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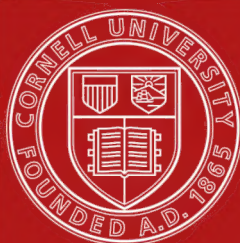
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FROM THE COMMENCEMENT OF 1891  
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LONDON:  
Printed and Published for the Council of Law Reporting,  
BY WILLIAM CLOWES AND SONS, LIMITED,  
DUKE STREET, STAMFORD STREET, S.E.  
PUBLISHING OFFICE: 7, FLEET STREET, E.C.,  
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## DIGEST OF CASES, 1891—1900.

### C O N T E N T S.

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	PAGE
LIST OF ABBREVIATIONS . . . . .	vii
TABLE OF CASES IN THE DIGEST . . . . .	ix
TABLE OF CASES AFFIRMED, REVERSED, FOLLOWED, OVERRULED, OR JUDICIALLY COMMENTED ON OR SUPERSEDED BY STATUTE OR ORDER, 1891—1900 . . . . .	} cclxxxi
TABLE OF STATUTES JUDICIALLY CONSIDERED, 1891 —1900 . . . . .	} cccci
TABLE OF RULES AND ORDERS OF COURT JUDI- CIALLY CONSIDERED, 1891—1900 . . . . .	} cccclvii
DIGEST OF CASES REPORTED IN THE LAW REPORTS OR WEEKLY NOTES, 1891—1900 . . . . .	} Columns 1—2394





## LIST OF ABBREVIATIONS.

IN THIS DIGEST THE FOLLOWING ABBREVIATIONS ARE USED.

A. C. . . .	House of Lords and Privy Council Appeal Cases.	Nov. . . .	November.
Appx. . . .	Appendix.	O. . . . .	Order.
Art. . . . .	Article (or Articles).	O. in C. . . .	Order in Council.
Att.-Gen. . . .	Attorney-General.	Oct. . . . .	October.
Aug. . . . .	August.	p. . . . .	page.
Bd. . . . .	Board.	P. C. . . . .	The Judicial Committee of the Privy Council.
c. . . . .	chapter.	Plt. . . . .	Plaintiff.
C. A. . . . .	Court of Appeal.	pp. . . . .	pages.
C. C. R. . . .	Crown Case Reserved.	pt. . . . .	part.
Co. . . . .	Company.	Parl. . . . .	Parliament (or Parliamentary).
col. . . . .	column.	Pres. . . . .	President.
Commrs. . . .	Commissioners.	Publ. . . . .	Publication.
Ct. of Sess. . .	Court of Sessions.	R. . . . .	Rule (or Rules).
Dec. . . . .	December.	R. S. C. . . .	Rules of the Supreme Court.
Deft. . . . .	Defendant.	Reg. . . . .	The Queen.
Dept. . . . .	Department.	Regs. . . . .	Regulations.
Div. Ct. . . .	Divisional Court.	ry. . . . .	railway.
E. . . . .	England.	Sc. . . . .	Scotland.
Eccles. . . . .	Ecclesiastical.	s. . . . .	section.
edit. . . . .	edition.	sa. . . . .	sections.
Educ. . . . .	Education.	Sched. . . . .	Schedule.
F. . . . .	Form (or Forms).	Secy. . . . .	Secretary.
Feb. . . . .	February.	Sept. . . . .	September.
H. L. . . . .	House of Lords.	St. O. P. . . .	Stationery Office Publication.
H. M. . . . .	Her Majesty the Queen.	St. R. & O. . .	The annual volumes entitled "The Statutory Rules and Orders, 189—," published by authority.
Ir. . . . .	Ireland.		
— J. . . . .	Mr. Justice —.		
Jan. . . . .	January.	Treas. . . . .	Treasury.
Ld. . . . .	Limited.	U. K. . . . .	United Kingdom of Great Britain and Ireland.
Loc. Govt. . .	Local Government.		
Lond. Gaz. . .	The London Gazette.	Vol. . . . .	Volume.
Mar. . . . .	March.	W. N. . . . .	Weekly Notes.
Merch. Shipp. .	Merchant Shipping.		
Metrop. . . .	Metropolis (or Metropolitan).		



## TABLE OF CASES IN THE DIGEST.

Name of Case.	Volume and Page.	Column of Digest.
A.		
A. and B. (Infants), In re .. ..	C. A. [1897] 1 Ch. 786 .. ..	948
A. & Co. :—D. v. .. ..	[1900] W. N. 30; [1900] 1 Ch. 484 .. ..	1561
A. B., In re .. ..	C. A. [1899] W. N. 233 .. ..	1198
A. B. & Co., In re .. ..	C. A. [1900] W. N. 50; [1900] 1 Q. B. 541 .. ..	158
————— (No. 2) .. ..	C. A. [1900] W. N. 112; [1900] 2 Q. B. 429 .. ..	135
A. B. v. C. D. .. ..	H. L. (Sc.) [1891] A. C. 616 .. ..	1836
A. Co., In re .. ..	[1894] 2 Ch. 349 .. ..	961
Aaron's Reefs, Ld. v. Twiss .. ..	H. L. (I.) [1896] A. C. 273 .. ..	374
Aas v. Benham .. ..	C. A. [1891] 2 Ch. 244 .. ..	1421
Abercarn Colliery Co. :—Brace v. .. ..	[1891] 1 Q. B. 496; C. A. [1891] 2 Q. B. 699 .. ..	1258
Abbott, In re .. ..	[1894] 1 Q. B. 442 .. ..	143
Abbott, In re. Peacock v. Frigout .. ..	[1893] 1 Ch. 54 .. ..	1483, 2348
Abbott :—Baker v. .. ..	[1897] W. N. 38 (4) .. ..	123
Abbott v. Minister for Lands .. ..	P. C. [1895] A. C. 425 .. ..	1324, 2071
Abbott & Co. v. Wolsey .. ..	C. A. [1895] 2 Q. B. 97 .. ..	1815
Abbott Fund (The Trusts of the), In re. Smith v. Abbott .. ..	[1900] W. N. 121; [1900] 2 Ch. 326 .. ..	2161
Abdy, In re. Rabbeth v. Donaldson (No. 1) .. ..	C. A. [1895] W. N. 12 .. ..	40, 923
————— (No. 2) .. ..	C. A. [1895] 1 Ch. 455 .. ..	33, 643
Aberdare (Lord) :—Att.-Gen. v. .. ..	[1892] 2 Q. B. 684 .. ..	1750
Aberdeen District Tramways Co. :—Ogston v. .. ..	H. L. (Sc.) [1896] W. N. 175 (14); [1897] A. C. 111 .. ..	1351
Aberdein, In re. Hagon v. Aberdein .. ..	[1896] W. N. 154 (5) .. ..	859
Abingdon :—Baring v. .. ..	C. A. [1892] 2 Ch. 374 .. ..	297
Abingdon (Earl of) :—Cannan v. .. ..	[1900] 2 Q. B. 66 .. ..	190
Abrahams v. Deakin .. ..	C. A. [1891] 1 Q. B. 516 .. ..	1242
Abstainers and General Insurance Co., In re .. ..	[1891] 2 Ch. 124 .. ..	384
“Accomac,” The .. ..	C. A. [1891] P. 349 .. ..	2004
Ackerman v. Lockhart. In re Hawkes .. ..	C. A. [1898] 2 Ch. 1 .. ..	2049
Ackland :—Chastey v. .. ..	C. A. [1895] 2 Ch. 389; H. L. (E.) [1897] A. C. 155 .. ..	1116
Acomb :—Brown v. In re Brown .. ..	[1896] W. N. 164 (7) .. ..	2315
Acton Urban Council :—Holford v. .. ..	[1898] 2 Ch. 240 .. ..	224
Adam v. British and Foreign Steamship Co. .. ..	[1898] 2 Q. B. 430 .. ..	1315
Adam :—Savage v. .. ..	C. A. [1895] W. N. 109 (11) .. ..	46
Adams, In re. Adams v. Adams .. ..	[1893] 1 Ch. 329 .. ..	952
Adams v. Adams .. ..	C. A. [1892] 1 Ch. 369 .. ..	2331

Name of Case.	Volume and Page.	Column of Digest.
Adams <i>v.</i> Adams .. .. .	[1900] W. N. 32 .. ..	707
Adams :—Cooper <i>v.</i> In re Budgett .. ..	[1894] 2 Ch. 557 .. ..	139, 153
Adams <i>v.</i> Great North of Scotland Ry. Co. ..	[1891] A. C. 31 .. ..	55, 65
Adams :—Lawrence <i>v.</i> .. .. .	[1896] W. N. 158 (2) .. ..	760
Adams :—Young <i>v.</i> .. .. .	P. C. [1898] A. C. 469 .. ..	1321
Adams & Perry's Contract, In re .. ..	[1899] W. N. 24 (12); [1899] 1 Ch. 554 .. ..	2311
Adams' Trade-mark, In re .. .. .	[1892] W. N. 40 .. ..	2124
Adcock <i>v.</i> Evans. In re Allen .. .. .	[1896] 2 Ch. 345 .. ..	804
Addison :—Kemble <i>v.</i> .. .. .	[1900] 1 Q. B. 430 .. ..	199
Admans :—Kimber <i>v.</i> .. .. .	[1900] W. N. 23; C. A. [1900] W. N. 43; [1900] 1 Ch. 412 ..	599
Adlington <i>v.</i> Conyngnam .. .. .	C. A. [1898] 2 Q. B. 492 .. ..	557
Ador, Ex parte. In re Browne & Wingrove ..	C. A. [1891] 2 Q. B. 574 .. ..	151
Aerated Bread Co. <i>v.</i> Shepherd .. .. .	[1897] W. N. 33 (9) .. ..	1154
African Consolidated Land and Trading Co. :—Boord <i>v.</i> .. .. .	[1897] W. N. 174 (3); [1898] 1 Ch. 596 .. ..	389
African Consolidated Land and Trading Co. :—Dawson <i>v.</i> .. .. .	C. A. [1898] 1 Ch. 6 .. ..	337
African Gold Concessions and Development Co., In re. Markham and Darter's Case .. ..	[1899] W. N. 119; [1899] 2 Ch. 480 .. ..	308
"Africano," The .. .. .	[1894] P. 141 .. ..	1988
Agar-Ellis :—Annaly <i>v.</i> In re Clifden (Lord) ..	[1900] W. N. 93; [1900] 1 Ch. 774 .. ..	1134
Al Biscuit Co., In re .. .. .	[1899] W. N. 115 .. ..	473
Agius <i>v.</i> Great Western Colliery Co. .. ..	C. A. [1899] W. N. 11 (8); [1899] 1 Q. B. 413 .. ..	634
Agnese, In the Goods of .. .. .	[1900] P. 60 .. ..	1600
Agricultural Hotel Co., In re .. .. .	[1891] 1 Ch. 396 .. ..	385
Aiken :—Burnley Steamship Co. <i>v.</i> .. ..	Ct. of Sess. (Sc.) [1896] W. N. 115 .. ..	1776
Aiken <i>v.</i> Macdonald .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 120 .. ..	1771
Ailesbury (Marquis of), and Iveagh (Lord), In re ..	[1893] 2 Ch. 345 .. ..	1889, 2235
Ailesbury's (Marquis of) Settled Estates, In re (No. 1) .. .. .	[1892] 1 Ch. 506; H. L. (E.); [1892] A. C. 356 .. ..	43, 1885
————— (No. 2) .. .. .	[1893] W. N. 140 .. ..	1531, 1886
Ailesbury (Marquis of) :—Bruce <i>v.</i> (No. 1) ..	[1892] 1 Ch. 506; H. L. (E.); [1892] A. C. 356 .. ..	43, 1885
————— (No. 2) .. .. .	[1892] W. N. 149 .. ..	1533, 1886
Ainley, Sons, & Co. <i>v.</i> Kirkheaton Local Board ..	[1891] W. N. 50 .. ..	2271
Ainley, Sons, & Co. :—Kirkheaton Local Board <i>v.</i> ..	C. A. [1892] 2 Q. B. 274 .. ..	585, 2271
Ainsworth, In re. Cockcroft <i>v.</i> Sanderson ..	[1895] W. N. 153 (9) .. ..	790
Ainsworth <i>v.</i> Wilding .. .. .	[1896] 1 Ch. 673 .. ..	1550
Ainsworth <i>v.</i> Wilding .. .. .	[1900] W. N. 132; [1900] 2 Ch. 315 .. ..	670
Airey, In re. Airey <i>v.</i> Stapleton .. ..	[1896] W. N. 174 (5); [1897] 1 Ch. 164 .. ..	1471
Aitchison <i>v.</i> Lothian .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 98 .. ..	1402
Aitken <i>v.</i> McMeckan .. .. .	P. C. [1895] A. C. 310 .. ..	1499, 1626, 1627, 2261
Aitken, Lilburn & Co. <i>v.</i> Ernsthausen & Co. ..	C. A. [1894] 1 Q. B. 773 .. ..	1977

Name of Case.	Volume and Page.	Column of Digest.
Ajello <i>v.</i> Worsley .. .. .	[1898] 1 Ch. 274 .. .. .	1250, 2117
Akerman, In re. <i>Akerman v. Akerman</i> .. .. .	[1891] 3 Ch. 212 .. .. .	788
Akeroyd's Settlement, In re. <i>Roberts v. Akeroyd</i> .. .. .	C. A. [1893] 3 Ch. 363 .. .. .	1905
Akers <i>v.</i> Sears. In re <i>Gray's Settlement</i> .. .. .	[1896] 2 Ch. 802 .. .. .	685
Akkersdyk, Ex parte. Ex parte <i>Fermenta</i> . Reg. } v. London County Council .. .. .	[1892] 1 Q. B. 190 .. .. .	1307
Aktieselskab <i>Helios v. Ekman &amp; Co.</i> .. .. .	C. A. [1897] 2 Q. B. 83 .. .. .	1940
Alabama, New Orleans, Texas and Pacific Junction Ry. Co., In re .. .. .	C. A. [1891] 1 Ch. 213 .. .. .	477
Alabaster <i>v.</i> Harness .. .. .	[1894] 2 Q. B. 897; C. A. [1895] 1 Q. B. 339 .. .. .	2023
"Albano," The .. .. .	C. A. [1892] P. 419 .. .. .	1985
Albany Hotel Co. :—Att.-Gen. <i>v.</i> .. .. .	C. A. [1896] 2 Ch. 696 .. .. .	961
Alberti :— <i>Caprioni v.</i> .. .. .	[1891] W. N. 200 .. .. .	539
Albion (Transvaal) Gold Mines, Ltd. :—Transvaal Exploring Co. <i>v.</i> .. .. .	[1899] W. N. 122; [1899] 2 Ch. 370 .. .. .	381
Albiston :— <i>Timmis v.</i> .. .. .	[1895] 2 Q. B. 58 .. .. .	546
Alcock <i>v.</i> Henley. In re <i>Henley</i> .. .. .	[1896] W. N. 154 (6) .. .. .	792
Alcock <i>v.</i> Smith .. .. .	C. A. [1892] 1 Ch. 238 .. .. .	196
Alcoy and Gandia Ry. and Harbour Co. <i>v.</i> Greenhill .. .. .	C. A. [1895] W. N. 150 (3); [1896] 1 Ch. 19 .. .. .	1527
Alder :— <i>Parker v.</i> .. .. .	[1899] 1 Q. B. 20 .. .. .	21
Alderson, In re. Ex parte <i>Jackson</i> .. .. .	[1895] 1 Q. B. 183 .. .. .	109
Aldin <i>v.</i> Latimer Clarke, Muirhead & Co. .. .. .	[1894] 2 Ch. 437 .. .. .	1075, 1116
Aldis <i>v.</i> London Corporation .. .. .	[1899] W. N. 76; [1899] 2 Ch. 169 .. .. .	1181
Aldridge, In re. <i>Aldridge v. Aldridge</i> .. .. .	[1894] 2 Ch. 97 .. .. .	1416
Aldridge :— <i>Caffin v.</i> .. .. .	[1895] 2 Q. B. 366; C. A. [1895] 2 Q. B. 648 .. .. .	1967
Alexander, In re. Ex parte <i>Alexander</i> .. .. .	C. A. [1892] 1 Q. B. 216 .. .. .	103
Alexander <i>v.</i> Automatic Telephone Co. .. .. .	[1899] W. N. 79; [1899] 2 Ch. 302; C. A. [1900] W. N. 93; [1900] 2 Ch. 56 .. .. .	2305
Alexander <i>v.</i> Burke (Mount Argus Case) .. .. .	C. A. (Ir.) [1899] W. N. 178 .. .. .	1378
Alexander <i>v.</i> Burke (The French College Case) .. .. .	C. A. (Ir.) [1897] W. N. 92 .. .. .	1401
Alexander <i>v.</i> Burke (The St. Joseph's College Case) .. .. .	C. A. (Ir.) [1897] W. N. 92 .. .. .	1401
Alexander <i>v.</i> Jenkins .. .. .	C. A. [1892] 1 Q. B. 797 .. .. .	652
Alexander :— <i>Penn v.</i> .. .. .	[1893] 1 Q. B. 522 .. .. .	1108
Alexandre <i>v.</i> Brassard .. .. .	P. C. [1895] A. C. 301 .. .. .	257
"Algoa," The .. .. .	[1899] P. 230; H. L. (E.) [1900] W. N. 86; [1900] A. C. 234 .. .. .	1945
Algesiras (Gibraltar) Ry. Co. :— <i>Greenwood v.</i> .. .. .	C. A. [1894] 2 Ch. 205 .. .. .	318
Alhambra Palace Co. :— <i>Phillips v.</i> .. .. .	[1900] W. N. 253 .. .. .	1415
Alison, In re. Ex parte <i>Jaynes</i> .. .. .	[1892] 2 Q. B. 587 .. .. .	122
Alkaline Reduction Syndicate, In re. <i>Ames's Case</i> .. .. .	[1896] W. N. 79 (1) .. .. .	421
Allan :— <i>Manitoba and North-West Land Corporation v.</i> .. .. .	[1893] 3 Ch. D. 432 .. .. .	966, 1537, 1540
All having Interest :— <i>Great Bardfield (Vicar of) v.</i> .. .. .	[1897] P. 185 .. .. .	740
All Persons having Interest, &c. :— <i>Richmond (Vicar of) and Chapelwardens of St. Matthias, Richmond v.</i> .. .. .	[1897] P. 70 .. .. .	741
All Persons having Interest, &c. :— <i>St. Andrew's, Romford (Rector of) .. .. .</i>	[1894] P. 220 .. .. .	741

Name of Case.	Volume and Page.	Column of Digest.
Allcard <i>v.</i> Walker .. .. .	[1896] 2 Ch. 369 .. ..	720
Allchurch <i>v.</i> Hendon Union Assessment Com- mittee .. .. .	C. A. [1891] 2 Q. B. 436 ..	1682
Allcock <i>v.</i> Hall .. .. .	C. A. [1891] 1 Q. B. 444 ..	1500
Allcroft <i>v.</i> Bishop of London .. .. .	H. L. (E.) [1891] A. C. 666 ..	757
Allday, In re Birmingham and District Land Co. and .. .. .	[1893] 1 Ch. 342 .. ..	2224, 2335
Aldred <i>v.</i> West Metropolitan Tram. Co. ..	C. A. [1891] 2 Q. B. 398 ..	2150
Allen, In re .. .. .	[1894] 2 Q. B. 924 .. ..	1689
Allen, In re. Adcock <i>v.</i> Evans .. .. .	[1896] 2 Ch. 345 .. ..	804
Allen, In re. Bassett <i>v.</i> Allen .. .. .	[1898] 2 Ch. 499 .. ..	1225
Allen, In the Goods of .. .. .	[1893] P. 184 .. ..	1594, 1609
Allen <i>v.</i> Allen (No. 1) .. .. .	C. A. [1894] P. 248 .. ..	706
— (No. 2) .. .. .	C. A. [1894] P. 134 .. ..	702
Allen:—Chetwynd <i>v.</i> .. .. .	[1899] 1 Ch. 353 .. ..	1286
Allen <i>v.</i> Cort. In re Harrison .. .. .	[1892] W. N. 148 .. ..	2191
Allen <i>v.</i> Flood .. .. .	C. A. [1895] 2 Q. B. 21; H. L. (E.) [1897] W. N. 177 (1); [1898] A. C. 1 .. ..	15
Allen <i>v.</i> Fulham Vestry .. .. .	C. A. [1900] 1 Q. B. 681 ..	1176
Allen <i>v.</i> Gold Reefs of West Africa, Ltd. ..	[1899] W. N. 75; [1899] 2 Ch. 40; [1900] W. N. 48; C. A. [1900] 1 Ch. 656 .. ..	304
Allen:—Hewlett <i>v.</i> .. .. .	C. A. [1892] 2 Q. B. 662; H. L. (E.) [1894] A. C. 383 ..	1249
Allen <i>v.</i> London County Council .. ..	C. A. [1895] 2 Q. B. 587 ..	1149
Allen <i>v.</i> Morrison .. .. .	P. C. [1900] A. C. 604 ..	2342
Allen <i>v.</i> Sinclair. Hodgkins <i>v.</i> Sinclair. In re Sinclair .. .. .	[1897] 1 Ch. 921 .. ..	31
Allen:—Smith <i>v.</i> In re Harrison. (No. 1) ..	[1891] 2 Ch. 349 .. ..	791, 1507, 1555
— (No. 2) .. .. .	[1892] W. N. 148 .. ..	2191
Alliance Marine Insurance Co., In re .. ..	[1892] 1 Ch. 300 .. ..	367
Allinson <i>v.</i> General Medical Council .. ..	C. A. [1894] 1 Q. B. 750 ..	1026, 1042, 1252
Alliott <i>v.</i> Smith .. .. .	[1895] 2 Ch. 111 .. ..	674, 798
Allsup & Sons (William):—Preston Banking Co. <i>v.</i> .. .. .	C. A. [1895] 1 Ch. 141 ..	1532
“Alne Holme,” The .. .. .	[1893] P. 173 .. ..	1929, 1965
“Alps,” The .. .. .	[1893] P. 109 .. ..	985
“Alsace Lorraine,” The .. .. .	[1893] P. 209 .. ..	997
Alston, In the Goods of .. .. .	[1892] P. 142 .. ..	1624
Alt <i>v.</i> Stratheden and Campbell (Lord). In re Lord Stratheden and Campbell .. .. .	[1894] 3 Ch. 265 .. ..	69, 281, 2347
“Altair,” The .. .. .	[1897] P. 105 .. ..	2010
Alton:—Wilmot <i>v.</i> .. .. .	[1896] 2 Q. B. 254; C. A. [1896] W. N. 160 (3); [1897] 1 Q. B. 17 .. ..	116
Altree <i>v.</i> Altree. Staffordshire Financial Co., Claimants .. .. .	[1898] 2 Q. B. 267 .. ..	197
Alty <i>v.</i> Farrell .. .. .	[1896] 1 Q. B. 636 .. ..	22, 94
Aluminium Co., In re .. .. .	[1894] W. N. 6 .. ..	386
Alvarez:—Scott <i>v.</i> In re Scott and Alvarez's Contract .. .. .	C. A. [1895] 1 Ch. 596; C. A. [1895] 2 Ch. 603 .. ..	1306, 1532, 2221

Name of Case.	Volume and Page.	Column of Digest.
Amalgamated Society of Railway Servants:— Taff Vale Ry. Co. v. .. .. .	C. A. [1900] 256 .. ..	2145
Amalgamated Syndicate, In re. .. ..	[1897] 2 Ch. 600 .. ..	462
Ambard:—Trinidad Asphalt Co. v. .. ..	P. C. [1899] 2 Ch. 260, n.; [1899] } A. C. 594 .. ..	2096
Ambition Investment Building Society, In re ..	[1895] W. N. 141 (1); [1896] } 1 Ch. 89 .. ..	232
Ambrose:—Baker v. .. .. .	[1896] 2 Q. B. 372 .. ..	199
American Concentrated Meat Co. v. Hendry ..	[1893] W. N. 67; C. A. [1893] } W. N. 82 .. ..	682, 1250, 1923
American Tobacco Co., The v. Guest .. ..	[1892] 1 Ch. 630 .. ..	2119
American Tobacco Co.:—Hanfstaengl v. .. ..	C. A. [1895] 1 Q. B. 347 .. ..	534, 535
American Trading Co.:—Bank of China, Japan, and the Straits v. .. .. .	P. C. [1894] A. C. 266 .. ..	509, 1591
Ames, In re. Ames v. Ames .. .. .	[1893] 2 Ch. 479 .. ..	1888
Ames's Case. In re Alkaline Reduction Syndicate	[1896] W. N. 79 (1) .. ..	421
Amos, In re. Carrier v. Price .. .. .	[1891] 3 Ch. 159 .. ..	2143, 2367
Ancell v. Rolfe .. .. .	[1896] W. N. 9 (8) .. ..	1406
Antcl v. Life Insurance Co (Manufacturer's) ..	P. C. [1899] A. C. 604 .. ..	242
Anderson v. Anderson .. .. .	C. A. [1895] 1 Q. B. 749 .. ..	642
Anderson:—Att.-Gen. v. In re Wood .. ..	[1896] 2 Ch. 596 .. ..	765
Anderson:—Bowen v. .. .. .	[1894] 1 Q. B. 164 .. ..	1066
Anderson:—Criglington v. .. .. .	C. A. (Ir.) [1898] W. N. 94 .. ..	1393
Anderson v. Dean .. .. .	C. A. [1894] 2 Q. B. 222 .. ..	1140, 1500
Anderson v. Gorrie .. .. .	C. A. [1895] 1 Q. B. 668 .. ..	1023, 2156
Anderson v. London City Mission. In re Wood	[1894] 2 Ch. 577 .. ..	2303
Anderson:—Manchester, Sheffield and Lincoln- shire Ry. Co. v. ... ..	C. A. [1898] 2 Ch. 394 .. ..	1644
Anderson v. Vicary .. .. .	[1899] W. N. 122; [1899] 2 Q. B. } 436; C. A. [1900] W. N. 128; } [1900] 2 Q. B. 287 .. ..	861
Anderson & Co. v. Beard .. .. .	[1900] 2 Q. B. 260 .. ..	2077
Anderson & Co.:—Grant v. .. .. .	C. A. [1892] 1 Q. B. 108 .. ..	1542
Anderton:—Blacklidge v. .. .. .	[1893] W. N. 112 .. ..	679
Andrew:—Barclay v. In re Barclay .. ..	[1899] 1 Ch. 674 .. ..	2171
Andrew v. Crossley .. .. .	C. A. [1892] 1 Ch. 492 .. ..	1435
Andrew:—Crossley v. .. .. .	C. A. [1892] 1 Ch. 492 .. ..	1435
Andrew v. St. Olave's Board of Works .. ..	[1898] 1 Q. B. 775 .. ..	1344
Andrew:—Tomlinson v. In re Tomlinson ..	[1897] W. N. 178 (4); [1898] } 1 Ch. 232 .. ..	2237
Andrew:—Witham v. In re Stead .. ..	[1899] W. N. 235; [1900] 1 Ch. } 237 .. ..	2162
Andrew Knowles & Sons, Ltd.:—Lysons v. ..	C. A. [1900] W. N. 55; [1900] } 1 Q. B. 780 .. ..	1222
Andrews, In the Goods of .. .. .	[1893] P. 14 .. ..	1626
Andrews v. Armstrong .. .. .	C. A. (Sc.) [1899] W. N. 170 .. ..	1372, 1381
Andrews:—Cook v. .. .. .	[1897] 1 Ch. 266 .. ..	2242
Andrews v. Denton .. .. .	[1897] 2 Q. B. 37 .. ..	1119
Andrews v. Gas Meter Co. .. .. .	[1896] W. N. 87 (8); C. A. } [1897] 1 Ch. 361 .. ..	368
Andrews:—Hands v. In re Smith .. ..	C. A. [1893] 2 Ch. 1 .. ..	118, 171, 933, 2171, 2193

Name of Case.	Volume and Page.	Column of Digest.
Andrews <i>v.</i> Mockford .. .. .	C. A. [1896] 1 Q. B. 372 ..	375, 572
Andrews <i>v.</i> Nott Bower .. .. .	C. A. [1895] 1 Q. B. 888 ..	648
Andrews:—Smith <i>v.</i> .. .. .	[1891] 2 Ch. 678 .. .. .	825
Angerstein, In re. Angerstein <i>v.</i> Angerstein ..	[1895] 2 Ch. 883 .. .. .	2299
Angier Line:—Steinman & Co. <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 619 ..	1972
Anglesea (Justices):—Reg. <i>v.</i> (No. 1) .. ..	[1892] 1 Q. B. 850 .. .. .	1103
(No. 2) .. .. .	[1892] 2 Q. B. 29 .. .. .	1041
Anglo-American Brush Electric Light Corpora- tion <i>v.</i> King, Brown & Co. .. .. .	H. L. (Sc.) [1892] A. C. 367 ..	1439
Anglo-American Exploration and Development Co., In re .. .. .	[1897] W. N. 152 (3); [1898] 1 Ch. 100 .. .. .	456
Anglo-American Land Mortgage and Agency Co.:—Nelson <i>v.</i> .. .. .	[1896] W. N. 166 (4); [1897] 1 Ch. 130 .. .. .	388
Anglo-Argentine Live Stock and Produce Agency <i>v.</i> Temperley Shipping Co. .. .. .	[1899] W. N. 110; [1899] 2 Q. B. 403 .. .. .	1931
Anglo-Australian Investment Co. (Debenture- holders, &c. of):—Newton <i>v.</i> .. .. .	P. C. [1895] A. C. 244 .. ..	315, 319, 1323
Anglo-Austrian Printing and Publishing Union, In re .. .. .	[1894] 2 Ch. 622 .. .. .	436
Anglo-Austrian Printing and Publishing Union, In re. Brabourne <i>v.</i> Anglo-Austrian Printing and Publishing Union .. .. .	[1895] 2 Ch. 891 .. .. .	470
Anglo-Austrian Printing and Publishing Union, In re. Isaac's Case .. .. .	C. A. [1892] 2 Ch. 158 .. ..	346
Anglo-Bavarian Steel Ball Co., In re .. ..	[1899] W. N. 80 .. .. .	459
Anglo-Continental Chemical Works, Ltd.:— Saccharin Corporation, Ltd. <i>v.</i> .. .. .	[1900] W. N. 95 .. .. .	1430
Anglo-Continental Corporation of Western Aus- tralia, In re .. .. .	[1898] 1 Ch. 327 .. .. .	411
Anglo-Italian Hemp Spinning Co.:—Lynde <i>v.</i> ..	[1895] W. N. 149 (1); [1896] 1 Ch. 178 .. .. .	376
Anglo-Sardinian Antimony Co., In re .. ..	[1894] W. N. 156 .. .. .	454
Angus <i>v.</i> Clifford .. .. .	C. A. [1891] 2 Ch. 449 .. ..	370
Ann, In re. Wilson <i>v.</i> Ann .. .. .	[1894] 1 Ch. 549 .. .. .	903, 1476
Annaly <i>v.</i> Agar-Ellis. In re Clifden (Lord) ..	[1900] W. N. 93; [1900] 1 Ch. 774 .. .. .	1134
Annan:—Cruise <i>v.</i> .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 94 .. .. .	1398
Annan:—Hutton <i>v.</i> .. .. .	H. L. (Sc.) [1898] A. C. 289 ..	2187
Annan:—Walshe <i>v.</i> .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 97 .. .. .	1400
Ansah:—Hockley <i>v.</i> .. .. .	[1896] W. N. 70 .. .. .	38
Anstee, In the Goods of .. .. .	[1893] P. 283 .. .. .	1597
Answorth:—Palmer <i>v.</i> In re Palmer .. ..	C. A. [1893] 3 Ch. 369 .. ..	2319, 2354
Anthony, In re. Anthony <i>v.</i> Anthony (No. 1) (No. 2) .. .. .	[1892] 1 Ch. 450 .. .. . [1893] 3 Ch. 498 .. .. .	2328 790
Anthony Birrell Pearce & Co., In re. Doig <i>v.</i> Anthony Birrell Pearce & Co. In re Same. Groos <i>v.</i> Same .. .. .	[1899] W. N. 76; [1899] 2 Ch. 50. .. .. .	775
Antwerp, London and Brazil Line:—Bell & Co. <i>v.</i> Aplin <i>v.</i> Porritt .. .. .	C. A. [1891] 1 Q. B. 103 .. .. [1893] 2 Q. B. 57 .. .. .	1541 608
Apollinaris Co.:—Saxlehner <i>v.</i> .. .. .	[1897] 1 Ch. 893 .. .. .	2141
Apollinaris Co.'s Trade-marks, In re (No. 1) ..	C. A. [1891] 1 Ch. 1 .. .. .	568
(No. 2) .. .. .	C. A. [1891] 2 Ch. 186 .. ..	2135, 2136
"Apollo," The. Owners of "Apollo" <i>v.</i> Port Talbot Co. .. .. .	H. L. (E.) [1891] A. C. 499 ..	1979



Name of Case.	Volume and Page.	Column of Digest.
Apothecaries Co. <i>v.</i> Jones .. ..	[1893] 1 Q. B. 89 .. ..	1252
Applebee, In re. <i>Leveson v. Beales</i> .. ..	[1891] 3 Ch. 422 .. ..	2338
Appleby <i>v.</i> Horseley Co. .. ..	C. A. [1899] W. N. 90; [1899] 2 Q. B. 521 .. ..	1220, 1245
Appleton:—Dunn <i>v.</i> .. ..	C. A. [1898] 1 Q. B. 564 .. ..	587
Apted, In the Goods of .. ..	[1899] W. N. 128; [1899] P. 272 .. ..	1623
Apthorpe:—London Bank of Mexico and South America <i>v.</i> .. ..	[1891] 1 Q. B. 383; C. A. [1891] 2 Q. B. 378 .. ..	1764
Arauco Co., In re .. ..	[1899] W. N. 134 .. ..	666
Arbib and Class' Contract, In re .. ..	C. A. [1891] 1 Ch. 601 .. ..	2243, 2319
Arbuckle <i>v.</i> Buchanan .. ..	C. A. (Ir.) [1899] W. N. 180 .. ..	1377
Archer's Case. In re North Australian Territory Co. .. ..	C. A. [1892] 1 Ch. 322 .. ..	349
Arden <i>v.</i> Boyce .. ..	C. A. [1894] 1 Q. B. 796 .. ..	1567
Ardern, In the Goods of .. ..	[1898] P. 147 .. ..	1601
Argentine Gold Fields, Ltd., Ex parte. In re Low .. ..	C. A. [1891] 1 Q. B. 147 .. ..	105
"Argo," The .. ..	[1895] P. 33 .. ..	2010
Argus Printing Co.:—Hathaway <i>v.</i> .. ..	C. A. [1900] W. N. 247 .. ..	1220
"Ariel" (Leatham, Owner of the SS.):—"Lancashire" (Bibby Bros. Co., Owners of the SS.) <i>v.</i> The "Lancashire" .. ..	C. A. [1893] P. 47; H. L. (E.) [1894] A. C. 1 .. ..	1950
Arizona Copper Co. <i>v.</i> Inland Revenue .. ..	Ct. of Sess. (Sc.) [1896] W. N. 93 .. ..	1766
Armitage, In re. <i>Armitage v. Garnett</i> .. ..	C. A. [1893] 3 Ch. 337 .. ..	1852
Armitage <i>v.</i> Moor .. ..	[1900] W. N. 123; [1900] 2 Q. B. 363 .. ..	1759
Armour <i>v.</i> Bate .. ..	C. A. [1891] 2 Q. B. 233 .. ..	1558
Armson:—Pharmaceutical Society <i>v.</i> .. ..	C. A. [1894] 2 Q. B. 720 .. ..	1451
Armstrong, In re. Ex parte Lindsay .. ..	[1892] 1 Q. B. 327 .. ..	503, 1403
Armstrong:—Andrews <i>v.</i> .. ..	C. A. (Sc.) [1899] W. N. 170 .. ..	1373, 1381
Armstrong <i>v.</i> Armstrong .. ..	[1892] P. 98 .. ..	709
Armstrong <i>v.</i> London County Council .. ..	[1900] 1 Q. B. 416 .. ..	1173
Armstrong <i>v.</i> Wilkin. In re Weeding .. ..	[1896] 2 Ch. 364 .. ..	2328
Armstrong (George) & Sons, In re .. ..	[1896] 1 Ch. 536 .. ..	2055
Armstrong, Mitchell & Co.:—O'Neill <i>v.</i> .. ..	[1895] 2 Q. B. 70; C. A. [1895] 2 Q. B. 418 .. ..	2014
Army and Navy Auxiliary Co-operative Supply:—Drury <i>v.</i> .. ..	[1896] 2 Q. B. 271 .. ..	1157
Armytage <i>v.</i> Armytage .. ..	[1898] P. 178 .. ..	708
Arnold:—Booth <i>v.</i> .. ..	C. A. [1895] 1 Q. B. 571 .. ..	543, 652
Arnold <i>v.</i> Burt. In re Jeffery (No. 1) .. ..	[1891] 1 Ch. 671 .. ..	951
(No. 2) .. ..	[1895] 2 Ch. 577 .. ..	952
Arnold <i>v.</i> Smith. In re Smith .. ..	[1895] W. N. 154 (16); [1896] 1 Ch. 171 .. ..	2170
Arrow:—Murphy <i>v.</i> .. ..	[1897] 2 Q. B. 527 .. ..	863
Arrow Shipping Co. <i>v.</i> Tyne Improvement Comrs. The "Crystal" .. ..	H. L. (E.) [1894] A. C. 508 .. ..	2012
"Arroyo," The .. ..	[1900] W. N. 60 .. ..	1937
Art Union of London:—Savoy Overseers <i>v.</i> .. ..	C. A. [1894] 2 Q. B. 609; H. L. (E.) [1896] A. C. 296 .. ..	1677
Arter <i>v.</i> Hammersmith Vestry .. ..	[1897] 1 Q. B. 646 .. ..	1178
Arthur:—Broomer <i>v.</i> .. ..	P. C. [1898] A. C. 777 .. ..	1020
Artistic Photographic Co.:—Lazarus <i>v.</i> .. ..	[1897] 2 Ch. 214 .. ..	1121
Arton, In re (No. 1) .. ..	[1896] 1 Q. B. 108 .. ..	810
(No. 2) .. ..	[1896] 1 Q. B. 509 .. ..	810

Name of Case.	Volume and Page.	Column of Digest.
Asfar & Co. v. Blundell .. .. .	[1895] 2 Q. B. 196; C. A. {	1976
Ash v. Ash .. .. .	[1896] 1 Q. B. 123 .. .. .	701
Ashburner v. Sewell .. .. .	[1893] P. 222 .. .. .	2242,
Ashbury v. Ellis .. .. .	[1891] 3 Ch. 405 .. .. .	2292
Ashby, In re. Ex parte Wreford .. .. .	P. C. [1893] A. C. 339 .. .. .	1336
Ashby :—Hindson v. .. .. .	[1892] 1 Q. B. 872 .. .. .	1905,
Ashby v. Wilson .. .. .	[1895] W. N. 147 (9); [1896] {	2183
Ashe :—Kitson v. .. .. .	1 Ch. 78; C. A. [1896] 2 Ch. 1 {	825,
Ashford v. Brooks. In re Hooper .. .. .	[1899] W. N. 222; [1900] 1 Ch. {	2284
Ashley & Smith, Ltd. :—Burge v. .. .. .	66 .. .. .	1063
Ashling v. Boon .. .. .	[1899] W. N. 16 (10); [1899] {	541
Ashmead, Ex parte. In re Nance .. .. .	1 Q. B. 425 .. .. .	791
Ashmore & Son v. Cox (C. S.) & Co. .. .. .	[1892] W. N. 151 .. .. .	870
Ashnton, In the Goods of .. .. .	C. A. [1900] W. N. 63; [1900] {	774, 781,
Ashnton, In re .. .. .	1 Q. B. 744 .. .. .	1804
Ashnton, In re. Ingram v. Papillon .. .. .	[1891] 1 Ch. 568 .. .. .	142, 550
Ashnton v. Ross. In re Ross .. .. .	C. A. [1893] 1 Q. B. 590 .. .. .	1816
Ashnton, Edridge & Co. :—Nickoll & Knight v. .. .. .	[1899] 1 Q. B. 436 .. .. .	789,
Ashton-under-Lyne Corporation v. Pugh .. .. .	[1892] P. 83 .. .. .	1610,
Ashwell :—Soar v. .. .. .	[1900] W. N. 109 .. .. .	2326,
"Asia," The .. .. .	C. A. [1897] W. N. 178 (2); [1897] {	2332
Askew v. Askew .. .. .	2 Ch. 574; [1898] 1 Ch. 142 {	2320
Aspinall v. Sutton .. .. .	[1899] W. N. 234; [1900] 1 Ch. {	1469
Assets Co. :—Blair v. .. .. .	162 .. .. .	32
Assets Co. v. Inland Revenue Commrs. .. .. .	[1900] W. N. 116; [1900] 2 Q. B. {	515
Assets Development Co. v. Close Brothers & Co. {	298 .. .. .	2087
Assicurazioni Generali v. SS. Bessie Morris Co. {	C. A. [1897] W. N. 156 (5); {	2193
Astbury v. Astbury .. .. .	[1898] 1 Q. B. 45 .. .. .	1958
Asten v. Asten .. .. .	C. A. [1893] 2 Q. B. 390 .. .. .	1593
Astley v. New Tivoli, Ltd. .. .. .	[1891] P. 121 .. .. .	1039
Astwood v. Cobbold .. .. .	[1891] P. 174 .. .. .	1831
Astwood :—Cobb ld v. .. .. .	[1894] 2 Q. B. 349 .. .. .	1767
Astwood :—Henderson v. .. .. .	H. L. (Sc.) [1896] A. C. 409 .. .. .	563
Atherden :—Morris v. In re Morris .. .. .	Ct. of Sess. (Sc.) [1897] W. N. {	988,
Atherton, In re .. .. .	144 .. .. .	1970
Atherton, In the Goods of .. .. .	[1900] W. N. 176; [1900] 2 Ch. {	1125
Atherton :—Cowap v. .. .. .	717 .. .. .	2364
Atherton :—Mostyn v. .. .. .	[1892] 1 Q. B. 571; C. A. [1892] {	340
Athole (Duke of) :—M'Inroy v. .. .. .	2 Q. B. 652 .. .. .	1301
	[1898] 2 Ch. 111 .. .. .	1301
	[1894] 3 Ch. 260 .. .. .	1301
	[1898] W. N. 172 (3); [1899] {	2284
	1 Ch. 151 .. .. .	1840
	P. C. [1894] A. C. 150 .. .. .	
	P. C. [1894] A. C. 150 .. .. .	
	P. C. [1894] A. C. 150 .. .. .	
	[1894] W. N. 85 .. .. .	
	[1891] W. N. 85 .. .. .	
	[1892] P. 104 .. .. .	
	[1893] 1 Q. B. 49 .. .. .	
	[1899] W. N. 103; [1899] 2 Ch. {	
	360 .. .. .	
	H. L. (Sc.) [1891] A. C. 629 .. .. .	

Name of Case.	Volume and Page.	Column of Digest.
Attholl (Duke of):—Wedderburn <i>v.</i> Duke of	H. L. (Sc.) [1900] A. C. 403 ..	824
Attholl <i>v.</i> Glover Incorporation of Perth ..	[1898] 2 Q. B. 547 ..	165
Athlumney, In re. Ex parte Wilson ..	[1898] 1 Ch. 637; C. A. [1899] ..	915
Atkinson, In re. Waller <i>v.</i> Atkinson ..	W. N. 51; [1899] 2 Ch. 1 ..	2336
Atkinson, In re. Wilson <i>v.</i> Atkinson ..	[1892] 3 Ch. 52 ..	858, 979
Atkinson <i>v.</i> Atkinson ..	[1895] W. N. 114 (3) ..	587
Atkinson <i>v.</i> Carlisle (Mayor of) ..	[1896] 1 Q. B. 393 ..	1390
Atkinson:—Moore <i>v.</i> ..	[1891] 1 Q. B. 269 ..	2357
Atkinson <i>v.</i> Morris ..	C. A. [1896] W. N. 167 (7); [1897] P. 40 ..	245, 256
Atlantic and North-West Ry. Co.:—Casgrain <i>v.</i>	P. C. [1895] A. C. 282 ..	245
Atlantic and North-West Ry. Co. <i>v.</i> Wood ..	P. C. [1895] A. C. 257 ..	1229
Atlantic Transport Co.:—Woodham <i>v.</i> ..	C. A. [1898] W. N. 159 (9); [1899] 1 Q. B. 15 ..	573
Atlas Metal Co. <i>v.</i> Miller ..	C. A. [1898] 2 Q. B. 500 ..	107
Attenborough, Ex parte. In re Cole ..	[1898] 1 Q. B. 290 ..	94
Attenborough & Son:—Clutton <i>v.</i> ..	[1895] 2 Q. B. 306; C. A. [1895] 2 Q. B. 707; H. L. (E.) [1896] W. N. 174 (2); [1897] A. C. 90 ..	501
Attenborough <i>v.</i> Henschel ..	[1895] 1 Q. B. 833 ..	1816
Attenborough:—Kirkham <i>v.</i> Kirkham <i>v.</i> Gill	C. A. [1897] 1 Q. B. 201 ..	148
Att.-Gen., Ex parte. In re Higginson & Dean	[1899] 1 Q. B. 325 ..	1750
Att.-Gen. <i>v.</i> Aberdare (Lord) ..	[1892] 2 Q. B. 684 ..	961
Att.-Gen. <i>v.</i> Albany Hotel Co. ..	C. A. [1896] 2 Ch. 696 ..	765
Att.-Gen. <i>v.</i> Anderson. In re Wood ..	[1896] 2 Ch. 596 ..	1095
Att.-Gen.:—Bain <i>v.</i> ..	[1892] P. 217; C. A. [1892] P. 261 ..	1748
Att.-Gen. <i>v.</i> Beech ..	[1897] 2 Q. B. 535; C. A. [1898] 2 Q. B. 147; H. L. (E.) [1898] W. N. 166 (13); [1899] A. C. 53 ..	1884
Att.-Gen.:—Betty <i>v.</i> In re Betty ..	[1899] W. N. 57; [1899] 1 Ch. 821 ..	890
Att.-Gen. <i>v.</i> Brighton and Hove Co-operative Supply Association ..	C. A. [1900] W. N. 12; [1900] 1 Ch. 276 ..	1181
Att.-Gen. <i>v.</i> Camberwell (Vestry) ..	[1894] W. N. 163 ..	548
Att.-Gen. <i>v.</i> Cardiff (Corporation of) ..	[1894] 2 Ch. 337 ..	1805
Att.-Gen. <i>v.</i> Carlton Bank ..	[1899] 2 Q. B. 158 ..	1729
Att.-Gen. <i>v.</i> Chapman ..	[1891] 2 Q. B. 526 ..	275
Att.-Gen. <i>v.</i> Christ Church, Oxford ..	[1894] 3 Ch. 524 ..	275
Att.-Gen. <i>v.</i> Christ's Hospital ..	[1896] 1 Ch. 879 ..	1738
Att.-Gen. <i>v.</i> Clarkson ..	C. A. [1899] W. N. 232; [1900] 1 Q. B. 156 ..	1348
Att.-Gen. <i>v.</i> Clerkenwell (Vestry) ..	[1891] 3 Ch. 527 ..	1349
Att.-Gen. <i>v.</i> Cole ..	[1900] W. N. 272 ..	1266
Att.-Gen. <i>v.</i> Conduit Colliery Co. ..	[1895] 1 Q. B. 301 ..	1734
Att.-Gen. <i>v.</i> Coulson. Att.-Gen. <i>v.</i> Owen ..	[1899] 2 Q. B. 253 ..	278
Att.-Gen. <i>v.</i> Day ..	[1899] W. N. 207; [1900] 1 Ch. 31 ..	1675
Att.-Gen. <i>v.</i> Deeping St. Nicholas (Overseers) ..	[1892] W. N. 183 ..	1748
Att.-Gen. <i>v.</i> De Préville ..	[1899] 2 Q. B. 238; C. A. [1899] W. N. 255; [1900] 1 Q. B. 223 ..	1744
Att.-Gen. <i>v.</i> Dobree ..	[1900] 1 Q. B. 442 ..	1729
Att.-Gen. <i>v.</i> Dodd ..	[1894] 2 Q. B. 150 ..	1738
Att.-Gen. <i>v.</i> Dodington ..	[1897] 1 Q. B. 722; C. A. [1897] 2 Q. B. 373 ..	

Name of Case.	Volume and Page.	Column of Digest.
Att.-Gen. v. Earl Grey .. .. .	{ [1898] 1 Q. B. 318; C. A. [1898] 2 Q. B. 534; H. L. (E.) [1900] W. N. 40; [1900] A. C. 124 }	1741
Att.-Gen. v. Edwards .. .. .	[1891] 1 Ch. 194 .. .. .	2080
Att.-Gen. v. Ellis .. .. .	[1895] 2 Q. B. 466 .. .. .	1730
Att.-Gen. v. Emerson .. .. .	H. L. (E.) [1891] A. C. 649 .. .. .	823
Att.-Gen. v. Fairley .. .. .	[1897] 1 Q. B. 698 .. .. .	1737
Att.-Gen. v. Furness Ry. Co. .. .. .	[1899] 2 Q. B. 267 .. .. .	1651
Att.-Gen. v. Gosling .. .. .	[1892] 1 Q. B. 545 .. .. .	1730
Att.-Gen. v. Hanwell Urban Council .. .. .	{ [1899] W. N. 214; [1900] 1 Ch. 51; C. A. [1900] W. N. 138; [1900] 2 Ch. 377 .. .. . }	1144
Att.-Gen. v. Hatch .. .. .	C. A. [1893] 3 Ch. 36 .. .. .	2080
Att.-Gen. v. Hay .. .. .	[1899] 2 Q. B. 245 .. .. .	1749
Att.-Gen. v. Hooper .. .. .	[1893] 3 Ch. 483 .. .. .	2091
Att.-Gen. :—Hunter v. .. .. .	{ [1897] 1 Ch. 518; C. A. [1897] 2 Ch. 105; H. L. (E.) [1899] W. N. 71; [1899] A. C. 309 }	276
Att.-Gen. v. Jacobs-Smith .. .. .	{ [1895] 1 Q. B. 472; C. A. [1895] 2 Q. B. 341 .. .. . }	1731
Att.-Gen. v. Jewish Colonization Association .. .. .	{ [1900] 2 Q. B. 556; C. A. [1900] W. N. 269 .. .. . }	1740
Att.-Gen. v. Logan .. .. .	[1891] 2 Q. B. 100 .. .. .	1347
Att.-Gen. v. London and North Western Ry. Co. .. .. .	{ [1898] W. N. 160 (12); [1899] 1 Q. B. 72; C. A. [1899] W. N. 221; [1900] 1 Q. B. 78 .. .. . }	1647
Att.-Gen. :—London County Council v. .. .. .	{ [1899] 2 Q. B. 226; C. A. [1900] W. N. 3; [1900] 1 Q. B. 192; H. L. (E.) [1900] W. N. 268 .. .. . }	1769
Att.-Gen. :—London County Council v. .. .. .	[1900] W. N. 100 .. .. .	1161
Att.-Gen. v. London Parochial Charities (Trustees of) .. .. .	[1896] 1 Ch. 541 .. .. .	235
Att.-Gen. v. Loyd .. .. .	[1895] 1 Q. B. 496 .. .. .	1785
Att.-Gen. v. Manchester (Corporation of) .. .. .	[1893] 2 Ch. 87 .. .. .	966, 1346
Att.-Gen. v. Margate Pier and Harbour (Company of Proprietors of) .. .. .	{ [1900] W. N. 65; [1900] 1 Ch. 749 .. .. . }	1633
Att.-Gen. v. Merthyr Tydfil Union .. .. .	{ [1899] W. N. 38 (3); C. A. [1900] W. N. 56; [1900] 1 Ch. 516 .. .. . }	1459
Att.-Gen. v. Metropolitan Ry. Co. .. .. .	C. A. [1894] 1 Q. B. 384 .. .. .	1667
Att.-Gen. v. Meyrick. In re Christchurch Inclosure Act .. .. .	H. L. (E.) [1893] A. C. 1 .. .. .	297
Att.-Gen. :—Meyrick v. In re Christchurch Inclosure Act .. .. .	[1894] 3 Ch. 209 .. .. .	297, 2088
Att.-Gen. v. Midland Railway .. .. .	{ [1900] 2 Q. B. 353; C. A. [1900] W. N. 271 .. .. . }	1804
Att.-Gen. v. Moore .. .. .	[1893] 1 Ch. 676 .. .. .	540, 627, 2153
Att.-Gen. v. Morgan .. .. .	C. A. [1891] 1 Ch. 432 .. .. .	1260
Att.-Gen. :—New York Breweries Co. v. .. .. .	{ [1897] 1 Q. B. 738; C. A. [1897] W. N. 175 (10); [1898] 1 Q. B. 205; H. L. (E.) [1898] W. N. 170 (12); [1899] A. C. 62 .. .. . }	1785
Att.-Gen. v. Newcastle-on-Tyne Corporation .. .. .	H. L. (E.) [1892] A. C. 568 .. .. .	542
Att.-Gen. v. Newcastle-upon-Tyne Corporation .. .. .	C. A. [1897] 2 Q. B. 384 .. .. .	665
Att.-Gen. v. Newcastle-upon-Tyne Corporation .. .. .	C. A. [1899] 2 Q. B. 478 .. .. .	668
Att.-Gen. v. North Metropolitan Tramways Co. .. .. .	[1892] 3 Ch. 70 .. .. .	672, 676, 2148
Att.-Gen. v. Owen. Att.-Gen. v. Coulson .. .. .	[1899] 2 Q. B. 253 .. .. .	1734

Name of Case.	Volume and Page.	Column of Digest.
Att.-Gen.:— <i>Panes v. In re Bond</i> .. ..	[1900] W. N. 122 .. ..	624
Att.-Gen. <i>v. Robertson</i> .. ..	[1892] 2 Q. B. 694; C. A. [1893] 1 Q. B. 293 .. ..	1806
Att.-Gen. <i>v. Rufford &amp; Co.</i> .. ..	[1899] W. N. 8 (3); [1899] 1 Ch. 537 .. ..	2084
Att.-Gen. <i>v. St. John's Hospital, Bath</i> .. ..	[1893] 3 Ch. 151 .. ..	1091
Att.-Gen. <i>v. Smith</i> .. ..	[1892] 2 Q. B. 289; C. A. [1893] 1 Q. B. 239 .. ..	1785, 1787
Att.-Gen. <i>v. Smith-Marriott</i> .. ..	[1899] 2 Q. B. 595 .. ..	1733
Att.-Gen. <i>v. Strange</i> .. ..	C. A. [1898] 2 Q. B. 39 .. ..	1741
Att.-Gen.:— <i>Sudeley (Lord) v.</i> .. ..	[1895] 2 Q. B. 526; C. A. [1896] 1 Q. B. 354; H. L. (E.) [1896] W. N. 162 (14); [1897] A. C. 11 .. ..	1785
Att.-Gen. <i>v. Swansea Corporation</i> .. ..	[1898] 1 Ch. 602 .. ..	545
Att.-Gen. <i>v. Teddington Urban Council</i> .. ..	[1898] 1 Ch. 66 .. ..	1144
Att.-Gen. <i>v. Tod Heatley</i> .. ..	C. A. [1897] 1 Ch. 560 .. ..	1353
Att.-Gen.:— <i>Tynemouth Corporation v.</i> .. ..	H. L. (E.) [1899] W. N. 71; C. A. [1898] 1 Q. B. 604; [1899] A. C. 293 .. ..	544
Att.-Gen. <i>v. Wilson</i> .. ..	[1900] W. N. 263 .. ..	627
Att.-Gen.:— <i>Wolverton (Baron) v.</i> .. ..	[1896] 2 Q. B. 604; C. A. [1897] 1 Q. B. 231; H. L. (E.) [1898] A. C. 535 .. ..	1807
Att.-Gen. <i>v. Wood</i> .. ..	[1897] 2 Q. B. 102 .. ..	1749
Att.-Gen. <i>v. Worrall</i> .. ..	C. A. [1895] 1 Q. B. 99 .. ..	1729
Att.-Gen. <i>v. Wright</i> .. ..	C. A. [1897] 2 Q. B. 318 .. ..	2107
Att.-Gen. for Canada:—Att.-Gen. of Ontario <i>v.</i> Att.-Gen. for the Dominion of Canada <i>v.</i> Att.-Gen. for Ontario .. ..	P. C. [1894] A. C. 189 .. ..	240, 292
Att.-Gen. for the Dominion of Canada <i>v.</i> Att.-Gen. for Ontario .. ..	P. C. [1897] A. C. 199 .. ..	242
Att.-Gen. for Ontario .. ..		
Att.-Gen. for Dominion of Canada <i>v.</i> Att.-Gen. for Province of Ontario .. ..	P. C. [1898] A. C. 247 .. ..	252
Att.-Gen. for Dominion of Canada <i>v.</i> Att.-Gen. for Provinces of Ontario, Quebec, and Nova Scotia .. ..	P. C. [1898] A. C. 700 .. ..	246
Att.-Gen. of Duchy of Lancaster <i>v.</i> Liverpool New Cattle Market Co. .. ..	C. A. [1896] W. N. 30 (2) .. ..	1140
Att.-Gen. of the Duchy of Lancaster <i>v.</i> London and North-Western Ry. Co. .. ..	C. A. [1892] 3 Ch. 274 .. ..	1530
Att.-Gen. for Ireland <i>v.</i> Rathdonnell (Baron) .. ..	Ex. Div., Ir. [1896] W. N. 141 .. ..	1809
Att.-Gen. of Jamaica:—Jamaica Ry. Co. <i>v.</i> .. ..	P. C. [1893] A. C. 127 .. ..	1019, 2068
Att.-Gen. of Jamaica:—West India Improvement Co. <i>v.</i> .. ..	P. C. [1894] A. C. 243 .. ..	1017, 1668
Att.-Gen. and Receiver-General for Jersey <i>v.</i> Le Moignan .. ..	P. C. [1892] A. C. 402 .. ..	1020, 1591
Att.-Gen. and Receiver-General for Jersey <i>v.</i> Turner .. ..	P. C. [1893] A. C. 326 .. ..	1020
Att.-Gen. of Manitoba:—Brophy <i>v.</i> .. ..	P. C. [1895] A. C. 202 .. ..	249, 292
Att.-Gen. for New South Wales <i>v.</i> Love .. ..	P. C. [1898] A. C. 679 .. ..	1330
Att.-Gen. for New South Wales:—Mackled <i>v.</i> .. ..	P. C. [1891] A. C. 455 .. ..	1324
Att.-Gen. for New South Wales:—Makin <i>v.</i> .. ..	P. C. [1894] A. C. 57 .. ..	610, 1324
Att.-Gen. for New South Wales <i>v.</i> Rennie .. ..	P. C. [1896] A. C. 376 .. ..	1330
Att.-Gen. for New South Wales:—Sydney (Municipal Council) <i>v.</i> .. ..	P. C. [1894] A. C. 444 .. ..	297, 1330
Att.-Gen. for New South Wales <i>v.</i> Walters .. ..	P. C. [1898] A. C. 460 .. ..	1327
Att.-Gen. for New Zealand:—Brown <i>v.</i> .. ..	P. C. [1898] A. C. 234 .. ..	1335
Att.-Gen. for Nova Scotia:—Reynolds <i>v.</i> .. ..	P. C. [1896] A. C. 240 .. ..	252

Name of Case.	Volume and Page.	Column of Digest.
Att.-Gen. for Ontario <i>v.</i> Att.-Gen. for the Dominion .. .. .	P. C. [1896] A. C. 348 .. ..	242, 243
Att.-Gen. for Ontario :—Att.-Gen. for the Dominion of Canada <i>v.</i> Att.-Gen. for Quebec <i>v.</i> Att.-Gen. for Ontario .. .. .	P. C. [1897] A. C. 199 .. ..	244
Att.-Gen. for Ontario :—Brewers and Maltsters' Association of Ontario <i>v.</i> .. .. .	P. C. [1897] A. C. 231 .. ..	253
Att.-Gen. of Ontario <i>v.</i> Att.-Gen. for Canada .. ..	P. C. [1894] A. C. 189 .. ..	240, 292
Att.-Gen. for Province of Ontario :—Att.-Gen. for Dominion of Canada <i>v.</i> .. .. .	P. C. [1898] A. C. 247 .. ..	252
Att.-Gen. for Provinces of Ontario, Quebec, and Nova Scotia :—Att.-Gen. for Dominion of Canada <i>v.</i> .. .. .	P. C. [1898] A. C. 700 .. ..	246
Att.-Gen. for Quebec <i>v.</i> Att.-Gen. for Ontario. Att.-Gen. for the Dominion of Canada <i>v.</i> Att.-Gen. for Ontario .. .. .	P. C. [1897] A. C. 199 .. ..	242
Att.-Gen. for Trinidad and Tobago <i>v.</i> Bourne .. ..	P. C. [1895] A. C. 83 .. ..	624, 2156
Att.-Gen. for Trinidad and Tobago <i>v.</i> Eriché .. ..	P. C. [1893] A. C. 518 .. ..	599, 769, 2156
Att.-Gen. on the relation of the Warwickshire County Council <i>v.</i> London and North Western Ry. Co. .. .. .	[1898] W. N. 160 (12); [1899] 1 Q. B. 72; C. A. [1899] W. N. 221; [1900] 1 Q. B. 78	1647
Attrill :—Huntington <i>v.</i> .. .. .	P. C. [1893] A. C. 150 .. ..	1008
Auckland (District Highway Board) :—Etherley Grange Coal Co. <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 37 .. ..	893
Audenshaw Paint and Colour Co. :—McNair & Co. <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 502 .. ..	45
"August," The .. .. .	[1891] P. 328 .. ..	1936
Auriferous Properties, Ltd., In re .. .. .	[1898] 1 Ch. 691 .. ..	479
(No. 2) .. .. .	[1898] 2 Ch. 428 .. ..	480
Austin <i>v.</i> Beddoe .. .. .	[1893] W. N. 78 .. ..	799
Austin :—Bowker <i>v.</i> In re Lawrance .. .. .	[1894] 1 Ch. 556 .. ..	2051
Austin <i>v.</i> St. Mary's, Newington .. .. .	C. A. [1894] 2 Q. B. 524 .. ..	1178
Australasia (Bank of) <i>v.</i> Palmer .. .. .	P. C. [1897] A. C. 540 .. ..	1326
Australasian Alkaline Reduction and Smelting Syndicate, In re .. .. .	[1891] W. N. 209 .. ..	463
Australasian Automatic Weighing Machine Co. <i>v.</i> Walter .. .. .	[1891] W. N. 170 .. ..	1489
Australasian Investment Co., Ex parte. In re Queensland Mercantile and Agency Co. Ex parte Union Bank of Australia .. .. .	[1891] 1 Ch. 536; C. A. [1892] 1 Ch. 219 .. ..	491
Australasian Mining Co., In re .. .. .	[1893] W. N. 74 .. ..	391
Australasian Territories :—Macmillan <i>v.</i> .. .. .	[1897] W. N. 30 (14) .. ..	1546
"Australia," The. The "Englishman," and .. .. .	[1894] P. 239 .. ..	1956
"Australia," The. The "Englishman" and .. .. .	[1895] P. 212 .. ..	1495, 1950
Australia (Perpetual Executors and Trustees Association of) <i>v.</i> Swan .. .. .	P. C. [1898] A. C. 763 .. ..	2259
Australia (Union Bank) <i>v.</i> Murray-Aynsley .. ..	P. C. [1898] A. C. 693 .. ..	1334
Australian Cities Investment Corporation, Ltd. :—Randwick (Council of the Borough of) <i>v.</i> .. .. .	P. C. [1893] A. C. 322 .. ..	1329, 1592
Australian Joint Stock Bank, In re .. .. .	[1897] W. N. 48 (3) .. ..	461
Australian Joint Stock Bank <i>v.</i> Bailey .. .. .	P. C. [1899] A. C. 396 .. ..	1327
Australian Newspaper Co. <i>v.</i> Bennett .. .. .	P. C. [1894] A. C. 284 .. ..	644, 1500
Automatic Telephone Co., Ltd. :—Alexander <i>v.</i> .. .. .	[1899] W. N. 79; [1899] 2 Ch. 302; C. A. [1900] W. N. 93; [1900] 2 Ch. 57 .. ..	305

Name of Case.	Volume and Page.	Column of Digest.
Automatic Weighing Machine Co. :—Everitt v. Averill, In re. Salisbury v. Buckle .. ..	[1892] 3 Ch. 506 .. ..	398
Avery v. Wood .. ..	[1898] 1 Ch. 523 .. ..	2322
Avill & Smart, Ld. :—Milward v. .. ..	C. A. [1891] 3 Ch. 115 .. ..	530
"Avon," The, and The "Thomas Joliffe" .. ..	[1897] W. N. 162 (1) .. ..	332
Axminster Union :—Plymouth Union v. .. ..	[1891] P. 7 .. ..	1950
Aylesbury Dairy Co. :—London County Council v. .. ..	H. L. (E.) [1898] A. C. 586 .. ..	1461
Aylesford (Countess of) v. Great Western Ry. Co. .. ..	[1897] W. N. 153 (10); [1898] 1 Q. B. 106 .. ..	1155
Aylesford (Earl of) v. Poulett (Earl) (No. 1) .. ..	C. A. [1892] 2 Q. B. 626 .. ..	595
..... (No. 2) .. ..	C. A. [1891] 1 Ch. 248 .. ..	1276, 2036
Aylward v. Lewis .. ..	[1892] 2 Ch. 60 .. ..	502, 503, 933, 1403, 2171
	[1891] 2 Ch. 81 .. ..	1279
B.		
B——, In re (No. 1) .. ..	C. A. [1891] 3 Ch. 274 .. ..	1193
..... (No. 2) .. ..	C. A. [1892] 1 Ch. 459 .. ..	1193
..... (No. 3) .. ..	C. A. [1892] 3 Ch. 194 .. ..	1196
B. v. B. .. ..	[1900] W. N. 130 .. ..	711
B. A. S., In re .. ..	C. A. [1898] 2 Ch. 392 .. ..	1197
B. :—L. (otherwise B.) v. .. ..	[1895] P. 274 .. ..	710
Bach, In re. Walker v. Bach. Lloyd's Bank v. Bach .. ..	[1892] W. N. 108 .. ..	789
Bache v. Billingham .. ..	C. A. [1894] 1 Q. B. 107 .. ..	56, 855
Bacon v. Bacon. In re Waddington .. ..	[1897] W. N. 6 (8) .. ..	1478
Badcock v. Cumberland Gap Park Co. .. ..	[1893] 1 Ch. 362 .. ..	1535
Baddeley v. Bailey .. ..	[1893] W. N. 56 .. ..	780
Baddeley :—Willis & Co. v. .. ..	C. A. [1892] 2 Q. B. 324 .. ..	675
Baden-Powell v. Wilson .. ..	[1894] W. N. 146 .. ..	1532
Badische Anilin und Soda Fabrik v. Basle Chemical Works, Bindschedler .. ..	H. L. (E.) [1897] W. N. 167 (8); [1898] A. C. 200 .. ..	1428
Badische Anilin und Soda Fabrik v. Henry Johnson & Co. and Basle Chemical Works, Bindschedler .. ..	C. A. [1896] 1 Ch. 25 .. ..	1542
Badische Anilin und Soda Fabrik v. Johnson & Co. and Basle Chemical Works, Bindschedler .. ..	C. A. [1897] 2 Ch. 322; H. L. (E.) [1897] W. N. 167 (8) .. ..	1428
Badische Anilin und Soda Fabrik v. Schott, Segner & Co. .. ..	[1892] 3 Ch. 447 .. ..	1721
Baerlein v. Chartered Mercantile Bank .. ..	C. A. [1895] 2 Ch. 488 .. ..	294
Baerselman v. Bailey .. ..	C. A. [1895] 2 Q. B. 301 .. ..	1972
Bagge v. Whitehead .. ..	C. A. [1892] 2 Q. B. 355 .. ..	1924
Baggs, In re .. ..	[1894] 2 Ch. 416, n. .. ..	1199
Baghino :—Figgins v. In re Russell Institution .. ..	[1898] 2 Ch. 72 .. ..	1826
Bagley v. Butcher .. ..	[1898] 1 Q. B. 67 .. ..	1376
Bagley :—Compton v. .. ..	[1892] 1 Ch. 313 .. ..	2241
Bagnall (J.) & Sons, Ld. :—Wright v. .. ..	C. A. [1900] W. N. 92; [1900] 2 Q. B. 240 .. ..	1247
Bagot, In re. Paton v. Ormerod .. ..	C. A. [1893] 3 Ch. 348 .. ..	2346
Bagot :—Perkins v. In re Perkins .. ..	[1893] 1 Ch. 283 .. ..	1474
Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co. .. ..	[1900] W. N. 272 .. ..	310
Bagot's Settlement, In re. Bagot v. Kittoe .. ..	[1894] 1 Ch. 177 .. ..	1880

Name of Case.	Volume and Page.	Column of Digest.
Bagshaw v. Pimm .. .. .	C. A. [1900] W. N. 64; [1900] P. 148 .. .. .	1614
Bagshawes, Ltd. v. Deacon .. .. .	C. A. [1898] 2 Q. B. 173 .. .. .	1923
Bahama Islands, In re Special Reference from the .. .. .	P. C. [1893] A. C. 138 .. .. .	292, 503, 626
Bahr:—Isis Steamship Co. v. .. .. .	C. A. [1899] 2 Q. B. 364; H. L. (E.) [1900] W. N. 112; [1900] A. C. 340 .. .. .	1935
Bailey:—Australian Joint Stock Bank v. .. .. .	P. C. [1899] A. C. 396 .. .. .	1327
Bailey:—Baddeley v. .. .. .	[1893] W. N. 56 .. .. .	780
Bailey:—Baerselman v. .. .. .	C. A. [1895] 2 Q. B. 301 .. .. .	1972
Bailey v. Barnes .. .. .	C. A. [1894] 1 Ch. 25 .. .. .	2234
Bailey v. Isle of Thanet Light Rys. .. .. .	[1900] 1 Q. B. 722 .. .. .	1089
Bailey v. Plant .. .. .	C. A. [1900] W. N. 248 .. .. .	1244
Bailey:—Smith v. .. .. .	C. A. [1891] 2 Q. B. 403 .. .. .	1146
Bailey v. Watson & Co. .. .. .	[1898] 2 Q. B. 270 .. .. .	588
Bailey:—Western v. .. .. .	[1896] 2 Q. B. 234; C. A. [1897] 1 Q. B. 86 .. .. .	525
Bailey:—Winkle v. .. .. .	[1896] W. N. 175 (11); [1897] 1 Ch. 123 .. .. .	1198
Baillie's Case. In re International Society of Auctioneers and Valuers .. .. .	[1897] W. N. 171 (4); [1898] 1 Ch. 110 .. .. .	425
Bain v. Att.-Gen. .. .. .	[1892] P. 217; C. A. [1892] P. 261 .. .. .	1095
Bain v. Bain. In re Smith .. .. .	C. A. [1896] W. N. 88 (16) .. .. .	568
Bain:—General Trustees of the Free Church of Scotland v. .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 138 .. .. .	1751
Bainbridge:—Esquimalt and Nanaimo Ry. Co. v. .. .. .	P. C. [1896] A. C. 561 .. .. .	249
Baine:—M'Cowan v. The "Niobe" .. .. .	H. L. (Sc.) [1891] A. C. 401 .. .. .	988
Baines, Ex parte. In re National Wholemeal Bread and Biscuit Co. .. .. .	[1892] 2 Ch. 457 .. .. .	451
Baines & Co.:—Hanfstaengl v. .. .. .	C. A. [1894] 3 Ch. 109; H. L. (E.) [1895] A. C. 20 .. .. .	539
Baird v. Bell .. .. .	H. L. (Sc.) [1898] A. C. 420 .. .. .	1845
Baird v. East Riding Club and Race Course Co. .. .. .	[1891] W. N. 144 .. .. .	1558
Baird:—Paxton v. .. .. .	[1893] 1 Q. B. 139 .. .. .	1487, 1563
Baird v. Tunbridge Wells Corporation .. .. .	C. A. [1894] 2 Q. B. 867; H. L. (E.) [1896] A. C. 434 .. .. .	2079, 2202
Baird:—Walker v. .. .. .	P. C. [1892] A. C. 491 .. .. .	628
Baird's Case. In re Bangor and North Wales Mutual Marine Protection Association .. .. .	[1899] W. N. 93; [1899] 2 Ch. 593 .. .. .	425
Baker, In re. Purssey v. Holloway .. .. .	[1898] W. N. 156 (12) .. .. .	2335
Baker v. Abbott .. .. .	[1897] W. N. 38 (4) .. .. .	123
Baker v. Ambrose .. .. .	[1896] 2 Q. B. 372 .. .. .	199
Baker v. Barnett. In re Barnett .. .. .	[1900] W. N. 81 .. .. .	949
Baker v. Carrick .. .. .	C. A. [1894] 1 Q. B. 838 .. .. .	649
Baker:—National Telephone Co. v. .. .. .	[1893] 2 Ch. 186 .. .. .	1345, 1352, 2101
Baker:—Reg. v. .. .. .	C. C. R. [1895] 1 Q. B. 797 .. .. .	612
Baker:—Searle v. In re Searle .. .. .	[1900] W. N. 186; [1900] 2 Ch. 829 .. .. .	1874, 1885
Baker v. Stone. In re Stone .. .. .	C. A. [1895] 2 Ch. 196 .. .. .	2314
Baker v. Williams .. .. .	[1893] W. N. 14 .. .. .	2241
Baker v. Williams .. .. .	[1898] 1 Q. B. 23 .. .. .	633, 2072
Baker v. Yorkshire Fire and Life Insurance Co. .. .. .	[1892] 1 Q. B. 144 .. .. .	66



Name of Case.	Volume and Page.	Column of Digest.
Baker & Sons :—Smith v. .. .. .	H. L. (E.) [1891] A. C. 325 .. {	584, 1244
Baker, Tuckers & Co., In re .. .. .	[1894] W. N. 33 .. .. .	463
Bakewell v. Davis .. .. .	[1894] 1 Q. B. 296 .. .. .	18
Balcarres Brook Steamship Co. :—Wilson, Sons & Co. v. .. .. .	C. A. [1893] 1 Q. B. 422 .. .. .	1505
Baldwin v. Dover Justices .. .. .	[1892] 2 Q. B. 421 .. .. .	1101
Baldwin v. Smith .. .. .	[1900] W. N. 58; [1900] 1 Ch. 588 .. .. .	1187
Bale, Ex parte. In re O'Gorman .. .. .	[1899] W. N. 68; [1899] 2 Q. B. 62 .. .. .	148
Balfour :—Munro v. .. .. .	[1893] 1 Q. B. 113 .. .. .	1365
Balfour, Williamson & Co. :—Dunlop & Sons v. .. .. .	[1892] 1 Q. B. 507 .. .. .	1936
Balkis Consolidated Co. :—Tomkinson v. .. .. .	C. A. [1891] 2 Q. B. 614; H. L. (E.) [1893] A. C. 396 .. {	393, 402, 403
Ball, Ex parte. In re Simonson .. .. .	[1894] 1 Q. B. 433 .. .. .	109, 2029
Ballantyne v. Mackinnon .. .. .	C. A. [1896] 2 Q. B. 455 .. .. .	768
Ballard v. Milner .. .. .	[1895] W. N. 14 .. .. .	1533
Ballard :—St. George's Local Board v. .. .. .	C. A. [1885] 1 Q. B. 702 .. .. .	2084
Ballingal v. Menzies .. .. .	Registration App. Ct. (Sc. [1887]) W. N. 95 .. .. .	1374
Balls :—Bell v. .. .. .	[1897] 1 Ch. 663 .. .. .	1571
Balme, In the Goods of .. .. .	[1897] P. 261 .. .. .	1616
Balmoral (Steamship) Co. v. Marten .. .. .	[1900] 2 Q. B. 748 .. .. .	983
Balzo (Duc del) :—Cartwright v. In re Countess of Orford .. .. .	[1895] W. N. 155 (1); [1896] 1 Ch. 257 .. .. .	1735
Bamber :—Donaldson v. In re Stephenson .. .. .	C. A. [1895] 1 Q. B. 286; C. A. [1896] W. N. 168 (12); C. A. [1897] 1 Ch. 75 .. .. .	2364
Bamfield v. Rogers. In re Glubb .. .. .	C. A. [1900] 1 Ch. 354 .. .. .	2264
Banchereau :—Peters v. In re Deneker .. .. .	[1895] W. N. 28 .. .. .	2339
Bangor (Bishop of) v. Parry .. .. .	[1891] 2 Q. B. 277 .. .. .	273
Bangor and North Wales Mutual Marine Protection Association, In re. Baird's Case .. .. .	[1899] W. N. 93; [1899] 2 Ch. 593 .. .. .	425
Banham :—Reddaway v. .. .. .	C. A. [1895] 1 Q. B. 286; H. L. (E.) [1896] A. C. 199 .. .. .	2141
Bank of Africa v. Salisbury Gold Mining Co. .. .. .	P. C. [1892] A. C. 281 .. .. .	398, 1312
Bank of Australasia :—Rose v. .. .. .	H. L. (E.) [1894] A. C. 687 .. .. .	1932
Bank of Brazil, Ex parte. In re English Bank of the River Plate .. .. .	[1893] 2 Ch. 438 .. .. .	2066
Bank of China, Japan and the Straits v. American Trading Co. .. .. .	P. C. [1894] A. C. 266 .. .. .	509, 1591
Bank of England, Ex parte. In re South American and Mexican Co. .. .. .	C. A. [1895] 1 Ch. 37 .. .. .	768
Bank of England :—Prescott, Dimsdale, Cave, Tugwell & Co. v. .. .. .	C. A. [1894] 1 Q. B. 351 .. .. .	96
Bank of England :—Reg. v. .. .. .	[1891] 1 Q. B. 785 .. .. .	90
Bank of England v. Vagliano Brothers .. .. .	H. L. (E.) [1891] A. C. 107 .. .. .	95, 192, 2066
Bank of Ireland v. McCarthy .. .. .	H. L. (Ir.) [1897] W. N. 164 (12); [1898] A. C. 181 .. .. .	2310
Bank of New Zealand :—Fleming v. .. .. .	P. C. [1900] A. C. 577 .. .. .	1572
Bank of New Zealand v. Simpson .. .. .	P. C. [1900] A. C. 182 .. .. .	510
Bank of Scotland v. Dominion Bank, Toronto .. .. .	H. L. (Sc.) [1891] A. C. 592 .. .. .	194
Bank of South Australia, In re (No. 1) .. .. .	[1894] 3 Ch. 722 .. .. .	484
(No. 2) .. .. .	C. A. [1895] 1 Ch. 578 .. .. .	420

Name of Case.	Volume and Page.	Column of Digest.
Bank of Syria, In re. Owen and Ashworth's Claim. Whitworth's Claim .. .. .	[1900] W. N. 66; [1900] 2 Ch. 272; C. A. [1900] W. N. 256	350
Bankes v. Bankes .. .. .	H. L. (Sc.) [1900] W. N. 246 ..	1838
Bankier Distillery Co.:—Young (John) & Co. v. Receiver .. .. .	H. L. (Sc.) [1893] A. C. 691 ..	1256, 2271
Bankruptcy Notice, In re a. Ex parte Official Receiver .. .. .	C. A. [1895] 1 Q. B. 609 ..	103
Bankruptcy Notice, In re a .. .. .	C. A. [1898] 1 Q. B. 383 ..	106
Bankruptcy Petition, In re a .. .. .	C. A. [1900] W. N. 12 ..	134
Banks:—Catton v. .. .. .	[1893] 2 Ch. 221 ..	1406
Banks v. Heaven. In re Burton's Will .. .. .	[1892] 2 Ch. 38 ..	952
Banks v. Hollingsworth .. .. .	C. A. [1893] 1 Q. B. 442 ..	1164
Banks and James' Trade-mark, In re .. .. .	[1895] W. N. 116 (14) ..	2129
Bannerman:—Hamelin v. .. .. .	P. C. [1895] A. C. 237 ..	258, 2285
Bannister & Co.:—Carrington v. .. .. .	C. A. [1900] W. N. 247 ..	1231
Bannon v. Hanrahan .. .. .	C. A. (Ir.) [1900] W. N. 226 ..	1401
Banque d'Hochelaga v. Jodoin .. .. .	P. C. [1895] A. C. 612 ..	259
Banque du Peuple:—Bryant, Powis, & Bryant, Ld. v. .. .. .	P. C. [1893] A. C. 170 ..	194, 1571
Banque Russe et Française v. Clark .. .. .	C. A. [1894] W. N. 203 ..	1546, 1038, 1059, 1210
Bantoft:—Spurling v. .. .. .	[1891] 2 Q. B. 384 ..	186
Barbados Water Supply Co.:—Trent-Stoughton v. .. .. .	P. C. [1893] A. C. 502 ..	10
Barbeau:—Beaudry v. .. .. .	P. C. [1900] A. C. 569 ..	712
Barber v. Barber .. .. .	[1896] P. 73 ..	582
Barber v. Burt .. .. .	[1894] 2 Q. B. 437 ..	1280
Barber v. Jéckells .. .. .	[1893] W. N. 91 ..	192
Barber v. Mackrell .. .. .	[1892] W. N. 87; C. A. [1892] W. N. 133 ..	1352
Barber v. Penley .. .. .	[1893] 2 Ch. 447 ..	1163
Barberton Development Syndicate:—Bowler v. .. .. .	C. A. [1897] 1 Q. B. 164 ..	1328
Barbour:—Rickatson v. .. .. .	P. C. [1893] A. C. 194 ..	2174
Barclay, In re. Barclay v. Andrew .. .. .	[1899] 1 Ch. 674 ..	1183
Barclay v. Pearson .. .. .	[1893] 2 Ch. 154 ..	230
Barclay:—Portsea Island Building Society v. .. .. .	[1894] 3 Ch. 86; C. A. [1895] 2 Ch. 298 ..	1939
"Barcore," The .. .. .	[1896] P. 294 ..	740
Bardfield (Great), Vicar of v. All having Interest .. .. .	[1897] P. 185 ..	353, 1852
Barfield:—Ellis v. In re Northage .. .. .	[1891] W. N. 84 ..	206, 212
Bargen, In re. Ex parte Hasluck .. .. .	[1894] 1 Q. B. 444 ..	1870, 2197
Baring, In re. Jeune v. Baring .. .. .	[1893] 1 Ch. 61 ..	297
Baring v. Abingdon .. .. .	C. A. [1892] 2 Ch. 374 ..	776
Baring:—Republic of Chili v. .. .. .	[1891] W. N. 138 ..	997
Baring Brothers & Co. v. Marine Insurance Co. .. .. .	[1893] W. N. 164 ..	1557
Baring Brothers & Co. v. North Western of Uruguay Ry. Co. .. .. .	C. A. [1893] 2 Q. B. 406 ..	1319
Baring Brothers & Co.:—Venables v. .. .. .	[1892] 3 Ch. 527 ..	410
Baring Gould v. Sharpington Combined Pick and Shovel Syndicate .. .. .	[1898] 2 Ch. 633; C. A. [1899] W. N. 73; [1899] 2 Ch. 80 ..	1855
Barker, In re. Barker v. Barker .. .. .	[1897] W. N. 154 (14) ..	1131
Barker, In re. Buxton v. Campbell .. .. .	[1892] 2 Ch. 491 ..	1619
Barker, In the Goods of .. .. .	[1891] P. 251 ..	138
Barker:—Collins v. .. .. .	[1893] 1 Ch. 578 ..	

Name of Case.	Volume and Page.	Column of Digest.
Barker <i>v.</i> Edger .. .. .	P. C. [1898] A. C. 748 .. ..	1336
Barker <i>v.</i> Faulkner .. .. .	[1898] W. N. 69 (8) .. ..	826
Barker <i>v.</i> Furlong .. .. .	[1891] 2 Ch. 172 .. ..	83, 782, 2157
Barker :—Hutchinson <i>v.</i> .. .. .	[1894] W. N. 198 .. ..	1520
Barker <i>v.</i> Ivimey. In re Turner .. ..	[1897] 1 Ch. 536 .. ..	2176
Barker :—Underwood (E.) & Son, Ld. <i>v.</i> .. {	C. A. [1899] W. N. 11 (7); [1899] 1 Ch. 300 .. ..	1725
Barker's Claim. In re McHenry. McDermott <i>v.</i> Boyd .. .. .	C. A. [1894] 3 Ch. 290 .. ..	1132
Barlow :—Newbold Friendly Society <i>v.</i> .. ..	[1893] 2 Q. B. 128 .. ..	857
Barlow <i>v.</i> Terrett .. .. .	[1891] 2 Q. B. 107 .. ..	831
Barnacle <i>v.</i> Clark .. .. .	[1900] 1 Q. B. 279 .. ..	1823
Barnard, Ex parte. In re Great Kruger Gold Mining Co. .. .. .	C. A. [1892] 3 Ch. 307 .. ..	440, 441
Barnard <i>v.</i> Faber .. .. .	C. A. [1893] 1 Q. B. 340 .. ..	977
Barnard <i>v.</i> Tomson .. .. .	[1894] 1 Ch. 374 .. ..	227
Barnard :—Watkins <i>v.</i> .. .. .	[1897] 2 Q. B. 521 .. ..	130
Barnardo <i>v.</i> McHugh .. .. .	[1891] 1 Q. B. 194; H. L. (E.) [1891] A. C. 388 .. ..	931, 948
Barnardo <i>v.</i> Ford. Gossage's Case .. ..	H. L. (E.) [1892] A. C. 326 .. ..	38, 883
Barnardo :—Reg. <i>v.</i> Jones's Case .. .. {	C. A. [1891] 1 Q. B. 194; H. L. (E.) [1891] A. C. 388 ..	948
Barnby's, Ld., In re. Fallows <i>v.</i> Barnby's, Ld. ..	[1899] W. N. 103 .. ..	468
Barned <i>v.</i> Sax. In re Sax .. .. .	[1893] W. N. 104 .. ..	356, 2353
Barnes, Ex parte .. .. .	H. L. (E.) [1896] A. C. 146 .. ..	441
Barnes, Ex parte. In re Leach .. .. .	[1900] W. N. 184; [1900] 2 Ch. 649 .. ..	175
Barnes :—Bailey <i>v.</i> .. .. .	C. A. [1894] 1 Ch. 25 .. ..	2234
Barnes <i>v.</i> Glenton .. .. .	[1898] 2 Q. B. 223; C. A. [1899] 1 Q. B. 885 .. ..	1134
Barnes :—Gluckstein <i>v.</i> .. .. .	H. L. (E.) [1900] W. N. 92; [1900] A. C. 240 .. ..	373
Barnes <i>v.</i> London, Edinburgh and Glasgow Life Insurance Co. .. .. .	[1892] 1 Q. B. 864 .. ..	979
Barnes :—Newen <i>v.</i> In re Newen .. .. .	[1894] 2 Ch. 297 .. ..	1880, 2166
Barnes :—Pemberton <i>v.</i> .. .. .	[1899] W. N. 8 (6); [1899] 1 Ch. 543 .. ..	2355
Barnes (or Ross) <i>v.</i> Ross .. .. .	H. L. (Sc.) [1896] A. C. 625 .. ..	949
Barnes <i>v.</i> Youngs .. .. .	[1898] 1 Ch. 414 .. ..	1413
Barnes District Council :—Lancaster <i>v.</i> .. ..	[1898] 1 Q. B. 855 .. ..	1921
Barnett, In re. Baker <i>v.</i> Barnett .. .. .	[1900] W. N. 81 .. ..	949
Barnett, In the Goods of .. .. .	[1898] P. 145 .. ..	1607
Barnett <i>v.</i> Eccles Corporation .. .. .	[1900] W. N. 96; [1900] 2 Q. B. 104; C. A. [1900] W. N. 145; [1900] 2 Q. B. 423 .. ..	574
Barnett <i>v.</i> Hickmott .. .. .	[1895] 1 Q. B. 691 .. ..	1399
Barnett <i>v.</i> Howard. Union Bank of London, Garnishees .. .. .	C. A. [1900] W. N. 179; [1900] 2 Q. B. 784 .. ..	918
Barnett :—Jones <i>v.</i> .. .. .	[1899] W. N. 26 (4); [1899] 1 Ch. 611; C. A. [1900] W. N. 29; [1900] 1 Ch. 370 .. ..	2253
Barnett <i>v.</i> King .. .. .	C. A. [1891] 1 Ch. 4 .. ..	149
Barnett :—Penton <i>v.</i> .. .. .	C. A. [1898] 1 Q. B. 276 .. ..	1062
Barnett & Co. :—Hurlbatt <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 77 .. ..	51, 64
Barney, In re. Barney <i>v.</i> Barney .. .. .	[1892] 2 Ch. 265 .. ..	2180
Barney, In re. Harrison <i>v.</i> Barney .. .. .	[1894] 3 Ch. 562 .. ..	1859

Name of Case.	Volume and Page.	Column of Digest.
Barney v. Joshua Stubbs, Ltd. In re Joshua Stubbs, Ltd. . . . .	[1891] 1 Ch. 187; C. A. [1891] 1 Ch. 475 . . . . .	329, 449
Baron v. Portslade Urban Council . . . . .	C. A. [1900] 2 Q. B. 588 . . . . .	1917
Baron Cigarette Machine Co.:—Ludington Cigarette Machine Co. v. In re Pitt's Patent . . . . .	[1899] W. N. 243; C. A. [1900] W. N. 50; [1900] 1 Ch. 508 . . . . .	1435
Barr, In re. Ex parte Wolfe . . . . .	[1896] 1 Q. B. 616 . . . . .	161
Barr v. Chambers . . . . .	C. A. (Ir.) [1898] W. N. 101 . . . . .	1391
Barr:—Hewett v. . . . .	C. A. [1891] 1 Q. B. 98 . . . . .	1568
Barracrough v. Brown . . . . .	H. L. (E.) [1897] A. C. 615 . . . . .	1038
Barras:—John Morley Building Co. v. . . . .	[1891] 2 Ch. 386 . . . . .	336
Barrett:—Winnipeg (City) v. . . . .	P. C. [1892] A. C. 445 . . . . .	249, 292
Barretto v. Young . . . . .	[1900] W. N. 153; [1900] 2 Ch. 339 . . . . .	1474
Barron v. Willis . . . . .	[1899] W. N. 109; [1899] 2 Ch. 578; C. A. [1900] W. N. 113; [1900] 2 Ch. 121 . . . . .	2046, 2207
Barrow v. Isaacs & Son . . . . .	C. A. [1891] 1 Q. B. 417 . . . . .	1073
Barrow:—Summers v. In re Walker . . . . .	[1900] W. N. 273 . . . . .	2166
Barrow Hæmatite Steel Co., In re . . . . .	[1900] W. N. 235; [1900] 2 Ch. 846 . . . . .	382
Barrow-in-Furness (Overseers of):—Lancaster (Commissioners of Port of) v. . . . .	[1897] 1 Q. B. 166 . . . . .	1680
Barry v. Peruvian Corporation . . . . .	C. A. [1896] 1 Q. B. 208 . . . . .	294
Barry and Cadoxton Local Board v. Parry . . . . .	[1895] 2 Q. B. 110 . . . . .	2086
Barry Ry. Co.:—Jackson v. . . . .	C. A. [1893] 1 Ch. 238 . . . . .	56
Barry Ry. Co. v. Taff Vale Ry. Co. . . . .	C. A. [1895] 1 Ch. 128 . . . . .	1660
Barsham, Suffolk (Rector, &c., of) v. Parishioners of Same . . . . .	[1896] P. 256 . . . . .	740
Barsht v. Tagg . . . . .	[1899] W. N. 260; [1900] 1 Ch. 231 . . . . .	2223
Barstaple Division of Essex (Commissioners of Taxes):—Reg. v. . . . .	[1895] 2 Q. B. 123 . . . . .	2112
Barstow:—Bird v. . . . .	C. A. [1892] 1 Q. B. 94 . . . . .	922, 1522
Bartholomay Brewing Co. of Rochester v. Wyatt . . . . .	[1893] 2 Q. B. 499 . . . . .	1767
Bartholomew:—Ehrman v. . . . .	[1898] 1 Ch. 671 . . . . .	516
Bartholomew:—Gray v. . . . .	C. A. [1895] 1 Q. B. 209 . . . . .	1524
Bartholomew:—Radcliffe v. . . . .	[1892] 1 Q. B. 161 . . . . .	1036, 2069
Bartlett:—Ford's Hotel Co. v. . . . .	C. A. [1895] 1 Q. B. 850; H. L. (E.) [1895] W. N. 153 (10); [1896] A. C. 1 . . . . .	53
Bartlett v. Mayfair Property Co. In re Mayfair Property Co. . . . .	[1897] W. N. 174 (4); C. A. [1898] 2 Ch. 28 . . . . .	328
Bartlett:—Stamford Union v. In re Watson . . . . .	[1898] W. N. 154 (5); [1899] 1 Ch. 72 . . . . .	1192
Bartlett v. West Metropolitan Tramways Co. (No. 1) . . . . .	[1893] W. N. 139; [1893] 3 Ch. 437 . . . . .	1498, 2149
Barton, Ex parte. In re Phillips . . . . .	[1894] 2 Ch. 286 . . . . .	2150
Barton, In the Goods of . . . . .	[1900] 2 Q. B. 329 . . . . .	101
Barton:—Daglish v. . . . .	[1897] W. N. 153 (1); [1898] P. 11 . . . . .	1597
Barton v. Irwin. In re Irwin . . . . .	C. A. [1900] 1 Q. B. 284 . . . . .	42
Bartram:—Monk v. . . . .	[1895] W. N. 23 . . . . .	2173
Baschet v. London Illustrated Standard Co. . . . .	C. A. [1891] 1 Q. B. 346 . . . . .	1501
Basle Chemical Works, Bindschedler:—Badische Anilin und Soda Fabrik v. . . . .	[1899] W. N. 215; [1900] 1 Ch. 73 . . . . .	531
	H. L. (E.) [1897] W. N. 167 (8); [1898] A. C. 200 . . . . .	1428

Name of Case.	Volume and Page.	Column of Digest.
Bassano v. Bradley .. .. .	[1896] 1 Q. B. 645 .. ..	592
Basset v. St. Levan .. .. .	[1894] W. N. 204 .. ..	2366
Bassett, In re. Ex parte Lewis .. .. .	[1896] 1 Q. B. 219 .. ..	121
Bassett, In re. Bassett v. Bassett .. .. .	[1894] 3 Ch. 179 .. ..	80
Bassett v. Allen. In re Allen .. .. .	[1898] 2 Ch. 499 .. ..	1125
Bassett :—North v. .. .. .	[1892] 1 Q. B. 333 .. ..	222, 2098
Bassett v. Tong .. .. .	[1894] 2 Q. B. 332 .. ..	594
Bassett's Plaster Co., In re .. .. .	[1894] 2 Q. B. 96 .. ..	444, 595, 1926
Baster v. London and County Printing Works .. {	[1899] W. N. 53; [1899] 1 Q. B. 901 .. ..	1234
Bate :—Armour v. .. .. .	C. A. [1891] 2 Q. B. 233 .. ..	1558
Bateman (Lady) v. Faber .. .. .	[1897] 2 Ch. 223; C. A. [1897] W. N. 167 (5); [1898] 1 Ch. 144; [1899] W. N. 241; [1900] W. N. 157 .. ..	915, 1899
Bateman (Baroness) and Parker's Contract, In re {	[1899] W. N. 30 (1); [1899] 1 Ch. 599 .. ..	742
Bater and Birkenhead Corporation, In re .. {	[1893] 1 Q. B. 679; C. A. [1893] 2 Q. B. 77 .. ..	831, 1037
Bates v. Donaldson .. .. .	C. A. [1896] 2 Q. B. 241 .. ..	1056
Bates v. Kesterton .. .. .	[1895] W. N. 153 (13); [1896] 1 Ch. 159 .. ..	1887
Bath, St. John's Hospital :—Att.-Gen. v. .. ..	[1893] 3 Ch. 151 .. ..	1091
Bath and Wells (Bishop of), In re .. .. {	[1899] W. N. 91; [1899] 2 Ch. 138 .. ..	1890
Bath and Wells (Bishop of) :—Marriner v. .. ..	[1893] P. 145, n. .. ..	753
Bath Gas Light and Coke Co. :—Carr & Co. v. .. ..	[1900] W. N. 265, n. .. ..	1345
Bath Union (Guardians of) v. Berwick-upon-Tweed Union (Guardians of) .. ..	[1892] 1 Q. B. 731 .. ..	1461
Batho v. Tunks .. .. .	[1892] W. N. 101 .. ..	1724
Batt (John) & Co. v. Dunnett .. .. .	H. L. (E.) [1899] W. N. 90; [1899] A. C. 428 .. ..	2133
Batt & Co.'s Trade-mark, In re .. .. .	[1898] W. N. 44 (15); affirmed by C. A. sub nom. Batt (John) & Co. (In re Registered Trade-Marks of) and In re Carter's Application for a Trade-Mark, [1898] 2 Ch. 432. See also [1898] 2 Ch. 701 .. ..	41
Batt's Settled Estates, In re .. .. .	[1897] 2 Ch. 65 .. ..	920
Battams, Ex parte. In re Wenham .. .. .	[1900] W. N. 117; C. A. [1900] W. N. 156; C. A. [1900] 2 Q. B. 698 .. ..	140
Battams and Hutchinson, In re .. .. .	[1897] 1 Ch. 699 .. ..	2030
Battersea (Lord) v. Commissioners of Sewers for the City of London .. .. .	[1895] 2 Ch. 708 .. ..	1118
Battison v. Hobson .. .. .	[1896] 2 Ch. 403 .. ..	1290
Baumvoll Manufactur von Scheibler v. Furness .. ..	[1891] 2 Q. B. 310; C. A. [1892] 1 Q. B. 253; H. L. (E.) [1893] A. C. 8 .. ..	1942
Baumvoll Manufactur von Scheibler v. Gilchrest & Co. .. .. .	[1891] 2 Q. B. 310; C. A. [1892] 1 Q. B. 253; H. L. (E.) [1893] A. C. 8 .. ..	1942
Bavins, Junr. & Sims v. London and South Western Bank .. .. .	C. A. [1899] W. N. 248; C. A. [1900] 1 Q. B. 270 .. ..	2158
Bawden, In re. National Provincial Bank of England v. Cresswell. Bawden v. Cresswell .. {	[1894] 1 Ch. 693 .. ..	2302, 2338

Name of Case.	Volume and Page.	Column of Digest.
Bawden v. London, Edinburgh and Glasgow Life Insurance Co. .. .. .	C. A. [1892] 2 Q. B. 534 ..	979, 1576
Baxendale v. Lucas .. .. .	[1895] W. N. 30 .. ..	1496, 2063
Baxendale:—Phythian v. .. .. .	[1895] 1 Q. B. 768 .. ..	890
Baxter, Ex parte. In re Vince .. .. .	[1892] 1 Q. B. 587; C. A. [1892] 2 Q. B. 478 .. ..	140
Baxter:—Forget v. .. .. .	P. C. [1900] A. C. 467 .. ..	247
Baxter v. France (No. 1) .. .. .	C. A. [1895] 1 Q. B. 455 ..	35, 1555
(No. 2) .. .. .	C. A. [1895] 1 Q. B. 591 ..	1555
Baxter v. Holdsworth .. .. .	C. A. [1898] W. N. 169 (10); [1899] 1 Q. B. 266 .. ..	1558
Baxter v. Middleton .. .. .	[1898] 1 Ch. 313 .. ..	1139
Baxter:—Smith v. .. .. .	[1900] W. N. 87; [1900] 2 Ch. 138	1120
Baxters, Ltd., In re .. .. .	[1898] W. N. 60 (3) .. ..	481
Bayard:—Reg. v. .. .. .	[1892] 2 Q. B. 181 .. ..	607
Baylis, Ex parte. In re Thompson .. .. .	[1894] 1 Q. B. 462 .. ..	2029
Baylis, In re .. .. .	C. A. [1896] 2 Ch. 107 .. ..	2042
Baylis v. Jiggins .. .. .	[1898] W. N. 64 (3); [1898] 2 Q. B. 315 .. ..	1060
Baynes & Co. v. Lloyd & Sons .. .. .	[1895] 1 Q. B. 820; C. A. [1895] 2 Q. B. 610 .. ..	1083
Beales:—Leveson v. In re Applebee .. .. .	[1891] 3 Ch. 422 .. ..	2338
Beall, In re. Ex parte Beall .. .. .	C. A. [1894] 2 Q. B. 135 ..	127
Beall, In re. Ex parte Official Receiver .. .. .	[1899] W. N. 10 (3); [1899] 1 Q. B. 688 .. ..	180
Beall:—Joyce v. .. .. .	[1891] 1 Q. B. 459 .. ..	661
Bean v. Flower .. .. .	C. A. [1895] W. N. 120 (12) ..	1549
Bean:—Wilding v. .. .. .	C. A. [1891] 1 Q. B. 100 .. ..	1547
Beard:—Anderson & Co. v. .. .. .	[1900] 2 Q. B. 260 .. ..	2077
Beard:—Hart v. .. .. .	[1895] W. N. 156 (4); [1896] 1 Q. B. 54 .. ..	1391
Beard v. London General Omnibus Co. .. .. .	C. A. [1900] 2 Q. B. 530 .. ..	1242
Beardmore, Ex parte. In re Clark .. .. .	C. A. [1894] 2 Q. B. 393 .. ..	115
Beardsley v. Beardsley .. .. .	[1899] 1 Q. B. 746 .. ..	769
Beardsley v. Walton & Co. .. .. .	[1900] 2 Q. B. 1.. .. ..	16
Beasley v. Roney .. .. .	[1891] 1 Q. B. 509 .. ..	903
Beaton v. Boulton .. .. .	[1891] W. N. 30 .. ..	1284
Beattie:—Pletts v. .. .. .	[1896] 1 Q. B. 519 .. ..	1108
Beauchamp, Ex parte. In re Beauchamp Brothers .. .. .	C. A. [1894] 1 Q. B. 1; H. L. (E.) [1894] A. C. 607 .. ..	106, 139, 161, 1025, 1496
Beauchamp:—Lovell & Christmas v. .. .. .	H. L. (E.) [1894] A. C. 607 ..	1420, 1698
Beauchamp Brothers:—Harris v. (No. 1) .. .. .	C. A. [1893] 2 Q. B. 534 .. ..	1420
(No. 2) .. .. .	C. A. [1894] 1 Q. B. 801 .. ..	1025, 1697
Beauchemin:—Lorocque v. .. .. .	P. C. [1897] A. C. 358 .. ..	255
Beaucherk v. Beaucherk (No. 1) .. .. .	C. A. [1891] P. 189 .. ..	702
(No. 2) .. .. .	[1895] P. 220 .. ..	704
Beaudry v. Barbeau .. .. .	P. C. [1900] A. C. 569 .. ..	10
Beaufort's Will, In re .. .. .	[1898] W. N. 148 (5) .. ..	2199
Beaumont, In re .. .. .	[1893] 3 Ch. 490 .. ..	724
Beaumont v. Bowers .. .. .	[1900] W. N. 117; [1900] 2 Q. B. 204 .. ..	1775
Beaumont:—Norman v. .. .. .	[1893] W. N. 45 .. ..	1300
Beaver v. Victoria Supreme Court of (Master in Equity of) .. .. .	P. C. [1895] A. C. 251 .. ..	1787, 2261

Name of Case.	Volume and Page.	Column of Digest.
Bebb:—Rowlls <i>v.</i> In re Rowlls. Walters <i>v.</i> Solicitor of the Treasury .. .. .	C. A. [1900] W. N. 108; [1900] 2 Ch. 107 .. .. .	1854
Bebro, In re .. .. .	C. A. [1900] W. N. 128; [1900] 2 Q. B. 316 .. .. .	143
Bechuanaland Exploration Co. <i>v.</i> London Trading Bank .. .. .	[1898] 2 Q. B. 658 .. .. .	1319
Beckett <i>v.</i> Tower Assets Co. .. .. .	[1891] 1 Q. B. 1; C. A. [1891] 1 Q. B. 638 .. .. .	205
Beckhuson & Gibbs <i>v.</i> Hamblet .. .. .	[1900] 2 Q. B. 18 .. .. .	2076
Beckwith, Ex parte. In re New British Iron Co. .. .. .	[1898] 1 Ch. 324 .. .. .	350
Beddington, In re. Micholls <i>v.</i> Samuel .. .. .	[1900] W. N. 76; [1900] 1 Ch. 771 .. .. .	2305
Beddington <i>v.</i> Beddington. In re Moses .. .. .	[1900] W. N. 182 .. .. .	1468
Beddoe, In re. Downes <i>v.</i> Cottam .. .. .	C. A. [1893] 1 Ch. 547 .. .. .	558
Beddoe:—Austin <i>v.</i> .. .. .	[1893] W. N. 78 .. .. .	799
Beddow:—Gillingham <i>v.</i> .. .. .	[1900] W. N. 115; [1900] 2 Ch. 242 .. .. .	1418
Bedford (Duke of) <i>v.</i> Ellis .. .. .	[1898] W. N. 169 (11); C. A. [1899] W. N. 19 (10); [1899] 1 Ch. 494; H. L. (E.) [1900] W. N. 268 .. .. .	1515
Bedford:—Schlesinger <i>v.</i> .. .. .	C. A. [1893] W. N. 57 .. .. .	528, 970
Bedfordshire County Council and Bedford Urban Sanitary Authority, In re .. .. .	[1894] 2 Q. B. 786 .. .. .	578, 896
Bedingfield and Herrings Contract, In re .. .. .	[1893] 2 Ch. 332 .. .. .	2234
"Bedouin," The .. .. .	C. A. [1894] P. 1 .. .. .	986
Bedouin Steam Navigation Co.:—Smith & Co. <i>v.</i> .. .. .	H. L. (Sc.) [1896] A. C. 70 .. .. .	1978
Beech:—Att.-Gen. <i>v.</i> .. .. .	[1897] 2 Q. B. 535; C. A. [1898] 2 Q. B. 147; H. L. (E.) [1898] W. N. 166 (13); [1899] A. C. 53 .. .. .	1748
Beedom:—Hadley & Son <i>v.</i> .. .. .	[1895] 1 Q. B. 646 .. .. .	199
Beeman, In re. Fowler <i>v.</i> James .. .. .	[1895] W. N. 151 (1); [1896] 1 Ch. 48 .. .. .	802
Beeney, In re. Ffrench <i>v.</i> Sproston .. .. .	[1894] 1 Ch. 499 .. .. .	1520
Beesley and King, In re. Ex parte King and Beesley .. .. .	[1894] W. N. 182 .. .. .	142
Beeston, In re .. .. .	[1898] W. N. 171 (1); C. A. [1899] W. N. 18 (4); [1899] 1 Q. B. 626 .. .. .	130
Beeston Pneumatic Tyre Co., In re .. .. .	[1898] W. N. 34 (4) .. .. .	414
Beighton <i>v.</i> Beighton .. .. .	[1895] W. N. 119 (7) .. .. .	525
Belfield <i>v.</i> Bourne .. .. .	[1894] 1 Ch. 521 .. .. .	1414
Belgian Mills Co.:—Pearson <i>v.</i> .. .. .	[1896] 1 Q. B. 244 .. .. .	1235
Belgravian Estate, Ltd.:—Prinsep <i>v.</i> .. .. .	C. A. [1896] W. N. 39 (1) .. .. .	1117
Belize Estate and Produce Co. <i>v.</i> Quilter .. .. .	P. C. [1897] A. C. 367 .. .. .	219
Bell, In re. Bell <i>v.</i> Bell .. .. .	[1894] W. N. 9 .. .. .	792, 1525
Bell, In re. Jeffery <i>v.</i> Sayles .. .. .	C. A. [1895] W. N. 139 (8); [1896] 1 Ch. 1 .. .. .	1299
Bell <i>v.</i> Balls .. .. .	[1897] 1 Ch. 663 .. .. .	1571
Bell:—Baird <i>v.</i> .. .. .	H. L. (Sc.) [1898] A. C. 420 .. .. .	1845
Bell <i>v.</i> Danson. In re Danson .. .. .	[1895] W. N. 102 .. .. .	10
Bell <i>v.</i> Dudley (Earl of) .. .. .	[1895] 1 Ch. 182 .. .. .	1268, 2068
Bell <i>v.</i> Galt .. .. .	Registration App. Ct. (Sc.) [1898] W. N. 111 .. .. .	1373
Bell:—Perkins <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 193 .. .. .	1818
Bell:—Reg. <i>v.</i> .. .. .	[1900] 2 Q. B. 391 .. .. .	1195

Name of Case.	Volume and Page.	Column of Digest.
Bell:—Stuart <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 341 ..	649, 652
Bell & Co. <i>v.</i> Antwerp, London and Brazil Line	C. A. [1891] 1 Q. B. 103 ..	1541
Bellamy <i>v.</i> Davey .. .. .	[1891] 3 Ch. 540; C. A. [1891] W. N. 192 .. .. .	517, 2092
Bellamy <i>v.</i> Debenham .. .. .	C. A. [1891] 1 Ch. 412 ..	2228
Bellamy:—Perrins <i>v.</i> .. .. .	[1898] 2 Ch. 521; C. A. [1899] W. N. 50; [1899] 1 Ch. 797 ..	2179
Bellencontre, In re .. .. .	C. A. [1891] 2 Q. B. 122 ..	617, 810
Bellinger, In re. Durell <i>v.</i> Bellinger .. ..	[1898] 2 Ch. 534 .. ..	1469
Bellyse <i>v.</i> M'Ginn .. .. .	[1891] 2 Q. B. 227 .. ..	142, 1926
Belsey:—Cooper <i>v.</i> .. .. .	C. A. [1899] W. N. 20 (12); [1899] 1 Ch. 639 ..	1888
Belson:—Rosenbaum <i>v.</i> .. .. .	[1900] W. N. 123; [1900] 2 Ch. 267 ..	2241
Belton <i>v.</i> Busby & Woods .. .. .	[1899] W. N. 115; [1899] 2 Q. B. 380 .. .. .	868
Bence, In re. Smith <i>v.</i> Bence .. .. .	C. A. [1891] 3 Ch. 242 ..	2349
Bence <i>v.</i> Shearman .. .. .	C. A. [1898] 2 Ch. 582 ..	73
Bendy, In re. Wallis <i>v.</i> Bendy .. .. .	[1895] 1 Ch. 109 .. ..	1901
Beneficed Clerk <i>v.</i> Lee .. .. .	P. C. [1897] A. C. 226 ..	761
Benford <i>v.</i> Sims .. .. .	[1898] 2 Q. B. 641 .. ..	1029
Benham:—Aas <i>v.</i> .. .. .	C. A. [1891] 2 Ch. 244 ..	1421
Benjamin Brooke & Co. <i>v.</i> Inland Revenue Commrs. .. .. .	[1896] 2 Q. B. 356 .. ..	1797
Bennett, In re. In re Sharpe, Masonic and General Life Assurance Co. <i>v.</i> Sharpe ..	C. A. [1892] 1 Ch. 154 .. ..	342, 1127
Bennett, In re. Clarke <i>v.</i> White .. .. .	[1898] W. N. 173 (8); [1899] 1 Ch. 316 .. .. .	1299
Bennett, In re. Jones <i>v.</i> Bennett .. .. .	C. A. [1896] 1 Ch. 778 .. ..	1411
Bennett:—Australian Newspaper Co. <i>v.</i> .. ..	P. C. [1894] A. C. 284 .. ..	644, 1500
Bennett <i>v.</i> Bennett. In re Fish .. .. .	C. A. [1893] 2 Ch. 413 .. ..	575, 1501, 2059, 2166
Bennett:—Cox <i>v.</i> .. .. .	C. A. [1891] 1 Ch. 617 .. ..	916, 1501
Bennett <i>v.</i> Harding .. .. .	[1900] 2 Q. B. 397 .. ..	1165
Bennett:—Keeble <i>v.</i> .. .. .	[1894] 2 Q. B. 329 .. ..	589
Bennett:—Machin <i>v.</i> .. .. .	[1900] W. N. 146 .. ..	1414
Bennett:—Norie <i>v.</i> In re Meadows .. .. .	[1898] 1 Ch. 300 .. ..	1866
Bennett <i>v.</i> Rebbeck. In re Rebbeck .. .. .	[1894] W. N. 68 .. .. .	801
Bennett <i>v.</i> Slater .. .. .	[1898] 1 Q. B. 469; reversed by C. A. [1898] W. N. 150 (5); [1899] 1 Q. B. 45 .. .. .	858
Bennett:—Spiers & Pond <i>v.</i> .. .. .	[1896] 2 Q. B. 65 .. ..	21
Bennetts & Co. <i>v.</i> McIlwraith & Co. .. ..	C. A. [1896] 2 Q. B. 464 ..	1506
Bennicourt <i>v.</i> Le Gendre .. .. .	P. C. [1900] A. C. 173 .. ..	5
Bensaude <i>v.</i> Hastings. In re Tatham .. ..	[1892] W. N. 150 .. ..	691
Bensaude & Co. <i>v.</i> Thames and Mersey Marine Insurance Co. .. .. .	C. A. [1897] 1 Q. B. 29; affirmed by H. L. (E.) [1897] A. C. 609 ..	991
Benson, In re. Elletson <i>v.</i> Pillers .. .. .	[1898] W. N. 155 (9); [1899] 1 Ch. 39 .. .. .	1518
Benson <i>v.</i> Grant. In re Brown .. .. .	[1895] W. N. 115 (9) .. ..	7
Bentham Hemp Spinning Co.:—Reddaway <i>v.</i> ..	C. A. [1892] 2 Q. B. 639 ..	2138
Bentinck, In re. Bentinck <i>v.</i> Bentinck .. ..	[1897] 1 Ch. 673 .. ..	797
Bentinck:—Davey <i>v.</i> .. .. .	C. A. [1892] W. N. 186; [1893] 1 Q. B. 185 .. .. .	679, 1530



Name of Case.	Volume and Page.	Column of Digest.
Bentinck v. London Joint Stock Bank .. ..	[1893] 2 Ch. 120 .. ..	2076
Bentley v. Manchester, Sheffield and Lincolnshire R. Co. .. ..	[1891] 3 Ch. 222 .. ..	633, 1498
Bentley (H.) & Co. and Yorkshire Breweries, Ltd. :—Shaw v. .. ..	[1893] W. N. 83 .. ..	405
Bentsen v. Taylor, Sons & Co. (No. 1) .. ..	C. A. [1893] 2 Q. B. 193 .. ..	569
(No. 2) .. ..	C. A. [1893] 2 Q. B. 274 .. ..	1936
Berens:—Hickman v. .. ..	[1895] 2 Ch. 638 .. ..	488
Beresford:—Furness v. (The York Election Petition) .. ..	C. A. [1898] 1 Q. B. 495 .. ..	1366
Berger:—Reg. v. .. ..	[1894] 1 Q. B. 823 .. ..	612, 623
Berger:—Shepherd v. .. ..	C. A. [1891] 1 Q. B. 597 .. ..	1081
Bergtheil:—Crowly v. .. ..	P. C. [1899] A. C. 374 .. ..	1312
Berlin:—Court v. .. ..	C. A. [1897] 2 Q. B. 396 .. ..	2048
Berners, In re. Berners v. Calvert .. ..	[1892] W. N. 171 .. ..	1897
"Bernicia" Steamship, In re .. ..	[1900] W. N. 24 .. ..	364
Bernstein v. Bernstein (No. 1) .. ..	[1892] P. 375 .. ..	695
(No. 2) .. ..	C. A. [1893] P. 292 .. ..	695
Berry:—Burnett v. .. ..	[1896] 1 Q. B. 641 .. ..	541
Berry, In re. Duffield v. Williams .. ..	[1896] 1 Ch. 939 .. ..	1508
Berry, Ex parte. In re Flack .. ..	[1900] W. N. 83; [1900] 2 Q. B. 32 .. ..	2279
Berry v. Halifax Commercial Banking Co. .. ..	[1900] W. N. 262 .. ..	91
Berry:—Wyatt v. .. ..	[1893] P. 5 .. ..	1597
Bertram Luipaard's Vlei Gold Mining Co., In re. In re Trust and Investment Corporation of South Africa .. ..	C. A. [1892] 3 Ch. 332 .. ..	440, 441
Berwick-upon-Tweed Union (Guardians of):—Bath Union (Guardians of) v. .. ..	[1892] 1 Q. B. 731 .. ..	1461
Bessie Morris SS. Co.:—Assicurazioni Generali v. .. ..	[1892] 1 Q. B. 571; C. A. [1892] 2 Q. B. 652 .. ..	988, 1970
Bethell (William), In re .. ..	[1899] W. N. 47 .. ..	1033
Bethell v. Trench Tubeless Tyre Co. In re Trench Tubeless Tyre Co. .. ..	[1899] W. N. 258; C. A. [1900] W. N. 42; [1900] 1 Ch. 408 .. ..	448
Bethnal Green, St. Matthew (Vestry):—Fortescue v. .. ..	[1891] 2 Q. B. 170 .. ..	1152
Bethnal Green, St. Matthew (Churchwardens &c. of):—West Ham (Guardians of) v. No. 1) (No. 2) .. ..	[1892] 2 Q. B. 65; C. A. [1892] 2 Q. B. 676; H. L. (E.) [1894] A. C. 230 .. ..	1462
Bethnal Green Vestry v. London School Board .. ..	C. A. [1895] 1 Q. B. 662 .. ..	1457
Bethnal Green, In re Poor Lands Charity .. ..	C. A. [1896] 2 Q. B. 319; H. L. (E.) [1897] W. N. 167 (7); [1898] A. C. 190 .. ..	1169
Bethune v. Bethune .. ..	[1891] 3 Ch. 400 .. ..	272
Betjemann v. Betjemann .. ..	[1891] P. 205 .. ..	703
Betteridge:—Lole v. .. ..	C. A. [1895] 2 Ch. 474 .. ..	1129
Betterton:—Wilmot v. In re Wilmot .. ..	C. A. [1897] W. N. 178 (3); [1898] 1 Q. B. 256 .. ..	130
Betts, In re. Ex parte Betts .. ..	[1897] W. N. 44 (15) .. ..	2334
Betts:—Comfort v. .. ..	C. A. [1897] 1 Q. B. 50 .. ..	157
Betty, In re. Betty v. Att.-Gen. .. ..	C. A. [1891] 1 Q. B. 737 .. ..	74
Bevan v. London Portland Cement Co. .. ..	[1899] W. N. 57; [1899] 1 Ch. 821 .. ..	1884
Bevan:—Westacott v. .. ..	[1892] W. N. 151 .. ..	731, 2203
Beveridge:—Hanbidge v. (Conlan's Case) .. ..	[1891] 1 Q. B. 774 .. ..	1527, 2027
	C. A. (Ir.) [1897] W. N. 132 .. ..	1382

Name of Case.	Volume and Page.	Column of Digest.
Beveridge :—Jones <i>v.</i> (Kavanagh's Case) ..	C. A. (Ir.) [1897] W. N. 130 ..	1383
Beveridge :—Jones <i>v.</i> (Kearn's Case) ..	C. A. (Ir.) [1897] W. N. 131 ..	1382
Beves :—Morris <i>v.</i> .. .. .	[1897] 1 Q. B. 449 ..	1824
Bew <i>v.</i> Bew .. .. .	C. A. [1899] W. N. 132; [1899] 2 Ch. 467 ..	558
Bewes :—Radcliffe <i>v.</i> In re Radcliffe ..	[1891] 2 Ch. 662; C. A. [1892] 1 Ch. 227 ..	1482
Bexley Heath Ry. Co. :—Dartford Rural Council <i>v.</i> .. .. .	C. A. [1896] 2 Q. B. 74; H. L. (E.) [1897] W. N. 171 (6); [1898] A. C. 210 ..	1663
Bexley Heath Ry. Co. <i>v.</i> North .. .. .	C. A. [1894] 2 Q. B. 579 ..	1086
Bexton :—United Forty Pound Club <i>v.</i> ..	[1891] 1 Q. B. 28, n. ..	205
Beyer, Peacock & Co., Ex parte. In re Clark ..	C. A. [1896] 2 Q. B. 476 ..	104
Beyfus :—Poyser <i>v.</i> In re Perkins ..	[1898] W. N. 18 (4); C. A. [1898] 2 Ch. 182 ..	1055
Beyts & Craig, In re. Ex parte Cooper ..	[1894] W. N. 56 ..	117, 2030
Bibby Brothers & Co., Owners of SS. "Lancashire" <i>v.</i> Leetham, Owners of SS. "Ariel." The "Lancashire" .. .. .	C. A. [1893] P. 47; H. L. (E.) [1894] A. C. 1 ..	1950
Biddulph <i>v.</i> Billiter Street Offices Co. ..	[1895] W. N. 98 ..	1284
Bideford (Rector, etc.), Ex parte. In re Bideford Parish .. .. .	[1900] W. N. 184; [1900] P. 314 ..	747
Bidwell Brothers, In re .. .. .	[1893] 1 Ch. 603 ..	360
Bielby :—Hardcastle <i>v.</i> .. .. .	[1892] 1 Q. B. 709 ..	890
Biernstein :—Jones <i>v.</i> .. .. .	[1899] W. N. 12 (10); [1899] 1 Q. B. 470; C. A. [1900] 1 Q. B. 100 ..	683
Big Blow Gold Mines :—Etherington <i>v.</i> ..	[1897] W. N. 21 (9) ..	1848
Biggerstaff <i>v.</i> Rowatt's Wharf, Ltd. Howard <i>v.</i> Rowatt's Wharf, Ltd. .. .. .	C. A. [1896] 2 Ch. 93 ..	334
Biggs <i>v.</i> Dagnall .. .. .	[1895] 1 Q. B. 207 ..	1493
Biggs <i>v.</i> Evans .. .. .	[1894] 1 Q. B. 88 ..	816
Biggs <i>v.</i> Hoddinott. Hoddinott <i>v.</i> Biggs ..	[1898] W. N. 58 (7); affirmed by C. A. [1898] 2 Ch. 307 ..	1295
Bignell, In re. Bignell <i>v.</i> Chapman ..	C. A. [1892] 1 Ch. 59 ..	1705
Billings <i>v.</i> Holloway .. .. .	C. A. [1898] W. N. 159 (8); [1899] 1 Q. B. 70 ..	1216
Billingham :—Bache <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 107 ..	56, 855
Billington (J. H.), Ltd. :—London and North Western and Great Western Joint Ry. Co. ..	[1898] 1 Q. B. 748; C. A. [1898] 2 Q. B. 7; H. L. (E.) [1899] A. C. 79 ..	1665
Billiter Street Offices Co. :—Biddulph <i>v.</i> ..	[1895] W. N. 98 ..	1284
Bills <i>v.</i> Tatham. In re Patrick ..	[1891] 1 Ch. 82 ..	1908
Bilston (Commrs.) :—Wolverhampton (Corporation) <i>v.</i> .. .. .	[1891] 1 Ch. 315; C. A. [1891] W. N. 56 ..	2278
Bing, Ex parte. In re Mason .. .. .	[1899] 1 Q. B. 810 ..	152
Binnie :—Strachan <i>v.</i> .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 99 ..	1399
Binning <i>v.</i> Binning .. .. .	[1895] W. N. 116 (16) ..	1023, 2359
Binnington & Co. :—Budgett & Co. <i>v.</i> ..	C. A. [1891] 1 Q. B. 35 ..	1965
Binns, In re. Lee <i>v.</i> Binns .. .. .	[1896] 2 Ch. 584 ..	802
Binstead, In re. Ex parte Dale ..	C. A. [1893] 1 Q. B. 199 ..	103, 700
Bjornstad :—Preston Corporation <i>v.</i> The "Ratata" ..	H. L. (E.) [1893] A. C. 513 ..	1979
Birch :—Norris <i>v.</i> .. .. .	[1895] 1 Q. B. 639 ..	884
Birchall <i>v.</i> Bullough .. .. .	[1896] 1 Q. B. 325 ..	782
Bircham, In re .. .. .	C. A. [1895] 2 Ch. 786 ..	1276, 2034

Name of Case.	Volume and Page.	Column of Digest,
Bird, In re. <i>Pitman v Pitman</i> .. .. .	[1892] 1 Ch. 279 .. ..	519
Bird v. Barstow .. .. .	C. A. [1892] 1 Q. B. 94 .. ..	922, 1522
Bird v. Davey .. .. .	C. A. [1891] 1 Q. B. 29 .. ..	197, 1530
Bird v. Philpott .. .. .	[1900] 1 Ch. 822 .. ..	181
Bird:—Reg. v. Ex parte Needes .. ..	[1898] 2 Q. B. 340 .. ..	1098
Bird:—St. Martin-in-the-Fields (Vestry) v. ..	C. A. [1895] 1 Q. B. 428 .. ..	1169
Bird v. St. Mary Abbots, Kensington (Vestry) ..	[1895] 1 Q. B. 912 .. ..	1349
Bird:—Wandsworth District Board v. .. ..	[1892] 1 Q. B. 481 .. ..	1174
Bird:—Wieland v. .. .. .	[1894] P. 262 .. ..	1606
Birkdale Steam Laundry and Carpet Beating Co., In re .. .. .	[1893] 2 Q. B. 386 .. ..	441, 442
Birkenhead Assessment Committee:—Mersey Docks and Harbour Board v. .. ..	C. A. [1900] 1 Q. B. 143 .. ..	1680
Birkett (or Kelsall or Elliott) v. Purdom .. ..	H. L. (Sc.) [1895] A. C. 371 .. ..	1834
Birks, In re. <i>Kenyon v Birks</i> .. .. .	[1899] W. N. 24 (13); [1899] 1 Ch. 703; C. A. [1899] W. N. 249; [1900] 1 Ch. 417 .. ..	2313
Birmingham and District Land Co. and Allday, In re .. .. .	[1893] 1 Ch. 342 .. ..	2224, 2235
Birmingham Battery and Metal Co.:—Williams v. .. .. .	C. A. [1899] W. N. 106; [1899] 2 Q. B. 338 .. ..	1226, 1251
Birmingham Breweries, Ltd., In re. <i>Ward v.</i> Birmingham Breweries, Ltd. .. ..	[1899] W. N. 92 .. ..	467
Birmingham Breweries, Ltd. v. Jameson .. ..	[1898] W. N. 15 (8); C. A. [1898] W. N. 145 .. ..	1058
Birmingham Corporation v. Foster .. ..	[1894] W. N. 43 .. ..	1210
Birmingham Vinegar Brewery Co. v. Powell .. ..	C. A. [1896] 2 Ch. 54; H. L. (E.) [1897] A. C. 710 .. ..	2140
Birmingham Vinegar Brewery Co.:—Powell v. (No. 1) .. .. .	H. L. (E.) [1894] A. C. 8 .. ..	2135
(No. 2) .. .. .	C. A. [1894] 3 Ch. 449 .. ..	2142
Birrell v. Greenhough. In re Crossley .. ..	[1897] 1 Ch. 928 .. ..	285
Birtwistle:—Hindle v. .. .. .	[1896] W. N. 178 (3); [1897] 1 Q. B. 192 .. ..	1236
Bischoffsheim:—Boyd v. .. .. .	C. A. [1895] 1 Ch. 1 .. ..	44
Bishop v. Bishop. <i>Judkins v. Judkins</i> .. ..	C. A. [1897] P. 138 .. ..	692
Bishop v. Duffy .. .. .	Registration App. Ct. (Sc.) [1898] W. N. 88 .. ..	1396
Bishop:—Equitable Life Assurance Society of United States v. .. .. .	[1899] 2 Q. B. 439; C. A. [1900] 1 Q. B. 177 .. ..	1772
Bishop v. Holt. In re Cheadle .. .. .	C. A. [1900] W. N. 174; [1900] 2 Ch. 620 .. ..	2326
Bishop v. Smyrna and Cassaba Ry. Co. (No. 1) (No. 2) .. .. .	[1895] 2 Ch. 265 .. ..	411
(No. 2) .. .. .	[1895] 2 Ch. 596 .. ..	411
Bishop (E.) & Sons, Ltd., In re .. .. .	[1900] W. N. 110; [1900] 2 Ch. 254 .. ..	483
Bishopsgate Foundation, In re .. .. .	[1894] 1 Ch. 185 .. ..	1091
Bissill v. Bradford and District Tramways Co. (No. 1) .. .. .	[1891] W. N. 51 .. ..	330
(No. 2) .. .. .	C. A. [1893] W. N. 44 .. ..	2051
Blaby:—Reg. v. .. .. .	C. C. R. [1894] 2 Q. B. 170 .. ..	621
Black v. Christchurch Finance Co. .. ..	P. C. [1894] A. C. 48 .. ..	1243
Black v. Clay .. .. .	H. L. (Sc.) [1894] A. C. 368 .. ..	1054, 1835
Black v. Dawson .. .. .	C. A. [1895] 1 Q. B. 848 .. ..	1540
Black:—Twigg v. In re Twigg's Estate .. ..	[1892] 1 Ch. 579 .. ..	1013
Black and White Publishing Co.:—Fisher v. .. ..	C. A. [1900] W. N. 271 .. ..	355

Name of Case.	Volume and Page.	Column of Digest.
Black v. Williams .. .. .	[1895] 1 Ch. 408 .. .. .	1986
Blackburn (W.) & Co., In re. Buckley's Case .. {	[1899] W. N. 126; [1899] 2 Ch. 725 .. .. .	468
Blackburne v. Hope Edwardes .. .. .	[1900] W. N. 175 .. .. .	1716
"Blackcock," The, and The "Morgengry" .. {	[1899] W. N. 211; C. A. [1900] P. 1 .. .. .	1955
Blackledge v. Anderton .. .. .	[1893] W. N. 112 .. .. .	679
Blackman v. Fysh .. .. .	C. A. [1892] 3 Ch. 209 .. .. .	1696, 2322
Blackmore :—Morton v. In re Brewer's Settlement .. .. .	[1896] 2 Ch. 503 .. .. .	1905
Blackmore v. White .. .. .	[1898] W. N. 172 (6); [1899] 1 Q. B. 293 .. .. .	524
Blackpool Motor Car Co., In re. Hamilton v. Blackpool Motor Car Co. .. .. .	[1900] W. N. 252 .. .. .	132
Blackpool Winter Gardens and Pavilion Co. :—Fuller v. .. .. .	C. A. [1895] 2 Q. B. 429 .. .. .	536
B'ackwood :—Muddock v. .. .. .	[1897] W. N. 158 (4); [1898] 1 Ch. 58 .. .. .	529
Blades :—Wilkinson v. In re Lart .. .. .	[1896] 2 Ch. 788 .. .. .	768
Blaiberg and Abrahams, In re .. .. .	[1899] W. N. 98; [1899] 2 Ch. 340 .. .. .	2252
Blair v. Assets Co. .. .. .	H. L. (Sc.) [1896] A. C. 409 .. .. .	1831
"B'airmore" Sailing Ship Co. v. Macredie .. .. .	H. L. (Sc.) [1898] A. C. 593 .. .. .	1002
Blake, In re .. .. .	C. A. [1895] W. N. 51 .. .. .	1498
Blake :—Fenner v. .. .. .	[1900] W. N. 17; [1900] 1 Q. B. 426 .. .. .	1065
Blake v. Halse .. .. .	[1892] W. N. 143 .. .. .	31
Blake v. Woolf .. .. .	[1898] 2 Q. B. 426 .. .. .	1075
Blaker v. Tillstone .. .. .	[1894] 1 Q. B. 345 .. .. .	830, 1037
Blakeway v. Patteshall .. .. .	[1894] 1 Q. B. 247 .. .. .	583
Bland, In re. Miller v. Bland .. .. .	[1899] 2 Ch. 336 .. .. .	2301
Bland :—Darlow v. .. .. .	C. A. [1896] W. N. 174 (1); [1897] 1 Q. B. 125 .. .. .	202
Bland v. Low. In re Low .. .. .	C. A. [1894] 1 Ch. 147 .. .. .	788, 1560
Bland's Case. In re Westmoreland Green and Blue Slate Co. .. .. .	C. A. [1893] 2 Ch. 612 .. .. .	345
Blandford v. Blandford .. .. .	[1892] P. 148 .. .. .	693
Blandy :—Simmons v. .. .. .	[1896] W. N. 171 (7); [1897] 1 Ch. 19 .. .. .	1281
Blandy-Jenkins v. Dunraven (Earl of) .. .. .	C. A. [1899] W. N. 88; [1899] 2 Ch. 121 .. .. .	772
Blane, Ex parte. In re Hallett & Co. .. .. .	C. A. [1894] 2 Q. B. 237 .. .. .	116
Blantern, In re. Lowe v. Cooke .. .. .	C. A. [1891] W. N. 54 .. .. .	2311, 2319
Plantyre (Lord) :—Clyde Navigation (Trustees of) v. .. .. .	H. L. (Sc.) [1893] A. C. 703 .. .. .	1449
Blazer Fire Lighter, Ltd., In re .. .. .	[1895] 1 Ch. 402 .. .. .	469, 1674
Blenkinsop v. Ogden .. .. .	[1898] 1 Q. B. 783 .. .. .	1237
Blenkinsop :—Reg. v. .. .. .	[1892] 1 Q. B. 43 .. .. .	1689
Blewitt v. Tritton .. .. .	C. A. [1892] 2 Q. B. 327 .. .. .	45, 1803
Blogg :—Chandler v. .. .. .	[1898] 1 Q. B. 32 .. .. .	998
Blogg :—Sea Insurance Co. v. .. .. .	[1898] 1 Q. B. 27; affirmed by C. A. [1898] 2 Q. B. 398 .. .. .	933
Bloomenthal v. Ford .. .. .	C. A. [1896] 2 Ch. 525; H. L. (E.) [1897] A. C. 156 .. .. .	246

Name of Case.	Volume and Page.	Column of Digest.
Blount <i>v.</i> Layard .. .. .	C. A. [1891] 2 Ch. 681, n. ..	825
Boxwich Iron and Steel Co., In re .. .. .	[1894] W. N. 111 .. .. .	450
"Blue Bell," The .. .. .	[1895] P. 242 .. .. .	1949
Bluman :—Marshall <i>v.</i> .. .. .	[1893] W. N. 184 .. .. .	1161
Blumberg <i>v.</i> Life Interests and Reversionary Securities Corporation .. .. .	[1897] 1 Ch. 171; C. A. [1897] W. N. 172 (10); [1898] 1 Ch. 27 .. .. .	2103
Blumberg <i>v.</i> Life Interests and Reversionary Securities Corporation .. .. .	C. A. [1898] 1 Ch. 27 .. .. .	2103
Blundell :—Asfar & Co. <i>v.</i> .. .. .	[1895] 2 Q. B. 196; C. A. [1896] 1 Q. B. 123 .. .. .	1976
Blyth, Ex parte. Hood Barrs <i>v.</i> Heriot .. .. .	C. A. [1896] 2 Q. B. 338 .. .. .	917
Blyth <i>v.</i> Fladgate .. .. .	[1891] 1 Ch. 337 .. .. .	1420, 2056
Blyth :—Morgan <i>v.</i> .. .. .	[1891] 1 Ch. 337 .. .. .	1420, 2056
Blyth :—Smith <i>v.</i> .. .. .	[1891] 1 Ch. 337 .. .. .	1420, 2056
Blyth Harbour Commrs. <i>v.</i> Newsham and South Blyth Churchwardens and Tynemouth Union Assessment Committee .. .. .	[1894] 2 Q. B. 293; C. A. [1894] 2 Q. B. 675 .. .. .	1683
Blythe :—Tilling, Ld. <i>v.</i> .. .. .	C. A. [1899] 1 Q. B. 557 .. .. .	1699
Blake <i>v.</i> Stevenson .. .. .	[1895] 1 Ch. 358 .. .. .	35
Boaler, Ex parte. Reg. <i>v.</i> London (Lord Mayor of) .. .. .	[1893] 2 Q. B. 146 .. .. .	1028
Boaler <i>v.</i> Brodhurst (No. 1) .. .. .	[1892] W. N. 49 .. .. .	369
(No. 2) .. .. .	[1892] W. N. 121 .. .. .	1497
Board of Trade, Ex parte. In re Burr .. .. .	C. A. [1892] 2 Q. B. 467 .. .. .	164
Board of Trade, Ex parte. In re Cornish .. .. .	[1895] 2 Q. B. 634; C. A. [1895] W. N. 152 (3); [1896] 1 Q. B. 99 .. .. .	172
Board of Trade, Ex parte. In re Hedley .. .. .	[1895] 1 Q. B. 923 .. .. .	124, 135
Board of Trade, Ex parte. In re Hunt .. .. .	[1898] 1 Q. B. 287 .. .. .	122
Board of Trade, Ex parte. In re Lamb .. .. .	C. A. [1894] 2 Q. B. 805 .. .. .	113, 145, 172
Board of Trade, Ex parte. In re Norman .. .. .	C. A. [1893] 2 Q. B. 369 .. .. .	123, 2071
Board of Trade, Ex parte. In re Stevens .. .. .	[1898] 2 Q. B. 495 .. .. .	124
Board of Trade, Ex parte. In re Wallis .. .. .	C. A. [1891] W. N. 68 .. .. .	125
Boards, In re. Knight <i>v.</i> Knight .. .. .	[1895] 1 Ch. 499 .. .. .	2338
Bode :—Lanchbury <i>v.</i> .. .. .	[1898] 2 Ch. 120 .. .. .	630
Boden :—Dando <i>v.</i> .. .. .	[1893] 1 Q. B. 318 .. .. .	1565
Boden <i>v.</i> Hensby .. .. .	[1892] 1 Ch. 101 .. .. .	2050
Boden <i>v.</i> Roscoe .. .. .	[1894] 1 Q. B. 608 .. .. .	29, 682
Bodman, In re. Bodman <i>v.</i> Bodman .. .. .	[1891] 3 Ch. 135 .. .. .	312, 2369
Bodmin Justices :—Reg. <i>v.</i> .. .. .	[1892] 2 Q. B. 21 .. .. .	628, 1208
Body <i>v.</i> Halse .. .. .	[1892] 1 Q. B. 203 .. .. .	1388
Boehm, In the Goods of .. .. .	[1891] P. 247 .. .. .	1618
Bogie :—Lord Advocate <i>v.</i> .. .. .	H. L. (Sc.) [1894] A. C. 83 .. .. .	1784
Bogie (Methven's Executors) :—Lord Advocate <i>v.</i> .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 100 .. .. .	1784
Boileau <i>v.</i> Heath .. .. .	[1898] 2 Ch. 301 .. .. .	1256
Boiler Explosions Act, 1882, Commrs. under :—Reg. <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 703 .. .. .	214
Boiler, ex Elephant .. .. .	[1891] W. N. 52 .. .. .	2005
Bolam :—Douglas <i>v.</i> .. .. .	C. A. [1900] W. N. 234; [1900] 2 Ch. 749 .. .. .	2190
Bolingbroke :—Reg. <i>v.</i> .. .. .	[1893] 2 Q. B. 347 .. .. .	1042

Name of Case.	Volume and Page.	Column of Digest.
Bolton, In the Goods of .. .. .	[1899] P. 186 .. .. .	1603
Bolton v. Bolton .. .. .	C. A. [1891] 3 Ch. 270 .. .. .	958
Bolton v. Buckenham .. .. .	C. A. [1891] 1 Q. B. 278 .. .. .	1586
Bolton v. Curre (No. 1) .. .. .	[1894] W. N. 122 .. .. .	1698, 1701, 2177
————— (No. 2) .. .. .	[1895] 1 Ch. 544 .. .. .	2177
Bolton v. Natal Land and Colonization Co. ..	[1892] 2 Ch. 124 .. .. .	355
Bolton v. Salmon .. .. .	[1891] 2 Ch. 48 .. .. .	1296, 1586
Bolton Corporation :—Knowles & Sons, Ld. v. ..	C. A. [1900] W. N. 73; [1900] 2 Q. B. 253 .. .. .	61
Bolton's Estate, In re. Morant v. Bolton ..	[1892] W. N. 114; C. A. [1892] W. N. 163 .. .. .	845
Bolton (R.) & Co., In re. Salisbury-Jones and Dale's Case (No. 1) .. .. .	C. A. [1894] 3 Ch. 356 .. .. .	347
————— (No. 2) .. .. .	C. A. [1895] 1 Ch. 333 .. .. .	435, 437
Bolton (R.) & Co. :—Davies v. .. .. .	[1894] 3 Ch. 678 .. .. .	314
Bombay Tea Co. :—Langley v. .. .. .	[1900] W. N. 141; [1900] 2 Q. B. 460 .. .. .	2121
"Bona," The .. .. .	C. A. [1895] P. 125 .. .. .	1932
Bonaparte v. Bonaparte .. .. .	[1892] P. 402 .. .. .	711
Bond, In re. Panes v. Att.-Gen. .. .. .	[1900] W. N. 122 .. .. .	624
Bond v. Plumb .. .. .	[1894] 1 Q. B. 169 .. .. .	864
Bonhote v. Henderson .. .. .	[1895] 1 Ch. 742; C. A. [1895] 2 Ch. 202 .. .. .	1907
Bonnard v. Perryman .. .. .	C. A. [1891] 2 Ch. 269 .. .. .	646, 963
Bonner v. Tottenham and Edmonton Permanent Investment Building Society .. .. .	C. A. [1898] W. N. 165 (10); [1899] 1 Q. B. 161 .. .. .	1082
Bonsor v. Bonsor .. .. .	[1897] P. 77 .. .. .	691
Booker :—Westwood v. In re Toleman ..	[1897] 1 Ch. 866 .. .. .	1606
Booker & Co. v. Pocklington Steamship Co. ..	[1899] 2 Q. B. 690 .. .. .	2006
Boon :—Ashling v. .. .. .	[1891] 1 Ch. 568 .. .. .	774, 781, 1804
Bord v. African Consolidated Land and Trading Co. .. .. .	[1897] W. N. 174 (3); [1898] 1 Ch. 596 .. .. .	389
Boosey v. Whight .. .. .	[1899] W. N. 45; [1899] 1 Ch. 836; C. A. [1899] W. N. 249; [1900] 1 Ch. 122 .. .. .	536
Booth, In re. Booth v. Booth .. .. .	[1894] 2 Ch. 282 .. .. .	2134
Booth, In re. Pickard v. Booth .. .. .	[1900] W. N. 76; [1900] 1 Ch. 768 .. .. .	2311
Booth v. Arnold .. .. .	C. A. [1895] 1 Q. B. 571 .. .. .	543, 652
Booth :—Cleary v. .. .. .	[1893] 1 Q. B. 465 .. .. .	1825
Booth :—Logsdon v. .. .. .	[1900] W. N. 5; [1900] 1 Q. B. 401 .. .. .	1147
Booth :—Roberts v. .. .. .	[1893] 1 Ch. 52 .. .. .	1528
Booth & Kettlewell, In re .. .. .	[1892] W. N. 156 .. .. .	1282
Bootham Ward Strays, York, In re. Inland Revenue Commrs. v. Scott .. .. .	C. A. [1892] 2 Q. B. 152 .. .. .	1758
Boots' Cash Chemists, Lancashire, Ld. v. Grundy ..	[1900] W. N. 142 .. .. .	500
Booty v. Groom. In re Groom .. .. .	[1897] 2 Ch. 407 .. .. .	2316
Borax Co., In re. Foster v. Borax Co. .. .. .	[1899] W. N. 34 (4); [1899] 2 Ch. 130 .. .. .	320
Borland's Trustee v. Steel Bros. & Co. .. .. .	[1900] W. N. 251 .. .. .	404
Born, In re. Curnock v. Born .. .. .	[1900] W. N. 148; [1900] 2 Ch. 433 .. .. .	2025
Born v. Turner .. .. .	[1900] W. N. 122; [1900] 2 Ch. 211 .. .. .	1119

Name of Case.	Volume and Page.	Column of Digest.
Borner & Co.:—Miller <i>v.</i> .. .. .	[1900] 1 Q. B. 691 .. ..	1935
Borough Commercial and Building Society, In re (No. 1) .. .. .	[1893] 2 Ch. 242 .. ..	433
(No. 2) .. .. .	C. A. [1894] 1 Ch. 289 .. ..	2027
Borrie:—Wallace <i>v.</i> .. .. .	Registration App. Ct. (Sc.) [1898] { W. N. 113 .. .. .}	1400
Borwick:—Reischer <i>v.</i> .. .. .	C. A. [1894] 2 Q. B. 548 .. ..	988
Borwick:—Union Marine Insurance Co. <i>v.</i> ..	[1895] 2 Q. B. 279 .. ..	987
Bosson:—Horton <i>v.</i> .. .. .	[1899] W. N. 23 (8); C. A. { [1899] W. N. 38 (4) .. ..}	1284
Bostock <i>v.</i> D'Eyncourt. In re Yates .. ..	[1891] 3 Ch. 53 .. ..	2335
Bostock <i>v.</i> Ramsey Urban Council .. ..	[1899] W. N. 261; [1900] 1 Q. B. { 357; C. A. [1900] W. N. 169; { [1900] 2 Q. B. 616 .. ..}	566
Botham & Sons:—Laver <i>v.</i> Chesterfield Union (Guardians), Claimants .. .. .	[1895] 1 Q. B. 59 .. ..	805, 1458
Botten <i>v.</i> City and Suburban Permanent Building Society .. .. .	[1895] 2 Ch. 441 .. ..	226
Boudard Peveril Gear Co.:—M'Keown <i>v.</i> ..	[1896] W. N. 36 (3) .. ..	376
Boughy <i>v.</i> Minor .. .. .	[1893] P. 181. .. ..	1611
Bould:—Scott <i>v.</i> .. .. .	[1895] 1 Q. B. 9 .. ..	1257
Boulter:—Beaton <i>v.</i> .. .. .	[1891] W. N. 30 .. ..	1284
Boulter <i>v.</i> Kent Justices .. .. .	C. A. [1896] 2 Q. B. 36; { H. L. (E.) [1897] A. C. 556 ..}	1111
Boulter:—Tibbatts <i>v.</i> .. .. .	[1895] W. N. 152 (4) .. ..	517
Bound <i>v.</i> Lawrence .. .. .	C. A. [1892] 1 Q. B. 226 .. ..	1233
Bound & Co., In re .. .. .	[1893] W. N. 21 .. ..	447, 451
Bourke <i>v.</i> Nurt. In re Pulborough (School Board Election for the Parish of) .. .. .	C. A. [1894] 1 Q. B. 725 .. ..	126, 2071
Bourke:—Sydney (Municipal Council of) <i>v.</i> ..	P. C. [1895] A. C. 433 .. ..	595, 1329
Bourne, In re. Martin <i>v.</i> Martin .. ..	[1893] 1 Ch. 188 .. ..	1743
Bourne:—Belfield <i>v.</i> .. .. .	[1894] 1 Ch. 521 .. ..	1414
Bourne:—Plant <i>v.</i> .. .. .	[1897] W. N. 40 (14); C. A. { [1897] 2 Ch. 281 .. ..}	2229
Bourne:—Trinidad and Tobago (Att.-Gen. for) <i>v.</i> .. .. .	P. C. [1895] A. C. 83 .. ..	624, 2156
Boustead:—Rochefoucauld <i>v.</i> .. .. .	C. A. [1896] W. N. 74 (2), 178 (5) ..	781
Boustead:—Rochefoucauld <i>v.</i> .. .. .	C. A. [1897] 1 Ch. 196; [1898] { 1 Ch. 550 .. ..}	850, 2178
Bouverie:—Low <i>v.</i> .. .. .	C. A. [1891] 3 Ch. 82 .. ..	771, 2184
Bovill <i>v.</i> Endle .. .. .	[1896] 1 Ch. 684 .. ..	1298
"Bovril" Trade-mark, In re .. .. .	C. A. [1896] 2 Ch. 600 .. ..	2130
Bowden:—Pain <i>v.</i> .. .. .	[1896] 2 Q. B. 301 .. ..	586
Bowden <i>v.</i> Yoxall .. .. .	C. A. [1900] W. N. 242 .. ..	40
Bowen, In re. James <i>v.</i> James .. .. .	[1892] 2 Ch. 291 .. ..	908, 2345
Bowen, In re. Lloyd Phillips <i>v.</i> Davis ..	[1893] 2 Ch. 491 .. ..	279, 2347
Bowen <i>v.</i> Anderson .. .. .	[1894] 1 Q. B. 164 .. ..	1066
Bowen <i>v.</i> Churchill. In re Davenport ..	[1893] 3 Ch. 421 .. ..	2349
Bowen <i>v.</i> Phillips .. .. .	[1897] 1 Ch. 174 .. ..	786
Bower <i>v.</i> Hett .. .. .	[1895] 2 Q. B. 51; C. A. [1895] { 2 Q. B. 337 .. ..}	115, 1925
Bower-Barff Patent, In re .. .. .	P. C. [1895] A. C. 675 .. ..	1440
Bower & Co.:—Felton <i>v.</i> .. .. .	[1900] W. N. 25; [1900] 1 Q. B. { 598 .. ..}	1160
Bowerman:—Reg. <i>v.</i> .. .. .	C. C. R. [1891] 1 Q. B. 112 .. ..	194, 617

Name of Case.	Volume and Page.	Column of Digest.
Bowers :—Beaumont <i>v.</i> .. .. .	{ [1900] W. N. 117; [1900] 2 Q. B. 204 .. .. .	{ 1300, 1775
Bowers <i>v.</i> Harding .. .. .	[1891] 1 Q. B. 560 .. .. .	1771
Bowes, In re. Earl of Strathmore <i>v.</i> Vane .. .. .	[1896] 1 Ch. 507 .. .. .	2342
Bowes, In re. Earl of Strathmore <i>v.</i> Vane .. .. .	{ [1900] W. N. 123; [1900] 2 Ch. 251 .. .. .	{ 2035
Bowes and Partners, Ltd. <i>v.</i> Press .. .. .	C. A. [1894] 1 Q. B. 202 .. .. .	1233
Bowker <i>v.</i> Austin. In re Lawrance .. .. .	[1894] 1 Ch. 556 .. .. .	2051
Bowler <i>v.</i> Barberton Development Syndicate .. .. .	C. A. [1897] 1 Q. B. 164 .. .. .	1163
Bowles :—Morgan <i>v.</i> .. .. .	[1894] 1 Q. B. 236 .. .. .	1163
Bowling & Welby's Contract, In re .. .. .	C. A. [1895] 1 Ch. 663 .. .. .	482
Bowman, In re. Bowman <i>v.</i> Bowman .. .. .	[1891] W. N. 192 .. .. .	2339
Bowman <i>v.</i> Bowman .. .. .	H. L. (Sc.) [1899] A. C. 518 .. .. .	1843
Bowman :—Reg. <i>v.</i> .. .. .	[1898] 1 Q. B. 663 .. .. .	1114
Bowser :—Frodingham Iron and Steel Co. <i>v.</i> .. .. .	[1894] 2 Q. B. 791 .. .. .	898
Bowyer <i>v.</i> Percy Supper Club .. .. .	[1893] 2 Q. B. 154 .. .. .	1106
Bowyer's Settled Estates, In re .. .. .	[1892] W. N. 48 .. .. .	{ 1852, 1857
Boxsius <i>v.</i> Goblet Frères .. .. .	C. A. [1894] 1 Q. B. 842 .. .. .	649
Boyce :—Arden <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 796 .. .. .	1567
Boyce <i>v.</i> Gill .. .. .	[1891] W. N. 108 .. .. .	962
Boycott :—Snow <i>v.</i> .. .. .	[1892] 3 Ch. 110 .. .. .	1254
Boyd, In re. Ex parte McDermott .. .. .	C. A. [1895] 1 Q. B. 611 .. .. .	103
Boyd, In re. Kelly <i>v.</i> Boyd .. .. .	[1897] 2 Ch. 232 .. .. .	1482
Boyd <i>v.</i> Bischoffsheim .. .. .	C. A. [1895] 1 Ch. 1 .. .. .	44
Boyd :—McDermott <i>v.</i> In re McHenry. Barker's Claim .. .. .	C. A. [1894] 3 Ch. 290 .. .. .	1132
Boyd :—McDermott <i>v.</i> In re McHenry. Levita's Claim .. .. .	[1894] 2 Ch. 428; C. A. [1894] 3 Ch. 365 .. .. .	112
Boyd :—Saunders <i>v.</i> In re Fitzgerald's Settled Estates .. .. .	[1891] 3 Ch. 394 .. .. .	1899
Boyer <i>v.</i> Norwich (Bis op of) .. .. .	{ [1892] P. 41; P. C. [1892] A. C. 417 .. .. .	{ 734
Boyes :—Johnston <i>v.</i> .. .. .	{ [1899] W. N. 59; [1899] 2 Ch. 73 .. .. .	{ 2236
Boyes :—Naismith <i>v.</i> .. .. .	{ H. L. (Sc.) [1899] W. N. 124; [1899] A. A. 495 .. .. .	{ 1843
Boyton :—Elve <i>v.</i> .. .. .	C. A. [1891] 1 Ch. 501 .. .. .	{ 286, 486, 625, 2185, 1251, 1634, 1639, 2066
Brabant & Co. <i>v.</i> King .. .. .	P. C. [1895] A. C. 632 .. .. .	{ 1639, 2066
Brabourne <i>v.</i> Anglo-Austrian Printing and Publishing Union .. .. .	[1895] 2 Ch. 891 .. .. .	470
Brace, In re. Welch <i>v.</i> Colt .. .. .	[1891] 2 Ch. 671 .. .. .	1479
Brace <i>v.</i> Abercarn Colliery Co. .. .. .	{ [1891] 1 Q. B. 496; C. A. [1891] 2 Q. B. 699 .. .. .	{ 1258
Brace <i>v.</i> Calder .. .. .	C. A. [1895] 2 Q. B. 253 .. .. .	{ 1234, 1415
Bracken :—Learoyd <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 114 .. .. .	{ 1793, 2074
Bradbury <i>v.</i> Sharp .. .. .	[1891] W. N. 143 .. .. .	536
Bradbury <i>v.</i> Wild .. .. .	[1893] 1 Ch. 377 .. .. .	228
Bradford <i>v.</i> Dawson .. .. .	[1897] 1 Q. B. 307 .. .. .	866
Bradford <i>v.</i> Eastbourne Corporation .. .. .	[1896] 2 Q. B. 205 .. .. .	1914
Bradford Banking Co. :—Rouse <i>v.</i> .. .. .	{ C. A. [1894] 2 Ch. 32; H. L. (E.) [1894] A. C. 586 .. .. .	{ 97, 1585



Name of Case.	Volume and Page.	Column of Digest.
Bradford Corporation <i>v.</i> Pickles .. .. .	{ [1894] 3 Ch. 53; C. A. [1895] 1 Ch. 145; H. L. (E.) [1895] A. C. 587 .. .. }	13, 1204, 1632, 2283
Bradford and District Tramways Co., Ex parte	[1893] 3 Ch. 463 .. ..	{ 1363, 1364
Bradford and District Tramways Co. :—Bissill <i>v.</i> (No. 1) .. .. .	[1891] W. N. 51 .. ..	330
(No. 2) .. .. .	C. A. [1893] W. N. 44 .. ..	2051
Bradford-on-Avon Assessment Committee <i>v.</i> White .. .. .	[1898] 2 Q. B. 630 .. ..	1679
Bradford School of Industry, In re .. .. .	[1893] W. N. 60 .. ..	277
Bradley :—Bassano <i>v.</i> .. .. .	[1896] 1 Q. B. 645 .. ..	592
Bradley <i>v.</i> Chamberlyn .. .. .	[1893] 1 Q. B. 439 .. ..	1564
Bradley :—Chandler <i>v.</i> .. .. .	{ [1896] W. N. 176 (18); [1897] 1 Ch. 315 .. .. }	1871
Bradley <i>v.</i> Colquhoun .. .. .	C. A. (Ir.) [1897] W. N. 130 .. ..	1383
Bradley :—Middleton <i>v.</i> .. .. .	[1895] 2 Ch. 716 .. ..	1437
Bradley :—Seed <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 319 .. ..	204
Bradshaw <i>v.</i> Bradshaw .. .. .	[1897] P. 24 .. ..	927
Brage :—Johnston <i>v.</i> .. .. .	[1900] W. N. 250 .. ..	1907
Brain :—Dobbs <i>v.</i> .. .. .	C. A. [1892] 2 Q. B. 207 .. ..	1594
Brall, In re. Ex parte Norton .. .. .	[1893] 2 Q. B. 381 .. ..	184
Bramble <i>v.</i> Lowe .. .. .	[1897] 1 Q. B. 283 .. ..	2215
Bramley :—Palmer <i>v.</i> .. .. .	C. A. [1895] 2 Q. B. 405 .. ..	196, 681
Brankelow Steamship Co. <i>v.</i> Lamport & Holt .. ..	[1897] 1 Q. B. 570 .. ..	1960
Brandon <i>v.</i> Hughes. In re Hughes .. .. .	C. A. [1898] 1 Ch. 529 .. ..	906
Brandon <i>v.</i> McHenry .. .. .	C. A. [1891] 1 Q. B. 538 .. ..	112
Brandreth, In re .. .. .	[1891] W. N. 86 .. ..	2055
Brandreth <i>v.</i> Colvin. In re Pitcairn .. .. .	{ [1895] W. N. 139 (1); [1896] 2 Ch. 199 .. .. }	1856
Brankelow Steamship Co. <i>v.</i> Canton Insurance Office, Ltd. .. .. .	C. A. [1899] 2 Q. B. 178 .. ..	{ 993, 1936
Branksome Urban District Council :—Durrant <i>v.</i> .. .. .	{ [1897] W. N. 43 (12); C. A. [1897] 2 Ch. 291 .. .. }	1922
Brannigan <i>v.</i> Robinson .. .. .	[1892] 1 Q. B. 344 .. ..	1240
Branson :—Brutton <i>v.</i> .. .. .	[1898] 2 Q. B. 219 .. ..	596
Brasier, In the Goods of .. .. .	[1899] P. 36 .. ..	1618
Brassard :—Alexandre <i>v.</i> .. .. .	P. C. [1895] A. C. 301 .. ..	257
Brash :—Hope <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 188 .. ..	667
Bray <i>v.</i> Ford .. .. .	H. L. (E.) [1896] A. C. 44 .. ..	646, 649
Bray :—London and County Banking Co. <i>v.</i> .. ..	[1893] W. N. 130 .. ..	{ 1488, 1501
Bray <i>v.</i> Milner. In re Milner .. .. .	{ [1899] W. N. 27 (7); [1899] 1 Ch. 563 .. .. }	1479
Brazilian Submarine Telegraph Co. :—Chatenay <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 79 .. ..	492
Bread Supply Association, In re .. .. .	[1893] W. N. 14 .. ..	346
Brearley <i>v.</i> Morley .. .. .	{ [1899] W. N. 84; [1899] 2 Q. B. 121 .. .. }	972
Breay <i>v.</i> Royal British Nurses' Association .. ..	C. A. [1897] 2 Ch. 272 .. ..	549
Brecon and Merthyr Tydfil Junction Ry. Co. :—Rhymney Ry. Co. <i>v.</i> .. .. .	C. A. [1900] W. N. 169 .. ..	509
Brenchley <i>v.</i> Higgins .. .. .	C. A. [1900] W. N. 242 .. ..	1810
Brenda Steamship Co. <i>v.</i> Green .. .. .	{ C. A. [1900] W. N. 49; [1900] 1 Q. B. 518 .. .. }	1936
Brentford Justices :—Mackrell <i>v.</i> .. .. .	{ [1900] W. N. 141; [1900] 2 Q. B. 387 .. .. }	1100
Brentford Local Board :—Grand Junction Waterworks Co. <i>v.</i> .. .. .	C. A. [1894] 2 Q. B. 735 .. ..	2275

Name of Case.	Volume and Page.	Column of Digest.
Brett v. Monarch Investment Building Society ..	C. A. [1894] 1 Q. B. 367 ..	232
Brett v. Rogers .. .. .	[1897] 1 Q. B. 525 .. ..	1166
Brewer v. Square .. .. .	[1892] 2 Ch. 111 .. ..	1300
Brewer's Settlement, In re. Morton v. Blackmore .. .. .	[1896] 2 Ch. 503 .. ..	1905
Brewers and Malsters' Association of Ontario v. Att.-Gen. for Ontario .. .. .	P. C. [1897] A. C. 231 .. ..	253
Brewery Assets Corporation, In re. Truman's Case .. .. .	[1894] 3 Ch. 272 .. ..	372, 393
Brewis v. Brewis .. .. .	[1893] W. N. 6 .. ..	700
Brewster :—Rochdale Canal Co. v. .. .. .	C. A. [1894] 2 Q. B. 852 .. ..	1676
Briant v. Rosher. In re Rosher .. .. .	[1899] W. N. 134 .. ..	1865
Brickwood & Co. v. Reynolds .. .. .	C. A. [1898] 1 Q. B. 95 .. ..	1761
Bridewell Hospital Governors v. Ward, Lock, Bowden & Co. .. .. .	[1892] W. N. 194 .. ..	1119
Bridge v. Howard .. .. .	[1896] W. N. 154 (1); [1897] 1 Q. B. 80 .. ..	17
Bridger, In re. Brompton Hospital for Consumption v. Lewis .. .. .	[1893] 1 Ch. 44; C. A. [1894] 1 Ch. 297 .. ..	285
Bridger :—Grose-Smith v. In re Smith .. .. .	[1899] W. N. 12 (13); [1899] 1 Ch. 331 .. ..	1886
Bridges v. Shaw. In re Shaw .. .. .	[1894] 3 Ch. 615 .. ..	552, 1613
Bridgman :—Hanks v. .. .. .	[1896] 1 Q. B. 253 .. ..	2151
Bridgwater Justices :—Hawkins v. .. .. .	[1900] 2 Q. B. 382 .. ..	1103
Bridgewater Navigation Co., In re .. .. .	[1891] 1 Ch. 155; C. A. [1891] 2 Ch. 317 .. ..	416
Briercliffe - with - Extwistle Churchwardens :—Thursby v. .. .. .	[1894] 1 Q. B. 567; C. A. [1894] 2 Q. B. 11; H. L. (E.) [1895] A. C. 32 .. ..	1048, 1257, 1680, 2082
Briesemann, In the Goods of (No. 1) .. .. .	[1894] P. 260 .. ..	1601
.. .. . (No. 2) .. .. .	[1895] W. N. 32 .. ..	1601, 1615
Briesmann :—Yungmann v. .. .. .	C. A. [1892] W. N. 162 .. ..	1451
"Brigella," The .. .. .	[1893] P. 189 .. ..	994
Briggs, In re. Earp v. Briggs .. .. .	[1894] W. N. 162 .. ..	796
Briggs v. Ryan. In re Wheeler's Settlement .. .. .	[1899] W. N. 141; [1899] 2 Ch. 717 .. ..	909
Briggs and Spicer, In re .. .. .	[1891] 2 Ch. 127 .. ..	2252
Brighthouse Corporation :—Walshaw v. .. .. .	C. A. [1899] 2 Q. B. 286 .. ..	550
Bright :—Pole v. .. .. .	[1892] 1 Q. B. 603 .. ..	583
Bright, Claimant. Golden Sovereigns, Ltd. v. Kotchie .. .. .	C. A. [1898] 2 Q. B. 164 .. ..	1009
Bright v. River Plate Construction Co. .. .. .	[1900] W. N. 153; [1900] 2 Ch. 835 .. ..	54
Brighton Corporation :—Thompson v. .. .. .	C. A. [1894] 1 Q. B. 332 .. ..	549, 895
Brighton and Hove Co-operative Supply Association :—Att.-Gen. v. .. .. .	C. A. [1900] W. N. 12; [1900] 1 Ch. 276 .. ..	890
Brighton (Guardians of the Parish of) v. Strand Union (Guardians of the) .. .. .	C. A. [1891] 2 Q. B. 156 .. ..	1462
Brighton Alhambra, Ltd. :—Securities Properties Investment Corporation v. .. .. .	[1893] W. N. 15 .. ..	333
Brighton Marine Palace and Pier Co., In re .. .. .	[1897] W. N. 12 (3) .. ..	434
Brighton Marine Palace and Pier Co. :—Statham v. .. .. .	[1898] W. N. 168 (4); [1899] 1 Ch. 199 .. ..	395
Brighton Marine Palace and Pier Co. v. Woodhouse .. .. .	[1893] 2 Ch. 486 .. ..	52
Brims, Ex parte. In re Palmer .. .. .	C. A. [1898] 1 Q. B. 419 .. ..	104

Name of Case.	Volume and Page.	Column of Digest.
Bringeman :—Swain <i>v.</i> In re Swain .. ..	[1891] 3 Ch. 233 .. ..	2192
Brinsden <i>v.</i> Williams .. ..	[1894] 3 Ch. 185 .. ..	2049,
Brin's Oxygen Co., In re .. ..	[1899] W. N. 44 .. ..	2180
Brinsley <i>v.</i> Lynton and Lynmouth Hotel and Property Co. .. ..	[1895] W. N. 53 .. ..	369
Brinsmead (T. E.) & Sons, In re .. ..	[1896] W. N. 170 (4); [1897] 1 Ch. 45; C. A. [1897] 1 Ch. 406	317,
Brinsmead (T. E.) & Sons, In re. (Tomlin's Case) .. ..	[1897] W. N. 162 (3); [1898] 1 Ch. 104 .. ..	1700
Brisbane Municipal Council <i>v.</i> Martin .. ..	P. C. [1894] A. C. 249 .. ..	462
Briscoe <i>v.</i> Briscoe .. ..	[1892] 3 Ch. 543 .. ..	422
Briscoe :—Nickalls <i>v.</i> .. ..	[1892] P. 269 .. ..	1499,
Brisley :—Walker <i>v.</i> Grinter <i>v.</i> Fleming .. ..	[1900] 2 Q. B. 735 .. ..	1639
Bristol's (Marquis of) Settled Estates, In re .. ..	[1893] 3 Ch. 161 .. ..	2024
Bristol Corporation :—Robertson <i>v.</i> .. ..	C. A. [1900] W. N. 102; [1900] 2 Q. B. 198 .. ..	747, 751
Bristol (Marquis of), In re. Grey (Earl) <i>v.</i> Grey .. ..	[1897] 1 Ch. 946 .. ..	1752
Bristol (Marquis of) :—Rutland (Duke of) <i>v.</i> In re Rutland's (Duke of) Settled Estates .. ..	[1900] W. N. 122; [1900] 2 Ch. 206 .. ..	1859
Bristol Tramways and Carriage Co. <i>v.</i> National Telephone Co. .. ..	[1899] W. N. 91; [1899] 2 Ch. 282 .. ..	2085
Bristol and West of England Bank <i>v.</i> Midland Railway Co. .. ..	C. A. [1891] 2 Q. B. 653 .. ..	1906
Britain Steamship Co. :—Sloane <i>v.</i> .. ..	C. A. [1896] W. N. 174 (4); [1897] 1 Q. B. 185 .. ..	1872
Britannia Fire Association, In re. Coventry's Case .. ..	C. A. [1891] 1 Ch. 202 .. ..	2101
Britannia Permanent Benefit Building Society .. ..	[1891] W. N. 123 .. ..	1450,
British and American Trustee and Finance Corporation <i>v.</i> Couper .. ..	H. L. (E.) [1894] A. C. 399 .. ..	1942
British and Foreign Steamship Co. :—Adam <i>v.</i> .. ..	[1898] 2 Q. B. 430 .. ..	665
British Bank of South America :—Lubbock <i>v.</i> .. ..	[1892] 2 Ch. 198 .. ..	420
British Columbia Electric Ry., Ltd., In re .. ..	[1899] W. N. 260 .. ..	230
British Columbian Exploitation and Gold Estates, Ltd., In re .. ..	[1899] W. N. 32 (1) .. ..	387
British Gold Fields of West Africa, In re .. ..	C. A. [1899] W. N. 73; [1899] 2 Ch. 7 .. ..	1315
British India Steam Navigation Co. :—“Mary” Tug. Co. <i>v.</i> The “Meanatchy” .. ..	P. C. [1897] A. C. 351 .. ..	6, 354,
British Insulated Wire Co. <i>v.</i> Prescott Urban District Council .. ..	[1895] 2 Q. B. 463; C. A. [1895] 2 Q. B. 528 .. ..	1852
British Investors (Corporation of), In re .. ..	C. A. [1897] W. N. 36 (3) .. ..	309
British Linen Co. Bank :—Mansell <i>v.</i> .. ..	[1892] 3 Ch. 159 .. ..	389
British Linen Co. <i>v.</i> South American and Mexican Co. .. ..	C. A. [1894] 1 Ch. 108 .. ..	473
British Marine Mutual Insurance Co. <i>v.</i> Jenkins .. ..	[1899] W. N. 262; [1900] 1 Q. B. 299 .. ..	996
British Motor Syndicate, Ltd. <i>v.</i> Taylor & Son .. ..	[1900] W. N. 43; [1900] 1 Ch. 577; C. A. [1900] W. N. 239	1429
British Natural Premium Provident Association <i>v.</i> Bywater .. ..	[1897] 2 Ch. 531 .. ..	564
British Ry. Carriage Metal Fittings, &c., Co., In re Mason <i>v.</i> British Ry. Carriage Metal Fittings, &c., Co. .. ..	[1898] W. N. 173 (9) .. ..	318
British South Africa Co. :—Chaddock <i>v.</i> .. ..	C. A. [1896] 2 Q. B. 153 .. ..	674

Name of Case.	Volume and Page.	Column of Digest.
British South Africa Co. v.—Companhia de Moçambique .. .. .	C. A. [1892] 2 Q. B. 358; H. L. (E.) [1893] A. C. 602 ..	1498, 1560
British Wagon Co. v. Gray .. .. .	C. A. [1896] 1 Q. B. 35 ..	1545
Britten v. Great Northern Ry. Co. .. .. .	[1899] 1 Q. B. 243 ..	1652
Britten :—Sen Sen Co. v. .. .. .	[1899] W. N. 27 (9); [1899] 1 Ch. 692 ..	2138
Britton v. Partridge. In re Wasdale .. .. .	[1898] W. N. 164 (2); [1899] 1 Ch. 163 ..	75
Broad :—Driver v. .. .. .	[1893] 1 Q. B. 539; C. A. [1893] 1 Q. B. 744 ..	335, 844
Broad :—Woolley v. (No. 1) .. .. .	[1892] 1 Q. B. 806 ..	656
————— (No. 2) .. .. .	C. A. [1892] 2 Q. B. 317 ..	655
Broad's Patent Night Light Co. :—Fowler v. .. .. .	[1893] 1 Ch. 724 ..	304
Broad's Patent Night Light Co., In re .. .. .	[1892] W. N. 5 ..	456
Broadbent :—Leeds and Hanley Theatre of Varieties v. .. .. .	[1897] W. N. 175 (9); C. A. [1898] 1 Ch. 344 ..	1285
Broadbent & Co. :—Smith v. .. .. .	[1892] 1 Q. B. 551 ..	1926
Broadsmith :—Tomlinson v. .. .. .	C. A. [1896] 1 Q. B. 386 ..	81
Broadwood :—Shipway v. .. .. .	C. A. [1899] 1 Q. B. 369 ..	1573
Brock v. Harrison .. .. .	[1899] W. N. 67; [1899] 1 Q. B. 958 ..	2278
Brooklehurst :—Reg. v. .. .. .	[1892] 1 Q. B. 566 ..	2215
Brooklesby v. Temperance Permanent Building Society .. .. .	C. A. [1893] 3 Ch. 130; H. L. (E.) [1895] A. C. 173 ..	1571
Brodhurst :—Boaler v. (No. 1) .. .. .	[1892] W. N. 49 ..	369
————— (No. 2) .. .. .	[1892] W. N. 121 ..	1497
Brodie, In re. Hood v. Hall .. .. .	[1893] W. N. 161 ..	795
Brogden :—Crozat v. .. .. .	C. A. [1894] 2 Q. B. 30 ..	569
Brogden :—Hamilton v. (No. 1) .. .. .	[1891] W. N. 14 ..	1697
————— (No. 2) .. .. .	[1891] W. N. 36 ..	352, 1695, 1698
Bromby, In re. Wilson v. Bromby .. .. .	[1900] W. N. 187 ..	2369
Bromilow v. Phillips .. .. .	[1891] W. N. 209 ..	504, 932
Bromley Rural District Council :—Hayes Common (Conservators of) .. .. .	[1897] 1 Q. B. 21 ..	296
Brompton County Court Judge :—Reg. v. .. .. .	[1893] 2 Q. B. 195 ..	593, 2061
Brompton Hospital for Consumption v. Lewis. In re Bridger .. .. .	[1893] 1 Ch. 44; C. A. [1894] 1 Ch. 297 ..	285
Brook v. Kelly .. .. .	H. L. (Sc.) [1893] A. C. 721 ..	1830
Brook :—Learoyd v. .. .. .	[1891] 1 Q. B. 431 ..	49
Brook v. Manchester, Sheffield and Manchester Ry. Co. .. .. .	[1895] 2 Ch. 571 ..	1087
Brook :—Maude v. .. .. .	C. A. [1900] 1 Q. B. 575 ..	1229
Brook :—Scholes v. .. .. .	[1891] W. N. 16; C. A. [1891] W. N. 101 ..	1581, 2216
Brooke, In re. Brooke v. Brooke (No. 1) .. .. .	[1894] 1 Ch. 43 ..	2321
————— (No. 2) .. .. .	[1894] 2 Ch. 600 ..	208, 800
Brooke and Fremlin's Contract, In re .. .. .	[1898] 1 Ch. 647 ..	912
Brook & Sons :—Dibb v. .. .. .	[1894] 2 Q. B. 338 ..	115, 1422
Brooks :—Ashford v. In re Hooper .. .. .	[1892] W. N. 151 ..	791
Brooks :—Folkestone (Corporation) v. .. .. .	C. A. [1893] 3 Ch. 22 ..	2086
Brooks :—Peace v. .. .. .	[1895] 2 Q. B. 451 ..	199, 203
Brooks v. Religious Tract Society .. .. .	[1897] W. N. 25 (5) ..	538
Brooman v. Withall. In re Kidd .. .. .	[1894] 3 Ch. 558 ..	790, 2327
Broomer v. Arthur .. .. .	P. C. [1898] A. C. 777 ..	1020

Name of Case.	Volume and Page.	Column of Digest.
Broomfield v. Williams .. ..	C. A. [1897] 1 Ch. 602 ..	2232
Brophy v. Att.-Gen. of Manitoba .. ..	P. C. [1895] A. C. 202 ..	249, 292
Broster, In re. Ex parte Pruddah .. ..	[1897] 2 Q. B. 429 ..	591
Brotherton v. Metropolitan District Ry. Joint Committee .. ..	C. A. [1894] 1 Q. B. 666 ..	561
Brothwood v. Keeling. In re Salt .. ..	[1895] 2 Ch. 203 ..	788
Brougham v. Brougham .. ..	[1895] P. 288 ..	715
Brougham v. Brougham .. ..	[1900] W. N. 130 ..	716
Broughton v. Broughton. In re Coghlan ..	[1894] 3 Ch. 76 ..	1903
Broughton v. Commrs. of Stamp Duties ..	P. C. [1899] A. C. 251 ..	1330
Broughton :—Donnelly v. .. ..	P. C. [1891] A. C. 435 ..	1337, 1596, 1619
Broughton :—Mohan v. .. ..	[1899] P. 211; C. A. [1900] W. N. 20; [1900] P. 56 ..	1626
Broughton :—Solling v. .. ..	P. C. [1893] A. C. 556 ..	1331
Brown, Ex parte. In re Stephenson .. ..	[1897] 1 Q. B. 638 ..	181
Brown, Ex parte. In re Vansittart (No. 1) ..	[1893] 1 Q. B. 181 ..	183
(No. 2) .. ..	[1893] 2 Q. B. 377 ..	184
Brown, In re .. ..	[1895] 2 Ch. 666 ..	1202
Brown, In re. Benson v. Grant .. ..	[1895] W. N. 115 (9) ..	7
Brown, In re. Brown v. Acomb .. ..	[1896] W. N. 164 (7) ..	2315
Brown, In re. Llewellyn v. Brown .. ..	[1900] W. N. 37; [1900] 1 Ch. 489 ..	1186
Brown v. Att.-Gen. for New Zealand .. ..	P. C. [1898] A. C. 234 ..	1335
Brown :—Barracrough v. .. ..	H. L. (E.) [1897] A. C. 615 ..	1038
Brown v. Buchanan .. ..	C. A. (Ir.) [1899] W. N. 160 ..	1378
Brown :—Burns-Burns (Trustee of) v. .. ..	C. A. [1895] 1 Q. B. 324 ..	110
Brown v. Dunstable Corporation .. ..	[1899] W. N. 83; [1899] 2 Ch. 378 ..	1919
Brown :—Edwards v. In re Cliff .. ..	C. A. [1895] 2 Ch. 21 ..	1538
Brown v. Hawkes .. ..	C. A. [1891] 2 Q. B. 718 ..	1204
Brown :—Hill v. .. ..	P. C. [1894] A. C. 125 ..	1334, 2300, 2361
Brown :—Hubbuck & Son, Ltd. v. .. ..	[1899] W. N. 250 ..	2120
Brown v. Jackson .. ..	P. C. [1895] A. C. 446 ..	267, 1428
Brown :—Lofthouse v. .. ..	[1898] W. N. 52 (2) ..	954
Brown v. Martin .. ..	Registration App. Ct. (Sc.) [1897] W. N. 121 ..	1386
Brown :—Nicholson v. .. ..	[1897] W. N. 52 (13) ..	1487
Brown v. Patch .. ..	[1899] W. N. 46; [1899] 1 Q. B. 892 ..	865
Brown v. Peto .. ..	[1900] 1 Q. B. 346; C. A. [1900] W. N. 185; [1900] 2 Ch. 653 ..	1286
Brown :—Powell v. .. ..	C. A. [1898] W. N. 165 (8); [1898] 1 Q. B. 157 ..	1223
Brown :—Reg. v. .. ..	C. C. R. [1895] 1 Q. B. 119 ..	622, 864, 1030
Brown :—Sheward v. In re Sheward .. ..	[1893] 3 Ch. 502 ..	2331
Brown :—Smith v. .. ..	P. C. [1896] A. C. 614 ..	1322
Brown :—Stanton v. .. ..	[1900] 1 Q. B. 671 ..	862
Brown v. Tombs .. ..	[1891] 1 Q. B. 253 ..	1387
Brown :—Warren v. .. ..	[1900] 2 Q. B. 722 ..	1122
Brown :—Wheat v. .. ..	[1892] 1 Q. B. 418 ..	19
Brown v. Wren Brothers .. ..	[1895] 1 Q. B. 390 ..	774
Brown's Estate, In re. Brown v. Brown ..	[1893] 2 Ch. 300 ..	1138, 1583

Name of Case.	Volume and Page.	Column of Digest.
Brown, Doering, McNab & Co.:—Scott <i>v.</i> ..	C. A. [1892] 2 Q. B. 724 ..	513
Brown, Doering, McNab & Co.:—Slaughter & May <i>v.</i> ..	C. A. [1892] 2 Q. B. 724 ..	513
Brown, Janson & Co. <i>v.</i> Hutchinson & Co. (No. 1) ..	C. A. [1895] 1 Q. B. 737 ..	1423, 1705
(No. 2) ..	C. A. [1895] 2 Q. B. 126 ..	1422
Brown, Shipley & Co. <i>v.</i> Inland Revenue Commrs. ..	[1895] 2 Q. B. 240; C. A. [1895] 2 Q. B. 598 ..	1803
Brown, Toogood & Co.:—Finska Angfartygs Aktiebolaget <i>v.</i> ..	[1891] W. N. 87; C. A. [1891] W. N. 116 ..	558
Browne, In re ..	C. A. [1894] 3 Ch. 412 ..	1197, 1698
Browne:—Malcolm <i>v.</i> ..	Registration App. Ct. (Sc.) [1897] W. N. 124 ..	1385
Browne:—Mara <i>v.</i> ..	[1895] 2 Ch. 69; reversed by C. A. [1896] 1 Ch. 199 ..	2056
Browne and Wingrove, In re. Ex parte Ador ..	C. A. [1891] 2 Q. B. 574 ..	151
Brownfields Guild Pottery Society, In re ..	[1898] W. N. 80 (4) ..	362
Browning:—Spooner <i>v.</i> ..	C. A. [1898] 1 Q. B. 528 ..	1572
Bruce <i>v.</i> Ailesbury (Marquis) (No. 1) ..	C. A. [1892] 1 Ch. 506; H. L. (E.) [1892] A. C. 356 ..	43, 1885
(No. 2) ..	[1892] W. N. 149 ..	1531, 1886
Bruce:—Miller <i>v.</i> ..	C. A. (Ir.) [1900] W. N. 230 ..	1385
Bruce:—Reg. <i>v.</i> ..	[1892] 2 Q. B. 136 ..	1192, 1461
Brune <i>v.</i> James ..	[1898] 1 Q. B. 417 ..	583
“Brunel,” The ..	[1898] W. N. 164 (1); [1899] P. 45; C. A. [1899] W. N. 227; [1900] P. 24 ..	1982
Bruno <i>v.</i> Eyston. In re Huddleston ..	[1894] 3 Ch. 595 ..	774, 1476
Brunton <i>v.</i> Dixon ..	[1892] W. N. 105 ..	922
Brunton <i>v.</i> Electrical Engineering Corporation ..	[1892] 1 Ch. 434 ..	322, 829 2053
Brunton:—English and Scottish Mercantile Investment Trust <i>v.</i> ..	[1892] 2 Q. B. 1; C. A. [1892] 2 Q. B. 700 ..	328
Brutton <i>v.</i> Branson ..	[1898] 2 Q. B. 219 ..	596
Bruty <i>v.</i> Mackey. In re Buck ..	[1896] 2 Ch. 727 ..	857
Bruyère:—Pepin <i>v.</i> ..	[1900] W. N. 164; [1900] 2 Ch. 504 ..	497
Bryant, In the Goods of ..	[1896] P. 159 ..	1603
Bryant, In re. Ex parte Bryant ..	C. A. [1895] 1 Q. B. 420 ..	125
Bryant, In re. Bryant <i>v.</i> Hickley ..	[1894] 1 Ch. 324 ..	953, 2183
Bryant <i>v.</i> Hancock & Co. ..	C. A. [1898] 1 Q. B. 716; H. L. (E.) [1899] W. N. 118; [1899] A. C. 442 ..	1058
Bryant, Powis & Bryant, Ld. <i>v.</i> Banque du Peuple ..	P. C. [1893] A. C. 170 ..	194, 1571
Bryant, Powis & Bryant, Ld. <i>v.</i> Quebec Bank ..	P. C. [1893] A. C. 170 ..	194, 1571
Bryden:—Union Colliery Co. of British Columbia <i>v.</i> ..	P. C. [1899] A. C. 580 ..	249
Buccleuch (Duke of):—Johnstone <i>v.</i> ..	H. L. (Sc.) [1892] A. C. 625 ..	1844
Buchanan:—Arbuckle <i>v.</i> ..	C. A. (Ir.) [1899] W. N. 180 ..	1377
Buchanan:—Brown <i>v.</i> ..	C. A. (Ir.) [1899] W. N. 160 ..	1378
Buchanan:—Clarke <i>v.</i> (Carlin's Case) ..	C. A. (Ir.) [1898] W. N. 109 ..	1393
Buchanan:—Clarke <i>v.</i> (Dogberty's Case) ..	C. A. (Ir.) [1897] W. N. 113 ..	1392

Name of Case.	Volume and Page.	Column of Digest.
Buchanan :—Gormley <i>v.</i> .. .. .	C. A. (Ir.) [1899] W. N. 156 ..	1375
Buchanan :—Lynch <i>v.</i> (Re Richey.) Hasson } <i>v.</i> Chambers. Crossan <i>v.</i> Chambers .. .. }	C. A. (Ir.) [1897] W. N. 85 ..	1398
Buchanan :—M'Crea <i>v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 112 ..	1383
Buchanan :—M'Grath <i>v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 109 ..	1393
Buchanan :—M'Keever <i>v.</i> .. .. .	C. A. (Ir.) [1899] W. N. 159 ..	1377
Buchanan :—M'Kendrick <i>v.</i> .. .. .	C. A. (Ir.) [1899] W. N. 172 ..	1368
Buchanan :—Wilson <i>v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 124 ..	1372
Buck, In re. Bruty <i>v.</i> Mackey .. .. .	[1896] 2 Ch. 727 .. .. .	857
Buckenham :—Bolton <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 278 ..	1586
Buckinghamshire (Earl of) :—Hampden <i>v.</i> .. .. .	C. A. [1893] 2 Ch. 531 .. ..	1877
Buckinghamshire County Council and Hertfordshire County Council, In re .. .. .	[1899] 1 Q. B. 515 .. .. .	1145
Buckland <i>v.</i> Buckland .. .. .	[1900] W. N. 159; [1900] 2 Ch. 534 .. .. .	956
Buckle, In re. Williams <i>v.</i> Marson .. .. .	C. A. [1894] 1 Ch. 286 .. ..	2308
Buckle :—Salsbury <i>v.</i> In re Averill .. .. .	[1898] 1 Ch. 523 .. .. .	2322
Buckler <i>v.</i> Wilson .. .. .	[1895] W. N. 156 (6); [1896] 1 Q. B. 83 .. .. .	20
Buckley (R. H.) & Sons, Ld. <i>v.</i> N. Buckley & Sons .. .. .	C. A. [1898] 2 Q. B. 608 .. ..	2282
Buckley <i>v.</i> Crawford. Townsend, Claimant .. .. .	[1893] 1 Q. B. 105 .. .. .	932
Buckley <i>v.</i> Edwards .. .. .	P. C. [1892] A. C. 387 .. ..	292, 1024,
Buckley <i>v.</i> Hull Docks Co. .. .. .	[1893] 2 Q. B. 93 .. .. .	1335 1560
Buckley :—Wigram <i>v.</i> .. .. .	C. A. [1894] 3 Ch. 483 .. ..	1139, 1281, 1287
Buckley's Case. In re Blackburn (W.) & Co. .. .. .	[1899] W. N. 126; [1899] 2 Ch. 725 .. .. .	468
Buckley's Trusts, In re .. .. .	[1893] W. N. 95 .. .. .	1475
Bucks and Oxon Union Bank :—Coleman <i>v.</i> .. .. .	[1897] 2 Ch. 243 .. .. .	97
Buckwell <i>v.</i> Norman .. .. .	C. A. [1898] 1 Q. B. 622 .. ..	149
Budd :—Jay <i>v.</i> .. .. .	C. A. [1897] W. N. 150 (3); [1898] 1 Q. B. 12 .. .. .	1548
Budd <i>v.</i> Lucas .. .. .	[1891] 1 Q. B. 408 .. .. .	2122
Budden <i>v.</i> Wilkinson .. .. .	C. A. [1893] 2 Q. B. 432 .. ..	661, 669
Budge :—Rassam <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 571 .. ..	1529
Budgett, In re. Cooper <i>v.</i> Adams .. .. .	[1894] 2 Ch. 557 .. .. .	139, 153
Budgett <i>v.</i> Budgett (No. 1) .. .. .	C. A. [1894] 2 Ch. 555 .. ..	46
— (No. 2) .. .. .	[1895] 1 Ch. 202 .. .. .	573, 575, 2182
Budgett & Co. <i>v.</i> Binnington & Co. .. .. .	C. A. [1891] 1 Q. B. 35 .. ..	1965
Buena Ventura Nitrate Grounds Syndicate :—James <i>v.</i> .. .. .	C. A. [1896] 1 Ch. 456 .. ..	394
Building Estates Brickfields Co., In re. Parbury's Case .. .. .	[1895] W. N. 142 (2); [1896] 1 Ch. 100 .. .. .	423
Bulkeley <i>v.</i> Stephens .. .. .	[1896] 2 Ch. 241 .. .. .	1853
Bull :—Burt, Boulton & Hayward <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 276 .. ..	1701
Bull :—Moore (falsely called Bull) <i>v.</i> .. .. .	[1891] P. 279 .. .. .	718
Bull :—Wright & Son <i>v.</i> .. .. .	[1900] 2 Q. B. 124 .. .. .	588
Bull, Bevan & Co., In re .. .. .	[1891] W. N. 170 .. .. .	457
Bull, Sons & Co. :—Strapp <i>v.</i> .. .. .	C. A. [1895] 2 Ch. 1 .. .. .	332
Bull Coal Mining Co. <i>v.</i> Osborne .. .. .	P. C. [1899] A. C. 351 .. ..	1326
Bullis <i>v.</i> Jones. In re Jones .. .. .	[1891] W. N. 114 .. .. .	1495
Bullivant :—Reg. <i>v.</i> .. .. .	C. A. [1900] 2 Q. B. 163 .. ..	670
Bullock, In re. Ex parte Ward .. .. .	[1899] W. N. 114; [1899] 2 Q. B. 517 .. .. .	203

Name of Case.	Volume and Page.	Column of Digest.
Bullock, In re. <i>Goode v. Lickorish</i> .. ..	[1891] W. N. 62 .. ..	2329
Bullock :— <i>Hill (Viscount) v.</i> .. ..	{ [1897] 2 Ch. 55; C. A. [1897] 2 Ch. 482 .. .. }	826
Bullock :— <i>Lloyds Bank, Ltd. v.</i> .. ..	[1896] 2 Ch. 192 .. ..	1278
Bullough :— <i>Birchall v.</i> .. ..	[1896] 1 Q. B. 325 .. ..	782
Bulman & Dickson <i>v. Fenwick &amp; Co.</i> .. ..	C. A. [1894] 1 Q. B. 179 .. ..	1965
Bulmer :— <i>Child v. In re Wilks</i> .. ..	[1891] 3 Ch. 59 .. ..	1022
Bultfontein Mining Co. :— <i>Frames v.</i> .. ..	[1891] 1 Ch. 140 .. ..	351
Bunting :— <i>Pearce v.</i> .. ..	[1896] 2 Q. B. 360 .. ..	2106
Burbridge :— <i>St. Saviour's Union v.</i> .. ..	{ [1900] W. N. 184; [1900] 2 Ch. 695 .. .. }	2216
Burchard <i>v. Macfarlane. Ex parte Tindall</i> .. ..	C. A. [1891] 2 Q. B. 241 .. ..	663
Burchell :— <i>Lintern v. Killick v. Graham</i> .. ..	[1896] 2 Q. B. 196 .. ..	1783
Burchell <i>v. Wilde</i> .. ..	{ [1900] W. N. 29; C. A. [1900] W. N. 63; [1900] 1 Ch. 551 .. .. }	1417
Burnell, In re. <i>Walker v. Burnell</i> .. ..	[1893] W. N. 171 .. ..	1702
Burdekin, In re .. ..	C. A. [1895] 2 Ch. 136 .. ..	2027
Burdett-Coutts <i>v. True Blue (Hannan's) Gold Mining Co.</i> .. ..	{ [1899] W. N. 97; C. A. [1899] W. N. 113; [1899] 2 Ch. 616 .. .. }	380
Burford-Hancock :— <i>Malcolm v. In re Hancock</i> .. ..	C. A. [1896] 2 Ch. 173 .. ..	1480
Burge <i>v. Ashley &amp; Smith, Ltd.</i> .. ..	{ C. A. [1900] W. N. 63; [1900] 1 Q. B. 744 .. .. }	870
Burger <i>v. Indemnity Mutual Marine Assurance Co.</i> .. ..	{ C. A. [1900] W. N. 145; [1900] 2 Q. R. 348 .. .. }	986
Burgess <i>v. Morton</i> .. ..	H. L. (E.) [1896] A. C. 136 .. ..	1552
Burham Brick, Lime, and Cement Co.'s Trade-marks, In re .. ..	[1892] W. N. 134 .. ..	2124
Burke :— <i>Alexander v. (Mount Argus Case)</i> .. ..	C. A. (Ir.) [1899] W. N. 178 .. ..	1378
Burke :— <i>Alexander v. (The French College Case)</i> .. ..	C. A. (Ir.) [1897] W. N. 92 .. ..	1401
Burke :— <i>Alexander v. (The St. Joseph's College Case)</i> .. ..	C. A. (Ir.) [1897] W. N. 92 .. ..	1401
Burke :— <i>Holly v.</i> .. ..	C. A. (Ir.) [1897] W. N. 91 .. ..	1398
Burke's Trade-marks, In re .. ..	[1891] W. N. 2 .. ..	2124
Burkill <i>v. Thomas</i> .. ..	{ [1892] 1 Q. B. 99; C. A. [1892] 1 Q. B. 312 .. .. }	597, 1489, 2069
Burley :— <i>Scaman v.</i> .. ..	C. A. [1896] 2 Q. B. 344 .. ..	37
"Burma," The .. ..	[1899] W. N. 54 .. ..	1959
Burman, <i>Ex parte. In re Jubb</i> .. ..	[1897] 1 Q. B. 641 .. ..	161
Burnand :— <i>Seaton v.</i> .. ..	{ C. A. [1899] 1 Q. B. 782 H. L. (E.) [1900] W. N. 48; [1900] A. C. 135 .. .. }	977, 1251
Burnett <i>v. Berry</i> .. ..	[1896] 1 Q. B. 641 .. ..	541
Burnett :— <i>Lumsden v.</i> .. ..	C. A. [1898] 2 Q. B. 177 .. ..	684
Burnley <i>v. Harland. In re Jennings</i> .. ..	[1892] W. N. 156 .. ..	2330
Burnley Equitable Co-operative and Industrial Society <i>v. Casson</i> .. ..	[1891] 1 Q. B. 75 .. ..	49
Burnley Steamship Co. <i>v. Aiken</i> .. ..	{ Ct. of Sess. (Sc.) [1896] W. N. 115 .. .. }	1776
Burns (G. and J.) :— <i>MacIver v.</i> .. ..	C. A. [1895] 2 Ch. 630 .. ..	1537
Burns :— <i>New v.</i> .. ..	C. A. [1894] W. N. 196 .. ..	778
Burns-Burns (Trustee of) <i>v. Brown</i> .. ..	C. A. [1895] 1 Q. B. 324 .. ..	110
Burr, In re. <i>Ex parte Board of Trade</i> .. ..	C. A. [1892] 2 Q. B. 467 .. ..	165
Burr, In re. <i>Ex parte Clarke</i> .. ..	{ [1892] W. N. 122; C. A. [1892] W. N. 138 .. .. }	154, 168
Burr :— <i>Field Steamship Co. v.</i> .. ..	[1898] 1 Q. B. 821; C. A. [1899] 1 Q. B. 579 .. ..	989
Burr :— <i>Tatham, Bromage &amp; Co. v. The "Engineer"</i> .. ..	H. L. (E.) [1898] A. C. 382 .. ..	987



Name of Case.	Volume and Page.	Column of Digest.
Burrell & Sons:—Potter (J.) & Co. v. ..	C. A. [1896] W. N. 162 (15);	1964
Burrowes v. Lock ..	[1897] 1 Q. B. 97 ..	2184
Burrows:—Cleghorn v. In re Burrows ..	[1891] 3 Ch. 94, n. ..	2312
	[1895] 2 Ch. 497 ..	1640,
Burrows:—Reg. v. ..	[1892] 1 Q. B. 399 ..	2257
Burrows:—Reid v. ..	[1892] 2 Ch. 413 ..	2022
Burrows v. Rhodes ..	[1899] 1 Q. B. 816 ..	833
Burslem (Mayor, &c., of) and County Council of	C. A. [1895] W. N. 146 (4);	578
Staffordshire, In re ..	[1896] 1 Q. B. 24 ..	951
Burt:—Arnold v. In re Jeffery (No. 1) ..	[1891] 1 Ch. 671 ..	952
	[1895] 2 Ch. 577 ..	582
Burt:—Barber v. ..	[1894] 2 Q. B. 437 ..	1073
Burt v. Gray ..	[1891] 2 Q. B. 98 ..	933,
Burt:—Pidcock v. ..	[1894] 1 Ch. 343 ..	1410
Burt, Boulton & Hayward v. Bull ..	C. A. [1895] 1 Q. B. 276 ..	1701
Burton:—Crompton & Evans' Union Bank v. ..	C. A. [1895] 2 Ch. 711 ..	1518,
		1519,
		1520
Burton:—Hollis v. ..	C. A. [1892] 3 Ch. 226 ..	1486,
		1518,
		1519,
		1522
Burton:—Reg. v. Ex parte Young ..	[1897] 2 Q. B. 468 ..	1043
Burton v. St. Giles' and St. George's Assessment	[1900] W. N. 9; [1900] 1 Q. B.	1673
Committee ..	389 ..	952
Burton's Will, In re. Banks v. Heaven ..	[1892] 2 Ch. 38 ..	1143
Bury St. Edmunds Corporation v. West Suffolk	[1898] 2 Q. B. 246 ..	1064
County Council ..	[1895] 1 Q. B. 231; C. A. [1895]	868
Bury v. Thompson ..	W. N. 44; [1895] 1 Q. B. 696	972
	[1899] W. N. 115; [1899] 2	1557
Busby & Woods:—Belton v. ..	Q. B. 380 ..	1469
Bush & Co.:—Orchard v. ..	[1898] 2 Q. B. 284 ..	1376
Bushby:—Jenkins v. ..	C. A. [1891] 1 Ch. 484 ..	1137
Business (Course of) ..	[1900] W. N. 262 ..	2133
Buston:—Mounsey v. In re L'Herminier ..	[1894] 1 Ch. 675 ..	1819
Butcher:—Bagley v. ..	[1898] 1 Q. B. 67 ..	2310
Butcher:—Reeves v. ..	C. A. [1891] 2 Q. B. 509 ..	1604
Butcher:—Richards v. ..	C. A. [1891] 2 Ch. 522 ..	694
Bute's (Marquis of) Case ..	[1892] 2 Ch. 100 ..	1231
Butler, In re. Le Bas v. Herbert ..	[1894] 3 Ch. 250 ..	815
	[1897] W. N. 153 (12); [1898]	1389
Butler, In the Goods of ..	P. 9 ..	2225
Butler v. Butler (No. 1) ..	[1893] P. 185; C. A. [1894] P.	2049,
	25 ..	2196
Butler:—Cass v. ..	C. A. [1900] W. N. 49; [1900]	2181
	1 Q. B. 777 ..	2064,
Butler:—Lee v. ..	C. A. [1893] 2 Q. B. 318 ..	2252
Butler:—Linthorpe v. ..	[1899] 1 Q. B. 116 ..	1476
Butler:—Smith v. ..	C. A. [1900] 1 Q. B. 694 ..	
Butler:—Vipont v. ..	[1893] W. N. 64 ..	
Butt v. Wright. In re Maddock ..	[1899] W. N. 122; [1899] 2 Ch.	
	588 ..	
Buttenshaw:—Pearl Life Assurance Co. v. ..	[1893] W. N. 123 ..	
Butterworth:—Knight-Bruce v. In re Tyssen	[1894] 1 Ch. 56 ..	

Name of Case.	Volume and Page.	Column of Digest.
Butterworth :—Mansfield Corporation <i>v.</i> ..	[1898] 2 Q. B. 274 ..	2090
Button :—Reg. <i>v.</i> .. .. .	C. C. R. [1900] W. N. 176; [1900] 2 Q. B. 597 ..	613
Buxton <i>v.</i> Campbell. In re Barker ..	[1892] 2 Ch. 491 ..	1131
Buxton Lime Firms Co. <i>v.</i> Howe ..	[1900] 2 Q. B. 232 ..	1244
Byas :—Fraser <i>v.</i> .. .. .	[1895] W. N. 112 (5) ..	1451
Byng's Settled Estates, In re ..	[1892] 2 Ch. 219 ..	1865
Byron's Settlement, In re. Williams <i>v.</i> Mitchell	[1891] 3 Ch. 474 ..	1467
Bywater :—British Natural Premium Provident Association <i>v.</i> .. .. .	[1897] 2 Ch. 531 ..	564
C.		
C. M. G., In re .. .. .	C. A. [1898] 2 Ch. 324 ..	1200
C— :—G— <i>v.</i> In re S—'s Settlement ..	[1893] W. N. 127 ..	917
C. D. :—A. B. <i>v.</i> .. .. .	H. L. (Sc.) [1891] A. C. 616 ..	1836
Cadell <i>v.</i> Wilcocks .. .. .	[1898] P. 21 ..	2358
Cadieux :—Montreal Gas Co. <i>v.</i> .. ..	P. C. [1898] A. C. 718; [1899] A. C. 589 ..	241
Cadogan :—Coote <i>v.</i> In re Eyre Coote ..	[1899] W. N. 222 ..	1860
Cadogan <i>v.</i> Fitzroy. In re Hamilton ..	C. A. [1896] 2 Ch. 617 ..	282
Cadogan <i>v.</i> Lyric Theatre .. .. .	C. A. [1894] 3 Ch. 338 ..	1696, 1698
Caffin <i>v.</i> Aldridge .. .. .	[1895] 2 Q. B. 366; C. A. [1895] 2 Q. B. 648 ..	1967
Cahn and Mayer <i>v.</i> Pockett's Bristol Channel Steam Packet Co. .. .. .	[1898] 2 Q. B. 61; C. A. [1899] W. N. 32 (6); [1899] 1 Q. B. 643 ..	1817
Cain <i>v.</i> Moon .. .. .	[1896] 2 Q. B. 283 ..	725
Caland, The "P. Owner of the "P. Caland" <i>v.</i> Glamorgan Steamship Co. .. .. .	[1891] P. 313; C. A. [1892] P. 191; H. L. (E.) [1893] A. C. 207 ..	38, 1954
Calcott and Elvin's Contract, In re ..	[1898] W. N. 33 (1); C. A. [1898] 2 Ch. 460 ..	157
Calcraft :—Dixon <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 458 ..	1928
Calcraft <i>v.</i> Guest .. .. .	C. A. [1898] 1 Q. B. 759 ..	669
Calder :—Brace <i>v.</i> .. .. .	C. A. [1895] 2 Q. B. 253 ..	1234, 1415
Calder :—Teacher <i>v.</i> .. .. .	H. L. (Sc.) [1899] W. N. 118; [1899] A. C. 451 ..	4
Calder & Co. :—Macalpine & Co. .. ..	C. A. [1893] 1 Q. B. 545 ..	63
Caldwell, In re. Hamilton <i>v.</i> Hamilton ..	[1894] W. N. 13 ..	952
Caldwell :—Robinson <i>v.</i> .. .. .	[1893] 1 Q. B. 519 ..	1558
Cale <i>v.</i> James .. .. .	[1897] 1 Q. B. 418 ..	926
Caledonian Insurance Co. <i>v.</i> Gilmour ..	H. L. (Sc.) [1893] A. C. 85 ..	57, 64, 976
Caledonian Ry. Co. :—Lowther <i>v.</i> .. ..	[1891] 3 Ch. 443; C. A. [1892] 1 Ch. 73 ..	1086
Caledonian Ry. Co. <i>v.</i> Mulholland .. ..	H. L. (Sc.) [1897] W. N. 159 (7); [1898] A. C. 216 ..	1650
Caledonian Ry. Co. :—Palmer <i>v.</i> .. ..	[1892] 1 Q. B. 607; C. A. [1892] 1 Q. B. 823 ..	1547, 1637, 1839
Caledonian Ry. Co. :—Port Glasgow and Newark Sailcloth Co. <i>v.</i> .. .. .	H. L. (Sc.) [1893] W. N. 29 ..	1650
Caledonian Ry. Co. <i>v.</i> Turcan .. .. .	H. L. (Sc.) [1898] A. C. 256 ..	1088
Calham <i>v.</i> Smith. In re Horlock .. ..	[1895] 1 Ch. 516 ..	641, 2358

Name of Case.	Volume and Page.	Column of Digest.
Callander and Oban Ry. Co.:—Macfie v. ..	H. L. (Sc.) [1898] A. C. 270 ..	1093
Callander and Trossachs Hydropathic Co. and the Eagle Property Co. v. Marshall ..	H. L. (Sc.) [1896] A. C. 223 ..	1844
Callender, Sykes & Co. v. Colonial Secretary of Lagos. Williams v. Davies .. ..	P. C. [1891] A. C. 460 ..	119, 292, 877, 1045
Callicott, In the Goods of .. ..	[1899] P. 189 .. ..	1598
"Calliope," The. Tredegar Iron and Coal Co. v. Owners of SS. "Calliope" .. ..	H. L. (E.) [1891] A. C. 11 ..	2017
Calvert, In re .. ..	[1899] W. N. 84 (3) .. ..	150
Calvert, In re .. ..	[1899] W. N. 53 .. ..	152
Calvert, In re. Ex parte Calvert .. ..	[1899] 2 Q. B. 145 .. ..	154
Calvert:—Berners v. In re Berners .. ..	[1892] W. N. 171 .. ..	1897
Camberwell (Vestry):—Att.-Gen. v. .. ..	[1894] W. N. 163 .. ..	1181
Camberwell Assessment Committee v. Ellis ..	C. A. [1899] W. N. 22; [1900] 1 Q. B. 68; H. L. (E.) [1900] W. N. 156; [1900] A. C. 510	1683
Cambridge Union v. Edmonton Union .. ..	[1900] 2 Q. B. 111 .. ..	1461
Cameron v. Nystrom .. ..	P. C. [1893] A. C. 308 .. ..	1243
Cameron v. Tyler .. ..	[1890] W. N. 80; [1899] 2 Q. B. 94 .. ..	2295
Cameron v. Wiggins .. ..	[1900] W. N. 253 .. ..	2133
Cammell, Ex parte. In re Printing Telegraph and Construction Co. of the Agence Havas ..	[1894] 1 Ch. 528; C. A. [1894] 2 Ch. 392 .. ..	348
Campbell & Co.:—McCord v. .. ..	H. L. (E.) [1896] A. C. 57 .. ..	1241
Campbell, In re. Campbell v. Campbell (No. 1) .. ..	[1893] 2 Ch. 206 .. ..	2327
(No. 2) .. ..	[1893] 3 Ch. 468 .. ..	2327, 2341
Campbell:—Buxton v. In re Barker .. ..	[1892] 2 Ch. 491 .. ..	1131
Campbell v. Campbell. In re Powell .. ..	[1900] W. N. 165; [1900] 2 Ch. 525 .. ..	2337
Campbell v. Chambers. Gallagher's Case ..	C. A. (Ir.) [1899] W. N. 147 ..	1393
Campbell v. Chambers (William Campbell's Case) .. ..	C. A. (Ir.) [1898] W. N. 86 ..	1375
Campbell v. Chambers (Harris' Case) .. ..	C. A. (Ir.) [1897] W. N. 133 ..	1384
Campbell v. Chambers (Simpson's Case) ..	C. A. (Ir.) [1897] W. N. 121 ..	1385
Campbell v. Gillespie .. ..	[1899] W. N. 252; [1900] 1 Ch. 225 .. ..	6
Campbell:—Hope v. .. ..	H. L. (Sc.) [1898] W. N. 78 (9); [1899] A. C. 1 .. ..	2353
Campbell v. Lloyd's, Barnett's & Bosanquet's Bank .. ..	[1891] 1 Ch. 136, n. .. ..	1704, 1706
Campbell:—M'Daid v. .. ..	C. A. (Ir.) [1898] W. N. 104 ..	1390
Campbell:—M'Dougall v. .. ..	Ct. of Sess. (Sc.) [1900] W. N. 217 .. ..	1756
Campbell v. MacLachlan .. ..	C. A. (Sc.) [1899] W. N. 176 ..	1374
Campbell v. Morris .. ..	Registration App. Ct. (Sc.) [1897] W. N. 101 .. ..	1398
Campbell:—Nagle v. .. ..	C. A. (Ir.) [1899] W. N. 185 ..	1375
Campbell:—Pletts v. .. ..	[1895] 2 Q. B. 229 .. ..	1108
Campbell:—Serraino & Sons v. .. ..	C. A. [1891] 1 Q. B. 283 .. ..	1971
Campbell & Co.:—Stumore v. .. ..	C. A. [1892] 1 Q. B. 314 .. ..	78
Campion, In the Goods of .. ..	[1899] W. N. 218; [1900] P. 13 ..	1598
Campion:—Parker v. .. ..	C. A. (Ir.) [1899] W. N. 178 ..	
Canada (Att.-Gen. for Dominion of):—Att.-Gen. for Ontario v. .. ..	P. C. [1894] A. C. 189 .. ..	240, 292
Canada (Att.-Gen. for Dominion of) v. Att.-Gen. for Province of Ontario .. ..	P. C. [1898] A. C. 247 .. ..	252

Name of Case.	Volume and Page.	Column of Digest.
Canada (Att.-Gen. for Dominion of) <i>v.</i> Att.-Gen. for the Provinces of Ontario, Quebec and Nova Scotia .. .. .	P. C. [1898] A. C. 700 .. ..	246
Canada (Manitoba and North Western Ry. Co.) of) :—Grey <i>v.</i> .. .. .	P. C. [1897] A. C. 254 .. ..	250
Canada Sugar Refining Co. <i>v.</i> Reg. .. .. .	P. C. [1898] A. C. 735 .. ..	241
Canadian Direct Meat Co., In re. Champion's Case .. .. .	[1892] W. N. 94; C. A. [1892] W. N. 146 .. .. .	370
Canadian Direct Meat Co., In re. Tamplin's Case .. .. .	C. A. [1892] W. N. 146 .. ..	370
Canadian Pacific Colonization Co., In re .. .. .	[1891] W. N. 122 .. ..	453, 475
Canadian Pacific Ry. <i>v.</i> Notre Dame de Bonse- cours (Corporation of the Parish of) .. .. .	P. C. [1899] A. C. 367 .. ..	258
Canadian Pacific Ry. <i>v.</i> Parke .. .. .	P. C. [1899] A. C. 535 .. ..	246
Canadian Pacific Ry. Co. :—Robinson <i>v.</i> .. .. .	P. C. [1892] A. C. 481 .. ..	257, 2066
Caln :—Thorne <i>v.</i> .. .. .	H. L. (E.) [1895] A. C. 11 .. ..	1297
Cannan <i>v.</i> Abingdon (Earl of) .. .. .	[1900] 2 Q. B. 66 .. ..	190
Canning Jarrah Timber Co. (Western Australia), In re .. .. .	C. A. [1900] W. N. 75; [1900] 1 Ch. 708 .. .. .	381
Cannon, Son and Morten (Solicitors), In re. In re Coolgardie Goldfields, Ltd. .. .. .	[1900] W. N. 23; [1900] 1 Ch. 475 .. .. .	1803
Canterbury Corporation <i>v.</i> Wyburn .. .. .	P. C. [1895] A. C. 89 .. ..	283, 293, 496, 2260
Canterbury Union (Guardians of) :—St. Olave's Union (Guardians of) <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 682 .. ..	1460
Canton Insurance Office, Ltd. :—Brankelow Steamship Co. <i>v.</i> .. .. .	C. A. [1899] 2 Q. B. 178 .. ..	993, 1936
"Capella," The .. .. .	[1892] P. 70 .. .. .	2009
Capital and Industrial Corporation :—De Pass <i>v.</i> { [1892] A. C. 90 .. .. .	[1891] 1 Q. B. 216; H. L. (E.) [1892] A. C. 90 .. .. .	78
Capper :—Coulson <i>v.</i> In re Porter .. .. .	[1892] 3 Ch. 481 .. ..	2330
Caproni :—Alberti <i>v.</i> .. .. .	[1891] W. N. 200 .. ..	539
Capsey :—Lane <i>v.</i> .. .. .	[1891] 3 Ch. 411 .. ..	1343, 1704, 2291
Carbery :—Ross <i>v.</i> .. .. .	C. A. (Sc.) [1899] W. N. 171 .. ..	1380
Carbolic Smoke Ball Co. :—Carlill <i>v.</i> .. .. .	[1892] 2 Q. B. 484; C. A. [1893] 1 Q. B. 256 .. .. .	511, 873
Carden :—Johns <i>v.</i> In re Copland's Settlement { [1891] W. N. 14; [1900] 1 Ch. 326 .. .. .	[1894] 2 Ch. 337 .. ..	1870
Cardiff Corporation :—Att.-Gen. <i>v.</i> .. .. .	[1894] 2 Ch. 337 .. ..	548
Cardiff Corporation :—Lyle Shipping Co. <i>v.</i> .. .. .	C. A. [1900] 2 Ch. 638 .. ..	1962
Cardiff (Vicar of St. John the Baptist) <i>v.</i> Parishioners of Same .. .. .	[1898] P. 155 .. ..	744
Cardiff Union :—West Ham Union <i>v.</i> .. .. .	[1895] 1 Q. B. 766 .. ..	1460
Carew, Ex parte .. .. .	P. C. [1897] A. C. 719 .. ..	1020
Carew, In re. Carew <i>v.</i> Carew .. .. .	C. A. [1896] 2 Ch. 311 .. ..	2367
Carew <i>v.</i> Carew (No. 1) .. .. .	[1891] P. 360 .. ..	691
(No. 2) .. .. .	[1894] P. 31 .. ..	714
Carew :—Cave <i>v.</i> .. .. .	[1893] W. N. 42 .. ..	1562
Carey, In re. Ex parte Jeffreys .. .. .	[1895] 2 Q. B. 624 .. ..	117, 410
Carlin Coal Co. :—Clarke <i>v.</i> .. .. .	H. L. (Sc.) [1891] A. C. 412 .. ..	1837
"Carinthia," The. The "Servia" .. .. .	[1893] P. 36 .. ..	1993
"Carl XV.," The .. .. .	[1892] P. 132; C. A. [1892] P. 324 .. .. .	1991
Carl Hirth, In re. Ex parte The Trustee .. .. .	C. A. [1899] W. N. 10 (2); [1899] 1 Q. B. 612 .. ..	102

Name of Case.	Volume and Page.	Column of Digest.
Carlill v. Carbolic Smoke Ball Co. .. ..	[1892] 2 Q. B. 484; C. A. [1893] 1 Q. B. 256 .. ..	511, 873
Carline's Case. Clarke v. Buchanan .. ..	C. A. (Ir.) [1898] W. N. 109 .. ..	1393
Carlisle (Mayor of):—Atkinson v. .. ..	[1896] 1 Q. B. 393 .. ..	587
"Carlotta," The .. ..	[1899] W. N. 80; [1899] P. 223 .. ..	1955
Carlton Bank, Ltd.:—Cornford v. .. ..	[1899] W. N. 8 (4); [1899] 1 Q. B. 392; C. A. [1899] W. N. 211; [1900] 1 Q. B. 22 .. ..	1204
Carlton Bank:—Att.-Gen. v. .. ..	[1899] 2 Q. B. 158 .. ..	1805
Carlton Bank:—Davidson v. .. ..	C. A. [1893] 1 Q. B. 82 .. ..	211
Carlton Steamship Co. v. Castle Mail Packets Co. .. ..	C. A. [1897] 2 Q. B. 485; H. L. (E.) [1898] A. C. 486 .. ..	1942
Carlyle Press:—Strong v. (No. 1) .. ..	C. A. [1893] 1 Ch. 268 .. ..	35, 1705
(No. 2) .. ..	[1893] W. N. 51 .. ..	317
Carmichael's Case. In re Hannan's Empress Gold Mining and Development Co. .. ..	C. A. [1896] 2 Ch. 643 .. ..	406
Carne's Settled Estates, In re .. ..	[1899] W. N. 3 (7); [1899] 1 Ch. 324 .. ..	1895
Carney v. Plimmer .. ..	C. A. [1897] 1 Q. B. 634 .. ..	873
Carpenter:—George v. .. ..	[1893] 1 Q. B. 505 .. ..	824
Carr v. Fowle .. ..	[1893] 1 Q. B. 251 .. ..	1780, 2112
Carr v. Lynch .. ..	[1900] W. N. 69; [1900] 1 Ch. 613 .. ..	845
Carr:—Mallinson v. .. ..	[1891] 1 Q. B. 48 .. ..	830, 1037
Carr:—Minter v. .. ..	[1894] 2 Ch. 321; C. A. [1894] 3 Ch. 498 .. ..	1276
Carr:—Sea Insurance Co. v. .. ..	C. A. [1900] W. N. 233 .. ..	35
Carr & Co. v. Bath Gas Light and Coke Co. .. ..	[1900] W. N. 265, n. .. ..	1345
Carrara Marble Co., In re .. ..	[1896] W. N. 87 (9) .. ..	458
Carrick:—Baker v. .. ..	C. A. [1894] 1 Q. B. 838 .. ..	649
Carrick v. Wigan Tramways Co. .. ..	[1893] W. N. 98 .. ..	316
Carrier v. Price. In re Amos .. ..	[1891] 3 Ch. 159 .. ..	2143, 2367
Carrington v. Bannister & Co. .. ..	C. A. [1900] W. N. 247 .. ..	1231
Carritt v. Godson & Son .. ..	[1899] 2 Q. B. 193 .. ..	1157
Carruthers v. Carruthers .. ..	H. L. (Sc.) [1896] A. C. 659 .. ..	2173
Carswell v. Collard. The "Victoria" .. ..	H. L. (Sc.) [1893] W. N. 106; [1893] A. C. 635 .. ..	1943
Carter, In re. Dodds v. Pearson .. ..	[1900] W. N. 90; [1900] 1 Ch. 801 .. ..	2360
Carter v. Carter (No. 1) .. ..	[1895] W. N. 138 (5); [1896] 1 Ch. 62 .. ..	525
(No. 2) .. ..	[1896] P. 35 .. ..	689
Carter:—Edwards v. .. ..	H. L. (E.) [1893] A. C. 360 .. ..	956
Carter v. Fey .. ..	C. A. [1894] 2 Ch. 541 .. ..	965
Carter and Kenderdine's Contract, In re .. ..	C. A. [1897] 1 Ch. 776 .. ..	185
Carter v. Hasluck .. ..	[1891] 3 Ch. 553; C. A. [1892] 2 Ch. 278; H. L. (E.) [1893] A. C. 360 .. ..	956
Carter:—Lawson v. .. ..	[1894] W. N. 6 .. ..	1011
Carter:—Milson v. .. ..	P. C. [1893] A. C. 638 .. ..	1487, 1592
Carter:—Morley v. .. ..	[1897] W. N. 153 (8); [1898] 1 Q. B. 8 .. ..	1054
Carter v. Rigby & Co. .. ..	C. A. [1896] 2 Q. B. 113 .. ..	1511

Name of Case.	Volume and Page.	Column of Digest.
Carter :—San Paulo (Brazilian) Ry. Co. v. ..	C. A. [1895] 1 Q. B. 580; { H. L. (E.) [1896] A. C. 31 ..	1765
Carter v. Silber .. .. .	[1891] 3 Ch. 553; C. A. [1892] { 2 Ch. 278; H. L. (E.) [1893] } A. C. 360 .. .. .	956
Carter v. Thomas .. .. .	[1893] 1 Q. B. 673 .. .. .	820
Carter Medicine Co.'s Trade-mark, In re ..	[1892] 3 Ch. 472 .. .. .	2130
Cartman :—Police (Commissioners of) v. ..	[1896] 1 Q. B. 655 .. .. .	1106
Cartwright v. Balzo (Duc del). In re Countess of Orford .. .. .	[1895] W. N. 155 (1); [1896] { 1 Ch. 257 .. .. .	1735
Cartwright v. Regan .. .. .	[1895] 1 Q. B. 900 .. .. .	204
Cartwright v. Sculcoates Union .. .. .	H. L. (E.) [1900] W. N. 54; { [1900] A. C. 150 .. .. .	1678
Cartwright :—Williams v. .. .. .	C. A. [1895] 1 Q. B. 142 .. .. .	1544
Casey's Patents, In re. Stewart v. Casey ..	C. A. [1892] 1 Ch. 104 .. .. .	1441
Casgrain v. Atlantic and North-West Ry. Co. ..	P. C. [1895] A. C. 282 .. .. .	245, 256
Cass v. Butler .. .. .	C. A. [1900] W. N. 49; [1900] { 1 Q. B. 777 .. .. .	1231
Casson :—Burnley Equitable Co-operative and Industrial Society v. .. .. .	[1891] 1 Q. B. 75 .. .. .	49
Castell & Brown, Ltd., In re. Roger v. Castell & Brown, Ltd. .. .. .	[1898] 1 Ch. 315 .. .. .	320
Castioni, In re .. .. .	[1891] 1 Q. B. 149 .. .. .	810
Castle :—Tyndall v. .. .. .	[1893] W. N. 40 .. .. .	2225
Castle Bytham (Vicar of), Ex parte. Ex parte Midland Ry. Co. .. .. .	[1895] 1 Ch. 348 .. .. .	752
Castle Mail Packets Co. :—Carlton Steamship Co. v. .. .. .	C. A. [1897] 2 Q. B. 485; { H. L. (E.) [1898] A. C. 486 ..	1942
"Castlegate," The. Morgan v. The Castlegate SS. Co. .. .. .	H. L. (I.) [1893] A. C. 38 .. .. .	1980
Castlegate SS. Co. v. Dempsey .. .. .	[1892] 1 Q. B. 54; C. A. [1892] { 1 Q. B. 854 .. .. .	1964
Castlegate SS. Co. :—Morgan v. The "Castle- gate" .. .. .	H. L. (I.) [1893] A. C. 38 .. .. .	1980
Castner Kellner Alkali Co. v. Commercial De- velopment Corporation .. .. .	C. A. [1899] W. N. 50; [1899] { 1 Ch. 803 .. .. .	1436
Caswells v. Sheen .. .. .	[1893] W. N. 187 .. .. .	1408
Cathcart, Ex parte. In re Deakin .. .. .	C. A. [1900] 2 Q. B. 478 .. .. .	1849
Cathcart, Ex parte. In re Lumley .. .. .	C. A. [1894] 2 Ch. 271 .. .. .	1849
Cathcart, Ex parte. In re Stuart .. .. .	C. A. [1893] 2 Q. B. 201 .. .. .	2028
Cathcart, In re (No. 1) .. .. .	C. A. [1892] 1 Ch. 549; [1893] { 1 Ch. 466 .. .. .	42, 269, 1188
————— (No. 2) .. .. .	C. A. [1893] W. N. 107 .. .. .	560, 572, 1188
Cathcart :—Hood Barrs v. (No. 1) .. .. .	C. A. [1894] 2 Q. B. 559 .. .. .	917
————— (No. 2) .. .. .	C. A. [1894] 3 Ch. 376 .. .. .	565, 919
————— (No. 3) .. .. .	C. A. [1895] W. N. 34 .. .. .	1488
————— (No. 4) .. .. .	[1895] 1 Q. B. 873 .. .. .	565, 920
————— (No. 5) .. .. .	[1895] 2 Ch. 411 .. .. .	1024
Cathcart :—Hulbert v. .. .. .	H. L. (E.) [1896] A. C. 470 .. .. .	1849
Cathcart :—Hulbert & Crowe v. .. .. .	[1894] 1 Q. B. 244 .. .. .	1850
Cattle v. Thorpe .. .. .	[1900] W. N. 83 .. .. .	1722
Catton v. Banks .. .. .	[1893] 2 Ch. 221 .. .. .	1406
Caucasian Trading Corporation, Ltd., Ex parte ..	C. A. [1896] 1 Q. B. 368 .. .. .	102
Cave, In re. Mainland v. Cave .. .. .	[1892] W. N. 142 .. .. .	1693
Cave v. Carew .. .. .	[1893] W. N. 42 .. .. .	1562
Cave :—Pike v. .. .. .	[1893] W. N. 91 .. .. .	904, 970
Cave :—Tebb v. .. .. .	[1900] W. N. 45; [1900] 1 Ch. { 642 .. .. .	1058

Name of Case.	Volume and Page.	Column of Digest.
"Cawdor," The .. .. .	C. A. [1900] W. N. 8; [1900] P. 47 .. .. .	2000
Cawse v. Nottingham Lunatic Hospital .. .. .	[1891] 1 Q. B. 585 .. .. .	1754
Cefu Cribbwr Brick Co.:—Great Western Ry. Co. v. .. .. .	[1894] 2 Ch. 157 .. .. .	1649
Cellular Clothing Co. v. Maxton & Murray .. .. .	H. L. (Sc.) [1899] W. N. 56; [1899] A. C. 326 .. .. .	2139
"Celtic King," The .. .. .	[1894] P. 175 .. .. .	1986, 1995
Central Bank of London, Ex parte. In re Fraser .. .. .	C. A. [1892] 2 Q. B. 633 .. .. .	159
Central De Kaap Gold Mines, In re .. .. .	[1899] W. N. 216, 235 .. .. .	351
Central Klondyke Gold Mining Co., In re. Savigny's Case .. .. .	[1899] W. N. 1 (2) .. .. .	423
Central News, Ltd.:—Exchange Telegraph Co. v. .. .. .	[1897] 2 Ch. 48 .. .. .	536
Central Sugar Factories of Brazil, In re. Flack's Case .. .. .	[1894] 1 Ch. 369 .. .. .	444, 961
Chadburn v. Moore .. .. .	[1892] W. N. 126 .. .. .	765, 2224
Chaddock v. British South Africa Co. .. .. .	C. A. [1896] 2 Q. B. 153 .. .. .	674
Chadwick:—Coats (J. & P.) v. .. .. .	[1894] 1 Ch. 347 .. .. .	502, 645, 963
Chadwick v. Manning .. .. .	P. C. [1896] A. C. 231 .. .. .	1323
Chaffers v. Goldsmid .. .. .	[1894] 1 Q. B. 186 .. .. .	1203, 1366
Challis:—Whitley v. .. .. .	C. A. [1892] 1 Ch. 64 .. .. .	1703
Chalmers v. Scopenich .. .. .	[1892] 1 Q. B. 735 .. .. .	1989
Chalmers, Guthrie & Co.:—Thiery v. .. .. .	[1899] W. N. 235; [1900] 1 Ch. 80 .. .. .	1197
Chamber Colliery Co. v. Rochdale Canal Co. .. .. .	C. A. [1894] 2 Q. B. 632; H. L. (E.) [1895] A. C. 564 .. .. .	1266
Chamber Colliery Co.:—Twyerould v. .. .. .	C. A. [1892] W. N. 27 .. .. .	1267
Chamberlain v. Drake. In re Palk. In re Drake .. .. .	[1892] W. N. 112 .. .. .	2186
Chamberlain:—Hyslop v. In re Hyslop .. .. .	[1894] 3 Ch. 522 .. .. .	1610
Chamberlain v. Young .. .. .	C. A. [1893] 2 Q. B. 206 .. .. .	192
Chamberlin v. Springfield. In re Springfield .. .. .	[1894] 3 Ch. 603 .. .. .	2354
Chamberlain's Wharf, Ltd. v. Smith .. .. .	C. A. [1900] W. N. 163; [1900] 2 Ch. 605 .. .. .	2146
Chamberlyn:—Bradley v. .. .. .	[1893] 1 Q. B. 439 .. .. .	1564
Chambers, Ex parte .. .. .	[1893] 1 Ch. 47 .. .. .	1363
Chambers:—Barr v. .. .. .	C. A. (Ir.) [1898] W. N. 101 .. .. .	1391
Chambers:—Campbell v. (William Campbell's Case) .. .. .	C. A. (Ir.) [1898] W. N. 86 .. .. .	1375
Chambers:—Campbell v. (Harris' Case) .. .. .	C. A. (Ir.) [1897] W. N. 133 .. .. .	1384
Chambers:—Campbell v. (Gallagher's Case) .. .. .	C. A. (Ir.) [1899] W. N. 147 .. .. .	1393
Chambers:—Campbell v. (Simpson's Case) .. .. .	C. A. (Ir.) [1897] W. N. 121 .. .. .	1385
Chambers:—Chillingworth v. (No. 1) .. .. .	[1895] W. N. 132 (17); C. A. [1896] 1 Ch. 685 .. .. .	2172
Chambers:—Chillingworth v. (No. 2) .. .. .	[1895] W. N. 136 (6) .. .. .	38
Chambers:—Doherty v. .. .. .	C. A. (Ir.) [1898] W. N. 100 .. .. .	1392
Chambers:—Dunn v. .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 139 .. .. .	1772
Chambers:—Flowers v. .. .. .	C. A. [1899] W. N. 65; [1899] 2 Q. B. 142 .. .. .	1230
Chambers:—Hasson v. Crossan v. Chambers. Lynch v. Buchanan. (Re Richey) .. .. .	C. A. (Ir.) [1897] W. N. 85 .. .. .	1398
Chambers:—Hinds v. .. .. .	C. A. (Ir.) [1898] W. N. 95 .. .. .	1394
Chambers:—Holland v. (Devine's Case) .. .. .	C. A. (Ir.) [1897] W. N. 115 .. .. .	1403
Chambers:—Holland v. (Doherty's Case) .. .. .	C. A. (Ir.) [1897] W. N. 117 .. .. .	1374
Chambers:—Hollands v. (O'Doherty's Case) .. .. .	C. A. (Ir.) [1899] W. N. 153 .. .. .	1395

Name of Case.	Volume and Page.	Column of Digest.
Chambers :— <i>Kelly v. (M'Connell's Case)</i> ..	C. A. (Ir.) [1897] W. N. 125 ..	1380
Chambers :— <i>Kerr v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 122 ..	1392
Chambers :— <i>M'Carron v.</i> .. .. .	C. A. (Ir.) [1897] W. N. 107 ..	1367
Chambers :— <i>M'Cready v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 95 ..	1394
Chambers :— <i>M'Dermott v. (M'Laughlin's Case)</i> ..	C. A. (Ir.) [1898] W. N. 100 ..	1392
Chambers :— <i>M'Laughlin v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 90 ..	1379
Chambers :— <i>Melaugh v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 119 ..	1371
Chambers :— <i>Mooney v.</i> .. .. .	C. A. (Ir.) [1899] W. N. 183 ..	1394
Chambers <i>v. Whitehaven Harbour Commrs.</i> ..	C. A. [1899] 2 Q. B. 132 ..	1223
Champagné, <i>In re. Ex parte Kemp</i> .. ..	[1893] W. N. 153 .. ..	1559
Champion, <i>In re. Dudley v. Champion</i> ..	C. A. [1893] 1 Ch. 101 .. ..	2247, 2360, 2367
Champion :— <i>Parker v.</i> .. .. .	C. A. (Ir.) [1899] W. N. 178 ..	1383
Champion's Case. <i>In re Canadian (Direct) Meat Co.</i> .. .. .	[1892] W. N. 94; C. A. [1892] W. N. 146 .. ..	370
Chandler <i>v. Blogg</i> .. .. .	[1898] 1 Q. B. 32 .. ..	998
Chandler <i>v. Bradley</i> .. .. .	[1896] W. N. 176 (18); [1897] 1 Ch. 315 .. ..	1871
Chandler <i>v. Smith</i> .. .. .	C. A. [1899] W. N. 112; [1899] 2 Q. B. 506 .. ..	1227
Chant, <i>In re. Chant v. Lemon</i> .. ..	[1900] W. N. 133; [1900] 2 Ch. 345 .. ..	2365
Chaplin <i>v. Puttick. Laing, Claimant</i> .. ..	C. A. [1898] 2 Q. B. 160 .. ..	777
Chapman, <i>In re. Cocks v. Chapman</i> .. ..	C. A. [1896] 2 Ch. 763 .. ..	2072, 2188
Chapman :— <i>Att.-Gen. v.</i> .. .. .	[1891] 2 Q. B. 526 .. ..	1729
Chapman :— <i>Biguell v. In re Bignell</i> .. ..	C. A. [1892] 1 Ch. 59 .. ..	1705, 2197
Chapman <i>v. Fylde Waterworks Co.</i> .. ..	C. A. [1894] 2 Q. B. 599 .. ..	2276
Chapman's Case. <i>In re Theatrical Trust</i> ..	[1895] 1 Ch. 771 .. ..	428
Chappell, <i>In the Goods of</i> .. .. .	[1894] P. 98 .. ..	789, 1610
Chappell <i>v. North</i> .. .. .	[1891] 2 Q. B. 252 .. ..	52
Chappell <i>v. St. Botolph Overseers</i> .. ..	[1892] 1 Q. B. 561 .. ..	25, 1673
Chard Union :— <i>Hole v.</i> .. .. .	C. A. [1894] 1 Ch. 293 .. ..	635, 962
Charity Commrs. :— <i>Reg. v.</i> .. .. .	[1897] 1 Q. B. 407 .. ..	1206
Charity Commrs. <i>v. Green. In re Herbage Rents, Greenwich</i> .. ..	[1896] 2 Ch. 811 .. ..	1716
Charity Commrs. <i>v. London Corporation. In re White's Charities</i> .. ..	[1898] 1 Ch. 659 .. ..	2234
Charlebois :— <i>Great North-West Central Ry. v.</i> ..	P. C. [1899] A. C. 114 .. ..	244
Charles :— <i>East London Waterworks Co. v.</i> ..	[1894] 2 Q. B. 730 .. ..	1036, 2281
Charles <i>v. Shepherd</i> .. .. .	C. A. [1892] 2 Q. B. 622 .. ..	1528
Charlesworth <i>v. Mills</i> .. .. .	H. L. (E.) [1892] A. C. 231 .. ..	200
Charlton <i>v. Morris</i> .. .. .	C. A. (Ir.) [1897] W. N. 107 .. ..	1368
Charlwood, <i>In re. Ex parte Masters</i> .. ..	[1894] 1 Q. B. 643 .. ..	117, 2030
Charlwood <i>v. Leasehold Investment Co.</i> ..	[1895] W. N. 47 .. ..	317
Charnock <i>v. Court</i> .. .. .	[1899] W. N. 44; [1899] 2 Ch. 35 .. ..	2147
Charriere, <i>In re. Duret v. Charriere</i> .. ..	[1896] 1 Ch. 912 .. ..	726
Charnock <i>v. Merchant</i> .. .. .	[1900] W. N. 10; [1900] 1 Q. B. 474 .. ..	611
Charter <i>v. Watson</i> .. .. .	[1899] 1 Ch. 175 .. ..	1297
Chartered Mercantile Bank :— <i>Baerlein v.</i> ..	C. A. [1895] 2 Ch. 488 .. ..	294
Chartered Mercantile Bank of India, London and China :— <i>Minna Craig Steamship Co. v.</i> ..	[1897] 1 Q. B. 55; affirmed by C. A. [1897] 1 Q. B. 460 .. ..	467



Name of Case.	Volume and Page.	Column of Digest.
Charterhouse School <i>v.</i> Gayler .. ..	[1896] 1 Q. B. 437 .. ..	1756
Charterland Stores and Trading Co., In re .. {	[1900] W. N. 235; [1900] 2 Ch. 870 .. ..	457
Chastey <i>v.</i> Ackland .. ..	C. A. [1895] 2 Ch. 389; H. L. (E.) [1897] A. C. 155 .. ..	1116
Chatard's Settlement, In re .. ..	[1899] W. N. 35 (11); [1899] 1 Ch. 712 .. ..	1524
Chatenay <i>v.</i> Brazilian Submarine Telegraph Co., Ltd. .. ..	[1891] 1 Q. B. 79 .. ..	492
Chatterton <i>v.</i> Secretary of State for India in Council .. ..	C. A. [1895] 2 Q. B. 189 .. ..	647
Chawner's Settled Estates, In re .. ..	[1892] 2 Ch. 192 .. ..	1872
Chaytor, In re .. ..	[1900] W. N. 181; [1900] 2 Ch. 804 .. ..	1875
Cheadle, In re. Bishop <i>v.</i> Holt .. ..	C. A. [1900] W. N. 174; [1900] 2 Ch. 620 .. ..	2326
Cheesewright:—Groom <i>v.</i> .. ..	[1895] 1 Ch. 73 .. ..	2051
Cheeseman, In re .. ..	C. A. [1891] 2 Ch. 289 .. ..	2041
Chelmsford Union Assessment Committee:—Showers <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 339 .. ..	1675, 1682
Chemicals and Drugs Co.:—Saccharin Corporation <i>v.</i> .. ..	C. A. [1900] W. N. 185; [1900] 2 Ch. 556 .. ..	1426
Cheney, Eggar & Co.:—Gillespie Brothers & Co. <i>v.</i> .. ..	[1896] 2 Q. B. 59 .. ..	1817
Chertsey Union:—West Surrey Water Co. <i>v.</i> ..	[1894] 3 Ch. 513 .. ..	2278
Cheshire County Council:—Procter <i>v.</i> .. ..	[1891] W. N. 24 .. ..	1507
Chester-le-Street Assessment Committee:—Durham County Council <i>v.</i> .. ..	[1891] 1 Q. B. 330 .. ..	580, 1678
Chester, St. John's Street Wesleyan Chapel, In re .. ..	[1893] 2 Ch. 618 .. ..	272
Chester Master:—Lawson <i>v.</i> .. ..	[1893] 1 Q. B. 245 .. ..	1365
Chesterfield Brewery Co. <i>v.</i> Inland Revenue Commrs. .. ..	[1899] 2 Q. B. 7 .. ..	1795
Cheston <i>v.</i> Wells .. ..	[1893] 2 Ch. 151 .. ..	1280
Chetwynd <i>v.</i> Allen .. ..	[1899] 1 Ch. 353 .. ..	1286
Cheyne:—King <i>v.</i> .. ..	P. C. [1900] A. C. 622 .. ..	2262
Chicago and North West Granaries Co., In re. Morrison <i>v.</i> Same Co. .. ..	[1897] W. N. 174 (2); [1898] 1 Ch. 263 .. ..	333
Chichester <i>v.</i> Quatrefages .. ..	[1895] P. 186 .. ..	2357
Chidley:—May <i>v.</i> .. ..	[1894] 1 Q. B. 451 .. ..	93, 1563
Chifferiel, In re. Chifferiel <i>v.</i> Watson .. ..	[1895] W. N. 106 .. ..	2299, 2359
Chilcott, In the Goods of .. ..	[1897] P. 223 .. ..	2356
Child, In re. Ex parte Child .. ..	[1892] 2 Q. B. 77 .. ..	105
Child <i>v.</i> Bulmer. In re Wilks .. ..	[1891] 3 Ch. 59 .. ..	1022
Child:—Quinlan <i>v.</i> Quinlan <i>v.</i> Quinlan. Ex parte Quinlan .. ..	P. C. [1900] A. C. 496 .. ..	1493
Chili Republic <i>v.</i> Baring .. ..	[1891] W. N. 138 .. ..	776
Chili Republic <i>v.</i> Rothschild .. ..	[1891] W. N. 138 .. ..	776
Chillingworth <i>v.</i> Chambers (No. 1) .. ..	[1895] W. N. 132 (17); C. A. [1896] 1 Ch. 685 .. ..	2172
—(No. 2) .. ..	[1895] W. N. 136 (6) .. ..	38
Chilton <i>v.</i> Progress Printing and Publishing Co. ..	C. A. [1895] 2 Ch. 29 .. ..	537
China Traders Insurance Co.:—Iredale <i>v.</i> .. ..	[1899] 2 Q. B. 356; C. A. [1900] W. N. 157; [1900] 2 Q. B. 515 ..	1932
China Traders Insurance Co. <i>v.</i> Royal Exchange Assurance Corporation .. ..	C. A. [1898] 2 Q. B. 187 .. ..	998
"Chioggia," The .. ..	[1897] W. N. 156 (2); [1898] P. 1 .. ..	1987

Name of Case.	Volume and Page.	Column of Digest.
Chisholm:—Paine <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 531 ..	557, 563
Chisholm's Settlement, In re. Hemphill <i>v.</i> Hemp- hill .. .. .	[1900] W. N. 128 .. ..	1481
Chocqueel:—Osborne <i>v.</i> .. .. .	[1896] 2 Q. B. 109 .. ..	636
Cholditch <i>v.</i> Jones .. .. .	[1895] W. N. 147 (5); [1896] 1 Ch. 42 .. ..	2032
Cholmeley School, Highgate <i>v.</i> Sewell (No. 1) ..	[1893] 2 Q. B. 254 .. ..	1073
(No. 2) .. .. .	[1894] 2 Q. B. 906 .. ..	1063
Chorley Rural Council:—Smith <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 678 ..	2081
Chorlton & Sons:—Shackell & Co. <i>v.</i> .. ..	[1895] 1 Ch. 378 .. ..	475, 1081
Chouler:—Gayford <i>v.</i> .. .. .	[1898] 1 Q. B. 316 .. ..	619
Christchurch Finance Co.:—Black <i>v.</i> .. ..	[1894] A. C. 48 .. ..	1243
Christ Church, East Greenwich, Ex parte Vicar of. Ex parte London County Council ..	[1896] 1 Ch. 520 .. ..	735
Christchurch Inclosure Act, In re. Att.-Gen. <i>v.</i> Meyrick (No. 1) .. .. .	H. L. (E.) [1893] A. C. 1 ..	297
Christchurch Inclosure Act, In re. Meyrick <i>v.</i> Att.-Gen. (No. 2) .. .. .	[1894] 3 Ch. 209 .. ..	297, 2088
Christ Church Oxford:—Att.-Gen. <i>v.</i> .. ..	[1894] 3 Ch. 524 .. ..	275
Christie, In re. Ex parte Christie .. .. .	[1899] W. N. 217; [1900] 1 Q. B. 5 .. ..	175
Christie <i>v.</i> Davey .. .. .	[1893] 1 Ch. 316 .. ..	966, 1318
Christie:—De Penny <i>v.</i> In re De Penny ..	[1891] 2 Ch. 63 .. ..	1544
Christie:—Taunton, Delmard, Lane & Co. <i>v.</i> ..	[1893] 2 Ch. 175 .. ..	305
In re Taunton, Delmard, Lane & Co. ..	[1900] 2 Q. B. 522 .. ..	2122
Christie, Manson & Woods:—Cooper <i>v.</i> .. ..	[1896] 1 Ch. 879 .. ..	275
Christ's Hospital:—Att.-Gen. <i>v.</i> .. .. .	[1897] 2 Ch. 190 .. ..	794
Christmas <i>v.</i> Jones. In re Jones .. .. .	P. C. [1891] A. C. 272 .. ..	27, 2258
Chun Teeong Toy:—Musgrove <i>v.</i> .. .. .	[1893] 3 Ch. 421 .. ..	2349
Churchill:—Bowen <i>v.</i> In re Daveron .. ..	C. A. [1892] 2 Q. B. 144 ..	68
Churchill:—Hearson <i>v.</i> .. .. .	[1894] 3 Ch. 649 .. ..	1314, 2356
Churchill <i>v.</i> St. George's Hospital. In re Howell- Shepherd .. .. .	[1895] P. 7 .. .. .	694
Churchward <i>v.</i> Churchward .. .. .	C. A. [1897] 1 Q. B. 562 ..	222
Churton:—Dodd <i>v.</i> .. .. .	[1898] P. 198 .. .. .	1996
"City of Agra," The .. .. .	[1891] 3 Ch. 459 .. ..	401
City of Chicago Grain Elevators, Ltd.:—Eich- baum <i>v.</i> .. .. .	[1900] W. N. 16; [1900] 1 Ch. 496 ..	1069
City of London Brewery Co.:—Pannell <i>v.</i> ..	[1891] 2 Q. B. 71 .. ..	594, 1527
City of London Court (Judge of the):—Reg. <i>v.</i> (No. 1) .. .. .	C. A. [1891] 1 Q. B. 273 ..	1953
(No. 2) .. .. .	[1900] W. N. 116 .. ..	543
City of London Electric Lighting Co. <i>v.</i> London Corporation .. .. .	[1898] 1 Q. B. 408; C. A. [1898] W. N. 162 (4); [1899] 1 Q. B. 121 .. ..	1802
City of London Brewery Co. <i>v.</i> Inland Revenue Commrs. .. .. .	C. A. [1895] 1 Ch. 287 .. ..	45, 968, 1346
(No. 2) .. .. .	C. A. [1895] 2 Ch. 388 .. ..	968
City of London Electric Lighting Co.:—Shelfer <i>v.</i> (No. 1) .. .. .	C. A. [1895] 1 Ch. 287 .. ..	45, 968
(No. 2) .. .. .	C. A. [1895] 2 Ch. 388 .. ..	968
City of London Real Property Co.:—St. Gabriel, Fenchurch Street (Rector, &c., of) <i>v.</i> ..	[1896] P. 95 .. .. .	749
City and South London Railway Co. <i>v.</i> London (County Council) .. .. .	C. A. [1891] 2 Q. B. 513 ..	1152, 1669

Name of Case.	Volume and Page.	Column of Digest.
City and Suburban Permanent Building Society :— —Pepe v. .. .. .	[1893] 2 Ch. 311 .. ..	232
City and Suburban Permanent Building Society :— —Botten v. .. .. .	[1895] 2 Ch. 441 .. ..	226
City Lands Investment Corporation, Ltd., In re	[1897] W. N. 162 (2) .. ..	390
Civil, Naval, and Military Outfitters, Ltd., In re	C. A. [1898] W. N. 168 (6); [1899] 1 Ch. 215 .. ..	455
Civil Service Brewery Co., In re .. .. .	[1893] W. N. 5 .. ..	437, 457, 464
Clacton Local Board v. Young & Sons .. ..	[1895] 1 Q. B. 395 .. ..	2090
Clacton Urban District Council :—Toms v. ..	[1898] W. N. 61 (10) .. ..	567
Clancarty (Earl of):—London and Universal Bank v. .. .. .	[1892] 1 Q. B. 689 .. ..	1566
Clanmorris (Lord):—Thomson v. .. .. .	[1899] W. N. 125; [1899] 2 Ch. 523; C. A. [1900] W. N. 80; [1900] 1 Ch. 718 .. ..	1127
Clapp :—Mogridge v. .. .. .	C. A. [1892] 3 Ch. 382 .. ..	1873, 2103
Clare :—Hunter v. .. .. .	[1899] 1 Q. B. 635 .. ..	1252
Clare & Co. :—Fenna v. .. .. .	[1895] 1 Q. B. 199 .. ..	1351
Claridge v. South Staffordshire Tramway Co. ..	[1892] 1 Q. B. 422 .. ..	89
Claridge :—Union Steamship Co. v. .. ..	P. C. [1894] A. C. 185 .. ..	1243
Clark, In re. Ex parte Beardmore .. .. .	C. A. [1894] 2 Q. B. 393 .. ..	115
Clark, In re. Ex parte Clark .. .. .	C. A. [1897] W. N. 152 (1); [1898] 1 Q. B. 20 .. ..	158
Clark, In re. Ex parte Beaver, Peacock & Co.	C. A. [1896] 2 Q. B. 476 .. ..	104
Clark, In re. Ex parte Schulze .. .. .	C. A. [1898] 2 Q. B. 330 .. ..	151
Clark :—Banque Russe et Française v. .. ..	C. A. [1894] W. N. 203 .. ..	1546
Clark :—Barnacle v. .. .. .	[1900] 1 Q. B. 279 .. ..	1823
Clark :—Hasluck v. .. .. .	[1898] 2 Q. B. 28; C. A. [1899] 1 Q. B. 699 .. ..	128
Clark :—Torish v. (Monaghan's Case) .. ..	C. A. (Ir.) [1897] W. N. 102 .. ..	1402
Clark :—Torish v. (Starrs' Case) .. .. .	C. A. (Ir.) [1897] W. N. 112 .. ..	1378
Clark & Co. :—Lysaght v. .. .. .	[1891] 1 Q. B. 552 .. ..	1536
Clarke, Ex parte. In re Burr .. .. .	[1892] W. N. 122; C. A. [1892] W. N. 138 .. ..	154, 168
Clarke, In re .. .. .	C. A. [1898] 1 Ch. 336 .. ..	1190
Clarke, In the Goods of .. .. .	[1896] P. 287 .. ..	781
Clarke v. Buchanan (Doherty's Case) .. ..	C. A. (Ir.) [1897] W. N. 113 .. ..	1392
Clarke v. Buchanan (Carlin's Case) .. .. .	C. A. (Ir.) [1898] W. N. 109 .. ..	1393
Clarke v. Carfin Coal Co. .. .. .	H. L. (Sc.) [1891] A. C. 412 .. ..	1837
Clarke v. Clarke .. .. .	[1891] P. 278 .. ..	701
Clarke v. Clarke .. .. .	C. A. [1899] W. N. 130 .. ..	673
Clarke v. Coleman .. .. .	C. A. [1895] W. N. 114 (2) .. ..	773
Clarke :—Duke v. .. .. .	[1894] W. N. 100 .. ..	1048, 1560
Clarke v. Dunraven (Earl of). The "Satanita" }	H. L. (Sc.) [1896] W. N. 164 (5); H. L. (E.) [1897] A. C. 59 .. ..	1981
Clarke v. London and County Banking Co. ..	[1897] 1 Q. B. 552 .. ..	92
Clarke :—Long v. .. .. .	C. A. [1894] 1 Q. B. 119 .. ..	682
Clarke :—Mackinnon v. .. .. .	C. A. [1898] 2 Q. B. 251 .. ..	1365
Clarke v. Meaby & Co. In re Meaby & Co. ..	[1899] W. N. 58 .. ..	467
Clarke v. Ramuz .. .. .	C. A. [1891] 2 Q. B. 456 .. ..	2231
Clarke v. Torish (Case of Aiken and Others) ..	C. A. (Ir.) [1897] W. N. 127 .. ..	1383
Clarke v. White. In re Bennett .. .. .	[1898] W. N. 173 (8); [1899] 1 Ch. 316 .. ..	1299
Clarke & Co. :—Devereux v. .. .. .	[1891] 2 Q. B. 582 .. ..	646, 677
Clarke's Design, In re .. .. .	C. A. [1896] 2 Ch. 38 .. ..	657

Name of Case.	Volume and Page.	Column of Digest.
Clarkson :—Att.-Gen. v. .. .. .	C. A. [1899] W. N. 234; [1900] 1 Q. B. 156 .. .. .	1738
Clarkson v. Robinson .. .. .	[1900] W. N. 188; [1900] 2 Ch. 722 .. .. .	2197
Clay :—Black v. .. .. .	H. L. (Sc.) [1894] A. C. 368 .. .. .	1054, 1835
Clayton :—Sheffield Banking Co. v. In re Walker	[1892] 1 Ch. 621 .. .. .	1587
Clayton and Barclay's Contract, In re .. .. .	[1895] 2 Ch. 212 .. .. .	114, 125
Cleary v. Booth .. .. .	[1893] 1 Q. B. 465 .. .. .	1825
Cleaver v. Mutual Reserve Fund Life Association	C. A. [1892] 1 Q. B. 147 .. .. .	980
Clegg, Parkinson & Co. v. Earby Gas Co. .. .. .	[1896] 1 Q. B. 592 .. .. .	874
Clegg v. Ellison. In re Jones .. .. .	[1898] 2 Ch. 83 .. .. .	1826
Cleghorn v. Burrows. In re Burrows .. .. .	[1895] 2 Ch. 497 .. .. .	2113
Clements :—Reg. v. .. .. .	C. C. R. [1898] 1 Q. B. 556 .. .. .	618
Clements & Cie.'s Trade Mark, In re .. .. .	C. A. [1899] W. N. 220; [1900] 1 Ch. 114 .. .. .	2125
Clements, In re. Clements v. Pearsall .. .. .	[1894] 1 Ch. 665 .. .. .	953
Clements, In the Goods of .. .. .	[1892] P. 254 .. .. .	1622
Clements v. London and North Western Ry. Co.	C. A. [1894] 2 Q. B. 482 .. .. .	946, 1493
Clemow, In re. Yeo v. Clemow .. .. .	[1900] W. N. 105; [1900] 2 Ch. 182 .. .. .	2363
Clergy Orphan Corporation, In re .. .. .	C. A. [1894] 3 Ch. 145 .. .. .	276
Clerk v. Stevens. In re Stevens .. .. .	[1896] W. N. 24 (12) .. .. .	2317
Clerkenwell (Vestry) :—Att.-Gen. v. .. .. .	[1891] 3 Ch. 527 .. .. .	1348
Cleveland's (Duke of) Estate, In re. Hay v. Wolmer .. .. .	[1895] 2 Ch. 542 .. .. .	1852
Cleveland's (Duke of) Estate, In re. Wolmer (Viscount) v. Forester .. .. .	C. A. [1894] 1 Ch. 164 .. .. .	2368
Cleveland's (Duke of) Settled Estates, In re .. .. .	C. A. [1893] 3 Ch. 244 .. .. .	2360
Cleveland Water Co. v. Redcar Local Board .. .. .	[1895] 1 Ch. 168 .. .. .	2276
Clews v. Grindley. In re Grindley .. .. .	C. A. 1898] 2 Ch. 593 .. .. .	2174
"Clieveden," The. SS. "Diana" v. SS. "Clieveden" .. .. .	P. C. [1894] A. C. 625 .. .. .	1947
Clifden (Lord), In re. Annaly v. Agar-Ellis .. .. .	[1900] W. N. 93; [1900] 1 Ch. 774 .. .. .	1134
Clifden (Viscount) :—Jenks v. .. .. .	[1897] 1 Ch. 694 .. .. .	1120
Cliff, In re. Edwards v. Brown .. .. .	C. A. [1895] 2 Ch. 21 .. .. .	1538
Cliff's Trusts, In re .. .. .	[1892] 2 Ch. 229 .. .. .	2329
Clifford :—Angus v. .. .. .	C. A. [1891] 2 Ch. 449 .. .. .	370
Clifford v. Gurney. In re Gurney .. .. .	[1896] 2 Ch. 863 .. .. .	1497
Clifford v. Holt .. .. .	[1898] W. N. 168 (2); [1899] 1 Ch. 698 .. .. .	1118
Clifford v. Inland Revenue Commrs. .. .. .	[1896] 2 Q. B. 187 .. .. .	1791
Clifford v. Thames Ironworks and Shipbuilding Co. .. .. .	[1898] 1 Q. B. 314 .. .. .	584
Clifton College v. Tompson .. .. .	[1896] 1 Q. B. 432 .. .. .	1757
Clifton :—Hammer v. .. .. .	[1894] 1 Q. B. 238 .. .. .	1486, 1563
Clink v. Radford & Co. .. .. .	C. A. [1891] 1 Q. B. 625 .. .. .	1936
Clipper Pneumatic Tyre Co. :—Bagot Pneumatic Tyre Co. v. .. .. .	[1900] W. N. 272 .. .. .	310
Clippingle :—Rocket v. .. .. .	C. A. [1891] 2 Q. B. 293 .. .. .	1957
Close Brothers & Co. :—Assets Development Co. v. .. .. .	[1900] W. N. 176; [1900] 2 Ch. 717 .. .. .	563
Clough, Ex parte. In re West, King & Adams	[1892] 2 Q. B. 102 .. .. .	2042
Clowes, In re .. .. .	C. A. [1893] 1 Ch. 214 .. .. .	2303
Clowes :—Gerrard v. .. .. .	[1892] 2 Q. B. 11 .. .. .	1566

Name of Case.	Volume and Page.	Column of Digest.
Clowser:—Forster <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 362 ..	1010
Clutterbuck:—Gooch <i>v.</i> .. .. .	C. A. [1899] W. N. 96; [1899] 2 Q. B. 148 .. .. .	1062
Clutterbuck <i>v.</i> Taylor .. .. .	C. A. [1896] 1 Q. B. 395 ..	1399
Clutton <i>v.</i> Attenborough & Sons .. .. .	[1895] 2 Q. B. 306; C. A. [1895] 2 Q. B. 707; H. L. (E.) [1896] W. N. 174 (2); [1897] A. C. 90	94
Clyde Navigation (Trustees of) <i>v.</i> Blantyre (Lord) .. .. .	H. L. (Sc.) [1893] A. C. 703 ..	1449
Clydesdale Bank <i>v.</i> Paton .. .. .	H. L. (Sc.) [1896] A. C. 381 ..	1838
Clydesdale Bank:—Thomson <i>v.</i> .. .. .	H. L. (Sc.) [1893] A. C. 282 ..	99, 2077
"Clymene," The .. .. .	[1897] P. 295 .. .. .	1992
Coal Co-operative Society:—Great Northern Rlwy. Co. <i>v.</i> .. .. .	[1896] 1 Ch. 187 .. .. .	204, 940
Coalport China Co., In re .. .. .	C. A. [1895] 2 Ch. 404 .. ..	403
Coates <i>v.</i> Reg. .. .. .	P. C. [1900] A. C. 217 .. ..	1337
Coats (J. & P.) <i>v.</i> Chadwick .. .. .	[1894] 1 Ch. 347 .. .. .	502, 645, 963
Coats (J. & P.) <i>v.</i> Inland Revenue Commrs. .. .. .	[1897] 1 Q. B. 778; C. A. [1897] 2 Q. B. 423 .. .. .	1795
Cobb <i>v.</i> Cobb .. .. .	[1900] P. 145 .. .. .	42
— <i>v.</i> — .. .. .	[1900] P. 294 .. .. .	924
Cobb <i>v.</i> Great Western Rlwy. Co. .. .. .	C. A. [1893] 1 Q. B. 459; H. L. (E.) [1894] A. C. 419 .. .. .	1653
Cobbett:—St. Mary, Islington (Vestry) <i>v.</i> .. .. .	[1895] 1 Q. B. 369 .. .. .	1172
Cobbold <i>v.</i> Astwood .. .. .	P. C. [1894] A. C. 150 .. ..	1301
Cobbold:—Astwood <i>v.</i> .. .. .	P. C. [1894] A. C. 150 .. ..	1301
Cobden:—De Souza <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 687 .. ..	546, 577
Cobley:—Meux <i>v.</i> .. .. .	[1892] 2 Ch. 253 .. .. .	817, 877, 1054, 1078, 2268
Coburn <i>v.</i> Colledge .. .. .	C. A. [1897] 1 Q. B. 702 .. ..	2038
Cochrane <i>v.</i> Macnish & Son .. .. .	P. C. [1896] A. C. 225 .. ..	1019
Cockburn <i>v.</i> Raphael .. .. .	[1891] W. N. 14 .. .. .	283
Cockcroft <i>v.</i> Sanderson. In re Ainsworth .. .. .	[1895] W. N. 153 (9) .. ..	790
Cook:—Prout <i>v.</i> .. .. .	[1896] 2 Ch. 808 .. .. .	1298
Cockerton <i>v.</i> London School Board. Phillips <i>v.</i> The Same .. .. .	[1898] 1 Q. B. 4; C. A. [1898] 2 Q. B. 447 .. .. .	1825
Cocks <i>v.</i> Chapman. In re Chapman .. .. .	[1895] W. N. 162 (4); C. A. [1896] 2 Ch. 763 .. .. .	2072, 2188
Cocks, Biddulph & Co., Ex parte. In re Hallett & Co. .. .. .	C. A. [1894] 2 Q. B. 256 .. ..	151
Cocksedge <i>v.</i> Metropolitan Coal Consumers' Association .. .. .	[1891] W. N. 132; C. A. [1891] W. N. 148 .. .. .	466
Cockshott:—Reg. <i>v.</i> .. .. .	[1898] 1 Q. B. 582 .. .. .	1033
Coffey <i>v.</i> Coffey .. .. .	[1898] P. 169 .. .. .	716
Coghlan, In re. Broughton <i>v.</i> Broughton .. .. .	[1894] 3 Ch. 76 .. .. .	1903
Coghlan <i>v.</i> Cumberland .. .. .	C. A. [1898] 1 Ch. 704 .. ..	40
Cohen <i>v.</i> Tannar .. .. .	C. A. [1900] W. N. 162; [1900] 2 Q. B. 609 .. .. .	1059
Cohen:—White <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 580 .. ..	589
Colac (President, &c.) <i>v.</i> Summerfield .. .. .	P. C. [1893] A. C. 187 .. ..	2259
Colchester (In re A Scheme Relating to Grammar School in), In re Endowed Schools Act, 1869, 1873 and 1874 .. .. .	P. C. [1898] A. C. 477 .. ..	274
Colchester Tramways Co., In re .. .. .	[1893] 1 Ch. 309 .. .. .	1364, 2151
Cole:—Att.-Gen. <i>v.</i> .. .. .	[1900] W. N. 272 .. .. .	1349

Name of Case.	Volume and Page.	Column of Digest.
<i>Cole</i> , In re. <i>Ex parte</i> Attenborough .. ..	[1898] 1 Q. B. 290 .. ..	107
<i>Cole v. Eley</i> .. .. .	[1894] 2 Q. B. 180; C. A. [1894] 2 Q. B. 350 .. ..	2024
<i>Cole v. Langford</i> .. .. .	[1898] 2 Q. B. 36 .. ..	1551
<i>Cole</i> :— <i>Lovejoy v.</i> .. .. .	[1894] 2 Q. B. 861 .. ..	591
<i>Coleman v. Bucks and Oxon Union Bank</i> ..	[1897] 2 Ch. 243 .. ..	97
<i>Coleman</i> :— <i>Clarke v.</i> .. .. .	C. A. [1895] W. N. 114 (2) ..	773
<i>Coleman</i> :— <i>Lysaght (J.), Ltd. v.</i> .. ..	C. A. [1895] 1 Q. B. 49 .. ..	989
<i>Coleridge's Settlement</i> , In re Lord .. ..	[1895] 2 Ch. 704 .. ..	1869
<i>Coles</i> :— <i>Grey v.</i> In re Grey .. .. .	[1891] W. N. 201 .. ..	2057
<i>Coles v. Peyton</i> . In re Sir J. J. Ennis ..	C. A. [1893] 3 Ch. 238 .. ..	1582
<i>Coley</i> , In re. <i>Gibson v. Gibson</i> .. .. .	[1900] W. N. 272 .. ..	1896
<i>Coling v. Haden</i> . In re Haden .. .. .	[1898] 2 Ch. 220 .. ..	901
<i>Collard</i> :— <i>Carswell v. The "Victoria"</i> ..	H. L. (Sc.) [1893] W. N. 106; [1893] A. C. 635 .. ..	1943
<i>Collard v. Marshall</i> .. .. .	[1892] 1 Ch. 571 .. ..	645, 650, 963
<i>Colledge</i> :— <i>Coburn v.</i> .. .. .	C. A. [1897] 1 Q. B. 702 .. ..	2038
<i>Colless v. Lands (Minister for)</i> .. .. .	P. C. [1899] A. C. 90 .. ..	1325
<i>Collingham v. Sloper</i> . Foreign, American and General Investments Trusts Co. v. Sloper ..	[1893] 2 Ch. 96; C. A. [1894] 3 Ch. 716 .. ..	326, 487
<i>Collins</i> , <i>Ex parte</i> . In re Rogers .. .. .	[1894] 1 Q. B. 425 .. ..	114
<i>Collins</i> , <i>Ex parte</i> . In re Wells .. .. .	[1892] W. N. 96 .. ..	143, 776
<i>Collins v. Barker</i> .. .. .	[1893] 1 Ch. 578 .. ..	138
<i>Collins v. Elstone</i> .. .. .	[1893] P. 1 .. ..	2357
<i>Collins</i> :— <i>Miller v.</i> .. .. .	C. A. [1896] 1 Ch. 573 .. ..	913
<i>Collins v. North British and Mercantile Insurance Co.</i> <i>Pratt v. Same</i> .. .. .	[1894] 3 Ch. 228 .. ..	1540, 1544
<i>Collins</i> :— <i>Scobie v.</i> .. .. .	[1895] 1 Q. B. 375 .. ..	1274
<i>Collinson v. Jeffery</i> .. .. .	[1896] 1 Ch. 644 .. ..	1297
<i>Collis v. Laughner</i> .. .. .	[1894] 3 Ch. 659 .. ..	1122
<i>Collman v. Mills</i> .. .. .	[1896] W. N. 175 (10); [1897] 1 Q. B. 396 .. ..	1171
<i>Collman v. Roberts</i> .. .. .	[1896] 1 Q. B. 457 .. ..	2018
<i>Colman's Trade-marks</i> , In re (No. 1) .. ..	[1891] 2 Ch. 402 .. ..	2125
(No. 2) .. .. .	[1894] 2 Ch. 115 .. ..	2128
<i>Colmer (James), Ltd.</i> , In re .. .. .	[1897] 1 Ch. 524 .. ..	383
<i>Colmer</i> :— <i>Vowles v.</i> .. .. .	[1895] W. N. 42 .. ..	1913
<i>Colnett</i> :— <i>Shackell v.</i> In re Pride .. ..	[1891] 2 Ch. 135 .. ..	1298
<i>Colonial Secretary of Lagos</i> :— <i>Callender, Sykes &amp; Co. v. Williams v. Davies</i> .. ..	P. C. [1891] A. C. 460 .. ..	119, 292, 877, 1045
<i>Colonial Securities Trust Co. v. Massey</i> ..	C. A. [1896] 1 Q. B. 38 .. ..	46
<i>Colquhoun</i> :— <i>Bradley v.</i> .. .. .	C. A. (Ir.) [1897] W. N. 130 ..	1383
<i>Colquhoun</i> :— <i>Doogan v.</i> .. .. .	C. A. (Ir.) [1899] W. N. 148 ..	1390
<i>Colquhoun v. Young</i> .. .. .	Registration App. Ct. (Sc.) [1898] W. N. 114 .. ..	1396
<i>Colt</i> :— <i>Welch v.</i> In re Brace .. .. .	[1891] 2 Ch. 671 .. ..	1479
<i>Columbian Gold Mines</i> , In re .. .. .	[1894] W. N. 92 .. ..	455
"Columbus," The .. .. .	[1899] W. N. 22 (1) .. ..	1992
<i>Colville</i> :— <i>Tullett v.</i> In re Wood .. ..	[1894] 2 Ch. 310; C. A. [1894] 3 Ch. 381 .. ..	520, 2349
<i>Colvin</i> :— <i>Brandreth v.</i> In re Pitcairn ..	[1895] W. N. 139 (11); [1896] 2 Ch. 199 .. ..	1856
<i>Combe</i> :— <i>Ffinch v.</i> .. .. .	[1894] P. 191 .. ..	1611
<i>Comber v. Leyland</i> .. .. .	H. L. (E.) [1898] A. C. 524 ..	1539
"Comet" (Owners & c. of Lightship) :—"Mediana" (Owners of Steamship) v. The "Mediana" ..	H. L. (E.) [1900] W. N. 34; [1900] A. C. 113 .. ..	1951
<i>Comfort v. Betts</i> .. .. .	C. A. [1891] 1 Q. B. 737 .. ..	74

Name of Case.	Volume and Page.	Column of Digest.
Commercial Bank of Australia <i>v.</i> John Wilson & Co. (Official Assignee) .. .. .	P. C. [1893] A. C. 181 .. ..	150
Commercial Bank of Tasmania <i>v.</i> Jones ..	P. C. [1893] A. C. 313 .. ..	1587, 2100
Commercial Development Corporation :—Castner Kellner Alkali Co. <i>v.</i> .. .. .	C. A. [1899] W. N. 50; [1899] 1 Ch. 803 .. ..	1436
Commercial Press Telegram Bureaux, Ltd.:—Liverpool General Brokers' Association, Ltd. <i>v.</i> ..	[1897] 2 Q. B. 1 .. ..	529
Commr. for Rys. <i>v.</i> O'Rourke .. .. .	P. C. [1896] A. C. 594 .. ..	1323
Commr. for Rys. :—Penny <i>v.</i> .. .. .	P. C. [1900] A. C. 628 .. ..	2364
Commsrs. under the Boiler Explosions Act, 1882 :—Reg. <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 703 .. ..	214
Commsrs. (Drainage) Selby Dam :—Gallsworthy <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 348 .. ..	549, 1686
Commsrs. (Harbour) Blyth <i>v.</i> Newsham and South Blyth (Churchwardens of) .. ..	[1894] 2 Q. B. 293; C. A. [1894] 2 Q. B. 675 .. ..	1683
Commsrs. (Improvement) Rathmines and Rathgar :—Herron <i>v.</i> .. .. .	H. L. (I.) [1892] A. C. 498 .. ..	2069, 2274
Commsrs. (Improvement) Tyne Improvement :—Arrow Shipping Co. <i>v.</i> The "Crystal" ..	H. L. (E.) [1894] A. C. 508 .. ..	2012
Commsrs. of Inland Revenue. See also under Inland Revenue Commsrs., post pp. cxxviii.—cxxx.		
Commsrs. of Land Tax :—Harding <i>v.</i> .. ..	P. C. [1891] A. C. 446 .. ..	2259
Commsrs. (Sewers) for City of London :—Battersea (Lord) <i>v.</i> .. .. .	[1895] 2 Ch. 708 .. ..	1118
Commsrs. of Sewers for City of London, Ex parte St. Botolph, Aldgate (Vicar of), Ex parte ..	[1894] 3 Ch. 544 .. ..	754
Commsrs. (Sewers) for City of London <i>v.</i> St. Botolph Without, Aldgate (Parishioners of) ..	[1892] P. 161 .. ..	743
Commsrs. of Sewers of New Romney :—New Romney (Corporation of) <i>v.</i> .. .. .	[1892] 1 Q. B. 840 .. ..	1686
Commsrs. for Special Purposes of Income Tax <i>v.</i> Pemsel .. .. .	H. L. (E.) [1891] A. C. 531 .. ..	1762
Commsrs. of Stamp Duties :—Broughton <i>v.</i> ..	P. C. [1899] A. C. 251 .. ..	1330
Commsrs. of Stamps :—Dilworth <i>v.</i> .. ..	P. C. [1899] A. C. 99 .. ..	1335
Commsrs. of Stamps <i>v.</i> Hope .. .. .	P. C. [1891] A. C. 476 .. ..	640, 1332
Commsrs. of Taxation <i>v.</i> Teece .. .. .	P. C. [1899] A. C. 254 .. ..	1327
Commsrs. of Taxes for the Barstaple Division of Essex :—Reg. <i>v.</i> .. .. .	[1895] 2 Q. B. 123 .. ..	2112
Commsrs. of Works :—Gedye <i>v.</i> .. .. .	C. A. [1891] 2 Ch. 630 .. ..	2254
Common Petroleum Engine Co., In re. Elsner and McArthur's Case .. .. .	[1895] 2 Ch. 759 .. ..	431
Companhia de Moçambique :—British South Africa Co. <i>v.</i> .. .. .	C. A. [1892] 2 Q. B. 358; H. L. (E.) [1893] A. C. 602 .. ..	1498, 1560
Companies Guardian Society, In re. Lord Walls' court's Case .. .. .	[1899] W. N. 258 .. ..	430
Company, In re A .. .. .	[1894] 2 Ch. 349 .. ..	455
Comptoir National d'Escompte de Paris :—Kleinwort, Sons, & Co. <i>v.</i> .. .. .	[1894] 2 Q. B. 157 .. ..	92, 2157
Compton <i>v.</i> Bagley .. .. .	[1892] 1 Ch. 313 .. ..	2241
Comptroller-General of Patents :—Reg. <i>v.</i> ..	C. A. [1899] 1 Q. B. 909 .. ..	1437
Comptroller-General of Patents, &c. :—Eastman Photographic Materials Co. <i>v.</i> .. .. .	H. L. (E.) [1898] A. C. 571 .. ..	2132
Comyns <i>v.</i> Hyde .. .. .	[1895] W. N. 9 .. ..	537
Concessions Acquisition Syndicate, In re ..	[1898] W. N. 162 (1) .. ..	311
Concessions Trust, In re. McKay's Case ..	[1896] 2 Ch. 757 .. ..	423
Concha <i>v.</i> Concha .. .. .	H. L. (E.) [1892] A. C. 670 .. ..	39
Conduit Colliery Co. :—Att.-Gen. <i>v.</i> .. ..	[1895] 1 Q. B. 301 .. ..	1266

Name of Case.	Volume and Page.	Column of Digest.
Connecticut Fire Insurance Co. v. Kavanagh ..	P. C. [1892] A. C. 473 ..	841,
Connemara v. Connemara ..	[1892] P. 102 ..	1592
Connolly v. Riddall. Graham v. Donnelly; Martin v. Hanrahan (No. 2) ..	C. A. (Ir.) [1897] W. N. 103 ..	702
Connor v. Kent ..	[1891] 2 Q. B. 545 ..	1367
Conquest v. Ebbetts ..	C. A. [1895] 2 Ch. 377; H. L. (E.) [1896] W. N. 87 (10); [1896] A. C. 490 ..	607,
Conrad:—Guild & Co. v. ..	C. A. [1894] 2 Q. B. 885 ..	2143
Conroy v. Peacock ..	[1897] 2 Q. B. 6 ..	1061
Consett Iron Co., In re ..	[1900] W. N. 274 ..	843
Consolidated Bank:—Scott v. ..	[1893] W. N. 56 ..	597
Consolidated Co. v. Curtis & Son ..	[1892] 1 Q. B. 495 ..	364
Consolidated Exploration and Finance Co., In re	[1899] W. N. 127; [1899] 2 Ch. 599 ..	665
Consolidated Exploration and Finance Co. v. Musgrave ..	[1899] W. N. 212; [1900] 1 Ch. 37 ..	83, 2157,
Consort Deep Level Gold Mines, Ltd., In re. Ex parte "Stark" ..	C. A. [1897] 1 Ch. 575 ..	2158
Constables of St. Peter Port:—National Telephone Co. v. ..	P. C. [1900] A. C. 317 ..	434
Constantine & Co. v. Warden & Sons ..	C. A. [1895] W. N. 143 (11) ..	87
Continental Oxygen Co., In re. Ellias v. Continental Oxygen Co. ..	[1897] 1 Ch. 511 ..	390
Conway Justices:—Evans v. ..	[1900] 2 Q. B. 5; C. A. [1900] W. N. 132; [1900] 2 Q. B. 224 ..	2101
Conway and Colwyn Bay Joint Water Supply Board:—Jones v. ..	C. A. [1893] 2 Ch. 603 ..	1998
Conybeare v. London School Board ..	[1891] 1 Q. B. 118 ..	315
Conyngham:—Adlington v. ..	C. A. [1898] 2 Q. B. 492 ..	1114
Cook, In re. Ex parte Chipps ..	[1899] 1 Q. B. 863 ..	2277,
Cook v. Andrews ..	[1897] 1 Ch. 266 ..	2278
Cook v. Culverhouse. In re Culverhouse ..	[1896] 2 Ch. 251 ..	1823
Cook v. Hainsworth ..	[1896] 2 Q. B. 85 ..	557
Cook v. Mitcham Common Conservators ..	[1900] W. N. 252 ..	2027
Cook v. Sprigg ..	P. C. [1899] A. C. 572 ..	2242
Cook v. White ..	[1896] 1 Q. B. 284 ..	1745
Cook's Mortgage, In re ..	[1895] 1 Ch. 700 ..	2681
Cook's Mortgage, In re. Lawledge v. Tyndall ..	[1896] 1 Ch. 923 ..	298
Cooke, In the Goods of ..	[1895] P. 68 ..	260
Cooke:—Jones v. ..	C. A. [1894] 1 Q. B. 213 ..	22
Cooke v. Gilbert ..	[1892] W. N. 111 ..	2199
Cooke:—Lowe v. In re Blantern ..	C. A. [1891] W. N. 54 ..	934
Cooke:—Smith v. ..	C. A. [1891] 1 Ch. 509 ..	1607
Cooke:—Smith v. ..	H. L. (E.) [1891] A. C. 297 ..	1688,
Cooke v. Stevens. In re Stevens ..	[1897] 1 Ch. 422; C. A. [1897] W. N. 175 (7); [1898] 1 Ch. 162 ..	2068,
Cooke:—Storey v. ..	C. A. [1891] 1 Ch. 509; H. L. (E.) [1891] A. C. 297 ..	2071,
Coole v. Lovegrove ..	[1893] 2 Q. B. 44 ..	2113





Name of Case.	Volume and Page.	Column of Digest.
Cornwall <i>v.</i> Henson .. .. .	{ [1899] 2 Ch. 710; C. A. [1900] W. N. 128; [1900] 2 Ch. 298 .. .. }	2231
Cornwall :—McArthur & Co. <i>v.</i> .. .. .	P. C. [1892] A. C. 75 .. ..	637, 837
Cornwall Brick, Tile, and Terra-Cotta Co., In re	[1893] W. N. 9 .. ..	428, 484
Cornwall Minerals Ry. Co., In re .. ..	[1897] 2 Ch. 74 .. ..	325
Corregan <i>v.</i> Farrelly .. .. .	P. C. [1899] A. C. 563 .. ..	1618
Corry :—Fielding & Co. <i>v.</i> .. .. .	C. A. [1898] 1 Q. B. 268 .. ..	192
Cort :—Allen <i>v.</i> In re Harrison .. ..	[1892] W. N. 148 .. ..	2191
Cory :—General Insurance Co. of Trieste (Assicurazioni Generali) <i>v.</i> .. ..	[1897] 1 Q. B. 335 .. ..	1001
Cory & Son :—Kennaird <i>v.</i> .. .. .	[1898] 2 Q. B. 578 .. ..	2108
Cory Bros. & Co. <i>v.</i> Owners of Turkish Steamship "Mecca" .. .. .	H. L. (E.) [1897] A. C. 286 .. ..	50
Coryat :—Trinidad Asphalte Co. <i>v.</i> .. ..	P. C. [1896] A. C. 587 .. ..	1706
Cosh's Contract, In re .. .. .	C. A. [1897] 1 Ch. 9 .. ..	599
Cosier, In re. Hill Brothers <i>v.</i> Humphreys .. ..	[1898] W. N. 8 (12) .. ..	575
Costa Rica Ry. Co. <i>v.</i> Forwood .. .. .	[1900] 1 Ch. 756 .. ..	338
Coste :—Wohlgemuthe <i>v.</i> .. .. .	[1899] 1 Q. B. 501 .. ..	584
Coster :—Holloway <i>v.</i> .. .. .	[1897] 1 Q. B. 346 .. ..	2214
Cotham :—Reg. <i>v.</i> .. .. .	[1898] 1 Q. B. 802 .. ..	1207
Cottam :—Downes <i>v.</i> In re Beddoe .. ..	C. A. [1893] 1 Ch. 547 .. ..	558
Cotton <i>v.</i> Imperial and Foreign Agency and Investment Corporation .. .. .	[1892] 3 Ch. 454 .. ..	379, 399
Cotton <i>v.</i> Vogan & Co. .. .. .	{ C. A. [1895] 2 Q. B. 652; H. L. (E.) [1896] A. C. 457 .. .. }	1162
Coughlin <i>v.</i> Gillison .. .. .	C. A. [1899] 1 Q. B. 145 .. ..	88
Couldridge :—Gower <i>v.</i> .. .. .	C. A. [1898] 1 Q. B. 348 .. ..	1512
Coulson :—Att.-Gen. <i>v.</i> Att.-Gen. <i>v.</i> Owen .. ..	[1899] 2 Q. B. 253 .. ..	1734
Coulson <i>v.</i> Capper. In re Porter .. .. .	[1892] 3 Ch. 481 .. ..	2330
Coulson :—Cunard Steamship Co. <i>v.</i> .. ..	[1899] 1 Q. B. 865 .. ..	1768
Coulson <i>v.</i> Disborough .. .. .	C. A. [1894] 2 Q. B. 316 .. ..	782
Coulthard :—Ecroyd <i>v.</i> .. .. .	{ [1897] W. N. 25 (7); [1897] 2 Ch. 554; C. A. [1898] 2 Ch. 358 .. .. }	773, 825, 1495, 2286
Coulthwaite :—Thwaites <i>v.</i> .. .. .	[1896] 1 Ch. 496 .. ..	1411
Counties Conservative Permanent Benefit Building Society :—Norton <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 246 .. ..	225
Counties Conservative Permanent Benefit Building Society, In re. Davis <i>v.</i> Norton .. ..	[1900] 2 Ch. 819 .. ..	233
Country Estates Co. <i>v.</i> Graves .. .. .	P. C. [1895] A. C. 113 .. ..	2259
"County of Durham," The .. .. .	[1891] P. 1 .. ..	1999
County of Gloucester Bank <i>v.</i> Rudry Merthyr Steam and House Coal Colliery Co. .. ..	C. A. [1895] 1 Ch. 629 .. ..	{ 350, 1702
County of London and Brush Provincial Electric Lighting Co. :—St. Mary, Battersea (Vestry of) .. .. .	{ C. A. [1899] W. N. 12 (11); [1899] 1 Ch. 474 .. .. }	1180
Coupé Co. <i>v.</i> Maddick .. .. .	[1891] 2 Q. B. 413 .. ..	89, 1240
Couper :—British and American Trustee and Finance Corporation <i>v.</i> .. .. .	H. L. (E.) [1894] A. C. 399 .. ..	387
Courage <i>v.</i> O'Shea. In re O'Shea's Settlement .. ..	C. A. [1895] 1 Ch. 325 .. ..	117, 141
"Courier," The .. .. .	[1891] P. 355 .. ..	{ 560, 1959
Court <i>v.</i> Berlin .. .. .	C. A. [1897] 2 Q. B. 396 .. ..	2048
Court :—Charnock <i>v.</i> .. .. .	{ [1899] W. N. 44; [1899] 2 Ch. 35 .. .. }	2147
Court Bureau, Ltd. In re (No. 1) .. .. .	[1891] W. N. 9 .. ..	457
(No. 2) .. .. .	[1891] W. N. 15 .. ..	{ 445, 1161

Name of Case.	Volume and Page.	Column of Digest.
Cousins:—Goodlock <i>v.</i> .. .. .	{ [1896] W. N. 174 (3); [1897] 1 Q. B. 348; affirmed by C. A. [1897] 1 Q. B. 558 .. .. }	590
Coutts & Co. <i>v.</i> Irish Exhibition in London ..	C. A. [1891] W. N. 41 .. ..	97
Coventry's Case. In re Britannia Fire Association ..	C. A. [1891] 1 Ch. 202 .. ..	420
Coventry Machinists Co.:—Morris Wilson & Co. <i>v.</i> .. .. .	[1891] 3 Ch. 418 .. ..	655
Cowan:—Milligan <i>v.</i> .. .. .	{ Ct. of Sess. (Sc.) [1897] W. N. 137 .. .. }	1731
Cowap <i>v.</i> Atherton .. .. .	[1893] 1 Q. B. 49 .. ..	1108
Cowdary:—Mason <i>v.</i> .. .. .	[1900] 2 Q. B. 419 .. ..	18
Cowen <i>v.</i> Town Clerk of Kingston-upon-Hull ..	[1897] 1 Q. B. 273 .. ..	1369
Cowen <i>v.</i> Truefitt, Ltd. .. .. .	{ [1898] 2 Ch. 551; C. A. [1899] W. N. 102; [1899] 2 Ch. 309 }	1077
Cowie:—Kennedy <i>v.</i> .. .. .	[1891] 1 Q. B. 771 .. ..	2012, 2067
Cowie <i>v.</i> Muirden .. .. .	H. L. (Sc.) [1893] A. C. 674 ..	1845
Cowley, In re .. .. .	[1900] W. N. 264 .. ..	943
Cowley <i>v.</i> Cowley .. .. .	{ [1900] P. 118; C. A. [1900] W. N. 180; [1900] P. 305 .. }	930
Cowley (Earl) <i>v.</i> Inland Revenue Commrs. ..	{ [1897] 2 Q. B. 47; C. A. [1897] W. N. 171 (7); [1898] 1 Q. B. 355; H. L. (E.) [1898] W. N. 32 (5); [1899] A. C. 198 .. }	1746
Cowley <i>v.</i> Newmarket Local Board .. ..	H. L. (E.) [1892] A. C. 345 ..	549, 895, 2066
Cowper <i>v.</i> Stratheden and Campbell (Lord). In re Stratheden and Campbell (Lord) ..	[1893] W. N. 90 .. ..	32, 2309
Cox, In re. Cox <i>v.</i> Edwards .. .. .	[1900] W. N. 89 .. ..	8
Cox <i>v.</i> Bennett .. .. .	C. A. [1891] 1 Ch. 617 .. ..	{ 916, 1501
Cox <i>v.</i> Davies .. .. .	[1898] 2 Q. B. 202 .. ..	686
Cox:—Hakes <i>v.</i> .. .. .	[1892] P. 110 .. ..	757
Cox:—Hall <i>v.</i> .. .. .	[1899] 1 Q. B. 198 .. ..	1183
Cox:—Lambton <i>v.</i> Lambton <i>v.</i> Mellish ..	[1894] 3 Ch. 163 .. ..	966
Cox:—Lane <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 415 .. ..	1074
Cox:—London Printing and Publishing Alliance, Ltd. <i>v.</i> .. .. .	C. A. [1891] 3 Ch. 291 .. ..	529
Cox:—McGregor <i>v.</i> .. .. .	H. L. (Sc.) [1900] W. N. 247 ..	2209
Cox:—Metcalf <i>v.</i> .. .. .	{ H. L. (Sc.) [1895] A. C. 328; [1896] A. C. 647 .. .. }	2068, 2209
Cox:—Reg. <i>v.</i> .. .. .	[1898] 1 Q. B. 179 .. ..	609
Cox <i>v.</i> Watson. In re Watson .. .. .	[1892] W. N. 192 .. ..	2350
Cox and Neve's Contract, In re .. .. .	[1891] 2 Ch. 109 .. ..	2252
Cox, Sons, Buckley & Co.:—Wigram <i>v.</i> ..	[1894] 1 Q. B. 792 .. ..	1546
Cox (C. S.) & Co.:—Ashmore & Son <i>v.</i> ..	[1899] 1 Q. B. 436 .. ..	1816
Coxen <i>v.</i> Rowland .. .. .	[1894] 1 Ch. 406 .. ..	1476
Coxon <i>v.</i> Gorst .. .. .	[1891] 2 Ch. 73 .. ..	341
Cradock <i>v.</i> Scottish Provident Institution ..	{ [1893] W. N. 146; C. A. [1894] W. N. 88 .. .. }	1290
Cradock <i>v.</i> Witham .. .. .	[1895] W. N. 75 .. ..	2167
Craig <i>v.</i> Craig and Hamp .. .. .	[1896] P. 171 .. ..	717
Craig:—Gray <i>v.</i> .. .. .	{ Registration App. Ct. (Sc.) [1897] W. N. 134 .. .. }	1385
Craig <i>v.</i> Nicholas .. .. .	[1900] 2 Q. B. 444 .. ..	898
Craig's Claim. In re Midland Coal, Coke, and Iron Co. .. .. .	C. A. [1895] 1 Ch. 267 .. ..	479
Craignish, In re. Craignish <i>v.</i> Hewitt ..	C. A. [1892] 3 Ch. 180 .. ..	724, 905

Name of Case.	Volume and Page.	Column of Digest.
Crane:—Cooper v. .. .. .	[1891] P. 369 .. .. .	709
"Crathie," The .. .. .	[1897] P. 178 .. .. .	1983
Crawford:—Buckley v. Townsend (Claimant)	[1893] 1 Q. B. 105 .. .. .	932
Crawford v. Forshaw .. .. .	C. A. [1891] 2 Ch. 261 .. .. .	801
Crawshaw v. Harrison .. .. .	[1894] 1 Q. B. 79 .. .. .	1923
Crawshay, In re. Walker v. Crawshay .. .. .	[1891] 3 Ch. 176 .. .. .	1902
Crawshay, In the Goods of .. .. .	[1893] P. 108 .. .. .	1608
Crawshay:—Parkinson v. .. .. .	[1894] W. N. 85 .. .. .	776
Crayford Overseers v. Rutter (D. & C.) .. .. .	[1897] 1 Q. B. 650 .. .. .	2083
Creasey:—London and Eastern Counties Loan and Discount Co. v. .. .. .	[1897] 1 Q. B. 442; affirmed by C. A. [1897] 1 Q. B. 768 .. .. .	212
Crédit Lyonnais:—Lacave & Co. v. .. .. .	[1897] 1 Q. B. 148 .. .. .	96
Cree v. St. Pancras Vestry .. .. .	[1899] 1 Q. B. 693 .. .. .	1633
Cremer v. Lowles. Haggerston Election Petition	C. A. [1896] 1 Q. B. 504 .. .. .	1365
"Cressington," The .. .. .	[1891] P. 152 .. .. .	1971
Cresswell:—National Provincial Bank of England v. In re Bawden. Bawden v. Cresswell	[1894] 1 Ch. 693 .. .. .	2303, 2338
Criccieth Pier and Harbour Co., In re .. .. .	[1891] W. N. 15 .. .. .	368
Crichton v. Crichton .. .. .	[1895] 2 Ch. 853; reversed by C. A. [1896] 1 Ch. 870 .. .. .	2175
Criglington v. Anderson .. .. .	C. A. (Ir.) [1898] W. N. 94 .. .. .	1393
Criglington v. Gallagher .. .. .	C. A. (Ir.) [1897] W. N. 106 .. .. .	1366
"Crimdon," The .. .. .	[1900] W. N. 130; [1900] P. 171 .. .. .	2010
Cripps, Ex parte. In re Cook .. .. .	[1899] 1 Q. B. 863 .. .. .	2027
Cripps:—Hudson v. .. .. .	[1895] W. N. 161 (5) .. .. .	829
Cripps:—Hudson v. .. .. .	[1896] 1 Ch. 265 .. .. .	968
Crisp v. London County Council .. .. .	[1899] 1 Q. B. 720 .. .. .	1153
Crocker v. Knight .. .. .	C. A. [1892] 1 Q. B. 702 .. .. .	2070, 2144
Crocker v. Sturge .. .. .	[1897] 1 Q. B. 330 .. .. .	1001
Croft, In re. Deane v. Croft .. .. .	[1892] 1 Ch. 652 .. .. .	1469, 1728
Croft:—Fraser v. .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 134 .. .. .	1836, 1842
Croft v. King .. .. .	[1893] 1 Q. B. 419 .. .. .	1544
Crofton, Craven & Worthington, Ex parte. In re Nash & Son .. .. .	[1895] W. N. 135 (1); [1896] 1 Q. B. 13 .. .. .	122
Crompton & Co.:—Johnstone v. .. .. .	[1899] W. N. 93; [1899] 2 Ch. 190 .. .. .	1265
Crompton & Evans' Union Bank v. Burton .. .. .	C. A. [1895] 2 Ch. 711 .. .. .	1518, 1519
Cronbach v. Isaac. In re Isaac .. .. .	C. A. [1897] 1 Ch. 251 .. .. .	571
Cronk:—Owen & Co. v. .. .. .	C. A. [1895] 1 Q. B. 265 .. .. .	1577
Cronmire, In re. Ex parte Cronmire .. .. .	C. A. [1894] 2 Q. B. 246 .. .. .	127
Cronmire, In re. Ex parte Waud .. .. .	[1898] W. N. 19 (2); reversed by C. A. [1898] 2 Q. B. 383 .. .. .	871
Crook v. Morley .. .. .	H. L. (E) [1891] A. C. 316 .. .. .	108
Croom, In re. England v. Provincial Assets Co. .. .. .	[1891] 1 Ch. 695 .. .. .	164
Croshaw v. Lyndhurst Ship Co. .. .. .	[1897] 2 Ch. 154 .. .. .	444
Crosland v. Holliday. In re Powell .. .. .	[1897] W. N. 176 (12); [1898] 1 Ch. 227 .. .. .	2317
Crosley:—Hecksher v. .. .. .	C. A. [1891] 1 Q. B. 224 .. .. .	570, 1500
Cross v. Fisher .. .. .	C. A. [1892] 1 Q. B. 467 .. .. .	228
Cross v. London Anti-Vivisection Society. In re Foveaux .. .. .	[1895] 2 Ch. 501 .. .. .	277
Cross:—London County Council v. .. .. .	C. A. [1892] W. N. 80 .. .. .	1150

Name of Case.	Volume and Page.	Column of Digest.
Crossan v. Chambers. Hasson v. Chambers ; } Lynch v. Buchanan. (Re Richey) .. .. }	C. A. (Ir.) [1897] W. N. 85 ..	1398
Crossfield & Sons, Ld. v. Tanian .. ..	C. A. [1900] 2 Q. B. 629 ..	1219
Crossley, In re. Birrell v. Greenhough ..	[1897] 1 Ch. 928 ..	285
Crossley v. Andrew .. ..	C. A. [1892] 1 Ch. 492 ..	1435
Crossley :—Andrew v. .. ..	C. A. [1892] 1 Ch. 492 ..	1435
Crossley v. Magniac .. ..	[1893] 1 Ch. 594 ..	2075
Crossley Brothers :—McEntire v. .. ..	H. L. (I.) [1895] A. C. 457 ..	206, 813
Crossley (John) & Sons, In re .. ..	[1892] W. N. 55 ..	386
Crossman :—Mervin v. In re Mervin ..	[1891] 3 Ch. 197 ..	2348
Crossman and Prichard :—Hood Barrs v. ..	H. L. (E.) [1897] A. C. 172 ..	2042
Croston Urban District Council :—River Ribble } (Joint Committee of the) v. .. .. }	[1897] 1 Q. B. 251 ..	771
Croudace v. Zobel .. ..	P. C. [1899] A. C. 258 ..	1330
Crow :—Oxford Corporation v. .. ..	[1893] 3 Ch. 535 ..	542
Crowborough District Water Co. :—Uckfield } Rural Council v. .. .. }	[1899] 2 Q. B. 664 ..	222
Crowly v. Berghell .. ..	P. C. [1899] A. C. 374 ..	1312
Crown Accidental Insurance Co. :—Hamlyn v. ..	C. A. [1893] 1 Q. B. 750 ..	974
Crown :—Timothy v. .. ..	[1900] W. N. 51 ..	1524
Croyther, In re. Midgley v. Crowther ..	[1895] 2 Ch. 56 ..	1856, 2195
Croydon Tramways Co. :—Kaye v. .. ..	C. A. [1898] 1 Ch. 358 ..	312
Croydon Union (Rural Sanitary Authority of } the) :—Fenwick v. .. .. }	[1891] 2 Q. B. 216 ..	2086
Croydsale v. Sunbury-on-Thames Urban Council	[1898] 2 Ch. 515 ..	1916
Crozat v. Brogden .. ..	C. A. [1894] 2 Q. B. 30 ..	569
Cruddas, In re. Cruddas v. Smith .. ..	[1899] W. N. 126 ; C. A. [1900] } W. N. 81 ; [1900] 1 Ch. 730 }	1472
Cruddas :—Ramsey v. .. ..	C. A. [1893] 1 Q. B. 228 ..	526
Cruise v. Annan .. ..	Registration App. Ct. (Sc.) [1897] } W. N. 94 .. .. }	1398
Crumbie v. Wallsend Local Board .. ..	C. A. [1891] 1 Q. B. 503 ..	1137
Crumpe v. Crumpe .. ..	H. L. (Ir.) [1900] W. N. 40 ; } [1900] A. C. 127 .. .. }	2323
Crusha :—Jacobs v. .. ..	C. A. [1894] 2 Q. B. 37 ..	1494
"Crystal," The. Arrow Shipping Co. v. Tyne } Improvement Comms. .. .. }	H. L. (E.) [1894] A. C. 508 ..	2012
Crystal Palace Co. :—St. Giles, Camberwell v. ..	C. A. [1882] 2 Q. B. 33 ..	1178
Crystal Palace District Gas Co. :—Walker v. ..	[1891] 2 Q. B. 300 ..	560
Crystal Reef Gold Mining Co., In re .. ..	[1892] 1 Ch. 408 ..	463
Cubison v. Mayo .. ..	C. A. [1896] 1 Q. B. 246 ..	589
Cuckfield Rural District Council v. Goring ..	[1898] 1 Q. B. 865 ..	897
Cullen, Ex parte. In re Parrott .. ..	[1891] 2 Q. B. 151 ..	156
Cullen :—Flatau v. .. ..	[1899] W. N. 206 ..	575
Cullen v. Knowles .. ..	[1898] 2 Q. B. 380 ..	1506
Cullen v. Patterson .. ..	C. A. (Ir.) [1897] W. N. 126 ..	1386
Culling v. Culling .. ..	[1896] P. 116 ..	1212
Culver :—Dowsett v. In re Lepine .. ..	C. A. [1892] 1 Ch. 210 ..	801
Culverhouse, In re. Cook v. Culverhouse ..	[1896] 2 Ch. 251 ..	1745
Cumberland :—Coghlan v. .. ..	C. A. [1898] 1 Ch. 704 ..	40
Cumberland Gap Park Co. :—Badcock v. .. ..	[1893] 1 Ch. 362 ..	1535
Cumberland Union Banking Co. v. Maryport } Hematite Iron and Steel Co. (No. 1) .. .. }	[1892] 1 Ch. 92 ..	1301
Cumberland Union Banking Co. v. Maryport } Hematite Iron and Steel Co. In re Maryport }	[1892] 1 Ch. 415 ..	827
Cummins v. Perkins .. ..	C. A. [1898] W. N. 166 (12) ; } [1899] 1 Ch. 16 .. .. }	1698

Name of Case.	Volume and Page.	Column of Digest.
Cunard Steamship Co. v. Coulson .. ..	[1899] 1 Q. B. 865 .. ..	1768
Cunliffe Smith v. Hankey. In re Hankey .. {	[1899] W. N. 10 (1); [1899] 1 Ch. 541 .. ..	792
Cunningham, In re. Ex parte Official Receiver .. ..	[1899] W. N. 68 .. ..	126
Cunningham :—Grimston v. .. ..	[1894] 1 Q. B. 125 .. ..	960
Cunnack v. Edwards .. ..	[1895] 1 Ch. 489; reversed by C. A. [1896] 2 Ch. 679 .. ..	857
Cunningham and Frayling, In re .. ..	[1891] 2 Ch. 567 .. ..	2168
"Curfew," The .. ..	[1891] P. 131 .. ..	1933
Curlier :—De Nicols v. In re De Nicols .. {	[1900] W. N. 146; [1900] 2 Ch. 410 .. ..	495
Curlier :—De Nicols v. .. ..	[1898] 1 Ch. 403; reversed by C. A. [1898] 2 Ch. 60; H. L. (E.) [1899] W. N. 255; [1900] A. C. 21 .. ..	495
Curnock v. Born. In re Born .. ..	[1900] W. N. 148; [1900] 2 Ch. 433 .. ..	2025
Curran v. Treleaven .. ..	[1891] 2 Q. B. 545 .. ..	607, 2143
Curre :—Bolton v. (No. 1) .. ..	[1894] W. N. 122 .. ..	1698, 1701, 2177
————— (No. 2) .. ..	[1895] 1 Ch. 544 .. ..	2177
Currie v. McKnight .. ..	H. L. (Sc.) [1896] W. N. 164 (6); [1897] A. C. 97 .. ..	1981
Currie (Owners of the "Thorsa") :—Wilson, Sons & Co. (Owners of the "Otto") v. .. {	H. L. (Sc.) [1894] A. C. 116 .. ..	1935
Curtice :—Grey v. .. ..	C. A. [1898] W. N. 162 (5); [1899] 1 Ch. 121 .. ..	2039
Curtis v. Mundy .. ..	[1892] 2 Q. B. 178 .. ..	665
Curtis :—Mardell v. .. ..	[1899] W. N. 93 .. ..	1082
Curtis & Son :—Consolidated Co. v. .. ..	[1892] 1 Q. B. 495 .. ..	83, 2157, 2158
Currie and Timamis Patent, In re .. ..	P. C. [1898] A. C. 347 .. ..	1440
Cusack v. London and North Western Ry. Co. .. {	C. A. [1891] 1 Q. B. 347 .. ..	583
Cutbill v. Shropshire Rys. Co. .. ..	[1891] W. N. 65 .. ..	1655
Cutlan :—Shoe Machinery Co. v. (No. 1) .. {	[1895] W. N. 102 .. ..	1427
————— (No. 2) .. ..	C. A. [1895] W. N. 143 (10); [1896] 1 Ch. 108 .. ..	1428
————— (No. 3) .. ..	[1896] 1 Ch. 667 .. ..	1430
D.		
D. v. A. & Co. .. ..	[1900] W. N. 30; [1900] 1 Ch. 484 .. ..	1561
D'Auvergne v. Cooper .. ..	[1899] W. N. 256 .. ..	268
Dadson and F. A. Ellis & Co. :—Ellis v. .. ..	[1891] W. N. 43 .. ..	484, 960
Daglish v. Barton .. ..	C. A. [1900] 1 Q. B. 284 .. ..	42
Dagnall, In re. Ex parte Soan & Morley .. ..	[1896] 2 Q. B. 407 .. ..	160
Dagnall :—Biggs v. .. ..	[1895] 1 Q. B. 207 .. ..	1493
Daines :—Eaton v. .. ..	[1894] W. N. 32 .. ..	2167
Daines v. Eaton. In re Eaton .. ..	[1894] W. N. 95 .. ..	1857, 2302
Daintrey, In re. Ex parte Holt .. ..	[1893] 2 Q. B. 116 .. ..	109
Daintrey, In re. Ex parte Mant .. ..	C. A. [1900] 1 Q. B. 546 .. ..	170
Dakin v. Parker .. ..	[1894] 2 Q. B. 273; C. A. [1894] 2 Q. B. 556 .. ..	1103
Dale, Ex parte. In re Binstead .. ..	C. A. [1893] 1 Q. B. 199 .. ..	103, 700

Name of Case.	Volume and Page.	Column of Digest.
Dale and Elsdon, In re .. .. .	[1892] W. N. 56 .. .. .	185, 2253
Dale:—Palliser <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 257 .. .. .	858
Dalgety & Co.:—Hill, Clark & Co. <i>v.</i> .. .. .	P. C. [1898] A. C. 343 .. .. .	1326
Dalglish <i>v.</i> Dodds .. .. .	C. A. (Sc.) [1899] W. N. 165 .. .. .	1381
Dalglish <i>v.</i> Lowther .. .. .	C. A. [1899] W. N. 133; [1899] 2 Q. B. 590 .. .. .	676
Dalison's Settled Estates, In re .. .. .	[1892] 3 Ch. 522 .. .. .	1882
Dallmeyer, In re. Dallmeyer <i>v.</i> Dallmeyer .. .. .	C. A. [1896] 1 Ch. 372 .. .. .	2308
Dalton <i>v.</i> Fitzgerald .. .. .	[1897] 1 Ch. 440; affirmed by C. A. [1897] 2 Ch. 86 .. .. .	770
Dalton Overseers <i>v.</i> North Eastern Ry. Co. .. .. .	[1898] 2 Q. B. 66; C. A. [1899] W. N. 64; [1899] 1 Q. 1026; H. L. (E.) [1900] W. N. 126; [1900] A. C. 345 .. .. .	897
Dance, In re .. .. .	[1895] W. N. 127 (10) .. .. .	80
Dando <i>v.</i> Boden .. .. .	[1893] 1 Q. B. 318 .. .. .	1565
Dane <i>v.</i> Mortgage Insurance Corporation .. .. .	C. A. [1894] 1 Q. B. 54 .. .. .	978
Dangar, Grant & Co.:—Lee <i>v.</i> .. .. .	[1892] 1 Q. B. 231; C. A. [1892] 2 Q. B. 337 .. .. .	1924
Daniel Flynn's Case .. .. .	C. A. (Sc.) [1900] W. N. 230 .. .. .	1380
Daniel <i>v.</i> Ferguson .. .. .	C. A. [1891] 2 Ch. 27 .. .. .	1120
Daniel:—Jones <i>v.</i> .. .. .	[1894] 2 Ch. 332 .. .. .	843, 2226
Daniel & Arter <i>v.</i> Whitehouse .. .. .	[1898] 1 Ch. 685 .. .. .	2139
Daniel <i>v.</i> Ocean Coal Co. .. .. .	C. A. [1900] W. N. 109; [1900] 2 Q. B. 250 .. .. .	1224
Daniell, Ex parte. In re Deakin .. .. .	C. A. [1900] 2 Q. B. 489 .. .. .	119
Daniell's Settled Estates, In re .. .. .	C. A. [1894] 3 Ch. 503 .. .. .	1872
Daniells & Sons' Breweries:—Paine & Co. <i>v.</i> .. .. .	C. A. [1893] 2 Ch. 567 .. .. .	2126, 2129
In re Paine & Co.'s Trade-marks .. .. .	[1895] W. N. 102 .. .. .	10
Danson, In re. Bell <i>v.</i> Danson .. .. .	[1893] W. N. 99 .. .. .	1515
Darby:—Lewis <i>v.</i> In re Nash. In re Spence .. .. .	[1895] W. N. 123 (6) .. .. .	31, 1314
Darby:—Pack <i>v.</i> .. .. .	C. A. [1896] 1 Q. B. 554 .. .. .	1529
Darbyshire <i>v.</i> Leigh .. .. .	[1894] 2 Q. B. 45; C. A. [1894] 2 Q. B. 694 .. .. .	1666
Darlaston Local Board <i>v.</i> London and North Western Ry. Co. .. .. .	[1899] W. N. 30 (3); [1899] 1 Ch. 666 .. .. .	1478
Darley <i>v.</i> Hodgson. In re Hodgson .. .. .	[1895] W. N. 140 (12); [1896] 1 Ch. 50 .. .. .	279
Darling, In re. Farquhar <i>v.</i> Darling .. .. .	[1897] 1 Ch. 719 .. .. .	1901
Darling:—Finlay <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 245 .. .. .	59
Darlington Wagon Co. <i>v.</i> Harding and Trouville Pier and Steamboat Co. .. .. .	C. A. [1896] W. N. 174 (1); [1897] 1 Q. B. 125 .. .. .	202
Darlow <i>v.</i> Bland .. .. .	C. A. [1893] P. 33 .. .. .	1929, 2070
"Dart," The .. .. .	C. A. [1896] 2 Q. B. 74; H. L. (E.) [1897] W. N. 171 (6); [1898] A. C. 210 .. .. .	1663
Dartford Rural District Council <i>v.</i> Bexley Heath Ry. Co. .. .. .	C. A. [1895] 1 Ch. 474 .. .. .	2035, 2184
Dartnall, In re. Sawyer <i>v.</i> Goddard .. .. .	[1900] W. N. 186; [1900] 2 Ch. 812 .. .. .	736
Dash, In re. Solicitor to the Treasury <i>v.</i> Lewis .. .. .	C. A. [1891] 3 Ch. 306 .. .. .	1045, 1879, 2109, 2269

Name of Case.	Volume and Page.	Column of Digest.
Dashwood <i>v.</i> Magniac (No. 2) .. ..	[1892] W. N. 54 .. ..	560, 575
Dashwood :—Norton <i>v.</i> .. ..	[1896] 2 Ch. 497 .. ..	827
Dassenaile :—Gauder <i>v.</i> .. ..	P. C. [1897] A. C. 547 .. ..	267
Davenport, In re. Turner <i>v.</i> King .. ..	[1895] 1 Ch. 361 .. ..	901
Daventry Rural Council <i>v.</i> Parker .. ..	C. A. [1899] W. N. 210; [1900] 1 Q. B. 1 .. ..	897, 898
Daveron, In re. Bowen <i>v.</i> Churchill .. ..	[1893] 3 Ch. 421 .. ..	2349
Davey :—Bellamy <i>v.</i> .. ..	[1891] 3 Ch. 540; C. A. [1891] W. N. 192 .. ..	517, 2092
Davey <i>v.</i> Bentinck .. ..	C. A. [1892] W. N. 186; [1893] 1 Q. B. 185 .. ..	679, 1530
Davey :—Bird <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 29 .. ..	197, 1530
Davey :—Christie <i>v.</i> .. ..	[1893] 1 Ch. 316 .. ..	966, 1348
Davey :—Reg. <i>v.</i> .. ..	[1899] 2 Q. B. 301 .. ..	1031
David <i>v.</i> Sabin .. ..	[1892] W. N. 115; C. A. [1893] 1 Ch. 523 .. ..	1083, 2232, 2250
Davey & Co. <i>v.</i> Williamson & Sons .. ..	[1898] 2 Q. B. 194, 201 .. ..	321
David and Matthews, In re .. ..	[1899] 1 Ch. 378 .. ..	1419
Davidson, In re. Ex parte Davidson .. ..	[1899] W. N. 68; [1899] 2 Q. B. 103 .. ..	2035
Davidson, In re. Ex parte Davidson .. ..	C. A. [1894] W. N. 210 .. ..	162
Davidson <i>v.</i> Carlton Bank .. ..	C. A. [1893] 1 Q. B. 82 .. ..	211
Davidson <i>v.</i> Myrtle. In re Smith .. ..	[1896] 2 Ch. 590 .. ..	2185
Davies, In re. Davies <i>v.</i> Davies .. ..	[1892] 3 Ch. 63 .. ..	981, 1478
Davies, In re. Ellis <i>v.</i> Roberts .. ..	[1898] 2 Ch. 142 .. ..	2165
Davies, In re. Harrison <i>v.</i> Davis .. ..	[1897] 2 Ch. 204 .. ..	921
Davies, In re. Jenkins <i>v.</i> Davies .. ..	[1891] W. N. 104 .. ..	574
Davies <i>v.</i> Bolton (R.) & Co. .. ..	[1894] 3 Ch. 678 .. ..	314
Davies :—Cox <i>v.</i> .. ..	[1898] 2 Q. B. 202 .. ..	686
Davies :—Evans <i>v.</i> .. ..	[1893] 2 Ch. 216 .. ..	399
Davies :—Grand Junction Waterworks Co. <i>v.</i> .. ..	[1897] 2 Q. B. 209 .. ..	2279
Davies :—Hemming <i>v.</i> .. ..	[1898] 1 Q. B. 660 .. ..	590
Davies :—Hennell <i>v.</i> .. ..	[1893] 1 Q. B. 367 .. ..	596
Davies <i>v.</i> Jenkins .. ..	[1899] W. N. 252; [1900] 1 Q. B. 133 .. ..	201
Davies :—Jones <i>v.</i> .. ..	[1898] 1 Q. B. 405 .. ..	824
Davies <i>v.</i> Jones .. ..	[1899] P. 161 .. ..	1612
Davies <i>v.</i> Lowen .. ..	[1891] W. N. 86 .. ..	1722
Davies :—Main Colliery Co. <i>v.</i> .. ..	H. L. (E.) [1900] A. C. 358 .. ..	1218
Davies <i>v.</i> National Fire and Marine Insurance Co. of New Zealand .. ..	P. C. [1891] A. C. 485 .. ..	996, 1329
Davies <i>v.</i> Parry .. ..	[1898] W. N. 168 (1); [1899] 1 Ch. 602 .. ..	801
Davies :—Reg. <i>v.</i> .. ..	C. C. R. [1897] 2 Q. B. 199 .. ..	863
Davies <i>v.</i> Tagart. In re Weston .. ..	[1900] W. N. 104; [1900] 2 Ch. 164 .. ..	2198
Davies <i>v.</i> Thomas .. ..	C. A. [1900] W. N. 151; [1900] 2 Ch. 462 .. ..	2239
Davies <i>v.</i> Thomas .. ..	[1899] W. N. 244 .. ..	731
Davies <i>v.</i> Treharris Brewery Co. .. ..	[1894] W. N. 198 .. ..	564, 916
Davies <i>v.</i> Vale of Evesham Preserves, Ltd. .. ..	[1895] W. N. 105 .. ..	1700
Davies :—Williams <i>v.</i> Callender, Sykes & Co. <i>v.</i> Colonial Secretary of Lagos .. ..	P. C. [1891] A. C. 460 .. ..	119, 292, 877, 1045
Davies' Policy Trusts, In re .. ..	[1892] 1 Ch. 90 .. ..	905, 980



Name of Case.	Volume and Page.	Column of Digest.
Davis, In the Goods of .. .. .	[1899] W. N. 61 .. .. .	1604
Davis, In re. Evans v. Moore .. .. .	C. A. [1891] 3 Ch. 119 .. .. .	1131
Davis:—Bakewell v. .. .. .	[1894] 1 Q. B. 296 .. .. .	18
Davis v. Davis .. .. .	[1894] 1 Ch. 393 .. .. .	1415
Davis:—Duke v. .. .. .	[1893] 2 Q. B. 107; C. A. [1893] 2 Q. B. 260 .. .. .	598
Davis v. Foreman .. .. .	[1894] 3 Ch. 654 .. .. .	959
Davis:—Harrison v. In re Davies .. .. .	[1897] 2 Ch. 204 .. .. .	921
Davis v. Greenwich Board of Works .. .. .	C. A. [1895] 2 Q. B. 219 .. .. .	1175
Davis v. Harris .. .. .	[1900] W. N. 17; [1900] 1 Q. B. 729 .. .. .	684
Davis:—Hornsey Local Board .. .. .	C. A. [1893] 1 Q. B. 756 .. .. .	1912
Davis v. Ingram .. .. .	[1897] 1 Ch. 477 .. .. .	1408
Davis v. Leicester Corporation .. .. .	C. A. [1894] 2 Ch. 208 .. .. .	224, 543
Davis:—Levy v. .. .. .	[1900] W. N. 174 .. .. .	1700
Davis:—Lloyd Phillips v. In re Bowen .. .. .	[1893] 2 Ch. 491 .. .. .	279, 2347
Davis v. Martin. In re Queensland Land and Coal Co. .. .. .	[1894] 3 Ch. 181 .. .. .	335
Davis v. Norton. In re Counties Conservative Permanent Benefit Building Society .. .. .	[1900] 2 Ch. 819 .. .. .	233
Davis v. Reilly .. .. .	[1897] W. N. 152 (2); [1898] 1 Q. B. 1 .. .. .	191
Davis v. Whitehead. In re Marlborough (Duke of) .. .. .	[1894] 2 Ch. 133 .. .. .	851
Davis & Sons, Ltd. v. Taff Vale Ry. Co. .. .. .	C. A. [1894] 1 Q. B. 43; H. L. (E.) [1895] A. C. 542 .. .. .	1661
Davis (Third Party). Gooch v. Clutterbuck .. .. .	C. A. [1899] W. N. 96; [1899] 2 Q. B. 148 .. .. .	
Davis & Timmins, Ltd.:—Irons v. .. .. .	C. A. [1899] 2 Q. B. 330 .. .. .	1226
Davison:—Norton v. .. .. .	C. A. [1899] W. N. 12 (12); [1899] 1 Q. B. 401 .. .. .	1815
Davy, In re. .. .. .	C. A. [1892] 3 Ch. 38 .. .. .	1189
Daw v. Herring .. .. .	[1892] 1 Ch. 284 .. .. .	1415
Dawes v. Thomas .. .. .	C. A. [1892] 1 Q. B. 414 .. .. .	1082, 2111
Dawnay (Archibald D.), Ltd., In re .. .. .	[1900] W. N. 152 .. .. .	395
Dawson, In re. Ex parte Dawson .. .. .	[1899] W. N. 53; [1899] 2 Q. B. 54 .. .. .	128
Dawson v. African Consolidated Land and Trading Co. .. .. .	C. A. [1898] 1 Ch. 6 .. .. .	337
Dawson:—Black v. .. .. .	C. A. [1895] 1 Q. B. 848 .. .. .	1540
Dawson:—Bradford v. .. .. .	[1897] 1 Q. B. 307 .. .. .	866
Dawson:—Gold Reefs of Western Australia v. .. .. .	[1896] W. N. 171 (8); [1897] 1 Ch. 115 .. .. .	1491
Dawson v. Higgins. In re Grainger .. .. .	C. A. [1900] W. N. 158; [1900] 2 Ch. 756 .. .. .	2326, 2342
Dawson & Son:—McNicholas v. .. .. .	C. A. [1899] 1 Q. B. 773 .. .. .	1225
Dawson:—Rooke v. .. .. .	[1895] 1 Ch. 480 .. .. .	273
Dawson's Trusts, In re .. .. .	[1899] W. N. 134 .. .. .	2167
Day, In re. Sprake v. Day .. .. .	[1898] 2 Ch. 510 .. .. .	223
Day:—Att.-Gen. v. .. .. .	[1899] W. N. 207; [1900] 1 Ch. 31 .. .. .	278
Day v. Kelland .. .. .	C. A. [1900] W. N. 234; [1900] 2 Ch. 745 .. .. .	1277
Day v. Longhurst .. .. .	[1893] W. N. 3 .. .. .	193
Day:—McKenzie v. .. .. .	[1893] 1 Q. B. 289 .. .. .	1109
Day & Sons:—Palmer v. .. .. .	[1895] 2 Q. B. 618 .. .. .	169
Day v. Singleton .. .. .	C. A. [1899] 2 Ch. 320 .. .. .	2227

Name of Case.	Volume and Page.	Column of Digest.
Deacon:—Bagshawes, <i>Ld. v.</i> .. ..	C. A. [1898] 2 Q. B. 173 ..	1923
Deakin, <i>In re. Ex parte Cathcart</i> .. ..	C. A. [1900] 2 Q. B. 478 ..	1849
Deakin, <i>In re. Ex parte Daniell</i> .. ..	C. A. [1900] 2 Q. B. 489 ..	119
Deakin, <i>In re. Starkey v. Eyres</i> .. ..	[1894] 3 Ch. 565 ..	2333
Deakin:—Abrahams <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 516 ..	1242
Dean:—Anderson <i>v.</i> .. ..	C. A. [1894] 2 Q. B. 222 ..	1140, 1500
Dean <i>v. Dean</i> .. ..	[1891] 3 Ch. 150 ..	951, 2321
Dean, A. R., <i>Ld.</i> :—Mason <i>v.</i> .. ..	C. A. [1900] W. N. 48; [1900] 1 Q. B. 770 ..	1230
Deane <i>v. Croft. In re Croft</i> .. ..	[1892] 1 Ch. 652 ..	1469, 1728
Dear:—Hollington <i>v.</i> .. ..	[1895] W. N. 35 ..	565, 920
De Beaufort, <i>In the Goods of</i> .. ..	[1893] P. 231 ..	1594, 1601
De Beers Consolidated Mines:—Kimberley Waterworks Co. <i>v.</i> .. ..	P. C. [1897] A. C. 515 ..	260
De Beers Consolidated Mines, <i>Ld.</i> :—London and South African Exploration Co. <i>v.</i> .. ..	P. C. [1895] A. C. 451 ..	261
Debenham:—Bellamy <i>v.</i> .. ..	C. A. [1891] 1 Ch. 412 ..	2228
Debenham & Walker, <i>In re</i> .. ..	[1895] 2 Ch. 430 ..	2035
Debenture-holders' Actions, <i>In re</i> .. ..	[1900] W. N. 58 ..	468
De Bernardy:—Rees <i>v.</i> .. ..	[1896] 2 Ch. 437 ..	2024
De Bernales <i>v. New York Herald</i> .. ..	[1893] 2 Q. B. 97, n. ..	1535
De Braam <i>v. Ford</i> .. ..	[1899] W. N. 228; C. A. [1899] W. N. 239; [1900] 1 Ch. 142 }	208
De Braam:—Woolfe <i>v.</i> .. ..	C. A. [1899] W. N. 239 ..	1557
Debtor (A), <i>In re. Ex parte The Debtor</i> .. ..	C. A. [1898] 2 Q. B. 576 ..	159
De Bulmes:—Montgomery & Co. <i>v.</i> .. ..	C. A. [1898] 2 Q. B. 420 ..	590
De Cetto <i>v. Hope. In re Hope</i> .. ..	[1899] W. N. 78; C. A. [1899] W. N. 113; [1899] 2 Ch. 679 }	47, 886
De Cetto <i>v. Hope. In re Hope</i> .. ..	[1900] W. N. 76 ..	887
Déchène <i>v. Montreal (City)</i> .. ..	P. C. [1894] A. C. 640 ..	256
De Clifford's Estate (Lord), <i>In re. Lord De Clifford v. Quilter. The Same v. Lansdowne (Marquis of)</i> .. ..	[1900] 2 Ch. 707 ..	2173
Decroix, Verley & Cie.:—Meyer & Co. <i>v.</i> .. ..	H. L. (E.) [1891] A. C. 520 ..	190
Deeley <i>v. Perkes</i> .. ..	H. L. (E.) [1896] A. C. 496 ..	1435
Deeming, <i>Ex parte</i> .. ..	P. C. [1892] A. C. 422 ..	1591
Deeping, St. Nicholas (Overseers):—Att.-Gen. <i>v.</i> .. ..	[1892] W. N. 183 ..	1675
Deerhurst (Lord):—Seaton <i>v.</i> .. ..	C. A. [1895] 1 Q. B. 853 ..	165
D'Errico <i>v. Samuel</i> .. ..	C. A. [1896] 1 Q. B. 163 ..	595
D'Esterre <i>v. Waverley Type Writer. In re Waverley Type Writer</i> .. ..	[1898] 1 Ch. 699 ..	319
D'Eyncourt:—Bostock <i>v. In re Yates</i> .. ..	[1891] 3 Ch. 53 ..	2335
De Freville:—Nash <i>v.</i> .. ..	C. A. [1900] 2 Q. B. 72 ..	195
De Grey:—Reg. <i>v.</i> .. ..	[1900] W. N. 38; [1900] 1 Q. B. 521 ..	1673
De Hayn <i>v. Garland. In re De Linden. In re Spurrier's Settlement</i> .. ..	[1897] 1 Ch. 453 ..	1196
D'Hédouville:—Hope <i>v.</i> .. ..	[1893] 2 Ch. 361 ..	1854
De Hoghton, <i>In re. De Hoghton v. De Hoghton</i> .. ..	[1895] 2 Ch. 517; C. A. [1896] 1 Ch. 855 ..	1780
De Hoghton, <i>In re. De Hoghton v. De Hoghton</i> .. ..	[1896] 2 Ch. 385 ..	1468
Deighton and Harris's Contract, <i>In re</i> .. ..	C. A. [1898] 1 Ch. 458 ..	2219
Delaforce <i>v. Delaforce</i> .. ..	[1892] W. N. 68 ..	701
"Delano," The. Neptune Steam Navigation Co. <i>v. Selater</i> .. ..	C. A. [1895] P. 40 ..	2070

Name of Case.	Volume and Page.	Column of Digest.
De Las Rivas—Firth & Sons <i>v.</i> .. ..	[1893] 1 Q. B. 768 .. ..	1488, 1540
De Laubenque <i>v.</i> De Laubenque .. ..	[1898] W. N. 154 (4); [1899] P. 42 .. ..	703
Delhi Steamship Co., In re .. ..	C. A. [1895] 1 Ch. 3 .. ..	442
De Linden, In re. In re Spurrier's Settlement. De Hayn <i>v.</i> Garland .. ..	[1897] 1 Ch. 453 .. ..	1196
Dell :—Miller <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 468 .. ..	658, 1130
Dellwick's Patent, In re .. ..	[1896] 2 Ch. 705 .. ..	1434
Delmar Charitable Trust, In re .. ..	[1897] 2 Ch. 163 .. ..	2361
Delmege :—Jenoure <i>v.</i> .. ..	P. C. [1891] A. C. 73 .. ..	649
Delobbel-Flipo :—Morris <i>v.</i> .. ..	[1892] 2 Ch. 352 .. ..	209
Delobbel-Flipo <i>v.</i> Varty .. ..	[1893] 1 Q. B. 663 .. ..	597, 1527
Delve :—Pharmaceutical Society <i>v.</i> .. ..	[1894] 1 Q. B. 71 .. ..	1452
Demers :—Reg. <i>v.</i> .. ..	P. C. [1900] A. C. 103 .. ..	241
De Mestre <i>v.</i> West .. ..	P. C. [1891] A. C. 264 .. ..	1329, 1910
Dempsey :—Castlegate Steamship Co. <i>v.</i> .. ..	[1892] 1 Q. B. 54; C. A. [1892] 1 Q. B. 854 .. ..	1964
Dempsey <i>v.</i> Keegan .. ..	C. A. (Ir.) [1898] W. N. 117 .. ..	1370
Deneke, In re. Peters <i>v.</i> Banchereau .. ..	[1895] W. N. 28 .. ..	2339
De Nicols, In re. De Nicols <i>v.</i> Curlier .. ..	[1900] W. N. 146; [1900] 2 Ch. 410 .. ..	495
De Nicols <i>v.</i> Curlier .. ..	[1898] 1 Ch. 403; reversed by C. A. [1898] 2 Ch. 60; H. L. (E.) [1899] W. N. 255; [1900] A. C. 21 .. ..	495
Dennis, In re. Ex parte Dennis .. ..	[1895] 2 Q. B. 630 .. ..	157
Dennis, In the Goods of .. ..	[1891] P. 326 .. ..	1620
Dennis, In the Goods of .. ..	[1899] P. 191 .. ..	1606
Dennis :—Reg. <i>v.</i> .. ..	C. C. R. [1894] 2 Q. B. 458 .. ..	830
Dennison <i>v.</i> Jeffs .. ..	[1896] 1 Ch. 611 .. ..	226
Denny :—Keen <i>v.</i> .. ..	[1894] 3 Ch. 169 .. ..	734
Densham's Trade-mark, In re .. ..	C. A. [1895] 2 Ch. 176 .. ..	2129
Dent :—Eastern Telegraph Co. <i>v.</i> .. ..	C. A. [1899] 1 Q. B. 835 .. ..	1071
Dent <i>v.</i> De Pothonier. In re De Pothonier .. ..	[1900] W. N. 165; [1900] 2 Ch. 529 .. ..	2186
Denton :—Andrews <i>v.</i> .. ..	[1897] 2 Q. B. 37 .. ..	1110
Denton, Ex parte. Reg. <i>v.</i> Sharman .. ..	[1898] 1 Q. B. 578 .. ..	1115
Denton <i>v.</i> Legge .. ..	[1895] W. N. 46 .. ..	66
Denver Hotel Co., In re .. ..	C. A. [1893] 1 Ch. 495 .. ..	387
De Pass <i>v.</i> Capital and Industries Corporation .. ..	[1891] 1 Q. B. 216; H. L. (E.) [1892] A. C. 90 .. ..	78
De Pass :—Vinnal <i>v.</i> .. ..	H. L. (E.) [1892] A. C. 90 .. ..	78
De Penny, In re. De Penny <i>v.</i> Christie .. ..	[1891] 2 Ch. 63 .. ..	1544
De Pothonier, In re. Dent <i>v.</i> De Pothonier .. ..	[1900] W. N. 165; [1900] 2 Ch. 529 .. ..	2186
De Préville :—Att.-Gen. <i>v.</i> .. ..	[1899] 2 Q. B. 238; C. A. [1899] W. N. 255; [1900] 1 Q. B. 223 .. ..	1748
De Quetteville <i>v.</i> Hamon (Perrée) .. ..	P. C. [1893] A. C. 532 .. ..	1021
Derbshire <i>v.</i> Montagu. In re Montagu .. ..	[1897] 1 Ch. 685; C. A. [1897] 2 Ch. 8 .. ..	1863
Derby Corporation <i>v.</i> Derbyshire County Council .. ..	C. A. [1896] 2 Q. B. 297; H. L. (E.) [1897] A. C. 550 .. ..	671
Derby Corporation <i>v.</i> Grudgings .. ..	[1894] 2 Q. B. 496 .. ..	2087
Derby Corporation :—Stretton's Derby Brewery Co. <i>v.</i> .. ..	[1894] 1 Ch. 431 .. ..	1912

Name of Case.	Volume and Page.	Column of Digest.
Derby (County Council of) <i>v.</i> Urban District of Matlock Bath and Scarthin Nick .. ..	H. L. (E.) [1896] A. C. 315 ..	895
Derbyshire <i>v.</i> Houlston .. ..	[1897] 1 Q. B. 772 .. ..	22
Derbyshire County Council:—Derby Corporation <i>v.</i> .. ..	C. A. [1896] 2 Q. B. 297; H. L. (E.) [1897] A. C. 550 ..	671
Derbyshire Silkstone Coal Co. <i>v.</i> Midland Rlwy. Co. .. ..	[1896] 1 Q. B. 260 .. ..	1659
De Ricci <i>v.</i> De Ricci .. ..	[1891] P. 378 .. ..	924
De Rougemont:—West Rand Central Gold Mines Co. <i>v.</i> Driefontein Consolidated Gold Mines <i>v.</i> Janson .. ..	[1900] 2 Q. B. 339 .. ..	985
Derrington:—Handsworth District Council <i>v.</i> ..	[1897] 2 Ch. 438 .. ..	1913
De Rutzen:—Sherras <i>v.</i> .. ..	[1895] 1 Q. B. 918 .. ..	1111
De Souza <i>v.</i> Cobden .. ..	C. A. [1891] 1 Q. B. 687 ..	546, 577
De Soysa:—Murugasar Marimuttu <i>v.</i> .. ..	P. C. [1891] A. C. 69 .. ..	266
De Tabley (Lord), <i>In re.</i> Leighton <i>v.</i> Leighton .. ..	[1896] W. N. 162 (16) ..	1884
De Teissier's Settled Estates, <i>In re</i> .. ..	[1893] 1 Ch. 153 .. ..	941, 1857, 1858, 1862, 1865, 1867
De Trafford:—Kennedy <i>v.</i> .. ..	C. A. [1896] 1 Ch. 762; H. L. (E.) [1897] A. C. 180 ..	1302
Deuchar:—Gray <i>v.</i> .. ..	Registration App. Ct. (Sc.) [1897] W. N. 123 .. ..	1387
Deutsche National Bank <i>v.</i> Paul .. ..	[1898] 1 Ch. 283 .. ..	1540
Devenish:—Neal <i>v.</i> .. ..	[1894] 1 Q. B. 544 .. ..	17
Devenish <i>v.</i> Pester. <i>In re</i> Lowman .. ..	C. A. [1895] 2 Ch. 348 .. ..	504, 2302, 2347
De Vere Beauclerk <i>v.</i> De Vere Beauclerk .. ..	[1891] W. N. 12; [1891] P. 189 ..	702
Devereux <i>v.</i> Clarke & Co. .. ..	[1891] 2 Q. B. 582 .. ..	646, 677
De-Verges <i>v.</i> Sandermon, Clark & Co. .. ..	[1900] W. N. 252 .. ..	1302
Devon and Exeter Constitutional Newspaper Co.:—Dunn <i>v.</i> .. ..	[1895] 1 Q. B. 211, n. .. ..	1521, 1524
Devon's (Earl of) Settled Estates. White <i>v.</i> Earl of Devon. <i>In re</i> Steer. Steer <i>v.</i> Dobell ..	[1896] 2 Ch. 562 .. ..	1136
Devonport Corporation:—Thomas <i>v.</i> .. ..	C. A. [1900] 1 Q. B. 16 .. ..	1141
Devonshire (Duke of):—Mackenzie <i>v.</i> .. ..	H. L. (Sc.) [1896] A. C. 400 ..	1842
Dew <i>v.</i> Kennedy. <i>In re</i> Smith .. ..	[1892] W. N. 106 .. ..	2315
Dewhirst:—Kay <i>v.</i> <i>In re</i> Wilcox .. ..	[1898] 1 Ch. 95; [1897] W. N. 172 (12) .. ..	2299
De Wilton, <i>In re.</i> De Wilton <i>v.</i> Montefiore ..	[1900] W. N. 163; [1900] 2 Ch. 481 .. ..	1212
Dexter's Application, <i>In re.</i> <i>In re</i> Wills's Trade-marks .. ..	[1893] 2 Ch. 262 .. ..	2137
"Diana," (SS.) <i>v.</i> SS. "Clieveden." The Clieveden .. ..	P. C. [1894] A. C. 625 .. ..	1947
Dibb <i>v.</i> Brook & Sons .. ..	[1894] 2 Q. B. 338 .. ..	115, 1422
Dibb <i>v.</i> Walker .. ..	[1893] 2 Ch. 429 .. ..	1126, 2071
Dibbins <i>v.</i> Dibbins .. ..	[1896] 2 Ch. 348 .. ..	518
Dicido Pier Co., <i>In re</i> .. ..	[1891] 2 Ch. 354 .. ..	386
Dick, <i>In re.</i> Lopes <i>v.</i> Hume-Dick (Hume <i>v.</i> Lopes) .. ..	H. L. (E.) [1892] A. C. 112; C. A. [1891] 1 Ch. 423 ..	2189
Dick <i>v.</i> Fraser. <i>In re</i> Macdonald .. ..	[1897] 2 Ch. 181 .. ..	1125
Dickins <i>v.</i> Gill .. ..	[1896] 2 Q. B. 310 .. ..	1464

Name of Case.	Volume and Page.	Column of Digest.
Dickinson, In the Goods of .. ..	[1891] P. 292 .. ..	1603
Dickinson:—James v. In re Matson .. ..	[1897] 2 Ch. 509 .. ..	1012
Dicks v. Dicks .. ..	[1899] P. 275 .. ..	718
Dickson v. Law .. ..	[1895] 2 Ch. 62 .. ..	1542
Dickson:—Macdonald v. .. ..	Registration App. Ct. (Sc.) [1897] W. N. 123 .. ..	1387
“Dictator,” The (No. 1) .. ..	[1892] P. 64 .. ..	1994, 2002
— (No. 2) .. ..	[1892] P. 304 .. ..	1994, 2002
Didcot, Newbury and Southampton Rlwy. Co. v. Great Western Rlwy. Co. and London and South Western Rlwy. Co. .. ..	C. A. [1897] 1 Q. B. 33 .. ..	1661
Didisheim v. London and Westminster Bank .. ..	[1899] W. N. 107; C. A. [1900] W. N. 87; [1900] 2 Ch. 15 ..	494
Die Badische Anilin und Soda Fabrik v. Schott, Segner & Co. .. ..	[1892] 3 Ch. 447 .. ..	1721
Diederichsen v. Farquharson Brothers .. ..	C. A. [1898] 1 Q. B. 150 .. ..	1941
Dillon v. Harverfordwest (Corporation) .. ..	[1891] 1 Q. B. 575 .. ..	1773
Dilworth v. Stamps (Commissioners of). Dilworth v. Land and Income Tax (Commissioner for) .. ..	P. C. [1899] A. C. 99 .. ..	1335
Dimond v. Newburn. In re Freman .. ..	[1897] W. N. 159 (9); [1898] 1 Ch. 28 .. ..	1883
Dingle v. Coppen. Coppen v. Dingle .. ..	[1899] 1 Ch. 726 .. ..	1878
Diprose:—Johnson v. .. ..	C. A. [1893] 1 Q. B. 512 .. ..	212
Diprose:—West v. .. ..	[1900] W. N. 16; [1900] 1 Ch. 337 .. ..	207
Disborough:—Coulson v. .. ..	C. A. [1894] 2 Q. B. 316 .. ..	782
Discount Banking Co. of England and Wales, Ex parte. In re Fox & Jacobs .. ..	[1894] 1 Q. B. 438 .. ..	167
Discount Banking Co. of England and Wales v. Lambarde .. ..	C. A. [1893] 2 Q. B. 329 .. ..	1011
Ditton:—Jenks v. .. ..	[1897] W. N. 56 (4) .. ..	883
Dix:—Nash v. .. ..	[1898] W. N. 32 (7) .. ..	2063
Dixon, In re .. ..	[1892] P. 386 .. ..	604, 739
Dixon, In re. Heynes v. Dixon .. ..	[1899] W. N. 134; [1899] 2 Ch. 561; C. A. [1900] W. N. 144; [1900] 2 Ch. 561 .. ..	910
Dixon, In re. Tousey v. Sheffield .. ..	[1898] W. N. 65 (2); affirmed by C. A. [1898] 2 Ch. 443 .. ..	553
Dixon:—Brunton v. .. ..	[1892] W. N. 105 .. ..	922
Dixon v. Calcraft .. ..	C. A. [1892] 1 Q. B. 458 .. ..	1928
Dixon v. Great Western Rlwy. Co. .. ..	[1896] 2 Q. B. 333; C. A. [1897] 1 Q. B. 300 .. ..	1645
Dixon v. Kennaway & Co. .. ..	[1900] W. N. 94; [1900] 1 Ch. 833 .. ..	393
Dixon:—London County Council v. .. ..	[1899] 1 Q. B. 496 .. ..	1173
Dixon v. Winch .. ..	C. A. [1900] 1 Ch. 736 .. ..	1306
Dobbs v. Brain .. ..	C. A. [1892] 2 Q. B. 207 .. ..	1594
Dobell & Co. v. Steamship Rossmore Co. .. ..	C. A. [1895] 2 Q. B. 408 .. ..	1970
Dobell:—Steer v. In re Steer. In re Earl of Devon's Settled Estates. White v. Earl of Devon .. ..	[1896] 2 Ch. 562 .. ..	1136
Dobell & Co. v. Green & Co. .. ..	C. A. [1900] W. N. 41; [1900] 1 Q. B. 526 .. ..	1935
Dobell & Co. v. Watts, Ward & Co. .. ..	C. A. [1891] W. N. 131 .. ..	1966
Dobree:—Att.-Gen. v. .. ..	[1900] 1 Q. B. 442 .. ..	1744
Dobson v. Festi, Rasini & Co. .. ..	C. A. [1891] 2 Q. B. 92 .. ..	1536

Name of Case.	Volume and Page.	Column of Digest.
Docksey <i>v.</i> Else .. .. .	[1891] W. N. 65 .. ..	1281
Dodd:—Att.-Gen. <i>v.</i> .. .. .	[1894] 2 Q. B. 150 .. ..	1729
Dodd <i>v.</i> Churton .. .. .	C. A. [1897] 1 Q. B. 562 .. ..	222
Dodd:—Sovereign Life Assurance Co. .. .. .	[1892] 1 Q. B. 405; C. A. [1892] 2 Q. B. 573 .. ..	170
Dodds:—Dalglish <i>v.</i> .. .. .	C. A. [1899] W. N. 165 .. ..	1382
Dodds <i>v.</i> Pearson. In re Carter .. .. .	[1900] W. N. 90; [1900] 1 Ch. 801 .. ..	2360
Dodds <i>v.</i> South Shields Union (Assessment Committee) .. .. .	[1895] 2 Q. B. 133 .. ..	1678
Dodginton:—Att.-Gen. <i>v.</i> .. .. .	[1897] 1 Q. B. 722; C. A. [1897] 2 Q. B. 373 .. ..	1738
Dodson:—Kennedy <i>v.</i> .. .. .	C. A. [1895] 1 Ch. 334 .. ..	676
Doig <i>v.</i> Anthony Birrell Pearce & Co. In re Anthony Birrell Pearce & Co. In re Same. Groos <i>v.</i> Same .. .. .	[1899] W. N. 76; [1899] 2 Ch. 50 .. ..	775
Dodsworth, In re. Spence <i>v.</i> Dodsworth .. .. .	[1891] 1 Ch. 657 .. ..	774
Doetsch, In re. Matheson <i>v.</i> Ludwig .. .. .	[1896] 2 Ch. 836 .. ..	496
Doherty <i>v.</i> Chambers .. .. .	C. A. (Ir.) [1898] W. N. 100 .. ..	1392
Dolby:—Reg. <i>v.</i> (No. 1) .. .. .	[1892] 2 Q. B. 301 .. ..	1189, 1192
————— (No. 2) .. .. .	[1892] 2 Q. B. 736 .. ..	578, 896
Dolcini <i>v.</i> Dolcini .. .. .	[1895] 1 Q. B. 898 .. ..	198
Doman:—Haynes <i>v.</i> .. .. .	C. A. [1899] W. N. 65; [1899] 2 Ch. 13 .. ..	1234, 1721
Dombe & Sons, In re .. .. .	[1895] W. N. 146 (2) .. ..	457
Dombe & Son <i>v.</i> Playfair Bros. .. .. .	C. A. [1897] 1 Q. B. 368 .. ..	1497
Dominion Bank, Toronto:—Bank of Scotland <i>v.</i> .. .. .	H. L. (Sc.) [1891] A. C. 592 .. ..	194
Donaldson <i>v.</i> Bamber. In re Stephenson .. .. .	C. A. [1896] W. N. 168 (12); [1897] 1 Ch. 75 .. ..	2364
Donaldson:—Bates <i>v.</i> .. .. .	C. A. [1896] 2 Q. B. 241 .. ..	1056
Donaldson:—Rabbeth <i>v.</i> In re Abdy (No. 1) .. .. .	C. A. [1895] W. N. 12 .. ..	40, 923
————— (No. 2) .. .. .	C. A. [1895] 1 Ch. 455 .. ..	33, 643
Donaldson <i>v.</i> South Shields Corporation .. .. .	[1898] W. N. 170 (13); C. A. [1899] W. N. 6 (2) .. ..	2083
Doncaster Union <i>v.</i> Manchester, Sheffield and Lincolnshire Rlwy. Co. .. .. .	H. L. (E.) [1895] A. C. 133, n. .. ..	1684, 1687
Doncaster Union (Guardians of the Poor of):—Manchester, Sheffield and Lincolnshire Rlwy. Co. <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 117 .. ..	1457
Donellan:—London and North Western Rlwy. <i>v.</i> .. .. .	[1898] 1 Q. B. 748; C. A. [1898] 2 Q. B. 7; H. L. E. [1899] A. C. 79 .. ..	1664
Donisthorpe and Manchester, Sheffield and Lincolnshire Rlwy. Co., In re .. .. .	C. A. [1897] 1 Q. B. 671 .. ..	1660
Donnelly <i>v.</i> Broughton .. .. .	P. C. [1891] A. C. 435 .. ..	1337, 1596, 1619
Donnelly <i>v.</i> Graham. Connolly <i>v.</i> Riddall, Martin <i>v.</i> Hanrahan (No. 2) .. .. .	C. A. (Ir.) [1897] W. N. 103 .. ..	1367
Donovan <i>v.</i> Laing, Wharton and Down Construction Syndicate .. .. .	C. A. [1893] 1 Q. B. 629 .. ..	1238
Doody, In re. Fisher <i>v.</i> Doody. Hibbert <i>v.</i> Lloyd .. .. .	C. A. [1893] 1 Ch. 129 .. ..	1303, 2058
Doogan <i>v.</i> Colquhoun .. .. .	C. A. (Ir.) [1899] W. N. 148 .. ..	1390
"Dora Forster," The .. .. .	[1900] P. 241 .. ..	1001
Doré Gallery, Ltd., In re .. .. .	[1891] W. N. 98 .. ..	419, 458, 484
Dorking Union <i>v.</i> St. Saviour's Union .. .. .	C. A. [1898] 1 Q. B. 594 .. ..	1460

Name of Case.	Volume and Page.	Column of Digest.
<i>Dormer v. Ward</i> .. .. .	[1900] P. 130 .. .. .	711
<i>Dorrell v. Dorrell</i> In re Russell .. .. .	[1895] 2 Ch. 698 .. .. .	2348
<i>Douglas v. Bolam</i> .. .. .	C. A. [1900] W. N. 234; [1900] 2 Ch. 749 .. .. .	2190
<i>Douglas</i> :— <i>Rég. v.</i> .. .. .	[1898] 1 Q. B. 560 .. .. .	1044
<i>Dougal v. McCarthy</i> .. .. .	C. A. [1893] 1 Q. B. 736 .. .. .	1065
<i>Douglas Norman &amp; Co., In re</i> .. .. .	[1897] W. N. 171 (8); [1898] 1 Ch. 199 .. .. .	2051, 2052
<i>Douglass v. Pintsch's Patent Lighting Co.</i> .. .. .	[1896] W. N. 155 (9); [1897] 1 Ch. 176 .. .. .	1443
<i>Dover (Corporation) and Kent (County Council), Ex parte</i> .. .. .	[1891] 1 Q. B. 389; C. A. [1891] 1 Q. B. 725 .. .. .	42, 578, 579
<i>Dover (Justices of)</i> :— <i>Baldwin v.</i> .. .. .	[1892] 2 Q. B. 421 .. .. .	1101
<i>Dowling v. Dowling</i> .. .. .	[1898] P. 228 .. .. .	923
<i>Dowding</i> :— <i>Duncan v.</i> .. .. .	[1897] 1 Q. B. 575 .. .. .	1111
<i>Dowling</i> :— <i>Hunter v. (No. 1)</i> .. .. .	[1893] 1 Ch. 391; C. A. [1893] 3 Ch. 212 .. .. .	1412
————— <i>(No. 2)</i> .. .. .	[1895] 2 Ch. 223 .. .. .	1412
<i>Down</i> :— <i>Jacob v.</i> .. .. .	[1900] W. N. 99; [1900] 2 Ch. 156 .. .. .	1068
<i>Downes v. Cottam. In re Beddoe</i> .. .. .	C. A. [1893] 1 Ch. 547 .. .. .	558
<i>Downes v. Johnson</i> .. .. .	[1895] 2 Q. B. 203 .. .. .	863
<i>Downes v. Wolverhampton District Brewery</i> In re Wolverhampton District Brewery .. .. .	[1899] W. N. 229 .. .. .	324
<i>Downie v. Summerson. In re Summerson</i> .. .. .	[1900] 1 Ch. 112, n. .. .. .	2244
<i>Downing, In re. Ex parte Mardon</i> .. .. .	C. A. [1891] W. N. 180 .. .. .	112
<i>Downton</i> :— <i>Wilkinson v.</i> .. .. .	[1897] 2 Q. B. 57 .. .. .	13
<i>Dowse v. Gorton</i> .. .. .	H. L. (E.) [1891] A. C. 190 .. .. .	800
<i>Dowsett v. Culver. In re Lepine</i> .. .. .	C. A. [1892] 1 Ch. 210 .. .. .	801
<i>Dowsing Radiant Heat Co.</i> :— <i>Tallerman v.</i> .. .. .	[1899] W. N. 125; C. A. [1899] W. N. 234; [1900] 1 Ch. 1 .. .. .	817
<i>Dowton</i> :— <i>Tendring Union (Guardians of)</i> .. .. .	C. A. [1891] 3 Ch. 265 .. .. .	2086, 2089
<i>Dracup, In re. Field v. Dracup (No. 1)</i> .. .. .	[1892] W. N. 43 .. .. .	791, 1505
————— <i>(No. 2)</i> .. .. .	[1894] 1 Ch. 59 .. .. .	1409
<i>Drake, In re. In re Palk. Chamberlain v. Drake</i> .. .. .	[1892] W. N. 112 .. .. .	2186
<i>Drax v. Ffooks</i> .. .. .	[1895] W. N. 147 (5); [1896] 1 Q. B. 1; C. A. [1896] 1 Q. B. 238 .. .. .	1391
<i>Drew, In re. Drew v. Drew</i> .. .. .	[1898] W. N. 175 (17); [1899] 1 Ch. 336 .. .. .	2343
<i>Drew v. Guy</i> .. .. .	C. A. [1894] 3 Ch. 25 .. .. .	1723
<i>Drew</i> :— <i>Moubray Rowan and Hicks v.</i> .. .. .	P. C. [1893] A. C. 295 .. .. .	2260
<i>Drew v. Willis. Ex parte Martin</i> .. .. .	C. A. [1891] 1 Q. B. 450 .. .. .	269
<i>Drewitt</i> :— <i>Gwynne v.</i> .. .. .	[1894] 2 Ch. 616 .. .. .	2071, 2289
<i>Dreyfus Brothers &amp; Co.</i> :— <i>Peruvian Guano Co. v.</i> .. .. .	H. L. (E.) [1892] A. C. 166 .. .. .	635
<i>Driefontein Consolidated Gold Mines v. Janson. West Rand Central Gold Mines Co. v. De Rougemont</i> .. .. .	[1900] 2 Q. B. 339 .. .. .	985
<i>Drielsma v. Manifold</i> .. .. .	C. A. [1894] 3 Ch. 100 .. .. .	2033
<i>Driffeld Gas Light Co., In re</i> .. .. .	[1898] 1 Ch. 451 .. .. .	419
<i>Drincqbier v. Wood</i> .. .. .	[1898] W. N. 151 (13); [1899] 1 Ch. 393 .. .. .	1513
<i>Driscoll</i> :— <i>Watts v.</i> .. .. .	[1900] W. N. 77; C. A. [1900] W. N. 261 .. .. .	1413

Name of Case.	Volume and Page.	Column of Digest.
Driver v. Broad .. .. .	{ [1893] 1 Q. B. 539; C. A. [1893] 1 Q. B. 744 .. .. .	335, 844
Druce v. Young .. .. .	[1899] P. 84 .. .. .	746
Drucker:—Printing Telegraph and Construction Co. of the Agence Havas v. .. .. .	C. A. [1894] 2 Q. B. 801 .. .. .	773
Drummond:—Graham v. .. .. .	[1896] 1 Ch. 968 .. .. .	793
Drummond and Davie's Contract, In re .. .. .	[1891] 1 Ch. 524 .. .. .	{ 902, 2254, 2323
Drury v. Army and Navy Auxiliary Co-operative Supply .. .. .	[1896] 2 Q. B. 271 .. .. .	1157
Dubowski & Sons v. Goldstein .. .. .	C. A. [1896] 1 Q. B. 478 .. .. .	1725
Du Cane and Nettlefold's Contract, In re .. .. .	[1898] 2 Ch. 96 .. .. .	1892
Duck v. Mayeu .. .. .	C. A. [1892] 2 Q. B. 511 .. .. .	1710
Duckham v. Gibbs .. .. .	[1900] 1 Q. B. 394 .. .. .	722
Duckworth:—Reg. v. .. .. .	C. C. R. [1892] 2 Q. B. 83 .. .. .	619
Dudley (Earl):—Bell v. .. .. .	[1895] 1 Ch. 182 .. .. .	{ 1268, 2068
Dudley v. Champion. In re Champion .. .. .	C. A. [1893] 1 Ch. 101 .. .. .	{ 2247, 2360, 2367
Dudley and Kingswinford Tramways, In re .. .. .	[1893] W. N. 162 .. .. .	{ 1364, 2150
Duffield v. Williams. In re Berry .. .. .	[1896] 1 Ch. 939 .. .. .	1508
Duffy:—Bishop v. .. .. .	{ Registration App. Ct. (Sc.) [1898] W. N. 88 .. .. .	1396
Duggan:—London and Canadian Loan and Agency Co. v. .. .. .	P. C. [1893] A. C. 506 .. .. .	91, 1205
Dugmore v. Suffield .. .. .	[1896] W. N. 50 (13) .. .. .	2198
Duke v. Clarke .. .. .	[1894] W. N. 100 .. .. .	{ 1048, 1560
Duke v. Davis .. .. .	{ [1893] 2 Q. B. 107; C. A. [1893] 2 Q. B. 260 .. .. .	598
"Duke of Buccleuch," The (No. 1). The Eastern Steamship Co. v. Smith .. .. .	H. L. (E.) [1891] A. C. 310 .. .. .	1953
————— (No. 2) .. .. .	C. A. [1892] P. 201 .. .. .	{ 1514, 1997
"Dunbeth," The .. .. .	[1897] P. 133 .. .. .	1967
Duncan, In re .. .. .	[1899] 1 Ch. 387 .. .. .	1250
Duncan, In re. Ex parte Duncan .. .. .	[1892] 1 Q. B. 331 .. .. .	136
Duncan, In re. Ex parte Official Receiver .. .. .	C. A. [1892] 1 Q. B. 879 .. .. .	136
Duncan, In re. Terry v. Sweeting .. .. .	{ [1899] W. N. 14 (1); [1899] 1 Ch. 387 .. .. .	787
Duncan v. Dowding .. .. .	[1897] 1 Q. B. 575 .. .. .	1111
Duncan:—Lawson v. In re Hewit .. .. .	[1891] 3 Ch. 568 .. .. .	793
Duncan:—Morris v. .. .. .	{ [1898] W. N. 148 (4); [1899] 1 Q. B. 4 .. .. .	825
Duncan & Co.:—Vanderspar & Co. v. .. .. .	[1891] W. N. 178 .. .. .	1941
Duncombe:—Ward v. .. .. .	H. L. (E.) [1893] A. C. 369 .. .. .	{ 1290, 2194
Dundee Magistrates:—Inland Revenue v. .. .. .	{ Ct. of Sess. (Sc.) [1898] W. N. 127 .. .. .	1774
Dundee Royal Lunatic Asylum:—Musgrave v. .. .. .	{ Ct. of Sess. (Sc.) [1896] W. N. 138 .. .. .	1754
Dunham:—Mills v. .. .. .	C. A. [1891] 1 Ch. 576 .. .. .	{ 1720, 1724
Dunhill, In re. Ex parte Dunhill .. .. .	[1894] 2 Q. B. 234 .. .. .	141
Dunhill, In re. Ex parte Wilson .. .. .	[1894] 2 Q. B. 554 .. .. .	112



Name of Case.	Volume and Page.	Column of Digest.
Dunhill v. North Eastern Ry. Co. .. .. {	[1895] W. N. 116 (13); C. A. {	1092
	[1895] W. N. 156 (3); C. A. {	
Dunleavy v. McDaid .. .. {	[1896] 1 Ch. 121 .. .. {	1390
	C. A. (1.) [1898] W. N. 104 .. .. {	
Dunlop:—Falconer v. .. .. {	Registration App. Ct. (Sc.) [1897] {	1386
	W. N. 124 .. .. {	
Dunlop & Sons v. Balfour, Williamson & Co. .. {	[1892] 1 Q. B. 507 .. .. {	1936
Dunlop Pneumatic Tyre Co. v. Neal .. .. {	[1899] W. N. 39; [1899] 1 Ch. {	
	807 .. .. {	1429
Dunlop's Trustees. Lord Advocate v. Macfarlane .. .. {	Ct. of Session (Sc.) [1896] W. N. {	
	96 .. .. {	1782
Dunmore v. Wharam .. .. {	[1898] W. N. 15 (7) .. .. {	
Dunn v. Appleton .. .. {	C. A. [1898] 1 Q. B. 564 .. .. {	587
Dunn v. Chambers .. .. {	Ct. of Sess. (Sc.) [1898] W. N. {	
	139 .. .. {	1772
Dunn v. Devon and Exeter Constitutional Newspaper Co. .. .. {	[1895] 1 Q. B. 211, n. .. .. {	
	1524 .. .. {	1521,
Dunn:—Hawke v. .. .. {	C. A. [1897] 1 Q. B. 579 .. .. {	
Dunn:—Hildesheimer v. .. .. {	[1891] W. N. 66 .. .. {	868
	[1897] 1 Q. B. 401; C. A. [1897] {	
Dunn v. Macdonald .. .. {	1 Q. B. 555 .. .. {	1575
	C. A. [1895] W. N. 160 (4); {	
Dunn v. Reg. .. .. {	[1896] 1 Q. B. 116 .. .. {	625
	H. L. (E.) [1899] W. N. 90; {	
Dunnett:—Batt (John) & Co. v. .. .. {	[1899] A. C. 428 .. .. {	2133
Dunning, In re. Sturgeon v. Lawrence .. .. {	[1894] W. N. 140 .. .. {	
Dunning v. Grosvenor Dairies .. .. {	[1900] W. N. 265 .. .. {	77
	C. A. [1899] W. N. 88; [1899] {	
Dunraven (Earl of):—Blandy-Jenkins v. .. .. {	2 Ch. 121 .. .. {	1344
	H. L. (E.) [1896] W. N. 164 (5); {	
Dunraven (Earl of):—Clarke v. The "Satanita" .. {	[1897] A. C. 59 .. .. {	772
	[1899] W. N. 83; [1899] 2 Ch. {	
Dunstable Corporation:—Brown v. .. .. {	378 .. .. {	1981
"Dunstanborough," The .. .. {	[1892] P. 363, n. .. .. {	
Dunster's Case. In re Glory Paper Mills Co. .. {	C. A. [1894] 3 Ch. 473 .. .. {	1919
Duplany v. Duplany .. .. {	[1892] P. 53 .. .. {	
Durant:—Haas v. In re Overweg .. .. {	[1899] W. N. 245; [1900] 1 Ch. {	427
	209 .. .. {	
Durant & Co. v. Roberts and Keighley, Maxsted & Co. .. .. {	C. A. [1900] W. N. 54; [1900] {	927
	1 Q. B. 629 .. .. {	
Durall v. Bellinger. In re Bellinger .. .. {	[1898] 2 Ch. 534 .. .. {	2073
Duret v. Charriere. In re Charriere .. .. {	[1896] 1 Ch. 912 .. .. {	
Durham v. Northen .. .. {	[1895] P. 66 .. .. {	1469
Durham (Lord Bishop):—Reg. v. .. .. {	C. A. [1897] 2 Q. B. 414 .. .. {	
Durham Brothers v. Robertson .. .. {	C. A. [1898] 1 Q. B. 765 .. .. {	726
Durham County Council v. Chester-le-Street Assessment Committee .. .. {	[1891] 1 Q. B. 330 .. .. {	
	[1895] 1 Q. B. 801 .. .. {	1616
Durham Justices:—Reg. v. .. .. {	[1893] W. N. 30 .. .. {	
Durnford:—Riddell v. .. .. {	[1897] W. N. 43 (12); C. A. {	753
	[1897] 2 Ch. 291 .. .. {	
Durrant v. Branksome Urban District Council .. {	[1898] 1 Ch. 419 .. .. {	75
	[1892] 1 Q. B. 486 .. .. {	
Duthy and Jesson's Contract, In re .. .. {	[1893] W. N. 65 .. .. {	580,
Dutton, In re .. .. {	[1891] 2 Q. B. 208 .. .. {	
Dutton, In re. Plunkett v. Simeon .. .. {	[1891] P. 290 .. .. {	1678
	[1892] P. 58 .. .. {	
Dutton:—France v. .. .. {		1041
Duvernay:—White v. .. .. {		
"Dwina," The .. .. {		590,
		2034
		1615
		2009

Name of Case.	Volume and Page.	Column of Digest.
Dyer <i>v.</i> Munday .. .. .	C. A. [1895] 1 Q. B. 742 ..	1239
Dyer :—Stafford <i>v.</i> .. .. .	[1895] 1 Q. B. 566 .. ..	1993
Dyer <i>v.</i> Tulley .. .. .	[1894] 2 Q. B. 794 .. ..	1030, 2070
Dyer :—Wride <i>v.</i> .. .. .	[1900] 1 Q. B. 23 .. ..	1065
Dyke <i>v.</i> Gower .. .. .	[1892] 1 Q. B. 220 .. ..	21
Dyson :—Reg. <i>v.</i> .. .. .	C. C. R. [1894] 2 Q. B. 176 ..	135, 621
Dyson and Fowke, In re .. ..	[1896] 2 Ch. 720 .. ..	1464
Dyson's Trade-mark, In re .. ..	[1891] W. N. 176 .. ..	1491
E.		
Eagers :—Gosling <i>v.</i> .. .. .	[1895] 1 Q. B. 793 .. ..	2105
Eames :—Mercers' Co. <i>v.</i> .. ..	[1891] 1 Ch. 658 .. ..	135, 627, 1117, 1162
Eames :—Perry <i>v.</i> .. .. .	[1891] 1 Ch. 658 .. ..	135, 627, 1117, 1162
Eames :—Salaman <i>v.</i> .. .. .	[1891] 1 Ch. 658 .. ..	135, 627, 1117, 1162
Earby Gas Co. :—Clegg, Parkinson & Co. <i>v.</i> ..	[1896] 1 Q. B. 592 .. ..	874
Earle <i>v.</i> Kingscote .. .. .	[1899] W. N. 244; [1900] 1 Ch. 203; C. A. [1900] W. N. 162; [1900] 2 Ch. 585 .. ..	911
Earnshaw <i>v.</i> Earnshaw .. .. .	[1896] P. 160 .. ..	929
Earnshaw-Wall, In re .. .. .	[1894] 3 Ch. 156 .. ..	2043
Earp <i>v.</i> Briggs. In re Briggs .. ..	[1894] W. N. 162 .. ..	796
East Ham Churchwardens :—Fourth City Mutual Building Society <i>v.</i> .. .. .	[1892] 1 Q. B. 661 .. ..	1034, 1038, 1689
East London Waterworks Co. <i>v.</i> Charles ..	[1894] 2 Q. B. 730 .. ..	1036, 2281
East London Waterworks Co. <i>v.</i> Foulkes ..	[1894] 1 Q. B. 819 .. ..	2280
East London Waterworks Co. <i>v.</i> Kellerman ..	[1892] 2 Q. B. 72 .. ..	2280
East London Waterworks Co. <i>v.</i> Kyffin ..	[1895] 1 Q. B. 55 .. ..	2281
East London Waterworks Co. :—Kyffin <i>v.</i> ..	[1896] 1 Q. B. 446 .. ..	2277
East London Waterworks Co. :—London County Council <i>v.</i> .. .. .	[1900] W. N. 17; [1900] 1 Q. B. 330 .. ..	2275
East London Waterworks Co. :—West Ham Central Charity Board <i>v.</i> .. ..	[1900] W. N. 37; [1900] 1 Ch. 624 .. ..	2268
East Molesey Local Board <i>v.</i> Lambeth Waterworks Co. .. .. .	C. A. [1892] 3 Ch. 289 .. ..	2277
East Riding Club and Race Course Co. :—Baird <i>v.</i> .. .. .	[1891] W. N. 144 .. ..	1558
East Stonehouse Local Board <i>v.</i> Victoria Brewery Co. .. .. .	[1895] 2 Ch. 514 .. ..	575
Eastbourne Corporation :—Bradford <i>v.</i> .. ..	[1896] 2 Q. B. 205 .. ..	1914
Eastern and Australian Steamship Co., In re ..	[1893] W. N. 31 .. ..	388
Eastern and Midland Ry. Co., In re .. ..	[1892] W. N. 173 .. ..	1663
Eastern Steamship Co. <i>v.</i> Smith. The "Duke of Buccleuch" .. .. .	H. L. (E.) [1891] A. C. 310 ..	1953
Eastern Telegraph Co. <i>v.</i> Dent .. .. .	C. A. [1899] 1 Q. B. 835 .. ..	1071
Eastman Photographic Materials Co. <i>v.</i> Comp-troller-General of Patents, Designs, and Trade-marks .. .. .	[1896] W. N. 158 (8); C. A. [1897] W. N. 48 (6); H. L. (E.) [1898] A. C. 571 .. ..	2132
Eastman Photographic Materials Co. :—Staples <i>v.</i> ..	C. A. [1896] 2 Ch. 303 .. ..	356

Name of Case.	Volume and Page.	Column of Digest.
Eastman's Settled Estates, In re .. ..	[1898] W. N. 170 (15) .. ..	1881
Easton v. Landor .. ..	C. A. [1892] W. N. 176 .. ..	2181
Easton :—Nutt v. .. ..	{ [1899] 1 Ch. 873; C. A. [1899] W. N. 239; [1900] 1 Ch. 29 .. .. }	1301
Eastwood Brothers, Ltd. v. Honley Urban Council {	[1900] W. N. 94; [1900] 1 Ch. 781 .. .. }	1920
Eaton, In re. Daines v. Eaton .. ..	[1894] W. N. 95 .. ..	1857, 2302
Eaton v. Daines .. ..	[1894] W. N. 32 .. ..	2167
Eaton v. Tapley .. ..	{ [1899] W. N. 60; [1899] 1 Q. B. 953 .. .. }	1137
Eaton & Co., In re. Ex parte Viney .. ..	[1897] 2 Q. B. 16 .. ..	131
Ebbetts :—Conquest v. .. ..	{ C. A. [1895] 2 Ch. 377; H. L. (E.) [1896] W. N. 87 (10); [1896] A. C. 490 .. .. }	1061
Ebbsmith :—South Staffordshire Tramway Co. v. .. ..	C. A. [1895] 2 Q. B. 669 .. ..	663
Eccles :—Pudney v. .. ..	[1893] 1 Q. B. 52 .. ..	861
Eccles v. Mills .. ..	P. C. [1898] A. C. 360 .. ..	1336
Eccles Corporation :—Barnett v. .. ..	{ [1900] W. N. 96; [1900] 2 Q. B. 104; C. A. [1900] W. N. 145; [1900] 2 Q. B. 423 .. .. }	574
Ecclesiastical Commrs. v. Parr .. ..	C. A. [1894] 2 Q. B. 420 .. ..	524
Ecclesiastical Commrs. v. Pinney .. ..	{ C. A. [1898] W. N. 150 (6); [1899] 1 Ch. 99 .. .. }	2240
Ecclesiastical Commrs. v. Pinney .. ..	{ [1899] W. N. 140; [1899] 2 Ch. 720; [1900] W. N. 179; [1900] 2 Ch. 736 .. .. }	2240
Ecclesiastical Commrs. :—Plumstead Board of Works v. .. ..	[1891] 2 Q. B. 361 .. ..	735, 1175
Ecclesiastical Commrs. v. Treemer .. ..	[1893] 1 Ch. 166 .. ..	1076, 1136
Ecclesiastical Commrs. v. Wodehouse .. ..	[1895] 1 Ch. 552 .. ..	751, 2269
Ecclesiastical Commrs. and New City of London Brewery Co.'s Contract, In re .. ..	[1895] 1 Ch. 702 .. ..	236
Eckersley v. Mersey Docks and Harbour Board	C. A. [1894] 2 Q. B. 667 .. ..	55
Eckersley :—Newby v. .. ..	C. A. [1899] 1 Q. B. 465 .. ..	1052
Ecroyd v. Coulthard .. ..	{ [1897] W. N. 25 (7); [1897] 2 Ch. 554; C. A. [1898] 2 Ch. 358 .. .. }	773, 825, 1495, 2286
Eddlestone :—Farrar v. In re Holmes .. ..	[1892] W. N. 177 .. ..	1509, 1533
Eddy v. Eddy .. ..	P. C. [1900] A. C. 299 .. ..	255
Eddystone Granite Quarries :—Follit v. .. ..	[1892] 3 Ch. 75 .. ..	326
Eddystone Marine Insurance Co., In re (No. 1.) Ex parte Western Insurance Co. .. ..	[1892] 2 Ch. 423 .. ..	999
..... (No. 2) .. ..	C. A. [1893] 3 Ch. 9 .. ..	427
..... (No. 3) .. ..	[1894] W. N. 30 .. ..	215, 421
"Eden," The .. ..	[1892] P. 67 .. ..	1929, 2069
"Edenbridge" (Owners of Steamship) v. Green and Owners of Steamship "Rutland." The "Rutland" .. ..	H. L. (E.) [1897] A. C. 333 .. ..	1993
"Edenmore," The .. ..	[1893] P. 79 .. ..	2002
Edey :—Silkstone and Haigh Moor Coal Co. v. ..	{ [1899] W. N. 213; [1900] 1 Ch. 167 .. .. }	2238
Edgar v. Plomley .. ..	P. C. [1900] A. C. 431 .. ..	6

Name of Case.	Volume and Page.	Column of Digest.
Edge :—Johnson v. .. .. .	C. A. [1892] 2 Ch. 1 .. ..	1442
Edge & Sons v. Gallon (W.) & Son .. ..	C. A. [1899] W. N. 137 .. ..	564
Edgell v. Wilson .. .. .	[1893] W. N. 145 .. ..	1702
Edger :—Barker v. .. .. .	P. C. [1898] A. C. 748 .. ..	1336
Edinburgh (Corporation):—Edinburgh Street Tramways Co. v. .. ..	H. L. (Sc.) [1894] A. C. 456 .. ..	2149
Edinburgh Northern Tramways Co.:—Mann v. .. ..	H. L. (Sc.) [1893] A. C. 69 .. ..	372
Edinburgh Northern Tramways Co.:—Rixon v. .. ..	H. L. (Sc.) [1893] A. C. 636 .. ..	337
Edinburgh Street Tramways Co. v. Edinburgh Corporation .. ..	H. L. (Sc.) [1894] A. C. 456 .. ..	2149
Edinburgh United Breweries, Ltd. v. Molleson .. ..	H. L. (Sc.) [1894] A. 96 .. ..	1831
Edison General Electric Co. v. Westminster and Vancouver Tramways Co. .. ..	P. C. [1897] A. C. 193 .. ..	248
Edmiston's Case (Gallagher v. Edmiston) .. ..	C. A. (Ir.) [1897] W. N. 134 .. ..	1384
Edmonton Union:—Cambridge Union v. .. ..	[1900] 2 Q. B. 111 .. ..	1461
Edmonton Union:—Midland Ry. Co. v. .. ..	C. A. [1895] 1 Q. B. 357; H. L. (E.) [1895] A. C. 485 .. ..	1040, 1457
Edmunds :—Goodier v. .. .. .	[1893] 3 Ch. 455 .. ..	520, 2350
Edmunds :—Heyl-Dia v. .. .. .	[1899] W. N. 222 .. ..	1847
Edmunds v. James .. .. .	[1892] 1 Q. B. 18 .. ..	1106
Edwardes:—Hughes (or Edwardes) v. .. ..	H. L. (Sc.) [1892] A. C. 583 .. ..	1251, 1834
Edwards, In re. Edwards v. Edwards .. ..	[1894] 3 Ch. 644 .. ..	2320, 2321
Edwards:—Att.-Gen. v. .. .. .	[1891] 1 Ch. 194 .. ..	2080
Edwards v. Brown. In re Cliff .. ..	C. A. [1895] 2 Ch. 21 .. ..	1538
Edwards:—Buckley v. .. .. .	P. C. [1892] A. C. 387 .. ..	292, 1024, 1335
Edwards v. Carter .. .. .	H. L. (E.) [1893] A. C. 360 .. ..	956
Edwards:—Cox v. In re Cox .. .. .	[1900] W. N. 89 .. ..	8
Edwards:—Cunnack v. .. .. .	[1895] 1 Ch. 489; reversed C. A. [1896] 2 Ch. 679 .. ..	857
Edwards v. Edwards .. .. .	[1894] P. 33; [1897] P. 316 .. ..	698, 702
Edwards v. Godfrey .. .. .	C. A. [1899] W. N. 72; [1899] 2 Q. B. 333 .. ..	1247
Edwards v. Jenkins .. .. .	[1895] W. N. 142 (4); [1896] 1 Ch. 308 .. ..	630
Edwards:—Lawrence v. (No. 1) .. ..	[1891] 1 Ch. 144 .. ..	754, 758
(No. 2) .. .. .	[1891] 2 Ch. 72 .. ..	754
Edwards:—London County Council v. .. ..	[1898] 2 Q. B. 75 .. ..	1348
Edwards v. Marcus .. .. .	C. A. [1894] 1 Q. B. 587 .. ..	200
Edwards v. Marston .. .. .	C. A. [1891] 1 Q. B. 225 .. ..	206
Edwards:—Pillers v. .. .. .	C. A. [1894] W. N. 212 .. ..	917
Edwards v. Purnell .. .. .	[1899] 1 Q. B. 449 .. ..	2295
Edwards v. Roberts .. .. .	[1891] 1 Q. B. 302 .. ..	1038
Edwards:—Robson v. .. .. .	[1893] 2 Ch. 146 .. ..	1119
Edwards v. Standard Rolling Stock Syndicate .. ..	[1893] 1 Ch. 574 .. ..	331
Edwards v. Steel, Young & Co. .. ..	[1897] 1 Q. B. 712; C. A. [1897] 2 Q. B. 327 .. ..	204
Edwards v. Summerton .. .. .	[1899] W. N. 120 .. ..	878
Edwards v. Walters .. .. .	[1896] 2 Ch. 157 .. ..	196
Edwards:—Whiteley v. .. .. .	C. A. [1896] 2 Q. B. 48 .. ..	919
Edwards' Settlement, In re .. .. .	[1897] 2 Ch. 412 .. ..	1879
Edye (a Solicitor), In re .. .. .	[1891] W. N. 1 .. ..	118, 933, 2054
Egan, In re. Mills v. Penton .. .. .	[1899] W. N. 27 (10); [1899] 1 Ch. 688 .. ..	2299

## TABLE OF CASES IN THE DIGEST.

lxxxiii

Name of Case.	Volume and Page.	Column of Digest.
Egerton v. All of Odd Rode .. .. .	[1894] P. 15 .. .. .	747
Ehrman v. Bartholomew .. .. .	[1898] 1 Ch. 671 .. .. .	516
Ehrmann v. Ehrmann .. .. .	C. A. [1896] 2 Ch. 611 .. .. .	778
Ehrmann v. Ehrmann .. .. .	[1896] 2 Ch. 826 .. .. .	669
Ehrmann's Applications, In re .. .. .	[1897] 2 Ch. 495 .. .. .	2135
Eichbaum v. City of Chicago Grain Elevators, } Ld. .. .. .	[1891] 3 Ch. 459 .. .. .	401
"Eider," The .. .. .	C. A. [1893] P. 119 .. .. .	1541, 2004
Ekman & Co.:—Aktieselskab Helios v. .. .. .	C. A. [1897] 2 Q. B. 83 .. .. .	1940
Elcom, In re. Layborn v. Grovet-Wright .. .. .	C. A. [1894] 1 Ch. 303 .. .. .	912
Electrical Engineering Corporation:—Brunton v. .. .. .	[1892] 1 Ch. 434 .. .. .	322, 829 2052
Elen, In re. Thomas v. McKeckine .. .. .	[1893] W. N. 90 .. .. .	1476
"Elephant," The (Boiler ex) .. .. .	[1891] W. N. 52 .. .. .	2005
Eley:—Cole v. .. .. .	[1894] 2 Q. B. 180; C. A. [1894] } 2 Q. B. 350 .. .. .	2024
Eley:—Read v. .. .. .	[1900] W. N. 57 .. .. .	1792
Elgood v. Harris .. .. .	[1896] 2 Q. B. 491 .. .. .	171
Elias v. Continental Oxygen Co. In re Conti- nental Oxygen Co. .. .. .	[1897] 1 Ch. 511 .. .. .	321
Elliott (or Birkett or Kelsall) v. Purdom .. .. .	H. L. (Sc.) [1895] A. C. 371 .. .. .	1834
"Elise," The .. .. .	[1899] W. N. 54 .. .. .	2008
Elkington & Co. v. Hüter .. .. .	[1892] 2 Ch. 452 .. .. .	341
Ellenor v. Ugle .. .. .	[1895] W. N. 161 (8) .. .. .	1702
Ellesmere (Earl of), In re .. .. .	[1898] W. N. 18 (6) .. .. .	1858
Ellesmere Brewery Co. v. Cooper .. .. .	[1895] W. N. 157 (8); [1896] } 1 Q. B. 75 .. .. .	1584, 1586
Elletson v. Pillers. In re Benson .. .. .	[1898] W. N. 155 (9); [1899] } 1 Ch. 39 .. .. .	1518
Elliot, In re. Kelly v. Elliot .. .. .	[1896] 2 Ch. 353 .. .. .	2318
Elliott, In re. Elliott v. Elliott .. .. .	[1891] W. N. 9 .. .. .	496, 2361
Elliott v. London County Council .. .. .	[1899] 2 Q. B. 277 .. .. .	1159
Elliott v. Yates .. .. .	C. A. [1900] 2 Q. B. 370 .. .. .	1731
Elliott & Co.:—O'Hara, Matthews & Co. v. .. .. .	[1893] 1 Q. B. 362 .. .. .	560
Ellis, Ex parte .. .. .	C. A. [1898] 2 Q. B. 79 .. .. .	207
Ellis:—Ashbury v. .. .. .	P. C. [1893] A. C. 339 .. .. .	1336
Ellis:—Att.-Gen. v. .. .. .	[1895] 2 Q. B. 466 .. .. .	1730
Ellis v. Barfield. In re Northage .. .. .	[1891] W. N. 84 .. .. .	353, 1852
Ellis v. Bedford (Duke of) .. .. .	[1898] W. N. 169 (11); C. A. } [1899] W. N. 19 (10); [1899] } 1 Ch. 494; H. L. (E.) [1900] } W. N. 268 .. .. .	1515
Ellis:—Camberwell Assessment Committee v. .. .. .	C. A. [1899] W. N. 227; [1900] } 1 Q. B. 68; H. L. (E.) [1900] } W. N. 156; [1900] A. C. 510 } [1891] W. N. 43 .. .. .	1683
Ellis v. Dadson and F. A. Ellis & Co. .. .. .	[1896] P. 251 .. .. .	484, 960 929
Ellis v. Ellis .. .. .	C. A. [1893] 1 Q. B. 350 .. .. .	1578, 2256
Ellis v. Goulton .. .. .	C. A. [1898] 1 Q. B. 426 .. .. .	1579
Ellis v. Pond .. .. .	[1897] 1 Ch. 489 .. .. .	1898
Ellis:—Priestley v. .. .. .	C. C. R. [1898] W. N. 162 (2); } [1899] 1 Q. B. 230 .. .. .	615
Ellis:—Reg. v. .. .. .	[1898] 2 Ch. 142 .. .. .	2168
Ellis v. Roberts. In re Davies .. .. .	C. A. [1900] 1 Q. B. 740 .. .. .	48
Ellis v. Rowbotham .. .. .	C. A. [1899] 1 Q. B. 714 .. .. .	1528

Name of Case.	Volume and Page.	Column of Digest.
Ellison:—Clegg v. In re Jones .. ..	[1898] 2 Ch. 83 .. ..	1826
Ellison:—Singleton v. .. ..	[1895] 1 Q. B. 607 .. ..	619
Elms:—Hare v. .. ..	[1893] 1 Q. B. 604 .. ..	1071
Elmsley v. Mitchell. In re Pickard .. ..	[1894] 2 Ch. 88; C. A. [1894] 3 Ch. 704 .. ..	283
Elmsley v. North Eastern Ry. Co. .. ..	[1895] W. N. 161 (9); C. A. [1896] 1 Ch. 418 .. ..	1655
Else:—Docksey v. .. ..	[1891] W. N. 65 .. ..	1281
Elsner and McArthur's Case. In re Common Petroleum Engine Co. .. ..	1895] 2 Ch. 759 .. ..	431
Elstone:—Collins v. .. ..	[1893] P. 1 .. ..	2357
"Elton," The .. ..	[1891] P. 265 .. ..	1543, 2003, 2010
Elve v. Boyton .. ..	C. A. [1891] 1 Ch. 501 .. ..	286, 486, 625, 2185
Emerson:—Att.-Gen. v. .. ..	H. L. (E.) [1891] A. C. 649 .. ..	823
Emmerson, Tarn v. In re Leng .. ..	C. A. [1895] 1 Ch. 652 .. ..	133, 795
Emmott & Co. v. Walters .. ..	[1891] W. N. 79 .. ..	675
Empire Palace v. Hanfstaengl v. (No. 1) .. ..	C. A. [1894] 2 Ch. 1 .. ..	538
(No. 2) .. ..	C. A. [1894] 3 Ch. 109 .. ..	539
(No. 3) .. ..	[1895] W. N. 76 .. ..	539
Empire Palace Co.:—Michiels v. .. ..	C. A. [1892] W. N. 38 .. ..	569
Endle:—Bovill v. .. ..	[1896] 1 Ch. 648 .. ..	1298
Endowed Schools Act, 1869, and Swansea Grammar School, In re .. ..	P. C. [1894] A. C. 252 .. ..	275
Endowed Schools Act, 1869, 1873, and 1874, In re, and In re A Scheme Relating to Grammar School in Colchester .. ..	P. C. [1898] A. C. 477 .. ..	274
Enfield (Local Board):—Savery v. .. ..	H. L. (E.) [1893] A. C. 218 .. ..	2036
Engel v. South Metropolitan Brewing and Bottling Co. (No. 1) .. ..	[1891] W. N. 31 .. ..	684
(No. 2) .. ..	[1892] 1 Ch. 442 .. ..	315
Engelhart v. Farrant & Co. .. ..	C. A. [1897] 1 Q. B. 240 .. ..	1241
"Engineer," The. Tatham, Bromage & Co. v. Burr .. ..	H. L. (E.) [1898] A. C. 382 .. ..	987
England, In re. Steward v. England .. ..	[1895] 2 Ch. 100; C. A. [1895] 2 Ch. 820 .. ..	1126
England:—Kerry v. .. ..	P. C. [1898] A. C. 742 .. ..	243
England v. Provincial Assets Co. In re Croom .. ..	[1891] 1 Ch. 695 .. ..	164
England v. Webb .. ..	P. C. [1898] A. C. 758 .. ..	2259
England and Wales (Charity Commissioners for):—Reg. v. .. ..	[1897] 1 Q. B. 407 .. ..	1205
English and Colonial Syndicate:—Pritchett v. .. ..	C. A. [1899] W. N. 91; [1899] 2 Q. B. 428 .. ..	79
English and Scottish Mercantile Investment Trust v. Brunton .. ..	[1892] 2 Q. B. 1; C. A. [1892] 2 Q. B. 700 .. ..	328
English and Scottish Mercantile Investment Trust:—Smith v. .. ..	[1896] W. N. 86 (6) .. ..	328
English Bank of the River Plate, In re (No. 1) .. ..	[1892] 1 Ch. 391 .. ..	430
English Bank of the River Plate, In re (No. 2). Ex parte Bank of Brazil .. ..	[1893] 2 Ch. 438 .. ..	192, 472, 2066
English, Scottish, and Australian Chartered Bank, In re .. ..	C. A. [1893] 3 Ch. 385 .. ..	477, 478
"Englishman," The, and The "Australia" (No. 1) .. ..	[1894] P. 239 .. ..	1956
(No. 2) .. ..	[1895] P. 212 .. ..	1495, 1950
Ennis (Sir J. J.), In re. Coles v. Peyton .. ..	C. A. [1893] 3 Ch. 238 .. ..	1582

Name of Case.	Volume and Page.	Column of Digest.
Enright :—Smith <i>v.</i> .. .. .	[1893] W. N. 173 .. ..	1717
Entwistle :—Reg. <i>v.</i> Ex parte Jones .. ..	[1899] W. N. 47; [1899] 1 Q. B. 846 .. ..	2215
Epping Urban Council :—Nicholls <i>v.</i> .. ..	[1899] W. N. 58; [1899] 1 Ch. 844 .. ..	2288
Epsom District Council <i>v.</i> London County Council .. .. .	[1900] 2 Q. B. 751 .. ..	894
Epsom Local Board :—Murray <i>v.</i> .. .. .	[1896] W. N. 175 (9); [1897] 1 Ch. 35 .. ..	2291
Equitable Life Assurance Society of United States <i>v.</i> Bishop .. .. .	[1899] 2 Q. B. 439; C. A. [1900] 1 Q. B. 177 .. ..	1772
Equitable Life Assurance Society of the United States :—Honour <i>v.</i> .. .. .	[1900] W. N. 67; [1900] 1 Ch. 852 .. ..	981
Equitable Reversionary Interest Society :—Hill <i>v.</i> In re Hill's Estate .. .. .	[1896] W. N. 177 (2) .. ..	557
Equitable Reversionary Interest Society :—Hill <i>v.</i> In re Hill's Settlement Trusts .. ..	[1896] W. N. 177 (1) .. ..	556
Erdheim :—Reg. <i>v.</i> .. .. .	C. C. R. [1896] 2 Q. B. 260 .. ..	610
Erich :—Trinidad and Tobago (Att.-Gen. for) <i>v.</i> .. .. .	P. C. [1893] A. C. 518 .. ..	599, 769, 2156
Erith Churchwardens, &c. :—London County Council <i>v.</i> .. .. .	H. L. (E.) [1893] A. C. 562 .. ..	1686
Ernest <i>v.</i> Loma Gold Mines, Ltd. .. .. .	C. A. [1897] 1 Ch. 1 .. ..	360
Ernsthausen & Co. :—Aitken, Lilburn & Co. <i>v.</i> .. ..	C. A. [1894] 1 Q. B. 773 .. ..	1977
Errington, In re. Ex parte Mason .. .. .	[1894] 1 Q. B. 11 .. ..	152
Errington <i>v.</i> Sempell. In re Forbes .. .. .	[1899] W. N. 6 (4) .. ..	1900
Erskine :—Wingfield <i>v.</i> In re Fludyer .. ..	[1898] 2 Ch. 562 .. ..	805
Escrutt <i>v.</i> Todmorden Co-operative Society .. ..	[1896] 1 Q. B. 461 .. ..	940
Esdaile :—Lane <i>v.</i> .. .. .	H. L. (E.) [1891] A. C. 210 .. ..	39
Espuela Land and Cattle Co., In re .. .. .	[1900] W. N. 139 .. ..	359
Esquimalt and Nanaimo Ry. Co. <i>v.</i> Bainbridge .. ..	P. C. [1896] A. C. 561 .. ..	248
Esquimalt and Nanaimo Ry. Co. :—Hoggan <i>v.</i> .. ..	P. C. [1894] A. C. 429 .. ..	247
Essex (Sheriff of), Ex parte. In re Harrison .. ..	[1893] 2 Q. B. 111 .. ..	163, 1925
Essex (Commrs. of Taxes of Barstaple Division) :—Reg. <i>v.</i> .. .. .	[1895] 2 Q. B. 123 .. ..	2112
Essex (Justices of) :—Reg. <i>v.</i> (No. 1) .. .. .	[1892] 1 Q. B. 490 .. ..	1041
Essex (Justices of) and London County Council :—West Ham Union (Assessment Committee of) <i>v.</i> .. .. .	H. L. [1896] A. C. 443 .. ..	1671
Etherington <i>v.</i> Big Blow Gold Mines .. .. .	[1897] W. N. 21 (9) .. ..	1848
Etherley Grange Coal Co. <i>v.</i> Auckland District Highway Board .. .. .	C. A. [1894] 1 Q. B. 37 .. ..	893
Etoile, Société Anonyme des Verreries de l', In re the Trade-mark of (No. 1) .. .. .	[1893] W. N. 119 .. ..	569
(No. 2) .. .. .	[1894] 1 Ch. 61; C. A. [1894] 2 Ch. 26 .. ..	2136
Evans, Ex parte .. .. .	H. L. (E.) [1894] A. C. 16 .. ..	1113
Evans, In re. Ex parte Evans .. .. .	C. A. [1891] 1 Q. B. 143 .. ..	133
Evans, In re. Evans <i>v.</i> Noton (No. 1) .. .. .	C. A. [1893] 1 Ch. 252 .. ..	36, 81, 1488
(No. 2) .. .. .	[1893] W. N. 32 .. ..	77
Evans :—Adcock <i>v.</i> In re Allen .. .. .	[1896] 2 Ch. 345 .. ..	804
Evans :—Biggs <i>v.</i> .. .. .	[1894] 1 Q. B. 88 .. ..	816
Evans <i>v.</i> Conway Justices .. .. .	[1900] 2 Q. B. 5; C. A. [1900] W. N. 132; [1900] 2 Q. B. 224 .. ..	1114
Evans <i>v.</i> Davies .. .. .	[1893] 2 Ch. 216 .. ..	399
Evans <i>v.</i> Evans (No. 1) .. .. .	C. A. [1892] 2 Ch. 173 .. ..	643

Name of Case.	Volume and Page.	Column of Digest.
Evans v. Evans (No. 2) .. .. .	[1892] W. N. 174 .. .. .	80
Evans v. Evans .. .. .	[1899] P. 195 .. .. .	712
Evans :—Gordon v. .. .. .	C. A. [1894] 1 Q. B. 248 .. .. .	597
Evans v. Griffiths. <i>In re</i> Thomas .. .. .	[1900] W. N. 36; [1900] 1 Ch. 454 .. .. .	2039
Evans v. Hoare .. .. .	[1892] 1 Q. B. 593 .. .. .	848
Evans :—Isaacs v. .. .. .	[1899] W. N. 261 .. .. .	847
Evans :—Lamb v. (No. 1) .. .. .	[1892] 3 Ch. 462; C. A. [1893] 1 Ch. 218 .. .. .	527, 969, 1248
————— (No. 2) .. .. .	[1895] W. N. 156 (2) .. .. .	531
Evans :—London and North Western Ry. Co. v. {	[1892] 2 Ch. 432; C. A. [1893] 1 Ch. 16 .. .. .	1267
Evans :—Mercantile Bank of London v. .. .	C. A. [1899] 2 Q. B. 613 .. .. .	74
Evans v. Merthyr Tydfil Urban District Council	C. A. [1899] 1 Ch. 241 .. .. .	296
Evans v. Moore. <i>In re</i> Davis .. .. .	[1891] 3 Ch. 119 .. .. .	1131
Evans v. Owens .. .. .	[1895] 1 Q. B. 237 .. .. .	824
Evans :—Phillips v. .. .. .	[1896] 1 Q. B. 305 .. .. .	1731
Evans :—Ratcliffe v. .. .. .	C. A. [1892] 2 Q. B. 524 .. .. .	651
Evans :—Reg. v. .. .. .	[1896] 1 Q. B. 228 .. .. .	187
Evans v. Ware .. .. .	[1892] 3 Ch. 502 .. .. .	945, 1723
Evans :—Wegg-Prosser v. .. .. .	[1894] 2 Q. B. 101; C. A. [1895] 1 Q. B. 108 .. .. .	1584
Evans & Co. (J. H.), <i>In re</i> .. .. .	[1892] W. N. 126 .. .. .	459
Evans & Co. :—James v. .. .. .	[1897] 2 Q. B. 180 .. .. .	1245
Evans (In re) v. Woods. (Ex parte Woods	P. C. [1900] A. C. 338 .. .. .	756
Evelyn, <i>In re</i> . Ex parte General Public Works and Assets Co. .. .. .	[1894] 2 Q. B. 302 .. .. .	174, 965
Everard :—Walter v. .. .. .	C. A. [1891] 2 Q. B. 369 .. .. .	49, 954
Everett v. Remington .. .. .	[1892] 3 Ch. 148 .. .. .	2253
Everett :—Rutter v. .. .. .	[1895] 2 Ch. 872 .. .. .	137
Everitt v. Automatic Weighing Machine Co. ..	[1892] 3 Ch. 506 .. .. .	398
Everley, <i>In the Goods of</i> .. .. .	[1892] P. 50 .. .. .	1605
Eversfield :—King v. .. .. .	C. A. [1897] W. N. 38 (1); [1897] 2 Q. B. 475 .. .. .	1053
Evershed :—Wallace v. .. .. .	[1899] W. N. 58; [1899] 1 Ch. 891 .. .. .	1282
Eversley, <i>In re</i> . <i>Mildmay v. Mildmay</i> .. .. .	[1899] W. N. 208; [1900] 1 Ch. 96 .. .. .	2346
Evington :—Filshie v. .. .. .	[1892] 2 Q. B. 200 .. .. .	22
Exchange Telegraph Co. v. Central News, Ltd. ..	[1897] 2 Ch. 48 .. .. .	536
Exchange Telegraph Co. v. Gregory & Co. .. .	C. A. [1895] W. N. 138 (6); [1896] 1 Q. B. 147 .. .. .	530
Eynon, Ex parte. <i>In re</i> Wiltshire .. .. .	[1899] W. N. 236; [1900] 1 Q. B. 96 .. .. .	202
Ewart v. Fryer .. .. .	[1900] W. N. 82 .. .. .	1073
Extract of Meat (Baron Liebig) Photographic Brand, Ltd., Ex parte .. .. .	[1900] W. N. 30 .. .. .	2123
Eyre v. Wynn-Mackenzie (No. 1) .. .. .	[1894] 1 Ch. 218 .. .. .	1304, 2059
————— (No. 2) .. .. .	[1895] W. N. 161 (7); C. A. [1896] 1 Ch. 135 .. .. .	45, 1277, 2058, 2072
Eyre and Leicester Corporation, <i>In re</i> .. .. .	C. A. [1892] 1 Q. B. 136 .. .. .	54
Eyre Coote, <i>In re</i> . <i>Coote v. Cadogan</i> .. .. .	[1899] W. N. 222 .. .. .	1860
Eyres :—Starkey v. <i>In re</i> Deakin .. .. .	[1894] 3 Ch. 565 .. .. .	2333
Eyston :—Bruno v. <i>In re</i> Huddleston .. .. .	[1894] 3 Ch. 595 .. .. .	774
Eyton :—Vincent v. .. .. .	[1897] P. 1 .. .. .	1476, 748



## TABLE OF CASES IN THE DIGEST.

Lxxxvii

Name of Case.	Volume and Page.	Column of Digest.
F.		
Faber:—Barnard <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 340	977
Faber:—Bateman (Lady) <i>v.</i> .. .. .	[1897] 2 Ch. 223; C. A. [1897] W. N. 167 (5); [1898] 1 Ch. 144; [1899] W. N. 241; [1900] W. N. 157 .. .. .	915, 1899
Faber <i>v.</i> Montagu. In re Montagu .. .. .	[1896] 1 Ch. 549 .. .. .	2200
Facey:—Harvey <i>v.</i> .. .. .	P. C. [1893] A. C. 552 .. .. .	512, 2100
"Faadrelandet," The .. .. .	C. A. [1895] P. 205 .. .. .	1951
Fair:—Hickling <i>v.</i> .. .. .	H. L. (Sc.) [1898] W. N. 77 (7); [1899] A. C. 15 .. .. .	2813
Fairbairn Engineering Co., In re. Ladd's Case	[1893] 3 Ch. 450 .. .. .	485
Fairclough <i>v.</i> Manchester Ship Canal Co. .. .. .	C. A. [1897] W. N. 7 (13) .. .. .	504
Fairfield Shipbuilding and Engineering Co. <i>v.</i> London and East Coast Express Steamship Co. .. .. .	[1895] W. N. 64 .. .. .	318, 1704, 1986
Fairley:—Att.-Gen. <i>v.</i> .. .. .	[1897] 1 Q. B. 698 .. .. .	1737
Fairthorne:—Kibble <i>v.</i> .. .. .	[1895] 1 Ch. 219 .. .. .	1133
Fairtlough <i>v.</i> Whitmore .. .. .	[1895] W. N. 52 .. .. .	872
Falck <i>v.</i> Williams .. .. .	P. C. [1900] A. C. 176 .. .. .	512
Falcke:—Mander <i>v.</i> (No. 1) .. .. .	C. A. [1891] 2 Ch. 554 .. .. .	602
(No. 2) .. .. .	[1891] 3 Ch. 488 .. .. .	81, 1547
Falconer <i>v.</i> Dunlop .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 124 .. .. .	1386
Falconer <i>v.</i> McGuffie .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 96 .. .. .	1397
Falconer:—Rintoul <i>v.</i> .. .. .	C. A. (Sc.) [1899] W. N. 174 .. .. .	1392
Falkingham <i>v.</i> Victorian Railways Commrs. .. .. .	P. C. [1900] A. C. 452 .. .. .	68
Fallows <i>v.</i> Barnby's, Ltd. In re Barnby's, Ltd. .. .. .	[1889] W. N. 103 .. .. .	468
Fancy Dress Balls Co., In re .. .. .	[1899] W. N. 109 .. .. .	464
Fanshawe, Ex parte. In re Wood .. .. .	[1896] W. N. 163 (1); [1897] 1 Q. B. 314 .. .. .	119
Fanshawe:—Howard <i>v.</i> .. .. .	[1895] 2 Ch. 581 .. .. .	116, 1076
Fanshawe:—Napper <i>v.</i> In re Greer .. .. .	[1895] 2 Ch. 217 .. .. .	78, 123, 1521, 1923
Farbenfabriken Application, In re .. .. .	C. A. [1894] 1 Ch. 645 .. .. .	2131
Fareham Local Board and Fareham Electric Light Co. <i>v.</i> Smith .. .. .	[1891] W. N. 76 .. .. .	2082
Faridkote (Rajah):—Sirdar Gurdial Singh <i>v.</i> .. .. .	P. C. [1894] A. C. 670 .. .. .	1008
Farina <i>v.</i> Fickus. In re Fickus .. .. .	[1900] W. N. 4; [1900] W. N. 331 .. .. .	913
Farlow <i>v.</i> Stevenson .. .. .	[1899] W. N. 30 (2); C. A. [1900] W. N. 233; [1900] 1 Ch. 128 .. .. .	1060, 1167
Farmer <i>v.</i> Goy & Co. In re Goy & Co. .. .. .	[1900] W. N. 88; [1900] 2 Ch. 149 .. .. .	336
Farmer:—Hardy <i>v.</i> In re Hardy .. .. .	[1896] 1 Ch. 904 .. .. .	166
Farmer:—Reg. <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 637 .. .. .	187, 1029
Farmer <i>v.</i> Waterloo and City Ry. Co. .. .. .	[1895] 1 Ch. 527 .. .. .	1092
Farmer & Co. <i>v.</i> Inland Revenue Commrs. .. .. .	[1898] 2 Q. B. 141 .. .. .	1801
Farmers United. In re Stephenson's Case .. .. .	[1900] 2 Ch. 442 .. .. .	434
Farnborough:—Reg. <i>v.</i> .. .. .	C. C. R. [1895] 2 Q. B. 484 .. .. .	616
Farnedale:—Ridgeway <i>v.</i> .. .. .	[1892] 2 Q. B. 309 .. .. .	872

Name of Case.	Volume and Page.	Column of Digest.
Farnham, In re (No. 1) .. .. .	C. A. [1895] 2 Ch. 799 .. ..	1186
(No. 2) .. .. .	C. A. [1896] 1 Ch. 836 .. ..	1186
Farnham v. Milward & Co. .. .. .	[1895] 2 Ch. 730 .. .. .	1186
Farquhar v. Darling. In re Darling .. .. .	[1895] W. N. 140 (12); [1896] 1 Ch. 50 .. .. .	279
Farquhar, Ex parte. In re Land Securities Co. .. .. .	C. A. [1896] 2 Ch. 320 .. ..	477
Farquhar:—Forster v. .. .. .	C. A. [1893] 1 Q. B. 564 .. ..	561
Farquharson Brothers:—Diederichsen v. .. .. .	C. A. [1898] 1 Q. B. 150 .. ..	1941
Farquharson v. Morgan .. .. .	C. A. [1894] 1 Q. B. 552 .. ..	591, 1629
Farrant & Co.:—Engelhart v. .. .. .	C. A. [1897] 1 Q. B. 240 .. ..	1241
Farrar v. Eddlestone. In re Holmes .. .. .	[1892] W. N. 177 .. .. .	1509, 1533
Farrell:—Alty v. .. .. .	[1896] 1 Q. B. 636 .. .. .	2294
Farrelly v. Corrigan .. .. .	P. C. [1899] A. C. 563 .. ..	1618
Farrington v. Forrester. In re Jones .. .. .	[1893] 2 Ch. 461 .. .. .	956, 1274, 1407
Faulkner:—Barker v. .. .. .	[1898] W. N. 69 (8) .. .. .	826
Faulkner:—Gentle v. .. .. .	C. A. [1900] 2 Q. B. 267 .. ..	1067
Faulkners, Ld.:—Hildesheimer v. .. .. .	[1900] W. N. 170 .. .. .	531
Faulks:—Schmitt v. .. .. .	[1893] W. N. 64 .. .. .	962,970, 2048
Fearon, In re. Hotchkin v. Mayor .. .. .	[1896] W. N. 175 (12) .. ..	915
Feast v. Robinson & Fisher .. .. .	[1894] W. N. 14 .. .. .	198
Fecitt v. Walsh .. .. .	[1891] 2 Q. B. 304 .. .. .	22
Federal Bank of Australia, In re .. .. .	[1893] W. N. 46; C. A. [1893] W. N. 77 .. .. .	459
Feilden:—Westmoreland Green and Blue Slate Co. v. .. .. .	C. A. [1891] 3 Ch. 15 .. ..	89,420
Fell v. Official Trustee of Charity Lands .. .. .	C. A. [1899] 2 Ch. 44 .. ..	271
Fellows v. "Lord Stanley" (Owners of the) .. .. .	[1893] 1 Q. B. 98 .. .. .	1140
Felton v. Bower & Co. .. .. .	[1900] W. N. 25; [1900] 1 Q. B. 598 .. .. .	1160
Fenn v. Miller .. .. .	C. A. [1900] W. N. 64; [1900] 1 Q. B. 788 .. .. .	1224
Fenna v. Clare & Co. .. .. .	[1895] 1 Q. B. 199 .. .. .	1351
Fenner and Lord, In re .. .. .	C. A. [1897] 1 Q. B. 667 .. ..	666
Fenner v. Blake .. .. .	[1900] W. N. 17; [1900] 1 Q. B. 426 .. .. .	1065
Fenner v. Wilson .. .. .	[1893] 2 Ch. 656 .. .. .	1442
Fenning v. Halse .. .. .	[1892] 1 Q. B. 203 .. .. .	1388
Fenton, In re .. .. .	[1894] W. N. 128 .. .. .	573, 2031
Fenwick v. Croydon Union (Rural Sanitary Authority of the) .. .. .	[1891] 2 Q. B. 216 .. .. .	2086
Fenwick:—Watteau v. .. .. .	[1893] 1 Q. B. 346 .. .. .	1580
Fenwick & Co.:—Bulman & Dickson v. .. .. .	C. A. [1894] 1 Q. B. 179 .. ..	1965
Fereday, In re .. .. .	[1895] 2 Ch. 437 .. .. .	82,2046
Ferguson:—Daniel v. .. .. .	C. A. [1891] 2 Ch. 27 .. .. .	1120
Ferguson v. Green .. .. .	C. A. [1900] W. N. 247 .. ..	1229
Ferguson:—Hamilton v. .. .. .	C. A. (Sc.) [1899] W. N. 169 .. ..	1379
Ferguson v. North British Ry. Co. .. .. .	H. L. (Sc.) [1893] W. N. 166 .. ..	1839
Fermentia, Ex parte. Ex parte Ak-kersdyk. Reg. v. London (County Council) .. .. .	[1892] 1 Q. B. 190 .. .. .	1307
Ferndale Industrial Co-operative Society, In re .. .. .	[1894] 1 Q. B. 828 .. .. .	941
Ferrand v. Hallas Land and Building Co. .. .. .	C. A. [1893] 2 Q. B. 135 .. ..	1350, 1916
Ferrers:—Petre v. .. .. .	[1891] W. N. 171 .. .. .	680

Name of Case.	Volume and Page.	Column of Digest.
"Ferro," The .. .. .	[1893] P. 38 .. .. .	1971
Festi, Rasini & Co. :—Dobson v. .. .. .	C. A. [1891] 2 Q. B. 92 .. .. .	1536
Fey :—Carter v. .. .. .	C. A. [1894] 2 Ch. 541 .. .. .	965
Ffinch v. Combe .. .. .	[1894] P. 191 .. .. .	1611
Ffooks :—Drax v. .. .. .	[1895] W. N. 147 (5); [1896] 1 Q. B. 1; C. A. [1896]; 1 Q. B. 238 .. .. .	1391
Ffrench v. Sproston. In re Beeny .. .. .	[1894] 1 Ch. 499 .. .. .	1520
Fickus, In re. Farina v. Fickus .. .. .	[1900] W. N. 4; [1900] 1 Ch. 331 .. .. .	913
Field v. Dracup. In re Dracup (Nó. 1) .. .. .	[1892] W. N. 43 .. .. .	791, 1505
Field v. Field .. .. . (No. 2) .. .. .	[1894] 1 Ch. 59 .. .. .	1409
Field :—Nicholson v. .. .. .	[1894] 1 Ch. 425 .. .. .	2182
Field Steamship Co. v. Burr .. .. .	[1893] 2 Ch. 511 .. .. .	2168
Field (J. C. & J.), Ld. :—Schauer v. .. .. .	[1898] 1 Q. B. 821; C. A. [1899] 1 Q. B. 579 .. .. .	989
Field & Co. (J. C. & J.) v. Wagel Syndicate. In re Trade Mark 96,997 .. .. .	[1893] 1 Ch. 35 .. .. .	535
Fielden v. Morley Corporation .. .. .	[1900] W. N. 67; [1900] 1 Ch. 651 .. .. .	2137
Fielding & Co. v. Corry .. .. .	C. A. [1899] 1 Ch. 1; H. L. (E.) [1900] W. N. 40; [1900] A. C. 133 .. .. .	567, 2069
Fielding v. Thomas .. .. .	C. A. [1898] 1 Q. B. 268 .. .. .	192
Fields :—Fletcher v. .. .. .	P. C. [1896] A. C. 600 .. .. .	252
Fife (Duke of):—Great North of Scotland Ry. Co. v. .. .. .	[1891] 1 Q. B. 790 .. .. .	1178
Figg v. Moore Brothers .. .. .	H. L. (Sc.) [1900] W. N. 62 .. .. .	1833, 1839
Figgins v. Baghino. In re Russell Institution .. .. .	[1894] 2 Q. B. 690 .. .. .	167
Filby v. Hounsell .. .. .	[1898] 2 Ch. 72 .. .. .	1826
Fillingham v. Wood .. .. .	[1896] 2 Ch. 737 .. .. .	849
Filshie v. Evington .. .. .	[1891] 1 Ch. 51 .. .. .	1156
Finch v. Oake .. .. .	[1892] 2 Q. B. 200 .. .. .	22
Fine Art and General Insurance Co. :—Nevill v. .. .. .	C. A. [1896] 1 Ch. 409 .. .. .	2263
Finlay v. Darling .. .. .	C. A. [1895] 2 Q. B. 156; H. L. (E.) [1896] W. N. 171 (5); [1897] A. C. 68 .. .. .	648
Finlay v. Mexican Investment Corporation .. .. .	[1897] 1 Ch. 719 .. .. .	1901
Finnigan or (M'Court) :—Lord Advocate v. .. .. .	[1897] 1 Q. B. 517 .. .. .	978
Finsbury Permanent Building Society :—Stroh-menger v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 101 .. .. .	1778
Finska Angfartygs Aktiebolaget v. Brown, Too-good & Co. .. .. .	[1897] W. N. 65 (1); C. A. [1897] 2 Ch. 469 .. .. .	228
Firbank :—Fitzgerald v. .. .. .	[1891] W. N. 87; C. A. [1891] W. N. 116 .. .. .	558
Firbank, Pauling & Co. :—Worcester City and County Banking Co. v. .. .. .	[1897] 2 Ch. 96 .. .. .	825
Firth :—Liverpool and Manchester Aerated Bread and Café Co. v. .. .. .	C. A. [1894] 1 Q. B. 784 .. .. .	1536, 1567
Firth v. Staines .. .. .	[1891] 1 Ch. 367 .. .. .	661
Firth & Sons v. De Las Rivas .. .. .	[1897] 2 Q. B. 70 .. .. .	1354
Fish, In re. Bennett v. Bennett .. .. .	[1893] 1 Q. B. 768 .. .. .	1488, 1540
Fish, In re. Ingham v. Raynor .. .. .	C. A. [1893] 2 Ch. 413 .. .. .	575, 1501, 2059, 2166
	C. A. [1894] 2 Ch. 83 .. .. .	2326, 2332

Name of Case.	Volume and Page.	Column of Digest.
Fishburn <i>v.</i> Hollingshead .. ..	[1891] 2 Ch. 371 .. ..	534
Fisher and Grazebrook's Contract, In re ..	[1898] 2 Ch. 660 .. ..	1887
Fisher, In re .. ..	[1894] 1 Ch. 53; C. A. [1894] 1 Ch. 450 .. ..	561, 1091, 1180, 1523
Fisher:—Cross <i>v.</i> .. ..	C. A. [1892] 1 Q. B. 467 .. ..	228
Fisher <i>v.</i> Black and White Publishing Co. ..	C. A. [1900] W. N. 271 .. ..	355
Fisher <i>v.</i> Doody. In re Doody. Hibbert <i>v.</i> Lloyd .. ..	C. A. [1893] 1 Ch. 129 .. ..	1303, 2058
Fisher <i>v.</i> Jackson .. ..	[1891] 2 Ch. 84 .. ..	274
Fisher's Case. In re Tom Tit Cycle Co. ..	[1899] W. N. 35 (6) .. ..	424
Fitton, In re. Hardy <i>v.</i> Fitton .. ..	[1893] W. N. 201 .. ..	63, 781
Fitz <i>v.</i> Iles .. ..	C. A. [1893] 1 Ch. 77 .. ..	1722
Fitzgerald's Trustee <i>v.</i> Mellersh (No. 1) ..	[1892] W. N. 4 .. ..	1802
(No. 2) .. ..	[1892] 1 Ch. 385 .. ..	1285
FitzGerald's Settled Estates, In re. Saunders <i>v.</i> Boyd .. ..	[1891] 3 Ch. 394 .. ..	1899
Fitzgerald:—Dalton <i>v.</i> .. ..	[1897] 1 Ch. 440; C. A. [1897] 2 Ch. 86 .. ..	770
Fitzgerald <i>v.</i> Firbank .. ..	C. A. [1897] 2 Ch. 96 .. ..	825
Fitzhardinge (Lord):—Gifford (Lord) <i>v.</i> ..	[1899] W. N. 75; [1899] 2 Ch. 32 .. ..	1866
Fitzherbert's Settlement Trusts, In re ..	[1898] W. N. 58 (8) .. ..	2201
Fitzroy:—Cadogan <i>v.</i> In re Hamilton ..	C. A. [1896] 2 Ch. 617 .. ..	282
Fitzroy <i>v.</i> Harris. In re Harris .. ..	[1891] W. N. 76 .. ..	1467
Flack, In re. Ex parte Berry .. ..	[1900] W. N. 83; [1900] 2 Q. B. 32 .. ..	2279
Flack:—Lee <i>v.</i> .. ..	[1896] P. 138 .. ..	700
Flack's Case. In re Central Sugar Factories of Brazil .. ..	[1894] 1 Ch. 369 .. ..	444, 961
Fladgate:—Blyth <i>v.</i> .. ..	[1891] 1 Ch. 337 .. ..	1420, 2056
Flatau, In re. Ex parte Official Receiver ..	C. A. [1893] 2 Q. B. 219 .. ..	162
Flatau <i>v.</i> Cullen .. ..	C. A. [1899] W. N. 206 .. ..	575
Fleetwood Estate Co., In re .. ..	[1897] W. N. 20 (3) .. ..	365
Flegg <i>v.</i> Prentis .. ..	[1892] 2 Ch. 428 .. ..	1025
Fleming's Divorce Bill, In re .. ..	H. L. (Ir.) [1893] W. N. 93 .. ..	89
Fleming <i>v.</i> Bank of New Zealand .. ..	P. C. [1900] A. C. 577 .. ..	1572
Fleming:—Grinter <i>v.</i> Walker <i>v.</i> Brisley ..	[1900] 2 Q. B. 735 .. ..	1752
Fleming:—London and Lancashire Life Assurance Co. <i>v.</i> .. ..	P. C. [1897] A. C. 499 .. ..	254
Fleming:—Lord Advocate <i>v.</i> .. ..	H. L. (Sc.) [1897] A. C. 145 .. ..	1808
Fletcher <i>v.</i> Fields .. ..	[1891] 1 Q. B. 790 .. ..	1178
Fletcher <i>v.</i> London and North Western Ry. Co. ..	C. A. [1892] 1 Q. B. 122 .. ..	1491, 1500
Fletcher:—Molyneux <i>v.</i> .. ..	[1898] 1 Q. B. 648 .. ..	2308
Fletcher <i>v.</i> Nokes .. ..	[1897] 1 Ch. 271 .. ..	1069
Fletcher:—Stirling <i>v.</i> .. ..	C. A. (Sc.) [1899] W. N. 166 .. ..	1382
Fletcher:—Vallancey <i>v.</i> .. ..	[1897] 1 Q. B. 265 .. ..	752
Flimby and Broughton Moor Coal and Fire-Brick Co.:—Marrow <i>v.</i> .. ..	C. A. [1898] 2 Q. B. 588 .. ..	1233
Flinn & Sons, Ex parte .. ..	[1899] W. N. 94; [1899] 2 Q. B. 154 .. ..	1110
Flinn & Sons, Ex parte .. ..	[1899] W. N. 135 .. ..	1101
(No. 2) .. ..	[1899] 2 Q. B. 607 .. ..	1109
Flint <i>v.</i> Howard .. ..	C. A. [1893] 2 Ch. 54 .. ..	1296
Floating Dock Co. of St. Thomas, Ltd., In re ..	[1895] 1 Ch. 691 .. ..	338, 382

Name of Case.	Volume and Page.	Column of Digest.
Flood:—Allen <i>v.</i> .. .. .	C. A. [1895] 2 Q. B. 21; H. L. (E.) [1897] W. N. 177 (1); [1898] A. C. 1 ..	13
Flood:—Garnsey <i>v.</i> .. .. .	P. C. [1898] A. C. 687 ..	1325
Flood <i>v.</i> Jackson .. .. .	[1895] 2 Q. B. 21 ..	508
Florence <i>v.</i> Paddington Vestry .. .. .	[1895] W. N. 143 (9) ..	1168
Florida, In re Land Mortgage Bank of .. .. .	[1898] 1 Ch. 444 ..	476
Flower:—Bean <i>v.</i> .. .. .	C. A. [1895] W. N. 120 (12) ..	1549
Flower <i>v.</i> Flower .. .. .	[1893] P. 290 ..	713
Flower <i>v.</i> London and North Western Ry. Co. ..	C. A. [1894] 2 Q. B. 65 ..	945
Flowers <i>v.</i> Chambers .. .. .	C. A. [1899] W. N. 65; [1899] 2 Q. B. 142 ..	1230
Flowers & Co., In re .. .. .	C. A. [1897] 1 Q. B. 14 ..	156
Floyd, In re. Floyd <i>v.</i> Lyons (J.) & Co. ..	C. A. [1897] 1 Ch. 633 ..	2280
Fludyer, In re. Wingfield <i>v.</i> Erskine .. .. .	[1898] 2 Ch. 562 ..	805
Fluister <i>v.</i> Fluister and Hutton .. .. .	C. A. [1896] W. N. 176 (15); [1897] P. 22 ..	716
Foad:—Lilley <i>v.</i> In re Hale .. .. .	[1898] W. N. 154 (6); C. A. [1899] W. N. 83; [1899] 2 Ch. 107 ..	1293
Foakes <i>v.</i> Jackson .. .. .	[1900] W. N. 68; [1900] 1 Ch. 807 ..	1481
Foden <i>v.</i> Foden .. .. .	C. A. [1894] P. 307 ..	600
Foley:—Jones <i>v.</i> .. .. .	[1891] 1 Q. B. 730 ..	1666, 2155
Folkestone Corporation <i>v.</i> Brooks .. .. .	C. A. [1893] 3 Ch. 22 ..	2086
Folkestone Corporation <i>v.</i> Ladd .. .. .	[1893] 3 Ch. 22 ..	2086
Follit <i>v.</i> Eddystone Granite Quarries .. .. .	[1892] 3 Ch. 75 ..	326
Follows, In re. Ex parte Follows .. .. .	[1895] 2 Q. B. 521 ..	103
Fontes:—Machado <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 231 ..	650
Fooks <i>v.</i> Horner. In re Horner .. .. .	[1896] 2 Ch. 188 ..	1004
Foot:—Greater London Property Co. <i>v.</i> .. .. .	[1899] 1 Q. B. 972 ..	1167
Forbes, In re. Errington <i>v.</i> Sempell .. .. .	[1899] W. N. 6 (4) ..	1900
Forbes <i>v.</i> Hardcastle. In re Holton .. .. .	C. A. [1893] W. N. 111 ..	286
Forbes <i>v.</i> Hume. In re Hume .. .. .	C. A. [1895] 1 Ch. 422 ..	284
Forbes:—Religious Tract and Book Society of Scotland <i>v.</i> .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 126 ..	1775
Forbes <i>v.</i> Scottish Provident Institution .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 122 ..	1764
Forbes <i>v.</i> Standard Life Assurance Society .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 117 ..	1752
Ford, In re. Ex parte Trustee .. .. .	[1900] W. N. 124; [1900] 2 Q. B. 211 ..	144
Ford, In re. Ex parte Official Receiver .. .. .	[1899] W. N. 245; [1900] 1 Q. B. 264 ..	127
Ford:—Barnardo <i>v.</i> Gossage's Case .. .. .	H. L. (E.) [1892] A. C. 326 ..	38, 883
Ford:—Bray <i>v.</i> .. .. .	H. L. (E.) [1896] A. C. 44 ..	646
Ford:—Bloomenthal <i>v.</i> .. .. .	C. A. [1896] 2 Ch. 525; H. L. (E.) [1897] A. C. 156 ..	426
Ford:—Coote <i>v.</i> .. .. .	[1899] W. N. 57; C. A. [1899] 2 Ch. 93 ..	1519
Ford:—De Braam <i>v.</i> .. .. .	[1899] W. N. 228; C. A. [1899] W. N. 239; [1900] 1 Ch. 142 ..	208
Ford <i>v.</i> Nuthall. In re Nuthall .. .. .	C. A. [1891] W. N. 55 ..	160
Ford <i>v.</i> Stier .. .. .	[1896] P. 1 ..	710
Ford's Hotel Co. <i>v.</i> Bartlett .. .. .	C. A. [1895] 1 Q. B. 850; H. L. (E.) [1895] W. N. 153 (10); [1896] A. C. 1 ..	53
Fordom <i>v.</i> Parsons .. .. .	[1894] 2 Q. B. 780 ..	1911

Name of Case.	Volume and Page.	Column of Digest.
Foreign, American and General Investments Trusts Co. v. Sloper .. .. .	[1893] 2 Ch. 96; C. A. [1894] 3 Ch. 716 .. .. .	326, 487
Foreign and Colonial Government Trust Co., In re .. .. .	[1891] 2 Ch. 395 .. .. .	365
Foreman :—Davis v. .. .. .	[1894] 3 Ch. 654 .. .. .	959
Forester :—Wolmer (Viscount) v. In re Cleveland's (Duke of) Estate .. .. .	C. A. [1894] 1 Ch. 164 .. .. .	1852
Forget v. Baxter .. .. .	P. C. [1900] A. C. 467 .. .. .	247
Forget v. Ostigny .. .. .	P. C. [1895] A. C. 318 .. .. .	256, 868, 869, 1591, 2078
Forrest, Commr. of Crown Lands :—West Australian Land Co. v. .. .. .	P. C. [1894] A. C. 176 .. .. .	85
Forrester :—Farrington v. In re Jones .. .. .	[1893] 2 Ch. 461 .. .. .	956, 1274, 1407
Forrester v. Jones .. .. .	[1899] W. N. 78 .. .. .	1559
Forshaw :—Crawford v. .. .. .	C. A. [1891] 2 Ch. 261 .. .. .	801
Forster v. Clowser .. .. .	C. A. [1897] 2 Q. B. 362 .. .. .	1010
Forster v. Farquhar .. .. .	C. A. [1893] 1 Q. B. 564 .. .. .	561
Forsyth v. Forsyth .. .. .	[1891] P. 363 .. .. .	720, 721
Fort, In re. Ex parte Scholfield .. .. .	C. A. [1897] 2 Q. B. 495 .. .. .	1415
Fortescue v. Lostwithiel and Fowey Ry. .. .. .	[1894] 3 Ch. 621 .. .. .	1669, 2064
Fortescue v. Mercantile Bank of London .. .. .	C. A. [1897] 2 Q. B. 236 .. .. .	2039
Fortescue v. St. Matthew, Bethnal Green (Vestry of) .. .. .	[1891] 2 Q. B. 170 .. .. .	1152
Forth and North Sea Steamboat Mutual Insurance Association :—Muirhead v. .. .. .	H. L. (Sc.) [1894] A. C. 72 .. .. .	982
Forman & Co. Proprietary, Ltd. v. "Liddesdale" (The Ship) .. .. .	P. C. [1900] A. C. 190 .. .. .	509
Fortune v. Hanson .. .. .	[1896] 1 Q. B. 202 .. .. .	18
Forwood :—Costa Rica Ry. Co. v. .. .. .	[1900] 1 Ch. 756 .. .. .	338
Forwood :—Montagu v. .. .. .	C. A. [1893] 2 Q. B. 350 .. .. .	1580
Foster, In re. Thomas v. Foster .. .. .	[1897] 1 Ch. 484 .. .. .	1728
Foster :—Birmingham Corporation v. .. .. .	[1894] W. N. 43 .. .. .	1210
Foster v. Borax Co. In re Borax Co. .. .. .	[1899] W. N. 34 (4); [1899] 2 Ch. 130 .. .. .	320
Foster v. Fraser .. .. .	[1893] 3 Ch. 158 .. .. .	899
Foster v. Fyfe .. .. .	[1896] 2 Q. B. 104 .. .. .	1263
Foster v. Globe Venture Syndicate, Ltd. .. .. .	[1900] W. N. 69; [1900] 1 Ch. 811 .. .. .	780
Foster v. London, Chatham and Dover Ry. Co. .. .. .	C. A. [1895] 1 Q. B. 711 .. .. .	1643
Foster v. New Trinidad Lake Asphalt Co. .. .. .	[1900] W. N. 257 .. .. .	353
Foster v. North Hendre Mining Co. .. .. .	[1891] 1 Q. B. 71 .. .. .	1263
Foster v. Reeves .. .. .	C. A. [1892] 2 Q. B. 255 .. .. .	593
Foster (John) & Sons, Ltd. v. Inland Revenue Commrs. .. .. .	C. A. [1894] 1 Q. B. 516 .. .. .	1796
Foulis :—Leeson v. In re Uttermare .. .. .	[1893] W. N. 158 .. .. .	2368
Foulkes :—East London Waterworks Co. v. .. .. .	[1894] 1 Q. B. 819 .. .. .	2280
Fourth City Mutual Building Society v. East Ham (Churchwardens, &c.) .. .. .	[1892] 1 Q. B. 661 .. .. .	1034, 1038, 1689
Fourth City Mutual Building Society :—West Ham (Churchwardens, &c. v. .. .. .	[1892] 1 Q. B. 654 .. .. .	1687, 2070
Foveaux, In re. Cross v. London Anti-Vivisection Society .. .. .	[1895] 2 Ch. 501 .. .. .	277
Fowke and Dyson, In re .. .. .	[1896] 2 Ch. 720 .. .. .	1465

Name of Case.	Volume and Page.	Column of Digest.
Fowle:—Carr v. .. .. .	[1893] 1 Q. B. 251 .. .. .	1780,
Fowler v. Broad's Night Light Co. .. ..	[1893] 1 Ch. 724 .. .. .	2112
Fowler v. James. In re Beeman .. .. .	[1895] W. N. 151 (1); [1896] 1 Ch. 48 .. .. .	304
Fowler:—Rhymney Iron Co. v. .. .. .	[1896] 2 Q. B. 79 .. .. .	802
Fowler:—Metropolitan Ry. Co. v. .. .. .	C. A. [1892] 1 Q. B. 165; H. L. (E.) [1893] A. C. 416 .. .. .	1763
Fox:—Lord v. .. .. .	[1892] 1 Q. B. 199 .. .. .	1779
Fox v. Government of Newfoundland .. ..	P. C. [1898] A. C. 667 .. .. .	1369
Fox (Lane) v. Kensington and Knightsbridge Electric Lighting Co. .. .. .	[1892] 2 Ch. 66; C. A. [1892] 3 Ch. 424 .. .. .	1337
Fox v. Martin .. .. .	[1895] W. N. 36 .. .. .	1426,
Fox v. Star Newspaper Co. .. .. .	C. A. [1898] 1 Q. B. 636; H. L. (E.) [1899] W. N. 255; [1900] A. C. 19 .. .. .	1445
Fox:—Teague v. In re Godden .. .. .	[1893] 1 Ch. 292 .. .. .	401, 771
Fox & Jacobs, In re. Ex parte Discount Banking Co. of England and Wales .. .. .	[1894] 1 Q. B. 438 .. .. .	1491
Foxwell v. Van Grutten .. .. .	C. A. [1896] W. N. 158 (6), 161 (11); [1897] 1 Ch. 64 .. .. .	1876
Foxwell v. Van Grutten .. .. .	C. A. [1900] W. N. 97 .. .. .	167
Foxwell:—Van Grutten v. Foxwell v. Van Grutten .. .. .	H. L. (E.) [1897] A. C. 658 .. .. .	1697
Foy, Morgan & Co.:—Montgomery v. .. ..	C. A. [1895] 2 Q. B. 321 .. .. .	1471
Frames v. Bultfontein Mining Co. .. .. .	[1891] 1 Ch. 140 .. .. .	2325
France:—Baxter v. (No. 1) .. .. .	C. A. [1895] 1 Q. B. 455 .. .. .	1505
France:—Baxter v. (No. 2) .. .. .	C. A. [1895] 1 Q. B. 591 .. .. .	351
France v. Dutton .. .. .	[1891] 2 Q. B. 208 .. .. .	35, 1555
France:—Thornton v. .. .. .	C. A. [1891] 2 Q. B. 143 .. .. .	590,
Frances Handford & Co., In re. Ex parte Frances Handford .. .. .	C. A. [1899] W. N. 18 (2); [1899] 1 Q. B. 566 .. .. .	2034
Francis:—Greenwood v. .. .. .	C. A. [1899] 1 Q. B. 312 .. .. .	1133
Francis v. Turner Bros. .. .. .	C. A. [1900] 1 Q. B. 478 .. .. .	160
Frank, In re .. .. .	[1894] 1 Q. B. 9 .. .. .	1585
Frankenburg v. Great Horseless Carriage Co. .. .. .	C. A. [1900] W. N. 2; [1900] 1 Q. B. 504 .. .. .	1224
Frankenstein v. Gavin's House-to-House Cycle Cleaning and Insurance Co. .. .. .	C. A. [1897] 2 Q. B. 62 .. .. .	171
Franklin:—Pennell v. In re White .. .. .	[1898] 1 Ch. 297; C. A. [1898] 2 Ch. 217 .. .. .	374,
Franks, In re. Ex parte Gittins .. .. .	[1892] 1 Q. B. 646 .. .. .	1250
Frape, In re. Ex parte Perrett (No. 1) .. .. .	C. A. [1893] 2 Ch. 284 .. .. .	666
Frape, In re. Ex parte Perrett (No. 2) .. .. .	[1894] 2 Ch. 290 .. .. .	2060
Fraser, In re. Ex parte Central Bank of London .. .. .	C. A. [1892] 2 Q. B. 633 .. .. .	126
Fraser, In the Goods of .. .. .	[1891] P. 285 .. .. .	2028
Fraser v. Byas .. .. .	[1895] W. N. 112 (5) .. .. .	2042
Fraser v. Croft .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 134 .. .. .	159
Fraser:—Dick v. In re Macdonald .. .. .	[1897] 2 Ch. 181 .. .. .	1836,
Fraser:—Foster v. .. .. .	[1893] 3 Ch. 158 .. .. .	1842
Fraser:—Henthorn v. .. .. .	C. A. [1892] 2 Ch. 27 .. .. .	1125
Freckleton's Judicial Factor (Murray):—Lord Advocate v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 110 .. .. .	899
Freebody & Co.:—Peterson v. .. .. .	C. A. [1895] 2 Q. B. 294 .. .. .	511
Freeman v. General Publishing Co. .. .. .	[1894] 2 Q. B. 380 .. .. .	1781
Freeman:—Hargreave v. .. .. .	[1891] 3 Ch. 39 .. .. .	1961





Name of Case.	Volume and Page.	Column of Digest.
Fuller and Leathley's Contract, In re ..	[1897] W. N. 54. (6) ..	2255
Fuller v. McMahon. In re McMahon ..	[1899] W. N. 250; [1900] 1 Ch. 173 ..	148
Furber, In re ..	[1898] 2 Ch. 538; C. A. [1898] W. N. 160 (13) ..	2039
Furber, Ex parte. In re Parsons ..	C. A. [1893] 2 Q. B. 122 ..	209
Furber v. Tayler ..	C. A. [1900] W. N. 180; [1900] 2 Q. B. 719 ..	586
Furlong:—Barker v. ..	[1891] 2 Ch. 172 ..	83, 782, 2157
Furness:—Baumwoll Manufacturcr von Scheibler v. ..	C. A. [1892] 1 Q. B. 253; H. L. (E.) [1893] A. C. 8 ..	1942
Furness Ry. Co.:—Att.-Gen. v. ..	[1899] 2 Q. B. 267 ..	1651
Furness v. Beresford (The York Election Petition).	C. A. [1898] 1 Q. B. 495 ..	1366
Furness, Withy & Co.:—Manchester Trust v. ..	[1895] 2 Q. B. 282; C. A. [1895] 2 Q. B. 539 ..	1973
Furness, Withy & Co. White & Co. v. ..	C. A. [1894] 1 Q. B. 483; H. L. (E.) [1895] A. C. 40 ..	1937
Furness Finance Co., Ex parte. In re Seaman ..	[1896] 1 Q. B. 412 ..	156
Furnivall v. Hudson ..	[1893] 1 Ch. 335 ..	199, 1464
Fyfe:—Foster v. ..	[1896] 2 Q. B. 104 ..	1263
Fylde Waterworks Co.:—Chapman v. ..	C. A. [1894] 2 Q. B. 599 ..	2276
Fysh:—Blackman v. ..	C. A. [1892] 3 Ch. 209 ..	1696, 2322
Fyson v. Johnson. In re Rolfe ..	[1894] W. N. 77 ..	1494
G.		
G. (Infants), In re ..	[1899] W. N. 38 (2); [1899] 1 Ch. 719 ..	953
G—— (an Infant), In re ..	[1892] 1 Ch. 292 ..	946
G—— v. C——. In re S——'s Settlement ..	[1893] W. N. 127 ..	917
C—— v. L—— ..	[1891] 3 Ch. 126 ..	957, 1850
Gadban:—Musurus Bey v. ..	[1894] 1 Q. B. 533; C. A. [1894] 2 Q. B. 352 ..	1007, 1124, 1540
Gaden v. Newfoundland Savings Bank ..	P. C. [1899] A. C. 281 ..	1338
Gage, In re. Hill v. Gage ..	[1898] 1 Ch. 498 ..	1483
Gage v. M'Daid ..	C. A. (Ir.) [1898] W. N. 104 ..	1390
Gaisford:—Reg. v. ..	[1892] 1 Q. B. 381 ..	1042
Gallagher:—Criglington v. ..	C. A. (Ir.) [1897] W. N. 106 ..	1366
Gallagher v. Edmiston (Edmiston's Case)	C. A. (Ir.) [1897] W. N. 134 ..	1384
Gallagher v. Hay (Hay's Case) ..	C. A. (Ir.) [1897] W. N. 134 ..	1384
Gallagher v. Maxwell (Maxwell's Case) ..	C. A. (Ir.) [1897] W. N. 134 ..	1384
Gallagher v. Rudd ..	[1897] W. N. 153 (9); [1898] 1 Q. B. 114 ..	1107
Galashiels (Corporation):—Schulze v. ..	H. L. (Sc.) [1895] A. C. 666 ..	220, 2081
Galashiels Provident Building Society v. Newlands ..	Ct. of Sess. (Sc.) [1896] W. N. 107 ..	1772
Galbraith:—Witted v. ..	[1893] 1 Q. B. 431; C. A. [1893] 1 Q. B. 577 ..	1543
Gale v. Overend ..	[1891] 1 Q. B. 269 ..	1390
Gallard, In re. Ex parte Harris ..	C. A. [1892] 1 Q. B. 532 ..	175

Name of Case.	Volume and Page.	Column of Digest.
Gallard, In re. Ex parte Gallard .. ..	C. A. [1895] W. N. 146 (1);	120
Gallard, In re. Ex parte Gallard .. ..	[1896] 1 Q. B. 68 .. ..	120
Gallon (W.) & Son:—Edge & Sons v. .. ..	[1897] 2 Q. B. 8 .. ..	564
Galloway:—Smith v. .. ..	C. A. [1899] W. N. 137 .. ..	555
Galloway:—Smith v. .. ..	[1898] 1 Q. B. 71 .. ..	549,
Gallsworthy v. Selby Dam Drainage Commrs. ..	C. A. [1892] 1 Q. B. 348 .. ..	1686
Galt:—Bell v. .. ..	Registration App. Ct. (Sc.) [1898] W. N. 111 .. ..	1373
Galt:—Sim v. .. ..	Registration App. Ct. (Sc.) [1897] W. N. 111 .. ..	1395
Galvin, In re .. ..	Ch. Div. (Ir.) [1898] W. N. 140 .. ..	1781
Galwey, In re .. ..	[1896] 1 Q. B. 230 .. ..	812
Gamage:—Whiteley Exerciser, Ld. v. .. ..	[1898] 2 Ch. 405 .. ..	438
Gamble, In re .. ..	[1898] W. N. 173 (7); [1899] 1 Q. B. 305 .. ..	1458
Game, In re. Game v. Young .. ..	[1897] 1 Ch. 881 .. ..	521
Gamgee, In re .. ..	C. A. [1891] W. N. 106 .. ..	161
Gamgee:—Ward v. .. ..	[1891] W. N. 165 .. ..	774
Gandy:—Southport Tramways Co. .. ..	C. A. [1897] 2 Q. B. 66 .. ..	1567
"Gannet," The .. ..	[1899] W. N. 53; C. A. [1899] W. N. 72; [1899] P. 230; H. L. (E.) [1900] W. N. 86; [1900] A. C. 234 .. ..	1945
Gardiner:—Woolwich (Local Board) v. .. ..	[1895] 2 Q. B. 497 .. ..	1445
Gardner, In re. Long v. Gardner (No. 1) .. ..	[1892] W. N. 164 .. ..	790
(No. 2) .. ..	C. A. [1894] W. N. 159 .. ..	46
Gardner v. Hodgson's Kingston Breweries Co. ..	[1900] W. N. 67; [1900] 1 Ch. 592 .. ..	2289
Gardner:—Knight v. In re Knight .. ..	[1892] 2 Ch. 368 .. ..	2052
Gardner:—Pearce v. .. ..	C. A. [1897] 1 Q. B. 688 .. ..	511
Gardner:—Reg. v. .. ..	C. C. R. [1898] W. N. 150 (4); [1899] 1 Q. B. 150 .. ..	613
Garland:—De Hayn v. In re De Linden. In re Spurrier's Settlement .. ..	[1897] 1 Ch. 453 .. ..	1196
Garland's Case. Reg. v. Commrs. of Inland Revenue .. ..	[1891] 1 Q. B. 485 .. ..	1445
Garle:—Pollock v. .. ..	C. A. [1897] W. N. 152 (7); [1898] 1 Ch. 1 .. ..	662
Garner:—Percival v. .. ..	C. A. [1900] 2 Q. B. 406 .. ..	1230
Garnett, In the Goods of .. ..	[1894] P. 90 .. ..	1616
Garnett:—Armitage v. In re Armitage .. ..	C. A. [1893] 3 Ch. 337 .. ..	1852
Garnett:—Stephenson v. .. ..	C. A. [1898] 1 Q. B. 677 .. ..	1530
Garnsey v. Flood .. ..	P. C. [1898] A. C. 687 .. ..	1325
Gascoigne:—Sherrard v. .. ..	[1900] W. N. 129; [1900] 2 Q. B. 279 .. ..	862
Gas Float Whitton No. 2 (Owners of):—Wells v. .. ..	C. A. [1896] P. 42; H. L. (E.) [1897] A. C. 337 .. ..	2007
Gaskell:—Gosling v. .. ..	C. A. [1896] 1 Q. B. 669; reversed by H. L. (E.) [1897] A. C. 575 .. ..	331
Gaskell's Settled Estates, In re .. ..	[1894] 1 Ch. 485 .. ..	1857,
Gas Light and Coal Co.:—Paterson v. .. ..	C. A. [1896] 2 Ch. 476 .. ..	1859
Gas Meter Co.:—Andrews v. .. ..	[1896] W. N. 87 (8); C. A. [1897] 1 Ch. 361 .. ..	874
Gasquoine, In re. Gasquoine v. Gasquoine ..	C. A. [1894] 1 Ch. 470 .. ..	368
Gaston:—Stockton Football Co. v. .. ..	[1895] 1 Q. B. 453 .. ..	798
Gates and Jones' Case, otherwise Jones' Case ..	[1893] 2 Ch. 49, n. .. ..	76
		277

Name of Case.	Volume and Page.	Column of Digest.
Gathercole v. Norfolk. In re Jolly .. .. {	[1899] W. N. 249; [1900] 1 Ch. 292; C. A. [1900] W. N. 170; [1900] 2 Ch. 616 .. ..	2306
Gauder v. Dassenaike .. .. .	P. C. [1897] A. C. 547 .. ..	267
Gavin's House-to-House Cycle Cleaning and Insurance Co.—Frankenstein v. .. ..	C. A. [1897] 2 Q. B. 62 .. ..	666
Gayler:—Charterhouse School v. .. ..	[1896] 1 Q. B. 437 .. ..	1756
Gay v. McGill .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 98 .. ..	1401
Gayford v. Chouler .. .. .	[1898] 1 Q. B. 316 .. ..	619
Geake:—Pollard v. In re Hunt .. ..	[1900] W. N. 65 .. ..	1879
Gebhardt v. Saunders .. .. .	[1892] 2 Q. B. 452 .. ..	1166, 1347
Geck, In re. Freund v. Steward .. ..	C. A. [1893] W. N. 161 .. ..	278, 279
Gedge v. Royal Exchange Assurance Corporation .. ..	[1900] 2 Q. B. 214 .. ..	1002
Gedye v. Commrs. of Works .. .. .	C. A. [1891] 2 Ch. 630 .. ..	2254
Gedye v. Pelling .. .. .	[1892] W. N. 44 .. ..	780
Gee, In re. Pearson-Gee v. Pearson .. ..	[1895] W. N. 90 .. ..	1878, 2187
Geen v. Newington Vestry .. .. .	[1898] 2 Q. B. 1 .. ..	1167
Geilinger v. Gibbs .. .. .	[1897] 1 Ch. 479 .. ..	572
Geisel:—Robinson v. .. .. .	C. A. [1894] 2 Q. B. 685 .. ..	1506
Geldert:—Pictou (Municipality) v. .. ..	P. C. [1893] A. C. 524 .. ..	251, 549, 895, 2066
"Gemma," The .. .. .	[1899] W. N. 116; C. A. [1899] W. N. 136; [1899] P. 285 .. ..	1947
Gems:—Wyatt v. .. .. .	[1893] 2 Q. B. 225 .. ..	1178, 2070
General Auction, Estate, and Monetary Co. v. Smith .. .. .	[1891] 3 Ch. 432 .. ..	301
General and Commercial Investment Trust:—Verner v. .. .. .	C. A. [1894] 2 Ch. 239 .. ..	354
General Credit Co., In re .. .. .	[1891] W. N. 153 .. ..	366
General Insurance Co. of Trieste (Assicurazioni) Generali v. Cory .. .. .	[1897] 1 Q. B. 335 .. ..	1001
General Medical Council:—Allinson v. .. ..	C. A. [1894] 1 Q. B. 750 .. ..	1026, 1042, 1252
General Mineral Patents Syndicate, Ltd.:—Malleon v. .. .. .	[1894] 3 Ch. 538 .. ..	356
General Phosphate Corporation, In re (No. 1) .. ..	[1893] W. N. 142 .. ..	460
(No. 2) .. .. .	C. A. [1895] 1 Ch. 3 .. ..	442
General Public Works and Assets Co., Ex parte. In re Evelyn .. .. .	[1894] 2 Q. B. 302 .. ..	174, 965
General Publishing Co.:—Freeman v. .. ..	[1894] 2 Q. B. 380 .. ..	562
General Ry. Syndicate, In re. Whiteley's Case {	[1899] W. N. 34 (5); [1899] 1 Ch. 770; C. A. [1900] W. N. 28; [1900] 1 Ch. 365 .. ..	429
General Service Co-operative Stores, In re .. ..	[1891] 1 Ch. 496 .. ..	481
General Trustees of the Free Church of Scotland v. Bain .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 138 .. ..	1753
General Trustees of the Free Church of Scotland:—Inland Revenue v. .. ..	Ct. of Sess. (Sc.) [1897] W. N. 140 .. ..	1762, 1776
General Trustees of the Free Church of Scotland:—Maughan v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 105 .. ..	1762
Gentle v. Faulkner .. .. .	C. A. [1900] 2 Q. B. 267 .. ..	1067
"Georg," The .. .. .	[1894] P. 330 .. ..	2003
George v. Carpenter .. .. .	[1893] 1 Q. B. 505 .. ..	824

Name of Case.	Volume and Page.	Column of Digest.
George & Brandy :—Royal Mail Steam Packet Co. v. .. .. .	P. C. [1900] A. C. 480 .. ..	1018
George & Co. :—Pitt Pitts v. .. .. .	C. A. [1896] 2 Ch. 866 .. ..	527
George and Goldsmiths and General Burglary Insurance Association, In re .. .. .	[1898] 2 Q. B. 136; C. A. [1899] W. N. 27 (5); [1899] 1 Q. B. 595 .. ..	976
George :—Godfrey v. .. .. .	C. A. [1895] W. N. 152 (6); [1896] 1 Q. B. 48 .. ..	2048
George v. Grose. In re West .. .. .	[1899] W. N. 241; [1900] 1 Ch. 84 .. ..	2162
George Newnes, Ltd. :—Johnson v. .. .. .	[1894] 3 Ch. 663 .. ..	537
Gerard (Lord) and Beecham's Contract, In re .. .. .	C. A. [1894] 3 Ch. 295 .. ..	1715
Gerard (Lord) and the London and North Western Ry. Co., In re .. .. .	[1894] 2 Q. B. 915; C. A. [1895] 1 Q. B. 459 .. ..	1264, 1648
Gerard (Lord) v. Kent County Council .. .. .	C. A. [1897] 1 Q. B. 351; affirmed by H. L. (E.) [1897] A. C. 633 .. ..	892
Gerard's (Lord) Settled Estates, In re .. .. .	C. A. [1893] 3 Ch. 252 .. ..	1857, 1858, 1861
German :—Jones v. .. .. .	[1896] 2 Q. B. 418; C. A. [1897] 1 Q. B. 374 .. ..	1032
"Germanic," The .. .. .	C. A. [1896] P. 84 .. ..	1997
Gerrard v. Clowes .. .. .	[1892] 2 Q. B. 11 .. ..	1566
Gibbon v. Paddington Vestry .. .. .	[1900] W. N. 180; [1900] 2 Ch. 794 .. ..	1181
Gibbs, In re. Thorne v. Gibbs .. .. .	[1898] 1 Ch. 625 .. ..	1742
Gibbs :—Duckham v. .. .. .	[1900] 1 Q. B. 394 .. ..	722
Gibbs v. Messer .. .. .	P. C. [1891] A. C. 248 .. ..	2262
Gibbs :—Geilinger v. .. .. .	[1897] 1 Ch. 479 .. ..	572
Gibbs :—National Society for the Distribution of Electricity by Secondary Generators v. .. .. .	[1899] W. N. 59; [1899] 2 Ch. 289; C. A. [1900] W. N. 102; [1900] 2 Ch. 280 .. ..	1432
Gibbs (or Stevenson) v. Stevenson .. .. .	H. L. (Sc.) [1894] W. N. 104 .. ..	946
Gibson, Ex parte. In re Low .. .. .	C. A. [1895] 1 Q. B. 734 .. ..	104
Gibson v. Gibson. In re Coley .. .. .	[1900] W. N. 272 .. ..	1896
Gibson v. Lawson .. .. .	[1891] 2 Q. B. 545 .. ..	607, 2143
Gibson :—Reeve v. .. .. .	C. A. [1891] 1 Q. B. 652 .. ..	530
Gibson v. Riddell .. .. .	C. A. (Ir.) [1899] W. N. 173 .. ..	1376
Gibson :—Wallace v. .. .. .	H. L. (Sc.) [1895] A. C. 354 .. ..	1833
Gidney :—Northey Stone Co. v. .. .. .	C. A. [1894] 1 Q. B. 99 .. ..	592
Gieve, In re .. .. .	C. A. [1899] W. N. 32 (4); [1899] 1 Q. B. 794 .. ..	2074
Gieve, In re. Ex parte Shaw .. .. .	[1899] W. N. 41; C. A. [1899] W. N. 72 .. ..	147
Gifford (Lord) v. Fitzhardinge (Lord) .. .. .	[1899] W. N. 75; [1899] 2 Ch. 32 .. ..	1866
Gilbert, In the Goods of .. .. .	[1893] P. 183 .. ..	2357
Gilbert, In re. Ex parte Gilbert .. .. .	[1897] W. N. 174 (1); [1898] 1 Q. B. 282 .. ..	164
Gilbert :—Cooke v. .. .. .	[1892] W. N. 111 .. ..	1497
Gilbert & Rivington :—Yorkshire Provident Life Assurance Co. v. .. .. .	C. A. [1895] 2 Q. B. 148 .. ..	667
Gilchrest & Co. :—Baumvoll Manufactur von Scheibler v. .. .. .	[1891] 2 Q. B. 319; C. A. [1892] 1 Q. B. 253; H. L. (E.) [1893] A. C. 8 .. ..	1942
Gilchrist :—Ramsey v. .. .. .	P. C. [1892] A. C. 412 .. ..	281, 853
Gilchrist Educational Trust, In re .. .. .	[1895] 1 Ch. 367 .. ..	276

Name of Case.	Volume and Page.	Column of Digest.
Giles, In re. Jones v. Pennefather .. ..	[1896] 1 Ch. 956 .. ..	804
Giles (Ellen), In re .. ..	[1894] W. N. 73 .. ..	911
Giles v. Giles .. ..	[1899] W. N. 224; [1900] P. 17 .. ..	709
Giles v. Stephens. In re Stephens .. ..	[1892] W. N. 140 .. ..	69, 280
Gill:—Boyce v. .. ..	[1891] W. N. 108 .. ..	962
Gill:—Dickins v. .. ..	[1896] 2 Q. B. 310 .. ..	1464
Gill:—Kirkham v. Attenborough v. Kirkham .. ..	C. A. [1897] 1 Q. B. 201 .. ..	1816
Gill:—Smith v. .. ..	[1896] 2 Q. B. 166 .. ..	582
Gill (George) & Sons:—Universities of Oxford and Cambridge v. .. ..	[1893] W. N. 155 (8); [1899] 1 Ch. 55 .. ..	1517
Gillanders:—Ingilis v. .. ..	H. L. (Sc.) [1895] A. C. 507 .. ..	1833
Gillespie:—Campbell v. .. ..	[1899] W. N. 252; [1900] 1 Ch. 225 .. ..	6
Gillespie:—Parsons v. .. ..	P. C. [1898] A. C. 239 .. ..	1333
Gillespie Bros. & Co. v. Cheney, Eggar & Co. .. ..	[1896] 2 Q. B. 59 .. ..	1817
Gillingham v. Beddow .. ..	[1900] W. N. 115; [1900] 2 Ch. 242 .. ..	1418
Gillison:—Coughlin v. .. ..	C. A. [1899] 1 Q. B. 145 .. ..	88
Gillow:—Harvey v. In re Sir E. Harvey's Estate .. ..	[1893] 1 Ch. 567 .. ..	2317, 2336
Gilmour:—Caledonian Insurance Co. v. .. ..	H. L. (Sc.) [1893] A. C. 85 .. ..	57, 64, 976
Gilmour v. North British Ry. Co. .. ..	H. L. (Sc.) [1893] A. C. 281 .. ..	1838
Gilroy, Sons, & Co. v. Price & Co. .. ..	H. L. (Sc.) [1893] A. C. 56 .. ..	1974
Gilson, In re. Gilson v. Gilson .. ..	[1894] 2 Ch. 92 .. ..	1556
Gimblett, Ex parte. In re Lane-Fox .. ..	[1900] W. N. 142; [1900] 2 Q. B. 503 .. ..	182
Ginger, In re. Ex parte London and Universal Bank .. ..	[1897] 2 Q. B. 461 .. ..	138
Gunnever:—Rowley v. .. ..	[1897] 2 Ch. 503 .. ..	1864
"Gipsy Queen," The .. ..	C. A. [1895] P. 176 .. ..	2002
Girvin & Co.:—Weir & Co. v. .. ..	[1898] W. N. 164 (4); [1899] 1 Q. B. 193; C. A. [1900] 1 Q. B. 45 .. ..	1975
Gittins, Ex parte. In re Franks .. ..	[1892] 1 Q. B. 646 .. ..	126
Gjers, In re. Cooper v. Gjers .. ..	[1899] W. N. 77; [1899] 2 Ch. 54 .. ..	1883
Gladstone, In re. Gladstone v. Gladstone .. ..	C. A. [1900] W. N. 108; [1900] 2 Ch. 101 .. ..	1873
Gladstone:—Syer v. .. ..	[1892] W. N. 178 .. ..	787
Glamorgan County Council v. Great Western Ry. Co. .. ..	[1895] 1 Q. B. 21 .. ..	1655
Glamorgan County Council:—Reg. v. Ex parte Miller .. ..	[1899] W. N. 60; [1899] 2 Q. B. 26; C. A. [1899] W. N. 138; [1899] 2 Q. B. 536 .. ..	579
Glamorgan Ry. Co. (Vale of):—Llewellyn v. .. ..	[1897] 2 Q. B. 239; C. A. [1898] 1 Q. B. 473 .. ..	1663
Glamorgan Steamship Co.:—Owners of "P. Caland" v. The "P. Caland" .. ..	H. L. (E.) [1893] A. C. 207 .. ..	38, 1953
Glamorganshire (Justices of):—Reg. v. .. ..	C. A. [1892] 1 Q. B. 621 .. ..	1039, 1041, 1102
"Glanystwyth," The .. ..	[1899] W. N. 22 (2); [1899] P. 118 .. ..	1990
Glasgow Corporation:—Scott v. .. ..	H. L. (Sc.) [1899] W. N. 119; [1899] A. C. 470 .. ..	1209
Glasgow Corporation v. Glasgow and South Western Ry. Co. .. ..	H. L. (Sc.) [1895] A. C. 376 .. ..	2277
Glasgow Corporation v. Glasgow Tramway and Omnibus Co. .. ..	H. L. (Sc.) [1898] A. C. 631 .. ..	1836

Name of Case.	Volume and Page.	Column of Digest.
Glasgow Corporation <i>v.</i> M'Ewan .. ..	H. L. (Sc.) [1900] A. C. 91 ..	2280
Glasgow Corporation <i>v.</i> M'Omish .. ..	H. L. (Sc.) [1897] W. N. 67 (1); [1898] A. C. 432 .. ..	39, 1841
Glasgow and South Western Ry. Co.:—Glasgow Corporation <i>v.</i> .. ..	H. L. (Sc.) [1895] A. C. 376 ..	2277
Glass:—Woodin <i>v.</i> In re Woodin .. ..	C. A. [1895] 2 Ch. 309 .. ..	951, 2293, 2334
Glasson, In re. Glasson <i>v.</i> Glasson .. ..	[1893] W. N. 85 .. ..	1503
Glasson:—Langston <i>v.</i> .. ..	[1891] 1 Q. B. 567 .. ..	1763
Gledhill:—Halifax Joint Stock Banking Co. <i>v.</i> ..	[1891] 1 Ch. 31 .. ..	852
Gleen <i>v.</i> Gleen .. ..	[1900] W. N. 258 .. ..	705
"Glendarroch," The .. ..	C. A. [1894] P. 226 .. ..	1968
"Glendevon," The .. ..	[1893] P. 269 .. ..	1940
Glendower Steamship Co., In re .. ..	[1899] W. N. 114 .. ..	464
"Glengyle," The .. ..	[1897] W. N. 170 (1); C. A. [1898] P. 87; affirmed by H. L. (E.) sub nom. "Glengyle" " (Owners of), her Cargo and Freight <i>v.</i> Neptune Salvage Co. The "Glengyle" [1898] A. C. 519 .. ..	2002
"Glenochil," The .. ..	[1896] P. 10 .. ..	1938
"Glenlivet," The .. ..	[1893] P. 164; C. A. [1894] P. 48 .. ..	988
Gleuton:—Barnes <i>v.</i> .. ..	[1898] 2 Q. B. 223; C. A. [1899] 1 Q. B. 885 .. ..	1134
Globe Marine Insurance Co.:—Woodside <i>v.</i> ..	[1896] 1 Q. B. 105 .. ..	990
Globe Venture Syndicate, Ltd.:—Foster <i>v.</i> ..	[1900] W. N. 69; [1900] 1 Ch. 811 .. ..	780
Glory Paper Mills Co., In re. Dunster's Case ..	C. A. [1894] 3 Ch. 473 .. ..	427
Glover Incorporation of Perth:—Duke of Atholl <i>v.</i> Wedderburn <i>v.</i> Duke of Atholl .. ..	H. L. (Sc.) [1900] A. C. 403 ..	824
Glubb, In re. Bamfield <i>v.</i> Rogers .. ..	C. A. [1900] 1 Ch. 354 .. ..	2264
Gluckstein <i>v.</i> Barnes .. ..	H. L. (E.) [1900] W. N. 92; [1900] A. C. 240 .. ..	373
Glynn:—Margetson & Co. <i>v.</i> .. ..	C. A. [1892] 1 Q. B. 337; H. L. (E.) [1893] A. C. 351 ..	1967
Goblet Frères:—Boxsius <i>v.</i> .. ..	C. A. [1894] 1 Q. B. 842 .. ..	649
Goddard <i>v.</i> Higg. In re Higg's Mortgage ..	[1894] W. N. 73 .. ..	80, 1279
Goddard:—London and County Banking Co. <i>v.</i> ..	[1897] 1 Ch. 642 .. ..	2201
Goddard:—Sawyer <i>v.</i> In re Dartnall .. ..	C. A. [1895] 1 Ch. 474 .. ..	2035, 2184
Goddard:—Shears <i>v.</i> .. ..	C. A. [1896] 1 Q. B. 406 .. ..	111
Godden, In re. Teague <i>v.</i> Fox .. ..	[1893] 1 Ch. 292 .. ..	1876
Godfrey, In re. Thorne-George <i>v.</i> Godfrey ..	C. A. [1895] W. N. 12 .. ..	919
Godfrey:—Edwards <i>v.</i> .. ..	C. A. [1899] W. N. 72; [1899] 2 Q. B. 333 .. ..	1247
Godfrey <i>v.</i> George .. ..	C. A. [1895] W. N. 152 (6); [1896] 1 Q. B. 48 .. ..	2047
Godfrey & Co.:—Sheil <i>v.</i> .. ..	[1893] W. N. 115 .. ..	965, 1120
Godman <i>v.</i> Moses .. ..	C. A. [1900] W. N. 179 .. ..	585
Godmanchester (Mayor, &c., of):—Simpson <i>v.</i> ..	C. A. [1896] 1 Ch. 214; H. L. (E.) [1897] A. C. 696 .. ..	730
Godson & Son:—Carritt <i>v.</i> .. ..	[1899] 2 Q. B. 193 .. ..	1157
Godwin <i>v.</i> Prince. In re Prince .. ..	[1898] 2 Ch. 225 .. ..	1613
Goetz, Jonas & Co., In re. Ex parte The Trustee .. ..	C. A. [1898] 1 Q. B. 787 .. ..	137

Name of Case.	Volume and Page.	Column of Digest.
Gold Exploration and Development Syndi- cate:—Grant v. .. .. .	C. A. [1900] 1 Q. B. 233 ..	2219
Gold Ores Reduction Co. v. Parr .. .. .	[1892] 2 Q. B. 14 .. .. .	1566
Gold Reefs of West Africa, Ltd.:—Allen v. ..	[1899] W. N. 75; [1899] 2 Ch. 40; C. A. [1900] W. N. 43; ..	304
Gold Reefs of Western Australia v. Dawson ..	[1900] 1 Ch. 656 .. .. .	
Goldberg, Ex parte .. .. .	[1896] W. N. 171 (8); [1897] 1 Ch. 115 .. .. .	1491
Golden Sovereigns, Ltd.:—Kotchie v. Bright, Claimant .. .. .	C. A. [1893] 1 Q. B. 417 .. ..	1493
Goldberger v. Roth. In re Roth .. .. .	C. A. [1898] 2 Q. B. 164 .. ..	1009
Goldsborough, Mort & Co.:—North Australian Territory Co. v. .. .. .	[1896] W. N. 16 (15) .. ..	2189
Goldsmid:—Chaffers v. .. .. .	C. A. [1893] 2 Ch. 381 .. ..	442
Goldsmith:—Turner v. .. .. .	[1894] 1 Q. B. 186 .. .. .	1203,
Goldstein:—Dubowski & Sons v. .. .. .	C. A. [1891] 1 Q. B. 544 .. ..	1366
Goldstein v. Vaughan .. .. .	C. A. [1896] 1 Q. B. 478 .. ..	514
Goldstone v. Williams, Deacon & Co. .. ..	[1897] 1 Q. B. 549 .. .. .	1725
Gonty v. Manchester, Sheffield and Lincolnshire Ry. Co. .. .. .	[1898] W. N. 148 (3); [1899] 1 Ch. 47 .. .. .	1235
Gooch v. Clutterbuck .. .. .	C. A. [1896] 2 Q. B. 439 .. ..	668
Gooch v. Gooch .. .. .	C. A. [1899] W. N. 96; [1899] 2 Q. B. 148 .. .. .	1089
Good & Co. v. Isaacs .. .. .	[1893] P. 99 .. .. .	1062
Goodall, In re. Goodall v. Goodall .. ..	C. A. [1892] 2 Q. B. 555 .. ..	696
Goodall:—Alexander Pirie & Sons v. .. ..	C. A. [1892] 2 Q. B. 555 .. ..	1962
Goodden v. Goodden .. .. .	[1895] W. N. 136 (7) .. ..	1787
Goode v. Lickorish. In re Bullock .. ..	C. A. [1892] 1 Ch. 35 .. ..	2129
Goodenough, In re. Marland v. Williams ..	[1891] P. 395; C. A. [1892] P. 1 .. .. .	690
Goodfellow v. Gray .. .. .	[1891] W. N. 62 .. .. .	2329
Goodier v. Edmunds .. .. .	[1895] 2 Ch. 537 .. .. .	1868
Goodlock v. Cousins .. .. .	C. A. [1899] 2 Q. B. 498 .. ..	1549
Goodwin v. Goodwin and Arnold .. .. .	[1893] 3 Ch. 455 .. .. .	320,
Goole Local Bd.:—Reg. v. .. .. .	[1896] W. N. 174 (3); [1897] 1 Q. B. 348; affirmed by C. A.	2350
Goose:—Williams v. .. .. .	[1897] 1 Q. B. 558 .. .. .	590
Gordon, In the Goods of .. .. .	[1897] P. 87 .. .. .	700
Gordon v. Evans .. .. .	[1891] 2 Q. B. 212 .. .. .	2084
Gordon:—Lord Advocate v. .. .. .	C. A. [1897] 1 Q. B. 471 .. ..	1521
Gordon, In re. Ex parte, Navalchand ..	[1892] P. 228 .. .. .	1617
Gordon v. Pyper .. .. .	C. A. [1894] 1 Q. B. 248 .. ..	597
Gordon:—St. Martin's-in-the-Fields (Vestry of) v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 134 .. .. .	1808
Gordon v. St. Mary Abbots, Kensington ..	[1897] 1 Q. B. 516 .. .. .	168
Gordon v. Street .. .. .	H. L. (Sc.) [1892] W. N. 169 ..	1240,
Gordon v. Williamson .. .. .	C. A. [1891] 1 Q. B. 61 .. ..	1836
Gore:—Saunders v. In re Saunders .. ..	[1894] 2 Q. B. 742 .. .. .	1165
Gorman, Ex parte .. .. .	C. A. [1899] 2 Q. B. 641 .. ..	1180
	[1892] 1 Q. B. 616; C. A. [1892] 2 Q. B. 459 .. .. .	512
	[1897] 1 Ch. 888; C. A. [1897] W. N. 158 (2); [1898] 1 Ch. 17 .. .. .	1182
	H. L. (E.) [1894] A. C. 23 .. ..	1470
		1102

Name of Case.	Volume and Page.	Column of Digest.
Gorrie:—Anderson v. .. .. .	C. A. [1895] 1 Q. B. 668 .. {	1023, 2156
Gorringe:—Hobson v. .. .. .	C. A. [1897] 1 Ch. 182 .. ..	828
Goring:—Cuckfield Rural District Council v. .. .. .	[1898] 1 Q. B. 865 .. ..	897
Gormley v. Buchanan .. .. .	C. A. (Ir.) [1899] W. N. 156 ..	1375
Gorst:—Coxon v. .. .. .	[1891] 2 Ch. 73 .. ..	341
Gorton:—Dowse v. .. .. .	H. L. (E.) [1891] A. C. 190 ..	800
Görz & Högh's Patent, In re .. .. .	[1895] W. N. 105 .. ..	1438
Goschen:—Raleigh v. .. .. .	[1897] W. N. 160 (10); [1898] 1 Ch. 73 .. ..	2154
Gosford (Earl of) v. Irish Land Commision .. .. .	H. L. (Ir.) [1899] A. C. 435 ..	39
Gosling, In re. Gosling v. Smith .. .. .	[1900] W. N. 15 .. ..	279
Gosling:—Att.-Gen. v. .. .. .	[1892] 1 Q. B. 545 .. ..	1730
Gosling v. Eagers .. .. .	[1895] 1 Q. B. 793 .. ..	2105
Gosling v. Gaskell .. .. .	C. A. [1896] 1 Q. B. 669; H. L. (E.) [1897] A. C. 575 ..	331
Gosling v. Green .. .. .	[1893] 1 Q. B. 109 .. ..	2106
Gosling v. Newton .. .. .	[1895] 1 Q. B. 793 .. ..	2105
Gosling v. Woolf .. .. .	[1893] 1 Q. B. 39 .. ..	1084
Gossage's Case. Barnardo v. Ford .. .. .	H. L. (E.) [1892] A. C. 326 ..	38, 883
Goudie, In re. Ex parte Official Receiver .. .. .	[1896] 2 Q. B. 481 .. ..	156
Gough, In re. Lloyd v. Gough .. .. .	[1894] W. N. 76 .. ..	2051
Gough v. Gough .. .. .	C. A. [1891] 2 Q. B. 665 ..	1052
Gough:—Grainger & Son v. .. .. .	C. A. [1895] 1 Q. B. 71; H. L. (E.) [1896] A. C. 325 ..	1770
Gough v. Wood & Co. .. .. .	C. A. [1894] 1 Q. B. 713 .. ..	826, 827
Gould:—Head v. .. .. .	[1898] 2 Ch. 250 .. ..	2179
Gould:—Le Lievre v. .. .. .	C. A. [1893] 1 Q. B. 491 ..	1580, 2097
Gould v. Stuart .. .. .	P. C. [1896] A. C. 575 .. ..	1321
Goulder v. Goulder .. .. .	[1892] P. 240 .. ..	708, 724
Goulton:—Ellis v. .. .. .	C. A. [1893] 1 Q. B. 350 ..	1578, 2236
Governments Stock Investment Co., Ltd., In re (No. 1) .. .. .	[1891] 1 Ch. 649 .. ..	365
————— (No. 2) .. .. .	[1892] 1 Ch. 597 .. ..	366
Governments Stock and Other Securities Investment Co. v. Manila Ry. Co. .. .. .	C. A. [1895] 2 Ch. 551; affirmed by H. L. (E.) W. N. 1896 p. 174 (6); [1897] A. C. 81 ..	322
Gower v. Couldridge .. .. .	C. A. [1898] 1 Q. B. 348 .. ..	1512
Gower:—Dyke v. .. .. .	[1892] 1 Q. B. 220 .. ..	21
Gower v. Tobitt .. .. .	[1891] W. N. 6 .. ..	62, 1499
Goy & Co., In re. Farmer v. Goy & Co. .. .. .	[1900] W. N. 88; [1900] 2 Ch. 149 .. ..	336
Gozzett v. Malden Urban Sanitary Authority .. .. .	[1894] 1 Q. B. 327 .. ..	2084
Grace:—Wilmot v. .. .. .	[1892] 1 Q. B. 812 .. ..	856
Graham, In re. Graham v. Noakes .. .. .	[1895] 1 Ch. 66 .. ..	1583, 1701, 1706
Graham:—Donnelly v. Connolly v. Riddall. Martin v. Hanrahan (No. 2) .. .. .	C. A. (Ir.) [1897] W. N. 103 ..	1367
Graham v. Drummond .. .. .	[1896] 1 Ch. 968 .. ..	793
Graham v. Corporation of Newcastle-upon-Tyne (No. 1) .. .. .	[1892] W. N. 134 .. ..	873
————— (No. 2) .. .. .	C. A. [1893] 1 Q. B. 643 ..	891, 1130
Graham:—Killick v. Lintern v. Burchell .. .. .	[1896] 2 Q. B. 196 .. ..	1783
Graham v. O'Connor .. .. .	[1895] W. N. 157 (10) .. ..	405, 1064



Name of Case.	Volume and Page.	Column of Digest.
Graham:—Starey v. .. .. .	[1899] 1 Q. B. 407 .. ..	1434, 2072
Graham v. Sutton, Carden & Co. (No. 1) .. ..	C. A. [1897] 1 Ch. 761 .. ..	671
(No. 2) .. ..	C. A. [1897] 2 Ch. 367 .. ..	1553
Graham:—Warwick v. .. .. .	[1899] W. N. 88; [1899] 2 Q. B. 191 .. ..	1031
Graham's Trusts, In re. .. .. .	[1891] 1 Ch. 151 .. ..	1522, 2194
Grainger, In re. Dawson v. Higgins .. ..	C. A. [1900] W. N. 158; [1900] 2 Ch. 756 .. ..	2326, 2342
Grainger & Son v. Gough .. .. .	C. A. [1895] 1 Q. B. 71; H. L. (E.) [1896] A. C. 325 .. ..	1770
Grand Hotel Co.:—Medawar v. .. .. .	C. A. [1891] 2 Q. B. 11 .. ..	972
Grand Junction Waterworks Co. v. Brentford (Local Board) .. .. .	C. A. [1894] 2 Q. B. 735 .. ..	2275
Grand Junction Waterworks Co. v. Davies .. ..	[1897] 2 Q. B. 209 .. ..	2279
Grand Junction Waterworks Co. v. Hampton Urban Council .. .. .	[1898] 2 Ch. 331 .. ..	964
Grand Trunk Ry. Co. of Canada v. Washington .. ..	P. C. [1899] A. C. 275 .. ..	244
Grange v. Grange .. .. .	[1892] P. 245 .. ..	700
Grant v. Anderson & Co. .. .. .	C. A. [1892] 1 Q. B. 108 .. ..	1542
Grant:—Benson v. In re Brown .. .. .	[1895] W. N. 115 (9) .. ..	7
Grant v. Gold Exploration and Development Syndicate .. .. .	C. A. [1900] 1 Q. B. 233 .. ..	2219
Grant:—Inland Revenue v. .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 195 .. ..	1755
Grant v. Langston .. .. .	H. L. (Sc.) [1900] W. N. 126; [1900] A. C. 383 .. ..	1755
Grant:—Le Bas v. .. .. .	[1895] W. N. 28 .. ..	1282
Grant:—Moxham v. .. .. .	[1899] W. N. 14 (4); [1899] 1 Q. B. 480; C. A. [1899] W. N. 232; [1900] 1 Q. B. 88 .. ..	340
Grantham (Town Clerk of):—Treadgold v. .. ..	[1895] 1 Q. B. 163 .. ..	1391
Grassmoor Co. v. Midland Ry. Co. .. .. .	[1896] 1 Q. B. 260 .. ..	1659
Graves:—Country Estates Co. v. .. .. .	P. C. [1895] A. C. 113 .. ..	2259
Gray, In re .. .. .	[1900] W. N. 274 .. ..	2037
Gray, In re. Gray v. Gray .. .. .	[1896] 1 Ch. 620 .. ..	1734
Gray v. Bartholomew .. .. .	C. A. [1895] 1 Q. B. 209 .. ..	1524
Gray:—British Wagon Co. v. .. .. .	C. A. [1896] 1 Q. B. 35 .. ..	1545
Gray:—Burt v. .. .. .	[1891] 2 Q. B. 98 .. ..	1073
Gray v. Craig .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 134 .. ..	1385
Gray v. Deuchar .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 123 .. ..	1387
Gray:—Goodfellow v. .. .. .	C. A. [1899] 2 Q. B. 498 .. ..	1549
Gray:—Pilkington v. .. .. .	P. C. [1899] A. C. 401 .. ..	189
Gray:—Reg. v. .. .. .	[1900] 2 Q. B. 36 .. ..	503
Gray:—Robins & Co. v. .. .. .	[1895] 2 Q. B. 78; C. A. [1895] 2 Q. B. 501 .. ..	972
Gray v. Stone .. .. .	[1893] W. N. 133 .. ..	402
Gray's Settlement, In re. Akers v. Sears .. ..	[1896] 2 Ch. 802 .. ..	685
Gray v. Willis .. .. .	[1895] W. N. 9 .. ..	780
Gray & Sons:—Wood v. .. .. .	H. L. (Sc.) [1892] A. C. 576 .. ..	1250, 1337
Graydon, In re. Ex parte Official Receiver .. ..	[1896] 1 Q. B. 417 .. ..	179
Great Bardfield (Vicar of) v. All having Interest .. ..	[1897] P. 185 .. ..	740
Great Britain Steamship Premium Association v. Whyte .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 91 .. ..	1798
Great Eastern Ry. Co.:—Mallet v. .. .. .	[1899] 1 Q. B. 309 .. ..	1644

Name of Case.	Volume and Page.	Column of Digest.
Great Eastern Ry. Co.:—Meux v. .. ..	C. A. [1895] 2 Q. B. 387 ..	505, 586, 1653
Great Horseless Carriage Co.:—Frankenburg v. ..	C. A. [1900] W. N. 2; [1900] 1 Q. B. 504 .. ..	374, 1250
Great Kruger Gold Mining Co., In re. Ex parte Barnard .. ..	C. A. [1892] 3 Ch. 307 .. ..	440, 441
Great North of Scotland Ry. Co.:—Adams v. ..	H. L. (Sc.) [1891] A. C. 31 ..	55, 65
Great North of Scotland Ry. Co. v. Fife (Duke of) .. ..	H. L. (Sc.) [1900] W. N. 62 ..	1883, 1839
Great North of Scotland Ry. Co.:—Highland Ry. Co. v. .. ..	H. L. (Sc.) [1896] W. . 77 (1) ..	57, 58
Great North West Central Ry. v. Charlebois ..	P. C. [1899] A. C. 114 .. ..	244
Great Northern Ry. Co.:—Britten v. .. ..	[1899] 1 Q. B. 243 .. ..	1652
Great Northern Ry. Co. v. Coal Co-operative Society .. ..	[1896] 1 Ch. 187 .. ..	204, 940
Great Northern Ry.:—Holmes v. .. ..	C. A. [1900] W. N. 65; [1900] 2 Q. B. 409 .. ..	1227
Great Northern Ry. Co.:—Hunt v. (No. 1) ..	[1891] 1 Q. R. 601 .. ..	1250
(No. 2) .. ..	C. A. [1891] 2 Q. B. 189 .. ..	648
Great Northern Ry. Co. v. Inland Revenue Commrs. .. ..	[1899] 2 Q. B. 652 .. ..	1805
Great Northern Ry. Co.:—Lamb v. .. ..	[1891] 2 Q. B. 281 .. ..	1249
Great Northern Ry. Co.:—Milner v. .. ..	C. A. [1900] W. N. 55; [1900] 1 Q. B. 795 .. ..	1228
Great Northern Ry. Co. v. Palmer .. ..	[1895] 1 Q. B. 862 .. ..	1652
Great Northern Ry. Co.:—Willey v. .. ..	[1891] 2 Q. B. 194 .. ..	559, 562
Great Northern Ry. Co. v. Winder .. ..	[1892] 2 Q. B. 595 .. ..	1652
Great Western Colliery Co.:—Agius v. .. ..	C. A. [1899] W. N. 11 (8); [1899] 1 Q. B. 413 .. ..	634
Great Western Ry. (Masters and), In re ..	[1900] 2 Ch. 677 .. ..	1087
Great Western Ry. Co.:—Aylesford (Countess of) v. .. ..	C. A. [1892] 2 Q. B. 626 .. ..	595
Great Western Ry. Co. v. Cefn Cribbwr Brick Co. .. ..	[1894] 2 Ch. 157 .. ..	1649
Great Western Ry. Co.:—Cobb v. .. ..	C. A. [1893] 1 Q. B. 459; H. L. (E.) [1894] A. C. 419 ..	1653
Great Western Ry. Co.:—Dixon v. .. ..	[1896] 2 Q. B. 333; C. A. [1897] 1 Q. B. 300 .. ..	1645
Great Western Ry. Co.:—Glamorgan County Council v. .. ..	[1895] 1 Q. B. 21 .. ..	1655
Great Western Ry. Co. v. Inland Revenue Commrs. v. .. ..	C. A. [1894] 1 Q. B. 507 .. ..	1794
Great Western Ry. Co.:—Jersey (Earl of) v. ..	[1894] 3 Ch. 625, n. .. ..	1669, 2064
Great Western Ry. Co. v. London and County Banking Co. .. ..	[1899] W. N. 100; [1899] 2 Q. B. 172; C. A. [1900] W. N. 144; [1900] 2 Q. B. 464 .. ..	93
Great Western Ry. Co.:—Luscombe v. .. ..	[1899] 2 Q. B. 313 .. ..	1645
Great Western Ry. Co.:—Mansion House Association on Ry. Traffic v. .. ..	C. A. [1895] 2 Q. B. 141 .. ..	1655, 1657, 1658
Great Western Ry. Co.:—Miles v. .. ..	C. A. [1896] 2 Q. B. 432 .. ..	1090
Great Western Ry. Co.:—New Union Mills Co. v. .. ..	[1896] 2 Q. B. 290 .. ..	1658
Great Western Ry. Co.:—Ruabon Brick and Terra-cotta Co. v. .. ..	C. A. [1893] 1 Ch. 427 .. ..	1648
Great Western Ry. Co.:—Sadler v. .. ..	C. A. [1895] 2 Q. B. 688; H. L. (E.) [1896] A. C. 450 ..	1517
Great Western Ry. Co.:—Shaw v. .. ..	[1894] 1 Q. B. 373 .. ..	1649

Name of Case.	Volume and Page.	Column of Digest.
Great Western and London and North Western Ry. Cos., In re Haigh and .. .. .	[1896] 1 Q. B. 649 .. ..	56
Great Western Ry. Co. and London and South Western Ry. Co.:—Didcot, Newbury and Southampton Ry. Co. v. .. .. .	C. A. [1897] 1 Q. B. 33 .. ..	1661
Greater London Property Co. v. Foot .. .. .	[1899] 1 Q. B. 972 .. ..	1167
Greatorox:—Frost v. In re Travis .. .. .	C. A. [1900] W. N. 159; [1900] 2 Ch. 541 .. ..	9
Greatorox v. Shackle .. .. .	[1895] 2 Q. B. 249 .. ..	593
Greaves' Settled Estates, In re. Jones v. Greaves .. .. .	[1900] W. N. 148; [1900] 2 Ch. 683 .. ..	953
Green, In re. Green v. Knight .. .. .	[1895] W. N. 69 .. ..	1700
Green:—Brenda Steamship Co. v. .. .. .	C. A. [1900] W. N. 49; [1900] 1 Q. B. 518 .. ..	1936
Green:—Charity Commrs. v. In re Herbage Rents, Greenwich .. .. .	[1896] 2 Ch. 811 .. ..	1716
Green:—"Edenbridge" (Owners of Steamship) v. The "Rutland" .. .. .	H. L. (E.) [1897] A. C. 333 .. ..	1993
Green:—Ferguson v. .. .. .	C. A. [1900] W. N. 247 .. ..	1229
Green v. Green .. .. .	[1893] P. 89 .. ..	709, 724
Green:—Gosling v. .. .. .	[1893] 1 Q. B. 109 .. ..	2106
Green v. Knight .. .. .	C. A. [1895] 2 Ch. 148 .. ..	1554
Green:—Leigh v. .. .. .	[1892] P. 17 .. ..	1619
Green v. Marsh .. .. .	C. A. [1892] 2 Q. B. 330 .. ..	200
Green, McAllan & Feilden, In re .. .. .	[1891] W. N. 127 .. ..	459
Green v. Moore .. .. .	[1891] W. N. 68 .. ..	1552
Green:—Robb v. .. .. .	[1895] 2 Q. B. 1; C. A. [1895] 2 Q. B. 315 .. ..	969, 1248
Green:—Stephens v. .. .. .	C. A. [1895] 2 Ch. 148 .. ..	1554
Green v. Thompson .. .. .	[1899] 2 Q. B. 1 .. ..	944
Green:—Turner v. .. .. .	[1895] 2 Ch. 205 .. ..	2062
Green:—Walters v. .. .. .	[1899] W. N. 138; [1899] 2 Ch. 696 .. ..	2147
Green & Co.:—Dobell & Co. v. .. .. .	C. A. [1900] W. N. 41; [1900] 1 Q. B. 526 .. ..	1935
Greene v. St. John's Mansions, Ltd. .. .. .	[1900] W. N. 9 .. ..	1531
Greenhill:—Alcoy and Gandia Ry. and Harbour Co. v. .. .. .	C. A. [1895] W. N. 150 (3); [1896] 1 Ch. 19 .. ..	1527
Greenhill v. North British and Mercantile Insurance Co. .. .. .	[1893] 3 Ch. 474 .. ..	912
Greenhough:—Birrell v. In re Crossley .. .. .	[1897] 1 Ch. 928 .. ..	285
Greenock (Provost, &c., of) v. Peters .. .. .	H. L. (Sc.) [1893] A. C. 258 .. ..	1830
Greenway:—Heathfield v. .. .. .	[1900] W. N. 170 .. ..	1438
Greenwell v. Low Beechburn Coal Co. .. .. .	[1897] 2 Q. B. 165 .. ..	1261
Greenwell v. Howell .. .. .	C. A. [1900] W. N. 49; [1900] 1 Q. B. 535 .. ..	566
Greenwich Board of Works:—Davis v. .. .. .	C. A. [1895] 2 Q. B. 219 .. ..	1175
Greenwich Ferry Co.:—Lathom v. .. .. .	[1895] W. N. 77 .. ..	317
Greenwich Union, Ex parte. Reg. v. London Justices .. .. .	[1900] W. N. 26; [1900] 1 Q. B. 438 .. ..	1458
Greenwood, In re. Greenwood v. Greenwood .. .. .	[1892] 2 Ch. 295 .. ..	726
Greenwood, In re. Priestley v. Griffiths .. .. .	C. A. [1892] W. N. 20 .. ..	2318
Greenwood, In the Goods of .. .. .	[1892] P. 7 .. ..	1610
Greenwood v. Algesiras (Gibraltar) Ry. Co. .. .. .	C. A. [1894] 2 Ch. 205 .. ..	318
Greenwood v. Humber & Co. (Portugal), Ltd. .. .. .	[1898] W. N. 162 (3) .. ..	1508
Greenwood v. Francis .. .. .	C. A. [1899] 1 Q. B. 312 .. ..	1585
Greenwood v. Leather Shod Wheel Co. .. .. .	[1899] W. N. 26(2); C. A. [1900] W. N. 1; [1900] 1 Ch. 421 .. ..	376

Name of Case.	Volume and Page.	Column of Digest.
Greenwood v. Sutcliffe .. .. .	C. A. [1892] 1 Ch. 1 .. .. .	1295, 2103
Greenwood v. Turner .. .. .	[1891] 2 Ch. 144 .. .. .	2229
Greenwood & Co., In re .. .. .	[1900] 2 Q. B. 306 .. .. .	433
Greer, In re. Napper v. Fanshawe .. .. .	[1895] 2 Ch. 217 .. .. .	78, 123, 1521, 1923
Gregory & Co.:—Exchange Telegraph Co. v. .. .	C. A. [1895] W. N. 138 (6); [1896] 1 Q. B. 147 .. .. .	530
Gregory:—Halestrap v. .. .. .	[1895] 1 Q. B. 561 .. .. .	26
Gregory v. Serle. In re Serle .. .. .	[1895] 1 Ch. 652 .. .. .	1069
Gregson, In re .. .. .	C. A. [1893] 3 Ch. 233 .. .. .	404, 2202
Gregson (Claimant). Westbury v. Twigg & Co.	[1892] 1 Q. B. 77 .. .. .	485
Grehan, In re .. .. .	C. A. [1895] 2 Ch. 12 .. .. .	1192
Gresham Life Assurance Society v. Styles .. .	H. L. (E.) [1892] A. C. 309 .. .. .	1758
"Greta Holme," The. Owners of No. 7 Steam Sand Pump Dredger v. Owners of SS. "Greta Holme" .. .. .	H. L. (E.) [1897] A. C. 596 .. .. .	1948
Greville-Nugent v. Mackenzie .. .. .	H. L. (Sc.) [1899] W. N. 226; [1900] A. C. 83 .. .. .	1262
Grey v. Curtice .. .. .	C. A. [1898] W. N. 162 (5); [1899] 1 Ch. 121 .. .. .	2039
Grey, In re. Grey v. Coles .. .. .	[1891] W. N. 201 .. .. .	2057
Grey (Earl):—Att.-Gen. v. .. .. .	[1898] 1 Q. B. 318; C. A. [1898] 2 Q. B. 534; H. L. (E.) [1900] W. N. 40; [1900] A. C. 124 .. .	1741
Grey (Earl) v. Grey. In re Bristol (Marquis of)	[1897] 1 Ch. 946 .. .. .	1906
Grey v. Manitoba and North Western Ry. Co. of Canada .. .. .	P. C. [1897] A. C. 254 .. .. .	250
Grey:—Sutton & Co. v. .. .. .	C. A. [1894] 1 Q. B. 285 .. .. .	1583, 2073
Grey's Trusts, In re. Grey v. Stamford .. .. .	[1892] 3 Ch. 88 .. .. .	1095, 2312
Grey (H. A.) In re .. .. .	C. A. [1892] 2 Q. B. 440 .. .. .	2054
Gribble:—Midland Ry. Co. v. .. .. .	[1895] 2 Ch. 129; C. A. [1895] 2 Ch. 827 .. .. .	1647
Gribble v. Webber. In re Webber .. .. .	[1896] 1 Ch. 914 .. .. .	1735
Gridley:—Laybourn v. .. .. .	[1892] 2 Ch. 53 .. .. .	2229
Grieve v. Grieve .. .. .	[1893] P. 288 .. .. .	714
Griffin, In re. Griffin v. Griffin .. .. .	[1898] W. N. 174 (15); [1899] 1 Ch. 408 .. .. .	2263
Griffin:—Cooper v. .. .. .	C. A. [1892] 1 Q. B. 740 .. .. .	269, 349
Griffin:—Laughton v. .. .. .	P. C. [1895] A. C. 104 .. .. .	869, 1312
Griffin:—Stevens v. .. .. .	C. A. [1897] 2 Q. B. 368 .. .. .	2078
Griffin's Divorce Bill .. .. .	H. L. [1896] A. C. 133 .. .. .	1492
Griffith v. Hughes .. .. .	[1892] 3 Ch. 105 .. .. .	706
Griffith v. Tower Publishing Co. and Moncrieff	[1897] 1 Ch. 21 .. .. .	2176
Griffiths:—Evans v. In re Thomas .. .. .	[1900] W. N. 36; [1900] 1 Ch. 454 .. .. .	511
Griffiths (John) Cycle Corporation v. Humber & Co. .. .. .	C. A. [1899] 2 Q. B. 414 .. .. .	2039
Griffiths:—Priestley v. In re Greenwood .. .	C. A. [1892] W. N. 20 .. .. .	848
Griffiths:—Reg. v. .. .. .	[1891] 2 Q. B. 145 .. .. .	2318
Griffiths and Morris, In re .. .. .	[1895] 1 Q. B. 866 .. .. .	135, 2071
		591

Name of Case.	Volume and Page.	Column of Digest.
Grigg v. National Guardian Assurance Co. ..	[1891] 3 Ch. 206 ..	205, 653, 860
Grimston v. Cuninghame .. ..	[1894] 1 Q. B. 125 ..	960
Grindey, In re. Clews v. Grindey .. ..	C. A. [1898] 2 Ch. 593 ..	2174
Griuter v. Fleming. Walker v. Bisley ..	[1900] 2 Q. B. 735 ..	1752
Groenings:—Moul v. .. ..	C. A. [1891] 2 Q. B. 443 ..	533
Gronow:—Smith v. .. ..	[1891] 2 Q. B. 394 ..	1067
Groom, In re. Booty v. Groom .. ..	[1897] 2 Ch. 407 ..	2316
Groom v. Cheesewright .. ..	[1895] 1 Ch. 730 ..	2051
Groos v. Anthony Birrell Pearce & Co. Doig v. Same. In re Anthony Birrell Pearce & Co. ..	[1899] W. N. 76; [1899] 2 Ch. 50 ..	775
Grose:—George v. In re West .. ..	[1899] W. N. 241; [1900] 1 Ch. 84 ..	2162
Grose-Smith v. Bridger. In re Smith ..	[1899] W. N. 12 (13); [1899] 1 Ch. 331 ..	1886
Grosvenor Dairies:—Dunning v. .. ..	[1900] W. N. 265 ..	1344
Grosvenor Hotel Co. v. Hamilton .. ..	C. A. [1894] 2 Q. B. 836 ..	1074
Grosvenor and West End Ry. Terminus Hotel Co.:—Spokes v. .. ..	C. A. [1897] 2 Q. B. 124 ..	664
Grosvenor Mansions Co. and G. D'Allessandri:—Sanders-Clark v. .. ..	[1900] W. N. 136; [1900] 2 Ch. 373 ..	1344
Grout:—Heston and Isleworth Urban District Council v. .. ..	[1897] W. N. 59 (10); C. A. [1897] 2 Ch. 306 ..	2089
Grover:—Hobbs, Hart & Co. v. .. ..	C. A. [1898] W. N. 154 (2); [1899] 1 Ch. 11 ..	1156
Grover Wright:—Layborn v. In re Elcom ..	C. A. [1894] 1 Ch. 303 ..	912
Groves v. Wimborne (Lord) .. ..	C. A. [1898] 2 Q. B. 402 ..	1237
Grudgings:—Derby Corporation v. .. ..	[1894] 2 Q. B. 496 ..	2087
Grundy:—Boots' Cash Chemists, Lancashire, Ltd. v. .. ..	[1900] W. N. 142 ..	500
Grundy:—Rendell v. .. ..	C. A. [1895] 1 Q. B. 16 ..	77, 779
Gue, In re. Smith v. Gue .. ..	[1892] W. N. 88; C. A. [1892] W. N. 132 ..	903, 2316
Guest:—American Tobacco Co. The v. ..	[1892] 1 Ch. 630 ..	2119
Guest:—Calcraft v. .. ..	C. A. [1898] 1 Q. B. 759 ..	669
Guild & Co. v. Conrad .. ..	C. A. [1894] 2 Q. B. 885 ..	843
Guilford v. Lambeth .. ..	[1894] 2 Q. B. 832; C. A. [1895] 1 Q. B. 92 ..	594
Gu'lick:—Wolmershausen v. .. ..	[1893] 2 Ch. 514 ..	154, 1582, 1583
Gundry, In re. Mills v. Mills .. ..	[1898] 2 Ch. 504 ..	1903
Gurney, In re. Mason v. Mercer .. ..	[1893] 1 Ch. 590 ..	2192
Gurney:—Clifford v. In re Gurney .. ..	[1896] 2 Ch. 863 ..	1497
Gurney v. Small .. ..	[1891] 2 Q. B. 584 ..	1564
Gutta Percha Corporation, Ltd., In re. Thornton v. Gutta Percha Corporation, Ltd. ..	[1899] W. N. 251 ..	1554
Gutta Percha Corporation, In re .. ..	[1900] W. N. 164; [1900] 2 Ch. 665 ..	483
Guy:—Drew v. .. ..	C. A. [1894] 3 Ch. 25 ..	1723
Guyot v. Thomson .. ..	C. A. [1894] 3 Ch. 388 ..	1433
Gwilliam v. Twist .. ..	[1895] 1 Q. B. 557; C. A. [1895] 2 Q. B. 84 ..	1242
Gwynne v. Drewitt .. ..	[1894] 2 Ch. 616 ..	2071, 2289
Gwynrfai District Council:—Roberts v. ..	[1899] W. N. 16 (11); [1899] 1 Ch. 583; C. A. [1899] W. N. 203; [1900] 2 Ch. 603 ..	2285
Gyngall:—Reg. v. .. ..	C. A. [1893] 2 Q. B. 232 ..	948

Name of Case.	Volume and Page.	Column of Digest.
H.		
H. (otherwise G.) <i>v.</i> H. .. .. .	[1900] W. N. 130 .. ..	710
"Haabet," The .. .. .	[1899] P. 295 .. ..	1933
Haas <i>v.</i> Durant. In re Overweg .. ..	[1899] W. N. 245; [1900] 1 Ch. 209 .. ..	2073
Haddelsey <i>v.</i> Hannam. In re Hannam ..	[1897] 2 Ch. 39 .. ..	2317
Haddock <i>v.</i> Humphrey .. .. .	[1900] 1 Q. B. 609 .. ..	1232
Haddow <i>v.</i> Morton .. .. .	[1894] 1 Q. B. 95; C. A. [1894] 1 Q. B. 565 .. ..	1010
Haden, In re. Coling <i>v.</i> Haden .. ..	[1898] 2 Ch. 220 .. ..	901
Hadleigh Castle Gold Mines, Ltd., In re ..	[1900] W. N. 148; [1900] 2 Ch. 419 .. ..	361
Hadley (Felix) & Co. <i>v.</i> Hadley .. ..	[1898] 2 Ch. 680 .. ..	2118
Hadley & Son <i>v.</i> Beedom .. .. .	[1895] 1 Q. B. 646 .. ..	199
Hagan :—Holland <i>v.</i> .. .. .	C. A. (Ir.) [1897] W. N. 108 ..	1368
Haggard <i>v.</i> Pélacier Frères .. .. .	P. C. [1892] A. C. 61 .. ..	837, 1023, 1530
Haggenmacher's Patents, In re .. ..	[1898] 2 Ch. 280 .. ..	1441
Haggerston Election Petition, In re. Cremer <i>v.</i> Lowles .. .. .	C. A. [1896] W. N. 8 (6) .. ..	1365
Hagon <i>v.</i> Aberdein. In re Aberdein ..	[1896] W. N. 154 (5) .. ..	859
Haig :—Morley <i>v.</i> In re Morley .. ..	[1895] 2 Ch. 738 .. ..	1855
Haigh <i>v.</i> West .. .. .	C. A. [1893] 2 Q. B. 19 .. ..	891, 1131
Haigh and London and North Western and Great Western Ry. Cos., In re ..	[1896] 1 Q. B. 649 .. ..	56
Hainsworth :—Cook <i>v.</i> .. .. .	[1896] 2 Q. B. 85 .. ..	2081
Hair <i>v.</i> Hill .. .. .	[1895] 1 Q. B. 906 .. ..	1915
Hake, In re. Pownall <i>v.</i> Pryor .. ..	[1895] W. N. 116 (11) .. ..	1516
Hakes <i>v.</i> Cox .. .. .	[1892] P. 110 .. ..	757
Hale, In re. Lilley <i>v.</i> Foad .. .. .	[1898] W. N. 154 (6); C. A. [1899] W. N. 83; [1899] 2 Ch. 107 .. ..	1293
Hale :—Jarman <i>v.</i> .. .. .	[1899] 1 Q. B. 994 .. ..	1138
Hale & Co. :—Heinemann & Co. <i>v.</i> ..	C. A. [1891] 2 Q. B. 83 .. ..	1536
Halestrap <i>v.</i> Gregory .. .. .	[1895] 1 Q. B. 561 .. ..	26
Halford <i>v.</i> Halford. (Bryce, Intervener) ..	[1897] P. 36 .. ..	1612
Halford <i>v.</i> Hardy .. .. .	[1899] W. N. 243 .. ..	1548
Halifax and Huddersfield Union Banking Co. <i>v.</i> Radcliffe, Ltd. .. .. .	[1895] W. N. 63 .. ..	315, 317
Halifax Commercial Bank, Ltd., and Wood, In re ..	[1898] W. N. 62 (14); C. A. [1898] W. N. 174 (16) .. ..	2256
Halifax Commercial Banking Co. :—Berry <i>v.</i> ..	[1900] W. N. 262 .. ..	91
Halifax County Court (Judge of) :—Reg. <i>v.</i> ..	[1891] 1 Q. B. 793; C. A. [1891] 2 Q. B. 263 .. ..	593, 1444
Halifax Joint Stock Banking Co. <i>v.</i> Gledhill ..	[1891] 1 Ch. 31 .. ..	852
Halifax Joint Stock Banking Co. :—Learoyd <i>v.</i> ..	[1893] 1 Ch. 686 .. ..	670
Halifax Sugar Refining Co., In re .. ..	[1891] W. N. 2; C. A. [1891] W. N. 29 .. ..	431
Halkyn District Mines Drainage Co. :—Holywell Union and Halkyn Parish <i>v.</i> .. ..	H. L. (E.) [1895] A. C. 117 .. ..	731, 1688
Hall, In re. Hall <i>v.</i> Hall .. .. .	C. A. [1893] W. N. 24 .. ..	2300
Hall :—Allcock <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 444 .. ..	1500
Hall <i>v.</i> Cox .. .. .	C. A. [1899] 1 Q. B. 198 .. ..	1183
Hall <i>v.</i> Hall (No. 1) .. .. .	C. A. [1891] P. 302 .. ..	702

Name of Case.	Volume and Page.	Column of Digest.
Hall v. Hall (No. 2) .. .. .	{ [1891] 3 Ch. 389; C. A. [1892] 1 Ch. 361 .. .. }	2366
Hall :—Hood v. In re Brodie .. ..	[1893] W. N. 161 .. ..	795
Hall v. Launspach .. .. .	C. A. [1898] 1 Q. B. 513 .. ..	1163
Hall :—Lucas v. .. .. .	[1899] W. N. 92 .. ..	2247
Hall (or Scott) :—Macdonald v. .. ..	H. L. (Sc.) [1893] A. C. 642 .. ..	1833
Hall v. Metcalfe .. .. .	[1892] 1 Q. B. 208 .. ..	1402
Hall v. Norfolk (Duke of) .. .. .	{ [1900] W. N. 138; [1900] 2 Ch. 493 .. .. }	1265
Hall :—Reg. v. .. .. .	[1891] 1 Q. B. 747 .. ..	{ 621, 1403, 2066 }
Hall :—Riley v. .. .. .	[1898] W. N. 81 (9) .. ..	1294
Hall v. Snowden, Hubbard & Co. .. ..	C. A. [1899] 1 Q. B. 593 .. ..	569
Hall v. Snowden, Hubbard & Co. .. ..	C. A. [1899] 2 Q. B. 136 .. ..	1231
Hall & Co. v. Trigg .. .. .	[1897] 2 Ch. 219 .. ..	79
Hallas Land and Building Co. :—Ferrand v. .. ..	C. A. [1893] 2 Q. B. 135 .. ..	{ 1350, 1916 }
Hallen :—Tassell v. .. .. .	[1892] 1 Q. B. 321 .. ..	1541
Hallett, In re. Ex parte National Insurance Co. .. ..	[1894] W. N. 156 .. ..	150, 422
Hallett, In re. Hallett v. Hallett .. ..	[1892] W. N. 148 .. ..	2316
Hallett :—Hewett v. In re Hewett .. ..	[1894] 1 Ch. 362 .. ..	{ 904, 1022, 1902 }
Hallett & Co., In re. Ex parte Blane .. ..	C. A. [1894] 2 Q. B. 237 .. ..	116
Hallett & Co., In re. Ex parte Cocks, Biddulph & Co. .. .. .	C. A. [1894] 2 Q. B. 256 .. ..	115
Halliday :—Moult v. .. .. .	{ [1897] W. N. 171 (5); [1898] 1 Q. B. 125 .. .. }	1238
Halliday v. Phillippis .. .. .	H. L. (E.) [1891] A. C. 228 .. ..	755
Halliwell :—River Ribble Joint Committee v. .. ..	{ [1899] 1 Q. B. 27; C. A. [1899] W. N. 103; [1899] 2 Q. B. 385 .. .. }	2272
Halse :—Blake v. .. .. .	[1892] W. N. 143 .. ..	31
Halse :—Body v. .. .. .	[1892] 1 Q. B. 203 .. ..	1388
Halse :—Fenning v. .. .. .	[1892] 1 Q. B. 203 .. ..	1388
Halse :—Hunt v. .. .. .	[1892] 1 Q. B. 203 .. ..	1388
Hamblet :—Beckhuson & Gibbs v. .. ..	[1900] 2 Q. B. 18 .. ..	2076
Hamblin :—Ind, Coope & Co. v. .. ..	{ [1900] W. N. 24; C. A. [1900] W. N. 270 .. .. }	1116
Hambro v. Hambro .. .. .	[1894] 2 Ch. 564 .. ..	1714
Hambrough v. Mutual Life Insurance Co. of New York .. .. .	C. A. [1895] W. N. 18 .. ..	{ 977, 982, 1002 }
Hamelin v. Bannerman .. .. .	P. C. [1895] A. C. 237 .. ..	{ 258, 2285 }
Hamilton, In re. Cadogan v. Fitzroy .. ..	C. A. [1896] 2 Ch. 617 .. ..	282
Hamilton, In re. Trench v. Hamilton .. ..	{ [1895] 1 Ch. 373; C. A. [1895] 2 Ch. 370 .. .. }	2352
Hamilton, In re. Woodward v. Simpson .. ..	[1892] W. N. 74 .. ..	2342
Hamilton v. Blackpool Motor Car Co. In re) .. ..	[1900] W. N. 253 .. ..	132
Hamilton v. Brogden (No. 1) .. .. .	[1891] W. N. 14 .. ..	1697
————— (No. 2) .. .. .	[1891] W. N. 36 .. ..	{ 352, 1695, 1698 }
Hamilton (Duke of) v. Lord Advocate .. ..	H. L. (Sc.) [1892] W. N. 160 .. ..	1782
Hamilton v. Ferguson .. .. .	C. A. (Sc.) [1899] W. N. 169 .. ..	1379
Hamilton :—Grosvenor Hotel Co. v. .. ..	C. A. [1894] 2 Q. B. 836 .. ..	1074
Hamilton v. Hamilton .. .. .	[1892] 1 Ch. 396 .. ..	955, 957

Name of Case.	Volume and Page.	Column of Digest.
Hamilton v. Hamilton. In re Caldwell ..	[1894] W. N. 13 ..	952
Hamilton v. Paton .. ..	C. A. (Sc.) [1899] W. N. 175 ..	1386
Hamilton v. Ritchie .. ..	H. L. (Sc.) [1894] A. C. 310 ..	1843, 2320
Hamilton :—Robson v. In re Robson ..	[1891] 2 Ch. 559 ..	725, 2365
Hamilton v. Vaughan-Sherrin Electrical Engineering Co. .. ..	[1894] 3 Ch. 589 ..	925
Hamilton v. Walker .. ..	[1892] 2 Q. B. 25 ..	1036
Hamilton :—Woolf v. .. ..	C. A. [1898] 2 Q. B. 337 ..	864
Hamini (Dona Maria Abeyesekera) v. Tillekeratne (Daniel) .. ..	P. C. [1897] A. C. 277 ..	266
Hamlyn v. Crown Accidental Insurance Co. ..	C. A. [1893] 1 Q. B. 750 ..	974
Hamlyn :—Pike v. In re Rowe ..	C. A. [1897] W. N. 172 (13); [1898] 1 Ch. 153 ..	2328
Hamlyn & Co. v. Talisker Distillery ..	H. L. (Sc.) [1894] A. C. 202 ..	56, 65, 490
Hamlyn & Co. v. Wood & Co. ..	C. A. [1891] 2 Q. B. 488 ..	510
Hammersmith Vestry :—Arter v. ..	[1897] 1 Q. B. 646 ..	1178
Hammersmith Vestry v. Lowenfeld ..	[1896] 2 Q. B. 278 ..	1347
Hammond v. Pulsford .. ..	[1895] 1 Q. B. 223 ..	2018
Hammond v. Schofield .. ..	[1891] 1 Q. B. 453 ..	1551
Hammond :—Smith v. .. ..	[1896] 1 Q. B. 571 ..	1562
Hammond :—Zalinoff v. .. ..	[1898] 2 Ch. 92 ..	66
Hamon (Perrée) :—De Quetteville v. ..	P. C. [1893] A. C. 532 ..	1021
Hampshire Land Co., In re ..	[1894] 2 Ch. 632; [1896] 2 Ch. 743 ..	301, 452
Hampden v. Buckinghamshire (Earl of) ..	C. A. [1893] 2 Ch. 531 ..	1877
Hampton v. Lubbock .. ..	[1900] W. N. 18 ..	179
Hampton v. Nourse. In re Nourse ..	[1898] W. N. 150 (3); [1899] 1 Ch. 63 ..	2344
Hampton Urban District Council :—Grand Junction Waterworks Co. v. ..	[1898] 2 Ch. 331 ..	964
Hampton Urban District Council v. Southwark and Vauxhall Water Co. ..	C. A. [1898] W. N. 168 (3); [1899] 1 Q. B. 273; H. L. (E.) [1899] W. N. 238; [1900] A. C. 3 ..	2281
Hanbidge v. Beveridge (Conlan's Case) ..	C. A. (Ir.) [1897] W. N. 132 ..	1382
Hanbury v. Hanbury (No. 1) ..	[1892] P. 222 ..	709
————— (No. 2) ..	[1894] P. 102; C. A. [1894] P. 315; H. L. (E.) [1895] A. C. 417 ..	691
Hanbury :—Scott v. In re Scott ..	[1891] 1 Ch. 298 ..	955
Hanbury, Whitting & Nicholson, In re ..	[1896] W. N. 172 (10) ..	2051
Hancock, In re. Malcolm v. Burford-Hancock ..	C. A. [1896] 2 Ch. 173 ..	1480
Hancock, In re. Watson v. Watson ..	[1900] W. N. 58; C. A. [1900] W. N. 270 ..	2350
Hancock v. Mellor. In re Hodgkinson ..	[1893] W. N. 9 ..	2337
Hancock :—Miller v. .. ..	C. A. [1893] 2 Q. B. 177 ..	1074
Hancock :—Moss v. .. ..	[1899] 2 Q. B. 111 ..	618
Hancock :—Smith v. .. ..	[1894] 1 Ch. 209; C. A. [1894] 2 Ch. 377 ..	1721
Hancock & Co. :—Bryant v. ..	C. A. [1898] 1 Q. B. 716; H. L. (E.) [1899] W. N. 118; [1899] A. C. 442 ..	1058
Hand-in-Hand Fire and Life Insurance Society :—Life Interest and Reversionary Securities Corporation v. ..	[1898] 2 Ch. 230 ..	2250
Handley v. Handley .. ..	[1891] P. 124 ..	693



Name of Case.	Volume and Page.	Column of Digest.
Handelaar:—Nygberg <i>v.</i> .. .. .	C. A. [1892] 2 Q. B. 202 ..	2159
Handford (Frances) & Co., In re. Ex parte	C. A. [1899] W. N. 18 (2); [1899]	160
Handford (Frances) .. .. .	1 Q. B. 566 .. .. .	118, 171,
Hands <i>v.</i> Andrews. In re Smith .. ..	C. A. [1893] 2 Ch. 1 .. ..	933, 2171, 2193
Hands:—Wallis <i>v.</i> .. .. .	[1893] 2 Ch. 75 .. .. .	843, 1076, 1083
Handsworth District Council <i>v.</i> Derrington ..	[1897] 2 Ch. 438 .. .. .	1913
Handsworth Local Board <i>v.</i> Taylor .. ..	[1897] 2 Ch. 442, n. .. ..	1913
Hanfstaengl <i>v.</i> American Tobacco Co. .. ..	C. A. [1895] 1 Q. B. 347 ..	534, 535
Hanfstaengl <i>v.</i> Baines & Co. .. .. .	C. A. [1894] 3 Ch. 103; H. L. (E.) [1895] A. C. 20 ..	539
Hanfstaengl <i>v.</i> Empire Palace (No. 1) .. ..	C. A. [1894] 2 Ch. 1 .. ..	538
————— (No. 2) .. .. .	C. A. [1894] 3 Ch. 109; H. L. (E.) [1895] A. C. 20 ..	539
————— (No. 3) .. .. .	[1895] W. N. 76 .. .. .	539
Hanfstaengl <i>v.</i> Newnes .. .. .	C. A. [1894] 3 Ch. 109; H. L. (E.) A. C. 20 .. ..	539
Hanfstaengl Art Publishing Co. <i>v.</i> Holloway ..	[1893] 2 Q. B. 1 .. .. .	534
Hankey, In re. Cunliffe Smith <i>v.</i> Hankey ..	[1899] W. N. 10 (1); [1899] 1 Ch. 541 .. .. .	792
Hanks <i>v.</i> Bridgman .. .. .	[1896] 1 Q. B. 253 .. ..	2151
Hanley and Bucknall Coal Co. <i>v.</i> North Staffordshire Ry. Co. .. .. .	[1891] W. N. 93 .. .. .	1264
Hanmer <i>v.</i> Clifton .. .. .	[1894] 1 Q. B. 238 .. ..	1486, 1563
Hannam, In re. Haddelsey <i>v.</i> Hannam .. ..	[1897] 2 Ch. 39 .. .. .	2317
Hannan's Empress Gold-Mining and Development Co., In re. Carmichael's Case .. ..	C. A. [1896] 2 Ch. 643 .. ..	406
Hannay:—Reg. <i>v.</i> .. .. .	[1891] 2 Q. B. 709 .. .. .	1307
Hannay & Co.:—Smurthwaite <i>v.</i> .. .. .	C. A. [1893] 2 Q. B. 412; H. L. (E.) [1894] A. C. 494 ..	1511
Hanover Square, St. George (Vestry of):—Reg. <i>v.</i>	[1895] 2 Q. B. 275 .. .. .	1171
Hanrahan:—Bannon <i>v.</i> .. .. .	C. A. (Ir.) [1900] W. N. 226 ..	1401
Hanrahan:—Martin <i>v.</i> (No. 2). Donnelly <i>v.</i> Graham. Connolly <i>v.</i> Riddall .. .. .	C. A. (Ir.) [1897] W. N. 103 ..	1367
Hansen <i>v.</i> Harrold Brothers .. .. .	C. A. [1894] 1 Q. B. 612 .. ..	1936
Hanson:—Fortune <i>v.</i> .. .. .	[1896] 1 Q. B. 202 .. .. .	18
Hanson:—Unwin <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 115 ..	891
Hanwell Urban Council:—Att.-Gen. <i>v.</i> .. ..	[1899] W. N. 214; [1900] 1 Ch. 51; C. A. [1900] W. N. 138; [1900] 2 Ch. 377 .. ..	1144
Happaz:—Parapano <i>v.</i> .. .. .	P. C. [1894] A. C. 165 .. ..	632, 1095
Harbin <i>v.</i> Masterman (No. 1) .. .. .	C. A. [1894] 2 Ch. 184; H. L. (E.) [1895] A. C. 186 ..	7
————— (No. 2) .. .. .	C. A. [1895] W. N. 160 (1); [1896] 1 Ch. 351 .. ..	33
Hardaker <i>v.</i> Idle District Council .. .. .	C. A. [1896] 1 Q. B. 335 .. ..	1574
Hardcastle <i>v.</i> Bielby .. .. .	[1892] 1 Q. B. 709 .. .. .	890
Hardcastle:—Forbes <i>v.</i> In re Hollon .. ..	C. A. [1893] W. N. 111 .. ..	286
Harding, In re. Rogers <i>v.</i> Harding .. ..	C. A. [1894] 3 Ch. 315 .. ..	1477
Harding:—Bennett <i>v.</i> .. .. .	[1900] 2 Q. B. 397 .. .. .	1165
Harding:—Bowers <i>v.</i> .. .. .	[1891] 1 Q. B. 560 .. .. .	1771
Harding <i>v.</i> Comms. of Land Tax .. .. .	P. C. [1891] A. C. 446 .. ..	2259

Name of Case.	Volume and Page.	Column of Digest.
Harding:—Kingston-upon-Hull (Corporation of) <i>v.</i>	C. A. [1892] 2 Q. B. 494 ..	1586
Harding <i>v.</i> Queensland (Commissioners of Stamps for)	P. C. [1898] A. C. 769 ..	1639
Harding and Trouville Pier and Steamboat Co. :— Darlington Wagon Co. <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 245 ..	59
Harding's Estate, In re .. .. .	[1891] 1 Ch. 60 ..	1888
Hardman:—Whitwood Chemical Co. <i>v.</i> ..	C. A. [1891] 2 Ch. 416 ..	508, 515, 960, 2062
Hardstaff, in Re .. .. .	[1899] W. N. 256 ..	2195
Hardy, In re. Hardy <i>v.</i> Farmer .. ..	[1896] 1 Ch. 904 ..	166
Hardy <i>v.</i> Fitton. In re Fitton .. .. .	[1893] W. N. 201 ..	63, 781
Hardy:—Halford <i>v.</i> .. .. .	[1899] W. N. 243 ..	1548
Hare <i>v.</i> Elms .. .. .	[1893] 1 Q. B. 604 ..	1071
Hare and O'More's Contract, In re ..	[1900] W. N. 253 ..	2222
Harford <i>v.</i> Linskey .. .. .	[1899] 1 Q. B. 852 ..	546
Hargreave <i>v.</i> Freeman .. .. .	[1891] 3 Ch. 39 ..	2125
Hargreave <i>v.</i> Spink .. .. .	[1892] 1 Q. B. 25 ..	1162, 1211, 1813
Hargreaves (Joseph), <i>Ld.</i> , In re .. ..	[1899] W. N. 259; C. A. [1900] W. N. 13; [1900] 1 Ch. 347 ..	664
Hargreaves:—Meyrick. In re Meyrick ..	[1897] 1 Ch. 99 ..	1736
Hargreaves:—Nuttall <i>v.</i> .. .. .	C. A. [1892] 1 Ch. 23 ..	1444
Harkin:—Robinson <i>v.</i> .. .. .	[1896] 2 Ch. 415 ..	2172
Harkness and Allsopp's Contract, In re ..	[1896] 2 Ch. 358 ..	911
Harland:—Burnley <i>v.</i> In re Jennings ..	[1892] W. N. 156 ..	2330
Harland:—Swyny <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 707 ..	2049
Harle <i>v.</i> Jarman .. .. .	[1895] 2 Ch. 419 ..	910;
Harling, In the Goods of .. .. .	[1900] P. 59 ..	1603
Harling <i>v.</i> Harling .. .. .	[1896] W. N. 28 (12) ..	930
Harman, In re. Lloyd <i>v.</i> Tardy .. ..	[1894] 3 Ch. 607 ..	1475, 1503
Harman:—Nalder and Collyer's Brewery Co. <i>v.</i> {	[1900] W. N. 22; C. A. [1900] W. N. 180 .. .. .	600
Harness:—Alabaster <i>v.</i> .. .. .	[1894] 2 Q. B. 897; C. A. [1895] 1 Q. B. 339 .. .. .	2023
Harper, In the Goods of .. .. .	[1899] P. 59 ..	1599
Harper <i>v.</i> Marks .. .. .	[1894] 2 Q. B. 319 ..	608
Harper:—Nicholson <i>v.</i> .. .. .	[1895] 2 Ch. 415 ..	878
Harper:—Stead <i>v.</i> .. .. .	[1896] W. N. 46 (12) ..	1525
Harper (John) & Co. <i>v.</i> Wright & Butler Lamp Manufacturing Co. .. .. .	[1895] 2 Ch. 593; C. A. [1895] W. N. 146 (3); [1896] 1 Ch. 142 .. .. .	656
Harpur's Cycle Fittings Co., In re .. ..	[1900] W. N. 187; [1900] 2 Ch. 731 .. .. .	682
Harragin:—Pollard <i>v.</i> .. .. .	P. C. [1891] A. C. 450 ..	2156
Harrington (Earl of):—Howitt <i>v.</i> .. ..	[1893] 2 Ch. 497 ..	525
Harrington:—Lands (Minister for) <i>v.</i> ..	P. C. [1899] A. C. 409 ..	1325
Harris, Ex parte. In re Gallard .. ..	C. A. [1892] 1 Q. B. 532 ..	175
Harris, In re .. .. .	[1896] W. N. 33 (1) ..	120
Harris, In re. Ex parte Hasluck .. ..	[1899] W. N. 61; [1899] 2 Q. B. 97 .. .. .	174
Harris, In re. Fitzroy <i>v.</i> Harris .. ..	[1891] W. N. 76 ..	1467
Harris <i>v.</i> Beauchamp Brothers (No. 1) ..	C. A. [1893] 2 Q. B. 534 ..	1420
————— (No. 2) .. .. .	C. A. [1894] 1 Q. B. 801 ..	1025, 1697

Name of Case.	Volume and Page.	Column of Digest.
Harris:—Davis v. .. .. .	{ [1900] W. N. 17; [1900] 1 Q. B. 729 .. .. .	684
Harris:—Elgood v. .. .. .	[1896] 2 Q. B. 491 .. .. .	171
Harris:—Hatton v. .. .. .	H. L. (L.) [1892] A. C. 547 .. .. .	1487
Harris v. Kinloch & Co. .. .. .	[1895] W. N. 60 .. .. .	1121
Harris v. London County Council .. .. .	[1895] 1 Q. B. 240 .. .. .	2293
Harris:—"Morocco Bound" Syndicate, Ltd. v. .. .. .	[1895] 1 Ch. 534 .. .. .	533, 961
Harris v. Phillips .. .. .	[1891] 1 Q. B. 267 .. .. .	1373
Harris:—Robertson v. .. .. .	[1900] 2 Q. B. 117 .. .. .	23
Harris:—Rochester (Bishop) v. .. .. .	[1893] P. 137 .. .. .	754
Harris:—Royle v. .. .. .	[1895] P. 163 .. .. .	1596
Harris v. Sleep .. .. .	C. A. [1897] 2 Ch. 80 .. .. .	1424
Harris and Rawlings' Contract, In re .. .. .	[1894] W. N. 19 .. .. .	2224
Harris & Sons v. Judge .. .. .	C. A. [1892] 2 Q. B. 565 .. .. .	598
Harrison, In re. Smith v. Allen (No. 1) .. .. .	[1891] 2 Ch. 349 .. .. .	{ 791, 1507,
..... (No. 2) .. .. .	[1892] W. N. 148 .. .. .	1555
Harrison, In re. Harrison v. Higson .. .. .	[1894] 1 Ch. 561 .. .. .	2191
Harrison, In re. Ex parte The Sheriff of Essex .. .. .	[1893] 2 Q. B. 111 .. .. .	2312
Harrison v. Barney. In re Barney .. .. .	[1894] 3 Ch. 562 .. .. .	{ 163, 1925
Harrison:—Brock v. .. .. .	{ [1899] W. N. 67; [1899] 1 Q. B. 958 .. .. .	1859
Harrison:—Crawshaw v. .. .. .	[1894] 1 Q. B. 79 .. .. .	2278
Harrison v. Davis. In re Davies .. .. .	[1897] 2 Ch. 204 .. .. .	1923
Harrison:—Pelton Bros. v. (No. 1) .. .. .	C. A. [1891] 2 Q. B. 422 .. .. .	921
..... (No. 2) .. .. .	C. A. [1892] 1 Q. B. 118 .. .. .	907, 922
Harrison:—Rodger v. .. .. .	C. A. [1893] 1 Q. B. 161 .. .. .	916
Harrison v. Rutland (Duke of) .. .. .	C. A. [1893] 1 Q. B. 142 .. .. .	2394
Harrison v. St. Etienne Brewery Co. .. .. .	[1893] W. N. 108 .. .. .	2292
Harrison v. Southwark and Vauxhall Water Co. .. .. .	[1891] 2 Ch. 409 .. .. .	{ 304 1352, 1354
Harrison and Bottomley, In re .. .. .	{ C. A. [1899] W. N. 15 (7); [1899] 1 Ch. 465 .. .. .	1024
Harrison & Ingram, In re. Ex parte Whinney .. .. .	{ [1900] W. N. 118; C. A. [1900] W. N. 174; [1900] 2 Q. B. 710 .. .. .	184
Harrison, Ainslie & Co. v. Muncaster (Lord) .. .. .	C. A. [1891] 2 Q. B. 680 .. .. .	1059
Harrogate School Board:—Kirby v. .. .. .	C. A. [1896] 1 Ch. 437 .. .. .	1834
Harrold v. Watney .. .. .	C. A. [1898] 2 Q. B. 320 .. .. .	1346
Harrold Brothers:—Hansen v. .. .. .	C. A. [1894] 1 Q. B. 612 .. .. .	1936
Harrop v. Harrop .. .. .	[1899] P. 61 .. .. .	698
Harrop v. Ossett Corporation .. .. .	[1898] 1 Ch. 525 .. .. .	567
Harrowing Steamship Co. v. Toohey .. .. .	[1900] 2 Q. B. 28 .. .. .	1998
Harrys, In re. Harrys v. Howells .. .. .	[1900] W. N. 147 .. .. .	795
Hart v. Beard .. .. .	{ [1895] W. N. 156 (4); [1896] 1 Q. B. 54 .. .. .	139F
Hart v. Hart .. .. .	[1891] W. N. 162 .. .. .	699
Hart:—Harvey v. .. .. .	[1894] W. N. 72 .. .. .	{ 863, 1412
Hart v. Stone. In re Hubbuck .. .. .	[1896] 1 Ch. 754 .. .. .	1856
Hart's Divorce Bill .. .. .	H. L. (D.) [1898] A. C. 305 .. .. .	693
Hartley, In re. Nuttall v. Whittaker (No. 1) .. .. .	[1891] 2 Ch. 121 .. .. .	1547
..... (No. 2) .. .. .	[1892] W. N. 49 .. .. .	1699
Hartley, In re. Williams v. Williams. Williams v. Jones .. .. .	{ [1899] W. N. 234; [1900] 1 Ch. 152 .. .. .	1132
Hartley, In the Goods of .. .. .	{ [1898] W. N. 155 (10); [1899] P. 40 .. .. .	1597

Name of Case.	Volume and Page.	Column of Digest.
Hartley v. Maddlock .. .. .	[1899] W. N. 83; [1899] 2 Ch. 199 .. .. .	1714
Hartopp v. Hart pp .. .. .	[1899] P. 65 .. .. .	720
Harvey, In re. Harvey v. Hobday .. .	C. A. [1895] W. N. 161 (12); [1896] 1 Ch. 137 .. .. .	1878
Harvey v. Facey .. .. .	P. C. [1893] A. C. 552 .. .. .	512, 2100
Harvey v. Gillow. In re Sir E. Harvey's Estate	[1893] 1 Ch. 567 .. .. .	2317, 2336
Harvey v. Hart .. .. .	[1894] W. N. 72 .. .. .	863, 1412
Harvey's (Sir E.) Estate, In re. Harvey v. Gillow .. .. .	[1893] 1 Ch. 567 .. .. .	2317, 2336
Harvey's Oyster Co., In re. Ormerod's Case ..	[1894] 2 Ch. 474 .. .. .	432
Harwood :—Millington v. .. .. .	C. A. [1892] 2 Q. B. 166 .. .. .	586
Harwood :—Over v. .. .. .	[1900] 1 Q. B. 803 .. .. .	2214
Haslam :—McClatchie v. .. .. .	C. A. [1891] W. N. 191 .. .. .	513
Haslingden Corporation :—Rishton v. .. ..	[1898] 1 Q. B. 294 .. .. .	2091
Hasluck, Ex parte. In re Barçen .. .. .	[1894] 1 Q. B. 444 .. .. .	206, 212
Hasluck, Ex parte. In re Harris .. .. .	[1899] W. N. 61; [1899] 2 Q. B. 97 .. .. .	174
Hasluck, Ex parte. In re North .. .. .	C. A. [1895] 2 Q. B. 264 .. .. .	111
Hasluck :—Carter v. .. .. .	[1891] 3 Ch. 553; C. A. [1892] 2 Ch. 278; H. L. (E.) [1893] A. C. 360 .. .. .	956
Hasluck v. Clark .. .. .	[1898] 2 Q. B. 28; C. A. [1899] 1 Q. B. 699 .. .. .	128
Hasan v. Chambers. Crossan v. Chambers. Lynch v. Buchanan. (Re Richey) .. ..	C. A. (Ir.) [1897] W. N. 85 .. .. .	1398
Hassell v. Stanley .. .. .	[1896] 1 Ch. 607 .. .. .	571
Hastings :—Bensaude v. In re Tatham .. ..	[1892] W. N. 150 .. .. .	691
Hastings v. Pearson .. .. .	[1893] 1 Q. B. 62 .. .. .	813
Hastings (Lord) :—North Eastern Ry. Co. v. ..	[1898] 2 Ch. 674; C. A. [1899] W. N. 30 (4); [1899] 1 Ch. 656; H. L. (E.) [1900] W. N. 92; [1900] A. C. 260 .. .. .	2293
Hastings Corporation :—Reg. v. .. .. .	[1896] W. N. 160 (7); [1897] 1 Q. B. 46 .. .. .	1922
"Haswell," The Owners of, and Lamb :—Owners of "Vindomora" v. .. .. .	H. L. (E.) [1891] A. C. 1 .. .. .	1949
Haswell, Shotton, and Easington Coal and Coke Co. :—South Hetton Coal Co. v. .. ..	C. A. [1898] 1 Ch. 465 .. .. .	2103
Hatch :—Att.-Gen. v. .. .. .	C. A. [1893] 3 Ch. 36 .. .. .	2080
Hathaway v. Argus Printing Co. .. .. .	C. A. [1900] W. N. 247 .. .. .	1220
Hathorn :—Salisbury Gold Mining Co. v. .. ..	P. C. [1897] A. C. 268 .. .. .	1313
Hatton v. Harris .. .. .	H. L. (I.) [1892] A. C. 547 .. .. .	1487
Hatton v. Treeby .. .. .	[1897] 2 Q. B. 452 .. .. .	180
Haverfordwest Corporation :—Dillon v. .. ..	[1891] 1 Q. B. 575 .. .. .	1773
Haviland :—Johnstone v. .. .. .	H. L. (Sc.) [1896] A. C. 95 .. .. .	1250, 1840
Hawke v. Dunn .. .. .	[1897] 1 Q. B. 579 .. .. .	868
Hawker v. Stourfield Park Hotel Co. .. ..	C. A. [1900] W. N. 51 .. .. .	1311
Hawkes, In re. Ackerman v. Lockhart .. ..	C. A. [1898] 2 Ch. 1 .. .. .	2049
Hawkes :—Brown v. .. .. .	C. A. [1891] 2 Q. B. 718 .. .. .	1204
Hawkins, Ex parte. In re Hawkins .. .. .	[1894] 1 Q. B. 25 .. .. .	146, 689
Hawkins, In re. Ex parte Official Receiver ..	C. A. [1892] 1 Q. B. 890 .. .. .	113, 123
Hawkins, In re. Ex parte Troup .. .. .	C. A. [1895] 1 Q. B. 404 .. .. .	159
Hawkins v. Bridgwater Justices .. .. .	[1900] 2 Q. B. 382 .. .. .	1103
Hawkins v. Rutter .. .. .	[1892] 1 Q. B. 663 .. .. .	593, 729

Name of Case.	Volume and Page.	Column of Digest.
Hawksley v. Outram .. .. .	C. A. [1892] 3 Ch. 359 .. ..	1425, 1723, 2064
Hawtrey :—Lee v. .. .. .	[1898] P. 63 .. .. .	737
Hay :—Att.-Gen. v. .. .. .	[1899] 2 Q. B. 245 .. ..	1749
Hay :—Mess v. .. .. .	H. L. (Sc.) [1899] A. C. 233 ..	146
Hay v. Northcote .. .. .	[1900] W. N. 134; [1900] 2 Ch. 262 .. ..	495
Hay v. Wolmer. In re Cleveland's (Duke of) Estate .. .. .	[1895] 2 Ch. 542 .. ..	1852
Hay's Case (Gallagher v. Hay) .. .. .	C. A. (Ir.) [1897] W. N. 134 ..	1384
Haycraft Gold Reduction and Mining Co., In re .. .. .	[1900] W. N. 106; [1900] 2 Ch. 230 .. ..	460
Haydon, Claimant. Stokes v. Spencer .. .. .	[1900] W. N. 141; [1900] 2 Q. B. 483 .. ..	198
Hayes, In re. Turnbull v. Hayes .. .. .	[1900] W. N. 139; [1900] 2 Ch. 332 .. ..	1477
Hayes :—Strickland v. .. .. .	[1896] 1 Q. B. 290 .. ..	2091
Hayes Common Conservators v. Bromley Rural District Council .. .. .	[1897] 1 Q. B. 321 .. ..	296
Hayles v. Pease and Partners, Ltd. .. .. .	[1899] W. N. 15 (9); [1899] 1 Ch. 567 .. ..	936
Haynes v. Doman .. .. .	C. A. [1899] W. N. 65; [1899] 2 Ch. 13 .. ..	1234, 1721
Haynes v. King .. .. .	[1893] 3 Ch. 439 .. ..	1121
Hayward, In re. Hayward v. Hayward .. .. .	[1897] 1 Ch. 905 .. ..	2331
Hayward v. Mutual Reserve Association .. .. .	[1891] 2 Q. B. 236 .. ..	62
Head, In re. Ex parte Head .. .. .	[1894] 1 Q. B. 638 .. ..	139, 153
Head, In re. Head v. Head (No. 1) .. .. .	[1893] 3 Ch. 426 .. ..	95
(No. 2) .. .. .	C. A. [1894] 2 Ch. 236 .. ..	91, 95, 1422
Head v. Gould .. .. .	[1898] 2 Ch. 250 .. ..	2179
Headingley-cum-Burley Burial Board :—Wood v. .. .. .	[1892] 1 Q. B. 713 .. ..	234
Headland's Patent Electric Storage Battery Co. :—White v. .. .. .	C. A. [1899] W. N. 15 (6); [1899] 1 Q. B. 507 .. ..	588
Heap v. Peart .. .. .	[1891] 1 Q. B. 110 .. ..	587
Heard :—Thorne v. .. .. .	[1893] 3 Ch. 530; C. A. [1894] 1 Ch. 599; H. L. (E.) [1895] A. C. 495 .. ..	1128, 2192
Heard v. Heard .. .. .	[1896] P. 188 .. ..	927
Hearle :—Rundle v. .. .. .	[1898] 2 Q. B. 83 .. ..	894
Hearson v. Churchill .. .. .	C. A. [1892] 2 Q. B. 144 .. ..	68
Heath, In the Goods of .. .. .	[1892] P. 253 .. ..	1616
Heath :—Boileau v. .. .. .	[1898] 2 Ch. 301 .. ..	1256
Heath :—Simmonds v. .. .. .	C. A. [1894] 1 Q. B. 29 .. ..	2112
Heath v. Weaverham Overseers .. .. .	[1894] 2 Q. B. 108 .. ..	769, 892
Heath & Sons, Ltd. v. Rollason .. .. .	H. L. (E.) [1898] A. C. 499 ..	657
Heathcote, In re. Trench v. Heathcote .. .. .	[1891] W. N. 10 .. ..	1906
Heathcote :—Duke of Sutherland v. .. .. .	[1891] 3 Ch. 504; C. A. [1892] 1 Ch. 475 .. ..	642, 1264
Heathfield v. Greenway .. .. .	[1893] W. N. 170 .. ..	1438
Heatley (Tod) :—Att.-Gen. v. .. .. .	C. A. [1897] W. N. 17 (10) ..	1353
Heaven :—Banks v. In re Burton's Will .. .. .	[1892] 2 Ch. 38 .. ..	952
Hebblethwaite v. Peever .. .. .	[1892] 1 Q. B. 124 .. ..	1138, 1533
Hebditch v. MacIlwaine .. .. .	C. A. [1894] 2 Q. B. 54 .. ..	649
Heckles v. Heckles .. .. .	[1892] W. N. 188 .. ..	1408
Heckscher v. Crosley .. .. .	C. A. [1891] 1 Q. B. 224 .. ..	570, 1500

Name of Case.	Volume and Page.	Column of Digest.
Hedges:—Sumpter v. .. .. .	C. A. [1898] 1 Q. B. 673 ..	505
Hedley, In re. Ex parte Board of Trade ..	[1895] 1 Q. B. 923 ..	124, 135
Hedley v. Pinkney & Sons' Steamship Co. ..	C. A. [1892] 1 Q. B. 58; H. L. (E.) [1894] A. C. 222 ..	2013
Heinemann & Co. v. Hale & Co. .. ..	C. A. [1891] 2 Q. B. 83 ..	1536
Helby v. Matthews .. .. .	C. A. [1894] 2 Q. B. 262; H. L. (E.) [1895] A. C. 471 ..	815
Hellard & Bewes, In re .. .. .	[1896] 2 Ch. 229 ..	2038
Helsby, In re. Ex parte Helsby .. ..	[1893] W. N. 189 ..	105
Helsby, In re. Ex parte Trustee in Bankruptcy	C. A. [1894] 1 Q. B. 742 ..	113
Hemans v. Hotchkiss Ordnance Co. .. ..	C. A. [1898] W. N. 169 (8); [1899] 1 Ch. 115 ..	361
Hemery:—Lindon v. In re Hicks .. ..	[1893] W. N. 138 ..	575, 1501
Hemming v. Davies .. .. .	[1898] 1 Q. B. 660 ..	590
Hemp, Yarn and Cordage Co., In re. Hindley's Case .. .. .	C. A. [1896] 2 Ch. 121 ..	432
Hemphill v. Hemphill. In re Chisholm's Settlement .. .. .	[1900] W. N. 128 ..	1481
Hemsworth:—Hopkins v. .. .. .	[1898] 2 Ch. 347 ..	1291
Henderson v. Astwood .. .. .	P. C. [1894] A. C. 150 ..	1301
Henderson:—Bonhote v. .. .. .	[1895] 1 Ch. 742; C. A. [1895] 2 Ch. 202 ..	1907
Henderson:—King v. .. .. .	P. C. [1898] A. C. 720 ..	1320
Henderson v. Merthyr Tydfil Urban District Council .. .. .	[1900] 1 Q. B. 434 ..	2043
Henderson v. Thorn .. .. .	[1893] 2 Q. B. 164 ..	1061
Henderson:—Tiessen v. .. .. .	[1899] W. N. 45; [1899] 1 Ch. 861 ..	358
Henderson:—Torish v. .. .. .	C. A. (Ir.) [1897] W. N. 112 ..	1368
Henderson v. Underwriting and Agency Association .. .. .	[1891] 1 Q. B. 557 ..	667
Henderson & Co. v. Williams .. .. .	C. A. [1895] 1 Q. B. 521 ..	767, 2159
Henderson Brothers v. Shankland & Co. ..	C. A. [1896] 1 Q. B. 525 ..	1930
Hendon Union Assessment Committee:—Allchurch v. .. .. .	C. A. [1891] 2 Q. B. 436 ..	1682
Hendry:—American Concentrated Meat Co. v. ..	[1893] W. N. 67; C. A. [1893] W. N. 82 ..	682, 1250, 1923
Hengler, In re. Frowde v. Hengler (No. 1) ..	[1893] 1 Ch. 586 ..	1851
Hengler, In re. Frowde v. Hengler (No. 2) ..	[1893] W. N. 37 ..	1502
Henley, In re. Alcock v. Henley .. ..	[1896] W. N. 154 (6) ..	792
Henley:—Reg. v. .. .. .	[1892] 1 Q. B. 504 ..	825, 1044
Henman:—Tadman v. .. .. .	[1893] 2 Q. B. 168 ..	685
Hennell v. Davies .. .. .	[1893] 1 Q. B. 367 ..	596
Hennessey v. McCabe .. .. .	C. A. [1900] 1 Q. B. 491 ..	1218
Henry:—Keen v. .. .. .	C. A. [1894] 1 Q. B. 292 ..	884
Henry Clay and Bock and Co., In re .. ..	[1892] 3 Ch. 549 ..	2124
Hensby:—Boden v. .. .. .	[1892] 1 Ch. 101 ..	2050
Henschel:—Attenborough v. .. .. .	[1895] 1 Q. B. 833 ..	591
Hensey v. White .. .. .	C. A. [1900] 1 Q. B. 481 ..	1214
Henson:—Cornwall v. .. .. .	[1899] 2 Ch. 710; C. A. [1900] W. N. 128; [1900] 2 Ch. 298	2231
Henthorn v. Fraser .. .. .	C. A. [1892] 2 Ch. 27 ..	512
Henty v. Reg. .. .. .	P. C. [1896] A. C. 567 ..	2260
Henwood:—Walthamstow Urban District Council v. .. .. .	[1897] 1 Ch. 41 ..	1546

Name of Case.	Volume and Page.	Column of Digest.
Hepburn:—Slevin <i>v.</i> In re Slevin .. .. {	[1891] 1 Ch. 373; C. A. [1891] 2 Ch. 236 .. .. {	2335
Hepworth <i>v.</i> Pickles .. .. {	[1900] W. N. 216; [1900] 1 Ch. 108 .. .. {	2245
Herbage Rents, Greenwich, In re. Charity Commrs. <i>v.</i> Green .. .. {	[1896] 2 Ch. 811 .. .. {	1716
Herbert:—Le Bas <i>v.</i> In re Butler .. .. {	[1894] 3 Ch. 250 .. .. {	2310
Hercynia Copper Co., In re .. .. {	C. A. [1894] 2 Ch. 403 .. .. {	347
Herefordshire County Council and Leominster Town Council, In re, and In re Local Government Act, 1888 .. .. {	[1895] 1 Q. B. 43 .. .. {	547, 578
"Hereward," The .. .. {	[1895] P. 284 .. .. {	2000
Heriot:—Hood Barrs <i>v.</i> .. .. {	H. L. (E.) [1897] A. C. 177 .. .. {	916
Heriot:—Hood Barrs <i>v.</i> .. .. {	H. L. (E.) [1896] A. C. 174 .. .. {	919
Heriot:—Hood Barrs <i>v.</i> .. .. {	C. A. [1896] 1 Q. B. 610; [1896] 2 Q. B. 375 .. .. {	565
Heriot:—Hood Barrs <i>v.</i> Ex parte Blyth .. .. {	C. A. [1896] 2 Q. B. 338 .. .. {	917
Heritable Reversionary Co. <i>v.</i> Millar .. .. {	H. L. (Sc.) [1892] A. C. 598 .. .. {	1829
"Hero," The .. .. {	[1891] P. 294 .. .. {	1999
Herries (Lord):—Norfolk (Duke of) <i>v.</i> In re Norfolk's (Duke of) Parliamentary Estates .. .. {	[1900] W. N. 15; [1900] 1 Ch. 461 .. .. {	1860
Herring:—Daw <i>v.</i> .. .. {	[1892] 1 Ch. 284 .. .. {	1415
Herring:—London County Council <i>v.</i> .. .. {	[1894] 2 Q. B. 522 .. .. {	1153
Herron <i>v.</i> Rathmines and Rathgar Improvement Commrs. .. .. {	H. L. (I.) [1892] A. C. 498 .. .. {	2069, 2274
Herschler <i>v.</i> Hertz .. .. {	[1895] W. N. 108 (3) .. .. {	1578
Hersey <i>v.</i> Young .. .. {	C. A. [1894] W. N. 18 .. .. {	1538
Hertfordshire (Sheriff of), Ex parte. In re Mackenzie .. .. {	C. A. [1899] W. N. 132; [1899] 2 Q. B. 566 .. .. {	121, 129
Hertfordshire County Council:—Shaw <i>v.</i> .. .. {	C. A. [1899] W. N. 103; [1899] 2 Q. B. 282 .. .. {	566
Hertz:—Herschler <i>v.</i> .. .. {	[1895] W. N. 108 (3) .. .. {	1578
Heseltine, In re. Woodward <i>v.</i> Heseltine (in) H. L. (E.) Simmons <i>v.</i> Woodward) .. .. {	C. A. [1891] 1 Ch. 464; H. L. (E.) [1892] A. C. 100 .. .. {	197
Heseltine <i>v.</i> Simmons .. .. {	C. A. [1892] 2 Q. B. 547 .. .. {	202
Heseltine (W.) & Son, Ltd., In re .. .. {	[1891] W. N. 25 .. .. {	443
"Hesketh," SS.:—Hunter <i>v.</i> .. .. {	P. C. [1891] A. C. 628 .. .. {	1592
"Hestia," The (No. 1) .. .. {	[1895] P. 193 .. .. {	2002, 2004
— (No. 2) .. .. {	[1895] W. N. 100 .. .. {	560, 2005
Heston and Isleworth Urban District Council <i>v.</i> Grout .. .. {	[1897] W. N. 59 (10); C. A. [1897] 2 Ch. 306 .. .. {	2089
Hetling and Merton's Contract, In re .. .. {	C. A. [1893] 3 Ch. 269 .. .. {	2225
Hett:—Bower <i>v.</i> .. .. {	[1895] 2 Q. B. 51; C. A. [1895] 2 Q. B. 337 .. .. {	115, 1925
Heuer:—Robinson & Co. <i>v.</i> .. .. {	C. A. [1898] 2 Ch. 451 .. .. {	1726
Heuland:—Hodson <i>v.</i> .. .. {	[1896] 2 Ch. 428 .. .. {	847
Hewett, In re. Ex parte Levene .. .. {	[1895] 1 Q. B. 328 .. .. {	105
Hewett, In re. Hewett <i>v.</i> Hallett .. .. {	[1894] 1 Ch. 362 .. .. {	904, 1022, 1902
Hewett <i>v.</i> Barr .. .. {	C. A. [1891] 1 Q. B. 98 .. .. {	1568
Hewit, In re. Lawson <i>v.</i> Duncan .. .. {	[1891] 3 Ch. 568 .. .. {	793
Hewitt:—Craignish <i>v.</i> In re Craignish .. .. {	C. A. [1892] 3 Ch. 180 .. .. {	724, 905
Hewitt <i>v.</i> Taylor .. .. {	[1896] 1 Q. B. 287 .. .. {	18
Hewlett <i>v.</i> Allen .. .. {	C. A. [1892] 2 Q. B. 662; H. L. (E.) [1894] A. C. 383 .. .. {	1249
Hexter <i>v.</i> Pearce .. .. {	[1900] 1 Ch. 341 .. .. {	1260

Name of Case.	Volume and Page.	Column of Digest.
Heyhoe:—Scales <i>v.</i> In re Richerson (No. 1)	[1892] 1 Ch. 379 .. ..	520
—(No. 2)	[1893] 3 Ch. 146 .. ..	1503, 1509
Heyl-Dia <i>v.</i> Edmunds .. ..	[1899] W. N. 222 .. ..	1547
Heynes <i>v.</i> Dixon. In re Dixon .. ..	[1899] W. N. 134; [1899] 2 Ch. 561; C. A. [1900] W. N. 144; [1900] 2 Ch. 561 .. ..	910
Heywood, In re. Parkington <i>v.</i> Heywood .. ..	[1897] 2 Ch. 593 .. ..	796
Heywood:—Stokell <i>v.</i> .. ..	[1896] W. N. 65 (1); [1897] 1 Ch. 459 .. ..	975
Hibbert <i>v.</i> Lloyd. In re Doody. Fisher <i>v.</i> Doody .. ..	C. A. [1893] 1 Ch. 129 .. ..	1303, 2058
Hick <i>v.</i> Raymond and Reid .. ..	C. A. [1891] 2 Q. B. 626; H. L. (E.) [1893] A. C. 22 .. ..	1965
Hick <i>v.</i> Rodocanachi .. ..	C. A. [1891] 2 Q. B. 626; H. L. (E.) [1893] A. C. 22 .. ..	1965
Hickin:—Hill <i>v.</i> .. ..	[1897] 2 Ch. 579 .. ..	1410
Hickley:—Bryant <i>v.</i> In re Bryant .. ..	[1894] 1 Ch. 324 .. ..	953, 2183
Hickling <i>v.</i> Fair .. ..	H. L. [Sc.] [1898] W. N. 77 (7); [1899] A. C. 15 .. ..	2313
Hickman <i>v.</i> Berens .. ..	[1895] 2 Ch. 638 .. ..	488
Hickman <i>v.</i> Maisey .. ..	C. A. [1900] W. N. 72; [1900] 1 Q. B. 752 .. ..	899
Hickmott:—Barnett <i>v.</i> .. ..	[1895] 1 Q. B. 691 .. ..	1399
Hicks, In re .. ..	[1894] W. N. 55 .. ..	1504
Hicks, In re. Lindon <i>v.</i> Hemery .. ..	[1893] W. N. 138 .. ..	575, 1501
Hicks <i>v.</i> Ross .. ..	[1891] 3 Ch. 499 .. ..	32
Hicks <i>v.</i> Stokes .. ..	[1893] 1 Q. B. 124 .. ..	1391
Hiddle <i>v.</i> National Fire and Marine Insurance Co. of New Zealand .. ..	P. C. [1896] A. C. 372 .. ..	1328
Higg:—Goddard <i>v.</i> In re Higg's Mortgage .. ..	[1894] W. N. 73 .. ..	80, 1279
Higg's Mortgage, In re. Goddard <i>v.</i> Higg .. ..	[1894] W. N. 73 .. ..	80, 1279
Higginbottom, In re .. ..	[1892] 3 Ch. 132 .. ..	2168
Higgins:—Brenchley <i>v.</i> .. ..	C. A. [1900] W. N. 244 .. ..	1810
Higgins:—Dawson <i>v.</i> In re Grainger .. ..	C. A. [1900] W. N. 158; [1900] 2 Ch. 756 .. ..	2326, 2342
Higgins:—North Sydney Investment and Tramway Co. <i>v.</i> .. ..	P. C. [1899] A. C. 263 .. ..	1322
Higgins:—Yates <i>v.</i> .. ..	[1896] 1 Q. B. 166 .. ..	608
Higginshaw Mills and Spinning Co., In re .. ..	C. A. [1896] 2 Ch. 544 .. ..	454
Higginson & Dean, In re. Ex parte Att.-Gen. .. ..	[1899] 1 Q. B. 325 .. ..	148
Highgate, Sir Roger Cholmeley's School at) (Wardens and Governors of) <i>v.</i> Sewell (No. 1)	[1893] 2 Q. B. 254 .. ..	1073
—(No. 2)	[1894] 2 Q. B. 906 .. ..	1068
"Highland Chief," The .. ..	[1892] P. 76 .. ..	2012, 2014
Highland Ry. Co. <i>v.</i> Great North of Scotland Ry. Co. .. ..	H. L. (Sc.) [1896] W. N. 77 (1) .. ..	57, 58
Higson:—Harrison <i>v.</i> In re Harrison .. ..	[1894] 1 Ch. 561 .. ..	2312
Hildesheim, In re. Ex parte The Trustee in Bankruptcy .. ..	C. A. [1893] 2 Q. B. 357 .. ..	152
Hildesheimer <i>v.</i> Dunn .. ..	[1891] W. N. 66 .. ..	526
Hildesheimer <i>v.</i> Faulkners, Ltd. .. ..	[1900] W. N. 170 .. ..	531
Hildreth:—McInaney <i>v.</i> .. ..	[1897] 1 Q. B. 600 .. ..	866
Hill Brothers <i>v.</i> Humphreys. In re Cosier .. ..	[1898] W. N. 8 (12) .. ..	575
Hill (Viscount) <i>v.</i> Bullock .. ..	[1897] 2 Ch. 55; affirm. by C. A. [1897] 2 Ch. 482 .. ..	826



Name of Case.	Volume and Page.	Column of Digest.
Hill, In re. Hill v. Pilcher .. ..	[1896] 1 Ch. 962 .. ..	1869
Hill v. Brown .. ..	P. C. [1894] A. C. 125 .. ..	1334, 2300
Hill v. Cooper .. ..	C. A. [1893] 2 Q. B. 85 .. ..	906, 1699
Hill v. Gage. In re Gage .. ..	[1898] 1 Ch. 498 .. ..	1483
Hill :—Hair v. .. ..	[1895] 1 Q. B. 906 .. ..	1915
Hill v. Hill .. ..	C. A. [1897] 1 Q. B. 483 .. ..	2352
Hill v. Hickin .. ..	[1897] 2 Ch. 579 .. ..	1410
Hill :—Hooper v. .. ..	C. A. [1894] 1 Q. B. 659 .. ..	196, 1629
Hill :—Morgan v. In re Parker .. ..	C. A. [1894] 3 Ch. 400 .. ..	1582
Hill :—Phelps, James & Co. v. .. ..	[C. A. [1891] 1 Q. B. 605 .. ..	1968
Hill v. Rowlands .. ..	[1897] W. N. 68 (3); C. A. [1897] 2 Ch. 361 .. ..	1280
Hill v. Schwarz. In re Parlin .. ..	[1892] 3 Ch. 510 .. ..	1471
Hill v. Scott .. ..	[1895] 2 Q. B. 371; C. A. [1895] 2 Q. B. 713 .. ..	263
Hill v. Thomas .. ..	C. A. [1893] 2 Q. B. 333 .. ..	893
Hill :—Thorneloe v. .. ..	[1894] 1 Ch. 569 .. ..	2139
Hill (Trustees of Lord) v. Rowlands .. ..	[1896] 2 Q. B. 124 .. ..	107
Hill (Viscount):—Poulett (Earl) v. .. ..	C. A. [1893] 1 Ch. 277 .. ..	1280, 1565
Hill v. Wallacey Local Board .. ..	[1892] 3 Ch. 117; C. A. [1894] 1 Ch. 133 .. ..	1589, 2277
Hill & Co.:—Pullman v. .. ..	C. A. [1891] 1 Q. B. 524 .. ..	650
Hill, Clark & Co. v. Dalgety & Co. .. ..	P. C. [1898] A. C. 343 .. ..	1326
Hill's Dry Docks and Engineering Co.:—Rendall v. .. ..	C. A. [1900] W. N. 113; [1900] 2 Q. B. 245 .. ..	1247
Hill's Estate, In re. Hill v. Equitable Reversionary Interest Society .. ..	[1896] W. N. 177 (2) .. ..	557
Hill's Settlement Trust, In re. Hill v. Equitable Reversionary Interest Society .. ..	[1896] W. N. 177 (1) .. ..	556
Hill's Waterfall Estate and Gold Mining Co., In re .. ..	[1896] 1 Ch. 947 .. ..	485
Hille India Rubber Co., In re (No. 1) .. ..	[1897] W. N. 6 (4) .. ..	456
(No. 2) .. ..	[1897] W. M. 20 (5) .. ..	444
Hilleary :—Hurcum v. .. ..	C. A. [1894] 1 Q. B. 579 .. ..	1371
Hills :—Sixth West Kent Mutual Building Society v. .. ..	[1899] 2 Ch. 60 .. ..	229
Hilton :—Shenstone & Co. v. .. ..	[1894] 2 Q. B. 452 .. ..	814
Hinchliffe, In re (No. 1) .. ..	C. A. [1895] 1 Ch. 117 .. ..	775
(No. 2) .. ..	C. A. [1895] W. N. 147 (6) .. ..	1185
"Hinde (J. R.)," The .. ..	[1892] P. 231 .. ..	2107
Hindle v. Birtwistle .. ..	[1896] W. N. 178 (3); [1897] 1 Q. B. 192 .. ..	1236
Hindley's Case. In re Hemp, Yarn and Cordage Co. .. ..	C. A. [1896] 2 Ch. 121 .. ..	432
Hindmarsh :—Hotchin v. .. ..	[1891] 2 Q. B. 181 .. ..	17, 24
Hinds v. Chambers .. ..	C. A. (Ir.) [1898] W. N. 95 .. ..	1394
Hindson v. Ashby .. ..	[1895] W. N. 147 (9); [1896] 1 Ch. 78; C. A. [1896] 2 Ch. 1 .. ..	825, 2284
Hine, In the Goods of .. ..	[1893] P. 282 .. ..	1620
Hine :—Williamson v. .. ..	[1891] 1 Ch. 390 .. ..	1985
Hinton :—Oliver v. .. ..	[1898] W. N. 172 (4); C. A. [1899] W. N. 102; [1899] 2 Ch. 264 .. ..	1288
Hipwell v. Hipwell .. ..	[1892] P. 147 .. ..	721

Name of Case.	Volume and Page.	Column of Digest.
Hirsche v. Sims .. .. .	P. C. [1894] A. C. 654 ..	260, 341,
Hirst, In re .. .. .	C. A. [1892] W. N. 177 ..	396
Hirth (Carl), In re. Ex parte The Trustee .. {	C. A. [1899] W. N. 10 (2); [1899] 1 Q. B. 612 ..	1193
Hiscock (P. J.), In the Goods of .. .. .	[1900] W. N. 266 ..	102
Hitchcock v. Stretton .. .. .	[1892] 2 Ch. 343 ..	1627
Hitchens:—Malam v. In re Malam .. .. .	[1894] 3 Ch. 578 ..	2041
Hoare, In re. Hoare v. Owen .. .. .	[1892] 3 Ch. 94 ..	1853
Hoare:—Evans v. .. .. .	[1892] 1 Q. B. 593 ..	1303,
Hoare v. Niblett .. .. .	[1891] 1 Q. B. 781 ..	1703
Hobbs:—Reg. v. .. .. .	[1898] 2 Q. B. 647 ..	848
Hobbs, Hart & Co. v. Grover .. .. .	C. A. [1898] W. N. 154 (2); [1899] 1 Ch. 11 ..	514, 910
Hobday:—Harvey v. In re Harvey .. .. .	C. A. [1896] 1 Ch. 137 ..	872
Hobson:—Battison v. .. .. .	[1896] 2 Ch. 403 ..	1156
Hobson v. Gorringe .. .. .	C. A. [1897] 1 Ch. 182 ..	1878
Hobson v. Tulloch .. .. .	[1898] 1 Ch. 424 ..	1290
Hockey v. Western .. .. .	C. A. [1898] 1 Ch. 350 ..	828
Hocking, In re. Mitchell v. Loe .. .. .	C. A. [1898] 2 Ch. 567 ..	601
Hockley v. Anshah .. .. .	[1896] W. N. 70 ..	1300
Hodder v. Williams .. .. .	C. A. [1895] 2 Q. B. 663 ..	2305
Hoddinot v. Home and Colonial Stores .. .. .	[1896] 1 Q. B. 169 ..	38
Hoddinott:—Biggs v. Hoddinott v. Biggs .. {	[1898] W. N. 58 (7); C. A. [1898] 2 Ch. 307 ..	1923
Hoddinott v. Newton, Chambers & Co. .. .. .	C. A. [1899] 1 Q. B. 1018 ..	1753
Hoddinott v. Newton, Chambers & Co. .. .. .	H. L. (E.) [1900] W. N. 209 ..	1295
Hodge's Settled Estates, In re .. .. .	[1895] W. N. 69 ..	1215
Hodgkins v. Sinclair. Allen v. Sinclair. In re) Sinclair .. .. .	[1897] 1 Ch. 921 ..	1215
Hodgkinson, In re. Hancock v. Mellor .. .. .	[1893] W. N. 9 ..	1881
Hodgkinson, In re. Hodgkinson v. Hodgkinson .. .. .	C. A. [1895] 2 Ch. 190 ..	31
Hodgkinson, In the Goods of .. .. .	C. A. [1893] P. 339 ..	2337
Hodgson, In re. Darley v. Hodgson .. .. .	[1899] W. N. 30 (3); [1899] 1 Ch. 666 ..	562,
Hodgson, In re. Taylor v. Hodgson .. .. .	[1898] 2 Ch. 545 ..	2181
Hodgson:—Kenlis (Lord) v. .. .. .	[1895] 2 Ch. 458 ..	2358
Hodgson v. Sinclair. In re Hodgson & Simpson's Trade-mark .. .. .	[1891] W. N. 176 ..	1478
Hodgson & Simpson's Trade-mark, In re. Hodgson v. Sinclair .. .. .	[1891] W. N. 176 ..	734
Hodgson's Kingston Breweries Co.:—Gardner v. .. {	[1900] W. N. 67; [1900] 1 Ch. 592 ..	1780
Hodson, In re. Williams v. Knight .. .. .	[1894] 2 Ch. 421 ..	2129
Hodson v. Heuland .. .. .	[1896] 2 Ch. 428 ..	2129
Hodson v. Pare .. .. .	C. A. [1899] 1 Q. B. 455 ..	2289
Hodson:—Weardale Coal and Iron Co. v. .. .. .	C. A. [1894] 1 Q. B. 598 ..	955, 957
Hoffe's Estate Act, 1855, In re .. .. .	[1900] W. N. 114 ..	847
Hogan v. Sterrett .. .. .	C. A. (Ir.) [1898] W. N. 83 ..	647
Hogarth v. Jennings .. .. .	C. A. [1892] 1 Q. B. 907 ..	203
Hogarth v. Miller, Brother & Co. .. .. .	H. L. (Sc.) [1891] A. C. 48 ..	1525
Hogarth v. Walker .. .. .	[1899] 2 Q. B. 401; C. A. [1900] W. N. 127; [1900] 2 Q. B. 283 ..	1387
Hogg:—Payne v. .. .. .	C. A. [1900] W. N. 86; [1900] 2 Q. B. 43 ..	681
Hoggan v. Esquimalt and Nanaimo Ry. Co. .. .. .	P. C. [1894] A. C. 429 ..	1941
		993
		1630
		247

Name of Case.	Volume and Page.	Column of Digest.
"Holar," The .. .. .	[1900] W. N. 40 .. ..	1991
Holborn District Board of Works :—Saunders <i>v.</i> ..	[1895] 1 Q. B. 64 .. ..	1164, 2066
Holborn Board of Works :—Summers <i>v.</i> ..	[1893] 1 Q. B. 612 .. ..	1178, 2070
Holborn Union (Assessment Committee of) — Pearson <i>v.</i> .. .. .	[1893] 1 Q. B. 389 .. ..	70, 1676
Holborrow :—Pitman <i>v.</i> In re Mabbett ..	[1891] 1 Ch. 707 .. ..	33
Holdroyd :—Howell <i>v.</i> .. .. .	[1897] P. 198 .. ..	736
Holdroyd :—Woodcock <i>v.</i> In re Peel ..	[1899] W. N. 208 .. ..	555
Holdsworth :—Baxter <i>v.</i> .. .. .	C. A. [1898] W. N. 169 (10); [1899] 1 Q. B. 266 .. ..	1558
Hole <i>v.</i> Chard Union .. .. .	C. A. [1894] 1 Ch. 293 .. ..	635, 962
Holford, In re. Holford <i>v.</i> Holford ..	C. A. [1894] 3 Ch. 30 .. ..	952
Holford <i>v.</i> Acton Urban Council.. ..	[1898] 2 Ch. 240 .. ..	224
Holland <i>v.</i> Chambers (Devine's Case) ..	C. A. (Ir.) [1897] W. N. 115 ..	1403
Holland <i>v.</i> Chambers (Doherty's Case) ..	C. A. (Ir.) [1897] W. N. 117 ..	1374
Holland <i>v.</i> Hagan .. .. .	C. A. (Ir.) [1897] W. N. 108 ..	1368
Holland <i>v.</i> Leslie .. .. .	[1894] 2 Q. B. 346; C. A. [1894] 2 Q. B. 450 .. ..	1563
Holland :—Nutter <i>v.</i> .. .. .	C. A. [1894] 3 Ch. 408 .. ..	1522
Holland :—O'Connell <i>v.</i> .. .. .	C. A. (Ir.) [1900] W. N. 224 ..	1368
Holland :—Roberts <i>v.</i> .. .. .	[1893] 1 Q. B. 665 .. ..	1515, 2102
Holland :—Shaw <i>v.</i> .. .. .	C. A. [1900] 2 Ch. 305 .. ..	45, 342
Holland :—Sidebottom <i>v.</i> .. .. .	C. A. [1895] W. N. 3; [1895] 1 Q. B. 378 .. ..	846, 1064
Hollands <i>v.</i> Chambers (O'Doherty's Case) ..	C. A. (Ir.) [1899] W. N. 153 ..	1395
Holliday :—Crosland <i>v.</i> In re Powell ..	[1897] W. N. 176 (12); [1898] 1 Ch. 227 .. ..	2317
Holliday <i>v.</i> National Telephone Co. ..	[1898] W. N. 165 (9); [1899] 1 Q. B. 221; C. A. [1899] W. N. 119; [1899] 2 Q. B. 392	1217
Holliday <i>v.</i> Wakefield Corporation ..	H. L. (E.) [1891] A. C. 81 ..	1263, 2276
Hollingshead :—Fishburn <i>v.</i> .. .. .	[1891] 2 Ch. 371 .. ..	534
Hollingsworth :—Banks <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 442 .. ..	1164
Hollington <i>v.</i> Dear .. .. .	[1895] W. N. 35 .. ..	565, 920
Hollinrake <i>v.</i> Truswell .. .. .	[1893] 2 Ch. 377; C. A. [1894] 3 Ch. 420 .. ..	527, 1426
"Hollinside," The .. .. .	[1898] P. 131 .. ..	1976
Hollis <i>v.</i> Burton .. .. .	C. A. [1892] 3 Ch. 226 .. ..	1486, 1518, 1519, 1520, 1522
Hollis' Hospital (Trustees of) and Hague's Con- tract, In re .. .. .	[1899] W. N. 109; [1899] 2 Ch. 540 .. ..	1721, 2248
Hollon, In re. Forbes <i>v.</i> Hardcastle ..	C. A. [1893] W. N. 111 .. ..	286
Holloway, In re. Ex parte Pallister ..	[1894] 2 Q. B. 163 .. ..	1502, 1503, 1504
Holloway :—Billings <i>v.</i> .. .. .	C. A. [1898] W. N. 159 (8); [1899] 1 Q. B. 70 .. ..	1216
Holloway <i>v.</i> Coster .. .. .	[1897] 1 Q. B. 346 .. ..	2214
Holloway :—Hanfstaengl Art Publishing Co. <i>v.</i> ..	[1893] 2 Q. B. 1.. ..	534
Holloway :—Purssey <i>v.</i> In re Baker ..	[1898] W. N. 156 (12) .. ..	2335

Name of Case.	Volume and Page.	Column of Digest.
Holloway:—Wilson v. In re Wilson .. ..	[1893] 2 Ch. 340 .. ..	520, 1410
Holloway:—Young v. .. ..	[1895] P. 87 .. ..	1626
"Holloway, (John)" The .. ..	[1899] W. N. 246; [1900] P. 37 ..	1957
Holly v. Burke .. ..	C. A. (Ir.) [1897] W. N. 91 ..	1398
Holmes, In re. Farrar v. Eddlestone .. ..	[1892] W. N. 177 .. ..	1509, 1533
Holmes v. Great Northern Ry. .. ..	C. A. [1900] W. N. 65; [1900] 2 Q. B. 409 .. ..	1227
Holmes:—John Brothers Abergarw Brewery Co. v. .. ..	[1899] W. N. 257; [1900] 1 Ch. 188 .. ..	603
Holmes v. Millage .. ..	C. A. [1893] 1 Q. B. 551 .. ..	1025, 1695, 1698
Holmes v. Williams .. ..	[1895] W. N. 116 (15) .. ..	2160
Holmes and Formby, In re .. ..	[1895] 1 Q. B. 174 .. ..	1052
Holmes Oil Co. v. Pumpherston Oil Co. ..	H. L. (Sc.) [1891] W. N. 142 ..	55, 64
Holmfirth Urban Sanitary Authority:—Yorkshire West Riding Council v. .. ..	C. A. [1894] 2 Q. B. 842 .. ..	2272
Holness v. Mackay & Davies .. ..	C. A. [1899] W. N. 65; [1899] 2 Q. B. 319 .. ..	1228
Holt, Ex parte. In re Daintrey .. ..	[1895] 2 Q. B. 116 .. ..	109
Holt:—Clifford v. .. ..	[1898] W. N. 168 (2); [1899] 1 Ch. 698 .. ..	1118
Holt, In re. Rollason, In re. Holt v. Holt ..	[1897] 2 Ch. 525 .. ..	2175
Holt:—Bishop v. In re Cheadle .. ..	C. A. [1900] W. N. 174; [1900] 2 Ch. 620 .. ..	2326
Holt & Co.'s Trade-mark, In re .. ..	C. A. [1896] 1 Ch. 711 .. ..	2133
Holywell Union and Halkyn Parish v. Halkyn District Mines Drainage Co. .. ..	H. L. (E.) [1895] A. C. 117 .. ..	731, 1683
Home and Colonial Stores:—Hoddinot v. ..	[1896] 1 Q. B. 169 .. ..	1753
Home Marine Insurance Co. v. Smith .. ..	[1898] 1 Q. B. 829; affirmed by C. A. [1898] 2 Q. B. 351 ..	999
Homfray:—Phillips v. .. ..	C. A. [1892] 1 Ch. 465 .. ..	1006, 1257
Hong Kong and China Gas Co., In re .. ..	[1898] W. N. 158 (3) .. ..	367
Honley Urban Council:—Eastwood Brothers, Ltd. v. .. ..	[1900] W. N. 94; [1900] 1 Ch. 781 .. ..	1920
Honour v. Equitable Life Assurance Society of the United States .. ..	[1900] W. N. 67; [1900] 1 Ch. 852 .. ..	981
Honywood, In the Goods of .. ..	[1895] P. 341 .. ..	1610
Hood v. Hall. In re Brodie .. ..	[1893] W. N. 161 .. ..	795
Hood Barrs, Ex parte. In re Lumley .. ..	C. A. [1894] 3 Ch. 135 .. ..	907, 916, 919
Hood Barrs, Ex parte. In re Lumley .. ..	C. A. [1896] 2 Ch. 690 .. ..	921
Hood Barrs v. Crossman & Prichard .. ..	H. L. (E.) [1897] A. C. 172 .. ..	2042
Hood Barrs v. Heriot .. ..	H. L. (E.) [1896] A. C. 174 .. ..	919
Hood Barrs v. Heriot .. ..	C. A. [1896] 1 Q. B. 610; [1896] 2 Q. B. 375 .. ..	565
Hood Barrs v. Heriot .. ..	H. L. (E.) [1897] A. C. 177 .. ..	916
Hood Barrs v. Heriot. Ex parte Blyth .. ..	C. A. [1896] 2 Q. B. 338 .. ..	917
Hood's Trusts, In re .. ..	[1896] 1 Ch. 270 .. ..	2194
Hood & Sons v. Yates .. ..	[1894] 1 Q. B. 240 .. ..	1011, 1492
Hood Barrs, Ex parte. In re Lumley .. ..	C. A. [1894] 3 Ch. 135 .. ..	907, 916, 919
Hood Barrs v. Cathcart (No. 1) .. ..	C. A. [1894] 2 Q. B. 559 .. ..	917
(No. 2) .. ..	C. A. [1894] 3 Ch. 376 .. ..	565, 919

Name of Case.	Volume and Page.	Column of Digest.
Hood Barrs <i>v.</i> Catcart (No. 3) .. ..	C. A. [1895] W. N. 34 .. ..	1488
(No. 4) .. ..	[1895] 1 Q. B. 873 .. ..	565, 920
(No. 5) .. ..	[1895] 2 Ch. 411 .. ..	1024
Hook :—Hucklesby <i>v.</i> .. ..	[1900] W. N. 45 .. ..	845
Hooley, In re .. ..	[1899] W. N. 47 .. ..	124
Hooley, In re. Ex parte United Ordnance and Engineering Co. .. ..	[1899] 2 Q. B. 579 .. ..	149
Hooper, In re. Ashford <i>v.</i> Brooks .. ..	[1892] W. N. 151 .. ..	791
Hooper :—Att.-Gen. <i>v.</i> .. ..	[1893] 3 Ch. 483 .. ..	2091
Hooper <i>v.</i> Hill .. ..	C. A. [1894] 1 Q. B. 659 .. ..	596, 1629
Hooper <i>v.</i> Western Counties and South Wales Telephone Co. .. ..	[1892] W. N. 148 .. ..	332
Hope, In re. De Cetto <i>v.</i> Hope .. ..	[1899] W. N. 78; C. A. [1899] W. N. 113; [1899] 2 Ch. 679 .. ..	47, 886
Hope, In re. De Cetto <i>v.</i> Hope .. ..	[1900] W. N. 76 .. ..	887
Hope <i>v.</i> Brash .. ..	C. A. [1897] 2 Q. B. 188 .. ..	667
Hope <i>v.</i> Campbell .. ..	H. L. (Sc.) [1898] W. N. 78 (9); [1899] A. C. 1 .. ..	2353
Hope :—Commrs. of Stamps <i>v.</i> .. ..	P. C. [1891] A. C. 476 .. ..	640, 1332
Hope <i>v.</i> D'Hédouville .. ..	[1893] 2 Ch. 361 .. ..	1854
Hope <i>v.</i> Hope .. ..	[1892] 2 Ch. 336 .. ..	907, 2102
(No. 2) .. ..	C. A. [1893] W. N. 20 .. ..	773
Hope :—Jenkins <i>v.</i> .. ..	[1896] 1 Ch. 278 .. ..	967
Hope <i>v.</i> Walters .. ..	[1899] W. N. 36 (12); [1899] 1 Ch. 879; C. A. [1900] W. N. 20; [1900] 1 Ch. 257 .. ..	2246
Hope <i>v.</i> Warburton .. ..	[1892] 2 Q. B. 134 .. ..	1106
Hope Edwardes :—Blackburne <i>v.</i> .. ..	[1900] W. N. 175 .. ..	1716
Hopkins <i>v.</i> Hemsworth .. ..	[1898] 2 Ch. 347 .. ..	1291
Hopkins :—Reg. <i>v.</i> .. ..	[1893] 1 Q. B. 621 .. ..	1369
Hopkins :—Reg. <i>v.</i> .. ..	C. C. R. [1896] 1 Q. B. 652 .. ..	621
Hopkinson <i>v.</i> Newspaper Proprietary Syndicate, Ltd. In re Newspaper Proprietary Syndicate, Ltd. .. ..	[1900] W. N. 140; [1900] 2 Ch. 349 .. ..	341
Hopkinson <i>v.</i> St. James' and Pall Mall Electric Lighting Co. .. ..	[1893] W. N. 5 .. ..	563, 1436
Hopkinson's Trade-marks, In re .. ..	[1892] 2 Ch. 116 .. ..	2133, 2141
Hopkinson's Patent, In re .. ..	P. C. [1897] A. C. 249 .. ..	1440
Hordern :—Pouey <i>v.</i> .. ..	[1900] W. N. 37; [1900] 1 Ch. 492 .. ..	1472
Horlock, In re. Calham <i>v.</i> Smith .. ..	[1895] 1 Ch. 516 .. ..	641, 2358
Horn & Francis, In re .. ..	[1896] 2 Ch. 797 .. ..	2038
Horn <i>v.</i> Sleaford Rural Council .. ..	[1898] 2 Q. B. 358 .. ..	2281
Horner & Co., In re .. ..	[1898] W. N. 159 (7) .. ..	452
Horner, In re. Fooks <i>v.</i> Horner .. ..	[1896] 2 Ch. 188 .. ..	1004
Horner :—Robson <i>v.</i> .. ..	[1893] W. N. 100 .. ..	1702, 1704
"Hornet," The .. ..	[1892] P. 361 .. ..	1948
Hornibrook :—Pattle <i>v.</i> .. ..	[1897] 1 Ch. 25 .. ..	511
Hornsby <i>v.</i> Raggett .. ..	[1892] 1 Q. B. 20 .. ..	869
Hornsey :—Von Joel <i>v.</i> .. ..	C. A. [1895] 2 Ch. 774 .. ..	966, 1121
Hornsey District Council <i>v.</i> Smith .. ..	[1896] 2 Ch. 254; C. A. [1897] 1 Ch. 843 .. ..	2087, 2088

Name of Case.	Volume and Page.	Column of Digest.
Hornsey Local Board <i>v.</i> Davis .. ..	C. A. [1893] 1 Q. B. 756 ..	1912
Hornsey Urban Council:—Islington Vestry <i>v.</i> {	C. A. [1900] W. N. 74; [1900] 1 Ch. 695 .. ..	1170
Horseley Estate, <i>Ld. v.</i> Steiger .. ..	[1898] 2 Q. B. 259; C. A. [1899] W. N. 82; [1899] 2 Q. B. 79 }	1070
Horsham Local Board:—Oliver <i>v.</i> .. ..	C. A. [1894] 1 Q. B. 332 ..	549, 895, 2066
Horseley Co.:—Appleby <i>v.</i> .. ..	C. A. [1899] W. N. 90; [1899] 2 Q. B. 521 .. ..	1220, 1245
Horton <i>v.</i> Bosson .. ..	[1899] W. N. 23 (8); C. A. [1899] W. N. 38 (4) .. ..	1284
Horton & Son <i>v.</i> Walsall Assessment Committee	[1898] 2 Q. B. 237 .. ..	1671
Hosegood:—Rogers <i>v.</i> .. ..	[1899] W. N. 223; C. A. [1900] W. N. 157; [1900] 2 Ch. 388 }	602
Hosken & Co. and Palmer & Co. In re Arbitration Between .. ..	C. A. [1897] W. N. 156 (3); [1898] 1 Q. B. 131 .. ..	60
Hoskins:—Zelma Gold Mining Co. <i>v.</i> .. ..	P. C. [1895] A. C. 100 .. ..	1321
Hoskins:—Westminster Vestry <i>v.</i> .. ..	[1899] 2 Q. B. 474 .. ..	70
Hotchin <i>v.</i> Hindmarsh .. ..	[1891] 2 Q. B. 181 .. ..	1724
Hotchkyn <i>v.</i> Mayor. In re Fearon .. ..	[1896] W. N. 175 (12) .. ..	915
Hotchkiss Ordnance Co.:—Hemans <i>v.</i> .. ..	C. A. [1898] W. N. 169 (8); [1899] 1 Ch. 115 .. ..	361
Hough:—King <i>v.</i> .. ..	[1895] W. N. 60 .. ..	1283
Houghton <i>v.</i> Sutton Heath and Lea Green Collieries Co. .. ..	C. A. [1900] W. N. 256 .. ..	1221
Houghton <i>v.</i> Tottenham and Forest Gate Ry. Co.	[1892] W. N. 88 .. ..	1528
Houghton's Estates, In re .. ..	[1894] W. N. 20 .. ..	1872
Houlston:—Derbyshire <i>v.</i> .. ..	[1897] 1 Q. B. 772 .. ..	22
Hounsell:—Filby <i>v.</i> .. ..	[1896] 2 Ch. 737 .. ..	849
Hounslow Brewery Co., In re .. ..	[1896] W. N. 45 (6) .. ..	435
Houseman Intervening. Vicar of St. Saviour, Westgate-on-Sea <i>v.</i> Parishioners of Same	[1898] P. 217 .. ..	755
Housing of the Working Classes Act, 1890, In re. Ex parte Stevenson .. ..	[1892] 1 Q. B. 394; C. A. [1892] 1 Q. B. 609 .. ..	41, 58
Houston & Co.:—United Kingdom Mutual Steamship Assurance Association <i>v.</i> .. ..	[1896] 1 Q. B. 567 .. ..	59
Hove Comms.:—Self <i>v.</i> .. ..	[1895] 1 Q. B. 685 .. ..	1921
Hove, St. Andrew's (Vicar, &c.) <i>v.</i> Mawn .. ..	[1895] P. 228, n. .. ..	742
How <i>v.</i> Earl Winterton .. ..	C. A. [1896] 2 Ch. 626 .. ..	2162
How <i>v.</i> London and North Western Ry. Co. {	[1891] 2 Q. B. 496; C. A. [1892] 1 Q. B. 391 .. ..	583
Howard, In re. Howard <i>v.</i> Howard .. ..	[1895] W. N. 4 .. ..	1904
Howard:—Barnett <i>v.</i> Union Bank of London Garnishees .. ..	C. A. [1900] W. N. 179; [1900] 2 Q. B. 784 .. ..	918
Howard:—Bridge <i>v.</i> .. ..	[1896] W. N. 154 (1); [1897] 1 Q. B. 80 .. ..	17
Howard <i>v.</i> Fanshawe .. ..	[1895] 2 Ch. 581 .. ..	116, 1070
Howard:—Flint <i>v.</i> .. ..	C. A. [1893] 2 Ch. 54 .. ..	1296
Howard <i>v.</i> Jalland .. ..	[1891] W. N. 210 .. ..	1408
Howard <i>v.</i> Rowatt's Wharf, <i>Ld.</i> .. ..	[1896] 2 Ch. 93 .. ..	334
Howard <i>v.</i> Sadler .. ..	[1893] 1 Q. B. 1 .. ..	269, 349
Howard:—Shields <i>v.</i> .. ..	[1896] W. N. 155 (7); [1897] 1 Q. B. 84 .. ..	1310
Howard Football Syndicate <i>v.</i> Sykes .. ..	[1897] W. N. 81 (10) .. ..	1443
Howard Smith & Sons <i>v.</i> Wilson .. ..	P. C. [1896] A. C. 579 .. ..	2261
Howard's Settled Estates, In re .. ..	[1892] 2 Ch. 233 .. ..	1882
Howden:—Morris <i>v.</i> .. ..	[1897] 1 Q. B. 378 .. ..	1989
Howden <i>v.</i> Robson. In re Robson .. ..	[1899] W. N. 260 .. ..	2362

Name of Case.	Volume and Page.	Column of Digest.
Howe:—Buxton Lime Firms Co. v. .. ..	[1900] 2 Q. B. 232 .. ..	1244
Howe, Earl:—Willis v. .. ..	C. A. [1893] 2 Ch. 545 .. ..	1129
Howell:—Greenwell v. .. ..	C. A. [1900] W. N. 49; [1900] 1 Q. B. 535 .. ..	566
Howell v. Holdroyd .. ..	[1897] P. 198 .. ..	736
Howell v. Lewis .. ..	[1891] W. N. 181 .. ..	1514
Howells:—Harrys v. <i>In re</i> Harrys .. ..	[1900] W. N. 147 .. ..	795
Howell-Shepherd, <i>In re</i> . Churchill v. St. George's Hospital .. ..	[1894] 3 Ch. 649 .. ..	1314, 2356
Howells, <i>In re</i> . Ex parte Mandleberg & Co. .. ..	[1885] 1 Q. B. 844 .. ..	164, 681
Howes, <i>In re</i> . Ex parte Hughes .. ..	C. A. [1892] 2 Q. B. 628 .. ..	104
Howitt v. Harrington (Earl of) .. ..	[1893] 2 Ch. 497 .. ..	525
Howlett v. Maidstone (Corporation of) .. ..	C. A. [1891] 2 Q. B. 110 .. ..	577
Howorth v. Sutcliffe .. ..	C. A. [1895] 2 Q. B. 358 .. ..	586, 594
Hoyermann's Agency:—St. Gobain, Chauny and Cirey Co. v. .. ..	C. A. [1893] 2 Q. B. 96 .. ..	1535, 1562
Hoyle, <i>In re</i> . Hoyle v. Hoyle .. ..	C. A. [1893] 1 Ch. 84 .. ..	843
Hoyle:—Malcolm Flinn & Co. .. ..	C. A. [1893] W. N. 167 .. ..	1580
Hoyle and Jackson v. Oldham Assessment Committee .. ..	C. A. [1894] 2 Q. B. 372 .. ..	1675
Hubbard & Co., <i>In re</i> .. ..	[1898] W. N. 158 (4) .. ..	320
Hubbuck, <i>In re</i> . Hart v. Stone .. ..	C. A. [1896] 1 Ch. 754 .. ..	1856
Hubbuck & Sons, Ld. v. Wilkinson, Heywood & Clark, Ld. .. ..	C. A. [1899] 1 Q. B. 86 .. ..	51
Hubbuck (Thomas) & Son, Ld. v. Brown .. ..	[1899] W. N. 250 .. ..	2120
Huber, <i>In the Goods of</i> .. ..	[1896] P. 209 .. ..	1600
Hucklesby v. Hook .. ..	[1900] W. N. 45 .. ..	845
Huddersfield Banking Co., Ex parte. <i>In re</i> Henry Lister & Co. .. ..	[1892] 2 Ch. 417 .. ..	472
Huddersfield Banking Co., Ld. v. Lister (H.) & Son, Ld. .. ..	C. A. [1895] 2 Ch. 273 .. ..	1550
Huddersfield Corporation:—Lodge v. .. ..	[1898] 1 Q. B. 847 .. ..	2082
Huddersfield Corporation v. Ravensthorpe Urban District Council .. ..	C. A. [1898] 1 Q. B. 859 .. ..	43
Huddersfield Industrial Society:—Warburton v. .. ..	[1897] 1 Ch. 652; C. A. [1897] 2 Ch. 121 .. ..	2274
Huddleston, <i>In re</i> . Bruno v. Eyston .. ..	[1892] 1 Q. B. 213; C. A. [1892] 1 Q. B. 817 .. ..	940
Huddleston, <i>In re</i> . Bruno v. Eyston .. ..	[1894] 3 Ch. 595 .. ..	774, 1476
Hudson v. Cripps .. ..	[1895] W. N. 161 (5) .. ..	829
Hudson v. Cripps .. ..	[1896] 1 Ch. 265 .. ..	968
Hudson:—Furnivall v. .. ..	[1893] 1 Ch. 335 .. ..	199, 1464
Hudson v. Walker .. ..	[1894] W. N. 180 .. ..	80
Huffam v. North Staffordshire Ry. Co. .. ..	[1894] 2 Q. B. 821 .. ..	1651, 2071
Huggins v. London and South Wales Colliery Co. .. ..	[1891] 1 Q. B. 496; C. A. [1891] 2 Q. B. 699 .. ..	1258
Huggins:—Reg. v. (No. 1) .. ..	[1891] W. N. 88 .. ..	929, 1040
Huggins:—Reg. v. (No. 2) .. ..	[1895] 1 Q. B. 563 .. ..	1044
Hughes, Ex parte. <i>In re</i> Howes .. ..	C. A. [1892] 2 Q. B. 628 .. ..	104
Hughes, <i>In re</i> .. ..	[1899] W. N. 125 .. ..	2044
Hughes, <i>In re</i> . Ex parte Hughes .. ..	C. A. [1893] 1 Q. B. 595 .. ..	101
Hughes, <i>In re</i> . Brandon v. Hughes .. ..	C. A. [1898] 1 Ch. 529 .. ..	906
Hughes v. Edwardes .. ..	H. L. (Sc.) [1892] A. C. 583 .. ..	1251, 1834
Hughes:—Griffith v. .. ..	[1892] 3 Ch. 105 .. ..	2176

Name of Case.	Volume and Page.	Column of Digest.
Hughes v. Justin .. .. .	C. A. [1894] 1 Q. B. 667 ..	1563
Hughes:—Llandudno Urban Council v. .. {	[1900] W. N. 26; [1900] 1 Q. B. 472 .. .. .	1210
Hughes:—"Maori King" (Owners of the Cargo of) v. .. .. .	C. A. [1895] 2 Q. B. 550 ..	1559, 1973
Hughes:—Moreton v. In re Pinhorn .. .. .	[1894] 2 Ch. 276 .. .. .	2336
Hughes:—Pemberton v. .. .. .	C. A. [1899] W. N. 23 (6); [1899] 1 Ch. 781 .. .. .	491
Hughes:—Reg. v. .. .. .	[1893] 2 Q. B. 530 .. .. .	1100
Hughes v. Rimmer. In re Tithe Act, 1891 ..	[1893] 2 Q. B. 314 .. .. .	2112
Hughes:—Simpson v. .. .. .	[1896] W. N. 179 (5); C. A. [1897] W. N. 26 (11) ..	2223
Hughes and Ashley's Contract, In re .. .. .	C. A. [1900] W. N. 168; [1900] 2 Ch. 595 .. .. .	2233
Hulbert v. Cathcart .. .. .	H. L. (E.) [1896] A. C. 470 ..	1849
Hulbert and Crowe v. Cathcart .. .. .	[1894] 1 Q. B. 244 .. .. .	1850
Hull, Barnsley, and West Riding Junction Ry. Co., In re .. .. .	[1893] W. N. 83 .. .. .	1363, 1364
Hull Dock Co. v. Sculcoates Union .. .. .	C. A. [1894] 2 Q. B. 69; H. L. (E.) [1895] A. C. 136 ..	1676, 1677
Hull Docks Co.:—Buckley v. .. .. .	[1893] 2 Q. B. 93 .. .. .	1560
Hull Land and Property Investment Co., In re Hull Underwriters' Association:—Turnbull, Martin & Co. v. .. .. .	[1894] 1 Ch. 736 .. .. .	418, 482
Hulm and Lewis, In re .. .. .	[1900] 2 Q. B. 402 .. .. .	992
Hulton:—MacFarlane v. .. .. .	[1892] 2 Q. B. 261 .. .. .	2061
Humber & Co.:—Griffiths (John) Cycle Corporation v. .. .. .	[1899] W. N. 46; [1899] 1 Ch. 884 .. .. .	1338
Humber & Co. (Portugal):—Greenwood v. ..	C. A. [1899] 2 Q. B. 414 .. ..	848
Hume, In re. Forbes v. Hume .. .. .	[1898] W. N. 162 (3) .. ..	1508
Hume v. Lopes .. .. .	C. A. [1895] 1 Ch. 422 .. ..	284
Hume-Dick:—Lopes v. In re Dick .. .. .	H. L. (E.) [1892] A. C. 112 ..	2189
Hummel v. Hummel .. .. .	C. A. [1891] 1 Ch. 423; H. L. (E.) [1892] A. C. 112 ..	2189
Humphrey:—Kent County Council v. .. ..	[1898] 1 Ch. 642 .. .. .	1475
Humphreys, In re. Humphreys v. Levett ..	[1895] 1 Q. B. 903 .. .. .	2294
Humphrey:—Haddock v. .. .. .	C. A. [1893] 3 Ch. 1 .. .. .	8, 950
Humphreys:—Hill Brothers v. In re Cosier ..	[1900] 1 Q. B. 609 .. .. .	1232
Humphrey:—Reg. v. .. .. .	[1898] W. N. 8 (12) .. .. .	575
Humphreys:—Wheeler v. .. .. .	[1898] 1 Q. B. 875 .. .. .	866
Humphreys, In re. Ex parte Lloyd-George & George .. .. .	H. L. (E.) [1898] A. C. 506 ..	2306
Humphreys, Ld.:—London County Council v. ..	C. A. [1898] 1 Q. B. 520 .. ..	2026
Hunslet Union Guardians v. Ingram .. ..	[1894] 2 Q. B. 755 .. .. .	1159
Hunt, In re .. .. .	[1893] W. N. 61 .. .. .	510
Hunt, In re. Ex parte Board of Trade .. ..	C. A. [1900] 2 Ch. 54, n. ..	1186
Hunt, In re. Pollard v. Geake .. .. .	[1893] 1 Q. B. 287 .. .. .	122
Hunt, In the Goods of .. .. .	[1900] W. N. 65 .. .. .	1879
Hunt v. Fripp .. .. .	[1896] P. 288 .. .. .	1594
Hunt v. Great Northern Ry. Co. (No. 1) (No. 2) .. .. .	[1897] W. N. 158 (3); [1898] 1 Ch. 675 .. .. .	178
Hunt v. Halse .. .. .	[1891] 1 Q. B. 601 .. .. .	1250
Hunt v. Hunt .. .. .	C. A. [1891] 2 Q. B. 189 .. ..	648
Hunt v. Hunt .. .. .	[1892] 1 Q. B. 203 .. .. .	1388
Hunt v. Hunt .. .. .	[1894] P. 247 .. .. .	178
Hunt v. Hunt .. .. .	[1897] 2 Q. B. 304; reversed by C. A. [1897] 2 Q. B. 547 ..	922
Hunt:—Lancashire v. .. .. .	[1895] W. N. 52 .. .. .	41



Name of Case.	Volume and Page.	Column of Digest.
Hunt v. Luck .. .. .	[1900] W. N. 250	2248
Hunt:—Trego v. .. .. .	[1895] 1 Ch. 462; H. L. (E.) [1896] A. C. 7	1419
Hunt v. Wenham. In re Wenham .. .. .	[1892] 3 Ch. 59 .. .. .	799, 1137, 1502, 1504
Hunt v. Worsfold .. .. .	[1896] 2 Ch. 224	1512
Hunter v. Att.-Gen. .. .. .	[1897] 1 Ch. 518; C. A. [1897] 2 Ch. 105; H. L. (E.) [1899] W. N. 71; [1899] A. C. 309	276
Hunter v. Clare .. .. .	[1899] 1 Q. B. 635	1252
Hunter v. Dowling (No. 1) .. .. .	[1893] 1 Ch. 391; C. A. [1893] 3 Ch. 212 .. .. .	1412
— (No. 2) .. .. .	[1895] 2 Ch. 223 .. .. .	1412
Hunter v. Jacobson .. .. .	C. A. [1899] W. N. 82 .. .. .	1140
Hunter v. SS. "Hesketh" .. .. .	P. C. [1891] A. C. 628 .. .. .	1592
Hunter District Board v. Newcastle Wallsend Coal Co. .. .. .	P. C. [1896] A. C. 82 .. .. .	1333
Huntington v. Attrill .. .. .	P. C. [1893] A. C. 150 .. .. .	1008
Huntington v. Inland Revenue (Commrs. of) .. .. .	[1896] 1 Q. B. 422 .. .. .	1796
"Huntsman," The .. .. .	[1894] P. 214 .. .. .	1985
Hurcum v. Hilleary .. .. .	C. A. [1894] 1 Q. B. 579 .. .. .	1371
Hurlbatt v. Barnett & Co. .. .. .	C. A. [1893] 1 Q. B. 77 .. .. .	61, 64
Hurley v. Hurley .. .. .	[1891] P. 367 .. .. .	701
Hurlston, In the Goods of .. .. .	[1898] P. 27 .. .. .	1624
Hürter:—Elkington & Co. v. .. .. .	[1892] 2 Ch. 452 .. .. .	341
Hutcheson:—Lord Advocate v. .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 141 .. .. .	1803
Hutchins:—Trevor v. .. .. .	C. A. [1896] 1 Ch. 844 .. .. .	804
Hutchinson v. Barker .. .. .	[1894] W. N. 198 .. .. .	1520
Hutchinson's Case. In re Issue Co. .. .. .	[1895] 1 Ch. 226 .. .. .	347
Hutchinson & Co.:—Brown, Janson & Co. v. (No. 1) .. .. .	C. A. [1895] 1 Q. B. 737 .. .. .	1423, 1705
— (No. 2) .. .. .	[1895] 2 Q. B. 126 .. .. .	1422
Hutley v. Simmons .. .. .	[1898] 1 Q. B. 181 .. .. .	500
Hutton v. Annan .. .. .	H. L. (Sc.) [1898] A. C. 289 .. .. .	2187
Hutton:—King v. .. .. .	[1899] W. N. 135; [1899] 2 Q. B. 555; C. A. [1900] W. N. 157; [1900] 2 Q. B. 504 .. .. .	177
Hutton:—St. John's, Hackney (Vestry of) v. .. .. .	[1896] W. N. 158 (5); [1897] 1 Q. B. 210 .. .. .	2287
Hydarnes Steamship Co. v. Indemnity Mutual Marine Assurance Co. .. .. .	[1894] 2 Q. B. 590; C. A. [1895] 1 Q. B. 500 .. .. .	997
Hyde:—Comyns v. .. .. .	[1895] W. N. 9 .. .. .	537
Hyderabad (Deccan) Co. v. Willoughby .. .. .	[1899] 2 Q. B. 530 .. .. .	990
Hyslop, In re. Hyslop v. Chamberlain .. .. .	[1894] 3 Ch. 522 .. .. .	1610
Hyslop v. Morel Brothers, Corbett & Son, Ltd. .. .. .	[1891] W. N. 19 .. .. .	370, 403

## I.

Ibbotson:—Lowth v. .. .. .	C. A. [1899] 1 Q. B. 1003 .. .. .	1224
Ibotson (Percy) & Sons:—Makins v. .. .. .	[1891] 1 Ch. 133 .. .. .	330, 1704, 1706
Idle District Council:—Hardaker v. .. .. .	C. A. [1896] 1 Q. B. 335 .. .. .	1574
Iles:—Fitz v. .. .. .	C. A. [1893] 1 Ch. 77 .. .. .	1722

Name of Case.	Volume and Page.	Column of Digest.
Ilfacombe Permanent Mutual Benefit Building Society, In re .. .. .	[1900] W. N. 249 .. ..	232
Ilkley Hotel Co., In re .. .. .	[1893] 1 Q. B. 248 .. ..	445
Illingworth v. Walmsley .. .. .	C. A. [1900] 2 Q. B. 142 .. ..	1219
Imperial and Foreign Agency and Investment Corporation :—Cotton v. .. .. .	[1892] 3 Ch. 454 .. ..	379, 399
Imperial Japanese Government v. Peninsular and Oriental Steam Navigation Co. .. .. .	P. C. [1895] A. C. 644 .. ..	837
Imperial Loan Co. v. Stone .. .. .	C. A. [1892] 1 Q. B. 599 .. ..	1187
Imperial Ottoman Bank v. Trustees, Executors, and Securities Investment Corporation .. .. .	[1895] W. N. 23 .. ..	516
Imray v. Oakshette .. .. .	C. A. [1897] 2 Q. B. 218 .. ..	1072
Inchiquin (Lord), Ex parte. In re Portuguese Consolidated Copper Mines, Ltd. .. .. .	C. A. [1891] 3 Ch. 28 .. ..	346
"Inchmaree," The .. .. .	[1899] W. N. 22 (3); [1899] P. 111 .. ..	2006
Income Tax (Commrs. for Special Purposes) v. Pemsel .. .. .	H. L. (E.) [1891] A. C. 531 .. ..	1762
Incorporated Law Society, Ex parte. In re Louis .. .. .	[1891] 1 Q. B. 649 .. ..	2061
Incorporated Law Society, Ex parte. In re a Solicitor (No. 4) .. .. .	[1894] 1 Q. B. 254 .. ..	2053
Incorporated Law Society, Ex parte. In re a Solicitor .. .. .	[1898] 1 Q. B. 331 .. ..	2053
Incorporated Law Society :—Reg. v. .. .. .	[1895] 2 Q. B. 456; C. A. [1896] 1 Q. B. 327 .. ..	2054, 2056
Ind, Coope & Co. v. Hamblin .. .. .	[1900] W. N. 24; C. A. [1900] W. N. 270 .. ..	1116
Ind, Coope & Co. v. Mee .. .. .	[1895] W. N. 8 .. ..	1704
Indemnity Mutual Marine Assurance Co. :—Burger v. .. .. .	C. A. [1900] W. N. 145; [1900] 2 Q. B. 348 .. ..	986
Indemnity Mutual Marine Assurance Co. :—Hydarnes Steamship Co. v. .. .. .	[1894] 2 Q. B. 590; C. A. [1895] 1 Q. B. 500 .. ..	997
Indemnity Mutual Marine Insurance Co. :—Roddick v. .. .. .	[1895] 1 Q. B. 836; C. A. [1895] 2 Q. B. 380 .. ..	995
India in Council (Secretary of State for) :—Chatterton v. .. .. .	C. A. [1895] 2 Q. B. 189 .. ..	647
Indian Mechanical Gold Extracting Co., In re .. .. .	[1891] 3 Ch. 538 .. ..	367
Indigo Co. v. Ogilvy .. .. .	C. A. [1891] 2 Ch. 31 .. ..	1506
"Industrie," The .. .. .	C. A. [1894] P. 58 .. ..	1977
Ingham, In re. Jones v. Ingham .. .. .	[1893] 1 Ch. 352 .. ..	1287
Ingham, In re. Lawe's Chemical Manure Co. v. Ingham .. .. .	[1896] W. N. 12 (5) .. ..	82
Ingham v. Raynor. In re Fish .. .. .	C. A. [1894] 2 Ch. 83 .. ..	2326, 2332
Ingham :—Wilson v. .. .. .	[1895] W. N. 99 .. ..	686
Ingle v. Jenkins (Vaughan) .. .. .	[1900] W. N. 140; [1900] 2 Ch. 368 .. ..	1253
Inglis v. Gillanders .. .. .	H. L. (Sc.) [1895] A. C. 507 .. ..	1833
Inglis v. Robertson .. .. .	H. L. (Sc.) [1898] A. C. 616 .. ..	814
Ingram :—Davis v. .. .. .	[1897] 1 Ch. 477 .. ..	1408
Ingram :—Hunslet Union (Guardians) v. .. .. .	[1893] W. N. 61 .. ..	510
Ingram v. Papillon. In re Ashton .. .. .	C. A. [1897] W. N. 178 (2); [1897] 2 Ch. 574; [1898] 1 Ch. 142 .. ..	1469
Inland Revenue Commrs. :—Arizona Copper Co. v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 93 .. ..	1766
Inland Revenue Commrs. :—Assets Co. v. .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 144 .. ..	1767

Name of Case.	Volume and Page.	Column of Digest.
Inland Revenue Commrs.:—Benjamin Brooke & Co., <i>Ld. v.</i> .. .. .	[1896] 2 Q. B. 356 .. ..	1797
Inland Revenue Commrs.:—Brown, Shipley & Co. <i>v.</i> .. .. .	[1895] 2 Q. B. 240; C. A. [1895] 2 Q. B. 598 .. .. .	1803
Inland Revenue Commrs.:—Chesterfield Brewery Co. <i>v.</i> .. .. .	[1899] 2 Q. B. 7 .. ..	1795
Inland Revenue Commrs.:—City of London Brewery Co. <i>v.</i> .. .. .	[1898] 1 Q. B. 408; C. A. [1898] W. N. 162 (4); [1899] 1 Q. B. 121 .. .. .	1802
Inland Revenue Commrs.:—Clifford <i>v.</i> .. ..	[1896] 2 Q. B. 187 .. ..	1791
Inland Revenue Commrs.:—Coats (J. & P.) <i>v.</i> ..	[1897] 1 Q. B. 778; C. A. [1897] 2 Q. B. 423 .. ..	1795
Inland Revenue Commrs.:—Cowley (Earl) ..	[1897] 2 Q. B. 47; C. A. [1897] W. N. 171 (7); [1898] 1 Q. B. 355; H. L. (E.) [1899] W. N. 32 (5); [1899] A. C. 198 ..	1746
Inland Revenue <i>v.</i> Dundee Magistrates .. .	Ct. of Sess. (Sc.) [1898] W. N. 127 .. ..	1774
Inland Revenue Commrs.:—Farmer & Co. <i>v.</i> ..	[1898] 2 Q. B. 141 .. ..	1801
Inland Revenue Commrs.:—J. Foster & Sons, <i>Ld. v.</i> .. .. .	C. A. [1894] 1 Q. B. 516 .. ..	1796
Inland Revenue Commrs. <i>v.</i> General Trustees of the Free Church of Scotland .. ..	Ct. of Sess. (Sc.) [1897] W. N. 140 .. ..	1762, 1776
Inland Revenue Commrs.:—Grant <i>v.</i> .. ..	Ct. of Sess. (Sc.) [1899] W. N. 159 .. ..	1755
Inland Revenue Commrs.:—Great Northern Ry. Co. <i>v.</i> .. .. .	[1899] 2 Q. B. 652 .. ..	1805
Inland Revenue Commrs.:—Great Western Ry. Co. <i>v.</i> .. .. .	[1894] 1 Q. B. 507 .. ..	1794
Inland Revenue Commrs.:—Huntington <i>v.</i> ..	[1896] 1 Q. B. 422 .. ..	1796
Inland Revenue Commrs.:—Jones <i>v.</i> .. ..	[1895] 1 Q. B. 484 .. ..	1788
Inland Revenue Commrs.:—Knight's Deep, <i>Ld. v.</i>	[1898] W. N. 174 (12); [1899] 1 Q. B. 345; C. A. [1899] W. N. 239; C. A. [1900] 1 Q. B. 217	1792
Inland Revenue Commrs.:—Lancaster Insurance Co. <i>v.</i> Vulcan Boiler and General Insurance Co. <i>v.</i> The Same .. .. .	[1898] W. N. 174 (13); [1899] 1 Q. B. 353 .. ..	1799
Inland Revenue Commrs.:—Lawson <i>v.</i> .. ..	Ex. Div., Ir. [1896] W. N. 145 .. ..	1740
Inland Revenue Commrs.:—Leith, Hull and Hamburg Steam Packet Co. <i>v.</i> .. ..	Ct. of Sess. (Sc.) [1900] W. N. 210 .. ..	1778
Inland Revenue Commrs.:—Lewis <i>v.</i> .. ..	[1898] 2 Q. B. 290 .. ..	1791
Inland Revenue Commrs.:—London Clearing Bankers (Committee of) <i>v.</i> .. ..	C. A. [1896] 1 Q. B. 542 .. ..	1790
Inland Revenue Commrs.:—London and Westminster Bank <i>v.</i> .. ..	C. A. [1900] 1 Q. B. 166 .. ..	1805
Inland Revenue Commrs.:—Mersey Docks and Harbour Board <i>v.</i> .. ..	[1897] 1 Q. B. 786; C. A. [1897] 2 Q. B. 316 .. ..	1789
Inland Revenue Commrs.:—Muller & Co.'s Margarine, <i>Ld. v.</i> .. .. .	C. A. [1900] 1 Q. B. 310 .. ..	1796
Inland Revenue Commrs.:—Munro <i>v.</i> .. ..	Ct. of Sess. (Sc.) [1896] W. N. 149 .. ..	1800
Inland Revenue Commrs.:—National Telephone Co. <i>v.</i> .. .. .	[1899] 1 Q. B. 250; H. L. (E.) [1899] W. N. 252; [1900] A. C. 1 .. ..	1791
Inland Revenue Commrs.:—Old Battersea and District Building Society <i>v.</i> .. ..	[1898] 2 Q. B. 294 .. ..	1800
Inland Revenue Commrs.:—Onslow <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 239 .. ..	1806
Inland Revenue Commrs.:—Paisley Cemetery <i>v.</i>	Ct. of Sess. (Sc.) [1899] W. N. 196 .. ..	1761, 1774

Name of Case.	Volume and Page.	Column of Digest.
Inland Revenue Commrs.:—Reg. v. Ohlson's Case, Garland's Case .. .. .	[1891] 1 Q. B. 485 .. ..	1445
Inland Revenue Commrs.:—Revelstoke (Lord) v. .. .. .	H. L. (E.) [1898] A. C. 565 ..	1798
Inland Revenue Commrs.:—Rothschild & Sons v. .. .. .	[1894] 2 Q. B. 142 .. ..	1789
Inland Revenue Commrs.:—Rowell v. .. ..	[1897] 2 Q. B. 194 .. ..	1792
Inland Revenue Commrs. v. Scott. In re Bootham Ward Strays, York .. ..	C. A. [1892] 2 Q. B. 152 ..	1758
Inland Revenue Commrs.:—Scottish Investment Trust v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 108 .. ..	1765
Inland Revenue Commrs.:—Smelting Co. of Australia v. .. .. .	[1896] 2 Q. B. 179; C. A. [1896] W. N. 167 (8); [1897] 1 Q. B. 175 .. ..	1794
Inland Revenue Commrs. v. Stewart's Trustees .. .. .	Ct. of Sess. (Sc.) [1899] W. N. 198 .. ..	1750
Inland Revenue Commrs.:—Stocks v. .. ..	Ct. of Sess. (Sc.) [1900] W. N. 207 .. ..	1776
Inland Revenue Commrs.:—Swayne v. .. ..	[1899] W. N. 3 (6); [1899] 1 Q. B. 335; C. A. [1899] W. N. 240; [1900] 1 Q. B. 172 ..	1797
Inland Revenue Commrs.:—Sweetmeat Automatic Delivery Co. v. .. .. .	[1895] 1 Q. B. 484 .. ..	1788
Inland Revenue Commrs. v. Tod .. .. .	H. L. (Sc.) [1898] A. C. 399 ..	1793
Inland Revenue Commrs.:—United Realization Co. v. .. .. .	[1899] 1 Q. B. 361 .. ..	1800
Inland Revenue Commrs.:—West London Syndicate, Ltd. v. .. .. .	[1898] 1 Q. B. 226; C. A. [1898] 2 Q. B. 507 .. ..	1794
Inland Revenue Commrs.:—Wingate & Co. v. .. ..	Ct. of Sess. (Sc.) [1898] W. N. 129 .. ..	1768
Inman, In re. Inman v. Rolls .. .. .	[1893] 3 Ch. 518 .. ..	2340
Inman & Co., In re .. .. .	[1891] W. N. 202 .. ..	465
Innes v. Newman .. .. .	[1894] 2 Q. B. 292 .. ..	1348
Instant:—Reg. v. .. .. .	C. C. R. [1893] 1 Q. B. 450 ..	620
International Agency and Industrial Trust:—Page v. .. .. .	[1893] W. N. 32 .. ..	335
International Cable Co., In re .. .. .	[1892] W. N. 34 .. ..	346
International Co. of Mexico:—Mercantile Investment and General Trust Co. v. .. ..	C. A. [1893] 1 Ch. 484, n. ..	326
International Conversion Trust, In re .. ..	[1892] W. N. 100 .. ..	384
International Society of Auctioneers and Valuers, In re. Baillie's Case .. .. .	[1897] W. N. 171 (4); [1898] 1 Ch. 110 .. ..	425
Invicta Works, Ltd., In re .. .. .	[1894] W. N. 39 .. ..	466
Iredale v. China Traders' Insurance Co. .. ..	C. A. [1900] W. N. 157; [1900] 2 Q. B. 515; [1899] 2 Q. B. 356 .. ..	1932
Ireland (Bank of) v. McCarthy .. .. .	H. L. (I.) [1897] W. N. 164 (12); [1898] A. C. 181 .. ..	2310
Irish Exhibition in London:—Coutts & Co. v. ..	C. A. [1891] W. N. 41 .. ..	97
Irish Land Commission:—Gosford (Earl of) v. ..	H. L. (I.) [1899] A. C. 435 ..	39
Irons v. Davis & Timmins, Ltd. .. .. .	C. A. [1899] 2 Q. B. 330 ..	1226
Irving v. Turnbull .. .. .	[1900] 2 Q. B. 129 .. ..	221
Irwin, In re. Barton v. Irwin .. .. .	[1895] W. N. 23 .. ..	2173
Isaac, In re. Cronbach v. Isaac .. .. .	C. A. [1897] 1 Ch. 251 .. ..	571
Isaacs, In re. Isaacs v. Reginald .. .. .	[1894] 3 Ch. 506 .. ..	520
Isaacs v. Evans .. .. .	[1899] W. N. 261 .. ..	847
Isaacs:—Good & Co. v. .. .. .	C. A. [1892] 2 Q. B. 555 ..	1962
Isaacs:—Pullen v. .. .. .	[1895] W. N. 90 .. ..	1525
Isaacs v. Towell .. .. .	[1898] 2 Ch. 285 .. ..	2243

Name of Case.	Volume and Page.	Column of Digest.
Isaacs :—West of England Fire Insurance Co. <i>v.</i> {	[1896] 2 Q. B. 377; C. A. [1897] 1 Q. B. 226 .. .. }	977
Isaacs' Case. In re Anglo-Austrian Printing and Publishing Co. .. .. }	[1892] 2 Ch. 158 .. .. }	346
Isaacs & Son :—Barrow <i>v.</i> .. .. }	C. A. [1891] 1 Q. B. 417 .. .. }	1073
Isaacson, In re. Ex parte Mason .. .. }	C. A. [1895] 1 Q. B. 333 .. .. }	211
Isaacson :—Rushmere <i>v.</i> .. .. }	[1893] 1 Q. B. 118 .. .. }	1366
Isis Steamship Co. <i>v.</i> Bahr .. .. }	C. A. [1899] 2 Q. B. 364; H. L. (E.) [1900] W. N. 112; [1900] A. C. 340 .. .. }	1935
Isle of Thanet Light Rlws. :—Bailey <i>v.</i> .. .. }	[1900] 1 Q. B. 722 .. .. }	1089
Islington, St. Mary (Vestry) <i>v.</i> Cobbett .. .. }	[1895] 1 Q. B. 369 .. .. }	1172
Islington Vestry <i>v.</i> Hornsey Urban Council .. .. }	C. A. [1900] W. N. 74; [1900] 1 Ch. 695 .. .. }	1170
Islington and General Electric Supply, In re .. .. }	[1892] W. N. 81 .. .. }	366, 383, 476
Issue Co., In re. Hutchinson's Case .. .. }	[1895] 1 Ch. 226 .. .. }	347
Ives & Barker <i>v.</i> Willans .. .. }	[1894] 1 Ch. 63; C. A. [1894] 2 Ch. 478 .. .. }	52, 54, 65
Ivimey :—Barker <i>v.</i> In re Turner .. .. }	[1897] 1 Ch. 536 .. .. }	2176
Izod, In re. Ex parte Official Receiver .. .. }	C. A. [1898] 1 Q. B. 241 .. .. }	162
<b>J.</b>		
J— <i>v.</i> S— .. .. }	[1894] 3 Ch. 72 .. .. }	967
Jablochhoff's Patent, In re .. .. }	P. C. [1891] A. C. 293 .. .. }	1440
"Jacderen," The .. .. }	[1892] P. 351 .. .. }	1960
Jack, In re. Jack <i>v.</i> Jack .. .. }	[1899] W. N. 6 (5); [1899] 1 Ch. 374 .. .. }	1480
Jackson, Ex parte. In re Alderson .. .. }	[1895] 1 Q. B. 183 .. .. }	109
Jackson, In re .. .. }	[1894] W. N. 50 .. .. }	1091
Jackson, In the Goods of .. .. }	[1892] P. 257 .. .. }	1609
Jackson <i>v.</i> Barry Ry. Co. .. .. }	C. A. [1893] 1 Ch. 238 .. .. }	56
Jackson :—Brown <i>v.</i> .. .. }	P. C. [1895] A. C. 446 .. .. }	207, 1428
Jackson :—Fisher <i>v.</i> .. .. }	[1891] 2 Ch. 84 .. .. }	274
Jackson :—Flood <i>v.</i> .. .. }	[1895] 2 Q. B. 21 .. .. }	508
Jackson :—Foakes <i>v.</i> .. .. }	[1900] W. N. 68; [1900] 1 Ch. 807 .. .. }	1481
Jackson :—Jenkins <i>v.</i> .. .. }	[1891] 1 Ch. 89 .. .. }	559
Jackson <i>v.</i> Kilham .. .. }	[1891] W. N. 171 .. .. }	1279
Jackson :—Morgan <i>v.</i> .. .. }	[1895] 1 Q. B. 885 .. .. }	861
Jackson <i>v.</i> Normandy Brick Co. .. .. }	C. A. [1899] W. N. 51; [1899] 1 Ch. 438 .. .. }	2080
Jackson <i>v.</i> Parrott. In re Wise .. .. }	[1896] 1 Ch. 281 .. .. }	950
Jackson <i>v.</i> Plympton St. Mary Rural District Council .. .. }	[1900] W. N. 15 .. .. }	544
Jackson <i>v.</i> Rainford Coal Co. .. .. }	[1896] 2 Ch. 340 .. .. }	302
Jackson :—Reg. <i>v.</i> .. .. }	C. A. [1891] 1 Q. B. 671 .. .. }	922
Jackson :—Sharp (Official Receiver) <i>v.</i> .. .. }	H. L. (E.) [1899] W. N. 90; [1899] A. C. 419 .. .. }	131
Jackson :—Towerson <i>v.</i> .. .. }	C. A. [1891] 2 Q. B. 484 .. .. }	1079, 1275
Jackson & Co., In re .. .. }	[1899] 1 Ch. 348 .. .. }	399
Jacob <i>v.</i> Down .. .. }	[1900] W. N. 99; [1900] 2 Ch. 156 .. .. }	1068
Jacob <i>v.</i> Revell .. .. }	[1900] 2 Ch. 858 .. .. }	2220

Name of Case.	Volume and Page.	Column of Digest.
"Jacob Christensen," The .. .. .	[1895] P. 281 .. .. .	1998
Jacobs v. Crusha .. .. .	C. A. [1894] 2 Q. B. 37 .. .. .	1494
Jacobs-Smith:—Att.-Gen. v. .. .. .	C. A. [1895] 1 Q. B. 472; [1895] 2 Q. B. 341 .. .. .	1731
Jacobson:—Hunter v. .. .. .	C. A. [1899] W. N. 82 .. .. .	1140
Jacomb v. Turner .. .. .	[1892] 1 Q. B. 47 .. .. .	935
Jacson:—Tullis v. .. .. .	[1892] 3 Ch. 441 .. .. .	55, 59
Jagger v. Jagger .. .. .	[1896] W. N. 63 (2) .. .. .	930
Jalland:—Howard v. .. .. .	[1891] W. N. 210 .. .. .	1408
Jamaica (Administrator-General) v. Lascelles, De Mercado & Co. In re Rees' Bankruptcy } .. .. .	P. C. [1894] A. C. 135 .. .. .	101, 1017
Jamaica Att.-Gen.:—West India Improvement Co. v. .. .. .	P. C. [1894] A. C. 243 .. .. .	1017, 1668
Jamaica Fruit Importing and Trading Co. of London:—Milburn & Co. v. .. .. .	C. A. [1900] W. N. 169; [1900] 2 Q. B. 540 .. .. .	1930
Jamaica Ry. Co. v. Att.-Gen. of Jamaica .. .. .	P. C. [1893] A. C. 127 .. .. .	1019, 2068
James:—Brune v. .. .. .	[1898] 1 Q. B. 417 .. .. .	583
James v. Buena Ventura Nitrate Grounds Syndicate .. .. .	C. A. [1896] 1 Ch. 456 .. .. .	394
James:—Cale v. .. .. .	[1897] 1 Q. B. 418 .. .. .	926
James v. Dickenson. In re Matson .. .. .	[1827] 2 Ch. 539 .. .. .	1012
James:—Edmunds v. .. .. .	[1892] 1 Q. B. 18 .. .. .	1106
James v. Evans & Co. .. .. .	[1897] 2 Q. B. 180 .. .. .	1245
James:—Fowler v. In re Beeman .. .. .	[1895] W. N. 151 (1); [1896] 1 Ch. 48 .. .. .	802
James v. James. In re Bowen .. .. .	[1892] 2 Ch. 291 .. .. .	908, 2345
James v. Jones (No. 1) .. .. .	C. A. [1892] W. N. 104 .. .. .	44, 1497
———— (No. 2) .. .. .	[1894] 1 Q. B. 304 .. .. .	16, 72, 89
James v. London and County Banking Co. In re Morris .. .. .	[1898] 2 Ch. 413; C. A. [1899] W. N. 18 (3); [1899] 1 Ch. 485 .. .. .	147
James v. Masters .. .. .	[1893] 1 Q. B. 355 .. .. .	2081
James:—Price v. .. .. .	C. A. [1892] 2 Q. B. 428 .. .. .	1103
James:—Rudd v. .. .. .	C. A. [1896] 2 Ch. 554 .. .. .	856
James:—Sinclair v. .. .. .	[1894] 3 Ch. 554 .. .. .	1409
James v. Smith .. .. .	[1891] 1 Ch. 384; C. A. [1891] W. N. 175 .. .. .	849, 1486, 1575
James v. Stevenson .. .. .	P. C. [1893] A. C. 162 .. .. .	2262
Jameson:—Birmingham Breweries, Ltd. v. .. .. .	[1898] W. N. 15 (8); C. A. [1898] W. N. 145 .. .. .	1058
Jameson:—Reg. v. .. .. .	[1896] 2 Q. B. 425 .. .. .	833
Jameson and Newcastle Steamship Freight Insurance Association, In re .. .. .	[1895] 1 Q. B. 510; C. A. [1895] 2 Q. B. 90 .. .. .	985
"Jane," Owners of S.S., Page and:—Owners of S.S. "Pleiades" v. .. .. .	P. C. [1891] A. C. 259 .. .. .	1953
Janes:—Wilcox & Gibbs v. .. .. .	[1897] 2 Ch. 71 .. .. .	1438
"Janet Court," The .. .. .	[1897] P. 59 .. .. .	2005
Janson:—Driefontein Consolidated Gold Mines v. West Rand Central Gold Mines Co. v. De Rougemont .. .. .	[1900] 2 Q. B. 339 .. .. .	985
Japanese Government v. Peninsular and Oriental Steam Navigation Co. .. .. .	P. C. [1895] A. C. 644 .. .. .	837
Jaquess v. Thomas. In re Thomas .. .. .	C. A. [1894] 1 Q. B. 747 .. .. .	2023
Jarman v. Hale .. .. .	[1899] 1 Q. B. 994 .. .. .	1138
Jarman:—Harle v. .. .. .	[1895] 2 Ch. 419 .. .. .	910

Name of Case.	Volume and Page.	Column of Digest.
Jarman:—Townsend <i>v.</i> .. .. .	{ [1900] W. N. 172; [1900] 2 Ch. 698 .. .. }	1420
Jarvis <i>v.</i> Jarvis .. .. .	{ [1893] W. N. 138 .. .. }	207
Jarvis (F. W.) & Co., In re .. .. .	{ [1898] W. N. 164 (5); [1899] 1 Ch. 193 .. .. }	400
Jay <i>v.</i> Budd .. .. .	{ C. A. [1897] W. N. 153 (3); [1898] 1 Q. B. 12 .. .. }	1548
Jay <i>v.</i> Johnstone .. .. .	{ [1893] 1 Q. B. 25; C. A. [1893] 1 Q. B. 189 .. .. }	1533
Jaynes, Ex parte. In re Alison .. .. .	[1892] 2 Q. B. 587 .. ..	122
Jeans, In re. Upton <i>v.</i> Jeans .. .. .	[1895] W. N. 98 .. ..	2314, 2325
Jeckells:—Barber <i>v.</i> .. .. .	[1893] W. N. 91 .. ..	1280
Jeffery, In re. Burt <i>v.</i> Arnold .. .. .	[1891] 1 Ch. 671 .. ..	951
Jeffery:—Collinson <i>v.</i> .. .. .	{ [1895] 2 Ch. 577 .. .. }	952
Jeffery <i>v.</i> Sayles. In re Bell .. .. .	{ [1896] 1 Ch. 644 .. .. }	1297
Jeffery <i>v.</i> Weaver .. .. .	{ C. A. [1895] W. N. 139 (8); [1896] 1 Ch. 1 .. .. }	1299
Jeffray <i>v.</i> Tredwell. In re Tredwell (No. 1) .. .. .	[1899] 2 Q. B. 449 .. ..	1107
Jeffrey <i>v.</i> Tredwell. In re Tredwell (No. 2) .. .. .	{ C. A. [1891] 2 Ch. 640 .. .. }	2319, 2329
Jeffreys, Ex parte. In re Carey .. .. .	[1891] W. N. 201 .. ..	786
Jeffs:—Dennison <i>v.</i> .. .. .	[1895] 2 Q. B. 624 .. ..	117, 410
Jenkins, In the Goods of .. .. .	[1896] 1 Ch. 611 .. ..	226
Jenkins:—Alexander <i>v.</i> .. .. .	[1894] W. N. 16 .. ..	1621
Jenkins:—British Marine Mutual Insurance Co. <i>v.</i> .. .. .	{ C. A. [1892] 1 Q. B. 797 .. .. }	652
Jenkins <i>v.</i> Bushby .. .. .	{ [1899] W. N. 262; [1900] 1 Q. B. 299 .. .. }	996
Jenkins <i>v.</i> Davies. In re Davies .. .. .	{ C. A. [1891] 1 Ch. 484 .. .. }	1557
Jenkins <i>v.</i> Jackson .. .. .	{ [1899] W. N. 252; [1900] 1 Q. B. 133 .. .. }	201
Jenkins:—Sanders <i>v.</i> .. .. .	[1891] W. N. 104 .. ..	574
Jenkins (Vaughan):—Ingle <i>v.</i> .. .. .	[1891] 1 Ch. 89 .. ..	559
Jenkins:—Williams <i>v.</i> (No. 1) .. .. .	[1897] 1 Q. B. 93 .. ..	1964
Jenkins:—Williams <i>v.</i> (No. 2) .. .. .	{ [1900] W. N. 140; [1900] 2 Ch. 368 .. .. }	1253
Jenkins & Co.:—Nobel's Explosives Co. <i>v.</i> .. .. .	[1893] 1 Ch. 700 .. ..	11
Jenkins & Sons <i>v.</i> Coomber .. .. .	{ [1894] W. N. 176 .. .. }	1890, 2169
Jenkins:—Edwards <i>v.</i> .. .. .	[1896] 2 Q. B. 326 .. ..	1972
Jenkins <i>v.</i> Hope .. .. .	{ [1898] 2 Q. B. 168 .. .. }	193
Jenks <i>v.</i> Clifden (Viscount) .. .. .	{ [1895] W. N. 142 (4); [1896] 1 Ch. 308 .. .. }	630
Jenks <i>v.</i> Ditton .. .. .	[1896] 1 Ch. 278 .. ..	967
Jennings, In re. Burnley <i>v.</i> Harland .. .. .	[1897] 1 Ch. 694 .. ..	1120
Jennings:—Hogarth <i>v.</i> .. .. .	[1897] W. N. 56 (4) .. ..	883
Jennings <i>v.</i> Jennings .. .. .	[1892] W. N. 156 .. ..	2330
Jennings:—Reg. <i>v.</i> .. .. .	{ C. A. [1892] 1 Q. B. 907 .. .. }	681
Jennings:—Reg. <i>v.</i> .. .. .	[1893] 1 Ch. 378 .. ..	1418
Jenoure <i>v.</i> Delmege .. .. .	[1895] W. N. 142 (7) .. ..	1031
Jersey (Att.-Gen. and Receiver-General for) <i>v.</i> Le Moignan .. .. .	{ [1896] 1 Q. B. 64 .. .. }	1822
Jersey (Att.-Gen. and Receiver-General for) <i>v.</i> Turner .. .. .	{ P. C. [1891] A. C. 73 .. .. }	649
Jersey (Earl of) <i>v.</i> Great Western Ry. Co. .. .. .	{ P. C. [1892] A. C. 402 .. .. }	1020, 1591
	{ P. C. [1893] A. C. 326 .. .. }	1020
	[1894] 3 Ch. 625, n. .. ..	1669, 2064

Name of Case.	Volume and Page.	Column of Digest.
Jersey (Earl) <i>v.</i> Uxbridge Union Rural Sanitary Authority (No. 1) .. .. . (No. 2)	[1891] W. N. 31 .. .. [1891] 3 Ch. 183 .. ..	1918 1918
Jeune <i>v.</i> Baring. In re Baring .. .. .	[1893] 1 Ch. 61 .. ..	1870, 2197
Jewish Colonization Association :—Att.-Gen. <i>v.</i> {	[1900] 2 Q. B. 566 ; C. A. [1900] { W. N. 269 .. ..	1740
Jiggins :—Baylis <i>v.</i> .. .. . {	[1898] W. N. 64 (3) ; [1898] { 2 Q. B. 315 .. ..	1060
Jobson <i>v.</i> Palmer .. .. .	[1893] 1 Ch. 71 .. ..	2182, 2196
Jodoin <i>v.</i> La Banque d'Hochelaga .. ..	P. C. [1895] A. C. 612 .. ..	257
Jodrell :—Seale-Hayne <i>v.</i> .. .. .	H. L. (E.) [1891] A. C. 304 .. {	2319, 2333
Joel (Van) <i>v.</i> Hornsey .. .. .	C. A. [1895] W. N. 122 (5) .. {	966, 1121
Johannesburg Hotel Co., In re. Ex parte Zoutpansberg Prospecting Co. .. ..	C. A. [1891] 1 Ch. 119 .. ..	311
Johannisberg Land and Gold Trust Co., In re ..	[1892] 1 Ch. 583 .. ..	447
John Brothers Abergarw Brewery Co. <i>v.</i> Holmes {	[1899] W. N. 257 ; [1900] 1 Ch. { 188 .. ..	603
John Dewhurst & Sons, In re Trade-mark of ..	C. A. [1896] 2 Ch. 137 .. ..	2135
John Harper & Co. <i>v.</i> Wright and Butler Lamp Manufacturing Co. .. .. . {	[1895] 2 Ch. 593 ; C. A. [1895] { W. N. 146 (3) ; [1896] 1 Ch. { 142 .. ..	656
"John Hollway," The .. .. .	[1900] P. 37 .. ..	1957
John <i>v.</i> John .. .. .	C. A. [1898] 2 Ch. 573 .. ..	1695
John Morley Building Co. <i>v.</i> Barras .. ..	[1891] 2 Ch. 386 .. ..	336
"John O'Scott," The .. .. .	C. A. [1897] P. 64 .. ..	1957
John Reid & Sons, Ltd., In re .. .. .	[1900] 2 Q. B. 634 .. ..	
Johns <i>v.</i> Carden. In re Copland's Settlement .. {	[1900] W. N. 14 ; [1900] 1 Ch. { 326 .. ..	1870
Johns <i>v.</i> Pink .. .. .	[1899] W. N. 249 ; [1900] 1 Ch. { 296 .. ..	683, 1926
Johns <i>v.</i> Ware .. .. .	[1898] W. N. 172 (2) ; [1899] 1 { Ch. 359 .. ..	209
Johnson, In re. Moore <i>v.</i> Johnson .. ..	[1891] 3 Ch. 48 .. ..	955
Johnson <i>v.</i> Bragge .. .. .	[1900] W. N. 250 .. ..	1907
Johnson <i>v.</i> Diprose .. .. .	C. A. [1893] 1 Q. B. 512 .. ..	212
Johnson :—Downes <i>v.</i> .. .. .	[1895] 2 Q. B. 203 .. ..	863
Johnson <i>v.</i> Edge .. .. .	C. A. [1892] 2 Ch. 1 .. ..	1442
Johnson :—Fyson <i>v.</i> In re Rolfe .. ..	[1894] W. N. 77 .. ..	1494
Johnson <i>v.</i> George Newnes, Ltd. .. ..	[1894] 3 Ch. 663 .. ..	537
Johnson :—Kitchen <i>v.</i> .. .. .	[1899] 1 Q. B. 95 .. ..	1369
Johnson :—Kruse <i>v.</i> .. .. .	[1898] 2 Q. B. 91 .. ..	1308
Johnson <i>v.</i> Johnson .. .. .	[1899] W. N. 223 ; [1900] P. 19 ..	928
Johnson <i>v.</i> Langley. In re Langley .. ..	[1899] W. N. 23 (5) .. ..	1521
Johnson <i>v.</i> Lindsay & Co. (No. 1) .. .. (No. 2)	H. L. (E.) [1891] A. C. 371 .. ..	1238
Johnson :—Mann <i>v.</i> .. .. .	H. L. (E.) [1892] A. C. 110 .. ..	38, 1493
Johnson :—Robertson <i>v.</i> .. .. .	[1893] W. N. 196 .. ..	1371
Johnson & Co. and Basle Chemical Works, Bindschedler :—Badische Anilin und Soda Fabrik <i>v.</i> .. .. .	[1893] 1 Q. B. 129 .. ..	822
Johnson <i>v.</i> Russian Spratts Patent, Ltd. In re Russian Spratts Patent, Ltd. .. ..	C. A. [1897] 2 Ch. 322 ; H. L. (E.) [1897] W. N. 167 (8) .. }	1428
Johnson <i>v.</i> Russian Spratts Patent, Ltd. .. ..	C. A. [1898] 2 Ch. 149 .. ..	329
Johnson (Henry) & Co. :—Badische Anilin und Soda Fabrik <i>v.</i> .. .. .	C. A. [1896] 1 Ch. 25 .. ..	1542



Name of Case.	Volume and Page.	Column of Digest.
Johnston, Ex parte. Reg. v. Registrar of Joint Stock Companies .. .. .	C. A. [1891] 2 Q. B. 598 ..	391
Johnston, Ex parte. In re Watson. Johnston v. Watson .. .. .	C. A. [1893] 1 Q. B. 21 ..	{ 933, 1025
Johnston, In re. Mills v. Johnston .. ..	[1894] 3 Ch. 204 ..	{ 2182, 2339
Johnston v. Boyes .. ..	[1899] W. N. 59; [1899] 2 Ch. 73	2336
Johnston v. Mayfair Property Co. .. ..	[1893] W. N. 73 ..	1157
Johnston :—Mayfair Property Co. v. .. ..	[1894] 1 Ch. 508 ..	{ 965, 1409
Johnston v. Watson. In re Watson. Ex parte Johnston .. .. .	C. A. [1893] 1 Q. B. 21 ..	{ 933, 1025
Johnston and Toronto Type Foundry Co. v. Consumers' Gas Co. of Toronto .. ..	P. C. [1898] A. C. 447 ..	253
Johnstone v. Buccleuch (Duke) .. ..	H. L. (Sc.) [1892] A. C. 625 ..	1844
Johnstone v. Crompton & Co. .. ..	[1899] W. N. 93; [1899] 2 Ch. 190 ..	{ 1265
Johnstone v. Haviland .. ..	H. L. (Sc.) [1896] A. C. 95 ..	{ 1250, 1840
Johnstone :—Jay v. .. ..	[1893] 1 Q. B. 25; C. A. [1893] 1 Q. B. 189 ..	{ 1533
Johore (Sultan of) :—Mighell v. .. ..	C. A. [1894] 1 Q. B. 149 ..	1008
Joint Stock Institute, Ltd. :—McKeown v. .. ..	[1899] W. N. 35 (10); [1899] 1 Ch. 671 ..	{ 79
Joliffe's Trusts, In re .. ..	[1893] W. N. 84 ..	{ 404, 2202
Jolly, In re. Gathercole v. Norfolk .. ..	[1899] W. N. 249; [1900] 1 Ch. 292; C. A. [1900] W. N. 170; [1900] 2 Ch. 616 ..	{ 2306
Jonas :—Corbett v. .. ..	[1892] 3 Ch. 137 ..	1121
Jones, Ex parte. In re London and Northern Bank .. ..	[1899] W. N. 230; [1900] 1 Ch. 220 ..	{ 392
Jones, Ex parte. In re Young .. ..	[1896] 2 Q. B. 484 ..	153
Jones, Ex parte. Reg. v. Entwistle .. ..	[1899] W. N. 47; [1899] 1 Q. B. 846 ..	{ 2215
Jones, In re .. ..	[1895] 2 Ch. 719; C. A. [1896] 1 Ch. 222 ..	{ 2028
Jones, In re. Bullis v. Jones .. ..	[1891] W. N. 114 ..	1495
Jones, In re. Ex parte Lloyd .. ..	[1891] 2 Q. B. 231 ..	114
Jones, In re. Christmas v. Jones .. ..	[1897] 2 Ch. 190 ..	794
Jones, In re. Clegg v. Ellison .. ..	[1898] 2 Ch. 83 ..	1826
Jones, In re. Farrington v. Forrester .. ..	[1893] 2 Ch. 461 ..	{ 956, 1274, 1407
Jones, In re. Richards v. Jones .. ..	[1898] 1 Ch. 438 ..	2302
Jones and Judgment Act, 1864, In re .. ..	[1893] W. N. 123 (10) ..	1697
Jones :—Apothecaries Co. v. .. ..	[1895] 1 Q. B. 89 ..	1252
Jones v. Barnett .. ..	[1899] W. N. 26 (4); [1899] 1 Ch. 611; C. A. [1900] W. N. 29; [1900] 1 Ch. 370 ..	{ 2253
Jones v. Bennett. In re Bennett .. ..	C. A. [1896] 1 Ch. 778 ..	1411
Jones v. Beveridge (Kavanagh's Case) .. ..	C. A. (Ir.) [1897] W. N. 130 ..	1383
Jones v. Beveridge (Kearns' Case) .. ..	C. A. (Ir.) [1897] W. N. 131 ..	1382
Jones v. Biernstein .. ..	[1899] W. N. 12 (10); [1899] 1 Q. B. 470; C. A. [1900] 1 Q. B. 100 ..	{ 683
Jones :—Cholditch v. .. ..	[1895] W. N. 147 (5); [1896] 1 Ch. 42 ..	{ 2032

Name of Case.	Volume and Page.	Column of Digest.
Jones :—Commercial Bank of Tasmania v. ..	P. C. [1893] A. C. 313 ..	1587, 2100
Jones v. Conway and Colwyn Bay Joint Water Supply Board .. .. .	C. A. [1893] 2 Ch. 603 ..	2277, 2278
Jones v. Cooke .. .. .	C. A. [1894] 1 Q. B. 213 ..	1688, 2068, 2071, 2113
Jones v. Daniel .. .. .	[1894] 2 Ch. 332 ..	843, 2226
Jones :—Davies v. .. .. .	[1899] P. 161 ..	1612
Jones v. Davies .. .. .	[1898] 1 Q. B. 405 ..	824
Jones v. Foley .. .. .	[1891] 1 Q. B. 730 ..	1066, 2155
Jones :—Forrester v. .. .. .	[1899] W. N. 78 ..	1559
Jones v. German .. .. .	[1896] 2 Q. B. 418; C. A. [1897] 1 Q. B. 374 ..	1032
Jones v. Greaves. In re Greaves' Settled Estates	[1900] W. N. 148; [1900] 2 Ch. 683 ..	953
Jones v. Ingham. In re Ingham .. .. .	[1893] 1 Ch. 352 ..	1287
Jones v. Inland Revenue Commrs. .. .. .	[1895] 1 Q. B. 484 ..	1788
Jones :—James v. (No. 1) .. .. .	C. A. [1892] W. N. 104 ..	44, 1497
————— (No. 2) .. .. .	[1894] 1 Q. B. 304 ..	16, 72, 89
Jones v. Jones .. .. .	[1895] P. 201; [1896] P. 165 ..	699, 928, 1035
Jones v. Macaulay .. .. .	C. A. [1891] 1 Q. B. 221 ..	1528
Jones v. Merionethshire Permanent Benefit Building Society .. .. .	[1891] 2 Ch. 587; C. A. [1892] 1 Ch. 173 ..	512, 1559
Jones v. Morgan. In re Page .. .. .	[1893] 1 Ch. 304 ..	2166, 2191
Jones v. Ocean Coal Co. .. .. .	C. A. [1899] 2 Q. B. 124 ..	1220
Jones v. Palmer. In re Nottage (No. 1) .. .. .	C. A. [1895] 2 Ch. 649 ..	281, 2347
————— (No. 2) .. .. .	C. A. [1895] 2 Ch. 657 ..	2340
Jones v. Pennefather. In re Giles .. .. .	[1896] 1 Ch. 956 ..	804
Jones :—Reg. v. .. .. .	[1894] 2 Q. B. 382 ..	561
Jones :—Reg. v. .. .. .	C. C. R. [1896] 1 Q. B. 4 ..	620
Jones :—Reg. v. .. .. .	C. C. R. [1897] W. N. 167 (4); [1898] 1 Q. B. 119 ..	615
Jones :—Roberts v. .. .. .	[1891] 2 Q. B. 194 ..	559, 562
Jones v. Scullard .. .. .	[1898] 2 Q. B. 565 ..	1242
Jones v. Stone .. .. .	P. C. [1894] A. C. 122 ..	85, 1564
Jones :—Traynor v. .. .. .	[1894] 1 Q. B. 83 ..	1100
Jones :—Walton-on-the-Hill Overseers v. .. .. .	[1893] 2 Q. B. 175 ..	1690
Jones :—Williams v. In re Hartley. Williams v. Williams .. .. .	[1899] W. N. 234; [1900] 1 Ch. 152 ..	1132
Jones' Case, otherwise Gates and Jones' Case .. .. .	[1893] 2 Ch. 49, n. ..	277
Jones's Case. Reg. v. Barnardo .. .. .	[1891] 1 Q. B. 194; H. L. (E.). [1891] A. C. 388 ..	948
Jones' Divorce Bill .. .. .	H. L. (D.) [1899] A. C. 348 ..	706
Jordan :—Mantle v. .. .. .	[1897] 1 Q. B. 248 ..	548
Jordan :—Unsworth v. .. .. .	[1896] W. N. 2 (5) ..	1416
Jordeson v. Sutton, Southcoates and Drypool Gas Co. .. .. .	[1898] 2 Ch. 614; C. A. [1899] 2 Ch. 217 ..	2095
Joseph :—Marsh v. .. .. .	C. A. [1897] 1 Ch. 213 ..	1576
Joshua Stubbs, Ltd., In re. Barney v. Joshua Stubbs, Ltd. .. .. .	[1891] 1 Ch. 187; C. A. [1891] 1 Ch. 475 ..	329, 449

Name of Case.	Volume and Page.	Column of Digest.
Joule's Trade-mark, In re. Thompson v. Montgomery .. .. .	H. L. (E.) [1891] A. C. 217 ..	2127
Joyce v. Beall .. .. .	[1891] 1 Q. B. 459 .. ..	661
Joyner v. Weeks .. .. .	C. A. [1891] 2 Q. B. 31 .. ..	1061
Jubb, In re. Ex parte Burman .. .. .	[1897] 1 Q. B. 641 .. ..	161
Jubilee Sites Syndicate, 1897, In re .. .. .	[1899] W. N. 86; [1899] 2 Ch. 204 .. ..	454
Judge:—Harris & Sons v. .. .. .	C. A. [1892] 2 Q. B. 565 .. ..	598
Judkins v. Judkins. Bishop v. Bishop .. .. .	C. A. [1897] P. 138 .. ..	692
Jupp, In the Goods of .. .. .	[1891] P. 300 .. ..	1607
Justin:—Hughes v. .. .. .	C. A. [1894] 1 Q. B. 667 .. ..	1563
K.		
Kalle:—Leonhardt v. .. .. .	[1895] W. N. 97 .. ..	575, 1436
Karberg's Case. In re Metropolitan Coal Consumers' Association .. .. .	C. A. [1892] 3 Ch. 1 .. ..	370
"Kate B. Jones," The .. .. .	[1892] P. 366 .. ..	2002
"Kate," The .. .. .	[1899] W. N. 42; [1899] P. 165 .. ..	1947
"Katy," The .. .. .	C. A. [1895] P. 56 .. ..	1962, 1964
Kaufman:—London and Globe Finance Corporation, Ltd. v. .. .. .	[1899] W. N. 240 .. ..	783
Kavanagh:—Connecticut Fire Insurance Co. v. .. .. .	P. C. [1892] A. C. 473 .. ..	841, 1592
Kay, In re. Mosley v. Kay .. .. .	[1897] 2 Ch. 518 .. ..	2174
Kay v. Dewhirst. In re Wilcock .. .. .	[1897] W. N. 172 (12); [1898] 1 Ch. 95 .. ..	2299
Kaye v. Croydon Tramways Co. .. .. .	C. A. [1898] 1 Ch. 358 .. ..	312
Kay's Patent, In re .. .. .	[1894] W. N. 68 .. ..	1438, 1539
Kearney v. Whitehaven Colliery Co. .. .. .	C. A. [1893] 1 Q. B. 700 .. ..	1258
Keck and Hart's Contract, In re .. .. .	[1898] 1 Ch. 617 .. ..	1894
Keeble v. Bennett .. .. .	[1894] 2 Q. B. 329 .. ..	589
Keeling:—Brothwood v. In re Salt .. .. .	[1895] 2 Ch. 203 .. ..	788
Keegan:—Dempsey v. .. .. .	C. A. (Ir.) [1898] W. N. 117 .. ..	1370
Keen v. Denny .. .. .	[1894] 3 Ch. 169 .. ..	734
Keen v. Henry .. .. .	C. A. [1894] 1 Q. B. 292 .. ..	884
Keene:—Sandgate Local Board v. .. .. .	C. A. [1892] 1 Q. B. 831 .. ..	2085
Keep v. St. Mary's, Newington .. .. .	C. A. [1894] 2 Q. B. 524 .. ..	1178, 2070
Kehoe v. Lansdowne (Marquis of) .. .. .	H. L. (I.) [1893] A. C. 451 .. ..	1014
Keighley, Maxsted & Co. and Bryan Durant & Co., In re .. .. .	C. A. [1893] 1 Q. B. 405 .. ..	59
Keith, Prowse & Co. v. National Telephone Co. .. .. .	[1894] 2 Ch. 147 .. ..	1065, 2101
Kelcey, In re. Tyson v. Kelcey .. .. .	[1899] W. N. 133; [1899] 2 Ch. 530 .. ..	1298
Kelland:—Day v. .. .. .	C. A. [1900] W. N. 239; [1900] 2 Ch. 745 .. ..	1277
Kellerman:—East London Waterworks Co. v. .. .. .	[1892] 2 Q. B. 72 .. ..	2280
Kellie v. Little .. .. .	Registration App. Ct. (Sc.) [1898] W. N. 112 .. ..	1384
Kelly, In re .. .. .	[1895] 1 Q. B. 180 .. ..	2055
Kelly v. Boyd. In re Boyd .. .. .	[1897] 2 Ch. 232 .. ..	1482
Kelly:—Brook v. .. .. .	H. L. (Sc.) [1893] A. C. 721 .. ..	1830

Name of Case.	Volume and Page.	Column of Digest.
Knowles :—Taws <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 564 ..	2290
Knowles & Sons <i>v.</i> Sinclair .. .. .	[1897] W. N. 176 (11); [1898] 1 Q. B. 170 .. .. .	2295
Knowles & Sons, Ltd. <i>v.</i> Bolton Corporation .. .. .	C. A. [1900] W. N. 73; [1900] 2 Q. B. 253 .. .. .	61
Knowles (Andrew) & Sons, Ltd.:—Lysons <i>v.</i> .. .. .	C. A. [1900] 1 Q. B. 780 ..	1222
Knox's Trusts, In re .. .. .	[1895] 1 Ch. 538; C. A. [1895] 2 Ch. 483 .. .. .	2201
"Knutsford," The .. .. .	[1891] P. 219 .. .. .	1968
Koch <i>v.</i> Koch .. .. .	[1899] P. 221 .. .. .	703
König and Ebhardt's Application, In re .. .. .	[1896] 2 Ch. 236 .. .. .	2137
"Kong Magnus," The .. .. .	[1891] P. 223 .. .. .	1980
Koosen <i>v.</i> Rose .. .. .	C. A. [1897] W. N. 25 (9) ..	562
Kops, Ex parte. Kops <i>v.</i> Reg. .. .. .	P. C. [1894] A. C. 650 .. ..	612, 1324, 1591
Kotchie <i>v.</i> Golden Sovereigns, Ltd. Bright, Claimant .. .. .	C. A. [1898] 2 Q. B. 264 ..	1009
Krasnapolsky Restaurant and Winter Garden Co., In re .. .. .	[1892] 3 Ch. 174 .. .. .	463
Kronand Metal Co., In re .. .. .	[1899] W. N. 14 (5) .. .. .	461
Kruse <i>v.</i> Johnson .. .. .	[1898] 2 Q. B. 91 .. .. .	1308
"Kwang Tung" SS. (Owners of) <i>v.</i> "Ngapoota" SS. (Owners of). The "Ngapoota" .. .. .	P. C. [1897] A. C. 391 .. ..	1948
Kutner <i>v.</i> Phillips .. .. .	[1891] 2 Q. B. 267 .. .. .	1161
Kuypers' Policy Trusts, In re .. .. .	[1898] W. N. 151 (9); [1899] 1 Q. B. 38 .. .. .	914
Kydd :—Royal General Theatrical Fund Association <i>v.</i> In re Lacy .. .. .	[1899] 2 Ch. 149 .. .. .	285
Kyffin :—East London Waterworks Co. <i>v.</i> .. .. .	[1895] 1 Q. B. 55 .. .. .	2281
Kyffin <i>v.</i> East London Waterworks Co. .. .. .	[1896] 1 Q. B. 446 .. .. .	2277
Kyffin-Taylor and Wark :—Yates <i>v.</i> .. .. .	[1899] W. N. 141 .. .. .	1047

L.

L—— :—G—— <i>v.</i> .. .. .	[1891] 3 Ch. 126 .. .. .	957, 1850
L. otherwise B. <i>v.</i> B. .. .. .	[1895] P. 274 .. .. .	710
La Banque d'Hochelaga <i>v.</i> Jodoin .. .. .	P. C. [1895] A. C. 612 .. ..	257
La Banque Hochelaga <i>v.</i> Stevenson .. .. .	P. C. [1900] A. C. 600 .. ..	240
La "Bourgogne." La Compagnie Générale Transatlantique <i>v.</i> Law (Thomas) & Co. .. .. .	[1898] W. N. 80 (1); C. A. [1898] W. N. 150 (1); [1899] P. 1; H. L. (E.) [1899] W. N. 90; [1899] A. C. 431 .. ..	1535
La Compagnie Franco-Belge du Chemin de Fer du Nord :—South African Republic <i>v.</i> .. .. .	C. A. [1897] 2 Ch. 487; [1897] W. N. 162 (4) .. .. .	1526
La Compagnie Franco-Belge du Chemin de Fer du Nord :—South African Republic <i>v.</i> .. .. .	[1898] 1 Ch. 190 .. .. .	1008
La Compagnie de Mayville <i>v.</i> Whitley .. .. .	C. A. [1896] 1 Ch. 788 .. ..	359
La Compagnie Générale d'Eaux Minérales et de Bains de Mer, In re .. .. .	[1891] 3 Ch. 451 .. .. .	1538
La Compagnie Générale Transatlantique <i>v.</i> Law (Thomas) & Co. La "Bourgogne" .. .. .	[1898] W. N. 80 (1); C. A. [1898] W. N. 150 (1); [1899] P. 1; H. L. (E.) [1899] W. N. 90; [1899] A. C. 431 .. ..	1535
La Corporation de Limoilow :—Le Séminaire de Québec <i>v.</i> .. .. .	P. C. [1899] A. C. 288 .. ..	256

Name of Case.	Volume and Page.	Column of Digest.
La Société Anonyme des Verreries de l'Etoile, In re the Trade-mark of (No. 1) .. ..	[1893] W. N. 119 .. ..	569
— (No. 2) .. ..	[1894] 1 Ch. 61; C. A. [1894] 2 Ch. 26 .. ..	2128, 2136
Labouchere :—Zierenberg v. .. ..	C. A. [1893] 2 Q. B. 183 .. ..	646, 678
Labrador Co. v. Reg. .. ..	P. C. [1893] A. C. 104 .. ..	257, 1569, 2068
Lacave & Co. v. Crédit Lyonnais .. ..	[1897] 1 Q. B. 148 .. ..	96
Laceby :—Lacon v. .. ..	C. A. [1897] W. N. 46 (3) .. ..	1083
Laceby v. Lacon & Co. .. ..	H. L. (E.) [1899] W. N. 35 (9); [1899] A. C. 222 .. ..	1099
Lacon v. Laceby .. ..	C. A. [1897] W. N. 46 (3) .. ..	1083
Lacon, In re. Lacon v. Lacon .. ..	C. A. [1891] 2 Ch. 482 .. ..	2358
Lacon & Co. :—Laceby v. .. ..	H. L. (E.) [1899] W. N. 35 (9); [1899] A. C. 222 .. ..	1099
Lacy, In re. Royal General Theatrical Fund Association v. Kydd .. ..	[1899] 2 Ch. 149 .. ..	285
Ladies' Dress Association, Ld. v. Pulbrook .. ..	C. A. [1900] 2 Q. B. 376 .. ..	303
Ladd :—Folkestone Corporation v. .. ..	C. A. [1893] 3 Ch. 22 .. ..	2086
Ladd's Case. In re Fairbairn Engineering Co. .. ..	[1893] 3 Ch. 450 .. ..	485
Lagos, Colonial Secretary of :—Callender, Sykes & Co. v. Williams v. Davies .. ..	[1891] A. C. 460 .. ..	119, 292
Lagunas Nitrate Co. v. Lagunas Syndicate .. ..	C. A. [1899] 2 Ch. 392 .. ..	339
Lagunas Syndicate :—Lagunas Nitrate Co. v. .. ..	C. A. [1899] 2 Ch. 392 .. ..	339
Laidlaw v. Wilson .. ..	[1894] 1 Q. B. 74 .. ..	24
Laing :—Freeman v. .. ..	[1899] W. N. 99; [1899] 2 Ch. 355 .. ..	1305
Laing, Claimant. Chaplin v. Puttick .. ..	C. A. [1893] 2 Q. B. 160 .. ..	777
Laing, Wharton, and Down Construction Syndicate :—Donovan v. .. ..	C. A. [1893] 1 Q. B. 629 .. ..	1238
Laing's Settlement, In re. Laing v. Radcliffe .. ..	[1899] W. N. 23 (10); [1899] 1 Ch. 593 .. ..	2187
Laird, In the Goods of .. ..	[1892] P. 380 .. ..	1614
Lake View Extended Gold Mine (Western Australia), Ld., In re .. ..	[1900] W. N. 44 .. ..	378
Lake's Patent, In re .. ..	P. C. [1891] A. C. 240 .. ..	1439
Lamb, In re Ex parte Board of Trade .. ..	C. A. [1894] 2 Q. B. 805 .. ..	113, 145, 172
Lamb v. Evans (No. 1) .. ..	[1892] 3 Ch. 462; C. A. [1893] 1 Ch. 218 .. ..	527, 969, 1248
— (No. 2) .. ..	[1895] W. N. 156 (2) .. ..	531
Lamb v. Great Northern Ry. Co. .. ..	[1891] 2 Q. B. 281 .. ..	1249
Lamb and Owners of SS. "Haswell" :—Owners of "Vindomora" v. .. ..	H. L. (E.) [1891] A. C. 1 .. ..	1949
Lamharde :—Discount Banking Co. of England and Wales v. .. ..	C. A. [1893] 2 Q. B. 329 .. ..	1011
Lambert, In re. Middleton v. Moore .. ..	[1897] 2 Ch. 169 .. ..	2307
Lambert, Ex parte. Reg. v. London (Justices) .. ..	[1892] 1 Q. B. 664 .. ..	1042
Lambert v. Still. In re Webb .. ..	C. A. [1894] 1 Ch. 73 .. ..	2059
Lambert & Co. :—Rogers, Sons & Co. v. .. ..	C. A. [1891] 1 Q. B. 318 .. ..	767
Lambeth :—Guilford v. .. ..	[1894] 2 Q. B. 832; C. A. [1895] 1 Q. B. 92 .. ..	594
Lambeth Overseers v. London County Council .. ..	[1895] 2 Q. B. 511; C. A. [1896] 2 Q. B. 25; H. L. (E.) [1897] A. C. 625 .. ..	1681
Lambeth Waterworks Co. :—East Molesey Local Board v. .. ..	C. A. [1892] 3 Ch. 289 .. ..	2277
Lambton v. Cox .. ..	[1894] 3 Ch. 163 .. ..	966

Name of Case.	Volume and Page.	Column of Digest.
Lambton v. Kerr .. .. .	[1895] 2 Q. B. 233 .. ..	1757
Lambton v. Mellish .. .. .	[1894] 3 Ch. 163 .. ..	966
Lamond v. Richard .. .. .	C. A. [1897] 1 Q. B. 541 .. ..	973
Lampet v. Kennedy. In re Tilt .. .. .	[1896] W. N. 9 (10) .. ..	2161
Lamport & Holt:—Newman & Dale v. .. .. .	[1896] 1 Q. B. 20 .. ..	1943
Lamport & Holt:—Brancelow Steamship Co. v. .. .. .	[1897] 2 Q. B. 570 .. ..	1960
Lamson Store Service Co., In re. In re National Reversionary Investment Co. .. .. .	[1895] 2 Ch. 726 .. ..	383
Lamson Store Service Co., In re .. .. .	[1897] 1 Ch. 875, n. .. ..	382
Lancashire v. Hunt .. .. .	[1895] W. N. 52 .. ..	41
“Lancashire” (Bibby Brothers & Co., Owners of the SS.) v. “Ariel” (Seethan, Owners of the SS.). The “Lancashire” .. .. .	C. A. [1893] P. 47; H. L. (E.) [1894] A. C. 1 .. ..	1950
Lancashire and Yorkshire Ry. Co., In re. Slater v. Slater .. .. .	[1895] W. N. 85 .. ..	1525
Lancashire and Yorkshire Ry. Co.:—Smith v. { .. .. .	C. A. [1898] W. N. 165 (7); [1899] 1 Q. B. 141 .. ..	1230
Lancashire and Yorkshire Ry. Co.:—Spencer v. .. .. .	[1898] 1 Q. B. 643 .. ..	1652
Lancashire Asylums Board v. Manchester Corporation .. .. .	[1899] 1 Q. B. 759; C. A. [1900] 1 Q. B. 458 .. ..	1675
Lancaster Banking Co., In re .. .. .	[1897] W. N. 3 (1) .. ..	363
Lancaster v. Barnes District Council .. .. .	[1898] 1 Q. B. 855 .. ..	1921
Lancaster (Commrs. of Port of) v. Barrow-in-Furness Overseers .. .. .	[1897] 1 Q. B. 166 .. ..	1680
Lancaster v. Lancaster .. .. .	C. A. [1896] P. 118 .. ..	925
Lancaster (Att.-Gen. of the Duchy) v. London and North Western Ry. Co. .. .. .	C. A. [1892] 3 Ch. 274 .. ..	1530
Lancaster:—Smith v. .. .. .	C. A. [1894] 3 Ch. 439 .. ..	571, 1867
Lancaster Insurance Co. v. Inland Revenue Commrs. Vulcan Boiler and General Insurance Co. v. The Same .. .. .	[1898] W. N. 174 (13); [1899] 1 Q. B. 353 .. ..	1799
Lance, In re. Sharp v. Rebbeck .. .. .	[1900] W. N. 29 .. ..	805
Lanchbury v. Bode .. .. .	[1898] 2 Ch. 120 .. ..	630
Land and Income Tax (Commr. for):—Dilworth v. .. .. .	P. C. [1899] A. C. 99 .. ..	1335
Land Development Association, In re .. .. .	[1892] W. N. 23 .. ..	447
Land Mortgage Bank of Florida, In re .. .. .	[1896] W. N. 48 (5) .. ..	476
Land Mortgage Bank of Florida, In re .. .. .	[1898] 1 Ch. 444 .. ..	453
Land Securities Co., In re .. .. .	[1894] W. N. 91 .. ..	443
Land Securities Co., In re. Ex parte Farquhar .. .. .	C. A. [1896] 2 Ch. 320 .. ..	477
Land Securities Co.:—Lever v. .. .. .	[1894] W. N. 21 .. ..	353
Land Securities Co.:—Somerset v. .. .. .	C. A. [1894] 3 Ch. 464 .. ..	371, 1048
Land Securities Co.:—Somerset v. .. .. .	[1897] W. N. 29 (6) .. ..	389
Land Tax Commrs.:—Harding v. .. .. .	P. C. [1891] A. C. 446 .. ..	2259
Lander v. Lander .. .. .	[1891] P. 161 .. ..	689
Lander and Bagley's Contract, In re .. .. .	[1892] 3 Ch. 41 .. ..	1064
Landor (a Solicitor), In re .. .. .	[1899] W. N. 52; [1899] 1 Ch. 818 .. ..	2032
Landor:—Easton v. .. .. .	[1892] W. N. 176 .. ..	2181
Landray:—Sims v. .. .. .	[1894] 2 Ch. 318 .. ..	845, 2227
Lands Allotment Co., In re .. .. .	C. A. [1894] 1 Ch. 616 .. ..	343, 345
Lands (Minister for):—Abbott v. .. .. .	P. C. [1895] A. C. 425 .. ..	1324
Lands (Minister for):—Colless v. .. .. .	P. C. [1899] A. C. 90 .. ..	1325
Lands (Minister for) v. Harrington .. .. .	P. C. [1899] A. C. 409 .. ..	1325
Lane v. Capsey .. .. .	[1891] 3 Ch. 411 .. ..	1343, 1704, 2291

Name of Case.	Volume and Page.	Column of Digest.
Lane v. Cox .. .. .	C. A. [1897] 1 Q. B. 415 ..	1074
Lane v. Esdaile .. .. .	H. L. (E.) [1891] A. C. 210 ..	39
Lane-Fox, In re. Ex parte Gimblett .. .. .	[1900] W. N. 142; [1900] 2 Q. B. 508 ..	182
Lane Fox v. Kensington and Knightsbridge Electric Lighting Co. .. .. .	[1892] 2 Ch. 66; C. A. [1892] 3 Ch. 424 ..	1426, 1445
Lane Fox Electrical Co.:—Kensington and Knightsbridge Electric Lighting Co. v. ..	[1891] 2 Ch. 573 ..	1442
Lane v. Lane .. .. .	[1896] P. 133 ..	927, 2072
Lane:—Lister v. .. .. .	C. A. [1893] 2 Q. B. 212 ..	1061
Lane v. Norman .. .. .	[1891] W. N. 202 ..	282
Lane v. Rendall .. .. .	[1899] W. N. 208; [1899] 2 Q. B. 673 ..	2294
Lane:—Walter v. .. .. .	[1899] W. N. 138; C. A. [1899] W. N. 212; [1899] 2 Ch. 749; H. L. (E.) [1900] W. N. 178; [1900] A. C. 539 ..	537
Lang:—Victoria Corporation v. The Same v. Patterson .. .. .	[1899] A. C. 615 ..	248
Langdale, In re .. .. .	C. A. [1900] W. N. 248 ..	1200
Langford:—Cole v. .. .. .	[1898] 2 Q. B. 36 ..	1551
Langley, In re. Johnson v. Langley .. .. .	[1899] W. N. 23 (5) ..	1521
Langley v. Bombay Tea Co. .. .. .	[1900] W. N. 141; [1900] 2 Q. B. 460 ..	2121
Langlois & Biden (Solicitors), In re .. .. .	C. A. [1891] 1 Q. B. 349 ..	587
Langport District Drainage Board:—Knight v. .. .. .	[1898] 1 Q. B. 588 ..	1686
Langston v. Glasson .. .. .	[1891] 1 Q. B. 567 ..	1763
Langston:—Grant v. .. .. .	H. L. (Sc.) [1900] W. N. 126; [1900] A. C. 383 ..	1755
Langton:—St. Nicholas, Leicester (Vicar of) v. .. .. .	[1899] P. 19 ..	750
Lansdowne (Marquis of):—De Clifford (Lord) v. De Clifford (Lord) v. Quilter. In re Lord De Clifford's Estate .. .. .	[1900] 2 Ch. 707 ..	2173
Lansdowne (Marquis of):—Kehoe v. .. .. .	H. L. (I.) [1893] A. C. 451 ..	1014
Larkin v. Lloyd .. .. .	[1891] W. N. 71 ..	63
Larocque v. Beauchemin .. .. .	P. C. [1897] A. C. 358 ..	255
Larsen:—Ritchie v. .. .. .	[1899] W. N. 12 (14); [1899] 1 Q. B. 727 ..	2012
Lart, In re. Wilkinson v. Blades .. .. .	[1896] 2 Ch. 788 ..	768
Lascelles:—McSwaine v. .. .. .	P. C. [1895] A. C. 618 ..	1638
Lascelles:—Rudd v. .. .. .	[1900] W. N. 78; [1900] 1 Ch. 815 ..	2245
Lascelles, De Mercado & Co.:—Jamaica, Administrator-General of, v. In re Rees' Bankruptcy .. .. .	P. C. [1894] A. C. 135 ..	101, 1017
Lashmar, In re. Moody v. Penfold .. .. .	C. A. [1891] 1 Ch. 258 ..	1692, 2191
Latham & Son:—Tate v. .. .. .	C. A. [1897] 1 Q. B. 502 ..	1239
Lathom v. Greenwich Ferry Co. .. .. .	[1895] W. N. 77 ..	317
Latimer Clarke, Muirhead & Co.:—Aldin v. .. .. .	[1894] 2 Ch. 437 ..	1075, 1116
Latter:—Tomlin v. In re Price .. .. .	[1900] W. N. 36; [1900] 1 Ch. 442 ..	1473
Laugher:—Collis v. .. .. .	[1894] 3 Ch. 659 ..	1122
Laughton v. Griffin .. .. .	P. C. [1895] A. C. 104 ..	869, 1312, 2078
Launsbach:—Hall v. .. .. .	C. A. [1898] 1 Q. B. 513 ..	1163

Name of Case.	Volume and Page.	Column of Digest.
Lauri v. Renad .. .. .	C. A. [1892] 3 Ch. 402 .. ..	532, 534, 535
Laurie (J. C.) .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 136 .. ..	1739
Lavell:—London General Omnibus Co. v. ..	C. A. [1900] W. N. 249 .. ..	641
Laver v. Botham & Sons. Chesterfield Union, Claimants .. .. .	[1895] 1 Q. B. 59 .. ..	805, 1458
Lavery v. Kingsberry and Black .. .. .	C. A. (Ir.) [1898] W. N. 118 .. ..	1370
Lavy v. London County Council .. .. .	[1895] 1 Q. B. 915; C. A. [1895] 2 Q. B. 577 .. ..	1149, 1151
Law v. Redditch (Local Board of) .. .. .	C. A. [1892] 1 Q. B. 127 .. ..	636
Law:—Reg. v. .. .. .	[1900] 1 Q. B. 605 .. ..	607
Law (Thomas) & Co.:—La Compagnie Générale Transatlantique v. La "Bourgogne" ..	H. L. (E.) [1899] W. N. 90; [1899] A. C. 431 .. ..	1535
Law:—Dickson v. .. .. .	[1895] 2 Ch. 62 .. ..	1542
Law Investment and Insurance Corporation:—Shelbourne & Co. v. .. .. .	[1898] 2 Q. B. 626 .. ..	986
Law Life Assurance Society:—Frewen v. ..	[1896] 2 Ch. 511 .. ..	1877
Law Life Assurance Society:—Provident Clerks' Mutual Life Association v. .. .. .	[1897] W. N. 73 (6) .. ..	1291
Law Reversionary Interest Society:—Nobbs v. In re Nobbs .. .. .	[1896] 2 Ch. 830 .. ..	1287, 1502
Lawe's Chemical Manure Co. v. Ingham. In re Ingham .. .. .	[1896] W. N. 12 (5) .. ..	82
Lawledge v. Tyndall. In re Cook's Mortgage ..	[1896] 1 Q. B. 923 .. ..	934
Lawrence, In re. Bowker v. Austin .. .. .	[1894] 1 Ch. 556 .. ..	2051
Lawrence & Sons:—London (County Council) v. Lawrence, In re .. .. .	[1893] 2 Q. B. 228 .. ..	1154
Lawrence v. Adams .. .. .	[1896] P. 244 .. ..	759
Lawrence v. Adams .. .. .	[1896] W. N. 158 (2) .. ..	760
Lawrence:—Bound v. .. .. .	C. A. [1892] 1 Q. B. 226 .. ..	1233
Lawrence v. Edwards (No. 1) .. .. .	[1891] 1 Ch. 144 .. ..	754, 758
Lawrence v. Edwards (No. 2) .. .. .	[1891] 2 Ch. 72 .. ..	754
Lawrence:—Mather v. .. .. .	[1899] W. N. 67; [1899] 1 Q. B. 1001 .. ..	1821
Lawrence:—Sturgeon v. In re Dunning .. ..	[1894] W. N. 140 .. ..	77
Lawrence & Sons v. Willcocks .. .. .	C. A. [1892] 1 Q. B. 696 .. ..	1565, 1566
Lawrenson, In re. Payne-Collier v. Vyse .. ..	C. A. [1891] W. N. 28 .. ..	2353
Lawson v. Carter .. .. .	[1894] W. N. 6 .. ..	1011
Lawson v. Chester Master .. .. .	[1893] 1 Q. B. 245 .. ..	1365
Lawson v. Duncan. In re Hewit .. .. .	[1891] 3 Ch. 568 .. ..	793
Lawson:—Gibson v. .. .. .	[1891] 2 Q. B. 545 .. ..	607, 2143
Lawson v. Inland Revenue (Commrs. of) .. ..	Ex. Div., Ir. [1896] W. N. 145 .. ..	1740
Lawson:—Stroud v. .. .. .	C. A. [1898] 2 Q. B. 44 .. ..	1513
Lawson's Trusts, In re .. .. .	[1896] 1 Ch. 175 .. ..	1520
Laxon & Co., In re (No. 1) .. .. .	C. A. [1892] 3 Ch. 31 .. ..	445, 464
Laxon & Co., In re (No. 2) .. .. .	[1892] 3 Ch. 555 .. ..	369, 391
Laxon & Co., In re (No. 3) .. .. .	[1893] 1 Ch. 210 .. ..	441, 442
Layard:—Blount v. .. .. .	C. A. [1891] 2 Ch. 681, n. .. ..	825
Layborn v. Grover Wright. In re Elcom .. ..	C. A. [1894] 1 Ch. 303 .. ..	912
Laybourn v. Gridley .. .. .	[1892] 2 Ch. 53 .. ..	2229
Layton:—Weatherley v. .. .. .	[1892] W. N. 165 .. ..	298
Lazarus v. Artistic Photographic Co. .. ..	[1897] 2 Ch. 214 .. ..	1121
Leacroft:—Morley v. .. .. .	[1896] P. 92 .. ..	756
Leach, In re. Ex parte Barnes .. .. .	[1900] W. N. 184; [1900] 2 Ch. 649 .. ..	175
Leach v. Leach. In re Smyth .. .. .	[1897] W. N. 163 (10); [1898] 1 Ch. 89 .. ..	1786



Name of Case.	Volume and Page.	Column of Digest.
Leader v. Tod-Heatley .. .. .	[1891] W. N. 38 .. ..	1565
Learoyd v. Bracken .. .. .	C. A. [1894] 1 Q. B. 114 .. {	1793, 2074
Learoyd v. Brook .. .. .	[1891] 1 Q. B. 431 .. ..	49
Learoyd v. Halifax Joint Stock Banking Co. ..	[1893] 1 Ch. 686 .. ..	670,
Leasehold Investment Co.:—Charlwood v. ..	[1895] W. N. 47 .. ..	317
Leask, In re. Richardson v. Leask .. ..	[1891] W. N. 159 .. ..	1502
Leather:—William Radam's Microbe Killer } Co. v. .. .. .	C. A. [1892] 1 Q. B. 85 .. {	635, 1499
Leather Shod Wheel Co.:—Greenwood v. ..	[1899] W. N. 26 (2); C. A. { [1900] W. N. 1; [1900] 1 Ch. {	376
Leavesley (A person of unsound mind), In re ..	C. A. [1891] 2 Ch. 1 .. ..	1187
Le Bas v. Grant .. .. .	[1895] W. N. 28 .. ..	1282
Le Bas v. Herbert. In re Butler .. ..	[1894] 3 Ch. 250 .. ..	2310
Le Brasseur and Oakley, In re .. ..	C. A. [1896] 2 Ch. 487 .. ..	2031
Lee:—Beneficed Clerk v. .. ..	P. C. [1897] A. C. 226 .. ..	761
Lee v. Binns. In re Binns .. ..	[1896] 2 Ch. 584 .. ..	802
Lee v. Butler .. .. .	C. A. [1893] 2 Q. B. 318 .. ..	815
Lee v. Dangar, Grant & Co. .. ..	[1892] 1 Q. B. 231; C. A. [1892] { 2 Q. B. 337 .. ..	1924
Lee v. Flack .. .. .	[1896] P. 138 .. ..	760
Lee v. Hawtrey .. .. .	[1895] P. 63 .. ..	737
Lee:—Knight v. .. .. .	[1893] 1 Q. B. 41 .. ..	869, 2071
Lee:—Prescott v. .. .. .	[1898] W. N. 155 (7); [1899] { 1 Q. B. 102; C. A. [1899] W. N. { 107; [1899] 2 Q. B. 273 .. ..	1388
Lee v. Roundwood Colliery Co. In re Round- } wood Colliery Co. .. .. .	[1896] W. N. 166 (3); C. A. { [1897] 1 Ch. 373 .. ..	1259
Lee:—Stogdon v. .. .. .	C. A. [1891] 1 Q. B. 661 .. ..	30, 908, 921, 923, 2344
Lee v. Wilson. In re Tillott .. ..	[1892] 1 Ch. 86 .. ..	2184
Lee's Settlement Trusts, In re .. ..	[1896] 2 Ch. 508 .. ..	2201
Leech, Harrison & Forwood:—Tyne and Blythe } Shipping Co. v. .. .. .	[1900] 2 Q. B. 12 .. ..	1961
Leeds Benefit Building Society v. Mallandaine ..	C. A. [1897] 2 Q. B. 402 .. ..	1760
Leeds Grammar School, In re .. ..	[1900] W. N. 250 .. ..	1085
Leeds and Hanley Theatre of Varieties v. Broad- } bent .. .. .	[1897] W. N. 175 (9); C. A. { [1898] 1 Ch. 343 .. ..	1285
Leese, In the Goods of .. .. .	[1894] P. 160 .. ..	1605
Leeson v. Foulis. In re Uttermare .. ..	[1893] W. N. 158 .. ..	2368
Leethan, Owner of SS. "Ariel":—Bibby Brothers } & Co., Owners of SS. "Lancashire" v. "Lan- } cashire" .. .. .	C. A. [1893] P. 47; H. L. (E.) { [1894] A. C. 1 .. ..	1950
Le Gendre:—Bennicourt v. .. ..	P. C. [1900] A. C. 173 .. ..	5
Legg:—Smith v. .. .. .	[1893] 1 Q. B. 398 .. ..	1152
Leggatt:—Wassell v. .. .. .	[1896] 1 Ch. 554 .. ..	921
Legge:—Denton v. .. .. .	[1895] W. N. 46 .. ..	66
Leicester Corporation:—Davis v. .. ..	C. A. [1894] 2 Ch. 208 .. ..	224, 543
Leicester Mortgage Co., In re .. ..	[1894] W. N. 108, 116 .. ..	385, 778
Leicester Union:—Reg. v. .. ..	[1899] 2 Q. B. 632 .. ..	2213
Leicestershire County Council and Standing } Joint Committee, Ex parte .. ..	[1891] 1 Q. B. 53 .. ..	580
Leigh, Ex parte. In re Stogdon .. ..	[1895] W. N. 133 (1); [1895] { 2 Q. B. 534 .. ..	103
Leigh, In the Goods of .. .. .	[1892] P. 82 .. ..	1620
Leigh:—Darbyshire v. .. .. .	[1896] 1 Q. B. 554 .. ..	1529

Name of Case.	Volume and Page.	Column of Digest.
Leigh <i>v.</i> Green .. .. .	[1892] P. 17 .. .. .	1619.
Leigh (Lord):— <i>Reg. v.</i> In re Kinchant .. {	C. A. [1896] W. N. 161 (9); .. {	1454.
Leigh Rural Council:— <i>Reg. v.</i> .. .. .	[1897] 1 Q. B. 132 .. .. .	1690
Leighton <i>v.</i> Leighton. In re De Tabley (Lord)	C. A. [1898] 1 Q. B. 836 .. .. .	1884
Leith Council <i>v.</i> Leith Harbour and Docks	[1896] W. N. 162 (16) .. .. .	1829.
(Comms. of) .. .. .	H. L. (Sc.) [1899] W. N. 118; .. {	1778.
Leith, Hull and Hamburg Steam Packet Co. <i>v.</i>	[1899] A. C. 508 .. .. .	1580.
Inland Revenue .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 210 .. {	1604
Le Lievre <i>v.</i> Gould .. .. .	C. A. [1893] 1 Q. B. 491 .. .. .	1622
Leman, In the Goods of .. .. .	[1898] P. 215 .. .. .	1344.
Lemme, In the Goods of .. .. .	[1892] P. 89 .. .. .	1353
Lemmon <i>v.</i> Webb .. .. .	C. A. [1894] 3 Ch. 1; H. L. (E.) .. {	2365.
Lemon:— <i>Chant v.</i> In re Chant .. .. .	[1895] A. C. 1 .. .. .	1591.
Le Mesurier <i>v.</i> Le Mesurier (No. 1) .. .. .	[1900] W. N. 133; [1900] 2 Ch. 345 .. {	2097
————— (No. 2) .. .. .	P. C. [1894] A. C. 283 .. .. .	266, 707.
Le Meunier <i>v.</i> Le Meunier .. .. .	P. C. [1895] A. C. 517 .. .. .	1007
Le Moignan:— <i>Jersey (Att.-Gen. and Receiver- General for) v.</i> .. .. .	P. C. [1894] A. C. 283, read <i>Le Mesurier v. Le Mesurier</i> P. C. {	724.
Leng, In re. Tarn <i>v.</i> Emmerson .. .. .	[1894] A. C. 283. <i>See</i> Errata to [1894] A. C. volume .. {	1020.
Leominster Town Council and Herefordshire County Council, In re, and In re Local Govern- ment Act, 1888 .. .. .	P. C. [1892] A. C. 402 .. .. .	1591
Leon, In re .. .. .	C. A. [1895] 1 Ch. 652 .. .. .	133, 795.
Leonard, In re. Ex parte Leonard .. .. .	[1895] 1 Q. B. 43 .. .. .	547, 578.
Leonhardt <i>v.</i> Kalle .. .. .	C. A. [1892] 1 Ch. 348 .. .. .	1201,
“Lepanto,” The .. .. .	C. A. [1896] 1 Q. B. 473 .. .. .	2201
Lepine, In re. Dowsett <i>v.</i> Culver .. .. .	[1895] W. N. 97 .. .. .	157
Lepla <i>v.</i> Rogers .. .. .	[1892] P. 122 .. .. .	575,
Leppington <i>v.</i> Freeman .. .. .	C. A. [1892] 1 Ch. 210 .. .. .	1436.
Leresche:— <i>Reg. v.</i> .. .. .	[1893] 1 Q. B. 31 .. .. .	2003
Le Séminaire de Québec <i>v.</i> La Corporation de Limolow .. .. .	[1891] W. N. 159; C. A. [1891] .. {	801
Leslie:— <i>Holland v.</i> .. .. .	W. N. 198 .. .. .	1063.
Leslie <i>v.</i> Rothes (Earl of) .. .. .	C. A. [1891] 2 Q. B. 418 .. .. .	2230.
Leslie <i>v.</i> Young & Sons .. .. .	C. A. [1891] 2 Q. B. 288 .. .. .	705.
Lester:— <i>Kemp v.</i> .. .. .	[1899] A. C. 288 .. .. .	256.
Lester & Co., Ex parte. In re Hannah Lynes..	[1894] 2 Q. B. 346; C. A. [1894] .. {	1563.
Levasseur <i>v.</i> Mason & Barry, Ltd. .. .. .	2 Q. B. 450 .. .. .	2359
Levene, Ex parte. In re Hewett .. .. .	C. A. [1894] 2 Ch. 499 .. .. .	528
Lever, In re. Cordwell <i>v.</i> Lever .. .. .	H. L. (Sc.) [1894] A. C. 335 .. .. .	1275
Lever:— <i>Cordwell v.</i> In re Lever .. .. .	C. A. [1896] 2 Q. B. 162 .. .. .	105, 908.
Lever <i>v.</i> Land Securities Co. .. .. .	C. A. [1893] 2 Q. B. 113 .. .. .	1011.
Lever:— <i>Salford Corporation v.</i> .. .. .	C. A. [1891] 2 Q. B. 73 .. .. .	1696.
Leveson <i>v.</i> Beales. In re Applebee .. .. .	[1895] 1 Q. B. 328 .. .. .	105
Levett:— <i>Humphreys v.</i> In re Humphreys ..	[1897] 1 Ch. 32 .. .. .	1871.
	[1897] 1 Ch. 32 .. .. .	1871.
	[1894] W. N. 21 .. .. .	354
	C. A. [1891] 1 Q. B. 168 .. .. .	1573.
	[1891] 3 Ch. 422 .. .. .	1710
	C. A. [1893] 3 Ch. 1 .. .. .	2338
		8, 950.

Name of Case.	Volume and Page.	Column of Digest.
Hevison & Steiner:—Wissner v. .. ..	[1900] W. N. 152 .. ..	324
Levita's Claim. McDermott v. Boyd. In re } McHenry .. .. ..	[1894] 2 Ch. 428; C. A. [1894] } 3 Ch. 365 .. .. ..	112
Levy v. Davis .. .. ..	[1900] W. N. 174 .. ..	1700
Levy v. Stogdon .. .. ..	[1898] 1 Ch. 478; C. A. [1899] } 1 Ch. 5 .. .. ..	2063
Levy:—Woolford's Estate (Trustee of) v. ..	C. A. [1892] 1 Q. B. 772 ..	129, 1924, 1925
Lewin v. Lewin .. .. ..	[1891] P. 254 .. ..	925
Lewis, Ex parte. In re Bassett .. ..	[1896] 1 Q. B. 219 .. ..	121
Lewis, In re. Lewis v. Smith .. ..	[1900] W. N. 82; [1900] 2 Ch. } 176 .. .. ..	1742
Lewis:—Aylward v. .. ..	[1891] 2 Ch. 81 .. ..	1279
Lewis:—Brompton Hospital for Consumption v. } In re Bridger .. .. ..	[1893] 1 Ch. 44; C. A. [1894] } 1 Ch. 297 .. .. ..	285
Lewis v. Darby. In re Nash. In re Spence ..	[1893] W. N. 99 .. ..	1515
Lewis:—Howell v. .. ..	[1891] W. N. 181 .. ..	1514
Lewis v. Inland Revenue Commrs. .. ..	[1898] 2 Q. B. 290 .. ..	1791
Lewis v. Lewis .. .. ..	[1892] P. 212 .. ..	712
Lewis v. Londesborough (Earl of) .. ..	[1893] 2 Q. B. 191 .. ..	667
Lewis v. Owen .. .. ..	[1894] 1 Q. B. 102 .. ..	583
Lewis v. Poole .. .. ..	[1898] 1 Q. B. 164 .. ..	1361
Lewis v. Powell .. .. ..	[1897] 1 Ch. 678 .. ..	671
Lewis:—Provident Clerks Mutual Life Assur- } ance v. .. .. ..	[1892] W. N. 164 .. ..	1300
Lewis:—Reg. v. .. .. ..	[1896] 1 Q. B. 665 .. ..	69
Lewis:—Solicitor to the Treasury v. In re Dash }	[1900] W. N. 186; [1900] 2 Ch. } 812 .. .. ..	726
Lewis:—Underwood, Son, & Piper v. .. ..	C. A. [1894] 2 Q. B. 306 .. ..	2057
Lewisham Union:—Reg. v. .. ..	[1897] 1 Q. B. 498 .. ..	1207
Ley (Mary), In the Goods of .. ..	[1892] P. 6 .. ..	1606
Leyland:—Comber v. .. ..	H. L. (E.) [1898] A. C. 524 .. ..	1539
Leyland and Taylor's Contract, In re .. ..	[1900] 2 Ch. 625 .. ..	2244
L'Herminier, In re. Mounsey v. Buston ..	[1894] 1 Ch. 675 .. ..	1469
Lickorish:—Goode v. In re Bullock .. ..	[1891] W. N. 62 .. ..	2329
Lickorish:—Stone v. .. ..	[1891] 2 Ch. 363 .. ..	1304, 2059
Liddard:—Thellusson v. .. ..	[1900] W. N. 146; [1900] 2 Ch. } 635 .. .. ..	1254
Liddell v. Lofthouse .. ..	[1896] 1 Q. B. 295 .. ..	868
"Liddesdale" (The Ship):—Forman & Co. } Proprietary v. .. .. ..	P. C. [1900] A. C. 190 .. ..	509
Liebhenthal & Co.:—Montgomery, Jones & Co. v. }	C. A. [1898] 1 Q. B. 487 .. ..	1534
Life Insurance Co. (Manufactures):—Ancil v. ..	[1899] A. C. 604 .. ..	242
Life Interests and Reversionary Securities Cor- } poration:—Blumberg v. .. .. ..	[1897] 1 Ch. 171; C. A. [1897] } W. N. 172 (10); [1898] 1 Ch. } 27 .. .. ..	2103
Life Interests and Reversionary Securities Corpo- } ration v. Hand in Hand Fire and Life Insur- } ance Society .. .. ..	[1898] 2 Ch. 230 .. ..	2250
Lighton v. The Bishop of London .. ..	[1891] 2 Q. B. 48; H. L. (E.) } [1891] A. C. 666 .. ..	757
Liles v. Terry .. ..	C. A. [1895] 2 Q. B. 679 .. ..	2207
Lilleshall Coal Co.:—Walker v. .. ..	C. A. [1900] 1 Q. B. 481 .. ..	1214
Lilley, In re .. ..	C. A. [1892] 1 Q. B. 759 .. ..	2054
Lilley v. Foad. In re Hale .. ..	[1898] W. N. 154 (6); C. A. } [1899] W. N. 83; [1899] 2 Ch. } 107 .. .. ..	1293

Name of Case.	Volume and Page.	Column of Digest.
Lilly, Wilson & Co. v. Smales, Eeles & Co. ..	[1892] 1 Q. B. 456 ..	1944, 2100
Lillyman :—Reg. v. .. ..	C. C. R. [1896] 2 Q. B. 167 ..	612
Lincoln (Bishop of) :—Read v. .. ..	[1891] P. 9; P. C. [1892] A. C. 644 ..	756, 757, 758, 773, 1591
Lindon v. Hemery. In re Hicks .. ..	[1893] W. N. 138 ..	575, 1501
Lindsay, Ex parte. In re Armstrong .. ..	[1892] 1 Q. B. 327 ..	503, 1403
Lindsay & Co. :—Johnson v. (No. 1) .. ..	H. L. (E.) [1891] A. C. 371 ..	1238
(No. 2) .. ..	[1892] A. C. 110 ..	38, 1493
Lindsay & Co. :—Watkins v. .. ..	[1898] W. N. 22 (4) ..	170
Linfoot v. Pockett .. ..	C. A. [1895] 2 Ch. 835 ..	201, 206
Linforth v. Butler .. ..	[1899] 1 Q. B. 116 ..	1389
Link :—Kissam v. .. ..	C. A. [1896] 1 Q. B. 574 ..	662
Linotype Co.'s Trade-mark, In re .. ..	[1900] W. N. 106; [1900] 2 Ch. 238 ..	2132
Lintern v. Burchell. Killick v. Graham ..	[1896] 2 Q. B. 196 ..	1783
Linskey :—Harford v. .. ..	[1899] 1 Q. B. 852 ..	546
Lion :—Selig v. .. ..	[1891] 1 Q. B. 513 ..	1549
Liquidation Estates Purchase Co. v. Willoughby {	C. A. [1896] 1 Ch. 726; H. L. (E.) [1898] A. C. 321 ..	1297
List v. Tharp .. ..	[1897] 1 Ch. 260 ..	1156
Lister v. Lane .. ..	C. A. [1893] 2 Q. B. 212 ..	1061
Lister v. Henry Lister & Son .. ..	[1893] W. N. 33 ..	328
Lisle v. Reeve .. ..	[1900] W. N. 264 ..	1293
Lister (Henry) & Co., Ltd., In re. Ex parte {	[1892] 2 Ch. 417 ..	472
Huddersfield Banking Co. .. ..		
Lister (Henry) & Sons, Ltd. :—Huddersfield {	C. A. [1895] 2 Ch. 273 ..	1550
Banking Co., Ltd. v. .. ..	[1894] 1 Q. B. 312 ..	1155
Lister :—Wallen v. .. ..	Registration App. Ct. (Sc.) [1898] W. N. 112 ..	1384
Little :—Kellie v. .. ..	H. L. (Sc.) [1896] A. C. 108 ..	1963
Little v. Stevenson & Co. .. ..	C. A. [1897] W. N. 53 (1) ..	281
Littleboy :—Ogilvie v. .. ..	C. A. [1899] W. N. 228; [1900] 1 Ch. 19 ..	1135
Littledale v. Liverpool College .. ..	Reported (1793-4) 2 H. Bl. 267, 299; 2 Anstr. 356; 5 Bro. P. C. 519; [1899] 2 Ch. 233, n. ..	1265
Littledale v. Lonsdale (Earl of) .. ..		
Liverpool (Bank of) v. London and River Plate {	[1896] 1 Q. B. 7.. ..	194
Bank .. ..		
Liverpool (School for the Indigent Blind at), In re {	[1898] 2 Ch. 669 ..	1761
"Liverpool," The.. ..	[1893] P. 154 ..	2011
Liverpool and Manchester Aerated Bread and {	[1891] 1 Ch. 367 ..	661
Café Co. v. Firth .. ..		
Liverpool College :—Littledale v. .. ..	C. A. [1899] W. N. 228; [1900] 1 Ch. 19 ..	1135
Liverpool Corn Trade Association v. London and {	[1891] 1 Q. B. 120 ..	1661
North Western Ry. Co. .. ..		
Liverpool Corporation v. Llanfyllin Assessment {	C. A. [1899] W. N. 71; [1899] 2 Q. B. 14 ..	2280
Committee .. ..		
Liverpool General Brokers' Association, Ltd. v. {	[1897] 2 Q. B. 1 ..	529
Commercial Press Telegram Bureaux, Ltd. ..		
Liverpool Malt Co. :—Parry v. .. ..	C. A. [1900] W. N. 2; [1900] 1 Q. B. 339 ..	1246
Liverpool New Cattle Market Co. :—Att.-Gen. {	C. A. [1896] W. N. 30 (2) ..	1140
of Duchy of Lancaster v. .. ..		

Name of Case.	Volume and Page.	Column of Digest.
Liverpool (Revising Barrister):—Reg. v. ..	[1895] 1 Q. B. 155 .. ..	1372
Liverpool Sailing Shipowners' Mutual Protection and Indemnity Association:—Nourse v. ..	C. A. [1896] 2 Q. B. 16 .. ..	1000
Livett, Frank & Son:—Spencer v. .. ..	C. A. [1900] W. N. 34; [1900] 1 Q. B. 498 .. ..	1219
Llandudno Improvement Commissioners:—London and North Western Ry. Co. v. .. ..	[1897] 1 Q. B. 287 .. ..	1684
Llandudno Urban Council v. Hughes .. ..	[1900] W. N. 26; [1900] 1 Q. B. 472 .. ..	1210
Llandudno Urban Council v. Woods .. ..	[1899] W. N. 135; [1899] 2 Ch. 705 .. ..	1846
Llanely Union v. Neath Union .. ..	[1893] 2 Q. B. 38 .. ..	1461
Llanfyllin Assessment Committee:—Liverpool Corporation v. .. ..	C. A. [1899] W. N. 71; [1899] 2 Q. B. 14 .. ..	2280
Llanrhaidr-yn-Mochnant Overseers:—St. Asaph (Dean and Chapter) v. .. ..	C. A. [1897] 1 Q. B. 511 .. ..	1687
Llewellyn, a Solicitor, In re .. ..	[1891] 3 Ch. 145 .. ..	2052
Llewellyn v. Brown. In re Brown .. ..	[1900] W. N. 37; [1900] 1 Ch. 489 .. ..	1186
Llewellyn v. Glamorgan Ry. Co. (Vale of) .. ..	[1897] 2 Q. B. 239; C. A. [1898] 1 Q. B. 473 .. ..	1663
Lloyd, Ex parte. In re Jones .. ..	[1891] 2 Q. B. 231 .. ..	114
Lloyd v. Gough. In re Gough .. ..	[1894] W. N. 76 .. ..	2051
Lloyd and North London Ry. Co., In re .. ..	[1896] 2 Ch. 397 .. ..	1090
Lloyd and Tooth, In re .. ..	C. A. [1899] 1 Q. B. 559 .. ..	1053
Lloyd:—Hibbert v. In re Doody. Fisher v. Doody .. ..	C. A. [1893] 1 Ch. 129 .. ..	1303, 2058
Lloyd Jones v. Munro .. ..	[1899] 1 Q. B. 109 .. ..	1396
Lloyd:—Larkin v. .. ..	[1891] W. N. 71 .. ..	63
Lloyd v. Nowell .. ..	[1895] 2 Ch. 744 .. ..	2064, 2220, 2249
Lloyd v. Sugg & Co. .. ..	C. A. [1900] 1 Q. B. 481 .. ..	1214
Lloyd v. Tardy. In re Harman .. ..	[1894] 3 Ch. 607 .. ..	1475, 1503
Lloyd's Bank v. Bach. Walker v. Bach. In re Bach .. ..	[1892] W. N. 108 .. ..	789
Lloyd's Bank, Ltd. v. Bullock .. ..	[1896] 2 Ch. 192 .. ..	1278
Lloyd's Bank, Ltd. v. Princess Royal Colliery Co. .. ..	[1900] W. N. 99 .. ..	1491
Lloyd's, Barnett's and Bosanquet's Bank:—Campbell v. .. ..	[1891] 1 Ch. 136, n. .. ..	1704, 1706
Lloyd Phillips v. Davis. In re Bowen .. ..	[1893] 2 Ch. 491 .. ..	279, 2347
Lloyd & Sons:—Baynes & Co. v. .. ..	[1895] 1 Q. B. 820; C. A. [1895] 2 Q. B. 610 .. ..	1083
Lloyd & Sons:—Redgrave v. .. ..	[1895] 1 Q. B. 876 .. ..	1236
Lloyd-George & George, Ex parte. In re Humphreys .. ..	C. A. [1898] 1 Q. B. 520 .. ..	2026
Local Government Act, 1888, In re. Ex parte Kent County Council and Dover (Council of) .. ..	[1891] 1 Q. B. 389; C. A. [1891] 1 Q. B. 725 .. ..	42, 577, 579
Local Government Act, 1888, In re. Ex parte London County Council .. ..	[1892] 1 Q. B. 33 .. ..	540, 580
Local Government Act, 1888, In re, and In re Herefordshire County Council and Leominster Town Council .. ..	[1895] 1 Q. B. 43 .. ..	547, 578
Lock:—Burrowes v. .. ..	[1891] 3 Ch. 94, n. .. ..	2184
Lock v. Pearce .. ..	[1892] 2 Ch. 328; C. A. [1893] 2 Ch. 271 .. ..	1069, 1503

Name of Case.	Volume and Page.	Column of Digest.
Lock v. Queensland Investment and Land Mortgage Co. . . . .	C. A. [1896] 1 Ch. 397; H. L. (E.) [1896] A. C. 461 . . .	399
Locker :—Salt v. In re Parker-Jervis . . .	[1898] 2 Ch. 643 . . .	1745
Lockhart :—Akerman v. In re Hawkes . . .	C. A. [1898] 2 Ch. 1 . . .	2049
Lockhart, In the Goods of . . . . .	[1893] W. N. 80 . . .	1621
Lockwood :—Patent Agents (Institute of) v. . .	H. L. (Sc.) [1894] A. C. 347 . .	1434, 2069, 2072
Loder v. Duke of St. Albans. In re Duke of St. Albans . . . . .	[1900] 2 Ch. 873 . . .	1737
Lodge v. Huddersfield Corporation . . . . .	[1898] 1 Q. B. 847 . . .	2082
Lodge v. Huddersfield Corporation . . . . .	C. A. [1898] 1 Q. B. 859 . . .	43
Loe v. Michell. In re Hocking . . . . .	C. A. [1898] 2 Ch. 567 . . .	2305
Lofthouse v. Brown . . . . .	[1898] W. N. 52 (2) . . .	954
Lofthouse :—Liddell v. . . . .	[1896] 1 Q. B. 295 . . .	868
Loftus' Trade-mark, In re . . . . .	[1894] 1 Ch. 193 . . .	2127
Loftus-Otway, In re. Otway v. Otway . . . . .	[1895] 2 Ch. 235 . . .	159, 2331
Logan :—Att.-Gen. v. . . . .	[1891] 2 Q. B. 100 . . .	1347
Logan :—Freme v. In re Freme (No. 1) . . .	[1891] 3 Ch. 167 . . .	2321
Logan :—Winnipeg (City of) v. . . . .	C. A. [1894] 1 Ch. 1 . . .	1885
Logan :—Winnipeg (City of) v. . . . .	P. C. [1892] A. C. 445 . . .	250
Logsdon v. Booth . . . . .	[1900] W. N. 5; [1900] 1 Q. B. 401 . . .	1147
Logsdon v. Trotter . . . . .	[1900] 1 Q. B. 617 . . .	1148
Lole v. Betteridge . . . . .	C. A. [1897] W. N. 178 (3); [1898] 1 Q. B. 250 . . .	130
Loma Gold Mines, Ltd. :—Ernest v. . . . .	C. A. [1897] 1 Ch. 1 . . .	360
Lomer v. Waters . . . . .	C. A. [1898] 2 Q. B. 326 . . .	554
Londesborough (Earl of) :—Lewis v. . . . .	[1893] 2 Q. B. 191 . . .	667
Londesborough (Earl of) :—Schofield v. . . . .	[1894] 2 Q. B. 660; C. A. [1895] 1 Q. B. 536; H. L. (E.) [1896] A. C. 514 . . .	191
London and Canadian Loan and Agency Co. v. Duggan . . . . .	P. C. [1893] A. C. 506 . . .	91, 1205
London and County Banking Co. v. Bray . . .	[1893] W. N. 130 . . .	1488, 1501
London and County Banking Co. :—Clarke v. . .	[1897] 1 Q. B. 552 . . .	92
London and County Banking Co. v. Goddard . .	[1897] 1 Ch. 642 . . .	2201
London and County Banking Co. :—Great Western Ry. Co. v. . . . .	[1899] W. N. 100; [1899] 2 Q. B. 172; C. A. [1900] W. N. 144; [1900] 2 Q. B. 464 . . .	93
London and County Banking Co. :—James v. In re Morris . . . . .	[1898] 2 Ch. 413; C. A. [1899] W. N. 18 (3); [1899] 1 Ch. 485 . . .	147
London and County Printing Works :—Baster v. .	[1899] W. N. 53; [1899] 1 Q. B. 901 . . .	1234
London and East Coast Express Steamship Co. :—Fairfield Shipbuilding and Engineering Co. v. .	[1895] W. N. 64 . . .	318, 1704, 1986
London and Eastern Counties Loan and Discount Co. v. Creasey . . . . .	[1897] 1 Q. B. 442; C. A. [1897] 1 Q. B. 768 . . .	212
London and General Bank, In re (No. 1) . . .	[1894] W. N. 155 . . .	439, 772, 2072
London and General Bank, In re (No. 2) . . .	C. A. [1895] 2 Ch. 166 . . .	
London and General Bank, In re (No. 3) . . .	C. A. [1895] 2 Ch. 673 . . .	469
London and Globe Finance Corporation, Ltd. v. Kaufman . . . . .	[1899] W. N. 240 . . .	783

Name of Case.	Volume and Page.	Column of Digest.
London and India Docks Joint Committee:— London Association of Shipowners and Brokers <i>v.</i> .. .. .	C. A. [1892] 3 Ch. 242 .. ..	236, 723, 2148
London and Lancashire Life Assurance Co. <i>v.</i> Fleming .. .. .	P. C. [1897] A. C. 499 .. ..	254
London and Mashonaland Exploration Co. <i>v.</i> New Mashonaland Exploration Co. .. ..	[1891] W. N. 165 .. ..	337, 1414
London and Midland Bank <i>v.</i> Mitchell .. ..	[1899] W. N. 92; [1899] 2 Ch. 161 .. ..	1133
London and New York Investment Corporation, In re .. .. .	[1895] 2 Ch. 860 .. ..	384
London and North Western Ry. Co.:—Att- Gen. <i>v.</i> .. .. .	[1898] W. N. 160 (12); [1899] 1 Q. B. 72; C. A. [1899] W. N. 221; [1900] 1 Q. B. 78	1647
London and North Western Ry. Co.:—Att-Gen. of the Duchy of Lancaster <i>v.</i> .. ..	C. A. [1892] 3 Ch. 274 .. ..	1530
London and North Western Ry. Co.:—Clements <i>v.</i> .. .. .	C. A. [1894] 2 Q. B. 482 .. ..	946, 1493
London and North Western Ry. Co.:—Cusack <i>v.</i> London and North Western Ry. Co.:—Darlaston (Local Board) <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 347 .. .. [1894] 2 Q. B. 45; C. A. [1894] 2 Q. B. 694 .. ..	583 1666
London and North Western Ry. Co. <i>v.</i> Donellan	[1898] 1 Q. B. 748; C. A. [1898] 2 Q. B. 7; H. L. (E.) [1899] A. C. 79 .. ..	1664
London and North Western Ry. Co. <i>v.</i> Evans ..	[1892] 2 Ch. 432; C. A. [1893] 1 Ch. 16 .. ..	1267
London and North Western Ry. Co.:—Fletcher <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 122 .. ..	1491, 1500
London and North Western Ry. Co.:—Flower <i>v.</i> London and North Western Ry. Co.:—How <i>v.</i> ..	C. A. [1894] 2 Q. B. 65 .. .. [1891] 2 Q. B. 496; C. A. [1892] 1 Q. B. 391 .. ..	945 583
London and North Western Ry. Co.:—Liverpool Corn Trade Association <i>v.</i> .. ..	[1891] 1 Q. B. 120 .. ..	1661
London and North Western Ry. Co. <i>v.</i> Llan- dudno Improvement Commrs. .. ..	[1897] 1 Q. B. 287 .. ..	1684
London and North Western Ry. Co.:—London and Westminster Loan and Discount Co. <i>v.</i> ..	[1893] 2 Q. B. 49 .. ..	1081
London and North Western Ry. Co.:—Mansion House Association on Ry. Traffic <i>v.</i> .. ..	[1896] 1 Q. B. 273 .. ..	1658
London and North Western Ry. Co. and Mason's Orphanage, In re .. .. .	C. A. [1896] 1 Ch. 596 .. ..	273
London and North Western Ry. Co.:—Morgan <i>v.</i> .. .. .	[1896] 2 Q. B. 469 .. ..	1089
London and North Western and Great Western Ry. Companies, In re Haigh and .. ..	[1896] 1 Q. B. 649 .. ..	56
London and North Western Ry. Co.:—Phipps <i>v.</i> London and North Western Ry. Co.:—Reg. <i>v.</i> ..	C. A. [1892] 2 Q. B. 229 .. .. [1894] 2 Q. B. 512 .. ..	1662 628, 1206, 1649
London and North Western Ry. Co. and Great Western Ry. Co. <i>v.</i> Runcorn Rural District Council .. .. .	[1898] 1 Ch. 34; C. A. [1898] 1 Ch. 561 .. ..	1914
London and North Western Ry. Co. <i>v.</i> Walker	H. L. (E.) [1900] W. N. 34; [1900] A. C. 109 .. ..	1648
London and North Western Ry. Co.:—Williams <i>v.</i> .. .. .	[1899] 2 Q. B. 147; C. A. [1900] W. N. 75; [1900] 1 Q. B. 760	1684
London and North Western and Great Western Joint Ry. Co. <i>v.</i> Billington (J. H.), Ld. ..	[1898] 1 Q. B. 748; C. A. [1898] 2 Q. B. 7; H. L. (E.) [1899] A. C. 79 .. ..	1665

Name of Case.	Volume and Page.	Column of Digest.
London and 'Northern Assets Corporation:— Wall v. .. .. .	C. A. [1898] 2 Ch. 469 .. ..	358
London and Northern Assets Corporation:— Wall v. .. .. .	[1899] W. N. 10 (4); [1899] 1 Ch. 550 .. ..	362
London and Northern Bank, In re. Ex parte Jones .. .. .	[1899] W. N. 230; [1900] 1 Ch. 220 .. ..	392
London and Northern Bank, In re. Mack's Claim .. .. .	[1900] W. N. 114 .. ..	352
London and Provincial Bank:—Powell v. .. ..	[1893] 1 Ch. 610; C. A. [1893] 2 Ch. 555 .. ..	401
London and Provincial Laundry Co. v. Willesden (Local Board) .. .. .	[1892] 2 Q. B. 271 .. ..	1164
London and River Plate Bank v. Bank of Liverpool .. .. .	[1896] 1 Q. B. 7 .. ..	194
London and South African Exploration Co. v. De Beers Consolidated Mines, Ltd. .. ..	P. C. [1895] A. C. 451 .. ..	261
London and South Wales Colliery Co.:—Higgins v. .. .. .	[1891] 1 Q. B. 496; C. A. [1891] 2 Q. B. 699 .. ..	1258
London and South Western Bank:—Bavins, Junr. and Sims v. .. .. .	[1899] W. N. 248; C. A. [1900] 1 Q. B. 270 .. ..	2158
London and South Western Ry. Co.:—Mansion House Association on Ry. Traffic v. .. ..	[1895] 1 Q. B. 927 .. ..	1662
London and South Western Ry. Co.:—Pearce v. .. .. .	C. A. [1900] W. N. 93; [1900] 2 Q. B. 100 .. ..	1228
London and South Western Ry. Co.:—Putney (Overseers) v. .. .. .	[1891] 1 Q. B. 182; C. A. [1891] 1 Q. B. 440 .. ..	1682
London and South Western Ry. Co.:—Roche v. .. .. .	C. A. [1899] 2 Q. B. 502 .. ..	1559
London and South Western Ry. Co.:—Singer Manufacturing Co. v. .. .. .	[1894] 1 Q. B. 833 .. ..	88, 1666
London and South Western Ry. Co.:—Wakelin v. .. .. .	C. A. & H. L. (E.) [1896] 1 Q. B. 189, n. .. ..	1646
London and Suburban Bank, In re .. .. .	[1892] 1 Ch. 604 .. ..	446, 941
London and Universal Bank, Ex parte. In re Ginger .. .. .	[1897] 2 Q. B. 461 .. ..	138
London and Universal Bank v. Clancarty (Earl of) .. .. .	[1892] 1 Q. B. 689 .. ..	1566
London and Westminster Bank:—Didisheim v. .. ..	[1899] W. N. 107; C. A. [1900] W. N. 87; [1900] 2 Ch. 15 ..	494
London and Westminster Bank v. Inland Revenue Commrs. .. .. .	C. A. [1900] 1 Q. B. 166 .. ..	1805
London and Westminster Loan and Discount Co. v. London and North Western Ry. Co. .. ..	[1893] 2 Q. B. 49 .. ..	1081
London and Yorkshire Mutual Money Club Co., In re .. .. .	[1891] W. N. 2 .. ..	445
London Anti-Vivisection Society:—Cross v. In re Foveaux .. .. .	[1895] 2 Ch. 501 .. ..	277
London Association of Shipowners and Brokers v. London and India Docks Joint Committee .. ..	C. A. [1892] 3 Ch. 242 .. ..	236, 723, 2148
London Assurance:—Ruabon Steamship Co. v. .. ..	[1897] 2 Q. B. 456; C. A. [1898] 1 Q. B. 722; H. L. (E.) [1899] W. N. 254; [1900] A. C. 6 ..	990
London Bank of Mexico and South America v. Apthorpe .. .. .	[1891] 1 Q. B. 383; C. A. [1891] 2 Q. B. 378 .. ..	1764
London (Bishop of):—Allcroft v. .. .. .	H. L. (E.) [1891] A. C. 666 .. ..	757
London (Bishop of):—Reg. v. .. .. .	[1891] 2 Q. B. 48; H. L. (E.) [1891] A. C. 666 .. ..	757
London, The (Bishop of):—Lighton v. .. .. .	[1891] 2 Q. B. 48; H. L. (E.) [1891] A. C. 666 .. ..	757
London, Brighton and South Coast Ry. Co.:—Pugh v. .. .. .	C. A. [1896] 2 Q. B. 248 .. ..	975



Name of Case.	Volume and Page.	Column of Digest.
London Building Trades Federation:—Trollope <i>v.</i>	[1895] W. N. 29; C. A. [1895] W. N. 45 .. ..	650, 969, 2143
London Cemetery Co.:—St. Giles, Camberwell <i>v.</i>	[1894] 1 Q. B. 699 .. ..	1175
London Chartered Bank of Australia, In re ..	[1893] 3 Ch. 540 .. ..	478
London Chartered Bank of Australia <i>v.</i> Mac-Millan .. ..	P. C. [1892] A. C. 292 .. ..	97
London, Chatham and Dover Ry. Co.:—Foster <i>v.</i>	C. A. [1895] 1 Q. B. 711 .. ..	1643
London, Chatham and Dover Ry. Co.:—Nicholson <i>v.</i>	[1895] W. N. 91 .. ..	1661
London, Chatham and Dover Ry. Co. <i>v.</i> South Eastern Ry. Co. .. ..	C. A. [1892] 1 Ch. 120; H. L. (E.) [1893] A. C. 429 .. ..	1005, 1006
London City (Commissioners of Sewers) <i>v.</i> Battersea (Lord) .. ..	[1895] 2 Ch. 708 .. ..	1118
London City (Commissioners of Sewers), Ex parte. Ex parte Vicar of St. Botolph, Aldgate .. ..	[1894] 3 Ch. 544 .. ..	754
London City (Commissioners of Sewers) <i>v.</i> Parishioners of St. Botolph Without, Aldgate .. ..	[1892] P. 161 .. ..	743
London City (Corporation):—Reg. <i>v.</i> Ex parte Boaler .. ..	[1893] 2 Q. B. 146 .. ..	1028
London City Court (Judge):—Reg. <i>v.</i> (No. 1) .. ..	[1891] 2 Q. B. 71 .. ..	594, 1527
London City Court (Judge):—Reg. <i>v.</i> (No. 2) .. ..	C. A. [1892] 1 Q. B. 273 .. ..	1953
London City Mission:—Anderson <i>v.</i> In re Wood .. ..	[1894] 2 Ch. 577 .. ..	2303
London Clearing Bankers (Committee of) <i>v.</i> Inland Revenue Commrs. .. ..	C. A. [1896] 1 Q. B. 542 .. ..	1790
London Corporation:—Aldis <i>v.</i> .. ..	[1899] W. N. 76; [1899] 2 Ch. 169 .. ..	1181
London Corporation:—Charity Commrs. <i>v.</i> In re White's Charities .. ..	[1898] 1 Ch. 659 .. ..	2234
London Corporation:—City of London Electric Lighting Co. <i>v.</i> .. ..	[1900] W. N. 116 .. ..	543
London Corporation:—Sion College <i>v.</i> .. ..	[1900] 2 Q. B. 581 .. ..	2068
London Corporation and Tubb's Contract, In re .. ..	C. A. [1894] 2 Ch. 524 .. ..	2238
London County Council, Ex parte. Ex parte Christ Church, East Greenwich (Vicar of) .. ..	[1896] 1 Ch. 520 .. ..	735
London County Council:—Allen <i>v.</i> .. ..	C. A. [1895] 2 Q. B. 587 .. ..	1149
London County Council:—Armstrong <i>v.</i> .. ..	[1900] 1 Q. B. 416 .. ..	1173
London County Council <i>v.</i> Att.-Gen. .. ..	[1899] 2 Q. B. 226; C. A. [1900] W. N. 3; [1900] 1 Q. B. 192; H. L. (E.) [1900] W. N. 268 .. ..	1769
London County Council <i>v.</i> Att.-Gen. .. ..	[1900] W. N. 100 .. ..	1161
London County Council <i>v.</i> Aylesbury Dairy Co. .. ..	[1897] W. N. 153 (10); [1898] 1 Q. B. 106 .. ..	1155
London County Council:—City and South London Ry. Co. <i>v.</i> .. ..	C. A. [1891] 2 Q. B. 513 .. ..	1152, 1669
London County Council:—Crisp <i>v.</i> .. ..	[1899] 1 Q. B. 720 .. ..	1153
London County Council <i>v.</i> Cross .. ..	C. A. [1892] W. N. 80 .. ..	1150
London County Council <i>v.</i> Dixon .. ..	[1899] 1 Q. B. 496 .. ..	1173
London County Council <i>v.</i> East London Waterworks Co. .. ..	[1900] W. N. 17; [1900] 1 Q. B. 330 .. ..	2275
London County Council <i>v.</i> Edwards .. ..	[1898] 2 Q. B. 75 .. ..	1348
London County Council:—Elliott <i>v.</i> .. ..	[1899] 2 Q. B. 277 .. ..	1159
London County Council:—Epsom District Council <i>v.</i> .. ..	[1900] 2 Q. B. 751 .. ..	894
London County Council <i>v.</i> Erith Churchwardens .. ..	C. A. [1893] 1 Q. B. 210; H. L. (E.) [1893] A. C. 562 .. ..	1686

Name of Case.	Volume and Page.	Column of Digest.
London County Council:—Fulham Vestry <i>v.</i> ..	[1897] 2 Q. B. 76 .. ..	1170
London County Council, Ex parte. In re Local Government Act, 1888 .. ..	[1892] 1 Q. B. 33 .. ..	540, 580
London County Council:—Harris <i>v.</i> .. ..	[1895] 1 Q. B. 240 .. ..	2293
London County Council <i>v.</i> Herring .. ..	[1894] 2 Q. B. 522 .. ..	1153
London County Council <i>v.</i> Humphreys, Ld. ..	[1894] 2 Q. B. 755 .. ..	1159
London County Council <i>v.</i> Lambeth Overseers ..	[1895] 2 Q. B. 511; C. A. [1896] 2 Q. B. 25; H. L. (E.) [1897] A. C. 625 .. ..	1681
London County Council:—Lavy <i>v.</i> .. ..	[1895] 1 Q. B. 915; C. A. [1895] 2 Q. B. 577 .. ..	1149, 1151
London County Council <i>v.</i> Lawrance & Sons ..	[1893] 2 Q. B. 228 .. ..	1154
London County Council <i>v.</i> London School Board	[1892] 2 Q. B. 606 .. ..	1158
London County Council:—London Street Tramways Co. <i>v.</i> .. ..	C. A. [1894] 2 Q. B. 189; H. L. (E.) [1894] A. C. 489 ..	2149
London County Council:—London Tramways Co. <i>v.</i> .. ..	H. L. (E.) [1898] A. C. 375 ..	900
London County Council:—North Metropolitan Tramways Co. <i>v.</i> .. ..	[1895] W. N. 91; [1898] 2 Ch. 145 .. ..	568
London County Council:—Oxford (The), Ld. <i>v.</i> ..	[1898] 2 Ch. 491 .. ..	1172
London County Council <i>v.</i> Pearce .. ..	[1892] 2 Q. B. 109 .. ..	1160
London County Council <i>v.</i> Pryor .. ..	C. A. [1896] 1 Q. B. 465 ..	1151
London County Council <i>v.</i> Read .. ..	[1900] 1 Q. B. 288 .. ..	218
London County Council:—Reg. <i>v.</i> .. ..	C. A. [1893] 2 Q. B. 454 ..	1359, 1629, 2067
London County Council:—Reg. <i>v.</i> Ex parte Akkersdyk. Ex parte Fermentia .. ..	[1892] 1 Q. B. 190 .. ..	1307
London County Council <i>v.</i> St. George's Union Assessment Committee (No. 1) .. ..	C. A. [1893] 1 Q. B. 210; H. L. (E.) [1893] A. C. 562 ..	1685
(No. 2) .. ..	C. A. [1893] 2 Q. B. 476; H. L. (E.) [1894] A. C. 600 ..	1672
London County Council:—St. Leonard, Shore-ditch, Vestry <i>v.</i> .. ..	[1895] 2 Q. B. 104 .. ..	1682
London County Council:—Savoy Hotel Co. <i>v.</i> ..	[1900] W. N. 25; [1900] 1 Q. B. 665 .. ..	2018
London County Council:—Thompson <i>v.</i> .. ..	C. A. [1899] 1 Q. B. 840 .. ..	1517
London County Council:—Wendon <i>v.</i> .. ..	[1894] 1 Q. B. 227; C. A. [1894] 1 Q. B. 812 .. ..	1150
London County Council <i>v.</i> West Ham (Churchwardens, &c., of) (No. 1) .. ..	C. A. [1892] 2 Q. B. 44; H. L. (E.) [1893] A. C. 562 ..	1686
(No. 2) .. ..	C. A. [1892] 2 Q. B. 173 .. ..	628
London County Council <i>v.</i> Wood .. ..	[1897] 2 Q. B. 482 .. ..	1146
London County Council:—Woodham <i>v.</i> .. ..	[1898] 1 Q. B. 863 .. ..	1174
London County Council <i>v.</i> Woolwich Union (Assessment Committee of) .. ..	C. A. [1893] 1 Q. B. 210; H. L. (E.) [1893] A. C. 562 ..	1685
London County Council <i>v.</i> Worley .. ..	[1894] 2 Q. B. 826 .. ..	1154
London County Council and City of London Brewery Co., In re .. ..	[1898] 1 Q. B. 387 .. ..	1679
London County Council and Essex Justices:—West Ham Union <i>v.</i> .. ..	H. L. (E.) [1896] A. C. 443 ..	1671
London Drapery Stores, In re .. ..	[1898] 2 Ch. 684 .. ..	436
London, Edinburgh, and Glasgow Life Insurance Co.:—Barnes <i>v.</i> .. ..	[1892] 1 Q. B. 864 .. ..	979
London, Edinburgh, and Glasgow Life Insurance Co.:—Bawden <i>v.</i> .. ..	C. A. [1892] 2 Q. B. 534 ..	979, 1576
London Financial Association <i>v.</i> Whadcoat ..	C. A. [1893] 3 Ch. 307 .. ..	1654
London Freehold and Leasehold Property Co. <i>v.</i> Baron Suffield .. ..	C. A. [1897] 2 Ch. 608 .. ..	1278

Name of Case.	Volume and Page.	Column of Digest.
London General Omnibus Co.:—Beard <i>v.</i> ..	C. A. [1900] 2 Q. B. 530 ..	1242
London General Omnibus Co. <i>v.</i> Lavell ..	C. A. [1900] W. N. 249 ..	641
London Health Electrical Institute, In re ..	[1896] W. N. 170 (3) ..	410
London Illustrated Standard Co.:—Baschet <i>v.</i> .. {	[1899] W. N. 215; [1900] 1 Ch. 73 ..	531
London Joint Stock Bank:—Bentinck <i>v.</i> ..	[1893] 2 Ch. 120 ..	2076
London Joint Stock Bank:—Simmons <i>v.</i> .. {	C. A. [1891] 1 Ch. 270; H. L. (E.) [1892] A. C. 201 ..	1318, 2075
London Justices:—Reg. <i>v.</i> (No. 1) .. ..	[1893] W. N. 86 ..	1034, 1690
————— (No. 2) .. ..	C. A. [1893] 2 Q. B. 476 ..	1672
————— (No. 3) .. ..	C. A. [1894] 1 Q. B. 453 ..	562, 1630
————— (No. 4) .. .. {	[1895] 1 Q. B. 214; C. A. [1895] 1 Q. B. 616 ..	1040, 1112
————— (No. 5) .. ..	[1895] 1 Q. B. 881 ..	1180
London Justices:—Reg. <i>v.</i> Ex parte Greenwich Union .. .. {	[1900] W. N. 26; [1900] 1 Q. B. 438 ..	1458
London Justices:—Reg. <i>v.</i> Ex parte Lambert ..	[1892] 1 Q. B. 664 ..	1042
London Justices:—Reg. <i>v.</i> .. ..	[1897] 1 Q. B. 433 ..	1691
London Justices:—Reg. <i>v.</i> .. ..	C. A. [1896] 1 Q. B. 659 ..	1670
London Justices:—Reg. <i>v.</i> .. .. {	[1899] W. N. 20 (11); [1899] 1 Q. B. 532 ..	1671
London (Lord Mayor of):—Reg. <i>v.</i> Ex parte Boaler .. .. {	[1893] 2 Q. B. 146 ..	1028
London Metallurgical Co., In re .. ..	[1895] 1 Ch. 758 ..	437
London Metallurgical Co., In re .. ..	[1897] 2 Ch. 262 ..	450
London:—Mostyn (Lord) <i>v.</i> .. ..	[1895] 1 Q. B. 170 ..	1770
London Parochial Charities (Trustees of):—Att.-Gen. <i>v.</i> .. .. {	[1896] 1 Ch. 541 ..	235
London Portland Cement Co.:—Bevan <i>v.</i> ..	[1892] W. N. 151 ..	731, 2203
London Port Sanitary Authority:—Thames Conservancy <i>v.</i> .. .. {	[1894] 1 Q. B. 647 ..	1350, 2106, 2272
London Printing and Publishing Alliance <i>v.</i> Cox .. ..	C. A. [1891] 3 Ch. 291 ..	529
London Provident Building Society <i>v.</i> Morgan ..	[1893] 2 Q. B. 266 ..	230
London School Board:—Bethnal Green Vestry <i>v.</i> .. {	C. A. [1896] 2 Q. B. 219; H. L. (E.) [1897] W. N. 167 (7); [1898] A. C. 190 ..	1169
London School Board:—Conybeare <i>v.</i> .. ..	[1891] 1 Q. B. 118 ..	1823
London School Board:—London County Council <i>v.</i> .. .. {	[1892] 2 Q. B. 606 ..	1158
London School Board:—Phillips <i>v.</i> Cockerton <i>v.</i> The Same .. .. {	[1898] 1 Q. B. 4; C. A. [1898] 2 Q. B. 447 ..	1825
London School Board:—Shaw <i>v.</i> .. ..	C. A. [1895] 2 Ch. 1 ..	332
London School Board <i>v.</i> Smith .. ..	[1895] W. N. 37 ..	729, 964, 1086
London (Sheriff of):—Marylebone Vestry <i>v.</i> .. {	[1900] 1 Q. B. 111; C. A. [1900] 2 Q. B. 591 ..	1925
London Street Tramways Co. and London County Council, In re .. ..	C. A. [1894] 2 Q. B. 189; H. L. (E.) [1894] A. C. 489 ..	2149
London Trading Bank:—Bechuanaland Exploration Co. <i>v.</i> .. .. {	[1898] 2 Q. B. 658 ..	1319
London Tramways Co. <i>v.</i> London County Council ..	H. L. (E.) [1898] A. C. 375 ..	900
London Tramways Co.:—Rapier <i>v.</i> .. ..	C. A. [1893] 2 Ch. 588 ..	1352, 2152
London Trust Co. <i>v.</i> Mackenzie .. ..	[1893] W. N. 9 ..	341

Name of Case.	Volume and Page.	Column of Digest.
London, Windsor and Greenwich Hotels Co., In re. Quartermaine's Claim .. .. .	[1892] 1 Ch. 639 .. ..	475
Long v. Clarke .. .. .	C. A. [1894] 1 Q. B. 119 .. ..	682
Long v. Gardner. In re Gardner (No. 1) .. .. .	[1892] W. N. 164 .. ..	790
(No. 2) .. .. .	C. A. [1894] W. N. 159 .. ..	46
Longbottom:—Nell v. .. .. .	[1894] 1 Q. B. 767 .. ..	546, 548
Longhurst:—Day v. .. .. .	[1893] W. N. 3 .. ..	193
Lonsdale (Earl of):—Littledale v. .. .. .	(Reported) (1793-4) 2 H. Bl. 267, 299; 2 Anstr. 356; 5 Bro. P. C. 519; [1899] 2 Ch. 233, n.}	1265
Lonsdale (Earl of) v. Lowther .. .. .	[1900] W. N. 165; [1900] 2 Ch. 687 .. ..	1876
Lopes:—Hume v. .. .. .	H. L. (E.) [1892] A. C. 112 .. ..	2189
Lopes v. Hume-Dick. In re Dick. (Hume v. Lopes) .. .. .	C. A. [1891] 1 Ch. 423; H. L. (E.) [1892] A. C. 112 .. ..	2189
Lord v. Fox .. .. .	[1892] 1 Q. B. 199 .. ..	1369
Lord v. Lord .. .. .	[1900] P. 297 .. ..	696
Lord Advocate v. Bogie .. .. .	H. L. (Sc.) [1894] A. C. 83 .. ..	1784
Lord Advocate v. Bogie (Methven's Executors) .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 100 .. ..	1784
Lord Advocate v. Finnigan (or M'Court) .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 101 .. ..	1778
Lord Advocate v. Fleming .. .. .	H. L. (Sc.) [1897] A. C. 145 .. ..	1808
Lord Advocate v. Gordon .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 134 .. ..	1808
Lord Advocate:—Hamilton (Duke) v. .. .. .	H. L. (Sc.) [1892] W. N. 160 .. ..	1786
Lord Advocate v. Hutcheson .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 141 .. ..	1803
Lord Advocate:—Macfarlane v. .. .. .	H. L. (Sc.) [1894] A. C. 291 .. ..	1782
Lord Advocate v. Macfarlane (Dunlop's Trustees) .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 96 .. ..	1782
Lord Advocate v. MacLachlan .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 104 .. ..	1747
Lord Advocate v. McCulloch .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 124 .. ..	1809
Lord Advocate v. Murray (Freckleton's Judicial Factor) .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 110 .. ..	1781
Lord Advocate:—Phillips v. .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 204 .. ..	1783
Lord Advocate v. Robertson .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 132 .. ..	1806
Lord Advocate v. Sawers .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 131 .. ..	1769, 1770
Lord Advocate v. Thompson .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 141 .. ..	1803
Lord Advocate v. Wemyss .. .. .	H. L. (Sc.) [1899] W. N. 124; [1900] A. C. 48 .. ..	900, 944, 1261
Lord Advocate v. Wilson .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 118 .. ..	1779
Lord Advocate v. Young .. .. .	Ct. of Sess. (Sc.) [1899] W. N. 190 .. ..	1751
"Lord of the Isles," The:—Williams, Torrey & Co. v. Knight .. .. .	[1894] P. 342 .. ..	995
Lord and Fullerton's Contract, In re .. .. .	C. A. [1895] W. N. 157 (11); C. A. [1896] 1 Ch. 228 .. ..	2182
"Lord Bangor," The .. .. .	[1896] P. 28 .. ..	1956
"Lord Stanley" (Owners of The):—Fellows v. .. .. .	[1893] 1 Q. B. 98 .. ..	1140
Loseby & Carnley:—Midland Ry. Co. v. .. .. .	H. L. (E.) [1899] W. N. 23 (9); [1899] A. C. 133 .. ..	1665

Name of Case.	Volume and Page.	Column of Digest.
Lostwithiel and Fowey Ry. Co.:—Fortescue v.	[1894] 3 Ch. 621 .. .. {	1669, 2064
Lothian:—Aitchison v. .. .. {	Registration App. Ct. (Sc.) [1897] {	1402
Loughnan:—Morley v. .. .. {	W. N. 98 .. .. {	2207
Louis, In re. Ex parte Incorporated Law Society	[1893] 1 Ch. 736 .. .. {	2061
Louis v. Smellie .. .. {	[1891] 1 Q. B. 649 .. .. {	969, 1248
Loustalan v. Loustalan. In re Martin .. .. {	C. A. [1895] W. N. 115 (7) .. {	497
Love v. Williamson. In re Whiston's Settlement .. .. {	C. A. [1900] W. N. 103; [1900] {	1899
Love:—Att.-Gen. for New South Wales v. .. .. {	P. 211 .. .. {	1330
Love:—Torish v. .. .. {	[1894] 1 Ch. 661 .. .. {	1378
Love:—Wavertree Sailing Ship Co. v. .. .. {	P. C. [1898] A. C. 679 .. .. {	1332
Love:—Willson v. .. .. {	C. A. (Ir.) [1898] W. N. 93 .. {	1057
Loveday, In the Goods of .. .. {	P. C. [1897] A. C. 373 .. .. {	1625
Lovegrove:—Coole v. .. .. {	C. A. [1896] 1 Q. B. 626 .. .. {	1158
Lovejoy v. Cole .. .. {	[1900] P. 154 .. .. {	591
Lovell and Christmas v. Beauchamp .. .. {	[1893] 2 Q. B. 44 .. .. {	1420, 1698
Lovett v. Lovett .. .. {	[1894] 2 Q. B. 861 .. .. {	1909
Low, In re. Ex parte Argentine Gold Fields, Ltd. .. .. {	H. L. (E.) [1894] A. C. 607 .. {	105
Low, In re. Ex parte Gibson .. .. {	[1897] W. N. 163 (11); [1898] {	104
Low, In re. Bland v. Low .. .. {	1 Ch. 82 .. .. {	787, 1560
Low Beechburn Coal Co.:—Greenwell v. .. .. {	C. A. [1891] 1 Q. B. 147 .. .. {	1261
Low v. Bouverie .. .. {	C. A. [1895] 1 Q. B. 734 .. .. {	771, 2184
Low:—Phillips v. .. .. {	C. A. [1894] 1 Ch. 147 .. .. {	1118, 2360
Lowden:—Pease v. .. .. {	[1897] 2 Q. B. 165 .. .. {	543
Lowe:—Bramble v. .. .. {	C. A. [1891] 3 Ch. 82 .. .. {	2215
Lowe v. Cooke. In re Blantarn .. .. {	[1892] 1 Ch. 47 .. .. {	2311, 2319
Lowe v. Lowe .. .. {	[1899] W. N. 8 (5); [1899] {	698
Lowe v. Pearson .. .. {	1 Q. B. 386 .. .. {	1225
Lowe v. Volp .. .. {	[1897] 1 Q. B. 283 .. .. {	2151
Lowen:—Davies v. .. .. {	C. A. [1891] W. N. 54 .. .. {	1722
Lowenfeld:—Hammersmith (Vestry of)	C. A. [1899] W. N. 71; [1899] {	1347
Lowles:—Cremer v. In re Haggerston Election Petition .. .. {	C. A. [1899] W. N. 2 (3); [1899] {	1365
Lower Rhine and Würtemberg Insurance Association v. Sedgwick .. .. {	1 Q. B. 261 .. .. {	1000
Lowman, In re. Devenish v. Pester .. .. {	[1896] 1 Q. B. 256 .. .. {	504, 2302, 2347
Lowndes:—Reg. v. .. .. {	[1891] W. N. 86 .. .. {	2213
Lowth v. Ibbotson .. .. {	[1896] 2 Q. B. 278 .. .. {	1224
Lowther v. Caledonian Ry. Co. .. .. {	C. A. [1899] W. N. 133; [1899] {	1086
Lowther:—Dalglish v. .. .. {	2 Q. B. 590 .. .. {	676

Name of Case.	Volume and Page.	Column of Digest.
Lowther:—Lonsdale (Earl of) <i>v.</i> .. .. {	[1900] W. N. 165; [1900] 2 Ch. 687 .. .. }	1876
Loyd:—Att.-Gen. <i>v.</i> .. .. {	[1895] 1 Q. B. 496 .. .. }	1785
Lubbock <i>v.</i> British Bank of South America .. .. {	[1892] 2 Ch. 198 .. .. }	6, 354,
Lubbock:—Hampton <i>v.</i> .. .. {	[1900] W. N. 18 .. .. }	1852
Lucas:—Baxendale <i>v.</i> .. .. {	[1900] W. N. 18 .. .. }	179
Lucas:—Budd <i>v.</i> .. .. {	[1895] W. N. 30 .. .. }	1496,
Lucas:—Hall .. .. {	[1891] 1 Q. B. 408 .. .. }	2063
Lucas:—Peacock <i>v.</i> In re Whitehead .. .. {	[1899] W. N. 92 .. .. }	2122
Lucas <i>v.</i> Williams & Sons .. .. {	[1894] 1 Ch. 678 .. .. }	2247
Luck:—Hunt <i>v.</i> .. .. {	C. A. [1892] 2 Q. B. 113 .. .. }	2334
Ludington Cigarette Machine Co. <i>v.</i> Baron {	[1900] W. N. 250 .. .. }	530
Cigarette Machine Co. In re Pitt's Patent .. } {	[1899] W. N. 243; C. A. [1900] W. N. 50; [1900] 1 Ch. 508 }	2248
Ludwig:—Matheson <i>v.</i> In re Doetsch .. .. {	[1899] W. N. 243; C. A. [1900] W. N. 50; [1900] 1 Ch. 508 }	1435
Lulham:—Thomas <i>v.</i> .. .. {	[1896] 2 Ch. 836 .. .. }	496
Lumley, In re .. .. {	C. A. [1895] 2 Q. B. 400 .. .. }	685
Lumley, In re. Ex parte Cathcart .. .. {	[1893] W. N. 13 .. .. }	1495
Lumley, In re. Ex parte Hood Barrs .. .. {	C. A. [1894] 2 Ch. 271 .. .. }	1849
Lumley, In re. Ex parte Hood Barrs .. .. {	C. A. [1894] 3 Ch. 135 .. .. }	907, 916,
Lumley <i>v.</i> Ravenscroft .. .. {	C. A. [1896] 2 Ch. 690 .. .. }	919
Lumsden <i>v.</i> Burnett .. .. {	C. A. [1895] 1 Q. B. 683 .. .. }	921
Lunacy Commrs.:—Reg. <i>v.</i> .. .. {	C. A. [1898] 2 Q. B. 177 .. .. }	959,
Luscombe <i>v.</i> Great Western Ry. Co. .. .. {	[1897] 1 Q. B. 630 .. .. }	2062
Lushington:—Reg. <i>v.</i> Ex parte Otto .. .. {	[1899] 2 Q. B. 313 .. .. }	684
Lusk <i>v.</i> Sebright .. .. {	[1894] 1 Q. B. 420 .. .. }	1188
Luttrell:—Minehead Local Board <i>v.</i> .. .. {	[1894] W. N. 134 .. .. }	1645
Lutvens:—Walker <i>v.</i> In re Walker .. .. {	[1894] 2 Ch. 178 .. .. }	623, 809
Lyle Shipping Co. <i>v.</i> Cardiff Corporation .. .. {	[1897] 2 Ch. 238 .. .. }	1281
Lynch-Blosse, In re. Richards <i>v.</i> Lynch-Blosse {	C. A. [1900] 2 Ch. 638 .. .. }	1916
Lynch:—Carr <i>v.</i> .. .. {	[1899] W. N. 27 (8) .. .. }	2312
Lynch <i>v.</i> Buchanan. (Re Richey.) Hasson <i>v.</i> {	[1900] W. N. 69; [1900] 1 Ch. 613 .. .. }	1962
Chambers. Crossan <i>v.</i> Chambers .. .. {	C. A. (Ir.) [1897] W. N. 85 .. .. }	1868
Lynch:—Reg. <i>v.</i> .. .. {	[1895] W. N. 149 (1); [1896] 1 Ch. 178 .. .. }	845
Lynde <i>v.</i> Anglo-Italian Hemp Spinning Co. .. {	[1898] 1 Q. B. 61 .. .. }	1398
Lynde <i>v.</i> Waithman .. .. {	[1895] W. N. 149 (1); [1896] 1 Ch. 178 .. .. }	606
Lyndhurst Ship Co.:—Croshaw .. .. {	C. A. [1895] 2 Q. B. 180 .. .. }	376
Lynes (Hannah) In re. Ex parte Lester & Co. {	C. A. [1897] 2 Ch. 154 .. .. }	1280
Lynes:—Robinson, King & Co. <i>v.</i> .. .. {	C. A. [1893] 2 Q. B. 113 .. .. }	1565
Lynes <i>v.</i> Snaith .. .. {	[1894] 2 Q. B. 577 .. .. }	444
Lynton and Lynemouth Hotel Property Co.:— {	[1899] W. N. 16 (13); [1899] 1 Q. B. 486 .. .. }	105, 908
Brinsey <i>v.</i> .. .. {	[1895] W. N. 53 .. .. }	902
Lyon <i>v.</i> Mitchell .. .. {	[1899] W. N. 27 (6) .. .. }	1138
Lyon & Co.:—Wenman <i>v.</i> .. .. {	[1891] 1 Q. B. 634; C. A. [1891] 2 Q. B. 192 .. .. }	317,
Lyons:—Sydney and Suburban Mutual Building {	P. C. [1894] A. C. 260 .. .. }	1700
and Land Investment Association <i>v.</i> .. .. {	C. A. [1897] 1 Ch. 633 .. .. }	1274
Lyons (J.) & Co.:—Floyd <i>v.</i> In re Floyd .. {	C. A. [1896] 1 Ch. 811; [1899] W. N. 3 (9); [1899] 1 Ch. 255 .. .. }	207
Lyons (J.) & Sons <i>v.</i> Wilkins .. .. {	C. A. [1897] 1 Ch. 633 .. .. }	1331
	C. A. [1896] 1 Ch. 811; [1899] W. N. 3 (9); [1899] 1 Ch. 255 .. .. }	2280
		2145,
		2146

Name of Case.	Volume and Page.	Column of Digest.
Lyric Theatre:—Cadogan v. .. ..	C. A. [1894] 3 Ch. 338 .. ..	1696,
Lysaght, In re. Lysaght v. Lysaght .. ..	C. A. [1898] 1 Ch. 115 .. ..	1698
Lysaght, Ld. v. Clark & Co. .. ..	[1891] 1 Q. B. 552 .. ..	2323
Lysaght (J.) Ld. v. Coleman .. ..	C. A. [1885] 1 Q. B. 49 .. ..	1530
Lysons v. Andrew Knowles & Sons, Ld. .. {	C. A. [1900] W. N. 55; [1900] 1 Q. B. 780 .. ..	989
		1222
<b>M.</b>		
M., In re .. ..	[1898] W. N. 160 (11); [1899] 1 Ch. 79 .. ..	1200
Mabbett, In re. Pitman v. Holborrow .. ..	[1891] 1 Ch. 707 .. ..	33
McAdam:—Manchester Corporation v. .. ..	C. A. [1895] 1 Q. B. 673; H. L. (E.) [1896] A. C. 500 .. ..	1774
M'Aleer:—Riddall v. .. ..	C. A. (Ir.) [1898] W. N. 95 .. ..	1394
Macalpine & Co. v. Calder & Co. .. ..	C. A. [1893] 1 Q. B. 545 .. ..	63
McArthur & Co. v. Cornwall .. ..	P. C. [1892] A. C. 75 .. ..	637, 837
Macaulay:—Jones v. .. ..	C. A. [1891] 1 Q. B. 221 .. ..	1528
Macaulay v. Polley .. ..	C. A. [1897] 2 Q. B. 122 .. ..	2022
M'Auliffe, In the Goods of .. ..	[1895] P. 290 .. ..	1599
McCabe:—Hennessey v. .. ..	C. A. [1900] 1 Q. B. 491; [1900] W. N. 261 .. ..	1218
McCallum, In re. McCallum v. McCallum .. {	[1900] W. N. 36; C. A. [1900] W. N. 261 .. ..	1129
M'Carron v. Chambers .. ..	C. A. (Ir.) [1897] W. N. 107 .. ..	1367
McCarthy:—Dougal v. .. ..	C. A. [1893] 1 Q. B. 736 .. ..	1065
McCarthy:—Ireland (Bank of) v. .. ..	H. L. (I.) [1897] W. N. 164 (12); [1898] A. C. 181 .. ..	2310
McCarthy:—Mahoney v. .. ..	[1892] P. 21 .. ..	703,
McCarthy:—Wood v. .. ..	[1893] 1 Q. B. 775 .. ..	1617
McClatchie v. Haslam .. ..	C. A. [1891] W. N. 191 .. ..	1516
McCord v. Cammell & Co. .. ..	H. L. (E.) [1896] A. C. 57 .. ..	513
M'Court or Finnigan:—Lord Advocate v. .. {	Ct. of Sess. (Sc.) [1896] W. N. 191 .. ..	1241
McCowan v. Baine. "The Niobe" .. ..	H. L. (Sc.) [1891] A. C. 401 .. ..	1778
M'Crea v. Buchanan .. ..	C. A. (Ir.) [1898] W. N. 112 .. ..	988
M'Cready v. Chambers .. ..	C. A. (Ir.) [1898] W. N. 95 .. ..	1383
M'Culloch:—Lord Advocate v. .. ..	Ct. of Sess. (Sc.) [1896] W. N. 124 .. ..	1394
M'Daid v. Campbell .. ..	C. A. (Ir.) [1898] W. N. 104 .. ..	1809
M'Daid:—Dunleavy v. .. ..	C. A. (Ir.) [1898] W. N. 104 .. ..	1390
M'Daid:—Gage v. .. ..	C. A. (Ir.) [1898] W. N. 104 .. ..	1390
M'Daid:—Milligan v. .. ..	C. A. (Ir.) [1898] W. N. 104 .. ..	1390
M'Dermott v. Chambers (M'Laughlin's Case) ..	C. A. (Ir.) [1898] W. N. 100 .. ..	1390
McDermott, Ex parte. In re Boyd .. ..	C. A. [1895] 1 Q. B. 611 .. ..	1392
McDermott v. Boyd. In re McHenry. Barker's Claim .. ..	C. A. [1894] 3 Ch. 290 .. ..	103
McDermott v. Boyd. In re McHenry. Levita's Claim .. ..	[1894] 2 Ch. 428; C. A. [1894] 3 Ch. 365 .. ..	1132
Macdonald, In re. Dick v. Fraser .. ..	[1897] 2 Ch. 181 .. ..	112
Macdonald:—Aiken v. .. ..	Ct. of Sess. (Sc.) [1896] W. N. 120 .. ..	1125
Macdonald v. Dickson .. ..	Registration App. Ct. (Sc.) [1897] W. N. 120 .. ..	1771
Macdonald:—Dunn v. .. ..	[1897] 1 Q. B. 401; C. A. [1897] 1 Q. B. 555 .. ..	1387
		1575

Name of Case.	Volume and Page.	Column of Digest.
Macdonald <i>v.</i> Scott (or Hall) .. ..	H. L. (Sc.) [1893] A. C. 642 ..	1833
Macdonald, Sons & Co., In re .. ..	C. A. [1894] 1 Ch. 89 .. ..	426
Macdonald :—Williams <i>v.</i> .. ..	[1899] 2 Q. B. 308 .. ..	1109
M'Donnell :—Venner <i>v.</i> .. ..	[1897] 1 Q. B. 421 .. ..	1159
M'Dougal <i>v.</i> Sutherland .. ..	{ Ct. of Sess. (Sc.) [1896] W. N. 113 .. .. }	1763
M'Dougall <i>v.</i> Campbell .. ..	{ Ct. of Sess. (Sc.) [1900] W. N. 217 .. .. }	1756
Macduff, In re. Macduff <i>v.</i> Macduff .. ..	C. A. [1896] 2 Ch. 451 .. ..	277
McEntire <i>v.</i> Crossley Brothers .. ..	H. L. (I.) [1895] A. C. 457 ..	206, 813
M'Ewan :—Glasgow Corporation <i>v.</i> .. ..	H. L. (Sc.) [1900] A. C. 91 ..	2280
McFadzean :—Stewart <i>v.</i> .. ..	{ Registration App. Ct. (Sc.) [1879] W. N. 110 .. .. }	1395
Macfarlane :—Burchard <i>v.</i> Ex parte Tindall ..	C. A. [1891] 2 Q. B. 241 .. ..	663
McFarlane <i>v.</i> Hutton .. ..	{ [1899] W. N. 46; [1899] 1 Ch. 884 .. .. }	1338
Macfarlane <i>v.</i> Lord Advocate .. ..	H. L. (Sc.) [1894] A. C. 291 ..	1782
Macfarlane :—Lord Advocate <i>v.</i> .. ..	{ Ct. of Sess. (Sc.) [1896] W. N. 96 .. .. }	1782
Macfarlane & Co. :—Monsen <i>v.</i> .. ..	C. A. [1895] 2 Q. B. 562 .. ..	1960
Macfie <i>v.</i> Callander and Oban Ry. Co. .. ..	H. L. (Sc.) [1898] A. C. 270 ..	1093
M'Gaffigan <i>v.</i> Riddall .. ..	C. A. (Ir.) [1898] W. N. 95 ..	1394
McGarel, In re (a Lunatic) .. ..	C. A. [1897] 1 Ch. 400 .. ..	2037
McGavin :—McIntyre Brothers <i>v.</i> .. ..	H. L. (Sc.) [1893] A. C. 268 ..	2273
McGill :—Gay <i>v.</i> .. ..	{ Registration App. Ct. (Sc.) [1897] W. N. 98 .. .. }	1401
McGinn :—Bellyse <i>v.</i> .. ..	[1891] 2 Q. B. 227 .. ..	{ 142, 1926 }
Macgowan, In re. Macgowan <i>v.</i> Murray ..	C. A. [1891] 1 Ch. 105 .. ..	2040
McGrath (Infants), In re .. ..	{ [1892] 2 Ch. 496; C. A. [1893] 1 Ch. 143 .. .. }	946
M'Grath <i>v.</i> Buchanan .. ..	C. A. (Ir.) [1898] W. N. 109 ..	1393
McGregor <i>v.</i> Cox .. ..	H. L. (Sc.) [1900] W. N. 247 ..	2209
McGregor, Gow & Co. :—Mogul Steamship Co. ..	H. L. (E.) [1892] A. C. 25 ..	499
McGuffie :—Falconer <i>v.</i> .. ..	{ Registration App. Ct. (Sc.) [1897] W. N. 96 .. .. }	1397
McGuire :—Mackay <i>v.</i> .. ..	[1891] 1 Q. B. 250 .. ..	{ 125, 1373 }
McGuire :—Watt <i>v.</i> .. ..	{ Registration App. Ct. (Sc.) [1897] W. N. 109 .. .. }	1369
Machado <i>v.</i> Fontes .. ..	C. A. [1897] 2 Q. B. 231 .. ..	650
McHarg <i>v.</i> Universal Stock Exchange .. ..	C. A. [1895] 2 Q. B. 81 .. ..	40
McHenry, In re. McDermott <i>v.</i> Boyd. Barker's Claim .. ..	C. A. [1894] 3 Ch. 290 .. ..	1132
McHenry, In re. McDermott <i>v.</i> Boyd. Levita's Claim .. ..	{ [1894] 2 Ch. 428; C. A. [1894] 3 Ch. 365 .. .. }	112
McHenry :—Brandon <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 538 .. ..	112
Machin <i>v.</i> Bennett .. ..	[1900] W. N. 146 .. ..	1414
McHugh :—Barnardo <i>v.</i> .. ..	{ [1891] 1 Q. B. 194; H. L. (E.) [1891] A. C. 388 .. .. }	931, 948
McIlquham <i>v.</i> Taylor .. ..	C. A. [1895] 1 Ch. 53 .. ..	514
McIlroy :—Rymer <i>v.</i> .. ..	[1897] 1 Ch. 528 .. ..	2290
MacIlwaine :—Hebdict <i>v.</i> .. ..	C. A. [1894] 2 Q. D. 54 .. ..	649
McIlwraith & Co. :—Bennetts & Co. <i>v.</i> .. ..	C. A. [1896] 2 Q. B. 464 .. ..	1506
McInaney <i>v.</i> Hildreth .. ..	[1897] 1 Q. B. 600 .. ..	866
M'Inroy <i>v.</i> Athole (Duke of) .. ..	H. L. (Sc.) [1891] A. C. 629 ..	1840
MacIntosh :—Wilson <i>v.</i> .. ..	P. C. [1894] A. C. 129 .. ..	1331
McIntyre Brothers <i>v.</i> McGavin .. ..	H. L. (Sc.) [1893] A. C. 268 ..	2273
MacIver <i>v.</i> Burns (G. & J.) .. ..	C. A. [1895] 2 Ch. 630 .. ..	1537



Name of Case.	Volume and Page.	Column of Digest.
Mack v. Postle .. .. .	[1894] 2 Ch. 449 .. ..	1553
Mackay v. McGuire .. .. .	[1891] 1 Q. B. 250 .. ..	125, 1373
Mackay & Davies:—Holness v. .. .. .	C. A. [1899] W. N. 65; [1899] 2 Q. B. 319 .. ..	1228
McKay's Case. In re Concessions Trust .. .. .	[1896] 2 Ch. 757 .. ..	423
McKeckine:—Thomas v. In re Elen .. .. .	[1893] W. N. 90 .. ..	1476
M'Keever v. Buchanan .. .. .	C. A. (Ir.) [1899] W. N. 159 ..	1377
McKellar:—Reg. v. .. .. .	[1893] 1 Q. B. 121 .. ..	1372
M'Kendrick v. Buchanan .. .. .	C. A. (Ir.) [1899] W. N. 172 ..	1368
Mackenzie, In re. Ex parte Hertfordshire (Sheriff of) .. .. .	C. A. [1899] W. N. 132; [1899] 2 Q. B. 566 .. ..	121, 129
McKenzie v. Day .. .. .	[1893] 1 Q. B. 289 .. ..	1109
Mackenzie v. Devonshire (Duke of) .. .. .	H. L. (Sc.) [1896] A. C. 400 ..	1842
Mackenzie:—Greville-Nugent v. .. .. .	H. L. (Sc.) [1899] W. N. 226; } [1900] A. C. 83 .. ..	1262
Mackenzie:—London Trust Co. v. .. .. .	[1893] W. N. 9 .. ..	341
Mackenzie v. Mackenzie .. .. .	H. L. (Sc.) [1895] A. C. 384 ..	1832
McKenzie:—Reg. v. .. .. .	[1892] 2 Q. B. 519 .. ..	606, 1032
McKeown v. Budard Peveril Gear Co. .. .. .	[1896] W. N. 36 (3) .. ..	376
McKeown v. Joint Stock Institute, Ltd. .. .. .	[1899] W. N. 35 (10); [1899] 1 Ch. 671 .. ..	79
Mack's Claim. In re London and Northern Bank .. .. .	[1900] W. N. 114 .. ..	352
Mackey:—Bruty v. In re Buck .. .. .	[1896] 2 Ch. 727 .. ..	857
Mackinnon:—Ballantyne v. .. .. .	C. A. [1896] 2 Q. B. 455 .. ..	768
Mackinnon v. Clark .. .. .	C. A. [1898] 2 Q. B. 251 .. ..	1365
Mackintosh v. Pogose .. .. .	[1895] 1 Ch. 505 .. ..	185, 1904
M'Knight:—Currie v. .. .. .	H. L. (Sc.) [1896] W. N. 164 (6); } [1897] A. C. 97 .. ..	1981
Mackrell:—Barber v. .. .. .	[1892] W. N. 87; C. A. [1892] W. N. 133 .. ..	192
Mackrell v. Brentford Justices .. .. .	[1900] W. N. 141; [1900] 2 Q. B. 387 .. ..	1100
MacLachlan:—Campbell v. .. .. .	C. A. (Sc.) [1899] W. N. 176 ..	1374
MacLachlan:—Lord Advocate v. .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 104 .. ..	1747
M'Laughlin's Case. M'Dermott v. Chambers .. .. .	C. A. (Ir.) [1898] W. N. 100 ..	1392
M'Laughlin v. Chambers .. .. .	C. A. (Ir.) [1898] W. N. 90 ..	1379
Macleod, In re. Mills v. Macleod .. .. .	[1895] W. N. 97 .. ..	1900
Macleod v. Att.-Gen. for New South Wales .. .. .	P. C. [1891] A. C. 455 .. ..	1324
McLeod v. McNab .. .. .	P. C. [1891] A. C. 471 .. ..	2356
McLeod v. Power .. .. .	[1898] 2 Ch. 295 .. ..	1496
McLeod v. St. Aubyn .. .. .	P. C. [1899] A. C. 549 .. ..	502
McMahon, In re. Fuller v. McMahon .. .. .	[1899] W. N. 250; [1900] 1 Ch. 173 .. ..	148
McMahon v. North Kent Ironworks Co. .. .. .	[1891] 2 Ch. 148 .. ..	340 1499, 1626, 1627, 2261, 1546
McMeckan:—Aitken v. .. .. .	P. C. [1895] A. C. 310 .. ..	97
Macmillan v. Australasian Territories .. .. .	[1897] W. N. 30 (14) .. ..	251
MacMillan:—London Chartered Bank of Australia v. .. .. .	P. C. [1892] A. C. 292 .. ..	37, 547 287
McMillan:—Palgrave Gold Mining Co. v. .. .. .	P. C. [1892] A. C. 460 .. ..	
McMullen:—Unwin v. .. .. .	C. A. [1891] 1 Q. B. 694 .. ..	
McMurray:—Shanghai Municipal Council v. .. .. .	P. C. [1900] A. C. 206 .. ..	

Name of Case.	Volume and Page.	Column of Digest.
McNab :—McLeod <i>v.</i> .. .. .	P. C. [1891] A. C. 471 .. ..	2356
M'Nab <i>v.</i> Robertson .. .. .	H. L. (Sc.) [1896] W. N. 179 (7); [1897] A. C. 129 .. ..	2282
McNair & Co. <i>v.</i> Audenshaw Paint and Colour Co. .. .. .	C. A. [1891] 2 Q. B. 502 .. ..	45
McNamara & Co. :—Wilmer <i>v.</i> .. .. .	[1895] 2 Ch. 245 .. ..	354
McNicholas <i>v.</i> Dawson & Son .. .. .	C. A. [1899] 1 Q. B. 773 .. ..	1225
M'Omish :—Glasgow Corporation <i>v.</i> .. .. .	H. L. (Sc.) [1897] W. N. 67 (1); [1898] A. C. 432 .. ..	39, 1841
McMurdo, In re. Penfield <i>v.</i> McMurdo .. .. .	[1896] W. N. 171 (9); [1897] 1 Ch. 119 .. ..	2036
Macmurdo, In re. Penfield <i>v.</i> Macmurdo .. .. .	[1892] W. N. 73 .. ..	402, 798
Macnish & Son :—Cochrane <i>v.</i> .. .. .	P. C. [1896] A. C. 225 .. ..	1019
McPhail :—Westport Coal Co. <i>v.</i> .. .. .	C. A. [1898] 2 Q. B. 130 .. ..	1971
Macrae, Ex parte .. .. .	P. C. [1893] A. C. 346 .. ..	1591
Macredie :—Sailing Ship "Blairmore" Co. <i>v.</i> .. .. .	H. L. (Sc.) [1898] A. C. 593 .. ..	1002
McSwaine <i>v.</i> Lascelles .. .. .	P. C. [1895] A. C. 618 .. ..	1638
Madden <i>v.</i> Kensington Vestry .. .. .	[1892] 1 Q. B. 614 .. ..	1181
Madden <i>v.</i> Nelson and Fort Sheppard Ry. .. .. .	P. C. [1899] A. C. 626 .. ..	248
Maddick :—Coupé Co. <i>v.</i> .. .. .	[1891] 2 Q. B. 413 .. ..	89, 1240
Maddock, In re. Butt <i>v.</i> Wright .. .. .	[1899] W. N. 122; [1899] 2 Ch. 588 .. ..	2181
Maddock :—Hartley <i>v.</i> .. .. .	[1899] W. N. 83; [1899] 2 Ch. 199 .. ..	1714
Maddocks :—Rogers <i>v.</i> .. .. .	C. A. [1892] 3 Ch. 346 .. ..	1723
Madeley <i>v.</i> Ross, Sleeman & Co. .. .. .	[1897] 1 Ch. 505 .. ..	318
Madell <i>v.</i> Thomas & Co. .. .. .	C. A. [1891] 1 Q. B. 230 .. ..	205
"Madras," The .. .. .	[1898] P. 90 .. ..	2011
Magee <i>v.</i> Mortimer .. .. .	C. A. (Ir.) [1898] W. N. 102 .. ..	1389
Magniac :—Crossley <i>v.</i> .. .. .	[1893] 1 Ch. 594 .. ..	2075
Magniac :—Dashwood <i>v.</i> (No. 1) .. .. .	C. A. [1891] 3 Ch. 306 .. ..	1045, 1879, 2109, 2269
(No. 2) .. .. .	[1892] W. N. 54 .. ..	560, 575
Magnolia Metal Co.'s Trade-marks, In re .. .. .	C. A. [1897] 2 Ch. 371 .. ..	2131
Mahon, In re .. .. .	C. A. [1893] 1 Ch. 507 .. ..	2029
Mahoney <i>v.</i> M'Carthy .. .. .	[1892] P. 21 .. ..	703, 1617,
Maidstone (Corporation of) :—Howlett <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 110 .. ..	577
"Main," The .. .. .	[1894] P. 320 .. ..	993
Main Colliery Co. <i>v.</i> Davies .. .. .	H. L. (E.) [1900] A. C. 358 .. ..	1218
Main Colliery Co. :—Powell <i>v.</i> .. .. .	C. A. [1900] W. N. 73; [1900] 2 Q. B. 145; H. L. (E.) [1900] W. N. 144; [1900] A. C. 366	1246
Mainland <i>v.</i> Cave. In re Cave .. .. .	[1892] W. N. 142 .. ..	1694
Maisey :—Hickman <i>v.</i> .. .. .	C. A. [1900] W. N. 72; [1900] 1 Q. B. 752 .. ..	899
Maison Louis Pinet, Ltd. :—Pinet & Cie. (F.) <i>v.</i> .. .. .	[1897] W. N. 172 (11); [1898] 1 Ch. 179 .. ..	2140
Makin <i>v.</i> Att.-Gen. for New South Wales .. .. .	P. C. [1894] A. C. 57 .. ..	610, 1324
Makins <i>v.</i> Ibotson (Percy) & Sons .. .. .	[1891] 1 Ch. 133 .. ..	330, 1704, 1706
Malam, In re. Malam <i>v.</i> Hitchens .. .. .	[1894] 3 Ch. 578 .. ..	1853
Malcolm <i>v.</i> Browne .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 124 .. ..	1385
Malcolm <i>v.</i> Buiford-Hancock. In re Hancock .. .. .	C. A. [1896] 2 Ch. 173 .. ..	1480

Name of Case.	Volume and Page.	Column of Digest.
Malcolm Flinn & Co. v. Hoyle .. .. .	C. A. [1893] W. N. 167 ..	1580
Malcolm Khan, Prince :—Persian Investment Corporation v. .. .. .	[1893] W. N. 49 .. ..	310
Maldon Urban Sanitary Authority :—Gozzett v. .. .. .	[1894] 1 Q. B. 327 .. ..	2084
Male :—Reid's Brewery Co. v. .. .. .	[1891] 2 Q. B. 1.. .. ..	1760
Mallandaine :—Leeds Benefit Building Society v. .. .. .	C. A. [1897] 2 Q. B. 402 ..	1760
Malling Rural Council :—Simmons v. .. .. .	[1897] 2 Q. B. 433 .. ..	1917
Malleson v. General Mineral Patents Syndicate, } Ld. .. .. .	[1894] 3 Ch. 538 .. ..	356
Malleson v. National Insurance and Guarantee Corporation .. .. .	[1894] 1 Ch. 200 .. ..	368
Mallet v. Great Eastern Ry. Co. .. .. .	[1899] 1 Q. B. 309 .. ..	1644
Malling Justices :—Whiffen v. .. .. .	C. A. [1892] 1 Q. B. 362 ..	1102
Mallinson v. Carr .. .. .	Div. Ct. [1891] 1 Q. B. 48 ..	830
Manchester Brewery Co. :—North Cheshire and } Manchester Brewery Co. v. .. .. .	C. A. [1898] 1 Ch. 539; H. L. (E.) [1898] W. N. 168 (5); H. L. (E.) [1899] A. C. 83 .. ..	2139
Manchester Corporation :—Att.-Gen. v. .. .. .	[1893] 2 Ch. 87 .. ..	966, 1346
Manchester Corporation :—Lancashire Asylums Board v. .. .. .	[1899] 1 Q. B. 759; C. A. [1900] 1 Q. B. 458 .. ..	1675
Manchester Corporation v. McAdam .. .. .	C. A. [1895] 1 Q. B. 673; H. L. (E.) [1896] A. C. 500 ..	1774
Manchester and Milford Ry. Co., In re .. .. .	[1897] 1 Ch. 276 .. ..	1657
Manchester Justices :—Reg. v. .. .. .	[1899] W. N. 18 (6); [1899] 1 Q. B. 571 .. ..	1114
Manchester Corporation v. Williams .. .. .	[1891] 1 Q. B. 94 .. ..	545, 644
Manchester Corporation :—Withington Local Board of Health v. .. .. .	C. A. [1893] 2 Ch. 19 .. ..	1346
Manchester, Middleton and District Tramways Co., In re .. .. .	[1893] 2 Ch. 638 .. ..	1363, 1364
Manchester Packing Co. :—Rogers v. .. .. .	[1898] 1 Q. B. 344 .. ..	1236
Manchester Racecourse Co. :—Manchester Ship Canal Co. v. .. .. .	[1900] W. N. 134; [1900] 2 Ch. 352 .. ..	514
Manchester Real Ice Skating and Supply Co., In re .. .. .	C. A. [1900] W. N. 63; [1900] 1 Ch. 573 .. ..	1047
Manchester, Sheffield and Lincolnshire Ry. Co. :—Bentley v. .. .. .	[1891] 3 Ch. 222 .. ..	633, 1498
Manchester, Sheffield and Lincolnshire Ry. Co. :—Brook v. .. .. .	[1895] 2 Ch. 571 .. ..	1087
Manchester, Sheffield and Lincolnshire Ry. Co. v. Anderson .. .. .	C. A. [1898] 2 Ch. 394 .. ..	1644
Manchester, Sheffield and Lincolnshire Ry. Co. :—Doncaster Union v. .. .. .	H. L. (E.) [1895] A. C. 133, n. {	1684, 1687
Manchester, Sheffield and Lincolnshire Ry. Co. v. Doncaster Union (Guardians of the Poor of) .. .. .	C. A. [1897] 1 Q. B. 117 .. ..	1457
Manchester, Sheffield and Lincolnshire Ry. Co. :—Gonty v. .. .. .	C. A. [1896] 2 Q. B. 439 .. ..	1089
Manchester, Sheffield and Lincolnshire Ry. Co. v. Kingston-upon-Hull Guardians .. .. .	[1896] W. N. 71 (9) .. ..	1685
Manchester, Sheffield and Lincolnshire Ry. Co. :—New Moss Colliery Co. v. .. .. .	[1897] 1 Ch. 725 .. ..	259
Manchester, Sheffield and Lincolnshire Ry. Co. :—Taylor v. .. .. .	C. A. [1895] 1 Q. B. 134 .. ..	505, 586, 1653, 2115
Manchester Ship Canal Co. :—Fairclough v. .. .. .	C. A. [1897] W. N. 7 (13) ..	504
Manchester Ship Canal Co. v. Rochdale Canal Proprietors .. .. .	[1899] W. N. 24 (11) .. ..	2116

Name of Case.	Volume and Page.	Column of Digest.
Manchester Ship Canal Co. v. Manchester Race-course Co. .. .. .	[1900] W. N. 134; [1900] 2 Ch. 352	514
Manchester Ship Canal Co. v. Pearson (S.) & Sons, Ltd. .. .. .	C. A. [1900] W. N. 178; [1900] 2 Q. B. 606	66
Manchester Trust v. Furness, Withy & Co. .. .. .	[1895] 2 Q. B. 282; C. A. [1895] 2 Q. B. 539	1973
Mander v. Falcke (No. 1) .. .. .	C. A. [1891] 2 Ch. 554	602
— (No. 2) .. .. .	[1891] 3 Ch. 488	81, 1547
Mander v. Ridgway .. .. .	[1898] 1 Q. B. 501	585
Manders v. Manders .. .. .	[1897] 1 Q. B. 474	925
Mandleberg v. Morley (No. 1) .. .. .	[1893] W. N. 157	1437
— (No. 2) .. .. .	[1895] W. N. 9	1437
Mandleberg & Co., Ex parte. In re Howells .. .. .	[1895] 1 Q. B. 844	164, 681
Mangan v. Metropolitan Electric Supply Co. .. .. .	C. A. [1891] 2 Ch. 551	1557
Manifold :—Drielsma v. .. .. .	C. A. [1894] 3 Ch. 100	2033
Manila Ry. Co.:—Governments Stock Investment and other Securities Co. v. .. .. .	C. A. [1895] 2 Ch. 551; H. L. (E.) [1896] W. N. 174 (6); [1897] A. C. 81	322
Manitoba and North West Land Corporation v. —Allan .. .. .	[1893] 3 Ch. 432	966, 1537, 1540
Manitoba and North Western Ry. Co. of Canada :—Grey v. .. .. .	P. C. [1897] A. C. 254	250
Mann (Mary), In the Goods of .. .. .	[1891] P. 293	1601
Mann v. Edinburgh Northern Tramways Co. .. .. .	H. L. (Sc.) [1893] A. C. 692	372
Mann v. Johnson .. .. .	[1893] W. N. 196	1371
Manners v. Pearson & Son .. .. .	C. A. [1898] 1 Ch. 581	4
“Mannheim,” The .. .. .	[1896] W. N. 159 (1); [1897] P. 13	1995
Manning :—Chadwick v. .. .. .	P. C. [1896] A. C. 231	1323
Manning :—Sheppard v. In re Sheppard .. .. .	[1897] 2 Ch. 67	765
Mansel, In re. Ex parte Norton .. .. .	C. A. [1892] W. N. 32	176, 1127
Mansell v. British Linen Co. Bank .. .. .	[1892] 3 Ch. 159	637
Mansfield Corporation v. Buttesworth .. .. .	[1898] 2 Q. B. 274	2090
Mansion House Association on Ry. Traffic v. Great Western Ry. Co. .. .. .	C. A. [1895] 2 Q. B. 141	1655, 1657, 1658
Mansion House Association on Ry. Traffic v. London and North Western Ry. Co. .. .. .	[1896] 1 Q. B. 273	1658
Mansion House Association on Ry. Traffic v. London and South Western Ry. Co. .. .. .	[1895] 1 Q. B. 927	1662
Mant, Ex parte. In re Daintrey .. .. .	C. A. [1900] 1 Q. B. 546	170
Mantle v. Jordan .. .. .	[1897] 1 Q. B. 248	548
“Maori King” (Owners of Cargo of) v. Hughes .. .. .	C. A. [1895] 2 Q. B. 550	1559, 1973
Maple & Co.:—Wheaton v. .. .. .	C. A. [1893] 3 Ch. 48	627, 1118
Maplin Sands, In re .. .. .	[1894] W. N. 141; C. A. [1894] W. N. 184	64, 779
Mara v. Browne .. .. .	[1895] 2 Ch. 69; C. A. [1896] 1 Ch. 199	2056
Marchant, In the Goods of .. .. .	[1893] P. 254	1620
Marcks :—Harper v. .. .. .	[1894] 2 Q. B. 319	607
Marcus :—Edwards v. .. .. .	C. A. [1894] 1 Q. B. 587	200
Mardell v. Curtis .. .. .	[1899] W. N. 93	1082
Mardon, In re .. .. .	[1895] W. N. 152 (2); [1896] 1 Q. B. 140	173
Mardon, Ex parte. In re Downing .. .. .	C. A. [1891] W. N. 180	112

Name of Case.	Volume and Page.	Column of Digest.
"Maréchal Suchet," The .. .. .	[1896] P. 233 .. .. .	1997
Margate Pier and Harbour (Company of Proprietors of):—Att.-Gen. v. .. .. .	[1900] W. N. 65; [1900] 1 Ch. 749 .. .. .	1633
Margetson & Co. v. Glynn .. .. .	C. A. [1892] 1 Q. B. 337; H. L. (E.) [1893] A. C. 351 .. .. .	1967
Margetson and Jones, In re .. .. .	[1897] 2 Ch. 314 .. .. .	2050
Margetts, In re .. .. .	[1896] 2 Ch. 263 .. .. .	2032
Margrett, Ex parte. In re Soltykoff .. .. .	C. A. [1891] 1 Q. B. 413 .. .. .	104, 193, 954
Margrett:—Ramsay v. .. .. .	C. A. [1894] 2 Q. B. 18 .. .. .	40, 210, 905, 1693
"Marianne," The .. .. .	[1891] P. 180 .. .. .	1986
Marine Insurance Co.:—Baring Brothers & Co. v. .. .. .	[1893] W. N. 164 .. .. .	997
"Mariposa," The .. .. .	[1896] P. 273 .. .. .	2008
Maritime Bank of Canada (Liquidators) v. New Brunswick (Receiver-General) .. .. .	P. C. [1892] A. C. 437 .. .. .	239, 241, 251, 292, 293
Markey v. Tolworth Joint Isolation Hospital District Board .. .. .	[1900] 2 Q. B. 454 .. .. .	1634
Markham and Darter's Case. In re African Gold Concessions and Development Co. .. .. .	[1899] W. N. 7 (1); [1899] 1 Ch. 414; C. A. [1899] W. N. 119; [1899] 2 Ch. 480 .. .. .	308
Marks v. Frogley .. .. .	[1898] 1 Q. B. 396; C. A. [1898] 1 Q. B. 888 .. .. .	71
Marland v. Williams. In re Goodenough .. .. .	[1895] 2 Ch. 537 .. .. .	1868
Marlborough (Dowager Duchess of) v. Marlborough (Duke of) .. .. .	[1900] W. N. 88; C. A. [1900] W. N. 270 .. .. .	1907
Marlborough (Duke of), In re, Contract between, and the Governors of Queen Anne's Bounty .. .. .	[1897] 1 Ch. 712 .. .. .	886
Marlborough (Duke of), In re. Davis v. Whitehead .. .. .	[1894] 2 Ch. 133 .. .. .	851
Marney v. Scott .. .. .	[1899] 1 Q. B. 986 .. .. .	1316
"Marpessa," The .. .. .	[1891] P. 403 .. .. .	1931
Marriage, Neave & Co., In re. North of England Trustee, Debenture and Assets Corporation v. Marriage, Neave & Co. .. .. .	C. A. [1896] 2 Ch. 663 .. .. .	353
Marriner v. Bishop of Baths and Wells .. .. .	[1893] P. 145, n. .. .. .	753
Marrow v. Flimby and Broughton Moor Coal and Fire Brick Co. .. .. .	C. A. [1898] 2 Q. B. 588 .. .. .	1233
Marsden:—Montforts v. .. .. .	C. A. [1895] 1 Ch. 11 .. .. .	2057
Marsden:—Moser v. .. .. .	C. A. [1892] 1 Ch. 487 .. .. .	1438, 1507, 1514
Marsden:—Reg. v. .. .. .	[1891] 2 Q. B. 149 .. .. .	620
Marsden (J.) & Sons:—Price v. .. .. .	C. A. [1899] 1 Q. B. 493 .. .. .	1219
Marsh:—Green v. .. .. .	C. A. [1892] 2 Q. B. 330 .. .. .	200
Marsh v. Joseph .. .. .	C. A. [1897] 1 Ch. 213 .. .. .	1576
Marshall v. Bluman .. .. .	[1893] W. N. 184 .. .. .	1161
Marshall:—Callander and Trossachs Hydro-pathic Co. and the Eagle Property Co. v. .. .. .	H. L. (Sc.) [1896] A. C. 223 .. .. .	1844
Marshall:—Collard v. .. .. .	[1892] 1 Ch. 571 .. .. .	645, 650, 963
Marshall:—Knott v. .. .. .	[1894] W. N. 214 .. .. .	2120
Marshall v. National Provincial Bank of England .. .. .	[1892] W. N. 34 .. .. .	775, 1287
Marshall v. Orpen .. .. .	P. C. [1895] A. C. 606 .. .. .	262, 376
Marshall:—Sharp v. In re Pope .. .. .	[1900] W. N. 244 .. .. .	11

Name of Case.	Volume and Page.	Column of Digest.
Marshall v. South Staffordshire Tramways Co. . .	C. A. [1895] 2 Ch. 36 .. ..	1562, 2149
Marshall v. Taylor .. ..	C. A. [1895] 1 Ch. 641 .. ..	217
Marshall and Salt's Contract, In re .. ..	[1900] W. N. 105; [1900] 2 Ch. 202 .. ..	2254
Marshall, Parkes & Co. :—Powell v. .. ..	C. A. [1899] 1 Q. B. 710 .. ..	155
Marshall's Patent .. ..	P. C. [1891] A. C. 430 .. ..	1441
Marsham :—Reg. v. .. ..	C. A. [1892] 1 Q. B. 371 .. ..	1174, 1207
Marsom :—Wright v. .. ..	[1895] W. N. 148 (11) .. ..	2301
Marson :—Williams v. In re Buckle .. ..	C. A. [1894] 1 Ch. 286 .. ..	2308
Marston :—Edwards v. .. ..	C. A. [1891] 1 Q. B. 225 .. ..	206
Marten :—Steamship Balmoral Co. v. .. ..	[1900] 2 Q. B. 748 .. ..	983
Martin, Ex parte. Drew v. Willis .. ..	C. A. [1891] 1 Q. B. 450 .. ..	269
Martin, In re .. ..	[1900] W. N. 129 .. ..	2191
Martin, In re. Loustalan v. Loustalan .. ..	C. A. [1900] W. N. 103; [1900] P. 211 .. ..	497
Martin, In re. Martin v. Martin .. ..	[1892] W. N. 120 .. ..	2360
Martin :—Brisbane (Municipal Council) v. .. ..	P. C. [1894] A. C. 249 .. ..	1499, 1639
Martin :—Brown v. .. ..	Registration App. Ct. (Sc.) [1897] W. N. 121 .. ..	1386
Martin :—Davis v. In re Queensland Land and Coal Co. .. ..	[1894] 3 Ch. 181 .. ..	335
Martin v. Martin. In re Bourne .. ..	[1893] 1 Ch. 188 .. ..	1743
Martin :—Fox v. .. ..	[1895] W. N. 36 .. ..	401, 771
Martin v. Haarahan (No. 2). Donnelly v. Graham. Connolly v. Riddall .. ..	C. A. (Ir.) [1897] W. N. 103 .. ..	1367
Martin v. Martin & Co. .. ..	C. A. [1897] 1 Q. B. 429 .. ..	1510
Martin v. Price .. ..	C. A. [1894] 1 Ch. 276 .. ..	967, 1119
Martin v. Tomkinson .. ..	[1893] 2 Q. B. 121 .. ..	1403
Martin :—Sutton v. In re Poinsons .. ..	[1891] W. N. 139 .. ..	1503
Martin & Co. :—Midland Ry. Co. v. .. ..	[1893] 2 Q. B. 172 .. ..	658, 769, 1035, 1453
Martin & Varlow, In re .. ..	[1894] W. N. 223 .. ..	1504
Martindale, In re .. ..	[1894] 3 Ch. 193 .. ..	77, 501
Marwick v. Lord Thurlow .. ..	[1895] 1 Ch. 776 .. ..	317
Marx (Jacob) & Co. :—Pittsburgh Crushed Steel Co. v. .. ..	[1897] W. N. 36 (5) .. ..	570
"Mary Thomas," The .. ..	C. A. [1894] P. 108 .. ..	994
"Mary" Tug Co. v. British India Steam Navigation Co. The "Meanatchy" .. ..	P. C. [1897] A. C. 351 .. ..	1945
Marylebone Vestry :—Reg. v. .. ..	C. A. [1895] 1 Q. B. 771 .. ..	235
Marylebone Vestry v. London (Sheriff of) .. ..	[1900] 1 Q. B. 111; C. A. [1900] 2 Q. B. 591 .. ..	1925
Maryon-Wilson, In re. Wilson v. Maryon-Wilson .. ..	[1899] W. N. 97; [1899] 2 Ch. 489; C. A. [1900] W. N. 57; [1900] 1 Ch. 565 .. ..	1742, 1743
Maryport Hematite Iron and Steel Co., In re. Cumberland Union Banking Co. v. Maryport Hematite Iron and Steel Co. (No. 2) .. ..	[1892] 1 Ch. 415 .. ..	827
Maryport Hematite Iron and Steel Co. :—Cumberland Union Banking Co. v. (No. 1) .. ..	[1892] 1 Ch. 92 .. ..	1301
Maskell and Goldfinche's Contract, In re .. ..	[1895] 2 Ch. 525 .. ..	875, 2251
Maskelyne British Typewriter, Ltd., In re. Stuart v. Maskelyne British Typewriter, Ltd. .. ..	C. A. [1897] W. N. 170 (2); [1898] 1 Ch. 133 .. ..	331

Name of Case.	Volume and Page.	Column of Digest.
Mason, Ex parte. In re Errington .. ..	[1894] 1 Q. B. 11 .. ..	152
Mason, Ex parte. In re Isaacson .. ..	C. A. [1895] 1 Q. B. 333 .. ..	211
Mason, Ex parte. In re Smith .. ..	[1893] 1 Q. B. 323 .. ..	145, 874
Mason, In re. Ex parte Bing .. ..	[1899] 1 Q. B. 810 .. ..	152
Mason, In re. Mason v. Mason .. ..	[1891] 3 Ch. 467 .. ..	10, 2160 <sup>a</sup>
Mason, In re. Ogden v. Mason .. ..	[1900] W. N. 105; [1900] 2 Ch. 196 .. ..	2353
Mason v. British Ry. Carriage Metal Fittings, &c., Co. In re British Ry. Carriage Metal Fittings, &c., Co. .. ..	[1898] W. N. 173 (9) .. ..	318
Mason v. Cowdary .. ..	[1900] 2 Q. B. 419 .. ..	18
Mason v. Dean, A. R., Ltd. .. ..	C. A. [1900] W. N. 48; [1900] 1 Q. B. 770 .. ..	1230
Mason v. Mercer. In re Gurney .. ..	[1893] 1 Ch. 590 .. ..	2192
Mason:—Sharman v. .. ..	[1899] W. N. 217; [1899] 2 Q. B. 679 .. ..	137
Mason & Barry, Ltd.:—Levasseur v. .. ..	C. A. [1891] 2 Q. B. 73 .. ..	1011, 1696
Mason & Co.:—Smith v. .. ..	[1894] 2 Q. B. 363 .. ..	1799
Mason's Orphanage and London and North Western Ry. Co., In re .. ..	[1895] W. N. 138 (3); [1896] 1 Ch. 54; C. A. [1896] 1 Ch. 596 .. ..	273
Masonic and General Life Assurance Co. v. Sharpe. In re Sharpe. In re Bennett .. ..	C. A. [1892] 1 Ch. 154 .. ..	342, 1127
Massam:—Thorley v. In re Thorley .. ..	C. A. [1891] 2 Ch. 613 .. ..	2196
Massey, In the Goods of .. ..	[1899] P. 270 .. ..	1599
Massey:—Colonial Securities Trust Co. v. .. ..	C. A. [1896] 1 Q. B. 38 .. ..	46
Massey v. Morris .. ..	[1894] 2 Q. B. 412 .. ..	1989
Masterman:—Harbin v. (No. 1) .. ..	C. A. [1894] 2 Ch. 184; H. L. (E.) [1895] A. C. 186 .. ..	7
————— (No. 2) .. ..	[1895] W. N. 160 (1); C. A. [1896] 1 Ch. 351 .. ..	33
Masterman:—Wharton v. .. ..	H. L. (E.) [1895] A. C. 186 .. ..	7
Masters, Ex parte. In re Charwood .. ..	[1894] 1 Q. B. 643 .. ..	117, 2030
Masters:—James v. .. ..	[1893] 1 Q. B. 355 .. ..	2081
Masters:—Ryley v. .. ..	[1892] 1 Q. B. 674 .. ..	1566
Mather v. Lawrence .. ..	[1899] W. N. 67; [1899] 1 Q. B. 1001 .. ..	182F
Matheson v. Ludwig. In re Doetsch .. ..	[1896] 2 Ch. 836 .. ..	496
Matlock Bath and Scarthin Nick (Urban District of):—Derby (County Council of) v. .. ..	H. L. (E.) [1896] A. C. 315 .. ..	895
Matson, In re. James v. Dickinson .. ..	[1897] 2 Ch. 509 .. ..	1012
Mathieu:—Wentworth v. .. ..	P. C. [1900] A. C. 212 .. ..	242
Matthewman:—Neville v. .. ..	C. A. [1894] 3 Ch. 345 .. ..	1518, 1519
Matthews, In the Goods of .. ..	[1897] W. N. 163 (8); [1898] P. 17 .. ..	1624
Matthews v. Usher .. ..	C. A. [1900] 2 Q. B. 535 .. ..	1079
Matthews:—Corn v. .. ..	C. A. [1893] 1 Q. B. 310 .. ..	49, 944
Matthews:—Helby v. .. ..	C. A. [1894] 2 Q. B. 262; H. L. (E.) [1895] A. C. 471 .. ..	815
Maude v. Brook .. ..	C. A. [1900] 1 Q. B. 575 .. ..	1229
Maudslay, Sons & Field, In re. Maudslay v. Maudslay, Sons & Field .. ..	[1900] W. N. 51; [1900] 1 Ch. 602 .. ..	323
Maughan v. General Trustees of the Free Church of Scotland .. ..	Ct. of Sess. (Sc.) [1896] W. N. 105 .. ..	1762
Maund, In re. Ex parte Maund .. ..	[1895] 1 Q. B. 194 .. ..	141

Name of Case.	Volume and Page.	Column of Digest.
Mawn:—Hove, St. Andrew's (Vicar, &c.) <i>v.</i> ..	[1895] P. 228, n. ..	742
Maxim-Nordenfelt Guns and Ammunition Co., Ex parte. In re Nordenfelt .. ..	C. A. [1895] 1 Q. B. 151 ..	141
Maxim-Nordenfelt Guns and Ammunition Co.:— Nordenfelt <i>v.</i> (No. 1) .. ..	C. A. [1893] 1 Ch. 630; H. L. (E.) [1894] A. C. 535 ..	1721, 1723
(No. 2)	C. A. [1893] 3 Ch. 122 ..	677
Maxton and Murray:—Cellular Clothing Co. <i>v.</i> {	H. L. (Sc.) [1899] W. N. 56; } [1899] A. C. 326 ..	2139
Maxwell's Case (Gallagher <i>v.</i> Maxwell) ..	C. A. (Ir.) [1897] W. N. 134 ..	1384
May <i>v.</i> Chidley .. ..	[1894] 1 Q. B. 451 ..	93, 1563
May <i>v.</i> Platt .. ..	[1900] W. N. 69; [1900] 1 Ch. 616 ..	2228
May:—Smith <i>v.</i> In re Morgan .. ..	[1900] W. N. 151; [1900] 2 Ch. 474 ..	1406
Mayer:—Saffery <i>v.</i> .. ..	C. A. [1900] W. N. 242 ..	865
Mayeu:—Duck <i>v.</i> .. ..	C. A. [1892] 2 Q. B. 511 ..	1710
Mayfair Property Co., In re. Bartlett <i>v.</i> May- fair Property Co. .. ..	[1897] W. N. 174 (4); C. A. [1898] 2 Ch. 28 ..	328
Mayfair Property Co. <i>v.</i> Johnston .. ..	[1894] 1 Ch. 508 ..	965, 1409
Mayfair Property Co.:—Johnston <i>v.</i> ..	[1893] W. N. 73 ..	1157
Mayflower (The Log of the), In re ..	[1897] P. 208 ..	738
Maynard's Settled Estate, In re ..	[1899] W. N. 108; [1899] 2 Ch. 347 ..	1262
Maynards, Ltd., In re .. ..	[1898] 1 Ch. 515 ..	397
Mayo:—Cubison <i>v.</i> .. ..	C. A. [1896] 1 Q. B. 246 ..	589
Mayor <i>v.</i> Hotckin. In re Fearon .. ..	[1896] W. N. 175 (12) ..	915
May's Metal Separating Syndicate, In re	[1898] W. N. 159 (5) ..	307
Meaby & Co., In re. Clarke <i>v.</i> Meaby & Co. ..	[1899] W. N. 58 ..	467
Mead:—Reg. <i>v.</i> .. ..	[1894] 2 Q. B. 124 ..	1350
Mead:—Reg. <i>v.</i> .. ..	[1897] W. N. 153 (11); [1898] 1 Q. B. 110 ..	1155
Meador <i>v.</i> West Cowes Local Board ..	C. A. [1892] 3 Ch. 18 ..	1911
Meadows:—Pulman <i>v.</i> .. ..	[1900] W. N. 273 ..	802
Meakin:—Stock <i>v.</i> .. ..	[1899] W. N. 108; [1899] 2 Ch. 496; C. A. [1900] W. N. 73; [1900] 1 Ch. 683 ..	2090
"Meanatchy," The. "Mary" Tug Co. <i>v.</i> British India Steam Navigation Co. .. ..	P. C. [1897] A. C. 351 ..	1945
Meara:—O'Shea <i>v.</i> .. ..	C. A. (Ir.) [1899] W. N. 177 ..	1376
"Mecca," The .. ..	C. A. [1895] P. 95 ..	1988
"Mecca" Owners of Turkish Steamship:—Cory Brothers & Co. <i>v.</i> .. ..	H. L. (E.) [1897] A. C. 286 ..	50
Medawar <i>v.</i> Grand Hotel Co. .. ..	C. A. [1891] 2 Q. B. 11 ..	972
Medcalfe <i>v.</i> Cox .. ..	H. L. (Sc.) [1895] A. C. 328; [1896] A. C. 647 ..	2209
"Mediana" (Owners of the Steamship) <i>v.</i> "Comet" (Owners, Master & Crew of Light- ship). The "Mediana" .. ..	[1899] W. N. 14 (2); C. A. [1899] W. N. 17 (1); [1899] P. 127; H. L. (E.) [1900] W. N. 34; [1900] A. C. 113 ..	1951
Medical Battery Co., In re .. ..	[1894] 1 Ch. 444 ..	439, 460
Medical Council:—Reg. <i>v.</i> .. ..	[1897] 1 Q. B. 764; C. A. [1897] 2 Q. B. 203 ..	1251
Medows, In re. Norie <i>v.</i> Bennett .. ..	[1898] 1 Ch. 300 ..	1866
Medway <i>v.</i> Medway .. ..	[1900] P. 141 ..	925
Mee:—Ind, Coope & Co. <i>v.</i> .. ..	[1895] W. N. 8 ..	1704
Meeus' Application, In re .. ..	[1891] 1 Ch. 41 ..	2125
Mein:—Thompson <i>v.</i> .. ..	[1893] W. N. 202 ..	1267



Name of Case.	Volume and Page.	Column of Digest.
Melaugh v. Chambers .. .. .	C. A. (Ir.) [1898] W. N. 119 ..	1371
Mellen :—Swan v. .. .. .	[1892] W. N. 106; C. A. [1892] W. N. 128 .. .. .	14
Mellersh :—Fitzgerald's Trustee v. (No. 1) ..	[1892] W. N. 4 .. .. .	1802
(No. 2) .. .. .	[1892] 1 Ch. 385 .. .. .	1285
Mellin v. White .. .. .	C. A. [1894] 3 Ch. 276; H. L. (E.) [1895] A. C. 154 .. .. .	650, 970
Mellish :—Lambton v. .. .. .	[1894] 3 Ch. 163 .. .. .	966
Mellor, In re. In re Paget. Mellor v. Mellor ..	[1898] 1 Ch. 290 .. .. .	1479
Mellor :—Hancock v. In re Hodgkinson ..	[1893] W. N. 9 .. .. .	2337
Mellor v. Tomkinson & Co. .. .. .	C. A. [1899] W. N. 8 (2); [1899] 1 Q. B. 374 .. .. .	1216
Mellor :—Vickers v. In re Vickers .. .. .	[1899] W. N. 242 .. .. .	2304
Melville v. Mirror of Life Co. .. .. .	[1895] 2 Ch. 531 .. .. .	538
Melville :—Osborne v. .. .. .	C. A. (Sc.) [1900] W. N. 231 ..	1370
Memorandum .. .. .	[1899] W. N. 121 .. .. .	143
Menzies :—Ballingal v. .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 95 .. .. .	1374
Menzies v. Menzies .. .. .	H. L. (Sc.) [1893] W. N. 48 ..	1831
Mercantile Bank of Australia, In re .. .. .	[1892] 2 Ch. 204 .. .. .	451, 475
Mercantile Bank of London v. Evans .. .. .	C. A. [1899] 2 Q. B. 613 .. .. .	74
Mercantile Bank of London :—Fortescue v. ..	C. A. [1897] 2 Q. B. 236 .. .. .	2039
Mercantile Bank of Sydney v. Taylor .. .. .	P. C. [1893] A. C. 317 .. .. .	1586
Mercantile Investment and General Trust Co. v. International Co. of Mexico .. .. .	C. A. [1883] 1 Ch. 484, n. ..	326
Mercantile Investment and General Trust Co. v. River Plate Trust, Loan and Agency Co. (No. 1) .. .. .	[1892] 2 Ch. 303 .. .. .	319
(No. 2) .. .. .	[1894] 1 Ch. 578 .. .. .	325, 323, 766
Mercer :—Mason v. In re Gurney .. .. .	[1893] 1 Ch. 590 .. .. .	178, 2192
Mercer v. Vans Colina .. .. .	[1900] 1 Q. B. 130, n. .. .. .	178
Mercers' Co. v. Eames .. .. .	[1891] 1 Ch. 658 .. .. .	135, 627, 1117, 1162
Merchant :—Charnock v. .. .. .	[1900] W. N. 10; [1900] 1 Q. B. 474 .. .. .	611
"Merchant Prince," The .. .. .	[1892] P. 9; C. A. [1892] P. 179 .. .. .	1946
Merchants' Fire Office, In re .. .. .	[1899] W. N. 10 (5); [1899] 1 Ch. 432 .. .. .	441
Merchant's Marine Insurance Co. :—Universo Insurance Co. of Milan v. .. .. .	[1896] W. N. 160 (6); [1897] 1 Q. B. 205; affirmed by C. A. [1897] 2 Q. B. 93 .. .. .	998
Meredith, In re. Stone v. Meredith .. .. .	[1898] W. N. 48 (1) .. .. .	49
Meredyth v. Meredyth .. .. .	[1895] P. 92 .. .. .	721
Merionethshire Permanent Benefit Building Society :—Jones v. .. .. .	[1891] 2 Ch. 587; C. A. [1892] 1 Ch. 173 .. .. .	512, 1559
Merlin, In re. Thurburn v. Merlin .. .. .	[1898] W. N. 56 (3) .. .. .	1484
Merrill v. Wilson, Sons & Co. .. .. .	C. A. [1900] W. N. 248 .. .. .	1231
Merry v. Pownall .. .. .	[1898] 1 Ch. 306 .. .. .	1901
Merryweather v. Moore .. .. .	[1892] 2 Ch. 518 .. .. .	1248
Merryweather :—Mowbray v. .. .. .	[1895] 1 Q. B. 857; C. A. [1895] 2 Q. B. 640 .. .. .	2267
Mersey Docks and Harbour Board, Ex parte ..	C. A. [1899] W. N. 19 (9); [1899] 1 Q. B. 546 .. .. .	1009
Mersey Docks and Harbour Board v. Birkenhead Assessment Committee .. .. .	C. A. [1900] 1 Q. B. 143 .. .. .	1680

Name of Case.	Volume and Page.	Column of Digest.
Mersey Docks and Harbour Board :—Eckersley <i>v.</i>	C. A. [1894] 2 Q. B. 667 ..	55
Mersey Docks and Harbour Board <i>v.</i> Inland Revenue Commrs. .. .. .	[1897] 1 Q. B. 786; C. A. [1897] 2 Q. B. 316 .. .. .	1789
Mersey Docks and Harbour Board :—Turner <i>v.</i> The "Zeta" .. .. .	[1891] P. 216; C. A. [1892] P. 285; H. L. (E.) [1893] A. C. 468 .. .. .	1959
Mersey Docks and Harbour Board :—Union Credit Bank <i>v.</i> Same <i>v.</i> Same and North and South Wales Bank .. .. .	[1899] 2 Q. B. 205 .. ..	2158
Mersey Ry. Co., In re .. .. .	C. A. [1895] 2 Ch. 287 .. ..	328
Merthyr Tydfil Local Board <i>v.</i> Merthyr Tydfil Union Assessment Committee .. .. .	[1891] 1 Q. B. 186 .. ..	2279
Merthyr Tydfil Union :—Att.-Gen. <i>v.</i> .. .. .	[1899] W. N. 38 (3); C. A. [1900] W. N. 56; [1900] 1 Ch. 516 .. .. .	1459
Merthyr Tydfil Urban District Council :—Evaus <i>v.</i> .. .. .	C. A. [1899] 1 Ch. 241 .. ..	296
Merthyr Tydfil Urban District Council :—Henderson <i>v.</i> .. .. .	[1900] 1 Q. B. 434 .. ..	2043
Merthyr Tydfil Urban District Council :—Seal <i>v.</i> Mervin, In re. Mervin <i>v.</i> Crossman .. .. .	[1897] 2 Q. B. 543 .. .. [1891] 3 Ch. 197 .. ..	1921 2343
Mess <i>v.</i> Hay .. .. .	H. L. (Sc.) [1899] A. C. 233 .. ..	146
Messer :—Gibbs <i>v.</i> .. .. .	P. C. [1891] A. C. 248 .. ..	2262
Metcalfe <i>v.</i> Cox .. .. .	H. L. (Sc.) [1895] A. C. 328; [1896] A. C. 647 .. .. .	2068
Metcalfe :—Hall <i>v.</i> .. .. .	[1892] 1 Q. B. 208 .. ..	1402
Metcalfe <i>v.</i> Metcalfe .. .. .	C. A. [1891] 3 Ch. 1 .. ..	2330 964, 1640, 1823
Methley School Board :—Richardson <i>v.</i> .. .. .	[1893] 3 Ch. 510 .. ..	
Methven's Executors :—Lord Advocate <i>v.</i> .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 100 .. .. .	1784
"Metropolis," The .. .. .	[1899] W. N. 100 .. ..	2005
Metropolitan, &c., Bank <i>v.</i> H. H. Vivian & Co., In re H. H. Vivian & Co. .. .. .	[1900] W. N. 133; [1900] 2 Ch. 654 .. .. .	320
Metropolitan Board of Works :—Nathan <i>v.</i> .. .. .	[1894] 1 Q. B. 230, n. .. ..	1150
Metropolitan Coal Consumers' Association, In re. Karberg's Case .. .. .	C. A. [1892] 3 Ch. 1 .. ..	370
Metropolitan Coal Consumers' Association :—Cocksedge <i>v.</i> .. .. .	[1891] W. N. 132; C. A. [1891] W. N. 148 .. .. .	466
Metropolitan Coal Consumers' Association <i>v.</i> Scrimgeour .. .. .	C. A. [1895] 2 Q. B. 604 .. ..	394, 400
Metropolitan District Ry. Co. :—Fulham Vestry <i>v.</i> .. .. .	C. A. [1895] 2 Q. B. 443 .. ..	1175
Metropolitan District Ry. Joint Committee :—Brotherton <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 666 .. ..	561
Metropolitan Electric Supply Co. :—Mangan <i>v.</i> .. .. .	C. A. [1891] 2 Ch. 551 .. ..	1557
Metropolitan Fire Insurance Co., In re. Wallace's Case .. .. .	[1900] W. N. 171; [1900] 2 Ch. 671 .. .. .	377
Metropolitan Life Assurance Society :—West Derby Union <i>v.</i> The Same <i>v.</i> Priestman .. .. .	[1896] W. N. 156 (12); C. A. [1897] 1 Ch. 335; H. L. (E.) [1897] A. C. 416 .. .. .	1457
Metropolitan Ry. Co. :—Att.-Gen. <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 384 .. ..	1667
Metropolitan Ry. Co. <i>v.</i> Fowler .. .. .	C. A. [1892] 1 Q. B. 165; H. L. (E.) [1893] A. C. 416 .. ..	1779
Metropolitan Ry. Co. :—Kelly <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 944 .. ..	505, 586 1653, 2115

Name of Case.	Volume and Page.	Column of Digest.
Meunier, In re .. .. .	[1894] 2 Q. B. 415 .. ..	610, 779, 809, 810, 817, 877,
Meux v. Cobley .. .. .	[1892] 2 Ch. 253 .. ..	1054, 1078, 2268
Meux v. Great Eastern Ry. Co. .. ..	C. A. [1895] 2 Q. B. 387 .. ..	505, 586, 1653
Meux's Brewery Co. v. City of London Electric Lighting Co. (No. 1) .. .. .	C. A. [1895] 1 Ch. 287 .. ..	45, 968, 1346
..... (No. 2)	C. A. [1895] 2 Ch. 355 .. ..	968
Mexborough (Earl of) v. Whitwood Urban District Council .. .. .	C. A. [1897] 2 Q. B. 111 .. ..	666
Mexican Investment Corporation:—Finlay v. ..	[1897] 1 Q. B. 517 .. ..	978
Meyer & Co. v. Decroix, Verley & Cie. .. ..	H. L. (E.) [1891] A. C. 520 .. ..	190
Meyrick, In re. Meyrick v. Hargreaves .. ..	[1897] 1 Ch. 99 .. ..	1736
Meyrick v. Att.-Gen. In re Christchurch Inclosure Act (No. 1) .. .. .	H. L. (E.) [1893] A. C. 1. .. ..	297
..... (No. 2)	[1894] 3 Ch. 209 .. ..	297, 2088
Michell, In re. Moore v. Moore .. ..	[1892] 2 Ch. 87 .. ..	726, 2346
Michell v. Loe. In re Hocking .. ..	C. A. [1898] 2 Ch. 567 .. ..	2305
Michell v. Michell (No. 1) .. .. .	[1891] P. 166; C. A. [1891] P. 208 .. ..	721
..... (No. 2) .. .. .	[1891] P. 305 .. ..	721
Michiels v. Empire Palace Co. .. ..	C. A. [1892] W. N. 38 .. ..	569
Micholls v. Samuel. In re Beddington .. ..	[1900] W. N. 76; [1900] 1 Ch. 771 .. ..	2305
Micklethwaite v. Vavasour .. ..	[1893] W. N. 61 .. ..	1533
Middle Temple (Society of the):—Styles v. ..	1898] W. N. 172 (5) .. ..	1754
Middlesborough (Town Clerk of):—Pease v. ..	[1893] 1 Q. B. 127 .. ..	1389
Middlesex County Council v. St. George's Union Assessment Committee .. .. .	[1896] 2 Q. B. 143; C. A. [1896] W. N. 164 (4); [1897] 1 Q. B. 64 .. ..	1676
Middlesex (Sheriff of), Ex parte. In re Thomas ..	[1899] 1 Q. B. 66; C. A. [1899] W. N. 5 (1); [1899] 1 Q. B. 460 .. ..	163
Middleton:—Baxter v. .. ..	[1898] 1 Ch. 313 .. ..	1139
Middleton v. Bradley .. ..	[1895] 2 Ch. 716 .. ..	1437
Middleton:—Wood v. .. ..	[1896] W. N. 176 (16); [1897] 1 Ch. 151 .. ..	1545
Middleton v. Moore. In re Lambert .. ..	[1897] 2 Ch. 169 .. ..	2307
Midgley v. Crowther. In re Crowther .. ..	[1895] 2 Ch. 56 .. ..	1856, 2195
Midgley v. Midgley .. ..	C. A. [1893] 3 Ch. 282 .. ..	799, 2048
Midgley v. Smith .. ..	[1893] W. N. 120 .. ..	2226
Mid-Kent Fruit Factory, In re .. ..	[1892] W. N. 65; [1896] 1 Ch. 567 .. ..	458, 480
Midland Coal, Coke, and Iron Co., In re. Craig's Claim .. ..	C. A. [1895] 1 Ch. 267 .. ..	479
Midland Ry. Co., Ex parte .. ..	[1894] W. N. 38 .. ..	1092
Midland Ry. Co., Ex parte. Ex parte Castle Bytham (Vicar of) .. .. .	[1895] 1 Ch. 348 .. ..	752
Midland Ry.:—Att.-Gen. v. .. ..	[1900] 2 Q. B. 353; C. A. [1900] W. N. 271 .. ..	1804
Midland Ry. Co.:—Bristol and West of England Bank v. .. ..	C. A. [1891] 2 Q. B. 653 .. ..	1450, 1942

Name of Case.	Volume and Page.	Column of Digest.
Midland Ry. Co.:—Derbyshire Silkstone Coal Co. v. .. .. .	[1896] 1 Q. B. 260 .. ..	1659
Midland Ry. Co. v. Edmonton Union .. .. .	C. A. [1895] 1 Q. B. 357; H. L. (E.) [1895] A. C. 485 ..	1040, 1457
Midland Ry. Co.:—Grassmoor Co. v. .. .. .	[1896] 1 Q. B. 260 .. ..	1659
Midland Ry. Co. v. Gribble .. .. .	[1895] 2 Ch. 129; C. A. [1895] 2 Ch. 827 .. ..	1647
Midland Ry. Co. v. Loseby & Carnley .. .. .	H. L. (E.) [1899] W. N. 23 (9); [1899] A. C. 133 .. ..	1665
Midland Ry. Co. v. Martin & Co. .. .. .	[1893] 2 Q. B. 172 .. ..	658, 769, 1035, 1453
Midland Ry. Co.:—Page v. .. .. .	C. A. [1894] 1 Ch. 11 .. ..	2250
Midland Ry. Co.:—Rickett, Smith & Co. v. .. .. .	[1896] 1 Q. B. 260 .. ..	1659
Midland Ry. Co. v. Silvester. In re Silvester .. .. .	[1895] 2 Ch. 573 .. ..	1584
Midwinter v. Midwinter (No. 1) .. .. .	C. A. [1892] P. 28 .. ..	719
Midwinter v. Midwinter (No. 2) .. .. .	[1893] P. 93 .. ..	693, 722
Mighell v. Sultan of Johore .. .. .	C. A. [1894] 1 Q. B. 149 .. ..	1008
Milbank v. Milbank .. .. .	C. A. [1900] W. N. 35; [1900] 1 Ch. 376 .. ..	678
Milbank v. Vane .. .. .	C. A. [1893] 3 Ch. 79 .. ..	2324
Milburn & Co. v. Jamaica Fruit Importing and Trading Co. of London .. .. .	C. A. [1900] W. N. 169; [1900] 2 Q. B. 540 .. ..	1930
Mildmay v. Mildmay. In re Eversley .. .. .	[1899] W. N. 208; [1900] 1 Ch. 96; [1900] 1 Ch. 96 .. ..	2346
Miles v. Great Western Ry. Co. .. .. .	C. A. [1896] 2 Q. B. 432 .. ..	1090
Milford Haven Shipping Co., In re .. .. .	[1895] W. N. 16 .. ..	446
Millage:—Holmes v. .. .. .	C. A. [1893] 1 Q. B. 551 .. ..	1025, 1695, 1698
Millar:—Heritable Reversionary Co. v. .. .. .	H. L. (Sc.) [1892] A. C. 598 .. ..	1829
Millard v. Wastall .. .. .	[1898] 1 Q. B. 342 .. ..	1351
Millard's Settled Estates, In re .. .. .	C. A. [1893] 3 Ch. 116 .. ..	1862
Miller, In re .. .. .	C. A. [1900] W. N. 238 .. ..	108
Miller, In re. Ex parte Official Receiver .. .. .	C. A. [1893] 1 Q. B. 327 .. ..	145, 855
Miller, Ex parte. Reg. v. Glamorgan County Council .. .. .	[1899] W. N. 60; [1899] 2 Q. B. 26; C. A. [1899] W. N. 138; [1899] 2 Q. B. 536 .. ..	579
Miller:—Atlas Metal Co. v. .. .. .	C. A. [1898] 2 Q. B. 500 .. ..	573
Miller v. Bland. In re Bland .. .. .	[1899] 2 Ch. 336 .. ..	2301
Miller v. Borne & Co. .. .. .	[1900] 1 Q. B. 691 .. ..	1935
Miller v. Bruce .. .. .	C. A. (Sc.) [1900] W. N. 230 .. ..	1385
Miller v. Collins .. .. .	C. A. [1896] 1 Ch. 573 .. ..	913
Miller v. Dell .. .. .	C. A. [1891] 1 Q. B. 468 .. ..	658, 1130
Miller:—Fenn v. .. .. .	C. A. [1900] W. N. 64; [1900] 1 Q. B. 788 .. ..	1224
Miller v. Hancock .. .. .	C. A. [1893] 2 Q. B. 177 .. ..	1074
Miller:—Rowlands v. .. .. .	[1899] 1 Q. B. 735 .. ..	2015
Miller:—Wainwright v. .. .. .	[1897] 2 Ch. 255 .. ..	1474
Miller & Aldworth, Ltd. v. Sharp .. .. .	[1899] W. N. 16 (12); [1899] 1 Ch. 622 .. ..	846
Miller Brother & Co.:—Hogarth v. .. .. .	H. L. (Sc.) [1891] A. C. 48 .. ..	1941
Miller's Patent, In re .. .. .	[1894] W. N. 4 .. ..	570
"Millicent," The .. .. .	[1891] W. N. 162 .. ..	27, 2001
Milligan v. Cowan .. .. .	Ct. of Sess. (Sc.) [1897] W. N. 137 .. ..	1731
Milligan v. M'Daid .. .. .	C. A. (Ir.) [1898] W. N. 104 .. ..	1390
Mullington v. Harwood .. .. .	C. A. [1892] 2 Q. B. 166 .. ..	586

Name of Case.	Volume and Page.	Column of Digest.
Mills' Trusts, In re .. .. .	C. A. [1895] 2 Ch. 564 .. ..	138
Mills:—Charlesworth v. .. .. .	H. L. (E.) [1892] A. C. 231 ..	200
Mills:—Collman v. .. .. .	[1896] W. N. 175 (10); [1897] 1 Q. B. 396 .. .. .	1171
Mills v. Dunham .. .. .	C. A. [1891] 1 Ch. 576 .. ..	1720 <sup>2</sup>
Mills:—Eccles v. .. .. .	P. C. [1898] A. C. 360 .. ..	1724
Mills v. Johnston. In re Johnston .. .. .	[1894] 3 Ch. 204 .. ..	1366
Mills v. Macleod. In re Macleod .. .. .	[1895] W. N. 97 .. ..	2182 <sup>2</sup>
Mills v. Mills. In re Gundry .. .. .	[1898] 2 Ch. 504 .. ..	2339 <sup>2</sup>
Mills v. Penton. In re Egan .. .. .	[1899] W. N. 27 (10); [1899] 1 Q. B. 688 .. .. .	1900
Milner, In re. Bray v. Milner .. .. .	[1899] W. N. 27 (7); [1899] 1 Ch. 563 .. .. .	1903
Milner:—Ballard v. .. .. .	[1895] W. N. 14 .. ..	2299
Milner v. Great Northern Ry. Co. .. .. .	C. A. [1900] W. N. 55; [1900] 1 Q. B. 795 .. .. .	1479
Milner's Settlement, In re .. .. .	[1891] 3 Ch. 547 .. ..	1533
Milward & Co., In re .. .. .	C. A. [1900] W. N. 42; [1900] 1 Ch. 405 .. .. .	1228
Milson v. Carter .. .. .	P. C. [1893] A. C. 638 .. ..	920
Milward v. Avill & Smart, Ltd. .. .. .	[1897] W. N. 162 (1) .. ..	569
Milward & Co.:—Farnham v. .. .. .	[1895] 2 Ch. 730 .. ..	1487 <sup>2</sup>
Milward & Co., Solicitors, In re .. .. .	[1899] W. N. 251 .. ..	1592
Minehead Local Board v. Luttrell .. .. .	[1894] 2 Ch. 178 .. ..	332
Mining Shares Investment Co., In re .. .. .	[1893] 2 Ch. 660 .. ..	1186
Minister for Lands:—Abbott v. .. .. .	P. C. [1895] A. C. 425 .. ..	2034
Minister for Lands:—Colless v. .. .. .	P. C. [1899] A. C. 90 .. ..	1916
Minister for Lands v. Harrington .. .. .	P. C. [1899] A. C. 409 .. ..	366
"Minnie," The .. .. .	C. A. [1894] P. 336 .. ..	1324 <sup>2</sup>
Minna Craig Steamship Co. v. Chartered Mercantile Bank of India, London and China .. .. .	[1897] 1 Q. B. 55; C. A. [1897] 1 Q. B. 460 .. .. .	2071
Minor, Ex parte. In re Pollitt .. .. .	[1893] 1 Q. B. 175; C. A. [1893] 1 Q. B. 455 .. .. .	2038
Minor:—Boughey v. .. .. .	[1893] P. 181 .. ..	1325
Minter v. Carr .. .. .	[1894] 2 Ch. 321; C. A. [1894] 3 Ch. 498 .. .. .	1952
Mirams, In re .. .. .	[1891] 1 Q. B. 594 .. ..	467
Mirror of Life Co.:—Melville v. .. .. .	1895] 2 Ch. 531 .. ..	118, 2030 <sup>2</sup>
Miskin Higher, Justices:—Reg. v. .. .. .	[1893] 1 Q. B. 275 .. ..	1611
Mitcham Common (Conservators of):—Cook v. .. .. .	[1900] W. N. 252 .. ..	1276
Mitchell, In re. Wavell v. Mitchell .. .. .	[1892] W. N. 11 .. ..	1306
Mitchell:—Elmsley v. In re Pickard .. .. .	[1894] 2 Ch. 88; C. A. [1894] 3 Ch. 704 .. .. .	538
Mitchell:—London and Midland Bank v. .. .. .	[1899] W. N. 92; [1899] 2 Ch. 161 .. .. .	1104
Mitchell:—Lyon v. .. .. .	[1899] W. N. 37 (6) .. ..	298
Mitchell:—Orr v. .. .. .	H. L. (Sc.) [1893] A. C. 238 ..	1281
Mitchell v. Reg. .. .. .	C. A. [1896] 1 Q. B. 121, n. ..	283
Mitchell:—Rowland v. In re Rowland's Trade-mark .. .. .	C. A. [1896] W. N. 167 (10); [1897] 1 Ch. 71 .. .. .	1133
Mitchell:—Wavell v. .. .. .	[1891] W. N. 86 .. ..	1274
Mitchell v. Weise. Ex parte Friedheim .. .. .	[1892] W. N. 139 .. ..	1832 <sup>2</sup>
Mitchell:—Williams v. In re Byron's Settlement .. .. .	[1891] 3 Ch. 474 .. ..	625

Name of Case.	Volume and Page.	Column of Digest.
Mocambique, Companhia de v. British South African Co. .. .. .	C. A. [1892] 2 Q. B. 358; H. L. (E.) [1893] A. C. 602 ..	1498, 1560
Mockford :—Andrews v. .. .. .	C. A. [1896] 1 Q. B. 372 ..	374, 572
Moffat, In the Goods of .. .. .	[1900] P. 152 .. ..	1600
Moffat :—Wylie. In re Wylie .. .. .	[1895] 2 Ch. 116 .. ..	908, 1596, 2344
Mogridge v. Clapp .. .. .	C. A. [1892] 3 Ch. 382 ..	1873, 2103
Mogul Steamship Co. v. McGregor, Gow & Co. ..	H. L. (E.) [1892] A. C. 25 ..	499
Mohamidu Mohideen Hadjar v. Pitcheny ..	P. C. [1894] A. C. 437 ..	266
Mohan v. Broughton .. .. .	[1899] P. 211; C. A. [1900] W. N. 20; [1900] P. 56 ..	1626
Mohideen Hadjar v. Pitcheny .. .. .	P. C. [1893] A. C. 193 ..	797, 1591
Moir v. Williams .. .. .	C. A. [1892] 1 Q. B. 264 ..	1158
“Molière,” The .. .. .	[1893] P. 217 .. ..	1953
Molleson :—Edinburgh United Breweries, Co., Ltd. v. .. .. .	H. L. (Sc.) [1894] A. C. 96 ..	1831
Molsons’ Bank :—Simpson v. .. .. .	P. C. [1895] A. C. 270 ..	255
Molyneux v. Fletcher .. .. .	[1898] 1 Q. B. 648 ..	2208
“Mona,” The .. .. .	[1894] P. 265 .. ..	2016
Monaghan :—Ward v. .. .. .	C. A. [1895] W. N. 123 (8) ..	1056
Monarch Investment Building Society :—Brett v. ..	C. A. [1894] 1 Q. B. 367 ..	232
Monckton v. Payne .. .. .	[1899] 2 Q. B. 603 ..	524
Money Kyrle’s Settlement, In re. Money Kyrle v. Money Kyrle .. .. .	[1900] W. N. 171; [1900] 2 Ch. 839 .. ..	1880
Monk v. Bartram .. .. .	C. A. [1891] 1 Q. B. 346 ..	1501
Monkswell (Lord) v. Thompson .. .. .	C. A. [1898] 1 Q. B. 353 ..	44
Monkswell (Lord) v. Thompson .. .. .	[1898] 1 Q. B. 479 ..	1824
Monro :—Pendarves v. .. .. .	[1892] 1 Ch. 611 ..	1118
Monsen v. Macfarlane & Co. .. .. .	C. A. [1895] 2 Q. B. 562 ..	1960
Monson v. Tussaud (Louis) .. .. .	C. A. [1894] 1 Q. B. 671 ..	645, 963
Monson v. Tussauds, Ltd. .. .. .	C. A. [1894] 1 Q. B. 671 ..	645, 963
Monson’s (Lord) Settled Estates, In re .. .. .	[1898] 1 Ch. 427 .. ..	1877
Montagu, In re. Derbshire v. Montagu .. .. .	[1897] 1 Ch. 685; C. A. [1897] 2 Ch. 8 .. ..	1863
Montagu, In re. Faber v. Montagu .. .. .	[1896] 1 Ch. 549 .. ..	2200
Montagu v. Forwood .. .. .	C. A. [1893] 2 Q. B. 350 ..	1580
Mont de Piété of England, In re .. .. .	[1892] W. N. 166 .. ..	456
“Monte Rosa,” The .. .. .	[1893] P. 23 .. ..	2105
Montefiore :—De Wilton v. In re De Wilton ..	[1900] W. N. 163; [1900] 2 Ch. 481 .. ..	1212
Montforts v. Marsden .. .. .	C. A. [1895] 2 Ch. 11 ..	2057
Montgomerie v. United Kingdom Mutual Steamship Association, Ltd. .. .. .	[1891] 1 Q. B. 370 .. ..	996
Montgomery v. Foy, Morgan & Co. .. .. .	C. A. [1895] 2 Q. B. 321 ..	1505
Montgomery, Jones & Co. v. Liebenenthal ..	C. A. [1898] 1 Q. B. 487 ..	1534
Montgomery :—Thompson v. In re Joule’s Trade-mark .. .. .	H. L. (E.) [1891] A. C. 217 ..	2127
Montgomery & Co. v. De Bulmes .. .. .	C. A. [1898] 2 Q. B. 420 ..	590
Montgomeryshire Brewery Co. :—Robinson v. ..	[1896] 2 Ch. 841 .. ..	312
Montreal (City) :—Déchène v. .. .. .	P. C. [1894] A. C. 640 ..	256
Montreal (City of) v. Standard Light and Power Co. .. .. .	P. C. [1897] A. C. 527 ..	258
Montreal Gas Co. v. Cadieux. Ex parte Montreal Gas Co. .. .. .	P. C. [1898] A. C. 718; [1899] A. C. 589 .. ..	241
Montreal Gas Co. v. Vasey .. .. .	P. C. [1900] A. C. 595 ..	509
Montreal Lithographing Co. v. Sabiston ..	P. C. [1899] A. C. 610 ..	247

Name of Case.	Volume and Page.	Column of Digest.
Monyhan's Case .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 100 .. .. .	1400
Moody, In re. Woodroffe v. Moody .. .. .	[1895] 1 Ch. 101 .. .. .	2340
Moody v. Penfold. In re Lashmar .. .. .	C. A. [1891] 1 Ch. 258 .. .. .	1692, 2191
Moon :—Cain v. .. .. .	[1896] 2 Q. B. 283 .. .. .	725
Mooney v. Chambers .. .. .	C. A. (Ir.) [1899] W. N. 183 .. .. .	1394
Moore, In the Goods of (No. 1) .. .. .	[1892] P. 145 .. .. .	1594, 1608
Moore (Sarah), In the Goods of (No. 2) .. .. .	[1892] P. 378 .. .. .	1618
Moore (Sarah), In the Goods of .. .. .	[1891] P. 299 .. .. .	1608
Moor :—Armitage v. .. .. .	[1900] W. N. 123; [1900] 2 Q. B. 363 .. .. .	1759
Moore v. Atkinson .. .. .	[1891] 1 Q. B. 269 .. .. .	1390
Moore :—Att.-Gen. v. .. .. .	[1893] 1 Ch. 676 .. .. .	540, 627, 2153
Moore (falsely called Bull) v. Bull .. .. .	[1891] P. 279 .. .. .	718
Moore :—Chadburn v. .. .. .	[1892] W. N. 126 .. .. .	765, 2224
Moore :—Coppen v. (No. 1) .. .. .	[1898] 2 Q. B. 300 .. .. .	2122
Moore :—Coppen v. (No. 2) .. .. .	[1898] 2 Q. B. 306 .. .. .	1239
Moore :—Green v. .. .. .	[1891] W. N. 68 .. .. .	1552
Moore :—Evans v. In re Davis .. .. .	C. A. [1891] 3 Ch. 119 .. .. .	1131
Moore v. Fulham Vestry .. .. .	C. A. [1895] 1 Q. B. 399 .. .. .	1270
Moore v. Johnson. In re Johnson .. .. .	[1891] 3 Ch. 48 .. .. .	955
Moore :—Kitts v. .. .. .	C. A. [1895] 1 Q. B. 253 .. .. .	65, 959, 964
Moore v. Knight .. .. .	[1891] 1 Ch. 547 .. .. .	1229, 1130, 1422, 2192
Moore :—Merryweather v. .. .. .	[1892] 2 Ch. 518 .. .. .	1248
Moore :—Middleton v. In re Lambert .. .. .	[1897] 2 Ch. 169 .. .. .	2307
Moore v. Moore .. .. .	[1892] P. 382 .. .. .	696
Moore v. Moore. In re Michell .. .. .	[1892] 2 Ch. 87 .. .. .	726, 2346
Moore v. North Western Bank .. .. .	[1891] 2 Ch. 599 .. .. .	402
Moore :—Palmer v. .. .. .	P. C. [1900] A. C. 293 .. .. .	1259
Moore v. Peachey .. .. .	[1891] 2 Q. B. 707 .. .. .	660
Moore v. Pearce's Dining and Refreshment Rooms .. .. .	[1895] W. N. 136 (4); [1895] 2 Q. B. 657 .. .. .	19
Moore Brothers :—Figg v. .. .. .	[1894] 2 Q. B. 690 .. .. .	167
Moore Brothers & Co., In re .. .. .	C. A. [1899] W. N. 18 (5); [1899] 1 Ch. 627 .. .. .	374
Moorehead v. Torish .. .. .	C. A. (Ir.) [1898] W. N. 95 .. .. .	1394
Moorgate Street and Broad Street Building, Ltd. :—Vale & Sons v. .. .. .	[1899] W. N. 52 .. .. .	1063
Moran v. Place .. .. .	C. A. [1896] P. 214 .. .. .	1613
Morant v. Bolton. In re Bolton's Estate .. .. .	[1892] W. N. 114; C. A. [1892] W. N. 163 .. .. .	845
More-Smyth :—Mountcashell (Earl of) .. .. .	H. L. (I.) [1896] A. C. 158 .. .. .	766
More Brothers & Co. :—Tharsis Sulphur and Copper Co. v. .. .. .	C. A. [1891] 2 Q. B. 647 .. .. .	1966
More Brothers, Cobbett & Son, Ltd. :—Hyslop v. .. .. .	[1891] W. N. 19 .. .. .	370, 403
Moreton v. Hughes. In re Pinhorne .. .. .	[1894] 2 Ch. 276 .. .. .	2336
Morgan, In re. Morgan v. Morgan .. .. .	C. A. [1893] 3 Ch. 222 .. .. .	32, 2309
Morgan, In re. Smith v. May .. .. .	[1900] W. N. 151; [1900] 2 Ch. 474 .. .. .	1406

Name of Case.	Volume and Page.	Column of Digest.
Morgan, and London and North Western Ry. Co., In re .. .. .	[1896] 2 Q. B. 469 .. ..	1089
Morgan :—Att.-Gen. v. .. .. .	C. A. [1891] 1 Ch. 432 .. ..	1260
Morgan v. Blyth .. .. .	[1891] 1 Ch. 337 .. ..	1420, 2056
Morgan v. Bowles .. .. .	[1894] 1 Q. B. 236 .. ..	1163
Morgan v. "Castlegate" Steamship Co. The "Castlegate" .. .. .	H. L. (I.) [1893] A. C. 38 .. ..	1980
Morgan :—Farquharson v. .. .. .	C. A. [1894] 1 Q. B. 552 .. ..	591, 1629
Morgan v. Hill. In re Parker .. .. .	C. A. [1894] 3 Ch. 400 .. ..	1582
Morgan v. Jackson .. .. .	[1895] 1 Q. B. 885 .. ..	861
Morgan :—Jones v. In re Page .. .. .	[1893] 1 Ch. 304 .. ..	2166, 2191
Morgan :—London Provident Building Society v. Morgan v. Richardson. In re Richardson .. .. .	[1893] 2 Q. B. 266 .. .. [1896] 1 Ch. 512 .. ..	230 799
Morgan v. Williams. In re Williams .. .. .	[1892] W. N. 81 .. ..	799
"Morgengry," The, and The "Blackcock" .. .. .	[1899] W. N. 211; C. A. [1900] P. 1 .. ..	1955
Moritz v. Knowles .. .. .	[1899] W. N. 40; C. A. [1899] W. N. 83 .. ..	848
Morley, In re. Morley v. Haig .. .. .	[1895] 2 Ch. 738 .. ..	1855
Morley :—Brearley v. .. .. .	[1899] W. N. 84; [1899] 2 Q. B. 121 .. ..	972
Morley v. Carter .. .. .	[1897] W. N. 153 (8); [1898] 1 Q. B. 8 .. ..	1054
Morley Corporation :—Fielden v. .. .. .	C. A. [1899] 1 Ch. 1; H. L. (E.) [1900] W. N. 40; [1900] A. C. 133 .. ..	567, 2069
Morley :—Crook v. .. .. .	H. L. (E.) [1891] A. C. 316 .. ..	108
Morley v. Leacroft .. .. .	[1896] P. 92 .. ..	756
Morley v. Loughnan .. .. .	[1893] 1 Ch. 736 .. ..	2207
Morley :—Mandleberg v. (No. 1) .. .. .	[1893] W. N. 157 .. ..	1427
(No. 2) .. .. .	[1895] W. N. 9 .. ..	1437
Morley v. Rennoldson .. .. .	C. A. [1895] 1 Ch. 449 .. ..	2343
Morley & Soan, Ex parte. In re Dagnall .. .. .	[1896] 2 Q. B. 407 .. ..	160
Morley :—White v. .. .. .	[1899] W. N. 67; [1899] 2 Q. B. 34 .. ..	871
"Morocco Bound" Syndicate, Ltd. v. Harris .. .. .	[1895] 1 Ch. 534 .. ..	533, 961
Morris, In re. James v. London and County Banking Co. .. .. .	[1898] 2 Ch. 413; C. A. [1899] W. N. 18 (3); [1899] 1 Ch. 485 .. ..	147
Morris, In re. Morris v. Atherden .. .. .	[1894] W. N. 85 .. ..	2339
Morris :—Atkinson v. .. .. .	C. A. [1896] W. N. 167 (7); [1897] P. 40 .. ..	2357
Morris v. Beves .. .. .	[1897] 1 Q. B. 449 .. ..	1824
Morris :—Campbell v. .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 101 .. ..	1398
Morris :—Charlton v. .. .. .	C. A. (Ir.) [1897] W. N. 107 .. ..	1368
Morris v. Delobbel-Flipo .. .. .	[1892] 2 Ch. 352 .. ..	209
Morris v. Duncan .. .. .	[1898] W. N. 148 (4); Div. Ct. [1899] 1 Q. B. 4 .. ..	825
Morris v. Howden .. .. .	[1897] 1 Q. B. 378 .. ..	1989
Morris v. Morris .. .. .	P. C. [1895] A. C. 625 .. ..	1320
Morris :—National Bank of Australasia v. Morris v. Tottenham and Forest Gate Ry. Co. .. .. .	P. C. [1892] A. C. 287 .. .. [1892] 2 Ch. 47 .. ..	1327 1655
Morris, Wilson & Co. v. Coventry Machinists Co. .. .. .	[1891] 3 Ch. 418 .. ..	655
Morriss :—Massey v. .. .. .	[1894] 2 Q. B. 412 .. ..	1989
Morriss :—Southport Corporation v. .. .. .	[1893] 1 Q. B. 359 .. ..	1928



Name of Case.	Volume and Page.	Column of Digest.
Morrison:—Allen <i>v.</i> .. .. .	P. C. [1900] A. C. 604 ..	2342
Morrison <i>v.</i> Chicago and North West Granaries Co. In re Same Co. .. .. .	[1897] W. N. 174 (2); [1898] 1 Ch. 263 .. .. .	333
Morrison:—New Zealand Loan and Mercantile Agency Co. <i>v.</i> .. .. .	P. C. [1898] A. C. 349 ..	2258
Morrison <i>v.</i> Trustees, Executors, and Securities Insurance Corporation .. .. .	C. A. [1898] W. N. 154 (3) ..	395
Morshead's Settled Estate, In re .. .. .	[1893] W. N. 180 .. ..	1857
Mortgage Insurance Corporation, In re .. .. .	[1896] W. N. 4 (3) .. ..	476
Mortgage Insurance Corporation:—Dane <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 54 ..	978
Mortimer:—Magee <i>v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 102 ..	1389
Morton <i>v.</i> Blackmore. In re Brewer's Settlement .. .. .	[1896] 2 Ch. 503 .. ..	1905
Morton:—Burgess <i>v.</i> .. .. .	H. L. (E.) [1896] A. C. 136 ..	1552
Morton:—Haddow <i>v.</i> .. .. .	[1894] 1 Q. B. 95; C. A. [1894] 1 Q. B. 565 .. .. .	1010
Morton:—Reg. <i>v.</i> .. .. .	[1892] 1 Q. B. 39 .. ..	546, 1640 1438,
Moser <i>v.</i> Marsden .. .. .	C. A. [1892] 1 Ch. 487 ..	1507, 1514
Moses, In re. Beddington <i>v.</i> Beddington .. .. .	[1900] W. N. 182 .. ..	1468
Moses:—Godman <i>v.</i> .. .. .	C. A. [1900] W. N. 179 ..	585
Moses (alias Moss) <i>v.</i> Parker. Ex parte Moses .. .. .	P. C. [1896] A. C. 245 ..	2099
Mosley <i>v.</i> Kay. In re Kay .. .. .	[1897] 2 Ch. 518 .. ..	2174
Moss, In re. Kingsbury <i>v.</i> Walters .. .. .	C. A. [1899] W. N. 112; [1899] 2 Ch. 314 .. .. .	2315
Moss <i>v.</i> Hancock .. .. .	[1899] 2 Q. B. 111 .. ..	618
Moss <i>v.</i> Moss (otherwise Archer) .. .. .	[1897] P. 263 .. .. .	711
Mostyn <i>v.</i> Atherton .. .. .	[1899] W. N. 103; [1899] 2 Ch. 360 .. .. .	2284
Mostyn (Lord) <i>v.</i> London .. .. .	[1895] 1 Q. B. 170 .. ..	1770
Mostyn <i>v.</i> Mostyn .. .. .	C. A. [1893] 3 Ch. 376 ..	2233
Mouat, In re. Kingston Cotton Mills Co. <i>v.</i> Mouat .. .. .	[1899] W. N. 37 (1); [1899] 1 Ch. 831 .. .. .	853
Moubray Rowan and Hicks <i>v.</i> Drew .. .. .	P. C. [1893] A. C. 295 ..	2260
Moul <i>v.</i> Groenings .. .. .	C. A. [1891] 2 Q. B. 443 ..	533
Moules:—Rhodes <i>v.</i> .. .. .	C. A. [1895] 1 Ch. 236 ..	1423, 2159
Moult <i>v.</i> Halliday .. .. .	[1897] W. N. 171 (5); [1898] 1 Q. B. 125 .. .. .	1238
Mounsey <i>v.</i> Buston. In re L'Hermiuiet .. .. .	[1894] 1 Ch. 675 .. ..	1469
Mount Argus Case. Alexander <i>v.</i> Burke .. .. .	C. A. (Ir.) [1899] W. N. 178 ..	1378
Mountain <i>v.</i> Parr .. .. .	C. A. [1899] W. N. 35 (7); [1899] 1 Q. B. 805 .. .. .	1245
Mountcashell (Earl of) <i>v.</i> More-Smyth .. .. .	H. L. (I.) [1896] A. C. 158 ..	766
Mountfield <i>v.</i> Ward .. .. .	[1897] 1 Q. B. 326 .. ..	1108
Mowbray <i>v.</i> Merryweather .. .. .	[1895] 1 Q. B. 857; C. A. [1895] 2 Q. B. 640 .. .. .	2267
Moxham <i>v.</i> Grant .. .. .	[1899] W. N. 14 (4); [1899] 1 Q. B. 480; C. A. [1899] W. N. 232; [1900] 1 Q. B. 88 ..	340
Moxon:—Scott <i>v.</i> .. .. .	[1900] W. N. 14 .. ..	1529
Muddock <i>v.</i> Blackwood .. .. .	[1897] W. N. 158 (4); [1898] 1 Ch. 58 .. .. .	529
Mudie's Select Library, Ld.:—Vizetelly <i>v.</i> .. .. .	C. A. [1900] 2 Q. B. 170 ..	649
Muirden:—Cowie <i>v.</i> .. .. .	H. L. (Sc.) [1893] A. C. 674 ..	1845
Muirhead <i>v.</i> Forth and North Sea Steamboat Mutual Insurance Association .. .. .	H. L. (Sc.) [1894] A. C. 72 ..	982

Name of Case.	Volume and Page.	Column of Digest.
Müller:—Smith v. .. .. .	[1894] 1 Q. B. 192 .. .. .	214
Mulholland:—Caledonian Ry. Co. .. .. .	H. L. (Sc.) [1897] W. N. 159 (7); [1898] A. C. 216 .. .. .	1650
Muller v. Trafford .. .. .	[1900] W. N. 251 .. .. .	1084
Muller & Co.'s Margarine, Ld. v. Inland Revenue Commrs. .. .. .	C. A. [1900] 1 Q. B. 310 .. .. .	1796
Mulliner and Motor Carriage Supply Co.:—Soloman v. .. .. .	C. A. [1900] W. N. 260 .. .. .	590
Muncaster (Lord):—Harrison, Ainslie & Co. v. .. .. .	C. A. [1891] 2 Q. B. 680 .. .. .	1059
Munday:—Dyer v. .. .. .	C. A. [1895] 1 Q. B. 742 .. .. .	1239
Munday v. Norton .. .. .	C. A. [1892] 1 Q. B. 403 .. .. .	62, 1499
Mundy:—Curtis v. .. .. .	[1892] 2 Q. B. 178 .. .. .	665
Mundy & Roper's Contract, In re .. .. .	[1898] W. N. 49 (12); C. A. [1899] W. N. 3 (8); [1899] 1 Ch. 275 .. .. .	1893
Mundy's Settled Estates, In re .. .. .	C. A. [1891] 1 Ch. 399 .. .. .	1860, 1865, 1876
Munn's Patent Maizena and Starch Co.:—National Starch Manufacturing Co. v. .. .. .	P. C. [1894] A. C. 275 .. .. .	1332, 2183
Munro v. Balfour .. .. .	[1893] 1 Q. B. 113 .. .. .	1365
Munro v. Inland Revenue Commrs. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 149 .. .. .	1800
Munro:—Lloyd Jones v. .. .. .	[1899] 1 Q. B. 109 .. .. .	1396
"Munroe," The .. .. .	[1893] P. 248 .. .. .	988
Munslow:—Reg. v. .. .. .	C. C. R. [1895] 1 Q. B. 758 .. .. .	622
Munton:—Twickenham Urban Council v. .. .. .	[1898] W. N. 170 (14); [1899] 1 Ch. 168; C. A. [1899] W. N. 103; [1900] 2 Ch. 603 .. .. .	2085
Murphy v. Arrow .. .. .	[1897] 2 Q. B. 527 .. .. .	863
Murray v. Epsom Local Board .. .. .	[1896] W. N. 1759; [1897] 1 Ch. 35 .. .. .	2291
Murray (Freckleton's Judicial Factor):—Lord Advocate v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 110 .. .. .	1781
Murray:—Freer v. .. .. .	[1893] 1 Q. B. 281; C. A. [1893] 1 Q. B. 635; H. L. (E.) [1894] A. C. 576 .. .. .	1105
Murray:—Macgowan v. In re Macgowan .. .. .	C. A. [1891] 1 Ch. 105 .. .. .	2040
Murray:—Shuttleworth v. .. .. .	[1900] W. N. 89; [1900] 1 Ch. 795 .. .. .	2323
Murray:—Warren v. .. .. .	C. A. [1894] 2 Q. B. 648 .. .. .	1135
Murray, In the Goods of .. .. .	[1896] P. 65 .. .. .	1621
Murray-Aynsley:—Union Bank of Australia v. .. .. .	P. C. [1898] A. C. 693 .. .. .	1334
Murugasari Marimutta v. De Soysa .. .. .	P. C. [1891] A. C. 69 .. .. .	266
Musgrave:—Consolidated Exploration and Finance Co. v. .. .. .	[1899] W. N. 212; [1900] 1 Ch. 37 .. .. .	87
Musgrave v. Dundee Royal Lunatic Asylum .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 138 .. .. .	1754
Musgrove v. Chung Teeong Toy .. .. .	P. C. [1891] A. C. 272 .. .. .	27, 2258
Mustapha v. Wedlake .. .. .	[1891] W. N. 201 .. .. .	725
Mususur Bey v. Gadban .. .. .	[1894] 1 Q. B. 533; C. A. [1894] 2 Q. B. 352 .. .. .	1007, 1124, 1540
Mutoscope and Biograph Syndicate, In re .. .. .	[1899] W. N. 77; [1899] 1 Ch. 896 .. .. .	414
Mutual Cycle and Manufacturing Supply Co.:—Osmond v. .. .. .	C. A. [1899] 2 Q. B. 488 .. .. .	1436
Mutton v. Peat .. .. .	[1899] W. N. 127; [1899] 2 Ch. 556; C. A. [1900] W. N. 98; [1900] 2 Ch. 79 .. .. .	98

Name of Case.	Volume and Page.	Column of Digest.
Mutual Life Insurance Co. of New York:—	C. A. [1895] W. N. 18 ..	977, 982,
Hambrough v. .. .. .	[1891] 2 Q. B. 236 ..	1002
Mutual Reserve Association:—Hayward v. ..	C. A. [1892] 1 Q. B. 147 ..	62
Mutual Reserve Fund Life Association:—	[1892] 1 Ch. 427; C. A. [1893] ..	980
Cleaver v. .. .. .	1 Ch. 116 ..	1066,
Mutual Tontine Westminster Chambers Association:—Ryan v. .. .. .	[1896] 2 Ch. 590 ..	2063
Myrtle:—Davidson v. In re Smith .. ..		2185
N.		
N——:—P—— v. .. .. .	[1896] W. N. 175 (13) ..	773
“N. Strong,” The .. .. .	[1892] P. 105 ..	1949
Nagle v. Campbell .. .. .	C. A. (tr.) [1899] W. N. 185 ..	1375
Naismith v. Boyes .. .. .	H. L. (Sc.) [1899] W. N. 124; [1899] A. C. 495 ..	1843
Nalder & Collyer’s Brewery Co. v. Harman ..	[1900] W. N. 22; C. A. [1900] W. N. 180 ..	600
Nance, In re. Ex parte Ashmead .. ..	C. A. [1893] 1 Q. B. 590 ..	142, 550
Napper v. Fanshawe. In re Greer .. ..	[1895] 2 Ch. 217 ..	78, 123, 1521, 1923
Nash, In re. In re Spence. Lewis v. Darby ..	[1893] W. N. 99 ..	1515
Nash v. Dix .. .. .	[1898] W. N. 32 (7) ..	2063
Nash v. De Freville .. .. .	C. A. [1900] 2 Q. B. 72 ..	195
Nash:—Reg. v. .. .. .	[1900] 1 Q. B. 103 ..	1405
Nash & Sons, In re. Ex parte Crofton, Craven & Worthington .. .. .	[1895] W. N. 135 (1); [1896] 1 Q. B. 13 ..	122
Natal Land and Colonization Co.:—Bolton v. ..	[1892] 2 Ch. 124 ..	355
Natal (Surveyor-General of):—Remfry v. ..	P. C. [1896] A. C. 558 ..	1313
Nathan v. Metropolitan Board of Works ..	[1894] 1 Q. B. 230, n. ..	1150
Nathan & Co.:—Shoppee v. .. .. .	[1892] 1 Q. B. 245 ..	1924
National Bank v. Silke .. .. .	C. A. [1891] 1 Q. B. 435 ..	94, 196, 1319
National Bank of Australasia v. Morris ..	P. C. [1892] A. C. 287 ..	1327
National Bank of Wales, Ltd., In re .. ..	[1899] W. N. 26; C. A. [1899] W. N. 131; [1899] 2 Ch. 629 ..	344
National Bank of Wales, In re. Taylor, Phillips, and Rickards’ Cases .. .. .	[1896] 2 Ch. 851; C. A. [1897] 1 Ch. 298 ..	431
National Boiler Insurance Co., In re .. ..	[1892] 1 Ch. 306 ..	363
National Debenture and Assets Corporation, In re .. .. .	C. A. [1891] 2 Ch. 505 ..	390
National Dwelling Society v. Sykes .. ..	[1894] 3 Ch. 159 ..	357
National Fire and Marine Insurance Co. of New Zealand:—Davies v. .. .. .	P. C. [1894] A. C. 485 ..	996 1329
National Fire and Marine Insurance Co. of New Zealand:—Hiddle v. .. .. .	P. C. [1896] A. C. 372 ..	1328
National Guardian Assurance Co.:—Grigg v. ..	[1891] 3 Ch. 206 ..	205, 653, 860
National Insurance Co., Ex parte. In re Hallett	[1894] W. N. 156 ..	150, 422
National Insurance and Guarantee Corporation:—Malleson v. .. .. .	[1894] 1 Ch. 200 ..	368
National Permanent Mutual Benefit Building Society v. Raper .. .. .	[1892] 1 Ch. 54 ..	1284
National Provincial Bank of England, Ex parte. In re Newton .. .. .	[1896] 2 Q. B. 403 ..	147
National Provincial Bank of England, Ex parte. In re Sass .. .. .	[1896] 2 Q. B. 12 ..	154

Name of Case.	Volume and Page.	Column of Digest.
National Provincial Bank of England <i>v.</i> Cresswell. In re Bawden. <i>Bawden v. Cresswell</i> ..	[1894] 1 Ch. 693 .. ..	2303, 2338
National Provincial Bank of England:— <i>Marshall v.</i> ..	[1892] W. N. 34 .. ..	775, 1287
National Provincial Bank of England:— <i>Small v.</i> ..	[1894] 1 Ch. 686 .. ..	208
National Provincial Bank of England and <i>Marsh</i> , In re ..	[1895] 1 Ch. 190 .. ..	2249
National Reversionary Investment Co., In re. In re Lamson Store Service Co. ..	[1895] 2 Ch. 726 .. ..	383
National Society for the Distribution of Electricity by Secondary Generators <i>v.</i> Gibbs ..	[1899] W. N. 59; [1899] 2 Ch. 289; C. A. [1900] W. N. 102; [1900] 2 Ch. 280 .. ..	1432
National Starch Manufacturing Co., Ex parte. In re Kingsford's Trade-mark ..	[1898] W. N. 37 (2) .. ..	2136
National Starch Manufacturing Co. <i>v.</i> Munn's Patent Maizena and Starch Co. ..	P. C. [1894] A. C. 275 .. ..	1332, 2133
National Stores, Ltd., In re .. ..	[1899] W. N. 215; [1899] 2 Ch. 773; C. A. [1899] W. N. 233; [1900] 1 Ch. 27 .. ..	443
National Telephone Co. <i>v.</i> Baker .. ..	[1893] 2 Ch. 186 .. ..	1345, 1352, 2101
National Telephone Co.:— <i>Bristol Tramways and Carriage Co. v.</i> .. ..	[1899] W. N. 91; [1899] 2 Ch. 292 .. ..	2101
National Telephone Co. <i>v.</i> Constables of St. Peter's Port .. ..	P. C. [1900] A. C. 317 .. ..	2101
National Telephone Co.:— <i>Holliday v.</i> .. ..	[1898] W. N. 165 (9); [1899] 1 Q. B. 221; C. A. [1899] W. N. 119; [1899] 2 Q. B. 392 .. ..	1217
National Telephone Co.:— <i>Keith, Prowse &amp; Co., v.</i> ..	[1894] 2 Ch. 147 .. ..	1065, 2101
National Telephone Co. <i>v.</i> Inland Revenue Commrs. .. ..	H. L. (E.) [1900] A. C. 1 .. ..	1791
National Wholemeal Bread and Biscuit Co., In re ..	[1891] 2 Ch. 151 .. ..	457
National Wholemeal Bread and Biscuit Co., In re. Ex parte Baines .. ..	[1892] 2 Ch. 457 .. ..	451, 475
" <i>Nautik</i> ," The .. ..	[1895] P. 121 .. ..	1994
Navalchand, Ex parte. In re Gordon .. ..	[1897] 2 Q. B. 516 .. ..	168
Neal <i>v.</i> Devenish .. ..	[1894] 1 Q. B. 544 .. ..	17
Neal:— <i>Dunlop Pneumatic Tyre Co. v.</i> .. ..	[1899] W. N. 39; [1899] 1 Ch. 807 .. ..	1429
Neale:— <i>New London Credit Syndicate, Ltd. v.</i> ..	C. A. [1898] 2 Q. B. 487 .. ..	194
Neath and Brecon Ry. Co., In re .. ..	C. A. [1892] 1 Ch. 349 .. ..	1664
Neath and District Tramways Co.:— <i>Pegge v.</i> ..	[1895] 2 Ch. 508; C. A. [1896] 1 Ch. 684; [1897] W. N. 165 (1); [1898] 1 Ch. 183 .. ..	2152
Neath Union:— <i>Llanely Union v.</i> .. ..	[1893] 2 Q. B. 38 .. ..	1461
Neaverson <i>v.</i> Peterborough Rural Council .. ..	[1900] W. N. 244 .. ..	936
Neck <i>v.</i> Taylor .. ..	C. A. [1893] 1 Q. B. 560 .. ..	569
Needes, Ex parte. Reg. <i>v.</i> Bird .. ..	[1898] 2 Q. B. 340 .. ..	1098
Negus, In re .. ..	[1895] 1 Ch. 73 .. ..	2038
Nell <i>v.</i> Longbottom .. ..	[1894] 1 Q. B. 767 .. ..	546, 548
Nelson <i>v.</i> Anglo-American Land Mortgage Agency Co. .. ..	[1896] W. N. 166 (4); [1897] 1 Ch. 130 .. ..	388
Nelson Brothers, Ltd.:— <i>Southland Frozen Meat</i> and Produce Export Co. <i>v.</i> .. ..	P. C. [1898] A. C. 442 .. ..	1335
Nelson and Fort Sheppard Ry.:— <i>Madden v.</i> ..	P. C. [1899] A. C. 626 .. ..	248

Name of Case.	Volume and Page.	Column of Digest.
Neptune Salvage Co.:—Owners of "Glengyle," her Cargo and Freight v. The "Glengyle" ..	H. L. (E.) [1898] A. C. 519 ..	2002
Neptune Steam Navigation Co. v. Sclater. The "Delano" .. .. .	C. A. [1895] P. 40 .. ..	2070
Nevill (Lord William) v. Fine Art and General Insurance Co. .. .. .	C. A. [1895] 2 Q. B. 156; H. L. (E.) [1896] W. N. 171 (5); [1897] A. C. 68 .. ..	648
Neville v. Kirby .. .. .	[1898] P. 160 .. .. .	756
Neville v. Matthewman .. .. .	C. A. [1894] 3 Ch. 345 .. ..	1518, 1519
Neville & Co.:—Renton Gibbs & Co. v. ..	C. A. [1900] 2 Q. B. 181 .. ..	1527
Nevin (Violet), In re (an Infant) .. ..	C. A. [1891] 2 Ch. 299 .. ..	947
New Beeston Cycle Co.:—Salton v. .. ..	[1899] W. N. 40; [1899] 1 Ch. 775 .. ..	349
New Beeston Cycle Co.:—Salton v. .. ..	[1899] W. N. 213; [1900] 1 Ch. 43 .. ..	1581, 2047
New British Iron Co., In re. Ex parte Beckwith ..	[1898] 1 Ch. 324 .. .. .	350
New Brunswick (Receiver-General of):—Maritime Bank of Canada (Liquidators of) v. ..	P. C. [1892] A. C. 437 .. ..	239, 241, 251, 292, 293
New v. Burns .. .. .	C. A. [1894] W. N. 196 .. ..	778
New Chile Gold Mining Co., In re .. ..	[1892] W. N. 193 .. .. .	396
New Incandescent (Sunlight Patent) Gas Lighting Co.:—Welsbach Incandescent Gas Light Co. v. .. .. .	[1900] W. N. 51; [1900] 1 Ch. 843 .. .. .	1444
New Ixion Tyre and Cycle Co. v. Spilsbury ..	[1898] 2 Ch. 137; C. A. [1898] 2 Ch. 484 .. .. .	1432
New Land Development Association and Gray, In re .. .. .	C. A. [1892] 2 Ch. 138 .. ..	114
New London Credit Syndicate, Ltd. v. Neale ..	C. A. [1898] 2 Q. B. 487 .. ..	194
New Mashonaland Exploration Co., In re ..	[1892] 3 Ch. 577 .. .. .	342
New Mashonaland Exploration Co.:—London and Mashonaland Exploration Co. v. .. ..	[1891] W. N. 165 .. .. .	337, 1414
New Morgan Gold Mining Co., In re .. ..	[1893] W. N. 79 .. .. .	457
New Moss Colliery Co. v. Manchester, Sheffield and Lincolnshire Ry. Co. .. .. .	[1897] 1 Ch. 725 .. .. .	259
New Oriental Bank Corporation, In re (No. 1) ..	[1892] 3 Ch. 563 .. .. .	456, 457
.. .. . (No. 2) ..	[1895] 1 Ch. 753 .. .. .	474, 1080
New Ormonde Cycle Co., Ex parte .. ..	[1896] 2 Ch. 520 .. .. .	2125
New Par Consols, Ltd., In re (No. 1) .. ..	[1898] 1 Q. B. 573 .. .. .	481
.. .. . (No. 2) .. ..	C. A. [1898] 1 Q. B. 669 .. ..	1629
"New Pelton," The .. .. .	[1891] P. 258 .. .. .	2108
New Romney (Corporation of) v. New Romney Sewer Commrs. .. .. .	[1892] 1 Q. B. 840 .. .. .	1686
New Sharlston Collieries Co.:—Westmorland (Earl of) v. .. .. .	[1899] W. N. 2 (4); C. A. [1899] W. N. 88 .. .. .	1266
New South Wales (Att.-Gen. for) v. Love ..	P. C. [1898] A. C. 679 .. ..	1330
New South Wales (Att.-Gen. for):—Macleod v. ..	P. C. [1891] A. C. 455 .. ..	1324
New South Wales (Att.-Gen. for) v. Makin ..	P. C. [1894] A. C. 57 .. ..	610, 1324
New South Wales (Att.-Gen. for) v. Rennie ..	P. C. [1896] A. C. 376 .. ..	1330
New South Wales (Att.-Gen. for):—Sydney Municipal Council v. .. .. .	[1894] A. C. 444 .. .. .	297, 1330
New South Wales (Att.-Gen. for) v. Walters ..	P. C. [1898] A. C. 460 .. ..	1327
New South Wales (Bank of) v. Piper .. ..	P. C. [1897] A. C. 383 .. ..	1328
New Sunlight Incandescent Co.:—Welsbach Incandescent Gas Lighting Co. v. .. ..	C. A. [1900] W. N. 120; [1900] 2 Ch. 1 .. .. .	674

Name of Case.	Volume and Page.	Column of Digest.
New Terras Tin Mining Co., In re .. ..	[1894] 2 Ch. 344 .. ..	446, 465, 598
New Tivoli, Ld.:—Astley v. .. ..	[1898] W. N. 172 (3); [1899] 1 Ch. 151 .. ..	340
New Transvaal Co., In re .. ..	[1896] 2 Ch. 750 .. ..	413
New Travellers' Chambers, Ld., In re .. ..	[1895] 1 Ch. 395 .. ..	440
New Trinidad Lake Asphalt Co.:—Foster v. .. ..	[1900] W. N. 257 .. ..	353
New Union Mills Co. v. Great Western Ry. Co. .. ..	[1896] 2 Q. B. 290 .. ..	1658
New Weighing Machine Co., In re .. ..	[1896] W. N. 48 (4) .. ..	458
New Windsor Corporation v. Taylor .. ..	C. A. [1898] 1 Q. B. 186; H. L. (E.) [1898] W. N. 162 (6); H. L. (E.) [1899] A. C. 41 .. ..	2114
New York Breweries Co. v. Att.-Gen. .. ..	[1897] 1 Q. B. 738; C. A. [1897] W. N. 175 (10); [1898] 1 Q. B. 205; H. L. (E.) [1898] W. N. 170 (12); [1899] A. C. 62 .. ..	1785
New York Exchange Co., In re .. ..	[1893] 1 Ch. 371 .. ..	438, 486
New York Herald:—De Bernales v. .. ..	[1893] 2 Q. B. 97, n. .. ..	1535
New Zealand (Att.-Gen. for):—Brown v. .. ..	P. C. [1898] A. C. 234 .. ..	1335
New Zealand Gold Extraction Co. (Newbery-Vautin Process) v. Peacock .. ..	C. A. [1894] 1 Q. B. 622 .. ..	304
New Zealand Loan and Mercantile Agency Co., In re .. ..	[1894] W. N. 200 .. ..	455
New Zealand Loan and Mercantile Agency Co. v. Morrison .. ..	P. C. [1898] A. C. 349 .. ..	2258
New Zealand (National Fire and Marine Insurance Co. of):—Hiddle v. .. ..	P. C. [1896] A. C. 372 .. ..	1328
New Zealand Shipping Co.:—Parsons v. .. ..	[1900] 1 Q. B. 714 .. ..	1940
New Zealand Shipping Co.:—Waikato (SS.) Owners of Cargo on Board v. .. ..	[1898] 1 Q. B. 645; C. A. [1898] W. N. 152 (15); [1899] 1 Q. B. 56 .. ..	1969
New Zealand Trust and Loan Co., In re .. ..	C. A. [1893] 1 Ch. 403 .. ..	404, 2202
Newbery-Vautin (Patents) Gold Extraction Co., In re .. ..	[1892] 3 Ch. 127, n. .. ..	385
Newbold Friendly Society v. Barlow .. ..	[1893] 2 Q. B. 128 .. ..	857
Newby v. Eckersley .. ..	C. A. [1899] 1 Q. B. 465 .. ..	1052
Newby v. Sims .. ..	[1894] 1 Q. B. 478 .. ..	17
Newburn:—Dimond v. In re Freman .. ..	[1897] W. N. 159 (9); [1898] 1 Ch. 28 .. ..	1883
Newcastle (Duke of):—Pelham Clinton v. .. ..	[1900] W. N. 183 .. ..	2325
Newcastle (Mayor and Councillors of):—Vaude v. .. ..	P. C. [1899] A. C. 246 .. ..	1313
Newcastle-upon-Tyne Corporation:—Att.-Gen. v. .. ..	C. A. [1899] 2 Q. B. 478 .. ..	668
Newcastle-upon-Tyne Corporation:—Att.-Gen. v. .. ..	C. A. [1897] 2 Q. B. 384 .. ..	665
Newcastle-upon-Tyne Corporation:—Att.-Gen. v. .. ..	H. L. (E.) [1892] A. C. 568 .. ..	542
Newcastle-upon-Tyne Corporation:—Graham v. .. ..	[1892] W. N. 134 .. ..	873
(No. 2)		891, 1130
Newcastle Wallsend Coal Co.:—Hunter District Board v. .. ..	C. A. [1893] 1 Q. B. 643 .. ..	1333
Newell & Nevill's Contract, In re .. ..	P. C. [1896] A. C. 82 .. ..	1873
Newell:—Wirral Highway Board v. .. ..	[1899] W. N. 242; [1900] 1 Ch. 90 .. ..	893
Newell v. Newell .. ..	[1895] 1 Q. B. 827 .. ..	501
Newen, In re. Newen v. Barnes .. ..	[1896] W. N. 160 (2) .. ..	1880, 2166
	[1894] 2 Ch. 297 .. ..	

Name of Case.	Volume and Page.	Column of Digest.
Newfoundland Government :—Fox <i>v.</i> ..	P. C. [1898] A. C. 667 ..	1337
Newfoundland Savings Bank :—Gaden <i>v.</i> ..	P. C. [1899] A. C. 281 ..	1338
Newington, St. Mary Vestry :—Austin <i>v.</i> ..	[1894] 2 Q. B. 524 ..	1178
Newington Vestry :—Geen <i>v.</i> ..	[1898] 2 Q. B. 1 ..	1167
Newington, St. Mary Vestry :—Keep <i>v.</i> ..	C. A. [1894] 2 Q. B. 524 ..	1178, 2070
Newlands :—Galashiels Provident Building Society <i>v.</i> ..	Ct. of Sess. (Sc.) [1896] W. N. 107 ..	1772
Newman, In re. Ex parte Official Receiver ..	[1899] 2 Q. B. 587 ..	163
Newman :—Innes <i>v.</i> ..	[1894] 2 Q. B. 292 ..	1348
Newman & Dale <i>v.</i> Lamport & Holt ..	[1896] 1 Q. B. 20 ..	1943
Newman (George) & Co., In re ..	C. A. [1895] 1 Ch. 674 ..	471
Newmarket Local Board :—Cowley <i>v.</i> ..	H. L. (E.) [1892] A. C. 345 ..	549, 895, 2066
Newnes :—Hanfstaengl <i>v.</i> ..	C. A. [1894] 3 Ch. 109 ..	539
Newnes (George), Ld. :—Johnson <i>v.</i> ..	[1894] 3 Ch. 663 ..	537
Newport Assessment Committee :—Ystradyfodwg and Pontypridd Main Sewerage Board <i>v.</i> ..	[1900] 1 Q. B. 365 ..	1686
Newsham and South Blyth Churchwardens and Tynemouth Union Assessment Committee :—Blyth Harbour Commrs. <i>v.</i> ..	[1894] 2 Q. B. 293; C. A. [1894] 2 Q. B. 675 ..	1683
Newspaper Proprietary Syndicate, Ld., In re. Hopkinson <i>v.</i> Newspaper Proprietary Syndicate, Ld. ..	[1900] W. N. 140; [1900] 2 Ch. 349 ..	341
Newton, In re. Ex parte National Provincial Bank of England ..	[1896] 2 Q. B. 403 ..	147
Newton (Infants), In re ..	C. A. [1896] 1 Ch. 740 ..	947
Newton <i>v.</i> Anglo-Australian Investment Co. Debenture-holders ..	P. C. [1895] A. C. 244 ..	315, 319, 1323
Newton :—Gosling <i>v.</i> ..	[1895] 1 Q. B. 793 ..	2105
Newton <i>v.</i> Newton ..	[1895] W. N. 152 (5); [1896] P. 36 ..	689
Newton :—Reg. <i>v.</i> ..	[1892] 1 Q. B. 648 ..	1028
Newton, Chambers & Co. :—Hoddinott <i>v.</i> ..	C. A. [1899] 1 Q. B. 1018 ..	1215
Newton, Chambers & Co. :—Hoddinott <i>v.</i> ..	H. L. (E.) [1900] W. N. 269 ..	1215
"Ngapoota" SS. (Owners of) :—"Kwang Tung" SS. (Owners of) <i>v.</i> The "Ngapoota" ..	P. C. [1897] A. C. 391 ..	1948
Niblett :—Hoare <i>v.</i> ..	[1891] 1 Q. B. 781 ..	514, 910
Nicholas :—Craig <i>v.</i> ..	[1900] 2 Q. B. 444 ..	898
Nicholas and Settled Land Act, 1882, In re ..	[1894] W. N. 165 ..	1895, 2169
Nicholas :—Turnbull <i>v.</i> In re Turnbull ..	[1899] W. N. 229; [1900] 1 Ch. 180 ..	914
Nicholl & Knight <i>v.</i> Ashton, Edridge & Co. ..	[1900] W. N. 116; [1900] 2 Q. B. 298 ..	515
Nicholl <i>v.</i> Epping Urban Council ..	[1899] W. N. 58; [1899] 1 Ch. 844 ..	2288
Nicholls <i>v.</i> Nicholls ..	[1900] W. N. 4 ..	2289
Nichols :—Rudall <i>v.</i> ..	[1900] W. N. 133 ..	2301, 2344
Nicholson <i>v.</i> Brown ..	[1897] W. N. 52 (13) ..	1487
Nicholson <i>v.</i> Field ..	[1893] 2 Ch. 511 ..	2168
Nicholson <i>v.</i> Harper ..	[1895] 2 Ch. 415 ..	878
Nicholson <i>v.</i> London, Chatham and Dover Ry. Co. ..	[1895] W. N. 91 ..	1661
Nicholson <i>v.</i> Nicholson ..	[1895] W. N. 106 ..	1857, 2302
Nicholson :—Reg. <i>v.</i> ..	C. A. [1899] 2 Q. B. 455 ..	1099
Nicholson <i>v.</i> Rhodesia Trading Co. ..	[1897] 1 Ch. 434 ..	353

Name of Case.	Volume and Page.	Column of Digest.
Nickalls <i>v.</i> Briscoe .. .. .	[1892] P. 269 .. .. .	747, 751
Nickels, In re. Nickels <i>v.</i> Nickels .. .. .	[1898] 1 Ch. 630 .. .. .	2170
Nicols:—Ultzen <i>v.</i> .. .. .	[1894] 1 Q. B. 92 .. .. .	89
"Nifa," The .. .. .	[1892] P. 411 .. .. .	1934
Nind <i>v.</i> Nineteenth Century Building Society .. .. .	[1894] 1 Q. B. 472; C. A. [1894] } 2 Q. B. 226 .. .. .	1062, 1072
Nineteenth Century Building Society:—Nind <i>v.</i> .. .. .	[1894] 1 Q. B. 472; C. A. [1894] } 2 Q. B. 226 .. .. .	1062, 1072
"Niobe," The. M'Cowan <i>v.</i> Baine .. .. .	H. L. (Sc.) [1891] A. C. 401 .. .. .	988
Nitrophosphate and Odams Chemical Manure Co., In re .. .. .	[1893] W. N. 141 .. .. .	366
Nix <i>v.</i> Nottingham Justices .. .. .	C. A. [1899] W. N. 106; [1899] } 2 Q. B. 294 .. .. .	1104
Nix:—Roe <i>v.</i> .. .. .	[1893] P. 55 .. .. .	1195, 1627
Nixon:—Tabuleau <i>v.</i> .. .. .	[1899] W. N. 115 .. .. .	2314
Nixon's Navigation Co., In re .. .. .	[1897] 1 Ch. 872 .. .. .	382
Nixon & Bruce:—Stuart <i>v.</i> .. .. .	C. A. [1900] W. N. 92; [1900] } 2 Q. B. 95 .. .. .	1223
No. 7 Steam Sand Pump Dredger (Owners of) <i>v.</i> Owners of "Greta Holme." The "Greta Holme" .. .. .	H. L. (E.) [1897] A. C. 596 .. .. .	1948
Noakes:—Graham <i>v.</i> In re Graham .. .. .	[1895] 1 Ch. 66 .. .. .	1583, 1701, 1706
Noakes:—Ponting <i>v.</i> .. .. .	[1894] 2 Q. B. 281 .. .. .	1352, 1353
Noakes & Co.:—Rice <i>v.</i> .. .. .	[1899] W. N. 229; [1900] 1 Ch. } 213; C. A. [1900] W. N. 150; } [1900] 2 Ch. 445 .. .. .	1294
Nobbs, In re. Nobbs <i>v.</i> Law Reversionary Interest Society .. .. .	[1896] 2 Ch. 830 .. .. .	1287, 1502
Nobel Dynamite Trust Co. <i>v.</i> Wyatt .. .. .	[1893] 2 Q. B. 499 .. .. .	1767
Nobel's Explosives Co. <i>v.</i> Jenkins & Co. .. .. .	[1896] 2 Q. B. 326 .. .. .	1792
Nokes:—Fletcher <i>v.</i> .. .. .	[1897] 1 Ch. 271 .. .. .	1069
Noel <i>v.</i> Redruth Foundry Co. .. .. .	[1896] 1 Q. B. 453 .. .. .	1222 962,
Norburn <i>v.</i> Norburn .. .. .	[1894] 1 Q. B. 448 .. .. .	1533, 1599
Nordenfelt, In re. Ex parte Maxim-Nordenfelt Guns and Ammunition Co. .. .. .	C. A. [1895] 1 Q. B. 151 .. .. .	141
Nordenfelt <i>v.</i> Maxim-Nordenfelt Guns and Ammunition Co. (No. 1) .. .. .	C. A. [1893] 1 Ch. 630; H. L. } (E.) [1894] A. C. 535 .. .. .	1721, 1723
(No. 2) .. .. .	C. A. [1893] 3 Ch. 122 .. .. .	677
"Nord Kap" (SS.) <i>v.</i> SS. "Sandhill." The "Sandhill" .. .. .	P. C. [1894] A. C. 646 .. .. .	1946
Nordmann, In re .. .. .	[1898] W. N. 150 (2) .. .. .	122
Norfolk (Duke of):—Hall <i>v.</i> .. .. .	[1900] W. N. 138; [1900] 2 Ch. } 493 .. .. .	1265
Norfolk:—Gathercole <i>v.</i> In re Jolly .. .. .	[1899] W. N. 249; [1900] 1 Ch. } 292; C. A. [1900] W. N. 170; } [1900] 2 Ch. 616 .. .. .	2306
Norfolk County Council:—Thetford Corporation <i>v.</i> .. .. .	[1893] 1 Q. B. 141; appeal } dismissed and cross-appeal } allowed, C. A. [1898] 2 Q. B. } 468 .. .. .	577
Norfolk's (Duke of) Parliamentary Estates, In re. Norfolk (Duke of) <i>v.</i> Herries (Lord) .. .. .	[1900] W. N. 15; [1900] 1 Ch. } 461 .. .. .	1860



Name of Case.	Volume and Page.	Column of Digest.
Norie <i>v.</i> Bennett. In re Medows .. ..	[1898] 1 Ch. 300 .. ..	1866
Norman, In re. Ex parte Board of Trade .. ..	C. A. [1893] 2 Q. B. 369 .. ..	123, 2071
Norman, In re. Norman <i>v.</i> Norman .. ..	[1900] W. N. 159 .. ..	1528
Norman <i>v.</i> Beaumont .. ..	[1893] W. N. 45 .. ..	1300
Norman:—Buckwell <i>v.</i> .. ..	C. A. [1898] 1 Q. B. 622 .. ..	149
Norman:—Lane <i>v.</i> .. ..	[1891] W. N. 202 .. ..	282
Normanby Brick Co.:—Jackson <i>v.</i> .. ..	C. A. [1899] W. N. 51; [1899] 1 Ch. 438 .. ..	2030
“Normandie” (Owners of Norwegian SS.) <i>v.</i> “Pekin” (Owners of British SS.) The “Pekin” .. ..	P. C. [1897] A. C. 532 .. ..	288
Norris <i>v.</i> Birch .. ..	[1895] 1 Q. B. 639 .. ..	884
Norris:—Williamson <i>v.</i> .. ..	[1898] W. N. 151 (8); [1899] 1 Q. B. 7 .. ..	1110
North, In re. Ex parte Hasluck .. ..	[C. A. [1895] 2 Q. B. 264 .. ..	111
North <i>v.</i> Bassett .. ..	[1892] 1 Q. B. 333 .. ..	222, 2098
North:—Chappell <i>v.</i> .. ..	[1891] 2 Q. B. 252 .. ..	52
North:—Kirke <i>v.</i> In re Wright .. ..	[1895] 2 Ch. 747 .. ..	1514, 1520
North <i>v.</i> Percival .. ..	[1898] 2 Ch. 128 .. ..	2246
North Australian Territory Co., In re. Archer’s Case .. ..	C. A. [1892] 1 Ch. 322 .. ..	349
North Australian Territory Co. <i>v.</i> Goldsborough, Mort & Co. .. ..	C. A. [1893] 2 Ch. 381 .. ..	442
North:—Bexley Heath Ry. Co. <i>v.</i> .. ..	C. A. [1894] 2 Q. B. 579 .. ..	1086
“North Britain,” The .. ..	C. A. [1894] P. 77 .. ..	987
North British and Mercantile Insurance Co.:—Collins <i>v.</i> .. ..	[1894] 3 Ch. 228 .. ..	1540, 1544
North British and Mercantile Insurance Co.:—Greenhill <i>v.</i> .. ..	[1893] 3 Ch. 474 .. ..	912
North British and Mercantile Insurance Co.:—Kirby <i>v.</i> .. ..	[C. A. [1896] 2 Q. B. 99 .. ..	1163
North British and Mercantile Insurance Co.:—Pratt <i>v.</i> .. ..	[1894] 3 Ch. 228 .. ..	1540, 1544
North British Ry. Co.:—Ferguson <i>v.</i> .. ..	H. L. (Sc.) [1893] W. N. 166 .. ..	1839
North British Ry. Co.:—Gilmour <i>v.</i> .. ..	H. L. (Sc.) [1893] A. C. 281 .. ..	1838
North British Ry. Co. <i>v.</i> Park Yard Co. .. ..	H. L. (Sc.) [1898] A. C. 643 .. ..	730
North British Ry. Co. <i>v.</i> Wood .. ..	H. L. (Sc.) [1891] W. N. 130 .. ..	1643
North Cheshire and Manchester Brewery Co. <i>v.</i> Manchester Brewery Co. .. ..	C. A. [1898] 1 Ch. 539; H. L. (E.) [1898] W. N. 168 (5); [1899] A. C. 83 .. ..	2139
North Eastern News Association:—South Hetton Coal Co. <i>v.</i> .. ..	C. A. [1894] 1 Q. B. 133 .. ..	545, 644
North Eastern Ry. Co.:—Dalton Overseers <i>v.</i> .. ..	[1898] 2 Q. B. 66; C. A. [1899] W. N. 64; [1899] 1 Q. B. 102 (6); H. L. (E.) [1900] W. N. 126; [1900] A. C. 345 .. ..	897
North Eastern Ry. Co.:—Dunhill <i>v.</i> .. ..	[1895] W. N. 116; C. A. [1895] W. N. 156 (3); C. A. [1896] 1 Ch. 121 .. ..	1092
North Eastern Ry. Co.:—Emsley <i>v.</i> .. ..	C. A. [1896] 1 Ch. 418 .. ..	1655
North Eastern Ry. Co. <i>v.</i> Lord Hastings .. ..	[1898] 2 Ch. 674; C. A. [1899] W. N. 30 (4); [1899] 1 Ch. 656; H. L. (E.) [1900] W. N. 92; [1900] A. C. 60 .. ..	2293
North Eastern Ry. Co.:—Pounder <i>v.</i> .. ..	[1892] 1 Q. B. 385 .. ..	1651
North Eastern Ry. Co. <i>v.</i> York Union .. ..	[1900] 1 Q. B. 733 .. ..	1685

Name of Case.	Volume and Page.	Column of Digest.
North Hendre Mining Co.:— <i>Foster v. . . .</i>	[1891] 1 Q. B. 71 .. ..	1263
North Kent Ironworks Co.:— <i>McMahon v. . . .</i>	[1891] 2 Ch. 148 .. ..	330
North Metropolitan Ry. and Canal Co.:— <i>Paddington (Vestry) v. . . .</i>	[1894] 1 Q. B. 633 .. ..	1172
North Metropolitan Tramways Co.:— <i>Att.-Gen. v. . . .</i>	[1892] 3 Ch. 70 .. ..	672, 676, 2148
North Metropolitan Tramways Co. <i>v. London County Council</i> .. ..	[1895] W. N. 91; [1898] 2 Ch. 145 .. ..	568
North Queensland Insurance Co.:— <i>Trinder, Anderson &amp; Co. v. Trinder, Anderson &amp; Co. v. Thames and Mersey Marine Insurance Co. The Same v. Weston, Crocker &amp; Co. . . .</i>	C. A. [1898] 2 Q. B. 114 .. ..	997
North Riding of Yorkshire County Council:— <i>Reg. v. . . .</i>	[1899] 1 Q. B. 201 .. ..	822
North Staffordshire Ry. Co.:— <i>Hanley and Bucknall Coal Co. . . .</i>	[1891] W. N. 93 .. ..	1264
North of England Trustee, Debenture and Assets Corporation <i>v. Marriage, Neave &amp; Co. . . .</i>	C. A. [1896] 2 Ch. 663 .. ..	353
North Staffordshire Ry. Co.:— <i>Huffam v. . . .</i>	[1894] 2 Q. B. 821 .. ..	1651, 2071
North Staffordshire Ry. Co.:— <i>Salt Union Ld. v. . . .</i>	C. A. [1898] 2 Q. B. 435 .. ..	1659
North Sydney Investment and Tramway Co. <i>v. Higgins</i> .. ..	P. C. [1899] A. C. 263 .. ..	1322
North Wales Gunpowder Co., <i>In re</i> .. ..	C. A. [1892] 2 Q. B. 220 .. ..	451
North-West Argentine Ry. Co., <i>In re</i> .. ..	[1900] W. N. 243; [1900] 2 Ch. 882 .. ..	415
North Western Bank:— <i>Moore v. . . .</i>	[1891] 2 Ch. 599 .. ..	402
North Western Bank <i>v. Poynter, Son (John), and Macdonalds</i> .. ..	H. L. (Sc.) [1895] A. C. 56 .. ..	496, 1450, 1837, 1942
North Western of Uruguay Ry. Co.:— <i>Baring Bros. &amp; Co. v. . . .</i>	C. A. [1893] 2 Q. B. 406 .. ..	1557
North of England Iron Steamship Insurance Association, <i>In re</i> .. ..	[1900] W. N. 30; [1900] 1 Ch. 481 .. ..	367
Northage, <i>In re. Ellis v. Barfield</i> .. ..	[1891] W. N. 84 .. ..	353, 1853
Northallerton County Court Judge:— <i>Skioner v. . . .</i>	C. A. [1898] 2 Q. B. 680; H. L. (E.) [1899] W. N. 96; [1899] A. C. 439 .. ..	592
Northampton (Marquess of):— <i>Salt v. . . .</i>	H. L. (E.) [1892] A. C. 1 .. ..	1296
Northampton (Marquess of) <i>v. Pollock</i> .. ..	H. L. (E.) [1892] A. C. 1 .. ..	1296
Northcote:— <i>Hay v. . . .</i>	[1900] W. N. 134; [1900] 2 Ch. 262 .. ..	495
Northen:— <i>Durham v. . . .</i>	[1895] P. 66 .. ..	1616
Northern Creosoting and Sleeper Co., <i>In re</i> .. ..	[1898] W. N. 159 (5) .. ..	307
Northern Heritable Securities Investment Co.:— <i>Whyte v. . . .</i>	H. L. (S.) [1891] A. C. 608 .. ..	1829
Northern Transvaal Gold Mining Co., <i>In re</i> .. ..	C. A. [1895] 1 Ch. 3 .. ..	442
Northey Stone Co. <i>v. Gidney</i> .. ..	C. A. [1894] 1 Q. B. 99 .. ..	592
Northumberland (Duke of) <i>v. Percy</i> .. ..	[1893] 1 Ch. 298. .. ..	1314
Norton, <i>Ex parte. In re Brall</i> .. ..	[1893] 2 Q. B. 381 .. ..	184
Norton, <i>Ex parte. In re Mansel</i> .. ..	C. A. [1892] W. N. 32 .. ..	176, 1127
Norton, <i>In re. Norton v. Norton</i> .. ..	[1899] W. N. 216; [1900] 1 Ch. 101 .. ..	1406
Norton <i>v. Counties Conservative Permanent Benefit Building Society</i> .. ..	C. A. [1895] 1 Q. B. 246 .. ..	225
Norton <i>v. Dashwood</i> .. ..	[1896] 2 Ch. 497 .. ..	827

Name of Case.	Volume and Page.	Column of Digest.
Norton :—Davis <i>v.</i> In re Counties Conservative Permanent Building Society .. .. .	[1900] 2 Ch. 819 .. .. .	233
Norton <i>v.</i> Davison .. .. .	C. A. [1899] W. N. 12 (12); [1899] 1 Q. B. 401 .. .. .	1815
Norton :—Munday <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 403 .. .. .	62, 1499
Norwich (Bishop of) :—Boyer <i>v.</i> .. .. .	[1892] P. 41; P. C. [1892] A. C. 417 .. .. .	734
Norwich (Bishop of) :—O'Malley <i>v.</i> .. .. .	[1892] P. 175 .. .. .	752
Norwood (Overseers) <i>v.</i> Salter .. .. .	[1892] 2 Q. B. 118 .. .. .	1687, 1691
Noton :—Evans <i>v.</i> In re Evans (No. 1) .. .. .	C. A. [1893] 1 Ch. 252 .. .. .	36, 81, 1488
Noton :—Evans <i>v.</i> In re Evans (No. 2) .. .. .	[1893] W. N. 32 .. .. .	77
Notre Dame de Bonsecours (Corporation of the Parish of) :—Canadian Pacific Ry. <i>v.</i> .. .. .	P. C. [1899] A. C. 367 .. .. .	258
Nottage, In re. Jones <i>v.</i> Palmer (No. 1) .. .. .	C. A. [1895] 2 Ch. 649 .. .. .	281, 2347
Nottage, In re. Jones <i>v.</i> Palmer (No. 2) .. .. .	C. A. [1895] 2 Ch. 657 .. .. .	2340
Nott Bower :—Andrews <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 888 .. .. .	848
Nottingham Corporation, In re .. .. .	[1897] 2 Q. B. 502 .. .. .	1751
Nottingham Justices :—Nix <i>v.</i> .. .. .	C. A. [1899] W. N. 106; [1899] 2 Q. B. 294 .. .. .	1104
Nottingham Lunatic Hospital :—Cawse <i>v.</i> .. .. .	[1891] 1 Q. B. 585 .. .. .	1754
Nottingham Permanent Benefit Building Society :—Thurstan <i>v.</i> .. .. .	[1900] W. N. 239 .. .. .	227
Nourse, In re. Hampton <i>v.</i> Nourse .. .. .	[1898] W. N. 150 (3); [1899] 1 Ch. 63 .. .. .	2344
Nourse <i>v.</i> Liverpool Sailing Shipowners' Mutual Protection and Indemnity Association .. .. .	C. A. [1896] 2 Q. B. 16 .. .. .	1000
Nova Scotia (Att.-Gen. for) :—Reynolds <i>v.</i> .. .. .	P. C. [1896] A. C. 240 .. .. .	252
Nowell :—Lloyd <i>v.</i> .. .. .	[1895] 2 Ch. 744 .. .. .	2064, 2220, 2249
Noyce, In re .. .. .	[1892] 1 Q. B. 97; C. A. [1892] 1 Q. B. 642 .. .. .	594
Noyes <i>v.</i> Paterson .. .. .	[1894] 3 Ch. 267 .. .. .	2236
Nuthall, In re. Ford <i>v.</i> Nuthall .. .. .	C. A. [1891] W. N. 55 .. .. .	160
Nutley and Finn, In re .. .. .	[1894] W. N. 64 .. .. .	2224
Nutt :—Bourke <i>v.</i> In re Pulborough (School Board Election for the Parish of) .. .. .	C. A. [1894] 1 Q. B. 725 .. .. .	126, 2071
Nutt <i>v.</i> Easton .. .. .	[1899] 1 Ch. 873; C. A. [1899] W. N. 239; [1900] 1 Ch. 29 .. .. .	1301
Nuttall <i>v.</i> Hargreaves .. .. .	C. A. [1892] 1 Ch. 23 .. .. .	1444
Nuttall <i>v.</i> Whittaker. In re Hartley (No. 1) .. .. .	[1891] 2 Ch. 121 .. .. .	1547
Nuttall <i>v.</i> Whittaker. In re Hartley (No. 2) .. .. .	[1892] W. N. 49 .. .. .	1699
Nutter <i>v.</i> Holland .. .. .	C. A. [1894] 3 Ch. 408 .. .. .	1522
Nyberg <i>v.</i> Handelaar .. .. .	C. A. [1892] 2 Q. B. 202 .. .. .	2159
Nystrom :—Cameron <i>v.</i> .. .. .	P. C. [1893] A. C. 308 .. .. .	1243
O.		
Oake :—Finch <i>v.</i> .. .. .	C. A. [1896] 1 Ch. 409 .. .. .	2263
Oakey, In the Goods of .. .. .	[1896] P. 7 .. .. .	1594
Oakshette :—Imray <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 218 .. .. .	1072
O'Brien, In the Goods of .. .. .	[1900] P. 208 .. .. .	1603
Ocean Coal Co. :—Daniel <i>v.</i> .. .. .	C. A. [1900] W. N. 109; [1900] 2 Q. B. 250 .. .. .	1224
Ocean Coal Co. :—Jones <i>v.</i> .. .. .	[1899] 2 Q. B. 124 .. .. .	1220

Name of Case.	Volume and Page.	Column of Digest.
Ocean Queen Steamship Co., In re .. ..	[1893] 2 Ch. 666 .. ..	383
O'Connell v. Holland .. ..	C. A. (Ir.) [1900] W. N. 244 ..	1368
O'Connor :—Graham v. .. ..	[1895] W. N. 157 (10) .. ..	405, 2064
O'Connor :—"Star" Newspaper Co. v. ..	[1893] W. N. 114; C. A. [1893] W. N. 122 .. ..	515
Odd Rode (All of):—Egerton v. .. ..	[1894] P. 15 .. ..	747
Oddy, In re .. ..	C. A. [1895] 1 Q. B. 392 .. ..	44, 2043
Odessa Waterworks Co., In re .. ..	[1897] W. N. 166 (3) .. ..	417
O'Doherty's Case. Hollands v. Chambers	C. A. (Ir.) [1899] W. N. 153 ..	1395
Official Receiver, Ex parte. In re A Bankruptcy Notice .. ..	C. A. [1895] 1 Q. B. 609 .. ..	103
Official Receiver, Ex parte. In re Beall ..	[1899] W. N. 10 (3); [1899] 1 Q. B. 688 .. ..	180
Official Receiver, Ex parte. In re Cunningham	[1899] W. N. 68 .. ..	126
Official Receiver, Ex parte. In re Duncan ..	C. A. [1892] 1 Q. B. 879 .. ..	136
Official Receiver, Ex parte. In re Flatau ..	C. A. [1893] 2 Q. B. 219 .. ..	162
Official Receiver, Ex parte. In re Ford ..	[1899] W. N. 245; [1900] 1 Q. B. 264 .. ..	127
Official Receiver, Ex parte. In re Frost ..	[1899] W. N. 48; [1899] 2 Q. B. 50 .. ..	126
Official Receiver, Ex parte. In re Goudie ..	[1896] 2 Q. B. 481 .. ..	156
Official Receiver, Ex parte. In re Graydon ..	[1896] 1 Q. B. 417 .. ..	179
Official Receiver, Ex parte. In re Hawkins ..	C. A. [1892] 1 Q. B. 890 .. ..	113, 123
Official Receiver, Ex parte. In re Izod ..	C. A. [1898] 1 Q. B. 241 .. ..	162
Official Receiver, Ex parte. In re Lord Thurlow	C. A. [1895] 1 Q. B. 724 .. ..	111
Official Receiver, Ex parte. In re Miller ..	C. A. [1893] 1 Q. B. 327 .. ..	145, 855
Official Receiver, Ex parte. In re Newman ..	[1899] 2 Q. B. 587 .. ..	163
Official Receiver, Ex parte. In re Raynes Park Golf Club, Ltd. .. ..	[1899] 1 Q. B. 961 .. ..	435
Official Receiver, Ex parte. In re Tankard ..	[1899] W. N. 60; [1899] 2 Q. B. 57 .. ..	184
Official Trustee of Charity Lands:—Fell v. ..	C. A. [1898] 2 Ch. 44 .. ..	271
Ogden :—Blenkinsop v. .. ..	[1898] 1 Q. B. 783 .. ..	1237
Ogden v. Mason. In re Mason .. ..	[1900] W. N. 115; [1900] 2 Ch. 196 .. ..	2353
Ogilvie v. Littleboy .. ..	C. A. [1897] W. N. 53 (1) .. ..	281
Ogilvie v. West Australian Mortgage and Agency Corporation .. ..	P. C. [1896] A. C. 257 .. ..	85
Ogilvy :—Indigo Co. v. .. ..	C. A. [1891] 2 Ch. 31 .. ..	1506
Ogilvy :—West Lancaster Rural Council v. ..	[1899] W. N. 6 (3); [1899] 1 Q. B. 377 .. ..	2275
O'Gorman, In re. Ex parte Bale .. ..	[1899] W. N. 68; [1899] 2 Q. B. 62 .. ..	148
Ogston v. Aberdeen District Tramways Co. ..	H. L. (Sc.) [1896] W. N. 175 (14); [1897] A. C. 111 .. ..	1351
Ogston v. Stewart .. ..	H. L. (Sc.) [1896] A. C. 120 .. ..	823
O'Hara, Matthews & Co. v. Elliott & Co. ..	[1893] 1 Q. B. 362 .. ..	560
O'Hagan :—Viditz v. .. ..	[1899] W. N. 99; [1899] 2 Ch. 569; C. A. [1900] W. N. 103; [1900] 2 Ch. 87 .. ..	493
Ohlson's Case. Reg. v. Commrs. of Inland Revenue .. ..	[1891] 1 Q. B. 485 .. ..	1445
Oldham Assessment Committee:—Hoyle & Jackson v. .. ..	C. A. [1894] 2 Q. B. 372 .. ..	1675
Old Battersea and District Building Society v. Inland Revenue Commrs. .. ..	[1898] 2 Q. B. 294 .. ..	1800
Oldman :—Tanner v. .. ..	[1895] W. N. 139 (7); [1896] 1 Q. B. 60 .. ..	1153

Name of Case.	Volume and Page.	Column of Digest.
Oldrey v. Union Works, Ltd. .. .. .	[1895] W. N. 77 .. .. .	315, 322, 1503
Oldroyd v. Oldroyd .. .. .	[1896] P. 175 .. .. .	717
Oliver v. Hinton .. .. .	[1898] W. N. 172 (4); C. A. [1899] W. N. 102; [1899] 2 Ch. 264 .. .. .	1288
	C. A. [1894] 1 Q. B. 332 .. .. .	549, 895, 2066
Oliver v. Oliver .. .. .	[1892] W. N. 84 .. .. .	693
Oliver :—Pittard v. .. .. .	C. A. [1891] 1 Q. B. 474 .. .. .	652
Oliver v. Robbins .. .. .	[1894] W. N. 199 .. .. .	573
Ollis :—Reg. v. .. .. .	C. C. R. [1900] W. N. 154; [1900] 2 Q. B. 758 .. .. .	614
O'Malley v. Bishop of Norwich .. .. .	[1892] P. 175 .. .. .	752
Omnium Investment Co., In re .. .. .	[1895] 2 Ch. 127 .. .. .	365, 778
O'Neil v. Armstrong, Mitchell & Co. .. .. .	[1895] 2 Q. B. 70; C. A. [1895] 2 Q. B. 418 .. .. .	2014
	C. A. [1896] W. N. 54 (16) .. .. .	2360
Onslow v. Inland Revenue Commrs. .. .. .	C. A. [1891] 1 Q. B. 239 .. .. .	1806
Ontario (Att.-Gen. for) v. Att.-Gen. for the Dominion .. .. .	P. C. [1896] A. C. 348 .. .. .	242, 243
Onward Building Society, In re (No. 1) .. .. .	C. A. [1891] 2 Q. B. 463 .. .. .	405
	[1893] 1 Q. B. 16 .. .. .	2033
Onward Building Society v. Smithson .. .. .	C. A. [1893] 1 Ch. 1 .. .. .	769
Oregum Gold Mining Co. of India v. Roper. Wallroth v. Roper .. .. .	H. L. (E.) [1892] A. C. 125 .. .. .	396
Opera, Ltd., In re .. .. .	[1891] 2 Ch. 154; C. A. [1891] 3 Ch. 260 .. .. .	320, 449
	[1896] W. N. 170 (1); C. A. [1897] P. 249 .. .. .	1952
Oppenheim v. Schweder. In re Schweder's Estate (No. 1) .. .. .	[1891] 3 Ch. 44 .. .. .	2341
	(No. 2) [1893] W. N. 12 .. .. .	2304
Oppenheim & Co. v. Sheffield .. .. .	C. A. [1893] 1 Q. B. 5 .. .. .	676
Orchard v. Bush & Co. .. .. .	[1898] 2 Q. B. 284 .. .. .	972
Orford (Countess of) In re. Cartwright v. Balzo (Duc del) .. .. .	[1895] W. N. 155 (1); [1896] 1 Ch. 257 .. .. .	1735
	[1894] P. 271; C. A. [1895] P. 49 .. .. .	1980
"Orienta," The .. .. .	C. A. [1893] 2 Q. B. 518 .. .. .	1974
Oriental Steamship Co. v. Tylor .. .. .	[1891] W. N. 153 .. .. .	364
Oriental Telephone Co., In re .. .. .	[1891] P. 307 .. .. .	1951
"Orion," The .. .. .	[1892] P. 247 .. .. .	1610, 1616
Ormerod :—Paton v. .. .. .	C. A. [1893] 3 Ch. 348 .. .. .	2346
Ormerod :—Paton v. In re Bagot .. .. .	[1894] 2 Ch. 474 .. .. .	432
Ormerod's Case. In re Harvey's Oyster Co. .. .. .	[1898] 2 Ch. 638 .. .. .	279
Ormerod v. Wilkinson. In re Scoweroff .. .. .	[1892] 2 Ch. 318 .. .. .	1859, 1866
Ormskirk Union Assessment Committee :—Southport Corporation v. .. .. .	[1893] 2 Q. B. 468; C. A. [1894] 1 Q. B. 196 .. .. .	1677
	O'Rourke :—Commr. for Rys. v. .. .. .	1323
Orpen :—Marshall v. .. .. .	P. C. [1896] A. C. 594 .. .. .	262, 376
Orr v. Mitchell .. .. .	P. C. [1895] A. C. 606 .. .. .	1832
Orr v. (S.) [1893] A. C. 238 .. .. .	H. L. (S.) [1893] A. C. 238 .. .. .	1832
Orwell Park Estate, In re .. .. .	[1894] W. N. 135 .. .. .	1858
Osborn v. Vickers, Sons and Maxim .. .. .	C. A. [1900] 2 Q. B. 91 .. .. .	1226
	[1896] W. N. 174 (8); [1897] 1 Q. B. 197 .. .. .	1031
Osborn v. Wood Brothers .. .. .	P. C. [1899] A. C. 351 .. .. .	1326
Osborne :—Bulli Coal Mining Co. v. .. .. .		

Name of Case.	Volume and Page.	Column of Digest.
Osborne <i>v.</i> Chocqueel .. .. .	[1896] 2 Q. B. 109 .. ..	636
Osborne <i>v.</i> Melville .. .. .	C. A. (Sc.) [1900] W. N. 231 ..	1370
Osborne:—Parker <i>v.</i> In re Parker .. ..	[1897] 2 Ch. 208 .. ..	2333
O'Shea <i>v.</i> Meara .. .. .	C. A. (Ir.) [1899] W. N. 177 ..	1376
O'Shea <i>v.</i> Wood .. .. .	[1891] P. 237; C. A. [1891] P. 286 .. ..	1614
O'Shea's Settlement, In re. Courage <i>v.</i> O'Shea	C. A. [1895] 1 Ch. 325 .. ..	117, 141
Osmond <i>v.</i> Mutual Cycle and Manufacturing Supply Co. .. .. .	C. A. [1899] 2 Q. B. 488 .. ..	1436
Ossett Corporation:—Harrop <i>v.</i> .. .. .	[1898] 1 Ch. 525 .. ..	567
Ostigny:—Forget <i>v.</i> .. .. .	P. C. [1895] A. C. 318 .. ..	256, 868, 869, 1591, 2078
Oswaldtwistle Urban District Council:—Peebles <i>v.</i> .. .. .	C. A. [1896] 2 Q. B. 159 .. ..	1509
Oswaldtwistle Urban District Council:—Pasmore <i>v.</i> .. .. .	H. L. (E.) [1898] A. C. 387 .. ..	1912
O'Sullivan <i>v.</i> Thomas .. .. .	[1895] 1 Q. B. 698 .. ..	870
Ottery <i>v.</i> Turner. In re Lord Ongley .. ..	C. A. [1896] W. N. 54 (16) .. ..	2360
Otto, Ex parte. Reg. <i>v.</i> Lushington .. ..	[1894] 1 Q. B. 420 .. ..	623, 809
"Otto," The (Owners of) <i>v.</i> The "Thorsa" (Owners of). The "Otto" .. .. .	H. L. (Sc.) [1894] A. C. 116 .. ..	1953
Ottos Kopje Diamond Mines, Ltd., In re .. ..	C. A. [1893] 1 Ch. 618 .. ..	402, 403, 637
Otway, In re. Ex parte Otway .. .. .	[1895] 1 Q. B. 812 .. ..	162
Otway <i>v.</i> Otway. In re Loftus-Otway .. ..	[1895] 2 Ch. 235 .. ..	759, 2331
Outram:—Hawksley <i>v.</i> .. .. .	C. A. [1892] 3 Ch. 359 .. ..	1425, 1723, 2064
Over <i>v.</i> Harwood .. .. .	[1900] 1 Q. B. 803 .. ..	2214
Overell:—Tidd <i>v.</i> In re Tidd .. .. .	[1893] 3 Ch. 154 .. ..	88, 1126
Overend:—Gale <i>v.</i> .. .. .	[1891] 1 Q. B. 269 .. ..	1390
Overweg, In re. Haas <i>v.</i> Durant .. .. .	[1899] W. N. 245; [1900] 1 Ch. 209 .. ..	2073
Ovey <i>v.</i> Ovey .. .. .	[1900] 2 Ch. 524 .. ..	797
Owen, In re .. .. .	[1894] 3 Ch. 220 .. ..	1131
Owen:—Att.-Gen. <i>v.</i> Att.-Gen. <i>v.</i> Coulson .. ..	[1899] 2 Q. B. 253 .. ..	1734
Owen:—Hoare <i>v.</i> In re Hoare .. .. .	[1892] 3 Ch. 94 .. ..	1303, 1703
Owen:—Lewis <i>v.</i> .. .. .	[1894] 1 Q. B. 102 .. ..	583
Owen <i>v.</i> Richmond .. .. .	[1895] W. N. 29 .. ..	1093, 2184
Owen and Ashworth's Claim. Whitworth's Claim. In re Bank of Syria .. .. .	[1900] W. N. 66; [1900] 2 Ch. 272; C. A. [1900] W. N. 256 ..	350
Owen & Co. <i>v.</i> Cronk .. .. .	C. A. [1895] 1 Q. B. 265 .. ..	1577
Owens:—Evans <i>v.</i> .. .. .	[1895] 1 Q. B. 237 .. ..	824
Owen's Patent, In re .. .. .	[1898] W. N. 151 (11); [1899] 1 Ch. 157 .. ..	1436
Owthwaite, In re. Owthwaite <i>v.</i> Taylor .. ..	[1891] 3 Ch. 494 .. ..	2185
Oxford, Ltd. (The) <i>v.</i> London County Council .. ..	[1898] 2 Ch. 491 .. ..	1172
Oxford Circuit (Clerk of Assize of):—Reg. <i>v.</i> .. ..	[1897] 1 Q. B. 370 .. ..	622
Oxford and Cambridge (Universities of) <i>v.</i> George Gill & Sons .. .. .	[1898] W. N. 155 (8); [1899] 1 Ch. 55 .. ..	1517
Oxford Corporation <i>v.</i> Crow .. .. .	[1891] 3 Ch. 535 .. ..	542
Oxfordshire (Justices of):—Reg. <i>v.</i> .. .. .	C. A. [1893] 2 Q. B. 149 .. ..	1042
Oxfordshire County Court (Judge of):—Reg. <i>v.</i> .. ..	[1894] 2 Q. B. 440 .. ..	596
Oxley <i>v.</i> Wilkes .. .. .	C. A. [1898] 2 Q. B. 56 .. ..	647

Name of Case.	Volume and Page.	Column of Digest.
P.		
P—— v. N—— .. .. .	[1896] W. N. 175 (13) .. ..	773
"P. Caland," The. Owners of the "P. Caland" v. Glamorgan Steamship Co. .. .. .	C. A. [1892] P. 191; H. L. (E.) .. ..	38, 1953
"Pacific," The .. .. .	[1893] A. C. 207 .. ..	2008
Pack v. Darby .. .. .	[1898] P. 170 .. ..	51, 1314
Paddington Vestry :—Florence v. .. .. .	[1895] W. N. 123 (6) .. ..	1168
Paddington Vestry :—Gibbon v. .. .. .	[1895] W. N. 143 (9) .. ..	1181
Paddington Vestry v. North Metropolitan Ry. and Canal Co. .. .. .	[1900] W. N. 180; [1900] 2 Ch. 794 .. ..	1172
Pagani, In re. In re Pagani's Trust .. .. .	[1894] 1 Q. B. 633 .. ..	1187
Page, In re. Jones v. Morgan .. .. .	C. A. [1892] 1 Ch. 236 .. ..	2166, 2191
Page v. International Agency and Industrial Trust .. .. .	[1893] 1 Ch. 304 .. ..	335
Page v. Midland Ry. Co. .. .. .	[1893] W. N. 32 .. ..	2250
Page and Owners of SS. "Jane":—Owners of SS. "Pleiades" v. .. .. .	C. A. [1894] 1 Ch. 11 .. ..	1953
Paget, Ex parte. In re Semenra .. .. .	P. C. [1891] A. C. 259 .. ..	144
Paget, In re. In re Mellor. Mellor v. Mellor .. .. .	C. A. [1894] 1 Q. B. 15 .. ..	1479
Paget v. Paget .. .. .	[1897] W. N. 159 (6); [1898] 1 Ch. 47; affirmed by C. A. [1898] 1 Ch. 470 .. ..	918
Pain v. Bowden .. .. .	[1896] 2 Q. B. 301 .. ..	586
Paine, In re. Ex parte Paine .. .. .	C. A. [1891] W. N. 208 .. ..	164
Paine, In re. Ex parte Read .. .. .	[1896] W. N. 154 (2); [1897] 1 Q. B. 122 .. ..	132
Paine v. Chisholm .. .. .	C. A. [1891] 1 Q. B. 531 .. ..	557, 563
Paine :—Westmore v. .. .. .	[1891] 1 Q. B. 482 .. ..	1038
Paine & Co.'s Trade-marks, In re. Paine & Co. v. Daniells & Sons' Breweries .. .. .	C. A. [1893] 2 Ch. 567 .. ..	2126, 2129
Painter, Ex parte. In re Painter .. .. .	[1895] 1 Q. B. 85 .. ..	112, 142
Painton :—Tyrrell v. (No. 1) .. .. .	C. A. [1894] P. 151 .. ..	1619
(No. 2) .. .. .	C. A. [1895] 1 Q. B. 202 .. ..	1697
Paisley Cemetery v. Inland Revenue Commrs. Ct. of Sess. (Sc.) .. .. .	[1899] W. N. 196 .. ..	1761, 1774
Palace Theatre Ltd. :—Simpson v. .. .. .	[1893] W. N. 91 .. ..	378
Palgrave Gold Mining Co. v. McMillan .. .. .	P. C. [1892] A. C. 460 .. ..	251
Palk, In re. Drake, In re. Chamberlain v. Drake .. .. .	[1892] W. N. 112 .. ..	2186
Palliser v. Dale .. .. .	C. A. [1897] 1 Q. B. 257 .. ..	858
Pallister, Ex parte. In re Holloway .. .. .	C. A. [1894] 2 Q. B. 163 .. ..	1502, 1503, 1504
Palmer, In re. Ex parte Brims .. .. .	C. A. [1898] 1 Q. B. 419 .. ..	104
Palmer, In re. Palmer v. Ainsworth .. .. .	C. A. [1893] 3 Ch. 369 .. ..	2319, 2354
Palmer, In re. Palmer v. Rose-Innes .. .. .	[1900] W. N. 9 .. ..	1736
Palmer & Co. and Hosken & Co., In re .. .. .	C. A. [1897] W. N. 156 (3); [1898] 1 Q. B. 131 .. ..	60
Palmer :—Australasia (Bank of) v. .. .. .	P. C. [1897] A. C. 540 .. ..	1326
Palmer v. Bramley .. .. .	C. A. [1895] 2 Q. B. 405 .. ..	196, 681
Palmer v. Caledonian Ry. Co. .. .. .	[1892] 1 Q. B. 607; C. A. [1892] 1 Q. B. 823 .. ..	1547, 1657, 1839
Palmer v. Day & Sons .. .. .	[1895] 2 Q. B. 618 .. ..	169

Name of Case.	Volume and Page.	Column of Digest.
Palmer :—Great Northern Ry. Co. <i>v.</i> .. ..	[1895] 1 Q. B. 862 .. ..	1652
Palmer :—Jobson <i>v.</i> .. ..	[1893] 1 Ch. 71 .. ..	2182, 2196
Palmer :—Jones <i>v.</i> In re Nottage (No. 1) .. ..	C. A. [1895] 2 Ch. 649 .. ..	281, 2347
Palmer :—Jones <i>v.</i> In re Nottage (No. 2) .. ..	C. A. [1895] 2 Ch. 657 .. ..	2340
Palmer <i>v.</i> Moore .. ..	P. C. [1900] A. C. 293 .. ..	1259
Palmer <i>v.</i> Palmer .. ..	[1892] 1 Q. B. 319 .. ..	678
Palmer <i>v.</i> Rich .. ..	[1896] W. N. 174 (7); [1897] 1 Ch. 134 .. ..	1022
Palmer <i>v.</i> Rose Innes. In re Palmer .. ..	[1900] W. N. 9 .. ..	1736
Palmer :—St. Mary, Battersea <i>v.</i> .. ..	[1897] 1 Q. B. 220 .. ..	1177
Palmer <i>v.</i> Snow .. ..	[1900] W. N. 25; [1900] 1 Q. B. 725 .. ..	2093
Palmer :—Thompson <i>v.</i> .. ..	C. A. [1893] 2 Q. B. 80 .. ..	1541
Palmer <i>v.</i> Wade .. ..	[1894] 1 Q. B. 268 .. ..	1395
Palmer :—Wade <i>v.</i> .. ..	[1894] 1 Q. B. 268 .. ..	1395
Palmer :—Whitaker <i>v.</i> In re Whitaker .. ..	[1900] W. N. 175; [1900] 2 Ch. 677; C. A. [1900] W. N. 239 .. ..	796
Palmer <i>v.</i> Wick and Pulteneytown Steam Shipping Co. .. ..	H. L. (Sc.) [1894] A. C. 318 .. ..	1835
Palmer :—Wyatt <i>v.</i> .. ..	C. A. [1899] W. N. 74; [1899] 2 Q. B. 106 .. ..	1551
Panes <i>v.</i> Att.-Gen. In re Bond .. ..	[1900] W. N. 122 .. ..	624
Pannell <i>v.</i> City of London Brewery Co. .. ..	[1900] W. N. 16; [1900] 1 Ch. 496 .. ..	1069
Panther Lead Co., In re .. ..	[1896] 1 Ch. 978 .. ..	474
Papé <i>v.</i> Westacott .. ..	C. A. [1894] 1 Q. B. 272 .. ..	92, 264, 1573
Papillon :—Ingram <i>v.</i> In re Ashton .. ..	[1897] 2 Ch. 574; C. A. [1898] 1 Ch. 142 .. ..	1469
Papworth :—Williams <i>v.</i> .. ..	P. C. [1900] A. C. 563 .. ..	1328
Parapano <i>v.</i> Happaz .. ..	P. C. [1894] A. C. 165 .. ..	632, 1095
Parbury's Case. In re Building Estates Brickfields Co. .. ..	[1895] W. N. 142 (2); [1896] 1 Ch. 100 .. ..	423
Paré :—Hodson <i>v.</i> .. ..	C. A. [1899] 1 Q. B. 455 .. ..	647
"Paris," The .. ..	[1896] P. 77 .. ..	2025
Parishioners of Same :—Baisham, Suffolk (Rector of) <i>v.</i> .. ..	[1896] P. 256 .. ..	740
Parishioners of Same :—St. Botolph without Aldgate (Vicar of) <i>v.</i> (No 1) .. ..	[1892] P. 161 .. ..	743
Parishioners of Same :—St. Botolph, Aldersgate Without (Vicar of) <i>v.</i> .. ..	[1892] P. 173 .. ..	743, 873
Parishioners of Same :—St. Helens, Bishopsgate, with St. Mary Outwich (Rector of) <i>v.</i> .. ..	[1900] W. N. 69 .. ..	743
Parishioners of Same :—St. James, Norland (Vicar of) <i>v.</i> .. ..	[1892] P. 259 .. ..	750
Parishioners of Same :—St. James the Less, Bethnal Green (Vicar of) <i>v.</i> .. ..	[1894] P. 256 .. ..	741
Parishioners of Same :—St. James the Less, Bethnal Green (Vicar of) <i>v.</i> .. ..	[1899] P. 55 .. ..	746
Parishioners of Same :—St. John the Baptist, Cardiff (Vicar of) <i>v.</i> .. ..	[1898] P. 155 .. ..	744
Parishioners of Same :—St. Mary-at-Hill with St. Andrew Hubbard (Rector of) <i>v.</i> .. ..	[1892] P. 394 .. ..	739
Parishioners of Same :—St. Michael Bassishaw (Rector of) <i>v.</i> .. ..	[1893] P. 233 .. ..	738
Parishioners of Same :—St. Pendlebury (Vicar of) <i>v.</i> .. ..	[1895] P. 178 .. ..	750



Name of Case.	Volume and Page.	Column of Digest.
Parishioners of Same:—St. Peter's, Eaton Square (Vicar of) <i>v.</i> .. .. .	[1894] P. 350 .. .. .	741, 751
Parkdale, <i>The</i> .. .. .	[1897] P. 53 .. .. .	2015
Park Yard Co.:—North British Ry. Co. <i>v.</i> .. .. .	H. L. (Sc.) [1898] A. C. 643 .. .. .	730
Park:—Wignall <i>v.</i> In re Parker .. .. .	[1891] 1 Ch. 682 .. .. .	286
Parke:—Canadian Pacific Ry. <i>v.</i> .. .. .	P. C. [1899] A. C. 535 .. .. .	246
Parker, In re. Morgan <i>v.</i> Hill .. .. .	C. A. [1894] 3 Ch. 400 .. .. .	1582
Parker, In re. Parker <i>v.</i> Osborne .. .. .	[1897] 2 Ch. 208 .. .. .	2333
Parker, In re. Wignall <i>v.</i> Park .. .. .	[1891] 1 Ch. 682 .. .. .	286
Parker, <i>v.</i> Alder .. .. .	[1899] 1 Q. B. 20 .. .. .	21
Parker <i>v.</i> Champion .. .. .	C. A. (Ir.) [1899] W. N. 178 .. .. .	1383
Parker:—Daventry Rural Council <i>v.</i> .. .. .	C. A. [1899] W. N. 210; [1900] 1 Q. B. 1 .. .. .	897, 898
Parker:—Dakin <i>v.</i> .. .. .	[1894] 2 Q. B. 273; C. A. [1894] 2 Q. B. 556 .. .. .	1103
Parker:—Moses (alias Moss) <i>v.</i> Ex parte Moses .. .. .	P. C. [1896] A. C. 245 .. .. .	2099
Parker-Jervis, In re. Salt <i>v.</i> Locker .. .. .	[1898] 2 Ch. 643 .. .. .	1745
Parker's Trusts, In re .. .. .	[1894] 1 Ch. 707 .. .. .	789, 2168
Parkin, In re. Hill <i>v.</i> Schwarz .. .. .	[1892] 3 Ch. 510 .. .. .	1471
Parkington <i>v.</i> Heywood. In re Heywood .. .. .	[1897] 2 Ch. 593 .. .. .	796
Parkinson <i>v.</i> Crawshay .. .. .	[1894] W. N. 85 .. .. .	776
Parkinson:—Royal Aquarium and Summer and Winter Garden Society <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 431 .. .. .	648, 1308
Parkinson <i>v.</i> Snaith. In re Pickworth .. .. .	C. A. [1899] W. N. 28 (11); [1899] 1 Ch. 642 .. .. .	2362
Parkinson <i>v.</i> Wainwright & Co. .. .. .	[1895] W. N. 63 .. .. .	317
Parks:—Seagrove <i>v.</i> .. .. .	[1891] 1 Q. B. 551 .. .. .	1543
Parnell (formerly O'Shea) <i>v.</i> Wood. In re Wood .. .. .	C. A. [1892] P. 137 .. .. .	662
Parr:—Ecclesiastical Commrs. <i>v.</i> .. .. .	C. A. [1894] 2 Q. B. 420 .. .. .	524
Parr:—Gold Ores Reduction Co. <i>v.</i> .. .. .	[1892] 2 Q. B. 14 .. .. .	1566
Parr:—Mountain <i>v.</i> .. .. .	C. A. [1899] W. N. 35 (7); [1899] 1 Q. B. 805 .. .. .	1245
Parr (J.) & Co.:—Pneumatic Tyre Co. <i>v.</i> .. .. .	[1896] W. N. 88 (13) .. .. .	1437
Parr's Banking Co. <i>v.</i> Yates .. .. .	C. A. [1898] 2 Q. B. 460 .. .. .	1005
Parrott, In re. Ex parte Cullen .. .. .	[1891] 2 Q. B. 151 .. .. .	156
Parrott:—Jackson <i>v.</i> In re Wise .. .. .	[1896] 1 Ch. 281 .. .. .	950
Parry & Hopkins, In re .. .. .	[1900] 1 Ch. 160 .. .. .	2269
Parry:—Bangor (Bishop of) <i>v.</i> .. .. .	[1891] 2 Q. B. 277 .. .. .	273
Parry:—Barry and Cadoxton Local Board <i>v.</i> .. .. .	[1895] 2 Q. B. 110 .. .. .	2086
Parry:—Davies <i>v.</i> .. .. .	[1898] W. N. 168 (1); [1899] 1 Ch. 602 .. .. .	801
Parry <i>v.</i> Liverpool Malt Co. .. .. .	C. A. [1900] W. N. 2; [1900] 1 Q. B. 339 .. .. .	1246
Parry <i>v.</i> Parry .. .. .	[1896] P. 37 .. .. .	697
Parsons, In re. Ex parte Furber .. .. .	C. A. [1893] 2 Q. B. 122 .. .. .	209
Parsons:—Fordom <i>v.</i> .. .. .	[1894] 2 Q. B. 780 .. .. .	1911
Parsons <i>v.</i> Gillespie .. .. .	P. C. [1898] A. C. 239 .. .. .	1333
Parsons <i>v.</i> New Zealand Shipping Co. .. .. .	[1900] 1 Q. B. 714 .. .. .	1940
Parson's Patent, In re .. .. .	P. C. [1898] A. C. 673 .. .. .	1439
Partridge:—Brittin <i>v.</i> In re Wasdale .. .. .	[1898] W. N. 164 (2); [1899] 1 Ch. 163 .. .. .	75
Partridge <i>v.</i> Partridge .. .. .	[1894] 1 Ch. 351 .. .. .	2319
Pasmore <i>v.</i> Oswaldtwistle Urban District Council .. .. .	H. L. (E.) [1898] A. C. 387 .. .. .	1912
Patch:—Brown <i>v.</i> .. .. .	[1899] W. N. 46; [1899] 1 Q. B. 892 .. .. .	865
Patent Agents (Institute of) <i>v.</i> Lockwood .. .. .	H. L. (Sc.) [1894] A. C. 347 .. .. .	1434, 2069, 2072

Name of Case.	Volume and Page.	Column of Digest.
Paterson v. Gas Light and Coke Co. .. ..	C. A. [1896] 2 Ch. 476 .. ..	874
Paterson :—Noyes v. .. ..	[1894] 3 Ch. 267 .. ..	2236
Paterson :—Reg. v. .. ..	[1895] 1 Q. B. 31 .. ..	595, 2112
Paterson :—Seaward v. .. ..	C. A. [1897] 1 Ch. 545 .. ..	501
Paterson :—Wyman v. .. ..	H. L. (Sc.) [1900] W. N. 63 ; [1900] A. C. 271 .. ..	2175
Paton :—Clydesdale Bank v. .. ..	H. L. (Sc.) [1896] A. C. 381 .. ..	1838
Paton :—Hamilton v. .. ..	C. A. (Sc.) [1899] W. N. 175 .. ..	1386
Paton v. Ormerod .. ..	[1892] P. 247 .. ..	1610, 1616
Paton v. Ormerod. In re Bagot .. ..	C. A. [1893] 3 Ch. 348 .. ..	2346
Patrick, In re. Bills v. Tatham .. ..	[1891] 1 Ch. 82 .. ..	1908
Patten v. West of England Iron, Timber, and Charcoal Co. .. ..	[1894] 2 Q. B. 159 .. ..	559
Patterson :—Cullen v. .. ..	C. A. (Ir.) [1897] W. N. 126 .. ..	1386
Patterson :—Victorian Corporation v. The Same v. Lang .. ..	P. C. [1899] A. C. 615 .. ..	248
Patteshall :—Blakeway v. .. ..	[1894] 1 Q. B. 247 .. ..	583, 1510
Pattle v. Hornibrook .. ..	[1897] 1 Ch. 25 .. ..	511
Paul :—Deutsche National Bank v. .. ..	[1898] 1 Ch. 283 .. ..	1540
Pawley and London & Provincial Bank, In re ..	[1900] 1 Ch. 58 .. ..	2249
Paxton v. Baird .. ..	[1893] 1 Q. B. 139 .. ..	1487, 1563
Payne v. Cork Co., Ltd. .. ..	[1900] 1 Ch. 308 .. ..	378
Payne v. Hogg .. ..	C. A. [1900] W. N. 86 ; [1900] 2 Q. B. 43 .. ..	1630
Payne :—Monckton v. .. ..	[1899] 2 Q. B. 603 .. ..	524
Payne v. Stamford. In re Earl of Stamford ..	[1895] W. N. 157 (2) ; [1896] 1 Ch. 288 .. ..	2169
Payne v. Wilson .. ..	[1895] 1 Q. B. 653 ; C. A. [1895] 2 Q. B. 537 .. ..	815
Payne v. Wright .. ..	[1892] 1 Q. B. 104 .. ..	1158
Payne & Cooper :—Reg. v. .. ..	[1896] 1 Q. B. 577 .. ..	503
Payne-Collier v. Vyse. In re Lawrence .. ..	C. A. [1891] W. N. 28 .. ..	2353
Paynter v. Watson .. ..	[1898] 2 Q. B. 31 .. ..	1157
Peabody Gold Mining Corporation, In re .. ..	[1897] W. N. 170 (3) .. ..	412
Peace v. Brookes .. ..	[1895] 2 Q. B. 451 .. ..	199, 203
Peachey :—Moore v. .. ..	[1891] 2 Q. B. 707 .. ..	660
Peacock, In re. Ex parte Beyer, Clark & Co. ..	C. A. [1896] 2 Q. B. 476 .. ..	104
Peacock :—Conroy v. .. ..	[1897] 2 Q. B. 6 .. ..	597
Peacock v. Frigout. In re Abbot .. ..	[1893] 1 Ch. 54 .. ..	1483, 2348
Peacock v. Lucas. In re Whitehead .. ..	[1894] 1 Ch. 678 .. ..	2334
Peacock :—New Zealand Gold Extraction Co. (Newberry-Vautin Process), Ltd. v. .. ..	C. A. [1894] 1 Q. B. 622 .. ..	304
Peake's Settled Estates, In re (No. 1) (No. 2) .. ..	[1893] 3 Ch. 430 .. .. [1894] 3 Ch. 520 .. ..	1886 1894
Pearce, In re .. ..	C. A. [1899] W. N. 114 .. ..	34
Pearce v. Bunting .. ..	[1896] 2 Q. B. 360 .. ..	2106
Pearce v. Gardner .. ..	C. A. [1897] 1 Q. B. 688 .. ..	511
Peurce :—Hexter v. .. ..	[1900] 1 Ch. 341 .. ..	1260
Pearce :—Lock v. .. ..	[1892] 2 Ch. 328 ; C. A. [1893] 2 Ch. 271 .. ..	1069, 1503
Pearce v. London and South Western Ry. Co. ..	C. A. [1900] W. N. 93 ; [1900] 2 Q. B. 100 .. ..	1228
Pearce :—London (County Council) v. .. ..	[1892] 2 Q. B. 109 .. ..	1160

Name of Case.	Volume and Page.	Column of Digest.
Pearce's Dining and Refreshment Rooms:— Moore v. .. .. .	[1895] 2 Q. B. 657 .. ..	19
Pearl Life Assurance Co. v. Buttenshaw ..	[1893] W. N. 123 .. ..	2064, 2252
Pearsall:—Clements v. In re Clements ..	[1894] 1 Ch. 665 .. ..	953
Pearse:—Cooper v. .. .. .	[1896] W. N. 40 (3); [1896] 1 Q. B. 562 .. ..	1051
Pearse v. Schwder & Co. .. .. .	P. C. [1897] A. C. 520 .. ..	1313
Pearson, In re. Ex parte Pearson .. ..	C. A. [1892] 2 Q. B. 263 .. ..	106
Pearson & P'Anson, In re .. .. .	[1899] 2 Q. B. 618 .. ..	1052
Pearson, In the Goods of .. .. .	[1896] P. 289 .. .. .	1623
Pearson:—Barclay v. .. .. .	[1893] 2 Ch. 154 .. .. .	1183
Pearson v. Belgian Mills Co. .. .. .	[1896] 1 Q. B. 244 .. .. .	1235
Pearson:—Dodds v. In re Carter .. .. .	[1900] W. N. 90; [1900] 1 Ch. 801 .. .. .	2360
Pearson:—Hastings v. .. .. .	[1893] 1 Q. B. 62 .. .. .	813
Pearson v. Holborn Union Assessment Committee .. .. .	[1893] 1 Q. B. 389 .. ..	70, 1675
Pearson:—Lowe v. .. .. .	C. A. [1899] W. N. 2 (3); [1899] 1 Q. B. 261 .. ..	1225
Pearson:—Master in Equity of Supreme Court of Victoria v. .. .. .	P. C. [1897] A. C. 214 .. ..	2261
Pearson:—Pearson-Gee. In re Gee .. ..	[1895] W. N. 90 .. .. .	1878
Pearson (S.) & Sons, Ltd.:—Manchester Ship Canal Co. v. .. .. .	C. A. [1900] W. N. 178; [1900] 2 Q. B. 606 .. ..	66
Pearson-Gee v. Pearson. In re Gee .. ..	[1895] W. N. 90 .. .. .	2187
Pearson & Son:—Manners v. .. .. .	C. A. [1898] 1 Ch. 581 .. ..	4
Peart:—Heap v. .. .. .	[1891] 1 Q. B. 110 .. .. .	587
Pease v. Lowden .. .. .	[1899] W. N. 8 (5); [1899] 1 Q. B. 386 .. ..	543
Pease v. Town Clerk of Middlesbrough ..	[1893] 1 Q. B. 127 .. .. .	1389
Pease and Partners, Ltd.:—Hayles v. .. ..	[1899] W. N. 15 (9); [1899] 1 Ch. 567 .. ..	336
Peat:—Mutton v. .. .. .	[1899] W. N. 127; [1899] 2 Ch. 556; C. A. [1900] W. N. 98; [1900] 2 Ch. 79 .. ..	98
Peck and London School Board, In re .. ..	[1893] 2 Ch. 315 .. .. .	2232
Peck:—Scholey v. .. .. .	[1893] 1 Ch. 709 .. .. .	2026
Peck v. Snyder Dynamite Projectile Co. In re Snyder Dynamite Projectile Co. .. ..	[1893] W. N. 37 .. .. .	433
Peebles v. Oswaldtwistle Urban District Council	C. A. [1896] 2 Q. B. 159 .. ..	1509
Peek v. Ray .. .. .	C. A. [1894] 3 Ch. 282 .. ..	674
Peel, In re. Woodcock v. Holroyd .. ..	[1899] W. N. 208 .. .. .	555
Peel:—Wilkinson v. .. .. .	[1895] 1 Q. B. 516 .. .. .	683
Peever:—Hebblethwaite v. .. .. .	[1892] 1 Q. B. 124 .. ..	1138, 1533
Pegge v. Neath and District Tramways Co. ..	[1895] 2 Ch. 508; C. A. [1896] 1 Ch. 684; [1897] W. N. 165 (1); [1898] 1 Ch. 183 ..	2152
"Pekin," Owners of British SS.:—"Normandie," Owners of Norwegian SS. v. The "Pekin" .. .. .	P. C. [1897] A. C. 532 .. ..	288
Pelham Clinton v. Newcastle (Duke of) ..	[1900] W. N. 183 .. .. .	2325 837
Pélicier Frères:—Haggard v. .. .. .	P. C. [1892] A. C. 61 .. ..	1023, 1530
Pelling:—Gedye v. .. .. .	[1892] W. N. 44 .. .. .	780
Pelly:—Reg. v. .. .. .	[1897] 2 Q. B. 33 .. .. .	1106
Pelly:—United States of America v. .. ..	[1899] W. N. 12 (9) .. ..	834

Name of Case.	Volume and Page.	Column of Digest.
Pelton Brothers <i>v.</i> Harrison (No. 1) .. ..	C. A. [1891] 2 Q. B. 422 ..	907, 922
(No. 2) .. ..	C. A. [1892] 1 Q. B. 118 ..	916
Pemberton <i>v.</i> Barnes .. ..	[1899] W. N. 8 (6); [1899] 1 Ch. 544 ..	2355
Pemberton <i>v.</i> Hughes .. ..	C. A. [1899] W. N. 23 (6); [1899] 1 Ch. 781 ..	491
Pemsel :—Commrs. for Special Purposes of Income Tax .. ..	H. L. (E.) [1891] A. C. 531 ..	1762
Pendarves <i>v.</i> Monro .. ..	[1892] 1 Ch. 611 ..	1118
Pendlebury, St. John (Vicar, &c., of) <i>v.</i> St. John, Pendlebury (Parishioners) .. ..	[1895] P. 178 ..	750
Pender <i>v.</i> Taddei .. ..	C. A. [1898] 1 Q. B. 798 ..	1526
Penfield :—McMurdo <i>v.</i> In re McMurdo .. ..	[1896] W. N. 171 (9); [1897] 1 Ch. 119 ..	2036
Penfield <i>v.</i> Macmurdo. In re Macmurdo .. ..	[1892] W. N. 73 ..	402, 798
Penfold :—Moody <i>v.</i> In re Lashmar .. ..	C. A. [1891] 1 Ch. 258 ..	1692, 2191
Peninsular and Oriental Steam Navigation Co. :—Imperial Japanese Government <i>v.</i> .. ..	P. C. [1895] A. C. 644 ..	837
Peninsular and Oriental Steam Navigation Co. :—Queensland National Bank <i>v.</i> .. ..	C. A. [1898] 1 Q. B. 567 ..	1944
Peninsular and Oriental Steam Navigation Co. <i>v.</i> Tsune Kijima .. ..	P. C. [1895] A. C. 661 ..	837, 1511
Penley :—Barber <i>v.</i> .. ..	[1893] 2 Ch. 447 ..	1352
Penn <i>v.</i> Alexander .. ..	[1893] 1 Q. B. 522 ..	1108
Pennefather :—Jones. In re Giles .. ..	[1896] 1 Ch. 956 ..	804
Pennell <i>v.</i> Franklin. In re White .. ..	[1898] 1 Ch. 297; C. A. [1898] 2 Ch. 217 ..	2060
Penny <i>v.</i> Commr. for Rys. .. ..	P. C. [1900] A. C. 628 ..	2364
Penny <i>v.</i> Wimbledon Urban Council .. ..	[1898] 2 Q. B. 212; C. A. [1899] W. N. 65; [1899] 2 Q. B. 72 ..	1317
Pentalta Exploration Co., In re .. ..	[1898] W. N. 55 (2) ..	459
Penton <i>v.</i> Barnett .. ..	C. A. [1898] 1 Q. B. 276 ..	1062
Penton :—Mills <i>v.</i> In re Egan .. ..	[1899] W. N. 27 (10); [1899] 1 Q. B. 633 ..	2299
Pepe <i>v.</i> City and Suburban Permanent Building Society .. ..	[1893] 2 Ch. 311 ..	232
Pepin <i>v.</i> Bruyère .. ..	[1900] W. N. 164; [1900] 2 Ch. 504 ..	497
Percival <i>v.</i> Garner .. ..	C. A. [1900] 2 Q. B. 404 ..	1230
Percival :—North <i>v.</i> .. ..	[1898] 2 Ch. 128 ..	2246
Percy :—Northumberland (Duke of) <i>v.</i> .. ..	[1893] 1 Ch. 298 ..	1314
Percy Supper Club :—Bowyer <i>v.</i> .. ..	[1893] 2 Q. B. 154 ..	1106
Perez, Triana & Co. :—Western National Bank of City of New York <i>v.</i> .. ..	C. A. [1891] 1 Q. B. 304 ..	1536, 1537
Perkes :—Deeley <i>v.</i> .. ..	H. L. (E.) [1896] A. C. 496 ..	1435
Perkins, In re. Perkins <i>v.</i> Bagot .. ..	[1893] 1 Ch. 283 ..	1474
Perkins, In re. Poyser <i>v.</i> Beyfus .. ..	[1898] W. N. 18 (4); C. A. [1898] 2 Ch. 182 ..	1055
Perkins <i>v.</i> Bell .. ..	C. A. [1893] 1 Q. B. 193 ..	1818
Perkins :—Cummins <i>v.</i> .. ..	C. A. [1898] W. N. 166 (12); [1899] 1 Ch. 16 ..	1698
Perls <i>v.</i> Saalfeld .. ..	C. A. [1892] 2 Ch. 149 ..	1721
Perpetual Trustee Co. :—Trew <i>v.</i> .. ..	P. C. [1895] A. C. 264 ..	1334, 2354
Perrett, Ex parte. In re Frape (No. 1) .. ..	C. A. [1893] 2 Ch. 284 ..	2028
(No. 2) .. ..	[1894] 2 Ch. 290 ..	2042
Perrins <i>v.</i> Bellamy .. ..	[1898] 2 Ch. 521; C. A. [1899] W. N. 50; [1899] 1 Ch. 797 ..	2179

Name of Case.	Volume and Page.	Column of Digest.
Perry Almshouses, In re. In re Ross' Charity	{ [1897] 2 Ch. 397; C. A. [1898] W. N. 158 (1); [1899] 1 Ch. 21 .. .. }	272
Perry Almshouses, In re .. .. .	{ [1898] 1 Ch. 391; C. A. [1899] 1 Ch. 21 .. .. }	272
Perry v. Eames .. .. .	[1891] 1 Ch. 658 .. ..	135, 627, 1117, 1162
Perryman :—Bonnard v. .. .. .	C. A. [1891] 2 Ch. 269 .. ..	646, 963
Perryman :—Plumbly v. .. .. .	[1891] W. N. 64 .. ..	645, 963
Persian Investment Corporation v. Prince Malcolm Khan .. .. .	[1893] W. N. 49 .. ..	310
Perth General Station Committee v. Ross .. .. .	H. L. (Sc.) [1897] A. C. 479 .. ..	1666
Pertwee v. Townsend .. .. .	[1896] 2 Q. B. 129 .. ..	1714
Peruvian Corporation :—Barry v. .. .. .	[1896] 1 Q. B. 208 .. ..	294
Peruvian Guano Co., In re. Ex parte Kemp .. .. .	[1894] 3 Ch. 690 .. ..	352, 355.
Peruvian Guano Co. v. Dreyfus Brothers & Co. .. .. .	H. L. (E.) [1892] A. C. 166 .. ..	635
Pester :—Devenish v. In re Lowman .. .. .	C. A. [1895] 2 Ch. 348 .. ..	{ 504, 2302, 2347
Peterborough Rural Council :—Ncaverson v. .. .. .	[1900] W. N. 244 .. ..	936
Peters v. Banchereau. In re Deneker .. .. .	[1895] W. N. 28 .. ..	2339
Peters :—Greenock Provost, &c., v. .. .. .	H. L. (Sc.) [1893] A. C. 258 .. ..	1830
Peters :—Potter v. .. .. .	[1895] W. N. 37 .. ..	773, 848.
Petersen v. Freebody & Co. .. .. .	C. A. [1895] 2 Q. B. 294 .. ..	1961
Pethick :—Simcoe v. .. .. .	C. A. [1898] 2 Q. B. 555 .. ..	936
Peto :—Brown v. .. .. .	{ [1900] 1 Q. B. 347; C. A. [1900] W. N. 185; [1900] 2 Ch. 653 }	1286.
Petre v. Ferrers .. .. .	[1891] W. N. 171 .. ..	680
Petre :—Pryor v. .. .. .	C. A. [1894] 2 Ch. 11 .. ..	891
"Petrel," The .. .. .	[1893] P. 320 .. ..	{ 1244, 1982, 2013
Petrie :—Smith v. .. .. .	{ Ct. of Sess. (Sc.) [1896] W. N. 95 .. .. }	1758
Pettifer, In re. Pettifer v. Pettifer .. .. .	[1900] W. N. 182 .. ..	2343.
Petts :—Watson v. .. .. .	C. A. [1899] 1 Q. B. 54 .. ..	35
————— (No. 2) .. .. .	{ [1899] W. N. 10 (6); [1899] 1 Q. B. 430 .. .. }	586.
Petty v. Taylor .. .. .	{ [1896] W. N. 167 (6); [1897] 1 Ch. 465 .. .. }	532
Peveril Gold Mines, Ltd., In re .. .. .	{ [1897] W. N. 159 (5); affirmed by C. A. [1897] W. N. 166 (2); [1898] 1 Ch. 122 .. .. }	426
Peyton :—Coles v. In re Sir J. J. Ennis .. .. .	C. A. [1893] 3 Ch. 238 .. ..	1582
Pharmaceutical Society v. Armson .. .. .	C. A. [1894] 2 Q. B. 720 .. ..	1451
Pharmaceutical Society v. Delve .. .. .	[1894] 1 Q. B. 71 .. ..	1452
Pharmaceutical Society v. Piper & Co. .. .. .	[1893] 1 Q. B. 686 .. ..	1451
Pharmaceutical Society v. White .. .. .	{ [1900] W. N. 10; [1900] 1 Q. B. 454 .. .. }	1452
Phelan :—St. Leonard, Shoreditch (Vestry of) v. .. .. .	[1896] 1 Q. B. 533 .. ..	1168
Phelps, James & Co. v. Hill .. .. .	C. A. [1891] 1 Q. B. 605 .. ..	1968
"Philadelphian," The .. .. .	{ [1900] W. N. 5; [1900] P. 43; C. A. [1900] W. N. 120; [1900] P. 262 .. .. }	1945
Philip v. Roxburgh .. .. .	{ Registration App. Ct. (Sc.) [1897] W. N. 96 .. .. }	1402
Philipps v. Halliday .. .. .	H. L. [1891] A. C. 228 .. ..	755

Name of Case.	Volume and Page.	Column of Digest.
Phillips, In re. Ex parte Barton .. ..	{ [1900] W. N. 117; [1900] 2 Q. B. 329 .. .. }	101
Phillips, In re. Ex parte Treboeth Brick Co. ..	{ [1896] 2 Q. B. 122 .. .. }	121
Phillips v. Alhambra Palace Co. .. ..	{ [1900] W. N. 253 .. .. }	1415
Phillips:—Bowen v. .. ..	{ [1897] 1 Ch. 174 .. .. }	786
Phillips:—Bromilow v. .. ..	{ [1891] W. N. 209 .. .. }	504, 932
Phillips v. Evans .. ..	{ [1896] 1 Q. B. 305 .. .. }	1731
Phillips:—Harris v. .. ..	{ [1891] 1 Q. B. 267 .. .. }	1373
Phillips v. Homfray .. ..	{ C. A. [1892] 1 Ch. 465 .. .. }	1006, 1257
Phillips:—Kutner v. .. ..	{ [1891] 2 Q. B. 267 .. .. }	1161
Phillips v. London School Board. Cockerton v. The Saune .. ..	{ [1898] 1 Q. B. 4; C. A. [1898] 2 Q. B. 447 .. .. }	1825
Phillips v. Lord Advocate .. ..	{ Ct. of Sess. (Sc.) [1900] W. N. 204 .. .. }	1783
Phillips v. Low .. ..	{ [1892] 1 Ch. 47 .. .. }	1118, 2360
Phillips:—Price v. .. ..	{ [1894] W. N. 213 .. .. }	2193
Phillips v. Probyn .. ..	{ [1899] W. N. 51; [1899] 1 Ch. 811 .. .. }	1903
Phillips:—Pyne v. .. ..	{ [1895] W. N. 8 .. .. }	1409, 1895
Phillips:—Sale v. .. ..	{ [1894] 1 Q. B. 349 .. .. }	821
Phillips' Trade-marks, In re .. ..	{ [1891] 3 Ch. 139 .. .. }	2124
Philpott:—Bird v. .. ..	{ [1900] 1 Ch. 822 .. .. }	181
Phipps v. London and North Western Ry. Co. ..	{ C. A. [1892] 2 Q. B. 229 .. .. }	1662
Phœbe Gold Mining Co., In re .. ..	{ [1900] W. N. 182 .. .. }	385
Phythian v. Baxendale .. ..	{ [1895] 1 Q. B. 768 .. .. }	890
Piazzzi-Smyth, In the Goods of .. ..	{ [1897] W. N. 150 (2); [1898] P. 7 .. .. }	1617
Pickard & Currey v. Prescott .. ..	{ H. L. (Sc.) [1892] A. C. 263 .. .. }	1438
Pickard, In re. Elmsley v. Mitchell .. ..	{ [1894] 2 Ch. 88; C. A. [1894] 3 Ch. 704 .. .. }	283
Pickard v. Booth. In re Booth .. ..	{ [1900] W. N. 76; [1900] 1 Ch. 768 .. .. }	2311
Pickles:—Bradford Corporation v. .. ..	{ [1894] 3 Ch. 53; C. A. [1895] 1 Ch. 145; H. L. (E.) [1895] A. C. 587 .. .. }	13, 1204, 1632, 2283
Pickles:—Hepworth v. .. ..	{ [1899] W. N. 216; [1900] 1 Ch. 108 .. .. }	2245
Pickworth, In re. Snaith v. Parkinson .. ..	{ C. A. [1899] W. N. 28 (11); [1899] 1 Ch. 642 .. .. }	2362
Pietou (Municipality) v. Geldert .. ..	{ P. C. [1893] A. C. 524 .. .. }	251, 549, 895, 2066
Piddocke v. Burt .. ..	{ [1894] 1 Ch. 343 .. .. }	933, 1410
Piercy, In re. Whitwham v. Piercy .. ..	{ [1895] 1 Ch. 83 .. .. }	789, 838
Piercy, In re. Whitwham v. Piercy .. ..	{ [1896] W. N. 1 (4); C. A. [1898] 1 Ch. 565 .. .. }	284
Piers, In re. Ex parte Piers .. ..	{ C. A. [1898] 1 Q. B. 627 .. .. }	168
Pigott v. Pigott .. ..	{ [1893] W. N. 115 .. .. }	2333
Pike v. Cave .. ..	{ [1893] W. N. 91 .. .. }	904, 970
Pike v. Hamlyn. In re Rowe .. ..	{ C. A. [1897] W. N. 172 (13); [1898] 1 Ch. 153 .. .. }	2328
Pilbrow v. St. Leonard, Shoreditch (Vestry of) ..	{ [1895] 1 Q. B. 33; C. A. [1895] 1 Q. B. 433 .. .. }	1169
Pilcher:—Hill v. In re Hill .. ..	{ [1896] 1 Ch. 962 .. .. }	1869
"Pilgrim," The .. ..	{ [1895] P. 117 .. .. }	1984

Name of Case.	Volume and Page.	Column of Digest.
Pilkington v. Gray .. .. .	P. C. [1899] A. C. 401 .. ..	189
Pillers v. Edwards .. .. .	C. A. [1894] W. N. 212 .. ..	917
Pillers :—Elletson v. In re Benson .. .. {	[1898] W. N. 155 (9); [1899] 1 Ch. 39 .. ..	1518
Pimm :—Bagshaw v. .. .. .	C. A. [1900] W. N. 64; [1900] P. 148 .. ..	1614
Pinet & Cie. (F.) v. Maison Louis Pinet, Ltd. .. {	[1897] W. N. 172 (11); [1898] 1 Ch. 179 .. ..	2140
Pinfold, In re. Ex parte Pinfold .. .. .	[1892] 1 Q. B. 73 .. ..	111
Pinhorne, In re. Moreton v. Hughes .. .. .	[1894] 2 Ch. 276 .. ..	2336
Pini v. Roncoroni .. .. .	[1892] 1 Ch. 633 .. ..	52, 1414
Pink :—Johns v. .. .. .	[1899] W. N. 249; [1900] 1 Ch. 296 .. ..	683, 1926
Pinkney & Sons Steamship Co., In re .. .. .	[1892] 3 Ch. 125 .. ..	385, 388
Pinkney & Sons Steamship Co. :—Hedley v. .. {	[1892] 1 Q. B. 58; H. L. (E.) [1894] A. C. 222 .. ..	2013
Pinney :—Ecclesiastical Commrs. v. .. .. .	C. A. [1898] W. N. 150 (6); C. A. [1899] 1 Ch. 99 .. ..	2240
Pinney :—Ecclesiastical Commrs. v. .. .. .	[1899] W. N. 140; [1899] 2 Ch. 729; C. A. [1900] W. N. 179; [1900] 2 Ch. 736 .. ..	2240
Pintsch's Patent Lighting Co. :—Douglass v. .. {	[1896] W. N. 155 (9); [1897] 1 Ch. 176 .. ..	1443
Pioneers of Mashonaland Syndicate, In re .. ..	[1893] 1 Ch. 731 .. ..	396, 462
Piper :—New South Wales (Bank of) v. .. ..	P. C. [1897] A. A. 383 .. ..	1328
Piper & Co. :—Pharmaceutical Society v. .. ..	[1893] 1 Q. B. 686 .. ..	1451
Pirbright v. Salwey .. .. .	[1896] W. N. 86 (4) .. ..	280
Pirie (Alexander) & Sons v. Goodall .. .. .	C. A. [1892] 1 Ch. 35 .. ..	2129
Pitcairn, In re. Brandreth v. Colvin .. .. .	[1895] W. N. 139 (11); [1896] 2 Ch. 199 .. ..	1856
Pitchey :—Mohamidu Mohideen Hadjar v. .. ..	P. C. [1894] A. C. 437 .. ..	266
Pitchey :—Mohideen Hadjar v. .. .. .	P. C. [1893] A. C. 193 .. ..	797, 1591
Pitman v. Holborrow. In re Mabbett .. .. .	[1891] 1 Ch. 707 .. ..	33
Pitman v. Pitman. In re Bird .. .. .	[1892] 1 Ch. 279 .. ..	519
Pittard v. Oliver .. .. .	C. A. [1891] 1 Q. B. 474 .. ..	652
Pitt Pitts v. George & Co. .. .. .	C. A. [1896] 2 Ch. 866 .. ..	527
Pitt's Patent, In re. Ludington Cigarette Machine Co. v. Baron Cigarette Machine Co. .. {	C. A. [1900] W. N. 50; [1900] 1 Ch. 508 .. ..	1435
Pitts, Son, & King :—Thames and Mersey Marine Insurance Co. v. .. .. .	[1893] 1 Q. B. 476 .. ..	995
Pittsburgh Crushed Steel Co. v. Jacob Marx & Co. .. .. .	[1897] W. N. 36 (5) .. ..	570
Pixton & Tong's Contract, In re .. .. .	[1897] W. N. 178 (5) .. ..	2195
Place :—Moran v. .. .. .	C. A. [1896] P. 214 .. ..	1613
Plant :—Bailey v. .. .. .	C. A. [1900] W. N. 248 .. ..	1244
Plant v. Bourne .. .. .	[1897] W. N. 40 (14); C. A. [1897] 2 Ch. 281 .. ..	2229
Plant v. Potts .. .. .	C. A. [1891] 1 Q. B. 256 .. ..	1371
Plant :—Roberts v. .. .. .	C. A. [1895] 1 Q. B. 597 .. ..	1564
Platt :—May v. .. .. .	[1900] W. N. 69; [1900] 1 Ch. 616 .. ..	2228
Player's Trade-mark, In re .. .. .	[1900] W. N. 273 .. ..	2128
Playfair Bros. :—Dombe y & Son v. .. .. .	C. A. [1897] 1 Q. B. 368 .. ..	1497
Pledge v. White .. .. .	[1896] A. C. 187 .. ..	1275
"Pleiades," SS. (Owners of) v. Page and Owners of SS. "Jane" .. .. .	P. C. [1891] A. C. 259 .. ..	1953
Plenderleith, In re .. .. .	C. A. [1893] 3 Ch. 332 .. ..	1189

Name of Case.	Volume and Page.	Column of Digest.
Pletts <i>v.</i> Beattie .. .. .	[1896] 1 Q. B. 519 .. ..	1108
Pletts <i>v.</i> Campbell .. .. .	[1895] 2 Q. B. 229 .. ..	1108
Plimmer:—Carney <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 634 .. ..	873
Plomley:—Edgar <i>v.</i> .. .. .	P. C. [1900] A. C. 431 .. ..	6
Plomley <i>v.</i> Richardson and Wrench, <i>Ld.</i> .. ..	P. C. [1894] A. C. 632 .. ..	1333
Plomley <i>v.</i> Shepherd .. .. .	P. C. [1891] A. C. 244 .. ..	1331
Plumb:—Bond <i>v.</i> .. .. .	[1894] 1 Q. B. 169 .. ..	864
Plumbly <i>v.</i> Perryman .. .. .	[1891] W. N. 64 .. ..	645, 963
Plummer, <i>In re</i> .. .. .	C. A. [1900] 2 Q. B. 790 .. ..	183
Plumstead Board of Works <i>v.</i> Ecclesiastical Commrs. .. .. .	[1891] 2 Q. B. 361 .. ..	{ 735, 1175
Plumstead Burial Ground, <i>In re</i> .. .. .	[1895] P. 225 .. ..	741
Plunkett <i>v.</i> Simeon. <i>In re</i> Dutton .. .. .	[1893] W. N. 65 .. ..	2316
Plymouth (Mayor of):—Reg. <i>v.</i> .. .. .	[1896] 1 Q. B. 158 .. ..	822
Plymouth Union <i>v.</i> Axminster Union .. ..	H. L. E. [1898] A. C. 586 .. ..	1461
Plympton St. Mary Rural District Council:—Jackson <i>v.</i> .. .. .	[1900] W. N. 15 .. ..	544
Pneumatic Tyre Co. <i>v.</i> Parr (J.) & Co. .. ..	[1896] W. N. 88 (13) .. ..	1437
Pockett:—Linfoot <i>v.</i> .. .. .	C. A. [1895] 2 Ch. 835 .. ..	201, 206
Pockett's Bristol Channel Steam Packet Co.:—Cahn & Mayer <i>v.</i> .. .. .	[1898] 2 Q. B. 61; C. A. [1899] W. N. 32 (6); [1899] 1 Q. B. 643 .. ..	1817
Pocklington Steamship Co.:—Booker & Co. <i>v.</i> .. ..	[1899] 2 Q. B. 690 .. ..	2006
Pocock & Prankerd's Contract, <i>In re</i> .. ..	[1896] 1 Ch. 302 .. ..	1890
Pogose:—Mackintosh <i>v.</i> .. .. .	[1895] 1 Ch. 505 .. ..	185
Poinsons, <i>In re</i> . Sutton <i>v.</i> Martin .. .. .	[1891] W. N. 139 .. ..	1503
Pole <i>v.</i> Bright .. .. .	[1892] 1 Q. B. 603 .. ..	583
Police (Commissioners of) <i>v.</i> Cartman .. ..	[1896] 1 Q. B. 655 .. ..	1106
Pollard <i>v.</i> Geake. <i>In re</i> Hunt .. .. .	[1900] W. N. 65 .. ..	1879
Pollard <i>v.</i> Harragin .. .. .	P. C. [1891] A. C. 450 .. ..	2156
Pollard <i>v.</i> Pollard .. .. .	[1894] P. 172 .. ..	719
Pollard's Settlement, <i>In re</i> .. .. .	C. A. [1896] 2 Ch. 552 .. ..	920
Polley:—Macaulay <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 122 .. ..	2022
Pollitt, <i>In re</i> . Ex parte Minor .. .. .	[1893] 1 Q. B. 175; C. A. [1893] 1 Q. B. 455 .. ..	{ 118, 2030
Pollock <i>v.</i> Garle .. .. .	C. A. [1897] W. N. 152 (7); [1898] 1 Ch. 1 .. ..	662
Pollock:—Marquess of Northampton <i>v.</i> .. ..	H. L. (E.) [1892] A. C. 1 .. ..	1296
“Pomeranian,” The .. .. .	[1895] P. 349 .. ..	995
Pomeroy & Tanner, <i>In re</i> .. .. .	[1897] 1 Ch. 284 .. ..	2034
Pomphrey <i>v.</i> Southwark Press .. .. .	C. A. [1900] W. N. 256 .. ..	1221
Pond:—Ellis <i>v.</i> .. .. .	C. A. [1898] 1 Q. B. 426 .. ..	1579
Ponsford and Newport District School Board, <i>In re</i> .. .. .	C. A. [1894] 1 Ch. 454 .. ..	234
Ponsonby, <i>In the Goods of</i> .. .. .	[1895] P. 287 .. ..	1598
Ponting <i>v.</i> Noakes .. .. .	[1894] 2 Q. B. 281 .. ..	{ 1352, 1353
Pontypool Justices:—Reg. <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 621 .. ..	{ 1039, 1041, 1102
Poole:—Lewis <i>v.</i> .. .. .	[1898] 1 Q. B. 164 .. ..	1361
Poole Corporation:—Kinson Pottery Co. <i>v.</i> .. ..	[1899] 2 Q. B. 41 .. ..	1920
Poor Lands Charity, Bethnal Green, <i>In re</i> .. ..	[1891] 3 Ch. 400 .. ..	272
Pope, <i>In re</i> . Sharp <i>v.</i> Marshall .. .. .	[1900] W. N. 244 .. ..	11
Porrett, <i>In re</i> .. .. .	C. A. [1891] 2 Ch. 433 .. ..	{ 1492, 2035
Porritt:—Aplin <i>v.</i> .. .. .	[1893] 2 Q. B. 57 .. ..	608
Port Glasgow and Newark Sailcloth Co. <i>v.</i> Caledonian Ry. Co. .. .. .	H. L. (Sc.) [1893] W. N. 29 .. ..	1650



Name of Case.	Volume and Page.	Column of Digest.
Port Talbot Co.:—Owners of "Apollo" v. "The Apollo" .. .. .	H. L. (E.) [1891] A. C. 499 ..	1979
Porter, In re. Coulson v. Capper .. .. .	[1892] 3 Ch. 481 .. ..	2330
Porter, Robert & Co., Ltd., In re .. .. .	[1895] W. N. 102 .. ..	2136
Portingell, Ex parte .. .. .	C. A. [1892] 1 Q. B. 15 .. ..	1103
Portland Urban District Council and Tilley & Co., In re Arbitration between .. .. .	[1896] 2 Q. B. 98 .. ..	66
Portsea Island Building Society, In re .. .. .	[1893] 3 Ch. 205 .. ..	231, 596
Portsea Island Building Society v. Barclay .. .. .	[1894] 3 Ch. 86; C. A. [1895] 2 Ch. 298 .. ..	230
Portslade Urban Council:—Baron v. .. .. .	C. A. [1900] 2 Q. B. 588 .. ..	1917
Portsmouth Corporation:—Ward v. .. .. .	[1898] W. N. 34 (3); C. A. [1898] 2 Ch. 191 .. ..	235
Portsmouth (Justices of):—Reg. v. .. .. .	[1892] 1 Q. B. 491 .. ..	1037, 2213
Portsmouth, Borough of (Kingston, Fratton, and Southsea) Tramways Co., In re .. .. .	[1892] 2 Ch. 362 .. ..	463
Portuguese Consolidated Copper Mines, In re. Ex parte Lord Inchiquin .. .. .	C. A. [1891] 3 Ch. 28 .. ..	346
Postage Stamp Automatic Delivery Co., In re .. .. .	[1892] 3 Ch. 566 .. ..	345
Postle:—Mack v. .. .. .	[1894] 2 Ch. 449 .. ..	1553
Potter, In the Goods of. Potter v. Potter .. .. .	[1900] W. N. 31 .. ..	1609
Potter v. Peters .. .. .	[1895] W. N. 37 .. ..	773, 848
Potter (Charles), In the Goods of. Potter v. Potter .. .. .	[1899] P. 265 .. ..	1609
Potter (J.) & Co. v. Burrell & Son .. .. .	C. A. [1896] W. N. 162 (15); [1897] 1 Q. B. 97 .. ..	1964
Potts, In re. Ex parte Taylor .. .. .	C. A. [1893] 1 Q. B. 648 .. ..	168, 1696, 1704
Potts:—Plant v. .. .. .	C. A. [1891] 1 Q. B. 256 .. ..	1371
Potts:—Roberts v. In re Tithe Act, 1891 .. .. .	[1893] 2 Q. B. 33; C. A. [1894] 1 Q. B. 213 .. ..	1688, 2068, 2071, 2113
Pouey v. Hordern .. .. .	[1900] W. N. 37; [1900] 1 Ch. 492 .. ..	1472
Poulett (Earl):—Earl of Aylesford v. (No. 1) .. .. .	C. A. [1891] 1 Ch. 248 .. ..	1276, 2036
————— (No. 2) .. .. .	[1892] 2 Ch. 60 .. ..	502, 503, 933, 1403, 2171
Poulett (Earl):—Somerset v. In re Somerset .. .. .	C. A. [1894] 1 Ch. 231 .. ..	2180
Poulett (Earl) v. Hill (Viscount) .. .. .	C. A. [1893] 1 Ch. 277 .. ..	1280, 1565
Pounder v. North Eastern Ry. Co. .. .. .	[1892] 1 Q. B. 385 .. ..	1651
Powell, In re. Ex parte Powell .. .. .	[1891] 2 Q. B. 324 .. ..	106
Powell, In re. Campbell v. Campbell .. .. .	[1900] W. N. 165; [1900] 2 Ch. 525 .. ..	2337
Powell, In re. Crossland v. Holliday .. .. .	[1897] W. N. 176 (12); [1898] 1 Ch. 227 .. ..	2317
Powell v. Birmingham Vinegar Brewery Co. (No. 1) .. .. .	H. L. (E.) [1894] A. C. 8 .. ..	2135
————— (No. 2) .. .. .	C. A. [1894] 3 Ch. 449 .. ..	2142
Powell:—Birmingham Vinegar Brewery Co. v. .. .. .	C. A. [1896] 2 Ch. 54; H. L. (E.) [1897] A. C. 710 .. ..	2140
Powell v. Brown .. .. .	C. A. [1898] W. N. 165 (8); [1899] 1 Q. B. 157 .. ..	1223

Name of Case.	Volume and Page.	Column of Digest.
Powell v. Kempton Park Racecourse Co. .. {	C. A. [1897] 2 Q. B. 242; H. L. (E.) [1899] W. N. 32 (3); [1899] A. C. 143 .. .. }	867
Powell :—Lewis v. .. .. {	[1897] 1 Ch. 678 .. .. }	671
Powell v. London and Provincial Bank .. {	[1893] 1 Ch. 610; C. A. [1893] 2 Ch. 555 .. .. }	401
Powell v. Main Colliery Co. .. .. {	C. A. [1900] W. N. 73; [1900] 2 Q. B. 145; H. L. (E.) [1900] W. N. 144; [1900] A. C. 366 .. .. }	1246
Powell v. Marshall, Parkes & Co. .. .. {	C. A. [1899] 1 B. B. 710 .. .. }	155
Powell v. Powell .. .. {	[1900] 1 Ch. 243 .. .. }	1909
Powell :—Reg. v. .. .. {	[1891] 1 Q. B. 718; C. A. [1891] 2 Q. B. 693 .. .. }	1105
Powell :—Reg. v. Ex parte Williams .. {	[1899] 1 Q. B. 396 .. .. }	1361
Powell :—Stanley v. .. .. {	[1891] 1 Q. B. 86 .. .. }	2154
Powell v. Thomas .. .. {	[1891] 1 Q. B. 97 .. .. }	585
Powell :—Williams v. .. .. {	[1894] W. N. 141 .. .. }	779
Powell's Trade-mark, In re .. .. {	C. A. [1893] 2 Ch. 388; H. L. (E.) [1894] A. C. 8 .. .. }	2134
Powell (W.) & Sons, In re .. .. {	[1892] W. N. 94; [1896] 1 Ch. 681 .. .. }	437
Power :—McLeod v. .. .. {	[1898] 2 Ch. 295 .. .. }	1496
Power :—Tooth v. .. .. {	P. C. [1891] A. C. 284 .. .. }	1324
Pownall :—Merry v. .. .. {	[1898] 1 Ch. 306 .. .. }	1991
Pownall v. Pryor. In re Hake .. .. {	[1895] W. N. 116 (11) .. .. }	1516
Pownall :—Reg. v. .. .. {	[1893] 2 Q. B. 158 .. .. }	1098
Poynter (John), Son & Macdonalds :—North Western Bank v. .. .. {	H. L. (Sc.) [1395] A. C. 56 .. .. }	496, 1450, 1837, 1942
Poyser v. Beyfus. In re Perkins .. .. {	[1898] W. N. 18 (4); C. A. [1898] 2 Ch. 182 .. .. }	1055
Practice Direction .. .. {	[1896] W. N. 56 (2); [1898] W. N. 7 (10) .. .. }	458, 478
Practice Note .. .. {	[1894] W. N. 44 .. .. }	439
Practice Note .. .. {	C. A. [1897] W. N. 8 (15) .. .. }	573
Practice Note .. .. {	[1899] W. N. 262; [1900] W. N. 265 .. .. }	1490, 1594, 1623
Prance :—Stokes v. .. .. {	[1897] W. N. 163 (10); [1898] 1 Ch. 212 .. .. }	2180
Pratt, In re. Pratt v. Pratt .. .. {	[1894] 1 Ch. 491 .. .. }	2339
Pratt v. North British and Mercantile Insurance Co. .. .. {	[1894] 3 Ch. 228 .. .. }	1540, 1544
Pratt v. South Eastern Ry. Co. .. .. {	[1897] 1 Q. B. 718 .. .. }	1652
Pratt v. Willis .. .. {	[1895] W. N. 9 .. .. }	780
Prebble and Robinson, In re .. .. {	[1892] 2 Q. B. 602 .. .. }	62
Prentis :—Flegg v. .. .. {	[1892] 2 Ch. 428 .. .. }	1025
Prescott Urban District Council :—British Insulated Wire Co. v. .. .. {	C. A. [1895] 2 Q. B. 463; C. A. [1895] 2 Q. B. 538 .. .. }	686
Prescott v. Lee .. .. {	[1898] W. N. 155 (7); [1899] 1 Q. B. 102; C. A. [1899] W. N. 107; [1899] 2 Q. B. 237 .. .. }	1388
Prescott :—Pickard and Currey v. .. .. {	H. L. (Sc.) [1892] A. C. 263 .. .. }	1438
Prescott, Dimsdale, Cave, Tugwell & Co. v. Bank of England .. .. {	C. A. [1894] 1 Q. B. 351 .. .. }	96
Preservation Syndicate, In re .. .. {	[1895] 2 Ch. 768 .. .. }	429
Press Association :—Kimber v. .. .. {	C. A. [1893] 1 Q. B. 65 .. .. }	647

Name of Case.	Volume and Page.	Column of Digest.
Press Association, <i>Ld.</i> :— <i>Stone v.</i> .. ..	C. A. [1897] 2 Q. B. 159 ..	644
Press:— <i>Böwes &amp; Partners, Ld. v.</i> .. ..	C. A. [1894] 1 Q. B. 202 ..	1233
Presteign (Urban District Council of):— <i>Reynolds v.</i> .. ..	[1896] 1 Q. B. 604 ..	809
Preston Banking Co. <i>v.</i> <i>Allsup &amp; Sons</i> .. ..	C. A. [1895] 1 Ch. 141 ..	1532
Preston Corporation <i>v.</i> <i>Biornstad.</i> The ..	H. L. (E.) [1898] A. C. 513 ..	1979
" <i>Ratata</i> " .. ..	[1899] 1 Q. B. 1 ..	1179
Pretty:— <i>Wandsworth Board of Works v.</i> ..	[1894] W. N. 169 ..	2199
Price, <i>In re</i> .. ..	[1900] W. N. 36; [1900] 1 Ch. 442 ..	1473
Price, <i>In re.</i> <i>Tomlin v. Latter</i> .. ..	[1891] 3 Ch. 159 ..	2143, 2367
Price:— <i>Carrier v. In re Amos</i> .. ..	C. A. [1892] 2 Q. B. 428 ..	1103
Price <i>v.</i> <i>James</i> .. ..	C. A. [1899] 1 Q. B. 493 ..	1219
Price <i>v.</i> <i>Marsden (J.) &amp; Sons</i> .. ..	C. A. [1894] 1 Ch. 276 ..	967, 1119
Price:— <i>Martin v.</i> .. ..	[1894] W. N. 213 ..	2193
Price <i>v.</i> <i>Phillips</i> .. ..	[1899] W. N. 74; [1899] 2 Ch. 277 ..	1362
Price:— <i>Stoke Parish Council v.</i> .. ..	H. L. (Sc.) [1893] A. C. 56 ..	1974
Price & Co.:— <i>Gilroy, Sons &amp; Co. v.</i> .. ..	[1891] 2 Ch. 135 ..	1298
Pride, <i>In re.</i> <i>Shackell v. Colnett</i> .. ..	[1897] 1 Ch. 489 ..	1893
Priestley <i>v.</i> <i>Ellis</i> .. ..	C. A. [1892] W. N. 20 ..	2318
Priestley <i>v.</i> <i>Griffiths. In re Greenwood</i> ..	[1896] W. N. 156 (12); C. A. [1897] 1 Ch.; H. L. (E.) [1897] A. C. 647 ..	1457
Priestman:— <i>West Derby Union v.</i> .. ..	[1896] W. N. 171 (6); [1897] 1 Q. B. 159 ..	2094
Priestnall:— <i>Thorpe v.</i> .. ..	[1894] P. 128 ..	1975
" <i>Primula</i> ," The .. ..	P. C. [1893] A. C. 492 ..	1954
" <i>Primula</i> " (Owners, &c.):—"Utopia" (Owners of the SS.) <i>v.</i> " <i>The Utopia</i> " .. ..	[1898] 2 Ch. 225 ..	1613
Prince, <i>In re.</i> <i>Godwin v. Prince</i> .. ..	[1895] 2 Ch. 617 ..	325
Prince & Co.:— <i>Seligman v.</i> .. ..	[1900] W. N. 99 ..	1491
Princess Royal Colliery Co.:— <i>Lloyd's Bank, Ld. v.</i> .. ..	[1897] P. 18 ..	1535
" <i>Princesse Clémentine</i> ," The .. ..	C. A. [1896] W. N. 39 (1) ..	1117
Prinsep <i>v.</i> <i>Belgravian Estate, Ld.</i> .. ..	[1899] W. N. 54; [1899] P. 177 ..	1991
" <i>Prins Hendrik</i> ," The .. ..	[1899] W. N. 86; [1899] 2 Ch. 184 ..	2143
Printers and Transferrers Amalgamated Trades Protection Society, <i>In re</i> .. ..	[1894] 1 Ch. 528; C. A. [1894] 2 Ch. 392 ..	348
Printing Telegraph and Construction Co. of the Agence Havas, <i>In re.</i> <i>Ex parte Cammell</i> ..	C. A. [1894] 2 Q. B. 801 ..	773
Printing Telegraph and Construction Co. of the Agence Havas <i>v.</i> <i>Drucker</i> .. ..	[1898] 1 Q. B. 881 ..	1235
Prior <i>v.</i> <i>Slaitwaite Spinning Co.</i> .. ..	[1893] W. N. 34 ..	1373
Pritchard:— <i>Rowland v.</i> .. ..	C. A. [1900] 1 Q. B. 800 ..	1215
Pritchard & Renwick:— <i>Rixsom v.</i> .. ..	[1893] W. N. 153 ..	482
Pritchard, <i>Offor &amp; Co., In re</i> .. ..	C. A. [1899] W. N. 91; [1899] 2 Q. B. 428 ..	79
Pritchett <i>v.</i> <i>English and Colonial Syndicate</i> ..	[1899] W. N. 51; [1899] 1 Ch. 811 ..	1908
Probyn:— <i>Phillips v.</i> .. ..	[1891] 2 Q. B. 433 ..	125
Procter, <i>In re</i> .. ..	[1891] W. N. 24 ..	1507
Procter <i>v.</i> <i>Cheshire County Council</i> .. ..	C. A. [1895] 2 Ch. 29 ..	537
Progress Printing and Publishing Co.:— <i>Chilton v.</i> ..	C. A. [1891] 3 Ch. 278 ..	1654
Protheroe <i>v.</i> <i>Tottenham and Forest Gate Ry. Co.</i> .. ..	[1896] 2 Ch. 808 ..	1298
Prout <i>v.</i> <i>Cock</i> .. ..		

Name of Case.	Volume and Page.	Column of Digest.
Provident Clerks' Mutual Life Assurance Association <i>v.</i> Law Life Assurance Society .. ..	[1897] W. N. 73 (6) .. ..	1291
Provident Clerks' Mutual Life Assurance <i>v.</i> Lewis	[1892] W. N. 164 .. ..	1300
Provincial Assets Co.:—England <i>v.</i> In re Croom .. ..	[1891] 1 Ch. 695 .. ..	164
Pruddah, Ex parte. In re Broster .. ..	[1897] 2 Q. B. 429 .. ..	591
Pryor:—London County Council <i>v.</i> .. ..	C. A. [1896] 1 Q. B. 465 .. ..	1151
Pryor <i>v.</i> Petre .. ..	C. A. [1894] 2 Ch. 11 .. ..	891
Pryor <i>v.</i> Pryor .. ..	[1900] P. 157 .. ..	713
Pryor:—Pownall <i>v.</i> In re Hake .. ..	[1895] W. N. 116 (11) .. ..	1516
Pudney <i>v.</i> Eccles .. ..	[1893] 1 Q. B. 52 .. ..	861, 1751
Pugh:—Ashton-under-Lyne Corporation <i>v.</i> ..	C. A. [1897] W. N. 156 (5); [1898] 1 Q. B. 45 .. ..	2087
Pugh <i>v.</i> London, Brighton and South Coast Ry. Co. .. ..	C. A. [1896] 2 Q. B. 248 .. ..	975
Pugsley & Co. <i>v.</i> Ropkins & Co. .. ..	C. A. [1892] 2 Q. B. 184 .. ..	1964, 1999
Pulborough (School Board Election for the Parish of), In re. Bourke <i>v.</i> Nutt .. ..	C. A. [1894] 1 Q. B. 725 .. ..	126, 2071
Pulbrook, Ex parte .. ..	[1892] 1 Q. B. 86 .. ..	36, 644
Pulbrook:—Ladies' Dress Association <i>v.</i> .. ..	[1900] 2 Q. B. 376 .. ..	303
Pullen <i>v.</i> Isaacs .. ..	[1895] W. N. 90 .. ..	1525
Pullen <i>v.</i> St. Saviour's Union .. ..	[1899] W. N. 246; [1900] 1 Q. B. 138 .. ..	1674
Pullin <i>v.</i> Reffell .. ..	[1891] W. N. 39 .. ..	935, 2291
Pullman <i>v.</i> Hill & Co. .. ..	C. A. [1891] 1 Q. B. 524 .. ..	650
Pulman <i>v.</i> Meadows .. ..	[1900] W. N. 273 .. ..	802
Pulsford:—Hammond <i>v.</i> .. ..	[1895] 1 Q. B. 223 .. ..	2018
Pumpherson Oil Co.:—Holmes Oil Co. <i>v.</i> .. ..	H. L. (Sc.) [1891] W. N. 142 .. ..	55, 64
Purdom:—Birkett (or Kelsall or Elliott) <i>v.</i> .. ..	H. L. (Sc.) [1895] A. C. 371 .. ..	1834
Purnell:—Edwards <i>v.</i> .. ..	[1899] 1 Q. B. 449 .. ..	2295
Pursell and Deakin's Contract, In re .. ..	[1893] W. N. 152 .. ..	2255
Purssey <i>v.</i> Holloway. In re Baker .. ..	[1898] W. N. 156 (12) .. ..	2335
Purves <i>v.</i> Straits of Dover Steamship Co. ..	[1899] 1 Q. B. 38; C. A. [1899] W. N. 102; [1899] 2 Q. B. 217 .. ..	2014
Putney Overseers <i>v.</i> London and South Western Ry. Co. .. ..	[1891] 1 Q. B. 182; C. A. [1891] 1 Q. B. 440 .. ..	1682
Puttick:—Chaplin <i>v.</i> Laing, Claimant .. ..	C. A. [1898] 2 Q. B. 160 .. ..	777
Pyke & Gibson's Case. In re Kharaskhoma Exploring and Prospecting Syndicate ..	[1897] W. N. 58 (1); C. A. [1897] 2 Ch. 451 .. ..	424
Pyle, In re. Pyle <i>v.</i> Pyle .. ..	[1895] 1 Ch. 724 .. ..	521
Pyle Works, In re (No. 2) .. ..	[1891] 1 Ch. 173 .. ..	301
Pyman, Bell & Co.:—Smith, Hill & Co. <i>v.</i> ..	[1891] 1 Q. B. 42; C. A. [1891] 1 Q. B. 742 .. ..	1975
Pyne <i>v.</i> Phillips .. ..	[1895] W. N. 8 .. ..	1409 1895
Pyper:—Gordon <i>v.</i> .. ..	H. L. (Sc.) [1892] W. N. 169 .. ..	1240, 1836
Q.		
Quarm <i>v.</i> Quarm .. ..	[1892] 1 Q. B. 184 .. ..	2321, 2322
Quartermaine's Case. In re London, Windsor and Greenwich Hotels Co. .. ..	[1892] 1 Ch. 639 .. ..	475

Name of Case.	Volume and Page.	Column of Digest.
Quatrefages :—Chichester v. .. .. .	[1895] P. 186 .. .. .	2357
Quebec Bank :—Bryant, Powis & Bryant, Ld. v. ..	P. C. [1893] A. C. 170 .. ..	194, 1571
Quebrada Ry., Land and Copper Co. :—Williams v. .. .. .	[1895] 2 Ch. 751 .. .. .	669
Queen Anne Residential Mansions and Hotel Co. :—Renshaw v. .. .. .	C. A. [1897] 1 Q. B. 662 .. ..	53
Queen's Club :—Wilson v. .. .. .	[1891] 3 Ch. 522 .. .. .	223, 1079, 1275
Queen's Hotel Co., Cardiff, In re. In re Vernon Tin Plate Co., Ld. .. .. .	[1900] W. N. 77; [1900] 1 Ch. 792 .. .. .	316
Queensland (Commissioners of Stamps for) :—Harding v. .. .. .	P. C. [1898] A. C. 769 .. ..	1639
Queensland Investment and Land Mortgage Co. :—Lock v. .. .. .	C. A. [1996] 1 Ch. 397; H. L. (E.) [1896] A. C. 461 .. ..	399
Queensland Land and Coal Co., In re. Davis v. Martin .. .. .	[1894] 3 Ch. 181 .. .. .	335
Queensland Mercantile and Agency Co., In re. Ex parte Australasian Investment Co. Ex parte Union Bank of Australia (No. 1) .. .. .	[1891] 1 Ch. 536; C. A. [1892] 1 Ch. 219 .. .. .	491
Queensland National Bank, In re .. .. .	[1891] W. N. 132 .. .. .	481
Queensland National Bank v. Peninsular and Oriental Steam Navigation Co. .. .. .	[1893] W. N. 128 .. .. .	478
Quick, In the Goods of. Quick v. Quick .. .. .	C. A. [1898] 1 Q. B. 567 .. ..	1944
Quilter :—Belize Estate and Produce Co. v. .. .. .	[1899] P. 187 .. .. .	1598
Quilter :—Lord De Clifford v. Lord de Clifford v. Marquis of Lansdowne. In re Lord De Clifford's Estate .. .. .	P. C. [1897] A. C. 367 .. ..	219
Quincey :—Saccharin Corporation, Ld. v. .. .. .	[1900] 2 Ch. 707 .. .. .	2173
Quinlan v. Child. Quinlan v. Quinlan. Ex parte Quinlan .. .. .	[1900] W. N. 115; [1900] 2 Ch. 246 .. .. .	1427
	P. C. [1900] A. C. 496 .. ..	1493
R.		
Raatz, In re. Ex parte Raatz .. .. .	[1897] 2 Q. B. 80 .. .. .	107
Rabbeth v. Donaldson. In re Abdy (No. 1) .. .. .	C. A. [1895] W. N. 12 .. ..	40, 923
	C. A. [1895] 1 Ch. 455 .. ..	33, 643
Rackham :—Wetherby v. .. .. .	[1891] W. N. 57 .. .. .	902
Radam's (William) Microbe Killer Co. v. Leather .. .. .	C. A. [1892] 1 Q. B. 85 .. ..	635, 1499
Radcliffe, In re. Radcliffe v. Bewes .. .. .	[1891] 2 Ch. 662; C. A. [1892] 1 Ch. 227 .. .. .	1482
Radcliffe v. Bartholomew .. .. .	[1892] 1 Q. B. 161 .. .. .	1036, 2069
Radcliffe :—Halifax and Huddersfield Union Banking Co. v. .. .. .	[1895] W. N. 63 .. .. .	315, 317
Radcliffe :—Laing v. In re Laing's Settlement .. .. .	[1899] W. N. 23 (10); [1899] 1 Ch. 593 .. .. .	2187
Radcliffe :—Vipont v. In re Thorpe .. .. .	[1891] 2 Ch. 360 .. .. .	795, 2060
Radford & Bright, Ld., In re .. .. .	[1900] W. N. 263; [1901] 1 Ch. 272 .. .. .	419
Radford & Co. :—Clink v. .. .. .	C. A. [1891] 1 Q. B. 625 .. ..	1936
Radford (D.) & Co. :—Waynes Merthyr Co. v. .. .. .	[1895] W. N. 150 (4); [1896] 1 Ch. 29 .. .. .	660, 677

Name of Case.	Volume and Page.	Column of Digest.
Radnor's (Earl) Settled Estates, In re .. ..	[1898] W. N. 174 (14) .. ..	1869
Raffety v. Schofield .. ..	[1897] 1 Ch. 937 .. ..	1080
Raggett:—Hornsby v. .. ..	[1892] 1 Q. B. 20 .. ..	869
Railway Time Tables Publishing Co., In re. } Ex parte Welton .. ..	C. A. [1895] 1 Ch. 255 .. ..	397
Railway Time Tables Publishing Co., In re. } Ex parte Welton .. ..	[1898] W. N. 52 (1); reversed } by C. A. [1898] W. N. 159 (6); } C. A. [1899] 1 Ch. 108 .. ..	474
Rainford Coal Co.:—Jackson v. .. ..	[1896] 2 Ch. 340 .. ..	302
Raleigh v. Goschen .. ..	[1897] W. N. 160 (10); [1898] } 1 Ch. 73 .. ..	2154
Raleigh:—Vine v. (No. 1) .. ..	C. A. [1891] 2 Ch. 13 .. ..	8, 2160
————— (No. 2) .. ..	[1895] W. N. 150 (7); [1896] } 1 Ch. 37 .. ..	1889
Raleigh Corporation v. Williams .. ..	P. C. [1893] A. C. 540 .. ..	254
Ramage v. Womack .. ..	[1899] W. N. 246; [1900] 1 Q. B. } 116 .. ..	1062
Ramsay v. Gilchrist .. ..	P. C. [1892] A. C. 412 .. ..	281, 853
Ramsay v. Margrett .. ..	C. A. [1894] 2 Q. B. 18 .. ..	40, 210, 905, 1693
Ramsey v. Cruddas .. ..	C. A. [1893] 1 Q. B. 228 .. ..	526
Ramsey Urban Council:—Bostock v. .. ..	[1899] W. N. 261; [1900] 1 Q. B. } 357; C. A. [1900] W. N. 169; } [1900] 2 Q. B. 616 .. ..	566
Ramuz:—Clarke v. .. ..	C. A. [1891] 1 Q. B. 456 .. ..	2231
Randwick Borough Council v. Australian Cities } Investment Corporation, Ltd. .. ..	P. C. [1893] A. C. 322 .. ..	1329, 1592
Raper:—National Permanent Mutual Benefit } Building Society v. .. ..	[1892] 1 Ch. 54 .. ..	1284
Raphael, In re. Ex parte Salomon .. ..	[1899] W. N. 23 (7); [1899] } 1 Ch. 853; C. A. [1899] W. N. } 212 .. ..	1493
Raphael:—Cockburn v. .. ..	[1891] W. N. 14 .. ..	283
Rapier v. London Tramways Co. .. ..	C. A. [1893] 2 Ch. 588 .. ..	1352, 2152
Rapley v. Smart .. ..	[1894] W. N. 2 .. ..	1724
Rassam v. Budge .. ..	[1893] 1 Q. B. 571 .. ..	1529
"Ratata," The. Preston Corporation v. Bjornstad } [1898] A. C. 513 .. ..	C. A. [1897] P. 118; H. L. (E.) } [1898] A. C. 513 .. ..	1979
Ratcliff, In re .. ..	[1898] 2 Ch. 352 .. ..	2190
Ratcliffe, In the Goods of .. ..	[1899] P. 110 .. ..	1604
Ratcliffe v. Evans .. ..	C. A. [1892] 2 Q. B. 524 .. ..	651
Rathdonnell (Baron):—Att.-Gen. for Ireland v. } Rathmines and Rathgar Improvement Commrs.: } —Herron v. .. ..	Ex. Div. Ir. [1896] W. N. 141 .. ..	1809
Ratley:—Kilpin v. .. ..	H. L. (I.) [1892] A. C. 498 .. ..	2069, 2274
Ravenscroft:—Lumley v. .. ..	[1892] 1 Q. B. 582 .. ..	876
Ravensthorpe Urban District Council:—Hudders- } field Corporation v. .. ..	C. A. [1895] 1 Q. B. 683 .. ..	959, 2062
Rawlins:—Scale v. .. ..	[1897] 1 Ch. 652; C. A. [1897] } 2 Ch. 121 .. ..	2274
Ray, In re .. ..	H. L. (E.) [1892] A. C. 342 .. ..	2312
Ray:—Peek v. .. ..	C. A. [1896] 1 Ch. 468 .. ..	1198
Ray v. Walker .. ..	C. A. [1894] 3 Ch. 282 .. ..	674
Raybould, In re. Raybould v. Turner .. ..	[1892] 2 Q. B. 88 .. ..	1092
Raymond & Reid:—Hick v. .. ..	[1899] W. N. 244; [1900] 1 Ch. } 199 .. ..	2183
	C. A. [1891] 2 Q. B. 626; H. L. } (E.) [1893] A. C. 22 .. ..	1965

Name of Case.	Volume and Page.	Column of Digest.
Rayner v. Rederiaktiebolaget Condor .. ..	[1895] 2 Q. B. 289 .. ..	1942
Rayner's Settled Estates, In re .. ..	[1891] W. N. 152 .. ..	1867
Raynes Park Golf Club, Ltd., In re. Ex parte Official Receiver .. ..	Div. Ct. [1899] 1 Q. B. 961 .. ..	435
Rayner:—Ingham v. In re Fish .. ..	C. A. [1894] 2 Ch. 83 .. ..	2326, 2332
Rayson v. South London Tramways Co. ..	C. A. [1893] 2 Q. B. 304 .. ..	1204, 2151
Read, Ex parte. In re Paine .. ..	[1896] W. N. 154 (2); [1897] 1 Q. B. 122 .. ..	132
Read, In re .. ..	[1894] 3 Ch. 238 .. ..	2041
Read v. Eley .. ..	[1900] W. N. 57 .. ..	1792
Read v. Lincoln (Bishop of) .. ..	[1891] P. 9; P. C. [1892] A. C. 644 .. ..	756, 757, 758, 773, 1591
Read:—London County Council v. .. ..	[1900] 1 Q. B. 288 .. ..	218
Read:—Strangways v. .. ..	[1898] 2 Ch. 419 .. ..	1190
Read v. Wotton .. ..	[1893] 2 Ch. 171 .. ..	1510
Real Estates Co., In re .. ..	[1893] 1 Ch. 398 .. ..	231, 445, 465, 598, 1160
Rebbeck, In re. Bennett v. Rebbeck .. ..	[1894] W. N. 68 .. ..	801
Rebbeck:—Sharp v. In re Lance .. ..	[1900] W. N. 29 .. ..	805
"Recepta," The .. ..	C. A. [1893] P. 255 .. ..	1630, 1996
Reckitt:—Shaw v. .. ..	[1893] 1 Q. B. 779; C. A. [1893] 2 Q. B. 59 .. ..	37, 1365
"Red Sea," The .. ..	[1895] P. 293; C. A. [1896] P. 20 .. ..	982
Redcar Local Board:—Cleveland Water Co. v. ..	[1895] 1 Ch. 168 .. ..	2276
Reddaway v. Banham .. ..	C. A. [1895] 1 Q. B. 286; H. L. (E.) [1896] A. C. 199 .. ..	2141
Reddaway v. Bentham Hemp-Spinning Co. ..	C. A. [1892] 2 Q. B. 639 .. ..	2138
Redding, In re. Thomson v. Redding .. ..	[1897] 1 Ch. 876 .. ..	1870
Redditch (Local Board of):—Law v. .. ..	C. A. [1892] 1 Q. B. 127 .. ..	636
Rederiaktiebolaget Condor:—Rayner v. .. ..	[1895] 2 Q. B. 289 .. ..	1942
Redfern v. Redfern .. ..	C. A. [1891] P. 139 .. ..	694
Redgrave v. Lloyd & Sons .. ..	[1895] 1 Q. B. 876 .. ..	1236
Redruth Foundry Co.:—Noel v. .. ..	[1896] 1 Q. B. 453 .. ..	1222
"Red Sea," The .. ..	C. A. [1896] P. 20 .. ..	982
Reed:—Rice v. .. ..	C. A. [1900] 1 Q. B. 54 .. ..	2159
Rees' Bankruptcy, In re. Administrator-General of Jamaica v. Lascelles, De Mercado & Co. ..	P. C. [1894] A. C. 135 .. ..	101, 1017
Rees, In the Goods of .. ..	[1896] W. N. 57 (12) .. ..	1593
Rees v. De Bernardy .. ..	[1896] 2 Ch. 437 .. ..	2024
Rees v. Thomas .. ..	C. A. [1899] 1 Q. B. 1015 .. ..	1222
Reeve v. Gibson .. ..	C. A. [1891] 1 Q. B. 652 .. ..	530
Reeve:—Lisle v. .. ..	[1900] W. N. 264 .. ..	1293
Reeve:—Tatam v. .. ..	[1893] 1 Q. B. 44 .. ..	869
Reeves v. Butcher .. ..	C. A. [1891] 2 Q. B. 509 .. ..	1137
Reeves:—Foster v. .. ..	C. A. [1892] 2 Q. B. 255 .. ..	593
Reeves (Josephine), In the Goods of .. ..	[1891] W. N. 124 .. ..	1594
Reeves & Son, Ltd., In re. In re Whitefriars Financial Co. .. ..	[1899] 1 Ch. 184 .. ..	309
Reffell:—Pullin v. .. ..	[1891] W. N. 39 .. ..	935, 2291
Regan:—Cartwright v. .. ..	[1895] 1 Q. B. 900 .. ..	204
Reg. v. Anglesey Justices (No. 1) .. ..	[1892] 1 Q. B. 850 .. ..	1103
Reg. v. Anglesey Justices (No. 2) .. ..	[1892] 2 Q. B. 29 .. ..	1041
Reg. v. Baker .. ..	C. C. R. [1895] 1 Q. B. 797 .. ..	612

Name of Case.	Volume and Page.	Column of Digest.
Reg. v. Bank of England .. .. .	[1891] 1 Q. B. 785 .. .. .	90
Reg. v. Barnardo. Jones's Case .. .. .	C. A. [1891] 1 Q. B. 194; } H. L. (E.) [1891] 388 .. .. .	948
Reg. v. Barstaple Division of Essex Commrs. of Taxes .. .. .	[1895] 2 Q. B. 123 .. .. .	2112
Reg. v. Bayard .. .. .	[1892] 2 Q. B. 181 .. .. .	607
Reg. v. Bell .. .. .	[1900] 2 Q. B. 391 .. .. .	1195
Reg. v. Berger .. .. .	[1894] 1 Q. B. 823 .. .. .	612, 623
Reg. v. Bird. Ex parte Needes .. .. .	[1898] 2 Q. B. 340 .. .. .	1098
Reg. v. Blaby .. .. .	C. C. R. [1894] 2 Q. B. 170 .. .. .	621
Reg. v. Blenkinsop .. .. .	[1892] 1 Q. B. 43 .. .. .	1689
Reg. v. Bodmin Justices .. .. .	[1892] 2 Q. B. 21 .. .. .	628, 1208
Reg. v. Bolingbroke .. .. .	[1893] 2 Q. B. 347 .. .. .	1042
Reg. v. Bowerman .. .. .	C. C. R. [1891] 1 Q. B. 112 .. .. .	194, 617
Reg. v. Bowman .. .. .	[1898] 1 Q. B. 663 .. .. .	1114
Reg. v. Brocklehurst .. .. .	[1892] 1 Q. B. 566 .. .. .	2215
Reg. v. Brompton County Court (Judge of) .. .. .	[1893] 2 Q. B. 195 .. .. .	593, 2061
Reg. v. Brown .. .. .	C. C. R. [1895] 1 Q. B. 119 .. .. .	622, 864, 1030
Reg. v. Bruce .. .. .	[1892] 2 Q. B. 136 .. .. .	1192, 1461
Reg. v. Bullivant .. .. .	C. A. [1900] 2 Q. B. 163 .. .. .	670
Reg. v. Burrows .. .. .	[1892] 1 Q. B. 399 .. .. .	1640, 2257
Reg. v. Burton. Ex parte Young .. .. .	[1897] 2 Q. B. 468 .. .. .	1043
Reg. v. Button .. .. .	[1900] W. N. 176; [1900] 2 Q. B. 597 .. .. .	613
Reg. :—Canada Sugar Refining Co. v. .. .. .	P. C. [1898] A. C. 735 .. .. .	241
Reg. v. Charity Commrs. .. .. .	[1897] 1 Q. B. 407 .. .. .	1205
Reg. v. City of London Court (Judge of the) (No. 1) .. .. .	[1891] 2 Q. B. 71 .. .. .	594, 1527
Reg. v. Clemens .. .. .	C. A. [1892] 1 Q. B. 273 .. .. .	1953
Reg. :—Coates v. .. .. .	C. C. R. [1898] 1 Q. B. 556 .. .. .	617
Reg. v. Cockshott .. .. .	P. C. [1900] A. C. 217 .. .. .	1337
Reg. v. Commrs. under the Boiler Explosions Act, 1882 .. .. .	[1898] 1 Q. B. 582 .. .. .	1033
Reg. v. Commrs. of Inland Revenue. Ohlson's Case. Garland's Case .. .. .	C. A. [1891] 1 Q. B. 703 .. .. .	214
Reg. v. Comptroller-General of Patents, Designs and Trade-marks .. .. .	[1891] 1 Q. B. 485 .. .. .	1445
Reg. v. Cotham .. .. .	C. A. [1899] 1 Q. B. 909 .. .. .	1437
Reg. v. Cox .. .. .	[1898] 1 Q. B. 802 .. .. .	1207
Reg. v. Davey .. .. .	[1898] 1 Q. B. 179 .. .. .	609
Reg. v. Davies .. .. .	[1899] 2 Q. B. 301 .. .. .	1031
Reg. v. De Grey .. .. .	C. C. R. [1897] 2 Q. B. 199 .. .. .	863
Reg. v. Demers .. .. .	[1900] W. N. 38; [1900] 1 Q. B. 521 .. .. .	1673
Reg. v. Dennis .. .. .	P. C. [1900] A. C. 103 .. .. .	241
Reg. v. Dr. Tristram .. .. .	C. C. R. [1894] 2 Q. B. 458 .. .. .	830
Reg. v. Dolby (No. 1) .. .. .	[1898] 2 Q. B. 371 .. .. .	744
Reg. v. Douglas .. .. .	[1892] 2 Q. B. 301 .. .. .	1189, 1192
Reg. v. Duckworth .. .. .	[1892] 2 Q. B. 736 .. .. .	578, 890
Reg. :—Dunn v. .. .. .	[1898] 1 Q. B. 560 .. .. .	1044
	C. C. R. [1892] 2 Q. B. 83 .. .. .	619
	C. A. [1895] W. N. 160 (4); } [1896] 1 Q. B. 116 .. .. .	625



Name of Case.	Volume and Page.	Column of Digest.
Reg. v. Durham (Lord Bishop of)	C. A. [1897] 2 Q. B. 414	753
Reg. v. Durham Justices	[1895] 1 Q. B. 801	1041
Reg. v. Dyson	C. C. R. [1894] 2 Q. B. 176	135, 621
Reg. v. Ellis	C. C. R. [1898] W. N. 162 (2); [1899] 1 Q. B. 230	615
Reg. v. Entwistle. Ex parte Jones	[1899] W. N. 47; [1899] 1 Q. B. 846	2215
Reg. v. Erdheim	C. C. R. [1896] 2 Q. B. 260	610
Reg. v. Essex Justices (No. 1)	[1892] 1 Q. B. 490	1041
Reg. v. Evans	[1896] 1 Q. B. 228	187
Reg. v. Farmer	C. A. [1892] 1 Q. B. 637	187, 1039
Reg. v. Farnborough	C. C. R. [1895] 2 Q. B. 484	616
Reg. v. Gaisford	[1892] 1 Q. B. 381	1042
Reg. v. Gardner	C. C. R. [1898] W. N. 150 (4); [1899] 1 Q. B. 150	613
Reg. v. Glamorgan County Council. Miller	Ex parte { [1899] W. N. 60; [1899] 2 Q. B. 26; C. A. [1899] W. N. 138; [1899] 2 Q. B. 536	579
Reg. v. Glamorganshire Justices	C. A. [1892] 1 Q. B. 621	1039, 1041, 1102
Reg. v. Goole Local Board	[1891] 2 Q. B. 212	2084
Reg. v. Gray	[1900] 2 Q. B. 36	503
Reg. v. Griffiths	[1891] 2 Q. B. 145	135, 2071
Reg. v. Gyngall	C. A. [1893] 2 Q. B. 232	948
Reg. v. Halifax County Court Judge	[1891] 1 Q. B. 793; C. A. [1891] 2 Q. B. 263	593, 1444 621,
Reg. v. Hall	[1891] 1 Q. B. 747	1403, 2066
Reg. v. Hannay	[1891] 2 Q. B. 709	1307
Reg. v. Hastings Corporation	[1896] W. N. 160 (7); [1897] 1 Q. B. 46	1922
Reg. v. Henley	[1892] 1 Q. B. 504	825, 1044
Reg. v. Henty	P. C. [1896] A. C. 567	2260
Reg. v. Hobbs	C. C. R. [1898] 2 Q. B. 647	872
Reg. v. Hopkins	[1893] 1 Q. B. 621	1309
Reg. v. Hopkins	C. C. R. [1896] 1 Q. B. 652	621
Reg. v. Huggins (No. 1)	[1891] W. N. 88	929, 1040
Reg. v. Huggins (No. 2)	[1895] 1 Q. B. 563	1044
Reg. v. Hughes	[1893] 2 Q. B. 530	1100
Reg. v. Humphrey	C. C. R. [1898] 1 Q. B. 875	866
Reg. v. Incorporated Law Society	[1895] 2 Q. B. 456; C. A. [1896] 1 Q. B. 327	2054, 2056
Reg. v. Instan	C. C. R. [1893] 1 Q. B. 450	620
Reg. v. Jackson	C. A. [1891] 1 Q. B. 671	922
Reg. v. Jameson	[1896] 2 Q. B. 425	833
Reg. v. Jennings	[1895] W. N. 142 (7)	1031
Reg. v. Jennings	[1896] 1 Q. B. 64	1822
Reg. v. Jones	[1894] 2 Q. B. 382	561
Reg. v. Jones	C. C. R. [1896] 1 Q. B. 4	620
Reg. v. Jones	C. C. R. [1897] W. N. 167 (4); [1898] 1 Q. B. 119	615
Reg. v. Kennedy	[1893] 1 Q. B. 533	1086
Reg. v. Kerswill	[1895] 1 Q. B. 1	1028

Name of Case.	Volume and Page.	Column of Digest.
Reg. v. King .. .. .	C. C. R. [1897] 1 Q. B. 214 ..	614
Reg. :—Kops v. Ex parte Kops .. ..	P. C. [1894] A. C. 650 .. ..	612, 1324, 1591
Reg. :—Labrador Co. v. .. .. .	P. C. [1893] A. C. 104 .. ..	257, 1569
Reg. v. Law .. .. .	[1900] 1 Q. B. 605 .. ..	607
Reg. v. Leicester Union .. .. .	[1899] 2 Q. B. 632 .. ..	2213
Reg. v. Leigh (Lord). In re Kinchant ..	C. A. [1896] W. N. 161 (9); [1897] 1 Q. B. 132 .. ..	1454
Reg. v. Leigh Rural Council .. .. .	C. A. [1898] 1 Q. B. 836 .. ..	1690
Reg. v. Lerische .. .. .	C. A. [1891] 2 Q. B. 418 .. ..	705
Reg. v. Lewis .. .. .	[1896] 1 Q. B. 665 .. ..	69
Reg. v. Lewisham Union .. .. .	[1897] 1 Q. B. 498 .. ..	1207, 2213
Reg. v. Lillyman .. .. .	C. C. R. [1896] 2 Q. B. 167 .. ..	612
Reg. v. Liverpool (Revising Barrister) ..	[1895] 1 Q. B. 155 .. ..	1372
Reg. v. London (Bishop). Allcroft's Case ..	H. L. (E.) [1891] A. C. 666 .. ..	757
Reg. v. London (Bishop). Leighton's Case ..	[1891] 2 Q. B. 48; H. L. (E.) [1891] A. C. 666 .. ..	757,
Reg. v. London, City Corporation. Ex parte Boaler .. .. .	[1893] 2 Q. B. 146 .. ..	1028
Reg. v. London County Council. Ex parte Akkersdyk. Ex parte Fermentia .. ..	[1892] 1 Q. B. 190 .. ..	1307
Reg. v. London County Council .. .. .	C. A. [1893] 2 Q. B. 454 .. ..	1359, 1629, 2067
Reg. v. London Justices (No. 1) .. .. .	[1893] W. N. 86 .. ..	1034, 1690
————— (No. 2) .. .. .	C. A. [1893] 2 Q. B. 476 .. ..	1672
————— (No. 3) .. .. .	C. A. [1894] 1 Q. B. 453 .. ..	562, 1630
————— (No. 4) .. .. .	[1895] 1 Q. B. 214; C. A. [1895] 1 Q. B. 616 .. ..	1040, 1112
————— (No. 5) .. .. .	[1895] 1 Q. B. 881 .. ..	1180
Reg. v. London Justices. Ex parte Greenwich Union .. .. .	[1900] W. N. 26; [1900] 1 Q. B. 438 .. ..	1458
Reg. v. London Justices. Ex parte Lambert ..	[1892] 1 Q. B. 664 .. ..	1042
Reg. v. London Justices .. .. .	C. A. [1896] 1 Q. B. 659 .. ..	1670
Reg. v. London Justices .. .. .	[1897] 1 Q. B. 433 .. ..	1691
Reg. v. London Justices .. .. .	[1899] W. N. 20 (11); [1899] 1 Q. B. 532 .. ..	1671
Reg. v. London (Lord Mayor of). Ex parte Boaler .. .. .	[1893] 2 Q. B. 146 .. ..	1028
Reg. v. Lowndes .. .. .	[1899] W. N. 20 (13); [1899] 1 Q. B. 57 .. ..	2213
Reg. v. London and North Western Ry. Co. ..	[1894] 2 Q. B. 512 .. ..	628, 1206, 1649
Reg. v. Lord Leigh. In re Kinchant .. ..	C. A. [1896] W. N. 161 (9); [1897] 1 Q. B. 132 .. ..	1454
Reg. v. Lunacy Commrs. .. .. .	[1897] 1 Q. B. 630 .. ..	1188
Reg. v. Lushington. Ex parte Otto .. ..	[1894] 1 Q. B. 420 .. ..	623, 809
Reg. v. Lynch .. .. .	[1898] 1 Q. B. 61 .. ..	606
Reg. v. McKenzie .. .. .	[1892] 2 Q. B. 519 .. ..	606, 1032
Reg. v. Manchester Justices .. .. .	[1899] W. N. 18 (6); [1899] 1 Q. B. 571 .. ..	1114
Reg. v. Marsden .. .. .	[1891] 2 Q. B. 149 .. ..	620

Name of Case.	Volume and Page.	Column of Digest.
Reg. v. Marsham .. .. .	C. A. [1892] 1 Q. B. 371 ..	1174, 1207
Reg. v. Marylebone Vestry .. .. .	C. A. [1895] 1 Q. B. 771 ..	235
Reg. v. McKellar .. .. .	[1893] 1 Q. B. 121 ..	1372
Reg. v. Mead .. .. .	[1894] 2 Q. B. 124 ..	1350
Reg. v. Mead .. .. .	[1897] W. N. 153 (11); [1898] 1 Q. B. 110 ..	1155
Reg. v. Medical Council .. .. .	[1897] 1 Q. B. 764; C. A. [1897] 2 Q. B. 203 ..	1251
Reg. v. Miskin Higher Justices .. .. .	[1893] 1 Q. B. 275 ..	1104
Reg. v. —Mitchell v. .. .. .	C. A. [1896] 1 Q. B. 121, n. ..	625
Reg. v. Morton .. .. .	[1892] 1 Q. B. 39 ..	546, 1640
Reg. v. Munslow .. .. .	C. C. R. [1895] 1 Q. B. 758 ..	622
Reg. v. Nash .. .. .	[1900] 1 Q. B. 103 ..	1405
Reg. v. Newton .. .. .	[1892] 1 Q. B. 648 ..	1028
Reg. v. Nicholson .. .. .	C. A. [1899] 2 Q. B. 455 ..	1099
Reg. v. North Riding of Yorkshire County Council .. .. .	[1899] 1 Q. B. 201 ..	822
Reg. v. Ollis .. .. .	C. C. R. [1900] W. N. 154; [1900] 2 Q. B. 758 ..	614
Reg. v. Oxford Circuit (Clerk of Assize of) .. .. .	[1897] 1 Q. B. 370 ..	622
Reg. v. Oxfordshire Justices .. .. .	C. A. [1893] 2 Q. B. 149 ..	1042
Reg. v. Oxfordshire County Court (Judge of) .. .. .	[1894] 2 Q. B. 440 ..	596
Reg. v. Paterson .. .. .	[1895] 1 Q. B. 31 ..	595, 2113
Reg. v. Payne & Cooper .. .. .	[1896] 1 Q. B. 577 ..	503
Reg. v. Plymouth (Mayor of) .. .. .	[1896] 1 Q. B. 158 ..	822
Reg. v. Pelly .. .. .	[1897] 2 Q. B. 33 ..	1106
Reg. v. Pontypool Justices .. .. .	C. A. [1892] 1 Q. B. 621 ..	1039, 1041, 1102
Reg. v. Portsmouth Justices .. .. .	[1892] 1 Q. B. 491 ..	1037, 2213
Reg. v. Powell .. .. .	[1891] 1 Q. B. 718; C. A. [1891] 2 Q. B. 693 ..	1105
Reg. v. Powell. Ex parte Williams .. .. .	[1899] 1 Q. B. 396 ..	1361
Reg. v. Pownall .. .. .	[1893] 2 Q. B. 158 ..	1098
Reg. v. Registrar of Joint Stock Companies. Ex parte Johnston .. .. .	C. A. [1891] 2 Q. B. 598 ..	391
Reg. v. Reynolds .. .. .	[1893] 2 Q. B. 75 ..	2083
Reg. v. Rhodes .. .. .	C. C. R. [1899] 1 Q. B. 77 ..	614
Reg. v. —Richards v. .. .. .	[1897] 1 Q. B. 574 ..	623
Reg. v. Richardson .. .. .	[1894] 2 Q. B. 323 ..	1458
Reg. v. Riley .. .. .	C. C. R. [1896] 1 Q. B. 309 ..	616
Reg. v. Robinson .. .. .	[1898] 1 Q. B. 734 ..	188
Reg. v. Russett .. .. .	C. C. R. [1892] 2 Q. B. 312 ..	617
Reg. v. St. George, Hanover Square (Vestry) .. .. .	[1895] 2 Q. B. 275 ..	1171
Reg. v. St. Mary Abbotts, Kensington (Assessment Committee) .. .. .	C. A. [1891] 1 Q. B. 378 ..	1670, 1674, 1691
Reg. v. St. Marylebone Vestry .. .. .	C. A. [1895] 1 Q. B. 771 ..	235, 736
Reg. v. Samuel .. .. .	[1895] 1 Q. B. 815 ..	2105
Reg. v. Saunders .. .. .	C. C. R. [1899] 1 Q. B. 490 ..	612
Reg. v. Secretary of State for War .. .. .	C. A. [1891] 2 Q. B. 326 ..	1208
Reg. v. Senior .. .. .	C. C. R. [1898] W. N. 168 (7); [1899] 1 Q. B. 283 ..	609
Reg. v. Sharman. Ex parte Denton .. .. .	[1898] 1 Q. B. 578 ..	1115
Reg. v. Silverlock .. .. .	C. C. R. [1894] 2 Q. B. 766 ..	611, 615

Name of Case.	Volume and Page.	Column of Digest.
Reg. v. Slade. Ex parte Saunders .. ..	[1895] 2 Q. B. 247 .. ..	1036
Reg. v. Smallman .. ..	C. C. R. [1896] W. N. 157 (1); [1897] 1 Q. B. 4 .. ..	609
Reg. v. Smith .. ..	[1896] 1 Q. B. 596 .. ..	16
Reg. v. Smyth .. ..	P. C. [1898] A. C. 782 .. ..	2260
Reg. v. Soden .. ..	[1896] W. N. 178 (4); C. A. [1896] 1 Q. B. 634 .. ..	1405
Reg. v. Soden .. ..	[1897] 1 Q. B. 188 .. ..	1404
Reg. v. Soutter .. ..	C. A. [1891] 1 Q. B. 57 .. ..	1182, 1640
Reg. v. Sowerby .. ..	C. C. R. [1894] 2 Q. B. 173 .. ..	614
Reg. v. Sowter .. ..	[1900] W. N. 257 .. ..	736
Reg. v. Spilsbury v. .. ..	[1898] 2 Q. B. 615; P. C. [1899] A. C. 392 .. ..	87, 876
Reg. v. Staffordshire Justices .. ..	[1898] 2 Q. B. 231 .. ..	1112
Reg. v. Stern v. .. ..	[1896] 1 Q. B. 211 .. ..	1784
Reg. v. Stewart .. ..	[1896] 1 Q. B. 300 .. ..	30
Reg. v. Stewart .. ..	[1898] 1 Q. B. 552 .. ..	577
Reg. v. Stewart .. ..	[1899] 1 Q. B. 965 .. ..	2013
Reg. v. Stoddart .. ..	C. C. R. [1900] W. N. 258 .. ..	864
Reg. v. Streeter .. ..	C. C. R. [1900] W. N. 176; [1900] 2 Q. B. 601 .. ..	618
Reg. v. Stuart .. ..	C. C. R. [1894] 1 Q. B. 310 .. ..	340, 609
Reg. v. Surrey Justices (No. 1) .. ..	[1892] 1 Q. B. 633; C. A. [1892] 1 Q. B. 867 .. ..	889
(No. 2) .. ..	[1892] 2 Q. B. 719 .. ..	1041
Reg. v. Tankard .. ..	C. C. R. [1894] 1 Q. B. 548 .. ..	391, 406, 609
Reg. v. Taylor v. .. ..	[1895] 1 Q. B. 25 .. ..	615
Reg. v. Thomas .. ..	[1892] 1 Q. B. 426 .. ..	1100
Reg. v. Thompson .. ..	C. C. R. [1893] 2 Q. B. 12 .. ..	611
Reg. v. Tidy .. ..	[1892] 2 Q. B. 179 .. ..	1640
Reg. v. Titterton .. ..	[1895] 2 Q. B. 61 .. ..	20
Reg. v. Tomlinson .. ..	C. C. R. [1895] 1 Q. B. 706 .. ..	621
Reg. v. Toronto Ry. Co. v. .. ..	P. C. [1896] A. C. 551 .. ..	245
Reg. v. Turner (Judge) and Hodgson .. ..	[1897] 1 Q. B. 445 .. ..	592
Reg. v. Tyler and the International Commercial Co. .. ..	C. A. [1891] 2 Q. B. 588 .. ..	36
Reg. v. Tynemouth Rural District Council .. ..	C. A. [1896] 2 Q. B. 451 .. ..	1918
Reg. v. Tyrrell .. ..	C. C. R. [1894] 1 Q. B. 710 .. ..	620
Reg. v. Villensky .. ..	C. C. R. [1892] 2 Q. B. 597 .. ..	617
Reg. v. Vreones .. ..	C. C. R. [1891] 1 Q. B. 360 .. ..	611
Reg. v. Waite .. ..	[1892] 2 Q. B. 600 .. ..	620
Reg. v. Walsh v. .. ..	P. C. [1894] A. C. 144 .. ..	1638
Reg. v. Warwickshire Justices. Reg. v. Worcester- shire Justices .. ..	C. A. [1898] W. N. 160 (10); [1899] 1 Q. B. 59 .. ..	1105
Reg. v. Watermen's Co. .. ..	[1897] 1 Q. B. 659 .. ..	265
Reg. v. Waudby .. ..	C. C. R. [1895] 2 Q. B. 482 .. ..	619
Reg. v. Webb .. ..	[1896] 1 Q. B. 487 .. ..	188
Reg. v. Wedd .. ..	[1896] 2 Q. B. 360 .. ..	2106
Reg. v. West .. ..	C. C. R. [1897] W. N. 175 (6); [1898] 1 Q. B. 174 .. ..	623
Reg. v. West Riding Justices .. ..	[1900] 1 Q. B. 291 .. ..	1029
Reg. v. West Riding of Yorkshire (County Council) .. ..	C. A. [1895] 1 Q. B. 805 .. ..	579, 1453
Reg. v. West Riding of Yorkshire Justices. Ex parte Shaw .. ..	[1898] 1 Q. B. 503 .. ..	1105
Reg. v. Wilkinson .. ..	[1891] 1 Q. B. 722 .. ..	1458
Reg. v. Williams .. ..	C. C. R. [1893] 1 Q. B. 320 .. ..	620

Name of Case.	Volume and Page.	Column of Digest.
Reg. v. Winder .. .. .	[1900] 2 Ch. 666 .. ..	1113
Reg. v. Wolferstan .. .. .	[1893] 2 Q. B. 451 .. ..	896
Reg. v. Woolwich Union .. .. .	[1891] 2 Q. B. 712 .. ..	1670, 1671
Reg. v. Worcestershire Justices .. .. .	C. A. [1900] 2 Q. B. 576 .. ..	1112
Reg. v. Worcestershire Justices. Reg. v. War- wickshire Justices .. .. .	C. A. [1893] W. N. 160 (10); [1899] 1 Q. B. 59 .. ..	1105
Reg. v. Worton .. .. .	C. C. R. [1895] 1 Q. B. 227 .. ..	869
Reg. v. Yorkshire (County Council of West Riding of) .. .. .	[1896] 2 Q. B. 386 .. ..	2108
Regan :—Cartwright v. .. .. .	[1895] 1 Q. B. 900 .. ..	204
Regional :—Isaacs v. In re Isaacs .. .. .	[1894] 3 Ch. 506 .. ..	520
Registrar of Joint Stock Companies :—Reg. v. Ex parte Johnston .. .. .	[1891] 2 Q. B. 598 .. ..	391
Registrar of Probates :—Simms v. .. .. .	P. C. [1900] A. C. 323 .. ..	84
Reichardt v. Sapte .. .. .	[1893] 2 Q. B. 303 .. ..	528
Reid, In the Goods of .. .. .	[1896] P. 129 .. ..	1611
Reid v. Burrows .. .. .	[1892] 2 Ch. 413 .. ..	2022
Reid v. Rigby & Co. .. .. .	[1894] 2 Q. B. 40 .. ..	1574
Reid v. Wilson and King .. .. .	C. A. [1895] 1 Q. B. 315 .. ..	2094
Reid v. Wilson and Ward .. .. .	C. A. [1895] 1 Q. B. 315 .. ..	2094
Reid (J.) & Sons, Ltd. .. .. .	[1900] 2 Q. B. 634 .. ..	448
Reid's Brewery Co. v. Male .. .. .	[1891] 2 Q. B. 1 .. ..	1760
Reigate Union Assessment Committee v. South Eastern Ry. Co. .. .. .	[1894] 1 Q. B. 411 .. ..	1691
Reilly :—Davis v. .. .. .	[1897] W. N. 152 (2); [1898] 1 Q. B. 1 .. ..	191
Rein v. Stein .. .. .	C. A. [1892] 1 Q. B. 753 .. ..	1542
Reischer v. Borwick .. .. .	C. A. [1894] 2 Q. B. 548 .. ..	988
Reitmeyer & Co. :—Saccharin Corporation v. .. .	[1900] W. N. 159; [1900] 2 Ch. 659 .. ..	1432
Reliance Permanent Benefit Building Society, In re .. .. .	[1892] W. N. 77 .. ..	231
Religious Tract and Book Society of Scotland v. Forbes .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 126 .. ..	1775
Religious Tract Society :—Brooks v. .. .. .	[1897] W. N. 25 (5) .. ..	538
Remfry v. Natal (Surveyor-General of) .. .. .	P. C. [1896] A. C. 558 .. ..	1313
Remington :—Everett v. .. .. .	[1892] 3 Ch. 148 .. ..	2253
Remington v. Scoles .. .. .	C. A. [1897] 2 Ch. 1 .. ..	1531
Renad :—Lauri v. .. .. .	C. A. [1892] 3 Ch. 402 .. ..	532, 534, 535
Rendall v. Hill's Dry Docks and Eng'neering Co. .	C. A. [1900] W. N. 113; [1900] 2 Q. B. 245 .. ..	1247
Rendall :—Lane v. .. .. .	[1899] W. N. 208; [1899] 2 Q. B. 673 .. ..	2294
Rendell, In re. Wood v. Rendell .. .. .	[1900] W. N. 257 .. ..	786
Rendell v. Grundy .. .. .	C. A. [1895] 1 Q. B. 16 .. ..	77, 779
Reney v. Kirkcudbright Magistrates .. .. .	H. L. (Sc.) [1892] A. C. 264 .. ..	1979
Renner, Ex parte .. .. .	P. C. [1897] A. C. 218 .. ..	877
Renner v. Tolley .. .. .	[1893] W. N. 90 .. ..	1078
Rennie :—Att.-Gen. for New South Wales v. .. .	P. C. [1896] A. C. 376 .. ..	1330
Rennoldson :—Morley v. .. .. .	C. A. [1895] 1 Ch. 449 .. ..	2343
Renshaw v. Queen Anne Residential Mansions and Hotel Co. .. .. .	C. A. [1897] 1 Q. B. 662 .. ..	53
Rent and General Collecting and Estate Co. v. Troughton. In re Troughton .. .. .	[1894] W. N. 154 .. ..	852
Renton Gibbs & Co. v. Neville & Co. .. .. .	C. A. [1900] 2 Q. B. 131 .. ..	1527
Revell :—Jacobs v. .. .. .	[1900] 2 Ch. 858 .. ..	2220

Name of Case.	Volume and Page.	Column of Digest.
Revell v. Scott .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 137	1771
Revelstoke (Lord) v. Inland Revenue Commrs.	H. L. (E.) [1898] A. C. 565	1798
Reversionary Interest Society, Ltd., In re (No. 1)	[1892] 1 Ch. 615	325, 364
(No. 2)	[1892] W. N. 60	369
Review Publishing Co., In re .. .. .	[1893] W. N. 5	465
Rew, In re. Rew v. Wippell. In re Sharland	[1899] W. N. 140; [1899] 2 Ch. 536	1478
Reynolds v. Att.-Gen. for Nova Scotia .. ..	P. C. [1896] A. C. 240	252
Reynolds:—Brickwood v. .. .. .	C. A. [1898] 1 Q. B. 95	1761
Reynolds:—Reg. v. .. .. .	[1893] 2 Q. B. 75	2083
Reynolds:—Rosenthal v. .. .. .	[1892] 2 Ch. 301	2126
Reynolds v. Urban District Council of Presteign	[1896] 1 Q. B. 604	890
Reynolds (Charles) & Co., In re .. .. .	[1895] W. N. 31	453
Reynolds & Co. v. Tomlinson .. .. .	[1896] 1 Q. B. 586	1943
Rhoades, In re. Ex parte Rhoades .. .. .	[1899] W. N. 41; [1899] 1 Q. B. 905; C. A. [1899] 2 Q. B. 347	803
Rhodes:—Burrows v. .. .. .	[1899] 1 Q. B. 816	833
Rhodes v. Moules .. .. .	C. A. [1895] 1 Ch. 236	1423
Rhodes:—Reg. v. .. .. .	C. C. R. [1899] 1 Q. B. 77	614
Rhodes:—Stewart v. .. .. .	[1900] W. N. 13; C. A. [1900] W. N. 41; [1900] 1 Ch. 386	269
Rhodes's Trading Co.:—Nicholson v. .. .. .	[1897] 1 Ch. 434	353
Rhondda and Swansea Ry. Co. v. Talbot .. ..	C. A. [1897] 2 Ch. 131	1669
Rhydney Iron Co. v. Fowler .. .. .	[1896] 2 Q. B. 79	1763
Rhydney Ry. Co. v. Brecon and Merthyr Tydfil Junction Ry. Co. .. .. .	C. A. [1900] W. N. 169	509
"Rialto," The .. .. .	[1891] P. 175	2006
Rice v. Noakes & Co. .. .. .	[1899] W. N. 229; [1900] 1 Ch. 213; C. A. [1900] W. N. 150; [1900] 2 Ch. 445	1294
Rice v. Reed .. .. .	C. A. [1900] 1 Q. B. 54	2159
Rice:—Rogers v. .. .. .	C. A. [1892] 2 Ch. 170	1071
Rich, In the Goods of .. .. .	[1892] P. 143	1604
Rich:—Palmer v. .. .. .	[1896] W. N. 174 (7); [1897] 1 Ch. 134	1022
Richards v. Butcher .. .. .	C. A. [1891] 2 Ch. 522	2133
Richards v. Overseers of Kidderminster. Richards v. Mayor of Kidderminster .. .. .	[1896] 2 Ch. 212	316
Richards v. Jones. In re Jones .. .. .	[1898] 1 Ch. 438	2302
Richards:—Lamond v. .. .. .	C. A. [1897] 1 Ch. 541	973
Richards v. Reg. .. .. .	[1897] 1 Q. B. 574	623
Richards:—Rodgers v. .. .. .	[1892] 1 Q. B. 555	1036
Richards & Co.:—Thin v. .. .. .	C. A. [1892] 2 Q. B. 141	1945
Richards:—Richardson v. In re Richardson. Richardson v. Richardson. In re Richardson .. .. .	[1900] W. N. 3; [1900] 2 Ch. 778	1862
Richardson, In re. Richardson v. Richardson. In re Richardson. Richardson v. Richardson .. .. .	[1900] W. N. 3; [1900] 2 Ch. 778	1862
Richardson, In re. Morgan v. Richardson .. ..	[1896] 1 Ch. 512	779
Richardson v. Leask. In re Leask .. .. .	[1891] W. N. 159	1502
Richardson v. Methley School Board .. .. .	[1893] 3 Ch. 510	964, 1640, 1823
Richardson:—Reg. v. .. .. .	[1894] 2 Q. B. 323	1458
Richardson v. Richardson .. .. .	[1895] P. 276; C. A. [1895] P. 346	701, 1493
Richardson v. Stormont, Todd & Co. .. .. .	C. A. [1900] 1 Q. B. 701	2074
Richardson, S;ence & Co. v. Rowntree .. .. .	H. L. (E.) [1894] A. C. 217	263

Name of Case.	Volume and Page.	Column of Digest.
Richardsons and Samuel (M.) & Co., In re ..	C. A. [1898] 1 Q. B. 261 ..	1970
Richardson & Wrench, Ltd.:—Plomley v. ..	P. C. [1894] A. C. 632 ..	1333
Richerson, In re. Scales v. Heyhoe (No. 1) ..	[1892] 1 Ch. 379 ..	520
(No. 2) ..	[1893] 3 Ch. 146 ..	1503, 1509
Richmond:—Owen v. .. .. .	[1895] W. N. 29 ..	1093, 2184
Richmond:—Smith v. .. .. .	C. A. [1898] 1 Q. B. 683; H. L. (E.) [1899] W. N. 130; [1899] A. C. 448 .. ..	1680
Richmond Gas Co. and Richmond (Surrey) Corporation, In re .. .. .	[1893] 1 Q. B. 56 ..	875
Richmond Hill Steamship Co. v. Trinity House (Corporation of) .. .. .	C. A. [1896] 2 Q. B. 134 ..	2017
Richmond (Vicar of) and the Chapelwardens of St. Matthias, Richmond v. All Persons having Interest, &c. .. .. .	[1897] P. 70 .. ..	741
Rickards v. Lynch-Blosse. In re Lynch-Blosse	[1899] W. N. 27 (8) ..	1868
Ricketson v. Barbour .. .. .	P. C. [1893] A. C. 194 ..	1328
Rickett, Smith & Co. v. Midland Ry. Co. ..	[1896] 1 Q. B. 260 ..	1659
Ricketts v. Ricketts .. .. .	[1891] W. N. 29 ..	1283
Riddall:—Connolly v. Donnelly v. Graham. Martin v. Hanrahan (No. 2) .. .. .	C. A. (Ir.) [1897] W. N. 103 ..	1367
Riddall v. McAleer .. .. .	C. A. (Ir.) [1898] W. N. 95 ..	1394
Riddall:—M'Gaffigan v. .. .. .	C. A. (Ir.) [1898] W. N. 95 ..	1394
Riddell:—Corcoran v. In re Corcoran .. ..	[1892] W. N. 182 ..	283
Riddell v. Durnford .. .. .	[1893] W. N. 30 ..	1080
Riddell:—Gibson v. .. .. .	C. A. (Ir.) [1899] W. N. 173 ..	1376
Ridgeway v. Farndale .. .. .	[1892] 2 Q. B. 309 ..	872
Ridgway:—Mander v. .. .. .	[1898] 1 Q. B. 501 ..	585
Ridley:—Upperton v. .. .. .	[1900] 1 Q. B. 680 ..	1454
Rigby & Co.:—Carter v. .. .. .	C. A. [1896] 2 Q. B. 113 ..	1511
Rigby & Co.:—Reid v. .. .. .	[1894] 2 Q. B. 40 ..	1574
"Rijnstroom," The .. .. .	[1899] W. N. 33 (1) ..	1959
Riley, In the Goods of .. .. .	[1895] W. N. 150 (5); [1896] P. 9 .. ..	1626
Riley v. Hall .. .. .	[1898] W. N. 81 (9) ..	1294
Riley:—Reg. v. .. .. .	C. C. R. [1896] 1 Q. B. 309 ..	616
Rimmer:—Hughes v. In re Tithe Act, 1891 ..	[1893] 2 Q. B. 314 ..	2112
Rintoul v. Falconer .. .. .	C. A. (Sc.) [1899] W. N. 174 ..	1392
"Ripon City," The .. .. .	[1897] P. 226 .. ..	1987
"Ripon City," The .. .. .	[1898] P. 78 .. ..	2001
Rishton v. Haslingden Corporation .. ..	[1898] 1 Q. B. 294 ..	2091
Ritchie:—Hamilton v. .. .. .	H. L. (Sc.) [1894] A. C. 310 ..	1843, 2320
Ritchie v. Larsen .. .. .	[1899] W. N. 12 (14); [1899] 1 Q. B. 727 ..	2012
Ritchie (John) & Co. v. Sexton .. .. .	H. L. (Sc.) [1891] W. N. 59 ..	645
Ritchie Callagher's Case. Campbell v. Chambers	C. A. (Ir.) [1899] W. N. 147 ..	
Ritson, In re. Ritson v. Ritson .. .. .	[1898] 1 Ch. 667; C. A. [1898] W. N. 166 (11); C. A. [1899] 1 Ch. 128 ..	1423
River Plate Construction Co.:—Bright v. ..	[1900] W. N. 153; [1900] 2 Ch. 835 .. ..	54
River Plate Trust, Loan and Agency Co.:—Mercantile Investment and General Trust Co. (No. 1) .. .. .	[1892] 2 Ch. 303 .. ..	319
(No. 2) .. .. .	[1894] 1 Ch. 578 .. ..	325, 326, 766

Name of Case.	Volume and Page.	Column of Digest.
River Kibble Joint Committee <i>v.</i> Halliwell.	[1899] 1 Q. B. 27; C. A. [1899]	2272
Same <i>v.</i> Shorrook .. .. .	W. N. 103; [1899] 2 Q. B. 385	
River Ribble (Joint Committee of the) <i>v.</i> Croston Urban District Council .. .. .	[1897] 1 Q. B. 251 .. .. .	771
Rixon <i>v.</i> Edinburgh Northern Tramways Co. ..	H. L. (Sc.) [1893] A. C. 636 ..	337
Rixson <i>v.</i> Pritchard & Renwick .. .. .	C. A. [1900] 1 Q. B. 800 .. ..	1215
Roberts <i>v.</i> French .. .. .	C. A. [1895] W. N. 22 .. ..	1500
Robb <i>v.</i> Green .. .. .	[1895] 2 Q. B. 1; C. A. [1895]	969,
	2 Q. B. 315 .. .. .	1248
Robbins:—Oliver <i>v.</i> .. .. .	[1894] W. N. 199 .. .. .	573
Roberts, In re .. .. .	C. A. [1899] W. N. 220; [1900]	180
	1 Q. B. 122 .. .. .	
Roberts, In the Goods of .. .. .	[1898] P. 149 .. .. .	1602
Roberts <i>v.</i> Akeroyd. In re Akeroyd's Settlement .. .. .	C. A. [1893] 3 Ch. 363 .. ..	1905
Roberts <i>v.</i> Booth .. .. .	[1893] 1 Ch. 52 .. .. .	1528
Roberts:—Collman <i>v.</i> .. .. .	[1896] 1 Q. B. 457 .. .. .	2018
Roberts <i>v.</i> Cooper .. .. .	C. A. [1891] 2 Ch. 335 .. ..	1903
Roberts:—Edwards <i>v.</i> .. .. .	[1891] 1 Q. B. 302 .. .. .	1038
Roberts:—Ellis <i>v.</i> In re Davies .. .. .	[1898] 2 Ch. 142 .. .. .	2165
Roberts <i>v.</i> Gwyrgrai District Council .. .. .	[1899] W. N. 16 (11); [1899] 1 Ch. 583; C. A. [1899] W. N. 203; [1899] 2 Ch. 608 .. ..	2285
Roberts <i>v.</i> Holland .. .. .	[1893] 1 Q. B. 665 .. .. .	1515,
		2102
Roberts <i>v.</i> Jones .. .. .	[1891] 2 Q. B. 194 .. .. .	559, 562
Roberts <i>v.</i> Plant .. .. .	C. A. [1895] 1 Q. B. 597 .. ..	1564
Roberts <i>v.</i> Potts. In re Tithe Act, 1891 .. .. .	[1893] 2 Q. B. 33; C. A. [1894]	1688,
	1 Q. B. 213 .. .. .	2068,
		2071,
		2113
Roberts:—Sarson <i>v.</i> .. .. .	C. A. [1895] 2 Q. B. 395 .. ..	1074
Roberts <i>v.</i> Security Co. .. .. .	C. A. [1897] 1 Q. B. 111 .. ..	976
Roberts:—Shoolbred <i>v.</i> .. .. .	[1899] W. N. 136; [1889] 2 Q. B. 560; C. A. [1900] W. N. 157; [1900] 2 Q. B. 497 .. .. .	179
Roberts:—Thomas <i>v.</i> Smith, Claimant .. .. .	[1895] 1 Q. B. 657 .. .. .	204
Roberts:—Totfield <i>v.</i> .. .. .	[1894] W. N. 74 .. .. .	1488,
		1562
Roberts & Keighley, Maxsted & Co.:—Durant & Co. <i>v.</i> .. .. .	C. A. [1900] W. N. 54; [1900] 1 Q. B. 629 .. .. .	1578
Robertson, In the Goods of .. .. .	[1896] P. 8 .. .. .	1623
Robertson:—Att.-Gen. <i>v.</i> .. .. .	[1892] 2 Q. B. 694; C. A. [1893]	1806
	1 Q. B. 293 .. .. .	
Robertson <i>v.</i> Bristol Corporation .. .. .	C. A. [1900] W. N. 102; [1900] 2 Q. B. 198 .. .. .	2035
Robertson:—Durham Brothers <i>v.</i> .. .. .	C. A. [1898] 1 Q. B. 765 .. ..	75
Robertson <i>v.</i> Harris .. .. .	[1900] 2 Q. B. 117 .. .. .	23
Robertson:—Inglis <i>v.</i> .. .. .	H. L. (Sc.) [1898] A. C. 616 .. ..	814
Robertson <i>v.</i> Johnson .. .. .	[1893] 1 Q. B. 129 .. .. .	822
Robertson:—Lord Advocate <i>v.</i> .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 132 .. .. .	1806
Robertson:—McNab <i>v.</i> .. .. .	H. L. (Sc.) [1896] W. N. 179 (7); [1897] A. C. 129 .. ..	2282
Robertson, Sanderson & Co.'s Application, In re .. .. .	[1892] 2 Ch. 245 .. .. .	2134
“Robin,” The .. .. .	[1892] P. 95 .. .. .	563,
		1958
Robins & Co. <i>v.</i> Gray .. .. .	[1897] 2 Q. B. 78; C. A. [1895]	972
	2 Q. B. 501 .. .. .	



Name of Case.	Volume and Page.	Column of Digest.
Robinson, In re. Wright v. Tugwell .. .. {	[1892] 1 Ch. 95; C. A. [1896] W. N. 170 (2); [1897] 1 Ch. 85 {	753
Robinson :—Branlagan v. .. .. {	[1892] 1 Q. B. 344 .. .. {	1240
Robinson :—Caldwell v. .. .. {	[1893] 1 Q. B. 519 .. .. {	1558
Robinson v. Canadian Pacific Ry. Co. .. .. {	P. C. [1892] A. C. 481 .. .. {	257, 2066
Robinson :—Clarkson v. .. .. {	[1900] W. N. 188; [1900] 2 Ch. 722 .. .. {	2197
Robinson v. Geisel .. .. {	C. A. [1894] 2 Q. B. 685 .. .. {	1506
Robinson v. Harkin .. .. {	[1896] 2 Ch. 415 .. .. {	2172
Robinson v. Montgomeryshire Brewery Co. .. .. {	[1896] 2 Ch. 841 .. .. {	312
Robinson :—Reg. v. .. .. {	[1898] 1 Q. B. 734 .. .. {	188
Robinson :—Royal College of Veterinary Surgeons v. .. .. {	[1892] 1 Q. B. 557 .. .. {	2257
Robinson v. Robinson .. .. {	[1898] P. 153 .. .. {	929
Robinson v. Shaw. In re Shaw .. .. {	[1894] 2 Ch. 573 .. .. {	1899
Robinson :—Smith v. .. .. {	[1893] 2 Q. B. 53 .. .. {	1166
Robinson :—Stewart v. .. .. {	H. L. (Sc.) [1891] W. N. 122 .. .. {	1830
Robinson :—Sunderland Corporation v. .. .. {	[1899] W. N. 19 (7); [1899] 1 Q. B. 751 .. .. {	2287
Robinson :—West Hartlepool (Mayor, &c., of) v. .. .. {	[1897] W. N. 12 (7) .. .. {	2088
Robinson v. Workington Corporation .. .. {	C. A. [1897] 1 Q. B. 619 .. .. {	1911
Robinson & Co. v. Heuer .. .. {	C. A. [1898] 2 Ch. 451 .. .. {	1726
Robinson's Settlement Trusts, In re .. .. {	[1891] 3 Ch. 129 .. .. {	1085, 1875
Robinson & Fisher :—Feast v. .. .. {	[1894] W. N. 14 .. .. {	198
Robinson, King & Co. v. Lynes .. .. {	[1894] 2 Q. B. 577 .. .. {	902
Robson, In re. Howden v. Robson .. .. {	[1899] W. N. 260 .. .. {	725, 2362
Robson, In re. Robson v. Hamilton .. .. {	[1891] 2 Ch. 559 .. .. {	725, 2365
Robson v. Edwards .. .. {	[1893] 2 Ch. 146 .. .. {	1119
Robson v. Horner .. .. {	[1893] W. N. 100 .. .. {	1702, 1704
Robson v. Smith .. .. {	[1895] 2 Ch. 118 .. .. {	321
Robson v. Tidy. In re Smith .. .. {	[1900] W. N. 75 .. .. {	1902
Rochdale Canal Co. v. Brewster .. .. {	C. A. [1894] 2 Q. B. 852 .. .. {	1676
Rochdale Canal Co. :—Chamber Colliery Co. v. .. .. {	C. A. [1894] 2 Q. B. 632; H. L. (E.) [1895] A. C. [1895] 564 {	1266
Rochdale Canal Proprietors :—Manchester Ship Canal Co. v. .. .. {	[1899] W. N. 24 (11) .. .. {	2116
Rochdale Union and Haslingden Union, In re .. .. {	[1898] 2 Q. B. 206; C. A. [1899] 1 Q. B. 540 .. .. {	1145
Roche v. London and South Western Ry. Co. .. .. {	C. A. [1899] 2 Q. B. 502 .. .. {	1559
Rochefoucauld v. Boustead .. .. {	C. A. [1896] W. N. 74 (2), 178 (5) .. .. {	781
Rochefoucauld v. Boustead .. .. {	C. A. [1897] 1 Ch. 196; C. A. [1898] 1 Ch. 550 .. .. {	850, 2178
Rochester (Bishop of) v. Harris .. .. {	[1893] P. 137 .. .. {	754
Rockett v. Clippingdale .. .. {	C. A. [1891] 2 Q. B. 293 .. .. {	1957
Roderick :—Soutter v. .. .. {	[1895] W. N. 156 (7); [1896] 1 Q. B. 91 .. .. {	1372
Roddick v. Indemnity Mutual Marine Insurance Co. .. .. {	[1895] 1 Q. B. 836; C. A. [1895] 2 Q. B. 380 .. .. {	995
Rodger v. Harrison .. .. {	C. A. [1893] 1 Q. B. 161 .. .. {	2394
Rodgers v. Richards .. .. {	[1892] 1 Q. B. 555 .. .. {	1036
"Rodney," The .. .. {	[1900] W. N. 46; [1900] P. 112 .. .. {	1938
Rodocanachi :—Hick v. .. .. {	C. A. [1891] 2 Q. B. 626; H. L. (E.) [1893] A. C. 22 .. .. {	1965

Name of Case.	Volume and Page.	Column of Digest.
Roe v. Nix .. .. .	[1893] P. 55 .. .. .	1195,
Roe :—Taylor v. (No. 1) .. .. .	1893] W. N. 14 .. .. .	1627
(No. 2) .. .. .	[1893] W. N. 26 .. .. .	77, 80
(No. 3) .. .. .	[1894] 1 Ch. 413 .. .. .	1849
Roger's Trade-mark, In re .. .. .	[1894] W. N. 173 .. .. .	564
Rogers, In re. Ex parte Collins .. .. .	[1894] 1 Q. B. 425 .. .. .	777
Rogers :—Bamfield v. In re Glubb .. .. .	C. A. [1900] 1 Ch. 354 .. .. .	114
Rogers :—Brett v. .. .. .	[1897] 1 Q. B. 525 .. .. .	2264
Rogers v. Hosegood .. .. .	[1899] W. N. 223; C. A. [1900] { W. N. 157; [1900] 2 Ch. 388 }	1166
Rogers v. Harding. In re Harding .. .. .	C. A. [1894] 3 Ch. 315 .. .. .	602
Rogers :—Kelly v. .. .. .	C. A. [1892] 1 Q. B. 910 .. .. .	1477
Rogers :—Lepela v. .. .. .	[1893] 1 Q. B. 31 .. .. .	1060
Rogers v. Maddocks .. .. .	C. A. [1892] 3 Ch. 346 .. .. .	1063
Rogers v. Manchester Packing Co. .. .. .	[1898] 1 Q. B. 344 .. .. .	1723
Rogers v. Rice .. .. .	C. A. [1892] 2 Ch. 170 .. .. .	1236
Rogers v. Rogers .. .. .	[1894] P. 161 .. .. .	1071
Rogers :—Steers v. .. .. .	C. A. [1892] 2 Ch. 13; H. L. { (E.) [1893] A. C. 232 }	694
Rogers v. Whiteley .. .. .	H. L. (E.) [1892] A. C. 118 .. .. .	1433
Rogers, Sons & Co. v. Lambert & Co. .. .. .	C. A. [1891] 1 Q. B. 318 .. .. .	78, 90,
Rolfe, In re. Fyson v. Johnson .. .. .	[1894] W. N. 77 .. .. .	93
Rolfe :—Ancell v. .. .. .	[1896] W. N. 9 (8) .. .. .	767
Rolfe v. Thompson .. .. .	[1892] 2 Q. B. 196 .. .. .	1494
Rollason, In re. Holt, In re. Holt v. Holt .. .. .	[1897] 2 Ch. 525 .. .. .	1406
Rollason's Registered Design, In re .. .. .	C. A. [1898] 1 Ch. 237; affirmed { by H. L. (E.) sub nom. Heath & Sons, Ltd. v. Rollason, [1898] A. C. 499 .. .. . }	19
Rollit & Sons, In re .. .. .	[1893] W. N. 195 .. .. .	2175
Rolls :—Inman v. In re Inman .. .. .	[1893] 3 Ch. 518 .. .. .	1303,
"Romance," The .. .. .	[1900] W. N. 254 .. .. .	2058
Romer & Haslam, In re .. .. .	C. A. [1893] 2 Q. B. 286 .. .. .	2340
Romford, St. Andrew (Rector, &c.) v. All Persons { having Interest .. .. . }	[1894] P. 220 .. .. .	1946
Roncoroni :—Pini v. .. .. .	[1892] 1 Ch. 633 .. .. .	62, 2041,
Roney :—Beasley v. .. .. .	[1891] 1 Q. B. 509 .. .. .	2043
Rooke v. Dawson .. .. .	[1895] 1 Ch. 480 .. .. .	741
Roper v. Castell & Brown, Ltd. In re Castell & { Brown, Ltd. .. .. . }	[1898] 1 Ch. 315 .. .. .	52, 1414
Roper v. Knott .. .. .	[1898] 1 Q. B. 868 .. .. .	903
Roper :—Ooregum Gold Mining Co. of India v. { Wallroth v. Roper .. .. . }	H. L. (E.) [1892] A. C. 125 .. .. .	273
Ropkins & Co. :—Pugsley & Co. v. .. .. .	C. A. [1892] 2 Q. B. 184 .. .. .	320
Rosario Nitrate Co. :—Smith & Service v. .. .. .	[1893] 2 Q. B. 323; C. A. [1894] { 1 Q. B. 174 .. .. . }	619
Roscoe :—Boden v. .. .. .	[1894] 1 Q. B. 608 .. .. .	396
Rose v. Bank of Australasia .. .. .	H. L. (E.) [1894] A. C. 687 .. .. .	1964,
Rose :—Koozen v. .. .. .	C. A. [1897] W. N. 25 (9) .. .. .	1999
Rose Marie Gold Mining Co., In re .. .. .	[1896] W. N. 76 (5) .. .. .	1973
Rose v. Watson .. .. .	[1894] 2 Q. B. 90 .. .. .	29, 682
Rose-Innes :—Palmer v. In re Palmer .. .. .	[1900] W. N. 9 .. .. .	1932
Rosenthal v. Be'son .. .. .	[1900] W. N. 123; [1900] 2 Ch. { 267 .. .. . }	562
		2045
		736
		1736
		2241

Name of Case.	Volume and Page.	Column of Digest.
Rosenthal v. Reynolds .. .. .	[1892] 2 Ch. 301 .. ..	2126
Rosher, In re. Briant v. Rosher .. ..	[1899] W. N. 134 .. ..	1865
Ross, In re. Ashton v. Ross .. .. .	[1899] W. N. 234; [1900] 1 Ch. 162 .. ..	32
Ross :—Barnes (or Ross) v. .. .. .	H. L. (Sc.) [1896] A. C. 625 .. ..	949
Ross v. Carbery .. .. .	C. A. (Sc.) [1899] W. N. 171 .. ..	1380
Ross :—Hicks v. .. .. .	[1891] 3 Ch. 499 .. ..	32
Ross :—Perth General Station Committee v. ..	H. L. (Sc.) [1897] A. C. 479 .. ..	1666
Ross v. White .. .. .	C. A. [1894] 3 Ch. 326 .. ..	559, 1416
Ross v. Woodford .. .. .	[1894] 1 Ch. 38 .. ..	778
Ross :—Woolston v. .. .. .	[1900] W. N. 24; [1900] 1 Ch. 788 .. ..	684
Ross' Charity, In re. In re Perry Almshouses ..	[1897] 2 Ch. 397; C. A. [1898] W. N. 158; [1899] 1 Ch. 21 ..	272
Ross, Sleeman & Co. :—Madeley v. .. ..	[1897] 1 Ch. 505 .. ..	318
Roth, In re. Goldberger v. Roth .. ..	[1896] W. N. 16 (15) .. ..	2189
Roths (Earl of) :—Leslie v. .. .. .	C. A. [1894] 2 Ch. 499 .. ..	2359
Rothschild :—Chili Republic v. .. ..	[1891] W. N. 138 .. ..	776
Rothschild & Sons v. Inland Revenue Commrs. "Rougement," The .. .. .	[1894] 2 Q. B. 142 .. ..	1789
Roundwood Colliery Co., In re. Lee v. Roundwood Colliery Co. .. .. .	[1893] P. 275 .. ..	1960
Rourke :—Thompson v. (No. 1) .. ..	[1896] W. N. 166 (3); C. A. [1897] 1 Ch. 373 .. ..	1259
(No. 2) .. .. .	C. A. [1892] P. 244 .. ..	715
Rouse v. Bradford Banking Co. .. ..	[1893] P. 11; C. A. [1893] P. 70 .. ..	707
Rowatt's Wharf, Ld. :—Biggarstaff v. .. ..	C. A. [1894] 2 Ch. 32; H. L. (E.) [1894] A. C. 586 .. ..	97, 1585
Rowatt's Wharf, Ld. :—Howard v. .. ..	[1896] 2 Ch. 93 .. ..	334
Rowbotham :—Ellis v. .. .. .	[1896] 2 Ch. 93 .. ..	334
Rowe, In re. Pyke v. Hamlyn .. .. .	C. A. [1900] 1 Q. B. 740 .. ..	48
Rowell v. Inland Revenue Commrs. .. ..	C. A. [1897] W. N. 172 (13); [1898] 1 Ch. 153 .. ..	2328
Rowell v. Rowell .. .. .	[1897] 2 Q. B. 194 .. ..	1792
Rowland :—Coxen v. .. .. .	C. A. [1900] 1 Q. B. 9 .. ..	923
Rowland v. Mitchell. In re Rowland's Trade-mark .. .. .	[1894] 1 Ch. 406 .. ..	1476
Rowland v. Pritchard .. .. .	C. A. [1897] 1 Ch. 71 .. ..	2126
Rowlands :—Hill v. .. .. .	[1893] W. N. 34 .. ..	1373
Rowlands :—Hill (Trustee of Lord) v. .. ..	[1897] W. N. 68 (3); affirmed by C. A. [1897] 2 Ch. 361 ..	1280
Rowlands v. Miller .. .. .	[1896] 2 Q. B. 124 .. ..	107
Rowley v. Ginnever .. .. .	[1899] 1 Q. B. 735 .. ..	2015
Rowls v. Bebb. In re Rowls. Walters v. Solicitor for the Treasury .. .. .	[1897] 2 Ch. 503 .. ..	1864
Rowntree :—Richardson, Spence & Co v. ..	C. A. [1900] W. N. 103; [1900] 2 Ch. 107 .. ..	1854
Roxburgh :—Philip v. .. .. .	H. L. (E.) [1894] A. C. 217 .. ..	263
Roxburghe Press, In re. Spiers & Bevan's Case	Registration App. Ct. (Sc.) [1897] W. N. 96 .. ..	1402
Royal Aquarium and Summer and Winter Garden Society v. Parkinson .. ..	[1899] W. N. 1 (1); [1899] 1 Ch. 210 .. ..	425
Royal Bank of Scotland v. Tottenham ..	C. A. [1892] 1 Q. B. 431 .. ..	648, 1308
Royal British Nurses' Association :—Breay v. ..	C. A. [1894] 2 Q. B. 715 .. ..	94
Royal College of Music v. Westminster Vestry ..	C. A. [1897] 2 Ch. 272 .. ..	549
Royal College of Surgeons of England, In re ..	[1897] W. N. 175 (8); [1898] 1 Q. B. 304; C. A. [1898] 1 Q. B. 809 .. ..	1681
	C. A. [1899] 1 Q. B. 873 .. ..	1773

Name of Case.	Volume and Page.	Column of Digest.
Royal College of Surgeons of Edinburgh :— Sulley v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 98 .. .. .	1773
Royal College of Veterinary Surgeons v. Robinson .. .. .	[1892] 1 Q. B. 557 .. .. .	2257
Royal Exchange Assurance Corporation :—China Traders' Insurance Co. v. .. .. .	C. A. [1898] 2 Q. B. 187 .. .. .	998
Royal Exchange Assurance Corporation :— Gedge v. .. .. .	[1900] 2 Q. B. 214 .. .. .	1002
Royal Exchange Assurance Corporation :—Ruys v. .. .. .	[1897] 2 Q. B. 135 .. .. .	984
Royal General Theatrical Fund Association v. Kydd. In re Lacy .. .. .	[1899] 2 Ch. 149 .. .. .	285
Royal Holloway College, Egham v. Southwell ..	[1895] 2 Q. B. 487 .. .. . C. A. [1896] 1 Q. B. 41; H. L. (E.) [1896] W. N. 161 (13); [1897] A. C. 1 ..	1752 1765
Royal Insurance Co. v. Watson .. .. .	P. C. [1900] A. C. 480 .. .. .	1018
Royal Mail Steam Packet Co. v. George and Brandy .. .. .	[1895] P. 163 .. .. .	1596
Royle v. Harris .. .. .	[1899] W. N. 256 .. .. .	2291
Royston Water Co. :—Titchmarsh v. .. .. .	[1896] 1 Ch. 517; C. A. [1896] W. N. 62 (19) .. .. .	2300, 2339
Rozey :—Kemp v. In re Sharland .. .. .	C. A. [1893] 1 Ch. 427 .. .. .	1648
Ruabon Brick and Terra Cotta Co. v. Great Western Ry. Co. .. .. .	[1897] 2 Q. B. 456; C. A. [1898] 1 Q. B. 722; H. L. (E.) [1899] W. N. 254; [1900] A. C. 6 ..	990
Ruabon Steamship Co. v. London Assurance ..	[1898] P. 52 .. .. . [1898] P. 59 .. .. . [1896] P. 152 .. .. .	1996 2015 706
"Ruby," The (No. 1) .. .. .	[1900] W. N. 133 .. .. .	2301, 2344
(No. 2) .. .. .	[1897] W. N. 153 (9); [1898] 1 Q. B. 114 .. .. .	1107
Ruck v. Ruck .. .. .	C. A. [1896] 2 Ch. 554 .. .. .	856
Rudd :—Gallagher v. .. .. .	[1900] W. N. 78; [1900] 1 Ch. 815 .. .. .	2245
Rudd v. James .. .. .	C. A. [1895] 1 Ch. 629 .. .. .	350, 1702
Rudd v. Lascelles .. .. .	[1899] W. N. 8 (3); [1899] 1 Ch. 537 .. .. .	2084
Rudry Merthyr Steam and House Coal Colliery Co. :—County of Gloucester Bank v. .. .. .	[1899] W. N. 127 .. .. .	465
Rufford & Co. :—Att.-Gen. v. .. .. .	C. A. [1897] 2 Ch. 351 .. .. .	1302
Rugeley Gas Co., In re .. .. .	[1898] 1 Ch. 34; C. A. [1898] 1 Ch. 561 .. .. .	1914
Rumney and Smith, In re .. .. .	[1898] 2 Q. B. 83 .. .. .	894
Runcorn Rural District Council :—London and North Western Ry. Co. and Great Western Ry. Co. .. .. .	[1893] 1 Q. B. 118 .. .. .	1366
Rundle v. Hearle .. .. .	C. A. [1895] 2 Ch. 698 .. .. .	2348
Rushmere v. Isaacson .. .. .	[1892] P. 380 .. .. .	1614
Russell, In re. Dorrell v. Dorrell .. .. .	C. A. [1895] P. 315; H. L. (App. Com.) [1896] W. N. 37 (12); H. L. (D.) [1897] A. C. 395 ..	936
Russell, In the Goods of .. .. .	C. A. [1892] P. 152 .. .. .	700, 702
Russell (Earl) v. Russell (Countess) .. .. .	C. A. [1895] P. 315 .. .. .	703
Russell v. Russell (No. 1) .. .. .	H. L. (D.) [1898] A. C. 307 .. .. .	570
(No. 2) .. .. .	C. A. [1891] 1 Ch. 8; H. L. (E.) [1892] A. C. 244 .. .. .	1288
Russell v. Russell .. .. .		
Russell :—Taylor v. .. .. .		

Name of Case.	Volume and Page.	Column of Digest.
Russell:—Temperton (No. 1) .. .. .	C. A. [1893] 1 Q. B. 435 ..	1516, 2144
————— (No. 2) .. .. .	C. A. [1893] 1 Q. B. 715 ..	500, 508, 2142
Russell, Cordner & Co., In re .. .. .	[1891] 3 Ch. 171 .. ..	483
Russell Institution, In re. Figgins v. Baghino	[1898] 2 Ch. 72 .. ..	1826
Russett:—Reg. v. .. .. .	C. C. R. [1892] 2 Q. B. 312 ..	617
Russian Spratts Patent, Ltd., In re. Johnson v.	C. A. [1898] 2 Ch. 149 ..	329
Russian Spratts Patent, Ltd. .. .. .		
Rutland (Duke of):—Harrison v. .. .. .	C. A. [1893] 1 Q. B. 142 ..	2292
"Rutland," The. Owners of Steamship "Eden- bridge" v. Green and Owners of Steamship "Rutland" .. .. .	C. A. [1896] P. 281; H. L. (E.) [1897] A. C. 333 .. ..	1993
Rutland's Settled Estates (Duke of), In re.	[1900] W. N. 122; [1900] 2 Ch.	1872
Rutland (Duke of) v. Bristol (Marquis of) ..	206 .. ..	
Rutson:—Wix v. .. .. .	[1899] 1 Q. B. 474 .. ..	1176
Rutter v. Everett .. .. .	[1895] 2 Ch. 872 .. ..	137
Rutter:—Hawkins v. .. .. .	[1892] 1 Q. B. 668 .. ..	593, 729
Rutter (D. & C.):—Crayford Overscers v. ..	[1897] 1 Q. B. 650 .. ..	2083
Ruys v. Royal Exchange Assurance Corporation	[1897] 2 Q. B. 135 .. ..	984
Ryan:—Briggs v. In re Wheeler's Settlement	[1899] W. N. 141; [1899] 2 Ch.	909
Ryan v. Mutual Tontine Westminster Chambers Association .. .. .	717 .. ..	
Ryan v. Master. Sheba Gold Mining Co. v. Trub- shawe .. .. .	[1892] 1 Ch. 427; C. A. [1893] 1 Ch. 116 .. ..	1066, 2063
Ryley v. Master. Sheba Gold Mining Co. v. Trub- shawe .. .. .	[1892] 1 Q. B. 674 .. ..	1566
Rymer, In re. Rymer v. Stanfield .. .. .	C. A. [1895] 1 Ch. 19 .. ..	277, 2336
Rymer v. McIlroy .. .. .	[1897] 1 Ch. 528 .. ..	2290
S.		
S——:—J—— v. .. .. .	[1894] 3 Ch. 72 .. ..	967
S——'s Settlement, In re. G—— v. C. .. ..	[1893] W. N. 127 .. ..	917
Saalfeld:—Perls v. .. .. .	C. A. [1892] 2 Ch. 149 .. ..	1721
Sabin:—David v. .. .. .	[1892] W. N. 115; C. A. [1893] 1 Ch. 523 .. ..	1083, 2232, 2250
Sabiston:—Montreal Lithographing Co. v. ..	P. C. [1899] A. C. 610 .. ..	247
Saccharin Corporation v. Chemicals and Drugs Co. .. .. .	C. A. [1900] W. N. 185; [1900] 2 Ch. 556 .. ..	1426
Saccharin Corporation, Ltd. v. Anglo-Continental Chemical Works, Ltd. .. .. .	[1900] W. N. 95 .. ..	1430
Saccharin Corporation, Ltd. v. Quincey .. ..	[1900] W. N. 115; [1900] 2 Ch.	1427
Saccharin Corporation, Ltd. v. Reitmeyer & Co. ..	246 .. ..	
	[1900] W. N. 159; [1900] 2 Ch.	1432
	659 .. ..	
Sadler v. Great Western Ry. Co. .. .. .	C. A. [1895] 2 Q. B. 688; H. L. (E.) [1896] A. C. 450 ..	1517
Sadler:—Howard v. .. .. .	[1893] 1 Q. B. 1 .. ..	269, 349,
Sadler v. Worley .. .. .	[1894] 2 Ch. 170 .. ..	315
Safety Oil Co., In re .. .. .	[1892] W. N. 133 .. ..	387
Saffery, Ex parte. In re Vautin .. .. .	[1899] 2 Q. B. 549 .. ..	167
Saffery, Ex parte. In re Vautin .. .. .	[1900] W. N. 136; [1900] 2 Q. B.	131
	325 .. ..	
Saffery v. Mayer .. .. .	C. A. [1900] W. N. 242 .. ..	865
Saffery:—Welton v. .. .. .	[1895] 1 Ch. 255; affirmed by H. L. (E.) [1897] A. C. 299 ..	430

Name of Case.	Volume and Page.	Column of Digest.
Sagar v. Stoddart. Stoddart v. Sagar .. ..	[1895] 2 Q. B. 474 .. ..	865, 1183
Sailing Ship "Blairmore" Co. v. Macredie ..	H. L. (Sc.) [1898] A. C. 593 ..	1002
Sailing Ship "Kentmere" Co., In re .. ..	[1897] W. N. 53 (2) .. ..	461
St. Albans (Duke of), In re. Loder v. Duke of St. Albans .. ..	[1900] 2 Ch. 873 .. ..	1737
St. Albans, Wood Street (Rector, &c.), In re ..	[1891] W. N. 204 .. ..	565
St. Andrew, Romford (Rector, &c.), v. All Persons Having Interest, &c. .. ..	[1894] P. 220 .. ..	741
St. Andrew's, Hove (Vicar, &c.) v. Mawn ..	[1895] P. 228, n. .. ..	742
St. Asaph (Dean and Chapter) v. Llanrhaidr-yn-Mochnant Overseers .. ..	C. A. [1897] 1 Q. B. 511 .. ..	1687
St. Aubyn:—McLeod v. .. ..	P. C. [1899] A. C. 549 .. ..	502
St. Benet Fink, Churchyard, In re .. ..	[1893] P. 58 .. ..	743
St. Benet Sherehog, In re .. ..	[1893] P. 66, n. .. ..	743
St. Botolph, Aldgate (Vicar of), Ex parte ..	[1894] 3 Ch. 544 .. ..	754
St. Botolph, Aldersgate Without (Vicar of) v. Parishioners of Same .. ..	[1900] P. 69 .. ..	743
St. Botolph Overseers:—Chappell v. .. ..	[1892] 1 Q. B. 561 .. ..	25, 1673
St. Botolph without Aldgate (Parishioners of):—City of London Commrs. of Sewers v. ..	[1892] P. 161 .. ..	743
St. Botolph without Aldgate (Vicar, &c.) v. Parishioners of Same (No. 1) .. ..	[1892] P. 161 .. ..	743
St. Ethelburga, Bishopsgate Within (Rector of):—Kensit v. .. ..	[1892] P. 173 .. ..	743, 873
St. Etienne Brewery Co.:—Harrison v. .. ..	[1900] W. N. 80 .. ..	745
St. Gabriel, Fenchurch Street (Rector and Churchwardens of) v. City of London Real Property Co. .. ..	[1893] W. N. 108 .. ..	304
St. George, (The) Knight of .. ..	[1896] P. 95 .. ..	749
St. George's Local Board v. Ballard .. ..	[1898] W. N. 22 (3) .. ..	1958
St. George's, Hanover Square (Vestry):—Reg. v. .. ..	C. A. [1895] 1 Q. B. 702 .. ..	2084
St. George's Hospital:—Churchill v. In re Howell-Shepherd .. ..	[1895] 2 Q. B. 275 .. ..	1171
St. George's Union Assessment Committee:—Middlesex County Council v. .. ..	[1894] 3 Ch. 649 .. ..	1314, 2356
St. George's Union Assessment Committee:—London County Council v. (No. 1) .. ..	[1896] 2 Q. B. 143; C. A. [1896] W. N. 164 (4); [1897] 1 Q. B. 64 .. ..	1676
St. Giles and St. George's Assessment Committee:—Burton v. .. ..	C. A. [1893] 1 Q. B. 210; H. L. (E.) [1893] A. C. 562 .. ..	1685
St. Giles, Camberwell v. Crystal Palace Co. ..	C. A. [1893] 2 Q. B. 476; H. L. (E.) [1894] A. C. 600 .. ..	1672
St. Giles, Camberwell:—Wilson v. .. ..	[1900] W. N. 9; [1900] 1 Q. B. 389 .. ..	1673
St. Giles, Camberwell v. London Cemetery Co. ..	C. A. [1892] 2 Q. B. 33 .. ..	1178
St. Giles, Camberwell:—Wilson v. .. ..	[1894] 1 Q. B. 699 .. ..	1175
St. Gobain, Chauny, and Cirey Co. v. Hoyer-mann's Agency .. ..	[1892] 1 Q. B. 1 .. ..	1177
St. Helen's, Bishopsgate, with St. Mary Outwich (Rector, &c.) v. Parishioners of Same ..	C. A. [1893] 2 Q. B. 96 .. ..	1535, 1562
St. James' and Pall Mall Electric Lighting Co.:—Hopkinson v. .. ..	[1892] P. 259 .. ..	750
St. James-the-Less, Bethnal Green (Vicar of) v. Parishioners of Same .. ..	[1893] W. N. 5 .. ..	563, 1436
St. James Norland (Churchwardens, &c.) v. Parishioners of Same .. ..	[1899] P. 55 .. ..	746
St. John's Mansions, Ltd.:—Greene v. .. ..	[1894] P. 256 .. ..	741
St. John's Mansions, Ltd.:—Greene v. .. ..	[1900] W. N. 9 .. ..	1531

Name of Case.	Volume and Page.	Column of Digest.
St. John's, Pendlebury (Vicar, &c.) v. St. John, } Pendlebury (Parishioners of) .. .. .	[1895] P. 178 .. .. .	750
St. John the Baptist, Cardiff (Vicar of) v. } Parishioners of Same .. .. .	[1898] P. 155 .. .. .	744
St. John the Baptist, Timberhill (Rectors, &c., } of):—Vicar, &c., of the Same v. .. .. .	[1895] P. 71 .. .. .	751
St. John Street Wesleyan Methodist Chapel, } Chester, In re .. .. .	[1893] 2 Ch. 618 .. .. .	272
St. John's, Hackney (Vestry of) v. Hutton .. { 1 Q. B. 210 .. .. .	[1896] W. N. 158 (5); [1897] .. .. .	2287
St. John's Hospital, Bath:—Att.-Gen. v. .. ..	[1893] 3 Ch. 151 .. .. .	1091
St. Joseph's College Case. Alexander v. Burke ..	C. A. (Ir.) [1827] W. N. 92 .. .. .	1401
St. Leonard, Shoreditch Vestry v. London } County Council .. .. .	[1895] 2 Q. B. 104 .. .. .	1682
St. Leonard, Shoreditch (Vestry of) v. Phelan ..	[1896] 1 Q. B. 533 .. .. .	1168
St. Leonard, Shoreditch (Vestry of):—Pilbrow v. { 1 Q. B. 433 .. .. .	[1895] 1 Q. B. 33; C. A. [1895] .. .. .	1169
St. Levan:—Basset v. .. .. .	[1894] W. N. 204 .. .. .	2366
St. Ma k's, Marylebone Road, In re. St. Mark's } (Vicar of) v. St. Mark's (Parishioners of) ..	[1898] P. 114 .. .. .	750
St. Martin's-in-the-Fields (Vestry) v. Bird ..	C. A. [1895] 1 Q. B. 428 .. .. .	1169
St. Martin's-in-the-Fields Vestry v. Gordon ..	C. A. [1891] 1 Q. B. 61 .. .. .	1165
St. Martin's-in-the-Fields (Vestry of) v. Ward.. { C. A. [1896] W. N. 161 (8); } [1897] 1 Q. B. 40 .. .. .	.. .. .	1170
St. Mary Abbots, Kensington Assessment Com- } mittee:—Reg. v. .. .. .	C. A. [1891] 1 Q. B. 378 .. .. .	1670, 1674, 1691
St. Mary Abbots, Kensington (Vestry):—Bird v. ..	[1895] 1 Q. B. 912 .. .. .	1349
St. Mary Abbots, Kensington:—Gordon v. .. ..	[1894] 2 Q. B. 742 .. .. .	1180
St. Mary Abbots, Kensington (Vestry):—Mad- } den v. .. .. .	[1892] 1 Q. B. 614 .. .. .	1181
St. Mary Abbots, Kensington (Vestry):— } Worley v. .. .. .	[1892] 2 Ch. 404 .. .. .	1152
St. Mary, Battersea (Vestry of) v. County of } London and Brush Provincial Electric Light- } ing Co. .. .. .	C. A. [1899] W. N. 12 (11); } [1899] 1 Ch. 474 .. .. .	1180
St. Mary-at-Hill with St. Andrew Hubbard } (Rector), &c.) v. Parishioners of Same .. ..	[1892] P. 394 .. .. .	739
St. Mary, Islington (Vestry) v. Cobbett .. ..	[1895] 1 Q. B. 369 .. .. .	1172
St. Mary's, Battersea v. Palmer .. .. .	[1897] 1 Q. B. 220 .. .. .	1177
St. Mary's, Newington:—Austin v. .. .. .	C. A. [1894] 2 Q. B. 524 .. .. .	1178
St. Mary's, Newington:—Keep v. .. .. .	C. A. [1894] 2 Q. B. 524 .. .. .	1178, 2070
St. Marylebone Vestry:—Reg. v. .. .. .	C. A. [1895] 1 Q. B. 771 .. .. .	235, 736
St. Matthew, Bethnal Green (Vestry of):— } Fortescue v. .. .. .	[1891] 2 Q. B. 170 .. .. .	1152
St. Matthew, Bethnal Green (Churchwardens, } &c., of):—West Ham Union (Guardians of) v. } (No. 1) .. .. .	[1892] 2 Q. B. 65; C. A. [1892] } 2 Q. B. 676; H. L. (E.) [1894] } A. C. 230 .. .. .	1462
(No 2) .. .. .	C. A. [1895] 1 Q. B. 662; } H. L. (E.) [1896] A. C. 477 .. .. .	1457
St. Michael Bassishaw (Rector, &c.) v. Parish- } ioners of Same .. .. .	[1893] P. 233 .. .. .	738
"St. Michael, (The) Knight of" .. .. .	[1898] P. 30 .. .. .	992
St. Nicholas Acons, In re .. .. .	[1893] P. 66, n. .. .. .	743
St. Nicholas Cole Abbey, In re .. .. .	[1893] P. 58 .. .. .	743
St. Nicholas, Leicester (Vicar of) v. Langton ..	[1899] P. 19 .. .. .	750
St. Olave's Board of Works:—Andrew v. .. ..	[1898] 1 Q. B. 775 .. .. .	1344
St. Olave's Union v. Canterbury Union .. ..	C. A. [1897] 1 Q. B. 682 .. .. .	1400

Name of Case.	Volume and Page.	Column of Digest.
St. Pancras Vestry:—Cree <i>v.</i> .. .. .	[1899] 1 Q. B. 693 .. ..	1633
St. Peter's, Eaton Square (Vicar, &c.) <i>v.</i> Parish- ioners of Same .. .. .	[1894] P. 350 .. .. .	741, 751
St. Saviour (Vicar of), Westgate-on-Sea <i>v.</i> Parishioners of Same, Houseman Intervening }	[1898] P. 217 .. .. .	755
St. Saviour's Union <i>v.</i> Burbridge .. .. .	[1900] W. N. 184; [1900] 2 Ch. 695 .. .. .	2216
St. Saviour's Union:—Dorking Union <i>v.</i> .. .. .	C. A. [1898] 1 Q. B. 594 .. ..	1460
St. Saviour's Union:—Pullen <i>v.</i> .. .. .	[1899] W. N. 246; [1900] 1 Q. B. 138 .. .. .	1674
St. Thomas (Floating Dock Co. of), In re .. .. .	[1895] 1 Ch. 691 .. .. .	382
Salaman, In re .. .. .	C. A. [1894] 2 Ch. 201 .. ..	2043
Salaman <i>v.</i> Eames .. .. .	[1891] 1 Ch. 678 .. .. .	135, 627, 1117, 1162
Salaman <i>v.</i> Warner .. .. .	C. A. [1891] 1 Q. B. 734 .. ..	45
Sale Hotel and Botanical Gardens Co., In re .. .. .	[1897] W. N. 174 (5); C. A. [1898] W. N. 40 (2) .. ..	372
Sale <i>v.</i> Phillips .. .. .	[1894] 1 Q. B. 349 .. .. .	821
Salford Corporation <i>v.</i> Lever .. .. .	C. A. [1891] 1 Q. B. 168 .. ..	1573, 1710
Salisbury Gold Mining Co.:—Bank of Africa <i>v.</i> .. .. .	P. C. [1892] A. C. 281 .. ..	398, 1312
Salisbury Gold Mining Co. <i>v.</i> Hathorn .. .. .	P. C. [1897] A. C. 268 .. ..	1313
Salisbury-Jones and Dale's Case:—In re Bol- ton (R.) & Co. <i>v.</i> (No. 1) .. .. .	C. A. [1894] 3 Ch. 356 .. ..	347
(No. 2) .. .. .	C. A. [1895] 1 Ch. 333 .. ..	435, 437
Salomon, Ex parte. In re Raphael .. .. .	[1899] W. N. 23 (7); [1899] 1 Ch. 853; C. A. [1899] W. N. 212 .. .. .	1493
Salmon:—Bolton <i>v.</i> .. .. .	[1891] 2 Ch. 48 .. .. .	1296, 1586
Salmon & Gluckstein:—Kirshenboim <i>v.</i> .. .. .	[1898] 2 Q. B. 19 .. .. .	2121
Salomon:—Broderip <i>v.</i> Salomon <i>v.</i> Salomon & Co. Salomon & Co. <i>v.</i> Salomon .. .. .	C. A. [1895] 2 Ch. 323; H. L. (E.) [1896] W. N. 160 (5); [1897] A. C. 22 .. .. .	327
Salomons <i>v.</i> Knight .. .. .	C. A. [1891] 2 Ch. 294 .. ..	645
Salisbury <i>v.</i> Buckle. In re Averill .. .. .	[1898] 1 Ch. 523 .. .. .	2322
Salt, In re .. .. .	C. A. [1895] W. N. 156 (5); [1896] 1 Ch. 117 .. .. .	1189
Salt, In re. Brothwood <i>v.</i> Keeling .. .. .	[1895] 2 Ch. 203 .. .. .	788
Salt (Sir Titus), Bart., Sons, & Co.'s Application, In re .. .. .	[1894] 3 Ch. 166 .. .. .	2132
Salt <i>v.</i> Lecker. In re Parker-Jervis .. .. .	[1898] 2 Ch. 643 .. .. .	1744
Salt <i>v.</i> Northampton (Marquess of) .. .. .	H. L. (E.) [1892] A. C. 1 .. ..	1296
Salt Union, Ltd. <i>v.</i> North Staffordshire Ry. Co. .. .. .	[1898] 2 Q. B. 435 .. .. .	1659
Salt Union <i>v.</i> Wood .. .. .	[1893] 1 Q. B. 370 .. .. .	1989
"Saltburn," The .. .. .	[892] P. 333 .. .. .	1957
Salter:—Norwood Overseers .. .. .	[1892] 2 Q. B. 118 .. .. .	1687, 1691
Salter <i>v.</i> Salter .. .. .	C. A. [1896] P. 291 .. .. .	1617
Salton <i>v.</i> New Beeston Cycle Co. .. .. .	[1899] W. N. 40; [1899] 1 Ch. 775 .. .. .	349
Salton <i>v.</i> New Beeston Cycle Co. .. .. .	[1899] W. N. 213; [1900] 1 Ch. 43 .. .. .	1581, 2047
Salwey:—Pirbright <i>v.</i> .. .. .	[1896] W. N. 86 (4) .. .. .	280
Sampson, In re. Sampson <i>v.</i> Sampson .. .. .	[1896] 1 Ch. 630 .. .. .	2330
Samuel:—D'Errico <i>v.</i> .. .. .	C. A. [1896] 1 Q. B. 163 .. ..	595



Name of Case.	Volume and Page.	Column of Digest.
Samuel:—Micholls <i>v.</i> In re Beddington ..	[1900] W. N. 76; [1900] 1 Ch. 771	2305
Samuel:—Reg. <i>v.</i> .. .. .	[1895] 1 Q. B. 815 .. ..	2105
Sandbach and Edmondson's Contract, In re ..	C. A. [1891] 1 Ch. 99 .. ..	2219
Sandeman, Clark & Co.:—De Verges <i>v.</i> ..	[1900] W. N. 252 .. ..	1302
Sander and Walford's Contract, In re ..	[1900] W. N. 183 .. ..	2221
Sanders, In the Goods of .. .. .	[1900] P. 292 .. ..	1607
Sanders <i>v.</i> Jenkins .. .. .	[1897] 1 Q. B. 93 .. ..	1964
Sander's Settlement, In re .. .. .	C. A. [1896] 1 Ch. 480 .. ..	2033
Sanders-Clark <i>v.</i> Grosvenor Mansions Co. and G. D'Allessandri .. ..	[1900] W. N. 136; [1900] 2 Ch. 373 .. ..	1344
Sanderson:—Cockcroft <i>v.</i> In re Ainsworth ..	[1895] W. N. 153 (9) .. ..	790
Sanderson:—Turnell <i>v.</i> .. .. .	[1891] W. N. 71 .. ..	51, 1413
Sanderson:—Wilding <i>v.</i> .. .. .	C. A. [1897] 2 Ch. 534 .. ..	1551
Sanderson's Settlement. In re Wright's Settlement. Wright <i>v.</i> Sanderson .. ..	C. A. [1900] W. N. 261 .. ..	2050
Sandes <i>v.</i> Wildsmith .. .. .	[1893] 1 Q. B. 771 .. ..	1513
Sandgate Local Board <i>v.</i> Keene .. .. .	C. A. 1892] 1 Q. B. 831 .. ..	2085
Sandgate Local Board and the Kent County Council, In re .. .. .	[1895] 2 Q. B. 43 .. ..	1144
"Sandhill," (SS.):—SS. "Nord Kap" <i>v.</i> The "Sandhill" .. .. .	P. C. [1894] A. C. 646 .. ..	1946
Sandie & Hull:—Watson <i>v.</i> .. .. .	[1898] 1 Q. B. 326 .. ..	1771
Sandwich Council and Kent County Council, Ex parte .. .. .	[1891] 1 Q. B. 389; C. A. [1891] 1 Q. B. 725 .. ..	42, 577, 579
Sanguinetti <i>v.</i> Stuckey's Banking Co. ..	[1895] 1 Ch. 176; [1896] 1 Ch. 502 .. ..	182, 1279
Sanitary Burial Association, In re ..	C. A. [1900] W. N. 121; [1900] 2 Ch. 289 .. ..	452
San Paulo (Brazilian) Ry. Co. <i>v.</i> Carter ..	C. A. [1895] 1 Q. B. 580; H. L. (E.) [1896] A. C. 31 .. ..	1765
"Sans Pareil," H.M.S. .. .. .	[1900] W. N. 60; C. A. [1900] W. N. 127; [1900] P. 267 ..	1949
Santley <i>v.</i> Wilde .. .. .	[1899] W. N. 19 (8); [1899] 1 Ch. 747; C. A. [1899] W. N. 132; [1899] 2 Ch. 474 ..	1293
Sapte:—Reichardt <i>v.</i> .. .. .	[1893] 2 Q. B. 308 .. ..	528
Sargeant:—Wheeler <i>v.</i> .. .. .	[1893] W. N. 128 .. ..	2207
Sarl, In re. Ex parte Williams .. ..	[1892] 2 Q. B. 591 .. ..	212
Sarl:—Thynne <i>v.</i> .. .. .	[1891] 2 Ch. 79 .. ..	1283
Sarson <i>v.</i> Roberts .. .. .	C. A. [1895] 2 Q. B. 395 .. ..	1074
Sartoris's Estate, In re. Sartoris <i>v.</i> Sartoris ..	C. A. [1892] 1 Ch. 11 .. ..	158, 2332
Sass, In re. Ex parte National Provincial Bank of England .. .. .	[1896] 2 Q. B. 12 .. ..	154
"Satanita," The. Clarke <i>v.</i> Earl of Dunraven ..	C. A. [1895] P. 248; H. L. (E.) [1896] W. N. 164 (5); [1897] A. C. 59 .. ..	1981
Saul, In the Goods of .. .. .	[1896] P. 151 .. ..	1624
Saunders, Ex parte. Reg. <i>v.</i> Slade .. ..	[1895] 2 Q. B. 247 .. ..	1036
Saunders, In re. Ex parte Saunders .. ..	[1895] 3 Q. B. 117; C. A. [1895] 2 Q. B. 424 .. ..	117
Saunders In re. Saunders <i>v.</i> Gore .. ..	[1897] 1 Ch. 888; C. A. [1897] W. N. 158 (2); C. A. 1898] 1 Ch. 17 .. ..	1470
Saunders <i>v.</i> Boyd. In re FitzGerald's Settled Estates .. .. .	[1891] 3 Ch. 394 .. ..	1899
Saunders:—Gebhardt <i>v.</i> .. .. .	[1892] 2 Q. B. 452 .. ..	1166, 1347

Name of Case.	Volume and Page.	Column of Digest.
Saunders v. Holborn District Board of Works ..	[1895] 1 Q. B. 64 .. ..	1164,
Saunders v. Saunders .. .. .	C. A. [1897] P. 89 .. ..	2066
Saunders v. Sun Life Assurance Co. of Canada	[1894] 1 Ch. 537 .. ..	699
Saunders:—Reg. v. .. .. .	C. C. R. [1899] 1 Q. B. 490 ..	2142
Saunders v. Wiel (No. 1) .. .. .	[1892] 2 Q. B. 18; C. A. [1892] 2 Q. B. 321 .. ..	612
— (No. 2) .. .. .	C. A. [1893] 1 Q. B. 470 ..	655, 675
Savage v. Adam .. .. .	C. A. [1895] W. N. 109 (11) ..	656
Savery v. Enfield Local Board .. .. .	H. L. (E.) [1893] A. C. 218 ..	46
Savigny's Case. In re Central Klondyke Gold Mining Co. .. .. .	[1899] W. N. 1 (2) .. ..	2036
Saville:—Stoddart v. .. .. .	[1894] 1 Ch. 480 .. ..	423
"Savona," The .. .. .	[1900] W. N. 124; [1900] P. 252 .. ..	1900
Savory:—Steele v. .. .. .	[1891] W. N. 195 .. ..	1939
Savoy Hotel Co. v. London County Council ..	[1900] W. N. 25; [1900] 1 Q. B. 665 .. ..	671
Savoy Overseers v. Art Union of London ..	C. A. [1894] 2 Q. B. 609; H. L. (E.) [1896] A. C. 296 ..	2018
Sawers:—Lord Advocate v. .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 131 .. ..	1677
Sawyer v. Goddard. In re Dartnall .. ..	C. A. [1895] 1 Ch. 474 .. ..	1769, 1770
Sax, In re. Bamed v. Sax .. .. .	[1893] W. N. 104 .. ..	2035, 2184
Saxby v. Thomas .. .. .	[1891] W. N. 4; C. A. [1891] W. N. 28 .. ..	356, 2353
Saxlehner v. Apollinaris Co. .. .. .	[1897] 1 Ch. 893 .. ..	2222
Sayles:—Jeffery v. In re Bell .. .. .	C. A. [1895] W. N. 139 (8); [1896] 1 Ch. 1 .. ..	2141
Scaife v. Kemp & Co. .. .. .	[1892] 2 Q. B. 319 .. ..	1299
Scalé v. Rawlins .. .. .	H. L. (E.) [1892] A. C. 342 ..	675
Scales v. Heyhoe. In re Richardson (No. 1) ..	[1892] 1 Ch. 379 .. ..	2312
— (No. 2) .. .. .	[1893] 3 Ch. 140 .. ..	520
Scarborough Post Newspaper Co.:—Whittaker v. Scarlett:—Searles v. .. .. .	C. A. [1896] 2 Q. B. 148 .. ..	1503, 1509
Sceberras Trigona v. Sceberras d'Amico ..	C. A. [1892] 2 Q. B. 56 .. ..	675
Schauer v. Field, J. C. & J., Ltd. .. ..	P. C. [1892] A. C. 69 .. ..	647
Scheidges v. Williams .. .. .	[1893] 1 Ch. 35 .. ..	1205
Schlesinger v. Bedford .. .. .	[1893] W. N. 158 .. ..	535
Schmitt v. Faulks .. .. .	C. A. [1893] W. N. 57 .. ..	63
Schofield, Ex parte .. .. .	[1893] W. N. 64 .. ..	528, 970
Schofield, Ex parte. In re Fort .. .. .	C. A. [1891] 2 Q. B. 428 .. ..	962, 976
Schofield:—Hammond v. .. .. .	C. A. [1897] 2 Q. B. 495 .. ..	2048
Schofield:—Raffity v. .. .. .	[1891] 1 Q. B. 453 .. ..	36
Scholes v. Brook .. .. .	[1897] 1 Ch. 937 .. ..	1415
Scholey v. Peck .. .. .	[1891] W. N. 16; C. A. [1891] W. N. 101 .. ..	1551
Scholfield v. Londesborough (Earl of) ..	[1893] 1 Ch. 709 .. ..	1080
School Board for London:—St. Matthew, Bethnal Green (Vestry of) v. .. .. .	[1894] 2 Q. B. 660; C. A. [1895] 1 Q. B. 536; H. L. (E.) [1896] A. C. 514 .. ..	1581, 2216
Schott, Segner & Co.:—Badische Anilin und Soda Fabrik v. .. .. .	H. L. (E.) [1897] W. N. 167 (7); [1898] A. C. 190 .. ..	2026
Schulze, Ex parte. In re Clark .. .. .	[1892] 3 Ch. 447 .. ..	191
	C. A. [1898] 2 Q. B. 330 .. ..	169
		1721
		151

Name of Case.	Volume and Page.	Column of Digest.
Schulze v. Galashiels Corporation .. ..	H. L. (Sc.) [1895] A. C. 666 ..	220, 2081
"Schwan," The .. ..	C. A. [1892] P. 419 ..	1985
Schwarz:—Hill v. In re Parkin .. ..	[1892] 3 Ch. 510 ..	1471
Schweder & Co.:—Pearse v. .. ..	P. C. [1897] A. C. 520 ..	1313
Schweder's Estate, In re. Oppenheim v. Schweder (No. 1) .. ..	[1891] 3 Ch. 44 ..	2341
(No. 2) .. ..	[1893] W. N. 12 ..	2304
Schwerzerhof v. Wilkins .. ..	[1898] 1 Q. B. 640 ..	1237
Sclater:—Neptune Steam Navigation Co. v. The "Delano" .. ..	C. A. [1895] P. 40 ..	2070
Scobie v. Collins .. ..	[1895] 1 Q. B. 375 ..	1274
Scoles:—Remington v. .. ..	C. A. [1897] 2 Ch. 1 ..	1531
Scopenich:—Chalmers v. .. ..	[1892] 1 Q. B. 735 ..	1989
Scotney:—Sharratt v. .. ..	[1892] 2 Q. B. 479 ..	68
Scott, In re .. ..	[1900] 1 Q. B. 372; C. A. [1900] W. N. 127; [1900] W. N. ..	1747
Scott, In re. Ex parte Scott .. ..	[1896] 1 Q. B. 619 ..	109
Scott, In re. Scott v. Hanbury .. ..	[1891] 1 Ch. 298 ..	955
Scott, In the Goods of .. ..	[1895] P. 342 ..	1594
Scott and Alvarez's Contract, In re. Scott v. Alvarez .. ..	C. A. [1895] 1 Ch. 596; [1895] 2 Ch. 603 ..	1306, 1532, 2221
Scott v. Bould .. ..	[1895] 1 Q. B. 9 ..	1257
Scott v. Brown, Doering, McNab & Co. ..	C. A. [1892] 2 Q. B. 724 ..	513
Scott v. Consolidated Bank .. ..	[1893] W. N. 56 ..	665
Scott v. Glasgow Corporation .. ..	H. L. (Sc.) [1899] W. N. 119; [1899] A. C. 470 ..	1209
Scott:—Hill v. .. ..	[1895] 2 Q. B. 371; C. A. [1895] 2 Q. B. 713 ..	263
Scott:—Inland Revenue Commrs. v. In re Bootham Wark Strays, York .. ..	C. A. [1892] 2 Q. B. 152 ..	1758
Scott:—Knowles v. .. ..	[1891] 1 Ch. 717 ..	450
Scott (or Hall):—Macdonald v. .. ..	H. L. (Sc.) [1893] A. C. 642 ..	1833
Scott:—Marney v. .. ..	[1899] 1 Q. B. 986 ..	1316
Scott v. Moxon .. ..	[1900] W. N. 14 ..	1529
Scott:—Revell v. .. ..	Ct. of Sess. (Sc.) [1896] W. N. 137 ..	1771
Scott v. Streatham and General Estates Co. ..	[1891] W. N. 153 ..	1282
Scott:—Williams v. .. ..	P. C. [1900] A. C. 499 ..	2242
Scott and Jackson, In re .. ..	[1893] W. N. 184 ..	436
Scottish Investment Trust Co. v. Inland Revenue	Ct. of Sess. (Sc.) [1896] W. N. 108 ..	1765
Scottish Joint Stock Trust, In re .. ..	[1900] W. N. 114 ..	446
Scottish Provident Institution:—Cradock v. ..	[1893] W. N. 146; C. A. [1894] W. N. 88 ..	1290
Scottish Provident Institution:—Forbes v. ..	Ct. of Sess. (Sc.) [1896] W. N. 122 ..	1764
Scovell's Divorce Bill .. ..	H. L. [1896] W. N. 60 (3) ..	696
Scowby, In re. Scowby v. Scowby .. ..	C. A. [1897] 1 Ch. 741 ..	556
Scowcroft, In re. Ormrod v. Wilkinson ..	[1898] 2 Ch. 638 ..	279
Seringeour:—Metropolitan Coal Consumers' Association v. .. ..	C. A. [1895] 2 Q. B. 604 ..	394, 400
Sculcoates Union:—Cartwright v. .. ..	H. L. (E.) [1900] W. N. 54; [1900] A. C. 150 ..	1678
Sculcoates Union:—Hull Docks Co. v. .. ..	H. L. (E.) [1895] A. C. 136 ..	1676, 1677
Sculland:—Jones v. .. ..	[1898] 2 Q. B. 565 ..	1242

Name of Case.	Volume and Page.	Column of Digest.
Sea Insurance Co. <i>v.</i> Blogg .. .. .	[1898] 1 Q. B. 27; C. A. [1898] 2 Q. B. 398 .. .. .	983
Sea Insurance Co. <i>v.</i> Carr .. .. .	C. A. [1900] W. N. 238 .. .. .	35
Seagrove <i>v.</i> Parks .. .. .	[1891] 1 Q. B. 551 .. .. .	1543
Seal, In re. Seal <i>v.</i> Taylor .. .. .	C. A. [1894] 1 Ch. 316 .. .. .	2367
Seal <i>v.</i> Merthyr Tydfil Urban Council .. .. .	[1897] 2 Q. B. 543 .. .. .	1921
Seale-Hayne <i>v.</i> Jodrell .. .. .	H. L. (E.) [1891] A. C. 304 .. .. .	2319, 2333
Seale Hayne:—Whittington <i>v.</i> .. .. .	[1900] W. N. 31 .. .. .	517
Seaman, In re. Ex parte Furness Finance Co. .. .. .	[1896] 1 Q. B. 412 .. .. .	156
Seaman, In the Goods of .. .. .	[1891] P. 253 .. .. .	1621
Seaman <i>v.</i> Burley .. .. .	C. A. [1896] 2 Q. B. 344 .. .. .	37
Searle, In re. Searle <i>v.</i> Baker .. .. .	[1900] W. N. 186; [1900] 2 Ch. 829 .. .. .	1874, 1885
Searles <i>v.</i> Scarlett .. .. .	C. A. [1892] 2 Q. B. 56 .. .. .	647
Searles:—Thomas <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 408 .. .. .	202, 212
Sears:—Akers <i>v.</i> In re Gray's Settlement .. .. .	[1896] 2 Ch. 802 .. .. .	685
Seaton <i>v.</i> Burnand .. .. .	C. A. [1899] 1 Q. B. 782; H. L. (E.) [1900] W. N. 48; [1900] A. C. 135 .. .. .	977, 1251
Seaton <i>v.</i> Lord Deerhurst .. .. .	C. A. [1895] 1 Q. B. 853 .. .. .	165
Seaward <i>v.</i> Paterson .. .. .	C. A. [1897] 1 Ch. 545 .. .. .	501
Sebright:—Lusk <i>v.</i> .. .. .	[1894] W. N. 134 .. .. .	1281
Secretary of State for India in Council:—Chatterton <i>v.</i> .. .. .	C. A. [1895] 2 Q. B. 189 .. .. .	647
Secretary of State for War:—Reg <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 326 .. .. .	1208
Securities Insurance Co., In re .. .. .	C. A. [1894] 2 Ch. 410 .. .. .	43
Securities Properties Investment Corporation <i>v.</i> Brighton Alhambra, Ltd. .. .. .	[1893] W. N. 15 .. .. .	333
Security Co.:—Roberts <i>v.</i> .. .. .	C. A. [1897] 1 Q. B. 111 .. .. .	976
Sedgwick:—Lower Rhine and Württemberg Insurance Association <i>v.</i> .. .. .	[1898] 1 Q. B. 739; C. A. [1899] 1 Q. B. 179 .. .. .	100
Sedwick—Simon, Israel & Co. <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 303 .. .. .	983
Seed <i>v.</i> Bradley .. .. .	C. A. [1894] 1 Q. B. 319 .. .. .	204
Sefton (Earl of), In re .. .. .	C. A. [1898] 2 Ch. 378 .. .. .	1194
Selborne (Earl of):—Waldegrave (Earl) <i>v.</i> In re Waldegrave (Countess) .. .. .	[1899] W. N. 240 .. .. .	885
Selby Dam Drainage Commrs.:—Gallsworthy <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 348 .. .. .	549, 1686
Self <i>v.</i> Hove Commrs. .. .. .	[1895] 1 Q. B. 685 .. .. .	1921
Selig <i>v.</i> Lion .. .. .	[1891] 1 Q. B. 513 .. .. .	1549
Seligman <i>v.</i> Prince & Co. .. .. .	C. A. [1895] 2 Ch. 617 .. .. .	305
Semenza, In re. Ex parte Paget .. .. .	C. A. [1894] 1 Q. B. 15 .. .. .	144
Semet and Solvay's Patent, In re .. .. .	P. C. [1895] A. C. 78 .. .. .	1439
Sempell:—Errington <i>v.</i> In re Forbes .. .. .	[1899] W. N. 6 (4) .. .. .	1900
Sen Sen Co. <i>v.</i> Britten .. .. .	[1899] W. N. 27 (9); [1899] 1 Ch. 692 .. .. .	2138
Senior:—Reg <i>v.</i> .. .. .	C. C. R. [1898] W. N. 168 (7); [1899] 1 Q. B. 283 .. .. .	609
Serle, In re. Gregory <i>v.</i> Serle .. .. .	[1898] 1 Ch. 652 .. .. .	1069
Serle:—Waterland <i>v.</i> .. .. .	C. A. [1897] W. N. 163 (9) .. .. .	2026
Serraino & Sons <i>v.</i> Campbell .. .. .	C. A. [1891] 1 Q. B. 283 .. .. .	1971
"Servia," The. The "Carinthia" .. .. .	[1898] P. 36 .. .. .	1993
Sevenoaks Highway Board:—Whitel read <i>v.</i> .. .. .	[1892] 1 Q. B. 8 .. .. .	893
Severn and Wye and Severn Bridge Ry. Co., In re .. .. .	[1896] 1 Ch. 559 .. .. .	405
Sewell:—Ashburner <i>v.</i> .. .. .	[1891] 3 Ch. 405 .. .. .	2242, 2292

Name of Case.	Volume and Page.	Column of Digest.
Sewell :—Cholmeley School, Highgate <i>v.</i> (No. 1)	[1893] 2 Q. B. 254 .. ..	1073
(No. 2)	[1894] 2 Q. B. 906 .. ..	1068
Sewers (Commrs. of) for the City of London :—	[1895] 2 Ch. 708 .. ..	1118
Bittersea (Lord) <i>v.</i> .. ..		
Sewers (Commrs. of) for City of London, Ex parte. St. Botolph, Aldgate (Vicar of)	[1894] 3 Ch. 544 .. ..	754
Ex parte .. ..		
Sewers (Commrs. of) for City of London <i>v.</i> St. Botolph Without Aldgate (Parishioners of)	[1892] P. 161 .. ..	743
Sexton :—John Ritchie & Co. <i>v.</i> .. ..	H. L. (Sc.) [1891] W. N. 59 ..	645
Seyd & Kelly's Credit Index Co. :—Snuggs <i>v.</i> ..	[1894] W. N. 95 .. ..	968
Shackell <i>v.</i> Colnett. In re Pride .. ..	[1891] 2 Ch. 135 .. ..	1298
Shackell & Co. <i>v.</i> Chorlton & Sons .. ..	[1895] 1 Ch. 378 .. ..	475, 1081
Shackle :—Greateorex <i>v.</i> .. ..	[1895] 2 Q. B. 249 .. ..	593
Shanghai Municipal Council <i>v.</i> McMurray ..	P. C. [1900] A. C. 206 .. ..	287
Shankland & Co. :—Henderson Brothers <i>v.</i> ..	C. A. [1896] 1 Q. B. 525 ..	1930
Shann :—Smith <i>v.</i> .. ..	[1898] 2 Q. B. 347 .. ..	1104
Sharland, In re. In re Rew. Rew <i>v.</i> Wippell	[1899] W. N. 140; [1899] 2 Ch. 536 .. ..	1478
Sharland, In re. Kemp <i>v.</i> Rozey .. ..	[1896] 1 Ch. 517; C. A. [1896] W. N. 62 (19) .. ..	2300, 2339
Sharman <i>v.</i> Mason .. ..	[1899] W. N. 217; [1899] 2 Q. B. 679 .. ..	137
Sharman :—Reg. <i>v.</i> Ex parte Denton .. ..	[1898] 1 Q. B. 578 .. ..	1115
Sharman :—South Staffordshire Water Co. <i>v.</i> ..	[1896] 2 Q. B. 44 .. ..	658
Sharp :—Bradbury <i>v.</i> .. ..	[1891] W. N. 143 .. ..	536
Sharp :—Miller & Aldworth, Ld. <i>v.</i> .. ..	[1899] W. N. 16 (12); [1899] 1 Ch. 622 .. ..	846
Sharp (Official Receiver) <i>v.</i> Jackson .. ..	H. L. (E.) [1899] W. N. 90; [1899] A. C. 419 .. ..	131
Sharp <i>v.</i> Marshall. In re Pope .. ..	[1900] W. N. 244 .. ..	11
Sharp <i>v.</i> Rebbeck. In re Lance .. ..	[1900] W. N. 29 .. ..	805
Sharp <i>v.</i> Wakefield .. ..	H. L. (E.) [1891] A. C. 173 ..	1101
Sharpe, In re. In re Bennett. Masonic and General Life Assurance Co. <i>v.</i> Sharpe	C. A. [1892] 1 Ch. 154 .. ..	342, 1127
Sharpington Combined Pick and Shovel Syndicate :—Baring Gould <i>v.</i> .. ..	[1898] 2 Ch. 633; C. A. [1899] W. N. 73; [1899] 2 Ch. 80 ..	410
Sharratt <i>v.</i> Scotney .. ..	[1892] 2 Q. B. 479 .. ..	68
Shaw, Ex parte. In Gieve .. ..	[1899] W. N. 41; C. A. [1899] W. N. 72 .. ..	147
Shaw, Ex parte. Reg. <i>v.</i> West Riding of Yorkshire Justices .. ..	[1898] 1 Q. B. 503 .. ..	1105
Shaw, In re. Bridges <i>v.</i> Shaw .. ..	[1894] 3 Ch. 615 .. ..	552, 1613
Shaw, In re. Robinson <i>v.</i> Shaw .. ..	[1894] 2 Ch. 573 .. ..	1899
Shaw, In re. Tucket <i>v.</i> Shaw .. ..	[1895] 1 Ch. 343 .. ..	793, 1470, 1729
Shaw <i>v.</i> Great Western Ry. Co. .. ..	[1894] 1 Q. B. 373 .. ..	1649
Shaw <i>v.</i> Henry Bentley & Co. and Yorkshire Breweries, Ld. .. ..	[1893] W. N. 83 .. ..	405
Shaw <i>v.</i> Hertfordshire County Council .. ..	C. A. [1899] W. N. 103; [1899] 2 Q. B. 282 .. ..	566
Shaw <i>v.</i> Holland .. ..	C. A. [1900] 2 Ch. 305 .. ..	45, 342
Shaw <i>v.</i> London (School Board of) .. ..	C. A. [1895] 2 Ch. 1 .. ..	332
Shaw <i>v.</i> Reckitt .. ..	[1893] 1 Q. B. 779; C. A. [1893] 2 Q. B. 59 .. ..	37, 1365
Shaw and Ronaldson, In re .. ..	[1892] 1 Q. B. 91 .. ..	54, 63

Name of Case.	Volume and Page.	Column of Digest.
Sheard :—Story <i>v.</i> .. .. .	[1892] 2 Q. B. 515 .. ..	893
Shearman :—Bence <i>v.</i> .. .. .	C. A. [1898] 2 Ch. 582 .. ..	73
Shears <i>v.</i> Goddard .. .. .	C. A. [1896] 1 Q. B. 406 .. ..	111
Sheba Gold Mining Co. <i>v.</i> Trubshawe .. ..	[1892] 1 Q. B. 674 .. ..	1566
Sheen :—Caswells <i>v.</i> .. .. .	[1893] W. N. 187 .. ..	1408
Sheffield :—Oppenheim & Co. <i>v.</i> .. ..	C. A. [1893] 1 Q. B. 5 .. ..	676
Sheffield :—Tousey <i>v.</i> In re Dixon .. ..	[1898] W. N. 65 (2); affirmed by C. A. [1898] 2 Ch. 443 .. ..	553
Sheffield Banking Co. <i>v.</i> Clayton. In re Walker	[1892] 1 Ch. 621 .. ..	1587
Sheffield Corporation <i>v.</i> Sheffield Electric Light Co. .. ..	[1897] W. N. 771 (9); [1898] 1 Ch. 203 .. ..	2067
Sheffield Electric Light Co. :—Sheffield Corporation <i>v.</i> .. .. .	[1897] W. N. 171 (9); [1898] 1 Ch. 203 .. ..	2067
Shelbourne & Co. <i>v.</i> Law Investment and Insurance Corporation .. ..	[1898] 2 Q. B. 626 .. ..	986
Shelfer <i>v.</i> City of London Electric Lighting Co. (No. 1) .. .. .	C. A. [1895] 1 Ch. 287 .. ..	45, 968,
(No. 2) .. .. .	C. A. [1895] 2 Ch. 388 .. ..	1346
Shenstone & Co. <i>v.</i> Hilton .. .. .	[1894] 2 Q. B. 452 .. ..	968
Shenton <i>v.</i> Smith .. .. .	[1894] 2 Q. B. 452 .. ..	814
Shepherd :—Aerated Bread Co. <i>v.</i> .. ..	P. C. [1895] A. C. 229 .. ..	86, 293,
Shepherd, In the Goods of .. .. .	[1897] W. N. 33 (9) .. ..	625
Shepherd <i>v.</i> Berger .. .. .	[1891] P. 323 .. ..	1154
Shepherd :—Charles <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 597 .. ..	1617
Shepherd :—Plomley <i>v.</i> .. .. .	C. A. [1892] 2 Q. B. 622 .. ..	1081
Sheppard, In re. Sheppard <i>v.</i> Manning	P. C. [1891] A. C. 244 .. ..	1528
Sheppards :—Smallwood <i>v.</i> .. .. .	[1897] 2 Ch. 67 .. ..	1331
Sheppy Portland Cement Co., In re .. ..	[1895] 2 Q. B. 627 .. ..	765
Sheringham Development Co., In re .. ..	[1892] W. N. 184 .. ..	846
Sherrard <i>v.</i> Gascoigne .. .. .	[1893] W. N. 5 .. ..	448
Sherras <i>v.</i> De Rutzen .. .. .	[1900] W. N. 129; [1900] 2 Q. B. 279 .. ..	436
Shew & Co. :—Skinner & Co. <i>v.</i> (No. 1) .. ..	[1895] 1 Q. B. 918 .. ..	862
(No. 2) .. .. .	C. A. [1893] 1 Ch. 413 .. ..	1111
Sheward, In re. Sheward <i>v.</i> Brown .. ..	[1894] 2 Ch. 581 .. ..	1441,
Shiel <i>v.</i> Godfrey & Co. .. .. .	[1893] 3 Ch. 502 .. ..	1442
Shields <i>v.</i> Howard .. .. .	[1893] W. N. 115 .. ..	1443
Shine, In re. Ex parte Shire .. .. .	[1896] W. N. 155 (7); [1897] 1 Q. B. 84 .. ..	2331
Shine <i>v.</i> Shine .. .. .	C. A. [1892] 1 Q. B. 522 .. ..	965,
Shipowners Syndicate (Re-assured) :—Tyser <i>v.</i> .. ..	[1893] P. 289 .. ..	1120
Shoe Machinery Co. <i>v.</i> Outlan (No. 1) .. ..	[1896] 1 Q. B. 135 .. ..	1310
(No. 2) .. .. .	[1895] W. N. 102 .. ..	115
(No. 3) .. .. .	C. A. [1895] W. N. 143 (10); [1896] 1 Ch. 108 .. ..	700
Shoolbred <i>v.</i> Roberts .. .. .	[1896] 1 Ch. 667 .. ..	998
Shipway <i>v.</i> Broadwood .. .. .	[1899] W. N. 136; [1899] 2 Q. B. 560; C. A. [1900] W. N. 157; [1900] 2 Q. B. 497 .. ..	1427
Shoosmith, In the Goods of .. .. .	C. A. [1899] 1 Q. B. 369 .. ..	1428
Shoppee <i>v.</i> Nathan & Co. .. .. .	[1894] P. 23 .. ..	1430
Shoreditch, St. Leonard Vestry :—London County Council <i>v.</i> .. .. .	[1892] 1 Q. B. 245 .. ..	179
Shoreditch, St. Leonard Vestry :—Pilbrow <i>v.</i> .. ..	[1895] 2 Q. B. 104 .. ..	1573
	[1895] 1 Q. B. 33; C. A. [1895] 1 Q. B. 433 .. ..	1602
		1924
		1682
		1169

Name of Case.	Volume and Page.	Column of Digest.
Shorrock:—River Ribble Joint Committee <i>v.</i> The Same <i>v.</i> Halliwell .. .. .	[1899] 1 Q. B. 27; C. A. [1899] W. N. 163; [1899] 2 Q. B. 385	2272
Shorter <i>v.</i> Tol-Healty .. .. .	[1894] W. N. 21 .. .. .	572, 2048
Shortridge, In re .. .. .	C. A. [1895] 1 Ch. 278 .. .. .	1195
Shove:—Sixth West Kent Mutual Building Society <i>v.</i> .. .. .	[1899] 2 Ch. 64, n. .. .. .	230
Showers <i>v.</i> Chelmsford Union Assessment Committee .. .. .	C. A. [1891] 1 Q. B. 339 .. .. .	1675, 1682
Shrewsbury (Earl of) <i>v.</i> Wirral Rys. Committee .. .. .	C. A. [1895] 2 Ch. 812 .. .. .	1090
Shropshire Rys. Co.:—Cutbill <i>v.</i> .. .. .	[1891] W. N. 65 .. .. .	1655
Shropshire Rys. Co.:—Webb <i>v.</i> .. .. .	C. A. [1893] 3 Ch. 307 .. .. .	1654
Shropshire Rys. Co.:—Whadcoat <i>v.</i> .. .. .	C. A. [1893] 3 Ch. 307 .. .. .	1654
Shuttleworth <i>v.</i> Murray .. .. .	[1900] W. N. 89; [1900] 1 Ch. 795 .. .. .	2323
Sickert <i>v.</i> Sickert .. .. .	[1899] P. 278 .. .. .	704
Sickness and Accident Assurance Association:—South Staffordshire Tramways Co. <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 402 .. .. .	974
Sidebotham <i>v.</i> Holland .. .. .	C. A. [1895] W. N. 3; [1895] 1 Q. B. 378 .. .. .	846, 1064
Sigcau:—Sprigg <i>v.</i> .. .. .	P. C. [1897] A. C. 238 .. .. .	262
Silber:—Carter <i>v.</i> .. .. .	[1891] 3 Ch. 553; C. A. [1892] 2 Ch. 278; H. L. (E.) [1893] A. C. 360 .. .. .	956
Silke:—National Bank <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 435 .. .. .	94, 196, 1319
Silkstone and Haigh Moor Coal Co. <i>v.</i> Edey .. .. .	[1899] W. N. 213; [1900] 1 Ch. 167 .. .. .	2238
Silverlock:—Reg. <i>v.</i> .. .. .	C. C. R. [1894] 2 Q. B. 766 .. .. .	611, 615
Silvester, In re. Midland Ry. Co. <i>v.</i> Silvester .. .. .	[1895] 1 Ch. 573 .. .. .	1584
Sim <i>v.</i> Galt .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 111 .. .. .	1395
Simcoe <i>v.</i> Pethick .. .. .	C. A. [1898] 2 Q. B. 555 .. .. .	936
Simeon:—Plunkett <i>v.</i> In re Dutton .. .. .	[1893] W. N. 65 .. .. .	2316
Simister:—Copeland <i>v.</i> .. .. .	[1893] P. 16 .. .. .	584, 1625
Simmonds <i>v.</i> Heath .. .. .	C. A. [1894] 1 Q. B. 29 .. .. .	2112
Simmonds:—Knight <i>v.</i> .. .. .	C. A. [1896] 2 Ch. 294 .. .. .	223
Simmonds Brothers, Ltd. <i>v.</i> Fulham Vestry .. .. .	[1900] 2 Q. B. 188 .. .. .	1177
Simmons <i>v.</i> Blandy .. .. .	[1896] W. N. 171 (7); [1897] 1 Ch. 19 .. .. .	1281
Simmons:—Heseltine <i>v.</i> .. .. .	C. A. [1892] 2 Q. B. 547 .. .. .	202
Simmons:—Hutley <i>v.</i> .. .. .	[1898] 1 Q. B. 181 .. .. .	500
Simmons <i>v.</i> London Joint Stock Bank .. .. .	C. A. [1891] 1 Ch. 270; H. L. (E.) [1892] A. C. 201 .. .. .	1318, 2075
Simmons <i>v.</i> Malling Rural Council .. .. .	[1897] 2 Q. B. 433 .. .. .	1917
Simmons <i>v.</i> White Brothers .. .. .	C. A. [1899] W. N. 32 (2); [1899] 1 Q. B. 1005 .. .. .	1217
Simmons <i>v.</i> Woodward .. .. .	[1891] 1 Ch. 464; H. L. (E.) [1892] A. C. 100 .. .. .	197
Simms <i>v.</i> Registrar of Probates .. .. .	P. C. [1900] A. C. 323 .. .. .	84
Simon, Israel & Co. <i>v.</i> Sedgwick .. .. .	C. A. [1893] 1 Q. B. 303 .. .. .	983
Simonson, In re. Ex parte Ball .. .. .	[1894] 1 Q. B. 433 .. .. .	109, 2029
Simpson, In re. In re Whitchurch .. .. .	C. A. [1897] 1 Ch. 256 .. .. .	1891
Simpson:—Bank of New Zealand <i>v.</i> .. .. .	P. C. [1900] A. C. 182 .. .. .	510
Simpson <i>v.</i> Godmanchester (Mayor, &c., of) .. .. .	H. L. (E.) [1897] A. C. 696 .. .. .	730
Simpson <i>v.</i> Hughes .. .. .	[1896] W. N. 179 (6); C. A. [1897] W. N. 26 (11) .. .. .	2223

Name of Case.	Volume and Page.	Column of Digest.
Simpson <i>v.</i> Mayor of Godmanchester .. ..	C. A. [1896] 1 Ch. 214 .. ..	730
Simpson <i>v.</i> Molsons' Bank .. ..	P. C. [1895] A. C. 270 .. ..	255
Simpson <i>v.</i> Palace Theatre, Ltd. .. ..	[1893] W. N. 91 .. ..	378
Simpson:—United Alkali Co. <i>v.</i> .. ..	[1894] 2 Q. B. 116 .. ..	1978
Simpson:—Vawdrey <i>v.</i> .. ..	[1895] W. N. 152 (7); [1896] 1 Ch. 166 .. ..	66
Simpson:—Woodward <i>v.</i> In re Hamilton .. ..	[1892] W. N. 74 .. ..	2342
Sims:—Benford <i>v.</i> .. ..	[1898] 2 Q. B. 641 .. ..	1029
Sims:—Hirsche <i>v.</i> .. ..	P. C. [1894] A. C. 654 .. ..	260, 341, 396
Sims <i>v.</i> Landray .. ..	[1894] 2 Ch. 318 .. ..	845, 2227
Sims:—Newby <i>v.</i> .. ..	[1894] 1 Q. B. 478 .. ..	17
Sims <i>v.</i> Trollope & Sons .. ..	C. A. [1896] W. N. 160 (4); [1897] 1 Q. B. 24 .. ..	197
Sinclair, In re. Hodgkins <i>v.</i> Sinclair. Allen <i>v.</i> Sinclair .. ..	[1897] 1 Ch. 921 .. ..	31
Sinclair:—Hodgson <i>v.</i> In re Hodgson & Simpson's Trade-mark .. ..	[1891] W. N. 176 .. ..	2129
Sinclair <i>v.</i> James .. ..	[1894] 3 Ch. 554 .. ..	1409
Sinclair:—Knowles & Sons <i>v.</i> .. ..	[1897] W. N. 176 (11); [1898] 1 Q. B. 170 .. ..	2295
Sinclair's Divorce Bill .. ..	H. L. (D.) [1897] A. C. 469 .. ..	714
Singer Manufacturing Co. <i>v.</i> London and South Western Ry. Co. .. ..	[1894] 1 Q. B. 833 .. ..	88, 1666
Singlehurst <i>v.</i> Tapscott Steamship Co. .. ..	C. A. [1899] W. N. 133 .. ..	2190
Singleton:—Day <i>v.</i> .. ..	C. A. [1899] 2 Ch. 320 .. ..	2227
Singleton <i>v.</i> Ellison .. ..	[1895] 1 Q. B. 607 .. ..	619
Singleton:—Friary Ho'royd and Healey's Breweries, Ltd. <i>v.</i> .. ..	[1898] W. N. 150 (7); [1899] 1 Ch. 86; C. A. [1899] W. N. 96; [1899] 2 Ch. 261 .. ..	1079
Sion College <i>v.</i> London Corporation .. ..	[1900] 2 Q. B. 581 .. ..	2068
"Six Sisters," The .. ..	[1900] P. 302 .. ..	2105
Sirdar Gurdial Singh <i>v.</i> Faridkote (Rajah) .. ..	P. C. [1894] A. C. 670 .. ..	1008
Sixth West Kent Mutual Building Society <i>v.</i> Hills .. ..	[1899] 2 Ch. 60 .. ..	229
Sixth West Kent Mutual Building Society <i>v.</i> Shove .. ..	[1899] 2 Ch. 64, n. .. ..	230
Skerritt's Estate, In re .. ..	[1899] W. N. 240 .. ..	1895
Skinner, In re .. ..	[1896] W. N. 68 (7) .. ..	2196
Skinner & Co. <i>v.</i> Shew & Co. (No. 1) .. ..	C. A. [1893] 1 Ch. 413 .. ..	1441, 1442
(No. 2) .. ..	[1894] 2 Ch. 581 .. ..	1443
Skinner <i>v.</i> Northallerton County Court Judge .. ..	C. A. [1898] 2 Q. B. 680; H. L. (E.) [1899] W. N. 96; [1899] A. C. 439 .. ..	592
Skinnors' Co. <i>v.</i> Knight .. ..	C. A. [1891] 2 Q. B. 542 .. ..	1071
Slade:—Reg <i>v.</i> Ex parte Saunders .. ..	[1895] 2 Q. B. 247 .. ..	1036
Slaitwhaite Spinning Co.:—Prior <i>v.</i> .. ..	[1898] 1 Q. B. 881 .. ..	1235
Slater:—Bennett <i>v.</i> .. ..	[1898] 1 Q. B. 469; reversed by C. A. [1898] W. N. 150 (5); [1899] 1 Q. B. 45 .. ..	858
Slater <i>v.</i> Slater .. ..	[1897] 1 Ch. 222, n. .. ..	1576
Slater <i>v.</i> Slater. In re Lancashire and Yorkshire Ry. Co. .. ..	[1895] W. N. 85 .. ..	1525
Slaughter & May <i>v.</i> Brown, Doering, McNab & Co. .. ..	C. A. [1892] 2 Q. B. 724 .. ..	513
Slaytor <i>v.</i> Slaytor .. ..	[1897] P. 85 .. ..	697
Sleaford Rural Council:—Horn <i>v.</i> .. ..	[1898] 2 Q. B. 358 .. ..	2281



Name of Case.	Volume and Page.	Column of Digest.
Sleep:—Harris <i>v.</i> .. .. .	C. A. [1897] 2 Ch. 80 .. ..	1424
Sleet, In re. Ex parte Sleet .. .. .	C. A. [1894] 2 Q. B. 797 .. ..	144
Sleigh <i>v.</i> Tyser .. .. .	[1900] 2 Q. B. 333 .. ..	1000
Slevin, In re. Slevin <i>v.</i> Hepburn .. .. .	[1891] 1 Ch. 373; C. A. [1891] 2 Ch. 236 .. ..	2335
Sloane <i>v.</i> Britain Steamship Co. .. .. .	C. A. [1896] W. N. 174 (4); [1897] 1 Q. B. 185 .. ..	665
Sloper:—Collingham <i>v.</i> .. .. .	[1893] 2 Ch. 96; C. A. [1894] 3 Ch. 716 .. ..	326, 487
Sloper:—Foreign, American, and General Investments Trust Co. <i>v.</i> .. .. .	[1893] 2 Ch. 96; C. A. [1894] 3 Ch. 716 .. ..	326, 487
Smales, Eeles & Co.:—Lilly, Wilson & Co. <i>v.</i> .. .. .	[1892] 1 Q. B. 456 .. ..	1944, 2100
Small:—Gurney <i>v.</i> .. .. .	[1891] 2 Q. B. 584 .. ..	1564
Small <i>v.</i> National Provincial Bank of England .. .. .	[1894] 1 Ch. 686 .. ..	208
Small <i>v.</i> United Kingdom Marine Mutual Insurance Association .. .. .	[1897] 2 Q. B. 42; affirmed by C. A. [1897] 2 Q. B. 311 .. ..	984
Smallman:—Reg. <i>v.</i> .. .. .	C. C. R. [1896] W. N. 157 (1); [1897] 1 Q. B. 4 .. ..	609
Smallwood <i>v.</i> Sheppards .. .. .	[1895] 2 Q. B. 627 .. ..	846
Smart:—Rapley <i>v.</i> .. .. .	[1894] W. N. 2 .. ..	1724
Smart <i>v.</i> Smart .. .. .	P. C. [1892] A. C. 425 .. ..	253, 948, 2099
Smart & Co. <i>v.</i> Town Board of Suva .. .. .	P. C. [1893] A. C. 301 .. ..	819, 839
Smart & Son <i>v.</i> Watts .. .. .	[1895] 1 Q. B. 219 .. ..	18
Smeed, Dean & Co.:—Thames Conservators <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 334 .. ..	2107
Smellie:—Louis <i>v.</i> .. .. .	C. A. [1895] W. N. 115 (7) .. ..	969, 1248
Smelting Co. of Australia <i>v.</i> Inland Revenue Commrs. .. .. .	[1896] 2 Q. B. 179; C. A. [1896] W. N. 167 (8); [1897] 1 Q. B. 175 .. ..	1794
Smith, Claimant. Thomas <i>v.</i> Roberts .. .. .	[1898] 1 Q. B. 657 .. ..	204
Smith, In re. Arnold <i>v.</i> Smith .. .. .	[1895] W. N. 154 (16); [1896] 1 Ch. 171 .. ..	2170
Smith, In re. Bain <i>v.</i> Bain .. .. .	C. A. [1896] W. N. 88 (16) .. ..	568
Smith, In re. Davidson <i>v.</i> Myrtle .. .. .	[1896] 2 Ch. 590 .. ..	2185
Smith, In re. Dew <i>v.</i> Kennedy .. .. .	[1892] W. N. 106 .. ..	2315
Smith, In re. Ex parte Mason .. .. .	[1893] 1 Q. B. 323 .. ..	145, 874
Smith, In re. Grose-Smith <i>v.</i> Bridger .. .. .	[1899] W. N. 12 (13); [1899] 1 Ch. 331 .. ..	1886
Smith, In re. Hands <i>v.</i> Andrews .. .. .	C. A. [1893] 2 Ch. 1 .. ..	118, 171, 933, 2171, 2193
Smith, In re. Robson <i>v.</i> Tidy .. .. .	[1900] W. N. 75 .. ..	1902
Smith, In re. Smith <i>v.</i> Smith .. .. .	[1899] 1 Ch. 365 .. ..	2345
Smith, In re. Smith <i>v.</i> Thompson .. .. .	[1895] W. N. 144 (15); [1896] 1 Ch. 71 .. ..	2188
Smith, In re. Williams <i>v.</i> Frere .. .. .	[1891] 1 Ch. 323 .. ..	667, 669
Smith <i>v.</i> Abbott. In re Abbott Fund (the Trusts of the) .. .. .	[1900] W. N. 121; [1900] 2 Ch. 326 .. ..	2161
Smith:—Alcock <i>v.</i> .. .. .	C. A. [1892] 1 Ch. 238 .. ..	196, 791, 1507, 1555
Smith <i>v.</i> Allen. In re Harrison (No. 1) .. .. .	[1891] 2 Ch. 349 .. ..	2191
Smith:—Alliott <i>v.</i> .. .. .	[1894] W. N. 148 .. ..	674, 798
Smith <i>v.</i> Andrews .. .. .	[1895] 2 Ch. 111 .. ..	825
Smith <i>v.</i> Andrews .. .. .	[1891] 2 Ch. 678 .. ..	

Name of Case.	Volume and Page.	Column of Digest.
Smith :—Att.-Gen. <i>v.</i> .. .. .	{ [1892] 2 Q. B. 289; C. A. [1893] 1 Q. B. 239 .. .. }	1785, 1787
Smith <i>v.</i> Bailey .. .. .	C. A. [1891] 2 Q. B. 403 ..	1146
Smith <i>v.</i> Baker & Sons .. .. .	H. L. (E.) [1891] A. C. 325 ..	{ 584, 1244
Smith :—Baldwin <i>v.</i> .. .. .	{ [1900] W. N. 58; [1900] 1 Ch. 588 .. .. }	1187
Smith <i>v.</i> Baxter .. .. .	{ [1900] W. N. 87; [1900] 2 Ch. 138 .. .. }	1120
Smith <i>v.</i> Bence. In re Bence .. ..	C. A. [1891] 3 Ch. 242 ..	2349
Smith <i>v.</i> Blyth .. .. .	[1891] 1 Ch. 337 .. ..	{ 1420, 2056
Smith <i>v.</i> Broadbent & Co. .. ..	[1892] 1 Q. B. 551 .. ..	1926
Smith <i>v.</i> Brown .. .. .	P. C. [1896] A. C. 614 .. ..	1322
Smith <i>v.</i> Butler .. .. .	C. A. [1900] 1 Q. B. 694 ..	2225
Smith :—Calham <i>v.</i> In re Horlock ..	[1895] 1 Ch. 516 .. ..	2353
Smith :—Chamberlain's Wharf, Ld. <i>v.</i> ..	{ C. A. [1900] W. N. 163; [1900] 2 Ch. 605 .. .. }	2146
Smith :—Chandler <i>v.</i> .. .. .	{ C. A. [1899] W. N. 112; [1899] 2 Q. B. 506 .. .. }	1227
Smith <i>v.</i> Chorley Rural Council .. ..	C. A. [1897] 1 Q. B. 678 ..	2081
Smith <i>v.</i> Cooke .. .. .	C. A. [1891] 1 Ch. 509 .. ..	661
Smith <i>v.</i> Cooke .. .. .	H. L. (E.) [1891] A. C. 297 ..	643
Smith :—Cruddas <i>v.</i> In re Cruddas ..	{ [1899] W. N. 126; C. A. [1900] W. N. 81; [1900] 1 Ch. 730 .. }	1472
Smith :—Eastern Steamship Co. <i>v.</i> The "Duke of Buccleuch" .. .. .	H. L. (E.) [1891] A. C. 310 ..	1953
Smith <i>v.</i> English and Scottish Mercantile Invest- ment Trust .. .. .	[1896] W. N. 86 (6) .. ..	328
Smith <i>v.</i> Enright .. .. .	[1893] W. N. 173 .. ..	1717
Smith :—Fareham Local Board and Fareham Electric Light Co. <i>v.</i> .. .. .	[1891] W. N. 76 .. ..	2082
Smith <i>v.</i> Galloway .. .. .	[1898] 1 Q. B. 71 .. ..	855
Smith :—General Auction Estate and Monetary Co. <i>v.</i> .. .. .	[1891] 3 Ch. 432 .. ..	310
Smith <i>v.</i> Gill .. .. .	[1896] 2 Q. B. 166 .. ..	582
Smith :—Gosling <i>v.</i> In re Gosling .. ..	[1900] W. N. 15 .. ..	279
Smith <i>v.</i> Gronov .. .. .	[1891] 2 Q. B. 394 .. ..	1067
Smith <i>v.</i> Gue. In re Gue .. .. .	{ [1892] W. N. 88; C. A. [1892] W. N. 132 .. .. }	903, 2316
Smith <i>v.</i> Hammond .. .. .	[1896] 1 Q. B. 571 .. ..	1562
Smith <i>v.</i> Hancock .. .. .	{ [1894] 1 Ch. 209; C. A. [1894] 2 Ch. 377 .. .. }	1721
Smith :—Home Marine Insurance Co. ..	{ [1898] 1 Q. B. 829; affirmed by C. A. [1898] 2 Q. B. 351 .. }	999
Smith :—Hornsey District Council <i>v.</i> ..	{ [1896] 2 Ch. 254; C. A. [1897] 1 Ch. 843 .. .. }	2087, 2088
Smith :—James <i>v.</i> .. .. .	{ [1891] 1 Ch. 384; C. A. [1891] W. N. 175 .. .. }	849, 1486, 1575
Smith <i>v.</i> Kerr .. .. .	{ [1900] W. N. 140; [1900] 2 Ch. 511 .. .. }	280
Smith :—Kerrison <i>v.</i> .. .. .	[1897] 2 Q. B. 445 .. ..	1097
Smith <i>v.</i> King .. .. .	[1892] 2 Q. B. 543 .. ..	945
Smith :—King <i>v.</i> .. .. .	{ [1900] W. N. 134; [1900] 2 Ch. 425 .. .. }	1292
Smith :—Kirkwood <i>v.</i> .. .. .	[1896] 1 Q. B. 582 .. ..	194
Smith <i>v.</i> Lancashire and Yorkshire Ry. Co. ..	{ C. A. [1898] W. N. 165 (7); [1899] 1 Q. B. 41 .. .. }	1230

Name of Case.	Volume and Page.	Column of Digest.
Smith v. Lancaster .. .. .	C. A. [1894] 3 Ch. 439 .. — ..	571, 1867
Smith v. Legg .. .. .	[1893] 1 Q. B. 398 .. .. .	1152
Smith:—Lewis v. In re Lewis .. .. .	[1900] W. N. 82; [1900] 2 Ch. 176 .. .. .	1742
Smith:—London School Board v. .. .. .	[1895] W. N. 37 .. .. .	729, 964, 1886
Smith v. Mason & Co. .. .. .	[1894] 2 Q. B. 363 .. .. .	1799
Smith v. May. In re Morgan .. .. .	[1900] W. N. 151; [1900] 2 Ch. 474 .. .. .	1406
Smith:—Midgley v. .. .. .	[1893] W. N. 120 .. .. .	2226
Smith v. Müller .. .. .	[1894] 1 Q. B. 192 .. .. .	214
Smith v. Petrie .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 95 .. .. .	1758
Smith:—Reg. v. .. .. .	[1896] 1 Q. B. 596 .. .. .	16
Smith v. Richmond .. .. .	C. A. [1898] 1 Q. B. 683; H. L. (E.) [1899] W. N. 130; [1899] A. C. 448 .. .. .	1680
Smith v. Robinson .. .. .	[1893] 2 Q. B. 53 .. .. .	1166
Smith:—Robson v. .. .. .	[1895] 2 Ch. 118 .. .. .	312
Smith v. Shann .. .. .	[1898] 2 Q. B. 347 .. .. .	1104
Smith:—Shenton v. .. .. .	P. C. [1895] A. C. 229 .. .. .	86, 293, 625
Smith v. Smith .. .. .	[1891] 3 Ch. 550 .. .. .	1285
Smith v. Smith .. .. .	C. A. [1897] P. 293 .. .. .	716
Smith v. Smith .. .. .	[1898] P. 29 .. .. .	690
Smith v. Smith .. .. .	[1900] P. 66 .. .. .	712
Smith v. Smith. In re Smith's Policy Trusts .. .. .	[1894] W. N. 68 .. .. .	775
Smith v. Somes In re Somes .. .. .	[1896] 1 Ch. 250 .. .. .	1481
Smith v. South Eastern Ry. Co. .. .. .	C. A. [1896] 1 Q. B. 178 .. .. .	1646
Smith:—Stamford, Spalding and Boston Bank- ing Co. v. .. .. .	C. A. [1892] 1 Q. B. 765 .. .. .	1126
Smith v. Stuart. In re Stuart .. .. .	[1897] 2 Ch. 583 .. .. .	2186
Smith:—Taylor v. .. .. .	C. A. [1893] 2 Q. B. 65 .. .. .	851
Smith:—Tennant v. .. .. .	H. L. (Sc.) [1892] A. C. 150 .. .. .	1759
Smith:—Turner v. .. .. .	[1900] W. N. 273 .. .. .	1291
Smith v. Wallace .. .. .	[1895] 1 Ch. 385 .. .. .	2245
Smith v. Wilkinson. In re Victoria Steamboats, Ltd. .. .. .	[1897] 1 Ch. 158 .. .. .	332
Smith-Marriott:—Att.-Gen. v. .. .. .	[1899] 2 Q. B. 595 .. .. .	1733
Smith's Policy Trusts, In re. Smith v. Smith .. .. .	[1894] W. N. 68 .. .. .	775, 2198
Smith's Settled Estates, In re .. .. .	[1891] 3 Ch. 65 .. .. .	1866
Smith & Co. v. Bedouin Steam Navigation Co. .. .. .	H. L. (Sc.) [1896] A. C. 70 .. .. .	1978
Smith, Hill & Co. v. Pyman, Bell & Co. .. .. .	[1891] 1 Q. B. 42; C. A. [1891] 1 Q. B. 742 .. .. .	1975
Smith & Service v. Rosario Nitrate Co. .. .. .	[1893] 2 Q. B. 323; C. A. [1894] 1 Q. B. 174 .. .. .	1973
Smithson:—Onward Building Society v. .. .. .	C. A. [1893] 1 Ch. 1 .. .. .	769
Smokeless Powder Co.'s Trade-mark, In re .. .. .	[1892] 1 Ch. 590 .. .. .	2125
Smurthwaite v. Hannay & Co. .. .. .	C. A. [1893] 2 Q. B. 412; H. L. (E.) [1894] A. C. 494 .. .. .	1511
Smyrna and Cassaba Ry. Co.:—Bishop v. (No. 1) (No. 2) .. .. .	[1895] 2 Ch. 265 .. .. .	411
Smyth, In re. Leach v. Leach .. .. .	[1895] 2 Ch. 596 .. .. .	411
Smyth v. Reg. .. .. .	[1897] W. N. 168 (10); [1898] 1 Ch. 89 .. .. .	1786
Smyth v. Reg. .. .. .	P. C. [1898] A. C. 782 .. .. .	2260
Snaith, In re. Snaith v. Snaith .. .. .	[1894] W. N. 115 .. .. .	2338

Name of Case.	Volume and Page.	Column of Digest.
Snaith:—Lynes <i>v.</i> .. .. .	[1899] W. N. 16 (13); [1899] 1 Q. B. 486 .. .. .	1138
Snaith <i>v.</i> Parkinson. In re Pickworth .. .. .	C. A. [1899] W. N. 28 (11); [1899] 1 Ch. 642 .. .. .	2362
"Snark," The .. .. .	[1899] W. N. 14 (3); [1899] P. 74; [1900] W. N. 21; [1900] P. 105 .. .. .	1954
Sneath <i>v.</i> Valley Gold, Ltd. .. .. .	C. A. [1893] 1 Ch. 477 .. .. .	326
Snow <i>v.</i> Boycott .. .. .	[1892] 3 Ch. 110 .. .. .	1254
Snow:—Palmer <i>v.</i> .. .. .	[1900] W. N. 25; [1900] 1 Q. B. 725 .. .. .	2093
Snowden, Hubbard & Co.:—Hall <i>v.</i> .. .. .	C. A. [1899] 1 Q. B. 593 .. .. .	569
Snowden, Hubbard & Co.:—Hall <i>v.</i> .. .. .	C. A. [1899] 2 Q. B. 136 .. .. .	1231
Snuggs <i>v.</i> Seyd and Kelly's Credit Index Co. .. .. .	[1894] W. N. 95 .. .. .	968
Snyder Dynamite Projectile Co., In re. Peck <i>v.</i> Snyder Dynamite Projectile Co. .. .. .	[1893] W. N. 37 .. .. .	433
Soan & Morley, Ex parte. In re Dagnall .. .. .	[1896] 2 Q. B. 407 .. .. .	160
Soar <i>v.</i> Ashwell .. .. .	C. A. [1893] 2 Q. B. 390 .. .. .	2193
Société Anonyme des Verreries de l'Etoile, In re the Trade-mark of (No. 1) .. .. .	[1893] W. N. 119 .. .. .	569
(No. 2) .. .. .	[1894] 1 Ch. 61; C. A. [1894] 2 Ch. 26 .. .. .	2136
Soden:—Reg. <i>v.</i> .. .. .	[1897] 1 Q. B. 188 .. .. .	1404
Soden:—Reg. <i>v.</i> .. .. .	[1896] W. N. 178 (4); C. A. [1896] 1 Q. B. 634 .. .. .	1405
Softlaw <i>v.</i> Welch .. .. .	C. A. [1899] W. N. 113; [1899] 2 Q. B. 419 .. .. .	914
Solicitor, In re a (No. 1) .. .. .	[1892] W. N. 22 .. .. .	81, 1547
(No. 2) .. .. .	[1893] W. N. 188 .. .. .	77
(No. 3) .. .. .	[1895] 2 Ch. 66 .. .. .	2046
(No. 4). Ex parte The Incorporated Law Society .. .. .	[1894] 1 Q. B. 254 .. .. .	2053
Solicitor (A), In re. Ex parte Incorporated Law Society .. .. .	[1898] 1 Q. B. 331 .. .. .	2053
Solicitors Act, 1843, Application under .. .. .	[1899] W. N. 46 .. .. .	2053
Solicitors Act, 1888. In re Weave .. .. .	C. A. [1893] 2 Q. B. 439, 853 .. .. .	2055, 2056
Solicitor for the Treasury:—Walter <i>v.</i> In re Rowells. Rowells <i>v.</i> Bebb .. .. .	[1900] W. N. 108; [1900] 2 Ch. 107 .. .. .	1854
Solicitor to the Treasury <i>v.</i> Lewis. In re Dash .. .. .	[1900] W. N. 186; [1900] 2 Ch. 812 .. .. .	726
Solling <i>v.</i> Broughton .. .. .	P. C. [1893] A. C. 556 .. .. .	1331
Solomon:—Fulham (Vestry of) <i>v.</i> .. .. .	[1896] 1 Q. B. 198 .. .. .	2286
Solomon <i>v.</i> Mulliner and Motor Carriage Supply Co. .. .. .	C. A. [1900] W. N. 260 .. .. .	590
Soltau's Trusts, In re .. .. .	[1898] 2 Ch. 629 .. .. .	1861
Solytkoff, In re. Ex parte Margrett .. .. .	C. A. [1891] 1 Q. B. 413 .. .. .	104, 193, 954
Solytkoff (Princess), In re .. .. .	C. A. [1898] W. N. 77 (5) .. .. .	1194
"Solway Prince," The .. .. .	[1896] P. 120 .. .. .	2011
Somers-Cocks, In re. Wegg-Prosser <i>v.</i> Wegg-Prosser .. .. .	[1895] 2 Ch. 449 .. .. .	278
Somerset, In re. Somerset <i>v.</i> Poulett (Earl) .. .. .	C. A. [1894] 1 Ch. 231 .. .. .	2180
Somerset <i>v.</i> Land Securities Co. .. .. .	[1897] W. N. 29 (6) .. .. .	389
Somerset <i>v.</i> Land Securities Co. .. .. .	C. A. [1894] 3 Ch. 464 .. .. .	371, 1048
Somerset <i>v.</i> Wade .. .. .	[1894] 1 Q. B. 574 .. .. .	1106
Somerton, &c., Tramway Co.:—Turpin <i>v.</i> .. .. .	[1900] W. N. 94 .. .. .	1363
Somes, In re. Smith <i>v.</i> Somes .. .. .	[1896] 1 Ch. 250 .. .. .	1481

Name of Case.	Volume and Page.	Column of Digest.
Sons of the Clergy Corporation (Governors) and Skinner, In re .. .. .	[1893] 1 Ch. 178 .. ..	274
"Soto," The .. .. .	[1893] P. 73 .. ..	1958
South African and Australian Exploration and Development Syndicate:—Young v. .. ..	[1896] 2 Ch. 268 .. ..	362
South African Breweries, Ltd. v. King .. ..	[1899] W. N. 98; [1899] 2 Ch. 173; C. A. [1900] W. N. 28; [1900] 1 Ch. 273 .. ..	491
South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord .. ..	C. A. [1897] 2 Ch. 487; [1897] W. N. 162 (4) .. ..	1526
South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord .. ..	[1898] 1 Ch. 190 .. ..	1008
South African Territories, Ltd. v. Wallington ..	C. A. [1897] 1 Q. B. 692; H. L. (E.) [1898] A. C. 309 ..	334
South American and Mexican Co., In re. Ex parte Bank of England .. ..	C. A. [1895] 1 Ch. 37 .. ..	768
South American and Mexican Co.:—British Linen Co. v. .. ..	C. A. [1894] 1 Ch. 108 .. ..	316, 329, 449
South American and Mexican Co.:—Industrial and General Trust v. .. ..	C. A. [1894] 1 Ch. 108 .. ..	316
South Australian Petroleum Fields, Ltd., In re ..	[1894] W. N. 189 .. ..	379
South Eastern Ry. Co.:—London, Chatham and Dover Ry. Co. .. ..	C. A. [1892] 1 Ch. 120; H. L. (E.) [1893] A. C. 429 .. ..	1005, 1006
South Eastern Ry. Co.:—Pratt v. .. ..	[1897] 1 Q. B. 718 .. ..	1652
South Eastern Ry. Co.:—Reigate Union Assessment Committee v. .. ..	[1894] 1 Q. B. 411 .. ..	1691
South Eastern Ry. Co.:—Smith v. .. ..	C. A. [1896] 1 Q. B. 178 .. ..	1646
South Hetton Coal Co. v. Haswell, Shotton and Easington Coal and Coke Co. .. ..	C. A. [1898] 1 Ch. 465 .. ..	2103
South Hetton Coal Co. v. North Eastern News Association .. ..	C. A. [1894] 1 Q. B. 133 .. ..	545, 644
South London Tramways Co.:—Rayson v. .. ..	C. A. [1893] 2 Q. B. 304 .. ..	1204, 2151
South Metropolitan Brewing and Bottling Co., In re .. ..	[1891] W. N. 51 .. ..	462
South Metropolitan Brewing and Bottling Co.:—Engel v. (No. 1) .. ..	[1891] W. N. 31 .. ..	684
(No. 2) .. ..	[1892] 1 Ch. 442 .. ..	315
South Shields Corporation:—Donaldson v. .. ..	[1898] W. N. 170 (13); C. A. [1899] W. N. 6 (2) .. ..	2083
South Shields Union Assessment Committee:—Dodds v. .. ..	C. A. [1895] 2 Q. B. 133 .. ..	1678
South Staffordshire Tramways Co.:—Claridge v. .. ..	[1892] 1 Q. B. 422 .. ..	89
South Staffordshire Tramways Co. v. Ebbsmith .. ..	C. A. [1895] 2 Q. B. 669 .. ..	663
South Staffordshire Tramways Co.:—Marshall v. .. ..	C. A. [1895] 2 Ch. 36 .. ..	1562, 2149
South Staffordshire Tramways Co. v. Sickness and Accident Assurance Association .. ..	C. A. [1891] 1 Q. B. 402 .. ..	974
South Staffordshire Water Co. v. Sharman .. ..	[1896] 2 Q. B. 44 .. ..	658
Southby's Patent, In re .. ..	P. C. [1891] A. C. 432 .. ..	1440
Southcombe v. Yeovil Union .. ..	[1897] 1 Q. B. 343 .. ..	2214
Southend Hotel Co.:—White v. .. ..	C. A. [1897] W. N. 36 (6); [1897] 1 Ch. 767 .. ..	1057
"Southgate," The .. ..	[1893] P. 329 .. ..	1969
Southland Frozen Meat and Produce Export Co. v. Nelson Brothers, Ltd. .. ..	P. C. [1898] A. C. 442 .. ..	1335
Southport Corporation v. Morris .. ..	[1893] 1 Q. B. 359 .. ..	1928
Southport Corporation v. Ormskirk Union Assessment Committee .. ..	[1893] 2 Q. B. 468; C. A. [1894] 1 Q. B. 196 .. ..	1677

Name of Case.	Volume and Page.	Column of Digest.
Southport Tramways Co. v. Gandy .. ..	C. A. [1897] 2 Q. B. 66.. ..	1567
Southwark and Vauxhall Water Co.:—Hampton Urban District Council v. .. ..	C. A. [1898] W. N. 168 (3); [1899] 1 Q. B. 273; H. L. (E.) [1899] W. N. 238; [1900] A. C. 3.. ..	2281
Southwark and Vauxhall Water Co.:—Harrison v. .. ..	[1891] 2 Ch. 409 .. ..	1352, 1354
Southwark and Vauxhall Water Co. v. Wandsworth District Board of Works .. ..	C. A. [1898] 2 Ch. 603 .. ..	889
Southwark Press:—Pomphrey v. .. ..	C. A. [1900] W. N. 256 .. ..	1221
Southwell v. Royal Holloway College, Egham ..	[1895] 2 Q. B. 487 .. ..	1752
Southwood:—Wild v. .. ..	[1896] W. N. 166 (2); [1897] 1 Q. B. 317 .. ..	155
Soutter:—Reg. v. .. ..	C. A. [1891] 1 Q. B. 57.. ..	1182, 1640
Soutter v. Roderick .. ..	[1895] W. N. 156 (7); [1896] 1 Q. B. 91 .. ..	1372
Sovereign Life Assurance Co., In re .. ..	C. A. [1892] 3 Ch. 279 .. ..	386
Sovereign Life Assurance Co. v. Dodd .. ..	[1892] 1 Q. B. 406; C. A. [1892] 2 Q. B. 573 .. ..	170
Sowerby:—Reg. v. .. ..	C. C. R. [1894] 2 Q. B. 173 .. ..	614
Sowerby Urban Council:—Sykes v. .. ..	[1899] 1 Q. B. 979; C. A. [1900] W. N. 49; [1900] 1 Q. B. 584 .. ..	1915
Sowter:—Reg. v. .. ..	[1900] W. N. 257 .. ..	736
Soyas, De:—Murugasar Marimuttu v. .. ..	P. C. [1891] A. C. 69 .. ..	266
Spanish Corporation, Ex parte. In re Vitoria ..	C. A. [1894] 1 Q. B. 259 .. ..	113
Spargo:—Williams v. .. ..	[1893] W. N. 100 .. ..	2251
Sparrow's Settled Estate, In re .. ..	[1892] 1 Ch. 412 .. ..	1868
Spelman, Ex parte .. ..	C. A. [1895] 2 Q. B. 174 .. ..	1141
Spence, In re. In re Nash. Lewis v. Darby ..	[1893] W. N. 99 .. ..	1515
Spence v. Dodsworth. In re Dodsworth .. ..	[1891] 1 Ch. 657 .. ..	774
Spenceley, In the Goods of .. ..	[1892] P. 255 .. ..	1624
Spencer v. Lancashire and Yorkshire Ry. Co. ..	[1898] 1 Q. B. 643 .. ..	1652
Spencer v. Livett, Frank & Son .. ..	C. A. [1900] W. N. 34; [1900] 1 Q. B. 498 .. ..	1219
Spencer:—Stokes v. Haydon, Claimant .. ..	[1900] W. N. 141; [1900] 2 Q. B. 483 .. ..	198
Spicer v. Spicer .. ..	[1898] W. N. 156 (11); [1899] P. 38 .. ..	1614
Spiers & Bevan's Case. In re Roxburghe Press ..	[1899] W. N. 1 (1); [1899] 1 Ch. 210 .. ..	425
Spiers & Pond, Ltd., In re .. ..	[1895] W. N. 135 (2) .. ..	364
Spiers & Pond v. Bennett .. ..	[1896] 2 Q. B. 65 .. ..	21
Spiller v. Turner .. ..	[1897] 1 Ch. 911 .. ..	310
Spillers & Baker and Leatham & Sons, In re ..	C. A. [1897] 1 Q. B. 312 .. ..	60
Spilsbury:—New Ixion Tyre and Cycle Co. v. ..	[1898] 2 Ch. 137; C. A. [1898] 2 Ch. 484 .. ..	1432
Spilsbury v. Reg. .. ..	[1897] 2 Q. B. 615; P. C. [1899] A. C. 392 .. ..	87, 876
Spink:—Hargreave v. .. ..	[1892] 1 Q. B. 25 .. ..	1162, 1211, 1818
Spiral Wood Cutting Co., In re .. ..	[1894] 1 Ch. 736 .. ..	418, 428
Spokes v. Grosvenor and West End Ry. Terminus Hotel Co. .. ..	C. A. [1897] 2 Q. B. 124 .. ..	664
Spooner v. Browning .. ..	C. A. [1898] 1 Q. B. 528 .. ..	1572
Sprake v. Day. In re Day .. ..	[1898] 2 Ch. 510 .. ..	223
Spratt, In the Goods of .. ..	[1897] P. 28 .. ..	1612

Name of Case.	Volume and Page.	Column of Digest.
"Spree," The .. .. .	[1893] P. 147 .. ..	2003
Sprigg:—Cook v. .. .. .	P. C. [1899] A. C. 572 .. ..	260
Sprigg v. Sigcau .. .. .	P. C. [1897] A. C. 238 .. ..	262
Springfield, In re. Chamberlin v. Springfield ..	[1894] 3 Ch. 603 .. ..	2354
Sproston:—Ffrench v. In re Beeney .. ..	[1894] 1 Ch. 499 .. ..	1520
Spurling v. Bantoft .. .. .	[1891] 2 Q. B. 384 .. ..	1038, 1059, 1210
Spurrier's Settlement, In re. In re De Linden. De Hayn v. Garland .. .. .	[1897] 1 Ch. 453 .. ..	1196
Square:—Brewer v. .. .. .	[1892] 2 Ch. 111 .. ..	1300
Stafford v. Dyer .. .. .	[1895] 1 Q. B. 566 .. ..	1993
Staffordshire County Council and Burslem (Mayor, &c., of), In re .. .. .	C. A. [1896] 1 Q. B. 24 .. ..	895
Staffordshire Financial Co., Claimants. Altree v. Altree .. .. .	[1898] 2 Q. B. 267 .. ..	197
Staffordshire Gas & Coke Co., In re .. .. .	[1893] 3 Ch. 523 .. ..	437
Staffordshire Justices:—Reg. v. .. .. .	[1898] 2 Q. B. 231 .. ..	1112
Staines:—Firth v. .. .. .	[1897] 2 Q. B. 70 .. ..	1354
Staines:—Walthamstow Local Board v. .. ..	C. A. [1891] 2 Ch. 606 .. ..	1917
Stallibrass:—Turner v. .. .. .	C. A. [1897] W. N. 167 (9); [1898] 1 Q. B. 56 .. ..	585
Stamford (Earl of):—Grey v. In re Grey's Trusts .. .. .	[1892] 3 Ch. 88 .. ..	1095, 2312
Stamford (Earl of), In re. Payne v. Stamford..	[1895] W. N. 157 (2); [1896] 1 Ch. 288 .. ..	2169
Stamford, Spalding and Boston Banking Co. v. Smith .. .. .	C. A. [1892] 1 Q. B. 765 .. ..	1126
Stamford, Spalding and Boston Banking Co. and Knight's Contract, In re .. .. .	[1900] 1 Ch. 287 .. ..	2218
Stamford Union v. Bartlett. In re Watson ..	[1898] W. N. 154 (5); [1899] 1 Ch. 72 .. ..	1192
Stamps (Commr. of):—Dilworth v. .. .. .	P. C. [1899] A. C. 99 .. ..	1335
Stamps (Commrs. of) v. Hope .. .. .	J. C. [1891] A. C. 476 .. ..	640, 1332
Stamp Duties (Commrs. of):—Broughton v. ..	P. C. [1899] A. C. 251 .. ..	1330
Stanbridge:—Studham v. .. .. .	[1895] 1 Q. B. 870 .. ..	1012
Standard Gold Mining Co., In re .. .. .	[1895] 2 Ch. 545 .. ..	443
Standard Life Assurance Society:—Forbes v. ..	Ct. of Sess. (Sc.) [1896] W. N. 117 .. ..	1752
Standard Light and Power Co.:—City of Mon- treal v. .. .. .	P. C. [1897] A. C. 527 .. ..	258
Standard Manufacturing Co., In re .. .. .	C. A. [1891] 1 Ch. 627 .. ..	314
Standard Rolling Stock Syndicate:—Edwards v. .. .. .	[1893] 1 Ch. 574 .. ..	331
Standring (Herbert) & Co., In re .. .. .	[1895] W. N. 99 .. ..	464
Stanfield:—Rymer v. In re Rymer .. .. .	C. A. [1895] 1 Ch. 19 .. ..	277, 2336
Stanham:—Wild v. In re Treasure .. .. .	[1900] W. N. 181; [1900] 2 Ch. 648 .. ..	2363
Stanley:—Hassell v. .. .. .	[1896] 1 Ch. 607 .. ..	571
Stanley v. Powell .. .. .	[1891] 1 Q. B. 86 .. ..	2154
Stanley v. Stanley .. .. .	[1898] P. 227 .. ..	690
Stanley (Lord) of Alderley v. Wild & Son ..	C. A. [1899] W. N. 255; [1900] 1 Q. B. 256 .. ..	628
Stanley's Trusts, In re .. .. .	[1893] W. N. 30 .. ..	2201
Stanton v. Brown .. .. .	[1900] 1 Q. B. 671 .. ..	862
Stanway's Trusts, In re .. .. .	[1892] W. N. 11 .. ..	1539
Staples v. Fastman Photographic Materials Co..	C. A. [1896] 2 Ch. 303 .. ..	356

Name of Case.	Volume and Page.	Column of Digest.
Stapleton:—Airey <i>v.</i> In re Airey .. .. {	[1896] W. N. 174 (5); [1897] 1 Ch. 164 .. .. {	1471
"Star" Newspaper Co. <i>v.</i> O'Connor .. .. {	[1893] W. N. 114; C. A. [1893] W. N. 122 .. .. {	515
"Star" Newspaper, Ltd.:—Fox <i>v.</i> .. .. {	C. A. [1898] 1 Q. B. 636; H. L. (E.) [1899] W. N. 255; [1900] A. C. 19 .. .. {	1491
Starbruck:—Trainor <i>v.</i> .. .. {	[1893] W. N. 196 .. .. {	1388
Starey <i>v.</i> Graham .. .. {	[1899] 1 Q. B. 407 .. .. {	1434, 2072
Stark, Ex parte. In re Consort Deep Level Gold Mines, Ltd. .. .. {	C. A. [1897] 1 Ch. 575 .. .. {	390
Starkey <i>v.</i> Eyres. In re Deakin .. .. {	[1894] 3 Ch. 565 .. .. {	2333
Statham:—Wilson <i>v.</i> .. .. {	[1891] 2 Q. B. 261 .. .. {	589
Statham <i>v.</i> Brighton Marine Palace and Pier Co. {	[1898] W. N. 168 (4); [1899] 1 Ch. 199 .. .. {	395
SS. Bessie Morris Co.:—Assicurazioni Generali <i>v.</i> {	[1892] 1 Q. B. 571; C. A. [1892] 2 Q. B. 652 .. .. {	988, 1970
Stead, In re. Witham <i>v.</i> Andrew .. .. {	[1899] W. N. 235; [1900] 1 Ch. 237 .. .. {	2162
Stead <i>v.</i> Harper .. .. {	[1896] W. N. 46 (12) .. .. {	1525
Steamship Rossmore Co.:—Dobell & Co. <i>v.</i> .. .. {	C. A. [1895] 2 Q. B. 408 .. .. {	1970
Steel Brothers & Co.:—Borland's Trustee <i>v.</i> .. .. {	[1900] W. N. 251 .. .. {	404
Steel, Young & Co.:—Edwards <i>v.</i> .. .. {	[1897] 1 Q. B. 712; C. A. [1897] 2 Q. B. 327 .. .. {	2014
Steele <i>v.</i> Savory .. .. {	[1891] W. N. 195 .. .. {	671
Steer, In re. Steer <i>v.</i> Dobell. In re Earl of Devon's Settled Estates. White <i>v.</i> Earl of Devon .. .. {	[1896] 2 Ch. 562 .. .. {	1136
Steers <i>v.</i> Rogers .. .. {	C. A. [1892] 2 Ch. 13; H. L. (E.) [1893] A. C. 232 .. .. {	1433
Steiger:—Horsey Estate, Ltd. <i>v.</i> .. .. {	[1898] 2 Q. B. 259; C. A. [1899] W. N. 82; [1899] 2 Q. B. 79 .. .. {	1070
Stein:—Rein <i>v.</i> .. .. {	C. A. [1892] 1 Q. B. 753 .. .. {	1542
Steinkopf:—Walter <i>v.</i> .. .. {	[1892] 3 Ch. 489 .. .. {	537
Steinman & Co. <i>v.</i> Angier Line .. .. {	C. A. [1891] 1 Q. B. 619 .. .. {	1972
"Stella" The .. .. {	[1900] W. N. 96; [1900] P. 161 .. .. {	1984
Stenning, In re. Wood <i>v.</i> Stenning .. .. {	[1895] 2 Ch. 433 .. .. {	90
Stephens, In re. Giles <i>v.</i> Stephens .. .. {	[1892] W. N. 140 .. .. {	69, 280
Stephens:—Bulkeley <i>v.</i> .. .. {	[1896] 2 Ch. 241 .. .. {	1853
Stephens:—Cooper <i>v.</i> .. .. {	[1895] 1 Ch. 567 .. .. {	528
Stephens <i>v.</i> Green .. .. {	C. A. [1895] 2 Ch. 148 .. .. {	1554
Stephenson, In re. Donaldson <i>v.</i> Bamber .. .. {	C. A. [1896] W. N. 168 (12); [1897] 1 Ch. 75 .. .. {	2364
Stephenson, In re. Ex parte Brown .. .. {	[1897] 1 Q. B. 638 .. .. {	181
Stephenson <i>v.</i> Garnett .. .. {	C. A. [1898] 1 Q. B. 677 .. .. {	1530
Stephenson <i>v.</i> Yorke .. .. {	[1900] W. N. 44; [1900] 1 Ch. 505 .. .. {	1255
Stephenson's Case. In re Farmer's United .. .. {	[1900] 2 Ch. 442 .. .. {	434
Stern <i>v.</i> Reg. .. .. {	[1896] 1 Q. B. 211 .. .. {	1784
Stern <i>v.</i> Tegner .. .. {	C. A. [1897] W. N. 154 (13); [1898] 1 Q. B. 37 .. .. {	211
Sterrett:—Hogan <i>v.</i> .. .. {	C. A. (Ir.) [1898] W. N. 83 .. .. {	1387
Stevens, In the Goods of .. .. {	[1898] P. 126 .. .. {	1600
Stevens, In re. Clerk <i>v.</i> Stevens .. .. {	[1896] W. N. 24 (12) .. .. {	2317
Stevens, In re. Cooke <i>v.</i> Stevens .. .. {	[1897] 1 Ch. 422; C. A. [1897] W. N. 175 (7); C. A. [1898] 1 Ch. 162 .. .. {	798
Stevens, In re. Ex parte Board of Trade .. .. {	[1898] 2 Q. B. 495 .. .. {	124



Name of Case.	Volume and Page.	Column of Digest.
<i>Stevens v. Griffin</i> .. .. .	C. A. [1897] 2 Q. B. 368 ..	1492
<i>Stevens v. Trevor-Garrick</i> .. .. .	[1893] 2 Ch. 307 .. ..	957
<i>Stevens v. Boake v.</i> .. .. .	[1895] 1 Ch. 358 .. ..	35
<i>Stevenson, Ex parte.</i> In re Housing of the Working Classes Act, 1890 .. .. .	[1892] 1 Q. B. 394; C. A. [1892] 1 Q. B. 609 .. .. .	41, 58
<i>Stevenson:—Farlow v.</i> .. .. .	[1899] W. N. 30 (2); C. A. [1900] W. N. 233; [1900] 1 Ch. 123 .. .. .	1060, 1167
<i>Stevenson:—Gibbs (or Stevenson) v.</i> .. .. .	H. L. (Sc.) [1894] W. N. 104 ..	946
<i>Stevenson:—James v.</i> .. .. .	P. C. [1893] A. C. 162 ..	2262
<i>Stevenson &amp; Co.:—Little v.</i> .. .. .	H. L. (Sc.) [1896] A. C. 108 ..	1963
<i>Stevenson:—La Banque d'Hochelaga v.</i> .. .. .	P. C. [1900] A. C. 600 ..	240
<i>Steward v. England.</i> In re England .. .. .	[1895] 2 Ch. 100; C. A. [1895] 2 Ch. 820 .. .. .	1126
<i>Steward:—Freund v.</i> In re Geck .. .. .	C. A. [1893] W. N. 161 ..	278, 279
<i>Steward:—Reg. v.</i> .. .. .	[1896] 1 Q. B. 300 .. ..	30
<i>Steward:—Reg. v.</i> .. .. .	[1898] 1 Q. B. 552 .. ..	577
<i>Steward:—Reg. v.</i> .. .. .	[1899] 1 Q. B. 965 .. ..	2013
<i>Stewart v. Casey.</i> In re Casey's Patents .. .. .	C. A. [1892] 1 Ch. 104 ..	1441
<i>Stewart v. McFadzean</i> .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 110 .. .. .	1395
<i>Stewart:—Ogston v.</i> .. .. .	H. L. (Sc.) [1896] A. C. 120 ..	823
<i>Stewart v. Rhodes</i> .. .. .	[1900] W. N. 13; C. A. [1900] W. N. 41; [1900] 1 Ch. 386 ..	269
<i>Stewart v. Robinson</i> .. .. .	H. L. (Sc.) [1891] W. N. 122 ..	1830
<i>Stewart's Trustees:—Inland Revenue v.</i> .. .. .	Ct. of Sess. Sc. [1899] W. N. 198 ..	1750
<i>Stier:—Ford v.</i> .. .. .	[1896] P. 1 .. .. .	710
<i>Stileman-Gibbard v. Wilkinson</i> .. .. .	[1897] 1 Q. B. 749 .. ..	756
<i>Stiles, In the Goods of</i> .. .. .	[1897] W. N. 163 (7); [1898] P. 12 .. .. .	1624
<i>Still:—Lambert v.</i> In re Webb .. .. .	[1894] 1 Ch. 73 .. .. .	2059
<i>Still v. Webb.</i> In re Webb .. .. .	[1896] W. N. 176 (19); [1897] 1 Ch. 144 .. .. .	2044
<i>Still:—Wellby v. (No. 1)</i> .. .. .	[1892] W. N. 6 .. .. .	504, 932
————— (No. 2) .. .. .	[1893] W. N. 91 .. .. .	1303, 2058
————— (No. 3) .. .. .	[1894] 3 Ch. 641 .. .. .	1276, 2034
————— (No. 4) .. .. .	[1895] 1 Ch. 524 .. .. .	2037
<i>Stirling v. Fletcher</i> .. .. .	C. A. (Sc.) [1899] W. N. 166 ..	1382
<i>Stock v. Meakin</i> .. .. .	[1899] W. N. 108; [1899] 2 Ch. 496; C. A. [1900] W. N. 73; [1900] 1 Ch. 683 .. .. .	2090
<i>Stock and Share Auction and Banking Co.,</i> In re .. .. .	[1894] 1 Ch. 736 .. .. .	418, 482
<i>Stocken's Settlement Trusts, In re</i> .. .. .	[1893] W. N. 203 .. .. .	2202
<i>Stockport Ragged, Industrial, and Reformatory Schools, In re</i> .. .. .	[1897] W. N. 156 (4); [1898] W. N. 28 (4); [1898] 1 Ch. 610; partly affirmed and partly reversed C. A. [1898] 2 Ch. 687 ..	274, 282
<i>Stocks v. Inland Revenue</i> .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 207 .. .. .	1776
<i>Stocks:—Willerton v.</i> .. .. .	[1892] W. N. 29 .. .. .	2348
<i>Stockton Football Co. v. Gaston</i> .. .. .	[1895] 1 Q. B. 453 .. ..	76
<i>Stoddart:—Reg. v.</i> .. .. .	[1900] W. N. 258 .. .. .	864
<i>Stoddart v. Sagar. Sagar v. Stoddart</i> .. .. .	[1895] 2 Q. B. 474 .. ..	865, 1183
<i>Stoddart v. Saville</i> .. .. .	[1894] 1 Ch. 480 .. .. .	1900
<i>Stogdon, In re. Ex parte Leigh</i> .. .. .	[1895] 2 Q. B. 584 .. ..	103

Name of Case.	Volume and Page.	Column of Digest.
Stogdon v. Lee .. .. .	C. A. [1891] 1 Q. B. 661 ..	30, 908, 921, 923, 2344
Stogdon :—Levy v. .. .. .	[1898] 1 Ch. 478; C. A. [1899] 1 Ch. 5 ..	2063
Stokell v. Heywood .. .. .	[1896] W. N. 65 (1); [1897] 1 Ch. 459 ..	975
Stoke Parish Council v. Price .. .. .	[1899] W. N. 74; [1899] 2 Ch. 277 ..	1362
Stokes :—Hicks v. .. .. .	[1893] 1 Q. B. 124 ..	1391
Stokes v. France .. .. .	[1897] W. N. 163 (10); [1898] 1 Ch. 212 ..	2180
Stokes v. Spencer. Haydon, Claimant ..	[1900] W. N. 141; [1900] 2 Q. B. 483 ..	198
Stone, In re. Baker v. Stone .. .. .	C. A. [1895] 2 Ch. 196 ..	2314
Stone :—Gray v. .. .. .	[1893] W. N. 133 ..	402
Stone :—Hart v. In re Hubbuck .. .. .	C. A. [1896] 1 Ch. 754 ..	1856
Stone :—Imperial Loan Co. v. .. .. .	C. A. [1892] 1 Q. B. 599 ..	1187
Stone :—Jones v. .. .. .	P. C. [1894] A. C. 122 ..	85, 1564
Stone v. Lickorish .. .. .	[1891] 2 Ch. 363 ..	1304, 2059
Stone v. Meredith. In re Meredith .. .. .	[1898] W. N. 48 (1) ..	49
Stone v. Press Association, Ltd. .. .. .	C. A. [1897] 2 Q. B. 159 ..	644
Stone's Will, In re .. .. .	[1893] W. N. 50 ..	178
Storey v. Cooke .. .. .	C. A. [1891] 1 Ch. 509; H. L. (E.) [1891] A. C. 297 ..	643
Stormont, Todd & Co. :—Richardson v. ..	C. A. [1900] 1 Q. B. 701 ..	2074
Stourfield Park Hotel Co. :—Hawker v. ..	C. A. [1900] W. N. 51 ..	1311
Story v. Sheard .. .. .	[1892] 2 Q. B. 515 ..	893
Strachan, In re .. .. .	C. A. [1895] 1 Ch. 439 ..	669, 1196
Strachan v. Binnie .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 99 ..	1399
Strachan :—Universal Stock Exchange Ltd. v. (No. 1) .. .. .	C. A. [1895] 2 Q. B. 329; H. L. (E.) [1896] A. C. 166 ..	2075
(No. 2) .. .. .	C. A. [1895] 2 Q. B. 697 ..	870
Strafford (Earl of) and Maples, In re .. .. .	C. A. [1896] 1 Ch. 235 ..	1883
Straits of Dover Steamship Co. :—Purves v. ..	[1899] 1 Q. B. 38; C. A. [1899] W. N. 102; [1899] 2 Q. B. 217 ..	2014
Strand Union (Guardians of the) :—Brighton (Guardians of the Parish of) v. .. .. .	C. A. [1891] 2 Q. B. 156 ..	1462
Strange :—Att.-Gen. v. .. .. .	C. A. [1898] 2 Q. B. 39 ..	1741
Strangeways v. Read .. .. .	[1898] 2 Ch. 419 ..	1190
Strapp v. Bull, Sons & Co. Shaw v. School Board of London .. .. .	C. A. [1895] 2 Ch. 1 ..	332
Stratheden and Campbell (Lord), In re. Stratheden and Campbell (Lord) :—Alt v. .. .. .	[1894] 3 Ch. 265 ..	69, 281, 2347
Stratheden and Campbell (Lord), In re. Cowper v. Stratheden and Campbell .. .. .	[1893] W. N. 90 ..	32, 2309
"Strathgarry," The .. .. .	[1895] P. 264 ..	2004
Strathmore (Earl) v. Vane. In re Bowes .. .. .	[1896] 1 Ch. 507 ..	2342
Strathmore (Earl) v. Vane. In re Bowes .. .. .	[1900] W. N. 123; [1900] 2 Ch. 251 ..	2035
Streatham and General Estates Co., In re .. .. .	[1896] W. N. 164 (2); [1897] 1 Ch. 15 ..	336
Streatham and General Estates Co. :—Scott v. ..	[1891] W. N. 153 ..	1282
Streatley, In the Goods of .. .. .	[1891] P. 172 ..	1596
Street :—Gordon v. .. .. .	C. A. [1899] 2 Q. B. 641 ..	512

Name of Case.	Volume and Page.	Column of Digest.
Street v. Street .. .. .	C. A. [1900] W. N. 86; [1900] 2 Q. B. 57 .. .. .	62
Streeter:—Reg. v. .. .. .	C. C. R. [1900] W. N. 176; [1900] 2 Q. B. 601 .. .. .	618
Stretton:—Hitchcock v. .. .. .	[1892] 2 Ch. 343 .. .. .	2041
Stretton's Derby Vinegar Co. v. Derby Corporation .. .. .	[1894] 1 Ch. 431 .. .. .	1912
Strickland v. Hayes .. .. .	[1896] 1 Q. B. 290 .. .. .	2091
Strickland v. Williams .. .. .	C. A. [1899] 1 Q. B. 382 .. .. .	215
Stringer and Riley, Brothers, In re .. .. .	[1900] W. N. 240 .. .. .	54
Strohmenger v. Finsbury Permanent Building Society .. .. .	[1897] W. N. 65 (1); C. A. [1897] 2 Ch. 469 .. .. .	228
Strong v. Carlyle Press (No. 1) .. .. .	C. A. [1893] 1 Ch. 268 .. .. .	35, 1705
(No. 2) .. .. .	[1893] W. N. 51 .. .. .	317
"Strong (N.)," The .. .. .	[1892] P. 105 .. .. .	1949
Stroud v. Lawson .. .. .	C. A. [1898] 2 Q. B. 44 .. .. .	1513
Stroud v. Wandsworth District Board .. .. .	[1894] 1 Q. B. 64; C. A. [1894] 2 Q. B. 1 .. .. .	1179
Strutt:—Tippett v. .. .. .	[1891] W. N. 112 .. .. .	981
Stuart, In re. Ex parte Cathcart .. .. .	C. A. [1893] 2 Q. B. 201 .. .. .	2028
Stuart, In re. Smith v. Stuart .. .. .	[1897] 2 Ch. 583 .. .. .	2186
Stuart and Olivand and Seadon's Contract, In re .. .. .	C. A. [1896] 2 Ch. 328 .. .. .	2256
Stuart v. Bell .. .. .	C. A. [1891] 2 Q. B. 341 .. .. .	649, 652
Stuart:—Gould v. .. .. .	P. C. [1896] A. C. 575 .. .. .	1321
Stuart v. Maskelyne British Typewriter, Ltd. In re Maskelyne British Typewriter, Ltd. .. .. .	C. A. [1897] W. N. 170 (2); [1898] 1 Ch. 133 .. .. .	331
Stuart v. Nixon & Bruce .. .. .	C. A. [1900] W. N. 92; [1900] 2 Q. B. 95 .. .. .	1223
Stuart:—Reg. v. .. .. .	C. C. R. [1894] 1 Q. B. 310 .. .. .	340, 609
Stubbs (Joshua) Ltd., In re. Barney v. Joshua Stubbs, Ltd. .. .. .	[1891] 1 Ch. 187; C. A. [1891] 1 Ch. 475 .. .. .	329, 449
Stuckey's Banking Co.:—Sanguinetti v. .. .. .	[1895] 1 Ch. 176; [1896] 1 Ch. 502 .. .. .	182, 1279
Studdert and the Finance Act, 1894, In re .. .. .	Ct. of Sess. (Sc.) [1900] W. N. 220 .. .. .	1749
Studham v. Stanbridge .. .. .	[1895] 1 Q. B. 870 .. .. .	1012
Stumore v. Campbell and Co. .. .. .	C. A. [1892] 1 Q. B. 314 .. .. .	78
Sturge:—Crocker v. .. .. .	[1897] 1 Q. B. 330 .. .. .	1001
Sturgeon v. Lawrence. In re Dunning .. .. .	[1894] W. N. 140 .. .. .	77
Sturrock (B.):—Taylor v. Sturrock (W.) v. Sturrock (B.) .. .. .	P. C. [1900] A. C. 225 .. .. .	1314
Styles:—Gresham Life Assurance Co. v. .. .. .	H. L. (E.) [1892] A. C. 309 .. .. .	1758
Styles v. Society of the Middle Temple .. .. .	[1898] W. N. 172 (5) .. .. .	1754
Suarez, In the Goods of .. .. .	[1897] P. 8 .. .. .	1604
Sudbury and Poynton Settled Estates, In re. Vernon v. Vernon .. .. .	[1893] 3 Ch. 74 .. .. .	1864
Sudeley (Lord) v. Att.-Gen. .. .. .	[1895] 2 Q. B. 526; C. A. [1896] 1 Q. B. 354; H. L. (E.) [1896] W. N. 162 (14); [1897] A. C. 11 .. .. .	1786
Sudeley (Lord) and Baines and Co., In re Suffield (Baron):—London Freehold and Leasehold Property Co. v. .. .. .	[1894] 1 Ch. 334 .. .. .	2350
Suffield:—Dugmore v. .. .. .	C. A. [1897] 2 Ch. 608 .. .. .	1278
Sugg & Co.:—Lloyd v. .. .. .	[1896] W. N. 50 (13) .. .. .	2198
Sulley v. Royal College of Surgeons of Edinburgh .. .. .	C. A. [1900] 1 Q. B. 481 .. .. .	1214
Sumatra Tobacco Plantations Co., In re Summerfield:—Colac (President), &c. v. .. .. .	Ct. of Sess. (Sc.) [1896] W. N. 98 .. .. .	1773
	[1898] W. N. 80 (3) .. .. .	383
	P. C. [1893] A. C. 187 .. .. .	2259

Name of Case.	Volume and Page.	Column of Digest.
Summers <i>v.</i> Barron. In re Walker .. ..	[1900] W. N. 275 .. ..	2166
Summers <i>v.</i> Holborn Board of Works .. ..	[1893] 1 Q. B. 612 .. ..	1178, 2070
Summerson, In re. Downie <i>v.</i> Summerson ..	[1900] 1 Ch. 112, n. .. ..	2244
Summerton :—Edwards <i>v.</i> .. ..	[1899] W. N. 120 .. ..	878
Sumpter <i>v.</i> Hedges .. ..	C. A. [1898] 1 Q. B. 673 .. ..	505
Sun Life Assurance Co. of Canada :—Saunders <i>v.</i>	[1894] 1 Ch. 537 .. ..	2142
Sunbury-on-Thames Urban Council :—Croysdale <i>v.</i> .. ..	[1898] 2 Ch. 515 .. ..	1916
Sunderland Corporation <i>v.</i> Robinson .. ..	[1899] W. N. 19 (7); [1899] 1 Q. B. 751 .. ..	2287
Sunlight Incandescent Gas Lamp Co., In re ..	[1900] 2 Ch. 728 .. ..	447
Surman <i>v.</i> Wharton .. ..	[1891] 1 Q. B. 491 .. ..	904
Surrey Justices :—Reg. <i>v.</i> (No. 1) .. ..	[1892] 1 Q. B. 633; C. A. [1892] 1 Q. B. 867 .. ..	889
————— (No. 2) .. ..	[1892] 2 Q. B. 719 .. ..	1041
Sutcliffe :—Greenwood <i>v.</i> .. ..	C. A. [1892] 1 Ch. 1 .. ..	1295, 2103
Sutcliffe :—Howarth <i>v.</i> .. ..	C. A. [1895] 2 Q. B. 358 .. ..	586, 594
Sutherland :—McDougal <i>v.</i> .. ..	Ct. of Sess. (Sc.) [1896] W. N. 113 .. ..	1763
Sutherland (Dowager Duchess of) <i>v.</i> Sutherland (Duke of) .. ..	[1893] 3 Ch. 169 .. ..	1874, 2290
Sutherland (Duke of) <i>v.</i> Heathcote .. ..	[1891] 3 Ch. 504; C. A. [1892] 1 Ch. 475 .. ..	642, 1264
Sutters :—Thomas <i>v.</i> .. ..	[1891] W. N. 184; C. A. [1899] W. N. 206; [1900] 1 Ch. 10 .. ..	871, 872, 1594
Sutton, Carden & Co. :—Graham <i>v.</i> (No. 1) ..	C. A. [1897] 1 Ch. 761 .. ..	671
————— (No. 2) .. ..	C. A. [1897] 2 Ch. 367 .. ..	1553
Sutton, Southcoates and Drypool Gas Co. :—Jordeson <i>v.</i> .. ..	[1898] 2 Ch. 614; C. A. 2 Ch. 217 .. ..	2095
Sutton :—Aspinall <i>v.</i> .. ..	[1894] 2 Q. B. 349 .. ..	1039
Sutton <i>v.</i> Martin. In re Poinons .. ..	[1891] W. N. 139 .. ..	1503
Sutton <i>v.</i> Wade .. ..	[1891] 1 Q. B. 269 .. ..	1390
Sutton & Co. <i>v.</i> Grey .. ..	C. A. [1894] 1 Q. B. 285 .. ..	1583, 2073
Sutton Heath and Lea Green Collieries Co. :—Houghton <i>v.</i> .. ..	C. A. [1900] 256 .. ..	1221
Suva Town Board :—Smart & Co. <i>v.</i> .. ..	P. C. [1893] A. C. 301 .. ..	819, 839
Swain, In re. Swain <i>v.</i> Bringeman .. ..	[1891] 3 Ch. 233 .. ..	2192
Swan :—Australia (Perpetual Executors and Trustees Association of) <i>v.</i> .. ..	P. C. [1898] C. A. 763 .. ..	2259
Swan <i>v.</i> Mellen .. ..	[1892] W. N. 106; C. A. [1892] W. N. 128 .. ..	14
Swansea Corporation :—Att.-Gen. <i>v.</i> .. ..	[1898] 1 Ch. 602 .. ..	545
Swansea Free Grammar School and Endowed Schools Act, 1869, In re .. ..	P. C. [1894] A. C. 252 .. ..	275
Swansea Improvements and Tramway Co. <i>v.</i> Swansea Urban Sanitary Authority .. ..	[1892] 1 Q. B. 357 .. ..	1687
Swansea Urban Sanitary Authority :—Swansea Improvements and Tramway Co. <i>v.</i> .. ..	[1892] 1 Q. B. 357 .. ..	1687
Swayne <i>v.</i> Inland Revenue Commrs. .. ..	[1899] W. N. 3 (6); [1899] 1 Q. B. 335; C. A. [1899] W. N. 240; [1900] 1 Q. B. 172 .. ..	1797
Sweet (Stephen), In the Goods of .. ..	[1891] P. 400 .. ..	1496
Sweet <i>v.</i> Sweet .. ..	[1895] 1 Q. B. 12 .. ..	923
Sweetmeat Automatic Delivery Co. <i>v.</i> Inland Revenue Commrs. .. ..	[1895] 1 Q. B. 484 .. ..	1788
Sweeting, In re .. ..	[1898] 1 Ch. 268 .. ..	2060

Name of Case.	Volume and Page.	Column of Digest.
Sweeting:—Terry <i>v.</i> In re Duncan .. .. {	[1899] W. N. 14 (1); [1899] 1 Ch. 387 .. .. {	787
Swift <i>v.</i> Swift .. .. {	[1891] P. 129 .. .. {	721
Swoffer <i>v.</i> Swoffer .. .. {	[1896] P. 131 .. .. {	925
Swyny <i>v.</i> Harland .. .. {	C. A. [1894] 1 Q. B. 707 .. .. {	2049
Sydney Municipal Council <i>v.</i> Att.-Gen. for New South Wales .. .. {	P. C. [1894] A. C. 444 .. .. {	297, 1330
Sydney Municipal Council <i>v.</i> Bourke .. .. {	P. C. [1895] A. C. 433 .. .. {	895, 1329
Sydney Municipal Council <i>v.</i> Young .. .. {	P. C. [1898] A. C. 457 .. .. {	1332
Sydney and Suburban Mutual Building and Land Investment Association <i>v.</i> Lyons .. .. {	P. C. [1894] A. C. 260 .. .. {	1331
Syer <i>v.</i> Gladstone .. .. {	[1892] W. N. 178 .. .. {	787
Sykes:—Howard Football Syndicate <i>v.</i> .. .. {	[1897] W. N. 81 (10) .. .. {	1443.
Sykes:—National Dwellings Society <i>v.</i> .. .. {	[1894] 3 Ch. 159 .. .. {	356
Sykes <i>v.</i> Sowerby Urban Council .. .. {	[1899] 1 Q. B. 979; C. A. [1900] W. N. 49; [1900] 1 Q. B. 584 {	1915.
Sykes <i>v.</i> Sykes .. .. {	C. A. [1897] P. 306 .. .. {	689
Symes <i>v.</i> Symes .. .. {	[1896] 1 Ch. 272 .. .. {	1484
Symons <i>v.</i> Symons .. .. {	[1897] P. 167 .. .. {	714
Symons <i>v.</i> Wedmore .. .. {	[1894] 1 Q. B. 401 .. .. {	1104
Synge <i>v.</i> Synge .. .. {	C. A. [1894] 1 Q. B. 466 .. .. {	1898.
Synge <i>v.</i> Synge .. .. {	[1900] P. 180 .. .. {	704
Syria (Bank of), In re. Owen and Ashworth's Claim. Whitworth's Claim .. .. {	[1900] W. N. 66; [1900] 2 Ch. 272; C. A. [1900] W. N. 256 {	350.
T.		
Tabernacle Permanent Building Society <i>v.</i> Knight (No. 1) .. .. {	C. A. [1891] 2 Q. B. 63; H. L. (E.) [1892] A. C. 298 .. .. {	60, 225
(No. 2) .. .. {	C. A. [1892] 2 Q. B. 613 .. .. {	57
Tabureau <i>v.</i> Nixon .. .. {	[1899] W. N. 115 .. .. {	2314
Tadcaster Town Brewery Co. <i>v.</i> Wilson .. .. {	[1897] 1 Ch. 705 .. .. {	2229
Tadman <i>v.</i> Henman .. .. {	[1893] 2 Q. B. 168 .. .. {	685
Taddei:—Fender <i>v.</i> .. .. {	C. A. [1898] 1 Q. B. 798 .. .. {	1526
Taff Vale Ry. Co. <i>v.</i> Amalgamated Society of Railway Servants .. .. {	C. A. [1900] W. N. 256 .. .. {	2145
Taff Vale Ry. Co.:—Barry Ry. Co. <i>v.</i> .. .. {	C. A. [1895] 1 Ch. 128 .. .. {	1660
Taff Vale Ry. Co.:—Davis & Sons, Ltd. <i>v.</i> .. .. {	C. A. [1894] 1 Q. B. 43; H. L. (E.) [1895] A. C. 542 .. .. {	1661
Tagart:—Davies <i>v.</i> In re Weston .. .. {	[1900] W. N. 104; [1900] 2 Ch. 164 .. .. {	2198
Tagg:—Barsht <i>v.</i> .. .. {	[1900] 1 Ch. 291; [1900] 1 Ch. 231 .. .. {	2223
“Talbot,” The .. .. {	[1891] P. 184 .. .. {	1951
Talbot's Trade-mark, In re .. .. {	[1894] W. N. 12 .. .. {	2136
Talbot:—Rhondda and Swansea Ry. Co. <i>v.</i> .. .. {	C. A. [1897] 2 Ch. 131 .. .. {	1669
Talisker Distillery:—Hamlyn & Co. <i>v.</i> .. .. {	H. L. (Sc.) [1894] A. C. 202 .. .. {	56, 65, 490
Tallerman <i>v.</i> Dowsing Radiant Heat Co. .. .. {	[1899] W. N. 125; C. A. [1899] W. N. 234; [1900] 1 Ch. 1 .. .. {	817
Tamplin, In the Goods of .. .. {	[1894] P. 39 .. .. {	1622
Tamplin's Case. In re Canadian Meat Co. .. .. {	[1892] W. N. 94; C. A. [1892] W. N. 146 .. .. {	370
Tanian:—Crossfield & Sons, Ltd. <i>v.</i> .. .. {	C. A. [1900] 2 Q. B. 629 .. .. {	1219
Tankard, In re. Ex parte Official Receiver .. .. {	[1899] W. N. 60; [1899] 2 Q. B. 57 .. .. {	184

Name of Case.	Volume and Page.	Column of Digest.
Tankard :—Reg. v. .. .. .	C. C. R. [1894] 1 Q. B. 548 ..	391, 406, 609
Tannar :—Cohen v. .. .. .	C. A. [1900] W. N. 162; [1900] 2 Q. B. 609 ..	1059
Tanner v. Oldman .. .. .	[1895] W. N. 139 (7); [1896] 1 Q. B. 60 ..	1153
Taplen v. Taplen .. .. .	[1891] P. 283 .. .. .	701
Tapley :—Eaton v. .. .. .	[1899] W. N. 60; [1899] 1 Q. B. 953 ..	1137
Tapscott Steamship Co. :—Singlehurst v. ..	C. A. [1899] W. N. 133 ..	2190
Tardy :—Lloyd v. In re Harman .. ..	[1894] 3 Ch. 607 .. ..	1475, 1503
Tarn, In re .. .. .	C. A. [1893] 2 Ch. 280 ..	40
Tarn v. Emmerson. In re Leng .. ..	C. A. [1895] 1 Ch. 652 ..	133, 795
Tasker v. Tasker .. .. .	[1895] P. 1 .. .. .	905
Tassell v. Hallen .. .. .	[1892] 1 Q. B. 321 .. ..	1541
Tatam v. Reeve .. .. .	[1893] 1 Q. B. 44 .. ..	869
Tate v. Latham & Son .. .. .	C. A. [1897] 1 Q. B. 502 ..	1239
Tatham, In re. Bensaude v. Hastings ..	[1892] W. N. 150 .. ..	691
Tatham :—Bills v. In re Patrick .. ..	[1891] 1 Ch. 82 .. ..	1908
Tatham, Bromage & Co. v. Burr. The "Engineer" .. .. .	H. L. (E.) [1898] A. C. 382 ..	987
Taunton v. Sheriff of Warwickshire .. ..	[1895] 1 Ch. 734; C. A. [1895] 2 Ch. 319 .. ..	321, 449, 1011
Taunton, Delmard, Lane & Co., In re. Christie v. Taunton, Delmard, Lane & Co. ..	[1893] 2 Ch. 175 .. ..	305
Taws v. Knowles .. .. .	C. A. [1891] 2 Q. B. 564 ..	2290
Taxation (Commrs. of) v. Kirk .. .. .	P. C. [1900] A. C. 588 ..	1331
Taylor, Ex parte. In re Potts .. .. .	C. A. [1893] 1 Q. B. 648 ..	168, 1696, 1704
Taylor, In re. Taylor v. Wade .. ..	[1894] 1 Ch. 671 .. ..	791
Taylor, In the Goods of .. .. .	[1892] P. 90 .. .. .	1609
Taylor :—Clutterbuck v. .. .. .	C. A. [1896] 1 Q. B. 395 ..	1399
Taylor :—Furber v. .. .. .	C. A. [1900] W. N. 180; [1900] 2 Q. B. 719 .. ..	586
Taylor :—Handsworth Local Board v. ..	[1897] 2 Ch. 442, n. .. ..	1913
Taylor :—Hewitt v. .. .. .	[1896] 1 Q. B. 287 .. ..	18
Taylor v. Hodgson. In re Hodgson .. ..	[1898] 2 Ch. 545 .. ..	734
Taylor :—Kershaw v. .. .. .	[1895] 2 Q. B. 208; C. A. [1895] 2 Q. B. 471 .. ..	1168
Taylor :—McIlquham v. .. .. .	C. A. [1895] 1 Ch. 53 .. ..	514
Taylor v. Manchester, Sheffield and Lincolnshire Ry. Co. .. .. .	C. A. [1895] 1 Q. B. 134 ..	505, 586, 1653, 2115
Taylor :—Marshall v. .. .. .	C. A. [1895] 1 Ch. 641 ..	217
Taylor :—Mercantile Bank of Sydney v. ..	P. C. [1893] A. C. 317 ..	1586
Taylor :—Neck v. .. .. .	C. A. [1893] 1 Q. B. 560 ..	569
Taylor :—New Windsor Corporation v. ..	C. A. [1898] 1 Q. B. 186; H. L. (E.) [1898] W. N. 162 (6); H. L. (E.) [1899] A. C. 41 ..	2114
Taylor :—Owthwaite v. In re Owthwaite ..	[1891] 3 Ch. 494 .. ..	2185
Taylor :—Petty v. .. .. .	[1896] W. N. 167 (6); [1897] 1 Ch. 465 .. ..	532
Taylor, Phillips and Rickards' Cases. In re National Bank of Wales .. .. .	[1896] 2 Ch. 851; C. A. [1897] 1 Ch. 298 .. ..	431
Taylor v. Reg. .. .. .	[1895] 1 Q. B. 25 .. ..	615
Taylor v. Roe (No. 1) .. .. .	[1893] W. N. 14 .. ..	77, 80
Taylor v. Roe (No. 2) .. .. .	[1893] W. N. 26 .. ..	1849

Name of Case.	Volume and Page.	Column of Digest.
Taylor v. Roe (No. 3) .. .. .	[1894] 1 Ch. 413	564
Taylor v. Russell .. .. .	C. A. [1891] 1 Ch. 8; H. L. (E.)	1288
Taylor v. Seal v. In re Seal .. .. .	[1892] A. C. 244 .. .. .	2367
Taylor v. Smith .. .. .	C. A. [1894] 1 Ch. 316 .. .. .	851
Taylor v. Sturrock (B.), Sturrock (W.) v. Sturrock (B.) .. .. .	C. A. [1893] 2 Q. B. 65 .. .. .	1314
Taylor & Son :—British Motor Syndicate, Ltd. v. Taylor, Sons & Co. :—Bentsen v. (No. 1) (No. 2) .. .. .	P. C. [1900] A. C. 225 .. .. .	1429
Taylor, Sons & Tarbuck, In re .. .. .	[1900] W. N. 43; [1900] 1 Ch. 577; C. A. [1900] W. N. 239	569
Taylor, Stileman & Underwood, In re .. .. .	C. A. [1893] 2 Q. B. 193 .. .. .	1936
Teacher v. Calder .. .. .	C. A. [1893] 2 Q. B. 274 .. .. .	2032
Teague v. Fox. In re Godden .. .. .	[1894] 1 Ch. 503 .. .. .	2051
Tebb v. Cave .. .. .	C. A. [1891] 1 Ch. 590 .. .. .	4
Teece, In the Goods of .. .. .	H. L. (Sc.) [1899] W. N. 118; [1899] A. C. 451 .. .. .	1876
Teece :—Commrs. of Taxation v. Teddington Urban Council :—Att.-Gen. v. Tegner :—Stern v. Temperance Permanent Building Society :—Brocklesby v. Temperley Shipping Co. :—Anglo-Argentine Live Stock and Produce Agency v. Temperton v. Russell (No. 1) (No. 2) .. .. .	[1893] 1 Ch. 292	1858
Tempest :—Wynne v. Tendring Union v. Dowton Tennant v. Smith Tennant v. Union Bank of Canada Tennent :—Welch v. Terrett :—Barlow v. Terry :—Liles v. Terry v. Sweeting. In re Duncan Tesseyman's Settled Estates, In re Tetbury (Vicar) v. Tetbury Churchwardens, &c. Tetley, In re Thacker, In the Goods of Thames Conservancy v. London Port Sanitary Authority Thames Conservators v. Smeed, Dean & Co. Thames Ironworks and Shipbuilding Co. :—Clifford v. Thames and Mersey Marine Insurance Co. :—Bensaude & Co. v.	[1895] W. N. 143 (12); [1896] P. 6 .. .. .	1598
	P. C. [1899] A. C. 254 .. .. .	1327
	[1898] 1 Ch. 66 .. .. .	1144
	C. A. [1897] W. N. 154 (13); [1898] 1 Q. B. 37 .. .. .	211
	C. A. [1893] 3 Ch. 130; H. L. (E.) [1895] A. C. 173	1571
	[1899] W. N. 110; [1899] 2 Q. B. 403 .. .. .	1931
	C. A. [1893] 1 Q. B. 435 .. .. .	1516, 2144
	C. A. [1893] 1 Q. B. 715 .. .. .	500, 508, 2142
	[1896] W. N. 176 (17); [1897] 1 Ch. 110; [1897] W. N. 43 (14)	1556, 2178
	C. A. [1891] 3 Ch. 265 .. .. .	2086, 2089
	H. L. (Sc.) [1892] A. C. 150 .. .. .	1759
	P. C. [1894] A. C. 31 .. .. .	239, 240, 292
	H. L. (Sc.) [1891] A. C. 639 .. .. .	1834
	[1891] 2 Q. B. 107 .. .. .	831
	C. A. [1895] 2 Q. B. 679 .. .. .	2207
	[1899] W. N. 14 (1); [1899] 1 Ch. 387 .. .. .	787
	[1897] W. N. 167 (6); 168 (11)	920, 1887
	[1892] P. 271, n. .. .. .	747
	[1896] W. N. 86 (2) .. .. .	852
	[1899] W. N. 218; [1900] P. 15	1625
	[1894] 1 Q. B. 647 .. .. .	1350, 2106, 2272
	C. A. [1897] 2 Q. B. 334 .. .. .	2107
	[1898] 1 Q. B. 314 .. .. .	584
	C. A. [1897] 1 Q. B. 29; affirmed by H. L. (E.) [1897] A. C. 609 .. .. .	991

Name of Case.	Volume and Page.	Column of Digest.
Thames and Mersey Marine Insurance Co. v. Pitts, Son & King .. .. .	[1893] 1 Q. B. 476 .. ..	995
Thames and Mersey Marine Insurance Co. v. Trinder, Anderson & Co. v. Trinder, Anderson & Co. v. North Queensland Insurance Co. The Same v. Weston, Crocker & Co. .. ..	C. A. [1898] 2 Q. B. 114 .. ..	997
Tharp:—List v. .. .. .	[1897] 1 Ch. 260 .. ..	1156
Tharsis Sulphur and Copper Co. v. Morel Brothers & Co. .. .. .	C. A. [1891] 2 Q. B. 647 .. ..	1966
Theatrical Trust, Ltd., In re. Chapman's Case	[1895] 1 Ch. 771 .. ..	370
"Theodora," The .. .. .	[1897] P. 279 .. ..	1994, 2070
"Theta," The .. .. .	[1894] P. 280 .. ..	1995
Thellusson v. Liddard .. .. .	[1900] W. N. 146; [1900] 2 Ch. 635 .. ..	1254
Thetford Corporation v. Norfolk County Council	[1898] 1 Q. B. 141; appeal dismissed and cross-appeal allowed by C. A. [1898] 2 Q. B. 468 ..	577
Thiery v. Chalmers, Guthrie & Co. .. ..	[1899] W. N. 235; [1900] 1 Ch. 80	1197
Thin v. Richards & Co. .. .. .	C. A. [1892] 2 Q. B. 141 .. ..	1945
Thomas, In re. Evans v. Griffiths .. ..	[1900] W. N. 36; [1900] 1 Ch. 454 .. ..	2039
Thomas, In re. Jaquess v. Thomas .. ..	C. A. [1894] 1 Q. B. 747 .. ..	2023
Thomas, In re. Ex parte Middlesex (Sheriff of)	[1899] 1 Q. B. 66; C. A. [1899] W. N. 5 (1); [1899] 1 Q. B. 460	163
Thomas, In re. Weatherall v. Thomas .. ..	[1900] 1 Ch. 319 .. ..	1870
Thomas, In re. Wood v. Thomas .. .. .	[1891] 3 Ch. 482 .. ..	1855
Thomas (Howell), In re .. .. .	[1893] 1 Q. B. 670 .. ..	2028
Thomas:—Burkill v. .. .. .	[1892] 1 Q. B. 99; C. A. [1892] 1 Q. B. 312 .. ..	597, 1489
Thomas:—Carter v. .. .. .	[1893] 1 Q. B. 673 .. ..	2069
Thomas:—Davies v. .. .. .	[1899] W. N. 244 .. ..	820
Thomas:—Davies v. .. .. .	C. A. [1900] W. N. 151; [1900] 2 Ch. 463 .. ..	731
Thomas:—Dawes v. .. .. .	C. A. [1892] 1 Q. B. 414 .. ..	2239
Thomas v. Devonport Corporation .. ..	C. A. [1900] 1 Q. B. 16 .. ..	1082, 2111
Thomas:—Fielding v. .. .. .	P. C. [1896] A. C. 600 .. ..	1143
Thomas v. Foster. In re Foster .. .. .	[1897] 1 Ch. 484 .. ..	252
Thomas:—Hill v. .. .. .	C. A. [1893] 2 Q. B. 333 .. ..	1728
Thomas:—Kennedy v. .. .. .	C. A. [1894] 2 Q. B. 759 .. ..	893
Thomas:—Lulham .. .. .	C. A. [1895] 2 Q. B. 400 .. ..	191
Thomas v. McKeckine. In re Elen .. ..	[1893] W. N. 90 .. ..	685
Thomas:—O'Sullivan v. .. .. .	[1895] 1 Q. B. 698 .. ..	1476
Thomas:—Powell v. .. .. .	[1891] 1 Q. B. 97 .. ..	870
Thomas:—Rees v. .. .. .	C. A. [1899] 1 Q. B. 1015 .. ..	585
Thomas:—Reg. v. .. .. .	[1892] 1 Q. B. 426 .. ..	1222
Thomas v. Roberts. Smith v. Clements ..	[1898] 1 Q. B. 657 .. ..	1100
Thomas:—Saxby v. .. .. .	[1891] W. N. 4; C. A. [1891] W. N. 28 .. ..	204
Thomas v. Searles .. .. .	C. A. [1891] 2 Q. B. 408 .. ..	2222
Thomas v. Sutters .. .. .	C. A. [1899] W. N. 206; [1900] 1 Ch. 10 .. ..	202, 212
Thomas v. Van Os .. .. .	[1900] 2 Q. B. 448 .. ..	871, 872
Thomas:—Young v. .. .. .	C. A. [1892] 2 Ch. 134 .. ..	830
Thomas & Co.:—Madell v. .. .. .	C. A. [1891] 1 Q. B. 230 .. ..	561
"Thomas Joliffe," The "Avon" and The	[1891] P. 7 .. ..	205
Thomasset v. Thomasset .. .. .	C. A. [1894] P. 295 .. ..	1950
		693, 951



Name of Case.	Volume and Page.	Column of Digest.
Thompson, In re. <i>Ex parte Baylis</i> .. ..	[1894] 1 Q. B. 462 .. ..	2029
Thompson v. Brighton Corporation .. ..	C. A. [1894] 1 Q. B. 332 .. ..	549, 895
Thompson:—Bury v. .. ..	[1895] 1 Q. B. 231; C. A. [1895] W. N. 44; [1895] 1 Q. B. 696	1064
Thompson:—Green v. .. ..	[1899] 2 Q. B. 1 .. ..	944
Thompson v. London County Council .. ..	C. A. [1899] 1 Q. B. 840 .. ..	1517
Thompson v. Mein .. ..	[1893] W. N. 202 .. ..	1267
Thompson:—Monkswell (Lord) v. .. ..	C. A. [1898] 1 Q. B. 353 .. ..	44
Thompson:—Monkswell (Lord) v. .. ..	[1898] 1 Q. B. 479 .. ..	1824
Thompson v. Montgomery. In re Joule's Trade-mark .. ..	H. L. (E.) [1891] A. C. 217 .. ..	2127
Thompson v. Palmer .. ..	C. A. [1893] 2 Q. B. 80 .. ..	1541
Thompson v. Redding. In re Redding .. ..	[1897] 1 Ch. 876 .. ..	1890
Thompson:—Reg. v. .. ..	C. C. R. [1893] 2 Q. B. 12 .. ..	611
Thompson:—Rolfe v. .. ..	[1892] 2 Q. B. 196 .. ..	19
Thompson v. Rourke (No. 1) .. ..	C. A. [1892] P. 244 .. ..	715
Thompson v. Rourke (No. 2) .. ..	[1893] P. 11; C. A. [1893] P. 70 .. ..	707
Thompson v. Thompson .. ..	[1900] W. N. 254 .. ..	697
Thompson:—Smith v. In re Smith .. ..	[1895] W. N. 144 (15); [1896] 1 Ch. 71 .. ..	2188
Thomson, In re. Thomson v. Thomson .. ..	C. A. [1897] W. N. 29 (4) .. ..	123
Thomson v. Clanmorris (Lord) .. ..	C. A. [1900] W. N. 80; [1900] 1 Ch. 718 .. ..	1127
Thomson v. Clydesdale Bank .. ..	H. L. (Sc.) [1893] A. C. 282 .. ..	99, 2077
Thomson:—Guyot v. .. ..	C. A. [1894] 3 Ch. 388 .. ..	1433
Thomson:—Lord Advocate v. .. ..	Ct. of Sess. (Sc.) [1897] W. N. 141 .. ..	1803
Thomson v. Thomson and Rodschinka .. ..	C. A. [1896] P. 263 .. ..	718
Thomson v. Trustees, Executors, and Securities Insurance Corporation .. ..	[1895] 2 Ch. 454 .. ..	381
Thorley, In re. Thorley v. Massam .. ..	C. A. [1891] 2 Ch. 613 .. ..	2196
Thorn:—Henderson v. .. ..	[1893] 2 Q. B. 164 .. ..	1061
Thorne v. Cann .. ..	H. L. (E.) [1895] A. C. 11 .. ..	1297
Thorne v. Gibbs. In re Gibbs .. ..	[1898] 1 Ch. 625 .. ..	1742
Thorne v. Heard .. ..	[1893] 3 Ch. 530; C. A. [1894] 1 Ch. 599; H. L. (E.) [1895] A. C. 495 .. ..	1128, 2192
Thorne v. Thorne .. ..	[1893] 3 Ch. 196 .. ..	786, 800
Thorne-George v. Godfrey. In re Godfrey .. ..	C. A. [1895] W. N. 12 .. ..	919
Thorneloe v. Hill .. ..	[1894] 1 Ch. 569 .. ..	2139
Thornley v. Thornley .. ..	[1893] 2 Ch. 229 .. ..	904
Thornton v. France .. ..	C. A. [1897] 2 Q. B. 143 .. ..	1133
Thornton v. Gutta Percha Corporation, Ltd. In re Gutta Percha Corporation, Ltd. .. ..	[1899] W. N. 251 .. ..	1554
Thornycroft's Patent, In re .. ..	P. C. [1899] A. C. 415 .. ..	1440
Thorpe, In re. Vipont v. Radcliffe .. ..	[1891] 2 Ch. 360 .. ..	795, 2060
Thorpe:—Cattle v. .. ..	[1900] W. N. 83 .. ..	1722
Thorpe v. Priestnall .. ..	[1896] W. N. 171 (6); [1897] 1 Q. B. 159 .. ..	2094
"Thorsa," The (Owners of):—The "Otto" (Owners of) v. The "Otto" .. ..	H. L. (Sc.) [1894] A. C. 116 .. ..	1954
Thrunscoc, The .. ..	[1897] P. 30 .. ..	1969
Thurburn v. Merlin. In re Merlin .. ..	[1898] W. N. 56 (3) .. ..	1484
Thurlow (Lord), In re. Ex parte Official Receiver .. ..	[1895] 1 Q. B. 724 .. ..	111
Thurlow (Lord):—Marwick v. .. ..	[1895] 1 Ch. 776 .. ..	317

Name of Case.	Volume and Page.	Column of Digest.
Thursby v. Briercliffe-with-Extwistle (Church-wardens, &c.) .. .. .	[1894] 1 Q. B. 567; C. A. [1894] 2 Q. B. 11; H. L. (E.) [1895] A. C. 32 .. .. .	1048, 1257, 1680, 2082
Thurston v. Nottingham Permanent Benefit Building Society .. .. .	[1900] W. N. 239 .. .. .	227
Thwaites v. Coulthwaite .. .. .	[1896] 1 Ch. 496 .. .. .	1411
Thynne v. Sarl .. .. .	[1891] 2 Ch. 79 .. .. .	1283
Tibbatts v. Boulter .. .. .	[1895] W. N. 152 (4) .. .. .	517
Tibbitts' Settled Estates, In re .. .. .	[1897] 2 Ch. 149 .. .. .	1892
Tidd, In re. Tidd v. Overell .. .. .	[1893] 3 Ch. 154 .. .. .	88, 1126
Tidy:—Reg. v. .. .. .	[1892] 2 Q. B. 179 .. .. .	1640
Tidy:—Robson v. In re Smith .. .. .	[1900] W. N. 75 .. .. .	1902
Tiedemann and Ledermann Frères, In re .. .. .	[1899] 2 Q. B. 66 .. .. .	1578
Tiessen v. Henderson .. .. .	[1899] W. N. 45; [1899] 1 Ch. 861 .. .. .	358
Tilbury Portland Cement Co., In re .. .. .	[1893] W. N. 141 .. .. .	302
Tillekeratne (Daniel):—Hamini (Dona Mona Abeyesekera) v. .. .. .	[1897] A. C. 277 .. .. .	266
Tilley & Co., In re an Arbitration between the Portland Urban District Council and .. .. .	[1896] 2 Q. B. 98 .. .. .	66
Tilling, Ld. v. Blythe .. .. .	C. A. [1899] 1 Q. B. 557 .. .. .	1699
Tillott, In re. Lee v. Wilson .. .. .	[1892] 1 Ch. 86 .. .. .	2184
Tillstone:—Blaker v. .. .. .	[1894] 1 Q. B. 345 .. .. .	830, 1037
Tilt, In re. Lampet v. Kennedy .. .. .	[1896] W. N. 9 (10) .. .. .	2161
Timberhill, St. John the Baptist (Rector, &c.) } The Same (Vicar, &c.) v. .. .. .	[1895] P. 71 .. .. .	751
Timmis v. Albiston .. .. .	[1895] 2 Q. B. 58 .. .. .	546
Timothy v. Crown .. .. .	[1900] W. N. 51 .. .. .	1524
Tindall, Ex parte. Burchard v. Macfarlane .. .. .	C. A. [1891] 2 Q. P. 241 .. .. .	663
Tippett v. Strutt .. .. .	[1891] W. N. 112 .. .. .	981
Titchmarsh v. Royston Water Co. .. .. .	[1899] W. N. 256 .. .. .	2290
Tithe Act, 1891, In re The. Hughes v. Rimmer .. .. .	[1893] 2 Q. B. 314 .. .. .	2112
Tithe Act, 1891, In re. Roberts v. Potts .. .. .	[1893] 2 Q. B. 33; C. A. [1894] 1 Q. B. 213 .. .. .	1688, 2068, 2071
Titterton:—Reg. v. .. .. .	[1895] 2 Q. B. 61 .. .. .	20
Tobias & Co., In re. Ex parte H. A. Tobias .. .. .	[1891] 1 Q. B. 463 .. .. .	124
Tobitt:—Gower v. .. .. .	C. A. [1891] W. N. 6 .. .. .	62, 1499
Tod:—Inland Revenue Commrs. v. .. .. .	H. L. (Sc.) [1898] A. C. 399 .. .. .	1793
Tod-Heatley:—Att.-Gen. v. .. .. .	C. A. [1897] 1 Ch. 560 .. .. .	1353
Tod-Heatley:—Leader v. .. .. .	[1891] W. N. 38 .. .. .	1565
Tod-Heatly:—Shorter v. .. .. .	[1894] W. N. 21 .. .. .	572, 2048
Todd's Divorce Bill .. .. .	H. L. [1896] W. N. 60 (3) .. .. .	696
Todmorden Co-operative Society:—Escritt v. .. .. .	[1896] 1 Q. B. 461 .. .. .	940
Tofield v. Roberts .. .. .	[1894] W. N. 74 .. .. .	1488, 1562
Toleman, In re. Westwood v. Booker .. .. .	[1897] 1 Ch. 866 .. .. .	1606
Tolley:—Renner v. .. .. .	[1893] W. N. 90 .. .. .	1078
Tolworth Joint Isolation Hospital District Board:—Markey v. .. .. .	[1900] 2 Q. B. 454 .. .. .	1634
Tom Tit Cycle Co., In re. Fisher's Case .. .. .	[1899] W. N. 35 (6) .. .. .	424
Tombs:—Brown v. .. .. .	[1891] 1 Q. B. 253 .. .. .	1387
Tomkinson v. Balkis Consolidated Co. .. .. .	C. A. [1891] 2 Q. B. 614; H. L. (E.) [1893] A. C. 396 .. .. .	393, 402, 403
Tomkinson:—Martin v. .. .. .	[1893] 2 Q. B. 121 .. .. .	1403

Name of Case.	Volume and Page.	Column of Digest.
Tomkinson & Co.:—Mellor <i>v.</i> .. .. .	C. A. [1899] W. N. 8 (2); [1899] 1 Q. B. 374 .. .. .	1216
Tomlin <i>v.</i> Latter. In re Price .. .. .	[1900] W. N. 36; [1900] 1 Ch. 442 .. .. .	1473
Tomlin's Case. In re Brinsmead (T. E.) & Sons	[1897] W. N. 162 (3); C. A. [1898] 1 Ch. 104 .. .. .	422
Tomlinson In re. Tomlinson <i>v.</i> Andrew .. .. .	[1897] W. N. 178 (4); [1898] 1 Ch. 232 .. .. .	2337
Tomlinson <i>v.</i> Broadsmith .. .. .	C. A. [1896] 1 Q. B. 386 .. .. .	81
Tomlinson:—Reg. <i>v.</i> .. .. .	C. C. R. [1895] 1 Q. B. 706 .. .. .	621
Tomlinson:—Reynolds & Co. <i>v.</i> .. .. .	[1896] 1 Q. B. 586 .. .. .	1943
Tompson:—Clifton College <i>v.</i> .. .. .	[1896] 1 Q. B. 432 .. .. .	1757
Tomson:—Barnard <i>v.</i> .. .. .	[1894] 1 Ch. 374 .. .. .	227
Toms <i>v.</i> Clacton Urban District Council .. .. .	[1898] W. N. 61 (10) .. .. .	567
Tong:—Bassett <i>v.</i> .. .. .	[1894] 2 Q. B. 332 .. .. .	594
Tonge <i>v.</i> Tonge. Anderson <i>v.</i> Eykyn .. .. .	[1892] P. 51 .. .. .	692
Toohy:—Harrowing Steamship Co. <i>v.</i> .. .. .	[1900] 2 Q. B. 28 .. .. .	1998
Tooth <i>v.</i> Power .. .. .	P. C. [1891] A. C. 284 .. .. .	1324
Torish:—Clarke <i>v.</i> (Aiken's Case) .. .. .	C. A. (Ir.) [1897] W. N. 127 .. .. .	1383
Torish <i>v.</i> Clark (Monaghan's Case) .. .. .	C. A. (Ir.) [1897] W. N. 102 .. .. .	1402
Torish <i>v.</i> Clark (Starrs' Case) .. .. .	C. A. (Ir.) [1897] W. N. 112 .. .. .	1378
Torish <i>v.</i> Henderson .. .. .	C. A. (Ir.) [1897] W. N. 112 .. .. .	1368
Torish:—Moorehead <i>v.</i> .. .. .	C. A. (Ir.) [1898] W. N. 95 .. .. .	1394
Torish <i>v.</i> Love .. .. .	C. A. (Ir.) [1898] W. N. 93 .. .. .	1378
Toronto (Consumers' Gas Co. of):—Johnson and Toronto Type Foundry Co. <i>v.</i> .. .. .	P. C. [1898] A. C. 447 .. .. .	253
Toronto Corporation:—Toronto Street Ry. Co. <i>v.</i> .. .. .	P. C. [1893] A. C. 511 .. .. .	254
Toronto (Municipal Corporation of City of) <i>v.</i> Virgo .. .. .	P. C. [1896] A. C. 88 .. .. .	254
Toronto Ry. Co. <i>v.</i> Reg. .. .. .	P. C. [1896] A. C. 551 .. .. .	245
Toronto Street Ry. <i>v.</i> Toronto Corporation .. .. .	P. C. [1893] A. C. 511 .. .. .	254
Torva Exploring Syndicate <i>v.</i> Kelly .. .. .	P. C. [1900] A. C. 612 .. .. .	261
Tottenham, In re. Tottenham <i>v.</i> Tottenham .. .. .	[1896] 1 Ch. 628 .. .. .	791
Tottenham:—Royal Bank of Scotland <i>v.</i> .. .. .	C. A. [1894] 2 Q. B. 715 .. .. .	94
Tottenham and Edmonton Permanent Investment Building Society:—Bonner <i>v.</i> .. .. .	C. A. [1898] W. N. 165 (10); [1899] 1 Q. B. 161 .. .. .	1082
Tottenham and Forest Gate Ry. Co.:—Houghton <i>v.</i> .. .. .	[1892] W. N. 88 .. .. .	1528
Tottenham and Forest Gate Ry. Co.:—Morris <i>v.</i> .. .. .	[1892] 2 Ch. 47 .. .. .	1655
Tottenham and Forest Gate Ry. Co.:—Protheroe <i>v.</i> .. .. .	C. A. [1891] 3 Ch. 278 .. .. .	1654
Tottenham Urban District Council <i>v.</i> William-son & Sons, Ltd. .. .. .	[1896] 2 Q. B. 353 .. .. .	1347
Tousey <i>v.</i> Sheffield. In re Dixon .. .. .	[1898] W. N. 65 (2); C. A. [1898] 2 Ch. 443 .. .. .	553
Towell:—Isaacs <i>v.</i> .. .. .	[1898] 2 Ch. 285 .. .. .	2243
Tower Assets Co.:—Beckett <i>v.</i> .. .. .	[1891] 1 Q. B. 1; C. A. [1891] 1 Q. B. 638 .. .. .	205
Tower Publishing Co. and Moncrieff:—Griffith <i>v.</i> .. .. .	[1897] 1 Ch. 21 .. .. .	511
Towersson <i>v.</i> Jackson .. .. .	C. A. [1891] 2 Q. B. 484 .. .. .	1079, 1275
Townend, Claimant. Buckley <i>v.</i> Crawford .. .. .	[1893] 1 Q. B. 105 .. .. .	932
Townend <i>v.</i> Kirkham .. .. .	C. A. [1897] W. N. 163 (6); [1898] 1 Q. B. 51 .. .. .	1492
Townsend <i>v.</i> Jarman .. .. .	[1900] W. N. 172; [1900] 2 Ch. 698 .. .. .	1420
Townsend:—Pertwee <i>v.</i> .. .. .	[1896] 2 Q. B. 129 .. .. .	1714
Townsend's Contract, In re .. .. .	[1896] 1 Ch. 716 .. .. .	2249

Name of Case.	Volume and Page.	Column of Digest.
Trade-Mark 96,997. In re Field & Co. (J. C. & J.) v. Wagel Syndicate .. ..	[1900] W. N. 67; [1900] 1 Ch. 651 .. ..	2137
Trafford:—Muller v. .. ..	[1900] W. N. 251 .. ..	1084
Trainor v. Starbruck .. ..	[1893] W. N. 196 .. ..	1388
Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines, Ltd. .. ..	[1899] W. N. 122; [1899] 2 Ch. 370 .. ..	381
Travis, In re. Frost v. Greatorrex .. ..	C. A. [1900] W. N. 159; [1900] 2 Ch. 451 .. ..	9
Travis v. Uttley .. ..	[1894] 1 Q. B. 233 .. ..	1914
Traynor v. Jones .. ..	[1894] 1 Q. B. 83 .. ..	1100
Treadgold v. Grantham (Town Clerk of) .. ..	[1895] 1 Q. B. 163 .. ..	1391
Treboeth Brick Co., Ex parte. In re Phillips .. ..	[1896] 2 Q. B. 122 .. ..	121
Treasure, In re. Wild v. Stanham .. ..	[1900] W. N. 181; [1900] 2 Ch. 648 .. ..	2363
Tredegar Iron and Coal Co. v. Owners of SS. "Calliope" .. ..	H. L. (E.) [1891] A. C. 11 .. ..	2017
Tredwell, In re. Jeffray v. Tredwell (No. 1) .. ..	C. A. [1891] 2 Ch. 640 .. ..	2319, 2329
Treeby:—Hatton v. .. .. (No. 2) .. ..	[1891] W. N. 201 .. ..	786
Treeb:—Hatton v. .. ..	1897] 2 Q. B. 452 .. ..	190
Treemer:—Ecclesiastical Commrs. v. .. ..	[1893] 1 Ch. 166 .. ..	1076, 1136
Tréfond, In the Goods of .. ..	[1899] P. 247 .. ..	1605
Trego v. Hunt .. ..	C. A. [1895] 1 Ch. 462; H. L. (E.) [1896] A. C. 7 .. ..	1419
Treharris Brewery Co.:—Davies v. .. ..	[1894] W. N. 198 .. ..	564, 916
Treleaven:—Curran v. .. ..	[1891] 2 Q. B. 545 .. ..	607, 2143
Trench v. Hamilton. In re Hamilton .. ..	[1895] 1 Ch. 373; C. A. [1895] 2 Ch. 370 .. ..	2352
Trench v. Heathcote. In re Heathcote .. ..	[1891] W. N. 10 .. ..	1906
Trench Tubeless Tyre Co., In re. Bethell v. Trench Tubeless Tyre Co. .. ..	[1899] W. N. 258; C. A. [1900] W. N. 42; [1900] 1 Ch. 408 .. ..	448
Trent-Stoughton v. Barbados Water Supply Co. .. ..	P. C. [1893] A. C. 502 .. ..	186
Trevor v. Hutchins .. ..	C. A. [1896] 1 Ch. 844 .. ..	804
Trevor-Garrick:—Stevens v. .. ..	[1893] 2 Ch. 307 .. ..	957
Trew v. Perpetual Trustee Co. .. ..	P. C. [1895] A. C. 264 .. ..	1334, 2354
Trieste (General Insurance Co. of) (Assicurazioni Generali) v. Cory .. ..	[1897] 1 Q. B. 335 .. ..	1001
Trigg:—Hall & Co. v. .. ..	[1897] 2 Ch. 219 .. ..	79
Trinder, Anderson & Co. v. Thames and Mersey Marine Insurance Co. The Same v. North Queensland Insurance Co. The Same v. Weston, Crocker & Co. .. ..	C. A. [1898] 2 Q. B. 114 .. ..	997
Trinidad Asphalt Co. v. Ambard .. ..	P. C. [1899] 2 Ch. 260, n.; [1899] A. C. 594 .. ..	2096
Trinidad Asphalt Co. v. Coryat .. ..	P. C. [1896] A. C. 587 .. ..	1706
Trinidad and Tobago (Att.-Gen. for) v. Bourne .. ..	P. C. [1895] A. C. 83 .. ..	624, 2156
Trinidad and Tobago (Att.-Gen. for) v. Eriché .. ..	P. C. [1893] A. C. 518 .. ..	599, 769, 2156
Trinity House (Corporation of):—Richmond Hill Steamship Co. v. .. ..	C. A. [1896] 2 Q. B. 134 .. ..	2017
Tristram (Dr.):—Reg. v. .. ..	[1898] 2 Q. B. 371 .. ..	744
Tritton, In re .. ..	[1891] W. N. 194 .. ..	1049
Tritton:—Blewitt v. .. ..	C. A. [1892] 2 Q. B. 327 .. ..	45, 1803
Trollope v. London Building Trades Federation .. ..	[1895] W. N. 29; C. A. [1895] W. N. 45 .. ..	650, 969, 2143

Name of Case.	Volume and Page.	Column of Digest.
Trollope & Sons:—Sims <i>v.</i> .. .. .	C. A. [1896] W. N. 160 (4); [1897] 1 Q. B. 24 .. .. .	197
Trotter, In re. Trotter <i>v.</i> Trotter .. .. .	[1899] W. N. 36 (13); [1899] 1 Ch. 764 .. .. .	2309
Trotter:—Logsdon <i>v.</i> .. .. .	[1900] 1 Q. B. 617 .. .. .	1148
Troughton, In re. Rent and General Collecting and Estate Co. <i>v.</i> Troughton .. .. .	[1894] W. N. 154 .. .. .	852
Troup, Ex parte. In re Hawkins .. .. .	C. A. [1895] 1 Q. B. 404 .. .. .	159
Trouville Pier and Steamboat Co. and Harding:—Darlington Wagon Co. <i>v.</i> .. .. .	[1891] 1 Q. B. 245 .. .. .	59
Trubee's Trusts, In re .. .. .	[1892] 3 Ch. 55 .. .. .	2199
Trubshawe:—Sheba Gold Mining Co. <i>v.</i> .. .. .	[1892] 1 Q. B. 674 .. .. .	1566
True Blue (Hannan's) Gold Mining Co.:—Burdett-Coutts <i>v.</i> .. .. .	[1899] W. N. 97; C. A. [1899] W. N. 113; [1899] 2 Ch. 616 .. .. .	380
Truefitt, Ld.:—Cowen <i>v.</i> .. .. .	[1898] 2 Ch. 551; C. A. [1899] W. N. 102; [1899] 2 Ch. 309 .. .. .	1077
Truman's Case. In re Brewery Assets Corporation .. .. .	[1894] 3 Ch. 272 .. .. .	372, 393
Truman, Hanbury, Buxton & Co. <i>v.</i> Kerslake .. .. .	[1894] 2 Q. B. 774 .. .. .	1349
Trust and Investment Corporation of South Africa, In re. In re Bertram Luipaard's Vlei Gold Mining Co. .. .. .	C. A. [1892] 3 Ch. 332 .. .. .	440, 441
Trustee, Ex parte. In re Ford .. .. .	[1900] W. N. 124; [1900] 2 Q. B. 211 .. .. .	144
Trustee, Ex parte. In re Warren .. .. .	[1900] 2 Q. B. 138 .. .. .	133
Trustee, The, Ex parte. In re Goetz, Jonas & Co. .. .. .	C. A. [1898] 1 Q. B. 787 .. .. .	137
Trustees in Bankruptcy, Ex parte. In re Helsby .. .. .	C. A. [1894] 1 Q. B. 742 .. .. .	113
Trustee in Bankruptcy, Ex parte. In re Hildesheim .. .. .	C. A. [1893] 2 Q. B. 357 .. .. .	152
Trustee (The), Ex parte. In re Carl Hirth .. .. .	C. A. [1899] W. N. 10 (2); [1899] 1 Q. B. 612 .. .. .	102
Trustees, Executors, and Securities Insurance Corporation:—Morrison <i>v.</i> .. .. .	C. A. [1898] W. N. 154 (3) .. .. .	395
Trustees, Executors, and Securities Insurance Corporation:—Thomson <i>v.</i> .. .. .	[1895] 2 Ch. 454 .. .. .	381
Trustees, Executors, and Securities Investment Corporation:—Imperial Ottoman Bank <i>v.</i> .. .. .	[1895] W. N. 23 .. .. .	516
Truswell:—Hollinrake <i>v.</i> .. .. .	[1893] 2 Ch. 377; C. A. [1894] 3 Ch. 420 .. .. .	527, 1426
Tsune Kijima:—Peninsular and Oriental Steam Navigation Co. <i>v.</i> .. .. .	P. C. [1895] A. C. 661 .. .. .	837, 1511
Tubbs <i>v.</i> Wynne .. .. .	[1896] W. N. 167 (11); [1897] 1 Q. B. 74 .. .. .	2222
Tucker, In re .. .. .	[1897] P. 83 .. .. .	717
Tucker, In re. Tucker <i>v.</i> Tucker (No. 1) .. .. .	[1893] 2 Ch. 323 .. .. .	30
————— (No. 2) .. .. .	[1894] 1 Ch. 724; C. A. [1894] 3 Ch. 429 .. .. .	1423, 2185
Tucker <i>v.</i> Vowles .. .. .	[1893] 1 Ch. 195 .. .. .	2225
Tucker <i>v.</i> Wintle. In re Wintle .. .. .	[1896] 2 Ch. 711 .. .. .	2317
Tucker's Settled Estates, In re .. .. .	C. A. [1895] 2 Ch. 468 .. .. .	1864, 793, 1470, 1729
Tucket <i>v.</i> Shaw. In re Shaw .. .. .	[1895] 1 Ch. 343 .. .. .	753
Tugwell:—Wright <i>v.</i> In re Robinson .. .. .	[1892] 1 Ch. 95; C. A. [1896] W. N. 170 (2); [1897] 1 Ch. 85 .. .. .	520, 2349
Tullett <i>v.</i> Colville. In re Wood .. .. .	[1894] 2 Ch. 310; C. A. [1894] 3 Ch. 381 .. .. .	

Name of Case.	Volume and Page.	Column of Digest.
Tulley:—Dyer <i>v.</i> .. .. .	[1894] 2 Q. B. 794 .. .. .	1030,
Tullis <i>v.</i> Jacson .. .. .	[1892] 3 Ch. 441 .. .. .	2070
Tulloch:—Hobson <i>v.</i> .. .. .	[1898] 1 Ch. 424 .. .. .	55, 59
Tunbridge Wells Corporation:—Baird <i>v.</i> .. .. .	C. A. [1894] 2 Q. B. 867; H. L. (E.) [1896] A. C. 434 ..	601
Tunks:—Batho <i>v.</i> .. .. .	[1892] W. N. 101 .. .. .	2079,
Turcan:—Caledonian Ry. Co. <i>v.</i> .. .. .	H. L. (Sc.) [1898] A. C. 256 ..	2202
Turnbull, In re. Turnbull <i>v.</i> Nicholas .. .. .	[1899] W. N. 229; [1900] 1 Ch. 180 .. .. .	1724
Turnbull, In re. Turnbull <i>v.</i> Turnbull .. .. .	[1897] 2 Ch. 415 .. .. .	1088
Turnbull <i>v.</i> Hayes. In re Hayes .. .. .	[1900] W. N. 139; [1900] 2 Ch. 332 .. .. .	914
Turnbull:—Irving <i>v.</i> .. .. .	[1900] 2 Q. B. 129 .. .. .	980
Turnbull, Martin & Co. <i>v.</i> Hull Underwriters Association .. .. .	[1900] 2 Q. B. 402 .. .. .	1477
Turnbull <i>v.</i> West Riding Athletic Club (Leeds) .. .. .	[1894] W. N. 4 .. .. .	221
Turnell <i>v.</i> Sanderson .. .. .	[1891] W. N. 71 .. .. .	992
Turner, In re. Barker <i>v.</i> Ivimey .. .. .	[1897] 1 Ch. 536 .. .. .	340, 960
Turner:—Born <i>v.</i> .. .. .	[1900] W. N. 122; [1900] 2 Ch. 211 .. .. .	51, 1413
Turner <i>v.</i> Goldsmith .. .. .	C. A. [1891] 1 Q. B. 544 .. .. .	2176
Turner <i>v.</i> Green .. .. .	[1895] 2 Ch. 205 .. .. .	1119
Turner:—Greenwood <i>v.</i> .. .. .	[1891] 2 Ch. 144 .. .. .	514
Turner:—Jacomb <i>v.</i> .. .. .	[1892] 1 Q. B. 47 .. .. .	2062
Turner:—Jersey (Attorney-General and Receiver-General) <i>v.</i> .. .. .	P. C. [1893] A. C. 326 .. .. .	2229
Turner (Judge) and Hodgson:—Reg. <i>v.</i> .. .. .	[1897] 1 Q. B. 445 .. .. .	935
Turner <i>v.</i> King. In re Davenport .. .. .	[1895] 1 Ch. 361 .. .. .	1020
Turner <i>v.</i> Mersey Docks and Harbour Board. The "Zeta" .. .. .	[1891] P. 216; C. A. [1892] P. 285; H. L. (E.) [1893] A. C. 468 .. .. .	592
Turner:—Ottley <i>v.</i> In re Lord Ongley .. .. .	C. A. [1896] W. N. 54 (16) .. .. .	901
Turner:—Raybould <i>v.</i> In re Raybould .. .. .	[1899] W. N. 244; [1900] 1 Ch. 199 .. .. .	1959
Turner <i>v.</i> Smith .. .. .	[1900] W. N. 273 .. .. .	2360
Turner:—Spiller <i>v.</i> .. .. .	[1897] 1 Ch. 911 .. .. .	2183
Turner <i>v.</i> Stallibrass .. .. .	C. A. [1897] W. N. 167 (9); [1898] 1 Q. B. 56 .. .. .	1291
Turner <i>v.</i> Watson. In re Watson .. .. .	[1896] 1 Ch. 925 .. .. .	310
Turner Brothers:—Francis <i>v.</i> .. .. .	C. A. [1900] 1 Q. B. 478 .. .. .	585
Turney, In re. Turney <i>v.</i> Turney .. .. .	[1899] W. N. 211; C. A. [1899] 2 Ch. 739 .. .. .	803
Turpin <i>v.</i> Somerton, &c., Tramway Co. .. .. .	[1900] W. N. 94 .. .. .	1224
Tussaud (Louis):—Monson <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 671 .. .. .	2351
Tussaude, Ld.:—Monson <i>v.</i> .. .. .	C. A. [1894] 1 Q. B. 671 .. .. .	1363
Tuticorin Cotton Press Co., In re .. .. .	[1894] W. N. 181 .. .. .	645, 963
Tweed, Ex parte .. .. .	C. A. [1899] 2 Q. B. 167 .. .. .	645, 963
Tweedale, In re. Ex parte Tweedale .. .. .	[1892] 2 Q. B. 216 .. .. .	401,
Twickenham Urban Council <i>v.</i> Munton .. .. .	[1898] W. N. 170 (14); [1899] 1 Ch. 168; C. A. [1899] W. N. 103; [1899] 2 Ch. 603 .. .. .	1830
Twigg's Estate, In re. Twigg <i>v.</i> Black .. .. .	[1892] 1 Ch. 579 .. .. .	2026
Twigg & Co.:—Westbury <i>v.</i> Gregson (Claimant) .. .. .	[1892] 1 Q. B. 77 .. .. .	131
Twiss:—Aaron's Reefs, Ld. <i>v.</i> .. .. .	H. L. (I.) [1896] A. C. 273 .. .. .	2085
Twist:—Gwilliam <i>v.</i> .. .. .	[1895] 1 Q. B. 557; C. A. [1895] 2 Q. B. 84 .. .. .	1013
Twyerould <i>v.</i> Chamber Colliery Co. .. .. .	C. A. [1892] W. N. 27 .. .. .	485
		374
		1242
		1267

Name of Case.	Volume and Page.	Column of Digest.
Tye, In re .. .. .	C. A. [1900] W. N. 8; [1900] 1 Ch. 249 .. ..	1191
Tyler, In re. Tyler v. Tyler .. ..	[1891] 3 Ch. 252 .. ..	279, 280, 2318, 2347
Tyler :—Cameron v. .. .. .	[1899] W. N. 80; [1899] 2 Q. B. 94 .. ..	2295
Tyler v. Kingham & Son, Ltd. .. ..	[1900] 2 Q. B. 413 .. ..	23
Tyler and the International Commercial Co.:—Reg. v. .. .. .	C. A. [1891] 2 Q. B. 588 .. ..	36
Tylor :—Oriental Steamship Co. v. .. ..	C. A. [1893] 2 Q. B. 518 .. ..	1974
Tyndall v. Castle .. .. .	[1893] W. N. 40 .. ..	2225
Tyndall :—Lawledge v. In re Cook's Mortgage	[1896] 1 Ch. 923 .. ..	934
Tyne Improvement Commrs. :—Arrow Shipping Co. v. The "Crystal" .. ..	H. L. (E.) [1894] A. C. 508 .. ..	2012
Tyne and Blyth Shipping Co. v. Leech, Harrison and Forwood .. .. .	[1900] 2 Q. B. 12 .. ..	1961
Tynemouth Corporation v. Att.-Gen. .. ..	C. A. [1898] 1 Q. B. 604; H. L. (E.) [1899] W. N. 71; [1899] A. C. 293 .. ..	544
Tynemouth Rural District Council :—Reg. v. .. ..	C. A. [1896] 2 Q. B. 451 .. ..	1918
"Tynwald," The .. .. .	[1895] P. 142 .. ..	1999, 2070
Tyrrell v. Painton (No. 1) .. .. .	C. A. [1894] P. 151 .. ..	1619
(No. 2) .. .. .	C. A. [1895] 1 Q. B. 202 .. ..	1697
Tyrrell :—Reg. v. .. .. .	C. C. R. [1894] 1 Q. B. 710 .. ..	620
Tyser v. Shipowners' Syndicate (Re-assured) .. ..	[1896] 1 Q. B. 135 .. ..	998
Tyser :—Sleigh v. .. .. .	[1900] 2 Q. B. 333 .. ..	1000
Tyson v. Kelcey. In re Kelcey .. .. .	[1899] W. N. 133; [1899] 2 Ch. 530 .. ..	1298
Tyssen, In re. Knight-Bruce v. Butterworth .. ..	[1894] 1 Ch. 56 .. ..	1476

## U.

Uckfield Rural Council v. Crowborough District Water Co. .. .. .	[1899] 2 Q. B. 664 .. ..	222
Ugle:—Ellenor v. .. .. .	[1895] W. N. 161 (8) .. ..	1702
Ultzen v. Nicols .. .. .	[1894] 1 Q. B. 92 .. ..	89
“Umbilo,” The .. .. .	[1891] P. 118 .. ..	1984
Underwood v. Underwood .. .. .	C. A. [1894] P. 204 .. ..	688
Underwood:—Wimbledon Local Board v. .. ..	[1892] 1 Q. B. 836 .. ..	209, 1688
Underwood (E.) & Son, Ltd. v. Barker .. ..	C. A. [1899] W. N. 11 (7); [1899] 1 Ch. 300 .. ..	1725
Underwood, Son & Piper v. Lewis .. ..	C. A. [1894] 2 Q. B. 306 .. ..	2057
Underwriting and Agency Association:—Henderson v. .. .. .	[1891] 1 Q. B. 557 .. ..	667
Union Bank of Australia, Ex parte. In re Queensland Mercantile and Agency Co. Ex parte Australasian Investment Co. (No. 1) .. ..	[1891] 1 Ch. 536; C. A. [1892] 1 Ch. 219 .. ..	491
(No. 2)	[1891] W. N. 132 .. ..	481
Union Bank of Canada:—Tennant v. .. ..	P. C. [1894] A. C. 31 .. ..	239, 240, 292
Union Bank of London, Garnishees. Barnett v. Howard .. .. .	C. A. [1900] W. N. 179; [1900] 2 Q. B. 784 .. ..	918
Union Colliery Co. of British Columbia v. Bryden .. .. .	P. C. [1899] A. C. 580 .. ..	249

Name of Case.	Volumes and Page.	Column of Digest.
Union Credit Bank <i>v.</i> Mersey Docks and Harbour Board. Same <i>v.</i> Same and North and South Wales Bank .. .. .	[1899] 2 Q. B. 205 .. ..	2158
Union Marine Insurance Co. <i>v.</i> Borwick .. ..	[1895] 2 Q. B. 279 .. ..	987
Union Steamship Co. <i>v.</i> Claridge .. ..	P. C. [1894] A. C. 185 .. ..	1243
Union Steamship Co.:—Weir <i>v.</i> .. ..	C. A. [1900] 1 Q. B. 28; H. L. (E.) [1900] W. N. 168; [1900] A. C. 525 .. ..	1934
Union Works, Ltd.:—Oldrey <i>v.</i> .. ..	[1895] W. N. 77 .. ..	315, 322, 1503
Unionist Club, Ltd., In re .. ..	[1891] W. N. 64 .. ..	447, 451
United Alkali Co. <i>v.</i> Simpson .. ..	[1894] 2 Q. B. 116 .. ..	1987
United Forty Pound Loan Club <i>v.</i> Bexton .. ..	[1891] 1 Q. B. 28, n. .. ..	205
United Kingdom Marine Mutual Insurance Association:—Small <i>v.</i> .. ..	[1897] 2 Q. B. 42; affirmed by C. A. [1897] 2 Q. B. 311 .. ..	984
United Kingdom Mutual Steamship Assurance Association <i>v.</i> Houston & Co. .. ..	[1896] 1 Q. B. 567 .. ..	59
United Kingdom Mutual Steamship Assurance Association:—Montgomerie <i>v.</i> .. ..	[1891] 1 Q. B. 370 .. ..	996
United Ordnance and Engineering Co., Ex parte. In re Hooley .. ..	[1899] 2 Q. B. 579 .. ..	149
United Service Association, In re .. ..	[1900] W. N. 243; [1901] 1 Ch. 97 .. ..	422
United Realization Co. <i>v.</i> Inland Revenue Commrs. .. ..	[1899] 1 Q. B. 361 .. ..	1800
United States of America <i>v.</i> Pelly .. ..	[1899] W. N. 12 (9) .. ..	834
Universal Automatic Machines Co.:—Wallace <i>v.</i> .. ..	C. A. [1894] 2 Ch. 547 .. ..	315
Universal Stock Exchange, Ltd.:—McHarg <i>v.</i> .. ..	[1895] 2 Q. B. 81 .. ..	40
Universal Stock Exchange, Ltd. <i>v.</i> Strachan (No. 1) .. ..	C. A. [1895] 2 Q. B. 329; H. L. (E.) [1896] A. C. 166 .. ..	2075
(No. 2) .. ..	C. A. [1895] 2 Q. B. 697 .. ..	870
Universo Insurance Co. of Milan <i>v.</i> Merchants Marine Insurance Co. .. ..	[1896] W. N. 169 (6); [1897] 1 Q. B. 205; affirmed by C. A. [1897] 2 Q. B. 93 .. ..	998
Unsworth <i>v.</i> Jordan .. ..	[1896] W. N. 2 (5) .. ..	1416
Unwin <i>v.</i> Hanson .. ..	C. A. [1891] 2 Q. B. 115 .. ..	891
Unwin <i>v.</i> McMullen .. ..	C. A. [1891] 1 Q. B. 694 .. ..	37, 547
Upperton <i>v.</i> Ridley .. ..	[1900] 1 Q. B. 680 .. ..	1454
Upton <i>v.</i> Jeans. In re Jeans .. ..	[1895] W. N. 98 .. ..	2314, 2325
Usher:—Matthews <i>v.</i> .. ..	C. A. [1900] 2 Q. B. 535 .. ..	1079
“Utopia,” The. The “Utopia” (Owners of) <i>v.</i> .. ..	P. C. [1893] A. C. 492 .. ..	1954
“Primula” (Owners, &c., of) .. ..	[1893] W. N. 158 .. ..	2368
Uttermare, In re. Leeson <i>v.</i> Foulis .. ..	[1894] 1 Q. B. 233 .. ..	1914
Uttley:—Travis <i>v.</i> .. ..	[1891] W. N. 31 .. ..	1918
Uxbridge Union Rural Sanitary Authority:—Jersey, Earl <i>v.</i> (No. 1) .. ..	[1891] 3 Ch. 183 .. ..	1918
(No. 2) .. ..		

## V.

Vagliano Brothers:—Bank of England <i>v.</i> .. ..	H. L. (E.) [1891] A. C. 107 .. ..	95, 192, 2066
Vale & Sons <i>v.</i> Moorgate Street and Broad Street Buildings, Ltd. .. ..	[1899] W. N. 52 .. ..	1063
Vale of Evesham Preserves Co.:—Davies <i>v.</i> .. ..	[1895] W. N. 105 .. ..	1700
Vallancey <i>v.</i> Fletcher .. ..	[1897] 1 Q. B. 265 .. ..	752



Name of Case.	Volume and Page.	Column of Digest.
Valley Gold, <i>Ld.</i> :— <i>Sneath v.</i> .. ..	C. A. [1893] 1 Ch. 477 .. ..	326
Vanderspar & Co. <i>v.</i> Duncan & Co. .. ..	[1891] W. N. 178 .. ..	1941
Vane:— <i>Millbank v.</i> .. ..	C. A. [1893] 3 Ch. 79 .. ..	2324
Van Grutten:— <i>Foxwell v.</i> .. ..	C. A. [1896] W. N. 158 (6), 161 (11); [1897] 1 Ch. 64 .. ..	1697
Van Grutten:— <i>Foxwell v.</i> .. ..	C. A. [1900] W. N. 97 .. ..	1471
Van Grutten <i>v.</i> Foxwell. Foxwell <i>v.</i> Van Grutten .. ..	H. L. (E.) [1897] A. C. 658 .. ..	2325
Van Grutten:— <i>Fricker v.</i> .. ..	C. A. [1896] 2 Ch. 649 .. ..	1509
Van Os:— <i>Thomas v.</i> .. ..	[1900] 2 Q. B. 448 .. ..	830
Vane:— <i>Strathmore (Earl of) v.</i> In re Bowes ..	[1896] 1 Ch. 507 .. ..	2342
Vane:— <i>Strathmore (Earl of) v.</i> In re Bowes ..	[1900] W. N. 123; [1900] 2 Ch. 251 .. ..	2035
Vans Colina:— <i>Mercer v.</i> .. ..	[1900] 1 Q. B. 130, n. .. ..	178
Vansittart, In re. Ex parte Brown (No. 1) ..	[1893] 1 Q. B. 181 .. ..	183
(No. 2) .. ..	[1893] 2 Q. B. 377 .. ..	184
Varieties, <i>Ld.</i> (The), In re .. ..	[1893] 2 Ch. 235 .. ..	483
Varley <i>v.</i> Whipp .. ..	[1900] W. N. 38; [1900] 1 Q. B. 513 .. ..	1816
Varty:— <i>Delobbel-Flipo v.</i> .. ..	[1893] 1 Q. B. 663 .. ..	597, 1527
Vasey:— <i>Montreal Gas Co. v.</i> .. ..	P. C. [1900] A. C. 595 .. ..	509
Vassall:— <i>Knapp v.</i> In re Knapp's Settlement	[1895] 1 Ch. 91 .. ..	1910
Varlow, Martin and, In re .. ..	[1894] W. N. 223 .. ..	1504
Vauda <i>v.</i> Newcastle (Mayor and Councillors of)	P. C. [1899] A. C. 246 .. ..	1313
Vaughan:— <i>Goldstein v.</i> .. ..	[1897] 1 Q. B. 549 .. ..	1235
Vaughan-Sherrin Electrical Engineering Co.:— <i>Hamilton v.</i> .. ..	[1894] 3 Ch. 589 .. ..	945
Vautin, In re. Ex parte Saffery .. ..	[1899] 2 Q. B. 549 .. ..	167
Vautin, In re. Ex parte Saffery .. ..	[1900] W. N. 136; [1900] 2 Q. B. 325 .. ..	131
Vavasour, In re .. ..	[1900] W. N. 118; [1900] 2 Q. B. 309 .. ..	173
Vavasour:— <i>Micklethwaite v.</i> .. ..	[1893] W. N. 61 .. ..	1533
Vawdrey <i>v.</i> Simpson .. ..	[1895] W. N. 152 (7); [1896] 1 Ch. 166 .. ..	66
Venner <i>v.</i> McDonell .. ..	[1897] 1 Q. B. 421 .. ..	1159
Venables <i>v.</i> Baring Brothers & Co. .. ..	[1892] 3 Ch. 527 .. ..	1319
Venn and Furzes Contract, In re .. ..	[1894] 2 Ch. 101 .. ..	2251
Verner <i>v.</i> General and Commercial Investment Trust .. ..	C. A. [1894] 2 Ch. 239 .. ..	354
Verney's Settled Estates, In re .. ..	[1898] 1 Ch. 508 .. ..	1882
Vernon Tinplate Co., <i>Ld.</i> , In re. In re Queen's Hotel (Cardiff), <i>Ld.</i> .. ..	[1900] W. N. 77; [1900] 1 Ch. 792 .. ..	316
Vernon <i>v.</i> Vernon. In re Sudbury and Poynton Settled Estates .. ..	[1893] 3 Ch. 74 .. ..	1864
Vernon <i>v.</i> Watson .. ..	[1891] 1 Q. B. 400; C. A. [1891] 2 Q. B. 288 .. ..	858
Verreries de l'Etoile, La Société Anonyme des, In re, Trade-mark of (No. 1) .. ..	[1893] W. N. 119 .. ..	569
(No. 2) .. ..	[1894] 1 Ch. 61; C. A. [1894] 2 Ch. 26 .. ..	2136
Veterinary Surgeons (Royal College of):— <i>Robinson v.</i> .. ..	[1892] 1 Q. B. 557 .. ..	2257
Vicary:— <i>Anderson v.</i> .. ..	[1899] W. N. 122; [1899] 2 Q. B. 436; C. A. [1900] W. N. 128; [1900] 2 Q. B. 287 .. ..	861
Vickers, In re. <i>Vickers v. Mellor</i> .. ..	[1900] W. N. 242 .. ..	2304
Vickers, Sons & Maxim:— <i>Osborn v.</i> .. ..	C. A. [1900] 2 Q. B. 91 .. ..	1225

Name of Case.	Volume and Page.	Column of Digest.
"Victoria," The. <i>Carswell v. Collard</i> .. .. {	H. L. (Sc.) [1893] W. N. 106; [1893] A. C. 635 .. ..	1943
Victoria Brewery Co.:—East Stonehouse Local Board <i>v.</i> .. .. {	[1895] 2 Ch. 514 .. ..	575
Victoria Brick Works, In re .. .. {	[1898] W. N. 162 (1) .. ..	311
Victoria Corporation <i>v. Patterson</i> . The Same <i>v.</i> Lang .. .. {	P. C. [1899] A. C. 615 .. ..	248
Victoria Insurance Co.:—King <i>v.</i> .. .. {	P. C. [1896] A. C. 250 .. ..	1638
Victoria (Master in Equity of Supreme Court of) <i>v. Pearson</i> .. .. {	P. C. [1897] A. C. 214 .. ..	2261
Victoria Steamboats, Ld., In re. Smith <i>v.</i> Wilkinson .. .. {	[1897] 1 Ch. 158 .. ..	332
Victoria, Supreme Court (Master in Equity):—Beaver <i>v.</i> .. .. {	P. C. [1895] A. C. 251 .. ..	1787, 2261
Victorian Railways Commr.:—Falkingham <i>v.</i> .. .. {	P. C. [1900] A. C. 452 .. ..	58
Viditz <i>v. O'Hagan</i> .. .. {	[1889] W. N. 99; [1899] 2 Ch. 569; C. A. [1900] W. N. 103; [1900] 2 Ch. 87 .. ..	493
Vidler:—Kent County Council <i>v.</i> .. .. {	C. A. [1895] 1 Q. B. 448 .. ..	894
Villensky:—Reg. <i>v.</i> .. .. {	C. C. R. [1892] 2 Q. B. 507 .. ..	617
Vimbos, Ld., In re .. .. {	[1900] W. N. 23; [1900] 1 Ch. 470 .. ..	418
Vinall <i>v. De Pass</i> .. .. {	H. L. (E.) [1892] A. C. 90 .. ..	78
Vincent <i>v. Eyton</i> .. .. {	[1897] P. 1 .. ..	748
Vince, In re. <i>Ex parte Baxter</i> .. .. {	[1892] 1 Q. B. 587; C. A. [1892] 2 Q. B. 478 .. ..	140
"Vindomora," The. Owners of the SS. "Vindomora" <i>v. Lamb and Owners of SS. "Haswell"</i> .. .. {	H. L. (E.) [1891] A. C. 1 .. ..	1949
Vine <i>v. Raleigh</i> (No. 1) .. .. {	C. A. [1891] 2 Ch. 13 .. ..	8, 2160
(No. 2) .. .. {	[1896] 1 Ch. 37 .. ..	1889
Viney, <i>Ex parte</i> . In re <i>Eaton &amp; Co.</i> .. .. {	[1897] 2 Q. B. 16 .. ..	131
Violet Consolidated Gold Mining Co. .. .. {	[1899] W. N. 66 .. ..	403
Vipont <i>v. Butler</i> .. .. {	[1893] W. N. 64 .. ..	2049, 2196
Vipont <i>v. Radcliffe</i> . In re <i>Thorpe</i> .. .. {	[1891] 2 Ch. 360 .. ..	795, 2060
Virgo:—Toronto (Municipal Corporation of City of) <i>v.</i> .. .. {	P. C. [1896] A. C. 88 .. ..	254
Vitoria, In re. <i>Ex parte Spanish Corporation, Ld.</i> .. .. {	C. A. [1894] 1 Q. B. 259 .. ..	113
Vitoria, In re. <i>Ex parte Vitoria</i> .. .. {	C. A. [1894] 2 Q. B. 387 .. ..	142, 159
Vivian & Co., In re. Metropolitan Bank of Eng-land and Wales <i>v. Vivian &amp; Co.</i> .. .. {	[1900] W. N. 133; [1900] 2 Ch. 654 .. ..	320
Vizetelly <i>v. Mudie's Select Library, Ld.</i> .. .. {	C. A. [1900] 2 Q. B. 170 .. ..	649
Vogan & Co.:—Cotton <i>v.</i> .. .. {	C. A. [1895] 2 Q. B. 652; H. L. (E.) [1896] A. C. 457 .. ..	1162
Volp:—Lowe <i>v.</i> .. .. {	[1896] 1 Q. B. 256 .. ..	2151
Von Joel <i>v. Hornsey</i> .. .. {	C. A. [1895] 2 Ch. 774 .. ..	966, 1121
Von Linden, In the Goods of .. .. {	[1896] P. 148 .. ..	1615
"Vortigern," The .. .. {	C. A. [1899] W. N. 34 (2); [1899] P. 140 .. ..	1944
Vowles <i>v. Colmer</i> .. .. {	[1895] W. N. 42 .. ..	1913
Vowles:—Tucker <i>v.</i> .. .. {	[1893] 1 Ch. 195 .. ..	2225
"Vortigern," The .. .. {	C. A. [1899] W. N. 34 (2); [1899] P. 140 .. ..	1944
Vreones:—Reg. <i>v.</i> .. .. {	C. C. R. [1891] 1 Q. B. 360 .. ..	611
"Vulcan," The .. .. {	[1898] P. 222 .. ..	2016

Name of Case.	Volume and Page.	Column of Digest.
Vulcan Boiler and General Insurance Co. v. Inland Revenue. Lancaster Insurance Co. v. The Same .. .. .	[1898] W. N. 174 (13); [1899] 1 Q. B. 353 .. .. .	1799
Vyse:—Payne-Collier v. In re Lawrenson .. .. .	C. A. [1891] W. N. 28 .. .. .	2353
W.		
Waddell v. Waddell .. .. .	[1892] P. 226 .. .. .	700, 1533
Waddington, In re. Bacon v. Bacon .. .. .	[1897] W. N. 6 (8) .. .. .	1478
Wade v. Palmer .. .. .	[1894] 1 Q. B. 268 .. .. .	1395
Wade:—Palmer v. .. .. .	[1894] 1 Q. B. 268 .. .. .	1395
Wade:—Somerset v. .. .. .	[1894] 1 Q. B. 574 .. .. .	1106
Wade:—Sutton v. .. .. .	[1891] 1 Q. B. 269 .. .. .	1390
Wade:—Taylor v. In re Taylor .. .. .	[1894] 1 Ch. 671 .. .. .	791
Wade v. Wade .. .. .	[1898] 2 Ch. 276 .. .. .	1743
Wadeson:—Ellis v. .. .. .	C. A. [1899] 1 Q. B. 714 .. .. .	1528
Wagel Syndicate:—Field & Co. (J. C. & J.) v. In re Trade-mark 96,997 .. .. .	[1900] W. N. 67; [1900] 1 Ch. 651 .. .. .	2137
Waikato (SS.) Owners of Cargo on Board v. New Zealand Shipping Co. .. .. .	[1898] 1 Q. B. 645; C. A. [1898] W. N. 152 (15); [1899] 1 Q. B. 56 .. .. .	1969
Wainwright v. Miller .. .. .	[1897] 2 Ch. 255 .. .. .	1474
Wainwright & Co.:—Parkinson v. .. .. .	[1895] W. N. 63 .. .. .	317
Waite:—Reg. v. .. .. .	[1892] 2 Q. B. 600 .. .. .	620
Waithman:—Lynde v. .. .. .	C. A. [1895] 2 Q. B. 180 .. .. .	1280, 1565
Wakefield Corporation:—Holliday v. .. .. .	H. L. (E.) 1891] A. C. 81 .. .. .	1263
Wakefield Rolling Stock Co., In re .. .. .	[1892] 3 Ch. 165 .. .. .	416
Wakefield:—Sharp v. .. .. .	H. L. (E.) [1891] A. C. 173 .. .. .	1101
Wakelin v. London and South Western Ry. Co. { .. .. .	C. A. & H. L. (E.) [1896] 1 Q. B. 189, n. .. .. .	1646
Waldegrave (Countess), In re. Earl Waldegrave v. Earl of Selborne .. .. .	[1899] W. N. 240 .. .. .	885
Wales v. Wales .. .. .	[1900] P. 63 .. .. .	705
Walker, In re. Sheffield Banking Co. v. Clayton .. .. .	[1892] 1 Ch. 621 .. .. .	1587
Walker, In re. Summers v. Barrow .. .. .	[1900] W. N. 275 .. .. .	2160
Walker, In re. Walker v. Lutyens .. .. .	[1897] 2 Ch. 238 .. .. .	2312
Walker:—Allcard v. .. .. .	[1896] 2 Ch. 369 .. .. .	720
Walker v. Bach. Lloyd's Bank v. Bach. In re) Bach .. .. .	[1892] W. N. 108 .. .. .	789
Walker v. Baird .. .. .	P. C. [1892] A. C. 491 .. .. .	628
Walker v. Brisley. Grinter v. Fleming .. .. .	[1900] 2 Q. B. 735 .. .. .	1752
Walker v. Burchnall. In re Burchnall .. .. .	[1893] W. N. 171 .. .. .	1702
Walker v. Crawshay. In re Crawshay .. .. .	[1891] 3 Ch. 176 .. .. .	1902
Walker v. Crystal Palace District Gas Co. .. .. .	[1891] 2 Q. B. 300 .. .. .	560
Walker:—Dibb v. .. .. .	[1893] 2 Ch. 429 .. .. .	1126, 2071
Walker:—Hamilton v. .. .. .	[1892] 2 Q. B. 25 .. .. .	1036
Walker:—Hogarth v. .. .. .	[1899] 2 Q. B. 401; C. A. [1900] W. N. 127; [1900] 2 Q. B. 283 .. .. .	993
Walker:—Hudson v. .. .. .	[1894] W. N. 180 .. .. .	80
Walker v. Lilleshall Coal Co. .. .. .	C. A. [1900] 1 Q. B. 481 .. .. .	1214
Walker:—London & North Western Ry. Co. v. { .. .. .	H. L. (E.) [1900] W. N. 34; [1900] A. C. 109 .. .. .	1648
Walker:—Ray v. .. .. .	[1892] 2 Q. B. 88 .. .. .	1092
Walker's Settled Estate, In re .. .. .	[1894] 1 Ch. 189 .. .. .	1858, 1862

Name of Case.	Volume and Page.	Column of Digest.
Walkley, In the Goods of .. .. .	[1893] W. N. 62 .. ..	1618
Wall v. London and Northern Assets Corporation	C. A. [1898] 2 Ch. 469 .. ..	358
Wall v. London and Northern Assets Corporation	[1899] W. N. 10 (4); [1899] 1 Ch. 550 .. ..	362
Wallace v. Borrie .. .. .	Registration App. Ct. (Sc.) [1898] W. N. 113 .. ..	1400
Wallace v. Gibson .. .. .	H. L. (Sc.) [1895] A. C. 354 .. ..	1833
Wallace v. Evershed .. .. .	[1899] W. N. 58; [1899] 1 Ch. 891 .. ..	1282
Wallace:—Smith v. .. .. .	[1895] 1 Ch. 385 .. ..	2245
Wallace v. Universal Automatic Machines Co. ..	C. A. [1894] 2 Ch. 547 .. ..	315
Wallace's Case. In re Metropolitan Fire Insurance Co. .. .. .	[1900] W. N. 171; [1900] 2 Ch. 671 .. ..	377
Wallasey Local Board:—Hill v. .. .. .	[1892] 3 Ch. 117; C. A. [1894] 1 Ch. 133 .. ..	1589
Wallasey Brick and Land Co., In re .. ..	[1894] W. N. 20 .. ..	382
Wallen v. Lister .. .. .	[1894] 1 Q. B. 312 .. ..	1155
Waller:—Young v. .. .. .	P. C. [1898] A. C. 661 .. ..	1321
Waller v. Atkinson. In re Atkinson .. .. .	[1898] 1 Ch. 637; C. A. [1899] W. N. 51; [1899] 2 Ch. 1 .. ..	915
Wallington:—South African Territories v. ..	C. A. [1897] 1 Q. B. 692; H. L. (E.) [1898] A. C. 309 .. ..	333
Wallis, In re. Ex parte Board of Trade .. ..	C. A. [1891] W. N. 68 .. ..	125
Wallis and Barnard's Contract, In re .. ..	[1899] W. N. 139; [1899] 2 Ch. 515 .. ..	2235
Wallis v. Bendy. In re Bendy .. .. .	[1895] 1 Ch. 109 .. ..	1901
Wallis v. Hands .. .. .	[1893] 2 Ch. 75 .. ..	843, 1076, 1083
Wallis:—Ward & Co. v. .. .. .	[1900] 1 Q. B. 675 .. ..	1270
Wallscourt (Lord) Case. In re Companies	[1899] W. N. 258 .. ..	430
Guardians Society .. .. .	H. L. (E.) [1892] A. C. 125 .. ..	396
Wallroth v. Roper .. .. .	C. A. [1891] 1 Q. B. 503 .. ..	1137
Wallsend Local Board:—Crumble v. .. ..	C. A. [1900] 2 Q. B. 142 .. ..	1219
Walmsley:—Illingworth v. .. .. .	C. A. [1891] 2 Q. B. 534 .. ..	217, 779
Walpole:—Wiedemann v. .. .. .	[1898] 2 Q. B. 237 .. ..	1671
Walsall Assessment Committee:—Horton & Son v. .. .. .	C. A. [1899] W. N. 35 (8); [1889] 1 Q. B. 1009 .. ..	1216
Walsh & Sons:—Wood v. .. .. .	[1892] P. 230 .. ..	1603
Walsh, In the Goods of .. .. .	[1891] 2 Q. B. 304 .. ..	22
Walsh:—Fecitt v. .. .. .	P. C. [1894] A. C. 144 .. ..	1638
Walsh v. Reg. .. .. .	C. A. [1899] 2 Q. B. 286 .. ..	550
Walshaw v. Brighthouse Corporation .. ..	Registration App. Ct. (Sc.) [1897] W. N. 97 .. ..	1400
Walshe v. Annan .. .. .	[1891] W. N. 170 .. ..	1489
Walter:—Australasian Automatic Weighing Machine Co. v. .. .. .	C. A. [1891] 2 Q. B. 369 .. ..	49, 954
Walter v. Everard .. .. .	[1899] W. N. 36 (12); [1899] 1 Ch. 879; C. A. [1900] W. N. 20; [1900] 1 Ch. 257 .. ..	2246
Walter:—Hope v. .. .. .	[1899] W. N. 138; C. A. [1899] W. N. 212; [1899] 2 Ch. 749; H. L. (E.) [1900] W. N. 178; [1900] A. C. 539 .. ..	537
Walter v. Lane .. .. .	[1892] 3 Ch. 489 .. ..	537
Walter v. Steinkopff .. .. .	[1893] P. 202 .. ..	13, 1930
"Walter D. Wallet," The .. .. .	P. C. [1898] A. C. 460 .. ..	1327
Walters:—Att.-Gen. for New South Wales v. ..		

Name of Case.	Volume and Page.	Column of Digest.
Walters :—Edwards <i>v.</i> .. .. .	[1896] 2 Ch. 157 .. .. .	196
Walters :—Emmott & Co. <i>v.</i> .. .. .	[1891] W. N. 79 .. .. .	675
Walters <i>v.</i> Green .. .. .	[1899] W. N. 138; [1899] 2 Ch. 696 .. .. .	2147
Walters :—Kingsbury <i>v.</i> In re Moss .. .. .	C. A. [1899] W. N. 112; [1900] 2 Ch. 314 .. .. .	2315
Walters <i>v.</i> Solicitor for the Treasury. In re Rowlls. Rowlls <i>v.</i> Bebb .. .. .	C. A. [1900] W. N. 108; [1900] 2 Ch. 107 .. .. .	1854
Walthamstow Local Board <i>v.</i> Staines .. .. .	C. A. [1891] 2 Ch. 606 .. .. .	1917
Walthamstow Urban District Council <i>v.</i> Henwood .. .. .	[1896] W. N. 161 (12); [1897] 1 Ch. 41 .. .. .	1546
Walton & Co. :—Beardsley <i>v.</i> .. .. .	[1900] 2 Q. B. 1 .. .. .	16
Walton <i>v.</i> Walton .. .. .	[1900] P. 147 .. .. .	42
Walton-on-the-Hill Overseers <i>v.</i> Jones .. .. .	[1893] 2 Q. B. 175 .. .. .	1690
Wandsworth Board of Works <i>v.</i> Pretty .. .. .	[1891] 1 Q. B. 1 .. .. .	1179
Wandsworth Board of Works :—Southwark and Vauxhall Water Co. <i>v.</i> .. .. .	C. A. [1898] 2 Ch. 603 .. .. .	889
Wandsworth District Board <i>v.</i> Bird .. .. .	[1892] 1 Q. B. 481 .. .. .	1174
Wandsworth District Board :—Stroud <i>v.</i> .. .. .	[1894] 1 Q. B. 64; C. A. [1894] 2 Q. B. 1 .. .. .	1179
Wanklyn :—Kemp <i>v.</i> .. .. .	[1894] 1 Q. B. 265; C. A. [1894] 1 Q. B. 583 .. .. .	1390
Wanzer, Ltd., In re .. .. .	[1891] 1 Ch. 305 .. .. .	485, 1835
War (Secretary of State for) :—Reg. <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 326 .. .. .	1208
Warburton :—Hope <i>v.</i> .. .. .	[1892] 2 Q. B. 134 .. .. .	1106
Warburton <i>v.</i> Huddersfield Industrial Society .. .. .	[1892] 1 Q. B. 213; C. A. [1892] 1 Q. B. 817 .. .. .	940
Ward, In re .. .. .	C. A. [1896] 2 Ch. 31 .. .. .	2041
Ward, In re. Ex parte Ward .. .. .	C. A. [1897] 1 Q. B. 266 .. .. .	113
Ward, Ex parte. In re Bullock .. .. .	[1899] W. N. 114; [1899] 2 Q. B. 517 .. .. .	203
Ward <i>v.</i> Birmingham Breweries, Ltd. In re Birmingham Breweries, Ltd. .. .. .	[1899] W. N. 92 .. .. .	467
Ward :—Dormer <i>v.</i> .. .. .	[1900] P. 130 .. .. .	711
Ward <i>v.</i> Duncombe .. .. .	H. L. (E.) [1893] A. C. 369 .. .. .	1290, 2194
Ward <i>v.</i> Gamgee .. .. .	[1891] W. N. 165 .. .. .	774
Ward <i>v.</i> Monaghan .. .. .	C. A. [1894] W. N. 123 (8) .. .. .	1056
Ward :—Mountfield <i>v.</i> .. .. .	[1897] 1 Q. B. 326 .. .. .	1108
Ward <i>v.</i> Portsmouth Corporation .. .. .	[1898] W. N. 34 (3); C. A. [1898] 2 Ch. 191 .. .. .	236
Ward :—St. Martin-in-the-Fields (Vestry of) <i>v.</i> .. .. .	C. A. [1896] W. N. 161 (8); [1897] 1 Q. B. 40 .. .. .	1170
Ward & Co. <i>v.</i> Wallis .. .. .	[1900] 1 Q. B. 675 .. .. .	1270
Ward's Settled Estates, In re .. .. .	[1895] W. N. 41 .. .. .	1881
Ward, Lock, Bowden & Co. :—Bridewell Hospital Governors <i>v.</i> .. .. .	[1892] W. N. 194 .. .. .	1119
Warden & Sons :—Constantine & Co. <i>v.</i> .. .. .	C. A. [1895] W. N. 143 (11) .. .. .	1998
Ware, In re .. .. .	C. A. [1892] 1 Ch. 344 .. .. .	1198
Ware :—Evans <i>v.</i> .. .. .	[1892] 3 Ch. 502 .. .. .	945, 1723
Ware :—Johns <i>v.</i> .. .. .	[1898] W. N. 172 (2); [1899] 1 Ch. 359 .. .. .	209
Warner :—Salaman <i>v.</i> .. .. .	C. A. [1891] 1 Q. B. 734 .. .. .	45
Warren, In re. Ex parte Trustee .. .. .	[1900] 2 Q. B. 138 .. .. .	133
Warren <i>v.</i> Brown .. .. .	[1900] 2 Q. B. 722 .. .. .	1122
Warren <i>v.</i> Murray .. .. .	C. A. [1894] 2 Q. B. 648 .. .. .	1135
Warren <i>v.</i> Warren .. .. .	[1895] W. N. 72 .. .. .	1759

Name of Case.	Volume and Page.	Column of Digest.
"Warsaw," The .. .. .	[1898] P. 127 ..	1956
Warwick v. Graham .. .. .	[1899] W. N. 88; [1899] 2 Q. B. 181 ..	1031
Warwickshire Justices :—Reg. v. Reg. v. Worcester Justices .. .. .	C. A. [1898] W. N. 160 (10); [1899] 1 Q. B. 59 ..	1105
Warwickshire (Sheriff of) :—Taunton v. .. .. .	[1895] 1 Ch. 734; C. A. [1895] 2 Ch. 319 ..	321, 449 1011
Wasdale, In re. Brittin v. Partridge .. .. .	[1898] W. N. 164 (2); [1899] 1 Ch. 163 ..	75
Washington :—Grand Trunk Ry. Co. of Canada v. .. .. .	P. C. [1899] A. C. 275 ..	244
Washington Diamond Mining Co., In re .. .. .	C. A. [1893] 3 Ch. 95 ..	132, 169, 468
Wassell v. Leggatt .. .. .	[1896] 1 Ch. 554 ..	921
Wastall :—Millard v. .. .. .	[1898] 1 Q. B. 342 ..	1351
Wasteneys v. Wasteneys .. .. .	P. C. [1900] A. C. 446 ..	924
Waterhouse v. Waterhouse .. .. .	C. A. [1893] P. 284 ..	713
Waterland v. Serle .. .. .	C. A. [1897] W. N. 163 (9) ..	2026
Waterloo and City Ry. Co. :—Farmer v. .. .. .	[1895] 1 Ch. 527 ..	1092
Watermen's Co. :—Reg. v. .. .. .	[1897] 1 Q. B. 659 ..	265
Waterproof Materials Co., In re .. .. .	[1893] W. N. 18 ..	437
Waters :—Lomer v. .. .. .	C. A. [1898] 2 Q. B. 326 ..	554
Watkins, In re .. .. .	C. A. [1896] 2 Ch. 336 ..	1188
Watkins v. Barnard .. .. .	[1897] 2 Q. B. 521 ..	130
Watkins v. Lindsay & Co. .. .. .	[1898] W. N. 22 (4) ..	170
Watkins v. Watkins .. .. .	C. A. [1896] P. 222 ..	688
Watney :—Harrold v. .. .. .	C. A. [1898] 2 Q. B. 320 ..	1346
Watson, In re. Cox v. Watson .. .. .	[1892] W. N. 192 ..	2350
Watson, In re. Ex parte Johnston. Johnston v. Watson .. .. .	C. A. [1893] 1 Q. B. 21 ..	933, 1025
Watson, In re. Stamford Union v. Bartlett .. .. .	[1898] W. N. 154 (5); [1899] 1 Ch. 72 ..	1192
Watson, In re. Turner v. Watson .. .. .	[1896] 1 Ch. 925 ..	803
Watson :—Charter v. .. .. .	[1899] 1 Ch. 175 ..	1297
Watson :—Chifferiel v. In re Chifferiel .. .. .	[1895] W. N. 106 ..	2299
Watson :—Paynter v. .. .. .	[1898] 2 Q. B. 31 ..	1157
Watson v. Petts (No. 1) .. .. .	C. A. [1899] 1 Q. B. 54 ..	35
————— (No. 2) .. .. .	[1899] W. N. 10 (6); [1899] 1 Q. B. 430 ..	586
Watson (Robert) & Co., In re .. .. .	[1899] W. N. 120; [1899] 2 Ch. 509 ..	307
Watson :—Rose v. .. .. .	[1894] 2 Q. B. 90 ..	736
Watson v. Saundie & Hull .. .. .	[1898] 1 Q. B. 326 ..	1771
Watson (Surveyor of Taxes) :—Royal Insurance Co. v. .. .. .	C. A. [1896] 1 Q. B. 41; H. L. (E.) [1896] W. N. 161 (13); [1897] A. C. 1 ..	1765
Watson :—Vernon v. .. .. .	[1891] 1 Q. B. 400; C. A. [1891] 2 Q. B. 288 ..	858
Watson v. Watson. In re Hancock .. .. .	[1900] W. N. 58; C. A. [1900] W. N. 270 ..	2350
Watson v. White .. .. .	[1896] 2 Q. B. 9 ..	594
Watson (W.) & Sons, Ltd., In re .. .. .	[1891] 2 Ch. 55 ..	452
Watson & Co. :—Bailey v. .. .. .	[1898] 2 Q. B. 270 ..	588
Watson, Walker & Quickfall, Ltd., In re .. .. .	[1898] W. N. 69 (7) ..	388
Watt v. McGuire .. .. .	Registration App. Ct. (Sc.) [1897] W. N. 109 ..	1369
Watt & Co. :—Willets v. .. .. .	C. A. [1892] 2 Q. B. 92 ..	1239
Watteau v. Fenwick .. .. .	[1893] 1 Q. B. 346 ..	1580
Watts v. Driscoll .. .. .	[1900] W. N. 77; C. A. [1900] W. N. 261 ..	1413

Name of Case.	Volume and Page.	Column of Digest.
Watts:—Smart & Son <i>v.</i> .. .. .	[1895] 1 Q. B. 219 .. .. .	18
Watts, Ward & Co.:—Dobell & Co. <i>v.</i> .. .. .	C. A. [1891] W. N. 131 .. .. .	1966
Waud, <i>Ex parte.</i> In re Cronmire .. .. .	[1898] W. N. 19 (2); C. A. [1898] 2 Q. B. 383 .. .. .	871
Waudby:—Reg. <i>v.</i> .. .. .	C. C. R. [1895] 2 Q. B. 482 .. .. .	619
Wauton <i>v.</i> Coppard .. .. .	[1898] W. N. 152 (16); [1899] 1 Ch. 92 .. .. .	2244
Wavell <i>v.</i> Mitchell .. .. .	[1891] W. N. 86 .. .. .	1282,
Wavell <i>v.</i> Mitchell. In re Wavell .. .. .	[1892] W. N. 11 .. .. .	1514
Wavertree Sailing Ship Co. <i>v.</i> Love .. .. .	P. C. [1897] A. C. 373 .. .. .	1281
Waverley Type Writer, In re. D'Esterre <i>v.</i> Waverley Type Writer .. .. .	[1898] 1 Ch. 699 .. .. .	1332
Waygood:—Wild <i>v.</i> .. .. .	C. A. [1892] 1 Q. B. 783 .. .. .	319
Waynes Merthyr Co. <i>v.</i> Radford (D.) & Co. .. .. .	[1895] W. N. 100 (4); [1896] 1 Ch. 29 .. .. .	1243
Weardale Coal and Iron Co. <i>v.</i> Hodson .. .. .	C. A. [1894] 1 Q. B. 598 .. .. .	660, 677
Weare, In re. In re the Solicitors Act, 1888 .. .. .	C. A. [1893] 2 Q. B. 439 .. .. .	203
Weatherall <i>v.</i> Thomas. In re Thomas .. .. .	[1900] 1 Ch. 319 .. .. .	2055,
Weatherley <i>v.</i> Layton .. .. .	[1892] W. N. 165 .. .. .	2056
Weaver:—Jeffrey <i>v.</i> .. .. .	[1899] 2 Q. B. 449 .. .. .	1870
Weaverham (Overseers of):—Heath <i>v.</i> .. .. .	[1894] 2 Q. B. 108 .. .. .	298
Webb, In re. Lambert <i>v.</i> Still .. .. .	C. A. [1894] 1 Ch. 73 .. .. .	1107
Webb, In re. Still <i>v.</i> Webb .. .. .	[1896] W. N. 176 (19); [1897] 1 Ch. 144 .. .. .	769, 892
Webb:—England <i>v.</i> .. .. .	P. C. [1898] A. C. 758 .. .. .	2059
Webb:—Lemmon <i>v.</i> .. .. .	C. A. [1894] 3 Ch. 1; H. L. (E.). [1895] A. C. 1 .. .. .	2044
Webb:—Reg. <i>v.</i> .. .. .	[1896] 1 Q. B. 487 .. .. .	2259
Webb <i>v.</i> Shropshire Rys. Co. .. .. .	C. A. [1893] 3 Ch. 307 .. .. .	1344,
Webber, In re. Gribble <i>v.</i> Webber .. .. .	[1896] 1 Ch. 914 .. .. .	1353
Webster, In re .. .. .	[1891] 2 Ch. 102 .. .. .	188
Wedd:—Reg. <i>v.</i> .. .. .	[1896] 2 Q. B. 360 .. .. .	1654
Wedderburn <i>v.</i> Duke of Atholl. Duke of Atholl <i>v.</i> Glover Incorporation of Perth .. .. .	H. L. (Sc.) [1900] A. C. 403 .. .. .	1735
Wedlake:—Mustapha <i>v.</i> .. .. .	[1891] W. N. 201 .. .. .	2031
Wedmore:—Symons <i>v.</i> .. .. .	[1894] 1 Q. B. 401 .. .. .	2106
Weeding, In re. Armstrong <i>v.</i> Wilkin .. .. .	[1896] 2 Ch. 364 .. .. .	824
Weeks:—Joyner <i>v.</i> .. .. .	C. A. [1891] 2 Q. B. 31 .. .. .	725
"Wega," The .. .. .	[1895] P. 156 .. .. .	1104
Wegg-Prosser <i>v.</i> Evans .. .. .	[1894] 2 Q. B. 101; C. A. [1895] 1 Q. B. 108 .. .. .	2328
Wegg-Prosser <i>v.</i> Wegg-Prosser. In re Somers-Cocks .. .. .	[1895] 2 Ch. 449 .. .. .	1061
Weekes' Settlement, In re .. .. .	[1897] 1 Ch. 289 .. .. .	2107
Weir & Co. <i>v.</i> Girvin & Co. .. .. .	[1898] W. N. 164 (4); [1899] 1 Q. B. 193; C. A. [1900] 1 Q. B. 45 .. .. .	1584
Weir <i>v.</i> Union Steamship Co. .. .. .	C. A. [1900] 1 Q. B. 28; H. L. (E.). [1900] W. N. 163; [1900] A. C. 525 .. .. .	1975
Weise:—Mitchell <i>v.</i> Ex parte Friedheim .. .. .	[1892] W. N. 139 .. .. .	1934
Welch <i>v.</i> Colt. In re Brace .. .. .	[1891] 2 Ch. 671 .. .. .	139,
Welch:—Softlaw <i>v.</i> .. .. .	C. A. [1899] W. N. 113; [1899] 2 Q. B. 419 .. .. .	1417
Welch <i>v.</i> Tennent .. .. .	H. L. (Sc.) [1891] A. C. 639 .. .. .	1479

Name of Case.	Volume and Page.	Column of Digest.
Wellborne, In re .. .. .	{ [1900] W. N. 82; [1900] 1 Ch. 857; C. A. [1900] W. N. 261 }	2044
Welby v. Still (No. 1) .. .. .	[1892] W. N. 6 .. .. .	504, 932
———— (No. 2) .. .. .	[1893] W. N. 91 .. .. .	{ 1303, 2058
———— (No. 3) .. .. .	[1894] 3 Ch. 641 .. .. .	{ 1276, 2034
———— (No. 4) .. .. .	[1895] 1 Ch. 524 .. .. .	2037
Wells, In re. Ex parte Collins .. .. .	[1892] W. N. 96 .. .. .	143, 776
Wells:—Cheston v. .. .. .	[1893] 2 Ch. 151 .. .. .	1280
Wells v. Gas Float Whitton (No. 2) (Owners of) .. .. .	C. A. [1896] P. 42; H. L. (E.) [1897] A. C. 337 .. .. .	2007
Wells:—Willis v. .. .. .	[1892] 2 Q. B. 225 .. .. .	858
Welsbach Incandescent Gas Light Co. v. New Incandescent (Sunlight Patent) Gas Lighting Co. .. .. .	[1900] W. N. 51; [1900] 1 Ch. 843 .. .. .	1444
Welsbach Incandescent Gas Lighting Co. v. New Sunlight Incandescent Co. .. .. .	C. A. [1900] W. N. 120; [1900] 2 Ch. 1 .. .. .	674
Welsh & Son v. West Ham Corporation .. .. .	[1900] 1 Q. B. 325 .. .. .	220
Welsh Whisky Distillery Co., In re .. .. .	[1900] W. N. 59 .. .. .	415
Welton, Ex parte. In re Railway Time-Tables Publishing Co. .. .. .	C. A. [1895] 1 Ch. 255 .. .. .	397
Welton, Ex parte. In re Railway Time-Tables Publishing Co. .. .. .	C. A. [1898] W. N. 159 (6); C. A. [1899] 1 Ch. 108 .. .. .	474
Welton v. Saffrey .. .. .	[1895] 1 Ch. 255; affirmed by H. L. (E.) [1897] A. C. 299 .. .. .	430
Wemyss:—Lord Advocate v. .. .. .	H. L. (Sc.) [1899] W. N. 124; [1900] A. C. 48 .. .. .	900, 944, 1261
Wendon v. London County Council .. .. .	[1894] 1 Q. B. 227; C. A. [1894] 1 Q. B. 812 .. .. .	1150
Wenham, In re. Ex parte Battams .. .. .	[1900] W. N. 117; C. A. [1900] W. N. 156; [1900] 2 Q. B. 698 .. .. .	140
Wenham, In re. Hunt v. Wenham .. .. .	[1892] 3 Ch. 59 .. .. .	{ 799, 1137, 1502, 1504
Wenman v. Lyon & Co. .. .. .	[1891] 1 Q. B. 634; C. A. [1891] 2 Q. B. 192 .. .. .	207
Wentworth v. Mathieu .. .. .	P. C. [1900] A. C. 212 .. .. .	242
Wentworth v. Wentworth .. .. .	P. C. [1900] A. C. 163 .. .. .	9
West, In re. George v. Grose .. .. .	[1899] W. N. 241; [1900] 1 Ch. 84 .. .. .	2162
West:—De Mestre v. .. .. .	P. C. [1891] A. C. 264 .. .. .	{ 1329, 1910
West v. Diprose .. .. .	[1900] W. N. 16; [1900] 1 Ch. 337 .. .. .	207
West:—Haigh v. .. .. .	C. A. [1893] 2 Q. B. 19 .. .. .	{ 891, 1131
West:—Reg. v. .. .. .	C. C. R. [1897] W. N. 175 (6); [1898] Q. B. 174 .. .. .	623
West:—Western Wagon and Property Co. v. .. .. .	[1892] 1 Ch. 271 .. .. .	507
West v. Williams .. .. .	[1898] 1 Ch. 488; C. A. [1898] W. N. 169 (9); [1899] 1 Ch. 132 .. .. .	1289
West v. Wythes. In re Wythes .. .. .	[1893] 2 Ch. 369 .. .. .	1880
West Australian Land Co. v. Forrest, Commissioner of Crown Lands .. .. .	P. C. [1894] A. C. 176 .. .. .	85



Name of Case.	Volume and Page.	Column of Digest.
West Australian Mortgage and Agency Corporation :—Ogilvie v. .. ..	P. C. [1896] A. C. 257 .. ..	85
West Cowes Local Board :—Meador v. .. ..	C. A. [1892] 3 Ch. 18 .. ..	1911
West Cumberland Iron and Steel Co., In re ..	[1893] 1 Ch. 713 .. ..	482, 496
West Derby Union v. Metropolitan Life Assurance Society. The Same v. Priestman ..	[1896] W. N. 156 (12); C. A. [1897] 1 Ch. 335; H. L. (E.) [1897] A. C. 647 .. ..	1457
West of England Fire Insurance Co. v. Isaacs ..	[1896] 2 Q. B. 377; C. A. [1897] 1 Q. B. 226 .. ..	977
West of England Iron, Timber and Charcoal Co. :—Patten v. .. ..	[1894] 2 Q. B. 159 .. ..	559
West Ham Central Charity Board v. East London Waterworks Co. .. ..	[1900] W. N. 37; [1900] 1 Ch. 624 .. ..	2268
West Ham (Churchwardens, &c., of) v. Fourth City Mutual Building Society .. ..	[1892] 1 Q. B. 654 .. ..	1687, 2070
West Ham (Churchwardens, &c., of) :—London County Council v. (No. 1) .. ..	C. A. [1892] 2 Q. B. 44; H. L. (E.) [1893] A. C. 562 .. ..	1686
(No. 2) .. ..	C. A. [1892] 2 Q. B. 173 .. ..	628
West Ham Corporation :—Welsh & Son v. ..	[1900] 2 Q. B. 253 .. ..	220
West Ham Union (Guardians of) v. St. Matthew, Bethnal Green (Churchwardens, &c. of) (No. 1) ..	[1892] 2 Q. B. 65; C. A. [1892] 2 Q. B. 676; H. L. (E.) [1894] A. C. 230 .. ..	1462
(No. 2) .. ..	C. A. [1895] 1 Q. B. 662; revers. by H. L. (E.) [1896] A. C. 477 [1895] 1 Q. B. 766 .. ..	1457
West Ham Union v. Cardiff Union .. ..	[1895] 1 Q. B. 766 .. ..	1460
West Ham Union v. Essex Justices and London County Council .. ..	H. L. (E.) [1896] A. C. 443 .. ..	1671
West Hartlepool (Mayor, &c., of) v. Robinson ..	[1897] W. N. 12 (7) .. ..	2088
West India Improvement Co. v. Att.-Gen. of Jamaica .. ..	P. C. [1894] A. C. 243 .. ..	1017, 1668
West, King and Adams, In re. Ex parte Clough ..	[1892] 2 Q. B. 102 .. ..	2042
West Lancashire Rural Council :—Ogilvy v. ..	[1899] W. N. 6 (3); [1899] 1 Q. B. 377 .. ..	2275
West London and General Permanent Benefit Building Society, In re .. ..	[1894] 2 Ch. 352 .. ..	229, 231
West London Syndicate, Ltd., v. Inland Revenue Comrs. .. ..	[1898] 1 Q. B. 226; C. A. [1898] 2 Q. B. 507 .. ..	1794
West Metropolitan Trams. Co. :—Allred v. ..	C. A. [1891] 2 Q. B. 398 .. ..	2150
West Metropolitan Tramways Co. :—Bartlett v. (No. 1) .. ..	[1893] W. N. 139; [1893] 3 Ch. 437 .. ..	1498, 2149
(No. 2) .. ..	[1894] 2 Ch. 286 .. ..	2150
West Rand Central Gold Mines Co. v. De Rougemont. Driefontein Consolidated Gold Mines v. Janson .. ..	[1900] 2 Q. B. 339 .. ..	985
West Riding Athletic Club (Leeds) :—Turnbull v. ..	[1894] W. N. 4 .. ..	340, 960
West Riding Justices :—Reg. v. .. ..	[1900] 1 Q. B. 291 .. ..	1029
West Riding of Yorkshire (County Council) :—Reg. v. .. ..	C. A. [1895] 1 Q. B. 805 .. ..	579, 1453
West Riding of Yorkshire Justices :—Reg. v. Ex parte Shaw .. ..	[1898] 1 Q. B. 503 .. ..	1105
West Riding of Yorkshire (County Council) v. Holmfirth Urban Sanitary Authority ..	C. A. [1894] 2 Q. B. 842 .. ..	2272
West Suffolk County Council :—Bury St. Edmunds Corporation v. .. ..	[1898] 2 Q. B. 246 .. ..	1143
West Surrey Water Co. v. Chertsey Union ..	[1894] 3 Ch. 513 .. ..	2278
Westacott v. Bevan .. ..	[1891] 1 Q. B. 774 .. ..	1527, 2027
Westacott :—Papè v. .. ..	C. A. [1894] 1 Q. B. 272 .. ..	92, 264, 1573

Name of Case.	Volume and Page.	Column of Digest.
Westbury v. Twigg & Co. Gregson (Claimant)	[1892] 1 Q. B. 77 .. ..	485
Western v. Bailey .. .. .	[1896] 2 Q. B. 234; C. A. [1897] 1 Q. B. 86 .. ..	525
Western :—Hockey v. .. .. .	C. A. [1898] 1 Ch. 350 .. ..	1300
Western Counties and South Wales Telephone Co. :—Hooper v. .. .. .	[1892] W. N. 148 .. ..	332
Western Counties Steam Bakeries and Milling Co., In re .. .. .	[1897] W. N. 6 (5); reversed by C. A. [1897] 1 Ch. 617 .. ..	470
Western Insurance Co., Ex parte. In re Eddy-stone Marine Insurance Co. .. .. .	[1892] 2 Ch. 423 .. ..	999
Western National Bank of City of New York v. Perez, Triana & Co. .. .. .	C. A. [1891] 1 Q. B. 304 .. ..	1536, 1537
Western Wagon and Property Co. v. West .. .. .	[1892] 1 Ch. 271 .. ..	507
Westmacott v. Westmacott .. .. .	[1899] P. 183 .. ..	707
Westminster Brymbo Coal and Coke Co. :—Whitwham v. .. .. .	C. A. [1896] 2 Ch. 538 .. ..	2155
Westminster and Vancouver Tramway Co. :—Edison General Electric Co. v. .. .. .	P. C. [1897] A. C. 193 .. ..	248
Westminster Vestry v. Hoskins .. .. .	[1899] 2 Q. B. 474 .. ..	70
Westminster Vestry :—Royal College of Music v. .. .. .	[1897] W. N. 175 (8); [1898] 1 Q. B. 304; C. A. [1898] 1 Q. B. 809 .. ..	1681
Westmore v. Paine .. .. .	[1891] 1 Q. B. 482 .. ..	1038
Westmoreland Green and Blue Slate Co., In re .. .. .	[1892] W. N. 2 .. ..	443
Westmoreland Green and Blue Slate Co., In re .. .. .	C. A. [1893] 2 Ch. 612 .. ..	345
Westmoreland Green and Blue Slate Co. v. Feilden .. .. .	C. A. [1891] 3 Ch. 15 .. ..	89, 420
Westmorland (Earl of) v. New Sharlston Collieries Co. .. .. .	[1899] W. N. 2 (4); C. A. [1899] W. N. 88 .. ..	1266
Weston, In re. Davies v. Tagart .. .. .	[1900] W. N. 104; [1900] 2 Ch. 164 .. ..	2198
Weston, Crocker & Co. :—Trinder, Anderson & Co. v. Trinder, Anderson & Co. v. Thames and Mersey Marine Insurance Co. The Same v. North Queensland Insurance Co. .. .. .	C. A. [1898] 2 Q. B. 114 .. ..	997
Weston's Trusts, In re .. .. .	[1898] W. N. 151 (10) .. ..	2200
Westport Coal Co. v. McPhail .. .. .	C. A. [1898] 2 Q. B. 130 .. ..	1971
Westwood v. Booker. In re Toleman .. .. .	[1897] 1 Ch. 866 .. ..	1606
Weymouth and Channel Islands Steam Packet Co., In re .. .. .	C. A. [1891] 1 Ch. 66 .. ..	395, 397, 415
Whadcoat :—London Financial Association v. .. .. .	C. A. [1893] 3 Ch. 307 .. ..	1654
Whadcoat v. Shropshire Rys. Co. .. .. .	C. A. [1893] 3 Ch. 307 .. ..	1654
Wharam :—Dunmore v. .. .. .	[1898] W. N. 15 (7) .. ..	1047
Wharton v. Masterman .. .. .	H. L. (E.) [1895] A. C. 186 .. ..	7
Wharton :—Surman v. .. .. .	[1891] 1 Q. B. 491 .. ..	904
Wheat v. Brown .. .. .	[1892] 1 Q. B. 418 .. ..	19
Wheaton v. Maple & Co. .. .. .	C. A. [1893] 3 Ch. 48 .. ..	627, 1118
Wheeler & De Rochow, In re .. .. .	[1895] W. N. 154 (15); [1896] 1 Ch. 315 .. ..	2168
Wheeler v. Humphreys .. .. .	H. L. (E.) [1898] A. C. 506 .. ..	2806
Wheeler v. Sargeant .. .. .	[1893] W. N. 128 .. ..	2207
Wheeler's Settlement Trusts, In re. Briggs v. Ryan .. .. .	[1899] W. N. 141; [1899] 2 Ch. 717 .. ..	909
Whiffen v. Malling Justices .. .. .	C. A. [1892] 1 Q. B. 362 .. ..	1102
Whight :—Boosey v. .. .. .	[1899] W. N. 45; [1899] 1 Ch. 836; C. A. [1899] W. N. 249; C. A. [1900] 1 Ch. 122 .. ..	536

Name of Case.	Volume and Page.	Column of Digest.
Whinney, Ex parte. In re Harrison and Ingram {	[1900] W. N. 118; C. A. [1900] W. N. 174; [1900] 2 Q. B. 710	184
Whipp:—Varley v. .. .. . {	[1900] W. N. 38; [1900] 1 Q. B. 513	1816
Whiston's Settlement, In re. Lovatt v. William-son .. .. . {	[1894] 1 Ch. 661	1899
Whitaker, In re. Whitaker v. Palmer .. {	[1900] W. N. 175; [1900] 2 Ch. 677; C. A. [1900] W. N. 239	796
Whitaker:—Nuttall v. In re Hartley (No. 1) (No. 2) {	[1891] 2 Ch. 121	1547
Whitchurch, In re. In re Simpson .. .. {	[1892] W. N. 49	1699
White, In re. Pennell v. Franklin .. .. {	C. A. [1897] 1 Ch. 256	1891
White, In re. White v. White .. .. . {	[1898] 1 Ch. 297; C. A. [1898] 2 Ch. 217	2060
White, In re. White v. White .. .. . {	C. A. [1893] 2 Ch. 41	277, 2363
White:—Blackmore v. .. .. . {	[1898] W. N. 172 (6); [1899] 1 Q. B. 293	524
White:—Bradford-on-Avon Assessment Com- mittee v. .. .. . {	[1895] 2 Q. B. 630	1679
White:—Clarke v. In re Bennett .. .. {	[1898] W. N. 173 (8); [1899] 1 Ch. 316	1299
White v. Cohen .. .. . {	C. A. [1893] 1 Q. B. 580	589
White:—Cook v. .. .. . {	[1896] 1 Q. B. 284	22
White v. Devon (Earl of). In re Earl of Devon's Settled Estates. In re Steer. Steer v. Dobell .. .. . {	[1896] 2 Ch. 562	1136
White v. Duvernay .. .. . {	[1891] P. 290	1615
White v. Headland's Patent Electric Storage Battery Co. .. .. . {	C. A. [1899] W. N. 15 (6); [1899] 1 Q. B. 507	588
White:—Hensey v. .. .. . {	C. A. [1900] 1 Q. B. 481	1214
White:—Mellin v. .. .. . {	C. A. [1894] 3 Ch. 276; H. L. (E.) [1895] A. C. 154	650, 970
White v. Morley .. .. . {	[1899] W. N. 67; [1899] 2 Q. B. 34	871
White:—Pharmaceutical Society v. .. .. {	[1900] W. N. 10; [1900] 1 Q. B. 454	1452
White:—Pledge v. .. .. . {	H. L. (E.) [1896] A. C. 187	1275
White:—Ross v. .. .. . {	C. A. [1894] 3 Ch. 326	559, 1416
White v. Southend Hotel Co. .. .. . {	C. A. [1897] W. N. 36 (6); [1897] 1 Ch. 767	1057
White:—Watson v. .. .. . {	[1896] 2 Q. B. 9	594
White v. White .. .. . {	[1898] P. 124	701
White Brothers:—Simmons v. .. .. . {	C. A. [1899] W. N. 32 (2); [1899] 1 Q. B. 1005	1217
White & Co. v. Furness, Withy & Co. .. {	C. A. [1894] 1 Q. B. 483; H. L. (E.) [1895] A. C. 40	1937
White & Rubery, In re .. .. . {	[1894] 2 Q. B. 923	211
White and Smith's Contract, In re .. {	[1896] 1 Ch. 637	2226
Whitebread v. Sevenoaks Highway Board .. {	[1892] 1 Q. B. 8	893
Whitefriars Financial Co., In re. In re Reeves & Son, Ld. .. .. . {	[1898] W. N. 165 (6); [1899] 1 Ch. 184	309
Whitehaven Colliery Co.:—Kearney v. .. {	C. A. 1893] 1 Q. B. 700	1258
Whitehaven Harbour Commrs.:—Chambers v. {	C. A. [1899] 2 Q. B. 132	1223
Whitehead, In re. Peacock v. Lucas .. .. {	[1894] 1 Ch. 678	233
Whitehead:—Bagge v. .. .. . {	C. A. [1892] 2 Q. B. 355	1924
Whitehead:—Davis v. In re Marlborough (Duke of) .. .. . {	[1894] 2 Ch. 133	851

Name of Case.	Volume and Page.	Column of Digest.
Whitehead & Brothers, <i>Ld.</i> , In re .. ..	[1900] W. N. 90; [1900] 1 Ch. 804	392
Whitehouse:— <i>Daniel &amp; Arter v.</i> .. ..	[1898] 1 Ch. 685 .. ..	2139
Whitelegg, In the Goods of .. ..	[1899] P. 267 .. ..	1599
Whiteley:— <i>Rogers v.</i> .. ..	H. L. (E.) [1892] A. C. 118 ..	78, 90, 93
Whiteley's Case. In re General Ry. Syndicate {	[1899] W. N. 34 (5); [1899] 1 Ch. 770; C. A. [1900] W. N. 28; [1900] 1 Ch. 365 ..	429
Whiteley and Roberts, Arbitration, In re ..	[1891] 1 Ch. 558 .. ..	55, 59, 772
Whiteley <i>v.</i> Edwards .. ..	C. A. [1896] 2 Q. B. 48 .. ..	919
Whiteley Exerciser, <i>Ld. v.</i> Gamage .. ..	[1898] 2 Ch. 405 .. ..	438
White's Charities, In re. Charity Commrs. <i>v.</i> London Corporation .. ..	[1898] 1 Ch. 659 .. ..	2234
Whitley <i>v.</i> Challis .. ..	C. A. [1892] 1 Ch. 64 .. ..	1703
Whitley:— <i>La Compagnie de Mayville v.</i> ..	C. A. [1896] 1 Ch. 788 .. ..	359
Whitmore:— <i>Fairtlough v.</i> .. ..	[1895] W. N. 52 .. ..	872
Whittaker:— <i>Nuttall v.</i> In re Hartley (No. 1) (No. 2) ..	[1891] 2 Ch. 121 .. ..	1547
Whittaker <i>v.</i> Scarborough Post Newspaper Co. ..	[1892] W. N. 49 .. ..	1699
Whitting & Nicholson. In re Hanbury ..	C. A. [1896] 2 Q. B. 148 .. ..	675
Whittington <i>v.</i> Seale-Hayne .. ..	[1896] W. N. 172 (10) .. ..	2051
Whitton <i>v.</i> Whitton .. ..	[1900] W. N. 31 .. ..	517
Whitton (The), Gas Float, No. 2 .. ..	[1900] P. 178 .. ..	1014
Whitwham <i>v.</i> Piercy. In re Piercy .. ..	[1895] P. 301; C. A. [1895] W. N. 160 (2); [1896] P. 42; H. L. (E.) [1897] A. C. 237 ..	2007
Whitwham <i>v.</i> Piercy. In re Piercy .. ..	[1895] 1 Ch. 83 .. ..	789, 838
Whitwham <i>v.</i> Westminster Brymbo Coal and Coke Co. .. ..	[1896] W. N. 1 (4); C. A. [1898] 1 Ch. 565 .. ..	284
Whitwood Chemical Co. <i>v.</i> Hardman .. ..	C. A. [1896] 2 Ch. 538 .. ..	2155
Whitworth <i>v.</i> Whitworth .. ..	C. A. [1891] 2 Ch. 416 .. ..	508, 515, 960, 2062
Whitwood Urban District Council:— <i>Mexborough (Earl of) v.</i> .. ..	[1893] P. 85 .. ..	693, 1250
Whitworth's Claim. Owen and Ashworth's Claim. In re Bank of Syria .. ..	C. A. [1897] 2 Q. B. 111 .. ..	666
Whyte <i>v.</i> Northern Heritable Securities Investment Co. .. ..	[1900] W. N. 66; [1900] 2 Ch. 272; C. A. [1900] W. N. 256	350
Whyte:— <i>Great Britain Steamship Premium Association v.</i> .. ..	H. L. (Sc.) [1891] A. C. 608 .. ..	1829
Wick and Pulteneytown Steam Shipping Co.:— <i>Palmer v.</i> .. ..	Ct. of Sess. (Sc.) [1896] W. N. 91 .. ..	1798
Wickens, <i>Ex parte</i> .. ..	H. L. [1894] A. C. 318 .. ..	1835
Widnes Corporation:— <i>Wood v.</i> .. ..	C. A. [1898] 1 Q. B. 543 .. ..	210
Wiedemann <i>v.</i> Walpole .. ..	[1897] 2 Q. B. 357; C. A. [1898] 1 Q. B. 463 .. ..	2287
Wiel:— <i>Saunders v.</i> (No. 1) .. ..	C. A. [1891] 2 Q. B. 534 .. ..	217, 779
Wieland <i>v.</i> Bird .. ..	[1892] 2 Q. B. 18; C. A. [1892] 2 Q. B. 321 .. ..	655, 675
Wigan Tramways Co.:— <i>Carrick v.</i> .. ..	C. A. [1893] 1 Q. B. 470 .. ..	656
Wiggins:— <i>Cameron v.</i> .. ..	[1894] P. 262 .. ..	1606
Wignall <i>v.</i> Park. In re Parker .. ..	[1893] W. N. 98 .. ..	316
Wigram <i>v.</i> Buckley .. ..	[1900] W. N. 253 .. ..	2123
	[1891] 1 Ch. 682 .. ..	286
	C. A. [1894] 3 Ch. 483 .. ..	1139, 1281, 1287

Name of Case.	Volume and Page.	Column of Digest.
Wigram v. Cox, Sons, Buckley & Co. .. ..	[1894] 1 Q. B. 792 .. ..	1546
Wilcock, In re. Kay v. Dewhirst .. ..	{ [1897] W. N. 172 (12); [1898] 1 Ch. 95 .. .. }	2299
Wilcocks:—Cadell v. .. ..	[1898] P. 21 .. ..	2358
Wilcox & Gibbs v. Janes .. ..	[1897] 2 Ch. 71 .. ..	1438
Wild:—Bradbury v. .. ..	[1893] 1 Ch. 377 .. ..	228
Wild v. Southwood .. ..	{ [1896] W. N. 166 (2); [1897] 1 Q. B. 317 .. .. }	155
Wild v. Stanham. In re Treasure .. ..	{ [1900] W. N. 181; [1900] 2 Ch. 649 .. .. }	2363
Wild v. Waygood .. ..	C. A. [1892] 1 Q. B. 783 .. ..	1243
Wild & Son:—Stanley (Lord) of Alderley v. .. ..	{ C. A. [1899] W. N. 255; [1900] 1 Q. B. 256 .. .. }	626
Wilde:—Burchell v. .. ..	{ [1900] W. N. 29; C. A. [1900] W. N. 63; [1900] 1 Ch. 551 .. .. }	1417
Wilde:—Santley v. .. ..	{ [1899] W. N. 19 (8); [1899] 1 Ch. 747; C. A. [1899] W. N. 132; [1899] 2 Ch. 474 .. .. }	1293
Wilding:—Ainsworth v. .. ..	[1896] 1 Ch. 673 .. ..	1550
Wilding:—Ainsworth v. .. ..	{ [1900] W. N. 132; [1900] 2 Ch. 315 .. .. }	670
Wilding v. Bean .. ..	C. A. [1891] 1 Q. B. 100 .. ..	1547
Wilding v. Sanderson .. ..	{ [1897] W. N. 39 (11); C. A. [1897] 2 Ch. 534 .. .. }	1551
Wildsmith:—Sandes v. .. ..	[1893] 1 Q. B. 771 .. ..	1513
“Wilhelm Tell,” The .. ..	[1892] P. 337 .. ..	2003
Wilkes:—Coombs v. .. ..	[1891] 3 Ch. 77 .. ..	848
Wilkes:—Oxley v. .. ..	C. A. [1898] 2 Q. B. 56 .. ..	647
Wilkin:—Armstrong v. In re Weeding .. ..	{ [1896] 2 Ch. 364 .. .. }	2328
Wilkins:—J. Lyons & Sons v. .. ..	{ C. A. [1896] 1 Ch. 811; [1899] W. N. 3 (9); [1899] 1 Ch. 255 .. .. }	2145, 2146
Wilkins:—Schwerzerhof v. .. ..	[1898] 1 Q. B. 640 .. ..	1237
Wilkins v. Wilkins .. ..	C. A. [1896] P. 108 .. ..	715
Wilkinson, In the Goods of .. ..	[1892] P. 227 .. ..	1615
Wilkinson v. Blades. In re Lart .. ..	[1896] 2 Ch. 788 .. ..	768
Wilkinson:—Budden v. .. ..	C. A. [1893] 2 Q. B. 432 .. ..	661, 669
Wilkinson v. Downton .. ..	[1897] 2 Q. B. 57 .. ..	13
Wilkinson:—Ormond v. In re Scowcroft .. ..	[1898] 2 Ch. 638 .. ..	279
Wilkinson v. Peel .. ..	[1895] 1 Q. B. 516 .. ..	683
Wilkinson:—Reg. v. .. ..	[1891] 1 Q. B. 722 .. ..	1458
Wilkinson:—Smith v. In re Victoria Steam-boats, Ltd. .. ..	[1897] 1 Ch. 158 .. ..	332
Wilkinson:—Stileman-Gibbard v. .. ..	[1897] 1 Q. B. 749 .. ..	756
Wilkinson, Heywood & Clark, Ltd.:—Hubbuck & Sons, Ltd. .. ..	C. A. [1899] 1 Q. B. 86 .. ..	651
Wilks, In re. Child v. Bulmer .. ..	[1891] 3 Ch. 59 .. ..	1022
Wilks v. Wood .. ..	C. A. [1892] 1 Q. B. 684 .. ..	1566
Willans:—Ives & Barker v. .. ..	{ [1894] 1 Ch. 68; C. A. [1894] 2 Ch. 478 .. .. }	52, 54, 65
Willcocks:—Lawrence & Sons v. .. ..	C. A. [1892] 1 Q. B. 696 .. ..	1565, 1566
Willerton v. Stocks .. ..	[1892] W. N. 29 .. ..	2348
Wilkesden Local Board:—London and Provincial Laundry Co. v. .. ..	[1892] 2 Q. B. 271 .. ..	1164
Wilkesden Local Board and Wright, In re .. ..	C. A. [1896] 2 Q. B. 412 .. ..	1917
Willetts v. Watts & Co. .. ..	C. A. [1892] 2 Q. B. 92 .. ..	1239
Wiley v. Great Northern Ry. Co. .. ..	[1891] 2 Q. B. 194 .. ..	559, 562
Williams, Ex parte. In re Sarl .. ..	[1892] 2 Q. B. 591 .. ..	212

Name of Case.	Volume and Page.	Column of Digest.
Williams and Duchess of Newcastle's Contract, In re .. .. .	[1897] 2 Ch. 144 .. ..	2255
Williams, Ex parte. Reg. v. Powell .. ..	[1899] 1 Q. B. 396 .. ..	1361
Williams, In re. Morgan v. Williams .. ..	[1892] W. N. 81 .. ..	799
Williams, In re. Williams v. Williams .. ..	[1895] W. N. 36 .. ..	31, 2309
Williams, In re. Williams v. Williams .. ..	C. A. [1897] 2 Ch. 12 .. ..	2352
Williams:—Baker v. .. ..	[1893] W. N. 14 .. ..	2241
Williams:—Baker v. .. ..	[1898] 1 Q. B. 23 .. ..	633, 2072
Williams v. Birmingham Battery and Metal Co. {	C. A. [1899] W. N. 106; [1899] 2 Q. B. 338 .. ..	1226, 1251
Williams:—Black v. .. ..	[1895] 1 Ch. 408 .. ..	1986
Williams:—Brinsden v. .. ..	[1894] 3 Ch. 185 .. ..	2049, 2180
Williams:—Broomfield v. .. ..	C. A. [1897] 1 Ch. 602 .. ..	2232
Williams v. Cartwright .. ..	C. A. [1895] 1 Q. B. 142 .. ..	1544
Williams v. Davies. Callender, Sykes & Co. v. Colonial Secretary of Lagos .. ..	P. C. [1891] A. C. 460 .. ..	119, 292, 877, 1045
Williams:—Duffield v. In re Berry .. ..	[1896] 1 Ch. 939 .. ..	1508
Williams:—Falck v. .. ..	P. C. [1900] A. C. 176 .. ..	512
Williams v. Frere. In re Smith .. ..	[1891] 1 Ch. 323 .. ..	667, 669
Williams v. Goose .. ..	C. A. [1897] 1 Q. B. 471 .. ..	1521
Williams:—Henderson & Co. v. .. ..	C. A. [1895] 1 Q. B. 521 .. ..	767, 2159
Williams:—Hodder v. .. ..	C. A. [1895] 2 Q. B. 663 .. ..	1923
Williams:—Holmes v. .. ..	[1895] W. N. 116 (15) .. ..	2160
Williams v. Jenkins (No. 1) .. ..	[1893] 1 Ch. 700 .. ..	11
— (No. 2) .. ..	[1894] W. N. 176 .. ..	1890, 2169
Williams v. Jones. In re Hartley. Williams v. Williams .. ..	[1899] W. N. 234; [1900] 1 Ch. 152 .. ..	1132
Williams v. Knight. In re Hodson .. ..	[1894] 2 Ch. 421 .. ..	955, 957
Williams v. London and North Western Ry. Co. {	[1899] 2 Q. B. 197; C. A. [1900] W. N. 75; [1900] 1 Q. B. 760	1684
Williams v. Macdonald .. ..	[1899] 2 Q. B. 308 .. ..	1109
Williams:—Manchester Corporation v. .. ..	[1891] 1 Q. B. 94 .. ..	545, 644
Williams:—Marland v. In re Goodenough .. ..	[1895] 2 Ch. 537 .. ..	1868
Williams v. Marson. In re Buckle .. ..	C. A. [1894] 1 Ch. 286 .. ..	2308
Williams v. Mitchell. In re Byron's Settlement .. ..	[1891] 3 Ch. 474 .. ..	1467
Williams:—Moir v. .. ..	C. A. [1892] 1 Q. B. 264 .. ..	1158
Williams v. Papworth .. ..	P. C. [1900] A. C. 563 .. ..	1328
Williams v. Powell .. ..	[1894] W. N. 141 .. ..	779
Williams v. Quebrada Ry., Land and Copper Co. .. ..	[1895] 2 Ch. 751 .. ..	669
Williams:—Raleigh Corporation v. .. ..	P. C. [1893] A. C. 540 .. ..	254
Williams:—Reg. v. .. ..	C. C. R. [1893] 1 Q. B. 320 .. ..	620
Williams:—Schiedges v. .. ..	[1893] W. N. 158 .. ..	63
Williams v. Scott .. ..	P. C. [1900] A. C. 499 .. ..	2242
Williams v. Spargo .. ..	[1893] W. N. 100 .. ..	2251
Williams:—Strickland v. .. ..	C. A. [1899] 1 Q. B. 382 .. ..	215
Williams v. Williams. In re Hartley. Williams v. Jones .. ..	[1899] W. N. 234; [1900] 1 Ch. 152 .. ..	1132
Williams:—West v. .. ..	[1898] 1 Ch. 488; C. A. [1898] W. N. 169 (9); [1899] 1 Ch. 132 .. ..	1289
Williams v. Williams & Pocock .. ..	[1896] P. 153 .. ..	699
Williams v. Williams .. ..	[1899] W. N. 66 .. ..	1407
Williams & Sons:—Lucas v. .. ..	C. A. [1892] Q. B. 113 .. ..	530

Name of Case.	Volume and Page.	Column of Digest.
Williams and Stepney, In re .. .. .	[1891] 1 Q. B. 700; C. A. {	61
Williams, Deacon & Co.:—Goldstone v. .. .	[1891] 2 Q. B. 257 .. .	
Williams, Torrey & Co. v. Knight. The "Lord of the Isles" .. .. .	[1898] W. N. 148 (3); [1899] 1 Ch. 47 .. .. .	688
Williamson:—Gordon v. .. .. .	[1894] P. 342 .. .. .	995
Williamson v. Hine .. .. .	[1892] 1 Q. B. 616; C. A. [1892] 2 Q. B. B. 459 .. .. .	1182
Williamson:—Lovatt v. In re Whiston's Settlement ¶ .. .. .	[1891] 1 Ch. 390 .. .. .	1985
Williamson v. Norris .. .. .	[1894] 1 Ch. 661 .. .. .	1899
Williamson & Sons:—Davey & Co. v. .. .. .	[1898] W. N. 151 (8); [1899] 1 Q. B. 7 .. .. .	1110
Williamson & Sons, Ltd.:—Tottenham Urban District Council v. .. .. .	[1898] 2 Q. B. 194 .. .. .	321
Willis:—Barron v. .. .. .	[1896] 2 Q. B. 353 .. .. .	1347
Willis:—Drew v. Ex parte Martin .. .. .	[1899] W. N. 109; [1899] 2 Ch. 578; C. A. [1900] W. N. 113; [1900] 2 Ch. 121 .. .. .	2046, 2207
Willis v. Howe (Earl) .. .. .	C. A. [1891] 1 Q. B. 450 .. .. .	269
Willis:—Gray v. .. .. .	C. A. [1893] 2 Ch. 545 .. .. .	1129
Willis:—Pratt v. .. .. .	[1895] W. N. 9 .. .. .	780
Willis v. Wells .. .. .	[1895] W. N. 9 .. .. .	780
Willis & Co. v. Baddeley .. .. .	[1892] 2 Q. B. 225 .. .. .	858
Willoughby:—Hyderabad (Deccan) Co. v. .. .. .	C. A. [1892] 2 Q. B. 324 .. .. .	675
Willoughby:—Liquidation Estates Purchase Co. v. .. .. .	[1899] 2 Q. B. 530 .. .. .	990
Willson v. Love .. .. .	C. A. [1896] 1 Ch. 726; [1898] A. C. 321 .. .. .	1297
Willis' Trade-marks, In re .. .. .	C. A. [1896] 1 Q. B. 626 .. .. .	1057
Willis's Trade-marks, In re. In re Dexter's Application .. .. .	C. A. [1892] 3 Ch. 201 .. .. .	672
Wilmer v. McNamara & Co. .. .. .	[1893] 2 Ch. 262 .. .. .	2137
Wilmot, In re. Wilmot v. Betterton .. .. .	[1895] 2 Ch. 245 .. .. .	354
Wilmot v. Alton .. .. .	[1897] W. N. 44 (15) .. .. .	2334
Wilmot v. Grace .. .. .	[1896] 2 Q. B. 254; C. A. [1896] W. N. 160 (3); [1897] 1 Q. B. 17 .. .. .	116
Wilson, Ex parte. In re Athlumney .. .. .	[1892] 1 Q. B. 812 .. .. .	856
Wilson, Ex parte. In re Dunhill .. .. .	[1898] 2 Q. B. 547 .. .. .	165
Wilson, In re. Wilson v. Holloway .. .. .	[1894] 2 Q. B. 554 .. .. .	112
Wilson v. Ann. In re Ann .. .. .	[1893] 2 Ch. 340 .. .. .	520, 1410
Wilson:—Ashby v. .. .. .	[1894] 1 Ch. 549 .. .. .	903, 1476
Wilson v. Atkinson. In re Atkinson .. .. .	[1890] W. N. 222; [1900] 1 Ch. 66 .. .. .	1063
Wilson:—Att.-Gen. v. .. .. .	[1892] 3 Ch. 52 .. .. .	2336
Wilson:—Baden-Powell v. .. .. .	[1900] W. N. 263 .. .. .	627
Wilson v. Bromby. In re Bromby .. .. .	[1894] W. N. 146 .. .. .	1532
Wilson v. Buchanan .. .. .	[1900] W. N. 187 .. .. .	2369
Wilson:—Buckler v. .. .. .	C. A. (Ir.) [1898] W. N. 124 .. .. .	1372
Wilson:—Edgell v. .. .. .	[1895] W. N. 156 (6); [1896] 1 Q. B. 83 .. .. .	20
Wilson:—Fenner v. .. .. .	[1893] W. N. 145 .. .. .	1702
Wilson:—Howard Smith & Sons v. .. .. .	[1893] 2 Ch. 656 .. .. .	1442
Wilson v. Ingham .. .. .	P. C. [1896] A. C. 579 .. .. .	2261
Wilson:—Laidlaw v. .. .. .	[1895] W. N. 99 .. .. .	686
Wilson:—Lee v. In re Tillott .. .. .	[1894] 1 Q. B. 74 .. .. .	24
	[1892] 1 Q. B. 86 .. .. .	2184

Name of Case.	Volume and Page.	Column of Digest.
Wilson :—Lord Advocate <i>v.</i> .. .. .	Ct. of Sess. (Sc.) [1892] W. N. 118 .. .. .	1779
Wilson <i>v.</i> MacIntosh .. .. .	P. C. [1894] A. C. 129 .. .. .	1331
Wilson <i>v.</i> Maryon-Wilson. In re Maryon-Wilson .. .. .	[1899] W. N. 97; [1899] 2 Ch. 480; C. A. [1900] W. N. 57; [1900] 1 Ch. 565 .. .. .	1742, 1743
Wilson (John) & Co.'s Estate, Official Assignee of :—Commercial Bank of Australia <i>v.</i> .. .. .	P. C. [1893] A. C. 181 .. .. .	150
Wilson and King :—Reid <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 315 .. .. .	2094
Wilson & Son and Eastern Counties Navigation and Transport Co., In re .. .. .	[1892] 1 Q. B. 81 .. .. .	53
Wilson and Ward :—Reid <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 315 .. .. .	2094
Wilson :—Payne <i>v.</i> .. .. .	[1895] 1 Q. B. 653; C. A. [1895] 2 Q. B. 537 .. .. .	815
Wilson <i>v.</i> Queen's Club .. .. .	[1891] 3 Ch. 522 .. .. .	223, 1079, 1275
Wilson <i>v.</i> St. Giles, Camberwell .. .. .	[1892] 1 Q. B. 1 .. .. .	1177
Wilson, Sons & Co. <i>v.</i> Balcarres Brook Steamship Co. .. .. .	C. A. [1893] 1 Q. B. 422 .. .. .	1505
Wilson, Sons & Co. (Owners of the "Otto") <i>v.</i> Currie (Owners of the "Thorsa") .. .. .	H. L. (Sc.) [1894] A. C. 116 .. .. .	1953
Wilson, Sons & Co. :—Merrill <i>v.</i> .. .. .	C. A. [1900] W. N. 248 .. .. .	1231
Wilson <i>v.</i> Statham .. .. .	[1891] 2 Q. B. 261 .. .. .	589
Wilson :—Tadcaster Tower Brewery Co. <i>v.</i> .. .. .	[1897] 1 Ch. 705 .. .. .	2229
Wilson's and Steven's Contract, In re .. .. .	[1894] 3 Ch. 546 .. .. .	2231
Wiltshire, In re. Ex parte Eynon .. .. .	[1899] W. N. 236; [1900] 1 Q. B. 96 .. .. .	202
Wimbledon Local Board <i>v.</i> Underwood .. .. .	[1892] 1 Q. B. 836 .. .. .	209, 1688
Wimbledon Urban Council :—Penny <i>v.</i> .. .. .	[1898] 2 Q. B. 212; C. A. [1899] W. N. 65; [1899] 2 Q. B. 72 .. .. .	1317
Wimborne (Lord) :—Groves <i>v.</i> .. .. .	C. A. [1898] 2 Q. B. 402 .. .. .	1237
Winch :—Dixon <i>v.</i> .. .. .	C. A. [1900] 1 Ch. 736 .. .. .	1306
Winder :—Great Northern Ry. Co. <i>v.</i> .. .. .	[1892] 2 Q. B. 595 .. .. .	1652
Winder :—Reg. <i>v.</i> .. .. .	[1900] 2 Ch. 666 .. .. .	1113
"Winstead," The .. .. .	[1895] P. 170 .. .. .	1990
Wingate & Co. <i>v.</i> Inland Revenue .. .. .	Ct. of Sess. (Sc.) [1898] W. N. 129 .. .. .	1768
Wingfield <i>v.</i> Erskine. In re Fludyer .. .. .	[1898] 2 Ch. 562 .. .. .	805
Winkle, In re .. .. .	C. A. [1894] 2 Ch. 519 .. .. .	1191
Winkle <i>v.</i> Bailey .. .. .	[1896] W. N. 175 (11); [1897] 1 Ch. 123 .. .. .	1198
Winnipeg (City of) <i>v.</i> Barrett .. .. .	P. C. [1892] A. C. 445 .. .. .	219, 292
Winnipeg (City of) <i>v.</i> Logan .. .. .	P. C. [1892] A. C. 445 .. .. .	250
Winnipeg Electric Street Ry. Co. and City of Winnipeg :—Winnipeg Street Ry. Co. <i>v.</i> .. .. .	P. C. [1894] A. C. 615 .. .. .	250
Winnipeg Street Ry. Co. <i>v.</i> Winnipeg Electric Street Ry. Co. and City of Winnipeg .. .. .	P. C. [1894] A. C. 615 .. .. .	250
"Winstanley," The .. .. .	C. A. [1896] P. 297 .. .. .	1952
Winstone, In the Goods of .. .. .	[1898] P. 143 .. .. .	1624
Winter <i>v.</i> Winter .. .. .	[1894] 1 Ch. 421 .. .. .	1545
Winterton (Earl) :—How <i>v.</i> .. .. .	C. A. [1896] 2 Ch. 626 .. .. .	2165
Wintle, In re. Tucker <i>v.</i> Wintle .. .. .	[1896] 2 Ch. 711 .. .. .	2317
Wippell :—Rew <i>v.</i> In re Rew. In re Sharland .. .. .	[1899] W. N. 40; [1899] 2 Ch. 536 .. .. .	1473
Wirral Highway Board <i>v.</i> Newell .. .. .	[1895] 1 Q. B. 827 .. .. .	893
Wirral Rys. Committee :—Shrewsbury (Earl of) <i>v.</i> .. .. .	C. A. [1895] 2 Ch. 812 .. .. .	1090



Name of Case.	Volume and Page.	Column of Digest.
Wise, In re. Jackson v. Parrott .. ..	[1896] 1 Ch. 281 .. ..	950
Wissner v. Levison and Steiner .. ..	[1900] W. N. 152 .. ..	324
Withall, In re .. ..	C. A. [1891] 3 Ch. 8 .. ..	2040
Withall:—Brooman v. In re Kidd .. ..	[1894] 3 Ch. 558 .. ..	790, 2327
Witham v. Andrews. In re Stead .. ..	[1899] W. N. 235; [1900] 1 Ch. 237 .. ..	2164
Witham:—Cradock v. .. ..	[1895] W. N. 75 .. ..	2167
Witherby v. Rackham .. ..	[1891] W. N. 57 .. ..	902
Withington Local Board of Health v. Manchester Corporation .. ..	C. A. [1893] 2 Ch. 19 .. ..	1346
Witt v. Witt .. ..	[1891] P. 163 .. ..	693
Witted v. Galbraith .. ..	[1893] 1 Q. B. 431; C. A. [1893] 1 Q. B. 577 .. ..	1543
Wix v. Ru'son .. ..	[1899] 1 Q. B. 474 .. ..	1176
Wodehouse:—Ecclesiastical Commrs. v. .. ..	[1895] 1 Ch. 552 .. ..	752, 2269
Wohlgemuthe v. Coste .. ..	[1899] 1 Q. B. 501 .. ..	584
Wolfe, Ex parte. In re Barr .. ..	[1896] 1 Q. B. 616 .. ..	161
Wolferstan:—Reg. v. .. ..	[1893] 2 Q. B. 451 .. ..	896
Wolmer (Viscount) v. Forester. In re Cleveland's (Duke of) Settled Estate .. ..	C. A. [1894] 1 Ch. 164 .. ..	2368
Wolmer:—Hay v. In re Cleveland's (Duke of) Estate .. ..	[1895] 2 Ch. 542 .. ..	1852
Wolmershausen v. Gullick .. ..	[1893] 2 Ch. 514 .. ..	154, 1582, 1583
Wolmershausen v. Wolmershausen & Co. .. ..	[1892] W. N. 87 .. ..	969, 2141
Wolsey:—Abbott & Co. v. .. ..	C. A. [1895] 2 Q. B. 97 .. ..	1815
Wolverhampton Corporation v. Bilston Commrs. .. ..	[1891] 1 Ch. 315; C. A. [1891] W. N. 56 .. ..	2278
Wolverhampton District Brewery, Ltd., In re. Downes v. Wolverhampton District Brewery, Ltd. .. ..	[1899] W. N. 229 .. ..	324
Wolverton (Baron):—Att.-Gen. v. .. ..	[1896] 2 Q. B. 389; C. A. [1897] 1 Q. B. 231; H. L. (E.) [1898] A. C. 535 .. ..	1807
Womack:—Ramage v. .. ..	[1899] W. N. 246; [1900] 1 Q. B. 116 .. ..	1062
Wood, In re .. ..	[1891] W. N. 203 .. ..	2045
Wood, In re. Ex parte Fanshawe .. ..	[1896] W. N. 263 (1); [1897] 1 Q. B. 314 .. ..	119
Wood, In re. Ex parte Woolfe .. ..	[1894] 1 Q. B. 605 .. ..	206
Wood, In re. Anderson v. London City Mission .. ..	[1894] 2 Ch. 577 .. ..	2303
Wood, In re. Att.-Gen. v. Anderson .. ..	[1896] 2 Ch. 596 .. ..	765
Wood, In re. Parnell (formerly O'Shea) v. Wood .. ..	C. A. [1892] P. 137 .. ..	662
Wood, In re. Tullett v. Colville .. ..	[1894] 2 Ch. 310; C. A. [1894] 3 Ch. 381 .. ..	520, 2349
Wood:—Atlantic and North Western Ry. Co. .. ..	P. C. [1895] A. C. 257 .. ..	245
Wood:—Att.-Gen. v. .. ..	[1897] 2 Q. B. 102 .. ..	1749
Wood:—Avery v. .. ..	C. A. [1891] 3 Ch. 115 .. ..	530
Wood Brothers:—Osborn v. .. ..	[1896] W. N. 174 (8); [1897] 1 Q. B. 197 .. ..	1031
Wood v. Cooper .. ..	[1894] 3 Ch. 671 .. ..	1056
Wood:—Druicqbier v. .. ..	[1898] W. N. 151 (13); [1899] 1 Ch. 393 .. ..	1513
Wood:—Fillingham v. .. ..	[1891] 1 Ch. 51 .. ..	1156

Name of Case.	Volume and Page.	Column of Digest.
Wood v. Gray & Sons .. .. .	H. L. (Sc.) [1892] A. C. 576 .. {	1250, 1837
Wood v. Headingley-cum-Burley Burial Board	[1892] 1 Q. B. 713 .. ..	234
Wood :—London County Council v. .. ..	[1897] 2 Q. B. 482 .. ..	1146
Wood v. McCarthy .. .. .	[1893] 1 Q. B. 775 .. ..	1516
Wood v. Middleton .. .. .	[1896] W. N. 176 (16); [1897] 1 Ch. 151 .. ..	1545
Wood :—North British Ry. Co. .. ..	H. L. (Sc.) [1891] W. N. 130 .. ..	1643
Wood :—O'Shea v. .. .. .	[1891] P. 237; C. A. [1891] P. 286 .. ..	1614
Wood v. Rendell. In re Rendell .. ..	[1900] W. N. 257 .. ..	786
Wood :—Salt Union v. .. .. .	[1893] 1 Q. B. 370 .. ..	1989
Wood v. Stenning. In re Stenning .. ..	[1895] 2 Ch. 433 .. ..	90
Wood v. Thomas. In re Thomas .. ..	[1891] 3 Ch. 482 .. ..	1855
Wood v. Walsh & Sons .. .. .	C. A. [1899] W. N. 35 (8); [1899] 1 Q. B. 1009 .. ..	1216
Wood v. Widnes Corporation .. .. .	[1897] 2 Q. B. 357; C. A. [1898] 1 Q. B. 463 .. ..	2287
Wood v. Wilks v. .. .. .	C. A. [1892] 1 Q. B. 684 .. ..	1566
Wood v. Wood .. .. .	C. A. [1891] P. 272 .. ..	689
Wood & Co. :—Gough v. .. .. .	C. A. [1894] 1 Q. B. 713 .. ..	826, 827
Wood & Co. :—Hamlyn & Co. v. .. ..	C. A. [1891] 2 Q. B. 488 .. ..	510
Wood v. Woodhouse & Rawson, Ld. .. ..	[1896] W. N. 4 (4) .. ..	472
Woodcock v. Holdroyd. In re Peel .. ..	[1899] W. N. 208 .. ..	555
Woodd, In re. Ex parte King .. .. .	[1900] W. N. 84 .. ..	176
Woodford :—Ross v. .. .. .	[1894] 1 Ch. 38 .. ..	778
Woodham v. London County Council .. ..	[1898] 1 Q. B. 863 .. ..	1174
Woodham v. Atlantic Transport Co. .. ..	C. A. [1898] W. N. 139 (9); [1899] 1 Q. B. 15 .. ..	1229
Woodhead v. Woodhead .. .. .	[1895] P. 343 .. ..	924
Woodhouse :—Brighton Marine Palace and Pier Co., Ld., v. .. .. .	[1893] 2 Ch. 486 .. ..	52
Woodhouse & Rawson, Ld. :—Wood v. .. ..	[1896] W. N. 4 (4) .. ..	472
Woodin, In re. Woodin v. Glass .. .. .	C. A. [1895] 2 Ch. 309 .. ..	951, 2292, 2334
Woodroffe v. Moody. In re Moody .. ..	[1895] 1 Ch. 101 .. ..	2340
Woodrow, Hooper & Co., In re .. .. .	[1893] W. N. 38 .. ..	438
Woods, Ex parte. In re Evans v. Woods .. ..	P. C. [1900] A. C. 338 .. ..	756
Woods v. Harrison .. .. .	C. A. [1899] W. N. 15 (7); [1899] 1 Ch. 465 .. ..	1024
Woods :—Llandudno Urban Council v. .. ..	[1899] W. N. 135; [1899] 2 Ch. 705 .. ..	1845
Woods and Lewis' Contract, In re .. ..	[1898] 1 Ch. 433; C. A. [1898] 2 Ch. 211 .. ..	2237
Woodside v. Globe Marine Insurance Co. .. ..	[1896] 1 Q. B. 105 .. ..	990
Woodward v. Heseltine. In re Heseltine. Sim- mons v. Woodward .. .. .	C. A. [1891] 1 Ch. 464; H. L. (E.) [1892] A. C. 100 .. ..	197
Woodward v. Simpson. In re Hamilton .. ..	[1892] W. N. 74 .. ..	2342
Wool Industries Employers' Insurance Associa- tion, Ld., In re .. .. .	[1899] W. N. 259 .. ..	1523
Woolf :—Blake v. .. .. .	[1898] 2 Q. B. 426 .. ..	1075
Woolf :—Gosling v. .. .. .	[1893] 1 Q. B. 39 .. ..	1084
Woolf v. Hamilton .. .. .	C. A. [1898] 2 Q. B. 337 .. ..	864
Woolf v. Woolf .. .. .	[1898] W. N. 173 (10); [1899] 1 Ch. 343 .. ..	954
Woolfe, Ex parte. In re Wood .. .. .	[1894] 1 Q. B. 605 .. ..	206
Woolfe v. De Braam .. .. .	C. A. [1899] W. N. 289 .. ..	1557

Name of Case.	Volume and Page.	Column of Digest.
Woolford's Estate (Trustee of) <i>v.</i> Levy ..	C. A. [1892] 1 Q. B. 772 ..	129, 1924, 1925
Woolley <i>v.</i> Broad (No. 1) .. .. .	[1892] 1 Q. B. 806 ..	656
Woolley <i>v.</i> Broad (No. 2) .. .. .	C. A. [1892] 2 Q. B. 317 ..	655
Woolley Coal Co., In re .. .. .	[1891] W. N. 19 ..	386
Woolston <i>v.</i> Ross .. .. .	[1900] W. N. 24; [1900] 1 Ch. 788 ..	684
Woolwich Local Board <i>v.</i> Gardiner .. ..	[1895] 2 Q. B. 497 ..	1446
Woolwich Union (Assessment Committee of) :— London County Council <i>v.</i> .. .. .	C. A. [1893] 1 Q. B. 210 H. L. (E.) [1893] A. C. 562 ..	1685
Woolwich Union :—Reg. <i>v.</i> .. .. .	[1891] 2 Q. B. 712 ..	1670, 1671
Worcester City and County Banking Co. <i>v.</i> Fir- bank, Pauling & Co. .. .. .	C. A. [1894] 1 Q. B. 784 ..	1536, 1567
Worcestershire County Council <i>v.</i> Worcester Union .. .. .	C. A. [1897] 1 C. B. 480 ..	1676
Worcestershire Justices :—Reg. <i>v.</i> Reg. <i>v.</i> War- wickshire Justices .. .. .	C. A. [1898] W. N. 160 (10); [1899] 1 Q. B. 59 ..	1105
Worcestershire Justices :—Reg. <i>v.</i> .. .. .	C. A. [1900] 2 Q. B. 576 ..	1112
Workington Corporation :—Robinson <i>v.</i> .. ..	C. A. [1897] 1 Q. B. 619 ..	1911
Workington (Oversers of), Ex parte .. ..	C. A. [1894] 1 Q. B. 416 ..	1042
Works (Commissioners of) :—Gedye <i>v.</i> .. ..	C. A. [1891] 2 Ch. 630 ..	2254
Worley <i>v.</i> Keusington, St. Mary Abbotts Vestry	[1892] 2 Ch. 404 ..	1152
Worley :—London County Council <i>v.</i> .. ..	[1894] 2 Q. B. 826 ..	1154
Worley :—Sadler <i>v.</i> .. .. .	[1894] 2 Ch. 170 ..	315
Worrall :—Att.-Gen. <i>v.</i> .. .. .	C. A. [1895] 1 Q. B. 99 ..	1729
Worsfold :—Hunt <i>v.</i> .. .. .	[1896] 2 Ch. 224 ..	1512
Worsley, In re .. .. .	C. A. [1900] W. N. 269 ..	110
Worsley :—Ajello <i>v.</i> .. .. .	[1898] 1 Ch. 274 ..	1250, 2117
Worton :—Reg. <i>v.</i> .. .. .	C. C. R. [1895] 1 Q. B. 22 ..	869
Wotton :—Read <i>v.</i> .. .. .	[1893] 2 Ch. 171 ..	1510
Wragg (E. J.), Ltd., In re .. .. .	[1896] W. N. 166 (5); C. A. [1897] 1 Ch. 796 ..	428
Wreford, Ex parte. In re Ashby .. .. .	[1892] 1 Q. B. 872 ..	1905, 2183
Wren Bros. :—Brown <i>v.</i> .. .. .	[1895] 1 Q. B. 390 ..	774
Wrexham, Mold and Connah's Quay Ry. Co., In re .. .. .	[1898] 2 Ch. 663; [1899] W. N. 2 (5); [1899] 1 Ch. 205; C. A. [1899] W. N. 22 (4); [1899] 1 Ch. 440 ..	1654
Wrexham, Mold and Connah's Quay Ry. Co., In re .. .. .	[1899] W. N. 66; C. A. [1900] W. N. 21; [1900] 1 Ch. 261 ..	1656
Wrexham, Mold and Connah's Quay Ry. Co., In re .. .. .	[1900] W. N. 147; [1900] 2 Ch. 436 ..	1662
Wride <i>v.</i> Dyer .. .. .	[1900] 1 Q. B. 23 ..	1065
Wright, In re. Kirk <i>v.</i> North .. .. .	[1895] 2 Ch. 747 ..	1514, 1520
Wright, In the Goods of .. .. .	[1893] P. 21 ..	1622
Wright :—Att.-Gen. <i>v.</i> .. .. .	C. A. [1897] 2 Q. B. 318 ..	2107
Wright <i>v.</i> Bagnall (J.) & Sons, Ltd. .. ..	C. A. [1900] W. N. 92; [1900] 2 Q. B. 240 ..	1247
Wright :—Butt <i>v.</i> In re Maddock .. .. .	[1899] W. N. 122; [1899] 2 Ch. 588 ..	2181
Wright :—Kemp <i>v.</i> .. .. .	[1894] 2 Ch. 462; C. A. [1895] 1 Ch. 121 ..	226
Wright <i>v.</i> Marsom .. .. .	[1895] W. N. 148 (11) ..	2301
Wright :—Payne <i>v.</i> .. .. .	[1892] 1 Q. B. 104 ..	1158

Name of Case.	Volume and Page.	Column of Digest.
Wright v. Tugwell. In re Robinson .. .. {	[1892] 1 Ch. 95; C. A. [1896] W. N. 170 (2); [1897] 1 Ch. 85	753
Wright and Butler Lamp Manufacturing Co.:— John Harper & Co. v. .. .. {	[1895] 2 Ch. 593; C. A. [1895] W. N. 146 (3); [1896] 1 Ch. 142 .. .. {	656
Wright & Sons v. Bull .. .. {	[1900] 2 Q. B. 124 .. .. {	588
Wright and Willesden Local Board, In re ..	C. A. [1896] 2 Q. B. 412 ..	1917
Wright, Crossley & Co. and Royal Baking Powder Co. of New York, In re .. .. {	[1900] W. N. 129; [1900] 2 Ch. 218 .. .. {	2126
Wright's Settlement, In re. Wright v. Sanderson. Sanderson's Settlement. Wright v. Sanderson .. .. {	C. A. [1900] W. N. 261 ..	2050
Wroe, In re .. .. {	[1896] W. N. 38 (19) ..	2320
Wyatt, In the Goods of .. .. {	[1897] W. N. 156 (6); [1898] P. 15 .. .. {	1612
Wyatt:—Bartholomay Brewing Co. (of Rochester) v. .. .. {	[1893] 2 Q. B. 499 .. .. {	1767
Wyatt v. Berry .. .. {	[1893] P. 5 .. .. {	1597
Wyatt v. Gems .. .. {	[1893] 2 Q. B. 225 .. .. {	1178, 2070
Wyatt:—Nobel Dynamite Trust Co. v. ..	[1893] 2 Q. B. 499 ..	1767
Wyatt v. Palmer .. .. {	C. A. [1899] W. N. 74; [1899] 2 Q. B. 106 .. .. {	1551
Wyburn:—Canterbury Corporation v. .. .. {	P. C. [1895] A. C. 89 .. .. {	283, 293, 496, 2260
Wylie, In re. Wylie v. Moffat .. .. {	[1895] 2 Ch. 116 .. .. {	908, 1596, 2344
Wyman v. Paterson .. .. {	H. L. (Sc.) [1900] W. N. 63; [1900] A. C. 271 .. .. {	2175
Wynn-Mackenzie:—Eyre v. (No. 1) .. .. {	[1894] 1 Ch. 218 .. .. {	1304, 2059
————— (No. 2) .. .. {	[1895] W. N. 161 (7); C. A. [1896] 1 Ch. 135 .. .. {	45, 1277, 2058, 2072
Wynne v. Tempest .. .. {	[1896] W. N. 176 (17); [1897] 1 Ch. 110; [1897] W. N. 43 (14) .. .. {	1556, 2178
Wynne v. Tubbs .. .. {	[1896] W. N. 167 (11); [1897] 1 Q. B. 74 .. .. {	2222
Wynne v. Wynne .. .. {	[1897] W. N. 152 (5); [1898] P. 18 .. .. {	703
Wythes, In re. West v. Wythes .. .. {	[1893] 2 Ch. 369 .. .. {	1880
X.		
X., In re .. .. {	[1894] 2 Ch. 415 .. .. {	1199
X., In re. X. v. Y. .. .. {	C. A. [1899] W. N. 15 (8); [1899] 1 Ch. 526 .. .. {	947
Y.		
Y.:—X. v. In re X. .. .. {	C. A. [1899] W. N. 15 (8); [1899] 1 Ch. 526 .. .. {	947
Yabbicom v. King .. .. {	[1899] 1 Q. B. 444 .. .. {	2081
Yarrow v. Yarrow .. .. {	[1892] P. 92 .. .. {	709

Name of Case.	Volume and Page.	Column of Digest.
Yates, In re. <i>Bostock v. D'Eyncourt</i> .. ..	[1891] 3 Ch. 53 .. ..	2335
Yates :— <i>Elliott v.</i> .. ..	C. A. [1900] 2 Q. B. 370 .. ..	1731
Yates <i>v. Higgins</i> .. ..	[1896] 1 Q. B. 166 .. ..	608
Yates :— <i>Hood &amp; Sons v.</i> .. ..	[1894] 1 Q. B. 240 .. ..	1011, 1492
Yates <i>v. Kyffin-Taylor &amp; Wark</i> .. ..	[1899] W. N. 141 .. ..	1047
Yates :— <i>Parr's Banking Co. v.</i> .. ..	C. A. [1898] 2 Q. B. 460 .. ..	1005
Yeo <i>v. Clemow</i> . In re <i>Clemow</i> .. ..	[1900] W. N. 105; [1900] 2 Ch. } 182 .. ..	2363
Ydun, The .. ..	[1899] W. N. 41; C. A. [1899] } W. N. 72; [1899] P. 236 .. }	1978
Yeovil Union :— <i>Southcombe v.</i> .. ..	[1897] 1 Q. B. 343 .. ..	2214
York Election Petition. <i>Furness v. Beresford</i> ..	C. A. [1898] 1 Q. B. 495 .. ..	1366
York Union :— <i>North Eastern Ry. Co. v.</i> ..	[1900] 1 Q. B. 733 .. ..	1685
Yorke :— <i>Stephenson v.</i> .. ..	[1900] W. N. 44; [1900] 1 Ch. } 505 .. ..	1255
Yorkshire (County Council of West Riding of) :— Reg. <i>v.</i> .. ..	[1896] 2 Q. B. 386 .. ..	2108
Yorkshire Fire and Life Insurance Co. :— <i>Baker v.</i>	[1892] 1 Q. B. 144 .. ..	66
Yorkshire (North Riding of) County Council :— Reg. <i>v.</i> .. ..	[1899] 1 Q. B. 201 .. ..	822
Yorkshire Provident Life Assurance Co. <i>v. Gilbert &amp; Rivington</i> .. ..	C. A. [1895] 2 Q. B. 148 .. ..	667
Yorkshire West Riding Council <i>v. Holmfirth</i> } Urban Sanitary Authority .. ..	C. A. [1894] 2 Q. B. 842 .. ..	2272
Yorkshire (West Riding of) Justices :—Reg. <i>v.</i> } Ex parte <i>Shaw</i> .. ..	[1898] 1 Q. B. 503 .. ..	1105
Yorkshire West Riding (County Council) :— Reg. <i>v.</i> .. ..	C. A. [1895] 1 Q. B. 805 .. ..	579, 1453
Young, Ex parte. Reg. <i>v. Burton</i> .. ..	[1897] 2 Q. B. 468 .. ..	1043
Young, In re. Ex parte <i>Jones</i> .. ..	[1896] 2 Q. B. 484 .. ..	153
Young <i>v. Adams</i> .. ..	P. C. [1898] A. C. 469 .. ..	1321
Young :— <i>Barretto v.</i> .. ..	[1900] W. N. 153; [1900] 2 Ch. } 339 .. ..	1474
Young :— <i>Chamberlain v.</i> .. ..	C. A. [1893] 2 Q. B. 206 .. ..	192
Young :— <i>Colquhoun v.</i> .. ..	Registration App. Ct. (Sc.) [1898] } W. N. 114 .. ..	1396
Young :— <i>Druce v.</i> .. ..	[1899] P. 84 .. ..	746
Young :— <i>Friend v.</i> .. ..	[1897] 2 Ch. 421 .. ..	1421
Young :— <i>Friend v.</i> In re <i>Friend</i> .. ..	[1898] W. N. 26 (6) .. ..	1004
Young :— <i>Game v.</i> In re <i>Game</i> .. ..	[1897] 1 Ch. 881 .. ..	521
Young :— <i>Hersey v.</i> .. ..	C. A. [1894] W. N. 18 .. ..	1538
Young <i>v. Holloway</i> .. ..	[1895] P. 87 .. ..	1626
Young :— <i>Lord Advocate v.</i> .. ..	Ct. of Sess. (Sc.) [1899] W. N. } 190 .. ..	1751
Young <i>v. South African and Australian Explora- tion and Development Syndicate</i> .. ..	[1896] 2 Ch. 268 .. ..	362
Young :— <i>Sydney Municipal Council v.</i> .. ..	P. C. [1898] A. C. 457 .. ..	1332
Young <i>v. Thomas</i> .. ..	C. A. [1892] 2 Ch. 134 .. ..	561
Young <i>v. Waller</i> .. ..	P. C. [1898] A. C. 661 .. ..	1321
Young (John) & Co. <i>v. Bankier Distillery Co.</i> ..	H. L. (Sc.) [1893] A. C. 691 .. ..	1256, 2271
Young & Sons :— <i>Clacton Local Board v.</i> .. ..	[1895] 1 Q. B. 395 .. ..	2090
Young & Sons :— <i>Leslie v.</i> .. ..	H. L. (Sc.) [1894] A. C. 335 .. ..	528
Young (J. L.) Manufacturing Co., In re. Young } <i>v. Young (J. L.) Manufacturing Co.</i> .. ..	C. A. [1900] W. N. 234; [1900] } 2 Ch. 753 .. ..	775
Youngs :— <i>Barnes v.</i> .. ..	[1898] 1 Ch. 414 .. ..	1413
Yoxall :— <i>Bowden v.</i> .. ..	C. A. [1900] W. N. 242 .. ..	40

Name of Case.	Volume and Page.	Column of Digest.
Ystradyfodwg and Pontypridd Main Sewerage Board <i>v.</i> Newport Assessment Committee .. }	[1900] 1 Q. B. 365 .. ..	1686
Yungmann <i>v.</i> Briesmann .. .. . }	C. A. [1892] W. N. 162 .. ..	1451
Z.		
Zalinoff <i>v.</i> Hammond .. .. . }	[1898] 2 Ch. 92 .. .. . }	66
"Zanzibar," The .. .. . }	[1892] P. 233 .. .. . }	1984
Zelma Gold Mining Co. <i>v.</i> Hoskins .. .. }	P. C. [1895] A. C. 100 .. .. }	1321
"Zeta," The. Turner <i>v.</i> Mersey Docks and Harbour Board .. .. . }	[1891] P. 216; C. A. [1892] P. 285; H. L. (E.) [1893] A. C. 468 .. .. . }	1959
Zierenberg <i>v.</i> Labouchere .. .. . }	C. A. [1893] 2 Q. B. 183 .. .. }	646, 678
Zobel :—Croudace <i>v.</i> .. .. . }	P. C. [1899] A. C. 258 .. .. }	1330
Zoutpansberg Prospecting Co., Ex parte. In re Johannesburg Hotel Co. .. .. . }	C. A. [1891] 1 Ch. 119 .. .. }	311

## TABLE OF CASES

AFFIRMED, REVERSED, FOLLOWED, OVERRULED,  
OR JUDICIALLY COMMENTED ON OR SUPERSEDED BY  
STATUTE OR ORDER, 1891—1900.

NOTE.—*Additional references to Cases that have incidentally been referred to, but are not included in the above category, are placed after the Cases in the body of the Digest.*

- |   |  |
|---|--|
| <p><i>A. B. v. C. B.</i> - - - (1890) 18 R. 90<br/>         Affirmed by H. L. (Sc.) <i>sub nom.</i> <i>A. B. v. C. D.</i> - [1891] <b>A. C. 616</b></p> <p><i>A. B. v. C. D.</i> - - - (1889) 16 Dunlop, 111<br/>         Commented on by H. L. (Sc.) <i>MACKENZIE v. MACKENZIE</i> [1895] <b>A. C. 384, 401</b></p> <p><i>A. B. &amp; Co., In re</i>, [1900] 1 Q. B. 541; [1901] A. C. 102.<br/> <i>See also In re A. B. &amp; Co. (No. 2)</i> [1900] 2 Q. B. 429</p> <p><i>Aaron's Reefs, Ltd. v. Twiss</i> [1895] 2 I. R. 207<br/>         Affirmed by H. L. (L.) [1896] <b>A. C. 273</b></p> <p><i>Aberdeen Station Committee v. North British Ry. Co.</i>, (1891) 18 R. 855.<br/>         Reversed by H. L. (Sc.) <i>sub nom.</i> <i>FERGUSON v. NORTH BRITISH RY. CO.</i> [1893] <b>W. N. 166</b></p> <p><i>Acey v. Fernie</i> - - - (1840) 7 M. &amp; W. 151<br/>         Approved. <i>LONDON AND LANCASHIRE LIFE ASSURANCE CO. v. FLEMING</i> P. C. [1897] <b>A. C. 499</b></p> <p><i>Acton Local Board v. Batten</i>, (1885) 28 Ch. D. 283.<br/>         Distinguished by Romer J. <i>MINEHEAD LOCAL BOARD v. LUTTRELL</i> [1894] 2 Ch. 178</p> <p><i>Adams, In re</i> - - - [1893] 1 Ch. 329<br/>         Referred to by Kekewich J. <i>In re CALDWELL. HAMILTON v. HAMILTON</i> [1894] <b>W. N. 13</b><br/>         Commented on by C. A. <i>In re HOLFORD</i> [1894] 3 Ch. 30</p> <p><i>Adams v. Adams</i> - - - (1842) 1 Hare, 537<br/>         Discussed by C. A. <i>In re ROWE. PIKE v. HAMLYN</i> - - - [1898] 1 Ch. 153</p> <p><i>Adams v. Adams</i> - - - (1890) 45 Ch. D. 426<br/>         Affirmed by C. A. - [1892] 1 Ch. 369</p> <p><i>Adams v. Angell</i> - - - (1877) 5 Ch. D. 634<br/>         Followed by Stirling J. <i>In re PRIDE. SHACKELL v. COLNETT</i> [1891] 2 Ch. 135<br/>         Approved by H. L. (E.) <i>THORNE v. CANN</i> - [1895] <b>A. C. 11</b></p> <p><i>Adams v. Batley</i> - - - (1887) 18 Q. B. D. 625<br/>         Distinguished by C. A. <i>SAUNDERS v. WIEL</i> (No. 1) - [1892] 2 Q. B. 321</p> | <p><i>Adams v. Clementson</i> - (1879) 12 Ch. D. 714<br/>         Doubted by C. A. <i>SAUNDERS v. WIEL</i> (No. 2) - [1893] 1 Q. B. 470</p> <p><i>Adams v. Great North of Scotland Ry. Co.</i>, (1889) 16 R. 843.<br/>         Affirmed by H. L. (Sc.) [1891] <b>A. C. 31</b></p> <p><i>Adams and Kensington Vestry, In re</i>, (1884) 27 Ch. D. 394.<br/>         Followed by C. A. <i>In re HAMILTON</i> [1895] 2 Ch. 370</p> <p><i>Adam's Policy Trusts, In re</i>, (1883) 23 Ch. D. 525; 48 L. T. 727.<br/>         Dictum not followed by Chitty J. <i>In re DAVIES' POLICY TRUSTS</i> [1892] 1 Ch. 90<br/>         Followed by North J. <i>In re KUYPER'S POLICY TRUSTS</i> - [1899] 1 Ch. 38</p> <p><i>Adamson v. Jarvis</i>, (1827) 4 Bing. 66; 29 R. R. 503.<br/>         Discussed by H. L. (Sc.) <i>PALMER v. WICK, &amp;c., Co.</i> - [1894] <b>A. C. 318, 324</b><br/>         Discussed by Bruce J. <i>THE "ENGLISH-MAN" AND THE "AUSTRALIA"</i> (No. 2) [1895] <b>P. 212, 218</b><br/>         Referred to by Div. Ct. <i>BURROWS v. RHODES</i> - [1899] 1 Q. B. 816, 825</p> <p><i>Addison's Case</i> (1801) Macq. Prac. H. L. p. 598<br/>         Followed. <i>HART'S DIVORCE BILL</i> H. L. (D.) [1898] <b>A. C. 305</b></p> <p><i>Ador, Ex parte</i> - - - [1891] 2 Q. B. 574<br/> <i>See WALLACE v. UNIVERSAL AUTOMATIC MACHINES CO.</i> C. A. [1894] 2 Ch. 547, 553</p> <p><i>African Gold Concessions and Development Co., In re</i>, [1899] <b>W. N. 7 (1)</b>; [1899] 1 Ch. 414.<br/>         Affirmed by C. A. - [1899] 2 Ch. 480</p> <p><i>Agnew v. Usher</i> - - - (1885) 14 Q. B. D. 78<br/>         Distinguished by Div. Ct. <i>TASSELL v. HALLEN</i> - - - [1892] 1 Q. B. 321</p> <p><i>"Agricola," The</i> - - - (1843) 2 Wm. Rob. 10<br/>         Followed by Bruce J. <i>THE "WINE-STEAD"</i> - [1895] <b>P. 170</b></p> |
|---|--|

- Ahearn v. Bellman* (1879) 4 Ex. D. 201  
Applied. *BURY v. THOMPSON*  
C. A. [1895] 1 Q. B. 696
- Ailesbury (Marquis of) and Lord Iveagh, In re*,  
[1893] 2 Ch. 345.  
Observed upon by Stirling J. *In re*  
EARL OF STAMFORD [1896] 1 Ch. 288  
Distinguished by Stirling J. *In re DU*  
CANE AND NETTLEFOLD'S CONTRACT  
[1898] 2 Ch. 96  
Approved of by C. A. *In re MUNDY*  
AND ROPER'S CONTRACT  
[1899] 1 Ch. 275
- Ailesbury's (Marquis of) Settled Estates, In re*  
(No. 1), [1892] 1 Ch. 506.  
Affirmed by H. L. (E.) *sub nom.* BRUCE  
v. MARQUIS OF AILESBUURY  
[1892] A. C. 356  
Referred to by C. A. *In re HOPE*  
[1899] 2 Ch. 679, 689
- Ainley v. Kirkheaton Local Board*, (1891) 60 L. J.  
Ch. 734.  
Followed by Cozens-Hardy J. *BROWN*  
v. *DUNSTABLE CORPORATION*  
[1899] 2 Ch. 378
- Aitken, Lilburn & Co. v. Ernsthausen & Co.*, [1894]  
1 Q. B. 773.  
Applied by C. A. *WEIR & Co. v. GIRVIN*  
& Co. - [1900] 1 Q. B. 45, 49
- Akerblom v. Price* - (1881) 7 Q. B. D. 129  
Applied by Bruce J. THE "STRATH-  
GARRY" - - [1895] P. 264
- Alabama, New Orleans, Texas and Pacific Junc-  
tion Ry. Co.*, [1891] 1 Ch. 213.  
Followed. *In re ENGLISH, SCOTTISH*  
AND AUSTRALIAN CHARTERED BANK  
C. A. [1893] 3 Ch. 385
- Alabaster v. Hurness* [1894] 2 Q. B. 897  
Affirmed by C. A. [1895] 1 Q. B. 339
- Albo-Carbon Light Co. v. Kidd*, (1887) 4 Rep. Pat.  
Cas. 535.  
Referred to by Stirling J. *MANDLEBERG*  
v. *MORLEY* - [1895] W. N. 9
- Aldin v. Latimer Clark, Muirhead & Co.*, [1894]  
2 Ch. 437.  
Considered by Buckley J. *TEBB v. CAVE*  
[1900] 1 Ch. 642, 649
- Alexander, In the Goods of*, (1860) 29 L. J.  
(P. & M.) 93.  
Disapproved of but followed. *IN THE*  
GOODS OF *HUBER* [1896] P. 209
- Alexander v. Automatic Telephone Co.*, [1899]  
2 Ch. 302.  
Reversed by C. A. [1900] 2 Ch. 56
- Alexander v. Bridge of Allan Water Co.*, (1869)  
7 Macph. 492, opinion expressed at p.  
498.  
Disapproved by H. L. (Sc.) *ADAMS v.*  
*GREAT NORTH OF SCOTLAND RY. CO.*  
[1891] A. C. 31
- Alexander v. Simpson* - (1889) 43 Ch. D. 139  
Distinguished by Kekewich J. *THIESSEN*  
v. *HENDERSON* - [1899] 1 Ch. 861
- Alexandria Water Co. v. Musgrave*, (1883) 11  
Q. B. D. 174.  
Distinguished by H. L. (E.) in *GRESHAM*  
*LIFE ASSURANCE SOCIETY v. STYLES*  
[1892] A. C. 309
- "*Alina*," *The* - - (1880) 5 Ex. D. 227  
Distinguished by Div. Ct. *Allen v.*  
*Garbutt*, (1880) 6 Q. B. D. 165.  
Referred to. *REG. v. JUDGE OF CITY OF*  
*LONDON COURT* (No. 2)  
C. A. [1892] 1 Q. B. 273  
*See also PUGSLEY & Co. v. ROPKINS & Co.*  
C. A. [1892] 2 Q. B. 184
- Allan v. Overseers of Liverpool*, (1874) L. R. 9  
Q. B. 180.  
Followed. *ROCHDALE CANAL Co. v.*  
*BREWSTER* - C. A. [1894] 2 Q. B. 852
- Allcroft v. London (Bishop of)*, (1889) 24 Q. B. D.  
213  
Affirmed by H. L. (E.)  
[1891] A. C. 666
- Allen v. Flood* - [1898] A. C. 1  
Referred to. *J. LYONS & SONS v.*  
*WILKINS* - C. A. [1899] 1 Ch. 255
- Allen v. Garbutt* - (1880) 6 Q. B. D. 165  
Approved. *REG. v. JUDGE OF THE CITY*  
*OF LONDON COURT* (No. 2)  
C. A. [1892] 1 Q. B. 273
- Allen v. Gold Reefs of West Africa, Ltd.*, [1899]  
W. N. 75; [1899] 2 Ch. 40.  
Varied by C. A. [1900] 1 Ch. 656
- Allen v. Greensill* - (1847) 4 C. B. 100  
Considered. *MAGEE v. MORTIMER*, (1890)  
28 L. R. Ir. 251  
C. A. (Ir.) [1898] W. N. 102
- Allen v. Taylor* - (1880) 16 Ch. D. 355  
Rule applied to devises: *Chitty J.*  
*PHILLIPS v. LOW* [1892] 1 Ch. 47
- Allen v. Worthly* - (1870) L. R. 5 Q. B. 163  
*See now* 61 & 62 Vict. c. 49, s. 3.
- Allnut, In re* - - (1882) 22 Ch. D. 275  
Approved by North J. *In re CRAW-*  
*SHAY* - - [1891] 3 Ch. 176, 181
- Allsop v. Allsop* - - (1860) 5 H. & N. 534  
Considered by Wright J. *WILKINSON v.*  
*DOWNTON* - - [1897] 2 Q. B. 57
- Almada and Tirito Co., In re*, (1888) 38 Ch. D.  
415.  
Followed. *OOREGUM GOLD MINING Co.*  
*OF INDIA v. ROPER*  
H. L. (E.) [1892] A. C. 125  
Applied and followed by C. A. *In re*  
*RAILWAY TIME TABLES PUBLISHING Co.*  
*Ex parte WELTON* [1895] 1 Ch. 255;  
H. L. (E.) [1897] A. C. 299  
Referred to by V. Williams J. *In re*  
*THEATRICAL TRUST, LD. CHAPMAN'S*  
*CASE* - [1895] 1 Ch. 771
- "*Alps*," *The* - - [1893] P. 109  
Followed and approved. *THE "BE-*  
*DOUVIN"* - - C. A. [1894] P. 1



- Alton v. Midland Ry. Co.*, (1865) 19 C. B. (N.S.) 213; 34 L. J. (C.P.) 292.  
Discussed. *TAYLOR v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.*  
C. A. [1895] 1 Q. B. 134  
Distinguished. *MEUX v. GREAT EASTERN RY. CO.* - C. A. [1895] 2 Q. B. 387
- Ally v. Farrell* - - [1896] 1 Q. B. 636  
Discussed by Div. Ct. *KRUSE v. JOHNSON* - [1898] 2 Q. B. 91, 106, 113
- American Concentrated Meat Co. v. Hendry* [1893] W. N. 67.  
Affirmed by C. A. - [1893] W. N. 82  
But see *HODDER v. WILLIAMS* [1895] 2 Q. B. 663
- American Pastoral Co., In re*, [1890] W. N. 62; 62 L. T. (N.S.) 625.  
Followed by *Kekewich J. In re AGRICULTURAL HOTEL CO.* [1891] 1 Ch. 396
- Ames, In re* - - [1893] 2 Ch. 479  
Discussed. *In re EASTMAN'S SETTLED ESTATES*  
Romer J. [1898] W. N. 170 (15)
- Ames v. Birkenhead Docks Trustees*, (1855) 20 Beav. 332.  
Distinguished by C. A. *DAVIES v. THOMAS* - [1900] 2 Ch. 462, 470
- Ames v. Parkinson* (1844) 7 Beav. 379  
Distinguished. *In re CHAPMAN. COCKS v. CHAPMAN* - C. A. [1896] 2 Ch. 763
- Amon v. Bobbett* (1889) 22 Q. B. D. 543  
Observed upon. *FINSKA ANGFARTYGS AKTIEBOLAGET v. BROWN, TOOGOOD & CO.* [1891] W. N. 116
- Amos v. Smith* - (1862) 1 H. & C. 238  
Discussed. *In re DIXON. HEYNES v. DIXON* - C. A. [1899] 2 Ch. 561
- "*Andalusian*," *The* - (1878) 3 P. D. 182  
See 61 & 62 Vict. c. 14, s. 1.
- Anderson, In the Goods of*, (1864) 3 Sw. & Tr. 489.  
Followed by *Jeune P. In the Goods of STEVENS* - [1898] P. 126
- Anderson v. Bank of British Columbia*, (1876) 2 Ch. D. 644.  
Followed by *Stirling J. LEAROYD v. HALIFAX JOINT STOCK BANKING CO.* [1893] 1 Ch. 686
- Anderson v. Manchester, Sheffield and Lincolnshire Ry. Co. Manchester, Sheffield and Lincolnshire Ry. Co. v. Anderson*, [1898] W. N. 35 (10).  
Affirmed by C. A. *sub nom. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO. v. ANDERSON* - [1898] 2 Ch. 394
- Anderson v. Vicary* - - [1899] 2 Q. B. 436  
Affirmed by C. A. [1900] 2 Q. B. 287
- Anderson's Trade-mark, In re*, (1884) 26 Ch. D. 409.  
Explained. *ROWLAND v. MITCHELL*  
C. A. [1897] 1 Ch. 71
- Andrews v. Gas Meter Co.* [1896] W. N. 87 (8)  
Reversed by C. A. [1897] 1 Ch. 361  
Referred to by *Romer J. In re JAMES COLMER, LD.* - [1897] 1 Ch. 524, 527  
Considered by C. A. *ALLEN v. GOLD REEFS OF WEST AFRICA, LD.*  
[1900] 1 Ch. 656
- Andrews v. Partington*, (1790) 3 Bro. C. C. 401; 2 Cox, 223.  
Extended by *North J. In re KNAPP'S SETTLEMENT* - [1895] 1 Ch. 91
- Andrews v. Salt* (1873) L. R. 8 Ch. 622  
Observed upon. *In re VIOLET NEVIN*  
C. A. [1891] 2 Ch. 299
- Andros, In re* - - (1883) 24 Ch. D. 637  
Followed by *Stirling J. In re GREY'S TRUSTS. GREY v. EARL OF STAMFORD* [1892] 3 Ch. 88
- Anglo-Austrian Printing and Publishing Union, In re. Isaac's Case*, [1892] 2 Ch. 158  
Distinguished. *In re PRINTING, TELEGRAPH AND CONSTRUCTION CO. OF THE AGENCE HAYAS. Ex parte CAMMELL*  
C. A. [1894] 2 Ch. 392, 399
- Anglo-Continental Corporation of Western Australia, In re*, [1898] 1 Ch. 327.  
Distinguished by *Wright J. In re MUTOSCOPE AND BIOGRAPH SYNDICATE* [1899] 1 Ch. 896
- Anglo-Sardinian Antimony Co., In re*, [1894] W. N. 156.  
Referred to by *V. Williams J. PRACTICE NOTE* - [1894] W. N. 166
- Ann, In re* - - [1894] 1 Ch. 549  
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- Annan v. Annan's Curator Bonis*, (1897) 24 R. 851  
Affirmed by *H. L. (Sc.) sub nom. HUTTON v. ANNAN* [1898] A. C. 289
- Anstee v. Nelms* - (1856) 1 H. & N. 225  
Approved and adopted. *DALTON v. FITZGERALD* C. A. [1897] 2 Ch. 86
- Anthony, In re. Anthony v. Anthony* (No. 1), [1892] 1 Ch. 450.  
See *In re ANTHONY. ANTHONY v. ANTHONY* (No. 2) - [1893] 3 Ch. 498
- Aplin v. Porritt* - [1893] 2 Q. B. 57  
See now *Wild Animals in Captivity Protection Act, 1900* (63 & 64 Vict. c. 33), s. 1.
- Apollinaris Co. v. Wilson* - (1886) 31 Ch. D. 632  
Distinguished by *Kekewich J. In re MILLER'S PATENT* - [1894] W. N. 4  
Cited. *In re LA SOCIÉTÉ ANONYME DES VERRERIES DE L'ETOILE*  
[1893] W. N. 119
- Apollinaris Company's Trade-marks, In re* (No. 2) [1891] 2 Ch. 186.  
Distinguished by *Chitty J. In re PHILLIP'S TRADE-MARKS* [1891] 3 Ch. 139  
Considered by *Chitty J. In re SMOKELESS POWDER CO.'S TRADE-MARK* [1892] 1 Ch. 590

- Applebee, In re. Leveson v. Beales*, [1891] 3 Ch. 422.  
Referred to by Byrne J. *In re GRIFFIN* [1899] 1 Ch. 408, 412
- Appleby v. Myers* (1867) L. R. 2 C. P. 651  
Distinguished. *O'NEIL v. ARMSTRONG, MITCHELL & Co. C. A.* [1895] 2 Q. B. 418  
Followed by Jeune P. *THE "MADRAS"* [1898] P. 90  
Followed by P. C. FORMAN & CO. PROPRIETARY, LD. *v. THE SHIP "LIDDESDALE"* - [1900] A. C. 190
- Arabin's Trusts, In re* - [1885] W. N. 90  
Distinguished by Kekewich J. *In re WARD'S SETTLED ESTATES* [1895] W. N. 41
- Arbib and Class's Contract, In re*, [1890] W. N. 186.  
Affirmed by C. A. [1891] 1 Ch. 601
- Arden v. Boyce* - - [1894] 1 Q. B. 796  
Distinguished by C. A. *KEMP v. LESTER* [1896] 2 Q. B. 162, 164
- Arden's Settlement, In re* - [1890] W. N. 204  
Followed by Chitty J. *STODDART v. SAVILE* - [1894] 1 Ch. 480  
Followed. *In re FORBES. ERRINGTON v. SEMPELL* [1899] W. N. 6 (4)
- Arnold v. Garner* - - (1847) 2 Ph. 231  
See now 59 & 60 Vict. c. 35, s. 1 (5).
- Art Union of London v. Savoy Overseers*, [1894] 2 Q. B. 609.  
Reversed by H. L. (E) [1896] A. C. 296
- Arthur v. Mackinnon* - (1879) 11 Ch. D. 385  
Approved by C. A. *In re SHARLAND. KEMP v. ROZEY* - [1896] 1 Ch. 517; [1896] W. N. 62 (19)
- Artistic Colour Printing Co., In re*, (1880) 14 Ch. D. 502.  
Followed. *In re GENERAL SERVICE CO-OPERATIVE STORES* C. A. [1891] 1 Ch. 496
- Asfar & Co. v. Blundell* [1895] 2 Q. B. 196  
Affirmed by C. A. [1896] 1 Q. B. 123
- Ashford v. Tuile* - (1837) 7 Ir. C. L. R. 91  
Approved and adopted by Div. Ct. *HADLEY & SON v. BEEDOM* [1895] 1 Q. B. 646
- Ashling v. Boon* - [1891] 1 Ch. 568  
See *BIRCHALL v. BULLOUGH*  
Div. Ct. [1896] 1 Q. B. 325, 326
- Ashmore & Son v. Cox (C. S.) & Co.*, [1899] 1 Q. B. 436.  
Referred to by Mathew J. *NICKOLL AND KNIGHT v. ASHTON, ELDRIDGE & Co.* [1900] 2 Q. B. 298, 303
- Ashton, In re. Ingram v. Papillon*, [1897] 2 Ch. 574.  
Reversed by C. A. [1898] 1 Ch. 142
- Ashton, In the Goods of* - - [1892] P. 83  
Referred to by Kekewich J. *In re PARKER* [1897] 2 Ch. 208, 213
- Ashton Charity, In re* - (1856) 22 Beav. 288  
Referred to. *In re BRADFORD SCHOOL OF INDUSTRY Chitty J.* [1893] W. N. 60  
Followed by Stirling J. *In re STOCKPORT RAGGED, INDUSTRIAL AND REFORMATORY SCHOOLS* [1897] W. N. 156 (4); see also C. A. [1898] 2 Ch. 687
- "*Asia*," *The* - [1891] P. 121  
Considered. *ROCKETT v. CLIPPINGDALE C. A.* [1891] 2 Q. B. 293, 300
- Aslatt v. Southampton Corporation*, (1880) 16 Ch. D. 143.  
Considered by Kekewich J. *RICHARDSON v. METHLEY SCHOOL BOARD* [1893] 3 Ch. 510
- Assicurazioni Generali v. SS. Bessie Morris Co.*, [1892] 1 Q. B. 571.  
Affirmed by C. A. [1892] 2 Q. B. 652
- Asten v. Asten* - - - [1894] 3 Ch. 260  
Considered by C. A. *In re CHEADLE* [1900] 2 Ch. 630
- Astor, In the Goods of* (1876) 1 P. D. 150  
Followed by Jeune J. *IN THE GOODS OF FRASER* [1891] 1 P. 285  
Cited. *IN THE GOODS OF LOCKHART* [1893] W. N. 80
- Athole (Duke of) v. McInroy's Trustees*, (1890) 17 R. 456.  
Reversed by H. L. (Sc.) *sub nom. MCINROY v. DUKE OF ATHOLE* [1891] A. C. 629
- Athole (Duke of) v. Stewart* - (1890) 17 R. 724  
Distinguished by H. L. (Sc.) *JOHNSTONE v. DUKE OF BUCCLEUCH* [1892] A. C. 625
- Atholl (Duke of) v. Wedderburn*, (1899) 1 F. 651, 658.  
On appeal. H. L. (Sc.) [1900] A. C. 403
- Atkinson, In re* - - (1892) 9 Morr. 193  
Followed. *In re OTWAY* C. A. [1895] 1 Q. B. 812
- Atkinson, In re. Waller v. Atkinson*, [1898] 1 Ch. 637.  
Affirmed by C. A. - [1899] 2 Ch. 1
- Atkinson v. Collard* - (1885) 16 Q. B. D. 254  
Followed. *GAY v. MCGILL*, (1887) 15 R. 90  
*Registration App. Ct. (Sc.)* [1897] W. N. 98
- Attenborough v. London and St. Katharine Dock Co.*, (1878) 3 C. P. D. 450.  
Discussed. *HENDERSON & Co. v. WILLIAMS* C. A. [1895] 1 Q. B. 521  
Dicta in, followed. *Ex parte MERSEY DOCKS AND HARBOUR BOARD* C. A. [1899] 1 Q. B. 546
- Att.-Gen. v. Acton Local Board*, (1882) 22 Ch. D. 221.  
Opinion expressed at p. 232, followed by Romer J. *ATT.-GEN. v. CLERKENWELL VESTRY* - [1891] 3 Ch. 527  
Followed by Cozens-Hardy J. *BROWN v. DONSTABLE CORPORATION* [1899] 2 Ch. 378

- Att.-Gen. v. Albany Hotel Co.*, [1896] W. N. 88 (14).  
Affirmed by C. A. - [1896] 2 Ch. 696
- Att.-Gen. v. Beech* - [1897] 2 Q. B. 535  
Reversed by C. A. [1898] 2 Q. B. 147  
Affirmed by H. L. (E.) [1899] A. C. 53  
Referred to by H. L. (E.) EARL COWLEY *v.* INLAND REVENUE COMMS.  
[1899] A. C. 198, 206  
Applicable. *ATT.-GEN v. DE PRÉVILLE*  
C. A. [1900] 1 Q. B. 223, 229
- Att.-Gen. v. Birmingham Drainage Board*, (1881) 17 Ch. D. 685.  
*See* 56 & 57 Vict. c. 31.
- Att.-Gen. v. Bouwens* - (1838) 4 M. & W. 171  
Followed by Div. Ct. STERN *v.* REG.  
[1896] 1 Q. B. 211
- Att.-Gen. v. Brecon (Mayor of)*, (1878) 10 Ch. D. 204.  
Referred to by North J. *ATT.-GEN. v. SWANSEA CORPORATION*  
[1898] 1 Ch. 602  
Distinguished by H. L. (Sc.) LEITH CORPORATION *v.* LEITH HARBOUR AND DOCKS COMMS. [1899] A. C. 508
- Att.-Gen. v. Calvert* - (1857) 23 Beav. 248  
Discussed. *In re* ROSS'S CHARITY  
C. A. [1899] 1 Ch. 21
- Att.-Gen. v. Camberwell Vestry*, [1894] W. N. 163;  
10 T. L. R. 653.  
No longer law.  
*See* 60 & 61 Vict. c. 56, s. 2.
- Att.-Gen. v. Chambers*, (1854) 4 De G. M. & G. 206; (1859) 4 De G. & J. 55.  
Referred to by Div. Ct. PEARCE *v.* BUNTING - [1896] 2 Q. B. 360, 370
- Att.-Gen. v. Chapman* - [1891] 2 Q. B. 526  
Referred to by Div. Ct. *ATT.-GEN. v. DODDINGTON* - [1897] 1 Q. B. 722, 732  
This case was affirmed by C. A.  
[1897] 2 Q. B. 373
- Att.-Gen. v. Clerkenwell Vestry* [1891] 3 Ch. 527  
Followed by Cozens-Hardy J. BROWN *v.* DUNSTABLE CORPORATION  
[1899] 2 Ch. 378
- Att.-Gen. v. Cockermouth Local Board*, (1874) L. R. 18 Eq. 172.  
Followed by C. A. *ATT.-GEN. v. LONDON AND NORTH WESTERN RY. CO.*  
[1900] 1 Q. B. 78
- Att.-Gen. v. Croydon Corporation*, (1889) 42 Ch. D. 178.  
Superseded by 55 & 56 Vict. c. 53, s. 3 (e).
- Att.-Gen. v. De Préville* - [1899] 2 Q. B. 238  
Reversed by C. A. [1900] 1 Q. B. 223  
*But see* Finance Act, 1900 (63 & 64 Vict. c. 7), s. 11.
- Att.-Gen. v. Dodington* - [1897] 1 Q. B. 722  
Affirmed by C. A. [1897] 2 Q. B. 373  
Followed by (Ir.) C. A. *In re* STUDDERT,  
[1900] 2 Ir. R. 400  
*See* [1900] W. N. 220
- Att.-Gen. v. Dorking Union*, (1882) 20 Ch. D. 595, 609.  
Followed by Romer J. *ATT.-GEN. v. CLERKENWELL VESTRY* [1891] 3 Ch. 527  
*But see now* 56 & 57 Vict. c. 31, s. 1.
- Att.-Gen. v. Emerson* - (1882) 10 Q. B. D. 191  
Principle of, applied by C. A. *ATT.-GEN. v. NEWCASTLE-UPON-TYNE CORPORATION*  
[1897] 2 Q. B. 384
- Att.-Gen. v. Fairley* - [1897] 1 Q. B. 698  
Followed by C. A. *ATT.-GEN. v. CLARKSON* - [1900] 1 Q. B. 156  
*See now* Finance Act, 1898 (61 & 62 Vict. c. 10), s. 14.
- Att.-Gen. v. Gosling* - [1892] 1 Q. B. 545  
Referred to by Div. Ct. *ATT.-GEN. v. ELLIS* - [1895] 2 Q. B. 466, 470
- Att.-Gen. v. Great Western Ry. Co.*, (1872) L. R. 7 Ch. 767.  
Followed by C. A. *ATT.-GEN. v. LONDON AND NORTH WESTERN RY. CO.*  
[1900] 1 Q. B. 78
- Att.-Gen. v. Grey (Earl)* - [1898] 2 Q. B. 534  
Affirmed by H. L. (E.); *sub nom.* EARL GREY *v.* *ATT.-GEN.* - [1900] A. C. 124  
Referred to by C. A. *ATT.-GEN. v. DE PRÉVILLE* - [1900] 1 Q. B. 223, 228
- Att.-Gen. v. Hamwell Urban Council*, [1900] 1 Ch. 51.  
Affirmed by C. A. - [1900] 2 Ch. 377
- Att.-Gen. v. Hotham (Lord)*, (1823) 1 Turn. & R. 209; 24 R. R. 21.  
Followed. HAIGH *v.* WEST  
C. A. [1893] 2 Q. B. 19
- Att.-Gen. v. Jackson* - (1831) 2 Cr. & J. 101; 37 R. R. 641.  
Considered by Stirling J. *In re* DE HOUGHTON. DE HOUGHTON *v.* DE HOUGHTON  
[1895] 2 Ch. 517; C. A. [1896] 1 Ch. 855
- Att.-Gen. v. Jacobs-Smith* - [1895] 1 Q. B. 472  
Reversed by C. A. [1895] 2 Q. B. 341
- Att.-Gen. v. Jewish Colonization Association*, [1900] 2 Q. B. 556.  
Affirmed by C. A. [1900] W. N. 269;  
[1901] 1 Q. B. 123
- Att.-Gen. v. London and North Western Ry. Co.*, [1898] W. N. 160 (12); [1899] 1 Q. B. 72.  
Affirmed by C. A. - [1900] 1 Q. B. 78
- Att.-Gen. v. London Corporation*, (1850) 2 M. & G. 247.  
Principle of, applied by C. A. *ATT.-GEN. v. NEWCASTLE-UPON-TYNE CORPORATION*  
[1897] 2 Q. B. 384
- Att.-Gen. v. London County Council*, [1899] 2 Q. B. 226.  
Affirmed by C. A. [1900] 1 Q. B. 192  
Reversed by H. L. (E.) *sub nom.* LONDON COUNTY COUNCIL *v.* *ATT.-GEN.*  
[1900] W. N. 268; [1901] A. C. 1
- Att.-Gen. v. Loyd* - [1895] 1 Q. B. 496  
Referred to by Div. Ct. *In re* SCOTT  
[1900] 1 Q. B. 372, 387; C. A. [1900] W. N. 271; [1901] 1 Q. B. 228

- Att.-Gen. v. Merthyr Tydfil Union*, [1899] W. N. 38 (3).  
Reversed by C. A. - [1900] 1 Ch. 516
- Att.-Gen. v. Meyrick* - (1750) 2 Ves. Sen. 44  
Overruled by 54 & 55 Vict. c. 73, s. 3.
- Att.-Gen. v. Meyrick* - [1893] A. C. 1  
Distinguished. *SIMCOE v. PETHICK*  
C. A. [1898] 2 Q. B. 555
- Att.-Gen. v. Midland Ry. Co.* [1900] 2 Q. B. 353  
Affirmed by C. A. [1900] W. N. 271
- Att.-Gen. v. Mill* (1831) 2 Dow. & Cl. 393;  
35 R. R. 80.  
Distinguished by P. C. *CANTERBURY CORPORATION v. WYBURN*  
[1895] A. C. 89
- Att.-Gen. v. Mutual Tontine Westminster Chambers Association, Ltd.*, (1876) 1 Ex. D. 463.  
Referred to by Cozens-Hardy J. *KIMBER v. ADMANS* C. A. [1900] 1 Ch. 412, 413
- Att.-Gen. v. New York Breweries Co.*, [1898] 1 Q. B. 205.  
Affirmed by H. L. (E.) *sub nom.* *NEW YORK BREWERIES CO. v. ATT.-GEN.*  
[1899] A. C. 62
- Att.-Gen. v. Newcastle-on-Tyne Corporation*, (1889) 23 Q. B. D. 492.  
Affirmed by H. L. (E.) [1892] A. C. 568
- Att.-Gen. v. Newcastle-upon-Tyne Corporation*, C. A. [1897] 2 Q. B. 384.  
See also C. A. [1899] 2 Q. B. 479.
- Att.-Gen. v. Owen* - [1899] 2 Q. B. 253  
Applied by Stirling J. *In re DUKE OF ST. ALBANS* [1900] 2 Ch. 873
- Att.-Gen. v. Robertson* [1892] 2 Q. B. 694  
Affirmed by C. A. [1893] 1 Q. B. 293  
Distinguished by Div. Ct. *ATT.-GEN. v. WOOD* [1897] 2 Q. B. 102, 110
- Att.-Gen. v. Shrewsbury (Kingsland) Bridge Co.*, (1882) 21 Ch. D. 752.  
Followed by C. A. *ATT.-GEN. v. LONDON AND NORTH WESTERN RY. CO.*  
[1900] 1 Q. B. 78
- Att.-Gen. v. Smith* [1892] 2 Q. B. 289  
Affirmed by C. A. [1893] 1 Q. B. 239
- Att.-Gen. v. Southampton Corporation*, (1858) 1 Giff. 363.  
Distinguished by Romer J. *ATT.-GEN. v. TEDDINGTON URBAN COUNCIL*  
[1898] 1 Ch. 66
- Att.-Gen. v. Sudeley (Lord)* [1896] 1 Q. B. 354  
Affirmed by H. L. (E.) *sub nom.* *SUDELEY (LORD) v. ATT.-GEN.*  
[1897] A. C. 11
- Att.-Gen. v. Teddington Urban Council*, [1898] 1 Ch. 66.  
Followed by C. A. *ATT.-GEN. v. HANWELL URBAN COUNCIL* [1900] 2 Ch. 377
- Att.-Gen. v. Tynemouth Corporation*, [1898] 1 Q. B. 604.  
Affirmed by H. L. (E.) [1899] A. C. 293
- Att.-Gen. v. Vyner* (1890) 38 W. R. 194  
Distinguished. *JENKINS v. BUSHBY*  
C. A. [1891] 1 Ch. 484, 495
- Att.-Gen. v. Warren* (1818) 2 Swans. 291, 302;  
19 R. R. 74.  
Discussed. *In re CLERGY ORPHAN CORPORATION*  
C. A. [1894] 3 Ch. 145, at p. 154
- Att.-Gen. v. Wilkinson*, (1859) 28 L. J. (Ch.) 392;  
29 L. J. (Ch.) 41.  
Observed upon. *EARL JERSEY v. UxBRIDGE UNION RURAL SANITARY AUTHORITY* - [1891] W. N. 31, 113  
But see [1891] 3 Ch. 183.
- Att.-Gen. v. Wolverton (Baron)*, Div. Ct. [1896] 2 Q. B. 389, and C. A. [1897] 1 Q. B. 231.  
Reversed by H. L. (E.) *sub nom.* *WOLVERTON (BARON) v. ATT.-GEN.*  
[1898] A. C. 535
- Att.-Gen. v. Wood* [1897] 2 Q. B. 102  
See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 14.
- Attree v. Hawe* (1878) 9 Ch. D. 337, 349  
Followed by Stirling J. *In re PARKER, WIGNALL v. PARKER* [1891] 1 Ch. 682  
Dictum of James L.J. as to the nature of debenture stock discussed and explained by Chitty J. *In re BODMAN, BODMAN v. BODMAN* [1891] 3 Ch. 135  
Discussed by C. A. *In re PICKARD, ELMSELEY v. MITCHELL* [1894] 3 Ch. 704
- Attrill v. Huntingdon* - 70 Maryland, 191  
Disapproved by P. C. *sub nom.* *HUNTINGTON v. ATTRILL*  
P. C. [1893] A. C. 150
- Auckland (Lord) v. Westminster Local Board of Works*, (1872) L. R. 7 Ch. 597.  
Distinguished by North J. *WORLEY v. VESTRY OF ST. MARY ABBOTTS, KENSINGTON* - [1892] 2 Ch. 404  
Affected by 57 & 58 Vict. c. cccxiii., s. 22 (2).  
Distinguished by C. A. *LONDON COUNTY COUNCIL v. PRYOR*  
[1896] 1 Q. B. 465  
Considered by Stirling J. *GRAND JUNCTION WATERWORKS CO. v. HAMPTON URBAN COUNCIL* [1898] 2 Ch. 331
- Audain, Ex parte* - - (1889) 42 Ch. D. 1  
Distinguished by V. Williams J. *In re HARVEY'S OYSTER CO. ORMEROD'S CASE* [1894] 2 Ch. 474
- Auriferous Properties, Ltd., In re*, [1898] 1 Ch. 691.  
See also [1898] 2 Ch. 428.
- Auriferous Properties, Ltd. (No. 2), In re*, [1898] 2 Ch. 428.  
Referred to by Stirling J. *In re GOY & CO.* - [1900] 2 Ch. 149
- Australian Auxiliary Steam Clipper Co. v. Mounsey*, (1858) 4 K. & J. 733.  
See GENERAL AUCTION ESTATE AND MONETARY CO. v. SMITH  
[1891] 3 Ch. 432

- Automatic Weighing Machine Co. v. International Hygienic Society*, (1889) 6 Rep. Pat. Cas. 475.  
Referred to by Buckley J. *SACCHARIN CORPORATION, LD. v. ANGLO-CONTINENTAL CHEMICAL WORKS, LD.* [1900] W. N. 95
- Avery v. Andrews* - (1882) 51 L. J. (Ch.) 414  
Followed. *SEAWARD v. PATERSON*  
C. A. [1897] 1 Ch. 545, 555
- Avery v. Wood* - [1891] 3 Ch. 115  
Rendered obsolete by 56 & 57 Vict. c. 61, s. 1 (b).
- Ayerst v. Jenkins* - (1873) L. R. 16 Eq. 275  
Distinguished by North J. *PHILLIPS v. PROSYN* [1899] 1 Ch. 811
- Aylesford (Earl of) v. Morris*, (1873) L. R. 8 Ch. 484.  
Applied by C. A. *BRENCHLEY v. HIGGINS* [1900] W. N. 242
- Aylward v. Lewis* - [1891] 2 Ch. 81  
Observed upon. *SCOTT v. STREATHAM AND GENERAL ESTATES CO.*  
[1891] W. N. 153  
Observed upon. *In re MITCHELL WAVELL v. MITCHELL* [1892] W. N. 11
- Aynsley v. Glover* (1874) L. R. 18 Eq. 544  
Considered. *MARTIN v. PRICE*  
C. A. [1894] 1 Ch. 276
- B. (No. 1), In re* - [1891] 3 Ch. 274  
Referred to by C. A. *In re B. (No. 2)*  
[1892] 1 Ch. 459, 461
- Bache v. Billingham* [1894] 1 Q. B. 107  
See 59 & 60 Vict. c. 25, s. 68 (6).
- Bacon v. Bacon* (1800) 5 Ves. 331; 5 R. R. 52  
Followed by Farwell J. *In re LORD DE CLIFFORD'S ESTATE* [1900] 2 Ch. 707
- Badham v. Badham* - (1890) 62 L. T. 663  
Followed by G. Barnes J. *EDWARDS v. EDWARDS* - [1894] P. 33
- Badische Anilin und Soda Fabrik v. Johnson (H.) & Co. and Basle Chemical Works, Bindschedler*, C. A. [1897] 2 Ch. 322.  
Affirmed by H. L. (E.) *sub nom. BADISCHE ANILIN UND SODA FABRIK v. BASLE CHEMICAL WORKS, BINDSCHEDLER* [1898] A. C. 200  
Referred to by Stirling J. *BRITISH MOTOR SYNDICATE v. TAYLOR & SON* [1900] 1 Ch. 577, 581; C. A. [1900] W. N. 239; [1901] 1 Ch. 122
- Baggett v. Meux* - (1844) 1 Coll. 138  
Approved. *STODGON v. LEE*  
C. A. [1891] 1 Q. B. 661
- Baggs, In re* - [1894] 2 Ch. 416, u.  
Distinguished by C. A. *In re X.* [1894] 2 Ch. 415, 419;  
*In re SALT* [1896] 1 Ch. 117  
Referred to by C. A. *In re SKORTRIDGE* [1895] 1 Ch. 278, 284
- Bagot, In re* - [1894] 1 Ch. 177  
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- Bagshaw v. Pimm* - [1900] W. N. 64  
Reversed by C. A. - [1900] P. 148
- Bahia and San Francisco Ry. Co., In re*, (1868) L. R. 3 Q. B. 584.  
Considered by H. L. (E.). *BALKIS CONSOLIDATED CO. v. TOMKINSON* [1893] A. C. 396  
Explained by C. A. *In re OTTOS KOPJE DIAMOND MINES* - [1893] 1 Ch. 618
- Baile v. Baile* - (1872) L. R. 13 Eq. 497  
Reluctantly followed by Kekewich J. *BRISCOE v. BRISCOE* [1892] 3 Ch. 543
- Bailey v. Barnes* - [1894] 1 Ch. 25  
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- Bailey v. Watson & Co.* - [1898] 2 Q. B. 270  
Overruled. *WHITE v. HEADLAND'S PATENT ELECTRIC STORAGE BATTERY CO.*  
C. A. [1899] 1 Q. B. 507
- Bain v. Att.-Gen.* - [1892] P. 217  
Affirmed by C. A. [1892] P. 261
- Bain v. Fothergill* - (1874) L. R. 7 H. L. 158  
Considered by C. A. *DAY v. SINGLETON* [1899] 2 Ch. 320
- Baine & Johnston v. McCowan (The "Niobe,")* (1890) 17 R. 1016.  
Affirmed by H. L. (Sc.) [1891] A. C. 401
- Baines v. Baker* - (1752) 1 Amb. 158  
Considered by Chitty J. *ATT.-GEN. v. MANCHESTER CORPORATION* [1893] 2 Ch. 87
- Baines v. Geary* - (1887) 35 Ch. D. 154  
Commented on. *DUHOSKI & SONS v. GOLDSTEIN* C. A. [1893] 1 Q. B. 486
- Baird v. Tunbridge Wells (Mayor, &c., of),* [1894] 2 Q. B. 867.  
Affirmed by H. L. (E.) [1896] A. C. 434
- Baird's Trustees v. Lord Advocate*, (1888) 15 R. 682.  
Disapproved of. *COMMISSIONERS FOR SPECIAL PURPOSES OF INCOME TAX v. PEMSEL*  
H. L. (E.) [1891] A. C. 531
- Baker v. Sutton* - (1836) 1 Keen, 224  
Overruled if and so far as differing from *Lewis v. Allenby. In re PIERCY. WHITWHAM v. PIERCY* C. A. [1898] 1 Ch. 565
- Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396.  
Followed and applied by Farwell J. *DIXON v. KENNAWAY & CO.* [1900] 1 Ch. 833
- Ball v. Ray* - (1873) L. R. 8 Ch. 467, 469  
Followed by Buckley J. *SANDERS-CLARK v. GROSVENOR MANSIONS CO.* [1900] 2 Ch. 373  
Referred to by Kekewich J. *ATT.-GEN. v. COLE* - [1900] W. N. 272
- Ball's Trusts, In re* - (1879) 11 Ch. D. 270  
Followed by Chitty J. *STODDART v. SAVILE* - [1894] 1 Ch. 480  
Followed by Romer J. *In re FORBES* [1899] W. N. 6 (4)

- Ballinal v. Menzies* - (1886) 14 R. 127  
Followed. *WALSHE v. ANNAN*, (1892)  
22 R. 83 **Registration App. Ct. (Sc.)**  
[1897] **W. N. 97**
- Bamford, Ex parte* - (1808-9) 15 Ves. 449  
Referred to by C. A. *In re WORSLEY*  
[1900] **W. N. 269**
- Bamford v. Turnley* - (1860) 3 B. & S. 62  
Referred to. *J. LYONS & SONS v. WILKINS*  
**C. A.** [1899] 1 Ch. 255  
Followed by *Kekewich J. ATT-GEN. v. COLE* -  
[1900] **W. N. 272**
- Bank of Scotland v. Dominion Bank (Toronto)*,  
(1889) 16 R. 1081.  
Affirmed by H. L. (Sc.)  
[1891] **A. C. 592**
- Bank of South Australia, In re (No. 1)*, [1894] 3  
Ch. 722.  
Doubted. *In re BANK OF SOUTH AUSTRALIA (No. 2)* **C. A.** [1895] 1 Ch. 578
- Bank of Syria, In re. Owen and Ashworth's Claim. Whitworth's Claim*, [1900] 2  
Ch. 272.  
On appeal - - [1900] **W. N. 256**;  
*See* [1901] 1 Ch. 115
- Bank of Toronto v. Lambe*, (1887) 12 App. Cas.  
575.  
Followed. *BREWERS AND MALSTER'S ASSOCIATION OF ONTARIO v. ATT-GEN. FOR ONTARIO*  
[1897] **A. C. 231**
- Bankes v. Bankes* - - (1899) 1 F. 1194  
Affirmed by H. L. (Sc.)  
[1900] **W. N. 246**
- Bankier Distillery Co. v. Young & Co.*, (1892) 19  
R. 1083.  
Affirmed by H. L. (Sc.) *sub nom.* *YOUNG & CO. v. BANKIER DISTILLERY CO.*  
[1893] **A. C. 691**
- Banks v. Braithwaite* (1862) 32 L. J. (Ch.) 35  
Questioned by C. A. *In re SAUNDERS*  
[1898] 1 Ch. 17
- Banks v. Gibson* - - (1865) 34 Beav. 566  
Explained by C. A. *BURCHELL v. WILDE*  
[1900] 1 Ch. 551
- Bannatyne v. Direct Spanish Telegraph Co.*, (1887)  
34 Ch. D. 287.  
Applied by Stirling J. *In re LONDON AND NEW YORK INVESTMENT CORPORATION* -  
[1895] 2 Ch. 860
- Bannister v. Breslau* (1867) L. R. 2 C. P. 497  
Disapproved of. *CLINK v. RADFORD & CO.*  
**C. A.** [1891] 1 Q. B. 625
- Barber, In re* - - (1888) 39 Ch. D. 187  
Followed by Stirling J. *In re WESTON'S TRUSTS*  
[1898] **W. N. 151 (10)**
- Barber v. Jeckylls* - [1893] **W. N. 91**  
*See LUSK v. SEBRIGHT* [1894] **W. N. 134**  
Referred to by North J.  
[1896] **W. N. 171 (7)**; [1897] 1 Ch. 19
- Barber v. Mackrell* - [1892] **W. N. 87**  
Reversed by C. A. - [1892] **W. N. 133**
- Barber v. Manico* - (1893) 10 Rep. Pat. Cas. 93  
Considered by Stirling J. *In re THE TRADE-MARK OF LA SOCIÉTÉ ANONYME DES VERRERIES DE L'ÉTOILE (No. 2)*  
[1894] 1 Ch. 61;  
This case was affirmed by C. A.  
[1894] 2 Ch. 26
- Barclay, Ex parte* - (1874) L. R. 9 Ch. 576  
Explained by Romer J. *JOHNS v. WARE*  
[1899] 1 Ch. 359
- Baring, In re*, [1893] 1 Ch. 61, view taken in, of  
decision in *In re Courtier*, (1886) 34  
Ch. D. 136, dissented from. *In re REDDING*  
[1897] 1 Ch. 876  
Discussed by Kekewich J. *In re TOMLINSON* -  
[1898] 1 Ch. 232  
Not followed by Kekewich J. *In re GJERS*  
[1899] 2 Ch. 54, 58
- Baring v. Abingdon* - [1892] 2 Ch. 374, 381  
Dictum, p. 381, of Stirling J. on effect  
of decision in *Dawson v. Gent*, 1 H. & N.  
744, explained and corrected by Chitty J.  
in *WALLIS v. HANDS* - [1893] 2 Ch. 75
- Baring v. Inland Revenue Commrs., C. A.* [1898]  
1 Q. B. 78.  
Affirmed by H. L. (E.) *sub nom.* *LORD REVELSTOCK v. INLAND REVENUE COMMRs.*  
[1898] **A. C. 565**
- Baring-Gould v. Sharpington Combined Pick and Shovel Syndicate*  
[1898] 2 Ch. 633  
Affirmed in part and reversed in part  
by C. A. - [1899] 2 Ch. 80
- Barker, In re. Buxton v. Campbell*, [1892] 2 Ch.  
491.  
Referred to by Stirling J. *In re LACY*  
[1899] 2 Ch. 149, 157
- Barkshire v. Grubb* - (1881) 18 Ch. D. 616  
Explained by Chitty J. *In re PECK AND THE SCHOOL BOARD FOR LONDON*  
[1893] 2 Ch. 315
- Barlow v. Kensington Vestry*, (1886) 11 App. Cas.  
257.  
Met by 57 & 58 Vict. c. cccxiii. s. 49.  
Considered. *ALLEN v. LONDON COUNTY COUNCIL*  
**C. A.** [1895] 2 Q. B. 587
- Barlow's Will, In re* - (1887) 36 Ch. D. 287  
Considered. *In re BROWN*  
**C. A.** [1895] 2 Ch. 666  
Distinguished by Stirling J. *In re DE LINDEN*  
[1897] 1 Ch. 453  
Referred to by Kekewich J. *THIERY v. CHALMERS. GUTHRIE & CO.*  
[1900] 1 Ch. 80  
Discussed by C. A. *DIDDSHEIM v. LONDON AND WESTMINSTER BANK*  
[1900] 2 Ch. 15
- Barnard, Ex parte. In re Great Kruger Gold Mining Co.*  
[1892] 3 Ch. 307  
Explained by C. A. *In re TRUST AND INVESTMENT CORPORATION OF SOUTH AFRICA*  
[1892] 3 Ch. 332
- Barnard v. Faber* - - [1893] 1 Q. B. 340  
Referred to by C. A. *HAMBROUGH v. MUTUAL LIFE INSURANCE CO. OF NEW YORK* -  
[1895] **W. N. 18**

- Barnardo v. Ford* - - - [1892] A. C. 326  
See *Custody of Children Act*, 1891  
(54 & 55 Vict. c. 3), s. 3.
- Barnardo v. McHugh* [1891] 1 Q. B. 194  
Affirmed by H. L. (E.) [1891] A. C. 388  
See now *Custody of Children Act*, 1891  
(54 & 55 Vict. c. 3), s. 3.
- Barnes v. Addy* - (1874) L. R. 9 Ch. 244, 251  
Referred to by Kekewich J. *In re*  
BARNEY - [1892] 2 Ch. 265
- Barnes v. Glenton* - [1898] 2 Q. B. 223  
Reversed by C. A. [1899] 1 Q. B. 885  
Referred to by Stirling J. LONDON AND  
MIDLAND BANK *v.* MITCHELL  
[1899] 2 Ch. 161, 165
- Barnes v. Racster* - (1842) 1 Y. & C. Ch. 401  
Followed by C. A. FLINT *v.* HOWARD  
[1893] 2 Ch. 54
- Barnes v. Rider* - (1892) 62 L. J. (M.C.) 25  
Disapproved by Div. Ct. NEAL *v.*  
DEVENISH - [1894] 1 Q. B. 544
- Barnes v. Wood* - - (1869) L. R. 8 Eq. 424  
Distinguished by Farwell J. RUDD *v.*  
LASCELLES - [1900] 1 Ch. 815, 821
- Barnett v. Eccles Corporation*, [1900] W. N. 96;  
[1900] 2 Q. B. 104.  
Affirmed by C. A. [1900] 2 Q. B. 423
- Barney, In re* - - - [1894] 3 Ch. 562  
Distinguished by Byrne J. *In re*  
THOMAS - [1900] 1 Ch. 319, 324
- Barnhart v. Greenshields* (1853) 9 Moo. P. C. 18  
Discussed by Farwell J. HUNT *v.* LUCK  
[1900] W. N. 250
- Barr v. Kingsford* - (1887) 56 L. T. (N.S.) 861  
Distinguished by Div. Ct. CARTWRIGHT  
*v.* REGAN - [1895] 1 Q. B. 900, 902
- Barracrough v. Brown* - [1897] A. C. 615, 623  
Referred to by C. A. ATT.-GEN. *v.*  
MERTHYR TYDFIL UNION  
[1900] 1 Ch. 516, 550
- Barrington, In re* - - (1886) 33 Ch. D. 523  
Distinguished by Chitty J. *In re*  
ROBINSON'S SETTLEMENT TRUSTS  
[1891] W. N. 118; [1891] 3 Ch. 129
- Barron v. Willis* - - [1899] 2 Ch. 578  
Reversed by C. A. - [1900] 2 Ch. 121
- Barrow v. Barrow* - (1858) 4 K. & J. 409  
Applied by Stirling J. GREENHILL *v.*  
NORTH BRITISH AND MERCANTILE IN-  
SURANCE Co. - [1893] 3 Ch. 474  
Followed by Chitty J. *In re* HODSON.  
WILLIAMS *v.* KNIGHT [1894] 2 Ch. 421
- Barrow v. Isaacs & Son* [1891] 1 Q. B. 417  
Followed. EASTERN TELEGRAPH Co. *v.*  
DENT - C. A. [1899] 1 Q. B. 835
- Barrow v. Smith* - [1885] W. N. 136  
Observed upon. DOCKSEY *v.* ELSE  
[1891] W. N. 65
- Barrow Hematite Steel Co., In re*, (1888) 39  
Ch. D. 582.  
See *In re* BARROW HÆMATITE STEEL CO.  
[1900] 2 Ch. 846, 847  
Followed by Kekewich J. *In re* AGRICULTURAL HOTEL CO. [1891] 1 Ch. 396
- Barry v. Butlin* - (1838) 2 Moo. P. C. 480  
Explained. TYRRELL *v.* PAINTON (No. 1)  
C. A. [1894] P. 151
- Barry v. Peruvian Corporation*, [1896] 1 Q. B. 208.  
Discussed by C. A. SEA INSURANCE CO. *v.* CARR - [1900] W. N. 238
- Barry Ry. Co. v. Taff Vale Ry. Co.*, [1895] 1 Ch. 128.  
See DAVIS & SONS *v.* TAFF VALE RY. CO.  
[1895] A. C. 554
- Bartlett v. Ford's Hotel Co.* [1895] 1 Q. B. 850  
Affirmed by H. L. (E.) [1896] A. C. 1
- Bartlett v. Gibbs* (1843) 5 Man. & G. 81  
Followed by C. A. HURCUM *v.* HILL-  
LEARY - [1894] 1 Q. B. 579
- Bartlett v. Mayfair Property Co.*, [1897] W. N. 174 (4).  
Affirmed by C. A. *sub nom.* *In re* MAYFAIR PROPERTY CO. BARTLETT *v.* MAYFAIR PROPERTY CO. [1898] 2 Ch. 28
- Bartlett v. Phillips* - (1859) 4 De G. & J. 414  
Followed by Romer J. ECCLESIASTICAL COMMRS. *v.* WODEHOUSE [1895] 1 Ch. 552
- Bartlett v. Pickersgill*, (1759) 1 Cox, 15 cit.; 4 East, 577, n.; 1 Eden, 515; Burr, 2255; 1 R. R. 1. And see 20 R. R. 294, n.  
Is not overruled for all purposes by *Heard v. Pilley*, (1869) L. R. 4 Ch. 548, *per* Kekewich J. JAMES *v.* SMITH  
[1891] 1 Ch. 384;  
This case was affirmed by C. A.  
[1891] W. N. 175
- Overruled. ROUCHEFOUCALD *v.* BOUSTEAD  
C. A. [1897] 1 Ch. 196
- Bartlett v. West Metropolitan Tramways Co.*, [1893] 3 Ch. 437; [1894] 2 Ch. 286.  
Disapproved by C. A. MARSHALL *v.* SOUTH STAFFORDSHIRE TRAMWAYS CO.  
[1895] 2 Ch. 36
- Barton v. London and North Western Ry. Co.* (1890) 24 Q. B. D. 77; 59 L. J. (Q.B.) 33; 62 L. T. 164; 38 W. R. 197.  
*But see now* 54 & 55 Vict. c. 43.
- Barton v. Muir* (1874) L. R. 6 P. C. 134  
Distinguished by P. C. TOOTH *v.* POWER  
[1891] A. C. 284
- Barton v. Taylor* - (1886) 11 App. Cas. 197  
Distinguished. FIELDING *v.* THOMAS  
[1896] A. C. 600
- Baschet v. London Illustrated Standard Co.*, [1900] 1 Ch. 73.  
Referred to by Kekewich J. HILDESHEIMER *v.* FAULKNER, LD.  
[1900] W. N. 170
- Bate, In re* - - - (1890) 43 Ch. D. 600  
Considered by Kekewich J. *In re* BUTLER  
[1894] 3 Ch. 250  
Not followed by Chitty J. *In re* SALT  
[1895] 2 Ch. 203

- Bateman (Lady) v. Faber* - [1897] 2 Ch. 223  
 Affirmed by C. A. - [1898] 1 Ch. 144  
 See C. A. [1900] W. N. 157.
- Bateman (Lady) v. Faber* [1899] W. N. 241  
 Affirmed by C. A. - [1900] W. N. 157
- Baten's Case* - - - 9 Rep. 53 b  
 Discussed. *LANE v. CAPSEY*  
 C. A. [1891] 3 Ch. 411
- Bates v. Bates* - - - (1888) 14 P. D. 17  
 Distinguished by JEUNE J. CLARKE *v.*  
 CLARKE - [1891] P. 287
- Bathurst (Borough of) v. Macpherson*, (1879) 4 App.  
 Cas. 256.  
 Distinguished by P. C. PICTOU (MUNI-  
 CIPALITY OF) *v.* GELDEBT  
 [1893] A. C. 524  
 Explained by P. C. SYDNEY (MUNI-  
 CIPAL COUNCIL) *v.* BOURKE  
 [1895] A. C. 433
- Batt & Co.'s Trade-mark, In re*, [1898] W. N. 44  
 (15).  
 Affirmed by C. A. *sub nom.* *In re*  
 REGISTERED TRADE-MARKS OF JOHN BATT  
 & CO., and *In re* CARTER'S APPLICATION  
 FOR A TRADE-MARK - [1898] 2 Ch. 432  
 See also [1898] 2 Ch. 701  
 Affirmed by H. L. (E.) *sub nom.*  
 BATT & CO. *v.* DUNNETT  
 [1899] A. C. 428
- Battams, Ex parte. In re Wenham*, [1900] W. N.  
 117.  
 Affirmed by C. A. - [1900] 2 Q. B. 698
- Batten v. Dartmouth Harbour Commrs.*, (1890)  
 45 Ch. D. 612.  
 Followed. *CARRICK v. WIGAN TRAMWAYS*  
 CO. [1893] W. N. 98
- Batten v. Wedgwood Coal and Iron Co.*, (1885)  
 28 Ch. D. 317.  
 Referred to by Kekewich J. *LATHOM*  
*v.* GREENWICH FERRY CO.  
 [1895] W. N. 77
- Batty v. Hill* - - - (1863) 1 H. & M. 264  
 Followed by C. A. *TALLERMAN v.*  
*DOWSING RADIANT HEAT CO.*  
 [1900] 1 Ch. 1
- Baumwoll Manufactur von Carl Scheibler v.*  
*Gilchrest* [1891] 2 Ch. B. 310  
 Reversed by C. A. [1892] 1 Q. B. 253  
 Decision of C. A. affirm. by H. L. (E.)  
*sub nom.* BAUMWOLL MANUFACTURER VON  
 CARL SCHEIBLER *v.* FURNESS  
 [1893] A. C. 8  
 Distinguished by C. A. *MANCHESTER*  
*TRUST v.* FURNESS, WITHEY AND CO.  
 C. A. [1895] 2 Q. B. 539
- Baxendale v. London, Chatham and Dover Ry. Co.*  
 (1874) L. R. 10 Ex. 35.  
 Discussed by C. A. *AGIUS v. GREAT*  
*WESTERN COLLIERY CO.*  
 [1899] 1 Q. B. 413
- Baxter v. Inglis* - - - (1897) 24 R. 758  
 Affirmed by H. L. (Sc.) *sub nom.* *INGLIS*  
*v.* ROBERTSON - [1898] A. C. 616
- Bayley v. Great Western Ry. Co.*, (1884) 26 Ch. D.  
 434.  
 Dictum of Fry J. (p. 457) explained by  
 Chitty J. *In re PECK and the SCHOOL*  
*BOARD FOR LONDON* [1893] 2 Ch. 315  
 Distinguished by Romer J. *ATT.-GEN.*  
*v.* TEDDINGTON URBAN COUNCIL  
 [1898] 1 Ch. 66
- Baynes & Co. v. Lloyd & Sons*, [1895] 1 Q. B.  
 820  
 Affirmed by C. A. [1895] 2 Q. B. 610
- Beal, Ex parte* (1868) L. R. 3 Q. B. 387  
 Followed by Kekewich J. *BASCHET v.*  
*ILLUSTRATED STANDARD CO.*  
 [1900] 1 Ch. 73  
 Referred to by Kekewich J. *HILDES-*  
*HEIMER v.* FAULENEES, LD.  
 [1900] W. N. 170
- Beale v. Beale*, - (1874) L. R. 3 P. D. 179  
 Distinguished by Div. Ct. *LEIGH v.*  
*GREEN* - [1892] P. 17
- Beall v. Smith* - - - (1873) L. R. 9 Ch. 85  
 Explained by Stirling J. *In re GEORGE*  
*ARMSTRONG & SONS* [1896] 1 Ch. 536
- Beardmore, Ex parte* [1894] 2 Q. B. 393  
 Applicable. *HUNT v. FRIPP*  
 [1897] W. N. 158 (3); [1898] 1 Ch. 675
- Beardmore v. Meakin*, (1885) L. J. notes of cases, 8  
 Referred to by Div. Ct. *STANTON v.*  
*BROWN* - [1900] 1 Q. B. 671, 674
- Beauchamp Brothers, In re. Ex parte Beauchamp*,  
 [1894] 1 Q. B. 1.  
 Varied by H. L. (E.) *sub nom.* *LOVELL*  
*AND CHRISTMAS v.* BEAUCHAMP  
 [1894] A. C. 607
- Beauclerk v. Beauclerk (No. 1)* - [1891] P. 189  
 Referred to by JEUNE P. BEAUCLEBK *v.*  
 BEAUCLEBK (No. 2) [1895] P. 220
- Beavan v. Beavan* - (1883) 24 Ch. D. 649, n.  
 See *In re HENGLER. FROWDE v. HEN-*  
*GLER (No. 1)* [1893] 1 Ch. 586
- Beckett v. Tasker* - - - (1887) 19 Q. B. D. 7  
 See the Married Women's Property Act,  
 1893 (56 & 57 Vict. c. 63), s. 1.  
 Referred to by C. A. *SOFTLAW v. WELCH*  
 [1899] 2 Q. B. 419, 424
- Beckett v. Tower Assets Co.* - [1891] 1 Q. B. 1  
 Reversed by C. A. [1891] 1 Q. B. 639
- Beckhuson v. Hamblet* [1900] 2 Q. B. 18  
 Followed and approved by Mathew J.  
*ANDERSON & CO. v.* BEARD  
 [1900] 2 Q. B. 260
- Beckwith v. Beckwith* (1876) 46 L. J. (Ch.) 97  
 Referred to by Cozens-Hardy J. *In re*  
 ROBSON [1899] W. N. 260
- Becquet v. MacCarthy*, (1831) 2 B. & Ad. 951;  
 36 R. R. 803.  
 Distinguished by P. C. *SIRDAR GURD-*  
*YAL SINGH v.* RAJAH OF FARIDKOTE  
 [1894] A. C. 670
- Beddington v. Atlee* - (1887) 35 Ch. D. 317  
 Applicable. *DAVIES v.* THOMAS  
 [1899] W. N. 244
- Bedouin Steam Navigation Co. v. Smith & Co.*,  
 (1895) 22 R. 350.  
 Reversed by H. L. (Sc.) [1896] A. C. 70



- Beeching v. Phillips*, Oct. 27, 1883, R. P. K. folio 13.  
Followed by *North J. IND. COOPE & Co. v. MEE* - [1895] W. N. 8
- Beeston, In re* - [1898] W. N. 171 (1)  
Affirmed by C. A. [1899] 1 Q. B. 626
- Beeston Pneumatic Tyre Co., In re*, [1898] W. N. 34; 14 T. L. R. 338.  
Distinguished by *Wright J. In re NORTH-WEST ARGENTINE RY. Co.* [1900] 2 Ch. 882
- Behn v. Burness* - (1863) 3 B. & S. 751, 759  
Applied. *BENTSEN v. TAYLOR, SONS & Co. (No. 2)*  
C. A. [1893] 2 Q. B. 274, at pp. 279, 281
- Belcher v. Williams* - (1890) 45 Ch. D. 510  
Not followed by *Kekewich J. CATTON v. BANKS* [1893] 2 Ch. 221
- Bell, In re* [1896] 1 Ch. 1  
Approved of. *HOCKEY v. WESTERN C. A.* [1898] 1 Ch. 350
- Bell v. Aitkin* - (1863) L. R. 3 C. P. 320  
Followed by *Bucknill J. THE "METROPOLIS"* - [1899] W. N. 100
- Bell v. Banks* - (1841) 3 Man. & C. 258  
Referred to. *CHETWYND v. ALLEN* [1899] 1 Ch. 353
- Bell v. Hyde* - (1711) Prec. in Ch. 328  
Referred to by *Stirling J. In re TURNBULL* - [1900] 1 Ch. 180, 186
- Bell v. Love*, (1883) 10 Q. B. D. 547; (1884) 9 App. Cas. 286.  
Discussed by *Stirling J. HAYLES v. PEASE & PARTNERS, LD.* [1899] 1 Ch. 567
- Bell & Co. v. Antwerp, London and Brazil Line*, [1891] 1 Q. B. 103.  
Approved by H. L. (E.) [1898] A. C. 524, 533
- Bellamy v. Davey*, [1891] W. N. 160; [1891] 3 Ch. 540.  
Appeal dismissed by consent [1891] W. N. 192
- Bellamy v. Debenham* - (1890) 45 Ch. D. 481  
Affirmed by C. A. - [1891] 1 Ch. 412
- Bellamy and Metropolitan Board of Works, In re*, (1883) 24 Ch. D. 387  
Overruled by 56 & 57 Vict. c. 53, s. 17 (1).
- Bence, In re. Smith v. Bence* [1891] 3 Ch. 242  
Followed by *Byrne J. In re HANCOCK.* [1900] W. N. 58; C. A. [1900] W. N. 270
- Bendy, In re* - - [1895] 1 Ch. 109  
Discussed and not followed. *FINLAY v. DARLING* - [1897] 1 Ch. 719
- Beneficed Clerk v. Lee* - [1897] A. C. 226  
See now 61 & 62 Vict. c. 48, s. 1, sub-s. 5.
- Benett v. Wyndham* - (1862) 4 D. F. & J. 259  
Followed by *Byrne J. In re RAYBOULD* [1900] 1 Ch. 199
- Benfieldside Local Board v. Consett Iron Co.*, (1877) 3 Ex. D. 54.  
Considered by C. A. LONDON AND NORTH WESTERN RY. Co. v. EVANS [1893] 1 Ch. 16
- "*Benlarig*," *The* - - (1889) 14 P. D. 3  
Followed by *Jeune P. THE "LEPANTO"* [1892] P. 122
- Benn v. Benn* - - (1885) 29 Ch. D. 839  
Distinguished by C. A. *In re BLANTERN. LOWE v. COOKE* [1891] W. N. 54
- Bennett v. Gamgee* - (1876) 2 Ex. D. 11  
Referred to by C. A. *BEAM v. FLOWER* [1895] W. N. 120
- Bennett v. Slater* - - [1898] 1 Q. B. 469  
Reversed by C. A. - [1899] 1 Q. B. 45
- Bennett v. Womack*, (1828) 7 B. & C. 627; 31 R. R. 270.  
Referred to. *MIDGLEY v. SMITH* [1893] W. N. 120
- Bensaude v. Thames and Mersey Marine Insurance Co.* - C. A. [1897] 1 Q. B. 29  
Affirmed by H. L. (E.) [1897] A. C. 609  
Undistinguishable. *TURNBULL, MARTIN & Co. v. HULL UNDERWRITERS' ASSOCIATION* - [1900] 2 Q. B. 402
- Bent v. Cullen* - - (1871) L. R. 6 Ch. 235  
Observed on. *In re MORGAN C. A.* [1893] 3 Ch. 222
- Bentinck v. Fenn* - (1887) 12 App. Cas. 652  
Distinguished by C. A. *ARCHER'S CASE* [1892] 1 Ch. 322
- Bentley v. Vilmont* - (1887) 12 App. Cas. 471  
See *Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 24 (2).
- Bentley (H.) & Co., Re. Ex parte Harrison*, (1893) 69 L. T. (N.S.) 204.  
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C. A. [1897] 1 Ch. 575
- Benwell, Ex parte* (1885) 14 Q. B. D. 301  
Discussed by *V. Williams J. In re ROGERS. Ex parte COLLINS* [1894] 1 Q. B. 425
- Benwell, Ex parte. In re Hatton*, (1885) 14 Q. B. D. 301.  
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- Benwell v. Inns*, (1857) 24 Beav. 307; 26 L. J. (Ch.) 663.  
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- Benyon v. Benyon* - - (1876) 1 P. D. 447  
Considered. *THOMASSET v. THOMASSET C. A.* [1894] P. 295
- Berdan v. Greenwood* - (1878) 3 Ex. D. 251  
Approved of. *COOTE v. FORD C. A.* [1899] 2 Ch. 93, 105
- Beresford-Hope v. Lady Sandhurst*, (1889) 23 Q. B. D. 79.  
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- Berkeley v. Baird* - - (1895) 22 R. 372  
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- Berkley v. Thompson* - (1885) 10 App. Cas. 45  
Dictum at p. 49 explained and distinguished. *REG. v. WEBB* [1896] 1 Q. B. 487

- Berridge v. Ward* - (1861) 10 C. B. (N.S.) 400  
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C. A. [1894] 2 Ch. 11
- Bertie v. Lord Abingdon*, (1817) 3 Mer. 560;  
17 R. R. 125.  
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[1892] 3 Ch. 94
- Bertram Luipaard's Vlei Gold Mining Co., In re*,  
[1892] 3 Ch. 332.  
Explained by V. Williams J. *In re*  
LAXON & Co. (No. 3) [1893] 1 Ch. 210
- "*Beryl*," *The* - (1884) 9 P. D. 137  
Followed. *THE "OPORTO"*  
C. A. [1897] P. 249
- Bessela v. Stern* - (1877) 2 C. P. D. 265  
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*MANN v. WALPOLE* [1891] 2 Q. B. 534
- Bethlehem and Bridewell Hospitals, In re*, (1885)  
30 Ch. D. 541.  
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VICAR OF CASTLE BYTHAM  
[1895] 1 Ch. 348  
And by North J. *In re MARTIN AND*  
*VARLOW* - [1894] W. N. 223
- Bettesworth and Richer, In re*, (1888) 37 Ch. D.  
535.  
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[1900] 1 Ch. 683, 691
- Bettison, In re* (1874) L. R. 4 A. & E. 294  
Referred to. *ST. ANDREW'S, HOVE*  
(VICAR, &c., OF) *v. MAWN*  
[1895] P. 228, u.
- Betts, In re. Ex parte Betts* [1897] 1 Q. B. 50  
Distinguished by Div. Ct. *In re JUBB*  
[1897] 1 Q. B. 641, 644
- Betty, In re* - [1899] 1 Ch. 821  
Followed by Kekewich J. *In re GJERS*  
[1899] 2 Ch. 54  
Distinguished by North J. *In re PARRY*  
*AND HOPKIN* - [1900] 1 Ch. 160
- Bewicke v. Graham* (1881) 7 Q. B. D. 400  
Approved. *BUDDEN v. WILKINSON*  
C. A. [1893] 2 Q. B. 432
- Biddle v. Bond* - (1865) 6 B. & S. 225  
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*LAMBERT & Co. C. A.* [1891] 1 Q. B. 318  
Discussed. *HENDERSON & Co. v.*  
*WILLIAMS* C. A. [1895] 1 Q. B. 521
- Bidwell Brothers, In re* - [1893] 1 Ch. 603  
Overruled. *ERNEST v. LOMA GOLD*  
*MINES, LD.* C. A. [1897] 1 Ch. 1
- Biggerstaff v. Rowatt's Wharf Co.*, [1896] 2 Ch.  
93.  
Followed. *In re ROUNDWOOD COLLIERY*  
*Co.* C. A. [1897] 1 Ch. 373  
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*OF SYRIA* - [1900] 2 Ch. 272, 278;  
C. A. [1900] W. N. 256;  
Reported [1901] 1 Ch. 115
- Biggs v. Hoddinott* - [1898] W. N. 58 (7)  
Affirmed by C. A. - [1898] 2 Ch. 307  
Followed. *SANTLEY v. WILDE*  
C. A. [1899] 2 Ch. 474  
Referred to by C. A. *RICE v. NOAKES*  
& Co. - [1900] 2 Ch. 445, 453
- Bills v. Smith* - (1865) 34 L. J. (Q. B.) 68  
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[1900] 2 Q. B. 325, 327
- Bingham v. Bingham* - (1748) 1 Ves. Sen. 126  
Approved. *HUDDERSFIELD BANKING Co.*  
*v. H. LISTER & SON, LD.*  
C. A. [1895] 2 Ch. 273
- Birch v. Cropper* - (1889) 14 App. Cas. 525  
Distinguished by Byrne J. *In re ODESSA*  
*WATERWORKS Co.* [1897] W. N. 166 (3)  
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*ANGLO-CONTINENTAL CORPORATION OF*  
*WESTERN AUSTRALIA* [1898] 1 Ch. 327  
Referred to by Wright J. *In re MUTO-*  
*SCOPE AND BIOGRAPH SYNDICATE*  
[1899] 1 Ch. 896
- Birch v. Litchfield (Bishop of)*, (1803) 3 Bos. & P.  
444; see 17 R. R. Preface vii.  
Applied by Chitty J. *KEEN v. DENNY*  
[1894] 3 Ch. 169
- Bird v. Bird* - - - (1753) 1 Lee, 209  
Followed. *FODEN v. FODEN*  
C. A. [1894] P. 307
- Bird's Trusts, In re* - (1876) 3 Ch. D. 214  
Referred to by Kekewich J. *In re*  
*HOFFE'S ESTATE ACT, 1855*  
[1900] W. N. 114
- Birkdale Steam Laundry and Carpet Beating Co.,*  
*In re*, [1893] 2 Q. B. 386.  
Discussed. *In re GENERAL PHOSPHATE*  
*CORPORATION* - C. A. [1895] 1 Ch. 3
- Birks, In re. Kenyon v. Birks*, [1899] W. N.  
24 (13); [1899] 1 Ch. 703.  
Reversed by C. A. - [1900] 1 Ch. 417
- Birks v. Trippet* - - - 1 Wms. Saund. 32  
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*ESTATE* - - - [1893] 2 Ch. 300
- Birmingham and District Land Co. and Allday,*  
*In re*, [1893] 1 Ch. 342.  
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*LEICESTER CORPORATION*  
C. A. [1894] 2 Ch. 208, 220
- Birmingham Breweries, Ltd. v. Jameson*, [1898]  
W. N. 15 (8).  
Reversed on appeal.  
See RECORD OF BUSINESS  
[1898] W. N. 145
- Birmingham Corporation v. Baker*, (1881) 17  
Ch. D. 782.  
Distinguished. *TENDRING UNION v.*  
*DOWTON* C. A. [1891] 3 Ch. 265
- Birmingham, Dudley and District Banking Co. v.*  
*Ross*, (1888) 38 Ch. D. 295.  
Explained. *BROOMFIELD v. WILLIAMS*  
C. A. [1897] 1 Ch. 602
- Bishop v. Balkis Consolidated Co.*, (1890) 25  
Q. B. D. 512.  
Distinguished. *TOMKINSON v. BALKIS*  
*CONSOLIDATED Co.*  
C. A. [1891] 2 Q. B. 614  
This case affirmed by H. L. (E.)  
[1893] A. C. 396  
Observed upon by V. Williams J. *In re*  
*CONCESSIONS TRUST* [1893] 2 Ch. 757

- Bishop v. Smyrna Ry. Co.* - [1895] 2 Ch. 265  
Distinguished by Byrne J. *In re ONESSA WATERWORKS CO.* [1897] W. N. 166 (3)
- Bizzey v. Flight* - - (1876) 24 W. R. 957  
Discussed. *In re PATRICK*  
C. A. [1891] 1 Ch. 82, 87
- Black v. Clay* - - (1893) 21 R. 41  
Affirmed by H. L. (Sc.)  
[1894] A. C. 368
- Black & Co.'s Case* - (1872) L. R. 8 Ch. 254  
Dictum of Selborne L.C. explained by  
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[1891] 1 Ch. 717
- Blackburn and District Benefit Building Society v. Cunliffe, Brooks & Co.*, (1885) 29 Ch. D. 902.  
Distinguished. *In re WREXHAM, MOLD AND CONNAH'S QUAY RY. CO.*  
C. A. [1899] 1 Ch. 205, 440
- Blackburn Benefit Building Society v. Cunliffe, Brooks & Co.*, (1882) 22 Ch. D. 61;  
(1884) 9 App. Cas. 857.  
See GENERAL AUCTION ESTATE AND MONETARY CO. v. SMITH  
[1891] 3 Ch. 432
- Blackham v. Pugh* - - (1846) 2 C. B. 611  
Approved. BAKER v. CARRICK  
C. A. [1894] 1 Q. B. 838
- Blackmore v. London and South Western Ry. Co.*, (1870) L. R. 4 H. L. 610.  
Distinguished. MACFIE v. CALLANDER AND OBAN RY. CO.  
H. L. (Sc.) [1898] A. C. 270
- Blackmore v. Mills* - (1868) 16 W. R. 893  
Explained. FODEN v. FODEN  
C. A. [1894] P. 307
- Blackwood v. Reg.* - (1882) 8 App. Cas. 82  
Followed. COMMRS. OF STAMPS v. HOPE  
P. C. [1891] A. C. 476  
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- Blairberg v. Gatti* - (1896) 100 L. T. Jour. 441  
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- [1897] 1 Ch. 19, 20
- Blain, Ex parte* - - (1879) 12 Ch. D. 522  
Followed. *In re PEARSON*  
C. A. [1892] 2 Q. B. 263  
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[1900] 1 Q. B. 541, 545;  
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- Blair v. Bromley*, (1847) 2 Phil. 354; 5 Hare, 542.  
Explained by Stirling J. MOORE v. KNIGHT  
- [1891] 1 Ch. 547  
Distinguished by C. A. THORNE v. HEARD  
- [1894] 1 Ch. 599  
This case affirmed by H. L. (E.)  
[1895] A. C. 495
- Blake, Ex parte* - - (1879) 11 Ch. D. 572  
Distinguished by V. Williams J. *In re NEW ORIENTAL BANK CORPORATION* (No. 2)  
[1895] 1 Ch. 753
- Blake v. Blake* - - (1880) 15 Ch. D. 481  
Considered by Byrne J. *In re MOSES*  
[1900] W. N. 182
- Blake v. Bunbury* (1790) 1 Ves. Jr. 194; 1 R. R. 111; and see 19 R. R. 46; 21 R. R. 325, 326.  
Referred to by Stirling J. *In re RICHARDSON* - - [1900] 2 Ch. 778
- Blake v. Gale* - (1886) 32 Ch. D. 571, 577  
Distinguished. *In re FLUDYER*  
[1898] 2 Ch. 562
- Blakemoore v. Bristol and Exeter Ry. Co.*, (1858) 8 E. & B. 1035.  
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- Blaker v. Herts and Essex Waterworks Co.*, (1889) 41 Ch. D. 399.  
Applied to tramways. MARSHALL v. SOUTH STAFFORDSHIRE TRAMWAYS CO.  
C. A. [1895] 2 Ch. 36
- Blandford v. Blandford* - [1892] P. 148  
Overruled. THOMASSET v. THOMASSET  
C. A. [1894] P. 295
- Blantyre (Lord) v. Clyde Navigation Trustees*, (1891) 18 R. 197.  
Reversed by H. L. (Sc.)  
[1893] A. C. 703
- Blashill v. Chambers* (1885) 14 Q. B. D. 479  
Apparently met by 57 & 58 Vict. c. ccxiii. s. 5 (9).
- Bliethman, In re* - - (1866) L. R. 2 Eq. 23  
Followed by Kekewich J. *In re HAYWARD* - - [1897] 1 Ch. 905
- Bloomenthal, Ex parte* - C. A. [1896] 2 Ch. 525  
Reversed by H. L. (E.) *sub nom. BLOOMENTHAL v. FORD* - [1897] A. C. 156  
Distinguished. *In re AFRICAN GOLD CONCESSIONS AND DEVELOPMENT CO.*  
[1899] 1 Ch. 414; C. A. [1899] 2 Ch. 480
- Blower v. Morret* - (1752) 2 Ves. Sen. 419  
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- Blumberg v. Life Interests, &c., Corporation*, [1897] 1 Ch. 171.  
Affirmed by C. A. - [1898] 1 Ch. 27
- Blundell v. Catterall*, (1821) 5 B. & Ald. 268; 24 R. R. 353; Preface v.  
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[1899] 2 Ch. 7C5
- Blyth and Fanshawe, In re*, (1882) 10 Q. B. D. 207.  
Distinguished by C. A. OSMOND v. MUTUAL CYCLE AND MANUFACTURING SUPPLY CO. [1899] 2 Q. B. 488
- Blyth Harbour Commrs. v. Newsham and South Blyth Churchwardens and Tynemouth Union Assessment Committee*, [1894] 2 Q. B. 293.  
Affirmed by C. A. [1894] 2 Q. B. 675
- Board v. Board* - (1873) L. R. 9 Q. B. 48  
Approved and adopted. DALTON v. FITZGERALD  
C. A. [1897] 2 Ch. 86
- Bodman, In re* - - [1891] 3 Ch. 135  
Distinguished by North J. *In re WEEDING* - - [1896] 2 Ch. 364, 367

- Boehm, In the Goods of* - [1891] P. 274  
Cited. *IN THE GOODS OF WALKLEY*  
[1893] W. N. 62
- "Bold Buccleugh," The* (1851) 7 Moo. P. C. 267  
Approved. *CUBRIE v. McKNIGHT*  
H. L. (Sc.) [1897] A. C. 97
- Bolton, In re*, [1892] W. N. 163; 8 Times L. R. 668.  
Followed. *GUILD & Co. v. CONRAD*  
C. A. [1894] 2 Q. B. 885
- Bolton v. Buckenham* - [1891] 1 Q. B. 278  
Followed by *Chitty J. BOLTON v. SALMON* - [1891] 2 Ch. 48
- Bolton (R.) & Co., In re* - [1894] 3 Ch. 356  
See [1895] 1 Ch. 333
- Bolton Partners v. Lambert* (1889) 41 Ch. D. 295  
Distinguished by *Chitty J. DIBBINS v. DIBBINS* - [1896] 2 Ch. 348
- Bolton's Estate, In re. Morant v. Bolton*, [1892] W. N. 114.  
Affirmed by C. A. [1892] W. N. 163
- Bonafous v. Rybot* - (1763) 3 Burr. 1370  
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[1900] 2 Ch. 561
- Bond v. Evans* - (1888) 21 Q. B. D. 249  
Explained by Div. Ct. *SOMERSET v. WADE* [1894] 1 Q. B. 574
- Bonella v. Twickenham Local Board*, (1887) 20 Q. B. D. 63.  
Distinguished by Div. Ct. *SIMMONDS BROTHERS, LD. v. FULHAM VESTRY*  
[1900] 2 Q. B. 188
- Bonhote v. Henderson* - [1895] 1 Ch. 742  
Affirmed by C. A. [1895] 2 Ch. 202
- Bonnard v. Perryman* - [1891] 2 Ch. 269  
Discussed by *Chitty J. COLLARD v. MARSHALL* - [1892] 1 Ch. 571  
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C. A. [1894] 1 Q. B. 671
- Boor, In re. Boor v. Hopkins*, (1889) 40 Ch. D. 572.  
Distinguished by *Collins J. TUBBS v. WYNNE* [1897] 1 Q. B. 74
- Boosey v. Whight*, [1899] W. N. 45; [1899] 1 Ch. 836.  
Affirmed by C. A. [1900] 1 Ch. 122
- Booth v. Briscoe* - (1877) 2 Q. B. D. 496  
Discussed by Div. Ct. *SANDES v. WILDSMITH* - [1893] 1 Q. B. 771  
Commented on and distinguished by H. L. (E.) *SMURTHWAITE v. HANNAY*.  
[1894] A. C. 494  
Doubted. *CARTER v. RIGBY & Co.*  
C. A. [1896] 2 Q. B. 113
- Booth v. Ferrett* - (1890) 25 Q. B. D. 87  
Overruled by Div. Ct. *LOGSDON v. BOOTH* - [1900] 1 Q. B. 401
- Booth's Settlement Trusts, In re*, (1853) 1 W. R. 444.  
Overruled. *STEPHENS v. GREEN*  
C. A. [1895] 2 Ch. 148
- Bortoft v. Wadsworth* - (1846) 12 W. R. 523  
Followed by *Chitty J. In re HALLETT*  
[1892] W. N. 148
- Bostock v. Ramsey Urban Council*, [1900] 1 Q. B. 357.  
Affirmed by C. A. [1900] 2 Q. B. 616
- Bouch v. Sproule* (1887) 12 App. Cas. 385  
Considered and applied by *Stirling J. In re MALAM. MALAM v. HITCHENS*  
[1894] 3 Ch. 578
- Boughton v. James* - (1844) 1 Coll. C. C. 26, 46  
Followed by *Byrne J. WAINWRIGHT v. MILLER* - [1897] 2 Ch. 255
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Referred to. *REG. v. WEST RIDING OF YORKSHIRE JUSTICES* [1898] 1 Q. B. 503;  
*REG. v. STAFFORDSHIRE JUSTICES*  
[1898] 2 Q. B. 231, 235;  
*REG. v. MANCHESTER JUSTICES*  
[1899] 1 Q. B. 571, 575  
Referred to by H. L. (E.) *TYNEMOUTH CORPORATION v. ATT-GEN.*  
[1899] A. C. 293, 301
- Bourne, In re. Martin v. Martin*, [1893] 1 Ch. 188.  
Referred to by *North J. In re COUNTLESS OF ORFORD* [1896] 1 Ch. 257, 263  
Referred to by *Kekewich J. In re FOSTER* - [1897] 1 Ch. 484, 487
- Boursot v. Savage* (1866) L. R. 2 Eq. 134, 142  
Referred to by *Stirling J. In re HALIFAX SUGAR REFINING CO.*  
C. A. [1891] W. N. 2, 29
- Bowden, In re* - (1890) 45 Ch. D. 444  
Observed upon. *HOW v. EARL WINTER-TON* - C. A. [1896] 2 Ch. 626
- Bowditch v. Wakefield Local Board*, (1871) L. R. 6 Q. B. 567.  
Followed. *HORNSEY DISTRICT COUNCIL v. SMITH* C. A. [1897] 1 Ch. 843
- Bowen v. Hall* (1881) 6 Q. B. D. 333  
Commented on. *ALLEN v. FLOOD*  
H. L. (E.) [1898] A. C. 1
- Bower v. Hett* - [1895] 2 Q. B. 51  
Affirmed by C. A. [1895] 2 Q. B. 337
- Bowman, In re* - (1889) 41 Ch. D. 525, 535  
Commented on by *Cozens-Hardy J. In re ROBSON* - [1899] W. N. 260
- Bowman v. Bowman's Trustees* (1898) 25 R. 811  
Affirmed by H. L. (Sc.) [1899] A. C. 518
- Bowman v. Hyland* - (1878) 8 Ch. D. 588  
Explained by C. A. *In re DEIGHTON AND HARRIS'S CONTRACT*  
[1898] 1 Ch. 458
- Bown, In re* - (1884) 27 Ch. D. 411  
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[1896] W. N. 175 (12)
- Boyd v. Phillpotts* (1874) L. R. 4 A. & E. 297  
Considered in *PENDLEBURY ST. JOHN (VICAR) v. PARISHIONERS OF SAME*  
[1895] P. 178
- Boyer v. Norwich (Bishop of)* [1892] P. 41  
Affirmed by P. C. [1892] A. C. 417  
And see 61 & 62 Vict. c. 48, s. 7.
- Boynton v. Boynton* - (1879) 4 App. Cas. 733  
Principle of, applied. *In re LONDON DRAPERY STORES* - [1898] 2 Ch. 684

- Brace v. Abercarn Colliery Co.* [1891] 1 Q. B. 496  
Affirmed by C. A. [1891] 2 Q. B. 699
- Brackenbury, In the Goods of* (1877) 2 P. D. 272  
Referred to. DAVIES *v.* PARRY  
[1899] 1 Ch. 602, 606
- Brackenbury v. Gibbons* - (1876) 2 Ch. D. 417  
Not followed by Chitty J. DEAN *v.* DEAN - - - [1891] 3 Ch. 150
- Bradford v. Belfield*, (1828) 2 Sim. 264; 29 R. R. 100.  
Followed and approved. *In re* RUMNEY AND SMITH  
C. A. [1897] 2 Ch. 351, 355, 359
- Bradford v. Eastbourne Corporation*, [1896] 2 Q. B. 205.  
Followed by Div. Ct. SEAL *v.* MERTHYR TYDFIL URBAN COUNCIL  
[1897] 2 Q. B. 543
- Bradford v. Fry* - - (1878) 4 P. D. 93  
Followed by Chancellor of St. Albans. ST. ANDREW, ROMFORD (RECTOR, &C., OF) *v.* ALL PERSONS, &C. - [1894] P. 220
- Bradford Banking Co. v. Briggs & Co.*, (1887) 12 App. Cas. 29.  
Approved. BANK OF AFRICA *v.* SALISBURY GOLD MINING CO.  
P. C. [1892] A. C. 281
- Bradford Corporation v. Pickles* [1894] 3 Ch. 53  
Reversed in part by C. A.  
[1895] 1 Ch. 145;  
Decision of C. A. affirmed by H. L. (E.) - [1895] A. C. 587  
See dictum of Lord Shand. ALLEN *v.* FLOOD - [1898] A. C. 1, 167
- Bradford Tramways Co., Ex parte*, [1893] 3 Ch. 463.  
Dissented from by Cozens-Hardy J. TURPIN *v.* SOMERTON, &C., TRAMWAY CO. - - [1900] W. N. 94
- Bradley v. Baylis, Morfee v. Novis, Kirby v. Biffen*, (1881) 8 Q. B. D. 195.  
Followed. BISHOP *v.* DUFFEY, (1894) 24 R. 192 Registration App. Ct. (Sc.)  
[1898] W. N. 88
- Bradley v. Dunipace* - (1862) 1 H. & C. 521  
Distinguished by Kennedy J. PARSONS *v.* NEW ZEALAND SHIPPING CO.  
[1900] 1 Q. B. 714
- Brake, In the Goods of* - (1881) 6 P. D. 217  
Referred to. *In re* GOODS OF CHAPPELL  
[1894] W. N. 16
- Brall, In re* - - [1893] 2 Q. B. 381  
Approved by C. A. *In re* CARTER & KENDERDINE'S CONTRACT  
[1897] 1 Ch. 776
- Bramble v. Lowe* [1897] 1 Q. B. 283  
See 61 & 62 Vict. c. 49.  
And see Vaccination Order, Oct. 18th, 1898, art. 28.
- Brandon's Patent, In re* (1884) 9 App. Cas. 589  
Distinguished. MARSHALL'S PATENT  
P. C. [1891] A. C. 430
- Breeks v. Woolfrey* - (1838) 1 Curt. 880  
Discussed. EGERTON *v.* ALL OF ODD ROPE Consist. Ct. of Chester [1894] P. 15
- Bremer v. Freeman*, (1857) 10 Moo. P. C. 306, 359.  
Discussed by Kekewich J. PEPIN *v.* BRUYÈRE - [1900] 2 Ch. 504, 507
- Brereton v. Tuohey* - (1858) 8 Ir. C. L. R. 190  
Followed by Farwell J. MULLER *v.* TRAFFORD - - [1900] W. N. 251
- Brett v. Horton* - - (1841) 4 Beav. 239  
Considered. *In re* STONE  
C. A. [1895] 2 Ch. 196
- Brett v. Rogers* - - [1897] 1 Q. B. 525  
Approved by C. A. FARLOW *v.* STEVENSON - - [1900] 1 Ch. 128
- Brewer v. Eaton*, (1783) 3 Doug. 230; cited 6 T. R. 220, n.; 3 R. R. 161.  
Held by C. A. not to be inconsistent with *Cotesworth v. Spokes*, (1861) 10 C. B. (N.S.) 103. THOMAS *v.* LULHAM  
[1895] 2 Q. B. 400
- Briant, In re* - - (1888) 39 Ch. D. 471  
Form of settlement followed by Kekewich J. *In re* HOWARD. HOWARD *v.* HOWARD - [1895] W. N. 4
- Brice v. Bannister* - (1878) 3 Q. B. D. 569  
Distinguished by Chitty J. WESTERN WAGON AND PROPERTY CO. *v.* WEST  
[1892] 1 Ch. 271  
Judgment of Lord Coleridge C.J. in, questioned. DURHAM BROTHERS *v.* ROBERTSON C. A. [1898] 1 Q. B. 765
- Bridge v. Beadon* - (1867) L. R. 3 Eq. 664  
Dictum of Lord Romilly disapproved. STEPHENS *v.* GREEN  
C. A. [1895] 2 Ch. 148
- Bridge v. Quick* - (1892) 61 L. J. (Q.B.) 375  
Extended by 55 & 56 Vict. c. 13, s. 2 (1).
- Bridger, In re. Brompton Hospital for Consumption v. Lewis* - [1893] 1 Ch. 44  
Affirmed by C. A. [1894] 1 Ch. 297
- Bridges v. Garrett* - (1870) L. R. 5 C. P. 451  
Distinguished. PAPÉ *v.* WESTACOTT  
C. A. [1894] 1 Q. B. 272  
Distinguished by Romer J. CROSSLEY *v.* MAGNIAO [1893] 1 Ch. 594
- Bridges v. Hawkesworth*, (1851) 21 L. J. (Q.B.) 75.  
Distinguished by Div. Ct. SOUTH STAFFORDSHIRE WATER CO. *v.* SHARMAN  
[1896] 2 Q. B. 44
- Bridgewater Navigation Co., In re*, [1891] 1 Ch. 155.  
Varied by C. A. - [1891] 2 Ch. 317  
Applied by Kekewich J. BISHOP *v.* SMYRNA AND CASSABA RY. CO. (No. 2)  
[1895] 2 Ch. 596
- Briesemann, In the Goods of* (No. 1), [1894] P. 260.  
See IN THE GOODS OF BRIESEMANN (No 2) - - [1895] W. N. 32  
Principle in, applied. IN THE GOODS OF VON LINDEN - [1896] P. 148
- Briggs, In re* - - [1894] W. N. 162  
Principle of, applied. *In re* BENTINCK  
[1897] 1 Ch. 673

- Briggs and Spicer, In re* - [1891] 2 Ch. 127  
Overruled by C. A. *In re CARTER & KENDERDINE'S CONTRACT* [1897] 1 Ch. 776
- Bright v. Walker*, (1834) 1 C. M. & R. 211; 40 R. R. 536.  
Approved by C. A. *WHEATON v. MAPLE & Co.* [1893] 3 Ch. 48
- Brighton Marine Palace and Pier Co. v. Woodhouse*, [1893] 2 Ch. 486.  
Considered by Kekewich J. *IVES AND BARKER v. WILLIAMS* [1894] 1 Ch. 68;  
This case was affirmed by C. A. [1894] 2 Ch. 478  
Approved of by C. A. *BARTLETT v. FORD'S HOTEL CO.* [1895] 1 Q. B. 850, 852  
Referred to by Stirling J. *ZALINOFF v. HAMMOND* - [1898] 2 Ch. 92, 95
- Brigstocke, Ex parte* (1877) 4 Ch. D. 348  
Distinguished. *In re FLATAU. Ex parte OFFICIAL RECEIVER* C. A. [1893] 2 Q. B. 219
- Brinsley v. Lynton and Lynnmouth Hotel and Property Co.*, [1895] W. N. 53.  
Considered by V. Williams J. *MARWICK v. LORD THURLOW* [1895] 1 Ch. 776
- Brinsmead (T. E.) & Sns, In re* [1897] 1 Ch. 45  
Affirmed by C. A. [1897] 1 Ch. 406
- Bristol Athenaeum, In re The*, (1889) 43 Ch. D. 236.  
Discussed by North J. *In re RUSSELL INSTITUTION* [1898] 2 Ch. 72  
Considered by Stirling J. *In re JONES* [1898] 2 Ch. 83
- Britain v. Rossiter* - (1883) 11 Q. B. D. 123  
Referred to by Farwell J. *ISAACS v. EVANS* - [1899] W. N. 261
- Britannia, &c., Building Society, In re*, (1891) 65 L. T. (N.S.) 196.  
See 57 & 58 Vict. c. 47, s. 10.
- British and American Trustee and Finance Corporation v. Couper* [1894] A. C. 399  
Applied. *In re LONDON AND NEW YORK INVESTMENT CORPORATION* C. A. [1895] 2 Ch. 860  
Referred to. *ANDREWS v. GAS METER CO.* [1897] 1 Ch. 361, 370
- British Insulated Wire Co. v. Prescott Urban District Council*, [1895] 2 Q. B. 463.  
Affirmed on terms by C. A. [1895] 2 Q. B. 538
- British Motor Syndicate, Ltd. v. Taylor & Son*, [1900] 1 Ch. 577.  
Affirmed by C. A. [1900] W. N. 229
- British Mutual Banking Co. v. Charnwood Forest Ry. Co.*, (1887) 18 Q. B. D. 714.  
Followed. *THORNE v. HEARD* C. A. [1894] 1 Ch. 599;  
This case affirmed by H. L. (E.) [1895] A. C. 495
- British Wagon Co. v. Gray* - [1896] 1 Q. B. 35  
Distinguished by C. A. *MONTGOMERY v. LIEBENTHAL* [1898] 1 Q. B. 487, 493
- Brocksby v. Temperance Permanent Building Society*, [1893] 3 Ch. 130.  
Affirmed by H. L. (E.) [1895] A. C. 173  
Applicable. *LLOYDS BANK, LD. v. BULLOCK* - [1896] 2 Ch. 192
- Broder v. Saillard* (1876) 2 Ch. D. 692, 701  
Referred to. *J. LYONS & SONS v. WILKINS* C. A. [1899] 1 Ch. 255
- Broderip v. Salomon* - [1895] 2 Ch. 323  
Reversed by H. L. (E.) *sub nom. SALOMON v. SALOMON & Co.* [1897] A. C. 22
- Brook v. Kelly* - (1893) 20 R. 470  
Affirmed by H. L. (Sc.) [1893] A. C. 721
- Broughton v. Broughton*, (1855) 5 De G. M. & G. 160.  
See now 59 & 60 Vict. c. 35, s. 1 (5).
- Brown, In re* - [1895] 2 Ch. 666  
Discussed by Stirling J. *In re DE LINDEN* - [1897] 1 Ch. 453, 457  
Considered by C. A. *In re KNIGHT* [1898] 1 Ch. 257  
Followed by Kekewich J. *In re CHATARD'S SETTLEMENT* [1899] 1 Ch. 712, 718;  
*THIERY v. CHALMERS, GUTHRIE & Co.* [1900] 1 Ch. 80
- Brown v. Alabaster* - (1887) 37 Ch. D. 490  
Doubted by Kekewich J. *TITCHMARSH v. ROYSTON WATER CO.* [1899] W. N. 256  
Referred to by Stirling J. *NICHOLLS v. NICHOLLS* - [1900] W. N. 4
- Brown v. Burdett* (1887) 37 Ch. D. 207  
Discussed. *In re SCOWBY* C. A. [1897] 1 Ch. 741
- Brown v. Cole*, (1845) 14 Sim. 427; 14 L. J. (Ch.) 167.  
Considered. *BOVILL v. ENDLE* [1896] 1 Ch. 648
- Brown v. Fisher* - (1880) 63 L. T. (N.S.) 465  
Explained. *TYRRELL v. PAINTON (No. 1)* C. A. [1894] P. 151
- Brown v. Gellatly* - (1867) L. B. 2 Ch. 751  
Referred to by Kekewich J. *In re NICHOLSON* [1895] W. N. 106  
Rule in, approved of by P. C. *WENTWORTH v. WENTWORTH* [1900] A. C. 163
- Brown v. Glenn* - (1851) 16 Q. B. 254  
Followed by Bowen L.J. *AMERICAN CONCENTRATED MEAT CO. v. HENDRY* [1893] W. N. 67;  
This case was affirmed by C. A. [1893] W. N. 82
- Brown v. Higgs*, (1799—1803) 4 Ves. 708; 5 Ves. 495; 8 Ves. 561; 18 Ves. 192; 4 R. R. 523.  
Distinguished by Romer J. *In re WEEKES' SETTLEMENT* [1897] 1 Ch. 289
- Brown v. Peto* - [1900] 1 Q. B. 346  
Affirmed by C. A. - [1900] 2 Q. B. 653
- Brown, Bayley & Dixon, In re*, (1881) 18 Ch. D. 649.  
Considered. *In re HIGGINSHAW MILLS AND SPINNING CO.* [1896] 2 Ch. 544

- Brown, Shipley & Co. v. Inland Revenue Commrs.*,  
[1895] 2 Q. B. 240.  
Reversed by C. A. [1895] 2 Q. B. 598
- Brown's Case* - (1873) L. R. 9 Ch. 102  
*See Ex parte* CAMELL  
C. A. [1894] 2 Ch. 392, 400
- Brown's Estate, In re* - [1893] 2 Ch. 300  
Referred to. EDWARDS v. WALTERS  
C. A. [1896] 2 Ch. 157, 162
- Browne v. Hammond* (1858) Joh. 210  
Applied by Chitty J. HARVEY v.  
GILLOW - [1893] 1 Ch. 567
- Brownlie v. Russell* - (1883) 8 App. Cas. 235  
Referred to by Kekewich J. *In re*  
BRITANNIA PERMANENT BUILDING SO-  
CIETY [1891] W. N. 123  
Considered. KEMP v. WRIGHT  
C. A. [1895] 1 Ch. 121  
*See* BRUCE v. AILESBUURY, MARQUIS OF  
(No. 2) [1892] W. N. 149  
*See* 57 & 58 Vict. c. 47, s. 10.
- Brudenell v. Elwes* - (1801) 1 East, 442  
Followed. *In re* HARDING  
C. A. [1894] 3 Ch. 315
- "*Brunel*," *The*, [1898] W. N. 164 (1); [1899] P.  
45.  
Affirmed by C. A. - [1900] P. 24
- Brutton v. St. George's, Hanover Square, Vestry*,  
(1872) L. R. 13 Eq. 339.  
Met by 57 & 58 Vict. c. ccciii. s. 152.
- Bryant v. Hancock & Co.* - [1898] 1 Q. B. 716  
Affirmed by H. L. (E.) [1899] A. C. 442
- Bryant v. Lefever* - (1879) 4 C. P. D. 172  
Applied by C. A. CHASTLEY v. ACK-  
LAND [1895] 2 Ch. 389;  
H. L. (E.) [1897] A. C. 155
- Bryce v. Graham, 2 Wil. & Shaw*, 481; 3 Wil. &  
Shaw, 323.  
Followed by H. L. (Sc.). A. B. v. C. D.  
[1891] A. C. 616
- Bryon v. Metropolitan Saloon Omnibus Co.*, (1858)  
3 De G. & J. 123.  
*See* GENERAL AUCTION ESTATE AND  
MONETARY Co. v. SMITH  
[1891] 3 Ch. 432
- Buccleuch (Duke of) v. Johnstone*, (1891) 18 R.  
587.  
Affirmed by H. L. (Sc.) *sub nom.* JOHN-  
STONE v. BUCCLEUCH (DUKE OF)  
[1892] A. C. 625
- Buccleuch (Duke of) v. Wakefield*, (1869) L. R.  
4 H. L. 377.  
*See* THOMPSON v. MEIN  
[1893] W. N. 202
- Buckle v. Fredericks* (1890) 44 Ch. D. 244  
Followed. FITZ v. ILES  
C. A. [1893] 1 Ch. 77
- Buckler v. Wilson* - [1896] 1 Q. B. 83  
Distinguished by Div. Ct. TYLER v.  
KINGHAM & SON, LD.  
[1900] 2 Q. B. 413, 417
- Buckley v. Howell* - (1861) 29 Beav. 546  
Discussed by C. A. *In re* GLADSTONE  
[1900] 2 Ch. 101
- Budd v. London and North Western Ry. Co.*,  
(1877) 4 Ry. & Can. Cas. 393; 36 L. T.  
(N.S.) 802; 25 W. R. 752.  
Held by C. A. to be no longer law in  
PHIPPS v. LONDON AND NORTH WESTERN  
RY. CO. - [1892] 2 Q. B. 229
- Budden v. Wilkinson* C. A. [1893] 2 Q. B. 432  
Followed by C. A. MILBANK v. MIL-  
BANK [1900] 1 Ch. 376, 384
- Budgett v. Budgett*, [1894] W. N. 181; [1895] 1  
Ch. 202.  
Distinguished by Kekewich J. OLIVER  
v. ROBBINS - [1894] W. N. 199
- Budgett & Co. v. Binnington & Co.*, (1890) 25  
Q. B. D. 320.  
Affirmed by C. A. - [1891] 1 Q. B. 35
- Buller v. Harrison* - (1777) Cowp. 565  
Distinguished. OWEN & Co. v. CRONK  
C. A. [1895] 1 Q. B. 265
- Bullock v. Caird* - (1875) L. R. 10 Q. B. 276  
Followed by Romer J. *In re* DOETSCH  
[1896] 2 Ch. 836
- Burchell v. Wilde* - [1900] W. N. 29  
Affirmed by C. A. - [1900] 1 Ch. 551  
Applied by Farwell J. TOWNSEND v.  
JARMAN - [1900] 2 Ch. 699
- Burdett, In re* - (1888) 20 Q. B. D. 310  
Followed. *In re* ISAACSON  
C. A. [1895] 1 Q. B. 333, 338
- Burdett-Coutts v. True Blue (Hannan's) Gold  
Mining Co.* - [1899] W. N. 97  
Reversed by C. A. [1899] 2 Ch. 616
- Burgess v. Burgess* (1853) 3 De G. M. & G. 896  
Approved and followed by C. A. REDDA-  
WAY v. BANHAM [1895] 1 Q. B. 286;  
But this case was reversed by  
H. L. (E.) - [1896] A. C. 199
- Burkill v. Thomas* - [1892] 1 Q. B. 99  
Affirmed by C. A. [1892] 1 Q. B. 312
- Burkinshaw v. Nicolls*, (1878) 3 App. Cas. 1004,  
1016.  
Held not to apply by Stirling J. *In re*  
EDDYSTONE MARINE INSURANCE CO.  
(No. 3) - [1894] W. N. 30  
Distinguished. *In re* AFRICAN GOLD  
CONCESSIONS AND DEVELOPMENT CO.  
[1899] 1 Ch. 414; C. A. [1899] 2 Ch. 480  
Referred to by Stirling J. *In re*  
McMAHON - [1900] 1 Ch. 173, 177
- Burn v. Morris*, (1834) 4 Tyrw. 485; 2 Cr. & M. 579  
In effect followed by C. A. RICE v.  
REED - [1900] 1 Q. B. 54, 64
- Burnard v. Wainwright*, (1856) 19 L. J. (Q.B.)  
423; 1 L. M. & P. 455.  
Approved. *In re* KEIGHLEY, MAXTED  
& CO. AND BRYAN, DURANT & CO.  
C. A. [1893] 1 Q. B. 405
- Burnett v. Berry* - [1896] 1 Q. B. 641  
Approved by C. A. THOMAS v. SUTTERS  
[1900] 1 Ch. 10
- Burney v. Macdonald* - (1845) 15 Sim. 6  
Referred to by Farwell J. *In re* STEAD.  
[1900] 1 Ch. 237
- Burr, In re. Ex parte Clarke* [1892] W. N. 122  
Affirmed by C. A. - [1892] W. N. 138

- Burrard v. Calisher* - (1882) 19 Ch. D. 644  
Observed upon. *LARKIN v. LLOYD*  
[1891] W. N. 71
- Burrell v. Earl of Egremont* (1844) 7 Beav. 205  
Followed by *North J. LORD GIFFORD*  
*v. LORD FITZHARDINGE* [1899] 2 Ch. 32
- Burridge v. Row*, (1842) 1 Y. & C. Ch. 183, 192;  
this case was affirmed on appeal, (1844)  
13 L. J. (Ch.) 173; 8 Jur. (O.S.) 299.  
Applied by *Stirling J. In re WESTON*  
[1900] 2 Ch. 164, 170
- Burrough v. Philcox* (1840) 5 My. & Cr. 73  
Distinguished by *Romer J. In re*  
*WEEKES' SETTLEMENT* [1897] 1 Ch. 289
- Burrowes v. Lock*, (1805) 10 Ves. Jun. 470; [1891]  
3 Ch. 94, n.; 8 R. R. 33, 856; Preface v.  
Considered. *Low v. BOUVERIE*  
C. A. [1891] 3 Ch. 82
- Bursill v. Turner* - (1886) 16 Q. B. D. 1  
Discussed. *HOOD BARRS v. HERIOT*  
C. A. [1896] 2 Q. B. 338
- Burslem, &c., In re* - [1896] 1 Q. B. 24  
Approved. *DERBY COUNTY COUNCIL v.*  
*URBAN DISTRICT OF MATLOCK BATH*  
H. L. (E.) [1896] A. C. 315
- Burt v. Gray* - [1891] 2 Q. B. 98  
Approved. *NIND v. NINETEENTH CENTURY*  
*BUILDING SOCIETY*  
C. A. [1894] 2 Q. B. 226  
See now Conveyancing Act, 1892 (55 & 56  
Vict. c. 13), s. 4.
- Burt, Boulton and Hayward v. Bull*, [1895] 1  
Q. B. 276.  
Referred to. *In re FLOWERS & Co.*  
C. A. [1897] 1 Q. B. 14, 15
- Burton v. Salford Corporation*, (1883) 11 Q. B. D.  
286.  
Approved. *GRAHAM v. NEWCASTLE-UPON-TYNE CORPORATION*  
C. A. [1893] 1 Q. B. 643
- Burton v. Taylor* - (1886) 11 App. Cas. 197  
Distinguished. *FIELDING v. THOMAS*  
P. C. [1896] A. C. 600
- Burton's Will, In re* - [1892] 2 Ch. 38  
Considered by *North J. In re ADAMS*  
[1893] 1 Ch. 329  
Referred to in *In re CALDWELL*.  
[1894] W. N. 13
- Burton-on-Trent Corporation v. Burton-on-Trent*  
*Union Assessment Committee; Burton-on-*  
*Trent Corporation v. Egginton (Church-*  
*wardens, &c.)*, (1889) 24 Q. B. D. 197.  
Approved. *LONDON COUNTY COUNCIL v.*  
*ERITH (CHURCHWARDENS, &c.)*  
H. L. (E.) [1893] A. C. 562
- Bury v. Thompson* - [1895] 1 Q. B. 231  
Affirmed by C. A. [1895] 1 Q. B. 696
- Busfield, In re* - (1886) 32 Ch. D. 123  
Referred to by *North J. In re CLIFF*  
[1895] 2 Ch. 21
- Bushell, In the Goods of* (1887) 13 P. D. 7  
Cited. *IN THE GOODS OF WALKLEY*  
[1893] W. N. 62
- Busk v. Aldam* - (1874) L. R. 19 Eq. 16  
Followed by *North J. In re TYSEN*  
[1894] 1 Ch. 56
- Bustros v. White* - (1876) 1 Q. B. D. 423  
Considered by C. A. *HOPE v. BRASH*  
[1897] 2 Q. B. 188
- Butler v. Butler* - (1884) 28 Ch. D. 66  
Referred to. *In re UTTERMARE*  
[1893] W. N. 158
- Butler v. Butler* - [1893] P. 185  
Affirmed by C. A. - [1894] P. 25
- Butt v. Jones* - (1829) 2 Hagg. Ecc. 417, 424  
Referred to in *St. ANDREW'S, HOVE*  
*(VICAR, &c., OF) v. MAWN*  
[1895] P. 228, n.
- Byng's Settled Estates, In re* [1892] 2 Ch. 219  
Discussed by *Romer J. In re LORD*  
*MONSON'S SETTLED ESTATES*  
[1898] 1 Ch. 427
- Byrch, In re* - (1844) 8 Beav. 124  
Distinguished. *In re WARD*  
C. A. [1896] 2 Ch. 31
- Byron's Charity, In re* - (1883) 23 Ch. D. 171  
Followed by *Stirling J. Ex parte VICAR*  
*OF CASTLE BYTHAM* [1895] 1 Ch. 348
- Bywater, In re* - (1881) 18 Ch. D. 17  
Distinguished by *Stirling J. In re*  
*WILLIAMS* - [1895] W. N. 36
- "*Bywell Castle*," *The* (1879) 4 P. D. 219  
Approved. *THE "UTOPIA"*  
P. C. [1893] A. C. 492
- Caddick v. Skidmore* - (1857) 2 De G. & J. 52  
Followed by *Farwell J. ISAACS v. EVANS*  
[1899] W. N. 261
- Caffin v. Aldridge* - [1895] 2 Q. B. 366  
Affirmed by C. A. [1895] 2 Q. B. 648
- Cahn and Mayer v. Pockett's Bristol Channel Steam*  
*Packet Co.*, [1898] 2 Q. B. 61  
Reversed by C. A. [1899] 1 Q. B. 643
- Caird v. Moss* - (1886) 33 Ch. D. 22, 36  
Dictum of *Lopes L.J.* explained. *MOORE*  
*v. FULHAM VESTRY*  
C. A. [1895] 1 Q. B. 399
- Calcott and Elvin's Contract, In re*, [1898] W. N.  
33 (1).  
Reversed by C. A. [1898] 2 Ch. 460
- Calcraft v. Harborough (Earl of)*, (1831) 4 C. & P.  
499, 501.  
Adopted and followed by *G. Barnes J.*  
*LORD v. LORD* - [1900] P. 297
- Calder and Hebble Navigation Co. v. Pilling*,  
(1845) 14 M. & W. 76.  
Distinguished by C. A. *THOMAS v.*  
*SUTTERS* - [1900] 1 Ch. 10
- Caledonian Insurance Co. v. Gilmour*, (1891) 18  
R. 1219.  
Reversed by H. L. (Sc.) [1893] A. C. 85  
See now Arbitration (Scotland) Act,  
1894 (57 & 58 Vict. c. 13).
- Caledonian Ry. Co. v. Greenock and Wemyss Bay*  
*Ry. Co.*, (1874) L. R. 2 H. L. (Sc.) 347;  
Distinguished by *Farwell J. MAN-*  
*CHESTER SHIP CANAL Co. v. MANCHESTER*  
*RACECOURSE CO.* - [1900] 2 Ch. 352



- Caledonian Ry. Co. v. Mulholland*, (1897) 24 R. 429; 34 Soc. L. R. 317.  
Reversed by H. L. (Sc.) [1898] A. C. 216  
Distinguished by Bigham J. MARNEY  
*v. SCOTT* - [1899] 1 Q. B. 986, 991
- Caledonian Ry. Co. v. Sprot*, (1856) 2 Macq. 449, 462.  
Lord Cranworth's view followed by Kekewich J. GREAT WESTERN RY. *v.* CEFN CRIBBWE BRICK CO.  
[1894] 2 Ch. 157, 164  
Applied and followed by Stirling J. ALDIN *v.* LATIMER CLARK, MUIRHEAD & Co. [1894] 2 Ch. 437, 442
- Caledonian Ry. Co. v. Turcan*, (1898) 35 S. L. R. 404.  
Affirmed by H. L. (Sc.) [1898] A. C. 256
- Callaghan v. Dolwin* - (1869) L. R. 4 C. P. 288  
See now 59 & 60 Vict. c. 25, s. 68.
- Callander and Trossachs Hydropathic Co. v. Marshall*, (1895) 22 K. 954.  
Appeal dismissed by H. L. (Sc.) [1896] A. C. 223
- Callaway, In the Goods of* (1890) 15 P. D. 147  
Cited. IN THE GOODS OF LOCKART [1893] W. N. 80
- "*Calliope*," *The* - - (1890) 14 P. D. 138  
Reversed by H. L. (E.) [1891] A. C. 11
- Caloric Engine and Siren Fog Signals Co., In re*, (1885) 52 L. T. (N.S.) 846.  
Not followed by V. Williams J. *In re* BIDWELL BROTHERS - [1893] 1 Ch. 603  
Followed. ERNEST *v.* LOMA GOLD MINES, LD. - [1896] 2 Ch. 572;  
C. A. [1897] 1 Ch. 1
- Calvert, In re* - [1899] W. N. 34 (3)  
See also [1899] W. N. 53; [1899] 2 Q. B. 145
- Cambefort & Co. v. Chapman*, (1887) 19 Q. B. D. 229.  
Overruled. WEGG-PROSSER *v.* EVANS  
C. A. [1895] 1 Q. B. 108
- Cammell, Ex parte. In re Printing Telegraph and Construction Co. of the Agence Havas*, [1894] 1 Ch. 528.  
Affirmed by C. A. - [1894] 2 Ch. 392  
Judgment of C. A. applied by V. Williams J. *In re* ISSUE CO.  
[1895] 1 Ch. 226, 231
- Campbell v. Alexander* - (1868) 7 Macph. 283  
Distinguished by C. A. (Sc.) ROSS *v.* CARBERRY (1897) 25 R. 98.  
[1899] W. N. 171
- Campbell v. Holyland* - (1877) 7 Ch. D. 166  
Followed by Stirling J. BEATON *v.* BOULTON - - [1891] W. N. 30
- Campbell v. Lloyd's, Barnett's and Bosanquet's Bank*, [1891] 1 Ch. 136, n.  
Explained by C. A. WHITLEY *v.* CHALLIS - - [1892] 1 Ch. 64  
Referred to by C. A. COUNTY OF GLOUCESTER BANK *v.* RUDRY MERTHYR COLLIERY CO. [1895] 1 Ch. 638
- Campbell's Case* - - (1876) 4 Ch. D. 470  
Applied by C. A. WEBB *v.* SHROPSHIRE RYS. CO. - - [1893] 3 Ch. 307
- Canadian Direct Meat Co., In re. Tamplin's Case. Champion's Case*, [1892] W. N. 94.  
Reversed by C. A. [1892] W. N. 146
- Canadian Pacific Ry. Co. v. Notre Dame de Bonsecours (Corporation of Parish of)*, [1899] A. C. 367.  
Distinguished. MADDEN *v.* NELSON AND FORT SHEPPARD RY. CO.  
P. C. [1899] A. C. 626
- Candler v. Tillett* - - (1855) 22 Beav. 257  
Explained by C. A. *In re* GASQUOINE [1894] 1 Ch. 470
- Cann v. Willson* - - (1888) 39 Ch. D. 39  
Overruled by C. A. LE LIEVRE *v.* GOULD [1893] 1 Q. B. 491  
Observed upon by Romer J. SCHOLES *v.* BROOK - - [1891] W. N. 16;  
C. A. [1891] W. N. 101
- Canning Jarrah Timber Co. (Western Australia), Ltd., In re*, [1900] W. N. 59.  
On appeal - C. A. [1900] 1 Ch. 708
- Cannon, Ex parte* - (1885) 30 Ch. D. 629  
Distinguished by Wright J. *In re* NEW BRITISH IRON CO. [1898] 1 Ch. 324;  
*In re* A1 BISCUIT CO. [1899] W. N. 115
- Capital and Counties Bank v. Bank of England, In re*, (1889) 61 L. T. (N.S.) 516.  
Distinguished by C. A. PRESCOTT, DIMSDALE, CAVE, TUGWELL & Co. *v.* BANK OF ENGLAND [1894] 1 Q. B. 351
- Caplin's Will, Re* - (1865) 2 Dr. & Sm. 527  
Distinguished by Romer J. *In re* WEEKE'S SETTLEMENT [1897] 1 Ch. 289
- Cardross's Settlement, In re* (1878) 7 Ch. D. 728  
Referred to. *In re* DENEKER [1895] W. N. 23
- Carew, In re. Carew v. Carew* [1896] 1 Ch. 527  
Affirmed by C. A. [1896] 2 Ch. 311
- Carey, In re. Ex parte Jeffreys*, [1895] 2 Q. B. 624.  
Questioned. *In re* CARL HIRTH  
C. A. [1899] 1 Q. B. 612, 616
- Carey v. Carey* - (1854) 6 Ir. Ch. Rep. 255  
Referred to by Stirling J. *In re* DELMAR CHARITABLE TRUST [1897] 2 Ch. 163
- Cargill v. Cargill* - - (1858) 1 S. & T. 235  
Approved by Jeune J. MAHONEY *v.* MC CARTHY - - [1892] P. 21
- Cargo ex Woosung* - (1875) 3 Asp. M. L. C. 50  
Followed by Barnes J. THE "MARIPOSA" [1896] P. 273
- Carington (Lord) v. Wycombe Ry. Co.*, (1868) L. R. 3 Ch. 377.  
Discussed. DUNHILL *v.* NORTH EASTERN RY. CO. C. A. [1896] 1 Ch. 121
- "*Carisbrook*," *The* - - (1890) 15 P. D. 98  
Overruled by C. A. THARSIS SULPHUR AND COPPER CO. *v.* MOREL BROTHERS & Co. - [1891] 2 Q. B. 647, 652  
Referred to as overruled by Collins J. SANDERS *v.* JENKINS [1897] 1 Q. B. 93, 96
- "*Carl XV.*," *The* - - [1892] P. 132  
Affirmed by C. A. - [1892] P. 324

- Carlill v. Carbolic Smoke Ball Co.*, [1892] 2 Q. B. 484.  
 Affirmed by C. A. [1893] 1 Q. B. 256  
 Referred to by Cozens-Hardy J. *JOHNSTON v. BOYES* [1899] 2 Ch. 73
- Carlton Steamship Co. v. Castle Mail Packets Co.*, C. A. [1897] 2 Q. B. 485.  
 Affirmed by H. L. (E.) [1898] A. C. 486
- Carmichael's Case* - [1896] 2 Ch. 643  
 Referred to. *In re CONSORT DEEP LEVEL GOLD MINES, LD.*  
 C. A. [1897] 1 Ch. 575, 586
- Carpenter, In re* - - (1890) 7 Morrell, 270  
 Followed by Chitty J. *In re BUDGETT* [1894] 2 Ch. 557
- Carpenter v. Deen* - (1889) 23 Q. B. D. 566  
 Applied by Div. Ct. *DAVIES v. JENKINS* - [1900] 1 Q. B. 133, 136
- Carr v. Foster* - - (1842) 3 Q. B. 581  
 Referred to by Stirling J. *SMITH v. BAXTER* - C. A. [1900] 2 Ch. 138
- Carr v. Ingleby* - (1831) 1 De G. & Sin. 362  
 Not followed. *In re SINCLAIR* [1897] 1 Ch. 921
- Carr v. London and South Western Ry.*, (1875) L. R. 10 C. P. 307  
 Referred to by Farwell J. *DIXON v. KENNAWAY & Co.* [1900] 1 Ch. 833, 837
- Carr & Co. v. Bath Gas Light and Coke Co.* (Unreported).  
 Referred to by Joyce J. *DUNNING v. GROSVENOR DAIRIES, LD.*  
 [1900] W. N. 265
- Carrington v. Taylor*, (1809) 11 East, 571; 11 R. R. 270.  
 Overruled. *ALLEN v. FLOOD*  
 H. L. (E.) [1898] A. C. 1
- Carrodus v. Sharp* - - (1855) 20 B. & C. 56  
 Referred to by Cozens-Hardy J. *BARSHT v. TAGG* - [1900] 1 Ch. 231, 235
- Carroll's Policy, In re* - (1892) 29 L. R. Ir. 86  
 See now 59 & 60 Vict. c. 8.
- "*Carron Park*," *The* - (1890) 15 P. D. 203  
 Approved of by C. A. *MILBURN & Co. v. JAMAICA FRUIT IMPORTING AND TRADING Co. OF LONDON* [1900] 2 Q. B. 540
- Carruthers v. Carruthers* - (1895) 22 R. 775  
 Reversed by H. L. (Sc.) [1896] A. C. 659
- Carson v. Pickersgill & Sons*, (1885) 14 Q. B. D. 859.  
 Followed. *RICHARDSON v. RICHARDSON*  
 C. A. [1895] P. 346
- Carswell v. Collard. The "Victoria,"* (1892) 19 R. 987.  
 Affirmed by H. L. (Sc.) [1893] A. C. 635
- Carter, In re* - (1892) 41 W. R. 140  
 Applied by Kekewich J. *In re SEARLE* [1900] 2 Ch. 829, 833
- Carter v. Green* - - (1857) 3 K. & J. 591  
 Referred to. *In re PIERCY*  
 C. A. [1898] 1 Ch. 565
- Carter v. Silber. Carter v. Hasluck*, [1891] 3 Ch. 553.  
 Reversed by C. A. [1892] 2 Ch. 278  
 C. A. affirmed by H. L. (E.) *sub nom. EDWARDS v. CARTER* [1893] A. C. 360
- Carter and Kenderdine's Contract, In re*, [1897] W. N. 12 (8).  
 Affirmed by C. A. - [1897] 1 Ch. 776
- Cartwright v. Cartwright*, (1853) 3 D. M. & G. 982.  
 Inapplicable. *MARLBOROUGH (DOWAGER DUCHESS OF) v. MARLBOROUGH (DUKE OF)*  
 C. A. [1900] W. N. 270
- Cartwright v. Soulcoates Union*, [1899] 1 Q. B. 667.  
 Affirmed by H. L. (E.) [1900] A. C. 150  
 Referred to by C. A. *MERSEY DOCKS AND HARBOUR BOARD v. BIRKENHEAD ASSESSMENT COMMITTEE*  
 [1900] 1 Q. B. 143, 150
- Casamajor v. Strode* - (1809) 19 Ves. 390, n.  
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- Castellain v. Preston* - (1883) 11 Q. B. D. 380  
 Discussed by Collins J. *WEST OF ENGLAND FIRE INSURANCE Co. v. ISAACS*  
 [1896] 2 Q. B. 377, 384
- Castle v. Castle* - (1857) 1 De G. & J. 352  
 Followed. *In re G. (INFANTS)*  
 [1899] 1 Ch. 719
- Castle v. Wilkinson* - (1870) L. R. 5 Ch. 534  
 Applied by Farwell J. *RUDD v. LASCELLES* - [1900] 1 Ch. 815
- Castle Bytham (Vicar of), Ex parte*, [1895] 1 Ch. 348.  
 Approved and adopted. *In re BISHOP OF BATH AND WELLS* [1899] 2 Ch. 138
- "*Castlegate*," *The* - (1891) 29 L. R. Ir. 55  
 Affirmed by H. L. (I.) *sub nom. MORGAN v. CASTLEGATE STEAMSHIP Co. THE "CASTLEGATE"* [1893] A. C. 38
- Castlegate Steamship Co. v. Dempsey*, [1892] 1 Q. B. 54.  
 Reversed by C. A. [1892] 1 Q. B. 854
- Cathcart, In re (No. 1)* - [1892] 1 Ch. 549  
 Affirmed by C. A. [1893] 1 Ch. 466
- Cato v. Thompson* (1882), 9 Q. B. D. 616  
 Dictum in, approved and followed by Farwell J. *MAY v. PLATT* [1900] 1 Ch. 616; *RUDD v. LASCELLES* [1900] 1 Ch. 815.
- Catton v. Banks* - - [1893] 2 Ch. 221  
 Followed by Chitty J. *ANCELL v. ROSE* [1896] W. N. 9 (8)
- Cavendish-Bentinck v. Fenn*, (1887) 12 App. Cas. 652.  
 Distinguished by C. A. *ARCHER'S CASE* [1892] 1 Ch. 322
- Cause v. Nottingham Lunatic Hospital*, [1891] 1 Q. B. 585.  
 Approved of by Div. Ct. *SOUTHWELL v. ROYAL HOLLOWAY COLLEGE, EGHAM*  
 [1895] 2 Q. B. 487, 493

- Cayzer, Irvine & Co. v. Carron Co. The "Margaret,"* (1884) 9 App. Cas. 873.  
Applied by C. A. H.M.S. "SANS PAREIL"  
[1900] P. 267
- Cecil v. Langdon* - - - (1885) 28 Ch. D. 1  
Referred to by North J. CRADOCK v.  
WITHAM - - - [1895] W. N. 75
- Cellular Clothing Co. v. Maxton and Murray,*  
(1898) 25 R. 1098.  
Affirmed by H. L. (Sc.)  
[1899] A. C. 326
- Central De Kaap Gold Mines, In re,* [1899] W. N. 216.  
See also [1899] W. N. 235
- "Ceto," *The* - - - (1889) 14 App. Cas. 670  
Followed by H. L. (E.) *THE "LANCA-  
SHIRE"* - - - [1894] A. C. 1
- Chalk, Webb & Co. v. Tennent,* (1888) 36 W. R. 263; 57 L. T. (N.S.) 598.  
Followed by Kekewich J. WESTMORE-  
LAND GREEN AND BLUE SLATE CO. v.  
FEILDEN - C. A. [1891] 3 Ch. 15
- Challender v. Royle* (1887) 36 Ch. D. 425  
Followed by C. A. JOHNSON v. EDGE  
[1892] 2 Ch. 1
- Chamber Colliery Co. v. Co. of Proprietors of the  
Rochdale Canal,* [1894] 2 Q. B. 632.  
Affirmed by H. L. (E.) [1895] A. C. 564  
Referred to by Byrne J. NEW MOSS  
COLLIERY CO. v. MANCHESTER, SHEFFIELD  
AND LINCOLNSHIRE RY. CO.  
[1897] 1 Ch. 725
- Chamberlain, Ex parte* (1880) 14 Ch. D. 323  
Doubted by C. A. GEDYE v. COMMRS.  
OF WORKS [1891] 2 Ch. 630
- Chancellor, In re* - - - (1884) 26 Ch. D. 42  
Referred to by Chitty J. *In re CROW-  
THER* - - - [1895] 2 Ch. 56
- Chandler v. Pocock,* (1880) 15 Ch. D. 491; (1881)  
16 Ch. D. 648.  
Considered. *In re DUKE OF CLEVE-  
LAND'S SETTLED ESTATES*  
C. A. [1893] 3 Ch. 244  
Followed by Kekewich J. *In re HAR-  
MAN* - - - [1894] 3 Ch. 607
- Chapel House Colliery Co., In re,* (1883) 24 Ch. D. 259.  
Referred to. *In re LONDON HEALTH  
ELECTRICAL INSTITUTE*  
[1896] W. N. 170 (3)
- Chapman, Re,* (1886) W. N. 17; 54 L. T. (N.S.) 13.  
Disapproved. *NUTTER v. HOLLAND*  
C. A. [1894] 3 Ch. 408
- Chapman, In re* - - - [1896] 1 Ch. 323  
On appeal - C. A. [1896] 2 Ch. 763  
See 59 & 60 Vict. c. 35, s. 3.
- Chapman v. Auckland Union,* (1889) 23 Q. B. D. 294.  
Superseded by 56 & 57 Vict. c. 61, s. 1.
- Chapman v. Speller,* (1850) 14 Q. B. 621; 19  
L. J. (Q.B.) 239.  
See 56 & 57 Vict. c. 71, ss. 11 (1) (c);  
12 (1); 55.
- Chapman v. Turner,* (1738) 9 Mod. 268; S. C.  
Vin. Abr. Exor. D. 2, p. 72.  
Discussed by Wright J. *Ex parte GIL-  
BERT* - - - [1898] 1 Q. B. 282
- Chappell v. Griffith* (1885) 53 L. T. (N.S.) 459  
Commented on by Byrne J. BURGHELL  
v. WILDE - C. A. [1900] 1 Ch. 551, 559
- Chappell v. North* - - - [1891] 2 Q. B. 252  
Considered by Kekewich J. IVES &  
BARKER v. WILLANS - [1894] 1 Ch. 68;  
affirmed by C. A. [1894] 2 Ch. 478
- Charles v. Burke* - (1890) 43 Ch. D. 223, n.  
Followed by North J. *In re BRACE.*  
WELCH v. COLT [1891] 2 Ch. 671
- Charles v. Finchley Local Board,* (1883) 23 Ch. D. 767.  
Opinion expressed at p. 777 followed by  
Romer J. in *ATT.-GEN. v. CLERKENWELL  
VESTRY* - - - [1891] 3 Ch. 527  
Dissented from on one point by Cozens-  
Hardy J. *BROWN v. DUNSTABLE COR-  
PORATION* - [1899] 2 Ch. 378
- Charles v. Jones* - (1886) 33 Ch. D. 80  
Explained by C. A. *In re BEDDOE*  
[1893] 1 Ch. 547  
Partly followed and partly not followed  
BEW v. BEW C. A. [1899] 2 Ch. 467
- Charlesworth v. Mills* - (1890) 25 Q. B. D. 421  
Reversed by H. L. (E.) [1892] A. C. 231  
H. L. (E.) followed by C. A. RAMSAY  
v. MARGRETT - [1894] 2 Q. B. 18, 23
- Charlesworth v. Rudgard,* (1835) 1 C. M. & R. 896.  
See 56 & 57 Vict. c. 61, s. 1.
- Charlwood v. Leasehold Investment Co.,* [1895]  
W. N. 47.  
Considered by V. Williams J. *MAR-  
WICK v. LORD THURLOW*  
[1895] 1 Ch. 776
- Charnock v. Court* - - - [1899] 2 Ch. 35  
Followed. *WALTERS v. GREEN*  
[1899] 2 Ch. 696
- Charterhouse School v. Gayler* [1896] 1 Q. B. 437  
Referred to by Div. Ct. CLIFTON COL-  
LEGE v. TOMPSON - [1896] 1 Q. B. 436
- Chasemore v. Richards* (1859) 7 H. L. C. 349  
Commented on by H. L. (E.). *BRAD-  
FORD CORPORATION v. PICKLES*  
[1895] A. C. 587
- Chastey v. Ackland* - - - [1895] 2 Ch. 389  
Judgment of C. A. varied by consent  
H. L. (E.) [1897] A. C. 155
- Chatard's Settlement, In re* - [1899] 1 Ch. 712  
Distinguished by Kekewich J. *THIERY  
v. CHALMERS, GUTHRIE & CO.*  
[1900] 1 Ch. 80
- Chennell, In re. Jones v. Chennell,* (1878) 8 Ch. D. 492.  
Explained by Div. Ct. *PAIN v. BOWDEN*  
[1896] 2 Q. B. 301  
Not followed. *BEW v. BEW*  
C. A. [1899] 2 Ch. 467
- Cherry v. Boulton* - (1839) 4 My. & Cr. 442  
Considered by Kekewich J. *In re*  
AKERMAN - - - [1891] 3 Ch. 212

- Cherry v. Cherry* - (1858) 1 Sw. & Tr. 319  
Followed by *Jeune P. Smith v. Smith* [1900] P. 66, 68
- Chesterfield (Earl of) Trusts, In re*, (1883) 24 Ch. D. 643.  
See *In re HENGLER* [1893] 1 Ch. 586  
Considered by Kekewich J. *In re GOODENOUGH* [1895] 2 Ch. 537  
Followed by Kekewich J. *In re MORLEY* [1895] 2 Ch. 738  
Principle in, applied. *ROWLLS v. BEBB* [1900] 2 Ch. 107
- Chetham v. Williamson* - (1804) 4 East, 469  
Commented on by C. A. *DUKE OF SUTHERLAND v. HEATHCOTE* [1892] 1 Ch. 475
- Chick, Ex parte* - (1879) 11 Ch. D. 731  
Followed. *LAWRENCE v. ADAMS* [1896] W. N. 158 (2)
- Child v. Douglas*, (1854) Kay, 560; on appeal, See memoranda to Mr. Kay's volume of Reports and (1854) 5 De G. M. & G. 739.  
Referred to by C. A. *ROGERS v. HOSGOOD* [1900] 2 Ch. 388, 398, 404
- Childs v. Cox* - (1888) 20 Q. B. D. 290  
Overruled by C. A. *KEMP v. WANKLYN* [1894] 1 Q. B. 583
- Chillingworth v. Chambers* [1895] W. N. 132 (17)  
Affirmed by C. A. [1896] 1 Ch. 685
- Chislehurst Common (Conservators of) v. Newton*, (1887) Unreported.  
Followed by Farwell J. *COOK v. CONSERVATORS OF MITCHAM COMMON* [1900] W. N. 252
- Chorlton v. Dickie* - (1879) 13 Ch. D. 160  
See *BAIRD v. EAST RIDING CLUB AND RACECOURSE CO.* - [1891] W. N. 144
- Christ's Hospital, Ex parte Governors of*, (1864) 2 H. & M. 166.  
Considered by Chitty J. *In re BISHOPSGATE FOUNDATION* - [1894] 1 Ch. 185
- Christ's Hospital v. Grainger*, (1849) 1 Mac. & G. 460.  
Followed by C. A. *In re TYLER* [1891] 3 Ch. 252  
Distinguished by Stirling J. *In re BOWEN* [1893] 2 Ch. 491
- Christchurch Inclosure Act, In re*, (1887) 35 Ch. D. 355; (1888) C. A. 38 Ch. D. 520.  
Affirmed by H. L. (E.) *sub nom. ATT.-GEN. v. MEYRICK* - [1893] A. C. 1
- "*Christiansborg*," *The* - (1885) 10 P. D. 141  
Distinguished. *THE "MANNHEIM"* [1897] P. 13
- Christie v. Northern Counties Building Society*, (1890) 43 Ch. D. 62.  
Not approved by C. A. *NORTON v. COUNTIES CONSERVATIVE PERMANENT BENEFIT BUILDING SOCIETY* [1895] 1 Q. B. 246
- Christie v. Ovington* - (1875) 1 Ch. D. 279  
Approved by Stirling J. *In re CUNNINGHAM AND FRAYLING* [1891] 2 Ch. 567
- Christy v. Godwin* - (1893) 38 Sol. Jour. 10  
Referred to. *SIMMONS v. BLANDY* [1897] 1 Ch. 19, 20
- Chubb v. Griffiths* - (1865) 35 Beav. 127  
Followed by Kekewich J. *WOOLF v. WOOLF* [1899] 1 Ch. 343
- Circuit v. Perry* - (1856) 23 Beav. 275  
Observed upon by C. A. *In re BAGOT* [1893] 3 Ch. 348
- Citizens' Bank of Louisiana v. First National Bank of New Orleans*, (1873) L. R. 6 H. L. 352.  
Discussed by Romer J. *LOVETT v. LOVETT* [1898] 1 Ch. 82
- Citizens' Insurance Co. of Canada v. Parsons*, (1881) 7 App. Cas. 96.  
Distinguished. *ATT.-GEN. FOR ONTARIO v. ATT.-GEN. FOR THE DOMINION* [1896] A. C. 348
- City and South London Ry. Co. v. London County Council*, [1891] 2 Q. B. 513.  
Followed by Div. Ct. *LONDON COUNTY COUNCIL v. LONDON SCHOOL BOARD* [1892] 2 Q. B. 611
- City of London Brewery Co. v. Inland Revenue Commrs.*, [1898] 1 Q. B. 408.  
Reversed by C. A. [1899] 1 Q. B. 121
- "*City of Manchester*," *The* (1880) 5 P. D. 221  
Followed. *BEW v. BEW* C. A. [1899] 2 Ch. 467
- Claridge v. South Staffordshire Tramway Co.*, [1892] 1 Q. B. 422.  
See Remarks of A. L. Smith L.J. in *METZ v. GREAT EASTERN RY. CO.* [1895] 2 Q. B. 387, 394
- Clark, Ex parte* - (1884) 13 Q. B. D. 426  
Discussed by Kekewich J. *In re CROOM* [1891] 1 Ch. 695
- Clark v. Hooper*, (1834) 10 Bing. 480; 38 R. R. 508.  
Considered and distinguished by C. A. *STAMFORD, SPALDING AND BOSTON BANKING CO. v. SMITH* [1892] 1 Q. B. 765
- Clark v. London School Board*, (1874) L. R. 9 Ch. 120, 126.  
Followed by Kekewich J. *LONDON SCHOOL BOARD v. SMITH* [1895] W. N. 37
- Clark v. Taylor* - (1853) 1 Drew. 642  
Followed. *In re RYMER* C. A. [1895] 1 Ch. 19  
Considered. *In re SLEVIN* [1891] 1 Ch. 373; C. A. [1891] 2 Ch. 236
- Clarke, Ex parte. In re Burr* [1892] W. N. 122  
Affirmed by C. A. - [1892] W. N. 138
- Clarke, In re* - [1898] 1 Ch. 336  
Referred to by Cozens-Hardy J. *In re BROWN* - [1900] 1 Ch. 489, 491  
Referred to by C. A. *DAVIES v. THOMAS* [1900] 2 Ch. 462, 469
- Clarke, In re. Coombe v. Carter*, (1887) 36 Ch. D. 348, 352, 355.  
Referred to by Kekewich J. *In re KELCEY* - [1899] 2 Ch. 530

- Clarke v. Blake* - (1788) 2 Bro. C. C. 320  
Followed by Chitty J. *In re HALLETT*.  
[1892] W. N. 148
- Clarke v. Carfin Coal Co.* - (1889) 16 R. 614  
Affirmed by H. L. (Sc.) [1891] A. C. 412
- Clarke v. Thornton* - (1887) 35 Ch. D. 307  
Followed by Chitty J. *PEARSON-GEE v. PEARSON* - [1895] W. N. 90
- Clarke v. Wright* - (1861) 6 H. & N. 849  
Dissented from by P. C. *DE MESTRE v. WEST* - [1891] A. C. 264
- Clarke v. Musgrave* - (1882) 9 Q. B. D. 386  
Approved by H. L. (E.) *SMITH v. BAKER & SONS* [1891] A. C. 325
- Clay & Sons, In re* - (1895) 3 Manson, 31  
Inapplicable. *In re EATON & Co. Ex parte VINEY* - [1897] 2 Q. B. 16
- Clay and Tetley, In re* - (1880) 16 Ch. D. 3  
Superseded by 56 & 57 Vict. c. 53, s. 21 (1).
- Claydon v. Finch* - (1873) L. R. 15 Eq. 266  
See *PILLERS v. EDWARDS*  
[1894] W. N. 212; 71 L. T. (N.S.) 788
- Claydon v. Green* (1865) L. R. 3 C. P. 511  
Observed upon. *TADCASTER TOWER BREWERY CO. v. WILSON* [1897] 1 Ch. 705
- Clayton v. Lord Wilton*, (1813) 6 M. & S. 67, n.; 18 R. R. 307.  
Explained by P. C. *DE MESTRE v. WEST* - [1891] A. C. 264
- Clayton's Case*, (1816) 1 Mer. 572; 5 Rep. 1; 15 R. R. 161.  
Applied by C. A. *SIDEBOTHAM v. HOLLAND* - [1895] 1 Q. B. 378  
Applied by North J. *In re STENNING*. [1895] 2 Ch. 433  
Referred to. *CORY BROTHERS & Co. v. OWNERS OF THE TURKISH STEAMSHIP "MECCA"* H. L. (E.) [1897] A. C. 286  
Rule in inapplicable. *MUTTON v. PEAT* [1899] 2 Ch. 556, 560
- Cleather v. Twisden* - (1885) 28 Ch. D. 340  
Distinguished by C. A. *RHODES v. MOULES* - [1895] 1 Ch. 236
- Cleaver v. Bacon* - (1887) 4 Times L. R. 27  
Followed by Chitty J. *RAPLEY v. SMART* [1894] W. N. 2
- Clegg v. Hands* - (1890) 44 Ch. D. 503  
Referred to. *WHITE v. SOUTHERN HOTEL CO.* - C. A. [1897] 1 Ch. 767
- Clemence, Ex parte* - (1883) 23 Ch. D. 154  
Not followed by Wright J. *In re HARPUR'S CYCLE FITTINGS CO.* [1900] 2 Ch. 731
- Clements, In re* - [1894] 1 Ch. 665  
Applied by C. A. *In re WOODIN* [1895] 2 Ch. 309, 314
- Clemow, In re. Yeo v. Clemow*, [1900] 2 Ch. 182  
Followed by Kekewich J. *In re TREASURE* - [1900] 2 Ch. 648, 653
- Clergy Orphan Corporation, In re*, [1894] 3 Ch. 145.  
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- Cleveland Iron Co., In re. Ex parte Stevenson*, (1867) 16 W. R. 95.  
Distinguished by C. A. *In re GENERAL RAILWAY SYNDICATE. WHITELEY'S CASE* [1900] 1 Ch. 365
- Cleveland Water Co. v. Redcar Local Board*, [1895] 1 Ch. 168.  
Approved and held inapplicable by C. A. *HUDDERSFIELD CORPORATION v. RAVENSTHORPE URBAN DISTRICT COUNCIL* [1897] 2 Ch. 121
- Clibborn v. Clibborn* - (1857) 9 Ir. Jur. 381  
Observed upon by C. A. *In re BAGOT* [1893] 3 Ch. 348
- Clifford v. Inland Revenue Commrs.*, [1896] 2 Q. B. 187.  
Distinguished by Div. Ct. *LEWIS v. INLAND REVENUE COMMRS.* [1898] 2 Q. B. 290
- Clifton v. Ridsdale* - (1876) 1 P. D. 316  
Followed by Chancellor of Norwich in *ST. JOHN THE BAPTIST, TIMBERHILL (VICAR, & C.) v. ST. JOHN THE BAPTIST, TIMBERHILL (RECTORS, & C.)* [1895] P. 71
- Clifton College v. Tompson* - [1896] 1 Q. B. 432  
Referred to by Div. Ct. *CHARTERHOUSE SCHOOL v. GAYLER* [1896] 1 Q. B. 437
- Clink v. Radford* [1891] 1 Q. B. 625  
Followed by C. A. *HANSEN v. HARROLD BROTHERS* - [1894] 1 Q. B. 612
- Clithero, In re* - (1885) 28 Ch. D. 378  
Followed by Stirling J. *In re RICHARDSON* - [1900] 2 Ch. 778
- Clitheroe, Ex parte* - (1885) 15 L. R. Ir. 47  
Not followed by V. Williams J. *In re LONDON METALLURGICAL CO.* [1895] 1 Ch. 758
- Clowes, In re* - [1893] 1 Ch. 214  
Distinguished by Cozens-Hardy J. *In re CARTER* [1900] 1 Ch. 801, 802
- Cluff v. Cluff* (1876) 2 Ch. D. 222  
Followed. *In re CROSSLEY. BIRRELL v. GREENHOUGH* - [1897] 1 Ch. 928
- Clutton v. Attenborough & Son*, [1895] 2 Q. B. 306, 707.  
Affirmed by H. L. (E.) [1897] A. C. 90
- "*Clyde*," *The* - (1856) Sw. 23  
Considered. *THE "KATE"* [1899] P. 165
- Clyde Navigation (Trustees of the) v. Lord Blantyre*, (1891) 18 R. 197.  
Reversed by H. L. (Sc.) [1893] A. C. 703
- Clydesdale Bank v. Paton* - (1895) 23 R. 38  
Reversed by H. L. (Sc.) [1896] A. C. 381
- Coats, Ld. (J. & P.) v. Inland Revenue Commrs.*, [1897] 1 Q. B. 778.  
Affirmed by C. A. [1897] 2 Q. B. 423
- Cobb v. Great Western Ry. Co.*, [1893] 1 Q. B. 459.  
Affirmed by H. L. (E.) [1894] A. C. 419
- Cobham v. Dalton* (1875) L. R. 10 Ch. 655, 657  
Dissented from by C. A. *In re SMITH*. [1893] 2 Ch. 1
- Cochrane v. Entwistle* - (1890) 25 Q. B. D. 116  
Followed by C. A. *In re ISAACSON* [1895] 1 Q. B. 333

- Cockerell v. Cholmeley* - (1830) 10 B. & C. 564  
Distinguished by Byrne J. *In re DUKE OF RUTLAND'S SETTLED ESTATES* [1900] 2 Ch. 206
- Cocksedge v. Cocksedge* - (1844) 14 Sim. 244  
Inapplicable. *MARLBOROUGH (DOWAGER DUCHESS OF) v. DUKE OF MARLBOROUGH* C. A. [1900] W. N. 270
- Cocksedge v. Metropolitan Coal Consumers' Association* [1891] W. N. 132  
Affirmed by C. A. [1891] W. N. 148
- Codrington v. Lindsay* (1873) L. R. 8 Ch. 578  
Followed by Romer J. on one point. *CARTER v. SILBER*. [1891] 3 Ch. 553;  
This case was reversed by C. A. [1892] 2 Ch. 278, and C. A. affirmed by H. L. (E.) *sub nom. EDWARDS v. CARTER*. [1893] A. C. 360
- Coe v. Pascoe* - [1899] 1 I. R. 125  
Followed by Farwell J. *MULLER v. TRAFFORD* - [1900] W. N. 251
- Cohen v. Mitchell* - (1890) 25 Q. B. D. 262  
Explained and distinguished by C. A. *In re CLARK* [1894] 2 Q. B. 393  
Explained by C. A. *In re NEW LAND DEVELOPMENT ASSOCIATION AND GRAY* [1892] 2 Ch. 138  
Applied to leaseholds by Chitty J. *In re CLAYTON AND BARCLAY'S CONTRACT* [1895] 2 Ch. 212  
Applied by Byrne J. *HUNT v. FRIPP* [1898] 1 Ch. 675
- Colchester Tramways Co., In re* [1893] 1 Ch. 309  
Followed by Cozens-Hardy J. *TURPIN v. SOMERTON, & CO., TRAMWAY CO.* [1900] W. N. 94
- Cole v. Eley* - [1894] 2 Q. B. 180  
Affirmed by C. A. [1894] 2 Q. B. 350
- Coleman, In re* - (1888) 39 Ch. D. 443  
Referred to by Kekewich J. *In re BULLOCK* - [1891] W. N. 62
- Coleman v. Llewellyn* - (1887) 34 Ch. D. 143  
Distinguished by North J. *CHESTON v. WELLS* [1893] 2 Ch. 151
- Collen v. Wright* - (1857) 8 E. & B. 647  
Distinguished. *DUNN v. MACDONALD* [1897] 1 Q. B. 401  
Followed. *HALBOT v. LENS* [1901] 1 Ch. 344
- Colless v. Minister of Lands* - [1899] A. C. 90  
Followed. *MINISTER FOR LANDS v. HARRINGTON* - [1899] A. C. 408
- Collier, In the Goods of* (1862) 2 Sw. & Tr. 444  
*See IN THE GOODS OF CAMPION* [1900] P. 13, 14
- Collinge's Settled Estates, In re*, (1887) 36 Ch. D. 516.  
Considered by Kekewich J. *WILLIAMS v. JENKINS (No. 2)* [1894] W. N. 176  
Overruled. *COOPER v. BELSEY* C. A. [1899] 1 Ch. 639
- Collingham v. Sloper* - [1893] 2 Ch. 96  
A compromise sanctioned by C. A. [1894] 3 Ch. 716
- Collins, Ex parte* - (1875) L. R. 10 Ch. 367  
Dictum of James L.J., at p. 372, disapproved by C. A. *EDWARDS v. MARCUS* [1894] 1 Q. B. 587
- Collins v. Collins* - (1862) 31 Beav. 346  
Applied by C. A. *DAVIES v. THOMAS* [1900] 2 Ch. 462, 468
- Collins v. Paddington Vestry*, (1880) 5 Q. B. D. 368.  
Not followed by C. A. *CUSACK v. LONDON AND NORTH WESTERN RY. CO.* [1891] 1 Q. B. 347
- Collins v. Worley* - (1889) 60 L. T. (N.S.) 718  
Followed by Div. Ct. *O'HARA, MATTHEWS & CO. v. ELLIOTT & CO.* [1893] 1 Q. B. 362
- Collinson v. Collinson* - (1857) 24 Beav. 269  
Considered by Byrne J. *In re MOSES* [1900] W. N. 182
- Colles v. Robins*, [1886] W. N. 111; 55 L. T. (N.S.) 479.  
*See In re STANWAY'S TRUSTS* [1892] W. N. 11
- Colman's Trade-marks, In re* [1891] 2 Ch. 402  
Distinguished by Chitty J. *In re PHILLIP'S TRADE-MARKS* [1891] 3 Ch. 139
- Colonial Bank v. Cady* (1890) 15 App. Cas. 267  
Referred to. *FOX v. MARTIN* [1895] W. N. 36
- Colonial Government v. British South Africa Co.*, 9 Juta, 280.  
Approved by P. C. *MARSHALL v. ORPEN* [1895] A. C. 606
- Colonial Securities Trust Co. v. Massey*, [1896] 1 Q. B. 33.  
Applied by C. A. *HINLSON v. ASHBY* [1896] 2 Ch. 1, 18
- Colpoys v. Colpoys* - (1822) Jac. 451, 465  
Referred to by C. A. *In re GRAINGER* [1900] 2 Ch. 756, 764
- Colquhoun, In re* - (1854) 5 De G. M. & G. 35  
Referred to by C. A. *In re SALAMAN* [1894] 2 Ch. 201
- Colquhoun v. Brooks* - (1889) 14 App. Cas. 493  
Distinguished by C. A. *LONDON BANK OF MEXICO AND SOUTH AMERICA, LD. v. APHORPE* - [1891] 2 Q. B. 378  
Applied and followed. *BARTHOLOMAW BREWING CO. (OF ROCHESTER) v. WYATT* [1893] 2 Q. B. 499  
Distinguished by H. L. (E.) *SAN PAULO (BRAZILIAN) RY. CO. v. CARTER* [1896] A. C. 31, 39
- "*Columbus*," *The* - (1849) 3 Wm. Rob. 158  
Considered. *THE "KATE"* [1899] P. 165
- Combined Weighing and Advertising Machine Co., In re*, (1889) 43 Ch. D. 99.  
Considered by C. A. *PRITCHETT v. ENGLISH AND COLONIAL SYNDICATE* [1899] 2 Q. B. 428
- Comfort v. Betts* - [1891] 1 Q. B. 737  
Distinguished by C. A. *MERCANTILE BANK OF LONDON v. EVANS* [1899] 2 Q. B. 613

- Commins v. Scott* - (1875) L. R. 20 Eq. 11  
Followed. *FILBY v. HOUNSELL*  
[1896] W. N. 90 (3)
- Common Petroleum Engine Co., In re*, [1895] 2 Ch. 759.  
Followed by *Byrne J. TRANVAAL EXPLORING CO. v. ALBION (TRANVAAL) GOLD MINES, LD.* [1899] 2 Ch. 370
- Compagnie du Sénégal v. Woods & Co.*, (1883) 53 L. J. (Ch.) 166.  
Followed by *Stirling J. PINI v. RONDONI* - [1892] 1 Ch. 633
- Companhia de Moçambique v. British South Africa Co.*, [1892] 2 Q. B. 358.  
C. A. reversed and Div. Ct. restored by *H. L. (E)* - [1893] A. C. 602
- Compton, In re. Norton v. Compton*, (1885) 30 Ch. D. 15.  
Applied by *Kekewich J. In re LANCE* [1900] W. N. 29
- Concha v. Murrietta* C. A. (1889) 40 Ch. D. 543  
Varied by *H. L. (E.) sub nom. CONCHA v. CONCHA* - [1892] A. C. 670
- Conlan's Estate, In re* - (1892) 29 L. R. Ir. 199  
Discussed by *Byrne J. In re LORD CLIFDEN* - [1900] 1 Ch. 774
- Consett Waterworks Co. v. Ritson*, (1889) 22 Q. B. D. 702.  
Followed by *Kekewich J. THOMPSON v. MEIN* [1893] W. N. 202
- Consolidated Credit Corporation v. Gosney*, (1886) 16 Q. B. D. 24.  
Followed by *C. A. SEED v. BRADLEY* [1894] 1 Q. B. 319
- Consort Deep Level Gold Mines, Ltd., In re*, [1897] W. N. 1 (1).  
Reversed by *C. A.* [1897] 1 Ch. 575
- Constable v. Howick* (1858) 5 Jur. (N.S.) 331  
Followed by *Chitty J. NATIONAL PERMANENT MUTUAL BENEFIT BUILDING SOCIETY v. RAPER* - [1892] 1 Ch. 54
- Continental Union Gas Co., In re*, (1891) 7 T. L. R. 476.  
Observed upon by *Romer J. In re JAMES COLMER, LD.* [1897] 1 Ch. 524
- Conway v. Fenton* - (1888) 40 Ch. D. 512  
Distinguished by *Chitty J. In re DE TEISSIER'S SETTLED ESTATES* [1893] 1 Ch. 153  
Distinguished by *North J. In re LORD DE TABLEY* [1896] W. N. 162 (16)  
Distinguished. *In re MONTAGU* [1897] 1 Ch. 685; *C. A.* [1897] 2 Ch. 8
- Cook, Ex parte* - (1728) 2 P. Wms. 499  
*See In re BUDGETT* [1894] 2 Ch. 557
- Cook v. Fowler* (1874) L. R. 7 H. L. 27  
Discussed by *C. A. In re DIXON* [1900] 2 Ch. 561
- Cook v. Hathway* - (1869) L. R. 8 Eq. 612  
Distinguished by *Wright J. In re UNITED SERVICE ASSOCIATION* [1900] W. N. 243
- Cook v. Ipswich Local Board*, (1871) L. R. 6 Q. B. 451.  
Distinguished by *Div. Ct. DERBY CORPORATION v. GRUDGINGS* [1894] 2 Q. B. 496
- Cook's Mortgage, In re. Lawledge v. Tyndall*, [1896] 1 Ch. 923.  
Referred to by *Kekewich J. WILLIAMS v. WILLIAMS* - [1899] W. N. 66
- Cooke v. Gilbert* - [1892] W. N. 111, 128  
Followed by *Stirling J. MACMILLAN v. AUSTRALASIAN TERRITORIES* [1897] W. N. 30 (14)
- Cooke v. Smith* - (1890) 45 Ch. D. 38  
Decision of *C. A.* reversed, and that of *Kekewich J.* restored by *H. L. (E.) sub nom. SMITH v. COOKE. STOREY v. COOKE* - [1891] A. C. 297  
Applied by *C. A. CUNNACK v. EDWARDS* [1896] 2 Ch. 679, 684
- Coole v. Lovegrove* - [1893] 2 Q. B. 44  
Distinguished by *Div. Ct. ELLIOTT v. LONDON COUNTY COUNCIL* [1899] 2 Q. B. 277, 281
- Coolgardie Consolidated Gold Mines, Ltd., In re*, (1898) 14 Times L. R. 277.  
Distinguished by *Byrne J. TRANVAAL EXPLORING CO. v. ALBION (TRANVAAL) GOLD MINES, LD.* - [1899] 2 Ch. 370
- Coope v. Cresswell* - (1867) L. R. 2 Ch. 112  
Applied by *Kekewich J. In re ENGLAND* [1895] 2 Ch. 100;  
This case affirmed by *C. A.* [1895] 2 Ch. 820
- Cooper, Ex parte* - (1884) 26 Ch. D. 693  
Explained by *H. L. (E.). HEWLETT v. ALLEN & SONS* - [1894] A. C. 383
- Cooper v. Cooper* (1888) 13 App. Cas. 88  
Referred to by *C. A. VIDITZ v. O'HAGAN* - *C. A.* [1900] 2 Ch. 87, 96
- Cooper v. France* - (1850) 19 L. J. (Ch.) 313  
Applicable. *In re MATSON* [1897] 2 Ch. 509
- Cooper v. Griffin* - [1892] 1 Q. B. 740  
Followed by *Div. Ct. HOWARD v. SADLER* - [1893] 1 Q. B. 1
- Cooper v. Jarman* - (1866) L. R. 3 Eq. 98  
Followed by *North J. In re DAY. SRAKE v. DAY* [1898] 2 Ch. 510
- Cooper v. Straker* - (1888) 40 Ch. D. 21  
Referred to by *Stirling J. SMITH v. BAXTER* - [1900] 2 Ch. 138
- Cooper v. Wandsworth District Board of Works*, (1863) 14 C. B. (N.S.) 180.  
Considered by *Stirling J. ATT.-GEN. v. HOOPER* - [1893] 3 Ch. 483
- Cooper and Allen's Contract, In re*, (1876) 4 Ch. D. 802.  
Commented on. *BARON WOLVERTON v. ATT.-GEN. H. L. (E.)* [1898] A. C. 535
- Coote v. Ford* - [1899] W. N. 57  
Affirmed by *C. A.* - [1899] 2 Ch. 93
- "*Copernicus*," *The* - [1896] P. 154  
Affirmed by *C. A.* - [1896] P. 237

- Coplestone v. Nicholes*, (1863) 33 L. J. (P. & M.) 57  
Commented on by C. A. MORAN v. PLACE - [1896] P. 214, 217
- Coppard's Estate, In re* - (1887) 35 Ch. D. 350  
Observed upon by Kekewich J. WILLERTON v. STOCKS [1892] W. N. 29  
Commented on by Stirling J. *In re* STEVENS [1896] W. N. 24 (12)
- Coppock v. Bower* - (1838) 4 M. & W. 361  
See 54 & 55 Vict. c. 39, s. 14 (4)
- Corbet Davies, In re*, (1866) 15 W. R. 46; 15 L. T. (N.S.) 161.  
Not followed by C. A. *In re* H. A. GREY - [1892] 2 Q. B. 440
- Corbett's Trusts, Re* - (1860) Johns. 591  
Referred to by Cozens-Hardy J. *In re* ROBSON [1899] W. N. 260
- Corcoran, In re* - (1892) 62 L. J. (Ch.) 267  
Distinguished. *In re* HAMILTON C. A. [1896] 2 Ch. 617
- Coren v. Barne* - (1889) 22 Q. B. D. 249  
Approved by C. A. DE PASS v. CAPITAL AND INDUSTRIES CORPORATION [1891] 1 Q. B. 216;  
This case was affirmed by H. L. (E.) *sub nom.* VINALL v. DE PASS [1892] A. C. 90
- "*Corennie*," *The* - [1894] P. 338, n.  
No longer law. *THE "OPORTO"* C. A. [1897] P. 249
- Cork and Youghal Ry. Co., In re*, (1869) L. R. 4 Ch. 748.  
Explained by C. A. PORTSEA ISLAND BUILDING SOCIETY v. BARCLAY [1895] 2 Ch. 298
- Cormack v. Beisley* - (1858) 3 De G. & J. 157  
Followed by Kekewich J. *In re* KNIGHT. KNIGHT v. GARDNER [1892] 2 Ch. 368
- Corn v. Matthews* - [1893] 1 Q. B. 310  
Distinguished by Div. Ct. GREEN v. THOMPSON - [1899] 2 Q. B. 1, 5
- Cornford v. Carlton Bank, Ltd.*, [1899] W. N. 8 (4); [1899] 1 Q. B. 392.  
Affirmed by C. A. - [1900] 1 Q. B. 22
- Cornish, In re. Ex parte Board of Trade*, [1895] 2 Q. B. 634.  
Affirmed by C. A. [1896] 1 Q. B. 99
- Cornwall v. Henson* - [1899] 2 Ch. 710  
Reversed by C. A. - [1900] 2 Ch. 298
- Corpe v. Overton* - (1833) 10 Bing. 252  
Followed by Stirling J. HAMILTON v. VAUGHAN-SHERRIN ELECTRICAL ENGINEERING CO. - [1894] 3 Ch. 589
- Corporation of the Sons of the Clergy v. Sutton*, (1859) 27 Beav. 651.  
Followed by Stirling J. *In re* ST. JOHN STREET WESLEYAN METHODIST CHAPEL, CHESTER - [1893] 2 Ch. 618
- Corr v. Corr* - (1879) 3 L. R. Ir. 435  
Applied by Stirling J. *In re* WESTON [1900] 2 Ch. 164, 171
- Cosier, In re. Humphreys v. Gadsden*, C. A. [1897] 1 Ch. 325.  
Affirmed by H. L. (E.) *sub nom.* WHEELER v. HUMPHREYS [1898] A. C. 506
- Cotesworth v. Spokes* (1861) 10 C. B. (N.S.) 103  
Held by C. A. not to be inconsistent with *Brewer v. Eaton*, (1783) 3 Doug. 230. THOMAS v. LULHAM [1895] 2 Q. B. 400
- Cotton, Ex parte* - (1883) 11 Q. B. D. 301  
Approved by C. A. *Ex parte* WICKENS C. A. [1898] 1 Q. B. 543
- Cotton v. Vogan & Co.* - [1895] 2 Q. B. 632  
Affirmed by H. L. (E.) [1896] A. C. 459
- Couch v. Steel* (1854) 3 E. & B. 402  
See COWLEY v. NEWMARKET LOCAL BOARD H. L. (E.) [1892] A. C. 345  
Commented on by Charles J. REG. v. HALL - [1891] 1 Q. B. 747, 769
- Coulthart v. Clementson* (1879) 5 Q. B. D. 42, 48  
Referred to by Romer J. *In re* SILVESTER. - [1895] 1 Ch. 573
- Counsell v. London and Westminster Loan and Discount Co.*, (1887) 19 Q. B. D. 512.  
Followed by C. A. EDWARDS v. MARCUS [1894] 1 Q. B. 587
- "*County of Durham*," *The* - [1891] P. 1  
Explained by G. Barnes J. *THE "CITY OF AGRA"* [1898] P. 198
- County of Gloucester Bank v. Rudry, &c., Co.*, [1895] 1 Ch. 629.  
Referred to by Wright J. *In re* BANK OF SYRIA - [1900] 2 Ch. 272, 278;  
C. A. [1900] W. N. 256; [1901] 1 Ch. 115
- Coupe v. Collyer* - (1890) 62 L. T. (N.S.) 927  
Distinguished. LONDON FREEHOLD AND LEASEHOLD PROPERTY CO. v. BARON SUFFIELD C. A. [1897] 2 Ch. 608
- "*Courier*," *The* - [1891] P. 355  
Followed by Div. Ct. O'HARA, MATTHEWS & CO. v. ELLIOTT & CO. [1893] 1 Q. B. 362  
Applied by Bruce J. *THE "HESTIA"* (No. 2) - [1895] W. N. 100  
Followed by Bucknill J. *THE "BURMA"* [1899] W. N. 54
- Courtauld v. Legh* (1869) L. R. 4 Ex. 126  
Followed by Romer J. COLLIS v. LAUGHER - [1894] 3 Ch. 659
- Courtenay v. Williams*, (1844) 3 Hare, 539; 15 L. J. Ch. 204.  
Considered by Kekewich J. *In re* AKERMAN [1891] 3 Ch. 212  
Discussed by Byrne J. DINGLE v. COPTEN - [1899] 1 Ch. 726
- Courtier, In re* - (1886) 34 Ch. D. 136  
Followed by Kekewich J. *In re* BARING [1893] 1 Ch. 61  
Discussed by Stirling J. *In re* REDDING [1897] 1 Ch. 876  
Discussed by Kekewich J. *In re* TOMLINSON - [1898] 1 Ch. 232  
Considered by North J. *In re* BETTY [1899] 1 Ch. 821  
Referred to by Kekewich J. *In re* GJERS [1899] 2 Ch. 54



- Courtney v. Cole* - (1887) 19 Q. B. D. 447  
Distinguished by Bruce J. THE  
"WINESTEAD" [1895] P. 170  
Approved and followed by C. A. THE  
"RUTLAND" [1896] P. 281;  
[1897] A. C. 333
- Coutts & Co. v. Irish Exhibition in London*, [1890]  
W. N. 181.  
Reversed by C. A. - [1891] W. N. 41
- Couturier v. Hastie* (1852) 8 Ex. 40  
Applied. SUTTON & Co. v. GREY  
C. A. [1894] 1 Q. B. 285
- Coventry's Case* - - [1891] 1 Ch. 202  
Distinguished by Wright J. In re  
CENTRAL KLONDYKE GOLD MINING CO.  
SAVIGNY'S CASE [1899] W. N. 1 (2)
- Coverdale v. Charlton* (1878) C. A. 4 Q. B. D. 105  
See TUNBRIDGE WELLS CORPORATION v.  
BAIRD - - [1896] A. C. 434, 439
- Cowen v. Phillips* - (1863) 33 Beav. 18  
Explained and followed by Chitty J.  
FILLINGHAM v. WOOD [1891] 1 Ch. 51
- Cowen v. Truefitt, Ltd.*, [1898] W. N. 81 (8);  
[1898] 2 Ch. 551.  
Affirmed by C. A. - [1899] 2 Ch. 309
- Cowies' Trustees v. Cowie* - (1891) 18 R. 706  
Reversed by H. L. (Sc.) *sub nom.* COWIE  
v. MURDEN - [1893] A. C. 674
- Cowles v. Gale* - - (1871) L. R. 7 Ch. 12  
Observed upon by Romer J. TADCASTER  
TOWER BREWERY CO. v. WILSON  
[1897] 1 Ch. 705
- Cowley v. Cowley* - - [1900] P. 118  
Reversed by C. A. [1900] P. 305
- Cowley v. Newmarket Local Board*, [1892] A. C.  
345.  
Followed by P. C. SYDNEY (MUNICIPAL  
COUNCIL) v. BOURKE [1895] A. C. 433
- Cowley's (Earl) Estate, In re* [1897] 2 Q. B. 47  
Varied by C. A. - [1893] 1 Q. B. 355  
Judgment of C. A. [1898] 1 Q. B. 355  
Reversed by H. L. (E.) *sub nom.* COW-  
LEY (EARL) v. INLAND REVENUE COMMRS.  
[1899] A. C. 198
- Appl. cable. ATT.-GEN. v. DE PREVILLE  
C. A. [1900] 1 Q. B. 223, 229  
Referred to by Div. Ct. ATT.-GEN. v.  
DOBREE - [1900] 1 Q. B. 442, 450
- Coux v. Foster* - - (1860) 1 J. & H. 30  
Discussed by Kekewich J. In re PAGET  
[1898] 1 Ch. 290
- Cox v. Bennett* - - [1891] 1 Ch. 617  
See now s. 2 of the Married Women's  
Property Act, 1893 (56 & 57 Vict. c. 63).  
See also *PILLERS v. EDWARDS*  
[1894] W. N. 212
- Cox v. Willoughby* - (1880) 13 Ch. D. 863  
Discussed by Stirling J. DAW v. HER-  
RING - - [1892] 1 Ch. 284
- Cox's Case* - (1863) 4 D. J. & S. 53  
Distinguished. In re BRITANNIA FIRE  
ASSOCIATION. COVENTRY'S CASE  
C. A. [1891] 1 Ch. 202
- Cozen v. Rowland* - [1894] 1 Ch. 406  
Distinguished by Romer R. In re BOYD  
[1897] 2 Ch. 232
- Coxon v. Gorst* - - - [1891] 2 Ch. 73  
Referred to by North J. WHITELEY  
EXERCISER, LD. v. GAMAGE  
[1898] 2 Ch. 405
- Cradock v. Piper* - (1850) 1 Mac. & G. 664  
Followed. STONE v. LIGORISH  
[1891] 2 Ch. 363  
Considered by C. A. In re DOODY  
[1893] 1 Ch. 129  
Referred to by Chitty J. VIPONT v.  
BUTLER [1893] W. N. 64
- Cradock v. Scottish Provident Institution*, [1893]  
W. N. 146.  
Affirmed by C. A. [1894] W. N. 88
- Craig v. Wheeler* (1860) 29 L. J. (Ch.) 374  
Approved and followed by Stirling J.  
In re GAME [1897] 1 Ch. 881
- Cranley v. Dixon* - - (1857) 23 Beav. 512  
Followed by Stirling J. In re WHITE-  
HEAD - - [1894] 1 Ch. 678
- Craven Bank v. Hartley* - [1886] W. N. 189  
Followed. LE BAS v. GRANT  
[1895] W. N. 28
- Crawford v. Forshaw* - (1890) 43 Ch. D. 643  
Reversed by C. A. - [1891] 2 Ch. 261
- Crawley v. Crawley*, (1835) 7 Sim. 427; 40 R. R.  
170.  
Applied by Stirling J. In re WHITE-  
HEAD - - [1894] 1 Ch. 678  
Followed by Farwell J. In re POPE  
[1900] W. N. 244; [1901] 1 Ch. 64
- Creaton v. Creaton* - (1856) 3 Sm. & Giff. 386  
Applied by Chitty J. In re BROOKE  
[1894] 1 Ch. 43
- Cree v. St. Pancras Vestry* [1899] 1 Q. B. 693  
Disapproved of by C. A. BOSTOCK v.  
RAMSEY URBAN COUNCIL  
[1900] 1 Q. B. 357, 363;  
C. A. [1900] 2 Q. B. 616, 623
- Cresswell v. Davidson* (1887) 56 L. T. (N.S.) 811  
Approved by C. A. NIND v. NINE-  
TEENTH CENTURY BUILDING SOCIETY  
[1894] 2 Q. B. 226
- Crew v. Cummings* - (1888) 21 Q. B. D. 420  
Has overruled *In re Dobbin's Settlement*,  
(1887) 56 L. J. (Q.B.) 295, *per* C. A. in  
In re PARSONS - [1893] 2 Q. B. 122
- Criglington v. Anderson* (1889) 26 L. R. Ir. 131  
Undistinguishable. M'GAFFIGAN v.  
RIDDALL, (1890) 28 L. R. Ir. 257  
C. A. (Ir.) [1898] W. N. 95
- Crisp v. Crisp* (1872) L. R. 2 P. & M. 426  
Considered. HARTOPP v. HARTOPP  
[1899] P. 65
- Croft, In re* - - - [1892] 1 Ch. 652  
Distinguished by Stirling J. In re  
BOURNE [1893] 1 Ch. 188
- Croft, In re. Deane v. Croft* [1892] 1 Ch. 652  
Distinguished by Stirling J. In re  
BROWNE - - [1893] 1 Ch. 188  
Distinguished by Kekewich J. In re  
FOSTER - - [1897] 1 Ch. 484, 487

- Croft v. Rickmansworth Highway Board*, (1888) 39 Ch. D. 272.  
Followed by *Stirling J. Croysdale v. Sunbury-on-Thames Urban Council* [1898] 2 Ch. 515
- Cromford Canal Co. v. Cutts*, (1848) 5 Rail. Cas. 442.  
Distinguished by *H. L. (E.) Chamber Colliery Co. v. Rochdale Canal Co.* [1895] A. C. 564
- Crompton v. Jarratt* - (1885) 30 Ch. D. 298  
Distinguished. *In re Hodgson. Taylor v. Hodgson* [1898] 2 Ch. 545
- Cronmire, In re. Ex parte Waud*, (1898) W. N. 19 (2).  
Reversed by C. A. [1898] 2 Q. B. 383
- Crook v. Hill*, (1873) L. R. 6 Ch. 311; L. R. 6 H. L. 265.  
Followed by *Stirling J. In re Deakin* [1894] 3 Ch. 565
- Crook v. Morley* - (1890) 24 Q. B. D. 320  
Affirmed by H. L. (E.) [1891] A. C. 316
- Crookhaven Mining Co., In re*, (1866) L. R. 3 Eq. 69.  
Followed. *Whiteley Exerciser, Ltd. v. Gamage* [1898] 2 Ch. 405
- Croome v. Croome*, [1888] W. N. 37, 152; [1889] W. N. 156; 59 L. T. 582; 61 L. T. 814.  
Principles in, applied by *Kekewich J. In re West* [1900] 1 Ch. 84
- Cropper v. Smith* (1885) 10 App. Cas. 249  
Observed upon by C. A. *Shoe Machinery Co. v. Cutlan* [1896] 1 Ch. 108
- Crosby v. Noton* - (1867) 36 L. J. (P. & M.) 55  
Followed by *Jeune P. In the Goods of Dennis* [1899] P. 191
- Crossan v. Chambers* (1885) 18 L. R. Ir. 68  
Distinguished. *Holly v. Burke* (1887) 22 L. R. Ir. 463.  
C. A. (Ir.) [1897] W. N. 91
- Crossley v. Maycock* - (1874) L. R. 18 Eq. 180  
Followed by *Romer J. Jones v. Daniel* [1894] 2 Ch. 332
- Crossman v. Reg.* - (1886) 18 Q. B. D. 256  
Followed. *Lord Advocate v. Wilson*, (1894) 21 R. 997.  
Ct. of Sess. (Sc.) [1896] W. N. 118
- Crouch v. Credit Foncier of England*, (1873) L. R. 8 Q. B. 374.  
Has been in effect overruled by *Goodwin v. Roberts*, (1875) L. R. 10 Ex. 337; (1876) 1 App. Cas. 476. *Bechuanaland Exploration Co. v. London Trading Bank* [1898] 2 Q. B. 658
- Crowe v. Crisford* - (1853) 17 Beav. 507  
Commented on. *In re Game* [1897] 1 Ch. 881
- Crowe's Trusts, In re* (1880) 14 Ch. D. 304, 610  
See *In re Stocken's Settlement Trusts* [1893] W. N. 203
- Crowther, In re* - - [1895] 2 Ch. 56  
Considered by *North J. In re Smith* [1896] 1 Ch. 171
- Croysdale v. Sunbury-on-Thames Urban Council*, [1898] 2 Ch. 515.  
Approved by C. A. *Sykes v. Sowerby Urban Council* [1900] 1 Q. B. 584
- Cruddas, In re. Cruddas v. Smith*, [1899] W. N. 126.  
Reversed by C. A. [1900] 1 Ch. 730
- Cruickshank v. Duffin* (1872) L. R. 13 Eq. 555  
Followed by *Romer J. Thorne v. Thorne* [1893] 3 Ch. 196
- Crump v. Lambert* - (1867) L. R. 3 Eq. 409  
Referred to. *J. Lyons & Sons v. Wilkins* C. A. [1899] 1 Ch. 255
- Crumpe v. Crumpe* - - [1899] 1 I. R. 359  
Affirmed by H. L. (Ir.) [1900] A. C. 127
- "Crystal," *The* - - [1894] A. C. 508  
Distinguished by *P. C. Howard Smith & Sons v. Wilson* - [1896] A. C. 579  
Referred to. *Barraclough v. Brown* H. L. (E.) [1897] A. C. 615
- Cuckfield Rural Council v. Goring*, [1898] 1 Q. B. 865.  
Approved by C. A. *Davenport Rural Council v. Parker* - [1900] 1 Q. B. 1
- Culverhouse, In re. Cook v. Culverhouse*, [1896] 2 Ch. 251.  
Considered by *Kekewich J. In re Treasure* - [1900] 2 Ch. 648, 652
- Cumberland Union Banking Co. v. Maryport Hematite Iron and Steel Co.*, [1892] 1 Ch. 415.  
Followed by C. A. *Gough v. Wood* [1894] 1 Q. B. 713  
Discussed. *Hobson v. Gorringe* C. A. [1897] 1 Ch. 182
- Cundy v. Lindsay* (1878) 3 App. Cas. 459  
Principle in, applied by *Wright J. In re International Society of Auctioneers and Valuers. Baillie's Case* - - [1897] W. N. 171 (4); [1898] 1 Ch. 110
- Cunnack v. Edwards* - - [1895] 1 Ch. 489  
Reversed on appeal C. A. [1896] 2 Ch. 679
- Distinguished by *Kekewich J. In re Buck* - [1896] 2 Ch. 727
- Distinguished by *Byrne J. In re Printers and Transferrers Amalgamated Trades Protection Society* [1899] 2 Ch. 184
- Referred to by *Stirling J. In re Lacy* [1899] 2 Ch. 149
- Cunynghame v. Thurlow*, (1832) 1 Russ. & My. 436, n.; 32 R. R. 242.  
Followed by *North J. In re Radcliffe. Radcliffe v. Bewes* [1891] 2 Ch. 662  
Not followed by C. A. *In re Radcliffe. Radcliffe v. Bewes* [1892] 1 Ch. 227
- Cupit v. Jackson*, (1824) 13 Price, 721; 28 R. R. 735.  
Referred to by *Buckley J. Blackburne v. Hope-Edwards* [1900] W. N. 176; [1901] 1 Ch. 418

- Curnick v. Tucker* - (1874) L. R. 17 Eq. 320  
Referred to. *WILLIAMS v. WILLIAMS*  
C. A. [1897] 2 Ch. 12
- Currie v. McKnight* - (1895) 22 R. 607  
Affirmed by H. L. (Sc.) [1897] A. C. 97
- Currie v. Wilson, Sons & Co. The "Thora,"*  
(1893) 20 R. 876.  
Affirmed by H. L. (Sc.) [1894] A. C. 116
- Cushing v. Dupuy* - (1880) 5 App. Cas. 409  
Followed by P. C. *TENNANT v. UNION BANK OF CANADA* [1894] A. C. 31  
See New South Wales Act, 1899, No. 2, Third Sched., Chap. 3.
- Dagnall, In re* - [1896] 2 Q. B. 407  
Approved by C. A. *In re WORSLEY*  
[1900] W. N. 269
- Dairy v. Bailey* - (1891) 8 Rep. Pat. Cas. 166  
Cited. *MANDLERBERG v. MORLEY*  
[1893] W. N. 157
- Dale v. Hamilton* - (1846) 5 Hare, 369  
Followed by Kekewich J. *In re DE NICOLS* [1900] 2 Ch. 410
- Dale v. Martin*, (1884) 9 L. R. Ir. 498; 11 L. R. Ir. 371.  
Approved. *LOCK v. QUEENSLAND INVESTMENT AND LAND MORTGAGE CO.*  
H. L. (E.) [1896] A. C. 461
- Dalglish v. Dodds* - (1894) 22 R. 198  
Inapplicable. *STIRLING v. FLETCHER*, (1895) 23 R. 120.  
C. A. (Sc.) [1899] W. N. 166
- Dalison's Settled Estate, In re* [1892] 3 Ch. 522  
Considered by Kekewich J. *In re MARQUIS OF BRISTOL'S SETTLED ESTATES* [1893] 3 Ch. 161
- Dallmeyer, In re* - [1896] 1 Ch. 372  
Applied by Stirling J. *In re LAMBERT* [1897] 2 Ch. 169
- Dalton v. Fitzgerald* - [1897] 1 Ch. 440  
Affirmed by C. A. [1897] 2 Ch. 86
- D'Amico v. Trigona* - (1888) 13 App. Cas. 806  
Followed by J. C. *SCEBERRAS TRIGONA v. SCEBERRAS D'AMICO* [1892] A. C. 69
- Daniel v. Ferguson* - [1891] 2 Ch. 27  
Followed by C. A. *VON JOEL v. HORNSEY* [1895] 2 Ch. 774
- Darcy (Lord) v. Askwith* - (1617) Hob. 234  
Applied by Buckley J. *WEST HAM CENTRAL CHARITY BOARD v. EAST LONDON WATERWORKS CO.* [1900] 1 Ch. 624
- Darlaston Local Board v. London and North Western Ry. Co.*, [1894] 2 Q. B. 45.  
Reversed by C. A. [1894] 2 Q. B. 694
- Darley v. Reg.* - (1845) 12 Cl. & F. 520  
Followed by Div. Ct. *REG. v. BURROWS* [1892] 1 Q. B. 399
- Darley Main Colliery Co. v. Mitchell*, (1886) 11 App. Cas. 127.  
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Considered by Kekewich J. *HALL v. DUKE OF NORFOLK* [1900] 2 Ch. 493
- Darling v. Gray & Sons* (1891) 18 R. 1164  
Affirmed by H. L. (Sc.) *sub nom. WOOD v. GRAY & SONS* - [1892] A. C. 576
- Darlington v. Hamilton* - (1854) Kay, 550  
Commented on and distinguished by North J. *In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* [1895] 1 Ch. 190
- Darrell v. Tibbitts* - (1880) 5 Q. B. D. 560  
Discussed by Collins J. *WEST OF ENGLAND FIRE INSURANCE CO. v. ISAACS* [1896] 2 Q. B. 377; C. A. [1897] 1 Q. B. 226
- Dashwood v. Magniac* - [1891] 3 Ch. 306, 360  
Referred to by Stirling J. *In re CHAYTOR* - [1900] 2 Ch. 804, 809
- Daveron, In re* - [1893] 3 Ch. 421  
Considered by Kekewich J. *In re WOOD* [1894] 2 Ch. 310; affirmed by C. A. [1894] 3 Ch. 381
- David, In re. Buckley v. Royal National Life Boat Institution*, (1889) 41 Ch. D. 168; 43 Ch. D. 27.  
Overruled by 54 & 55 Vict. c. 73, s. 3.
- David v. Sabin* [1892] W. N. 115  
Reversed by C. A. - [1893] 1 Ch. 523
- Davidson, Ex parte* C. A. [1894] W. N. 210  
Referred to by C. A. *In re IZOD* [1898] 1 Q. B. 241, 249
- Davidson's Settlement Trusts, In re* (1873) L. R. 15 Eq. 383.  
Followed by North J. *In re LAWSON'S TRUSTS* [1896] 1 Ch. 175
- Davies v. Davies* - (1887) 36 Ch. D. 359  
As to costs on higher scale, see *"THE ROBIN"* [1892] P. 95  
Applicable. *DAVIES v. LOWEN* [1891] W. N. 86
- Davies v. Fitton* - (1842) 2 D. & War. 225  
Referred to by Farwell J. *MAY v. PLATT* - [1900] 1 Ch. 616
- Davies v. Gregory* - (1873) L. R. 3 P. & D. 28  
Followed by Barnes J. *ROE v. NIX* [1893] P. 55
- Davies v. McVeagh* - (1879) 4 Ex. D. 265  
Questioned by C. A. *THARIS SULPHUR AND COPPER CO. v. MOREL BROTHERS & CO.* [1891] 2 Q. B. 650
- Davies v. Parry* - [1899] 1 Ch. 602  
*But see now PRACTICE NOTE.* [1899] W. N. 262
- Davies v. Williams* - (1857) 16 Q. B. 546  
Followed by Chitty J. *LANE v. CAPSEY* [1891] 3 Ch. 411
- Davies v. Wright* - (1886) 32 Ch. D. 220  
Considered by Kekewich J. *BREWER v. SQUARE* - [1892] 2 Ch. 111
- Davies' Case* - (1890) 45 Ch. D. 537  
See *MARQUIS OF BUTE'S CASE* [1892] 2 Ch. 100
- Davies' Trusts, In re* - (1871) L. R. 13 Eq. 163  
Followed by Romer J. *In re BOYD* [1897] 2 Ch. 232

- \* *Davis, In re. Evans v. Moore* [1891] 3 Ch. 119  
 Referred to. *In re OWEN*  
 [1894] 3 Ch. 220, 225  
 Referred to. *In re LACY*  
 [1899] 2 Ch. 149, 159
- Davis v. Nisbett* - (1861) 10 C. B. (N.S.) 752  
 Explained by C. A. SMITH v. BUTLER  
 [1900] 1 Q. B. 694, 700
- Davis v. Starr* - - (1889) 41 Ch. D. 242  
 Distinguished. *RENSHAW v. QUEEN ANNE MANSIONS CO.*  
 C. A. [1897] 1 Q. B. 662  
 Explained by C. A. PARRY v. LIVERPOOL MALT CO. C. A. [1900] 1 Q. B. 339
- Davis v. Stribolt* - (1890) 6 Rep. Pat. Cas. 207  
 Distinguished by Romer J. *In re DENSHAM'S TRADE-MARK*  
 [1895] 2 Ch. 176
- Davis v. Treharne* (1881) 6 App. Cas. 460  
*See TWYEROULD v. CHAMBER COLLIERY CO.*  
 C. A. [1892] W. N. 27  
 Followed. *GREENWELL v. LOW BEECHBURN COAL CO.* [1897] 2 Q. B. 165  
 Applicable. *EARL OF WESTMORLAND v. NEW SHARLSTON COLLIERIES CO.*  
 C. A. [1899] W. N. 88
- Davis & Sons, Ltd. v. Taff Vale Ry. Co.*, [1894] 1 Q. B. 43.  
 Reversed by H. L. (E.) [1895] A. C. 542
- Davison v. Gent* - (1857) 1 H. & N. 744  
 Followed by Chitty J. *WALLIS v. HANDS* - [1893] 2 Ch. 75
- Dawes v. Tredwell* (1881) 18 Ch. D. 354  
 Applied by Byrne J. *In re SMITH*  
 [1900] W. N. 75
- Dawkins v. Prince Edward of Saxe-Weimar*, (1876) 1 Q. B. D. 499.  
*See* 59 & 60 Vict. c. 51.
- Dawson, In re* - (1888) 39 Ch. D. 155  
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 [1898] 2 Ch. 567
- Dawson v. Rayner*, (1826) 2 Russ. 466; 26 R. R. 149.  
*See In re GRAHAM Chitty J.* [1895] 1 Ch. 66, 69
- Duy v. Kelland* - [1900] W. N. 234  
 Affirmed by C. A. [1900] 2 Ch. 745
- Day v. Longhurst* - (1893) 41 W. R. 283  
 Followed. *SEAWARD v. PATERSON*  
 C. A. [1897] 1 Ch. 545
- Day v. Luhke* (1868) L. R. 5 Eq. 336  
 Observed upon by Romer J. *TADCASTER TOWER BREWERY CO. v. WILSON*  
 [1897] 1 Ch. 705
- Day v. Woolwich Equitable Building Society*, (1888) 40 Ch. D. 491.  
 Dictum in, questioned by Farwell J. *KING v. SMITH* [1900] 2 Ch. 425
- Daykin v. Parker* [1894] 2 Q. B. 273  
 Affirmed by C. A. [1894] 2 Q. B. 556
- Dayrell v. Hoare* - (1840) 12 A. & E. 356, 369  
 Referred to by Kekewich J. *In re NEWELL AND NEVILL'S CONTRACT*  
 [1900] 1 Ch. 90  
 Approved of by C. A. *In re GLADSTONE*  
 C. A. [1900] 2 Ch. 101
- Deakin, In re* - - - [1894] 3 Ch. 565  
 Followed by North J. *In re JEANS*  
 [1895] W. N. 98  
 Discussed by Kekewich J. *In re PARKER*  
 [1897] 2 Ch. 208, 212
- Deakin v. Laker* - (1885) 30 Ch. D. 169  
 Overruled by 56 & 57 Vict. c. 63, s. 1 (a).
- Dean v. Dean* - [1891] 3 Ch. 150  
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- Dean v. McDowell* - (1878) 8 Ch. D. 345  
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 [1891] 2 Ch. 244
- Dean and Chapter of St. Paul's, Ex parte*, (1870) 18 W. R. 724.  
 Cited. *In re JONES. BULLIS v. JONES*  
 [1891] W. N. 114
- Dearle, Ex parte* - (1885) 14 Q. B. D. 184  
 Distinguished by C. A. *In re GAMGEE*  
 [1891] W. N. 106
- De Beaufort, In the Goods of* - [1893] P. 231  
*See IN THE GOODS OF SCOTT*  
 [1895] P. 342
- De Braam v. Ford* - [1899] W. N. 228  
 Reversed by C. A. [1900] 1 Ch. 142
- Decroix, Verley & Cie. v. Meyer & Co.*, (1890) 25 Q. B. D. 343.  
 Affirmed by H. L. (E.) [1891] A. C. 520
- Deeley's Patent, In re* - [1895] 1 Ch. 687  
 Reversed by H. L. (E.) *sub nom. DEELEY v. PERKES* - [1896] A. C. 496  
 Discussed. *In re DELLWICK'S PATENT*  
 [1896] 2 Ch. 705  
 Explained by C. A. *LUDINGTON CIGARETTE MACHINE CO. v. BARON CIGARETTE MACHINE CO.* - [1900] 1 Ch. 508
- Deeming, Ex parte* - [1892] A. C. 422  
 Followed by P. C. *KOPS v. REG. Ex parte KOPS* [1894] A. C. 650  
*See Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), s. 9, sub-s. 73.*
- De Fogassieras v. Dupont*, (1881) 11 L. R. Ir. 123  
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- De Hoghton, In re. De Hoghton v. De Hoghton*, [1895] 2 Ch. 517.  
 Affirmed by C. A. [1896] 1 Ch. 855
- Delany v. Mansfield* - (1825) 1 Hogan, 234  
 Not followed by Stirling J. *In re HOARE* - [1892] 3 Ch. 94
- De Linden, In re. In re Spurrier's Settlement. De Hayn v. Garland*, [1897] 1 Ch. 453.  
 Followed by Kekewich J. *In re CHATARD'S SETTLEMENT*  
 [1899] 1 Ch. 712, 718;  
 THIERY v. CHALMERS, GUTHRIE & Co.  
 [1900] 1 Ch. 80
- Delmer v. McCabe* (1863) 14 Ir. C. L. Rep. 377  
 Explained by Kekewich J. *THIERY v. CHALMERS, GUTHRIE & Co.*  
 [1900] 1 Ch. 80  
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- De Mattos v. Benjamin*, (1894) 63 L. J. (Q.B.) 248.  
Followed by *Stirling J. HARVEY v. HART* - - - [1894] W. N. 72
- De Mestre v. West* - - - [1891] A. C. 264  
Followed by *C. A. ATT.-GEN. v. JACOBS-SMITH* - - - [1895] 2 Q. B. 341
- Denaby Main Colliery Co. v. Manchester, Sheffield, and Lincolnshire Ry. Co.*, (1885) 14 Q. B. D. 209; (1886) 11 App. Cas. 97.  
Explained by *C. A. PHIPPS v. LEBB AND NORTH WESTERN RY. CO.* [1892] 2 Q. B. 229
- De Nicols, In re. De Nicols v. Curlier, C. A.* [1898] W. N. 52 (4); [1898] 2 Ch. 60.  
Reversed, and decision of *Kekewich J.*, [1898] W. N. 12 (3); [1898] 1 Ch. 403, restored - *H. L. (E.)* [1900] A. C. 21
- Dennett v. Atherton*, (1872) L. R. 7 Q. B. 316, 326.  
Considered by *Buckley J. TEBB v. CAVE* - - - [1900] 1 Ch. 642, 647
- Dent v. Dent*, (1865) 34 L. J. (P. & M.) 118; 4 S. & T. 105.  
Followed by *Barnes J. MOORE v. MOORE* [1892] P. 382
- Denver Hotel Co., In re* - - - [1893] 1 Ch. 495  
Commented on by *H. L. (E.) BRITISH AND AMERICAN TRUSTEE AND FINANCE CORPORATION v. COUPER* [1894] A. C. 399
- De Pass v. Capital and Industries Corporation*, [1891] 1 Q. B. 216.  
Affirmed by *H. L. (E.) sub nom. VINALL v. DE PASS* - - - [1892] A. C. 90
- Derbyshire (In re County Council of) and Mayor, &c., of Derby*, [1896] 2 Q. B. 53.  
Affirmed by *C. A.* [1896] 2 Q. B. 297  
Affirmed by *H. L. (E.) sub nom. DERBY CORPORATION v. DERBYSHIRE COUNTY COUNCIL* - - - [1897] A. C. 550
- De Rosaz, In re* (1877) 2 P. D. 66  
Referred to. *IN THE GOODS OF CHAPPELL* [1894] W. N. 16
- Derry v. Peck* (1889) 14 App. Cas. 337  
See *ANGUS v. CLIFFORD* [1891] 2 Ch. 449  
Distinguished by *C. A. LOW v. BOUVERIE* - - - [1891] 3 Ch. 82  
Explained by *C. A. TOMKINSON v. BALKIS CONSOLIDATED CO.* [1891] 2 Q. B. 614  
Observed on by *C. A. LE LIEVRE v. GOULD* - - - [1893] 1 Q. B. 491  
Referred to by *C. A. GREENWOOD v. LEATHER SHOD WHEEL CO.* [1900] 1 Ch. 421, 434
- De Tessier, In re* - - - [1893] 1 Ch. 153  
Followed. *In re LORD DE TABLEY* [1896] W. N. 162 (16)
- Devine's Case*, *Lawson's Notes of Decisions*, 1887, p. 12.  
Distinguished. *CRIGLINGTON v. ANDERSON*, (1889) 26 L. R. Ir. 131  
*C. A. (Ir.)* [1898] W. N. 94
- Devonshire (Duke of) v. O'Connor*, (1890) 24 Q. B. D. 468.  
Followed by *C. A. ECROYD v. COULT-HARD* - - - [1898] 2 Ch. 358
- Deuirst's Trusts, In re* - (1886) 33 Ch. D. 416  
Referred to. *In re STOCKEN'S SETTLEMENT TRUSTS* [1893] W. N. 203
- D'Eyncourt v. Gregory* (1866) L. R. 3 Eq. 382  
Followed by *Chitty J. NORTON v. DASHWOOD* - - - [1896] 2 Ch. 497  
Discussed. *HILL (VISCOUNT) v. BULLOCK C. A.* [1897] 2 Ch. 482  
Distinguished by *Byrne J. In re EVERSLEY* - - - [1900] 1 Ch. 96
- D'Huart v. Harkness* - (1865) 34 Beav. 324  
Followed by *Jeune P. IN THE GOODS OF HUBER* [1896] P. 209  
Considered by *Kekewich J. HUMMEL v. HUMMEL* - - - [1898] 1 Ch. 642  
Followed by *Stirling J. In re PRICE. TOMLIN v. LATTER* - [1900] 1 Ch. 442
- Diamond Fuel Co., In re* (1879) 13 Ch. D. 400  
Explained by *North J. In re CRYSTAL REEF GOLD MINING CO.* [1892] 1 Ch. 408
- Dibb v. Walker* - - - [1893] 2 Ch. 429  
Referred to by *Kekewich J. In re ENGLAND* [1895] 2 Ch. 100, 107; *C. A.* [1895] 2 Ch. 820
- Dick, In re. Lopes v. Hume-Dick*, [1891] 1 Ch. 423.  
Affirmed by *H. L. (E.) sub nom. HUME v. LOPES* - - - [1892] A. C. 112  
See *In re OWTHTWAITE. OWTHTWAITE v. TAYLOR* - - - [1891] 3 Ch. 494
- Dicker v. Angerstein* (1876) 3 Ch. D. 600  
Explained and distinguished by *Stirling J. LIFE INTEREST AND REVERSIONARY SECURITIES CORPORATION v. HAND-IN-HAND FIRE AND LIFE INSURANCE SOCIETY* - - - [1898] 2 Ch. 230
- Dickins v. Gill* - - - [1896] 2 Q. B. 311  
Notice given by *Postmaster-General to Stamp Dealers and the Public*  
*London Gaz. June 4, 1897, p. 3131*
- Dicks v. Brooks* - - - (1880) 15 Ch. D. 22  
Followed by *C. A. HANFSTAENGL v. EMPIRE PALACE. HANFSTAENGL v. NEWNES* - - - [1894] 3 Ch. 109;  
This case was affirmed by *H. L. (E.) sub nom. HANFSTAENGL v. H. R. BAINES & Co., LD.* [1895] A. C. 20
- Dickson, In re* - - - (1885) 29 Ch. D. 331  
Followed by *Chitty J. In re CLEMENTS* [1894] 1 Ch. 665
- "*Dictator*," *The* - - - [1892] P. 304  
Held applicable, approved, and followed. *THE "GEMMA" - C. A.* [1899] P. 285
- Didisheim v. London and Westminster Bank*, [1899] W. N. 107; 43 Sol. J. 642; 81 L. T. 108.  
Reversed by *C. A.* - [1900] 2 Ch. 15  
Distinguished by *Kekewich J. THIERY v. CHALMERS, GUTHRIE & Co.* [1900] 1 Ch. 80
- Diggle v. Higgs* - - - (1877) 2 Ex. D. 422  
Followed by *Phillimore J. SHOOLBRED v. ROBERTS* - - - [1899] 2 Q. B. 560;  
*C. A.* [1900] 2 Q. B. 497

- Diggles, In re* - - (1888) 39 Ch. D. 253  
Followed by C. A. *In re* HAMILTON  
[1895] 2 Ch. 370
- Dillet, In re* - - (1887) 12 App. Cas. 459  
Re-affirmed. *Ex parte* CAREW  
P. C. [1897] A. C. 719
- Dingor v. Matthews* - (1889) 88 Law Times 139  
Followed by Div. Ct. POLE v. BRIGHT  
[1892] 1 Q. B. 603
- Dinn v. Blake* - (1875) L. R. 10 C. P. 388  
Principle in, applied. *In re* PALMER &  
CO. AND HOSKEN & CO.  
C. A. [1898] 1 Q. B. 131
- Dixon, In re. Heynes v. Dixon*, [1899] W. N. 134;  
[1899] 2 Ch. 561  
Affirmed by C. A. [1900] 2 Ch. 561
- Dixon, In re. Tousey v. Sheffield*, [1898] W. N. 65 (2).  
Affirmed by C. A. [1898] 2 Ch. 443
- Dixon v. Great Western Ry. Co.*, [1896] 2 Q. B. 333.  
Affirmed by C. A. [1897] 1 Q. B. 300
- Dixon v. Morley* - - [1869] W. N. 49  
Followed by North J. PULLEN v. ISAACS  
[1895] W. N. 90
- Dixon v. Pyner* - (1886) 55 L. J. (Ch.) 566  
Followed by C. A. *In re* HARDING  
[1894] 3 Ch. 315
- Dixon v. White* - (1883) 8 App. Cas. 833  
See TWYEROULD v. CHAMBER COLLIERY  
CO. - - C. A. [1892] W. N. 27
- Dobbin's Settlement, In re*, (1887) 56 L. J. (Q.B.) 295.  
Is overruled by *Crew v. Cummings*, (1888) 21 Q. B. D. 420, *per* C. A. *In re* PARSONS  
- [1893] 2 Q. B. 122
- Dockrell v. Dougal* - (1899) 80 L. T. (N.S.) 556  
Discussed by Byrne J. HAWKER v. STOURFIELD PARK HOTEL CO.  
[1900] W. N. 51
- Dodds v. South Shields Union*, [1895] 2 Q. B. 133.  
Applicable. *In re* LONDON COUNTY COUNCIL AND CITY OF LONDON BREWERY CO.  
[1898] 1 Q. B. 387, 394  
Referred to. BRADFORD ON AVON ASSESSMENT COMMITTEE v. WHITE  
[1898] 2 Q. B. 630, 637  
Commented on. CARTWRIGHT v. SCULCOATES UNION H. L. (E.) [1900] A. C. 150
- Doe v. Biggs* (1809) 2 Taunt. 109; 11 R. R. 533  
Criticized and doubted. *In re* LASHMAR  
C. A. [1891] 1 Ch. 258  
Followed by Stirling J. *In re* ADAMS AND PERRY'S CONTRACT [1899] 1 Ch. 554
- Doe v. Bolton* - (1839) 11 Ad. & E. 188  
Followed. *In re* ADAMS AND PERRY'S CONTRACT - - [1899] 1 Ch. 554
- Doe v. Clarke* (1795) 2 H. Bl. 399; 3 R. R. 430  
Followed by Chitty J. *In re* HALLETT  
[1892] W. N. 148
- Doe v. Culliford* - (1824) 4 Dowl. & Ry. 248  
Followed by Div. Ct. WRIE v. DYER  
[1900] 1 Q. B. 23
- Doe v. Grafton* - - (1852) 18 Q. B. 496  
Commented on. KING v. EVERSFIELD  
C. A. [1897] 2 Q. B. 475
- Doe v. Green* - - (1838) 4 M. & W. 229  
Followed by North J. *In re* ATKINSON  
[1892] 3 Ch. 52
- Doe v. Manning* (1807) 9 East, 59; 9 R. R. 503  
See 56 & 57 Vict. c. 21, s. 2.
- Doe v. Marchant* - (1843) 6 Man. & G. 813  
Followed. *In re* WILCOCK  
[1898] 1 Ch. 95
- Doe v. Martin and Richards*, (1833) 1 Nev. & M., 512, 524; 4 B. & Ad. 777.  
Referred to by C. A. *In re* GRAINGER  
[1900] 2 Ch. 756, 773
- Doe v. Massey* - (1851) 17 Q. B. 373  
Distinguished and considered. THORNTON v. FRANCE C. A. [1897] 2 Q. B. 143
- Doe v. Morphett* - - (1845) 7 Q. B. 577  
Dissented from by Div. Ct. WRIE v. DYER - - [1900] 1 Q. B. 23
- Doe v. Vardill*, (1839) 2 Cl. & F. 571; 7 Ibid. 895.  
Distinguished by Stirling J. *In re* GREY - - [1892] 3 Ch. 88
- Doe v. Walker* - (1844) 12 M. & W. 591  
Followed by North J. *In re* CHAMPTION  
[1893] 1 Ch. 101
- Doidge v. Carpenter*, (1817) 6 Maule & S. 47; 18 R. R. 299.  
Distinguished by C. A. BARING v. ABINGDON  
[1892] 2 Ch. 374
- Dominion Bank v. Bank of Scotland*, (1889) 16 R. 1081.  
Affirmed by H. L. (Sc.) [1891] A. C. 592
- Dominion of Canada Freehold Estate and Timber Co.*, (1886) 55 L. T. (N.S.) 347.  
Followed by Stirling J. FOLLIT v. EDDYSTONE GRANITE QUARRIES  
[1892] 3 Ch. 75
- Dominion of Canada Plumbago Co., In re*, (1884) 27 Ch. D. 33.  
Followed by V. Williams J. *In re* LONDON METALLURGICAL CO.  
[1895] 1 Ch. 758
- Donaldson, In re* - (1884) 27 Ch. D. 544  
Not approved of. *In re* DOODY  
C. A. [1893] 1 Ch. 129
- Donaldson v. South Shields Corporation*, [1898] W. N. 170 (13).  
Affirmed by C. A. [1899] W. N. 6 (2)
- Donnell v. Bennett* - (1883) 22 Ch. D. 835  
Referred to by Wright J. GRIMSTON v. CUNINGHAM [1894] 1 Q. B. 125, 132
- Donovan, In the Goods of*, (1898) 78 L. T. (N.S.) 567.  
Referred to by Jeune P. IN THE GOODS OF DAVIS - [1899] W. N. 61
- Doody, In re* - [1893] 1 Ch. 129  
Followed by Kekewich J. WELLEY v. STILL (No. 2) [1893] W. N. 91  
Rendered obsolete as to costs of solicitor-mortgagee by 58 & 59 Vict. c. 25, s. 2.

- Dorchester Union v. Weymouth Union*, (1885) 16 Q. B. D. 31.  
Approved by C. A. ST. OLAVE'S UNION v. CANTERBURY UNION  
[1897] 1 Q. B. 682
- Dorin v. Dorin* (1875) L. R. 7 H. L. 568  
Followed by Kekewich J. *In re HARRISON* - [1894] 1 Ch. 561
- Douglas v. Bolam* - [1900] W. N. 234  
Affirmed by C. A. - [1900] 2 Ch. 749
- Douglas v. Forrest*, (1828) 4 Bing. 686; 29 R. R. 695.  
Explained and approved by P. C. MOHAMIDU MOHIDEEN HADJIAR v. PITCHHEY - [1894] A. C. 437
- Douglas v. Young* - (1879) 7 Rettie, 229  
Followed. SMITH v. PETRIE, (1892) 19 Rettie, 405 - See [1896] W. N. 95
- Dowling v. Pontypool, Caerleon, and Newport Ry. Co.*, (1874) L. R. 18 Eq. 714.  
Discussed by C. A. PROTHEROE v. TOTTENHAM AND FOREST GATE RY. CO.  
[1891] 3 Ch. 278
- Downes, In re* - (1844) 5 Beav. 425  
Referred to by C. A. *In re WELLBORNE*  
[1900] W. N. 261
- Dowce, In re* - (1881) 50 L. J. (Ch.) 285  
Followed by Stirling J. *In re HORLOCK*  
[1895] 1 Ch. 516
- Dowse v. Gorton* - (1889) 40 Ch. D. 536  
Affirmed with variations by H. L. (E.)  
[1891] A. C. 190  
Referred to by Kekewich J. *In re BACH* - [1892] W. N. 108  
Applied and followed by Kekewich J. *In re BROOKE. BROOKE v. BROOKE* (No. 2) [1894] 2 Ch. 600  
See also *In re KIDD* - [1894] W. N. 73  
Applied by Byrne J. *In re RAYBOULD*  
[1900] 1 Ch. 199, 201
- Dowson, In re* - (1888) 21 Q. B. D. 417  
Distinguished by Cave J. *In re PROCTER*  
[1891] 2 Q. B. 433
- Doyle v. Kaufmann* - (1877) 3 Q. B. D. 7, 340  
Followed by C. A. HEWETT v. BARR  
[1891] 1 Q. B. 98
- Drake v. Mitchell*, (1803) 3 East, 251; 7 R. R. 449.  
Followed by C. A. WEGG-PROSSER v. EVANS - [1895] 1 Q. B. 108
- Drake v. Trefusis* (1875) L. R. 10 Ch. 364  
Considered. VINE v. RALEIGH  
C. A. [1891] 2 Ch. 13
- Draz v. Ffooks*, [1895] W. N. 147 (5); [1896] 1 Q. B. 1.  
Affirmed by C. A. - [1896] 1 Q. B. 238
- Drew v. Drew* - (1888) 13 P. D. 97  
Followed by Jeune P. WYNNE v. WYNNE - [1898] P. 18
- Dreyfus v. Peruvian Guano Co.*, (1890) 43 Ch. D. 316.  
Varied by H. L. (E.) [1892] A. C. 166  
Referred to by C. A. MARTIN v. PRICE  
[1894] 1 Ch. 276
- Driffeld Gas Light Co., In re* [1898] 1 Ch. 451  
Referred to by Wright J. *In re MUTOSCOPE AND BIOGRAPH SYNDICATE, LD.*  
[1899] 1 Ch. 896, 898
- Driver v. Broad* - [1893] 1 Q. B. 539  
Affirmed by C. A. [1893] 1 Q. B. 744  
Referred to by Cozens-Hardy J. *WALLACE v. EVERSHED* [1899] 1 Ch. 891, 894
- Dronfield Silkstone Coal Co., In re* (No. 2) (1883) 23 Ch. D. 511.  
Not followed by V. Williams J. *In re LONDON METALLURGICAL CO.*  
[1895] 1 Ch. 758
- Duffy v. Hanson* - (1867) 16 L. T. 332  
Approved. MACAULAY v. POLLEY  
C. A. [1897] 2 Q. B. 122
- Drummond v. Sant* - (1871) L. R. 6 Q. B. 763  
Approved by C. A. WARREN v. MURRAY - [1894] 2 Q. B. 648
- Drummond's Patent, In re* (1890) 43 Ch. D. 80  
Referred to. *In re MILLER'S PATENT*  
[1894] W. N. 4  
Referred to. *In re KAY'S PATENT*  
[1894] W. N. 68  
See *In re GÖRZ & HÖGH'S PATENT*  
[1895] W. N. 105
- Dubowski & Sons v. Goldstein* [1896] 1 Q. B. 478  
Referred to by C. A. UNDERWOOD & SON, LD. v. BARKER  
[1899] 1 Ch. 300, 305
- Du Cane and Nettlefold's Contract, In re*, [1898] 2 Ch. 96.  
Approved. *In re MUNDY AND ROPER'S CONTRACT* C. A. [1899] 1 Ch. 275
- Duck v. Mayeu* - [1892] 2 Q. B. 511  
See *RICE v. REED*  
C. A. [1900] 1 Q. B. 54, 67
- Duckmanton v. Duckmanton*, (1860) 5 H. & N. 219.  
Distinguished by Romer J. *ASTEN v. ASTEN* - [1894] 3 Ch. 260
- Dudden v. Clutton Union* (1857) 1 H. & N. 627  
Followed by Byrne J. *MOSTYN v. ATHERTON* - [1899] 2 Ch. 360
- Duddy v. Gresham* - (1878) 2 L. R. Ir. 442  
Followed by Byrne J. *In re PETTIFER*  
[1900] W. N. 182
- Duke v. Davis* - [1893] 2 Q. B. 107  
Affirmed by C. A. [1893] 2 Q. B. 260
- "*Duke of Buccleuch*," *The* (1890) 15 P. D. 86  
Affirmed by H. L. (E.) (the votes for and against being equal) [1891] A. C. 310
- Duncan v. Hill* - (1873) L. R. 8 Ex. 242  
Discussed by C. A. ELLIS v. POND  
[1898] 1 Q. B. 426
- Duncombe v. Brighton Club and Norfolk Hotel Co.*, (1875) L. R. 10 Q. B. 371.  
Commented on by H. L. (E.). *LONDON, CHATHAM AND DOVER RY. CO. v. SOUTH EASTERN RY. CO.* - [1893] A. C. 429
- Dunhill v. North Eastern Ry. Co.*, [1895] W. N. 116 (13).  
Reversed by C. A. - [1896] 1 Ch. 121

- Dunn v. Devon and Exeter Constitutional Newspaper Co.* - [1895] 1 Q. B. 211, n. Distinguished by C. A. *GRAY v. BARTHOLOMEW* - [1895] 1 Q. B. 209
- Dunn v. Flood*, (1883) 25 Ch. D. 629; affirmed by C. A. (1885) 28 Ch. D. 586. Dictum in, followed by Byrne J. *In re TRUSTEES OF HOLLIS' HOSPITAL AND HAGUE'S CONTRACT* [1899] 2 Ch. 540
- Dunn v. Macdonald* - [1897] 1 Q. B. 401. Affirmed by C. A. [1897] 1 Q. B. 555
- Dunraven (Earl) v. Llewellyn*, (1850) 19 L. J. (Q.B.) 388, 392; S. C. 15 Q. B. 791. Observed upon. *EVANS v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL* C. A. [1899] 1 Ch. 241
- Durham (Earl) v. Legard* - (1865) 34 Beav. 611. Referred to by Farwell J. *RUDD v. LASCELLES* - [1900] 1 Ch. 815
- Durrant v. Branksome Urban District Council*, [1897] W. N. 43 (12). Affirmed by C. A. - [1897] 2 Ch. 291
- "*Dunstanborough*," *The* - [1892] P. 363, n. Distinguished by Div. Ct. *THE "HORNET"* [1892] P. 361
- Du Vigier v. Lee* - - (1843) 2 Harc. 326. Discussed by Byrne J. *DINGLEY v. COPPEN* - [1899] 1 Ch. 726
- Duxbury v. Sandiford*, (1898) 78 L. T. (N.S.) 230. Not followed. [This case was reversed by C. A., Record of Business, [1898] W. N. 161; (1899) 80 L. T. (N.S.) 552.] *MARDELL v. CURTIS* [1899] W. N. 93
- Dyke v. Gower* - [1892] 1 Q. B. 220. Referred to by Div. Ct. *SPIERS & POND v. BENNETT* [1896] 2 Q. B. 65, 72
- Dyke v. Stephens* - (1885) 30 Ch. D. 189. Followed by Kekewich J. *SCOTT v. CONSOLIDATED BANK* [1893] W. N. 56
- Dymond v. Croft* - (1875) 3 Ch. D. 512. See *JACKSON v. KILHAM* [1891] W. N. 171
- Dyott v. Nerile* - [1887] W. N. 35. Principle in, adopted. *HORTON v. BOSSON* C. A. [1899] W. N. 38 (4)
- Eager, In re* - (1882) 22 Ch. D. 86. Referred to by North J. *In re CLIFF* [1895] 2 Ch. 21
- Earl, In the Goods of* (1866) L. R. 1 P. & D. 450. See *IN THE GOODS OF BRISEMAN* [1895] W. N. 32
- Earl v. Stocker* - (1691) 2 Vern. 250. Considered by Kekewich J. *In re WHITELEY AND ROBERTS' ARBITRATION* [1891] 1 Ch. 558
- Earle v. Kingscote* - [1900] 1 Ch. 203. Affirmed by C. A. [1900] 2 Ch. 585
- Earnshaw-Wall, In re* - [1894] 3 Ch. 156. Approved. *In re SANDER'S SETTLEMENT* C. A. [1896] 1 Ch. 480
- Eastern and Midlands Ry. Co., In re*, (1890) 45 Ch. D. 367. Followed by Farwell J. *In re WREXHAM, MOLD AND CONNAR'S QUAY RY. CO.* [1900] 2 Ch. 436
- Eastman's Photographic Materials Co.'s Trade-mark*, [1896] W. N. 158 (8). Affirmed by C. A. [1897] W. N. 48 (6)
- Eastman's Settled Estates, In re*, [1898] W. N. 170 (15). Followed by North J. *In re CARNE'S SETTLED ESTATES* - [1899] 1 Ch. 324
- Ebbetts v. Conquest* - [1895] 2 Ch. 377. Affirmed by H. L. (E.) *sub nom. CONQUEST v. EBBETTS* - [1896] A. C. 490
- Ebbw Vale Steel, Iron and Coal Co., In re*, (1877) 4 Ch. D. 827. Commented on by H. L. (E.) *BRITISH AND AMERICAN TRUSTEE AND FINANCE CORPORATION v. COUPER* [1894] A. C. 399, 412
- Ebsworth and Tidy's Contract, In re*, (1889) 42 Ch. D. 23. Considered by North J. *In re STAMFORD, SPALDING AND BOSTON BANKING CO. AND KNIGHT'S CONTRACT* [1900] 1 Ch. 287
- Ecclesiastical Commissioners v. North Eastern Ry. Co.*, (1877) 4 Ch. D. 845. Disapproved. *BULLI COAL MINING CO. v. OSBORNE* - [1899] A. C. 351
- Ecclesiastical Commissioners v. Pinney*, [1899] 1 Ch. 99; [1899] 2 Ch. 729. Affirmed by C. A. [1900] 2 Ch. 736
- Ecclesiastical Commissioners v. Rowe*, (1878) 4 Q. B. D. 63; (1880) 5 App. Cas. 736. Explained by Chitty J. *ECCELESTIASTICAL COMMRS. v. TREEMER* [1893] 1 Ch. 166
- Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract, In re*, [1895] 1 Ch. 702. Followed by Stirling J. *ATT.-GEN. v. LONDON PAROCHIAL CHARITIES (TRUSTEES OF)* [1896] 1 Ch. 541
- Eckersley v. Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667. Followed by Cozens-Hardy J. *BRIGHT v. RIVER PLATE CONSTRUCTION CO.* [1900] 2 Ch. 835, 838
- Ecroyd v. Coulthard* - [1897] 2 Ch. 554. Affirmed by C. A. - [1898] 2 Ch. 358
- Eddystone Marine Insurance Co., In re*, [1893] 3 Ch. 9. Referred to by V. Williams J. *In re THEATRICAL TRUST, LD.* [1895] 1 Ch. 771
- "*Eden*," *The* - [1892] P. 67. Approved by C. A. *THE "DELANO"* [1895] P. 40
- Edgell v. Wilson* - [1893] W. N. 145. Referred to. *IND, COOPE & CO. v. MEE* [1895] W. N. 8
- "*Edith*," *The* - (1883) 11 L. R. Ir. 270. Disapproved of by H. L. (E.). *ARROW SHIPPING CO. v. TYNE IMPROVEMENT COMMRS.* [1894] A. C. 508, 517, 521
- Edgware Highway Board v. Colne Valley Water Co.*, (1877) 46 L. J. (Ch.) 889. Approved by C. A. *EAST MOLESEY LOCAL BOARD v. LAMBETH WATERWORKS CO.* - [1892] 3 Ch. 289



- Edinburgh Northern Tramways Co. v. Mann*, (1891) 18 R. 1140.  
Affirmed by H. L. (Sc.) [1893] A. C. 69
- Edinburgh Street Tramways Co. v. Lord Provost, &c., of Edinburgh*, (1894) 21 R. 688.  
Affirmed by H. L. (Sc.) [1894] A. C. 456
- Edinburgh United Breweries v. Molleson (Nicholson's Trustee)*, (1893) 20 R. 581.  
Affirmed by H. L. (Sc.) [1894] A. C. 96
- Edison Telephone Co. v. India Rubber Co.*, (1881) 17 Ch. D. 137.  
See MORRIS, WILSON & Co. v. COVENTRY MACHINIST CO. [1891] 3 Ch. 418
- Edmonds, Ex parte* - (1882) 30 W. R. 432  
Approved by C. A. *In re MILLER* [1893] 1 Q. B. 327
- Edmonds, Ex parte* - (1882) 51 L. J. (Ch.) 406  
See 59 & 60 Vict. c. 25, s. 35 (b).
- Edmunds v. Waugh* - (1866) L. R. 1 Eq. 418  
Followed. DINGLE v. COPPEN. COPPEN v. DINGLE - [1899] 1 Ch. 726
- "Edward Oliver," The*, (1867) L. R. 1 A. & E. 379.  
Distinguished. THE "CHIOGGIA" [1898] P. 1
- Edwardes v. Hughes* - (1890) 18 R. 319  
Reversed by H. L. (Sc.) [1892] A. C. 583
- Edwards, In re* - (1874) L. R. 9 Ch. 97  
Followed by Kekewich J. *In re COGHLAN* - [1894] 3 Ch. 76
- Edwards v. Carter* - [1893] A. C. 360  
Referred to by C. A. VIDITZ v. O'HAGAN C. A. [1900] 2 Ch. 87, 96
- Edwards v. Dennis* - (1885) 30 Ch. D. 454  
Applied by Chitty J. HARGREAVE v. FREEMAN [1891] 3 Ch. 39
- Edwards v. Hughes* - (1890) 18 R. 319  
Reversed by H. L. (Sc.). HUGHES v. EDWARDS - [1892] A. C. 583  
Referred to by H. L. (Sc.). MACDONALD v. SCOTT [1893] A. C. 642, 663
- Edwards v. Midland Ry. Co.*, (1880) 6 Q. B. D. 287.  
Followed. CORNFORD v. CARLTON BANK, LD. - [1899] 1 Q. B. 392;  
C. A. [1900] 1 Q. B. 22
- Edwards v. Steel, Young & Co.*, [1897] 1 Q. B. 712.  
Affirmed by C. A. [1897] 2 Q. B. 327  
Dicta in, followed. PURVES v. STRAITS OF DOVER STEAMSHIP CO. C. A. [1899] 2 Q. B. 217
- Edwards v. Waugh* - (1866) L. R. 1 Eq. 418  
Followed. DINGLE v. COPPEN [1899] 1 Ch. 726
- Eglinton, Earl of v. Norman*, (1877) 46 L. J. (Ex.) 557; 3 Asp. M. L. C. (N.S.) 471.  
Overruled by H. L. (E.). ARROW SHIPPING CO. v. TYNE IMPROVEMENT COMMS. THE "CRYSTAL" [1894] A. C. 508
- Ehrman v. Bartholomew* - [1898] 1 Ch. 671  
Followed. ROBINSON & Co., LD. v. HEUER - C. A. [1898] 2 Ch. 451
- "Eider," The* - C. A. [1893] P. 119  
Approved by H. L. (E.). COMBER v. LEYLAND - [1898] A. C. 524, 533
- Eldridge v. Stacey* - (1863) 15 C. B. (N.S.) 458  
Approved by C. A. LONG v. CLARKE [1894] 1 Q. B. 119
- Elias v. Snowden Slate Quarries Co.*, (1879) 4 App. Cas. 454, 466.  
Referred to by Kekewich J. *In re MAYNARD'S SETTLED ESTATE* [1899] 2 Ch. 347
- Elliott v. Elliott's Trustees* (1894) 21 R. 955  
Affirmed by H. L. (Sc.) *sub nom.* BIRKETT v. FURDOM [1895] A. C. 371
- Elkins v. Onslow* - (1869) 19 L. T. (N.S.) 528  
Distinguished by Div. Ct. MUNRO v. BALFOUR - [1893] 1 Q. B. 113
- Ellard v. Lord Llandaff*, (1810) 1 Ball & B. 241; 12 R. R. 22.  
Considered by Chitty J. TURNER v. GREEN - [1895] 2 Ch. 205
- Elliott v. Dearsley* - (1880) 16 Ch. D. 322  
Followed by North J. *In re BOARDS* [1895] 1 Ch. 499
- Elliott v. Elliott* - (1841) 12 Sim. 276  
Referred to by Kekewich J. WILLERTON v. STOCKS [1892] W. N. 29  
Discussed by Stirling J. *In re STEVENS* [1896] W. N. 24 (12)
- Ellis, Ex parte* - (1876) 2 Ch. D. 796  
Approved by P. C. ADMINISTRATOR-GENERAL OF JAMAICA v. LASCELLES, DE MERCADO & Co. *In re REES' BANKRUPTCY* [1894] A. C. 136
- Ellis v. Bedford (Duke of)* [1898] W. N. 169 (11)  
Reversed by C. A. - [1899] 1 Ch. 494  
Affirmed by H. L. (E.) *sub nom.* BEDFORD (DUKE OF) v. ELLIS [1900] W. N. 268;  
[1901] A. C. 1
- Ellis v. Camberwell Assessment Committee*, [1900] 1 Q. B. 68.  
Affirmed by H. L. (E.) [1900] A. C. 510
- Ellis v. Ellis* - [1896] P. 251  
Approved of by Div. Ct. MEDWAY v. MEDWAY - [1900] P. 141, 143
- Ellis v. Marshall & Son* (1895) 64 L. J. (Q.B.) 757; 11 Times L. R. 522.  
Followed by Kekewich J. BASCHET v. LONDON ILLUSTRATED STANDARD CO. [1900] 1 Ch. 73  
Referred to by Kekewich J. HILDESHEIMER v. FAUKNERS, LD. [1900] W. N. 170
- Elmslie v. Boursier* - (1869) L. R. 9 Eq. 217  
Followed by Buckley J. SACCHARIN CORPORATION, LD. v. ANGLO-CONTINENTAL CHEMICAL WORKS, LD. [1900] W. N. 95
- Elmslie v. North Eastern Ry. Co.*, [1895] W. N. 161 (9).  
Affirmed by C. A. [1896] 1 Ch. 418  
Referred to by C. A. KIRBY v. HARROGATE SCHOOL BOARD [1896] 1 Ch. 437, 452

- Elphinstone v. Purchas*, dictum in, (1870) L. R. 3 A. & E. 91.  
Disapproved of. *In re ROBINSON*  
C. A. [1897] 1 Ch. 85
- Elphinstone (Lord) v. Monkland Iron and Coal Co.*, (1886) 11 App. Cas. 332.  
See Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50), s. 6.
- Else v. Else* - - (1872) L. R. 13 Eq. 196  
Referred to by North J. *In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* - - [1895] 6 Ch. 190
- Else v. Smith*, (1822) 1 Dowl. & Ry. 97; 24 R. R. 639.  
Followed by C. A. JONES v. GERMAN [1897] 1 Q. B. 374, 377
- Elser and McArthur's Case* [1895] 2 Ch. 759  
Followed. TRANSVAAL EXPLORING CO. v. ALBION (TRANSVAAL) GOLD MINES [1899] 2 Ch. 370
- Elve v. Boyton* - - [1891] 1 Ch. 501  
Distinguished. *In re SMITH* [1896] 2 Ch. 590
- Emanuel and Simmonds*, *In re*, (1886) 33 Ch. D. 40.  
Followed by C. A. *In re SAVERY AND STEVENS* [1892] W. N. 33  
Approved by H. L. (E.). SAVERY v. ENFIELD LOCAL BOARD [1893] A. C. 218  
Followed by Chitty J. *In re NEGUS* [1895] 1 Ch. 73, 77
- Emden v. Carte* - - (1881) 19 Ch. D. 311  
Distinguished by Div. Ct. WESTCOTT v. BEVAN [1891] 1 Q. B. 774, 777
- "*Emerald*," *The*. *The "Greta Holme"*, C. A. [1896] P. 192.  
Reversed by H. L. (E.) *sub nom.* OWNERS OF NO. 7 STEAM SAND PUMP DREDGER v. OWNERS OF SS. "GRETA HOLME." *THE "GRETA HOLME"* [1897] A. C. 596  
Applicable. *THE "MEDIANA"* [1900] A. C. 113
- Emma Silver Mining Co. v. Grant*, (1879) 11 Ch. D. 918.  
Followed by Wright J. *In re SALE HOTEL AND BOTANICAL GARDENS CO.* [1897] W. N. 174 (5);  
But this case was reversed by C. A. [1898] W. N. 40 (2)
- Emmens v. Pottle* - (1885) 16 Q. B. D. 354  
Discussed by C. A. VIZETELLY v. MCDIE'S SELECT LIBRARY, LD. [1900] 2 Q. B. 170
- Emmins v. Bradford* - (1880) 13 Ch. D. 493  
Not followed by C. A. STODDART v. SAVILLE [1894] 1 Ch. 480
- "*Emmy Haase*," *The* - (1884) 9 P. D. 81  
Approved. *THE "NGAPOOTA"* P. C. [1897] A. C. 391
- Empire Mining Co., In re* (1890) 44 Ch. D. 402  
Approved by North J. *In re ALABAMA, NEW ORLEANS, TEXAS AND PACIFIC JUNCTION RY. CO.* C. A. [1891] 1 Ch. 213
- Emuss v. Smith* - (1848) 2 De G. & Sm. 722  
Explained by Chitty J. *In re ISAACS* [1894] 3 Ch. 506  
Followed by Stirling J. *In re PYLE* [1895] 1 Ch. 724
- England, In re. Steward v. England*, [1895] 2 Ch. 100.  
Affirmed by C. A. - [1895] 2 Ch. 820  
Applied by North J. *In re ALLEN* [1898] 2 Ch. 499
- English Joint Stock Bank, In re*, (1867) L. R. 3 Eq. 203.  
Followed by Kekewich J. *In re WEST-MORELAND GREEN AND BLUE SLATE CO.* [1892] W. N. 2
- English and Scottish Mercantile Investment Trust v. Brunton*, [1892] 2 Q. B. 1.  
Affirmed by C. A. [1892] 2 Q. B. 700
- English, Scottish, and Australasian Chartered Bank, In re*, [1893] W. N. 120.  
Referred to. *In re QUEENSLAND NATIONAL BANK* [1893] W. N. 128
- "*Englishman*," *The*, and *The "Australia"*, (No. 1) [1894] P. 239.  
See *THE "ENGLISHMAN" AND THE "AUSTRALIA"* (No. 2) - [1895] P. 212  
Distinguished by C. A. *THE "MORGENGRY" AND THE "BLACKCOCK"* [1900] P. 1
- Enniskillen Guardians v. Hilliard*, (1884) 14 L. R. Ir. 214.  
Approved of by Div. Ct. BUCKLER v. WILSON - [1896] 1 Q. B. 83
- "*Envoy*," *The* - - (1888) Not reported  
Followed by C. A. *THE "GLENGYLE"* C. A. [1898] P. 97; [1898] A. C. 519
- Equitable Life Assurance Society of United States v. Bishop* - [1899] 2 Q. B. 439  
Affirmed by C. A. [1900] 1 Q. B. 177
- Erlanger v. New Sombbrero Phosphate Co.*, (1878) 3 App. Cas. 1218.  
Discussed. LAGUNAS NITRATE CO. v. LAGUNAS SYNDICATE C. A. [1899] 2 Ch. 592
- Ernest v. Loma Gold Mines, Ltd.*, [1896] 2 Ch. 572.  
Affirmed by C. A. - [1897] 1 Ch. 1
- Esdaile v. Assessment Committee of City of London Union*, (1887) 19 Q. B. D. 431.  
See Tithe Rent-charge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1.
- Esdaile v. Payne* - (1889) 40 Ch. D. 520  
Affirmed by H. L. (E.) *sub nom.* LANE v. ESDAILE - [1891] A. C. 210
- Etherley Grange Coal Co. v. Auckland District Highway Board*, C. A. [1894] 1 Q. B. 37  
See Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 1 (3).
- Etoile, In re Trade-mark of la Société Anonyme des Verreries de V* (No. 2), [1894] 1 Ch. 61.  
Affirmed by C. A. - [1894] 2 Ch. 26
- European Bank, In re* (1871) 19 W. R. 268  
Not followed by V. Williams J. *In re HAMPSHIRE LAND CO.* [1894] 2 Ch. 632

- European Life Assurance Co., In re*, (1870) L. R. 10 Eq. 403.  
Considered by North J. *In re* CRYSTAL REEF GOLD MINING CO.  
[1892] 1 Ch. 408
- Evans, In re* - (1873) 42 L. J. (Ch.) 357  
Distinguished by North J. GEDYE v. COMMRS. OF WORKS  
C. A. [1891] 2 Ch. 630
- Evans, In re. Evans v. Noton*, [1893] 1 Ch. 252, 259.  
Followed by Cozens-Hardy J. D. v. A. & Co. [1900] 1 Ch. 484, 488
- Evans v. Conway Justices* - [1900] 2 Q. B. 5  
Reversed by C. A. [1900] 2 Q. B. 224
- Evans v. Evans* - (1790) 1 Hagg. Cons. Rep. 35  
Referred to by C. A. RUSSELL v. RUSSELL - [1895] P. 315;  
[1898] A. C. 307
- Evans v. Harlow* - - (1844) 5 Q. B. 624  
Approved by H. L. (E.). WHITE v. MELLIN - - [1895] A. C. 154
- Evans v. Hoare* - - [1892] 1 Q. B. 593  
Distinguished by Buckley J. HUCKLESBY v. HOOK - [1900] W. N. 45
- Evans v. Prothero* - (1852) 1 D. M. & G. 572  
Distinguished by Kekewich J. ASHLING v. BOON [1891] 1 Ch. 568
- Everard v. Kendall* - (1870) L. R. 5 C. P. 428  
Approved by C. A. REG. v. JUDGE OF THE CITY OF LONDON COURT (No. 2) [1892] 1 Q. B. 273
- Evers v. Challis* - (1859) 7 H. L. C. 531  
Considered by C. A. *In re* BENICE [1891] 3 Ch. 242
- Exmouth Docks Co., In re*, (1873) L. R. 17 Eq. 181.  
Not followed by Stirling J. *In re* BOROUGH OF PORTSMOUTH (KINGSTON, FRATTON, AND SOUTHEA) TRAMWAY [1892] 2 Ch. 362
- Eyre v. Cox* - - (1876) 24 W. R. 317  
Explained by North J. *In re* TOTTENHAM - - [1896] 1 Ch. 628
- Eyre v. Saunders* - (1858) 4 Jur. (N.S.) 830  
Referred to. *In re* HODGE'S SETTLED ESTATES - [1895] W. N. 69
- Eyre v. Wynn-Mackenzie* - [1894] 1 Ch. 218  
*See now* Mortgages Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 2.
- Eyre v. Wynn-Mackenzie* - [1896] 1 Ch. 135  
Applied by C. A. DAY v. KELLAND [1900] 2 Ch. 745, 748
- F. v. P.* - - (1896) 75 L. T. (N.S.) 192  
Followed by G. Barnes J. B. v. B. [1900] W. N. 130; [1901] P. 39
- Fairfield v. Morgan* (1805) 2 B. & P. (N.R.) 38  
Rule in, applied by Chitty J. WRIGHT v. MARSON [1895] W. N. 148 (11)
- Fairtile v. Gilbert*, (1787) 2 T. R. 169; 1 R. R. 455.  
Referred to by C. A. ST. MARTY, ISLINGTON (VESTRY OF) v. HORNSEY URBAN COUNCIL - - [1900] 1 Ch. 695
- Faithfull v. Ewen* - - (1878) 7 Ch. D. 495  
Followed by Div. Ct. COLE v. ELEY [1894] 2 Q. B. 180;  
C. A. [1894] 2 Q. B. 350
- Falcke v. Scottish Imperial Insurance Co.*, (1887) 34 Ch. D. 234.  
Considered by Kekewich J. SECURITIES PROPERTIES INVESTMENT CORPORATION v. BRIGHTON ALHAMBRA, LD. [1893] W. N. 15
- Fane, Ex parte* - (1848) 16 Sim. 406  
Has no longer any operation. *In re* ATKINSON - - [1898] 1 Ch. 637;  
C. A. [1899] 2 Ch. 1
- "*Fanny M. Carvill*," *The*, (1820) 13 App. Cas. 455, n.  
Approved by H. L. (E.). EASTERN STEAMSHIP CO. v. SMITH. *THE* "DUKE OF BUCCLEUCH" [1891] A. C. 310
- Farbenfabriken Application, In re*, [1894] 1 Ch. 645.  
Distinguished by Romer J. *In re* DENSHAM'S TRADE-MARK C. A. [1895] 2 Ch. 176
- Overruled. EASTMAN PHOTOGRAPHIC MATERIALS CO. v. COMPTROLLER-GENERAL OF PATENTS, DESIGNS, AND TRADE-MARKS H. L. (E.) [1898] A. C. 571
- Farlow v. Stevenson* - [1899] W. N. 30 (2)  
Affirmed by C. A. - [1900] 1 Ch. 128
- Farnham, In re* - [1895] 2 Ch. 799  
Referred to by Stirling J. FARNHAM v. MILWARD - [1895] 2 Ch. 730, 735  
Explained by C. A. *In re* FARNHAM (No. 2) - [1896] 1 Ch. 836;  
*In re* CLARKE [1898] 1 Ch. 336, 340  
Referred to by Wright J. [1899] 2 Q. B. 57, 60
- Farquhar v. Morris* - (1797) 7 Term Rep. 124  
Discussed. *In re* DIXON [1899] 2 Ch. 561;  
C. A. [1900] 2 Ch. 561
- Farrar v. Farrar's, Ltd.* - (1888) 40 Ch. D. 395  
Explained by C. A. KENNEDY v. DE TRAFFORD - [1896] 1 Ch. 762;  
H. L. (E.) [1897] A. C. 180
- Farrer v. Lacy, Hartland & Co.*, (1885) 31 Ch. D. 42, 51.  
Followed. EARL POULETT v. VISCOUNT HILL - C. A. [1893] 1 Ch. 277
- Faure Electric Accumulator Co., In re*, (1888) 40 Ch. D. 141.  
Distinguished by C. A. METROPOLITAN COAL CONSUMERS' ASSOCIATION v. SCRIMGEOUR - [1895] 2 Q. B. 604
- Faversham (Mayor of) v. Ryder*, (1854) 5 De G. M. & G. 350.  
Referred to. *In re* PIERCY C. A. [1898] 1 Ch. 565
- Fechter v. Montgomery* (1863) 33 Beav. 22  
Distinguished by Div. Ct. GRIMSTON v. CUNNINGHAM - [1894] 1 Q. B. 125
- Federal Bank of Australia, In re*, [1893] W. N. 46.  
Affirmed by C. A. - [1893] W. N. 77

- Fellows v. Owners of the "Lord Stanley,"* [1893] 1 Q. B. 98.  
Overruled by 56 & 57 Vict. c. 37, ss. 6, 7, 8.
- Fendall v. O'Connell* - (1885) 29 Ch. D. 899  
Followed by Kekewich J. *SCOTT v. CONSOLIDATED BANK* [1893] W. N. 56
- Fenwick v. East London Ry. Co.,* (1875) L. R. 20 Eq. 544.  
Distinguished by V. Williams J. *HARRISON v. SOUTHWARK AND VAUXHALL WATER CO.* [1891] 2 Ch. 409
- Ferguson v. North British Ry. Co.,* (1891) 18 R. 855.  
Reversed by H. L. (Sc.) [1893] W. N. 166
- Ferguson v. Paterson* - (1898) 25 R. 697  
Reversed by H. L. (Sc.) *sub nom. WYMAN OR FERGUSON (PAUPER) v. PATERSON* - [1900] A. C. 271
- Ferrand v. Hallas Land and Building Co.,* [1893] 2 Q. B. 135.  
Distinguished by Romer J. *MINEHEAD LOCAL BOARD v. LUTTRELL* [1894] 2 Ch. 178  
But followed by Romer J. *VOWLES v. COLMER* [1895] W. N. 42  
Followed and applied. *CROYSDALE v. SUNBURY-ON-THAMES URBAN COUNCIL* [1898] 2 Ch. 615
- Field, In re* - (1885) 29 Ch. D. 608  
Followed by Chitty J. *In re HORN & FRANCIS* - [1896] 2 Ch. 797
- Field v. Field* - - - [1894] 1 Ch. 425  
Distinguished by Cozens-Hardy J. *In re DE POTHONIER* [1900] 2 Ch. 529
- Field Steamship Co. v. Burr* [1898] 1 Q. B. 821  
Affirmed by C. A. [1899] 1 Q. B. 579
- Fielding v. Morley Corporation* [1899] 1 Ch. 1  
Affirmed by H. L. (E.) *sub nom. FIELDEN v. MORLEY CORPORATION* [1900] A. C. 133
- Fife (Duke of) v. Great North of Scotland Ry. Co.,* (1897) 35 Sco. L. R. 78.  
Reversed by H. L. (Sc.) *sub nom. GREAT NORTH OF SCOTLAND RY. CO. v. DUKE OF FIFE* - - - [1900] W. N. 62
- Figg v. Moore* - - - [1894] 2 Q. B. 690  
Approved by C. A. *TRUSTEE OF JOHN BURNS-BURNS v. BROWN* [1895] 1 Q. B. 324
- Fillingham v. Wood* - - - [1891] 1 Ch. 51  
See 57 & 58 Vict. c. cccxiii., s. 5 (32).
- Finch v. Squire* (1804) 10 Ves. 41; 7 R. R. 337  
Questioned by C. A. *In re PICKARD* [1894] 3 Ch. 704
- Finlay v. Seaton* - (1808) 1 Taunt. 210  
Discussed by Romer J. *NORTH METROPOLITAN TRAMWAYS CO. v. LONDON COUNTY COUNCIL* [1898] 2 Ch. 145
- Finney v. Hinde* - - (1879) 4 Q. B. D. 102  
Commented on by C. A. *STEWART v. RHODES* - - [1900] 1 Ch. 386
- Finska Angfartygs Aktiebolaget v. Brown, Toogood & Co.,* [1891] W. N. 87.  
Reversed by C. A. [1891] W. N. 116
- Firbank's Executors v. Humphreys,* (1887) 18 Q. B. D. 54.  
Distinguished by Romer J. *ELKINGTON & CO. v. HURTER* - [1892] 2 Ch. 452
- Fish, In re. Bennett v. Bennett,* [1893] 2 Ch. 413  
Referred to. *In re HICKS* [1893] W. N. 138  
Distinguished by Buckley J. *CLARKSON v. ROBINSON* - [1900] 2 Ch. 722, 725
- Fish v. Kempton* - - (1849) 7 C. B. 687  
Applied. *MONTAGU v. FORWOOD* - C. A. [1893] 2 Q. B. 350
- Fishburn v. Hollingshead* - [1891] 2 Ch. 371  
Not followed by Charles J. *HANFSTAENGL ART PUBLISHING CO. v. HOLLOWAY* [1893] 2 Q. B. 1  
Disapproved by C. A. *HANFSTAENGL v. AMERICAN TOBACCO CO.* [1895] 1 Q. B. 347
- Fisher, In re* - - - [1894] 1 Ch. 53  
Affirmed by C. A. [1894] 1 Ch. 450
- Fisher, In re* - - C. A. [1894] 1 Ch. 450  
Referred to by C. A. *In re WREXHAM, MOLD AND CONNAR'S QUAY RY. CO.* [1900] 1 Ch. 261, 269
- Fisher, Ex parte* (1872) L. R. 7 Ch. 636  
Distinguished by P. C. *MORRIS v. MORRIS* - [1895] A. C. 625, 630
- Fisk v. Att.-Gen.* - (1867) L. R. 4 Eq. 521  
Followed by C. A. *In re RYMER* [1895] 1 Ch. 19
- Fitz v. Iles* - - - [1893] 1 Ch. 77  
Commented on by Kekewich J. *ASHBY v. WILSON* - - [1900] 1 Ch. 66
- Fitzgerald v. Dressler* (1859) 17 C. B. (N.S.) 374  
Applied by C. A. *SUTTON v. GREY* [1894] 1 Q. B. 285
- Fitzgerald v. Fitzgerald,* (1869) L. R. 1 P. & D. 691.  
Explained by Jeune J. *MAHONEY v. M'CARTHY* - - [1892] P. 21  
Explained and distinguished. *BRADSHAW v. BRADSHAW* - [1897] P. 24
- Flatau, In re* - - - [1893] 2 Q. B. 219  
Referred to by C. A. *In re IZOD* [1898] 1 Q. B. 241, 248
- Fleet, Ex parte* - (1850) 4 De G. & Sm. 52  
Followed. *In re ABERDEIN* [1896] W. N. 154 (5)
- Fleet v. Murton* - (1872) L. R. 7 Q. B. 126  
Applied by C. A. *SUTTON v. GREY* [1894] 1 Q. B. 285
- Fleetwood v. Hull* - (1889) 23 Q. B. D. 35  
Referred to. *WHITE v. SOUTHDEN HOTEL CO.* - - C. A. [1897] 1 Ch. 767
- Fletcher, In re* - - (1891) 9 Morrell, 8  
Followed by Wright J. *In re BLACKBURN & CO.* - - [1899] 2 Ch. 725
- Fletcher v. Nokes* - - [1897] 1 Ch. 271  
Followed by Kekewich J. *In re SERLE* [1898] 1 Ch. 653

- Fletcher v. Rylands*, (1866) L. R. 1 Ex. 265; (1868) 3 H. L. 330.  
Followed and extended by *Kekewich J. NATIONAL TELEPHONE CO. v. BAKER* [1893] 2 Ch. 186  
Distinguished by Div. Ct. *PONTING v. NOAKES* [1894] 2 Q. B. 281
- Flitcroft's Case* - (1882) 21 Ch. D. 519  
Distinguished. *In re NATIONAL BANK OF WALES, LD.* C. A. [1899] 2 Ch. 629, 725
- Floating Dock Co. of St. Thomas, Ltd., In re*, [1895] 1 Ch. 691.  
Applied by *Stirling J. In re LONDON AND NEW YORK INVESTMENT CORPORATION* [1895] 2 Ch. 860
- Flood v. Jackson* - C. A. [1895] 2 Q. B. 21  
Reversed by H. L. (E.) *sub nom. ALLEN v. FLOOD* [1898] A. C. 1
- Flower v. Low Leyton Local Board*, (1877) 5 Ch. D. 347.  
Superseded by 56 & 57 Vict. c. 61, s. 1.
- Flower v. Sadler* - (1882) 10 Q. B. D. 572  
Explained and distinguished by V. Williams J. *JONES v. MERIONETHSHIRE PERMANENT BENEFIT BUILDING SOCIETY* [1891] 2 Ch. 587
- Forbes v. Aspinall*, (1811) 13 East, 323; 12 R. R. 352.  
Distinguished by G. Barnes J. *THE "MAIN"* [1894] P. 320, 324
- Ford, Ex parte. In re Caughey*, (1876) 1 Ch. D. 521.  
Followed by C. A. *In re CLARK* [1894] 2 Q. B. 393  
Referred to by Byrne J. *HUNT v. FRIPP* [1898] 1 Ch. 675, 680
- Ford v. Barnes*, (1886) 16 Q. B. D. 254; 55 L. J. (Q.B.) 15; 53 L. T. 670; 34 W. R. 75.  
Overruled by 54 & 55 Vict. c. 11, s. 2 (qua four months' absence only).
- Ford v. Hart* - (1873) L. R. 9 C. P. 273  
Discussed. *DONNELLY v. GRAHAM C. A. (Ir.)* [1897] W. N. 103
- Ford v. Hoar* - (1884) 14 Q. B. D. 507  
Observed upon. *MELLAUGH v. CHAMBERS*, (1886) 20 L. R. Ir. 286.  
C. A. (Ir.) [1898] W. N. 119
- Ford's Hotel Co. v. Bartlett* [1895] 1 Q. B. 850  
Affirmed by H. L. (E.) [1896] A. C. 1
- Fore Street Warehouse Co., In re*, [1888] W. N. 155.  
Followed. *In re WATSON, WALKER AND QUICKFALL, LD.* [1898] W. N. 69 (7)
- Foreign, American and General Investments Trust v. Sloper*, [1893] 2 Ch. 96.  
Reversed by C. A. [1894] 2 Ch. 716
- Foreign and Colonial Government Trust Co., In re*, [1891] 2 Ch. 395.  
Followed by *Kekewich J. In re ALLIANCE MARINE ASSURANCE CO.* [1892] 1 Ch. 300
- Forman v. Dawes* - (1843) 11 M. & W. 730  
Discussed by Romer J. *NORTH METROPOLITAN TRAMWAYS CO. v. LONDON COUNTY COUNCIL* [1898] 2 Ch. 145
- Forster v. Clowser* - [1897] 2 Q. B. 362  
Distinguished. *STERN v. TEGNER C. A.* [1898] 1 Q. B. 37, 42  
Rule in, followed. *WEST v. DIPROSE* [1900] 1 Ch. 337, 340
- Forster v. Hale* (1800) 5 Ves. 308; 4 R. R. 128  
Followed by *Kekewich J. In re DE NICOLS* - [1900] 2 Ch. 410
- Forsyth v. Bristowe* - (1853) 8 Ex. 716  
Followed by *Chitty J. DIBB v. WALKER* [1893] 2 Ch. 429
- Forsyth v. Forsyth* - [1891] P. 363  
Considered by G. Barnes J. *HARTOPP v. HARTOPP* - [1899] P. 65
- Fortescue v. St. Matthew, Bethnal Green (Vestry of)*, [1891] 2 Q. B. 170.  
Referred to by Div. Ct. *KRUSE v. JOHNSON* - [1898] 2 Q. B. 91, 102
- Fortune v. Hanson* - [1896] 1 Q. B. 202  
Explained by Div. Ct. *BRIDGE v. HOWARD* - [1897] 1 Q. B. 80
- Foskett v. Kaufman* - (1886) 16 Q. B. D. 279  
See *MANN v. JOHNSON* [1893] W. N. 196  
Followed by C. A. *HURCUM v. HIL-LEARY* - [1894] 1 Q. B. 579
- Foster, In re. Lloyd v. Carr*, (1890) 45 Ch. D. 629.  
Distinguished by *Stirling J. In re BARKER* [1897] W. N. 154 (14)  
Not followed by North J. *LYON v. MITCHELL* - [1899] W. N. 27 (6)
- Foster v. Foster* - (1875) 1 Ch. D. 588  
See *HOWARD v. JALLAND* [1891] W. N. 210  
Approved of by Byrne J. *In re NORTON* [1900] 1 Ch. 101
- Foster v. London, Chatham and Dover Ry. Co.*, [1895] 1 Q. B. 711.  
Referred to. *In re GONTY and MANCHESTER, SHEFFIELD and LINCOLNSHIRE RY. CO. C. A.* [1896] 2 Q. B. 439, 448
- Foster (John) & Sons, Ltd. v. Inland Revenue Commrs.*, [1894] 1 Q. B. 516.  
Followed by C. A. *COATS v. INLAND REVENUE COMMRS.* [1897] 2 Q. B. 423, 425  
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- Fothergill v. Rowland* (1873) L. R. 17 Eq. 132  
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- Foulkes v. Quartz Hill Consolidated Gold Mining Co.*, (1884) Cababé & Ellis, 156.  
Referred to. *In re (T. E.) BRINSMEAD & SONS (TOMLIN'S CASE)* [1897] W. N. 162 (3)
- Fowler v. Broad's Patent Night Light Co.*, [1893] 1 Ch. 724.  
See *HARRISON v. ST. ETIENNE BREWERY CO.* - [1893] W. N. 108
- Fox, Ex parte* - (1871) L. R. 6 Ch. 176  
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- Fox, In re* - (1886) 33 Ch. D. 37  
Explained. *In re RAY* [1896] 1 Ch. 468
- Fox v. Fox* - (1875) L. R. 19 Eq. 286  
Dissented from by North J. *In re WINTLE*  
[1896] 2 Ch. 711  
Approved of by C. A. *In re TURNEY*  
[1899] 2 Ch. 739
- Fox v. Star Newspaper Co.*, [1898] W. N. 26 (4);  
[1898] 1 Q. B. 636.  
Affirmed by H. L. (E.) [1900] A. C. 19
- Foxwell v. Van Grutten* - [1896] W. N. 158 (6)  
Principle affirmed, but order reversed  
by C. A. on the facts [1897] 1 Ch. 64  
Considered by C. A. *JOHN v. JOHN*  
[1898] 2 Ch. 573
- Fozard, In the Goods of* (1863) 3 Sw. & Tr. 173  
Followed. *IN THE GOODS OF OAKLEY*  
[1896] P. 7
- France v. Clark*, (1883) 22 Ch. D. 830; (1884)  
26 Ch. D. 257.  
Followed by Kekewich J. *FOX v.*  
*MARTIN* - - [1895] W. N. 36
- Frances Handford & Co., Ex parte*, [1899] 1 Q. B.  
566.  
See also *In re WHEELER'S SETTLEMENT*  
[1899] 2 Ch. 717
- Franks v. Weaver*, (1847) 10 Beav. 297; 8 L. T.  
(O.S.) 510.  
Explained and distinguished. *TALLER-*  
*MAN v. DOWSING RADIANT HEAT CO.*  
C. A. [1900] 1 Ch. 1
- Frape, In re* - - [1893] 2 Ch. 284  
Distinguished. *In re BAYLIS*  
C. A. [1896] 2 Ch. 107
- Freeman v. Cox* - - (1878) 8 Ch. D. 148  
Discussed by C. A. *HOLLIS v. BURTON*  
[1892] 3 Ch. 226  
Followed. *In re BEENY* [1894] 1 Ch. 499  
Not extended by C. A. *NEVILLE v.*  
*MATTHEWMAN* [1894] 3 Ch. 345
- Freme's Contract, In re* [1895] 2 Ch. 256  
Affirmed by C. A. - [1895] 2 Ch. 778
- Frend v. Buckley* (1870) L. R. 5 Q. B. 213  
Followed by Kekewich J. *WILLIAMS v.*  
*SPARGO* - [1893] W. N. 100
- Friary, Holroyd & Healey's Breweries v. Single-*  
*ton*, [1898] W. N. 150 (7); [1899] 1 Ch.  
86.  
Reversed by C. A. [1899] 2 Ch. 261
- Fricker v. Van Grutten* - [1896] 2 Ch. 649  
Applied by Kekewich J. *GEILINGER v.*  
*GIBBS* - [1897] 1 Ch. 479
- Frost (S.) & Co., In re* - [1898] 2 Ch. 556  
Affirmed by C. A. - [1899] 2 Ch. 207  
Observed upon. *In re AFRICAN GOLD*  
*CONCESSIONS AND DEVELOPMENT CO.*  
[1899] 1 Ch. 414; C. A. [1899] 2 Ch. 480  
Distinguished. *In re WATSON (ROBERT)*  
*& Co.* - [1899] 2 Ch. 509
- Fry v. Moore* - (1889) 23 Q. B. D. 395  
Followed by C. A. *WILDING v. BEAN*  
[1891] 1 Q. B. 100  
Distinguished by C. A. *JAY v. BUDD*  
[1898] 1 Q. B. 12
- Fuggle v. Bland* - (1883) 11 Q. B. D. 711  
Followed by C. A. *TYRRELL v. PAIN-*  
*TON (No. 2)* [1895] 1 Q. B. 202
- "*Fulham*," *The* - - [1898] P. 206  
Affirmed by C. A. [1899] P. 251
- Fuller, In re* - - [1900] 2 Ch. 551  
Distinguished by C. A. *In re LANGDALE*  
[1900] W. N. 248
- Fuller v. Chamier* (1866) L. R. 2 Eq. 682  
Referred to by C. A. *EVANS v. EVANS*  
[1892] 2 Ch. 173
- Fulton v. Andrew* - (1875) L. R. 7 H. L. 448  
Explained by C. A. *TYRRELL v. PAIN-*  
*TON (No. 1)* - [1894] P. 151
- Furber, In re* - [1898] 2 Ch. 538  
Affirmed by C. A. [1898] W. N. 160 (13)
- Furber v. Cobb* - - (1887) 18 Q. B. D. 494  
Followed by C. A. *SEED v. BRADLEY*  
[1894] 1 Q. B. 319
- Furneaux v. Rucker* - - [1879] W. N. 135  
Explained by Chitty J. *In re BURTON'S*  
*WILL* - - [1892] 2 Ch. 38  
Disapproved by C. A. *In re WOODIN*  
[1895] 2 Ch. 309
- Furness, Withy & Co. v. W. N. White & Co., Ltd.*,  
[1894] 1 Q. B. 483.  
Reversed by H. L. (E.) [1895] A. C. 40
- Furnivall v. Hudson* - [1893] 1 Ch. 335  
Considered by North J. *DENNISON v.*  
*JEFFS* [1896] 1 Ch. 611, 616
- G. v. M.* - (1885) 10 App. Cas. 171  
Dictum of Lord Selborne at p. 186 ap-  
proved by Jeune P. in *L. v. B.*  
[1895] P. 274
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Not followed by North J. *In re BOARDS*  
[1895] 1 Ch. 499
- Galashiels Corporation v. Schulze*, (1894) 21 R.  
682.  
Affirmed by H. L. (Sc.) [1895] A. C. 666
- Galatti v. Wakefield* - (1878) 4 Ex. D. 249  
Followed by C. A. *STREET v. STREET*  
[1900] 2 Q. B. 57, 64
- Gale v. Gale* (1852) 2 Rob. Ecc. Rep. 421  
Contrary to *Bray v. Bray*, 1 Hagg. Ecc.  
163.  
*RUSSELL v. RUSSELL*  
C. A. [1895] P. 315, 324; [1897] A. C. 395
- Gale v. Gale* - - (1856) 21 Beav. 349  
Considered by Byrne J. *In re MOSES*  
[1900] W. N. 182
- Gale v. Gale* - - (1877) 6 Ch. D. 144  
Not followed by C. A. *ATT.-GEN. v.*  
*JACOBS-SMITH* [1895] 2 Q. B. 341
- Gale v. Lewis* - (1846) 9 Q. B. (N.S.) 730  
Distinguished. *In re HAMPSHIRE LAND*  
*Co.* - [1896] 2 Ch. 743
- Galloway v. Craig* - (1861) 4 Macq. 267  
Precedent in, followed by H. L. (Sc.)  
*LORD ADVOCATE v. WEMYSS*  
[1900] A. C. 48, 59

- Galloway v. London (Mayor, &c., of)*, (1866) L. R. 1 H. L. 34.  
Distinguished. *DONALDSON v. SOUTH SHIELDS CORPORATION*  
C. A. [1899] W. N. 6 (2)
- Gandy v. Gandy*, (1882) 7 P. D. 168; (1885) 30 Ch. D. 57.  
Explained. *BISHOP v. BISHOP*  
C. A. [1897] P. 138
- "*Gannet*," *The* - - - [1899] W. N. 53  
Affirmed by C. A. - [1899] P. 230  
Reversed by H. L. (E.) [1900] A. C. 234
- Gardiner's Estate, In re* (1875) L. R. 20 Eq. 647  
Not followed by Chitty J. *In re HALLETT* (No. 1) - [1892] W. N. 148
- Gardner v. London, Chatham and Dover Ry. Co.*, (1867) L. R. 2 Ch. 201.  
Followed by Stirling J. *In re PARKER*  
[1891] 1 Ch. 682  
Distinguished by North J. *BARTLETT v. WEST METROPOLITAN TRAMWAYS* (No. 1) [1893] 3 Ch. 437  
Applied to tramways by C. A. *MARSHALL v. SOUTH STAFFORDSHIRE TRAMWAYS CO.* - C. A. [1895] 2 Ch. 36  
Distinguished by North J. *PEGGE v. NEATH AND DISTRICT TRAMWAYS CO.* [1895] 2 Ch. 508; C. A. [1896] 1 Ch. 684
- Garland's Trustees v. Macaulay's Executors*, (1896) 23 R. 598.  
Reversed by H. L. (Sc.) *sub nom. HICKLING v. FAIR* [1899] A. C. 15
- Garnett v. Bradley* - (1878) 3 App. Cas. 944  
See observations of C. A. *ROCKETT v. CLIPPINGDALE* - [1891] 2 Q. B. 293
- Garrard v. Edge* - (1890) 41 Ch. D. 224  
Cited. *MANDLERBERG v. MORLEY* [1893] W. N. 157
- Garrard v. Frankel* - (1862) 30 Beav. 445  
Commented on by Farwell J. *MAY v. PLATT* - [1900] 1 Ch. 616
- Garrard v. Lord Lauderdale*, (1831) 2 Russ. & My. 451; 30 R. R. 105; 31 R. R. Preface, vi.  
Inapplicable. *PRIESTLEY v. ELLIS* [1897] 1 Ch. 489
- "*Gas Float Whitton No. 2*," *The* [1895] P. 301  
Reversed by C. A. - [1896] P. 42  
Affirmed by H. L. (E.) *sub nom. WELLS v. OWNERS OF "GAS FLOAT WHITTON No. 2"* - [1897] A. C. 337
- Gas Light and Coke Co. v. Vestry of St. Mary Abbots* - (1885) 15 Q. B. D. 1  
Distinguished. *SOUTHWARK AND VAUXHALL WATER CO. v. WANDSWORTH DISTRICT BOARD OF WORKS*  
C. A. [1898] 2 Ch. 603
- Gatling Gun, Ltd., In re* - (1890) 43 Ch. D. 628  
Followed by Kekewich J. *In re AGRICULTURAL HOTEL CO.* [1891] 1 Ch. 396
- Gatty v. Fry* - (1877) 2 Ex. D. 265  
Approved. *ROYAL BANK OF SCOTLAND v. TOTTENHAM* C. A. [1894] 2 Q. B. 715
- Gay v. Cadby* - (1877) 2 C. P. D. 391  
Discussed. *VESTRY OF ST. MARTINS-IN-THE-FIELDS v. GORDON*  
C. A. [1891] 1 Q. B. 61
- Gebhardt v. Saunders* [1892] 2 Q. B. 452  
Followed. *ANDREW v. ST. OLAVE'S BOARD OF WORKS* - [1898] 1 Q. B. 775  
Referred to by Bruce J. *CREE v. ST. PANCRAS VESTRY* [1899] 1 Q. B. 693, 695
- Geddis v. Bann Reservoir Proprietors*, (1878) 3 App. Cas. 430.  
Distinguished and explained. *SOUTHWARK AND VAUXHALL WATER CO. v. WANDSWORTH DISTRICT BOARD OF WORKS* - C. A. [1898] 2 Ch. 603
- Geen v. Newington Vestry* - [1898] 2 Q. B. 1  
Referred to by Div. Ct. *GREATER LONDON PROPERTY CO. v. FOOT* [1899] 1 Q. B. 972, 975
- "*Gemma*," *The* - [1899] W. N. 116  
Reversed by C. A. - [1899] P. 285
- General Credit Co., In re* [1891] W. N. 153  
Referred to. *In re HONG KONG AND CHINA GAS CO.* [1898] W. N. 158 (3)  
Not followed. *In re COPIAPO MINING CO.* - [1899] W. N. 25 (1)
- General Phosphate Corporation, In re*, [1894] W. N. 78. Affirmed by C. A.  
[1894] W. N. 173; [1895] 1 Ch. 3
- General Railway Syndicate, In re. Whiteley's Case*, [1899] W. N. 34 (5); [1899] 1 Ch. 770.  
Reversed by C. A. [1900] 1 Ch. 365
- Genery v. Fitzgerald*, (1822) Jac. 468; 23 R. R. 121.  
Followed by Chitty J. *In re BURTON'S WILL* - - - [1892] 2 Ch. 38
- George and Goldsmiths and General Burglary Insurance Association, In re*, [1898] 2 Q. B. 136.  
Reversed by C. A. [1899] 1 Q. B. 595
- George, In re* - - - (1877) 5 Ch. D. 837  
Referred to by Kekewich J. *In re MOODY* - - - [1895] 1 Ch. 101
- George v. Clagett*, (1797) 7 T. R. 359; 4 R. R. 462.  
Followed. *MONTAGU v. FORWOOD*  
C. A. [1893] 2 Q. B. 350
- George v. Skivington* - (1870) L. R. 5 Ex. 1  
Referred to. *SCHOLES v. BROOK* [1891] W. N. 16, 101
- Gerard (Lord) v. Kent County Council*, C. A. [1897] 1 Q. B. 351.  
Affirmed by H. L. (E.) *sub nom. KENT COUNTY COUNCIL v. LORD GERARD* [1897] A. C. 633
- Gerard (Lord) and the London and North Western Ry. Co., In re* - [1894] 2 Q. B. 915  
Affirmed by C. A. - [1895] 1 Q. B. 459
- Gibbins v. North Eastern Metropolitan Asylum District Board of Management*, (1847) 11 Beav. 1.  
Distinguished by Romer J. *JONES v. DANIEL* - - - [1894] 2 Ch. 332
- Gibbs v. Barrow* - - - (1886) 30 Sol. J. 538  
Followed. *O'HARA, MATTHEWS & CO v. ELLIOTT & CO.* - [1893] 1 Q. B. 362

- Gibbs v. Sidney*, [1883] W. N. 148; 49 L. T. (N.S.) 132.  
Followed by *Buckley J. STEPHENSON v. YORKE* - [1900] 1 Ch. 505, 507
- Gibbs v. Société des Métaux*, (1890) 25 Q. B. D. 399  
Approved. NEW ZEALAND LOAN AND MERCANTILE AGENCY Co. v. MORRISON  
P. C. [1898] A. C. 349
- Gibraltar (Sanitary Commissioners) v. Orfila*, (1890) 15 App. Cas. 411.  
Followed by P. C. MUNICIPALITY OF PICTOU v. GELBERT [1893] A. C. 524
- Gibson v. Doeg* - - (1857) 2 H. & N. 615  
Followed by *Farwell J. HEPWORTH v. PICKLES* [1900] 1 Ch. 108
- Gibson v. Preston (Mayor of)*, (1870) L. R. 5 Q. B. 218.  
Approved by H. L. (E.) COWLEY v. NEWMARKET LOCAL BOARD [1892] A. C. 345
- Gieve, In re. Ex parte Shaw* [1899] W. N. 41  
Reversed by C. A. [1899] W. N. 72
- Gifford v. Overseers of St. Luke's (Chelsea)*, (1889) 24 Q. B. D. 141.  
Considered. *MAGEE v. MORTIMER*, (1890) 28 L. R. Ir. 251.  
C. A. (Ir.) [1898] W. N. 102  
Not followed. *GAGE v. McDAID*, Lawson's Notes of Decisions (1896), p. 137  
C. A. Ir. [1898] W. N. 104
- Gilbert v. Endean* (1878) 9 Ch. D. 259, 266  
Discussed by *Kekewich J. HALFORD v. HARDY* - [1899] W. N. 243
- Gilbert v. Wandsworth District Board of Works*, (1888) 5 Times L. R. 31.  
Met by 57 & 58 Vict. c. ccciii. s. 29.
- Gillard v. Cheshire Lines Committee*, (1884) 32 W. R. 943.  
Distinguished by *Chitty J. WALLIS v. HANDS* - [1893] 2 Ch. 75
- Gillet v. Gillet* - - (1889) 14 P. D. 158  
Followed by *Jeune P. BREWIS v. BREWIS* - [1893] W. N. 6
- Gillet v. Wray* (1715) 1 P. Wms. 284  
Principle in, applied. *In re NOURSE*. [1899] 1 Ch. 63
- Gilmour v. Caledonian Insurance Co.*, (1891) 18 R. 1219.  
Reversed by H. L. (Sc.) [1893] A. C. 85  
And see now Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13).
- Gilmour v. North British Ry. Co.*, (1893) 20 R. 409.  
Reversed by H. L. (Sc.) [1893] A. C. 281
- Gilroy, Sons & Co. v. Price & Co.*, (1891) 18 R. 569.  
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- Gilroy v. Stephens*, (1882) 51 L. J. (Ch.) 834; 30 W. R. 745.  
Not followed by *Kekewich J. OWEN v. RICHMOND* - [1895] W. N. 29
- Gladstone, In re* - [1900] 2 Ch. 101  
Referred to by *Byrne J. In re DUKE OF BUTLAND'S SETTLED ESTATES* [1900] 2 Ch. 206, 209
- Glanvill, In re* - (1886) 31 Ch. D. 532  
Distinguished. *COX v. BENNETT*  
C. A. [1891] 1 Ch. 617
- Glasgow and South Western Ry. Co. v. Banks*, (1880) 7 R. 1161.  
Followed. INLAND REVENUE COMMS. v. GRANT, (1898) 25 R. 1040.  
Ct. of Sess. (Sc.) [1899] W. N. 195
- Glasgow and South Western Ry. Co. v. Glasgow Corporation*, (1894) 21 R. 1033.  
Affirmed by H. L. (Sc.) [1895] A. C. 376
- Glasgow Corporation v. Farie*, (1888) 13 App. Cas. 657.  
Explained. *JOHNSTONE v. CROMPTON & Co.* [1899] 2 Ch. 190
- Glasgow Corporation v. McEwan* (1899) 1 F. 523  
Affirmed by H. L. (Sc.) [1900] A. C. 91
- Glasgow Police Commrs. v. McOmish*, (1896) 23 R. 896.  
Varied by H. L. (Sc.) *sub nom. GLASGOW CORPORATION v. McOMISH* [1898] A. C. 432
- Glasgow Tramway and Omnibus Co. v. Glasgow Corporation*, (1897) 24 R. 628.  
Reversed by H. L. (Sc.) [1898] A. C. 632
- "*Glengyle*," *The* - C. A. [1898] P. 97  
Affirmed by H. L. (E.) *sub nom. OWNERS OF "GLENGLYLE," HER CARGO AND FREIGHT v. NEPTUNE SALVAGE CO. THE "GLENGLYLE"* [1898] A. C. 519
- "*Glenlivet*," *The* - [1893] P. 164  
Varied by C. A. [1894] P. 48
- Glennie v. Glennie* (1863) 3 Sw. & Tr. 109  
Doubted by C. A. *ALLEN v. ALLEN* (No. 1) [1894] P. 248
- "*Glenochil*," *The* - [1896] P. 10  
Followed by Div. Ct. *THE "RODNEY"* [1900] P. 112
- Glossop v. Heston and Isleworth Local Board*, (1879) 12 Ch. D. 102.  
Followed by *Romer J. ATT-GEN. v. CLERKENWELL VESTRY* [1891] 3 Ch. 527
- Glover, In re* [1899] 1 Ir. 337  
Followed by *Cozens-Hardy J. In re COWLEY* - [1900] W. N. 264
- Godfrey v. George* [1896] 1 Q. B. 48  
Followed. *PRITCHETT & YOUNG v. ENGLISH AND COLONIAL SYNDICATE*  
C. A. [1899] 2 Q. B. 428
- Gold Co., In re* - (1879) 11 Ch. D. 701  
Followed by *Farwell J. In re BISHOP (E.) & SONS, LD.* [1900] 2 Ch. 254
- Goldhill v. Clarke* - (1893) 68 L. T. (N.S.) 414  
Not followed by C. A. *SOLOMON v. MULLINER AND MOTOR CARRIAGE SUPPLY CO.* [1900] W. N. 260;  
see [1901] 1 Q. B. 76
- Golding, Davis & Co., Ex parte*, (1880) 13 Ch. D. 628  
Referred to by *Romer J. BELLAMY v. DAVEY* [1891] 3 Ch. 540, at p. 545
- Goldstrom v. Tallerman*, (1887) L. R. 18 Q. B. D. 1  
Discussed by C. A. *EDWARDS v. MARSTON* [1891] 1 Q. B. 225  
Discussed by V. Williams J. *In re BARGEN* - [1894] 1 Q. B. 444, at p. 447



- Gonty v. Manchester, Sheffield and Lincolnshire Ry.*, [1896] 2 Q. B. 439.  
Distinguished. CALEDONIAN RY. CO. v. TURCAN - H. L. (Sc.) [1898] A. C. 256
- Goodden v. Goodden* - - [1891] P. 395  
Affirmed by C. A. - [1892] P. 1
- Goodenough, In re* - - [1895] 2 Ch. 537  
Followed. ROWLLS v. BEBB [1900] 2 Ch. 107
- Goodier v. Edmunds* - [1893] 3 Ch. 455  
Considered by Kekewich J. *In re* WOOD - [1894] 2 Ch. 310;  
affirm. by C. A. [1894] 3 Ch. 381
- Goodier v. Johnson* (1881) 18 Ch. D. 441  
*Dictum* of Jessel M.R., p. 446, followed by Stirling J. GOODIER v. EDMUNDS [1893] 3 Ch. 455, at p. 459
- Gooding v. Read* (1853) 4 D. M. & G. 510  
Followed by Chitty J. *In re* WATSON [1892] W. N. 192
- Goodlock v. Cousins* - [1897] 1 Q. B. 348  
Affirmed by C. A. [1897] 1 Q. B. 558
- Goodman's Trusts, In re* - (1880) 17 Ch. D. 266  
Followed by Stirling J. *In re* GREY [1892] 3 Ch. 88
- Goodman v. Saltash, Mayor of*, (1882) 7 App. Cas. 633.  
Followed by Charles J. and C. A. HAIGH v. WEST [1893] 2 Q. B. 19
- Goodwin v. Roberts*, (1875) L. R. 10 Ex. 337; (1876) 1 App. Cas. 476.  
Referred to by Kennedy J. BECHUANALAND EXPLORATION CO. v. TRADING BANK [1898] 2 Q. B. 658
- Gordon's Settlement Trusts, In re*, [1887] W. N. 192.  
Doubted by C. A. *In re* CLIFF [1895] 2 Ch. 21
- Gordon v. Atkinson* (1847) 1 De G. & Sm. 478  
Distinguished by North J. *In re* ATKINSON. WILSON v. ATKINSON [1892] 3 Ch. 52
- Gordon v. Pyper* (1891) 29 Sco. L. R. 178  
Affirmed by H. L. (Sc.) [1892] W. N. 169
- Gordon v. St. Mary Abbots, Kensington (Vestry of)*, [1894] 2 Q. B. 742.  
Followed by Kekewich J. ALDIS v. LONDON CORPORATION [1899] 2 Ch. 169, 171  
Followed by Stirling J. GIBBON v. PAD-DINGTON VESTRY - [1900] 2 Ch. 794
- Gordon v. Williamson* - [1892] 1 Q. B. 616  
Reversed by C. A. [1892] 2 Q. B. 459
- Gorham v. Bishop of Exeter* (1849) 13 Jur. 238  
See 61 & 62 Vict. c. 48, ss. 2 (b), 3 (5).
- Gort v. Rowney* - (1886) 17 Q. B. D. 625  
Discussed by Div. Ct. SANDES v. WILDSMITH - [1893] 1 Q. B. 771
- Gosling v. Brown* - (1878) 5 R. 735  
Disapproved. LORD ADVOCATE v. YOUNG, (1898) 25 R. 778  
Ct. of Sess. (Sc.) [1899] W. N. 190
- Gosling v. Gaskell* - C. A. [1896] 1 Q. B. 669  
Reversed by H. L. (E.) [1897] A. C. 575
- Gough v. Wood* - - [1894] 1 Q. B. 713  
Explained by C. A. HUDDERSFIELD BANKING CO. LD. v. H. LISTER & SON, LD. - [1895] 2 Ch. 273  
Discussed. HOBSON v. GORRINGE C. A. [1897] 1 Ch. 182
- Governments Stock and other Securities Investment Co. v. Manila Ry. Co.*, [1895] 2 Ch. 551  
Affirmed by H. L. (E.) [1897] A. C. 81
- Governments Stock Investment Co., In re*, [1891] 1 Ch. 649.  
Explained by Stirling J. *In re* FOREIGN AND COLONIAL GOVERNMENT TRUST CO. [1891] 2 Ch. 395
- Governors of the Charity for the Relief of Poor Widows and Children of Clergymen v. Sutton*, (1860) 27 Beav. 651.  
Considered by C. A. *In re* CLERGY ORPHAN CORPORATION [1894] 3 Ch. 145
- Gowan v. Wright* - (1886) 18 Q. B. D. 201  
Referred to by P. C. TAYLOR v. STURROCK - [1900] A. C. 225, 230
- Gower v. Couldridge* [1898] 1 Q. B. 348  
Explained by C. A. FRANKENBURG v. GREAT HORSELESS CARRIAGE CO. [1900] 1 Q. B. 504
- Grace v. Newman* (1875) L. R. 19 Eq. 623  
Distinguished. PETTY v. TAYLOR [1897] 1 Ch. 465
- Grainger & Son v. Gough* - [1895] 1 Q. B. 71  
Reversed by H. L. (E.) [1896] A. C. 325
- Grand Junction Waterworks Co. v. Hampton Urban Council*, [1898] 2 Ch. 331.  
Distinguished by C. A. ATT.-GEN. v. MERTHYR TYDFIL UNION [1900] 1 Ch. 516, 550
- Grant v. Langston* - - (1898) 25 R. 1040  
Reversed by H. L. (Sc.) [1900] A. C. 383
- Gratrix v. Chambers* - (1860) 2 Giff. 321  
Distinguished by Kekewich J. *In re* SINGLAIR - [1897] 1 Ch. 921, 926
- Graves v. Hicks* - - (1841) 11 Sim. 551  
Explained by North J. *In re* TUCKER (No. 1) - [1893] 2 Ch. 323  
Referred to by Buckley J. BLACKBURN v. HOPE-EDWARDS [1900] W. N. 175; [1901] 1 Ch. 418
- Gray v. Carr* - (1871) L. R. 6 Q. B. 522  
Considered by C. A. SERRAINO & SONS v. CAMPBELL [1891] 1 Q. B. 283
- Gray v. Craig* - (1892) 20 R. 81  
Followed. ROSS v. CARBERY, (1897) 25 R. 98 - C. A. (Sc.) [1899] W. N. 171
- Gray v. Smith* - (1890) 43 Ch. D. 208  
Considered by Stirling J. JENNINGS v. JENNINGS - [1898] 1 Ch. 370  
Distinguished by C. A. BURCHELL v. WILDE v. - [1900] 1 Ch. 551

- Great Kruger Gold Mining Co., In re. Ex parte Barnard*, [1892] 3 Ch. 307.  
Explained by C. A. TRUST AND INVESTMENT CORPORATION OF SOUTH AFRICA [1892] 3 Ch. 332  
Impliedly approved and followed as so explained by C. A. *In re* GENERAL PHOSPHATE CORPORATION (No. 2) [1895] 1 Ch. 3  
Discussed by H. L. (E.) *Ex parte* BARNES - [1896] A. C. 146
- Great North of Scotland Ry. Co. v. Highland Ry. Co.*, (1895) 32 S. L. R. 275.  
Affirmed by H. L. (Sc.) [1896] W. N. 77 (1)
- Great North-West Central Ry. Co. v. Charlebois*, [1899] A. C. 114.  
Referred to by C. A. ST. MARY, ISLINGTON (VESTRY OF) v. HORNSEY URBAN COUNCIL - [1900] 1 Ch. 695
- Great Western Ry. Co. v. Bennett*, (1867) L. R. 2 H. L. 27.  
See RUABON BRICK AND TERRA COTTA CO. v. GREAT WESTERN RY. CO. [1893] 1 Ch. 427
- Great Western Ry. Co. v. Cefn Gribbur Brick Co.*, [1894] 2 Ch. 157.  
Referred to. REG. v. LONDON & NORTH WESTERN RY. CO. C. A. [1899] 1 Q. B. 944
- Great Western Ry. Co. v. Inland Revenue Commrs.*, [1894] 1 Q. B. 507.  
Referred to by C. A. COATS, LD. v. INLAND REVENUE COMMRS. [1897] 2 Q. B. 423, 427
- Great Western Ry. Co. v. London and County Banking Co.*, [1899] W. N. 106; [1899] 2 Q. B. 172.  
Affirmed by C. A. [1900] 2 Q. B. 464
- Green, In re* - - (1875) L. R. 10 Ch. 272  
Followed. *In re* WESTON'S TRUSTS [1898] W. N. 151 (10)
- Green v. Cresswell* - (1839) 10 A. & E. 453  
Not followed by C. A. GUILD & CO. v. CONRAD - [1894] 2 Q. B. 885
- Green v. Davies*, (1825) 4 B. & C. 235; 28 R. R. 230.  
Followed by Kekewich J. ASHLING v. BOON - [1891] 1 Ch. 568
- Green v. Irish Independent Co.*, [1899] 1 I. R. 386  
Compare. BASCHET v. LONDON ILLUSTRATED STANDARD CO. [1900] 1 Ch. 73, 79  
Referred to by Kekewich J. HILDESHEIMER v. FAULKENERS, LD. [1900] W. N. 170
- Green v. Paterson* - (1886) 32 Ch. D. 95  
Discussed. CARTER v. CARTER [1896] 1 Ch. 62
- Greene v. West Cheshire Ry. Co.*, (1871) L. R. 13 Eq. 44.  
Followed by Kekewich J. FORTESCUE v. LOSTWITHTEL AND FOWEY RY. [1894] 3 Ch. 621
- Greenock (Provost, &c., of) v. Peters*, (1892) 19 R. 613.  
Affirmed by H. L. (Sc.) [1893] A. C. 258
- Greenwell v. Low Beechburn Coal Co.*, [1897] 2 Q. B. 165.  
Followed by Kekewich J. HALL v. NORFOLK (DUKE OF) [1900] 2 Ch. 493
- Greenwood v. Leather Shod Wheel Co.*, [1899] W. N. 26 (2).  
Affirmed by C. A. [1900] 1 Ch. 421  
See Companies Act, 1900 (63 & 64 Vict. c. 48), s. 10 (5).
- Greer v. Young* - (1883) 24 Ch. D. 545  
Followed by Romer J. SCHOLEY v. PECK - [1893] 1 Ch. 709
- Gregory v. Fraser* - (1813) 3 Camp. 454  
See 54 & 55 Vict. c. 39, s. 14 (4).
- Gregson, In re* - (1858) 26 Beav. 87  
Not followed by Kekewich J. *In re* LAWRENCE [1894] 1 Ch. 556
- Gregson, In re* - - [1893] 3 Ch. 233  
Approved by C. A. *In re* C. M. G. [1898] 2 Ch. 324
- Grenfell v. Inland Revenue Commrs.*, (1876) 1 Ex. D. 242; 45 L. J. (Ex.) 465.  
Overruled by 54 & 55 Vict. c. 39, s. 82 (1), (b) ii.
- Gresham Life Assurance Society v. Styles*, [1890] 24 Q. B. D. 360; C. A. 25 Q. B. D. 351.  
Reversed by H. L. (E.) [1892] A. C. 309
- "Greta Holme," The. "The "Emerald," C. A.* [1896] P. 192.  
Reversed by H. L. (E.) *sub nom.* OWNERS OF NO. 7 STEAM SAND PUMP DREDGER v. SS. "GRETA HOLME" (OWNERS OF) THE "GRETA HOLME" [1897] A. C. 596  
Applied by H. L. (E.) THE "MEDIANA" [1900] A. C. 113
- Greville v. Browne* - (1859) 7 H. L. C. 689  
Applied by Kekewich J. *In re* BAWDEN [1894] 1 Ch. 693  
Referred to by Kekewich J. *In re* DYSON & FOWKE - [1896] 2 Ch. 720  
Applied by Stirling J. *In re* ADAMS AND PERRY'S CONTRACT [1899] 1 Ch. 554
- Greville-Nugent v. Mackenzie* (1898) 25 R. 475  
Reversed by H. L. (So.) [1900] A. C. 83
- Grey v. Jenkins* - (1859) 26 Beav. 351  
Followed by Kekewich J. *In re* HODGE'S SETTLED ESTATES [1895] W. N. 69
- Grey (Earl) v. Att.-Gen.* - [1900] A. C. 124  
Referred to by C. A. ATT.-GEN. v. DE PRÉVILLE - [1900] 1 Q. B. 223, 228
- Greys Brewery Co., In re* (1883) 25 Ch. D. 400  
Followed by Stirling J. LEARROYD v. HALIFAX JOINT STOCK BANKING CO. [1893] 1 Ch. 686
- Gribble v. Webber* - - [1896] 1 Ch. 914  
Met by 59 & 60 Vict. c. 28, s. 19.
- Grice v. Shaw* - - (1852) 10 Hare, 76  
Referred to by Farwell J. INGLE v. JENKINS - [1900] 2 Ch. 365, 370

- Grieve v. Grieve* - - - [1893] P. 288  
Followed by *G. Barnes J. CAREW v. CAREW* (No. 2) [1894] P. 31
- Griffin, Ex parte* - (1880) 14 Ch. D. 37  
Followed by *V. Williams J. In re BASSETT* - [1896] 1 Q. B. 219
- Griffith v. Paget*, (1877) 5 Ch. D. 894; (1878) 6 Ch. D. 511.  
Followed by *Kekewich J. SIMPSON v. PALACE THEATRE, LD.* [1893] W. N. 91  
Distinguished by *Wright J. In re BEESTON PNEUMATIC TYRE CO.* [1898] W. N. 34 (4)
- Griffiths v. Dudley (Earl of)*, (1882) 9 Q. B. D. 357.  
See 60 & 61 Vict. c. 37, s. 3 (1).
- Grissell, Ex parte* - (1876) 3 Ch. D. 411  
Considered by *Kekewich J. SECURITIES PROPERTIES INVESTMENT CORPORATION v. BRIGHTON ALHAMBRA, LD.* [1893] W. N. 15
- Gue, In re. Smith v. Gue* - [1892] W. N. 88  
Affirmed by C. A. - [1892] W. N. 132
- Gulford v. Lambeth* - [1894] 2 Q. B. 832  
Affirmed by C. A. - [1895] 1 Q. B. 92
- Guinness, In re* - (1888) 5 Rep. Pat. Cas. 316  
Referred to. *In re BURKE'S TRADE-MARK* [1891] W. N. 2
- Gulliver v. Wickett* - - (1745) 1 Wils. 105  
See *In re BURROWS* [1895] 2 Ch. 497
- Gurney v. Gurney* - (1855) 3 Drew. 208  
Principles of, applied by *Byrne J. In re TROTTER* - [1899] 1 Ch. 765
- Guthrie v. Walrond* - (1883) 22 Ch. D. 573  
Distinguished by *Chitty J. In re CLEMENTS* - [1894] 1 Ch. 665
- Gutteridge v. Munyard*, (1834) 1 Mood. & Rob. 334; 7 C. & P. 129.  
Followed by C. A. *LISTER v. LANE* [1893] 2 Q. B. 212
- Gwilliam v. Twist* - [1895] 1 Q. B. 557  
Reversed by C. A. - [1895] 2 Q. B. 84
- H. v. W.* - - (1857) 3 K. & J. 382  
Inapplicable. *MARLBOROUGH (DOWAGER DUCHESS OF) v. DUKE OF MARLBOROUGH* [1900] W. N. 270
- H.M.S. "Sans Pareil"* - [1900] W. N. 60  
Affirmed by C. A. - [1900] P. 267
- Haddow v. Morton* - [1894] 1 Q. B. 95  
Affirmed by C. A. [1894] 1 Q. B. 565
- Hadley v. Bazendale* - (1854) 9 Ex. 341  
Approved and followed by C. A. *EBBETTS v. CONQUEST* - [1895] 2 Ch. 377;  
H. L. (E.) [1896] A. C. 490  
Followed by C. A. *AGIUS v. GREAT WESTERN COLLIERY CO.* [1899] 1 Q. B. 413
- Haggin v. Comptoir d'Escompte de Paris*, (1889) 23 Q. B. D. 519.  
See *BADCOCK v. CUMBERLAND GAP PARK CO.* [1893] 1 Ch. 362
- Hale, In re. Lilley v. Foad* [1898] W. N. 154 (6)  
Affirmed by C. A. - [1899] 2 Ch. 107
- Halford v. Hardy* - [1899] W. N. 243  
Referred to by *Cozens-Hardy J. D. v. A. & Co.* - [1900] 1 Ch. 484, 487
- Halifax Commercial Bank, Ltd., and Wood, In re,* [1898] W. N. 62 (14).  
Affirmed by C. A. [1898] W. N. 174 (16)
- Halifax Sugar Refining Co., In re* [1891] W. N. 2  
Affirmed by C. A. [1891] W. N. 29
- Hall, In re* - (1880) 7 L. R. Ir. 180  
Distinguished by *Stirling J. In re WASDALE* [1899] 1 Ch. 163
- Hall v. Dyson* - (1852) 17 Q. B. 785  
Distinguished by C. A. *In re MOHENRY* [1894] 3 Ch. 365
- Hall v. Ewin* - (1887) 37 Ch. D. 74  
Referred to. *JOHN BROTHERS ABERGARW BREWERY CO. v. HOLMES* [1899] W. N. 257
- Hall v. Hall (No. 2)* - [1891] 3 Ch. 389  
Affirmed by C. A. [1892] 1 Ch. 361
- Hall v. Hurt* - (1861) 2 J. & H. 76  
Followed by *Buckley J. BLACKBURN v. HOPE-EDWARDES* [1900] W. N. 175
- Hall v. Richardson* - (1889) 54 J. P. 345  
Disapproved by Div. Ct. *ROPER v. KNOTT* [1898] 1 Q. B. 868
- Hall Dare's Contract, In re* (1882) 21 Ch. D. 41  
Distinguished. *JONES v. BARNETT* [1899] 1 Ch. 611
- Hall's Trustees v. Macdonald* (1892) 19 R. 567  
Reversed by H. L. (Sc.) *sub nom. MACDONALD v. SCOTT* - [1893] A. C. 642
- Hallett's Estate, In re* - (1880) 13 Ch. D. 696  
Considered by C. A. *In re HALLETT* [1894] 2 Q. B. 237  
Referred to by *Byrne J. MUTTON v. PEAT* - [1899] 2 Ch. 556;  
This case was reversed on a conclusion of fact C. A. [1900] 2 Ch. 79  
Distinguished by *Stirling J. In re WESTERN* - [1900] 2 Ch. 164
- Halliday v. Holgate* - (1868) L. R. 3 Ex. 299  
Referred to by C. A. *YUNGEMANN v. BRIESMANN* - [1892] W. N. 162
- Halliday v. Philipps* - (1889) 23 Q. B. D. 48  
Affirmed by H. L. (E.) [1891] A. C. 228
- Halliwell, In the Goods of* (1885) 10 P. D. 198  
Followed. *IN THE GOODS OF OAKLEY* [1896] P. 7
- Halliwell v. Tanner*, (1830) 1 Russ. & My. 633;  
32 R. R. 306.  
Followed by *Kekewich J. In re BUTLER* [1894] 3 Ch. 250
- Hallyburton, In the Goods of*, (1866) L. R. 1 P. & D. 90.  
Disapproved of but followed. *IN THE GOODS OF HUBER* - [1896] P. 209
- Haly v. Barry* (1868) L. R. 3 Ch. 452  
Commented on by C. A. *STEWART v. RHODES* - [1900] 1 Ch. 386
- Hambro v. Hambro* - [1894] 2 Ch. 564  
Referred to by *Stirling J. In re HERBAGE RENTS, GREENWICH* [1896] 2 Ch. 811, 816

- Hamilton, In re* - (1886) 31 Ch. D. 291, 294  
Referred to. *In re JONES* and JUDGMENT ACT, 1864 [1895] W. N. 123 (10)
- Hamilton, In re. Trench v. Hamilton*, [1895] 1 Ch. 373.  
Affirmed by C. A. - [1895] 2 Ch. 370  
Approved by C. A. *HILL v. HILL* [1897] 1 Q. B. 483, 493;  
*In re WILLIAMS* [1897] 2 Ch. 12, 21
- Hamilton v. Ritchie* - (1894) 21 R. 451  
Affirmed by H. L. (Sc.) [1894] A. C. 310
- Hamilton's Trustees v. Boyes* - (1898) 25 R. 899  
Affirmed by H. L. (Sc.) *sub nom. NAT-SMITH v. BOYES* [1899] A. C. 495
- Hamlyn & Co. v. Talisker Distillery*, [1894] A. C. 202.  
Principle in, applied. *SOUTH AFRICAN BREWERIES v. KING* [1899] 2 Ch. 173;  
C. A. [1900] 1 Ch. 273
- Hammersmith, &c., Ry. Co. v. Brand*, (1869) L. R. 4 H. L. 171.  
Followed by C. A. *ATT.-GEN. v. METROPOLITAN RY. CO.* [1894] 1 Q. B. 384, at p. 392, et seq.
- Hammond v. Pulsford* [1895] 1 Q. B. 223  
Rendered obsolete by Shop Hours Act, 1892 (58 & 59 Vict. c. 5).
- Hammond & Co. v. Bussey* (1887) 20 Q. B. D. 79  
Followed by C. A. *AGIUS v. GREAT WESTERN COLLIERY CO.* [1899] 1 Q. B. 413
- Hampshire v. Wickens* - (1878) 7 Ch. D. 555  
Referred to. *MIDGLEY v. SMITH* [1893] W. N. 120
- Hampton Urban Council v. Southwark and Vauxhall Water Co.*, [1899] 1 Q. B. 273.  
Affirmed on one point by H. L. (E.) [1900] A. C. 3
- Hanbury v. Hanbury (No. 2)* [1894] P. 102  
Reversed by C. A. [1895] P. 315  
C. A. reversed and Jeune Pres. restored by H. L. (E.) [1895] A. C. 417
- Hance v. Harding* (1888) 20 Q. B. D. 732  
Referred to. *In re DALE AND ELDEN* [1892] W. N. 56
- Hancock, In re* [1896] 2 Ch. 173  
Applied by Farwell J. *FOAKES v. JACKSON* - [1900] 1 Ch. 807
- Hancock, In re. Watson v. Watson*, [1900] W. N. 58.  
Affirmed by C. A. [1900] W. N. 270
- Hancock v. Hancock* - (1888) 38 Ch. D. 78  
Extended by Chitty J. *STEVENS v. TREVOR-GARRICK* [1893] 2 Ch. 307  
Applied by Buckley J. *BUCKLAND v. BUCKLAND* - [1900] 2 Ch. 534
- Hancock v. Smith* - (1889) 41 Ch. D. 456  
Distinguished by North J. *In re STENNING* [1895] 2 Ch. 433
- Hanfstaengl v. Empire Palace (No. 1)*, [1894] 3 Ch. 109.  
Affirmed by H. L. (E.) *sub nom. HANFSTAENGL v. H. & R. BAINES & CO.* [1895] A. C. 20
- Hanfstaengl v. Newnes* - [1894] 3 Ch. 109  
Affirmed by H. L. (E.) *sub nom. HANFSTAENGL v. H. & R. BAINES & CO.* [1895] A. C. 20
- Hanfstaengl Art Publishing Co. v. Holloway*, [1893] 2 Q. B. 1.  
Approved by C. A. *HANFSTAENGL v. AMERICAN TOBACCO CO.* [1895] 1 Q. B. 347
- Hannay v. Smurthwaite* - [1893] 2 Q. B. 412  
Reversed by H. L. (E.) [1894] A. C. 494  
Decision of H. L. followed by P. C. *PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. TSUNE HIJIMA* [1895] A. C. 661
- Harbin v. Masterman* (1871) L. R. 12 Eq. 559  
Affirmed by C. A. [1894] 2 Ch. 184  
C. A. affirmed by H. L. (E.) *sub nom. WHARTON v. MASTERMAN* [1895] A. C. 186  
For second appeal, *see HABBIN v. MASTERMAN* - C. A. [1896] 1 Ch. 351
- Hardaker v. Idle District Council*, [1896] 1 Q. B. 335.  
Followed by Bruce J. *PENNY v. WIMBLEDON URBAN COUNCIL* [1898] 2 Q. B. 212;  
C. A. [1899] 2 Q. B. 72  
Followed by C. A. *THE "SNARK"* [1900] P. 105
- Hardy, In re* - (1881) 17 Ch. D. 798  
Dissented from by Chitty J. *In re SCHWEDER'S ESTATE* [1891] 3 Ch. 44
- Hardy v. Fothergill* - (1888) 13 App. Cas. 351  
Referred to by C. A. *In re MIDLAND COAL, COKE, AND IRON CO. CRAIG'S CLAIM* [1895] 1 Ch. 267  
Not applied by V. Williams J. *In re NEW ORIENTAL BANK CORPORATION (No. 2)* [1895] 1 Ch. 753  
Referred to by Romer J. *In re PANTHER LEAD CO.* - [1896] 1 Ch. 978  
Followed by Stirling J. *In re McMAHON* [1900] 1 Ch. 173, 177
- Hare v. Cartridge* - (1842) 13 Sim. 165  
Commented on and distinguished. *In re STEPHENSON* - C. A. [1897] 1 Ch. 75
- Hare v. Elmes* - [1893] 1 Q. B. 604  
Referred to by Stirling J. *HOWARD v. FANSHAWE* - [1895] 2 Ch. 581, 589
- Hargreaves v. Parsons*, (1844) 13 M. & W. 561, 570  
Followed by C. A. *GUILD & CO. v. CONRAD* - [1894] 2 Q. B. 885
- Hargreaves (Joseph), Ltd., In re* [1899] W. N. 259  
Affirmed by C. A. - [1900] 1 Ch. 347
- Harkness and Alsopp's Contract, In re*, [1896] 2 Ch. 358.  
Distinguished by Kekewich J. *In re BROOKE AND FREMLIN'S CONTRACT* [1898] 1 Ch. 647
- Harman and Uxbridge and Rickmansworth Ry. Co., In re*, (1883) 24 Ch. D. 720.  
Distinguished by Kekewich J. *In re BLAIBERG AND ABRAHAMS* [1899] 2 Ch. 340,

- Harper v. Forbes* - (1859) 5 Jur. (N.S.) 275  
Referred to. *ST. ANDREW'S, HOVE*  
(VICAR, & C., OF) *v. MAWN* [1895] P. 228, n.
- Harper v. Marcks* - [1894] 2 Q. B. 319  
See now *Wild Animals in Captivity Protection Act, 1900* (63 & 64 Vict. c. 33), s. 1.
- Harper (John) & Co. v. Wright and Butler Lamp Manufacturing Co.*, [1895] 2 Ch. 593.  
Reversed by C. A. - [1896] 1 Ch. 142
- Harpham v. Shacklock* - (1881) 19 Ch. D. 207  
Explained by C. A. *TAYLOR v. RUSSELL* [1891] 1 Ch. 8
- Harris' Case* - (1872) L. R. 7 Ch. 587  
Referred to. *In re LONDON and NORTHERN BANK* [1930] 1 Ch. 220, 222
- Harris' Settled Estates, In re*, (1884) 28 Ch. D. 171.  
Applied and followed. *In re BATT'S SETTLED ESTATES* [1897] 2 Ch. 65
- Harris v. Cockermouth and Workington Ry. Co.*, (1858) 3 C. B. (N.S.) 693.  
Discussed and explained by C. A. *PHIPPS v. LONDON and NORTH WESTERN RY. CO.* - [1892] 2 Q. B. 229
- Harris v. Davis* - (1844) 1 Coll. 416, 424  
Dictum of Knight Bruce V.-C. dissented from by C. A. *In re LOWMAN* [1895] 2 Ch. 348
- Harris v. De Pinna* - (1886) 33 Ch. D. 238  
Considered. *CLIFFORD v. HOLT* [1899] 1 Ch. 698
- Harris v. Harris* (1869) Ir. R. 3 Eq. 610  
Observed upon by C. A. *In re BAGOT* [1893] 3 Ch. 348
- Harris v. May* - (1883) 12 Q. B. D. 97  
See *Sale of Food and Drugs Act, 1899* (62 & 63 Vict. c. 51), s. 20.  
Distinguished by Div. Ct. *LIDLAW v. WILSON* - [1894] 1 Q. B. 74
- Harris v. Pepperell* - (1867) L. R. 5 Eq. 1  
Commented on by Farwell J. *MAY v. PLATT* - [1900] 1 Ch. 616
- Harrison, Ex parte* (1893) 69 L. T. (N.S.) 204  
Distinguished. *In re CONSORT DEEP LEVEL GOLD MINES, LD.* C. A. [1897] 1 Ch. 575
- Harrison, In re. Ex parte Whinney*, [1900] W. N. 118.  
Reversed by C. A. [1900] 2 Q. B. 710
- Harrison, In re. Latimer v. Harrison*, (1886) 32 Ch. D. 395.  
Considered by Kekewich J. *In re GILES* - [1896] 1 Ch. 956
- Harrison v. Harrison* - (1888) 13 P. D. 180  
Followed by Stirling J. *In re TATHAM* [1892] W. N. 150
- Harrison v. Duke of Rutland* [1893] 1 Q. B. 142  
Considered by H. L. (E.). *ALLEN v. FLOOD* - [1898] A. C. 1, 20  
Referred to by Div. Ct. *LUSCOMBE v. GREAT WESTERN RY. CO.* [1899] 2 Q. B. 313, 317  
Followed by C. A. *HICKMAN v. MAISEY* [1900] 1 Q. B. 752
- Harrop v. Harrop* [1899] P. 61  
Followed. *LOWE v. LOWE* C. A. [1899] P. 204
- Harrop v. Ossett Corporation* [1898] 1 Ch. 525  
Referred to. *TOMS v. CLACTON URBAN DISTRICT COUNCIL* [1898] W. N. 61 (10)
- Harter v. Colman* (1882) 19 Ch. D. 630  
Applied by Romer J. *MINTER v. CARR* [1894] 2 Ch. 321; affirmed by C. A. [1894] 3 Ch. 496
- Distinguished by Romer J. *PLEDGE v. CARR* [1894] 2 Ch. 328.  
This case was affirmed C. A. [1895] 1 Ch. 51;  
H. L. (E.) [1896] A. C. 187
- Hartley v. Gilbert* - (1843) 13 Sim. 596  
Explained by Stirling J. *In re GEORGE ARMSTRONG & SONS* [1896] 1 Ch. 536
- Hartley's Case* (1875) L. R. 10 Ch. 157  
Distinguished. *SMITH v. BROWN* [1896] A. C. 614
- Hartnall v. Ryde Commrs.* (1863) 4 B. & S. 361  
Overruled by P. C. *SYDNEY MUNICIPAL COUNCIL v. BOURKE* [1895] A. C. 433
- Harton v. Harton*, (1798) 7 T. R. 652; 4 R. R. 537  
Distinguished by Stirling J. *In re ADAMS and PERRY'S CONTRACT* [1899] 1 Ch. 554
- Harty v. Davis* - (1850) 13 Ir. L. Rep. 23  
Approved by Byrne J. *In re LORD CLIFDEN* - [1900] 1 Ch. 774
- "*Harvest*," *The*, (1886) 11 P. D. 14, on appeal, 90  
Referred to. *THE "JOHN O'SCOTT"* C. A. [1897] P. 64
- Harvey, In re. Peek v. Savory*, (1888) 39 Ch. D. 289.  
Followed by Byrne J. *In re HANCOCK*, [1900] W. N. 58;  
C. A. [1900] W. N. 270
- Harvey v. Hall* - (1873) L. R. 16 Eq. 324  
Distinguished by North J. *In re FERE-DAY* - [1895] 2 Ch. 437
- Haseldine, In re. Grange v. Sturdy*, (1886) 31 Ch. D. 511.  
Followed by Kekewich J. *In re HARRISON* - [1894] 1 Ch. 561  
And by North J. *In re JEANS* [1895] W. N. 98
- Haſker v. Wood* - (1885) 54 L. J. (Q.B.) 419  
Followed by C. A. *REEVE v. GIBSON* [1891] 1 Q. B. 652
- Haslam Foundry and Engineering Co. v. Good-fellow*, (1887) 37 Ch. D. 118, 123.  
See *LUDINGTON CIGARETTE MACHINE CO v. BARON CIGARETTE MACHINE CO.* [1899] W. N. 243;  
C. A. [1900] 1 Ch. 508
- Hasluck v. Clark* - [1898] 2 Q. B. 28  
Affirmed by C. A. [1899] 1 Q. B. 699
- Hassel v. Hassel* - (1776) 2 Dick. 527  
Followed by Kekewich J. *In re BAWDEN* - [1894] 1 Ch. 693

- Hasson v. Chambers* - (1885) 18 L. R. Ir. 68  
Followed. *ALEXANDER v. BURKE*, (1887)  
22 L. R. Ir. 443  
C. A. (Ir.) [1897] W. N. 92  
Overruled (as to four months' absence  
only) by 54 & 55 Vict. c. 11, s. 2.
- Hastings v. Pearson* - - [1893] 1 Q. B. 62  
Distinguished by Bruce J. *SHENSTONE*  
& Co. v. *HILTON* [1894] 2 Q. B. 452
- Hastings (Lord) v. North Eastern Ry. Co.*, [1898]  
2 Ch. 674; C. A. [1899] 1 Ch. 656.  
Affirmed by H. L. (E.) *sub nom.* *NORTH*  
*EASTERN RY. CO. v. LORD HASTINGS*  
[1900] A. C. 260
- Hatton v. Harris* - - [1892] A. C. 547  
Followed by P. C. *MILSON v. CARTER*  
[1893] A. C. 638
- Haven Gold Mining Co., In re*, (1882) 20 Ch. D.  
151.  
See *In re GENERAL PHOSPHATE CORPORA-*  
*TION* (No. 1) [1893] W. N. 142
- Haviland v. Johnstone* - (1895) 22 R. 396  
Affirmed by H. L. (Sc.) *sub nom.* *JOHN-*  
*STONE v. HAVILAND* - [1896] A. C. 95
- Hawes, In re* - (1892) 41 W. R. 173  
Discussed by Byrne J. *In re DIXON*  
[1899] 2 Ch. 561; [1900] 2 Ch. 561
- Hawe v. Dunn* - [1897] 1 Q. B. 579  
Overruled. *POWELL v. KEMPTON PARK*  
*RACECOURSE CO.*  
H. L. (E.) [1899] A. C. 143
- Hawkes v. Holland* - (1881) W. N. 128  
Followed by North J. *EDGELL v. WIL-*  
*SON* - [1893] W. N. 145
- Hawkins, In re. Ex parte Hawkins*, [1894] 1  
Q. B. 25.  
Referred to by C. A. *WATKINS v.*  
*WATKINS* [1896] P. 222, 226  
Referred to. *KERR v. KERR*  
[1897] 2 Q. B. 439, 440
- Hawks v. Longridge* (1873) 29 L. T. (N.S.) 449  
Observed upon by C. A. *In re BA-*  
*GOT* [1893] 3 Ch. 348
- Hawksbee v. Hawksbee* (1853) 11 Har. 230  
Approved and adopted. *DALTON v.*  
*FITZGERALD* C. A. [1897] 2 Ch. 86
- Hawksley v. Outram* - - [1892] 3 Ch. 359  
Distinguished by Kekewich J. *LOYD*  
*v. NOWELL* - [1895] 2 Ch. 744
- Hay v. Swedish and Norwegian Ry. Co.*, (1889)  
5 Times L. R. 460.  
Distinguished by Stirling J. *FOLLIT v.*  
*EDDYSTONE GRANITE QUARRIES*  
[1892] 3 Ch. 75
- Hay's Case* - (1875) L. R. 10 Ch. 593  
See *ARCHER'S CASE* [1892] 1 Ch. 322  
Opinion of Mellish L.J., at p. 601, fol-  
lowed by C. A. *In re NORTH AUSTRA-*  
*LIAN TERRITORY CO.* *ARCHER'S CASE*  
[1892] 1 Ch. 322
- Haycock's Policy, In re* - (1876) 1 Ch. D. 611  
Met by 59 & 60 Vict. c. 8.
- Haygarth's Trusts, In re* (1883) 22 Ch. D. 545  
Distinguished by Kekewich J. *KENLIS*  
*(LORD) v. HODGKIN* - [1895] 2 Ch. 458
- Hayn v. Culliford* - (1879) 4 C. P. D. 182  
Approved by C. A. *MEUX v. GREAT*  
*EASTERN RY.* - [1895] 2 Q. B. 387
- Hayter v. Trego*, (1828-30) 5 Russ. 113; 25 R. R.  
13.  
Considered. *In re SLEVIN*  
[1891] 1 Ch. 373; C. A. [1891] 2 Ch. 236
- Haytor Granite Co., In re* (1865) L. R. 1 Ch. 77  
Applied by V. Williams J. *In re NEW*  
*ORIENTAL BANK CORPORATION* (No. 2)  
[1895] 1 Ch. 753
- Hazleton v. Bright* - - [1873] W. N. 3  
Followed by North J. *NEWELL v.*  
*NEWELL* [1896] W. N. 160 (2)
- Head, In re. Head v. Head* (No. 1), [1893] 3 Ch.  
426.  
Distinguished by C. A. *In re HEAD.*  
*HEAD v. HEAD* (No. 2) [1894] 2 Ch. 236
- Healy v. Donnery* - (1853) 3 Ir. C. L. Rep. 213  
Followed by Romer J. *In re WELLES'*  
*SETTLEMENT* - [1897] 1 Ch. 289
- Heap v. Hartley* (1889) 42 Ch. D. 461  
See *LONDON PRINTING AND PUBLISHING*  
*ALLIANCE, LD. v. COX*  
C. A. [1891] 3 Ch. 291
- Heard v. Pilley* - (1869) L. R. 4 Ch. 548  
Observed on by Kekewich J. *JAMES R.*  
*SMITH* [1891] 1 Ch. 384;  
This case was affirmed by C. A.  
[1891] W. N. 175
- Hearn v. Baker* - (1856) 2 K. & J. 383  
Followed by Chitty J. *BROWN v. ACOMB*  
[1896] W. N. 164 (7)
- Heather, In re* - (1870) L. R. 5 Ch. 694  
Followed by Kekewich J. *In re WOOD*  
[1891] W. N. 203  
Distinguished by Chitty J. *In re NEGUS*  
[1895] 1 Ch. 73
- Heaven v. Pender* - (1883) 11 Q. B. D. 503  
Distinguished. *LE LIEVRE v. GOULD*  
C. A. [1893] 1 Q. B. 491
- Heckles v. Heckles* - [1892] W. N. 188  
Commented on by Stirling J. *HILL v.*  
*HICKIN* - [1897] 2 Ch. 579
- Heckscher v. Crosley* - [1891] 1 Q. B. 224  
Doubted by Kay L.J. *ALLCOCK v. HALL*  
[1891] 1 Q. B. 444, 448
- Hecla Foundry Co. v. Walker, Hunter & Co.*,  
(1889) 14 App. Cas. 550.  
Applied by C. A. *JOHN HARPER & CO.*  
*v. WRIGHT AND BUTLER LAMP MANU-*  
*FACTURING CO.* [1896] 1 Ch. 142
- "Hector," *The* - (1883) 8 P. D. 218  
Followed by Bruce J. *THE "BLUE*  
*BELL"* - [1895] P. 242, 248

- Hedley v. Pinkney & Sons Steamship Co.*, [1892] 1 Q. B. 58.  
Affirmed by H. L. (E.) [1894] A. C. 222
- Helly v. Matthews* - [1894] 2 Q. B. 262  
Reversed by H. L. (E.) [1895] A. C. 471  
Decision of H. L. (E.) followed by C. A. PAYNE v. WILSON [1895] 2 Q. B. 537
- Hellard and Beves, In re* - [1896] 2 Q. B. 699  
Referred to by Stirling J. *In re WEBB* [1897] 1 Ch. 144, 149
- Helmore v. Smith (No. 2)* (1887) 35 Ch. D. 449  
Distinguished by Hawkins J. *ROBB v. GREEN* [1895] 2 Q. B. 1;  
This case affirmed by C. A. [1895] 2 Q. B. 315
- Hemming, Ex parte* (1856) 28 L. T. (O.S.) 144  
Distinguished. *In re BAYLIS* [1896] 2 Ch. 107
- Hemp v. Garland* - - (1843) 4 Q. B. 519  
Approved by C. A. REEVES v. BUTCHER [1891] 2 Q. B. 509
- Henderson v. Hay* - (1792) 3 Bro. C. C. 632  
Followed by Chitty J. *In re LANDER AND BAGLEY'S CONTRACT* [1892] 3 Ch. 41
- Henderson v. Underwriting and Agency Association*, [1891] 1 Q. B. 557.  
Distinguished by C. A. CHINA TRADERS' INSURANCE CO. v. ROYAL EXCHANGE ASSURANCE CORPORATION [1898] 2 Q. B. 187, 191
- Hendriks v. Montagu* - (1881) 17 Ch. D. 638  
Discussed by Stirling J. SAUNDERS v. SUN LIFE ASSURANCE CO. OF CANADA [1894] 1 Ch. 537
- Hennessey v. McCabe* - [1900] 1 Q. B. 491  
Followed by C. A. SPENCER v. LIVETT, FRANK & SON [1900] 1 Q. B. 498, 501
- Hennessy v. Wright* (1888) 21 Q. B. D. 509  
Referred to. *In re J. HARGREAVES, LD.* [1900] 1 Ch. 347, 351
- Hennessy v. Wright (No. 2)*, (1888) 24 Q. B. D. 445, n.  
Followed by C. A. HOPE v. BRASH [1897] 2 Q. B. 188
- Henry v. Great Northern Ry. Co.*, (1857) 1 De G. & J. 606.  
Distinguished. STAPLES v. EASTMAN PHOTOGRAPHIC MATERIALS CO. C. A. [1896] 2 Ch. 303
- Herefordshire County Council, In re*, [1895] 1 Q. B. 43.  
Overruled. THETFORD CORPORATION v. NORFOLK COUNTY COUNCIL C. A. [1898] 2 Q. B. 463
- Heritable Reversionary Co. v. Millar (McKay's Trustee)*, (1891) 18 R. 1166.  
Reversed by H. L. (Sc.) [1892] A. C. 598
- Herne Bay Waterworks Co.* (1878) 10 Ch. D. 42  
Not followed by Stirling J. *In re BOROUGH OF PORTSMOUTH (KINGSTON, FRATTON AND SOUTHSEA) TRAMWAYS CO.* [1892] 2 Ch. 362
- Herron v. Rathmines & Rathgar Improvement Commrs.*, (1890) 27 L. R. Ir. 179.  
Reversed by H. L. (Ir.) [1892] A. C. 498
- Heseltine, In re. Woodward v. Heseltine*, [1891] 1 Ch. 464.  
Reversed by H. L. (E.) *sub nom.* SIMMONS v. WOODWARD - [1892] A. C. 100
- Heslop v. Metcalfe* - (1837) 3 M. & C. 183  
Referred to by North J. *In re ROSE MARIE GOLD MINING CO.* [1896] W. N. 76 (5)
- Hesse v. Stevenson*, (1803) 3 Bos. & P. 565; *see Nias v. Adamson*, (1819) 22 R. R. 360, 364.  
Approved of by C. A. *In re ROBERTS* [1900] 1 Q. B. 122, 128
- Hester, In re* - (1889) 22 Q. B. D. 632  
Followed by C. A. *In re FLATAU* [1893] 2 Q. B. 219  
Referred to by C. A. *In re DAVIDSON* [1894] W. N. 210
- Heston and Isleworth Urban District Council v. Grout*, [1897] W. N. 59 (10).  
Affirmed by C. A. - [1897] 2 Ch. 306
- Hetting and Merton's Contract, In re*, [1893] 3 Ch. 269.  
Followed by C. A. *In re EARL OF STRAFFORD AND MAPLES* [1896] 1 Ch. 235
- Hewett v. Foster* - (1844) 7 Beav. 384  
Distinguished by C. A. EASTON v. LANDOR [1892] W. N. 176
- Hewlett v. Allen & Sons* - [1892] 2 Q. B. 662  
Affirmed by H. L. (E.) [1894] A. C. 383
- Heat v. Gill* - (1872) L. R. 7 Ch. 699  
Explained by Byrne J. JOHNSTONE v. CROMPTON & CO. [1899] 2 Ch. 190
- Heywood v. Bishop of Manchester*, (1884) 12 Q. B. D. 404.  
*See* 61 & 62 Vict. c. 48, s. 2 (b).
- Hibbert v. Cooke*, (1824) 1 S. & S. 552; 24 R. R. 225.  
Followed by Chitty J. *In re DE TEISSIER'S SETTLED ESTATES* [1893] 1 Ch. 153
- Hick v. Rodocanachi* - [1891] 2 Q. B. 626  
Considered by Div. Ct. CASTLEGATE STEAMSHIP CO. v. DEMPSEY [1892] 1 Q. B. 54;  
This case affirmed by C. A. [1892] 1 Q. B. 854
- Affirmed by H. L. (E.) *sub nom.* HICK v. RAYMOND & REID [1893] A. C. 22
- Hickling v. Fair* (1896) 23 R. 598  
Reversed by H. L. (Sc.) [1899] A. C. 15
- Hickman v. Berens* [1895] 2 Ch. 638  
Explained by C. A. WILDING v. SANDERSON - [1897] 2 Ch. 534
- Hicks v. Gardner* - (1837) 1 Jur. 541  
Distinguished by Kekewich J. LEEDS AND HANLEY THEATRE OF VARIETIES v. BROADBENT [1897] W. N. 175 (9);  
This case was reversed by C. A. [1898] 1 Ch. 343

- Higgins v. Scott* - - (1888) 21 Q. B. D. 10  
Approved and followed by C. A. JONES  
v. MACAULAY - [1891] 1 Q. B. 221
- Higginson v. Hall* - (1878) 10 Ch. D. 235  
Followed. SCOTT v. CONSOLIDATED BANK  
[1893] W. N. 56
- Higginson v. Simpson* - (1877) 2 C. P. D. 76  
Distinguished by Stirling J. HARVEY  
v. HART [1894] W. N. 72
- Hildige v. O'Farrell* (1881) 8 L. R. Ir. 158  
Approved by C. A. REMINGTON v.  
SCOLES - - [1897] 2 Ch. 1
- Hill (Viscount) v. Bullock* [1897] 2 Ch. 55  
Affirmed by C. A. [1897] 2 Ch. 482
- Hill v. Cooper* - [1893] 2 Q. B. 85  
Distinguished by Kekewich J. *In re*  
HUGHES C. A. [1898] 1 Ch. 529, 535
- Hill v. Crook* - (1873) L. R. 6 H. L. 265  
Followed by North J. *In re* JEANS.  
UPTON v. JEANS - [1895] W. N. 98
- Hill v. Hair* - [1895] 1 Q. B. 906  
Disapproved. BRADFORD v. MAYOR, &c.,  
OF EASTBOURNE [1896] 2 Q. B. 205  
Disapproved of by Div. Ct. SEAL v.  
MERTHYR TYDFIL URBAN COUNCIL  
[1897] 2 Q. B. 543
- Hill v. Rowlands* - - [1897] W. N. 68 (3)  
Affirmed by C. A. - [1897] 2 Ch. 361
- Hill v. Scott* - [1895] 2 Q. B. 371  
Affirmed by C. A. [1895] 2 Q. B. 713
- Hill v. South Staffordshire Ry. Co.* (1874) L. R.  
18 Eq. 154.  
See LONDON, CHATHAM AND DOVER RY.  
Co. v. SOUTH EASTERN RY. Co.  
[1892] 1 Ch. 120; [1893] A. C. 429
- Hill v. Thomas* C. A. [1893] 2 Q. B. 333  
See Locomotives Act, 1898 (61 & 62  
Vict. c. 29), s. 1 (3).  
Followed by C. A. ETHERLEY GRANGE  
COAL CO. v. ATCKLAND DISTRICT HIGH-  
WAY BOARD - C. A. [1894] 1 Q. B. 37
- Hill v. Wallasey Local Board* [1892] 3 Ch. 117  
Reversed by C. A. [1894] 1 Ch. 133
- Hilton v. Tipper*, (1868) 18 L. T. 626; 16 W. R.  
888.  
Overruled by 55 & 56 Vict. c. 13, s. 3.
- Hinchliffe, In re* [1895] 1 Ch. 117  
Distinguished by C. A. SLOANE v.  
BRITAIN STEAMSHIP CO. [1897] 1 Q. B. 185
- "*Hinde (J. R.)*," *The* [1892] P. 231  
Applied by G. Barnes J. THE SIX  
SISTERS [1900] P. 302
- Hindle v. Taylor* (1855) 5 De G. M. & G. 577  
Approved by P. C. TREW v. PERPETUAL  
TRUSTEE CO. [1895] A. C. 264
- Hindson v. Ashby* - [1896] 2 Ch. 1  
Discussed by North J. ECROYD v.  
COULTHARD [1897] 2 Ch. 554, 569;  
C. A. [1898] 2 Ch. 359
- Hipgrave v. Case* - (1885) 28 Ch. D. 356  
Relied on by Stirling J. NICHOLSON v.  
BROWN [1897] W. N. 52 (13)
- Hipwell v. Hipwell* - - [1892] P. 147  
Considered. HARTOPP v. HARTOPP  
[1899] P. 65
- Hirth, In re* - - [1898] W. N. 164 (3)  
Reversed by C. A. [1899] 1 Q. B. 612
- Hitchcock v. Stretton* - [1892] 2 Ch. 343  
Distinguished. *In re* BAYLIS  
C. A. [1896] 2 Ch. 107
- Hitchins v. Brown* - - (1845) 2 C. B. 25  
See MANN v. JOHNSON [1893] W. N. 196
- Hobbs v. Midland Ry. Co.* (1882) 20 Ch. D. 418  
Discussed. DUNHILL v. NORTH EASTERN  
RY. Co. C. A. [1896] 1 Ch. 121
- Hobson's Trusts, In re*, (1878) 7 Ch. D. 708, not  
overruled by *In re* SMITH, (1888) 40  
Ch. D. 388. Per Stirling J. *In re*  
MORGAN [1900] 2 Ch. 474
- Hochster v. De la Tour* - (1853) 2 E. & B. 678  
Referred to by C. A. RHYMNEY RY. CO.  
v. BRECON AND MERTHYR TYDFIL JUNC-  
TION RY. CO. - [1900] W. N. 169
- Hoddinott v. Newton, Chambers & Co.*, [1899]  
1 Q. B. 1018.  
Reversed by H. L. (E.)  
[1900] W. N. 269  
Discussed by C. A. MAUDE v. BROOK  
[1900] 1 Q. B. 575, 578, 580
- Hodgson, In re* (1885) 31 Ch. D. 177, 188  
Followed by Byrne J. McLEOD v.  
POWER - [1898] 2 Ch. 295
- Hodgson v. Halford* - (1879) 11 Ch. D. 959  
Followed by Byrne J. WAINWRIGHT v.  
MILLER - [1897] 2 Ch. 255
- Hodgson v. Hodgson* - (1837) 2 Keen, 704  
Discussed by Chitty J. BOLTON v.  
SALMON - [1891] 2 Ch. 48
- Hodson v. Tea Co.* (1880) 14 Ch. D. 859  
Approved of by C. A. WALLACE v.  
UNIVERSAL AUTOMATIC MACHINES CO.  
[1894] 2 Ch. 547
- Hogarth v. Miller Brother & Co.*, (1889) 16 R.  
599.  
Affirmed by H. L. (Sc.) [1891] A. C. 48
- Hogarth v. Walker* - [1899] 2 Q. B. 401  
Affirmed by C. A. [1900] 2 Q. B. 283
- Holborn Guardians v. Chertsey Guardians*, (1885)  
15 Q. B. D. 76.  
Followed by C. A. LODGE v. HUDDERS-  
FIELD CORPORATION [1898] 1 Q. B. 859
- Holden, In re* - (1887) 20 Q. B. D. 43  
Approved by C. A. *In re* CARTER AND  
KENDERDINE'S CONTRACT [1897] 1 Ch. 776
- Holden v. Weekes* - (1860) 1 J. & H. 278  
Explained by Romer J. ECCLESIASTICAL  
COMMRS. v. WODEHOUSE [1895] 1 Ch. 552
- Holdsworth v. Davenport* - (1876) 3 Ch. D. 185  
Followed by Stirling J. *In re* PARKER  
[1891] 1 Ch. 682
- Hole v. Bradbury* - (1879) 12 Ch. D. 886  
Applicable. GRIFFITHS v. TOWER PUB-  
LISHING CO. - - [1897] 1 Ch. 21



- Holford, In re* - - - [1894] 3 Ch. 30  
Not applicable. *In re* AVERILL  
[1898] 1 Ch. 523
- Holland v. Hodgson* - (1872) L. R. 7 C. P. 328  
Explained. *HOBSON v. GORRINGE*  
C. A. [1897] 1 Ch. 182
- Holland v. King* - - (1848) 6 C. B. 727  
Followed by *Chitty J. DIBBINS v. DIBBINS* - [1896] 2 Ch. 348
- Holland v. Leslie* - (1894) 2 Q. B. 346  
Affirmed by C. A. [1894] 2 Q. B. 450
- Holland v. Wallen* (1894) 70 L. T. (N.S.) 376  
See 57 & 58 Vict. c. cccxiii, ss. 5 (20), 75.
- Holland v. Worley* (1884) 26 Ch. D. 578  
Considered by C. A. MARTIN v. PRICE  
[1894] 1 Ch. 276
- Holles v. Carr* - (1876) 3 Sw. 638  
Followed by *Buckley J. BUCKLAND v. BUCKLAND* [1900] 2 Ch. 534, 540
- Holliday v. National Telephone Co.*, [1899] 1 Q. B. 221.  
Reversed by C. A. [1899] 2 Q. B. 392
- Holliday v. Wakefield Corporation*, (1888) 20 Q. B. D. 699.  
Affirmed by H. L. (E.) [1891] A. C. 81  
Referred to. *In re* LORD GERARD AND LONDON AND NORTH WESTERN RY. CO.  
C. A. [1895] 1 Q. B. 464  
Inapplicable. *GONTY v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.*  
C. A. [1896] 2 Q. B. 439
- Hollinrake v. Truswell* - [1893] 2 Ch. 377  
Reversed by C. A. - [1894] 3 Ch. 420  
Followed. *BOOSEY v. WHIGHT*  
C. A. [1900] 1 Ch. 122, 125
- Hollins v. Verney* - (1884) 13 Q. B. D. 304  
Referred to by *Stirling J. SMITH v. BAXTER* - C. A. [1900] 2 Ch. 138
- Hollis v. Burton* - - [1892] 3 Ch. 226  
Explained by *North J. In re BEENY*  
[1894] 1 Ch. 499, 501
- Holme v. Brunskill* - (1877) 3 Q. B. D. 495  
Discussed by *Chitty J. BOLTON v. SALMON* - - [1891] 2 Ch. 48
- Holmes and Formey, In re* - [1895] 1 Q. B. 174  
Distinguished. *In re* LLOYD AND TOOTH  
C. A. [1899] 1 Q. B. 559, 563
- Holmes v. Millage* - - [1893] 1 Q. B. 551  
Considered by C. A. *CADOGAN v. LYRIC THEATRE* - - [1894] 3 Ch. 338
- Holmes Oil Co. v. Pumpherton Oil Co.*, (1890) 17 R. 624.  
Affirmed by H. L. (Sc.).  
[1891] W. N. 142
- Holt, In re* - - (1878) 4 Q. B. D. 29  
Met by 59 & 60 Vict. c. 26.
- Holt v. Dewell* - - (1845) 4 Hare, 446  
Followed by C. A. *STEPHENS v. GREEN. GREEN v. KNIGHT* - [1895] 2 Ch. 148
- Holt v. Jesse* - - (1876) 3 Ch. D. 177  
Approved by C. A. *HICKMAN v. BERENS*  
[1895] 2 Ch. 638
- Holt & Co.'s Trade-mark, In re*, [1895] W. N. 154 (14).  
Reversed by C. A. - [1896] 1 Ch. 711
- Holby v. Hodgson* (1890) 24 Q. B. D. 103  
See *AYLESFORD (COUNTESS OF) v. GREAT WESTERN RY. CO.*  
C. A. [1892] 2 Q. B. 626  
Dictum of *Lindley L.J.* at p. 108  
doubted by *Div. Ct. In re HEWETT. Ex parte LEVENE*  
[1895] 1 Q. B. 328, 332
- Home Investment Society, In re*, (1880) 14 Ch. D. 167.  
Followed by *V. Williams J. In re LONDON METALLURGICAL CO.*  
[1895] 1 Ch. 758
- Home Marine Insurance Co. v. Smith*, [1898] 1 Q. B. 829.  
Affirmed by C. A. [1898] 2 Q. B. 351
- Honduras Ry. Co. v. Tucker* (1877) 2 Ex. D. 301  
Followed by C. A. *BENNETTS & CO. v. M'ILWRAITH & CO.* [1896] 2 Q. B. 464
- Hong Kong and China Gas Co., In re*, [1898] W. N. 158 (3).  
Followed. *In re* COPIAPO MINING CO.  
[1899] W. N. 25 (1)
- Honywood v. Honywood*, (1874) L. R. 18 Eq. 309, 310.  
The exception at p. 310 of this case in favour of owners of timber estates considered by C. A. *DASHWOOD v. MAGNIAC (No. 1)* [1891] 3 Ch. 306
- Hood & Sons v. Yates* - [1894] 1 Q. B. 240  
Commented upon by *O. A. TOWNEND v. KIRKHAM* - - [1898] 1 Q. B. 51
- Hood Barrs v. Cathcart* [1894] 2 Q. B. 559, 570  
Reasoning on one point overruled. *HOOD BARRS v. HERIOT* [1896] A. C. 174
- Hood Barrs v. Cathcart (No. 2)* [1894] 3 Ch. 376  
Approved. *HOOD BARRS v. HERIOT H. L. (E.)* [1897] A. C. 172, 177
- Hood Barrs v. Heriot* C. A. [1896] 1 Q. B. 610  
Affirmed by H. L. (E.) *sub nom. HOOD BARRS v. CROSSMAN AND PRITCHARD*  
[1897] A. C. 172
- Hooper v. Smart* - - (1875) 1 Ch. D. 90  
Referred to by *Romer J. GRAHAM v. DRUMMOND* - [1896] 1 Ch. 968
- Hope, In re* - - (1874) L. R. 7 Ch. 523  
Discussed by *North J. In re A SOLICITOR (No. 3)* - [1895] 2 Ch. 66
- Hope, In re. De Cetto v. Hope* [1899] W. N. 78  
Affirmed by C. A. - [1899] 2 Ch. 679
- Hope v. Campbell* - - (1896) 23 R. 513  
Reversed by H. L. (Sc.) [1899] A. C. 1
- Hope v. Walter*, [1898] W. N. 36 (12); [1899] 1 Ch. 879.  
Affirmed in part and reversed in part by C. A. - [1900] 1 Ch. 257
- Hope's Settlement, In re* - [1899] 2 Ch. 691, n.  
Approved of. *In re* HOPE. *DE CETTO v. HOPE* - C. A. [1899] 2 Ch. 679
- Hopkinson v. Rolt* - - (1861) 9 H. L. C. 514  
Referred to. *WEST v. WILLIAMS*  
C. A. [1899] 1 Ch. 132

- Horbury Bridge Coal, Iron and Waggon Co.*, (1879) 11 Ch. D. 109.  
Distinguished by *V. Williams J. In re BIDWELL BROTHERS* - [1893] 1 Ch. 603
- Horne and Hellard, In re* (1885) 29 Ch. D. 736  
Considered by Kekewich J. *BRUNTON v. ELECTRICAL ENGINEERING CORPORATION* [1892] 1 Ch. 434
- Horner, In re. Eagleton v. Horner*, (1888) 37 Ch. D. 695.  
Followed by Kekewich J. *In re HARRISON* - - - [1894] 1 Ch. 561
- Hornsey District Council v. Smith*, [1897] W. N. 4 (6).  
Affirmed by C. A. - [1897] 1 Ch. 843
- Horsey Estate, Ltd. v. Steiger* [1898] 2 Q. B. 259  
Reversed by C. A. - [1899] 2 Q. B. 79  
Distinguished by Buckley J. *PANNELL v. CITY OF LONDON BREWERY CO.* [1900] 1 Ch. 496
- Horsey's Claim* - - (1868) L. R. 5 Eq. 561  
Applied by V. Williams J. *In re NEW ORIENTAL BANK CORPORATION (No. 2)* [1895] 1 Ch. 753  
Followed by Kekewich J. *EWART v. FRYER* - [1900] W. N. 82
- Horton v. Bosson* - - [1899] W. N. 23 (8)  
Affirmed by C. A. [1899] W. N. 38 (4)
- Horton v. Hall* - (1874) L. R. 17 Eq. 437  
Considered by North J. *In re TUCKER (No. 1)* - [1893] 2 Ch. 323
- Hoskin's Trusts, In re* (1877) 6 Ch. D. 281  
Referred to by Kekewich J. *In re TREASURE* - [1900] 2 Ch. 648, 651
- Hough v. Edwards* - (1856) 1 H. & N. 171  
Questioned by Div. Ct. *COLE v. ELEY* [1894] 2 Q. B. 180;  
affirmed by C. A. [1894] 2 Q. B. 350
- Houghton Estate, In re* - (1885) 30 Ch. D. 102  
Considered. *In re LORD GERARD'S SETTLED ESTATES* - C. A. [1893] 3 Ch. 252
- Houlston v. Woodward*, Annual Practice, 1893, p. 1028.  
Considered and extended by Kekewich J. *TAYLOR v. ROE (No. 2)* [1893] W. N. 26
- Household, In re* - (1884) 27 Ch. D. 553  
Distinguished by North J. *In re LORD DE TABLEY* [1896] W. N. 162 (16)
- Housing of the Working Classes Act*, 1890, *In re. Ex parte Stevenson* [1892] 1 Q. B. 394  
Affirmed by C. A. [1892] 1 Q. B. 609
- How v. London and North Western Ry. Co.*, [1891] 2 Q. B. 496.  
Affirmed by C. A. - [1892] 1 Q. B. 391
- Howard v. Bennett & Sons*, (1888) 58 L. J. (Q.B.) 129; 60 L. T. (N.S.) 152.  
Considered by C. A. *WILD v. WAYGOOD* [1892] 1 Q. B. 783
- Howard v. Jalland* - - [1891] W. N. 210  
Approved of by Byrne J. *In re NORTON* [1900] 1 Ch. 101
- Howard v. Lupton* (1875) L. R. 10 Q. B. 598  
Not followed by Div. Ct. *WOOLWICH LOCAL Bd. OF HEALTH v. GARDINER* [1895] 2 Q. B. 497
- Howard v. Patent Ivory Manufacturing Co.*, (1888) 33 Ch. D. 156.  
Distinguished by Kekewich J. *BAGOT PNEUMATIC TYRE Co. v. CLIPPER PNEUMATIC TYRE Co.* [1900] W. N. 272
- Howard's Settled Estates, In re*, [1892] 2 Ch. 233  
Considered by Kekewich J. *In re EARL STRAFFORD AND MAPLES* [1895] W. N. 147 (10);  
This case reversed by C. A. [1896] 1 Ch. 235
- Howbeach Coal Co. v. Teague*, (1860) 5 H. & N. 151.  
Considered. *DAWSON v. AFRICAN CONSOLIDATED LAND AND TRADING CO.* C. A. [1898] 1 Ch. 6
- Howden (Lord), In the Goods of*, (1874) 43 L. J. (P. & M.) 26.  
Followed by Barnes J. *IN THE GOODS OF LOCKHART* [1893] W. N. 80
- Howe v. Dartmouth (Earl of)*, (1802) 7 Ves. Jun. 137a; 6 R. R. 96.  
Referred to. *In re EATON* [1894] W. N. 95  
Referred to. *In re NICHOLSON* [1895] W. N. 106  
Rule in, inapplicable. *In re PITCAIRN* [1896] 2 Ch. 199  
Referred to. *In re GAME* [1897] 1 Ch. 881  
Inapplicable. *In re BLAND* [1899] 2 Ch. 336
- Howitt v. Nottingham Tramways Co.*, (1883) 12 Q. B. D. 16.  
Approved by C. A. *ALLDRED v. WEST METROPOLITAN TRAMS CO.* [1891] 2 Q. B. 398
- Howlett v. Maidstone Corporation, C. A.* [1891] 2 Q. B. 110.  
See Lunacy Act, 1890 (53 Vict. c. 5), s. 342.
- Hubbard, Ex parte* - (1886) 17 Q. B. D. 690  
Approved by H. L. (E.) *CHARLESWORTH v. MILLS* - [1892] A. C. 231  
Followed by Stirling J. *MORRIS v. DELOBBEL-FLIPO* [1892] 2 Ch. 352
- Huber, In the Goods of* - [1896] P. 209  
See *POUEY v. HORDERN* [1900] 1 Ch. 492
- Huddersfield Corporation v. Ravenshorpe Urban Council*, [1897] 1 Ch. 652.  
Reversed by C. A. [1897] 2 Ch. 121
- Hudson v. Ede* - (1872) L. R. 3 Q. B. 412  
Followed by C. A. *SMITH & SERVICE v. ROSARIO NITRATE CO.* [1894] 1 Q. B. 174, 178
- Hudson's Trade-marks, In re*, (1886) 32 Ch. D. 311.  
Explained by Chitty J. *In re SMOKE-LESS POWDER Co.'s TRADE-MARK* [1892] 1 Ch. 590
- Huggins v. London and South Wales Colliery Co.*, [1891] 1 Q. B. 496.  
Affirmed by C. A. [1891] 2 Q. B. 699
- Hughes, In re* - - [1893] 1 Q. B. 595  
Referred to by C. A. *GENTLE v. FAULKNER* [1900] 2 Q. B. 267, 274

- Hughes v. Edwardes* - (1890) 18 R. 319  
Reversed by H. L. (Sc.) [1892] A. C. 583
- Hughes v. Pritchard* - (1877) 6 Ch. D. 24  
Referred to. *In re MORRIS* [1894] W. N. 85
- Hugill v. Wilkinson* (1888) 38 Ch. D. 480  
Explained and distinguished by Stirling J. *In re OWEN* - [1894] 3 Ch. 220
- Huguenin v. Baseley*, (1807) 14 Ves. 273; 9 R. R. 148, 276; Preface vi.  
Referred to by C. A. *BARRON v. WILLIS* [1900] 2 Ch. 121, 131
- Hull, Barnsley and West Riding Junction Ry. Co., In re*, [1893] W. N. 83.  
Followed by Stirling J. *Ex parte BRADFORD AND DISTRICT TRAMWAYS CO.* [1893] 3 Ch. 463
- Hull Docks Co. v. Sculcoates Union*, [1894] 2 Q. B. 69.  
Partly affirmed and partly reversed by H. L. (E.) [1895] A. C. 136
- Humble v. Shore* - (1847) 7 Hare, 247  
Overruled. *In re PALMER* C. A. [1893] 3 Ch. 369
- Hume v. Bentley* - (1852) 5 De G. & Sm. 520  
Followed by North J. *In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* [1895] 1 Ch. 190
- Hummel v. Hummel* - - [1898] 1 Ch. 642  
Distinguished by Stirling J. *In re PRICE* - - [1900] 1 Ch. 442
- Humphreys v. Green* (1882) 10 Q. B. D. 148, 156  
Referred to by Byrne J. *MILLER & ALDORTH, LD. v. SHARP* [1899] 1 Ch. 622
- Humphreys v. Jones* - (1886) 31 Ch. D. 30  
Referred to by Kekewich J. *SMITH v. LANCASTER* - [1894] 3 Ch. 439
- Hunt v. Harris* - (1865) 19 C. B. (N.S.) 13  
Explained by Chitty J. *FILLINGHAM v. WOOD* - - [1891] 1 Ch. 51
- Hunt v. Hunt* - - [1897] 2 Q. B. 304  
Reversed by C. A. [1897] 2 Q. B. 547
- Hunt v. White*, (1868) 37 L. J. (Ch.) 326; 16 W. R. 478.  
Overruled by C. A. *PAGE v. MIDLAND RY. CO.* - - [1894] 1 Ch. 11
- Hunter, In re. Hood v. Attorney-General*, [1897] 1 Ch. 518.  
Reversed by C. A. - [1897] 2 Ch. 105  
C. A., [1897] 2 Ch. 105, reversed, except as to costs, by H. L. (E.) *sub nom. HUNTER v. ATT.-GEN. & HOOD* [1899] A. C. 309
- Hunter v. Dowling* (No. 1) [1893] 1 Ch. 391  
Affirmed by C. A. [1893] 3 Ch. 212
- Hunter v. Walters* - (1871) L. R. 7 Ch. 75  
Referred to by Farwell J. *KING v. SMITH* [1900] 2 Ch. 425, 429
- Huntingdon v. Inland Revenue Commrs.*, [1896] 1 Q. B. 422.  
*See Finance Act, 1898* (61 & 62 Vict. c. 10), s. 6.  
*See also INLAND REVENUE COMMRS. v. TOD* H. L. (Sc.) [1898] A. C. 399
- Huntley v. Russell* - (1884) 13 Q. B. 572  
Followed by Romer J. *ECCELESTASTICAL COMMRS. v. WODEHOUSE* [1895] 1 Ch. 552
- Hurley, In re* - - (1893) 10 Morr. 120  
Approved and followed by C. A. *In re BEESTON* [1899] 1 Q. B. 626
- Hurley v. Hurley & Menzies* - [1891] P. 367  
Followed by the President. *DELAFORE v. DELAFORE* - [1892] W. N. 68
- Hutchinson and Tenant, In re*, (1878) 8 Ch. D. 540.  
Followed by Kekewich J. *In re HAMILTON* [1895] 1 Ch. 373; [1895] 2 Ch. 370
- Hutton v. Annan* - [1896] 24 R. 851  
Affirmed by H. L. (Sc.) [1898] A. C. 289
- Hutton v. Scarborough Cliff Hotel Co.*, (1865) 2 Drew. & Sm. 521.  
Commented on by H. L. (E.) *BRITISH AND AMERICAN TRUSTEE AND FINANCE CORPORATION v. COUPER* [1894] A. C. 399  
Overruled. *ANDREWS v. GAS METER CO. C. A.* [1897] 1 Ch. 361  
Observed upon by Romer J. *In re JAMES COLMER, LD.* - [1897] 1 Ch. 524
- Hutton v. West Cork Ry. Co.*, (1883) 23 Ch. D. 651.  
Distinguished. *KAYE v. CROYDON TRAMWAYS CO.* C. A. [1898] 1 Ch. 358
- Hydarnes Steamship Co. v. Indemnity Mutual Marine Assurance Co.*, [1894] 2 Q. B. 590.  
Reversed by C. A. [1895] 1 Q. B. 500
- Hyde v. Hyde* - - (1865) 4 Sw. & Tr. 80  
Followed by Barnes J. *CARTER v. CARTER* [1896] P. 35
- Hyde v. Warden* - (1877) 3 Ex. D. 72  
Questioned. *EASTERN TELEGRAPH CO. v. DENT* - C. A. [1899] 1 Q. B. 835
- Ickeringill's Estate, In re* (1881) 17 Ch. D. 151  
Distinguished by Romer J. *In re BOYD* [1897] 2 Ch. 232
- Imperial Mercantile Credit Association v. Coleman*, (1871) L. R. 6 Ch. 558 (which has not been overruled on this point by S. C., (1873) L. R. 6 H. L. 189).  
Followed by Byrne J. *COSTA RICA RY. CO. v. FORWOOD* - [1900] 1 Ch. 756  
Followed by Kekewich J. *TURNBULL v. WEST RIDING ATHLETIC CLUB (LEEDS)* [1894] W. N. 4
- Inchiquin (Lord), Ex parte* - [1891] 3 Ch. 28  
Followed by Stirling J. *In re INTERNATIONAL CABLE CO.* [1892] W. N. 34  
And again in *In re THE PRINTING, TELEGRAPH AND CONSTRUCTION CO. OF THE AGENCE HAVAS. Ex parte CAMMELL* [1894] 1 Ch. 528  
This last case was affirmed by C. A. [1894] 2 Ch. 392

- Income Tax Commrs. v. Pemsell*, (1889) 22 Q. B. D. 296.  
 Affirmed by H. L. (E.) [1891] A. C. 531  
 Followed by C. A. INLAND REVENUE COMMISSIONERS *v.* SCOTT [1892] 2 Q. B. 152  
 Referred to by Kekewich J. *In re* NOTTAGE C. A. [1895] 2 Ch. 649  
 Referred to by C. A. *In re* MACDUFF [1896] 2 Ch. 466  
 Distinguished by C. A. CUNNACK *v.* EDWARDS [1896] 2 Ch. 685  
 Followed by Kekewich J. *In re* BUCK [1896] 2 Ch. 727
- Ind, Coope & Co. v. Hamblin* [1900] W. N. 24  
 Reversed by C. A. [1900] W. N. 270
- India in Council (Secretary of State for) v. Kamachee Boye Sahaba*, (1859) 13 Moo. P. C. 22.  
 Followed. COOK *v.* SPRIGG P. C. [1899] A. C. 572
- "*India*," *The* - (1863) 32 L. J. (Ad.) 185  
 Overruled by C. A. THE "MECCA" [1895] P. 95
- Ingleby and Boak and Norwich Union Insurance Co., In re*, (1883) L. R. (L.) 13 Ch. D. 326.  
 Referred to by Byrne J. *In re* PIXTON AND TONG'S CONTRACT [1897] W. N. 178 (5)
- Inglis v. Gillanders* - (1895) 22 R. 266  
 Affirmed by H. L. (Sc.) [1895] A. C. 507
- Innes v. Sayer* - (1851) 3 Mac. & G. 606  
 Followed by Kekewich J. *In re* HUDLESTON - [1894] 3 Ch. 595
- Institute of Patent Agents v. Lockwood*, (1893) 20 R. 315, reversed in part by H. L. (Sc.), [1894] W. N. 105; [1894] A. C. 347.  
 Discussed by V. Williams J. *In re* LONDON AND GENERAL BANK (No. 3) [1894] W. N. 155
- Ionides v. Pacific Insurance Co.*, (1871) L. R. 6 Q. B. 682; (1872) L. R. 7 Q. B. 517.  
 Dictum in adopted by P. C. DAVIES *v.* NATIONAL FIRE, &c., INSURANCE CO. OF NEW ZEALAND [1891] A. C. 485, at p. 491
- Iredale v. China Traders Insurance Co.*, [1899] 2 Q. B. 356.  
 Affirmed by C. A. [1900] 2 Q. B. 515
- Ireland (Governor and Co. of the Bank of) v. McCarthy* - [1897] 1 I. R. 86  
 Affirmed H. L. (I.) [1898] A. C. 181
- Irons v. Davis and Timmins, Ltd.*, [1899] 2 Q. B. 330.  
 Followed by C. A. POMPHREY *v.* SOUTHWARK PRESS - [1900] W. N. 256
- Irvine v. Sullivan* - (1869) L. R. 8 Eq. 673  
 Referred to. WILLIAMS *v.* WILLIAMS C. A. [1879] 2 Ch. 12
- Irwin v. Reddish* - (1822) 5 B. & Ald. 796  
 Referred to by C. A. AVERY *v.* WOOD [1891] 2 Ch. 115
- Isaac's Case* - - - [1892] 2 Ch. 158  
 Dictum of Stirling J., at p. 164, followed by Kekewich J. *In re* BREAD SUPPLY ASSOCIATION - [1893] W. N. 14  
 Distinguished by C. A. *Ex parte* CAMELL - [1894] 2 Ch. 392
- Isis Steamship Co. v. Bahr & Co.* [1899] 2 Q. B. 364.  
 Affirmed by H. L. (E.) [1900] A. C. 340
- Islington and General Electric Supply, In re*, [1892] W. N. 81.  
 Considered by V. Williams J. *In re* MINING SHARES INVESTMENT CO. [1893] 2 Ch. 660, at p. 664
- Islington Vestry v. Goodman*, (1889) 23 Q. B. D. 154.  
 Overruled by Div. Ct. FORTESCUE *v.* VESTRY OF ST. MATTHEW, BETHNAL GREEN [1891] 2 Q. B. 170
- Ires, In re. Ex parte Addington*, (1886) 16 Q. B. D. 670, 671.  
 Dicta of Cave J. in, dissented from. MONTGOMERY & Co. *v.* DE BULMES C. A. [1898] 2 Q. B. 420
- Ires & Barker v. Willans* [1894] 1 Ch. 68  
 Affirmed by C. A. [1894] 2 Ch. 478
- Jablochhoff's Patent, In re* - [1891] A. C. 293  
 Distinguished by P. C. MARSHALL'S PATENT [1891] A. C. 430
- Jackman v. Mitchell*, (1807) 13 Ves. 581; 9 R. R. 229.  
 Distinguished by C. A. *In re* McHENRY [1894] 3 Ch. 365
- Jackson, In re* - - - (1882) 21 Ch. D. 786  
 Distinguished by Chitty J. *In re* DE TEISSIER'S SETTLED ESTATES [1893] 1 Ch. 153  
 Distinguished by North J. *In re* LORD DE TABLEY [1896] W. N. 162 (16)
- Jackson v. Barry Ry. Co.* [1893] 1 Ch. 238  
 Followed by Cozens-Hardy J. BRIGHT *v.* RIVER PLATE CONSTRUCTION CO. [1900] 2 Ch. 835, 838
- Jackson v. Hamilton* - - - (1846) 3 J. & Lat. 702  
 Considered by Stirling J. *In re* WILLIAMS [1895] W. N. 36
- Jackson Co.'s Trade-mark, In re*, (1889) 6 Rep. Pat. Cas. 80.  
 Distinguished by Romer J. *In re* DENSHAM'S TRADE-MARK [1895] 2 Ch. 176, 183
- Jackson & Co, In re* - [1899] 1 Ch. 348  
 Distinguished. TRANSVAAL EXPLORING CO. *v.* ALBION (TRANSVAAL) GOLD MINES, LD. [1899] 2 Ch. 370
- "*Jacob Landstrom*," *The* (1878) 4 P. D. 191, 193  
 Dissented from by Bruce J. THE "STRATHGARRY" [1895] P. 264
- Jacobs v. Crédit Lyonnais* (1884) 12 Q. B. D. 589  
 Principle in, applied. SOUTH AFRICAN BREWERIES *v.* KING [1899] 2 Ch. 173

- Jacoby v. Whitmore*, (1883) 32 W. R. 18, 19; 49 L. T. 335.  
Dictum of Cotton L.J. followed by North J. *BATHO v. TUNES* [1892] W. N. 101  
Applied by Farwell J. *TOWNSEND v. JARMAN* - - [1900] 2 Ch. 698
- James, Ex parte* (1874) L. R. 9 Ch. 609  
Referred to by Kekewich J. *In re THE OPERA, LD.* - - [1891] 2 Ch. 154
- James v. Buena Ventura Nitrate Grounds Syndicate*, [1896] 1 Ch. 456.  
Considered by C. A. *ALLEN v. GOLD REEFS OF WEST AFRICA, LD.* [1900] 1 Ch. 656
- James v. Carr* - - (1890) 7 Times L. R. 4  
Considered. *WHITTAKER v. SCARBOROUGH POST NEWSPAPER CO.* C. A. [1896] 2 Q. B. 148
- James v. Jones* - - [1894] 1 Q. B. 304  
See now Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 26.
- James v. Smith* - [1891] 1 Ch. 384  
Affirmed by C. A. [1891] W. N. 175  
Note.—The C. A. did not decide whether the Statute of Frauds applied.
- Jamieson v. Trevelyan* - (1854) 10 Ex. 269  
Explained by Stirling J. *DE HOGHTON v. DE HOGHTON* - [1896] 2 Ch. 385
- Jamieson and Newcastle Steamship Freight Insurance Association, In re*, [1895] 1 Q. B. 510.  
Reversed by C. A. [1895] 2 Q. B. 90
- Jardine v. Jardine* - (1881) 6 P. D. 213  
Head-note in, corrected. *WATKINS v. WATKINS* - C. A. [1896] P. 222, 226
- Jarvis & Co., In re* - - [1899] 1 Ch. 193  
Distinguished by Cozen & Hardy J. *In re WHITEHEAD & BROTHERS, LD.* [1900] 1 Ch. 804  
Followed by Kekewich J. *In re DAWNAY, LD.* - - [1900] W. N. 152
- Jay v. Johnstone* - [1893] 1 Q. B. 25  
Affirmed by C. A. [1893] 1 Q. B. 189
- Jee v. Audley* (1787) 1 Cox, 324; 1 R. R. 46  
Followed by C. A. *In re HOCKING* [1898] 2 Ch. 567
- Jeffery, In re* - [1891] 1 Ch. 671  
Dissented from by Chitty J. *In re BURTON'S WILL* [1892] 2 Ch. 38  
But adhered to by North J. *In re ADAMS* [1893] 1 Ch. 329  
Followed with reluctance by Kekewich J. *In re CALDWELL* [1894] W. N. 13  
Overruled by C. A. *In re HOLFORD* [1894] 3 Ch. 30
- Jeffrey v. Paul* - - 1 Shaw & McL. 767  
Discussed by H. L. (Sc.) *HERITABLE AND REVERSIONARY CO. v. MILLAR* [1892] A. C. 598, 607, 618
- Jeffries v. Reynolds* - (1882) 52 L. J. (Q.B) 55  
Approved of by C. A. *DREW v. WILLIS* [1891] 1 Q. B. 450, 452
- Jegon v. Vivian* - - (1871) L. R. 6 Ch. 742  
Principle applied. *WHITTHAM v. WESTMINSTER BRYMBO COAL AND COKE CO.* C. A. [1896] 2 Ch. 538
- Jellard, In re* - - (1888) 39 Ch. D. 424  
Doubted, but followed by Kekewich J. *In re STANWAY'S TRUSTS* [1892] W. N. 11
- Jenkins v. Bushby* - [1891] 1 Ch. 484  
Explained. *MANGAN v. METROPOLITAN ELECTRIC SUPPLY CO.* C. A. [1891] 2 Ch. 551
- Jenkins v. Robertson*, (1866) L. R. 1 H. L. (Sc.) 117.  
Distinguished by V. Williams J. *In re SOUTH AMERICAN AND MEXICAN CO.* [1895] 1 Ch. 37
- Jenkinson v. Brandley Mining Co.*, (1887) 19 Q. B. D. 568.  
Overruled by C. A. *In re STANDARD MANUFACTURING CO.* [1891] 1 Ch. 627
- Jenkinson v. Harcourt* - (1854) Kay, 688  
Considered by Kekewich J. *In re ANTHONY (No. 2)* [1893] 3 Ch. 498
- Jenks v. Turpin* - (1884) 13 Q. B. D. 505  
Applied by Stirling J. *FAIRTLOUGH v. WHITMORE* - [1895] W. N. 52
- Jenner-Fust v. Needham*, (1886) 32 Ch. D. 582,  
observed upon.  
See *AYLWARD v. LEWIS* [1891] 2 Ch. 81
- Jennings v. Jordan* - (1881) 6 App. Cas. 698  
Distinguished by Romer J. *PLEDGE v. CARR* [1894] 2 Ch. 238;  
This case affirmed by C. A. [1895] 1 Ch. 51; H. L. (E.) [1896] A. C. 187  
Form of order followed by North J. *BIDDULPH v. BILLITER STREET OFFICES CO.* [1895] W. N. 98  
Referred to by Stirling J. *RILEY v. HALL* [1898] W. N. 81 (9)
- Jennings v. Ward* - (1705) 2 Vern. 520  
Explained and distinguished. *BIGGS v. HODDINOTT* C. A. [1898] 2 Ch. 307
- Jersey (Earl of) v. Neath Union*, (1889) 22 Q. B. D. 555.  
Explained by Byrne J. *JOHNSTONE v. CROMPTON & CO.* [1899] 2 Ch. 190
- Jesus College, Cambridge, Ex parte*, (1884) W. N. 37.  
Followed by Stirling J. *Ex parte VICAR OF CASTLE BYTHAM* [1895] 1 Ch. 348
- Jodrell, In re. Jodrell v. Seale*, (1890) 44 Ch. D. 590.  
Affirmed by H. L. (E.) *sub nom. SEALE-HAYNE v. JODRELL* [1891] A. C. 304  
Referred to by C. A. *In re GUE* [1892] W. N. 132  
Followed by Jeune J. *IN THE GOODS OF ASHTON* [1892] P. 83, 88  
Referred to by Stirling J. *In re DEAKIN* [1894] 3 Ch. 565, 569  
Referred to by Kekewich J. *In re PARKER* - - [1897] 2 Ch. 208, 211

- "Johann Sverdrup," The*, (1886) 11 P. D. 49; 12 P. D. 43.  
Referred to by G. Barnes J. *THE "WARSAW"* - - [1898] P. 127;  
*THE "HOLAR"* [1900] W. N. 240
- Johannesburg Hotel Co., In re* [1891] 1 Ch. 119  
Approved. *NORTH SYDNEY INVESTMENT AND TRAMWAYS CO. v. HIGGINS*  
[1899] A. C. 263
- Johnson, Ex parte* - (1884) 26 Ch. D. 338  
Approved by P. C. ADMINISTRATOR-GENERAL OF JAMAICA *v. LASCELLES, DE MERCADO & Co. In re REES' BANKRUPTCY* [1894] A. C. 135
- Johnson v. Lindsay & Co.*, (1889) 23 Q. B. D. 508  
Decision of C. A. and Div. Ct. reversed by H. L. (E.), and that of Grantham J. restored [1891] A. C. 371  
Judgment of H. L. (E.) approved by P. C. CAMERON *v. NYSTROM*  
[1893] A. C. 308  
See *JOHNSON v. LINDSAY & Co. (No. 2)*  
[1892] A. C. 110
- Johnson v. Raylton* (1881) 7 Q. B. D. 438  
*Quære*, superseded by 56 & 57 Vict. c. 71, s. 14 (1).
- Johnson v. Royal Mail Steam Packet Co.*, (1867) L. R. 3 C. P. 38.  
Distinguished by Jeune P. *THE "RIPON CITY"* - [1898] P. 78
- Johnson and Tustin, In re* (1885) 30 Ch. D. 42  
Applied by North J. *In re STAMFORD, & C., Co. AND KNIGHT'S CONTRACT*  
[1900] 1 Ch. 287, 291
- Johnston v. Swann*, (1818) 3 Madd. 457; 18 R. R. 270.  
Overruled if and so far as differing from *Lewis v. Allenby. In re PIERCY*  
C. A. [1898] 1 Ch. 565
- Johnstone v. Buccleuch (Duke of)* (1891) R. 587  
Affirmed by H. L. (Sc.) [1892] A. C. 625
- Johnstone v. Haviland* - (1895) 22 R. 396  
Affirmed by H. L. (Sc.) [1896] A. C. 95
- Johnstone v. Milling* (1886) 16 Q. B. D. 460, 471  
Referred to by C. A. RHYMNEY RY. CO. *v. BRECON AND MERTHYR TYDFIL JUNCTION RY. CO.* - [1900] W. N. 169
- Johnstone's Settlement, In re*, (1880) 14 Ch. D. 162  
Considered by Byrne J. *In re MOSES*  
[1900] W. N. 182
- Jolly, In re. Gathercole v. Norfolk*, [1900] 1 Ch. 292.  
Reversed by C. A. - [1900] 2 Ch. 616
- Jones, In re* - - (1869) L. R. 9 Eq. 63  
Superseded. *In re SWEETING*  
North J. [1898] 1 Ch. 268
- Jones, In re* - - (1885) 31 Ch. D. 440  
Followed by Chitty J. *In re BRIGGS*  
[1894] W. N. 162  
*In re BENTINCK*  
[1897] 1 Ch. 673
- Jones, In re* - - [1893] 2 Ch. 461  
Applied by North J. *In re COOK'S MORTGAGE* - [1896] 1 Ch. 923, 925
- Jones, In re* - [1895] 2 Ch. 719  
Affirmed by C. A. [1896] 1 Ch. 222
- Jones v. Badley* - - (1868) L. R. 3 Ch. 362  
Referred to by Farwell J. *In re STEAD*  
[1900] 1 Ch. 237
- Jones v. Barnett* - - [1899] 1 Ch. 611  
Affirmed by C. A. - [1900] 1 Ch. 370
- Jones v. Biernstein*, [1899] W. N. 12 (10); [1899] 1 Q. B. 470.  
Affirmed by C. A. [1900] 1 Q. B. 100
- Jones v. Clifford* - - (1876) 3 Ch. D. 779  
Referred to by North J. *In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* [1895] 1 Ch. 190
- Jones v. Croucher* - (1822) 1 Sim. & St. 315  
See 56 & 57 Vict. c. 21.
- Jones v. Evans* - (1876) 2 Ch. D. 420  
Distinguished. *DAVIES v. PARRY*  
[1899] 1 Ch. 602
- Jones v. German* [1896] 2 Q. B. 418  
Affirmed by C. A. [1897] 1 Q. B. 374
- Jones v. Hough* - (1879) 5 Ex. D. 115  
Commented on by Mathew J. RAYNER *v. REDERIAKTIEBOLAGET CONDOR*  
[1895] 2 Q. B. 289
- Jones v. Inland Revenue Commrs.*, [1895] 1 Q. B. 484.  
Followed. *NATIONAL TELEPHONE CO. v. INLAND REVENUE COMMRS.*  
C. A. [1899] 1 Q. B. 250;  
H. L. (E.) [1899] W. N. 232
- Jones v. Jenner* - (1856) 25 L. J. (Ex. 319  
The principle of, approved. *MONTGOMERY & Co. v. DE BULMES*  
C. A. [1898] 2 Q. B. 420
- Jones v. Jones*, [1896] P. 165, rule laid down at p. 170.  
Disapproved. *SAUNDERS v. SAUNDERS*  
C. A. [1897] P. 89
- Explained by Jeune P. *EDWARDS v. EDWARDS* [1897] P. 316
- Jones v. Merionethshire Permanent Benefit Building Society*, [1891] 2 Ch. 587.  
Affirmed by C. A. [1892] 1 Ch. 173
- Jones v. Mills* - (1861) 10 C. B. (N.S.) 788  
Considered by Div. Ct. *BOWEN v. ANDERSON* [1894] 1 Q. B. 164
- Jones v. St. John's College*, (1870) L. R. 6 Q. B. 115.  
Distinguished by C. A. *DODD v. CHURTON* - [1897] 1 Q. B. 562
- Jones v. Selby* - - (1710) Prec. Ch. 330  
Followed by Mathew J. *MUSTAPHA v. WEDLAKE* - [1891] W. N. 201
- Jones v. Simes* - - (1890) 43 Ch. D. 607  
Distinguished. *PEEBLES v. OSWALD-TWISTLE URBAN DISTRICT COUNCIL*  
C. A. [1896] 2 Q. B. 159
- Jones v. Thorne* - - (1823) 1 B. & C. 715  
Followed by Chitty J. *RAFLEY v. SMART*  
[1894] W. N. 2
- Jones v. Westcomb* - - 1 Eq. C. Ab. 245  
Held not applicable by C. A. *In re TREDWELL (No. 1)* [1891] 2 Ch. 640

- Jones v. Williams* - (1843) 11 M. & W. 176  
Considered by C. A. *LEMMON v. WEBB*  
[1894] 3 Ch. 1;  
This case affirmed by H. L. (E.)  
[1895] A. C. 1
- Jones and Judgments Acts, 1864, In re, [1895]*  
W. N. 123 (10).  
Doubted by C. A. *In re HARRISON AND*  
*BOTTOMLEY* [1899] 1 Ch. 465, 472
- Joplin v. Postlethwaite, (1889) 61 L. T. (N.S.)*  
629.  
Followed by *Kekewich J. TURNELL v.*  
*SANDERSON* - [1891] W. N. 71  
Explained by *Clitty J. VAWDREY v.*  
*SIMPSON* - - [1896] 1 Ch. 166
- Jordan, Ex parte* - (1892) 31 L. R. Ir. 1  
Referred to. *In re GALVIN, [1897] 1*  
*Ir. R. (Ch.) 520-534*  
Ch. Div. Ir. [1898] W. N. 140
- Jorden v. Money* - (1854) 5 H. L. C. 185  
Approved. *CHADWICK v. MANNING*  
[1896] A. C. 231, 238
- Jordeson v. Sutton, Southcoates and Drypool Gas*  
*Co., [1898] 2 Ch. 614.*  
Affirmed by C. A. - [1899] 2 Ch. 217
- Joules' Trade-marks, In re. Thompson v. Mont-*  
*gomery, (1889) 41 Ch. D. 35.*  
Affirmed by H. L. (E.) *sub nom. MONT-*  
*GOMERY v. THOMPSON* [1891] A. C. 217
- Jowett v. Local Board of Idle* [1888] W. N. 87  
Followed by Div. Ct. *FENWICK v. RURAL*  
*SANITARY AUTHORITY OF THE CROYDON*  
*UNION* [1891] 2 Q. B. 216
- Joys, In the Goods of* - (1860) 4 Sw. & Tr. 214  
Disapproved. *LADELL v. WILCOCKS*  
[1898] P. 21
- Karberg's Case* - - [1892] 3 Ch. 1  
Distinguished. *LYNDE v. ANGLO-*  
*ITALIAN HEMP SPINNING Co.*  
[1896] 1 Ch. 178
- Kay v. Atherton Local Board, (1878) 42 J. P. 792*  
Overruled by C. A. *GRAHAM v. COR-*  
*PORATION OF NEWCASTLE-UPON-TYNE*  
[1893] 1 Q. B. 643
- Kaye v. Croydon Tramways Co., [1898] 1 Ch. 358*  
Followed by *Kekewich J. TIESSEN v.*  
*HENDERSON* - [1899] 1 Ch. 861
- Kaye v. Sutherland* (1888) 20 Q. B. D. 147  
Followed by Div. Ct. *TASSELL v.*  
*HALLEN* - [1892] 1 Q. B. 321
- Kearney v. Lloyd* - (1890) 26 L. R. Ir. 268  
Approved and followed. *HUTLEY v.*  
*SIMMONS* - [1898] 1 Q. B. 181
- Kearns v. Leaf* - (1864) 1 H. & M. 681  
Principle applied by C. A. *CUMMINS v.*  
*PERKINS* [1899] 1 Ch. 16
- Keays v. Lane* - (1869) Ir. Rep. 3 Eq. 1  
Referred to by *Kekewich J. In re*  
*LAING'S SETTLEMENT* [1899] 1 Ch. 583
- Keeble v. Bennett* - [1894] 2 Q. B. 329  
Distinguished. *BAILEY v. WATSON &*  
*Co.* - [1898] 2 Q. B. 270  
Approved of. *WHITE v. HEADLAND'S*  
*PATENT ELECTRIC STORAGE BATTERY*  
*Co.* - C. A. [1899] 1 Q. B. 507
- Keeble v. Hickerlingill, (1705) 11 East, 574, n.*  
11 R. R. 273, n.  
Commented on. *ALLEN v. FLOOD*  
H. L. (E.) [1898] A. C. 1
- Kehoe v. Lansdowne (Marquis of), (1891) 29 L. R.*  
Ir. 230.  
Affirmed by H. L. (I.) [1893] A. C. 451
- Keighley, Maxsted & Co. and Durant & Co., In re,*  
[1893] 1 Q. B. 405.  
Principle in, applied. *In re PALMER &*  
*CO. AND HOSKEN & Co.*  
C. A. [1898] 1 Q. B. 131, 137
- Kelly, Ex parte* - (1893) 31 L. R. Ir. 137  
Followed. *In re LLOYD AND NORTH*  
*LONDON RY. (CITY BRANCH) ACT, 1861*  
[1896] 2 Ch. 397
- Kelly, In re* - [1895] 1 Q. B. 180  
See *Solicitors Act, 1899 (62 & 63 Vict.*  
*c. 4).*
- Kelly v. Batchelar* (1893) 10 Rep. Pat. Cas. 289  
Distinguished by North J. *DUNLOP*  
*PNEUMATIC TYRE Co. v. NEAL*  
[1899] 1 Ch. 807
- Kelly v. Kelly* - (1870) L. R. 2 P. & D. 31-59  
Followed. *BETHUNE v. BETHUNE*  
[1891] P. 205  
And see *BEAUCLERK v. BEAUCLERK*  
[1891] P. 189, 194
- Kemp v. Bird* - (1877) 5 Ch. D. 549, 974.  
Followed by *Kekewich J. ASHBY v.*  
*WILSON* - [1900] 1 Ch. 66
- Kemp v. Wanklyn* - [1894] 1 Q. B. 265  
Reversed by C. A. [1894] 1 Q. B. 583
- Kemp v. Wright* - [1894] 2 Ch. 462  
Partially reversed by C. A.  
[1895] 1 Ch. 121  
See now *Building Societies Act, 1894*  
(57 & 58 Vict. c. 47), s. 10.  
Decision of C. A. referred to by *Stirling*  
*J. BOTTEN v. CITY AND SUBURBAN*  
*PERMANENT BUILDING SOCIETY*  
[1895] 2 Ch. 441
- Kemp's Settled Estates, In re, (1883) 24 Ch. D.*  
485.  
Observed upon. *In re EARL OF STAM-*  
*FORD* - [1896] A. C. 288
- Kendall v. Hamilton* - (1879) 4 App. Cas. 504  
Held not to apply. *WEGG-FROSSER v.*  
*EVANS* - C. A. [1895] 1 Q. B. 108  
Explained. *WILSON, SONS & Co. v.*  
*BALCARRES BROOK STEAMSHIP CO.*  
C. A. [1893] 1 Q. B. 422
- Kennard v. Simmons* - (1884) 50 L. T. Rep. 28  
See now 61 & 62 Vict. c. 49, s. 5.
- Kennedy v. De Trafford* - [1896] 1 Ch. 762  
Affirmed by H. L. (E.) [1897] A. C. 180
- Kennedy v. Kennedy* - (1853) 10 Hare, 438  
Distinguished. *In re SHARLAND*  
[1896] 1 Ch. 517; C. A. [1896] W. N. 62 (17)
- Kent v. Freehold Land and Brickmaking Co.,*  
(1868) L. R. 3 Ch. 493.  
Discussed by *Wright J. In re GENERAL*  
*RAILWAY SYNDICATE, WHITELEY'S*  
*CASE* - [1899] 1 Ch. 770;  
C. A. [1900] 1 Ch. 365

- Kent v. Stoney* - (1859) 9 Ir. Ch. R. 249  
Followed by *Farwell J. MULLER v. TRAFFORD* - [1900] W. N. 251
- Kent v. Worthing Local Board of Health*, (1882) 10 Q. B. D. 118.  
Overruled. *THOMPSON v. BRIGHTON CORPORATION* C. A. [1894] 1 Q. B. 332
- Kent Coast Ry. Co. v. London, Chatham and Dover Ry. Co.*, (1868) L. R. 3 Ch. 656.  
Followed by *Farwell J. MANCHESTER SHIP CANAL Co. v. MANCHESTER RACE-COURSE Co.* - [1900] 2 Ch. 352
- Kent County Council v. Gerard (Lord)*, [1897] A. C. 633.  
See 61 & 62 Vict. c. 29, s. 12.
- Kent County Council v. Humphrey*, [1895] 1 Q. B. 903.  
Discussed by Div. Ct. *ALTY v. FARRELL* [1896] 1 Q. B. 636, 640
- Kent County Council and Dover Council, Ex parte*, [1891] 1 Q. B. 389.  
Affirmed by C. A. [1891] 1 Q. B. 725
- Kent County Council and Sandwich Council, Ex parte*, [1891] 1 Q. B. 389; C. A. [1891] 1 Q. B. 725.  
Overruled. *THETFORD CORPORATION v. NORFOLK COUNTY COUNCIL* C. A. [1898] 2 Q. B. 468
- Kenworthy v. Bate*, (1802) 6 Ves. 793; 6 R. R. 46  
Discussed by Kekewich J. *In re PAGET* [1898] 1 Ch. 290
- Ker v. Ker* - (1869) 4 Ir. Rep. Eq. 15  
Distinguished by North J. *In re JONES. FARRINGTON v. FOSTER (No. 2)* [1893] 2 Ch. 461, at p. 473
- Kernaghan v. McNally* (1861) 12 Ir. Ch. Rep. 89  
Commented on. *DALTON v. FITZGERALD* C. A. [1897] 2 Ch. 86
- Kerr v. Preston Corporation* (1876) 6 Ch. D. 463  
Considered by Stirling J. *GRAND JUNCTION WATERWORKS Co. v. HAMPTON URBAN COUNCIL* [1898] 2 Ch. 331
- Kershaw v. Taylor* - [1895] 2 Q. B. 208  
Affirmed by C. A. [1895] 2 Q. D. 471  
Followed by Chitty J. *FLORENCE v. PADDINGTON VESTRY* [1895] W. N. 143 (9)  
Referred to by Div. Ct. and C. A. *REG. v. BETHNAL GREEN VESTRY* [1896] 2 Q. B. 95, 97, 319, 325; H. L. (E.) [1898] A. C. 190
- Kharaskhoma Exploring and Prospecting Syndicate, In re. Pyke and Gibson's Case*, [1897] W. N. 58 (1).  
Reversed by C. A. - [1897] 2 Ch. 451  
Followed by Kekewich J. *In re MAYNARDS LD.* - [1898] 1 Ch. 515;  
But *In re Maynards, Ltd.*, was dis-sented from by C. A. *In re S. FROST & Co.* - [1899] 2 Ch. 207  
Referred to by Wright J. *In re MAY'S METAL SEPARATING SYNDICATE* [1898] W. N. 159 (5)  
See also Companies Act, 1898 (61 & 62 Vict. c. 26).
- Kibble v. Gough* - (1878) 38 L. T. (N.S.) 204  
Considered by C. A. *TAYLOR v. SMITH* [1893] 2 Q. B. 65
- Kidderminster (Mayor of) v. Hurdwick*, (1873) L. R. 9 Ex. 13.  
Followed by *Romer J. OXFORD CORPORATION v. CROW* - [1893] 3 Ch. 535
- Kidman v. Kidman* - (1871) 40 L. J. (Ch.) 359  
Followed by C. A. *In re WOODIN* [1895] 2 Ch. 309
- Kimber v. Admans* - - [1900] W. N. 23  
Affirmed by C. A. - [1900] 1 Ch. 412
- King, Ex parte* - - (1876) 2 Ch. D. 256  
Approved by P. C. ADMINISTRATOR-GENERAL OF JAMAICA v. LASCELLES, DE MERCADO & Co. *In re REES' BANKRUPTCY* - [1894] A. C. 135
- King v. Denison*, (1813) 1 Ves. & B. 260; 12 R. R. 227.  
Discussed by Kekewich J. *In re WEST* [1900] 1 Ch. 84, 87
- King v. Hoare* - (1844) 13 M. & W. 494  
Followed by Byrne J. *MCLEOD v. POWER* - [1898] 2 Ch. 295
- King v. Hutton*, [1899] W. N. 135; [1899] 2 Q. B. 555.  
Affirmed by C. A. [1900] 2 Q. B. 504  
Followed by Wright J. *In re WOODD* [1900] W. N. 84
- King v. London Improved Cab Co.*, (1889) 23 Q. B. D. 281.  
Followed, applied, and held by C. A. to overrule *King v. Spurr*, (1881) 8 Q. B. D. 104. *KEEN v. HENRY* [1894] 1 Q. B. 292
- King v. Spurr* - - (1881) 8 Q. B. D. 104  
Overruled by *King v. London Improved Cab Co.*, (1889) 23 Q. B. D. 281, per C. A. *KEEN v. HENRY* [1894] 1 Q. B. 292
- King & Co., In re* - - [1892] 2 Ch. 462  
Followed by Stirling J. *In re KAY'S PATENT* - [1894] W. N. 68  
Referred to by North J. *In re CLIFF* [1895] 2 Ch. 21, 25
- King, Brown & Co. v. Brush Electric Light Corporation, Ltd.*, (1890) 17 R. 1266.  
Affirmed by H. L. (Sc.) *sub nom. ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CORPORATION v. KING, BROWN & Co.* [1892] A. C. 367
- Kingham v. Kingham* - [1897] 1 I. R. 170, 174  
Referred to by Kekewich J. *In re GJERS* - [1899] 2 Ch. 54
- Kingham v. Robins* - (1839) 5 M. & W. 94  
Followed by Div. Ct. *HENNELL v. DAVIES* - [1893] 1 Q. B. 367
- Kingsford v. Merry* - (1856) 1 H. & N. 503  
Discussed by C. A. *HENDERSON & Co. v. WILLIAMS* - [1895] 1 Q. B. 521
- Kingston Cotton Mill Co., In re*, [1895] W. N. 138 (4).  
Affirmed by C. A. - [1896] 1 Ch. 6



- Kingston Cotton Mill Co. (No. 2), In re*, [1896] 1 Ch. 331.  
Reversed by C. A. - [1896] 2 Ch. 279
- Kippen v. Darley* (1858) 3 Macq. H. L. Cas. 203  
Followed. *JOHNSTONE v. HAVILAND*  
[1896] A. C. 95
- Kirk v. Bell* - - (1851) 16 Q. B. 290  
Distinguished by Wright J. *OWEN AND ASHWORTH'S CLAIM. WHITWORTH'S CLAIM* - - [1900] 2 Ch. 272;  
C. A. [1900] W. N. 256
- Kirkheaton Local Board v. Ainley & Sons & Co.*,  
[1892] 2 Q. B. 274.  
Referred to by Div. Ct. and C. A. *In re COUNTY COUNCIL OF DERBYSHIRE AND MAYOR, & C., OF DERBY*  
[1896] 2 Q. B. 58, 299;  
This case was affirmed by H. L. (E.)  
[1897] A. C. 550
- Kirkleatham Local Board and Stockton and Middlesborough Water Board, In re*,  
[1893] 1 Q. B. 375.  
Affirmed on another point by H. L. (E.)  
*sub nom. STOCKTON AND MIDDLESBOROUGH WATER BOARD v. KIRKLEATHAM LOCAL BOARD* - [1893] A. C. 444  
Referred to by H. L. (Sc.). *EDINBURGH STREET TRAMWAYS Co. v. EDINBURGH CORPORATION* [1894] A. C. 456, 483
- Kirkwood v. Webster* (1878) 9 Ch. D. 239  
Explained by Ry. Commrs. *GLAMORGAN COUNTY COUNCIL v. GREAT WESTERN RY. Co.* - [1895] 1 Q. B. 21  
Referred to by Chitty J. *DASHWOOD v. MAGNIAC (No. 2)* [1892] W. N. 54
- Kirwan's Trusts, In re* - (1883) 25 Ch. D. 373  
Followed by Kekewich J. *HUMMEL v. HUMMEL* - [1898] 1 Ch. 642  
Distinguished by Stirling J. *In re PRICE* [1900] 1 Ch. 442  
Considered by Byrne J. *BARRETTO v. YOUNG* - [1900] 2 Ch. 339
- Kleinwort, Sons & Co. v. Comptoir National d'Escompte de Paris*, [1894] 2 Q. B. 157.  
Followed by Collins J. *LACAVE & Co. v. CRÉDIT LYONNAIS* [1897] 1 Q. B. 148
- Knapp v. Burnaby* - (1861) 9 W. R. 765  
Followed by Chitty J. *In re HORNER*  
[1896] 2 Ch. 188
- Knight, In re* - - [1898] 1 Ch. 257  
Referred to by Kekewich J. *In re CHATARD'S SETTLEMENT*  
[1899] 1 Ch. 712, 718
- Knight v. Bowyer*, (1857) 23 Beav. 609; 2 De G. & J. 421.  
Discussed by Farwell J. *HUNT v. LUCK*  
[1900] W. N. 250
- Knight v. Simmonds* - - [1896] 1 Ch. 653  
Affirmed by C. A. - [1896] 2 Ch. 294
- Knight v. Whitmore* (1885) 53 L. T. (N.S.) 233  
Followed by Div. Ct. *VERNON v. WATSON* - [1891] 1 Q. B. 400;  
This case was affirmed by C. A.  
[1891] 2 Q. B. 288
- Knight and Tabernacle Permanent Building Society, In re (No. 1)*, [1891] 2 Q. B. 63; [1892] 2 Q. B. 613; [1892] A. C. 298.  
*See now Building Societies Act, 1894*  
(57 & 58 Vict. c. 47), s. 20.
- Knight and Tabernacle Permanent Building Society, In re (No. 2)*, [1892] 2 Q. B. 613.  
Distinguished by C. A. *In re KIRKLEATHAM LOCAL BOARD AND STOCKTON AND MIDDLESBOROUGH WATER BOARD*  
[1893] 1 Q. B. 375;  
This case was affirmed by H. L. (E.)  
[1893] A. C. 444
- Knight's Deep, Ld. v. Inland Revenue Commrs.*,  
[1899] 1 Q. B. 345.  
Reversed by C. A. [1900] 1 Q. B. 217
- Knights v. Wiffen* (1870) L. R. 5 Q. B. 660, 665  
Followed by C. A. *HENDERSON v. WILLIAMS* - [1895] 1 Q. B. 521  
Followed and applied by Farwell J. *DIXON v. KENNAWAY & Co.*  
[1900] 1 Ch. 833
- Knipe's Estate, In re* - (1891) 27 L. R. Ir. 512  
Affirmed by H. L. (I.) *sub nom. HATTON v. HARRIS* - [1892] A. C. 547  
Followed by P. C. *MILSON v. CARTER*  
[1893] A. C. 638
- Knott v. Cottee* - - (1852) 16 Beav. 77  
Followed by Stirling J., except as to the rate of interest. *In re BARCLAY*  
[1899] 1 Ch. 674
- Knowles & Sons v. Lancashire and Yorkshire Ry. Co.*, (1889) 14 App. Cas. 248.  
Distinguished by H. L. (E.). *CHAMBER COLLIERY Co. v. ROCHDALE CANAL Co.*  
[1895] A. C. 564  
Referred to by Byrne J. *NEW MOSS COLLIERY Co. v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. Co.*  
[1897] 1 Ch. 725
- Knowles & Sons, Ld. v. Sinclair*, [1898] 1 Q. B. 170.  
Explained by Div. Ct. *EDWARDS v. PURNELL* - [1899] 1 Q. B. 449, 454
- Knox v. Gye* - - (1872) L. R. 5 H. L. 656  
Distinguished by G. A. *BETJEMANN v. BETJEMANN* - [1895] 2 Ch. 474
- Knox's Trusts, In re* - [1895] 1 Ch. 538, 542  
Affirmed by C. A. - [1895] 2 Ch. 483
- Kops v. Reg.* - - [1894] A. C. 650  
*See Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1 (b).  
*See Commonwealth of Australia Constitution Act, 1900* (63 & 64 Vict. c. 12), s. 9 (73).
- Kutner v. Phillips* - - [1891] 2 Q. B. 267  
Distinguished by Div. Ct. *FELTON v. BOWER & Co.* [1900] 1 Q. B. 598, 602
- Labouchere v. Dawson* (1872) L. R. 13 Eq. 322  
Approved by H. L. (E.) *TREGO v. HUNT* - - [1896] A. C. 7

- "*La Bourgogne*" - - [1898] W. N. 80 (1)  
 Affirmed by C. A.  
 [1898] W. N. 150 (1); [1899] P. 1  
 C. A. [1899] P. 1.  
 Affirmed by H. L. (E.) *sub nom.*  
*LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE v. LAW & Co.* "*LA BOURGOGNE*"  
 [1899] A. C. 431
- Lacey, In re* - (1884) 13 Q. B. D. 128  
 Distinguished by Wright J. *In re*  
*VAUTIN* - [1899] 2 Q. B. 549
- Lacey v. Hill* (1872) L. R. 8 Ch. 441  
 Discussed by V. Williams J. *In re*  
*HEAD* - [1894] 1 Q. B. 638, 641
- Lacey v. Hill. Scrimgeour's Claim*, (1873) L. R. 8 Ch. 921.  
 Discussed by C. A. *ELLIS v. POND*  
 [1898] 1 Q. B. 426
- Lacey & Son, In re* - (1883) 25 Ch. D. 301  
 Distinguished by Kekewich J. *In re*  
*READ* - [1894] 3 Ch. 238
- La Compagnie Générale, &c.* [1891] 3 Ch. 451  
 Cited. *In re LA SOCIÉTÉ ANONYME DES*  
*VERRERIES DE L'ÉTOILE*  
 [1893] W. N. 119  
 Referred to. *In re KAY'S PATENT*  
 [1894] W. N. 68
- Lacon v. Hooper* - (1794-5) 6 T. R. 224  
 Met by Sale of Goods Act, 1893 (56 & 57  
 Vict. c. 71), s. 10 (2).
- Lacon v. Lacey* - [1897] W. N. 39 (7)  
 Affirmed by C. A. [1897] W. N. 46 (3)
- L'Fit v. L'Batt* (1718) 1 P. Wms. 526  
 The report corrected by North J. *In re*  
*CLIFF'S TRUSTS* - [1892] 2 Ch. 229
- Laidlaw v. Wilson* - [1894] 1 Q. B. 74  
 See Sale of Food and Drugs Act, 1899  
 (62 & 63 Vict. c. 51), s. 20.  
 Referred to by Div. Ct. *ROBERTSON v.*  
*HARRIS* - [1900] 2 Q. B. 117, 120
- Laird v. Pim* - (1841) 7 M. & W. 474  
 Followed by Stirling J. *LEADER v.*  
*TOD-HEATLY* - [1891] W. N. 38
- Lamb, In re* - (1889) 23 Q. B. D. 477  
 See Solicitors Act, 1899 (62 & 63 Vict.  
 c. 4).
- Lamb, In re. Ex parte Board of Trade*, [1894]  
 2 Q. B. 805.  
 Followed by V. Williams J. *In re*  
*MARDON* - [1896] 1 Q. B. 140, 145
- Lamb, In re. Ex parte Board of Trade*, C. A.  
 [1894] 2 Q. B. 805.  
 Followed by V. Williams J. *In re*  
*MARDON* - [1896] 1 Q. B. 140
- Lamb v. Erans (No. 1)* - [1892] 3 Ch. 462  
 Affirmed by C. A. - [1893] 1 Ch. 218  
 Followed by C. A. *ROBB v. GREEN*  
 [1895] 2 Q. B. 315, 317
- Lamb v. Great Northern Ry. Co.*, [1891] 2 Q. B. 281.  
 Distinguished by C. A. *HEWLETT v.*  
*ALLEN & SONS* - [1892] 2 Q. B. 662;  
 This case affirmed by H. L. (E.)  
 [1894] A. C. 383
- Lambe v. Eames* - (1871) L. R. 6 Ch. 597  
 Followed by Kekewich J. *In re HAMILTON* - [1895] 1 Ch. 373;  
 This case affirmed by C. A.  
 [1895] 2 Ch. 370  
 Referred to. *WILLIAMS v. WILLIAMS*  
 C. A. [1897] 2 Ch. 12
- Lambeth Overseers v. London County Council*,  
 [1896] 2 Q. B. 25  
 Affirmed by H. L. (E.) [1897] A. C. 625
- Lambton & Co. v. Parkinson* (1887) 35 W. R. 545  
 Inapplicable. *LLOYD'S BANK, LD. v.*  
*PRINCESS ROYAL COLLIERY CO.*  
 [1900] W. N. 99
- Lamond v. Richard* - [1897] W. N. 7 (11)  
 Affirmed by C. A. [1897] 1 Q. B. 541
- Lamplugh v. Norton*, (1883) 22 Q. B. D. 452; 37  
 W. R. 422.  
 Overruled by 54 & 55 Vict. c. 8, s. 6 (1).
- "*Lancashire, The*" C. A. [1893] P. 47  
 Affirmed by H. L. (E.) on the facts and  
 not on law *sub nom.* *BIBBY BROTHERS*  
*& Co., OWNERS OF SS. "LANCASHIRE" v.*  
*LEATHAM, OWNER OF SS. "ARIEL." THE*  
*"LANCASHIRE"* [1894] A. C. 1
- Lancashire and Yorkshire Ry. Co., Ex parte*,  
 (1886) 55 L. T. (N.S.) 58.  
 See *Ex parte MIDLAND RY. CO.*  
 North J. [1894] W. N. 38
- Lancashire Asylums Board v. Manchester Corporation*, [1899] 1 Q. B. 759.  
 Reversed by C. A. [1900] 1 Q. B. 458
- Lancashire Cotton Spinning Co., In re*, (1887) 35  
 Ch. D. 656.  
 Referred to by Kekewich J. *SHACKELL*  
*& Co. v. CHORLTON & SONS*  
 [1895] 1 Ch. 378  
 Considered. *In re HIGGINSHAW MILLS*  
*AND SPINNING CO. C. A.* [1896] 2 Ch. 544
- Lancashire Insurance Co. v. Inland Revenue*,  
 [1899] 1 Q. B. 353.  
 See *In re WOOL INDUSTRIES EMPLOYERS'*  
*INSURANCE ASSOCIATION, LD.*  
 [1899] W. N. 259
- Lancaster v. Eve* - (1859) 5 C. B. (N.S.) 717  
 Distinguished. *HOBSON v. GORRINGE*  
 C. A. [1897] 1 Ch. 182
- Lander v. Lander* [1891] P. 161; 64 L. T. 120  
 Distinguished by G. Barnes J. *EDWARDS*  
*v. EDWARDS* - [1894] P. 33
- Lander and Bagley's Contract, In re*, [1892] 3 Ch.  
 41.  
 See *MIDGLEY v. SMITH*  
 [1893] W. N. 120
- Lane-Fox v. Kensington and Knightsbridge Electric Lighting Co.*, [1892] 2 Ch. 66.  
 Affirmed by C. A. [1892] 3 Ch. 424
- Lanfranchi v. Mackenzie* (1867) L. R. 4 Eq. 421  
 Not followed by Kekewich J. *LAZARUS*  
*v. ARTISTIC PHOTOGRAPHIC CO.*  
 [1897] 2 Ch. 214

- Langridge v. Levy**, (1837) 2 M. & W. 519; 4 M. & W. 337.  
See **SCHOLES v. BROOK** [1891] W. N. 16, 101  
Distinguished by **Stirling J. TALLERMAN v. DOWSING RADIANT HEAT CO.**  
[1899] W. N. 125;  
This case was compromised on appeal C. A. [1899] W. N. 234;  
[1900] 1 Ch. 1
- Langston v. Grant** - - (1898) 25 R. 1040  
Reversed by H. L. (Sc.) *sub nom.* **GRANT v. LANGSTON** - [1900] A. C. 383
- Lansdowne (Marquis of) v. Kehoe (No. 1)**, (1891) 29 L. R. Ir. 230.  
Affirmed by H. L. (I.) [1893] A. C. 451
- Lashley v. Hog**, (1804) 4 Paton, 581; 11 Ves. 602  
Distinguished by H. L. (E.). **DE NICOLS v. CURLIER** - - [1900] A. C. 21
- Laskier v. Telekian** - (1892) 67 L. T. 121  
Distinguished by C. A. **BAXTER v. HOLDSWORTH** - [1899] 1 Q. B. 266
- Last v. London Assurance Corporation**, (1885) 10 App. Cas. 438.  
Considered by C. A. **EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES v. BISHOP** [1900] 1 Q. B. 177
- Lavery v. Pursell** - (1888) 39 Ch. D. 508  
See 56 & 57 Vict. c. 71, s. 62 (definition of "goods").
- Lavy v. London County Council**, [1895] 1 Q. B. 915.  
Affirmed by C. A. [1895] 2 Q. B. 577  
Referred to by Div. Ct. **LONDON COUNTY COUNCIL v. PRYOR** [1896] 1 Q. B. 330, 333
- Law and Gould, In re** (1856) 21 Beav. 481  
Distinguished by North J. *In re* **WARD** [1896] 2 Ch. 31
- Law Guarantee and Trust Society v. Bank of England**, (1890) 24 Q. B. D. 406.  
See now **National Debt (Stockholders) Relief Act**, 1892 (55 & 56 Vict. c. 39), s. 6, and **Bodies Corporate (Joint Tenancy) Act**, 1899 (62 & 63 Vict. c. 20).
- Lawes v. Bennett** (1785) 1 Cox, 167; 1 R. R. 10  
Applied in the case of an intestacy by **Chitty J. In re ISAACS** [1894] 3 Ch. 506  
Distinguished by **Stirling J. In re PYLE** - - [1895] 1 Ch. 724
- Lawrence v. Lord Norreys**, (1890) 15 App. Cas. 210.  
Followed by C. A. **WILLIS v. EARL HOWE** [1893] 2 Ch. 545  
Approved by P. C. **HAGGARD v. PÉLICIER FRÈRES** [1892] A. C. 61  
And followed by **Stirling J. BRUCE v. AILESBUURY (MARQUIS OF) (No. 2)** [1892] W. N. 149  
See **Vexatious Actions Act**, 1896 (59 & 60 Vict. c. 51).
- Lawrence v. Richmond**, (1820) 1 Jac. & Walk. 241.  
See *In re* **JONES** [1891] W. N. 114
- Lawrence v. Horton** (1890) 38 W. R. 555  
Referred to. **SHIEL v. GODFREY & CO.** [1893] W. N. 115
- Laxon & Co, In re (No. 3)** - [1893] 1 Ch. 210  
Followed by Div. Ct. *In re* **BIRDALE STEAM LAUNDRY AND CARPET BEATING CO.** - - [1893] 2 Q. B. 386  
Discussed by C. A. *In re* **GENERAL PHOSPHATE CO.** [1895] 1 Ch. 3
- Leadbitter, In re** - - (1878) 10 Ch. D. 388  
Explained by **Farwell J. BIRD v. PHILPOT** - [1900] 1 Ch. 822
- Learoyd v. Bracken** C. A. [1894] 1 Q. B. 114  
See now **Customs and Inland Revenue Act**, 1898 (61 & 62 Vict. c. 46), s. 7.
- Leather Cloth Co. v. Hirschfeld**, (1863) 1 H. & M. 295.  
Referred to by C. A. **SACCHARIN CORPORATION v. CHEMICALS AND DRUGS CO.** [1900] 2 Ch. 556
- Lebel v. Tucker** - (1868) L. R. 3 Q. B. 77  
Distinguished by C. A. **ALCOCK v. SMITH** [1892] 1 Ch. 238
- Lechmere and Lloyd, In re** (1881) 18 Ch. D. 524  
Followed by **Chitty J. DEAN v. DEAN** [1891] 3 Ch. 150  
Referred to by **Kekewich J. BLACKMAN v. FYSH C. A.** [1892] 3 Ch. 209, 220  
Distinguished by **North J. SYMES v. SYMES** - [1896] 1 Ch. 272
- Leduc v. Ward** - (1888) 20 Q. B. D. 475  
See **MARGETSON v. GLYNN** [1892] 1 Q. B. 337; **H. L. (E.) A. C. 351**
- Lee v. Alexander** - (1883) 8 App. Cas. 853  
Distinguished by **H. L. (Sc.) ORR v. MITCHELL** - [1893] A. C. 238
- Lee v. Butler** - - [1893] 2 Q. B. 318  
Distinguished by **H. L. (E.) HELBY v. MATTHEWS** - [1895] A. C. 471
- Lee v. Dangar, Grant & Co.** [1892] 1 Q. B. 231  
Affirmed by C. A. [1892] 2 Q. B. 337
- Lee v. Gandell** (1774) 1 Cowp. 1  
See **AMERICAN CONCENTRATED MEAT CO. v. HENDRY** - [1893] W. N. 67
- Lee v. Gaskell** - (1876) 1 Q. B. D. 700  
See 56 & 57 Vict. c. 71, s. 62 (definition of "goods").
- Lee v. Neuchatel Asphalte Co.** (1889) 41 Ch. D. 1  
Followed by **Stirling J. VERNER v. GENERAL AND COMMERCIAL INVESTMENT TRUST** - [1894] 2 Ch. 239  
Followed by **Romer J. BOLTON v. NATAL LAND AND COLONIZATION CO.** [1892] 2 Ch. 124  
Followed by **Stirling J. WILMER v. McNAMARA & Co., LD.** [1895] 2 Ch. 245
- Lee v. Pain** - (1844) 4 Hare, 201, 249  
Commented on and distinguished. *In re* **STEPHENSON C. A.** [1897] 1 Ch. 75
- Lee v. Ryder** - (1822) 6 Madd. 294  
Referred to by **Kekewich J. HOWELL v. LEWIS** - [1891] W. N. 181
- Lee v. Sankey** - (1872) L. R. 15 Eq. 204  
Referred to by **Kekewich J. In re BARNEY** - [1892] 2 Ch. 265

- Leeds and Hanley Theatre of Varieties v. Broadbent*, [1897] W. N. 175 (9).  
Reversed by C. A. - [1898] 1 Ch. 343
- Leeds (Duke of) v. Lord Amherst*, (1846) 14 Sim. 357, 367; 2 Ph. 117.  
Considered by C. A. PHILLIPS *v.* HOMFRAY - - - [1892] 1 Ch. 465
- Lees' Settlement Trusts, In re* [1896] 2 Ch. 508  
Followed. *In re* FITZHERBERT'S SETTLEMENT TRUSTS [1898] W. N. 58 (8)
- Leeson v. Medical Council* (1890) 43 Ch. D. 366  
See *REG. v. GAISFORD* [1892] 1 Q. B. 381  
Followed by C. A. ALLINSON *v.* GENERAL MEDICAL COUNCIL - [1894] 1 Q. 750
- Leftley v. Mills* (1791) 4 T. R. 170; 2 R. R. 350  
Distinguished by C. A. KENNEDY *v.* THOMAS - - [1894] 2 Q. B. 759
- Leggott v. Great Northern Ry. Co.*, (1876) 1 Q. B. D. 599.  
See 60 & 61 Vict. c. 37, s. 1.
- Leigh v. Jack* - - (1879) 5 Ex. D. 264  
Distinguished by C. A. MARSHALL *v.* TAYLOR - - [1895] 1 Ch. 641  
Referred to by C. A. LITLEDALE *v.* LIVERPOOL COLLEGE [1900] 1 Ch. 19, 23
- Leigh v. Leigh* - - (1886) 35 W. R. 121  
Met by 51 & 52 Vict. c. 59, ss. 9, 12; 56 & 57 Vict. c. 53, s. 5, sub-s. 1.
- Leith Dock Commrs. v. Leith (Magistrates of)*, (1897) 25 R. 126.  
Affirmed by H. L. (Sc.) *sub nom.* LEITH COUNCIL *v.* LEITH HARBOUR AND DOCK COMMRS. - [1899] A. C. 508
- Leman, In the Goods of* - - [1898] P. 215  
Followed by JEUNE P. *IN THE GOODS OF DAVIS* - [1899] W. N. 61
- Le Marchant v. Le Marchant*, (1874) L. R. 18 Eq. 414.  
Referred to. WILLIAMS *v.* WILLIAMS C. A. [1897] 2 Ch. 12
- Le Mesurier v. Le Mesurier* - [1895] A. C. 517  
Referred to. SINCLAIR'S DIVORCE BILL H. L. (D.) [1897] A. C. 469
- Lemme, In the Goods of* - - [1892] P. 89  
Followed by JEUNE P. *IN THE GOODS OF VON LINDEN* - - [1896] P. 148
- Lemmon v. Webb* - - [1894] 3 Ch. 1  
Affirmed by H. L. (E.) [1895] A. C. 1
- Lemprière v. Lange* - (1879) 12 Ch. D. 675  
Followed. WOOLF *v.* WOOLF [1899] 1 Ch. 343
- Leng, In re* - - [1895] 1 Ch. 652, 656  
Approved and followed by Stirling J. *In re* HEXWOOD [1897] 2 Ch. 593, 598  
Followed by C. A. *In re* WHITAKER [1900] W. N. 239
- Lenham v. Barber* - (1883) 10 Q. B. D. 203  
Distinguished by Div. Ct. RUSHMERE *v.* ISAACSON [1893] 1 Q. B. 118
- Lennox, Ex parte* - (1886) 16 Q. B. D. 315  
See *In re* FRASER C. A. [1892] 2 Q. B. 633
- Leppington v. Freeman* - [1891] W. N. 159  
Affirmed by C. A. [1891] W. N. 198
- Leslie v. Young & Sons* - (1893) 20 R. 1077  
Reversed in part by H. L. (Sc.) [1894] A. C. 335
- Lester v. Garland*, (1808) 15 Ves. Jun. 248; 10 R. R. 68.  
Approved by C. A. *In re* NORTH [1895] 2 Q. B. 264
- Lester v. Garland*, (1832) 5 Sim. 205; 35 R. R. 146.  
Referred to by Stirling J. MACKINTOSH *v.* POGOSE - - [1895] 1 Ch. 505
- Lester v. Torrens* - (1877) 2 Q. B. D. 403  
Considered by Div. Ct. REG. *v.* PELBY [1897] 2 Q. B. 33
- Letts v. Hutchins* - (1871) L. R. 13 Eq. 176  
Explained by Romer J. SMITH *v.* SMITH [1891] 3 Ch. 550
- Lever v. Goodwin*, (1887) 36 Ch. D. 1; 4 Rep. Pat. Cas. 492.  
Form in, followed. SAXLEHNER *v.* APOLLINARIS CO. - - [1897] 1 Ch. 893
- "*Leverington, The* - (1886) 11 P. D. 117  
Distinguished. OWNERS OF NORWEGIAN SS. "NORMANDIE" *v.* OWNERS OF BRITISH SS. "PEKIN." THE "PEKIN" P. C. [1897] A. C. 532
- Levy v. Stogdon* - - [1898] 1 Ch. 478  
Affirmed by C. A. - [1899] 1 Ch. 5
- Levy v. Walker* - - (1879) 10 Ch. D. 436  
Commented on by Byrne J. BURCHELL *v.* WILDE C. A. [1900] 1 Ch. 551, 555
- Lewes v. Morgan*, (1818) 5 Price, 518; see 19 R. R. 566.  
Followed. SEAWARD *v.* PATERSON C. A. [1897] 1 Ch. 545, 548, 554, 557
- Lewis, In re. Ex parte Munro*, (1876) 1 Q. B. D. 724.  
Dictum of Coleridge C.J. at pp. 726, 727, disapproved by Div. Ct. *In re* THOMPSON - - [1894] 1 Q. B. 462
- Lewis v. Allenby*, (1870) L. R. 10 Eq. 668, on petition [1872] W. N. 55.  
Commented on. *In re* PIERCY C. A. [1898] 1 Ch. 565
- Lewis v. Arnold* - (1875) L. R. 10 Q. B. 245  
Overruled by Div. Ct. SALE *v.* PHILLIPS [1894] 1 Q. B. 349
- Lewis v. Goodbody* (1892) 67 L. T. (N.S.) 194  
Not followed by Stirling J. SEN SEN CO. *v.* BRITTEN - [1899] 1 Ch. 692  
Considered by Kekewich J. HUBBUCK & SON, LD. *v.* BROWN [1899] W. N. 250
- Lewis v. Hillman* - (1852) 3 H. L. C. 607  
Referred to by Kekewich J. *In re* HOFFE'S ESTATE ACT, 1855 [1900] W. N. 114
- Lewis v. Lewis* - (1871) L. R. 13 Eq. 218  
Observed upon by North J. *In re* BENNETT - - [1899] 1 Ch. 316
- Lewis v. Madocks*, (1803-10) 8 Ves. 149; 17 Ves. 48; 7 R. R. 10.  
Discussed by Kekewich J. *In re* BENDY [1895] 1 Ch. 109
- Considered by Romer J. FINLAY *v.* DARLING - - [1897] 1 Ch. 719

- Liddell v. Liddell**, (1883) 31 W. R. 238; 52 L. J. (Ch.) 207.  
Followed by North J. *In re SPARROW'S SETTLED ESTATE* [1892] 1 Ch. 412
- Liddiard v. Gale**, (1850) 4 Ex. 816; 9 L. J. (Ex.) 160.  
Overruled by 54 & 55 Vict. c. 39, Sch. I.
- Lindo v. Belisario** - (1795) 1 Hagg. Cons. 216  
Distinguished by Stirling J. *In re DE WILTON* - [1900] 2 Ch. 481
- Line v. Stephenson** (1838) 5 Bing. N. C. 183  
*See* **BAYNES v. LLOYD** [1895] 2 Q. B. 610
- Linford v. Fitzroy** - (1849) 13 Q. B. 240  
*See* 61 & 62 Vict. c. 7.
- Lion Mutual Marine Insurance Association v. Tucker**, (1883) 12 Q. B. D. 176.  
Referred to by Wright J. *In re BANGOR AND NORTH WALES MUTUAL MARINE PROTECTION ASSOCIATION* [1899] 2 Ch. 593, 598
- Liquidation Estates Purchase Co. v. Willoughby**, C. A. [1896] 1 Ch. 726.  
Reversed in part by H. L. (E.) [1898] A. C. 321
- Lister v. Leather** - (1858) 4 K. & J. 425  
Discussed by Romer J. *NORTH METROPOLITAN TRAMWAYS Co. v. LONDON COUNTY COUNCIL* - [1898] 2 Ch. 145
- Little v. Stevenson & Co.** - (1895) 22 R. 796  
Affirmed by H. L. (Sc.) [1896] A. C. 108
- Littledale v. Lonsdale (Earl of)**, (1793) 2 H. Bl. 267, 299; 2 Anstr. 356; 5 Bro. P. C. 519.  
*See* **JORDESON v. SUTTON**, *SOUTHCOTES AND DRYPOOL GAS CO.*  
C. A. [1899] 2 Ch. 217, 233
- Liver Alkali Co. v. Johnson**, (1874) L. R. 9 Ex. 338.  
Followed by Russell of Killowen C.J. **HILL v. SCOTT** - [1895] 2 Q. B. 371;  
C. A. [1895] 2 Q. B. 713
- Liverpool Adelphi Loan Association v. Fairhurst**, (1854) 9 Ex. 422.  
Approved by C. A. **EARLE v. KINGSCOTE** - C. A. [1900] 2 Ch. 585
- Liverpool and Manchester Aerated Bread and Café Co. v. Firth**, [1891] 1 Ch. 367.  
Commented on by Div. Ct. **JOYCE v. BEALL** - [1891] 1 Q. B. 459, 462
- Liverpool Borough Bank v. Turner**, (1860) 1 J. & H. 159; on appeal 2 De G. F. & J. 502.  
Distinguished by V. Williams J. **BLACK v. WILLIAMS** - [1895] 1 Ch. 408
- Liverpool Marine Credit Co. v. Hunter**, (1867) L. R. 4 Eq. 62; (1868) L. R. 3 Ch. 479.  
Followed by Cozens-Hardy J. *In re MAUDSLAY, SONS & FIELD* [1900] 1 Ch. 602
- Llewellyn, In re** - (1888) 37 Ch. D. 317  
Followed by Kekewich J. *In re SMITH'S SETTLED ESTATES* - [1891] 3 Ch. 65
- Llewellyn v. Vale of Glamorgan Ry. Co.**, [1897] 2 Q. B. 239.  
Affirmed by C. A. [1898] 1 Q. B. 473
- Lloyd v. Lloyd** - (1866) L. R. 2 Eq. 722  
Distinguished by C. A. **METCALFE v. METCALFE** - [1891] 3 Ch. 1
- Lloyd v. Mostyn** - (1842) 10 M. & W. 478  
Followed by C. A. **CALCRAFT v. GUEST** [1898] 1 Q. B. 759
- Lloyd v. Nowell** - [1895] 2 Ch. 744  
Discussed by Kekewich J. *NORTH v. PERCIVAL* [1898] 2 Ch. 128, 132
- "Lloyds, or Sea Queen," The**, (1863) Br. & L. 359.  
Followed by Bruce J. **THE "WINE-STEAD"** - [1895] P. 170
- Lock v. Pearce** - [1892] 2 Ch. 328  
Affirmed by C. A. - [1893] 2 Ch. 271  
Referred to by Buckley J. **PANNELL v. CITY OF LONDON BREWERY CO.** [1900] 1 Ch. 496, 501
- Lock v. Queensland Investment and Land Mortgage Co.** - [1896] 1 Ch. 397  
Affirmed by H. L. (E.) [1896] A. C. 461
- Lockhart v. Reilly** (1856) 25 L. J. (Ch.) 697  
Followed by Byrne J. *In re TURNER* [1897] 1 Ch. 536
- Lodge v. Huddersfield Corporation**, [1898] 1 Q. B. 847.  
Affirmed by C. A. [1898] 1 Q. B. 859
- Loftus v. Heriot** - [1895] 2 Q. B. 212  
Reversed by H. L. (E.) *sub nom.* **HOOD BARRS v. HERIOT** - [1896] A. C. 174
- London (Bishop of), Ex parte**, (1860) 2 De G. F. & J. 14.  
Considered by Chitty J. *In re BISHOPS-GATE FOUNDATION (No. 1)* [1894] 1 Ch. 185
- London and Caledonian Marine Insurance Co., In re**, (1879) 11 Ch. D. 140.  
Dictum of James L.J., explained by Romer J. **KNOWLES v. SCOTT** [1891] 1 Ch. 717  
Referred to by North J. **WHITELEY EXERCISER, LD. v. GAMAGE** [1898] 2 Ch. 405
- London and Eastern Counties Loan and Discount Co. v. Creasey**, [1897] 1 Q. B. 442.  
Affirmed by C. A. [1897] 1 Q. B. 768
- London and General Bank, In re**, [1895] 2 Ch. 166.  
Followed. *In re KINGSTON COTTON MILL CO.* - C. A. [1896] 1 Ch. 6
- London and North Western Ry. Co. v. Buckmaster**, (1875) L. R. 10 Q. B. 70, 444.  
Followed by C. A. **ROCHDALE CANAL CO. v. BREWSTER** [1894] 2 Q. B. 852, 857
- London and North Western Ry. Co. v. Billington, Ltd.**, C. A. [1898] 2 Q. B. 7.  
Reversed by H. L. (E.) *sub nom.* **LONDON AND NORTH WESTERN AND GREAT WESTERN JOINT RY. COS. v. J. H. BILLINGTON, LD** [1899] A. C. 79
- London and North Western Ry. Co. v. Donellan**, [1898] 2 Q. B. 7.  
Was approved of by H. L. (E.). **MIDLAND RY. CO. v. LOSEBY & CARNLEY H. L. (E.)** [1899] A. C. 133

- London and North Western Ry. Co. v. Evans*,  
[1892] 2 Ch. 432.  
Reversed by C. A. - [1893] 1 Ch. 16
- London and North Western Ry. Co. v. Evershed*,  
(1878) 3 App. Cas. 1029.  
Discussed and explained by C. A.  
PHIPPS *v.* LONDON AND NORTH WESTERN  
RY. CO. [1892] 2 Q. B. 229
- London and North Western Ry. Co. v. Llandudno  
Improvements Commrs.*, [1897] 1 Q. B.  
287.  
Referred to. SMITH *v.* RICHMOND  
C. A. [1898] 1 Q. B. 683, 694;  
This case was affirmed by H. L. (E.)  
[1899] A. C. 448
- London and North Western Ry. Co. v. Runcorn  
Rural Council*, [1898] 1 Ch. 34.  
Affirmed by C. A. - [1894] 1 Ch. 561
- London and South Western Ry. Co. v. Blackmore*,  
(1870) L. R. 4 H. L. 610.  
Distinguished. MACFIE *v.* CALLANDER  
AND OBAN RY. CO.  
H. L. (Sc.) [1898] A. C. 278
- London and South Western Ry. Co. v. Coward*,  
(1848) 5 Rail. Cas. 703.  
Followed by C. A. KITTS *v.* MOORE  
[1895] 1 Q. B. 253, 263
- London and South Western Ry. Co. v. Gomm*,  
(1882) 20 Ch. D. 562.  
Distinguished by Div. Ct. RAY *v.*  
WALKER [1892] 2 Q. B. 88  
Referred to by Farwell J. MANCHESTER  
SHIP CANAL CO. *v.* MANCHESTER RACE-  
COURSE CO. [1900] 2 Ch. 352  
Referred to by C. A. ROGERS *v.* HOSE-  
GOOD [1900] 2 Ch. 388, 394, 404
- London and Suburban Bank, In re*, [1892] 1 Ch.  
604.  
Approved by W. Williams J. *In re* REAL  
ESTATES CO. - [1893] 1 Ch. 398  
See now Building Societies Act, 1894  
(57 & 58 Vict. c. 47), s. 8 (2).
- London Bank of Mexico and South America v.  
Apthorpe*, [1891] 1 Q. B. 383.  
Affirmed by C. A. [1891] 2 Q. B. 378  
Followed by C. A. SAN (PAULO) BRA-  
ZILIAN RY. CO. *v.* CARTER  
[1895] 1 Q. B. 580;  
This case was affirmed by H. L. (E.)  
[1896] A. C. 31
- London, Brighton and South Coast Ry. Co. v.  
Truman*, (1885) 11 App. Cas. 45.  
Distinguished. JORDENSON *v.* SUTTON,  
SOUTHCOATES AND DRYPOOL GAS CO.  
C. A. [1899] 2 Ch. 217
- London, Brighton and South Coast Ry. Co. v.  
Watson*, (1879) 4 C. P. D. 118.  
Distinguished by Div. Ct. GREAT  
NORTHERN RY. CO. *v.* WINDER  
[1892] 2 Q. B. 595
- London, Chatham and Dover Ry. Co. v. South  
Eastern Ry. Co.*, (1880) 40 Ch. D. 100.  
Distinguished by Farwell J. MAN-  
CHESTER SHIP CANAL CO. *v.* MANCHESTER  
RACECOURSE CO. - [1900] 2 Ch. 352
- London, Chatham and Dover Ry. Co. v. South  
Eastern Ry. Co.*, [1892] 1 Ch. 120.  
Affirmed by H. L. (E.) [1893] A. C. 429
- London Clearing Bankers (Committee of) v. Inland  
Revenue Commrs.*, [1896] 1 Q. B. 222.  
Affirmed by C. A. [1896] 1 Q. B. 542
- London County Council v. Aylesbury Dairy Co.*,  
[1898] 1 Q. B. 106.  
See now London Building Act, 1898  
(61 & 62 Vict. c. cxxxvii.), s. 3.
- London County Council v. Best & Co.*, (1893) 9  
Times L. R. 499.  
Apparently met by 57 & 58 Vict.  
c. ccxiii. s. 26 (1).
- London County Council v. Davis*, (1898) 77 L. T.  
Rep. 693.  
See now London Building Act, 1898 (61 & 62  
Vict. c. cxxxvii.), s. 4.
- London County Council v. Edmondson & Sons*,  
(1892) 66 L. T. (N.S.) 200.  
Met by 57 & 58 Vict. c. ccxiii. s. 9 (4).
- London County Council v. Erith (Churchwardens,  
&c., of)*, [1893] A. C. 562, 592.  
Distinguished by H. L. (E.). KINGSTON-  
UPON-HULL DOCK CO. *v.* SCULCOATES  
UNION (GUARDIANS) [1895] A. C. 136
- London County Council v. Lambeth Overseers*,  
C. A. [1896] 2 Q. B. 25.  
Affirmed by H. L. (E.) *sub nom.* LAM-  
BETH (CHURCHWARDENS OF) *v.* LONDON  
COUNTY COUNCIL [1897] A. C. 625
- London County Council v. Lavrance*, [1893] 2  
Q. B. 228.  
Met by 57 & 58 Vict. c. ccxiii. s. 49.
- London County Council v. London School Board*,  
[1892] 2 Q. B. 606.  
Extended by 57 & 58 Vict. c. ccxiii.  
s. 21.
- London County Council v. London Street Tram-  
ways Co.*, [1894] 2 Q. B. 189.  
Affirmed by H. L. (E.) [1894] A. C. 489  
Approved of by H. L. (Sc.). EDINBURGH  
STREET TRAMWAYS CO. *v.* LORD PROVOST,  
&c., OF EDINBURGH  
[1894] A. C. 456, 479
- London County Council v. Pryor*, [1896] 1 Q. B.  
330.  
Affirmed by C. A. [1896] 1 Q. B. 465
- London County Council v. St. George's Union As-  
sessment Committee*, (No. 1), C. A.  
reversed Div. Ct. [1893] 1 Q. B. 210.  
C. A. reversed and Div. Ct. restored by  
H. L. (E.) - [1893] A. C. 562  
Distinguished. SCULCOATES UNION *v.*  
KINGSTON-UPON-HULL DOCK CO.  
[1895] A. C. 136  
Referred to. PORT OF LANCASTER  
COMMRS. *v.* BARROW-IN-FURNESS OVER-  
SEERS - Div. Ct. [1897] 1 Q. B. 173  
Distinguished. LAMBETH OVERSEERS *v.*  
LONDON COUNTY COUNCIL  
H. L. (E.) A. C. 631

- London County Council v. West Ham (Churchwardens, &c.)*, (No. 1), C. A. reversed Div. Ct. [1892] 2 Q. B. 44.  
C. A. reversed and Div. Ct. restored by H. L. (E.). LONDON COUNTY COUNCIL v. CHURCHWARDENS, &c., of WEST HAM [1893] A. C. 562  
Applied by C. A. LONDON COUNTY COUNCIL v. ASSESSMENT COMMITTEE OF WOOLWICH UNION. LONDON COUNTY COUNCIL v. ASSESSMENT COMMITTEE OF ST. GEORGE'S UNION [1893] 1 Q. B. 210
- London County Council v. Wood*, [1897] 2 Q. B. 482.  
See 61 & 62 Vict. c. 29, s. 9.
- London County Council v. Worley*, [1894] 10 Times L. R. 652.  
Met by 57 & 58 Vict. c. cexxiii. s. 49.
- London Joint Stock Bank v. Simmons*, [1891] 1 Ch. 270.  
Reversed by H. L. (E.) [1892] A. C. 201  
Followed by North J. BENTINCK v. LONDON JOINT STOCK BANK [1893] 2 Ch. 120  
Approved by C. A. MANCHESTER TRUST v. FURNESS [1895] 2 Q. B. 539
- London Printing and Publishing Alliance v. Cox*, [1891] 3 Ch. 291.  
Followed by Kekewich J. PETTY v. TAYLOR [1897] 1 Ch. 465
- London Provident Society v. Morgan*, [1893] 2 Q. B. 266.  
Met by 57 & 58 Vict. c. 47, s. 10.
- London Quays and Warehouses Co., In re*, (1868) L. R. 3 Ch. 391.  
Followed by Chitty J. *In re WATSON & SONS, LD.* - [1891] 2 Ch. 55
- London Street Tramways Co. v. London County Council*, H. L. (E.) [1894] A. C. 489.  
See H. L. (E.) [1898] A. C. 375
- London Syndicate v. Lord* - (1878) 8 Ch. D. 84  
Followed. *In re BEENY. FRENCH v. SPROSTON* - - [1894] 1 Ch. 499
- Long v. Ovenden* (1881) 16 Ch. D. 691, at p. 694  
Dictum of Jessel M.R. corrected and explained by Chitty J. *In re CLEMENTS. CLEMENTS v. PEARSALL* [1894] 1 Ch. 665
- Long v. Rankin*, (Sugden on Powers, App. 895).  
Referred to by Farwell J. *EARL OF LONSDALE v. LOWTHER* [1900] 2 Ch. 687
- Long v. Short* (1717) 1 P. Wms. 402  
Considered by Kekewich J. *In re BAWDEN. NATIONAL PROVINCIAL BANK v. CRESSWELL. BAWDEN v. CRESSWELL* [1894] 1 Ch. 693
- Lonsdale (Earl) v. Nelson*, (1823) 2 B. & C. 302; 26 R. R. 363.  
Considered by H. L. (E.). LEMMON v. WEBB - - [1895] A. C. 1
- Lord Advocate v. Bogie (Methven's Executors)*, (1893) 20 R. 429.  
Affirmed by H. L. (Sc.) [1894] A. C. 83  
Followed by Div. Ct. ATT-GEN. v. LOYD - - [1895] 1 Q. B. 496  
Referred to by Div. Ct. *In re SCOTT* [1900] 1 Q. B. 372, 387
- Lord Advocate v. Fleming* - (1895) 22 R. 568  
Affirmed by H. L. (Sc.) [1897] A. C. 145
- Lord Advocate v. Hamilton (Duke of)*, (1891) 29 Sco. Law Rep. 213.  
Affirmed by H. L. (Sc.) *sub nom. HAMILTON (DUKE OF) v. LORD ADVOCATE* [1892] W. N. 160
- Lord Advocate v. Macfarlane (Dunlop's Trustees)*, (1892) 19 R. 461.  
Affirmed by H. L. (Sc.) [1894] A. C. 291  
Part of judgment of Ct. of Sess. not appealed from, (1891) 21 Rettie, 348  
See [1896] W. N. 96
- Lord Advocate v. Robertson* - (1894) 22 R. 568  
Affirmed by H. L. (Sc.) *sub nom. LORD ADVOCATE v. FLEMING or ROBERTSON* [1897] A. C. 145
- Lord Advocate v. Saltoun (Lord)*, (1858) 21 Dunlop, 124; 3 Macq. 659.  
Commented on. LORD ADVOCATE v. M'CULLOCH, (1895) 22 Rettie, 356.  
Ct. of Sess. (Sc.) [1896] W. N. 124
- Lord Advocate v. Wemyss* - (1896) 24 R. 216  
Reversed by H. L. (Sc.) [1899] W. N. 124; [1900] A. C. 48
- Love v. Bell* - (1884) 9 App. Cas. 286  
Distinguished by Kekewich J. THOMPSON v. MEIN [1893] W. N. 202  
See TWYEROULD v. CHAMBER COLLIERY CO. C.A. [1892] W. N. 27  
Discussed by Stirling J. HAYLES v. PEASE AND PARTNERS, LD. [1899] 1 Ch. 567
- Lovejoy v. Cole* - - [1894] 2 Q. B. 861  
Followed by C. A. SOLOMON v. MULLINER AND MOTOR CARRIAGE SUPPLY CO. [1900] W. N. 260; see [1901] 1 Q. B. 76
- Low v. Bourerie* - [1891] 3 Ch. 82  
Referred to by Stirling J. *In re WYATT. WHITE v. ELLIS* [1892] 1 Ch. 188, at p. 199  
This last case was affirmed by H. L. (E.) *sub nom. WARD v. PEMBERTON* - - [1893] A. C. 369
- Lower Rhine and Württemberg Insurance Association v. Sedgwick*, [1893] 1 Q. B. 739.  
Reversed by C. A. [1899] 1 Q. B. 179
- Lowman, In re* - - [1895] 2 Ch. 348  
Explained and distinguished by C. A. *In re HOCKING* [1898] 2 Ch. 567  
Followed by Cozens-Hardy J. *In re CARTER* - - [1900] 1 Ch. 801, 802
- Lowther v. Caledonian Ry. Co.* [1891] 3 Ch. 443  
Reversed by C. A. - [1892] 1 Ch. 73
- Lubbock v. British Bank of South America*, [1892] 2 Ch. 198.  
Referred to by C. A. VERNER v. GENERAL AND COMMERCIAL INVESTMENT TRUST [1894] 2 Ch. 239, 266  
Referred to by Byrne J. FOSTER v. NEW TRINIDAD LAKE ASPHALT CO. [1900] W. N. 257

- Lucas v. Harris* - (1887) 18 Q. B. D. 127  
Considered by C. A. *In re SAUNDERS*.  
*Ex parte SAUNDERS* [1895] 2 Q. B. 424
- Lucas v. James* - (1849) 7 Hare, 410  
Distinguished by C. A. *HOPE v. WALTER* - [1900] 1 Ch. 257
- Ludington Cigarette Machine Co. v. Baron Cigarette Machine Co. In re Pitt's Patent*, [1899] W. N. 243.  
Affirmed by C. A. - [1900] 1 Ch. 508
- Lumley, In re. Ex parte Cathcart*, [1894] 2 Ch. 271.  
Followed by C. A. *In re DEAKIN. Ex parte CATHCART* - [1900] 2 Q. B. 478
- Lumley v. Gye* - (1853) 2 E. & B. 216  
Commented on. *ALLEN v. FLOOD*  
H. L. (E.) [1898] A. C. 1
- Lumley v. Simmons* - (1887) 34 Ch. D. 698  
Explained by V. Williams J. *In re WOOD* - [1894] 1 Q. B. 605
- Lumley v. Wagner* (1852) 1 De G. M. & G. 604  
Discussed. *WHITWOOD CHEMICAL CO. v. HARDMAN* - C. A. [1891] 2 Ch. 416  
Followed by Kekewich J. *STAR NEWSPAPER CO. v. O'CONNOR*  
[1893] W. N. 114; C. A. [1893] W. N. 122  
Distinguished by Kekewich J. *DAVIS v. FOREMAN* - [1894] 3 Ch. 654
- Lusk v. Sebright* - [1894] W. N. 134  
Referred to by North J. *SIMMONS v. BLANDY* - [1896] W. N. 171 (7); [1897] 1 Ch. 19
- Lutkins v. Leigh* - (1734) Cas. t. Tal. 53  
Rule in, applied by Romer J. *In re SMITH* - [1899] 1 Ch. 365
- Lydney and Wigpool Iron Ore Co. v. Bird*, (1883) 23 Ch. D. 358.  
Rule in, applied. *In re SMITH*  
C. A. [1896] W. N. 88 (16)
- Lydney and Wigpool Iron Ore Co. v. Bird*, (1886) 33 Ch. D. 85.  
Distinguished by C. A. *METROPOLITAN COAL CONSUMERS' ASSOCIATION v. SCRINGEOUR* - [1895] 2 Q. B. 604  
Followed by Wright J. *In re SALE HOTEL AND BOTANICAL GARDENS CO.*  
[1897] W. N. 174 (5);  
But this case was reversed by C. A. [1898] W. N. 40 (2)  
And see Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8.
- Lynch v. Wheatley* - (1885) 14 Q. B. D. 504  
See *MANN v. JOHNSON* [1893] W. N. 196
- Lyne's Trust, In re* - (1869) L. R. 8 Eq. 65  
Referred to by Stirling J. *In re DREW. DREW v. DREW* [1898] W. N. 175 (17); [1899] 1 Ch. 336
- Lyon v. Reed* - (1844) 13 M. & W. 285  
Explained by Chitty J. *WALLIS v. HANDS* - [1893] 2 Ch. 75
- Lyons (J.) & Sons v. Wilkins*, C. A. [1896] 1 Ch. 811.  
Approved and held not overruled by *Allen v. Flood*, [1898] A. C. 1. J. LYONS & SONS v. WILKINS  
C. A. [1899] 1 Ch. 255
- Lysaght, In re. Blythe v. Baumgarten*, [1887] W. N. 23.  
Followed by Kekewich J. *In re DUNNING* - [1894] W. N. 140  
Referred to by Stirling J. *In re A SOLICITOR* - [1893] W. N. 188
- Lysons v. Andrew Knowles & Sons, Ltd., C. A.* [1900] 1 Q. B. 780.  
Reversed by H. L. (E.) [1901] A. C. 79
- "Mac," *The* - (1881-2) 7 P. D. 126  
Corrected by C. A. "GAS FLOAT WHITTON" (No. 2) [1896] F. 42, at p. 57  
Affirmed by H. L. (E.) [1897] A. C. 337
- McAndrew v. Bassett*, (1864) 4 De G. J. & S. 380  
Held to be practically overruled by s. 10 (e) of the Patents, Designs, and Trade Marks Act, 1888. *In re SIR TITUS SALT, BART., SONS & CO.'S APPLICATION*  
[1894] 3 Ch. 166
- McCabe v. Bank of Ireland*, (1889) 14 App. Cas. 413.  
Distinguished by Wright J. *In re UNITED SERVICE ASSOCIATION*  
[1900] W. N. 243
- McCallum, In re. McCallum v. McCallum*, [1900] W. N. 36.  
Reversed by C. A. - [1900] W. N. 261
- McCarogher v. Whieldon* (1867) L. R. 3 Eq. 236  
Followed by Romer J. *CARTER v. SILBER. CARTER v. HASLUCK*  
[1891] 3 Ch. 553  
This last case reversed by C. A. [1892] 2 Ch. 279  
And C. A. affirmed by H. L. (E.) *sub nom. EDWARDS v. CARTER*  
[1893] A. C. 360
- McCarthy, In re* - (1881) 7 L. R. (Ir.) 473  
Approved and followed by C. A. *In re MACKENZIE. Ex parte HERTFORDSHIRE (SHERIFF OF)* - [1899] 2 Q. B. 566
- McCarthy v. McCartie* - [1897] 1 I. R. 86  
Affirmed by H. L. (I.) *sub nom. BANK OF IRELAND v. MCCARTHY*  
[1898] A. C. 181
- MacCarthy v. Young* - (1861) 6 H. & N. 329  
Approved of by C. A. *COUGHLIN v. GILLISON* - C. A. [1899] 1 Q. B. 145
- McCowan v. Baine* - (1890) 17 R. 1016  
Affirmed by H. L. (Sc.) [1891] A. C. 401
- MacDonald v. Scott (or Hall)* (1892) 19 R. 567  
Reversed by H. L. (Sc.) [1893] A. C. 642
- McDougal v. Sutherland* - (1894) 21 Rettie, 753  
Distinguished by Ct. of Sess. (Sc.).  
*CORKE v. FRAY*, (1895) 22 Rettie, 422.  
[1896] W. N. 128



- MacDuff, In re* - - - [1896] 2 Ch. 451  
Followed by *Romer J. In re HUNTER*  
[1897] 1 Ch. 518;  
This case was reversed by C. A.  
[1897] 2 Ch. 105;  
But restored by H. L. (E.)  
[1899] A. C. 309
- McEntire v. Crossley Brothers* [1894] 1 I. R. 235  
Affirmed by H. L. (I.) [1895] A. C. 457
- Macfie v. Callander and Oban Ry.*, (1897) 24 R. 1156; 34 Sco. L. R. 828.  
Affirmed by H. L. (Sc.)  
[1898] A. C. 270
- McGaffigan v. Riddall* - (1890) 28 L. R. Ir. 257  
Followed by Div. Ct. PALMER v. WADE  
[1894] 1 Q. B. 268
- McGavin v. McIntyre Brothers* (1890) 17 R. 818  
Varied by H. L. (Sc.) *sub nom. MCINTYRE BROTHERS v. MCGAVIN* [1893] A. C. 268
- McGrath, In re* - - - [1892] 2 Ch. 496  
Affirmed by C. A. - [1893] 1 Ch. 143
- McGregor v. Cox* - (1898) 25 R. 1216  
Affirmed by H. L. (Sc.)  
[1900] W. N. 247
- McHenry, In re* - - (1886) 17 Q. B. D. 351  
Distinguished by V. Williams J. *In re PHILLIPS* - - [1896] 2 Q. B. 122
- McHenry, In re. McDermott v. Boyd. Levita's Claim*, [1894] 2 Ch. 428.  
Reversed by C. A. - [1894] 3 Ch. 365
- McInroy v. Athole (Duke of)* (1890) 17 R. 456  
Affirmed by H. L. (Sc.) [1891] A. C. 629
- McIntosh v. Pontypridd Improvements Co.*, (1891) 61 L. J. (Q.B.) 164.  
Approved of by Div. Ct. YABBICOM v. KING - - [1899] 1 Q. B. 444, 448
- MacKay v. Bannister* - (1886) 16 Q. B. D. 174  
Distinguished by C. A. GUILFORD v. LAMBETH - - [1894] 2 Q. B. 832;  
[1895] 1 Q. B. 92
- McKenzie v. British Linen Co.*, (1881) 6 App. Cas. 82.  
Distinguished by P. C. OGILVIE v. WEST AUSTRALIAN MORTGAGE AND AGENCY CORPORATION [1896] A. C. 257
- McKewan's Case* - - (1877) 6 Ch. D. 447  
Distinguished. *In re BANGOR AND NORTH WALES MUTUAL MARINE PROTECTION ASSOCIATION* [1899] 2 Ch. 593
- McNab v. Campbell's Trustees*, (1896) 33 S. L. R. 497.  
Affirmed by H. L. (Sc.) *sub nom. McNAB v. ROBERTSON* - - [1897] A. C. 129
- Mackenzie v. Devonshire (Duke of)*, (1895) 22 Rettie, 839.  
Reversed by H. L. (Sc.)  
[1896] A. C. 400
- Mackenzie v. Mackenzie* - (1893) 20 R. 636  
Affirmed by H. L. (Sc.) [1895] A. C. 384  
Referred to by C. A. RUSSELL v. RUSSELL [1895] P. 315, 332;  
This case was affirmed by H. L. (D.)  
[1897] A. C. 395  
Referred to by G. Barnes J. OLDROYD v. OLDROYD - [1896] P. 175, 179
- Mackenzie and Ascot Gas Co., In re*, (1886) 17 Q. B. D. 114.  
Overruled by C. A. KNOWLES & SONS, LD. v. BOLTON CORPORATION  
[1900] 2 Q. B. 253
- Mackenzie's Trusts* - (1883) 23 Ch. D. 750  
Approved by C. A. *In re MUNDY'S SETTLED ESTATES* - [1891] 1 Ch. 399
- Mackie v. Herbertson* - (1884) 9 App. Cas. 303  
Approved by P. C. DE MESTRE v. WEST [1891] A. C. 264  
Followed by C. A. ATT.-GEN. v. JACOBS-SMITH - [1895] 2 Q. B. 341
- Mackie v. Mackie* - - (1845) 5 Hare, 70  
Followed by C. A. ROWLLS v. BEBB  
C. A. [1900] 2 Ch. 107
- McKnight v. Currie* - - (1895) 22 R. 607  
Affirmed by H. L. (Sc.) [1897] A. C. 97
- Maclean Brothers & Rigg, Ld. v. Jones & Co.*, (1892) 66 L. T. (N.S.) 653.  
Disapproved by C. A. BUDDEN v. WILKINSON - - [1893] 2 Q. B. 432
- Macleay, In re* - (1875) L. R. 20 Eq. 186  
Dictum in, followed by Byrne J. *In re TRUSTEES OF HOLLIS' HOSPITAL AND HAGUE'S CONTRACT* - [1899] 2 Ch. 540
- Maddison v. Alderson* - (1883) 8 App. Cas. 467  
Discussed by Byrne J. MILLER & ALDWORTH, LD. v. SHARP [1899] 1 Ch. 622  
Referred to by Farwell J. ISAACS v. EVANS - - [1899] W. N. 261
- Magee v. Mortimer* - (1890) 28 L. R. Ir. 251  
Distinguished. GAGE v. M'DAID, LAWSON'S Notes of Decisions, (1896), p. 137.  
C. A. (Ir.) [1898] W. N. 104
- Maggi, In re* - - (1882) 20 Ch. 545  
Overruled by C. A. *In re WHITAKER*  
[1900] W. N. 239  
Considered by C. A. *In re LENG. TARN v. EMMERSON* [1895] 1 Ch. 652
- Magnolia Metal Co.'s Trade-marks, In re*, [1897] W. N. 21 (11).  
Affirmed by C. A. - [1897] 2 Ch. 371
- Maguire v. Russell* - (1885) 12 Rettie, 1071  
Disapproved by H. L. (E.) JOHNSON v. LINDSAY & CO. (No. 1) [1891] A. C. 371
- Mahony v. East Holyford Mining Co.*, (1875) L. R. 7 H. L. 869.  
Followed by C. A. COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM AND HOUSE COAL COLLIERY CO.  
[1895] 1 Ch. 629
- Main v. Stark* - (1890) 15 App. Cas. 384  
Referred to. REYNOLDS v. ATT.-GEN. FOR NOVA SCOTIA P. C. [1896] A. C. 240
- Mainland v. Upjohn* - (1889) 41 Ch. D. 126  
Discussed and applied. BIGGS v. HODDINOTT. HODDINOTT v. BIGGS  
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- Makins v. Percy Ibbotson & Sons*, [1891] 1 Ch. 133.  
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[1893] 1 Ch. 574

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[1899] P. 195
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[1895] 2 Ch. 370
- Mallinson v. Mallinson*, (1866) L. R. 1 P. & M. 221  
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- Malony, In re* - - (1860) 1 J. & H. 249  
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*v. WILLIS* [1895] W. N. 9
- Manchester Brewery Co. v. North Cheshire and*  
*Manchester Brewery Co.*, C. A. [1898]  
1 Ch. 539.  
Affirmed by H. L. (E.) *sub nom. NORTH*  
*CHESHIRE AND MANCHESTER BREWERY*  
*Co. v. MANCHESTER BREWERY Co.*  
[1899] A. C. 83
- Manchester Corporation v. M'Adam*, [1895] 1 Q. B.  
673.  
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- Manchester, Sheffield and Lincolnshire Ry. Co. v.*  
*Anderson*, [1898] W. N. 35 (10).  
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*CAVE* - [1900] 1 Ch. 642, 649
- Manchester Trust v. Furness* [1895] 2 Q. B. 282  
Affirmed by C. A. [1895] 2 Q. B. 539
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(1891) 18 R. 1140.  
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*O'MORE'S CONTRACT*  
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146, 147.  
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[1896] 1 Q. B. 260, 264
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(1882) 21 Ch. D. 369.  
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[1895] W. N. 9
- Maplin Sands, In re* [1894] W. N. 141  
Affirmed by C. A. [1894] W. N. 184
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- "*Margaret*," *The* - (1829) 2 Hagg. Adm. 275  
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[1900] P. 47, 53
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*PAREIL"* - - - [1900] P. 267
- Margetson v. Glynn* - [1892] 1 Q. B. 337  
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- Marine Insurance Co. v. China Transpacific*  
*Steamship Co.*, (1886) 11 App. Cas. 573.  
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*STEAMSHIP Co. v. LONDON ASSURANCE*  
[1900] A. C. 6
- Markham and Darter's Case* [1899] 1 Ch. 414  
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- Marks v. Frogley* - [1898] 1 Q. B. 396  
Reversed by C. A. [1898] 1 Q. B. 888
- Marlborough (Dowager Duchess of) v. Marlborough*  
*(Duke of)*, [1900] W. N. 88.  
Affirmed by C. A. - [1900] W. N. 270
- Marlborough (Duke of) Settlement, In re*, (1866)  
32 Ch. D. 1.  
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*AND GOVERNORS OF QUEEN*  
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& Sm. 174.  
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[1895] 1 Ch. 552
- "*Marpesia*," *The* - (1872) L. R. 4 P. C. 212  
Approved by C. A. *THE "MERCHANT*  
*PRINCE"* - [1892] P. 179
- Marseilles Extension Ry. Co., In re*, (1871) L. R.  
7 Ch. 161.  
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[1896] W. N. 78 (2)
- Marsh v. Keating*, (1833-4) 1 Bing. N. C. 198;  
37 R. R. 75.  
Followed by Div. Ct. *REID v. RIGBY &*  
*Co.* - [1894] 2 Q. B. 40
- Marshall v. Berridge* - (1881-2) 19 Ch. D. 233  
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*In re LANDER & BAGLEY'S CONTRACT*  
[1892] 3 Ch. 41
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*Co.*, (1895) 22 R. 954.  
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*& TROSSACHS HYDROPATHIC Co. AND THE*  
*EAGLE PROPERTY Co. v. MARSHALL*  
[1896] A. C. 223
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*In re BROOKE. BROOKE v. BROOKE*  
*(No. 1) - - - [1894] 1 Ch. 43*
- Marshall v. Smith* - (1873) L. R. 8 C. P. 416  
Commented on by Div. Ct. *WELSH &*  
*SON v. WEST HAM CORPORATION*  
[1900] 1 Q. B. 324, 328
- Marshfield, In re* - (1887) 34 Ch. D. 721  
Followed by *Byrne J. DINGLE v. COP-*  
*PEN* - - [1899] 1 Ch. 726
- Martano v. Mann* - (1880) 14 Ch. D. 419  
Rule in, applied. *In re SMITH*  
C. A. [1896] W. N. 88 (16)
- Martin, In re* - (1886) 34 Ch. D. 618  
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[1898] W. N. 151 (10)
- Martin v. Porter* - (1839) 5 M. & W. 351  
Principle applied. *WHITTHAM v. WEST-*  
*MINSTER BRYNBO COAL AND COKE Co.*  
C. A. [1896] 2 Ch. 538

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Followed. *SHELFER v. CITY OF LONDON*  
*ELECTRIC LIGHTING CO.*  
C. A. [1895] 1 Ch. 287, 311, 316  
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*DRYPOOL GAS CO.*  
C. A. [1899] 2 Ch. 217
- Martins v. Upcher* - - (1842) 3 Q. B. 662  
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*KENSINGTON VESTRY* [1892] 1 Q. B. 614
- Marylebone Vestry v. Sheriff of London*, [1900] 1  
Q. B. 111.  
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- Marion-Wilson, In re. Wilson v. Marion-Wilson*  
[1899] W. N. 97; [1899] 2 Ch. 489.  
Reversed on one point by C. A.  
[1900] 1 Ch. 565  
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*ST. ALBANS* - [1900] 2 Ch. 873
- Mason v. Broadbent* - (1863) 33 Beav. 296  
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*COPPEN* - - [1899] 1 Ch. 726
- Mason v. Dean* - - [1900] 1 Q. B. 770  
Distinguished by C. A. *CASS v. BUTLER*  
[1900] 1 Q. B. 777, 779
- Mason & Taylor, In re* - (1878) 10 Ch. D. 729  
Distinguished by Kekewich J. *BRUN-*  
*TON v. ELECTRICAL ENGINEERING COR-*  
*PORATION* - - [1892] 1 Ch. 434  
Followed by Kekewich J. *In re LAW-*  
*RANCE.* [1894] 1 Ch. 556
- Mason's Orphanage and London and North West-*  
*ern Ry. Co., In re*, (1895) W. N. 138 (3).  
Affirmed by C. A.  
[1896] 1 Ch. 596; [1896] 1 Ch. 54
- Massey v. Heynes & Co.* - (1888) 21 Q. B. D. 330  
Followed by C. A. *BENNETTS & Co. v.*  
*McILWRAITH & Co.* - [1896] 2 Q. B. 464
- Mathers v. Green* - - (1865) L. R. 1 Ch. 29  
Approved by H. L. (E.). *STEEERS v.*  
*ROGERS* - - [1893] A. C. 232  
Referred to by Kekewich J. *HEYL*  
*DIA v. EDMUNDS* - [1899] W. N. 222
- Matheson v. Ross* - - (1849) 2 H. L. C. 286  
See 54 & 55 Vict. c. 39, s. 14 (4).
- Mathews v. Magrath* (1868) Ir. R. 3 C. L. 127  
Observed upon. *LAVERY v. KINGS-*  
*BERRY AND BLACK*  
(1886) 20 L. R. (Ir.) 387;  
C. A. (Ir.) [1898] W. N. 118
- Matson, In re* - - [1897] 2 Ch. 509  
See Lunacy Act, 1890 (53 Vict. c. 5),  
s. 342.
- Maude, Ex parte* - - (1870) L. R. 6 Ch. 51  
Followed. *In re WEYMOUTH AND CHAN-*  
*NEL STEAM PACKET CO.*  
C. A. [1891] 1 Ch. 66  
Distinguished. *In re ANGLO-CONTINEN-*  
*TIAL CORPORATION OF WESTERN AUS-*  
*TRALIA* - - [1898] 1 Ch. 327
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*Co.* - - (1863) 1 H. & M. 130  
Followed by C. A. *KITTS v. MOORE*  
[1895] 1 Q. B. 253
- Mauver v. Harrison, Eq. Ca. Abr. 93, Mich. 1692;*  
20 Viner's Abr. p. 102.  
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*WALKER. SHEFFIELD BANKING CO. v.*  
*CLAYTON* [1892] 1 Ch. 621
- Maxim-Nordenfelt Gun and Ammunition Co. v.*  
*Nordenfelt (No. 1)*, [1893] 1 Ch. 630.  
Affirmed by H. L. (E.) *sub nom. NORDEN-*  
*FELT v. MAXIM-NORDENFELT GUN AND*  
*AMMUNITION CO.* - [1894] A. C. 535  
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*v. GOLDSTEIN* [1896] 1 Q. B. 484  
Referred to by Byrne J. *In re HOLLIS*  
*HOSPITAL AND HAGUE'S CONTRACT*  
[1899] 2 Ch. 540, 553
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Distinguished. *In re BANGOR AND*  
*NORTH WALES MUTUAL MARINE PRO-*  
*TECTION ASSOCIATION* [1899] 2 Ch. 593
- Maynard's, Ltd., In re* - - [1898] 1 Ch. 515  
Referred to. *In re NORTHERN CREO-*  
*SOTING AND SLEEPER CO.*  
[1898] W. N. 159 (5)  
Dissented from. *In re S. FROST & Co.*  
C. A. [1899] 2 Ch. 207  
See also Companies Act, 1898 (61 & 62  
Vict. c. 26).
- Mayor v. Collins* - (1890) 24 Q. B. D. 361  
Distinguished by C. A. *REDFERN v.*  
*REDFERN* - - [1891] P. 139
- May's Metal Separating Syndicate, In re*, [1898]  
W. N. 159 (5).  
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*SOTING AND SLEEPER CO.*  
[1898] W. N. 159 (5)
- Meade's Settled Estates, In re* [1897] 1 I. R. 121  
Followed. *In re TIBBITS' SETTLED*  
*ESTATES* [1897] 2 Ch. 149  
Distinguished. *In re KECK AND HART'S*  
*CONTRACT* - [1898] 1 Ch. 617  
Distinguished. *In re DU CANE AND*  
*NETTLEFORD'S CONTRACT*  
[1898] 2 Ch. 96
- Meakin v. Morris* - (1884) 12 Q. B. D. 352  
Approved by C. A. *CORN v. MATTHEWS*  
[1893] 1 Q. B. 310  
Discussed by Div. Ct. *GREEN v.*  
*THOMPSON* - [1899] 2 Q. B. 1, 5
- "*Mediana.*" *The* - - [1899] W. N. 14 (2)  
Reversed by C. A. [1899] P. 127  
Affirmed by H. L. (E.) *sub nom. OWNERS*  
*OF STEAMSHIP "MEDIANA" v. OWNERS,*  
*& C. OF LIGHTSHIP "COMET." THE*  
*"MEDIANA"* - [1900] A. C. 113
- Medical Battery Co., In re* [1894] 1 Ch. 444, 448  
Followed by Farwell J. *In re BISHOP*  
*(E.) & SONS, LD.* - [1900] 2 Ch. 254
- Medland, In re. Eland v. Medland* (1889) 41  
Ch. D. 476.  
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Vict. c. 10), s. 4.

- Medlock, In re* (1886) 55 L. J. (Ch.) 738  
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 [1894] 1 Ch. 665  
 And by *North J. In re SNAITH*  
 [1894] W. N. 115  
 Applied by C. A. *In re WOODIN*  
 [1895] 2 Ch. 309
- Mellin v. White* - - [1894] 3 Ch. 276  
 C. A. reversed by H. L. (E.)  
 [1895] A. C. 154
- Mellor v. Swire* - (1885) 30 Ch. D. 239  
 Approved of by H. L. (Ir.). *HATTON*  
*v. HARRIS* - [1892] A. C. 547 at p. 560  
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 [1893] A. C. 638
- "*Melpomene*," *The* - (1873) L. R. 4 A. & E. 129  
 Referred to by *Jeune P. THE "STRATH-*  
*GARRY"* - - - [1895] P. 264
- Menzies v. Menzies* - (1892) 29 Sc. L. R. 677  
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- Mercantile Bank of Australia, In re*, [1892] 2 Ch. 204.  
 Referred to by V. Williams J. *In re*  
*BOUND & Co.* - [1893] W. N. 21
- Mercantile Bank of Sydney v. Taylor*, (1891) 12  
 New South Wales L. R. 252.  
 Affirmed by P. C. [1893] A. C. 317
- Mercantile Investment Co. v. International Co. of*  
*Mexico* - [1893] 1 Ch. 484, n.  
 Distinguished by *Stirling J. FOLLIT v.*  
*EDDYSTONE GRANITE QUARRIES*  
 [1892] 3 Ch. 75  
*See also SNEATH v. VALLEY GOLD, LD.*  
 [1893] 1 Ch. 477  
 And *MERCANTILE INVESTMENT*  
*AND GENERAL TRUST CO. v. RIVER PLATE*  
*TRUST, LOAN AND AGENCY CO. (No. 2)*  
 [1894] 1 Ch. 578
- Mercer v. Vans Colina*, (1897) 67 L. J. (Q. B.)  
 424.  
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 [1899] 1 Q. B. 688
- Merchant Shipping Co. v. Armitage*, (1873) L. R.  
 9 Q. B. 99.  
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 H. L. (E.). *LONDON, CHATHAM AND*  
*DOVER RY. CO. v. SOUTH EASTERN RY.*  
*CO.* [1892] 1 Ch. 120; [1893] A. C. 429
- Merritt, In the Goods of* (1858) 1 Sw. & Tr. 142  
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 [1898] P. 21
- Merryweather v. Nixan*, (1799) 8 T. R. 186; 16  
 R. R. 810.  
 Not extended to Sc. by H. L. (Sc.).  
*PALMER v. WICK AND PULTENEYTOWN*  
*STEAM SHIPPING CO.* [1894] A. C. 318  
 Referred to by C. A. *MOXHAM v. GRANT*  
 [1900] 1 Q. B. 88, 93, 95
- Mersey Docks v. Liverpool*, (1872) L. R. 7 Q. B.  
 643.  
 Approved by H. L. (E.). *HULL DOCKS*  
*CO. v. SCULCOATES UNION (GUARDIANS)*  
 [1895] A. C. 136  
 Followed by C. A. *DODDS v. ASSESS-*  
*MENT COMMITTEE OF SOUTH SHIELDS*  
 [1895] 2 Q. B. 133
- Mersey Docks and Harbour Board v. Inland*  
*Revenue Commrs.*, [1897] 1 Q. B. 786.  
 Affirmed by C. A. [1897] 2 Q. B. 316
- Mersey Docks and Harbour Board v. Llanelian*  
*Overseers*, (1884) 14 Q. B. D. 770.  
 Overruled. *See COMMS. OF PORT OF*  
*LANCASTER v. BARROW-IN-FURNESS OVER-*  
*SEERS Div. Ct.* [1897] 1 Q. B. 166, 171
- Mersey Docks and Harbour Board v. Turner.*  
*The "Zeta,"* [1892] P. 285.  
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- Mersey Steel and Iron Co. v. Naylor, Benzon &*  
*Co.*, (1884) 9 App. Cas. 434, 442.  
 Referred to by C. A. *RHYMNEY RY.*  
*CO. v. BRECON AND MERTHYR TYDFIL*  
*JUNCTION RY. CO.* - [1900] W. N. 169
- Merrin, In re. Merrin v. Crossman*, [1891] 3 Ch.  
 197.  
 Observed upon. *WILLERTON v. STOCKS*  
 [1892] W. N. 29  
 Followed. *In re STEVENS*  
 [1896] W. N. 24 (12)
- Mess v. Hay* - - - (1898) 25 R. 398  
 Affirmed by H. L. (Sc.) [1899] A. C. 233
- Metcalfe, In re. Metcalfe v. Metcalfe*, (1889) 43  
 Ch. D. 633.  
 Affirmed by C. A. - [1891] 3 Ch. 1  
 Distinguished by C. A. *WEST v.*  
*WILLIAMS* - [1899] 1 Ch. 132, 148
- Metcalfe v. Cox* - - (1894) 22 R. 210  
 Reversed by H. L. (Sc.) [1895] A. C. 328
- Metcalfe v. St. Andrews (University of)*, (1896)  
 23 Rettie, 559.  
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*CALFE v. COX* - - [1896] A. C. 647
- Methuen and Blore's Contract, In re*, (1881) 16  
 Ch. D. 696.  
 Referred to. *In re MORRIS*  
 [1894] W. N. 85
- Metropolitan Asylum District v. Hill*, (1881) 6  
 App. Cas. 193.  
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*LONDON TRAMWAYS CO.*  
 [1893] 2 Ch. 588  
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*v. PAREE* P. C. [1899] A. C. 535
- Metropolitan Bank v. Pooley*, (1885) 10 App. Cas.  
 210.  
 Followed by *Stirling J. BRUCE v. MAR-*  
*QUESS OF AILESBUURY (No. 2)*  
 [1892] W. N. 149  
*See 59 & 60 Vict. c. 51.*
- Metropolitan Board of Works v. London and North*  
*Western Ry. Co.*, (1880) 14 Ch. D. 521;  
 (1881) 17 Ch. D. 246.  
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*v. HORNSEY URBAN COUNCIL*  
 [1900] 1 Ch. 695
- Metropolitan Board of Works v. Overseers of West*  
*Ham*, (1870) L. R. 6 Q. B. 193.  
 Followed by C. A. *LONDON COUNTY*  
*COUNCIL v. CHURCHWARDENS, &c., OF*  
*WEST HAM* - [1892] 2 Q. B. 44

- Metropolitan Board of Works v. Vauzhall Bridge Co.*, (1857) 7 E. & B. 964.  
Overruled by Div. Ct. KNIGHT v. LANGPORT DISTRICT DRAINAGE BOARD [1898] 1 Q. B. 588
- Metropolitan Coal Consumers' Association, In re. Karberg's Case*, [1892] 3 Ch. 1.  
Followed by C. A. *In re CANADIAN DIRECT MEAT CO.* - [1892] W. N. 146
- Metropolitan Coal Consumers' Association v. Scrimgeour*, [1895] 2 Q. B. 604.  
*See Companies Act, 1900* (63 & 64 Vict. c. 48), s. 8, sub-s. 3.
- Metropolitan Coal Consumers' Association, In re. Wainwright's Case*, (1890) 62 L. T. (N.S.) 30; 63 L. T. (N.S.) 429.  
Considered by C. A. *In re METROPOLITAN COAL CONSUMERS' ASSOCIATION. KARBERG'S CASE* - [1892] 3 Ch. 1
- Metropolitan Ry. Co. v. Fowler*, [1892] 1 Q. B. 165.  
Affirmed by H. L. (E.) [1893] A. C. 416  
Referred to by Kekewich J. *FARMER v. WATERLOO AND CITY RY. CO.* [1895] 1 Ch. 527, 532
- Metropolitan Ry. Co. v. Wright*, (1886) 11 App. Cas. 152.  
*See HOW v. LONDON AND NORTH WESTERN RY. CO.* C. A. [1892] 1 Q. B. 391
- Meux v. Smith* - (1843) 11 Sim. 410  
Followed by Farwell J. *BIRD v. PHILPOTT* - - [1900] 1 Ch. 822
- Meyer v. Simonsen* (1852) 5 De G. & Sm. 723  
Applied and followed by Kekewich J. *In re EATON. DAINES v. EATON* [1894] W. N. 95  
Referred to by Kekewich J. *In re NICHOLSON* - [1895] W. N. 106  
Rule in, approved of by P. C. *WENTWORTH v. WENTWORTH* [1900] A. C. 163
- Meyerstein's Trade-mark, In re*, (1890) 43 Ch. D. 604.  
Followed. *In re TALBOT'S TRADE-MARK* [1894] W. N. 12  
Considered by C. A. *In re FARBEN-FABRINKEN APPLICATION* [1894] 1 Ch. 645;  
But this case was overruled by H. L. (E.). *EASTMAN PHOTOGRAPHIC MATERIALS CO. v. COMP-TROLLER-GENERAL OF PATENTS, &c.* [1898] A. C. 571
- Meyler v. Meyler* - (1883) 11 L. R. Ir. 522  
Approved and adopted by Chitty J. *In re WHISTON'S SETTLEMENT. LOVATT v. WILLIAMSON* [1894] 1 Ch. 661
- Michell v. Michell* (No. 1) - [1891] P. 166  
Reversed by C. A. - [1891] P. 208
- Middlesborough, &c., Building Society, In re*, (1889) 58 L. J. (Ch.) 771.  
Referred to by Kekewich J. *In re BRITANNIA PERMANENT BENEFIT BUILDING SOCIETY* - [1891] W. N. 123
- Middlesex County Council v. St. George's Union Assessment Committee*, [1896] 2 Q. B. 143.  
Affirmed by C. A. [1897] 1 Q. B. 64
- Middleton, In re* - - (1882) 19 Ch. D. 552  
Followed by North J. *In re COPLAND* [1895] W. N. 137 (1).
- Middleton v. Bailey* - [1895] 2 Ch. 716  
Approved of by Romer J. *WILCOX AND GIBBS v. JAMES* [1897] 2 Ch. 71, 72
- Middleton v. Lord Advocate* (1876) 3 Rettie, 599  
Followed. *REVELL v. SCOTT*, (1895) 22 Rettie, 772  
Ct. of Sess. (Sc.) [1896] W. N. 137
- Middleton v. Pollock* - (1876) 2 Ch. D. 104  
Approved of. NEW, PRANCE & GARRARD'S TRUSTEE v. HUNTING C. A. [1897] 2 Q. B. 19;  
This case was affirmed by H. L. (E.) [1899] A. C. 419
- Midgley v. Coppock* - (1879) 4 Ex. D. 309  
Followed by Collins J. *TUBBS v. WYNNE* [1897] 1 Q. B. 74
- Midland Coal, Coke and Iron Co., In re*, [1895] 1 Ch. 267.  
*See In re NEW ORIENTAL BANK CORPORATION* (No. 2) - [1895] 1 Ch. 753, 755
- Midland Ry. Co. v. Edmonton Union*, [1895] 1 Q. B. 357.  
Affirmed by H. L. (E.) [1895] A. C. 485
- Midland Ry. Co. v. Gribble* - [1895] 2 Ch. 129  
Affirmed with a variation in the order by C. A. - [1895] 2 Ch. 827
- Midland Ry. Co. v. Haunchiwood Brick and Tile Co.*, (1882) 20 Ch. D. 532.  
*See RUABON BRICK AND TERRA COTTA CO. v. GREAT WESTERN RY. CO.* C. A. [1893] 1 Ch. 427
- Midland Ry. Co. v. Miles* (1886) 33 Ch. D. 632  
*See RUABON BRICK AND TERRA COTTA CO. v. GREAT WESTERN RY. CO.* C. A. [1893] 1 Ch. 427
- Midland Ry. Co. v. Pye*, (1861) 10 C. B. (N.S.) 191.  
Approved. *YOUNG v. ADAMS* P. C. [1898] A. C. 469.
- Midland Ry. Co. v. Robinson*, (1890) 15 App. Cas. 19.  
*See RUABON BRICK AND TERRA COTTA CO. v. GREAT WESTERN RY. CO.* C. A. [1893] 1 Ch. 427
- Midland Ry. Co. v. Withington Local Board*, (1883) 11 Q. B. D. 788.  
Followed by Bruce J. *CREE v. ST. PANCRAS VESTRY* - [1899] 1 Q. B. 693
- Miles v. Jarvis* - (1883) 24 Ch. D. 633  
Referred to by Kekewich J. *BLACKMAN v. FISH* - [1892] 3 Ch. 209, 220  
Followed by Chitty J. *DEAN v. DEAN* [1891] 3 Ch. 150
- Millard's Settled Estates, In re* [1893] 3 Ch. 116  
Distinguished by Byrne J. *DUKE OF NORFOLK v. LORD HERBIES* [1900] 1 Ch. 461
- Miller, In re* - C. A. [1893] 1 Q. B. 327  
*See 59 & 60 Vict. c. 25, s. 35 (b).*

- Miller v. Collins* - [1895] W. N. 143 (8)  
Reversed by C. A. - [1896] 1 Ch. 573
- Miller v. Dell* - - [1891] 1 Q. B. 468  
Referred to. LONDON AND MIDLAND  
BANK v. MITCHELL [1899] 2 Ch. 161, 166
- Mills, Ex parte* - - (1873) L. R. 8 Ch. 569  
Followed by C. A. *In re* HILDESHEIM.  
*Ex parte* THE TRUSTEE [1893] 2 Q. B. 357
- Mill's Estate, In re* - - (1887) 34 Ch. D. 24  
Considered by C. A. *In re* FISHER  
[1894] 1 Ch. 450
- Mills v. Bowyers' Co.* - - (1856) 3 K. & J. 66  
Followed by Kekewich J. *In re* WHITE-  
LEY AND ROBERTS' ARBITRATION  
[1891] 1 Ch. 558
- Mills v. Fowkes* - - (1839) 5 Bing. N. C. 455  
Distinguished by Stirling J. FRIEND  
v. YOUNG [1897] 2 Ch. 421
- Mills v. Jennings* - - (1880) 13 Ch. D. 639  
Affirmed by H. L. (E.) *sub nom.* JENN-  
INGS v. JORDAN (1881) 6 App. Cas. 698  
Referred to by Kekewich J. *In re*  
MITCHELL [1892] W. N. 11
- Milsom v. Awdry*, (1800) 5 Ves. 465; 5 R. R. 102  
Referred to by Cozens-Hardy J. *In re*  
ROBSON [1899] W. N. 260
- Minehead Local Board v. Luttrell*, [1894] 2 Ch.  
178.  
Distinguished by Romer J. VOWLES v.  
COLMER [1895] W. N. 42  
Followed and applied by Stirling J.  
CROSDALE v. SUNBURY-ON-THAMES  
URBAN COUNCIL [1898] 2 Ch. 515
- Minet v. Morgan* - - (1873) L. R. 8 Ch. 361  
Followed by C. A. CALCRAFT v. GUEST  
[1898] 1 Q. B. 759
- Mining Shares Investment Co., In re*, [1893] 2 Ch.  
660.  
Referred to. ALUMINIUM CO., *In re*  
[1894] W. N. 6
- Minna Craig Steamship Co. v. Chartered Mercan-  
tile Bank of India, London and China*,  
[1897] 1 Q. B. 55.  
Affirmed by C. A. [1897] 1 Q. B. 460
- "Minnie," The* - - [1894] P. 336  
No longer law. *THE "OPORTO"*  
C. A. [1897] P. 249
- Minter v. Carr* - - - [1894] 2 Ch. 321  
Affirmed by C. A. [1894] 3 Ch. 498
- Minter v. Williams*, (1835) 4 Ad. & E. 251; 1  
Web. Pat. Cas. 135.  
Considered by C. A. BRITISH MOTOR  
SYNDICATE, LD. v. TAYLOR & SON  
[1900] W. N. 239; [1901] 1 Ch. 122
- Mirams, In re* - - - [1891] 1 Q. B. 594  
Referred to by H. L. (E.) MOGUL  
STEAMSHIP CO. v. MCGREGOR, GOW &  
CO. - - [1892] A. C. 25, 45
- Missouri Steamship Co., In re*, (1889) 42 Ch. D.  
321.  
Principle in, applied by Kekewich J.  
SOUTH AFRICAN BREWERIES v. KING  
[1899] 2 Ch. 172; C. A. [1900] 1 Ch. 273
- Mitchell v. Cantrill* (1888) 37 Ch. D. 56  
Distinguished by North J. HAYNES v.  
KING [1893] 3 Ch. 439, at p. 445
- Mitchell v. Simpson* - (1889) 23 Q. B. D. 373  
Followed by Chitty J. *In re* EDDY (A  
SOLICITOR) - - [1891] W. N. 1
- Moase v. White* - - - (1876) 3 Ch. D. 763  
Referred to by Kekewich J. *In re*  
Uttermare [1893] W. N. 158
- Mozambique, Companhia de v. British South Africa  
Co.* - - [1892] 2 Q. B. 358  
C. A. reversed by H. L. (E.)  
[1893] A. C. 602
- Mogg v. Clark* - - - (1885) 15 Q. B. D. 82  
Followed by C. A. REG. v. SOUTTER  
[1891] 1 Q. B. 57
- Mogul Steamship Co. v. McGregor, Gow & Co.*  
(1889) 23 Q. B. D. 598.  
Affirmed by H. L. (E.) [1892] A. C. 25  
Applied and followed by Kekewich J.  
TROLLOPE v. LONDON BUILDING TRADES  
FEDERATION [1895] W. N. 29;  
This case affirmed by C. A.  
[1895] W. N. 45
- Mohan v. Broughton* - - [1899] P. 211  
Affirmed by C. A. - [1900] P. 56
- Molyneux & White, In re*, (1884) 13 L. R. Ir. 382;  
15 L. R. Ir. 383.  
Explained by Stirling J. *In re* VENN  
& FURZE'S CONTRACT [1894] 2 Ch. 101
- Monks v. Jackson* - - (1876) 1 C. P. D. 633  
Distinguished by Div. Ct. HARFORD v.  
LINSKEY - - [1899] 1 Q. B. 852
- Monson v. Tussauds, Ltd.* - [1894] 1 Q. B. 671  
Dictum of Lord Halsbury not followed  
by C. A. KITTs v. MOORE  
[1895] 1 Q. B. 253
- Montagu, In re. Derbshire v. Montagu*, [1897] 1  
Ch. 685.  
Affirmed by C. A. - [1897] 2 Ch. 8  
See *In re* COUNTESS WALDEGRAVE  
[1899] W. N. 240
- Montague v. Flockton* (1873) L. R. 16 Eq. 189  
Disapproved. WHITWOOD CHEMICAL CO.  
v. HARDMAN C. A. [1891] 2 Ch. 416  
Referred to by Kekewich J. "STAR"  
NEWSPAPER CO. v. O'CONNOR  
[1893] W. N. 114;  
C. A. [1893] W. N. 122
- Mont de Piété of England, In re*, (1892) 37 S. J.  
48.  
Not followed by Byrne J. *In re* HILLE  
INDIA RUBBER CO. [1897] W. N. 6 (4)
- Montgomery v. Thompson* - [1891] A. C. 221  
Observations of Lord Watson followed  
by Chitty J. WOLMERSHAUSEN v. WOL-  
MERSHAUSEN & CO. [1892] W. N. 87  
Form of injunction followed by Stir-  
ling J. POWELL v. BIRMINGHAM VINE-  
GAR BREWERY CO. (No. 2)  
[1894] 3 Ch. 449
- Moore, Ex parte* - - (1881) 51 L. J. (Ch.) 72  
Distinguished by V. Williams J. *In re*  
GALLARD [1897] 2 Q. B. 8

- Moore, Ex parte* - (1885) 14 Q. B. D. 627  
Followed by C. A. *In re ALEXANDER*  
[1892] 1 Q. B. 216
- Moore, In re* - (1882) 21 Ch. D. 778  
Referred to by Kekewich J. *EATON v. DAINES* - - - [1894] W. N. 32
- Moore, In re* - (1885) 54 L. J. (Ch.) 432  
Followed. *In re BARKER. BARKER v. BARKER* - - [1897] W. N. 154 (14)
- Moore v. Moore* - - - [1892] P. 382  
Followed by Jeune Pres. *ROGERS v. ROGERS* - - [1894] P. 161
- Moore v. Watson* - (1867) L. R. 2 C. P. 314  
Disapproved of by C. A. *STREET v. STREET* - - [1900] 2 Q. B. 57
- Moore Brothers & Co., In re*, [1898] W. N. 71 (1)  
Reversed by C. A. - [1899] 1 Ch. 627
- Moran v. Jones* - (1857) 7 E. & B. 523  
Commented on by G. Barnes J. *THE "BRIGELLA"* - [1893] P. 189, 197
- Morant v. Taylor* - (1876) 1 Ex. D. 188  
See 57 & 58 Vict. c. ccxiii, s. 116 (3).
- Mordue v. Palmer* - (1870) L. R. 6 Ch. 22  
See *In re Stringer and Riley Brothers*, [1900] W. N. 240.
- More-Smyth v. Mountcashell (Earl of)*, [1895] 1 I. R. 44.  
Affirmed by H. L. (I.) [1896] A. C. 128
- Morgan v. Bowles* - - [1894] 1 Q. B. 236  
Approved by C. A. *KIRBY v. NORTH BRITISH AND MERCANTILE INSURANCE CO.* [1896] 2 Q. B. 99, 101
- Morgan v. Britten* (1871) L. R. 13 Eq. 28  
Followed by Chitty J. *BINNING v. BINNING* - [1895] W. N. 116 (16)
- Morgan v. Castlegate Steamship Co.*, (1891) 29 L. R. (Ir.) 55.  
Affirmed by H. L. (Ir.) [1893] A. C. 38
- Morgan v. Mather*, (1792) 2 Ves. Jr. 15; 2 R. R. 163.  
Commented on by Kekewich J. *In re WHITELEY AND ROBERTS' ARBITRATION* [1891] 1 Ch. 558
- Morgan v. Ravey* - (1861) 6 H. & N. 265, 276  
Applied by Hawkins J. *ROBB v. GREEN* [1895] 2 Q. B. 1  
This case affirm. by C. A. [1895] 2 Q. B. 315
- Morgan v. Swansea Urban Sanitary Authority*, (1878) 9 Ch. D. 582.  
Considered by Stirling J. *In re CUNNINGHAM AND FRAYLING* [1891] 2 Ch. 567
- "*Morgengry,*" *The*, and "*The Blackcock*," [1899] W. N. 211.  
Affirmed by C. A. - [1900] P. 1
- Moritz v. Knowles* - - [1899] W. N. 40  
Reversed by C. A. - [1899] W. N. 83
- Morley v. Attenborough*, (1849) 3 Ex. 500; 18 L. J. (Ex.) 148.  
See 56 & 57 Vict. c. 71, ss. 11 (1) (c); 12 (1), 55.
- Morley v. Carter* - - [1898] 1 Q. B. 8  
See now *Agricultural Holdings Act*, 1900 (63 & 64 Vict. c. 50), s. 2, sub-s. 2.
- Morley v. Rennoldson* - (1843) 2 Hare, 570  
Explained and further heard by C. A. [1895] 1 Ch. 449
- Morrell v. Morrell* - (1882) 7 P. D. 68  
Followed by Jeune Pres. *COLLINS v. ELSTONE* - - [1893] P. 1
- Morrice v. Aylmer* - (1875) L. R. 7 H. L. 717  
See *In re BODMAN* [1891] 3 Ch. 135, at p. 137
- Morris, In re. James v. London and County Banking Co.* [1898] 2 Ch. 413.  
Affirmed by C. A. [1899] 1 Ch. 485
- Morris v. Edwards* - (1890) 15 App. Cas. 309  
Followed by C. A. *ATT.-GEN. v. NEW-CASTLE-UPON-TYNE CORPORATION* [1899] 2 Q. B. 478
- Morris v. Lewison* - (1876) 1 C. P. D. 155  
Distinguished by Div. Ct. *MILLER v. BORNER & Co.* - [1900] 1 Q. B. 691
- Morris v. Morris* (1861) 31 L. J. (P. M. & A. 33)  
Followed by G. Barnes J. *STANLEY v. STANLEY* - - [1898] P. 227
- Morris v. Robinson*, (1824) 3 B. & C. 196; 27 R. R. 322.  
Referred to by C. A. *RICE v. REED* [1900] 1 Q. B. 54, 63
- Morris v. Wilson* - (1859) 5 Jur. (N.S.) 168  
Followed by Romer J. *FILBY v. HOUNSELL* - [1896] 2 Q. B. 737
- Morris, Wilson & Co. v. Coventry Machinists Co.* [1891] 3 Ch. 418.  
Commented on by C. A. *WOOLLEY v. BROAD (No. 2)* - [1892] 2 Q. B. 317
- Mortlock v. Buller*, (1804) 10 Ves. 292, 315; 7 R. R. 417.  
Applied by Farwell J. *RUDD v. LASCELLES* - [1900] 1 Ch. 815
- Morton v. Thorpe* - (1863) 3 Sw. & Tr. 179  
Followed by G. Barnes J. *IN THE GOODS OF QUICK* - [1899] P. 187
- Morton v. Tibbett* - (1850) 15 Q. B. 428  
Considered. *TAYLOR v. SMITH* C. A. [1893] 2 Q. B. 65
- Morton and Hallett, In re* (1880) 15 Ch. D. 143  
Followed by Stirling J. *In re CUNNINGHAM AND FRAYLING* [1891] 2 Ch. 567
- Moser v. Marsden* - - [1892] 1 Ch. 487  
See *MONTFORTS v. MARSDEN* [1895] 1 Ch. 11, 13
- Moser v. Marsden* - (1896) 13 Pat. Rep. 24  
Discussed. *In re DELLWIK'S PATENT* [1896] 2 Ch. 705
- Moss v. Cooper* - (1861) 1 J. & H. 352  
Referred to by Farwell J. *In re STEAD. WITHAM v. ANDREW* [1900] 1 Ch. 237
- Mostyn v. Mostyn* - - [1893] 3 Ch. 376  
Distinguished by Romer J. *JONES v. BARNETT* [1899] 1 Ch. 611; C. A. [1900] 1 Ch. 370
- Moul v. Groenings* - [1891] 2 Q. B. 443  
Explained by Chitty J. *SCHAUER v. J. C. & J. FIELD, LD.* [1893] 1 Ch. 35  
Followed by Charles J. *HANFSTAENGL ART PUBLISHING CO. v. HOLLOWAY* [1893] 2 Q. B. 1

- Moule v. Garrett*, (1870) L. R. 5 Ex. 132; (1872) 7 Ex. 101.  
Distinguished by C. A. *BONNER v. TOTTENHAM AND EDMONTON PERMANENT INVESTMENT BUILDING SOCIETY* [1899] 1 Q. B. 161  
Discussed by Stirling J. *JOHNS v. PINK* - - - [1900] 1 Ch. 296
- Mountcashell (Earl of) v. More-Smyth*, [1895] 1 I. R. 44.  
Affirmed by H. L. (I.) [1896] A. C. 158
- Mountjoy's (Lord) and the Earl of Huntington's Case*, (1582-3) Godbolt 17; 1 Anderson, 307.  
Discussed by C. A. *DUKE OF SUTHERLAND v. HEATHCOTE* [1892] 1 Ch. 475
- Mowbray v. Merryweather* - [1895] 1 Q. B. 857  
Affirmed by C. A. [1895] 2 Q. B. 640
- Mozham v. Grant*, [1899] W. N. 14 (4); [1899] 1 Q. B. 480.  
Affirmed by C. A. [1900] 1 Q. B. 88
- Mozham, The M.* (1876) 1 P. D. 107  
Rule in, applied. *MACHADO v. FONTES* C. A. [1897] 2 Q. B. 231
- Muirden (Cowie's Trustee) v. Cowie*, (1891) 18 R. 706.  
Reversed by H. L. (Sc.). *COWIE v. MUIRDEN* [1893] A. C. 674
- Muirhead v. Forth and North Sea Steamboat Mutual Insurance Association*, (1893) 20 Rettie, 442.  
Affirmed by H. L. (Sc.) [1894] A. C. 72
- Mulckern v. Doerks* (1884) 53 L. J. (Q.B.) 526  
Overruled by *Wilmott v. Freehold House Property Co.*, (1884) 51 L. T. (N.S.) 552.  
See *HUNT v. WORSFOLD*  
North J. [1896] 2 Ch. 224
- Mulliner v. Midland Ry. Co.*, (1879) 11 Ch. D. 611.  
Commented on. *GONTY v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* C. A. [1896] 2 Q. B. 439
- Mumford v. Stohwasser* [1875] L. R. 18 Eq. 556  
Commented on by Farwell J. *HUNT v. LUCK* [1900] W. N. 250
- Mundy and Roper's Contract, In re*, [1898] W. N. 49 (12).  
Reversed by C. A. - [1899] 1 Ch. 275
- Mundy's Settled Estates, In re* [1891] 1 Ch. 399  
Followed by North J. *In re BYNG'S SETTLED ESTATES* [1892] 2 Ch. 219  
Discussed by Romer J. *In re LORD MONSON'S SETTLED ESTATES* [1898] 1 Ch. 427  
Applicable. *In re EYRE COOTE* North J. [1899] W. N. 222
- Munro v. Balfour* - - [1893] 1 Q. B. 113  
Followed by C. A. *FURNESS v. BERSFORD* - [1898] 1 Q. B. 495
- Munro v. Butt* - - (1858) 8 E. & B. 738  
Followed. *SUMPTER v. HEDGES* C. A. [1898] 1 Q. B. 673
- "Munster." The.* (Not reported.) Followed.  
THE "MEDINA" [1899] P. 129, note;  
but this decision was reversed by C. A. [1899] P. 127;  
Decision of C. A. affirmed by H. L. (E.) - - [1900] A. C. 113
- Muriel v. Tracy* - - (1703-4) 6 Mod. 169  
Referred to by Stirling J. *WALTERS v. GREEN* - - [1899] 2 Ch. 696, 701
- Murray v. Clayton* - (1872) L. R. 15 Eq. 115  
Referred to by C. A. *SACCHARIN CORPORATION v. CHEMICALS AND DRUGS CO.* [1900] 2 Ch. 556
- Murray v. Freer* - - [1893] 1 Q. B. 281  
Reversed by C. A. [1893] 1 Q. B. 635  
C. A. affirmed by H. L. (E.) *sub nom. FREER v. MURRAY* [1894] A. C. 576
- Musgrove v. Chun Teeong Toy* [1891] A. C. 272  
See Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), s. 9, sub-s. 51 (xxvi).
- Musurus Bey v. Gadban* - [1894] 1 Q. B. 533  
Affirmed by C. A. [1894] 2 Q. B. 352
- Mutton v. Peat*, [1899] W. N. 127; [1899] 2 Ch. 556.  
Reversed by C. A. - [1900] 2 Ch. 79
- Myers v. Catterson* - (1890) 43 Ch. D. 470  
Followed by Romer J. *WILSON v. QUEEN'S CLUB* - [1891] 3 Ch. 522  
Discussed and explained. *BROOMFIELD v. WILLIAMS* C. A. [1897] 1 Ch. 602
- Myers v. Elliott* - - (1886) 16 Q. B. D. 526  
Distinguished by V. Williams J. *In re WOOD. Ex parte WOOLFE* [1894] 1 Q. B. 605
- Mytne v. Dickinson*, (1815) G. Cooper 195; 14 R. R. 243.  
Followed by C. A. *KITTS v. MOORE* [1895] 1 Q. B. 253, 260
- Mytton v. Mytton* (1874) L. R. 19 Eq. 30  
Considered by North J. *In re PRATT* [1894] 1 Ch. 491
- Nalder & Collyer's Brewery Co. v. Harman.* [1900] W. N. 22.  
Affirmed by C. A. - [1900] W. N. 180
- Nash v. Hodgson* (1855) 6 D. M. & G. 474  
Distinguished by Stirling J. *FRIEND v. YOUNG* [1897] 2 Ch. 421
- Nassau Phosphate Co.* - (1876) 2 Ch. D. 610  
Followed by V. Williams J. *In re LAXON & Co. (No. 2)* [1892] 3 Ch. 555  
Discussed by North J. *DENNISON v. JEFFS* - [1896] 1 Ch. 611, 617
- Nathan, Newman & Co., In re*, (1887) 35 Ch. D. 1  
Followed by C. A. *In re CLIFF. EDWARDS v. BROWN* [1895] 2 Ch. 21
- National Arms and Ammunition Co., In re*, (1885) 28 Ch. D. 474, 482.  
Test suggested by Bowen L.J. followed by V. Williams J. *In re BLAZER FIRE LIGHTER, LD.* - [1895] 1 Ch. 402
- National Bank of Wales, In re* [1896] 2 Ch. 851  
Reversed by C. A. - [1897] 1 Ch. 298



- National Bank of Wales, In re. Ex parte Cory*,  
[1899] W. N. 26.  
Reversed by C. A. - [1899] 2 Ch. 629
- National Boiler Insurance Co., In re*, [1892] 1 Ch. 306.  
Distinguished by North J. *In re FLEETWOOD ESTATE CO.*  
[1897] W. N. 20 (3)
- National Debenture and Assets Corporation, In re.*  
[1891] 2 Ch. 505.  
Distinguished by V. Williams J. *In re LAXON & Co. (No. 2)* [1892] 3 Ch. 555  
See Companies Act, 1900 (63 & 64 Vict. c. 48), s. 1.
- National Provincial Bank and Marsh, In re*,  
[1895] 1 Ch. 190.  
Followed by Kekewich J. *In re SCOTT AND ALVAREZ'S CONTRACT*  
[1895] 1 Ch. 596;  
This case varied by C. A.  
[1895] 2 Ch. 603
- National Society for the Distribution of Electricity by Secondary Generators v. Gibbs*, [1899] 2 Ch. 289.  
Reversed by C. A. - [1900] 2 Ch. 280
- National Stores, Ltd., In re*, [1899] W. N. 215;  
[1899] 2 Ch. 773.  
Affirmed by C. A. - [1900] 1 Ch. 27
- Navan and Kingscourt Ry. Co., In re*, (1885) 17 L. R. Ir. 398.  
Followed by Farwell J. *In re WREXHAM, MOLD AND CONNAH'S QUAY RY. CO.*  
[1900] 2 Ch. 436
- Neal v. Barrett* - - - [1887] W. N. 88  
Observed upon by North J. *AYLWARD v. LEWIS* - - - [1891] W. N. 36;  
But see *ib. in* - - [1891] 2 Ch. 81
- Nedby v. Nedby* - (1852) 5 De G. & Sm. 377  
Followed by Cozens-Hardy J. *BARRON v. WILLIS* - - - [1899] 2 Ch. 578;  
But this case was reversed by C. A.  
[1900] 2 Ch. 121
- Needham v. Bowers* - (1888) 21 Q. B. D. 436  
Distinguished by Div. Ct. *CAWSE v. COMMITTEE OF NOTTINGHAM LUNATIC HOSPITAL* - - - [1891] 1 Q. B. 585
- Negus, In re* - - - [1895] 1 Ch. 73  
Discussed by Cozens-Hardy J. *In re GRAY* - - - [1900] W. N. 274
- Neill v. Duke of Devonshire*, (1882) 8 App. Cas. 135.  
Referred to by C. A. *BLOUNT v. LAYARD* - - - [1891] 2 Ch. 681, n.  
See also *ATT.-GEN. v. NEWCASTLE-UPON TYNE CORPORATION*  
C. A. [1897] 2 Q. B. 384, 389
- Neilson v. Mossend Iron Co.*, (1886) 11 App. Cas. 298.  
Discussed by Stirling J. *DAW v. HERING* - - - [1892] 1 Ch. 284
- Neilson v. Wait* - - (1886) 16 Q. B. D. 67  
Referred to by Div. Ct. *THE "ALME HOLME"* - - - [1893] P. 173  
Distinguished by Div. Ct. *REYNOLDS & Co. v. TOMLINSON* [1896] 1 Q. B. 586
- "Nellie," The* - - - ([1896] not reported)  
Followed. *THE "BURMA"*  
[1899] W. N. 54
- "Nelly Schneider," The* - (1878) 3 P. D. 152  
Followed by Bruce J. *THE "HEREWARD"* - - [1895] P. 284
- Nesbitt v. Greenwich Board of Works*, (1875) L. R. 10 Q. B. 465.  
Followed by C. A. *DAVIS v. GREENWICH BOARD OF WORKS*  
[1895] 2 Q. B. 219
- Nether Stowey Vicarage, In re*, (1873) L. R. 17 Eq. 156.  
Distinguished by North J. *Ex parte VICAR OF ST. BOTOLPH, ALDGATE*  
[1894] 3 Ch. 544
- Netherseal Colliery Co. v. Bourne*, (1889) 14 App. Cas. 228.  
Followed by Div. Ct. *BRACE v. ABERCARN COLLIERY CO.* [1891] 1 Q. B. 496  
This case was affirmed by C. A.  
[1891] 2 Q. B. 699
- Nevill v. Fine Arts and General Insurance Co.*, [1895] 2 Q. B. 156.  
Affirmed by H. L. (E.) [1897] A. C. 68
- Neville v. Matthewman* - [1894] 3 Ch. 345  
Considered by North J. *CROMPTON AND EVANS' UNION BANK v. BURTON*  
[1895] 2 Ch. 711
- New City Constitutional Club Co., In re. Ex parte Purssell*, (1887) 34 Ch. D. 646.  
Followed by Wright J. *In re HARPUR'S CYCLE FITTINGS CO.* [1900] 2 Ch. 731
- New Eberhardt Co.* - (1890) 43 Ch. D. 118  
Distinguished by Romer J. *In re COMMON PETROLEUM ENGINE CO. ELSNER AND MCARTHUR'S CASE*  
[1895] 2 Ch. 759  
See also *TRANSVAAL EXPLORING CO. v. ALBION (TRANSVAAL) GOLD MINES, LD.*  
Byrne J. [1899] 1 Ch. 370  
Discussed by Cozens-Hardy J. *In re METROPOLITAN FIRE INSURANCE CO.*  
[1900] 2 Ch. 671, 676
- New Ixion Tyre and Cycle Co. v. Spilsbury*, [1898] 2 Ch. 137.  
Affirmed by C. A. - [1898] 2 Ch. 484
- New Land Development Association and Gray, In re*, [1892] 2 Ch. 138.  
Referred to by Chitty J. *In re CLAYTON AND BARCLAY'S CONTRACT*  
[1895] 2 Ch. 212  
Applicable. *HUNT v. FRIPP*  
Byrne J. [1898] 1 Ch. 675, 681  
See also *BRID v. PHILPOTT*  
Farwell J. [1900] 1 Ch. 822, 831
- New Oriental Bank Corporation*, [1892] 3 Ch. 563.  
Followed by V. Williams J. *In re CIVIL SERVICE BREWERY CO.*  
[1893] W. N. 5
- New Oriental Bank Corporation (No. 2), In re*, [1895] 1 Ch. 753.  
Distinguished by Romer J. *In re PANTHER LEAD CO.* - [1896] 1 Ch. 978

- New Par Consols, Ltd.*, (No. 3), [1898] 1 Q. B. 669.  
Followed by C. A. *SKINNER v. COUNTY COURT JUDGE OF NORTHALLERTON* [1898] 2 Q. B. 680, 685; H. L. (E.) [1899] A. C. 439
- New, Prance & Garrard's Trustee v. Hunting*, [1897] 1 Q. B. 607.  
Affirmed by C. A. - [1897] 2 Q. B. 19  
C. A. affirmed by H. L. (E.) *sub nom. SHARP (OFFICIAL RECEIVER) v. JACKSON* [1899] A. C. 419  
Referred to by Wright J. *In re BLACKBURN & Co.* [1899] 2 Ch. 725, 728  
*In re VAUTIN* [1900] 2 Q. B. 325, 328
- New Transvaal Co., In re* - [1896] 2 Ch. 750  
Followed by Wright J. *In re PEABODY GOLD MINING CORPORATION* [1897] W. N. 170 (3)
- New Weighing Machine Co., In re*, [1896] W. N. 48 (4).  
Referred to. PRACTICE DIRECTION [1898] W. N. 7 (10)
- New York Exchange Co., In re* [1893] 1 Ch. 371  
Considered by C. A. *In re SANITARY BURIAL ASSOCIATION* [1900] 2 Ch. 289
- New York Exchange, Ltd., In re*, (1888) 39 Ch. D. 415.  
Distinguished by Farwell J. *E. BISHOP & SONS, LD., In re* [1900] 2 Ch. 254
- New York Life Insurance Co. v. Styles*, (1889) 14 App. Cas. 381.  
Considered by C. A. *EQUITABLE LIFE ASSURANCE SOCIETY OF UNITED STATES v. BISHOP* - [1900] 1 Q. B. 177
- New Zealand Gold Extraction Co. v. Peacock*, [1894] 1 Q. B. 622.  
Applied by Kekewich J. *ALLEN v. GOLD REEFS OF WEST AFRICA, LD.* [1899] 2 Ch. 40;  
But this case was varied by C. A. [1900] 1 Ch. 656
- New Zealand Trust and Loan Co., In re*, [1893] 1 Ch. 403.  
Dictum of Lindley L.J. as to form of vesting order disapproved by Kekewich J. *In re JOLIFFE'S TRUSTS* [1893] W. N. 84  
Explained by L.J.J. *In re GREGSON C. A.* [1893] 3 Ch. 233
- Newbegin's Estate, In re* - (1887) 36 Ch. D. 477  
Discussed by North J. *WINKLE v. BAILEY* - [1897] 1 Ch. 123  
Followed by Stirling J. *In re WATSON. GUARDIANS OF STAMFORD UNION v. BARTLETT* - [1899] 1 Ch. 72
- Newbery-Vautin (Patents) Gold Extraction Co.* [1892] 3 Ch. 127, n.  
Followed by Kekewich J. *In re PINKNEY & SONS STEAMSHIP CO.* [1892] 3 Ch. 125
- Newbiggin-by-the-Sea Gas Co. v. Armstrong*, [1879] 13 Ch. D. 310.  
Adopted by C. A. *FRICKER v. VAN GRUTTEN* - [1896] 2 Ch. 649
- Newbigging v. Adam*, (1886) 34 Ch. D. 582; (1888) 13 App. Cas. 308.  
Discussed by Farwell J. *WHITTINGTON v. SEALE-HAYNE* - [1900] W. N. 31
- Newbold Friendly Society v. Barlow*, [1893] 2 Q. B. 128.  
See 59 & 60 Vict. c. 25, s. 62.
- Newby v. Eckersley* - [1899] 1 Q. B. 465  
Referred to by Div. Ct. *In re PEARSON & T'ANSON* [1899] 2 Q. B. 618, 627, 630  
See *Agricultural Holdings Act, 1900* (63 & 64 Vict. c. 50), s. 1, sub-s. 5.
- Newby v. Sims* - [1894] 1 Q. B. 478  
Referred to by Div. Ct. *FORTUNE v. HANSON* [1896] 1 Q. B. 202, 207
- Newcastle Fire Insurance Co. v. Macmorran & Co.*, (1815) 3 Dow's Reports, 255, 262; 15 R. R. 67.  
Followed by C. A. *HAMBROUGH v. MUTUAL LIFE INSURANCE CO. OF NEW YORK* - [1895] W. N. 18
- Newell and Nevill's Contract, In re*, [1900] 1 Ch. 90.  
Disapproved of by C. A. *In re GLADSTONE* - - [1900] 2 Ch. 101  
See also *SCOTT v. MOXON* [1900] W. N. 14
- Newen, In re* - - [1894] 2 Ch. 297, 309  
Not followed by Stirling J. with regard to question of costs. *In re HUNT. POLLARD v. GEAKE* - [1900] W. N. 65
- Newman v. Pinto* - (1886) 57 L. T. 31.  
Followed. *BASCHET v. LONDON ILLUSTRATED STANDARD CO.* [1899] W. N. 215; [1900] 1 Ch. 73
- Newson v. Pender* - - (1884) 27 Ch. D. 43  
Followed by Stirling J. *SMITH v. BAXTER* - [1900] 2 Ch. 138
- Newstead v. Searles* - (1737) 1 Atk. 264  
Explained by P. C. *DE MESTRE v. WEST* - [1891] A. C. 264  
And by C. A. *ATT.-GEN. v. JACOBS-SMITH* [1895] 2 Q. B. 341
- Newton v. Anglo-Australian Investment Co.*, [1895] A. C. 244.  
Followed by Chitty J. *JACKSON v. RAINFORD COAL CO.* [1896] 2 Ch. 340  
Commented on and explained. *In re MAYFAIR PROPERTY CO.* C. A. [1898] 2 Ch. 28
- Newton's Trusts, In re* - (1883) 23 Ch. D. 181  
Overruled by C. A. *MILLER v. COLLINS* [1896] 1 Ch. 573
- Newton v. Newton* - - (1886) 11 P. D. 11  
Cited. *BREWIS v. BREWIS* [1893] W. N. 6
- Nicholl v. Eberhardt Co.*, (1889) 61 L. T. 489; 1 Megone, 402.  
Not followed. *BURDETT-COUTTS v. TRUE BLUE (HANNAN'S) GOLD MINES* C. A. [1899] 2 Ch. 616
- Nicholson v. Holborn Union*, (1886) 18 Q. B. D. 161.  
Discussed. *WORCESTERSHIRE COUNTY COUNCIL v. WORCESTER UNION* C. A. [1897] 1 Q. B. 480

- Nielson v. Wait* - - (1886) 16 Q. B. D. 67  
Followed by Div. Ct. *THE "ALINE HOLME"* - - [1893] P. 173
- Nind v. Nineteenth Century Building Society*,  
[1894] 1 Q. B. 472.  
Reversed by C. A. [1894] 2 Q. B. 226
- Nitro-Phosphate and Odams Chemical Manure Co., In re*, [1893] W. N. 141.  
Referred to by Kekewich J. *In re HONG KONG AND CHINA GAS CO.*  
[1898] W. N. 158 (3)  
Followed by WRIGHT J. *In re COPIAPO MINING CO.* - [1899] W. N. 25 (1)
- Noakes v. Noakes* - - (1877) 4 P. D. 60  
Cited. *BREWIS v. BREWIS*  
[1893] W. N. 6
- Noble v. Brett* - - (1858) 24 Beav. 499  
Referred to by Romer J. *GRAHAM v. DRUMMOND* - [1896] 1 Ch. 968
- Noddings, In the Goods of* (1860) 2 Sw. & Tr. 15  
As amended by the corrigenda in that volume.  
Followed by G. Barnes J. *IN THE GOODS OF REID* - - [1896] P. 129
- Noel v. Bewley* - - (1829) 3 Sim. 103  
Followed by Kekewich J. *In re HOFFE'S ESTATE ACT, 1855*  
[1900] W. N. 114
- Noel v. Noel* - - (1885) 10 P. D. 179  
Considered by Barnes J. *HARTOPF v. HARTOPF* - [1899] P. 65
- Norman v. Binnington* - (1890) 25 Q. B. D. 475  
Considered by C. A. *BAERSELMAN v. BAILEY* - [1895] 2 Q. B. 301
- North Australian Territory Co. v. Goldsborough, Mort & Co.*, [1893] 2 Ch. 381.  
Followed by Stirling J. *GOLDSTONE v. WILLIAMS, DEACON & CO.*  
[1899] 1 Ch. 47
- North, In re. Ex parte Hasluck*, [1895] W. N. 65.  
Affirmed by C. A. [1895] 2 Q. B. 264
- "*North Britain*," *The* - - [1894] P. 77  
Approved by H. L. (E.) *TATHAM, BROMAGE & Co. v. BURR. THE "ENGINEER"* - [1898] A. C. 382
- North v. Stewart* - (1890) 15 App. Cas. 452  
Distinguished by Kekewich J. *In re KNIGHT* [1892] 2 Ch. 368
- North Cheshire and Manchester Brewery Co. v. Manchester Brewery Co., C. A.* [1898] 1 Ch. 539.  
Affirmed by H. L. (E.)  
[1898] W. N. 168 (5)
- North Eastern Ry. Co. v. Dalton Overseers*, [1898] 2 Q. B. 66.  
Reversed by C. A. [1899] 1 Q. B. 1026  
C. A. affirmed by H. L. (E.) *sub nom. DALTON OVERSEERS v. NORTH EASTERN RY. CO.* - [1900] A. C. 345
- North Eastern Ry. Co. v. Elliot*, (1860) 1 J. & H. 145.  
Applied and followed by Stirling J. *ALDIN v. LATIMER CLARKE, MUIRHEAD & Co.* - - [1894] 2 Ch. 437
- North Kent Ry. Co. v. Badger*, (1858) 27 L. J. (M.C.) 106.  
Partially met by 57 & 58 Vict. c. cccxiii., s. 81.
- North London Land Co. v. Jacques*, (1884) 32 W. R. 283.  
Distinguished by C. A. *ROGERS v. RICE*  
[1892] 2 Ch. 170
- Disapproved by Lord Esher M.R. *LOCK v. PEARCE* - [1893] 2 Ch. 271, 276
- North London Ry. Co. v. Great Northern Ry. Co.*, (1883) 11 Q. B. D. 30.  
Considered by Kekewich J. *RICHARDSON v. METHLEY SCHOOL BOARD*  
[1893] 3 Ch. 510
- Approved and distinguished by C. A. *KITTS v. MOORE* - [1895] 1 Q. B. 253
- North Wales Gunpowder Co., In re*, [1892] 2 Q. B. 220.  
Cited by V. Williams J. *In re BOUND & Co.* - [1893] W. N. 21
- North Western Bank v. Poynter, Son & Macdonalds*, (1894) 21 R. 513.  
Reversed by H. L. (Sc.) [1895] A. C. 56  
Discussed by H. L. (Sc.) *INGLIS v. ROBERTSON* - [1898] A. C. 616, 626
- Northampton (Marquess of) v. Pollock*, (1890) 45 Ch. D. 190.  
Affirmed by H. L. (E.) *sub nom. SALT v. MARQUESS OF NORTHAMPTON*  
[1892] A. C. 1
- Referred to by C. A. *RICE v. NOAKES & Co.* - [1900] 2 Ch. 445, 451
- Northern Heritable Securities Investments Co. v. Whyte*, (1888) 16 R. 100.  
Affirmed by H. L. (Sc.) *sub nom. WHYTE v. HERITABLE SECURITIES INVESTMENT CO.* - [1891] A. C. 608
- Northumberland Avenue Hotel Co., In re*, (1886) 33 Ch. D. 16.  
Applied by Kekewich J. *BAGOT PNEUMATIC TYRE CO. v. CLIPPER PNEUMATIC TYRE CO.* - [1900] W. N. 272
- Northumberland (Duke of) v. Percy*, [1893] 1 Ch. 298, 303.  
Adopted by Kekewich J. *In re HOWELL-SHEPHERD* - [1894] 3 Ch. 649
- Norton v. London and North Western Ry. Co.*, (1878) 9 Ch. D. 623.  
Ratio decidendi of *Malins V.-C.* disapproved by C. A. *FOSTER v. LONDON, CHATHAM AND DOVER RY. CO.*  
[1895] 1 Q. B. 711
- Notara v. Henderson*, (1872) L. R. 7 Q. B. 225, 237.  
Applied by G. Barnes J. *THE "SAVONA"* - [1900] P. 252

- Nottingham Patent Brick and Tile Co. v. Butler* (1885) 15 Q. B. D. 261; (1886) 16 Q. B. D. 778.  
Explained by Stirling J. *In re BIRMINGHAM AND DISTRICT LAND CO. AND ALLDAY* - - [1893] 1 Ch. 342  
Referred to by Kekewich J. *NALDER AND COLLYER'S BREWERY CO. v. HARMAN* [1900] W. N. 22; C. A. [1900] W. N. 180
- Noyce, In re* - - - [1892] 1 Q. B. 97  
Affirmed by C. A. *sub nom. In re NOYCE. HILLEARY v. NOYCE* [1892] 1 Q. B. 642
- Nugent's Trustees v. Nugent* - (1898) 25 R. 475  
Reversed by H. L. (Sc.) *sub nom. GREVILLE-NUGENT v. MACKENZIE* [1900] A. C. 83
- Nunn v. Barlow*, (1824) 1 S. & S. 588; 24 R. R. 242  
Followed by Romer J. *DAVIES v. PARRY* [1899] 1 Ch. 602
- Nunn v. Fabian* - - (1865) L. R. 1 Ch. 35  
Applicable. *MILLER & ALDORTH, LD. v. SHARP* Byrne J. [1899] 1 Ch. 622
- Nunneley v. Nunneley* - (1890) 15 P. D. 186  
Explained and followed. *FORSYTH v. FORSYTH* - - - [1891] P. 363
- Nurse v. Durnford* - (1879) 13 Ch. D. 764  
Adopted by C. A. *FRICKER v. VAN GRUTTEN* - - - [1896] 2 Ch. 649
- Nutt v. Easton* - - - [1899] 1 Ch. 873  
Affirmed by C. A. - [1900] 1 Ch. 29
- Nuttall v. Hargreaves*, (1891) 8 Rep. Pat. Cas. 273.  
Referred to. *MANDLEBERG v. MORLEY* [1895] W. N. 9
- Nuttall v. Manchester Corporation*, (1892) 8 Times L. R. 513.  
Commented on by C. A. *ECKERSLEY v. MERSEY DOCKS AND HARBOUR BOARD* [1894] 2 Q. B. 667
- Nuttall v. Staunton*, (1825) 4 B. & C. 51; 28 R. R. 207.  
Distinguished by Div. Ct. *WILKINSON v. PEEL* - - [1895] 1 Q. B. 516
- Nutter v. Holland* - - [1894] 3 Ch. 408  
Considered by North J. *CROMPTON AND EVANS' UNION BANK v. BURTON* North J. [1895] 2 Ch. 711
- Oakeley v. Pasheller*, (1836) 4 Cl. & F. 207; 10 Bli. (N.S.) 548.  
Explained by H. L. (E.) *ROUSE v. BRADFORD BANKING CO.* [1894] A. C. 586
- Oakes v. Turquand* - (1867) L. R. 2 H. L. 325  
Distinguished by C. A. *In re NATIONAL DEBENTURE AND ASSETS CORPORATION* [1891] 2 Ch. 505  
Referred to by Kekewich J. *In re TRENCH TUBELESS TYRE CO.* [1899] W. N. 258;  
But this case was reversed by C. A. [1900] 1 Ch. 408
- Occleston v. Fullalove* - (1874) L. R. 9 Ch. 147  
Followed by North J. *In re SHAW* [1894] 2 Ch. 573
- Ocean Queen Steamship Co., In re*, [1893] 2 Ch. 666.  
Referred to. *ALUMINIUM CO., In re* [1894] W. N. 6
- Odell, Ex parte* - - (1878) 10 Ch. D. 76  
Referred in the UNITED FORTY POUND LOAN CLUB *v. BEXTON* [1891] 1 Q. B. 28, n
- Ogden v. Turner* - - (1703-4) 2 Salk. 696  
Overruled by 54 & 55 Vict. c. 51. s. 1.
- Ogilvie v. Foljambe*, (1817) 3 Mer. 53; 17 R. R. 13  
Principle applied. *PLANT v. BOURNE* C. A. [1897] 2 Ch. 281
- Ogle v. Story* - - (1833) 4 B. & Ad. 735  
Distinguished by Chitty J. *In re LLEWELLIN* - [1891] 3 Ch. 145
- Ogston v. Aberdeen District Tramways Co.*, (1895) 23 Rettie, 340.  
Reversed by H. L. (Sc.) [1897] A. C. 111
- Ogston v. Stewart's Trustees*, (1893) 21 Rettie, 282  
Reversed by H. L. (Sc.) [1896] A. C. 120
- O'Hara v. Elliott* - - [1893] 1 Q. B. 362  
Applied by Bruce J. *THE "HESTIA" (No. 2)* - - [1895] W. N. 100
- Oliver v. Hinton* - - [1898] W. N. 172 (4)  
Affirmed by C. A. - [1899] 2 Ch. 264
- Oliver v. Louther*, (1880) 42 L. T. (N.S.) 47; 28 W. R. 381.  
Cited. *BREWIS v. BREWIS* [1893] W. N. 6
- Olney v. Bates* - - (1855) 3 Drew. 319  
Discussed by Chitty J. *In re SIR E. HARVEY'S ESTATE* - [1893] 1 Ch. 567
- Olympia, Ltd., In re* - - [1898] 2 Ch. 153  
Affirmed by H. L. (E.) *sub nom. GLUCKSTEIN v. BARNES* - [1900] A. C. 240
- O'Neal v. Mead* - - (1720) 1 P. Wms. 693  
Followed by Kekewich J. *In re BUTLER* [1894] 3 Ch. 250, 258
- O'Neil v. Armstrong, Mitchell & Co.* [1895] 2 Q. B. 70  
Affirmed by C. A. [1895] 2 Q. B. 418
- O'Neil v. Clason* - (1876) 46 L. J. (Q.B.) 191  
Held by C. A. to be overruled by *Russell v. Cambefort*, (1889) 23 Q. B. D. 526.  
*WESTERN NATIONAL BANK OF NEW YORK v. PEREZ, TRIANA & CO.* [1891] 1 Q. B. 304
- O'Neill v. Lucas, In re* - (1838) 2 Keen 313  
Followed by Farwell J. *In re POPE* [1900] W. N. 244; see [1901] 1 Ch. 64
- Onslow v. Horne* - - 2 W. Bl. 750  
Followed by C. A. *ALEXANDER v. JENKINS* - [1892] 1 Q. B. 797
- Onslow v. Inland Revenue Commrs.*, (1890) 24 Q. B. D. 584.  
Affirmed by C. A. [1891] 1 Q. B. 239
- Onslow v. Wallis* - (1849) 1 Mac. & G. 506  
Distinguished. *In re LASHMAR* C. A. [1891] 1 Ch. 258

- Ooregum Gold Mining Co. of India v. Roper*, [1892] A. C. 125, 142, 143.  
Explained by V. Williams J. *In re* PIONEERS OF MASHONALAND SYNDICATE [1893] 1 Ch. 731  
Dicta of Lord Herschell commented on by Kekewich J. and C. A. *In re* RY. TIME TABLES PUBLISHING CO. *Ex parte* WELTON - [1895] 1 Ch. 255;  
H. L. (E.) [1897] A. C. 299
- Opera, Ltd., In re* - - [1891] 2 Ch. 154  
Reversed by C. A. - [1891] 3 Ch. 260  
Explained and followed and head-note corrected by Kekewich J. and C. A. *TAUNTON v. WARWICKSHIRE (SHERIFF OF)* [1895] 1 Ch. 734; [1895] 2 Ch. 319  
Distinguished by Romer J. *ROBSON v. SMITH* - - [1895] 2 Ch. 118  
Observed upon. *In re* ROUNDWOOD COLLIERY CO. - C. A. [1897] 1 Ch. 373
- "*Orchis*," *The* - - (1889) 15 P. D. 38  
Distinguished by Jeune P. *THE "RIPON CITY"* - - [1898] P. 78
- Orde, In re* - - (1883) 24 Ch. D. 271  
Distinguished by Chitty J. *In re* DODSWORTH [1891] 1 Ch. 657
- Orford, In re. Cartwright v. Duc del Balzo*, [1896] 1 Ch. 257.  
Followed by Stirling J. *In re* HILL'S SETTLEMENT TRUSTS [1896] W. N. 177 (1)
- Orford v. Cole* - - (1818) 2 Stark. 351  
Quare, overruled by 54 & 55 Vict. c. 39, Sch. I.
- "*Orienta*," *The* - - [1894] P. 271  
Affirmed by C. A. - [1895] P. 49
- Oriental Inland Steam Co., In re*, (1874) L. R. 9 Ch. 557.  
Dictum of James L.J. explained by Romer J. *KNOWLES v. SCOTT* [1891] 1 Ch. 717
- Oriental Steamship Co. v. Taylor*, [1893] 2 Q. B. 518, 527.  
Followed by Stirling J. *HOLFORD v. ACTON URBAN COUNCIL* [1898] 2 Ch. 240
- Orr v. Mitchell (Moir's Trustees)*, (1892) 19 R. 700.  
Reversed. H. L. (Sc.) [1893] A. C. 238
- Orr-Ewing v. Registrar of Trade-marks*, (1879) 4 App. Cas. 479.  
Explained by Chitty J. *In re* MEEUS' APPLICATION - - [1891] 1 Ch. 41  
Referred to by Byrne J. *WRIGHT, CROSBLEY & CO.'S APPLICATION, &c.* [1900] 2 Ch. 218, 226
- Orton v. Cleveland Fire Brick and Pottery Co.*, (1865) 3 H. & C. 868.  
Not followed by Wright J. *In re* PERUVIAN GUANO CO. *Ex parte* KEMP [1894] 3 Ch. 690
- O'Shanassy v. Joachim* - (1876) 1 App. Cas. 82  
Distinguished by P. C. *TOOTH v. POWER* - - [1891] A. C. 284
- O'Shea v. O'Shea* - - (1890) 15 P. D. 59  
See *EVANS v. NOTON* (No. 1)  
C. A. [1893] 1 Ch. 252
- O'Shea v. Wood* - - - [1891] P. 237  
Partly affirmed and partly reversed by C. A. - - - [1891] P. 286
- O'Shea's Settlement, In re* - [1895] 1 Ch. 325.  
Followed by V. Williams J. *WILD v. SOUTHWOOD* - [1897] 1 Q. B. 317
- O'Sullivan v. Thomas* - [1895] 1 Q. B. 698  
Approved of by C. A. *BURGE v. ASHLEY & SMITH, LD.* - [1900] 1 Q. B. 744
- Ottway v. Wing* - - (1841) 12 Sim. 90  
Referred to by Stirling J. *In re* TURNBULL [1900] 1 Ch. 180, 186
- Otway, In re. Ex parte Otway, C. A.* [1895] 1 Q. B. 812.  
Referred to by C. A. *In re* LEONARD [1896] 1 Q. B. 473, 474
- Otway v. Otway* - (1888) 13 P. D. 12, 141  
Discussed by Jeune J. *DUPLANY v. DUPLANY* - [1892] P. 53, 55
- Overend, Gurney & Co. v. Oriental Financial Corporation*, (1874) L. R. 7. H. L. 348.  
Explained by H. L. (E.) *ROUSE v. BRADFORD BANKING CORPORATION* [1894] A. C. 586
- Owen v. De Beauvoir*, (1847) 16 M. & W. 547; 5 Ex. 166.  
Followed by Stirling J. *HOWITT v. EARL OF HARRINGTON* [1893] 2 Ch. 497
- Owens College v. Chorlton-upon-Medlock Overseers*, (1887) 18 Q. B. D. 403.  
Disapproved by H. L. (E.) *LONDON COUNTY COUNCIL v. ERITH (CHURCHWARDENS, &c.)* - [1893] A. C. 562
- "*P. Caland*," *The* - - [1891] P. 313  
Affirmed by C. A. [1892] P. 191  
C. A. Affirmed by H. L. (E.) [1893] A. C. 207
- Padstow Total Loss and Collision Assurance Association, In re* (1882) 20 Ch. D. 137.  
Distinguished by C. A. *In re* BOWLING AND WELBY'S CONTRACT [1895] 1 Ch. 663
- Pagani, In re* - - [1892] 1 Ch. 236  
Referred to. *In re* BEAUFORT'S WILL [1898] W. N. 148 (5)
- Page v. Midland Ry. Co.* - [1894] 1 Ch. 11  
Referred to by Farwell J. *MAY v. PLATT* - - [1900] 1 Ch. 616
- Page v. Morgan* - (1885) 15 Q. B. D. 228  
Considered by C. A. *TAYLOR v. SMITH (No. 1)* - [1893] 2 Q. B. 65
- Paget v. Marshall* - (1884) 28 Ch. D. 255  
Commented on by Farwell J. *MAY v. PLATT* - - [1900] 1 Ch. 616
- Paget v. Paget* - - [1898] 1 Ch. 47  
Affirmed by C. A. - [1898] 1 Ch. 470
- Paget's Settled Estates, In re*, (1885) 30 Ch. D. 161.  
Discussed. *In re* EASTMAN'S SETTLED ESTATES - [1898] W. N. 170 (15)
- Pain v. Boughtwood* - (1890) 24 Q. B. D. 353  
Followed by Div. Ct. *DYKE v. GOWER* [1892] 1 Q. B. 220

- Paine v. Jones* - (1874) L. R. 18 Eq. 320  
Explained and distinguished. *DALTON v. FITZGERALD* - [1897] 1 Ch. 440;  
C. A. [1897] 2 Ch. 86
- Palliser v. Gurney* - (1887) 19 Q. B. D. 519  
Followed by C. A. *STODDON v. LEE*  
[1891] 1 Q. B. 661  
See now 56 & 57 Vict. c. 63, s. 1 (a).
- Palmer, In re* - - (1890) 45 Ch. D. 291  
Considered by C. A. *In re FRAPE*  
[1893] 2 Ch. 284
- Palmer, In re. Palmer v. Rose-Innes*, [1900] W. N. 9.  
See now *In re MARYON-WILSON*  
C. A. [1900] 1 Ch. 565
- Palmer v. Caledonian Ry. Co.*, [1892] 1 Q. B. 607.  
Reversed by C. A. [1892] 1 Q. B. 823
- Palmer v. Fletcher*, (Mich. 15 Car. II.); 1 Lev. 122.  
Rule applied to devises by Chitty J. *PHILLIPS v. LOW* [1892] 1 Ch. 47
- Palmer v. Locke* - - (1881) 18 Ch. D. 381  
Followed by Chitty J. *In re STONE'S WILL* - [1893] W. N. 50
- Palmer v. Temple* - (1839) 9 Ad. & E. 508  
Observed upon. *CORNWALL v. HENSON*  
[1899] 2 Ch. 710;  
C. A. [1900] 2 Ch. 298
- Palmer v. Wick & Pulteneytown Steam Shipping Co.*, [1894] A. C. 318.  
Referred to by Bruce J. *THE "ENGLISHMAN" AND THE "AUSTRALIA"*  
[1895] P. 212, 218  
Referred to by Div. Ct. *BURROWS v. RHODES* - [1899] 1 Q. B. 816, 825
- Palmer's (J. B.) Trade-mark, In re*, (1883) 24 Ch. D. 504.  
Discussed by Chitty J. *In re MEEUS' APPLICATION* - [1891] 1 Ch. 41
- Papendick v. Bridgwater* (1855) 5 E. & B. 166  
Distinguished. *BLANDY-JENKINS v. DUNRAVEN (EARL OF)*  
C. A. [1899] 2 Ch. 121
- Parbury's Case* - [1896] 1 Ch. 100  
Distinguished. *In re AFRICAN GOLD CONCESSIONS AND DEVELOPMENT CO.*  
[1899] 1 Ch. 414; C. A. [1899] 2 Ch. 480
- Park Yard Co. v. North British Ry. Co.*, (1897) 24 R. 1148.  
Reversed by H. L. (Sc.)  
[1898] A. C. 643
- Parker, In re* - (1885) 54 L. J. (Ch.) 694  
Explained by C. A. *SALTER v. SALTER*  
[1896] P. 291
- Parker-Jervis, In re* - - [1898] 2 Ch. 643  
Followed by Stirling J. *In re DUKE OF ST. ALBANS* - [1900] 2 Ch. 873
- Parker v. McKenna* - (1874) L. R. 10 Ch. 96  
Referred to by North J. *WILLIAMS v. SCOTT* - [1900] A. C. 499
- Parker's Trusts, In re* - [1894] 1 Ch. 707, 721  
See 60 & 61 Vict. c. 65, s. 1.
- Parkinson v. Wainwright* - [1895] W. N. 63  
Considered by V. Williams J. *MARWICK v. LORD THURLOW* - [1895] 1 Ch. 776
- "Parlement Belge," The* - (1880) 5 P. D. 197  
Approved by P. C. OWNERS OF THE "UTOPIA," v. OWNERS AND MASTER OF THE "PRIMULA." *THE "UTOPIA"*  
[1893] A. C. 492  
Considered and followed. *MIGHELL v. SULTAN OF JOHORE*  
C. A. [1894] 1 Q. B. 149
- Parnell v. Walter* (1890) 24 Q. B. D. 441  
Overruled on one point. *WHITTAKER v. SCARBOROUGH POST NEWSPAPER CO.*  
C. A. [1896] 2 Q. B. 148
- Parry v. Great Ship Co.* - (1863) 4 B. & S. 556  
Distinguished by Kennedy J. *RODDICK v. INDEMNITY MUTUAL MARINE INSURANCE CO.* - [1895] 1 Q. B. 836;  
This case partly affirmed by C. A.  
[1895] 2 Q. B. 380
- Parsons v. Birmingham Dairy Co.*, (1882) 9 Q. B. D. 172.  
Disapproved of by Div. Ct. *BUCKLER v. WILSON* - [1896] 1 Q. B. 83  
See also Sale of Food and Drugs Act, 1889 (62 & 63 Vict. c. 51), s. 2.
- Parsons v. Brand* - (1890) 25 Q. B. D. 110  
Distinguished by C. A. *BIRD v. DAVEY*  
[1891] 1 Q. B. 29
- Pasley v. Freeman*, (1789) 3 T. R. 51; 1 R. R. 634  
Distinguished. *TALLERMAN v. DOWSING RADIANT HEAT CO.* [1899] W. N. 125;  
This case was compromised on appeal C. A. [1899] W. N. 234;  
[1900] 1 Ch. 1
- Patching v. Barnett* - (1881) 51 L. J. (Ch.) 74  
Followed by North J. *In re COPLAND*  
[1895] W. N. 137 (1)
- Patent Agents (Institute of) v. Lockwood*, (1893) 20 R. 315.  
Reversed in part by H. L. (Sc.)  
[1894] A. C. 347
- Paterson v. Paterson*, (1850) 3 H. L. C. 308, 319, 328.  
Dicta of L. Brougham referred to by Pollock B. *RUSSELL v. RUSSELL*  
[1895] P. 152;  
This case reversed by C. A.  
[1895] P. 315;  
C. A. affirmed by H. L. (D.)  
[1897] A. C. 395
- Paterson v. Russell* - (1850) 7 Bell's App. 337  
Commented on by H. L. (Sc.) *MACKENZIE v. MACKENZIE*  
[1895] A. C. 384, 415
- Paton v. Clydesdale Bank* - (1895) 23 R. 38  
Reversed by H. L. (Sc.) *sub nom. CLYDESDALE BANK v. PATON*  
[1896] A. C. 381
- Patten v. Bond* - - (1889) 60 L. T. 583  
Followed by Romer J. *CHEWTWYND v. ALLEN* - [1899] 1 Ch. 353
- Paul, In re. Ex parte Earl of Portarlington*, (1889) 24 Q. B. D. 247.  
See Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50), s. 2, sub-s. 2.
- Payne, In re* - - (1886) 18 Q. B. D. 154  
Referred to by Kekewich J. *In re THOMSON* - [1897] W. N. 29 (4)

- Payne, In re. Ex parte Read*, [1897] 1 Q. B. 122.  
Followed by Buckley J. *In re BLACKPOOL MOTOR CAR CO.* [1900] W. N. 252;  
see [1901] 1 Ch. 775
- Payne v. Hogg* - - - [1900] W. N. 86  
Reversed by C. A. - [1900] 2 Q. B. 43
- Payne v. Wilson* - - - [1895] 1 Q. B. 653  
Reversed by C. A. [1895] 2 Q. B. 537
- "Peace," *The* - - - (1856) Swabey, 115  
Followed by Jeune J. *THE "ELTON"*  
[1891] P. 265
- Peace & Ellis, In re*, (1887) 36 W. R. 61; [1887] W. N. 186.  
Approved by C. A. *DRIELISMA v. MANIFOLD* - - - [1894] 3 Ch. 100
- Peacock, In re* - - - (1880) 14 Ch. D. 212  
Considered by C. A. *In re NEW ZEALAND TRUST AND LOAN CO.*  
[1893] 1 Ch. 403
- Peacock v. Lowe* (1867) L. R. I. P. & M. 311  
Commented on. *MORAN v. PLACE*  
C. A. [1896] P. 214
- Peacock v. Saggars* (1862) 4 De G. F. & J. 406  
Referred to. *PRATT v. WILLIS. GREY v. WILLIS* - - - [1895] W. N. 9
- Peake's Settled Estates, In re* [1893] 3 Ch. 430  
Further heard by North J.  
[1894] 3 Ch. 520  
Considered by Kekewich J. *In re NEWEN* - - - [1894] 2 Ch. 297
- Pearce v. Bunting* - - - [1896] 2 Q. B. 360  
Disapproved of. *THAMES CONSERVATORS v. SMEED, DEAN & CO.*  
C. A. [1897] 2 Q. B. 334
- Pearks v. Moseley* - - - (1880) 5 App. Cas. 714  
Rule laid down at p. 719 applied by Stirling J. *In re MERVIN*  
[1891] 3 Ch. 197, 200  
Applied by Kekewich J. *WILLERTON v. STOCKS* - - - [1892] W. N. 29
- Pearls v. Salfield* - - - [1892] 2 Ch. 149  
Referred to by C. A. *HAYNES v. DO-MAN* - - - [1899] 2 Ch. 13, 25
- Pearson, In re* - - - [1892] 2 Q. B. 263  
Followed by C. A. *In re A. B. & Co.*  
[1900] 1 Q. B. 541, 545;  
[1901] A. C. 102
- Pearson, In the Goods of* - - - [1896] P. 289  
Qualified by G. Barnes J. *IN THE GOODS OF APTE* - - - [1899] P. 272
- Pearson v. Holborn Union Assessment Committee*, [1893] 1 Q. B. 389.  
Distinguished by Div. Cf. *WESTMINSTER VESTRY v. HOSKINS* [1899] 2 Q. B. 477
- Pearson v. McGowan* - - - (1825) 3 B. & C. 700  
Discussed. *REG. v. ELLIS*  
C. C. R. [1899] 1 Q. B. 230
- Pearson v. Pearson* - - - (1884) 27 Ch. D. 145  
The reasoning in, overruled. *TREGO v. HUNT* - H. L. (E.) [1896] A. C. 7  
Considered by Stirling J. *JENNINGS v. JENNINGS* - - - [1898] 1 Ch. 378
- Pearson v. Spencer* - - - (1863) 3 B. & S. 761  
Referred to by Stirling J. *NICHOLLS v. NICHOLLS* - - - [1900] W. N. 4
- Pearson's Case* - - - (1877) 5 Ch. D. 336  
See *ARCHER'S CASE* - [1892] 1 Ch. 322
- Peat v. Fowler*, (1886) 55 L. J. (Q.B.) 271; 33 W. R. 365.  
See 59 & 60 Vict. c. 25, s. 8 (5).
- Peat v. Gott* - - - [1885] W. N. 46  
See *AYLWARD v. LEWIS* [1891] 2 Ch. 81
- Peat v. Jones* - - - (1881) 8 Q. B. D. 147  
See *FINSKA ANGFARTYGS AKTIEBOLAGET v. BROWN, TOOGOOD & CO.*  
[1891] W. N. 116
- Peck, in the Goods of* - (1860) 2 Sw. & Tr. 506  
Followed by Jeune P. *IN THE GOODS OF HARLING* - - - [1900] P. 59, 60
- Peebles v. Oswaldtwistle District Council*, [1897] 1 Q. B. 384.  
Reversed by C. A. [1897] 1 Q. B. 625  
C. A. affirmed by H. L. (E.) *sub nom. PASMORE v. OSWALDTWISTLE URBAN DISTRICT COUNCIL*  
H. L. (E.) [1898] A. C. 387  
Followed on one point by Byrne J. *EASTWOOD BROTHERS, LD. v. HONLEY URBAN COUNCIL* - [1900] 1 Ch. 781
- Peek v. Derry* - - - (1889) 14 App. Cas. 337  
Discussed. *ANGUS v. CLIFFORD*  
C. A. [1891] 2 Ch. 449
- Peek v. Gurney* (1873) L. R. 6 H. L. 377  
Distinguished by C. A. *ANDREWS v. MOCKFORD* [1896] 1 Q. B. 372
- Peek v. Trinsmaran Iron Co.*, (1875-6) 2 Ch. D. 115.  
Followed by Chitty J. *CAMPBELL v. LLOYD'S, BARNETT'S AND BOSANQUET'S BANK* [1891] 1 Ch. 136, n.  
Doubted: but followed by Kay J. *MAKINS v. PERCY IBOTSON & SONS*  
[1891] 1 Ch. 133
- Peek v. Trower* - - - (1881) 7 P. D. 21  
Explained by Arches Ct. *NICKALLS v. BRISCOE* - - - [1892] P. 269
- Peel, In re. Ex parte Crossley Brothers, Ltd.*, [1894] I. R. 235.  
Affirmed by H. L. (I.) *sub nom. MCENTIRE v. CROSSLEY BROTHERS*  
[1895] A. C. 457
- Peel's Case* - - - (1867) L. R. 2 Ch. 674  
Distinguished. *In re NATIONAL DEBENTURE AND ASSETS CORPORATION*  
C. A. [1891] 2 Ch. 505  
See *In re LAXON & Co.* (No. 2)  
[1892] 3 Ch. 555
- Pegg v. Chamberlain* - (1860) 1 Sw. & Tr. 527  
Followed by Barnes J. *IN THE GOODS OF RATCLIFFE* - - - [1899] P. 110
- Peirce v. Corf* - - - (1874) L. R. 9 Q. B. 210  
Referred to by Kekewich J. *POTTER v. PETERS* - - - [1895] W. N. 37
- Pelly v. Royal Exchange Assurance Co.*, (1757) 1 Burt. 341.  
See *BARING BROTHERS & CO. v. MARINE INSURANCE CO.* - [1893] W. N. 164
- Pelly v. Wathen* - (1851) 1 De G. M. & G. 16  
Followed by Kekewich J. *BRUNTON v. ELECTRICAL ENGINEERING CORPORATION*  
[1892] 1 Ch. 434

- Pelton Brothers v. Harrison* [1891] 2 Q. B. 422  
See Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.  
Discussed by Cozens-Hardy J. *In re WHEELER'S SETTLEMENT TRUSTS*  
[1899] 2 Ch. 717
- Penfold, Ex parte* - (1851) 4 De G. & Sm. 282  
Followed by Stirling J. *In re LONDON, WINDSOR AND GREENWICH HOTELS CO.*  
[1892] 1 Ch. 639
- Pennefather v. Short* - [1866] W. N. 102, 126  
Followed. *NEWELL v. NEWELL*  
[1896] W. N. 160 (2)
- Penney, Ex parte* - (1872) L. R. 8 Ch. 446  
Followed by C. A. *In re COALPORT CHINA CO.* - [1895] 2 Ch. 404
- Pennsylvania Coal Co. v. Sanderson*, 56 American Repts. 89.  
Disapproved of by H. L. (Sc.) JOHN YOUNG & CO. v. BANKIER DISTILLERY CO.  
[1893] A. C. 691, 701
- Penny v. Wimbledon Urban District Council*, [1898] 2 Q. B. 212.  
Affirmed by C. A. - [1899] 2 Q. B. 72  
C. A. [1899] 2 Q. B. 72.  
Followed by C. A. *THE "SNARK"*  
[1900] P. 105
- Penruddock's Case* - - - 5 Rep. 100 b.  
Distinguished by C. A. *LEMMON v. WEBB* - - [1894] 3 Ch. 1, 13;  
This case affirmed by H. L. (E.)  
[1895] A. C. 1
- Penton v. Barnett* - - [1898] 1 Q. B. 276  
Referred to by Kekewich J. *In re SERLE* - [1898] 1 Ch. 652, 656
- Penton v. Browne* - 1 Sid. 186; 1 Keb. 698  
Not followed by Bowen L.J. *AMERICAN CONCENTRATED MEAT CO. v. HENDRY*  
[1893] W. N. 67; 62 L. J. (Q.B.) 388;  
This case affirmed by C. A.  
[1893] W. N. 82  
*But see HODDER v. WILLIAMS*  
C. A. [1895] 2 Q. B. 663, 668
- Pen-y-Van Colliery Co.* - (1877) 6 Ch. D. 477  
Followed by V. Williams J. *In re BANK OF SOUTH AUSTRALIA* (No. 1)  
[1894] 3 Ch. 722
- Percival, Ex parte* - (1868) L. R. 6 Eq. 519  
Not followed by V. Williams J. *In re LONDON METALLURGICAL CO.*  
[1895] 1 Ch. 758
- Perkins, In re. Poyser v. Beyfus*, [1898] W. N. 18 (4).  
Affirmed by C. A. - [1898] 2 Ch. 182
- Perrins v. Bellamy* - - [1898] 2 Ch. 521  
Affirmed by C. A. - [1899] 1 Ch. 797
- Perry Almshouses, In re* - [1898] 1 Ch. 391  
Affirmed by C. A. [1898] W. N. 158 (1);  
[1899] 1 Ch. 21
- Perry v. Clutton Coal Co.*, Seton on Decrees, 5th ed. p. 1685.  
See *PARKINSON v. WAINWRIGHT & CO.*  
[1895] W. N. 63
- Perry v. Eames* - - - [1891] 1 Ch. 658  
Approved by C. A. *WHEATON v. MAPLE & CO.* - - - [1893] 3 Ch. 48
- Perry v. Oriental Hotels Co.*, (1871) L. R. 12 Eq. 126.  
Referred to by Kekewich J. *LATHOM v. GREENWICH FERRY CO.*  
[1895] W. N. 77
- Perry's Executors v. Reg.* (1868) L. R. 4 Ex. 27  
Distinguished by Div. Ct. *ATT.-GEN. v. LOYD* - [1895] 1 Q. B. 496
- Perry-Herrick v. Attwood*, (1857) 2 De G. & J. 21  
Followed by H. L. (E.) *BROCKLESBY v. TEMPERANCE PERMANENT BUILDING SOCIETY* - - [1895] A. C. 173  
Applied by Chitty J. *LLOYDS BANK, LD. v. BULLOCK* [1896] 2 Ch. 192
- Perth General Station Committee v. Ross*, (1896) 23 R. 885.  
Reversed by H. L. (Sc.)  
[1897] A. C. 479
- Pertwee v. Townsend* - [1896] 2 Q. B. 129  
Approved of. *In re HERBAGE RENTS, GREENWICH. CHARITY COMMRS. v. GREEN*  
[1896] 2 Ch. 811
- Peterborough Corporation v. Wilsthorpe Overseers*, (1883) 12 Q. B. D. 1.  
Followed by C. A. *LODGE v. HUDDERSFIELD CORPORATION* [1898] 1 Q. B. 859
- Peters v. Greenock (Magistrates of)*, (1892) 19 R. 643.  
Affirmed by H. L. (Sc.) [1893] A. C. 258
- Peters v. Lewes and East Grinstead Ry. Co.*, (1881) 18 Ch. D. 429.  
Dictum of Jessel M.R., at p. 433; approved and followed. *In re LORD SUDLEY AND BAINES & CO.* [1894] 1 Ch. 334
- Petty v. Daniel* - - (1887) 34 Ch. D. 172  
Distinguished by Kekewich J. *TAYLOR v. ROE* (No. 1) - [1893] W. N. 14, 26
- Pettyt v. Janeson*, (1819) 6 Madd. 146; 22 R. R. 259.  
Applied by C. A. *HUNTER v. DOWLING* (No. 1) - [1893] 3 Ch. 212, 216, 221
- Peveril Gold Mines, Ltd., In re*, [1897] W. N. 159 (5).  
Affirmed by C. A. [1897] W. N. 166 (2);  
[1898] 1 Ch. 122
- Pharmaceutical Society v. Piper & Co.* [1893] 1 Q. B. 686.  
Approved by C. A. *PHARMACEUTICAL SOCIETY v. ARMSON* [1894] 2 Q. B. 720
- Philadelphian, The* - - - [1900] P. 43  
Affirmed by C. A. - [1900] P. 262
- Philbrick's Settlement, In re*, (1865) 34 L. J. (Ch.) 368.  
Referred to by Kekewich J. *In re TREASURE* [1900] 2 Ch. 648, 651
- Phillips, In re. Phillips v. Levy*, (1880) 49 L. J. (Ch.) 199.  
Not followed by Farwell J. *In re POPE* [1900] W. N. 244; see [1901] 1 Ch. 64
- Phillips v. Cayley* - (1890) 43 Ch. D. 222  
See *In re DAVIES* [1892] 2 Ch. 68



- Phillips v. Eyre* - (1870) L. R. 6 Q. B. 1  
Rule in, applied. *MACHADO v. FONTES*  
C. A. [1897] 2 Q. B. 231
- Phillips v. Innes* - (1837) 4 Cl. & F. 234  
Distinguished by Div. Ct. *PALMER v. SNOW* - [1900] 1 Q. B. 725, 727
- Phillips v. Homfray* - (1871) L. R. 6 Ch. 770  
Principle applied. *WHITWHAM v. WESTMINSTER BRYMBO COAL AND COKE CO.*  
C. A. [1896] 2 Ch. 538
- Phillips v. Homfray* - (1890) 44 Ch. D. 694  
Affirmed by C. A. - [1892] 1 Ch. 465
- Phillips v. Hudson* - (1867) L. R. 2 Ch. 243  
Distinguished. *EVANS v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL*  
C. A. [1899] 1 Ch. 241
- Phillips v. London School Board. Cockerton v. Same*, [1898] 1 Q. B. 4.  
Affirmed by C. A. - [1898] 2 Q. B. 447
- Phillips v. Martin* - 11 N. S. W. L. R. 153  
Approved by P. C. *WILSON v. MCINTOSH* - - - [1894] A. C. 129
- Phillips v. Silvester* - (1872) L. R. 8 Ch. 173  
Followed by C. A. *CLARKE v. RAMUZ*  
[1891] 2 Q. B. 456
- Phillips' Trade-marks, In re* [1891] 3 Ch. 139  
Followed by Kekewich J. *In re ADAMS' TRADE-MARK* - - [1892] W. N. 40  
See also *In re HENRY CLAY AND BONE & CO.* - - [1892] 3 Ch. 549
- Phillipson v. Hale* - (1880) 43 L. T. Rep. 508  
See 61 & 62 Vict. c. 15.
- Phillipotts v. Boyd* (1874) L. R. 4 A. & E. 297;  
(1875) L. R. 6 P. C. 435.  
See *ALLCROFT v. BISHOP OF LONDON*  
[1891] A. C. 666  
Considered in *PENDELBURY ST. JOHN (VICAR) v. PARISHIONERS OF THE SAME*  
[1895] P. 178
- Phillipotts v. James* - (1784) 3 Doug. 425  
Distinguished by Romer J. *In re SHEPARD* - - [1897] 2 Ch. 67
- Pickard, In re. Elmsley v. Mitchell* [1894] 2 Ch. 88.  
Affirmed by C. A. - [1894] 3 Ch. 704
- Pickard v. Smith* - (1861) 10 C. B. (N.S.) 470  
Followed by Bruce J. *PENNY v. WIMBLEDON URBAN COUNCIL*  
[1898] 2 Q. B. 212;  
C. A. [1899] 2 Q. B. 72, 76
- Pickering v. Rudd*, (1815) 4 Camp. 219; 16 R. R. 777; 1 Stark. 56.  
Followed by C. A. *LEMMON v. WEBB*  
[1894] 3 Ch. 1; affirm. by H. L. (E.)  
[1894] A. C. 1
- Pickering Lythe East Highway Board v. Barry*  
(1881) 8 Q. B. D. 59.  
Overruled by C. A. *HILL v. THOMAS*  
[1893] 2 Q. B. 333;  
*ETHERLEY GRANGE COAL CO. v. AUCKLAND DISTRICT HIGHWAY BOARD* - C. A. [1894] 1 Q. B. 37
- Pictou Municipality v. Geldert* [1893] A. C. 524  
Applied by P. C. *SYDNEY MUNICIPAL COUNCIL v. BOURKE* [1895] A. C. 433
- Pickard v. Prescott*, (1890) 17 R. 1102; 27 Sc. L. R. 933.  
Affirmed by H. L. (Sc.) [1892] A. C. 263
- Piercy, In re. Whitwham v. Piercy*, [1896] W. N. 1 (4).  
Affirmed by C. A. - [1898] 1 Ch. 565
- Pike v. Fitzgibbon* - (1880) 14 Ch. D. 837  
Commented on by C. A. *COX v. BENNETT* - - - [1891] 1 Ch. 617  
The effect on this Case of the Married Women's Property Act, 1882, discussed by Kay L.J. *PELTON BROTHERS v. HARRISON (No. 1)* [1891] 2 Q. B. 422
- Pilbrow v. St. Leonard, Shoreditch (Vestry)*, [1895] 1 Q. B. 33.  
Affirmed by C. A. [1895] 1 Q. B. 433
- Pilley v. Robinson* - (1888) 20 Q. B. D. 155  
Distinguished by C. A. *WILSON, SONS & CO. v. BALCARRES BROOK STEAMSHIP CO.* - - - [1893] 1 Q. B. 422  
Explained by C. A. *ROBINSON v. GEISEL*. [1894] 2 Q. B. 685.
- Pinder v. Barr* - (1854) 4 E. & B. 105  
Distinguished by Chitty J. *LAWRENCE v. EDWARDS (No. 1)* [1891] 1 Ch. 144
- Pinede's Settlement, In re* (1879) 12 Ch. D. 667  
Distinguished by Romer J. *In re BOYD*. [1897] 2 Ch. 232
- Pinhorne, In re* - - [1894] 2 Ch. 276  
Followed by Cozens-Hardy J. *In re POWELL* - - [1900] 2 Ch. 525
- Pinkney & Sons Steamship Co., In re*, [1892] 3 Ch. 125.  
Referred to. *In re JAMES COLMER*  
[1897] 1 Ch. 524.
- Pinto v. Badman* - (1891) 8 Rep. Pat. Cas. 181  
Considered by Chitty J. *In re SMOKELESS POWDER CO.'S TRADE-MARK*  
[1892] 1 Ch. 590.
- Pinto Silver Mining Co., In re*, (1878) 8 Ch. D. 273.  
Referred to. *WHITELEY EXERCISER, LD. v. GAMAGE* [1898] 2 Ch. 405.
- Pirie (Alexander) & Sons v. Goodall*, [1892] 1 Ch. 35.  
Explained by Stirling J. *In re COLMAN'S TRADE-MARK APPLICATION (No. 2)*. [1894] 2 Ch. 115
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[1900] A. C. 6, 14
- Plant v. Bourne* - [1897] W. N. 40 (14).  
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[1899] 1 Ch. 414, 429; C. A. [1899] 2 Ch. 480.
- Referred to by Farwell J. *CARR v. LYNCH* - - [1900] 1 Ch. 613, 615.

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 Followed by C. A. *HURCUM v. HIL-LEARY* - [1894] 1 Q. B. 579  
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- Platt, In re* - (1887) 36 Ch. D. 410  
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 C. A. [1895] W. N. 51
- Player, In re. Ex parte Harvey*, (1885) 15 Q. B. D. 682.  
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 [1899] 2 Q. B. 57  
 Approved of by C. A. *In re PLUMMER*  
 [1900] 2 Q. B. 790
- Pledge v. Carr* - [1894] 2 Ch. 328  
 Affirmed by C. A. [1895] 1 Ch. 51  
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*PLEDGE v. WHITE* [1896] A. C. 187
- Pledge v. White* - [1896] A. C. 187  
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 [1898] W. N. 81 (9)
- Plenderleith, In re* - [1893] 3 Ch. 332  
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 [1898] 1 Ch. 336, 340  
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 [1900] 1 Ch. 489, 490
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 [1896] 1 Q. B. 519
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- Plumbly, In re* - (1880) 13 Ch. D. 667  
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 [1900] W. N. 84
- Pneumatic Tyre Co. v. Puncture Proof Pneumatic Tyre Co.*, (1899) 16 Rep. Pat. Cas. 209.  
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 [1900] 1 Ch. 577; C. A. [1900] W. N. 239
- Poinons, In re* - [1891] W. N. 139  
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 [1894] W. N. 74
- Polden v. Bastard* - (1865) L. R. 1 Q. B. 156  
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- Pollard v. Pollard* - [1894] P. 172  
 Considered. *HARTOFF v. HARTOPP*  
 [1899] P. 65
- Pollard's Settlement, In re* - [1896] 1 Ch. 901  
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- Polluxfen v. Sibson* (1886) 16 Q. B. D. 792  
 Is overruled by *Russell v. Cambefort*,  
 23 Q. B. D. 526.  
 So held by C. A. *WESTERN NATIONAL BANK OF NEW YORK v. PEREZ, TRIANA & Co.*  
 [1891] 1 Q. B. 304
- Pollitt, In re. Ex parte Minor* [1893] 1 Q. B. 175  
 Affirmed by C. A. - [1893] 1 Q. B. 455  
 Distinguished by Div. Ct. *In re CHARLWOOD. Ex parte MASTERS*  
 [1894] 1 Q. B. 643
- Pomero v. Pomero* - (1885) 10 P. D. 174  
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 C. A. [1893] P. 292
- Pomfret v. Perring* (1854) 5 De G. M. & G. 775  
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*WELCH v. COLT* [1891] 2 Ch. 671
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*v. N. BUCKLEY & SONS*  
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- Ponsonby, In re* - (1842) 3 D. & W. 27  
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 [1898] 2 Ch. 419
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 C. A. [1893] W. N. 82
- Popplewell v. Hodgkinson* (1869) L. R. 4 Ex. 248  
 Not applicable. *JORDESON v. SUTTON,*  
*SOUTHCOTES AND DRYPOOL GAS CO.*  
 C. A. [1899] 2 Ch. 217  
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*v. AMBAARD* - P. C. [1899] A. C. 594
- Porcher v. Wilson* - (1866) 14 W. R. 1011  
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 [1899] 1 Ch. 365
- Port Glasgow and Newark Sailcloth Co. v. Caledonian Ry. Co.*, (1892) 19 R. 608.  
 Affirmed by H. L. (Sc.)  
 [1893] W. N. 29
- Porter v. Lopes* - (1877) 7 Ch. D. 358  
 Distinguished by C. A. *CARTER v. FEY*  
 [1894] 3 Ch. 541
- Porter's Trust, In re* - (1857) 4 K. & J. 188  
 Discussed by Farwell J. *In re BROMBY*  
 [1900] W. N. 187
- Portsea Island Building Society v. Barclay*, [1894]  
 3 Ch. 86.  
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- Portsmouth (Corporation of) v. Smith*, (1884) 13  
 Q. B. D. 184.  
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*RURAL SANITARY AUTHORITY OF CROY-DON UNION*  
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- Pottinger v. Wightman*, (1817) 3 Mer. 67; 17 R. R. 20.  
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*In re BEAUMONT* - [1893] 3 Ch. 490
- Potts, In re. Ex parte Taylor*, [1893] 1 Q. B. 648.  
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*LYNDHURST SHIP CO.* [1897] 2 Ch. 159
- Poulett (Earl) v. Hill (Viscount)*, [1893] 1 Ch. 277  
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MAN* [1895] 2 Q. B. 180
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*GILES, CAMBERWELL v. CRYSTAL PALACE*  
*Co.* - [1892] 2 Q. B. 33
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 Ch. D. 402.  
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[1894] A. C. 419
- Powell v. Birmingham Vinegar Brewery Co.*, (1896) 14 Rep. Pat. Cas. 1.  
Followed by C. A. SACCHARIN CORPORATION v. CHEMICALS AND DRUGS CO.  
[1900] 2 Ch. 556
- Powell v. Birmingham Vinegar Brewery Co., C. A.* [1896] 2 Ch. 54.  
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- Powell v. Brown* - - [1899] 1 Q. B. 157  
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- Powell v. Guest* - (1864) 18 C. B. (N.S.) 72  
Discussed by C. A. (Ir.) DONNELLY v. GRAHAM - - [1897] W. N. 103
- Powell v. Kempton Park Racecourse Co.*, [1897] 2 Q. B. 242.  
Affirmed by H. L. (E.) [1899] A. C. 143
- Powell v. Kempton Park Racecourse Co.*, [1897] 2 Q. B. 242.  
Considered. REG. v. HUMPHREY  
C. C. R. [1898] 1 Q. B. 875
- Powell v. London and Provincial Bank*, [1893] 1 Ch. 610.  
Affirmed by C. A. - [1893] 2 Ch. 555
- Powell v. Main Colliery Co.* [1900] W. N. 73;  
[1900] 2 Q. B. 145  
Reversed by H. L. (E.).  
[1900] A. C. 366  
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[1900] 2 Q. B. 240, 243
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[1895] P. 201
- Powell v. Smith* - - (1872) L. R. 14 Eq. 85  
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Affirmed by H. L. (E.) [1894] A. C. 8  
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[1894] W. N. 12
- Powerscourt v. Powerscourt* (1824) 1 Molloy, 616  
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[1896] 1 Ch. 50
- Prater, In re* - - (1888) 37 Ch. D. 481  
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- Prentice v. London* (1875) L. R. 10 C. P. 679  
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- Prescott v. Lee*, [1898] W. N. 155 (7); [1899] 1 Q. B. 102.  
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- Price, In re. Tomlin v. Latter* [1900] 1 Ch. 442  
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[1892] 3 Ch. 55
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- Price v. Griffith* - (1851) 1 D. M. & G. 80  
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- Price v. McBeth* (1864) 33 L. J. (Ch.) 460  
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[1891] 2 Ch. 363
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[1900] 2 Ch. 164
- Printing, Telegraph and Construction Co. of the Agence Havas, In re. Ex parte Cammell*, [1894] 1 Ch. 528.  
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[1894] 2 Ch. 392
- Pritchard v. Mayor of Bangor*, (1888) 13 App. Cas. 241.  
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[1899] 1 Q. B. 852
- Private Investors' Association, In re*, Palmer's Winding-up Forms, 2nd ed. p. 624.  
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- Provident Clerks' Mutual Life Assurance Association v. Lewis*, (1892) 67 L. T. (N.S.) 644.  
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- Pudney v. Eccles*, [1893] 1 Q. B. 52; 41 W. R. 125.  
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- Pugh and Sharman's Case*, (1872) L. R. 13 Eq. 566.  
Distinguished. *In re* BRITANNIA FIRE ASSOCIATION. COVENTRY'S CASE  
C. A. [1891] 1 Ch. 202  
Followed by Wright J. *In re* CENTRAL KLONDYKE GOLD MINING CO. SAVIGNY'S CASE - - [1899] W. N. 1 (2)
- Pugsley v. Ropkins* - - [1892] 2 Q. B. 184  
Explained. THE "CITY OF AGRA"  
[1898] P. 198
- Pulbrook v. Ashby* - (1887) 56 L. J. (Q. B.) 376  
Explained and approved. *In re* ROUNDWOOD COLLIERY CO.  
C. A. [1897] 1 Ch. 373
- Pulbrook v. Richmond Consolidated Mining Co.*, [1876] 9 Ch. D. 610.  
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- Pullman v. Hill & Co.* C. A. [1891] 1 Q. B. 524  
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- Purves v. Straits of Dover Steamship Co.*, [1899] 1 Q. B. 38.  
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- Putney Overseers v. London and South Western Ry. Co.* [1891] 1 Q. B. 182.  
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- Putney Overseers v. London and South Western Ry. Co.*, [1891] 1 Q. B. 182; C. A. [1891] 1 Q. B. 440.  
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- Purcell v. Sowler* - - (1877) 2 C. P. D. 215  
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- Pye v. Butterfield* (1864) 5 B. & S. 829  
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- Pyle Works, In re* - (1890) 44 Ch. D. 534  
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Commented on and explained. *In re* MAYFAIR PROPERTY CO.  
C. A. [1898] 2 Ch. 28
- Quartz Hill Consolidated Gold Mining Co. v. Eyre*, (1883) 11 Q. B. D. 674.  
Discussed. WYATT v. PALMER  
C. A. [1899] 2 Q. B. 106, 110
- Quebec Marine Insurance Co. v. Commercial Bank of Canada*, (1870) L. R. 3 P. C. 234.  
Followed. THE "VORTIGERN"  
C. A. [1899] P. 140
- Quebrada Ry. Land and Copper Co., In re*, (1889) 40 Ch. D. 363.  
Followed by Kekewich J. *In re* AGRICULTURAL HOTEL CO. [1891] 1 Ch. 396
- Queen's College, Oxford v. Hallett*, (1811) 14 East, 489; 13 R. R. 293.  
Observed upon by Buckley J. WEST HAM CENTRAL CHARITY BOARD v. EAST LONDON WATERWORKS CO.  
[1900] 1 Ch. 624
- Queensland Land and Coal Co., In re*, [1894] 3 Ch. 181.  
Followed. PEGGE v. NEATH AND DISTRICT TRAMWAYS CO. [1898] 1 Ch. 183
- Queensland Mercantile Agency Co., In re. Ex parte Australasian Investment Co. Ex parte Union Bank of Australia*, [1891] 1 Ch. 536.  
Affirmed by C. A. - [1892] 1 Ch. 219
- "R. W. Boyd," The - (1886) A. No. 27, fol. 5  
Followed by Bruce J. THE "MONA"  
[1894] P. 265
- Radcliffe, In re. Radcliffe v. Bewes*, [1891] 2 Ch. 662.  
Varied by C. A. - [1892] 1 Ch. 227  
Applied by Chitty J. *In re* SOMES [1896] 1 Ch. 250  
Referred to. *In re* HIRST  
C. A. [1892] W. N. 177
- Radnor's (Earl of) Will Trusts, In re*, (1890) 45 Ch. D. 402.  
Followed by C. A. *In re* MARQUIS OF AILESBURY SETTLED ESTATES IN THE COUNTIES OF WILTS AND BERKS  
[1892] 1 Ch. 506  
This case was affirmed by H. L. (E.) *sub nom.* BRUCE v. MARQUIS OF AILESBURY  
[1892] A. C. 356
- Raft of Spars, A* - 1 Abbott Adm. 485  
Disapproved of. GAS FLOAT WHITTON (No. 2) - - [1896] P. 42  
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[1897] A. C. 337
- Raikes v. Boulton* - (1860) 29 Beav. 41  
Followed by Kekewich J. *In re* BAWDEN - - [1894] 1 Ch. 693
- Railway Time Tables Publishing Co., In re. Ex parte Welton*, [1895] 1 Ch. 255.  
Affirmed by H. L. (E.) *sub nom.* WELTON v. SAFFERY [1897] A. C. 299
- Railway Time Tables Publishing Co., In re*, [1898] W. N. 52 (1).  
Reversed by C. A.  
[1898] W. N. 159 (6); [1899] 1 Ch. 108
- Ralph v. Carrick* - - (1879) 11 Ch. D. 873  
Applied by Kekewich J. *In re* SPRINGFIELD. CHAMBERLIN v. SPRINGFIELD  
[1894] 3 Ch. 603
- Ramsden v. Hirst* - (1853) 4 Jur. (N.S.) 200  
Distinguished by Farwell J. RUDD v. LASCELLES - - [1900] 1 Ch. 815
- Ramsden v. Smith* - - (1854) 2 Drew. 298  
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[1900] W. N. 75
- Raphael, In re. Ex parte Salomon*, [1899] 1 Ch. 853.  
Reversed by C. A. [1899] W. N. 212

- Rasbotham v. Shropshire Union Rys. and Canal Co.*, (1883) 24 Ch. D. 110.  
Followed by *Kekewich J. ALLIOTT v. SMITH* - [1895] 2 Ch. 111
- "Ratata," The* - - C. A. (1897) P. 118  
Affirmed by H. L. (E.) *sub nom.* *PRESTON CORPORATION v. BIORNSTAD. THE "RATATA"* - [1898] A. C. 513
- Ratcliffe v. Barnard* (1871) L. R. 6 Ch. 652, 654  
Observed upon. *OLIVER v. HINTON*  
C. A. [1899] 2 Ch. 264
- Ravald v. Russell*, (1830) Younge, 9; 34 R. R. 257  
Followed. *PROUT v. COCK* [1896] 2 Ch. 808
- Rawlins v. Wickham* (1858) 3 De G. & J. 304  
Followed by C. A. *BETJEMANN v. BETJEMANN* [1895] 2 Ch. 474
- Rawlins' Trusts, In re* - (1890) 45 Ch. D. 299  
Affirmed by H. L. (E.) *sub nom.* *SCALE v. RAWLINS* - [1892] A. C. 342
- Read v. Anderson*, (1884) 13 Q. B. D. 779; 53 L. J. (Q. B.) 532; 51 L. T. 55; 32 W. R. 950.  
Overruled by 55 & 56 Vict. c. 9, s. 1.
- Read v. Lincoln (Bishop of)* - [1891] P. 9  
Affirmed by P. C. - [1892] A. C. 644
- Reade v. Bentley* - (1857) 3 K. & J. 271  
See *LONDON PRINTING AND PUBLISHING ALLIANCE, LD. v. COX*  
C. A. [1891] 3 Ch. 291  
Applicable. *GRIFFITH v. TOWER PUBLISHING CO.* - [1897] 1 Ch. 21
- Reader v. Kingham* (1862) 13 C. B. (N.S.) 344  
Followed by C. A. *GUILD & Co. v. CONRAD* - [1894] 2 Q. B. 885
- Reading Dispensary, In re* (1839) 10 Sim. 118  
Cited and distinguished. *In re BRADFORD SCHOOL OF INDUSTRY* [1893] W. N. 61
- Real Estate Co., In re* - [1893] 1 Ch. 398  
See now *Building Societies Act, 1894* (57 & 58 Vict. c. 47), s. 8 (1).
- Red Sea, The* - - [1895] P. 293  
Affirmed by C. A. - [1896] P. 20
- Reddaway v. Banham* [1895] 1 Q. B. 286  
Reversed by H. L. (E.) [1896] A. C. 199  
Discussed. *SAXLEHNER v. APOLLINARIS CO.* - - [1897] 1 Ch. 893  
Approved. *PARSONS v. GILLESPIE*  
P. C. [1898] A. C. 239  
Distinguished. *CELLULAR CLOTHING CO. v. MAXTON AND MURRAY* [1899] A. C. 326
- Reddaway v. Bentham Hemp Spinning Co.*, [1892] 2 Q. B. 639.  
Distinguished by C. A. *REDDAWAY v. BANHAM* - [1895] 1 Q. B. 286;  
But this case was reversed by H. L. (E.) [1896] A. C. 199
- Redding, In re* - [1897] 1 Ch. 876  
Discussed by *Kekewich J. In re TOMLINSON* - [1898] 1 Ch. 232  
Referred to. *In re GJERS. COOPER v. GJERS* - - [1899] 2 Ch. 54
- Redgrave v. Kelly* - - (1889) 37 W. R. 543  
See now 59 & 60 Vict. c. 44.
- Reed, In the Goods of* (1874) 29 L. T. (N.S.) 932  
Followed by *Jeune P. In re GOODS OF CALLICOTT* - [1899] P. 189
- Rees, In re* - - (1881) 17 Ch. D. 701  
Considered and applied. *In re LAMBERT* [1897] 2 Ch. 169
- Reese River Silver Mining Co. v. Smith*, (1869) L. R. 4 H. L. 64, 77, 78.  
Explained. *In re GENERAL RAILWAY SYNDICATE* - [1899] 1 Ch. 770
- Reeve v. Berridge* - (1888) 20 Q. B. D. 523  
Followed. *In re WHITE AND SMITH'S CONTRACT* - [1896] 1 Ch. 637  
Referred to. *MIDGLEY v. SMITH* [1893] W. N. 120
- Reeves v. Barlow* - (1884) 12 Q. B. D. 436  
Followed by *Stirling J. MORRIS v. DELOBBEL-FLIPO* - [1892] 2 Ch. 352
- Reg. v. Bacon* - (Law Journal, Notes of Cases, July 13, 1895, p. 438.)  
County Court Rules, 1896, r. 4, and explanatory Memorandum thereto, see Current Index, 1896, p. lxxv.
- Reg. v. Badger* - - (1843) 4 Q. B. 468  
See 61 & 62 Vict. c. 7.
- Reg. v. Barnardo. Gossage's Case*, (1890) 24 Q. B. D. 283.  
Affirmed by H. L. (E.) *sub nom.* *BARNARDO v. FORD* - [1892] A. C. 326
- Reg. v. Barnardo. Jones' Case* [1891] A. C. 388  
Overruled by 54 & 55 Vict. c. 3, s. 3.
- Reg. v. Barnardo. Tye's Case*, (1889) 23 Q. B. D. 305.  
Disapproved by H. L. (E.) *BARNARDO v. FORD* - [1892] A. C. 326
- Reg. v. Beadle* - - (1857) 7 E. & B. 492  
Followed. *In re GALVIN*, (1897), 1 Ir. R. (Ch.) 520-534.  
Ch. Div. (Ir.) [1898] W. N. 140
- Reg. v. Bexley Heath Ry. Co.*, C. A. [1896] 2 Q. B. 74.  
Affirmed by H. L. (E.) *sub nom.* *DARTFORD RURAL COUNCIL v. BEXLEY HEATH RY. CO.* - [1898] A. C. 210
- Reg. v. Bolingbroke* - - [1893] 2 Q. B. 347  
Approved of by C. A. *Ex parte OVERSEERS OF WORKINGTON* [1894] 1 Q. B. 416, at pp. 418, 419
- Reg. v. Bowman* - [1898] 1 Q. B. 663  
Referred to *REG. v. COTHAM* [1898] 1 Q. B. 802, 806
- Reg. v. Brown* - (1867) L. R. 2 Q. B. 630  
Approved. *RHONDDA AND SWANSEA RY. CO. v. TALBOT*  
C. A. [1897] 2 Ch. 131
- Reg. v. Bunn* - (1872) 12 Cox C. C. 316  
Dissented from *CONNOR v. KENT* [1891] 2 Q. B. 545
- Reg. v. Burnup* - (1886) 50 J. P. 598  
Not followed by *Cave and Charles JJ. FENWICK v. RURAL SANITARY AUTHORITY OF CROYDON UNION* [1891] 2 Q. B. 216

- Reg. v. Capel*, (1840) 12 Ad. & E. 412; 9 L. J. (M.C.) 65.  
See Tithe Rent-charge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1.
- Reg. v. Chandler* - (1855) 24 L. J. (M.C.) 109  
See now Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 23 (2).
- Reg. v. Christopherson* - (1885) 16 Q. B. D. 7  
See Tithe Rent-charge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1.
- Reg. v. Commrs. of Income Tax*, (1889) 22 Q. B. D. 296.  
Affirmed by H. L. (E.) [1891] A. C. 531  
Followed by C. A. INLAND REVENUE COMMISSIONERS v. SCOTT [1892] 2 Q. B. 152
- Reg. v. Commrs. of Stamps and Taxes*, (1849) 13 Jur. 624.  
Abrogated by 57 & 58 Vict. c. 30, s. 7 (4).
- Reg. v. Cowper* - (1890) 24 Q. B. D. 60, 533  
Distinguished. FRANCE v. DUTTON [1891] 2 Q. B. 208
- Reg. v. Cox* - (1885) 14 Q. B. D. 153  
Considered by Kekewich J. WILLIAMS v. QUEBRADA RY. LAND AND COPPER CO. [1895] 2 Ch. 751
- Reg. v. Croydon County Court (Registrar of)* (1894) 11 T. L. Rep. 19.  
Doubted by Div. Ct. FELTON v. BOWER & Co. - [1900] 1 Q. B. 598, 604
- Reg. v. Curzon* - (1873) L. R. 8 Q. B. 400  
Approved by H. L. (E.) FREER v. MURRAY - [1894] A. C. 576
- Reg. v. Dolan* - (1855) Dears. 436  
Followed by C. C. R. REG. v. VILLEN-SKY - - - [1892] 2 Q. B. 597
- Reg. v. D'Oilly* - (1840) 12 A. & E. 139  
Overruled by 56 & 57 Vict. c. 73, s. 31 (1).
- Reg. v. Drutt* - (1867) 10 Cox C. C. 592  
Dissented from CONNOR v. KENT [1891] 2 Q. B. 545
- Reg. v. East London Waterworks Co.*, (1852) 18 Q. B. 705.  
Discussed by H. L. (E.) METROPOLITAN RY. CO. v. FOWLER [1893] A. C. 416 at pp. 422, 428
- Reg. v. Essex (Justices of)* - [1895] 1 Q. B. 38  
Affirmed by H. L. (E.) *sub nom.* WEST HAM UNION v. ESSEX (JUSTICES OF) AND LONDON COUNTY COUNCIL [1896] A. C. 443
- Reg. v. Evans* - (1850) 19 L. J. (M.C.) 151  
Approved by C. A. REG. v. FARMER [1892] 1 Q. B. 637
- Reg. v. Fennell* - (1881) 7 Q. B. D. 147  
Followed by C. C. R. REG. v. THOMPSON - [1893] 2 Q. B. 12
- Reg. v. Fisher* - (1882) 3 B. & S. 191  
Approved. RHONDDA AND SWANSEA RY. CO. v. TALBOT C. A. [1897] 2 Ch. 131
- Reg. v. Francis* - (1874) L. R. 2 C. C. 128  
See 61 & 62 Vict. c. 36, s. 1 (i).
- Reg. v. Garbett* - (1847) 1 Den. C. C. 236  
See 61 & 62 Vict. c. 36, s. 1 (e.).
- Reg. v. Garner* - (1863) 3 F. & F. 681  
See 61 & 62 Vict. c. 36, s. 1 (i).
- Reg. v. Geering* - (1849) 18 L. J. M. C. 215  
See 61 & 62 Vict. c. 36, s. 1 (f.).
- Reg. v. Glamorgan County Council. Ex parte Miller*, [1899] W. N. 60; [1899] 2 Q. B. 26.  
Affirmed by C. A. [1899] 2 Q. B. 536
- Reg. v. Glamorganshire Justices*, [1892] 1 Q. B. 621.  
Overruled. BOULTER v. KENT JUSTICES H. L. (E.) [1897] A. C. 556
- Reg. v. Gloucestershire (Justices of)*, (1893) 68 L. T. (N.S.) 225.  
Approved by C. A. REG. v. KENT JUSTICES [1896] 2 Q. B. 306;  
But this case was reversed by H. L. (E.) [1897] A. C. 556
- Reg. v. Goodchild* - (1857) 27 L. J. (M.C.) 233  
See Tithe Rent-charge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1.
- Reg. v. Government Stock Investment Co.*, (1878) 3 Q. B. D. 442.  
Followed by V. Williams J. *In re* BIDWELL BROS. [1893] 1 Ch. 603
- Reg. v. Grant* - (1849) 14 Q. B. 43  
Distinguished by C. A. BACHE v. BILLINGHAM - [1894] 1 Q. B. 107
- Reg. v. Halifax County Court (Judge of)*, [1891] 1 Q. B. 793.  
Affirmed by C. A. [1891] 2 Q. B. 263
- Reg. v. Harrald* - (1872) L. R. 7 Q. B. 361  
See 56 & 57 Vict. c. 73, s. 43.
- Reg. v. Hines*, (1874) 80 C. C. C. Sessions Paper, 309.  
Dissented from. REG. v. SENIOR [1899] 1 Q. B. 283, 292
- Reg. v. Huggins* - [1891] W. N. 88  
See 58 & 59 Vict. c. 39, s. 12.
- Reg. v. Hull Dock Co.* - (1887) 18 Q. B. 325  
Commented on by H. L. (E.) HULL DOCK CO. v. SCULCOATES UNION [1895] A. C. 136
- Reg. v. Hunter* - (1867) 10 Cox, 642  
Form of indictment held bad by C. C. R. REG. v. SOWERBY [1894] 2 Q. B. 173
- Reg. v. Inclosure Commrs.* (1871) 23 L. T. 778  
Distinguished. SIMCOE v. PETHICK C. A. [1898] 2 Q. B. 565
- Reg. v. Irish Land Commission*, [1899] 2 I. R. 399.  
Affirmed by H. L. (I.) [1899] A. C. 435
- Reg. v. Johnston* 2 Meody's Crown Cases, 254  
See Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), s. 3.
- Reg. v. Kennedy* - [1893] 2 Q. B. 533  
Considered and explained. BEXLEY HEATH RY. v. NORTH C. A. [1894] 2 Q. B. 579

- Reg. v. Kent Justices* - [1896] 2 Q. B. 1  
Affirmed by C. A. [1896] 2 Q. B. 306;  
But reversed by H. L. (E.) *sub nom.*  
BOULTER *v.* KENT JUSTICES  
[1897] A. C. 556
- Reg. v. Kent Justices* (1899) 80 L. T. (N.S.) 622  
Disapproved and not followed. *Reg. v.*  
DE GREY - [1900] 1 Q. B. 521
- Reg. v. Kettle* - - (1886) 17 Q. B. D. 761  
Judgment of Willis J. explained by  
C. A. CUSACK *v.* LONDON & N. W. RY.  
Co. - - [1891] 1 Q. B. 347
- Reg. v. Lambarde* - (1866) L. R. 1 Q. B. 388  
*See now* 59 & 60 Vict. c. 25, s. 68,  
sub-s. 7.
- Reg. v. Lambourn Valley Ry. Co.*, (1889) 22  
Q. B. D. 463.  
Explained by Div. Ct. *Reg. v.* LONDON  
AND NORTH WESTERN RY. CO.  
[1894] 2 Q. B. 512
- Reg. v. Larner* - (1880) 14 Cox C. C. 497  
Disapproved of. *Reg. v.* BUTTON  
[1900] 2 Q. B. 597
- Reg. v. Lavey* - - (1850) 3 C. & K. 26  
Referred to by Div. Ct. *Reg. v.* BAKER  
[1895] 1 Q. B. 797
- Reg. v. Leeds Union* - (1878) 4 Q. B. D. 323  
Disapproved by H. L. (E.) WEST HAM  
GUARDIANS *v.* CHURCHWARDENS OF  
ST. MATTHEW, BETHNAL GREEN  
[1894] A. C. 230
- Reg. v. Leicester Union* - [1899] 2 Q. B. 632  
*See* Vaccination Order of Loc. Govt. Bd.  
dated Oct. 18, 1898.
- Reg. v. Leresche* - [1891] 2 Q. B. 418  
Explained and distinguished. BRAD-  
SHAW *v.* BRADSHAW - [1897] P. 24
- Reg. v. Lewis* - [1896] 1 Q. B. 665  
*See now* 60 & 61 Vict. c. 47, s. 1.
- Reg. v. Liverpool Justices*, (1883) 11 Q. B. D. 638.  
Followed by Div. Ct. BALDWIN *v.*  
DOVER JUSTICES [1892] 2 Q. B. 421  
Followed by Div. Ct. SYMONS *v.* WED-  
MORE - [1894] 1 Q. B. 401
- Reg. v. Liverpool (Revising Barrister)*, [1895] 1  
Q. B. 155.  
Distinguished by Div. Ct. JONES *v.*  
MUNRO - [1899] 1 Q. B. 109, 115
- Reg. v. London and North Western Ry. Co.*, [1899]  
1 Q. B. 921.  
Affirmed by H. L. (E.) *sub nom.* LONDON  
AND NORTH WESTERN RY. CO. *v.* WALKER  
[1900] A. C. 109
- Reg. v. London (Bishop of). Allcroft's Case*,  
(1889) 24 Q. B. D. 213; [1891] 2 Q. B.  
48.  
Affirmed by H. L. (E.) *sub nom.* ALL-  
CROFT *v.* BISHOP OF LONDON  
[1891] A. C. 666
- Reg. v. London (Bishop of). Lighton's Case*,  
[1891] 2 Q. B. 48.  
Decision of Hawkins J. affirmed by C. A.  
and by H. L. (E.) *sub nom.* LIGHTON *v.*  
BISHOP OF LONDON [1891] A. C. 666
- Reg. v. London County (Justices of)* (No. 2),  
[1893] 2 Q. B. 476.  
Affirmed by H. L. (E.) *sub nom.* LONDON  
COUNTY (COUNTY COUNCIL) *v.* ST.  
GEORGE'S UNION ASSESSMENT COMMITTEE  
[1894] A. C. 600
- See also upon another point*  
C. A. [1894] 1 Q. B. 453
- Reg. v. London (Justices of)* (No. 4), [1895] 1  
Q. B. 214.  
Affirmed by C. A. [1895] 1 Q. B. 616  
Referred to. *Reg. v.* STAFFORDSHIRE  
JUSTICES - [1898] 2 Q. B. 231, 235
- Reg. v. London Justices* - [1895] 1 Q. B. 616  
Not followed by C. A. *Reg. v.* WOR-  
CESTERSHIRE JUSTICES  
[1900] 2 Q. B. 576
- Reg. v. London (Mayor of)*, (1886) 16 Q. B. D.  
772, 775.  
*See* 61 & 62 Vict. c. 36, s. 4 (2).
- Reg. v. London (School Board for)*, (1886) 17  
Q. B. D. 738.  
Approved by H. L. (E.) LONDON  
COUNTY COUNCIL *v.* ERITH (CHURCH-  
WARDENS, &c.) [1893] A. C. 562
- Reg. v. Marsham* - [1892] 1 Q. B. 371  
Explained by C. A. SROUD *v.* WANDS-  
WORTH BOARD OF WORKS  
[1894] 2 Q. B. 1  
Referred to by C. A. METROPOLITAN  
DISTRICT RY. CO. *v.* FULHAM VESTRY  
[1895] 2 Q. B. 443, 448
- Reg. v. Master* - (1869) L. R. 4 Q. B. 285  
Doubted. SEAMAN *v.* BURLEY  
[1896] 2 Q. B. 344
- Reg. v. Mead* - [1898] 1 Q. B. 110  
*See* London Building Act, 1898 (61 & 62  
Vict. c. cxxxvii.).
- Reg. v. Medical Council* - [1897] 1 Q. B. 764  
Affirmed by C. A. [1897] 2 Q. B. 203
- Reg. v. Metropolitan Board of Works*, (1869)  
L. R. 4 Q. B. 15.  
Followed by C. A. LONDON COUNTY  
COUNCIL *v.* CHURCHWARDENS, &c., OF  
WEST HAM - [1892] 2 Q. B. 44
- Reg. v. Midland Ry. Co.* (1887) 19 Q. B. D. 540  
Distinguished by Farwell J. MAN-  
CHESTER SHIP CANAL CO. *v.* MANCHESTER  
RACECOURSE CO. - [1900] 2 Ch. 352
- Reg. v. Millis* - (1844) 10 Cl. & F. 534  
Distinguished by Stirling J. *In re* DE  
WILTON - [1900] 2 Ch. 481
- Reg. v. Mitchell* - - (1809) 10 East, 511  
Superseded by 54 & 55 Vict. c. 11, s. 2.
- Reg. v. Nash* - (1882-83) 10 Q. B. D. 454  
Approved by H. L. (E.) BARNARDO  
*v.* McHUGH - [1891] A. C. 388
- Reg. v. Parry* - (1887) 3 Times Rep. 649  
Doubted by Div. Ct. *Reg. v.* BURROWS  
[1892] 1 Q. B. 399
- Reg. v. Paul* - - (1890) 25 Q. B. D. 202  
*See now* Prevention of Cruelty to  
Children Act, 1894 (57 & 58 Vict. c. 41),  
s. 15.
- Reg. v. Powell* - - [1891] 1 Q. B. 718  
Affirmed by C. A. [1891] 2 Q. B. 693

- Reg. v. Plymouth (Mayor, &c., of)*, [1896] 1 Q. B. 158.  
Considered. *Reg. v. NORTH RIDING OF YORKSHIRE COUNTY COUNCIL* [1899] 1 Q. B. 201
- Reg. v. Pontypool County Court (Judge of)*, (1894) 63 L. J. (Q.B.) 702.  
See County Court Rules, 1896, r. 2, and explanatory Memorandum thereto.  
See *Current Index*, 1893, p. lxxv.
- Reg. v. Portsmouth Justices* [1892] 1 Q. B. 491  
See 61 & 62 Vict. c. 49, ss. 2-4, and sched.
- Reg. v. Routon* - (1865) 34 L. J. M. C. 57  
See 61 & 62 Vict. c. 36, s. 1 (f).
- Reg. v. Ryland* (1867) L. R. 1 C. C. R. 199  
See now Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 23 (2).
- Reg. v. St. George* - (1840) 9 C. & P. 483  
Overruled by C. C. R. *Reg. v. DUCKWORTH* - [1892] 2 Q. B. 83
- Reg. v. St. Matthew, Bethnal Green Vestry, C. A.* [1896] 2 Q. B. 319.  
Affirmed by H. L. (E.) *sub nom.* BETHNAL GREEN VESTRY v. LONDON SCHOOL BOARD [1898] A. C. 180
- Reg. v. Sharman* [1898] 1 Q. B. 578  
Followed. *Reg. v. BOWMAN* [1898] 1 Q. B. 663  
Referred to. *Reg. v. COTHAM* [1898] 1 Q. B. 802, 806  
Distinguished. *Reg. v. MANCHESTER JUSTICES* - [1899] 1 Q. B. 571
- Reg. v. Smith* (1870) L. R. 1 C. C. 266  
Approved and followed by C. C. R. *Reg. v. STREETER* - [1900] 2 Q. B. 601
- Reg. v. Smith* - (1873) L. R. 8 Q. B. 146  
Distinguished by Div. Ct. *Reg. v. THOMAS* [1892] 1 Q. B. 426
- Reg. v. Soden* [1896] 1 Q. B. 499  
Affirmed by C. A. [1896] 1 Q. B. 634
- Reg. v. Soverby* - [1894] 2 Q. B. 173  
Distinguished by C. C. R. *Reg. v. SILVERLOCK* [1894] 2 Q. B. 766
- Reg. v. Stainer* (1870) 39 L. J. (M.C.) 54  
Considered by Div. Ct. *Reg. v. TANKARD* - [1894] 1 Q. B. 548, 550
- Reg. v. Surrey (Justices of)* (No. 1), [1892] 1 Q. B. 633.  
Affirmed by C. A. [1892] 1 Q. B. 867
- Reg. v. Sykes* - (1875) 1 Q. B. D. 52  
Commented on by H. L. (E.) *Ex parte GORMAN* - [1894] A. C. 23
- Reg. v. Thornton. Ex parte Lacon & Co.*, [1897] 2 Q. B. 308; [1898] 1 Q. B. 334.  
Reversed by H. L. (E.) *sub nom.* LACEBY v. LACON & Co. [1899] A. C. 222
- Reg. v. Tipton (Inhabitants of)*, (1842) 3 Q. B. 215.  
Rule in, applied. *DORKING UNION v. ST. SAVIOUR'S UNION* C. A. [1898] 1 Q. B. 594
- Reg. v. Turner and Hodgson*, Law Journal, Notes of Cases, Feb. 6, 1897, p. 76.  
See Explanatory Memorandum to the County Court Rules (March), 1897 [1897] W. N. (Mar. 6) p. 75;  
These rules annulled  
W. N. [1897] (May 8) pp. 157, 159
- Reg. v. Wealand* (1888) 20 Q. B. D. 827  
See now Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 15.
- Reg. v. Winslow* - (1860) 8 Cox, 397  
Discussed by P. C. MALLIN v. ATT.-GEN. FOR NEW SOUTH WALES [1894] A. C. 57, 66
- Reid, In the Goods of*, (1868) 38 L. J. (P. & M.) 1  
Followed by Jeune Pres. *DURHAM v. NORTHERN* - [1895] P. 66
- Reigate Union (Guardians) v. Guardians of Croydon Union*, (1889) 14 App. Cas. 465.  
Explained by Div. Ct. *LLANELLY UNION v. NEATH UNION* [1893] 2 Q. B. 38
- Reinhardt v. Mentasti* (1889) 42 Ch. D. 685, 690  
Explained by Kekewich J. ATT.-GEN. v. COLE - [1900] W. N. 272  
Questioned by Buckley J. *SANDERS-CLARK v. GROSVENOR MANSIONS Co.* [1900] 2 Ch. 373
- Remington v. Scoles* - [1897] W. N. 43 (10)  
Affirmed by C. A. [1897] 2 Ch. 1
- Renals v. Cowlshaw*, (1878) 9 Ch. D. 125; (1879) 11 Ch. D. 866.  
Referred to by Kekewich J. *NALDER AND COLLYER'S BREWERY Co. v. HARMAN* [1900] W. N. 22; C. A. [1900] W. N. 180  
Referred to by C. A. *ROGERS v. HOSGOOD* [1900] 2 Ch. 388, 396, 404
- Rendall v. Blair* - (1890) 45 Ch. D. 139  
Explained by Chitty J. *ROOKE v. DAWSON* [1895] 1 Ch. 480  
Referred to by North J. *FISHER v. JACKSON* - [1891] W. N. 49
- Renney v. Kirkcudbright Magistrates*, (1890) 18 R. 294.  
Reversed by H. L. (Sc.) *sub nom.* *RENEY v. KIRKCUDBRIGHT MAGISTRATES* [1892] A. C. 264
- Renshaw v. Queen Anne Mansions Co.*, [1897] 1 Q. B. 662.  
Followed by C. A. *PARRY v. LIVERPOOL MALT Co.* [1900] 1 Q. B. 339, 343
- Reversionary Interest Society, In re*, [1892] W. N. 60.  
Followed. *In re BRIN'S OXYGEN Co.* [1899] W. N. 44
- Rex v. Buttery*, Cited in 4 B. & Ald. p. 179; 22 R. R. 590.  
Discussed. *Reg. v. ELLIS* [1899] 1 Q. B. 230
- Rex v. Hodges* - (1829) Moo. & Mal. 341  
Followed. *VALE & SONS v. MOORGATE STREET AND BROAD STREET BUILDINGS, LD.* [1899] W. N. 52
- Rex v. Mitchell* - (1809) 10 East, 511  
Discussed by C. A. (Ir.) *DONNELLY v. GRAHAM* - [1897] W. N. 103



- Rex v. Russell*, (1805) 6 East, 427, 430; 8 R. R. 506.  
Applicable. *ATT.-GEN. v. BRIGHTON AND HOVE CO-OPERATIVE SUPPLY ASSOCIATION* - C. A. [1900] 1 Ch. 276, 281
- Rex v. St. Pancras*, (1834) 1 A. & E. 80; 3 N. & M. 425.  
Overruled. See *REG. v. SOUTHER*  
[1891] 1 Q. B. 57
- Reynish v. Martin* - (1746) 3 Atk. 330  
Distinguished. *In re NOURSE. HAMP- TON v. NOURSE* - [1899] 1 Ch. 63
- Reynolds (Charles) & Co., In re* [1895] W. N. 31  
Referred to by Wright J. *In re RADFORD & BRIGHT, LD.* - [1900] W. N. 263
- Reynolds v. Howell* - (1873) L. R. 8 Q. B. 398  
Approved of by C. A. *FRICKER v. VAN GRUTTEN* - [1896] 2 Ch. 649
- Rhoades, In re. Ex parte Rhoades*, [1899] W. N. 41; [1899] 1 Q. B. 905.  
Affirmed by C. A. [1899] 2 Q. B. 347
- Rhodes v. Forwood* - (1875-6) 1 App. Cas. 256  
Distinguished by C. A. *TURNER v. GOLDSMITH* - [1891] 1 Q. B. 544
- Rhodes v. Rhodes* (1859) 27 Beav. 413, 417  
Considered by Kekewich J. *In re BIRKS* - [1899] 1 Ch. 703;  
This case was reversed by C. A. [1899] W. N. 249; [1900] 1 Ch. 417
- Rice Jones, Ex parte*, (1850) 1 L. M. & P. 357;  
1 Practice Reports, 357.  
Approved by C. A. *REG. v. FARMER*  
[1892] 1 Q. B. 637
- Rice v. Noakes & Co.* - [1900] 1 Ch. 213  
Affirmed by C. A. - [1900] 2 Ch. 445
- Richards, In re* - (1890) 45 Ch. D. 589  
Considered. *HOPKINS v. HEMSWORTH*  
[1898] 2 Ch. 347
- Richards v. Kidderminster Overseers*, [1896] 2 Ch. 212.  
See 60 & 61 Vict. c. 19.
- Richards v. Macclesfield (Earl of)*, (1835) 7 Sim. 257; 4 L. J. (N.S.) Ch. 153; 40 R. R. 131.  
Applied by Chitty J. *KEEN v. DENNY*  
[1894] 3 Ch. 169
- Richards v. Morgan* (1863) 4 B. & S. 641  
Observed upon. *EVANS v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL*  
[1899] 1 Ch. 241
- Richards v. Overseers of Kidderminster*, [1896] 2 Ch. 212.  
Considered. *In re MARRIAGE, NEAVE & Co.* - C. A. [1896] 2 Ch. 663
- Richardson, In re*, [1900] W. N. 3; [1900] 2 Ch. 778.  
Referred to by Cozens-Hardy J. *In re MONEY KYRLE* - [1900] 2 Ch. 839
- Richardson v. Harris* - (1889) 22 Q. B. D. 268  
Distinguished by Div. Ct. *In re WILT- SHIRE* - [1900] 1 Q. B. 96, 98
- Richardson v. Mellish*, (1824) 2 Bing. 229, 252; 27 R. R. 603.  
Referred to by Kekewich J. *In re KELCEY* - [1899] 2 Ch. 530, 534
- Richardson v. Methley School Board*, [1893] 3 Ch. 510.  
Followed by Kekewich J. *TURNBULL v. WEST RIDING ATHLETIC CLUB (LEEDS)*  
[1894] W. N. 4
- Richardson v. Richardson*, [1895] P. 276 (affirmed on Appeal, [1895] P. 346).  
Dicta in, adopted. *In re RAPHAEL. Ex parte SALOMON* - [1899] 1 Ch. 853;  
But this case on the evidence was reversed by C. A. [1899] W. N. 212
- Richmond v. White* - (1879) 12 Ch. D. 361  
Followed by Kekewich J. *In re LANG- LEY* - [1899] W. N. 23 (5)  
Applied by Kekewich J. *In re LANCE*  
[1900] W. N. 29
- Richmond Hill Steamship Co. v. Corporation of Trinity House*, [1896] 1 Q. B. 493.  
Affirmed by C. A. [1896] 2 Q. B. 134
- Ricketts v. Ricketts* (1891) 64 L. T. (N.S.) 263  
Distinguished by Kekewich J. *GRIF- FITH v. HUGHES* [1892] 3 Ch. 105  
Explained by Romer J. *BOLTON v. CURRE* - [1895] 1 Ch. 544
- Ridge, In re. Hellard v. Moody*, (1885) 31 Ch. D. 504, 508.  
Referred to by Stirling J. *In re CHAYTOR* - [1900] 2 Ch. 804, 809
- Ridgeway v. Munkittrick*, (1841) 1 D. & War. 84, 93.  
Considered by Kekewich J. *In re BIRKS*  
[1899] 1 Ch. 703;  
This case was reversed by C. A. [1899] W. N. 249; [1900] 1 Ch. 417
- Ridsdale v. Clifton* - (1877) 2 P. D. 276  
See *READ v. BISHOP OF LINCOLN*  
[1892] A. C. 644  
Considered. *In re ROBINSON*  
C. A. [1897] 1 Ch. 85
- Rigby v. Bennett* - (1882) 21 Ch. D. 559  
Rule applied to devices by Chitty J. *PHILLIPS v. LOW* - [1892] 1 Ch. 47
- Rigby v. Connol* - (1880) 14 Ch. D. 482  
Followed by C. A. *CHAMBERLAIN'S WHARF, LD. v. SMITH* [1900] 2 Ch. 605
- "Ripon City," The* - [1897] P. 226  
Referred to. *THE "RIPON CITY"*  
[1898] P. 78
- Rishton v. Grissell* - (1868) L. R. 5 Eq. 326  
Followed by Chitty, J. *FRAMES v. BULTFONTEIN MINING CO.*  
[1891] 1 Ch. 140
- Ritchie, & Co. (Watson's Trustees) v. Hamilton*, (1894) 21 R. 451.  
Affirmed by H. L. (Sc.) *sub nom. HAMIL- TON v. RITCHIE* - [1894] A. C. 310
- Ritson, In re. Ritson v. Ritson*, [1898] 1 Ch. 667  
Affirmed by C. A. - [1899] 1 Ch. 128
- River Derwent, The* (1891) 7 Asp. M. L. C. 37  
Distinguished by Bucknill J. *THE "JOHN HOLLWAY"* - [1900] P. 37
- River Ribble Joint Committee v. Halliwell. Same v. Shorrock*, [1899] 1 Q. B. 27.  
Affirmed by C. A. [1899] 2 Q. B. 385

- Rixon v. Edinburgh Northern Tramways Co.*,  
(1891) 18 R. 264.  
Affirmed by H. L. (Sc.) [1893] A. C. 636
- Roach v. Wadham* - - (1805) 6 East, 289  
Followed by Kekewich J. JOHN  
BROTHERS ABERGARW BREWERY Co. v.  
HOLMES - [1900] 1 Ch. 188
- Roberts v. Jefferys*, (1830) 8 L. J. (O.S.) (Ch.) 137,  
140.  
Followed by C. A. *In re* TAYLOR,  
STILEMAN AND UNDERWOOD  
[1891] 1 Ch. 590, 598
- Robb v. Green* - - [1895] 2 Q. B. 1  
Affirmed by C. A. [1895] 2 Q. B. 315
- Roberts, In re* - - (1885) 30 Ch. D. 234  
Distinguished by Chitty J. *In re* PIN-  
HORNE - [1894] 2 Ch. 276
- Roberts, In re* - - (1885) 30 Ch. D. 234  
Distinguished by Cozens-Hardy J. *In re*  
POWELL [1900] 2 Ch. 525
- Roberts, In re. Kiff v. Roberts*, (1886) 33 Ch. D.  
265.  
Followed by C. A. *Ex parte* GOLDBERG  
[1893] 1 Q. B. 417
- Roberts v. Gwyrful Rural District Council*, [1899]  
W. N. 16 (11); [1899] 1 Ch. 583.  
Affirmed by C. A. - [1899] 2 Ch. 608
- Roberts v. Kufin* - - (1740) 2 Atk. 112  
Distinguished by Chitty J. *In re* ROB-  
SON - [1891] 2 Ch. 559
- Roberts v. Phillips* - (1855) 4 E. & B. 450  
Followed by Butt J. *In re* GOODS  
OF SREATLEY [1891] P. 172
- Roberts v. Potts* - - [1893] 2 Q. B. 33  
Affirmed by C. A. (Kay L.J. dissenting)  
[1894] 1 Q. B. 213
- "*Robert Pow*," *The*, (1863) Browning & Lushing-  
ton's Reports, 99.  
Commented on and doubted by H. L. (E.).  
MERSEY DOCKS AND HARBOUR BOARD v.  
TURNER [1893] A. C. 468
- Robertson v. Broadbent*, (1883) 8 App. Cas. 812,  
820.  
Referred to by Kekewich J. *In re*  
HAMILTON - [1892] W. N. 74
- Robertson v. Robertson* (1881) 6 P. D. 119  
Referred to. DELAFORCE v. DELAFORCE  
AND DRISCOLL [1892] W. N. 68
- Robertson & Baxter v. Inglis* (1897) 24 R. 758  
Affirmed by H. L. (Sc.) [1898] A. C. 616
- Robins v. Goldingham*, (1872) L. R. 13 Eq. 440.  
Referred to. *In re* ROSE MARIE GOLD  
MINING Co. - [1896] W. N. 76 (5)
- Robins v. Gray* - [1895] 2 Q. B. 78  
Affirmed by C. A. [1895] 2 Q. B. 501
- Robinson, In re. Wright v. Tugwell*, [1892] 1 Ch.  
95.  
Affirmed by C. A. - [1897] 1 Ch. 85
- Robinson, In re* - (1854) 23 L. J. Q. B. 286  
*See* 61 & 62 Vict. c. 7.
- Robinson, Ex parte. In re Robinson*, (1883) 22  
Ch. D. 816.  
Followed by C. A. *In re* OTWAY  
[1895] 1 Q. B. 812
- Robinson, In the Goods of*, (1870) L. R. 2 P. & M.  
171.  
Considered by Jeune P. *IN THE GOODS*  
OF SPRATT - [1897] P. 28
- Robinson v. Barton-Eccles Local Board*, (1883)  
8 App. Cas. 798.  
Applicable. ATT.-GEN. v. RUFFORD &  
Co. [1899] 1 Ch. 537, 539
- Robinson v. Grave* - (1872) 21 W. R. 223  
Considered by Buckley J. TEBB v.  
CAVE [1900] 1 Ch. 642, 647
- Robinson v. Kilvert* - (1889) 41 Ch. D. 88  
Applied and followed by Stirling J.  
ALDIN v. LATIMER CLARKE, MUIRHEAD  
& Co. - [1894] 2 Ch. 437
- Considered by Buckley J. TEBB v.  
CAVE - [1900] 1 Ch. 642, 648
- Robinson (Dalhousie's Tutors) v. Stewart*, (1890)  
27 Sc. L. R. 819.  
Affirmed by H. L. (Sc.) *sub nom.*  
STEWART v. ROBINSON  
[1891] W. N. 122
- Robson, In re* - - (1890) 45 Ch. D. 71  
Discussed and followed. *In re* HORN &  
FRANCIS [1896] 2 Ch. 797
- Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B.  
852.  
Referred to. HOLYWELL UNION AND  
HALKYN PARISH v. HALKYN DRAINAGE  
Co. [1895] A. C. 134
- Rochdale Property and General Finance Co., In*  
*re*, (1879) 12 Ch. D. 775.  
Followed by Chitty J. *In re* WATSON  
& SONS, LD. [1891] 2 Ch. 55
- Rochdale Union and Haslingden Union, In re*,  
[1898] 2 Q. B. 206.  
Affirmed by C. A. [1899] 1 Q. B. 540  
*See* London. Government Act, 1899  
(62 & 63 Vict. c. 14), s. 16.
- Rochevoucauld v. Boustead* - [1897] 1 Ch. 196  
Reversed (subject to a variation) by  
C. A. [1898] 1 Ch. 550
- Roddam v. Morley* - (1857) 1 De G. & J. 1  
Followed by Chitty J. DIBB v. WALKER  
[1893] 2 Ch. 429
- Roddick v. Indemnity Mutual Marine Insurance*  
*Co.*, [1895] 1 Q. B. 836.  
Partly affirmed by C. A.  
[1895] 2 Q. B. 360
- Rodwell v. Phillips* - (1842) 9 M. & W. 501  
*See* 56 & 57 Vict. c. 71, s. 62 (definition  
of "goods").
- Rogers v. Hosegood*, [1899] W. N. 223; 69 L. J.  
(Ch.) 59.  
Affirmed by C. A. [1900] 2 Ch. 388  
Referred to by Cozens-Hardy J. KIMBER  
v. ADMANS C. A. [1900] 1 Ch. 412, 414
- Rogers v. Maddocks* - [1892] 3 Ch. 346  
Referred to by C. A. UNDERWOOD &  
SONS, LD. v. BARKER  
[1899] 1 Ch. 300, 305

- Rogers v. Whiteley* - (1889) 23 Q. B. D. 236  
Affirmed by H. L. (E.) [1892] A. C. 118
- Rollason's Registered Design, In re, C. A.* [1898]  
1 Ch. 237.  
Affirmed by H. L. (E.) *sub nom.* HEATH  
& SONS, LD. *v.* ROLLASON  
[1898] A. C. 499
- Rook v. Hopley* - (1878) 3 Ex. D. 209  
*See* Sale of Food and Drugs Act, 1899  
(61 & 62 Vict. c. 51), s. 20.
- Roper v. Roper* (1876) 3 Ch. D. 714  
Dictum at p. 719, disapproved by  
Chitty J. *In re* GREENWOOD  
[1892] 2 Ch. 295
- Rorke, Ex parte* - [1894] 1 Ir. R. 146  
Followed. *In re* LLOYD AND NORTH  
LONDON RY. CO. (CITY BRANCH) ACT,  
1861 [1896] 2 Ch. 397
- Rose v. Rose* - (1882) 7 P. D. 225; (1883)  
8 P. D. 98.  
Distinguished. *DOWLING v. DOWLING*  
[1898] P. 228
- Rosenberg v. Northumberland Building Society,*  
(1889) 22 Q. B. D. 373.  
Considered by Kekewich J. *BRADBURY*  
*v. WILD* - [1893] 1 Ch. 377
- Ross' Charity, In re* - [1897] 2 Ch. 391  
Affirmed by C. A. [1899] 1 Ch. 21  
*See* London Government Act, 1899  
(62 & 63 Vict. c. 14), s. 23 (3).
- Ross Improvement Commrs. v. Osborne,* [1890]  
W. N. 92.  
Not followed by Chitty J. NATIONAL  
PERMANENT MUTUAL BENEFIT BUILDING  
SOCIETY *v.* RAPER - [1892] 1 Ch. 54
- Ross v. Woodford* - [1894] 1 Ch. 38  
Referred to. *NEW v. BURNS*  
[1894] W. N. 196
- Rossiter v. Mellor* - (1878) 3 App. Cas. 1124  
*See* LLOYD *v.* NOWELL [1895] 2 Ch. 744
- Roths (Countess of) v. Kirkcaldy and Dysart*  
*Waterworks Commrs.,* (1882) 7 App. Cas.  
694.  
Observations of Lord Watson at p. 707  
commented on and explained. *In re*  
MANCHESTER AND MILFORD RY. CO.  
[1897] 1 Ch. 276
- Rothschild v. Commrs. of Inland Revenue,* [1894]  
2 Q. B. 142.  
Met by 57 & 58 Vict. c. 30, s. 40.
- Roundwood Colliery Co., In re. Lee v. Roundwood*  
*Colliery Co.* [1896] W. N. 166 (3)  
Reversed by C. A. - [1897] 1 Ch. 373
- Rouse v. Bradford Banking Co.* [1894] 2 Ch. 32  
Affirmed by H. L. (E.) [1894] A. C. 586
- Rowcliffe v. Longford Wire Co.,* (1887) 4 Rep. Pat.  
Cas. 281.  
Cited. *MANDLEBERG v. MORLEY*  
[1893] W. N. 157
- Rowell v. Inland Revenue Commrs.* [1897] 2 Q. B.  
194.  
Approved of by C. A. *KNIGHT'S DEEP,*  
*LD. v. INLAND REVENUE COMMRS.*  
[1900] 1 Q. B. 217, 221
- Rowland v. Michell* - [1896] W. N. 74 (5)  
Affirmed by C. A. [1896] W. N. 167 (10);  
[1897] 1 Ch. 71
- Rowland v. Oakley* - (1850) 14 Jur. (N.S.) 845  
Followed by *Cozens-Hardy J.* *TIMOTHY*  
*v. CROWN* - [1900] W. N. 51
- Rowley v. Umwin* - (1855) 2 K. & J. 138  
Considered and applied by Stirling J.  
*In re* MALAM - [1894] 3 Ch. 578
- Royal British Bank v. Turquand,* (1856) 6 E. & B.  
327.  
Followed by C. A. COUNTY OF GLOU-  
CESTER BANK *v.* RUDRY MERTHYR STEAM  
AND HOUSE COAL COLLIERY CO.  
[1895] 1 Ch. 629  
Followed. *In re* HAMPSHIRE LAND CO.  
[1896] W. N. 78 (2);  
[1896] 2 Ch. 743
- Royal College of Music v. Westminster Vestry,*  
[1897] W. N. 175 (8); [1898] 1 Q. B.  
304.  
Affirmed by C. A. [1898] 1 Q. B. 809
- Royal Liver Friendly Society, In re,* (1870) L. R.  
5 Ex. 78.  
*See* 59 & 60 Vict. c. 25, s. 33.
- Royal Liver Friendly Society, In re,* (1887) 35  
Ch. D. 332.  
*See* 59 & 60 Vict. c. 25, s. 68, sub-s. 6.
- Ruabon Brick and Terra Cotta Co. v. Great*  
*Western Ry. Co.,* [1893] 1 Ch. 42.  
Referred to. *In re* LORD GERARD AND  
LONDON AND NORTH WESTERN RY. CO.  
C. A. [1895] 1 Q. B. 446
- Ruabon Steamship Co. v. London Assurance,* [1897]  
2 Q. B. 456.  
Affirmed by C. A. [1898] W. N. 35 (6);  
[1898] 1 Q. B. 722  
C. A. [1898] 1 Q. B. 722.  
Reversed by H. L. (E.) [1899] W. N. 254;  
[1900] A. C. 6
- "*Ruby,*" *The* - [1898] P. 52  
*See* Explanatory Memorandum to County  
Court Rules (May), 1899, and rules 46  
to 57. W. N. 1899 (May 20), at p. 172.  
*See* Current Index, 1899, p. exi.
- Ruffle, Ex parte* (1873) L. R. 8 Ch. 997  
Referred to by Stirling J. *In re* CANA-  
DIAN PACIFIC COLONIZATION CORPORA-  
TION, LD. [1891] W. N. 122
- Rumney & Smith's Contract, In re,* [1897] W. N.  
42 (8).  
Affirmed by C. A. [1897] 2 Ch. 351
- Rumney v. Walter* (1891) 61 L. J. Q. B. 149  
Considered. *WHITTAKER v. SCAR-*  
*BOROUGH POST NEWSPAPER CO.*  
C. A. [1896] 2 Q. B. 148
- Russell, In re. Dorrell v. Dorrell,* [1895] 2 Ch.  
698.  
Referred to by Chitty J. *BATES v. KES-*  
*TERTON* - [1896] 1 Ch. 159, 162

- Russell v. Cambefort* (1889) 23 Q. B. D. 526  
Explained and followed by C. A. WESTERN NATIONAL BANK OF NEW YORK v. PEREZ, TRIANA & Co. [1891] 1 Q. B. 304  
Order XLVIII.A, rr. 1, 3, must be read as subject to this decision, and not as intended to overrule it. *Per* Lord Coleridge C.J. and Wright J. GRANT v. ANDERSON & Co. [1892] 1 Q. B. 108  
The C. A. expressed no opinion on this point - - [1892] 1 Q. B. 108  
Followed by C. A. ST. GOBAIN, CHAUNY AND CIREY Co. v. HOYER-MANN'S AGENCY [1893] 2 Q. B. 96
- Russell, Cordner & Co., In re* (1891) 3 Ch. 171  
Distinguished by Farwell J. *In re* E. BISHOP & SONS, LD. [1900] 2 Ch. 254
- Russell v. Jackson* - (1852) 10 Hare, 204  
Referred to by Farwell J. *In re* STEAD. WITHAM v. ANDREW [1899] W. N. 235; [1900] 1 Ch. 237
- Russell v. Niemann* (1864) 17 C. B. (N.S.) 163  
Considered by C. A. SERRAINO & SONS v. CAMPBELL [1891] 1 Q. B. 283
- Russell v. Reg.* - (1882) 7 App. Cas. 829  
Followed. ATT.-GEN. FOR ONTARIO v. ATT.-GEN. FOR THE DOMINION [1896] A. C. 348
- Russell v. Russell* - C. A. [1895] P. 315  
Affirmed by H. L. (D.) [1897] A. C. 395  
*See also* [1898] A. C. 307.  
Followed. OLDROYD v. OLDROYD [1896] P. 175
- Russell v. Tapping* - (1855) 3 W. R. 379  
Cited. *In re* JONES. BULLIS v. JONES [1891] W. N. 114
- Russell v. Town and County Bank*, (1888) 13 App. Cas. 418.  
Considered by H. L. (Sc.) TENNANT v. SMITH - [1892] A. C. 150
- Russian Spratts Patent, In re*, [1898] 2 Ch. 149, 152.  
Referred to. ALEXANDER v. AUTOMATIC TELEPHONE CO. [1899] 2 Ch. 306
- "*Rutland*," *The* - - C. A. [1896] P. 281  
Affirmed by H. L. (E.) *sub nom.* OWNER OF STEAMSHIP "EDENBRIDGE" v. GREEN. THE "RUTLAND" [1897] A. C. 333
- Ryan v. Mutual Tontine Westminster Chambers Association*, [1892] 1 Ch. 427.  
Reversed by C. A. - [1893] 1 Ch. 116  
Referred to. DAVIS v. FOREMAN [1894] 3 Ch. 654, 658
- Ryder v. Ryder* - - (1861) 2 Sw. & Tr. 225  
Disapproved by C. A. THOMASSET v. THOMASSET - - [1894] P. 295
- Rymer, In re. Rymer v. Stanfield*, [1894] W. N. 114.  
Affirmed by C. A. [1895] 1 Ch. 19  
Referred to by C. A. *In re* MACDUFF [1896] 2 Ch. 451, 475
- Saccharin Corporation Ltd. v. Chemicals and Drugs Co.*, (1899) 17 Rep. Pat. Cas. 28.  
*See also* SACCHARIN CORPORATION, LD. v. ANGLO-CONTINENTAL CHEMICAL WORKS, LD. - [1900] W. N. 95
- Sadler v. Great Western Ry. Co.*, [1895] 2 Q. B. 688.  
Affirmed by H. L. (E.) [1896] A. C. 450  
Distinguished. WALTERS v. GREEN [1899] 2 Ch. 696
- Sadler v. Worley* [1894] 2 Ch. 170  
Followed by Kekewich J. OLDREY v. UNION WORKS, LD [1895] W. N. 77  
Form of judgment followed by Kekewich J. HALIFAX AND HUDDERSFIELD UNION BANKING CO. v. RADCLIFFE, LD. [1895] W. N. 63  
Considered. ELIAS v. CONTINENTAL OXYGEN CO. - - [1897] 1 Ch. 511
- Sailing Ship Blairmore Co. v. Macredie*, (1897) 24 R. 893.  
Reversed by H. L. (Sc.) [1898] A. C. 593
- St. Albans, Wood Street (Rector and Churchwardens of), In re*, (1891) 66 L. T. (N.S.) 51.  
*See* ATT.-GEN. v. ST. JOHN'S HOSPITAL, BATH - - [1893] 3 Ch. 151  
Followed. ST. ANDREW'S, HOVE (VICAR, &c., OF) v. MAWN - [1895] P. 228, n.
- St. Bartholomew's Hospital, Ex parte, Governors of* (1875) L. R. 20 Eq. 369.  
Partly followed by Chitty J. *In re* BISHOPSGATE FOUNDATION [1894] 1 Ch. 185
- St. Botolph (Vicar, &c.) v. Parishioners of the Same*, [1892] P. 161.  
Not followed by Chancellor of Rochester. *In re* PLUMSTEAD BURIAL GROUND [1895] P. 225, 240
- St. Giles, Camberwell v. Crystal Palace Co.*, [1892] 2 Q. B. 33.  
Followed by C. A. DAVIS v. GREENWICH BOARD OF WORKS [1895] 2 Q. B. 219, 226
- St. Giles, Camberwell v. Hunt*, (1887) 56 L. J. (M.C.) 65.  
Distinguished by Div. Ct. WILSON v. ST. GILES, CAMBERWELL [1892] 1 Q. B. 1
- St. James and St. John, Clerkenwell (Vestry of) v. Feary*, (1890) 24 Q. B. D. 703.  
Followed by Stirling J. ATT.-GEN. v. HOOPER - - [1893] 3 Ch. 483
- St. John Street Wesleyan Chapel, Chester*, [1893] 2 Ch. 618.  
Met by 57 & 58 Vict. c. 35.
- St. Leonard, Shoreditch, Parochial Schools, In re*, (1885) 10 App. Cas. 304.  
Followed by P. C. *In re* ENDOWED SCHOOLS ACT, 1869, and SWANSEA GRAMMAR SCHOOL - - [1894] A. C. 252
- St. Luke's, Middlesex (Vestry of) v. Lewis*, (1862) 1 B. & S. 865.  
Discussed. NICHOLL v. EPPING URBAN DISTRICT COUNCIL [1899] 1 Ch. 844, 850

- St. Margaret's, Leicester, In re the Prebend of*, (1864) 10 L. T. (N.S.) 221.  
Followed by *Kekewich J. In re Rector AND CHURCHWARDENS OF ST. ALBANS, WOOD STREET* - [1891] W. N. 204
- St. Martin's-in-the-Fields Vestry v. Bird*, [1895] 1 Q. B. 428.  
Referred to by C. A. *REG. v. BETHNAL GREEN VESTRY* [1896] 2 Q. B. 319, 324; [1898] A. C. 190
- St. Mary Abbots (Vicar, &c., of) v. Parishioners, &c., of the Same*, *Tristram Reports*, 37.  
Not followed by *Consist. Ct. of Rochester. In re PLUMSTEAD BURIAL GROUND* [1895] P. 225
- St. Mary, Battersea v. Palmer*, [1897] 1 Q. B. 220.  
Referred to by C. A. *ALLEN v. FULHAM VESTRY* - [1899] 1 Q. B. 681, 686
- St. Mary, Islington (Vestry of) v. Goodman*, (1889) 23 Q. B. D. 154.  
Overruled by *Div. Ct. FORTESCUE v. VESTRY OF ST. MATTHEW, BETHNAL GREEN* - [1891] 2 Q. B. 170
- St. Mary-at-Hill (Rector, &c., of) v. Parishioners of the Same*, [1892] P. 394.  
Followed. *RECTOR, &c., of ST. MICHAEL BASSISHAW v. PARISHIONERS OF SAME* [1893] P. 233
- St. Nicolas Cole Abbey, In re* - [1893] P. 58  
Not followed. *In re PLUMSTEAD BURIAL GROUND* - [1895] P. 225
- St. Olave's Union v. Canterbury Union*, [1897] 1 Q. B. 438.  
Affirmed by C. A. [1897] 1 Q. B. 682
- St. Saviour's Rectory (Trustees of) and Oyler, In re*, (1886) 81 Ch. D. 412.  
Not followed by *Stirling J. ATT.-GEN. v. LONDON PAROCHIAL CHARITIES (TRUSTEES OF)* [1896] 1 Ch. 541
- St. Thomas' Dock Co., In re* (1875) 2 Ch. D. 116  
Referred to. *In re SCOTT & JACKSON, LD.* [1893] W. N. 184
- Sale Hotel and Botanical Gardens Co., In re*, [1897] W. N. 174 (5).  
Reversed by C. A. [1898] W. N. 40 (2)
- Salford Corporation v. Lever*, (1890) 25 Q. B. D. 363.  
Affirmed by C. A. [1891] 1 Q. B. 168  
Referred to by C. A. *GRANT v. GOLD EXPLORATION DEVELOPMENT SYNDICATE* [1900] 1 Q. B. 233, 244, 246
- Sale v. Lambert* - (1874) L. R. 18 Eq. 1  
Referred to by *Farwell J. CARR v. LYNCH* - [1900] 1 Ch. 613, 615
- Salmon, In re* - (1889) 42 Ch. D. 351  
Considered. *HEAD v. GOULD* [1898] 2 Ch. 250
- Salomon v. Salomon & Co.* [1897] A. C. 22  
Discussed. *LAGUNAS NITRATE CO. v. LAGUNAS SYNDICATE* C. A. [1899] 2 Ch. 392
- Salt v. Northampton (Marquess of)*, [1892] A. C. 1.  
Referred to by C. A. *RICE v. NOAKES & Co.* - [1900] 2 Ch. 445, 451
- Salter v. Edgar* - - (1886) W. N. 47  
Followed. *LE BAS v. GRANT* [1895] W. N. 28
- Salton v. New Beeston Cycle Co.*, [1899] W. N. 40; [1899] 1 Ch. 775.  
Referred to. *In re CENTRAL DE KAAP GOLD MINES* - [1899] W. N. 216, 235; see also [1900] 1 Ch. 43
- Salt's Application, In re* - [1894] 3 Ch. 166  
Distinguished by *Romer J. In re DENSHAM'S TRADE-MARK* [1895] 2 Ch. 176
- Sammons v. Bailey* - (1890) 24 Q. B. D. 727  
Disapproved by C. A. *OPPENHEIM & Co. v. SHEFFIELD* - [1893] 1 Q. B. 5
- Sampson v. Davie* - (1887) 14 R. 113  
Dissented from by H. L. (SC.) *CLARKE v. CARFIN COAL CO.* - [1891] A. C. 412
- Samuel v. Samuel* - (1879) 12 Ch. D. 152  
Considered by *Stirling J. In re LOFTUS-OTWAY* - [1895] 2 Ch. 235
- San Paulo (Brazilian) Ry. Co. v. Carter*, [1895] 1 Q. B. 580.  
Affirmed by H. L. (E.) [1896] A. C. 31
- Sanders v. Davis* - (1885) 15 Q. B. D. 218  
Followed by C. A. *GOUGH v. WOOD* [1894] 1 Q. B. 713
- Sanders-Clark v. Grosvenor Mansions Co.*, [1900] 2 Ch. 373.  
Referred to by *Kekewich J. ATT.-GEN. v. COLE* - [1900] W. N. 272
- Sanderson v. Berwick-on-Tweed Corporation*, (1884) 13 Q. B. D. 547, 551.  
Considered by *Buckley J. TEBB v. CAVE* [1900] 1 Ch. 642, 647
- Sandford v. Clarke* - (1888) 21 Q. B. D. 398  
Practically overruled by *Div. Ct. BOWEN v. ANDERSON* [1894] 1 Q. B. 164
- Sandgate Local Board v. Keene*, [1892] 1 Q. B. 831.  
Distinguished by *Wright J. CORPORATION OF FOLKESTONE v. BROOKS* [1893] 1 Ch. 22, at p. 28
- Saner v. Bilton* - (1879) 11 Ch. D. 416  
Considered. *ATLAS METAL CO. v. MILLER* - [1898] 2 Q. B. 500
- Sanguinetti v. Stuckey's Banking Co.*, [1895] 1 Ch. 176.  
Approved by C. A. *In re FARNHAM* [1895] 2 Ch. 799, 808
- "*Sans Pareil*" (H.M.S.) - [1900] W. N. 60  
Affirmed by C. A. [1900] W. N. 127; [1900] P. 267
- Santley v. Wilde*, [1899] W. N. 19 (8); [1899] 1 Ch. 747  
Reversed by C. A. - [1899] 2 Ch. 474  
Explained and distinguished by C. A. *RICE v. NOAKES & Co.* [1900] 2 Ch. 445
- Sargent v. Read* - (1876) 1 Ch. D. 600  
Distinguished. *CARTER v. FEY* C. A. [1894] 2 Ch. 541
- "*Satanita*," *The* - - [1895] P. 248  
Affirmed by H. L. (E.) *sub nom. CLARKE v. EARL OF DUNRAVEN. THE "SATANITA"* - - [1897] A. C. 59

- Saunders, In re. Ex parte Saunders*, [1895] 2 Q. B. 117.  
 Affirmed by C. A. [1895] 2 Q. B. 424
- Saunders, In re. Saunders v. Gore*, [1897] 1 Ch. 888.  
 Reversed by C. A. [1898] 1 Ch. 17
- Saunders v. Saunders* [1897] P. 89  
 Explained. *EDWARDS v. EDWARDS* [1897] P. 316
- Saunders v. Vautier*, (1841) 4 Beav. 115; Cr. & Ph. 240.  
 Applied to charities by H. L. (E.).  
*WHARTON v. MASTERMAN* [1895] A. C. 186
- Saunders v. Wiel* (No. 1) [1892] 2 Q. B. 18  
 Affirmed by C. A. [1892] 2 Q. B. 321
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- Savage v. Adam* - [1895] W. N. 109 (11)  
 Approved of by C. A. *COLONIAL SECURITIES TRUST CO. v. MASSEY* [1896] 1 Q. B. 38  
 Applied by C. A. *HINDSON v. ASHBY* [1896] 2 Ch. 1, 18
- Savage v. James* - (1875) 1 R. 9 Eq. 357  
 Explained by *Kekewich J. BRISCOE v. BRISCOE* - [1892] 3 Ch. 543
- Savile v. Roberts* - 1 Ld. Raym. 374, 379  
 Referred to. *WALTERS v. GREEN* [1899] 2 Ch. 696
- Savin, In re* - (1872) L. R. 7 Ch. 760  
 Followed by *Stirling J. In re LONDON, WINDSOR AND GREENWICH HOTELS CO.* [1892] 1 Ch. 639
- Saxby v. Thomas* - - [1891] W. N. 4  
 Reversed by C. A. - [1891] W. N. 28
- Scarsdale (Lord) v. Curzon* (1859) 1 J. & H. 40  
 Considered and applied by *Kekewich J. In re ANGERSTEIN* [1895] 2 Ch. 883
- Schibsky v. Westenholz*, (1870) L. R. 6 Q. B. 155, 161.  
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- Schneider v. Norris*, (1814) 2 M. & S. 286; 15 R. R. 250.  
 Distinguished by *Buckley J. HUCKLESBY v. HOOK* - - [1900] W. N. 45
- Scholes v. Brook* - - [1891] W. N. 16  
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- Scholfield v. Londesborough (Earl of)*, [1894] 2 Q. B. 660.  
 Affirmed on different grounds by C. A. [1895] 1 Q. B. 536  
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 Affirmed by H. L. (Sc.) [1895] A. C. 666
- Schuster v. Fletcher* - (1878) 3 Q. B. D. 418  
 Disapproved by H. L. (E.). *ROSE v. BANK OF AUSTRALASIA* [1894] A. C. 687
- Schwerdtfeger, In the Goods of*, (1876) 1 P. D. 424.  
 Followed by G. Barnes J. *IN THE GOODS OF BOLTON* - [1899] P. 186
- "*Scotia*," *The* (1890) 6 Asp. M. L. C. (N.S.) 541  
 Distinguished by Div. Ct. *THE "HORNET"* - [1892] P. 361
- Scotney v. Lomer*, (1885) 29 Ch. 535; (1886) 31 Ch. D. 380.  
*See In re TYSSEN. KNIGHT-BRUCE v. BUTTERWORTH* [1894] 1 Ch. 56
- Scott, In re* - - [1900] 1 Q. B. 372  
 Affirmed by C. A. - [1900] W. N. 271
- Scott and Alvarez's Contract, In re. Scott v. Alvarez*, [1895] 1 Ch. 596.  
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 Discussed by C. A. *In re HUGHES AND ASHLEY'S CONTRACT* [1900] 2 Ch. 595, 202
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 Followed by H. L. (Sc.). *CALEDONIAN INSURANCE CO. v. GILMOUR* [1893] A. C. 85
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 Questioned by C. A. *LONG v. CLARKE* [1894] 1 Q. B. 119
- Scott v. Glasgow (Magistrates of)*, (1899) 1 F. 665; 36 Sco. L. R. 458.  
 Affirmed by H. L. (Sc.) [1899] A. C. 470
- Scott v. Legg* (1882) 10 Q. B. D. 236  
*See* 57 & 58 Vict. c. cccxiii. s. 75.
- Scott v. Morley* - (1887) 20 Q. B. D. 120  
*See In re HANNAH LYNES. Ex parte LISTER & CO. C. A.* [1893] 2 Q. B. 113  
 Form of judgment in, to be used only in cases to which that form applies. *See Explanatory Memorandum to County Court Rules (May)*, 1899, and rules 26 and 27. *W. N.* 1899 (May 20), at p. 171. *See Current Index*, 1899, p. exi.  
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- Scott v. Nesbitt*, (1808) 14 Ves. Jr. 438; 9 R. R. 318.  
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- Scott v. Nixon* - - (1843) 3 D. & War. 338  
 Discussed. *DALTON v. FITZGERALD C. A.* [1897] 2 Ch. 86

- Scott v. Pape* - (1886) 31 Ch. D. 554, 467  
Referred to by Stirling J. SMITH v. BAXTER - [1900] 2 Ch. 138
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Observed upon. *In re* GENERAL RAILWAY SYNDICATE - [1899] 1 Ch. 770  
Applicable. *In re* BANK OF SYRIA [1900] 2 Ch. 272, 273;  
C. A. [1900] W. N. 256
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Followed. INLAND REVENUE COMMRS. v. GRANT, (1898) 25 R. 1040  
Ct. of Sess. (Sc.) [1899] W. N. 195
- Scrutton v. Childs*, (1877) 3 Asp. Mar. L. C. (N.S.) 373.  
Distinguished by Div. Ct. THE "NIFA" [1892] P. 411
- Sea Insurance Co. v. Blogg* [1898] 1 Q. B. 27  
Affirmed by C. A. [1898] 2 Q. B. 398
- Seale-Hayne v. Jodrell* - [1891] A. C. 504  
Referred to by Jeune J. IN THE GOODS OF ASHTON - [1892] P. 82, 88  
Considered by Kekewich J. *In re* PARKER - [1897] 2 Ch. 208
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Referred to by C. A. SOUTHWARK AND VAUXHALL WATER CO. v. HAMPTON URBAN DISTRICT COUNCIL [1899] 1 Q. B. 273, 276;  
H. L. (E.) [1900] A. C. 3
- Seaton v. Heath. Seaton v. Burnand*, [1899] 1 Q. B. 782.  
Reversed by H. L. (E.) *sub nom.* SEATON v. BURNAND. BURNAND v. SEATON [1900] A. C. 135
- Seaton v. Seaton* (1888) 13 App. Cas. 61  
Explained by Stirling J. GREENHILL v. NORTH BRITISH AND MERCANTILE INSURANCE CO. [1893] 3 Ch. 474  
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- Seaward v. Dennington* (1896) 44 W. R. 696  
Overruled by C. A. EARL OF MEXBOROUGH v. WHITWOOD URBAN DISTRICT COUNCIL [1897] 2 Q. B. 111
- Seaward v. Paterson* - [1897] W. N. 12 (5)  
Affirmed by C. A. - [1897] 1 Ch. 545
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Discussed by Div. Ct. HAIR v. HILL [1895] 1 Q. B. 906  
Followed. BRADFORD v. MAYOR, & C., OF EASTBOURNE - [1896] 2 Q. B. 205
- Selig v. Lion* - [1891] 1 Q. B. 513  
Referred to. BEAN v. FLOWER [1895] W. N. 120
- Selous v. Croydon Rural Sanitary Authority*, (1885) 53 L. T. (N.S.) 209.  
*See* HUDSON v. WALKER [1894] W. N. 180
- Selwin v. Brown* - (1735) 3 Bro. P. C. 607  
Distinguished by Stirling J. *In re* APPLEBEE. LEVESON v. BEALES [1891] 3 Ch. 422
- Semayne's Case*, 5 Co. 91, and notes thereon;  
1 Smith's L. C. 7th ed. p. 123.  
Extended by Bowen L. J. AMERICAN CONCENTRATED MEAT CO. v. HENDRY [1893] W. N. 67  
This case affirmed by C. A. [1893] W. N. 82
- Sen Sen Co. v. Britten*, [1899] W. N. 27 (9);  
[1899] 1 Ch. 692.  
Followed by Kekewich J. HUBBUCK & SON, LD. v. BROWN [1899] W. N. 250
- Serle, In re* - [1898] 1 Ch. 652  
Distinguished by Buckley J. PANNELL v. CITY OF LONDON BREWERY CO. [1900] 1 Ch. 496
- Seroka v. Kattenburg* - (1886) 17 Q. B. D. 177  
Approved of by C. A. EARLE v. KINGSCOTE [1900] 2 Ch. 585
- Serraino & Sons v. Campbell*, (1890) 25 Q. B. D. 501.  
Affirmed by C. A. [1891] 1 Q. B. 283
- Sevenoaks, Maidstone and Tunbridge Ry. Co. v. London, Chatham and Dover Ry. Co.*, (1879) 11 Ch. D. 625.  
Followed by Farwell J. MANCHESTER SHIP CANAL CO. v. MANCHESTER RACECOURSE CO. [1900] 2 Ch. 352
- Seyton, In re* - (1887) 34 Ch. D. 511  
Followed by Chitty J. *In re* DAVIES' POLICY TRUSTS [1892] 1 Ch. 90
- Shardlow v. Cotterell* - (1881) 20 Ch. D. 90  
Principle applied. PLANT v. BOURNE C. A. [1897] 2 Ch. 281
- Sharland, In re. Kemp v. Rozez*, [1896] 1 Ch. 517.  
Reversed by C. A. [1896] W. N. 62 (19)
- Sharp (Official Receiver) v. Jackson*, [1899] A. C. 419.  
Referred to. *In re* BLACKBURN & CO. [1899] 2 Ch. 725
- Sharp v. Wakefield* - (1888) 22 Q. B. D. 239  
Affirmed by H. L. (E.) [1891] A. C. 173  
Referred to. REG. v. COUNTY COUNCIL OF WEST RIDING OF YORKSHIRE [1896] 2 Q. B. 386, 388
- Sharpe, In re. In re Bennett. Masonic and General Life Assurance Co. v. Sharpe.*  
Referred to. LOCK v. QUEENSLAND INVESTMENT LAND MORTGAGE CO. [1896] 1 Ch. 397, 402;  
This case was affirmed [1896] A. C. 461  
Referred to. *In re* NATIONAL BANK OF WALES C. A. [1899] 2 Ch. 629, 669
- Shaw v. Reckitt* - [1893] 1 Q. B. 779  
Affirmed by C. A. [1893] 2 Q. B. 59  
*See now* Judicature Act, 1894 (57 & 58 Vict. c. 16).
- Shaw v. Shaw* - (1861) 2 Sw. & Tr. 517  
Followed by North J. BROMILOW v. PHILLIPS - [1891] W. N. 209
- Sheffield, Ex parte. In re Austin*, (1879) 10 Ch. D. 434.  
Explained by Farwell J. BIRD v. PHILPOTT - [1900] 1 Ch. 822

- Sheffield (Earl of) v. London Joint Stock Bank*, (1898) 13 App. Cas. 333.  
Distinguished by *H. L. (E.) LONDON JOINT STOCK BANK v. SIMMONS* [1892] **A. C. 201**
- Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287.  
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- Shelley's Case* - (1581) 1 Co. Rep. 93 b, rule in. See *EVANS v. EVANS* (No. 1) **C. A. [1892] 2 Ch. 173**  
Applicable. *VAN GRUTTEN v. FOXWELL H. L. (E.) [1897] A. C. 658*  
Referred to by *Buckley J. PELHAM CLINTON v. DUKE OF NEWCASTLE* [1900] **W. N. 183**
- Shenton v. Smith* - - [1895] **A. C. 229**  
Referred to by *C. A. DUNN v. REG.* [1896] **1 Q. B. 119**
- Shepard v. Jones* - - (1882) 21 Ch. D. 469  
Approved by *P. C. HENDERSON v. ASTWOOD* [1894] **A. C. 150**
- Shephard, In re* (1890) 43 Ch. D. 131  
See *In re CAVE* - [1892] **W. N. 142**
- Shepherd v. Allen* - - (1864) 33 Beav. 577  
Referred to by *North J. UNSWORTH v. JORDAN* [1896] **W. N. 2 (5)**
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Referred to by *North J. In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* [1895] **1 Ch. 190, 194**
- Shepherdson v. Dale* - (1866) 12 Jur. (N.S.) 156  
Disapproved by *North J. In re YATES* [1891] **3 Ch. 53**
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Distinguished and commented on. *In re DRIFFIELD GAS LIGHT CO.* [1898] **1 Ch. 451**
- Sherras v. De Rutzen* - [1895] **1 Q. B. 918**  
Referred to. *DERBYSHIRE v. HOULISTON* [1897] **1 Q. B. 772, 777**  
Referred to *P. C. BANK OF NEW SOUTH WALES v. PIPER* [1897] **A. C. 383, 390**
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Dictum of *Cave J.* disapproved of by *C. A. In re BOYD*. [1895] **1 Q. B. 611**
- Shirley v. Ferrers (Earl)* (1842) 1 Phillips, 167  
Distinguished by *C. A. In re DE HOGHTON* [1896] **1 Ch. 855**
- Shoolbred v. Roberts*, [1899] **W. N. 136**; [1899] **2 Q. B. 560**.  
Varied by *C. A.* [1900] **2 Q. B. 497**
- Shoosmith, In the Goods of* - [1894] **P. 23**  
Distinguished by *Jeune P. In the GOODS OF CALLICOTT* - [1899] **P. 189**
- Shortbridge, In re* - - [1895] **1 Ch. 278**  
Referred to by *C. A. In re C. M. G. (SPINSTER)* [1898] **2 Ch. 324, 328**
- Shovelton v. Shovelton* - (1863) 32 Beav. 143  
Referred to. *WILLIAMS v. WILLIAMS* [1897] **2 Ch. 12**
- Shrapnel v. Laing* - (1888) 20 Q. B. D. 334  
Followed by *C. A. FINSKA ANG-FARTYGS AKTIEBOLAGET v. BROWN, TOO-GOOD & Co.* - [1891] **W. N. 116**  
Considered. *ATLAS METAL CO. v. MILLER* - - [1898] **2 Q. B. 500**
- Shrewsbury Grammar School, In re*, (1849) 1 Mac. & G. 324.  
Referred to. *In re BRADFORD SCHOOL OF INDUSTRY* - [1893] **W. N. 60**
- Shropshire Union Rys. and Canal Co. v. Reg.*, (1875) L. R. 7 H. L. 496.  
Distinguished. *LLOYDS BANK, LD. v. BULLOCK* [1896] **2 Ch. 192**
- Shuttleworth, In the Goods of* (1838) 1 Curt. 911  
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- Sidney v. Sidney* - (1867) 17 L. T. (N.S.) 9  
Followed by *Barnes J. NEWTON v. NEWTON* - - [1896] **P. 36**  
Cited. *BREWIS v. BREWIS* [1893] **W. N. 6**
- Sieveking v. Kingsford* (1866) 36 L. J. (Ecc.) 1  
Followed. *In re ST. MARK'S, MARLYBONE ROAD* - [1898] **P. 114**
- Silver Valley Mines, In re* (1881) 18 Ch. D. 472  
*Semble*, overruled by 53 & 54 Vict. c. 63 (Companies (Winding-up), s. 1 (4)). *In re NEW TERRAS TIN MINING CO.* **V. WILLIAMS J. [1894] 2 Ch. 344**
- Silver Valley Mines, In re* (1882) 21 Ch. D. 381  
Principle in, extended *In re RAYNES PARK GOLF CLUB, LD. Ex parte OFFICIAL RECEIVER* [1899] **1 Q. B. 961**
- Simes, In re*, (1890) 38 W. R. 570; 62 L. T. (N.S.) 721.  
Not followed by *Chitty J. In re EYDE (A SOLICITOR)* - [1891] **W. N. 1**
- Simm v. Anglo-American Telegraph Co.*, (1879) 5 Q. B. D. 188.  
Approved of by *H. L. (E.) BALKIS CONSOLIDATED CO. v. TOMKINSON* [1893] **A. C. 396, 412**  
Distinguished by *Farwell J. DIXON v. KENNAWAY & Co.* - [1900] **1 Ch. 833**
- Simmonds, Ex parte* - (1886) 16 Q. B. D. 308  
Referred to by *Kekewich J. In re THE OPERA, LD.* - [1891] **2 Ch. 154**;  
This last case was reversed by *C. A.* [1891] **3 Ch. 260**
- Simmonds v. Heath* - *C. A.* [1894] **1 Q. B. 29**  
See 60 & 61 Vict. c. 23.
- Simmons v. London Joint Stock Bank*, [1891] **1 Ch. 270**.  
Reversed by *H. L. (E.) [1892] A. C. 201*  
Judgment of *H. L. (E.)* followed by *North J. BENTINCK v. LONDON JOINT STOCK BANK* [1893] **2 Ch. 120**
- Simmons v. White Brothers* [1899] **1 Q. B. 1005**  
Discussed by *H. L. (E.) MAIN COLLIERY CO. v. DAVIES* [1900] **A. C. 358**
- Simonds v. White*, (1824) 2 B. & C. 805; 26 R. R. 560.  
Explained. *WAVERTREE SAILING SHIP CO. v. LOVE* - **P. C. [1897] A. C. 373**



- Simonin v. Mallac* - (1860) 2 Sw. & Tr. 67  
Followed by *Farwell J. HAY v. NORTH-COTE* - - - [1900] 2 Ch. 262
- Simpson v. Fogo* - (1862) 1 Hem. & M. 195  
Explained by *Lindley L.J. In re QUEENSLAND MERCANTILE AND AGENCY Co.* - - - [1892] 1 Ch. 219
- Simpson v. Godmanchester Corporation, C. A.* [1896] 1 Ch. 214.  
Affirmed by *H. L. (E.)* [1897] A. C. 696
- Simpson v. Hughes* - [1896] W. N. 179 (6)  
Affirmed by *C. A.* [1897] W. N. 26 (11)
- Sinclair, In re. Ex parte Payne*, (1885) 15 Q. B. D. 616.  
Distinguished by *C. A. In re POLLITT* [1893] 1 Q. B. 455, 458
- Singer Manufacturing Co. v. Wilson*, (1876) 2 Ch. D. 434.  
Distinguished. *TALLERMAN v. DOWSING RADIANT HEAT Co.* [1899] W. N. 125;  
This case was compromised on appeal - *C. A.* [1899] W. N. 234;  
[1900] 1 Ch. 1
- Singleton v. Tomlinson* (1878) 3 App. Cas. 404  
Referred to. *MORRIS, In re. MORRIS v. ATHERDEN* - - - [1894] W. N. 85
- Skeats' Settlement, In re* - (1889) 42 Ch. D. 522  
Followed by *Kekewich J. In re NEWEN* [1894] 2 Ch. 297  
And by *L.J.J. In re SHORTRIDGE* [1895] 1 Ch. 278
- Skinner v. Gunton* - - 1 Wm. Saunds. 228  
Referred to. *WALTERS v. GREEN* [1899] 2 Ch. 696
- Skinner v. Northallerton County Court Judge*, [1898] 2 Q. B. 680.  
Affirmed by *H. L. (E.)* [1899] A. C. 439
- Skinner's Trusts, In re* - (1860) 1 J. & H. 102  
Applied and followed by *Stirling J. In re JOHNSTON* - [1894] 3 Ch. 204
- Skinner's Co. v. Knight*, [1891] 2 Q. B. 542;  
60 L. J. (Q.B.) 629; 65 L. T. 240; 40 W. R. 57.  
Overruled by 55 & 56 Vict. c. 13, s. 2 (1).
- Slevin, In re. Slevin v. Hepburn*, [1891] 1 Ch. 373.  
Reversed by *C. A.* - [1891] 2 Ch. 236  
Discussed by *Chitty J. In re RYNER* [1895] 1 Ch. 19, 24
- Slim v. Croucher* - (1860) 1 De G. F. & J. 518  
Disapproved by *C. A. Low v. BOUVIERIE* [1891] 3 Ch. 82
- Small v. National Provincial Bank of England*, [1894] 1 Ch. 686.  
Distinguished by *Kekewich J. In re BROOKE. BROOKE v. BROOKE (No. 2)* [1894] 2 Ch. 600  
Referred to by *Romer J. JOHNS v. WARE* [1899] 1 Ch. 359, 364
- Small v. United Kingdom Marine Mutual Insurance Association*, [1897] 2 Q. B. 42.  
Affirmed by *C. A.* [1897] 2 Q. B. 311
- Smelting Company of Australia v. Inland Revenue Commrs.*, [1896] 2 Q. B. 179.  
Affirmed by *C. A.* [1897] 1 Q. B. 175  
Discussed and explained by *C. A. MULLER & Co.'s MARGARINE, LD. v. INLAND REVENUE COMMRS.* [1900] 1 Q. B. 310, 318, 320, 322
- Smith and Service v. Rosario Nitrate Co.*, [1893] 2 Q. B. 323.  
Affirmed by *C. A.* [1894] 1 Q. B. 174
- Smith, Ex parte* - - (1878) 3 Q. B. D. 374  
Commented on by *H. L. (E.). Ex parte GORMAN* - - - [1894] A. C. 23
- Smith, In re* - - (1888) 40 Ch. D. 386  
Discussed by *Stirling J. In re MORGAN* [1900] 2 Ch. 474
- Smith, In re. Ex parte Mason*, [1893] 1 Q. B. 323.  
Referred to by *C. A. PATERSON v. GAS LIGHT AND COKE Co.* [1896] 2 Ch. 476, 483
- Smith's Estate, In re* - (1887) 35 Ch. D. 589  
Distinguished by *Chitty J. In re DRUMMOND AND DAVIE'S CONTRACT* [1891] 1 Ch. 524, at p. 535
- Smith v. Baker & Sons* - [1891] A. C. 325  
Followed. *WILLIAMS v. BIRMINGHAM BATTERY AND METAL Co.* *C. A.* [1899] 2 Q. B. 338
- Smith v. Chambers Trustees'* (1878) 5 Rettle, 97  
Followed. *BLAIR v. ASSETS Co.* *H. L. (Sc.)* [1896] A. C. 409  
*See Chambers v. Smith*, (1878) 3 App. Cas. 795.
- Smith v. Chorley Rural Council*, [1897] 1 Q. B. 532.  
Affirmed by *C. A.* [1897] 1 Q. B. 678
- Smith v. Davies* - (1884) 28 Ch. D. 650  
Followed. *HORTON v. BOSSON* [1899] W. N. 23 (8); *C. A.* [1899] W. N. 38 (4)
- Smith v. Day* - - (1882) 21 Ch. D. 421  
Referred to. *SCHLESINGER v. BEDFORD* [1893] W. N. 57
- Smith v. Doe d. Jersey*, (1821) 2 B. & B. 473, 553; 22 R. R. 19.  
Referred to by *C. A. In re GRAINGER* [1900] 2 Ch. 756, 773
- Smith v. Gronou* - [1891] 2 Q. B. 394  
Referred to. *HORSEY ESTATE LD. v. STEIGER* - *C. A.* [1899] 2 Q. B. 79, 89
- Smith v. Hancock* - - [1894] 1 Ch. 209  
Affirmed by *C. A.* - [1894] 2 Ch. 377
- Smith v. Houblon* - - (1859) 26 Beav. 482  
Followed by *C. A. In re RADCLIFFE* [1892] 1 Ch. 227  
Applied by *Chitty J. In re SOMES* [1896] 1 Ch. 250
- Smith v. Lakeman* - (1857) 2 Jur. (N.S.) 1202  
Followed by *North J. BROMLOW v. PHILLIPS* - [1891] W. N. 209
- Smith v. Lidiard* - - (1857) 3 K. & J. 252  
Whether overruled. *In re GODRELL* [1891] A. C. 304  
*See In re GUE C. A.* [1892] W. N. 132

- Smith v. Legg* - - [1893] 1 Q. B. 398  
Followed by Div. Ct. *WALLEN v. LISTER*  
[1894] 1 Q. B. 312, 315  
And see 57 & 58 Vict. c. 213, s. 152.
- Smith v. Lucas* - - (1881) 18 Ch. D. 531  
Not followed. *VIDITZ v. O'HAGAN*  
[1899] 2 Ch. 569
- Smith v. Reed* - - [1883] W. N. 196  
Followed by *Stirling J. LIVERPOOL AND MANCHESTER AERATED BREAD AND CAFÉ CO. v. FIRTH* - [1891] 1 Ch. 367
- Smith v. Richmond* [1898] 1 Q. B. 683  
Affirmed by H. L. (E.) [1899] A. C. 448
- Smith v. Robinson* - (1879) 13 Ch. D. 148  
Referred to by North J. *In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* [1895] 1 Ch. 190
- Smith v. St. Lawrence Tow Boat Co.*, (1873) L. R. 5 P. C. 308.  
Followed. *THE "ALTAIR"* [1897] P. 105
- Smith v. Salzmann* - (1854) 9 Ex. 535  
Followed by C. A. *In re McHENRY* [1894] 3 Ch. 365
- Smith v. Smith*, (1833) 2 Cr. & M. 231; 39 R. R. 762.  
Referred to by *Stirling J. In re WYATT* [1892] 1 Ch. 188  
This case affirmed by H. L. (E.) [1892] A. C. 389
- Smith v. Smith* - (1835) 1 Y. & C. Ex. 338  
Applied by *Stirling J. In re WESTON* [1900] 2 Ch. 164
- Smith v. Smith*, (1860) 10 Ir. Ch. Rep. 89 and 461  
Not followed by *Romer J. In re SMITH* [1899] 1 Ch. 365
- Smith v. Stokes*, (1863) 4 B. & S. 84; 32 L. J. (M.C.) 199.  
See now *Locomotive Threshing Engines Act*, 1894 (57 & 58 Vict. c. 37).
- Smith v. Thackerah* - (1866) L. R. 1 C. P. 564  
Considered by Div. Ct. *ATT.-GEN. v. CONDUIT COLLIERY CO.* [1895] 1 Q. B. 301
- Smith v. Webster* - (1876) 3 Ch. D. 49  
Discussed. *JOHN GRIFFITHS CYCLE CORPORATION v. HUMBER & CO.* C. A. [1899] 2 Q. B. 414
- Smith & Co. v. Bedouin Steam Navigation Co.*, (1895) 22 R. 350.  
Reversed by H. L. (Sc.) [1896] A. C. 70
- Smith and Service v. Rosario Nitrate Co.*, [1893] 2 Q. B. 323.  
Affirmed by C. A. [1894] 1 Q. B. 174
- Smith, Hill & Co. v. Pyman, Bell & Co.*, [1891] 1 Q. B. 42, 142.  
Distinguished by *Kay L.J. ORIENTAL STEAMSHIP CO. v. TYLOR* C. A. [1893] 2 Q. B. 518, at p. 523
- Smout v. Ilbery* - (1842) 10 M. & W. 1  
Applicable. *SALTON v. NEW BEESTON CYCLE CO.* - [1900] 1 Ch. 43  
See also *HALBOT v. LENS* [1901] 1 Ch. 344
- Smurthwaite v. Hannay* - [1894] A. C. 494  
Followed by P. C. *PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. TSUNE KIJIMA* - [1895] A. C. 661  
Followed by North J. *HUNT v. WORSFOLD* [1896] 2 Ch. 224
- Distinguished by G. Barnes J. *THE "MARÉCHAL SUCHET"* - [1896] P. 233  
Discussed by C. A. *CARTER v. RIGBY & CO.* [1896] 2 Q. B. 113  
Referred to by C. A. *BENNETTS & CO. v. McILWRAITH & CO.* [1896] 2 Q. B. 464;  
*THOMPSON v. LONDON COUNTY COUNCIL* [1899] 1 Q. B. 840, 844
- Smyth-Pigott v. Smyth-Pigott* [1884] W. N. 149  
Referred to. *In re BERNERS* [1892] W. N. 171
- "*Snark*," *The* [1899] P. 74  
Affirmed by C. A. [1900] P. 105
- Sneath v. Valley Gold, Ltd.* - [1893] 1 Ch. 477  
Applied by *Romer J. MERCANTILE INVESTMENT AND GENERAL TRUST CO. v. RIVER PLATE TRUST, LOAN, AND AGENCY CO. (No. 2)* [1894] 1 Ch. 578, at p. 596
- Snell, In re* - - (1877) 6 Ch. D. 105  
Distinguished by *Kekewich J. BRUNTON v. ELECTRICAL ENGINEERING CORPORATION* [1892] 1 Ch. 434  
Followed by *Kekewich J. In re LAW-RANCE* - [1894] 1 Ch. 556
- Snow v. Hill* - - (1885) 14 Q. B. D. 588  
Distinguished by Div. Ct. *HORNSBY v. RAGGETT* [1892] 1 Q. B. 20
- Soar v. Ashwell* - [1893] 2 Q. B. 390  
Applied. *ROCHEFOUCAULD v. BOUSTEAD* C. A. [1897] 1 Ch. 196
- Soar v. Ashwell* - [1893] 2 Q. B. 390, 396  
Discussed by C. A. *In re DIXON* [1900] 2 Ch. 561
- Société Anonyme des Verreries de l'Etoile, In re Trade-mark of (No. 2)*, [1894] 1 Ch. 61.  
Affirmed by C. A. - [1894] 2 Ch. 26
- Solicitor, In re A* - (1880) 14 Ch. D. 152  
Distinguished by North J. *In re DANCE* [1895] W. N. 127 (10)
- Somerset (Duke of), In re* (1887) 34 Ch. D. 465  
Referred to. *LONDON AND COUNTY BANKING CO. v. BRAY* [1893] W. N. 130
- Somerset v. Hart* (1884) 12 Q. B. D. 360  
Approved and followed by Div. Ct. *SOMERSET v. WADE* [1894] 1 Q. B. 574
- Somerset v. Land Securities Co.*, [1894] W. N. 129.  
Reversed by C. A. - [1894] 3 Ch. 464
- Somes v. Currie* - (1855) 1 K. & J. 605  
Distinguished and commented on. *In re DRIFFIELD GAS LIGHT CO.* [1898] 1 Ch. 451  
Followed. *In re BEESTON PNEUMATIC TYRE CO.* [1898] W. N. 34 (4)  
Distinguished by *Wright J. In re NORTH-WEST ARGENTINE RY. CO.* [1900] 2 Ch. 882

- Sons of the Clergy (Corporation of) v. Sutton*, (1860) 27 Beav. 651.  
Followed by *North J. Sons of the Clergy (Corporation of) v. Skinner* [1893] 1 Ch. 178
- "Soto," The* - - - [1893] P. 73  
Followed. *THE "METROPOLIS"* [1899] W. N. 100
- Soutar's Policy Trust, In re*, (1884) 26 Ch. D. 236  
Discussed. *In re TURNBULL* [1897] 2 Ch. 415  
Not followed. *In re KUYPER'S POLICY TRUSTS* - [1899] 1 Ch. 38
- South African Breweries, Ltd. v. King*, [1899] W. N. 98; [1899] 2 Ch. 173.  
Affirmed by C. A. - [1900] 1 Ch. 273
- South African Territories v. Wallington, C. A.* [1897] 1 Q. B. 692.  
Affirmed by H. L. (E.) [1898] A. C. 309
- South Australia Commercial Bank, In re*, (1886) 33 Ch. D. 174.  
Followed. *In re FEDERAL BANK OF AUSTRALIA* C. A. [1893] W. N. 77
- South Durham Iron Co., In re. Smith's Case*, (1879) 11 Ch. D. 579.  
Distinguished. *FREEMAN v. LAING* [1899] 2 Ch. 355, 359
- South Eastern Ry. Co. v. Railway Commrs.*, (1881) 6 Q. B. D. 586.  
Applied by C. A. *MILNER v. GREAT NORTHERN RY. CO.* [1900] 1 Q. B. 795, 798
- South London Fish Market, In re*, (1888) 39 Ch. D. 324.  
Followed by *Stirling J. In re BOWLING AND WELBY* - [1895] 1 Ch. 663
- South Sea Co. v. Wymondsell*, (1732) 3 P. Wms. 143.  
Observed upon. *In re MANSELL. Ex parte NORTON* [1892] W. N. 32
- Southall v. British Mutual Life Assurance Society*, (1871) L. R. 6 Ch. 614.  
Followed. *KAYE v. CROYDON TRAMWAYS CO.* - C. A. [1898] 1 Ch. 358
- Southport Corporation v. Ormskirk Union Assessment Committee*, [1893] 2 Q. B. 468.  
Affirmed by C. A. [1894] 1 Q. B. 196
- Southwark and Vauxhall Water Co. v. Hampton Urban Council*, [1899] 1 Q. B. 273.  
Affirmed on one point by H. L. (E.) [1900] A. C. 3
- Southwark and Vauxhall Water Co. v. Quick*, (1878) 3 Q. B. D. 315.  
Followed by *Stirling J. LEAROYD v. HALIFAX JOINT STOCK BANKING CO.* [1893] 1 Ch. 686
- Sovereign Life Assurance Co. v. Dodd*, [1892] 1 Q. B. 405.  
Affirmed by C. A. [1892] 2 Q. B. 573  
Discussed by Div. Ct. *In re DAINTRY C. A.* [1900] 1 Q. B. 546, 562, 569
- Spackman, In re* - (1890) 24 Q. B. D. 728  
Observed on by C. A. *In re HUGHES* [1893] 1 Q. B. 595
- Spargo's Case* - - (1873) L. R. 8 Ch. 407  
Doubted by C. A. *In re JOHANNESBURG HOTEL CO.* [1891] 1 Ch. 119  
Approved. *LAROCQUE v. BEAUCHEMIN* [1897] A. C. 358
- Spence v. Spence* - (1862) 12 C. B. (N.S.) 199  
Considered and applied by *Chitty J. In re BROOKE. BROOKE v. BROOKE* (No. 1) [1894] 1 Ch. 43
- Spencer's Trade-marks, In re*, (1886) 3 Rep. Pat. Cas. 73.  
Discussed by C. A. *RICHARDS v. BUTCHER* - [1891] 2 Ch. 522
- Spickernell v. Hotham* - (1854) Kay, 669  
Discussed by C. A. *In re DIXON* [1900] 2 Ch. 561
- Spiers & Pond, Ltd., In re* [1895] W. N. 135 (2)  
Approved. *In re FLEETWOOD ESTATE CO.* [1897] W. N. 20 (3)
- Spiller v. Maude*, (1881) 32 Ch. D. 153, n., not overruled by *Cunnack v. Edwards*, [1896] 2 Ch. 679.  
See *In re LACY. ROYAL GENERAL THEATRICAL FUND SOCIETY v. KYDD* [1899] 2 Ch. 149
- Spooner's Trust, In re* (1851) 2 Sim. (N.S.) 129  
Followed by *Stirling J. In re ELEN* [1893] W. N. 90
- Springett v. Jenings* - (1871) L. R. 6 Ch. 333  
Followed and applied by *Kekewich J. In re MASON* - [1900] 2 Ch. 196
- Stables v. Eley* - - (1825) 1 C. & P. 614  
As reported, disapproved of by C. A. *SMITH v. BAILEY* - [1891] 2 Q. B. 403
- Staffordshire Gas and Coke Co., In re*, [1893] 3 Ch. 523.  
Overruled by C. A. *In re R. BOLTON & CO. SALISBURY-JONES AND DALE'S CASE* (No. 2) - [1895] 1 Ch. 333
- Staley v. Overseers of Castleton*, (1864) 5 B. & S. 505.  
Distinguished by C. A. *HOYLE & JACKSON v. OLDHAM ASSESSMENT COMMITTEE, &c.* - C. A. [1894] 2 Q. B. 372
- Standard Manufacturing Co, In re*, [1891] 1 Ch. 627, at pp. 640-1.  
Referred to by C. A. *In re OPERA, LD.* [1891] 3 Ch. 260  
Referred to by *Kekewich J. TAUNTON v. WARWICKSHIRE (SHERIFF)* [1895] 1 Ch. 734  
Which case was affirmed by C. A. [1895] 2 Ch. 319  
Distinguished by *Romer J. ROBSON v. SMITH* [1895] 2 Ch. 118  
Distinguished. *GREAT NORTHERN RY. CO. v. COAL CO-OPERATIVE SOCIETY* [1896] 1 Ch. 187
- Standley's Estate, In re* (1868) L. R. 5 Eq. 303  
Not followed by *Stirling J. In re DEAKIN* - [1894] 3 Ch. 565
- Standring (Herbert) & Co., In re* [1895] W. N. 99  
Referred to. *In re FANCY DRESS BALLS CO.* - - [1899] W. N. 109

- Staniar v. Evans* - - (1887) 34 Ch. D. 470  
Observed upon by C. A. PRESTON  
BANKING CO. v. ALLSUP & SONS  
[1895] 1 Ch. 141
- Stanley, In re* (1885) L. R. (Ir.) 17 Ch. D. 487  
Not followed. *In re* GINGER  
[1897] 2 Q. B. 461
- Stanley's Case* - (1864) 4 De J. & S. 407  
Referred to. *In re* STREATHAM and  
GENERAL ESTATES CO. [1897] 1 Ch. 15
- Stanley v. Potter* (1789) 2 Cox, 180; 2 R. R. 26  
Referred to by Kekewich J. *In re*  
VICKERS [1899] W. N. 242
- Stanley v. Stanley* - (1862) 2 J. & H. 491  
Observed upon by C. A. *In re* SEAL  
[1894] 1 Ch. 316
- Stannard v. St. Giles Vestry, Camberwell*, (1882)  
20 Ch. D. 190.  
Considered. GRAND JUNCTION WATER-  
WORKS CO. v. HAMPTON URBAN DISTRICT  
'OUNCIL - [1898] 2 Ch. 331
- Stapleton, Ex parte* (1879) 10 Ch. D. 586  
Not followed by C. A. *In re* MACKENZIE  
[1899] 2 Q. B. 566
- Star Newspaper Co. v. O'Connor*, [1893] W. N.  
114.  
Compromised on appeal to C. A.  
[1893] W. N. 122
- Stark, In re* - (1850) 2 Mac. & G. 174  
Referred to by C. A. DIDDSHEIM v.  
LONDON AND WESTMINSTER BANK  
[1900] 2 Ch. 15, 51
- Steamship Isis Co. v. Bahr & Co.*, [1899]  
2 Q. B. 364.  
Affirmed by H. L. (E.). [1900] A. C. 340
- Stearnson v. Corporation of Berwick*, (1841) 1  
Q. B. 154.  
Followed by Div. Ct. HENNELL v.  
DAVIES - [1893] 1 Q. B. 367
- Stebbing v. Metropolitan Board of Works*, (1870)  
L. R. 6 Q. B. 37.  
Distinguished. *In re* MORGAN and THE  
LONDON and NORTH WESTERN RY. CO.  
[1896] 2 Q. B. 469
- Stedman v. Hart* - - (1854) Kay, 607  
Distinguished by Stirling J. *In re*  
WATSON [1899] 1 Ch. 72
- Steel v. State Line Steamship Co.*, (1877) 3  
App. Cas. 72.  
Followed by H. L. (Sc.) GILROY, SONS  
& Co. v. PRICE & Co. [1893] A. C. 56
- Steele v. McKinlay* - (1889) 5 App. Cas. 754  
Principles laid down in, are not affected  
by provisions of Bills of Exchange Act,  
1882. JENKINS & SONS v. COOMBER  
[1898] 2 Q. B. 168
- Steers v. Rogers* - - [1892] 2 Ch. 13  
Affirmed by H. L. (E.) [1893] A. C. 232  
Referred to. HEYL-DIA v. EDMUNDS  
[1899] W. N. 222
- Stenning, In re* - - [1895] 2 Ch. 433  
Referred to by Byrne J. MUTTON v.  
PEAT - - [1899] 2 Ch. 556, 560
- Stephens, Smith & Co., and Liverpool, London and  
Globe Insurance Co., In re*, (1892) 36  
Sol. J. 464.  
Distinguished by Div. Ct. PREBBLE  
AND ROBINSON, *In re* [1892] 2 Q. B. 602
- Stephens v. Venables (No. 1)* (1862) 30 Beav. 625  
Referred to. BOLTON v. CURRIE  
[1894] W. N. 122
- Stevens, In re. Cooke v. Stevens*, [1897] 1 Ch.  
422.  
Affirmed by C. A. [1898] 1 Ch. 162
- Stevens v. Benning* - (1854) 1 K. & J. 168  
Applicable. GRIFFITH v. TOWER PUB-  
LISHING CO. - [1897] 1 Ch. 21
- Stevens v. Trevor-Garrick* - [1893] 2 Ch. 307  
Followed by Buckley J. BUCKLAND v.  
BUCKLAND - [1900] 2 Ch. 534
- Stevenson, Ex parte* - (1867) 16 W. R. 95  
Distinguished by C. A. *In re* GENERAL  
RAILWAY SYNDICATE. WHITELEY'S CASE  
[1900] 1 Ch. 365
- Stewart, In re* - - [1889] 41 Ch. D. 494  
Discussed and distinguished by Chitty J.  
*In re* EARNshaw-WALL [1894] 3 Ch. 156  
Approved, *In re* SANDER'S SETTLEMENT  
[1896] 1 Ch. 480
- Stewart v. Gladstone* - (1879) 10 Ch. D. 626  
Followed by North J. HUNTER v. DOW-  
LING (No. 2) - [1895] 2 Ch. 223
- Stewart v. Jones* - (1859) 3 De G. & J. 532  
Distinguished by Chitty J. *In re* PIN-  
HORNE [1894] 2 Ch. 276
- Stewart v. Kennedy* - (1890) 15 App. Cas. 108  
Explained by C. A. WILDING v. SAN-  
DERSON - [1897] 2 Ch. 534
- Stewart v. Rhodes* - - [1900] W. N. 13  
Affirmed by C. A. [1900] 1 Ch. 386
- Stillman v. Weedon* - (1848) 16 Sim. 26  
Considered by Byrne J. *In re* HAYES  
[1900] 2 Ch. 332
- Stirling v. Fletcher* - - (1895) 23 R. 120  
Followed. ANDREWS v. ARMSTRONG,  
(1897) 25 R. 95  
C. A. (Sc.) [1899] W. N. 170
- Stock v. Meakin* - - [1899] 2 Ch. 496  
Affirmed by C. A. [1900] 1 Ch. 683
- Stockport Ragged, Industrial, and Reformatory  
Schools, In re*, [1898] 1 Ch. 610.  
Affirmed by C. A. [1898] 2 Ch. 687
- Stockton and Middlesbrough Water Board v.  
Kirkleatham Local Board*, [1893] 1  
Q. B. 375.  
Affirmed by H. L. (E.) [1893] A. C. 444
- Stoddard v. Sager, Sager v. Stoddard*, [1895]  
2 Q. B. 474.  
Referred to by C. A. HALL v. COX  
[1899] 1 Q. B. 198, 200
- Stoddart v. Saville* - - [1894] 1 Ch. 480  
Followed. *In re* FORBES  
[1899] W. N. (6) 4
- Stogdon, In re* - (1887) 56 L. J. (Ch.) 420  
Considered and explained by Stirling J.  
HITCHCOCK v. STRETTON  
[1892] 2 Ch. 343

- Stogdon v. Lee* - - [1891] 1 Q. B. 661  
See now Married Women's Property Act,  
1893 (56 & 57 Vict. c. 63), s. 1 (a).  
Referred to by C. A. *In re* LUMLEY  
[1896] 2 Ch. 694
- Stokes, Ex parte* - - (1848) De G. 618  
Followed by C. A. *In re* PARKER.  
MORGAN v. HILL [1894] 3 Ch. 400
- Stokes, In re* - (1892) 87 L. T. (N.S.) 223  
Followed by Chitty J. *In re* SALT  
[1895] 2 Ch. 203
- Stone v. Stone* - - (1869) L. R. 5 Ch. 74  
Discussed by Byrne J. *In re* DIXON  
[1899] 2 Ch. 561;  
C. A. [1900] 2 Ch. 561
- Stonley's Will, In re* (1883) 27 Sol. J. 554  
See *In re* NICHOLAS AND SETTLED LAND  
ACT, 1882 - - [1894] W. N. 165
- Stonor v. Fowle* - (1888) 13 App. Cas. 20  
See *In re* WATSON [1893] 1 Q. B. 21
- Storer, In re* - (1884) 26 Ch. D. 189  
Followed. THE "METROPOLIS"  
[1899] W. N. 100
- Story v. Story* - (1887) 12 P. D. 196  
Approved. BERNSTEIN v. BERNSTEIN  
C. A. [1893] P. 292
- Strachan, In re* - - [1895] 1 Ch. 439  
Referred to by Stirling J. GOLDSTONE  
v. WILLIAMS, DEACON & Co.  
[1899] 1 Ch. 47, 54
- Strachan v. Universal Stock Exchange*, [1895] 2  
Q. B. 329.  
Affirmed by H. L. (E.) [1896] A. C. 166
- Strafford (Earl of) and Maples, In re*, [1895]  
W. N. 147 (10).  
Reversed by C. A. - [1896] 1 Ch. 235
- Strathblane (Heritors of) v. Glasgow Corporation*,  
(1899) 1 F. 523.  
Affirmed by H. L. (Sc.) *sub nom.* GLAS-  
GOW CORPORATION v. McEWAN  
[1900] A. C. 91
- Stratheden and Campbell (Lord), In re*, [1894] 3  
Ch. 265.  
Referred to by Kekewich J. *In re*  
NOTTAGE [1895] 2 Ch. 649
- Stratton v. Metropolitan Board of Works*, (1874)  
L. R. 10 C. P. 76.  
Commented on by C. A. OVERSEERS OF  
PUTNEY v. LONDON AND SOUTH WESTERN  
RY. CO. - [1891] 1 Q. B. 440
- Streatham and General Estates Co., In re*, [1897]  
1 Ch. 15.  
Approved. *In re* RUSSIAN SPRATTS  
PATENT, LD. C. A. [1898] 2 Ch. 149
- Street v. Gover* - (1877) 2 Q. B. D. 498  
Followed in ALCOY, & Co. v. GREEN-  
HILL - - C. A. [1896] 1 Ch. 19
- Stribling v. Halse* (1885) 16 Q. B. D. 246  
Commented on by Div. Ct. BARNETT v.  
HICKMOTT - [1895] 1 Q. B. 691  
Followed. HASSON v. CHAMBERS. *Re*  
RICHEY (1885) 18 L. R. Ir. 68  
C. A. (Ir.) [1897] W. N. 85  
Followed. ALEXANDER v. BURKE, (1887)  
22 L. R. Ir. 443  
C. A. (Ir.) [1897] W. N. 92
- Strickland v. Hayes* [1896] 1 Q. B. 290  
Distinguished by C. A. THOMAS v.  
SUTTERS - - [1900] 1 Ch. 10
- Stringer's Estate, In re* - (1877) 6 Ch. D. 1  
Explained and distinguished. DALTON  
v. FITZGERALD - [1897] 1 Ch. 440;  
C. A. [1897] 2 Ch. 86
- Strohmenger v. Finsbury (Borough of) Permanent  
Building Society*, [1897] W. N. 65 (1).  
Reversed by C. A. - [1897] 2 Ch. 469
- Strong, In re* - - [1886] 31 Ch. D. 273  
Referred to. HOOD BARRE v. HERIOT  
C. A. [1896] 2 Q. B. 375
- Strong v. Bird* - (1874) L. R. 18 Eq. 315  
Followed by Stirling J. *In re* APPEL-  
BEE - - [1891] 3 Ch. 422  
Distinguished by North J. *In re*  
HYSLOP - [1894] 3 Ch. 522
- Strong v. Carlyle Press (No. 1)* [1893] 1 Ch. 268  
Referred to by V. Williams J. BRITISH  
LINEN CO. v. SOUTH AMERICAN AND  
MEXICAN CO. [1894] 1 Ch. 108, 111
- Strong v. Stringer* - (1889) 61 L. T. (N.S.) 470  
See 55 & 56 Vict. c. 13, s. 5.
- Stroud v. Lawson* - - [1898] 2 Q. B. 44  
Followed by Stirling J. UNIVERSITIES  
OF OXFORD AND CAMBRIDGE v. GEORGE  
GILL & SONS - [1899] 1 Ch. 55;  
WALTERS v. GREEN  
[1899] 2 Ch. 696, 702
- Stroud v. Wandsworth Board of Works*, [1894] 1  
Q. B. 64.  
Affirmed by C. A. [1894] 2 Q. B. 1.  
Referred to by C. A. METROPOLITAN  
DISTRICT RY. CO. v. FULHAM VESTRY  
[1895] 2 Q. B. 443, 447
- Stuart v. Diplock* - (1890) 43 Ch. D. 343  
Distinguished by C. A. FITZ v. ILES  
[1893] 1 Ch. 77
- Stuart v. Jackson* - - (1890) 17 R. 85  
Distinguished by H. L. (Sc.) JOHN-  
STONE v. DUKE OF BUCCLEUCH  
[1892] A. C. 625
- Stubbins, Ex parte* - - (1881) 17 Ch. D. 58  
Followed. NEW, PRANCE & GARRARD'S  
TRUSTEE v. HUNTING  
C. A. [1897] 2 Q. B. 19;  
This case was affirmed by H. L. (E.)  
[1899] A. C. 419
- Stubbs (Joshua), Ltd., In re* [1891] 1 Ch. 187  
Affirmed by C. A. - [1891] 1 Ch. 475  
See BRITISH LINEN CO. v. SOUTH AMERI-  
CAN AND MEXICAN CO. [1894] 1 Ch. 108
- Studholme v. Mandell* (1897-8) 1 Ld. Rym. 279  
Followed by Stirling J. McILQUHAM  
v. TAYLOR - - [1895] 1 Ch. 53
- Sturla v. Freccia* - (1880) 5 App. Cas. 623  
Referred to. EVANS v. MERTHYR TYDFIL  
URBAN DISTRICT COUNCIL  
[1899] 1 Ch. 241
- Sudeley (Lord) v. Att.-Gen.* [1896] 1 Q. B. 354  
Affirmed by H. L. (E.). [1897] A. C. 11
- Sudeley (Lord) v. Att.-Gen.* - [1897] A. C. 11  
Followed by Romer J. *In re* SMYTH  
[1898] 1 Ch. 89

- Sudeley (Lord) and Baines & Co., In re*, [1894] 1 Ch. 334.  
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- Suffield and Watts, In re.* (1888) 20 Q. B. D. 693  
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- Sugden v. Lord St. Leonards* (1876) 1 P. D. 154  
Explained by C. A. *ATKINSON v. MORRIS* - [1897] P. 40
- Suggitt's Trusts, In re* - (1868) L. R. 3 Ch. 215  
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- Summers v. Holborn District Board of Works*, [1893] 1 Q. B. 612.  
Considered by C. A. *KEEP v. ST. MARY'S NEWINGTON VESTRY* [1894] 2 Q. B. 524
- Summerson, In re* [1900] 1 Ch. 112, n.  
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- Sunderland 36th Universal Building Society, In re*, (1890) 24 Q. B. D. 334.  
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- Sutherland (Dowager Duchess of) v. Sutherland (Duke of)*, [1893] 3 Ch. 169.  
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C. A. [1900] 2 Q. B. 653
- Sutherland (Duke of) v. Heathcote*, [1891] 3 Ch. 504.  
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- Sutherland's (Duke of) Trustees v. Countess of Cromartie*, (1895) 22 R. 839.  
Reversed by H. L. (Sc.). *MACKENZIE v. DUKE OF DEVONSHIRE* [1896] A. C. 400
- Sutton v. Sutton* - (1882) 22 Ch. D. 511  
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- Swain v. Ayres* - (1888) 21 Q. B. D. 289  
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Discussed by C. A. *CHAMBERLAIN'S WHARF, LD. v. SMITH* [1900] 2 Ch. 605
- Swan v. Mellen* - [1892] W. N. 106  
Reversed by C. A. [1892] W. N. 128
- Swan v. North British Australasian Co.*, (1863) 2 H. & C. 175.  
Headnote to, questioned. *UNION CREDIT BANK v. MERSEY DOCKS AND HARBOUR BOARD* [1899] 2 Q. B. 205, 210
- Swan v. Sindlers*, (1881) 50 L. J. (M.C.) 67; 44 L. T. 424.  
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- Swansborough v. Coventry*, (1832) 2 Moo. & Sc. 362; 9 Bing. 305; 35 R. R. 660.  
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- Swayne v. Inland Revenue Commrs.*, [1899] W. N. 3 (6); [1899] 1 Q. B. 335.  
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- Swift v. Swift* - - [1891] P. 129  
Explained by C. A. *MICHELL v. MICHELL (No. 1)* [1891] P. 208
- Swindon Waterworks Co. v. Wilts and Berks Canal Co.*, (1875) L. R. 7 H. L. 697.  
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- Swire v. Redman* - (1876) 1 Q. B. D. 536  
Not followed by C. A. (*A. L. Smith L.J.* dissent.). *ROUSE v. BRADFORD BANKING Co.* - [1894] 2 Ch. 32  
This case affirmed by H. L. (E.) [1894] A. C. 586
- Sword v. Cameron*, (1839) 1 Sc. Sess. Cas., 2nd Series, 493.  
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- Syer v. Gladstone* - (1885) 30 Ch. D. 614  
Head-note in, commented on. *FREWEN v. LAW LIFE ASSURANCE SOCIETY* [1896] 2 Ch. 511
- Sykes v. Sowerby Urban Council*, [1899] 1 Q. B. 979.  
Reversed by C. A. [1900] 1 Q. B. 584
- Sykes v. Sykes* - - (1868) L. R. 3 Ch. 301  
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- Sykes v. Sykes* - - [1897] P. 306  
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Applicable. *PRIESTLEY v. ELLIS* [1897] 1 Ch. 489
- Tabernacle Permanent Building Society v. Knight*, [1891] 2 Q. B. 63.  
Affirmed by H. L. (E.) [1892] A. C. 293
- Talbott, In re* - - (1888) 39 Ch. D. 567  
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- Talisker Distillery v. Hamlyn & Co.*, (1893) 21 R. 204.  
Reversed by H. L. (Sc.) [1894] A. C. 202  
Principle in, applied by Kekewich J. *SOUTH AFRICAN BREWERIES, LD. v. KING* [1899] 2 Ch. 173; C. A. [1900] 1 Ch. 273  
See *Arbitration (Scotland) Act, 1894* (57 & 58 Vict. c. 13).
- Tallerman v. Dorsing Radiant Heat Co.*, [1899] W. N. 125.  
Compromised on appeal  
C. A. [1899] W. N. 234; [1900] 1 Ch. 1
- Tamplin v. James* - (1879) 15 Ch. D. 215  
Referred to by Joyce J. *In re HARE AND O'MORE'S CONTRACT* [1900] W. N. 253
- Tancred v. Delagoa Bay and East Africa Ry.* (1889) 23 Q. B. D. 239.  
Approved of by C. A. *DURHAM BROTHERS v. ROBERTSON* C. A. [1898] 1 Q. B. 765  
Distinguished by C. A. *MERCANTILE BANK OF LONDON v. EVANS* C. A. [1899] 2 Q. B. 613

- Tankard, In re* - [1899] 2 Q. B. 57, 60, 61  
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[1900] 2 Q. B. 790
- Tanner, Ex parte* - (1855) 20 Beav. 374  
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WILSON v. ATKINSON [1892] 3 Ch. 52
- Tanqueray-Willauwe and Landau, In re*, (1882)  
20 Ch. D. 465.  
Considered by Stirling J. *In re VENN*  
AND FURZE - [1894] 2 Ch. 101
- Tapley v. Eagleton* - (1879) 12 Ch. D. 683  
Distinguished by Romer J. *ASTEN v.*  
ASTEN - [1894] 3 Ch. 260  
Distinguished by C. A. *In re CHEADLE*  
[1900] 2 Ch. 620
- "*Tasmania*," *The* - (1890) 15 App. Cas. 223  
Followed by P. C. THE OWNERS OF  
SS. "PLEIADES" v. PAGE AND OWNERS  
OF SS. "JANE" - [1891] A. C. 259
- Tassel v. Hallen* - [1892] 1 Q. B. 321  
Held not to affect *Yorkshire Tannery v.*  
*Eglinton Chemical Co.*, (1884) 54 L. J.  
(Ch.) 81 per Kekewich J. *COLLINS v.*  
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- Tatam v. Reeve* - [1893] 1 Q. B. 44  
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MAYER - [1900] W. N. 242
- Tate v. Hilbert*, (1793) 2 Ves. Jr. 111; 2 R. R. 175.  
Relied on. *MASTAPHA v. WEDLAKE*  
[1891] W. N. 201
- Tate v. Latham & Son* - [1897] W. N. 12 (4)  
Affirmed by C. A. [1897] 1 Q. B. 502
- Tatem v. Chaplin*, (1793) 2 H. Bl. 133; 3 R. R. 360.  
Referred to. *WHITE v. SOUTHELD HOTEL*  
Co. - C. A. [1897] 1 Ch. 767, 771, 773
- Tattersall v. Grootte*, (1800) 2 Bos. & P. 131, 253;  
*see* 14 R. R. Preface viii.  
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J. *BELFIELD v. BOURNE*  
[1894] 1 Ch. 521
- Taunton v. Warwickshire (Sheriff of)*, [1895] 1 Ch. 734.  
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- Taylor, In re. Turpin v. Pain*, (1890) 44 Ch. D. 128.  
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[1893] W. N. 201
- Taylor, Ex parte* - (1886) 18 Q. B. D. 295  
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*TRUSTEE v. HUNTING*  
C. A. [1897] 2 Q. B. 19;  
H. L. (E.) [1900] A. C. 419, 422
- Taylor v. Barclay*, (1828) 2 Sim. 213; 29 R. R. 82  
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*GLOBE VENTURE SYNDICATE, LD.*  
[1900] 1 Ch. 811, 814
- Taylor v. Batten* - (1878) 4 Q. B. D. 85  
Referred to by C. A. *MILBANK v. MILBANK* - [1900] 1 Ch. 376, 384
- Taylor v. Budden* - (1878) 4 Q. B. D. 85  
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C. A. [1893] 2 Q. B. 432
- Taylor v. Haygarth* - (1844) 14 Sim. 8  
Distinguished by Kekewich J. *In re*  
BOND - [1900] W. N. 122
- Taylor v. Kymer*, (1832) 3 B. & Ad. 320; 37 R. R. 433.  
Distinguished by Bruce J. *SHENSTONE*  
& Co. v. *HILTON* [1894] 2 Q. B. 452
- Taylor v. Manchester, Sheffield and Lincolnshire Ry. Co.*, [1895] 1 Q. B. 134.  
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*RY. CO.* - C. A. [1895] 1 Q. B. 944
- Taylor v. Meltham Local Board of Health*, (1877)  
47 L. J. (C.P.) 12.  
Overruled by C. A. *GRAHAM v. CORPORATION OF NEWCASTLE-UPON-TYNE*  
[1893] 1 Q. B. 643
- Taylor v. New Windsor Corporation*, C. A. [1898] 1 Q. B. 186.  
Affirmed by H. L. (E.) *sub nom. NEW WINDSOR CORPORATION v. TAYLOR*  
[1899] A. C. 41
- Taylor v. Roe* - (1893) 68 L. T. (N.S.) 213  
Discussed by C. A. *RENDELL v. GRUNDY*  
[1895] 1 Q. B. 16
- Taylor v. Rundell* - (1843) 1 Ph. 222  
Relied on. *EMMOTT & Co. v. WALTERS*  
[1891] W. N. 79
- Taylor v. Russell* - [1891] 1 Ch. 8  
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- Taylor v. Soper*, [1890] W. N. 121; 65 L. T. (N.S.) 828.  
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[1893] W. N. 145  
Referred to. *IND, COOPE & Co. v. MEE*  
[1895] W. N. 8
- Taylor v. Taylor* - (1873) L. R. 17 Eq. 324  
Not followed by North J. *TUCKER (No. 1)* - [1893] 2 Ch. 323
- Taylor v. Taylor* - (1875) L. R. 20 Eq. 155  
Followed. *In re JONES*  
[1897] 2 Ch. 190  
Referred to by Stirling J. *In re HUNT*  
[1900] W. N. 65
- Taylor v. Taylor* - (1881) 6 P. D. 29  
Distinguished by Jeune Pres. *WIELAND v. BIRD* - [1894] P. 262
- Taylor, Stileman and Underwood, In re*, [1891] 1 Ch. 590.  
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[1893] W. N. 44  
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- Teacher v. Calder* - (1898) 25 R. 661  
Reversed by H. L. (Sc.)  
[1899] A. C. 451
- Teasdale v. Sanderson* - (1864) 33 Beav. 534  
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[1893] 2 Ch. 461

- Teasdale's Case* - - (1874) L. R. 9 Ch. 54  
This decision has not been overruled by  
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*CHICAGO GRAIN ELEVATORS, LD.*  
[1891] 3 Ch. 459
- Tee v. Ferris* - - (1856) 2 K. & J. 357  
Referred to. *In re STEAD*  
[1899] W. N. 235
- Teevan v. Smith* - - (1882) 20 Ch. D. 724  
Referred to. *RICE v. NOAKES & CO.*  
C. A. [1900] 2 Ch. 445
- Temperton v. Russell* - [1893] 1 Q. B. 715  
Commented on. *ALLEN v. FLOOD*  
H. L. (E.) [1898] A. C. 1
- Tempest v. Lord Camoys*, (1882) 21 Ch. D. 571,  
576, n.  
Explained by *Chitty J. In re BRYANT*  
[1894] 1 Ch. 324
- Tenant v. Ellis* - - (1880) 6 Q. B. D. 46  
Approved by C. A. *ROCKETT v. CLIP-*  
*PINGDALE* - [1891] 2 Q. B. 293
- Tendring Union (Guardians of) v. Downton*, (1890)  
45 Ch. D. 583.  
Reversed by C. A. - [1891] 3 Ch. 265
- Tennant, In re* - - (1889) 40 Ch. D. 594  
Approved by C. A. *In re MUNDY'S*  
*SETTLED ESTATES* - [1891] 1 Ch. 399
- Tennant v. Inland Revenue*, (1891) 18 R. 428;  
28 Sc. L. R. 307.  
Reversed by H. L. (Sc.) *sub nom.*  
*TENNANT v. SMITH* - [1892] A. C. 150
- Tennant v. Smith* - - [1892] A. C. 150  
Followed by Ct. of Sess. *M'DOUGAL v.*  
*SUTHERLAND*, 21 *Rettie*, 735.  
See [1896] W. N. 113  
Distinguished by Ct. of Sess. *CORKE*  
*v. FRY*, 22 *Rettie*, 422.  
See [1896] W. N. 128  
Referred to by C. A. *ATT.-GEN. v.*  
*BEECH* [1898] 2 Q. B. 147, 150;  
This case was affirmed by H. L. (E.)  
[1899] A. C. 53
- Tennant v. Welch (Tennant's Executors)*, (1889)  
16 R. 876.  
Reversed by H. L. (Sc.) *sub nom. WELCH*  
*v. TENNANT* - - [1891] A. C. 639
- Tennent v. City of Glasgow Bank*, (1879) 4 App.  
Cas. 615.  
Inapplicable. *In re ROUNDWOOD COL-*  
*LIERY CO.* - C. A. [1897] 1 Ch. 373
- Tetbury (Vicar of) v. Churchwardens, &c., of*  
*Tetbury*, [1892] P. 271, n.  
Referred to by *Archds Court. NICKALLS*  
*v. BRISCOE* - - [1892] P. 269
- Thackwray and Young's Contract, In re*, (1888)  
40 Ch. D. 34.  
Followed by *Byrne J. In re TRUSTEES*  
*OF HOLLIS' HOSPITAL AND HAGUE'S CON-*  
*TRACT* - [1899] 2 Ch. 540
- Thames Conservators v. Inland Revenue Commrs.*,  
(1886) 18 Q. B. 279.  
Commented on. *NATIONAL TELEPHONE*  
*CO. v. INLAND REVENUE COMMRS.*  
C. A. [1899] 1 Q. B. 250;  
H. L. (E.) [1899] W. N. 232
- Tharsis Sulphur and Copper Co. v. Morel Brothers*  
*& Co.* [1891] 2 Q. B. 647.  
Followed by C. A. *GOOD & CO. v.*  
*ISAACS & SONS* [1892] 2 Q. B. 555  
Referred to by *Pollock B. BULMAN AND*  
*DICKSON v. FENWICK & CO.*  
C. A. [1894] 1 Q. B. 183  
Followed by C. A. *MONSEN v. MACFAR-*  
*LANE & CO.* [1895] 2 Q. B. 570, 576  
Explained by *Collins J. SANDERS v.*  
*JENKINS* - - [1897] 1 Q. B. 96  
Followed by C. A. *CARLTON STEAM-*  
*SHIP CO. v. CASTLE MAIL PACKETS CO.*  
[1897] 2 Q. B. 494;  
This case was affirmed by H. L. (E.)  
[1898] A. C. 486  
Referred to by C. A. *DOBELL & CO. v.*  
*GREEN & CO.* [1900] 1 Q. B. 526, 532
- Tharsis Sulphur Co. v. Societe Industrielle des*  
*Metallux*, (1889) 58 L. J. (Q.B.) 435;  
60 L. T. 924.  
Explained. *BRITISH WAGON CO. v.*  
*GRAY* - [1896] 1 Q. B. 35  
Approved by C. A. *MONTGOMERY v.*  
*LIEBENTHAL* [1898] 1 Q. B. 487
- Thellusson v. Woodford*, (1798-1805) 11 Ves. Jun.  
112; 8 R. R. 104.  
Dictum of *Lord Eldon* at p. 149 followed  
by C. A. *In re BURROWS*  
[1895] 2 Ch. 497
- Théberge v. Laundry* - (1876) 2 App. Cas. 102  
Followed. *MOSES v. PARKER*  
[1896] A. C. 245
- Thetford Corporation v. Norfolk County Council*,  
[1898] 1 Q. B. 141.  
Appeal dismissed and cross-appeal  
allowed C. A. [1898] 2 Q. B. 468
- Thin v. Richards & Co.* - [1892] 2 Q. B. 141  
Followed. *THE "VORTIGERN"*  
C. A. [1899] P. 140
- Thomas, In re. Ex parte Trustee*, [1899] 1 Q. B.  
66.  
Affirmed by C. A. *sub nom. In re*  
*THOMAS. Ex parte SHERIFF OF MIDDLE-*  
*SEX* - [1899] 1 Q. B. 460
- Thomas v. Cook*, (1818) 2 B. & Ald. 119; 20 R. R.  
374.  
Explained by *Chitty J. WALLIS v.*  
*HANDS* - - [1893] 2 Ch. 75
- Thomas v. Cook*, (1828) 8 B. & C. 728; 32 R. R.  
520.  
Approved and followed by C. A. *GUILD*  
*& CO. v. CONRAD* - [1894] 2 Q. B. 885  
Referred to. *In re BOLTON'S ESTATE*  
[1892] W. N. 114
- Thomas v. Kelly* - (1888) 13 App. Cas. 506  
Distinguished by C. A. *SEED v. BRAD-*  
*LEY* - [1894] 1 Q. B. 319,  
at pp. 322, 325
- Thomas v. Nokes* - (1868) L. R. 6 Eq. 521  
Commented on. *HALFORD v. HARDY*  
[1899] W. N. 243
- Thomas v. Owen* - (1887) 20 Q. B. D. 225  
Referred to by *Stirling J. NICHOLLS v.*  
*NICHOLLS* - [1900] W. N. 4



- Thomas v. Peck* - (1888) 20 Q. B. D. 727  
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and explanatory Memorandum thereto,  
Current Index, 1896, p. lxvi.
- Thomas v. Quartermaine* (1887) 18 Q. B. D. 685  
Commented on by H. L. (E.). SMITH v.  
BAKER & SONS [1891] A. C. 325  
See 60 & 61 Vict. c. 37, s. 1.
- Thompson, Ex parte* - (1881) 6 Q. B. 721  
Followed by Div. Ct. REG. v. MAYOR  
AND JUSTICES OF BODMIN  
[1892] 2 Q. B. 21
- Thompson, In re* - [1894] 1 Q. B. 462  
Followed by Stirling J. *In re JONES*  
[1895] 2 Ch. 719
- Thompson, In re* - (1885) 30 Ch. D. 441  
Followed by North J. *In re WEBSTER*  
[1891] W. N. 50  
Referred to by Kekewich J. *In re WOOD*  
[1891] W. N. 203
- Thompson, In re. Ex parte Baylis*, [1894] 1 Q. B. 462.  
Report of case corrected. *In re BAYLIS*  
[1896] 2 Ch. 107
- Thompson v. Hill* - (1870) L. R. 5 C. P. 564  
Met by 57 & 58 Vict. c. cxxiii, s. 90 (2).
- Thompson v. Lapworth* (1868) L. R. 3 C. P. 149  
Followed. WIX v. RUTSON  
[1899] 1 Q. B. 474  
Followed. FARLOW v. STEVENSON  
[1899] W. N. 30 (2);  
C. A. [1899] W. N. 233
- Thompson v. London County Council*, [1899]  
1 Q. B. 840.  
Explained by C. A. FRANKENBURG v.  
GREAT HORSELESS CARRIAGE CO.  
[1900] 1 Q. B. 504
- Thompson v. Montgomery*, (1889) 41 Ch. D. 35;  
[1891] A. C. 217.  
See *In re PAINE & Co's TRADE-MARKS*  
[1893] 2 Ch. 567
- Thompson v. Rourke (No. 2)* - [1893] P. 11  
Affirmed by C. A. [1893] P. 70
- Thomson v. Clanmorris (Lord)* [1899] 2 Ch. 523  
Affirmed by C. A. - [1900] 1 Ch. 718
- Thomson v. Clydesdale Bank, Ltd.*, (1891) 18 R. 751.  
Affirmed by H. L. (Sc.)  
[1893] A. C. 282
- Thorley, In re. Thorley v. Massum*, [1891] 2 Ch. 613.  
Referred to by Kekewich J. *In re WHITE* - [1898] 1 Ch. 297, 299  
This case was affirmed by C. A.  
[1898] 2 Ch. 217
- Thorne v. Heard*, [1893] 3 Ch. 530; [1894] 1 Ch. 599.  
Affirmed by H. L. (E.) *sub nom. THORNE v. HEARD AND MARSH*  
[1895] A. C. 495  
Discussed. HOW v. EARL WINTERTON  
[1896] 2 Ch. 626, 638
- Thornhill v. Thornhill*, (1819) 4 Madd. 377; 20 R. R. 315.  
Approved. *In re HANNAM*  
[1897] 2 Ch. 39
- Thorpe v. Brumfitt* (1873) L. R. 8 Ch. 650, 656  
Dictum of James L.J. approved and  
followed by C. A. LAMBTON v. MEL-  
LISH - [1894] 3 Ch. 163  
Considered by C. A. SADLER v. GREAT  
WESTERN RY. CO. - [1895] 2 Q. B. 688
- Thursby v. Briercliffe-with-Extwistle Church-wardens*, [1894] 1 Q. B. 567.  
Affirmed by C. A. - [1894] 2 Q. B. 11  
Affirmed by H. L. (E.) [1895] A. C. 32
- Thurso New Gas Co., In re* (1889) 42 Ch. D. 486  
Followed by Stirling J. *In re SNYDER DYNAMITE PROJECTILE CO.*  
[1893] W. N. 37
- Thynne v. Shove* - (1890) 45 Ch. D. 577  
Commented on by Byrne J. BURGHELL  
v. WILDE C. A. [1900] 1 Ch. 551, 557
- Tibbitts' Settled Estates, In re* [1897] 2 Ch. 149  
Distinguished. *In re KECK AND HART'S CONTRACT* - [1898] 1 Ch. 617  
Distinguished. *In re DU CANE AND NETTLEFOLD'S CONTRACT* [1898] 2 Ch. 96
- Tichborne v. Tichborne*, (1869) L. R. 1 P. & D. 730, 733; (1870) L. R. 2 P. & D. 41.  
Considered. *In re TOLEMAN*  
[1897] 1 Ch. 866
- Tickle v. Brown*, (1836) 4 Ad. & E. 369; 43 R. R. 358.  
Commented on by Cozens-Hardy J. GARDNER v. HODGSON'S KINGSTON  
BREWERIES CO. [1900] 1 Ch. 592, 599
- Tidd v. Lister* (1820) 5 Mad. 429; 21 R. R. 323  
Referred to by Stirling J. *In re RICHARDSON* - [1900] 2 Ch. 778
- Tidswell, Ex parte* - (1887) 35 W. R. 669  
Followed by Stirling J. MACKINTOSH  
v. POGOSE - [1895] 1 Ch. 505
- Tidswell, In re. Ex parte Tidswell*, (1887) 56 L. J. (Q.B.) 548.  
Approved by C. A. *In re CLARK*  
[1898] 2 Q. B. 330
- Tidswell v. Whitworth* (1867) L. R. 2 C. P. 236  
Discussed. FARLOW v. STEVENSON  
C. A. [1899] W. N. 233
- Tiessen v. Henderson*, [1899] W. N. 45; [1899] 1 Ch. 861.  
Referred to. *In re VIOLET CONSOLIDATED GOLD MINING CO.*  
[1899] W. N. 66
- Timson v. Ramsbottom* - (1837) 2 Keen, 35  
Distinguished by Stirling J. *In re WASDALE* - [1899] 1 Ch. 163
- Tindal, In re* - (1897) 18 N. S. W. L. R. 378  
Overruled by P. C. COMMRS. OF TAXA-  
TION v. KIRK - [1900] A. C. 588
- Tinkler v. Wandsworth District Board of Works*,  
(1858) 2 De G. & J. 261.  
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TION - [1897] 2 Q. B. 357  
Discussed. NICHOLL v. URBAN DISTRICT  
COUNCIL OF EPPING  
[1899] 1 Ch. 844, 851

- Tithe Act, 1891, In re. Roberts v. Potts*, [1893] 2 Q. B. 33.  
 Affirmed by C. A. *sub nom. In re TITHE ACT, 1891. ROBERTS v. POTTS. JONES v. COOKE* - [1894] 1 Q. B. 213
- Tod v. Inland Revenue Commrs.*, (1897) 24 R. 934.  
 Reversed by H. L. (Sc.) *sub nom. INLAND REVENUE COMMRS. v. TOD* [1898] A. C. 399  
*See also Finance Act, 1898* (61 & 62 Vict. c. 10), s. 6.
- Tod & Son v. Merchant Banking Co.*, (1883) 10 R. 1009.  
 Distinguished by H. L. (Sc.) *NORTH WESTERN BANK v. JOHN POYNTER, SON & MACDONALDS* [1895] A. C. 56
- Toke v. Andrews* - (1882) 8 Q. B. D. 428  
 Distinguished by C. A. *ALCOY, &c., Co. v. GREENHILL* [1896] 1 Ch. 19  
 Approved of by C. A. *RENTON GIBBS & Co. v. NEVILLE & Co.* [1900] 2 Q. B. 181
- Tomkinson v. Balkis Consolidated Co.*, [1891] 2 Q. B. 614.  
 Affirmed by H. L. (E.) [1893] A. C. 396
- Tomlinson, In re* - [1898] 1 Ch. 232  
 Differed from by North J. *In re BETTY* [1899] 1 Ch. 821  
 Not followed by Kekewich J. *In re GJERS* - [1899] 2 Ch. 54
- Tompson v. Dashwood* - (1883) 11 Q. B. D. 431  
 Disapproved of by C. A. *HEBDITCH v. McILWAINE* - [1894] 2 Q. B. 54
- Toovey v. Milne* - (1819) 2 B. & Ald. 683  
 Applied by Wright J. *In re VAUTIN* [1900] 2 Q. B. 325, 327
- Topping, Ex parte* (1865) 4 De G. J. & S. 551.  
 Referred to by V. Williams J. *In re HEAD* [1894] 1 Q. B. 638
- Torish v. McCormack*, Lawson's Notes of Decisions, 1890, p. 19.  
 Distinguished d. *M'GAFFIGAN v. RIDDALL*, (1890) 28 L. R. 11 257.  
 C. A. Ir. [1898] W. N. 95
- Toronto (Municipal Corporation of) v. Virgo*, [1896] A. C. 88  
 Followed. ATT. GEN. FOR ONTARIO v. ATT.-GEN. FOR THE DOMINION [1896] A. C. 348
- Torret v. Cripps* - (1879) 27 W. R. 706  
 Distinguished by Buckley J. *HUCKLESBY v. HOOK* - [1900] W. N. 45
- Tosh v. North British Building Society*, (1886) 11 App. Cas. 489.  
*See* 57 & 58 Vict. c. 47, s. 10.
- Tottenham Local Board v. Rowell*, (1876) 1 Ex. D. 514.  
 Undistinguishable. *VESTRY OF HAMMERSMITH v. LOWENFELD* [1896] 2 Q. B. 278
- Tottenham Urban District Council v. Williamson & Sons*, [1896] 2 Q. B. 353.  
 Referred to. *STOKE PARISH COUNCIL v. PRICE* - [1899] 2 Ch. 277, 281
- Toulmin v. Steere*, (1816-7) 3 Mer. 210; 17 R. R. 67.  
 Distinguished and commented on by H. L. (E.) *THORNE v. CANN* [1895] A. C. 11  
 Questioned by C. A. *LIQUIDATION ESTATES PURCHASE Co. v. WILLOUGHBY* [1896] 1 Ch. 726;  
 But this case was reversed by H. L. (E.) [1898] A. C. 321
- Travers v. Blundell* (1877) 6 Ch. D. 436  
 Distinguished by C. A. *In re SEAL* [1894] 1 Ch. 316
- Travis v. Uttley* - [1894] 1 Q. B. 233  
 Distinguished by Div. Ct. *SELF v. HOVE COMMRS.* - [1895] 1 Q. B. 685
- Tredwell, In re* - [1891] 2 Ch. 640  
 Distinguished by C. A. *In re AKEROYD'S SETTLEMENT* - [1893] 3 Ch. 393
- Trego v. Hunt* - [1895] 1 Ch. 462  
 Reversed by H. L. (E.) [1896] A. C. 7  
 Followed by Stirling J. *JENNINGS v. JENNINGS* - [1898] 1 Ch. 378
- Trench Tubeless Tyre Co., In re. Bethell v. Trench Tubeless Tyre Co.* [1899] W. N. 258  
 Reversed by C. A. [1900] 1 Ch. 408
- Tress v. Tress* - (1887) 12 P. D. 128  
 Followed by Jeune Pres. *BEAUCLEERK v. BEAUCLEERK (No. 2)* - [1895] P. 220
- Trevor v. Whitworth*, (1887) 12 App. Cas. 409, 436, 438.  
 This case does not overrule *Teasdale's Case*, (1874) L. R. 9 Ch. 54: *per* Stirling J. *EICHBAUM v. CITY OF CHICAGO GRAIN ELEVATORS, LD.* [1891] 3 Ch. 459  
 Observed on by C. A. *In re DENVER HOTEL Co.* - [1893] 1 Ch. 495  
 Observation of Lord Herschell explained by V. Williams J. *In re BOROUGH COMMERCIAL AND BUILDING SOCIETY* [1893] 2 Ch. 242;  
 This case affirmed by C. A. [1894] 1 Ch. 289
- Trew v. Perpetual Trustee Co.* [1895] A. C. 264  
 Referred to by Romer J. *In re MARQUIS OF BRISTOL* [1897] 1 Ch. 949
- Trollope v. London Building Trades Federation*, [1895] W. N. 29.  
 Affirmed by C. A. - [1895] W. N. 45
- Trower v. Butts*, (1823) 1 Sim. & S. 181; 24 R. R. 164.  
 Followed by Chitty J. *In re HALLETT* [1892] W. N. 148
- Truman v. London, Brighton and South Coast Ry. Co.*, (1886) 11 App. Cas. 45, 51, 53.  
 Referred to by Kekewich J. *RAPIER v. LONDON TRAMWAYS Co.* [1893] 1 Ch. 588
- Truman & Co. v. Redgrave* (1881) 18 Ch. D. 547  
 Explained by C. A. *WHITLEY v. CHALLIS* [1892] 1 Ch. 64
- Trust and Investment Corporation of South Africa, In re*, [1892] 3 Ch. 332.  
 Explained by V. Williams J. *In re LAXON & Co. (No. 3)* [1893] 1 Ch. 210  
 Discussed by C. A. *In re GENERAL PHOSPHATE CORPORATION* [1895] 1 Ch. 3

- Trustees, Executors, and Agency Co. v. Short*,  
(1888) 13 App. Cas. 793.  
Distinguished by C. A. WILLIS v. EARL  
HOWE - - - [1893] 2 Ch. 545
- Tubbs v. Wynne* - - - [1897] 1 Q. B. 74  
Followed by Cozens-Hardy J. BARSHT  
v. TAGG - - - [1900] 1 Ch. 231
- Tuck v. Southern Counties Deposit Bank*, (1889)  
42 Ch. D. 471.  
Distinguished by C. A. THOMAS v.  
SEARLES - - - [1891] 2 Q. B. 408
- Tucker, In re* - - - [1893] 2 Ch. 323  
Referred to by Buckley J. BLACK-  
BURN v. HOPE EDWARDS  
[1900] W. N. 175
- Tucker, In re. Tucker v. Tucker* (No. 2), [1894]  
1 Ch. 724.  
Affirmed in part by C. A.  
[1894] 3 Ch. 429
- Tull v. Mozhay* - - - (1848) 2 Ph. 774  
Referred to. JOHN BROTHERS ABERGARW  
BREWERY Co. v. HOLMES  
[1899] W. N. 257
- Tunbridge Wells Corporation v. Baird*, [1896]  
A. C. 434.  
Applicable. BATTERSEA VESTRY v.  
COUNTY OF LONDON AND BRUSH PRO-  
VINCIAL ELECTRIC LIGHTING Co.  
C. A. [1899] 1 Ch. 474, 482
- Turnbull, In re* - - - [1897] 2 Ch. 415  
Followed. *In re KUYPER'S POLICY*  
TRUSTS [1899] 1 Ch. 38
- Turnbull v. Janson* - - - (1878) 3 C. P. D. 264  
Referred to by North J. EAST STONE-  
HOUSE LOCAL BOARD v. VICTORIA  
BREWERY Co. [1895] 2 Ch. 514
- Turner v. London and South Western Ry. Co.*,  
(1874) L. R. 17 Eq. 561.  
Followed. ECROYD v. COULTHARD  
[1897] 2 Ch. 554
- Turner v. Mersey Docks and Harbour Board. The*  
"Zeta," [1891] P. 216.  
Reversed by C. A. - [1892] P. 285  
C. A. reversed and decision of Butt Pres.  
restored by H. L. (E.) [1893] A. C. 468
- Turner v. Mullineux* - - - (1861) 1 J. & H. 334  
Applied and followed by C. A. *In re*  
BUCKLE [1894] 1 Ch. 286
- Turner v. Newport* - - - (1846) 2 Ph. 14  
Followed with a variation by Keke-  
wich J. *In re CLEVELAND'S (DUKE OF)*  
ESTATE [1895] 2 Ch. 542
- Turquand v. Marshall* - - - (1869) L. R. 4 Ch. 376  
Distinguished. *In re NATIONAL BANK*  
OF WALES, LD. C. A. [1899] 2 Ch. 629
- Turton v. Turton* - - - (1889) 42 Ch. D. 128  
Approved and followed by C. A. REDD-  
AWAY v. BANHAM [1895] 1 Q. B. 286  
Discussed by Stirling J. SAUNDERS v.  
SUN LIFE ASSURANCE Co. OF CANADA  
[1894] 1 Ch. 537
- Tuther v. Caralampi* - - - (1888) 21 Q. B. D. 414  
Distinguished by Div. Ct. GERRARD v.  
CLOWES - - - [1892] 2 Q. B. 11
- Tweeddale v. Tweeddale* - - - (1857) 23 Beav. 341  
Followed by Romer J. and C. A.  
PLEDGE v. CARR - [1895] 1 Ch. 51;  
This case was affirmed by H. L. (E.)  
[1896] A. C. 187
- Twickenham Urban Council v. Muntom*, [1899]  
1 Ch. 168.  
Affirmed by C. A. [1899] 2 Ch. 603
- Tyler, In re* - - - [1891] 3 Ch. 252  
Distinguished by Stirling J. *In re*  
BOWEN - - - [1893] 2 Ch. 49
- Tyrell v. Painton* - - - [1895] 1 Q. B. 202  
Followed by Chitty J. *In re JONES*  
AND JUDGMENTS ACT, 1864  
[1895] W. N. 123 (10)
- Ullzen v. Nicols* - - - [1894] 1 Q. B. 92  
Distinguished by Div. Ct. ORCHARD v.  
BUSH & Co. - [1898] 2 Q. B. 284, 289
- "Umbilo," *The* - - - [1891] P. 118  
Distinguished by Bruce J. *THE "PIL-*  
GRIM" - - - [1895] P. 117
- Underhay v. Read* (1888) 20 Q. B. D. 209  
Observed upon. ENGEL v. SOUTH  
METROPOLITAN BREWING AND BOTTLING  
Co. (No. 1) - [1891] W. N. 31;  
But see *ib.* [1892] 1 Ch. 442
- Underwood & Son, Ld. v. Barker*, [1899] 1 Ch.  
300.  
Referred to by C. A. HAYNES v. DO-  
MAN - [1899] 2 Ch. 13, 24
- Union Plate Glass Co.* - - - (1889) 42 Ch. D. 513  
Not followed by Kekewich J. *In re*  
AGRICULTURAL HOTEL Co.  
[1891] 1 Ch. 396
- United Kingdom Mutual Assurance Co. v. Nevill*,  
(1887) 19 Q. B. D. 110.  
Followed by Wright J. MONTGOMERIE  
v. UNITED KINGDOM MUTUAL STEAMSHIP  
ASSOCIATION, LD. - [1891] 1 Q. B. 370  
Distinguished by Bigham J. BRITISH  
MARINE MUTUAL INSURANCE Co. v.  
JENKINS - - - [1900] 1 Q. B. 299
- Universal Stock Exchange v. Strachan*, [1896]  
A. C. 166.  
Considered. *In re GIEVE*  
C. A. [1899] 1 Q. B. 794
- University of London v. Yarrow*, (1857) 1 De G.  
& J. 72.  
Referred to. *In re PIERCY*  
C. A. [1898] 1 Ch. 565
- Universo Insurance Co. of Milan v. Merchants*  
*Marine Insurance Co.*, [1897] 1 Q. B.  
205.  
Affirmed by C. A. [1897] 2 Q. B. 93
- Upmann v. Forester* - - - (1883) 24 Ch. D. 231  
Distinguished by Stirling J. *THE*  
AMERICAN TOBACCO Co. v. GUEST  
[1892] 1 Ch. 630
- Upton v. Brown* - - - (1879) 12 Ch. D. 872  
Followed by Chitty J. STODDART v.  
SAVILLE - - - [1894] 1 Ch. 480  
Followed. *In re FORBES*  
[1899] W. N. 6 (4)

- Upton v. Hardman* - (1874) Ir. R. 9 Eq. 157  
Followed by *Kekewich J. In re EDWARDS* - [1894] 3 Ch. 644
- "*Utopia*," *The* - - - [1893] A. C. 492  
Followed by C. A. *THE "SNARK"* [1900] P. 105
- Vachell v. Roberts* - (1863) 32 Beav. 140  
Commented on. *In re GAME* [1897] 1 Ch. 881
- Vagliano Brothers v. Bank of England* (1882)  
22 Q. B. D. 103; C. A. (1889) 23 Q. B. D. 243.  
Reversed by H. L. (E.) [1891] A. C. 107  
Referred to by H. L. (E.) *SCHOLFIELD v. EARL OF LONDESBOROUGH* [1896] A. C. 524  
Referred to by H. L. (E.) *CLUTTON v. ATTENBOROUGH & SON* [1897] A. C. 90, 93
- Vale & Sons v. Moorgate Street and Broad Street Rys. Ld.* [1899] W. N. 52.  
Distinguished. *IND COOPE & Co. v. HAMBLIN* - - [1900] W. N. 24
- "*Vancouver*" *Case, The (Marine Insurance Co. v. China Transpacific Steamship Co.)*, (1886)  
11 App. Cas. 573.  
Distinguished by H. L. (E.) *RUABON STEAMSHIP Co. v. LONDON ASSURANCE* [1900] A. C. 6
- Vanderhaege, In re. Ex parte Izard* (1888) 20 Q. B. D. 146.  
Discussed by C. A. *In re SEMENZA. C. A.* [1894] 1 Q. B. 15
- Van Duzer's Trade-mark, In re* (1887) 34 Ch. D. 623.  
Referred to by *Chitty J. HODGSON v. SINCLAIR. In re HODGSON & SIMPSON'S TRADE-MARK* [1891] W. N. 176  
Followed. *In re PAYNE & Co.'s TRADE-MARK* - [1892] W. N. 56  
Followed. *In re TALBOT'S TRADE MARK* [1894] W. N. 12  
Explained by *Romer J. In re DENSHAM'S TRADE-MARK* [1895] 2 Ch. 196
- Van Gheluwe v. Nerinckx* (1882) 21 Ch. D. 189  
*See In re CAVE. MAINLAND v. CAVE* [1892] W. N. 142
- Van Grutten v. Digby* - (1862) 31 Beav. 561  
Followed. *VIDITZ v. O'HAGAN* [1899] 2 Ch. 569
- Van Grutten v. Foxwell* - [1897] A. C. 658  
Distinguished by *Stirling J. In re ADAMS AND PERRY'S CONTRACT* [1899] 1 Ch. 554
- Van Horne v. Fonda* 5 Johns. Ch. (N.Y.) 388  
Not followed. *KENNEDY v. DE TRAF-FORD* [1896] 1 Ch. 762
- Vansittart, In re* - [1893] 2 Q. B. 377  
Discussed. *In re CARTER AND KENDERDINE'S CONTRACT* C. A. [1897] 1 Ch. 776
- Vansittart, In re* - - [1893] 1 Q. B. 181  
Considered by *Wright J. In re TANK-ARD* - [1899] 2 Q. B. 57  
Approved of by C. A. *In re PLUMMER* [1900] 2 Q. B. 790
- Vardon's Trusts, In re* - (1886) 31 Ch. D. 275  
Distinguished by *Romer J. CARTER v. SILBER* [1891] 3 Ch. 553  
This case reversed by C. A. [1892] 2 Ch. 278  
And C. A. affirmed by H. L. (E.) *sub nom. EDWARDS v. CARTER* [1893] A. C. 360
- Varieties (The), In re* - - [1893] 2 Ch. 235  
Referred to. *BLOXWICH IRON AND STEEL Co., In re.* - [1894] W. N. 111  
Followed by *Farwell J. In re E. BISHOP & SONS, LD.* - [1900] 2 Ch. 254
- Vaughan v. Vanderstegen* - (1854) 2 Drew. 408  
Applied and followed by *North J. In re GOUGH* - - [1894] W. N. 76
- Vavasour v. Krupp* - (1878) 9 Ch. D. 351  
Cited. *In re LA SOCIÉTÉ ANONYME DES VERRERIES DE L'ÉTOILE* [1893] W. N. 119  
Referred to. *MILLER'S PATENT, In re* [1894] W. N. 4
- Vawdrey v. Simpson* . [1896] 1 Ch. 166  
Followed by *Kekewich J. MACHIN v. BENNETT* - - [1900] W. N. 146
- Verner v. General and Commercial Investment Trust* [1894] 2 Ch. D. 239.  
Followed by *Stirling J. WILMER v. McNAMARA & Co., LD.* [1895] 2 Ch. 245
- Vernon v. Cooke* - (1880) 49 L. J. (C.P.) 767  
Distinguishable, and semble, no longer the law. *BAKER v. AMBROSE* [1896] 2 Q. B. 372
- Vernon v. Vestry of St. James, Westminster* (1880)  
16 Ch. D. 449.  
*See GRAHAM v. CORPORATION OF NEW-CASTLE ON-TYNE* C. A. [1893] 1 Q. B. 643
- Vernon v. Watson* - [1891] 1 Q. B. 400  
Affirmed by C. A. [1891] 2 Q. B. 288  
*See* 59 & 60 Vict. c. 25, s. 87 (3).
- Veure Monnier et ses Fils, Ld., In re. Ex parte Bloomenthal*, [1896] 2 Ch. 525.  
Reversed by H. L. (E.) *sub nom. BLOOMENTHAL v. FORD* [1897] A. C. 156
- Vickers v. Siddell* - (1890) 15 App. Cas. 496  
*Dictum of Halsbury L.C.* followed by C. A. *NUTTALL v. HARGREAVES* [1892] 1 Ch. 23
- Victorian Railways Commrs. v. Coultas*, (1888)  
13 App. Cas. 222.  
Discussed by C. A. *PUGH v. LONDON, BRIGHTON AND SOUTH COAST RY. Co.* C. A. [1896] 2 Q. B. 248  
Considered by *Wright J. WILKINSON v. DOWNTON* - [1897] 2 Q. B. 57
- Viditz v. O'Hagan* - - [1899] 2 Ch. 569  
Reversed by C. A. - [1900] 2 Ch. 87

- Vignier's Trade-mark, In re*, (1889) 6 Rep. Pat. Cas. 490.  
Distinguished by Romer J. *In re* DEN-  
SHAM'S TRADE-MARK [1895] 2 Ch. 176
- Villars, Ex parte* - (1874) L. R. 9 Ch. 432  
Distinguished by V. Williams J. FIGG  
*v. MOORE BROTHERS* [1894] 2 Q. B. 690  
And by C. A. TRUSTEE IN BANKRUPTCY  
*v. BROWN* - [1895] 1 Q. B. 324
- Vilmont v. Bentley* - (1887) 12 App. Cas. 471  
Superseded, as to goods obtained by  
false pretences, by Sale of Goods Act,  
1893 (56 & 57 Vict. c. 71), s. 24 (2).
- Vince, In re. Ex parte Trustee in Bankruptcy*,  
[1892] 1 Q. B. 587.  
Reversed by C. A. *sub nom. In re VINCE*  
*Ex parte BAXTER* [1892] 2 Q. B. 478
- "*Vindomora*," *The* - (1889) 14 P. D. 172  
Affirmed by H. L. (E.) [1891] A. C. 1
- Vine v. Raleigh* - [1891] 2 Ch. 13  
Followed by Stirling J. *In re* MASON  
[1891] 3 Ch. 467
- Vingoe and Davies, In re* - (1894) 1 Mans. 416  
Followed. *In re* BLACKBURN & Co.  
[1899] 2 Ch. 725
- Vint v. Padget*, (1858) 1 Giff. 446, on appeal  
2 De G. & J. 611.  
Followed by Romer J. and C. A.  
*PLEDGE v. CARR* - [1894] 2 Ch. 328;  
C. A. [1895] 1 Ch. 51  
This case was affirmed by H. L. (E.)  
[1896] A. C. 187  
Considered by C. A. *MINTER v. CARR*  
[1894] 3 Ch. 498  
Followed. *PLEDGE v. WHITE*  
[1896] A. C. 187
- Vinter v. Hind* - (1882) 10 Q. B. D. 63  
Overruled by 54 & 55 Vict. c. 76, s. 47  
(3).
- Vitoria, Ex parte* - [1894] 2 Q. B. 387  
Approved by P. C. KING *v. HENDERSON*  
[1898] A. C. 720, 730
- Von Heyden v. Neustadt* (1880) 14 Ch. D. 230  
Followed by Buckley J. SACCHARIN  
CORPORATION, LD. *v. ANGLO-CONTI-  
NENTAL CHEMICAL WORKS, LD.*  
[1900] W. N. 95
- Voyle v. Hughes*, (1854) 2 Sm. & Giff. 18; 23  
L. J. (Ch.) 238.  
See 56 & 57 Vict. c. 21.
- "*Vulcan*," *The* - [1898] P. 222  
See *Explanatory Memorandum to County  
Court Rules (May), 1899, and rules 58 to  
65. W. N. 1899 (May 20)*, at p. 173.  
See *Current Index, 1899*, p. cxi.
- Waddell v. Wolfe* - (1874) L. R. 9 Q. B. 515  
Referred to by North J. *In re* NA-  
TIONAL PROVINCIAL BANK OF ENGLAND  
AND MARSH - [1895] 1 Ch. 190
- Waddington v. City of London Union*, (1858)  
E. B. & E. 370.  
Discussed. *REG. v. LEIGH RURAL DIS-  
TRICT COUNCIL* C. A. [1898] 1 Q. B. 836
- Wadsworth, In re* - (1887) 34 Ch. D. 155  
Followed by Kekewich J. *In re*  
KNIGHT - [1892] 2 Ch. 368
- "*Waikato*" (*Owners of Cargo on Board SS.*)  
*v. New Zealand Shipping Co.*, [1898]  
1 Q. B. 645.  
Affirmed by C. A.  
[1898] W. N. 152 (15); [1899] 1 Ch. 56
- Wainwright v. Miller* - [1897] 2 Ch. 255  
Approved by Kekewich J. *In re* GAGE  
[1898] 1 Ch. 498
- Wainwright's Case. In re Metropolitan Coal  
Consumers' Association*, (1890) 63 L. T.  
(N.S.) 429.  
Considered by C. A. *KARBERG'S CASE*  
[1892] 3 Ch. 1
- Wake v. Sheffield Corporation*, (1883) 11 Q. B. D.  
291; 12 Q. B. D. 142.  
Followed by Div. Ct. *DERRY COR-  
PORATION v. GRUDGINGS*  
[1894] 2 Q. B. 496
- Wakelin v. London & South Western Ry.*, (1886)  
12 App. Cas. 31.  
See also [1896] 1 Q. B. 189, n.
- Walker, In re*, (1890) 59 L. J. (Ch.) 386; 62 L. T.  
(N.S.) 449.  
Followed by Kekewich J. *In re* SOMER-  
SET - [1894] 2 Ch. 231
- Walker v. Bunkell* (1883) 22 Ch. D. 722  
Observed upon. *LARKIN v. LLOYD*  
[1891] W. N. 71
- Walker v. Crystal Palace District Gas Co.*, [1891]  
2 Q. B. 300.  
Dissented from by Butt J. *THE*  
"COURIER" - [1891] P. 355  
And by Div. Ct. *O'HARA, MATTHEWS  
& Co. v. ELLIOT & Co.*  
[1893] 1 Q. B. 362
- Walker v. Milne* - (1849) 11 Beav. 507  
Followed by Stirling J. *In re* PARK  
[1891] 1 Ch. 682
- Walker v. Nussey* - (1847) 16 M. & W. 302  
Followed by C. A. *NORTON v. DAVISON*  
[1899] 1 Q. B. 401
- Wall v. Byrne* - (1845) 2 J. & Lat. 118  
Distinguished. *In re* SHEPPARD  
[1897] 2 Ch. 67
- Wall v. Cockerell* - (1863) 9 Jur. (N.S.) 447  
Distinguished. *LONDON FREEHOLD AND  
LEASEHOLD PROPERTY CO. v. BARON  
SUFFIELD* - C. A. [1897] 2 Ch. 608
- Wallace v. Greenwood* - (1880) 16 Ch. D. 362  
See *HOWARD v. JAILLAND*  
[1891] W. N. 210  
Discussed by Byrne J. *In re* NORTON  
[1899] W. N. 216; [1900] 1 Ch. 101
- Wallace v. Universal Automatic Machine Co.*,  
[1894] 2 Ch. 547, 555.  
Form of judgment followed by Keke-  
wich J. *BRINSLEY v. LYNTON AND  
LYNMOUTH HOTEL AND PROPERTY CO.*  
[1895] W. N. 53

- Wallasey Local Board v. Gracey* (1887) 36 Ch. D. 593.  
Approved. *TOTTENHAM URBAN DISTRICT COUNCIL v. WILLIAMSON & SONS* C. A. [1896] 2 Q. B. 353  
Discussed. *STOKE PARISH COUNCIL v. PRICE* - [1899] 2 Ch. 277, 281
- Wallen v. Lister* - [1894] 1 Q. B. 312  
See 57 & 58 Vict. c. ccciii., s. 152.
- Wallis and Barnard's Contract, In re*, [1899] 2 Ch. 515.  
Discussed by C. A. *In re HUGHES AND ASHLEY'S CONTRACT* [1900] 2 Ch. 592, 600
- Wallis v. Smith* - (1882) 21 Ch. D. 243  
Applied by C. A. *WARD v. MONAGHAN* [1895] W. N. 123 (8)  
See *Agricultural Holdings Act*, 1900 (63 & 64 Vict. c. 50), s. 6.
- Walmsley v. White* - (1892) 40 W. R. 675  
Followed by *CHITTY J. VAWDREY v. SIMPSON* - [1896] 1 Ch. 166
- Walsh v. Gladstone* - (1843) 1 Phillips, 290  
Followed by *Jeune P. In the Goods of M'ADULIFFE* - [1895] P. 290
- Walsh v. Lincoln (Bishop of)*, (1875) L. R. 10 C. P. 518.  
See 61 & 62 Vict. c. 48, s. 3 (5).
- Walsh v. Reg.* - [1894] A. C. 144  
Referred to. *HENTY v. REG.* [1896] A. C. 567, 574
- Walter v. Lane* [1899] W. N. 138  
Reversed by C. A. [1899] 2 Ch. 749  
Reversed by H. L. (E.) [1900] A. C. 539
- Walter v. Selfe* - (1851) 4 De G. & Sm. 315  
Referred to. *J. LYONS & SONS v. WILKINS* C. A. [1899] 1 Ch. 255
- Walters v. Morgan* (1860) 3 De G. F. & J. 718  
Referred to by *CHITTY J. TURNER v. GREEN* [1895] 2 Ch. 205
- Wandsworth Board of Works v. United Telephone Co.*, (1884) 13 Q. B. D. 904.  
Observed upon. *FAREHAM LOCAL BOARD AND FAREHAM ELECTRIC LIGHT CO. v. SMITH* - [1891] W. N. 76
- Want v. Campaign* (1893) 9 Times L. R. 254  
Followed by *Kekewich J. In re SOMERSET* [1894] 2 Ch. 231
- Want v. Stallibrass* - (1873) L. R. 8 Ex. 175  
Distinguished. *SAXBY v. THOMAS* [1891] W. N. 4
- Warburton v. Haslingden Local Board*, (1879) 48 L. J. (Q.B.) 451.  
Approved of by C. A. *KNOWLES & SONS, LD. v. BOLTON CORPORATION* [1900] 2 Q. B. 253
- Warburton v. Huddersfield Industrial Society*, [1892] 1 Q. B. 213.  
Affirmed by C. A. [1892] 1 Q. B. 817  
Overruled by 56 & 57 Vict. c. 39, s. 10 (6).
- Ward v. Duncombe* - [1893] A. C. 369  
Discussed by *Stirling J. In re WASHDALE* - [1899] 1 Ch. 163
- Ward v. Gregg* - - (1837) 5 Dowl. 729  
Referred to. *FLATAU v. CULLEN* C. A. [1899] W. N. 206
- Ward v. Lloyd* - (1843) 6 Man. & G. 785  
Explained and distinguished by *V. WILLIAMS J.*, and referred to by C. A. *JONES v. MERIONETHSHIRE PERMANENT BENEFIT BUILDING SOCIETY* [1891] 2 Ch. 587; [1892] 1 Ch. 173
- Ward v. Portsmouth Corporation*, [1898] W. N. 34 (3).  
Reversed by C. A. - [1898] 2 Ch. 191
- Ward v. Turner* - (1751) 2 Ves. Sen. 431  
Relied on. *MUSTAPHA v. WEDDLAKE* [1891] W. N. 201
- Ward's Estates, In re* - (1884) 28 Ch. D. 100  
Referred to by *Stirling J. In re MORGAN* [1900] W. N. 151; [1900] 2 Ch. 474, 479
- Ware v. Egmont (Lord)*, (1854) 4 De G. M. & G. 460.  
Referred to. *In re NEW CHILI GOLD MINING CO.* - [1892] W. N. 193
- Warlow v. Harrison* - (1858) 1 E. & E. 295, 317  
Referred to by *Cozens-Hardy J. JOHNSTON v. BOYES* - [1899] 2 Ch. 73
- Warminster Local Board and County Council of Wilts, In re*, (1890) 25 Q. B. D. 450.  
Approved by C. A. *In re MAYOR, &c., OF BURSLEM AND COUNTY COUNCIL OF STAFFORDSHIRE* [1896] 1 Q. B. 24  
Approved of. *COUNTY COUNCIL OF DERBY v. URBAN DISTRICT OF MATLOCK BATH* H. L. (E.) [1896] A. C. 315
- Warren, Ex parte. In re Holland*, (1885) 15 Q. B. D. 48.  
Opinion of C. A. (at p. 52) as to the meaning of "sheriff" followed by *Mathew and V. Williams JJ. in BELYSE v. M'GINN* - [1891] 2 Q. B. 227
- Warren, In re. Ex parte Trustee*, [1900] 2 Q. B. 138.  
Considered by *Buckley J. In re BLACKPOOL MOTOR CAR CO.* [1900] W. N. 252;  
See [1901] 1 Ch. 77
- Warren v. Richardson*, (1830) Younge, 1; 34 R. R. 251.  
Referred to by *North J. In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* [1895] 1 Ch. 190
- Warren's Trusts, In re*, (1884) 26 Ch. D. 208, 216  
Followed. *In re BIRKS* [1899] 1 Ch. 703  
This case was reversed by C. A. [1900] 1 Ch. 417
- Warrick v. Queen's College, Oxford*, (1871) L. R. 6 Ch. 716.  
Observed upon. *EVANS v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL* [1899] 1 Ch. 241
- Warwick v. Caledonian Ry. Co.*, (1897) 24 R. 429; 34 Soc. L. R. 317.  
Reversed by H. L. (Sc.) *sub nom. CALEDONIAN RY. CO. v. MULHOLLAND* [1898] A. C. 216

- Waterhouse v. Keen*, (1825) 4 B. & C. 200; 40 R. R. 858.  
Followed by *Bruce J. CREE v. ST. PANCRAS VESTRY* [1899] 1 Q. B. 693
- Watney & Co. v. Musgrave* (1880) 5 Ex. D. 241  
Distinguished. *REID'S BREWERY Co., LD. v. MALE* [1891] 2 Q. B. 1
- Watson, In re* - - (1890) 25 Q. B. D. 27  
Followed by *C. A. MADELL v. THOMAS & Co.* - - [1891] 1 Q. B. 230
- Watson, In re* - - - [1893] 1 Q. B. 21  
Followed. *In re A BANKRUPTCY NOTICE C. A.* [1898] 1 Q. B. 383
- Watson, In re* - - - [1896] 1 Ch. 925  
Referred to. *In re BINNS* [1896] 2 Ch. 584
- Watson, In re* - - - [1899] 2 Ch. 509  
Followed. *In re BRITISH COLUMBIA ELECTRIC RX., LD.* [1899] W. N. 260
- Watson v. Birch* - (1847) 15 Sim. 523  
Followed by *C. A. JAY v. JOHNSTONE* [1893] 1 Q. B. 25, 189, at p. 190
- Watson v. Mid Wales Ry. Co.*, (1867) L. R. 2 C. P. 593.  
Followed by *Stirling J. In re TAUNTON, DELMARD, LANE & Co.* [1893] 2 Ch. 175
- Watson v. Pitt* - - (1848) 5 C. B. 77  
Followed. *MAGEE v. MORTIMER*, (1890) 28 L. R. Ir. 251  
*C. A. (Ir.)* [1898] W. N. 102
- Watson v. Royal Insurance Co.* [1896] 1 Q. B. 41  
Affirmed by *H. L. (E.) sub nom. ROYAL INSURANCE Co. v. WATSON* [1897] A. C. 1
- Watson v. Woodman* - (1875) L. R. 20 Eq. 721  
Distinguished by *C. A. In re TICKER* [1894] 3 Ch. 429
- Watson v. Young* - - (1885) 28 Ch. D. 436  
Observed upon by *C. A. In re BENCE* [1891] 3 Ch. 242
- Watson, Kipling & Co., In re*, (1883) 23 Ch. D. 500.  
Not followed by *V. Williams J. In re BLAZER FIRE LIGHTER, LD.* [1895] 1 Ch. 402
- Watts, In re* - - (1882) 22 Ch. D. 1  
Referred to by *Byrne J. LLOYD'S BANK, LD. v. PRINCESS ROYAL COLLIERY Co.* [1900] W. N. 99
- Watts, In re. Cornford v. Elliott*, (1885) 29 Ch. D. 947.  
Referred to by *Stirling J. MILLER v. COLLINS* - - [1895] W. N. 143 (8)
- Watts v. Driscoll* - - [1900] W. N. 77  
Affirmed by *C. A.* [1900] W. N. 261
- Wavell, In re* - - (1856) 22 Beav. 634  
Distinguished by *North J. In re WARD* [1896] 2 Ch. 31
- Waverley Typewriter, Ltd., In re*, [1898] 1 Ch. 699  
Followed. *WEEKS v. KENT, SUSSEX AND GENERAL LAND SOCIETY* [1898] W. N. 39 (1)
- Wearing v. Wearing* - (1856) 23 Beav. 99  
Commented on. *In re GAME* [1897] 1 Ch. 881
- Weatherall v. Thornburgh*, (1878) 8 Ch. D. 261,  
269, not overruled by *Wharton v. Masterman*, [1895] A. C. 186.  
*Per C. A. In re TRAVIS* [1900] 2 Ch. 541
- Weaver, In re* - - (1882) 21 Ch. D. 615  
Met by 56 & 57 Vict. c. 71, s. 2.
- Webb v. Earle* - - (1875) L. R. 20 Eq. 556  
Distinguished. *STAPLES v. EASTMAN PHOTOGRAPHIC MATERIALS Co.*  
*C. A.* [1896] 2 Ch. 303
- Webber, In re. Gribble v. Webber*, [1896] 1 Ch. 914.  
Followed by *Stirling J. In re GIBBS* [1898] 1 Ch. 625  
Followed by *Buckley J. In re PALMER. PALMER v. ROSE-INNES* [1900] W. N. 9  
Disapproved of by *C. A. In re MARYON-WILSON.* - [1900] 1 Ch. 565
- Webster v. Webster* (1862) 31 L. J. (P. & M.) 184  
Considered by *Jeune J. OLIVER v. OLIVER* - - [1892] W. N. 84  
Considered and disapproved by *C. A. THOMASSET v. THOMASSET* [1894] P. 295
- Wedderburn's Trusts, In re* (1878) 9 Ch. D. 112  
Not followed by *Cuzens-Hardy J. OVEY v. OVEY* - - [1900] 2 Ch. 524
- Weeding v. Weeding* - (1861) 1 J. & H. 424  
Applied by *Stirling J. In re PYLE* [1895] 1 Ch. 724
- Weedon v. Timbrell*, (1793) 5 T. R. 357; 1 Esp. 16; *See Hall v. Hollander*, (1825) 28 R. R. 437, 439.  
Considered. *EVANS v. EVANS* [1899] P. 125
- Wegg-Prosser v. Evans* [1894] 2 Q. B. 101  
Affirmed by *C. A.* [1895] 1 Q. B. 108
- Weir v. Coltness Iron Co.* - (1889) 16 R. 614  
Affirmed by *H. L. (Sc.) sub nom. CLARKE v. CARFIN COAL Co.* - [1891] A. C. 412
- Weir & Co. v. Girvin & Co.*, [1898] W. N. 164 (4);  
[1899] 1 Q. B. 193.  
Affirmed by *C. A.* - [1900] 1 Q. B. 45
- Weir & Co. v. Union Steamship Co.*, [1900] 1 Q. B. 28.  
Affirmed by *H. L. (E.)* [1900] A. C. 525
- Wekett v. Raby* - - (1724) 2 Bro. P. C. 386  
Followed by *Stirling J. In re APFLEBEE* [1891] 3 Ch. 422
- Welch v. National Cycle Co.*, [1886] W. N. 97,  
*Palmer's Company Precedents*, 6th ed. Part I., p. 909.  
Considered. *ELIAS v. CONTINENTAL OXYGEN Co.* [1897] 1 Ch. 511
- Welch v. Tennent* - - (1889) 16 R. 876  
Reversed by *H. L. (Sc.)* [1891] A. C. 639
- Wellborne, In re*, [1900] W. N. 82; [1900] 1 Ch. 857.  
Reversed by *C. A.* - [1900] W. N. 261
- Wellesley (Viscount) v. Mornington (Earl of)*, (1848) 11 Beav. 180, 181.  
Followed. *SEAWARD v. PATERSON C. A.* [1897] 1 Ch. 545

- Wells, In re. Wells v. Wells*, (1890) 43 Ch. D. 281.  
Approved by C. A. *In re HUMPHREYS* [1893] 3 Ch. 1
- Wells v. Giles* - - (1836) 2 Gale, 209  
Approved and followed by C. A. *KENNEDY v. THOMAS* - [1894] 2 Q. B. 759
- Wells v. Wells* - - (1874) L. R. 18 Eq. 504  
Whether overruled. *In re GODRELL* [1891] A. C. 304  
*See In re GUE* - [1892] W. N. 132
- Welton, Ex parte* - - [1895] 1 Ch. 255  
Affirmed by H. L. (E.) *sub nom. WELTON v. SAFFERY* - [1897] A. C. 299
- Wemyss' Trustees v. Lord Advocate*, (1896) 24 R. 216.  
Reversed by H. L. (Sc.) *sub nom. LORD ADVOCATE v. WEMYSS* [1900] A. C. 48
- Wendon v. London County Council*, [1894] 1 Q. B. 227.  
Affirmed on different grounds by C. A. [1894] 1 Q. B. 812  
Explained by Div. Ct. *LAVY v. LONDON COUNTY COUNCIL* [1895] 1 Q. B. 915;  
C. A. [1895] 2 Q. B. 577, 581
- Wenham, In re. Ex parte Battams*, [1900] W. N. 117.  
Affirmed by C. A. [1900] 2 Q. B. 698
- Wenham, In re. Hunt v. Wenham*, [1892] 3 Ch. 59.  
Referred to. *BUDGETT v. BUDGETT* [1895] 1 Ch. 202, 217
- Wenlock (Baroness) v. River Dee Co.*, (1887) 36 Ch. D. 675, n.  
*See GENERAL AUCTION ESTATE AND MONETARY CO. v. SMITH* [1891] 3 Ch. 432
- Wenman v. Lyon & Co.* - [1891] 1 Q. B. 634  
Affirmed by C. A. [1891] 2 Q. B. 192
- Wenmoth's Estate, In re* - (1887) 37 Ch. 266  
Observed upon. *WILLELTON v. STOCKS* [1892] W. N. 29  
Distinguished by Kekewich J. *In re POWELL* [1898] 1 Ch. 227
- Werderman v. Société Générale d'Électricité*, (1881) 19 Ch. D. 246.  
Referred to by Kekewich J. *BAGOT PNEUMATIC TYRE CO. v. CLIPPER PNEUMATIC TYRE CO.* [1900] W. N. 272
- West v. Berney*, (1819) 1 Russ. & My. 431; 32 R. R. 237.  
Referred to. *In re HIRST* C. A. [1892] W. N. 177
- West v. Downman* (1880) 14 Ch. D. 111  
Disapproved by C. A. *SANDGATE DISTRICT LOCAL BOARD v. KEENE* [1892] 1 Q. B. 831  
Followed. *WILLESDEN LOCAL BOARD v. WRIGHT* C. A. [1896] 2 Q. B. 412
- West v. Fritche* - - (1848) 3 Ex. 216  
Distinguished by V. Williams J. *SCOBIE v. COLLINS* - [1895] 1 Q. B. 375
- West v. Williams* - - [1898] 1 Ch. 488  
Reversed by C. A. [1899] 1 Ch. 132
- West Derby Union v. Metropolitan Life Assurance Society. The Same v. Priestman*, C. A. [1897] 1 Ch. 335.  
Affirmed by H. L. (E.) [1897] A. C. 647
- West Devon Great Consols Mine, In re*, (1888) 38 Ch. D. 51.  
Applied. *MORGAN v. BOWLES* [1894] 1 Q. B. 236
- West Ham Union v. Essex Justices and London County Council*, [1895] 1 Q. B. 38.  
Affirmed by H. L. (E.) [1896] A. C. 443
- West Ham Union v. St. Matthew, Bethnal Green (Churchwardens, &c., of)*, [1892] 2 Q. B. 65.  
Affirmed by C. A. [1892] 2 Q. B. 676  
Reversed by H. L. (E.) [1894] A. C. 230  
As to costs (242, n.) *see now* Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. 5, 16), s. 2 (3).
- West Ham Union v. St. Matthew, Bethnal Green (Churchwardens, &c., of)*, [1895] 1 Q. B. 662.  
Reversed by H. L. (E.) [1896] A. C. 477
- West Hartlepool Iron Co., In re*, (1876) 34 L. T. (N.S.) 568.  
Not followed by V. Williams J. *In re BLAZER FIRE LIGHTER, LD.* [1895] 1 Ch. 402
- West Hartlepool Ironworks Co., In re*, (1875) L. R. 10 Ch. 618.  
Followed by Farwell J. *In re E. BISHOP & SONS, LD.* - [1900] 2 Ch. 254
- West London Syndicate, Ld. v. Inland Revenue Commrs.*, [1898] 1 Q. B. 226.  
Affirmed in part and reversed in part by C. A. - [1898] 2 Q. B. 507  
Distinguished by C. A. *MULLER & Co.'s MARGARINE, LD. v. INLAND REVENUE COMMS.* [1900] 1 Q. B. 310, 320
- West of England Fire Insurance Co. v. Isaacs*, [1896] 2 Q. B. 377.  
Affirmed by C. A. [1897] 1 Q. B. 226
- Western v. Bailey* - [1896] 2 Q. B. 234  
Affirmed by C. A. [1897] 1 Q. B. 86
- Western Counties Manure Co. v. Lawes Chemical Manure Co.*, (1874) L. R. 9 Ex. 218.  
Commented on by H. L. (E.) *WHITE v. MELLIN* - [1895] A. C. 154
- Western Counties Steam Bakeries and Milling Co., Ld., In re*, [1897] W. N. 6 (5).  
Reversed by C. A. [1897] 1 Ch. 617
- Western National Bank of New York v. Perez*, [1891] 1 Q. B. 304.  
Followed by C. A. *INDIGO CO. v. OGILVY* [1891] 2 Ch. 31
- Western of Canada Oil Co.* (1877) 6 Ch. D. 109  
Observed upon. *In re W. HESELTINE & SON, LD.* - [1891] W. N. 25
- Westhead v. Riley* - (1883) 25 Ch. D. 413  
Followed by C. A. *TYRRELL v. PAINTON (No. 2)* - [1895] 1 Q. B. 202
- Westmorland (Earl of) v. New Sharlston Collieries Co.*, [1899] W. N. 2.  
Affirmed by C. A. - [1899] W. N. 88



- Westwood v. India (Secretary of State for)*, (1863)  
11 W. R. 261; 7 L. T. 736.  
Followed by C. A. *Dodd v. Churton*  
[1897] 1 Q. B. 562
- Weymouth and Channel Islands Steam Packet Co., In re*, [1891] 1 Ch. 66.  
Applied and followed by C. A. *In re RY. TIME TABLES PUBLISHING CO. Ex parte WELTON* - [1895] 1 Ch. 255;  
This case was affirmed by H. L. (E.)  
[1897] A. C. 299
- Wharton v. Masterman* - [1895] A. C. 186  
Distinguished by C. A. *In re TRAVIS*  
[1900] 2 Ch. 541
- Whatman, In re. Hoar v. Whatman*, (1889)  
W. N. 213.  
Considered by Stirling J. *FARNHAM v. MILWARD* - [1895] 2 Ch. 730
- Wheat Buller Console, In re* (1888) 38 Ch. D. 42  
Followed by Stirling J. *In re THE PRINTING TELEGRAPH AND CONSTRUCTION CO. OF THE AGENCE HAVAS. Ex parte CAMELL* - [1894] 1 Ch. 528;  
affirmed by C. A. [1894] 2 Ch. 392  
Applied by V. Williams J. *In re ISSUE Co.* - [1895] 1 Ch. 226
- Wheat v. Brown* - [1892] 1 Q. B. 418  
Compare, *Sale of Food and Drugs Act*, 1899 (62 & 63 Vict. c. 51), s. 18.
- Wheatley v. Bastow* (1855) 7 De G. M. & G. 261  
Discussed by Chitty J. *BOLTON v. SALMON* - [1891] 2 Ch. 48
- Wheeler v. Le Marchant* - (1881) 17 Ch. D. 675  
Considered by Stirling J. *LEAROYD v. HALIFAX JOINT STOCK BANKING CO.*  
[1893] 1 Ch. 686  
Not inconsistent with *Minet v. Morgan*, L. R. 8 Ch. 361. *CALORAPT v. GUEST*  
C. A. [1898] 1 Q. B. 759
- Wheeler v. Wheeler and Rhodes*, (1889) 14 P. D. 154.  
Considered. *HARROP v. HARROP*  
[1899] P. 61  
Referred to. *LOWE v. LOWE*  
C. A. [1899] P. 204
- Whinney, Ex parte. In re Harrison*, [1900] W. N. 118.  
Reversed by C. A. [1900] 2 Q. B. 710
- Whistler, In re* - (1887) 35 Ch. D. 561  
Followed by Stirling J. *In re VENN & FURZE'S CONTRACT* - [1894] 2 Ch. 101
- Whitaker, In re. Whitaker v. Palmer*, [1900] W. N. 175; [1900] 2 Ch. 676.  
Affirmed by C. A. - [1900] W. N. 239
- White, In re* - [1893] 2 Ch. 41  
Discussed by C. A. *In re MACDUFF*  
[1896] 2 Ch. 451, 462
- White, In re. Pennell v. Franklin*, [1898] 1 Ch. 297.  
Affirmed by C. A. - [1898] 2 Ch. 217
- White v. Baker* - (1860) 2 De G. F. & J. 55  
Distinguished by C. A. *In re PICKWORTH* - [1899] 1 Ch. 642
- White v. Chitty* - (1866) L. R. 1 Eq. 372  
Distinguished by C. A. *METCALFE v. METCALFE* - [1891] 3 Ch. 1  
Considered by Stirling J. *In re LOFTUS-OTWAY* - [1895] 2 Ch. 235
- White v. Hillacre* - (1839) 3 Y. & C. Ex. 597  
Distinguished by Romer J. *PLEDGE v. CARR* - [1894] 2 Ch. 238  
Affirmed by C. A. - [1895] 1 Ch. 51;  
And by H. L. (E.) [1896] A. C. 187
- White v. Mellin* - [1894] 3 Ch. 276  
Reversed by H. L. (E.) [1895] A. C. 154  
Discussed by Byrne J. *HAWKER v. STOURFIELD PARK HOTEL CO.*  
[1900] W. N. 51
- White v. Morley*, [1899] W. N. 67; [1899] 2 Q. B. 34.  
Approved of. *THOMAS v. SUTTERS*  
C. A. [1899] W. N. 206; [1900] 1 Ch. 10
- White v. Morley* - [1899] 2 Q. B. 34  
Approved by C. A. *THOMAS v. SUTTERS*  
[1900] 1 Ch. 10
- White v. Tyndall* - (1888) 13 App. Cas. 263  
Distinguished by C. A. *NATIONAL SOCIETY FOR THE DISTRIBUTION OF ELECTRICITY BY SECONDARY GENERATORS v. GIBBS* [1900] 2 Ch. 280
- White's Trusts, Re* - (1860) Joh. 656  
Distinguished. *In re WEEKES' SETTLEMENT* [1897] 1 Ch. 289
- Whitehead & Brothers, Ltd., In re* [1900] 1 Ch. 804  
Not followed by Kekewich J. *In re DAWNAY, LD.* [1900] W. N. 152
- Whitehurst v. Fincher*, (1890) 54 J. P. 565; 62 L. T. (N.S.) 433.  
Distinguished by Div. Ct. *HORNSBY v. RAGGETT* [1892] 1 Q. B. 20
- Whiteley Exerciser, Ltd. v. Gamage*, [1898] 2 Ch. 405.  
Distinguished by Stirling J. *SALTON v. NEW BEESTON CYCLE CO.* [1900] 1 Ch. 43
- Whitfield v. Clement*, (1816) 1 Mer. 402; 15 R. R. 143.  
Discussed by C. A. *In re ROWE. PIKE v. HAMLYN* - [1898] 1 Ch. 153
- Whitley v. Challis* - [1892] 1 Ch. 64  
Distinguished by C. A. *COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR COLLIERY CO.* [1895] 1 Ch. 629
- Whitmore v. Mason* - (1861) 2 J. & H. 204  
Referred to by Stirling J. *MACKINTOSH v. POGOSE* - [1895] 1 Ch. 505
- Whittle v. Henning* - (1848) 2 Phillips, 731  
Not applied by Kekewich J. *In re DAVENPORT* - [1895] 1 Ch. 361
- Whitwham v. Westminster Brymbo Coal and Coke Co.*, [1896] 1 Ch. 194.  
Affirmed by C. A. - [1896] 2 Ch. 538
- Whitwood Chemical Co. v. Hardman* [1891] 2 Ch. 416.  
Applied by Kekewich J. *STAR NEWS-PAPER CO. v. O'CONNOR*  
[1893] W. N. 114

- Whyte v. Northern Heritable Securities Investment Co.*, (1889) 16 Ct. Sess. Cas. 4th Series (R.) 100. Affirmed by H. L. (E.) [1891] A. C. 608
- Wick and Pulteneytown Steam Shipping Co. v. Palmer*, (1893) 20 R. 275. Affirmed by H. L. (Sc.) *sub nom.* PALMER *v.* WICK AND PULTENEY TOWN STEAM SHIPPING CO. - [1894] A. C. 318
- Wickens, Ex parte* - - [1898] 1 Q. B. 543  
Distinguished by Div. Ct. *Ex parte* ELLIS - - C. A. [1898] 2 Q. B. 79
- Wiggett v. Fox* - - (1856) 11 Ex. 832  
Commented on by H. L. (E.) JOHNSON *v.* LINDSAY & CO. - [1891] A. C. 371
- Wight v. Earl of Hopetoun* (1864) 4 Macq. 729  
Distinguished by H. L. (Sc.) BLACK *v.* CLAY - - [1894] A. C. 368
- Wigram v. Fryer* - (1887) 36 Ch. D. 87, 96  
Followed by Kekewich J. SCHOOL BOARD FOR LONDON *v.* SMITH [1895] W. N. 37
- Willbran, Ex parte*, (1820) 5 Madd. 1; 38 R. R. 856.  
Approved. KING *v.* HENDERSON P. C. [1898] A. C. 720
- Wilder v. Pigott* - - (1882) 22 Ch. D. 263  
Applied by Stirling J. GREENHILL *v.* NORTH BRITISH MERCANTILE INSURANCE CO. [1893] 3 Ch. 474  
Discussed and followed by Chitty J. *In re* HODSON - [1894] 2 Ch. 421
- Wildes v. Dudlow* (1874) L. R. 19 Eq. 198  
Followed by Chitty J. *In re* BOLTON'S ESTATE - - [1892] W. N. 114;  
This case affirmed by C. A. [1892] W. N. 163  
Approved and followed by C. A. GUILD & CO. *v.* CONRAD [1894] 2 Q. B. 885
- Wilding v. Bean* - - [1891] 1 Q. B. 100  
Distinguished. JAY *v.* BUDD C. A. [1898] 1 Q. B. 12
- Wilding v. Sanderson* - [1897] W. N. 39 (11)  
Affirmed by C. A. - [1897] 2 Ch. 534
- Wild's Case* - - 6 Rep. 16 b.  
Referred to. *In re* WILMOT [1897] W. N. 44 (15)
- Wildy v. Mid-Hants Ry. Co.*, (1868) 16 W. R. 409.  
Followed by North J. EDWARDS *v.* STANDARD ROLLING STOCK SYNDICATE [1893] 1 Ch. 574
- Wilkinson v. Jagger* - (1888) 20 Q. B. D. 423  
See 59 & 60 Vict. c. 25, s. 68 (6).
- Wilkinson v. Verity* - (1871) L. R. 6 C. P. 206  
Considered by C. A. MILLER *v.* DELL [1891] 1 Q. B. 468
- Willes v. Greenhill* (1861) 4 De G. F. & J. 147  
Referred to by Stirling J. *In re* WYATT [1892] 1 Ch. 188;  
This case affirmed by H. L. (E.) [1893] A. C. 369
- Willett v. Argenti, In re*, [1889] W. N. 66; 60 L. T. 735.  
Distinguished by Farwell J. *In re* SANDER AND WALFORD'S CONTRACT [1900] W. N. 183
- Willets v. Watt & Co.* - [1892] 2 Q. B. 92  
Distinguished. TATE *v.* LATHAM & SON C. A. [1897] 1 Q. B. 502
- Willey, In re* [1890] W. N. 1; 34 Sol. J. 180  
Referred to by Kekewich J. EATON *v.* DAINES - [1894] W. N. 32  
"William Beekford," The (1801) 3 C. Rob. 355  
Followed by C. A. THE "GLENGYLE" [1898] P. 97  
C. A. affirmed by H. L. (E.) [1898] A. C. 519
- "William Hutt," The - (1860) Lush. 25  
Referred to by Jeune Pres. THE "STRATHGARRY" - [1895] P. 264
- Williams v. Bayley* - (1866) L. R. 1 H. L. 200  
Referred to by Lindley L. J. McCLATCHIE *v.* HASLAM [1891] W. N. 191
- Williams v. Colonial Bank* (1888) 38 Ch. D. 388  
Referred to. FOX *v.* MARTIN [1895] W. N. 36
- Williams v. Glenton* - (1866) L. R. 1 Ch. 200  
Observed upon by C. A. *In re* WOODS AND LEWIS' CONTRACT [1898] 2 Ch. 211
- Williams v. Jenkins* (No. 1) [1893] 1 Ch. 700  
See WILLIAMS *v.* JENKINS (No. 2) [1894] W. N. 176
- Williams v. London and North Western Ry. Co.*, [1899] 2 Q. B. 197.  
Reversed by C. A. [1900] 1 Q. B. 760
- Williams v. Roberts*, (1857) 27 L. J. (Ch.) 177; 4 Jur. (N.S.) 18.  
Applicable. *In re* WEST [1900] 1 Ch. 84
- Williams v. Smith* (1889) 22 Q. B. D. 134  
Discussed by C. A. SEARLES *v.* SCARLETT - - [1892] 2 Q. B. 56
- Williams and Stepney, In re* [1891] 1 Q. B. 700  
Reversed by C. A. [1891] 2 Q. B. 257  
Decision of C. A. distinguished by Div. Ct. *In re* WILSON & SON AND EASTERN COUNTIES NAVIGATION AND TRANSPORT CO. - - [1892] 1 Q. B. 81
- Williams' Estate, In re* (1872) L. R. 15 Eq. 270  
Distinguished. *In re* BENTINCK [1897] 1 Ch. 673
- Williamson v. Begg* - (1887) 14 R. 720  
Distinguished. COWIE *v.* MUIRDEN H. L. (Sc.) [1897] A. C. 674
- Williamson v. Verity* - (1871) 24 L. T. Rep. 32  
See 60 & 61 Vict. c. 30.
- Willis v. Oxford (Bishop of)* (1877) 2 P. D. 192  
See 61 & 62 Vict. c. 48, s. 2 (b).
- Willis v. Wells* [1892] 2 Q. B. 225  
Followed. PALLISER *v.* DALE C. A. [1897] 1 Q. B. 257  
See 56 & 57 Vict. c. 39, s. 49 (1); 59 & 60 Vict. c. 25, s. 68 (1).
- Willcock v. Noble* - (1875) L. R. 7 H. L. 580  
The law is reversed by s. 3 of the Married Women's Property Act, 1893 56 & 57 Vict. c. 63).

- Willhay's Trusts, Re*, Seton on Decrees, 5th ed. p. 1470.  
Followed. *In re* SKINNER [1896] W. N. 68 (7)
- Wilmot v. Alton* [1896] 2 Q. B. 254  
Affirmed by C. A. [1897] 1 Q. B. 17
- Wilmot v. Grace* - - [1892] 1 Q. B. 812  
See now 59 & 60 Vict. c. 25, s. 80 (5).
- Willmott v. Barber* - (1880) 15 Ch. D. 96  
Referred to by Farwell J. MANCHESTER SHIP CANAL CO. v. MANCHESTER RACE-COURSE CO. - - [1900] 2 Ch. 352
- Willmott v. Freehold House Property Co.*, (1884) 51 L. T. (N.S.) 552.  
Followed by North J. HUNT v. WORSFOLD - - - [1896] 2 Ch. 224
- Wilson's Estate, In re*, (1863) 3 De G. J. & S. 410  
But see 57 & 58 Vict. c. 46, s. 3.
- Wilson v. Atkinson* (1864) 4 De G. J. & S. 455  
Followed by Chitty J. STODDART v. SAVILE - - - [1894] 1 Ch. 480
- Wilson v. Caledonian Ry. Co.* (1850) 5 Ex. 822  
Dissented from by C. A. PALMER v. CALEDONIAN RY. CO. [1892] 1 Q. B. 823
- Wilson v. Coxwell* - (1883) 23 Ch. D. 764  
Applicable. *In re* BENTINCK [1897] 1 Ch. 673
- Wilson v. Greenwood*, (1818) 1 Sw. 471; 18 R. R. 118.  
Followed by Stirling J. COLLINS v. BARKER - - [1893] 1 Ch. 578
- Wilson v. Jones* - (1867) L. R. 2 Ex. 139  
Referred to. BARING BROTHERS & CO. v. THE MARINE INSURANCE CO. [1897] W. N. 164
- Wilson v. McMath*, (1819) 3 B. & Ald. 241; 22 R. R. 371.  
Overruled by 56 & 57 Vict. c. 73, s. 31 (1).
- Wilson v. Merry*, (1868) L. R. 1 H. L. (Sc.) 326, 331, 332.  
Observations of Lord Cairns explained by H. L. (E.) JOHNSON v. LINDSAY & CO. - - [1891] A. C. 371  
Referred to by H. L. (E.) HEDLEY v. PINKNEY & SONS STEAMSHIP CO. [1894] A. C. 222
- Wilson v. Miles Platting Building Society*, (1889) 22 Q. B. D. 381, n.  
Considered by Kekewich J. BRADBURY v. WILD - - [1893] 1 Ch. 377
- Wilson v. Morley* - - (1877) 5 Ch. D. 776  
Discussed by C. A. *In re* ROWE [1898] 1 Ch. 153
- Wilson v. Poe*, (1845) 2 J. & La T. 765; 9 Ir. Eq. Rep. 114.  
Discussed by H. L. (I.) HATTON v. HARRIS - [1892] A. C. 547, 554
- Wilson v. St. Giles, Camberwell* [1892] 1 Q. B. 1  
Followed by C. A. DAVIS v. GREENWICH BOARD OF WORKS [1895] 2 Q. B. 219
- Wilson v. Thornbury*, (1875) L. R. 10 Ch. 239, 249  
Not followed on one point. *In re* GLUBB C. A. [1900] 1 Ch. 354
- Wilson v. Turner* - - [1883] 22 Ch. D. 521  
Discussed and explained by Chitty J. *In re* BRYANT - [1894] 1 Ch. 324
- Wilson v. Wilson* (1872) L. R. 2 P. & D. 435, 442  
Approved by P. C. LE MESURIER v. LE MESURIER (No. 2) [1895] A. C. 517
- Wilson, Sons & Co. (Owners of The "Otto") v. Currie (Owners of The "Thorsa")*, (1893) 20 R. 876.  
Affirmed by H. L. (Sc.) [1894] A. C. 116
- Wilton v. Chambers* - (1837) 7 Ad. & E. 524  
Followed by Div. Ct. *In re* HULM & LEWIS - [1892] 2 Q. B. 261
- Winder, Ex parte* - - (1877) 6 Ch. D. 696  
Distinguished by C. A. GEDYE v. COMMISSIONERS OF WORKS [1891] 2 Ch. 630
- Windus v. Windus* (1856) 6 De G. M. & G. 549  
Referred to. MORRIS v. ATHERDEN [1894] W. N. P. 85
- "*Winestead, The*" - - [1895] P. 170  
Followed. THE "GLANYSTWYTH" [1899] 1 Ch. 118
- Winkle, In re* - - - [1894] 2 Ch. 519  
Referred to by North J. WINKLE v. BAILEY - - [1897] 1 Ch. 123, 127  
Distinguished. *In re* CLARKE C. A. [1898] 1 Ch. 336  
Referred to by Cozens-Hardy J. *In re* BROWN - [1900] 1 Ch. 489, 490  
Explained and distinguished by C. A. DAVIES v. THOMAS [1900] 2 Ch. 462
- Wintle, In re* - - - [1896] 2 Ch. 711  
See *In re* TURNEY C. A. [1899] 2 Ch. 739
- Wirrall Highway Board v. Newell*, [1895] 1 Q. B. 827.  
See 61 & 62 Vict. c. 29, s. 12.
- Withers v. Reynolds*, (1831) 2 B. & Ad. 882; 36 R. R. 782; Preface v.  
Referred to by C. A. RHYMNEY RY. CO. v. BRECON AND MERTHYR TYDFIL JUNCTION RY. CO. - [1900] W. N. 169
- Witted v. Galbraith* - [1893] 1 Q. B. 431  
Reversed by C. A. - [1893] 1 Q. B. 577  
Decision of C. A. applied and followed by Kekewich J. COLLINS v. NORTH BRITISH MERCANTILE INSURANCE CO. [1894] 3 Ch. 228, 237
- Wolmershausen v. Gullick* - [1893] 2 Ch. 514  
Followed by Stirling J. ROBINSON v. HARKIN [1896] 2 Ch. 415, 426  
Explained by C. A. ELLIS v. POND [1897] 1 Q. B. 426, 454
- Wolverhampton (Corporation) v. Bilston Commissioners*, [1891] 1 Ch. 315.  
Affirmed by C. A. [1891] W. N. 56
- Wolverhampton District Brewery, Ltd., In re*, [1899] W. N. 229.  
Form in, followed by Stirling J. WISSNER v. LEVISON [1900] W. N. 152
- Wolverhampton (Mayor of) v. Salop County Council*, (1895) 64 L. J. M. C. 181.  
See 61 & 62 Vict. c. 29, s. 12.

- Wolverhampton and Walsall Ry. Co. v. London and North-Western Ry. Co.*, (1873) L. R. 16 Eq. 433.  
 Referred to by A. L. SMITH J. RYAN v. MUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION [1892] 1 Ch. 427  
 This case reversed by C. A. [1893] 1 Ch. 116
- Wood, In re. Ex parte Fanshawe*, [1897] 1 Q. B. 314.  
 Considered by C. A. *In re DEAKIN* [1900] 2 Q. B. 489
- Wood, In re. Tullett v. Colville* [1894] 2 Ch. 310  
 Affirmed by C. A. - [1894] 3 Ch. 381
- Wood v. Boosey* (1867) L. R. 2 Q. B. 340  
 Not followed. LIVERPOOL GENERAL BROKERS' ASSOCIATION v. COMMERCIAL PRESS TELEGRAM BUREAUX [1897] 2 Q. B. 1
- Wood v. Gray & Sons* - (1891) 18 R. 1164  
 Affirmed by H. L. (Sc.) [1892] A. C. 576
- Wood v. Hewett* - (1846) 8 Q. B. 913  
 Distinguished. HOBSON v. GORRINGE C. A. [1897] 1 Ch. 182
- Wood v. Leadbitter* - (1845) 13 M. & W. 838  
 Distinguished. KEERISON v. SMITH [1897] 2 Q. B. 445
- Wood v. London County Council*, (1895) 64 L. J. (M.C.) 276.  
 Overruled by Div. Ct. ARMSTRONG v. LONDON COUNTY COUNCIL [1900] 1 Q. B. 416
- Wood v. North British Ry. Co.*, (1890) 28 Sco. L. R. 130.  
 Reversed by H. L. (Sc.) *sub nom.* NORTH BRITISH RY. CO. v. WOOD [1891] W. N. 130
- Wood v. Walsh & Sons* [1899] 1 Q. B. 1009  
 Distinguished by C. A. MASON v. A. R. DEAN, LD. - [1900] 1 Q. B. 770
- Wood v. Widnes Corporation* [1897] 2 Q. B. 357  
 Affirmed by C. A. - [1898] 1 Q. B. 463  
 Distinguished by Stirling J. NICHOLL v. EPPING URBAN COUNCIL [1899] 1 Ch. 844, 848
- Wood v. Wood* - (1868) L. R. 1 P. & M. 467  
 Followed by Wright J. *In re O'GORMAN* [1899] 2 Q. B. 62, 64
- Wood v. Wood* - [1891] P. 272  
 Followed by Jeune P. KETTLEWELL v. KETTLEWELL [1898] P. 138, 142
- Wood's Trade-mark, In re* (1886) 32 Ch. D. 262  
 Distinguished by Wright J. *In re DEXTER'S APPLICATION. In re WILLS' TRADE-MARKS* - [1893] 2 Ch. 262
- Woodford v. Charnley* - (1860) 28 Beav. 96  
 Discussed by C. A. *In re PATRICK* [1891] 1 Ch. 82, at p. 87
- Woodhead v. Gartness Mineral Co.*, (1877) 4 Rettie, 469.  
 Disapproved by H. L. (E.) JOHNSON v. LINDSAY & CO. - [1891] A. C. 371
- Woodhead v. Woodhead* - [1895] P. 343  
 Met by the Summary Jurisdiction (Married Women) Act, 1895 (57 & 58 Vict. c. 39).
- Woodhouse v. Meredith*, (1816) 1 Mer. 450; 15 R. R. 145.  
 Distinguished by C. A. *In re CLOWES* [1893] 1 Ch. 214
- Woodhouse v. Walker* (1880) 5 Q. B. D. 404  
 Followed. JENKS v. VISCOUNT CLIFDEN [1897] 1 Ch. 694
- Woods and Lewis' Contract, In re*, [1898] 1 Ch. 433.  
 Affirmed by C. A. [1898] 2 Ch. 211
- Woodward v. Darcy* - (1557) 1 Plow. 184  
 Discussed by Wright J. *Ex parte GILBERT* - [1898] 1 Q. B. 282
- Woodward v. Heseltine* [1891] 1 Ch. 464  
 Reversed by H. L. (E.) *sub nom.* SIMMONS v. WOODWARD [1892] A. C. 100
- Woolford's Estate (Trustee of) v. Levy*, [1892] 1 Q. B. 772.  
 Opinion of Cave J. at p. 776 dissented from by C. A. LEE v. DANGAR, GRANT & CO. - [1892] 2 Q. B. 837  
 Referred to by C. A. *In re THOMAS* [1899] 1 Q. B. 460, 463
- Woolley v. Colman* - (1882) 21 Ch. D. 169  
 Considered by Kekewich J. BREWER v. SQUARE - [1892] 2 Ch. 111
- Worley v. Kensington Vestry* [1892] 2 Ch. 404  
 Affected by 57 & 58 Vict. c. ccxxiii, s. 22 (2).
- Worral Waterworks Co. v. Lloyd*, (1866) L. R. 1 C. P. 719.  
 Observed upon. EARL JERSEY v. UXBIDGE RURAL SANITARY AUTHORITY [1891] W. N. 31;  
 but see *ib.* [1891] 3 Ch. 183
- Worthington v. Hulton* (1865) L. R. 1 Q. B. 63  
 Discussed. REG. v. LEIGH RURAL DISTRICT COUNCIL C. A. [1898] 1 Q. B. 536
- Wotton, In the Goods of*, (1874) L. R. 3 P. & D. 159.  
 Explained and distinguished by Jeune Pres. ROYLE v. HARRIS [1895] P. 163
- Wragg (E. J.), Ltd., In re* [1896] W. N. 166 (5)  
 Affirmed by C. A. - [1897] 1 Ch. 796
- Wray, In re* - (1887) 36 Ch. D. 138  
 Followed by Chitty J. *In re EDYE (A SOLICITOR)* - [1891] W. N. 1
- Wray v. Ellis* - (1858) 1 E. & E. 276  
 Distinguished and doubted by Div. Ct. REG. v. TITERTON [1895] 2 Q. B. 61
- Wrexham, Mold and Connah's Quay Ry. Co., In re*, [1898] 2 Ch. 663; [1899] W. N. 2 (5); [1899] 1 Ch. 205.  
 Affirmed by C. A. - [1899] 1 Ch. 440  
*See also on another point the next case.*
- Wrexham, Mold and Connah's Quay Ry. Co., In re*, [1899] W. N. 66.  
 Varied by C. A. [1900] 1 Ch. 261  
 Followed by Farwell J. *In re WREXHAM, MOLD AND CONNAH'S QUAY RY. CO.* [1900] 2 Ch. 436
- Wright v. Atkyns*, (1823) 1 T. & R. 143, 157; 24 R. R. 3.  
 Considered and explained. *In re WILLIAMS* - C. A. [1897] 2 Ch. 12

- Wright v. Bagnall* - - [1900] 2 Q. B. 240  
Distinguished by C. A. RENDALL *v.*  
HILL'S DRY DOCKS AND ENGINEERING CO.  
[1900] 2 Q. B. 245
- Wright v. Castle* (1817) 3 Mer. 12; 17 R. R. 3  
Observed upon. *In re* GREY  
[1891] W. N. 201
- Wright v. Ingle* - (1886) 16 Q. B. D. 379  
Discussed. HORNSEY DISTRICT COUNCIL  
*v.* SMITH - - [1896] 2 Ch. 244
- Wright v. Leonard* (1861) 11 C. B. (N.S.) 258  
Followed by BYRNE J. EARLE *v.* KINGS-  
COTE - - [1900] 1 Ch. 203;  
C. A. [1900] 2 Ch. 585
- Wright's Trusts, In re* - (1883) 24 Ch. D. 662  
Followed. *In re* SIMPSON. *In re* WHIT-  
CHURCH - C. A. [1897] 1 Ch. 256
- Wrotesley v. Adams* - (1558) Plowd. 191  
Applied. COWEN *v.* TRUEFIT, LD.  
[1898] 2 Ch. 551
- Wyatt, In re. White v. Ellis* [1892] 1 Ch. 188  
Affirmed by H. L. (E.) *sub nom.* WARD  
*v.* DUNCOMBE - - [1893] A. C. 369
- Wynstanley v. Lee* - (1818) 2 Swanst. 333  
Referred to. PERRY *v.* EAMES  
[1891] 1 Ch. 658
- "*Xantho*," *The* - (1887) 12 App. Cas. 503, 512  
Observations of Lord Herschell explained  
by C. A. THE "GLENDAARROCH"  
[1894] P. 226
- Yarmouth v. France* - (1887) 19 Q. B. D. 647  
Distinguished by C. A. LONDON AND  
EASTERN COUNTIES LOAN AND DISCOUNT  
CO. *v.* CREASEY [1897] 1 Q. B. 768
- Yarnold v. Wallis* - (1840) 4 Y. & C. (Ex.) 160  
Followed by North J. *In re* CHAMPION  
[1893] 1 Ch. 101
- Yates, In re* - - (1888) 38 Ch. D. 112  
Applied and followed by Kekewich J.  
*In re* BROOKE. BROOKE *v.* BROOKE  
(No. 2) - [1894] 2 Ch. 600  
Distinguished by Stirling J. SMALL *v.*  
NATIONAL PROVINCIAL BANK OF ENGLAND  
[1894] 1 Ch. 686
- Yates, In re. Batchelder v. Yates*, (1888) 38  
Ch. D. 172.  
Referred to by BYRNE J. BORN *v.*  
TURNER - [1900] 2 Ch. 211
- Yates v. Compton* - (1725) 2 P. Wms. 308  
Distinguished by Kekewich J. *In re*  
MARBETT - - [1891] 1 Ch. 707
- Yates v. Finn* - - (1880) 13 Ch. D. 839  
Discussed by Stirling J. DAW *v.*  
HERRING - - [1892] 1 Ch. 284
- Yates v. Higgins* - [1896] 1 Q. B. 166  
See *new Wild Animals in Captivity*  
Protection Act, 1900 (63 & 64 Vict. c. 33),  
s. 1.
- Yates v. Yates* - - (1860) 28 Beav. 637  
Considered by Kekewich J. *In re*  
SEARLE - - [1900] 2 Ch. 829
- "*Ydum*," *The* - - [1899] W. N. 41  
Affirmed by C. A. - [1899] P. 236  
Followed by Kekewich J. ATT.-GEN.  
*v.* COMPANY OF PROPRIETORS OF MAR-  
GATE PIER AND HARBOUR  
[1900] 1 Ch. 749
- Yerbury's Estate, In re*, (1889) 62 L. T. (N.S.)  
55.  
Followed by Stirling J. *In re* PARKER  
[1891] 1 Ch. 682
- Yetts, Re* - - - (1864) 33 Beav. 412  
Distinguished by North J. *In re* WARD  
[1896] 2 Ch. 31
- Yorkshire Tannery, &c. v. Eglinton Chemical Co.*,  
(1884) 54 L. J. (Ch.) 81.  
Followed by Kekewich J. COLLINS *v.*  
NORTH BRITISH MERCANTILE INSURANCE  
CO. - [1894] 3 Ch. 228
- Young v. Adams* - [1898] A. C. 469  
See *YOUNG v. WALLER* [1898] A. C. 661
- Young v. Austen* - (1869) L. R. 4 C. P. 553  
Followed by C. A. NEW LONDON CREDIT  
SYNDICATE, LD. *v.* NEALE  
[1898] 2 Q. B. 487
- Young v. Grote*, (1827) 4 Bing. 253; 29 R. R. 552  
Discussed. UNION CREDIT BANK *v.*  
MERSEY DOCKS AND HARBOUR BOARD  
[1899] 2 Q. B. 205, 210, 211, 214  
Commented on by H. L. (E.) SCHOL-  
FIELD *v.* LONDESBOROUGH (EARL OF)  
[1896] A. C. 514
- Young v. Rosenthal & Co.*, (1884) 7 Rep. Pat. Cas.  
29, 34.  
Referred to by Buckley J. WELSBACH  
INCANDESCENT GAS LIGHT CO. *v.* NEW  
INCANDESCENT (SUNLIGHT PATENT) GAS  
LIGHTING CO. - [1900] 1 Ch. 843;  
C. A. [1900] 2 Ch. 1
- Young v. South African and Australian Explora-  
tion and Development Syndicate*, [1896]  
2 Ch. 268.  
Not followed by Cozens-Hardy J. *In re*  
HADLEIGH CASTLE GOLD MINES, LD.  
[1900] 2 Ch. 419
- Young and Harston's Contract, In re*, (1885) 31  
Ch. D. 168, 174.  
Observed upon by C. A. *In re* WOODS  
AND LEWIS' CONTRACT [1898] 2 Ch. 211
- "*Zeta*," *The. Turner v. Mersey Dock and Harbour  
Board*, [1891] P. 216.  
Reversed by C. A. - [1892] P. 285  
C. A. reversed and Butt Pres. restored by  
H. L. (E.) - [1893] A. C. 468
- Zierenberg v. Labouchere* - [1893] 2 Q. B. 189  
Dictum explained. WAYNES MERTHYR  
CO. *v.* D. RADFORD & CO.  
[1896] 1 Ch. 29, 34



## TABLE OF STATUTES

JUDICIALLY CONSIDERED DURING THE YEARS 1891—1900.

- I. *Imperial Statutes*, p. cccci.      II. *Colonial Statutes*, p. ccclii.  
                III. *Foreign Laws*, p. ccclv.

## I.—IMPERIAL STATUTES.

## STATUTES.

1324.

17 Edw. 2, c. 10 (*De Prerogativa Regis*).  
See LUNACY. 30.

1540.

32 Hen. 8, c. 34 (*Covenants*), s. 1.  
See WAY-LEAVE.

— s. 2.  
See LANDLORD AND TENANT. 95.

1541-2.

33 Hen. 8, c. 9 (*Gaming*), s. 9.  
See GAMING. 2.

— s. 11.  
See GAMING. 34.

1547.

1 Edw. 6, c. 14 (*College—First Fruits*).  
See WILL. 202.

1550.

3 & 4 Edw. 6, c. 10 (*Ecclesiastical Law*).  
See ECCLESIASTICAL LAW. 28.

1571.

13 Eliz. c. 5 (*Fraudulent Conveyances*).  
See BANKRUPTCY. 4, 264.  
FRAUDULENT CONVEYANCES. 1, 4.

— ss. 1, 5.  
See FRAUDULENT CONVEYANCES. 2.

See **VENDOR AND PURCHASER.** 49.

13 Eliz. c. 10 (*Eleemosynary Corporations*).  
See ECCLESIASTICAL LAW. 44.

13 Eliz. c. 20 (*Ecclesiastical Pension*).  
See ECCLESIASTICAL LAW. 44.

1572.

14 Eliz. c. 11 (*Leases*).  
See ECCLESIASTICAL LAW. 44.

14 Eliz. c. 14 (*Hospital—Lease (Corporation)*  
—*Will*).  
See ECCLESIASTICAL LAW. 44.

## STATUTES—continued.

1573.

Scots Act, 1573, c. 55.  
See SCOTTISH LAW—Divorce. 12.

1584-5.

27 Eliz. c. 4 (*Fraudulent Conveyances*).  
See CHARITY. 34.

FRAUDULENT CONVEYANCE. 5.  
VENDOR AND PURCHASER. 90.  
— — s. 3.

See **VENDOR AND PURCHASER.** 49.

1586-7.

29 Eliz. c. 4 (*Sheriff*), s. 29.  
See SHERIFF. 7.

1601.

43 Eliz. c. 2 (*Poor Relief*).  
See POOR LAW. 9.

— — s. 1.  
See POOR LAW. 10.

RATES. 35.  
— — s. 2.

See COMPANY. 144.  
——— 8. 6.

See POOR LAW. 8.  
43 Eliz. c. 4 (*Charitable Uses*).

See CHARITY. 22,  
— s. 1.

1623-4.

21 Jac. 1, c. 16 (*Statute of Limitations*).  
[Statutes of Limitations. See Cases  
under LIMITATION, STATUTE OF.]  
See BAILMENT. 3.

BANKRUPTCY. 196.  
LUNACY. 22.

SETTLED LAND. 89.  
— — s. 3.  
*See* COMPANY. 120.  
LIMITATIONS, STATUTE OF. 25, 30.  
MORTGAGE. 57.  
SOLICITOR. 59.

## STATUTES—continued.

21 Jac. 1, c. 16, s. 7.

*See* WASTE. 6.

## 1662.

13 & 14 Car. 2, c. 12 (*Poor Relief*), s. 21.*See* POOR LAW. 11.

## 1663.

Scottish Act, 1663, c. 21 or c. 31.

*See* WATER. 30.

## 1670-1.

22 & 23 Car. 2, c. 10 (*Statute of Distribution*).*See* INTESTACY. 2.

## 1677.

29 Car. 2, c. 3 (*Statute of Frauds*).*See* FRAUDS, STATUTE OF, *passim*.

PRINCIPAL AND AGENT. 1, 12.

VENDOR AND PURCHASER. 71.

— s. 3.

*See* LANDLORD AND TENANT. 91.

— s. 4.

*See* BILL OF SALE. 38.

CONTRACT. 17.

FRAUDS, STATUTE OF. 3—8, 10—12,

14—16, 17, 20, 21.

SETTLEMENT. 30.

STOCK EXCHANGE. 1.

VENDOR AND PURCHASER. 14, 30,

50.

— ss. 4, 7.

*See* CONFLICT OF LAWS. 9.

FRAUDS, STATUTE OF. 22.

— s. 7.

*See* FRAUDS, STATUTE OF. 23.

— ss. 7, 8.

*See* FRAUDS, STATUTE OF. 24.

TRUST. 3.

— s. 17.

*See* SALE OF GOODS. 2.29 Car. 2, c. 7 (*Sunday Observance*).*See* Cases under SUNDAY.29 Car. 2, c. 8 (*Benefice*).*See* RENT-CHARGE. 3.

## 1688.

1 Wm. & M. c. 30 (*Gold Mines*), ss. 1, 2, 3, 4.*See* MINES. 10.

## 1693.

5 Wm. & M. c. 6 (*Gold Mines*) ss. 2, 3.*See* MINES. 10.

## 1696-7.

8 & 9 Will. 3, c. 11 (*Bonds*), s. 8.*See* PRACTICE. 292.

## 1705.

4 & 5 Anne, c. 3 (*Landlord and Tenant*), s. 27.*See* HUSBAND AND WIFE. 11.

## STATUTES—continued.

4 & 5 Anne, c. 16 (*Limitations*).

(c. 3 in 1 Rev. Stat. p. 784).

*See* INTERNATIONAL LAW. 2.

PRACTICE. 201.

— ss. 12, 13.

*See* HUSBAND AND WIFE. 27.

PRACTICE. 292.

— s. 19.

*See* LIMITATIONS, STATUTE OF. 1.

SOLICITOR. 59.

## 1708.

7 Anne, c. 12 (*Diplomatic Privileges*), s. 3.*See* INTERNATIONAL LAW. 2.7 Anne, c. 20 (*Middlesex Registry*), s. 1.*See* BANKRUPTCY. 193.

## 1709.

8 Anne, c. 14 (c. 18 in Rev. Stat.), (*Landlord and Tenant*), s. 1.*See* BANKRUPTCY. 104.

DISTRESS. 9.

## 1710.

9 Anne, c. 14 (*Private*).*See* GAMING. 7.9 Anne, c. 22 (*London*).*See* PARISH.

## 1711.

10 Anne, c. 11 (*London*).*See* PARISH.

## 1713.

13 Anne, c. 13 (*Benefice*).*See* ECCLESIASTICAL LAW. 2.

## 1716-7.

3 Geo. 1, c. 15 (*Sheriff*).*See* SHERIFF. 7.

## 1721.

8 Geo. 1, c. 24 (*Merchant Shipping*), s. 7.*See* SHIPPING. 266.

## 1728.

2 Geo. 2, c. 28 (*Gaming*), s. 9.*See* GAMING. 2.

## 1730-1.

4 Geo. 2, c. 28 (*Surrender of Lease*), s. 2.*See* BANKRUPTCY. 60.

— s. 5.

*See* RENT-CHARGE. 4.

— s. 6.

*See* LANDLORD AND TENANT. 74.

## 1732-3.

6 Geo. 2, c. 28 (*National Debt*).*See* LIMITATIONS, STATUTE OF. 33.

## 1735-6.

9 Geo. 2, c. 36 (*Mortmain*).*See* CHARITY. 5, 42.



**STATUTES—continued.**

9 Geo. 2, c. 36, ss. 1, 3, 4.

See CHARITY. 46.

— s. 3.

See HIGHWAY. 9.

HUSBAND AND WIFE. 36.

**1737.**

11 Geo. 2, c. 19 (*Distress for Rent*), s. 10.

See DISTRESS. 10.

**1742.**

16 Geo. 2, c. 18 (*Justice of the Peace*), ss. 1, 3.

See JUSTICES. 46.

**1743.**

17 Geo. 2, c. 3 (*Poor*), s. 1.

See HIGHWAY. 25.

17 Geo. 2, c. 38 (*Poor Relief*), s. 4.

See RATES. 9.

— s. 11.

See RATES. 65.

**1745.**

19 Geo. 2, c. 37 (*Marine Insurance*), s. 1.

See INSURANCE—MARINE. 82.

**1751-2.**

25 Geo. 2, c. 36 (*Disorderly Houses*), ss. 5, 6, 7.

See JUSTICES. 1.

**1757-60.**

33 Geo. 2, c. xii. (*National Debt*).

See MINES. 30.

**1766.**

7 Geo. 3, c. 37 (*Local*), s. 51.

See STATUTES. 7.

7 Geo. 3, c. lxxiii.

See BICYCLE. 2.

**1768.**

9 Geo. 3, c. 16 (*Nullum Tempus*).

See NEW SOUTH WALES. 34.

**1774.**

14 Geo. 3, c. 48 (*Insurance, Life*), ss. 1, 2.

See INSURANCE. 14, 14a.

— s. 2.

See CONTRACT. 14.

14 Geo. 3, c. lvi. (*Local*) (*Hull Docks Act*).

See PRACTICE. 271.

**1780-1.**

21 Geo. 3, c. 49 (*Sunday Observance*), ss. 1, 2.

See SUNDAY. 3.

**1794.**

35 Geo. 3, c. 73 (*Rates*).

See SHERIFF. 11.

35 Geo. 3, c. 101 (*Poor Law*), s. 2.

See POOR LAW. 6.

**STATUTES—continued.****1795-8.**

36 Geo. 3, c. 52 (*Death Duties*), s. 12.

See REVENUE. 47.

— ss. 12, 19.

See REVENUE. 122, 126.

— s. 14.

See REVENUE. 127.

— ss. 23, 37.

See REVENUE. 123.

36 Geo. 3, c. xxxix. (*Inclosure*).

See WATER. 45.

**1797-8.**

38 Geo. 3, c. 5 (*Land Tax*), s. 4.

See REVENUE. 118.

**1799-1800.**

39 & 40 Geo. 3, c. 98 (*Thellusson's Act*).

See ACCUMULATIONS. 1, 2, 5, 7.

— s. 1.

See SETTLED LAND. 124.

— s. 2.

See ACCUMULATIONS. 1, 4.

**1801.**

41 Geo. 3, c. 23 (*Poor-rate*), s. 1.

See RATES. 6.

41 Geo. 3, c. 90 (*Supreme Court, Ireland*), s. 6.

See CONTEMPT OF COURT. 1.

41 Geo. 3, c. lxxxvi. (*Newcastle Pilotage*), s. 6.

See SHIPPING—Pilotage. 190.

**1801-2.**

42 Geo. 3, c. 119 (*Lottery*), 1.

See LOTTERY. 1.

— s. 2.

See LOTTERY. 2.

**1803.**

43 Geo. 3, c. 151 (*Cotton Manufacture, Scotland*), s. 15.

See COMPANY. 202.

**1804.**

44 Geo. 3, c. 12 (*Exportation and Importation*), s. 41.

See REVENUE. 122.

44 Geo. 3, c. 98 (*Stamp Act*), Sched. B.

See REVENUE. 165.

**1808.**

48 Geo. 3, c. 55 (*House Tax*), Sched. B.

See REVENUE. 62, 63.

— Sched. B, Case IV.

See REVENUE. 53, 57, 58.

— Sched B, r. 2.

See REVENUE. 64, 65.

48 Geo. 3, c. 55, Sched. B.

See REVENUE. 51, 53, 57, 58, 62, 63.

## STATUTES—continued.

48 Geo. 3, c. 55, Sched. B. r. 2.

See REVENUE. 64, 65.

— — — Sched. B, r. 3.

See REVENUE. 59, 60.

— — — Sched. B, r. v.

See REVENUE. 55, 56.

— — — Sched. B, r. 6.

See REVENUE. 61.

48 Geo. 3, c. 149 (*Stamps*), s. 38.

See REVENUE. 131.

## 1811-2.

52 Geo. 3, c. 101 (*Charity*).

See CHARITY. 8, 20, 40.

52 Geo. 3, c. 150 (*Medicine Stamps*), ss. 1, 2, Sch.

See REVENUE. 165.

## 1813-4.

54 Geo. 3, c. 56 (*Copyright—Sculpture*).

See COPYRIGHT. 41.

54 Geo. 3, c. 159 (*Harbours*), s. 11.

See SHIPPING. 154.

## 1815.

55 Geo. 3, c. 184 (*Stamps*), s. 2.

See REVENUE. 126.

— — — s. 37.

See REVENUE. 131, 134.

55 Geo. 3, c. 191 (*Apothecaries*), s. 20.

See MEDICAL PRACTITIONER. 4.

## 1816.

56 Geo. 3, c. 56 (*Death Duties*), s. 115.

See REVENUE. 25.

## 1817.

57 Geo. 3, c. 25 (*House Tax*), s. 1.

See REVENUE. 59, 60.

57 Geo. 3, c. 93 (*Distress—Costs*), s. 1.

See DISTRESS. 14.

57 Geo. 3, c. xxix. (*Michael Angelo Taylor's Act*), s. 65.

See BURIAL. 3.

LONDON. 87, 88.

PRACTICE. 140.

— — — s. 72.

See LONDON. 7.

— — — c. xxix.

See LONDON. 93.

— — — s. 80.

See LONDON. 95.

— — — ss. 80, 82.

See LONDON. 94.

— — — s. 82.

See LONDON. 92.

— — — ss. 80—85, 96.

See BURIAL. 3.

## STATUTES—continued.

## 1818.

56 Geo. 3, c. 45 (*Church Building*), ss. 75, 77, 84, 85.

See ECCLESIASTICAL LAW. 54.

— — — s. 80.

See ECCLESIASTICAL LAW. 13.

58 Geo. 3, c. 70 (*Disorderly Houses*), s. 7.

See JUSTICES. 1.

## 1819.

59 Geo. 3, c. 12 (*Poor*), s. 17.

See HIGHWAY. 9.

— — — s. 19.

See STATUTES. 24.

## 1821.

1 & 2 Geo. 4, c. cxiv. (*Church Rate, St. Nicholas Harwich*), s. 8.

See ECCLESIASTICAL LAW. 7.

## 1822.

3 Geo. 4, c. 72 (*Church Building*), ss. 36, 37.

See ECCLESIASTICAL LAW. 54.

3 Geo. 4, c. cvi. (*Sale of Bread*), s. 4.

See BREAD.

## 1823.

4 Geo. 4, c. 60 (*Lottery*), s. 41.

See LOTTERY. 2.

## 1824.

5 Geo. 4, c. 44 (*House Tax*), s. 4.

See REVENUE. 59, 60.

5 Geo. 4, c. 83 (*Vagrancy*), s. 3.

See POOR LAW. 10.

VAGRANCY. 1.

— — — s. 4.

See VAGRANCY. 1.

— — — s. 9.

See JUSTICES. 4.

## 1825.

6 Geo. 4, c. 50 (*County Juries*), ss. 1, 2, 8, 25, 52.

See CORONER. 3.

6 Geo. 4, c. 81 (*Licensing Act*), s. 26.

See LICENSING ACTS. 28.

6 Geo. 4, c. 94 (*Factors*), s. 4.

See FACTOR. 8.

6 Geo. 4, c. 120 (*Judicature, Scotland*), s. 40.

See APPEAL. 21.

SCOTTISH LAW. 39.

SHIPPING. 110, 144.

6 Geo. 4, c. 125 (*Pilotage*), s. 59.

See SHIPPING. 191.

6 Geo. 4, c. 129 (*Workmen*), s. 3.

See CRIMINAL LAW. 3.

## 1827.

7 & 8 Geo. 4, c. 17 (*Distress—Costs*).

See DISTRESS. 14.

7 & 8 Geo. 4, c. 53 (*Excise*), s. 71.

See JUSTICES. 7.

## STATUTES—continued.

## 1828.

9 Geo. 4, c. 14 (*Contracts—Limitations*), s. 1.  
See LIMITATIONS, STATUTE OF. 3.

9 Geo. 4, c. 61 (*Licensing*).  
See JUSTICES. 34.

— s. 1.  
See LICENSING ACTS. 10.

— s. 4.  
See MANDAMUS. 3.

— ss. 4, 11, 14.  
See VENDOR AND PURCHASER. 32.

— ss. 4, 14.  
See LICENSING ACTS. 5, 26.

— ss. 9, 27.  
See LICENSING ACTS. 52.

— s. 14.  
See LICENSING ACTS. 3, 7, 11, 24, 27.

— ss. 27, 29.  
See LICENSING ACTS. 50.

— ss. 27, 37.  
See LICENSING ACTS. 12.

— s. 29.  
See LICENSING ACTS. 48.

9 Geo. 4, c. 83 (*Australian Courts*).  
See NEW SOUTH WALES. 34.

9 Geo. 4, c. cxiii. (*Covent Garden Market*).  
See PRACTICE. 113.

## 1829.

10 Geo. 4, c. 56 (*Friendly Societies*).  
See FRIENDLY SOCIETY. 7.

10 Geo. 4, c. xv. (*Special Act*), ss. 22, 26.  
See REVENUE. 75.

## 1830.

11 Geo. 4 and 1 Will. 4, c. 40 (*Administration of Estates*).  
See CHARITY. 47.

11 Geo. 4 & 1 Will. 4, c. 68 (*Carriers*), ss. 1, 6, 8.  
See RAILWAY. 16.

## 1831.

1 & 2 Will. 4, c. 37 (*Truck*), s. 23.  
See MASTER AND SERVANT. 105.

— ss. 1—4, 24.  
See MASTER AND SERVANT. 104.

1 & 2 Will. 4, c. 43 (*Turnpike—Scotland*).  
See BUILDING. 1.

1 & 2 Will. 4, c. lii. (*West India Docks*), s. 101.  
See DOCK. 1.

## 1832.

2 & 3 Will. 4, c. 45 (*Reform Act*), ss. 20, 27.  
See PARLIAMENT. 50.

— s. 27.  
See PARLIAMENT. 41, 138.

— s. 36.  
See PARLIAMENT. 26.

2 & 3 Will. 4, c. 65 (*Representation of the People*), s. 11.  
See PARLIAMENT. 118.

## STATUTES—continued.

2 & 3 Will. 4, c. 71 (*Prescription*), ss. 1, 2, 3.  
See LIGHT AND AIR. 5.

— s. 2.  
See EASEMENT. 4.  
WAY, RIGHT OF. 3.

— ss. 2, 3.  
See LIGHT AND AIR. 6.

— s. 3.  
See LIGHT AND AIR. 9, 10, 13, 20.

— ss. 3, 4.  
See LIGHT AND AIR. 10, 25.

2 Will. 4, c. viii. (*Liverpool New Cattle Market*).  
See LIVERPOOL COURTS. 3.

## 1833.

3 & 4 Will. 4, c. 15 (*Dramatic Copyright*).  
See INFUNCTION. 9.

— ss. 1, 2.  
See COPYRIGHT. 7, 22, 29.

— s. 2.  
See COPYRIGHT. 12.

3 & 4 Will. 4, c. 27 (*Real Property Limitation*).  
ss. 1, 2, 3, 20.

See COPYHOLD. 1.  
LIMITATIONS, STATUTE OF. 34.

— s. 2.  
See COPYHOLD. 8.

— EASEMENT. 7.

— ss. 2, 42.  
See SETTLED LAND. 89.

— s. 3.  
See BOUNDARY. 1.

— ss. 2, 7.  
See LIMITATIONS, STATUTE OF. 43.

— ss. 2, 42.  
See SETTLED LAND. 8, 9.

— s. 3.  
See COMPANY. 63.

— LIMITATIONS, STATUTE OF. 32.

— s. 9.  
See COPYHOLD. 7.

— s. 25.  
See TRUSTEE. 84.

— s. 26.  
See LIMITATIONS, STATUTE OF. 16.

— s. 29.  
See LIMITATIONS, STATUTE OF. 33.

— s. 34.  
See ESTOPPEL. 10.

— LIMITATIONS, STATUTE OF. 26.

— ss. 34, 42.  
See WILL. 23.

— s. 40.  
See LIMITATIONS, STATUTE OF. 39.

— s. 42.  
See LIMITATIONS, STATUTE OF. 2.

3 & 4 Will. 4, c. 42 (*Limitations*), s. 2.  
See LIGHT AND AIR. 15.

— s. 3.  
See COPYHOLD. 4.

— LIMITATIONS, STATUTE OF. 39, 41.

— s. 5.  
See HUSBAND AND WIFE. 27.

— LIMITATIONS, STATUTE OF. 7.

## STATUTES—continued.

- 3 & 4 Will. 4, c. 42, s. 8.  
See PRACTICE. 77, 80.
- s. 28.  
See COMPANY. 141, 153.  
INTEREST. 1.
- s. 29.  
See MINES. 3.
- 3 & 4 Will. 4, c. 74 (*Fines and Recoveries*), ss. 1, 77.  
See DIVORCE. 126.  
HUSBAND AND WIFE. 36.
- ss. 1, 15, 19, 40, 77.  
See HUSBAND AND WIFE. 5.
- s. 15.  
See WILL. 80.
- s. 77.  
See COPYHOLD. 6.
- ss. 77, 78, 80, 84.  
See SCOTTISH LAW. 20.
- s. 91.  
See HUSBAND AND WIFE. 31.
- 3 & 4 Will. 4, c. 90 (*Lighting and Watching*), ss. 5—15.  
See STREETS. 13.
- s. 33.  
See LAND. 1.  
MINES. 5.  
STREETS. 12, 14.
- 3 & 4 Will. 4, c. 105 (*Dower*), s. 12.  
See DOWER. 2.
- 3 & 4 Will. 4, c. 106 (*Inheritance*), ss. 1, 2.  
See TESTACY. 1.
- s. 3.  
See WILL. 112.

## 1834.

- 4 & 5 Will. 4, c. 76 (*Poor Law*), s. 4.  
See POOR LAW. 6.
- ss. 15, 52, 54.  
See POOR LAW. 10.
- s. 61.  
See INFANT. 18.
- 4 & 5 Will. 4, c. 85 (*Intoxicating Liquors*), s. 17.  
See LICENSING ACTS. 28.

## 1835.

- 5 & 6 Will. 4, c. 41 (*Gaming*), s. 1.  
See GAMING. 7.
- 5 & 6 Will. 4, c. 50 (*Highways*).  
See HIGHWAY. 30.
- s. 27.  
See HIGHWAY. 25, 26.
- s. 33.  
See HIGHWAY. 11.
- s. 51.  
See COMMON. 2.
- s. 56.  
See HIGHWAY. 4.
- s. 65.  
See HIGHWAY. 7.
- 67, 68.  
See SEWERS. 15.
- s. 78.  
See HIGHWAY. 3.

## STATUTES—continued.

- 5 & 6 Will. 4, c. 50, s. 85.  
See HIGHWAY. 2.
- s. 109.  
See HIGHWAY. 10.  
LIMITATIONS, STATUTE OF. 19.  
WAY, RIGHT OF. 9.
- 5 & 6 Will. 4, c. 54 (*Marriage*), s. 2.  
See MARRIAGE. 1.
- 5 & 6 Will. 4, c. 83 (*Patents*).  
See PATENT. 48.

## 1836.

- 6 & 7 Will. 4, c. 32 (*Building Societies*).  
See BUILDING SOCIETY. 8, 11, 21.
- 6 & 7 Will. 4, c. 71 (*Tithes*), s. 80.  
See TITHE. 1.
- 6 & 7 Will. 4, c. 85 (*Marriage*), s. 2.  
See MARRIAGE. 1.
- 6 & 7 Will. 4, c. 86 (*Births' and Deaths' Registration*), s. 38.  
See DIVORCE. 81.
- 6 & 7 Will. 4, c. 96 (*Parochial Assessment*).  
See RATES. 54.
- s. 1.  
See RATES. 6, 24, 28, 29, 30, 49.
- 6 & 7 Will. 4, c. xxv. (*Local*), s. 82.  
See STREETS. 39.
- 6 & 7 Will. 4, c. cxxxvi. (*London Cemetery Company*), s. 4.  
See ECCLESIASTICAL LAW. 29.

## 1837.

- 7 Will. 4 and 1 Vict. c. 26 (*Wills*), s. 3.  
See WILL. 178.
- s. 6.  
See ESTATE PUR AUTRE VIE. 1, 2.
- s. 9.  
See CONFLICT OF LAWS. 17.  
PROBATE. 14, 20.
- ss. 9, 10, 27.  
See POWERS. 17, 23.
- s. 11.  
See PROBATE. 150.
- s. 15.  
See WILL. 30.
- s. 18.  
See CONFLICT OF LAWS. 16.
- ss. 20, 22.  
See WILL. 187.
- s. 21.  
See PROBATE. 81, 112.
- s. 22.  
See WILL. 181.
- ss. 23, 24.  
See WILL. 16.
- s. 24.  
See CHARITY. 48.  
PROBATE. 15.  
WILL. 143, 195.
- ss. 24, 27.  
See POWERS. 29.

**STATUTES—continued.**

- 7 Will. 4 and 1 Vict. c. 26, s. 26.  
*See WILL.* 220.  
 — s. 27.  
*See INSURANCE.* 19.  
 LIMITATIONS, STATUTE OF. 24.  
 POWERS. 2, 22, 25, 35.  
 — s. 28.  
*See WILL.* 79.  
 — s. 29.  
*See WILL.* 70.  
 — s. 33.  
*See REVENUE.* 40.  
 WILL. 56, 114.  
 7 Will. 4 and 1 Vict. c. 28 (*Real Property Limitation*).  
*See LIMITATIONS, STATUTE OF.* 28.  
 7 Will. 4 and 1 Vict. c. 45 (*Parish Notices*), s. 2.  
*See HIGHWAY.* 25.  
 7 Will. 4 and 1 Vict. c. 55 (*Sheriffs*).  
*See SHERIFF.* 7.

**1838.**

- 1 & 2 Vict. c. 56 (*Poor Relief, Ireland*), ss. 54, 57.  
*See PARLIAMENT.* 106.  
 1 & 2 Vict. c. 74 (*Landlord and Tenant*).  
*See LANDLORD AND TENANT.* 45.  
 — ss. 11, 13.  
*See WILL.* 86.  
 — s. 13.  
*See JUDGMENT DEBT.* 1, 2.  
 WILL. 87.  
 1 & 2 Vict. c. 110 (*Judgments*), ss. 11, 13.  
*See WILL.* 86, 87.  
 — s. 14.  
*See BANKRUPTCY.* 62, 141.  
 CHARGING ORDER. 1, 3.  
 LUNACY. 7.  
 — ss. 14, 15.  
*See CHARGING ORDER.* 2, 5.  
 — ss. 17, 18, 20.  
*See COSTS.* 36.  
 MINES. 3.  
 1 & 2 Vict. c. c.  
*See ECCLESIASTICAL LAW.* 24.

**1839.**

- 2 & 3 Vict. c. 11 (*Judgments*), s. 7.  
*See MORTGAGE.* 23.  
 2 & 3 Vict. c. 47 (*Metropolitan Police*), s. 60.  
*See LONDON.* 89.  
 — s. 77.  
*See MUSIC AND DANCING.* 5.  
 2 & 3 Vict. c. 54 (*Infants*).  
*See INFANT.* 17.  
 2 & 3 Vict. c. 67 (*Patents*).  
*See PATENT.* 48.  
 2 & 3 Vict. c. 71 (*Metropolitan Police Courts*), s. 40.  
*See DETINUE.* 2.  
 ESTOPPEL. 8.  
 POLICE. 1.

**STATUTES—continued.**

- 2 & 3 Vict. c. 71, s. 47.  
*See ADULTERATION.* 16.  
 — s. 50.  
*See POOR LAW.* 9.

**1840.**

- 3 & 4 Vict. c. 60 (*Ecclesiastical Commission*), s. 19.  
*See ECCLESIASTICAL LAW.* 4.  
 3 & 4 Vict. c. 61 (*Beerhouses*), s. 1.  
*See LICENSING ACTS.* 22.  
 3 & 4 Vict. c. 65 (*Admiralty Court*), s. 6.  
*See SHIPPING.* 177, 180.  
 3 & 4 Vict. c. 72 (*Marriage*), s. 5.  
*See MARRIAGE.* 1.  
 3 & 4 Vict. c. 82 (*Judgments*), s. 1.  
*See LUNACY.* 7.  
 WILL. 67.  
 3 & 4 Vict. c. 86 (*Church Discipline*).  
*See ECCLESIASTICAL LAW.* 63.  
 — s. 15.  
*See ECCLESIASTICAL LAW.* 45.  
 3 & 4 Vict. c. 88 (*Police*), ss. 3, 27, 28.  
*See COUNTY COUNCILS.* 13.  
 — s. 2.  
*See LICENSING ACTS.* 25.  
 3 & 4 Vict. c. cxviii. (*Clyde Navigation*), s. 11.  
*See PIER.*

**1841.**

- 4 & 5 Vict. c. 38 (*School Sites*), s. 6, 10.  
*See STREETS.* 29, 31.  
 4 & 5 Vict. c. 39 (*Ecclesiastical Commissioners*), s. 25.  
*See PARLIAMENT.* 42.

**1842.**

- 5 & 6 Vict. c. 35 (*Income Tax*).  
*See REVENUE.* 97.  
 — s. 6.  
*See REVENUE.* 95.  
 — ss. 41—44.  
*See REVENUE.* 90, 96.  
 — s. 45.  
*See REVENUE.* 100.  
 — ss. 52, 55.  
*See REVENUE.* 93.  
 — ss. 60, 102.  
*See REVENUE.* 92.  
 — s. 60, Sched. A.  
*See REVENUE.* 74, 106, 114.  
 — s. 61, Sched. A.  
*See REVENUE.* 57, 76, 77, 108, 109, 113.  
 — s. 63, Sched. B, r. 7.  
*See REVENUE.* 99.  
 — s. 100, Sched. D.  
*See REVENUE.* 67, 70, 72, 73, 81, 83—85, 86, 88, 89, 98, 106, 110.  
 — s. 102.  
*See REVENUE.* 75.  
 — ss. 111, 113, 118.  
*See BANKRUPTCY.* 185.

**STATUTES—continued.**

- 5 & 6 Vict. c. 35, s. 146.  
*See* REVENUE. 70, 111.  
 — s. 167.  
*See* REVENUE. 78, 79.  
 — Sched. A, r. 6.  
*See* REVENUE. 104.  
 — Sched. D.  
*See* REVENUE. 69, 70, 73, 82, 87, 98.  
 — Sched. B.  
*See* REVENUE. 70, 80.  
 5 & 6 Vict. c. 44 (*Licensing*), s. 1.  
*See* LICENSING ACTS. 15, 44.  
 VENDOR AND PURCHASER. 32.  
 5 & 6 Vict. c. 45 (*Copyright*).  
*See* COPYRIGHT. 24, 32.  
 — s. 2.  
*See* COPYRIGHT. 4.  
 — ss. 2, 3, 18.  
*See* COPYRIGHT. 19, 34.  
 — ss. 2, 11.  
*See* COPYRIGHT. 1.  
 — ss. 2, 11, 13, 15, 17.  
*See* COPYRIGHT. 2.  
 — ss. 2, 15.  
*See* COPYRIGHT. 28.  
 — ss. 2, 20.  
*See* COPYRIGHT. 29.  
 — ss. 13, 24.  
*See* COPYRIGHT. 10, 19, 24.  
 — s. 15.  
*See* COPYRIGHT. 5, 28.  
 — ss. 15, 23, 26.  
*See* COPYRIGHT. 11.  
 — s. 18.  
*See* COPYRIGHT. 3.  
 — s. 19.  
*See* COPYRIGHT. 6, 30, 35.  
 — s. 26.  
*See* COPYRIGHT. 13.  
 5 & 6 Vict. c. 54 (*Tithe*), s. 16.  
*See* SETTLED LAND. 105.  
 5 & 6 Vict. c. 79 (*Railway Passenger Duty*),  
 s. 2, Sched.  
*See* RAILWAY. 21.  
 5 & 6 Vict. c. 82 (*Stamp Duties*), s. 2.  
*See* REVENUE. 25.  
 5 & 6 Vict. c. 97 (*Double Costs*), s. 2.  
*See* COPYRIGHT. 12, 13.  
 5 & 6 Vict. c. ci. (*Royal Exchange*).  
*See* ECCLESIASTICAL LAW. 24.  
 5 & 6 Vict. c. 108 (*Ecclesiastical Leasing Act*).  
*See* ECCLESIASTICAL LAW. 35.  
 VENDOR AND PURCHASER. 56 A.  
 WASTE. 4.  
 — ss. 6, 20.  
*See* ECCLESIASTICAL LAW. 44.

**1843.**

- 6 & 7 Vict. c. 18 (*Registration of Voters*), ss. 15, 38.  
*See* PARLIAMENT. 28.  
 — s. 17.  
*See* PARLIAMENT. 94.

**STATUTES—continued.**

- 6 & 7 Vict. c. 18, ss. 17, 100.  
*See* PARLIAMENT. 95.  
 — s. 41.  
*See* PARLIAMENT. 146.  
 — s. 51.  
*See* CRIMINAL LAW. 57.  
 PARLIAMENT. 141.  
 6 & 7 Vict. c. 36 (*Fine Art Societies*), s. 1.  
*See* RATES. 25, 36.  
 6 & 7 Vict. c. 68 (*Theatres*).  
*See* THEATRE. 1.  
 6 & 7 Vict. c. 73 (*Solicitor*), s. 2.  
*See* SOLICITOR. 139.  
 — ss. 2, 35, 36.  
*See* COUNTY COURT. 48.  
 SOLICITOR. 137.  
 — ss. 21, 23, 24.  
*See* SOLICITOR. 110.  
 — s. 32.  
*See* SOLICITOR. 119.  
 — s. 37.  
*See* SOLICITOR. 31, 41, 59.  
 — ss. 37—41.  
*See* SOLICITOR. 73, 81.  
 — s. 38.  
*See* SOLICITOR. 68.  
 — s. 41.  
*See* SOLICITOR. 22, 23, 67.  
 6 & 7 Vict. c. 82 (*Evidence*), s. 5.  
*See* DISCOVERY. 12.  
 6 & 7 Vict. c. 86 (*London Hackney Carriages*).  
*See* HACKNEY CARRIAGE. 1.  
 — ss. 8, 22.  
*See* HACKNEY CARRIAGE. 3.  
 6 & 7 Vict. c. 94 (*Foreign Jurisdiction*).  
*See* JAPAN. 1.  
 6 & 7 Vict. c. 96 (*Libel*).  
*See* PRACTICE. 142.  
 — s. 2.  
*See* DEFAMATION. 14.  
 — s. 5.  
*See* CRIMINAL LAW. 61.

**1844.**

- 7 & 8 Vict. c. 12 (*International Copyright*).  
*See* COPYRIGHT. 24.  
 — ss. 2, 3, 10.  
*See* COPYRIGHT. 2.  
 — ss. 10, 11, 12, 23, 24, 25, 28.  
*See* BANKER. 20.  
 7 & 8 Vict. c. 101 (*Poor Law*), s. 56.  
*See* LUNACY. 31.

**1845.**

- 8 & 9 Vict. c. 16 (*Companies Clauses*).  
*See* RAILWAY. 31.  
 — ss. 14, 15.  
*See* COMPANY. 292.  
 — s. 60.  
*See* COMPANY. 274.  
 — s. 65.  
*See* RAILWAY. 37.  
 — ss. 71, 85, 86, 99.  
*See* COMPANY. 24.

**STATUTES—continued.**

- 8 & 9 Vict. c. 16, s. 135.  
*See RAILWAY.* 41.
- 8 & 9 Vict. c. 18 (*Lands Clauses*).  
*See RAILWAY.* 15.
- ss. 3, 18, 68, 84.  
*See LANDS CLAUSES ACTS.* 20.
- ss. 7—69.  
*See CHARITY.* 5.
- ss. 10, 11.  
*See RENT-CHARGE.* 4.
- ss. 34, 35.  
*See LANDS CLAUSES ACTS.* 13, 14.
- s. 35.  
*See RAILWAY.* 11, 14.
- s. 68.  
*See LANDS CLAUSES ACTS.* 4, 7.
- s. 69.  
*See ECCLESIASTICAL LAW.* 43.
- LANDS CLAUSES ACTS. 1.  
 UNIVERSITY. 4.
- ss. 69, 76, 80.  
*See LANDS CLAUSES ACTS.* 2.
- s. 79.  
*See VENDOR AND PURCHASER.* 94.
- ss. 80, 82.  
*See CHARITY.* 14.
- LANDS CLAUSES ACTS. 15, 16, 18, 19.
- ss. 85—87.  
*See LANDS CLAUSES ACTS.* 21.
- ss. 85, 121.  
*See LANDS CLAUSES ACTS.* 5, 6.
- s. 92.  
*See LANDS CLAUSES ACTS.* 8, 10.
- ss. 95, 96, 97.  
*See LANDS CLAUSES ACTS.* 3.
- ss. 99—107.  
*See COMMON.* 8.
- ss. 127—129.  
*See LANDS CLAUSES ACTS.* 22, 23.
- s. 133.  
*See RATES.* 40, 41.
- 8 & 9 Vict. c. 19 (*Lands Clauses—Scotland*),  
 s. 90.  
*See LANDS CLAUSES ACTS.* 9, 24.
- s. 120.  
*See LANDS CLAUSES ACTS.* 24.
- 8 & 9 Vict. c. 20 (*Railway Clauses*), s. 6.  
*See RAILWAY.* 3.
- ss. 6, 78, 81.  
*See RAILWAY.* 14.
- s. 16.  
*See RAILWAY.* 34, 66.
- s. 21.  
*See RAILWAY.* 68.
- s. 32.  
*See RAILWAY.* 33.
- s. 35.  
*See RAILWAY.* 11.
- ss. 46, 49, 50, 61.  
*See RAILWAY.* 56.

**STATUTES—continued.**

- 8 & 9 Vict. c. 20, s. 48.  
*See RAILWAY.* 10.
- ss. 53, 54.  
*See RAILWAY.* 57.
- s. 65.  
*See RAILWAY.* 37.
- s. 68.  
*See RAILWAY.* 5, 9.
- SEWERS. 11.
- ss. 68, 73.  
*See RAILWAY.* 6.
- ss. 75—85.  
*See MINES.* 19.
- ss. 77, 78, 79.  
*See RAILWAY.* 12.
- ss. 77—85.  
*See RAILWAY.* 13.
- s. 78.  
*See REVENUE.* 179.
- ss. 103, 104, 108, 109.  
*See RAILWAY.* 20.
- s. 140.  
*See WATER.* 33, 34.
- s. 145.  
*See JUSTICES.* 2.
- 8 & 9 Vict. c. 33 (*Railways Clauses, Scotland*),  
 ss. 46, 49, 60.  
*See LANDS CLAUSES ACTS.* 9.
- s. 65.  
*See SCOTTISH LAW.* 13.
- 8 & 9 Vict. c. 70 (*Church Building*), s. 7.  
*See ECCLESIASTICAL LAW.* 5, 17.
- 8 & 9 Vict. c. 75 (*Libel*), s. 2.  
*See PRACTICE.* 142.
- 8 & 9 Vict. c. 76 (*Legacy Duty*), s. 4.  
*See REVENUE.* 120, 121, 131.
- 8 & 9 Vict. c. 109 (*Gaming*).  
*See CONTRACT.* 14.
- GAMING. 17, 22, 25, 26.
- ss. 3, 6, First Sched.  
*See GAMING.* 2.
- s. 18.  
*See BANKRUPTCY.* 259.
- GAMING. 27, 28.
- STOCK EXCHANGE. 3, 6.
- 8 & 9 Vict. c. 118 (*Inclosure*), ss. 34, 73, 76.  
*See INCLOSURE.* 4.
- s. 105.  
*See INCLOSURE.* 1.
- 8 & 9 Vict. c. 127 (*Small Debts*), s. 8.  
*See BANKRUPTCY.* 102.
- 1846.**
- 9 & 10 Vict. c. 66 (*Poor Law*), s. 1.  
*See POOR LAW.* 12, 20.
- 9 & 10 Vict. c. 93 (*Death by Accident*).  
*See NEGLIGENCE.* 1.
- PRACTICE. 97, 264.
- SHIPPING. 167.
- ss. 1, 3.  
*See PUBLIC AUTHORITIES PROTECTION.* 3.
- 9 & 10 Vict. c. 95 (*County Courts*), s. 113.  
*See COUNTY COURT.* 48.
- SOLICITOR. 137.

## STATUTES—continued.

1847.

10 & 11 Vict. c. 14 (*Markets and Fairs Clauses*),  
s. 13.See MARKETS AND FAIRS. 2, 3.  
PEDLAR.— s. 42.  
See MARKETS AND FAIRS. 1.10 & 11 Vict. c. 15 (*Gasworks Clauses*).  
See CANADA. 9.— s. 16.  
See BANKRUPTCY. 157.  
GAS. 1, 3.— s. 29.  
See SUPPORT. 1.10 & 11 Vict. c. 17 (*Waterworks Clauses*).  
See WATER. 29.— ss. 3, 37—43.  
See WATER. 12.— ss. 6, 22, 25, 27.  
See WATER. 14.— s. 12.  
See NUISANCES. 42.— ss. 18—27.  
See MINES. 18.— ss. 28, 29.  
See WATER. 17, 19.— ss. 28, 30, 31.  
See WATER. 18.— ss. 28, 48, 51, 52.  
See WATER. 16.— ss. 38—41.  
See WATER. 13.— ss. 43, 53, 70—74.  
See WATER. 25.— s. 68.  
See WATER. 26.— ss. 70, 71, 74.  
See WATER. 32, 34.— s. 72.  
See WATER. 22.— ss. 74, 85.  
See WATER. 33.— s. 93.  
See BUILDING. 3.10 & 11 Vict. c. 27 (*Harbours, Docks, and Piers  
Clauses*), ss. 23, 33, 83, 84, 85.

See TRADERS. 3.

— s. 56.  
See JUSTICES. 29.

— SHIPPING. 254.

— s. 85.  
See DOCK. 2.10 & 11 Vict. c. 34 (*Towns Improvement*), s. 61.  
See HIGHWAY. 1.— s. 63.  
See STREETS. 19.10 & 11 Vict. c. 89 (*Town Police Clauses*), s. 32.  
See FIRE. 1.— s. 33.  
See FIRE. 2.— s. 66.  
See JUSTICES. 2.

## STATUTES—continued.

10 & 11 Vict. c. 96 (*Trustee Relief*).  
See PRACTICE. 138.

1848.

11 & 12 Vict. c. 42 (*Administration of Justice*),  
s. 5.

See CRIMINAL LAW. 59.

— s. 25.  
See GAMING. 5.11 & 12 Vict. c. 43 (*Summary Jurisdiction*).  
See JUSTICES. 6.— s. 1.  
See LONDON. 17.— ss. 1, 10.  
See JUSTICES. 24.— s. 5.  
See JUSTICES. 5.— s. 10.  
See MINES. 16.— s. 11.  
See FISHERY. 11.— HUSBAND AND WIFE. 86, 91.  
JUSTICES. 21, 22.— LONDON. 3.  
NUISANCES. 14.— s. 22.  
See JUSTICES. 3.— s. 27.  
See JUSTICES. 37.11 & 12 Vict. c. 44 (*Justices' Protection*), s. 5.  
See CRIMINAL LAW. 63.

— EXTRADITION. 1.

— ss. 8, 9.  
See DEFAMATION. 21.

— MUSIC AND DANCING. 3.

11 & 12 Vict. c. 63 (*Public Health*).  
See SEWERS. 13.— ss. 2, 49, 90.  
See SETTLED LAND. 28.— s. 83.  
See ECCLESIASTICAL LAW. 13.11 & 12 Vict. c. 78 (*Criminal Law*), s. 2.  
See CRIMINAL LAW. 22.11 & 12 Vict. c. 91 (*Poor Law Audit*), s. 4.  
See POOR LAW. 10.11 & 12 Vict. c. 99 (*Inclosure*), ss. 13, 14.  
See INCLOSURE. 1.11 & 12 Vict. c. 111 (*Poor Law*), s. 1.  
See POOR LAW. 20.11 & 12 Vict. c. clxiii. (*City of London Sewers*),  
ss. 33—42, 116.

See CORPORATION. 5.

— s. 169.  
See STATUTES. 7.

1849.

12 & 13 Vict. c. 14 (*Poor Rates*), s. 2.  
See RATES. 62.12 & 13 Vict. c. 18 (*Petty Sessions*), s. 1.  
See CORPORATION. 20.12 & 13 Vict. c. 26 (*Leases*).  
See SETTLED LAND. 78.



## STATUTES—continued.

- 12 & 13 Vict. c. 45 (*Quarter Sessions*), ss. 5, 6.  
See JUSTICES. 37.
- s. 11.  
See APPEAL. 41.
- 12 & 13 Vict. c. 51 (*Judicial Factors*), ss. 4, 13.  
See TRUSTEE. 65.
- 12 & 13 Vict. c. 68 (*Consular Marriages*).  
See CONFLICT OF LAWS. 10.
- 12 & 13 Vict. c. 92 (*Cruelty to Animals*), s. 2.  
See JUSTICES. 5.
- ss. 2, 29.  
See CRIMINAL LAW. 6—8.
- s. 14.  
See JUSTICES. 20.
- 12 & 13 Vict. c. 103 (*Poor Law*), s. 16.  
See POOR LAW. 6, 7.
- 12 & 13 Vict. c. 104 (*Poor Law, Ireland*), s. 19.  
See PARLIAMENT. 110.
- 12 & 13 Vict. c. 106 (*Bankruptcy*), s. 125, 141.  
See BANKRUPTCY. 131.

## 1850.

- 13 & 14 Vict. c. 43 (*Court of Chancery of Lancaster*), s. 15.  
See LANCASTER. 3, 4.  
PRACTICE. 269.
- 13 & 14 Vict. c. 57 (*Vestries*), ss. 6, 7.  
See QUO WARRANTO. 4.
- 13 & 14 Vict. c. 60 (*Trustees*), s. 2.  
See TRUSTEE. 7.
- ss. 2, 31, 35. (See now s. 50 of *Trustee Act*, 1893.)  
See TRUSTEE. 114.
- s. 9. (See now s. 26 of the *Trustee Act*, 1893.)  
See TRUSTEE. 113.
- ss. 9, 20, 30.  
See PARTITION. 9.
- ss. 24, 25.  
See TRUSTEE. 103.
- ss. 25, 35.  
See TRUSTEE. 116.
- s. 25. (See now s. 35 of the *Trustee Act*, 1893.)
- s. 28.  
See COMPANY. 303.
- s. 35.  
See COMPANY. 303.
- 13 & 14 Vict. c. 69 (*Representation of the People, Ireland*).  
See PARLIAMENT. 100.
- s. 11.  
See PARLIAMENT. 107.
- ss. 26, 113.  
See PARLIAMENT. 93.
- s. 36.  
See PARLIAMENT. 96.
- s. 110.  
See PARLIAMENT. 113.
- s. 111.  
See PARLIAMENT. 105, 106.
- s. 113.  
See PARLIAMENT. 97.

## STATUTES—continued.

- 13 & 14 Vict. c. 115 (*Friendly Societies*), s. 2.  
See FRIENDLY SOCIETY. 11.

## 1851.

- 14 & 15 Vict. c. 28 (*Common Lodging-houses*).  
See LODGING-HOUSE. 1, 2.
- 14 & 15 Vict. c. 36 (*House Duty*).  
See REVENUE. 51, 55, 62—64.
- s. 2.  
See REVENUE. 53.
- Sched.  
See REVENUE. 61, 65.
- 14 & 15 Vict. c. 99 (*Evidence*), s. 13. }  
See LANCASTER. 2.
- 14 & 15 Vict. c. xci. (*City of London Sewers*),  
s. 35.  
See ECCLESIASTICAL LAW. 25.
- ss. 53, 57.  
See CORPORATION. 5.

## 1852.

- 15 & 16 Vict. c. 12 (*Copyright*), ss. 3, 4.  
See COPYRIGHT. 20, 23, 27.
- 15 & 16 Vict. c. 24 (*Lord St. Leonards' Act*),  
s. 1.  
See PROBATE. 17, 19.
- 15 & 16 Vict. c. 51 (*Copyhold*), s. 45.<sup>1</sup>  
See COPYHOLD. 10.
- 15 & 16 Vict. c. 55 (*Trustees*), s. 2. (But see  
now s. 50 of the *Trustee Act*, 1893.)
- s. 6.  
See TRUSTEE. 114.
- 15 & 16 Vict. c. 72 (*New Zealand Constitution*).  
See NEW ZEALAND. 7.
- 15 & 16 Vict. c. 76 (*Common Law Procedure*),  
s. 210.  
See DISTRESS. 16.
- s. 212.  
See BANKRUPTCY. 60.
- s. 214.  
See PRACTICE. 298.
- 15 & 16 Vict. c. 81 (*County Rates*), ss. 21, 26,  
31, 32, 33, 34.  
See RATES. 17.
- 15 & 16 Vict. c. 83 (*Patents*), s. 25.  
See PATENT. 41, 42.
- 15 & 16 Vict. c. 85 (*Burial*), ss. 25, 26.  
See BURIAL. 5.
- ss. 30, 32.  
See BURIAL. 1.
- s. 36.  
See ECCLESIASTICAL LAW. 6.
- s. 44.  
See ECCLESIASTICAL LAW. 19.
- 15 & 16 Vict. c. lxxvii. (*London (City) Small  
Debts Extension*), s. 39.  
See LONDON. 35, 36.
- 15 & 16 Vict. c. clx. (*New River Company*)  
ss. 36, 38, 40.  
See WATER. 29.

## STATUTES—continued.

## 1853.

- 16 & 17 Vict. c. 30 (*Certiorari*), s. 5.  
See CRIMINAL LAW. 5.
- 16 & 17 Vict. c. 33 (*London Hackney Carriages*), s. 17.  
See HACKNEY CARRIAGE. 2.
- 16 & 17 Vict. c. 34 (*Income Tax*).  
See REVENUE. 72, 96, 97.
- ss. 1 and 40.  
See REVENUE. 102.
- s. 2, Sched. D.  
See REVENUE. 70, 71, 73, 83, 89, 90, 92, 96, 101, 110.
- s. 40.  
See COMPANY. 120.  
REVENUE. 103.
- Sched. B.  
See TITHE. 3.
- 16 & 17 Vict. c. 41 (*Common Lodging-houses*).  
See LODGING-HOUSE. 1, 2.
- 16 & 17 Vict. c. 51 (*Succession Duty*), ss. 1, 2, 10, 32.  
See REVENUE. 47.
- ss. 1, 15, 20, 28.  
See REVENUE. 182.
- s. 2.  
See REVENUE. 185.
- ss. 2, 7, 8, 16.  
See REVENUE. 26.
- ss. 2, 15, 17, 18.  
See REVENUE. 183.
- ss. 2, 17.  
See REVENUE. 186.
- ss. 2, 20.  
See VENDOR AND PURCHASER. 2.
- ss. 2, 42.  
See REVENUE. 184.
- 16 & 17 Vict. c. 97 (*Lunacy*), s. 54.  
See COUNTY COUNCIL. 4.
- [*This Act was repealed by Lunacy Act, 1890* (53 Vict. c. 5), s. 342.]
- 16 & 17 Vict. c. 70 (*Lunacy Regulation*), ss. 124, 135.  
See INTESACY. 1.
- [*This Act was repealed by Lunacy Act, 1890* (53 Vict. c. 5), s. 342.]
- 16 & 17 Vict. c. 119 (*Betting*).  
See CRIMINAL LAW. 59.
- s. 1.  
See GAMING. 5, 6, 13, 19.
- ss. 1, 2, 3, 11.  
See GAMING. 2.
- ss. 1, 3.  
See GAMING. 3, 5, 10, 11, 12, 14, 15, 33.  
JUSTICES. 6.
- ss. 1, 3, 4.  
See GAMING. 8.
- 16 & 17 Vict. c. 119, s. 3.  
See GAMING. 16, 18.  
PARTNERSHIP. 4.

## STATUTES—continued.

- 16 & 17 Vict. c. 134 (*Burials*), s. 3.  
See ECCLESIASTICAL LAW. 13.
- s. 6.  
See BURIAL. 5.
- 16 & 17 Vict. c. 137 (*Charitable Trusts*), s. 17.  
See CHARITY. 6, 10.
- ss. 24, 26.  
See CHARITY. 5, 9.
- s. 41.  
See COUNTY COURT. 44.
- s. 62, 66.  
See CHARITY. 3, 8, 15.
- 16 & 17 Vict. c. clxvi. (*East London Water-works*).  
See WATER. 34.

## 1854.

- 17 & 18 Vict. c. 31 (*Railway and Canal Traffic*).  
See RAILWAY. 65.
- ss. 1, 2.  
See RAILWAY. 64.
- s. 2.  
See RAILWAY. 50, 53, 54.
- s. 6.  
See RAILWAY. 49.
- s. 7.  
See RAILWAY. 16.
- 17 & 18 Vict. c. 36 (*Bills of Sale*).  
See BILL OF SALE. 44.  
COMPANY. 29.
- 17 & 18 Vict. c. 38 (*Gaming*), s. 4.  
See GAMING. 4, 34.
- 17 & 18 Vict. c. 60 (*Cruelty to Animals*), s. 3.  
See CRIMINAL LAW. 6—8.
- 17 & 18 Vict. c. 82 (*Lancaster Court*), s. 7.  
See LANCASTER. 3.
- 17 & 18 Vict. c. 91 (*Valuation of Lands, Scotland*), s. 6.  
See SCOTTISH LAW. 24.
- 17 & 18 Vict. c. 102 (*Corrupt Practices Prevention*), s. 12.  
See CRIMINAL LAW. 4.
- 17 & 18 Vict. c. 104 (*Merchant Shipping*), ss. 2, 303, 318.  
See SHIPPING. 2.
- ss. 2, 353.  
See SHIPPING. 195.
- ss. 2, 388.  
See SHIPPING. 188.
- s. 21.  
See SHIPPING. 168.
- ss. 43, 69.  
See SHIPPING. 175.
- s. 50.  
See SHIPPING. 174.
- ss. 62, 63, 64, 103.  
See ALIEN. 2.  
SHIPPING. 216.
- ss. 109, 243.  
See SHIPPING. 183.

**STATUTES—continued.**

- 17 & 18 Vict. c. 104, s. 171.  
See SHIPPING. 264.
- s. 182.  
See SHIPPING. 223.
- s. 361.  
See JUSTICES. 51.
- ss. 376, 379.  
See SHIPPING. 187.
- ss. 458, 476.  
See SHIPPING. 239.
- s. 506.  
See SHIPPING. 171.
- 17 & 18 Vict. c. 112 (*Literary and Scientific Institutions*), s. 30.  
See SCIENTIFIC SOCIETY. 1.
- ss. 30, 33.  
See SCIENTIFIC SOCIETY. 2.
- 17 & 18 Vict. c. 113 (*Locke King's Act*).  
See EXECUTOR. 17, 18, 20.  
MORTGAGE. 75.  
PARTNERSHIP. 41.  
WILL. 85, 86, 87, 147.
- 17 & 18 Vict. c. cii. (*Llandudno Improvement Act*), s. 68.  
See RATES. 45.
- 17 & 18 Vict. c. cxxiv. (*Bradford Waterworks*), s. 44.  
See WATER. 39.

**1855.**

- 18 & 19 Vict. c. 43 (*Infants' Settlements*), s. 1.  
See INFANT. 38.
- ss. 1, 2.  
See INFANT. 41.
- 18 & 19 Vict. c. 63 (*Friendly Societies*).  
See FRIENDLY SOCIETY. 1.
- ss. 9, 13, 15, 25, 27.  
See FRIENDLY SOCIETY. 4.
- 18 & 19 Vict. c. 90 (*Costs*), s. 2.  
See REVENUE. 124.
- 18 & 19 Vict. c. 111 (*Bill of Lading*), s. 1.  
See SHIPPING. 41.
- s. 3.  
See SHIPPING. 32.
- 18 & 19 Vict. c. 120 (*Metropolis Management*), s. 6.  
See LONDON, 99, 100.
- s. 58.  
See NUISANCES. 41.
- ss. 68, 69, 85, 86, 250.  
See NUISANCES. 17, 61, 62.
- ss. 68, 250.  
See LONDON. 57.
- ss. 69, 73.  
See LONDON. 63.
- 69, 135, 138.  
See LONDON. 65.
- s. 85.  
See LANDLORD AND TENANT. 25.
- LONDON. 54.
- s. 96.  
See LONDON. 91.

**STATUTES—continued.**

- 18 & 19 Vict. c. 120, s. 98.  
See HIGHWAY. 1.
- s. 105.  
See LONDON. 74, 75, 77, 82, 83, 84.
- ss. 105, 250.  
See LONDON. 78, 79, 80, 81, 85.
- s. 119.  
See LONDON. 7, 88.
- s. 128.  
See LONDON. 50.
- ss. 135, 138, 140, 250.  
See LONDON. 62.
- s. 161.  
See COMPANY. 144.
- RATES. 63.
- ss. 161, 250.  
See SHERIFF. 11.
- s. 250.  
See LONDON. 55, 56, 58, 60, 68.
- 18 & 19 Vict. c. 121 (*Nuisances Removal*), ss. 8, 11, 12.  
See NUISANCES. 17.
- [*This Act is repealed by the Public Health (London) Act, 1891.*]
- 18 & 19 Vict. c. 122 (*Metropolitan Building*).  
[*This Act is repealed by the London Building Act, 1894.*]
- ss. 3, 82, 85.  
See LONDON. 20.
- ss. 3, 83.  
See LONDON. 24.
- ss. 6, 38.  
See LONDON. 30.
- s. 19.  
See LONDON. 27.
- s. 26.  
See LONDON. 7.
- ss. 27, 49, 51.  
See LONDON. 29.
- ss. 45, 46, 105.  
See LONDON. 10, 18.
- s. 73.  
See LONDON. 12.
- 18 & 19 Vict. c. 124 (*Charitable Trusts*), s. 29.  
See CHARITY. 1, 5, 7.
- 29, 48.  
See CHARITY. 9.

**1856.**

- 19 & 20 Vict. c. 20 (*Bank Notes*).  
See BANKER. 20.
- 19 & 20 Vict. c. 47 (*Joint Stock Companies*).  
See COMPANY. 184.
- 19 & 20 Vict. c. 56 (*Exchequer Court*), s. 6.  
See REVENUE. 172.
- 19 & 20 Vict. c. 58 (*Registration of Votes (Scotland)*), s. 46.  
See PARLIAMENT. 31, 62, 78.

## STATUTES—continued.

- 19 & 20 Vict. c. 60 (*Mercantile Law—Scotland*),  
s. 6.  
See SCOTTISH LAW. 16, 32.
- 19 & 20 Vict. c. 79 (*Bankruptcy—Scotland*),  
s. 102.  
See SCOTTISH LAW. 2.
- ss. 102, 103, 132, 152, 155.  
See SCOTTISH LAW. 1.
- 19 & 20 Vict. c. 97 (*Mercantile Law*), s. 5.  
See PRINCIPAL AND SURETY. 3.  
SHIPPING. 67.
- s. 14.  
See TRUSTEE. 59.
- 19 & 20 Vict. c. 112 (*Metropolis Management*),  
s. 8.  
See LONDON. 99.
- 19 & 20 Vict. c. 120 (*Settled Estates*), s. 23.  
See PARTITION. 2.

## 1857.

- 20 & 21 Vict. c. 43 (*Justices*), s. 2.  
See JUSTICES. 33, 35.
- 20 & 21 Vict. c. 57 (*Married Woman—Malins' Act*).  
See DIVORCE. 126.  
HUSBAND AND WIFE. 4, 34, 35, 36.  
SETTLEMENT. 20.
- 20 & 21 Vict. c. 71 (*Lunacy—Scotland*).  
See SCOTTISH LAW. 26.
- 20 & 21 Vict. c. 77 (*Probate*), s. 24.  
See PROBATE. 13.
- s. 26.  
See PROBATE. 86, 103.
- s. 29.  
See ECCLESIASTICAL LAW. 29.
- ss. 54—58.  
See COUNTY COURT. 11.
- s. 63.  
See ESTOPPEL. 9.
- s. 70.  
See PROBATE. 60.
- s. 73.  
See PROBATE. 26, 27, 29, 31, 33, 39, 41,  
43, 44, 45, 49, 54, 56, 68, 70, 71, 73.
- s. 79.  
See PROBATE. 141.
- s. 81.  
See PROBATE. 4.
- s. 83.  
See PROBATE. 3.
- ss. 105, 113.  
See ANNUITY. 3.
- 20 & 21 Vict. c. 79 (*Probate—Ireland*), ss. 94,  
95. Additional Rules for Registrars.  
See W. N. 1897 (Jan. 9), p. 9.
- 20 & 21 Vict. c. 81 (*Burial*), s. 23.  
See ECCLESIASTICAL LAW. 10, 12.
- s. 25.  
See ECCLESIASTICAL LAW. 26, 29.
- 20 & 21 Vict. c. 85 (*Matrimonial Causes*).  
See DIVORCE. 14.
- ss. 7, 22, 25, 26.  
See DIVORCE. 85.

## STATUTES—continued.

- 20 & 21 Vict. c. 85, s. 17.  
See DIVORCE. 9.
- s. 21.  
See DIVORCE. 65.  
PROBATE. 106.
- ss. 21, 25, 26.  
See HUSBAND AND WIFE. 11, 18.
- s. 22.  
See DIVORCE. 7.  
HUSBAND AND WIFE. 84.
- s. 27.  
See DIVORCE. 114.
- s. 28.  
See DIVORCE. 38—41, 99.
- ss. 28, 33.  
See DIVORCE. 42.
- s. 30.  
See DIVORCE. 27, 32.
- ss. 30, 33, 59.  
See DIVORCE. 30.
- s. 31.  
See DIVORCE. 19, 29, 71, 105, 106,  
109.
- ss. 31, 32.  
See DIVORCE. 62.
- s. 32.  
See DIVORCE. 2, 6, 12, 13, 103.
- ss. 32, 35.  
See DIVORCE. 18.
- s. 33.  
See BANKRUPTCY. 166, 263.
- s. 35.  
See DIVORCE. 20.  
INFANT. 26.
- ss. 35, 45.  
See DIVORCE. 132.
- s. 45.  
See DIVORCE. 23, 121, 123, 124, 126.
- s. 51.  
See DIVORCE. 50, 52, 58.
- s. 52.  
See DIVORCE. 116.
- ss. 54, 58.  
See PROBATE. 143.
- s. 79.  
See PROBATE. 141.
- s. 83.  
See PROBATE.
- 20 & 21 Vict. c. clvii. (*Lord Mayor's Court*).  
See LONDON. 43, 45.
- s. 11.  
See LONDON. 44.

## 1858.

- 21 & 22 Vict. c. 27 (*Lord Cairns' Act*).  
See INJUNCTION. 32.  
LANCASTER. 1.  
SUPPORT. 1.
- s. 2.  
See LIGHT AND AIR. 12.

## STATUTES—continued.

- 21 & 22 Vict. c. 44 (*Universities Estates*), ss. 27, 28.  
See UNIVERSITY. 4.
- 21 & 22 Vict. c. 57 (*Ecclesiastical Leasing Act*).  
See ECCLESIASTICAL LAW. 35.
- VENDOR AND PURCHASER, 56 A.
- ss. 1, 2, 10.  
See ECCLESIASTICAL LAW. 44.
- 21 & 22 Vict. c. 90 (*Medical Practitioners*), ss. 28, 29.  
See JUSTICES. 47.
- MEDICAL PRACTITIONER. 2.
- s. 40.  
See MEDICAL PRACTITIONER. 3.
- 21 & 22 Vict. c. 93 (*Legitimacy Declaration*), ss. 4, 5, 7, 8, 11.  
See LEGITIMACY. 1.
- 21 & 22 Vict. c. 95 (*Probate Court*), s. 11.  
See COUNTY COURT. 11.
- PROBATE. 143.
- s. 23.  
See PROBATE. 103.
- 21 & 22 Vict. c. xii. (*Merthyr Tydfil Water*).  
See WATER. 27.
- 21 & 22 Vict. c. xcii. (*Mersey Docks*), s. 221.  
See SHIPPING. 193.
- 21 & 22 Vict. c. cxlix. (*Clyde Navigation*), s. 76.  
See PIER.

## 1859.

- 22 & 23 Vict. c. 17 (*Vexatious Indictments*), s. 1.  
See CRIMINAL LAW. 59.
- GAMING. 5.
- 22 & 23 Vict. c. 35 (*Law of Property*), s. 14.  
See WILL. 35.
- 22 & 23 Vict. c. 49 (*Poor Law—Payment of Debts*), s. 1.  
See POOR LAW. 3.
- ss. 1, 4.  
See POOR LAW. 1, 2.
- 22 & 23 Vict. c. 61 (*Matrimonial Causes*), s. 4.  
See DIVORCE. 20.
- INFANT. 26.
- ss. 4, 5.  
See DIVORCE. 18.
- s. 5.  
See DIVORCE. 95, 120, 121, 122, 124, 126, 128.
- s. 25.  
See DIVORCE. 127.
- 22 & 23 Vict. c. cxxxiii. (*Watermen's and Lightermen's Company*).  
See THAMES. 4.
- s. 56.  
See CERTIORARI. 1.
- ss. 66, 80.  
See THAMES. 12.
- By-law 99.  
See THAMES. 5.

## STATUTES—continued.

## 1860.

- 23 & 24 Vict. c. 15 (*Death Duties*), s. 4.  
See REVENUE. 131.
- 23 & 24 Vict. c. 27 (*Licensing*), s. 19.  
See LICENSING ACTS. 28.
- 23 & 24 Vict. c. 32 (*Brawling*), s. 2.  
See ECCLESIASTICAL LAW. 46.
- 23 & 24 Vict. c. 38 (*Law of Property*), s. 1.  
See WILL. 87.
- s. 10.  
See EXECUTOR. 6, 39.
- s. 13.  
See CHARITY. 47.
- 23 & 24 Vict. c. 90 (*Excise*), s. 14.  
See REVENUE. 49.
- [But see now the Customs and Inland Revenue Act, 1893 (56 & 57 Vict. c. 7), s. 2.]
- 23 & 24 Vict. c. 93 (*Tithes*), s. 28.  
See PARISH COUNCILS. 1.
- 23 & 24 Vict. c. 125 (*Gas—Metropolis*), ss. 4, 14—19, 39.  
See BANKRUPTCY. 157.
- GAS. 3.
- 23 & 24 Vict. c. 126 (*Common Law Procedure*), s. 1.  
See LANDLORD AND TENANT. 60.
- s. 17.  
See APPEAL. 29.
- 23 & 24 Vict. c. 127 (*Solicitors*), s. 26.  
See COUNTY COURT. 43.
- SOLICITOR. 137, 139.
- s. 28.  
See BANKRUPTCY. 67, 68.
- PRACTICE. 234.
- SOLICITOR. 7—14, 105.
- 23 & 24 Vict. c. 136 (*Charitable Trusts*), ss. 2, 4, 6, 8.  
See CHARITY. 4.
- 23 & 24 Vict. c. 142 (*Union of Benefices*).  
See BURIAL. 6.
- 23 & 24 Vict. c. 144 (*Divorce Court*), s. 5.  
See DIVORCE. 61.
- ss. 5, 7.  
See DIVORCE. 27.
- s. 6.  
See DIVORCE. 123.
- s. 7.  
See DIVORCE. 25, 54.

## 1861.

- 24 & 25 Vict. c. 10 (*Admiralty Court*), s. 5.  
See SHIPPING. 180.
- s. 7.  
See SHIPPING. 201.
- s. 8.  
See SHIPPING. 214.
- s. 10.  
See SHIPPING. 267.
- s. 15.  
See SHIPPING. 57.

## STATUTES—continued.

- 24 & 25 Vict. c. 10, s. 34.  
See SHIPPING. 101.
- 24 & 25 Vict. c. 91 (*Stamps*), s. 17.  
See GAME. 1.
- 24 & 25 Vict. c. 96 (*Larceny*), ss. 3, 100.  
See FACTOR. 7.
- s. 44.  
See CRIMINAL LAW. 55.
- s. 68.  
See COMPANY. 106.
- CRIMINAL LAW. 12.
- s. 75.  
See BILL OF EXCHANGE. 13.
- CRIMINAL LAW. 36.
- ss. 75, 76.  
See CRIMINAL LAW. 37.
- EXTRADITION. 7.
- s. 83.  
See CRIMINAL LAW.
- EXTRADITION. 3.
- s. 88.  
See SUMMARY JURISDICTION ACT, 1899  
(62 & 63 Vict. c. 22), Sched.
- s. 91.  
See CRIMINAL LAW. 40.
- s. 95.  
See CRIMINAL LAW. 31.
- s. 100.  
See BANKRUPTCY. 226.
- CRIMINAL LAW. 41.
- 24 & 25 Vict. c. 97 (*Malicious Damage*), s. 16.  
See SUMMARY JURISDICTION ACT, 1899  
(62 & 63 Vict. c. 22), Sched.
- s. 51.  
See CRIMINAL LAW. 42.
- s. 52.  
See CRIMINAL LAW. 43, 44.
- 24 & 25 Vict. c. 98 (*Forgery*), s. 38.  
See CRIMINAL LAW. 34.
- 24 & 25 Vict. c. 99 (*Coinage Offences*), ss. 9, 12,  
37.  
See CRIMINAL LAW. 58.
- 24 & 25 Vict. c. 100 (*Offences against the  
Person*), s. 18.  
See CRIMINAL LAW. 47.
- s. 43.  
See HUSBAND AND WIFE. 80, 99.
- JUSTICES. 19.
- s. 45.  
See MASTER AND SERVANT. 71.
- 24 & 25 Vict. c. 109 (*Salmon Fishery*), s. 8.  
See FISHERY. 7.
- 24 & 25 Vict. c. 114 (*Wills*), s. 1.  
See POWERS. 17, 23.

## 1862.

- 25 & 26 Vict. c. 42 (*Roll's Act*).  
See LANCASTER. 1.
- 25 & 26 Vict. c. 53, s. 17.  
See LAND. 3.

## STATUTES—continued.

- 25 & 26 Vict. c. 61 (*Highways*), s. 35.  
See HIGHWAY. 26.
- 25 & 26 Vict. c. 63 (*Merchant Shipping*), s. 3.  
See SHIPPING. 175.
- s. 18.  
See SHIPPING. 223.
- s. 54.  
See SHIPPING. 163, 169, 170, 171.
- ss. 66, 72 (*now s. 496 of the Act of  
1894*).  
See SHIPPING. 26.
- 25 & 26 Vict. c. 68 (*Fine Arts Copyright*).  
See COPYRIGHT. 1, 24, 32.
- ss. 1, 2, 4, 6.  
See COPYRIGHT. 39.
- ss. 1, 4.  
See COPYRIGHT. 19.
- ss. 1, 6.  
See COPYRIGHT. 37.
- ss. 3, 4, 6.  
See COPYRIGHT. 9.
- s. 4.  
See COPYRIGHT. 24.
- ss. 4, 12.  
See COPYRIGHT. 25.
- s. 6.  
See COPYRIGHT. 16, 17, 40.
- 25 & 26 Vict. c. 89 (*Companies*), s. 4.  
See COMPANY. 259, 309.
- CRIMINAL LAW. 13.
- ss. 4, 199.  
See BUILDING SOCIETY. 21.
- ss. 6, 8, 30, 43.  
See COMPANY. 69.
- ss. 6, 18.  
See COMPANY. 192, 258, 260.
- ss. 7, 8, 12, 25, 38.  
See COMPANY. 277.
- ss. 7, 14.  
See COMPANY. 157.
- ss. 7, 38, 98, 102.  
See COMPANY—WINDING-UP. 112.
- ss. 8, 11, 14, 15, 22, 23, 31, 38.  
See COMPANY. 12.
- ss. 8, 41.  
See TRADE-MARK. 57.
- s. 13.  
See COMPANY. 261.
- ss. 14, 19, 38; Table A, s. 7.  
See COMPANY. 285.
- ss. 16, 38, 101.  
See COMPANY—WINDING-UP. 227, 228.
- ss. 16, 50.  
See COMPANY. 188.
- ss. 16, 161, 162.  
See COMPANY—WINDING-UP. 1.
- s. 19.  
See Companies Act, 1900 (63 & 64 Vict.  
c. 48), Sched.
- s. 23.  
See COMPANY. 13, 129, 265.
- COMPANY—WINDING-UP. 23, 40, 42.

**STATUTES—continued.**

- 25 & 26 Vict. c. 89, ss. 23, 25, 26, 27, 32, 43, 56,  
58, 67, 100, 154—156.  
*See* COMPANY. 30.  
— ss. 23, 39.  
*See* COMPANY. 201, 266.  
— s. 25.  
*See* COMPANY. 131.  
— ss. 26, 27.  
*See* APPEAL. 7.  
— ss. 30, 77.  
*See* COMPANY. 291.  
— s. 31.  
*See* COMPANY. 267, 268, 297.  
— s. 32.  
*See* COMPANY. 252, 253.  
— ss. 33, 39, 62.  
*See* COMPANY. 264.  
— s. 35.  
*See* COMPANY. 23, 255, 298, 299.  
COMPANY—WINDING-UP. 46, 264.  
DAMAGES. 8.  
— ss. 35, 87, 98, 153.  
*See* COMPANY. 304.  
— ss. 35, 131.  
*See* COMPANY. 300.  
— ss. 35, 158.  
*See* COMPANY—WINDING-UP. 204.  
— s. 38.  
*See* BONUS.  
COMPANY. 138, 139, 279.  
COMPANY—WINDING-UP. 25, 36, 41,  
50, 205.  
— ss. 38, 51.  
*See* COMPANY. 6.  
— ss. 38, 131, 133, 153.  
*See* COMPANY—WINDING-UP. 52.  
— s. 43.  
*See* COMPANY. 34, 251.  
— ss. 43, 156.  
*See* COMPANY. 254.  
— ss. 45, 46.  
*See* Companies Act. 1900 (63 & 64 Vict.  
c. 48), Sched.  
— s. 50.  
*See* COMPANY. 7.  
— s. 51, Table A.  
*See* COMPANY. 163, 164, 166.  
— s. 51, Table A, arts. 35, 37, 42.  
*See* COMPANY. 169.  
— ss. 51, 129, Sched. I., Table A, rr. 42,  
43, 48, 51.  
*See* COMPANY. 163.  
— s. 53.  
*See* COMPANY. 234.  
— s. 67, Table A, arts. 35, 52, 53, 58,  
62, 71.  
*See* COMPANY. 99.  
— s. 69.  
*See* COMPANY. 39.  
— ss. 74, 75.  
*See* LONDON.  
— s. 75.  
*See* COMPANY. 10.

**STATUTES—continued.**

- 25 & 26 Vict. c. 89, ss. 75, 101, 102, 120.  
*See* COMPANY—WINDING-UP. 24.  
— s. 79.  
*See* COMPANY. 276.  
COMPANY—WINDING-UP. 163, 164,  
165, 166, 167, 168.  
— ss. 79, 80.  
*See* COMPANY—WINDING-UP. 176.  
— ss. 79, 91.  
*See* COMPANY—WINDING-UP. 160, 172.  
— ss. 79, 91, 129.  
*See* COMPANY—WINDING-UP. 241.  
— ss. 79, 129, 145.  
*See* COMPANY—WINDING-UP. 162.  
— ss. 81, 141.  
*See* COMPANY—WINDING-UP. 103.  
— ss. 81, 171, 199.  
*See* COMPANY—WINDING-UP. 102.  
— s. 82.  
*See* COMPANY—WINDING-UP. 38.  
— s. 85.  
*See* COMPANY—WINDING-UP. 107, 137,  
232.  
COSTS. 28.  
INJUNCTION. 28.  
— ss. 87, 138, 163.  
*See* DISTRESS. 4.  
— ss. 87, 151.  
*See* COMPANY—WINDING-UP. 209, 235.  
CONFLICT OF LAW. 14.  
— ss. 87, 163.  
*See* COMPANY—WINDING-UP. 91, 93, 130,  
251.  
— s. 89.  
*See* COMPANY—WINDING-UP. 234.  
— s. 91.  
*See* COMPANY—WINDING-UP. 20, 106,  
219, 222, 224.  
— ss. 91, 145.  
*See* COMPANY—WINDING-UP. 78, 161.  
— ss. 91, 145, 149.  
*See* COMPANY—WINDING-UP. 240.  
— ss. 95, 98, 102.  
*See* COMPANY. 8.  
— ss. 95, 133, 145, 161.  
*See* COMPANY—WINDING-UP. 22.  
— ss. 96, 133.  
*See* COMPANY—WINDING-UP. 124.  
— ss. 98, 123, 138, 151, 161.  
*See* COMPANY—WINDING-UP.  
— ss. 98, 164.  
*See* COMPANY—WINDING-UP. 97.  
— s. 101.  
*See* COMPANY—WINDING-UP. 29.  
— ss. 109, 133.  
*See* COMPANY—WINDING-UP. 15, 19.  
— ss. 110, 144.  
*See* COMPANY—WINDING-UP. 73, 123,  
252.

**STATUTES—continued.**

- 25 & 26 Vict. c. 89, s. 111.  
*See* COMPANY. 110.
- s. 115.  
*See* COMPANY—WINDING-UP. 83, 86, 88, 89.  
 DISCOVERY. 14.
- ss. 115, 147.  
*See* COMPANY—WINDING-UP. 90.
- s. 122.  
*See* COMPANY—WINDING-UP. 233.
- s. 124.  
*See* APPEAL. 39.
- s. 129.  
*See* COMPANY—WINDING-UP. 247.  
 INJUNCTION. 6.
- s. 133.  
*See* COMPANY—WINDING-UP. 44.
- ss. 133, 138.  
*See* COMPANY—WINDING-UP. 245.
- ss. 133, 138, 163.  
*See* COMPANY—WINDING-UP. 248.
- ss. 133, 139.  
*See* COMPANY—WINDING-UP. 249.
- ss. 133, 161.  
*See* COMPANY. 216.
- s. 138.  
*See* COMPANY. 139.  
 COMPANY—WINDING-UP. 118.
- ss. 138, 141.  
*See* COMPANY—WINDING-UP. 104.
- ss. 138, 163.  
*See* COMPANY—WINDING-UP. 193.
- s. 141.  
*See* COMPANY—WINDING-UP. 111.
- ss. 142, 143.  
*See* COMPANY—WINDING-UP. 75.
- s. 145.  
*See* COMPANY—WINDING-UP. 242.
- s. 147.  
*See* COMPANY—WINDING-UP. 236, 246.
- s. 150.  
*See* COMPANY—WINDING-UP. 126.
- s. 151.  
*See* COMPANY—WINDING-UP.
- s. 156.  
*See* DISCOVERY. 21.
- s. 158.  
*See* COMPANY—WINDING-UP. 208.
- s. 161.  
*See* COMPANY. 89, 214, 215, 217, 218, 219, 220, 287.
- s. 163.  
*See* COMPANY—WINDING-UP. 92.  
 INJUNCTION. 7.
- s. 164.  
*See* BANKRUPTCY. 113, 114  
 COMPANY—WINDING-UP.
- s. 165.  
*See* COMPANY. 133.

[This section is repealed by the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), and s. 10 of that Act substituted.]

**STATUTES—continued.**

- 25 & 26 Vict. c. 89, ss. 165, 200.  
*See* SAVINGS BANK. 1.
- s. 176.  
*See* COMPANY. 183.
- s. 180.  
*See* COMPANY. 262.
- ss. 183, 191—196, 209.  
*See* COMPANY. 194.
- s. 192.  
 [Repealed by Companies Act, 1900 (63 & 64 Vict. c. 48), Sched.]
- s. 199.  
*See* COMPANY—WINDING-UP. 159, 239.
- s. 200.  
*See* BUILDING SOCIETY. 15.
- Sched. I, Table A, clause 74.  
*See* COMPANY. 152.
- Table A, art. 27.  
*See* COMPANY. 270.
- 25 & 26 Vict. c. 101 (*Police and Improvements—Scotland*), s. 162.  
*See* STREETS. 5.
- 25 & 26 Vict. c. 102 (*Metropolis Management*).  
*See* MANDAMUS. 5.
- ss. 47, 48, 61.  
*See* LONDON. 61.
- s. 61.  
*See* LONDON. 62.
- ss. 64, 96.  
*See* LANDLORD AND TENANT. 25.  
 LONDON. 54.
- s. 73.  
*See* LONDON. 92.
- ss. 74, 75.  
*See* LONDON. 6.
- s. 75.  
*See* LONDON. 1, 3, 4, 5, 8, 9.
- s. 77.  
*See* LONDON. 74, 76, 77.
- ss. 77, 96.  
*See* LONDON. 79.
- ss. 77, 112.  
*See* LONDON. 80, 83, 85.
- s. 85.  
*See* LONDON. 16.
- ss. 85, 107.  
*See* LONDON. 15.
- s. 106.  
*See* LONDON. 98.
- s. 112.  
*See* LONDON. 75, 81, 84.
- 25 & 26 Vict. c. 103 (*Parochial Assessment*).  
*See* RATES. 54.
- ss. 18, 19.  
*See* RATES. 70, 71, 72.

**1863.**

- 26 & 27 Vict. c. 41 (*Innkeepers*), s. 1.  
*See* INNKEEPER. 2.
- 26 & 27 Vict. c. 65 (*Volunteers*), s. 21  
*See* ARMY AND NAVY. 8.
- s. 24.  
*See* ARMY AND NAVY. 5.



## STATUTES—continued.

- 26 & 27 Vict. c. 65, s. 26.  
See ARMY AND NAVY. 6.
- 26 & 27 Vict. c. 87 (*Savings Banks*), ss. 6, 11.  
See SAVINGS BANK. 1.
- 26 & 27 Vict. c. 93 (*Waterworks*), ss. 17, 19.  
See WATER. 16.
- 26 & 27 Vict. c. 112 (*Telegraph*), ss. 10, 12, 13.  
See TELEPHONE. 4.
- 26 & 27 Vict. c. 117 (*Nuisances, Removal*), s. 2.  
See FOOD. 6.
- 26 & 27 Vict. c. 118 (*Companies Clauses*), s. 21.  
See COMPANY. 274.  
RAILWAY. 31.  
— ss. 22, 24.  
See COMPANY. 71.
- ss. 22, 27.  
See COMPANY. 63.

## 1864.

- 27 & 28 Vict. c. 32 (*Banks*).  
See BANKER. 20.
- 27 & 28 Vict. c. 39 (*Union Assessment Committee*), s. 1.  
See RATES. 70.
- s. 2.  
See RATES. 4.
- s. 6.  
See JUSTICES. 46.
- 27 & 28 Vict. c. 55 (*Metropolitan Police*), s. 1.  
See LONDON.
- s. 1.  
See MUSIC AND DANCING. 5, 6.
- 27 & 28 Vict. c. 95 (*Fatal Accidents*).  
See NEGLIGENCE. 1.
- 27 & 28 Vict. c. 112 (*Judgments*).  
See PRACTICE. 74.  
JUDGMENT DEBT. 2.  
LIMITATIONS, STATUTE OF. 39.  
WILL. 87.
- ss. 1, 4.  
See JUDGMENT DEBT. 1.  
RECEIVER. 12.
- 27 & 28 Vict. c. 114 (*Improvement of Land*), ss. 15, 63, 68, 69.  
See SETTLED LAND. 105.
- s. 60.  
See SETTLED LAND. 103.
- 27 & 28 Vict. c. cxi. (*Private Railway Act*).  
See SCOTTISH LAW. 36.
- 27 & 28 Vict. c. cclxxv. (*Private Railway Act*), cl. 17.  
See CONTRACT. 7.

## 1865.

- 28 & 29 Vict. c. 18 (*Evidence*), s. 8.  
See CRIMINAL LAW. 20.
- 28 & 29 Vict. c. 36 (*Registration of Voters*), s. 15.  
See PARLIAMENT. 146.

## STATUTES—continued.

- 28 & 29 Vict. c. 44 (*Tyne Pilotage Order Confirmation*), Sched., ss. 16, 22.  
See SHIPPING. 88.
- 28 & 29 Vict. c. 72 (*Navy and Marines Wills Act*).  
See ARMY AND NAVY. 2.
- 28 & 29 Vict. c. 78 (*Mortgage Debentures*), ss. 10, 46.  
See COMPANY. 199.
- 28 & 29 Vict. c. 83 (*Locomotives*), ss. 3, 7.  
See LOCOMOTIVE. 2.
- 28 & 29 Vict. c. 86 (*Bovill's Act*), ss. 1, 5.  
See BANKRUPTCY. 138, 179.
- 28 & 29 Vict. c. 90 (*Metropolitan Fire Brigade*), s. 32.  
See WATER. 12.
- 28 & 29 Vict. c. 104 (*Crown Suits*), ss. 13, 14, 15, 16.  
See DISCOVERY. 15.
- s. 57.  
See REVENUE. 134.
- 28 & 29 Vict. c. 121 (*Salmon Fisheries*).  
See FISHERY. 6.
- ss. 27, 61.  
See FISHERY. 9.  
JUSTICES. 52.
- 28 & 29 Vict. c. 122 (*Clergy*).  
See ECCLESIASTICAL LAW. 74, 75.
- 28 & 29 Vict. c. col. (*Newcastle-on-Tyne Improvement*).  
See CORPORATION. 3.

## 1866.

- 29 & 30 Vict. c. 32 (*Matrimonial Causes*).  
See DIVORCE. 1.
- s. 1.  
See DIVORCE. 2, 8, 18.
- s. 2.  
See DIVORCE. 38, 39.
- 29 & 30 Vict. c. 38 (*Burial*).  
See PARLIAMENT. 107.
- 29 & 30 Vict. c. 39 (*Revenue*), s. 20.  
*Rule under Judicial Trustees Act, 1896.*  
W. N. 1899 (March 18), p. 79. See  
Current Index, 1899, p. cxxiii.
- 29 & 30 Vict. c. 109 (*Naval Discipline*), ss. 19, 87.  
See ARMY AND NAVY. 2.
- 29 & 30 Vict. c. 118 (*Industrial Schools*).  
See JUSTICES. 9.  
RATES. 27.
- s. 14.  
See SCHOOLS. 2.
- 29 & 30 Vict. c. 122 (*Common*).  
See COMMON. 7.
- 29 & 30 Vict. c. cclxxiii. (*Glasgow—Police*), ss. 332, 335.  
See SCOTTISH LAW. 39.
- 29 & 30 Vict. c. cccxi. (*Private Railway Act*).  
See SCOTTISH LAW. 36.

## STATUTES—continued.

## 1867.

- 30 & 31 Vict. c. 3 (*British North America*).  
*See CANADA—LAW OF CANADA—Dom-  
 inion and Constitutional Law.*
- 30 & 31 Vict. c. 23 (*Stamps—Duties*), s. 1,  
 Sched. B, and s. 4.  
*See REVENUE.* 163.
- 30 & 31 Vict. c. 35 (*Criminal Law*), s. 1.  
*See CRIMINAL LAW.* 59.  
*GAMING.* 5.
- 30 & 31 Vict. c. 47 (*Lis Pendens*), s. 2.  
*See LIS PENDENS.* 2.
- 30 & 31 Vict. c. 69 (*Locke King's Act*).  
*See WILL.* 86.
- 30 & 31 Vict. c. 84 (*Vaccination*), ss. 29, 31.  
*See VACCINATION.* 2.  
 — s. 31.  
*See VACCINATION.* 4—6, 7, 8.
- 30 & 31 Vict. c. 90 (*Excise*), ss. 1, 3, 17.  
*See REVENUE.* 129.
- 30 & 31 Vict. c. 101 (*Public Health—Scotland*),  
 s. 95.  
*See SCOTTISH LAW.* 3.
- 30 & 31 Vict. c. 102 (*Representation of the  
 People*), s. 3.  
*See BANKRUPTCY.* 94.  
*PARLIAMENT.* 110, 116.  
 — ss. 3, 26.  
*See PARLIAMENT.* 139.  
 — ss. 3, 27.  
*See PARLIAMENT.* 50.  
 — s. 7.  
*See RATES.* 38.  
 — s. 28.  
*See PARLIAMENT.* 109.
- 30 & 31 Vict. c. 106 (*Poor Law Amendment  
 Act*), s. 27.  
*See ADULTERATION.* 17.
- 30 & 31 Vict. c. 124 (*Merchant Shipping*), s. 9.  
*See SHIPPING.* 164.
- 30 & 31 Vict. c. 127 (*Railway Companies*), s. 4.  
*See RAILWAY.* 38, 39, 55.  
 — ss. 6, 10, 12, 15, 16, 17.  
*See RAILWAY.* 59.  
 — s. 18.  
*See RAILWAY.* 58.  
 — s. 24.  
*See COMPANY.* 71.  
 — s. 27.  
*See RAILWAY.* 31.
- 30 & 31 Vict. c. 131 (*Companies*).  
*See COMPANY.* 178, 222, 232, 233, 236,  
 237, 241, 250.  
 — s. 9.  
*See COMPANY.* 104, 226, 245.  
 — ss. 9—11.  
*See COMPANY.* 227, 235, 246.  
 — ss. 9, 11, 13, 14, 25.  
*See COMPANY.* 249.  
 — ss. 9, 11, 15, 16.  
*See COMPANY.* 6.

## STATUTES—continued.

- 30 & 31 Vict. c. 131, ss. 9, 12.  
*See COMPANY.* 228.  
 — s. 11.  
*See COMPANY.* 223, 234, 240.  
 — ss. 11, 16.  
*See COMPANY.* 248.  
 — s. 13.  
*See COMPANY.* 229.  
 — ss. 13, 14.  
*See COMPANY.* 225.  
 — s. 23.  
*See COMPANY.* 265.  
 — s. 24.  
*See COMPANY.* 13.  
 — s. 25.  
*See BONUS.*  
*COMPANY.* 14, 15, 16, 22, 23, 221,  
 272, 277, 280, 281, 284, 288.  
*COMPANY—WINDING-UP.* 26, 33, 34,  
 35, 40, 41, 43, 45, 46, 50, 51, 61.  
*NEW SOUTH WALES.* 7, 8.  
 [This section is repealed by *Companies Act*,  
 1900 (63 & 64 Vict. c. 48), Sched.]
- s. 38.  
*See COMPANY.* 206, 209, 279.  
 [This section and s. 39 are repealed by *Com-  
 panies Act*, 1900 (63 & 64 Vict. c. 48), Sched.]
- s. 40.  
*See COMPANY—WINDING-UP.* 137, 177.  
*INJUNCTION.* 8.  
 — s. 55.  
*See COMPANY—WINDING-UP.* 31.
- 30 & 31 Vict. c. 133 (*Consecration of Church-  
 yards*).  
*See ECCLESIASTICAL LAW.* 20.
- 30 & 31 Vict. c. 134 (*Metropolitan Streets*).  
 s. 6.  
*See LONDON.* 87.  
 — s. 15.  
*See LONDON.* 86.  
 — s. 23.  
*See GAMING.* 29, 30, 31.  
*LONDON.* 5.
- 30 & 31 Vict. c. v. (*Richmond—Gas*).  
*See GAS.* 4.

## 1868.

- 31 & 32 Vict. c. 4 (*Reversions*), s. 1.  
*See REVERSION.*
- 31 & 32 Vict. c. 5 (*Metropolitan Streets*), s. 1.  
*See LONDON.* 87, 89.
- 31 & 32 Vict. c. 17 (*County Courts Admiralty  
 Jurisdiction*), s. 26.  
*See SHIPPING.*
- 31 & 32 Vict. c. 40 (*Partition*), s. 6.  
*See PARTITION.* 15.  
 — s. 7.  
*See PARTITION.* 10.  
 — s. 8.  
*See PARTITION.* 2.
- 31 & 32 Vict. c. 48 (*Representation of the  
 People*), s. 3.  
*See PARLIAMENT.* 25, 40, 44, 117.

## STATUTES—continued.

- 31 & 32 Vict. c. 48, s. 1.  
*See* PARLIAMENT. 69, 76, 77, 81, 82, 85.  
 — ss. 4, 22.  
*See* PARLIAMENT. 59.
- 31 & 32 Vict. c. 49 (*Representation of the People—Ireland*), s. 4.  
*See* PARLIAMENT. 66, 67, 80.
- 31 & 32 Vict. c. 54 (*Judgments Extension*), ss. 1, 4.  
*See* IMPRISONMENT. 3.  
 JUDGMENT DEBT. 4.  
 — s. 3.  
*See* EXECUTOR. 7.  
 — ss. 3, 4.  
*See* BANKRUPTCY. 24.
- 31 & 32 Vict. c. 71 (*County Court—Admiralty*), ss. 2, 36.  
*See* SHIPPING. 78.  
 — s. 3.  
*See* SHIPPING. 91, 92, 98, 239, 267.  
 — ss. 3, 9.  
*See* SHIPPING. 91—93.  
 — ss. 3, 12, 23.  
*See* SHIPPING. 202.  
 — ss. 3, 21.  
*See* SHIPPING. 113.  
 — ss. 5, 21.  
*See* SHIPPING. 212.  
 — ss. 10, 11.  
*See* SHIPPING. 211.  
 — ss. 10, 13, 23, 25.  
*See* LIVERPOOL COURTS. 4.  
 — s. 21.  
*See* SHIPPING. 203  
 — ss. 26, 31.  
*See* SHIPPING. 3, 269.
- 31 & 32 Vict. c. 84 (*Entail Amendment*), s. 11.  
*See* REVENUE. 24.
- 31 & 32 Vict. c. 89 (*Inclosure, &c., Expenses*).  
*Fees to be taken in respect of transactions under the Tithe and other Acts. W. N., 1900 (May 19), p. 143. See Current Index, 1900, p. xc.*
- 31 & 32 Vict. c. 100 (*Court of Session—Scotland*), s. 101.  
*See* SCOTTISH LAW. 26.
- 31 & 32 Vict. c. 101 (*Titles to Land Consolidation—Scotland*), s. 19.  
*See* SCOTTISH LAW. 50.
- 31 & 32 Vict. c. 109 (*Church Rates Abolition*), s. 5.  
*See* ECCLESIASTICAL LAW. 6.
- 31 & 32 Vict. c. 116 (*Partnership*), s. 1.  
*See* COMPANY. 259, 309.  
 CRIMINAL LAW. 13.
- 31 & 32 Vict. c. 119 (*Regulation of Railways*), s. 41.  
*See* RAILWAY. 47.  
 — s. 15.  
*See* POISON. 4, 5, 6.

## STATUTES—continued.

- 31 & 32 Vict. c. 121 (*Pharmacy*) s. 15.  
*See* POISON. 4—6.  
 — s. 17.  
*See* POISON. 3.
- 31 & 32 Vict. c. 125 (*Parliamentary Elections*), s. 11, sub-s. 11.  
*See* PARLIAMENT. 11.
- 31 & 32 Vict. c. cxxx. (*Salford Hundred Court of Record*), ss. 6, 7.  
*See* PROHIBITION. 6.

## 1869.

- 32 & 33 Vict. c. 14 (*Customs and Inland Revenue*), s. 19.  
*See* REVENUE. 10.
- 32 & 33 Vict. c. 19 (*Stammaries*), ss. 2, 13.  
*See* COST-BOOK MINE.
- 32 & 33 Vict. c. 27 (*Wine and Beerhouse*), s. 7.  
*See* LICENSING ACTS. 2, 3.  
 — s. 8.  
*See* LICENSING ACTS. 13.  
 — ss. 8, 9.  
*See* LICENSING ACTS. 8, 41.  
 — ss. 8, 19.  
*See* LICENSING ACTS. 7, 14, 21, 27.
- 32 & 33 Vict. c. 41 (*Poor Rate Assessment*).  
*See* RATES. 54.  
 — s. 2.  
*See* RATES. 66.  
 — s. 3.  
*See* RATES. 41.  
 — ss. 3, 4.  
*See* RATE. 62, 69.  
 — s. 4.  
*See* RATES. 55.  
 — s. 16.  
*See* COMPANY. 34, 144.  
 — s. 19.  
*See* PARLIAMENT. 116.
- 32 & 33 Vict. c. 46 (*Debts*).  
*See* EXECUTOR. 25, 36, 38.
- 32 & 33 Vict. c. 48 (*Companies Clauses*), s. 5.  
*See* COMPANY. 274.  
 RAILWAY. 31.
- 32 & 33 Vict. c. 51 (*County Courts*), ss. 1, 2, 4.  
*See* SHIPPING. 78, 113, 212.  
 — ss. 1, 6.  
*See* LIVERPOOL COURTS. 4.  
 — s. 2.  
*See* SHIPPING. 196.  
 — s. 4.  
*See* SHIPPING. 98.
- 32 & 33 Vict. c. 56 (*Endowed Schools*).  
*See* MANDAMUS. 1.  
 — ss. 4, 5, 6, 8, 9, 24.  
*See* CHARITY. 13.  
 — s. 14.  
*See* CHARITY. 11.  
 — ss. 19, 39.  
*See* CHARITY. 10A.

**STATUTES—continued.**

- 32 & 33 Vict. c. 56, s. 39.  
See CHARITY. 12.
- 32 & 33 Vict. c. 62 (*Debtors*), s. 4.  
See BANKRUPTCY. 66, 240.  
IMPRISONMENT. 2, 4, 5, 6.  
PARTNERSHIP. 1.  
SOLICITOR. 86, 112.
- ss. 4, 5.  
See HUSBAND AND WIFE. 38.  
IMPRISONMENT. 3.  
JUDGMENT DEBT. 4.
- s. 5.  
See BANKRUPTCY. 166, 197, 206, 240.  
COUNTY COURT. 37.  
MASTER AND SERVANT. 90.
- s. 11.  
See BANKRUPTCY. 122.
- ss. 11, 13.  
See CRIMINAL LAW. 32.
- s. 13.  
See CRIMINAL LAW. 33, 54.
- s. 18.  
See BANKRUPTCY. 123.  
CRIMINAL LAW. 56.
- 32 & 33 Vict. c. 67 (*Valuation—Metropolis*).  
See RATES. 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

**1870.**

- 33 & 34 Vict. c. 20 (*Mortgage Debentures*), ss. 8, 9.  
See COMPANY. 199.

**STATUTES—continued.**

- 33 & 34 Vict. c. 28 (*Solicitors*), ss. 4, 5.  
See SOLICITOR. 23, 78.
- ss. 4, 8, 10, 15.  
See SOLICITOR. 19.
- s. 8.  
See SOLICITOR. 21.
- ss. 8, 9.  
See SOLICITOR. 20.
- 33 & 34 Vict. c. 29 (*Licensing*), s. 7.  
See LICENSING ACTS. 13, 27.
- 33 & 34 Vict. c. 35 (*Apportionment*).  
See COMPANY. 132.  
DISTRESS. 2.
- s. 2.  
See APPORTIONMENT. 1.
- ss. 2, 3, 4, 5.  
See SETTLED LAND. 8.
- ss. 5, 7.  
See WILL. 76.
- s. 7.  
See APPORTIONMENT. 2.
- 33 & 34 Vict. c. 48 (*Paupers' Conveyance (Expenses)*), Order under.  
See POOR LAW.
- 33 & 34 Vict. c. 52 (*Extradition*).  
See CRIMINAL LAW. 37.  
EXTRADITION. 6.
- s. 3.  
See CRIMINAL LAW. 14.  
EVIDENCE. 32.  
EXTRADITION. 2, 4, 5.
- s. 6.  
See EXTRADITION. 7.
- s. 9.  
See CRIMINAL LAW. 63.  
EXTRADITION. 1.
- 33 & 34 Vict. c. 56 (*Limited Owners' Residences*), s. 9.  
See MORTGAGE. 53.
- 33 & 34 Vict. c. 57 (*Extradition*), s. 7.  
See REVENUE. 50.
- 33 & 34 Vict. c. 61 (*Life Assurance Companies*), s. 2.  
See FRIENDLY SOCIETY. 8.
- 33 & 34 Vict. c. 71 (*National Debt*), s. 52.  
See BANK OF ENGLAND.
- 33 & 34 Vict. c. 75 (*Elementary Education*), ss. 19, 20.  
See LONDON. 28.  
SCHOOLS. 8.
- s. 34.  
See SCHOOLS. 5.
- s. 35.  
See SCHOOLS. 10.
- Sched. II., Part 1, r. 14.  
See SCHOOLS. 3, 4.
- 33 & 34 Vict. c. 77 (*Juries*), ss. 3, 9, Sched. 1.  
See CORONER. 3.
- 33 & 34 Vict. c. 78 (*Tramways*), ss. 12, 64.  
See TRAMWAYS. 8.
- s. 18.  
See TRAMWAYS. 7.

**STATUTES—continued.**

- 33 & 34 Vict. c. 78, ss. 28, 29, 55, 56.  
*See* TRAMWAYS. 6, 12.
- ss. 28, 32.  
*See* TELEPHONE. 4.
- s. 43.  
*See* HOUSE OF LORDS. 2.
- s. 44.  
*See* TRAMWAYS. 3, 5.
- ss. 51, 52, 56.  
*See* TRAMWAYS. 9.
- 33 & 34 Vict. c. 90 (*Foreign Enlistment*).  
*See* FOREIGN ENLISTMENT ACT. 1.
- s. 8.  
*See* FOREIGN ENLISTMENT ACT. 3.
- s. 11.  
*See* FOREIGN ENLISTMENT ACT. 2.
- 33 & 34 Vict. c. 93 (*Married Women's Property*),  
s. 7.  
*See* HUSBAND AND WIFE. 62.
- s. 10.  
*See* HUSBAND AND WIFE. 13, 40.
- INSURANCE. 16, 17.
- 33 & 34 Vict. c. 97 (*Stamps*), ss. 2, 105, 107.  
*See* REVENUE. 147.
- s. 3.  
*See* REVENUE. 181.
- ss. 15, 107.  
*See* REVENUE. 171.
- s. 48, Sched.  
*See* REVENUE. 142.
- s. 54.  
*See* REVENUE. 176.
- ss. 70, 71.  
*See* REVENUE. 159.
- 33 & 34 Vict. c. 104 (*Joint Stock Companies Arrangement*).  
*See* APPEAL. 39.
- COMPANY. 220.
- COMPANY—WINDING-UP. 215, 216, 225.
- VICTORIA. 2.
- s. 2.  
*See* BANKRUPTCY. 235.
- COMPANY. 167.
- COMPANY—WINDING-UP. 219—224, 226.
- 33 & 34 Vict. c. clxxi. (*London Street Tramways*), s. 44.  
*See* TRAMWAYS. 1.

**1871.**

- 34 & 35 Vict. c. 11 (*Poor Guardians*), s. 2.  
*See* POOR LAW. 4.
- 34 & 35 Vict. c. 22 (*Lunacy*), ss. 109, 114.  
*See* LUNACY. 25.
- 34 & 35 Vict. c. 31 (*Trade Unions*).  
*See* TRADE UNION. 9, 11.
- ss. 2, 3.  
*See* CRIMINAL LAW. 3.
- TRADE UNION. 10.

**STATUTES—continued.**

- 34 & 35 Vict. c. 31, s. 4.  
*See* TRADE UNION. 6.
- s. 7.  
*See* TRADE UNION. 2.
- 34 & 35 Vict. c. 32 (*Criminal Law Amendment Act*), s. 1.  
*See* CRIMINAL LAW. 3.
- TRADE UNION. 8.
- 34 & 35 Vict. c. 41 (*Gasworks Clauses*), s. 9.  
*See* SUPPORT. 1.
- ss. 11, 12, 36.  
*See* GAS. 2.
- ss. 11, 39.  
*See* BANKRUPTCY. 157.
- GAS. 3.
- ss. 24, 36.  
*See* GAS. 4.
- 34 & 35 Vict. c. 45 (*Sequestration*), ss. 1—4.  
*See* ECCLESIASTICAL LAW. 72.
- ss. 1, 5, 6.  
*See* ECCLESIASTICAL LAW. 71.
- 34 & 35 Vict. c. 87 (*Sunday Observance*), s. 1.  
*See* SUNDAY. 2.
- 34 & 35 Vict. c. 90, s. 4.  
*See* BURIAL. 6.
- 34 & 35 Vict. c. 96 (*Pedlars*), ss. 3, 6.  
*See* PEDLAR.
- 34 & 35 Vict. c. 98 (*Vaccination*), s. 5.  
*See* VACCINATION. 3.
- s. 11.  
*See* VACCINATION. 2.
- 34 & 35 Vict. c. 103 (*Customs and Inland Revenue*), s. 31.  
*See* REVENUE. 61.
- 34 & 35 Vict. c. 113 (*Metropolis—Water*), ss. 7, 16, 44, 45.  
*See* WATER. 20.
- s. 34.  
*See* WATER. 12.
- s. 48.  
*See* WATER. 25.
- 34 & 35 Vict. c. lxxxix. (*Edinburgh Tramways*).  
*See* TRAMWAY COMPANY.

**1872.**

- 35 & 36 Vict. c. 21 (*Industrial School*).  
*See* RATES. 27.
- 35 & 36 Vict. c. 33 (*Elections—Ballot*).  
*See* COUNTY COUNCIL. 1.
- DISTRICT COUNCILS. 2.
- s. 2.  
*See* SCHOOLS. 6.
- 35 & 36 Vict. c. 44 (*Chancery Funds*), s. 5.  
*See* PRINCIPAL AND AGENT. 13.
- 35 & 36 Vict. c. 65 (*Bastardy*), s. 3.  
*See* BASTARDY. 1, 4.
- ss. 3, 4.  
*See* BASTARDY. 2.
- JUSTICES. 36.
- s. 4.  
*See* BASTARDY. 4.

**STATUTES—continued.**

- 35 & 36 Vict. c. 76 (*Coal Mines Regulation*),  
s. 17.  
See MINES. 6.
- 35 & 36 Vict. c. 77 (*Metalliferous Mines*), s. 23.  
See MINES. 17.
- s. 35.  
See MINES. 16.
- 35 & 36 Vict. c. 89 (*Borough and Local Courts of Record*), Sch. clause 12.  
See LONDON. 47.
- 35 & 36 Vict. c. 91 (*Borough Funds*), s. 2.  
See CORPORATION. 10.
- 35 & 36 Vict. c. 93 (*Pawnbrokers*), s. 39.  
See PAWNBROKER.
- 35 & 36 Vict. c. 94 (*Licensing*), s. 3.  
See LICENSING ACTS. 28, 34, 35, 41, 42, 43, 44.
- s. 12.  
See LICENSING ACTS. 30.
- s. 13.  
See LICENSING ACTS. 29—31.
- s. 16.  
See LICENSING ACTS. 146.
- s. 25.  
See LICENSING ACTS. 39.
- ss. 37, 43.  
See LICENSING ACTS. 1.
- s. 40.  
See LICENSING ACTS. 3.
- 40, 43, 50.  
See LICENSING ACTS. 2.
- 40, 74.  
See LICENSING ACTS. 5.
- s. 42.  
See LICENSING ACTS. 10, 13—20.
- s. 50.  
See LICENSING ACTS. 4.
- s. 72.  
See LICENSING ACTS. 33.
- 35 & 36 Vict. c. xxiii. (*Gas Light and Coke Company's Act*), s. 18.  
See GAS. 1.
- 35 & 36 Vict. c. c. (*Metage on Grain (Port of London)*), s. 4.  
See LONDON. 42.

**1873.**

- 36 & 37 Vict. c. 12 (*Custody of Infants*).  
See INFANT. 17.
- 36 & 37 Vict. c. 38 (*Vagrant*), s. 3.  
See GAMING. 32.
- 36 & 37 Vict. c. 48 (*Railways and Canals*).  
See RAILWAY. 65.
- s. 3.  
See MASTER AND SERVANT. 39.
- 36 & 37 Vict. c. 66 (*Judicature*), s. 16.  
See APPEAL. 16.

**STATUTES—continued.**

- 36 & 37 Vict. c. 66, ss. 16, 34.  
See HUSBAND AND WIFE. 31.  
PROHIBITION. 5.
- s. 19.  
See APPEAL. 41.
- s. 24.  
See COMPANY—WINDING-UP. 232.
- s. 24, sub-s. 3.  
See LANDLORD AND TENANT. 47.  
PRACTICE. 152, 153.
- s. 25.  
See ARBITRATION. 55.  
ASSIGNMENT. 2—4.  
BANKRUPTCY. 191.  
COMPANY. 74.  
CONTRACT. 3.  
INJUNCTION. 2, 15, 18, 20, 23.  
LANDLORD AND TENANT. 79.  
LIMITATIONS, STATUTE OF. 21.  
MERGER. 3.  
RECEIVER. 2, 3, 4, 10, 11, 14, 18, 24.  
STATUTES. 32.
- s. 39.  
See SOLICITOR. 21.
- s. 45.  
See ARBITRATION. 42.  
PRACTICE. 54.  
SHIPPING. 5.
- s. 47.  
See APPEAL. 7, 10, 11.
- s. 49.  
See COSTS. 8, 10, 11, 66.  
DIVORCE. 50, 58, 66.  
PRACTICE.
- s. 50.  
See APPEAL. 1, 4, 9.
- s. 52.  
See APPEAL. 44.
- s. 100.  
See ARBITRATION. 10, 47.  
DISCOVERY. 18.  
PROBATE. 88.
- 36 & 37 Vict. c. 71 (*Salmon Fishery*), s. 62.  
See FISHERY. 11.
- 36 & 37 Vict. 85 (*Merchant Shipping*), s. 17.  
See SHIPPING. 71, 80.  
SHIP. 71.
- 36 & 37 Vict. c. 86 (*Elementary Education*),  
Sched. II.  
See SCHOOLS. 6.
- 36 & 37 Vict. c. 87 (*Endowed Schools*), s. 9.  
See CHARITY. 13.

**1874.**

- 37 & 38 Vict. c. 15 (*Betting*), s. 3.  
See GAMING. 8.
- 37 & 38 Vict. c. 37 (*Powers—Lord Selborne's Act*).  
See WILL. 104.
- 37 & 38 Vict. c. 42 (*Building Society*), ss. 4, 32.  
See BUILDING SOCIETY. 19, 20.  
COMPANY—WINDING-UP. 98.
- ss. 13, 14, 21, 38.  
See BUILDING SOCIETY. 7.

**STATUTES—continued.**

- 37 & 38 Vict. c. 42, ss. 16, 18.  
*See* BUILDING SOCIETY. 9.  
 — ss. 16, 36.  
*See* BUILDING SOCIETY. 1.  
 — ss. 18, 32.  
*See* BUILDING SOCIETY. 5.  
 — s. 32.  
*See* BUILDING SOCIETY. 3, 24.  
 — ss. 32, 38, 39.  
*See* BUILDING SOCIETY. 4.  
 — s. 36.  
*See* ARBITRATION. 35.  
 — s. 40.  
*See* BUILDING SOCIETY. 21.  
 — ss. 41, 42.  
*See* REVENUE. 168.  
 — s. 43.  
*See* BUILDING SOCIETY. 10.  
 37 & 38 Vict. c. 49 (*Licensing*), ss. 3, 9.  
*See* LICENSING ACTS. 33.  
 — ss. 9, 10.  
*See* LICENSING ACTS. 32, 36, 37.  
 — s. 10.  
*See* LICENSING ACTS. 38, 39.  
 — s. 15.  
*See* LICENSING ACTS. 9, 41, 42.  
 — s. 16.  
*See* LICENSING ACTS. 45.  
 — s. 17.  
*See* LICENSING ACTS. 40.  
 — s. 26.  
*See* LICENSING ACTS. 10, 13, 19, 20.  
 37 & 38 Vict. c. 57 (*Real Property Limitation*).  
*See* CHARITY. 47.  
 COPYHOLD. 1, 7.  
 — s. 1.  
*See* COPYHOLD. 8.  
 EASEMENT. 7.  
 WILL. 23.  
 — ss. 1, 2.  
*See* LIMITATIONS, STATUTE OF. 34.  
 SETTLED LAND. 89.  
 — ss. 1, 2, 8.  
*See* LIMITATIONS, STATUTE OF. 23.  
 — ss. 1, 9.  
*See* LIMITATIONS, STATUTE OF. 31.  
 — s. 7.  
*See* MORTGAGE. 67.  
 — s. 8.  
*See* LIMITATIONS, STATUTE OF. 4, 6, 21,  
 22, 26, 29, 30, 39, 40.  
 TRUSTEE. 82.  
 — ss. 8, 10.  
*See* LIMITATIONS, STATUTE OF. 24.  
 37 & 38 Vict. c. 62 (*Infants' Relief*), s. 1.  
*See* INFANT. 33.  
 — s. 1.  
*See* BANKRUPTCY. 16, 33.  
 BILL OF EXCHANGE. 12.  
 BUILDING SOCIETY. 7.  
 JUSTICES. 49.  
 — s. 2.  
*See* INFANT. 6, 33.

**STATUTES—continued.**

- 37 & 38 Vict. c. 68 (*Attorneys and Solicitors*),  
 s. 12.  
*See* JUSTICES. 49.  
 37 & 38 Vict. c. 68 (*Solicitors*), s. 12, sub-s. 1.  
*See* SOLICITOR. 136.  
 37 & 38 Vict. c. 78 (*Vendor and Purchaser*),  
 ss. 1, 2.  
*See* VENDOR AND PURCHASER. 86.  
 — ss. 2, 5.  
*See* VENDOR AND PURCHASER. 97—99.  
 — s. 9.  
*See* LANDLORD AND TENANT. 37.  
 VENDOR AND PURCHASER. 37, 41, 48.  
 37 & 38 Vict. c. 85 (*Public Worship Regulation*),  
 ss. 8, 9.  
*See* ECCLESIASTICAL LAW. 62.  
 37 & 38 Vict. c. 87 (*Endowed Schools*), s. 6.  
*See* CHARITY. 13.  
 37 & 38 Vict. c. 94 (*Conveyancing—Scotland*),  
 s. 4.  
*See* SCOTTISH LAW. 48.

**1875.**

- 38 & 39 Vict. c. 24 (*Falsification of Accounts*).  
*See* EXTRADITION. 3.  
 38 & 39 Vict. c. 50 (*County Court*), s. 10.  
*See* SHIPPING. 5.  
 38 & 39 Vict. c. 55 (*Public Health*).  
*See* WATER. 42.  
 — s. 4.  
*See* SEWERS. 10.  
 — ss. 4, 13.  
*See* SEWERS. 1.  
 — ss. 4, 13, 15, 21, 94, 95.  
*See* SEWERS. 26.  
 — ss. 4, 13, 15, 41.  
*See* SEWERS. 13.  
 — 4, 13, 41.  
*See* SEWERS. 12.  
 — ss. 4, 13, 327.  
*See* SEWERS. 11.  
 — 4, 16, 54, 57, 308.  
*See* WATER. 19.  
 — ss. 4, 42.  
*See* LONDON. 48.  
 — ss. 4, 51, 52, 55.  
*See* WATER. 15, 23.  
 — ss. 4, 150, 257.  
*See* STREETS. 29, 32.  
 — ss. 4, 150, 276.  
*See* BANKRUPTCY. 110.  
 — ss. 4, 157.  
*See* STREETS. 18.  
 — ss. 4, 257.  
*See* STREETS. 31.  
 — s. 13.  
*See* NUISANCES. 26.  
 — s. 13.  
*See* SEWERS. 7, 14, 15, 16.  
 — ss. 13, 15, 17, 19, 27.  
*See* WATER. 1.  
 — ss. 13, 15, 18, 150, 180, 257, 268.  
*See* SEWERS. 8.

**STATUTES—continued.**

- 38 & 39 Vict. c. 55, ss. 13, 15, 94, 95, 96.  
*See* SEWERS. 3.
- ss. 13, 15, 150.  
*See* SEWERS. 5.
- ss. 13, 150.  
*See* SEWERS. 9.
- ss. 15, 16, 17.  
*See* SEWERS. 32.
- ss. 15, 17, 21, 257.  
*See* WATER. 2.
- ss. 15, 19, 21, 299.  
*See* SEWERS. 6.
- ss. 15, 19, 299.  
*See* SEWERS. 2, 19.
- 15, 150, 157, 277.  
*See* SEWERS. 24.
- ss. 15, 299.  
*See* PRACTICE. 91.
- SEWERS. 4.
- ss. 16, 32, 33, 34, 54, 285.  
*See* WATER. 21.
- ss. 17, 21.  
*See* SEWERS. 27.
- ss. 21, 299.  
*See* SEWERS. 25.
- s. 36.  
*See* WATERCLOSETS. 4, 5.
- ss. 36, 305.  
*See* WATERCLOSETS. 2.
- ss. 39, 149.  
*See* STREETS. 1.
- s. 41.  
*See* SEWERS. 28, 29, 30, 31.
- ss. 51, 229, 230.  
*See* WATER. 36.
- s. 52.  
*See* WATER. 10.
- ss. 57, 332.  
*See* WATER. 43.
- s. 62.  
*See* WATER. 11.
- s. 66.  
*See* WATER. 13.
- ss. 91, 96.  
*See* APPEAL. 10.
- s. 94.  
*See* NUISANCES. 28.
- s. 107.  
*See* NUISANCES. 15.
- ss. 112, 131, 285.  
*See* NUISANCES. 12.
- ss. 116, 117.  
*See* JUSTICES. 25, 26.
- ss. 116, 117, 308.  
*See* CORPORATION. 27.
- JUSTICES. 27.
- s. 124.  
*See* JUSTICES. 10, 11.
- ss. 144, 264.  
*See* LIMITATIONS, STATUTE OF. 19.

**STATUTES—continued.**

- 38 & 39 Vict. c. 55, s. 149.  
*See* HIGHWAY. 6.
- ss. 149, 161.  
*See* STREETS. 11.
- ss. 149, 340.  
*See* STREETS. 28.
- s. 150.  
*See* LANDLORD AND TENANT. 24.
- PRINCIPAL AND AGENT. 10.
- STREETS. 20—24.
- ss. 150, 151, 152.  
*See* STREETS. 33.
- ss. 150, 180.  
*See* SEWERS. 21.
- ss. 150, 257.  
*See* STREETS. 25.
- VENDOR AND PURCHASER. 65.
- ss. 150, 257, 268.  
*See* SEWERS. 20.
- s. 155.  
*See* STREETS. 3.
- s. 156.  
*See* STREETS. 2.
- s. 157.  
*See* BUILDING. 3.
- SEWERS. 18.
- STREETS. 16—18.
- s. 158.  
*See* BUILDER.
- s. 166.  
*See* LANDLORD AND TENANT. 20.
- MARKETS AND FAIRS. 3.
- s. 171.  
*See* FIRE. 1.
- s. 174.  
*See* DISTRICT COUNCILS. 1.
- s. 175.  
*See* LOCAL GOVERNMENT. 4.
- ss. 175, 176.  
*See* SOLICITOR. 18.
- ss. 175, 176, 229—235, 242, 270—275.  
*See* SEWERS. 23.
- ss. 175, 295.  
*See* LOCAL GOVERNMENT. 3.
- s. 180.  
*See* ARBITRATION. 36.
- ss. 210, 229, 230.  
*See* RATES. 68.
- s. 211.  
*See* COMPANY. 34.
- RATES. 58.
- WATER. 35.
- s. 246.  
*See* LOCAL GOVERNMENT. 1.
- ss. 256, 261.  
*See* BILL OF SALE. 43.
- s. 264.  
*See* LIMITATIONS, STATUTE OF. 36.



**STATUTES—continued.**

- 38 & 39 Vict. c. 55, s. 267.  
*See PRACTICE.* 225.
- s. 276.  
*See STREETS.* 26.
- s. 308.  
*See COSTS.* 76.
- s. 334.  
*See NUISANCES.* 27.
- s. 343, Sched. V., Part III.  
*See ECCLESIASTICAL LAW.* 13.
- 38 & 39 Vict. c. 60 (*Friendly Societies*), ss. 4, 28.  
*See FRIENDLY SOCIETY.* 8.
- ss. 6, 15, 25.  
*See FRIENDLY SOCIETY.* 4.
- s. 15.  
*See FRIENDLY SOCIETY.* 13.
- ss. 15, 17.  
*See FRIENDLY SOCIETY.* 2.
- s. 16.  
*See FRIENDLY SOCIETY.* 12, 14.
- s. 22.  
*See ARBITRATION.* 18.  
*FRIENDLY SOCIETY.* 3, 9, 10.
- s. 25.  
*See FRIENDLY SOCIETY.* 5.
- 38 & 39 Vict. c. 63 (*Sale of Foods and Drugs*), s. 3.  
*See ADULTERATION.* 1.
- ss. 6, 7.  
*See ADULTERATION.* 2, 20.
- ss. 6, 12, 14, 20, 21, 28.  
*See ADULTERATION.* 17.
- ss. 6, 14, 21, 25.  
*See ADULTERATION.* 25.
- ss. 6, 18.  
*See ADULTERATION.* 8.
- ss. 6, 18, 21.  
*See ADULTERATION.* 10.
- ss. 6, 20, 27.  
*See ADULTERATION.* 3, 27, 28.
- ss. 6, 21.  
*See ADULTERATION.* 6.
- ss. 6, 25.  
*See ADULTERATION.* 5.
- s. 9.  
*See ADULTERATION.* 18, 19.
- ss. 9, 13.  
*See ADULTERATION.* 22.
- ss. 13, 14.  
*See ADULTERATION.* 12.
- s. 14.  
*See ADULTERATION.* 11.
- s. 18.  
*See ADULTERATION.* 7.
- s. 21.  
*See ADULTERATION.* 9.
- s. 25.  
*See ADULTERATION.* 26.
- s. 26.  
*See ADULTERATION.* 16.

**STATUTES—continued.**

- 38 & 39 Vict. c. 63, s. 27.  
*See ADULTERATION.* 23, 24.
- 38 & 39 Vict. c. 77 (*Judicature*), s. 10.  
*See BANKRUPTCY.* 117, 164.  
*COMPANY—WINDING-UP.* 93, 204,  
 207, 208, 210, 227, 228, 229.  
*EXECUTOR.* 24, 34, 35, 37.
- s. 17.  
*See PRACTICE.* 223.
- s. 18.  
*See ECCLESIASTICAL LAW.* 29.
- s. 21.  
*See PRACTICE.* 15.
- s. 22.  
*See PRACTICE.* 134.
- 38 & 39 Vict. c. 84 (*Parliamentary Elections—Returning Officers*), ss. 3, 4.  
*See PARLIAMENT.* 144.
- s. 7.  
*See TRADE UNION.* 12, 13.
- 38 & 39 Vict. c. 86 (*Conspiracy and Protection of Property*), ss. 3, 7.  
*See CRIMINAL LAW.* 3.  
*TRADE UNION.* 8, 11.
- s. 7.  
*See CRIMINAL LAW.* 2, 13.  
*JUSTICES.* 13.  
*TRADE UNION.* 12, 13.
- ss. 7, 16.  
*See CRIMINAL LAW.* 1.
- s. 16.  
*See SHIPPING.* 256.
- 38 & 39 Vict. c. 87 (*Land Transfer*), s. 48.  
*See TRUSTEE.* 13.
- s. 95.  
*See MIDDLESEX REGISTRY.* 1.
- 38 & 39 Vict. c. 89 (*Public Works Loans*), ss. 28, 36.  
*See SEWERS.* 23.
- 38 & 39 Vict. c. 90 (*Employers and Workmen*), s. 4.  
*See MASTER AND SERVANT.* 91, 94.
- ss. 5, 6.  
*See APPRENTICE.* 2.
- s. 10.  
*See APPRENTICE.* 2.  
*INFANT.* 4.  
*MASTER AND SERVANT.* 53, 55, 106.
- 38 & 39 Vict. c. 91 (*Trade Marks*), ss. 5, 10.  
*See TRADE-MARK.* 54.
- s. 10.  
*See TRADE-MARK.* 48, 49.

**1876.**

- 39 & 40 Vict. c. 16 (*Customs and Inland Revenue*), s. 8.  
*See REVENUE.* 70, 78, 79.
- 39 & 40 Vict. c. 17 (*Partition*), s. 6.  
*See PARTITION.* 7.
- 39 & 40 Vict. c. 22 (*Trade Unions*), ss. 1, 10.  
*See TRADE UNION.* 6.

## STATUTES—continued.

- 39 & 40 Vict. c. 22, s. 16.  
See TRADE UNION. 10.
- 39 & 40 Vict. c. 36 (*Customs Consolidation*), ss. 129, 144, 145.  
See SHIPPING. 187.
- 39 & 40 Vict. c. 45 (*Industrial and Provident Societies*), s. 11.  
See INDUSTRIAL AND PROVIDENT SOCIETY. 3.
- s. 12.  
See INDUSTRIAL AND PROVIDENT SOCIETY. 1.
- s. 17.  
See COMPANY—WINDING-UP. 100.  
INDUSTRIAL AND PROVIDENT SOCIETY. 5.
- 39 & 40 Vict. c. 56 (*Commons*), s. 20.  
See COMMON. 2.
- s. 33.  
See INCLOSURE. 1.
- 39 & 40 Vict. c. 59 (*Appellate Jurisdiction*).  
See APPEAL. 23.
- s. 3.  
See APPEAL. 22.
- ss. 3, 12.  
See APPEAL. 19.
- s. 20.  
See DIVORCE. 50, 58.
- 39 & 40 Vict. c. 61 (*Divided Parishes*), ss. 1, 3, 8.  
See POOR LAW. 11.
- s. 23.  
See POOR LAW. 5.
- s. 34.  
See POOR LAW. 12, 13, 20.
- s. 35.  
See POOR LAW. 14—16.
- s. 36.  
See POOR LAW. 19.
- 39 & 40 Vict. c. 75 (*Rivers Pollution Prevention*), ss. 2, 17, 20.  
See WATER. 4.
- s. 3.  
See ESTOPPEL. 11.
- ss. 3, 10, 11.  
See DISCOVERY. 39.  
WATER. 1, 6.
- ss. 4, 7, 16.  
See SEWERS. 27.
- s. 7.  
See PRACTICE. 91.  
SEWERS. 4.
- 39 & 40 Vict. c. 79 (*Elementary Education*), s. 47.  
See SCHOOLS. 1.
- 39 & 40 Vict. c. 80 (*Merchant Shipping*), s. 5.  
See SHIPPING. 260.
- 39 & 40 Vict. c. 80, ss. 6, 10.  
See SHIPPING. 1.
- ss. 13, 34, 37.  
See SHIPPING. 184.

## STATUTES—continued.

- 39 & 40 Vict. c. 80, s. 23.  
See SHIPPING. 270.
- s. 28.  
See SHIPPING. 185.
- 39 & 40 Vict. c. cccxxx. (*Stockton and Middlesbrough Corporations Waterworks*), s. 4.  
See WATER. 8.
- 1877.
- 40 & 41 Vict. c. 16 (*Removal of Weeds*), ss. 4, 6, 8.  
See SHIPPING. 254.
- 40 & 41 Vict. c. 18 (*Settled Estates*), s. 4.  
See MINES. 15.
- ss. 4, 13.  
See SETTLED LAND. 70.
- s. 16.  
See SETTLED LAND. 56.
- s. 24.  
See SETTLED LAND. 101.
- ss. 26, 27, 28.  
See SETTLED LAND. 54.
- s. 34.  
See POWERS. 22.
- s. 38.  
See SETTLED LAND. 114.
- s. 50.  
See HUSBAND AND WIFE. 58, 59.
- 40 & 41 Vict. c. 26 (*Companies*).  
See COMPANY. 178, 222, 223, 225, 232, 233, 236, 237, 241, 250.
- s. 3.  
See COMPANY. 104, 226, 235, 245, 248.
- ss. 3, 4.  
See COMPANY. 234, 246, 249.
- s. 4.  
See COMPANY. 231, 242.
- 40 & 41 Vict. c. 33 (*Contingent Remainders*).  
See WILL. 71.
- 40 & 41 Vict. c. 34 (*Loche King's Act Amendment Act*).  
See EXECUTOR. 18, 20.  
WILL. 5, 84, 87.
- 40 & 41 Vict. c. 42 (*Fishery, Oyster, Crab, and Lobster*), s. 4.  
See FISHERY. 1.
- 40 & 41 Vict. c. 48 (*Universities of Cambridge and Oxford*), ss. 28, 45.  
See ECCLESIASTICAL LAW. 2.
- 40 & 41 Vict. c. 55 (*Public Record Office*), s. 1.  
Rule dated Dec. 9, 1898. W. N. 1899 (June 3), p. 183. See Current Index, 1899, p. cxxxvii.
- 40 & 41 Vict. c. 57 (*Judicature—Ireland*), s. 25.  
See PRACTICE. 4.
- s. 86.  
See APPEAL. 19.
- 40 & 41 Vict. c. xxx. (*Middlesbrough Improvement*), s. 25.  
See CORPORATION. 1.

## STATUTES—continued.

## 1878.

- 41 & 42 Vict. c. 15 (*Customs and Inland Revenue*), s. 3.  
See REVENUE. 59.
- s. 12.  
See REVENUE. 91, 112, 115.
- s. 13.  
See REVENUE. 52, 54, 55, 60, 64, 65.
- s. 22.  
See REVENUE. 12.
- 41 & 42 Vict. c. 16 (*Factory and Workshop*), s. 5.  
See MASTER AND SERVANT. 63, 64.
- ss. 5, 81, 82, 86, 87.  
See MASTER AND SERVANT. 66.
- s. 9.  
See MASTER AND SERVANT. 59, 61, 63.
- ss. 17, 83, 94.  
See MASTER AND SERVANT. 60.
- s. 51.  
See MASTER AND SERVANT. 61.
- s. 82.  
See MASTER AND SERVANT. 65.
- s. 93, Sched. IV.  
See MASTER AND SERVANT. 12, 62.
- 41 & 42 Vict. c. 18 (*Public Works Loans*), s. 4.  
See SEWERS. 23.
- 41 & 42 Vict. c. 19 (*Matrimonial Causes*), s. 2.  
See DIVORCE. 54.
- s. 3.  
See DIVORCE. 95, 120.
- s. 4.  
See HUSBAND AND WIFE. 76, 80, 89, 92.  
JUSTICES. 19.
- 41 & 42 Vict. c. 25 (*Public Health—Water*), s. 3.  
See WATER. 11.
- s. 10.  
See WATER. 36.
- 41 & 42 Vict. c. 26 (*Parliamentary and Municipal Registration*), s. 5.  
See PARLIAMENT. 119, 133.  
RATES. 38.
- ss. 24, 28.  
See PARLIAMENT. 28.
- s. 26.  
See PARLIAMENT. 89.
- s. 28.  
See PARLIAMENT. 27, 32, 34, 37, 90, 119, 145.
- 41 & 42 Vict. c. 31 (*Bills of Sale*).  
See BILL OF SALE. 14, 38.  
COMPANY. 29.
- ss. 3, 4.  
See BILL OF SALE. 29.  
DELIVERY ORDER.  
FURNITURE WAREHOUSES.

## STATUTES—continued.

- 41 & 42 Vict. c. 31, s. 4.  
See BILL OF SALE. 10, 30, 37, 42.  
MINES. 8.
- ss. 4, 5.  
See BILL OF SALE. 40.
- ss. 4, 6.  
See MINES. 8.
- ss. 4, 8.  
See BILL OF SALE. 47, 51.
- s. 6.  
See BILL OF SALE. 13.  
FRAUDS, STATUTE OF. 6.
- ss. 8, 10.  
See BILL OF SALE. 18, 21, 55.
- s. 10.  
See BILL OF SALE. 5, 7, 8, 15, 16, 27, 34, 50.
- s. 14.  
See BILL OF SALE. 45.
- 41 & 42 Vict. c. 32 (*Metropolis Management*), ss. 4, 6.  
See LONDON. 28.
- s. 12.  
See MUSIC AND DANCING. 1.
- 41 & 42 Vict. c. 33 (*Dentists*), ss. 6, 7, 37.  
See MEDICAL PRACTITIONER. 1.
- 41 & 42 Vict. c. 49 (*Weights and Measures*), s. 25.  
See WEIGHTS AND MEASURES. 1, 2.
- 41 & 42 Vict. c. 54 (*Debtors*).  
See BANKRUPTCY. 240.  
CONTEMPT OF COURT. 5.  
IMPRISONMENT. 7.
- 41 & 42 Vict. c. 74 (*Contagious Diseases (Animals)*), s. 34.  
See DAIRY.
- 41 & 42 Vict. c. 77 (*Highways and Locomotives*), s. 13.  
See HIGHWAY. 20, 21.
- s. 20.  
See COUNTY COUNCIL. 6.  
HIGHWAY. 24.
- s. 23.  
See HIGHWAYS. 12—17, 18.
- s. 27.  
See MINES. 27.
- s. 32.  
See LOCOMOTIVE. 1.

## 1879.

- 42 & 43 Vict. c. 11 (*Bankers' Books Evidence*).  
See JUSTICES. 15.
- s. 7.  
See DISCOVERY. 8, 10, 11.
- ss. 7, 10.  
See DISCOVERY. 9.

**STATUTES—continued.**

- 42 & 43 Vict. c. 21 (*Customs and Inland Revenue*), s. 9.  
See SHIPPING. 187.
- 42 & 43 Vict. c. 30 (*Sale of Food and Drugs*), s. 3.  
See ADULTERATION. 13, 20, 21, 22.
- s. 6.  
See ADULTERATION. 6.
- s. 10.  
See ADULTERATION. 4, 17, 23.
- 42 & 43 Vict. c. 49 (*Summary Jurisdiction*).  
See GAMING. 5.
- s. 4.  
See JUSTICES. 8.
- ss. 6, 35.  
See JUSTICES. 2.
- POOR LAW. 8.
- RATES. 62.
- ss. 12, 19.  
See JUSTICES. 45.
- s. 16.  
See REVENUE. 12.
- s. 17.  
See CRIMINAL LAW. 50.
- JUSTICES. 14.
- s. 25.  
See WEIGHTS AND MEASURES. 1.
- s. 31.  
See JUSTICES. 40, 41, 43, 44.
- LICENSING. 47.
- ss. 31, 32, 55.  
See JUSTICES. 37.
- ss. 31, 33.  
See LICENSING ACTS. 12.
- s. 33.  
See JUSTICES. 32.
- LICENSING ACTS. 15.
- ss. 35, 47.  
See JUSTICES. 3.
- 42 & 43 Vict. c. 58 (*Public Offices Fees Act*, 1879), (Order under).  
W. N. 1897 (Jan. 2), p. 1. See *Current Index*, 1897, p. lxxxv.
- ss. 2, 3.  
Notice under—Fees. W. N. 1898, (Dec. 3), p. 397. See *Current Index*, 1898, p. xcix.
- 42 & 43 Vict. c. 76 (*Companies*).  
See COMPANY—WINDING-UP. 194.
- s. 5.  
See COMPANY. 70, 188.
- s. 7.  
See COMPANY—WINDING-UP. 195.

**1880.**

- 43 Vict. c. 19 (*Companies*), s. 7.  
See COMPANY—WINDING-UP. 143.
- 43 & 44 Vict. c. 19 (*Taxes—Management*).  
See REVENUE. 11, 114.
- s. 21.  
See REVENUE. 94.

**STATUTES—continued.**

- 43 & 44 Vict. c. 19, s. 50.  
See REVENUE. 115.
- s. 57.  
See BANKRUPTCY. 185.
- s. 59.  
See REVENUE. 107.
- 43 & 44 Vict. c. 20 (*Inland Revenue*), s. 43.  
See REVENUE. 128.
- 43 & 44 Vict. c. 41 (*Burials*), ss. 1, 5.  
See BURIAL. 1.
- 43 & 44 Vict. c. 42 (*Employers' Liability*).  
See COUNTY COURT. 10.
- SCOTTISH LAW. 30.
- s. 1.  
See MASTER AND SERVANT. 73, 75, 78.
- s. 3.  
See MASTER AND SERVANT. 21.
- s. 4.  
See COUNTY COURT. 67.
- s. 6.  
See PRACTICE. 98.
- s. 8.  
See MASTER AND SERVANT. 53.
- 43 & 44 Vict. c. 46 (*Universities Estates*), ss. 2, 4.  
See UNIVERSITY. 4.
- 43 & 44 Vict. c. 47 (*Ground Game*), ss. 1, 2, 3.  
See GAME. 2, 3.
- s. 3.  
See GAME. 4, 5.
- 43 & 44 Vict. c. cxliii. (*Liverpool Corporation Waterworks*).  
See FISHERY. 6.

**1881.**

- 44 & 45 Vict. c. 12 (*Customs and Inland Revenue*), s. 24.  
See REVENUE. 52.
- s. 27.  
See REVENUE. 137.
- ss. 27, 41.  
See REVENUE. 33.
- s. 32.  
See REVENUE. 131, 133.
- s. 38.  
See REVENUE. 2, 3, 4, 5, 6, 9, 9, 114.
- 117, 185, 186.
- ss. 38, 39.  
See REVENUE. 1—7.
- s. 39.  
See HUSBAND AND WIFE.
- s. 40.  
See REVENUE. 134.
- s. 41.  
See REVENUE.
- s. 42, sub-s. 1.  
See INFANT. 3.
- s. 52.  
See POWERS. 40.

**STATUTES**—*continued.*

- 44 & 45 Vict. c. 12, ss. 54, 56.  
*See* MORTGAGE. 4.  
 — s. 63.  
*See* MERGER. 2.  
 — s. 70, sub-s. 1.  
*See* VENDOR AND PURCHASER. 23.  
 44 & 45 Vict. c. 34 (*Metropolitan Open Spaces*),  
 s. 1.  
*See* BURIAL. 1, 2, 3.  
 — ss. 3, 5.  
*See* LONDON. 68.  
 — s. 5.  
*See* ECCLESIASTICAL LAW. 23.  
 GARDEN. 2.  
 44 & 45 Vict. c. 41 (*Conveyancing and Law of Property*).  
*See* SETTLED LAND. 41.  
 — ss. 2, 15.  
*See* COMPANY. 282.  
 — ss. 2, 54, 55.  
*See* MORTGAGE. 14.  
 — s. 3.  
*See* VENDOR AND PURCHASER. 1, 86, 100, 102.  
 — ss. 3, 13.  
*See* LANDLORD AND TENANT. 94.  
 — s. 5.  
*See* CONVEYANCING AND LAW OF PROPERTY. 1.  
 — s. 6.  
*See* VENDOR AND PURCHASER. 39, 40, 41.  
 — ss. 6, 19.  
*See* LIGHT AND AIR. 14.  
 — s. 7.  
*See* LUNACY. 43.  
 VENDOR AND PURCHASER. 28, 81.  
 — s. 14.  
*See* LANDLORD AND TENANT. 32, 49, 50, 51, 52, 53, 54, 56, 57, 59, 61, 62, 64, 65.  
 — ss. 14, 67.  
*See* LANDLORD AND TENANT. 47.  
 — ss. 14, 69.  
*See* LANDLORD AND TENANT. 64.  
 — s. 15.  
*See* COMPANY.  
 — s. 18.  
*See* LANDLORD AND TENANT. 79 A.  
 MORTGAGE. 41.  
 — ss. 18, 55.  
*See* LANDLORD AND TENANT. 76, 78.  
 — s. 19.  
*See* BANKRUPTCY. 129.  
 — ss. 19, 20, 21.  
*See* VENDOR AND PURCHASER. 83.  
 — ss. 19, 24.  
*See* DISTRESS. 11.  
 — s. 21.  
*See* LAND. 3.  
 — s. 21, sub-s. 2.  
*See* VENDOR AND PURCHASER. 44.

**STATUTES**—*continued.*

- 44 & 45 Vict. c. 41, s. 22.  
*See* MORTGAGE. 77.  
 — s. 24.  
*See* COMPANY. 34.  
 MORTGAGE. 57.  
 — s. 25.  
*See* MORTGAGE. 78, 79, 80.  
 — s. 30.  
*See* TRUSTEE. 100.  
 WILL. 16, 197.  
 — s. 31.  
*See* EXECUTOR. 14.  
 TRUSTEE. 7, 9, 12, 14.  
 — s. 32.  
*See* TRUSTEE. 111.  
 — s. 39.  
*See* DIVORCE. 120.  
 HUSBAND AND WIFE. 51, 56, 57.  
 SETTLED LAND. 117.  
 — s. 42.  
*See* INFANT. 2.  
 — s. 43.  
*See* INFANT. 23, 27, 28, 29.  
 WILL. 130.  
 — s. 52.  
*See* POWERS. 40, 41, 42.  
 — ss. 54, 56.  
*See* MORTGAGE. 56.  
 — s. 56.  
*See* VENDOR AND PURCHASER. 21.  
 — s. 70.  
*See* VENDOR AND PURCHASER. 92.  
 44 & 45 Vict. c. 44 (*Solicitors' Remuneration*).  
*See* SOLICITOR. 55, 60.  
 — s. 2.  
*See* SOLICITOR. 39.  
 — s. 7.  
*See* SOLICITOR. 50.  
 — s. 8.  
*See* SOLICITOR. 22, 73.  
 — Sched. I.  
*See* SOLICITOR. 56, 57, 60—63, 82.  
 — s. 56.  
*See* VENDOR AND PURCHASER. 21.  
 — s. 63.  
*See* MERGER. 2.  
 — s. 70.  
*See* VENDOR AND PURCHASER. 42, 92.  
 44 & 45 Vict. c. 58 (*Army*), ss. 41, 43, 45, 158, 176.  
*See* ARMY AND NAVY. 8.  
 — ss. 103—110.  
*See* ARMY AND NAVY. 1.  
 — s. 136.  
*See* MANDAMUS. 6.  
 — s. 143.  
*See* HIGHWAY. 31.  
 44 & 45 Vict. c. 61 (*Sunday Closing—Wales*),  
 s. 4.  
*See* LICENSING ACTS. 39.  
 44 & 45 Vict. c. 62 (*Veterinary Surgeons*), s. 17,  
 sub-s. 1.  
*See* VETERINARY SURGEON.

**STATUTES—continued.**44 & 45 Vict. c. 68 (*Judicature*), s. 9.*See* DIVORCE. 39.

——— s. 14.

*See* APPEAL. 13.44 & 45 Vict. c. 69 (*Fugitive Offenders*).*See* BAIL. 1.44 & 45 Vict. c. xxxv. (*Richmond Gas*).*See* GAS. 4.**1882.**45 & 46 Vict. c. 14 (*Metropolis Management*),  
s. 10.*See* LONDON. 9.

——— s. 13.

*See* LONDON. 33.45 & 46 Vict. c. 15 (*Commonable Rights Com-*  
*penation*).*See* COMMON. 8.45 & 46 Vict. c. 20 (*Poor Rates*), s. 4.*See* HIGHWAY. 25.45 & 46 Vict. c. 22 (*Boiler Explosions*).*See* BOILER. 1.

——— s. 4.

*See* BOILER. 2.45 & 46 Vict. c. 38 (*Settled Land*).*See* CROWN. 2.

——— s. 2.

*See* REVENUE. 14, 21, 22.*SETTLED LAND.* 27, 85, 126, 137.

——— ss. 2, 3, 20, 21, 22, 31, 44.

*See* SETTLED LAND. 125.

——— ss. 2, 3, 20, 22, 38, 45, 50.

*See* SETTLED LAND. 131.

——— ss. 2, 9, 11, 56.

*See* SETTLED LAND. 81.

——— ss. 2, 19.

*See* SETTLED LAND. 123.

——— ss. 2, 20.

*See* SETTLED LAND. 133.

——— ss. 2, 20, 50, 58.

*See* SETTLED LAND. 132.

——— ss. 2, 21, 25, sub-s. 33.

*See* SETTLED LAND. 32.

——— ss. 2, 21, 25, 26.

*See* SETTLED LAND. 47.

——— ss. 2, 21, 32.

*See* ECCLESIASTICAL LAW. 43.

——— ss. 2, 21, 53.

*See* COSTS. 65.

——— ss. 2, 21, 56.

*See* SETTLED LAND. 53.

——— ss. 2, 25, 26, 58.

*See* ACCUMULATIONS. 2.

——— ss. 2, 38, 58.

*See* SETTLED LAND. 135, 137.

——— ss. 2, 38, 59, 60.

*See* SETTLED LAND. 129.

——— ss. 2, 50.

*See* SETTLED LAND. 130.

——— ss. 2, 53, 58.

*See* ACCUMULATIONS. 10.*SETTLED LAND.* 98.**STATUTES—continued.**

45 &amp; 46 Vict. c. 38, ss. 2, 56, 58.

*See* SETTLED LAND. 76.

——— ss. 2, 58.

*See* SETTLED LAND. 124, 127.

——— ss. 2, 58, 61.

*See* SETTLED LAND. 117.

——— ss. 3, 4, 20, 55, 62.

*See* LUNACY. 43.

——— ss. 3, 15, 50, 51, 53.

*See* SETTLED LAND. 112.

——— ss. 3, 53, 62.

*See* LUNACY. 44.

——— ss. 4, 21, 46, 47, 55.

*See* SETTLED LAND. 51.

——— ss. 5, 30.

*See* SETTLED LAND. 105.

——— ss. 6, 7, 8, 13, 53.

*See* SETTLED LAND. 69.

——— ss. 6, 13, 17.

*See* SETTLED LAND. 73.

——— ss. 6—13, 17, 20.

*See* SETTLED LAND. 74.

——— ss. 6, 20, 45, 53, 58.

*See* SETTLED LAND. 75.

——— ss. 6, 53, 54.

*See* SETTLED LAND. 78.

——— ss. 6, 62.

*See* LUNACY. 15.

——— ss. 7, 22, 45, 53, 54.

*See* SETTLED LAND. 67.

——— ss. 8, 63.

*See* SETTLED LAND. 68.

——— ss. 11, 12.

*See* SETTLED LAND. 80, 83.

——— ss. 15, 53.

*See* SETTLED LAND. 116.

——— s. 21.

*See* SETTLED LAND. 21, 34, 61, 102.

——— ss. 21, 22, 24, 37.

*See* HEIRLOOMS. 5.

——— ss. 21, 22, 25, 26, 53.

*See* SETTLED LAND. 33.

——— ss. 21, 22, 53.

*See* SETTLED LAND. 12, 37, 59, 111.

——— ss. 21, 25, 26.

*See* SETTLED LAND. 30, 43, 103.

——— ss. 21, 32.

*See* SETTLED LAND. 100.

——— ss. 21, 34.

*See* SETTLED LAND. 17.

——— s. 22.

*See* SETTLED LAND. 120.

——— ss. 22, 25.

*See* SETTLED LAND. 40.

——— s. 25.

*See* SETTLED LAND. 29, 104.

——— ss. 25, 27.

*See* SETTLED LAND. 26.

**STATUTES—continued.**

- 45 & 46 Vict. c. 38, ss. 25, 51, 56.  
*See SETTLED LAND.* 64.  
 — ss. 26, 36.  
*See SETTLED LAND.* 31, 38.  
 — s. 31.  
*See SETTLED LAND.* 113.  
 — ss. 32, 33.  
*See SETTLED LAND.* 36, 52, 60, 90, 119.  
 — s. 37.  
*See HEIRLOOMS.* 1, 4.  
 — ss. 37, 51.  
*See HEIRLOOMS.* 3.  
 — ss. 38, 40.  
*See SETTLED LAND.* 128, 136.  
*TRUSTEE.* 16.  
 — s. 51.  
*See SETTLED LAND.* 44, 115.  
 — ss. 51, 58.  
*See SETTLED LAND.* 93, 99.  
 — s. 53.  
*See SETTLED LAND.* 87.  
 — s. 58.  
*See SETTLED LAND.* 20.  
 — s. 63.  
*See SETTLED LAND.* 77, 94, 110.  
 — Appendix FORM, 19.  
*See SETTLED LAND.* 129.  
 45 & 46 Vict. c. 39 (*Conveyancing*), s. 3.  
*See VENDOR AND PURCHASER.* 44.  
 — s. 10.  
*See WILL.* 35.  
 45 & 46 Vict. c. 40 (*Copyright*), s. 2.  
*See COPYRIGHT.* 29.  
 — ss. 2, 15.  
*See COPYRIGHT.* 28.  
 45 & 46 Vict. c. 43 (*Bills of Sale*).  
*See BILL OF SALE.* 6, 14, 16, 34, 38, 40.  
*FRAUDS, STATUTE OF.* 6.  
 — s. 1.  
*See BILL OF SALE.* 42.  
 — ss. 3, 8, 9, 15.  
*See BILL OF SALE.* 13.  
 — ss. 3, 9.  
*See BILL OF SALE.* 30.  
 — s. 4.  
*See BILL OF SALE.* 50.  
 — ss. 4, 6, 9.  
*See BILL OF SALE.* 26.  
 — ss. 4, 8, 9.  
*See BILL OF SALE.* 17.  
 — s. 5.  
*See BILL OF SALE.* 21, 55, 56.  
 — s. 6.  
*See BILL OF SALE.* 53.  
 — s. 7.  
*See BANKRUPTCY.* 130.  
*BILL OF SALE.* 22, 32, 35, 46, 54.  
 — ss. 7, 9.  
*See BILL OF SALE.* 25.

**STATUTES—continued.**

- 45 & 46 Vict. c. 43, ss. 7, 10.  
*See BILL OF SALE.* 23.  
 — s. 8.  
*See BILL OF SALE.* 29.  
*DELIVERY ORDER.*  
*FURNITURE WAREHOUSERS.*  
 — ss. 8, 9, 10.  
*See BILL OF SALE.* 11, 24.  
 — ss. 8, 9, 12.  
*See BILL OF SALE.* 19, 20.  
 — s. 9.  
*See BILL OF SALE.* 1, 3, 4, 31, 41, 51.  
 — s. 10.  
*See BILL OF SALE.* 12.  
 — s. 14.  
*See BILL OF SALE.* 43.  
*COMPANY.* 34.  
 — s. 17.  
*See BILL OF SALE.* 28.  
*COMPANY.* 29.  
*INDUSTRIAL AND PROVIDENT SOCIETY.* 2.  
 — Schedule.  
*See BILL OF SALE.* 33, 53.  
 — Sched. 7.  
*See BILL OF SALE.* 54.  
 — s. 3.  
*See CORPORATION.* 18.  
 — ss. 9, 32.  
*See PARLIAMENT.* 116.  
 45 & 46 Vict. c. 50 (*Municipal Corporations*), s. 11.  
*See CORPORATION.* 19.  
 — s. 22.  
*See CORPORATION.* 4.  
 — s. 23.  
*See CORPORATION.* 2, 23.  
*GAMING.* 29, 31.  
 — s. 25.  
*See LOCAL GOVERNMENT.* 1.  
 — ss. 36, 60.  
*See CORPORATION.* 7.  
 — ss. 41, 73.  
*See COUNTY COUNCIL.* 2.  
 — s. 42.  
*See CORPORATION.* 17.  
 — s. 58.  
*See COUNTY COUNCIL.* 1.  
 — ss. 60, 87, 225.  
*See CORPORATION.* 15.  
 — s. 73.  
*See CORPORATION.* 16.  
 — ss. 77, 88.  
*See CORPORATION.* 14.  
 — ss. 87, 225.  
*See CORPORATION.* 15.  
 — s. 93.  
*See APPEAL.* 43.  
 — ss. 108, 109.  
*See CORPORATION.* 8.

## STATUTES—continued.

- 45 & 46 Vict. c. 50, s. 140.  
*See CORPORATION.* 11, 20.  
*LOCAL GOVERNMENT.*  
 — ss. 140—143, 190, 191, 5th Sched.,  
 Part II, cl. 5 (d), cl. 12.  
*See CORPORATION.* 10.  
 — s. 154.  
*See ADULTERATION.* 17.  
 — ss. 169, 248.  
*See COUNTY COUNCIL.* 5.  
 45 & 46 Vict. c. 51 (*Parliamentary Elections*),  
 ss. 40, 56.  
*See PARLIAMENT.* 10.  
 45 & 46 Vict. c. 56 (*Electric Lighting*), ss. 10,  
 12, 17, 32.  
*See INJUNCTION.* 33.  
 45 & 46 Vict. c. 61 (*Bills of Exchange*), ss. 2, 7,  
 73.  
*See BANKER.* 12.  
 — ss. 2, 31.  
*See BILL OF EXCHANGE.* 10.  
 — ss. 3, 5, 7, 55.  
*See BILL OF EXCHANGE.* 8.  
 — s. 7.  
*See BILL OF EXCHANGE.* 7.  
 — ss. 8, 19, 36.  
*See BILL OF EXCHANGE.* 1.  
 — ss. 8, 73, 76.  
*See BILL OF EXCHANGE.* 23.  
 — ss. 13, 73.  
*See BANKER.* 14.  
 — ss. 14, 47.  
*See BILL OF EXCHANGE.* 4.  
 — s. 21.  
*See BILL OF EXCHANGE.* 14.  
 — s. 22.  
*See BANKRUPTCY.* 16.  
*BILL OF EXCHANGE.* 12.  
*INFANT.* 33.  
 — ss. 24, 60, 79, 80, 82.  
*See BANKER.* 19.  
 — s. 25.  
*See PRINCIPAL AND AGENT.* 9.  
 — ss. 29, 36, 72.  
*See BILL OF EXCHANGE.* 22.  
 — s. 49.  
*See BILL OF EXCHANGE.* 5.  
 — ss. 51, 57, 65—68, 97.  
*See COMPANY—WINDING-UP.* 203.  
 — ss. 51, 65—68, 97.  
*See BILL OF EXCHANGE.* 6.  
 — ss. 55, 56.  
*See BILL OF EXCHANGE.* 11.  
 — s. 57.  
*See PRACTICE.* 291, 294.  
 — s. 61.  
*See BILL OF EXCHANGE.* 19.  
 — ss. 62, 89.  
*See BILL OF EXCHANGE.* 20.  
 — s. 64.  
*See BILL OF EXCHANGE.* 2.

## STATUTES—continued.

- 45 & 46 Vict. c. 61, ss. 73, 76.  
*See NEGOTIABLE INSTRUMENT.* 4.  
 — ss. 81, 82.  
*See BANKER.* 9.  
 — s. 82.  
*See BANKER.* 8.  
 — s. 83.  
*See BILL OF EXCHANGE.* 18.  
 45 & 46 Vict. c. 75 (*Married Women's Pro-*  
*perty*).  
*See HUSBAND AND WIFE.* 63.  
*PROBATE.* 51.  
 — s. 1.  
*See BANKRUPTCY.* 18, 21, 35, 203, 204.  
*COSTS.* 41.  
*HUSBAND AND WIFE.* 21, 22, 24,  
 25, 29, 47, 55, 64, 69.  
*RATES.* 62.  
 — ss. 1, 2.  
*See HUSBAND AND WIFE.* 1, 5, 20.  
 — ss. 1, 2, 17.  
*See HUSBAND AND WIFE.* 15.  
 — ss. 1, 4.  
*See HUSBAND AND WIFE.* 7.  
 — ss. 1, 5.  
*See HUSBAND AND WIFE.* 6, 11, 21, 33,  
 58.  
 — ss. 1, 18, 24.  
*See HUSBAND AND WIFE.* 32, 38.  
 — ss. 1, 19.  
*See HUSBAND AND WIFE.* 26, 40, 53, 54.  
 — ss. 1, 23.  
*See HUSBAND AND WIFE.* 12.  
 — s. 2.  
*See COSTS.* 39.  
 — ss. 2, 19.  
*See INFANT.* 42, 45.  
 — s. 3.  
*See BANKRUPTCY.* 117, 271.  
*EXECUTOR.* 34.  
 — s. 4.  
*See HUSBAND AND WIFE.* 17.  
*POWERS.* 31.  
 — ss. 11, 12.  
*See INSURANCE.* 16, 18.  
 — s. 12.  
*See HUSBAND AND WIFE.* 61.  
 — ss. 12, 16.  
*See CRIMINAL LAW.* 40.  
 — s. 19.  
*See HUSBAND AND WIFE.* 26.  
 45 & 46 Vict. c. cliv. (*City of Glasgow Bank*  
*Liquidation Act*), s. 17, and 1st Sched.  
*See REVENUE.* 88.  
  
**1883.**  
 46 & 47 Vict. c. 34 (*Cheap Trains*), s. 2.  
*See RAILWAY.* 21.  
 — s. 6.  
*See RAILWAY.* 24.



## STATUTES—continued.

- 46 & 47 Vict. c. 41 (*Merchant Shipping—Fishing Boats*), s. 13 (now ss. 399, 400 of the *Merch. Shipp. Act, 1894*).  
See SHIPPING. 223.
- 46 & 47 Vict. c. 51 (*Corrupt and Illegal Practices*), ss. 33, 34.  
See PARLIAMENT. 9.
- ss. 40, 56.  
See APPEAL. 13.
- s. 53.  
See CRIMINAL LAW. 4.
- 46 & 47 Vict. c. 52 (*Bankruptcy*).  
See BANKRUPTCY. 127, 154.  
CONTEMPT OF COURT. 9.  
PRACTICE. 89.
- s. 3.  
See BANKRUPTCY. 174.
- s. 4.  
See BANKRUPTCY. 1, 2, 4, 6, 7, 8, 9, 10, 11, 13, 15, 17, 18, 19, 20, 22, 24, 26, 28, 29, 30, 31, 32, 34, 35, 140.  
DIVORCE. 46.  
HUSBAND AND WIFE. 25.
- ss. 4, 5, 6, 105.  
See BANKRUPTCY. 23.
- ss. 4, 6.  
See BANKRUPTCY. 12, 25, 29, 198.
- ss. 4, 9.  
See BANKRUPTCY. 38.
- ss. 4, 49.  
See BANKRUPTCY. 38.
- ss. 4, 115, 143.  
See BANKRUPTCY. 137.
- ss. 4, 143.  
See BANKRUPTCY. 14.
- ss. 5, 6.  
See BANKRUPTCY. 208.
- s. 6.  
See BANKRUPTCY. 142, 209.
- ss. 6, 103.  
See BANKRUPTCY. 197.
- ss. 6, 105.  
See BANKRUPTCY. 139.
- s. 6, Sched. I., r. 12; Sched. II., rr. 11—13.  
See BANKRUPTCY. 226.
- s. 7.  
See BANKRUPTCY. 144, 145, 150, 194, 201, 202, 210, 211.
- s. 8.  
See BANKRUPTCY. 41, 146.
- s. 9.  
See BANKRUPTCY. 66, 203, 240.
- ss. 9, 10.  
See IMPRISONMENT. 5.  
SOLICITOR. 112.
- ss. 9, 10, 45, 168.  
See BANKRUPTCY. 229.
- ss. 9, 37.  
See BANKRUPTCY. 168.
- ss. 9, 42, Sched. H, r. 9.  
See DISTRESS. 2.

## STATUTES—continued.

- 46 & 47 Vict. c. 52, ss. 9, 45, 46.  
See BANKRUPTCY. 105.
- ss. 9, 54, 70.  
See BANKRUPTCY. 199.
- ss. 9, 168, Sched. II., r. 9.  
See COMPANY—WINDING-UP. 210.
- ss. 10, 12.  
See BANKRUPTCY. 119, 120.
- s. 17.  
See BANKRUPTCY. 100.  
CRIMINAL LAW. 16.
- ss. 18, 20.  
See BANKRUPTCY. 39.
- ss. 18, 30, 37.  
See BANKRUPTCY. 224.
- ss. 18, 44.  
See BANKRUPTCY. 224.
- ss. 18, 108.  
See BANKRUPTCY. 225.
- s. 19.  
See BANKRUPTCY. 129.
- s. 20.  
See BANKRUPTCY. 94.
- ss. 20, 40, 44, 50, 54, 65, 168.  
See BANKRUPTCY. 262.
- ss. 20, 54, 121.  
See BANKRUPTCY. 193.
- ss. 20, 105, 109.  
See BANKRUPTCY. 39.
- s. 21.  
See BANKRUPTCY. 244.
- s. 21, 104.  
See BANKRUPTCY. 155, 241, 242.
- ss. 22, 54, 57, 73.  
See BANKRUPTCY. 77, 126.
- ss. 22, 57, 66.  
See BANKRUPTCY. 125.
- ss. 24, 163.  
See BANKRUPTCY. 72.
- s. 25.  
See BANKRUPTCY. 42.
- s. 27.  
See BANKRUPTCY. 98, 99.  
DISCOVERY. 38.
- s. 28.  
See BANKRUPTCY. 91.
- s. 28, 44, 65.  
See BANKRUPTCY. 49, 84.
- s. 30.  
See ATTACHMENT. 9.
- s. 30, 52.  
See ECCLESIASTICAL LAW. 73.
- s. 31.  
See BANKRUPTCY. 123.  
CRIMINAL LAW. 56.
- s. 52.  
See BANKRUPTCY. 95.
- ss. 35, 36.  
See BANKRUPTCY. 196.

## STATUTES—continued.

- 46 & 47 Vict. c. 52, s. 37.  
*See* BANKRUPTCY. 160, 164, 166, 167, 184.  
 COMPANY—WINDING UP. 204.  
 PRACTICE. 88.
- ss. 37, 40, Sched. II., r. 2.  
*See* BANKRUPTCY. 175.
- ss. 37, 48.  
*See* BANKRUPTCY. 114, 115.
- s. 38.  
*See* BANKRUPTCY. 234, 235, 237.  
 COMPANY—WINDING-UP. 227—229.
- ss. 38, 125.  
*See* BANKRUPTCY. 236.
- s. 40.  
*See* BANKRUPTCY. 135, 156, 181.
- s. 40, sub-s. 4.  
*See* EXECUTOR. 35.
- ss. 41, 42, 44.  
*See* BANKRUPTCY. 33.
- s. 42.  
*See* DISTRESS. 2.
- s. 44.  
*See* BANKRUPTCY. 124, 130, 131, 258, 260.
- ss. 44, 49.  
*See* BANKRUPTCY. 129, 180.
- ss. 44, 53.  
*See* BANKRUPTCY. 257, 259.
- ss. 44, 54.  
*See* BANKRUPTCY. 55, 192, 255.
- ss. 44, 54, 55, 168.  
*See* BANKRUPTCY. 50, 92.
- 44, 58, 118.  
*See* BANKRUPTCY. 52.
- ss. 44, 168.  
*See* BANKRUPTCY. 61.
- s. 45.  
*See* BANKRUPTCY. 36, 101.
- ss. 45, 46.  
*See* BANKRUPTCY. 227.
- ss. 45, 49, 168.  
*See* BANKRUPTCY. 187.
- ss. 45, 125.  
*See* BANKRUPTCY. 103, 106.
- ss. 45, 168.  
*See* BANKRUPTCY. 231.
- s. 47.  
*See* BANKRUPTCY. 263, 265, 267, 268, 269, 271, 272.  
 FRAUDULENT CONVEYANCING. 1.  
 LUNACY. 2.  
 VENDOR AND PURCHASER. 90.
- ss. 47, 48.  
*See* BANKRUPTCY. 273.
- ss. 47, 168.  
*See* BANKRUPTCY. 266.

## STATUTES—continued.

- 46 & 47 Vict. c. 52, s. 48.  
*See* BANKRUPTCY. 103, 111, 112, 113, 116.
- s. 49.  
*See* BANKRUPTCY. 52, 62, 141, 188.
- ss. 50, 54, 168.  
*See* BANKRUPTCY. 254.
- s. 52.  
*See* ECCLESIASTICAL LAW. 73.
- s. 53.  
*See* BANKRUPTCY. 48, 51, 53, 61.
- ss. 53, 54.  
*See* BANKRUPTCY. 54.
- s. 55.  
*See* BANKRUPTCY. 169.
- s. 57.  
*See* BANKRUPTCY. 245.
- ss. 57, 73.  
*See* BANKRUPTCY. 16.
- ss. 58, 63, 126.  
*See* BANKRUPTCY. 96.
- s. 72.  
*See* BANKRUPTCY. 240, 251.
- s. 73.  
*See* BANKRUPTCY. 76.
- s. 82.  
*See* BANKRUPTCY. 247.
- ss. 82, 121.  
*See* BANKRUPTCY. 248.
- ss. 85, 86, 87.  
*See* BANKRUPTCY. 217.
- s. 92.  
*Order dated May 28, 1898, as to jurisdiction of County Courts in Bankruptcy and Companies Winding-up. W. N. 1898 (June 25), p. 241. See Current Index, 1898, p. lix.*
- s. 93.  
*See* BANKRUPTCY. 191.
- 93, 99.  
*See* BANKRUPTCY. 68.
- 95, 125, 127.  
*See* BANKRUPTCY. 118.
- s. 102.  
*See* LUNACY. 4.  
 PRACTICE. 265.
- s. 104.  
*See* BANKRUPTCY. 45, 89, 212, 214.
- s. 105.  
*See* BANKRUPTCY. 73, 207.
- s. 112.  
*See* BANKRUPTCY. 149.
- s. 122.  
*See* BANKRUPTCY. 231.
- s. 125.  
*See* BANKRUPTCY. 152, 219.  
 EXECUTOR. 58.

**STATUTES—continued.**

- 46 & 47 Vict. c. 52, s. 132.  
*See* LUNACY. 3.  
 — s. 145.  
*See* SHERIFF. 4.  
 — s. 152.  
*See* BANKRUPTCY. 203.  
 HUSBAND AND WIFE. 26.  
 — s. 162.  
*See* BANKRUPTCY. 243.  
 — s. 168.  
*See* BANKRUPTCY. 143, 153, 173.  
 — s. 168, Sched. I., r. 10.  
*See* BANKRUPTCY. 186, 232.  
 — Sched. I., r. 10; Sched. II., rr. 11, 12, 13.  
*See* BANKRUPTCY. 230.  
 — Sched. I., rr. 10, 15.  
*See* BANKRUPTCY. 190.  
 — Sched. II., rr. 9, 11.  
*See* BANKRUPTCY. 228.  
 — Sched. II., rr. 12 A, 13.  
*See* BANKRUPTCY. 161.  
 — Sched. II., rr. 22-27.  
*See* BANKRUPTCY. 171.  
 46 & 47 Vict. c. 57 (*Patents, Designs, and Trade Marks*).  
*See* PATENT. 24, 45.  
 TRADE-MARK. 38, 51, 52, 53, 56.  
 — ss. 5, 26.  
*See* PATENT. 61, 62.  
 — ss. 11, 95.  
*See* PATENT. 29.  
 — ss. 18, 19, 20.  
*See* PATENT. 22, 24.  
 — ss. 18-21.  
*See* PATENT. 23.  
 — ss. 19, 26.  
*See* PATENT. 20, 21  
 — ss. 23, 85, 87, 90.  
*See* PATENT. 49.  
 — ss. 23, 87.  
*See* PATENT. 15.  
 — ss. 24.  
*Notice under—Fees. W. N. 1898 (Dec. 3), p. 397. See Current Index, 1898, p. xcix.*  
 — s. 25.  
*See* PATENT. 41.  
 — s. 26.  
*See* PATENT. 20, 21.  
 — s. 29.  
*See* PATENT. 8, 25, 30, 31, 33.  
 — s. 31.  
*See* PATENT. 11.  
 — s. 32.  
*See* PATENT. 51, 53, 56, 57.  
 — ss. 32, 46, 87.  
*See* PATENT. 52.  
 — ss. 39, 57.  
*International Exhibition at Paris. O. in C. dated Feb. 2, 1899. See Lond. Gaz. Feb. 3, 1899, p. 682.*

**STATUTES—continued.**

- 46 & 47 Vict. c. 57, ss. 47, 51, 60.  
*See* DESIGNS. 6.  
 — ss. 47, 60.  
*See* DESIGNS. 7.  
 — ss. 58, 59.  
*See* DESIGNS. 2, 3.  
 — s. 60.  
*See* DESIGNS. 4.  
 — 62, 64, 73 (1).  
*See* TRADE-MARK. 52.  
 — ss. 62, 64, 74.  
*See* TRADE-MARK. 22.  
 — ss. 62, sub-s. 6, 90, 107, 111, 117.  
*See* TRADE-MARK. 59.  
 — s. 64.  
*See* TRADE-MARK. 29, 33, 34, 36, 37, 41-44, 46, 48.  
 — ss. 64, 65, 70.  
*See* TRADE MARK. 40.  
 — ss. 64, 65, 70.  
*See* TRADE-MARK. 40.  
 — ss. 64, 73, 74.  
*See* TRADE-MARK. 20, 21.  
 — ss. 64, 74, 77.  
*See* TRADE-MARK. 23.  
 — ss. 64, 74, 92.  
*See* TRADE-MARK. 16.  
 — ss. 64, 90.  
*See* TRADE-MARK. 58.  
 — ss. 67, 72, 90.  
*See* TRADE-MARK. 31.  
 — s. 69.  
*See* TRADE-MARK. 56.  
 — ss. 69, 71, 72, 74.  
*See* TRADE-MARK. 17.  
 — ss. 72, 73.  
*See* TRADE-MARK. 26.  
 — s. 74.  
*See* TRADE-MARK. 39.  
 — ss. 76, 77A, 90.  
*See* TRADE-MARK. 60.  
 — s. 87.  
*See* TRADE-MARK. 18.  
 — s. 90.  
*See* PRACTICE. 18, 194.  
 TRADE-MARK. 25, 50, 54, 55, 58.  
 — s. 92.  
*See* TRADE-MARK. 12-15, 57.  
 — ss. 92, 105.  
*See* TRADE-MARK. 11.  
 — s. 101.  
*See* PATENT. 18, 19.  
 — s. 105.  
*See* TRADE-MARK. 64.  
 — Sched. I, Form D.  
*See* PATENT. 9.  
 46 & 47 Vict. c. 61 (*Agricultural Holdings*).  
*See* COUNTY COURT. 43.

## STATUTES—continued.

- 46 & 47 Vict. c. 61, ss. 6, 7, 24.  
*See LANDLORD AND TENANT.* 4.  
 ——— ss. 6—9, 22.  
*See LANDLORD AND TENANT.* 7.  
 ——— s. 7.  
*See LANDLORD AND TENANT.* 8.  
 ——— s. 24.  
*See COUNTY COURT.* 41.  
 ——— ss. 29, 61.  
*See LANDLORD AND TENANT.* 5.  
 ——— ss. 34, 54.  
*See LANDLORD AND TENANT.* 10.  
 ——— s. 57.  
*See LANDLORD AND TENANT.* 2, 3.  
 ——— s. 61.  
*See LANDLORD AND TENANT.* 6.  
 46 & 47 Vict. c. 62 (*Agricultural Holdings, Scotland*).  
*See LANDLORD AND TENANT.* 9.  
 ——— ss. 2, 6, 78.  
*See SCOTTISH LAW.* 22.  
 ——— s. 24.  
*See PROHIBITION.* 4.  
 46 & 47 Vict. c. lxx. (*Birmingham*), s. 90.  
*See MARKETS AND FAIRS.* 4.  
 46 & 47 Vict. c. cxv. (*Ribble Navigation*).  
*See SHIPPING.* 156.

## 1884.

- 47 & 48 Vict. c. 3 (*Municipal Corporations*), s. 9, sub-s. 9.  
*See PARLIAMENT.* 116.  
 47 & 48 Vict. c. 9 (*Bankruptcy Appeals—County Court*), s. 2.  
*See BANKRUPTCY.* 44.  
 47 & 48 Vict. c. 18 (*Settled Land*), s. 4.  
*See SETTLED LAND.* 67.  
 ——— s. 7.  
*See SETTLED LAND.* 94.  
 ——— s. 8.  
*See SETTLED LAND.* 75, 117.  
 47 & 48 Vict. c. 43 (*Summary Jurisdiction*), ss. 4, 5.  
*See JUSTICES.* 2.  
 ——— s. 6.  
*See JUSTICES.* 37.  
 ——— s. 7.  
*See LICENSING ACTS.* 12.  
 ——— ss. 7, 10.  
*See JUSTICES.* 16, 31.  
*RATES.* 62.  
 47 & 48 Vict. c. 54 (*Yorkshire Registry*), ss. 3, 4, 14.  
*See YORKSHIRE.* 1.  
 ——— ss. 7, 14.  
*See MORTGAGE.* 52.  
 47 & 48 Vict. c. 61 (*Judicature*), s. 8.  
*See ARBITRATION.* 42.

## STATUTES—continued.

- 47 & 48 Vict. c. 61, s. 14.  
*See HUSBAND AND WIFE.* 74.  
*PRACTICE.* 32.  
 47 & 48 Vict. c. 63 (*Trustees, Scotland*), s. 3.  
*See TRUSTEE.* 65.  
 47 & 48 Vict. c. 68 (*Matrimonial Causes*).  
*See HUSBAND AND WIFE.* 84.  
 ——— s. 5.  
*See DIVORCE.* 71, 118.  
 47 & 48 Vict. c. 70 (*Corrupt and Illegal Practices*), s. 20.  
*See CRIMINAL LAW.* 4.  
 ——— s. 36.  
*See APPEAL.* 43.  
 47 & 48 Vict. c. 71 (*Intestates' Estates*), ss. 4, 7.  
*See ESCHEAT.*  
 47 & 48 Vict. c. 72 (*Disused Burial Grounds*), ss. 2, 3, 5.  
*See BURIAL.* 2, 6.  
 ——— s. 3.  
*See ECCLESIASTICAL LAW.* 21, 30.  
 ——— ss. 3, 5.  
*See BURIAL GROUND.* 3, 6.  
 47 & 48 Vict. c. 76 (*Post Office Protection*), s. 7.  
*See POST OFFICE.* 1.  
 47 & 48 Vict. c. 78 (*Settled Land*), s. 7.  
*See SETTLED LAND.* 68.  
 47 & 48 Vict. c. ccxxii. (*Cardiff Corporation*), ss. 23.  
*See CORPORATION.* 21.

## 1885.

- 48 Vict. c. 3 (*Representation of the People*), ss. 2, 5, 7.  
*See PARLIAMENT.* 50.  
 ——— ss. 2, 7.  
*See PARLIAMENT.* 25, 44, 76, 117.  
 ——— s. 3.  
*See PARLIAMENT.* 86, 119, 123, 125, 126, 132, 133, 134, 139.  
 ——— ss. 5, 7.  
*See PARLIAMENT.* 41.  
 ——— s. 7.  
*See PARLIAMENT.* 120.  
 ——— s. 9.  
*See PARLIAMENT.* 113.  
 48 Vict. c. 15 (*Registration of Electors*), s. 59  
*Sched. 3, Form 58.*  
*See PARLIAMENT.* 37.  
 48 Vict. c. 17 (*Parliamentary Registration—Ireland*), s. 4.  
*See PARLIAMENT.* 30, 35.  
 ——— ss. 4, 27.  
*See PARLIAMENT.* 32.  
 ——— s. 27.  
*See PARLIAMENT.* 29, 63.  
 48 & 49 Vict. c. 16 (*Registration Amendment—Scotland*), s. 14.  
*See PARLIAMENT.* 60, 63, 64, 65.  
 ——— s. 22.  
*See PARLIAMENT.* 33.

**STATUTES—continued.**

- 48 & 49 Vict. c. 16, Sched. I., Part III., Form 31.  
See PARLIAMENT. 66.
- Sched. I., Part III., Form 34.  
See PARLIAMENT. 86.
- 48 & 49 Vict. c. 23 (*Representation of the People*), s. 14.  
See PARLIAMENT. 35.
- 48 & 49 Vict. c. 51 (*Customs and Inland Revenue*), s. 11.  
See REVENUE. 65, 105.
- 48 & 49 Vict. c. 69 (*Criminal Law Amendment*), s. 4.  
See CRIMINAL LAW. 49, 50.
- ss. 4, 9.  
See CRIMINAL LAW. 51.
- s. 5.  
See CRIMINAL LAW. 48.
- ss. 5, 9.  
See CRIMINAL LAW. 64.
- s. 11.  
See CRIMINAL LAW. 52.
- s. 13.  
See CRIMINAL LAW. 45.
- JUSTICES. 1.
- 48 & 49 Vict. c. lxxxix. (*Metropolitan Railway*).  
See CHARITY. 50.
- 48 & 49 Vict. c. cxvii. (*Hastings Improvement*), s. 148.  
See SEWERS. 31.

**1886.**

- 49 & 50 Vict. c. 27 (*Guardianship of Infants*), s. 2.  
See INFANT. 14.
- ss. 3, 13.  
See INFANT. 12, 13.
- s. 5.  
See INFANT. 11, 17.
- 49 & 50 Vict. c. 29 (*Crofters Holdings*), ss. 9, 34.  
See PARLIAMENT. 44.
- 49 & 50 Vict. c. 33 (*International Copyright*).  
See COPYRIGHT. 24.
- s. 2.  
See COPYRIGHT. 16, 39.
- ss. 4, 11.  
See COPYRIGHT. 25.
- s. 6.  
See COPYRIGHT. 20, 21, 23, 24, 26, 27.
- 49 & 50 Vict. c. 48 (*Medical Practitioners*), s. 6.  
See MEDICAL PRACTITIONER. 3.
- 49 & 50 Vict. c. 52 (*Married Woman—Maintenance in Case of Desertion*).  
See DIVORCE. 72.
- [*This Act was repealed and further provision made by 58 & 59 Vict. c. 39.*]
- 49 & 50 Vict. c. 54 (*Extraordinary Tithe Redemption*).  
See REVENUE. 119.

**STATUTES—continued**

- 49 & 50 Vict. c. 54, (s. 1—4).  
See TITHE. 2.
- ss. 3, 4.  
See TITHE. 4.
- 1887.**
- 50 & 51 Vict. c. 20 (*Criminal Law and Procedure—Ireland*).  
See SCHOOLS. 4.
- 50 & 51 Vict. c. 21 (*Water Companies*), s. 4.  
See WATER. 31.
- 50 & 51 Vict. c. 26 (*Allotments and Cottage Gardens Compensation for Crops*), s. 4.  
See LANDLORD AND TENANT. 1.
- 50 & 51 Vict. c. 28 (*Merchandise Marks*), s. 2.  
See MASTER AND SERVANT. 72.
- TRADE-MARK. 5, 6, 8.
- ss. 2, 3.  
See TRADE-MARK. 4, 5.
- ss. 2, 5.  
See TRADE-MARK. 7.
- s. 3.  
See TRADE-MARK. 9.
- 50 & 51 Vict. c. 29 (*Margarine*), s. 6.  
See ADULTERATION. 14, 15.
- ss. 6, 7, 12.  
See ADULTERATION. 17, 25.
- ss. 6, 12.  
See ADULTERATION. 12.
- ss. 11, 12.  
See ADULTERATION. 16.
- 50 & 51 Vict. c. 30 (*Settled Land*), s. 1.  
See SETTLED LAND. 39, 104.
- ss. 1, 2.  
See ECCLESIASTICAL LAW. 43.
- ss. 1, 2, 3.  
See SETTLED LAND. 102, 103.
- 50 & 51 Vict. c. 32 (*Open Spaces*), ss. 2, 4, and Sched.  
See BURIAL. 2, 6.
- s. 4.  
See BURIAL. 3.
- ss. 4, 14, 69.  
See ECCLESIASTICAL LAW. 21.
- 50 & 51 Vict. c. 46 (*Truck*).  
See MASTER AND SERVANT. 106.
- s. 6.  
See MASTER AND SERVANT. 105.
- 50 & 51 Vict. c. 47 (*Trustee Savings Banks*).  
See SAVINGS BANK. 1.
- 50 & 51 Vict. c. 55 (*Sheriffs*).  
FEES.] *Lands Clauses Act, 1845* (8 & 9 Vict. c. 18). *Scale of sheriff's fees for inquiries under. W. N. [1900] (Sept. 8) p. 245. See Current Index, 1900, p. xcvi.*  
See BANKRUPTCY. 215.
- s. 20.  
See SHERIFF. 14.
- s. 29.  
See SHERIFF. 6, 7, 8, 9.

**STATUTES—continued.**

- 50 & 51 Vict. c. 58 (*Coal Mines Regulation*).  
     *See* MASTER AND SERVANT. 53.  
     — s. 12.  
     *See* CONTRACT. 207.  
     MINES. 6, 7.  
     — s. 49.  
     *See* MINES. 4.  
 50 & 51 Vict. c. 66 (*Bankruptcy—Discharge and Closure*), s. 6.  
     *See* BANKRUPTCY. 248.  
 50 & 51 Vict. c. 71 (*Coroners*), s. 3.  
     *See* CORONER. 3.  
     — s. 36.  
     *See* CORONER. 2.

**1888.**

- 51 & 52 Vict. c. 2 (*National Debt Conversion*), s. 20.  
     *See* ANNUITY. 4.  
     NATIONAL DEBT. 1.  
     — ss. 21, 25.  
     *See* NATIONAL DEBT. 3.  
     — s. 25.  
     *See* NATIONAL DEBT. 2.  
 51 & 52 Vict. c. 8 (*Customs and Inland Revenue*), s. 14.  
     *See* REVENUE. 147.  
     — s. 17.  
     *See* REVENUE. 150.  
     — s. 24.  
     *See* REVENUE. 92.  
 51 & 52 Vict. c. 12 (*Electric Lighting*).  
     *See* INJUNCTION. 33.  
 51 & 52 Vict. c. 17 (*Copyright*).  
     *See* COPYRIGHT. 29.  
 51 & 52 Vict. c. 20 (*Glebe Lands*). Sale of Glebe Land Rules, dated March 15, 1897.  
     *See* Current Index, 1897, p. lxviii.  
 51 & 52 Vict. c. 21 (*Distress*), s. 4.  
     *See* DISTRESS. 12.  
     — s. 7.  
     *See* DISTRESS. 1.  
 51 & 52 Vict. c. 25 (*Railway and Canal Traffic*).  
     *See* RAILWAY. 60.  
     — ss. 7, 27.  
     *See* RAILWAY. 53.  
     — ss. 7, 31.  
     *See* RAILWAY. 40, 43.  
     — ss. 9, 10.  
     *See* RAILWAY. 49.  
     — ss. 17, 27, 29—35.  
     *See* RAILWAY. 54.  
     — s. 25.  
     *See* RAILWAY. 50.  
     — s. 27.  
     *See* RAILWAY. 54A.  
     — s. 29.  
     *See* RAILWAY. 52.  
     — s. 33.  
     *See* RAILWAY. 42.

**STATUTES—continued.**

- 51 & 52 Vict. c. 41 (*Local Government*).  
     *See* RATES. 27.  
     — ss. 2, 75.  
     *See* COUNTY COUNCIL. 2.  
     — ss. 3, 5, 59.  
     *See* CORONER. 1.  
     — ss. 3, 9.  
     *See* COUNTY COUNCIL. 13.  
     — ss. 3, 23, 78.  
     *See* MUSIC AND DANCING. 3.  
     — ss. 3, 59.  
     *See* COUNTY COUNCIL. 12.  
     — ss. 6, 35.  
     *See* LOCAL GOVERNMENT. 2.  
     — s. 11.  
     *See* HIGHWAY. 20, 21.  
     STREETS. 10.  
     — ss. 11, 23, 68.  
     *See* COUNTY COUNCIL. 6.  
     — ss. 11, 35.  
     *See* COUNTY COUNCIL. 8.  
     HIGHWAY. 23.  
     — ss. 11, 63, 87.  
     *See* LOCAL GOVERNMENT. 5.  
     — s. 16.  
     *See* CORPORATION. 23.  
     GAMING. 29, 31.  
     STREETS. 38.  
     — s. 24 (2) (j.).  
     *See* COUNTY COUNCIL. 9.  
     — s. 29.  
     *See* APPEAL. 34.  
     COUNTY COUNCIL. 11.  
     — s. 33.  
     *See* RATES. 16.  
     — ss. 35, 38, 84.  
     *See* COUNTY COUNCIL. 3.  
     — ss. 35, 38, 100.  
     *See* COUNTY COUNCIL. 5.  
     — s. 40.  
     *See* LONDON. 9.  
     — ss. 54, 59.  
     *See* CORPORATION. 9.  
     — ss. 57, 59.  
     *See* PROHIBITION. 2.  
     WATER. 10.  
     — s. 62.  
     *See* LOCAL GOVERNMENT. 6.  
     — ss. 62, 86.  
     *See* COUNTY COUNCIL. 4.  
     — s. 84.  
     *See* CORPORATION. 20.  
     — s. 85.  
     *See* BICYCLE. 1.  
 51 & 52 Vict. c. 42 (*Mortmain*).  
     *See* CHARITY. 43, 50.  
     — s. 4.  
     *See* CHARITY. 45.  
     — ss. 4, 10.  
     *See* CHARITY. 44.  
     — s. 10.  
     *See* CHARITY. 43.

**STATUTES—continued.**

- 51 & 52 Vict. c. 43 (*County Court's*), ss. 35, 43, 49.  
     *See* COUNTY COURT. 54.  
 ——— ss. 48, 120, 186.  
     *See* COUNTY COURT. 3.  
 ——— s. 56.  
     *See* COUNTY COURT. 51.  
 ——— s. 56, 60.  
     *See* COUNTY COURT. 49.  
 ——— ss. 56, 60, 116.  
     *See* COUNTY COURT. 55.  
 ——— ss. 56, 74.  
     *See* SHIPPING. 113.  
 ——— s. 57.  
     *See* COUNTY COURT. 42.  
 ——— s. 60.  
     *See* COUNTY COURT. 44.  
 ——— s. 65.  
     *See* COUNTY COURT. 27, 29, 30, 56, 57, 71.  
 ——— ss. 65, 74.  
     *See* COUNTY COURT. 69.  
 ——— ss. 65, 94.  
     *See* COUNTY COURT. 34.  
 ——— ss. 65, 113.  
     *See* COUNTY COURT. 28.  
 ——— ss. 65, 116.  
     *See* COUNTY COURT. 23, 32, 33, 71.  
 ——— ss. 65, 118.  
     *See* COUNTY COURT. 31.  
 ——— s. 66.  
     *See* COUNTY COURT. 58, 70.  
 ——— ss. 67, 68, 164.  
     *See* PRACTICE. 223.  
 ——— s. 72.  
     *See* COUNTY COURT. 65.  
 ——— s. 74.  
     *See* COUNTY COURT. 45, 46.  
 ——— ss. 74, 86.  
     *See* COUNTY COURT. 68.  
 ——— ss. 74, 185.  
     *See* LONDON. 35, 36.  
 ——— ss. 88, 89, 113, 114.  
     *See* COUNTY COURT. 21.  
 ——— s. 90.  
     *See* COUNTY COURT. 62.  
 ——— s. 101.  
     *See* SHIPPING. 196, 211.  
 ——— s. 116.  
     *See* CONTRACT. 2.  
     COPYRIGHT. 12.  
     COUNTY COURT. 16, 19, 36.  
     TORT. 1.  
 ——— s. 118.  
     *See* COUNTY COURT. 25.  
 ——— s. 120.  
     *See* COUNTY COURT. 2, 6—12, 14A.  
     PROBATE. 143.  
     REPLEVIN.  
     SHIPPING. 3.

**STATUTES—continued.**

- 51 & 52 Vict. c. 43, ss. 120—124.  
     *See* COUNTY COURT. 14A.  
 ——— s. 121.  
     *See* COUNTY COURT. 1.  
 ——— s. 132.  
     *See* SHIPPING. 204.  
 ——— s. 147.  
     *See* DISTRESS. 12.  
 ——— s. 153.  
     *See* COUNTY COURT. 39.  
 ——— ss. 154, 160.  
     *See* COUNTY COURT. 40.  
 ——— s. 156.  
     *See* COUNTY COURT. 38.  
     INTERPLEADER. 4.  
 ——— s. 162.  
     *See* COUNTY COURT. 48.  
     SOLICITOR. 137.  
 ——— s. 164.  
     *See* COUNTY COURT. 15, 66.  
 ——— s. 186.  
     *See* COUNTY COURT. 3.  
 ——— s. 188.  
     *See* SHIPPING. 5.  
 51 & 52 Vict. c. 50 (*Patents, Designs, and Trade Marks*).  
     *See* DESIGN. 7.  
     TRADE-MARK. 29.  
 ——— s. 1.  
     *See* PATENT. 18.  
 ——— ss. 1, 27.  
     *See* PATENT. 19.  
 ——— s. 4.  
     *See* PATENT. 20.  
 ——— s. 5.  
     *See* PATENT. 23.  
 ——— s. 10.  
     *See* TRADE-MARK. 16, 21, 24, 36, 40, 41—44, 46, 49, 58.  
 ——— ss. 10, 14.  
     *See* TRADE-MARK. 31.  
 ——— ss. 10—16.  
     *See* TRADE-MARK. 22, 23.  
 ——— ss. 14, 15.  
     *See* TRADE-MARK. 26.  
 ——— s. 18.  
     *See* TRADE-MARK. 60.  
 ——— ss. 18—20.  
     *See* PATENT. 24.  
 ——— ss. 62, 64, 73.  
     *See* TRADE-MARK. 52.  
 ——— s. 64.  
     *See* TRADE-MARK. 48.  
 ——— ss. 64, 103.  
     *See* TRADE-MARK. 38.  
 ——— s. 69.  
     *See* TRADE-MARK. 51, 56.  
 ——— ss. 70—74, 76, 77, 87, 91.  
     *See* TRADE-MARK. 33.

**STATUTES—continued.**

- 51 & 52 Vict. c. 52 (*Public Health—Buildings in Streets*), s. 3.  
See INJUNCTION. 17.  
STREETS. 2.
- 51 & 52 Vict. c. 54 (*Sea Fisheries*), s. 6.  
See FISHERY. 2, 3.
- 51 & 52 Vict. c. 59 (*Trustee*).  
See TRUSTEE. 80.
- ss. 1, 8.  
See BANKRUPTCY. 243.  
COMPANY. 119, 122.
- s. 2.  
See VENDOR AND PURCHASER. 21.
- ss. 4, 5, 6, 8.  
See TRUSTEE. 40.
- s. 6.  
See TRUSTEE. 31, 34.
- s. 8.  
See COMPANY. 203.  
HUSBAND AND WIFE. 61.  
LIMITATIONS, STATUTE OF. 12.  
TRUSTEE. 1, 2, 4, 21, 59, 78, 81, 82.
- ss. 10, 11.  
See TRUSTEE. 98.
- 51 & 52 Vict. c. 62 (*Preferential Payments in Bankruptcy*), s. 1.  
See COMPANY. 34, 114.  
COMPANY—WINDING-UP. 189.
- s. 2.  
See BANKRUPTCY. 156.  
FRIENDLY SOCIETY. 2.
- s. 3.  
See EXECUTOR. 37.
- 51 & 52 Vict. c. 64 (*Libel*), s. 5.  
See DEFAMATION. 1.
- s. 8.  
See DEFAMATION. 8.
- 51 & 52 Vict. c. 65 (*Solicitors*), s. 13.  
See SOLICITOR. 49, 115.
- ss. 13, 19.  
See SOLICITOR. 116, 121.

**1889.**

- 52 & 53 Vict. c. 7 (*Customs and Inland Revenue*), s. 5.  
See REVENUE. 33, 47, 132.
- s. 11.  
See REVENUE. 1, 2, 3, 6—9, 116, 117, 185, 186.
- 52 & 53 Vict. c. 10 (*Commissioners for Oaths*), s. 1.  
See EVIDENCE. 14.
- 52 & 53 Vict. c. 21 (*Weights and Measures*), s. 21.  
See WEIGHTS AND MEASURES. 5, 7.
- s. 22.  
See WEIGHTS AND MEASURES. 6.
- s. 28.  
See WEIGHTS AND MEASURES. 3, 4.
- 52 & 53 Vict. c. 27 (*Advertising Stations—Rating*), s. 3.  
See RATES. 10, 11.

**STATUTES—continued.**

- 52 & 53 Vict. c. 27, ss. 3, 4.  
See ADVERTISING STATIONS.
- 52 & 53 Vict. c. 32 (*Trust Investments*), ss. 3, 6.  
See TRUSTEE. 58, 70.
- 52 & 53 Vict. c. 40 (*Welsh Intermediate Education*), s. 13.  
See CHARITY. 12.
- 52 & 53 Vict. c. 42 (*Revenue*), s. 16.  
See REVENUE. 142.
- 52 & 53 Vict. c. 43 (*Merchant Shipping—Tonnage*), s. 3.  
See COSTS. 20  
SHIPPING. 169, 170.
- s. 5.  
See SHIPPING. 168.
- [*This Act was repealed by 57 & 58 Vict. c. 60, s. 745.*]
- 52 & 53 Vict. c. 45 (*Factors*), ss. 1, 2.  
See FACTOR. 2, 8.
- ss. 2, 9, 10.  
See SALE OF GOODS. 7.
- ss. 3, 9.  
See FACTOR. 3.
- s. 9.  
See FACTOR. 4, 5, 6, 7.
- 52 & 53 Vict. c. 46 (*Merchant Shipping*), s. 1.  
See SHIPPING. 160, 161.
- [*This Act was repealed by 57 & 58 Vict. c. 60, s. 745.*]
- 52 & 53 Vict. c. 49 (*Arbitration*), s. 1.  
See ARBITRATION. 10, 47.
- s. 2.  
See ARBITRATION. 39.
- ss. 2, 25, 26.  
See ARBITRATION. 37.
- s. 4.  
See ARBITRATION. 3, 4, 5, 6, 12, 21, 56, 57, 58, 59, 61.  
MASTER AND SERVANT. 95.  
PARTNERSHIP. 9.
- s. 5.  
See ARBITRATION. 7, 8.
- ss. 9, 24.  
See ARBITRATION. 36.
- s. 10.  
See ARBITRATION. 9, 29.
- ss. 10, 11, 19.  
See ARBITRATION. 33.
- s. 12.  
See BANKRUPTCY. 5.  
LANDLORD AND TENANT. 7.
- ss. 12, 24.  
See SEWERS. 21.
- ss. 13, 14.  
See FRAUDS, STATUTE OF. 23.
- ss. 13, 15.  
See ARBITRATION. 44.
- s. 14.  
See ARBITRATION. 1, 42, 49.



**STATUTES—continued.**

- 52 & 53 Vict. c. 49, ss. 14, 15.  
*See* ARBITRATION. 31, 38, 48.  
 — s. 15.  
*See* ARBITRATION. 45.  
 — s. 19.  
*See* ARBITRATION. 23, 31.  
 — ss. 19, 24.  
*See* ARBITRATION. 35.  
 — s. 20.  
*See* LANDS CLAUSES ACTS. 10.  
 — s. 24.  
*See* LOCAL GOVERNMENT. 5.  
 — s. 27.  
*See* ARBITRATION. 60.  
 — Sched I. (c).  
*See* COMPANY—WINDING-UP. 1.  
 52 & 53 Vict. c. 55 (*Universities (Scotland)*),  
 ss. 15, 16, 19, 20.  
*See* UNIVERSITY. 3.  
 — ss. 15, 16, 21.  
*See* UNIVERSITY. 1.  
 52 & 53 Vict. c. 57 (*Regulation of Railways*),  
 s. 5.  
*See* RAILWAY. 20.  
 52 & 53 Vict. c. 62 (*Factories (Cotton Cloth)*),  
 s. 13.  
*See* JUSTICES. 8.  
 52 & 53 Vict. c. 63 (*Interpretation*), s. 1.  
*See* REVENUE. 163.  
 — s. 10.  
*See* COMPANY. 123.  
 — s. 13.  
*See* JUSTICES. 16, 31, 37.  
 LICENSING ACTS. 12, 47.  
 RATES. 62.  
 — s. 38.  
*See* STREETS. 33.  
 52 & 53 Vict. c. xxxii.  
*See* JUSTICES. 29.

**1890.**

- 53 & 54 Vict. c. 5 (*Lunacy*). *Rules as to applications for Traverse, Supersedeas and Vesting Orders.* W. N. 1900 (Aug. 11), p. 229. *See* Current Index, 1900, p. xciii.  
*See* DEFAMATION. 17.  
 JUSTICES. 15.  
 — ss. 14, 24.  
*See* LUNACY. 31.  
 — s. 49.  
*See* LUNACY. 12.  
 — s. 94.  
*See* LUNACY. 27, 31.  
 — ss. 108, 116, 146, 333.  
*See* LUNACY. 38.  
 — ss. 108, 117, 120, 124.  
*See* LUNACY. 30.  
 — s. 109.  
*See* LUNACY. 11.  
 — s. 116.  
*See* LUNACY. 13, 39.  
 PROBATE. 56, 65.  
 VENDOR AND PURCHASER. 53.

**STATUTES—continued.**

- 53 & 54 Vict. c. 5, ss. 116, 117.  
*See* LUNACY. 20.  
 — ss. 116, 117, 120.  
*See* LUNACY. 19.  
 — ss. 116, 117, 120, 128.  
*See* LUNACY. 26, 45.  
 — ss. 116—119, 133—143, 342.  
*See* LUNACY. 50.  
 — ss. 116, 120.  
*See* LUNACY. 15.  
 — s. 116, 128, 129, 135.  
*See* LUNACY. 47.  
 — ss. 116, 128, 129, 142.  
*See* LUNACY. 32.  
 — s. 116, 130, 136.  
*See* LUNACY. 48.  
 — s. 117.  
*See* LUNACY. 41.  
 — ss. 117, 120.  
*See* LUNACY. 2, 3.  
 PROBATE. 65.  
 — ss. 117, 134.  
*See* CONFLICT OF LAWS. 7.  
 — s. 120.  
*See* LUNACY. 4.  
 — ss. 120, 122, 124.  
*See* LUNACY. 43.  
 — ss. 132, 133.  
*See* COUNTY COURT. 51.  
 — s. 134.  
*See* LUNACY. 52.  
 — ss. 134, 341.  
*See* LUNACY. 46.  
 — s. 135.  
*See* LUNACY. 9.  
 — ss. 135, 136.  
*See* LUNACY. 51.  
 — s. 136.  
*See* COMPANY. 303.  
 — ss. 136, 137, 142.  
*See* LUNACY. 49.  
 — s. 148, 149.  
*See* LUNACY. 25.  
 — ss. 184, 185, 186.  
*See* LUNACY. 33.  
 — s. 283.  
*See* LUNACY. 24.  
 — ss. 287, 291.  
*See* LUNACY. 23.  
 — s. 299.  
*See* LUNACY. 21, 40.  
 53 & 54 Vict. c. 21 (*Inland Revenue*), ss. 21, 24.  
*See* JUSTICES. 7.  
 — s. 22.  
*See* REVENUE. 94.  
 53 & 54 Vict. c. 29 (*Intestates' Estates*).  
*See* INTESTACY. 2.  
 — s. 1.  
*See* PROBATE. 44, 51.  
 — ss. 2, 4.  
*See* DOWER. 1.  
 53 & 54 Vict. c. 35 (*Boiler Explosions*).  
*See* BOILER. 1.

**STATUTES—continued.**

53 & 54 Vict. c. 35 (*Boiler Explosions*) s. 2.  
*See* BOILER. 2.

53 & 54 Vict. c. 39 (*Partnership*), ss. 2, 3.  
*See* BANKRUPTCY. 138, 178, 179.  
 PARTNERSHIP. 16.

— ss. 2, 3, 10.

*See* BANKRUPTCY. 180.

— s. 3.

*See* BANKRUPTCY. 162.

— s. 9.

*See* PARTNERSHIP. 32.

— s. 10.

*See* PRINCIPAL AND AGENT. 13.

— ss. 11, 12.

*See* PARTNERSHIP. 39.

— ss. 17, 36.

*See* SOLICITOR. 90.

— s. 20.

*See* PARTNERSHIP. 18.

— s. 23.

*See* BANKRUPTCY. 187.

PARTNERSHIP. 40.

— ss. 23, 31.

*See* PARTNERSHIP. 35.

— s. 31.

*See* PARTNERSHIP. 8.

— s. 38.

*See* BANKRUPTCY. 137.

— s. 40.

*See* ARBITRATION. 13.

53 & 54 Vict. c. 40 (*Factors*), s. 1.

*See* FACTOR. 3.

53 & 54 Vict. c. 44 (*Judicature*), s. 1.

*See* COSTS. 59.

DIVORCE. 115.

PRACTICE. 47, 48, 52, 54.

— ss. 4, 5.

*See* COSTS. 24.

CROWN OFFICE. 1.

PROHIBITION. 7.

— s. 5.

*See* COSTS. 20, 26, 28.

RAILWAY. 38.

53 & 54 Vict. c. 45 (*Police*), ss. 1, 5, 12.

*See* POLICE. 3.

— s. 25.

*See* COUNTY COUNCIL. 9.

— Sched. I., Rule 1, s. 11.

*See* POLICE. 4.

53 & 54 Vict. c. 51 (*Metropolis—Management*),  
 s. 1.

*See* LONDON. 67, 68.

53 & 54 Vict. c. 59 (*Public Health*), s. 17,  
 sub-s. 1.

*See* SEWERS. 27.

— s. 19.

*See* SEWERS. 12, 13, 28—30.

— s. 23.

*See* SEWERS. 18.

— s. 25.

*See* WASTE. 2.

— s. 51.

*See* INNKEEPER. 4.

**STATUTES—continued.**

53 & 54 Vict. c. 62 (*Companies—Memorandum*).  
*See* COMPANY. 170, 178, 184, 232.

— s. 1.

*See* COMPANY. 172—174, 176, 179—182,  
 185, 186, 187.

COMPANY—WINDING-UP. 182.

— ss. 1, 2, 3.

*See* COMPANY. 171, 180.

— ss. 1, 3.

*See* COMPANY. 64, 175, 183.

— ss. 2, 3.

*See* COMPANY. 191, 193.

— s. 3.

*See* COMPANY. 177.

53 & 54 Vict. c. 63 (*Companies—Winding-up*).  
*See* COMPANY—WINDING-UP. 49, 97,  
 149, 232.

— s. 1.

*See* COMPANY. 185, 241.

COMPANY—WINDING UP. 94, 95, 98,  
 100.

COUNTY COURT. 60.

PROHIBITION. 1.

— ss. 1, 2.

*See* COMPANY—WINDING-UP. 182.

— ss. 1, 2, 32.

*See* COMPANY. 181, 228.

COMPANY—WINDING-UP. 103.

— ss. 1, 2, 3.

*See* COMPANY—WINDING-UP. 100.

— ss. 1, 3.

*See* COMPANY—WINDING-UP. 101, 108.

LONDON. 31.

— ss. 1, 31.

*See* COMPANY—WINDING UP. 96.

— ss. 1, 32, 33.

*See* COMPANY—WINDING-UP. 102.

— s. 3.

*See* BUILDING SOCIETY. 20.

COMPANY—WINDING-UP. 99, 176.

— ss. 4, 5.

*See* COMPANY—WINDING-UP. 107, 108.

— ss. 4, 6.

*See* COMPANY—WINDING-UP. 110, 122.

— ss. 4, 27.

*See* COMPANY—WINDING-UP. 135.

— ss. 4, 31, 32.

*See* COMPANY—WINDING-UP. 120, 121,  
 213.

— s. 4, Sched. I.

*See* COMPANY. 30.

— s. 6.

*See* COMPANY—WINDING-UP. 105, 117,  
 128.

— ss. 6, 9, 12.

*See* COMPANY—WINDING-UP. 124.

— ss. 6, 9, 23, 24, Sched. 1, r. 6.

*See* COMPANY—WINDING-UP. 20.

— s. 6, Sched. I., r. 8.

*See* COMPANY—WINDING-UP. 202.

**STATUTES—continued.**

- 53 & 54 Vict. c. 63, s. 7.  
*See* COMPANY—WINDING-UP. 136, 231.  
 — s. 8.  
*See* COMPANY—WINDING-UP. 78, 79, 80, 81, 82, 84, 85, 87, 134, 151, 160, 161, 172, 244.  
 — ss. 8, 9.  
*See* COMPANY—WINDING-UP. 212.  
 — ss. 8, 14.  
*See* COMPANY—WINDING-UP. 131.  
 — ss. 8, 26.  
*See* COMPANY—WINDING-UP. 76, 77.  
 — s. 10.  
*See* COMPANY. 115, 117, 120, 133, 203.  
 COMPANY—WINDING-UP. 69, 195—201.  
 'INDUSTRIAL AND PROVIDENT SOCIETY. 5.  
 — ss. 10, 13.  
*See* COMPANY—WINDING-UP. 250.  
 — s. 12.  
*See* COMPANY—WINDING-UP. 116.  
 — ss. 12, 13.  
*See* COMPANY. 8.  
 — s. 15.  
*See* COMPANY—WINDING-UP. 18, 127, 237.  
 — Sched. I., cl. 7, 11.  
*See* COMPANY—WINDING-UP. 129, 212.  
 53 & 54 Vict. c. 64 (*Directors' Liability*).  
*See* PRACTICE. 88.  
 — s. 3.  
*See* COMPANY. 207, 209.  
 PRACTICE. 101.  
 53 & 54 Vict. c. 66 (*Metropolis Management*), s. 3.  
*See* LONDON. 90.  
 — s. 6.  
*See* LONDON. 73.  
 53 & 54 Vict. c. 69 (*Settled Land*), ss. 3, 7.  
*See* SETTLED LAND. 67.  
 — s. 4.  
*See* SETTLED LAND. 113, 130, 131, 133.  
 — s. 8.  
*See* SETTLED LAND. 81.  
 — s. 10.  
*See* APPEAL. 40.  
 SETTLED LAND. 78, 112.  
 — s. 11.  
*See* SETTLED LAND. 85, 87.  
 — s. 13.  
*See* SETTLED LAND. 21, 29, 39, 47.  
 — ss. 13, 15.  
*See* SETTLED LAND. 40, 43, 64.  
 — s. 15.  
*See* SETTLED LAND. 30, 31, 102.  
 — s. 19.  
*See* SEWERS. 19.  
 53 & 54 Vict. c. 70 (*Housing of the Working Classes*), Sched. II.  
*See* APPEAL. 32.

**STATUTES—continued.**

- 53 & 54 Vict. c. 71 (*Bankruptcy*).  
*See* PRACTICE. 89.  
 — s. 1.  
*See* BANKRUPTCY. 5, 15, 36, 37.  
 LUNACY. 2.  
 — ss. 1, 11.  
*See* BANKRUPTCY. 107, 227.  
 — s. 3.  
*See* BANKRUPTCY. 212, 221, 222.  
 — s. 8.  
*See* BANKRUPTCY. 49, 84, 86, 88, 90, 121.  
 — s. 10.  
*See* BANKRUPTCY. 163.  
 — s. 11.  
*See* ATTACHMENT. 9.  
 BANKRUPTCY. 56, 57, 102, 104, 106, 108, 143, 215, 216.  
 BILL OF SALE. 48.  
 — s. 15.  
*See* BANKRUPTCY. 245, 250.  
 — s. 23.  
*See* BANKRUPTCY. 223, 228.  
 — s. 25.  
*See* BANKRUPTCY. 83.  
 — s. 26.  
*See* BANKRUPTCY. 122.  
 53 & 54 Vict. c. ccxxi. (*Glasgow Police Amendment*), s. 16.  
*See* SCOTTISH LAW. 39.  
 53 & 54 Vict. c. ccxxxv. (*Tunbridge Wells Improvement*), s. 93.  
*See* STREETS. 1.  
 53 & 54 Vict. c. ccxliii. (*London Council (General Powers)*), ss. 4, 5.  
*See* RATES. 37.

**1891.**

- 54 & 55 Vict. c. 8 (*Tithes*), s. 2.  
*See* TITHE. 5.  
 — s. 6.  
*See* TITHE. 6.  
 — s. 8.  
*See* TITHE. 3.  
 — s. 10.  
*See* TITHE. 7.  
 54 & 55 Vict. c. 11 (*Electoral Disabilities Removal Act*), s. 2.  
*See* PARLIAMENT. 20.  
 54 & 55 Vict. c. 17 (*Charitable Trusts (Recovery)*), s. 3.  
*See* RENT-CHARGE. 6.  
 54 & 55 Vict. c. 39 (*Stamps*), ss. 1, 53.  
*See* REVENUE. 172.  
 — ss. 4, 38.  
*See* BANKER. 13.  
 — s. 12. Instructions as to adjudication stamps.  
*See* Current Index, 1897, p. lxxxiii.  
 — s. 14.  
*See* EVIDENCE. 43.  
 REVENUE. 173.

**STATUTES—continued.**

- 54 & 55 Vict. c. 39, ss. 15, 80.  
*See* COMPANY—WINDING-UP. 219, 222, 224.
- s. 32.  
*See* REVENUE. 143.
- ss. 54, 55, 73.  
*See* REVENUE. 156.
- ss. 54, 57.  
*See* REVENUE. 151.
- ss. 54, 57.  
 Removal of doubt as to, so far as regards  
 foreclosure decrees.  
*See* FINANCE ACT, 1898 (61 & 62 Vict.  
 c. 10), s. 6.
- ss. 54, 59.  
*See* REVENUE. 155.
- ss. 54, 60, 87.  
*See* REVENUE. 141.
- s. 54 and Sched.  
*See* REVENUE. 153.
- s. 57, Sched. 1.  
*See* REVENUE. 160.
- s. 59.  
*See* REVENUE. 152, 154, 157, 161, 169.
- s. 80.  
*See* COMPANY. 164.
- ss. 82, 122.  
*See* REVENUE. 162, 175.
- s. 86, Sched. I.  
*See* REVENUE. 148, 167.
- ss. 86, 87, 88, Sched. I.  
*See* REVENUE. 170.
- ss. 93, 95.  
*See* INSURANCE. 74.
- s. 98, Sched. I.  
*See* REVENUE. 164.
- s. 101.  
*See* REVENUE. 178.
- s. 113.  
*See* REVENUE. 177.
- Sched.  
*See* REVENUE. 140, 144–146.
- Sched. I.  
*See* REVENUE. 149, 166, 168, 179.
- Sched., Receipt, Exemption 11.  
*See* REVENUE. 108.
- First Sched. tit. “Bill of Exchange,”  
 Exemption 10.  
*See* REVENUE. 143.
- First Sched. voce “Mortgage,” sub-s.  
 5.  
*See* REVENUE. 166.
- 54 & 55 Vict. c. 64 (*Land Registry—Middlesex  
 Deeds*), s. 1.  
*See* MIDDLESEX REGISTRY. 1.
- 54 & 55 Vict. c. 65 (*Lunacy*), s. 26, Sched.  
*See* LUNACY. 27, 34.
- s. 27.  
*See* LUNACY. 1, 25, 38, 47, 48.

**STATUTES—continued.**

- 54 & 55 Vict. c. 73 (*Mortmain and Charitable  
 Uses*), ss. 3, 5.  
*See* CHARITY. 45.
- s. 9.  
*See* CHARITY. 48.
- 54 & 55 Vict. c. 75 (*Factories and Workshops*),  
 s. 6.  
*See* MASTER AND SERVANT. 63, 64.
- 54 & 55 Vict. c. 76 (*Public Health—London*).  
*See* LONDON. 53.
- MANDAMUS. 4.
- SETTLED LAND. 63.
- WATER. 5.
- s. 2.  
*See* LONDON. 64.
- ss. 2, 4, 21.  
*See* NUISANCES. 22.
- s. 4.  
*See* NUISANCES. 25.
- PUBLIC AUTHORITIES PROTECTION. 1.
- ss. 4, 11.  
*See* LONDON. 52.
- NUISANCES. 2, 13.
- ss. 4, 121, 141.  
*See* SETTLED LAND. 66.
- s. 5.  
*See* JUSTICES. 21.
- ss. 11, 117.  
*See* NUISANCES. 14.
- s. 29.  
*See* LONDON. 49.
- ss. 30, 35, 138, 141.  
*See* NUISANCES. 40.
- s. 37.  
*See* WATER-CLOSETS. 3.
- s. 38.  
*See* LONDON. 51.
- ss. 39, 41.  
*See* WATER-CLOSETS. 1.
- s. 47.  
*See* FOOD. 1, 2.
- s. 121.  
*See* SETTLED LAND.
- s. 128.  
*See* NUISANCES. 24.
- s. 141.  
*See* NUISANCES. 23.
- s. 142.  
*See* LONDON. 66.

**1892.**

- 55 & 56 Vict. c. 9 (*Gaming*).  
*See* GAMING. 21.
- s. 1.  
*See* BANKRUPTCY. 259.
- GAMING. 9, 22, 26, 36.
- 55 & 56 Vict. c. 13 (*Conveyancing and Law of  
 Property*), s. 2.  
*See* LANDLORD AND TENANT. 56.
- ss. 2, 4.  
*See* LANDLORD AND TENANT. 61.

**STATUTES—continued.**

- 55 & 56 Vict. c. 13, s. 3.  
See COVENANT. 1.
- s. 4.  
See LANDLORD AND TENANT. 49, 62, 64.
- 55 & 56 Vict. c. 19 (*Statute Law Revision Act*).  
See RAILWAY. 20.
- 55 & 56 Vict. c. 23 (*Foreign Marriages*).  
See CONFLICT OF LAWS. 10.
- 55 & 56 Vict. c. 27 (*Parliamentary Deposits and Bonds*).  
See PARLIAMENT. 6.  
TRAMWAY. 7.
- s. 1.  
See PARLIAMENT. 1—3.  
TRAMWAY. 8.
- 55 & 56 Vict. c. 32 (*Clergy Discipline*), ss. 2, 12.  
See ECCLESIASTICAL LAW. 50, 74, 75.
- s. 4.  
See ECCLESIASTICAL LAW. 58.
- s. 8.  
See ECCLESIASTICAL LAW. 47.
- 55 & 56 Vict. c. 53 (*Public Libraries*), ss. 4, 11, 12, 14.  
See REVENUE. 108.
- 55 & 56 Vict. c. 57 (*Private Street Works*), ss. 1, 12, 13.  
See STREETS. 34.
- ss. 5, 6.  
See STREETS. 37.
- ss. 6, 7, 8, 11, 12, 13.  
See STREETS. 22.
- ss. 7, 8.  
See STREETS. 36.
- s. 10.  
See STREETS. 35.
- ss. 24, 25.  
See STREETS. 33.
- 55 & 56 Vict. c. 58 (*Accumulations*).  
See ACCUMULATIONS. 8.
- 55 & 56 Vict. c. 62 (*Shop Hours*), s. 3.  
See SHOP. 3.
- ss. 4, 5.  
See SHOP. 1.
- ss. 9, 10.  
See SHOP. 2.
- [But see now the *Shop Hours Regulation Act*, 1895 (58 & 59 Vict. c. 5).]
- 55 & 56 Vict. c. ccxxxiii. (*Great Western Railway*).  
See REVENUE. 153.

**1893.**

- 56 & 57 Vict. c. 7 (*Income Tax*), s. 3.  
See REVENUE. 172.
- s. 5.  
See REVENUE. 82.

**STATUTES—continued.**

- 56 & 57 Vict. c. 37 (*Liverpool Court of Passage*), ss. 6, 9, 10.  
See LIVERPOOL COURTS. 2.
- s. 10.  
See LIVERPOOL COURTS. 1.
- 56 & 57 Vict. c. 39 (*Industrial and Provident Societies*), s. 27.  
See INDUSTRIAL AND PROVIDENT SOCIETY. 3.
- ss. 58, 59.  
See INDUSTRIAL AND PROVIDENT SOCIETY. 5.
- 56 & 57 Vict. c. 53 (*Trustees*), s. 8.  
See TRUSTEE. 64.
- s. 10.  
See TRUSTEE. 5, 10, 11.
- s. 12.  
See TRUSTEE. 108.
- s. 17.  
See TRUSTEE. 22.
- s. 25.  
See TRUSTEE. 8.
- ss. 25, 35.  
See TRUSTEE. 107.
- ss. 25—41.  
See LUNACY. 50.
- ss. 26, 34.  
See TRUSTEE. 102.
- ss. 26, 35.  
See TRUSTEE. 100, 109, 110.
- s. 29.  
See TRUSTEE. 104.
- ss. 31, 32, 50.  
See TRUSTEE. 106.
- s. 35.  
See TRUSTEE. 105.
- ss. 35, 38.  
See TRUSTEE. 112.
- s. 44.  
See TRUSTEE. 89, 92.
- s. 45.  
See TRUSTEE. 30, 33, 34.
- s. 50.  
See TRUSTEE. 7.
- 56 & 57 Vict. c. 61 (*Public Authorities Protection*), s. 1.  
See COSTS. 43—49.  
PUBLIC AUTHORITIES PROTECTION. 1, 2, 3.  
SHIPPING. 155.
- s. 2.  
See COPYRIGHT. 11.
- 56 & 57 Vict. c. 63 (*Married Women's Property*).  
See WILL. 143.
- s. 1.  
See ANNUITY. 2.  
HUSBAND AND WIFE. 2.
- ss. 1, 2.  
See HUSBAND AND WIFE. 20, 55.
- s. 2.  
See COSTS. 38.  
HUSBAND AND WIFE. 44.  
PROBATE. 88.

**STATUTES—continued.**

- 56 & 57 Vict. c. 63, s. 3.  
See HUSBAND AND WIFE. 23.
- s. 21.  
See HUSBAND AND WIFE. 46.
- 56 & 57 Vict. c. 71 (*Sale of Goods*), s. 4.  
See CONTRACT. 17.  
COUNTY COURT. 63.  
SALE OF GOODS. 1, 2.
- ss. 13, 17, 35.  
See SALE OF GOODS. 3.
- s. 14.  
See SALE OF GOODS. 6.
- s. 18, r. 4 (a).  
See SALE OF GOODS. 4.
- ss. 21, 24, 25.  
See FACTOR. 7.
- ss. 25, 47.  
See SALE OF GOODS. 7.
- 56 & 57 Vict. c. 73 (*Local Government*).  
See PARLIAMENT. 147.
- ss. 1, 67, 68, 75.  
See POOR LAW. 11.
- ss. 2, 43, 44.  
See PARLIAMENT. 103.
- ss. 2, 75.  
See PARLIAMENT. 102.
- s. 5.  
See PARISH COUNCIL. 2.
- ss. 5, 81.  
See CRIMINAL LAW. 11.
- ss. 14, 70, 75.  
See CHARITY. 2.
- s. 17.  
See PARISH COUNCIL. 1.
- s. 25.  
See HIGHWAY. 27—29.
- s. 26.  
See COSTS. 42.  
HIGHWAY. 6.
- ss. 26, 46.  
See WAY, RIGHT OF. 10.
- s. 33.  
See RATES. 9.
- s. 36.  
See WATER. 10.
- s. 68.  
See LOCAL GOVERNMENT. 7.
- 56 & 57 Vict. c. clxxxi. (*Liverpool Corporation*),  
s. 36 (ii.).  
See RATES. 44.

**1894.**

- 57 & 58 Vict. c. 10 (*Trustees*), s. 4.  
See TRUSTEE. 68.
- 57 & 58 Vict. c. 16 (*Judicature*), s. 1.  
See APPEAL. 2, 4, 14, 15, 21, 25, 26, 27,  
30, 38, 44, 45.  
ARBITRATION. 5, 62.  
COUNTY COURT. 13.  
PRACTICE. 11, 204.

**STATUTES—continued.**

- 57 & 58 Vict. c. 30 (*Finance Act*), ss. 1, 2  
See REVENUE. 41.
- ss. 1, 2, 3.  
See REVENUE. 35.
- ss. 1, 2 5.  
See REVENUE. 43.
- ss. 1, 2, 5, 6, 8, 9, 14.  
See REVENUE. 32.
- ss. 1, 2, 7.  
See REVENUE. 33, 39.
- ss. 1, 2, 21.  
See REVENUE. 23.
- ss. 1, 2, 22.  
See REVENUE. 40.
- ss. 1, 5, 6, 8, 9, 14, 22.  
See REVENUE. 16.
- s. 2.  
See REVENUE. 25, 26, 27.
- ss. 2, 3.  
See REVENUE. 13.
- ss. 2, 4, 7, 8, 9, 14.  
See REVENUE. 36.
- ss. 2, 5.  
See REVENUE. 44.
- ss. 2, 6, 7, 8, 9, 14.  
See REVENUE. 19.
- ss. 2, 7.  
See REVENUE. 42.
- ss. 2, 9.  
See WILL. 21.
- s. 5.  
See REVENUE. 21, 22, 29, 31, 45.
- ss. 5, 7, 9, 14, 22.  
See REVENUE. 20.
- ss. 5, 9.  
See REVENUE. 18.
- ss. 5, 22.  
See REVENUE. 14, 30, 46.
- s. 6.  
See WILL. 205.
- ss. 6—9, 14.  
See REVENUE. 15.
- s. 9.  
See REVENUE. 24, 37.  
WILL. 206.
- s. 14.  
See REVENUE. 17, 34.
- s. 21.  
See REVENUE. 28.
- 57 & 58 Vict. c. 41 (*Prevention of Cruelty to Children*).  
See CRIMINAL LAW. 10, 18.
- s. 1.  
See CRIMINAL LAW. 9.
- 57 & 58 Vict. c. 44 (*Heritable Securities*), ss. 8,  
9.  
See REVENUE. 157.
- 57 & 58 Vict. c. 47 (*Building Societies*), ss. 1,  
25.  
See BUILDING SOCIETY. 9.

**STATUTES—continued.**

- 57 & 58 Vict. c. 47, s. 10.  
*See BUILDING SOCIETY.* 3.  
 — s. 25.  
*See BUILDING SOCIETY.* 21.  
 57 & 58 Vict. c. 54 (*Railway and Canal Traffic*),  
 ss. 1, 2.  
*See RAILWAY.* 35, 43—45.  
 — s. 4.  
*See RAILWAY.* 46.  
 57 & 58 Vict. c. 57 (*Diseases of Animals*).  
*See ANIMALS.* 2.  
 — s. 32.  
*See MARKET AND FAIRS.* 1.  
 57 & 58 Vict. c. 60 (*Merchant Shipping*), ss. 3,  
 503.  
*See SHIPPING.* 165.  
 — ss. 33, 56, 57.  
*See SHIPPING.* 175.  
 — ss. 79, 503.  
*See SHIPPING.* 169.  
 — s. 111.  
*See SHIPPING.* 253.  
 — ss. 124, 140.  
*See SHIPPING.* 255.  
 — s. 163.  
*See SHIPPING.* 266.  
 — s. 167.  
*See SHIPPING.* 161, 179.  
 — s. 186.  
*See SHIPPING.* 261, 262.  
 — ss. 191, 192, 625.  
*See SHIPPING.* 192.  
 — s. 232.  
*See SHIPPING.* 265.  
 — ss. 320, 341, 342.  
*See SHIPPING.* 182.  
 — ss. 493—496.  
*See PRACTICE.* 79.  
 — s. 503.  
*See PRACTICE.* 264.  
*SHIPPING.* 96, 165, 166, 167.  
 — s. 544.  
*See SHIPPING.* 212.  
 — ss. 546, 552.  
*See INSURANCE, MARINE.* 76.  
*SHIPPING.* 240.  
 — ss. 603, 625.  
*See SHIPPING.* 191.  
 — s. 604.  
*See SHIPPING.* 88.  
 — ss. 622, 625.  
*See SHIPPING.* 186.  
 — s. 625.  
*See SHIPPING.* 187, 194.  
 — s. 741.  
*See SHIPPING.* 62.  
 57 & 58 Vict. c. clxvi. (*West Riding of Yorkshire  
 Rivers*), ss. 9, 10.  
*See SEWERS.* 27.  
 57 & 58 Vict. c. clxxxvii. (*Thames Conservancy*),  
 ss. 3, 87.  
*See THAMES.* 7.

**STATUTES—continued.**

- 57 & 58 Vict. c. clxxxvii., ss. 22, 23, 25.  
*See THAMES.* 3.  
 — ss. 87, 238.  
*See THAMES.* 8.  
 57 & 58 Vict. c. cxxii. (*London County Council  
 —General Powers*), s. 4.  
*See WATER.* 12.  
 57 & 58 Vict. c. cxxiii. (*London—Building*).  
*See SETTLED LAND.* 65.  
 — ss. 5, 90.  
*See LONDON.* 21.  
 — s. 7.  
*See LONDON.* 70.  
 — s. 8.  
*See LONDON.* 71.  
 — s. 9.  
*See LONDON.* 72.  
 — s. 14.  
*See LONDON.* 19.  
 — s. 43.  
*See LONDON.* 25.  
 — ss. 59, 75.  
*See LONDON.* 23.  
 — s. 64.  
*See LONDON.* 14.  
 — s. 74.  
*See LONDON.* 26.  
 — s. 86.  
*See LONDON.* 32.  
 — s. 90.  
*See LONDON.* 22.  
 — ss. 106, 107.  
*See LONDON.* 11.  
 — s. 145.  
*See LONDON.* 31.  
 — s. 188.  
*See LONDON.* 17.  
 — s. 212.  
*See LONDON.* 13.

**1895.**

- 58 & 59 Vict. c. 25 (*Mortgagees' Legal Costs*);  
 s. 3.  
*See MORTGAGE.* 12, 13.  
*SOLICITOR.* 127.  
 58 & 59 Vict. c. 26 (*Friendly Societies*), s. 10,  
 sub-s. 1.  
*See FRIENDLY SOCIETY.* 9.  
 58 & 59 Vict. c. 27 (*Market Gardeners' Com-  
 pensation*), s. 4.  
*See LANDLORD AND TENANT.* 6.  
 58 & 59 Vict. c. 37 (*Factories and Workshops*),  
 ss. 4, 23.  
*See MASTER AND SERVANT.* 32.  
 — s. 23.  
*See MASTER AND SERVANT.* 11, 48, 49,  
 52.  
 — s. 27.  
*See MASTER AND SERVANT.* 67.  
 58 & 59 Vict. c. 39 (*Summary Jurisdiction—  
 Married Women*).  
*See APPEAL.* 36, 37.  
*HUSBAND AND WIFE.* 76, 77, 82, 95.  
*STATUTES.* 35.

## STATUTES—continued.

- 58 & 59 Vict. c. 39, s. 4.  
 See HUSBAND AND WIFE. 85, 86, 87, 92, 94.  
 — ss. 4, 5.  
 See HUSBAND AND WIFE. 83.  
 — ss. 4, 5, 11.  
 See HUSBAND AND WIFE. 93.  
 — ss. 4, 7.  
 See HUSBAND AND WIFE. 90.  
 — ss. 4, 8.  
 See DIVORCE. 91.  
 — s. 11.  
 See HUSBAND AND WIFE. 78, 79.  
 58 & 59 Vict. c. cxxx. (*Tower Bridge Southern Approach*).  
 See RATES. 31.

## 1896.

- 59 & 60 Vict. c. 16 (*Agricultural Rates*), ss. 1, 2, 3, 9.  
 See RATES. 16.  
 — ss. 1, 5, 6, 9.  
 See RATES. 34.  
 59 & 60 Vict. c. 21 (*Liverpool Court of Passage. Order as to fees in actions.* Lond. Gaz. (Jan. 19), p. 345).  
 59 & 60 Vict. c. 28 (*Finance Act*), s. 19.  
 See REVENUE. 18, 29, 31, 32.  
 — ss. 19, 24, 39.  
 See REVENUE. 20, 30.  
 59 & 60 Vict. c. 35 (*Judicial Trustees*).  
*Rules under this Act dated Aug. 31, 1897.*  
*See Current Index, 1897, p. lxxiii.*  
*Rule under. W. N. (1899) Mar. 18, p. 79.*  
*See Current Index, 1899, p. cxxii.*  
*Rule (April) 1900, as to sole judicial trustee. W. N. 1900 (April 21), p. 93.*  
*See Current Index, 1900, p. xcii.*  
 — s. 1.  
 See TRUSTEE. 72, 73, 75.  
 — s. 3.  
 See TRUSTEE. 25, 26, 27, 32, 35, 37, 64, 74.  
 59 & 60 Vict. c. 44 (*Truck Act*), s. 1.  
 See MASTER AND SERVANT. 91.  
 59 & 60 Vict. c. 45 (*Stannaries Court (Abolition)*), s. 1.  
 See PROHIBITION. 1.  
 59 & 60 Vict. c. 48 (*Light Railways*).  
*Rules under. W. N. 1898 (Aug. 13), p. 279; (Dec. 17), p. 408. See Current Index, 1898, p. xcix.*  
 59 & 60 Vict. c. 50 (*Poor Law Officers' Superannuation*), s. 12.  
 See REVENUE. 111.  
 59 & 60 Vict. c. li. (*London County—Tramways*), s. 2.  
 See LONDON. 38.

## 1897.

- 60 & 61 Vict. c. 15 (*Navy and Marines—Wills*).  
 See ARMY AND NAVY. 2.

## STATUTES—continued.

- 60 & 61 Vict. c. 19 (*Preferential Payments in Bankruptcy Amendment*).  
 See COMPANY. 48.  
 — s. 2.  
 See COMPANY—WINDING-UP. 189.  
 — s. 3.  
 See COMPANY. 114.  
 COMPANY—WINDING-UP. 191.  
 60 & 61 Vict. c. 37 (*Workmen's Compensation*).  
*Rules dated Sept. 1, 1899. W. N. 1899 (Sept. 9), p. 271. See Current Index, 1899, p. cxxviii.*  
*See COSTS. 61.*  
 REVENUE. 164.  
 — s. 1.  
 See MASTER AND SERVANT. 1, 22, 31, 36—38, 45, 92, 99.  
 — 1, 7.  
 See MASTER AND SERVANT. 5, 43.  
 — s. 1, Sched. I., cl. 1 (b).  
 See MASTER AND SERVANT. 23.  
 — s. 2.  
 See MASTER AND SERVANT. 96—98.  
 — s. 2, Sched. I., s. (3).  
 See MASTER AND SERVANT. 33.  
 — s. 4.  
 See MASTER AND SERVANT. 93.  
 — ss. 4, 7.  
 See MASTER AND SERVANT. 40, 50.  
 — s. 7.  
 See MASTER AND SERVANT. 2—4, 6—12, 25—29, 32, 39, 41, 42, 44, 46—49, 51, 52.  
 — Sched. I., 1, (a).  
 See MASTER AND SERVANT. 16, 19.  
 — Sched. I., 1, (b).  
 See MASTER AND SERVANT. 15, 17, 18.  
 — Sched. I., cl. 2.  
 See MASTER AND SERVANT. 35.  
 — Sched. I., (2), (12).  
 See MASTER AND SERVANT. 20.  
 — Sched. I., (1), (a), (i).  
 See MASTER AND SERVANT. 24.  
 — Sched. I., cl. 1, (b), 2.  
 See MASTER AND SERVANT. 14.  
 — Sched. I., cl. 4, 5, 6, 7.  
 See MASTER AND SERVANT. 30.  
 — Sched. I., cl. 12.  
 See MASTER AND SERVANT. 13.  
 — Sched. II. (8).  
 See MASTER AND SERVANT. 90.  
 60 & 61 Vict. c. 56 (*Metropolis—Water*).  
*Rules as to applications to Railway and Canal Commissioners under this Act W. N. 1898 (Jan. 22), p. 45. See Current Index, 1898, p. xcvi.*  
 60 & 61 Vict. c. 61 (*Merchant Shipping—Exemption from Pilotage*), s. 1.  
 See SHIPPING. 191.  
 60 & 61 Vict. c. 65 (*Land Transfer*).  
*For list of Land Transfer Rules and Orders, see under LAND TRANSFER.*  
 See COSTS. 4.  
 INFANT. 1.



**STATUTES—continued.**

- 60 & 61 Vict. c. 65, s. 1.  
See PROBATE. 22.
- ss. 1, 2, 24.  
See VENDOR AND PURCHASER. 79.
- s. 7.  
See MIDDLESEX REGISTRY.
- Part I., s. 2.  
See PROBATE. 39, 40, 62.
- 60 & 61 Vict. c. cxvii. (*Crowborough District Water*).  
See BUILDINGS. 3.
- 60 & 61 Vict. c. ccxlii. (*London County Council—Improvements*), s. 42.  
See LONDON. 69.

**1898.**

- 61 & 62 Vict. c. 10 (*Finance*), s. 14.  
See REVENUE. 20, 22.
- 61 & 62 Vict. c. 12 (*Public Record Office*), s. 1.  
Rule dated Dec. 9, 1898. W. N. 1899 (June 3), p. 183. See Current Index, 1899, p. cxxvii.
- 61 & 62 Vict. c. 26 (*Companies*).  
See COMPANY. 14, 15, 23.  
COMPANY—WINDING-UP. 34, 35, 61.
- s. 1.  
See COMPANY. 18, 265, 272, 284, 288.
- s. 35.  
See COMPANY. 255.
- 61 & 62 Vict. c. 29 (*Locomotives*), s. 12.  
See HIGHWAY. 7.
- 61 & 62 Vict. c. 36 (*Criminal Evidence*), s. 1.  
See CRIMINAL LAW. 30.
- ss. 1, 16.  
See CRIMINAL LAW. 18.
- ss. 2, 3.  
See CRIMINAL LAW. 26.
- 61 & 62 Vict. c. 41 (*Prisons*), s. 9.  
See PRISON.
- 61 & 62 Vict. c. 44 (*Merchant Shipping—Mercantile Marine Fund*), s. 3, Sched. I.  
See SHIPPING. 210.
- 61 & 62 Vict. c. 46 (*Revenue*), s. 18, sub-s. 1.  
See REVENUE—Government Annuities.
- 61 & 62 Vict. c. 48 (*Benefices*).  
Rules under. W. N. 1899 (Jan. 7), p. 1; (March 18), p. 79; (March 25), p. 91; (Aug. 19), p. 260. See Current Index, 1899, p. lxi.
- 61 & 62 Vict. c. 49 (*Vaccination*), s. 2.  
See VACCINATION. 1.
- 61 & 62 Vict. c. 58 (*Marriages*).  
Rules and Regulations under.  
See MARRIAGE.

**1899.**

- 62 Vict. c. 6 (*Judicature*).  
See APPEAL. 56.

**STATUTES—continued.****1900.**

- 63 & 64 Vict. c. 26 (*Land Charge*).  
Order (Aug.) 1900 as to transfer to Land Registry Office. W. N. 1900 (Aug. 18), p. 234. See Current Index, 1900, p. xcii.  
Rule (Aug.) 1900 as to Fees. W. N. 1900 (Sept. 8), p. 245. See Current Index, 1900, p. xcii.

**II. COLONIAL STATUTES.****AUSTRALIA, STATUTES OF.****AUSTRALIA (SOUTH), STATUTES OF.**

- 56 & 57 Vict. No. 567 (*Succession Duties*), ss. 16, 27.  
See AUSTRALIA. 1.

**AUSTRALIA (WESTERN), STATUTES OF.**

- 44 Vict. No. 10—Rules and Orders, Order xxxvi., No. 10 (*Supreme Court Act of the Colony*).  
See AUSTRALIA. 2.

**BARBADOS.**

- 49 Vict. c. 15 (*Water Supply*), ss. 11, 23.  
See BARBADOS. 1.

**BRITISH COLUMBIA, STATUTES OF.**

- Consolidated Statutes, c. 51, s. 1.  
See CANADA. 27.

**BRITISH COLUMBIA LAND ACT, 1875.**

- 13 Vict. c. 5.  
See CANADA. 25.
- 47 Vict. c. 14 (*Crown Lands*), s. 3.  
See CANADA. 29.
- s. 23.  
See CANADA. 25.
- 53 Vict. c. 33 (*Coal Mines Regulation*).  
See CANADA. 28.
- s. 4.  
See CANADA. 30.
- 54 Vict. c. 1 (*Cattle Protection*).  
See CANADA. 26.
- 54 Vict. c. 26 (*Placer Mining Act*).  
See CANADA. 29.
- 55 Vict. c. 33 (*Municipal Corporations*).  
See CANADA. 28.
- 58 Vict. c. 7 (*Cattle Protection*).  
See CANADA. 26.

**BRITISH HONDURAS, STATUTES OF.**

- Consolidated Laws of 1887, c. 19 (*Limitations*), s. 5.  
See BRITISH HONDURAS. 1.
- c. 106 (*Lands Titles Registry*), s. 30.  
See BRITISH HONDURAS. 1.

**BRITISH NORTH AMERICAN ACT, 1837**  
(30 & 31 Vict. c. 3).  
See CANADA. 7, 33.

**STATUTES—continued.**

- 30 & 31 Vict. c. 3, ss. 58, 92, 109, 126.  
*See CANADA.* 2.  
 — ss. 91, 92.  
*See CANADA.* 1, 3, 4, 13, 30, 61.  
 COLONY. 2.  
 — ss. 91, 92, 108.  
*See CANADA.* 21.  
 — s. 92.  
*See CANADA.* 41, 42.  
 — ss. 109, 111, 112.  
*See CANADA.* 10.

**BRITISH NORTH AMERICAN ACTS, 1867 and 1871.**

*See CANADA.* 32, 35.

**CANADA, STATUTES OF.**

**BRITISH COLUMBIA.**

*See Statutes—BRITISH COLUMBIA, STATUTES OF.*

**MANITOBA.**

*See Statutes—MANITOBA, STATUTES OF.*

**NOVA SCOTIA.**

*See Statutes—NOVA SCOTIA, STATUTES OF.*

**ONTARIO.**

*See Statutes—ONTARIO, STATUTES OF.*

**QUEBEC.**

*See Statutes—QUEBEC, STATUTES OF.*

12 Vict. c. 183 (*Gas*), s. 20.

*See CANADA.* 9.

18 Vict. c. 3 (*Seigneuries*).

*See CANADA.* 59.

18 Vict. c. 126 (*Custody of Infants*).

*See CANADA.* 44.

18 Vict. c. 202 (*Bank Act*).

*See CANADA.* 51.

24 Vict. c. 83 (*Toronto Street Railway*).

*See CANADA.* 47.

27 & 28 Vict. c. 13 (*Canada Temperance Act*), s. 17.

*See CANADA.* 12.

33 Vict. c. 3 (*Dominion Statute*).

*See CANADA.* 31.

46 Vict. c. 120 (*Banks*).

*See COLONY.* 2.

49 Vict. c. 32 (*Customs*), s. 150.

*See CANADA.* 8.

49 Vict. c. 106 (*Canada Temperance Act*).

*See CANADA.* 13.

49 & 50 Vict. c. 32 (*Customs*), s. 150.

*See CANADA.* 8.

50 & 51 Vict. c. 39 (*Dominion Act*), s. 1, item 88; s. 2, item 173.

*See CANADA.* 20.

51 Vict. c. 29 (*Railways*), s. 262.

*See CANADA.* 16, 18, 19.

— s. 262.

*See CANADA.* 16.

57 & 58 Vict. c. 33 (*Customs Tariff*), s. 4.

*See CANADA.* 8.

**STATUTES—continued.**

59 Vict. c. 42 (*Act to amend the Civil Code with respect to the privileges of Builders, &c.*).  
*See CANADA.* 5.

Civil Procedure Code, s. 6.

*See CANADA.* 59.

Civil Code of Lower Canada, arts. 2103 G and 2103.

*See CANADA.* 5.

— art. 2590.

*See CANADA.* 11.

Civil Code of Quebec, art. 1233.

*See CANADA.* 23.

Revised Statutes of Canada, c. 92 (*Works in Navigable Waters*), s. 4.

*See CANADA.* 21.

Revised Statutes of Canada, c. 95 (*Fisheries*), s. 4.

*See CANADA.* 21.

Revised Statutes of Canada, 1880, c. 109, s. 12.

*See CANADA.* 55.

**CAPE OF GOOD HOPE, STATUTES OF.**

27 & 28 Vict. No. 3, Sched. XVII., s. 2.

*See CAPE OF GOOD HOPE.* 7.

51 & 52 Vict. c. 37 (*Crown Liabilities*).

*See CAPE OF GOOD HOPE.* 1.

British South Africa Companies Mining Ordinance, 1890, ss. 26–28.

*See CAPE OF GOOD HOPE.* 4.

57 & 58 Vict. No. 5 (*Pondoland Annexation Act*, 1894), s. 2.

*See CAPE OF GOOD HOPE.* 6.

**CEYLON, STATUTES OF.**

Ordinance of 1844, No. 21.

*See CEYLON.* 1.

Ordinance of 1863, No. 8 (*Registration of Titles to Land*), s. 39.

*See CEYLON.* 6.

Ordinance of 1863, No. 10.

*See CEYLON.* 1.

Ordinance of 1871, No. 7, s. 3.

*See CEYLON.* 1.

**CHINA.**

Shanghai Land Regulation, 1869, No. 6.

*See CHINA.* 1.

**INDIA, STATUTES OF.**

Indian Act, XV. of 1872 (*Indian Christian Marriages*).

*See DIVORCE.* 81.

**JAMAICA, STATUTES OF.**

Code of Civil Procedure, s. 438.

*See JAMAICA.* 4.

40 & 41 Vict. No. 17 (*Bankruptcy*), s. 10.

*See JAMAICA.* 1.

42 & 43 Vict. No. 33 (*Bankruptcy*), s. 151.

*See JAMAICA.* 1.

51 & 52 Vict. No. 17 (*Trade-marks*).

*See JAMAICA.* 6.

**STATUTES—continued.**

- 52 & 53 Vict. No. 12 (*Railways*), ss. 20, 29.  
See JAMAICA. 2.

**JERSEY.**

- Enactment of Feb. 13, 1851; Enactment of March 26, 1873.*  
See JERSEY. 4.

**MANITOBA, STATUTES OF.**

- 33 Vict. c. 3 (*Dominion Manitoba Act, 1870*).  
See CANADA. 31, 35.  
— s. 22.  
See CANADA. 32.  
45 Vict. c. 36 (*City of Winnipeg*).  
See CANADA. 31.  
45 Vict. c. 37 (*Winnipeg Street Railways*).  
See CANADA. 31.  
Manitoba Public Schcols Act, 1890.  
See CANADA. 31.  
55 Vict. c. 36 (*Street Railways*).  
See CANADA. 31.

**NATAL, STATUTES OF.**

- 26 & 27 Vict. No. 22 (*Natal Laws*), s. 7.  
See NATAL. 8.  
60 & 61 Vict. No. 18 (*Licenses to Wholesale and Retail Dealers*), ss. 5, 6.  
See NATAL. 5.

**NEW SOUTH WALES, STATUTES OF.**

- See NEW SOUTH WALES—*Law of New South Wales, passim.*  
7 Vict. No. 16 (*Real Property*), ss. 11, 12.  
See NEW SOUTH WALES. 41.  
11 Vict. No. 4 (*Liens on Wool*), s. 7.  
See NEW SOUTH WALES. 29.  
16 Vict. No. 19 (*Trustees*), ss. 30, 32.  
See NEW SOUTH WALES. 49.  
22 Vict. No. 1 (*Real Property*), s. 18.  
See NEW SOUTH WALES. 41.  
25 Vict. No. 1 (*Crown Lands Alienation*).  
See NEW SOUTH WALES. 15.  
— s. 5.  
See NEW SOUTH WALES. 36.  
25 Vict. No. 8 (*Bankruptcy*).  
See NEW SOUTH WALES. 25.  
26 Vict. No. 9 (*Real Property*).  
See NEW SOUTH WALES. 39.  
— s. 21.  
See NEW SOUTH WALES. 40.  
— ss. 117, 122.  
See NEW SOUTH WALES. 27.  
26 Vict. No. 12 (*Trust Property*), s. 25.  
See REVENUE. 160.  
26 Vict. No. 17 (*Criminal Law Amendment*), s. 423.  
See NEW SOUTH WALES. 12.  
26 Vict. No. 20 (*Real Property*), ss. 1, 2.  
See NEW SOUTH WALES. 42.  
31 Vict. No. 12 (*Municipalities*), s. 163.  
See NEW SOUTH WALES. 33.  
37 Vict. No. 19 (*Companies*).  
See COMPANY. 32, 47.  
NEW SOUTH WALES. 6.

**STATUTES—continued.**

- 37 Vict. No. 19, s. 57.  
See NEW SOUTH WALES. 7, 8.  
41 Vict. No. 18 (*Real Property*).  
See NEW SOUTH WALES. 39.  
43 Vict. No. 3 (*Sydney Corporation*), s. 67.  
See NEW SOUTH WALES. 32, 40.  
44 Vict. No. 3 (*Stamp Duties*).  
See NEW SOUTH WALES. 38, 45.  
46 Vict. No. 17 (*Criminal Law Amendment*), s. 54.  
See NEW SOUTH WALES. 13.  
— s. 423.  
See CRIMINAL LAW. 15.  
48 Vict. No. 18 (*Crown Lands*), ss. 13, 14, 18, 19, 20, 39.  
See NEW SOUTH WALES. 22.  
— s. 42.  
See NEW SOUTH WALES. 15.  
— s. 102.  
See NEW SOUTH WALES. 16.  
48 Vict. No. 24 (*Civil Service*).  
See NEW SOUTH WALES. 5.  
— ss. 10, 46.  
See NEW SOUTH WALES. 3.  
50 Vict. No. 10 (*Stamp Duties*).  
See NEW SOUTH WALES. 38, 45.  
51 & 52 Vict. No. 37 (*Public Works*).  
See NEW SOUTH WALES. 46.  
53 Vict. No. 12 (*Parliamentary Representatives' Allowances*), s. 2.  
See NEW SOUTH WALES. 35.  
53 Vict. No. 21 (*Crown Lands*), s. 8.  
See NEW SOUTH WALES. 19.  
54 Vict. No. 1060 (*Administration and Probate*).  
See REVENUE. 138.  
55 Vict. No. 5 (*Criminal Law*).  
See NEW SOUTH WALES. 14.  
55 Vict. No. 27 (*Hunter District Water Supply and Sewerage*), s. 35.  
See NEW SOUTH WALES. 50.  
55 Vict. No. 32 (*Arbitration*).  
See NEW SOUTH WALES. 6.  
57 Vict. No. 32 (*Mining on Private Lands*), ss. 8, 13.  
See NEW SOUTH WALES. 37.  
58 & 59 Vict. No. 18 (*Crown Lands*), ss. 5, 11.  
See NEW SOUTH WALES. 18.  
— ss. 10, 11, 13.  
See NEW SOUTH WALES. 16.  
59 Vict. No. 15 (*Land and Income Tax Assessment*), s. 15.  
See NEW SOUTH WALES. 43.  
— ss. 27, 28.  
See NEW SOUTH WALES. 24.  
59 Vict. c. 25 (*Civil Servants*), s. 58.  
See NEW SOUTH WALES. 4.
- NEW ZEALAND, STATUTES OF.**  
44 & 45 Vict. No. 37 (*Railways Construction and Land Act*), ss. 123, 125, 126.  
See NEW ZEALAND. 9.  
46 & 47 Vict. No. 46 (*Charitable Gifts Duties Exemption*), ss. 2, 3.  
See NEW ZEALAND. 2.

**STATUTES—continued.**

- 50 Vict. No. 24 (*Native Land Courts*), ss. 75, 78.  
See NEW ZEALAND. 8.
- 52 Vict. No. 37 (*Native Land Courts*), s. 24.  
See NEW ZEALAND. 8.
- 53 Vict. No. 7 (*Poututu Jurisdiction*).  
See NEW ZEALAND. 8.
- 54 & 55 Vict. No. 18 (*Land and Income Assessment*), s. 16.  
See NEW ZEALAND. 2.
- 55 & 56 Vict. No. 54 (*Land and Income Assessment*), s. 3.  
See NEW ZEALAND. 2.
- 57 Vict. No. 56 (*Criminal Code*), s. 24.  
See NEW ZEALAND. 4.

**NEWFOUNDLAND, STATUTES OF.**

- 58 Vict. c. 3 (*Commercial Bank—Liquidation*).  
See NEWFOUNDLAND.

**NOVA SCOTIA, STATUTES OF.**

- Revised Statutes, 5th Series, c. 3.  
See CANADA. 39.
- c. 7, s. 19.  
See CANADA. 38.
- c. 7, s. 95.  
See CANADA. 40.
- 25 Vict. c. 25 (*Mines and Minerals Consolidation Act*, Rev. Stat. Nova Scotia, 3rd Series).  
See CANADA.
- 42 Vict. c. 1 (*County Incorporations Act*, 1879).  
See CANADA. 37.

**ONTARIO, STATUTES OF.**

- Revised Statutes of Ontario, c. 24 (*Public Lands*), s. 47.  
See CANADA. 21.
- Revised Statutes of Ontario, c. 122 (*Mercantile Amendment*).  
See CANADA. 3.
- Revised Statutes of Ontario, 1877 (40 & 41 Vict. c. 139) (*Barristers*).  
See CANADA. 41.
- Revised Statutes of Ontario, c. 194 (*Liquor Licences*), s. 51.  
See CANADA. 42.
- 24 Vict. c. 83 (*Toronto Street Railway*).  
See CANADA. 47.
- 51 Vict. Ontario Municipal Act, 1887 (*Rev. Stat. Ontario*, c. 184), s. 495 (3).  
See CANADA. 48.
- ss. 583, 586, 591.  
See CANADA. 45.
- 53 Vict. c. 56 (*Licensing*), s. 18.  
See CANADA. 13.
- 53 Vict. c. 105 (*Street Railways*).  
See CANADA. 47.
- 55 Vict. c. 10 (*Provisional Fisheries*).  
See CANADA. 21.

**QUEBEC, STATUTES OF.**

- Civil Code, arts. 1056, 2262 (2).  
See CANADA. 58.

**STATUTES—continued.**

- Civil Code, art. 1927.  
See CANADA. 54.
- GAMING. 17.
- Civil Procedure Code, s. 6.  
See CANADA. 59.
- arts. 997, 998.  
See CANADA. 53.
- Municipal Code of Queb.c.  
See CANADA. 61.
- art. 712, sub-s. 3.  
See CANADA. 53.
- Revised Statutes of Queb.c, s. 3380.  
See CANADA. 57.
- Revised Statutes (*Companies*) art. 4722, (1), (5).  
See CANADA. 12.
- 42 & 43 Vict. c. 53 (*City of Montreal*), s. 12.  
See CANADA. 56.
- 55 & 56 Vict. c. 77 (*St. Henri Light and Power Co.*), s. 5.  
See CANADA. 63.

**QUEENSLAND, STATUTES OF.**

- 25 Vict. No. 19 (*Religious, Educational, and Charitable Institutions Act*), s. 3.  
See QUEENSLAND. 1.
- 37 Vict. No. 1 (*Queensland Customs Act*), s. 103.  
See QUEENSLAND. 4.
- 40 Vict. No. 84 (*Queensland Judicature Act*), s. 5.  
See QUEENSLAND. 3.
- 41 Vict. No. 3 (*Queensland Navigation Act*).  
See QUEENSLAND. 4.
- 54 Vict. No. 10 (*Dividend Duty Paying Act*), s. 9.  
See QUEENSLAND. 2.
- 56 Vict. No. 13 (*Succession and Probate Duties Act*), s. 4.  
See QUEENSLAND. 6.

**TASMANIA, STATUTES OF.**

- 22 Vict. c. 10 (*Claims to Grants to Land Act*), ss. 5, 8.  
See TASMANIA. 1.

**TRINIDAD AND TOBAGO ORDINANCES.**

- Ordinance No. 8 of 1889.  
See TRINIDAD. 1.
- Ordinance No. 4 of 1889.  
See TRINIDAD. 3.
- Ordinance No. 11 of 1891.  
See TRINIDAD. 3.

**VICTORIA, STATUTES OF.**

- 14 Vict. No. 20 (*Melbourne Corporation*).  
See VICTORIA. 8.
- 29 & 30 Vict. No. 301 (*Transfer of Land*), s. 144.  
See VICTORIA. 17.
- 38 Vict. No. 506 (*Local Government*), s. 384.  
See VICTORIA. 4.
- 41 Vict. No. 575 (*Land Tax*), s. 4.  
See VICTORIA. 6, 7.

**STATUTES**—*continued*.

- 45 Vict. No. 723 (*Victorian Chinese Act*), s. 3.  
*See* VICTORIA. 1.
- 54 Vict. No. 1060 (*Administration and Probate*),  
 s. 97.  
*See* VICTORIA. 11, 13, 14.
- 54 Vict. No. 1074 (*Companies*), s. 384.  
*See* VICTORIA. 3.
- 54 Vict. No. 1112 (*Local Government*), s. 428.  
*See* VICTORIA. 18.
- 54 Vict. No. 1193 (*Public Service*), ss. 3, 107.  
*See* VICTORIA. 10.
- ss. 3, 124, 130, 131, 182, 229.  
*See* LUNACY. 52.
- 54 Vict. No. 1153 (*Vermin Destruction*).  
*See* VICTORIA. 18.
- 54 Vict. No. 1565 (*Marine Act*), s. 13.  
*See* VICTORIA. 15.
- 58 Vict. No. 1374 (*Income Tax*), ss. 5, 7,  
 sub-s. 3.  
*See* VICTORIA. 5.

**STATUTES**—*continued*.**WESTERN PACIFIC.**

- Pacific Islanders Protection Acts, 1872, 1875.  
 Foreign Jurisdiction Acts, 1843–1875.  
*See* FOREIGN JURISDICTION. 4.

## III. FOREIGN LAWS.

**FRANCE.**

- Code Penal Act, 147.  
*See* EXTRADITION. 3.

**NEW YORK STATE.**

- 1875, c. 611, s. 21.  
*See* INTERNATIONAL LAW. 7.

- UNITED STATES OF AMERICA ACT OF CON-**  
**GRESS, Feb. 13, 1893 (The Harter Act).**  
*See* SHIPPING. 23, 29, 133.



# TABLE OF RULES AND ORDERS OF COURT JUDICIALLY CONSIDERED DURING THE YEARS 1891—1900.

	PAGE		PAGE
<i>Rules of Supreme Court</i>	cccclvii	<i>Mersey River Rules</i>	- cccclxvi
<i>Rules of Supreme Court Funds Rules</i>	cccclxiii	<i>Newport Harbour By-laws</i>	cccclxvi
<i>Agricultural Rates Orders</i>	cccclxiii	<i>New South Wales Bankruptcy Acts, Rules</i>	cccclxvi
<i>Bankruptcy Rules</i>	cccclxiii	<i>Parliamentary, &amp;c., Registration Orders</i>	cccclxvi
<i>Board of Trade Rules</i>	cccclxiv	<i>Patent Rules</i>	cccclxvi
<i>Building Society Regulations</i>	cccclxiv	<i>Police Regulations</i>	cccclxvi
<i>Central Office Practice Rules</i>	cccclxiv	<i>Practice Master's Rules</i>	- cccclxvi
<i>China and Japan Rules</i>	cccclxiv	<i>Probate Rules</i>	cccclxvi
<i>City of London Court</i>	cccclxiv	<i>Rural District Councillors' Election Order</i>	- cccclxvi
<i>Clergy Discipline Act Rules</i>	cccclxiv	<i>Settled Land Rules</i>	cccclxvi
<i>Collisions at Sea (Regulations for preventing)</i>	cccclxiv	<i>Sheriffs' Fees Order -</i>	cccclxvi
<i>Companies Winding-up Rules</i>	cccclxiv	<i>Shipping Rules and Orders -</i>	cccclxvi
<i>Contentious Business Rules -</i>	cccclxv	<i>Solicitors' Remuneration Order.</i>	cccclxvi
<i>County Court Rules</i>	cccclxv	<i>Stock Exchange Rules</i>	cccclxvi
<i>Dairies, Cowsheds and Millshops Order</i>	cccclxv	<i>Summary Jurisdiction Rules</i>	cccclxvi
<i>Danube Navigation Regulations</i>	cccclxv	<i>Thames Conservancy and Navigation Rules -</i>	cccclxvi
<i>Deeds of Arrangement Rules</i>	cccclxv	<i>Trade Marks Rules</i>	cccclxvi
<i>Designs Rules</i>	cccclxv	<i>Tramways Rules</i>	- cccclxvii
<i>Divorce Court Rules</i>	cccclxv	<i>Treasury Regulations</i>	- cccclxvii
<i>Election Petition Rules</i>	cccclxv	<i>Trinidad and Tobago</i>	cccclxvii
<i>House of Lords Standing Orders</i>	cccclxv	<i>Tyne River Regulations</i>	- cccclxvii
<i>Inferior Courts Rules</i>	- cccclxv	<i>Vaccination Order -</i>	cccclxvii
<i>Irish Rules</i>	cccclxv	<i>Watermen and Lightermen By-laws</i>	cccclxvii
<i>Judicial Trustee Rules</i>	cccclxv	<i>Workmen's Compensation Rules</i>	- cccclxvii
<i>Luxury Rules</i>	cccclxv		
<i>Mayor's Court of London Rules</i>	cccclxvi		

## RULES OF SUPREME COURT.

- **Order I. (Form and Commencement of Action),**  
r. 1.  
See PROBATE. 88.
- **Order II. (Writ of Summons),** r. 5.  
See PRACTICE. 213.
- **(Writ of Summons and Procedure, &c.),**  
r. 1.  
See PROBATE. 88.
- r. 3.  
See PRACTICE. 274.
- **Order III. (Indorsement of Claim),** r. 1.  
See PRACTICE. 98.
- r. 4.  
See EXECUTOR. 22.
- r. 6.  
See PRACTICE. 2, 282, 284, 285, 287—  
289, 291, 292, 297, 298.  
MORTGAGE. 6.
- r. 7.  
See COSTS. 78.

## RULES OF SUPREME COURT—continued.

- **Order IV. (Indorsement of Address),** r. 1.  
See COSTS. 62.
- r. 2.  
See COMPANY. 286.
- **Order V. (Issue of Writs of Summons).**  
See PRACTICE. 138.
- r. 2.  
See PRACTICE. 70.
- r. 9.  
See PRACTICE. 194, 195.
- **IT. 9 (a), 10.**  
See COUNTY COURT. 68.
- **Order VI. (Concurrent Writs),** r. 1.  
See PRACTICE. 217.
- **Order VIII. (Renewal of Writ),** r. 1.  
See PRACTICE. 273, 300.
- **Order IX. (Service of Writ of Summons),**  
r. 1.  
See PRACTICE. 273.
- **IT. 1, 2.**  
See PRACTICE. 180.

**RULES OF SUPREME COURT—continued.**

- **Order IX., r. 2.**  
See PRACTICE. 180, 231, 232.
- **r. 6.**  
See PRACTICE. 187, 188, 189, 190.
- **r. 8.**  
See PRACTICE. 181, 182, 183, 228.
- **Order X. (Substituted Service).**  
See PRACTICE. 231.
- **rr. 14 (a), 18 (a).**  
See LIMITATIONS, STATUTE OF. 37
- **Order XI. (Service out of Jurisdiction).**  
See INTERNATIONAL LAW. 2.  
PRACTICE. 201.
- **r. 1.**  
See PATENT. 36.  
PRACTICE. 192, 194, 196, 197, 199,  
200, 202, 206, 207, 208, 209, 210,  
212, 215, 216, 218, 221, 222.  
SHIPPING. 249.
- **rr. 1, 2.**  
See PRACTICE. 219, 220, 233.
- **rr. 1, 4.**  
See PRACTICE. 213, 217.
- **r. 4.**  
See PRACTICE. 214.
- **r. 6.**  
See PRACTICE. 224.
- **r. 7.**  
See PRACTICE. 187.
- **Order XII. (Appearance), r. 4.**  
See PRACTICE. 7, 58.
- **r. 30.**  
See PRACTICE. 204.
- **Order XIII. (Default of Appearance), r. 1.**  
See DIVORCE. 90.  
PROBATE. 97.
- **r. 3.**  
See PRACTICE. 279, 299.
- **r. 12.**  
See PRACTICE. 158, 170.
- **r. 13.**  
See PRACTICE. 292.
- **Order XIV. (Leave to Sign Judgment and  
Defend where Writ specially indorsed).**  
See COMPANY—WINDING-UP. 47.  
COUNTY COURT. 27, 29.  
LIVERPOOL COURTS. 5.  
MORTGAGE. 6, 21.  
PRACTICE. 136, 287, 289,
- **r. 1.**  
See BOND. 1.  
COSTS. 25.  
PRACTICE. 37, 39, 189, 280, 284,  
285, 287, 291, 298.
- **rr. 1, 4, 6.**  
See PRACTICE. 292.
- **r. 6.**  
See BANKRUPTCY. 150
- **rr. 6, 8.**  
See PRACTICE. 254.
- **r. 9.**  
See COSTS. 25.  
COUNTY COURT. 23.

**RULES OF SUPREME COURT—continued.**

- **Order XV. (Application for an Account).**  
See MORTGAGE. 34.
- **Order XVI. (Parties), r. 1.**  
See PRACTICE. 101, 102, 103, 105, 120.  
SHIPPING. 207.  
TRADE UNION. 13.
- **rr. 2, 11, 12.**  
See PRACTICE. 108.
- **r. 4.**  
See PRACTICE. 118.
- **rr. 4, 5, 7.**  
See PRACTICE. 118, 119.
- **r. 5.**  
See PRACTICE. 100.
- **rr. 5, 7, 11.**  
See PRACTICE. 83.
- **rr. 6, 11, 48.**  
See PRACTICE. 86.
- **r. 8.**  
See MORTGAGE. 28.
- **r. 9.**  
See COMPANY. 44, 45.  
COMPROMISE. 1.  
PRACTICE. 113, 116, 117.
- **r. 11.**  
See EXECUTOR. 21.  
PATENT. 35.  
PRACTICE. 78, 79, 80, 90, 109, 111,  
149.
- **rr. 11, 12.**  
See PRACTICE. 87.
- **rr. 11, 32.**  
See ESTOPPEL. 4.
- **rr. 11, 48.**  
See PRACTICE. 251.
- **r. 16.**  
See COMPANY. 291.
- **r. 17.**  
See LUNACY. 3.
- **r. 22.**  
See PRACTICE. 23.
- **rr. 23, 24.**  
See DISCOVERY. 16.
- **r. 29.**  
See PRACTICE. 28.
- **r. 32.**  
See COSTS. 77.
- **r. 40.**  
See PRACTICE. 196.
- **rr. 40, 41, 42.**  
See PRACTICE. 29.
- **r. 46.**  
See COMPANY. 201.  
MORTGAGE. 17, 29.  
PRACTICE. 72.
- **r. 48.**  
See PRACTICE. 252, 253.  
SHIPPING. 203, 209.
- **rr. 52, 55.**  
See PRACTICE. 249, 250.
- **r. 55.**  
See LIGHT AND AIR. 14.  
TRUSTEE. 39.



**RULES OF SUPREME COURT—continued.**

- **Order XVII.** (*Change of Parties by Death, &c.*), r. 4.  
See LIMITATIONS, STATUTE OF. 39.  
PRACTICE. 89, 173, 174, 176.
- rr. 4, 6.  
See PRACTICE. 83.
- r. 8.  
See COUNTY COURT. 71.
- **Order XVIII.** (*Joinder of Causes of Action*), r. 1.  
See SHIPPING. 207.
- rr. 1, 8.  
See PRACTICE. 100.
- r. 2.  
See PRACTICE. 95, 99.
- **Order XVIIIa.** (*Trial without Pleadings*), r. 6.  
See PRACTICE. 170.
- **Order XIX.** (*Pleadings generally*), r. 3.  
See PRACTICE. 152.
- r. 6.  
See DISCOVERY. 63.
- rr. 6, 7.  
See DISCOVERY. 62, 63.
- r. 7.  
See DISCOVERY. 65.  
PRACTICE. 167.
- r. 10.  
See PRACTICE. 230.
- r. 15.  
See PRACTICE. 2.
- r. 21.  
See PRACTICE. 163.
- r. 27.  
See PRACTICE. 150.
- **Order XX.** (*Statement of Claim*), r. 1.  
See ARBITRATION. 4, 12, 56.
- r. 4.  
See PRACTICE. 278.
- **Order XXI.** (*Defence and Counter-claim*), r. 18 [*as amended July, 1898, see W. N. 1898, Sept. 10, p. 315*].  
See PROBATE. 87, 91.
- rr. 10—17.  
See PRACTICE. 152.
- r. 11.  
See PRACTICE. 149.
- rr. 11, 12, 13, 14.  
See PRACTICE. 153.
- r. 15.  
See PRACTICE. 151.
- r. 16.  
See PRACTICE. 156.
- r. 18.  
See PROBATE. 87, 91.
- **Order XXII.** (*Payment into and out of Court and Tender*), r. 1.  
See DEFAMATION. 14.
- rr. 1—5.  
See SHIPPING. 263.
- rr. 1, 6.  
See PRACTICE. 126.
- r. 5.  
See PRACTICE. 130, 135, 142.
- r. 6.  
See BANKRUPTCY. 231.

**RULES OF SUPREME COURT—continued.**

- **Order XXII.**, r. 7.  
See COPYRIGHT. 12.  
COSTS. 3.
- r. 17.  
See EXECUTOR. 33.
- r. 22.  
See PRACTICE. 134.
- **Order XXIII.** (*Reply and Subsequent Pleadings*), r. 1.  
See PRACTICE. 262.
- r. 4.  
See PRACTICE. 156.
- **Order XXIV.** (*Pending the Action*), r. 3.  
See PRACTICE. 160.
- **Order XXV.** (*Proceedings in Lieu of Demurrer*), r. 2.  
See PRACTICE. 263.
- rr. 2, 3.  
See APPEAL. 50.
- rr. 2, 4.  
See DEFAMATION. 33.
- r. 4.  
See LUNACY. 3.  
PRACTICE. 166, 235, 240.  
TENDER. 3.
- r. 5.  
See INJUNCTION. 17.  
POOR LAW. 10.  
PRACTICE. 113.  
TRADERS. 3.
- **Order XXVI.** (*Discontinuance*), r. 1.  
See PRACTICE. 14, 15, 18.
- rr. 1, 4.  
See COMPANY—WINDING-UP. 29.  
PRACTICE. 16.
- **Order XXVII.** (*Default of Pleading*), r. 11.  
See COSTS. 22.  
PRACTICE. 156, 157.
- r. 12.  
See PRACTICE. 33, 226.
- r. 13.  
See PRACTICE. 262.
- r. 15.  
See PRACTICE. 240.
- **Order XXVIII.** (*Amendment*), rr. 1, 6.  
See PRACTICE. 1, 263.
- r. 9.  
See PRACTICE. 281.
- rr. 9, 10.  
See PRACTICE. 3.
- r. 10.  
See PRACTICE. 230.
- r. 11.  
See CHARGING ORDER. 2.  
EXECUTOR. 21.  
PRACTICE. 4, 78, 237.
- r. 12.  
See TRADE-MARK. 51.
- **Order XXIX.** (*Release in Admiralty Actions*), rr. 12, 18.  
See SHIPPING. 247.
- **Order XXX.** (*Summons for Directions*).  
See MORTGAGE. 31.  
PRACTICE. 248, 254.

**RULES OF SUPREME COURT—continued.**

- Order XXX., r. 1.  
See PRACTICE. 158.
- rr. 1, 2.  
See PRACTICE. 261.
- Order XXXI. (*Discovery*), r. 1.  
See DISCOVERY. 54, 55, 58.
- rr. 1, 2, 12.  
See DISCOVERY. 22.
- rr. 1, 5, 24.  
See DISCOVERY. 49.
- rr. 1, 6.  
See DISCOVERY. 46.
- rr. 1, 12.  
See DISCOVERY. 44.
- r. 5.  
See DISCOVERY. 48.
- r. 7.  
See DISCOVERY. 57.
- r. 8.  
See DISCOVERY. 35, 57.
- r. 12.  
See DISCOVERY. 13, 18, 41, 43.
- r. 14.  
See DISCOVERY. 26.
- rr. 15, 17, 18, 26.  
See DISCOVERY. 2.
- rr. 15-18.  
See DISCOVERY. 20.
- rr. 15, 19a (2).  
See DISCOVERY. 63.
- r. 18.  
See DISCOVERY. 24.
- r. 19a.  
See DISCOVERY. 36.
- rr. 19a (2).  
See DISCOVERY. 31, 32.
- r. 26.  
See DISCOVERY. 3, 4, 5.
- Order XXXII. (*Admissions*), r. 6.  
See PRACTICE. 127.
- Order XXXIII. (*Issues, Inquiries, and Accounts*), rr. 2, 3, 4.  
See FRAUDS, STATUTE OF. 23.
- rr. 2-3.  
See ACCOUNT.
- Order XXXIV. (*Special Case*), r. 1.  
See PRACTICE. 244.
- Order XXXV. (*District Registries*), rr. 1-6.  
See PRACTICE. 22.
- r. 4.  
See PRACTICE. 20.
- r. 6.  
See PRACTICE. 19.
- Order XXXVI. (*Trial*).  
See PRACTICE. 44.
- r. 1.  
See PRACTICE. 270, 271.
- rr. 1, 1a, 3.  
See PRACTICE. 267.
- rr. 4, 6, 7.  
See PRACTICE. 255.
- r. 5.  
See ARBITRATION. 47.  
PROBATE. 93.

**RULES OF SUPREME COURT—continued.**

- Order XXXVI., r. 6.  
See PRACTICE. 254.
- rr. 6, 7.  
See PRACTICE. 256, 257.
- r. 11.  
See PRACTICE. 262.
- rr. 14, 18, 18a.  
See PRACTICE. 261.
- r. 21.  
See PRACTICE. 29.
- r. 31.  
See PRACTICE. 258.
- r. 32.  
See PRACTICE. 259.
- r. 33.  
See PRACTICE. 259.
- r. 37.  
See DISCOVERY. 23, 51.
- r. 50.  
See ARBITRATION. 48.
- r. 54.  
See ARBITRATION. 45, 46.  
EVIDENCE. 39.
- rr. 54, 55.  
See ARBITRATION. 44.
- r. 55.  
See COMMON. 8.
- r. 58.  
See DAMAGES. 3.  
INJUNCTION. 14.  
PRACTICE. 95.
- r. 59.  
See COSTS. 16.
- Order XXXVII. (*Evidence*), r. 3.  
See EVIDENCE. 37.
- r. 5.  
See ARBITRATION. 10.  
EVIDENCE. 26, 28, 33.
- r. 7.  
See DISCOVERY. 25.  
PROBATE. 93.
- r. 9.  
See ATTACHMENT. 2.  
EVIDENCE. 30.
- r. 28.  
See HUSBAND AND WIFE. 54.
- r. 30.  
See DISCOVERY. 42.
- Order XXXVIII. (*Affidavits and Depositions*), r. 3.  
See EVIDENCE. 8, 18, 19.
- r. 16.  
See BILL OF SALE. 9.  
EVIDENCE. 22.
- Order XXXIX. (*Motion for New Trial*), r. 6.  
See DEFAMATION. 13.
- r. 8.  
See APPEAL. 46.  
COUNTY COURT. 15.
- rr. 8, 14.  
See EVIDENCE. 15.
- Order XL. (*Motion for Judgment*), r. 7.  
See ARBITRATION. 44.  
PRACTICE. 40.

RULES OF SUPREME COURT—*continued.*

- Order **XXI.** (*Entry of Judgment*), r. 3.  
See EXECUTOR. 21.  
PRACTICE. 78.
- — rr. 3, 4.  
See PRACTICE. 37.
- — r. 5.  
See ATTACHMENT. 1, 15, 16, 17.  
MORTGAGE. 19.  
PRACTICE. 283.  
SEQUESTRATION. 5, 6.
- — r. 23.  
See PRACTICE. 176.
- Order **XXII.** (*Execution*), rr. 3, 4.  
See ATTACHMENT. 10.
- — rr. 3, 6.  
See SEQUESTRATION. 6.
- — rr. 4, 24.  
See HUSBAND AND WIFE. 38.
- — r. 6.  
See SEQUESTRATION. 2, 6.
- — r. 7.  
See PRACTICE. 272.
- — rr. 8, 23.  
See RECEIVER. 21.
- — rr. 14, 16.  
See COSTS. 36.
- — rr. 22, 23.  
See SEQUESTRATION. 4.
- — r. 23.  
See CHARGING ORDER. 2  
PRACTICE. 178.
- — r. 24.  
See ATTACHMENT. 12.
- — r. 28.  
SOLICITOR. 88.
- — r. 28.  
See PRACTICE. 174.
- — r. 31.  
RECEIVER. 22.
- — r. 31.  
See ATTACHMENT. 13.
- — r. 32.  
See ATTACHMENT. 2.  
EVIDENCE. 30.  
HUSBAND AND WIFE. 50.  
RECEIVER. 13.
- — rr. 32, 34.  
See COSTS. 8.
- Order **XXIII.** (*Writs of Fieri Facias, Elegit, and Sequestration*), rr. 6, 7.  
See SEQUESTRATION. 4, 5, 6.
- — r. 7, 8.  
See SEQUESTRATION. 2, 3.
- Order **XXIV.** (*Attachment*), r. 1.  
See ATTACHMENT. 6.
- — rr. 1, 2.  
See PRACTICE. 272.
- — r. 2.  
See ATTACHMENT. 21, 22, 24.  
PRACTICE. 229.
- — r. 13.  
See SEQUESTRATION. 4.
- — r. 18.  
See PRACTICE. 98.
- Order **XXV.** (*Attachment of Debts*), r. 1.  
See ATTACHMENT. 7, 10.
- — rr. 1, 2.  
See BANKER. 2.
- — r. 3.  
See ATTACHMENT. 12.

RULES OF SUPREME COURT—*continued.*

- Order **XLV.**, r. 9.  
See COSTS. 8.
- Order **XLVI.** (*Charging Orders, Distringas, and Stop Orders*), r. 1.  
See CHARGING ORDER. 2, 4.
- Order **XLVII.** (*Writ of Possession*), rr. 1, 2.  
App. H., Forms 7a, 8.  
See MORTGAGE. 32.
- Order **XLVIII.** A. (*Actions by and against Firms*), r. 1.  
See PRACTICE. 184, 186.
- — rr. 1, 3.  
See PRACTICE. 211.
- — rr. 1, 3, 8.  
See PRACTICE. 227, 299.
- — rr. 1—8.  
See BANKRUPTCY. 137.
- — rr. 3, 11.  
See PRACTICE. 191, 277.
- — r. 5.  
See ATTACHMENT. 25.
- — rr. 5, 8.  
See BANKRUPTCY. 23.
- — rr. 5, 8, 11.  
See BANKRUPTCY. 205.
- — r. 11.  
See PRACTICE. 191.
- Order **XLIX.** (*Transfers and Consolidation*), r. 3.  
See PRACTICE. 264, 267.
- — r. 8.  
See PRACTICE. 96.
- Order **L.** (*Interlocutory Orders*), r. 3.  
See ARBITRATION. 48.  
DISCOVERY. 26.  
EVIDENCE. 26.
- — r. 4.  
See DECEIT.
- — r. 6.  
See INJUNCTION. 23.
- — r. 12.  
See INTERPLEADER. 10.
- — r. 15 (a).  
See RECEIVER. 13, 22.
- Order **LI.** (*Sales by Court in Chancery Division*), r. 1 (a).  
See MORTGAGE. 81.
- — r. 23.  
See PRACTICE. 223.
- Order **LII.** (*Motions*), rr. 3, 4.  
See ATTACHMENT. 21.
- — r. 4.  
See ARBITRATION. 45.  
ATTACHMENT. 2, 4, 14, 16.  
EVIDENCE. 30.
- — rr. 5, 9.  
See RECEIVER. 31.
- — r. 9.  
See PRACTICE. 192.
- Order **LIV.** (*Applications and Proceedings at Chambers*), r. 12.  
See RAILWAY. 47.
- — r. 23.  
See APPEAL. 45.
- Order **LIVa.** (*Declaration on Originating Summons*).  
See WAY, RIGHT OF. 1.

## RULES OF SUPREME COURT—continued.

- Order LIVA., r. 1.  
See MORTGAGE. 43.  
PRACTICE. 65.
- r. 2.  
See LANDS CLAUSES ACTS. 16, 19.  
PRACTICE. 73, 146.
- Order LV. (*Chambers in the Chancery Division*), r. 2.  
See LANDS CLAUSES ACT. 16, 19.
- r. 3.  
See PRACTICE. 137.  
TRUSTEE. 24.
- r. 3 (c).  
See ACCOUNT. 7.
- rr. 3, 4.  
See EXECUTOR. 45.  
PRACTICE. 62, 76.
- r. 5 (a).  
See MORTGAGE. 31, 43.  
PRACTICE. 65.  
RECEIVER. 31.
- r. 9.  
See PATENT. 27.
- r. 9 (b).  
See PRACTICE. 74.
- r. 10.  
See ACCOUNT. 6.
- r. 15 (a).  
See RECEIVER. 14.
- rr. 66 (a), 67, 70, 71.  
See ATTACHMENT. 26.
- Order LVII. (*Interpleader*), rr. 1, 2.  
See INTERPLEADER. 1.
- r. 4.  
See MORTGAGE. 18.
- rr. 8, 9, 11.  
See APPEAL. 29.
- r. 12.  
See BILL OF SALE. 48.  
INTERPLEADER. 3.
- r. 13.  
See APPEAL. 51.
- r. 15.  
See APPEAL. 49.  
INTERPLEADER. 6.
- Order LVIII. (*Appeals to the Court of Appeal*), r. 3.  
See APPEAL. 59.
- r. 4.  
See PATENT. 8.  
PRACTICE. 52.
- r. 6.  
See PATENT. 13.
- r. 11.  
See APPEAL. 31.
- r. 15.  
See APPEAL. 22, 51, 52, 53.  
COMPANY—WINDING-UP. 134.  
COSTS. 40, 59, 61.
- Order LIX. (*Divisional Court*), r. 4.  
See SHIPPING. 5.
- r. 8.  
See COUNTY COURT. 12.
- rr. 10—17.  
See LONDON. 45.
- r. 12.  
See COUNTY COURT. 14.

## RULES OF SUPREME COURT—continued.

- Order LIX., r. 16.  
See COUNTY COURT. 15.  
LONDON. 43.
- r. 26.  
See BILL OF SALE. 49.
- Order LXI. (*Central Office*), r. 26.  
See BILL OF SALE. 49.
- Order LXII. (*Chancery Registrars*), r. 2.  
See ATTACHMENT. 22.  
PRACTICE. 15.
- r. 18.  
See PRACTICE. 19.
- Order LXIV. (*Time*), r. 7.  
See DIVORCE. 111.  
PRACTICE. 300.
- r. 8.  
See ARBITRATION. 4.
- Order LXV. (*Costs*), r. 1.  
See COPYRIGHT. 12.  
COSTS. 10, 11, 14, 20, 22, 23, 41, 66  
77.  
CROWN OFFICE. 1.  
PROBATE. 87, 92.  
SHIPPING. 92.
- rr. 1, 20.  
See COSTS. 25.
- r. 6.  
See COSTS. 51, 55.  
PATENT. 27.
- r. 9.  
See COSTS. 9, 30, 33, 34.
- r. 11.  
See ANNUITY. 11.  
COSTS. 69.  
SOLICITOR. 48, 91.
- r. 12.  
See ARBITRATION. 38.  
COUNTY COURT. 19, 42.
- r. 14.  
See COSTS. 63.  
PRACTICE. 234.
- r. 14 (b).  
See WILL. 50.
- rr. 14, 27.  
See BANKRUPTCY. 75.  
COSTS. 64.
- r. 26.  
See COSTS. 55.
- r. 27.  
See COMPANY—WINDING-UP. 65.  
COSTS. 2, 17, 19, 41, 78, 82.  
HUSBAND AND WIFE. 47.  
PRACTICE. 20.  
SHIPPING. 233.
- App. K., No. 19.  
See DISCOVERY. 27.
- App. N.  
See SOLICITOR. 17.
- Order LXVII. (*Service of Orders, &c.*), r. 4.  
See APPEAL. 3.  
ATTACHMENT. 21, 22.  
MORTGAGE. 18.  
RECEIVER. 20.
- r. 5.  
See PRACTICE. 191, 224.

**RULES OF SUPREME COURT—continued.**

- Order **LXVII.**, r. 6.  
See ATTACHMENT. 24.  
PRACTICE. 229.
- Order **LXVIII.** (*Application of Rules in Crown, Revenue, and Matrimonial Cases*), r. 1.  
See APPEAL. 9.
- — rr. 1, 2.  
See PRACTICE. 23.
- Order **LXX.** (*Effect of non-compliance with Rules*), r. 1.  
See ATTACHMENT. 2, 3, 22.  
DISCOVERY. 42.  
EVIDENCE. 30.  
PRACTICE. 74, 213.
- — r. 1, App. A., Part I., Form No. 5.  
See PRACTICE. 213.
- — r. 2.  
See PRACTICE. 99.
- Order **LXXI.** (*Interpretation*), r. 1 (a).  
See PRACTICE. 69.
- — r. 1 (a); App. N. items 61, 82, 82a.  
See COMPANY—WINDING-UP. 60.
- Order **LXXII.** (*General Rules*), r. 2.  
See PRACTICE.
- Nov. 28, 1893, r. 7.  
See PRACTICE. 196.
- Jan. 10, 1894.  
See PRACTICE. 196.
- July, 1898.  
See PROBATE. 91.

**RULES OF SUPREME COURT FUNDS RULES.**

- Funds Rules, r. 5.  
See PRACTICE. 138.
- Chancery Funds Consolidated Rules, 1874, r. 34.  
See PRACTICE. 138.
- Supreme Court Funds Rules, 1886, rr. 2, 41.  
See PRACTICE. 138.
- — r. 21.  
See PARTITION. 8.
- — r. 30.  
See PRACTICE. 130.
- — r. 101.  
See EVIDENCE. 35.

**AGRICULTURAL RATES ACT, 1896, ORDERS,**

Art. 17.  
See RATES. 16.

**BANKRUPTCY RULES, 1886 to 1890, rr. 2, 73, 75.**

See COMPANY—WINDING-UP. 210.

- r. 6.  
See BANKRUPTCY. 68.
- rr. 6, 338.  
See BANKRUPTCY. 100.
- r. 8.  
See BANKRUPTCY. 87.
- r. 13.  
See BANKRUPTCY. 213.
- r. 15.  
See BANKRUPTCY. 239.

**BANKRUPTCY RULES—continued.**

- r. 24.  
See BANKRUPTCY. 222.
- rr. 27, 29.  
See BANKRUPTCY. 148.  
EVIDENCE. 21.
- rr. 70, 88.  
See CONTEMPT OF COURT. 9.
- r. 90.  
See BANKRUPTCY. 108.
- rr. 93, 353.  
See BANKRUPTCY. 191.
- rr. 109, 130.  
See BANKRUPTCY. 46.
- r. 112.  
See BANKRUPTCY. 93.
- rr. 112, 124.  
See BANKRUPTCY. 79.
- rr. 117, 285.  
See BANKRUPTCY. 245.
- rr. 117, 337.  
See BANKRUPTCY. 77, 125, 126.
- rr. 118, 119.  
See BANKRUPTCY. 216.
- r. 122.  
See BANKRUPTCY. 80.
- r. 124.  
See BANKRUPTCY. 76.
- r. 125.  
See SOLICITOR. 11.
- r. 131.  
See BANKRUPTCY. 74.
- rr. 131, 148.  
See BANKRUPTCY. 154.
- r. 132.  
See BANKRUPTCY. 45.
- r. 134a.  
See BANKRUPTCY. 44.
- r. 136.  
See BANKRUPTCY. 6, 18, 19, 20.  
HUSBAND AND WIFE. 25.
- rr. 136, 262, 353, and App. Form 6.  
See BANKRUPTCY. 137.
- rr. 138, 139.  
See BANKRUPTCY. 26.
- rr. 170—175.  
See BANKRUPTCY. 120.
- r. 143, App. of Forms 10.  
See BANKRUPTCY. 140.
- rr. 214, 215.  
See BANKRUPTCY. 171.
- r. 260.  
See BANKRUPTCY. 192.
- rr. 260, 262, 264.  
See BANKRUPTCY. 23.
- r. 274.  
See BANKRUPTCY. 118.
- r. 316.  
See BANKRUPTCY. 71.
- r. 317.  
See BANKRUPTCY. 70.

**BANKRUPTCY RULES—continued.**

— r. 353.

*See* BANKRUPTCY. 75, 226.

— r. 361.

*See* BANKRUPTCY. 206.**BOARD OF TRADE RULES, August, 1886, A. 22.***See* TRAMWAYS. 8.**BUILDING SOCIETY REGULATIONS, 1884, rr. 13, 14.***See* BUILDING SOCIETY. 4.**CENTRAL OFFICE PRACTICE RULES, A. 15.***See* BILL OF SALE. 49.**CHINA AND JAPAN, SUPREME COURT OF, RULES.***See* FOREIGN JURISDICTION. 3.**CITY OF LONDON COURT. Order of Lord Chancellor of Nov. 29, 1890.***See* LONDON. 34.**CLERGY DISCIPLINE ACT, 1892, PROCEDURE RULES, r. 34.***See* ECCLESIASTICAL LAW. 74.**COLLISIONS AT SEA (REGULATIONS FOR PREVENTING), 1884, art. 5.***See* SHIPPING. 76.

— arts. 15, 18, 19, 21.

*See* SHIPPING. 81.

— art. 18.

*See* SHIPPING. 87.

— arts. 18, 21.

*See* SHIPPING. 74.

— art. 20.

*See* SHIPPING. 77.

— art. 21.

*See* SHIPPING. 73.**COLLISIONS AT SEA (REGULATIONS FOR PREVENTING), 1897, arts. 3, 11.***See* SHIPPING. 53.

— art. 4.

*See* SHIPPING. 84.

— art. 10, Sched. Part II.

*See* SHIPPING. 70.

— art. 11.

*See* SHIPPING. 51, 52.

— arts. 12, 13.

*See* SHIPPING. 64.

— art. 13.

*See* SHIPPING. 65.

— art. 18.

*See* SHIPPING. 59, 66.

— arts. 19, 21, 27.

*See* SHIPPING. 62.**COMPANIES WINDING-UP ORDER, Nov. 29, 1890 (Published in W. N., Dec. 20, 1890).****COMPANIES WINDING-UP RULES, 1890 (Published in W. N., Dec. 20, 1890).**

— rr. 3, 73, App. Forms 14, 15.

*See* COMPANY—WINDING-UP. 149.

— r. 31.

*See* COMPANY—WINDING-UP. 70, 123.**COMPANIES WINDING-UP RULES—contd.**

— rr. 32, 67.

*See* COMPANY—WINDING-UP. 120, 121, 213.

— rr. 34, 177.

*See* COMPANY—WINDING-UP. 144.

— r. 35.

*See* COMPANY—WINDING-UP. 143.

— r. 36.

*See* COMPANY—WINDING-UP. 184.

— rr. 36, 177 (1).

*See* COMPANY—WINDING-UP. 148.

— r. 63.

*See* COMPANY—WINDING-UP. 105, 117.

— r. 67.

*See* COMPANY—WINDING-UP. 120, 121, 213.

— r. 71.

*See* COMPANY—WINDING-UP. 79.

— r. 78.

*See* COMPANY—WINDING-UP. 65.

— r. 83.

*See* COMPANY—WINDING-UP. 49.

— rr. 89, 90.

*See* COMPANY—WINDING-UP. 250.

— r. 92.

*See* COMPANY—WINDING-UP. 44.

— rr. 110 &amp; 111.

*See* COMPANY—WINDING-UP. 129, 212.

— rr. 110, 111, 112, 178.

*See* COMPANY—WINDING-UP. 119, 211.

— r. 127 (d).

*See* COMPANY—WINDING-UP. 127.

— r. 165.

*See* COMPANY—WINDING-UP. 135.

— r. 177.

*See* COMPANY—WINDING-UP. 141, 142.**COMPANIES WINDING-UP RULES, Feb. 1891***(Published in W. N., Feb. 21, 1891, p. 9).**See* COMPANY—WINDING-UP. 153.

— rr. 2, 3, Form 2.

*See* COMPANY—WINDING-UP. 141.

— r. 3.

*See* COMPANY—WINDING-UP. 153.

— rr. 3, 4.

*See* COMPANY—WINDING-UP. 183.

— r. 4, Form 3.

*See* COMPANY—WINDING-UP. 170.**COMPANIES WINDING-UP RULES, April, 1892***(Published in W. N., 1892 (App. of O. & R.), p. 16), r. 3.**See* COMPANY—WINDING-UP. 119, 211.

— rr. 11, 32.

*See* COMPANY—WINDING-UP. 86.— r. 19; *Ibid.* Form 3.*See* COMPANY—WINDING-UP. 138, 142.

— r. 20.

*See* COMPANY—WINDING-UP. 28, 67, 74.

— rr. 20, 21.

*See* COMPANY—WINDING-UP. 185.

— r. 25.

*See* COMPANY—WINDING-UP. 117.

**COMPANIES WINDING-UP RULES—continued.**

— r. 27.

*See* COMPANY—WINDING-UP. 76.

EVIDENCE. 3.

**COMPANIES WINDING-UP RULES, March, 1893, r. 2.***See* COMPANY—WINDING-UP. 185.**COMPANIES WINDING-UP RULES, Nov. 1895.***See* COMPANY—WINDING-UP. 83.**CONTENTIOUS BUSINESS RULES, 1862, r. 41.***See* PROBATE. 116.**COUNTY COURT RULES, 1889.**

— Order III., r. 1.

*See* PRACTICE. 98.

— Order V., r. 9 (a).

*See* COUNTY COURT. 46.

— Order IX., r. 11, Form 104 (a).

*See* COUNTY COURT. 61.

— Order X., rr. 10, 18.

*See* COUNTY COURT. 67.

— Order XXII., r. 6.

*See* COUNTY COURT. 62.

— Order XXV., r. 26.

*See* COUNTY COURT. 37.

— r. 29.

*See* BANKRUPTCY. 206.

— r. 40.

*See* PROHIBITION. 1.

— r. 47.

*See* COUNTY COURT. 61.

— Order XXVII., r. 4, Sch.

*See* COUNTY COURT. 35, 42.

— Order XL., r. 7.

*See* COUNTY COURT. 43.

— Order XLIV., r. 18.

*See* PRACTICE. 98.

— Order L. A., r. 12.

*See* INTERPLEADER. 10.

— r. 20.

*See* COUNTY COURT. 22.

— Order LI., r. 23.

*See* PRACTICE. 223.

— Form 14 (a).

*See* COUNTY COURT. 68.**COUNTY COURT RULES, 1889, 1892, 1895,**

Order X., r. 18 (a).

*See* COUNTY COURT. 63.**COUNTY COURT ORDER, Nov. 29, 1890.***See* LONDON. 30.**COUNTY COURT RULES, 1892.**

— Order XXV., r. 47.

*See* COUNTY COURT. 61.

— Order XXXIX. (b), rr. 30—32.

*See* SHIPPING. 248.

— r. 42.

*See* SHIPPING. 202.

— rr. 48, 50.

*See* SHIPPING. 269.

— r. 146.

*See* COMPANY—WINDING-UP. 98.

COUNTY COURT. 66, 72.

**COUNTY COURT (ADMIRALTY) FORMS, No. 331.***See* SHIPPING. 202.**DAIRIES, COWSHEDS AND MILKSHOPS ORDER, 1885, s. 13.***See* DAIRY. 1.

— No. 29.

*See* NUISANCES. 18.**DANUBE—REGULATIONS AS TO NAVIGATION OF LOWER DANUBE, art. 32.***See* SHIPPING. 58.**DEEDS OF ARRANGEMENT RULES, 1890, rr. 7, 16, App. to Rules 2, 3, 6.***See* BANKRUPTCY. 83.**DESIGNS RULES, 1883, r. 9.***See* DESIGNS. 4, 6.**DIVORCE COURT RULES, rr. 4, 6.***See* DIVORCE. 41.

— rr. 10—13.

*See* DIVORCE. 43.

— rr. 44, 47.

*See* DIVORCE. 112.

— r. 62.

*See* DIVORCE. 115.

— rr. 86, 191.

*See* DIVORCE. 3.

— rr. 95—103.

*See* DIVORCE. 2.

— rr. 158, 159, 199, 201.

*See* DIVORCE. 50, 58.

— r. 175.

*See* DIVORCE. 117.

— r. 196.

*See* DIVORCE. 90.**ELECTION PETITION RULES.**— Rules of 1868 (*Published in L. R. 4 C. P. 771—789*).

— r. 6.

*See* PARLIAMENT. 15.

— rr. 6, 7.

*See* PARLIAMENT. 13, 14.**HOUSE OF LORDS STANDING ORDERS, No. 1.***See* APPEAL. 23.**INFERIOR COURTS RULES.**

— General Orders of the Liverpool Court of Passage, 1882, No. II.

*See* LIVERPOOL COURTS. 4.**IRELAND.**

— Rules of Supreme Court, 1891, Order XXVIII., r. 11.

*See* PRACTICE. 4.**JUDICIAL TRUSTEE RULES, 1897, r. 23.***See* TRUSTEE. 73.

— r. 27.

*See* TRUSTEE. 75.**LUNACY RULES.**

— Rules of 1892, r. 126.

*See* LUNACY. 25.

— Schedule, Form 1 (e).

*See* LUNACY. 38.

**MAYOR'S COURT OF LONDON RULES, 1890 and 1892.**

See LONDON. 44.

**MERSEY RIVER RULES, art. 4.**

See SHIPPING. 71.

**NEWPORT HARBOUR BY-LAWS, art. 13.**

See SHIPPING. 75.

**NEW SOUTH WALES BANKRUPTCY ACTS, 1887—1888.**

— Rule of Procedure, No. 51.

See NEW SOUTH WALES. 1.

**PARLIAMENTARY REGISTRATION ORDER, 1889, Sched. III., Form (P).**

See PARLIAMENT. 37.

**PARLIAMENTARY REGISTRATION ORDER, 1895.**

See PARLIAMENT. 147.

— Sched. I., Form 5 (a).

See PARLIAMENT. 92.

— Sched. II., Part I., s. 19.

See PARLIAMENT. 34.

**PATENT RULES, 1883, rr. 65, 68, Form 4.**

See PATENT. 49.

**PATENT RULES, 1890.**

See PATENT. 19.

**POLICE REGULATIONS, Dec. 28, 1869.**

See LONDON. 89.

**PRACTICE MASTER'S RULES (5).**

See PRACTICE. 7, 58, 70.

**PROBATE RULES, 1862.**

— rr. 4, 7.

See PROBATE. 13.

— r. 41.

See PROBATE. 116.

— r. 74.

See PROBATE. 97.

**PROBATE RULES, April, 1887.**

See PROBATE. 51.

**REGISTER OF PATENT AGENTS RULES, 1889 and 1891.**

See PATENT. 19.

**RURAL DISTRICT COUNCILLORS' ELECTION ORDER, 1898, r. 7 (2).**

See DISTRICT COUNCILS. 3.

**SETTLED LAND ACT, 1882, RULES, App. Form XIX.**

See SETTLED LAND. 129.

**SHERIFFS ACT, 1887.**

— Order as to Fees of Aug. 31, 1888.

See SHERIFF. 14.

**SHIPPING RULES AND ORDERS.**

— Order in Council, May 1, 1855, Regulation 4.

See SHIPPING. 188.

— Order in Council, Feb. 5, 1873.

See SHIPPING. 195.

**SOLICITORS' REMUNERATION ORDER.**

— Solicitors' Remuneration Order, 1882 (Published in W. N., Sept. 2, 1882).

— Sched. I.

See SOLICITOR. 62.

— Sched. I., Part I., rr. 1, 7, 8.

See SOLICITOR. 60.

— Sched. I., Part I., rr. 2, 4.

See SOLICITOR. 39, 43, 61.

— Sched. I., Part I., rr. 7, 8; Part II., r. 5.

See SOLICITOR. 56.

— Sched. I., Part I., r. 8; Part II., r. 5.

See SOLICITOR. 35, 82.

— Sched. I., r. 9.

See SOLICITOR. 63.

— Sched. I., Part I., r. 10.

See SOLICITOR. 51.

— Sched. I., Part I., r. 11.

See SOLICITOR. 36, 38, 64, 65.

— Sched. I., Part II.

See SOLICITOR. 52, 55.

— Sched. I., Part II., r. 5.

See SOLICITOR. 57.

**STOCK EXCHANGE RULES, r. 177.**

See STOCK EXCHANGE. 10.

**SUMMARY JURISDICTION RULES, 1886 (Published in W. N., Oct. 1886), r. 18.**

See JUSTICES. 32.

**THAMES BY-LAWS, 1898.**

— art. 11.

See THAMES. 2.

— art. 40.

See SHIPPING. 84.

— art. 48.

See SHIPPING. 90.

**THAMES NAVIGATION BY-LAWS, 1872**

— art. 16.

See THAMES. 4.

— art. 20.

See THAMES. 1, 11.

**THAMES NAVIGATION BY-LAWS, 1887.**

— arts. 17, 18.

See THAMES. 13.

— art. 18.

See THAMES. 10.

**THAMES NAVIGATION BY-LAWS, 1892.**

— art. 7 (o).

See THAMES. 10.

**TRADE MARKS RULES, 1890 (Published in W. N., Jan. 11, 1890).**

— r. 23.

See EVIDENCE. 25.

TRADE-MARK. 10, 30.

— rr. 23, 26.

See TRADE-MARK. 5, 6.

— rr. 31, 54, 55.

See TRADE-MARK. 51.



**TRAMWAYS RULES, August, 1886.***See* PARLIAMENT. 8.— **r. 22.***See* TRAMWAY. 8.**TREASURY REGULATIONS, 1884, rr. 13, 14.***See* BUILDING SOCIETY. 4.**TRINIDAD AND TOBAGO.**— **Constitution of Supreme Court.**— **Order XXVIII., r. 12.***See* TRINIDAD AND TOBAGO. 4.— **Order XXXVI., r. 18.***See* TRINIDAD AND TOBAGO. 4.— **Order LVII., r. 6.***See* TRINIDAD AND TOBAGO. 4.**TYNE RIVER REGULATIONS, 1884.**— **By-law 20.***See* SHIPPING. 89.**VACCINATION.**— **Local Government Board General Order, 1874, art. 16.***See* VACCINATION. 7, 8.**WATERMEN AND LIGHTERMEN BY-LAWS.**— **art. 60.***See* THAMES. 12.— **art. 99.***See* THAMES. 5.**WORKMEN'S COMPENSATION RULES,<sup>s</sup> 1898, rr. 19—23.***See* MASTER AND SERVANT. 93.



# THE LAW REPORTS.

## DIGEST OF CASES, 1891-1900.

( 1 )

- ABANDONMENT**—Ancient lights—Evidence of intention to preserve—User—Interruption.  
*See* LIGHT AND AIR. 16.
- Cash advances for ship's disbursements—Prepaid freight—Rights of underwriter.  
*See* INSURANCE—**Marine**. 23.
- Contract—Right to sue on quantum meruit.  
*See* CONTRACT. 1.
- Easement—Evidence to shew abandonment.  
*See* EASEMENT. 1.
- Execution—Seizure of goods—Going out of possession.  
*See* SHERIFF. 3.
- Joint gold-mining lease—Notice of abandonment by a joint lessee—Law of New South Wales.  
*See* MINES. 9.
- Notice of—Recovery of ship—Total loss.  
*See* INSURANCE—**Marine**. 29.
- Railway undertaking.  
*See* Cases under PARLIAMENT—**Deposits and Bonds**.
- Ship as constructive total loss.  
*See* INSURANCE—**Marine**. 42, 43.
- Tramway—Parliamentary deposit—Board of Trade notice.  
*See* TRAMWAY. 7.
- Voyage—Shipping.  
*See* SHIPPING—**Charterparty**. 30.
- ABATEMENT**—Legacies—Advances—Insufficient estate.  
*See* WILL—**Advancement**. 19.
- Nuisance—Remedies.  
*See* Cases under NUISANCE.
- Plea or defence shall be pleaded in abatement.  
*See* R. S. C., Order XXI, r. 20.
- ABETTOR**—Offences against the person.  
*See* Cases under CRIMINAL LAW—**Offences against the Person**.
- ABLUTION**—Communion service—Illegality—Ritual.  
*See* ECCLESIASTICAL LAW—**Ritual**. 60.

( 2 )

- ABSCONDING DEBTOR**—Before presentation of petition—Arrest—Order made in exercise of bankruptcy jurisdiction—Certiorari.  
*See* COUNTY COURT. 47.
- ABSENCE**—Beyond seas—Statutes of Limitations.  
*See* LIMITATIONS, STATUTE OF—**Absence**. 1.
- Director—Vacating office—Absence through illness.  
*See* COMPANY—**Directors**. 143.
- Franchise.  
*See* PARLIAMENT—**Franchise**. 17-25.
- Trustee—Absence from the jurisdiction.  
*See* TRUSTEE—**Appointment**. 5.
- Workman without leave—Truck Act—Jurisdiction of justices.  
*See* MASTER AND SERVANT—**Practice**. 91.
- ABSENT PARTIES**—Accepting benefit of judgment—Practice.  
*See* ESTOPPEL. 4.
- "ABSENTING HIMSELF"**—Debtor—Act of Bankruptcy.  
*See* BANKRUPTCY—**Act of Bankruptcy**. 34.
- ABSOLUTE GIFT**—Construction of will.  
*See* Cases under WILL—**Absolute Gift**.
- ABSTRACT**—of title.  
*See* Cases under VENDOR AND PURCHASER—**Abstract**.
- ABUSE OF PROCESS**—Demurrable petition.  
*See* COMPANY—**WINDING-UP**—**Petition**. 137.
- ACCELERATION**—Will, construction of.  
*See* Cases under WILL—**Acceleration**.
- ACCEPTANCE**—Bill of Exchange—Acceptance whether qualified.  
*See* BILL OF EXCHANGE. 1.
- Bill of Exchange—Acceptance or indorsement "per pro"—Agent's authority.  
*See* BILL OF EXCHANGE. 17.

**ACCEPTANCE**—*continued.*

- Letters—Time—Withdrawal of offer.  
See **CONTRACT**—**Formation**. 17A.
- Negotiation by telegram.  
See **CONTRACT**—**Formation**. 18.
- Office of executor—Delay in proving will—Loss of interest.  
See **EXECUTOR**. 41.
- Sale of goods.  
See Cases under **SALE OF GOODS**.
- Withdrawal of offer before—Acceptance by post—Company—Shares.  
See **COMPANY**—**Shares**. 264.

**ACCESS**—Right of—Lease—Construction—Parcels—Misdescription—Falsa demonstratio.See **LANDLORD AND TENANT**. 75.**ACCIDENT**—Corporation—Liability of—Accident to bridge under corporate control.  
See **CANADA**. 28.

## —Fatal Accidents Acts—Cause of action outside jurisdiction.

See **NEGLIGENCE**. 1.

## —Fatal Accidents Act—Limitation of action—Neglect in execution of Act of Parliament.

See **PUBLIC AUTHORITIES PROTECTION**. 3.

## —Insurance.

See Cases under **INSURANCE, ACCIDENT**.

## —Policy—Stamp duty.

See **REVENUE**—**Stamps**. 163.

## —Prevention of—Load-line.

See **SHIPPING**—**Prevention of Accidents**.

## —Railway.

See **RAILWAY**—**Accident**.

## —Shooting-party—Liability—Trespass without intention or negligence.

See **TRESPASS**. 1.

## —To railway—Charterparty—Exceptions.

See **SHIPPING**—**Exceptions**. 131.

## —Transfer of action—Fatal accidents—Decree for limitation of liability in the Admiralty Division.

See **PRACTICE**—**Trial**. 264.

## —Workmen's Compensation Act.

See Cases under **MASTER AND SERVANT**.**ACCOMMODATION WORKS**—Railways.See Cases under **RAILWAY**—**Works**.**ACCOMPLICE**—Evidence of—Corroboration.See **CRIMINAL LAW**—**Evidence**. 14.**ACCORD AND SATISFACTION**—Insurance or suretyship—Statutory discharge.See **INSURANCE**—**Guarantee**. 13.**ACCOUNT.**

Order XXXIII., rr. 2-8, and Order LV., r. 3 (c), relate to accounts.

1. — Action for accounts—Contract—Works abroad—Periodical payments—Unascertained amounts—Foreign currency—Rate of exchange—Period of conversion into English money.

The defts. in 1891 entered into a contract with M. to pay him monthly one cent in Mexican currency per cubic metre of certain excavation works being done in Mexico, as and when pay-

**ACCOUNT**—*continued.*

ment should be received by defendants from the Mexican authorities; and during M.'s life they duly paid him. M. died in June, 1894; but he had no legal personal representative till May, 1896, when the plt. became his administrator.

In an action for account brought by the plt. in June, 1896, the Court, on Nov. 4, 1897, declared that he was entitled to an account of what was due under the contract, and on Nov. 13 the defts. delivered an account shewing that 19,366 Mexican dollars were due to the plt. on Aug. 31, 1896, and offering to pay that amount in Mexican currency or in English currency at the rate of exchange on Nov. 13. On Aug. 31, 1896, the Mexican dollar was worth 2s. 6d., on Nov. 13, 1887, it was only worth 1s. 10½d.; and the plt. refused the defts.' offer, and contended that the value of the dollar should be ascertained at the several times the monthly payments became due, or, in the alternative, on Aug. 31, 1896:—

*Held*, by C. A. (V. Williams L.J. dissentiente), dismissing an appeal from Kekewich J., that the plt. was not entitled to have the dollars turned into English money until the amount due on taking the whole account was ascertained.

Observations upon the principles applicable where a plt. sues a deft. in England for an account upon a contract to pay in a foreign currency. **MANNERS v. PEARSON & SON**

C. A. [1898] 1 Ch. 581

## —Advancement—Gift within twelve months of death—Ademption—Estate duty.

See **WILL**—**Advancement**. 21.

## —Advances—Purchases by husband in names of wife and daughter—Law of Quebec.

See **CANADA**. 50.

## 2. — Audit—Finality of—Contract—Agreement—Charges of fraud—Costs.

The appellant advanced 15,000*l.* to the respondent, to be used in the business of the respondent for five years. In return for the advance the appellant was to receive interest and 37½ per cent. of the profits of the respondent's business. The contract stipulated that there should be an annual audit of the respondent's business by the firm of M. & Co., accountants, and that their certificate as to the profits should be binding on both parties. For four years the respondent's books were audited by G., a member of the firm of M. & Co. Subsequently the appellant raised this action against the respondent for a judicial account on the ground that the audits had not been in terms of the agreement in respect that the auditor did not know that his estimate of the profits was to be binding on the appellant and respondent. G. swore in his evidence that he did not know of this agreement, and that if he had he would have made out the account in a somewhat different form:—

*Held*, reversing Ct. of Sess., (1898) 25 R. 661, that there must be a new account taken, the auditor being unaware that his audit was to be final between the parties. **TEACHER v. CALDER**

H. L. (Sc.) [1899] W. N. 118;

[1899] A. C. 451

## —Banking account.

See **BANKER**—**Account**. 2.

**ACCOUNT—continued.**

- Carrying back account—Statutes of Limitation—Administration action.  
See **TRUSTEE—Account.** 2.
- Closing—Banker and customer—Mortgage to secure amount owing on account current—Power of sale.  
See **BANKER.** 3.
- Common order for taxation of bill of costs—No costs claimed by solicitor—Liability to render cash account.  
See **SOLICITOR—Costs.** 33.
- Continuation account—Death of principal—Contracts for sale and repurchase after death—Liability.  
See **STOCK EXCHANGE.** 2.
- Culpa lata—Liability of trustees.  
See **TRUSTEE—Breach of Trust.** 23.
- Date for taking—Mutual debts or dealings—Set-off—Receiving order.  
See **BANKRUPTCY—Set-off.** 237.
- Discovery—Production of documents—Privilege.  
See **EVIDENCE.** 41.

**3. — Entries disallowed—Discretion of Court—Digging of pitch—Appeal from Trinidad and Tobago.**

Where an account ordered by the Court is limited to pitch dug and won from certain specified lands, entries relating to pitch in other lands must be excluded, and a certificate made in disregard of this rule will be varied by disallowing them. *BENNETT COURT v. LE GENDRE*  
**P. C. [1900] A. C. 173**

- Foreclosure—Practice.  
See **Cases under MORTGAGE—Foreclosure.**
- Maintenance and establishment of pupil heir.  
See **INFANT—Maintenance.** 22.
- Partnership.  
See **PARTNERSHIP—Accounts.**
- Receivers' accounts.  
See **RECEIVER—Accounts.**

**4. — Separate account, Fund carried to—Assignment of separate fund—Notice—Equity against assignee—Administration suit—Laws of New South Wales.**

Where a fund in court in an administration suit is carried to a separate account, the persons specified in its heading are the owners of the fund so far as is consistent with its retention in court released from the general questions in the cause and free from claims by other sharers in the estate.

Where a fund standing to a separate account is specifically assigned for value by a person entitled thereto according to the terms of the account:—

*Held*, that the assignor's general liability to other parties to the suit to make good defaults in his character of trustee of the estate cannot be enforced against this fund in the hands of its assignee for value without notice.

Notice that the assignor was a trustee and debt. to a suit for an account in which his fund might be made answerable in case of default

**ACCOUNT—continued.**

proved, is insufficient to affect the assignee.  
*EDGAR v. PLOMLEY* **P. C. [1900] A. C. 431**

— Solicitors'.

See **SOLICITOR, passim.**

- Stockbroker—Several accounts—Appropriation of payments—Banker and customer.  
See **BANKER.** 25.

- Maintenance—Common order—Liability of committee of person to account—Form of inquiry.  
See **LUNACY—Maintenance.** 18.

**5. — Trading company.**

Principles on which the accounts of a trading co. should be kept stated in *LUBBOCK v. BRITISH BANK OF SOUTH AMERICA*

**Chitty J. [1892] 2 Ch. 198**

Referred to by C. A. *Verner v. General and Commercial Investment Trust*, [1894] 2 Ch. 239, at p. 266.

Referred to by Byrne J. *Foster v. New Trinidad Lake Asphalt Co.*, [1901] 1 Ch. 208, 212.

**6. — Trust deed—Misconduct of trustee—Common accounts refused at the trial—Discretion of Court—Administration action—R. S. C., 1883, Order LV., r. 10.**

In 1887 A. conveyed his business and property to B. upon trusts for the benefit of his creditors with an ultimate trust for himself. Under the powers in the deed, B. carried on the business by means of an overdraft arranged with a bank. In 1893 A. assigned his interest under the deed to his wife, the plt., for her separate use. In 1896 B. reconveyed the trust estate to the plt., the reconveyance containing a recital that all A.'s debts had been paid. On this occasion some investigation of the trust account was made by the plt., but a detailed account was not required. In July, 1898, B. destroyed all the books of account in the belief that they were no longer of use. In Oct. 1898, the plt. brought an action against B. charging him with fraud and misconduct, and claiming an account of all his transactions under the trust deed from 1887 to 1896 on the footing of wilful default. B. denied the charges, but admitted (1) that he had improperly allowed the trust estate to be charged for a short period with interest at 5 per cent. on sums amounting to 10,000l.; (2) that he had received the usual commissions, amounting to 31l. 10s. 8d., on fire insurances of the trust estate; and (3) that he had retained 52l. 17s. 6d. for debts of A. due in 1887, but never claimed. At the trial the charges of fraud and wilful default were not established, but the plt. claimed an order for a common account from 1887:—

*Held*, that, although B. had been guilty of some misconduct, it was not a case in which the Court, in the exercise of its discretion under Order LV., r. 10, would under the circumstances make an order for a common account; but there would be judgment for the plt. for the amounts admitted under the three items above mentioned.  
*CAMPBELL v. GILLESPIE* **Cozens-Hardy J.**

[1899] W. N. 252; [1900] 1 Ch. 225

**ACCOUNT**—*continued.*

— Trustee's duties and liabilities.

See **TRUSTEE**.

7. — *Vouching Accounts* — *Administration* — *R. S. C., Order LV., r. 3 (c)*.

It is not necessary under an ordinary order for accounts in an administration action to vouch every item before the chief clerk, as any items can be waived by the parties taking the accounts. *In re BROWN. BENSON v. GRANT*

**Kekewich J. [1895] W. N. 115 (9)**

**ACCOUNT STAMP DUTY.**

See **REVENUE**—**Account Duty.**

**ACCOUNTANT**—Charges—Proof for in Company winding-up.

See **COMPANY**—**WINDING-UP**—**Proof.** 212.

— Charges for Statement of Affairs—Circular to creditors.

See **BANKRUPTCY**—**Act of Bankruptcy.** 33.

— Partnership.

See **PARTNERSHIP**—**Accountants.**

**ACCOUNTS AND INQUIRIES**—Official Referee's report on—Power of Court to go into evidence used for purposes of.

See **ARBITRATION.** 46.

**ACCRUER OF RIGHT OF ACTION**—Dishonour—Days of grace—Payment.

See **BILL OF EXCHANGE.** 4.

**ACCUMULATIONS**—By the *Accumulations Act*, 1892 (55 & 56 Vict. c. 58), accumulations for the purchase of land were restrained.

1. — *Annuities* — *Charity* — *Thellusson Act* (39 & 40 Geo. 3, c. 98).

Where there is an absolute vested gift made payable in a future event, with direction to accumulate the income and pay it with the principal, the Court will not enforce the trust for accumulation, in which no person has any interest but the legatee; in other words, a legatee may put an end to an accumulation exclusively for his benefit. This principle is applicable whether the legatee is a charity corporate or unincorporate or an individual.

Where such an accumulation is directed for more than twenty-one years from the death of the testor, and for the above reason is not effective, the *Thellusson Act* does not apply. *HARBIN v. MASTERMAN* (No. 1).

**C. A. affirm. Wickens V. C. (L. R. 12 Eq. 559) and Stirling J. [1894] 2 Ch. 184; affirm. by H. L. (E.) sub nom. WHARTON v. MASTERMAN [1895] A. C. 186**

For second appeal, see *Harbin v. Masterman*, **C. A. [1896] 1 Ch. 351.**

2. — *Annuities*—*Expenditure of surplus income on improvements*—*Repairing houses*—*Building houses*—*Thellusson Act* (39 & 40 Geo. 3, c. 98)—*Settled Land Act*, 1882 (45 & 46 Vict. c. 38), ss. 2 (sub-s. 5, 8), 25, 26, 58 (sub-s. 5).

A direction in a will that, after providing for the annuity, the surplus income should be expended in maintaining and improving the settled property, is held to be valid as being a discretionary trust for the whole life of the annuitant, and not an accumulation within the

**ACCUMULATIONS**—*continued.*

danger of the *Thellusson Act*, to be restricted to twenty-one years.

*Per C. A.*, all improvements in substance which could in any fair sense be regarded as coming under the words maintaining in good habitable repair houses and tenements on the property are wholly outside the *Thellusson Act*. But money laid out in building new houses would be within the act, and the surplus income cannot be expended on charges properly payable out of capital. *VINE v. RALEIGH* (No. 1)

**Chitty J. affirmed by C. A. [1891] 2 Ch. 13**

**NOTE.**—This case was followed in *Mason v. Mason, Stirling J., [1891] 3 Ch. 467, No. 7, below.*

— Breach of trust—Wilful default—Compound interest—Rate of interest.

See **TRUSTEE**—**Breach of Trust.** 19.

— Covenant to settle wife's property.

See **SETTLEMENT**—**Covenant to Settle.** 13, 14.

— Infant—Capital or income.

See **INFANT**—**Maintenance.** 23, 24.

3. — *Interim income* — *Vested life interest* — *Right to fund accumulated during minority.*

Where a testator gave to an infant an immediate vested life interest in his residuary estate:—

**Held**, that the income which accumulated, after maintenance, between the testator's death and the infant's marriage, belonged to her absolutely and was not an accretion to capital, the immediate gift shewing an intention (sub-s. 3) to exclude the provisions of sub-s. 2, s. 43, of the *Conveyancing Act*, 1881. *In re HUMPHREYS. HUMPHREYS v. LEVETT* **C. A. [1893] 3 Ch. 1**

4. — “*Intermediate income*” — “*Set apart and retain*” — *Application of part of income* — *Will* — *Trust for conversion* — *Postponement of conversion at discretion of trustees* — *Thellusson Act* (39 & 40 Geo. 3, c. 98), s. 2.

The words “*retain and set apart*” are equivalent to a direction to accumulate although there is no express direction to accumulate, and, there being no direction in the will for payment of debts:—

**Held**, that the trust fell within s. 2 of the *Thellusson Act*, and was therefore void beyond the statutory period of twenty-one years. *In re COX. COX v. EDWARDS* — **Byrne J. [1900] W. N. 89**

5. — *Intestacy* — *Surplus income* — *Will* — *Trust to accumulate income beyond twenty-one years* — *Thellusson Act* (39 & 40 Geo. 3, c. 98).

A testator devised and bequeathed his estate and effects to trustees upon trust to pay out of the income thereof an annuity of 200*l.* to his niece during her life, and he directed that the surplus income of his trust estate should accumulate and be invested until the death of his niece, and, subject and without prejudice to the trusts aforesaid, his trust estate should be held in trust for the children of his niece living at his decease, or born afterwards, who should attain twenty-one, or who dying under that age should leave issue living at his or her decease, if more than one in equal shares; and in case there should be no such issue of the niece then, subject and without prejudice to the trusts aforesaid,

**ACCUMULATIONS—continued.**

after her death and the failure of her issue, as to one-third of his trust estate the same should be held in trust for some cousins named in the will, and as to the other two-thirds the same should be held in trust for the trustees of a charity:—

*Held*, that as to the surplus income from the expiration of twenty-one years after the testator's death down to the death of the niece there was an intestacy.

*Weatherall v. Thornburgh*, (1878) 8 Ch. D. 261, is not inconsistent with and has not been overruled by *Wharton v. Masterman*, [1895] A. C. 186.

*Held* also, on the construction of the will, that the persons who should become on the death of the niece entitled to the trust fund would become entitled also to the accumulations of the surplus income during the period of twenty-one years from the death of the testator. *In re TRAVIS. FROST v. GREATOROX*

C. A. [1900] W. N. 159; [1900] 2 Ch. 541

6. — *Mining leases, Rents and royalties from—Tenants for life—Remaindermen—Direction to accumulate—Construction of will.*

A testator devised his residue upon trust to convert with power to postpone conversion for twenty-one years, and with a direction that the surplus income of the unconverted estate during the twenty-one years and all accumulations thereof should go in augmentation of capital. The residue was settled on trusts for tenants for life and remaindermen. The trustees under powers in the will granted a mining lease, and retained the leased property unconverted for more than twenty-one years:—

*Held*, that the rents and royalties received under the mining lease during the twenty-one years ought to be invested, and that the income therefrom ought to be invested and accumulated:

*Held* also, that after the twenty-one years, the tenants for life of settled shares in the residue were entitled to receive out of the rents and royalties such an annual sum as in the opinion of the Court would under all the circumstances of the case be a fair equivalent for the annual income that would have resulted if the estate had been converted.

The rule laid down in *Meyer v. Simonsen*, (1852) 5 De G. & Sm. 723, and *Brown v. Gellatly*, (1867) L. R. 2 Ch. 751, approved. *WENTWORTH v. WENTWORTH* -

- F. C. [1900] A. C. 163

— Power to resort to past accumulations—Maintenance.

*See INFANT. 24.*

7. — *Rebuilding and repair of buildings—Accumulation of income—Thellusson Act (39 & 40 Geo. 3, c. 98).*

A testator directed the net rents and income of his real and leasehold estates to be applied during the lifetime of certain annuitants under his will in paying the ground-rents, the annuities, and the cost of repairs and insurance, and the clear surplus in augmentation of the general trust fund created by his will:—

*Held*, (1) that the will amounted to an express direction for the accumulation of income; and (2) that the trust for accumulation was valid, so far as it was a *bonâ fide* provision for the

**ACCUMULATIONS—continued.**

performance of the trusts for rebuilding, repairing, and reinstating the buildings; but that, subject to the due performance of such trusts, the trust for investment of the surplus income, after answering the purposes specified in the will, was invalid as from the expiration of twenty-one years from the testator's death. *In re MASON. MASON v. MASON - Stirling J. [1891] 3 Ch. 467*

8. — *Rents of leaseholds—Direction to accumulate for 21 years after testator's death—Accumulations Act, 1892 (55 & 56 Vict. c. 58).*

D. by his will devised lands on trust in strict settlement, and directed that accumulations made during the minority of any infant taking should be deemed capital money arising under the Settled Land Acts, and should be primarily liable to be laid out in the purchase of land, and bequeathed leaseholds to trustees on trusts corresponding to the trusts of the land; with a proviso that during twenty-one years after his death the net profits should be capitalised and become capital money of the settlement:—

*Held*, that the direction to capitalise the rents of the leaseholds did not fall within the Accumulation Act, 1892, and was valid. *In re DANSON. BELL v. DANSON Chitty J. [1895] W. N. 102*

9. — *Substitution—Annuity—Construction of will—Appeal from Quebec.*

A testator set apart a fund as a provision for his wife and also for his children until majority or marriage. He gave the residue of his estate to his children living at his death, and directed that it should be divided on the death of all of them. He further directed that from majority or marriage each child was to receive the revenue derivable from his share limited to \$6000 a year, each child being charged with a substitution in favour of his or her children:—

*Held*, in a suit brought by the eldest son to recover arrears of his annuity of \$6000 a year, that according to the true intention of the testator as disclosed by the words of the will—

(1) the annuity of each child is a charge on the revenue of his own share and its arrears, not on the total revenue of the estate;

(2) each child was entitled from the testator's death to an equal share of the net revenue current and accumulated; without regard to the benefits which during minority he receives from the fund set apart or under other clauses of the will;

(3) the substitution is confined to the share of each child in the capital of the residue, and does not extend to the accumulation of its revenue. *BEAUDRY v. BARBEAU*

P. C. [1900] A. C. 569

10. — *Trust for accumulation of income for payment of debts—Cesser of life estate—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 2, 5, 7; s. 58, sub-s. 1, cl. vi.*

A testor. devised land in trust for a daughter for life with a gift over to her children; and proviso that if a sum of money covenanted to be paid by the testor. in the daughter's marriage settlement were enforced against his estate, the daughter's interest in the life estate should cease until all the debts and claims were paid. The covenant was enforced, and the personality being

**ACCUMULATIONS**—*continued.*

insufficient to pay this and other claims against the estate, the income of the life estate was retained:—

*Held*, that the daughter's life estate under the will was only suspended, and that she was entitled to exercise during the continuance of the trust, which was substantially a trust for accumulation of income for payment of debts within s. 58, sub-s. 1, cl. vi. of the Act of 1882. **WILLIAMS v. JENKINS** (No. 1) — **Kekewich J.** [1893] 1 Ch. 700

See **WILLIAMS v. JENKINS** (No. 2) [1894] W. N. 176

— Trust for management and—Right to possession.

See **SETTLED LAND**—Possession. 98.

11. — *Validity*—*Direction to accumulate income beyond twenty-one years*—*Residue*—*Tenant for life*—*Construction of will.*

The testator, who died in 1865, by his will gave two freehold houses to trustees, and directed them to apply the income arising therefrom at their discretion for the benefit of his daughter F. for life, and after her death he gave the premises, together with any surplus accumulation of rents that might not be applied, for the benefit of F. upon trust for her children who should attain twenty-one, and in default of such children then over. He gave his residue upon trust for certain persons for life with remainders over. F. died in 1900, at which time the trustees had in their hands a considerable sum representing the accumulated surplus rents:—

*Held*, that the accumulations beyond the period of twenty-one years from the testator's death were bad under the Thellusson Act, and fell into residue; and that the tenant for life of the residue was not entitled to the surplus rents themselves, but only to the income arising from the investment thereof.

**Crawley v. Crawley**, (1835) 7 Sim. 427; 40 R. R. 170, and **O'Neill v. Lucas**, (1838) 2 Keen, 313, followed. *In re Phillips, Phillips v. Levy*, (1880) 49 L. J. (Ch.) 199, disapproved. *In re POPE. SHARP v. MARSHALL Farwell J.* [1900] W. N. 244; see [1901] 1 Ch. 64

— Vested life interest—Right to fund accumulated during minority.  
See No. 3 above.

**ACKNOWLEDGMENT**—Base fee—Fee simple absolute—Concurrence.

See **HUSBAND AND WIFE**. 5.

— Debt—Part payment by receiver—Inference of promise to pay—Statute of Limitations.

See **MORTGAGE**. 57.

— Limitations, statute of.

See **LIMITATIONS, STATUTE OF**—**Acknowledgment**. 7.

— Married woman—Mortgagee—Conveyance to purchaser by mortgagor and mortgagee.  
See **HUSBAND AND WIFE**. 33.

— Receipt by fellow-servant—Money received by servant on account of master and handed over to fellow-servant.

See **REVENUE**—**Stamps**. 178.

**ACQUIESCENCE**—Charge of legacies on real estate, if personal estate insufficient.

See **WILL**—**Charge of Debts, &c.** 31.

— In Jurisdiction.

See **PROHIBITION**. 4.

— Jactitation of marriage—Acquiescence of petitioner.

See **DIVORCE**—**Jactitation of Marriage**. 83.

— Laches—Action for revocation of letters of administration.

See **PROBATE**—**Revocation**. 145.

— Restricted covenants—Alteration in character of estate.

See **BUILDING ESTATE**. 2.

**ACT OF BANKRUPTCY.**

See Cases under **BANKRUPTCY**.

**ACT OF STATE**—Concessions granted before cession—Rights after annexation—Jurisdiction of municipal courts.

See **CAPE OF GOOD HOPE**. 1.

**ACTIO PERSONALIS**—Ancient lights—Continuance of obstruction.

See **LIGHT AND AIR**. 15.

**ACTION.**

See Cases under **PRACTICE**.

1. — *Cause of Maliciously inducing employer to discharge servant and not to employ servant—Interference with trade—Trade union—Malice—Intent to injure—Motive.*

An act lawful in itself is not converted by a malicious or bad motive into an unlawful act so as to make the doer of the act liable to a civil action.

Discussion of the cases in which evil motive is said to be an essential ingredient in a civil cause of action, such as malicious prosecution: see per Lord Watson, Lord Herschell, and Lord Davey, [1898] A. C. at pp. 92, 93, 125, 126, 173.

The respondents were shipwrights employed "for the job" on the repairs to the woodwork of a ship, but were liable to be discharged at any time. Some ironworkers who were employed on the ironwork of the ship objected to the respondents being employed, on the ground that the respondents had previously worked at ironwork on a ship for another firm, the practice of shipwrights working on iron being resisted by the trade union of which the ironworkers were members. The appellant, who was a delegate of the union, was sent for by the ironworkers and informed that they intended to leave off working. The appellant informed the employers that unless the respondents were discharged all the ironworkers would be called out or knock off work (it was doubtful which expression was used); that the employers had no option; that the ironmen were doing their best to put an end to the practice of shipwrights doing ironwork, and that wherever the respondents were employed the ironmen would cease work. There was evidence that this was done to punish the respondents for what they had done in the past. The employers, in fear of this threat being carried out which (as they knew) would have stopped their business, discharged the respondents and refused to employ them again. In the ordinary course the respond-



**ACTION—continued.**

ents' employment would have continued. The respondents having brought an action against the appellant, the jury found that he had maliciously induced the employers to discharge the respondents and not to engage them, and gave the respondents a verdict for damages:—

*Held*, reversing the decision of the C. A., *Flood v. Jackson*, [1895] 2 Q. B. 21 (Lord Halsbury L.C. and Lords Ashbourne and Morris dissenting), that the appellant had violated no legal right of the respondents, done no unlawful act, and used no unlawful means, in procuring the respondents' dismissal; that his conduct was therefore not actionable however malicious or bad his motive might be, and that notwithstanding the verdict the appellant was entitled to judgment.

*Carrington v. Taylor*, (1809) 11 East, 571, overruled, and *Keeble v. Hickeringill*, (1706) 11 East, 574, n.; *Lumley v. Gye*, (1853) 2 E. & B. 216; *Bowen v. Hall*, (1881) 6 Q. B. D. 333, and *Temperton v. Russell*, [1893] 1 Q. B. 715, commented on. ALLEN v. FLOOD

H.L. (E.) [1897] W. N. 177 (1); [1898] A. C. 1

2. — Cause of—Nervous shock—Practical joke causing—Remoteness of damage.

The deft., by way of a practical joke, falsely represented to the plt., a married woman, that her husband had met with a serious accident whereby both his legs were broken. The deft. made the statement with intent that it should be believed to be true. The plt. believed it to be true, and in consequence suffered a violent nervous shock which rendered her ill:—

*Held*, that these facts constituted a good cause of action.

*Victorian Railways Commrs. v. Coultas*, (1888) 13 App. Cas. 222, and *Allsop v. Allsop*, (1860) 5 H. & N. 534, considered. WILKINSON v. DOWN-TON Wright J. [1897] 2 Q. B. 57

### 3. — Malicious Act.

(A) A right of action cannot be extended by alleging malice where without malice there would be no cause of action. CHAFFERS v. GOLDSMID. Per Wills J. [1894] 1 Q. B. 186, at p. 191

(B) No use of property which would be legal if due to a proper motive can become illegal if it is prompted by a motive which is improper or even malicious. BRADFORD CORPORATION v. PICKLES — H. L. (E.) [1895] A. C. 587

See dictum of Lord Shand in *Allen v. Flood*, [1898] A. C. 1, 167.

### 4. — Maliciously arresting ship.

*Semble*, an action will lie at common law for malicious arrest of a ship by Admiralty process. THE "WALTER D. WALKER"

Jeune P. [1893] P. 202

— Limitation of—Nuisance order, costs of obtaining and enforcing. See NUISANCE. 14.

— Limitation of time for bringing. See Cases under LIMITATIONS, STATUTE OF.

— Notice of cause of. See LONDON. 46.

— Public Authorities Protection. See Cases under PUBLIC AUTHORITIES PROTECTION.

**ACTION—continued.**

### 5. — Repudiation—Adoption.

In this case North J. held that after the plt. had repudiated the action to the deft. he could not adopt it.

On appeal the C. A. held on the facts that authority for the action was given before issue of writ, and that the question whether after repudiation there could be an adoption of the action did not arise. SWAN v. MELLE

C. A. [1892] W. N. 128

— Right of—Person induced by misrepresentation to commit crime—False representation.

See FOREIGN ENLISTMENT ACT. 2.

— Scottish law—Competency of second action for same injury.

See SCOTTISH LAW—Master and Servant. 28.

**ACTION IN REM**—Admiralty practice and jurisdiction.

See Cases under SHIPPING.

**ACTOR**—Breach of contract to act with a company for a certain period.

See INJUNCTION. 4.

### ACTS OF PARLIAMENT.

See STATUTES.

### ADDING PARTIES.

See Cases under PRACTICE—Parties.

**ADDRESS**—Bill of sale—Address of grantor, grantee and witnesses, in.

See BILL OF SALE. 4.

— Of creditor issuing bankruptcy notice.

See BANKRUPTCY—Act of Bankruptcy. 6

**ADEMPTION**—Construction of will.

See WILL—Ademption.

**"ADJOINING"**—Buildings "adjoining" land of vendors—Covenant against overlooking lights.

See LIGHT AND AIR. 1.

**"ADJOINING OWNER"**—Buildings.

See LONDON—Buildings. 20, 21.

— Right to soil of Highway—Ad medium filum via.

See HIGHWAY. 8.

**ADJOINING PREMISES**—Alterations—Reasonable use of a building—Injunction.

See NUISANCE. 4.

**ADJOURNMENT**—Costs of, into Court—Jurisdiction—"Court or a judge."

See PRACTICE—Discontinuance. 14.

— Of hearing—Ground for setting aside bankruptcy notice.

See BANKRUPTCY. 26.

— Power of chairman to refuse, of a meeting.

See NATAL. 4.

### ADJUDICATION—Bankruptcy.

See BANKRUPTCY—Adjudication.

**ADJUDICATION STAMP**—Instructions from solicitor of Inland Revenue as to. See Current Index, 1897, p. lxxxiii.

**ADJUSTMENT**—General average—Ship in ballast—Chartered homeward freight—"Foreign Statement" Clause.  
See **INSURANCE—Marine**. 56.

—General average payable for foreign statement—Dutch Law.  
See **INSURANCE—Marine**. 57.

—Liabilities—Transfer of part of one county to another county.  
See **LOCAL GOVERNMENT**. 6.

—Liabilities—Transfer of part of one union to another union.  
See **LOCAL GOVERNMENT**. 7.

#### **ADMINISTRATION.**

See Cases under **EXECUTOR Administration**.

#### **ADMINISTRATION (AND PROBATE).**

See Cases under **PROBATE**.

#### **ADMINISTRATION, LETTERS OF.**

See Cases under **PROBATE**.

#### **ADMINISTRATOR.**

See Cases under **EXECUTOR**.

**ADMINISTRATOR PENDENTE LITE**—Duration of grant of administration.  
See **PROBATE—Grant of Administration**.

—Right of creditor to sue—Practice.

See **PROBATE—Grant of Administration**.

#### **ADMIRALTY.**

See Cases under **SHIPPING**.

—Action against Lords of the Admiralty—Prerogative of the Crown.  
See **TRESPASS**. 2.

—Marine insurance.

See Cases under **INSURANCE—Marine**.

#### **ADMISSIBILITY—Evidence.**

See Cases under **EVIDENCE**.

**ADMISSION**—By tenant as to title—Declaration by deceased person against interest.  
See **EVIDENCE**. 1.

—Cesser of interest—Married woman—Separate estate—Restraint on anticipation.  
See **HUSBAND AND WIFE**. 43.

—Evidence of—Severability of statement.  
See **EVIDENCE**. 13.

—Interrogatories—Particulars.

See **DISCOVERY**. 45.

—Payment into Court on admissions.

See **PRACTICE—Payment into Court**. 122—129.

#### **ADMITTANCE—Copyholds.**

See Cases under **COPYHOLD**.

**ADOPTION**—Contract made before formation of company—Payment of shares in cash—set-off.

See **NEW SOUTH WALES**. 7.

—Infant—Lease made by trustees—Compromise.

See **INFANT**. 3.

—Minor—Lease of coal—Coal below low water-mark—Barony title.

See **MINES**. 12.

—Sale—Mistake.

See **VENDOR AND PURCHASER—Title**. 74.

#### **ADOPTION—continued.**

—Unauthorized action—Repudiation.

See **ACTION**. 5.

#### **ADULTERATION.**

*Sale of Foods and Drugs Act, 1899 (62 & 63 Vict. c. 51), amends the law.*

*In General*, col. 16.

*Analysis*, col. 17.

*Fertilizers and Feeding Stuffs*, col. 19.

*Margarine*, col. 19.

*Milk*, col. 20.

*Warranty*, col. 22.

#### **In General.**

1. — *Article of food—Baking powder—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 3.*

A. sold a baking-powder composed of 20 per cent. of bicarbonate of soda, 40 per cent. of ground rice, and 40 per cent. of alum, which is injurious to health:—

*Held*, that such baking-powder was not an article of food, and that the sale of it so compounded was not an offence within s. 3. **JAMES v. JONES** — **Div. Ct. [1894] 1 Q. B. 304**

See now 62 & 63 Vict. c. 51, s. 26.

2. — *Compounded drug—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 7.*

A sale to the prejudice of the purchaser of a compounded drug, which is not of the nature, substance, and quality of the article demanded, is an offence under s. 6 of the Sale of Food and Drugs Act, 1875, and proceedings for the recovery of a penalty may be taken under that section. **BEARDSLEY v. WALTON & Co.**

**Div. Ct. [1900] 2 Q. B. 1**

3. — *Magistrate—Jurisdiction—Place where offence committed—Analysis—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 20, 27.*

An information was preferred in the Clerkenwell Police Court by an inspector of nuisances for the district, charging the deft. with having, contrary to s. 27 of the Sale of Food and Drugs Act, 1875, given a false warranty in writing with respect to milk sold and delivered by him to a dairy co. The sale, delivery, and giving of the warranty had all taken place outside the limits of the jurisdiction of the Clerkenwell Police Court; but the inspector had, with a view to a prosecution against the dairy co. under s. 6, obtained a sample of the milk in the course of its delivery by them, within the jurisdiction of that Court, to purchasers from them, and had submitted the sample to the public analyst of the district, who certified that it contained a percentage of added water:—

*Held*, that a metropolitan police magistrate sitting at the Clerkenwell Police Court had no jurisdiction under the Sale of Food and Drugs Act, 1875, to hear and determine the information against the defendant. **REG. v. SMITH**

**Hawkins J. [1896] 1 Q. B. 596**

4. — *Particulars of offences charged—Jurisdiction of justices—Sale of Food and Drugs Act, 1879 (42 & 43 Vict. c. 30), s. 10.*

The omission from a summons of the particulars required by s. 10 of the Food and

**ADULTERATION (In General)—continued.**

Drugs Act, 1879, does not deprive the justices of jurisdiction; but if the justices are satisfied that the deft. is prejudiced thereby, he is entitled to an adjournment of the hearing. *NEAL v. DEVENISH* — Div. Ct. [1894] 1 Q. B. 544

5. — “*Seller*”—*Sale by servant*—*Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), ss. 6, 25.

A servant of a co. who acting as such sold adulterated milk, held to be a “seller” within s. 6 of the Sale of Food and Drugs Act, 1875. *HOTCHIN v. HINDMARSH*

Div. Ct. [1891] 2 Q. B. 181

**Analysis.**

— Public analyst under Sale of Food and Drugs Acts—Practising at the Bar—Etiquette of the Bar. *W. N. 1899* (Jan. 21), p. 45. See *Current Index*, 1899, p. c. xxii.

*Analysts*—*Order of Loc. Govt. Bd.* dated March 7, 1900, making Regs. as to Competency of Public Analysts appointed under the Sale of Food and Drugs Acts, 1875 to 1899. *St. R. & O. 1900*, No. 156.

6. — *Certificate — Spirits — Admixture of Water*—*Sale of Food and Drugs Acts*, 1875, 1879 (38 & 39 Vict. c. 63), ss. 6, 21 (42 & 43 Vict. c. 30), s. 6.

The certificate of an analyst declared the result of his analysis to be as follows: “I find that the sample contained an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13% of the entire sample. I am of opinion that the sample is not a sample of genuine rum” :—

*Held*, that the certificate ought to have stated the proportion of water mixed with the rum, was insufficient, and that a conviction could not be supported. *NEWBY v. SIMS*

Div. Ct. [1894] 1 Q. B. 478

Referred to by Div. Ct. *Fortune v. Hanson*, [1896] 1 Q. B. 202, 207. See No. 9, below.

7. — *Certificate, sufficiency of*—*Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), s. 18.

In a prosecution under the Sale of Food and Drugs Act, 1875, for selling adulterated milk, the certificate of the public analyst stated that the sample submitted to him contained 6 per cent. of added water, and went on to say, “This opinion is based on the fact that the sample contained 7·97 per cent. solids not fat, whereas genuine milk contains not less than 8·5 per cent. solids not fat” :—

*Held*, that the certificate was good, although it did not state the constituent parts of the sample analyzed.

*Fortune v. Hanson*, [1896] 1 Q. B. 202, explained. *BRIDGE v. HOWARD*

Div. Ct. [1896] *W. N.* 154 (1); [1897] 1 Q. B. 80

8. — *Certificate — Unauthorized addition*—*Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), ss. 6, 18.

The certificate of a public analyst of the result of an analysis under the Sale of Food and Drugs Act, 1875, where the case is not one of adulteration, need not set out the parts contained in

**ADULTERATION (Analysis)—continued.**

the sample; it need only state the “result” of the analysis. The “observations” which follow the “result” in the form of certificate given in the schedule to the Act are only to be made in case of adulteration. But if in a case not of adulteration such “observations,” amounting only to an expression of opinion and not to a statement of fact, are made, this, though improper, will not necessarily vitiate a conviction. *BAREWELL v. DAVIS* — Div. Ct. [1894] 1 Q. B. 296

9. — *Certificate of analyst—Evidence—Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), s. 21.

At the hearing of an information under the Sale of Food and Drugs Act, 1875, the production of the certificate of the analyst is not conclusive evidence if the defendant tenders himself as a witness and gives evidence on his own behalf. *HEWITT v. TAYLOR* — [1896] 1 Q. B. 287

10. — *Certificate of analysts, Sufficiency of*—*Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), ss. 6, 18, 21.

In a prosecution under the Sale of Food and Drugs Act, 1875, for selling adulterated milk to a purchaser, the only evidence of adulteration was the certificate of the public analyst, which stated that the sample submitted to him “contained the percentage of foreign ingredients as under: 5 per cent. of added water” :—

*Held*, that the certificate was bad as evidence, under the Act, of adulteration, because it did not state the constituent parts of the sample analyzed. *FORTUNE v. HANSON*

Div. Ct. [1896] 1 Q. B. 202

Explained by Div. Ct. *Bridge v. Howard*, [1897] 1 Q. B. 80.

11. — *Sample—Purchase for analysis—Mode of dividing sample*—*Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), s. 14.

Where a purchase is made of several articles of food or drugs at the same time for the purpose of analysis, each article purchased must be divided into three parts, and otherwise dealt with as required by s. 14 of the Sale of Food and Drugs Act, 1875. Where a purchase is made of six bottles of the same article of food or drug, each bottle is for the purposes of the Act a separate article, and it is therefore not a sufficient compliance with the requirements of s. 14 for the purchaser to divide them into three lots of two bottles each without opening any of the bottles, and to hand one lot to the analyst, one to the seller, and to retain one himself. *MASON v. COWDARY*

Div. Ct. [1900] 2 Q. B. 419

12. — *Sample—Purchase for analysis—Notification to seller*—*Sale of Food and Drugs Act*, 1875 (38 & 39 Vict. c. 63), ss. 13, 14—*Margarine Act*, 1887 (50 & 51 Vict. c. 29), ss. 6, 12.

The requirements of s. 14 of the Food and Drugs Act, 1879, are peremptory and cannot be dispensed with. Therefore, even if the seller admit the offence at the time, notice to him that it is intended to have an analysis made and the making of an analysis are conditions precedent to a prosecution. *SMART & SON v. WATTS*

Div. Ct. [1895] 1 Q. B. 219

Referred to by Div. Ct. *Reg. v. Smith*, [1896] 1 Q. B. 596, 601.

**ADULTERATION (Analysis)—continued.**

§13. — *Sample—Purchase for analysis—Quantum to be analyzed—Sale of Food and Drugs Act, 1879 (42 & 43 Vict. c. 30), s. 3.*

An inspector under the Sale of Food and Drugs Acts who takes a sample under s. 3 of the Act of 1875 is not bound to submit for analysis the whole of the sample taken by him. *ROLFE v. THOMPSON* Div. Ct. [1892] 2 Q. B. 196

**Fertilizers and Feeding Stuffs.**

By the Fertilizers and Feeding Stuffs Act, 1893 (56 & 57 Vict. c. 56), provisions were made to prevent adulteration of fertilizers and feeding stuffs.

Regulations ("The Fertilizers and Feeding Stuffs Regulations, 1897"), dated June 1, 1897, were made under the Act by the Bd. of Agriculture. *St. R. & O. 1897, p. 2, No. 419.*

O. of the Bd. of Agriculture, dated Dec. 20, 1893, prescribing form of certificate of District Analysts under the Fertilizers and Feeding Stuffs Act, 1893. *St. R. & O. 1893, p. 299.*

**Margarine.**

Provisions as to, and margarine-cheese—See *Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51).*

14. — "*Exposed for sale*"—*Margarine Act, 1887 (50 & 51 Vict. c. 29), s. 6.*

A parcel of margarine, when placed in view of the purchaser but wrapped in paper so that the margarine itself is invisible to the purchaser, may be "*exposed for sale*" within s. 6 of the *Margarine Act, 1887*, so as to require the label prescribed by that section. *WHEAT v. BROWN*

Div. Ct. [1892] 1 Q. B. 418

See 62 & 63 Vict. c. 51, s. 18.

15. — "*Exposed for sale*" — *Margarine Act, 1882 (50 & 51 Vict. c. 29), s. 6.*

The respondents were summoned for exposing margarine for sale by retail, without a label marked "*Margarine*" attached to each parcel, contrary to s. 6. The respondents kept a refreshment-room, in which were posted notices that "*Nothing but a mixture of the best Danish butter and margarine is sold at this establishment.*" Slices of bread, spread with a mixture of Danish butter and margarine, were sold for consumption on the premises, and also haddocks, on which was put margarine cut from a lump kept on a shelf. There were no labels either on the slices or on the lump of margarine:—

*Held*, that the margarine had not been exposed for sale by retail, within the meaning of the *Margarine Act, 1887*, s. 6, and therefore no offence had been committed. *MOORE v. PEARCE'S DINING AND REFRESHMENT ROOMS, LD.*

Div. Ct. [1895] 2 Q. B. 657

16. — *Penalties, Application of—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 47—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 26—Margarine Act, 1887 (50 & 51 Vict. c. 29), ss. 11, 12.*

The application of penalties under the *Margarine Act, 1887*, is part of "the proceedings" within s. 12; and in the case of a prosecution by an inspector appointed by a local authority

**ADULTERATION (Margarine)—continued.**

within the Metropolitan Police District the penalties are payable to the inspector, under the incorporated s. 20 of the *Sale of Food and Drugs Act, 1875*, and not to the Receiver of the Metropolitan Police under s. 47 of the Metropolitan Police Courts Act, 1839. *REG. v. TITTERTON*

Div. Ct. [1895] 2 Q. B. 61

17. — *Sale contrary to Act—Delivery to purchaser in borough—Jurisdiction of county justices—Time for service of summons—Notification to seller—Condition precedent—Margarine Act, 1887 (50 & 51 Vict. c. 29), ss. 6, 7, 12—Sale of Food and Drugs Acts, 1875, 1879 (38 & 39 Vict. c. 63), ss. 6, 12, 14, 20, 21, 28 (42 & 43 Vict. c. 30), s. 10—Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106), s. 27—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 154.*

The appellant was convicted, on the complaint of the guardians of a union, by county justices, under the *Margarine Act, 1887*, for selling margarine otherwise than in a package marked "*Margarine*," contrary to s. 6. The margarine was delivered to the purchaser in a borough which had not a separate court of quarter sessions:—

*Held*, affirming the conviction.—That the county justices had jurisdiction:—That, the justices having found that the article sold was not a perishable article, s. 10 of the *Sale of Food and Drugs Act Amendment Act, 1879*, did not apply, and it was not necessary that the summons should be served within twenty-eight days from the time of the purchase:—That, the margarine not having been purchased for test purposes, or with the intention of submitting it to analysis, it was not a condition precedent to the prosecution under the *Margarine Act* that the notification of intention to have it analyzed, prescribed by s. 14 of the *Sale of Food and Drugs Act, 1875*, should have been given to the appellant.

*Parsons v. Birmingham Dairy Co., (1882) 9 Q. B. D. 172*, disapproved. *Guardians of Ennis-killen v. Hilliard, (1884) 14 L. R. 214*, approved. *BUCKLER v. WILSON*

Div. Ct. [1895] W. N. 156 (8); [1896] 1 Q. B. 83

Distinguished by Div. Ct. *Tyler v. Kingham & Son, Ltd., [1900] 2 Q. B. 413, 417.*

— *Warranty, Written—Subsequent proceedings against wholesale merchant.*

See *ADULTERATION—Warranty. 25.*

**Milk.**

18. — *Altered state, sale of article of food in—Disclosure of alteration—Mens rea—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 9.*

By s. 9 of the *Food and Drugs Act, 1875*, "No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds."

The appellants, a firm of refreshment contractors, entered into a contract with a dairy

**ADULTERATION (Milk)—continued.**

co. for the supply to them of milk; the contract containing a warranty by the co. as to the purity of the milk to be supplied. Milk was delivered under the contract at a refreshment room of the appellants; it was handed in a can to one of their servants, who poured a portion of it into a churn, which was placed on the counter for the purpose of the milk being sold to customers; it was so poured that a less proportion of cream was in the milk that went into the churn than in the milk which remained in the can. The respondent bought a glass of milk at the counter; the milk was drawn from the churn, and on analysis shewed a deficiency of 17 per cent. of cream. Upon the glass in which the milk was served were engraved the words, "Not guaranteed as new or pure milk or with all its cream, see notices"; and upon the refreshment counter was a printed notice to the effect that all milk sold by the appellants was purchased by them under a warranty of its purity and genuine quality; that they took all possible precautions to ensure its supply to their customers in proper condition, but were unable to guarantee it as new, pure, or with all its cream, and did not, therefore, sell it as such:—

*Held*, that, assuming that the facts showed an abstraction from the milk, there had been a sufficient disclosure by the appellants of the alteration to satisfy the requirements of the section.

In order to constitute the offence of selling an article in its altered state without disclosure of the alteration, it is unnecessary to shew a mens rea on the part of the seller. *SPIERS & POND v. BENNETT* - - [1896] 2 Q. B. 65

**19. — Guilty intent—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 9.**

The prohibition in s. 9 of the Sale of Food and Drugs Act, 1875, forbidding the sale of any article so altered as to injuriously affect its quality without disclosing the alteration, applies irrespective of the intent with which the alteration is made:—

*Held*, that a person selling milk by retail in such a manner that the later customers got milk very deficient in quality was guilty of an offence under the section. *DYKE v. GOWER*

Div. Ct. [1892] 1 Q. B. 220

Referred to by Div. Ct. *Spiers & Pond v. Bennett*, [1896] 2 Q. B. 65, 72.

**20. — Innocent vendor—Liability of innocent vendor for milk adulterated in transit—Sale of Food and Drugs Act, 1875, 1879 (38 & 39 Vict. c. 63, s. 6; 42 & 43 Vict. c. 30, s. 3).**

The respondent, a milk salesman, contracted, to supply pure milk to an association. The milk was to be delivered to the association at a railway terminus in London. The respondent delivered the milk in a pure and unadulterated condition to the servants of the ry. co. at his local station, and the milk was adulterated without his knowledge or consent during the transit from the local station to the terminus:—

*Held*, that the respondent was liable to be convicted under s. 6 of the Sale of Food and Drugs Act, 1875. *PARKER v. ALDER*

Div. Ct. [1899] 1 Q. B. 20

**ADULTERATION (Milk)—continued.**

**21. — Milk in course of delivery—"Place of delivery"—Analysis—Sale of Food and Drugs Act, 1879 (42 & 43 Vict. c. 30), s. 3.**

The place of delivery in s. 3 of the Sale of Food and Drugs Act, 1879, means the place where the purchaser takes possession of the milk, and not the place whence the purchaser under the contract of sale pays the carriage. *FILSHIE v. EVINGTON* - - Div. Ct. [1892] 2 Q. B. 200

**22. — Milk in course of delivery under contract—Samples from different vessels—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 9, 13; 1879 (42 & 43 Vict. c. 30), s. 3.**

A. contracted to supply a workhouse with milk to contain a certain percentage of cream; to be tested on delivery and a reduction to be made in the price in respect of any deficiency in cream; and samples to be taken from each of the cans in which the daily supply was delivered. Samples were taken from five cans under s. 3 of the Sale of Food and Drugs Amendment Act, 1879, and a large deficiency of cream found in two samples:—

*Held*, that the procuring of each sample was a separate transaction, and that A. was rightly convicted in a separate penalty in respect of each sample which was deficient in cream:

*Held*, further, that the fact that A.'s contract with the workhouse provided for a reduction in price if the percentage of cream was below a certain amount did not affect the question whether an offence had been committed under the Sale of Food and Drugs Act. *FEIGHT v. WALSH*

Div. Ct. [1891] 2 Q. B. 304

— "Seller"—Sold by servant.

See ADULTERATION—In General. 5.

— Warranty—"Milk to be pure new milk."

See ADULTERATION—Warranty. 26.

**Warranty.**

**23. — False warranty—Time—Limit of time for taking proceedings—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 27—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 10.**

A summons under s. 27 of the Sale of Food and Drugs Act, 1875, against the original vendor of a perishable article of food for giving a false warranty in writing in respect of it to a purchaser need not be served within twenty-eight days from the purchase of the food for test purposes from that purchaser. *COOK v. WHITE*

Div. Ct. [1896] 1 Q. B. 284

See *Hewitt v. Taylor*, Div. Ct., [1896] 1 Q. B. 287, 289.

**24. — Scienter—Giving false warranty to purchaser—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 27.**

The appellant was charged, under s. 27 of the Sale of Food and Drugs Act, 1875, with giving a false warranty in writing to a purchaser in respect of an article of food sold by the appellant. When the appellant sold the article he did not know, and had no reason to believe, that the warranty was false:—

*Held*, that he was not liable to be convicted. *DERBYSHIRE v. HOULISTON*

Div. Ct. [1897] 1 Q. B. 772

**ADULTERATION (Warranty)—continued.**

25. — *Sale to prejudice of purchaser—Defence that article bought with written warranty—Subsequent proceedings against wholesale merchant—Certificate of analyst—Evidence—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 14, 21, 25—Margarine Act, 1887 (50 & 51 Vict. c. 29), ss. 6, 7, 12.*

Where, upon the hearing of a summons under s. 6 of the Sale of Food and Drugs Act, 1875, the deft. establishes the defence under s. 25 of the Act that he bought the article with a written warranty and sold it in the same state as when he purchased it, the certificate of the public analyst used in those proceedings is not evidence in subsequent proceedings before justices against the person from whom the deft. purchased the article.

Upon the hearing of a summons under the above section for selling as butter an article which was not of the nature, substance, and quality of the article demanded, the certificate of the public analyst shewed the article sold to be margarine; the summons was, however, dismissed on the deft. proving a purchase with a written warranty from the respondents. A summons was then taken out against the respondents under s. 6 of the Margarine Act, 1887, for delivering the margarine in a package not marked as required by the section, and at the hearing before justices the same certificate was tendered as evidence against the respondents, but was rejected:—

*Held*, that the certificate was not evidence against the respondents that the article sold and delivered by them was margarine, and that the evidence was properly rejected. *TYLER v. KINGHAM & SON, LD.* Div. Ct. [1900] 2 Q. B. 413

26. — *Written warranty—Contract to supply milk in instalments—"Milk to be pure new milk"—Whether a warranty within the Act—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.*

By s. 25 of the Sale of Food and Drugs Act, 1875, "If the deft. in any prosecution under this Act prove to the satisfaction of the justices . . . that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor and with a written warranty to that effect," he shall, under certain other specified conditions, be entitled to be discharged from the prosecution.

Upon the hearing of an information against the respondent for having, contrary to the provisions of the Act, sold on Dec. 15, 1899, certain milk to the appellant which was not of the nature, substance, and quality demanded of him by the appellant, the respondent relied on an agreement in writing dated Jan. 20, 1899, by which a farmer agreed to sell to the respondent 1000 gallons of milk weekly, "the milk to be pure new milk":—

*Held*, that, even if the agreement amounted to a warranty within the meaning of s. 25, there must be some evidence in writing to shew that the particular milk sold to the appellant was purchased with that warranty, and that in the absence of that evidence the agreement afforded no defence to the respondent. *ROBERTSON v. HARRIS* — Div. Ct. [1900] 2 Q. B. 117

**ADULTERATION (Warranty)—continued.**

27. — *Written warranty—Lard—Delivery part of goods—Sale of Food and Drugs Act, (38 & 39 Vict. c. 63), ss. 6, 25.*

A manufacturer of lard contracted in writ with W., "We have this day sold to you 3 K's pure lard for delivery to end of Jan. 18 On Dec. 23, 1892, a parcel of lard was consigned by K to W. under the contract. Part of the was sold to the appellant, and was on anal found to be adulterated. An information laid against W. under the Sale of Food and Drugs Act, 1875:—

*Held*, that the contract contained a sufficient warranty of the purity of the lard to satisfy s. 6 of the Act of 1875, and that W. was entitled to be discharged from the prosecution. *LAID v. WILSON* Div. Ct. [1894] 1 Q. B.

*See* Sale of Food and Drugs Act, 1899 (63 Vict. c. 51), s. 20.

Referred to by Div. Ct. *Robertson v. Ha* [1900] 2 Q. B. 117, 120.

28. — *Written warranty—Servant, sale of lard to master—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 25.*

Section 25 of the Sale of Food and Drugs Act, 1875, with respect to written warranty does protect a servant of the person to whom warranty is given, as he is not a purchaser within the meaning of that section. *HOTHORN v. HEMMERS* — Div. Ct. [1891] 2 Q. B.

**ADULTERY.**

*See* Cases under DIVORCE.

**ADVANCE FREIGHT—Bill of lading.**

*See* SHIPPING—Freight. 145—148.

**ADVANCE RENT—Distress.**

*See* LANDLORD AND TENANT—Rent.

— Business, Purchase of—Embarking goods—Alienation of gift—Settlement of property.

*See* BANKRUPTCY—Voluntary Settlement. 266.

**ADVANCEMENT—Construction of will.**

*See* Cases under WILL—Advancement.

**ADVANCES**—Purchases by husband in name of wife and daughter—Account—Law Quebec.

*See* CANADA. 50.

— Seamen—Wages.

*See* SHIPPING—Seamen. 226.

**"ADVERSE CLAIM."**

*See* VENDOR AND PURCHASER—Contract.

**ADVERTISEMENT**—Citation by—Disappearance of executor to whom power to preserve.

*See* PROBATE. 82.

— Constituting trade libel.

*See* DEFAMATION—Libel. 30.

— Contract by advertisement.

*See* CONTRACT—Formation. 14.

— Copyright in arrangement of.

*See* COPYRIGHT—Book. 1.

— Issue advertisement—Right to—Misrepresentation—Damage to manufacturer.

*See* TRADE. 1.

**ADVERTISEMENT**—*continued.*

- Notice of meeting of debenture-holders.  
*See COMPANY—Debentures.* 67.
- Order sanctioning alteration of memorandum of association.  
*See COMPANY—Memorandum, &c., of Association.* 170, 171.
- Probate—Necessity for advertisement.  
*See PROBATE—Presumption of Death.* 134.
- Winding-up petition.  
*See COMPANY—WINDING-UP—Petition.* 138—147.

**ADVERTISING STATION**—*Poor-rate—Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), ss. 3, 4.*

A building contractor who had let a hoarding for advertisements *held to be* in beneficial occupation and therefore rateable under s. 3 of the Advertising Stations (Rating) Act, 1889. *CHAPPELL v. ST. BOTOLPH OVERSEERS*

*Div. Ct. [1892] 1 Q. B. 561*

- Rateable occupation—Hoardings—Advertising contractor.  
*See RATES—Rateability.* 10.

**ADVOWSON.**

*See ECCLESIASTICAL LAW—Advowson.*

**AFFIDAVIT.**

*See EVIDENCE.* 14—22.

**AFFILIATION**—Incorporation of colleges—Consent.

*See UNIVERSITY—Affiliation of Colleges.* 1.

**AFRICA**—*Royal Niger Company Act, 1899 (62 & 63 Vict. c. 43), makes provision for certain payments to be made in connection with the revocation of the Charter of the Royal Niger Co.*

- Consular Courts.  
*See COLONIAL COURT OF ADMIRALTY.*
- Extradition from.  
*See EXTRADITION.*
- Foreign jurisdiction.  
*See FOREIGN JURISDICTION.*

**AFTER-ACQUIRED PROPERTY**—Bankrupt.

*See BANKRUPTCY—Assets.* 49—55.

**BANKRUPTCY**—Scheme of Arrangement. 220.

- Covenant by husband alone that after-acquired property of wife shall be settled.  
*See HUSBAND AND WIFE.* 2.
- Covenant to settle.  
*See Cases under SETTLEMENT—Covenant to Settle.*
- Covenant to settle—Valuable consideration—Priority.  
*See PRACTICE—Stop Order.* 247.
- French law—Domicil—Community of goods.  
*See CONFLICT OF LAWS.* 8, 9.
- Infant.  
*See INFANT—Settlement.*
- Undischarged bankrupt.  
*See BANKRUPTCY—Undischarged Bankrupt.* 255—262.

**AGENT.**

*See Cases under PRINCIPAL AND AGENT.*

**AGENT (PATENT).**

*See PATENT—Patent Agent.*

**AGISTMENT**—*Negligence—Intervening act of third person.*

Plt. delivered to deft. a horse to be agisted in a certain field next to a cricket ground into which the horse escaped through a gate left open by deft.'s servant. On the cricketers trying to drive it back in a careful manner, the horse injured itself in trying to jump the fence:—

*Held*, that the damage was the natural consequence of the gate having been left open, and that deft. was liable. *HALESTRAP v. GREGORY*

*Div. Ct. [1895] 1 Q. B. 561*

**AGNUS DEI**—Singing at Communion—Ritual.

*See ECCLESIASTICAL LAW.* 61.

**AGREEMENT.**

*See Cases under CONTRACT.*

**AGRICULTURE**—Workmen's Compensation Act, 1900.

*See MASTER AND SERVANT.*

**AGRICULTURAL HOLDINGS**—Compensation.

*See LANDLORD AND TENANT—Agricultural Holdings.*

**AGRICULTURAL RATES.**

*See RATES.*

**AGRICULTURAL RATES ACT, 1896, Orders, Art. XVII.**

*See RATES—Rateability.* 16.

**AGRICULTURE, BOARD OF.**

*See BOARD OF AGRICULTURE.*

**AIDING AND ABETTING**—Carnal knowledge of girl between thirteen and sixteen.

*See CRIMINAL LAW.* 48.

## —Committal—Breach of injunction.

*See CONTEMPT OF COURT.* 2.

## —Felony wounding—Unlawful wounding.

*See CRIMINAL LAW.* 46.

**AIR.**

*See LIGHT AND AIR.*

**AIR-SPACE**—Power of local authority to regulate—Cowsheds.

*See DAIRY.*

**AIRE AND CALDER NAVIGATION ACT, 1899**

—Wrecks, removal of—Right to recover expenses.

*See JUSTICES.* 29.

**ALDERMAN**—Election of.

*See CORPORATION.* 15.

## —Outgoing—Resignation of office—Office when vacant.

*See CORPORATION.* 7.

## —Power of amotion—Corporate office—Chairman of Improvement Committee.

*See CORPORATION.* 6.

**ALEHOUSES.**

*See Cases under LICENSING ACTS.*

**ALIEN.**

*By the Naturalization Act, 1895 (58 & 59 Vict. c. 43), s. 10 (5) of the Act of 1870 was amended as*

**ALIEN**—continued.

respects children of naturalized British subjects resident abroad.

*Regs., dated Oct. 20, 1897, made for purpose of carrying into effect the provisions of the Naturalization Act, 1870. St. R. & O. 1898, No. 13. Price 3d.*

**RETURN AS TO NATURALIZED ALIENS.]** *A list of the persons to whom certificates of naturalization have been granted by the Secy. of State under the Naturalization Act, 1870, is published every month in the Lond. Gaz. An annual return of the certificates granted during the year is also published as a Parl. Paper.*

— Chinamen — British Columbia Coal Mines Regulations.  
*See CANADA. 30.*

— Fatal Accidents Acts—Cause of action outside jurisdiction.  
*See NEGLIGENCE. 1.*

1. — Right to enter British territory—Law of Victoria.

No alien has a legal right enforceable by action to enter British territory. *MUSGROVE v. CHUN TEEHONG TOY - P. C. [1891] A. C. 272*

2. — Ship — Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 62, 63, 64, 103 (3).

Practice followed as to the sale of a ship which had been transmitted to an alien and so forfeited to the Crown. *THE "MILLCENT" Jeune J. [1891] W. N. 162*

**ALIENATION** — Annuity — Succession duty — Exemption.

*See REVENUE—Succession Duty. 183.*

— Annuity determinable on—Deficiency of assets — Payment.

*See ANNUITY. 6.*

— Corporate lands, alienation of — Corporate property.

*See CORPORATION. 8.*

— Forfeiture on.

*See Cases under SETTLEMENT — Forfeiture.*

**WILL—Forfeiture.**

— Life estate — Powers of leasing — Lease of minerals — Validity.

*See SETTLED LAND. 72.*

— Succession duty — New succession.

*See REVENUE—Succession Duty. 183.*

— Trust over on alienation — Retrospective operation — Past alienation.

*See MORTGAGE. 49.*

**ALIMONY.**

*See DIVORCE—Alimony.*

— Income tax on alimony.

*See REVENUE—Income Tax. 68.*

— Proof—Arrears accrued due before receiving order.

*See BANKRUPTCY—Proof. 160.*

**ALLOTMENTS.**

*Allotments Rating Exemption Act, 1891 (54 & 55 Vict. c. 33), amends the laws relating to the rating of allotments for sanitary purposes.*

*Local Government Act, 1894 (56 & 57 Vict. c. 73), makes further provision as to allotments.*

*Power to modify provisions as to allotments*

**ALLOTMENTS**—continued.

*for recreation grounds, field gardens, &c. Commons Act, 1899 (62 & 63 Vict. c. 30), s. 18.*

— Agricultural holdings.

*See LANDLORD AND TENANT—Agricultural Holdings. 1.*

— Common allotment — Corporation duty Exemptions.

*See REVENUE—Income Tax. 65.*

— Turbary — Legal estate in land — Compensation to lord of the manor.

*See INCLOSURE. 4.*

**ALLOTMENT OF SHARES.**

*See Cases under COMPANY—Shares.*

**ALLOWANCE** — Separation order — Summ Jurisdiction (Married Women) Act Husband's earnings — Allowance wife—Mode of assessment.

*See HUSBAND AND WIFE. 77.*

**ALMS**—Receipt of—Franchise—Borough vote  
*See PARLIAMENT—Franchise. 25.*

**ALTERATION** — Adjoining premises — Reasonable use of a building—Injunction.

*See NUISANCE. 4.*

— Effect of alteration of rules of friendly society  
*See FRIENDLY SOCIETY. 1.*

**ALTERNATIVE BEQUEST** — Condition — Constraint of marriage—Marriage with consent.

*See WILL—Marriage. 142.*

**ALTERNATIVE CONTRACT.**

*See CONTRACT—Performance. 26.*

**ALTERNATIVE DEVISE** — Vested interests Divesting—Construction of will.

*See WILL—Vested Interests. 210.*

**ALTERNATIVE GIFT**—Substitutional—Scheme—Charity.

*See WILL—Substitution. 201.*

**ALTERNATIVE RELIEF**—Joinder of parties.  
*See PRACTICE—Parties. 83.*

— Patent action—Infringement.

*See PATENT. 5.*

**ALUM**—Baking powder—Article of food.

*See ADULTERATION—In General. 1.*

**AMALGAMATION**—Company practice.

*See Cases under COMPANY—Reconstruction.*

**AMBASSADOR**—Immunities of.

*See INTERNATIONAL LAW. 2.*

**AMBIGUITY**—Charterparty—Bill of lading.

*See SHIPPING—Charterparty. 15, 16*

— Will—Evidence, Admissibility of.

*See WILL—Evidence. 83.*

— Will—Grant of Probate.

*See PROBATE—Grant of Probate. 77*

**"AMELIORATING WASTE."**

*Discussed by Kekewich J. in MEUX v. COB [1892] 2 Ch.*

**AMENDMENT**—Action against public officer their official capacity.

*See TRESPASS. 2.*



**AMENDMENT**—*continued*.

— Income tax—Process—Stated case—Question of law.

See REVENUE—Income Tax. 115.

— Practice.

See PRACTICE—Amendment.

— Registration of voters.

See Cases under PARLIAMENT—Franchise.

— Specification.

See PATENT—Practice. 20—24.

**AMERCEMENT**—Fines and—Construction of charter to corporation.

See REVENUE—Forfeited Recognizance. 48.

**AMOTION**—Power of amotion of member of a municipal corporation.

See CORPORATION. 6.

**ANALYSIS**—Food and Drugs Act.

See Cases under ADULTERATION.

**ANCHOR AND ANCHOR LIGHT.**

See Cases under SHIPPING—Anchor.

**ANCIENT LIGHTS.**

See Cases under LIGHT AND AIR.

**ANCIENT MONUMENTS**—*Ancient Monuments Protection Act, 1900 (63 & 64 Vict. c. 34), amends the Ancient Monuments Protection Act, 1882 (45 & 46 Vict. c. 73).*

**ANIMAL**—*Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), consolidates the Contagious Diseases (Animals) Acts, 1878 to 1893.*

*Diseases of animals—Slaughter of foreign animals—Act of 1896 (59 & 60 Vict. c. 15), amending s. 24 and repealing s. 26 of 57 & 58 Vict. c. 57.*

*Diseases—Amendment as to regulation with respect to infectious—Public Health Act, 1896 (59 & 60 Vict. c. 19)—Powers of port sanitary authority. See Public Health (Ports) Act, 1896 (59 & 60 Vict. c. 20).*

*Diseases of Animals Acts, 1894 and 1896. O. of Bd. of Trade dated March 23rd, 1897, as to Rabies in Dogs. Lond. Gaz. Mar. 23, 1897, p. 1678, 1682.*

*Importation of Dogs Order of 1897. Lond. Gaz. May 7, 1897, p. 2540.*

*Cruelty to animals—Wild Animals in Captivity Protection Act, 1900 (63 & 64 Vict. c. 33), passed for the prevention of cruelty to wild animals in captivity.*

1. — *Distraint on animals—For what damage animals may be distrained.*

Trespassing animals may be distrained damage for injuries to other animals as well as damage to the freehold. *BODEN v. ROSCOE*

Div. Ct. [1894] 1 Q. B. 608

— *Adulteration of food of.*

See ADULTERATION — Fertilizers and Feeding Stuffs.

— *Caged lions—Domestic animals—Cruelty to.*

See CRIMINAL LAW. 6.

— *Cruelty to—"Counselling" commission of offence—Information—Summary jurisdiction.*

See JUSTICES. 5.

**ANIMAL**—*continued*.

— "Domestic animal"—Tame seagull—Cruelty to.

See CRIMINAL LAW. 7.

— *Rabbit coursing—"Domestic animals"—Cruelty to.*

See CRIMINAL LAW. 9.

2. — *Right of private person to prefer information—Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57).*

A private person may prefer information under the Diseases of Animals Act, 1894, and the Orders made under that Act, for the right to enforce such Act and Orders is not confined to the local authority. *REG. v. STEWART*

D.v. Ct. [1896] 1 Q. B. 300

**ANIMUS FURANDI**—Larceny—Function of jury.

See CRIMINAL LAW. 35.

**ANNEXATION**—Rights after—Act of State—Concessions granted before cession—Jurisdiction of municipal courts.

See CAPE OF GOOD HOPE. 1.

— *To freehold—Movable chattels—Stuffed-bird collection.*

See FIXTURES. 1.

— *Will—Grant of administration.*

See PROBATE—Grant of Administration. 23.

**ANNOYANCE**—Covenant against—Trellis.

See LANDLORD AND TENANT—Lease. 12.

"**ANNUAL RENTAL**,"—Mode of calculating—

Application of capital money.

See SETTLED LAND. 23.

**ANNUITY**—*GOVERNMENT ANNUITIES.] Treas. Warrant dated Jan. 5, 1899, under s. 18 (1) of Revenue Act, 1898 (61 & 62 Vict. c. 46). St. B. & O. 1899, p. 743, No. 6.*

— *Accumulations—Substitution—Construction of will.*

See ACCUMULATIONS. 9.

1. — *Arrears—Sale or mortgage of charged estate.*

Annuities charged on the corpus of real estate fell into arrears. There was no prospect that the rents of the estate would at an early date become sufficient to satisfy the annuities:—

*Held*, that the arrears might be satisfied by sale or mortgage of part of the real estate, but that the making of such an order is a matter not of course but of discretion. The authorities reviewed. *In re TUCKER. TUCKER v. TUCKER*

North J. [1893] 2 Ch. 323

Referred to by North J. *In re Shaw*, [1894] 2 Ch. 573.

2. — *Arrears—Separate use.*

A separation deed contained a covenant by the husband to pay an annuity for the wife's separate use during their joint lives; the husband died leaving the annuity in arrears:—

*Held*, that as the separate use came to an end on the husband's death, it did not bind the arrears. *STODGON v. LEE* — C. A. [1891] 1 Q. B. 661

But see now *Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1 (a).*

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 694.

**ANNUITY—continued.**

3. — *Assignment—Compensation for privileges as proctor—Probate Act, 1857* (20 & 21 Vict. c. 77), ss. 105, 113.

An annuity granted by the Treasury under s. 105 of the Probate Act, 1857, held to be assignable: notice to the Treasury of assignment held to be nugatory and not to confer priority.

**BLAKE v. HALSE** Chitty J. [1892] W. N. 143

— Breach of trust—Statutes of Limitations.

See **TRUSTEE**. 1.

4. — *Charge on capital—National debt conversion—National Debt Conversion Act, 1888* (51 & 52 Vict. c. 2), s. 20, sub-s. 2.

A will provided that trustees should appropriate and invest in Government stock "such a sum of money as will, when invested, be sufficient with the income thereof to produce two weekly sums of 15s. each, and shall maintain the same as a fund to answer the said two weekly sums," and provided for the destination of the capital set aside when it should fall in. By reason of the conversion into 2½ per cent. Consols, the income became insufficient:—

Held, that the annuities were charged on the capital of the fund, and the provisions of s. 20(3) of the National Debt Conversion Act did not override the provisions of the will, and that the annuitants were entitled to be paid in full. **PACK v. DARBY** North J. [1895] W. N. 123 (6)

— Conflict of statutes—Construction.

See **STATUTE**. 4.

— Contingent annuity—Interim income.

See **WILL—Income**. 108.

— Contingent—Settlement estate duty—Incidence.

See **REVENUE—Estate Duty**. 20.

5. — *Date of commencement—Immediate vestity.*

Where A. gave his personalty and a life estate in his realty to B., and charged the reversion of one portion of such realty with an annuity to C., and directed that the first payment of the annuity was to be made half a year after A.'s death:—

Held, that C. was entitled to an annuity commencing on A.'s death. *In re WILLIAMS.* **WILLIAMS v. WILLIAMS**

Stirling J. [1895] W. N. 36

6. — *Deficiency of assets—Administration—Annuity determinable on alienation—Valuation—Right of annuitant to payment.*

An annuity payable to one for life or until he should do or suffer some act whereby the annuity or any part thereof, if belonging to him absolutely, would become vested in some other person, was secured by deed of covenant. The estate of the covenantor was insufficient for payment of the annuity in full, and, in an administration action, the annuity was valued, and was represented by a fund in court:—

Held, that the whole fund ought to be paid to the annuitant.

*Carr v. Ingleby*, (1831) 1 De G. & Sm. 362, not followed. *In re SINCLAIR.* **ALLEN v. SINCLAIR.** **HODGKINS v. SINCLAIR**

— **Kekewich J.** [1897] 1 Ch. 921

**ANNUITY—continued.**

— Estate duty.

See **REVENUE—Estate Duty**. 13, 14.

— Income Tax—Annuity—"Profits and gains."

See **REVENUE—Income Tax**. 67.

— Income Tax—Annuity by way of alimony.

See **REVENUE—Income Tax**. 68.

— Income tax—Deduction of income tax from interest or annuities.

See **REVENUE—Income Tax**. 103.

— Indian reserves—Liability to pay annuities in respect thereof.

See **CANADA**. 10.

— Interest—Gift of money for purchase of annuity.

See **INTEREST**. 2.

— Legacy duty—Annuity by way of salary.

See **REVENUE—Legacy Duty**. 120.

— Legacy duty—Annuity out of rents of realty.

See **REVENUE—Legacy Duty**. 121.

7. — *Life or Perpetual.*

(A) A gift of "An annuity of 150l. a year to be secured to X." is merely an annuity to X. for life. *In re LORD STRATHEDEN and CAMPBELL.* **COWPER v. STRATHEDEN and CAMPBELL**

**Kekewich J.** [1893] W. N. 90

(B) A gift of "250l. per ann. to X. or his descendants" is an annuity to X. for life with a substitutionary gift for life to X.'s descendants living at testator's death if X. did not survive the testator. *In re MORGAN.* **MORGAN v. MORGAN**

**C. A.** [1893] 3 Ch. 222

8. — *Married woman—Restraint on anticipation—Administration—Insolvent estate—Appropriation of capital sum.*

In the final distribution of an insufficient estate the dividend on the capital value of an annuity bequeathed to a married woman, with restraint on anticipation, was ordered to be laid out in the purchase of an annuity for her. Before the annuity was purchased she died:—

Held, that the capital belonged to her estate. *In re ROSS.* **ASNTON v. ROSS** North J.

[1899] W. N. 234; [1900] 1 Ch. 162

9. — *Redemption—Cash value of perpetual annuity.*

The amount to be paid to the owner of a perpetual annuity, adequately secured on the estate, who is willing to redeem, is the sum which at the price of the day will purchase 2½ per cent. Government stock sufficient to produce the annuity, excluding any charge for brokerage. **HICKS v. ROSS**

**Kekewich J.** [1891] 3 Ch. 499

— Retainer by executor.

See **EXECUTOR**. 36.

— Retainer of trust property to satisfy annuity—

Husband and wife—Separation deed.

See **TRUSTEE**. 99.

10. — *Right to receive value of annuity.*

A will contained a direction to trustees to purchase Government annuities out of proceeds of land when sold. One annuitant died before and another after the completion of the sale:—

Held, that the estate of the annuitant who

**ANNUITY—continued.**

died before completion of sale had no claim for the value of the annuity, but that the other estate could so claim. *In re MABBETT. PITMAN v. HOLBORROW* - Kekewich J. [1891] 1 Ch. 707

11. — *Security for — Residue — Bequest of annuity payable out of — Provision for annuity — Distribution of residue — Will — Administration — Jurisdiction — Appeal — Costs improperly incurred — Payment by solicitor*—R. S. C., 1883, Order LXX., r. 11.

Where an annuity is payable out of the clear residuary estate of a testator, the Court has jurisdiction to set apart a sufficient sum to answer the annuity, and to pay the remainder of the residue to the residuary legatees. And this jurisdiction will be exercised in a proper case notwithstanding the opposition of the annuitant:—

*Per* Lindley L.J.: The annuitant has nevertheless the right to resort, if it becomes necessary, to the corpus of the fund set apart. In an administration action, where several respondents to an unsuccessful appeal were in the same interest, the Court allowed only one set of costs against the appellant, and directed those costs to be paid to the respondents who had the conduct of the proceedings in the cause.

The solicitor of an appellant will be ordered to indemnify his client against the costs of the appeal, if it was prosecuted, not in the interests of the client, but for the purposes of the solicitor. *HARBIN v. MASTERMAN* (No. 2)

C. A. [1895] W. N. 160 (1); [1896] 1 Ch. 351

For First Appeal, *see Wharton v. Masterman*, H. L. (E.) [1895] A. C. 186.

12. — *Separation deed—Annuity under, between man and woman not married.*

In a separation deed between A. and B., who was living with him as his mistress, A. covenanted to pay an annuity to B. during her life. They resumed cohabitation, and A. died:—

*Held*, affirming North J., that the resumption of cohabitation did not cause the annuity to cease.

*Secus*, in the case of a separation deed between husband and wife. *In re ABDY. RABBEITH v. DONALDSON* (No. 2) C. A. [1895] 1 Ch. 455

— Stamp duty.

*See* REVENUE—Stamps. 141.

— Succession duty.

*See* REVENUE—Succession Duty. 183.

— Will.

*See* Cases under WILL—Annuity.

**ANNULLMENT—Bankruptcy.**

*See* BANKRUPTCY—Annulment.

— Conditions of sale—Vendor's power of annulling sale.

*See* VENDOR AND PURCHASER—Conditions of Sale. 4.

— Receiving order—Payment into court—Payment out after six years.

*See* BANKRUPTCY—Receiving Order. 196.

**ANSWERS—Objection to—Allowance by judge.**

*See* DISCOVERY—Interrogatories. 46.

**ANSWERS—continued.**

— Sufficiency—Agent—Executor.

*See* DISCOVERY—Interrogatories. 47.

**ANTE-NUPTIAL SETTLEMENT.**

*See* Cases under SETTLEMENT.

**ANTICIPATION**—Rents—Churchwardens—Income of charity estates—Banking account—Charge on charitable property.

*See* CHARITY. 1.

**ANTICIPATION (RESTRAINT ON)**—Married woman.

*See* Cases under HUSBAND AND WIFE.

— Costs—Married woman.

*See* PROBATE. 88.

— Married woman—Breach of trust—Indemnity.

*See* TRUSTEE. 30.

— Married woman—Insolvent estate—Annuity—Appropriation of capital sum.

*See* ANNUITY. 8.

**APOTHECARIES ACT**—"Acting" without certificate.

*See* MEDICAL PRACTITIONER. 4.

**APPEAL.**

*By the Supreme Court of Judicature (Procedure Act, 1894 (57 & 58 Vict. c. 16), it was prescribed that appeals from judges in matters of Procedure should lie direct to the Court of Appeal; the right of appeal was restricted; and the appeals from County Courts, &c., to Divisional Courts and the Court of Appeal were regulated.*

R. S. C. 1883, Order LVIII., relates to appeals to the Court of Appeal.

— Admiralty practice.

*See* Cases under SHIPPING—Appeal.

— Arbitration.

*See* ARBITRATION—Appeals. 5, 23, 24, 26, 41, 42.

— Bankruptcy practice.

*See* Cases under BANKRUPTCY—Appeal.

— Board of Trade's right of appeal.

*See* BANKRUPTCY—Scheme of Arrangement. 222.

1. — *Chambers—Appeal from order made in—Refusal of judge to give certificate—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 50.*

Originating summons by a client under the Solicitors Act. Kekewich J. in chambers dismissed the summons and declined to give a certificate that the matter had been sufficiently argued before him, and that he did not desire to hear further argument in court.

On motion *ex parte* for leave to come direct to the C. A. without moving before the learned judge in court to discharge his order made in chambers:—

*Held*, that the practice is now perfectly well settled that, unless the judge gives a certificate, the person who desires to appeal must first move in court to discharge the order made in chambers. The C. A. had considered this point fully already and would not now allow it to be reargued. Motion refused. *In re PEARCE*

C. A. [1899] W. N. 114

2. — *Chambers—Appeal from order of judge at—Prohibition to judge of county court—"Prac-*

**APPEAL**—continued.

*tice and procedure*—*Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.*

An application to a judge at chambers for a prohibition to restrain an inferior Court from exceeding its jurisdiction is not a matter of practice or procedure within the meaning of s. 1, sub-s. 4, of the Supreme Court of Judicature (Procedure) Act, 1894, and an appeal lies to the Divisional Court and not, in the first instance, to the C. A. **WATSON v. PETTS**

C. A. [1899] 1 Q. B. 54

— Chambers, Application referred from.

See PRACTICE—Chambers. 11.

3. — *Chambers, Order in—Chancery Division.*

Where a case has been fully argued before a judge at chambers in the Ch. Div. an appeal lies, although the judge has not certified that he requires no further argument. **STRONG v. CARLYLE PRESS (No. 1)**

C. A. [1893] 1 Ch. 268, at p. 272

Referred to by V. Williams J. *British Linen Co. v. South American and Mexican Co.*, [1894] 1 Ch. 108, 111.

4. — *Chambers, Order in—Motion to discharge—“Appeal” — Chancery Division — Judicature Acts, 1873 (36 & 37 Vict. c. 66), s. 50; 1894 (57 & 58 Vict. c. 16), s. 1.*

A motion to discharge an order made in chambers is not an “appeal,” but a rehearing. The right to move to discharge an order made in chambers by a judge of the Ch. Div. was expressly reserved by s. 50 of the Judicature Act, 1873, and that right (exercisable without leave, if notice is given within fourteen days) has not been taken away by s. 1 of the Act of 1894.

An unsuccessful litigant in chambers in the Ch. Div. has still three alternatives, (i.), to move in Court to discharge the order; (ii.) to have the matter adjourned into Court; (iii.) to obtain leave from the judge to go straight to C. A. **BOAKE v. STEVENSON**

**Kekewich J. [1895]**  
1 Ch. 358

— City of London Court.

See COUNTY COURT. 1.

LONDON—City of London Court. 37.

— Clergy Discipline Act, 1892 — Practice — Special leave to appeal — Frivolous application.

See ECCLESIASTICAL LAW—Practice. 58.

5. — *Co-defendant brought in as third party.*

Where a third party notice claiming contribution or indemnity is given to a co-deft., he cannot appeal to the C. A. against the notice and must wait till there has been a summons for directions and an order thereon. **BAXTER v. FRANCE (No. 1)**

C. A. [1895] 1 Q. B. 455

— Colonial—to Governor-General of Canada in Council from Provincial Legislature.

See CANADA. 32.

6. — *Commercial list—Practice.*

An appeal will lie to the C. A. against an order for entry of a cause in the commercial list if it be not a commercial cause. **SEA INSURANCE CO. v. CARR**

C. A. [1900] W. N. 238

**APPEAL**—continued.

— Costs—Appeals.

See Cases under Costs.

— County Courts.

See COUNTY COURT—Appeal.

7. — *“Criminal cause or matter” — Company*

— *Default in forwarding list of members to Registrar—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 26, 27—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.*

An application to a magistrate for a summons against a co., to recover penalties for default in forwarding a list of its members to the registrar of joint stock companies, as required by s. 26 of the Companies Act, 1862, is a criminal proceeding. Therefore, the judgment of the Q. B. Div. on an application for a mandamus directing the magistrate to hear the summons is a judgment in a “criminal cause or matter” within s. 47 of the Judicature Act, 1873, and no appeal lies therefrom to the C. A. **REG. v. TYLER AND THE INTERNATIONAL COMMERCIAL CO.**

C. A. [1891] 2 Q. B. 588

8. — *“Criminal cause or matter” — Contempt of Court.*

An order was made for the attachment of a trustee for contempt in disobeying an order made for his attendance before a special examiner in an administration action under O. LXVII., r. 4.

*Seem*, that the contempt was not so far of a criminal nature as to make the order for attachment one made in a criminal cause or matter within s. 47 of the Judicature Act, 1873. *In re EVANS. EVANS v. NOTON (No. 1)*

C. A. [1893] 1 Ch. 252

Referred to by Cozens-Hardy J. *D. v. A. & Co.*, [1900] 1 Ch. 484, 488.

9. — *“Criminal cause or matter” — Libel—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 50—R. S. C., Order LXVIII., r. 1.*

An order was made by a judge at chambers, under s. 8 of the Law of Libel Amendment Act, 1888, allowing a criminal prosecution to be commenced against the proprietors of a newspaper for a libel published therein:

*Held*, that the order was made in a criminal proceeding, and was not subject to the R. S. C. as to appeal from chambers, and that no appeal therefrom lay to the Div. Ct. *Ex parte PULBROOK*

Div. Ct. [1892] 1 Q. B. 86

10. — *“Criminal cause or matter” — Nuisance—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 91, 96.*

The Q. B. Div. refused to grant an order nisi for a mandamus to compel a stipendiary magistrate who had made an order under s. 96 of the Public Health Act, 1875, for the abatement of a nuisance, to state a case for the opinion of the Court:—

*Held*, that the decision of the Q. B. Div. was given in a “criminal cause or matter” within s. 47 of the Judicature Act, 1873, and therefore that the C. A. had no jurisdiction to entertain the application for a mandamus. *Ex parte SCHORFIELD*

C. A. [1891] 2 Q. B. 428

Referred to by C. A. *Seaman v. Burley*, [1896] 2 Q. B. 344, 347. See next Case.

**APPEAL—continued.**

11. — "*Criminal Cause or matter*"—*Poor-rate*—*Application for distress warrant—Case stated by justices—Appeal to Court of Appeal—Judicature Act* (36 & 37 Vict. c. 66), s. 47.

A judgment upon a special case stated by justices on an application to enforce payment of a poor-rate by warrant of distress is a judgment in a criminal cause or matter within s. 47 of the Judicature Act, 1873, inasmuch as the proceedings before the justices may end in imprisonment of the person in default; and therefore an appeal will not lie to the C. A. from the judgment of the Q. B. Div. on such a case. *SEAMAN v. BURLEY*  
C. A. [1896] 2 Q. B. 344

Referred to by C. A. *Southwark and Vauxhall Water Co. v. Hampton Urban Council* [1899] 1 Q. B. 273, 276; [1900] A. C. 3.

— Criminal suit against rector for non-repair of chancel—Jurisdiction.

See ECCLESIASTICAL LAW. 57.

— Cross-notice—Cross-appeal—Counter-claim—Separate causes of action.

See PATENT—Joint Grant. 13.

— Crown Lands Acts—Reference by Land Appeal Court to Supreme Court—Effect of decision.

See NEW SOUTH WALES. 17.

— Divorce—Irish divorce bill—Substituted service.

See No. 20, below.

— Divorce—Leave to appeal to House of Lords.

See DIVORCE—Co-respondent. 39.

— Election law.

See Cases under PARLIAMENT.

12. — *Election, municipal—Case stated on petition.*

There is no appeal from a decision of the High Court on a case stated under the Municipal Corporations Act, 1882, except by special leave of that Court. *UNWIN v. McMULLEN*

C. A. [1891] 1 Q. B. 694

13. — *Election, parliamentary—Petition—Question of law—Judicature Act, 1881* (44 & 45 Vict. c. 68) s. 14. *Corrupt and Illegal Practices Prevention Act* (46 & 47 Vict. c. 51) ss. 40, 56.

A Div. Ct. consisting of two election judges rescinded an order made under s. 40 of the Corrupt and Illegal Practices Prevention Act, 1883, for the amendment of an election petition, on the ground that the judge who made it, not being on the rota of election judges, had no jurisdiction:—

*Held*, that the decision was one of law within s. 14 of the Judicature Act, 1881, and therefore no appeal lay except by special leave of the Div. Ct. *SHAW v. RECKITT*

Div. Ct. [1893] 1 Q. B. 779;

C. A. [1893] 2 Q. B. 59

14. — "*Final order*"—*Summons in administration action—Judicature (Procedure) Act, 1894* (57 & 58 Vict. c. 16), s. 1 (a) (vi.).

A summons in an administration action to adjust loss from breach of trust is "in the nature of a final appeal" within s. 1 (a) (vi.) of the Judicature (Procedure) Act, 1894:

*Semble*, that pending the making of rules

**APPEAL—continued.**

under that section leave to appeal is not necessary. *CHILLINGWORTH v. CHAMBERS* (No. 2)

North J. [1895] W. N. 136 (6)

— *Formâ Pauperis.*

See PRACTICE—*Formâ Pauperis*. 23—28.

15. — *Garnishee order—"Practice and procedure"—Appeal from judge at chambers—Judicature (Procedure) Act, 1894* (57 & 58 Vict. c. 16), s. 1, sub-s. 4.

A garnishee order is a "matter of practice and procedure" within s. 1, sub-s. 4, of the Judicature (Procedure) Act, 1894, and an appeal from a judge at chambers making a garnishee order absolute must be to the C. A. *HOCKLEY v. ANSAH*  
— Div. Ct. [1896] W. N. 70

16. — *Habeas corpus—Infant—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 16.

An appeal lies to the C. A. under s. 16 of the Judicature Act, 1873, from an order absolute of the Q. B. Div. directing the issue of a writ of habeas corpus to bring before the Court an infant who is alleged to be under the custody or control of a person not entitled thereto.

(A) *BARNARDO v. FORD*. *GOSAGE'S CASE*

H. L. (E.) [1892] A. C. 326

(B) *BARNARDO v. McHUGH*

H. L. (E.) [1891] A. C. 388

*But see* the Custody of Children Act, 1891 (54 & 55 Vict. c. 3), s. 3.

— House of Lords—Costs.

See below, Nos. 17—23.

— House of Lords—Costs—Jurisdiction over costs.

See POOR LAW—Guardians. 1.

17. — *House of Lords—Costs of successful pauper appellant in House of Lords.*

On taxation of a pauper appellant's costs of a successful appeal, the fees of the House and the fees of counsel are to be disallowed, and the solicitor is to have his costs out of pocket with a reasonable allowance to cover office expenses, including clerks, &c. *JOHNSON v. LINDSAY & Co.* (No. 2)  
— H. L. (E.) [1892] A. C. 110

See *Johnson v. Lindsay & Co.* (No. 1), [1891] A. C. 371.

Referred to by *Jeune, P. Richardson v. Richardson*, [1895] P. 276, 279; C. A. [1895] P. 346.

Referred to by *Kekewich J. Ex parte Salomon*, [1899] 1 Ch. 853. But this case was reversed by C. A. [1899] W. N. 212.

18. — *House of Lords—Finding of fact.*

The House will not disturb a finding of fact in which both the Courts below have concurred, unless it can be clearly shewn that such finding was erroneous.

(A.) *OWNERS OF THE "P. CALAND" v. GLAMORGAN STEAMSHIP CO. THE "P. CALAND."*

H. L. (E.) [1893] A. C. 207

(B.) *McINTYRE BROTHERS v. MCGAVIN*

H. L. (Sc.) [1893] A. C. 268, 272

19. — *House of Lords—Ireland—Appeal to House of Lords from interlocutory order of Court of Appeal in Ireland—Jurisdiction—Appellate Jurisdiction Act, 1876* (39 & 40 Vict. c. 59),

**APPEAL—continued.**

ss. 3, 12—*Judicature Act (Ireland)*, 1877 (40 & 41 Vict. c. 57), s. 86.

No appeal lies to the H. L. from an interlocutory order of the Q. B. Div. in Ireland, or from an order on appeal therefrom made by the C. A. in Ireland. *Judgment of C. A. Reg. (Earl of Gosford) v. Irish Land Commission*, [1899] 2 I. R. 399, affirmed. *EARL OF GOSFORD v. IRISH LAND COMMISSION*

**H. L. (I.) [1899] A. C. 435**

**20. — House of Lords—Irish divorce bill—Substituted service.**

Substituted service of copy of bill for divorce with notice of the second reading allowed on wife's parents, the whereabouts of the wife being unknown and the parents refusing all information. **FLEMING'S DIVORCE BILL**

**H. L. (I.) [1893] W. N. 93**

**21. — House of Lords—Material facts—Appeal to the House of Lords—All material facts to be found by Court of Session—Jurisdiction—Scottish law—Judicature (Scotland) Act, 1825 (6 Geo. 4, c. 120), s. 40.**

To give effect to s. 40 of the Scottish Judicature Act, 1825, in cases arising in the Sheriff Courts in Scotland, the Inner House of the Ct. of Sess. ought to find in their interlocutor all the material facts; else the parties in the H. L. may be deprived of a hearing, or at least of an arguable point; for the House cannot in such an appeal hear an argument upon a fact not found in the interlocutor appealed from: and the only remedy is—unless the parties agree as to the facts—for the House to remit the case back to the Ct. of Sess. to pronounce a finding on the fact or facts in question. **GLASGOW CORPORATION v. J. & J. McOMISH**, (1896) 23 R. 896

**H. L. (Sc.) [1897] W. N. 67 (1)**

**22. — House of Lords—Time, Extension of—Appellate jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3, R. S. C., Order LVIII., r. 15.**

No appeal lies from a refusal of the C. A. to give leave to appeal where the time limited by Order LVIII., r. 15, has expired. Such a refusal is not an order or judgment of the C. A. within the meaning of s. 3 of the Appellate Jurisdiction Act, 1876. Decision of C. A., *Esdaile v. Payne* (1889), 40 Ch. D. 520 affirmed. *Sub nom. LANE v. ESDAILE* - **H. L. (E.) [1891] A. C. 210**

**23. — House of Lords—Time for appealing—Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59); Standing Order I.**

Under Standing Order I., when there is a competent appeal from an order of the C. A. made within the year, the H. L. can in some cases entertain an appeal from a previous order of the C. A. made more than a year before. No definite rule can be laid down; each case must be judged by its own circumstances. **CONCHA v. CONCHA** - **H. L. (E.) [1892] A. C. 670**

— **Interim injunction, Appeal from—Trespass—New South Wales Mining on Private Lands Act. See NEW SOUTH WALES. 37.**

**24. — Interim injunction—Chambers—"Practice and procedure"—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.**

**APPEAL—continued.**

A summons for an interim injunction till trial is a matter of "practice and procedure," within the Judicature Act, 1894, s. 1 (4), and the appeal from the judge in chambers lies to the C. A. and not to the Div. Ct. **McHARG v. UNIVERSAL STOCK EXCHANGE, LD.**

**Div. Ct. [1895] 2 Q. B. 81**

**25. — Interlocutory order—Leave to appeal—Liberty of subject—Refusal to commit—Practice—Supreme Court of Judicature (Procedure) Act 1894 (57 & 58 Vict. c. 16), s. 1 (b), (i).**

A judge having refused an application for the committal of the defts. on the ground of a breach by them of an undertaking which they had given to the Court, and having refused to give leave to appeal:—

*Held*, that the liberty of the subject was not concerned, and that an appeal could not be brought without leave, which the C. A. refused to give. **BOWDEN v. YOXALL**

**C. A. [1900] W. N. 242**

**26. — Interlocutory orders made in chambers—Leave to appeal—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 1 (b).**

Several appeals from interlocutory orders in chambers were dismissed with costs through failure to obtain leave to appeal under s. 1 (1) (b) of the above Act. **PRACTICE NOTE**

**C. A. [1894] W. N. 203**

**27. — "Interlocutory order or interlocutory judgment"—Ex parte application—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 1 (b), sub-s. 6.**

The C. A., assuming without deciding the point that an order made by a judge of the Ch. Div. holding the claim of a person claiming to be a creditor of a testator and to administer his estate to be valid was an interlocutory order, gave leave to appeal. *In re ABDY. RABBETH v. DONALDSON* (No. 1) - **C. A. [1895] W. N. 12**

**28. — Interpleader—Issue tried by judge alone.**

An appeal lies from the findings on fact of a judge who tries an interpleader issue without a jury. **RAMSEY v. MARGRETT**

**C. A. [1894] 2 Q. B. 18, 22**

**29. — Interpleader—Summary decision—Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 17—R. S. C., 1883, Order LVII., rr. 8, 9, 11.**

Where a judge in interpleader proceedings has decided the case under Order LVII., r. 9, without directing an issue or stating a special case, his decision is a summary decision within s. 17 of the Common Law Procedure Act, 1860, and is not subject to appeal. *In re TARN*

**C. A. [1893] 2 Ch. 280**

**30. — Judge without jury, Appeal from—Appeal raising questions of fact—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (b) (i).**

The rehearing on appeal of a case tried by a judge without a jury is not governed by the rules applicable where there has been a trial and verdict by a jury. The C. A. must act on its own considered conclusion on questions of fact as well as law. **COGHLAN v. CUMBERLAND**

**C. A. [1898] 1 Ch. 704**

**APPEAL—continued.**

31. — *Judge's notes of oral evidence in Court below.*

The Master of the Rolls at the sitting of the C. A. on Nov. 4, 1898, said that a misapprehension had arisen with reference to certain remarks made by his Lordship during the hearing of this case, noted [1898] W. N. 77 (8), and reported [1898] 2 Ch. 442. The first paragraph there given, namely, "It is desirable that solicitors should know that, on an appeal in cases where evidence has been taken orally in the Court below, it is their duty to apply in good time for the judge's notes of evidence," was correct; but the concluding words should read as follows: "If they do so, this Court will apply to the judge for a copy of his notes; but if, as frequently happens, a copy of the notes is applied for just before the appeal comes on for hearing, there is no time to obtain a copy for the use of the C. A., which leads to great inconvenience."

See the Annual Practice for 1898, p. 1045, and the Annual Practice for 1899, p. 847; Order LVIII., r. 11, and the notes thereto. *In re BATT & Co.'s REGISTERED TRADE-MARKS. In re CARTER'S APPLICATION* - C. A. [1898] 2 Ch. 701

This case was affirmed by H. L. (E.), [1899] A. C. 428.

— Judicial Committee—Practice.

See PRIVY COUNCIL — Judicial Committee. 1.

— from Justices.

See Cases under JUSTICES.

32. — *Leave to appeal, Refusal of—Party dissatisfied with award of Arbitrator—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), Sched. II., cl. 26 (a).*

Under the provisions of Sched. II., cl. 26, of the Housing of the Working Classes Act, empowering appeal from an arbitrator to a jury on a question of compensation, by leave of the High Court or a judge at chambers, there is no appeal to the Div. Ct. from the refusal of the judge in chambers to give such leave. Decision of Div. Ct., [1892] 1 Q. B. 394, affirmed. *In re HOUSING OF THE WORKING CLASSES ACT, 1890. Ex parte STEVENSON* - C. A. [1892] 1 Q. B. 609

— Leave to, granted under misapprehension of fact—Practice.

See NEW ZEALAND. 4.

33. — *Liberty of the subject—Motion to commit—Leave to appeal.*

An appeal lies without leave to the C. A. from the Ch. Div. from a refusal to commit for alleged breach of an injunction as being within the exception in s. 1 (b) (i.) of the Judicature (Procedure) Act, 1894. *LANCASHIRE v. HUNT* North J. [1895] W. N. 52

— Licensing Appeals.

See Cases under LICENSING ACTS.

— Liverpool Court of Passage.

See LIVERPOOL COURTS. 1, 2.

34. — *Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 29—Question for opinion of High Court—Right of appeal to the Court of Appeal.*

The jurisdiction of the High Court, upon questions submitted to them under s. 29 of

**APPEAL—continued.**

the Local Government Act, 1888, is consultative only, and is not judicial. Consequently no appeal lies from their decision to the C. A. *Ex parte COUNTY COUNCIL OF KENT AND THE COUNCILS OF THE BOROUGH OF DOVER AND SANDWICH* (No. 2)

C. A. [1891] 1 Q. B. 725

35. — *Lunacy—Costs of inquiry.*

An appeal lies, without leave, to the C. A. from a decision of the Lords Justices sitting in Lunacy, directing that the costs of an inquiry into the mental condition of an alleged lunatic should be paid out of the alleged lunatic's estate. *In re CATHCART* (No. 1) C. A. [1893] 1 Ch. 466

— Mayor's Court.

See LONDON—Mayor's Court.

— Municipal Corporation—Against refusal of licence—Costs of chief constable—Borough fund.

See CORPORATION. 10.

— New trial.

See Cases under PRACTICE—New Trial.

36. — *Notes of proceedings in Court below—Copies required for use of Divisional Court—Costs—Taxation—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

Upon appeals under the Summary Jurisdiction (Married Women) Act, 1895, it is the duty of the appellant to furnish, for the use of the judges of the Div. Ct., two copies of the notes taken by the clerk of the Court below, and the costs of these copies will be allowed on taxation. *WALTON v. WALTON* Div. Ct. [1900] P. 147

37. — *Notes of proceedings in Court below—Duties of magistrates' and justices' clerks—Right of either party to a copy of notes—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

Upon the hearing of every summons under the Summary Jurisdiction (Married Women) Act, 1895, it is the duty of the clerk to the magistrate or justices to make a note, not only of the evidence and of the decision arrived at, but also of the reasons for arriving at the decision, and to furnish a copy of the note upon the application of either party. *COBB v. COBB*

Div. Ct. [1900] P. 145

— Notice of appeal—Extension of time.

See LONDON—Mayor's Court. 43.

— Notice of appeal—Poor-rate—Quarter sessions—Jurisdiction.

See RATES. 9.

38. — *Official referee, Trial before—Application to Divisional Court—Appeal from Divisional Court—Leave to appeal—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 5.*

Where an action has been referred to an official referee, a motion to a Div. Ct. to review the findings of the official referee and to enter judgment accordingly is "an appeal to the High Court from any Court or person" within the meaning of s. 1, sub-s. 5, of the Judicature Act, 1894, and the decision of the Div. Ct. is therefore final, unless leave be given to appeal. *DAGLISH v. BARTON* - C. A. [1900] 1 Q. B. 284

39. — *Parties—Appeal by persons not parties—Leave to appeal—Company—Scheme of arrange-*

**APPEAL—continued.**

*ment—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 124—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104).*

The right of appeal against the order of a judge sanctioning a scheme of arrangement in the matter of a co. is governed by the same conditions as appeals from decisions in the ordinary jurisdiction of the Court.

A judge made an order sanctioning a scheme of arrangement under the Joint Stock Companies Arrangement Act, 1870. Persons appealed who were interested as creditors, but who had not opposed the scheme at the meeting of creditors, nor appeared before the judge, nor obtained leave to appeal :—

*Held*, that, as the appellants were not parties to the proceedings, they could not according to the Chancery practice appeal without the leave of the Court. *In re SECURITIES INSURANCE CO.*

C. A. [1894] 2 Ch. 410

40. — *Parties to appeal—Respondent trustee supporting appeal.*

The rule that a respondent to an appeal cannot be heard by counsel in support of the appellant's case may be relaxed in favour of a respondent trustee who supports an appeal by a tenant for life under s. 10 of the Settled Land Act, 1890. *In re MARQUIS OF AILESBURY'S SETTLED ESTATES (No. 1)* C. A. [1892] 1 Ch. 506

Affirmed by H. L. (E.) *Sub. nom. Bruce v. Marquis of Ailesbury*, [1892] A. C. 356.

Referred to by C. A. *In re Hope*, [1899] 2 Ch. 679, 689.

— *Petition of right—Appeal from judgment on Practice.*

See CANADA. 6.

— *Poor-rates.*

See CASES UNDER RATES.

— *Privy Council Appeals.*

See PRIVY COUNCIL.

41. — *Quarter Sessions—Case stated under Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 11—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19.*

The entry of judgment in an appeal at quarter sessions in accordance with the decision of a Div. Ct. on a case stated under the Quarter Sessions Act, 1849, s. 11, does not prevent an appeal against the decision to the C. A. under the Judicature Act, 1873, s. 19.

*Corporation of Peterborough v. Wiltshorpe Overseers*, (1883) 12 Q. B. D. 1, and *Holborn Guardians v. Chertsey Guardians*, (1885) 15 Q. B. D. 76, followed. *LODGE v. HUDDERSFIELD CORPORATION* - C. A. [1898] 1 Q. B. 859

— *to Quarter sessions—Order for maintenance—Practice.*

See POOR LAW. 9.

— *Rates.*

See CASES UNDER RATES.

— *Refusal of Appellate Court to interfere with discretion of Ordinary—Faculty.*

See ECCLESIASTICAL LAW. 35.

— *Registration of voters.*

See CASES UNDER PARLIAMENT—FRANCHISE.

**APPEAL—continued.**

— *Rehearing in Court of Appeal—Trial without jury.*

See PRACTICE—TRIAL. 25.

— *Review.*

See PRACTICE—REVIEW.

— *Refusal to commit.*

See above, No. 25.

42. — *Refusal to vary minutes.*

There is no appeal to the C. A. from the refusal of a judge to vary minutes of judgment.

JAMES v. JONES - C. A. [1892] W. N. 104

— *Right of—Laws of Natal—Licensing officer—Jurisdiction of Supreme Court.*

See NATAL. 5.

— *Right of appeal—Jurisdiction to rehear—Laws of New Zealand.*

See NEW ZEALAND. 8.

43. — *School board election—Petition—Interlocutory order—Appeal to Court of Appeal—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Part IV., s. 93, sub-s. 7—Municipal Elections (Corrupt and Illegal Practices Act), 1884 (47 & 48 Vict. c. 70), s. 36—General Rules, 1883, for the execution of Part IV. of the Municipal Corporations Act, 1882, rules 48, 57.*

From an order of a judge at chambers in an interlocutory application arising in a school board election petition an appeal lies to the C. A. LORD MONKSWELL v. THOMPSON

C. A. [1898] 1 Q. B. 353

— *Service—Essential particulars.*

See TRADE-MARK. 10.

44. — *Single judge, of Court of Appeal, Order of—Judicature Acts, 1873 (36 & 37 Vict. c. 66), s. 52; 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 1 (b).*

A motion to discharge or vary an order of a single judge of the C. A. made under s. 52 of Judicature Act, 1873, is not an "appeal" within s. 1 (1) (b) of the Judicature Act, 1894, and does not require the leave of the judge or of the C. A. BOYD v. BISCHOFFSHEIM C. A. [1895] 1 Ch. 1

45. — *"Practice and procedure"—Solicitor's bill of costs—Review—Taxation—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-ss. 1, 4, 5—R. S. C. Order LIV., r. 23.*

A summons to review the taxation of a solicitor's bill of costs is a "matter of practice and procedure" within the Judicature Act, 1894, and an appeal from the judge in chambers lies to C. A. and not to Div. Ct. *In re ODDY*

C. A. [1895] 1 Q. B. 392

— *Special case—Proceedings extra cursum curiæ.*

See PRACTICE—SPECIAL CASE. 244.

— *Special leave given at the hearing—Practice.*

See NATAL. 4.

— *Special leave to appeal—Condition as to costs.*

See CANADA. 15.

— *Special leave to appeal in criminal cases—Jurisdiction.*

See JAPAN. 1.

46. — *Stamp—Objection—Ruling of judge at trial—R. S. C. Order XXXIX., r. 8.*

Where a judge, trying an action without a jury, rules that the stamp upon any document is



**APPEAL—continued.**

sufficient, or that the document does not require a stamp, the decision is final, and no appeal lies to the C. A. by way of application for a nonsuit, or to enter judgment, or for a new trial. *BLEWITT v. TRITTON* — C. A. [1892] 2 Q. B. 327

**47. — Stay of inquiries.**

A stay of inquiries directed by a judgment pending an appeal will be granted only under very special circumstances. *SHAW v. HOLLAND*

C. A. [1900] 2 Ch. 305

— Summary Jurisdiction Acts.

See HUSBAND AND WIFE — Summary Jurisdiction.

**48. — Time for appealing, Extension of — Alteration of law since judgment—Costs of solicitor-mortgagee.**

A solicitor-mortgagee who had, by a judgment given before the passing of the Mortgagees Legal Costs Act, 1895, been held not to be entitled to charge profit costs against his mortgagor, applied after the passing of the Act for an extension of the time for appealing against the judgment, on the ground that s. 3 of the Act is retrospective in its operation :—

*Held*, that the Act was not intended to affect judgments given before it was passed, and that there was no ground for extending the time. *EYRE v. WYNN-MACKENZIE* (No. 2)

C. A. [1896] 1 Ch. 135

**49. — Time for appealing — Refusal of an application—Judgment or order refusing part and granting part of relief sought—R. S. C., 1883, Order LVII., r. 15.**

A judgment or order refusing part and granting part of the relief sought is not the "refusal of an application" within the meaning of Order LVIII., r. 15, so as to cause the time for appealing to run from the date of its making. *SHELFEY v. CITY OF LONDON ELECTRIC LIGHTING CO. MEUX'S BREWERY CO. v. THE SAME* (No. 1)

C. A. [1895] 1 Ch. 287; [1895] 2 Ch. 388

**50. — Time for appealing—Final or interlocutory order—Dismissal of action as frivolous—R. S. C., Order LVIII., r. 3; Order XXV., rr. 2, 3.**

On a point of law being raised that the statement of claim disclosed no cause of action, the Court dismissed the action with costs :—

*Held*, that the order was interlocutory, because the proceeding if given in favour of the plts. would have allowed the action to go on, whereas a final order is one made on such an application or proceeding that for whichever side the decision is given it will, if it stands, finally determine the matter in litigation. *SALAMAN v. WARNER*

C. A. [1891] 1 Q. B. 734

**51. — Time for appealing—Interlocutory order—Interpleader issue, judgment on—R. S. C., Order LVIII., r. 15; Order LVII., r. 13—An appeal from the.**

Decision of a judge on an interpleader issue tried by him without a jury must, under Order LVIII., r. 15, be brought within twenty-one days. *MCCNAIR & CO. v. AUDENSHAW PAINT AND COLOUR CO.* — C. A. [1891] 2 Q. B. 502

**52. — Time for appealing—Interlocutory order—Order or summons in administration action—****APPEAL—continued.**

*R. S. C., Order LVIII., r. 15—Rules of Nov. 1893.*

In an administration action by the order on further consideration subsequent further consideration was adjourned. Four months later, on a summons by the plts., certain annuities were declared to be charged on the residue :—

*Held*, that this was an interlocutory order, and must be appealed against within fourteen days of its being passed and entered. *In re GARDNER. LONG v. GARDNER* (No. 2)

C. A. [1894] W. N. 159

**53. — Time for appealing—Judgments perfected before new rule came into operation—R. S. C., 1883, Order LVIII., r. 15—R. S. C., 1893, r. 27.**

The amended rule of Nov., 1893, which substitutes fourteen days for twenty-one in case of appeal to C. A. from an interlocutory order, and "three months" for "one year" in other cases, does not apply to judgments perfected before Jan. 1, 1894, the day on which the amended rules came into force. *BUDGETT v. BUDGETT* (No. 1)

C. A. [1894] 2 Ch. 555

— Trade-mark.

See Cases under TRADE-MARK.

**54. — Trial without jury—Decision on facts—Rehearing.**

*Per Lopes L.J.* :—Where a case tried by a judge without a jury comes to the C. A., the presumption is that the decision of the Court below on the facts was right, and that presumption must be displaced by the appellant. If he satisfactorily makes out that the judge below was wrong, then, inasmuch as the appeal is in the nature of a rehearing, the decision should be reversed : if the case is left in doubt, it is clearly the duty of the C. A. not to disturb the decision of the Court below. *SAVAGE v. ADAM*

C. A. [1895] W. N. 109 (11)

Approved of by C. A. *Colonial Securities Trust Co. v. Massey*, [1896] 1 Q. B. 38.

Applicable. *Hindson v. Ashby*, C. A. [1896] 2 Ch. 1, 18.

**55. — Trial without jury—Rehearing in Court of Appeal—Decision of judge on facts—Weight to be given to decision.**

Where a case tried by a judge without a jury comes before the C. A., that Court will presume that the decision of the judge on the facts was right, and will not disturb it unless the appellant satisfactorily makes out that it was wrong (*per Lord Esher M.R. and Lopes L.J.*).

*Per Kay L.J.* : Under Order LVIII. the C. A. is bound to try the case and give the judgment which ought to have been given, though in a doubtful case the judgment of the Court below on the facts is entitled to great weight. *COLONIAL SECURITIES TRUST CO. v. MASSEY*

C. A. [1896] 1 Q. B. 38

Applicable. *Hindson v. Ashby*, C. A. [1896] 2 Ch. 1, 18.

**56. — Two judges—Power for two judges to hear appeals or motions, see Judicature Act, 1899 (62 Vict. c. 6).**

This was the first case heard before two judges of the C. A. under this Act. Before the

**APPEAL**—*continued.*

case was entered on the list for hearing before two judges, the necessary consent was filed under s. 1. That section reserves the same right of appeal to the H. L. as if the hearing and determination had been before three judges.

*In re HOPE. DE CETTO v. HOPE*

C. A. [1899] W. N. 113; [1899] 2 Ch. 679

— Undertaking by solicitor to repay costs in event of successful appeal.

See **SOLICITOR—Liability.** 96.

— Voters, Registration of.

See **PARLIAMENT—Franchise.** 30, 31.

**APPEARANCE**—Practice.

See **PRACTICE—Appearance.**

— Solicitors' right of.

See **SOLICITORS—Appearance.**

— Writ — Undertaking by solicitor to enter appearance—Duration.

See **PRACTICE—Undertaking.** 273.

**APPOINTMENT**—Arbitrator.

See **ARBITRATION—Arbitrator.** 7, 8.

— Assistant overseer—Right to rate-books.

See **PARISH COUNCIL.** 2.

— Auditor.

See **COMPANY—Audit.**

— Colonial trustee—Form of order.

See **SETTLED LAND—Trustees.** 129.

— Directors.

See **Cases under COMPANY—Directors.**

— Fishery officers—Conditions as to expenditure.

See **FISHERY.** 3.

— Jointure on second marriage—Dissolution of first marriage.

See **SETTLEMENT.** 28.

— Liquidator.

See **Cases under COMPANY—WINDING-UP—Liquidator.**

— New trustees.

See **Cases under TRUSTEE.**

— Power of appointment.

See **Cases under POWERS.**

— Probate practice.

See **Cases under PROBATE.**

— Receiver.

See **Cases under RECEIVER.**

— Recital — Estoppel — Construction of settlement.

See **SETTLEMENT—Validity.** 33.

— Settled land Acts.

See **Cases under SETTLED LAND.**

— Subsequent surrender of life interest—Estate duty.

See **REVENUE—Estate Duty.** 41, 42.

— Trustees.

See **TRUSTEE—Appointment.**

— Trustee in bankruptcy.

See **BANKRUPTCY—Trustee.** 241, 242.

**APPORTIONMENT**—Assets—Residue—Settled shares.

See **TRUSTEE.** 17.

— Assets—Specialty and simple contract debts—Crown debt.

See **EXECUTION—Insolvent Estate.** 38.

**APPORTIONMENT**—*continued.*

— Breach of trust—Mortgage of trust estate along with trustee's own property.

See **TRUSTEE—Breach of Trust.** 36.

— Contribution.

See **INSURANCE—Marine.** 47.

— Costs.

See **Cases under COSTS.**

— Dividends—Public company—Income or capital.

See **WILL.** 76.

— Dock charges and expenses—Contribution—Ship docked for repair of sea damage.

See **INSURANCE—Marine.** 47.

— Dock charges and expenses—Ship surveyed while in dock for Lloyd's classification.

See **INSURANCE—Marine.** 47.

— Estate duty.

See **REVENUE—Estate Duty.** 15—18.

— Mortgage.

See **MORTGAGE—Apportionment.**

— Partnership action—Costs.

See **COSTS—Apportionment.** 13.

— Paving, &c., expenses.

See **Cases under LONDON—Streets.**  
**STREETS.**

— Rates — Contribution for special purpose — County rate basis.

See **RATES—Rateability.** 16.

— Remuneration—Director—Qualifications shares.

See **COMPANY—Director.** 132.

— Rent in company winding-up.

See **COMPANY—WINDING-UP—Proof.** 209.

1. — *Rent, annuities, dividends, and other payments in the nature of income—Landlord and tenant—Rent payable in advance—Apportionment on eviction—Apportionment Act, 1870 (33 & 34 Vict. c. 35), s. 2.*

The plt. let a house to the deft. at a yearly rent payable quarterly in advance. By the terms of the agreement, if the rent should be in arrear for fourteen days, or on breach by the deft. of any of the clauses of the agreement, the plt. was to be at liberty to re-enter on giving notice. A quarter's rent being in arrear, the plt. gave the required notice, and re-entered. In an action to recover the unpaid rent:—

*Held*, that the Apportionment Act, 1870, does not apply to rent, annuities, dividends, and other payments in the nature of income, which have accrued due before the happening of the event by reason of which it is proposed to apply the Act; that the Act, therefore, does not apply to rent payable in advance; and that the plt. was entitled to recover the whole amount. **ELLIS v. ROWBOTHAM** — C. A. [1900] 1 Q. B. 740

— Rent-charge—Acreage or value.

See **RENT-CHARGE.** 1.

— Salvage.

See **SHIPPING—Salvage.** 223, 224.

— Sewering, expenses of—Streets.

See **SEWERS—Costs.** 20.

— Statutes of Limitations—Settlement.

See **LIMITATIONS, STATUTE OF.** 34.

**APPORTIONMENT**—*continued.*

— Tenant for life and remainderman.

See SETTLED LAND—**Apportionment**. 9, 11—15.

— Tithe—Order for removal of parish documents  
— Justices—Jurisdiction.

See PARISH COUNCIL—**Custody of Documents**. 1.

2. — *Will*—*Construction*—“*Whole income*”—*Apportionment Act*, 1870 (33 & 34 Vict. c. 35), s. 7.

A testator directed the whole of the income of stocks, out of which his wife was entitled to an annuity, should be paid to her during widowhood:—

*Held*, that he had expressly stipulated, within the meaning of s. 7 of the *Apportionment Act*, that the Act should not apply. *In re MEREDITH. STONE v. MEREDITH* North J. [1898] W. N. 48 (1)

**APPRENTICE**—*Breach of covenant by master.*

To an action for breach of covenant in an apprenticeship deed, to keep, teach and maintain the apprentice, it is a good defence that the apprentice, while in the master's service, was an habitual thief. *LEARROYD v. BROOK*

A. L. Smith J. [1891] 1 Q. B. 431

— Earnings of—Measure of compensation.

See MASTER AND SERVANT—**Compensation**. 21.

— Infant's benefit—Contract not for—Employers and Workmen Act, 1875.

See INFANT. 5.

2. — *Infant's benefit*—*Employers and Workmen Act*, 1875 (38 & 39 Vict. c. 90), ss. 5, 6.

A clause in an apprenticeship deed provided that the master need not pay wages to the apprentice (an infant) during any lock-out of his workmen, but gave liberty to the apprentice to get work elsewhere:—

*Held*, that the provision was so much to the detriment of the infant that the apprenticeship deed was not enforceable. *CORN v. MATTHEWS*

C. A. [1893] 1 Q. B. 310

Referred to by Div. Ct. *Green v. Thompson*. [1899] 2 Q. B. 1, 5.

3. — *Master a corporation.*

A contract of apprenticeship is not invalid by reason of the fact that the master to whom the apprentice is bound is a corporation. *BURNLEY EQUITABLE CO-OPERATIVE AND INDUSTRIAL SOCIETY, LD. v. CASSON* Div. Ct. [1891] 1 Q. B. 75

— Pauper children.

See POOR LAW—**Statutes and Orders**.

4. — *Payment of premium by infant apprentice.*

A covenant under seal was entered into by an infant, with the consent of his guardian, that he would pay what was held to be a reasonable premium, if he were taught the business to which he was apprenticed. The master sued the infant on the covenant:—

*Held*, that the infant was liable for necessary instruction duly provided as for ordinary necessities supplied, and that the covenant did not defeat such liability. *WALTER v. EVERARD*

C. A. [1891] 2 Q. B. 369

**APPRENTICE**—*continued.*

— Qualified lighterman.

See THAMES. 4.

**APPROPRIATION**—Annuity—Married women—Restraint on anticipation.

See ANNUITY. 8.

— Assets—Residue.

See EXECUTOR—**Powers**. 46.

— Bankrupt's pay or salary—Retired officer—Pension.

See BANKRUPTCY. 48.

1. — *Debtor and creditor*—*Payments*—*Right to appropriate*—*Intention of creditor*.

When a debtor pays money on account to his creditor and makes no appropriation to particular items, the creditor has the right of appropriation and may exercise the right up to the last moment, by action or otherwise; the application of the money is governed, not by any rigid rule of law, but by the intention of the creditor, expressed, implied or presumed. The rule in *Clayton's Case*, (1816) 1 Mer. 585, does not apply to a case where there is no account current between the parties, nor where from an account rendered or other circumstances it appears that the creditor intended, not to make any appropriation, but to reserve the right.

Decision of C. A. reversed. *CORY BROTHERS AND CO. v. OWNERS OF TURKISH STEAMSHIP "MECCA"* — H. L. (E.) [1897] A. C. 286

See also SHIPPING—**Necessaries**. 180.

Referred to by Byrne J. *Mutton v. Peat*, [1899] 2 Ch. 556, 560.

— Money as payment—Guarantee—Proof

See BANKRUPTCY—**Proof**. 172.

— Payments—Account.

See BANKER. 1.

— Payments—Partial ademption.

See WILL—**Ademption**. 18.

— To provide for deferred legacies.

See EXECUTOR. 1.

— Stockbroker—Clients' securities deposited to secure broker's indebtedness—Several accounts—Rights of owner of deposited securities.

See BANKER. 25.

**ARBITRATION.**

*Arbitration Act*, 1889 (52 & 53 Vict. c. 49) amends and consolidates the enactments relating to Arbitration.

*Local Government (Determination of Differences) Act*, 1896 (59 & 60 Vict. c. 9), amends certain provisions of the *Local Government Act*, 1888, with respect to the determination of differences by the Loc. Gov. Bd.

*Conciliation Act*, 1896 (59 & 60 Vict. c. 30) makes better provision for the prevention and settlement of trade disputes.

*Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37)—Rule as to appointment of new arbitrator under the *W. N. 1898* (Sept. 10), p. 315. As to fees. *W. N. 1898* (Dec. 17), p. 407. See *Current Index*, 1898, pp. cvil., cxxxix.

Generally, col. 51.

Agreement to Refer, col. 53.

Arbitrator, col. 53.

**ARBITRATION—continued.***Award*, col. 57.*Costs*, col. 61.*Official Referee*, col. 62.*Scottish Law*. See Cases under ARBITRATION.*Special Referee*, col. 63.*Staying Proceedings*, col. 65.*Submission*, col. 66.**Generally.**

— Agricultural Holdings Acts—Settlement of differences by arbitration and rules thereof.

See Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50), s. 2.

— Agricultural Holdings England Act, 1883.

See Cases under LANDLORD AND TENANT—Agricultural Holdings.

— Building Society.

See BUILDING SOCIETY—Arbitration.

— Charge for use of sidings—Right of action—Railway and Canal Traffic Act.

See RAILWAY—Sidings. 60.

— Drainage works—Remedy by arbitration.

See CANADA. 45.

— Differences between local authorities.

See LOCAL GOVERNMENT. 5.

— Inclosure Act—Presumption that bed of river ad medium filum passes.

See WATER. 41, 45.

1. — *Matter of account—Jurisdiction—Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 14 (c).

If the Court think that any part of a case does or may involve a matter of account, the whole case may be compulsorily referred under the Arbitration Act, 1889, s. 14 (c), although in certain events it may become unnecessary to determine the matter of account. *HURLBATT v. BARNETT & Co.* — C. A. [1893] 1 Q. B. 77

— Mayor's Court of London.

See LONDON—Mayor's Court. 43, 45.

— Partners.

See PARTNERSHIP—Arbitration.

2. — *Partnership—Dissolution.*

The question whether there ought to be a dissolution of partnership is one which ought not to be referred to arbitration, whether it is or is not strictly within the terms of the arbitration clause of the partnership articles. *TURNELL v. SANDERSON* — Kekewich J. [1891] W. N. 71

— Paving expenses—As to apportionment of paving expenses.

See STREETS—Paving, &c., Expenses. 21, 24.

3. — *Receiver—Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 4.

A partnership contract contained a clause for submission of disputes to arbitration. An action was brought for dissolution in which cross-motions were made for a receiver, and to stay all proceedings, under s. 4 of the Act of 1889, pending arbitration:—

*Held*, that although the application for a receiver could not be granted as of right, the

**ARBITRATION (Generally)—continued.**

Court had a discretion to appoint one, notwithstanding the arbitration clause. *PINI v. REX-CORONI* — Stirling J. [1892] 1 Ch. 633

— Salvage—Principles of assessment of award.

See SHIPPING—Salvage. 234.

4. — “*Step in the proceedings*”—*Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 4—R. S. C., Order XX., r. 1 (b).

A “step in the proceeding,” within s. 4 of the Arbitration Act, 1889, means some application to the Court by summons or motion, and does not include an application from one party to another. *IVES & BARKER v. WILLIAMS* Kekewich J. [1894] 1 Ch. 68; affirm. by C. A. [1894] 2 Ch. 478

Referred to by C. A. *Bartlett v. Ford's Hotel Co.*, [1895] 1 Q. B. 850, 852.

*Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 4—Order LXIV., r. 8.

Therefore (A) an application by letter, under Order LXIV., r. 8, for enlargement of time for putting in a defence is not such a “step.” *BRIGHTON MARINE PALACE AND PIER CO. v. WOODHORSE* — North J. [1893] 2 Ch. 486

Considered by Kekewich J. *Ives and Barker v. Williams*, [1894] 1 Ch. 68. This case was affirm. by C. A., [1894] 2 Ch. 478.

Approved of by C. A. *Bartlett v. Ford's Hotel Co.*, [1895] 1 Q. B. 850, 852.

Referred to by Stirling J. *Zalínoff v. Hammond*, [1898] 2 Ch. 92, 95.

Nor (B) is the requiring the delivery of a statement of claim. *IVES & BARKER v. WILLIAMS*, *supra*.

And (c) so is an application for leave to administer interrogatories. *CHAPPELL v. NORTH* Div. Ct. [1891] 2 Q. B. 252

Considered by Kekewich J. *Ives and Barker v. Williams*, [1894] 1 Ch. 68; affirmed by C. A., [1894] 2 Ch. 478.

Referred to by C. A. *Bartlett v. Ford's Hotel Co.*, [1895] 1 Q. B. 850, 851.

5. — “*Step in the proceedings*”—*Application for extension of time—Arbitration Act*, 1889 (c. 49), s. 4—*Appeal to House of Lords—Leave to appeal—Practice—Procedure—Supreme Court of Judicature (Procedure) Act*, 1894 (c. 16), s. 1, sub-s. 1—*Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 4—*Supreme Court of Judicature (Procedure) Act*, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 1.

Where a defendant takes out a summons and obtains an order for further time for delivering his defence, he “takes a step in the proceedings” within the meaning of the Arbitration Act, 1889, s. 4, and is not afterwards entitled to apply under that section for a stay on the ground that the proceedings were brought in respect of a matter agreed to be referred.

Decision of the C. A. ([1895] 1 Q. B. 850) affirmed.

The Supreme Court of Judicature (Procedure) Act, 1894, s. 1, sub-s. 1, which enacts that no appeal shall lie, without the leave of the judge or of the C. A., from certain interlocutory orders or judgments made by a judge, has no application to appeals to the H. L. from the C. A., and

**ARBITRATION (Generally)—continued.**

does not affect the Appellate Jurisdiction Act, 1876, s. 3. *FORD'S HOTEL CO. v. BARTLETT*

**H. L. (E.) [1896] A. C. 1**

Referred to by *Stirling J. Zalinoff v. Hammond*, [1898] 2 Ch. 92, 95.

— Workmen's Compensation Act.

See Cases under MASTER AND SERVANT.

**Agreement to Refer.**

— Power to expel partner—Validity of notice.

See PARTNERSHIP—Arbitration. 9.

**6. — Practice—Contract for employment—Wrongful dismissal—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**

A contract for the employment of the plt. by the defts. for five years provided, among other things, that the defts. might dismiss the plt., if he were guilty of gross misconduct, and that, if any dispute should arise between the defts. and the plt. touching their or his rights or liabilities under the contract, it should be referred to arbitration. The defts. dismissed the plt. on the ground of alleged misconduct, and the plt. thereupon brought an action against the defendants claiming damages for wrongful dismissal:—

*Held*, that the dispute was within the terms of the arbitration clause in the contract, and that reference of the plt.'s claim to arbitration should be enforced under the Arbitration Act, 1889, s. 4.

*Davis v. Starr*, (1889) 41 Ch. D. 242, distinguished. *RENSHAW v. QUEEN ANNE RESIDENTIAL MANSIONS AND HOTEL CO.*

**C. A. [1897] 1 Q. B. 662**

Followed. *Parry v. Liverpool Malt Co.*, C. A. [1900] 1 Q. B. 339, 343.

**Arbitrator.**

— Appointment—Refusal of party to appoint—Jurisdiction of Court to stay action.

See ARBITRATION—Staying Proceedings. 59.

**7. — Appointment by Court—Fresh arbitrator—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 5 (b).**

A contract made before the commencement of the Arbitration Act, 1889, provided for reference of all differences to a standing referee, or failing him to a person to be named by a person specified in the contract. It was afterwards agreed that the arbitration should be conducted according to the Act of 1889. The arbitrator made an award and left the country. During his absence, further differences having arisen, one of the parties applied to the person specified in the contract to appoint another arbitrator, which was done. The person named objected to act without a judge's order, which was granted, not to take effect if the original arbitrator should return by a certain day. He did not return till later:—

*Held*, that the case was not one where an appointed arbitrator refused to act or was incapable of acting within s. 5 (b) of the Arbitration Act, 1889, and therefore that there was no jurisdiction to make an order appointing a fresh arbitrator. *In re WILSON & SON AND THE EASTERN COUNTIES NAVIGATION AND TRANSPORT CO.*

**Div. Ct. [1892] 1 Q. B. 81**

**ARBITRATION (Arbitrator)—continued.**

**8. — Appointment by Court—Notice to concur—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 5.**

One of the parties to an agreement to submit differences to a single arbitrator refused to concur in an appointment, after being served with a written notice "to concur in the appointment of a sole arbitrator in the matter":—

*Held*, that the notice being sufficient, the Court was bound on application to appoint an arbitrator. As a general rule, where the conditions exist under which s. 5 of the Arbitration Act, 1889, is applicable, the Court has no discretion to refuse to appoint an arbitrator, the word "may" in the section being equivalent to "must" *In re EYRE AND LEICESTER CORPORATION*  
**C. A. [1892] 1 Q. B. 136**

**9. — Arbitrator functus officio—Power to remit matters referred—Practice—Arbitration Act, 1889, (52 & 53 Vict. c. 49), s. 10.**

The Court has power under s. 10 of the Arbitration Act, 1889, to remit the matters referred to the reconsideration of the arbitrator, even although the arbitrator be functus officio. *In re STRINGER AND RILEY BROTHERS*

**Div. Ct. [1900] W. N. 240;**

see [1901] 1 Q. B. 105

**10. — Commission to examine witnesses—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100; Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 1; R. S. C., Order XXXVII., r. 5.**

There is no power under Order XXXVII., r. 5, to direct the issue of a commission for the examination of witnesses in a matter referred to arbitration under an agreement, unless an action is also pending in reference to the same dispute. *In re SHAW & RONALDSON*

**Div. Ct. [1892] 1 Q. B. 91**

**11. — Disqualification—Bias.**

An arbitrator named in a reference is not disqualified merely because circumstances may exist or arise such as to cause a suspicion of bias.

A contract provided that all disputes arising thereout should be decided by a certain barrister. Disputes arose in which one party alleged misconduct, affecting fulfilment of the contract, on the part of the representative of a firm of solicitors. An action to stay arbitration before the barrister on the ground that he had intimate professional relations with the solicitors, held untenable. *BRIGHT v. RIVER PLATE CONSTRUCTION CO. Cozens-Hardy J.* [1900] W. N. 153;  
**[1900] 2 Ch. 835**

**12. — Disqualification on ground of bias—Named arbitrator—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4—R. S. C., 1883, Order XV., r. 1 (b).**

An arbitration clause referring disputes to the engineer of one party cannot be disregarded on the ground that the engineer is in substance a judge in his own case, unless there is sufficient reason to suspect that he will act unfairly. Judgment of *Kekewich J.*, [1894] 1 Ch. 68, affirmed. *IVES & BARKER v. WILLANS*

**C. A. [1894] 2 Ch. 478**

Referred to by *C. A. Bartlett v. Ford's Hotel Co.*, [1895] 1 Q. B. 850, 852.

**ARBITRATION (Arbitrator)—continued.****13. — Disqualification on ground of bias—Named arbitrator.**

The rule that a judge ought not to hear cases in which he might be suspected of bias in favour of one of the parties, does not apply to an arbitrator named by the parties in a contract under which all disputes are to be referred to him. To disqualify such an arbitrator at least a probability of bias must be shewn. Where such an arbitrator is a servant of one of the parties, he is not disqualified by the fact that he may have to decide whether he himself acted with due skill. *EOCKESLEY v. MERSEY DOCKS AND HARBOUR BOARD* C. A. [1894] 2 Q. B. 667

Followed. *Bright v. River Plate Construction Co.*, [1900] 2 Ch. 835, 838.

— Jurisdiction—Charge for use of railway sidings.

See RAILWAY—Sidings. 62.

**14. — Jurisdiction—Construction of contract.**

*Held*, that the question raised, being one as to the construction of the contract, was within the reference, and that the award could not be recalled. *HOLMES OIL Co. v. PUMPHERSTON OIL Co.* H. L. (Sc.) [1891] W. N. 142

**15. — Jurisdiction—Construction of contract.**

By a contract for building a ry. the contractors were to be liable to pay liquidated damages as compensation for loss of profits if the line were not complete by a day named. The contract contained an arbitration clause as to all differences arising under it. Disputes arose as to delay, and an arbitration was held:—

*Held*, that the award was good on the face of it, and that the arbitrator had jurisdiction to construe the building contract. Decision of Ct. of Sess., (1889) 16 R. 843, affirmed. *ADAMS v. GREAT NORTH OF SCOTLAND Ry. Co.*

H. L. (Sc.) [1891] A. C. 31

Referred to by H. L. (Sc.). *Caledonian Ry. Co. v. Turcan*, [1898] A. C. 256, 262.

**16. — Misconduct of arbitrator—Evidence.**

Evidence of an admission out of Court that the arbitrator made his award improperly (e.g., by collusion or in consequence of a bribe) is not admissible in support of an application to set aside the award. The evidence of the arbitrator himself on the matter must be before the Court. *In re WHITELEY AND ROBERTS' ARBITRATION*

*Kekewich J.* [1891] 1 Ch. 558

**17. — Misconduct of arbitrator—Fraud.**

Parties to a contract may lawfully agree that the question of fraud on the part of an arbitrator on differences arising under the contract shall not be raised by either of them. *TULLIS v. JACSON*

*Chitty J.* [1892] 3 Ch. 441

**18. — Misconduct of arbitrator—Jurisdiction of justices—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 22.**

In an arbitration between a member of a friendly society and the society, the arbitrators excluded the claimant from the room during the examination of two witnesses, and gave him no opportunity of cross-examining them. By one of the rules of the society, "where no decision is made on a dispute within forty days of applica-

**ARBITRATION (Arbitrator)—continued.**

tion for reference to arbitration, the member may apply to a Court of summary jurisdiction":—

*Held*, that, as the arbitrators had given a decision which was valid until set aside the jurisdiction of justices to hear the complaint did not arise. *BACHE v. BILLINGHAM*

C. A. [1894] 1 Q. B. 107

See 59 & 60 Vict. c. 25, s. 68, sub-s. 6.

**19. — Umpire—Misconduct—Bias.**

It is not necessarily an objection on the ground of bias to the award of an umpire in an arbitration under the Lands Clauses Consolidation Acts to determine the value of land compulsorily taken that, during the pendency of the arbitration and before making his award, he has given evidence on behalf of one of the parties in another inquiry as to the value of other land taken for the same purposes and under the same parliamentary powers. *In re AN ARBITRATION BETWEEN HAIGH AND L. AND N. W. AND G. W. Ry. Cos.*

[1896] 1 Q. B. 649

**20. — Unfitness of arbitrator—Injunction.**

The deft., in pursuance of a clause in the contract, referred a question between them and their contractor to arbitration, and chose their engineer as arbitrator. The matter in dispute had already come under the notice of the engineer in the course of his duties, and he had expressed an opinion adverse to the contractor. The engineer again wrote to the contractor reiterating the opinion he had before expressed:—

*Held*, that the engineer was not disqualified by what had passed from acting as arbitrator. Whether, in any case there was jurisdiction to grant an injunction to restrain the deft. from proceeding with the arbitration, *quære*. *JACKSON v. BARRY Ry. Co.* C. A. [1893] 1 Ch. 238

Referred to by C. A. *Ives and Barker v. Willans*, [1894] 2 Ch. 478, 490.

**21. — Unnamed arbitrators—Reference to—Scottish law—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**

*Semble*, per Lord Watson, that the rule of Scottish law that a reference to arbitrators not named cannot be enforced has been so largely trenchoned on by recent legislation that the policy upon which it was originally based can hardly be now regarded as of cardinal importance. Decision of Ct. of Sess., *Talisker Distillery v. Hamlyn & Co.*, (1893), 21 R. 204, reversed. *HAMLYN & Co. v. TALISKER DISTILLERY*

H. L. (Sc.) [1894] A. C. 202, at p. 214

See *South African Breweries, Ltd. v. King*, [1899] 2 Ch. 173, 177; C. A. [1900] 1 Ch. 273.

**22. — Unnamed arbitrators—Reference—Condition precedent to cause of action—Scottish law.**

A policy of insurance provided for reference of disputes to arbitrators to be chosen by the parties so that no action should be brought until an award had been obtained:—

*Held*, that as no cause of action accrued on the policy till an award was made, the contract was excepted from the rule of Scottish law that a reference to unnamed arbitrators cannot be enforced. Decision of Ct. of Sess., *Gilmour v. Caledonian Insurance Co.*, (1891) 18 R. 1219,

**ARBITRATION (Arbitrator)—continued.**

reversed. *CALEDONIAN INSURANCE Co. v. GILMOUR* - H. L. (Sc.) [1893] A. C. 85

And see now Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13).

**Award.**

— Agricultural holdings—Award to landlord of amount in excess of tenant's claim—Enforcement of award.

See **LANDLORD AND TENANT**. 7.

23. — (A.) *Appeal—Special case—Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 19.

No appeal lies from the decision of the Div. Ct. on a special case stated by an arbitrator under s. 19 of the Act of 1889 for the purpose of obtaining the opinion of the Court for his guidance; the jurisdiction of the High Court under that s. being consultative. Except so far as there may be power under s. 20 of the Act to impose terms as to costs on making an order for the statement of a special case, the Court has no power to make an order as to the costs of a special case under s. 19. *In re KNIGHT AND TABERNACLE PERMANENT BUILDING SOCIETY*

C. A. [1892] 2 Q. B. 613;

H. L. (E.) [1892] A. C. 298

Distinguished by C. A. See next Case.

See now Supreme Court of Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1.

(B.) But where an arbitrator has made an award in the form of a special case for the opinion of the Court, an appeal lies to the C. A. from the judgment of a Div. Ct. *In re KIRKLEATHAM LOCAL BOARD AND STOCKTON AND MIDDLEBOROUGH WATER BOARD*

C. A. [1893] 1 Q. B. 375

This case was affirmed by H. L. (E.) *sub nom. Stockton and Middlesbrough Water Board v. Kirkleatham Local Board*, [1893] A. C. 444.

24. — *Appeal—Special case stated during the arbitration.*

Where an arbitrator states a special case on a point of law arising in the course of the reference, no appeal lies to the C. A. from the judgment of a Div. Ct. *In re KNIGHT AND TABERNACLE PERMANENT BUILDING SOCIETY (No. 2)*

C. A. [1891] 2 Q. B. 63

This case was affirmed by H. L. (E.) *sub nom. Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 298.

See now Building Societies Act, [1894] (57 & 58 Vict. c. 47), s. 20.

— Costs.

See **ARBITRATION—Costs**.

— Enforcement of.

See **SEWERS**. 21.

— Evidence—admissibility of parol evidence.

See **FRAUDS, STATUTE OF**. 23.

— Evidence—Preparing false, for submission to arbitrators—Fabricating evidence.

See **CRIMINAL LAW**. 19.

25. — *Evidence, Admissibility of extrinsic.*

Where the award is in the express and distinct words of the reference, and the words are

**ARBITRATION (Award)—continued.**

not ambiguous, it is not competent to enter upon inquiry whether the arbitrator understood the whole scope of his award. Appeal dismissed with costs. *Great North of Scotland Ry. Co. v. Highland Ry. Co.*, (1895), 32 S. L. R. 275. *HIGHLAND Ry. Co. v. GREAT NORTH OF SCOTLAND Ry. Co.*

H. L. (Sc.) [1896] W. N. 77 (1).

— Execution—Act of Bankruptcy.

See **BANKRUPTCY—Act of Bankruptcy**. 5.

— Finality of Scottish award—Right of one tenant in common.

See **LANDS CLAUSES ACTS**. 9.

— Principles of assessment—Salvage—Salvaging vessels specially equipped.

See **SHIPPING—Salvage**. 221.

26. — *Award—Housing of the Working Classes Act.*

There is no right of appeal to the C. A. from the refusal by a judge in chambers to give leave to appeal from an arbitrator to a jury under Sch. II., cl. 26, of the Housing of the Working Classes Act, 1890. Decision of Div. Ct., [1892] 1 Q. B. 394, affirmed. *In re HOUSING OF THE WORKING CLASSES ACT, 1890. Ex parte STEVENSON* - C. A. [1892] 1 Q. B. 609

27. — *Lump sum—Evidence taken on matters not referred—Jurisdiction of arbitrators—Laws of Victoria.*

In an action upon an award the defts. pleaded that the lump sum awarded included matters, claims, and demands in respect of which the arbitrators had no jurisdiction, as not having been referable to them under the terms of the contract between the parties:—

*Held*, that, as it appeared that the matters actually referred were those contained in the submission, the award was not bad (1) on the face of it by reason that it did not state that matters not referred had been rejected from consideration; (2) because the arbitrators had taken evidence on matters not referred, but not shewn to have been irrelevant to the inquiry, or to have been included in the award of the lump sum.

The defts. having counter-claimed in respect of liquidated damages for delays not allowed in writing by their engineer-in-chief:—

*Held*, that the counter-claim must be disallowed, for the refusal to allow delays was itself by the terms of the contract subject to arbitration, and a final award was by the same terms competent without sending the matter back to the engineer. *FALKINGHAM v. VICTORIAN RAILWAYS COMMISSIONER* - P. C. [1900] A. C. 452

— Minerals—Notice of intention to work—Compensation—Duty of company to take up award.

See **RAILWAY—Minerals**. 11.

28. — *Reference to three arbitrators—Award signed by two only—Validity of award.*

Where a matter in dispute is referred to the decision of three arbitrators, all three must concur in the making of the award; an award made by two of them only is bad.

An agreement to refer disputes to arbitration provided for a reference to "the decision of one or of three disinterested arbitrators as mutually agreed," and that if three arbitrators were

**ARBITRATION (Award)—continued.**

appointed one should be nominated by each of the parties, and the third by the two so nominated. Three arbitrators having been duly nominated and having entered upon the reference, two of them made an award from which the third dissented:—

*Held*, that the award was invalid. **UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION v. HOUSTON & CO.**

**Mathew J. [1896] 1 Q. B. 567**

**29. — Remittal to arbitrator—Fresh evidence**—*Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 10.*

Under s. 10 of the Arbitration Act, 1889, the Court or judge has power to remit an award to the arbitrator for reconsideration, if it appear that fresh and material evidence has been discovered since the award which might have affected the arbitrator's decision. *In re KEIGHLEY, MAXSTED & CO. AND DURANT & CO.*

**C. A. [1893] 1 Q. B. 405**

Referred to by C. A. *In re Palmer & Co. v. Hosken & Co.*, [1898] 1 Q. B. 131, 137.

**30. — Setting aside—Fraud of arbitrator.**

It is lawful for the parties to a building contract to agree that the question of fraud on the part of the arbitrator shall not be raised by either of them. **TULLIS v. JACSON - Chitty J. [1892] 3 Ch. 441**

**31. — Setting aside—Jurisdiction—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 14, 15.**

In an action an order by consent was made for the reference of all matters in difference to arbitration and not merely "the whole cause or matter":—

*Held*, that the Court had no jurisdiction to review the findings of the arbitrator. The jurisdiction to review given by s. 15 of the Arbitration Act, 1889, refers to references which are or could be made under the statutory power given by s. 14, and not to references which from their extended scope can only be made by consent. **DARLINGTON WAGON CO. v. HARDING AND TROUVILLE PIER AND STEAMBOAT CO. - C. A. [1891] 1 Q. B. 245**

**32. — Setting aside—Misconduct of arbitrator—Evidence.**

Claim to have an award set aside on the ground that the arbitrator had admitted before witnesses that he had acted improperly:—

*Held*, that the Court could not set aside the award without hearing the evidence of the arbitrator himself. *In re WHITELEY AND ROBERTS'S ARBITRATION - Kekewich J. [1891] 1 Ch. 558*

**33. — Setting aside—Statement of special case—Right to apply to Court—Reconsideration of award—Duty of arbitrator—Misconduct—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 10, 11, 19.**

Sect. 19 of the Arbitration Act, 1889, impliedly confers on a party to an arbitration the right, at any stage of the proceedings, to apply to the Court for an order directing the arbitrator to state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

If a party to an arbitration, acting *bonâ fide*, requests the arbitrator on reasonable grounds

**ARBITRATION (Award)—continued.**

either to state a special case for the opinion of the Court upon some questions so arising and material for consideration, or to delay his award until the party can himself apply to the Court for an order directing a special case, and the arbitrator refuses to comply with the request, or by summarily making his award attempts to preclude the party from applying, the arbitrator is *prima facie* guilty of a breach of duty towards that party. But if the application is frivolous and made merely for the purpose of delay, the arbitrator will be right in refusing it, and will be upheld by the Court if he does so.

A breach of duty of this character is *prima facie* misconduct on the part of an arbitrator within the meaning of s. 11 of the Act of 1889, and justifies the Court, even after an award has been completed, in setting it aside under s. 11, sub-s. 2, or in remitting it for reconsideration under s. 10, sub-s. 1.

This view of the law is consistent with *Dinn v. Blake*, (1875) L. R. 10 C. P. 383, and *In re Keighley, Maxsted & Co. and Durant & Co.*, [1893] 1 Q. B. 405.

In this case, on the ground of misconduct of that character by the arbitrators, a completed award was remitted to them with a direction that they should reconsider it, and state whether there was a deficiency in the quantity of a cargo of wheat delivered at a port of discharge, and, if there was, then to state a special case. *In re PALMER & CO. AND HOSKEN AND CO.*

**C. A. [1897] W. N. 156 (3); [1898] 1 Q. B. 131**—Special case—Appeal.

*See preceding Case.*

**34. — Special case — Order for statement pending arbitration—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 19.**

It is no bar to the right to apply for a direction to an arbitrator to state, in the form of a special case for the opinion of the Court, a question of law arising in the course of the reference, that the arbitrator has expressed no opinion adverse to the party making the application. *In re SPILLERS & BAKER AND LEETHAM & SONS*

**C. A. [1897] 1 Q. B. 312**

**35. — Stating case — Building society—Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 36—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 19, 24.**

The power given to the Court by the Arbitration Act, 1889, s. 19, to order an arbitrator to state in the form of a special case for the opinion of the Court, any question of law arising in the course of the reference, applies to arbitrations under the Buildings Societies Act, 1874. **KNIGHT v. TABERNACLE PERMANENT BUILDING SOCIETY**

**C. A. [1891] 2 Q. B. 63; affirm. by H. L. (E.) [1892] A. C. 298**

*But see now Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 20.*

—Taking up award—Duty of company to take up—Minerals—Notice of intention to work.

*See RAILWAY—Minerals. 11.*

**36. — Time, extension of, for making award—Jurisdiction of Court or judge—Arbitration Act,**



**ARBITRATION (Award)—continued.**

1889 (52 & 53 *Vict. c. 49*), ss. 9, 21—*Public Health Act*, 1875 (38 & 39 *Vict. c. 55*), s. 180, sub-s. 9.

Sect. 180, sub-s. 9, of the *Public Health Act*, 1875, which enacts that the time for making an award by arbitrators or an umpire under that Act shall not in any case be extended beyond the period of two months from the date of the submission to arbitration or the date of the reference of the matters to the umpire respectively, deals only with the power of the arbitrators or umpire to extend the time, and does not affect the jurisdiction of the Court. Under s. 9 of the *Arbitration Act*, 1889, the Court or a judge has jurisdiction to extend the time for making an award under the *Public Health Act*, 1875, although the time for making the award has expired.

*In re Mackenzie and Ascot Gas Co.*, (1886) 17 Q. B. D. 114, overruled.

*Warburton v. Haslingden Local Board*, (1879) 48 L. J. (Q.B.) 451, approved. *KNOWLES & SONS, L.D. v. BOLTON CORPORATION* — C. A. [1900]

W. N. 73; [1900] 2 Q. B. 253

— Time for making award—Arbitrators “called on to act”—Notice to appoint umpire. *See COMPANY—WINDING-UP*. 1.

— Unwholesome meat—Findings of arbitrator—Costs of summons. *See CORPORATION*. 27.

**Costs.**

— “Full compensation”—*Public Health Act*. *See COSTS—Taxation*. 76.

**37. — Jurisdiction of arbitrator—***Arbitration Act*, 1889 (52 & 53 *Vict. c. 49*), ss. 2, 25, 26.

In an arbitration, commenced after the commencement of the *Arbitration Act*, 1889, under a submission entered into before that date, which is silent as to costs, the arbitrators have power to award costs. The whole Act, including the schedules, applies to arbitrations commenced before the Act came into force in so far as the contract to refer is not inconsistent with such application. *In re WILLIAMS and STEPNEY*

C. A. [1891] 2 Q. B. 257, *revers.*  
Div. Ct. [1891] 1 Q. B. 700

Distinguished by Div. Ct. *In re Wilson & Son and Eastern Counties Navigation & Transport Co.*, [1892] 1 Q. B. 81.

— Costs—Offer made by company.

*See LANDS CLAUSES ACTS—Costs*. 14.

— Reference—Costs—Limitation of liability. *See SHIPPING*. 97.

**38. — Reference of action to arbitrator—Costs of reference, whether taxable on High or County Court scale—Reference whether by consent or compulsory—Practice—***Order LXV.*, r. 12—*Arbitration Act*, 1889 (52 & 53 *Vict. c. 49*), ss. 14, 15.

An action of contract was referred by order of a district registrar, on the ground that it involved matters of account, to an arbitrator agreed on by the parties, and the order of reference provided that the costs of the action should abide the event of the award and the costs of the reference and award should be in the discretion of the arbitrator. The arbitrator awarded that an amount less than 50*l.* was due from the deft. to

**ARBITRATION (Costs)—continued.**

the plt., and that the deft. should pay to the plt. his costs of the reference and award:—

*Held*, that the plt. was entitled to have the costs of the reference taxed on the High Court scale.

*Moore v. Watson*, (1867) L. R. 2 C. P. 314, disapproved of. *STREET v. STREET*

C. A. [1800] W. N. 86; [1900] 2 Q. B. 57 — Special case stated by arbitrator.

*See LANDS CLAUSES ACTS*. 10.

**39. — Taxation of costs of award—***Arbitration Act*, 1889 (52 & 53 *Vict. c. 49*), s. 2, *Sched. I. (i.)*.

Under s. 2 of the *Arbitration Act*, 1889, the amount of the costs must be stated in the award, otherwise the costs (including the arbitrator's fees, &c.), are liable to taxation in the ordinary course. *In re PREBBLE and ROBINSON*

Div. Ct. [1892] 2 Q. B. 602

**40. — Taxation of costs of award.**

*Semble*, that the making of an award and its remission to the arbitrator for reconsideration may be treated as breaks in protracted arbitration proceedings, upon the occurrence of which the solicitor may send in such a bill of costs to his client as to amount to a separate bill. *In re ROMER and HASLAM* C. A. [1893] 2 Q. B. 286

**Official Referee.**

*Order XXXVI.*, rr. 45–55 *c.*, relate to official referees.

**41. — Appeal.**

The *Judicature Act*, 1890 (53 & 54 *Vict. c. 44*), s. 1, only applies to motions for new trials in cases tried with a jury. In a case tried before an official referee, the motion must be made to a Div. Ct. *GOWER v. TOBITT*

C. A. [1891] W. N. 6

**42. — Appeal from Order of Divisional Court—***Judicature Acts*, 1873 (36 & 37 *Vict. c. 66*), s. 45; 1884 (47 & 48 *Vict. c. 61*), s. 8—*Arbitration Act*, 1889 (52 & 53 *Vict. c. 49*), s. 14.

Where an Order has been made under s. 14 of the *Arbitration Act*, 1889, that the whole cause or matter, or any question or issue of fact arising therein, shall be tried before an official referee, no leave to appeal is required from an Order of the Div. Ct. on an application made to the Court to review the decision of the official referee. *MUNDAY v. NORTON*

C. A. [1892] 1 Q. B. 403

**43. — Commission to examine witnesses abroad.**

An official referee, to whom an action is referred for trial, has jurisdiction to make an order granting a commission to examine witnesses abroad, and a judge at chambers has jurisdiction to review the decision of the official referee granting or refusing such an order. *HAYWARD v. MUTUAL RESERVE ASSOCIATION*

Div. Ct. [1891] 2 Q. B. 236

— Company—Law of New South Wales.

*See NEW SOUTH WALES*. 6.

— New trial—Appeal.

*See PRACTICE—New Trial*. 46, 47.

**44. — Report—Motion for judgment—***R. S. C. Order XL.*, r. 7; *Order XXXVI.*, rr. 54, 55—*Arbitration Act*, 1889 (52 & 53 *Vict. c. 49*), ss. 13, 15.

An action to restrain a nuisance was referred

**ARBITRATION (Official Referee)—continued.**

to an official referee for inquiry and report. The official referee reported that no nuisance existed:—

*Held*, that debts. could move, under Order XL, r. 7, for judgment dismissing the action with costs, and that an eight days' notice under Order XXXVI, r. 55, was not necessary. **LARKIN v. LLOYD** - **Kekewich J. [1891] W. N. 71**

45. — *Report—Notice of motion to vary—Form of notice—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 15—R. S. C., Order XXXVI, r. 54; Order LII, r. 4.*

In an action to restrain threats under the Patents, Designs, and Trade Marks Act, the official referee assessed the damages; on further consideration deft. moved to vary the report so as to find that plt. was not entitled to damages:—

*Held*, that the notice of motion was sufficient under Order XXXVI, r. 54, and that that rule was independent of Order LII, r. 4, relating to awards. **SCHIEDGES v. WILLIAMS**

**Kekewich J. [1893] W. N. 158**

46. — *Report—Power of Court to go into evidence used for purposes of—R. S. C., 1883, Order XXXVI, r. 54.*

Where the official receiver has made his report on accounts and inquiries directed by a judgment and no motion has been made to vary his report, the Court cannot go into the evidence which was before him. *In re FITTON*. **HARDY v. FITTON** - **Stirling J. [1893] W. N. 201**

— Taking accounts before official referee—Practice

See FRAUDS, STATUTE OF. 23.

— Title under Bankruptcy Act, 1883—"Conveyance"—Registration in Middlesex. See BANKRUPTCY. 193.

— Trial before official referee—Application to Divisional Court—Leave to appeal. See APPEAL. 38.

**Special Referee.**

*Order XXXVI, rr. 48–55c, relate to proceedings before a special referee.*

47. — *Commission to examine witnesses abroad—R. S. C., Order XXXVI, r. 5—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 1.*

On a reference by consent out of Court the Court has no jurisdiction to issue a commission to examine witnesses abroad. *In re SHAW and RONALDSON* - **Div. Ct. [1892] 1 Q. B. 91**

48. — *Inspection of property—Jurisdiction—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 14, 15—R. S. C., Order XXXVI, r. 50; Order L, r. 3.*

The Court has still jurisdiction to make an order to inspect property, the subject of a reference or arbitration, notwithstanding the reference or arbitration, but the more convenient course is to apply in the first instance to the referee or arbitrator, and not to the judge in chambers. **MACALPINE & Co v. CALDER & Co.**

**C. A. [1893] 1 Q. B. 545**

49. — *Matter of account—Jurisdiction—Arbitration Act, 1889 (52 & 53 Vict. c. 44), s. 14 (c).*

If the Court think that any part of a case

**ARBITRATION (Special Referee)—continued.**

does or may involve a matter of account, the whole case may be compulsorily referred under the Arbitration Act, 1889, s. 14 (c), although in certain events it may become unnecessary to determine the matter of account. **HURLBATT v. BARNETT & Co.** - **C. A. [1893] 1 Q. B. 77**

*Order LII, r. 2, relates to motions to enforce the award of a special referee.*

50. — *Report—Motion to vary—Rejection of evidence.*

A motion to vary the report of a special referee for rejection of evidence can succeed only where substantial wrong has been done by rejecting the evidence. *In re MAPLIN SANDS*

**Kekewich J. [1894] W. N. 141; affirmed by C. A. [1894] W. N. 184**

And see ARBITRATION, *passim*.

51. — *Action excluded till arbitration—Reference to arbitrators not named.*

By a policy of insurance against fire, differences between the parties were to be referred as they arose to arbitrators then to be named, and it was expressly declared such reference, and that obtaining on award, should be a condition precedent to the commencement of any action on the policy:—

*Held*, (1) that the condition to ascertain the damage by arbitration was an integral part of the contract of indemnity under the policy, and was a condition precedent to the bringing of any action on the policy; (2) that the contract could be enforced, notwithstanding the reference was to unnamed arbitrators, as the cause of action did not arise until after the arbitration. **CALEDONIAN INSURANCE Co. v. GILMOUR** - **H. L. (Sc.) [1893] A. C. 85**

See now Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13).

— Finality of Scottish award—Right of one tenant in common.

See LANDS CLAUSES ACTS—Compensation. 9.

52. — *Reduction of decree arbitral—Jurisdiction of arbitrator—Construction.*

*Held*, that the question raised, being one as to the construction of the contract, was within the reference, and that the award could not be recalled. Decision of Ct. of Sess., (1890) 17 R. 624, affirmed. **HOLMES OIL Co. v. PUMPHREYSTON OIL Co.** - **H. L. (Sc.) [1891] W. N. 142**

53. — *Reduction of decree arbitral—Jurisdiction of arbitrator—Constructive corruption of arbitrator—Scots Act of Regulations, 1895, s. 25.*

The word "corruption" in the Scots Act of Regulations, 1895, s. 25, is used in its ordinary sense, and does not include irregular conduct by the arbitrator without any corrupt motive.

By a contract for building a ry. the contractors were to be liable to pay liquidated damages as compensation for loss of profits if the line were not complete by a day named. The contract contained an arbitration clause as to all differences arising under it. Disputes arose and an arbitration was held:—

*Held*, that the award was good on the face of

**ARBITRATION (Special Referee)—continued.**

it, and that the arbitrator had jurisdiction to construe the building contract. Decision of Ct. of Sess., (1889) 16 R. 843, affirmed. *ADAMS v. GREAT NORTH OF SCOTLAND RY. CO.*

H. L. (Sc.) [1891] A. C. 31

**54. — Unnamed arbitrator—Reference to.**

*Semble*, per Lord Watson, that the rule of Scottish law that a reference to arbitrators not named cannot be enforced has been so largely trenched on by recent legislation that the policy upon which it was originally based could hardly be now regarded as of cardinal importance. Decision of Ct. of Sess., *Talisker Distillery v. Hamlyn & Co.*, (1893) 21 R. 204, reversed. *HAMLYN & CO. v. TALISKER DISTILLERY*

H. L. (Sc.) [1894] A. C. 202, at p. 214

Principle in, applied by Kekewich J. *South African Breweries, Ltd. v. King*, [1899] 2 Ch. 173; C. A. [1900] 1 Ch. 273.

See Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13).

**Staying Proceedings.****55. — Action impeaching contract—Injunction—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 8.**

The Court has jurisdiction to interfere by injunction on equitable grounds to restrain the deft. from proceeding to arbitration where an action has been brought impeaching the instrument containing the agreement for reference. Sect. 25, sub-s. 8, of the Judicature Act, 1873, has not enlarged the jurisdiction of the Court so as to enable it to grant an injunction where, before the Act, it could not have done so. *KITTS v. MOORE*

C. A. [1895] 1 Q. B. 253

**56. — Action relating to matters not covered by arbitration clause—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4—R. S. C., Order xx., r. 1 (b).**

The fact that a small portion of the relief claimed in an action is not covered by the arbitration clause is not in itself a sufficient reason for refusing to stay proceedings where the main object of the action is within that clause. *IVES & BARKER v. WILLIAMS* - C. A. [1894] 2 Ch. 478

Referred to by C. A. *Bartlett v. Ford's Hotel Co.*, [1895] 1 Q. B. 850, 852.

— Contract for service—Arbitration clause—Wrongful dismissal—Action for damages. See MASTER AND SERVANT—Dismissal. 58.

— Partnership—Action for dissolution—Motion to stay proceedings—Form of order. See PARTNERSHIP—Arbitration. 11.

**57. — Practice—Arbitration clause—Action for dissolution—Motion to stay proceedings—Discretion of the Judge—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**

Where articles of partnership contain a clause referring all matters in difference between the partners to arbitration, an arbitrator has power to decide whether or not the partnership shall be dissolved, and to award a dissolution, though the judge has full discretion to determine, on a motion to stay proceedings under the Arbitration Act, 1889, s. 4, whether the matters in dispute

**ARBITRATION (Staying Proceedings)—contd.**

shall be tried out in the action or referred to arbitration.

*Walmsley v. White*, (1892) 40 W. R. 675, followed; *Joplin v. Postlethwaite*, (1889) 61 L. T. (N.S.) 629, explained. *VAWDREY v. SIMPSON*

Chitty J. [1896] 1 Ch. 166

**58. — Submission—Practice—Action—Application to stay proceedings—Time—"Step in the proceedings"—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**

The mere filing of affidavits in answer to a motion for a receiver in an action for dissolution of partnership is not a "step in the proceedings" within s. 4 of the Arbitration Act, 1889, the taking of which will preclude the defendant from moving to refer the case to arbitration under a clause in the partnership articles. *ZALINOFF v. HAMMOND* - *Stirling J.* [1898] 2 Ch. 92

**59. — Submission to three arbitrators—Refusal of party to appoint arbitrators—Jurisdiction of Court to stay action—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**

Where an agreement to refer disputes to arbitration provides for a reference to three arbitrators, one to be appointed by each of the parties, and the third by the two so appointed, and one of the parties refuses to appoint an arbitrator and brings an action against the other party to the submission, the Court has, under s. 4 of the Arbitration Act, 1889, power to stay the action. *MANCHESTER SHIP CANAL CO. v. S. PEARSON & SON, LD.*

C. A. [1900] W. N. 178; [1900] 2 Q. B. 606

**Submission.****60. — "Submission"—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 27.**

"Submission" in s. 27 of the Arbitration Act, 1889, means a "written agreement" to submit differences to arbitration, but not necessarily an agreement signed by both parties. Hence, where a policy of insurance provided for a submission of differences to arbitration as a condition precedent to taking legal proceedings, an action on the policy was stayed, although the policy had not been signed by the person insured. *BAKER v. YORKSHIRE FIRE AND LIFE ASSURANCE CO.*

Div. Ct. [1892] 1 Q. B. 144

**61. — "In accordance with the submission"—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**

*Quære*, whether the effect of the words "in accordance with the submission" in s. 4 of the Arbitration Act, 1889, is that in each case the Court must consider whether the provisions of the submission are applicable to the particular case—that is, whether the particular matter can conveniently be decided by arbitration. *DENTON v. LEGGE* - *Kekewich J.* [1895] W. N. 46

**62. — Revoke submission to arbitration, Leave to—Appeal from chambers—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.**

An appeal from a judge at chambers granting leave to revoke a submission to arbitration lies to the C. A. and not to a Div. Ct. *In re AN ARBITRATION BETWEEN PORTLAND URBAN DISTRICT COUNCIL AND TILLEY & CO.*

Div. Ct. [1896] 2 Q. B. 98

**ARBITRATION (Submission)**—*continued.*

— Staying proceedings.

See **ARBITRATION**—**Staying Proceedings.****ARBITRATOR.**See Cases under **ARBITRATION.****ARCH (RAILWAY).**See **RAILWAY**—**Arches.****ARCHWAY**—“Place” used for betting.See **GAMING.** 11.**ARCHITECT**—London Building line.See **LONDON**—**Buildings.** 1—3.**ARGENTINE REPUBLIC**—Extradition from.See **EXTRADITION.****ARMORIAL BEARINGS**—Excise.See **REVENUE**—**Armorial Bearings.** 10.**ARMY AND NAVY.***Army, col. 67.**Navy, col. 68.**Reserve Forces, col. 68.**Volunteers, col. 69.***Army.**

*Regimental Debts Act, 1893 (56 Vict. c. 5), consolidates and amends the law relating to the payment of regimental debts, and the collection and disposal of the effects of officers and soldiers in case of death, desertion, insanity and other cases.*

*Rules of Procedure*—“*The Rules of Procedure, 1893*,” dated 1893, regulating proceedings of Courts Martial. **St. R. & O. 1893, pp. 707–799.**

*Army Order 43 of 1895, dated March, 1895, amending Rules of Procedure under the Army Act. St. R. & O. 1895, No. 214. Price ½d.*

*Military Manœuvres Act, 1897 (60 & 61 Vict. c. 43), facilitates and regulates manœuvres.*

*Rules of Procedure, dated Aug. 1, 1899. St. R. & O. 1900, No. 31. See St. R. & O. 1899, p. 1416.*

**ELECTORS.] Electoral Disabilities (Military Service) Removal Act, 1900 (63 & 64 Vict. c. 8), removes electoral disabilities which may arise in the case of members of the Reserve, Militia, and Yeomanry forces, and in the case of Volunteers, by reason of absence on the military service of the Crown.**

**MILITARY LANDS.] Military Lands Act, 1900 (63 & 64 Vict. c. 56), amends the Military Lands Act, 1892 (55 & 56 Vict. c. 43).**

*Exportation of Arms Act, 1900 (63 & 64 Vict. c. 44), amends the law relating to the exportation of arms, ammunition, and military and naval stores.*

**COUNTY COUNCILS, &c.] Members of Local Authorities Relief Act, 1900 (63 & 64 Vict. c. 46), relieves members of county councils and other local authorities from disqualification by reason of absence in certain cases.**

1. — *Billeting*—**Army Act, 1881 (44 & 45 Vict. c. 58), ss. 103, 110.**

A victualling-house keeper is bound, under ss. 103–110 of the Army Act, 1881, to provide accommodation for soldiers on the march in excess of the number imposed on him by the billet list, such list being only conclusive as to the propor-

**ARMY AND NAVY (Army)**—*continued.*

tion in which billets are to be distributed, and not as to their number. **SHARRATT v. SCOTNEY**

Div. Ct. [1892] 2 Q. B. 479

— Evidence — Non-commissioned officer—Entry in official document—Admissibility. See **DIVORCE.** 74.

— Officer — Liability to dismissal — Petition of right. See **CROWN.** 6.

— Pay and retiring allowances—Royal Warrant — Secretary of State for War. See **MANDAMUS.** 6.

— Soldier's Will—Probate.

See **PROBATE**—**Soldier's Will.** 150.

— “Subject to military law”—Returning from training—Obedience to order of superior officer. See *No. 8, below.*

— Troops summoned to preserve the peace — Expenses of maintenance—Liability. See **COUNTY COUNCIL.** 10.

— Turnpike Acts—Tolls—Exemption—Carriage employed in military service of Crown. See **HIGHWAY.** 31.

— Uniforms—Unauthorized use. See **UNIFORMS.**

**Navy.**

*Naval Works Act, 1899 (62 and 63 Vict. c. 42), makes further provision for construction of works, and amends the law with respect to tramways for naval purposes.*

— Naval reserves.

See **RESERVE FORCES, infra.**

2. — **Navy and Marines (Wills) Act, 1865 (28 & 29 Vict. c. 72), amended by 60 & 61 Vict. c. 15—Right of officer to resign commission—Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), ss. 19, 87.**

An engineer officer in the navy who has accepted a commission, and is borne on the books of a ship in commission, cannot resign without the consent of the Admiralty.

*Semble*, under no circumstances is a naval officer entitled to resign without permission of Her Majesty. **HEARSON v. CHURCHILL**

C. A. [1892] 2 Q. B. 144

— Service of writ on officer at sea.

See **PRACTICE**—**Service.** 183.**Reserve Forces.**

*Reserve Forces and Militia Act, 1898 (61 & 62 Vict. c. 9), amends the law.*

**RESIDENCE.] Permission to Army reserve men to reside out of United Kingdom. See Reserve Forces Act, 1899 (62 & 63 Vict. c. 40).**

**RESERVE FORCES.] Discipline and regulation—Royal Warrant dated Dec. 28, 1882, as to the trial of an alleged offender under the Reserve Forces Act, 1882 (45 & 46 Vict. c. 48). St. R. & O. 1899, p. 1658.**

*Naval Reserve (Mobilisation) Act, 1900 (63 & 64 Vict. c. 17) amends the Royal Naval Reserve (Volunteer) Act, 1859 (22 & 23 Vict. c. 40), in relation to calling out the Volunteers for actual service.*

**ARMY AND NAVY (Reserve Forces)—*contd.***

*Reserve Forces Act, 1900* (63 & 64 Vict. c. 42), amends the *Reserve Forces Act, 1882* (45 & 46 Vict. c. 48).

*Naval Reserve Act, 1900* (63 & 64 Vict. c. 52), makes further provision for a Naval Reserve.

**Volunteers.**

*Royal Naval Reserve Volunteers Act, 1896* (59 & 60 Vict. c. 33) amends the laws with respect to the *Royal Naval Volunteers*.

**EFFICIENCY OF VOLUNTEER.]** *O. in C. dated Aug. 14, 1896. Amendment as to efficiency of volunteers. St. R. & O. 1896, p. 602, No. 707. O. in C. dated Oct. 20, 1898. St. R. & O. 1898, p. 1269, No. 763.*

*Os. in C. dated July 14, and Oct. 7, 1899, amending previous Os. in C. as to. St. R. & O. 1899, p. 1397, No. 575; Lond. Gaz. July 18, and Oct. 17, 1899, pp. 4409, 6245.*

**EFFICIENCY OF MEMBERS OF CORPS.]** *Volunteer Act, 1897* (60 & 61 Vict. c. 47), declares the effect of provisions of *Volunteer Act, 1863*.

*Military Lands Act, 1897* (60 & 61 Vict. c. 6), amends *Military Lands Act, 1892*.

*Volunteer Act, 1900* (63 & 64 Vict. c. 39), amends the *Volunteer Act, 1863* (26 & 27 Vict. c. 65).

3. — *Charitable bequest—Contingent gift to volunteer corps—Uncertainty—Perpetuity.*

The bequest of an annuity to a volunteer corps on the appointment of the next Lieut.-Col. is void as infringing the rule against perpetuities. *In re LORD STRATHEDEN AND CAMPBELL. ALT v. LORD STRATHEDEN AND CAMPBELL.*

**Romer J. [1894] 3 Ch. 265**

Referred to by Kekewich J. *In re Nottage*, [1895] 2 Ch. 649, 653.

4. — *Charitable bequest—Public advantage—Teaching shooting.*

A gift to the National Rifle Association for teaching shooting, held to be valid. *In re STEPHENS. GILES v. STEPHENS*

**Kekewich J. [1892] W. N. 140**

5. — *Power to make rules—Failure of volunteer to become efficient—Loss of capitation grant—Rule ultra vires—Volunteer Act, 1863* (26 & 27 Vict. c. 65), s. 24.

By s. 24 of the *Volunteer Act, 1863*, "The officers and volunteers belonging to a volunteer corps may from time to time make rules for the management of the property, finances, and civil affairs of the corps."

A volunteer corps made (inter alia) the following rule: "Any . . . member of the corps who shall fail to make himself efficient and to earn the Government capitation grant . . . shall pay to the funds of the corps a sum equal to the amount of Government capitation grant which he has in consequence failed to earn:—"

Held, that there was no power under the section to make such a rule, and that it was therefore ultra vires. **REG. v. LEWIS**

**Div. Ct. [1896] 1 Q. B. 665**

6. — *Rates—Exemption—Crown property—Volunteer Act, 1863* (26 & 27 Vict. c. 65), s. 26.

Premises used solely for the purposes of a

**ARMY AND NAVY (Volunteers)—*continued.***

volunteer corps are exempt from poor-rate, although parts, such as the mess-rooms, canteen, &c., and the quarters of the resident non-commissioned officers, may not come within the exemption provided by s. 26 of the *Volunteer Act, 1863*. **PEARSON v. HOLBORN UNION ASSESSMENT COMMITTEE** **Div. Ct. [1893] 1 Q. B. 389**

Distinguished by **Div. Ct. Westminster Vestry v. Hoskins**, [1899] 2 Q. B. 477.

7. — *Sewerage and drainage—Volunteer corp—Storehouse and drill-hall—Metropolis Management Acts—Exemptions.*

A building consisting of an armoury, storehouse, and drill-hall of a volunteer corps, which is vested in the commanding officer of the corps and is intended for the use of the corps only, is not exempt from the operation of the sanitary provisions of the *Metropolis Management Act, 1855*, on the ground that it is occupied and used solely for the purposes of the Crown. **WESTMINSTER VESTRY v. HOSKINS**

**Div. Ct. [1899] 2 Q. B. 474**

8. — "Subject to military law"—"When being trained or exercised with regular forces"—Returning from training—Assault and false imprisonment—Obedience to order of superior officer—*Army Act, 1881* (44 & 45 Vict. c. 58), ss. 41, 43, 45, 158, 176—*Volunteer Act, 1863* (26 & 27 Vict. c. 65), s. 21.

The plt. was a member of a volunteer corps, which was trained and exercised with a portion of the regular forces at Shorncliffe Camp under an order of the War Office, forming a volunteer brigade for the purpose of such training and exercise during the period Aug. 1 to Aug. 8, 1896. Upon the latter day, while preparations were going on for the departure of the volunteers from the camp, he was charged with larceny from a comrade. The adjutant of the corps gave orders that he should be taken under arrest with the baggage guard to Shorncliffe Station, and thence to Boxmoor Station in the special military train which was on that day to convey the corps home, and that on arrival at the latter station he should be taken to Hemel Hempstead, where he lived, and handed over to the police authority there. The plt. was accordingly taken under arrest to Shorncliffe Station, and three of his comrades were there told off to form his escort in the train and to take him from Boxmoor Station to Hemel Hempstead, and there hand him over to the police, which they did.

In an action against them for assault and false imprisonment:—

Held (reversing the judgment of Kennedy J., [1898] 1 Q. B. 396), that, by virtue of s. 176 of the *Army Act, 1881*, the members of the corps were subject to military law from the time when they fell in on Aug. 1 for the purpose of proceeding to the camp to be trained and exercised with the regulars until on their return home on Aug. 8 they were dismissed; and that the plt. and defts. were therefore subject to military law at the time when the defts. did the acts complained of, which were consequently justified under ss. 41 and 45 of the *Army Act, 1881*:

Held, also, that the acts of the defts. were

**ARMY AND NAVY (Volunteers)—continued.**

justified by virtue of the provisions of s. 158 of the Army Act, 1881.

The words "where an offence under this Act has been committed" in that section mean "where an offence under this Act is alleged to have been committed." *MARKS v. FROGLEY*

C. A. [1898] 1 Q. B. 888

**ARRANGEMENT SCHEME**—Bankrupt's affairs.  
*See* Cases under **BANKRUPTCY**—**Scheme of Arrangement.**

— Company's affairs.

*See* Cases under **COMPANY**—**WINDING-UP**—**Scheme of Arrangement.**

— Joint Stock Companies Arrangement Act, 1870, inapplicable to the Colonies.

*See* **VICTORIA**. 2.

— Railway company's affairs.

*See* Cases under **RAILWAY**—**Scheme of Arrangement.**

**ARREARS**—Alimony accrued due before receiving order—Proof.

*See* **BANKRUPTCY**—**Proof**. 160.

— Annuity.

*See* **ANNUITY**. 1, 2.

— Gas rate—Payment of arrears.

*See* **GAS**. 3.

— Interest — Mortgage — Acknowledgment by one of two executors and trustees.

*See* **LIMITATIONS, STATUTE OF**—**Acknowledgment**. 2.

— Poor-rate—Mistake—Incorrect demand notes.

*See* **RATES**—**Recovery**. 65.

— Water rate—Trustee in bankruptcy—"Incoming tenant"—Payment of arrears under protest.

*See* **WATER**—**Water Rates**. 25.

**ARRESTMENT**—Debentures, Priority of—Scottish law.

*See* **CONFLICT OF LAWS**. 3.

— Pledge—Documents of title—Foreign arrestment—Conflict of laws—Goods in Scotland.

*See* **FACTOR**. 3.

**ARRESTS**—Admiralty practice.

*See* **SHIPPING**—**Arrest**. 6.

— Arbitrary arrest, conviction and punishment—Illegal proclamation of—Legislative power.

*See* **CAPE OF GOOD HOPE**. 6.

— Attachment.

*See* Cases under **ATTACHMENT**.

— Bankrupt trustee—Discretion of Court.

*See* **IMPRISONMENT**. 6.

— Betting-house—Person found therein—Power to bind over—Evidence.

*See* **GAMING**. 2.

— Commitments, and execution of process.

*See* **COMPANY**—**WINDING-UP**—**Enforcement of Orders**.

— Debtor—Absconding before presentation of petition—Order made in exercise of bankruptcy jurisdiction—Certiorari.

*See* **COUNTY COURT**. 47.

— Imprisonment for debt.

*See* Cases under **IMPRISONMENT**.

**ARRESTS**—continued.

— Riding bicycle at night without proper light—Justification.

*See* **BICYCLE**. 1.

— Salvage—Practice—Solicitors' undertaking—Damages.

*See* **SHIPPING**—**Salvage**. 247.

**ART UNION**—Exemption from rating.

*See* **RATES**—**Rateability**. 25.

**ARTICLE OF FOOD**—The question of what is an article of food within s. 3 of the Sale of Food and Drugs Act, 1875, discussed. *JAMES v. JONES*

Div. Ct. [1894] 1 Q. B. 304

*See now* 62 & 63 Vict. c. 51, s. 26.

*And see* Cases under **ADULTERATION**.

**ARTICLED CLERK**—*See* **SOLICITOR**—**Articled Clerks**.

**ARTICLES OF ASSOCIATION.**

*See* **COMPANY**—**Memorandum and Articles of Association**.

**ARTIZANS' DWELLINGS**—Valuation (Metropolis) Act, 1869—Gross value—Cost of lighting and cleaning common stair.

*See* **RATES**—**Rateability**. 12.

**ASSAULT**—Liability of master for assault by servant.

*See* **MASTER AND SERVANT**—**Master's Liability**. 72.

— Liability of railway company for assault on passenger by fellow-passengers.

*See* **RAILWAY**—**Passengers**. 19.

**ASSESSMENT**—Award—Salvaging vessels specially equipped.

*See* **SHIPPING**—**Salvage**. 221.

— Damages—Infringement of patent.

*See* **PATENT**. 5.

— Power of Court to go behind—Proof for assessed taxes—Scheme of arrangement

*See* **BANKRUPTCY**—**Proof**. 171.

— Rates.

*See* Cases under **RATES**.

— Revenue.

*See* Cases under **REVENUE**.

— Way-leave—"Heritor"—Church and manse.

*See* **WATER**. 30.

— Waterworks Clauses Act.

*See* **WATER**. 26.

**ASSETS**—Appropriation of—Residue—Settled shares.

*See* **TRUSTEE**. 17.

— Assignment of—Defaulter—Rules of Stock Exchange—Set-off.

*See* **STOCK EXCHANGE**. 5.

— Bankruptcy.

*See* **BANKRUPTCY**—**Assets**.

— Company.

*See* **COMPANY**—**Debenture**. 95.

— Company Winding-up.

*See* **COMPANY**—**WINDING-UP**—**Assets**.

— Deficiency of—Right of annuitant to payment.

*See* **ANNUITY**. 6.

— Distribution of—Dissolution of society.

*See* **SCIENTIFIC SOCIETY**. 2.

**ASSETS—continued.**

- Local situation of—Property in Jamaica.  
See **REVENUE—Probate Duty.** 136.
- Marcelling—Bottomry—Necessaries.  
See **SHIPPING—Bottomry.** 14.
- Part payment of judgment debt—Subsequent receiving order—Benefit of execution.  
See **BANKRUPTCY—Execution.** 101.
- Sale of business to one partner—Goodwill—Canvassing old customers—Injunction.  
See **PARTNERSHIP—Goodwill.** 25.
- Surplus assets—Articles of association.  
See **COMPANY—WINDING-UP—Assets.** 6.

**ASSIGNMENT—Abstract—Leaseholds.**

See **VENDOR AND PURCHASER—Abstract.** 1.

- Annuity.  
See **ANNUITY.** 3.
- Assets—Defaulter—Rules of Stock Exchange—Set-off.  
See **STOCK EXCHANGE.** 5.
- Assignee of equitable life estate—Letting into possession.  
See **SETTLED LAND—Possession.** 92.
- Bankruptcy practice.  
See **Cases under BANKRUPTCY.**
- Bankruptcy of client—Submission to pay—Form of order.  
See **SOLICITOR.** 26.
- Benefit of creditors.  
See **Cases under BILL OF SALE.**
- Company—Cheque—Conditional payment.  
See **TRADE.** 2.
- Chose in action—Remedies of insurers.  
See **QUEENSLAND.** 3.
- Complete or incomplete transfer of settled property.  
See **SETTLEMENT—Voluntary Settlement.** 32.
- Covenant against—Forfeiture.  
See **Cases under LANDLORD AND TENANT.**
- Covenant against, without licence—Deposit by way of security.  
See **COVENANT.** 1.

1. — **Debt—Debtor and Creditor—Negotiable Instrument—Equitable assignment of debt—Notice.**

Notice to a debtor, who has given a negotiable instrument for his debt, that the debt has been assigned by the creditor, can be disregarded by the debtor even if the creditor who has assigned the debt is the holder of the negotiable instrument. The decision of Kekewich J. reversed. *BENCE v. SHEARMAN*

**C. A. [1898] 2 Ch. 582**

2. — **Debt—Security—Power to assignee to sue in name of assignor—Absolute assignment—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.**

The plts. made an advance to a customer who, in consideration thereof, assigned to them the whole of his rights and interest under an agreement between himself and others, of whom the debt was one, as security for the repayment on demand of the advance, and by the assign-

**ASSIGNMENT—continued.**

ment he appointed the plts. his nominees in pursuance of the provisions of the agreement, with power to exercise all his rights thereunder either in his name or in the plts.' own name, and he appointed them his attorneys in that behalf. In an action to recover from the debt. moneys alleged to be due under the agreement:—

*Held*, that the assignment was not an absolute assignment within the meaning of s. 25, sub-s. 6, of the Judicature Act, 1873.

*Tancred v. Delagoa Bay Ry. Co.*, (1889) 23 Q. B. D. 239, and *Comfort v. Betts*, [1891] 1 Q. B. 737, distinguished. **MERCANTILE BANK OF LONDON v. EVANS** **C. A. [1899] 2 Q. B. 613**

3. — **of debts—Trust in respect of moneys recovered—Judicature Act, 1873 (36 & 37 Vict. c. 66) s. 25, sub-s. 6.**

An assignment of debts by tradesmen conditioned that the assignee should pay over to them all moneys recovered:—

*Held*, to be an absolute assignment within the meaning of s. 25, sub-s. 6, of the Judicature Act, 1873. **COMFORT v. BETTS**

**C. A. [1891] 1 Q. B. 737**

Referred to by *C. A. Mercantile Bank of London v. Evans*, [1899] 2 Q. B. 613, 616. See preceding Case.

— **Equitable—Banker's deposit note—Indorsement and delivery.**

See **VOLUNTARY GIFT.** 1.

— **Goodwill—Partner's covenant—Restriction against trading—Benefit of covenant.**  
See **PARTNERSHIP—Goodwill.** 23.

— **Goodwill—Validity.**  
See **TRADE-MARK—Registration.** 40.

— **Married woman's reversionary life interest.**  
See **HUSBAND AND WIFE.** 36.

4. — **Mortgage—Absolute assignment with proviso for redemption—Implication of power to redeem—Assignment of part of an entire debt—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.**

A mortgage of debts due to the mortgagor, made in the ordinary form with a proviso for redemption and reassignment upon repayment to the mortgagor, is "an absolute assignment (not purporting to be by way of charge only)" within s. 25, sub-s. 6, of the Judicature Act, 1873.

*Tancred v. Delagoa Bay and East Africa Railway*, (1889) 23 Q. B. D. 239, approved.

Where there is an absolute assignment of a debt, but by way of security, a right to a reassignment on redemption will be implied, and s. 25, sub-s. 6, of the Judicature Act, 1873, is applicable to such an assignment.

*Quære*, whether an assignment of part of an entire debt is within the enactment.

Judgment of Lord Coleridge C.J. in *Brice v. Bannister*, (1878) 3 Q. B. D. 569, questioned.

A firm of builders delivered to the plts. a document in the following terms: "Re Building Contract, South Lambeth Road.—In consideration of money advanced from time to time we hereby charge the sum of 1080l., which will become due to us from John Robertson on the completion of the above buildings, as security for the advances, and we hereby assign our interest

**ASSIGNMENT**—*continued.*

in the above-mentioned sum until the money with added interest be repaid to you." The plts. gave notice to the John Robertson named in the document, and brought this action against him to recover the amount:—

*Held*, that the document was not "an absolute assignment (not purporting to be by way of charge only)" within s. 25, sub-s. 6, of the Judicature Act, 1873, and that the plts. could not recover in the action. **DURHAM BROTHERS v. ROBERTSON**  
C. A. [1898] 1 Q. B. 765

Referred to by Byrne J. *In re Griffin*, [1899] 1 Ch. 408, 412.

— Mortgages.

See Cases under MORTGAGE—Consolidation.

— Patent.

See Cases under PATENT.

5. — *Priority—Chose in action—Reversionary trust fund—Notice to existing trustees—Death or retirement of trustees.*

An assignee of a reversionary interest in a trust fund who has given notice to all the trustees in existence at the time of his assignment is under no obligation to give any further notice, and is consequently entitled to priority over a subsequent assignee who has taken his assignment after the death or retirement of all those trustees, and who gives notice of such assignment to the new trustees.

*Timson v. Ramsbottom*, (1837) 2 Keen, 35, and *In re Hall*, (1880) 7 L. R. Ir. 180, distinguished.

*Ward v. Duncombe*, [1893] A. C. 369, discussed. *In re WASDALE. BRITTIN v. PARTRIDGE*  
Stirling J. [1898] W. N. 164 (2);  
[1899] 1 Ch. 163

Referred to by Kekewich J. in *Freeman v. Laing*, [1899] 2 Ch. 355, 358.

— Protection of creditors—Creditors' administration action—Following assets.  
See FRAUDULENT CONVEYANCE. 4.

— Publishing agreement—Author's consent.  
See CONTRACT—Formation. 16.

— Qualified covenant against—Unwilling purchaser—Lessor's consent—Unreasonable refusal.

See VENDOR AND PURCHASER. 95.

— Reversion of married woman.

See HUSBAND AND WIFE. 36.

— Right of unregistered assignee to sue.

See COPYRIGHT—Infringement. 10.

— Separate account, Fund carried to—Assignment of separate fund—Notice—Equity against assignee.

See ACCOUNT. 4.

— Stamp duty.

See Cases under REVENUE—Stamps.

— Wages—Advances—Seamen.

See SHIPPING—Seamen. 226.

**ASSIGNMENT IN GROSS.**

See TRADE NAME. 1.

**ASSIGNS**—Breach of covenant—Lease of public-house—Licence.

See LANDLORD AND TENANT—Covenant. 18.

**ASSIGNS**—*continued.*

— Lease — Option to purchase — Equitable assignee—Possession.

See LANDLORD AND TENANT—Option to Purchase. 80.

— Purchaser of lot whether an assign—Restrictive covenant—Enforcement.

See VENDOR AND PURCHASER—Title. 93.

— Restrictive covenant—Tied public-house—Mortgagor and mortgagee—Underlessee—Notice.

See COVENANT. 7.

**ASSISTANT OVERSEER**—Right to rate-books—Appointment.

See PARISH COUNCIL. 2.

**ASSIZES**—General Council of the Bar—Criminal business at Assizes—Report. W. N. 1899 (July 1), p. 236. See Current Index, 1899, p. cxviii.

— Notice of trial—Summons for directions—Jurisdiction.

See PRACTICE—Trial. 261.

**"ASSURANCE"**—Further, Covenant for—Mortgage of scheme in moieties.

See MORTGAGE—Apportionment. 1.

— Registry Acts—Meaning of.

See YORKSHIRE.

**ASYLUM**—Lunatic asylums.

See LUNACY—Lunatic Asylums. 6.

**ATHLETIC SPORTS**—False statements as to name and performances—Attempt to obtain prize.

See CRIMINAL LAW—False Pretences. 27.

**ATTACHMENT.**

(Committal and Attachment.)

Order XLI., r. 1, Order XLIV., and Order LII., r. 4, relate to attachment.

Memorandum as to committal and attachment, by Mr. Registrar Lavie.—Differences between the two processes explained—Forms and warrants. PRACTICE NOTE — [1893] 1 Ch. 259, n

1. — Affidavit—Matters to be stated—R. S. C., 1883, Order XLI., r. 5; Order LII., r. 4.

The copy of the affidavit to be used in support of a motion for attachment, which by Order LII., r. 4, is required to be served with the notice of motion, must contain a statement that the order alleged to have been disobeyed when served was duly indorsed with the memorandum pointing out the consequence of neglecting to obey it, as required by Order XLI., r. 5; and if such statement is omitted the service is insufficient. **STOCKTON FOOTBALL CO. v. GASTON**

Div. Ct. [1895] 1 Q. B. 453

2. — Affidavit—Non-service of copy—Waiver—R. S. C., Order XLII., r. 32; Order XXXVII., r. 9; Order LII., r. 4; Order LXX., r. 1.

Copies of the affidavits on which an application for an attachment was made in chambers were not served on the deft. The objection being taken, the judge adjourned the case to give deft. an opportunity of answering them. On the further hearing deft.'s solicitor admitted that deft. could not answer them:—

*Held*, that, assuming that Order LII., r. 4, of



**ATTACHMENT—continued.**

the R. S. C., 1883, applied, and that copies of the affidavits should have been served, yet the deft., having had the equivalent of the advantages intended to be conferred by the r., was not entitled to insist on the irregularity. **RENDELL v. GRUNDY** - C. A. [1895] 1 Q. B. 16

**3. — Affidavit—Service of copies—R. S. C., Order LXX., r. 1.**

On a motion for attachment it is necessary to serve copies of all affidavits intended to be used on the motion with the notice of motion, including a copy of an affidavit verifying the service of the original order.

(A) **TAYLOR v. ROE** (No. 1) - **Kekewich J.** [1893] W. N. 14

“Served with,” in Order LII., r. 4, explained. **TAYLOR v. ROE** (No. 1) - [1893] W. N. 14

(B) *In re DUNNING. STURGEON v. LAWRENCE* **Kekewich J.** [1894] W. N. 140

(C) The mere failure to serve copies of the affidavits with summonses or notice of motion is not necessarily and in all cases fatal. **RENDELL v. GRUNDY** - C. A. [1895] 1 Q. B. 16, at p. 21

**4. — Affidavit of service of order disobeyed—Non-service of copy—Dispensation, Order LII., r. 4.**

An order was made on Aug. 5, 1892, directing a solicitor to pay a sum of money. The solicitor did not appear. A motion was made to commit him for disobedience to the order, on which he did not appear. He had been served with the order and notice of motion, but not with a copy of the affidavit of service of the order:—

*Held*, that the service in the present case was sufficient, and dispensed with service of a copy of the affidavit of service of the order of Aug. 5, 1892. *In re A SOLICITOR*

**Stirling J.** [1893] W. N. 188

— Appeal—Security for costs.

*See* COSTS. 50.

· Appeal.

*See* APPEAL. 25, 33.

— Bankrupt solicitor.

*See* BANKRUPTCY—Attachment. 66.

— Committal or attachment—Breach of undertaking—Service of order containing the undertaking—Solicitor.

*See* PRACTICE—Undertaking. 272.

**5. — Costs.**

The Court will dismiss with costs an unnecessary and vexatious motion to commit. *In re MARTINDALE* - **North J.** [1894] 3 Ch. 193

**6. — Discharge—Ex parte application, R. S. C., Order XLIV., r. 1.**

A prisoner who has been attached and imprisoned for contempt in disobeying orders to attend for examination cannot move ex parte for his discharge. *In re EVANS. EVANS v. NOTON* (No. 2) - **Kekewich J.** [1893] W. N. 32

— Disobedience of order of Irish Court.

*See* CONTEMPT OF COURT. 1.

— Disobedience to order to deliver up money and documents.

*See* SOLICITOR. 138.

**ATTACHMENT—continued.**

*Order XLV. relates to attachment of debts.*

**7. — Garnishee—Affidavit—Sufficiency.**

It is sufficient to sustain a garnishee order under Order XLV., r. 1, if the creditor swear to the best of his knowledge and belief that a debt is owing from the garnishee to his debtor. If the creditor further and unnecessarily specifies a particular form of debt, and the garnishee denies that debt without denying that any debt be owing, the garnishee order should nevertheless issue. **DE PASS v. CAPITAL AND INDUSTRIES CORPORATION** C. A. [1891] 1 Q. B. 216; *affirm.* by

**H. L. (E.)** *sub nom.* **VINALL v. DE PASS** [1892] A. C. 90

— Garnishee—Appeal.

*See* APPEAL. 15.

**8. — Garnishee—Banking account—Honouring cheques.**

A banker was served with a garnishee order attaching all moneys in his hands belonging to the plt. :—

*Held*, that he was not obliged to honour cheques drawn by the plt. against the balance in his hands over and above the judgment debt, and that his refusal to do so gave the plt. no cause of action.

*Semble*, that the operation of a garnishee order may be restricted by the Court or judge to an amount equal to the judgment debt. **ROGERS v. WHITELEY** **H. L. (E.)** [1892] A. C. 118 *affirm.*

**C. A. and Div. Ct.** (1899) 23 Q. B. D. 236

Referred to by Div. Ct. **Yates v. Terry**, [1901] 1 Q. B. 102, 104.

**9. — Garnishee — Bankruptcy Act, 1890 — Money in the hands of the sheriff—Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), s. 30, sub-s. 1; 1890 (53 & 54 Vict. c. 71), s. 11, sub-s. 2.**

Apart from s. 11 (2) of the Bankruptcy Act, 1890, moneys in the hands of the sheriff can be attached by a garnishee order. The sub-s. merely puts a temporary stop on the money in the hands of the sheriff. *In re GREER. NAPPER v. FANSHAWE* - **Chitty J.** [1895] 2 Ch. 217

**10. — Garnishee — Order for payment into court—R. S. C., 1883, Order XLII., rr. 3, 4; Order XLV., r. 1.**

A judgment or order for payment of money into court is not within Order XLV., r. 1, and a garnishee order cannot be founded thereon. *In re GREER. NAPPER v. FANSHAWE*

**Chitty J.** [1895] 2 Ch. 217

**11. — Garnishee — Trust fund in hands of garnishee.**

Money was deposited by the judgment debtor with the garnishees for a special purpose that had failed:—

*Held*, that the execution creditor could attach this money; for, on the failure of the special purpose, the money remained in the garnishees' hands on trust to repay it to the judgment debtor, and they could not, therefore, set up a claim to costs in answer to a demand for the return of the money. **STUMORE v. CAMPBELL & CO.**

**C. A.** [1892] 1 Q. B. 314

**12. — Garnishee order, Action upon—Judgment — Execution — Company — Debt—Winding-**

**ATTACHMENT—continued.**

up of company—*Creditor—Practice—R. S. C., Order XLII., r. 2A; Order XLV., r. 3.*

An action for debt will lie on a garnishee order, but should not be resorted to if the amount can be recovered by execution under Order XLV., r. 3.

A garnishee order absolute had been obtained, under Order XLV., r. 3, against a limited co. having property abroad, but none in this country on which execution could be levied:—

*Held*, by C. A., that under Order XLII., r. 24, the garnishee could maintain an action on the garnishee order for the debt thereby ordered to be paid to him by the co., the garnishees, with a view to his presenting a petition, as a judgment creditor for winding-up the co.

Decision of Phillimore J. affirmed.

*In re Combined Weighing and Advertising Machine Co.*, (1889) 43 Ch. D. 99, considered. **PRITCHETT v. ENGLISH AND COLONIAL SYNDICATE C. A. [1899] W. N. 91; [1899] 2 Q. B. 428**

—Garnishee order—Company—Floating security. *See COMPANY—Debentures.* 55.

**13. — Service of order—Corporation—Order on—Disobedience—Enforcement by attachment of director—R. S. C., Order XLII., r. 31.**

Obedience to an order made against a corporation will not be enforced, under rule 31 of Order XLII., by the attachment of a director of the corporation unless the order has been served personally upon the director. **MCKEOWN v. JOINT STOCK INSTITUTE, LD. North J. [1899] W. N. 35 (10); [1899] 1 Ch. 671**

—Income of tenant for life—Provision against alienation.

*See WILL—Forfeiture.* 93.

—Married woman administratrix—Payment into court—Form of order.

*See HUSBAND AND WIFE—Practice.* 38.

—Master in Lunacy—Jurisdiction to attach.

*See LUNACY.* 1.

**14. — Notice—Contempt—Consent order, Disobedience to—Service of order—Affidavit—Irregularity—R. S. C., 1883, Order LII., r. 4.**

On a motion by a plt. for attachment or committal of the deft. for disobedience to an order, the order must, under Order LII., r. 4, be brought in its exact form to the attention of the deft. contemporaneously with, though it need not necessarily be attached to, the notice of motion, on the usual affidavit of service, unless the Court is satisfied that the order has been brought to his knowledge in some other way, as where the deft. himself appeared in court and personally consented to or opposed the order and the fact is stated on the face of the order itself: and the rule applies even where the order has been made by the consent of the deft.'s counsel, there being no difference in this respect between a consent order and an adverse order. **HALL & Co. v. TRIGG — Kekewich J. [1897] 2 Ch. 219**

**15. — Notice of motion to attach—Foreclosure action—Order not indorsed pursuant to R. S. C., Order XLI., r. 5.**

In a foreclosure action the order absolute, as

**ATTACHMENT—continued.**

drawn up by the registrar, did not name any time within which possession was to be given, and consequently the memorandum required by Order XLI., r. 5, was not indorsed thereon. After possession had been obtained under a writ of possession, the deft. retook possession:—

*Held*, that a writ of attachment was the proper remedy and could issue notwithstanding the absence of an indorsed order. *In re HIGG'S MORTGAGE. GODDARD v. HIGG*

**Kekewich J. [1894] W. N. 73**

**16. — Notice of motion to attach—Indorsement on citation—R. S. C., Order LII., r. 4; Order XLI., r. 5.**

A motion was made for a writ of attachment against an executrix who had not complied with a citation to bring in a probate for revocation, the memorandum required by Order XLI., r. 5, had not been indorsed on the back of the citation:—

*Held*, that the motion must be dismissed. **EVANS v. EVANS (No. 2) — G. Barnes J. [1892] W. N. 174**

**17. — Notice of motion to attach—Indorsement on copy order served—R. S. C., Order XLI., r. 5.**

The indorsement required by Order XLI., r. 5, only applies to judgments or orders which require the deft. to do some act, and not to merely prohibitory orders. **HUDSON v. WALKER North J. [1894] W. N. 180**

**18. — Notice of motion to attach—Irregularity—Name of wrong judge.**

A notice of motion for attachment was issued marked with the name of the wrong judge:—

*Held*, that this was an irregularity which could be amended. **TAYLOR v. ROE (No. 1) Kekewich J. [1893] W. N. 14**

**19. — Notice of motion to attach—Omission of grounds of motion.**

Where the notice of motion for attachment did not state the grounds on which it was issued:—

*Held*, that such irregularity was fatal on an application involving the liberty of the subject. **TAYLOR v. ROE (No. 1) Kekewich J. [1893] W. N. 14**

**20. — Notice of motion to attach—Service other than personal.**

Where an order to deliver a bill of costs had been served personally on a solicitor, and a notice of motion to attach for non-compliance had been served at his office on his clerk:—

*Held*, that the service was insufficient, but leave was given to re-serve the notice of motion by leaving the notice at his office. *In re DANCE North J. [1895] W. N. 127 (10)*

**21. — Notice of motion to attach—Service—Defendant who has not appeared—R. S. C. Order XLIV., r. 2; Order LII., rr. 3, 4; Order LXVII., r. 4.**

Where a deft. has not appeared, but the plt. knows where to find him, the Court will not issue a writ of attachment on a notice of motion which has not been served, but has merely been filed with the officer of the Court. *In re BASSETT. BASSETT v. BASSETT North J. [1894] 3 Ch. 179*

**ATTACHMENT—continued.**

22. — *Notice of motion to attach—Service—Solicitor trustee—Attachment or committal—R. S. C., Order XLIV., r. 2; Order LXVII., r. 4; Order LXX., r. 1; Order LXII., r. 2.*

A solicitor trustee was made a deft. in an administration action, but did not appear. Orders were made on him to attend for examination, which he disobeyed. The plt. then obtained an order for attachment. The notice of motion for the attachment was not served personally on the deft., but filed under Order LXVII., r. 4:—

*Held*, (1) that personal service was not essential; (2) that the filing of the notice was sufficient service; (3) that attachment and not committal was the proper remedy. *In re EVANS. EVANS v. NOTON* (No. 1) C. A. [1893] 1 Ch. 252

Referred to by Cozens-Hardy J. *D. v. A. & Co.*, [1900] 1 Ch. 484, 488.

23. — *Notice of motion to commit—Personal service—Substituted service—Waiver.*

Notice of motion to commit a deft. must be served upon him personally if practicable, service upon his solicitor being insufficient; and the Court will not make an order for substituted service until it is satisfied that every endeavour has been made to effect personal service. Mere knowledge on the part of the deft. of the plt.'s intention to move to commit does not dispense with the necessity of endeavouring to effect personal service; and the appearance of the deft. upon the motion is not a waiver of any objection on his part on the ground either of want of personal service or of any irregularity. *MANDER v. FALCKE* (No. 2) — — [1891] 3 Ch. 488

24. — *Notice of motion to commit—Substituted service—R. S. C., Order XLIV., r. 2; Order LXVII., r. 6.*

If personal service of a notice of motion to commit cannot be effected, application must be made *ex parte* for leave to effect substituted service. *In re A SOLICITOR*

North J. [1892] W. N. 22

25. — *Partnership—Practice—Authority of acting partner—Defence of action against firm—Employment of solicitor—Entering appearance in names of partners—Communication of progress of action to other partners—Negligence—Order XLVIII., A, r. 5.*

A managing partner of a business firm has an implied authority to employ a solicitor to defend an action brought against the firm for the price of goods supplied to the firm in the ordinary course of business.

A solicitor employed by the managing partner of a business firm to defend an action brought against the firm in the firm name has authority to enter an appearance in the names of each of the partners individually, and is not guilty of negligence in not keeping the partners, other than the managing partner by whom he was employed, informed of the progress of the action. *TOMLINSON v. BROADSMITH*

C. A. [1896] 1 Q. B. 386

— *Service—Undertaking to do an act.*

*See PRACTICE—Undertaking.* 272.

**ATTACHMENT—continued.**

— *Solicitor's liability.*

*See BANKRUPTCY—Attachment.* 66.

— *Solicitor's misconduct.*

*See SOLICITOR—Misconduct.* 112.

26. — *Time—Certificate of chief clerk—Variation—Time—Extension—R. S. C., 1883, Order LV., rr. 66a, 67, 70, 71.*

An appointment before a chief clerk to sign the certificate is a purely formal matter, and need not be attended by either party. The plt. alone attended such an appointment. The certificate was not then signed, but was handed to the plt. for some necessary alteration, and by him passed to the defts. who had the carriage of the proceedings. The defts. made the alteration and returned the certificate to the chief clerk's office. It was then signed and filed without any further appointment being made. The plt., being unaware that the certificate had been filed, allowed the time for moving to vary it to elapse, and now applied for an extension of time:—

*Held*, that plt. had no right to rely upon another appointment being made, and that no extension of time could be granted. *In re INGHAM. LAW'S CHEMICAL MANURE CO. v. INGHAM* Stirling J. [1896] W. N. (12) 5

27. — *Time given—Writ of attachment—Non-payment—Time given—Waiver.*

After a writ of attachment had been issued at the instance of clients against a solicitor for his non-payment of a sum of 78*l.* which he had been ordered to pay, the clients, at the request of the solicitor, agreed to suspend proceedings under the writ for fourteen days, upon the solicitor paying 25*l.* on account. This was done, but the solicitor did not make any further payment within the extended time, and he was arrested. Upon a motion by the solicitor for his discharge from custody:—

*Held*, that, by giving time and accepting part payment, the clients had not waived their right to enforce the writ of attachment. *In re FERREDAY*

North J. [1895] 2 Ch. 437

**ATTESTATION**—Description of attesting witness.

*See BILL OF SALE.* 1, 3.

— *Notice of claim—Lodger claim—Signature.*

*See PARLIAMENT—Franchise.* 87.

— *Probate practice.*

*See Cases under PROBATE.*

— *Proxy.*

*See BANKRUPTCY.* 190.

— *Will.*

*See WILL—Attestation.*

**ATTORNEY**—Administrator—Distribution of estate.

*See EXECUTOR—Administration.*

— *Grant to—Administration de bonis non—Necessity for notice.*

*See PROBATE—Grant of Administration.* 70.

— *Power of.*

*See POWER OF ATTORNEY.*

**ATTORNEY-GENERAL**—Powers of in Quebec—Information—Code of Civil Procedure.

*See CANADA—Quebec.* 55.

**ATTORNMEN—Bailee.**

See **ESTOPPEL**. 2.

**ATTORNMEN CLAUSE—Mortgages.**

See **MORTGAGE—Attornment Clause**. 3.

**AUCTION—Auctioneer—Liability—Conversion of chattels.**

Where an auctioneer only settles the price as between vendor and purchaser and takes his commission he is not liable for conversion if the vendor has no title to sell. But where an auctioneer receives goods into his custody, and on selling them hands them over to the purchaser with a view of passing the property in them, he is liable for conversion, and is not in the position of a packing agent or carrier who merely purports to change the position of the goods and not the property therein. **BARKER v. FURLONG**

**Romer J. [1891] 2 Ch. 172**

**2. — Auctioneer — Liability — Conversion of chattels—Sale by auction on private premises.**

An auctioneer who sells and delivers goods in the ordinary course is not a mere broker or intermediary, and is liable for conversion if the vendor had no title. A. granted a bill of sale of her furniture to B., and subsequently instructed a firm of auctioneers to sell the furniture by auction at her house; they sold it and delivered it to the purchasers. B. brought trover:—

*Held*, that the auctioneers were liable for conversion. **CONSOLIDATED CO. v. CURTIS & SON**

**Collins J. [1892] 1 Q. B. 495**

— Bill of sale—Written authority to take possession of and sell goods.

See **BILL OF SALE**. 14.

— Commission—Conducting sale by auction.

See **SOLICITOR**. 37, 38.

— Deposit—Cheque for—Custom—Refusal to accept highest bidder.

See **VENDOR AND PURCHASER**. 50.

— Name of purchaser filled in in blanks of memorandum by auctioneer's clerk.

See **VENDOR AND PURCHASER—Contract**. 27.

— Signature of clerk of, on behalf of purchaser—Statute of Frauds.

See **PRINCIPAL AND AGENT**.

— Solicitor's remuneration for conducting sale.

See **SOLICITOR—Costs**. 36.

**AUCTIONEER.**

See **AUCTION**.

**AUDITOR—Accounts—Finality of audit—Contract.**

See **ACCOUNTS**. 2.

— Company law.

See **COMPANY—Audit**.

— Extent of duty of—Audit of accounts—Elective auditor of corporation—Remuneration.

See **LOCAL GOVERNMENT**. 1.

— Liability of.

See **COMPANY—WINDING-UP**. 194—197.

**AUSTRALIA.**

*Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), constitutes the Commonwealth of Australia.*

**AUSTRALIA—continued.**

*New South Wales. See NEW SOUTH WALES.*

*New Zealand. See NEW ZEALAND.*

*South Australia, col. 84.*

*Victoria. See VICTORIA.*

*Western Australia, col. 84.*

**Application of Colonial Probates Act, 1892.**

See **PROBATE—Colonial Probates Act**.

**Copyright.**

See **COPYRIGHT—International**.

**Death Duties.**

See **REVENUE—Estate Duty**.

**Designs.**

See **DESIGN—Colonial, &c.**

**South Australia.**

1. — *Revenue—Succession duty—Covenant to pay—“With intent to evade payment of duty”—South Australian Succession Duties Act, 1893 (56 & 57 Vict. No. 567), ss. 16, 27—Construction.*

The deceased covenanted to pay 200,000*l.* to his children with interest at 1½ per cent. per annum, the debt being payable at call. He regularly paid the interest, but no portion of the principal:—

*Held*, that this covenant, in the absence of evidence to the contrary, conferred on the children complete ownership of the debt, and was a non-testamentary disposition of property within the meaning of the South Australian Succession Duties Act, 1893, s. 16, not subject to duty under s. 17, as the testator died more than three months thereafter:

*Held*, further, that it was not chargeable with double duty under s. 27, as made “with intent to evade the payment of duty hereunder” in the absence of evidence of some device or contrivance for that purpose. **SIMMS v. REGISTRAR OF PROBATES**

**P. C. [1900] A. C. 323**

**Western Australia.**

**APPEALS FROM WESTERN AUSTRALIA.] O. in C. dated Oct. 11, 1861, regulating Appeals to Her Majesty in Council from the Supreme Court of Western Australia. St. R. & O. 1899, p. 1715.**

2. — *Bank—Banker and customer—Forged cheques—Liability of bank—44 Vict. No. 10—Rules and Orders, Order XXXVI., No. 10.*

Order XXXVI., No. 10, of the rules under 44 Vict., No. 10, does not empower the Court to give judgment in disregard of findings of the jury not objected to, merely because it sets aside one or more findings which have been objected to.

Where the effect of the former was that certain entries debited by the bank to their customer were in respect of cheques forged by one of its servants, that the customer was first informed thereof by the accredited agent of the bank who requested his silence, and that the customer in complying with that request acted honestly and with a view to what he believed to be the bank's interest:—

*Held*, that the silence of the customer was not

**AUSTRALIA (Western Australia)—continued.**

a legal wrong to the bank, and that he was not estopped from relying on the forgery.

*McKenzie v. British Linen Co.*, (1881) 6 App. Cas. 82, distinguished. *Ogilvie v. West Australian Mortgage and Agency Corporation*

P. C. [1896] A. C. 257

**3. —Contract—Construction—Selection of waste lands.**

Under contract with the Colonial Government the W. Co. was entitled to select subsidy and compensation blocks of land within a prescribed area, and the Government was bound to abstain from making any grants or sales of land within such area to third parties while the contract ran :—

*Held*, that the co. was entitled to select from all lands within such area which the Government was, at the time of making the contract, able to convey in fee, including lands proclaimed as town sites, but not devoted to public uses or withdrawn from the Government's power of alienation. *West Australian Land Co. v. Forrest, Commissioner of Crown Lands*

P. C. [1894] A. C. 176

**4. — Ejectment—Practice.**

Where the plt. in ejectment claimed that the deft. was estopped by payment of rent from denying his title :—

*Held*, that the deft., who alleged receipt of rent by plt. as collector, was entitled to defend on the merits in the ordinary way, and that the plt. was not entitled to judgment under Order XIV. *Jones v. Stone* - P. C. [1894] A. C. 122

— Patents.

*See* PATENTS—Colonial and International Arrangements.

**5. — Servant of the Crown—Tenure at pleasure—Colonial Office regulations.**

In the absence of special contract a servant of the Colonial Government holds office during pleasure. The Colonial Office regulations as to the dismissal of public servants do not constitute such special contract, but are mere directions for the information and guidance of Colonial Governors and their subordinates.

**AUSTRALIA (Western Australia)—continued.**

A person gazetted without any special contract to act temporarily as medical officer during the absence on leave of the actual holder of the office was dismissed before the expiry of such leave :—

*Held*, that he had no cause of action. *Shenton v. Smith* - - - P. C. [1895] A. C. 229

Referred to by C. A. *Dunn v. Reg.*, [1896] 1 Q. B. 119.

**AUTHOR**—Photograph—Picture—Good and valuable consideration.

*See* COPYRIGHT—Picture. 37.

— Publishing agreement—Assignability.

*See* CONTRACT—Formation. 16.

**"AUTHOR"**—Reports of public speeches—Newspaper.

*See* COPYRIGHT—Periodical. 34.

**AUTHORITY**—Agent.

*See* Cases under PRINCIPAL AND AGENT.

— Master of salving vessel—Agreement—Tender—Discontinuous services.

*See* SHIPPING.

— Servant—Liability for acts of servants.

*See* Cases under MASTER AND SERVANT.

— Solicitor.

*See* SOLICITOR—Authority.

— Stockbroking transactions—Authority to stock brokers is on Stock Exchange terms—Notice to produce.

*See* CANADA. 23.

**AVERAGE**—Shipping.

*See* Cases under INSURANCE—Marine. SHIPPING—Average.

**AVOIDANCE CONTRACT**—Agent—Surreptitious dealing with other principal—Bribe accepted by agent.

*See* PRINCIPAL AND AGENT. 6.

— Voluntary Settlement.

*See* BANKRUPTCY—Voluntary Settlement. 265.

**AWARD**—Arbitration.

*See* ARBITRATION—Award.

## B.

**BACCARAT**—Unlawful game.See **GAMING**. 34.**BAHAMAS**.

Application of Colonial Probates Act, 1892.

See **PROBATE**—Colonial Probates Act, 1892.**Death Duties**.See **REVENUE**—Estate Duty.**Law of Bahamas**.

— Governor's power of pardon—Contempt of Court.

See **COLONY**. 3.**BAIL**.*Bail Act, 1898 (61 Vict. c. 7), amends the law with respect to bail.*— Action in rem—*Lis alibi pendens*—Staying proceedings.See **SHIPPING**—Practice. 199.— Collision—Action in rem—Writ of *feri facias*.See **SHIPPING**—Collision. 57.1. — Fugitive offender—Committal to await return—Power to admit to bail—Jurisdiction—*Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69)*.

Where a magistrate has made an order, under the Fugitive Offenders Act, 1881, committing to prison a person accused of having committed an offence, to which Part I. of the Act applies, in some part of Her Majesty's dominions, or within the jurisdiction of a Consular Court, to await his return to the place where the offence is alleged to have been committed, the Queen's Bench Division of the High Court has jurisdiction to admit the accused to bail until the time for his return.

*REG. v. SPILSBURY* Div. Ct. [1898] 2 Q. B. 615See also *Spilsbury v. Reg.*, [1899] A. C. 392.

2. — Illegal contract—Bail to produce prisoner—Indemnity.

An indemnity given to bail, whether by the prisoner bailed or another, is illegal. *CONSOLIDATED EXPLORATION AND FINANCE CO. v. MUSGRAVE* North J. [1899] W. N. 212; [1900] 1 Ch. 37

— Security for costs of appeal—Practice.

See **PRIVY COUNCIL**—Judicial Committee. 10.**BAILIFF**—HIGH BAILIFF.] *Inquiry and indorsement on summons against registered company—County Court Rules (May), 1899. W. N. 1899 (April 29), p. 147. See Current Index, 1899, p. xcii.*

— Distress by.

See **CASES** under **DISTRESS**.

— Fees—High bailiff—Practice.

See **COUNTY COURT**. Execution. 40.**BAILMENT**—Assignment—Validity of as against trustee—Chattels for hire.See **BANKRUPTCY**. 59.**BAILMENT**—continued.

— Cab—Registered proprietor of—Liability for acts.

See **MASTER AND SERVANT**—Master's Liability. 77—82.1. — Cloak-room, goods deposited at, by bailee—*Lien for charges*.

When a bailee deposits an article at a ry. station cloak-room, as he was entitled to do by the contract of bailment, and after the determination of the contract the owners seek to recover it:—

*Held*, that the ry. co. had a lien on it against the owners for the cloak-room charges. *SINGER MANUFACTURING CO. v. LONDON AND SOUTH WESTERN RY. CO.* — Div. Ct. [1894] 1 Q. B. 833

— Detinue—Conversion—Demand and refusal—Time when beginning to run.

See **LIMITATIONS, STATUTE OF**.—**Fraud**. 17.

— Estoppel—Attornment by bailee—Fraud.

See **ESTOPPEL**. 2.

— Estoppel—Jus tertii.

See **ESTOPPEL**. 3.

2. — Gratuitous loan of chattel—Defect in article lent—Knowledge of lender—Injury to borrower resulting from defect—Liability of lender.

The duty of a gratuitous lender of a chattel, for use by the borrower, is to communicate defects in the article lent, with reference to the use to which it is to be put, of which he is aware, and if, wilfully or by gross negligence, he does not discharge this duty, he is liable for injury resulting to the borrower from such defects.

*Blakemore v. Bristol and Exeter Ry. Co.* (1858) 8 E. & B. 1035, and *MacCarthy v. Young*, (1861) 6 H. & N. 329, approved. *COUGHLIN v. GILLISON* — C. A. [1899] 1 Q. B. 145

— Horse — Contract of agistment — Action founded on tort.

See **AGISTMENT**.

— Interpleader—bailee—Estoppel—Right to set up jus tertii.

See **INTERPLEADER**. 1.

3. — Limitations, Statute of—Money deposited for safe custody.

Time does not begin to run under the Statute of Limitations (21 Jac. 1, c. 16) against a person who has entrusted money to another person for safe custody until demand, though it was contemplated that the bailee might use the money in business. *In re TIDD. TIDD v. OVERELL*

North J. [1893] 3 Ch. 154

— Locomotive.

See **LOCOMOTIVE**. 2.

— Negligence of bailee—Liability of Government as compulsory bailees for hire.

See **QUEENSLAND**. 4.

4. — Negligence of stranger—Injury to chattel by.

**BAILMENT**—*continued.*

The plt. received a horse for sale with liberty to use it until sold. The horse, while being driven by the plt.'s servant, was injured by the negligence of the defts. :—

*Held*, that as the plt. was under no liability to his bailor, he could not recover any damages for the injury to the horse. *CLARIDGE v. SOUTH STAFFORDSHIRE TRAMWAY CO.*

Div. Ct. [1892] 1 Q. B. 422

See hereon remarks of A. L. Smith L.J. in *MEUX v. GREAT EASTERN RY. CO.*

C. A. [1895] 2 Q. B. 387, 394

5. — *Restaurant keeper—Coat of customer.*

Plt. went to deft.'s restaurant to dine. A waiter took the plt.'s coat without being requested, and hung it up behind plt. While plt. was dining the coat was stolen. Plt. sued deft. for damages for loss of the coat by his servant's negligence :—

*Held*, that there was evidence to support a verdict in plt.'s favour.

By Charles J., on the ground there was evidence from which a jury might find that deft. was bailee of the coat, and that he had been negligent.

By Wright J., on the ground that bailment must be assumed as the point was not taken at the trial, and there was evidence of negligence. *ULTZEN v. NICOLS* Div. Ct. [1894] 1 Q. B. 92

Distinguished by Div. Ct. *Orchard v. Bush & Co.*, [1898] 2 Q. B., 284, 289.

6. — *Title paramount — Bailee for hire — Liability of, for negligence of servant.*

The deft. hired a carriage and horse from the plts. His coachman, instead of taking them, as was his duty, to the stable, drove for his own purposes in another direction. While he was thus engaged, the carriage and horse were injured owing to his negligent driving :—

*Held*, that the deft. was liable under his contract as bailee in respect of the consequences of his servant's breach of duty to himself. *COUPÉ CO. v. MADDICK* — Div. Ct. [1891] 2 Q. B. 413

**BAKEHOUSE**—Underground—Premises vacant at commencement of Act.

See MASTER AND SERVANT — *Factory Acts.* 67.

**BAKING POWDER**—Baking powder is not "an article of food" within s. 3 of the Sale of Food and Drugs Act, 1875. *JAMES v. JONES*

Div. Ct. [1894] 1 Q. B. 304

See now Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 26.

**BALANCE**—Banking account.

See BANKER. 1.

**BALANCE ORDER**—*Definition.*

A balance order under the Companies Act, 1862, is not a "judgment."

The nature of a balance order discussed. *WESTMORELAND GREEN AND BLUE SLATE CO. v. FEILDEN* — C. A. [1891] 3 Ch. 15

**BALANCE-SHEET**—Proceedings against officers.

See COMPANY — *WINDING-UP* — *Proceedings against Delinquent Officers.* 195.

**BALLAST**—Obligation of shipowner to supply ballast—Responsibility for navigation.

See SHIPPING—*Charterparty.* 17.

**BALLOT**—Crosses, how to be counted.

See SCHOOLS. 6.

— Election of county council—Death of candidate between nomination and poll.

See COUNTY COUNCIL. 1.

**BANK.**

See BANKER.

**BANK ANNUITIES**—Conversion.

See NATIONAL DEBT. 2—3.

**BANK CHARGES**—Expenses of noting bill of exchange—Liquidated demand.

See PRACTICE—*Writ.* 290.

**BANK OF ENGLAND**—*Inspection of Register of Unclaimed Stock—National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 52.*

The Bank of England is not obliged under s. 52 of the National Debt Act, 1870, to allow a person who cannot shew that he has a bona fide interest in some unclaimed stock to inspect the register. Application by a "next of kin and unclaimed money agent" for a mandamus to compel allowance of inspection refused. *REG. v. GOVERNOR, &c., OF BANK OF ENGLAND.* Div. Ct. [1891] 1 Q. B. 785

— Lunatic stockholder.

See Cases under LUNACY.

**BANK-NOTE**—Composition for loss of right to issue notes.

See BANKER. 20.

**BANKER**—Account—Appropriation of payments—*Balance.*

A solicitor paid into his own account money of a client. From then to the solicitor's death the balance of the account always exceeded the sum so paid in. But on many days during that period the credit balance was less than the amount of other clients' moneys which the solicitor had paid in subsequently to his payment of the money off the first client and had not withdrawn :—

*Held*, that the money of the first client must be taken to have been drawn out by the solicitor, and that a claim by that client to be paid specifically out of the balance could not be sustained. *In re STENNING.* *WOOD v. STENNING.* North J. [1895] 2 Ch. 433

Referred to by Byrne J. *Mutton v. Peat*, [1899] 2 Ch. 556, 560.

2. — *Account—Banking account—Garnishee order—Honouring cheques—R. S. C., Order XLV., rr. 1, 2.*

Where a banker had been served with a garnishee order nisi attaching all moneys in his hands belonging to the plt. :—

*Held*, that he was not obliged to honour cheques drawn by the plt. against the balance in his hands over and above the judgment debt, and that his refusal to do so gave the plt. no cause of action.

Decision of C. A., (1889) 23 Q. B. D. 236, affirmed. *ROGERS v. WHITELAW*

H. L. (E.) [1892] A. C. 118

**BANKER—continued.**

3. — *Account—Closing account—Mortgage to secure amount owing on account current—Power of sale—Banker and customer.*

A customer of a bank assigned to the bank a policy of assurance on his life, and the moneys payable thereunder, by way of mortgage for securing the amount from time to time owing by him to the bank in account current. The mortgage provided that the statutory power of sale should be exercisable by the bank if (inter alia) default should be made in payment of the balance owing on the account current for the space of one calendar month after the account current had been closed.

In 1899 the amount owing by the customer was more than the bank was willing to allow, and he was constantly pressed to reduce the amount. On Nov. 9 he wrote to the bank manager: "There was a meeting of creditors yesterday. . . . They agreed to accept all the assets I had. I gave them to understand that I was insured . . . and that you held the policy . . . as security for your account. . . . There was a trustee appointed. . . . Trusting every one will get 20s. in the pound. . . ."—

*Held*, that the letter of Nov. 9 amounted to a closing of the account. It recognised that the relation of banker and customer was at an end, and the transactions between the parties must cease. The bank were, therefore, justified in realizing their security, and the plt. had no case against them. *BERRY v. HALIFAX COMMERCIAL BANKING CO.* **Kekewich J. [1900] W. N. 262**

4. — *Account—Current to deposit account, effect of transfer of sum from.*

Shortly after the death of G., a partner in a bank, T. transferred a sum from his current account to a deposit account. T. subsequently paid into and drew out of his current account sums exceeding that transferred. The bank stopped payment:—

*Held*, that the transaction was the same as if T. had drawn a cheque for the sum, and paid the proceeds into the deposit account. It was an entirely fresh contract, and G.'s estate was discharged. *In re HEAD. HEAD v. HEAD (No. 2)* **C. A. [1894] 2 Ch. 236**

— *Account not earmarked as trust account—Set-off.*

*See NEW ZEALAND. 1.*

— *Bank manager—Residence on bank premises—Income tax.*

*See REVENUE—Income Tax. 70.*

5. — *Bank manager—"Manager in trust"—Signature—Constructive notice.*

The words "manager in trust" appended to the signature of a bank manager to a transfer of shares import that he is a trustee for his employers, and are not calculated to suggest that he stood in a fiduciary relation to any third person so as to affect a transferee of such shares with constructive notice of such fiduciary relationship. *LONDON AND CANADIAN LOAN AND AGENCY CO. v. DUGGAN* — **P. C. [1893] A. C. 506**

— *Bank with several branches—Notice of dishonour to wrong branch.*

*See BILL OF EXCHANGE. 5.*

**BANKER—continued.**

— *Cheque—Agents.*

*See PRINCIPAL AND AGENT. 8.*

— *Cheque—Bet on horse-race—Illegal consideration.*

*See GAMING. 7*

6. — *Cheque—Cash, when equivalent to.*

The circumstances in which an agent may receive a cheque in lieu of cash considered. *PAPPE v. WESTACOTT* **C. A. [1894] 1 Q. B. 272**

— *Cheque—Conditional payment—Sale of debts and securities.*

*See TRADE. 2.*

— *Cheque—Co-surety—Cheque given by.*

*See PRINCIPAL AND SURETY—Discharge. 8.*

7. — *Cheque—Crossed cheque—Banker collecting and handing over proceeds—Conversion.*

M., the payee of a cheque, specially indorsed it to K. and posted it to K. S., having obtained possession of the cheque in transmission, altered the indorsement, presented it at the C. Bank, and requested them to collect it. They did so, and handed the proceeds to him in France:—

*Held*, that the C. Bank were liable to K. for the amount of the cheque. *KLEINWORT, SONS & CO. v. COMPTOIR NATIONAL D'ESCOMPTE DE PARIS*

**Cave J. [1894] 2 Q. B. 157**

Followed by *Collins J. Lacave & Co. v. Crédit Lyonnais*, [1897] 1 Q. B. 148.

8. — *Cheque—Crossed cheque—Receipt of payment for customer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 82.*

Where a crossed cheque is delivered to a banker by a customer for collection, and the banker receives payment of it and places the amount to the customer's account, the fact that the customer's account is overdrawn at the time does not make such receipt of payment by the banker any the less a receipt of payment for the customer within the meaning of s. 82 of the Bills of Exchange Act, 1882, or disentitle the banker to the protection of that section. *CLARKE v. LONDON AND COUNTY BANKING CO.*

**Div. Ct. [1897] 1 Q. B. 552**

9. — *Cheque—Defective title—Receiving payment for a customer—"Customer"—Liability of banker—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 81, 82.*

In order to constitute a person a "customer" of a bank within the meaning of s. 82 of the Bills of Exchange Act, 1882, it is not necessary that he should have an account at the bank.

A rate-collector had been in the habit for several years of receiving cheques for rates and cashing them at a country branch of the debts' bank, where he was known but had no account. By falsely pretending to the plts., who were rate-payers, that a rate had been made and was due, he obtained from them a cheque, drawn to his order upon a London bank, crossed generally, and marked "not negotiable." He indorsed the cheque and handed it in to the debts' branch bank, where it was cashed for him, a portion of the proceeds being applied by the banks according to his request, and the balance being handed to him in cash. This balance he appropriated to his own use. The debts. received payment of the



**BANKER—continued.**

cheque from the bank on which it was drawn before the collector's fraud was discovered. In an action to recover the amount so paid, it was found as a fact that the defts. received the payment in good faith and without negligence:—

*Held*, that in the circumstances the rate-collector, although he had no account with the defts., was a "customer" of the bank within the meaning of s. 82 of the Bills of Exchange Act, 1882, and (*V. Williams L.J.* doubting) that the defts. received payment of the cheque for the rate-collector and not for themselves; and that, therefore, the defts. were protected by s. 82, and were not liable.

Judgment of Bigham J., [1899] W. N. 106; [1899] 2 Q. B. 172, affirmed. *GREAT WESTERN RY. CO. v. LONDON AND COUNTY BANKING CO.*

C. A. [1900] W. N. 144; [1900] 2 Q. B. 464

10. — *Cheque—Dishonour, notice of—Affidavit verifying cause of action.*

On an application under Order XIV., r. 1, to enter final judgment on a writ specially indorsed with a claim for the amount of a dishonoured cheque, the affidavit verifying the cause of action need not contain an allegation that notice of dishonour has been given to the drawer. *MAY v. CHIDLEY* — Div. Ct. [1894] 1 Q. B. 451

—*Cheque—Effect of drawee bank certifying cheque—Usage—Effect of crediting customer with amount of cheque deposited.*

See *NEWFOUNDLAND*. 2.

11. — *Cheque—Honouring cheques—Garnishee order.*

Where a banker had been served with a garnishee order attaching all moneys in his hands belonging to the plt.:—

*Held*, that he was not obliged to honour cheques drawn by the plt. against the balance in his hands over and above the judgment debt, and that his refusal to do so gave the plt. no cause of action.

Decisions of C. A. and Div. Ct., (1889) 23 Q. B. D. 236, affirmed. *ROGERS v. WHITELEY*

H. L. (E.) [1892] A. C. 118

12. — *Cheque—Negotiable instrument—"Issue"—"Fictitious or non-existing person"—Belief or intention of drawer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 2, s. 7, sub-s. 3, s. 73.*

A cheque drawn to the order of a fictitious or non-existing person may be treated as payable to bearer within the Bills of Exchange Act, 1882, s. 7, sub-s. 3, although the drawer believes and intends the cheque to be payable to the order of a real person.

A clerk in the account department of the appellants, by fraudulently representing to them that work had been done on their account by B., induced them to draw cheques payable to the order of B. in payment for the pretended work. There was in fact no such person as B. The cheques when signed by the appellants were sent by them to the account department for postage. The clerk obtained possession of the cheques, indorsed them in B.'s name, and negotiated them

**BANKER—continued.**

with the respondents, who gave value for them in good faith. The cheques were paid to the respondents by the appellants' bankers. The appellants having discovered the fraud brought an action against the respondents to recover the amount of the cheques as money paid under a mistake of fact:—

*Held*, that the cheques were "issued" within the meaning of the Bills of Exchange Act, 1882, s. 2; that B. was a "fictitious or non-existing person" within the meaning of s. 7, sub-s. 3, of the Act, although the appellants believed and intended the cheques to be payable to the order of a real person; that the cheques might therefore be treated as payable to bearer, and that the action could not be maintained, the respondents being holders in good faith for value.

The decisions of Wills J. and C. A. [1895] 2 Q. B. 306, 767, affirmed. *CLUTTON v. ATTENBOROUGH & SON* H. L. (E.) [1897] A. C. 90

13. — *Cheque—Post-dated—Evidence of debt—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 4, 38.*

A post-dated cheque stamped as a cheque is admissible in evidence in action brought after the date of the cheque, as it appears when tendered to be sufficiently stamped. *ROYAL BANK OF SCOTLAND v. TOTTENHAM*

C. A. [1894] 2 Q. B. 715

14. — *Cheque—Post-dated—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 13, 73.*

A post-dated cheque stamped as a cheque is admissible in evidence in an action brought after the date of the cheque, since under the Stamp Act, 1891, the test of admissibility is whether an instrument when tendered in evidence appears to be sufficiently stamped. *ROYAL BANK OF SCOTLAND v. TOTTENHAM*

C. A. [1894] 2 Q. B. 715

—*Cheque—Signed by procurator—Liability of principal.*

See *PRINCIPAL AND AGENT*. 9.

—*Cheque—Tender—Validity—Authority of solicitor.*

See *TENDER*. 1.

15. — *Cheque—Words prohibiting transfer—Bills of Exchange.*

In order to prevent a cheque, drawn payable to order, being negotiable, the intention must be clearly expressed. Crossing the cheque to the payee's account at a particular bank is not sufficient.

Conditions necessary for rendering a cheque not negotiable considered. *NATIONAL BANK v. SILKE* — C. A. [1891] 1 Q. B. 435

—*Cheque—Churchwardens—Income of charity estates—Banking account—Anticipation of rents—Charge on charitable property.*

See *CHARITY*. 1.

—*Cheque—Collecting crossed cheque and handing over proceeds.*

See *TROVER*. 3.

16. — *Deceased partner—Deposit—Novation.*

The acceptance by a customer from the surviving partner of a fresh deposit-note for the balance of a debt due from a banking firm, one of whose partners is dead since the deposit was made, is not sufficient evidence of novation to

**BANKER—continued.**

discharge the estate of the deceased partner.  
*In re G. HEAD. HEAD v. HEAD (No. 1)*

**Chitty J. [1893] 3 Ch. 426**

Distinguished by C. A. *In re Head, [1894] 2 Ch. 236.*

**17. — Deceased partner—Transfer from current to deposit account—Novation.**

T. had a current account in the above bank. Shortly after the death of C., T. transferred a sum from his current account to a deposit account. T. subsequently paid into and drew out of his current account sums exceeding that transferred. The bank stopped payment :—

*Held*, that the transaction was the same as if T. had drawn a cheque for the sum, and paid the proceeds into the deposit account. It was an entirely fresh contract, and C.'s estate was discharged. *In re HEAD. HEAD v. HEAD (No. 2)*

**C. A. [1894] 2 Ch. 236**

— Deposit, Cheque for — Custom — Refusal to accept highest bidder.

*See VENDOR AND PURCHASER—Deposit.* 50.

— Deposit of securities by broker—Authority—Liability of bank — “Negotiable securities.”

*See STOCK EXCHANGE.* 8.

— Deposit of securities by broker—Negotiable securities—Right of redemption—“Contango.”

*See STOCK EXCHANGE.* 9.

— Deposit receipt, Banker's—Equitable assignment—Indorsement and delivery—Donee appointed executor.

*See VOLUNTARY GIFT.* 1.

**18. — Forged documents—Payment of forged documents purporting to be bills.**

A clerk forged the names of two firms with whom his principal had dealings, one as drawer and the other as payee of certain forged bills. He also by fraud obtained the signature of his principal as acceptor, and also to letters advising the bank that the bills were coming in for payment. The bank paid the money to the forger :—

*Held* (Lords Bramwell and Field diss.), that the loss fell on the principal and not on the bank.

*Held*, also, that if the Bills of Exchange Act, 1882, applied, the bills were payable to bearer, as the words “fictitious or non-existent person” (s. 7, sub-s. 3) included a real person who never had or was intended to have any right to the bill.

Decisions of Charles J., (1888) 22 Q. B. D. 103 and C. A. (1889) 23 Q. B. D. 243, reversed. *BANK OF ENGLAND v. VAGLIANO BROTHERS*

**H. L. (E.) [1891] A. C. 107**

Referred to. *Clutton v. Attenborough & Son, [1895] 2 Q. B. 306; H. L. (E.) [1897] A. C. 93.*

— Forged cheques—Liability of bank.

*See AUSTRALIA.* 2.

**19. — Forged indorsement — Cheque — “Customer.”—Action for conversion—Liability of banker—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 24, 60, 79 sub-s. 2, ss. 80, 82.**

The debt. bank carried on business in London

**BANKER—continued.**

and had a branch in Paris. A cheque was drawn on the debt. bank in London in favour of the plts. specially indorsed by the plts. to a firm in London and posted for collection to that firm, but it never reached them. After the posting a forged indorsement was put on the cheque, and it was presented at the debtfs.' bank in Paris by a person, purporting to be the last indorsee, who had no account at the debtfs.' bank. The debtfs. paid the cheque, and sent it to their bank in London, who credited their bank in Paris with the value. The London bank refused to deliver the cheque to the plts. The cheque, when it reached the debtfs., was crossed generally.

In an action for conversion of the cheque :—

*Held*, that the debtfs., by paying the cheque, and forwarding it to their London bank, and crediting their Paris bank with the value, were guilty of a conversion of the cheque in England, and therefore the case was governed by English law; that the person who obtained payment of the cheque was not a “customer” of the debtfs. within the meaning of the Bills of Exchange Act, 1882, s. 82; that the debtfs., having paid the cheque on a forged indorsement, were not protected by any of the provisions of the Bills of Exchange Act, but were liable, under s. 24, for the value of the cheque.

*Kleinwort, Sons & Co. v. Comptoir National d'Escompte de Paris, [1894] 2 Q. B. 157, followed. LACAVE & Co. v. CRÉDIT LYONNAIS*

**Collins J. [1897] 1 Q. B. 148**

— Inspect bankers' books in Scotland, Order to.

*See DISCOVERY—Documents.* 9.

— Inspection of bankers' books.

*See DISCOVERY—Documents.* 8—11.

**20. — Notes—Composition for loss of right to issue notes—Consolidation of firms into company—Bank Charter Act, 1844 (7 & 8 Vict. c. 32) ss. 10, 11, 12, 23, 24, 25, 28—Bank Note Act, 1856 (19 & 20 Vict. c. 20)—Bank Act, 1864 (27 & 28 Vict. c. 32).**

Five firms, two of which were London bankers without right to compensation, and three county bankers with such right under the Bank Charter Act, 1844, ss. 23, 24, agreed to sell their businesses to a limited co., the considerations being shares in the co., and agreed in future not to carry on business as bankers. The co. carried on business at the old banks with the old staff :—

*Held*, that the banks had ceased to carry on business, that the co. was not “such banker or bankers” as the three county firms, and that neither the firms nor the co. were entitled to be paid any composition by the Bank of England. *PRESCOTT, DIMSDALE, CAVE, TUGWELL & Co. v. BANK OF ENGLAND*

**C. A. [1894] 1 Q. B. 351**

**21. — Overdraft — Banker and Customer—Private account—Payment in of trust money—Notice—Liability of bank.**

Country bankers with whom A. had a current account received from their London agents a sum of money to be placed to the credit of A.'s trust account. A. had no trust account with the bankers, and they accordingly placed it to the credit of his current account and advised him thereof. A. knew it was trust money, but gave no instructions to the bankers and continued to

**BANKER—continued.**

draw on his account as usual. At the time the trust money was credited to his current account A. was overdrawn on securities deposited with the bankers, and the effect of so crediting him was to largely reduce his overdraft temporarily. A. however was in good credit, and the bankers had no intention of benefiting themselves and no suspicion that A. contemplated a breach of trust, and they continued to allow him a further and extended overdraft on further securities deposited with them until his bankruptcy some time afterwards:—

*Held*, that the bankers were not liable to make good to A.'s cestui que trust the trust money that had been lost under the above circumstances. **COLEMAN v. BUCKS AND OXON UNION BANK** — **Byrne J. [1897] 2 Ch. 243**

**22. — Overdraft — Honouring without knowledge of Customer—Authority.**

The Registrar-General of New South Wales opened an account with a bank under a special authority and instruction known to the bank for the daily lodgment of the collections of his department and their weekly transfer by his cheque to the Colonial treasury. By the fraud of a clerk in the Registrar's department less was paid in during each week than was certified for, so that each week's cheque resulted in an overdraft. The bank honoured the overdrafts without calling the customer's attention to the fact:—

*Held*, that the Colonial Government for whom the account was kept was not liable for the overdrafts. **LONDON CHARTERED BANK OF AUSTRALIA v. MACMILLAN** — **P. C. [1892] A. C. 292**

**23. — Overdraft—Liability of Promoters of projected Company—Novation.**

The executive council of an exhibition held to be liable for an overdraft on an account opened in the name of such exhibition, the Court being of opinion that the bank had never substituted as their debtors the co. when formed for the promoters.

Decision of Kekewich J., [1890] W. N. 181, reversed. **COUTTS & CO. v. IRISH EXHIBITION IN LONDON** — **C. A. [1891] W. N. 41**

**24. — Overdraft—Partner retiring from debtor firm.**

Where a bank allowed a firm to overdraw, and A. retired from the firm in 1884, and the overdraft was carried to the debit of the new firm, and the bank in 1889 passed a resolution continuing the overdraft for a little time, and in 1890 agreed with the new firm and a surety, B., for guaranteeing payment to the bank of any balance on the overdraft exceeding a certain sum:—

*Held*, that there was no agreement to give time to the new firm, or to alter the relation between the parties, and that the retired partner was not released; but quære whether a proviso in the deed of dissolution of 1884 which gave time to make arrangements with creditors prevented A. from being discharged.

Decision of C. A., [1894] 2 Ch. 32, affirmed. **ROUSE v. BRADFORD BANKING CO.**

**H. L. (E.) [1894] A. C. 586**

— Order on banker to transfer in account—Stamp.

See **REVENUE—Stamps.** 143.

**BANKER—continued.**

— Production and inspection of banker's books.

See **DISCOVERY—Documents.** 8—11.

— Shares—Valuation of testator's estate—Bank deposit receipts—Probate Duty.

See **VICTORIA.** 13.

**25. — Stockbroker—Clients' securities deposited to secure broker's indebtedness—Several accounts—Appropriation of payments—Rights of owner of deposited securities—Banker and customer.**

Stockbrokers had two accounts with their bankers—a current account and a loan account. The brokers became defaulters on the Stock Exchange on Jan. 13, and were on Jan. 24 adjudicated bankrupts. At the time of their stoppage there was on the current account a balance of 1362l. 10s. to their credit, and a balance of 7500l. was due from them to the bankers on the loan account. They had deposited with the bankers as security bonds and shares belonging to some of their clients. This deposit was made without the authority of the clients, but the bankers did not know that the deposited securities were not the property of the brokers. The deposit was made (as the C. A. held, differing in this respect from Byrne J.) to secure the general indebtedness of the brokers to the bankers, and not merely their indebtedness on the loan account. After the stoppage of the brokers the bankers realized the deposited securities, the proceeds of which were, together with interest until sale, more than sufficient to cover the balance due on the loan account, and there remained in their hands a sum exceeding the credit balance on the current account:—

*Held*, that the two accounts must be treated as one, and that it was the duty of the bankers to apply the 1362l. 10s. due from them on the current account in reduction of the 7500l. due to them on the loan account, and to use the deposited securities to satisfy only the difference between those two balances:

*Held*, therefore, that the sum remaining in the bankers' hands belonged to the owners of the deposited securities.

Two days before the stoppage of the brokers a client had sent them a cheque to pay for some stock which they had purchased for him. This cheque was paid to their current account, and the amount of it formed part of the 1362l. 10s. The purchase was not completed by the brokers:

*Held*, that the client had no equity as against the owners of the deposited securities to be repaid the amount of his cheque out of the 1362l. 10s.

Decision of Byrne J., [1899] W. N. 127; [1899] 2 Ch. 556, reversed on a conclusion of fact. **MUTTON v. PEAT**

**C. A. [1900] W. N. 98; [1900] 2 Ch. 79**

**26. — Stockbroker paying principal's money into his own account.**

When a broker or other agent entrusted with the possession and apparent ownership of money pays it away in the ordinary course of business for onerous consideration, a transaction which is fraudulent as between the agent and his employer will bind the latter unless he can shew that the recipient of the money did not act in good faith.

Trustees of bank shares instructed a stockbroker to sell them and deposit the proceeds in

**BANKER—continued.**

certain colonial banks. He sold the shares to another stockbroker, and received in the ordinary course a cheque for the price drawn in his own favour. This cheque he paid into his own bank account, then overdrawn. The bank knew the cheque to be proceeds of a sale of shares, but did not know or inquire in what capacity the broker received it:—

*Held*, affirming the decision of Ct. of Sess., Thomson, &c. (*Dunlop's Trustees*) v. *Clydesdale Bank, Ltd.*, (1891) 18 R. 751, that the bank were entitled to retain the proceeds of the cheque as against the debt due to them by the broker.

THOMSON v. CLYDESDALE BANK

H. L. (Sc.) [1893] A. C. 282

— Subrogation—Secured creditors—Unauthorized borrowing.

See RAILWAY. Powers. 30.

— Trustees—Investment—Convertible securities—Bearer bonds—Custody.

See TRUSTEE.—Investments. 62.

— Trustees' powers of investment—Deposits with banks—Laws of Victoria.

See VICTORIA. 3.

**BANKRUPTCY.**

*Additional rule, being rule 112B, dated Aug. 19, 1896, as to costs of solicitor to petitioning creditor. W. N. 1896 (Sept. 12), p. 251 (1). See Current Index, 1896, p. lviii.*

*O. of the Bd. of Trade dated Jan. 10, 1896, substituting a new Form for No. 74. (Notice of rejection of proof of debt). W. N. 1896 (Jan. 18), p. 36. See Current Index, 1896, p. lviii.*

PREFERENTIAL PAYMENTS IN BANKRUPTCY.] *Law regarding, in case of companies amended by 60 Vict. c. 19.*

*Official Assignee, &c., of estates of insolvent debtors—Bd. of Trade O. abolishing Offices of. W. N. 1897 (April 10), p. 105. See Current Index, 1897, p. lx.*

OFFICIAL RECEIVERS.] *Bd. of Trade O. as to distributing estates of debtors and duties in relation thereto amongst. W. N. 1897 (Jan. 2), p. 2. See Current Index, 1897, p. lx.*

*In General, col. 100.*

*Act of Bankruptcy, col. 101.*

*Adjudication, col. 111.*

*Annulment, col. 111.*

*Appeal, col. 112.*

*Appropriation, col. 113.*

*Assets, col. 113.*

*Attachment, col. 118.*

*Bankruptcy Notice. See BANKRUPTCY—Act of Bankruptcy.*

*Charging Order, col. 118.*

*Colonial Law, col. 119.*

*Committee of Inspection, col. 119.*

*Contempt of Court, col. 120.*

*Costs, col. 121.*

*County Court. See COUNTY COURT—Bankruptcy Jurisdiction.*

*Deeds of Arrangement, col. 123.*

*Discharge, col. 123.*

**BANKRUPTCY—continued.**

*Disclaimer, col. 125.*

*Disqualification, col. 125.*

*Dividends, col. 126.*

*Examination, col. 126.*

*Execution, col. 127.*

*Fraudulent Preference, col. 131.*

*Insolvent Estates, col. 133.*

*Lunacy, col. 133.*

*Manager, col. 133.*

*Offences, col. 135.*

*Officers and Offices, col. 135.*

*Official Assignee, col. 135.*

*Official Receiver, col. 135.*

*Order and Disposition, col. 136.*

*Partnership, col. 138.*

*Petition, col. 141.*

*Practice, col. 142.*

*Preference, col. 145.*

*Priority, col. 146.*

*Proof, col. 146.*

*Protected Transaction, col. 155.*

*Proxy, col. 156.*

*Receiver, col. 156.*

*Receiving Order, col. 157.*

*Rent, col. 163.*

*Reputed Ownership. See BANKRUPTCY—Order and Disposition.*

*Retainer, col. 164.*

*Scheme of Arrangement, col. 164.*

*Secured Creditor, col. 165.*

*Set-off, col. 169.*

*Small Bankruptcy, col. 171.*

*Stay of Proceedings, col. 171.*

*Trustee, col. 171.*

*Undischarged Bankrupt, col. 178.*

*Void Settlement, col. 181.*

*Voluntary Settlement, col. 181.*

**In General.**

— Annuity—Appropriation of capital sum—Married Woman—Restraint on anticipation.

See ANNUITY. 8.

— Assignee of equitable life estate—Letting into possession.

See SETTLED LAND—Possession. 92.

— Crown debt—Legacy duty—Priority.

See REVENUE—Legacy Duty. 124.

— Executor—Injunction restraining from further acting as.

See EXECUTOR—Administration. 4.

— Forfeiture—Determinable life interest.

See SETTLEMENT—Forfeiture. 25.

— Forfeiture—Foreign bankruptcy—English domicile.

See WILL—Forfeiture. 98.

— Interest in land—Limitations, Statute of—Rights of beneficiaries whose trustees are barred.

See NEW SOUTH WALES. 27.

**BANKRUPTCY (In General)—continued.**

— Intestacy—Beneficial owner a bankrupt—Limited grant of administration to trustee in bankruptcy.

See PROBATE—Grant of Administration. 35.

— “Legal disability,” meaning of.

See WILL—Uncertainty. 215.

— Limitations, Statutes of.

See LIMITATIONS, STATUTES OF—Bankruptcy.

— Mortgagor, Bankrupt—Foreclosure—Account—Practice.

See MORTGAGE—Foreclosure. 16.

— Sequestration of benefice.

See CASES UNDER ECCLESIASTICAL LAW—Sequestration.

— Solicitor.

See SOLICITOR—Bankruptcy.

— Wife's unsettled reversion—Equity to settlement.

See SETTLEMENT—Equity to Settlement. 21.

**Act of Bankruptcy.**

1. — Assignment of whole property—Assignment by partners for benefit of trade creditors only—Receiving order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (a).

By s. 4, sub-s. 1, of the Bankruptcy Act, 1883, a debtor commits an act of bankruptcy if (a) “he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally” :—

Held, that an assignment by a debtor for the benefit of his trade creditors only was not an act of bankruptcy under clause (a). *In re PHILLIPS. Ex parte BARTON*

Div. Ct. [1900] W. N. 117; [1900] 2 Q. B. 329

2. — Assignment of whole property—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (a).

A debtor assigned all his property except leaseholds to trustees for the benefit of his creditors, and executed a declaration of trust as to the excepted property in favour of the same trustees :—

Held, that this was a “conveyance or assignment” of all his property within s. 4, sub-s. 1, of the Bankruptcy Act, 1883, and the deed was consequently an act of bankruptcy. *In re HUGHES. Ex parte HUGHES* — C. A. [1893] 1 Q. B. 595

Referred to by C. A. *Gentle v. Faulkner* [1900], 2 Q. B. 267, 274.

3. — Assignment of whole property—Bankruptcy Law, 1879, s. 151—Act No. 17 of 1877, s. 10.

An assignment of the whole of a debtor's property in consideration of a contemporaneous advance and promises of future advances “in order to enable the debtor to carry on his business and in the reasonable belief that he would thereby be enabled to do so,” held not to be an act of bankruptcy. *ADMINISTRATOR-GENERAL OF JAMAICA V. LASCELLES DE MERCADO & Co. In re REES' BANKRUPTCY* — P. C. [1894] A. C. 135

4. — Assignment to one-man company—Fraudulent conveyance—13 Eliz. c. 5—Bankruptcy Act,

**BANKRUPTCY (Act of Bankruptcy)—continued.**

1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (b); ss. 43, 44.

A trader, who was liable under a judgment for the costs of an action, purported to sell his business to a co. which he had formed for the purpose in consideration of fully paid-up shares and of the co. undertaking to pay his debts. He was the chairman, managing director, and secretary of the co.; he or his nominee held substantially the whole of the shares in it, and he had the complete control of it, including the power to draw cheques, which he exercised in his own favour. Within three months of this transaction a bankruptcy petition was presented against him, grounded on his non-compliance with a bankruptcy notice in respect of the costs in question, and a receiving order was made upon it. His liabilities exceeded 2000*l.*, with assets nil. Between the presentation of the petition and the making of the order, a resolution was passed for the voluntary winding-up of the co., and a liquidator was appointed :—

Held, that the transfer was fraudulent and an act of bankruptcy; that the title of the trustee to the business related back to the date of the transfer, and overrode the claims of the creditors of the co. in the winding-up; and that the liquidator was bound to hand over to the trustee the assets representing the business at the time of the transfer.

Decision of Wright J., [1898] W. N. 164 (3), reversed. *In re CARL HIRTH. Ex parte THE TRUSTEE*

C. A. [1899] W. N. 10 (2); [1899] 1 Q. B. 612

5. — Award—Execution—Seizure and sale of goods—“Civil proceedings in the High Court”—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 12.

An application to enforce an award in the same manner as a judgment or order to the same effect under s. 12 of the Arbitration Act, 1889, is a “civil proceeding in the High Court” within the meaning of s. 1 of the Bankruptcy Act, 1890. *Ex parte CAUCASIAN TRADING CORPORATION. In re A BANKRUPTCY PETITION*

C. A. [1896] 1 Q. B. 368

By the “Companies (Winding-up) Act, 1893” (56 & 57 Vict. c. 58), an order for payment of money under 53 & 54 Vict. c. 63, s. 10, was declared to be a final judgment within 46 & 47 Vict. c. 52, s. 4, sub-s. 1 (g).

6. — Bankruptcy Notice—Address of issuing creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136, Appx. Pt. 1, Form No. 6.

An address at which the creditor cannot be found, but can only be heard of, so that the debtor cannot pay the debt there, is not such an address as is required by the Bankruptcy Act and Rules. A bankruptcy notice stated the address of the creditor who issued it to be “White's Club, St. James', S.W.” The creditor did not reside at the club, and he was in fact out of England during the whole of the seven days limited by the notice for the payment of the debt. There was evidence that, if the debtor had gone to the club, he would have been referred to the creditor's

**BANKRUPTCY (Act of Bankruptcy)—continued.**  
 London solicitor, who held a general power of attorney for the creditor, and could have received payment of the debt on his behalf :—

*Held*, that the notice was invalid, and that the non-payment of the debt within the seven days did not constitute an act of bankruptcy.  
*In re STODDON. Ex parte LEIGH*

C. A. [1895] 2 Q. B. 534

7. — *Bankruptcy Notice—Execution—Interpleader—Right of Execution—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).

Where goods taken in execution have been claimed by a third party before return by the sheriff, and an interpleader summons has been taken out and is pending, the execution creditor cannot issue execution, and therefore cannot serve a bankruptcy notice on the debtor. *In re FOLLOWS. Ex parte FOLLOWS*

Div. Ct. [1895] 2 Q. B. 521

8. — *Bankruptcy Notice—"Final judgment"—Costs—Action upon Interlocutory order for payment of—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).

A judgment recovered in an action for the recovery of costs payable under an interlocutory order is a "final judgment" within s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883. *In re BOYD. Ex parte McDERMOTT* C. A. [1895] 1 Q. B. 611

Referred to by C. A. *Pritchett v. English and Colonial Syndicate*, [1899] 2 Q. B. 428, 434.

9. — *Bankruptcy Notice—"Final judgment"—Costs—Order on co-respondent in divorce suit—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (e), 1 (g).

An order on a co-respondent for payment of the petitioner's costs made on the grant of decree nisi in a divorce suit (afterwards made absolute) is not a final judgment in an action within s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883. *In re BINSTED. Ex parte DALE*

C. A. [1893] 1 Q. B. 199

10. — *Bankruptcy Notice—"Final judgment"—Costs—Order upon motion in bankruptcy—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).

An order to pay costs made on a motion in bankruptcy is not a "final judgment" within s. 4 (1) (g) of the Bankruptcy Act, 1883. *In re A BANKRUPTCY NOTICE. Ex parte OFFICIAL RECEIVER* C. A. [1895] 1 Q. B. 609

11. — *Bankruptcy notice—"Final judgment"—Costs—Separate judgments in partnership action—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. (g).

In a partnership action the Court made two orders, one for dissolution of partnership with the usual accounts and inquiries, and another dismissing a counter-claim and giving the plt. his taxed costs up to and including the trial. Subsequent costs were reserved :—

*Held*, that the order giving taxed costs was a final judgment within s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883. *In re ALEXANDER. Ex parte ALEXANDER* C. A. [1892] 1 Q. B. 216

Referred to by Stirling J. *Taylor v. Roe*, [1894] 1 Ch. 413, 421.

**BANKRUPTCY (Act of Bankruptcy)—continued.**

12. — *Bankruptcy notice—Foreigner out of Jurisdiction—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 6, sub-s. 1 (d).

A bankruptcy notice was issued under the Bankruptcy Act, 1883, s. 4, sub-s. 1 (g), against a foreigner who had not ordinarily resided or had a dwelling-house or place of business in England within the preceding year and was then abroad. The debtor subsequently coming to England temporarily, he was served with the bankruptcy notice in this country ;—

*Held*, that the issue of the bankruptcy notice was valid. *In re CLARK. Ex parte BEYER, PEACOCK & Co.* C. A. [1886] 2 Q. B. 476

13. — *Bankruptcy Notice—Irregularity—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).

A bankruptcy notice which is not in accordance with the terms of the judgment on which it is founded or which is in terms likely to perplex the debtor, or does not clearly inform him who is the creditor whom he is required to pay, will be set aside. *In re HOWES. Ex parte HUGHES* - - C. A. [1892] 2 Q. B. 628

Referred to by C. A. *In re Low*, [1895] 1 Q. B. 734, 736. See next Case.

14. — *Bankruptcy notice—Irregularity—Amendment—Joint debtors—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 143.

A. obtained judgment against B. and three out of five co-debts. A. served a bankruptcy notice on B. in which it was stated that judgment had been recovered against B. and all five co-debts :—

*Held*, that the error was not material, as it could not prejudice B., and that the notice could be amended under s. 143 of the Act of 1883 :

*Held*, also, that where judgment has been recovered against several persons jointly, a bankruptcy notice may be issued against one of them without including the others. *In re Low. Ex parte GIBSON* - - C. A. [1895] 1 Q. B. 734

15. — *Bankruptcy notice—Judgment—Equitable assignment of judgment debt—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—*Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 1.

A judgment creditor, who has made an equitable assignment of the judgment debt, may nevertheless issue a bankruptcy notice upon the judgment under the Bankruptcy Act, 1883, s. 4, sub-s. 1 (g). *In re PALMER. Ex parte BRIMS* C. A. [1898] 1 Q. B. 419

16. — *Bankruptcy notice—Judgment debt—Infant—Acceptance—Infants Relief Act, 1873* (37 & 38 Vict. c. 62), s. 1—*Bills of Exchange Act, 1882* (45 & 46 Vict. c. 61), s. 22.

An infant cannot bind himself by the acceptance of a bill of exchange, even when the bill is given for the price of necessities supplied to him during infancy. Such an acceptance is wholly void, even in the hands of an indorsee for value without notice of the infancy, and bankruptcy proceedings cannot be founded on a judgment on such an acceptance. *In re SOLTYSKOFF. Ex parte MARGRETT* C. A. [1891] 1 Q. B. 413

**BANKRUPTCY (Act of Bankruptcy)—continued.**

17. — *Bankruptcy notice—Judgment debt—Joinder of several—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

Two or more judgment debts cannot be included in the same bankruptcy notice under s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883. *In re Low. Ex parte ARGENTINE GOLD FIELDS, LD.*

C. A. [1891] 1 Q. B. 147

18. — *Bankruptcy notice—Judgment debt—Married woman—Married Women Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136, App. Form No. 6.*

A judgment had been obtained against a married woman trading separately from her husband in the ordinary form in the case of a married woman—i.e. against her separate estate and not as a personal judgment:—

*Held*, that on this judgment a bankruptcy notice could not issue under s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883, against the debtor, for the notice would not be “in accordance with the terms of the judgment,” as the notice required the person served to pay the judgment debt, whereas the judgment was only against her separate estate. A bankruptcy notice must be in the form prescribed by Form 6 in the Appendix to the Bankruptcy Rules, 1886. *In re HANNAH LYNES. Ex parte LESTER & CO.*

C. A. [1893] 2 Q. B. 113

Referred to by Div. Ct. *In re Hewett*, [1894] 1 Q. B. 328, 331.

Referred to by C. A. *In re Clark*, [1896] 2 Q. B. 476, 479.

19. — *Bankruptcy notice—Judgment debt—Married woman—Death of husband—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136, Appx. Form No. 6.*

A judgment recovered against a married woman does not, upon the death of her husband, render her personally liable to pay the judgment debt, so as to entitle the judgment creditor to issue a bankruptcy notice against her upon such judgment. *In re HEWETT. Ex parte LEVENE*

Div. Ct. [1895] 1 Q. B. 328

20. *Bankruptcy notice—Judgment debt—Payment of part—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136, Appx. Form No. 6.*

Where part of a judgment debt has been paid the creditor is not entitled to serve a bankruptcy notice in respect of the whole of such debt, as he cannot issue execution in respect of the part which has been paid. *In re CHILD. Ex parte CHILD* - - - Div. Ct. [1892] 2 Q. B. 77

21. — *Bankruptcy notice—Married woman—Trading separately from husband—Married Women Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5.*

On the facts, *held* that there was neither separate property nor separate trading within s. 1, sub-s. 5, of the Married Women's Property Act, 1882. The meaning of “carrying on a trade separately from her husband” considered by V. Williams J. *In re HELSBY. Ex parte HELSBY* - - - Div. Ct. [1893] W. N. 189

And see Nos. 18, 19 above.

**BANKRUPTCY (Act of Bankruptcy)—continued.**

22. — *Bankruptcy notice—Non-compliance with bankruptcy notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (g).*

Where a debtor has committed an act of bankruptcy by non-compliance with a bankruptcy notice under s. 4 (g) of the Act of 1883, a bankruptcy petition may be presented by any creditor, although the creditor who served the notice has subsequently to the act of bankruptcy received payment of his debt. *In re POWELL. Ex parte POWELL* - Div. Ct. [1891] 2 Q. B. 324

23. — *Bankruptcy notice—Partnership firm—Infant partner—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4, 5, 6, 105—Bankruptcy Rules, 1886, rr. 260, 262, 264—R. S. C., Order XLVIII. A. rr. 5, 8.*

If an act of bankruptcy is committed by a firm having an infant partner a receiving order cannot be made against the firm simply, but can be made against the members of the firm “other than” the infant partner; and if a receiving order has been made against the firm simply it can be amended under s. 105 of the Bankruptcy Act, 1883.

Judgment was recovered against a partnership, one member of which, G. W. B., was an infant. A bankruptcy notice was served, the non-compliance with which was alleged in the petition as an act of bankruptcy, and a receiving order was made:—

*Held*, by H. L. (E.), varying C. A., that the judgment should be amended by adding after the word “defts.” the words “other than G. W. B.”; and that the bankruptcy proceedings should be amended by adding these words after the words “B. Brothers.” *In re BEAUCHAMP BROTHERS. Ex parte BEAUCHAMP*

C. A. [1894] 1 Q. B. 1; varied by H. L. (E.) sub nom. LOVELL and CHRISTMAS v. BEAUCHAMP [1894] A. C. 607

24. — *Bankruptcy notice—Scottish judgment registered in England—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), ss. 3, 4.*

A judgment of the Ct. of Sess. in Scotland registered in England under the Judgments Extension Act, 1868, cannot be made the foundation of a bankruptcy notice.

*In re Watson* [1893] 1 Q. B. 21, followed. *In re A BANKRUPTCY NOTICE.*

C. A. [1898] 1 Q. B. 383

25. — *Bankruptcy Notice—Service out of jurisdiction—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 6, sub-s. 1 (d).*

There is no jurisdiction under the Bankruptcy Act, 1883, to allow the service of a bankruptcy notice upon a foreigner out of the jurisdiction. *In re PEARSON. Ex parte PEARSON*

C. A. [1892] 2 Q. B. 263

Referred to by C. A. *In re Clark*, [1896] 2 Q. B. 476, 479.

Considered by C. A. *In re A. B. & Co.*, [1900] 1 Q. B. 541, 545.

26. — *Bankruptcy notice—Set aside, application to—Adjournment of hearing—Ground for setting aside—Bankruptcy Act, 1883 (46 & 47 Vict.*

**BANKRUPTCY (Act of Bankruptcy)—continued.**

c. 52), s. 4, sub-s. 1 (g)—*Bankruptcy Rules*, 1886 and 1890, *Rules* 138 (2), 139, *Form* 8.

An adjournment of the hearing of an application to set aside a bankruptcy notice cannot be granted to the judgment debtor, unless, upon the application for adjournment, sufficient ground, within s. 4, sub-s. 1 (g), of the *Bankruptcy Act*, 1883, and *Rules* 138 (2), 139, and *Form* 8 of the *Bankruptcy Rules*, 1886 and 1890, is shown for setting aside the bankruptcy notice. *In re COLB. Ex parte ATTENBOROUGH*

Div. Ct. [1898] 1 Q. B. 290.

27. — *Bill of exchange given for amount of debt—Determination of credit by Act of Bankruptcy—Petitioning creditor's debt.*

A petition in bankruptcy alleged as the petitioning creditor's debt a sum due for goods sold and delivered. Previously to the commission of the alleged act of bankruptcy, the debtor had given to the petitioning creditor bills of exchange for the price of the goods, which bills had not matured at the date of the presentation of the petition:—

*Held*, that the only effect of taking the bills was to give the debtor a period of credit, that by the act of bankruptcy the period of credit was determined, and that the petitioning creditor's debt was correctly stated in the petition. *In re RAATZ. Ex parte RAATZ*

Div. Ct.  
[1897] 2 Q. B. 80

28. — *Circular or notice to Creditors—Non-Trader—Notice of Intention to suspend Payment—Solicitor's Letter—Bankruptcy Act*, 1883 (46 & 47 *Vict. c. 52*), s. 4, sub-s. 1 (h).

Sect. 4, sub-s. 1 (h), of the *Bankruptcy Act*, 1883, applies to non-traders as well as to traders.

Judgment creditors having pressed the debtor for payment and threatened to levy execution, he offered them a second mortgage on his freehold estates as security, and with a view thereto his solicitors wrote to the solicitors of the judgment creditors as follows: "As promised we send you herewith statement showing income and expenditure and amount of the mortgages on the estates. We think it well to repeat what we stated to you at our interview that a receiving order will be applied for immediately execution is issued." The security offered was declined, and shortly afterwards the judgment creditors issued execution. The debtor at once presented a bankruptcy petition and obtained a receiving order. The trustee in bankruptcy claimed moneys paid to the debtor's solicitor between the date of the letter and of the receiving order, on the ground that the letter was an act of bankruptcy and that his title related back thereto:—

*Held*, that the letter did not amount to a notice of suspension or of intention to suspend payment, and therefore was not an act of bankruptcy. *TRUSTEE OF LORD HILL v. ROWLANDS*

V. Williams J. [1896] 2 Q. B. 124

See also on another point, *Hill v. Rowlands*, C. A. [1897] 2 Ch. 361.

29. — *Circular or notice to Creditors—“Notice”—Suspension of payment—Verbal admission of insolvency—Debt—Payment on a contingency—Future partnership—“Liquidated sum”—Petitioning creditor's debt—Bankruptcy Act*,

**BANKRUPTCY (Act of Bankruptcy)—continued.**

1883 (46 & 47 *Vict. c. 52*), s. 4, sub-s. 1 (h); s. 6, sub-s. 1 (b).

Under an agreement made in Jan. 1900, between M., a stockbroker, and T., with a view to T.'s ultimately becoming a member of the Stock Exchange and entering into partnership with M., T. paid 2000*l.* into M.'s banking account subject to a condition that if T. should not, on or before Sept. 29, 1900, become a member of the Stock Exchange, or if, having become a member, he should not be at liberty to enter a partnership within that period by reason of his recommenders withholding their consent, then and in either of those cases T. should have the option of determining the agreement by notice, whereupon the 2000*l.* should be repaid by M.

On June 28 M. was hammered on the Stock Exchange, and on July 3 he told T. in conversation that "he was utterly penniless," that "he could not pay anybody," and that "he had lost everything." Thereupon T., without having given any notice determining the agreement, presented a bankruptcy petition against M., alleging that T. was indebted to him "in the sum of 2000*l.* lent by him to M. pursuant to the agreement," and that the act of bankruptcy was that the debtor gave him "notice" on July 3 of having "suspended payment of his debts":—

*Held*, that the alleged debt of 2000*l.* was not "a liquidated sum, payable either immediately or at some certain future time," within s. 6, sub-s. 1 (b), of the *Bankruptcy Act*, 1883, and was therefore not sufficient to support the petition:—

*Held*, also, by Lord Alverstone C.J., that if on July 3 T. had been in fact a "creditor" of M., the statement then made by M. to T. would have been a "notice" of suspension of payment constituting an "act of bankruptcy" within s. 4, sub-s. 1 (h). *In re MILLER*

C. A. [1900] W. N. 238; see [1901] 1 Q. B. 51

30. — *Circular or notice to Creditors—Notice of intention to suspend payment—Bankruptcy Act*, 1883 (46 & 47 *Vict. c. 52*), s. 4, sub-s. 1 (h).

A debtor sent to his creditors a circular letter in these terms: "Being unable to meet my engagements as they fall due invite your attendance (at specified time and place) when I will submit a statement of my position for your consideration and decision."

*Held*, that this letter would naturally induce the creditors to believe that the debtor intended to suspend payment of his debts, and therefore amounted to a notice that he was "about to suspend payment of his debts," within s. 4, sub-s. 1 (h), of *Bankruptcy Act*, 1883, and was therefore an act of bankruptcy. *CROOK v. MORLEY*

- H. L. (E.) [1891] A. C. 316  
(affirm. C. A. (1890) 24 Q. B. D. 320)

Referred to by Div. Ct. *In re Scott*, [1896] 1 Q. B. 619, 625.

31. — *Circular or notice to Creditors—Notice of suspension of payment—Bankruptcy Act*, 1883 (46 & 47 *Vict. c. 52*), s. 4, sub-s. 1 (h).

A written notice by a debtor to a creditor that he is about to suspend payment of his debts is admissible in evidence to prove an act of bankruptcy, notwithstanding that the notice is ex-



**BANKRUPTCY (Act of Bankruptcy)—continued.**

pressed to be "without prejudice." *In re DAINTRY.* *Ex parte* HOLT. Div. Ct. [1893] 2 Q. B. 116

**32. — Circular or notice to Creditors—Notice of suspension of payment—Declaration of inability to pay—Intention to deal with creditors collectively—Notice by non-trader—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (h).**

A statement made by a debtor will amount to a notice that he has suspended, or is about to suspend, payments of his debts, within the meaning of s. 4, sub-s. 1 (h), of the Bankruptcy Act, 1883, so as to constitute an act of bankruptcy, if it is in effect a statement that the debtor is unable to pay his debts, and intends to deal with his creditors collectively.

SECT. 4, sub-s. 1 (h), applies to non-traders as well as to traders. *In re* SCOTT. *Ex parte* SCOTT. Div. Ct. [1896] 1 Q. B. 619

**33. — Circular or notice to Creditors—Solicitor's and accountant's charges—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 41, 42, 44.**

On Aug. 15, 1892, a firm sent out a circular stating "circumstances have placed us in financial difficulties, which makes it desirable for us to consult with our creditors." "We are having our books examined, and a statement prepared by Messrs. F., chartered accountants, and as soon as this is complete, we propose inviting you to a meeting of our creditors." On Sept. 7 the firm admittedly committed an act of bankruptcy. On Sept. 17 a receiving order was made against the firm. Between Aug. 15 and Sept. 14, Messrs. F. collected money for the bankrupts, out of which they made payments to themselves for preparing the statement and to the solicitors for costs:—

*Held*, that the circular of Aug. 15 was an act of bankruptcy, and that if an allowance was made to Messrs. F. and the solicitors, it must be only for services which had clearly benefited the creditors. *In re* SIMONSON. *Ex parte* BALL

V. Williams J. [1894] 1 Q. B. 433

**34. — Debtor absenting himself—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (d).**

In order to show that a debtor has "absented" himself within s. 4 (1) (d), of the Bankruptcy Act, 1883, it is not necessary to show actual physical absence from a particular place.

A., previous to a judgment against her, adopted an assumed name, and after the judgment removed, leaving no address, nor giving any to her solicitor, through whom she was being pressed:—

*Held*, that A. had committed an act of bankruptcy. *In re* ALDERSON. *Ex parte* JACKSON. Div. Ct. [1895] 1 Q. B. 183

**35. — Debtor—"Absenting himself"—Married woman—"Carrying on trade"—Separate estate—Debtor—Liability to bankruptcy laws—Ceasing to trade—Undischarged debts—Receiving order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (d)—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5.**

The debtor, a married woman, in 1898, purchased a furniture-polish business in Manchester with money provided out of her separate estate, and carried it on as "the Unedit Company" in a house in which she, her husband, and family

**BANKRUPTCY (Act of Bankruptcy)—continued.**

were then living, and which had a private entrance in one street and a "trade entrance" in another, the husband taking part in the management of the business. In Jan. one Lambert supplied her with goods for the purposes of the business to the value of 174*l.*, for which she gave him bills of exchange. Early in Feb. last she sold the business to a limited co., and on Feb. 11 left Manchester and joined her husband and children at lodgings in London, whither the husband had gone to take up a situation. In April they moved to another residence without leaving any address. The bills were dishonoured, and Lambert obtained judgment upon them against the debtor, an order for substituted service of the writ having been obtained in consequence of the impossibility of discovering her address. In Oct. Lambert presented a bankruptcy petition against her in respect of the judgment debt, the alleged act of bankruptcy being that the debtor was "absenting herself with intent to defeat and delay her creditors," within s. 4, sub-s. 1 (d) of the Bankruptcy Act, 1883.

As it was again found impossible to serve the petition upon her, an order was made for substituted service, and on Nov. 15 a receiving order was made against her:—

*Held*, that the facts were sufficient to shew that the debtor had absented herself within the meaning of s. 4, sub-s. 1 (d), of the Bankruptcy Act, 1883; and as to the first point, that the decision in *In re Dagnall*, [1896] 2 Q. B. 407, was perfectly right; that the words of s. 1, sub-s. 5, of the Married Women's Property Act, 1882, "carrying on a trade separately from her husband," were not confined to the case of a married woman carrying on trade at the time, in the sense of actually conducting the business, but applied so long as she had not discharged the debts incurred in the business. The difference of language in the Bankruptcy Acts, 1869 and 1883, was sufficient to justify the decision in *In re Dagnall*. Moreover, the principle was long ago settled by Lord Eldon in *Ex parte Bamford* (1808-9), 15 Ves. 449, a decision under the Bankruptcy Act of George III. The debtor was therefore subject to the bankruptcy laws. Appeal dismissed. *In re* WORSLEY C. A. [1900] W. N. 269

— Execution.

See **BANKRUPTCY—Execution.**

**36. — Holding by Sheriff of debtor's goods—Holding for more than twenty-one days—Execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 45—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1.**

Where the sheriff remained in possession on behalf of a judgment creditor for twenty-one days and was then paid out, and later a receiving order was made against the debtor, the execution creditor was ordered to repay the money to the trustee of the debtor, as the debts must be held to have notice of the act of bankruptcy committed by the sheriff remaining in for more than twenty-one days. *BURNS-BURNS (TRUSTEE IN BANKRUPTCY OF) v. BROWN* C. A. [1895] 1 Q. B. 324

Referred to by C. A. *In re North*, [1895] 2 Q. B. 264, 268.

**BANKRUPTCY (Act of Bankruptcy)—continued.**

37. — *Holding by Sheriff of debtor's goods—Holding for twenty-one days—Computation of time—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1.*

To constitute an act of bankruptcy under s. 1 of the Bankruptcy Act, 1890, by seizure of the debtor's goods by the sheriff's holding them for twenty-one days, the holding by the sheriff must be for twenty-one whole days excluding the day of seizure. *In re NORTH. Ex parte HASLUCK*

C. A. [1895] 2 Q. B. 264

— Notice or circular to creditors.

See Nos. 28—33, above.

38. — *Protected transactions—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4, 49.*

A transaction with a bankrupt which comes within the terms of s. 49 of the Bankruptcy Act, 1883, is protected by that section, although it is an act of bankruptcy. *SHEARS v. GODDARD*

C. A. [1896] 1 Q. B. 406

— Registrar's judgment admissible—Laws of New South Wales.

See NEW SOUTH WALES. I.

**Adjudication.**

39. — *Discretion of Court to refuse adjudication—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 18, 20.*

(A) Where a receiving order has been made, and a composition is not accepted in pursuance of s. 18 of the Act of 1883, the Court has no discretion under s. 20 to refuse to adjudge the debtor bankrupt merely in order that the creditors may have time to reconsider the proposal for composition. *In re PINFOLD. Ex parte PINFOLD*

Div. Ct. [1892] 1 Q. B. 73

Referred to by C. A. *In re Lord Thurlow*, [1895] 1 Q. B. 724, 731.

[NOTE.—It should be noted that s. 18 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), was repealed by the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), and is now replaced by s. 3 of the latter Act.]

(B) *Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 20, sub-s. 1; s. 105, sub-ss. 2, 4; s. 109.*

But on an application for adjudication in a case within s. 20, sub-s. 1, of the Act of 1883 the Court is not bound forthwith to adjudge the debtor bankrupt, but may for good reasons adjourn the proceedings under s. 105, sub-s. 2. *In re LORD THURLOW. Ex parte OFFICIAL RECEIVER*

C. A. [1895] 1 Q. B. 724

— Lunatic bankrupt—Jurisdiction—Committee. See LUNACY—Bankruptcy. 2.

**Annulment.**

40. — *Annulment by consent—Fraud on bankruptcy law—Secret agreement.*

A bankrupt agreed with B. that B. should buy up the debts of the creditors who had proved. All the creditors being satisfied or having assigned the bankruptcy was annulled. After the death of the bankrupt, L., a former creditor, sought to prove against his estate for a sum which the deceased had agreed by letter to pay him in consideration of L. assigning his debt to B. for £2000. This agreement had not been dis-

**BANKRUPTCY (Annulment)—continued.**

closed to the creditors or the Court of Bankruptcy:—

*Held*, that L. could prove in the administration action because there was no duty to disclose the agreement to the Court of Bankruptcy, as the function of the Court was merely to ascertain whether the proper parties consented, nor to the other creditors, as there was no common basis of consent. *In re MCHENRY. McDERMOTT v. BORD. LEVITA'S CLAIM*

C. A. [1894] 3 Ch. 365; revers. North J. [1894] 2 Ch. 428

41. — *Bankrupt's petition—Adjudication not for benefit of creditors—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) s. 8, sub-s. 1.*

P., who had an inalienable pension, had judgment recovered against him. On a judgment summons an order was made for payment by instalments. P. then presented his petition, with the object of evading the judgment, and was adjudicated bankrupt. The judgment creditor was practically the sole creditor, and the assets were very small:—

*Held*, that the presentation of the petition was not an abuse of the process of the Court, and did not entitle the Court to annul the adjudication. *Ex parte PAINTER. In re PAINTER*

Div. Ct. [1895] 1 Q. B. 85

42. — *Effect of annulment—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71) s. 81—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) s. 25, sub-s. 2.*

A creditor obtained by consent a judgment for the amount of his debt. The debtor became bankrupt, and the trustee rejected the creditor's proof. The creditor did not appeal, but after the annulment of the bankruptcy sought to enforce his judgment:—

*Held*, that the rejection of the proof was an act done by the trustee within the meaning of s. 81 of the Bankruptcy Act, 1869: the rejection of the debt was, therefore, valid and final, and the creditor could not enforce his judgment. *BRANDON v. MCHENRY* — C. A. [1891] 1 Q. B. 538

But see Bankruptcy Act, 1883, s. 35, sub-s. 2.

— Of receiving order.

See BANKRUPTCY—Receiving Order. 196.

**Appeal.**

43. — *Abandoned appeal.*

Where an appeal is abandoned the practice is to make an order dismissing it with costs and not an order giving leave to abandon it. *In re DOWNING. Ex parte MARDON*

C. A. [1891] W. N. 180

— Board of Trade's right of appeal.

See BANKRUPTCY—Scheme of Arrangement. 222.

44. — *Court for appeal from incidental order of High Court—Bankruptcy Appeals (County Courts) Act, 1884 (47 & 48 Vict. c. 9) s. 2—Bankruptcy Rules, 1886 and 1890, r. 134a.*

The appeal from an incidental order of a judge of the High Court for the time being exercising bankruptcy jurisdiction should be to a Div. Ct. constituted to hear appeals in bankruptcy matters. *In re DUNHILL. Ex parte WILSON* — Div. Ct. [1894] 2 Q. B. 554

**BANKRUPTCY (Appeal)—continued.**

45. — *Notice of appeal—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 104 (d), 105 (4), 143—*Bankruptcy Rules, 1886 and 1890, r. 132.*

Except under special circumstances the Court will not extend the time for compliance with the Bankruptcy Rules, 1886, r. 132, as to sending a copy of the notice of appeal to the registrar, and non-compliance should not be treated as an irregularity which can be cured. *In re VITORIA. Ex parte SPANISH CORPORATION*

C. A. [1894] 1 Q. B. 259

46. — *Time for appealing—"Perfecting" of order—Bankruptcy Rules, 1886, rr. 109, 130.*

An order of the Div. Ct. was signed by the registrar and sealed on Dec. 1, and filed on Dec. 2:—

*Held*, that the order is perfected under Bankruptcy Rules, 1886, r. 130, when signed by the registrar, and that the time for appealing runs from the date of his signature:—

*Held*, also, that it is not necessary to perfect an order that it should be filed with the proceedings. *In re HELSBY. Ex parte TRUSTEE IN BANKRUPTCY*

C. A. [1894] 1 Q. B. 742

47. — *Trustee—Appointment.*

An appeal lies to the C. A. by the Bd. of Trade from a decision of the High Court that the objection of the Board to the appointment of a trustee is invalid. *In re LAMB. Ex parte BOARD OF TRADE*

C. A. [1894] 2 Q. B. 805

Discussed and followed. *In re Mardon*, [1896] 1 Q. B. 140.

**Appropriation.**

48. — *Pension—Appropriation of bankrupt's pay or salary—Retired officer—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52) s. 53, sub-s. 1, 2.

An officer who has been permitted to retire from the army, and is in receipt of "retired pay" under art. 1057 of the Royal Warrant of 1887, though still an officer in the reserve, comes within sub-s. 2, and not sub-s. 1, of s. 53 of the Bankruptcy Act, 1883; and therefore upon his bankruptcy an order may be made appropriating a portion of his retired pay for the benefit of creditors under that section without the consent required by sub-s. 1. *In re WARD. Ex parte WARD*

C. A. [1897] 1 Q. B. 266

**Assets.**

49. — *After-acquired property—Discharge conditional on payment of specified dividend—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52) ss. 28, 44, 65—*Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 8, sub-s. 2 (iii.).

A bankrupt's discharge was suspended until he should pay 5s. in the pound. A legacy was left him which was more than sufficient to pay the 5s.:—

*Held*, (1) that the order was not valid under the Bankruptcy Act, 1883, but having been acted on for five years must be treated as valid; (2) that the trustee was entitled to the whole legacy, and the bankrupt to an immediate discharge. *In re HAWKINS. Ex parte OFFICIAL RECEIVER*

C. A. [1892] 1 Q. B. 890

50. — *After-acquired property—Leaseholds—Vesting—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 44, 54, 55, 168.

**BANKRUPTCY (Assets)—continued.**

The propositions that all dealings by the bankrupt in respect of after-acquired property with bona fide purchasers for value are valid against a trustee who has not intervened applies to leaseholds. *In re CLAYTON AND BARCLAY'S CONTRACT* - *Chitty J. [1895] 2 Ch. 212*

51. — *After-acquired property—Partnership—Personal earnings—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52) s. 53.

Where the personal earnings of an undischarged bankrupt are received periodically, and are more than sufficient to provide for his support, the balance may be made the subject of an order under s. 53 of the Bankruptcy Act, 1883. A partner in a firm of dental surgeons mortgaged his share in the business. The mortgagees brought an action to realize their mortgage and obtained a receiver; subsequently the mortgagor became bankrupt, but continued to carry on business under the terms of the partnership deed. The trustee claimed that the profits which since the bankruptcy had been paid to the receiver should be paid over to him:—

*Held*, that the earnings of the bankrupt could not be treated as his personal earnings, and even if they were personal earnings they lost that character by being dealt with as part of a partnership business, and vested in the trustee. *In re ROGERS. Ex parte COLLINS* - *V. Williams J. [1894] 1 Q. B. 425*

Referred to by C. A. *In re Roberts*, [1900] 1 Q. B. 122, 129.

52. — *After-acquired property—Real estate—Intervention of Trustee—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52) ss. 44, 58, 118.

A sold real estate devised to him when an undischarged bankrupt to B. The trustee subsequently discovered the fact, and claimed the real estate:—

*Held*, that he was entitled, for the rule that, until the trustee intervenes all transactions with regard to after-acquired property between an undischarged bankrupt and a bona fide purchaser were valid against the trustee, did not apply to real estate. *In re NEW LAND DEVELOPMENT ASSOCIATION AND GRAY. C. A. [1892] 2 Ch. 138*

Referred to by Chitty J. *In re Clayton and Barclay's Contract*, [1895] 2 Ch. 212.

53. — *After-acquired property—Salary or income—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 53, sub-s. 2.

The wages of a workman employed in a colliery are not salary or income within s. 53 of the Act of 1883; no order can, therefore, be made for the payment of part of such wages to his trustee in bankruptcy. *In re JONES. Ex parte LLOYD* - *Div. Ct. [1891] 2 Q. B. 231*

54. — *After-acquired property—Salary or income—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 53, 54.

In order to entitle the Court to appropriate part of a bankrupt's salary or income to creditors under s. 53, sub-s. 2, of the Bankruptcy Act, 1883, the bankrupt must be in actual receipt of the income or salary in question. A bankrupt actor, after a receiving order had been made against him, agreed that his employer should deduct

**BANKRUPTCY (Assets)—continued.**

the greater part of his salary in satisfaction of debts which the employer had bought up:—

*Held*, that, as to the deducted portion, the bankrupt was not in receipt of it, and that the agreement as to deductions was valid.

*Per Lord Esher M.R.*: The Court ought not to cut down too closely a bankrupt's means of living. *In re SHINE. Ex parte SHINE*

C. A. [1892] 1 Q. B. 522

Referred to by C. A. *In re Roberts*, [1900] 1 Q. B. 122, 129.

— After-acquired property—Undischarged bankrupt.

*See* **BANKRUPTCY—Undischarged Bankrupt.** 255—262.

55. — *After-acquired property—Undischarged bankrupt trading without knowledge of trustee—Second bankruptcy—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 44, 54.

An undischarged bankrupt traded without knowledge of his trustee and acquired property. He assigned by deed all his personal property to a trustee for his creditors, and became bankrupt a second time, the act of bankruptcy being the execution of the deed:—

*Held*, that there had been no “dealing for value” with the bankrupt after the first adjudication, and consequently nothing to disturb the title, under s. 44 of the Bankruptcy Act, 1883, of the trustee in the first bankruptcy to all property acquired by the bankrupt prior to his discharge. *In re CLARK. Ex parte BEARDMORE*

C. A. [1894] 2 Q. B. 393

Referred to by Byrne J. *Hunt v. Fripp*, [1896] 1 Ch. 675, 681.

56. — *Execution—Money paid to avoid sale—Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 11, sub-s. 2.

The provision in s. 11, sub-s. 2, of the Bankruptcy Act, 1890, by which the trustee is entitled, as against the execution creditor, to money paid under an execution in order to avoid sale, does not apply to money paid after execution issued in order to prevent seizure, and the execution creditor is entitled to such money as against the trustee. *BOWER v. HETT.*

*Div. Ct.* [1895] 2 Q. B. 51; *affirm.* by C. A. [1895] 2 Q. B. 337

57. — *Execution against firm—Sale of partnership property—Bankruptcy of one partner—Interpleader—Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 11.

When execution has been levied against a firm for a partnership debt, and one partner presents his petition in bankruptcy within 14 days, and a receiving order is made against him, s. 11, sub-s. 2, of the Bankruptcy Act, 1890, does not apply, and the official receiver is not entitled to the net proceeds of sale in the hands of the sheriff. *DIBB v. BROOK & SONS*

*Div. Ct.* [1894] 2 Q. B. 338

Referred to by Div. Cts. *Wild v. Southwood*, [1896] 1 Q. B. 314, 319.

58. — *Following trust money.*

Trust money was invested in debentures of a co. which were about to be paid off. The trustees authorized H. & Co., a firm of bankers, with

**BANKRUPTCY (Assets)—continued.**

whom they had an account on behalf of the trust, to receive the proceeds of the debentures. The bankers having to pay money to the co. did not receive the amount of the debentures in cash, but gave their own cheque to the co. for the balance due, and credited the trust account with 1600*l.*, the amount of the debentures. H. & Co. then suspended payment, having more than 1600*l.* at their own bankers:—

*Held*, that the doctrine of following trust money did not apply, as the money secured by the debentures had not been paid to H. & Co., nor by H. & Co. to their bankers, and was incapable of identification, and therefore the balance at H. & Co.'s bankers was part of their estate. *In re HALLETT & Co. Ex parte BLANE*

C. A. [1894] 2 Q. B. 237

59. — *Future payments—Equitable assignment of—Contract for supply of chattels on hire—Validity of assignment as against trustee in bankruptcy.*

A trader, who carried on the business of a theatrical costumier, contracted with a co. to supply dresses for a ballet and keep them in repair for the sum of 40*l.* a week for twelve weeks commencing from a certain date. She subsequently charged her right and interest under the contract in favour of the plt. as security for an advance made by him. The dresses were duly supplied to the co. under the contract, but before any moneys became payable under it the trader became bankrupt:—

*Held*, affirming the judgment of the Lord Chief Justice, [1896] 2 Q. B. 254, that the charge in favour of the plt. gave no title as against the debts, the trustees in bankruptcy, to moneys which might become due under the contract after the bankruptcy. *WILMOT v. ALTON*

C. A. [1896] W. N. 160 (3); [1897] 1 Q. B. 17

60. — *Lease—Relief against forfeiture—Bankruptcy of lessee—Surrender of Leases Act, 1730* (4 Geo. 2, c. 28), s. 2 (*Preamble*)—*Common Law Procedure Act, 1852* (15 & 16 Vict. c. 76), s. 212—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 44, 168.

The right to relief against forfeiture of a lease for non-payment of rent is a chose in action, and on bankruptcy vests in the trustee, who can assign it to a purchaser. *HOWARD v. FANSHAWE*  
*Stirling J.* [1895] 2 Ch. 581

— Lease—Successive assignments—Covenants—“Property” of bankrupt.

*See* **LANDLORD AND TENANT—Covenant.** 11.

— Lunatic bankrupt.

*See* Cases under **LUNACY—Bankruptcy.**

— Order and disposition—True owner.

*See* Cases under **BANKRUPTCY—Order and Disposition.**

— Partnership—Articles—Clause as to bankruptcy—Invalidity.

*See* **BANKRUPTCY—Partnership.** 132.

61. — *Pension—Indian pension—Payment to trustee—Discretion—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 53, sub-s. 2.

The Court has jurisdiction under s. 53, sub-s. 2, of the Act of 1883 to order payment to the trustee

**BANKRUPTCY (Assets)—continued.**

in bankruptcy of a pension made inalienable by the Indian legislature. There is no rule of law that such an order should not be made; but the discretion is absolute and should be exercised with regard to the facts in each particular case.

*In re SAUNDERS. Ex parte SAUNDERS*

Div. Ct. [1895] 2 Q. B. 117;  
affirm. by C. A. [1895] 2 Q. B. 424

62. — *Protected transaction—Charging order—Judgments Act, 1838* (1 & 2 Vict. c. 110), s. 14—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 49.

A charging order under s. 14 of the Judgments Act, 1838, is not a "contract, dealing, or transaction" by or with the bankrupt "for valuable consideration," protected by s. 49 of the Bankruptcy Act, 1883, and is void against the trustee.

*Semble, per Lindley L.J.*: Notice that a bankruptcy petition has been dismissed is not constructive notice that an act of bankruptcy has been committed by the debtor. *In re O'SHEA'S SETTLEMENT. COURAGE v. O'SHEA* — C. A.

[1895] 1 Ch. 325

Referred to by V. Williams J. *Wild v. Southwood*, [1897] 1 Q. B. 317, 318.

63. — *Sale of business to company—Company for benefit of bankrupt.*

A trader, in financial difficulties, sold his business to a limited co. The subscribers to the memorandum of association of the co. were either his relatives or employees. No cash was paid by the co. for the business, and no shares were issued to the public, and all the shares that were issued were issued as fully paid up. The trader was appointed the managing director of the co. Some months afterwards a receiving order was made against the trader, and the same day the co. passed resolutions for a voluntary winding-up:—

*Held*, that the business and assets of the co. formed part of the property of the bankrupt divisible amongst his creditors, subject to a first charge thereon in favour of the bona fide creditors of the co. *In re CAREY. Ex parte JEFFREYS*

V. Williams J. [1895] 2 Q. B. 624

See *In re Carl Hirth*, C. A. [1899] 1 Q. B. 612.

64. — *Solicitor's right to retain money paid to him before, for services rendered after, knowledge of act of bankruptcy.*

(A) A solicitor, *held* to be entitled as against the trustee to retain a sum which he had received under an agreement to defend a person on a criminal charge, the agreement and the receipt of the money being before, but the services rendered after, his knowledge of an act of bankruptcy by that person. *In re CHARLWOOD. Ex parte MASTERS* Div. Ct. [1894] 1 Q. B. 643

(b) Solicitors ordered to pay over to the trustee in bankruptcy a sum handed to them before the bankruptcy of the debtors for defending them on a criminal charge. *In re BEYTS AND CRAIG. Ex parte COOPER*

V. Williams J. [1894] W. N. 56

(c) A client who owed money to his solicitor deposited a sum of money with him to meet future costs. Before this sum was spent the client committed an act of bankruptcy, and was afterwards made bankrupt:—

**BANKRUPTCY (Assets)—continued.**

*Held*, that the trustee's title related back to the act of bankruptcy, and he was entitled to all the unspent deposit; that the unspent money could not be set off against the client's debt, as the money was deposited for a specific purpose; and that there had not been mutual credits within s. 38 of the Bankruptcy Act, 1883, since one sum was due by the solicitor to the trustee, and the other was due to the solicitor from the bankrupt. *In re POLLITT. Ex parte MINOR*

Div. Ct. [1893] 1 Q. B. 175;  
affirm. by C. A. [1893] 1 Q. B. 455

Distinguished by Div. Ct. *In re Charlwood, Ex parte Masters*, [1894] 1 Q. B. 643.

65. — *Stipend of workhouse chaplain—Validity of mortgage—Public policy—Public officer.*

A chaplain of a workhouse mortgaged his salary, which was paid out of the poor-rate, and afterwards became bankrupt:—

*Held* (1) that the stipend, subject to the charge, vested in the trustee; (2) that the mortgage was not void as against public policy, for a clergyman with a cure of souls is not a public officer. An office is not public unless the officer is paid out of national funds and the discharge of the duties of the officer is for the public benefit in a direct or primary sense. *In re MIRAMS*

Cave J. [1891] 1 Q. B. 594

Referred to by H. L. (E.) *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25, 45.

**Attachment.**

66. — *Solicitor's liability—Debtors Act, 1869* (32 & 33 Vict. c. 62), s. 4, sub-s. 4—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 9.

Bankruptcy of a solicitor who is in default under is no bar to the attachment.

(A) *In re EDYE, A SOLICITOR*

Chitty J. [1891] W. N. 1

(B) *In re SMITH. HANDS v. ANDREWS*

Kekewich J. varied by C. A. [1893] 2 Ch. 1

**Charging Order.**

67. — *Costs—Solicitor—Lien—"Property recovered or preserved" in bankruptcy proceedings—Jurisdiction—Judge of High Court—Judge in bankruptcy—Practice—Application to discharge order—Ex parte proceedings—Time—Delay—Solicitors Act, 1860* (23 & 24 Vict. c. 127), s. 28.

Any judge of the High Court, whether sitting in bankruptcy or not, can make a charging order under s. 28 of the Solicitors Act, 1860; and, *semble*, so also can a judge who is a judge of the Court of Bankruptcy alone, where in the course of bankruptcy proceedings property has been "recovered or preserved."

A charging order under the section can be made by any judge of the Division in which the "suit, matter, or proceeding" has been heard, and the application for the order need not necessarily be made to the particular judge who heard the suit, matter, or proceeding.

*In re Suffield and Watts*, (1888) 20 Q. B. D. 693, and *In re Wood, Ex parte Fanshawe*, [1897] 1 Q. B. 314, considered.

An application to discharge a charging order under the above section, as in all cases in which it is sought to set aside ex parte proceedings,

**BANKRUPTCY (Charging Order)—continued.**

must be made promptly: for instance, an application made after the lapse of two months from the service of the order, without sufficient cause shewn for the delay, is too late. *In re DEAKIN. Ex parte DANIELL* C. A. [1900] 2 Q. B. 489

— Judgment debtor—Charging order on dividend—Costs—Property recovered.

See **SOLICITOR—Charging Order. 15.**

68. — *Jurisdiction in chambers—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28—Power of registrar—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 93, 99—Bankruptcy Rules, 1886, r. 6.*

The judge of the High Court in Bankruptcy has power as a judge of the High Court, though not under his bankruptcy jurisdiction, to make charging orders under s. 28 of the Solicitors Act, 1860; and inasmuch as it is a power to be exercised in chambers, he can delegate that power to the registrar in bankruptcy. *In re WOOD. Ex parte FANSHAWE* — — — **V. Williams J.**

[1896] W. N. 163; [1897] 1 Q. B. 314

Referred to by C. A. *In re Deakin*, [1900] 2 Q. B. 489, 496.

— Protected transaction—Completed execution.

See **BANKRUPTCY—Protected Transaction. 187.**

**Colonial Law.**

— Conflict of federal and provincial powers.

See **CANADA. 4.**

69. — *Land vesting in trustee—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 74.*

The English Bankruptcy Act of 1869 applies to all H. M.'s dominions. Therefore an adjudication under that Act vests in the trustee in bankruptcy the bankrupt's title to real estate in Lagos, subject to any requirements prescribed by the local law as to the conditions necessary to effect a transfer of real estate. **CALLENDER, SYKES & Co. v. COLONIAL SECRETARY OF LAGOS AND DAVIES** P. C. [1891] A. C. 460

**Committee of Inspection.**

70. — *"Profit derived from transaction arising out of the bankruptcy"—Sanction of Court—Solicitor to trustee—Bankruptcy Rules, 1886, r. 317.*

By rule 317 of the Bankruptcy Rules, 1886, "No member of a committee of inspection of an estate shall, except under and with the sanction of the Court, directly or indirectly, . . . be entitled to derive any profit from any transaction arising out of the bankruptcy, or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate":—

*Held*, that the sanction of the Court under this rule cannot be given after the profit has been derived, but must be obtained before the business from which the profit is to be derived is undertaken:

*Held*, also (reversing the decision of Williams J.), that the "profit derived" by a solicitor is the amount of his costs, less his disbursements out of pocket in the particular matter, and that no allowance can be made to him in respect of his general office expenses.

*Per Lord Esher M.R.* When one of the

**BANKRUPTCY (Committee of Inspection)—contd.**

members of a committee of inspection is the managing clerk of a solicitor, though it is not a breach of rule 317 to appoint that solicitor to be solicitor to the trustee in the bankruptcy, yet on general principles such an appointment would be improper, and would be set aside by the Court on application for the purpose. *In re GALLARD. Ex parte GALLARD* C. A. [1895] W. N. 146 (1); [1896] 1 Q. B. 68

71. — *Sale by trustee to partner of member of committee of inspection—Sale at an undervalue—Damages—Delay—Bankruptcy Rules, 1886, r. 316.*

The sale of a bankrupt's property by the trustee in bankruptcy to a partner of a member of the committee of inspection, such partner buying for himself and not for the benefit of the partnership, does not fall within the mischief of rule 316 of the Bankruptcy Rules, 1886, which enacts that "neither the trustee nor any member of the committee of inspection of an estate shall, while acting as trustee or member of such committee, . . . either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the estate"; neither does the principle of *Ex parte Moore*, (1881) 51 L. J. (Ch.) 72, apply.

In 1889 a trustee, with the approval of his committee of inspection, sold part of a bankrupt's estate to S. The sale was at an undervalue to the knowledge of all parties concerned. A creditor of the bankrupt became aware of the transaction in Mar., 1891, but took no steps to impugn it until Feb., 1897:—

*Held*, that the creditor's right to relief against S. was not barred by laches and acquiescence.

*In re GALLARD. Ex parte GALLARD*

**V. Williams J.** [1897] 2 Q. B. 8

**Contempt of Court.**

72. — *Committal—Practice—Duty of Bankrupt—Property abroad—Refusal to execute a power of attorney—Bankruptcy Act, 1883 (c. 52), ss. 24, 168.*

The only asset of a bankrupt was some land in Guatemala in South America. By the law of that State only the registered owner of property is regarded, and it cannot be dealt with except by him or under a registered power of attorney from him. The trustee in bankruptcy had received an offer of 1000*l.* for the land, which he considered good and was desirous of accepting, and, pursuant to s. 24 of the Bankruptcy Act, 1883, he requested the bankrupt to execute a power of attorney to enable him to accept the offer and complete the sale. The bankrupt refused, objecting to the form of the power of attorney, and also suggesting that the land was worth more than 1000*l.*: thereupon the trustee applied to the Court for his committal to prison, on the ground that his refusal was a contempt of Court:—

*Held*, that under the circumstances the refusal of the bankrupt was unreasonable, and an order of committal was made, but not to be enforced if within fourteen days the bankrupt executed a power of attorney in a form approved of by the registrar. *In re HARRIS*

**Cave J.** [1896] W. N. 33 (1)

**BANKRUPTCY—continued.****Costs.**

*Costs of Solicitor to Petitioning debtor—Rule 112 b. W. N. 1896 (Sept. 12) p. 251; Current Index, 1896, p. lviii.*

**MODE OF PAYING CERTAIN FEES.]** *Bankruptcy Acts, 1883 and 1890—Treas. Warrant, dated Feb. 2, 1899. W. N. 1899 (Feb. 18), p. 65. See Current Index, 1899, pp. lxi.*

**73. — Appeal—Trustee in bankruptcy—Practice.**

A trustee in bankruptcy who is respondent to a successful appeal is not entitled, as a matter of course, to have the costs paid out of the bankrupt's estate: unless he can make out a right to the contrary, he will be ordered to pay them personally.

*Ex parte Stapleton, (1879) 10 Ch. D. 586, not followed. In re MACKENZIE. Ex parte SHERIFF OF HERTFORDSHIRE - C. A. [1899] W. N. 132; [1899] 2 Q. B. 566*

— Charging order—Property recovered or preserved.

*See Cases under SOLICITOR—Charging Order.*

— Security for costs—Jurisdiction—Joinder of trustee.

*See COUNTY COURT—Costs. 34.*

**74. — Security for — Practice — Appeal from Receiving Order—Application to increase security for costs—“Special Circumstances”—Bankruptcy Rules, 1886, r. 131.**

Where a debtor appeals from a receiving order made against him and lodges in court the sum of 20*l.* prescribed by rule 131 as security for the costs of the appeal, the fact that the respondent's costs of the appeal out of pocket will alone exceed 20*l.* is not a special ground for increasing the amount of the deposit.

*In re McHenry, (1886), 17 Q. B. D. 351, distinguished. In re PHILLIPS. Ex parte TREBOOTH BRICK CO. V. Williams J. [1896] 2 Q. B. 122*

**75. — Set-off — Practice — Bankruptcy Rules, 1886, r. 353—R. S. C., Order LXV., rr. 14, 27, sub-r. 21.** Costs of an appeal from a county court to the High Court in proceedings in the winding-up of a co. cannot be set off against costs of an appeal from a county court to the High Court in bankruptcy proceedings, although the two appeals are between the same parties.

*Ex parte Griffin, (1880) 14 Ch. D. 37, followed. In re BASSETT. Ex parte LEWIS*

**V. Williams J. [1896] 1 Q. B. 219**

*See also PRACTICE—Set-off.*

**76. — Taxation — County Court — Power of Bd. of Trade to review—Practice—Costs of stranger to the bankruptcy—Bankruptcy Rules, 1886 and 1890, r. 124—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 73, sub-s. 3.**

Rule 124 of the Bankruptcy Rules, 1886 and 1890, which empowers the Bd. of Trade to have “any bill of costs, charges, fees or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person,” which has been taxed by a registrar of a county court, reviewed by a bankruptcy taxing master of the High Court, does not apply to persons litigating with

**BANKRUPTCY (Costs)—continued.**

the trustee outside the bankruptcy, but is confined to the class of persons enumerated in the rule and employed by the trustee in the bankruptcy. *In re HUNT. Ex parte BOARD OF TRADE*

**Wright J. [1898] 1 Q. B. 287**

—Taxation—Disclaimer of leaseholds.

*See BANKRUPTCY—Disclaimer. 93.*

**77. — Taxation—Limitation of amount of costs to be incurred—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 22 (9), 54 (1), 57 (3), 73 (3)—Bankruptcy Rules, 1886, rr. 117, 337.**

In taxing the costs of a solicitor employed by an official receiver acting as trustee the taxing officer's jurisdiction is limited to the amount which the official receiver has been authorized to incur whether by the Bd. of Trade or the committee of inspection. *In re DUNCAN. Ex parte OFFICIAL RECEIVER - C. A. [1892] 1 Q. B. 879*

**78. — Taxation—Retainers to counsel—Discretion of taxing master.**

It is in the discretion of the taxing master in bankruptcy, when taxing the bill of costs of a solicitor to a trustee in bankruptcy, to allow retainers to counsel, but as a general rule such retainers will not be allowed. *In re NORDMANN*

**Wright J. [1898] W. N. 150 (2)**

**79. — Taxation — Review — Appeal — Bankruptcy Rules, 1886, rr. 112, 124—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 105.**

An appeal lies to the judge in bankruptcy from the decision of the Bankruptcy Taxing Master, who has, at the instance of the Bd. of Trade, reviewed the taxation of a county court registrar. Special costs incurred, owing to adjournments, at the instance of the official receiver disallowed, the county court judge having made no special order under s. 105 of the Bankruptcy Act, 1883, as to the items. *In re ALISON. Ex parte JAYNES V. Williams J. [1892] 2 Q. B. 587*

**80. — Taxation of Costs of trustee's solicitor—Right of Official Receiver to attend—Bankruptcy Rules, 1886 and 1890, r. 122.**

An official receiver has no right, without the leave of the Court, to be present at the taxation of the bill of costs of the solicitor of a trustee in bankruptcy. The registrar or the judge (as the case may be) may, however, if he thinks fit, give the official receiver leave to attend such taxation, not as a litigant, but merely for the purpose either of assisting the trustee or the taxing master by his advice, or of enabling him to report on the taxation to the Bd. of Trade. *In re NASH & SONS. Ex parte CROFTON, CRAYEN & WORTHINGTON Div. Ct. [1895] W. N. 135 (1); [1896] 1 Q. B. 13*

**81. — Trustee — Bankrupt trustee—Charging order—Solicitor and client.**

Costs due to a trustee who has become bankrupt, whether incurred before or after bankruptcy, are payable to the trustee in bankruptcy; unless the solicitor of the trustee obtains a charging order in his favour. If costs are payable out of a fund in court, the taxing master by his certificate would not make them payable to the trustee's solicitor, but to the trustee in bankruptcy, unless the solicitor obtains a charging order. They are not the solicitor's costs at all;

**BANKRUPTCY (Costs)—continued.**

they are the trustee's costs, and, being an asset coming to him after bankruptcy, must be paid to his trustee in bankruptcy. *BAKER v. ABBOTT*

*Romer J. [1897] W. N. 38 (4)*

**82. — Undischarged bankrupt—Jurisdiction.**

The Court has jurisdiction to order an undischarged bankrupt to pay costs, where he appears as a party to the proceedings without his trustee in bankruptcy.

See *In re Payne*, (1886) 18 Q. B. D. 154. *In re THOMSON. THOMSON v. THOMSON*

*Kekewich J. [1897] W. N. 29 (4)*

**County Courts.**

See *COUNTY COURT — Bankruptcy Jurisdiction.*

**Deeds of Arrangement.**

*The Deeds of Arrangement Rules*, 1890, dated Nov. 26, 1890. *W. N. 1890, (Dec. 13); St. R. & O. 1890, pp. 342–349.*

*Order dated Dec. 18, 1890, as to Fees under the Bankruptcy Acts, Table F. St. R. & O. 1890, p. 75.*

*Rules dated May 4, 1891. St. R. & O. 1891, p. 193.*

**83. — Trustee's accounts—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 25—Deed of Arrangement Rules, 1890, rr. 7, 16; Appx. to Rules, Forms 2, 3, 6.**

SECT. 25 of the Bankruptcy Act, 1890, either does not apply to deeds of arrangement registered before Jan. 1, 1891, or if it does apply to such deeds, it only applies to accounts subsequent to Jan. 1, 1891. *In re NORMAN. Ex parte BOARD OF TRADE — C. A. [1893] 2 Q. B. 369*

**Discharge.**

**84. — Conditional Discharge — Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), ss. 28, 44, 65; 1890 (53 & 54 Vict. c. 71), s. 8, sub-s. 2 (iii).**

A bankrupt's discharge was suspended until he should pay 5s. in the pound. A legacy was left him which was more than sufficient to pay the 5s. :—

*Held* (1) that the order was not valid under the Bankruptcy Act, 1883, but having been acted on for five years must be treated as valid; (2) that the trustee was entitled to the whole legacy, and the bankrupt to an immediate discharge. *In re HAWKINS. Ex parte OFFICIAL RECEIVER*

*C. A. [1892] 1 Q. B. 890*

**85. — Effect—"Debt or liability incurred by means of any fraudulent breach of trust."**

Costs incurred in an action for fraudulent breach of trust are not "a debt or liability incurred by means of any fraudulent breach of trust," and the discharge releases the bankrupt from them. *In re GREER. NAPPER v. FANSHAW. Chitty J. [1895] 2 Ch. 217*

**86. — Misdemeanour—Refusal of Discharge—Power to otherwise determine—"Special reasons"—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, sub-s. 2.**

In cases coming within the words in s. 8, sub-s. 2, of the Bankruptcy Act, 1890, "Provided that the Court shall refuse the discharge in all

**BANKRUPTCY (Discharge)—continued.**

cases where the bankrupt has committed any misdemeanour under the Debtors Act, 1869, unless for special reasons the Court otherwise determines," if any order is made other than an order absolutely refusing the discharge, sufficient special reasons for the determination of the Court must exist, and should be stated in the order. *In re STEVENS. Ex parte BOARD OF TRADE — Div. Ct. [1898] 2 Q. B. 495*

**87. — Practice—Application for discharge—Hearing by the judge—Bankruptcy Rules, 1886, r. 8.**

Motion on behalf of the bankrupt that the further hearing of his application for discharge might be transferred to and heard by the judge.

On the bankrupt's application for his discharge coming on for hearing before the registrar, it appeared from the official receiver's report that the bankrupt had committed certain offences under the Debtors Act, 1869. It also appeared by the report that the bankrupt had been engaged with various persons in transactions involving issues of fact of much difficulty and sums of great magnitude. The registrar directed the prosecution of the bankrupt for the offences mentioned in the report, and adjourned the further hearing of the bankrupt's application :—

*Held*, that the fact that the registrar had ordered the prosecution of the bankrupt was no reason whatever for transferring the further hearing of the application for discharge to the judge; but the objection that the report dealt with transactions raising issues of fact of much difficulty and involving sums of great magnitude was entitled to weight, and on this ground the order asked for was made, but it was directed that the further hearing should stand adjourned pending the result of the prosecution directed by the registrar. *In re HOOLEY*

*Wright J. [1899] W. N. 47*

**88. — Refusal—Felony connected with bankruptcy—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8.**

Where a person embezzles money of his employer and subsequently becomes bankrupt, the mere fact that the employer proves in the bankruptcy for the amount so embezzled does not cause the offence to be "a felony connected with the bankruptcy" within the meaning of s. 8 of the Act of 1890, as it is not ejusdem generis with the felonies and misdemeanours dealt with by the Debtors Act, 1869, and the Bankruptcy Act, 1883. *In re HEDLEY. Ex parte BOARD OF TRADE*

*Div. Ct. [1895] 1 Q. B. 923*

**89. — Refusal—Power of Court to review—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 104.**

The Court has jurisdiction under s. 104 of the Bankruptcy Act, 1883, to reconsider an absolute refusal of an order of discharge and, if so minded, to discharge the bankrupt. *In re TOBIAS & Co. Ex parte H. A. TOBIAS — Div. Ct. [1891] 1 Q. B. 463*

**90. — Suspension—Undue Preference—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, sub-s. 3(1).**

A bankrupt, who was indebted to the executors of his partner, and also to joint creditors of the



**BANKRUPTCY (Discharge)—continued.**

firm, within three months of his bankruptcy paid some of his own separate creditors in full. The estate had paid 15s. in the pound, and was expected to pay more. The registrar suspended his discharge for two years.

*Held*, that the registrar has to look to the conduct of the bankrupt, and that the bankrupt had been guilty of undue preference.

*Semble*, that even if the creditors would certainly have been paid in full, it was not the less "undue preference." *In re BRYANT. Ex parte BRYANT* - C. A. [1895] 1 Q. B. 420

91. — *Withdrawal of application—Bankruptcy Act, 1883, (46 & 47 Vict. c. 52), s. 28.*

After notice to the creditors and an adverse report made by the official receiver, the registrar allowed the bankrupt to withdraw his application for discharge, on conditions as to costs and renewal of application.

*Held*, that there was jurisdiction to allow the withdrawal. *In re WALLIS. Ex parte BOARD OF TRADE* C. A. [1891] W. N. 68

**Disclaimer.**

92. — *After-acquired leaseholds—Bankruptcy Act, 1883, (46 & 47 Vict. c. 52), ss. 44, 54, 55, 168.*

*Quære*, whether s. 55 of the Bankruptcy Act, 1883, enables a trustee to disclaim after-acquired leaseholds. *In re CLAYTON AND BARCLAY'S CONTRACT* Chitty J. [1895] 2 Ch. 212

93. — *Costs—Leaseholds—Bankruptcy Rules, 1886, r. 112, sub-s. 2.*

The costs of a trustee's application under s. 55 of the Bankruptcy Act, 1883, to disclaim leaseholds, are costs of a "proceeding under the Act" which, as a general rule, are payable out of the estate. Where, therefore, the assets are under 300*l.*, such costs are taxable on the lower scale, pursuant to rule 112, sub-s. 2, of the Bankruptcy Rules, 1886. *In re PROCTER*

Cave J. [1891] 2 Q. B. 433

— Proof for injury caused by disclaimer—Measure of damages.

See **BANKRUPTCY—Proof.** 169.

**Disqualification.**

*By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46 (1) (c), provision is made disqualifying from holding certain offices persons who within five years before election or since election become bankrupt or make a composition or arrangement with their creditors.*

94. — *Occupation franchise—Bankruptcy—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 20.*

A claimant in respect of the occupation of a house as tenant became bankrupt during the qualifying period. The trustee did not interfere with the property, and the landlord continued to accept rent from the bankrupt.

*Held*, that he had been in continuous occupation as a tenant within s. 4 of the Representation of the People Act, 1867, and that the fact that s. 20 of the Bankruptcy Act, 1883, had vested the property in the trustee did not deprive the bankrupt of his right to vote. *MACKAY v. MCGUIRE* - Div. Ct. [1891] 1 Q. B. 250

**BANKRUPTCY (Disqualification)—continued.**

95. — *Retrospective effect of statute—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 32.*

Sect. 32 of the Act of 1883 is not retrospective; therefore a person adjudicated bankrupt before Dec. 31, 1883, and undischarged, is not disqualified for, e.g., a seat on a school board. *In re SCHOOL BOARD ELECTION FOR PARISH OF PULBOROUGH. BOURKE v. NUTT*

C. A. [1894] 1 Q. B. 725

Considered by Jeune P. *Lane v. Lane*, [1896] P. 133, 136.

**Dividends.**

96. — *Assignment of dividend—Right of assignee to demand payment from trustee—Creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 58, 63, Forms 122 (a), 126.*

Certain creditors of a bankrupt, whose proofs had been allowed in the bankruptcy, assigned their debts to the respondent, who applied to the county court in which the bankrupt's estate was being administered for an order under s. 63 of the Bankruptcy Act, 1883, that the trustee should pay to the respondent the dividend payable in respect of the debts so assigned.

*Held*, that there was no jurisdiction to make the order. *In re FROST. Ex parte OFFICIAL RECEIVER* Div. Ct. [1899] W. N. 48;

[1899] 2 Q. B. 50

**Examination.**

97. — *Bankrupt called as a witness—Cross-examination by party calling him—Practice.*

This was an application by the official receiver as trustee in the bankruptcy to set aside a transaction between the bankrupt and his mother in relation to some furniture. The bankrupt, being called as a witness in support of the trustee's application, gave unsatisfactory answers, and counsel for the trustee thereupon proposed to cross-examine him as to answers he had given at his public examination.

*Per Wright J.*: I think it very desirable that the practice in bankruptcy should be that either party to an application should be at liberty to elicit from the bankrupt, when called as a witness, what account he has given of a matter on a previous occasion, without regard to who calls him. It is important that this practice should be known. *In re CUNNINGHAM. Ex parte OFFICIAL RECEIVER Wright J.* [1899] W. N. 68

— Parol evidence of bankrupt's admissions.

See **CRIMINAL LAW—Evidence.** 16.

98. — *Pendency of action—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 27.*

Although the pendency of an action between the trustee and a third party, in relation to the bankrupt's property, is not an absolute bar to the right of the trustee to examine the party under s. 27 of the Bankruptcy Act, 1883, the Court will not as a general rule allow it, or will allow it only under certain restrictions. *In re FRANKS. Ex parte GITTENS V. Williams J.* [1892] 1 Q. B. 646

99. — *Private examination—Application to take depositions off file—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 27—Bankruptcy Rules, 1886, r. 12.*

Every step taken in a bankruptcy for the purpose of enabling the Court to come to a final

**BANKRUPTCY (Examination)—continued.**

determination ought to be placed on the file. Depositions (taken at a private examination under s. 27 of the Bankruptcy Act, 1883, at the official receiver's instance) are a proceeding of the Court within the Bankruptcy Rules, 1886, r. 12, and should be placed on the file, and will not be taken off on the application of the bankrupt. *In re BEALL. Ex parte BEALL*.

C. A. [1894] 2 Q. B. 135

Discussed by V. Williams J. *In re Standard Gold Mining Co.*, [1895] 2 Ch. 545, 548.

—Privilege of Parliament—Refusal to answer.

See CONTEMPT OF COURT. 9.

100. — *Public examination—Order to file accounts of business alleged to have been carried on by bankrupt—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 17—Bankruptcy Rules, 1886, rr. 6, 338.*

A registrar in bankruptcy, in consequence of allegations made by the bankrupt in his public examination, ordered him to file accounts of a business alleged by the bankrupt to have been carried on by him only as clerk to his wife. The order was made in the absence of and without notice to the wife:—

*Held*, that the registrar had jurisdiction to make the order; that it did not amount to a final adjudication on the title to the business: and that if an application were made to commit the bankrupt for disobeying the order, it would still be open to him to prove that the business was his wife's. *In re CRONMIRE. Ex parte CRONMIRE*

C. A. [1894] 2 Q. B. 246

**Execution.**

See also under EXECUTION.

101. — *Assets—Part payment of judgment debt—Subsequent receiving order—Benefit of execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 45, sub-s. 1.*

By s. 45, sub-s. 1, of the Bankruptcy Act, 1883, an execution creditor is not entitled to retain the benefit of his execution against the trustee in bankruptcy of the debtor unless he has completed the execution before the date of the receiving order; by sub-s. 2 an execution against goods is completed by seizure and sale.

Execution having been issued upon a judgment for 80*l.* and costs, the sheriff on Dec. 31, 1898, levied under a writ of *fi. fa.* On Jan. 5, 1899, the debtor, under an arrangement with the solicitors of the execution creditors, paid the solicitors a sum of 40*l.* on account, and gave to the sheriff authority to re-enter under the writ of *fi. fa.* upon default in payment of any of the instalments of the balance at the agreed dates for payment. The sheriff thereupon withdrew. On Jan. 14 a receiving order was made against the debtor on his own petition; at that date the sheriff had not re-entered under the writ of *fi. fa.*:—

*Held*, that the execution had not been completed as to the 40*l.* at the date of the receiving order, that the execution creditors were therefore not entitled to retain the benefit of the execution, and that the trustee in bankruptcy was entitled to the 40*l.* as part of the debtor's estate. *In re FORD. Ex parte OFFICIAL RECEIVER*

Div. Ct. [1899] W. N. 245; [1900] 1 Q. B. 264

**BANKRUPTCY (Execution)—continued.**

102. — *Execution creditor—Levy by sheriff—Bankruptcy of judgment debtor—Tools of trade—Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 8—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11.*

A sheriff seized the goods of a judgment debtor under a writ of *fi. fa.* at the suit of a judgment creditor for more than 20*l.*, and advertised them for sale, except the debtor's tools of trade, &c., to the value of 5*l.*, as provided by s. 8 of the Small Debts Act, 1845. Before the sale a receiving order was made against the debtor, and thereupon he claimed that, by virtue of s. 44 of the Bankruptcy Act, 1883, his tools of trade, &c., to the value of 20*l.* were excepted from the sale. The official receiver made no request to the sheriff under s. 11 of the Bankruptcy Act, 1890, and declined to interfere:—

*Held*, (1) that s. 8 of the Small Debts Act, 1845, was in no way modified or extended by s. 44 of the Bankruptcy Act, 1883; and (2) that the sheriff was bound to sell, and under s. 11 of the Bankruptcy Act, 1890, to hand over the proceeds of sale, less costs of execution, to the official receiver, although, had there been no sale, the debtor would have been entitled under s. 44 of the Bankruptcy Act, 1883, to his tools of trade, &c., to the value of 20*l.* *In re DAWSON. Ex parte DAWSON Wright J.* [1899] W. N. 53; [1899] 2 Q. B. 54

103. — *Execution creditor—Rights of—Administration of estate of deceased debtor—Execution not completed by sale—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 45, 125.*

An order for the administration of the estate of a deceased debtor under s. 125 of the Bankruptcy Act, 1883, is not equivalent to a receiving order for the purposes of s. 45 of that Act, so as to disentitle an execution creditor of the deceased debtor to retain, as against the trustee of the debtor's estate, the benefit of an execution not completed before the date of the administration order.

Judgment of Wright J., [1898] 2 Q. B. 28, affirmed. *HASLUCK v. CLARK*

C. A. [1899] 1 Q. B. 699  
Referred to by C. A. *In re Rhodes*, [1899] 2 Q. B. 347, 354.

104. — *Execution creditor—Sheriff, Sale by—Proceeds of sale—Landlord—Rent in arrear—Lien—Priority—Payment by sheriff—Indemnity—Title to proceeds of execution—Official receiver—Trustee—"Goods of a debtor"—8 Anne, c. 14 (c. 18 in Rev. Stat.), s. 1—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11.*

Where under an execution the sheriff sells the goods of the judgment debtor, and subsequently, under s. 11 of the Bankruptcy Act, 1890, receives from the official receiver notice of bankruptcy proceedings commenced against the debtor since the sale, together with a demand for payment of the proceeds of sale, he is entitled to retain out of the proceeds and pay the landlord of the premises on which the execution was levied any arrears of rent due to him from the debtor, not exceeding the amount of one year's rent, even though he, the sheriff, has not received notice of the landlord's claim until after the sale,

**BANKRUPTCY (Execution)—continued.**

and notwithstanding that the sale has deprived the landlord of the lien given him on the goods themselves by s. 1 of 8 Anne, c. 14 (c. 18 in Revised Statutes).

The right of the landlord to be paid out of the proceeds of sale in the hands of the sheriff, where no bankruptcy intervenes—a right established by the practice uniformly adopted under the statute of Anne and recognised by judicial authority long before the present law of bankruptcy—is not affected by s. 11 of the Bankruptcy Act, 1890. The expression “the goods of a debtor” in that section does not include the goods of a judgment debtor, which are by the statute of Anne impounded until the landlord is paid; nor are the proceeds of sale of those goods to be handed by the sheriff to the trustee in bankruptcy under that section free from the right of the landlord, sanctioned by long practice, or of the sheriff for his own indemnity.

*In re McCarthy*, (1881) 7 L. R. (Ir.) 473, approved and followed.

Decision of Div. Ct. reversed. *In re Mackenzie. Ex parte Sheriff of Hertfordshire*

C. A. [1899] W. N. 132; [1899] 2 Q. B. 566

—Execution creditor—Sale by sheriff—Sheriff directed to withdraw.

See BILL OF SALE. 48.

—Payment of money to avoid seizure.

See BANKRUPTCY—Assets. 56.

—Receiving order—Poundage.

See BANKRUPTCY—Receiving Order. 215.

**105.—Sale of Goods—Liability of Sheriff—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 45, 46.**

A sheriff is justified in selling seized goods after notice of a receiving order, at the request of the official receiver, and a trustee subsequently appointed has no ground of action against him because the goods were not delivered up in accordance with s. 46 of the Act of 1883. *Trustee of Woolford's Estate v. Levy*

C. A. [1892] 1 Q. B. 772

But see criticisms on judgment of Cave J. in *Lee v. Dangar, Grant & Co.*, C. A. [1892] 2 Q. B. 337.

Referred to by Lindley M.R. *In re Thomas*, [1899] 1 Q. B. 460 at p. 463.

**106.—Sale of Goods—Sale by sheriff—Execution levied for over 20l.—Notice of bankruptcy petition—Death of judgment debtor—Administration order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 45, 125, sub-s. 6—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11, sub-s. 2.**

The sheriff sold under an execution levied for more than 20l., and within the fourteen days limited by sub-s. 2 of s. 11 of the Bankruptcy Act, 1890, received notice of a bankruptcy petition against the judgment debtor, who died shortly afterwards. After the fourteen days the sheriff received notice of a petition under s. 125 of the Bankruptcy Act, 1883, for the administration of the estate of the deceased debtor, on which an administration order was subsequently made:—

*Held*, that the judgment creditor was under the circumstances entitled to the money in the hands of the sheriff.

**BANKRUPTCY (Execution)—continued.**

Observations as to the extent to which the provisions of Part III. of the Bankruptcy Act, 1883, are applicable to an administration of a deceased debtor's estate under s. 125 of that Act.

*Quere*, whether an administration order is equivalent to a receiving order for the purposes of s. 11 of the Bankruptcy Act, 1890. *Watkins v. Barnard. V. Williams J.* [1897] 2 Q. B. 521

Referred to by C. A. *Hasluck v. Clark*, [1899] 1 Q. B. 699, 705.

**107.—Seizure of goods and possession of sheriff for twenty-one days—Sheriff's fees—Possession money—Continued possession at request of debtor—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 1, 11.**

The sheriff levied execution on the goods of a debtor and remained in possession for fifteen months. This was done at the request of the debtor and with the consent of the execution creditor. At the end of the fifteen months a receiving order was made against the debtor on his own petition, and the goods were sold. On the taxation of the costs of the execution, the Bd. of Trade disputed the right of the sheriff to possession money for the full period:—

*Held*, that the act of bankruptcy created by s. 1 of the Bankruptcy Act, 1890, consisted of—first, the seizure by the sheriff; and, secondly, his remaining in possession for twenty-one days; and that his subsequent continuing in possession under the same seizure did not constitute a further or continuing act of bankruptcy; that consequently there was no act of bankruptcy under this section available against the debtor; and that the sheriff was entitled under s. 11 to possession money for the full period as costs of the execution.

*In re Hurley*, (1893) 10 Morr. 120, approved and followed. Decision of Wright J., [1898] W. N. 171 (1), affirmed. *In re Beeston*

C. A. [1899] W. N. 18 (4); [1899] 1 Q. B. 626

**108.—Sheriff—Notice of bankruptcy petition—Service—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11, sub-s. 2—Bankruptcy Rules, 1886, r. 90.**

Rule 90 of the Bankruptcy Rules, 1886, which provides that service of notices, orders, or other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon, does not apply to the notice to the sheriff of a bankruptcy petition mentioned by s. 11, sub-s. 2, of the Bankruptcy Act, 1890.

Therefore, where a sheriff to whom money had been paid by an execution debtor in order to avoid a sale under an execution upon a judgment for more than 20l. was, after two in the afternoon of the fourteenth day after the payment, being a Saturday, served with notice of a bankruptcy petition upon which a receiving order was made against the debtor:—

*Held*, that the sheriff must pay the balance of the money so paid, after deducting his costs, to the official receiver. *Lole v. Betteridge*

C. A. [1897] W. N. 178 (3);

[1898] 1 Q. B. 256

— Sheriff—Sale of goods by.

See BILL OF SALE. 48.

**BANKRUPTCY—continued.****Fraudulent Preference.**

109. — *Bill of exchange—Payment of overdue acceptance—Onus of proof—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 48.

When a bill of exchange is not presented for payment at maturity but is held over at the request of the acceptor and subsequently paid, such a payment is not within the principle of *In re Clay & Sons*, (1895) 3 Manson, 31, and may be a fraudulent preference within s. 48 of the Bankruptcy Act, 1883.

When a trustee in bankruptcy proves that the debtor was insolvent at the time when he made the payment that is impeached as a fraudulent preference, the onus of proof shifts, and the party supporting the payment must shew that it was not made with the view of preferring him. *In re EATON & Co. Ex parte VINEY*

V. Williams J. [1897] 2 Q. B. 16

110. — *Bill of Sale—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 4, 150, 276.

The mere fact that a grantor gives a good bill of sale in order to correct a mistake in the original bill, so far from amounting in law to a fraudulent preference, in fact negatives any intention to prefer within s. 48 of the Bankruptcy Act, 1883. *In re TWEEDALE. Ex parte TWEEDALE*

Div. Ct. [1892] 2 Q. B. 216

Referred to by C. A. *Hill v. Wallasey Local Board*, [1894] 1 Ch. 133, 145.

111. — *Conveyance to make good breaches of trust—Bankruptcy Act 1883* (46 & 47 Vict. c. 52), s. 48.

A trustee, who had committed breaches of trust and was insolvent, on the eve of his bankruptcy conveyed an estate to make good the breaches of trust, without any pressure or request by his cestuis que trust:—

*Held*, that there was no fraudulent preference within s. 48 of the Bankruptcy Act, 1883, the debtor's object being to shield himself from the consequences of his breaches of trust.

Decision of C. A. (*New, France & Garrard's Trustee v. Hunting*, [1897] 2 Q. B. 19) affirmed *sub nom.* SHARP (OFFICIAL RECEIVER) v. JACKSON

H. L. (E.) [1899] W. N. 90; [1899] A. C. 419

Referred to by Wright J. *In re Blackburn & Co.*, [1899] 2 Ch. 725, 728.

Referred to by Wright J. *In re Vautin. Ex parte Saffery*, [1900] 2 Q. B. 325, 328.

112. — *Repayment after act of bankruptcy—Money lent for a special purpose—Dominant view of debtor—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 48.

When a debtor with bankruptcy impending pays a creditor in the honest belief on reasonable grounds that he is legally bound to make the payment, it is not a fraudulent preference even although the debtor is in fact under no legal obligation to make the payment. *In re VAUTIN. Ex parte SAFFERY* Wright J. [1900] W. N. 136; [1900] 2 Q. B. 325

113. — *Set-off—Directors' fees—Calls—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 164—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 48.

The director of a co. which was in embarrassed

**BANKRUPTCY (Fraudulent Preference)—contd.**

circumstances held shares in the co. not fully paid up. He gave the co. a cheque for the balance due on his shares, and on the same day received from the co. a cheque for the same amount for his fees. Within three months the co. was wound up, and the liquidator sought to set aside the payment of fees as a fraudulent preference:—

*Held*, that the payment was a fraudulent preference having regard to the special legislation applicable to cos. which is to be read with s. 48 of the Bankruptcy Act, 1883, in applying that s. to insolvent cos. *In re WASHINGTON DIAMOND MINING Co. - C. A.* [1893] 3 Ch. 95

Referred to by Wright J. *In re Auriferous Properties, Ltd.*, [1893] 1 Ch. 697.

114. — *Surety—“Creditor”—Company—Winding-up—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 164—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 37; s. 48, sub-s. 1.

The word “creditor” in s. 48 of the Bankruptcy Act, 1883 (which avoids as a fraudulent preference a charge or payment made by an insolvent debtor “in favour of any creditor or any person in trust for any creditor with a view of giving such creditor a preference”), means any person who at the date when the charge or payment is made is entitled, if bankruptcy supervenes, to prove in the bankruptcy and share in the distribution of the bankrupt's estate. A surety who has a right of proof under s. 37 of the Act in respect of his contingent liability as surety is such a person. A charge or payment, therefore, made for the benefit of a surety, before he has been called upon to pay as surety, may be a fraudulent preference.

*In re Paine, Ex parte Read*, [1897] 1 Q. B. 123, is not on this point inconsistent with, and has not been overruled by, *In re Warren, Ex parte Trustee*, [1900] 2 Q. B. 138. *In re BLACKPOOL MOTOR CAR Co. HAMILTON v. BLACKPOOL MOTOR CAR Co. Buckley J.* [1900] W. N. 252; *see* [1901] 1 Ch. 77

115. — *Surety—Payment into bank to meet accommodation bill—“Creditor”—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 37, 48.

The word “creditor” in s. 48 of the Bankruptcy Act, 1883 (which avoids as a fraudulent preference a payment made by an insolvent debtor out of his own moneys in favour of any creditor with a view to prefer such creditor), means any person who at the date of the payment is entitled, if bankruptcy supervenes, to prove in the bankruptcy, and share in the distribution of the bankrupt's estate. A surety, who has a right of proof under s. 37 of the Act in respect of his contingent liability as surety, is such a person. A payment, therefore, to or for the benefit of a surety, before he has been called upon to pay as surety, may be a fraudulent preference. *In re PAINE. Ex parte READ*

V. Williams J. [1896] W. N. 154 (2); [1897] 1 Q. B. 122

Referred to by Div. Ct. *In re Warren*, [1900] 2 Q. B. 138, 140.

116. — *Surety—Payment of creditor with a view to prefer surety—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 48.

In order to constitute a fraudulent preference

**BANKRUPTCY (Fraudulent Preference)—*contd.***

within the meaning of s. 48 of the Bankruptcy Act, 1883, a payment made by a debtor to one of his creditors must be made to the creditor intended to be preferred. Where, therefore, an insolvent debtor, who is jointly and severally liable with two sureties upon a promissory note, pays the amount of the note to the payee with the view of preferring the sureties by releasing them from their contingent liability upon the note, the payment is not a fraudulent preference within that section, and the sureties cannot be ordered to pay over to the trustee in bankruptcy the amount so paid by the debtor. *In re WARREN. Ex parte TRUSTEE* - - Div. Ct. [1900] 2 Q. B. 138

Considered by Buckley J. *In re Blackpool Motor Car Co.*, [1900] W. N. 252. See [1901] 1 Ch. 77.

**Insolvent Estates.**

117. — *Claim of widow—Costs—Postponement—Judicature Act, 1875* (38 & 39 Vict. c. 77), s. 10—*Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 3.

In determining whether the estate of a deceased person is insolvent the costs of administration must be taken into account. By the combined effect of s. 10 of the Judicature Act, 1873, and of s. 3 of the Married Women's Property Act, 1882, the claim of a widow for a debt due from the insolvent estate of her husband is postponed to the claims of the other creditors. *In re LENG. TARN v. EMMERSON.*

C. A. [1895] 1 Ch. 652  
Considered by C. A. *In re Whitaker*, [1900] W. N. 239.

118. — *Creditor's petition—Deceased debtor resident abroad—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 95, 125, 127—*Bankruptcy Rules, 1886*, r. 274; *Appx., P. I., Form 11.*

A creditor's petition for the administration of the estate of a deceased insolvent ought, if the debtor were not resident in England and died out of England, to be presented to the High Court of Justice, *i.e.* to the London Bankruptcy Court. *In re EVANS. Ex parte EVANS*

C. A. [1891] 1 Q. B. 143

— *Priorities—Insolvent estates—Administration. See Cases under EXECUTOR—Insolvent Estates.*

**Lunacy.**

— *Adjudication.*

*See BANKRUPTCY—Adjudication.*

— *Lunacy practice.*

*See LUNACY—Bankruptcy.*

**Manager.**

119. — *Pending petition—Practice—Official receiver—Interim receiver—Special manager—Appointment of—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 10, 12.

A creditors' bankruptcy petition had been presented against a firm of drug manufacturers, but a receiving order had not yet been made. Under s. 10 of the Bankruptcy Act, 1883, the official receiver was appointed interim receiver of the assets of the firm. As the business was a going concern, and many workpeople were

**BANKRUPTCY (Manager)—*continued.***

employed in it, the question arose how the business was to be carried on and the wages paid until it had been decided whether a receiving order should be made or not. Under the practice in bankruptcy there seems to be some doubt whether, under s. 12, empowering the official receiver to appoint a special manager, the official receiver can make the appointment while he is acting only as interim receiver under s. 10: see Vaughan Williams on Bankruptcy, 7th ed. p. 57.

The C. A. directed the official receiver to appoint a special manager. *In re A BANKRUPTCY PETITION* - - C. A. [1900] W. N. 12

*See also same case on other points. In re A. B. & Co., C. A. [1900] 1 Q. B. 541, and [1900] 2 Q. B. 429, next Case.*

— *Preferential payments in bankruptcy—Managing director—"Clerk or servant."*

*See COMPANY—Directors.* 114.

— *Private manager—Trust for creditors—Right in security—Pledge.*

*See BANKRUPTCY—Preference.* 158.

120. — *Special manager of business—Expenses of management—Just allowances—Petition—Official receiver—Interim receiver—Special manager—Jurisdiction—Dismissal of petition—Order appointing interim receiver, Validity of—Business of alleged debtor carried on by special manager—Accounts—Remuneration and expenses of special manager—Charge on profits—Officers of the Court, Protection of—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 10, 12—*Bankruptcy Rules, 1886*, rr. 170–175.

Where, during the pendency of a bankruptcy petition which is ultimately dismissed without any receiving order having been made upon it, the official receiver, on being appointed interim receiver under s. 10 of the Bankruptcy Act, 1883, appoints, in exercise of his power under s. 12 ([1900] W. N. 12), a special manager of the alleged debtor's business, the special manager is entitled to be reimbursed out of his receipts from the business his expenses, including remuneration, properly incurred by him in carrying it on until the dismissal of the petition.

The fact that the special manager has, under such circumstances, been in possession of and carrying on the business does not entitle the alleged debtor, on the petition being dismissed, to treat him as a wrong-doer or to deprive him of his right to protection as an officer of the Court; for, as the Bankruptcy Court has jurisdiction to entertain a petition against an alleged debtor, an order appointing the official receiver as interim receiver during the pendency of the petition, with the consequent right of appointing a special manager under s. 12, continues valid until it is set aside, and thus imparts validity to everything done under it, even though it may turn out to have been erroneously made—as where, at the hearing of the petition, it appears that the alleged debtor, being a foreigner not subject to the jurisdiction of the Bankruptcy Court, is not a "debtor" within the meaning of the Act ([1900] 1 Q. B. 541), and, therefore, not subject to the provisions for the appointment of an interim receiver or a special manager.

**BANKRUPTCY (Manager)—continued.**

*Per Rigby L.J.*: The power of the Bankruptcy Court to appoint the official receiver to be interim receiver under s. 10 of the Act arises immediately upon the presentation of the petition, whatever the result of the petition may be.

The special provisions of rules 170-175 (Bankruptcy Rules, 1886) relating to the appointment of the official receiver as "interim receiver," and providing for the deposit in advance of a sum for his expenses, do not deprive him of his subsequent right to reimbursement out of his receipts of all expenses incurred by him in carrying out the duties of his office.

Those rules apply exclusively to an interim receiver, and not to a special manager at all.

The principles on which accounts should be taken of the proceeds of a business carried on on behalf of the owner, considered. *In re A. B. & Co.* (No. 2)

C. A. [1900] W. N. 112; [1900] 2 Q. B. 429

**Offences.**

121. — "*Felony connected with the bankruptcy*" — *Bankruptcy Act*, 1890 (53 & 54 Vict. c. 71), s. 8.

Embezzlement by the bankrupt prior to his bankruptcy is not a felony connected with the bankruptcy within s. 8 of the Bankruptcy Act, 1890. *In re HEDLEY. Ex parte BOARD OF TRADE.*

Div. Ct. [1895] 1 Q. B. 923

122. — *Retrospective Enactment—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 11, sub-ss. 13, 14, 15 — *Bankruptcy Act*, 1890 (53 & 54 Vict. c. 71), s. 26.

S. 26 of the Bankruptcy Act, 1890, is not retrospective, so as to render liable to conviction under s. 11, sub-ss. 13, 14, 15, of the Debtors Act, 1869, persons who committed the acts incriminated before Jan. 1, 1891, and presented his own petition after that date. *REG. v. GRIFFITHS*

C. C. R. [1891] 2 Q. B. 145

Referred to by Wright J. *In re Athlumney*, [1898] 2 Q. B. 547, 553.

123. — *Undischarged bankrupt obtaining credit—Intent to defraud—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 18—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 31.

To constitute an offence under s. 31 of the Bankruptcy Act, 1883, it is not necessary to prove an intent to defraud. *REG. v. DYSON*

C. C. R. [1894] 2 Q. B. 176

**Officers and Offices.**

124. — The history of the old Bankruptcy Court in Basinghall Street and of Blackwell Hall traced and considered. *PERRY v. EAMES. SALAMAN v. EAMES. MERCERS' CO. v. EAMES*

Chitty J. [1891] 1 Ch. 658

Approved by C. A. *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48.

**Official Assignee.**

*Security—O. dated April 12, 1894, as to the security to be given by official assignee. St. R. & O. 1896, p. 607.*

**Official Receiver.**

125. — *Powers as trustee without a committee of inspection—Bankruptcy Act*, 1883 (46 & 47 Vict.

**BANKRUPTCY (Official Receiver)—continued.**

c. 52), s. 22, sub-s. 9; s. 57, sub-s. 3; s. 66—*Bankruptcy Rules*, 1886, rr. 117, 337.

When the official receiver is trustee without a committee of inspection, he is in the same position as any other trustee appointed by creditors, and when proceeding under s. 57 of the Bankruptcy Act, 1883, and the Bankruptcy Rules, 1886, r. 117, must obtain the special authority of the Bd. of Trade for the act proposed to be done. *In re DUNCAN. Ex parte DUNCAN*

V. Williams J. [1892] 1 Q. B. 331

See next Case.

126. — *Power as to employing solicitor—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 22, sub-s. 9; s. 54, sub-s. 1; s. 57, sub-s. 3; s. 73, sub-s. 3—*Bankruptcy Rules*, 1886, rr. 117, 337.

When the official receiver is trustee without a committee of inspection, the Bd. of Trade have power to authorise him to employ a solicitor, and to limit the amount of costs to be paid to him, and only the amount so sanctioned will be allowed out of the estate. *In re DUNCAN. Ex parte OFFICIAL RECEIVER*

C. A. affirm.  
V. Williams J. [1892] 1 Q. B. 879

**Order and Disposition.**

127. — *Reputed ownership—Assignment of debt—Bill of exchange—Custom of trade—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52).

Bankrupts had, prior to their bankruptcy, sold and consigned goods to customers in Spain on the terms that the customers were to have six months' credit from the date of the invoice, and on the expiration of the first three months, but not before, were bound to accept the bankrupts' drafts at three months for the price of the goods. The bankrupts, on making the consignments, obtained advances from bankers upon the following terms, namely, that they should draw for the price of the goods upon their customers in Spain at six months from the date of the invoice, and hand the draft to the bankers, and, when the period of three months from the date of the invoice arrived, they should draw a bill of exchange upon the customer for the price of the goods, and hand the bill to the bankers for them to get it accepted by the customer, and, when the bill was met, the unaccepted draft at six months should be handed back to the bankrupts. The bankrupts, in pursuance of this arrangement, drew and handed to the bankers drafts for the prices of goods sold and consigned to customers in Spain at six months from the date of the invoice, and at the commencement of the bankruptcy these drafts were in the hands of the bankers unaccepted and no notice of the transaction between them and the bankrupts had been given to the customers:—

*Held*, that the debts owing by the Spanish customers to the bankrupts were at the commencement of the bankruptcy in the order and disposition of the bankrupts, in their trade, by the consent and permission of the true owners under such circumstances that the bankrupts were the reputed owners thereof.

A custom of trade by which goods are left in the possession of persons to whom they do not belong must, in order to exclude the doctrine of

**BANKRUPTCY (Order and Disposition)—contd.**

reputed ownership, be a custom known in business generally, and not merely to persons dealing in a particular market. *In re GOETZ, JONAS & Co. Ex parte THE TRUSTEE*

C. A. [1898] 1 Q. B. 787

128. — *Reputed ownership—Goods used by bankrupt “in his trade or business”—Stands used to shew off goods in shop—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (iii).*

In order to establish that goods were, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt “in his trade or business,” within the meaning of s. 44 (iii.) of the Bankruptcy Act, 1883, it is not necessary to shew that the goods were such as the bankrupt could pledge or sell in the course of his business: it is enough to shew that they were in his possession, order, or disposition for the purposes of, or purposes connected with, his trade or business.

In an action to recover possession of stands used in the business of a mantle-maker for the purpose of shewing off to advantage the mantles in her shop, it was proved that the stands were in her possession with the consent of the plt., who was the true owner of them; that the mantle-maker subsequently became bankrupt, and that the deft., her trustee in bankruptcy, had thereupon removed them from her shop:—

*Held*, that there was evidence for the jury that the stands were goods “in the possession, order, or disposition of the bankrupt, in her trade or business, by the consent and permission of the true owner, under such circumstances that she was the reputed owner thereof” within the meaning of s. 44 (iii.) of the Bankruptcy Act, 1883. *SHARMAN v. MASON*

. Div. Ct. [1899] W. N. 217; [1899] 2 Q. B. 679

129. — *True owner—Book debts—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 19, sub-s. 1, cl. iii.; s. 24—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (iii.), s. 49 (d).*

In order to take book debts out of the order and disposition of an assignor the assignee must give notice to the debtors, and take every possible step to obtain possession of the debts. A mortgagee of book debts who, without notice of any act of bankruptcy by the mortgagor, gives the debtors notice of his assignment is entitled to the protection conferred by s. 49 of the Act of 1883.

Although, from the absence of notice, consent on the part of the true owner to a debt remaining in the order and disposition of a bankrupt is *prima facie* to be inferred, the inference will be rebutted if the true owner takes every possible step to obtain possession of the debt, or if his failure to obtain possession is not attributable to his own fault. *RUTTER v. EVERETT*

Stirling J. [1895] 2 Ch. 872

130. — *True owner—Reputed ownership—Bill of sale—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. 3—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 7.*

Where the grantor of a bill of sale has become bankrupt before making any default in payment of the sums thereby secured, his possession of the goods assigned by it under such circumstances that he continues to be the reputed owner thereof

**BANKRUPTCY (Order and Disposition)—contd.**

is a possession by him with the consent of the true owner within the meaning of s. 44, sub-s. 3, of the Bankruptcy Act, 1883. *In re GINGER. Ex parte LONDON AND UNIVERSAL BANK*

Div. Ct. [1897] 2 Q. B. 461

131. — *True owner—Trust funds—Bankruptcy Acts, 1849 (12 & 13 Vict. c. 106), ss. 125, 141; 1883 (46 & 47 Vict. c. 52), s. 44 (iii).*

Where the trustees named in a settlement of property of a person who afterwards becomes bankrupt have never executed or had any knowledge thereof, or decline the trusts, the beneficiaries, and not the trustees, are the “true owners” for the purpose of giving “consent and permission” to the property being in the “order or disposition” of the bankrupt as “reputed owner” at his bankruptcy, so as to render the property available for his creditors; and such consent and permission can only be effectually given by the beneficiaries when they are capable of giving it, and not, for instance, married women restrained from anticipation or infants. *In re MILLS’ TRUSTS*

C. A. [1895] 2 Ch. 564

Compare Bankrupt Law Consolidation Act, 1849, s. 125, and Bankruptcy Act, 1883, s. 44 (iii.).

**Partnership.**

132. — *Articles of Partnership—Clause as to bankruptcy—Invalidity—Receiver and manager—Terms of appointment.*

Partnership articles contained a clause providing for cesser of partnership on bankruptcy and retention of bankrupt's share as a loan to remaining partners. Three partners became bankrupt, and the trustees in their bankruptcy sued to have the bankruptcy clause declared invalid, and for the appointment of a receiver and manager of the business:—

*Held*, that the clause must be treated as void, and that the solvent partner should be appointed receiver and manager, but that he must give security, pass his accounts, furnish the trustees with proper accounts, allow them all reasonable access to the books, and pay the balances in his hands into a bank to be agreed. *COLLINS v. BARKER*

Stirling J. [1893] 1 Ch. 578

—Future partnership—Payment on a contingency—Verbal admission of insolvency.

See **BANKRUPTCY—Act of Bankruptcy.**  
29.

133. — *Infant partner—Receiving order.*

If an act of bankruptcy is committed by a firm having an infant partner a receiving order cannot be made against the firm simply, but can be made against the members of the firm “other than” the infant partner: and if a receiving order has been made against the firm simply it can be amended under s. 105 of the Bankruptcy Act, 1883.

Judgment was recovered against a partnership, one member of which, G. W. B., was an infant. A bankruptcy notice was served, the non-compliance with which was alleged in the petition as an act of bankruptcy, and a receiving order was made:—

*Held*, by H. L. (E.), varying C. A., that the judgment should be amended by adding after the word “defendants” the words “other than

**BANKRUPTCY (Partnership)—continued.**

G. W. B.”; and that the bankruptcy proceedings should be amended by adding these words after the words “B. Brothers.” *In re BEAUCHAMP BROTHERS. Ex parte BEAUCHAMP*

C. A. [1894] 1 Q. B. 1; H. L. (E.) *sub nom.*  
LOVELL AND CHRISTMAS v. BEAUCHAMP  
[1894] A. C. 607

**134. — Joint creditor — Bankruptcy of all partners.**

After dissolution one partner brought a partnership action, and a receiver and manager was appointed. A judgment creditor of the firm obtained on April 4 an order for the receiver to pay him his debt and costs. On April 5 all the partners were adjudicated bankrupt, but there was no joint adjudication against the firm. In drawing up the order the registrar dated the same May 16, to let in an affidavit of the latter fact:—

*Held*, that the judgment creditor was not entitled to an order for payment of his debt and costs, as the interest of each partner had vested in his trustee in bankruptcy before May 16, and because he had acquiesced in the postdating of the order. *MITCHELL v. WEISE. Ex parte FRIEDHEIM — Chitty J. [1892] W. N. 139*

—Loan in consideration of share of profits—Postponement to other creditors.

See **PARTNERSHIP—Contra** *uts.* 16.

**135. — Partnership creditor—Separate estate of partners—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 40, sub-s. 3.**

Sec. 40 (3) of the Bankruptcy Act, 1883, leaves the law as it was previously. Therefore, where there is no joint partnership estate, a creditor of the partnership is entitled to have his debt paid out of the separate estates of the separate partners on an equality with the separate creditors. *In re BUDGETT. COOPER v. ADAMS*

*Chitty J. [1894] 2 Ch. 557*

**136. — Partnership creditor—Separate estate of partners—Proof by solvent partner for separate debt against separate estate of insolvent partner.**

Where a partnership is insolvent and a proof is tendered by the solvent partner against the separate estate of the insolvent partner, in respect of a separate debt, it is no objection thereto that the dividend to be received from the insolvent's separate estate will swell the surplus of what will eventually go to the solvent partner's estate to pay the joint debts of the partnership. *In re HEAD. Ex parte HEAD (No. 1)*

*V. Williams J. [1894] 1 Q. B. 638*

**137. — Partnership debts—Dissolution—Writ against firm after dissolution—Service on each late partner—Judgment against late firm—Liability of partners after dissolution—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 38—Bankruptcy notice against firm—Notice following judgment—Petition against one late partner only—Receiving order—Procedure—Irregularity—Amendment—Application of Rules of Supreme Court to bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 2; ss. 115, 143—Bankruptcy Rules, 1886, rr. 136, 262, 353, and Appendix, Form 6—R. S. C., 1883, Order XLVIII. a, rr. 1-8.**

Judgment was recovered, in default of appear-

**BANKRUPTCY (Partnership)—continued.**

ance, against a late partnership firm of “W. Brothers,” in an action brought against it after its dissolution, for a debt incurred during the partnership. The writ had been served on each of the late partners, J. W. and T. W. A bankruptcy notice in the usual form, and following the judgment, was then addressed to “W. Brothers” and served personally on each of the late partners. The notice not having been complied with, the judgment creditor presented a petition against J. W. alone:—

*Held*, by the Div. Ct., that the bankruptcy notice was good, having followed the judgment; and that as it had been served on J. W. personally, a receiving order on the petition could properly be made against him.

On appeal by J. W. to the C. A.:—

*Held*, that under R. S. C., Order XLVIII. a, the action had been properly constituted against “W. Brothers” as a firm, notwithstanding its dissolution, since the cause of action had accrued before the dissolution (Partnership Act, 1890, s. 38); and that, under the same order, the judgment was enforceable against each of the late partners:

*Held* also, by Lord Alverstone M.R. and Rigby L.J. (Collins L.J. doubting), that under s. 115 of the Bankruptcy Act, 1883, bankruptcy proceedings on the judgment would lie against the firm notwithstanding its dissolution, and that therefore the bankruptcy notice, though addressed to a then non-existent firm, was sufficient to support a receiving order under rule 262 of the Bankruptcy Rules, 1886, against J. W. alone:

But *held*, by Collins L.J., that even if the bankruptcy notice was technically defective as against J. W., yet under the circumstances the defect was one that had not caused him any “substantial injustice,” and was therefore capable of amendment under s. 143.

Decision of Div. Ct., [1900] W. N. 117, affirmed. *In re WENHAM. Ex parte BATTAMS*

C. A. [1900] W. N. 156; [1900] 2 Q. B. 698

—Proof.

See **BANKRUPTCY—Proof.** 178—182.

**138. — Quasi-partnership — Loan — Interest varying with profits — Bankruptcy — Priority — Agreement void for uncertainty—Partnership Acts, 1865 (28 & 29 Vict. c. 86), ss. 1, 5; 1890 (53 & 54 Vict. c. 39), ss. 2, 3.**

A person lent a trader money at a fixed rate of interest, with a proviso that, if the trader could not pay the agreed rate out of his profits, the lender should make him an allowance:—

*Held*, by Div. Ct., that the loan was in effect an advance at a rate of interest varying with the profits, and, consequently, on the bankruptcy of the trader the lender's claim must be postponed to those of the other creditors under s. 3 of the Partnership Act, 1890.

But *held* by C. A., that the agreement was void for uncertainty, and that the lender was entitled to prove for the unpaid balance. Decision of Div. Ct., [1892] 1 Q. B. 587, reversed. *In re VINCE. Ex parte BAXTER*

C. A. [1892] 2 Q. B. 476



**BANKRUPTCY—continued.****Petition.**

**139. — Amendment—Adding petitioning creditors—Time—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 6, 105.**

The Court will not amend a petition by adding as petitioners, after the lapse of three months from the act of bankruptcy on which the petition is founded, creditors whose debts are other than those in respect of which the petition was presented. *In re MAUND. Ex parte MAUND* Div. Ct. [1895] 1 Q. B. 194

**140. — Amendment—Date of act of bankruptcy—Bankruptcy notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886 and 1890, r. 143, App. of Forms, Form 10.**

Where the act of bankruptcy relied on is failure to comply with a bankruptcy notice, the petition must state the date of the act of bankruptcy.

A petition stated that a debtor had failed to comply with a bankruptcy notice served on him on a day named:—

*Held*, that this statement was insufficient, and that the petition should state that the debtor had failed before a day eight days later than that on which the notice was stated to have been served, to comply with such notice:

*Held*, also, that the defect in not stating the date of the act of bankruptcy was not a ground for setting aside the receiving order, but ought to have been amended on the hearing of the petition, and could be amended by the Court on an appeal from the making of the receiving order. *In re DUNHILL. Ex parte DUNHILL* Div. Ct. [1894] 2 Q. B. 234

**141. — Dismissal—Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 14—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 49.**

*Semble*, notice that a bankruptcy petition has been dismissed is not constructive notice that an act of bankruptcy has been committed: *Per Lindley L.J. In re O'SHEA'S SETTLEMENT. COURAGE v. O'SHEA*

C. A. [1895] 1 Ch. 325, at p. 331

Referred to by Div. Ct. *Wild v. Southwood*, [1897] 1 Q. B. 317, 318.

—Dismissal of—Effect of dismissed petition under forfeiture clause in will.

*See WILL—Forfeiture.* 99.

**142. — “Dwelling-house in England”—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6, sub-s. 1 (d).**

Without defining “dwelling-house” in the s., the C. A. (affirming the registrar) dismissed a petition on the ground that the debtor had abandoned his house as a dwelling-house more than a year previous to the filing of the petition, although if he had chosen so to do he could have gone to reside in it. *In re NORDENFELT. Ex parte MAXIM-NORDENFELT GUNS AND AMMUNITION CO.* — C. A. [1895] 1 Q. B. 151

**143. — Notice of petition—Protected transaction—Notice to sheriff—“Sheriff”—Man in possession—Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), s. 168; 1890 (53 & 54 Vict. c. 71), s. 11, sub-s. 2.**

**BANKRUPTCY (Petition)—continued.**

A man in possession, who seizes, keeps possession of, and sells the goods of a judgment debtor by direction of the sheriff, is not an “officer charged with the execution of a writ or other process,” and therefore is not a “sheriff” within s. 168 of the Bankruptcy Act, 1883; notice to him within fourteen days after sale, of a bankruptcy petition against the debtor, is therefore not notice to the sheriff within s. 11, sub-s. 2, of the Bankruptcy Act, 1890, and does not entitle the official receiver or trustee in bankruptcy to the balance of the proceeds of sale. *BELLYSE v. M'GINN* Div. Ct. [1891] 2 Q. B. 227

**144. — Petitioning creditor's debt—Merger in judgment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7, sub-s. 2.**

A judgment on a simple contract debt (though for most purposes merging the debt in the judgment) does not extinguish the debt for the purpose of bankruptcy proceedings, and such debt is still available to support a petition. The law in this respect has not been altered by the Bankruptcy Act, 1883. *In re KING AND BEESLEY. Ex parte KING AND BEESLEY*

Div. Ct. [1895] 1 Q. B. 189

**145. — Refusal of registrar to make receiving order—Res judicata—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7.**

A county court registrar refused to grant a receiving order on a petition based on a judgment debt, being of opinion, on inquiry into the consideration on which the judgment was founded, that there was not a good petitioning creditor's debt. A second bankruptcy petition was presented in the London Court of Bankruptcy:—

*Held*, that the judgment, so long as it was not set aside, was conclusive that there was a debt between the judgment debtor and creditor, and that the county court registrar had no jurisdiction to decide that the judgment debt was not a valid debt as between the parties to it. Therefore, all he could do and did was to exercise his discretion to refuse to make a receiving order. Therefore it was not *res judicata* that there was not a valid debt. *In re VITORIA. Ex parte VITORIA*

C. A. [1894] 2 Q. B. 387

Approved by P. C. *King v. Henderson*, [1898] A. C. 720, 730.

**146. — Right to present—Debtor—Bankruptcy Act, 1888 (46 & 47 Vict. c. 52), s. 8, sub-s. 1.**

The course of legislation as to a debtor's right to present his own petition traced by V. Williams J. in *ex parte PAINTER. In re PAINTER* [1895] 1 Q. B. 85, at p. 88

**147. — Right to present—Purser of cost-book mine.**

A purser of a cost-book mine is only authorized to sue on behalf of the company. He cannot, under s. 13 of the Stannaries Act, 1869, present a bankruptcy petition on their behalf in respect, e.g., of a judgment debt obtained for unpaid calls. *In re NANCE. Ex parte ASHMEAD*

C. A. [1893] 1 Q. B. 590

**Practice.**

—Adding parties—Official receiver.

*See PRACTICE—Parties.* 89.

**BANKRUPTCY (Practice)—continued.**

—Adding trustee a party—Liquidated damages.  
See **PRACTICE—Parties**. 88.

148. — *Affidavits—Service of copies—Bankruptcy Rules*, 1886, rr. 27, 29.

As a general rule copies of affidavits in support of an application should be served with the notice of motion. *In re WELLS. Ex parte COLLINS* V. Williams J. [1892] W. N. 96

149. — *Consolidation—Separate estates—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 112.

Where a partnership has been dissolved and afterwards separate receiving orders are made against the late partners, and there are joint assets and liabilities still in existence, there is jurisdiction to make an order consolidating the proceedings under the separate receiving orders. *In re ABBOTT* V. Williams J. [1894] 1 Q. B. 442—Costs.

See **Cases under BANKRUPTCY—Costs**.

—Debtor absconding before presentation of petition—Arrest—Order made in exercise of bankruptcy jurisdiction—Certiorari.

See **COUNTY COURT—Jurisdiction**. 47.

150. — *Dismissal of bankruptcy petition by consent—Increased debt, Second petition for—Receiving order—Extortion—Pressure—Abuse of process of Court—Procedure—Leave of Court to withdrawal of petition—Terms to be submitted to Court—Debtor and creditor—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 7, sub-s. 7.

Where a creditor, having presented a bankruptcy petition against his debtor based upon a particular debt, such as a judgment debt, consents to its being dismissed upon the terms of the debtor agreeing to pay a fresh debt of increased amount, it is not an abuse of the process of the Court for the creditor, in case of the debtor making default, to present a second petition based upon the new debt, provided he has not used extortion or pressure towards the debtor.

Leave to withdraw a creditor's bankruptcy petition under s. 7, sub-s. 7, of the Bankruptcy Act, 1883, should not be given without the Court being first informed of the facts of the case and the proposed terms of withdrawal, so that it may exercise its judgment as to whether the case is a proper one for allowing a withdrawal. *In re BEBBO* C. A. [1900] W. N. 128; [1900] 2 Q. B. 316

151. — *Motions—Vivâ voce evidence*.

*Per Wright J.*: His attention had been drawn to the fact that unnecessary expenses in bankruptcy matters were incurred by applications to the Court for orders that the evidence on pending motions might be taken vivâ voce. In future a party desiring that the evidence on a pending motion should be taken vivâ voce must give notice in writing to the other side, and if no objection was raised within a week, then the evidence would be taken that way, and no order for the purpose would be required. But if any objection was raised within the week, then an application for the purpose must be made to the Court at the peril of the party objecting. **MEMORANDUM** — Wright J. [1899] W. N. 121

152. — *Order for administration of estate of*

**BANKRUPTCY (Practice)—continued.**

*deceased person—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 125.

An order under s. 125 of the Bankruptcy Act, 1883, for the administration in bankruptcy of the estate of a deceased debtor may be made upon a petition served before the grant of probate of letters of administration, if at the time of the making of the order there is a duly constituted legal personal representative of the deceased before the Court. *In re SLEET. Ex parte SLEET* C. A. [1894] 2 Q. B. 797

153. — *Payment into court for leave to defend—Bankruptcy of defendant before trial—Secured creditor—Pending action—R. S. C.*, 1883, Order xiv., r. 6—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 168.

Money paid into court under R. S. C., 1883, Order xiv., for leave to defend, must be treated as money paid in to abide the event, and is a security to the plt. for the sum for which he may obtain judgment at the trial; and if the deft. becomes bankrupt before the trial, the money must remain in court until "the event" is decided by the trial of the action, if that is to be tried, or by adjudication upon a proof by the plt. in the bankruptcy. *In re FORD. Ex parte THE TRUSTEE.*

Wright J. [1900] W. N. 124; [1900] 2 Q. B. 211

See upon another point, **BANKRUPTCY—Execution**. 101.

—Petition.

See **Cases under BANKRUPTCY—Petition**.

154. — *Security for costs—Foreigner resident abroad—Bankruptcy Acts*, 1869 (32 & 33 Vict. c. 71); 1883 (46 & 47 Vict. c. 52)—*Bankruptcy Rules*, 1886 and 1890, rr. 131, 148.

Under the Bankruptcy Act, 1883, and the Bankruptcy Rules, the Court has jurisdiction to order a foreign creditor resident abroad to give security for the costs of an appeal against the rejection of his proof, but will not exercise its discretion to do so where there is a fair subject of dispute involved, and ought not to do so except in extreme cases. In cases governed by the Bankruptcy Act, 1869, the Court will be guided by the Act of 1883, and the rules thereunder. *In re SEMENZA. Ex parte PAGET*

C. A. [1894] 1 Q. B. 15

—Stay of proceedings—Discontinuance by trustee. See **BANKRUPTCY—Stay of Proceedings**.

155. — *Two estates—Same trustee—Conflicting interests—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), ss. 21, 104.

G. was appointed trustee of the estate of E., a bankrupt, and subsequently of that of L. G. was a creditor of E.'s estate for a large amount, and of L.'s for a small amount. The only asset of either E. or L. was an interest in certain property as to half of which E. alleged that L. was trustee for him. The Bd. of Trade objected to G.'s appointment as trustee for L.'s estate, on the ground that his connection with the bankrupt or his estate made it difficult for him to act impartially:—

*Held*, that the objection was valid:

*Held*, also, that the order appointing G. was appealable, and that the Bd. of Trade were

**BANKRUPTCY (Practice)—continued.**

"persons aggrieved" by it. *In re LAMB. Ex parte BOARD OF TRADE* C. A. [1894] 2 Q. B. 805

Followed by V. Williams J. *In re Mardon*, [1896] 1 Q. B. 140.

**Preference.**

— Fraudulent preference.

See **BANKRUPTCY—Fraudulent Preference.**

— Preferential payments in bankruptcy.

See **Cases under COMPANY—WINDING-UP—Preference.**

156.—*Preferential payments—Friendly Society—Debt due from treasurer—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 40—*Bankruptcy Preferential Payments Act, 1888* (51 & 52 Vict. c. 62), s. 2, sub-s. 1.

The trustees of a friendly society have by s. 15 of the Friendly Societies Act, 1875, a preferential claim on the assets of a bankrupt treasurer of the society for the balance due from him to the society at the commencement of the bankruptcy, even where the moneys are not in his possession in specie and cannot be traced. *In re MILLER. Ex parte OFFICIAL RECEIVER*

C. A. [1893] 1 Q. B. 327

See 59 & 60 Vict. c. 25, s. 35 (b.)

157.—*Preferential payments—Gas supply—Gasworks Clauses Acts, 1847* (10 & 11 Vict. c. 15), s. 16; 1871 (34 & 35 Vict. c. 41), ss. 11, 39—*Metropolis Gas Act, 1860* (23 & 24 Vict. c. 125), ss. 4, 14–19, 39.

Arrears of gas rent paid by the official receiver to a gas co. to prevent the supply of gas being cut off from premises in the occupation of a bankrupt are not preferential payments which the trustee in bankruptcy can recover back. *In re SMITH. Ex parte MASON*

V. Williams J. [1893] 1 Q. B. 323

Referred to by C. A. *Paterson v. Gas Light and Coke Co.*, [1896] 2 Ch. 476, 483.

— Preferential payments in bankruptcy—Managing director—"Clerk or servant."

See **COMPANY—Directors.** 114.

158.—*Trust for creditors—Right in security—Pledge—Private manager.*

By trust deed executed July, 1895, S., a farmer, conveyed his whole estate to M., "as trustee and in trust and as my commr. (but hereinafter called trustee) for the uses, ends, and purposes after specified," "with full power to manage the farm until expiry or renunciation of the lease, to sell the stock, &c., to sue and defend actions, pay rent and wages, and out of the remainder pay the creditors" of S.; "or if the remainder was inadequate, to call for claims and divide the sums." S. was declared bankrupt July 10, 1896. M. claimed a preferential right to be paid a balance due to him in respect of his actings in the management of the farm. He alleged that at the date of the bankruptcy he held the whole estate in security and for payment of his advances, expenses, and remuneration as trustee, and claimed full payment of his debt. And in virtue of his having paid for the seed and labour of sowing and caring for the crop of 1896, he specially claimed to be preferred to the

**BANKRUPTCY (Preference)—continued.**

whole sum arising from the realization of the crops, or such part as would recoup him for his expenses, advances, and remuneration. The trustee rejected M.'s claim so far as it included law expenses after the date of the bankruptcy and other small sums, and under deduction of these sums the trustee admitted M.'s claim to be an ordinary debt, rejecting the debt altogether as a preferable one:—

*Held*, affirming the decision of Ct. of Sess., *Mess v. Hay* (*Sime's Trustee*), (1898) 25 R. 398, that M. had no right to a preferable claim, on the ground that he had never held the bankrupt's estate in security, and that the payments made for seed and labour did not entitle him to a preferable ranking. *Mess v. HAY*

H. L. (Ss.) [1899] A. C. 233

**Priority.**

— Quasi partnership—Loan at interest varying with profits.

See **BANKRUPTCY—Partnership.** 138.

**Proof.**

*Notice of rejection of proof of debt—A new form substituted for No. 74, W. N. 1896* (Jan. 18), p. 36; *Current Index, 1896*, p. lviii.

159.—*Alimony—Arrears accrued after receiving order.*

Arrears of alimony under an order of the Divorce Court, which became due after a receiving order has been made against the husband, but before discharge, cannot be proved for in bankruptcy by his wife. *In re HAWKINS. Ex parte HAWKINS* - - Div. Ct. [1894] 1 Q. B. 25

Referred to by C. A. *Watkins v. Watkins*, [1896] P. 222, 226.

Referred to by V. Williams J. *Kerr v. Kerr*, [1897] 2 Q. B. 439, 444.

160.—*Alimony—Arrears accrued due before receiving order—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 37.

Arrears of alimony payable by a debtor to his wife under an order of the Probate and Divorce Div. of the High Court of Justice, which accrue due before the making of a receiving order against the debtor, are not provable by the wife in the debtor's bankruptcy.

*Per Hawkins and Williams JJ.* (Wright J. diss.) *KERR v. KERR* Div. Ct. [1897] 2 Q. B. 439

161.—*Amendment—Right to amend proof—Secured creditor—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), *Sched. II., rr. 12a, 13.*

By the Bankruptcy Act, 1883, *Sched. II.*, rule 12a, where a secured creditor has valued his security the trustee may "at any time" redeem it on payment to the creditor of the assessed value; and by rule 13 a secured creditor may "at any time" amend his valuation and proof on shewing that the security has increased in value since its previous valuation. A secured creditor having valued his security, it subsequently greatly increased in value, and thereupon the trustee gave notice to redeem it, and tendered payment of the assessed value to the creditor, who refused to accept the tender:—

*Held*, that the creditor was entitled, under rule 13, to amend his valuation and proof not-

**BANKRUPTCY (Proof)—continued.**

withstanding such tender and refusal. *In re NEWTON. Ex parte NATIONAL PROVINCIAL BANK OF ENGLAND* - Div. Ct. [1896] 2 Q. B. 403

162. — *Annuity—Sale of business in consideration of an annuity—Bankruptcy of purchaser—Proof by vendor for value of annuity—Postponement—Reference to Registrar to assess value of annuity—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 3.*

The O. A. held that Wright J., [1899] W. N. 41, had taken an erroneous view of s. 3 of the Partnership Act, 1890, and allowed the appeal, and referred the case back to the Registrar to assess the value of the annuity; both parties assenting to the reference to him for that purpose. *In re GIEVE. Ex parte SHAW*

C. A. [1899] W. N. 72

163. — *Bills of exchange—Lumping debts and securities.*

Although under ordinary circumstances a creditor proving in a bankruptcy may properly lump together his debts and securities, yet when the debts are distinct in substance, with different rights over as against third persons, or with different securities, the trustee in the bankruptcy may insist that proof shall not be made for a lump sum, and may require the creditor to distinguish and specify the particular debts and the values of the securities for the same respectively.

A bank were the indorsees of four bills of exchange, of which A and C were drawn by one person, and B and D by another person, upon different acceptors, to the order of the same payee, who indorsed them all to the same firm. That firm indorsed them to another firm, who indorsed them to the bank. The first-mentioned firm executed a creditor's deed, which provided for the distribution of their assets as in bankruptcy. The bank proved under the deed for the aggregate amount of the four bills, and, by means of dividends under the deed and payments by the other persons liable upon the bills, they received in respect of the bills B and D more than 20s. in the pound, but they had not yet received payment in full of the other two bills A and C. The whole amount which they had received was less than the total amount due on all the four bills:—

*Held*, that the trustee of the deed was entitled to have the bills B and D delivered up to him, and to have the surplus above 20s. in the pound which the bank had received in respect of each of those bills handed over to him.

Decision of Romer J., [1898] 2 Ch. 413, affirmed. *In re MORRIS. JAMES v. LONDON AND COUNTY BANKING CO.* C. A. [1899] W. N. 18 (3); [1899] 1 Ch. 485

164. — *Company—Death of shareholder—Insolvent estate—Administration—Proof of debts—Liability to future calls—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37, sub-ss. 3, 4, 6, 8.*

By virtue of s. 10 of the Judicature Act, 1875, and s. 37 of the Bankruptcy Act, 1883, a co. may prove, in the administration of the estate of a deceased shareholder whose estate is insolvent, for the estimated value of the liability to future

**BANKRUPTCY (Proof)—continued.**

calls in respect of the shares standing in his name. *In re McMAHON. FULLER v. McMAHON* Stirling J. [1900] 1 Ch. 173

— *Company—Practice.*

*See Cases under COMPANY—WINDING-UP—Proof.*

165. — *Corporation—Dissolution—Claim of dissolved corporation—Right of the Crown—Bona Vacantia.*

A trading firm became bankrupt in 1847, and a corporation created by statute proved in the bankruptcy, with other creditors. In 1887 the corporation was dissolved by an order of the Court under the Companies Acts. Afterwards it was discovered that the bankrupts had been entitled to certain ry. shares, and the official receiver recovered the value of the shares, and held the proceeds as trustee in the bankruptcy. Another creditor moved to expunge the proof of the dissolved corporation, claiming that the money to which the corporation had been entitled as a creditor, and which was then in the hands of the official receiver as trustee, was divisible among the still existing creditors.

The county court judge made an order expunging the proof.

On appeal by the Att.-Gen. on behalf of the Treasury:—

*Held*, reversing the order, that on the dissolution of the corporation the proceeds of the shares in the hands of the official receiver as trustee in the bankruptcy had passed to the Crown as bona vacantia, and the Crown was entitled to the amount. *In re HIGGINSON & DEAN. Ex parte ATT.-GEN.* - Div. Ct. [1899] 1 Q. B. 325

— *Costs—Provable debt—Unliquidated damages.*

*See COMPANY—WINDING-UP—Proof. 204.*

— *Proof—"Cover"—"Money deposited to abide the event."*

*See GAMING. 28.*

166. — *Damages in the Divorce Court—Bankruptcy of co-respondent—Provable debt—Judgment summons—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 33—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5—Bankruptcy Acts, 1883, 1890 (46 & 47 Vict. c. 52, s. 37; 53 & 54 Vict. c. 71, s. 10).*

Damages awarded to a petitioner in the Divorce Court against a co-respondent, and ordered to be paid into court, although they will not support a bankruptcy petition against the co-respondent, are nevertheless a debt provable in his bankruptcy. The payment of such damages therefore cannot, if his bankruptcy supervenes, be enforced against him by a judgment summons under s. 5 of the Debtors Act, 1869.

*Wood v. Wood*, (1868) L. R. 1. P. & M. 467, followed. *In re O'GORMAN. Ex parte BALE*

Wright J. [1899] W. N. 68; [1899] 2 Q. B. 62

167. — *Debts provable—Covenant—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37.*

The term "liability" in s. 37 of the Bankruptcy Act, 1883, includes a liability under a covenant for the payment of money out of the estate of the covenantor after his death, and the value of such an obligation is provable as a

**BANKRUPTCY (Proof)—continued.**

debt on the bankruptcy of the covenantor.  
**BARNETT v. KING** - - **C. A. [1891] 1 Ch. 4**

**168.** — “*Debt provable in bankruptcy*”—*Debt incurred after notice to creditor of act of bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 37.*

Where a debt has been incurred by a bankrupt before the date of the receiving order, but after notice to the creditor of an act of bankruptcy available against the debtor, an action for the debt cannot be maintained, it being a debt provable in bankruptcy within the meaning of the Bankruptcy Act, 1883, s. 37, sub-s. 3, although by sub-s. 2 of that section the creditor is subject to a personal disqualification for proving it. **BUCKWELL v. NORMAN** - **C. A. [1898] 1 Q. B. 622**

**169.** — *Disclaimer by trustee in bankruptcy—Contract to take shares in a company—Proof for injury caused by disclaimer—Measure of damages—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55.*

By a contract made in Feb., 1898, H. agreed to sell to a co. certain properties; and by the same contract H. agreed to subscribe and pay for in cash so much of the share capital of the co. as should not be taken up by the public. In the events which happened H. became bound under the contract to take up and pay for certain preference shares and 25,000 ordinary shares of 1l. each in the co. In June, 1898, H. became bankrupt, and in the July following his trustee in bankruptcy disclaimed the contract. Soon afterwards the co. went into liquidation, and the liquidator lodged a proof against H.'s estate for damages for breach of the contract. H.'s estate was estimated to realise not more than 4s. in the pound. The liabilities of the co. were about 16,000l., whilst its assets comprised, practically, about 4000l. at a bank and the claim against H.'s estate. The liquidator made a call of 1l. per share on the ordinary shares of the co., and claimed that the proof against H.'s estate should stand at 25,000l., on the ground that the measure of damages for the injury caused to the co. by the disclaimer was the loss of the call of 1l. per share on the 25,000 shares which H. was bound to take up. The trustee admitted the proof for 10,500l. only, that being the difference between the then estimated assets and liabilities of the co. —

*Held*, that, as the disclaimer had put an end to the contract, and the claim of the co. could only be for damages for breach of the contract, the trustee had assessed the damages on the right principle, and that the proof must stand at 10,500l. *In re HOOLEY. Ex parte UNITED ORDANCE AND ENGINEERING CO.* - **WRIGHT J. [1899] 2 Q. B. 579**

**170.** — *Disclaimer of shares—Damages.*

A bankrupt held shares not fully paid up; a call was made on them, and before it was payable his trustee disclaimed the shares. The co. then went into liquidation, and the liquidator lodged a proof for the whole amount unpaid on the shares. The trustee admitted a proof for the amount of the call, but rejected the remainder. The liquidator then lodged a proof for the balance as damages caused by the disclaimer: this the trustee rejected; —

**BANKRUPTCY (Proof)—continued.**

*Held*, that the liquidator was entitled to prove for the damage caused by the disclaimer. *In re HALLETT. Ex parte NATIONAL INSURANCE CO.*

**V. WILLIAMS J. [1894] W. N. 156**

**171.** — *Disputed proofs—Practice—Receiving order—Scheme of arrangement—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., rr. 22–27—Bankruptcy Rules, 1886, rr. 214, 215.*

After a receiving order, a debtor submitted to the first meeting of his creditors a scheme to pay a composition of 7s. 6d. in the pound to those creditors whose debts he admitted. At the first meeting proofs were lodged for 60,000l., of which proofs for 15,000l. were admitted, but the debtor wholly disputed the remaining 45,000l. The admitted creditors accepted the scheme subject to the sanction of the Court. The official receiver had no assets and no means of testing the validity of the disputed proofs, which depended on complicated questions of fact. The debtor then applied to the Court that he might be at liberty in the name of the official receiver (indemnifying him) to reject the disputed proofs or to take proceedings to expunge or reduce them. The official receiver objected to his name being used; —

*Held*, the proper course was for the debtor to serve notice of motion on the creditors in question asking that their proofs might be expunged from the file of the proceedings. *In re CALVERT* - **WRIGHT J. [1899] W. N. 34 (3)**

*See also Nos. 177, 185, below.*

**172.** — *Guarantee—Appropriation of money as payment—Construction of agreement.*

Four persons guaranteed a debt to a bank. Three of the guarantors deposited money with the bank, which the bank was to carry to a suspense account, it being agreed that the bank might, when it so pleased, appropriate the deposit as payment of the depositors' share of the guarantee. The fourth guarantor became bankrupt, and the bank claimed to prove against his estate for the whole of the guarantee; —

*Held*, that the bank was entitled to prove for the whole amount of the guarantee, for the payment to the suspense account with the creditor was not a discharge until the creditor had appropriated the money as payment of the guarantee. **COMMERCIAL BANK OF AUSTRALIA v. OFFICIAL ASSIGNEE OF JOHN WILSON & CO.**

**P. C. [1893] A. C. 181**

**173.** — *Guarantee by third party—Security—Secured creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168.*

A. gave a promissory note to H. & Co. for money lent, and also a transferable guarantee by the C. Co. H. & Co. handed the note and guarantee to their bankers, who lent them money. The note was dishonoured at maturity. H. & Co. became bankrupt. The C. Co. went into liquidation. D. sought to prove in the bankruptcy of H. & Co. for the whole debt due to him; —

*Held*, that H. & Co. had parted with the property in the note and the guarantee to their bankers, and that the guarantee had not been handed over to the bankers merely by way of mortgage or lien on the bankrupts' property,

**BANKRUPTCY (Proof)—continued.**

and therefore that the bankers were not secured creditors within s. 168 of the Bankruptcy Act, 1883, and need not deduct the value of the guarantee from the amount of their debt. *In re HALLETT & Co. Ex parte COCKS, BIDDULPH & Co.* - C. A. [1894] 2 Q. B. 256

174. — *Husband and wife—Loan by wife to husband for purposes unconnected with his business—Proof against husband's estate—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 3.*

By s. 3 of the Married Women's Property Act, 1882, "Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied." On a claim by a wife to prove against her husband's estate for money lent to him:—

*Held*, that the section does not apply to a loan by a wife to her husband for purposes unconnected with his trade or business.

*In re Tidswell, Ex parte Tidswell*, (1887) 56 L. J. (Q. B.) 548, approved. *In re CLARK. Ex parte SCHULZE* - C. A. [1898] 2 Q. B. 330

175. — *Interest—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 37, 40, Sched. II., r. 21.*

The effect of s. 37 of the Bankruptcy Act, 1883, and rule 21 in Sched. II. to the Act, is that when a debt is by contract payable at a future date, with interest in the meantime, and the debtor becomes bankrupt before the time of payment has arrived, the creditor may prove for interest accruing after the date of the receiving order. In such a case the proper course is to prove for the principal sum as a present debt: then under rule 21 to deduct a rebate of interest at 5 per cent. from the dividends upon it; and then to value the liability to pay interest and prove for that value the dividend on which is to be paid without any rebate. When the rate of interest contracted for is 5 per cent. the proper course is simply to prove for the principal sum as a present debt, without any rebate. History of the law as to proof for interest in bankruptcy considered. *In re BROWNE AND WINGROVE. Ex parte ADOR*

C. A. [1891] 2 Q. B. 574

Referred to by C. A. *Wallace v. Universal Automatic Machines Co.*, C. A. [1894] 2 Ch. 547, 553.

176. *Interest on mortgage—Transfer of mortgage—Assignment of equity of redemption—Arrears.*

A mortgagor to two mortgagees assigned his equity of redemption, and the estate of the two mortgagees was transferred so as to vest in one alone. The assignee of the equity continued to pay interest on the mortgage, and when sued for arrears suffered judgment by default, and was subsequently adjudged bankrupt. The transferee of the mortgage claimed to prove against his estate for further arrears of interest:—

**BANKRUPTCY (Proof)—continued.**

*Held*, that the proof could not be allowed since there was no privity of contract between the assignee of the equity and the transferee of the mortgage, and no personal liability on the part of the assignee to pay interest. *In re ERRINGTON. Ex parte MASON.* Div. Ct. [1894] 1 Q. B. 11

177. — *Jurisdiction, creditor resident out of the—Proof by—Notice of motion to expunge proof—Service out of jurisdiction.*

Leave given to serve the notice of motion on the creditor in Edinburgh by registered post to his address there; and as to the Australian creditor, by serving the notice on the firm of solicitors in London who had lodged his proof. *In re CALVERT* - Wright J. [1899] W. N. 53

See also No. 171, above, and No. 185, below.

178. — *Loan to firm on terms of sharing profits—Subsequent advances without express stipulation as to rate of interest—Dissolution of firm—Subsequent agreement with continuing partner to continue loan at fixed rate of interest—Postponement—Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 2, 3.*

In 1893 A., B., and C. executed a deed by which A. and B. entered into partnership for a term of years, and C. agreed to lend them 1600*l.* as capital for the business, she to receive a share of the profits in lieu of interest. In June, 1895, A. and B. by deed, to which C. was a party, dissolved partnership, B. continuing the business and taking over and becoming solely responsible for the debt due to C., which at this date comprised the 1600*l.* and a further sum advanced by her without any express stipulation as to interest. In Aug. 1895, B. and C. entered into a deed by which it was agreed that C. should continue to receive a share of profits in lieu of interest in respect of the 1600*l.*, but that the further advance and any future advances should carry a fixed rate of interest. In 1896 B. became bankrupt, and C. claimed to prove in competition with the other creditors of the business in respect of all her advances:—

*Held*, that C. must be postponed in respect of all her advances prior to Aug., 1895. *In re MASON. Ex parte BING* - Wright J.

[1899] 1 Q. B. 810

179. — *Loan to trader—Interest varying with profits—Bocill's Act (28 & 29 Vict. c. 86), ss. 1, 5 Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 2, 3.*

In 1881 A. lent B. 20,000*l.* at 5 per cent. interest plus by way of additional interest a sum equal to one-fourth of the net profits of B.'s business. In 1886, on negotiations for repayment, A. agreed in writing to continue the existing loan, and B. agreed to pay interest thereon at 10 per cent.:—

*Held*, that the transaction of 1886 did not amount to a re-lending, that s. 5 of the Partnership Amendment Act, 1865 (now s. 3 of the Partnership Act, 1890), applied, and that in the bankruptcy of B., A. could not prove until all the other creditors were paid in full. *In re HILDESHEIM. Ex parte TRUSTEE IN BANKRUPTCY*

C. A. [1893] 2 Q. B. 357

180. — *Partnership, Agreement for a—Loan or Partnership—Loan to Trader—Weekly Payments*

**BANKRUPTCY (Proof)—continued.**

of fixed Sum out of Profits—"Share of Profits"—*"Loan"*—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 2, sub-s. 3 (d); ss. 3, 10.

A contract that a person shall receive a fixed sum "out of the profits" of a business is equivalent to a contract that he shall receive "a share of the profits" within the meaning of sub-s. 3 (d) of s. 2 of the Partnership Act, 1890.

Under a written contract A. lent B. 500l. for his business. A. was to have the sole control and management of the business, and an option was given him (which was not exercised) of becoming a partner with B. in the business within a certain time. For the use of his money A. was to be paid the weekly sum of 3l., afterwards reduced to 2l., "out of the profits" of the business. B. was to draw like weekly sums. B. having become bankrupt, A. claimed to prove for the money he had advanced:—

*Held*, that, under the circumstances, A. was not a partner; but that he was in the position of a person who was receiving a "share of the profits" of the business within the meaning of the Partnership Act, 1890, s. 2, sub-s. 3 (d), and therefore could not prove until all the other creditors had been satisfied. *In re YOUNG. Ex parte JONES* - V. Williams J. [1896] 2 Q. B. 484

181. — Partnership creditor—Separate estate of partners—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 40, sub-s. 3.

Sect. 40, sub-s. 3 of the Bankruptcy Act, 1883, leaves the law as it was previously. Therefore, where there is no joint partnership estate, a creditor of the partnership is entitled to have his debt paid out of the separate estates of the separate partners on an equality with the separate creditors. *In re BUDGETT. COOPER v. ADAMS*

Chitty J. [1894] 2 Ch. 557

182. — Partnership creditor—Separate estate of partners—Proof by solvent partner for separate debt against separate estate of insolvent partner.

Where a partnership is insolvent and a proof is tendered by the solvent partner against the separate estate of the insolvent partner, in respect of a separate debt, it is no objection thereto that the dividend to be received from the insolvent's separate estate will swell the surplus of what will eventually go to the solvent partner's estate to pay the joint debts of the partnership. *In re HEAD. Ex parte HEAD* (No. 1)

V. Williams J. [1894] 1 Q. B. 638

183. — Principal and Surety—Guarantee to Bank—Surety for whole Debt, but Liability limited in Amount—Payment by Surety—Proof by Bank for whole Debt.

A surety guaranteed a bank the payment of all sums of money which then were or might thereafter from time to time become due or owing to the bank for their customer S., but nevertheless the total amount recoverable from the surety was not to exceed 300l. The guarantee was to be a continuing security, and any dividends which the bank might receive on the bankruptcy of S. were not to prejudice their right to recover from the surety to the full extent of the guarantee any sums which after the receipt of such dividends might remain owing to them by S.

**BANKRUPTCY (Proof)—continued.**

S. became bankrupt, and the bank, after receiving the 300l. from the surety, claimed to prove in the bankruptcy for the full amount due to them from S. The trustee in bankruptcy contended that the proof ought to be reduced by the amount the bank had received from the surety:—

*Held*, that the bank were entitled to prove for their whole debt without any deduction. *In re SASS. Ex parte NATIONAL PROVINCIAL BANK OF ENGLAND, LD.*

V. Williams J. [1896] 2 Q. B. 12

184. — Provable debt—Surety—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37.

Under s. 37 of the Bankruptcy Act, 1883, the liability of a bankrupt co-surety to contribution, though unascertained at the time of the bankruptcy proceedings, is a debt provable in bankruptcy, and the bankrupt co-surety will be discharged from all liability by a composition under s. 18 of the Act. *WOLMERSHAUSEN v. GULLICK* - Wright J. [1893] 2 Ch. 514

Followed by *Stirling J. Robinson v. Harkin*, [1896] 2 Ch. 415, 426.

Explained by C. A. *Ellis v. Pond*, [1897] 1 Q. B. 426, 454.

— Secured creditor.

See Cases under **BANKRUPTCY—Secured Creditor.**

185. — Taxes—Proof for assessed—Scheme of arrangement—Power of Court to go behind assessment—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 111, 113, 118—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 57—Board of Trade Regulations, May, 1888.

The rule that on a proof for a judgment debt the Court will go behind the judgment and ascertain whether there is a provable debt, does not apply to a proof for assessed taxes.

Where therefore a debtor, who had carried in a scheme of arrangement, applied to expunge a proof for an assessment to income tax under Sched. D (which had not been appealed against), on the ground that he had made no profits assessable to duty, the application was dismissed, but without prejudice to any application he might be advised to make to the Inland Revenue under the Board of Trade Regulations of May, 1888. *In re CALVERT. Ex parte CALVERT*

Wright J. [1899] 2 Q. B. 145

See also Nos. 171, 185, above.

186. — Unpaid vendor's lien—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168, Sched. I., r. 10.

Per V. Williams J.: Under Sched. I., r. 10, of the Bankruptcy Act of 1883, a secured creditor who has voted and omitted to value his security ought always to be allowed to withdraw his proof and be relieved from being deemed to have surrendered his security unless it clearly appears that he has deliberately and purposely abandoned his security. Affirmed by the C. A. on the ground that there was no debt to the creditor, and that his proof was presented under a mistake. *In re BURR. Ex parte CLARKE*

V. Williams J. [1892] W. N. 122; affirmed by C. A. [1892] W. N. 138

**BANKRUPTCY—continued.****Protected Transaction.**

187. — “Completed execution” — Charging order on share in a partnership—*Partnership Act, 1890* (53 & 54 *Vict. c. 39*), s. 23—*Bankruptcy Act, 1883* (46 & 47 *Vict. c. 52*), ss. 45, 49, 168.

A charging order under s. 23 of the *Partnership Act, 1890*, upon a judgment debtor's interest in a partnership, being a proceeding in invitum, is not a “transaction” protected by s. 49 of the *Bankruptcy Act, 1883*.

*In re O'Shea's Settlement*, [1895] 1 Ch. 325, followed.

When in such a case the partners by direction of the Court pay into court a sum of money in redemption or purchase of the interest charged, the transaction is not a “completed execution” within the meaning of s. 45 of the *Bankruptcy Act, 1883*.

*Semble*, if the money had been paid out to the execution creditor or the partners had paid him the money direct, he would have got a good title. *WILD v. SOUTHWOOD*

**V. Williams J. [1897] 1 Q. B. 317**

188. — Contract for sale of lease—Deposit—Act of bankruptcy by vendor before completion—Action to recover deposit—*Bankruptcy Act, 1883* (46 & 47 *Vict. c. 52*), s. 49.

On a contract for the sale of the lease of a public-house a day was fixed for completion, and the plaintiff, the purchaser, paid a deposit to the defendants as stakeholders. It was a term of the contract that the deposit should be forfeited in case the purchaser refused to perform his part of the agreement. Before the date fixed for completion the vendor committed an act of bankruptcy, which came to the notice of the purchaser, who thereupon refused to complete, and demanded the return of the deposit:—

*Held*, that though the contract for sale was protected by s. 49 of the *Bankruptcy Act, 1883*, the assignment and the payment of the purchase-money, in pursuance of the contract but after notice of the act of bankruptcy, would not have been protected, and that the purchaser was therefore not bound to complete, and was entitled to recover the deposit. *POWELL v. MARSHALL, PARKES & Co.* — **C. A. [1899] 1 Q. B. 710**

189. — Mortgage of chose in action—Notice—Order and disposition—Delay in making claim—Costs—*Bankruptcy Act, 1883* (c. 52), ss. 44, 49.

In 1890 A. by deed assigned to a co. the moneys to become due to him under a contract with the War Office to secure the payment of 30l. No notice of this deed was given to the War Office. In May, 1892, A. committed an act of bankruptcy, and a receiving order was made against him in Aug. 1892. On June 24, 1892, A. by deed assigned the same moneys under the same contract to the co. to secure the payment of 74l, which sum in fact included the previous 30l. Notice of this deed was at once given to the War Office by the co., who were not aware of the act of bankruptcy. In Nov., 1893, the trustee in bankruptcy rejected the claim of the co. to be secured creditors, and informed them that he should shortly receive from the War Office the money due under the contract. The co. took no step to assert their claim until Dec., 1895:—

**BANKRUPTCY (Protected Transaction)—contd.**

*Held*, first, that the delay of two years did not under the circumstances amount to an abandonment by the co. of their claim; secondly, that the notice to the War Office was equivalent to taking possession of the subject-matter of the assignment, and, coupled with the deed of June, 1892, was a dealing for valuable consideration, and therefore a protected transaction within s. 49 of the *Bankruptcy Act, 1883*; and, thirdly, that the co., having taken possession by their notice, could then set up both their deeds of assignment. *In re SEAMAN. Ex parte FURNESS FINANCE CO. V. Williams J. [1896] 1 Q. B. 412* — Charging order—Jurisdiction.

*See Nos. 67, 68, ante.*

**Proxy.****190. — Attestation.**

A person appointed by a creditor under rule 15 of Sched. I. of the *Bankruptcy Act, 1883*, to act as his proxy cannot himself be the attesting witness to the instrument of proxy. *In re PARROTT. Ex parte CULLEN*

**Div. Ct. [1891] 2 Q. B. 151**

**Receiver.**

191. — Appointment of receiver — Equitable Execution—Practice—Judicature Act, 1873 (36 & 37 *Vict. c. 66*), s. 25, sub-s. 8—*Bankruptcy Rules, 1886*, rr. 93, 353—*Bankruptcy Act, 1883* (46 & 47 *Vict. c. 52*), s. 93.

The Court of Bankruptcy has jurisdiction under s. 25, sub-s. 8, of the *Judicature Act, 1873*, to appoint a receiver by way of equitable execution for the purpose of enforcing orders for the payment of money to the trustee in bankruptcy; but such an order will not, as a general rule, be made on an ex parte application. *In re GORDIE. Ex parte OFFICIAL RECEIVER*

**V. Williams J. [1896] 2 Q. B. 481**

192. — Service of notice—Partnership—Action for dissolution—Service on receiver appointed by the Court—*Bankruptcy Rules, 1890*, r. 260.

Service of a bankruptcy notice on a receiver and manager, appointed by the Court in an action for the winding-up of a partnership business, is not service on a person having the control or management of the partnership business within rule 260 of the *Bankruptcy Rules, 1890*. *In re FLOWERS & Co.* — **C. A. [1897] 1 Q. B. 14**

193. — Title of official receiver under *Bankruptcy Act, 1883*—Registration in *Middlesex*—“Conveyance”—*Bankruptcy Act, 1883* (46 & 47 *Vict. c. 52*), ss. 20, 54, 121—*Middlesex Registry Act, 1708* (7 *Anne, c. 20*), s. 1.

An order of adjudication in bankruptcy is not a “conveyance” within the meaning of the *Middlesex Registry Act* (7 *Anne, c. 20*), s. 1.

A debtor entitled to land in *Middlesex* was adjudged bankrupt, and an order was made under s. 121 of the *Bankruptcy Act, 1883*, that his estate should be administered in a summary way, so that no appointment of a trustee was made. He never disclosed to the official receiver the fact of his having the land, and he subsequently mortgaged it to a mortgagee who forthwith registered his mortgage:—

*Held* (reversing the decision of Kekewich J.),



**BANKRUPTCY (Receiver)—continued.**

that the title of the official receiver was not postponed to that of the mortgagee by reason of the order of adjudication not having been registered. *In re CALCOTT AND ELVIN'S CONTRACT* - C. A. [1898] 2 Ch. 460

**Receiving Order.**

194. — *Absence of assets—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7, sub-s. 3.*

It is not a sufficient cause for refusing to make a receiving order in bankruptcy that the debtor has apparently no assets for distribution among his creditors. *In re LEONARD. Ex parte LEONARD* - C. A. [1896] 1 Q. B. 473

195. — *Absence of assets—Discretion of the Court.*

Where a debtor, against whom a bankruptcy petition was presented, had not obtained his discharge in a previous bankruptcy, and the Court was convinced from all the circumstances of the case that there were no assets which would be available under a second bankruptcy, and that the only result of making a receiving order would be a waste of money in costs:—

*Held* that, the Court having a discretion in the matter, a receiving order ought not under the special circumstances of the case to be made. *In re BETTS. Ex parte BETTS*

C. A. [1897] 1 Q. B. 50

Distinguished by Div. Ct. *In re Jubb*, [1897] 1 Q. B. 641, 644.

198. — *Annulment—Payment into Court—Payment out after six years—Statute of Limitations (21 Jac. 1, c. 16)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 35, 36.*

The principles which, under the Bankruptcy Act, 1883, ss. 35, 36, govern the annulment of an adjudication in bankruptcy are also applicable to the annulment of a receiving order. A receiving order was annulled on payment into court by the debtor of a sum sufficient to pay in full those of his creditors for the payment of whose debts he could not produce receipts. After six years, no proof or claim having been made in the meantime by the creditors in question, the debtor applied that the sum in court might be paid out to him:—

*Held*, that the Statute of Limitations did not apply, and that he was not entitled to the order. But *held*, that on the Court being satisfied that there was practically no possibility of the creditors or their personal representatives being found, and on reasonable security being given by the debtor for the repayment into Court of the money if at any time the creditors or their personal representatives should appear and make a claim, the sum in Court might be paid out to the debtor. *In re DENNIS. Ex parte DENNIS*

V. Williams J. [1895] 2 Q. B. 630

— Arrears of alimony accrued due before—Proof.

See **BANKRUPTCY—Proof**. 159.

— Effect on franchise.

See **BANKRUPTCY—Disqualification**.

**PARLIAMENT—Franchise**. 39.

197. — *Foreigner—Receiving order in lieu of committal—Jurisdiction—Judgment debtor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6,*

**BANKRUPTCY (Receiving Order)—continued.**

*sub-s. 1 (d); s. 103, sub-s. 5—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*

Where there is jurisdiction to commit a judgment debtor under s. 5 of the Debtors Act, 1869, there is jurisdiction under the Bankruptcy Act, 1883, s. 103, sub-s. 5, to make a receiving order against him in lieu of committing him, even although he is a foreigner not domiciled in England, and has not within a year ordinarily resided, or had a dwelling-house or place of business in England, and consequently a bankruptcy petition could not be presented against him by reason of the provisions of s. 6, sub-s. 1 (d), of the Bankruptcy Act, 1883. *In re CLARK. Ex parte CLARK* - C. A. [1897] W. N. 151 (i); [1898] 1 Q. B. 20

198. — *Foreigner resident abroad but trading in England—Jurisdiction—Act of bankruptcy—Assignment for benefit of creditors generally executed abroad—Notice of suspension of payment—Court of Bankruptcy—"Debtor"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (a), (h); s. 6, sub-s. 1 (d).*

The Court of Bankruptcy has no jurisdiction to make a receiving order against a foreigner resident out of the jurisdiction who, without himself coming within the jurisdiction, has carried on business, contracted debts, and has assets there, and has executed out of the jurisdiction an assignment of his property for the benefit of his creditors generally, or has given notice of suspension of payment to creditors within the jurisdiction. Such a person is not a "debtor" within the meaning of the Bankruptcy Act, 1883.

*In re Pearson*, [1892] 2 Q. B. 263, followed. *In re A. B. & Co.*

C. A. [1900] W. N. 50; [1900] 1 Q. B. 541, 545

This case was affirmed by H. L. (E.) *sub nom. Cooke v. Charles A. Vogeler Co.*, [1901] A. C. 102. See also same case upon other points, No. 120 above.

199. — *Forfeiture clause in will—"Become payable to some other person"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 54, 70.*

A will contained a condition determining a life interest on its "vesting in or becoming payable to some other person":—

*Held*, that the life interest was forfeited on a receiving order being made against the life tenant, for, by the force of that order, the life interest became payable to, although it did not vest in, the official receiver. *In re SARTORIS'S ESTATE: SARTORIS v. SARTORIS*

C. A. (affirming Chitty J.) 1892 1 Ch. 11

200. — *Forfeiture clause in will—"Liable to be deprived"—Bankruptcy petition.*

A. was entitled, under his mother's will, subject to a prior life interest, to the income during his life of a fund, subject to gift over if he should do anything whereby he was "liable to be deprived" of the beneficial enjoyment thereof. Before his interest fell into possession he committed an act of bankruptcy. A petition was presented. His interest then fell in, and the petition was dismissed, but before the dismissal an instalment of the income became payable to A.:—

*Held*, that the forfeiture clause had come into

**BANKRUPTCY (Receiving Order)—continued.**

operation and that the gift over took effect. *In re* LOFTIS-OTWAY. OTWAY v. OTWAY

Stirling J. [1895] 2 Ch. 235

-- In lieu of committal—Jurisdiction—Foreigner.

See No. 197, above.

-- Infant partner.

See **BANKRUPTCY—Partnership**. 133.

**201.** — *Judgment debt—Power to go behind judgment—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7.

(A) When a judgment has been obtained by compromise, and an application for a receiving order is founded thereon, the Court has power to reject the debt, as not being a good petitioning creditor's debt, if on going into all the circumstances the compromise appears, though not fraudulent, to have been unfair and unreasonable. *In re* HAWKINS. *Ex parte* TROUP

C. A. [1895] 1 Q. B. 404

(B) On the hearing of a judgment creditor's petition for a receiving order the Court of Bankruptcy has a discretion under s. 7, sub-s. 3, of the Bankruptcy Act, 1883, on the application of the judgment debtor himself, to go behind the judgment, even in a case where the debtor has previously applied in the action to set aside the judgment and his application has been refused, and the refusal affirmed by the C. A. *In re* FRASER. *Ex parte* CENTRAL BANK OF LONDON

C. A. [1892] 2 Q. B. 633

**202.** — *Judgment debt—Res judicata—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7.

On a creditor's petition the registrar of a Court of Bankruptcy cannot adjudicate whether there is a valid debt on which the judgment is founded, or set the judgment aside or stay execution, but has a discretion as to making a receiving order. *In re* VITORIA. *Ex parte* VITORIA

C. A. [1894] 2 Q. B. 387

Approved by P. C. *King v. Henderson*, [1898] A. C. 720, 730.

**203.** — *Married woman—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 152—*Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 5.

Judgment was obtained against a single woman on a bill of exchange. She then committed an act of bankruptcy, and the creditor presented a petition for adjudication against her. She promised to settle the demand, and prevailed on the registrar to adjourn the case till March 3. On March 24 the registrar made a receiving order. She was not carrying on a trade separately from her husband:—

*Held*, that on the construction of the Bankruptcy Act, 1883, and the Married Women's Property Act, 1882, as she was not carrying on a trade separately from her husband, she was not subject to the bankruptcy laws, and the receiving order must be discharged. *In re* A. DEBTOR. *Ex parte* THE DEBTOR

C. A. [1898] 2 Q. B. 576

-- Married woman—"Carrying on trade"—"Ab-senting herself."

See **BANKRUPTCY—Act of Bankruptcy**. 35.

**BANKRUPTCY (Receiving Order)—continued.**

**204.** — *Married Woman—"Carrying on a Trade"—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 5.

By s. 1, sub-s. 5, of the Married Women's Property Act, 1882, "Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole."

A married woman having carried on a trade separately from her husband sold the business. Shortly afterwards she gave notice to her creditors that she was about to suspend payment of her debts, and thereupon a bankruptcy petition was presented against her by two creditors in respect of trade debts incurred by her prior to the sale:—

*Held*, that a receiving order might be made against her—

By V. Williams J. on the ground that the fact of her having trade debts undischarged at the date of the petition was evidence from which it ought to be inferred that she was still carrying on the trade at that date:

By Wright J. on the ground that having once carried on a trade she continued, even after she had ceased to carry it on, to be subject to the bankruptcy laws in respect of the debts incurred by her during the period of her trading. *In re* DAGNALL. *Ex parte* SOAN and MORLEY

Div. Ct. [1896] 2 Q. B. 407

**205.** — *Married woman trading separately from husband in firm name—Action against firm—Act of bankruptcy—Bankruptcy notice—R. S. C., Order XLVIII. a, rr. 5, 8, 11.*

A receiving order cannot be made against a married woman trading separately from her husband under a firm name on the ground of non-compliance with a bankruptcy notice founded upon a judgment obtained against her in the firm name. *In re* FRANCES HANDFORD & Co. *Ex parte* FRANCES HANDFORD C. A. [1899] W. N. 18 (2); [1899] 1 Q. B. 566

See also *In re Wheeler's Settlement*, [1899] W. N. 141; [1899] 2 Ch. 717.

**206.** — *Order on judgment summons—Setting aside—Debtor's Act, 1869* (32 & 33 Vict. c. 62), s. 5—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 9—*Bankruptcy Rules, 1886*, r. 361—*County Court Rules, 1889*, Order XIV., r. 29.

After the making of a receiving order leave was given to continue proceedings on a judgment summons issued before the making of the receiving order:—

*Held*, that by Order xxv., r. 29, of the County Court Rules, 1889, as applied to all judgment debtors by rule 361 of the Bankruptcy Act, 1886, the receiving order was a bar to further proceedings on the judgment summons. *In re* NUTHALL. *FORD v. NUTHALL* C. A. [1891] W. N. 55

-- Partnership—Dissolution—Bankruptcy notice against firm—Bankruptcy petition against one late partner—Irregularity. See **BANKRUPTCY—Partnership**.

**207.** — *Partnership firm—Infant partner.*

A receiving order cannot be made against a firm simply where one of the partners is an

**BANKRUPTCY (Receiving Order)—continued.**

infant; but can be made against the firm "other than" the infant partner, and if made against the firm simply, can be amended under s. 105 of the Bankruptcy Act, 1883. *In re BEAUCHAMP BROTHERS. Ex parte BEAUCHAMP*

C. A. [1894] 1 Q. B. 1

Varied by H. L. (E) *sub nom. Lovell & Christmas v. Beauchamp*, [1894] A. C. 607.

**208.** — *Petition—Parties—Trustee with Beneficial interest—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 5, 6.

If a trustee has himself a beneficial interest in the debt, he need not join the cestui que trust as co-petitioner in making application for a receiving order. *In re GAMGEE*

C. A. [1891] W. N. 106

**209.** — *Petition—Petitioning creditor's debt—"Liquidated sum, payable either immediately or at some certain future time"—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 6, sub-s. 1 (b).

A debtor, who owed 100*l.* for money lent, accepted a bill of exchange at three months for that amount and interest, and the creditor signed a letter agreeing that the bill should be renewed, provided the interest was paid from time to time. The interest on the first bill was paid, and the bill was renewed. Before the second bill became payable the debtor committed an act of bankruptcy, and the creditor presented a bankruptcy petition against him.

On appeal from an order dismissing the petition:—

*Held*, that the debt of 100*l.* was "a liquidated sum, payable either immediately or at some certain future time," within the meaning of s. 6, sub-s. 1 (b), of the Bankruptcy Act, 1883, and therefore the creditor was entitled to present the petition, and a receiving order ought to be made. *In re BARR. Ex parte WOLFE*

Div. Ct. [1896] 1 Q. B. 616

**210.** — *Refusal—Probability that costs will exceed assets—"Sufficient cause"—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7, sub-s. 3.

Where a bankruptcy petition is presented against a debtor, it is not sufficient cause, within the meaning of the Bankruptcy Act, 1883, s. 7, sub-s. 3, for refusing to make a receiving order, and dismissing the petition, that at the hearing it appears probable that the amount of the costs of bankruptcy proceedings will exceed the amount of the assets available for distribution.

*In re BETTS, Ex parte BETTS*, [1897] 1 Q. B. 50, distinguished. *In re JUBB. Ex parte BURMAN AND GREENWOOD* Div. Ct. [1897] 1 Q. B. 641, 644

— Refusal to make—*Res judicata.*

See **BANKRUPTCY—Petition.** 145.

**211.** — *Refusal to make—"Sufficient cause"—Extortion—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7, sub-s. 3.

A debtor had a life interest ceasing on bankruptcy, but no other property. The petitioning creditor did not agree to a proposal of the debtor to secure and pay a composition, and a receiving order was made:—

*Held*, that the fact that a receiving order would destroy the only available asset was a sufficient cause why no order should be made.

**BANKRUPTCY (Receiving Order)—continued.**

The petitioning creditor endeavoured to obtain a sum from the debtor for agreeing to an adjournment of the petition:

*Held*, that as he had made the petition a means of endeavouring to extort money from the debtor, no receiving order ought to be made on it. *In re OTWAY. Ex parte OTWAY*

C. A. [1895] 1 Q. B. 812

Referred to by C. A. *In re Leonard*, [1896] 1 Q. B. 473, 474.

— Registration in Middlesex—Title of official receiver under Bankruptcy Act, 1883.

See **BANKRUPTCY—Receiver.** 193.

**212.** — *Rescission—Arrangement with creditors—Discretion—Bankruptcy Acts, 1883* (46 & 47 Vict. c. 52), s. 104; 1890 (53 & 54 Vict. c. 71), s. 3, sub-s. 6.

In the exercise of the general discretion given to a Court of Bankruptcy by s. 104 of the Bankruptcy Act, 1883, to rescind its orders, the Court may rescind a receiving order where an arrangement is, subsequently to the making of the order, effected by the debtor with his creditors otherwise than in pursuance of the provisions of s. 3 of the Bankruptcy Act, 1890, though the Court will only do so with great caution and under special circumstances which make it quite clear that the arrangement is for the benefit of the creditors, and the debtor has not been guilty of misconduct in connection with his insolvency.

So *held* by A. L. Smith L.J. and Collins L.J., Rigby L.J. dissenting. *In re IZOD. Ex parte THE OFFICIAL RECEIVER* C. A. [1898] 1 Q. B. 241

**213.** — *Rescission—Payment of debt—Bankruptcy Rules, 1890*, r. 13.

When a receiving order has been made the Court, even though the proceedings under it have been stayed, has a discretion as to its rescission, and will not rescind the order merely upon the consent of the petitioning creditor, nor without a full investigation of all the circumstances including the conduct of the debtor.

A receiving order had been made; the debtor paid the debt and applied to have the order rescinded. The official receiver opposed:—

*Held*, that the order should not be rescinded. *In re FLATAU. Ex parte OFFICIAL RECEIVER*

C. A. [1893] 2 Q. B. 219

Referred to by C. A. *In re Izod*, [1898] 1 Q. B. 241, 248.

**214.** — *Rescission—Registrar's discretion—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 104.

The Court will not be justified in interfering, or induced to interfere, with the registrar's discretion to refuse to rescind a receiving order except on a very strong case; and before doing so must consider the consequences of such a rescission to future as well as to existing creditors. *In re DAVIDSON. Ex parte DAVIDSON*

C. A. [1894] W. N. 210

Referred to by C. A. *In re Izod*, [1898] 1 Q. B. 241, 249.

— Right to receiving order—Practice—Second petition.

See **BANKRUPTCY—Practice.** 150.

**BANKRUPTCY (Receiving Order)—continued.**

-- Set-off—Mutual debts or dealings—Act of bankruptcy.

See **BANKRUPTCY—Set-off.** 235—237.

**215.** — *Sheriff—Execution—Sale—Poundage—Sheriffs Act, 1887 (50 & 51 Vict. c. 55)—Order as to Fees of August 31, 1888 [See W. N. Oct. 6, 1888, p. 441]—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11, sub-s. 1.*

A sheriff's officer is not entitled to poundage where, after he has seized goods in execution under a f. fa., a receiving order is made against the judgment debtor and the goods are delivered to the official receiver or trustee in bankruptcy in pursuance of s. 11, sub-s. 1, of the Bankruptcy Act, 1890.

Decision of Div. Ct., [1898] W. N. 154 (1); [1899] 1 Q. B. 66, affirmed. *In re Thomas. Ex parte SHERIFF OF MIDDLESEX*

**C. A. [1899] W. N. 6 (1); [1899] 1 Q. B. 460**

**216.** — *Sheriff, Notice to—Costs—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11, sub-s. 1—Bankruptcy Rules, 1886 & 1890, rr. 118, 119.*

Under s. 11, sub-s. 1, of the Bankruptcy Act, 1890, although interpleader proceedings be pending, a sheriff in possession must deliver the goods or their proceeds to the official receiver on being served with notice of a receiving order, and is only entitled as against the official receiver or trustee in bankruptcy to his costs up to the date at which he received notice of the order. *In re HARRISON. Ex parte SHERIFF OF ESSEX*

**Div. Ct. [1893] 2 Q. B. 111**

Referred to by Lindley, M.R. *In re Thomas, [1899] 1 Q. B. 460, 463.*

— Trade creditors—Act of bankruptcy—Assignment for benefit of trade creditors only.

See **BANKRUPTCY—Act of Bankruptcy.** 1.

**217.** — *Trustee in bankruptcy—Receiving order against—Practice—Vacating office—Rescission of receiving order—Restoration—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 85, 86, 87.*

The 85th section of the Bankruptcy Act, 1883, provides that "if a receiving order is made against a trustee in bankruptcy he shall thereby vacate his office of trustee."

A receiving order was made against a trustee in bankruptcy, but was soon after rescinded on the ground that it ought never to have been made. A new trustee had not in the meantime been appointed:—

*Held*, that the trustee was restored to his original position. *In re NEWMAN. Ex parte OFFICIAL RECEIVER* - - - Wright J.

**[1899] 2 Q. B. 587**

**Receiving Orders.**

*A Quarterly Return shewing the number of Receiving Orders in the High Court and the several County Courts having Bankruptcy Jurisdiction, is published in the London Gazette.*

**Rent.**

— Arrears of—Lien—Priority—Payment by sheriff—Indemnity.

See **BANKRUPTCY—Execution.** 104.

**218.**—*Distress—Rent accrued due.*

Where a tenant becomes bankrupt during the

**BANKRUPTCY (Rent)—continued.**

currency of a quarter, so much of the quarter's rent as is apportionable to the part of the quarter prior to the adjudication is, by the Apportionment Act, 1870, "rent accrued due prior to the date of adjudication" within s. 42 of the Bankruptcy Act, 1883, and the landlord is entitled upon the expiry of the quarter to distrain. *In re HOWELLS. Ex parte MANDLEBERG & Co.*

**Div. Ct. [1895] 1 Q. B. 844**

**Retainer.**

— Debt due from bankrupt legatee—Executor—Retainer.

See **EXECUTOR—Retainer.** 59.

**219.** — *Insolvent testator—Debt due to executor—Retainer in specie—Administration order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125, sub-ss. 1, 9.*

When the debt due to the executor of an insolvent testator exceeds the value of the testator's assets, the executor is not bound to realize the assets, i.e., convert them into money, before exercising his right of retainer, but is entitled to retain the assets in specie in satisfaction of his debt.

*Woodward v. Darcy, (1557) 1 Plow. 184, and Chapman v. Turner, (1738) 9 Mod. 268; S. C. Vin. Abr. Exor. D. 2, p. 72, discussed. In re GILBERT. Ex parte GILBERT*

**Wright J. [1897] W. N. 174 (1); [1898] 1 Q. B. 282**

Referred to by C. A. *In re Rhoades, [1899] 2 Q. B. 347, 352.*

— Mistake—Assets paid to official receiver without retaining debt—Repayment.

See **EXECUTOR—Retainer.** 58.

— Of legatee debtor to testator—Retainer.

See **EXECUTOR—Retainer.** 57.

**Scheme of Arrangement.**

**220.** — *After-acquired property—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 18, sub-ss. 12, 13; s. 44, sub-s. 1.*

A scheme of arrangement operates only to convey to the trustee property to which the debtor is entitled up to the date of the approval of the scheme by the Court. It does not, unless there be an express stipulation to that effect, include property coming to the debtor after that date, as the approval of the Court is equivalent to an order of discharge. *In re CROOM. ENGLAND v. PROVINCIAL ASSETS Co.*

**Kekewich J. [1891] 1 Ch. 695**

**221.** — *Approval by Court—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3, sub-s. 9.*

The reasonable security for payment of 7s. 6d. in the pound must be for payment at once or within a short time less than a year. *In re PAINE. Ex parte PAINE C. A. [1891] W. N. 208*

**222.** — *Approval by Court—Board of Trade's right of appeal—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3, sub-s. 9—Bankruptcy Rules, Nov. 26, 1890, r. 24.*

Even though a proposed scheme provides reasonable security for the payment of 7s. 6d. in the pound the Court is not bound to approve the

**BANKRUPTCY (Scheme of Arrangement)—*contd.***  
scheme, but has a discretion in the matter under s. 3, sub-s. 9, of the Bankruptcy Act, 1890.

The Bd. of Trade appealed against a scheme of arrangement which had been approved by the official receiver:—

*Held*, that, notwithstanding the approval of the official receiver, the Bd. were entitled to appeal under the Bankruptcy Rules, Nov. 1890, r. 24. *In re BURR. Ex parte BOARD OF TRADE*

C. A. [1892] 2 Q. B. 467

223. — *Debt carrying interest exceeding 5 per cent.—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 23—Construction—Retrospective effect.*

The Bankruptcy Act, 1890, which was passed on August 18, 1890, and came into operation on January 1, 1891, provides (s. 23) that where a debt, including interest, “has been proved” on a debtor’s estate, such interest shall for the purposes of dividend be calculated at a rate not exceeding 5 per cent. per annum, without prejudice to the right of the creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts have been paid in full:—

*Held*, that the section was not retrospective in its operation, and therefore did not apply to a debt, including interest above 5 per cent., proved under a scheme adopted by the Court before the date of the passing of the Act.

*Seem*: If the scheme had been adopted between the dates of the passing of the Act and of its coming into operation, the section would have applied. *In re ATHELUMNEY. Ex parte WILSON* - Wright J. [1898] 2 Q. B. 547

224. — *Debt provable in bankruptcy—Rejection of proof—Judgment—Execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 18, sub-s. 8; s. 30, sub-s. 2; s. 37, sub-s. 3.*

A receiving order having been made against the debt., a scheme of arrangement was agreed to by his creditors, including the plt., who was a judgment creditor. The trustee disallowed the plt.’s proof on the ground that the judgment was in respect of a gambling transaction. The plt. issued execution:—

*Held*, that the execution must be stayed, on the ground that the plt.’s claim was a debt provable in bankruptcy, and that he was therefore bound by the scheme although he had not received any benefit under it. *SEATON v. DEERHURST (LORD)* - C. A. [1895] 1 Q. B. 853

— Proof for assessed taxes—Power of Court to go behind assessment.

See **BANKRUPTCY—Proof.** 185.

#### Secured Creditor.

— Bill of sale—Second bill in substitution for first—Bankruptcy of grantor.

See **BILL OF SALE.** 52.

— Charging order on judgment debtor’s share in a partnership.

See **Cases under BANKRUPTCY—Partnership.**

225. — *Composition—Default in payment—Death of debtor—Administration action—Balance of mortgage debt—Claim by mortgagees to prove—*

**BANKRUPTCY (Secured Creditor)—*continued.***

*Mode of procedure—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 18, sub-s. 11; s. 108.*

In 1889 A. mortgaged certain property to secure 2000*l.* and interest. Shortly afterwards a receiving order was made against A. on his own petition. In July, 1890, he made a composition with his creditors under s. 18 of the Bankruptcy Act, 1883, which was approved of by the Court, under which the creditors were to be paid by three instalments extending over a year.

The mortgagees neither attended the creditors’ meeting nor assented to the scheme of composition.

Default was made in payment of the instalments. A. died two months after the expiration of the year, and this action was commenced by a creditor for the administration of his estate, which proved to be insolvent.

The mortgagees valued their security at 1500*l.*, and claimed to be admitted as creditors in the action for 500*l.*, the balance of their debt. Their proof had been admitted by the trustee under the composition deed:—

*Held*, that the Court of Bankruptcy had jurisdiction to proceed in the bankruptcy of A. under s. 108 and s. 18, sub-s. 11, of the Bankruptcy Act, 1883, notwithstanding his death, and that the strict course would be to allow the applicants to take proceedings in that Court, but the plt. having submitted, in order to save delay and expense, to abide by the judgment of this Court on what would be the result of those proceedings, the claim was admitted. *In re HARDY. HARDY v. FARMER*

Chitty J. [1896] 1 Ch. 904

*NOTE.*—It should be noted that s. 18 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) was repealed by the Bankruptcy Act, 1893 (53 & 54 Vict. c. 71), and is now replaced by s. 3 of the latter Act.

226. — *Contract induced by fraud of bankrupt—Election by vendor to affirm contract—Petition by secured creditor—Right of trustee to redeem security at value assessed in petition—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6, sub-s. 2; Sched. I., r. 12, and Sched. II., rr. 11–13—Bankruptcy Rules, 1886, r. 353—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100.*

When a secured creditor presents a bankruptcy petition against his debtor and adjudication follows, there is nothing in the Bankruptcy Act, 1883, or the rules thereunder, that entitles the trustee in bankruptcy to redeem the petitioning creditor’s security at the value he places on it in his petition.

V. bought shares of H. and induced H. to give him the certificates of the shares and to accept his cheque for 3298*l.* 16*s.* in payment, representing that it would be met. The cheque was dishonoured and V. absconded. Soon afterwards V. was adjudicated bankrupt on a petition presented against him by H., based on the dishonoured cheque, H. alleging in his petition that he had a security or lien on the shares, which security or lien he valued at 3200*l.* Meantime H. had issued a warrant against V., under which he was arrested and committed for trial for fraud, and subsequently convicted. Thereupon the

**BANKRUPTCY (Secured Creditor)—continued.**

certificates of the shares were, on an order of the Court made under s. 100 of the Larceny Act, 1861, restored to H. The trustee in bankruptcy of V. then claimed to redeem the shares at the value placed on them by H. in his petition:—

*Held*, first, that as the title to the shares had, on the conviction of V., reverted in H. under s. 100 of the Larceny Act, 1861, he ought not to be deprived of them by reason of his mistake in treating them as a security in his petition; and secondly, that even if H. had affirmed the contract of sale for the shares, there was nothing in the Bankruptcy Act, 1883, or the rules thereunder, that entitled the trustee to redeem the shares at the amount at which they were valued in the petition.

*In re Lacey*, (1884) 13 Q. B. D. 128, distinguished. *In re VAUTIN. Ex parte SAFFERY*

**Wright J. [1899] 2 Q. B. 549**

**227. — Execution creditor — Possession by sheriff for more than 21 days—Act of Bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 45, 46; 1890 (53 & 54 Vict. c. 71), ss. 1, 11.**

To entitle an execution creditor to retain the benefit of his execution against the trustee in bankruptcy of the judgment debtor, the execution must be completed by sale or receipt of the amount of the levy before the sheriff has been in possession for twenty-one days. If the sheriff remains in for twenty-one days the act of bankruptcy thereby committed under s. 45 of the Bankruptcy Act, 1890, of which the execution creditor will be deemed to have notice, renders the execution void.

(A) **FIGG v. MOORE BROTHERS V. Williams J. [1894] 2 Q. B. 690**

(B) **TRUSTEE OF JOHN BURNS-BURNS v. BROWN C. A. [1895] 1 Q. B. 324**

**228. — Interest above 5 per cent.—Assessed value of security allocated in discharge of interest—Proof—Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), Sched. II., rr. 9, 11; 1890 (53 & 54 Vict. c. 71), s. 23.**

Sect. 23 of the Bankruptcy Act, 1890, which provides that where a debt proved against the estate includes interest, such interest shall for the purpose of dividend be calculated at a rate not exceeding 5 per cent., does not prevent a secured creditor who has realized or assessed his security from allocating such value in discharge of interest at a higher rate than 5 per cent., and proving for the principal or balance of principal due to him. *In re FOX and JACOBS. Ex parte DISCOUNT BANKING CO. OF ENGLAND and WALES V. Williams J. [1894] 1 Q. B. 438*

**229. — Judgment creditor—Ex parte order for receiver—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 10, 45, 168.**

Judgment creditors failing to realize their judgment obtained in the action *ex parte* an order for a receiver to receive a share of residuary estate which came to the debtor after the judgment. The debtor became bankrupt before the executors had paid over the share:—

*Held*, that the order appointing a receiver should not have been made *ex parte*, and did not make the creditors "secured creditors" within

**BANKRUPTCY (Secured Creditor)—continued.**

ss. 9 and 168 of the Bankruptcy Act, 1883. *In re PORTS. Ex parte TAYLOR*

**C. A. [1893] 1 Q. B. 648**

Referred to by Stirling J. *Croslaw v. Lyndhurst Ship Co.*, [1897] 2 Ch. 159.

**230. — Omission to value security—Inadvertence—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. I., r. 10; Sched. II., rr. 11, 12, 13.**

A secured creditor of a bankrupt who mentions his security in his proof and states that it is worthless, does not omit to value his security within the meaning of the Bankruptcy Act, 1883, Sched. I., r. 10:—

So *held* by the C. A. (A. L. Smith L.J. and Chitty L.J., Collins L.J. doubting).

Where a creditor omits to value his security by reason of erroneous information leading him to suppose it to be worthless, there is not an omission to value the security which arises from inadvertence within the meaning of the Bankruptcy Act, 1883, Sched. I., r. 10. *In re PIERS. Ex parte PIERS* - **C. A. [1898] 1 Q. B. 627**

— Payment into court for leave to defend—Bankruptcy of defendant before trial. *See BANKRUPTCY—Practice.* 153.

**231. — Pending action—Payment into court with denial of liability—Payment into court as security for costs—R. S. C., Order XXII., r. 6—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 45, 168.**

Where a debt under R. S. C., Order xxii., r. 6, pays money into court in satisfaction of the plt.'s claim with a denial of liability, and becomes bankrupt before the trial, and the trustee in bankruptcy declines to be made a party to the action, the plt. is a secured creditor to the extent to which his proof in the bankruptcy for the amount claimed by him in the action is admitted by the trustee. If the proof when admitted is less than the sum so paid in, the plt. is a secured creditor only for the amount so admitted, and the trustee is entitled to the balance of the sum in court.

Directions as to how the costs should be dealt with in such a case when the plt. has paid money into court as security for the debt's costs of the action. *In re GORDON. Ex parte NAVALCHAND*

**V. Williams J. [1897] 2 Q. B. 516**

Referred to by Wright J. *In re Ford*, [1900] 2 Q. B. 211, 213.

— Proof—Right to amend.

*See BANKRUPTCY—Proof.* 161.

**232. — Unpaid vendor's lien — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168, Sched. I., r. 10.**

A. sold to B. a policy of insurance, and obtained judgment for specific performance of the contract. B. became bankrupt:—

*Held*, by V. Williams J., that A. was in respect of his unpaid vendor's lien a secured creditor within s. 168 of the act of 1883:

*Held*, by C. A. that the judgment for specific performance created no debt, and that A. was not a secured creditor. *In re BURR. Ex parte CLARKE* - **V. Williams J. [1892] W. N. 122; C. A. [1892] W. N. 138**

**BANKRUPTCY—continued.****Set-off.****— Company—Practice.**

See Cases under COMPANY—WINDING-UP  
—Set-off.

**233. — Contrast between "set-off" in bankruptcy and in winding-up.**

The effect of set-off in bankruptcy and in company winding-up contrasted. *In re WASHINGTON DIAMOND MINING CO.*

C. A. [1893] 3 Ch. 95

Referred to by Wright J. *In re Auriferous Properties, Ltd.* [1898] 1 Ch. 697.

**234. — Deposit of goods with authority to sell subject to approval of price—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.**

The debtor instructed auctioneers to sell his house and furniture, and a sum of money became due from him to them in respect of their charges for the sale of the furniture and the attempted sale of the house. Subsequently he instructed the auctioneers to remove to their own premises certain pictures which had remained unsold, and to sell them subject to his approval of the price. The debtor became bankrupt while the pictures were still unsold, and the pictures were with other property of the bankrupt subsequently sold by the auctioneers, acting upon the instructions of the debtor's trustee in bankruptcy. The auctioneers claimed to deduct from the proceeds the money due to them for their charges in respect of the sale of the furniture and the abortive sale of the house:—

*Held*, that the deposit by the debtor of the pictures, with such an authority to sell and receive the proceeds, constituted a giving of credit by him to the debtors; that there were therefore mutual dealings between him and the debtors at the date of the bankruptcy, in respect of which the auctioneers had a right of set-off in bankruptcy under the Bankruptcy Act, 1883, s. 38. *PALMER v. DAY & SONS* — Div. Ct. [1895] 2 Q. B. 618

Referred to by V. Williams J. *In re Mid-Kent Fruit Factory*, [1896] 1 Ch. 567, 571.

Referred to by C. A. *In re Daintrey*, [1900] 1 Q. B. 546, 556.

**235. — Mutual credits or dealings—Life assurance co.—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.**

The debt effected with the plt. co. two policies for a fixed period on his own life, which had not matured at the date when the winding-up of that co. was commenced. Before such date he had obtained loans from the co. on mortgage of the policies. By an arrangement under the Joint Stock Companies Arrangement Act, 1870, to which the debt. did not consent, the policies of the plt. co. were transferred to the C. Co., and the policies were largely reduced, the debt's policies being reduced to an amount less than the loans. In an action by the plt. co. against the debt. to recover the amount of the loans:—

*Held*, that the debt. was entitled to set off the amount of the original policies.

Judgment of Charles J. [1892] 1 Q. B. 405,

**BANKRUPTCY (Set-off)—continued.**

affirmed. *SOVEREIGN LIFE ASSURANCE CO. v. DODD* — C. A. [1892] 2 Q. B. 573

Referred to by C. A. *In re Daintrey*, [1900] 1 Q. B. 546, 556.

**236. — Mutual dealings — Administration Order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 38, 125.**

C. had a speculative account with his brokers, and on April 15, 1897, being short of money, he instructed them to sell certain securities and remit him the proceeds. The same day the brokers sold and sent C. a cheque for 161*l.* The next day C. died without having presented the cheque for payment. On April 24 an order was made for the administration of C.'s estate in bankruptcy, and a trustee was appointed. On April 27 the trustee presented the cheque, but it was not met, the brokers having stopped payment of it because at that date C. was indebted to them on his general account in a much larger amount. The trustee having brought an action against the brokers on their dishonoured cheque:—

*Held*, that s. 38 of the Bankruptcy Act, 1883, applied, and that under the circumstances the brokers were entitled to set off the amount of the cheque against the larger amount due to them from C. *WATKINS v. LINDSAY & CO.*

Wright J. [1898] W. N. 22 (4)

**237. — Mutual debts or dealings—Act of bankruptcy—Receiving order—Debtor and creditor—Account of mutual dealings—Date for taking account—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.**

D., a solicitor, being at the time indebted to M., another solicitor, in a sum of 86*l.*, on Dec. 24, 1892, committed an act of bankruptcy of which M. had no notice. On Dec. 31, 1892, D. sold his business to M. under an agreement which fixed as the price a portion of the profits expected to be earned for three years from the business sold. Thereupon M. took possession of and carried on the business. On Jan. 17, 1893, a receiving order was made against D., but no profits had then been earned from the business. At the end of the three years a sum of 300*l.* was found to be due from M. to D. under the agreement as the price of the business, and this sum M. paid to D.'s trustee in bankruptcy after deducting the 86*l.* due from D. to M. The trustee however objected that M. could not set off the 86*l.* against the 300*l.*; that he must pay the 300*l.* in full and be satisfied with a dividend on the debt of 86*l.*

The county court judge allowed the objection, and an appeal by M. to the Div. Ct. was dismissed, the Court differing in opinion. On appeal by M., by leave, to the C. A.:—

*Held*, that the dealings between M. and D. were "mutual dealings" within s. 38 of the Bankruptcy Act, 1883, and that M. was therefore entitled to set off the 86*l.* due to him from D. against the 300*l.* due from him to D.; also that the date of the receiving order, and not that of the act of bankruptcy, was the proper date at which to ascertain what those dealings were, so as to be capable of being made the subject of set-off under the section. *In re DAINTREY. Ex parte MANT* — C. A. [1900] 1 Q. B. 546

**BANKRUPTCY (Set-off)—continued.**

**238. — Underwriter — Insurance brokers — Claim by trustee for salvage—Right to set off unpaid losses.**

The trustee in bankruptcy of an underwriter sued insurance brokers, who had effected policies with the underwriter, for moneys which had come into their hands since the bankruptcy as salvage in respect of losses which had been paid by the underwriter before his bankruptcy. The brokers claimed to set off losses on other policies effected by them with the underwriter, which, in consequence of his bankruptcy, they had had to make good to their principals, to whom they had guaranteed the solvency of the underwriter:—

*Held*, that the brokers were not entitled to set off those losses, since the sums received by way of salvage were part of the bankrupt's estate, which they only held as trustees for him. *ELGOOD v. HARRIS* Collins J. [1896] 2 Q. B. 491

Referred to by C. A. *In re Daintrey*, [1900] 1 Q. B. 546, 556.

— Mutual credits or dealings—Solicitor and client.

See **BANKRUPTCY—Assets.** 61.

**Small Bankruptcy.**

**239. — Summary administration — Leave to issue execution—Sect. 122, sub-s. 5, of the Act of 1883—Rules of Dec. 21, 1888, r. 15—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 122, sub-s. 5.**

While an order for summary administration under s. 122 of the Act of 1883 is in force, the county court has no power under sub-s. 5 of that section to allow execution to issue. *In re FRANK* Div. Ct. [1894] 1 Q. B. 9

**Stay of Proceedings.**

**240. — Attachment under s. 4 of Debtors Act, 1869—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4; 1878 (41 & 42 Vict. c. 54)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 9.**

The prohibition in s. 9 of the Bankruptcy Act, 1883, relates to debts only, and does not take away the jurisdiction of the Court to make an order, under s. 4, sub-s. 3, of the Debtors Act, 1869, for the committal or attachment of a defaulting trustee against whom a receiving order in bankruptcy has been made, for such orders are not to be regarded simply as a form of civil process, but are punitive in their nature. *In re SMITH. HANDS v. ANDREWS*

C. A. [1893] 2 Ch. 1

**Trustee.**

**241. — Appeal — Appointment — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 21, 104.**

An appeal lies to the C. A. by the Bd. of Trade from a decision of the High Court that the objection of the Board to the appointment of a trustee is invalid. *In re LAMB. Ex parte BOARD OF TRADE* C. A. [1894] 2 Q. B. 805

Followed by V. Williams J. *In re Mardon*, [1896] 1 Q. B. 140, 145.

**242. — Appointment—Objection by Board of Trade—Conflicting interests—Two estates—Same trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 21, 104.**

G. was appointed trustee of the estate of E.,

**BANKRUPTCY (Trustee)—continued.**

a bankrupt, and subsequently of that of L. G. was a creditor of E.'s estate for a large amount, and of L.'s for a small amount. The only asset of either E. or L. was an interest in certain property as to half of which E. alleged that L. was trustee for him. The Bd. of Trade objected to G.'s appointment as trustee for L.'s estate, on the ground that his connection with the bankrupt or his estate made it difficult for him to act impartially:—

*Held*, that the objection was valid. *In re LAMB. Ex parte BOARD OF TRADE*

C. A. [1894] 2 Q. B. 805

Followed by V. Williams J. *In re Mardon*, [1896] 1 Q. B. 140, 145.

**243. — Board of Trade—Unclaimed or undistributed Funds—Liability to account—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 162—Trustee Act, 1888 (51 & 52 Vict. c. 59), ss. 1, 8.**

By s. 162, sub-s. 2 (a), of the Bankruptcy Act, 1883, where, after the passing of the Act, any unclaimed or undistributed funds or dividends in the hands of any trustee empowered to collect, receive, or distribute any funds or dividends under any Act of Parliament mentioned in the 4th schedule, or any petition, resolution, deed, or other proceeding under or in pursuance of such Act, have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee, it shall be the duty of such trustee forthwith to pay the same to the Bankruptcy Estates Account at the Bank of England. (b) The Bd. of Trade may at any time order "such trustee" to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding:—

*Held*, that the Bd. of Trade were entitled to enforce an order for an account against a trustee under this section without proving that he had had in his hands, after the passing of the Act, any unclaimed or undistributed funds or dividends.

Decision of Queen's Bench Division, [1895] 2 Q. B. 634, affirmed.

Sect. 8 of the Trustee Act, 1888, does not apply to a trustee in bankruptcy. *In re CORNISH. Ex parte Bd. OF TRADE* C. A. [1896] 1 Q. B. 99

— Costs—Appeal—Trustee in bankruptcy.

See **BANKRUPTCY—Costs.** 73.

**244. — Costs—Appointment—Practice—Objection by Board of Trade—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 21, sub-s. 2.**

When the Bd. of Trade at the request of a majority of the creditors notify to the Court, under s. 21 of the Bankruptcy Act, 1883, their objection to the appointment of a trustee in bankruptcy, the Court will not exercise any discretion in the matter on the merits of the case, but will only decide whether the objection is on the facts valid in point of law.

The fact that the trustee appointed by the creditors is an accounting party to the estate, and will as trustee have to investigate his own account, is of itself a valid objection.



**BANKRUPTCY (Trustee)—continued.**

*In re Lamb*, C. A. [1894] 2 Q. B. 805, discussed and followed.

When the Bd. of Trade object to the trustee appointed by the creditors, and at the request of the creditors notify that objection to the Court, and the creditors alone appear *bonâ fide* to oppose the objection of the Bd. of Trade, costs will not as a rule be given against the trustee although the objection is upheld. *In re MARDON*

V. Williams J. [1896] 1 Q. B. 140

— Costs—Employment of solicitor.

See **BANKRUPTCY—Official Receiver**. 126.

245. — *Costs—Taxation—Practice—Committee of inspection—Employment of solicitor—Authority to do particular things—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 57, sub-s. 3; s. 73, sub-s. 3; 1890 (53 & 54 Vict. c. 71), s. 15, sub-s. 3—*Bankruptcy Rules*, 1886, rr. 117, 285.

The Bankruptcy Act, 1883, s. 57, empowers a trustee with the permission of the committee of inspection to (amongst other things) employ a solicitor to take any proceedings or do any business which may be sanctioned by the committee of inspection, and enacts: "The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases."

In 1897 the tenant for life of large settled estates became bankrupt. The official receiver at first acted as trustee with a committee of inspection, and, with the sanction of the committee, employed A. & Co. as his solicitors in all matters relating to the letting and management of the estates. In 1898 M. was appointed the trustee in the bankruptcy with the same committee of inspection, and applied to them for permission to employ A. & Co. in the same capacity as before. Thereupon they passed the following resolution: "That Messrs. A. & Co. be employed by the trustee where necessary." Under this resolution M. employed A. & Co. in all matters connected with the letting and management of the estates. All the debts having been paid, A. & Co. carried in their bill of costs for taxation. The bankrupt objected to all items and charges relating to the letting and management of the estates on the ground that the written sanction of the committee for the disputed matters had not been obtained in accordance with the sections of the Acts and the Rules above stated. The committee deposed that they intended their resolution to apply to the disputed matters. The taxing master having overruled the objection, the plt. appealed:—

*Held*, (1.) that the resolution was in form insufficient; (2.) that the sanction of the committee need not be in writing, provided it was specific and given before the work was done; and (3.) that the bill of costs must be reviewed on this footing. *In re VAVASOUR* — Wright J. [1900]

W. N. 118; [1900] 2 Q. B. 309

— Grant of administration to—Interest—Shares in foreign railways.

See **PROBATE—Grant of Administration**. 35.

**BANKRUPTCY (Trustee)—continued.**

— Income tax—Assignment for benefit of creditors—Profits made by trustee in carrying on part of insolvent debtor's business. See **REVENUE—Income Tax**. 69.

246. — *Mortgage of reversion by undischarged bankrupt—Sale by mortgagees—Injunction.*

An undischarged bankrupt mortgaged a contingent reversion. The mortgagees put it up for sale subject to the rights of the trustee and of the creditors under the bankruptcy. The trustee obtained a perpetual injunction from a county court judge restraining the mortgagees from proceeding with the sale:—

*Held*, that the judge had no jurisdiction to make such order, the proposed sale being within the powers of the mortgagees and not being of any property vested in the trustee. *In re EVELYN*. *Ex parte* GENERAL PUBLIC WORKS AND ASSETS CO. — Div. Ct. [1894] 2 Q. B. 302

— Official receiver acting as trustee.

See **BANKRUPTCY—Official Receiver**. 125

— Purchase as trustee—Statute of Limitations.

See **FRAUDS, STATUTE OF**. 23.

247. — *Release of trustee—Practice—Error in administration—Revocation by Board of Trade—Suppression or concealment of any material fact*—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 82.

In Jan., 1898, a trustee in bankruptcy disallowed a proof in the mistaken belief that it was not a provable debt, and by an oversight notice of rejection was not sent to the creditor. In Feb., 1898, the trustee applied under s. 82, sub-s. 1, of the Act to the Bd. of Trade for his release. In March, 1898, he paid a dividend, and in the list of proofs transmitted to the Bd. of Trade marked the proof as "disallowed." In April and May, 1898, he received letters written on behalf of the creditor asking in effect when the claim would be settled, but in the *bonâ fide* belief that the proof had been properly dealt with and disallowed he did not answer the letters nor inform the Bd. of Trade that he had received them. In June, 1898, the trustee obtained his release under s. 82, sub-s. 2. In July the creditor communicated with the Bd. of Trade, who thereupon applied to the trustee for an explanation. Some correspondence ensued, and in Jan., 1899, the Bd. of Trade revoked the order of release on the ground that it had been obtained by the suppression or concealment of material facts. The trustee appealed:—

*Held*, (1.) that the words "suppression or concealment of any material fact" must be read to mean such suppression or concealment as has in it an element of fraud; (2.) that on the evidence the trustee had not wilfully withheld information from the Bd. of Trade, and that under the circumstances the order of the Bd. revoking his release must be discharged, but without costs. *In re HARRIS*. *Ex parte* HASLUCK. — — — Wright J. [1899]

W. N. 61; [1899] 2 Q. B. 97

248. — *Release of trustee—Subsequent assets—Right of creditors to appoint new trustee—Practice—Small bankruptcy—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), ss. 82, 121—*Bankruptcy*

**BANKRUPTCY (Trustee)—continued.**

*Discharge and Closure Act, 1887* (50 & 51 Vict. c. 66), s. 6, sub-s. 2.

In a summary bankruptcy, as in an ordinary bankruptcy, after the release of the trustee or of the official receiver acting as trustee, the creditors have no power to appoint a new trustee to administer further assets that may come in; but the official receiver is the trustee for that purpose, if necessary. *In re LEACH. Ex parte BARNES*

Wright J. [1900] W. N. 184; [1900] 2 Q. B. 649

249. — *Remuneration—Alteration by Board of Trade—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 72, sub-s. 2—*Bankruptcy Forms, 1886, No. 122.*

The Bd. of Trade has power under s. 72 of the Bankruptcy Act, 1883, on the application of the prescribed number of dissentient creditors, to fix the remuneration of the trustee not only when the remuneration has been fixed by resolution of the creditors, but also when it has been fixed by a resolution of the committee of inspection in pursuance of authority delegated to them by a resolution of the creditors. *In re GALLARD. Ex parte HARRIS.* C. A. [1892] 1 Q. B. 532

250. — *Remuneration of trustee—Resolution of creditors—Ultra vires—Composition provided by debtor's father—"Amount realized by trustee"—Practice—Bankruptcy Acts, 1883* (46 & 47 Vict. c. 52), s. 72, sub-s. 1; 1890 (53 & 54 Vict. c. 71), s. 15, sub-s. 1.

Under s. 72 of the Bankruptcy Act, 1883, the remuneration of a trustee is to be fixed by a resolution of the creditors, and is to be a commission or percentage payable partly on "the amount realized" and partly on "the amount distributed in dividend"; and s. 15 of the Bankruptcy Act, 1890, enacts that the commission payable on the amount realized is to be payable "only on the amount realized by the trustee."

The creditors of a bankrupt accepted a composition, and the sum required to pay the composition was provided by his father and distributed by the trustee. The creditors also passed a resolution that the remuneration of the trustee should be a commission of "5 per cent. on all amounts brought to credit and 5 per cent. on all amounts distributed to the creditors." The trustee claimed the commission on the sum provided by the father as being an "amount brought to credit" of the estate:—

*Held*, that the resolution, not being in accordance with the terms of s. 72 of the Act of 1883, was ultra vires:

*Held*, also, that the words "the amount realized" in s. 72—apart from s. 15 of the Act of 1890—mean "the amount realized by the trustee"; that the sum provided by the father was not a sum "realized by the trustee," and, therefore, that the commission claimed was not payable.

*Semble*, the words "distributed in dividend" in s. 72 mean "distributed in dividend out of assets realized by the trustee." *In re CHRISTIE. Ex parte CHRISTIE* Wright J. [1899] W. N. 217; [1900] 1 Q. B. 5

— Rights over property of bankrupt.

See Cases under BANKRUPTCY—Assets.

**BANKRUPTCY (Trustee)—continued.**

251. — *Statute of Limitations—Bankruptcy Act, 1869* (32 & 33 Vict. c. 71), s. 72.

The Statute of Limitations runs against a trustee in bankruptcy in the same way as it would against the bankrupt himself. *In re MANSEL. Ex parte NORTON* C. A. [1892] W. N. 32

252. — *Stock Exchange—Defaulting broker—Rules of the Stock Exchange—Official assignee of the Stock Exchange—Stock Exchange creditors—Outside creditors—Sum due to and from stock-jobbers—Book debts—Title of trustee in bankruptcy as against official assignee.*

On Jan. 3, 1899, a receiving order was made against one W., a broker on the Stock Exchange, on a creditor's petition based on an act of bankruptcy committed on the previous Dec. 29; adjudication followed, and one K. became the trustee in bankruptcy. It happened that Dec. 29 was "ticket" day on the Exchange, Dec. 28 was account day, and Dec. 30 was pay-day. On Dec. 30, W. was officially declared a defaulter on the Exchange, and the same day the official assignee of the Stock Exchange, in accordance with the practice and rules of the Exchange, closed all W.'s contracts on the Exchange, and, after receiving and paying all sums due to or by members of the Exchange, there remained a surplus of about 600l. in his hands. W. had large outside liabilities. The official assignee had notice of the act of bankruptcy committed on Dec. 29. Two of the sums so received by the official assignee were: (1) a sum of 117l. 15s. 2d., being the proceeds of cheques sent to W. on Dec. 30 by outside customers to pay for certain contracts made by him on their behalf with jobbers on the Exchange; (2) a sum of 1262l. 15s. 2d. due to W. by jobbers on the Exchange:—

*Held*, on the evidence that as to 137l., part of the sum of 1262l. 15s. 2d., it represented merely the provisional or "making up price" on "ticket" day. It was therefore purely an artificial fund temporarily created for a temporary and special purpose, and not shewn to be in any sense the property of the bankrupt or of any of his clients, and fell within the principle of *In re Plumby*, (1880) 13 Ch. D. 667, and therefore the trustee was not entitled to it. As to the balance of 1262l. 15s. 2d., it did not represent the amount payable for the purchase or sale of a particular sum of stock, but merely the differences payable in the usual way on the Exchange in speculative transactions made by W. on behalf of outside clients, and which, if W. had received, he would not have held in a fiduciary capacity for the outside clients. This balance, therefore, was merely a book debt of W.'s, and was covered by the decision in *King v. Hutton*, [1899] 2 Q. B. 555; C. A. [1900] 2 Q. B. 504 (see next Case), and passed to his trustee in bankruptcy. The same considerations applied to the 117l. 15s. 2d., which comprised sums sent to W. by outside clients, not to pay for the purchase of any particular stock, but to provide for the differences payable by them. The trustee, therefore, was also entitled to these sums. *In re WOODD. Ex parte KING* Wright J. [1900] W. N. 84

253. — *Stock Exchange, Rules of the—Title of trustee in bankruptcy—Broker and customer—*

**BANKRUPTCY (Trustee)—continued.**

*Customer's speculative account—Bankruptcy of broker—Differences due to customer—Surplus in hands of the official assignee of the Stock Exchange.*

A broker on the Stock Exchange was officially declared a defaulter. The same day the official assignee, under the Rules of the Stock Exchange, closed all accounts of the broker then open, and received and paid all amounts owing by or to him on the Stock Exchange, and, after payment of all the Stock Exchange liabilities of the broker, there remained a surplus in the hands of the official assignee. Shortly afterwards the broker was adjudicated bankrupt with large outside liabilities. Part of the surplus above mentioned comprised a sum of money which represented differences, being profits, due on contracts made with jobbers on the Stock Exchange by the broker as agent for an outside customer, who was running a speculative account on the Stock Exchange through him, and which the broker, on the day he became a defaulter, had been then solvent, would have received for the customer. Both the customer and the trustee in bankruptcy of the broker having claimed this sum of money, the official assignee paid it into court under an interpleader summons:—

*Held*, that the sum of money in question was merely a book debt of the broker and formed part of his general assets, and therefore passed to his trustee in bankruptcy; and that the remedy of the customer was to prove in the bankruptcy for the amount.

Judgment of Phillimore J., [1899] W. N. 135; [1899] 2 Q. B. 555, affirmed. *KING v. HUTTON* - C. A. [1900] W. N. 157; [1900] 2 Q. B. 504

— Tenant for life bankrupt—Consent of tenant for life—Concurrence of trustee in bankruptcy.

*See* **VENDOR AND PURCHASER—Conveyance.** 45.

**254. — Title—Perfecting title—Notice—Priority—Bankruptcy Acts**, 1869 (32 & 33 Vict. c. 71), ss. 4, 17, 22; 1883 (46 & 47 Vict. c. 52), s. 50, sub-s. 4; ss. 54, 168.

There is nothing in the Bankruptcy Act, 1883, to shew that it was the intention of the legislature, when vesting a bankrupt's equitable choses in action in the trustee, to relieve him of the effect of the rules of equity as to perfecting his title by notice to the holders of the fund. A bankrupt became entitled to a reversionary interest in a fund held by trustees under a will, but did not know of it nor include it in his statement of affairs. Before his discharge it fell into possession; after discharge he mortgaged it to a person who had no notice of the bankruptcy, and gave notice to the trustees of his mortgage:—

*Held*, that the subsequent mortgagee by his notice had obtained priority over the trustee in bankruptcy. *In re* **STONE'S WILL**

**Chitty J.** [1893] W. N. 50

— Undischarged bankrupt—Rights of trustee.

*See* **Cases under BANKRUPTCY—Undischarged Bankrupt.**

— Voluntary settlement—Rights of trustee.

*See* **Cases under BANKRUPTCY—Voluntary Settlements.**

**BANKRUPTCY (Trustee)—continued.**

— Water rate, Arrears of—Trustee in bankruptcy "Incoming tenant" — Paymnet of arrears under protest.

*See* **WATER—Water Rates.** 25.

**Undischarged Bankrupt.**

**255. — After-acquired property—Assignment of interest under will—Bona fides—Colonial law—Bankruptcy Act**, 1883 (46 & 47 Vict. c. 52), ss. 44, 54.

The proposition laid down in *Cohen v. Mitchell*, (1890) 25 Q. B. D. 262—that until his trustee intervenes all transactions by a bankrupt after his bankruptcy with any person dealing with him bona fide and for value, in respect of his after-acquired property, are valid against the trustee—applies where the after-acquired property consists of a legacy and a share of residue under a will, even where the trustee intervenes before the bequeathed property has reached the hands of a bona fide equitable assignee.

An assignment of the future-acquired property is not necessarily mala fide because at the time the assignee has knowledge of the assignor's bankruptcy and of the ignorance of the trustee in bankruptcy that the bankrupt has acquired the assigned property.

The law is the same on this point in the Colony of Victoria. *HUNT v. FRIPP*

**Byrne J.** [1897] W. N. 158 (3); [1898] 1 Ch. 675

**256. — After-acquired property—Assignment by bankrupt—Stop order—Priority—Maintenance of bankrupt.**

Interpleader issue raising the question as to who was entitled to a sum of 258l. paid into court in an action of *Tibbitts v. Renton*. Tibbitts had been adjudicated a bankrupt and was still undischarged. The claimant Mercer was his trustee in bankruptcy. Vans Colina also claimed the fund under an assignment from the bankrupt:—

*Held*, that as Renton had neither notice nor knowledge of Vans Colina's assignment, and Vans Colina had not obtained a stop order, the trustee by giving his notices and obtaining a stop order had obtained priority. The amount of the allowance to be made out of the fund for the maintenance of the bankrupt discussed. *MERCER v. VANS COLINA*

**Wright J.** [1900] 1 Q. B. 130, n.

**257. — After-acquired property—Letters patent—Royalties—Personal earnings—Judgment of County Court—Estoppel—Solicitor's lien for costs—Bankruptcy Act**, 1883, ss. 44, 53.

The principles which underlie s. 53 of the Bankruptcy Act, 1883, with respect to the "salary or income" of a bankrupt, are also applicable to his "personal earnings." In each case it is a question of amount, and he will be allowed to retain only such a sum as is sufficient for the reasonable maintenance of himself and his family, and the residue will pass to his trustee in bankruptcy.

An undischarged bankrupt took out letters patent for an invention, and granted a licence to a co. to work the patented invention at a royalty of 10l. per week. Two instalments of the

**BANKRUPTCY (Undischarged Bankrupt)—contd.**

royalty, i.e. 20l., becoming payable were claimed by the trustee in bankruptcy as after-acquired property of the bankrupt. The co. took out an interpleader summons in the High Court, which was remitted to a county court for decision. The county court judge held that the 20l. was in the nature of personal earnings and belonged to the bankrupt, and refused leave to appeal. Subsequent royalties became due, and the trustee applied to the Bankruptcy Court for a declaration that they vested in him as after-acquired property of the bankrupt:—

*Held*, that the judgment of the county court estopped the trustee from asserting that the royalties were not the personal earnings of the bankrupt, but that 5l. a week was a fitting sum for the reasonable maintenance of the bankrupt and his family, and that the residue passed to the trustee in bankruptcy:

But *held*, also, that the solicitor of the bankrupt had as against the trustee a first charge for his costs of creating the fund, i.e., his costs properly incurred in taking out and maintaining the letters patent and carrying through the arrangements with the co.

*Seemle*, the royalties were not the "personal earnings" of the bankrupt. *In re GRAYDON*. *Ex parte* OFFICIAL RECEIVER

V. Williams J. [1896] 1 Q. B. 417

Referred to by Phillimore J. *Shoolbred v. Roberts*, [1899] 2 Q. B. 560, 563; C. A. [1900] 2 Q. B. 497.

Referred to by C. A. *In re Roberts*, 1900, 1 Q. B. 122, 128.

**258. — After-acquired property—Personal earnings—Assignment for value before intervention by trustee—Title of Assignee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.**

A bankrupt has a qualified property in goods until the trustee in bankruptcy intervenes:—

*Held*, that as before any intervention the bankrupt had transferred them to the claimants for value, the title of the claimants was good. *HAMPTON v. LUBBOCK* Div. Ct. [1900] W. N. 18

**259. — After-acquired property—Personal earnings—Interpleader—Wagering contract—Money deposited as stakes—Stakes claimed by trustee in bankruptcy—Gaming Acts, 1845 (8 & 9 Vict. c. 109), s. 18; 1892 (55 & 56 Vict. c. 9), s. 1—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 55.**

The deft., a professional billiard player, who was then an undischarged bankrupt, agreed to play a match at billiards with another billiard player for 100l. a side, and each party deposited that amount with stakeholders. The deft. won the match, and thereupon both the deft. and the plt., his trustee in bankruptcy, claimed the stakes. The stakeholders interpleaded; and, the money having been paid into court, an issue was directed to try whether the plt. or the deft. was entitled to the money:—

*Held* (varying the order of Phillimore J., [1899] W. N. 136; [1899] 2 Q. B. 560), that the plt. was entitled to the whole of the money. *SHOOLBRED v. ROBERTS*

C. A. [1900] W. N. 157; [1900] 2 Q. B. 497

**BANKRUPTCY (Undischarged Bankrupt)—contd.**

**260. — After-acquired property—Personal earnings—"Property of the bankrupt"—Trustee, right of—Maintenance of bankrupt—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.**

Under s. 44 of the Bankruptcy Act, 1883, which vests in the trustee all property belonging to the bankrupt at the commencement of the bankruptcy or acquired by him before his discharge, all personal earnings of the bankrupt between the commencement of his bankruptcy and his discharge belong to his trustee, save only what is necessary for the support of the bankrupt and his family.

R., a professional billiard player, while an undischarged bankrupt, entered into a contract with a billiard-ball manufacturing co., whereby the co. agreed to supply him annually for five years, free of cost, with 2000 billiard balls of their manufacture as and when required by him; and R. agreed that he would not, during the five years, play public billiard matches (not being championship matches) other than with balls manufactured and supplied by the co.; but the contract did not impose any obligation on R. to play billiards at all. The co. supplied R. during his bankruptcy with balls according to the contract, intending that he might sell them and apply the proceeds to his own use:—

*Held*, that under s. 44 of the Bankruptcy Act, 1883, the balls belonged to the trustee in bankruptcy, the evidence shewing that they were not wanted for R.'s support even if they could be regarded as personal earnings, as to which *quære*.

Appeal from Wright J. dismissed. *In re ROBERTS* - - C. A. [1899] W. N. 220; [1900] 1 Q. B. 122

**261. — After-acquired property—Solicitor's bill of costs—Chose in action—Assignee for value—Notice by trustee—Priority—Out of pocket expenses.**

An undischarged bankrupt assigned for value the amount of his taxed bill of costs as solicitor for the petitioning creditors of a company in liquidation. His trustee in bankruptcy gave notice, before the assignee, to the liquidator of the company claiming the amount of the taxed bill as part of the after-acquired property of the bankrupt.

*Held*, that the trustee was entitled to the amount in priority to the assignee.

*Mercer v. Vans Colina*, (1897) 67 L. J. (Q.B.) 424, followed.

In such a case the bankrupt's out of pocket expenses will, if properly vouched, be allowed to him out of the amount. *In re BEALL*. *Ex parte* THE OFFICIAL RECEIVER - Wright J. [1899] W. N. 10 (3); [1899] 1 Q. B. 688

**262. — After-acquired property—Surplus assets—Mortgage by undischarged bankrupt—Purchase of real estate—Contemporaneous agreement for charge—Successive bankruptcies—Rights of trustees—Vesting—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 20, 40, sub-s. 5; ss. 44, 50, 54, 65, 168.**

An undischarged bankrupt has power to dispose of any part of his assets that may remain after payment of his liabilities before that surplus is ascertained. The decisions in *In re Leadbitter*, (1878) 10 Ch. D. 388, and *Ex parte Sheffield*, *In*

**BANKRUPTCY (Undischarged Bankrupt)—*contd.***  
*re Austin*, (1879) 10 Ch. D. 434, merely shew that he cannot give an assignee a right to interfere in the administration of his bankruptcy.

A charge given by an undischarged bankrupt on specific property may be read as referring to such part of the property as turns out to be surplus.

Where an agreement for an advance to be made to an undischarged bankrupt in order to enable him to obtain a conveyance of real estate is contemporaneous with an agreement that the lender shall have a charge on the property so purchased, and the lender has no notice of the bankruptcy, the charge will be supported against the trustee.

*Meux v. Smith*, (1843) 11 Sim. 410, followed.

Where an undischarged bankrupt is made bankrupt a second time, and there is, by reason of the extent of his after-acquired property, a surplus in the first bankruptcy, the trustee in the second bankruptcy only takes that part of the surplus which has not been effectually dealt with by the bankrupt before the date of the second bankruptcy. *BIRD v. PHILPOT*

*Farwell J.* [1900] 1 Ch. 822

— Clause validating the acts of *de facto* directors.

*See COMPANY—Directors.* 100.

— Costs—Jurisdiction.

*See BANKRUPTCY—Costs.* 82.

— Obtaining Credit—Intent to defraud.

*See BANKRUPTCY—Offences.* 123.

#### **Void Settlement.**

*See Cases under BANKRUPTCY—Voluntary Settlement.*

#### **Voluntary Settlement.**

*See s. 47 of the Bankruptcy Act, 1883.*

**263. — Damages recovered in the Divorce Court—Life interest determinable on bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 33.**

In an action for divorce the husband was awarded by a jury 1500*l.* damages against the co-respondent, and this sum was paid into court. A settlement was then executed with the sanction of the Court to which the husband was a party, and by which the money was vested in trustees upon trust for the wife for life whilst chaste and unmarried, and then for the husband for life with a gift over in the event of his bankruptcy, which event happened:—

*Held*, that the damages were not “the property” of the husband within the meaning of s. 47 of the Bankruptcy Act, 1883, and consequently that the gift over of his life estate on bankruptcy was not void as against his trustee in bankruptcy. *In re STEPHENSON. Ex parte BROWN* — *V. Williams J.* [1897] 1 Q. B. 638

**264. — Discretionary trust to pay future debts—Intent to defeat and delay future creditors—Fraudulent Conveyancing Act, 1871 (13 Eliz. c. 5).**

A voluntary settlement, honestly entered into at the time it is made, all then existing debts being paid, and the settlor retaining an income sufficient for reasonable and probable require-

**BANKRUPTCY (Voluntary Settlement)—*contd.***

ments, ought not to be treated as fraudulent and void under the statute 13 Eliz. c. 5, merely because some years afterwards it has the effect of defeating or delaying the subsequent creditors of the settlor.

In 1891 A., a few days after attaining twenty-one, executed a voluntary settlement whereby she vested the whole of her property in trustees with an absolute discretionary trust to apply either capital or income in payment of any of her then existing or future debts; and a further discretionary trust to apply the income during her life for the benefit of herself or any husband or children. The deed contained a power for A. to revoke the settlement with the consent of her trustees. The few debts she had at the date of the settlement were paid out of cash in hand. On two subsequent occasions A. executed partial revocations of the settlement, and portions of the settled funds were applied by the trustees in payment of her debts; but the trustees refused a third time to pay her debts, and thereupon, in Feb., 1900, she was adjudicated bankrupt, having no assets except the settled property:—

*Held*, that the settlement was not fraudulent and void under 13 Eliz. c. 5, as against her trustee in bankruptcy. *In re LANE-FOX. Ex parte GIMBLETT* *Wright J.* [1900] W. N. 142; [1900] 2 Q. B. 508

**265. — Extent of avoidance—Voluntary settlement—Void “as against the trustee”—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.**

A voluntary settlement which is “void against the trustee” under s. 47 of the Act of 1883 is void for all purposes, and does not entitle the trustee to stand in the place of the beneficiaries.

The trustee therefore has not priority over incumbrancers subsequent to the settlement.

*Semble*, the effect of such an order is to accelerate subsequent incumbrances generally. *SANGUINETTI v. STUCKEY’S BANKING Co.*

*Chitty J.* [1895] 1 Ch. 176

*See also* upon another point, *Chitty J.* [1896] 1 Ch. 502.

Approved by C. A. *In re Farnham*, [1895] 2 Ch. 799, 808.

**266. — Father and son—Voluntary settlement—Purchaser for value—Gift of money—Advancement—Business, Purchase of—Earmarking gift—Alienation of gift—“Settlement of property”—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 47, 168.**

In May, 1896, a trader, then in good credit, sold his business to a limited co. promoted by him for the purpose of purchasing it. He and his son took between them practically the whole of the shares issued by the co., and substantially the whole of the debenture issue was taken by the father himself. The co. was unsuccessful, and, in May, 1898, went into voluntary liquidation; whereupon, with a view to preserving the father's credit, he and his son entered into an arrangement by deed with the co., by its liquidator, and the co.'s ascertained creditors, whereby the son purchased the co.'s business in consideration partly of a sum in cash and partly of payment by him of the debts due to the ascertained creditors secured by joint and several

**BANKRUPTCY (Voluntary Settlement)—contd.**

promissory notes of the father and son; and, by way of further consideration, the father surrendered his debentures and a private debt due to him from the co. The father and son also covenanted to pay off any then unascertained creditors of the co., and to indemnify the co. and its assets against all claims in respect of the business, and the father covenanted with the son that all moneys paid by him, the father, under the arrangement, and all property thereby handed over by him to the son, should be treated "as an absolute and irrevocable gift" from him to the son.

The son thereupon took over the business, and carried it on with such success that, by means partly of his earnings and partly by contributions from the father, the whole of the purchase-moneys and debts payable under the arrangement were discharged. Subsequently, in March, 1899, the father became bankrupt; whereupon the trustee in bankruptcy applied to have the transfer of the business to the son under the arrangement of 1898 declared void as a "settlement" within s. 47 of the Bankruptcy Act, 1883:—

*Held*, by the C. A. (affirming Wright J.), that the mere fact that the business had been acquired by the son partly by means of money obtained from or paid by the father was not sufficient to make the transfer a "settlement" within s. 47.

"Settlement" in s. 47 of the Bankruptcy Act, 1883, means such a conveyance or transfer by the donor as contemplates the retention of the property by the donee, either in its original form or in such a form that it can be traced, and does not extend to a conveyance or transfer of property which cannot be traced, as, for instance, where there is a gift of money to be employed in a business or in the purchase of a business, and the money is so employed or spent, the business itself not being settled.

*In re Player*, *Ex parte Harvey*, (1885) 15 Q. B. D. 682, approved of. The principles stated in *In re Vansittart*, [1893] 1 Q. B. 181; *In re Tankard*, [1899] 2 Q. B. 57, 60, 61, approved of. *In re PLUMMER* - C. A. [1900] 2 Q. B. 790

267. — *Gift of jewels by husband to wife*—"Settlement"—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47.

A husband gave his wife valuable jewels on certain anniversaries within two years of his bankruptcy. There was no written transfer:—

*Held*, that the gifts were a "settlement," and therefore void under s. 47, sub-s. 3, of the Act of 1883, as against the trustee in bankruptcy. *In re VANSITTART*. *Ex parte BROWN* (No. 1)

V. Williams J. [1893] 1 Q. B. 181

Considered by Jeune P. Tasker v. Tasker, [1895] P. 1, 6.

Referred to by Wright J. *In re Tankard*, [1899] 2 Q. B. 57, 59.

See also *In re Plummer*, C. A. [1900] 2 Q. B. 790.

268. — *Gift of jewels and money*—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47.

Gifts of personal property made by a bankrupt

**BANKRUPTCY (Voluntary Settlement)—contd.**

within two years of his bankruptcy, without restricting the donee's power of alienation, but with intention that the donee shall use or retain the property for an indeterminate time, are voluntary settlements within the meaning of s. 47 of the Bankruptcy Act, 1883, and void as against the trustee in bankruptcy, but without prejudice to any sale or disposition of the property made by the donee before the bankruptcy in good faith and without notice of an available act of bankruptcy. But the donee may have to account for the proceeds of any such sale or disposition remaining in his hands at the commencement of the bankruptcy.

*In re Player*, (1885) 15 Q. B. D. 682, and *In re Vansittart*, [1893] 1 Q. B. 181, considered. *In re TANKARD*. *Ex parte THE OFFICIAL RECEIVER* - Wright J. [1899] W. N. 60; [1899] 2 Q. B. 57

— Insolvent estate—Priorities.

See EXECUTOR—Insolvent Estates. 35.

269. — *Life policy*—*Post-nuptial settlement*—*Covenant to keep up policy*, *Absence of*—*Premiums*—*Voluntary payment by settlor*—*Bankruptcy of settlor*—*Policy moneys*—*Proportion not represented by each premium*—*Voluntary "settlement"*—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47.

The payment of a premium on a life policy is not to be regarded as securing a certain part of the money assured by the policy. The whole of the premiums are paid to keep up the policy, and no proportionate part of the money payable under it is represented by the payment of any particular premium.

Consequently, where the owner of a policy on his life by a post-nuptial settlement in 1877 assigned it to trustees for his wife and children, and he himself continued to pay the premiums voluntarily, being under no covenant with the trustees to do so, and in 1899 became bankrupt and died:—

*Held*, that no part of the payments of premiums during the ten years preceding the bankruptcy was a "settlement" within s. 47 of the Bankruptcy Act, 1883, so as to entitle the trustee in bankruptcy to any proportionate part of the policy moneys.

Decision of Wright J., [1900] W. N. 118, reversed. *In re HARRISON & INGRAM*. *Ex parte WHINNEY* C. A. [1900] W. N. 174; [1900] 2 Q. B. 710

270. — *Purchaser for value and in good faith from donee*.

"Void" in s. 47 of the Bankruptcy Act, 1883, means "voidable" and a bona fide purchaser for value from a beneficiary under a settlement falling within the s., whether with or without notice of the settlement, has a good title against the trustee in bankruptcy.

(A) *In re VANSITTART*. *Ex parte BROWN* (No. 2) - V. Williams J. [1893] 2 Q. B. 377

(B) *In re BRALL*. *Ex parte NORTON*

V. Williams J. [1893] 2 Q. B. 381

Approved by C. A. *In re Carter and Kenderdine's Contract*, [1897] 1 Ch. 776. See No. 273, below.

271. — "*Purchaser in good faith*"—*Proviso for cesser of husband's interest on bankruptcy*—*Bank-*

**BANKRUPTCY (Voluntary Settlement)—*contd.***

*ruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47—*Married Women's Property Act*, 1882 (45 & 46 Vict. c. 75), s. 3.

In order to constitute a "purchaser in good faith" within s. 47 of the Bankruptcy Act, 1883, it is sufficient if there be good faith on the part of the purchaser; it is not necessary that both parties to the transaction should act in good faith. A wife (married in 1883) after marriage allowed her separate property to pass into her husband's hands, but not as a gift nor as a loan for the purposes of his trade. The husband having applied part of the property to his own use, settled the residue, together with property of his own, upon trusts under which he took a life interest, with a proviso for cesser in the event of his bankruptcy; the wife had no notice of any fraudulent intention on the husband's part:—

*Held*, (1) that the settlement was not void under s. 47 of the Bankruptcy Act, 1883; (2) that to the extent of the wife's property received by the husband the proviso for the cesser of his life interest was good; and (3) that s. 3 of the Married Women's Property Act, 1882, did not apply. *MACKINTOSH v. POGOSE*

*Stirling J.* [1895] 1 Ch. 505

272. — *Transfer of property in consideration of liability undertaken—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47.

A., in consideration of B.'s paying his debt and taking on himself a liability, conveyed his property in trust for C.; and B., in consideration of A. so conveying the property, agreed to pay A.'s debt and to take on himself a liability:—

*Held*, that there was a consideration moving from A. to B. and from B. to A., and that, therefore, the transaction did not amount to a voluntary settlement either by A. or B. within s. 47 of the Bankruptcy Act, 1883. *In re DALE AND ELSDEN*

*Stirling J.* [1892] W. N. 56

273. — *Title—Trustee in bankruptcy of settlor—Vendor and purchaser—Bonâ fide purchaser for value—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), ss. 47, 48, sub-s. 2.

According to the true construction of s. 47 of the Bankruptcy Act, 1883, a voluntary settlement is not void against the settlor's trustee in bankruptcy from its date, but is only void against the trustee from the time when his title accrues; so that if before that time the property comprised in the settlement has been sold, bonâ fide, to a purchaser for value, the title of the purchaser will be good as against the trustee.

*In re Brall*, [1893] 2 Q. B. 381, and *In re Holden*, (1887) 20 Q. B. D. 43, approved. *In re Briggs and Spicer*, [1891] 2 Ch. 127, overruled. *In re CARTER AND KENDERDINE'S CONTRACT*

C. A. [1897] 1 Ch. 776

Discussed by Wright J. *In re Tankard*, [1899] 2 Q. B. 57, 60.

**BANKRUPTCY RULES AND ORDERS.** *See Table of Rules and Orders of Court judicially considered.*

**BARBADOS**—Application of Colonial Probates Act, 1892.

*See PROBATE—Colonial Probates Act*, 1892.

**BARBADOS—*continued.***

SOLICITOR.] *O. in C. extending the Colonial Attorneys Relief Act to Barbados.* St. R. & O. 1899, No. 573. Price 3d.

**Law of Barbados.**

1. — *Water Supply Act*, 1886, ss. 11, 23—*Compensation—Past and future profits.*

Compensation for the abstraction of streams of water by a co. under the Water Supply Act, 1886, includes the value of the owners' proprietary interest, and that possible future benefit is an element not to be excluded in assessing such compensation. *TRENT-STOUGHTON v. BARBADOS WATER SUPPLY CO.* — P. C. [1893] A. C. 502

**BARBED WIRE.**

*See HIGHWAY—Obstruction.*

**BARBER**—Exercising "worldly labour, business, or work" on Sunday.

*See SUNDAY.* 1.

**BARONY TITLE**—Coal below low-water mark—Lease of coal—Minor—Adoption.

*See MINES—Leases.* 12.

**BARBATRY**—Master part-owner of ship—Mortgagee.

*See INSURANCE—Marine.* 28.

**BARRISTER.**

— Counsel—Law patents—Fees.

*See FEES—Clerk of the Crown in Chancery.*

*Re the proportion of the fees of junior counsel to those of their leaders in civil proceedings—Report of the General Council of the Bar.* W. N. 1900 (Dec. 8), p. 325. *See Current Index*, 1900, p. lxxxviii.

— Consultations.

*See COMPANY—WINDING-UP—Costs.* 65.

— Fees.

*See COSTS—Counsel's Fees.*

— Mistake of.

*See COMPROMISE.* 2.

— Order striking off the roll reversed—Practice.

*See GOLD COAST.* 2.

— Power to issue patents of precedence—Powers of provincial legislature.

*See CANADA.* 41.

— Retainers — Costs — Taxation — Discretion of taxing master.

*See BANKRUPTCY—Costs.* 78.

*Retainers of Counsel—Rule of the Profession—General Council of the Bar.* W. N. 1897 (June 5), p. 183. *See Current Index*, 1897, p. lxxvii.

*Retainers of Counsel—General Council of the Bar—Retainer Rule* 20. W. N. 1899 (Jan. 21), p. 45. *See Current Index*, 1899, p. cxxii.

— Taxes management—Power to barristers and solicitors to plead before the general commissioners.

*See Finance Act*, 1898 (61 & 62 Vict. c. 10), s. 16.

**BASE-FEE**—Fee simple absolute—Acknowledgment.

*See HUSBAND AND WIFE—Generally.* 5.

— Settled Land Acts.

*See SETTLED LAND—Base-Fee.* 20.

**BASTARDY**—Grant of administration.

*See PROBATE—Grant of Administration.* 22.

**BASTARDY—continued.**

1. — *Jurisdiction—Absence from England of alleged father—Ceasing to reside in England within the twelve months next after the birth—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 3.*

By s. 3 of the Bastardy Laws Amendment Act, 1872, an affiliation summons may be applied for either before the birth of the child "or at any time within twelve months from the birth of such child . . . or at any time within the twelve months next after the return to England of the man alleged to be the father of such child, upon proof that he ceased to reside in England within the twelve months next after the birth of such child."—The alleged father of a bastard child left England about a month before the child's birth, and did not return till the child was fifteen months old. The mother then took out a summons which was dismissed for want of jurisdiction on the ground that the summons was out of time.

*Held*, that the alleged father ceased to reside in England during the whole period of his absence; that he was therefore a person who had "ceased to reside in England within the twelve months next after the birth of such child" within the meaning of s. 3 of the Act of 1872, and that the justices had jurisdiction to adjudicate upon a summons taken out within twelve months after his return. *REG. v. EVANS*

**Div. Ct. [1896] 1 Q. B. 228**

Referred to by *Jeune P. Heard v. Heard*, [1896], pp. 188, 190.

— Illegitimate children en ventre sa mère.

*See SETTLEMENT—Construction.* 8.

— Illegitimate children.

*See WILL—Children.* 36—38.

2. — *Service of notice—"Last place of abode"—Jurisdiction of Justices—35 & 36 Vict. c. 65, ss. 3, 4.*

A bastardy summons was served at the house where the putative father had resided when last in England. At the time of the service he was resident in America:—

*Held*, that his "last place of abode" for service within s. 4 of the Bastardy Laws Amendment Act, 1872, was his American residence, and the service was bad:

*Held*, also, that the Court had power on an application for a certiorari to inquire into the validity of the service, as the jurisdiction of the justices only attached on proof that the summons was duly served. *REG. v. FARMER*

**C. A. [1892] 1 Q. B. 637**

Referred to by *Lawrance J. Reg. v. Webb*, [1896] 1 Q. B. 487, 491.

3. — *Service of summons—Putative father out of jurisdiction—"Last place of abode"—Bastardy Laws Amendment Act 1872 (35 & 36 Vict. c. 65), s. 4.*

By the Bastardy Laws Amendment Act, 1872, s. 4, after the birth of a bastard child, on proof that the summons was left at the last place of abode of the person summoned, six days at least before the petty sessions, the justices may make an order.

Shortly after the birth of a child the person

**BASTARDY—continued.**

alleged to be the father left the house where he had up to that time resided, and went to America, but the evidence did not show that he had any place of abode in America. Ten days after the birth a summons was left at the house where he had resided:—

*Held*, that this house was his last place of abode, within the meaning of the Act, and the service was sufficient.

Dictum of Lord Selborne in *Berkley v. Thompson*, (1885) 10 App. Cas. 45, at p. 49, explained and distinguished. *REG. v. WEBB*

**Div. Ct. [1896] 1 Q. B. 487**

4. — *Simultaneous applications to several justices—Summons heard on one application—Dismissal on merits—Summons issued on another of the applications—Jurisdiction—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 3.*

A bastard child having been born in Sept. 1896, the mother on Oct. 21, 1896, made three separate applications to three different justices for a bastardy summons against the deft., but as she was at that time unable to find him the issue of the summons was suspended. In July, 1897, the mother, having found the deft., procured one of the three justices to issue his summons upon the application so made to him on Oct. 21, 1896. On Nov. 3, 1897, that summons was heard, and dismissed on the ground that the evidence was insufficient. On Nov. 17, 1897, she procured another of the three justices to issue a further summons against the deft., which summons purported to be founded on the application to the said justice of Oct. 21, 1896. The summons was heard and a bastardy order made:—

*Held*, that the three applications made on Oct. 21, 1896, were in substance but one application, and were exhausted by the hearing and dismissal of the summons on Nov. 3, 1897, and that the order was consequently made without jurisdiction. *REG. v. ROBINSON*

**Div. Ct. [1898] 1 Q. B. 734**

**BATHS AND WASHHOUSES—Baths and Wash-houses Act, 1899 (62 & 63 Vict. c. 29), amends the Baths and Washhouses Acts.**

*Circular issued in 1899 by Loc. Gov. Bd. to clerks to towns, urban districts and parish councils with reference to this Act.*

— Misapplication of rates.

*See LONDON—Vestries.* 97.

**BEACON—Buoy—Gas float—Salvage—Jurisdiction.**

*See SHIPPING—Salvage.* 239.

**BEARER—Debenture payable to—Usage.**

*See NEGOTIABLE INSTRUMENT.* 2.

**BED OF RIVER—Presumption that, ad medium flum passes by conveyance—Rebuttal—Evidence.**

*See WATER.* 41, 45.

**"BEDDING"—Bedstead—Privileged from distress.**

*See DISTRESS.* ¶12.

**BEER—Public-house—Lease—Restrictive covenant.**

*See LANDLORD AND TENANT—Covenant.* 13, 15, 17, 18, 37.



**BEER**—continued.

— Sale at unauthorised place—Offences.  
See LICENSING ACTS. 28, 34, 35.

**BEERHOUSES.**

See Cases under LICENSING ACTS.

**BEHRING SEA SEAL FISHERY**—Convention between Great Britain and the United States for submission to arbitration of British claims. Ratifications exchanged at London, June 3, 1896. 1896 [C. 8101]. Price  $\frac{1}{2}$ d.

— Seal Fishery.

See FISHERY—Sea.

**BELGIUM**—Extradition treaty between Great Britain and. 1896 [C. 8285]. Price  $\frac{1}{2}$ d.

[MARRIAGES.] Modification of form of declaration to be issued by Belgium Legation in London in cases of mixed marriages in U. K. between British and Belgian subjects. Lond. Gaz. Feb. 19, 1897, p. 384.

— Fisheries Act.

See FISHERY—Sea.

**BENEFICE.**

See ECCLESIASTICAL LAW.

**" BENEFICIAL OCCUPATION "** — Preferential payments.

See COMPANY — WINDING-UP — Preference.

**BENEFICIAL OWNER**—Conveyance as.

See VENDOR AND PURCHASER—Conveyance. 38, 39.

**BENEFIT BUILDING SOCIETY.**

See BUILDING SOCIETY.

**BERMUDA**—Death duties.

See REVENUE—Estate Duty.

1.—Will—Evidence of execution—Denial by attesting witness—Testamentary capacity.

Case in which probate of a will which had been originally granted on the evidence of the two attesting witnesses was confirmed, notwithstanding that one of them retracted his evidence and in effect swore to the signatures of testator and witnesses having been forged, and the other witness was not called. In the circumstances, the later evidence of the one was held to be incredible, and the absence of the other to be satisfactorily explained.

Testamentary capacity is not disproved by evidence of the testator's merely eccentric acts and conduct. *PILKINGTON v. GRAY*

P. C. [1899] A. C. 401

**BERNE CONVENTION.**

See COPYRIGHT—International.

**" BEST RENT "**—Lease under Settled Land Acts.

See SETTLED LAND—Leases. 67.

**" BETTERMENT "**—Initial valuation—Trade interest—Tied public-house.

See RATES—Rateability. 31.

**BETTING.**

See Cases under GAMING.

**BETTING-HOUSE**—Person found therein—Arrest—Power to bind over—Evidence.

See GAMING. 2.

**BIAS**—Arbitrator.

See ARBITRATION—Arbitrator. 11—13, 19.

— Disqualification—Prosecution by council—Adjudication by ordinary member.

See JUSTICES—Disqualification. 49.

— General rule.

See JUSTICES—Disqualification. 47.

— Pecuniary interest as ratepayer.

See JUSTICES—Disqualification. 48.

— Salmon fishery.

See JUSTICES—Disqualification. 52.

**BICYCLE**—Arrest of rider—Justification—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 85.

A constable who sees a person riding a bicycle at night without a proper light, contrary to the provisions of s. 85 of the Local Government Act, 1888, has no power to stop him for the purpose of ascertaining his name and address. *HATTON v. TREEBY*

Div. Ct. [1897] 2 Q. B. 452

— Passengers' luggage—" Ordinary luggage."

See RAILWAY—Passengers. 25.

2.—Toll, Liability to—" Carriage"—7 Geo. 3, c. lxiii.

By a special Act, passed in 1767, the owner of a bridge across the Thames, and his heirs and assigns, were authorized to take the following (amongst other) tolls for passage over the bridge: " For every coach, chariot, berlin, hearse, chaise, chair, calash, wagon, wain, dray, cart, car, or other carriage whatsoever with four wheels the sum of fourpence, and with less than four wheels the sum of twopence " :—

Held, that a bicycle ridden over the bridge was a " carriage " within the meaning of the Act, so that the owner of the bridge was entitled to take the toll of twopence in respect of the bicycle. *CANNAN v. EARL OF ABERGON*

Div. Ct. [1900] 2 Q. B. 66

**BIGAMY.**

See DIVORCE—Bigamy.

— Jurisdiction—Bigamy committed within the Colony.

See NEW SOUTH WALES. 13.

**BILL OF COSTS**—Taxation.

See Cases under SOLICITOR.

**BILL OF EXCHANGE**—Acceptance, whether qualified—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 8, 19, 36.

If the acceptor of a bill of exchange desires to qualify his acceptance, he must do so on the face of the bill in clear and unequivocal terms, and so that any person taking the bill could not if he acted reasonably fail to understand that it was accepted subject to an expressed qualification. *MEYER & Co. v. DECROIX, VERLEY ET CIE.*

H. L. (E.) [1891] A. C. 520 affirm.

C. A. (1890) 25 Q. B. D. 343

— Action on—Claim for interest specially indorsed on writ.

See PRACTICE—Writ. 290.

2.—Alteration—Fraudulent alteration—Accepting bill which gives facilities for alteration—Negligence—Stamp of larger amount than necessary—Estoppel—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 64.

The acceptor of a bill of exchange is not

**BILL OF EXCHANGE—continued.**

under a duty to take precautions against fraudulent alteration in the bill after acceptance.

A bill for 500*l.* was presented for acceptance with a stamp of much larger amount than was necessary and with spaces left. The acceptor wrote his acceptance and handed the bill to the drawer, who fraudulently filled up the spaces and turned it into a bill of 3500*l.* Being sued on the bill by a bona fide holder for value the acceptor paid 500*l.* into court :—

*Held*, affirming the decisions of Charles J., [1894] 2 Q. B. 660, and of the Court of Appeal, [1895] 1 Q. B. 536, that the acceptor owed no duty of precaution to the plt., and was guilty of no negligence, and was entitled to judgment.

*Young v. Grote*, (1927) 4 Bing. 253, commented on. *SCHOLFIELD v. EARL OF LONDESBOROUGH*

H. L. (E.) [1896] A. C. 514

—Cheque.

See Cases under BANKER.

3. — *Consideration, Action on—Bill coming into hands of plaintiff after action brought.*

Where a buyer of goods has given a bill of exchange for the price, an action will not lie for the price, even after dishonour of the bill, if at the date of the commencement of the action the bill is outstanding in the hands of a third party. It is not enough to entitle the plt. to succeed that he is in possession of the bill at the date of the trial. *DAVIS v. REILLY*

Div. Ct. [1897] W. N. 152 (2); [1898] 1 Q. B. 1

4. — *Dishonour—Days of grace—Payment—Accrual of right of action—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 14, 47.*

A right of action does not accrue on a bill of exchange until after the expiration of the whole of the last day of grace, although a right to protest and to give notice of dishonour accrues immediately on refusal of payment. *KENNEDY v. THOMAS*

C. A. revers. *Cave J.* [1894] 2 Q. B. 759

5. — *Dishonour, Notice of—Bank with several Branches—Notice to wrong branch—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 49, sub-s. 12 (b), 13.*

A branch of a country banking co. received from a customer a bill of exchange and forwarded it to a London bank for presentation. The bill was dishonoured, and the London bank on the following day sent notice of dishonour by post to a branch of the country banking co., but not to the branch from which they had received the bill. On the next day they discovered the mistake, and telegraphed notice of dishonour to the branch from which they had received the bill. The notice given by that branch, and all subsequent notices, including that to the deft., who was an indorser of the bill, were sent in due time. In an action by the holder of the bill :—

*Held*, by A. L. Smith and Rigby L.J.J., Collins L.J. dissenting, that sufficient notice of dishonour had been sent by the London bank to comply with the provisions of s. 49, sub-ss. 12, 13, of the Bills of Exchange Act, 1882.

*Held*, by Collins L.J., that for the purpose of notice of dishonour the branches of a bank must be regarded as distinct, that the written notice

**BILL OF EXCHANGE—continued.**

by the London bank, not having been sent to their principals, was ineffective, and could not be made effective by the telegram, which was out of time. *FIELDING & Co. v. CORRY*

C. A. [1898] 1 Q. B. 268

6. — *Expenses—Proof—Bill of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 51, sub-ss. 2, 5; s. 57, sub-s. 1 (c); ss. 65–68, s. 97.*

Drawers of unpaid bills of exchange are entitled under s. 51, sub-s. 2, and s. 57, sub-s. 1, of the Bills of Exchange Act, 1882, to prove for expenses of protest for non-payment, but not for expenses of protest for better security or for commissions paid to their own bankers. *In re ENGLISH BANK OF THE RIVER PLATE. Ex parte BANK OF BRAZIL* — *Chitty J.* [1893] 2 Ch. 438

7. — *Fictitious or non-existent person—Liability of bank for payment of forged bills—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 7, sub-s. 3.*

A clerk prepared certain documents in the form of bills to which he forged the names of two firms with whom his principal had dealings, one as drawer and the other as payee. He also by fraud obtained the signature of his principal as acceptor of the documents, and also to letters advising the bank that they were coming in for payment. The bank paid the money to the forger :—

*Held*, by H. L. (Lords Bramwell and Field, diss.), that the loss fell on the principal and not on the bank :

*Held*, also, that if the Bills of Exchange Act, 1882, applied, the bills were payable to bearer, as the words "fictitious or non-existent person" in s. 7, sub-s. 3, included a real person who never had or was intended to have any right to the bill. Decisions of Charles J., (1888) 22 Q. B. D. 103; and C. A. (1889) 23 Q. B. D. 243. *BANK OF ENGLAND v. VAGLIANO BROTHERS*

H. L. (E.) [1891] A. C. 107

Referred to. *Clutton v. Attenborough & Son*, [1895] 2 Q. B. 306; H. L. (E) [1897] A. C. 90, 93.

— *Forged indorsement—Payment to bona fide holder—Right to recover money.*

See No. 15, below.

8. — *Form—Bill made payable to "— order"—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 3, 5, 7, 55.*

An instrument made payable to "— order," the blank never having been filled in, must be construed as payable to "my order"—that is, to the order of the drawer, and, if indorsed by him, it becomes a valid bill of exchange. *CHAMBERLAIN v. YOUNG*

C. A. [1893] 2 Q. B. 206

9. — *Guarantee—Renewal—Variation.*

A. guaranteed the payment of two bills of a certain amount each as a condition for renewal. The plts. did not renew the bills, but granted new bills of a different amount; but the total sum covered by the new bills was the same as that covered by the old :—

*Held*, that "renew" was not used in a technical sense, and that the guarantor intended to guarantee the debt represented by the old bills. Decision of North J. [1892] W. N. 87, reversed. *BARBER v. MACKRELL* — C. A. [1892] W. N. 133

**BILL OF EXCHANGE—continued.**

10. — *Indorsement—Negotiation—Contempt of Court—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 2, 31, sub-ss. 1, 4.*

A deft. was restrained from negotiating certain bills payable to his order. The bills at the date of the order were in the possession of his solicitor as a security for a debt. Subsequently deft., at the solicitor's request, indorsed one of the bills:—

*Held*, that the delivery of unindorsed bills to the solicitor was not negotiating them; that the indorsement by converting the solicitor from a transferee into a "holder" was negotiation; and that the solicitor, by exercising his right to call for indorsement under s. 31, sub-s. 4, of the Bills of Exchange Act, 1882, and the deft. by making the indorsement were guilty of a contempt of Court. "Bearer" means the person in possession of a bill payable to "bearer." "Holder" means the payee or indorsee of a bill or note. *DAY v. LONGHURST* - *Stirling J. [1893] W. N. 3*

11. — *Indorser—Bill not complete and regular—Indorsement by way of security—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 55, 56.*

It was agreed between the plts. and A., who owed them money, that they should draw a bill on him, and that the deft., who was A.'s father, should indorse it to guarantee payment. They accordingly drew a bill on A. to their own order and, without indorsing it, gave it to A., who returned it to them accepted by himself, and indorsed by the deft. They then indorsed it, and it was not paid at maturity.

In an action against the deft.:—

*Held*, that he was not liable as indorser under s. 55 of the Bills of Exchange Act, 1882, nor as having incurred the liabilities of indorser under s. 56, since at the time he put his name on the bill it was not complete and regular on the face of it, as it lacked the plt.'s indorsement; nor was he liable on a contract of suretyship, since the provisions of the Statute of Frauds were not satisfied.

The principles laid down in *Steele v. McKinlay*, (1880) 5 App. Cas. 754, are not affected by the provisions of the Bills of Exchange Act, 1882. *JENKINS & SONS v. COOMBER* - *Div. Ct.*

[1896] 2 Q. B. 168

12. — *Infant—Acceptance—Infants' Relief Act, 1874 (37 & 38 Vict. c. 62), s. 1—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 22.*

An infant cannot bind himself by the acceptance of a bill of exchange, even when the Bill is given for the price of necessities supplied to him during infancy. Such an acceptance is wholly void, even in the hands of an indorsee for value without notice of the infancy. *In re SOLTYSKOFF. Ex parte MARGRETT* C. A. [1891] 1 Q. B. 413

— *Liquidated demand—Indorsement of writ—Bill of exchange—Expenses of noting. See PRACTICE—Writ.* 290.

13. — *Misappropriation by agent (24 & 25 Vict. c. 96) s. 75.*

Acceptances with the drawer's name in blank were delivered by prosecutors to the prisoner to be discounted. He subsequently completed the bills, discounted them, and converted the proceeds to his own use:—

**BILL OF EXCHANGE—continued.**

*Held*, that the acceptances were "securities for the payment of money" within s. 75 of the Larceny Act, 1861. *REG. v. BOWERMAN*

C. C. R. [1891] 1 Q. B. 112

14. — *Oral agreement to renew—Inadmissibility of evidence—Bills of Exchange Act, 1862 (45 & 46 Vict. c. 61), s. 21, sub-s. 2 (b); s. 29, sub-s. 2.*

Evidence of a contemporaneous oral agreement to renew a bill of exchange is inadmissible on the ground that its effect would be to contradict the terms of the written agreement.

*Young v. Austen*, (1869) L. R. 4 C. P. 553, followed. *NEW LONDON CREDIT SYNDICATE, LD. v. NEALE* - C. A. [1898] 2 Q. B. 487

15. — *Payment—Forged indorsement—Payment to bonâ fide holder—Right to recover money.*

When a bill becomes due and is presented for payment, and is paid in good faith and the money is received in good faith, if such an interval of time has elapsed that the position of the holder may have been altered, the money so paid cannot be recovered from the holder, although indorsements on the bill subsequently prove to be forgeries. *LONDON AND RIVER PLATE v. BANK OF LIVERPOOL*

Mathew J. [1896] 1 Q. B. 7

16. — *Payment and discharge—Cancellation without authority.*

Where an agent is employed by the holder of a bill to receive payment from the acceptor, and receives payment from him clogged with a condition without assent to which the holder is not entitled to retain the money paid, the agent is not entitled to treat such conditional payment as if it were an absolute payment, and to cancel the bill, as paid before he has received the assent to the condition. *Decision of Ct. of Sess., Dominion Bank v. Bank of Scotland*, (1889) 16 R. 1081, affirmed. *BANK OF SCOTLAND v. DOMINION BANK (TORONTO)* - H. L. (Sc.) [1891] A. C. 592

17. — *Procurator—Acceptance or indorsement "per pro"—Agent's authority.*

Where an agent accepts or indorses "per pro," the taker of the bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority. Where an agent has such authority, his abuse of it does not affect a bonâ fide holder for value. *BRYANT, POWIS & BRYANT v. BANQUE DU PEUPLE. SAME v. QUEBEC BANK, LD.* - P. C. [1893] A. C. 170

18. — *Promissory note—Document containing unnecessary provisions—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 83, sub-s. 3.*

The plt. sued as indorsee of a document, described as a promissory note, which provided for payment of certain money by instalments, the whole to become due on default in payment of any one instalment and contained the following clause: "No time given to, or security taken from, or composition or arrangements entered into with, either party hereto, shall prejudice the rights of the holder to proceed against any other party":—

*Held*, that the document was not a promissory note, and could not be sued on as such. *KIRKWOOD v. SMITH* Div. Ct. [1896] 1 Q. B. 582

**BILL OF EXCHANGE—continued.**

19. — *Promissory note—Note left in hands of payee after payment—Negotiation by payee—Note obtained by payee from holder by fraud—Note returned to maker—Liability of maker on note—Holder for value—Overdue note—Holder “in his own right”—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 61.*

In s. 61 of the Bills of Exchange Act, 1882, which enacts that when the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged, the expression “in his own right” is not used in contradistinction to a right in a representative capacity, but indicates a right not subject to that of another person, and good against all the world.

The deft. gave three promissory notes to cover his indebtedness to the payee, and subsequently two more notes, in substitution for the first three and to cover further advances. All the notes were payable on demand and were given on the understanding that they should not be negotiated. The payee indorsed all five notes generally to the plts. After the payee had so negotiated the notes the deft. paid to him the amount due on the last two notes, but the deft. was not aware that the payee had parted with the notes, and did not ask for or receive any of them from him. At a later date the payee obtained the five notes from the plts. by fraud, and handed them to the deft. In an action by the plts. on the notes:—

*Held*, that the deft., when he received back the notes, did not become holder for value, since the previous satisfaction of the notes by him was not a consideration given by him when he received back the notes, and that as they were then overdue he acquired no better title than the payee had while they were in his hands, and that the plts., being entitled to disaffirm the transaction between themselves and the payee, by which the latter obtained possession of the notes, could recover in the action. *NASH v. DE FREVILLE* — C. A. [1900] 2 Q. B. 72

— Stamp duty—Reduction of duty on certain bills of exchange.

*See Finance Act, 1899 (62 & 63 Vict. c. 9), s. 10.*

— Stamp duty.

*See REVENUE—Stamps.* 142, 143.

20. — *Promissory note—“On demand”—“At Maturity”—Delivery—Renunciation—Parol—“Maker”—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 62 (sub-s. 1), 89.*

By s. 62, sub-s. 1, and s. 89 of the Bills of Exchange Act, 1882, when the holder of a promissory note at or after its maturity absolutely and unconditionally renounces his rights against the maker the bill is discharged, but the renunciation must be in writing unless the note is delivered to the “maker”:—

*Held* (affirming the decision of Kekewich J.), that a parol renunciation by the holder of all rights under a promissory note, accompanied by a delivery of the note to a devisee of the maker, the real estate in whose hands was liable to the payment of the debt, and who had for some time paid interest on it, did not operate as a

**BILL OF EXCHANGE—continued.**

discharge, for that although the word “maker” would probably be held to include the executors or administrators of the maker, it did not include his devisees. *EDWARDS v. WALTERS*

C. A. [1896] 2 Ch. 157

— Proof—Lumping debts and securities.

*See BANKRUPTCY—Proof.* 163.

— Rent, Bill of Exchange for—Landlord—Distress—Debentures—Receiver.

*See DISTRESS.* 4.

21. — *given for Rent—Suspension of right of distress.*

The fact of a landlord taking a bill of exchange from his tenant for rent due is some evidence of an agreement by the landlord to suspend his remedy by distress during the currency of the bill. *PALMER v. BRAMLEY*

C. A. [1895] 2 Q. B. 405

— Reputed ownership—Assignment of debt—Custom of trade.

*See BANKRUPTCY—Order and Disposition.* 127.

22. — *Transfer—Indorsement abroad—Conflict of laws—Equities—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 29 (sub-s. 2), 36 (sub-s. 2), 72 (sub-s. 2).*

A bill of exchange drawn and accepted by English firms and payable in England was indorsed in Norway by the payees to the order of M., who indorsed it in blank, and handed it in Norway to S. as agent for A., an Englishman resident in London, and for an English firm of A. & Co. in which A. & J. were partners. While the bill was current it was seized in execution under a Norwegian judgment against J., and when overdue was sold by auction to M., who sold the bill in Sweden to K. without any notice of infirmity of title. On claims by K. and A. & Co. to the proceeds of the bill:—

*Held*, (1) that as the question was, which of two persons was entitled to receive payment and the payer was not affected, the Bills of Exchange Act, 1882, s. 72, did not apply; (2) that the case was governed by the law of the country (Norway) where the bill was transferred, and, on that law, the equitable claim of A. & Co. could not be sustained. *ALCOCK v. SMITH*

C. A. [1892] 1 Ch. 238

23. — *Words prohibiting transfer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 8, 73, 76.*

In order to prevent a cheque, drawn payable to order, being negotiable, the intention must be clearly expressed. Crossing the cheque to the payee's account at a particular bank is not sufficient. Conditions necessary for rendering a cheque not negotiable considered. *NATIONAL BANK v. SILKE* — C. A. [1891] 1 Q. B. 435

**BILL OF LADING.**

*See Cases under SHIPPING—Charterparty (Bill of lading and).*

**BILL OF SALE.**

*The Bills of Sale Act, 1890, was amended by the Bills of Sale Act, 1891 (54 & 55 Vict. c. 35).*

**BILL OF SALE—continued.**

1. — *Address and description—Attesting witness—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9.*

A bill of sale contained two attestation clauses attesting the execution by two different grantors. The name of the witness was the same in both attestations, but the address and description of the witness was only appended to the first attestation :—

*Held*, (1) that an irresistible inference arose from what appeared on the face of the bill that the witness of both clauses was the same; (2) that the bill of sale was valid. *BIRD v. DAVEY*

C. A. [1891] 1 Q. B. 29

2. — *Address and description—Attesting witness and grantee.*

In a bill of sale the grantee was described as "the Discount Bank of London, of 6, Duncannon Street, Charing Cross, in the County of Middlesex (of which said bank L. S. of the same place is the sole proprietor)." The bill was attested by a clerk of the grantee, who, in the attestation clause, gave as his address his place of business at the bank, and in the affidavit of execution stated that he resided at another address :—

*Held*, that the grantee was sufficiently described, and that the address of the attesting witness was given and was sufficient.

Decisions of North J. and C. A. *In re Heseltine, Woodward v. Heseltine*, [1891] 1 Ch. 464, reversed *sub nom.* *SIMMONS v. WOODWARD*

H. L. (E.) [1892] A. C. 100

Referred to by C. A. *Linfoot v. Pockett*, [1895] 2 Ch. 835, 847.

3. — *Address and description—Attesting witness—Form in schedule—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9.*

The meaning of the term "description" in the form in the schedule to the Bills of Sale Act, 1882, which requires the description of the witness attesting a bill of sale to be given, is not confined to the description of his occupation.

Where the attestation clause of a bill of sale contained no description of an attesting witness who had no occupation :—

*Held*, that the bill of sale was void as not being in accordance with the form in the schedule to the Bills of Sale Act, 1882. *SIMS v. TROLLOPE & SONS*

C. A. [1896] W. N. 160 (4); [1897] 1 Q. B. 24

4. — *Address and description—Grantor—Address of—Validity—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 9, Sched.*

A bill of sale given by way of security for the payment of money by the grantor is void, under s. 9 of the Bills of Sale Act, 1882, as not made in accordance with the form in the schedule, if the grantee's address be not given in the bill of sale. *ALTREE v. ALTREE. STAFFORDSHIRE FINANCIAL CO., CLAIMANTS*

Div. Ct. [1898] 2 Q. B. 267

5. — *Address and description—Grantor—Gentleman of no occupation—Dormant partner—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10.*

Sect. 10 of the Bills of Sale Act, 1878, does

**BILL OF SALE—continued.**

not require the grantor to state every undertaking in which he was interested; but he must so describe himself that those who knew him would recognise him.

W., a country gentleman, was a sleeping partner in certain firms; in one case the partnership was under articles, in the other cases at will :—

*Held*, that his description in a bill of sale of which he was grantor as "gentleman, of no occupation," was substantially correct. *FEAST v. ROBINSON & FISHER. Romer J.* [1894] W. N. 14

6. — *Address and description—Grantor—Residence—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43).*

The address of the grantor of a bill of sale appearing in the body of the bill need not be his actual place of residence or his place of business.

The grantor of a bill of sale gave in the body of the bill of sale his address as that of a club of which he was a member, to which letters might be sent to him with the certainty that they would be received by him :—

*Held*, that the bill of sale was not void as deviating from the scheduled form. *DOLCINI v. DOLCINI* — — — Div. Ct. [1895] 1 Q. B. 898

7. — *Address and description—Grantor known only under assumed name—Bill registered under true name—Validity—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 2.*

An unmarried woman of the name of Ott, about the year 1879, went to live with a man as his mistress and took the name of Mrs. Spencer, by which name alone she was thenceforward known. In 1893 the man made a settlement upon her, and in that settlement she was described by her true name of Ott. In 1899 she executed an absolute deed of assignment of certain personal chattels to the trustees of the settlement, by whom it was registered, and in that deed of assignment and the registration of it she was described by the name of Ott alone, no reference being made to the name of Spencer. The chattels comprised in the deed having been seized in execution of a judgment, the trustees of the settlement claimed them. On the trial of an interpleader issue, it was contended by the execution creditor that the deed, not having been registered in the name of Spencer, was invalid :—

*Held*, that the Bills of Sale Act, 1878, did not require the name of the grantor to be stated at all, and that consequently the insertion in the register of a name other than that by which alone the grantor was known would not invalidate the registration, even though the effect of it was to deprive persons searching the register of all means of ascertaining therefrom whether the grantor was the true owner or not of the chattels which were in her possession. *STOKES v. SPENCER. HAYDON, CLAIMANT*

Div. Ct. [1900] W. N. 141; [1900] 2 Q. B. 483

18. — *Address and description—Married woman—Non-description of occupation—Validity—Registration—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 2.*

In a bill of sale given by a married woman living apart from her husband, and in the

**BILL OF SALE—continued.**

affidavit filed on registration, she was simply described as a married woman, no occupation being given. She was in fact employed as manager in a dressmaking business at a weekly salary:—

*Held*, that the registration of the bill was invalid, since her occupation ought to have been described. **KEMBLE v. ADDISON** - Div. Ct.

[1900] 1 Q. B. 430

9. — *Affidavit of execution—Sworn before solicitor of grantee—Validity of Bill—Practice—R. S. C., Order XXXVIII., r. 16—“Party.”*

By Order xxxviii., r. 16, “No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used”:—

*Held*, that the above rule applies to affidavits of execution of bills of sale, and that consequently if an affidavit of execution be sworn before the solicitor acting for the grantee in the preparation of the bill, the bill of sale will be void. **BAKER v. AMBROSE** **Wright J.** [1896] 2 Q. B. 372

10. — *Assignment for benefit of creditors—Exclusion of creditors not executing within time limited—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4.*

A debtor assigned all his personal estate to trustees for the benefit of his creditors by a deed registered under the Deeds of Arrangement Act, 1887, but not registered as a bill of sale. The deed contained a proviso that no creditor should benefit who did not within three months assent to the deed:—

*Held*, that notwithstanding the proviso, the deed was “an assignment for the benefit of the creditors of the person making the same,” within s. 4 of the Bills of Sale Act, 1878, and did not require to be registered as a bill of sale. **HADLEY & SON v. BEEDOM**

Div. Ct. [1895] 1 Q. B. 646

11. — *Attesting witness—Validity of attestation—Bills of Sale Act (1878) Amendment Act (45 & 46 Vict. c. 43), ss. 8, 9, 10.*

The sole attesting witness of the bill of sale was the agent and manager of one of the firms who were grantees. He had conducted the negotiations with respect to the giving of the bill of sale and the payment of the composition, and he had to see that such composition was paid to the creditors other than the grantees:—

*Held*, that the bill of sale was duly attested, “because the attesting witness was not a “party thereto” within the meaning of s. 10 of the Act of 1882. **PEACE v. BROOKS**

**Hawkins J.** [1895] 2 Q. B. 451

12. — *Attorney, power of, to execute bill of sale—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 10.*

A valid bill of sale may be executed by attorney and the grantee is not necessarily excluded from being such attorney. **FURNIVALL v. HUDSON** - North, J. [1893] 1 Ch. 335

Considered by North J. **Dennison v. Teffs**, [1896] 1 Ch. 611, 616.

13. — *Attornment—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), s. 6; 1882 (45 & 46 Vict. c. 43), ss. 3, 8, 9, 15.*

W. mortgaged premises occupied by him.

**BILL OF SALE—continued.**

The mortgage deed contained an attornment clause, and a power of distress on non-payment of rent by way of interest on the loan. Subsequently, by letter written to the mortgagee, W. acknowledged that he held the mortgaged premises as tenant at a weekly rent slightly in excess of the interest under the mortgage, admitted arrears of rent to be due, and undertook to deliver up possession at any time on four weeks' notice:—

*Held*, that the attornment clause and the letter modifying it were bills of sale and void under s. 8 of the Act of 1882 for want of registration. **GREEN v. MARSH** **C. A.** [1892] 2 Q. B. 330

14. — *Authority to sell—Written authority—Licence to take possession—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31); 1882 (45 & 46 Vict. c. 43).*

The owner of goods seized under a writ of *fi. fa.* verbally agreed with an auctioneer that in consideration of his paying out the sheriff the auctioneer should hold possession of the goods, sell them by auction, and pay the balance (if any) to the owner. This agreement was reduced into writing and the sheriff was paid out, the man in possession remaining in possession for the auctioneer:—

*Held*, that the written agreement was not an assurance or licence to take possession, or in any other respect a bill of sale within the Acts of 1878 or 1882; as it did not constitute the auctioneer's title, and did not operate, and was not intended to operate, the goods were actually transferred from sheriff to auctioneer. **CHARLES-WORTH v. MILLS** **H. L. (E.)** [1892] A. C. 231

revers. **C. A.** (1890) 25 Q. B. D. 421

Followed by **C. A.** **Ramsay v. Margrett**, [1894] 2 Q. B. 18, 23.

15. — *Condition—Contemporary instrument containing condition not in bill of sale—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 3.*

A husband and wife executed a bill of sale to T. on chattels to secure repayment of a loan of 300l. with simple interest. The wife on the same day mortgaged her interest under certain wills to T. to secure repayment of 300l. with compound interest. Both securities were given for the same debt and as part of the same transaction. The bill was registered, but the mortgage was not:—

*Held*, that the agreement in the mortgage to pay compound interest was a condition which ought to have been written on the same paper as the bill, and that the bill was therefore void under s. 10, sub-s. 3, of the Bills of Sale Act, 1878.

In considering whether a defeasance or condition is within that sub-s., it is immaterial whether it is in favour of grantor or grantee. **EDWARDS v. MARCUS** - **C. A.** [1894] 1 Q. B. 587

16. — *Condition not expressed in Bill—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 3; 1882 (45 & 46 Vict. c. 43).*

The plt. signed a bill of sale and paid the first instalment, and the deft. sent him a receipt in a book, on the cover of which were printed, “Rules and regulations which are strictly

**BILL OF SALE—continued.**

adhered to." These rules and regulations contained various provisions very burdensome to the plt., and which had not previously been mentioned to him. He did not assent so as to bind himself to them; but the deft. afterwards wrote to him treating the rules and regulations as part of the bargain:—

*Held*, that the bargain being complete at the time when the bill of sale was executed, and the rules and regulations being no part of it, the false statement of the deft. that they were part of the bargain did not enable the Court to hold as against him that they were part of it, and so to hold the bill of sale void as being made subject to a condition or defeasance not expressed in it. **LINFORTH v. POCKETT - C. A. [1895] 2 Ch. 835**

**17. — Consideration — Statement of — Farm stock, specific description of — Schedule — Accordance with form — Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 4, 8, 9.**

A bill of sale given in consideration of a present advance is bad if it fails to contain an acknowledgment of the receipt of the money.

Where the chattels comprised in a bill of sale are of a kind which requires to be replaced from time to time by the substitution of other similar chattels, as in the case of the live stock on a farm, a more specific description of them in the schedule is necessary than in the case of chattels which do not require to be replaced with the same degree of frequency, such as the furniture of a house.

A bill of sale expressed the consideration to be a sum of money "now due and owing." In fact, part of the said sum was advanced contemporaneously with the execution of the deed. Part of the chattels comprised in the bill were described in the schedule as "Stock: 2 horses, 4 cows." There was no evidence that at the date of the bill there were any other horses or cows on the premises of the grantor:—

*Held*, that there was not such a specific description of the stock as to satisfy s. 4 of the Bills of Sale Act, 1882; and that the bill of sale was void on the grounds that the consideration was not truly stated, and that, as the bill omitted to acknowledge the receipt of the money then advanced, it was not in accordance with the statutory form. **DAVIES v. JENKINS**

**Div. Ct. [1899] W. N. 252; [1900] 1 Q. B. 133**

**18. — Consideration — Statement of — Money "now paid" — Promissory note not yet due — Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 8.**

A bill of sale stated the consideration of it to be a sum of money "now paid" by the grantee to the grantor. Of the money paid by the grantee to the grantor a part was, in pursuance of a previous agreement between them, applied by the grantor to the retirement of a promissory note then current upon which the grantor and grantee were jointly and severally liable:—

*Held*, that as the liability, to the satisfaction of which the money was agreed to be applied, was a liability to a third person and not to the grantee, the fact that the liability was not a debt already due did not render it obligatory to set out in the bill of sale the agreement as to the application of the money, and that the considera-

**BILL OF SALE—continued.**

tion of the bill was not untruly stated. *In re WILTSHIRE. Ex parte EYNON* **Div. Ct. [1899] W. N. 236; [1900] 1 Q. B. 96**

**19. — Consideration not truly stated — Sum payable in futuro — Sum under 30l. — Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9, 12.**

A bill of sale purported to be given in consideration of 13l. 12s. then owing by the grantors upon a promissory note and of 16l. 8s. then paid to the grantors, making together the sum of 30l., the receipt of which the grantors thereby acknowledged. The promissory note referred to was for the sum of 14l. 3s. 4d. payable by weekly instalments of 11s. 4d., of which one had been paid and the remainder had not become payable when the bill of sale was given. The consideration paid for the promissory note was 10l. only. The sum of 16l. 8s. was paid to the grantors upon the execution of the bill of sale:—

*Held*, that the bill of sale was void as not truly stating the consideration for which it was given, and as being given in consideration of a sum under 30l. **DARLOW v. BLAND**

**C. A. [1897] 1 Q. B. 125**

**20. — Consideration — Statement of — Term for defeasance of security — Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9.**

An untrue statement of the consideration is not a deviation from the form in the sched. to the Bills of Sale Act, 1882; and therefore does not render the bill wholly void under s. 9, but only in respect of the personal chattels comprised therein under s. 8. A collateral agreement that the bill of sale shall not be made available till certain other securities were exhausted is not a term for the "defeasance" of the security; and the non-insertion of such agreement does not make the bill void under s. 9, as not being in accordance with the form in the schedule. **HESELTINE v. SIMMONS C. A. [1892] 2 Q. B. 547**

**21. — Consideration — Statement of — Undisclosed Trust — Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), ss. 8, 10, sub-s. 3; 1882 (45 & 46 Vict. c. 43), s. 5.**

A debtor who owed a sum of money partly secured by an existing bill of sale executed a second bill of sale of the same chattels to secure a fresh advance, on the understanding that out of the sum advanced he should pay off the existing debt. The bill of sale was expressed to be made in consideration of the fresh advance, without alluding to the intended application of the money. The money was actually paid to the grantor and applied by him as agreed:—

*Held*, (1) that the consideration was truly stated; (2) that there was no undisclosed trust within the Bills of Sale Act, 1878, s. 10, sub-s. 3. **THOMAS v. SEARLES C. A. [1891] 2 Q. B. 408**

**22. — Covenant — Construction of covenants — Covenant for payment of instalments reducing amount as well as for payment of interest annually on amount — Covenant to produce receipt for rent, &c. — Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 7.**

A bill of sale contained a covenant to pay the amount by equal yearly instalments, and also a covenant to pay interest "on the said sum" at a given rate payable quarterly: it also contained a

**BILL OF SALE—continued.**

covenant to produce receipts for rent, &c., and a proviso excluding seizure for cases not specified in s. 7 of the Bills of Sale Act, 1882:—

*Held*, that (1) the covenant as to payment of interest referred to the amount of principal due from time to time. (2) The covenant to produce receipts must be read subject to the qualification in s. 7 (4), that the goods could only be seized if the failure to produce the receipts should be without reasonable excuse and that the bill was valid. **WEARDALE COAL AND IRON CO. v. HODSON**  
C. A. [1894] 1 Q. B. 598

**23. — Covenant—Receipt for rent, rates and taxes—Covenant to produce “when called upon” last—Power to seize on breach of any covenant—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 7, 9.**

By a bill of sale the grantor covenanted (inter alia) to produce “when called upon” the last receipt for the rent, rates and taxes of the premises where the chattels were; and the deed provided that the chattels thereby assigned should not be liable to seizure or to be taken possession of by the grantee for any cause other than those specified in s. 7 of the Bills of Sale Act, 1882 (the section being set out); and then followed a further proviso that if the chattels thereby assigned should be seized or taken possession of by the grantee “in consequence of the breach of any of the covenants therein contained,” he should be at liberty to sell the same. The trustee in bankruptcy of the grantor contended that the bill of sale was void because the second proviso enabled the grantor to seize on non-production of receipts for rent, &c., on an oral demand, whereas the Act requires the demand to be made in writing:—

*Held*, that the deed considered as a whole substantially complied with the provisions of the Act, and was valid. *In re BULLOCK. Ex parte WARD*  
Wright J. [1899] W. N. 114; [1899] 2 Q. B. 517

**24. — Covenant against obtaining credit elsewhere—Maintenance of security—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9, 10.**

A bill of sale was given to secure the repayment of money advanced by several creditors of the grantor, in order to enable him to pay a composition to them and to others of his creditors. It contained stipulations that the grantor, a trader, should not during the existence of the security obtain credit to the extent of 10*l*. without the consent of one of the firms parties thereto, but this clause was not to apply to purchases of goods from any of those firms; that the grantor would give them the greater portion of his business, and that he would keep proper books of account of his business, and permit any of the firms or their agent to inspect the same:—

*Held*, that the insertion of those stipulations rendered the bill of sale void, under s. 9 of the Act of 1882, as not in accordance with the form in the schedule. **PEACE v. BROOKES**  
Hawkins J. [1895] 2 Q. B. 451

**25. — Covenant to produce last receipt for rent—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 7, 9.**

A bill of sale contained a covenant by the

**BILL OF SALE—continued.**

grantor to produce his last receipts for rent, rates and taxes, and a proviso that the chattels assigned should not be liable to seizure for any cause other than specified in s. 7 of the Act of 1882:—

*Held*, that the bill was not void as deviating from the scheduled form. **CARTWRIGHT v. REGAN**  
Div. Ct. [1895] 1 Q. B. 900

**26. — Covenant to replace worn-out furniture—Maintenance of security—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 4, 6, 9.**

A bill of sale contained a covenant that the grantor would not remove furniture, the subject of the bill of sale, except to be repaired, without consent of the grantee, and would replace any articles damaged or worn out by others of equal value:—

*Held*, that the covenant might be inserted, as being “for the maintenance of the security,” and that the bill of sale did not deviate from the form in the schedule to the Bills of Sale Act, 1882, and was therefore good. **SEED v. BRADLEY**  
C. A. [1894] 1 Q. B. 319

**27. — Date of execution—Omission from copy—Insertion in original and in affidavit—Validity—Filing of copy and affidavit—Bills of Sale Act, 1878 (41 & 42 Vict. 31), s. 10, sub-s. 2.**

A bill of sale is not void because the copy of the bill of sale required to be filed by s. 10, sub-s. 2, of the Bills of Sale Act, 1878, leaves the date of the execution of the bill of sale in blank, if the date is truly stated in the original bill of sale, and in the affidavit filed under the same section. **THOMAS v. ROBERTS. SMITH, CLAIMANT**  
Div. Ct. [1898] 1 Q. B. 657

— Debentures—Covering deed.

*See* COMPANY—Debentures. 34.

— Debentures of incorporated Company—Priority over execution creditors.

*See* COMPANY—Debentures. 29.

**28. — Debenture of industrial and Provident Society—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 17.**

Inasmuch as there is not in the case of societies registered under the Industrial and Provident Societies Acts a statutory provision requiring their securities to be registered, debentures given by societies registered under these Acts are not (like the debentures of companies under the Companies Act, 1862), exempted by s. 17 of the Bills of Sale Act, 1882, from the statutory requirements in respect of bills of sale. **GREAT NORTHERN RY. CO. v. COAL CO-OPERATIVE SOCIETY**  
V. Williams J. [1895] W. N. 142 (6); [1896] 1 Ch. 187

— Delay in possession and registration—Validity.

*See* NEW SOUTH WALES. 2.

**29. — Delivery Order—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), ss. 3, 4; 1882 (45 & 46 Vict. c. 43), s. 8.**

The plt. borrowed two sums from the deft. on the security of furniture warehoused with T., giving two promissory notes and two memoranda undertaking to pay interest on the two sums, and handing to T. a delivery order in favour of the



**BILL OF SALE—continued.**

deft. The plt. having made default in payment the deft. removed the furniture from T.'s warehouse and advertised it for sale :—

*Held*, that the delivery order did not require registration as a bill of sale, the whole transaction being one of pledge, and the delivery order being equivalent to possession by the pledges. *GRIGG v. NATIONAL GUARDIAN ASSURANCE CO.*

**Kekewich J. [1891] 3 Ch. 206**

— **Distress—Chattels of lessee on adjoining mines.**

*See MINES—Distress. 8.*

**30. — Hiring agreement—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 41), s. 4; 1882 (45 & 46 Vict. c. 43), ss. 3, 9.**

(A) To decide whether a document is or is not a bill of sale the Court must look into the real transaction between the parties. Plt. being in want of money to pay his rent, requested his landlord to distrain on his goods and sell them to the deft. co. Plt. received the money, and then entered into a hire-purchase agreement with the co. for the use of the furniture and repurchase by monthly instalments. The deft. co. subsequently seized the goods for default in compliance with the terms of the hiring agreement :—

*Held*, that the arrangement was not intended to pass any beneficial interest to the defts. till the execution of the hiring agreement, and that till such execution the defts. had no title to the goods, and that the hiring agreement was a bill of sale, and not being registered was void.

Decision of *Cave J.* [1891] 1 Q. B. 1, reversed. **BECKETT v. TOWER ASSETS CO.**

**C. A. [1891] 1 Q. B. 638**

(B) To determine whether a hire-purchase agreement be a real sale with conditions of repurchase, so as not to require registration as a bill of sale, or a mortgage, in a form intended to evade the Bills of Sale Acts, the Court must consider the true nature of the document in dispute. **UNITED FORTY POUND LOAN CLUB v. BEXTON** — **Fry L.J. [1891] 1 Q. B. 28, n.**

(C) In considering whether a document is or is not a bill of sale the Court must disregard the form of the document and look into the true nature of the transaction :—

*Held*, in the cases, that the documents did not represent the real transaction between the parties, their intention being merely to create a security for money, and therefore, as they were not registered, the borrower was entitled to shew the nature of the transaction, and could maintain an action against the lender who had seized the chattels for breach of the terms of the hiring agreement.

(a) **MADELL v. THOMAS & CO.**

**C. A. [1891] 1 Q. B. 230**

(b) **BECKETT v. TOWER ASSETS CO.**

**C. A. [1891] 1 Q. B. 638; revers. Cave J. [1891] 1 Q. B. 1**

(D) A gas-engine was let on hire at a rent payable by instalments; on payment in full the agreement to be at an end and the engine to become the property of the hirer :—

*Held*, that the property never passed to the

**BILL OF SALE—continued.**

hirer, and that the transaction did not amount to a bill of sale. **McENTIRE v. CROSSLEY BROTHERS**

**H. L. (1.) [1895] A. C. 457**

*See also* **Hobson v. Gorringe, C. A. [1897] 1 Ch. 182.**

**31. — Instalments — Interest — Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9.**

A bill of sale was given for a loan of 50*l.* for two years at 5 per cent. per mensem. It contained a covenant to pay 2*l.* 10*s.* on the 26th of each month and balance and interest at end of two years :—

*Held*, that the bill of sale was good, and in accordance with the statutory form, as the payments of 2*l.* 10*s.* per mensem were intended to be in respect of interest only. **EDWARDS v. MARSTON**

**C. A. [1891] 1 Q. B. 225**

Referred to by **C. A. Linfoot v. Pockett, [1895] 2 Ch. 835, 847.**

**32. — Instalments—Payment by—Default in payment of one instalment—Seizure—Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 7.**

The grantee of a bill of sale lent the grantor moneys secured with interest by the bill, and payable by monthly instalments :—

*Held*, that the grantee was entitled to seize the whole of the goods on default of payment of one instalment, although the bill contained no express provision to that effect. *In re* **WOOD. Ex parte WOLFE** — **Div. Ct. [1894] 1 Q. B. 605**

**33. — Instalments—Principal and interest—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), Sched.**

A bill of sale is not void because it provides for the payment of principal and interest by instalments or does not limit the number of instalments. *In re* **BARGEN. Ex parte HASLUCK**

**V. Williams J. [1894] 1 Q. B. 444**

Referred to by **C. A. Linfoot v. Pockett, [1895] 2 Ch. 835, 847.**

**34. — Instalments—Principal and interest—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 3; 1882 (45 & 46 Vict. c. 43).**

A bill of sale is not void under the Bills of Sale Act, 1882, by reason of interest as well as principal being included in the equal instalments by which repayment is to be made, nor by reason of the period over which the instalments will extend not being expressed, nor by reason of the fact that the principal and interest cannot be exactly paid by means of instalments of the amount specified. **LINFOT V. POCKETT**

**C. A. [1895] 2 Ch. 835**

**35. — Interest — Default in payment of — Seizure of goods—Relief—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 7.**

Under a bill of sale the principal sum thereby secured was payable at the end of two years, and in the meantime a certain sum was payable monthly as interest. One of the monthly payments of interest being in arrear, the grantee of the bill of sale took possession of the goods thereby assigned for the purpose of holding the same until payment of the interest due, but not for the purpose of realizing the security by sale of the goods :—

*Held*, that, under the above-mentioned cir-

**BILL OF SALE—continued.**

cumstances, an order could not be made under s. 7 of the Bills of Sale Act, 1882, that upon payment of the principal, interest up to date, and costs, the grantee of the bill of sale should give up his security.

*Ex parte Wickens*, [1898] 1 Q. B. 543, distinguished. *Ex parte ELLIS* - - - Div. Ct. [1898] 2 Q. B. 79

— Interest—Installments.

*See No. 31, above.*

36. — Interest — Sale — When interest ceases to run.

Principal and interest secured by bill of sale were payable by equal monthly instalments. The borrower authorized the lender to sell, and out of the proceeds deduct the amount for which she was "liable".—

*Held*, that on sale interest ceased to run, and the lender was entitled to retain unpaid principal and interest to date only. *WEST v. DIPROSE*

*Cozens-Hardy J.* [1900] W. N. 16;  
[1900] 1 Ch. 337

37. — Marriage settlement, agreement for — Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4.

A memorandum of agreement for a marriage settlement, although informal and not under seal, is a "marriage settlement" within the exception of s. 4 of the Bills of Sale Act, 1878, and is not a bill of sale. Decision of Div. Ct., [1891] 1 Q. B. 634, affirmed. *WENMAN v. LYON & Co.*

C. A. [1891] 2 Q. B. 192

38. — Mortgage of land and machinery—Statute of Frauds—Agreement to make assignment of machinery—Statute of Frauds (29 Car. 2, c. 3), s. 4—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31); 1882 (45 & 46 Vict. c. 43).

The A. co. borrowed money from J. & J., bankers, agreeing (but not in writing) to make an assignment of certain machinery. The A. co. demised the premises, where the machinery was, to the B. co., who were to make half-yearly payments to J. & J. to be applied in discharge of the loan. J. & J. borrowed money from P. & Co. (their London agents), and by letter agreed to charge the machinery in possession of the B. co. The B. co. went into liquidation. One of the partners in J. & J. died and an action for accounts was brought; the receiver in which had received interest on the amount due from the A. co.:—

*Held*, that P. & Co. were not entitled to any part of the interest, because (i.) some of the chattels were lands within the meaning of the Statute of Frauds, (ii.) as to the whole of the chattels a duly registered bill of sale was necessary. *JARVIS v. JARVIS*

- North J. [1893] W. N. 138

39. — Mortgage of land and machinery, &c.

The principle of *In re Yates* (38 Ch. D. 112)—under which a conveyance of land and buildings used for a business passes the fixed trade machinery on the premises, though not expressly mentioned, and therefore is not a bill of sale of the machinery—applies equally where the conveyance expressly mentions the fixed trade machinery, either by reference to a schedule or

**BILL OF SALE—continued.**

otherwise.. *In re BROOKE. BROOKE v. BROOKE* (No. 2) - - - *Kekewich J.* [1894] 2 Ch. 600

40. — Mortgage of land together with fixed machinery — Non-registration — Invalidity—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), ss. 4, 5; 1882 (45 & 46 Vict. c. 43).

A millwright conveyed to a bank, by way of mortgage, to secure advances by them, certain lands, "together with all and singular the fixed and moveable plant, machinery and fixtures, &c., now or hereafter fixed to or placed upon or used in or about the said hereditaments." The deed, which was not registered as a bill of sale, contained a covenant by the mortgagor to keep "the said plant, machinery and fixtures," &c., in good repair and insured against fire. There was upon the mortgaged premises fixed machinery which was trade machinery within the Bills of Sale Act, 1878:—

*Held*, that the deed was void as an unregistered bill of sale with respect to the machinery, and that the mortgagees could not sell it either together with or without the lands mortgaged. *SMALL v. NATIONAL PROVINCIAL BANK OF ENGLAND* - *Stirling J.* [1894] 1 Ch. 686

Considered by *Kekewich J.* *Brooke v. Brooke*, [1894] 2 Ch. 600.

Referred to by C. A. *West London Syndicate v. Inland Revenue*, [1898] 2 Q. B. 507, 532.

Referred to by *Romer J.* *Johns v. Ware*, [1899], 1 Ch. 359, 364.

41. — Payment—Time of—Validity—Deviation from statutory form—"Stipulated time of payment"—Covenant to pay "on or before" a named day—Statutory form—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9.

By a bill of sale, given as security for money, the grantor agreed to pay the principal "on or before" Nov. 1:—

*Held*, that this amounted to an agreement to pay on a fixed day, with a provision for the defeasance of the security (at the option of the grantor) on payment at an earlier date, and that the bill of sale was, therefore, "in accordance with" the form given in the schedule to the Bills of Sale Act, 1882, and was valid.

Decision of *North J.*, [1899] W. N. 228, reversed.

The provision in the statutory form that there must be a "stipulated" time of payment means that the time at which payment is to become obligatory upon the grantor must be fixed. *DR BRAAM v. FORD* - C. A. [1899] W. N. 239; [1900] 1 Ch. 142

42. — Principal and agent—Agent's security for advances to his principal—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4—Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 1.

By an agreement in writing between a foreign manufacturer and his agent in E., it was provided that advances made by the agent should "be covered and secured by the stock of goods which shall be in his hands," which the foreign principal bound himself not to let fall below a certain value. The principal terminated the agency and claimed to remove the goods without satisfying the agent's claims for the expenses of the agency,

**BILL OF SALE—continued.**

and contended that the agreement was a bill of sale and void for want of registration:—

*Held*, (1) that the agreement gave no power to seize goods, but only to retain possession of goods come to his hands; (2) that when the goods came to the agent's hands he had possession coupled with an agreement which gave him a legal, not an equitable right, and the agreement was not void as a bill of sale. *MORRIS v. DELOBBEL-FILIPPO* *Stirling J.* [1892] 2 Ch. 352

43. — *Rates, protection against—Priority—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 14—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 256, 261.*

S. 14 of the Bills of Sale Act, 1882, which postpones the debt secured by the bill of sale to claims for parochial rates, does not apply where the local authority proceeds to recover the rate in default in the county court under s. 261 of the Public Health Act, 1875, and not by distress warrant under s. 256. *WIMBLETON LOCAL BOARD v. UNDERWOOD* — *Div. Ct.* [1892] 1 Q. B. 836

44. — *Registration—Fixtures—Trade machinery—Mortgage—Freeholds with fixed machinery and fixtures—Non-registration—Power of sale—Invalidity—Bills of Sale Act, 1854 (17 & 18 Vict. c. 36).*

The test whether a mortgage of a building and fixtures requires registration under the Bills of Sale Act as respects the fixtures, laid down by *Ex parte Barclay*, (1874) L. R. 9 Ch. 576, namely, that it depends on whether the deed gives power to the mortgagee to sell or take possession of the fixtures separately from the building, is not limited to leaseholds, but is equally applicable to a mortgage of freeholds, notwithstanding that in the latter case fixtures might be deemed to pass as part of the fee simple. *JOHNS v. WARE* *Romer J.* [1898] W. N. 172 (2); [1899] 1 Ch. 359

45. — *Registration—Renewal of registration—Extension of time—Bankruptcy of grantor—Bills of Sale Act, 1878 (41 & 42 Vict. c. 51), s. 14.*

By inadvertence a bill of sale was not re-registered after the first five years had expired, and so became void. Before the mistake was discovered the grantor became bankrupt:—

*Held*, that the time for re-registration could not then be extended under s. 14 of the Bills of Sale Act, 1878, as the vested right of the trustee in bankruptcy would thereby be defeated. *In re PARSONS. Ex parte FURBER*

C. A. [1893] 2 Q. B. 122

46. — *Rent—Last receipt for—Reasonable excuse for non-production—Rent due but not demanded by landlord—Demand to send receipt to grantee by post—Goods seized to realize security—Relief against seizure—Jurisdiction to “make such order as may seem just”—Order as to giving up bill of sale—Costs of levy—Costs of application—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 7.*

The grantee of a bill of sale gave the grantor notice in writing to send by post the last quarter's receipt for rent. The rent had not been paid, the landlord not having demanded it. No receipt having been sent, the grantee seized, and claimed the sum advanced, the whole of the interest secured by the bill of sale, and the costs of the

**BILL OF SALE—continued.**

levy. The grantor applied for relief under s. 7 of the Bills of Sale Act, 1882, and the judge at chambers ordered that the grantee should withdraw and give up the bill of sale upon the grantor paying the principal sum with interest to date, but without the costs of the levy, and ordered the grantee to pay the costs of the application. On appeal:—

*Held*, that the grantor had not “without reasonable excuse” failed to produce his last receipt for rent, within the meaning of s. 7, sub-s. 4, of the Bills of Sale Act, 1882.

*Ex parte Cotton*, (1883) 11 Q. B. D. 301, approved.

*Held*, also, by Chitty and Collins L.J.J., that a demand that the last receipt shall be sent to the grantee by post is not a demand to produce the receipt to him within the meaning of s. 7, sub-s. 4, of the Act:

*Held*, also, that, as the grantee had seized for the purpose of realizing his security, the judge had jurisdiction to order him to withdraw and give up the bill of sale on payment of the principal with interest to date, and, as the seizure was wrongful, to refuse to give him the costs of the levy, and to order him to pay the costs of the application. *Ex parte WICKENS*

C. A. [1898] 1 Q. B. 543

Distinguished. *Ex parte Ellis*, [1898] 2 Q. B. 79. See No. 1, above.

— Reputed ownership.

See Cases under BANKRUPTCY—Order and Disposition.

47. — *Sale of goods—Receipt—Possession—Bills of Sale Act, 1878 (41 & 42 Vict. c. 51), ss. 4, 8.*

A wife who had separate estate purchased furniture, &c., from her husband, which were in the house in which they lived; she stipulated for a receipt, but paid the purchase-money before obtaining it. The receipt was drawn up by the wife's solicitor and contained these words, “which I hereby acknowledge are now absolutely her property”:—

*Held*, by C. A., that the receipt notwithstanding those words formed no part of the bargain, but that the property passed by a prior and independent transaction, and that therefore the receipt did not require registration as a bill of sale, and that the wife was entitled as against an execution creditor of the husband:

*Held*, also, *per* *Esher M.R.*, and *Davey L.J.*, that the situation of the goods being consistent with either the husband's or the wife's possession the law would attribute the possession to the one having the legal title. *RAMSAY v. MARGRETT*

C. A. [1894] 2 Q. B. 18

48. — *Sale of goods by sheriff—Execution—R. S. C., Order LVII., r. 12—Bankruptcy Act, 1900 (53 & 54 Vict. c. 71), s. 11.*

A debtor gave a bill of sale of goods as security for a loan. The sheriff having taken the goods in execution on behalf of a judgment creditor of the grantor, the grantee gave the sheriff notice of his claim. The sheriff took out an interpleader summons, and on the same day a receiving order in bankruptcy was made against the grantor, and he was afterwards adjudged bankrupt. The

**BILL OF SALE—continued.**

official receiver did not claim the goods under the Bankruptcy Act, 1890, s. 11, but appeared on the hearing of the interpleader summons and concurred with the judgment creditor in asking for a sale under Order LVII., r. 12, and an order for the sale was accordingly made. It appeared on the evidence that the sale of the goods by the sheriff was not likely to produce enough to pay what was due on the bill of sale:—

*Held*, that, assuming Order LVII., r. 12, not to be defeated by s. 11 of the Bankruptcy Act, 1890, a sale ought not to be ordered, and that as it was very doubtful whether the goods would realize enough to pay the bill of sale holder, and neither the official receiver nor the judgment creditor were willing to redeem or to give a guarantee against loss if the proceeds of sale proved insufficient, the proper course was to order the sheriff to withdraw.

*Semble*, that if the official receiver had asked for the delivery of the goods to him under s. 11 of the Bankruptcy Act, 1890, the operation of Order LVII., r. 12, would have been excluded, but that as he had not so done, but asked for a sale, that rule could be applied. *STERN v. TEGNER*

C. A. [1897] W. N. 153 (13); [1898] 1 Q. B. 37

49. — *Satisfaction—Entry of—Affidavit of verification—R. S. C., Order LXI., r. 26—Central Office Practice Rules, r. 25.*

The affidavit verifying the signature and consent of the person entitled to the benefit of a bill of sale to the entry of satisfaction of the bill of sale need not be made by a solicitor. *In re WHITE to RUBY* Div. Ct. [1894] 2 Q. B. 923 — Schedule.

See BILL OF SALE, *passim*.

50. — *Schedule or inventory therein referred to—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 2; 1882 (45 & 46 Vict. c. 43), s. 4.*

A bill of sale specified the furniture, &c., in each room of a house: under "Study" was the item "1800 volumes of books as per catalogue." The catalogue was not registered with the bill:—

*Held*, that the bill of sale was not void, since the catalogue was not a sched. or inventory referred to in the bill within s. 10, sub-s. 2, of the Bills of Sale Act, 1882, and the books were specifically described in the sched., and the words "as per catalogue" were not restrictive of the previous part of the description of the books. *DAVIDSON v. CARLTON BANK*

C. A. [1893] 1 Q. B. 82

51. — *Severability of subject-matter—Validity—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), ss. 4, 8; 1882 (45 & 46 Vict. c. 43), s. 9.*

By one and the same deed the owner of a piano assigned, by way of security for money, the piano, and also the benefit of a hire purchase agreement into which he had entered respecting it:—

*Held*, that the assignment of the agreement was severable from that of the piano, and that, consequently, the deed was not void in toto under the Bills of Sale Acts for non-registration, or because it was not in the statutory form. *In re ISAACSON. Ex parte MASON*

C. A. affirm. Div. Ct. [1895] 1 Q. B. 333

**BILL OF SALE—continued.**

52. — *Substituted bill—Second bill in substitution for first—Bankruptcy of grantor—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), Sched.*

A second bill of sale, in substitution for the first, had been accepted in ignorance of the grantor's bankruptcy:—

*Held*, that the second bill was entirely nugatory and did not operate as a surrender or cancellation of the first one. *In re BARGEN. Ex parte HASLUCK* — — — V. Williams J. [1894] 1 Q. B. 444

Referred to by C. A. *Linfoot v. Pockett*, [1895] 2 Ch. 835, 847.

53. — *Substitution—Specific description—Plant—Horse—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 6, sub-s. 2.*

Horses used as cab-horses are not plant within the meaning of s. 6, sub-s. 2, of the Bills of Sale Act (1878) Amendment Act, 1882.

*Yarmouth v. France*, (1887) 19 Q. B. D. 647, distinguished. *LONDON AND EASTERN COUNTIES LOAN AND DISCOUNT CO. v. CREASY*

C. A. [1897] 1 Q. B. 768

54. — *Trespass—Property in goods—Tender—Trespass—Redemption—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), 7 Sched.*

The grantee of a bill of sale seized the goods on default in payment of an instalment due under the bill, and after five days began to remove them. The grantor then tendered the full amount due, which the grantee refused to accept as being too late:—

*Held*, (1) that no action for trespass could lie against the grantee, for he had a right to the possession of the goods; but (2) that the grantor might set off any damage to the goods caused by the negligence of the grantee in the course of removal. *JOHNSON v. DIPROSE*

C. A. [1893] 1 Q. B. 512

55. — *True owner—Grantor—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), ss. 8, 10, sub-s. 3; 1882 (45 & 46 Vict. c. 43), s. 5.*

The grantor of chattels by a bill of sale by way of security is still the true owner of the chattels within s. 5 of the Bills of Sale Act, 1882, and may execute a subsequent valid bill of sale of the same chattels. *THOMAS v. CHARLES*

C. A. [1891] 2 Q. B. 408

56. — *True owner—Legal owner—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 5.*

The true owner of personal chattels described in a bill of sale at the time of its execution within s. 5 of the Bills of Sale Act, 1882, is the person who is the legal owner thereof at the time of the execution of the bill of sale irrespective of whether he is also the equitable owner or only trustee for another. *In re SARI. Ex parte WILLIAMS*

V. Williams J. [1892] 2 Q. B. 591

**BILLETTING.**

See ARMY AND NAVY.

**BILLS OF COSTS.**

See COSTS.

**BIRDS**—Bird collection—Moveable chattels—Annexation to freehold—Mansion-house. See FIXTURES. 1.

— Wild Birds Protection Acts.

See WILD BIRDS.

**BISHOP.**

See ECCLESIASTICAL LAW.

**"BLACK LIST"**—Trade libel—Intimidating circular.

See INJUNCTION. 36.

**BLACKSMITH**—Qualified person.

See VETERINARY SURGEON.

**BLANK IN WILL**—"Charitable, philanthropic or."

See CHARITY. 17, 18.

**BLANK TRANSFER**—Of Shares.

See COMPANY—Shares. 292, 293.

**BLENDED FUND**—Interest.

See EXECUTOR—Administration. 5.

**BOAR**—Parish bull and—Charge on great tithes—Transfer of liability to custom.

See CUSTOM. 1.

**BOARD OF AGRICULTURE**—Proceeds of sale of college property—Consent to application.

The consent of the Bd. is necessary before moneys arising from purchase of college property by a railway and paid into Court can be applied in manner provided by s. 2 of the Universities and College Estates Amendment Act, 1880. *Ex parte KING'S COLLEGE, CAMBRIDGE* (No. 1)

North J. [1891] 1 Ch. 333

And see next *Case*.

2. — *Proceeds of sale of college property—Evidence of consent to application.*

The consent of the Bd. to a petition by a college for the application of purchase-money in Court should be evidenced by an order under the hand and seal of the Bd. mentioned in s. 27 of the Universities and College Estates Act, 1885. *Ex parte KING'S COLLEGE, CAMBRIDGE* (No. 2)

North J. 1891 1 Ch. 677, at p. 680

**BOARD OF EDUCATION.**

See SCHOOLS—Board of Education.

**BOARD OF TRADE**—Powers and jurisdiction of the Bd. of Trade as to the following matters:—

**Bankruptcy.**

— Power of Bd. of Trade to review taxation of costs—County court.

See BANKRUPTCY—Costs. 76.

— Revocation by Bd. of Trade—Release of trustee—Error in administration.

See BANKRUPTCY. 247.

— Scheme of arrangement approved by Official Receiver, right of Board to appeal against.

See BANKRUPTCY—Scheme of arrangement. 222.

— Trustee's remuneration—power to alter.

See BANKRUPTCY—Trustee. 249.

— Unclaimed or undistributed funds—Liability to account.

See BANKRUPTCY—Trustee. 243.

**Boiler Explosions.**

— Jurisdiction under Boiler Explosions Act.

See BOILER.

**BOARD OF TRADE—continued.****Company—Winding-up.**

— Control over Official Receivers.

See COMPANY—WINDING-UP—Examination of Officers. 77.

— Fixing security of provisional liquidator before winding-up order.

See COMPANY—WINDING-UP—Liquidator. 120.

**Merchant Shipping.**

— Detention of ship—Unseaworthiness.

See SHIPPING—In General. 1.

**BOARDING-HOUSE**—Lodging scholars attending school—"Private residence."

See COVENANT. 4.

**BOILER.****Explosions.**

1. — *Coal Mines—Jurisdiction of Board of Trade—Boiler Explosions Acts, 1882 & 1890* (45 & 46 Vict. c. 22, and 53 & 54 Vict. c. 35).

A pipe conveying steam from a boiler outside to an engine inside a coal mine exploded:—

*Held*, that the effect of s. 2 of the Boiler Explosions Act, 1890, was to give the Bd. of Trade jurisdiction to order an inquiry; and also that the pipe was a "boiler" within the interpretation clause of the Boiler Explosions Act, 1882. *REG. v. COMMS. UNDER THE BOILER EXPLOSIONS ACT, 1882* — C. A. (affirm.)

Div. Ct. [1891] 1 Q. B. 703

2. — *"Used exclusively for domestic purposes"—Boiler Explosions Act, 1882* (45 & 46 Vict. c. 22), s. 4—*Boiler Explosions Act, 1890* (53 & 54 Vict. c. 35), s. 2.

A boiler used to warm offices or business premises where the occupier does not reside, and also to supply warm water for cleaning purposes and for household purposes of a resident caretaker, is "used exclusively for domestic purposes" within the exception in s. 4 of the Boiler Explosions Act, 1882, and s. 2 of the Boiler Explosions Act, 1890. *SMITH v. MÜLLER*

Div. Ct. [1894] 1 Q. B. 192

**Generally.**

— Derelict boiler—Salvage—Amount of award

— Costs.

See SHIPPING—Salvage. 235.

**BONÂ FIDE TRAVELLER.**

See LICENSING ACTS—Offences. 36—39.

**BONA VACANTIA**—Charity—Failure of objects

— Cy-près.

See FRIENDLY SOCIETY. 6, 7.

— Right of Crown—Proceeds of sale of land under Settled Land Act, 1882.

See CROWN. 2.

— Right of the Crown—Proof—Corporation—Dissolution.

See BANKRUPTCY—Proof. 165.

**BOND**—Condition not to commit breach of injunction—Enumeration of prohibited acts—Condition depending on one event—Liquidated damages—*R. S. C., Order XIV., r. 1.*

A bond was executed by the deft. for the the payment of 100*l.* to the plt. The condition

**BOND**—*continued.*

of the bond was that if the debt. should at all times thereafter, in obedience to a perpetual injunction granted by the High Court of Justice, refrain from trespassing on the plt.'s lands therein mentioned, or the walls, gates, or fences thereof, or inclosing the same, and from pulling down or removing or otherwise injuring the same, or inciting others to commit any such trespasses, the obligation should be void. The debt. committed a breach of the injunction :—

*Held*, that the condition of the bond depended on one event only, namely, a breach of the injunction, and that the sum secured by the bond was a liquidated sum, to the recovery of which the procedure of Order XIV., r. 1, was applicable. *STRICKLAND v. WILLIAMS* C. A. [1899] 1 Q. B. 382

— Construction—Recital and condition—Guarantee.

*See* NEW SOUTH WALES. 23.

— Coupon of foreign government bond.

*See* REVENUE—Stamps. 142.

— For safe return—Forfeiture—Co-ownership—Action of restraint—Jurisdiction.

*See* SHIPPING—Restraint. 213.

— Loan to husband—Bond by husband to trustees—Interest on—Statute of Limitations.

*See* HUSBAND AND WIFE—Bond. 27.

**BOND (ADMINISTRATION).**

*See* PROBATE—Administration Bond.

“**BOND, COVENANT, OR INSTRUMENT**”—Stamp.

*See* REVENUE—Stamps. 144—146.

**BOND TO BEARER**—Custody.

*See* TRUSTEE. 47.

**BONUS**—*Definition*—*Companies Act, 1862* (25 & 26 Vict. c. 89), s. 38—*Companies Act, 1867* (30 & 31 Vict. c. 131), s. 25.

“A bonus is a boon or gift over and above what is nominally due to the receiver and which is therefore something wholly to the good.” Therefore the occurrence of the word in a share certificate puts a prudent man on his inquiry. *In re EDDYSTONE MARINE INSURANCE CO.*

*Stirling J. [1894] W. N. 30*

— Contributory—Bonus shares.

*See* COMPANY — WINDING-UP — Contributory. 25, 26.

— Income tax—Profits—Deduction.

*See* REVENUE—Income Tax. 87.

**BONUS DIVIDEND**—Capital or income.

*See* COMPANY—Dividends. 147.

**BOOK DEBTS**—Mortgage of.

*See* MORTGAGE—Foreclosure. 23.

— In “Order and disposition” of bankrupt.

*See* BANKRUPTCY—Order and Disposition. 129.

**BOOKING**—Railway regulations—Reasonable facilities.

*See* Cases under RAILWAY—Railway and Canal Traffic.

**BOOKMAKER**—Place used for betting.

*See* Cases under GAMING.

**BOOKS**—Assistant overseer—Right to rate-books.

*See* PARISH COUNCIL. 2.

— Bankers’—Production and inspection of.

*See* DISCOVERY—Documents. 8—11.

— Of company—Right to custody.

*See* COMPANY—Debentures. 30.

— Copyright in.

*See* COPYRIGHT—Book.

— Inspection—Right to take free copies.

*See* DISCOVERY—Documents. 21.

— Libel—Publication—Circulating library.

*See* DEFAMATION—Libel. 27.

— Piracy—Infringement—Combining causes of action.

*See* COPYRIGHT—Infringement. 11.

— Tithe apportionment—Custody.

*See* PARISH COUNCIL. 1.

**BOROUGH.**

*See* Cases under CORPORATION.

**BOROUGH VOTE**—Registration of voters.

*See* Cases under PARLIAMENT—Franchise.

**BORROWER.**

*See* MONEY-LENDER.

**BORROWING MEMBER**—Infant—Mortgage for advances — Repudiation on attaining twenty-one.

*See* BUILDING SOCIETY—Mortgage. 7.

**BORROWING POWERS**—*Societies’ Borrowing Powers Act, 1898* (61 & 62 Vict. c. 15), empowers certain societies to borrow money from persons and corporations other than members.

— Agent’s power of borrowing.

*See* PRINCIPAL AND AGENT. 2, 3.

— Company’s powers of borrowing.

*See* COMPANY—Borrowing Powers.

— Unauthorized borrowing — Subrogation — Secured creditors.

*See* RAILWAY—Powers. 30.

**BOTTOMRY.**

*See* SHIPPING—Bottomry.

**BOUNDARY**—Settlement of—Inclosure, &c., Expenses Act, 1868 (31 & 32 Vict. c. 89). *W. N. 1900 (May 19), pp. 143, 144.*

*See* Current Index, 1900, p. xc.

— Alteration of boundaries—Costs—Liability of added area.

*See* CORPORATION. 9.

— Fishings ex adverso glebe land.

*See* FISHERY. 5.

— Foreign State, status and boundaries of—Judicial cognizance—Practice—Application to Foreign Office.

*See* EVIDENCE. 38.

1. — Hedge and ditch—Presumption—Acts of joint ownership—*Real Property Limitation Act, 1833* (3 & 4 Will. 4, c. 27), s. 3.

Two properties belonging to plt. and debt. were separated by a hedge and ditch. The hedge was on plt.’s side of the ditch, and both were the property of plt.’s predecessor in title, who in 1865 had made certain use of the ditch, covered over the ditch, putting in drain-pipes and allowing the drainage of both houses to pass thereby.

**BOUNDARY**—*continued.*

Thenceforward deft. used the surface of the ditch as part of his garden, while plt. cut the hedge from deft.'s side when necessary, and on two or three occasions opened the ditch to clean out the drain :—

*Held*, assuming that plt. had originally owned the ditch, that deft.'s acts were sufficient to dispossess plt. within 3 & 4 Will. 4, c. 27, s. 3, and that plt.'s rights were now statute-barred.

*Quære*, whether presumption that a ditch belongs to the owner of the adjacent hedge applies to a natural watercourse or only to an artificial ditch. **MARSHALL v. TAYLOR**

**C. A. [1895] 1 Ch. 641**

— Of parish.

*See* **PARISH.**

**BOUNDARY WALL**—Mutual gable—Half cost of erection.

*See* **SCOTTISH LAW—Walls.** 49.

— Notice to set back buildings.

*See* **LONDON—Buildings.** 19.

**BRAND**—Water-mark, use of, as trade-mark.

*See* **TRADE-MARK—Registration.** 32.

**BRAWLING**—Liability of clergyman for.

*See* **ECCLIASTICAL LAW.** 46.

**BREACH OF CONTRACT**—Landlord and tenant.

*See* Cases under **LANDLORD AND TENANT.**

— Licensee's right of action.

*See* **LICENCE.**

**BREACH OF COVENANT.**

*See* Cases under **LANDLORD AND TENANT—Lease.**

**BREACH OF INJUNCTION.**

*See* Cases under **CONTEMPT OF COURT.**

**BREACH OF PROMISE OF MARRIAGE**—*Corroboration of Promise*—32 & 33 Vict. c. 68, s. 2.

In an action for breach of promise of marriage the mere fact that the deft. did not answer letters written by the plt. in which she stated that he had promised to marry her, was *held* no evidence corroborating the plt.'s testimony in support of such promise within 32 & 33 Vict. c. 68, s. 2. **WIEDERMANN v. WALFOLE** - **C. A. [1891] 2 Q. B. 534**

**BREACH OF TRUST.**

*See* **TRUSTEE—Breach of Trust.**

— Voluntary conveyance to make good—Fraudulent preference.

*See* **BANKRUPTCY—Fraudulent Preference.** 111.

**BREACH OF UNDERTAKING**—Committal or attachment—Service of order containing the undertaking—Solicitor.

*See* **PRACTICE—Undertaking.** 272.

**BREAD**—Sale otherwise than by weight—3 Geo. 4, c. cvi. s. 4.

By 3 Geo. 4, c. cvi. s. 4 (which applies in substance to the metropolitan area), any baker or seller of bread who sells or causes to be sold bread in any other manner than by weight is liable to a penalty.

The respondent, a grocer and general dealer, was asked by a purchaser for a twopenny loaf, and served him with a loaf for which he paid

**BREAD**—*continued.*

2d. The loaf was not weighed in the shop in the purchaser's presence, nor was any statement made to him as to its weight, nor was there any evidence that it had ever been weighed. When subsequently weighed, the loaf, which resembled in shape and appearance a 2 lb. loaf, weighed 2½ ozs. short of 2 lbs. :—

*Held*, that it was immaterial that the purchaser had not asked for a loaf of a specific weight, and that the respondent had sold bread otherwise than by weight within the meaning of the section. **LONDON COUNTY COUNCIL v. READ**

**Div. Ct. [1900] 1 Q. B. 288**

**BREWER**—Covenant restraining traveller from selling liquors.

*See* **RESTRAINT OF TRADE.** 12.

— Income tax—Deductions.

*See* **REVENUE—Income tax.** 72, 73.

— Licence—Direct taxation.

*See* **CANADA.** 42.

— Licensed house—Poor-rate—Assessment—Competition of brewers—"Tied" houses.

*See* **RATES—Rateability.** 28—31.

— Licensing Acts.

*See* Cases under **LICENSING ACTS.**

— Public-house.

*See* **INN.**

**BREWERY**—"Fixed plant and machinery."

*See* **VENDOR AND PURCHASER—Contract.** 17.

**BRIBERY**—Agent.

*See* **PRINCIPAL AND AGENT.** 6, 7.

**BRICKFIELD**—Lighting rates—Land.

*See* **STREETS—Lighting.** 14.

**BRIDGE**—Footpath—Mandamus.

*See* **RAILWAY—Roads and Streets.** 56.

— Injunction to restrain building of—Accommodation works.

*See* **RAILWAY—Works.** 68.

— Liability of corporation—Accident to bridge under corporate control.

*See* **CANADA.** 28.

— Liability of larger quarter sessions borough to contribute to cost of bridge.

*See* **LOCAL GOVERNMENT.** 2.

**BRIDLE-PATH**—Inclosure award—Right of public to whole width of road.

*See* **INCLOSURE.** 2.

**BRIEFS**—*Etiquette of the Bar.* **W. N. 1899** (Jan. 21), p. 45. *See* **Current Index**, 1899, p. cxxii.

— Instructions for brief—Costs—Trial of issue of fact before judge—Originating summons.

*See* **COMPANY—WINDING-UP—Costs.** 60.

**BRINE PUMPING**—*By the Brine Pumping (Compensation for Subsidence) Act, 1891* (54 & 55 Vict. c. 40), compensation was provided for owners of property suffering through the subsidence of the ground caused by the pumping of brine.

**BRITISH COLUMBIA**—Laws of.

*See* **CANADA—British Columbia.**

**BRITISH GUIANA**—*Appeals from*—*Arts. 25 to 27 of the O. in C. dated June 20, 1831, regulating appeals from the Supreme Court to H. M. in Council.* *St. R. & O. 1899, p. 1672.*

— *Documents and correspondence respecting the question of its boundary.* *Parl. Paper, 1896 [C. 7926]. Price 3½d. Parl. Paper, 1896 [C. 7972]. Price 4s. 4d. Maps, 2s. 9d.*

— Application of the Colonial Probates Act, 1892.

*See PROBATE—Colonial Probates Act.*

— Death duties.

*See REVENUE—Estate Duty.*

— Surrender of fugitive criminals.

*See EXTRADITION.*

**BRITISH HONDURAS**—Application of the Colonial Probates Act, 1892.

*See PROBATE—Colonial Probates Act.*

1. — *Limitations, Statute of—Registered title—Adverse possession—Lands Titles Registry Act—Consolidated Laws of 1887, c. 106, s. 30; c. 19, s. 5.*

*Held*, with regard to the British Honduras Consolidated Laws of 1887, that the provisions of the Limitation Act (c. 19) apply to lands held under a title registered under the Lands Titles Registry Act (c. 106); and that consequently twenty years' adverse possession extinguishes by force of s. 5 of the former Act a title registered under the latter Act. *BELIZE ESTATE AND PRODUCE CO. v. QUILTER* P. C. [1897] A. C. 367

**BRITISH INDIA.**

*See INDIA.*

**BRITISH NORTH AMERICA ACT.**

*See Cases under CANADA.*

**BROKER**—Bankruptcy, Title of trustee in, as against official assignee of Stock Exchange—Defaulting broker.

*See BANKRUPTCY—Trustee in Bankruptcy.* 252, 253.

— Clients' securities deposited to secure broker's indebtedness—Appropriation of payments—Rights of owner of deposited securities.

*See BANKER.* 25.

— Liability for premiums—Policy.

*See INSURANCE—Marine.* 71.

— Salvage—Right to set-off unpaid losses.

*See BANKRUPTCY—Set-off.* 238.

— Ship broker—Managing owner.

*See SHIPPING—Managing Owner.* 172.

— Stock Exchange.

*See Cases under STOCK EXCHANGE.*

— Wrongful sale by—Indemnity—Stock Exchange.

*See PRINCIPAL AND AGENT.* 21.

**BROOK**—Whether tributary of river.

*See FISHERY.* 6.

**"BROTHEL"**—Offences against morality.

*See CRIMINAL LAW.* 54.

*JUSTICES.* 1.

**BUILDER**—*Continuing offence—Work executed in contravention of by-law—Continuance in same state—Builder without power to remedy breach—*

*BUILDER—continued.*

*Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 158.*

By the Public Health Act, 1875, s. 158, where the execution of any work is an offence, in respect whereof the offender is liable in respect of any by-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the by-law shall be deemed to be a continuing offence.

A builder was convicted for building a house without sufficient air space, contrary to a by-law. The builder was not the owner, and had not been in possession, nor had any right to go on the premises after the conviction. Afterwards the builder was prosecuted for a continuing offence in respect of the continuance of the work in the same state, in contravention of the by-law, and convicted.

On a case stated:—

*Held*, that the builder, having no power to remedy the breach complained of, was not guilty of a continuing offence, and the conviction was wrong. *WELSH & SON v. WEST HAM CORPORATION* — — — Div. Ct. [1900] 1 Q. B. 324

— Privilege—Hypothecary privilege—Law of Quebec.

*See CANADA.* 5.

**BUILDING.**

*See LONDON—Buildings.*

*STREETS.*

— Adjoining premises—Alterations—Reasonable use of a building—Injunction.

*See NUISANCE.*

— Agricultural Holdings Act.

*See LANDLORD AND TENANT—Agricultural Holdings.*

— Burial ground, Building upon disused.

*See BURIAL.* 2, 3.

— Contract.

*See Cases under BUILDING CONTRACT.*

— Estate.

*See Cases under BUILDING ESTATE.*

1.—*Height of buildings—Street—General Turnpike (Scotland) Act, 1831 (1 & 2 Will. 4, c. 43).*

The corporation of a burgh which has by a local Act adopted ss. 83 to 92 of the General Turnpike (Scotland) Act, "so far as the said clauses are applicable to the roads and streets within the extended burgh, and in so far as the same are not inconsistent with this Act and the Police Act," has power under that Act and s. 91 of the General Turnpike (Scotland) Act, 1831, to restrain a proprietor of vacant land situate within twenty-five feet of the centre of the street from erecting a building thereon above the height of seven feet. Decision of Ct. of Sess., (1894) 21 R. 682, affirmed. *SCHULZE v. GALASHIELS CORPORATION* — H. L. (Sc.) [1895] A. C. 666

— Highways.

*See HIGHWAY.*

— Hoardings.

*See HOARDING.*

— Inhabited House Duty.

*See Cases under REVENUE—House Duty.*

— Landlord and tenant.

*See Cases under LANDLORD AND TENANT.*



**BUILDING—continued.**

— Light and air.

See Cases under LIGHT AND AIR.

**2. — Party wall—Adjoining owners—Implied contract to pay half cost of party wall.**

A building society, who were the mortgagees of a building estate, joined with the mortgagor in selling a site on the estate to a purchaser; the conveyance contained a covenant by the purchaser to perform the building and other conditions in the schedule, one of which was that the purchaser first building a party wall should be repaid half the value by the purchaser of the adjoining site. The purchaser, having built a house on the site, mortgaged it to the building society, who subsequently under their power of sale sold it to the plt. At a later date the building society, in exercise of their power of sale under the original mortgage of the building estate, sold the residue of the estate to a company, who in their turn sold to the defts. a site adjoining the plt.'s house, the agreement of sale containing a similar (though not verbally identical) condition as to party walls to that above mentioned. The defts. built a house on their site, making use for that purpose of the plt.'s party wall, half of which (as provided by the building conditions) was built on the plt.'s, and half on the defts.' land :—

*Held*, that the circumstances raised an implied contract on the part of the defts. to pay half the cost of the party wall to the plt. as the owner of the adjoining house, notwithstanding that the wall had in fact been built by the plt.'s predecessor in title. *IRVING v. TURNBULL*

Div. Ct. [1900] 2 Q. B. 129

— Re-building—Settled Land Acts.

See Cases under SETTLED LAND—Capital Monies.

— In Scotland.

See Cases under SCOTTISH LAW.

— Society.

See Cases under BUILDING SOCIETY.

**3. — Water tower—Effect of Public Health Acts on subsequent Special Water Company's Act—By-laws—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 93—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 157—60 & 61 Vict. c. xlvii (Local).**

Act. 93 of the Waterworks Clauses Act, 1847, provides that nothing therein or in the Special Act contained shall be deemed to exempt the undertakers "from any Act for improving the sanitary condition of towns and populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament." A water co. by their special Act, passed in 1897, and incorporating the Waterworks Clauses Act, 1847, were empowered to erect and maintain a water tower in a specified place. Shortly after the special Act came into force the local sanitary authority of the district, under the powers given by s. 157 of the Public Health Act, 1875, made by-laws providing that any person intending to erect a building should give the local authority notice of his intention and of the date on which the building was to be commenced, and deliver

**BUILDING—continued.**

to them plans and sections of it, and a description of the materials with which it was to be constructed. The special Act did not incorporate the Public Health Act, 1875, but contained no provisions inconsistent with s. 157 of that Act or with the by-laws :—

*Held*, with respect to the erection of the water tower authorized by the special Act, that s. 93 of the Waterworks Clauses Act, 1847, had not the effect of exempting the water co. from the provisions of the Public Health Act, 1875, and that they were bound to comply with the by-laws made by the local sanitary authority under that Act. *UCKFIELD RURAL COUNCIL v. CROWBOROUGH DISTRICT WATER CO.* Div. Ct. [1899] 2 Q. B. 664

— Workmen's Compensation Act.

See Cases under MASTER AND SERVANT.

**BUILDING (CHURCH) ACTS—Faculty—Discretion.**

See ECCLESIASTICAL LAW—Faculty. 17.

**BUILDING CONTRACT—Arbitration.**

It is competent for the parties to a building contract to agree that the question of fraud on the part of the arbitrator shall not be raised by either of them. *TULLIS v. JACSON*

Chitty J. [1892] 3 Ch. 441

**2. — Charges of quantity surveyor—Liability—Usage.**

By the usage of the building trade, the builder whose tender is accepted is liable to the quantity surveyor for the amount due for taking the quantities, but if no tender be accepted the building owner or architect is liable :—

*Held*, that the usage was reasonable and valid and entitled the surveyor to sue the builder. *NORTH v. BASSETT* Div. Ct. [1892] 1 Q. B. 333

**3.—Liquidated damages—Penalties for delay—Extras.**

Where in a contract for the execution of specified works it is provided that the works shall be completed by a certain day, and, in default of such completion, the contractor shall be liable to pay liquidated damages, and there is also a provision that other work may be ordered by way of addition to the contract, and additional work is ordered which necessarily delays the completion of the works, the contractor is exonerated from liability to pay the liquidated damages, unless by the terms of the contract he has agreed that, whatever additional work may be ordered, he will nevertheless complete the works within the time originally limited.

*Westwood v. Secretary of State for India*, (1863) 11 W. R. 261; 7 L. T. 736, followed. *Jones v. St. John's College*, (1870) L. R. 6 Q. B. 115, distinguished. *Dodd v. CHURTON*

G. A. [1897] 1 Q. B. 562

**4. — Non-completion before death of landowner—Devise of the land—Right of devisee to have the contract completed at cost of landowner's personal estate.**

A testator having in his lifetime entered into a contract for the erection of buildings on land belonging to him :—

*Held*, on the authority of *Cooper v. Jarman*, (1866) L. R. 3 Eq. 98, that, the buildings not

**BUILDING CONTRACT**—*continued.*

having been completed before the testator's death, the devisee of the land was entitled to have them completed at the cost of the testator's personal estate.

The testator had also entered into a contract for the erection of buildings upon land belonging to the devisee by an independent title, and these buildings were not completed before the testator's death :—

*Held*, that *Cooper v. Jarman* did not apply, and that, it not being shewn that the devisee had given valuable consideration for the contract, she was not entitled to have the buildings completed at the cost of the personal estate. *In re DAY. SPRAKE v. DAY* North J. [1898] 2 Ch. 510

— Rateability of contractor for advertising boardings.

See ADVERTISING STATION.

— Restrictive covenants.

See Cases under LANDLORD AND TENANT.  
VENDOR AND PURCHASER.

**BUILDING ESTATE**—*Obstruction to light by hoarding—Injunction.*

A mortgagor in possession of a building estate leased part thereof to A., the lease being made pursuant to s. 18 of the Conveyancing Act, 1881, and the mortgagees not being parties. Subsequently, the mortgagees conveyed another part of the estate to B., who laid it out as a cricket-ground, and erected a hoarding obstructing the lights of A.'s houses :—

*Held*, (1) that A.'s lease was binding on the mortgagees; (2) that A. was entitled to an unobstructed access of light to his houses subject only if at all to restriction from buildings to be erected on other parts of the estate; (3) that the hoarding was not a building and must be removed as infringing A.'s rights. *WILSON v. QUEEN'S CLUB* — Romer J. [1891] 3 Ch. 522

— Restriction as to number of houses—"House"—Flat.

See COVENANT. 2.

— Restrictive covenants.

See Cases under LANDLORD AND TENANT.  
VENDOR AND PURCHASER.

**2. — Restrictive covenants — Acquiescence — Alteration in character of estate—Injunction.**

Where all the purchasers of lots of an estate are bound by restrictive covenants not to allow any trade or business to be carried on upon their lots, equitable relief in enforcing the covenants will be refused if the party suing has debarred himself from such relief by delay or acquiescence, or if the property has been so laid out and used that the object of the covenants, namely, the preserving the property as a residential property, can no longer be attained; but it will not be refused merely because in a few instances the covenants have not been enforced.

Decision of Romer J., [1896] 1 Ch. 653, affirmed. *KNIGHT v. SIMMONDS*

C. A. [1896] 2 Ch. 294

— Waterworks—Improvements.

See SETTLED LAND—Capital Money. 26.

**BUILDING LEASES**—Settled land.

See SETTLED LAND—Leases. 68—70.

**BUILDING LINE.**

See LONDON—Buildings.  
STREETS.

**BUILDING PLANS.**

See LONDON—Buildings.  
STREETS—Building Plans.

**BUILDING SCHEME**—*Restrictive condition—Positive covenant—Implied negative stipulation.*

Building land described as adapted for shops and business premises was put up for sale by auction subject to a condition that the purchasers of certain specified lots should respectively covenant with the vendors to erect within a given time on each of the lots respectively purchased by them a shop and dwelling-house of a given minimum value, but the lots in question remained unsold :—

*Held*, applying the test in *Oriental Steamship Co. v. Tylor*, [1893] 2 Q. B. 518, 527, that, having regard to the absence of any express provision as to the maintenance of the contemplated buildings when erected as shops and dwelling-houses, no negative stipulation ought to be implied that nothing but shops and dwelling-houses should be erected on the lots in question; consequently, that the vendors could not be restrained, at the instance of the purchaser of an adjoining lot, from erecting on the unsold lots a fire-engine station of a value exceeding the aggregate value of the contemplated buildings, there being no such departure from the condition as to render the whole transaction futile. *HOLFORD v. ACTON URBAN DISTRICT COUNCIL* — Stirling J. [1898] 2 Ch. 240

— Restrictive covenant—Prior purchaser—Benefit—Burden.

See COVENANT. 3.

**2. — Restrictive Covenant—Sale by municipal corporation.**

A corporation offered at auction some of their corporate land as building land in lots with restrictive conditions. None of the lots were sold; but subsequently pl.t. agreed with the corporation to purchase two of the lots subject to the conditions. The conveyance contained a covenant by the pl.t. to observe the conditions, but no covenant by the corporation to be bound by them as to the unsold lots. The Treasury were not informed that there was a building scheme. Subsequently the corporation agreed to sell two other lots to trustees for a church. The pl.t. was refused an injunction restraining them from so doing, for the Treasury had only approved what was within the four corners of his conveyance, and without their approval the pl.t. could not sustain the larger outside right claimed by him. *DAVIS v. LEICESTER CORPORATION*

C. A. [1894] 2 Ch. 208

Referred to by Stirling J. *Holford v. Acton Urban Council*, [1898] 2 Ch. 240, 246.

**BUILDING SOCIETY.**

*Building Societies Act*, 1894 (57 & 58 Vict. c. 47), amends the *Building Societies Acts*.

*Building Society Regulations*, 1895, dated January 1, 1895. St. R. & O. 1895, No. 16. Price 2d.

County Court Rules (Nov.), 1900, Order xli. A.

**BUILDING SOCIETY—continued.**

W. N. 1900 (Dec. 8), p. 325. See *Current Index*, 1900, p. lxxiii.

*In General*, col. 225.

*Arbitration*, col. 225.

*Dissolution*, col. 225.

*Mortgage*, col. 227.

*Ultra Vires*, col. 228.

*Winding-up*, col. 230.

*Withdrawal*, col. 232.

**In General.**

— Income tax—Benefit building society—Interest on money lent to borrowing member.

See *REVENUE—Income Tax*. 71.

— Reconveyance to building society—Stamp—Mortgage.

See *REVENUE—Stamps*. 168.

**Arbitration.**

1. — *Right of member to arbitration—Neglect to appoint arbitrators—Mandamus—Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 16, 36.*

Where the rules provide that all disputes shall be settled by standing arbitrators, the High Court has no jurisdiction to decide disputes falling within the rules; but a member is not deprived of the right of seeking arbitration by the failure of the society to fill up the number of arbitrators, since a mandamus lies to the society to direct such filling up, and the number can be filled up after the dispute has arisen. *NORTON v. COUNTIES CONSERVATIVE PERMANENT BENEFIT BUILDING SOCIETY* - C. A. [1895] 1 Q. B. 246

But see now the *Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 20.*

**2. — Stating case.**

The power of the Court under s. 19 of the *Arbitration Act, 1889*, to order an arbitrator to state, in the form of a special case for the opinion of the Court, any question of law arising in the course of the reference, applies to arbitrations under the *Building Societies Act, 1874*.

Decision of C. A. *In re Knight and Tabernacle Permanent Building Society*, [1891] 2 Q. B. 63 affirmed. *KNIGHT v. TABERNAACLE PERMANENT BUILDING SOCIETY* - H. L. (E.) [1892] A. C. 298

But see now the *Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 20.*

Referred to by C. A. *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131, 138.

**Dissolution.**

3. — *Calling up advanced shares—Building Societies Acts, 1874 (37 & 38 Vict. c. 42), s. 32; 1894 (57 & 58 Vict. c. 47), s. 10.*

An instrument of dissolution under s. 32 of the *Building Societies Act, 1874*, is not equivalent in its operation to a winding-up order made by the Court. Under such an instrument, advanced members who had covenanted to pay up their advances by instalments cannot be compelled to do so forthwith. Sect. 10 of the *Building Societies Act, 1894*, applies to a society the dissolution of

**BUILDING SOCIETY (Dissolution)—continued.**

which was begun before, but was not completed at, the time when that section came into operation. *KEMP v. WRIGHT* - C. A. [1895] 1 Ch. 121 partially reversing *Kekewich J.* [1894] 2 Ch. 462

Considered by *Stirling J.* *Botten v. City and Suburban Permanent Building Society*, [1895] 2 Ch. 441. See No. 5, below.

See now *Building Societies Act 1894 (57 & 58 Vict. c. 47), s. 10.*

4. — *Instrument of dissolution—Signature—Agent—Infant—Joint shareholder—Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 32, sub-s. 3; ss. 38, 39—Secretary of State's Regulations, 1884, rr. 13, 14.*

The signature of a member of a building society to one only of the two duplicate instruments of dissolution is inoperative.

An infant member of a building society can consent to dissolution of the society; and the consent of a principal to such a dissolution may be signed by an agent on his behalf.

For the purpose of consenting to dissolution of a building society joint holders of a share are to be considered one member, and must all sign the instrument of dissolution.

A member of a building society who holds shares both jointly and severally need not sign the instrument of dissolution in more than one place to testify consent in respect of all his shares. *DENNISON v. JEFFS* North J. [1896] 1 Ch. 611

5. — *Priority of members—Withdrawing members—Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 18, 32.*

It is not competent for the members of a building society by an instrument of dissolution executed under the *Building Societies Act, 1874*, to vary the rights of members under the rules of the society by a provision taking away the priority of withdrawing members over those who have given no notice of withdrawal unless the variation has been specially sanctioned at a special meeting held under s. 18 of the Act of 1874, of which notice has been given under the rules of the society. *BOTTEN v. CITY AND SUBURBAN PERMANENT BUILDING SOCIETY*

*Stirling J.* [1895] 2 Ch. 441

Referred to by C. A. *Allen v Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 556, 573.

**6. — Priority of payment of members.**

A building society having suffered loss, passed a resolution in 1889 to reduce the shares from 12*l.* to 10*l.* The rules then in force entitled any unadvanced member to withdraw his payments on account of shares by giving one month's notice, such withdrawing members to be paid in rotation, but not more than one withdrawing member was entitled to be paid at each monthly meeting. In Feb. 1890, altered rules were adopted entitling members to withdraw amounts standing to their credit by giving one month's written notice, the amount due in respect of shares to be five-sixths of the net amount paid on them. In 1892 an instrument of dissolution, under s. 32 of the *Building Societies Act, 1874*, was executed and registered; some members had given notice of withdrawal before the losses were known, others before the reduction of the shares.

**BUILDING SOCIETY (Dissolution)**—*continued.*—others after the reduction. One member had not assented to the reduction. Other members had not given notice of withdrawal:—

*Held*, (1) that all the members were bound by the reduction; (2) that the rule as to priority of payment applied to all who had given a month's notice of withdrawal before the date of the instrument of dissolution. **BARNARD v. TOMSON**  
North J. [1894] 1 Ch. 374

Referred to by Byrne J. *Sixth West Kent Mutual Building Society v. Hills*, [1899] 2 Ch. 60, 69.

#### Mortgage.

7. — *Infant borrowing member—Mortgage for advances—Repudiation on attaining twenty-one—Infants Relief Act, 1874 (37 & 38 Vict. c. 62), s. 1—Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 13, 14, 21, and 38.*

The Building Societies Act, 1874, s. 13, empowers building societies registered under the Act to make advances to its members by way of mortgage; s. 21 makes the rules of the society binding on all the members; and s. 38 enacts that any person under the age of twenty-one may be admitted a member of the society, unless such admission is prohibited by the rules, and may give "all necessary acquittances."

The Infants Relief Act, 1874, s. 1, enacts that all contracts, whether by specialty or by simple contract, thenceforth entered into by infants for the repayment of money lent or to be lent . . . shall be absolutely void, but this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter.

In 1898 T., a member of a building society registered under the Building Societies Act, 1874, and whose rules enabled infants to become members, obtained advances to enable her to purchase some land and to complete some houses thereon. The transaction was carried out by a conveyance of the land to T., and a mortgage of it by T. to the society in the usual form as security for the advances made and to be made to her. At this time T. was a minor, but this was not known to the society. In 1899 T. attained her majority, and shortly afterwards brought an action against the society to set aside the mortgage as void under the Infants Relief Act, 1874. The society contended (1) that by virtue of the provisions of the Building Societies Act, 1874, and their rules, the mortgage was valid; and (2) that in any event T. could not retain the property and at the same time repudiate the charge created by the mortgage:—

*Held*, without deciding the first question, that the purchase and mortgage were one transaction, and that under the circumstances T. could not retain the property free from the charge upon it for the advances made by the society.

*Quære*, whether an infant borrowing member of a building society registered under the Building Societies Act, 1874, and whose rules enable infants to become members, can execute a valid mortgage to the society for advances. **THURSTON v. NOTTINGHAM PERMANENT BENEFIT BUILDING SOCIETY** — **Joyce J.** [1900] W. N. 239; see [1901] 1 Ch. 88

**BUILDING SOCIETY (Mortgage)**—*continued.*

— Power of sale—Exercise by person not trustee of society.

See **MORTGAGE—Sale**. 84.

— Reconveyance to building society.

See **REVENUE—Stamps**. 168.

8. — *Redemption—Advanced member—Alteration of rules after date of mortgage—Building Societies Act, 1836 (6 & 7 Will. 4, c. 32).*

An advanced member of a society executed a mortgage to the society with a proviso for redemption on payment of the several sums which under the constitution and rules and regulations of the society ought to be paid in respect of his shares and a covenant to the same effect. At the date of the mortgage advanced members were not liable to contribute to losses; but the rules were subsequently altered so as to make them liable, and a levy was made for contribution to losses suffered:—

*Held*, that the advanced member was not entitled to redeem except upon payment of his proportion of the levy. **BRADBURY v. WILD**

**Kekewich J.** [1893] 1 Ch. 377

Considered by **Kekewich J.** *Kemp v. Wright*, [1894] 2 Ch. 462, 469; **C. A.** [1895] 1 Ch. 121.

#### Ultra Vires.

9. — *Alteration of rules—Repayment of fully paid-up shares—Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 16, 18—Building Societies Act, 1894 (57 & 58 Vict. c. 47), ss. 1, 25, sub-s. 2.*

The power of altering the rules of a building society established under the Building Societies Act of 6 & 7 Will. 4, and subsequently incorporated under the Building Societies Act, 1874, now depends on s. 18 of the Act of 1874 and s. 1 of the Building Societies Act, 1894.

A resolution duly passed by a majority of three-fourths of the members present at a special meeting for making a rule that the amount due from the society to each member in respect of any share or shares held by him on December 1, 1896, should be deemed to be and taken as thirty-three-fiftieths of the net amount paid on such share or shares is not ultra vires. **STROMMINGER v. FINSBURY (BOROUGH OF) PERMANENT INVESTMENT BUILDING SOCIETY**

**C. A.** [1897] 2 Ch. 469

Referred to by Byrne J. *Sixth West Kent Mutual Building Society v. Hills*, [1899] 2 Ch. 60, 69.

10. — *Deposits—Liability of directors for deposits in excess of the prescribed limits—Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 43.*

The secretary of a society received deposits in excess of the prescribed limits, giving, in pursuance of the director's authority so to do, provisional receipts followed by formal receipts signed by the directors, and appropriated part of the moneys deposited:—

*Held*, that every director who was a member of the board when the deposit was received was personally liable under s. 43 of the Building Societies Act, 1874, for the deposits made in excess of the prescribed limits. **CROSS v. FISHER**

**C. A.** [1892] 1 Q. B. 467

But see now the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 15.

**BUILDING SOCIETY (Ultra Vires)—continued.**

11. — *Deposits—Building Societies Act, 1836* (6 & 7 Will. 4, c. 32).

A society under the Act of 1836 cannot make a rule empowering the society to borrow on deposit so as to bind not only its assets but also its members personally. *In re WEST LONDON AND GENERAL PERMANENT BENEFIT BUILDING SOCIETY* - - Wright J. [1894] 2 Ch. 352

12. — *New rules—Known insolvency at time of passing—Ultra vires—Transfer of properties to members in exchange for shares—Payment of interest on shares.*

A rule conferring special powers of realization and of compromising and settling claims may be rightly passed by a building society after known and recognised insolvency, so long as the rule does not of necessity involve altering the constitutional rights of its members inter se or the rights of creditors, inasmuch as it may be exercised so as to be advantageous to all members alike.

If, however, such a rule is so exercised as to give unfair or undue advantage to individuals, this will be a breach of trust.

A building society under its rules issued three classes of shares—A, B, and C. Of these the C shares were preferential, the holders being entitled to be paid interest in lieu of bonus and other periodical payments. In Oct., 1889, the society passed a rule that after Dec. 31, 1890, no further advances should be made upon shares then existing, and that from and after the passing of the rule the withdrawal of shares (other than C shares) by priority of notice should cease, and that the funds of the society should be applied, amongst other things, to the payment of capital and interest on the C shares.

On Oct. 28, 1891, the society passed the following rule: "In order to facilitate the realization of any properties now or at any time in the possession of the society, the directors shall have power to sell the same or any part thereof to any member, and receive in payment, either wholly or in part, any fully paid or subscription shares held by the member, whether under notice of withdrawal or not, provided that such shares shall be taken subject to the deduction of any withdrawal fee in force for the time being."

At the time of passing the rule of Oct., 1889, and thenceforward the society was known both to its officers and members to be insolvent in the sense that the assets of the society were not sufficient to repay in full the sum due to members on their shares; but there were no outside creditors.

The directors having acted in pursuance of the above rule of Oct., 1891:—

*Held*, in an action commenced against them as having acted ultra vires, that the rule of Oct., 1891, was not ultra vires, and that the directors were not liable for a breach of trust, and, further, that the payment of interest on the C shares was in accordance with the contract notwithstanding that the society was insolvent. *SIXTH WEST KENT MUTUAL BUILDING SOCIETY v. HILLS*

Byrne J. [1899] 2 Ch. 60

13. — *New rules—Known insolvency at time of passing—Ultra vires—Notice of withdrawal—Priority.*

The Court declared that the C shares in the

**BUILDING SOCIETY (Ultra Vires)—continued.**

society, in respect of which notice of withdrawal was not given before the change of rules, were preferential as regards payment of interest only, and not as regards capital, but that the holders of C shares who gave notice to withdraw prior to the change of rules were entitled to be preferred over the holders of shares who had not then given such notice, and that the new rule was invalid in so far as it varied any then subsisting rights of members.

*In re Sunderland 36th Universal Building Society*, (1890) 24 Q. B. D. 394, followed. *SIXTH WEST KENT MUTUAL BUILDING SOCIETY v. SHOVE*  
Stirling J. [1899] 2 Ch. 64, n.

14. — *Power to lend on first mortgage—Subrogation—Part payment of mortgage moneys by third person—Postponement of security for balance.*

A building society, having exhausted its borrowing powers, applied for a loan from an insurance co., who lent 6000*l.* to H. on security of property mortgaged by H. for 17,000*l.* to the society, which joined in the security to postpone their own mortgage. The 6000*l.* was handed to the society by H., who was credited therewith in part discharge of the 17,000*l.*:—

*Held*, (1) that the transaction with the insurance co. was ultra vires the society; (2) that the co.'s security for 6000*l.* was postponed to the society's security for 11,000*l.*; and (3) that the co. was not entitled to the security as against the society in respect of any part of the 6000*l.* applied in payment of any liabilities properly payable by the society. *PORTSEA ISLAND BUILDING SOCIETY v. BARCLAY* C. A. [1895] 2 Ch. 298  
affirm. Romer J. [1894] 3 Ch. 86

**Winding-up.**

15. — *Advanced and unadvanced members—Contributories—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 200.*

A building society formed under the Act of 1836, but not registered under the Act of 1874, was ordered to be wound up. By its rules advanced members were not liable to contribute to losses:—

*Held*, that they were not liable as contributories in the winding-up. *In re BRITANNIA PERMANENT BENEFIT BUILDING SOCIETY*

Kekewich J. [1891] W. N. 123

16. — *Advanced members—Obligation to repay immediately the future instalments of advance.*

Advanced members of a society registered and incorporated under the Act of 1874 held to be at liberty to redeem on giving a certain notice and paying the instalments specified in the mortgage less a discount on instalments prepaid. The ordinary period for repayment under the mortgage was twenty-one years. *LONDON PROVIDENT BUILDING SOCIETY v. MORGAN*

Div. Ct. [1893] 2 Q. B. 266

Referred to by Kekewich J. *Kemp v. Wright*, [1894] 2 Ch. 462, 471.

But see now the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 10.

17. — *Contributory—Insolvency—Liability of advanced and unadvanced members.*

The liability of members of a building society registered under the Act of 1836 for its ordinary

**BUILDING SOCIETY (Winding-up)—continued.**

debts depends, not on the law of partnership nor on the contract of the members inter se, but on the law of principal and agent, and if the assets are insufficient such members, whether advanced or unadvanced, are liable as contributories for such debts if incurred while they were members.

In the winding-up of a society registered under the Act of 1836, the claims were met in the following order of priority:—

(1.) Costs of realization of assets including costs of all parties on applications which were test cases.

(2.) Payment of ordinary creditors and depositors *pari passu*.

(3.) Deficiency due to ordinary creditors and estimated costs of winding-up other than realization to be met by a call on all members advanced or unadvanced.

(4.) No further contribution by advanced to loss of unadvanced members; advanced members to be entitled to redeem on payment according to the rules and tables of the society and the contribution under Head 3. *In re WEST LONDON AND GENERAL PERMANENT BENEFIT BUILDING SOCIETY* Wright J. [1894] 2 Ch. 352

**18. — Contributory — Liability of members inter se—Advanced and preference shares.**

On the winding-up of an unincorporated society formed under the Act of 1836, and consisting of advanced and unadvanced or depositing members and holders of preference shares, it was found that the assets, after payment in full of outside creditors, were insufficient to repay the preference shareholders, who by their agreement were to be exempt from the losses of the society:—

*Held*, that the advanced and depositing members must contribute rateably to repay the preference shareholders in full with interest at 5 per cent. *In re RELIANCE PERMANENT BENEFIT BUILDING SOCIETY* Chitty J. [1892] W. N. 77

**19. — Jurisdiction—Transfer to High Court—Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 4, 32.**

Notwithstanding rule 146 of the County Court Rules, 1890, the winding-up of a building society registered under the Act of 1874 cannot be transferred to the High Court. *In re REAL ESTATES Co.* — V. Williams J. [1893] 1 Ch. 398

*But see now the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8.*

**20. — Special case — Jurisdiction — Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 4, 32, sub-s. 4—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 3, sub-s. 3.**

In the winding-up in the county-court of a building society registered under the Building Societies Act, 1874, a special case for the opinion of the High Court may be stated under s. 3 (3) of the Winding-up Act, 1890.

*Semble*, the enactments from time to time in force, whether previous or subsequent to the Building Societies Act, 1874, for winding-up companies in the Chancery Division apply to such winding-up in the County Court. *In re PORTSEA ISLAND BUILDING SOCIETY*

V. Williams J. [1893] 3 Ch. 205

*But see now the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8 (1).*

**BUILDING SOCIETY (Winding-up)—continued.**

21. — *Winding-up—Unincorporated Society certified after 1862 and before 1874—Repeal of statute under which certified—Illegal company—Jurisdiction to wind up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 4, 199—Building Societies Act, 1836 (6 & 7 Will. 4, c. 32); 1874 (37 & 38 Vict. c. 42), s. 40; 1894 (57 & 58 Vict. c. 47), s. 25.*

In this case it was held that on the merits the petition for the compulsory winding-up of this society must be dismissed. The society was legal when constituted, and ceased to enjoy the full protection of the law in consequence of the repeal of the Act of 1836, which was the only Act which justified the society's existence. In a literal sense, the society was formed "in pursuance of some other Act;" but "formed" in s. 4 of the Act of 1862 must mean formed and having its existence recognised under the provisions of an existing Act. Therefore the society appeared to be an illegal one, and there was no jurisdiction to wind it up. *In re ILFRACOMBE PERMANENT MUTUAL BENEFIT BUILDING SOCIETY*

Wright J. [1900] W. N. 249;  
*see* [1901] 1 Ch. 102

**Withdrawal.****22. — Deposits—Withdrawal in rotation.**

A rule provided for payment of withdrawals in rotation where the available balance in hand was insufficient to pay all the depositors wishing to withdraw:—

*Held*, that the rule suspended the right to an action for the deposit. *BRETT v. MONARCH INVESTMENT BUILDING SOCIETY*

C. A. [1894] 1 Q. B. 367

**23. — Notice—Alteration in rules.**

A withdrawing member will be affected by an alteration duly sanctioned in the rules relative to withdrawal, although the alteration be made after he has given notice to withdraw, and his vested right to payment may by such alteration be divested. *PEPE v. CITY AND SUBURBAN PERMANENT BUILDING SOCIETY*

Chitty J. [1893] 2 Ch. 311

— Notice of—New rules—Known insolvency at time of passing.

*See BUILDING SOCIETY—Ultra Vires. 13.*

**24. — Priorities — Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 32.**

The question whether an investing member of a building society may withdraw so as to obtain priority over other members does not depend on the answer to be given to the question whether the society was solvent or insolvent when his notice matured, or on the answer to be given to the question whether the members or officers of the society then knew that the society was insolvent. The line is to be drawn at the time when there is a stoppage of the society's business, or a recognition, by those who are entitled to form a judgment, that the business must be stopped. *In re AMBITION INVESTMENT BUILDING SOCIETY*

V. Williams J. [1896] W. N. 141 (1); [1896] 1 Ch. 89

Referred to by Byrne J. *Sixth West Kent Mutual Building Society v. Hills*, [1899] 2 Ch. 60, 69.

**BUILDING SOCIETY (Withdrawal)**—*continued.*

25. — *Winding-up—Construction of rules—Withdrawal of members—Priority—Deceased member—Executor—Loan by society to member—Set-off.*

The rules of a building society provided that members might withdraw from the society on giving certain notice; that the amounts receivable on withdrawal should be subject to any payments or deductions as might be determined by the directors; that payment of withdrawals should be made according to priority of receipt of notice by the society; and that the directors should have power to limit the number of shares to be withdrawn in any one month, and to limit the withdrawals so that they should not exceed one-half of the monthly income from share subscriptions. The directors had determined by resolution "that the terms of the rules limiting the shares withdrawable be enforced." The society went into voluntary liquidation. All outside creditors had been paid, but the assets were insufficient to meet the claims of all the shareholders:—

*Held*, that members who had given notices of withdrawal which expired before the commencement of the winding-up were entitled to be paid in full in priority to those whose notices had matured later, or who had given no notice at all:

*Held*, also, that the executor of a member who had died before the winding-up was entitled to priority over withdrawing members.

A member who had given notice of withdrawal, afterwards accepted from the society a loan upon terms whereby he still continued to receive interest upon his share, but paid interest upon his advance:

*Held*, that he was not entitled in the winding-up to set off the amount of his share against the unpaid balance of the loan. *In re* COUNTIES CONSERVATIVE PERMANENT BENEFIT BUILDING SOCIETY. DAVIS *v.* NORTON

Stirling J. [1900] 2 Ch. 819

**BULGARIA**—*Deeds, powers of attorney, contracts and other documents emanating from United Kingdom, and intended to be produced in Bulgaria, must be legalized at Foreign Office, London.* Lond. Gaz. April 23, 1897, p. 2248.

**BULL**—Parish bull and boar—Charge on great tithes—Transfer of liability to custom. See CUSTOM. 1.

**BULLION-ROOM**—Bill of lading—Implied warranty—Fitness to resist thieves. See SHIPPING—Charterparty. 46.

**BUNGALOW**—"Wooden structure or erection of a movable or temporary character." See LONDON—Buildings. 33.

**BUOY**—Beacon—Gas float—Salvage—Jurisdiction. See SHIPPING—Salvage. 239.

**BURGH**—Rates—Ultra vires—Costs of opposing bill in Parliament. See SCOTTISH LAW—Burgh. 3.

**BURGLARY**—*Burglary Act, 1896 (59 & 60 Vict. c. 57), provides for the trial of burglaries by Courts of Quarter Sessions.*

**BURGLARY**—*continued.*

— Loss by theft—Entry by opening unlocked shop door—"Actual forcible and violent entry."

See INSURANCE—Burglary. 5.

— Policy—Waiver of prepayment of premium.

See INSURANCE—Burglary. 6.

**BURIAL**—*Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), amends s. 53 of Local Government Act, 1894 (56 & 57 Vict. c. 73), as to Joint Committees for purposes of Burial Acts.*

*Burial Act, 1900 (63 & 64 Vict. c. 15) amends the law relating to burial grounds.*

1. — *Cemetery—Fees—Service at funeral—Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 30, 32—Burial Act, 1880 (43 & 44 Vict. c. 41), ss. 1, 5.*

(1) Where a parish is comprised in the district of a burial bd., formed under the Burial Act, 1852, and the cemetery of the bd. is the burial ground of the parish, s. 32 of that Act does not entitle the incumbent to fees for the burial of a deceased parishioner in the consecrated part of the cemetery, if he was not present to perform the burial service owing to non-receipt of notice, nor is the bd. bound to give him notice of such a burial.

(2) Incumbents of ecclesiastical districts comprised in a burial bd. district have the same rights quoad sacra only as they would have had in the churchyards of their parishes or districts, and have no right of fees for the interment of non-inhabitants or non-parishioners in the cemetery, nor for the grant of vaults or exclusive rights of interment therein. (3) A burial bd. is under no obligation to give the notice required by s. 1 of the Burial Laws Amendment Act, 1880, before allowing burial without the Church of England service in the consecrated part of the cemetery.

(4) Apart from the Act of 1880, it is illegal for a burial bd. knowingly to permit an unqualified or unauthorized person to conduct a religious service at a portion of a cemetery which is the burial ground of a parish. *WOOD v. HEADINGLEY-CUM-BURLEY BURIAL BOARD*

Div. Ct. [1892] 1 Q. B. 713

— Cemetery—Income tax.

See REVENUE—Income Tax. 74.

2. — *Disused burial ground—Building restrictions—Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 1—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), ss. 2, 3—Open Spaces Act, 1887 (50 & 51 Vict. c. 32), ss. 2, 4, and Sched.*

The combined effect of the Open Spaces Act, 1881, s. 1, the Disused Burial Grounds Act, 1884, s. 2, and the Open Spaces Act, 1887, ss. 2, 4, and schedule, make the term "disused burial ground" (on which building is prohibited by s. 3 of the Act of 1884) include land, whether consecrated or not, set apart for, but never used for, interments. *In re* PONSFORD AND NEWPORT DISTRICT SCHOOL BOARD — — C. A. [1894] 1 Ch. 454

3. — *Disused burial ground, Building upon—Sale or disposition "under the authority of any Act of Parliament"—Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), ss. 80–85, 96—Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 1—Disused Burial Grounds Act, 1884*

**BURIAL—continued.**

(47 & 48 Vict. c. 72), ss. 3, 5—*Open Spaces Act*, 1887 (50 & 51 Vict. c. 32), s. 4.

In 1885 land forming part of a disused burial ground, building upon which, except for the purpose of enlarging places of worship, is prohibited by s. 3 of the Disused Burial Grounds Act, 1884, was acquired by the Commrs. of Sewers for the City of London under the powers of 57 Geo. 3, c. xxix., for the purpose of street improvements. A portion of the land so acquired was afterwards resold by the Commrs. as surplus land to the defts., a body of charity trustees, who, with the consent of the Charity Commrs., let it for general building purposes.

In an action for an injunction to restrain the defts. from building upon the land:—

**Held**, that it had been “sold under the authority of an Act of Parliament” within s. 5 of the Act of 1884, and consequently was excepted from the operation of that Act.

SECT. 5 applies to a sale or disposition made after the commencement of the Act.

*In re Ecclesiastical Commrs. and New City of London Brewery Co.’s Contract*, [1895] 1 Ch. 702, preferred upon this point to *In re Trustees of St. Saviour’s Rectory and Ogley*, (1886) 31 Ch. D. 412. **ATT.-GEN. v. TRUSTEES OF THE LONDON PAROCHIAL CHARITIES**

**Stirling J.** [1896] 1 Ch. 541

Referred to by North J. *In re Ecclesiastical Commrs. and New City of London Brewery Co.’s Contract*, [1895] 1 Ch. 702, 711.

—Facilities for removal of bodies, &c.

See Cases under ECCLESIASTICAL LAW—Faculty.

**4. — Parochial purpose—Application of fees.**

The repair of a parish church is a parochial purpose within s. 36 of the Burial Act, 1852, and fees received by a burial bd. under s. 34 of the Act are applicable to that purpose. **REG. v. ST. MARYLEBONE VESTRY** C. A. [1895] 1 Q. B. 771

**5. — Purchase of addition to burial ground—Approval by Secretary of State—Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 25, 26—Burial Act, 1853 (16 & 17 Vict. c. 134), s. 6.**

The burial board of Portsmouth, where by Order in Council no new burial ground was to be opened without the previous approval of one of the Secretaries of State, contracted in 1889 with the consent of the vestry for the purchase of a piece of land for the purpose of adding to their existing cemetery. The purchase was not to be completed till June, 1896. In the meantime no interest was to run, and the vendor was to be at liberty to remove the clay and make bricks on the land. In 1895 the property and liabilities of the board were transferred to the corporation. Shortly before the time for completion the corporation applied to the Home Secretary for his approval of the land as a burial ground, which he refused to give. The corporation then declined to complete, and the vendor sued for specific performance or damages:—

**Held**, by the C. A., affirming the decision of Byrne J. on this point, that s. 6 of the Act of 1853, which provides that no new burial ground shall be “provided and used” within the limits there specified without the approval of a Secretary

**BURIAL—continued.**

of State, applied to an addition to an existing burial ground.

But **held**, reversing the decision of Byrne J. that the section did not prohibit the contracting to purchase land with the consent of the vestry for the purpose of a burial ground without the approval of a Secretary of State, and that the contract was binding and the vendor entitled to damages for the breach of it, he not insisting on specific performance. **WARD v. PORTSMOUTH CORPORATION** — C. A. [1898] 2 Ch. 191

**6. — Site of church—Open space—Burial ground—Union of Benefices Acts, 1860, 1871 (23 & 24 Vict. c. 142); 34 & 35 Vict. c. 90, s. 4—Open Spaces Acts, 1881, 1887 (44 & 45 Vict. c. 34), s. 1; 50 & 51 Vict. c. 32, ss. 2, 4, and Schedule—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), ss. 2, 3, 5.**

The site of a desecrated church in London sold under the Union of Benefices Act, 1860, is not a “disused burial ground” within the Open Spaces Acts so as not to be available for building. The power to build is not affected by the Union of Benefices Act of 1871. Sect. 5 of the Disused Burial Grounds Act, 1884, applies to dispositions made after the Act. *In re ECCLESIASTICAL COMMRS. AND NEW CITY OF LONDON BREWERY CO.’S CONTRACT* — North J. [1895] 1 Ch. 702

Followed by Stirling J. *Att.-Gen. v. London Parochial Charities Trustees*, [1896] 1 Ch. 541.

—Cemetery company—New street—Expenses of paving.

See LONDON—Streets. 77.

**BURMA**—Marriage in—Evidence of validity—Practice.

See DIVORCE—Evidence. 82.

**BURSAR**—Liability to income tax on salary.

See REVENUE—Income Tax. 80.

**BUSINESS**—Carried on by trustees.

See TRUSTEE—Indemnity. 53.

—Rents and profits derived from business, devise of—House of gravel-kind tenure. See WILL—Specific Devise. 198.

—Remuneration for carrying on, at a loss—Death of partner.

See PARTNERSHIP—Dissolution. 22.

—Sale of to company—Assets

See BANKRUPTCY—Assets. 63.

—Sale of, to one partner—Cauvassing old customers—Injunction.

See PARTNERSHIP—Goodwill. 26.

**BUTTER**—Adulteration of.

See ADULTERATION—Margarine.

**BY-LAW—Definition.**

A by-law is not an agreement, but a law binding on all persons to whom it applies, whether they agree to be bound by it or not. All regulations made by a corporate body and intended to bind not only themselves and their servants but the public, are “by-laws” whether valid or invalid in law. *Per Lindley L.J. in LONDON ASSOCIATION OF SHIPOWNERS AND BROKERS v. LONDON AND INDIA DOCKS JOINT COMMITTEE*

C. A. [1892] 3 Ch. 242, at p. 252

Referred to. *Barraclough v. Brown*, [1897] A. C. 615, at p. 624.



**BY-LAW**—*continued.*

- Betting—Private ground used for betting—  
“Place of public resort”—Validity.  
*See* CORPORATION. 1, 2.
- Betting in streets—Statutory enactment—  
Repugnancy.  
*See* GAMING. 30.
- Building plans.  
*See* STREETS—Building Plans.
- Coal, as to sale of.  
*See* WEIGHTS AND MEASURES.
- Improper slaughtering of cattle by servant  
contrary to instructions—Liability.  
*See* LONDON—Slaughter-houses.
- Levying rate on lands outside rateable limit.  
*See* NEW SOUTH WALES. 50.
- London County.  
*See* LONDON—By-laws.
- Markets and fairs—Diseases of animals—  
Ultra vires.  
*See* MARKET. 1.

**BY-LAW**—*continued.*

- Noise in street.  
*See* NUISANCE. 20.
- Power to regulate a trade does not include  
power to prohibit.  
*See* CANADA. 48.
- Railway company.  
*See* RAILWAY—Passengers.
- Requirement to show ticket—Reasonableness  
*See* TRAMWAY. 10, 11.
- Streets and buildings.  
*See* LONDON—Streets.  
STREETS.
- Thames navigation.  
*See* SHIPPING—Collision. 84.  
Cases under THAMES.
- Using profane or obscene language—Legality.  
*See* STREETS. 38.
- Water tower—Effect of Public Health Acts  
on subsequent special water company's  
Act.  
*See* BUILDING. 3.

## C.

**CAB.**

See HACKNEY CARRIAGE.

**CABLEGRAM**—Mistake—Action on contract—Onus probandi.

See CONTRACT—Formation. 19.

**CABLES.**

See SHIPPING — Anchors and Chain Cables.

**CALENDAR MONTH**—Computation of time.

See JUSTICES. 20.

**CALLS**—Company practice.

See Cases under COMPANY and COMPANY — WINDING-UP.

**CANADA.**

Generally, col. 239.

British Columbia, col. 247.

Manitoba, col. 249.

New Brunswick, col. 250.

North-West Territories, col. 251.

Nova Scotia, col. 251.

Ontario, col. 252.

Quebec, col. 255.

**Dominion and Constitutional Law.****(Powers of Federal and Provincial Legislatures.)****Generally.**

1 — *British North America Act*, 1867 (30 & 31 Vict. c. 3), s. 91, sub-s. 15; s. 92, sub-s. 13—*Dominion Bank Act* (46 Vict. c. 120).

The legislation of the Dominion Parliament, so long as it strictly relates to subjects enumerated in s. 91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislature by s. 92. *TENNANT v. UNION BANK OF CANADA* P. C. [1894] A. C. 31

Referred to by P. C. *Att.-Gen. for Ontario v. Att.-Gen. for the Dominion*, [1896] A. C. 348, 360.

2. — *British North America Act*, 1867 (30 & 31 Vict. c. 3), ss. 58, 92, 109, 126—*Relations between Crown and provinces*.

The *British North America Act*, 1867, has not severed the connection between the Crown and the provinces: the relation between them is the same as that between the Crown and the Dominion in respect of the powers executive and legislative, public property and revenues vested in them respectively. *LIQUIDATORS OF THE MARITIME BANK OF CANADA v. RECEIVER-GENERAL OF NEW BRUNSWICK* — P. C. [1892] A. C. 437

— *British North America Act*.

See CANADA, *passim*.

— Accumulations — Substitution — Annuity — Construction of will.  
See ACCUMULATIONS. 9.

3. — *Bank—British North America Act*, 1867 (30 & 31 Vict. c. 3), ss. 91, 92—*Validity of*

**CANADA (Generally)—continued.**

*Dominion Bank Act* (46 Vict. c. 120)—*Ontario Mercantile Amendment Act* (c. 122 of the Revised Statutes of Ontario)—*Negotiability of warehouse receipts*.

Although warehouse receipts granted to itself by a firm which has not the custody of any goods but its own are not negotiable instruments within the meaning of the *Mercantile Amendment Act* (c. 122 of Revised Statutes of Ontario):—

*Held*, that the *Dominion Bank Act* (46 Vict. c. 120) while in force dispensed with that limitation, validated such receipts, and transferred to the indorsees thereof the property therein:

*Held*, further, that the *Bank Act* was *intra vires* of the Dominion Parliament. *TENNANT v. UNION BANK OF CANADA* P. C. [1894] A. C. 31

Referred to by P. C. *Att.-Gen. for Ontario v. Att.-Gen. for the Dominion*, [1896] A. C. 348, 360.

4. — *Bankruptcy—British North America Act*, 1867 (30 & 31 Vict. c. 3), ss. 91, 92—*Powers of local legislature—Enactment ancillary to bankruptcy law*.

*Held*, that s. 9 of Ontario "Act respecting assignments and preferences by insolvent persons" (Revised Statutes of Ontario, c. 124), which relates to assignments purely voluntary and postpones thereto judgments and executions not completely executed by payment, is merely ancillary to bankruptcy law, and as such is within the competence of the provincial legislature so long as it does not conflict with any existing bankruptcy legislation of the Dominion Parliament. *ATT.-GEN. OF ONTARIO v. ATT.-GEN. FOR CANADA* P. C. [1894] A. C. 189

Referred to by P. C. *Att.-Gen. for Ontario v. Att.-Gen. for the Dominion*, [1896] A. C. 348, 360.

5. — *Builder's privilege—Hypothecary privilege—Civil Code of Lower Canada*, arts. 2013 G and 2103—59 Vict. c. 42.

*Held*, that under the Civil Code, as amended by 59 Vict. c. 42, a builder's privilege is limited to one year from the date of registration thereof; and, with regard to an hypothecary privilege conferred on suppliers of materials, it only arises on notice being given to the proprietor under art. 2013 G, and registered under art. 2103, and lapses unless the prescribed legal proceedings are taken within three months from the date of notice. *LA BANQUE D'HOCHELEGA v. STEVENSON*

P. C. [1900] A. C. 600

— Contract—Conditional promise to consider a proposal favourably.

See CONTRACT—Construction. 10.

6. — *Contract—Construction—Breach of contract—Appeals from judgment on petition of right*.

Where the respondent contracted with the Government to execute for a term of years the printing and binding of certain public documents

**CANADA (Generally)—continued.**

at stipulated prices, but the Government did not expressly contract to give to the respondent all or any of the said work:—

*Held*, that a stipulation to that effect could not be implied, and that there was no breach of contract by reason of orders for work being withheld.

An appeal lies to Her Majesty in Council from a decision of the Court of Queen's Bench on a petition of right. *REG. v. DEMERS*

**P. C. [1900] A. C. 103**

7. — *Crown debts—Rights of provincial government—British North America Act, 1867.*

A claim by a provincial government in respect of public moneys deposited at a bank in the name of the Receiver-General of the province is a Crown debt, and as such has priority over the debts due to other depositors and simple contract creditors. *LIQUIDATORS OF THE MARITIME BANK OF CANADA v. RECEIVER-GENERAL OF NEW BRUNSWICK*

**P. C. [1892] A. C. 437**

8. — *Customs Tariff Act, 1894 (57 & 58 Vict. c. 33), s. 4—R. S. C. (1886) 49 Vict. c. 32, s. 150—Construction—Date of importation of goods.*

*Held*, that by the true construction of the Customs Tariff Act, 1894, s. 4, as amended by the Tariff Act, 1895, which in effect directs that duty be paid upon raw sugar "when such goods are imported into Canada or taken out of warehouse for consumption therein," the date at which duty both attaches thereto and becomes payable is when the goods are landed and delivered to the importer or to his order, or, when they are taken out of warehouse, if instead of being delivered they have been placed in bond.

Sect. 150 of the Customs Act, 1886, which directs that the precise time of the importation of goods shall be deemed to be the time when "they came within the limits of the port at which they ought to be reported," refers on its true construction to the port at which the goods are to be landed—that is, where the effective report is to be made. Such construction is required in order to place a consistent, rational, and probable meaning on the context and other clauses of the Act. *CANADA SUGAR REFINING CO. v. REG.*

**P. C. [1898] A. C. 735**

9. — *Gas—Right to stop supply of gas generally—Canada Act (12 Vict. c. 183), s. 20—Construction—Gasworks Clauses (Imperial) Act, 1847 (10 & 11 Vict. c. 15).*

*Held*, that, by the true construction of s. 20 of the Canada Act (12 Vict. c. 183), borrowed from the Gasworks Clauses Act, 1847 (Imperial Parliament), the appellant co. is authorized to cease supplying the respondent with gas at any of his houses on his neglect to pay its bill for any one of them. There is nothing in the section to limit the authority of the co. to the particular building in respect of which there has been default, and such a limitation cannot be implied. *MONTREAL GAS CO. v. CADIEUX*

**P. C. [1899] A. C. 589**

10. — *Indian reserves—Liability to pay annuities in respect thereof—British North America Act, 1867 (30 & 31 Vict. c. 3), ss. 109, 111, 112.*

By treaties in 1850 the Governor of Canada,

**CANADA (Generally)—continued.**

as representing the Crown and the provincial government, obtained the cession from the Ojibeway Indians of lands occupied as Indian reserves, the beneficial interest therein passing to the provincial government, together with the liability to pay to the Indians certain perpetual annuities:—

*Held*, that these lands being within the limits of the province of Ontario, created by the British North America Act, 1867, the beneficial interest therein vested under s. 109 in that province.

The perpetual annuities have been capitalised on the basis of the amounts specified in the treaties, the Dominion assumed liability in respect thereof under s. 111. Thereafter the amounts of these annuities were increased according to the treaties:

*Held*, that liability for these increased amounts was not so attached to the ceded lands and their proceeds as to form a charge thereon in the hands of the province, under s. 109. They must be paid by the Dominion with recourse to the provinces of Ontario and Quebec conjointly, under ss. 111 and 112; in the same manner as the original annuities. *ATT.-GEN. FOR DOMINION OF CANADA v. ATT.-GEN. FOR ONTARIO. ATT.-GEN. FOR QUEBEC v. ATT.-GEN. FOR ONTARIO*

**P. C. [1897] A. C. 199**

11. — *Insurance, life—Validity of life policy—Lawful holder—Civil Code of Lower Canada, Art. 2590.*

In an action on a policy of life insurance:—

*Held*, that the plf. was not a lawful holder. As "the protector of the deceased whenever he stood in need of protection" he had not an insurable interest in his life within the meaning of art. 2590 of the Civil Code of Lower Canada:

*Held*, further, that a condition in the policy that the same should on the lapse of a year or upwards during which premiums have been regularly paid become incontestable is no answer to an objection founded on the terms of the Code. *ANOTIL v. MANUFACTURERS' LIFE INSURANCE CO.*

**P. C. [1899] A. C. 604**

12. — *Intoxicating liquors—Canada Temperance Act, 1864 (27 & 28 Vict. c. 13), s. 17—Construction.*

There having been numerous convictions of the respondent, with accumulated penalties amounting to \$1400, for having on various occasions sold intoxicating liquor, and thereby committed offences under the Canada Temperance Act of 1864, a certiorari was granted in one case by the Superior Court, on the ground that by the true construction of s. 17, which provides that two or more offences by the same party may be included in the same complaint, a penalty of \$100 was sufficient for all offences under the Act during the limitation period of three months prescribed by s. 13:—

*Held*, that, in the absence of express words to that effect, s. 17 must be construed as permissive merely, and not imperative. *WENTWORTH v. MATHIEU*

**P. C. [1900] A. C. 212**

13. — *Liquor Laws—British North America Act, 1867 (30 & 31 Vict. c. 3), ss. 91, 92—Distribution of legislative powers—Power of prohibi-*

**CANADA (Generally)—continued.**

*tion—Canada Temperance Act, 1886—Ontario Act (53 Vict. c. 56), s. 18.*

The general power of legislation conferred upon the Dominion Parliament by s. 91 of the British North America Act, 1867, in supplement of its therein enumerated powers, must be strictly confined to such matters as are unquestionably of national interest and importance; and must not trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation, unless they have attained such dimensions as to affect the body politic of the Dominion.

Dominion enactments, when competent, override but cannot directly repeal provincial legislation. Whether they have in a particular instance effected virtual repeal by repugnancy is a question for adjudication by the tribunals, and cannot be determined by either the Dominion or provincial legislature.

Accordingly the Canada Temperance Act, 1886, so far as it purported to repeal the prohibitory clauses of the old provincial Act of 1864 (27 & 28 Vict. c. 18) was ultra vires the Dominion. Its own prohibitory provisions are, however, valid when duly brought into operation in any provincial area, as relating to the peace, order, and good government of Canada:

*Russell v. Reg.* (7 App. Cas. 829) followed;

but not as regulating trade and commerce within s. 91, sub-s. 2, of the Act of 1867;

*Citizens' Insurance Co. v. Parsons* (7 App. Cas. 98) distinguished and *Municipal Corporation of Toronto v. Virgo* ([1896] A. C. 88) followed.

*Held*, also, that the local liquor prohibitions authorized by the Ontario Act (53 Vict. c. 56), s. 18, are within the powers of the provincial legislature. But they are inoperative in any locality which adopts the provisions of the Dominion Act of 1886. **ATT.-GEN. FOR ONTARIO v. ATT.-GEN. FOR THE DOMINION - P. C. [1896] A. C. 348**

**14. — Practice—New trial—Verdict—Judgment—Damages.**

Where a jury found (1) that the death of the plaintiff's wife had been accelerated, but not to any appreciable extent, by taking a dose of tartar emetic negligently supplied by the defendants; (2) that the plaintiff had suffered no damage thereby, but that his minor child had incurred damage to the extent of \$1000:—

*Held*, that the action must be dismissed, because the damages attributable to the defendants were on those findings (which could not properly be disturbed) inappreciable and irrecoverable.

The Court of Queen's Bench was in error in directing a new trial on the assumption that the findings as to damages are contradictory and illogical. **KERRY v. ENGLAND**

**P. C. [1898] A. C. 742**

**15. — Practice—Special leave to appeal—Condition as to costs.**

Special leave to appeal may be given on terms that the appellants should be liable to pay the respondent's costs in any event. **MONTREAL GAS CO. v. CADIEUX. Ex parte MONTREAL GAS CO. - P. C. [1898] A. C. 718**

— Nova Scotia—Finance Act, 1894.

*See PROBATE—Nova Scotia.*

**CANADA (Generally)—continued.**

**16. — Railway Committee of Privy Council—Canada Railway Act (51 Vict. c. 29), s. 262, sub-ss. 3, 4—Construction.**

*Held*, that under the true construction of the Railway Act (Canada), 51 Vict. c. 29, the power conferred by sub-s. 4 of s. 262 upon the Railway Committee of the Privy Council to exonerate a ry. co. during a specified portion of the year from the duty of filling certain spaces specified in sub-s. 4, did not apply to the duty imposed by sub-s. 3 of filling certain other spaces specified by sub-s. 3. Such extension of power was not authorized by the grammatical construction of the sub-sections, nor rendered imperative by the context. **GRAND TRUNK RY. CO. OF CANADA v. WASHINGTON - P. C. [1899] A. C. 275**

**17. — Railway Company—Contract by company ultra vires—Effect of consent judgment—Estoppel—Terms on which contract will be set aside—Relief—Parties—Misjoinder.**

Where by contract, ex facie legal and regular, the appellant co. purported to incur liability to the respondent for ry. construction in an amount which was in reality calculated to cover the amount of bonus and of price of issued shares payable by agreement between the respondent and all the shareholders of the co. irrespective of either actual or estimated cost of construction:—

*Held*, that the contract was ultra vires of the co.:

*Held*, further, that a consent judgment obtained on the contract declaring the respondent's lien on the co.'s ry. and other property, the question of ultra vires not having been raised either in the pleadings or on the facts stated, was of no greater validity than the contract.

In a suit by the co. to set aside the contract and judgment, *held*, that they must be set aside on terms which were consented to of paying to the respondent the balance due to him for construction on a quantum meruit, securing the amount thereof by bonds of the co. if and when issued, the whole to be taken by him subject to first and other charges in favour of sub-contractors and banks in advance to them who had acted on the faith of the judgment to which they were not parties without notice of the illegalities of the contract.

The co. having joined some of their bondholders and shareholders as co-plts., raising questions affecting them individually, *held*, that the action of the Court should be confined to issues between the co. and the defts. **GREAT NORTH-WEST CENTRAL RY. CO. v. CHARLEBOIS**

**P. C. [1899] A. C. 114**

Referred to by C. A. *Islington Vestry v. Hornsey Urban Council*, [1900] 1 Ch. 695, 706.

**18. — Railways—Dominion Railways Act, 1888 (51 Vict. c. 29)—Arbitration—Review.**

Where an award of compensation made in an arbitration under the Canadian Railway Act, 1888 (c. 109 of the Revised Statutes of Canada), was appealed from:—

*Held*, that the Court rightly exercised its jurisdiction in reviewing the award by deciding whether a reasonable estimate of the evidence had been made. It was not authorized by the section to disregard the award and deal with the

**CANADA (Generally)—continued.**

evidence de novo as if it had been a Court of first instance. *ATLANTIC AND NORTH-WEST RY. CO. v. WOOD* - - - **P. C. [1895] A. C. 257**

19. — *Railways—Dominion Railway Act, 1888* (51 *Vict. c. 29*)—*Closing lane*.

A city council has power under the Canada Railway Act, 1888 (c. 109 of the Revised Statutes of Canada), to assent to the closing, occupation and use of a public lane by a ry. co. *CASGRAIN v. ATLANTIC AND NORTH-WEST RY. CO.*

**P. C. [1895] A. C. 282**

20. — *Railways—Dominion Act, 1887* (50 & 51 *Vict. c. 39*), s. 1, item 88; s. 2, item 173—*Imported steel rails—Street railways—Tramways—Law of Canada—Construction*.

Although there may be in various Canadian Acts and for other purposes substantial distinctions between rys. or ry. tracks and street rys. and tramways, yet, for the purpose of separating free and dutiable articles, such distinction is not maintained in Canadian Act 50 & 51 *Vict. c. 39*, and its three predecessors.

According to the true construction of that Act (see s. 1, item 88, and s. 2, item 173), the question whether imported steel rails are taxed or free depends solely upon their weight, not upon the character of the ry. track for which they are intended. *TORONTO RY. CO. v. REG.*

**P. C. [1896] A. C. 551**

21. — *Rivers and lake improvements—"Public harbours"—Fisheries and fishing rights—Revised Statutes of Canada, c. 92, c. 95, s. 4—Revised Statutes of Ontario, c. 24, s. 47—Ontario Act of 1892 (55 *Vict. c. 10*)—British North America Act, 1867 (30 & 31 *Vict. c. 3*), ss. 91, 92, 108—Distribution of legislative power—Construction*.

Whatever proprietary rights vested in the provinces at the date of British North America Act, 1867, remained so unless by its express enactment transferred to the Dominion. Such transfer is not to be presumed from the grant of legislative jurisdiction to the Dominion in respect of the subject-matter of those proprietary rights:—

*Held*, that the transfer by s. 108 and the 5th clause of its schedule to the Dominion of "rivers and lake improvements" operates on its true construction in regard to the improvements only both of rivers and lakes, and not in regard to the entire rivers. Such construction does no violence to the language employed, and is reasonably and probably in accordance with the intention of the Legislature:—

*Held*, that the transfer of "public harbours" operates on whatever is properly comprised in that term having regard to the circumstances of each case, and is not limited merely to those portions on which public works had been executed.

With regard to fisheries and fishing rights:—

*Held*, (1.) that s. 91 did not convey to the Dominion any proprietary rights therein, although the legislative jurisdiction conferred by the section enables it to affect those rights to an unlimited extent, short of transferring them to others.

(2.) a tax by way of licence as a condition of the right to fish is within the powers conferred by sub-ss. 4 and 12.

**CANADA (Generally)—continued.**

(3.) the same power is conferred on the Provincial Parliament by s. 92.

(4.) Revised Statutes of Canada, c. 95, s. 4, so far as it empowers the grant of exclusive fishing rights over provincial property, is ultra vires the Dominion.

(5.) Revised Statutes of Ontario, c. 24, s. 47, is with a specific exception intra vires the province.

As regards Ontario Act, 1892, the regulations therein which control the manner of fishing are ultra vires. Fishing regulations and restrictions are within the exclusive competence of the Dominion: see s. 91, sub-s. 12.

*Secus* with regard to any provisions relating thereto which would properly fall under the headings "Property and Civil Rights" or "The Management and Sale of Public Lands":—

*Held*, further, that the Dominion Legislature had power to pass Revised Statutes of Canada, c. 92, intitled "An Act respecting certain Works constructed in or over Navigable Waters." *ATT.-GEN. FOR DOMINION OF CANADA v. ATT.-GEN. FOR THE PROVINCES OF ONTARIO, QUEBEC, AND NOVA SCOTIA* - - - **P. C. [1898] A. C. 700**

22. — *Statute—Construction—Permissive statutory powers—Injunction—Liability for damages—Water—Irrigation—Land slides*.

Wherever, according to the sound construction of a statute, the legislature has authorized a proprietor to make a particular use of his land, and the authority given is in the strict sense of law permissive merely, and not imperative, the Legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law right of others.

*Metropolitan Asylums District v. Hill*, (1881) 6 App. Cas. 193, approved.

Where the effect of British Columbian legislation was to authorize the respondents to irrigate their soil by the compulsory diversion of water from any adjacent stream, lake, or river, by conveying it over lands which do not belong to them, and to run the surplus water after irrigation through adjacent lands by means of flumes, ditches, or drains, all subject to provisions for compensation, and the respondents brought water upon their land in such manner as to be the substantial cause of damage to the appellants' line of ry. by causing a slide of their land:—

*Held*, reversing the judgment of the Court below, that, in the absence of provisions shewing an intention on the part of the legislature to take away the appellants' right to protect their property from invasion, they were entitled to an injunction to prevent the respondents' user of the water in disregard of their common law obligation to do no damage to the appellants' land. *CANADIAN PACIFIC RY. CO. v. PARKE*

**P. C. [1899] A. C. 535**

23. — *Stockbroking transactions—Civil Code, art. 1233, "Commercial Matters"—Art. 1233 (7), commencement of proof in writing—Art. 1233 (6), notice to produce—Authority to stockbrokers as on Stock Exchange terms—Law of Lower Canada*.

In an action by stockbrokers against their principal to recover the balance of their account

**CANADA (Generally)—continued.**

in respect of sales and purchases of shares for private speculation on his account :—

*Held*, (1) that these transactions were "commercial matters" within art. 1233, Civil Code, which the plts. might prove by oral evidence; and that a plt. was a competent witness under s. 2 of 54 Vict. c. 45.

(2) An admission by the deft. in his deposition that he employed the plts. as his stock-brokers, and that they bought and sold something for him, is a sufficient commencement of proof in writing under art. 1233 (7) to let in oral evidence of the particulars.

(3) Art. 1233 (6) authorises reception of secondary evidence of bought and sold notes in possession of the adverse party without a notice to produce; and an objection thereto not taken at the trial cannot be taken on appeal.

(4) The deft. in giving authority to the plts. to do business on the Stock Exchange must be taken, in the absence of evidence to the contrary, to have employed them on the terms of the Stock Exchange, and, therefore, to have authorized the sale of his shares on failure to supply them with the requisite funds. *FORGET v. BAXTER*

P. C. [1900] A. C. 467

**24. — Trade-name—Right to injunction—Colourable imitation of name—What constitutes false representation.**

The appellant co., being the transferee of the assets and goodwill of the dissolved Sabiston and Lithographic and Publishing Co., sued to restrain the respondent from carrying on business under the name of the Sabiston Lithographic and Publishing Co., or any other name so framed as to lead to the belief that his business was in succession to that of the dissolved co. :—

*Held*, that the respondent had no right so to represent, but that there was no evidence that he had done so, and that the appellants were not entitled to an injunction against the mere use of the name. *MONTREAL LITHOGRAPHING CO. v. SABISTON*

P. C. [1899] A. C. 610

**British Columbia.**

ADMINISTRATION.] *O. in C. directing that the Colonial Probates Act, 1892, shall apply. St. R. & O. 1896, No. 960.*

**25. — "Actual settler for agricultural purposes"—Pre-emption—British Columbia Land Act, 1875—British Columbia Act (47 Vict. c. 14), s. 23.**

A. claimed, as an actual settler for agricultural purposes, a right of pre-emption over certain lands under the section. The lands had before the Act been reserved for a town site :—

*Held*, that a settler means a person entitled to record land under the British Columbia Land Act, 1875 (38 Vict. c. 5), that the Act did not apply to reserved land, and that 47 Vict. c. 14 gave no new right of pre-emption. *HOGGAN v. ESQUIMALT AND NANAIMO RY. CO.*

P. C. [1894] A. C. 429

**26. — Cattle—Powers of provincial legislature—Ultra vires—British Columbian Cattle Protection Act, 1891, 1895 (54 Vict. c. 1; 58 Vict. c. 7).**

The provision in the British Columbian Cattle Protection Act, 1891, as amended in 1895,

**CANADA (British Columbia)—continued.**

to the effect that a Dominion ry. co., unless they erect proper fences on their ry., shall be responsible for cattle injured or killed thereon, is ultra vires of the provincial parliament.

*Canadian Pacific Ry. Co. v. Corporation of the Parish of Notre Dame de Bonsecours*, [1899] A. C. 367, distinguished. *MADDEN v. NELSON AND FORT SHEPPARD RY. CO.*

P. C. [1899] A. C. 626

**27. — Consent judgment with intent to delay creditors—Consolidated Statutes, c. 51, s. 1.**

Unders. 1 of c. 51 of the Consolidated Statutes of British Columbia a consent judgment obtained by the respondent bank against the insolvent respondent tramway co., with intent to defeat or delay the creditors of the latter, was *held* to be null and void against them.

So long as the intent is proved, it is immaterial whether consent was given under pressure. *EDISON GENERAL ELECTRIC CO. v. WESTMINSTER AND VANCOUVER TRAMWAY CO.*

P. C. [1897] A. C. 193

**28. — Corporation—Liability of—Accident to bridge under corporate control—By-law—British Columbia Municipal Act, 1892 (55 Vict. c. 33).**

The appellant corporation having, under 55 Vict. c. 33, de facto taken over the care and control of a certain bridge: *held*, that their acts with regard to it were *prima facie* competent corporate acts. It would lie on the corporation to shew clearly that any acts done by their officers under their direction were ultra vires and illegal, and that conclusion could not be reached merely by reason of their not having passed a by-law under 55 Vict. c. 33 actually vesting the bridge in them.

In an action to recover damages from them for a fatal accident caused by the breaking down of the said bridge over which a tramcar containing the deceased was running :—

*Held*, that the finding of the jury that an act done by their officer had materially weakened the beam which afterwards broke amply justified a verdict against them; and that the liability, if any, of the tram co. for passing an extraordinarily heavy weight over it not having been before the jury, could not be raised in appeal. *VICTORIA CORPORATION v. PATTERSON. SAME v. LANG*

P. C. [1899] A. C. 615

**29. — Mines and minerals—Precious metals—Free miner's certificate—Construction—Law of British Columbia—Act 47 Vict. c. 14, s. 3—Act 54 Vict. c. 26.**

By s. 3 of the British Columbia Act (47 Vict. c. 14), land was granted to the Dominion Government, the appellant co.'s predecessor in title, "including all mines, minerals, and substances whatsoever thereupon, therein, and thereunder" :—

*Held*, in an action for wrongful ejectment by the holder of a free miner's certificate under the "British Columbia Placer Mining Act, 1891" (54 Vict. c. 26), applicable to a part of the land granted, that he was entitled to mine for gold and other precious metals thereon, the above words not being sufficiently precise to transfer to the applicants' predecessor the right of the provincial legislature to administer the precious

**CANADA (British Columbia)—continued.**

metals in the lands assigned. *ESQUIMALT AND NANAIMO RY. CO. v. BAINBRIDGE*

P. C. [1896] A. C. 561

30. — *Naturalization and aliens—Chinamen—Law of Canada—Legislative power—Ultra vires—British North America Act, 1867* (30 & 31 Vict. c. 3), s. 91, sub-s. 25, and s. 92, sub-ss. 10, 13—*British Columbia "Coal Mines Regulation Act, 1890"* (53 Vict. c. 33), s. 4.

*Held*, that s. 4 of the British Columbian "Coal Mines Regulation Act, 1890," which prohibits Chinamen of full age from employment in underground coal workings, is in that respect ultra vires of the provincial legislature.

Regarded merely as a coal-working regulation, it would come within s. 92, sub-s. 10, or s. 92, sub-s. 13, of the British North America Act. But its exclusive application to Chinamen who are aliens or naturalized subjects establishes a statutory prohibition which is within the exclusive authority of the Dominion Parliament conferred by s. 91, sub-s. 25, in regard to "naturalization and aliens." *UNION COLLIERY CO. OF BRITISH COLUMBIA v. BRYDEN*

P. C. [1899] A. C. 580

**Manitoba.**

*Appeals from—O. in C. dated Nov. 26, 1892, regulating appeals to Her Majesty in Council from Her Majesty's Court of Queen's Bench for Manitoba. St. E. & O. 1899, p. 1690.*

— Colonial Probates Act, 1892.

*See PROBATE—Colonial Probates Act, 1892.*

— Education, Power of provincial legislature as to.

*See Nos. 32, 35, below.*

31. — *Entry into Dominion—Dominion Statute 33 Vict. c. 3—Manitoba Public Schools Act, 1890.*

The effect of the Dominion Statute 33 Vict. c. 3 (under which Manitoba entered the Dominion) considered. *CITY OF WINNIPEG v. BARRETT*

P. C. [1892] A. C. 445

Referred to by P. C. *Brophy v. Att.-Gen. of Manitoba*, [1895] A. C. 202, 211.

32. — *Practice—Appeal to Governor-General in Council—British North America Acts, 1867 and 1871—Dominion Manitoba Act, 1870* (33 Vict. c. 3), s. 22, sub-ss. 2, 3—*Denominational schools—Remedies against provincial legislation.*

(i.) An appeal lies to the Governor-General in Council under s. 22, sub-s. 2, of the Dominion Manitoba Act, 1870 (33 Vict. c. 3), which applies to rights and privileges acquired by legislation in the province after the date of that Act. (ii.) The Roman Catholics of Manitoba having acquired certain rights as to their denominational schools, are affected in those rights by the Manitoba Public Schools Act, 1890. (iii.) The Governor-General in Council has power to make remedial orders by way of supplemental rather than repealing legislation. *BROPHY v. ATT.-GEN. OF MANITOBA* — P. C. [1895] A. C. 202

33. — *Railway—Dominion railway—Section capable of sale—Jurisdiction of provincial Court*

**CANADA (Manitoba)—continued.**

— *Part of section outside jurisdiction of Court—Construction of mortgage—Revenues—Practice—Issues not raised in Courts below.*

In a suit by the appellants, being mortgagees of a division of 180 miles of the respondents' ry. and of its revenues subject to working expenses, for a sale of the division and for a receiver and other relief:—

*Held*, (1.) that this division of 180 miles is by the law of Canada applicable to the ry. a section capable of sale in its entirety, but that the provincial Court had no power to order a sale, part of the section being within and part without its jurisdiction; (2.) that so long as the ry. was worked as a whole the revenues of the division are subject along with other revenues to the working expenses of the whole line, and that the receiver was only entitled to the net earnings of the division so ascertained.

Their Lordships declined to hear argument as to the validity of the mortgage or of the power of sale, or of the mortgagees' right of entry, the pleadings and evidence not raising those issues, and the Courts below not having adjudicated thereon. *GREY v. MANITOBA AND NORTH WESTERN RY. CO. OF CANADA*

P. C. [1897] A. C. 254

34. — *Railway—Street railway—Grant—Construction—Manitoba Acts* (45 Vict. c. 36; 45 Vict. c. 37; 55 Vict. c. 36.)

Where a municipal council granted to a ry. co. authority to construct, maintain and work rys. in its streets, with the exclusive right to such portion of any street as shall be occupied by the ry., but with the plain intent that the co. should have no concern whatever with any portion of any street not in actual occupation by their rails:—

*Held*, that a subsequent clause in the deed of grant giving to the co. the refusal on terms of other streets in the city for ry. purposes was insufficient to constitute, contrary to the plain meaning of the previous stipulations, a right of monopoly in any of the streets of the city.

*Quære*, whether if a monopoly had been conceded it was ultra vires of the municipal council. *WINNIPEG STREET RY. CO. v. WINNIPEG ELECTRIC STREET RY. CO. AND CITY OF WINNIPEG*

P. C. [1894] A. C. 615

35. — *Schools—British North America Acts, 1867 and 1871—Dominion Manitoba Act, 1870* (33 Vict. c. 3)—*Manitoba—Denominational schools—Powers of provincial legislature.*

The legislature of Manitoba did not exceed its powers in passing the Public Schools Act, 1890, and thereby abolishing the denominational system of education established by law since the union of Manitoba with Canada. *CITY OF WINNIPEG v. BARRETT. CITY OF WINNIPEG v. LOGAN*

P. C. [1892] A. C. 445

Referred to by P. C. *Brophy v. Att.-Gen. of Manitoba*, [1895] A. C. 202, 211. *See next Case.*

**New Brunswick.**

— Death duties.

*See REVENUE—Estate Duty.*

36. — *Winding-up—Priority of Crown over*

**CANADA (New Brunswick)—continued.**

*simple contract creditors—British North America Act, 1867.*

Simple contract debts due to the provincial government from an insolvent bank take priority over the other depositors and simple contract creditors of the bank. *LIQUIDATORS OF THE MARITIME BANK OF CANADA v. RECEIVER-GENERAL OF NEW BRUNSWICK*

**P. C. [1892] A. C. 437**

**North-West Territories.**

*Appeals from—O. in C. dated July 30, 1891, regulating appeals to Her Majesty in Council from the Supreme Court of North-West Territories. St. R. & O. 1899, p. 1709.*

*Application of the Colonial Probates Act, 1892, to the North-West Territories. See PROBATE—Colonial Probates Act.*

**Nova Scotia.**

*Application of the Colonial Probates Act, 1892, to Nova Scotia. See PROBATE—Colonial Probates Act.*

**37. — County Incorporations Act, 1879—Construction—Non-feasance—Claim for damages.**

Public corporations under an obligation to keep in repair public roads and bridges are not liable to an action for non-feasance unless the legislature has shewn an intention to impose such liability upon them. The County Incorporations Act, 1879, contains no indication of any intention to impose on a municipality incorporated under it any liability for non-feasance. *MUNICIPALITY OF PICTOU v. GELBERT* **P. C. [1893] A. C. 524**

Applied by P. C. *Sydney Municipal Council v. Bourke*, [1895] A. C. 433.

**38. — Gold mining—Compensation—Arbitration—Revised Statutes of Nova Scotia (5th Series), c. 7, s. 19.**

The warden of a municipality acting under Mines and Minerals Consolidation Act (the Revised Statutes of Nova Scotia (5th series), c. 7, s. 19) appointed an arbitrator on behalf of a landowner to estimate damages to be paid to him by lessees from the Crown of gold mines under the statute. The landowner had received and neglected a notice under s. 18 of the Act to appoint:—

*Held*, that the appointment was not a judicial act, and that a fresh notice to the respondent was not a condition precedent to its validity. The award gave the landowner a fixed sum as estimated damages for all works or occupation necessary to or required by the mining lessee:

*Held*, that having regard to the subject-matter and scope of the Act, the award was not bad for uncertainty. *FALGRAVE GOLD MINING CO. v. McMILLAN* **P. C. [1892] A. C. 460**

**39. — Jurisdiction of Provincial House of Assembly—Immunities of its members—Order of imprisonment—Revised Statutes, 5th Series, c. 3—Law of Nova Scotia.**

The Nova Scotia House of Assembly has statutory power to adjudicate that wilful disobedience to its order to attend in reference to a libel reflecting on its members is a breach of

**CANADA (Nova Scotia)—continued.**

privilege and contempt, and to punish that breach by imprisonment.

In an action for assault and imprisonment against members of the Assembly who had voted for the plts.' imprisonment —

*Held*, that the sections of the Local Revised Statutes, 5th Series, c. 3, which create the jurisdiction of the House and indemnify its members against legal proceedings in respect of their votes therein, are a complete answer to an attempt to enforce civil liability for acts done and words spoken in the House. Those sections, except so far as they may be deemed to confer any criminal jurisdiction, otherwise than as incident to the protection of members, are intra vires of the local legislature, as relating to the constitution of the province within the meaning of s. 92 of the British North America Act, 1867, or under the authority of s. 5 of the Colonial Laws Validity Act (28 & 29 Vict. c. 63), which was recognised by the Act of 1867, s. 88.

*Barton v. Taylor*, (1886) 11 App. Cas. 197, distinguished. *FIELDING v. THOMAS*

**P. C. [1896] A. C. 600**

**40. — Licence—Application for renewal of—Effect of repeal of section authorizing renewal—Revised Statutes, 5th Series, c. VII. s. 95.**

The appellants having obtained a licence to work for two years under s. 95, c. VII., of the Revised Statutes, 5th Series, afterwards applied under the same section for a renewal thereof; but in the meantime s. 95 had been repealed by an amending Act of 1889:—

*Held*, that at the date of the application to renew the power to grant it was gone, for even if the amending Act were so construed as not to interfere with vested rights, the appellants possessed a privilege and not an accrued right in reference to the renewal sought.

*Main v. Stark*, (1890) 15 App. Cas. 384, referred to. *REYNOLDS v. ATT.-GEN. FOR NOVA SCOTIA*

**P. C. [1896] A. C. 240**

**Ontario.**

(Formerly Upper Canada, see s. 6 of the British North America Act, 1867.)

— Application of the Colonial Probates Act, 1892, to Ontario.

*See PROBATE—Colonial Probates Act.*

— Bankruptcy, Power of provincial legislature as to.

*See No. 4, above.*

**41. — Barristers—Provincial Bar—Power to issue patents of precedence—British North America Act, 1867 (30 & 31 Vict. c. 3), s. 92, sub-ss. 1, 4, 14 — Powers of provincial legislature — Revised Statutes of Ontario, 1877, c. 139.**

*Held*, that, according to the true construction of the British North America Act, 1867, s. 92, sub-ss. 1, 4, 14, Revised Statutes of Ontario, 1877, c. 139, which empowers the Lieutenant-Governor of the province to confer precedence by patents upon such members of the bar of the province as he may think fit to select, is intra vires of the provincial legislature. *ATT.-GEN. FOR DOMINION OF CANADA v. ATT.-GEN. FOR PROVINCE OF ONTARIO* — — — **P. C. [1898] A. C. 247**



**CANADA (Ontario)—continued.**

42. — *Brewers' licences—Revised Statutes of Ontario, c. 194, s. 51, sub-s. 2—Direct Taxation—British North America Act, 1867 (30 & 31 Vict. c. 3), s. 92, sub-ss. 2, 9—Powers of provincial legislature.*

*Held*, that the Liquor Licence Act (Revised Statutes of Ontario, c. 194), s. 51, sub-s. 2, which requires every brewer and distiller to obtain a licence thereunder to sell wholesale within the province, is *intra vires* of the provincial legislature—

(a) as being direct taxation within sub-s. 2, s. 92, of the British North America Act, 1867.

*Bank of Toronto v. Lambe*, (1887) 12 App. Cas. 575, followed.

(b) as comprised within the term "other licences" in sub-s. 9 of the same section. *BREWERS AND MALTSTERS' ASSOCIATION OF ONTARIO v. ATT.-GEN. FOR ONTARIO*

P. C. [1897] A. C. 231

43. — *Company—Statutory duties of a corporation—Breach—Cause of action.*

Where by an Act extending the powers of the respondent co. certain duties and obligations were imposed on it for the benefit of its customers with a view to the reduction of the price of gas contingent on the amount of surplus net profit, but no pecuniary penalty was imposed for default and no right of action given to persons aggrieved, provision however being made for its accounts being audited by direction of the mayor of the corporation with whose assent the company was originally established:—

*Held*, that no individual customer had a right of action against the company for non-compliance with the provisions of the Act. Such a right only arises where given by the Act, and especially so where the Act as in this case is in the nature of a private legislative bargain, and not one of public and general policy. *JOHNSTON AND TORONTO TYPE FOUNDRY CO. v. CONSUMERS' GAS CO. OF TORONTO* — P. C. [1898] A. C. 447

— Costs of appeals by special leave.

See PRIVY COUNCIL — Judicial Committee; Practice. 3.

44. — *Custody of children—Habeas corpus—Considerations other than paternal rights—Canadian Act, 18 Vict. c. 126.*

The legal rights of a father are controlled as to a child under twelve by the Canadian Act, 18 Vict. c. 126, framed on the principle of Talfourd's Act, giving the Courts absolute authority in their judicial discretion to deprive him of the custody. In the case of children over twelve such legal right is materially affected by breaches of marital duty, considerations with respect to the welfare of the children, and the objection to separating them from each other. *SMART v. SMART* — P. C. [1892] A. C. 425

45. — *Drainage works—Ontario Municipal Act of 1887 (R. S. O. c. 184), ss. 583, 586, 591—Damages for non-feasance—Mandamus—Notice in writing—Remedy by arbitration.*

*Held*, on the construction of s. 583 (2) and 586 of the above Act, that notice in writing is not a condition precedent to an action for damages for

**CANADA (Ontario)—continued.**

non-performance of the statutory duty of maintaining and repairing drainage works:—

*Held*, also, that the remedy for damages for negligent construction of drains was by arbitration under s. 591. *RALEIGH (CORPORATION OF) v. WILLIAMS* — P. C. [1893] A. C. 540

46. — *Insurance, Life—Policies of life assurance—Proviso for cash payment of premium—Onus probandi—Duties of insurers' agent—Payment of premium by notes discounted and then dishonoured.*

Where a life policy contains provisions to the effect that it shall not be in force till the first premium is paid, and that if a note be taken for the first or renewal premium and not paid the policy is void at and from default, the onus is on the policy-holder to prove cash payment of the premium.

Where the insurers' agent accepts in payment of a premium a note which is not paid when due, there is no presumption that he was to raise money thereon as an agent for the insured and pay the premium out of the proceeds.

And where the insurers accept their agent's note in discharge of an account current between them in which the agent was debited with the amount of the premium, that affords no presumption of an intention to treat their own agent as agent for the insured, or the insurance as subsisting contrary to the terms of their contract with the policy-holder.

*Accey v. Fernie*, (1840) 7 M. & W. 151, approved. *LONDON AND LANGASHIRE LIFE ASSURANCE CO. v. FLEMING* — P. C. [1897] A. C. 499

47. — *Railways—Canadian Act, 24 Vict. c. 83—Ontario Act, 53 Vict. c. 105—Construction—Street railway—Grant.*

*Held*, that the Canadian Act and the agreement in pursuance thereof granted a privilege to use the streets of Toronto for the purpose of a ry. for thirty years only, and that the limit of time applied not merely to the original ry. but also to the various extensions authorized under the same privilege. *TORONTO STREET RY. CO. v. CORPORATION OF TORONTO* — P. C. [1893] A. C. 511

48. — *Trade—Power to regulate a trade does not include power to prohibit—By-laws—Construction—Ontario Revised Statutes, 1887, c. 184, s. 495 (3).*

A statutory power conferred upon a municipal council to make by-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorize the making it unlawful to carry on a lawful trade in a lawful manner:—

So *held*, where, under c. 184 of Revised Statutes of Ontario, 1887, s. 495 (3), a municipal by-law was passed prohibiting hawkers from plying their trade in an important part of the municipality, no question of apprehended nuisance having been raised. *MUNICIPAL CORPORATION OF THE CITY OF TORONTO v. VERGO*

P. C. [1896] A. C. 88

Followed. *Att.-Gen. for Ontario v. Att.-Gen. for the Dominion*, [1896] A. C. 348.

Applied to by H. L. (Sc.). *Scott v. Glasgow Corporation*, [1899] A. C. 470, 490.

**CANADA (Ontario)—continued.**

49. — *Transfer of shares subject to a trust—Constructive notice—Signature of bank manager as "manager in trust."*

See **BANKER**. 5.

— Warehouse receipt, Negotiability of.  
See No. 3, above.

**Quebec.**

(Formerly Lower Canada, see s. 6 of the *British North America Act*, 1867.)

50. — *Advances—Purchases by husband in names of wife and daughter—Advances—Account by mandatory before action—Gifts by husband to wife—Civil Procedure Code*, s. 6.

The appellant after his wife's death sued his daughter, the respondent, to recover as creditor of herself and his wife's estate moneys which he alleged that he had advanced to purchase properties in Quebec to which she was entitled either in her own right or under his wife's will:—

*Held*, on the evidence, that he failed to establish his claim.

And, *quære*, whether advances made as his wife's mandatory in charge of her estate could be recovered in a suit brought before he had rendered an account of rents and moneys received in that character as well as disbursements.

*Quære*, also, if the advances were in the nature of gifts, whether those gifts were valid by the Quebec law or by s. 6 of the Code of Civil Procedure. **EDDY v. EDDY**

**P. C. [1900] A. C. 299**

51. — *Banking company—Shares—Transfer—Trust—Notice—Bank Act* (18 Vict. c. 202), Canada.

Where executors in breach of trust transferred shares in a bank, and the bank registered such transfer, such registration was, under the special Act of the bank (18 Vict. c. 202, Canada), not wrongful unless the bank had actual knowledge of the breach of trust. **SIMPSON v. MOLSON'S BANK** — — **P. C. [1895] A. C. 270**

52. — *Company—Shares—Payment in cash—Price of property sold to company—Quebec Revised Statutes*, Art. 4722 (1), (5).

The shares of promoters of a co. incorporated under the Revised Statutes of Quebec having been credited as paid in full under an arrangement by which half the amount thereof was paid in cash and half by receipts on account of the purchase price of the property acquired by the company:—

*Held*, that under art. 4722, par. 1 (originally enacted as s. 1 of Quebec Statute 47 Vict. c. 73, and reproducing s. 25 of the English Companies Act, 1867), the shares were rightly so credited; the promoters having acted in good faith and the purchase price being fair.

*Spargo's Case*, (1873) L. R. 8 Ch. 407, approved. **LAROCQUE v. BEAUCHEMIN**

**P. C. [1897] A. C. 358**

Referred to by **P. C. North Sydney Investment and Tramway Co. v. Higgins**, [1899] A. C. 263, 273.

53. — *Corporation, property of—Liability to*

**CANADA (Quebec)—continued.**

*taxation—Municipal Code of Quebec*, Art. 712, sub-s. 3—*Construction*.

By the true construction of art. 712, sub-s. 3, of the Municipal Code of Quebec, property belonging to a corporation "for the ends for which they are established, and not possessed solely by them to derive a revenue therefrom," is not taxable:—

But *held*, that a farm belonging to the appellant corporation and worked by them as a farm in order to derive revenue therefrom, is taxable, although not detached from the residue of the corporate property and occasionally used for the above ends. **LE SÉMINAIRE DE QUÉBEC v. LA CORPORATION DE LIMOULOU** **P. C. [1899] A. C. 288**

— Estate duty.

See **REVENUE—Estate Duty**.

54. — *Gaming—Principal and broker—Stock Exchange transactions—Civil Code*, Art. 1927.

Art. 1927 of the Civil Code does not differ substantially from the Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18, and renders null and void all contracts by way of gaming and wagering.

Contracts made by a broker employed to make actual contracts of purchase and sale, in each case completed by delivery and payment, on behalf of a principal whose object was not investment but speculation, are not gaming contracts within the meaning of the Code. **FORGET v. OSTIGNY** — **P. C. [1895] A. C. 318**

55. — *Information—Code of Civil Procedure—Arts. 997, 998—Attorney-General's powers—General Railway Act*, c. 109 of the Revised Statutes of Canada, 1888, s. 12.

Informations against associations under art. 997 of the Civil Procedure Code apply only to acts done in the assertion of some special power, franchise, or privilege, not conferred by law.

An allegation that a co. had closed a lane under the pretext that they had acquired private rights entitling them so to do is not sufficient under the art.

The Court has jurisdiction under art. 998 of the Code to prohibit the issue of an information under art. 997, but when it has once been issued the Att.-Gen. is dominus litis, and can discontinue, &c., independently of the relator. **CASGRAIN v. ATLANTIC AND NORTH-WEST RY. CO.**

**P. C. [1895] A. C. 282**

56. — *Municipal election—Expiry of prescribed time—Non-judicial day—Quebec Act*, 42 & 43 Vict. c. 53.

Where it was enacted by s. 12 of 42 & 43 Vict. (Quebec) c. 53, that any municipal elector might demand the annulment of the corporate appropriation for expenditure within three months from the date thereof on the ground of illegality, but that thereafter the right was prescribed and the appropriation valid:—

*Held*, that, on the expiration of the three months the elector's statutory right was at an end, and could not be extended by any procedure clause (see art. 3 of the Civil Procedure Code) which presupposed an existing right of action and regulated its exercise. **DÉCHÈNE v. MONTREAL (CITY OF)** — — **P. C. [1894] A. C. 640**

**CANADA (Quebec)—continued.**

57. — *Parish—Creation—Civil and canonical jurisdiction—Revised Statutes of Quebec*, ss. 3373, 3380.

Proceedings for civil recognition of a new parish are sufficiently founded on a decree for canonical erection thereof.

Proceedings before the Commrs. of the diocese with a view to civil recognition are not subject to the review or control of a Court of justice.

An objection to the formation of a new parish on the ground that one of the old parishes dismembered for that purpose is in debt is valid under Revised Statutes of Quebec, s. 3380; but where the debt relied on was contracted by the Fabrique it must be proved that the Fabrique is unable to pay it and that a levy on the Roman Catholic freeholders of the parish has been duly authorized. *ALEXANDRE v. BRASSARD*

P. C. [1895] 301

58. — *Prescription—Civil Code*, Arts. 1056, 2262 (2)—*Construction*.

On the construction of ss. 1056, 2256 (2) of the Civil Code of the Province of Quebec the widow's right of action is distinct from that of the deceased; though the latter be barred by prescription the former may still be extant. An appeal to earlier law and decisions for the purpose of interpreting a statutory code can only be justified on some special ground such as the doubtful import or previously acquired technical meaning of the language used therein. *ROBINSON v. CANADIAN PACIFIC RY. CO.*

P. C. [1892] A. C. 481

59. — *Prescription—Statutory acknowledgment of title—Immemorial possession*.

The Canadian Act, 18 Vict. c. 3, recognised as a seigneurie the appellants' rights over a strip of sea coast, although the appellants could only shew a title which gave them a right to make hunting and fishing stations on the land in question:—

*Held*, that the Court must give effect to the enactment as it stood:

*Held*, also, as to other lands claimed as a seigneurie by immemorial possession, that where the true root of title is shewn, the law of prescription does not apply. *LABRADOR CO. v. REG.*

P. C. [1893] A. C. 104

60. — *Principal and agent—Construction of power of attorney*.

Where by a document indorsed "procuration générale et spéciale" a wife being sole owner constituted her husband "son procureur général et spécial" to administer her affairs, specifying such acts as drawing bills of exchange and making promissory notes:—

*Held*, that the wife's liability extended to all promissory notes granted by the husband, and was not limited by art. 181 of the Civil Code to such notes as were required for purposes of the administration. *LA BANQUE D'HOCHELAGA v. JODOIN* — — — P. C. [1895] A. C. 612

— *Railway—Compensation for land taken*.

*See No. 18, above.*

— *Railway—Closing of public lane by*.

*See No. 19, above.*

61. — *Railways—British North America Act*,

**CANADA (Quebec)—continued.**

1867 (30 & 31 Vict. c. 3), s. 91, sub-s. 29, and s. 92, sub-s. 10—*Municipal Code of Quebec—Powers of provincial legislature—Municipal legislation affecting Dominion Railway*.

By the true construction of British North America Act, 1867, s. 91, sub-s. 29, and s. 92, sub-s. 10, the Dominion Parliament has exclusive right to prescribe regulations for the construction, repair, and alteration of the appellant ry.; and the provincial legislature has no power to regulate the structure of a ditch forming part of its authorized works:—

But *held*, that the provisions of the municipal code of Quebec, which prescribe the cleaning of the ditch and the removal of an obstruction which had caused inundation on neighbouring land, are intra vires of the provincial legislature. *CANADIAN PACIFIC RY. CO. v. CORPORATION OF THE PARISH OF NOTRE DAME DE BONSECOURS*

P. C. [1899] A. C. 367

Distinguished by P. C. *Madden v. Nelson and Fort Sheppard Ry. Co.*, [1899] A. C. 626.

62. — *Riparian proprietor—Navigable river—Sale of water power artificially created*.

A riparian proprietor can acquire an interest in the water power of a navigable river as derived from a reservoir artificially formed by a dam across its channel; and can sell such interest along with and as appurtenant to his land, and even if the sale is ineffectual against the public the vendor cannot impeach it on that ground. *HAMELIN v. BANNERMAN* P. C. [1895] A. C. 237

— *Signing bills pro pro.*

*See PRINCIPAL AND AGENT. 3.*

63. — *Underground wires—Power to lay wires underground for purpose of supplying electricity and gas—Right to excavate streets—Quebec Act* (55 & 56 Vict. c. 77), s. 5—*Construction*.

Sec. 5 of the respondent co.'s incorporating Act (55 & 56 Vict. c. 77) empowers it on certain conditions (which have been complied with) to lay its wires underground as the same may be necessary, and in so many streets, squares, highways, lanes, and public places as may be deemed necessary for the purpose of supplying electricity and gas:—

*Held*, that the power to open streets, that is, to break up their surface and excavate them, is plainly involved in this provision, and that an injunction obtained by the respondents to restrain the municipality from interfering therewith was properly granted. *CITY OF MONTREAL v. STANDARD LIGHT AND POWER CO.*

P. C. [1897] A. C. 527

**CANAL**—*Canal Protection (London) Act*, 1898 (61 & 62 Vict. c. 16), provides for the protection of dangerous places on canals in the County of London.

— *Canal owners, Liability of*.

*See Merchant Shipping (Liability of Shipowners and Owners) Act*, 1900 (63 & 64 Vict. c. 32).

— *London canals*.

*See LONDON—Canal.*

— *Mines and minerals—Right of support*.

*See MINES. 26.*

**CANAL**—*continued.*

— Railway and Canal Traffic Act.

*See* RAILWAY—Railway and Canal Commission.

— Rating.

*See* RATES—Rateability. 57.1. — *Support, Right to—Subjacent and adjacent minerals—Working—Undertaking not to sue.*

The defts.' canal was constructed under an Act of Parliament by which the canal was to be open for use by the public on payment of tolls. Two sections of the Act (37 and 38) were identical in effect with the statutory provisions construed by the H. L. in *Knowles & Sons v. Lancashire and Yorkshire Ry. Co.*, (1889) 14 App. Cas. 248, and *Chamber Colliery Co. v. Rochdale Canal Co.*, [1895] A. C. 564.

Plts. sued defts. for—(a) a declaration that they were entitled to work all their adjacent coal, although the result might be to endanger or damage the canal, or, in the alternative, (b) a declaration that plts. were entitled to be paid, under s. 38, satisfaction for adjacent coal left as canal protection. Plts. also claimed a declaration that under ss. 37 and 38 they were entitled to be paid satisfaction for the subjacent coal left as protection:—

*Held*, that the plts. were entitled to declaration (a), but that on the plts. and defts. making admissions (substantially to the effect of the referee's findings in the *Chamber Colliery Case*, see [1894] 2 Q. B. 635) that the cost, if any, of repairing damages to be sustained to the canal and works by getting all the coal would be trifling compared with the value of the coal required to be left for the absolute protection of the canal and works, and that such damage could be repaired from time to time, and would not interfere with the navigation, and on the defts. undertaking (substantially in accord with the undertaking required by the C. A. in the *Chamber Colliery Case*, [1894] 2 Q. B. 632, 642) not to claim damages in the future in respect of the plts. working the subjacent coal, and at their own expense to repair any damage thereby caused, the plts. were not entitled to any declaration respecting the subjacent coal. *NEW MOSS COLLIERY CO. v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* *Byrne J.* [1897] 1 Ch. 725

**CANCELLATION**—Pension—Incapacity by infirmity.*See* POLICE. 3.**CANDIDATE**—Nomination of disqualified person

—Election—Right to petition.

*See* CORPORATION. 14.**CANON, ETC.**—Right to vote—Claim.*See* PARLIAMENT—Franchise. 41, 42.

— Stipend.

*See* SCOTTISH LAW—Church. 5.**CANON LAW**—Legitimation per subsequens matrimonium.*See* LEGITIMACY. 2, 3.**CANVASSING CUSTOMERS**—Injunction—Sale

of business to one partner—"Assets."

*See* PARTNERSHIP—Goodwill. 25—28.**CAPACITY (TESTAMENTARY).***See* PROBATE—Testamentary Capacity.

**CAPE OF GOOD HOPE**—*Appeals from—Charter of Justice, dated May 4, 1832, regulating (Articles 50, 51 and 52) appeals from the Supreme Court of the Colony to Her Majesty in Council.* *St. R. & O.* 1899, p. 1675.

(Application of the Colonial Probates Act, 1892.

*See* PROBATE—Colonial Probates Act.**Death Duty.***See* REVENUE—Estate Duties.**Law of the Cape of Good Hope.**

1. — *Act of State—Concessions granted before cession—Rights after Annexation—Jurisdiction of municipal courts—Crown Liabilities Act, 1888 (51 & 52 Vict. No. 37).*

*Held*, that the appellants as grantees of concessions made by the paramount chief of Pondoland cannot, after the annexation of Pondoland by Her Majesty, enforce against the Crown the privileges and rights conferred.

Annexation is an act of State, and any obligation assumed under a treaty to that effect, either to the ceding sovereign or to individuals, is not one which municipal courts are authorized to enforce.

The Crown Liabilities Act, 1888, permits such an action to be brought, but it does not empower the Court to make a declaration of right.

*Secretary of State for India in Council v. Kamachee Boye Sahaba*, (1859) 13 Moo. P. C. 22, followed. *Cook v. Sprigg* P. C. [1899] A. C. 572

2. — *Agreement—Construction—Proviso—Monopoly of supply—Water required for mining purposes.*

Where respondents had agreed for a specified term to "obtain and purchase all the water required by them for their mining purposes" from the appellants and from no other person or persons, with a proviso excepting any water obtained by them from their own mines:—

*Held*, that on the true construction of this agreement the proviso was not limited to such mines as the respondents possessed at the date of the agreement; and that on the other hand they could not deprive the appellants of their monopoly of supply by obtaining it gratis elsewhere. *KIMBERLEY WATERWORKS CO. v. DE BEERS CONSOLIDATED MINES* P. C. [1897] A. C. 515

3. — *Company—Directors—Liability—Issue of shares at a discount.*

*Held*, that the directors of a co. established in South Africa could not issue shares at a discount so as to make the holder liable for less than their full amount. Where shares are, in consideration of services rendered, issued at a discount, the directors are liable to the co.; but in the absence of fraud or further resulting damage to the co., no further than the amount of the discount.

*Semble*, such further resulting damage could not exceed the difference between the discount price and the value of the shares if the services and transactions founded thereon had not taken place. *HIRSCH v. SIMS* P. C. [1894] A. C. 654

Referred to by H. L. (E.) *Welton v. Saffery*, [1897] A. C. 299, 325.

**CAPE OF GOOD HOPE (Law of the Cape of Good Hope)—continued.****4. — Contract—Construction—"Flotation"—British South Africa Company's Mining Ordinance, 1890, ss. 26, 27, 28—Company.**

Where a prospector agreed with a syndicate that his pay for services rendered in Matabeleland or Mashonaland should be 250*l.* on flotation by the syndicate of every block of ten claims pegged by him, and the syndicate agreed to sell 330 claims pegged by the prospector to a substantial co. which had for one of its principal objects the developing and working of gold mines:—

*Held*, that this was a flotation of the claims within the meaning of the agreement, and that the provisions of the Mining Regulations of 1890, ss. 26, 27, and 28, were not imported into the agreement so as to limit the meaning of flotation to one by the British South Africa Co. or by the claimholder with their consent, in either case after the grant of an inspection certificate.  
**TORVA EXPLORING SYNDICATE v. KELLY**  
**P. C. [1900] A. C. 612**

— Devise to "children"—Child legitimized by law of Cape of Good Hope.  
*See WILL—Children.* 38.

**5. — Lease—Improvements—Permanent buildings erected by lessee—Right of removal.**

Where a lessee being entitled by the terms of his lease to remove all such improvements as should be capable of removal without injury to the land itself, pulled down a brick building which he had erected on the land demised, and removed the materials except those composing the stone foundations beneath the soil:—

*Held*, that this proceeding was authorized by the lease, and in accordance with the lessee's common law right under the Roman-Dutch law.  
**LONDON AND SOUTH AFRICAN EXPLORATION CO. v. DE BEERS CONSOLIDATED MINES, LD.**  
**P. C. [1895] A. C. 451**

**6. — Pondoland Annexation Act, 1894, No. 2, s. 2—Construction—Extent of legislative power conferred on the governor—Illegal proclamation of arbitrary arrest, conviction, and punishment.**

Sect. 2 of the Pondoland Annexation Act, 1894, gives authority to the Governor to add to the existing laws, already proclaimed and in force in the territories annexed, such laws as he "shall from time to time by proclamation declare to be in force in such territories":—

*Held*, that this section did not, according to its true construction, authorize the Governor to make new laws, but only to transplant to the new territories and enact there such laws as were already in force in other parts of the Colony.

In 1895 the Governor, "in virtue of powers vested in me by law," including the Act above mentioned, issued a proclamation which set aside the established law of Pondoland with respect to arrest, trial, conviction and punishment, and condemned the respondent untried and unheard to imprisonment, the place and duration of his captivity being left to the uncontrolled will of the Governor.

In a petition for his discharge by the respondent, who had been arrested thereunder:—

*Held*, that the proclamation was ultra vires of

**CAPE OF GOOD HOPE (Law of the Cape of Good Hope)—continued.**

any authority conferred upon the Governor by s. 2; or of any authority at all except that of an irresponsible sovereign, or of a supreme and unfettered legislature. **SIR JOHN GORDON SPRIGG v. SIGCAU** — — — **P. C. [1897] A. C. 238**

**7. — Revenue—Company—Laws of Cape of Good Hope, No. 3 of 1864, Sched. 17, s. 2, head (b).**

Where a co. was authorized by its memorandum of association to carry on its business in any part of the world:—

*Held*, that it was not taxable under No. 3 of 1864, Sched. 17, s. 2, head (b), which, on its true construction, relates to companies, some of whose dealings are specifically authorized "to be carried on in this Colony." **MARSHALL v. ORPEN**  
**P. C. [1895] A. C. 603**

**CAPITAL—Charge on.**

*See ANNUITY.* 4.

## — Company practice.

*See Cases under COMPANY and COMPANY—WINDING-UP.*

## — Income or—Dividends—Public company—Apportionment.

*See WILL—Dividends.* 76.

## — Income or—Settled Land Acts.

*See Cases under SETTLED LAND.*

**CAPITAL MONEY—Application of, under Settled Land Acts.**

*See SETTLED LAND—Capital Money.*

**CAPITATION GRANT—Loss of—Rule ultra vires.**

*See ARMY AND NAVY—Volunteers.* 5.

**CAPTURE—Notice of abandonment—Recovery of ship—Total loss.**

*See INSURANCE—Marine.* 29.

## — Seizure by belligerent government of property of its own subjects—Contract of indemnity—Validity.

*See INSURANCE—Marine.* 30.

**CARGO—Bill of lading and charterparty.**

*See Cases under SHIPPING—Charter-party.*

**CARNAL KNOWLEDGE—Offences against the person.**

*See CRIMINAL LAW.* 48—50.

**"CARRIAGE"—Bicycle—Liability to toll.**

*See BICYCLE.* 2.

## — Hackney carriages.

*See HACKNEY CARRIAGES.*

## — Servant of one person hired by another to drive his carriage—Liability of hirer for negligence of driver.

*See MASTER AND SERVANT.* 77—82.

**CARRIAGE OF GOODS—Charterparty.**

*See Cases under SHIPPING—Charter-party.*

## — Railways.

*See Cases under RAILWAY.*

**CARRIAGE OF GRAIN.**

*See SHIPPING—Carriage of Grain.*

**CARRIER**—Contract to carry—Passenger—Ticket Conditions—Evidence.

A. paid R. & Co. passage-money for a voyage on their steamer and received a folded ticket on which no writing was visible till it was opened. On the ticket was a condition that the co. would not be liable beyond \$100 for injury to the passenger or his luggage. On an action by A. to recover damages exceeding \$100 for personal injuries, the jury found that A. knew there was writing on the ticket, but did not know that it contained conditions as to the contract of carriage, and that the co. did not do what was reasonably sufficient to give A. notice of the conditions:—

*Held*, that there was evidence on which the jury could properly so find. **RICHARDSON, SPENCE & Co. v. ROWNTREE**

**H. L. (E.) affirm. C. A. [1894] A. C. 217**

**2. — Goods shipped without bill of lading—Shipowner's liability.**

The plt., a wool merchant at Bradford, bought wool in London and handed a delivery order to the deft., who shipped the wool on board his steamer in London, carried it by sea to Goole, and forwarded it by rail to Bradford, charging the plt. a through rate of 1*l.* 7*s.* 6*d.* per ton, which covered all expenses of the transit from London to Bradford, including insurance. The insurance was effected by the deft., who selected the underwriters and paid the premium, after receiving directions from the plt. as to the amount per bale for which he was to insure. The plt. did not receive possession of the policy; and on previous occasions, when losses had occurred, the deft. had received payment from the underwriters, and had settled with the plt. The wool was shipped without a bill of lading. In cases where the plt. imported wool, he insured it for the whole transit, and the deft. charged only 1*l.* 5*s.* 9*d.* per ton for its conveyance from London to Bradford:—

*Held*, that the deft. had insured the wool, not as agent for the plt. but to cover his own liability of carrier, and had undertaken a liability equal to that of a common carrier, and had not, either expressly or impliedly, stipulated for any limitation of his liability, and therefore was liable without proof of negligence.

Decision of Lord Russell of Killowen C.J., [1895] 2 Q. B. 371, affirmed. **HILL v. SCOTT**

**C. A. [1895] 2 Q. B. 713**

— Negligence—Liability—Loss by theft of company's servants—Special contract.  
*See* **RAILWAY—Negligence. 16.**

**CASE STATED**—On behalf of one prisoner only—Prisoners jointly indicted—Misreception of evidence.

*See* **CRIMINAL LAW—Evidence. 22.**

— On appeal from justices.

*See* **JUSTICES—Appeal. 30—35.**

**CASES**—A list of Cases affirmed, reversed, followed, overruled, or judicially commented on or overruled or directly affected by Statute or Order during the years 1891—1900 inclusive is given in the "Table of Cases Affirmed, &c.," at p. cclxxxii.

**CASH**—Advanced to ship.

*See* **INSURANCE—Marine. 23.**

**CASH**—continued.

1. — Agent—Payment by cheque instead of cash—Auctioneer.

An agent employed to receive money must not accept anything but cash unless it is in accordance with the ordinary course of business to receive a cheque. **PAPE v. WESTACOTT**

**C. A. [1894] 1 Q. B. 272**

**CASTING VOTE**—Election of mayor—Validity of votes—Municipal election.

*See* **CORPORATION. 17.**

**CASTS OF FRUIT AND LEAVES**—Sculpture.

*See* **COPYRIGHT—Sculpture. 41.**

**CATALOGUE** — Probate — Will — Incorporated document—Custody.

*See* **PROBATE—Grant of Probate. 98.**

**CATTLE** — Fences — British Columbian Cattle Protection Acts.

*See* **CANADA. 26.**

— Injury to cattle—Persons liable.

*See* **NUISANCE. 37—39.**

— Insurance on live cattle.

*See* **INSURANCE—Marine. 61.**

**CATTLE MARKET**—Charges—Special Act.

*See* **LIVERPOOL COURTS. 3.**

**CAUTIONARY OBLIGATION.**

*See* **SCOTTISH LAW—Guaranty. 16.**

**CAVEAT**—Entry of—Costs of litigation.

*See* **PROBATE—Grant of Probate. 88.**

— Real Property Acts.

*See* **NEW SOUTH WALES. 39.**

— Receiver before probate—Jurisdiction.

*See* **PROBATE—Grant of Probate. 105.**

**CEMETERY**—Burial.

*See* **BURIAL. 1.**

— Grant of faculty for use as public street of portion of consecrated cemetery or churchyard closed for burials.

*See* **ECLESIASTICAL LAW—Faculty. 31.**

— Income tax.

*See* **REVENUE—Income Tax. 74.**

**CEMETERY COMPANY**—Whether "owners of land," within Metropolis Management Acts—New street.

*See* **LONDON—Streets. 77.**

**CENSUS (GREAT BRITAIN) ACT, 1900 (63 & 64 Vict. c. 4), for taking the Census for Great Britain in year 1901.****CERTIFICATE**—Analyst under Sale of Food and Drugs Act, 1875.

*See* Cases under **ADULTERATION — Analysis.**

— Discharge—Discretion of Lunacy Commissioners.

*See* **LUNACY—Custody. 12.**

— Incorporation of company—Whether conclusive.

*See* **COMPANY—Registration. 258.**

— Ownership of shares in company.

*See* **COMPANY—Shares. 267, 268, 298.**

— Reasonableness and propriety of particulars of objection to patent.

*See* **PATENT—Practice. 30, 32.**

**CERTIFICATE—continued.**

— Scrip certificate—Payment by instalments—Receipts for future payments indorsed on certificate.

See **REVENUE—Stamps.** 180.

— Shares fully paid-up — Contributory — Estoppel.

See **COMPANY—WINDING-UP—Contributory.** 30, 31.

— Solicitor—Discretion of registrar to refuse.

See **SOLICITOR.** 110.

— Surveyor of highways as to extraordinary traffic.

See **HIGHWAY—Repairs.** 13.

**CRETIORARI**—Bankruptcy jurisdiction—Order made in exercise of.

See **COUNTY COURT—Jurisdiction.** 47.

— Confirmation of new licence—Excess of jurisdiction.

See **LICENSING ACTS—Practice.** 55.

— Jurisdiction of justices—Power to require witnesses to be sworn.

See **LICENSING ACTS—Practice.** 56.

— Licence—Excess of jurisdiction—Mandamus.

See **LICENSING ACTS—Practice.** 54.

1. — *Thames Watermen—Court of Company of Judicial Order—Applications for licences—Watermen's and Lightermen's Amendment Act, 1859 (22 & 23 Vict. c. cxxxiii.), s. 56 (Local).*

Certiorari will not lie to remove an order, made by the Court of the Company of Watermen and Lightermen of the River Thames under s. 56 of the Watermen's and Lightermen's Amendment Act, 1859 (Local), granting a licence to act as a waterman or lighterman within the limits of the Act. *REG. v. WATERMEN'S CO.*

**Div. Ct. [1897] 1 Q. B. 659**

**CESSER**—Admission of, of interest—Married woman—Restraint on anticipation.

See **HUSBAND AND WIFE.** 43.

— Before trial—Nuisance.

See **NUISANCE.** 5, 6.

— Of interest—On bankruptcy.

See **BANKRUPTCY—Voluntary Settlement.** 271.

— "Off licence"—Order sanctioning removal—Notice of application.

See **LICENSING ACTS—Licence.** 4.

**CESSER CLAUSE.**

See **SHIPPING—Charterparty.** 23, 24.

**CESSPOOL.**

See **SEWERS—Cesspools.**

**CEYLON.****Death Duties.**

See **REVENUE—Estate Duty.**

**Law of Ceylon.**

— Appeal to Judicial Committee—Divorce suit.

See **PRIVY COUNCIL—Judicial Committee.** 1.

1. — *Fidei commissum—Ordinances 21 of 1844, 10 of 1863, and 7 of 1871—Will—Construction—Jus accrescendi.*

The law of fidei commissum is not altered by

**CEYLON (Law of Ceylon)—continued.**

Ceylon Ordinances No. 21 of 1844, No. 10 of 1863, and No. 7 of 1871.

Two spouses by joint will directed that after the death of the survivor the lands in suit should be created fidei commissum, so that they may not be sold, mortgaged, or in any way alienated, and that "the three children of their deceased daughter and their surviving daughter shall divide into two and inherit according to custom, and they and their descendants possess without interruption":—

*Held*, that, by the true construction of the will, the moiety devised to the three grandchildren was burdened with one fidei commissum, and not with three fidei commissas separately applicable to the three shares. Accordingly one-third share of such moiety did not vest absolutely in each institute, so as to pass to his heir-at-law not in the direct line of descent from the testators; but the whole vested in the three institutes jointly with benefit of survivorship and with substitution of their descendants. *DONA MARIA ABEYSEKERA HAMINI v. DANIEL TILLEKERATNE*

**P. C. [1897] A. C. 277**

**2. — Fiscal sale—Ejectment.**

In an action of ejectment the plt. had purchased from the mortgagor of an estate, and the deft. (subsequently), from the mortgagee, under a fiscal sale obtained in proceedings to which plt. was not a party:—

*Held*, that whether the plt. was or was not bound by the fiscal sale, he could not in law or justice eject the deft. without at least paying the moneys due on the mortgage; and that, whether he was or was not entitled to redress, there being no prayer for relief of that character, it could not be decreed to him in that action. *MURUGASER MARIMUTTU v. DE SOYSA*

**P. C. [1891] A. C. 69**

3. — *Fiscal sale of testator's estate—Judgment against executor who has not proved—Effect of application for probate.*

A creditor of a deceased debtor cannot sue a person named as executor in the will of the deceased unless he has either administered or obtained a grant of probate, and a fiscal sale in execution of a judgment against such person does bind the deceased's estate. *MOHAMIDU MOHIDEEN HADJIAR v. PITCHAY*

**P. C. [1894] A. C. 437**

**4. — Matrimonial law.**

The matrimonial law applicable to British or European residents in Ceylon is the Roman-Dutch law as it existed in the Colony at the date of the Royal Proclamation of Sept. 23, 1799. That law did not contain any power specially conferring on the Colonial Courts jurisdiction to divorce a vinculo European spouses resident in the Colony, but whose marriage and domicile were in England. *LE MESURIER v. LE MESURIER (No. 2)*

**P. C. [1895] A. C. 517**

Referred to by G. Barnes J. *Armytage v. Armytage*, [1898] P. 178, 185.

5. — *Patent—Infringement—Improvements—Extent of protection.*

Where a patent had been granted merely for improvements upon the mechanism of an old and known machine:—

*Held*, that the patentee's exclusive right

**CEYLON (Law of Ceylon)—continued.**

thereto could not be permitted to exceed the exact terms of his specification; and that the debts' improvements, which had the same object, but were effected in a manner not strictly corresponding to the specification, were not an infringement of his patent. *BROWN v. JACKSON*

P. C. [1895] A. C. 446

**6. — Registration—Priority—Mortgage bonds — Unregistered ante-nuptial settlement — Ceylon Land Registration Ordinance VIII. of 1863, s. 39.**

*Held*, that under s. 39 of the Ceylon Land Registration Ordinance VIII. of 1863, an unregistered deed of ante-nuptial settlement executed by a wife is postponed to subsequently registered mortgage bonds relating to the settled estates and jointly executed by both husband and wife, bona fide and for valuable consideration. *GAUDER v. DASSENAIKE* - P. C. [1897] A. C. 547

**CHAFF-CUTTING MACHINES (ACCIDENTS) ACT, 1897 (60 & 61 Vict. c. 60), passed for prevention of accidents by chaff-cutting machines.**

**CHAIN CABLES.**

*See SHIPPING — Anchors and Chain Cables.*

**CHAIRMAN — Of improvement committee of borough council.**

*See CORPORATION.* 6.

**— at Meeting of company.**

*See COMPANY—Meetings.* 158, 169.

**CHAIR-MARKING — Of cabman's licence.**

*See HACKNEY CARRIAGE.* 3.

**CHAMBERS —Appeal.**

*See PRACTICE—Appeal.* 1—4.

**— Practice generally.**

*See PRACTICE—Chambers.*

**CHAMPERTY.**

*See SOLICITOR—Champerty.*

**CHANCEL—Ecclesiastical law.**

*See Cases under ECCLESIASTICAL LAW—Faculty.*

**— Liability to repair—Tithe rent-charge—Deductions—Poor-rate.**

*See RATES—Rateability.* 56.

**— Pew in chancel.**

*See Cases under ECCLESIASTICAL LAW—Pews.*

**CHANCERY COURT OF LANCASTER.**

*See LANCASTER COURT.*

**CHANGE—Name of proprietor—Register.**

*See TRADE-MARK.* 15, 18.

**CHANNEL—Narrow channel—Collision.**

*See Cases under SHIPPING—Collision.*

**CHAPEL—Endowments—Duty to render accounts to Charity Commissioners.**

*See CHARITY—Commissioners.* 3.

**— Side chapel—Faculty.**

*See ECCLESIASTICAL LAW—Faculty.* 30.

**CHAPLAIN—Salary of—Charitable institution.**

*See REVENUE—Income Tax.* 75.

**— Workhouse—Validity of charge on salary.**

*See BANKRUPTCY—Assets.* 65.

**CHARGE—Annuity on capital.**

*See ANNUITY.* 4.

**— Debentures.**

*See COMPANY—Debentures.*

**— Judgment debt.**

*See Cases under JUDGMENT DEBT.*

**— Land charges.**

*See LAND CHARGES.*

**— Mortgages.**

*See Cases under MORTGAGE.*

**— Railway and Canal Traffic Act.**

*See RAILWAY — Railway and Canal Traffic.*

**— Rent-charges.**

*See RENT-CHARGE.*

**— Settlement.**

*See SETTLEMENT—Charges.*

**— Streets—Frontagers.**

*See LONDON—Streets. STREETS.*

**— Will—Debts and legacies.**

*See WILL—Charge of Debts, &c.*

**CHARGING ORDER—R. S. C., Order XLVI. relates to charging orders.**

**— Bankruptcy practice.**

*See BANKRUPTCY—Charging Order.*

**1. — Company—Shares—Sale—Judgment Act, 1837 (1 & 2 Vict. c. 110), s. 14.**

The remedy of a person having a charge under s. 14 of the Judgment Act is sale, not foreclosure.

An account and sale directed, with liberty for the plt. if he did not have the conduct of the sale. *D'AUVERGNE v. COOPER*

North J. [1899] W. N. 256

**2. — Death of judgment debtor—Leave to issue execution against executor—Clerical error—Correction—Charge on executor's interest—1 & 2 Vict. c. 110, ss. 14, 15—R. S. C., Order XXVIII, r. 11; Order XLII, r. 23; Order XLVI, r. 1.**

Under 1 & 2 Vict. c. 110, s. 14, there is no power after the death of a judgment debtor to make a charging order against his executor in respect of a judgment debt of the deceased, unless in some way judgment has been first obtained against the executor.

Whether such a judgment can be obtained under the present practice, *quære*.

Under s. 15 of the Act it is essential that the person who is to shew cause against the making absolute a charging order nisi should be the person against whom the judgment was recovered.

The executor of a deceased judgment debtor cannot shew cause against a charging order nisi made in respect of a judgment recovered against the deceased.

Leave given under rule 23 of Order XLII. to issue execution against the executor of a deceased judgment debtor does not operate as a judgment against the executor; it dispenses with the necessity of recovering judgment against him, and consequently does not satisfy the requirements of ss. 14 and 15 of 1 & 2 Vict. c. 110:—

*So held by the C. A.*

*Halv v. Barry*, (1868) L. R. 3 Ch. 452, and



**CHARGING ORDER—continued.**

*Finney v. Hinde*, (1879) 4 Q. B. D. 102, commented on.

An order obtained by a judgment creditor after the death of the judgment debtor gave him liberty to issue execution against the debtor's executor, and ordered that, unless sufficient cause were shewn to the contrary, the interest of the debtor in a sum of Consols should stand charged with the amount of the judgment. Before the order was made absolute judgment was pronounced for the administration of the debtor's estate:—

*Held*, by Stirling J., [1900] W. N. 13, that the order could not be treated as charging the interest of the executor, and that, having regard to the judgment for administration, the Court ought not to correct the form of the order:

*Held*, therefore, that the order was bad.

Decision affirmed by the C. A., on different grounds.

Observations by Stirling J. on the construction of orders of the Court. *STEWART v. RHODES*

C. A. [1900] W. N. 41; [1900] 1 Ch. 386

3. — *Debtor's shares—Beneficial ownership—“In his own right”*—*Judgments Act*, 1838 (1 & 2 Vict. c. 110), s. 14.

(A) A director of a ry. co., in pursuance of an amalgamation scheme with another co., sold his shares to them, but remained on the register as owner of the shares, and continued to act as a director:—

*Held*, that a charging order on his qualifying shares could not be granted, as he was not the beneficial owner, and that the transferees were not estopped from denying his beneficial ownership. *HOWARD v. SADLER*

Div. Ct. [1893] 1 Q. B. 1

(B) Shares transferred into the name of a director (to give him the necessary qualification) of which the transferors remain the beneficial owners, are not held by the director in his own right so as to be subject to a charging order under s. 14 of the *Judgments Act*, 1838. *COOPER v. GRIFFIN* — C. A. [1892] 1 Q. B. 740

Followed by Div. Ct. *Howard v. Sadler*, [1893] 1 Q. B. 1. See preceding Case.

— Lunacy practice.

See LUNACY—Charging Order.

4. — *Lunacy—Enforcing payment of costs—R. S. C.*, 1883, *Order XLVI.*, r. 1.

An order enforcing payment of costs of an inquiry in Lunacy by directing a transfer of Consols is not a charging order and not bound by the procedure laid down in *Order XLVI.*, r. 1. *In re CATHCART* (No. 1) C. A. [1893] 1 Ch. 466

5. — *Rescinding order absolute—Judgments Act*, 1838 (1 & 2 Vict. c. 110), ss. 14, 15.

Where a charging order nisi, under ss. 14, 15 of the *Judgments Act*, 1838, has become absolute, the statute gives no power to rescind it. *DREW v. WILLIS*. *Ex parte MARTIN*

C. A. [1891] 1 Q. B. 450

— Solicitor's costs.

See SOLICITOR—Charging Order.

— Transfer of stock.

See MORTGAGE—Foreclosure. 31.

**CHARITABLE PURPOSE.**

See CHARITY.

**CHARITY.**

*Charitable Trusts (Places of Religious Worship) Amendment Act*, 1891 (57 & 58 Vict. c. 35), amends the *Charitable Trusts Acts*.

*Church affairs and charities—Provisions as to*. See *London Government Act*, 1899 (62 & 63 Vict. c. 14), s. 18.

*In General*, col. 270.

*Commissioners (Charity Commissioners)*, col. 272.

*Endowed Schools*. See CHARITY—Commissioners.

*Gift to Charity*, col. 276.

*Management*, col. 281.

*Mortmain*, col. 283.

**In General.**

1. — *Churchwardens—Income of charity estates—Banking account—Anticipation of rents—Charge on charitable property—Charitable Trusts Amendment Act*, 1855 (18 & 19 Vict. c. 124), s. 29.

Estates held on old parochial trusts, the origin of which was unknown, were in 1865 vested in trustees by a deed of appointment of new trustees upon trust to permit and suffer the churchwardens of St. B., in the City of London, to receive and take the rents as the same should from time to time grow due and be payable as formerly had been used, and for such charitable uses, intents, and purposes as the same had been usually employed by the parishioners of the said parish, whether in or about the repairs of the church, the relief of the poor of the parish, or any other of the public affairs of the parish. The churchwardens kept an account with a bank headed as the account of the churchwardens, not mentioning their names, and for many years this account had been kept as a continuous account, an adverse balance at the end of one year being paid out of rents of subsequent years. From 1885 to 1888 the then churchwardens, there being a temporary diminution of income, obtained from the bank, with the sanction of the Charity Commrs., advances amounting to 3000*l.*, which were carried to the credit of the churchwardens in the account. In 1891 a scheme by the Charity Commrs. under the City of London Parochial Charities Act, 1883 (46 & 47 Vict. c. 36), came into effect, by which the estates were vested in the Official Trustee of Charity Lands, and the administration of the rents in the Trustees of the London Parochial Charities. The bank then sued the individual churchwardens in whose time the advances had been made for the advances; and the churchwardens brought an action against the Official Trustee of Charity Lands and the Trustees of the London Parochial Charities to be indemnified out of the rents against the claims of the bank:—

*Held*, by Romer J., that on the construction of the deed appointing new trustees, the churchwardens for the time being could only receive the rents as they became due and apply them, and had no power to anticipate the income so as to

**CHARITY (In General)—continued.**

have a claim on the future income, and that their claim therefore failed:

*Held*, by the C. A., that whether this was a correct view or not the churchwardens' claim was defeated by the Charitable Trusts Amendment Act, 1855, s. 29, which prohibits any sale, mortgage, or charge of a charity estate without the approval of the Charity Commrs. *FELL v. OFFICIAL TRUSTEE OF CHARITY LANDS*

C. A. [1898] 2 Ch. 44

2. —“*Ecclesiastical Charity*”—*Parish council—Appointment of trustees—Churchwarden trustees—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 14, sub-ss. 1, 2; ss. 70, 75, sub-s. 2.*

The founder of an eleemosynary charity by her deed of endowment declared that the objects of the charity should be selected by the trustees thereof (one of whom was to be the rector of the parish) from amongst poor men and women resident in a certain parish who should have (1) regularly attended divine service in the church of the parish for a fixed period, (2) been partakers of the Holy Communion, (3) lived a godly, righteous, and sober life to the glory of God's Holy Name; and she also declared that the lay trustees should always be members of the Church of England:—

*Held*, that the charity was one for the benefit of members of the Church of England “as such,” i.e., in their character of members of that Church, and to the exclusion of non-members thereof, and was accordingly an ecclesiastical charity within s. 75 of the Local Government Act, 1894; and *held*, therefore, that the parish council had no power, under s. 14, sub-s. 1, of the same Act, to appoint trustees of it.

In s. 75, sub-s. 2 (e), of the Act of 1894, the words “or otherwise for the benefit of any particular Church . . . or any members thereof as such” are not to be construed as limited to religious “benefit,” to the exclusion of mere temporal benefit.

There may be a charity in the legal sense for purposes which are both eleemosynary and ecclesiastical or religious.

The decision of *Stirling J.*, [1898] 1 Ch. 391, affirmed.

A testatrix by her will (made in 1799) devised a rent-charge to be paid to the churchwardens for the time being of the parish of B. H. on a certain day in every year for ever, and to be laid out in the purchase of garments to be given to “six old and poor widows of the said parish whom they shall judge the properest objects to receive the same with preference to those who not being disabled by infirmity or sickness are most constant in their attendance on the public service of the church.”

*Held*, first, that the charity thus created was not an ecclesiastical charity within the meaning of the Local Government Act, 1894; and, secondly, that s. 14, sub-s. 2, of that Act had application to the case of a non-ecclesiastical charity, the only trustees of which were churchwardens, and accordingly that the parish council had power to appoint trustees of such a charity in place of the churchwardens.

The decision of *North J.*, [1897] 2 Ch. 397,

**CHARITY (In General)—continued.**

affirmed. *In re PERRY ALMSHOUSES. In re ROSS' CHARITY*

C. A. [1898] W. N. 158 (1), (2); [1899] 1 Ch. 21  
See *London Government Act, 1899 (62 & 63 Vict. c. 14), s. 23 (3).*

—Common lodging-house—Liability to penalty for keeping—Charitable institution—Non-registration.

See *LODGING-HOUSE. 1, 2.*

—Costs—Compulsory purchase—Charitable land—Payment into court.

See *LANDS CLAUSES ACTS. 2.*

—Exemption from duty—Charitable trusts.

See *NEW ZEALAND. 2.*

—Income tax.

See *REVENUE—Income Tax. 75—77.*

—Inhabited house duty.

See *REVENUE—House Duty. 53, 57.*

—Rent-charge—Tenant for years—Personal liability.

See *RENT-CHARGE. 6.*

—Salary of chaplain—Income tax.

See *REVENUE—Income Tax. 75.*

—Substitutional or alternative gift—Scheme.

See *WILL—Substitution. 201.*

**Commissioners.****(Charity Commissioners.)**

3. —*Accounts of charity—Wesleyan chapel and endowments—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62, 66.*

The trustees of a Wesleyan chapel, which was endowed, refused to render any accounts of the endowments to the Charity Commrs.:—

*Held*, that they must render accounts of the endowments, for the exemption of buildings registered for religious worship in s. 62 of the Charitable Trusts Act, 1853, only applied to the chapel itself and not to any property held with it on a particular and specific trust. *In re St. JOHN STREET WESLEYAN METHODIST CHAPEL, CHESTER* — *Stirling J.* [1893] 2 Ch. 618

But See the Charitable Trusts (Places of Religious Worship) Amendment Act, 1894 (57 & 58 Vict. c. 35).

4. —*Application for scheme—Jurisdiction of Commissioners—Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), ss. 2, 4, 6, 8.*

When once the trustees of a charity make formal application to the Commrs. for a scheme, the jurisdiction of the Commrs. attaches absolutely to the charity, and cannot be put an end to by the withdrawal of the application before the scheme is completed. *In re POOR LANDS CHARITY, BETHNAL GREEN*

*Chitty J.* [1891] 3 Ch. 400

5. —*Consent—Sale—Sale by trustees of lands under power in deed—Charity lands—Charity founded by deed—“Scheme legally established.”—Charitable Trusts Acts, 1853, 1855 (16 & 17 Vict. c. 137, ss. 24, 26; 18 & 19 Vict. c. 124, s. 29)—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 7–69.*

A deed founding a charity, and duly enrolled under 9 Geo. 2, c. 36, is not “a scheme legally

**CHARITY (Commissioners)—continued.**

established" within s. 29 of the Charitable Trusts Amendment Act, 1855; and the trustees in whom the lands of the charity are vested cannot sell such lands under a power of sale contained in the deed, otherwise than with the authority of Parliament, or of the Court, or with the approval of the Charity Commrs.

The meaning of the expression "scheme legally established" defined by the Court; and the decision of Stirling J., [1895] W. N. 138 (3); [1896] 1 Ch. 54, affirmed. *In re MASON'S ORPHANAGE AND LONDON AND NORTH WESTERN RY. CO.* C. A. [1896] 1 Ch. 596

6. — *Consent to action—Administration—Scholarship—Contract or invitation—Refusal to elect—Charitable Trusts Act, 1853* (16 & 17 Vict. c. 137), s. 17.

An action claiming that a person was entitled to the possession and enjoyment of a scholarship involves the partial execution or administration of the trusts of the charity deed establishing the scholarship, and consequently the consent of the Charity Commrs. is necessary before the action can be proceeded with. *ROOKE v. DAWSON*

Chitty J. [1895] 1 Ch. 480

7. — *Consent—Lease—Lease for more than twenty-one years—Charitable Trusts Act, 1855* (18 & 19 Vict. c. 124), s. 29.

A lease by the trustees of a charity for more than twenty-one years without the approval of the Charity Commrs. (as required by s. 29 of the Charitable Trusts Act, 1855) is not valid for twenty-one years, but is absolutely void. *BISHOP OF BANGOR v. PABRY* Charles J. [1891] 2 Q. B. 277

8. — *Consent—Mortgage—Jurisdiction—Industrial school—Charitable Trusts Act, 1853* (16 & 17 Vict. c. 137), ss. 62, 66—*Proviso as to extent of exemption in s. 62—"Any cathedral, collegiate, chapter, or other schools"—Ejusdem generis rule—Endowment.*

The proviso at the end of s. 62, excluding "any cathedral, collegiate, chapter, or other schools" from the "exemption" contained in the section, does not extend to all schools of whatever description, but only extends to the schools there mentioned, and to schools of a similar character.

The decision of Stirling J., [1898] 1 Ch. 610, affirmed.

The trustees of an industrial school maintained by voluntary contributions, Government grants, contributions from school boards, boards of guardians, and other public authorities, and possessed of lands and buildings occupied by the school, presented a petition under Sir Samuel Romilly's Act (52 Geo. 3, c. 101) asking for the sanction of the Court to a proposed mortgage of part of the school lands and buildings;—

*Held*, by the Court, that the consent of the Charity Commrs. to the presentation of the petition and to the proposed mortgage was necessary, per Lindley M.R., upon the construction of s. 62; and, per Chitty J., having regard to the nature of the property proposed to be mortgaged.

The order of Stirling J., [1898] 1 Ch. 610, reversed.

Government grants, and contributions by

**CHARITY (Commissioners)—continued.**

school boards, boards of guardians, and other public authorities to an industrial school, are not voluntary contributions within s. 62. *In re STOCKPORT RAGGED, INDUSTRIAL, AND REFORMATORY SCHOOLS*

C. A. [1898] W. N. 28 (4); [1898] 2 Ch. 687

Also same case, [1897] W. N. 156 (4).

See **CHARITY—Management.** 40.

9. — *Consent—Sale of land—Charitable Trusts Acts, 1853, 1855* (16 & 17 Vict. c. 137, ss. 24, 62, 66; 18 & 19 Vict. c. 124, ss. 29, 48).

Under the Charitable Trusts Acts, 1853 and 1855, the consent of the Commrs. to the sale of land belonging to a charity is not required when the land is held in trust for the general purposes of the charity, and is not subject to any specific and particular trust distinct from those general objects. *In re GOVERNORS OF THE CORPORATION OF SONS OF CLERGY AND SKINNER*

North J. [1893] 1 Ch. 178

10. — *Endowed school—Dismissal of schoolmaster—Charitable Trusts Act, 1853* (16 & 17 Vict. c. 137), s. 17.

The consent of the Charity Commrs. is not a necessary preliminary to obtaining an interlocutory injunction to restrain trustees from dismissing a schoolmaster, until the trustees have held a formal and proper meeting and the schoolmaster has been heard on his defence. *FISHER v. JACKSON* —

North J. [1891] 2 Ch. 84

10A. — *Endowed school—Locus standi of petitioners—Ratepaying parents of scholars—Endowed Schools Act, 1869* (32 & 33 Vict. c. 56), ss. 19, 39.

In appeal from a scheme relating to a grammar school:—

*Held*, (1) that the petitioners, who were ratepayers of the borough where the school was situate and parents of scholars attending the school, were not in either capacity persons directly affected by the scheme within the meaning of s. 39, and, therefore, had no locus standi for appeal; (2) that although an opinion of the Commrs. that s. 19 applies is appealable, it is so only as mentioned in the Act, which requires that the petitioners be aggrieved by the scheme and not by the opinion on which it is founded; (3) that they were not so aggrieved, for, whether that opinion was right or wrong, the scheme having received the consents required by the section, was in either view in conformity with the Act. *In re ENDOWED SCHOOLS ACT, 1869, 1873, AND 1874, AND In re A SCHEME RELATING TO GRAMMAR SCHOOL IN COLCHESTER*

P. C. [1898] A. C. 477

11. — *Endowed school—Scheme—Excepted endowments—Jurisdiction—Endowed Schools Act, 1869* (32 & 33 Vict. c. 56), s. 14.

The scheme under consideration proposed that all the excepted educational endowments should be made over to the governing body constituted by a scheme of 1890, in augmentation of the endowments already comprised therein, and should be dealt with and administered according to that scheme:—

*Held*, that it was beyond the jurisdiction of the Court to sanction the scheme in the face of the opposition of the existing governing body,

**CHARITY (Commissioners)—continued.**

their title being founded on Royal Charter and established by Act of Parliament, and no breach of trust being charged.

Sect. 14 of the Endowed Schools Act, 1869, has left the jurisdiction of the Court untouched in regard to endowments within the fifty years' limit, it has neither diminished nor increased the jurisdiction. The section can at most assist the Court in the exercise of its discretion. *ATT.-GEN. v. CHRIST'S HOSPITAL*

**Chitty J. [1896] 1 Ch. 879**

**12. — Endowed school—Scheme—Patronage—Modern endowment—Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 39—Welsh Intermediate Act, 1889 (52 & 53 Vict. c. 40), s. 13.**

In an appeal under s. 39 of the Endowed Schools Act, 1869, against a scheme of the Charity Commrs. under the Welsh Intermediate Education Act, 1889 :—

*Held*, that the policy of the scheme cannot be considered. It can only be modified so far as it is ultra vires. Where there was no direction to that effect in the instrument of foundation, nor regulations prescribed by the founder or under his authority in his lifetime or within fifty years of the founder's death, the scheme need not provide for religious instruction according to the Established Church. Such regulation cannot be presumed from practice extending over a long period. Sect. 13 of the Act does not apply to rights of patronage which are not at the date of the Act exercised by a member of the governing body or possessed in consequence of his gift. A modern endowment under the Welsh Act is one made since 1869. Such endowment if so mixed with the old endowment as that it cannot be conveniently separated must be deemed to be part thereof. *In re ENDOWED SCHOOLS ACT, 1869, AND SWANSEA GRAMMAR SCHOOL*

**P. C. [1894] A. C. 252**

**13. — Endowed school—Scheme—Public school—Maintenance—Endowed Schools Acts, 1869, 1873, 1874 (32 & 33 Vict. c. 56, ss. 4, 5, 6, 8, 9, 24; 36 & 37 Vict. c. 87, s. 9; 37 & 38 Vict. c. 87, s. 6).**

A charitable foundation provided for scholarships at Oxford for boys from six schools, one of which was a public school within the meaning of the Public Schools Act, 1868 :—

*Held*, that such a provision was for the "maintenance" of the schools and part of their "educational endowment," and that the fact that one of them was a public school did not exclude the jurisdiction of the Charity Commrs. to make a scheme for the management of the whole charity under the Endowed Schools Acts. *ATT.-GEN. v. CHRIST CHURCH, OXFORD*

**North J. [1894] 3 Ch. 524**

**14. — Jurisdiction—Endowment—Funds arising from voluntary contributions—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 80.**

The C. Corporation had power to hold land without licence under the Mortmain Act. The corporation applied funds arising from voluntary contributions for the general purposes of the charity in purchase of land :—

*Held*, (1) that the income of any endowment means *prima facie* the income of any invested

**CHARITY (Commissioners)—continued.**

funds whether held on special trust or for the general purposes of the charity; (2) that in the case of a charity partly supported by voluntary subscriptions and partly by endowment, gifts for the general purposes of the charity which may be lawfully applied as income are exempt from the jurisdiction of the Charity Commrs.; (3) that the funds invested in land did not lose their character by such application, and that the land was not subject to the jurisdiction of the Charity Commrs.; (4) (by Kekewich J.) that the claim of the Commrs. was not adverse litigation within s. 80 of the Lands Clauses Act, 1845, and that a ry. which had purchased the land must pay the costs of the application. *In re CLERGY ORPHAN CORPORATION* — **C. A. [1894] 3 Ch. 145**

Considered by Kekewich J. *In re Gilchrist Educational Trust*, [1895] 1 Ch. 367. *See next Case.*

Referred to by C. A. *In re Stockport Ragged, &c., Schools*, [1898] 2 Ch. 697, No. 8, above.

**15. — Jurisdiction—Endowment—Absolute discretionary power—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62, 66.**

A bequeathed a fund to trustees with absolute discretion to apply the bequest for the benefit of a charity not supported by any voluntary contributions :—

*Held*, that the bequest was an endowment of a charity, but not a mixed charity within s. 62 of the Charitable Trusts Act, 1853, and that the Charity Commrs. were entitled to demand accounts of the property and income of the charity. *In re GILCHRIST EDUCATIONAL TRUST*

**Kekewich J. [1895] 1 Ch. 367**

— Jurisdiction of Commissioners — Endowed Schools Act.  
*See MANDAMUS. 1.*

**Gift to Charity.**

— Accumulations—Surplus income.

*See ACCUMULATIONS. 1.*

**16. — Advowsons—Will—Failure of gift—Bequest of trust funds to be applied "in grants for or towards the purchase of advowsons or presentations."**

A bequest to trustees to expend the income or any portion of the trust funds "in grants for or towards the purchase of advowsons or presentations" is not a good charitable bequest.

*Held*, that since upon the true construction of the will no trust, charitable or other, which the Court could execute or control was annexed to the advowsons or presentations for the purchase of which the trustees had power to make grants, and there was no general trust for charity binding the whole fund, the whole gift failed and the residuary estate was undisposed of.

Decision of C. A., *In re Hunter. Hood v. Att.-Gen.*, [1897] 2 Ch. 105, reversed and the decision of Romer J., [1897] 1 Ch. 518, restored. *HUNTER v. ATT.-GEN. AND HOOD*

**H. L. [1899] W. N. 71; [1899] A. C. 309**

**17. — Blank in will—"Charitable, Philanthropic or"—Construction of will—Legacy—Charitable bequest.**

A bequest of money "for some one or more

**CHARITY (Gift to Charity)—continued.**

purposes, charitable, philanthropic or " is not bad simply by reason of the existence of the blank, but must be treated as one "for charitable or philanthropic purposes." Such a bequest, however, is not a good charitable bequest, as there may be philanthropic purposes which are not charitable. *In re MACDUFF*. *MACDUFF v. MACDUFF* - C. A. [1896] 2 Ch. 451

Referred to by H. L., [1899] A. C. 323.

**18. — Blanks in will—Charitable purposes—“Religious Societies.”**

A bequest to a religious institution or for a religious purpose is *prima facie* a bequest for a "charitable" purpose, and the law applicable to "charitable" bequests, as distinguished from ordinary bequests, should be applied. A gift "to the following religious charities" (the names being left blank):—

*Held*, to shew a general charitable intention, which the Court would execute. Scheme directed as to such part of the estate as was at the testator's death pure personality.

(A) *In re WHITE*. *WHITE v. WHITE*

C. A. revers. *Kekewich J.* [1893] 2 Ch. 41

(B) *GATES' AND JONES' CASE otherwise JONES' CASE* - - - [1893] 2 Ch. 49, n.

(C) *In re MACDUFF* C. A. [1896] 2 Ch. 462

**19. — “Charitable purpose”—Anti-vivisection society.**

Societies for the suppression and abolition of vivisection are within the legal definition of the term "charity." *In re FOVEAUX*. *CROSS v. LONDON ANTI-VIVISECTION SOCIETY*

*Chitty J.* [1895] 2 Ch. 501

— Colonial law—Queensland.

*See QUEENSLAND*. 1.

— Colonial will—Land in England.

*See CHARITY—Mortmain*. 43.

— Cy-près—Failure of object.

*See FRIENDLY SOCIETY*. 6, 7.

— Cy-près — Failure of object — Charitable legacy.

*See WILL—Lapse*. 113.

**20. — Cy-près—Failure of object—Educational charity—*Romilly's Act*, 1812 (52 Geo. 3, c. 101).**

An educational charity became useless owing to the effect of the Elementary Education Acts. The Court sanctioned a cy-près scheme which the Att.-Gen. had approved, although the Att.-Gen. had not been formally served and did not appear on the petition. *In re BRADFORD SCHOOL OF INDUSTRY*

*Chitty J.* [1893] W. N. 60

**21. — Cy-près—Failure of object—Religious seminary.**

A. by his will bequeathed a legacy "to the rector for the time being" of a certain R. C. seminary. A. died in 1893. Between the date of the will and A.'s death the seminary ceased to exist:—

*Held*, that the gift pointed to a particular seminary, and that seminary having ceased to exist in A.'s lifetime, the legacy lapsed. *In re RYMER*. *RYMER v. STANFIELD*

C. A. affirm. *Chitty J.* [1895] 1 Ch. 19

Referred to by C. A. as to costs. *In re Macduff*, [1896] 2 Ch. 475.

**CHARITY (Gift to Charity)—continued.****22. — Foreign objects, charity having only—*Charitable Trusts Act*, 1601 (43 Eliz. c. 4.)**

A testator left 20,000*l.* on trust, to transmit the income to Germany to be applied for the benefit of the poor of O.; he also gave three-fourths of the residue on the same trusts, and empowered the trustees to transfer the corpus of the trust funds to Germany if they thought fit:—

*Held*, by *Chitty J.*, that impure personality did not pass under the bequest:

*Held*, by C. A., affirming *Chitty J.*, that a gift in favour of poor foreigners resident abroad was a charitable gift under 43 Eliz. c. 4, and that the bequest was good as to pure personality. *In re GECK*. *FREUND v. STEWARD*

C. A. [1893] W. N. 161

— Highway—Grant of soil of highway for charitable use.

*See LIMITATIONS, STATUTE OF—Highway*. 20.

**23. — Highway—Repair of road—Road transferred to local authority—*Failure of trust*.**

The testator bequeathed 3000*l.* upon trust to build galleries in a church and to construct a causeway, and directed that 40*l.* a year should be laid aside for the repairs of the galleries and the road as there should be occasion, and as the trustees should think fit, and gave the residue after these things were performed to other objects. An additional sum of 40*l.* a year out of the funds was subsequently ordered by the Court of Chancery to be applied to the repairs of the road. The road had recently come under the control of a county council and a district council so that the obligation to repair it rested on these bodies:—

*Held*, that this circumstance did not put an end to the trust, and that so much of the 80*l.* a year as was available for the repairs of the road ought to be paid to the councils. *ATT.-GEN. v. DAY* *North J.* [1899] W. N. 207; [1900] 1 Ch. 31

**24. — Marshalling—Impure personality.**

Where a testator gave to a charity after a pecuniary legacy all the residue of her personal estate, "save and except such parts thereof as cannot by law be appropriated by will to charitable purposes":—

*Held*, that the gift of the residue did not operate as a direction to marshal the estate in favour of the charity, and that the impure personality passed to the next of kin. *In re SOMERS-COCKS*. *WEGG-PROSSER v. WEGG-PROSSER*

*Kekewich J.* [1895] 2 Ch. 449

**25. — “Old and worn-out” clerks of a firm—Charitable gift—Construction of will.**

A testator, who died in 1855, bequeathed a sum of 1890*l.* Consols, to be invested in the names of trustees, to form a fund to be called the Superannuation Fund, for the purpose of pensioning off old and worn-out clerks of the firm of G. & S. In June, 1896, the firm of G. & S. was amalgamated with the firm of B. & Co., and in consequence of this amalgamation some difficulties had arisen as to the proper objects and distribution of the fund. The trustees now applied for the determination of the following questions: (1) Whether the gift was a good charitable gift; and, if so, (2) whether a scheme

**CHARITY (Gift to Charity)—continued.**

ought not to be settled for the administration of the fund, or whether the fund ought not to be applied cy-près for charitable purposes:—

*Held*, that, amongst the other charitable objects enumerated by 43 Eliz. c. 4, both the "aged" and "impotent" were especially mentioned, and "old and worn-out" clerks came within this description, and, having regard to the phrase "pensioning off" and to the frame of the gift, that poor clerks of the firm, and those unable properly to provide for themselves and their families, were intended to be benefited. So long as the gift was in favour of a section of the public, if within the scope of charitable gifts, it was a charitable gift; and the fact that the section of the public was limited to persons born or residing in a particular parish, district, or county, or belonging to, or connected with, any special sect, denomination, guild, institution, firm, name, or family, did not of itself render that which would be otherwise charitable void, or take it out of the category of charitable gifts. For these reasons the gift was held to be a good charitable gift, and a scheme was directed to be settled for the administration of the fund. *In re GOSLING. GOSLING v. SMITH*

**Byrne J. [1900] W. N. 15**

— Perpetuity.

*See WILL—Perpetuity.* 151-154.

**26. — Perpetuity, rule against.**

(A) The rule against perpetuities has no application to the transfer in a certain event of property from one charity to another. *In re TYLER. TYLER v. TYLER C. A. [1891] 3 Ch. 252* Distinguished. *See next Case.*

(B) But this exception does not extend to cases where (1) an immediate gift in favour of private individuals is followed by an executory gift in favour of charity, or (2) an immediate gift in favour of charity is followed by an executory gift in favour of private individuals. *In re BOWEN. LLOYD PHILLIPS v. DAVIS*

**Stirling J. [1893] 2 Ch. 491**

**27. — Political and religious purposes—Gift for.**

The vicar of a parish by his will dated in 1897 devised to the vicar for the time being a building used as a village club and reading-room "to be maintained for the furtherance of Conservative principles and religious and mental improvement and to be kept free from intoxicants and dancing":—

*Held*, a good charitable gift. *In re SCOWCROFT. ORMROD v. WILKINSON*

**Stirling J. [1898] 2 Ch. 638**

**28. — Poor—Charitable purposes.**

A gift in favour of poor foreigners resident abroad is a charitable gift. *In re GECK. FREUND v. STEWARD* — **C. A. [1893] W. N. 161**

**29. — Poor—Gift "to the poor and the service of God"—Will—Construction.**

A gift by will "to the poor and the service of God" is a good charitable gift.

*Powerscourt v. Powerscourt*, 1 Molloy, 616, is an authority to this effect. *In re DARLING. FARQUHAR v. DARLING* — **Stirling J. [1895] W. N. 140 (12); [1896] 1 Ch. 50**

**CHARITY (Gift to Charity)—continued.**

— Self-supporting hospital—House tax—Exemption.

*See REVENUE—House Duty.* 57.

**30. — Teaching shooting—Charitable purposes—Public advantage—Charitable Trusts Act, 1601 (43 Eliz. c. 4), s. 1.**

A gift to the National Rifle Association for teaching shooting, *held* to be valid. *In re STEPHENS. GILES v. STEPHENS*

**Kekewich J. [1892] W. N. 140**

**31. — Tomb—Bequest to maintain—So long as the law permits—Validity.**

A testator, after expressing his wish to be buried in the inclosure in which his child lay in the churchyard of E., bequeathed to the rector and churchwardens for the time being of the parish church, 800*l.* Consols to be invested in their joint names, the interest and dividend to be derived therefrom to be applied, so long as the law for the time being permitted, in keeping up the inclosure and decorating the same with flowers:—

*Held*, that the gift was valid for at least a period of twenty-one years from the testator's death, and *semble*, that it was not charitable. *PIRBRIGHT v. SALWEY*

**Stirling J. [1896] W. N. 86 (4)**

**32. — Tomb—Repair of—Conditional gift.**

A condition that a family vault shall be kept in repair, attached to a gift of stock to charity A., with a gift over on non-compliance to charity B.:—

*Held* to be valid. *In re TYLER. TYLER v. TYLER* **C. A. affirming Stirling J. [1891] 3 Ch. 252**

Distinguished by *Stirling J. In re Bowen* [1893] 2 Ch. 491.

**33. — Voluntary association—Clifford's Inn—Inn of Chancery—Failure of objects—Charity.**

By an indenture of feoffment of March, 1618, a messuage and premises known as Clifford's Inn was assured to certain members of the society, as trustees, in consideration of 600*l.*, with a declaration that the true intent and meaning of the deed was, that the said messuage "shall for ever hereafter retain and keep the same usual and ancient name of Clifford's Inn and shall for ever hereafter be continued and employed as an Inn of Chancery for the good of the gentlemen of that society and for the benefit of the Commonwealth as aforesaid, and not otherwise, nor to any other use, intent or purpose." The property had long been dealt with by the society as its own, and for its own purposes, and the surviving members of the society contended that it was not now subject to or affected by any charitable trust, but belonged to the individual members for their own personal benefit, to be divided and disposed of as they might think fit:—

*Held*, that the deed of 1618 negatived the idea of private ownership, and proved a dedication to public or charitable objects, and that the property now vested in the present trustees must be held by them upon trust for charitable purposes. *SMITH v. KERR*

**Cozens-Hardy J. [1900] W. N. 140; [1900] 2 Ch. 511**

**CHARITY (Gift to Charity)—continued.**

34. — *Voluntary gift—Subsequent conveyance for value*—27 Eliz. c. 4.

A voluntary gift for charitable purposes is not covinous within 27 Eliz. c. 4, and is not avoided by a subsequent conveyance for value. *RAMSAY v. GILCHRIST* - - P. C. [1892] A. C. 412

But see now the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21).

35. — *Voluntary gift of property—Action to set aside—Deeds of foundation—Mistake.*

In an action by a donor to set aside certain voluntary deeds of gift founding charities in London and Suffolk, it was held that where there was neither fraud, nor undue influence, nor fiduciary relationship between donor and donee, nor mistake induced by those who derived benefit under the gift, the donor could only obtain back property which he had given away, by shewing that he was under some mistake of so serious a character as to render it unjust on the part of the donee to retain the property given to him. And it was also held that in a long and complicated deed of gift mistakes might be made which the Court might rectify if desired by the donor so to do, and yet such mistakes might not be important and serious enough to enable the donor to set aside the whole deed as failing in substance to carry out his intention.

The decision of Byrne J. affirmed. *OGILVIE v. LITTLEBOY* C. A. [1897] W. N. 53 (1)

36. — *Volunteer corps—Perpetuity.*

A conditional gift by will for the benefit of a volunteer corps held void as infringing the rule against perpetuities. *In re LORD STRATHEDEN AND CAMPBELL. ALT v. STRATHEDEN AND CAMPBELL* - - Romer J. [1894] 3 Ch. 265

Referred to by Kekewich J. *In re Nottage*, [1895] 2 Ch. 653. See next Case.

37. — *Yacht-racing—Encouragement of—Perpetuity—Purpose beneficial to the community.*

N. by his will gave a sum the interest of which was to be expended in providing a cup to be given for the encouragement of yacht-racing:—

Held, that the gift being for the encouragement of a mere sport, though it might be beneficial to the public, could not be upheld as charitable and was void for remoteness. *In re NOTTAGE. JONES v. PALMER* (No. 1)

C. A. affirming Kekewich J. [1895] 2 Ch. 649

**Management.**

*Charitable Trusts (Recovery) Act*, 1891 (54 & 55 Vict. c. 17), facilitates the recovery of rent-charges and other payments owing to charities.

Rules, dated May 27, 1892 ("R. S. C. Charitable Trusts (Recovery), 1892"), made under the *Charitable Trusts (Recovery) Act*, 1891. St. B. & O. 1892 p. 907; W. N. 1892 (Appx. of O. & E.), p. 21.

*Local Government Act*, 1894 (56 & 57 Vict. c. 73), provides for the transfer to parish councils of the management of parochial charities not being ecclesiastical.

38. — *Investment—Option to invest on Govern-*

**CHARITY (Management)—continued.**

*ment or real securities—Exercise of option to invest on real securities—Validity of gift.*

The validity of a charitable gift by will is not affected by the trustees exercising an option to invest in real security.

A testatrix disposed separately of all such parts of her personal estate "as could not by law be devoted to charitable purposes." She then gave the residue of her personal estate to trustees upon trust to convert it into money, invest the proceeds on Government or real securities, pay the income to her daughter for life, and after her death to apply the capital for the benefit of certain charities. The trustees during the life of the tenant for life invested out of the pure personality two sums of 350*l.* and 100*l.* in real securities, and they remained so invested at the death of the tenant for life:—

Held, by C. A. (reversing the decision of Kekewich J.), that the charitable gifts were not made pro tanto invalid by the investment in real securities.

*In re Corcoran*, (1892) 62 L. J. (Ch.) 267, distinguished. *In re HAMILTON. CADOGAN v. FITZROY* - - C. A. [1896] 2 Ch. 617

39. — *National school—Dismissal of school-master.*

An injunction granted restraining the committee of management from dismissing a school-master because (1) one member of the committee had not been summoned, and (2) strangers took part in the meeting:—

Held, that the committee could act though no elective members existed, but did not decide whether the master ought to have had an opportunity of being heard. *LANE v. NORMAN*

North J. [1891] W. N. 202

40. — *Real estate—Mortgage—Sanction of Court—Romilly's Act* (52 Geo. 3, c. 101).

The Stockport Industrial Schools were established by a trust-deed in 1866. The school buildings were conveyed to trustees upon trust to permit them to be used as a ragged, industrial and reformatory school under a committee of management. The trustees were empowered to sell the original buildings and apply the proceeds of sale in providing larger schools. The situation of the schools is now unsuitable, and the buildings were too small for the purposes of the trust. Notice had been given by the Government inspectors that unless the buildings were enlarged the number of children must be reduced. The trustees proposed to sell the existing buildings and apply the proceeds, together with other moneys in hand and a further sum to be raised upon mortgage of the new premises, in buying a new site and building larger schools.

Upon a petition presented by the trustees under Romilly's Act (52 Geo. 3, c. 101), the Court, upon the authority of *Re Ashton Charity*, (1856) 22 Beav. 288, sanctioned the proposed mortgage. *In re STOCKPORT RAGGED, INDUSTRIAL AND REFORMATORY SCHOOLS*

Stirling J. [1897] W. N. 156 (4)

But see same case, C. A. [1898] 2 Ch. 687, No. 8, above.

41. — *Two charities for one object.*

Where two charities are being administered

**CHARITY (Management)—continued.**

for the same object, viz., maintaining a school, the Court sanctioned the application of funds of one charity in discharging a mortgage upon property belonging to the other, but ordered the mortgage to be kept alive in favour of the charity out of whose funds it was discharged in the event of subsequent separation of the administration of the two charities. *COCKBURN v. RAPHAEL*

North J. [1891] W. N. 14

— By Charity Commissioners.

See Cases under CHARITY — Commissioners.

**Mortmain.**

*Mortmain and Charitable Uses Act, 1891* (54 & 55 Vict. c. 73), amends the law relating to *Mortmain and Charitable Uses*.

42. — *Charitable bequest—Impure personality—Mortmain Act* (9 Geo. 2, c. 36).<sup>1</sup>

Where there was a contingent bequest of residuary personality on trust for the general purposes of a Roman Catholic diocese, and at testator's death a part (A) of the estate was invested on mortgage of realty, and the trustees subsequently similarly invested a further portion (B), held that the bequest did not take effect on the parts of the estate (A) and (B). *In re CORCORAN. CORCORAN v. RIDDELL*

North J. [1892] W. N. 182

43. — *Colonial will—Land in England—Mortmain Act, 1888* (51 & 52 Vict. c. 42).

The *Mortmain and Charitable Uses Act, 1888*, does not apply to Colonial wills.

Where A., domiciled in Victoria, by his will gave money to an English corporation for the purchase of land in England for a charitable purpose:—

Held, that the gift was governed by the law of Victoria, and, being valid by that law, bound the executors to pay the legacy to the corporation. *CANTERBURY CORPORATION v. WYBURN*

P. C. [1895] A. C. 89

44. — *Corporation stock—Charge on rates and revenues—Mortmain Act* (9 Geo. 2, c. 36), s. 3—*Mortmain and Charitable Uses Act, 1888* (51 & 52 Vict. c. 42), ss. 4, 10, sub-s. iii.

Corporation debenture stock charged on "the rates and revenue of all landed and other property of the corporation" is not an interest in land within the *Mortmain Act* (9 Geo. 2, c. 36), s. 3, nor within the *Mortmain and Charitable Uses Act, 1888*, ss. 4, 10 (iii.). *In re PICKARD. ELMSLEY v. MITCHEL*

North J. [1894] 2 Ch. 88;

affirmed by C. A. [1894] 3 Ch. 704

Referred to by Kekewich J. *In re Crossley*, [1897] 1 Ch. 394.

45. — *Devise of future estate—Mortmain and Charitable Uses Acts, 1888, 1891* (51 & 52 Vict. c. 42, s. 4; 54 & 55 Vict. c. 73), ss. 3, 5.

Under s. 5 of the *Mortmain and Charitable Uses Act, 1891*, land may be devised in favour of charities for any estate or interest whatever therein, whether the interest is in possession or merely a future one.

Sec. 4 of *Mortmain and Charitable Uses Act,*

**CHARITY (Mortmain)—continued.**

1888, so far as it applies to wills, is inconsistent with and repealed by s. 5 of *Mortmain and Charitable Uses Act, 1891*, but remains in force so far as it is applicable to deeds. *In re HUME, FORBES v. HUME*

C. A. affirming *Stirling J.* [1895] 1 Ch. 422

46. — *Discretion of trustees—Mixed fund—Pure and impure personal estate, and proceeds of sale of real estate—Gift to "such charitable institutions and objects as my trustees may determine"—Will—Charitable bequest—Charitable Uses Act, 1735* (9 Geo. 2, c. 36), ss. 1, 3, 4.

A testator, who died before the *Mortmain and Charitable Uses Act, 1888*, by his will gave real and personal estate upon trust for sale and conversion; and directed his trustees to apply one-tenth of the fund to "such charitable institutions and objects as my said trustees may determine":—

Held, by C. A., (1) that the gift applied and extended not only to the pure, but also to the impure personal estate and the proceeds of the real estate of the testator, and conferred upon the trustees a power of selection; (2) that if and so far as the trustees selected charitable institutions and objects exempted from the operation of 9 Geo. 2, c. 36, the names of the charitable institutions and objects selected would be read into the will, and the gift would be a good charitable gift in their favour; (3) that, as to the impure personality and the proceeds of the sale of real estate, no exercise of the power of selection in favour of an unexempted charitable institution or object would operate as a valid gift.

If a gift of this kind gives the trustees a discretion enabling them to select such as are valid from a class including valid and invalid objects, that is sufficient to prevent the gift from being voided by the statute of 9 Geo. 2, c. 36.

Although some parts of *Stuart V.-C.*'s judgment in *Lewis v. Allenby*, (1870) L. R. 10 Eq. 668, may be open to comment, there is no necessary invalidity in such a gift as was the subject of that decision.

The principle upon which the Court proceeded in *Lewis v. Allenby* is the same as that on which the Court acted in *Mayor of Faversham v. Ryder*, (1854) 5 D. M. & G. 350, *University of London v. Yarrow*, (1857) 1 De G. & J. 72, and *Carter v. Green*, (1857) 3 K. & J. 591.

*Johnson v. Swann*, (1818) 2 Madd. 457, and *Baker v. Sutton*, (1836) 1 Keen, 224, if and so far as they differ from *Lewis v. Allenby*, must be taken to be overruled.

Judgment of North J. [1896] W. N. 1 (4), affirmed with a variation. *In re PIERCEY. WHITWHAM v. PIERCEY* C. A. [1896] 1 Ch. 565

47. — *Executor not express trustee for next of kin—Title of heir-at-law and next of kin barred by Statute of Limitations—Will—Gift to charity—Freeholds and leaseholds—Possession by executor—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57)—*Executors Act, 1830* (11 Geo. 4 and 1 Will. 4, c. 40)—*Law of Property Amendment Act, 1860* (23 & 24 Vict. c. 38), s. 13.

*Spiller v. Maude*, (1881) 32 Ch. D. 158, n., in which it was held that the Royal General Theatrical Fund Association is a charity, was



**CHARITY (Mortmain)**—*continued.*

not overruled or intended to be overruled by *Cunnaock v. Edwards*, [1896] 2 Ch. 679.

The trusteeship of executors created by the Executors Act, 1830, was not intended to be different in its nature from that which existed previously under the rule established in courts of equity—namely, that in the absence of special circumstances executors were not to be regarded as express trustees.

A testator, who died in 1873, gave all his property charged with certain annuities to the trustees of a charity, and appointed K. to be his executor and gave him a legacy. The estate included freehold and leasehold property. K. entered into possession, and received the income of the testator's estate on behalf of the charity for a period of twenty years. Soon after the testator's death he read over the will to the testator's only son, who was his heir-at-law and sole next of kin, but gave him no information as to his rights under the will, having regard to the gift being to a charity. The son died in 1895 without ever having claimed the estate. In an action by the trustees of the charity for a declaration who was entitled to the testator's estate:—

*Held*, (1) that the gift to the charity failed under the Mortmain Act so far as the testator's property consisted of realty or impure personality; (2) that K. was not an express trustee for the next of kin, and that the title of the heir-at-law to the freeholds and of the next of kin to the leaseholds was barred by statute. *In re Lacy. Royal General Theatrical Fund Association v. Kydd* - - Stirling J. [1899] 2 Ch. 149

48. — *Interest in land*—*Mortmain and Charitable Uses Act*, 1891 (54 & 55 Vict. c. 73), s. 9—*Will made before, and death of testator after, passing of Act*—*Wills Act*, 1837 (1 Vict. c. 26), s. 24.

A testator, who died after the passing of the Mortmain and Charitable Uses Act, 1891, by his will, made before the passing of the Act, gave to a charity such part of residue "as may by law be given for charitable purposes," with a separate gift of the remainder to A.:—

*Held*, that the Act applied, and in the absence of a contrary intention the whole of the residue, realty as well as personality, went to the charity. *In re Bridger. Brompton Hospital for Consumption v. Lewis*

North J. [1893] 1 Ch. 44;  
affirmed by C. A. [1894] 1 Ch. 297

49. — *Metropolitan Stock*—*Interest in land*—*Pure or impure personality*—*Mortmain and Charitable Uses Act*, 1888 (51 & 52 Vict. c. 42), s. 10 (*iii.*).

Metropolitan Consolidated 3½ per cent. Stock, issued under the Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), held to be impure personality, as conferring on the holders an interest in land within s. 10 (*iii.*) of the Mortmain and Charitable Uses Act, 1888. *In re Crossley. Birrell v. Greenough*

Kekewich J. [1897] 1 Ch. 928

50. — *Metropolitan Surplus Land Stock*—*Mortmain and Charitable Uses Act*, 1888 (51 & 52 Vict. c. 42)—*Metropolitan Railway Act*, 1885 (48 & 49 Vict. c. *lxxxix.*).

A gift of Metropolitan Surplus Land Stock to

**CHARITY (Mortmain)**—*continued.*

a charity is valid, for under the Act creating the stock the stockholder has no power of reaching the land, and the stock is not therefore an interest in land within the meaning of the Act of 1888. In this case the testator died in 1890: the Act of 1891 provides for cases where the testator dies after Aug. 5, 1891. *In re Hollon. Forbes v. Hardcastle*. - - C. A. [1893] W. N. 111

51. — *Mortgage on waterworks*—*Pure or impure personality.*

A mortgage on the water-rates and works, given by a corporation to raise moneys for waterworks, *held*, not to be a charge on the undertaking as a going concern, and not to confer on the mortgagee an interest in land. The authorities considered. *In re Parker. Wignall v. Park* - - Stirling J. [1891] 1 Ch. 682

Followed by C. A. *In re Pickard*, [1894] 3 Ch. 711.

**CHARITY COMMISSIONERS.**

See **CHARITY**—Commissioners.

**CHART**—"Map, chart, or plan"—Dress pattern.

See **COPYRIGHT**—Book. 4.

**CHARTER**—*Powers of Crown to grant.*

The powers of the Crown in 1720 as to the grant of prerogative charters considered by Lindley L.J. in *Elve v. Boyton*

C. A. [1891] 1 Ch. 501, at p. 507

Distinguished by Kekewich J. *In re Smith, Davidson v. Myrtle*, [1896] 2 Ch. 590.

**CHARTER**—To corporation—Forfeited recognizance—Amercement.

See **REVENUE**—Forfeited Recognizances.

**CHARTERPARTY.**

See Cases under

**INSURANCE**—Marine.

**SHIPPING**—Charterparty.

**CHATTEL**—Bailment of.

See Cases under **BAILMENT**.

— Mounds of refuse produced in iron manufacture—Minerals.

See **MINES**. 1.

— Movable—Annexation to freehold—Stuffed-bird collection.

See **FIXTURES**. 1.

**CHEAP TRAINS**—Duty—Exemption—Third-class passengers—Extra charge for reserved carriage.

See **RAILWAY**—Passengers. 21.

— Police officer—Inspector of weights and measures—Conveyance at reduced rate.

See **RAILWAY**—Passengers. 24.

**CHEMIN DE FER**—"Baccarat."

See **GAMING**. 34.

**CHEQUE.**

See Cases under **BANKER**.

**CHIEF CONSTABLE**—Payment of costs of—Licensing appeals—Borough fund.

See **CORPORATION**. 10.

**CHILDREN.**

See **INFANT**.

— Cruelty to.

See **CRIMINAL LAW**—Cruelty to Children.

**CHILDREN—continued.**

— Divorced parents.

See **DIVORCE—Children.**

— Employment of—Cleaning machinery.

See **MASTER AND SERVANT—Factory Acts.**

— Gifts to by will.

See **WILL—Children.**

**CHILD-BEARING**—Woman past—Advancement clause — “Expectant or presumptive share”—Impossibility of issue.  
See **WILL—Advancement.** 20.

**CHILI**—Evidence of law of—Executors—Powers and duties—Grant to widow.  
See **PROBATE—Grant of Administration.** 32.

— Extradition of fugitive criminals.

See **EXTRADITION.**

**CHIMNEY** — Covenant for quiet enjoyment—Breach by erection of buildings causing lessee's chimneys to smoke.  
See **LANDLORD AND TENANT.** 19.

**CHIMNEY SWEEPER**—*By the Chimney Sweepers Act, 1894 (57 & 58 Vict. c. 51), chimney sweepers were prohibited from knocking or ringing bells, &c.*

**CHINA** — Chinamen — British Columbia Coal Mines Regulations—Naturalization and aliens.

See **CANADA.** 30.

— Chinese immigration.

See **VICTORIA.** 1.

1. — *Land taken for public purposes*—“*Extension*” of roads—*Shanghai Land Regulation VI. of 1869—Construction.*

Shanghai Regulation VI. of 1869 authorized the municipal council of that place to take the respondent's land as being required for the “extension of the lines of roads at present laid down as means of communication in the settlement.” A proviso directed that no appropriation “for roads other than those already defined” shall be sanctioned or held lawful:—

*Held*, that, on the true construction of the regulation, “extension” is not restricted to the enlargement of an existing road by adding to its length or breadth, but includes new lateral branches therefrom; and that the roads “already defined” are the roads mentioned in the whole of the preceding part of the regulation including the extensions. **SHANGHAI MUNICIPAL COUNCIL v. McMURRAY** — P. C. [1900] A. C. 206

— Merchandise—Patents, Designs, and Trade Marks.

See **Foreign Jurisdiction Act, 1890.**

2. — *Ship—Collision—Crossing vessels in rivers—Regulations for Preventing Collisions at Sea, 1884, Art. 22.*

Art. 22 of the maritime rules, which relates to vessels “crossing so as to involve risk of collision,” must be distinguished in its application, (1) as regards vessels navigating the open sea; (2) as regards vessels passing along the winding channels of rivers. In the latter case the vessels must follow, and must be known to intend to follow, the curves of the river bank:—

*Held*, in this case, that the deft. vessel, though

**CHINA—continued.**

she ported her helm, kept the course prescribed by the nature of the locality; and that at the moment of porting the vessels were not crossing vessels within the meaning of art. 22, since the reasonable inference, having regard to the locality and their previous courses, was that they would avoid collision.

*The Leverington*, (1866) 11 P. D. 117, distinguished. **OWNERS OF NORWEGIAN SS. “NORMANDIE” v. OWNERS OF BRITISH SS. “PEKIN.”** *THE “PEKIN”* — P. C. [1897] A. C. 532

**CHLORODYNE**—Sale of.

See **POISON.** 2.

**CHOSE IN ACTION**—Assignment—Remedies of insurers.

See **QUEENSLAND.** 3.

— Mortgage of—Notice—Undischarged bankrupt—After-acquired property.

See **BANKRUPTCY—Undischarged Bankrupt.** 261.

— Passing by will.

See **WILL—Words.** 211.

— Priority—Notice to existing trustees—Death or retirement of trustees.

See **ASSIGNMENT.** 5.

— Right to relief from forfeiture of lease.

See **Cases under LANDLORD AND TENANT.**

**CHURCH.**

See **Cases under ECCLESIASTICAL LAW.**

**CHURCH BUILDING ACTS**—Faculty.

See **Cases under ECCLESIASTICAL LAW.**

**CHURCH RATE.**

See **ECCLESIASTICAL LAW—Church Rates.**

**CHURCHWARDEN.**

See **ECCLESIASTICAL LAW—Churchwarden.**

**CHURCHYARD.**

See **ECCLESIASTICAL LAW—Churchyard.**

**CIRCULAR**—Intimidating—Trade libel.

See **INJUNCTION.** 36.

— Libellous.

See **DEFAMATION—Libel.** 22, 24, 31, 32.

— Patent.

See **PATENT—Threats.** 53.

**CIRCULAR TO CREDITORS.**

See **BANKRUPTCY—Act of Bankruptcy.** 28—33.

**CIRCULATING LIBRARY**—Libel—Publication

—Book—Negligence.

See **DEFAMATION—Libel.** 27.

**CITATION**—Divorce practice.

See **Cases under DIVORCE.**

— Grant of administration.

See **Cases under PROBATE—Grant of Administration.**

— Grant of probate.

See **Cases under PROBATE—Grant of Probate.**

— Parties—*Res judicata*—Will—Validity—Probate action.

See **ESTOPPEL.** 4.

**CITATION OF CASES.***See* LAW REPORTS.**CITY OF LONDON COURT.***See* Cases under LONDON—**City of London Court.****CIVIL SERVANT**—Abolition of office—Compensation.*See* NEW SOUTH WALES. 3.

— Dismissal.

*See* NEW SOUTH WALES. 4, 5.**CLAIM**—Franchise.*See* Cases under PARLIAMENT—**Franchise.****CLASS**—Different classes of shareholders—Separate general meetings of each class—Quorum.*See* COMPANY—**Meetings.** 165.

— Gifts to—Will.

*See* WILL—**Class.****CLAY**—Entering lands sold to railway.*See* RAILWAY—**Minerals.** 12.**CLEANSING**—Sewer.*See* SEWERS—**Cleansing.****CLEANSING OF PERSONS ACT, 1897 (60 & 61 Vict. c. 31), permits Local Authorities to provide Cleansing and Disinfection for persons infested with vermin.****CLERGY.***See* Cases under ECCLESIASTICAL LAW.**CLERGY DISCIPLINE ACT.***See* Cases under ECCLESIASTICAL LAW.**CLERGYMAN.***See* Cases under ECCLESIASTICAL LAW.

— Salary of workhouse chaplain.

*See* BANKRUPTCY—**Assets.** 65.**CLERK**—Charitable gift—"Old and worn-out" clerks of a firm.*See* CHARITY—**Gift to Charity.** 25.

— "Clerk or servant"—Managing director"—Preferential payments in bankruptcy.

*See* COMPANY—**Directors.** 114.

— Embezzlement by.

*See* CRIMINAL LAW—**Embezzlement.** 12.

— to Justices—Incompatible offices—Disqualification.

*See* JUSTICES—**Disqualification.** 50.

— to Justices—Judicial expenses.

*See* CORPORATION. 20.

— Lodger franchise—Bedroom in employer's house.

*See* PARLIAMENT—**Franchise.** 70.

— Service—Foreign corporation—Agent—Admiralty—Practice.

*See* PRACTICE—**Service.** 182.

— Signature by auctioneer's clerk—Statute of Frauds.

*See* PRINCIPAL AND AGENT. 1.

— Trade secrets—Duties of clerks as to.

*See* Cases under MASTER AND SERVANT—**Trade Secrets.****CLERK (ARTICLED).***See* SOLICITOR—**Articled Clerk.****CLIENT**—Solicitor and client.*See* Cases under SOLICITOR.**CLOAK ROOM**—Lien for charges—Goods deposited by bailee.*See* RAILWAY—**Stations.** 63.**CLOG**—On redemption.*See* MORTGAGE—**Redemption.** 58—60.**CLOSETS**—Water-closets.*See* Cases under WATER-CLOSETS.**CLOSURE**—Meeting of shareholders.*See* COMPANY—**Meetings.** 159.**CLUB**—Betting in.*See* GAMING. 3.

— Conversion of part of residential flat into.

*See* INJUNCTION. 32.

— Sale of liquors in.

*See* LICENSING ACTS—**Offences.** 23.

— Sick and accident.

*See* Cases under MASTER AND SERVANT—**Truck.****COAL.***See* MINES—**Coal Mines.**

— Cargo—Policy—Heating—Discharge and sale—Loss of freight.

*See* INSURANCE—**Marine.** 52.

— Consumed in endeavouring to float stranded steamship.

*See* SHIPPING—**Average.** 13.

— Insufficiency of—Charter-party—Warranty of seaworthiness—Cargo burned as fuel.

*See* SHIPPING. 48.

— Necessaries—Action in rem—Maritime lien.

*See* SHIPPING—**Necessaries.** 179.

— Sale of coal.

*See* WEIGHTS AND MEASURES.**COASTING TRADE**—Foreign-going ship.*See* SHIPPING—**Pilotage.** 187.**CO-CONTRACTORS**—Parties—Adding defendant.*See* PRACTICE—**Parties.** 80.**CODICIL.***See* WILL—**Codicil.****COERCION**—Marital—New Zealand Criminal Code.*See* NEW ZEALAND. 4.**CO-EXECUTOR**—Misappropriation by.*See* Cases under EXECUTOR.**COFFIN-PLATES**—Pattern—Registration—Novel combination of old designs.*See* DESIGNS. 6.**COHABITATION**—Desertion—Husband's adultery—Refusal to lead chaste life—Wife unable to continue cohabitation.*See* DIVORCE—**Desertion.** 69.

— Desertion—Maintenance—Jurisdiction of justices.

*See* Cases under HUSBAND AND WIFE—**Summary Jurisdiction.**

— Desertion without previous cohabitation.

*See* DIVORCE—**Desertion.** 68.

— Evidence of—Separation—Intercourse while living apart.

*See* HUSBAND AND WIFE—**Separation.**

73.

**COHABITATION**—*continued*.

- Resumption of cohabitation.  
See **DEED**. 5.

- Substituted service of written demand for.  
See **DIVORCE—Practice**. 117.

- COKE**—Whether “coal.”  
See **LONDON—Streets**. 86.

- COLLATERAL NEGLIGENCE** — Independent contractor.  
See **NEGLIGENCE**. 3.

- Independent contractor—Liability of principal for negligence of.  
See **MASTER AND SERVANT—Compensation**. 8.

- COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES ACT, 1896**—*Consolidation of the law*—See 59 & 60 Vict. c. 26.

- COLLECTION OF TAXES**.  
See **REVENUE—Collection of Taxes**.

- COLLEGE**.  
See **UNIVERSITY, passim**.

- Bursar—Office or employment of profit.  
See **REVENUE—Income Tax**. 80.

- Inhabited house duty.  
See **REVENUE—House Duty**. 53, 55, 62, 63.

- Theological college — Income tax — Exemption.  
See **REVENUE—Income Tax**. 113.

- COLLEGE OF MUSIC** — Rates — Exemption — Scientific society.  
See **RATES—Rateability**. 36.

- COLLIERY**.  
See **MINES**.

- Mortgage of—Apportionment between tenant for life and remainderman.  
See **SETTLED LAND—Mortgages**. 84.

- Subscriptions to coal owners' association.  
See **REVENUE—Income Tax**. 81.

- COLLISION**.  
See **SHIPPING—Collision**.

- Thames navigation.  
See **THAMES**.

- COLLUSION**.  
See **DIVORCE—Collusion**.

- COLONIAL COURT OF ADMIRALTY**—*O. in C. dated Aug. 7, 1894 (The Consular Courts (Admir.) O. in C. 1894), applying certain enactments of the Colonial Court of Admiralty Act, 1890, to all Courts having Vice-Admiralty jurisdiction under Os. in C. in places in Africa (local jurisdictions), China, Corea, Japan, Ottoman Empire, Persian Coast, Siam, and Zanzibar. St. R. & O. 1894, p. 131.*

And see **FOREIGN JURISDICTION**.

- COLONIAL LAWS**.  
See **COLONY**.

- COLONIAL SOLICITORS**.  
See **SOLICITOR—Colonial Solicitors**.

- COLONY**—*Colonial Loans Act, 1899 (62 & 73 Vict. c. 36), authorizes certain Public Loans to certain Colonies or places,*

**COLONY**—*continued*.

- Appeals from the Colonies.  
See **List under PRIVY COUNCIL APPEALS**.

**Colonial Law Generally.**

1. — *Bankruptcy*.  
The English Bankruptcy Act, 1869, applies to the whole of Her Majesty's dominions. *CALLENDER, SYKES & Co. v. COLONIAL SECRETARY OF LAGOS AND DAVIES. WILLIAMS v. DAVIES*  
P. C. [1891] A. C. 460

- Colonial grant—Intestacy—Re-sealing.  
See **PROBATE—Grant of Administration**.

- Colonial solicitors.  
See **SOLICITOR—Colonial Solicitors**.

2. — *Federal and provincial rights—British North America Act, s. 91, sub-s. 15; s. 92, sub-s. 13—Dominion Bank Act (46 Vict. c. 120).*

The mutual rights of the Dominion and Provincial Governments in Canada considered by J. C. with regard to the following matters:—

- (A) Bank Act of the Dominion. *TENNANT v. UNION BANK OF CANADA* [1894] A. C. 31

- (B) *British North America Act, 1867, ss. 91, 92.*

- Bankruptcy legislation. *ATT.-GEN. OF ONTARIO v. ATT.-GEN. FOR CANADA*

- P. C. [1894] A. C. 189  
Referred to by P. C. *Att.-Gen. for Ontario v. Att.-Gen. for the Dominion*, [1896] A. C. 348, 360.

- (C) Crown relations to Provinces. *LIQUIDATORS OF MARITIME BANK OF CANADA v. RECEIVER-GENERAL OF NEW BRUNSWICK*

- P. C. [1892] A. C. 437  
(D) Education Act of Province. *CITY OF WINNIPEG v. BARRETT* - P. C. [1892] A. C. 445

- BROPHY v. ATT.-GEN. OF MANITOBA*  
P. C. [1895] A. C. 202

3. — *Governor's power to pardon contempt of Court.*

The prerogative of pardon extends to the remission of a sentence of a purely punitive character for contempt of Court. *In re A*  
SPECIAL REFERENCE FROM THE BAHAMA ISLANDS  
P. C. [1893] A. C. 138

- Considered by C. A. *Seaward v. Paterson*, [1897] 1 Ch. 545, 559.

4. — *Governor—Statutory limitation of power to appoint judges—Supreme Court Judges Act, 1858, s. 2.*

The power of the governor of a Colony having constitutional government to add without limit to the number of judges of the Supreme Court without express parliamentary sanction considered. *BUCKLEY v. EDWARDS*  
P. C. [1892] A. C. 387

- Grant of administration—Colonial grant—Intestacy—Re-sealing.

- See **PROBATE—Grant of Administration**. 63.

- Investments—Income tax.  
See **REVENUE—Income Tax**. 82.

- Investment—Power for trustees to invest in Colonial stock.

- See **TRUSTEE—Investments**.

**COLONY (Colonial Law Generally)—continued.**

— Marriage—Colonial marriage—Evidence of validity.

See **DIVORCE—Evidence.**

**5. — Mortmain—Land in England.**

The Mortmain and Charitable Uses Act, 1888, does not apply to Colonial wills. **CANTERBURY CORPORATION v. WYBURN** P. C. [1895] A. C. 89

— Patent—Colonial patent—Conveyance on sale. See **REVENUE—Stamps.**

**6. — Prerogative of the Crown — Priority over simple contract creditors — British North America Act, 1867.**

The prerogative of the Crown, when not expressly limited by local law or statute, is as extensive in the Colonies as in Great Britain, and gives a Colonial government priority in bankruptcy in respect of a simple contract debt. **LIQUIDATORS OF THE MARITIME BANK OF CANADA v. RECEIVER-GENERAL OF NEW BRUNSWICK**

P. C. [1892] A. C. 437

**7. — Prerogative of the Crown — Petition of right—Colonial servants of the Crown hold office during pleasure.**

A Colonial Government is on the same footing as the Home Government as to the employment and dismissal of servants of the Crown; and in the absence of special contract they hold their offices during the pleasure of the Crown:—

Where A. during the absence on leave of B. was gazetted to act temporarily in his office and was dismissed before B.'s leave expired:—

Held, that A. had no cause of action. **SHENTON v. SMITH** P. C. [1895] A. C. 229

Referred to by C. A. **Dunn v. Reg.** [1896] 1 Q. B. 119.

**PRISONERS.] Colonial prisoners—Application to Places under British Jurisdiction. The Colonial Prisoner's Removal (South African) Order in Council, 1896. St. R. & O. 1896 No. 962.**

— Colonial Probates Act, 1892.

See **PROBATE—GRANT OF PROBATE—Colonial Probates Act.**

— Striking off the rolls — Order of Colonial Court—Jurisdiction.

See **SOLICITOR—Misconduct.** 111.

— Trustees, Appointment of Colonial—Form of Order.

See **SETTLED LAND.** 129.

— Will—Colonial will—Land in England—Mortmain.

See **CHARITY.** 43.

**COLUMBIA—Laws of.**

See **CANADA.**

**COMMERCIAL CAUSES—Notice of the Queen's Bench Division as to Commercial Causes. W. N. 1895 (Appx. of O. & B.) p. 2.**

— Appeal—Practice—Commercial list.

See **APPEAL.** 6.

**1. — Application to enter cause in commercial list before appearance of defendant—Power to order costs to be costs in the cause.**

An application by a plt. to the judge charged with commercial business for leave to enter the cause in the separate list of commercial causes may be made before the appearance of the deft.,

**COMMERCIAL CAUSES—continued.**

and before the time for such appearance has expired, and the judge has power to direct that the costs of the application shall be costs in the cause. **BARRY v. PERUVIAN CORPORATION**

C. A. [1896] 1 Q. B. 208

**2. — Transfer—Powers of judge.**

The judge charged with commercial business has no further power of dispensing with the technical rules of evidence than any other judge of the High Court. Rule 6 of the Notice of the Q. B. Div. (above) as to commercial causes does not purport to extend that power.

The object of the establishment of the commercial court was not that on the one hand all commercial causes or on the other hand only short causes should be tried there, but that causes should be so tried which are likely to be more speedily, economically, and satisfactorily tried if brought before a judge having special familiarity with mercantile transactions:—

A cause will not be transferred from the Ch. Div. to the Q. B. Div. to be tried as a commercial cause merely because it is a commercial cause; but the Court will consider whether from its nature it is likely to be more speedily, economically, and satisfactorily tried by the Commercial Court. **BAERLEIN v. CHARTERED MERCANTILE BANK** — — C. A. [1895] 2 Ch. 488

**COMMERCIAL TREATIES.**

See **TREATY.**

**COMMISSION — Agreement by vendor to pay commission to purchaser's agent—Right of purchaser to recover from vendor.**

See **VENDOR AND PURCHASER.** 3.

— Evidence—Subject-matter of action—Sending out of jurisdiction for identification.

See **EVIDENCE.** 26.

— For placing shares.

See **COMPANY—Shares.** 269.

— Receipt by trustee.

See **TRUSTEE—Remuneration.** 95.

— To examine witness—Arbitrators—Divorce—Jurisdiction.

See **ARBITRATION.** 10.

**COMMISSION CHARGEABLE — Action for — Interpleader.**

See **COUNTY COURT—Jurisdiction.** 52.

— Agreement to share Stock Exchange losses.

See **PRINCIPAL AND SURETY—Contribution.** 5.

**COMMISSION (IN NAVY)—Power to resign.**

See **ARMY AND NAVY.** 2.

**COMMITTAL—Arrests, commitments, and execution of process.**

See **COMPANY — WINDING-UP — Enforcement of Orders.**

— Attachment.

See **Cases under ATTACHMENT.**

— Attachment or—Breach of undertaking—Service of order containing the undertaking—Solicitor.

See **PRACTICE—Undertaking.** 272.

— Breach of injunction—Aiding and abetting.

See **CONTEMPT OF COURT.** 2.

**COMMITTAL**—*continued.*

— Contempt — County court — Jurisdiction — Company—Winding-up.  
See PROHIBITION. 1.

— Contempt of Court.

See BANKRUPTCY—Contempt of Court.

— County courts.

See COUNTY COURT—Committals.

— Interlocutory order—Leave to appeal—Liberty of subject—Refusal to commit.  
See APPEAL. 25.

— Jurisdiction to make order—Workmen's Compensation Act.

See MASTER AND SERVANT—Practice. 90.

— Receiving order in lieu of—Jurisdiction — Foreigner.

See BANKRUPTCY — Receiving Order. 197.

**COMMITTEE**—Right of, as representing creditors of company in liquidation to take part in proceedings.

See COMPANY—WINDING-UP—Petition. 153.

**COMMITTEE OF INSPECTION.**

See BANKRUPTCY—Committee of Inspection.

COMPANY—WINDING-UP—Committee of Inspection.

**COMMITTEE OF LUNATIC.**

See Cases under LUNACY.

**COMMON**—By the "Law of Commons Amendment Act, 1893" (56 & 57 Vict. c. 57), inclosures under the Statute of Merton and the Statute of Westminster the Second, without the consent of the Bd. of Agric., were rendered invalid.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), district councils are empowered to act for the prevention of the inclosure of commons.

Metropolitan Commons Act, 1898 (61 & 62 Vict. c. 43), amends the Metropolitan Commons Acts.

Commons Act, 1899 (62 & 63 Vict. c. 30), amends the Inclosure Acts, 1845 to 1882, and the law relating to commons and open spaces.

1. — *Commonable rights—Agreement for sale—Action for specific performance—Counter-claim—Finding of jury on trial of issue of fact—Motion for new trial—Evidence—Admissibility—Reputation—Deposition in suit to perpetuate testimony—Survey and report as to manor made under statute.*

In an action in the Ch. Div. by a statutory committee of commoners for specific performance of an agreement to purchase commonable rights, an order was made directing the trial before a jury in the Q. B. Div. of the following issue of fact, namely, whether a certain piece of land was common land or subject to any commonable rights either of the commoners of the parish of C., or of the commoners of the parish of L. :—

*Held*, that evidence of reputation was admissible on the trial of such an issue.

*Earl Dunraven v. Llewellyn*, (1850) 19 L. J. (Q.B.) 388, 392; S. C. 15 Q. B. 791, and *Warrick v. Queen's College, Oxford*, (1871) L. R. 6 Ch. 716, observed upon.

**COMMON**—*continued.*

A deposition made in the year 1815, in a suit to perpetuate testimony by a witness examined on commission on behalf of a predecessor in title of the defts., was admitted in evidence at the trial of this issue as being a statement made by a person vouched by the party on whose behalf the deponent was examined, and consequently an admission by conduct of a predecessor in title of the defts. This deposition had been sealed up by the examiners, but was now found unsealed :—

*Held*, that the mere fact that the deposition was now found to be unsealed was not evidence of user or adoption by the party on whose behalf the deponent was examined, and that, in the absence of evidence of such user or adoption, the deposition was inadmissible on the ground on which it was admitted.

*Richards v. Morgan*, (1863) 4 B. & S. 641, observed upon.

A survey and report made by a surveyor in 1816, in discharge of a duty imposed upon him by the 8th section of the statute 34 Geo. 3, c. 75, upon the occasion of a sale of Crown lands, and produced out of the proper custody, is admissible in evidence as a public document within the decision in *Sturla v. Freccia*, (1880) 5 App. Cas. 623. *Phillips v. Hudson*, (1867) L. R. 2 Ch. 243, distinguished. *EVANS v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL* C. A. [1899] 1 Ch. 241

REGULATION OF COMMONS.] *Commons Regs.*, 1899, dated Oct. 2, 1899, and *Forms*. St. R. & O. 1899, p. 106, No. 750.

2. — *Gravel—Digging gravel for roads—Justices—Jurisdiction—Highway Act, 1835* (5 & 6 Will. 4, c. 50), s. 51—*Commons Act, 1876* (39 & 40 Vict. c. 56), s. 20—*Discretion of justices to refuse to make order.*

By s. 51 of the Highway Act, 1835, power is given to a surveyor of highways to get and carry away gravel, &c., in any waste land or common ground. By s. 20 of the Commons Act, 1876, such right is not to be exercised, as regards certain classes of commons, "without the consent of the person or persons having the regulation or management of the same, or in default of such consent without an order of two or more justices in petty sessions assembled . . . who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient."

The appellants having refused leave to the respondents to take gravel from a common, the latter applied to justices, who made an order under s. 20 of the Commons Act, 1876, on the express ground that the section only gave them power to prescribe the conditions under which the right given by s. 35 of the Highway Act, 1835, was to be exercised, and that they had therefore no discretion to refuse altogether to make an order :—

*Held*, that the decision of the justices was wrong, and that they had absolute discretion, under s. 20 of the Commons Act, 1876, to make or refuse to make an order. *HAYES COMMON CONSERVATORS v. BROMLEY RURAL DISTRICT COUNCIL* Div. Ct. [1897] 1 Q. B. 321

**COMMON—continued.****3. — Inclosure—Lord's rights as owner of soil—Purchase by railway company.**

Under an Inclosure Act part of a waste was allotted to the lord in trust for the cottagers as a turf common. Subsequently a ry. co. took part of this turf common, and paid the purchase-money into court:—

*Held*, that the lord was entitled to so much of the fund in court as represented the value of the soil. *In re CHRISTCHURCH INCLOSURE ACT* (No. 1)

**C. A. (38 Ch. D. 520); affirm. by H. L. (E.)**

*sub. nom.* *ATT.-GEN. v. MEYRICK*  
[1893] **A. C. 1**

Distinguished by *C. A. Simcoe v. Pethick*, [1898] **2 Q. B. 555**.

— Inclosure award—Map—Evidence.

*See CRIMINAL LAW. 21.*

**4. — "Owner."**

Lord of the manor held to be "owner" for sewerage expenses purposes in respect of a waste allotted on charitable trusts. *In re CHRISTCHURCH INCLOSURE ACT. MEYRICK v. ATT.-GEN.* (No. 2)

**Stirling J. [1894] 3 Ch. 209**

Referred to by *C. A. Hornsey District Council v. Smith*, [1897] **1 Ch. 860**.

**5. — "Permanent common."**

The dedication of Crown lands under a Colonial Act as "permanent common" does not create a common of pasturage, but a grant of the lands for ever for common or public enjoyment. *SYDNEY MUNICIPAL COUNCIL v. ATT.-GEN. FOR NEW SOUTH WALES* - - - **P. C. [1894] A. C. 444**

**6. — Rights of common—Extinction on release of seigniorial rights.**

On the release of seigniorial rights in ancient arable lands of customary freehold tenure, the rights of common are not extinguished. Where part of a farm is sold to a stranger, no rights of common will in the absence of special grant pass. *BARING v. ABINGDON*

**C. A. affirm. Stirling J. [1892] 2 Ch. 374**

Dictum of Stirling J. explained and corrected by Chitty J. *See Wallis v. Hands*, [1893] **2 Ch. 75**.

**7. — Scheme for regulation under Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122)—Effect of Scheme.**

The Court held that, assuming the plt. had made out a good paper title to the land, the fact that it was included in the area of the common as defined by the scheme was fatal to the action. The scheme, which had all the force of an Act of Parliament, provided that the conservators should maintain the common as delineated in the plan free of all encroachment, and should not permit any trespass on or inclosure of any part thereof. That was a positive enactment directing the conservators to do what the Court was now asked to restrain them from doing. It was true the scheme contained a clause saving to all persons all such estates, interests, or rights of a profitable or beneficial nature in, over, or affecting the common as they had before the confirmation of the scheme; but that did not extend to a right to deny that any particular piece of land was within the scheme, but referred to rights in the nature

**COMMON—continued.**

of profits à prendre. The Act of 1866 provided for the greatest publicity in the making of the scheme, and persons who did not exercise their right of objecting to the scheme before it was confirmed could not successfully do so afterwards.

The Court in so deciding was following a decision of Chitty J. in an unreported case of *Conservators of Chislehurst Common v. Newton* (1887), where the scheme was practically in the same form as that in the present case. *COOK v. MITCHAM COMMON CONSERVATORS*

**Farwell J. [1900] W. N. 252**

— Waste—Custom of lord to make grants of—  
Consent of homage—Enfranchisement  
— Statutory reservation of rights of common.

*See COPYHOLD. 10.*

**8. — Winter eatage—Distribution of fund paid for extinction of rights—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 99, 107—Commonable Rights Compensation Act, 1882 (45 & 46 Vict. c. 15).**

Lands subject to lammas rights were taken by a local board and a sum paid as compensation for such rights. Claims were allowed in respect of 144 tenements. The arbitrator appointed to report to the Court in what shares the persons were entitled reported that the expense of determining this by reference to the winter eatage would probably exhaust the fund, and that such fund ought to be divided into 144 equal parts. The Court, under Order xxxvi. r. 55, adopted the report. *WEATHERLEY v. LAYTON*

**Stirling J. [1892] W. N. 165**

**COMMON CARRIER—Negligence.**

*See CARRIER.*

**RAILWAY.**

**COMMON EMPLOYMENT—Liability for injuries to workman.**

*See Cases under MASTER AND SERVANT.*

**COMMON LODGING-HOUSES.**

*See Cases under LODGING-HOUSE.*

**COMMON SEAL.**

*See CORPORATION. 4.*

**COMMUNION TABLE—Reredos—Second communion table in side chapel.**

*See ECCLESIASTICAL LAW—Faculty. 39, 41.*

**COMMUNITY OF GOODS—International law—French law—Matrimonial domicile.**

*See Cases under CONFLICT OF LAWS. DOMICIL.*

**COMPANY.**

*Companies Act, 1898 (61 & 62 Vict. c. 26), amends the Companies Act, 1867.*

*Companies Act, 1900 (63 & 64 Vict. c. 48), amends the Companies Acts. For notes thereon see [1900] W. N. 188 et seq.*

*Generally, col. 299.*

*Annual Summary, col. 300.*

*Audit, col. 300.*

*Balance Sheets. See DISCOVERY. 14.*

*Borrowing Powers, col. 301,*

*Calls, col. 302,*

**COMPANY—continued.**

- Contracts*, col. 306.
- Conversion of Stock into Shares*, col. 312.
- Costs*, col. 312.
- County Courts*, col. 312.
- Debentures*, col. 312.
- Directors*, col. 336.
- Distress*, col. 352.
- Dividends*, col. 353.
- False Statements*, col. 356.
- Formation*, col. 356.
- Guarantee*, col. 356.
- Incorporation*, col. 356.
- Meetings*, col. 357.
- Memorandum, Deed of Settlement, and Articles*, col. 362.
- Misrepresentation*, col. 369.
- Mortgages and Charges*, col. 370.
- Offences*, col. 371.
- Practice*, col. 371.
- Promoters*, col. 372.
- Prospectus*, col. 373.
- Rates and Taxes*, col. 376.
- Reconstruction*, col. 376.
- Reduction of Capital*, col. 381.
- Register*, col. 388.
- Registration*, col. 390.
- Shares*, col. 392.
- Unregistered Company*, col. 406.

**Generally.**

- Action—Limitation—Public authorities protection—Company dividing profits.  
*See PUBLIC AUTHORITIES PROTECTION. 2.*
- Assignment of debts—Conditional payment—Effect of giving cheque or bill of exchange.  
*See TRADE. 2.*
- Assignment to one-man company—Fraudulent conveyance—Act of bankruptcy.  
*See BANKRUPTCY—Act of Bankruptcy. 4.*
- Building society.  
*See Cases under BUILDING SOCIETY.*
- Discovery—Documents.  
*See DISCOVERY—Documents. 13, 14.*
- Discovery—Interrogatories.  
*See DISCOVERY—Interrogatories. 48.*
- Estate duty—Succession duty—Disposition by foreigner domiciled abroad—Property situate abroad—Disposition to English company.  
*See REVENUE—Estate Duty. 26.*
- Executor de son tort—Liability to pay probate duty.  
*See REVENUE—Probate Duty. 134.*
- “Flotation”—Contract—Construction—British South Africa Company’s Mining Ordinance.  
*See CAPE OF GOOD HOPE. 4.*
- Forfeiture—Reasonable notice before action for—Condition against liquidation.  
*See LANDLORD AND TENANT. 56.*

**COMPANY (Generally)—continued.**

- Gas rate—Refusal to supply receiver until arrears due from company paid.  
*See GAS. 1.*
- Improvement of land company.  
*See Improvement of Land Act, 1899 (62 & 63 Vict. c. 46).*
- Income tax.  
*See REVENUE—Income Tax. 83—90.*
- Interrogatories.  
*See DISCOVERY—Interrogatories. 48.*
- Limitations, Statute of.  
*See LIMITATIONS, STATUTE OF—Company.*
- Lunacy—Sale of property in consideration of shares—Jurisdiction.  
*See LUNACY—Sales. 42.*
- Payment of interest—Ultra vires—New rules—Known insolvency at time of passing.  
*See BUILDING SOCIETY—Ultra Vires. 12.*
- Probate duty—Valuation of testator’s estate.  
*See VICTORIA. 13.*
- Proof of formation of—Prohibition.  
*See LONDON—Mayor’s Court. 46.*
- Railway company.  
*See Cases under RAILWAY.*
- Reconstruction of company.  
*See Cases under COMPANY—Reconstruction.*
- Sale—Shares—Judgment Act.  
*See CHARGING ORDER. 1.*
- Shares deemed to be fully paid up—Liability.  
*See NEW SOUTH WALES. 8.*
- Solicitor—Authority to defend action in name of company—Dissolution pendente lite—Costs.  
*See PRINCIPAL AND AGENT. 27.*
- Stamp duty.  
*See REVENUE—Stamps. 147—149.*
- Surety—Administration bond.  
*See PROBATE. 11.*
- Telephone company.  
*See TELEGRAPH.*
- Trade name.  
*See TRADE NAME.*
- Trustees’ powers of investment—Deposits with banks.  
*See VICTORIA. 13.*
- Water companies.  
*See Cases under WATER.*
- Winding-up of company.  
*See Cases under COMPANY—Winding-up.*

**Annual Summary.**

*Particulars of. See Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 19, 20. For notes thereon see [1900] W. N. 200.*

**Audit.**

**AUDITORS.]** *Appointment, remuneration, rights and duties of. See Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 21—23. For notes thereon see [1900] W. N. 200.*



**COMPANY—continued.****Borrowing Powers.**

- Arrangement scheme—Dissentient debenture holders.

See **COMPANY—WINDING-UP—Scheme of Arrangement.** 219, 220.

1. — *Implied power of borrowing money—Trading company.*

A co. formed with the object of selling and managing estates, &c., and making advances and loans is a trading co., and as such has an implied power to borrow money to a reasonable extent:—

*Held*, therefore, an equitable mortgage of certain real estate, given by the directors to secure an advance to the co. for the purpose of repaying a depositor, was valid. Law as to implied borrowing powers considered. **GENERAL AUCTION ESTATE AND MONETARY CO. v. SMITH**

**Stirling J. [1891] 3 Ch. 432**

2. — *Irregularity—Notice—Common officer of two companies.*

Where one person is an officer of two cos. his personal knowledge is not necessarily the knowledge of both the cos. The knowledge which he has acquired as officer of one co. will not be imputed to the other co. unless he has some duty imposed on him to communicate his knowledge to the co. sought to be affected by the notice, and some duty imposed on him by that co. to receive the notice; and if the common officer has been guilty of fraud, or even irregularity, the Court will not draw the inference that he has fulfilled these duties.

**Gale v. Lewis, (1846) 9 Q. B. 730; 16 L. J. (Q.B.) 119, distinguished.**

The directors of a co. were empowered to borrow money on its behalf, but not beyond a certain limit without the consent of a general meeting. A general meeting gave the required consent, but the notices summoning the meeting did not, as required by the regulations of the co., specify that borrowing beyond the limit was to be authorized by the meeting. The money was borrowed from a society the secretary of which was also the secretary of the co., and he knew of the irregularity:—

*Held*, that the knowledge of the secretary could not be imputed to the society, and that the money lent could be proved for in the winding-up of the co. *In re HAMPSHIRE LAND CO.*

**V. Williams J. [1896] 2 Ch. 743**

3. — *Mortgage of uncalled capital—Winding-up—“Assets.”*

A mortgage was given to two directors to indemnify them against promissory notes given by them to the co.'s bankers to secure overdrafts, and also against guarantees given by them to ry. cos.:—

*Held*, that the overdraft with the bank was in substance a borrowing on uncalled capital, and that the mortgage was valid as to the overdrafts, but *semble*, not as to the guarantees:—

*Held*, also, on the construction of the memorandum, that “assets” included uncalled capital. *In re PYLE WORKS (No. 2)*

**Stirling J. [1891] 1 Ch. 173**

**COMPANY (Borrowing Powers)—continued.**

4. — *Oral charge on uncalled capital.*

Memorandum as interpreted by articles held to authorize directors to borrow in any way they chose, and therefore to give a bank an oral charge on the uncalled capital. *In re TILBURY PORTLAND CEMENT CO.*

**V. Williams J. [1893] W. N. 141**

5. — *Uncalled capital—Charging uncalled capital—Sufficient authority—Articles of association—Alteration by special resolution.*

The articles of association authorized the co. to borrow, upon mortgage of its freehold and leasehold hereditaments, works, and “other property and effects” for the time being of the co., or upon bonds or debenture notes of the co., or “in such other manner as the co. may determine.” The memorandum of association contained no reference to any borrowing:—

*Held*, that the co. could under its articles mortgage its uncalled capital; and that, had it been necessary so to do, the co. could by special resolution have extended its articles so as to confer upon itself the power to charge its uncalled capital.

*Newton v. Anglo-Australian Investment, Finance, and Land Co., [1895] A. C. 244, discussed and followed.* **JACKSON v. RAINFORD COAL CO.**

**Chitty J. [1896] 2 Ch. 340**

**Calls.**

- Action to enforce.

See **COMPANY—WINDING-UP—Contributory.** 29.

- in Arrear.

See **COMPANY—WINDING-UP—Petition.** 174.

- Death of shareholder—Insolvent estate—Proof of debts—Liability to future calls.

See **BANKRUPTCY—Proof.** 164.

6. — *Forfeited shares, Calls on—Liquidation—Past member of company—Reduction of capital—Special resolution—Irregularity—Certificate of registration—Companies Acts, 1862 (25 & 26 Vict. c. 89), ss. 38, 51; 1867 (30 & 31 Vict. c. 131), ss. 9, 11, 15, 16.*

The articles of association of a co. provided that any member whose shares had been forfeited should, nevertheless, be liable to pay all calls owing upon the shares at the time of the forfeiture. The deft. had been the owner of shares in the co., but his shares had been forfeited for non-payment of calls. More than a year after the forfeiture the co. went into liquidation, and the deft. was then sued for the unpaid calls:—

*Held*, that, notwithstanding the provisions of s. 38 of the Companies Act, 1862, sub-ss. 1, 3, the action was maintainable, inasmuch as the deft. was liable, not as a contributory, but as a debtor to the co.

Where the resolution confirming a resolution by a co. to reduce its capital did not comply with the terms of s. 51 of the Companies Act, 1862, because there was not an interval of fourteen days between the passing of the two resolutions, but an order of the Court had been made in accordance with the resolutions under s. 11 of the Companies Act, 1867, and the Registrar of Joint

**COMPANY (Calls)—continued.**

Stock Companies had certified the registration of the order, together with a minute approved by the Court, in conformity with s. 15 of that Act:—

*Held*, that the certificate of the registrar was conclusive evidence that a special resolution to reduce the capital of the co. had been duly passed in accordance with s. 51 of the Companies Act, 1862, and s. 9 of the Companies Act, 1867. **LADIES' DRESS ASSOCIATION, LD. v. PULBROOK** C. A. [1900] 2 Q. B. 376

— Death of shareholder—Notice to executors. See **COMPANY—Shares**. 270.

7. — *Lien on shares—Alteration of articles of association—Shareholder—Vendor's shares—Fully paid shares—Unpaid shares—Calls—Arrears—Debts—Lien of company on unpaid shares—Special resolution—Lien on fully paid shares for arrears of calls on unpaid shares—Contract—Retrospective effect of altered articles—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 50—General meetings—Notice—Service—Member—Deceased member—Legal personal representatives.*

A co. by one of its articles provided that it should have a lien for all debts and liabilities of any member to the co. "upon all shares (not being fully paid) held by such member."

The co., by way of purchase-money for the property acquired by it, allotted fully paid shares to Z., a nominee of the vendor to the co. Z. also applied for and had allotted to him shares not paid up. He was the only holder of fully paid-up shares. At his death he was indebted to the co. in arrears of calls on the unpaid shares, but his assets were insufficient to pay the arrears. Thereupon the co., by special resolution under s. 50 of the Companies Act, 1862, altered the above article by omitting therefrom the words "not being fully paid," thus creating a lien on Z.'s fully paid shares:—

*Held*, by C. A., that the co. had power to alter its articles by extending its lien to fully paid shares:—

*Held*, also, by Lindley M.R. and Romer L.J. (V. Williams L.J. dissenting), that the lien so extended, having been made in good faith, was enforceable against Z.'s fully paid shares, since he took them subject to the original articles and the power of altering them given to the co. by s. 50 of the Act, and did not make any special or implied bargain that they should not be affected by any subsequent alteration of the articles; and that the fact of those shares being vendor's shares allotted in payment for the property purchased by the co., instead of being shares paid for in cash in the ordinary way, was immaterial.

**James v. Buena Ventura Nitrate Grounds Syndicate**, [1896] 1 Ch. 456, and **Andrews v. Gas Meter Co.**, [1897] 1 Ch. 361, considered as to the "retrospective" effect of an alteration by a co. of its articles.

Where, under a co.'s articles, notice of general meetings is to be given to "members," and such notice may be served upon any "member" either personally or by sending it prepaid by post addressed to "such member" at his registered address, it is not necessary, in the case of a deceased member, either to send a notice addressed to him at his registered address, or to serve his

**COMPANY (Calls)—continued.**

legal personal representatives unless they have themselves become "members" by formal registration.

Judgment of Kekewich J., [1899] W. N. 75; [1899] 2 Ch. 40, varied. **ALLEN v. GOLD REEFS OF WEST AFRICA, LD.** — [1900] W. N. 43; C. A. [1900] 1 Ch. 656

— Prepayment of calls—"Discount."

See **COMPANY—WINDING-UP**. 218.

8. — *Right to make—Debenture-holders' action—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 95, 98, 102—Companies Winding-up Act, 1890 (53 & 54 Vict. c. 63), ss. 12, 13—Companies Winding-up Rules, 1890, r. 92.*

On a winding-up order the power of the directors to make calls comes to an end, and the only power to make calls is that given by statute to the liquidator in the winding-up. Therefore, when uncalled capital has been charged by the co. in favour of debenture-holders and a winding-up order is made, the Court cannot order either a receiver appointed in an action to enforce the debentures or the liquidator to make a call in the action, and can only order the liquidator to make a call in the winding-up. But the receiver in the action may be empowered to proceed in the name of the liquidator to enforce the call. **FOWLER v. BROAD'S NIGHT LIGHT CO.**

V. Williams J. [1893] 1 Ch. 724

(b) As a rule proceedings should be taken by the liquidator and not by some other person in the name of the liquidator; in this case the receiver was allowed to proceed in the liquidator's name to get in the calls on an undertaking to leave the books of the co. with the liquidator and to indemnify him against costs. **HARRISON v. ST. ETIENNE BREWERY CO.**

V. Williams J. [1893] W. N. 108

9. — *Sale of undertaking—Death of shareholder—Notice.*

The Z. Co. was empowered by its memorandum of association to amalgamate with any other co. or to sell its undertaking. By the articles, fourteen days' notice was to be given of a call, and might be served by being posted to the registered address of a member. The Z. Co. sold its undertaking and assets to the N. Co., and, in accordance with the agreement, called up their unpaid capital. P., a member of the Z. Co., had died previously to the call. Notice was posted to his registered address, and was returned marked "gone away":—

*Held*, that a call of unpaid capital for the purposes of the sale was not invalid, and that as to notice, a "member" includes a deceased member as long as the shares remain in his name. **NEW ZEALAND GOLD EXTRACTION CO. (NEWBERRY-VAUTIN PROCESS) v. PEACOCK**

C. A. affirm. **Kernedy J.** [1894] 1 Q. B. 622

Referred to by C. A. *In re Bank of South Australia* (No. 2), [1895] 1 Ch. 593; **James v. Buena Ventura Nitrate Grounds Syndicate**, [1896] 1 Ch. 467; **Wall v. London and Northern Assets Corporation**, [1898] 2 Ch. 479.

Discussed and applied by C. A. **Allen v. Gold Reefs of West Africa, Ltd.**, [1899] 2 Ch. 40.

10. — *Set-off—Debentures—Notice—Calls*

**COMPANY (Calls)—continued.**

*made before and after winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 75.*

A shareholder, who was also a debenture-holder, mortgaged debentures with his bank, and the bank gave notice of the charge to the co., but not until a call had been made on the shareholders. The co. afterwards went into liquidation and further calls were made:—

*Held*, that the co. were entitled to set off against the debentures the call made before notice of the charge, but not calls made after the liquidation, for until the winding-up there was no debt due in respect of the further calls, but only a liability. *In re TAUNTON, DELMARD, LANE & Co. CHRISTIE v. TAUNTON, DELMARD, LANE & Co.* — *Stirling J. [1893] 2 Ch. 175*

**11. — Set-off — Directors' fees — Fraudulent preference.**

Directors three months before the liquidation, by exchanging cheques with the co., paid calls owing by them out of the fees owing to them:—

*Held*, that this was a fraudulent preference. *In re WASHINGTON DIAMOND MINING Co.*

**V. Williams J. reversed by C. A. [1893] 3 Ch. 95**

Referred to by Wright J. *In re Auriferous Properties, Ltd.*, [1898] 1 Ch. 697.

**12. — Shareholder—Subscriber of memorandum of association—Liability to pay for shares—Issue of shares on different terms—Directors—Breach of duty—Power to make calls—Duty to make calls on their own shares—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 8, 11, 14, 15, 22, 23, 31, 38.**

A subscriber of the memorandum of association of a co. limited by shares is (in the absence of any provision in the articles of association, or of an express agreement between him and the co., to the contrary) not liable to make any payment in respect of the shares for which he subscribes, except as and when calls are made upon him in accordance with the provisions of the articles.

If directors issue other shares besides those which are taken by the subscribers of the memorandum, there is nothing to prevent them from offering those shares on such terms as regards payment to the company on application and allotment as the directors may think expedient.

But if directors require other applicants for shares to make payments on application and allotment, and issue their own shares for which they have subscribed the memorandum without requiring any such payments to be made, and without disclosing to the other shareholders this difference between their position and that of the directors, they commit a breach of duty, even though in so doing they act without fraud, and in the belief that they are doing nothing wrong.

Directors who so use their powers as to obtain benefits for themselves at the expense of the other shareholders, without informing them of the facts, cannot be allowed to retain those benefits, but must account for them to the co., so that all the shareholders may participate in them.

Decision of Cozens-Hardy J., [1899] 2 Ch. 302, reversed. *ALEXANDER v. AUTOMATIC TELEPHONE CO.* **C. A. [1900] W. N. 93; [1900] 2 Ch. 56**

**COMPANY (Calls)—continued.**

**13. — Special agreement as to calls—Shareholder—Subscribers to memorandum of association—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 23—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 24, sub-s. 1.**

Although the subscribers to a co.'s memorandum of association become on its incorporation members of the co. in respect of the shares set opposite their names in the memorandum, they are not, in the absence of a special agreement, liable to pay anything on the shares except in respect of calls made in the manner provided by the articles. And where the articles provide that the directors may make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls, the directors may agree with subscribers of the memorandum who are also directors that nothing shall on allotment be paid on the shares set opposite their names in the memorandum, although payments on allotment are required from other shareholders. *ALEXANDER v. AUTOMATIC TELEPHONE CO.* **Cozens-Hardy J. [1899] W. N. 79; [1899] 2 Ch. 302**

Reversed by C. A. *See preceding Case.*

**Contracts.**

— Adoption of contract made before its formation, Effect of company's—Payment of shares in cash—Set-off.

*See NEW SOUTH WALES. 7, 8.*

— Consent judgment—Effect of—Contract by company ultra vires—Terms on which contract will be set aside.

*See CANADA. 17, 27.*

— Directors—Contracts with company—Fiduciary relation.

*See Cases under COMPANY—Directors.*

**14. — Fully paid shares—Leave to file contract after issue of shares—Notice—Costs—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26).**

An agreement was entered into with a trustee for an intended co. under which S., for a consideration which was not cash, was to take fully paid shares in the co. when incorporated. This agreement was adopted with modifications by the co. when incorporated, but the second agreement did not state the consideration given for the shares. The first agreement was not filed, but the second one was filed before the shares were issued. Some years afterwards a winding-up order was made against the co., and, after the decision in *In re Kharaskhoma Exploring and Prospecting Syndicate*, [1897] 2 Ch. 451, the official receiver and liquidator informed S., who was previously unaware of the fact, that he was liable to pay for the shares in cash. After the coming into operation of the Companies Act, 1898 (Aug. 2, 1898), S. applied by motion to the winding-up court for leave to file the first contract with the Registrar of Joint Stock Companies, and that on being filed it might be directed to operate as if it had been filed before the issue of the shares. The original of the first contract was not in the possession of S.:—

*Held*, that copies of both contracts must be

**COMPANY (Contracts)—continued.**

ordered to be filed, and to have the operation asked for; that an office copy of the order must also be filed, the filing to take place within one month from the date of the order:

*Held*, also (without laying down any general rule), that S. must pay the costs of the official receiver of the application. *In re MAY'S METAL SEPARATING SYNDICATE*

Wright J. [1898] W. N. 159 (5)

Another co. after incorporation agreed to purchase a private business, the consideration being fully paid shares. The agreement contained a clause providing that prior to the issue of the shares the co. should enter into and file a separate agreement of even date therewith to allot the fully paid shares to the vendors. The agreement referred to (which was the only one filed with the Registrar of Joint Stock Companies) provided for the allotment of the shares, but did not state what was being given for the shares except by reference to the other agreement. After the coming into operation of the Act of 1898, the vendors were advised that the shares were not protected as fully paid having regard to the decision in *In re Maynards, Ltd.*, [1898] 1 Ch. 515. The vendors moved for leave to file the first agreement, and that such filing should have the operation of a filing before the shares were issued. The co., still a going concern, was served, but did not ask for costs. There were no pressing creditors, and the vendors' shares were of small nominal value:—

*Held*, without laying down any general rule as to whether the Court would in future cases direct notice to be given of the day for hearing the application, and that any one desiring to oppose could attend (see *Palmer's Company Law*, 2nd ed. p. 379)—that a duplicate of the original first contract, which was in the applicants' possession, must be filed, and that (except as to costs) the rest of the order must follow the lines of that made by Wright J. in *In re May's Metal Separating Syndicate*, *supra*. *In re NORTHERN CREOSOTING AND SLEEPER CO.*

Byrne J. [1898] W. N. 159 (5)

15. — *Filed contract—Nature of consideration—Statement—Sufficiency—Shares—Mode of payment—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26).*

A statement of the mere form or character of the consideration of a contract filed under s. 25 of the Companies Act, 1867—e.g., the sale to the company of property the general nature of which does not appear on the face of the contract—is not a sufficient statement of the “nature of the consideration” within the rule of *In re S. Frost & Co.*, C. A. [1899] 2 Ch. 207. *In re ROBERT WATSON & CO. Kekewich J. [1899] W. N. 120; [1899] 2 Ch. 509*

Followed by Byrne J. *In re British Columbia Electric Ry. Ltd.*, [1899] W. N. 260.

See No. 17, below.

16. — *Filed contract—Sufficiency of—Shares issued as fully paid—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

The object of s. 25 of the Companies Act, 1867, is to have it shown what shares are not to be paid for in cash, and the nature of the con-

**COMPANY (Contracts)—continued.**

sideration other than cash which is to be given, but not to compel disclosure of the agreement in all its details.

On Dec. 6, 1894, a written agreement was made between a syndicate and H., as trustee for an intended co., whereby it was agreed that the vendors should sell, and the co. should purchase, a property called Millwood, in the Cape Colony, which was fully described, and that as consideration for the sale H., as the trustee for the intended co., should on or before Dec. 15 allot to the vendors, or as they might direct, 22,500 fully paid shares of 10s. each in the intended co., and should also allot to the vendors, or as they might direct, 277,493 shares of 10s. each in the intended co. upon each of which 8s. should be deemed to have been paid. This agreement was never filed with the Registrar of Joint Stock Companies. The co. was registered on Dec. 6, 1894, and on Dec. 11 the directors resolved to adopt the agreement. On Dec. 12 an agreement in writing was made between the syndicate (called the vendors) and the co. which provided that the co. would forthwith allot to the vendors, or their nominee or nominees, 22,500 fully paid shares of 10s. each in the co., and should allot to the vendors, or as they might direct, 277,493 shares of 10s. each in the co. upon each of which 8s. should be deemed to have been paid “as mentioned in an agreement dated Dec. 6, 1894.

In consideration of the allotment of such shares as aforesaid the vendors will forthwith thereafter give to the co. possession of the premises more particularly mentioned in the said agreement. In all other respects the said agreement is hereby confirmed.” On Dec. 19, 1894, another agreement in writing was made between the co. and the syndicate, which provided that, in consideration of the syndicate agreeing to give the co. immediate possession of “the lands and premises situate in the mining district of Millwood, in the Cape Colony, more particularly mentioned and referred to in an agreement dated Dec. 6, 1894, made between the syndicate and H., as trustee for the co.,” the co. should forthwith allot to the syndicate, or to their nominee or nominees, 22,500 fully paid shares of 10s. each in the co., and for all purposes the said shares should be deemed fully paid shares in the co. The syndicate should with all possible expedition procure the lands and premises to become vested in the co. free from all incumbrances. Both the contracts of Dec. 12 and Dec. 19 were filed with the Registrar of Joint Stock Companies—the first on Dec. 13 and the second on Dec. 28. On Jan. 2, 1895, 1406 shares of 10s. each were allotted and issued as fully paid to Markham and Darter respectively as nominees of the syndicate. The co. being in liquidation:—

*Held*, that the filed contract of Dec. 19 was a sufficient compliance with the requirements of s. 25 of the Companies Act, 1867, or that at any rate the two contracts of Dec. 12 and Dec. 19 were sufficient.

Decision of Wright J., [1899] W. N. 7 (1); [1899] 1 Ch. 414, affirmed. *In re AFRICAN GOLD CONCESSIONS AND DEVELOPMENT CO. MARKHAM AND DARTER'S CASE - C. A. [1899] W. N. 119; [1899] 2 Ch. 480*

**COMPANY (Contracts)—continued.**

17. — *Filing contract—Issue of fully paid shares—Registered contract—Sufficiency—Description of property purchased—Reference to prior contract.*

By an agreement of April, 1897, between the Colonial co. of the one part, and a trustee on behalf of the above-named co. of the other part, it was agreed that the co. should purchase "the whole of the undertakings, properties, and other premises contracted to be sold to the Colonial co." by an agreement of Dec., 1896, at a price to be satisfied by the allotment to the vendors (inter alia) of 200,000*l.* worth of fully paid-up shares in the co. This agreement was filed with the Registrar of Joint Stock Companies pursuant to s. 25 of the Companies Act, 1867; 20,000 10*l.* shares were subsequently issued as fully paid up. The question having been raised whether the filed agreement contained a sufficient description of the property purchased to comply with the requirements of s. 25, as interpreted by some of the recent decisions, the co. now moved for leave to file the contract of Dec., 1896:—

*Held*, that the case was covered by *In re R. Watson & Co.*, [1899] 2 Ch. 509, which he proposed to follow, and that the description of the property was insufficient. Liberty given to the co. to file the agreement of Dec., 1896. *In re BRITISH COLUMBIA ELECTRIC RAILWAY, LD.*

Byrne J. [1899] W. N. 260

— Filing contract—Contributory.

*See* COMPANY—WINDING-UP—Contributory. 33—35.

18. — *Filing of memorandum in lieu of contract—Practice—Procedure—Application for relief—Rectifying register—Motion—Summons—Shareholders, application by some only—Forms of order and memorandum—Companies Act, 1898 (61 & 62 Vict. c. 26), s. 1.*

An application under the Companies Act, 1898, s. 1, for leave to file a contract or a memorandum in lieu of a contract, may be made either by motion or summons, but preferably by summons, and if by summons it should be heard in open Court and not in chambers, following the better practice on applications to rectify the register of shareholders.

The application, if made by shareholders, may be made by some only, and not necessarily by all, of the shareholders affected.

Where a memorandum in lieu of a contract is approved by the Court and ordered to be filed with the Registrar of Joint Stock Companies under sub-s. 4, it is not necessary to file a copy of the order as well as the memorandum, but the memorandum should state on the face of it that it has been approved by the Court and directed to be filed by the order.

Forms of order and memorandum under the Act. *In re WHITEFRIARS FINANCIAL CO. In re REEVES & SON, LD.* — — — Kekewich J. [1898] W. N. 165 (6); [1899] 1 Ch. 184

19. — *Payment on void contract—Ultra vires—Following trust money.*

A co. sued to recover from an ex-ambassador of Persia a sum paid for a concession to the co. of lotteries in Persia:—

*Held*, that the co. could not recover the

**COMPANY (Contracts)—continued.**

money either (1) as trust money, as it had been paid in accordance with the objects of the co., and the directors were not acting ultra vires in making such payment, nor (2) as money had and received, for they could not follow the money into the deft.'s hands. *PERSIAN INVESTMENT CORPORATION v. PRINCE MALCOLM KHAN*

Chitty J. [1893] W. N. 49

20. — *Preference and ordinary stockholders—Incidence of income tax imposed by colonial legislature.*

An English co., which carried on business in a Colony, passed resolutions under which a class of guaranteed preference stockholders became entitled to a cumulative payment of interest at the rate of 6 per cent. per annum in priority to the other stockholders. By a subsequent Act of the Colonial legislature a duty, in the nature of income tax, was imposed on all dividends or interest paid out of assets in the Colony to the members of companies carrying on business therein, and it was declared that the duty payable in respect of the amount received by any member should be a debt due by him to the Crown:—

*Held*, that the contract between the preference and ordinary stockholders being an English contract, the rights under it of preference stockholders, not domiciled in the Colony, were not affected by the Colonial Act, and that they were therefore entitled to their 6 per cent. without any deduction in respect of the Colonial duty. *SPILLER v. TURNER Kekewich J. [1897] 1 Ch. 911*

21. — *Priority of contract—Contract on behalf of intended company—New contract—Patent—Licence—Burden attaching to property.*

In this case it was held, first, that there was no ground for inferring a contract between the plts. and the defts., and that the case fell within *In re Northumberland Avenue Hotel Co.*, (1886) 33 Ch. D. 16, and not within *Howard v. Patent Ivory Manufacturing Co.*, (1888) 38 Ch. D. 156; secondly, that the obligations imposed by the agreement of March 3 could not be treated as a burden attaching to the licence itself within the principle of *Werderman v. Société Générale d'Électricité*, (1881) 19 Ch. D. 246. The plts. had, therefore, no cause of action against the defts. *BAGOT PNEUMATIC TYRE CO. v. CLIPPER PNEUMATIC TYRE CO. Kekewich J. [1900] W. N. 272*

— Projected company—Overdraft.

*See* BANKER. 23.

— Proof for injury caused by disclaimer by trustee in bankruptcy—Contract to take share in company—Measure of damages.

*See* BANKRUPTCY—Proof. 169.

22. — *Ratification and payment in cash—Paid-up shares—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

In order that a transaction between a co. and an allottee of shares may be equivalent to a "payment in cash" of the amount payable on the shares, there must be debts on each side which could be extinguished by cross payments, e.g., the co. must owe the allottee money, and the allottee

**COMPANY (Contracts)—continued.**

must have contracted to take the shares. *In re JOHANNESBURG HOTEL CO. Ex parte ZOUTPAANS-BERG PROSPECTING CO.* C. A. [1891] 1 Ch. 119

Approved by P. C. *Larocque v. Beauchemin*, [1897] A. C. 365; *North Sydney Investment and Tramway Co. v. Higgins*, [1899] A. C. 263.

23. — *Relief where no sufficient contract filed—Fully paid shares—Jurisdiction—Affidavit in support—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 35—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26).*

An application was made by a co., which was not in winding up, to Wright J., the winding-up judge, for an order that a contract filed after the issue of the shares to which it related should operate as if it had been filed before such issue.

Wright J. held that he had jurisdiction to make orders under the Act of 1898, as a judge of one of Her Majesty's Superior Courts of Law or Equity, and made the order; but said there was no reason why applications under the Act, where the co. was not in winding-up, should not be made to the ordinary judges of the Ch. Div. Such applications are properly made in court, and should not as a rule be made in chambers. *In re CONCESSIONS ACQUISITION SYNDICATE*

Wright J. [1898] W. N. 162 (1)

Affidavits in support of applications under the Act of 1898 should not state the bare fact that the omission to file a proper contract was accidental or due to inadvertence, but should set out the circumstances under which the accident or inadvertence occurred. *In re VICTORIA BRICK WORKS*

Wright J. [1898] W. N. 162 (1)

24. — *Ultra vires—Sale of undertaking—Compensation to directors—Notice of extraordinary meeting—Sufficiency of notice—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 71, 85, 86, 99.*

By a provisional agreement made between two co.'s for the sale of the undertaking of the one to the other, the purchasing co. agreed to pay, in addition to the sum payable to the selling co., a substantial sum to the directors of the selling co. as compensation for loss of office, and the agreement was made conditional upon its adoption by the shareholders of the selling co. The notice convening the meeting of shareholders to consider the agreement described it simply as an agreement for the sale of the undertaking. The selling co. was governed by the Companies Clauses Act, 1845:—

*Held*, (1) that the provision in favour of the directors did not render the agreement ultra vires, but (2) that the notice, by reason of its omission to refer to this provision, did not fairly disclose the purpose for which the meeting was convened, and did not comply with s. 71 of the Companies Clauses Act.

*Southall v. British Mutual Life Assurance Society*, (1871) L. R. 6 Ch. 614, followed.

*Hutton v. West Cork Ry. Co.*, (1883) 23 Ch. D. 654, distinguished.

*Per V. Williams L.J.* *Semble*, if the money payable under this agreement to the directors was a bonus to them in consideration of their

**COMPANY (Contracts)—continued.**

facilitating the contract, the agreement would not be binding upon a dissentient shareholder. *KAYE v. CROYDON TRAMWAYS CO.*

G. A. [1898] 1 Ch. 358

**Conversion of Stock into Shares.**

*See Companies Act, 1900 (63 & 64 Vict. c. 48), s. 29. For notes thereon see [1900] W. N. 202.*

**Costs.**

— Debenture-holder's action—Costs.

*See COMPANY—Debentures.* 36—39.

— Liquidator's costs.

*See Cases under COMPANY—WINDING-UP—Liquidator.*

— Solicitor's lien—Charging order—Property recovered for company—Application after winding-up—Delay.

*See SOLICITOR—Charging Order.* 10.

**County Courts.**

HIGH BAILIFFS.] *Inquiry and indorsement on summons against registered company—Præcipe where registered company is defendant—Service, &c., &c.—County Court Rules (May), 1899. W. N. 1899 (April 29), p. 147. See p. xcii., ante.*

JURISDICTION.] *See County Court—Companies (Winding-up) Jurisdiction.*

**Debentures.**

25. — *Definition—Debenture stock.*

Debenture stock is borrowed money capitalized for purposes of convenience, and stands on an entirely different footing from the ordinary "shares" or "stock" of a co. A gift by will of "all my shares" in a co. will therefore not carry debenture stock. *In re BODMAN. BODMAN v. BODMAN*

Chitty J. [1891] 3 Ch. 135

Distinguished by North J. *In re Weeding*, [1896] 2 Ch. 367.

26. — *Agent—Authority of—Debenture stock certificate—Purchaser for value—Mortgagee.*

A co. applied to P., who had acted as its broker, for a loan of 3000l. on the security of 8000l. of its debenture stock, which was by the trust deed assignable free from equities. P. asked G. to lend 6000l. on the stock, and he consented to do so on the certificate for the 8000l. stock being deposited. After P. had communicated with the co., its secretary deposited as required a certificate under its seal stating that G. was the registered holder of 8000l. debenture stock of the co., and that the stock was only transferable by deed registered in the co.'s books. G. then paid 6000l. to P., who paid the co. only 3000l. :—

*Held*, that, although the certificate was not a negotiable instrument, G. was entitled to assume that P. had full authority from the co. to deal with it, and was not concerned to see that P. paid the 6000l. to the co.: and that in an action to enforce the rights of the debenture stock holders, G. could prove for 8000l. provided he did not receive dividends exceeding 6000l. and interest. *ROBINSON v. MONTGOMERYSHIRE BREWERY CO.*

V. Williams J. [1896] 2 Ch. 841

**COMPANY (Debentures)—continued.**

27. — *Agreement to give debenture when called upon—Waiver—Equitable security—Debenture-holder's action.*

In 1882 a co. borrowed money from P., for which they gave him a promissory note bearing interest at 5 per cent., and undertook that they would at any time, when called upon by the holder of the note, issue for the amount debentures, bearing interest at  $4\frac{1}{2}$  per cent., of a series which constituted a second charge on the co.'s assets, subject to a charge in favour of a first series of debentures previously issued. In 1894 an action was brought by debenture-holders against the co. to enforce their security. P. was one of the plts., as a holder of a first debenture, the other plt. being a holder of a second debenture. P. did not then claim to be a holder of a second debenture. He had continued to receive interest at 5 per cent. on his promissory note, and had not applied to the co. for debentures for the amount. After judgment in the action P. for the first time claimed to have debentures of the second series issued to him for the amount of his debt. The whole of the second series had not been issued, and the amount remaining unissued was sufficient to answer P.'s claim:—

*Held*, that P. had not waived his right under his agreement with the co.; that he was in equity a holder of debentures of the second series for the amount of his debt; and that he was entitled in respect of that amount to share in the distribution of the co.'s assets as if he were a legal holder of debentures of the second series.

*In re Queensland Land and Coal Co.*, [1894] 3 Ch. 181, followed. *PEGGE v. NEATH AND DISTRICT TRAMWAYS CO.* North J. [1898] 1 Ch. 183

28. — *Articles of association—Irregularities—Valuable consideration—Director's authority to seal.*

B. & D., partners, dissolved partnership on terms of a sum payable by B. to D. D. sold his business to a co. of which he became a first director. The articles gave the directors power to borrow on debentures assignable free from equities. No director was to vote in respect of any contract in which he was interested, and if he voted his vote was not to be counted. One director was a quorum. Any debenture bearing the common seal, issued for a valuable consideration, was to bind the co. notwithstanding any irregularity touching the authority of the directors to issue the same (art. 115). Under pressure from D., B. agreed that the sum due from him should be secured by a debenture granted by the co. to B. and transferred to D. D.'s solicitors were given a copy of the articles. The co. owed B. more than the amount due from B. to D. payable by instalments not due at the date of the debenture, and interest at 6 per cent. was payable on undue instalments; the debenture carried interest at 5 per cent. Only B. and the secretary signed the debenture:—

*Held*, that the seal was duly affixed; that it was doubtful whether an uninterested director was present at the sealing; that the seal had been irregularly fixed; but that these objections were cured by art. 115:

*Held*, also, that the change from 6 per cent.

**COMPANY (Debentures)—continued.**

to 5 per cent. was a sufficient consideration to support the debenture, and that the fact of D.'s solicitors having a print of the articles did not affect D. with notice of the infirmities connected with the issue of the debentures, as an examination of the articles would not show that other directors were not present when the debenture was issued. *DAVIES v. R. BOLTON & CO.*

V. Williams J. [1894] 3 Ch. 678

— Bill of sale.

*See BILL OF SALE.* 28.

29. — *Bill of sale—Non-registration—Debenture-holders—Priority over execution creditors—Bills of Sale Acts, 1854, 1878, 1882 (17 & 18 Vict. c. 36; 41 & 42 Vict. c. 31; 45 & 46 Vict. c. 43, s. 17).*

On the true construction of the Bills of Sale Act, 1878, the mortgages or charges of any incorporated co., for the registration of which statutory provision has already been made by the Companies Clauses Act, 1845, or by the Companies Act, 1862, are not bills of sale within the scope of the Bills of Sale Act, 1878. Limited cos. with borrowing powers are within the words "or other incorporated co." in s. 17, Bills of Sale Act, 1882, even if the words are to be restricted to cos. ejusdem generis with mortgage or loan cos. *In re STANDARD MANUFACTURING CO.*

C. A. [1891] 1 Ch. 627

Referred to by C. A. in *In re Opera, Ltd.*, C. A. [1891] 3 Ch. 260.

Referred to by Kekewich J. *Taunton v. Warwickshire (Sheriff of)*, [1895] 1 Ch. 738. This case affirmed by C. A., [1895] 2 Ch. 319.

Distinguished by Romer J. *Robson v. Smith*, [1895] 2 Ch. 118.

Distinguished by V. Williams J. *Great Northern Ry. Co. v. Coal Co-operative Society*, [1896] 1 Ch. 187.

Followed by North J. *Richards v. Kidderminster Overseers*, [1896] 2 Ch. 221.

Referred to by C. A. *In re Roundwood Colliery Co.*, [1897] 1 Ch. 390, 395.

Referred to by Div. Ct. *Davey & Co. v. Williamson & Sons*, [1898] 2 Q. B. 201.

30. — *Books of company—Right to custody of—Debenture-holders—Receiver and manager—Official receiver—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 23, 25–27, 32, 43, 56, 58, 67, 100, 154–156—Companies (Winding up) Act, 1890 (53 & 54 Vict. c. 63), s. 4, sub-ss. 3, 7, 8, and Sched. I., cl. 3.*

The receiver of the debenture-holders, whose security practically included the whole of the property of the co., claimed the books, &c., as against the liquidator of the co. under an order which directed that he (the receiver) should take all books and documents relative to the debentures:—

*Held* (notwithstanding the terms of the order), that the official liquidator was entitled to the custody of such of the books and documents of the co. as related to its management and business, and were not necessary to support the title of the debenture-holders, and that the receiver was not entitled to any books and documents

**COMPANY (Debentures)—continued.**

which were not shewn to be documents of title.  
**ENGEL v. SOUTH METROPOLITAN BREWING AND BOTTLING Co. (No. 2)**

**Kekewich J. [1892] 1 Ch. 442**

**31. — Charge on uncalled capital—Floating security—Foreclosure.**

The remedy by foreclosure is applicable to the uncalled capital of a limited co.

Therefore, when debentures were a floating security in the usual form charging all the property of the co., both present and future, including uncalled capital, with a condition that on default in payment of interest or on a winding-up the principal should immediately become payable and the condition was fulfilled, an order was made directing the co. at the debenture-holders' request to assign the several items comprised in the debentures.

Form of foreclosure judgment on a mortgage debenture.

(A) **SADLER v. WORLEY**

**Kekewich J. [1894] 2 Ch. 170**

(B) **OLDREY v. UNION WORKS, LD.**

**Kekewich J. [1895] W. N. 77**

(C) **HALIFAX AND HUDDERSFIELD UNION BANKING Co. v. RADCLIFFE, LD.**

**Kekewich J. [1895] W. N. 63**

(D) **In re CONTINENTAL OXYGEN Co.**

**Kekewich J. [1897] 1 Ch. 511**

**32. — Charge on uncalled capital—Priority—New South Wales Act, 1874 (37 Vict. No. 19).**

A co. limited by shares can create a charge upon its uncalled capital so as to confer priority in the winding-up.

Where the memorandum of association authorized the giving any security of any description for money:—

*Held*, that this authorized a charge on the whole uncalled capital in the absence of any article excluding any part thereof from its operation. **NEWTON v. ANGLO-AUSTRALIAN INVESTMENT Co. (DEBENTURE-HOLDERS)**

**P. C. [1895] A. C. 244**

Referred to by C. A. **In re Mayfair Property Co., [1898] 2 Ch. 28, 37.**

— Contract to insure payment of debenture—Liability.

*See* **INSURANCE—Guarantee. 12.**

**33. — Covenant for payment on specified day—Winding-up before such day.**

Where debentures issued by way of floating security, and charging the undertaking with repayment of principal and interest, contained a covenant for payment on a specified day and of interest in the interim, but contained no condition making the principal payable on default in payment of interest or on a winding-up:—

*Held*, that the principal sum is rendered due and payable by a winding-up before such day. **WALLACE v. UNIVERSAL AUTOMATIC MACHINES Co. C. A. v. varying Kekewich J. [1894] 2 Ch. 547**

Form of judgment followed by Kekewich J. **Brinsley v. Lynton and Lynnmouth Hotel and Property Co., [1895] W. N. 53**

**34. — Covering deed—Receiver—Poor-rate—District rate—Change of occupancy—Winding-up**

**COMPANY (Debentures)—continued.**

— **Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 14—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 43—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 16—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 3—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 24, sub-s. 2—Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1, sub-s. 1 (a).**

A deed of charge on the assets of a co. registered under the Companies Act, 1862, to cover debentures is not a bill of sale within s. 14 of the Bills of Sale Act (1878) Amendment Act, 1882.

The general district rate of an urban sanitary authority is not a tax or poor or other parochial rate within the meaning of s. 14 of the Bills of Sale Act (1878) Amendment Act, 1882.

A deed of floating charge on the assets of a co. gave power to the trustee to appoint a receiver and manager, who was expressed to be the agent of the mortgagor:—

*Held*, that, on a receiver duly appointed under the power entering into possession of the premises and commencing to carry on the business of the co., there was a change of occupancy within the meaning of the Poor Rate Assessment and Collection Act, 1869, s. 16, and the Public Health Act, 1875, s. 211, sub-s. 3.

There is no preferential charge in respect of rates on effects of a co. in the hands of a receiver for debenture-holders when the co. is being wound up. **RICHARDS v. OVERSEERS OF KIDDERMINSTER. RICHARDS v. MAYOR OF KIDDERMINSTER — North J. [1896] 2 Ch. 212**

Considered. **In re Marriage, Neave & Co., C. A. [1896] 2 Ch. 663, 678.**

**35. — Debenture-holders' action—Appointment of official receiver to be receiver for debenture-holders.**

The rights of debenture-holders to nominate their own receiver where there is a winding-up considered. **BRITISH LINEN Co. v. SOUTH AMERICAN AND MEXICAN Co. V. Williams J. varied by C. A. [1894] 1 Ch. 108**

**36. — Debenture-holders' action—Costs.**

Action by plt. on behalf of himself and all other debenture-holders to enforce security and settle priorities. The security was sold and the proceeds paid into Court. On inquiry it was found that the debentures did not rank *pari passu*, but in order of date, and, consequently, the proceeds being insufficient, the plt., who held a late debenture, would get nothing:—

*Held*, nevertheless, that he was entitled to his costs, except such (if any) as were incurred in support of his own security only, the result of the action being for the benefit of all the debenture-holders. **CARRICK v. WIGAN TRAMWAYS Co. — Chitty J. [1893] W. N. 98**

**37. — Debenture-holder's action—Costs—Party and party costs.**

The plt. in a debenture-holder's action is allowed party and party costs of action only. **In re QUEEN'S HOTEL Co., CARDIFF. In re VERNON TIN PLATE Co.**

**Cozens-Hardy J. [1900] W. N. 77; [1900] 1 Ch. 792**



**COMPANY (Debentures)—continued.****38. — Debenture-holder's action—Costs of "realization"—"Raising" of money.**

Where the receiver in a debenture-holder's action was authorized to pay certain annual sums "as part of the costs of realization," and to "raise" money to carry on the business of the co., and he created debentures purporting to have priority over existing debentures, and where there was a fund in court representing assets of the co.:—

*Held*, that (i.) "costs of realization" were confined to costs of actual sale, and did not include costs of preservation; (ii.) the order authorizing the receiver to raise money gave him by implication power to create a charge having priority over the existing debentures; and (iii.) the fund in court must be applied first in satisfaction of the annual payments, and secondly of the charge created by the receiver. *LATHOM v. GREENWICH FERRY CO.*

**Kekewich J. [1895] W. N. 77**

**39. — Debenture-holder's action—Counter-claim by company—Security for costs—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 69.**

In an action brought before winding-up proceedings, the co. counter-claimed against the debenture-holders. After the winding-up the plts. moved to strike out the counter-claim, or that the co. should give security for costs. Ordered that the co. find some person to give 50*l.* as security for costs. No order on the official receiver. *STRONG v. CARLYLE PRESS (No. 2)*

**V. Williams J. [1893] W. N. 51**

**40. — Debenture-holder's action—Declaration of charge.**

The general practice of the Ch. Div. is to allow the judgment in a debenture-holder's action, even if heard as a short cause or by default, to contain a declaration of charge; but when there has been a winding-up order the liquidator's assent must be placed on record. *MARWICK v. LORD THURLOW* **V. Williams J. [1895] 1 Ch. 776**

A declaration refused in *CHARLWOOD v. LEASEHOLD INVESTMENT CO.* **V. Williams J. [1895] W. N. 47**

*See MARWICK v. LORD THURLOW*

**V. Williams J. [1895] 1 Ch. 776**

A declaration inserted—

(A) in *BRINSLEY v. LYNTON AND LYNMOUTH HOTEL AND PROPERTY CO* **Kekewich J. [1895] W. N. 53**

(B) in *PARKINSON v. WAINWRIGHT & Co.*

**North J. [1895] W. N. 63**

(C) *MARWICK v. LORD THURLOW*

**V. Williams J. [1895] 1 Ch. 776**

**41. — Debenture-holder's action—Declaration of right to foreclosure.**

A declaration of right to foreclosure can only be made in court. *HALIFAX AND HUDDERSFIELD UNION BANKING CO. v. RADCLIFFE LD.*

**Kekewich J. [1895] W. N. 63**

**42. — Debenture-holder's action—Practice—No pleadings—Form of judgment.**

This was a debenture-holder's action in which there were no pleadings, but the co. admitted that the plt. was the holder of a debenture which was one of a series. The form of judgment was as

**COMPANY (Debentures)—continued.**

follows: "The deft. co. admitting that the plt. is the holder of a mortgage debenture charged on the deft. co.'s undertaking, stock-in-trade, &c., and effects both present and future; and the deft. co. admitting that this debenture is part of an issue of 500 debentures ranking *pari passu*"; then followed usual accounts and inquiries, including an inquiry whether there were any incumbrances "other than the mortgage debenture aforesaid" affecting the co.'s property. *In re BRITISH RAILWAY CARRIAGE METAL FITTINGS, &c., Co. MASON v. BRITISH RAILWAY CARRIAGE METAL FITTINGS, &c., Co.*

**Kekewich J. [1893] W. N. 173 (9)**

**43. — Debenture-holder's action—Procedure—Shareholder plaintiff—Judgment—Certificate—Uncalled capital—Liability of plaintiff.**

In an action against a limited co. by one debenture-holder on behalf of himself and all other debenture-holders, the chief clerk may, under an inquiry directed by the judgment as to the property charged by the debentures, find what uncalled capital is due from the several shareholders (where uncalled capital is part of the security), notwithstanding that no calls can actually be made in such an action; and where the plt. is himself a shareholder and is found indebted in a sum of uncalled capital, he, being a party to the action, is bound by that finding, unless varied by the judge, the Court having jurisdiction to decide in that action the question of the plt.'s liability without leaving it to be decided by other proceedings. *MADELEY v. ROSS, SLEEMAN & Co. — Kekewich J. [1897] 1 Ch. 505*

**44. — Debenture-holder's action—Receiver—Priority—R. S. C., 1883, Order XVI., r. 9.**

In a debenture-holder's action the Court will, in a case of emergency, empower the receiver to borrow money as a first charge on the undertaking with priority over the debentures, for the preservation of the property. *GREENWOOD v. ALGESTRAS (GIBALTAR) RY. CO. — C. A. [1894] 2 Ch. 205*

**45. — Debenture-holder sued in representative capacity—R. S. C., Order XVI., r. 9.**

Where a debenture-holder is sued in a representative capacity, under Order XVI., r. 9, an order should be obtained authorizing him to defend in that capacity, and the record should bear the words "authorized by order dated, &c., to defend on behalf of himself and all other the debenture-holders." *FAIRFIELD SHIPBUILDING AND ENGINEERING CO. v. LONDON AND EAST COAST EXPRESS STEAMSHIP CO. — Kekewich J. [1895] W. N. 64*

*See In re Continental Oxygen Co., [1897] 1 Ch. 511, at p. 513.*

— Distress—Landlord—Bill of exchange for rent—Receiver.

*See DISTRESS. 4.*

**46. — Enforcing security—Land out of jurisdiction.**

A foreign (Connecticut) co. domiciled in the United States created an equitable charge on land in Mexico to defts. as trustees to secure debentures. The foreign co. failed, but the mortgage could not be enforced in Mexico, not being registered. An English co. was formed to take

**COMPANY (Debentures)—continued.**

over the liabilities of the insolvent co., and the Mexican land was duly transferred to them with express obligation to pay off the charge out of the proceeds of sale of the property:—

*Held*, that the new co. and its directors were accountable in an English Court to the debenture-holders for the proceeds of the Mexican land.

Receiver refused. *MERCANTILE INVESTMENT AND GENERAL TRUST CO. v. RIVER PLATE TRUST LOAN AND AGENCY CO.* (No. 1)

**North J. [1892] 2 Ch. 303**

— Enforcing security—Tramway company—Sale of undertaking.

*See* *TRAMWAY*. 3.

**47. — First charge on uncalled capital—New South Wales Act, 1874 (37 Vict. No. 19.)**

A co. limited by shares can create a charge upon its uncalled capital so as to confer priority in the winding-up.

Where the memorandum of association authorized the giving any security of any description for money:—

*Held*, that this authorized a charge on the whole uncalled capital in the absence of any article excluding any part thereof from its operation. *NEWTON v. ANGLO-AUSTRALIAN INVESTMENT CO. (DEBENTURE-HOLDERS)*

**P. G. [1895] A. C. 244**

Followed by *Chitty J. Jackson v. Rainford Coal Co.*, [1896] 2 Ch. 340, 342.

Referred to by *C. A. In re Mayfair Property Co.*, [1898] 2 Ch. 28, 37.

**48. — Floating charge—Preferential payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19).**

The Preferential Payments in Bankruptcy Amendment Act, 1897, received the royal assent on July 15, 1897. Before that date a winding-up order had been made against a co. which had issued debentures creating a floating charge, and a receiver had been appointed in an action for realization of the debentures:—

*Held*, that the Act was not retrospective, and did not apply so as to give priority over the debenture-holders to the preferential creditors referred to in the Act.

This decision was followed by *Kekewich J. in Weeks v. Kent, Sussex and General Land Society*, [1898] W. N. 39 (1). *In re WAVERLEY TYPE WRITER. D'ESTERRE v. WAVERLEY TYPE WRITER* — **Wright J. [1898] 1 Ch. 699**

**49. — Floating charge—Receiver.**

A co. resolved on the issue of a defined number of debentures of equal amount, ranking *pari passu*, and creating a floating charge on the assets. The amount secured was to become immediately payable if the interest should fall into arrear. Some only of the debentures had been issued when the interest fell into arrear; whereupon an action was commenced on behalf of the debenture-holders for realization of their security. After the issue of the writ, but before the appointment of a receiver, the co. issued further debentures of the same issue to its solicitor to secure his costs of defending the action on behalf of the co.:—

*Held*, that as no receiver had been appointed

**COMPANY (Debentures)—continued.**

the directors still had power, notwithstanding the issue of the writ, to issue the further debentures. *In re HUBBARD & CO. Wright J. [1898] W. N. 158 (4)*

**50. — Floating charge—Sale of business—Injunction.**

The objects of a co. comprised the carrying on three distinct businesses, supplemental to one another. The Court refused, at the instance of debenture-holders having a floating charge on the whole undertaking, to restrain the sale of one business. *In re VIVIAN & CO. METROPOLITAN BANK OF ENGLAND AND WALES v. VIVIAN & CO.*

**Cozens-Hardy J. [1900] W. N. 133; [1900] 2 Ch. 654**

**51. — Floating charge—Sale of business—Injunction.**

A co. with power to amalgamate with or sell its business and assets to another co. of the same kind, contracted so to sell. In an action on behalf of holders of debentures charged on the assets of the co., and maturing in case of a winding-up, an injunction was granted to restrain the co. from parting with its assets. *In re BORAX CO. FOSTER v. BORAX CO.*

**North J. [1899] W. N. 34 (4); [1899] 2 Ch. 130**

**52. — Floating security—Equitable incumbrancers — Priority — Negligence — Possession of title-deeds.**

In 1885 a limited co. issued a series of debentures charged upon all its property both present and future, such charge to be a floating security, but so that the co. was not to be at liberty to create any mortgage or charge upon its freehold or leasehold hereditaments in priority to the said debentures. In 1895 the co. deposited the title-deeds of some of its property with its bankers, on a memorandum of charge under seal, as a security for an overdraft. When this charge was given, the bank had no notice of the existence of the debentures and made no inquiries. In 1896 a debenture-holders' action to enforce the security was commenced in which an inquiry as to priorities was directed:—

*Held*, that the debenture-holders, having left the title-deeds with the co. so as to enable it to deal with its property as if it had not been incumbered, could not set up their prior charge against the equitable mortgage to the bank; that the bank had not been guilty of negligence, and, having a stronger equity than the debenture-holders, was entitled to priority. *In re CASTELL & BROWN, LD. ROPER v. CASTELL & BROWN, LD.* **Romer J. [1898] 1 Ch. 315**

**53. — Floating security—Execution creditor.**

Where the goods of a co. are taken in execution and money paid by debenture-holders to the sheriff to stop the sale, but the money is not handed over to the execution creditor, the holder of a debenture which is a floating security upon all the property of the co. can still oust the execution creditor.

*Quere*, in case of actual sale and payment of the money to the execution creditor.

(A) *In re THE OPERA LD. — C. A. [1891] 3 Ch. 260 revers. Kekewich J. [1891] 2 Ch. 154*

**COMPANY (Debentures)—continued.**

(B) **TAUNTON v. SHERIFF OF WARWICKSHIRE**  
**Kekewich J. [1895] 1 Ch. 734;**  
**C. A. [1895] 2 Ch. 319**

(C) **DAVEY & Co. v. WILLIAMSON & SONS**  
**[1898] 2 Q. B. 194, 201**

**54. — Floating security—Foreclosure—Absent debenture-holder.**

In a debenture-holders' action, where the debentures constitute a charge on the property of a co. by way of floating security, foreclosure cannot be ordered in the absence of any one debenture-holder.

*Sadler v. Worley*, [1894] 2 Ch. 170, and *Welch v. National Cycle Co.*, (1886) W. N. 97, *Palmer's Company Precedents*, 6th ed. Part I., p. 909, considered. *In re CONTINENTAL OXYGEN CO. ELIAS v. CONTINENTAL OXYGEN CO.*

**Kekewich J. [1897] 1 Ch. 511**

— "Floating security"—Foreclosure—Parties.  
*See MORTGAGE—Foreclosure. 27.*

**55. — Floating security—Garnishee order.**

Debentures by way of "floating security" allow the co. to deal with its assets till winding-up, or stoppage of business, or appointment of a receiver. So where payment had been made by a debtor of the co. to a judgment creditor of the co. who had obtained a garnishee order absolute, such payment is valid, although the debenture-holders gave the garnishee notice of the debentures. Words in a debenture prohibiting a co. from creating a prior "charge" are to be read strictly, and do not defeat the rights obtained under a garnishee order. *ROBSON v. SMITH* **Romer J. [1895] 2 Ch. 118**

**56. — Floating security—Goods seized in execution—Rights of debenture-holders.**

A limited co. issued debentures secured by a floating charge upon all the property of the co., and also by a trust deed which vested in a trustee for the benefit of the debenture-holders the leasehold property and uncalled capital of the co., and gave him the right to call upon the co. to vest in him all other property of the co. except chattels within the meaning of the Bills of Sale Acts. Before the time for the payment of the amount secured by the debentures had arrived certain goods of the co. charged by the debentures were seized by the sheriff under a fi. fa. No winding-up resolution was passed and no receiver appointed, nor did the trustee put in force his powers under the deed, but the debenture-holders claimed the goods, and the sheriff interpleaded:—

*Held*, that the rights of the debenture-holders prevailed over those of the execution creditor since, the goods seized being validly charged with payment of the debentures, there was no interest of the co. in them available to satisfy the judgment debt. *DAVEY & Co. v. WILLIAMSON & SONS, LD.* **Div. Ct. [1898] 2 Q. B. 194**

**57. Floating security—Mortgage of assets of a company—Priority.**

A co. issued debentures by which it undertook to pay the principal at a distant day and interest on fixed days half-yearly and charged by way of floating security all its property present and future. A condition indorsed on the debentures

**COMPANY (Debentures)—continued.**

provided that "notwithstanding the said charge" the co. might in the course and for the purpose of its business sell or otherwise deal with its property until default should be made in payment of interest for three months after the same should have become due, or until an order or resolution for winding up. After an instalment of interest had been due more than three months but before the debenture-holders had taken any step to enforce their security the co. by an issue of bonds mortgaged specific assets:—

*Held*, upon the construction of the condition, that after the expiration of the three months the debentures remained a floating security till the holders took some step to enforce it and prevent the co. from dealing with its property, and that the debenture-holders were not entitled to an injunction restraining the co. from paying interest to the bondholders.

The decision of *C. A.*, [1895] 2 Ch. 551, affirmed. *GOVERNMENTS STOCK AND OTHER SECURITIES INVESTMENT CO. v. MANILA RY. CO.*  
**H. L. (E.) [1896] W. N. 174 (6); [1897] A. C. 81**

**58. — "Floating security"—Solicitor's lien.**

A solicitor's lien for costs incurred prior to the appointment of a receiver, *held* to prevail over the rights of the debenture-holders and their receiver, even where the debentures stipulated that the co. should not be at liberty to create any mortgage or charge in priority to the debentures. A "floating security" discussed. *BRUNTON v. ELECTRICAL ENGINEERING CORPORATION*

**Kekewich J. [1892] 1 Ch. 434**

Referred to by *Romer J. Robson v. Smith*, [1895] 1 Ch. 118, 126.

**59. — Foreclosure—Chattels—Patents—Originating summons.**

Foreclosure ordered in a debenture-holder's action where the security consisted of (1) freehold premises; (2) goodwill, book debts, plant, &c.; (3) three patents. Foreclosure can be granted in an action commenced by originating summons. *OLDREY v. UNION WORKS* **Kekewich J. [1895] W. N. 77**

**60. — Foreign country, charge on property in—Receiver—French debt—Locality of debt—Unsecured creditor—Enforcing payment—Interference with receiver—Contempt.**

In Oct., 1899, receivers were appointed in debenture-holders' actions of the undertaking and of the property whatsoever and wheresoever both present and future of an English co., the order following the wording of the debentures. Among the assets of the co. was a debt due to them from a French firm. In Nov., 1899, P. & Co., English creditors of the co., took proceedings in France for the purpose of attaching the debt due to the co. from the French firm. The plts. in the debenture-holders' action moved to restrain P. & Co. from intercepting, attaching, or taking in execution, or attempting to obtain payment of moneys due to the co. from the French firm, or from otherwise interfering with the receivers:—

*Held*, on the authority of *Liverpool Marine Credit Co. v. Hunter*, (1867) L. R. 4 Eq. 62; (1868) L. R. 3 Ch. 479, that the existence of the charge created by the debenture, though valid according to English law, did not entitle the debenture-

**COMPANY (Debentures)—continued.**

holders to prevent P. & Co., who were unsecured creditors, from asserting and enforcing any rights given them by French law against this French debt; there being no equity in favour of the debenture-holders as against P. & Co., that the debt due from the French firm must be treated as being situate in France and subject to French law, and P. & Co. could not be prevented, at the suit of the debenture-holders, from taking any proceedings the law of France allowed for recovering their debt out of this French asset, and that the attachment which alone was recognised by the law of France ought to prevail over the title of the debenture-holders:

*Held*, further, that the appointment of the receivers made no difference; for though the Court can appoint receivers over property out of the jurisdiction, the receiver is not put in possession of foreign property by the mere order of the Court; something else has to be done, and until what is necessary has been done in accordance with foreign law, any person, not a party to the suit, who takes proceedings in a foreign country is not guilty of contempt either on the ground of interfering with the receivers' possession or otherwise, and for this purpose no distinction can be drawn between a foreigner and a British subject. *In re MAUDSLAY, SONS & FIELD. MAUDSLAY v. MAUDSLAY, SONS & FIELD*

Cozens-Hardy J. [1900] W. N. 51;  
[1900] 1 Ch. 602

**61. — Form of judgment—Debenture-holders' action—Practice.**

This was a debenture-holders' action in which some discussion took place as to the form of judgment.

Kekewich J. made some observations as to the recurring necessity to animadvert on the form of minutes as settled by counsel in actions of this kind. In view of these observations, it has been thought desirable to subjoin a copy of the General Form of Judgment in a Debenture-holders' Action settled by North J. and Kekewich J., and distributed by the senior registrar amongst the Chancery registrars.

**THE FORM ABOVE REFERRED TO.**

Declare that the plaintiffs and all other the holders of mortgage debentures of the defendant company of the same issue as the plaintiffs' debentures are entitled to a charge upon [NOTE.—*The property charged by the order is taken from the language of the debenture which is produced to the Registrar*] for securing the repayment of the principal monies and interest in the debentures mentioned.

Let the following accounts and inquiries be taken and made:—

(1.) An account of what is due to the plaintiffs and the other holders of mortgage debentures issued by the defendant company under and by virtue of such debentures. [*If more than one series of debentures has been issued add, distinguishing the holders of the first mortgage debentures and the second mortgage debentures in the statement of claim referred to.*]

(2.) An inquiry of what the property comprised in and charged by the said mortgage

**COMPANY (Debentures)—continued.**

debentures consists and in whom the same is vested.

(3.) An inquiry what other incumbrances affect the property comprised in or charged by the said debentures or any and what parts thereof and in whom the same are vested.

(4.) An account of what is due to such other incumbrancers respectively.

(5.) An inquiry what are the priorities of such other incumbrances and the said debentures respectively, and what property other than that comprised in the said debentures is comprised in such other incumbrances.

\* (6.) An inquiry whether there are any, and if any what, debts of the company which have priority over the claims of the debenture-holders under the Preferential Payments in Bankruptcy Amendment Act, 1897.

[\*NOTE.—*This inquiry is inserted when the debentures constitute a floating charge; see section 3 of the Act.*]

Adjourn further consideration in chambers.  
Liberty to apply. *In re WOLVERHAMPTON DISTRICT BREWERY, LD. DOWNES v. WOLVERHAMPTON DISTRICT BREWERY, LD. Kekewich J. [1899] W. N. 229*

See next Case.

**62. — Form of judgment—Debenture-holder's action—Principal money not due—Security in jeopardy—Practice.**

This was a debenture-holder's action in which a receiver had been appointed of the business undertaking and property of the debt. co. The plt. alleged that the debentures held by him were the only debentures of the debt. co. now outstanding. The principal moneys secured by the debentures had not become payable, and a sum which, at the date of the issue of the writ, was due to the plt. in respect of interest on his debentures was, after the issue of the writ, paid into court to the credit of the action. The plt., however, alleged that the debt. co. had ceased to carry on its business, was unable to pay its debts, and that his security was in jeopardy. The action now came on upon motion for judgment in default of defence.

Stirling J. made the order in the general form adapted from that settled by North J. and Kekewich J. in *In re Wolverhampton District Brewery, Ltd.*, [1899] W. N. 229, directing (inter alia) an account of what was due to the plt. and the other holders (if any) of mortgage debentures issued by the debt. co. under and by virtue of such debentures. *WISSNER v. LEVISON AND STEINER - - Stirling J. [1900] W. N. 152*

— Industrial, &c., society.

See INDUSTRIAL AND PROVIDENT SOCIETY.

— Insure payment of debenture, Contract to.

See INSURANCE—Guarantee. 12.

**63. — Interest—Statutes of Limitations—Debenture stock—Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), ss. 22, 27—Real Property Limitation Act, 1833 (3 & 4 Will. 4), c. 27, s. 3.**

A ry. co.—incorporated by a special Act, authorizing it to issue debenture stock, bearing interest, subject to Part III. (which includes

**COMPANY (Debentures)—continued.**

ss. 22 and 27) of the Companies Clauses Act, 1863—in 1885 issued debenture stock, for which it gave certificates under its common seal, and also a warrant for interest under the signature of the secretary. The warrant was never presented for payment, and in 1896 the co. went into voluntary liquidation under another Act:—

*Held*, that, the liability being statutory, the period of limitation was twenty years, and the claim for interest mentioned in the warrant was therefore not statute-barred. *In re CORNWALL MINERALS RY. Co.*

**V. Williams J. [1897] 2 Ch. 74**

**64. — Issue—Power to issue debentures—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), ss. 1, 3.**

The deed of settlement of a co. can under s. 1, sub-s. 5 (a) of the Companies (Memorandum of Association) Act, 1890, be altered so as to enable the co. to issue debentures. *In re REVERSONARY INTEREST SOCIETY (No. 1)*

**North J. [1892] 1 Ch. 615**

**65. — Issue—Power to issue debentures in satisfaction of debts of founder of company.**

The directors of a co. had power under their articles to raise money by the issue of debentures. The co. was formed to take over the business of P., and was bound by an agreement to indemnify him against the debts and liabilities shewn in a balance-sheet mentioned in the agreement, among which was a debt due to the plt. P. was managing director of the co., and he and his brother were sole acting directors. They issued debentures to the plt. and other creditors of P., which they accepted in satisfaction of their debts:—

*Held* (reversing V. Williams J.), (1) that although the debentures were not issued literally for the purpose of raising money for the co., their issue to pay debts of P. for which the co. was ultimately liable was *intra vires*; (2) that there was no conflict of interest between P. and the co. in its corporate capacity, and that the debentures were therefore in fact issued for the benefit of the co. and were valid:—

*Held*, also (affirming V. Williams J.), that the issue of the debentures was not a fraudulent preference of some of the creditors of the co. *SELIGMAN v. PRINCE & Co.*

**C. A. [1895] 2 Ch. 617**

— Issue at a discount.

*See RAILWAY—Powers.* 31.

— Liquidator—Debenture-holders' action.

*See COMPANY—WINDING-UP—Liquidator.* 113—115.

**66. — Majority—Power to bind dissenting minority—Compromise.**

(A) If the difficulties in the way of the enforcement by the debenture-holders of their rights are of so substantial a character that a required majority might *bonâ fide* come to the conclusion that it was desirable to compromise their rights, a special resolution carried on by the requisite majority is binding on the minority. *MERCANTILE INVESTMENT AND GENERAL TRUST CO. v. RIVER PLATE TRUST, LOAN AND AGENCY CO. (No. 2)*

**Romer J. [1894] 1 Ch. 578**

**COMPANY (Debentures)—continued.**

(B) The unspent portion of a fund held under a trust for debenture-holders ordered by North J. to be administered by the Court on the petition of a minority of the debenture-holders, the Court holding that the objects had failed for which the fund had been created.

A compromise of the litigation sanctioned by C. A. *COLLINGHAM v. SLOPER. FOREIGN, AMERICAN AND GENERAL INVESTMENTS TRUST CO. v. SLOPER North J. [1893] 2 Ch. 96; C. A. [1894] 3 Ch. 716*

**67. — Majority—Power to bind dissentient minority—"Compromise"—Notice of meeting—Time—Advertisement.**

The question whether the majority of debenture-holders can bind a dissentient minority by a compromise depends on whether the rights given by the debentures can be easily enforced. If the rights are undisputed, and can be enforced without difficulty, the majority cannot bind the dissentient minority.

*Secus*, if, as in case (A) there is a real difficulty.

Notice convening a meeting can be given by advertisement in the newspaper, unless the debenture deed requires some other form of notice.

Meaning of "compromise" and "14 days before the date" of the proposed meeting, considered.

(C) *SNEATH v. VALLEY GOLD, LD.*

**C. A. affirm. North J. [1893] 1 Ch. 477**

(D) *MERCANTILE INVESTMENT AND GENERAL TRUST CO. v. INTERNATIONAL CO. OF MEXICO*

**C. A. revers. Day J. [1883] Ch. 484, n.**

(E) *MERCANTILE INVESTMENT AND GENERAL TRUST CO. v. RIVER PLATE TRUST, LOAN, AND AGENCY CO. (No. 2)*

**Romer J. [1894] 1 Ch. 578, at p. 596**

**68. — Majority, power to bind minority.**

*Held*, in this case, that a majority of debenture-holders had power to postpone their security, so as to bind the minority. *FOLLIT v. EDDYSTONE GRANITE QUARRIES - Stirling J. [1902] 3 Ch. 75*

— *New Zealand Railways Construction and Land Act—Debenture-holders, Rights of.*

*See NEW ZEALAND.* 9.

**69. — One man company—Private company—Limited liability—Winding-up—Fraud upon creditors—Liability to indemnify company in respect of debts—Rescission—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 6, 8, 30, 43.**

It is not contrary to the true intent and meaning of the Companies Act, 1862, for a trader, in order to limit his liability and obtain the preference of a debenture-holder over other creditors, to sell his business to a limited co. consisting only of himself and six members of his own family, the business being then solvent, all the terms of sale being known to and approved by the shareholders, and all the requirements of the Act being complied with.

A trader sold a solvent business to a limited co. with a nominal capital of 40,000 shares of 1*l.* each, the co. consisting only of the vendor, his wife, a daughter and four sons, who subscribed for one share each, all the terms of sale being

**COMPANY (Debentures)—continued.**

known to and approved by the shareholders. In part payment of the purchase-money debentures forming a floating security were issued to the vendor. Twenty thousand shares were also issued to him and were paid for out of the purchase-money. These shares gave the vendor the power of outvoting the six other shareholders. No shares other than these 20,007 were ever issued. All the requirements of the Companies Act, 1862, were complied with. The vendor was appointed managing director, bad times came, the co. was wound up, and after satisfying the debentures there was not enough to pay the ordinary creditors:—

*Held*, that the proceedings were not contrary to the true intent and meaning of the Companies Act, 1862; that the co. was duly formed and registered and was not the mere "alias" or agent of or trustee for the vendor; that he was not liable to indemnify the co. against the creditors' claims; that there was no fraud upon creditors or shareholders; and that the co. (or the liquidator suing in the name of the company) was not entitled to rescission of the contract for purchase.

Decisions of *V. Williams J.* and the *C. A.*, *Broderip v. Salomon*, [1895] 2 Ch. 323, reversed. *SALOMON v. SALOMON & CO. SALOMON & CO. v. SALOMON* - **H. L. (E.) [1897] A. C. 22**

Referred to by *C. A.* *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392, 422.

— Payable to bearer—Usage.

See **NEGOTIABLE INSTRUMENT. 2.**

**70. — Power to charge uncalled capital—Resolution under Companies Act, 1879 (42 & 43 Vict. c. 76), s. 5—Debenture-holders—Winding-up—Priority.**

A limited co. having, under its articles, power to issue debentures charging its assets including its uncalled capital, in Oct., 1892, passed a special resolution under s. 5 of the Companies Act, 1879, declaring that 5*l.* per share remaining uncalled up upon its ordinary 10*l.* shares should not be capable of being called up "except in the event of and for the purpose of the company being wound up." In June, 1894, when 5*l.* 15*s.* remained uncalled up, the co. issued debentures charging all its undertaking and property, "including its uncalled capital for the time being," with the principal money and interest secured by the debentures. The co. was afterwards ordered to be wound up, and the question arose whether the debentures issued by the co. created a valid first charge upon the 5*l.* per share reserved capital so as to entitle the debenture-holders to payment thereout in priority to the other creditors and the costs of winding-up:—

*Held*, by the *C. A.*, affirming the judgment of *Wright J.*, that upon the true construction of s. 5 of the Act of 1879, the co. had no power to create any charge on that portion of its capital which, in accordance with the resolution passed under that section, could only be called up "in the event of and for the purposes of the co. being wound up." The Companies Act, 1879, and the decisions in *In re Pyle Works*, (1890) 44 Ch. D. 534, and *Newton v. Anglo-Australian Investment, Finance and Land Co.*, [1895] A. C. 244, com-

**COMPANY (Debentures)—continued.**

mented on, and explained. *In re MAYFAIR PROPERTY CO. BARTLETT v. MAYFAIR PROPERTY CO.* - **C. A. [1898] 2 Ch. 28**

— Prefrential payments in bankruptcy.

See **Cases under COMPANY—WINDING-UP**

— Preference.

**71. — Priority—Borrowing powers—Railway company—Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), ss. 22, 24—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 24.**

Sect. 24 of the Companies Clauses Act, 1863, which enacts that the holders of debenture stock shall not as among themselves be entitled to any priority, applies only to debentures issued under the same special Act, and not to all debentures issued by the same co.:—

Sect. 24 of the Railway Companies Act, 1867, which empowers railway cos. to issue debenture stock subject to the provisions of Part III. of the Act of 1863, applies to all ry. cos. which have power to raise money by mortgage or bond, although their special Act does not incorporate Part III. of the said Act. *In re MERSEY RY. CO.* **C. A. [1895] 2 Ch. 287**

**72. — Priority—First and second issue—Re-issue.**

A second series of debentures was issued before all the debentures of the first series had been taken up. The second debentures were subject to "debentures already issued":—

*Held*, that this meant subject to all the debentures of the first series, and therefore debentures of the first series, excepting some which had been paid off and re-issued, had priority although issued after some of the second series. *LISTER v. HENRY LISTER & SON*

**V. Williams J. [1893] W. N. 33**

**73. — Priority—Floating security.**

A co. issued debenture stock purporting to be a first charge and which gave a floating security on all its assets. It afterwards issued debentures to other persons which also purported to be a first charge and gave a like floating security:—

*Held*, that the holders of the debentures, whether they had or had not notice of the issue of the stock, did not obtain priority over, but ranked after the stock holders. *SMITH v. ENGLISH AND SCOTTISH MERCANTILE INVESTMENT TRUST* - **V. Williams J. [1896] W. N. 86 (6)**

**74. — Priority—Mortgage—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.**

A mortgage by the co. of its interest in a fund due to it from a fire insurance co. held under the circumstances to have priority over the debentures. *ENGLISH AND SCOTTISH MERCANTILE INVESTMENT TRUST v. BRUNTON*

**Charles J. [1892] 2 Q. B. 1;**

**affirmed by C. A. [1892] 2 Q. B. 700**

— Priority—Scottish arrestment.

See **CONFLICT OF LAWS. 3.**

**75. — "Property"—Charge on all present and future "property" of the company—Winding-up of company.**

A limited co. having under its articles of association power to borrow money upon debentures charging its "property," both present and

**COMPANY (Debentures)—continued.**

future, including its uncalled capital, issued debentures charging its undertaking "and all the property to which it now is, or shall at any time hereafter become entitled." The company afterwards went into liquidation; and it was held by the Court of Appeal that the expression "property" in the debentures did not include the capital of the company uncalled up at the commencement of the liquidation.

The decision of Stirling J. affirmed; and that of Chitty J. in *In re Streatham and General Estates Co.*, [1897] 1 Ch. 15, approved. *In re RUSSIAN SPRATTS PATENT, LD. JOHNSON v. RUSSIAN SPRATTS PATENT, LD.*

C. A. [1898] 2 Ch. 149

Referred to by Cozens-Hardy J. *Alexander v. Automatic Telephone Co.*, [1899] 2 Ch. 302, 306.

**76. — Receiver—Debenture-holders' rights — Company—Winding-up.**

(A) As a general rule of convenience the liquidator appointed in the winding-up of a co. should be appointed receiver for the debenture-holders or mortgagees. But if the debenture-holders or mortgagees have already appointed a receiver, under special powers given them by their security, the Court will not displace him by the liquidator. Where a judge has in the exercise of his discretion refused to displace a receiver by a liquidator, the C. A. will not interfere with that exercise of discretion except under special circumstances. *In re JOSHUA STUBBS, LD. BARNEY v. JOSHUA STUBBS, LD.*

Kekewich J. [1891] 1 Ch. 187;  
affirmed by C. A. [1891] 1 Ch. 475

See next Case. *British Linen Co. v. South American and Mexican Co.*, C. A. [1894] 1 Ch. 108, 111.

(B) The assets of a co. including a large amount of uncalled capital were sufficient to pay the debentures. The official receiver, who was also provisional liquidator, was appointed by V. Williams J. receiver and manager, in place of the receiver and manager in a debenture-holders' action, on an undertaking by him to keep a separate account on behalf of the debenture-holders. On appeal fresh evidence was produced that a large amount of the assets consisted of securities, which required to be realized by a commercial person. The receiver in the action was appointed by C. A. receiver of these particular assets, and the official receiver receiver of the other assets. *BRITISH LINEN CO. v. SOUTH AMERICAN AND MEXICAN CO.*

V. Williams J. varied by C. A. [1894] 1 Ch. 108

— Receiver—Debenture-holders' rights—Distress for rent.

See MINES. 8.

**77. — Receiver—Debenture-holders' rights—Insolvency—Interest in arrear.**

Mortgage debentures constituting an equitable charge were conditioned to become immediately payable on interest being two months in arrears. Interest fell into arrear and the co. were not in a position to pay:—

Held, that the debenture-holders were entitled

**COMPANY (Debentures)—continued.**

to a receiver though the two months had not elapsed. *BISSILL v. BRADFORD TRAMWAYS CO.* (No. 1) — Stirling J. [1891] W. N. 51

**78. — Receiver—Debenture-holders' rights — Insolvency of mortgagor.**

The Court will appoint a receiver to protect the debenture-holders' security, if it be in jeopardy owing to the co.'s insolvency, although the principal is not immediately payable nor the interest in arrears. *McMAHON v. NORTH KENT IRONWORKS CO.*

Kekewich J. [1891] 2 Ch. 148

Referred to by Cozens-Hardy J. *Wallace v. Evershed*, [1899] 1 Ch. 894.

**79, 80. — Receiver—Debenture-holders' rights — Realization of assets.**

The Court, on the application of the only debenture-holder, appointed by consent the managing director of the co. as receiver and also manager of its business pending realization, with a view to its being sold as a going concern upon terms as to wages and current expenses, accounts, and immediate realization.

Form of order. *MAKINS v. PERCY IBOTSON & SONS* — — — Kay J. [1891] 1 Ch. 133

On this case see *Campbell v. Lloyd's, Barnett's and Bosanquet's Bank*, Chitty J. [1891] 1 Ch. 136, n., and *Whitley v. Challis*, C. A. [1892] 1 Ch. 64.

Followed by North J. *Edwards v. Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574.

**81. — Receiver—Debenture-holders' rights.**

The Court will appoint a receiver to protect the debenture-holders' security, if it be in jeopardy owing to the co.'s insolvency, although the principal is not immediately payable nor the interest in arrears. *McMAHON v. NORTH KENT IRONWORKS CO.* — Kekewich J. [1891] 2 Ch. 148

Referred to by Cozens-Hardy J. *Wallace v. Evershed*, [1899] 1 Ch. 894.

**82. — Receiver — Debenture-holders' rights — Interest in arrear.**

Debentures of a co. were conditioned to become immediately payable on interest being two months in arrear. An application for a receiver was granted although the interest was less than two months in arrear. *BISSILL v. BRADFORD TRAMWAYS CO.* (No. 1) Stirling J. [1891] W. N. 51

— Receiver—Liquidator.

See COMPANY — WINDING-UP — Liquidator. 119.

**83. — Receiver—Power to debenture-holder to appoint — Fiduciary power — Jurisdiction of Court.**

A co. issued a series of debentures, each of which contained a condition that, at any time after the principal moneys thereby secured should have become payable, the L. Corporation (one of the debenture-holders) might by writing appoint a receiver of all or any part of the property thereby charged. In exercise of this power the corporation, who were also shareholders in the co., appointed a receiver:—

Held, that the corporation were trustees of this power on behalf of all the debenture-holders, and were bound to exercise it in their interest alone, and that as it was shewn that the appoint-

**COMPANY (Debentures)—continued.**

ment had been made in the interest of the shareholders, and not in that of the debenture-holders, the Court had jurisdiction to interfere to carry out the trust, and accordingly to appoint its own receiver.

Decision of North J. affirmed. *In re MASKELYNE BRITISH TYPEWRITER, LD. STUART v. MASKELYNE BRITISH TYPEWRITER, LD.*

C. A. [1897] W. N. 170 (2); [1898] 1 Ch. 133

**84. — Receiver—Trustees for debenture-holders—Principal and agent—Liability for goods ordered by receiver.**

A limited co. mortgaged all its assets to trustees for debenture-holders to secure payment of the debentures, and by the deed it was provided that the trustees might in writing appoint a receiver who should carry on the business of the co., and that any receiver so appointed should be the agent of the co. who alone should be liable for his acts and defaults. The trustees appointed a receiver under the deed and he took possession of the assets and carried on the business of the co. Soon after his appointment the co. was ordered to be compulsorily wound up. The receiver continued to carry on the business and in so doing ordered goods from the respondents. In an action against the trustees for the price of the goods:—

*Held*, reversing the decision of C. A., *Gaskell v. Gosling*, [1896] 1 Q. B. 669, that though after the winding-up order the receiver ceased to be the agent of the co., he did not thereby or at any time receive any implied authority from the trustees to act as their agent, and that as the trustees never gave him any authority in fact they were not liable for the goods. *GOSLING v. GASKELL* H. L. (E.) [1897] A. C. 575

**85. — Receiver and manager.**

An appointment can be made (with consent of co.) though debentures are not yet due and no interest is in arrear, where the debenture-holders have a floating security, and execution has been levied upon goods of the co. comprised in the security and other actions against the co. are pending. *EDWARDS v. STANDARD ROLLING STOCK SYNDICATE* — North J. [1893] 1 Ch. 574

Referred to by Cozens-Hardy J. *Wallace v. Evershed*, [1899] 1 Ch. 891, 894.

**86. — Receiver and manager—Borrowing power—Debenture-holders' action.**

In a debenture-holders' action the plt. obtained an order appointing two persons receivers and managers of the property and assets comprised in the debentures, and to manage the co.'s undertaking. The order gave to the receivers and managers "liberty for the purposes of the said undertaking to borrow 700*l.* at interest not exceeding" 5*l.* per cent. per annum. The receivers and managers, not requiring all the money at once, overdrew with bankers to the extent of 500*l.*, and afterwards paid off the 500*l.* and interest out of assets in their hands. Subsequently they overdrew again to the full extent of 700*l.* without obtaining any further leave to borrow:—

*Held*, that the borrowing power was not exhausted to the extent of 500*l.* on the repayment

**COMPANY (Debentures)—continued.**

of that sum, and that the bankers' claim for 700*l.* and interest must be allowed. *MILWARD v. AVILL & SMART, LD.* Wright J. [1897] W. N. 162 (1)

**87. — Receiver and manager—Debenture not actually due—Jurisdiction.**

In an action by debenture-holders of a limited co. to enforce their security, the Court has jurisdiction to appoint, not only a receiver of the co.'s property, but also a manager of its undertaking and business, where the security is in jeopardy—as for instance where the co. is practically insolvent and there is a pending winding-up petition—notwithstanding that the security has not yet "crystallized" by the debenture debt having become actually due; but as the appointment of a manager is made only with a view to the probable necessity of realization it should extend for a limited period only. *In re VICTORIA STEAMBOATS, LD. SMITH v. WILKINSON*

Kekewich J. [1897] 1 Ch. 158

**88. — Receiver and manager—Indemnity—Priority.**

A co. for building operations being in difficulties, a debenture-holder's action was commenced, and a winding-up petition was presented. By consent an order was made in the latter that the plt. in the action and the unsecured creditors should raise a sum for the completion of the contracts, which should have priority over all debentures, and that two receivers and managers should be appointed, but the co. was to incur no fresh liabilities. The receivers and managers in carrying out the contracts incurred expenses beyond the sum raised.

*Held*, that the receivers were entitled to be reimbursed in priority to the sum raised. *STRAFF v. BULL, SONS & CO. SHAW v. SCHOOL BOARD OF LONDON*

C. A. reversing V. Williams J. [1895] 2 Ch. 1

— Redemption on contingency—Stamp duty — "Marketable security."

See REVENUE—Stamps. 149.

**89. — Redemption on reconstruction of company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

Debentures were redeemable at par if the co. were wound up otherwise than for the purposes of reorganization or reconstruction; under other circumstances they were redeemable at a premium. An agreement for the amalgamation of the co. with another co. was held to be a sale and not a reconstruction, and the debentures to be therefore redeemable at par. *HOOPER v. WESTERN COUNTIES AND SOUTH WALES TELEPHONE CO.*

Chitty J. [1892] W. N. 148

**90. — Redemption—"Redeemable" sinking fund—Prospectus.**

Debentures issued by a co. provided that the co. should carry to the credit of a sinking fund in each half-year the sum of 2500*l.* which should be applied in redeeming at a specified premium, on Jan. 1 and July 1 in each year, so many of the debentures issued as the sum from time to time standing to the credit of the sinking fund should suffice to pay off, the particular debentures to be redeemed on each occasion (being determined by half-yearly drawings. The prospectus which the



**COMPANY (Debentures)—continued.**

co. had previously issued, inviting subscriptions for the debentures, stated that they were to be "redeemable within seventeen years by half-yearly drawings on Jan. 1 and July 1 in each year by the application of a sinking fund of 5000*l.* per annum":—

*Held*, that, even if the prospectus could be looked at in order to ascertain the contract between the co. and the debenture-holders, the word "redeemable" meant only that the debentures were to be liable to redemption during the seventeen years, but that there was no obligation upon the co. that they should all be redeemed within that period.

*Semble*, however, that the debentures contained the whole contract between the co. and the debenture-holders, and that the prospectus could not be looked at for the purpose of interpreting the contract. *In re CHICAGO AND NORTH WEST GRANARIES CO.* *MORRISON v. SAME CO.*

North J. [1897] W. N. 174 (2);  
[1898] 1 Ch. 263

**91. — Salvage expenses.**

The Court refused an application to raise a sum of money with a view of preventing a depreciation in the property, on the ground that there was no evidence that after the expenditure the property could be sold at a price sufficient to satisfy even the prior mortgages. Grounds on which the Court will authorize salvage expenditure considered. *SECURITIES PROPERTIES INVESTMENT CORPORATION v. BRIGHTON ALHAMBRA, LD.*

*Kekewich J.* [1893] W. N. 15

**92. — Set-off—Floating security—Liquidated demand — Hypothecation — Powers of managing director — Presumption of regularity.**

A limited co. agreed to sell to H., B. & Co. 7000 barrels out of their stock at 3*s.* 6*d.* each. H., B. & Co. paid for them; but the co. fell into difficulties, its stock of barrels was exhausted, and as to more than 4000 it failed to deliver them. The co. had to the knowledge of H., B. & Co. issued debentures in the usual form of floating securities on all the property of the co. The debenture-holders obtained the appointment of a receiver, at which time H., B. & Co. owed the co. a liquidated sum for rent, and had the above claim against the co. in respect of the barrels:—

*Held* (reversing the decision of North J.), that the claim of H., B. & Co. against the co. was a liquidated claim of 3*s.* 6*d.* for each barrel not delivered, there being as to each such barrel a total failure of consideration which entitled H., B. & Co. to recover back their purchase-money:

*Held*, further, that H., B. & Co. could set off this demand against what they owed to the co., and that the knowledge of the existence of the debentures as a floating security at the time when the debt due to them was contracted was not such notice of an assignment as to prevent a set-off binding the debenture-holders.

Persons dealing *bonâ fide* with a managing director are entitled to assume that he has all such powers as he purports to exercise, if they are powers which according to the constitution of the co. a managing director can have.

Shortly before the appointment of the receiver,

**COMPANY (Debentures)—continued.**

H., B. & Co. pressed the co. for security for their claim as to the barrels; and at a meeting between them and the three directors of the co. it was proposed, but not finally settled, that the co. should issue debentures to H., B. & Co. by way of security, and should hypothecate to them various debts owing to the co. This meeting was adjourned to the next day, when only two directors were present (the quorum being three), but D., the managing director, was one of them. At this adjourned meeting H., B. & Co. advanced to the co. money to pay wages, and D. gave them a letter, signed by him on behalf of the board, by which, in consideration of H., B. & Co. finding cash for wages and payment of barrels, he agreed to execute a deed in conjunction with the board of directors creating and issuing to them the remainder of an issue of debenture stock; and he also gave to them a number of orders addressed to debtors of the co. informing them that the debts due from them were hypothecated to H., B. & Co. These orders were signed by D. as managing director. By the articles of the co. the directors were authorized to appoint a managing director, and to delegate to him such of the powers of the board as they thought fit; and it was not disputed that the board had power to hypothecate. There was no minute shewing what powers had been delegated to D., nor of his appointment as managing director, but he had acted as such:—

*Held* (reversing the decision of North J.), that the hypothecations were valid. *BIGGERSTAFF v. ROWATT'S WHARF, LD.* *HOWARD v. ROWATT'S WHARF, LD.* — C. A. [1896] 2 Ch. 93

Applied by Wright J. *Owen and Ashworth's Claim*, [1900] 2 Ch. 202, 278.

— Set-off—Unpaid calls against debentures.

*See COMPANY—Calls.* 10.

**93. — Specific performance—Agreement to lend money—Action for breach of contract to pay instalments of loan—Damages. Measure of.**

The rule that specific performance cannot be granted in respect of a contract to lend money applies to a contract to lend to a co. money, payable by instalments, upon the security of debentures to be issued by the co.

Where the lender makes default in payment, the moneys due for unpaid instalments do not constitute a debt to the co., and the co. are only entitled to damages for the actual loss caused by the breach of contract.

Decision of C. A., [1897] 1 Q. B. 692, affirmed. *SOUTH AFRICAN TERRITORIES, LD. v. WALLINGTON H. L. (E.)* [1898] A. C. 309

— Stamp duty.

*See REVENUE—Stamps.* 147—149.

— Tramway company—Debenture-holder.

*See TRAMWAY.* 3—5.

**94. — Transfer, Contract for—Interest in land — "Floating security"—Statute of Frauds.**

Where debentures were charged upon the property of a co. and the property includes land:—

*Held*, that a contract for sale of the debentures was a contract for an interest in land within s. 4 of the Statute of Frauds, the fact that the

**COMPANY (Debentures)—continued.**

security is a "floating security" making no difference. *DRIVER v. BROAD*

**Mathew J. [1893] 1 Q. B. 539;**  
**affirmed by C. A. [1893] 1 Q. B. 744**

Referred to by *Cozens-Hardy J. Wallace v. Evershed*, [1899] 1 Ch. 891, 894.

**95. — Uncalled capital—"Assets."**

Debentures were secured on all "the property, assets, and revenues of the co.," uncalled capital not being specifically mentioned:—

*Held*, that uncalled capital was included in the word "assets." *PAGE v. INTERNATIONAL AGENCY AND INDUSTRIAL TRUST*

**Kekewich J. [1893] W. N. 32**

— Uncalled capital.

*See COMPANY—Borrowing Powers. 3—5.*

— Usage—Debenture payable to bearer.

*See NEGOTIABLE INSTRUMENT. 2.*

**96. — Void debentures—Equitable charge.**

Where a co. borrowed money and were to issue debentures, and such debentures were issued to the lender in blank as to the names of the obligees and secured with other debentures by a covering deed:—

*Held*, that the debentures were void, but that the lender had an equitable security for the amount of his loan, and was entitled to participate *pari passu* with the holders of valid debentures in the property realized under the covering deed. *In re QUEENSLAND LAND AND COAL CO. DAVIS v. MARTIN* **North J. [1894] 3 Ch. 181**

Followed by *North J. Pegge v. Neath and District Tramways Co.*, [1898] 1 Ch. 183, 189.

**97. — Winding-up—Debenture-holder's action—Judgment—Transfer—Cross-claim by company against transferor—Right to registration.**

After resolutions for the voluntary winding-up of a co. had been passed and a liquidator appointed, and judgment had been given in a debenture-holder's action against the co., R. became transferee, by way of security for a loan, of certain debentures from C., who had been a director of the co. The conditions of the debentures provided that transfers must be delivered at the registered office of the co. with a fee, and such evidence of identity or title as the co. might reasonably require, and thereupon the transfers would be registered; and that the principal and interest secured by the debentures would be paid without regard to any equities between the co. and the original or any intermediate holder. After R. had taken his transfer it was discovered that C. had been guilty of misfeasance, and he was ordered to pay a sum of money to the liquidator in respect thereof. R., who had had no notice of any cross-claim by the co., duly sent his transfer to the liquidator, who was also receiver in the action, for registration, but the liquidator declined to register it, and claimed to deduct C.'s debt to the co. from the amount due on his debentures:—

*Held*, that the right to transfer and to have the transfer registered was not affected either by the winding-up or by the judgment in the action, and that consequently R. was entitled to receive without deduction any dividend payable in respect

**COMPANY (Debentures)—continued.**

of C.'s debentures. *In re GOY & Co. FARMER v. GOY & Co.* [1900] W. N. 88; [1900] 2 Ch. 149

**98. — Winding-up—"Property" both present and future—Uncalled capital—Liquidation.**

A co., having power by its memorandum and articles to borrow on the security of any of its property both present and future, including its uncalled capital, issued debentures charging the undertaking and all its "property whatsoever and wheresoever both present and future" with payment of the sums advanced. The co. subsequently went into liquidation:—

*Held*, that the addition of the word "future" did not extend the meaning of the term "property" as defined by *Stanley's Case*, (1864) 4 D. J. & S. 407, and that the debentures were a charge only on the property of the co. as it existed at the commencement of the liquidation. *In re STREATHAM AND GENERAL ESTATES CO.*

**Chitty J. [1896] W. N. 164 (2);**  
**[1897] 1 Ch. 15**

Approved by C. A. *In re Russian Spratts Patent, Ltd.*, [1898] 2 Ch. 149.

**Directors.**

**APPOINTMENT.] Restrictions on appointment or advertisement of director.** *See Companies Act, 1900 (63 & 64 Vict. c. 48), s. 2. For notes thereon see [1900] W. N. 190.*

**99. — Appointment—Subscribers of memorandum—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 67; Table A., Arts. 35, 52, 53, 58, 62, 71.**

A subscriber of the memorandum of a co. incorporated without articles, and therefore under Table A of the Companies Act, 1862, convened a meeting of the subscribers to elect directors. No directors had been appointed at two general meetings held previously, although certain persons had been acting as *de facto* directors. A majority of the subscribers elected six persons as directors:—

*Held*, that their appointment was valid. Position of *de facto* directors, and the articles relating to the appointment of directors in Table A (arts. 35, 52, 58, 62) considered. *JOHN MORLEY BUILDING CO. v. BARRAS*

**Stirling J. [1891] 2 Ch. 386**

**100. — Appointment—Undischarged bankrupt—Clause validating the acts of *de facto* directors.**

No. 114 of the articles of a co. provided that all acts done at any meeting of directors or by any person acting as a director should, notwithstanding that it should be afterwards discovered that there was some defect in the appointment of such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director. T., N., and S., the *de facto* directors, made a call, payment of which was resisted by some of the shareholders on the ground that T., N., and S., were not *de jure* directors. To shew that they were not, various irregularities were alleged, the most important of which was that N. had according to the articles vacated his office by parting with all his shares. After six days he acquired other shares sufficient for a

**COMPANY (Directors)—continued.**

qualification, and continued to act as director. His co-directors, who had power to fill up the casual vacancy occasioned by his parting with his shares, did not formally reappoint him, but all along treated him as a director; and it did not appear that they ever knew that for six days he had not been a shareholder:—

*Held*, by the C. A., that a clause such as art. 114 did not operate only as between the co. and outsiders, but also as between the co. and its members, and was sufficient to cover such irregularities as those alleged, and that the call was valid.

*Howbeach Coal Co. v. Teague*, (1860) 5 H. & N. 151, considered.

T. was an undischarged bankrupt. One of the articles provided that a director should vacate his office if he became bankrupt:—

*Held*, that this did not prevent the appointment of a bankrupt to be a director.

Decision of Ridley J. reversed. *DAWSON v. AFRICAN CONSOLIDATED LAND AND TRADING CO.*

C. A. [1898] 1 Ch. 6

— Attachment—Order on corporation—Service of order.

See ATTACHMENT. 13.

— Contract—Interest—Ejecting director.

See No. 109, below.

**101. — Contract—Setting aside.**

Question as to setting aside contract in which it was alleged the directors had an interest apart from that of the co. *RIXON v. EDINBURGH NORTHERN TRAMWAYS CO.*

H. L. (Sc.) [1893] A. C. 636

**102. — Contract of service—Exclusive right to services.**

A motion to restrain a person who, it was alleged, had accepted the office of chairman and director of the plt. co., from acting as director of the deft. co. refused, there being no contract, express or implied, that he would give his whole or personal services to the plt. co. *LONDON AND MASHONALAND EXPLORATION CO. v. NEW MASHONALAND EXPLORATION CO.*

Chitty J. [1891] W. N. 165

**103. — Contracts with company—Declaration of interest—Collateral profits—Fiduciary character.**

By the articles of association of a ry. co., it was provided that a director should vacate his office if he was concerned in, or participated in the profits of, any contract with the co. without declaring the nature of his interest; but "no director shall vacate his office by reason of his being a member of any corporation, co., or partnership, which has entered into contracts with or done any work for, the co.; or by reason of his being interested, either in his individual capacity, or as a member of any co., corporation, or partnership, in any adventure or undertaking in which the co. may also have an interest"; but the director was not to vote on contracts of this kind, and if he did, his vote was not to be counted. The ry. co., of which F. was a director, shortly after its formation entered into contracts with a steamship co. for the carriage and shipment of bananas. F. was the largest shareholder in the steamship co., and was also a

**COMPANY (Directors)—continued.**

partner in the firm that managed it: no disclosure of F.'s interest was made either in the prospectus of the ry. co., or when the contracts were entered into. The ry. co. brought an action against F. to make him liable for all profits received by him, as a shareholder in the steamship co., and as partner in the firm that managed it, under the contracts with the plt. co. F. having died before the trial, the action was revived against his executors:—

*Held*, on the authority of *Imperial Mercantile Credit Association v. Coleman*, (1871) L. R. 6 Ch. 558 (which has not been overruled on this point by S. C. (1873) L. R. 6 H. L. 189), and on the articles of association, that F.'s estate was not liable to account for any collateral profits made out of the contracts entered into with the plt. co., and that the action must be dismissed. *COSTA RICA RY. CO. v. FORWOOD* Byrne J. [1900] 1 Ch. 756

**104. — Duties as to repairs—Companies Acts**, 1867 (30 & 31 Vict. c. 131), s. 9; 1877 (40 & 41 Vict. c. 26), s. 3.

The duties of directors as to maintaining and repairing a co.'s property stated. *In re FLOATING DOCK CO. OF ST. THOMAS, LD.*

Chitty J. [1895] 1 Ch. 691

Applied by Stirling J. *In re London and New York Investment Corporation*, [1895] 2 Ch. 860.

**105. — Duties of directors — Promoters — Fiduciary relation—Appointment of directors of one company as directors of the other—Memorandum and Articles of Association—Contract—Sale by directors in one character to themselves in another—Dual relation—Independent board—Contract by company with its directors—Agency—Prospectus—Concealment from shareholders of material facts—Misrepresentation—Misfeasance—Breach of trust—Vendor and purchaser—Voidable contract—Rescission—Damages—Delay—Change of position.**

The L. Co. was promoted and formed by the directors of the L. Syndicate for the purpose of purchasing part of the property of the syndicate, consisting of nitrate works. The directors of the syndicate prepared and signed the memorandum and articles of association of the co., the articles nominating them as directors and stating specifically that they were also the directors of the syndicate. They also prepared the co.'s prospectus and purchase contract, and affixed the seals of the syndicate and of the co. to the latter. The co.'s solicitors and secretary were also the same as those of the syndicate. Two years after the date of the contract and the completion of the purchase the shareholders of the co., believing that their property had been purchased at an over-value and that there had been misrepresentations in the contract and prospectus, appointed an independent board of directors who, after investigating the facts and with the sanction of a general meeting of the shareholders, brought an action against the syndicate and the directors for rescission of the contract and damages on the ground of misrepresentation, misfeasance, breach of trust, and concealment of material facts, but not alleging fraud. From the date of the contract

**COMPANY (Directors)—continued.**

and down to and also since the commencement of the action the co. had, first by its original directors and afterwards by its independent board, carried on business and worked the property the subject of the contract. At the trial *Romer J.* dismissed the action:—

*Held*, by *Lindley M.R.* and *Collins L.J.*, that the co. was not entitled to rescission or damages, for (1.) at the date of the contract the co. had, by its memorandum and articles, notice that its directors were also the vendors or agents of the vendor syndicate, and the mere fact that its directors did not constitute an independent board was not a sufficient ground for setting aside the contract; (2.) there had been no misrepresentation made to, or any material fact concealed from, any of the persons who were members of the co. at the date of the contract, those persons being the directors themselves; (3.) although the contract and prospectus were, on the evidence, misleading in certain particulars which would have entitled the co. at the time to repudiate the contract, yet through the subsequent alteration of the property consequent on its being worked by the co., the position of the parties had been so changed that they could not be restored to their original position; and (4.) the defts., the directors, had not been guilty of such negligence or breach of trust as to render them liable in damages in law for the loss occasioned to the co., or in equity to make good the loss.

But *held*, by *Rigby L.J.*, (1.) that, in the promotion of the co., the preparation and sealing of the contract, and the preparation and issue of the prospectus, the original directors had, while acting as sole agents for the vendor syndicate, constituted themselves sole fiduciary agents for the purchasing co., and that the co. was therefore entitled to rescission (but accounting for the profits of its working), on the principle that no fiduciary agent can bind his principal by a sale to him of such agent's property, where the principal has purchased without independent advice; and that the notice in the memorandum and articles of the co. of the double relation of its directors was ineffectual to discharge them from the obligations involved in that principle; and (2.) that the co. had not lost its right to rescission either (a) through delay—for time did not run during the domination of the original directors and the non-disclosure by them of material facts—or (b) through alteration of the property, the alteration having been in effect the act of the vendor syndicate by its directors.

*Erlanger v. New Sombbrero Phosphate Co.*, (1878) 3 App. Cas. 1218, and *Salomon v. Salomon & Co.*, [1897] A. C. 22, discussed.

Statement of the principles as to (1.) the fiduciary relationship between the promoters of a co. and its shareholders; (2.) the validity of contracts between a co. and its directors as promoters; (3.) the non-liability of directors for losses when acting intra vires and honestly; (4.) the voidability of a contract for misrepresentation; and (5.) the impossibility of rescinding a contract after change of position. *LAGUNAS NITRATE Co. v. LAGUNAS SYNDICATE.*

**C. A. [1899] 2 Ch. 392**

**COMPANY (Directors)—continued.**

**106. — Embezzlement—"Clerk or servant"—Director of company—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68.**

A director who is also employed as a servant to collect money for the co. is liable to be convicted of embezzlement of such money as a clerk or servant of the co. *REG. v. STUART*

**C. C. R. [1894] 1 Q. B. 310**

**107. — Incapable of acting as a director—Articles of association—Construction—"Place of profit"—"Under."**

A trustee of a covering deed relating to debentures issued by a co., who was nominated and paid by the co., *held* to be the holder of a "place of profit under the co.," and therefore incapable of acting as a director. *ASTLEY v. NEW TIVOLI, LD.* — **North J. [1899] 1 Ch. 151**

**108. — Indemnity—Money paid out of capital by directors to shareholders—Order on directors to replace it—Right of directors to indemnity from shareholders.**

Directors of a co., which had not obtained the sanction of the Court to a reduction of its capital, distributed a portion of the capital amongst the shareholders with their assent, and with notice of the fact that the money so distributed was part of the capital. The co. was subsequently wound up, and the liquidator obtained an order that the directors should replace the money on the ground that the payment to the shareholders was ultra vires:—

*Held*, that the directors were entitled to an indemnity from the shareholders.

Decision of Div. Ct., [1899] W. N. 14 (4); [1899] 1 Q. B. 480, affirmed. *MOXHAM v. GRANT*

**C. A. [1899] W. N. 232; [1900] 1 Q. B. 88**

**109. — Interest in contract—Declaring interest—Ejecting director.**

The articles of the W. co. declared "that the office of any director shall be vacated, if" inter alia "he participate in the profits of any contract with the co., without declaring his interest at the meeting of directors at which such contract is determined on." T., a director, was interested in a contract of M. with the co. At the first meeting after T.'s interest accrued, T. said he was jointly interested with M., but did not declare the precise nature of his interest. Subsequently the other directors, without giving him notice, passed a resolution declaring T.'s seat vacant:—

*Held*, that a director was bound not only to declare that he had an interest, but to specify what his interest was. On the other hand, a director ought to have an opportunity of explaining and justifying himself. Injunction granted restraining the directors from excluding T. from their meetings, holding meetings without giving him notice, or interfering with him in the exercise of his duties as a director. Declaration that T. was a director refused. *TURNBULL v. WEST RIDING ATHLETIC CLUB (LEEDS)*

**Kekewich J. [1894] W. N. 4**

**110. — Liability—After dissolution of company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 111.**

*Semble*, a claim by creditors against the late directors of a co. founded on payments of dividends out of capital, is, in the absence of fraud,

**COMPANY (Directors)—continued.**

barred by the winding-up and dissolution of the co. *COXON v. GORST* Chitty J. [1891] 2 Ch. 73

**111. — Liability—Issue of shares at a discount—Extent of liability—Law of the Cape of Good Hope.**

Where directors, in consideration of services rendered, issued shares at a discount, they are liable to the co.; but, in the absence of fraud or further resulting damage to the co., no further than the amount of the discount:—

*Semble*, such further resulting damage cannot exceed the difference between the discount price and the value of the shares if the services and the transactions thereon had not taken place. *HIRSCH v. SIMS* — P. C. [1894] A. C. 654

Referred to by H. L. (E.). *Welton v. Saffery*, [1897] A. C. 299, 325.

— Liability—Misfeasance.

*See Nos. 115—123, below.*

— Liability of directors—Prospectus.

*See Cases under COMPANY—Prospectus.*

— Liability—Qualification shares.

*See Nos. 124—135, below.*

**112. — Liability—Representation.**

The plts. contracted with a co. to supply goods to be paid for in part by debentures. A director who was chairman when the contract was entered into, and knew there were no debentures available, held not to be liable as for a representation that there were debentures available. *ELKINGTON & Co. v. HURTER*

*Romer J.* [1892] 2 Ch. 452

**113. — Liability—Ultra vires acts—Indemnity.**

Directors issued debentures and shares as fully paid to a contractor in order that he might do certain necessary works, and in addition might pay certain creditors sums in excess of their just debts, and take up shares in the co., and otherwise benefit the shareholders and the directors:—

*Held*, that the directors were liable to return any benefit they had received, and were, except one who had not participated in the scheme, also liable to make good the excessive consideration and indemnify the co. against loss on the shares issued as paid up. *LONDON TRUST Co. v. MACKENZIE* — *Wright J.* [1893] W. N. 9

**114. — Managing director—"Clerk or servant"**

— *Preferential payments in Bankruptcy Acts*, 1888 (51 & 52 Vict. c. 62), s. 1, sub-s. 1 (b); 1897 (60 & 61 Vict. c. 19), s. 3.

A managing director of a co. is not a "clerk or servant" within the meaning of the *Preferential Payments in Bankruptcy Act*, 1888, s. 1, sub-s. 1 (b). *In re NEWSPAPER PROPRIETARY SYNDICATE, LD.* *HOPKINSON v. NEWSPAPER PROPRIETARY SYNDICATE, LD.*

*Cozens-Hardy J.* [1900] W. N. 140; [1900] 2 Ch. 349

**115. — Misfeasance—Companies Winding-up Act**, 1890 (53 & 54 Vict. c. 63), s. 10.

A summons, under s. 10 of the Act of 1890, against directors, for misfeasance or breach of trust in relation to the co., should state the grounds on which it is suggested that the matters complained of constitute a wrongful act

**COMPANY (Directors)—continued.**

or misfeasance for which the directors are responsible:—

Where the alleged misfeasance consists of an act which is not ultra vires the co., and not fraudulent or dishonest, the directors are not liable, unless it can be shewn that they did not really exercise their discretion and judgment as such directors, and that the omission to do so resulted in loss or damage to the co. *In re NEW MASHONALAND EXPLORATION Co.*

*V. Williams J.* [1892] 3 Ch. 577

**116. — Misfeasance—Improper allotment of shares to director at undervalue—Measure of damage.**

It being held that directors of a co. had improperly allotted a large number of shares to themselves at an undervalue:—

*Held*, that the directors must account to the co. for the profits which they had derived from the sale of such of the shares thus allotted as they had disposed of, and that as to the shares which they retained the proper measure of the damages was, under the circumstances, not the highest price at which any shares of the co. had been sold during the period for which the directors had held their shares, but the market value of the shares at the dates at which they were respectively allotted to the directors, and that the directors must pay to the co. the excess (if any) of that market value above the sums which they had paid to the co. for the shares respectively.

Decision of North J. affirmed with a slight variation.

A stay of inquiries directed by a judgment pending an appeal will be granted only under very special circumstances. *SHAW v. HOLLAND*

*G. A.* [1900] 2 Ch. 305

**117. — Misfeasance—Judgment and discretion—Companies (Winding-up) Act**, 1890 (53 & 54 Vict. c. 63), s. 10.

Loans the security for which was not given. Question whether directors had exercised their judgment and discretion as agents of the co. in making certain advances. *In re NEW MASHONALAND EXPLORATION Co.*

*V. Williams J.* [1892] 3 Ch. 577

**118. — Misfeasance—Limitations, Statute of—Payment of interest out of capital—State demand.**

Payment of interest out of capital where there are no profits is ultra vires, notwithstanding a clause in the articles that interest shall be paid on all moneys paid up on shares. Where directors paid interest out of capital, they were held liable to make good the payments made during the period of their directorships, with interest at 4 per cent. The Statute of Limitations is no bar to an action which seeks to make directors liable, for the directors are in the position of trustees. A claim in 1889 by the liquidator in a winding-up of 1886 against the estate of a director who died in 1883, held not to be a stale demand. *In re SHARPE. In re BENNETT. MASONIC AND GENERAL LIFE ASSURANCE Co. v. SHARPE* — *C. A.* [1892] 1 Ch. 154

*See now the Trustee Act*, 1888 (51 & 52 Vict. c. 59), s. 8.

Referred to by *Stirling J.* *Lock v. Queens-*

**COMPANY (Directors)—continued.**

*land Investment and Mortgage Co.*, [1896] 1 Ch. 397, 402. This case was affirmed [1896] A. C. 461.

Referred to by C. A. *In re National Bank of Wales*, [1899] 2 Ch. 629.

**119. — Misfeasance—Limitations, Statute of—Trustee Act, 1888** (51 & 52 Vict. c. 59), ss. 1 (3), 8.

The directors of the A. co. took shares in the B. co. in satisfaction of a debt due from H., whose business the B. co. was taking over. More than six years after, in the winding-up of the A. co., the liquidator issued a summons for a declaration that the directors were liable for the money so employed:—

*Held*, that as directors were by the decisions taken out of the benefit of the Statute of Limitations—their position being likened to that of trustees—it was right they should now have the same protection that the Act of 1888 gave to trustees. There being no evidence of “fraud or fraudulent breach of trust,” the summons must be dismissed.

Decision of Wright J., [1894] W. N. 5, affirmed. *In re LANDS ALLIEMENT CO.*

**C. A. [1894] 1 Ch. 616**

Referred to by Romer J. *In re Severn and Wye and Severn Bridge Ry. Co.*, [1896] 1 Ch. 559, 566.

**120. — Misfeasance—Payment of dividends out of capital—Banking company—Losses charged against capital—Right of liquidator after payment of creditors to recover from directors dividends improperly paid—Damages for misfeasance—Interest—Income tax—Advances on improper security—Lien on company's own shares—Duty of director—Negligence—Companies (Winding-up) Act, 1890** (53 & 54 Vict. c. 63), s. 10—*Limitation Act, 1623* (21 Jac. 1, c. 16), s. 3—*Income Tax Act, 1853* (16 & 17 Vict. c. 34), s. 40.

Though the paid-up capital of a limited co. cannot be lawfully returned to the shareholders under the guise of dividends or otherwise, yet the law does not prohibit such a co.—even if it be a banking co.—from paying dividends unless its paid-up capital is intact.

The payment of dividends out of the excess of the receipts over the outgoings of a year, after making some allowance for bad debts, losses made in previous years being ignored and in effect thrown on the capital, does not amount to a payment of dividends out of capital. If paid-up capital has been lost, its subsequent application in the payment of dividends is impossible.

Excluding cases in which it would be obvious that a particular debt or outlay could not be reasonably charged to capital, the question what losses can be properly charged to capital and what to income is a matter for business men to determine, and on such a matter the opinions of honest and competent men may differ. There is no hard and fast legal rule on the subject.

But if expenses or payments are obviously improperly charged to capital simply to swell the apparent profits and to make it appear that dividends may properly be declared, dividends declared and paid under such circumstances can

**COMPANY (Directors)—continued.**

no more be justified than if they were paid out of capital.

A director who is acting honestly himself is entitled to trust the officers of the co. not to conceal from him what they ought to report to him, if he has no reasonable ground for suspecting that they are deceiving him.

Directors are not liable for all their mistakes, but only for negligence which is in a business sense culpable or gross. Nor is a director liable for untrue representations made to the shareholders if he honestly believed the representations to be true and had at the time reasonable grounds for his belief.

The liquidator in the winding-up of a limited co. can recover from the directors dividends improperly paid by them, even though the creditors of the co. have been satisfied.

*Turquand v. Marshall*, (1869) L. R. 4 Ch. 376, distinguished.

A director resigned his office, and his resignation was accepted by the board. After this his name appeared as one of the directors in a report presented by the board to the shareholders. He took no part in the preparation of the report or in recommending the dividend proposed by it:—

*Held*, that, even if he knew that his name appeared in the report as a director, he was not liable for the statements contained in it or the recommendation of the dividend.

Clause 15 of the articles of association of a limited banking co. provided that the co. should have a paramount lien on all the shares held by any shareholder for all his debts to the co., and empowered the directors in case of non payment of any such debt, or in the event of the bankruptcy of the shareholder, to sell his shares, and apply the proceeds in discharge of his debt. Clause 98 empowered the directors to lend the funds of the co., or give credit, with or without security, and provided that no advances without security should be made or credit given to any director:—

*Held*, that the lien given by clause 15 was a security within clause 98, and that a loan might be made to a director without any other security than the lien, if the board considered his shares to be of sufficient value.

A former director of a banking co. was ordered to pay to the liquidator of the co. a sum of money, together with interest thereon at 5 per cent. per annum, on the ground that he had been guilty of a misfeasance in sanctioning the payment of dividends to the shareholders out of capital:—

*Held*, by Wright J., [1899] W. N. 26, that the director was not entitled under s. 40 of the Income Tax Act, 1853, to deduct income tax from the interest, it being in the nature of damages. *In re NATIONAL BANK OF WALES, LD.*

**C. A. [1899] W. N. 181; [1899] 2 Ch. 629**

Effect of order under s. 10 of 53 & 54 Vict. c. 63. See 56 & 57 Vict. c. 58.

**121. — Misfeasance—Promotion money.**

The insertion in the agreement for sale to the co. of the names as vendors of persons who had no real interest in the property, held to be a

**COMPANY (Directors)—continued.**

device for enabling such persons to get fully paid-up shares for their services as promoters, and the issuing such shares held to be a misfeasance on the part of the directors. *In re WESTMORELAND GREEN AND BLUE SLATE CO. BLAND'S CASE* - C. A. [1893] 2 Ch. 612

122. — *Misfeasance — Ratification — Trustee Act*, 1888 (51 & 52 Vict. c. 59), ss. 1, 8.

Less than six years before the winding-up of the A. co. the directors bought shares in the B. co. X., the chairman, and Y., were not present at the meeting where this investment was sanctioned, but X. took the chair and signed the minutes, and Y. was present at the meeting when the minutes of the previous meeting were read and confirmed. X. took the chair at the next general meeting of the co. and said: "We carefully considered the matter and have no reason to regret our decision":—

*Held*, by C. A., affirm. Wright J., that the mere presence of X. and Y. at the confirming meeting was not sufficient to make them liable, but, *revers*. Wright J., that X.'s conduct shewed him to have taken an active part in the investment, and that he was responsible for it. *In re LANDS ALLOTMENT CO.* C. A. [1894] 1 Ch. 616

Referred to by Romer J. *In re Severn and Wye and Severn Bridge Ry. Co.*, [1896] 1 Ch. 559, 566.

— *Misfeasance—Refusal to register transfer of shares.*

*See COMPANY—Shares.* 297—299.

123. — *Misfeasance—Undisclosed gifts from vendor — Companies (Winding-up) Act*, 1890 (52 & 53 Vict. c. 63), s. 10.

Under the vendor's agreement with the co., duly filed before allotment, twenty fully paid-up founders' shares were allotted to each of four directors, A., B., C. D. Subsequently the vendor transferred to each of the four directors 250 ordinary shares, part of his consideration. A prospectus issued to the public did not mention the transfer of vendor's shares to the directors. On the winding-up A., B., C., and D. were held liable for the par value of the ordinary, but not of the founders' shares. *In re POSTAGE STAMP AUTOMATIC DELIVERY CO.*

V. Williams, J. [1892] 3 Ch. 566

Appeal dismissed, the appellants not appearing - - [1892] W. N. 162

**QUALIFICATION OF DIRECTOR.] Vacating office**  
—*Penalty. See Companies Act*, 1900 (63 & 64 Vict. c. 48), s. 3. *For notes thereon see* [1900] W. N. 190.

124. — *Qualification shares—Agreement to qualify.*

Forty unpaid shares, being the number necessary for a director's qualification, were allotted to the plt. without his knowledge. The plt. acted as a director, and subsequently acquired forty paid-up shares:—

*Held*, that the plt., when he acted as a director, knew what was the qualification of a director, and yet had allowed more than a

**COMPANY (Directors)—continued.**

reasonable time to elapse without acquiring it. He must, therefore, be considered to have had notice that the shares registered in his name were the shares he had agreed to take when he acted as director, and he was liable for them as a contributory. *In re PORTUGUESE CONSOLIDATED COPPER MINES, LD. Ex parte LORD INCHQUIN*

North J. affirm. by C. A. [1891] 3 Ch. 28

Followed by Stirling J. *In re International Cable Co.*, [1892] W. N. 34; *In re Printing, Telegraph and Construction Co. of the Agence Havas, Ex parte Cammell*, [1894] 1 Ch. 528. This last case was affirmed by C. A., [1894] 2 Ch. 392.

125. — *Qualification shares—Agreement to qualify.*

Where a person has accepted the office of director and acted as such, an agreement is to be inferred between him and the co., that he will serve the co. on the terms, as to qualification and otherwise, contained in the articles of association. In this case, there being sufficient shares to enable an allotment to be made, the director was held to be a contributory to the extent of the qualification. *In re ANGLO-AUSTRIAN PRINTING AND PUBLISHING UNION. ISAACS' CASE*

Stirling J. affirm. by C. A.

[1892] 2 Ch. 158

Dictum of Stirling J., at p. 164, followed by Kekewich J. *In re Bread Supply Association*, [1893] W. N. 14.

Distinguished by C. A. *Ex parte Cammell*, [1894] 2 Ch. 392.

126. — *Qualification shares—Agreement to qualify—Acting before acquiring qualification.*

Directors, when duly authorized by the co., may act before they have acquired their qualifying shares, and may receive remuneration for so acting. *In re INTERNATIONAL CABLE CO.*

Stirling J. [1892] W. N. 34

127. — *Qualification shares—Agreement to qualify.*

A director, who had acted as such, was placed on the list of contributories in respect of the qualifying shares, although as a fact no shares had ever been allotted to him, nor had he applied for any. *In re BREAD SUPPLY ASSOCIATION*

Kekewich J. [1893] W. N. 14

128. — *Qualification shares—Agreement to qualify—Contributory.*

R. was named in the articles of the H. Co. as one of its first directors. The articles provided that the first directors might act without acquiring their qualification, but that if they did not acquire it "within one month of their appointment, they shall be deemed to have agreed to take the same, and the same shall be allotted to them accordingly." R. after the registration wrote a letter referring to his having signed a proposed prospectus, shewing R.'s name as a director, and the articles of the co. He never acted as a director. Later he wrote resigning on account of pressure of business and referring to his having consented to join the board:—

*Held*, that by the first letter R. had authorized the co. to hold him out as a director, and had

**COMPANY (Directors)—continued.**

allowed himself to be named a first director, and that this was evidence that he had accepted office on the terms of the articles, and had agreed to take the shares, and that this was corroborated by the second letter. Therefore his name must remain on the list.

Decision of Wright J., [1894] W. N. 15, affirmed. *In re HERCYNIA COPPER CO.*

C. A. affirm. Wright J. [1894] 2 Ch. 403

Referred to by C. A. *Salisbury-Jones and Dale's Case*, [1894] 3 Ch. 356, 358.

129. — *Qualification shares—Agreement to qualify—Qualification—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 23.*

A director in a co. whose articles contain a provision as to qualification shares has not by accepting office completed a contract to become a member, but only a contract to qualify by taking the required shares within the specified time, and does not become so merely by lapse of the time for taking shares; the lapse of the time merely amounts to an offer, and no agreement exists till acceptance of that offer, e.g., by placing the director on the register. *In re ISSUE CO. HUTCHINSON'S CASE* — V. Williams, J. [1895] 1 Ch. 226

130. — *Qualification shares—Period allowed to qualify—Resignation.*

By the articles of association of a co. it was provided that the subscribers should be the first directors, that a director "may act before acquiring his qualification, but shall in any case acquire the same within three months from his appointment, and unless he shall do so he shall be deemed to have agreed to take the said shares." Three of the subscribers acted as directors by signing a paper appointing a director in their stead within the three months allowed to qualify:—

*Held*, by C. A., *revers. Wright J. (Lindley L.J. diss.)*, that upon the construction of the articles, as the three subscribers ceased to be directors within the three months, they could not be deemed to have agreed to take their qualifying shares, and their resigning within the period allowed for qualification released them, as the obligation to hold the shares ceased on resignation, and the obligation to acquire the shares was merely ancillary to the obligation to hold them. *In re R. BOLTON & CO. SALISBURY-JONES AND DALE'S CASE (No. 1)* C. A. [1894] 3 Ch. 356

See also same case upon application to vary the minutes upon a question of costs, [1895] 1 Ch. 333.

131. — *Qualification shares—Rectification of register—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 25.*

To fix a director with liability in respect of his qualification shares, where these have been registered in his name without his application or knowledge, it is essential to shew that he has acted as a director at a time when he could not properly so act without being qualified. The articles of the A. Co. provided for qualification of directors, that the first directors should be allowed one month from the first general allotment to

**COMPANY (Directors)—continued.**

qualify, and that a director should vacate his office if he did not qualify in the prescribed time. C. signed the memorandum for one share, attended several board meetings within but not after the one month, but never applied for his qualifying shares. At the first general allotment, at which C. was not present, his qualifying shares were allotted to him and his name was placed on the register without his knowledge. As soon as he became aware of this he resigned, and did not act as a director after the expiration of the prescribed period for qualification:—

*Held*, by Stirling J., that C. was not stopped from denying that he had agreed to take the shares. On appeal fresh evidence was adduced to the effect that C.'s name was entered on certain loose sheets called allotment sheets signed by the chairman and secretary before his resignation, and copied into the formal register after the same:—

*Held*, by C. A., that C.'s name had not been placed on the register till after his resignation, and that he had entered into no binding agreement to take the shares:—

*Semble*, that if the allotment sheets had been intended and treated as a register of shares by the directors, the entry in them would have been valid registration.

Decision of Stirling J., [1894] 1 Ch. 528, affirmed. *In re PRINTING TELEGRAPH AND CONSTRUCTION CO. OF THE AGENCE HAVAS. Ex parte CANNELL* — C. A. [1894] 2 Ch. 392

Referred to by V. Williams J. *Hutchinson's Case*, [1895] 1 Ch. 226, 231.

132. — *Qualification shares—Remuneration—Apportionment—Apportionment Act, 1870 (33 & 34 Vict. c. 35).*

The articles of association of a co. provided (inter alia) as follows: "(80.) The qualification of a director shall be the holding of shares of the co. of the nominal amount of 250*l.* A first director may act before acquiring his qualification, but shall in any case acquire the same within one month from his appointment, and unless he shall do so he shall be deemed to have agreed to take the said shares from the co., and the same shall be forthwith allotted to him accordingly." N. was one of the first directors, and from June, 1896, to Nov., 1897 (when the co. went into liquidation), he attended eight meetings of the board of directors. He did not acquire any shares within a month of his appointment; but in March, 1897, he acquired twenty-five shares of 10*l.* each, not from the co., but from its promoter. The directors never agreed as to the proportions in which the remuneration was to be divided amongst them:—

*Held*, that the agreement by N. to serve the co. on the terms of the articles as to qualification and otherwise, and the agreement by the co. to remunerate him, were cross and not interdependent contracts; that N. could not "cease" to hold a qualification which he never possessed; that as a member of the board he was nevertheless entitled to remuneration; but that he could only claim his share of the remuneration for one year, against which must be set off the 250*l.* due from him to the co. for the qualification shares which



**COMPANY (Directors)—continued.**

he had agreed to take. *SALTON v. NEW BEESTON CYCLE CO.* - *Cozens-Hardy J.* [1899] W. N. 40; [1899] 1 Ch. 775

Referred to by Wright J. *In re Central de Kaap Gold Mines*, [1899] W. N. 216, 235.

See also *Salton v. New Beeston Cycle Co.*, [1900] 1 Ch. 43.

**133. — Qualification shares—Secret agreement between director and promoter—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 165—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.**

In 1887 A., as a consideration for becoming a director, took an undertaking from S., one of the promoters, that if A. should at any time desire to part with his qualifying shares, S. would buy them at the price A. paid for them. In 1888 A. resigned his directorship, and S. accepted a transfer of his shares, and paid A. the original price of them. On the winding-up of the co., held, that the money received by A. from S. must be accounted for to the co. *In re NORTH AUSTRALIAN TERRITORY CO. ARCHER'S CASE*

C. A. reversing *Kekewich J.* [1892] 1 Ch. 322

**134. — Qualification shares—Shares held "in his own right"—Charging order.**

Shares transferred into the name of a director so as to give him the necessary qualification, and of which the transferors remained the beneficial owners, cannot be charged under s. 14 of the Judgments Act, 1838, for payment of a judgment debt incurred by the director. *COOPER v. GRIFFIN*

C. A. [1892] 1 Q. B. 740

Followed by Div. Ct. *Howard v. Sadler*, [1893] 1 Q. B. 1. See next Case.

**135. — Qualification shares—Shares held "in his own right"—Beneficial ownership.**

A direction in articles of association or in an Act of Parliament that a director must, as his qualification, hold shares "in his own right," does not mean that he must be personally and beneficially interested in the shares.

*Pulbrook v. Richmond Consolidated Mining Co.*, (1878) 9 Ch. D. 610, followed reluctantly. *HOWARD v. SADLER* - Div. Ct. [1893] 1 Q. B. 1

**136. — Quorum—Breach of regulations by directors—Validity of acts as regards third parties.**

A co.'s articles of association provided that its affairs should be conducted by a council of administration; that the number of members of the council should not be less than three; that the continuing council might act notwithstanding any vacancy; and that the council might determine the quorum necessary for the transaction of business. The members of the council became reduced to two, and those two members acting in the name of the co. gave securities for debts of the co. to persons who had no knowledge of the irregularity. It was not proved that any resolution fixing a quorum had been passed by the council:—

Held, that the securities so given were binding on the co.

One of the securities was transferred by the creditor to whom it was given to one of the two

**COMPANY (Directors)—continued.**

members of the council, who had himself paid off the secured debt:—

Held, that the security was valid in the hands of the transferee.

Decision of Wright J., [1900] W. N. 66; [1900] 2 Ch. 272, reversed on the first point and affirmed on the second.

*In re Scottish Petroleum Co.*, (1883) 23 Ch. D. 413, followed. *In re BANK OF SYRIA. OWEN AND ASHWORTH'S CLAIM. WHITWORTH'S CLAIM* C. A. [1900] W. N. 256; see [1901] 1 Ch. 115

**137. — Quorum—Sealing of deed by secretary—Validity of deed irregularly executed.**

The articles of a co. empowered the directors to fix the number of directors who should form a quorum. The directors by resolution fixed three as a quorum. Two directors only were present at a meeting where the seal of the co. was affixed by the secretary to a mortgage deed:—

Held, that it was not the duty of the mortgagees to inquire whether the secretary was duly authorized to affix the seal, and that it must be taken that the deed was duly executed.

Decision of North J. reversed. *COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM AND HOUSE COAL COLLIERY CO.*

C. A. [1895] 1 Ch. 629

Referred to by Wright J. *In re Bank of Syria*, [1900] W. N. 66; [1900] 2 Ch. 272; C. A. [1901] 1 Ch. 115.

**138. — Remuneration—Directors' fees—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 38, sub-s. 7.**

The articles of association of a co. required its directors to possess a share qualification; and provided that the remuneration of the board "shall be an annual sum of 1000*l.* to be paid out of the funds of the co.":—

Held, that although these provisions in the articles were only part of the contract between the shareholders inter se, the provisions were, on the directors being employed and accepting office on the footing of them, embodied in the contract between the co. and the directors; that the remuneration was not due to the directors in their character of members, but under the contract so embodying the provisions; and that, in the winding-up of the co., the directors were entitled to rank as ordinary creditors in respect of the remuneration due to them at the commencement of the winding-up.

*Ex parte Cannon*, (1885) 30 Ch. D. 629, distinguished. *In re NEW BRITISH IRON CO. Ex parte BECKWITH* Wright J. [1893] 1 Ch. 324

**139. — Remuneration—Directors' fees—Voluntary winding-up—Application to the Court—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 138.**

The articles of association of a co. provided that "The directors shall be paid out of the funds of the co. as follows, viz. a sum of 150*l.* per annum to the chairman, and a sum of 100*l.* per annum to each ordinary director . . . by way of remuneration for their ordinary services." The co. having gone into voluntary liquidation on March 1, 1898, the directors claimed payment of remuneration at the rate of 150*l.* and 100*l.* respectively from June 30, 1897, when they were

**COMPANY (Directors)—continued.**

last paid, and which was the end of the co.'s financial year, to the date of their resignation shortly before the winding-up, and, on the refusal of the liquidator to pay, they issued an originating summons, raising the question whether they were entitled to payment, under s. 138 of the Companies Act, 1862. Each of the applicants held fully paid shares. One of them died when the case was part heard, and his executor applied to be allowed to continue the proceedings, but the liquidator refused his consent.

*Held*, upon reconsideration, that the applicants (other than the executor of the deceased applicant), being contributories, came within the words of s. 138 of the Act of 1862 and were entitled to pay, although the application was with reference to a claim by them to be paid certain directors' fees.

It followed that without consent the Court could not add the executor of the deceased applicant as a party to the proceedings. It was alleged that the directors had stated that they would waive their fees; but, even if that had been proved, it would not be enough to deprive them of the right of payment unless some alteration of position had thereby been brought about. It was also alleged, though not proved, that the services of the directors were useless. But because some of the work they did was of no use payment could not be refused. If the articles had said that the remuneration was to be so much for each year, there could be little question that, as *Cozens-Hardy J.* held in *Salton v. New Beeston Cycle Co.*, [1899] 1 Ch. 775, nothing could have been claimed except for services for a full year. After some doubt as to the meaning of the article in this case, *held* that there could be no apportionment. One strong argument was that, if a director served a day or two, he would, if the opposite view were taken, be entitled to be paid *de die in diem*. Short of so holding, he could not say that under the article a director was otherwise entitled than to a lump sum for a year's services. The application must be dismissed. *In re CENTRAL DE KAAP GOLD MINES* **Wright J. [1899] W. N. 216, 235**

**140. — Remuneration—"Net profits."**

The articles of a co. provided that the directors should receive 3 per cent. of the net profits by way of remuneration. The co. sold its business as a going concern to a new co. and made a large profit:

*Held*, that the directors were not entitled to 3 per cent. on the profits of the sale. *FRAMES v. BULTFONTEIN MINING CO.*

**Chitty J. [1891] 1 Ch. 140**

**141. — Remuneration—Payment out of capital—Bonâ fide estimate of assets—Validity of resolution—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 28.**

In 1883 a resolution was passed by the shareholders of the A. Co. declaring net profits on which by the articles the directors were to have 10 per cent. by way of remuneration. The profits, which were not distributed, as a resolution was passed to wind up the co. voluntarily, were based on a balance-sheet in which assets had been

**COMPANY (Directors)—continued.**

greatly over-estimated, but which had been made out bonâ fide. All the creditors had been paid, and the directors claimed the 10 per cent. on the net profits declared in 1883. If the said profits were distributed as dividend a large portion of it would come out of capital:—

*Held*, that, as it was not impossible for reasonable men to have in 1883 taken the view then taken in estimating the profits, the directors were entitled to the remuneration by way of percentage they claimed. *In re PERUVIAN GUANO CO. Ex parte KEMP* **Wright J. [1894] 3 Ch. 690**  
— Remuneration—Proof—Directors' fees.

*See COMPANY — WINDING-UP — Proof.*  
**205.**

— Remuneration—Qualification shares—Apportionment.

*See No. 132, above.*

**142. — Remuneration—Receiver—Appointment—Equitable execution.**

The Court refused to appoint a receiver of fees due to deft. as director on the ground that there was a legal mode of execution against them by attachment. *HAMILTON v. BROGDEN* (No. 2).

**North J. [1891] W. N. 36**

— Unpaid calls—Set-off of fees against—Fraudulent preference.

*See COMPANY — WINDING-UP — Preference.* **192.**

**143. — Vacating office—Absence through illness—Articles of association—Remuneration—Proof.**

Absence may be sufficient to vacate the office of director if no other circumstances are shewn, but if it is shewn that the absence is involuntary it cannot be said that the director had absented himself:—

*Held*, that the more reasonable construction was that the article in question meant that the office of a director was vacated if he voluntarily or deliberately absented himself without special leave for the period mentioned. The proof must be admitted for one year's remuneration. *In re LONDON AND NORTHERN BANK. MACK'S CLAIM*

**Wright J. [1900] W. N. 114**

*Vacating office—Penalty. See Companies Act, 1900 (63 & 64 Vict. c. 48), s. 3. For notes thereon see [1900] W. N. 190.*

**Distress.**

— Coal mine—Chattels of lessee on adjoining mine.

*See MINES—Distress.* **8.**

**144. — Rates—Change of occupation—Receiver and manager, order appointing—Possession—Parish rates—Preferential charge—Debenture—Equitable charge—Poor Relief Act, 1601 (43 Eliz. c. 2), s. 2—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 161—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 16.**

The existence of an equitable charge on goods does not protect them from distress for poor-rate.

Where an order is made appointing a receiver and manager of a co.'s business, but not directing delivery-up of possession to him, and thereupon the receiver and manager enters upon the co.'s premises for the purpose of managing

**COMPANY (Distress)—continued.**

and carrying on the business, there is no change of occupation within s. 16 of the Poor Rate Assessment and Collection Act, 1869; and accordingly, under s. 2 of 43 Eliz. c. 2, and s. 161 of the Metropolis Management Act, 1855, the co.'s goods are liable to distress for the whole of the parish rates made for the half-year in which the order has been made; and this right of distress vested in the churchwardens and overseers of the parish prevails as against the equitable charge created by debentures charging, in the usual form, all the property of the co., where there is no assignment of chattels in the covering deed.

Whether possession taken by a receiver appointed under an order directing the co. to deliver up possession to him creates a change of occupation within s. 16 of the Poor Rate Assessment and Collection Act, 1869, *quære*.

*Richards v. Kidderminster Overseers*, [1896] 2 Ch. 212, considered. *In re MARRIAGE, NEAVE & Co. NORTH OF ENGLAND TRUSTEE, DEBENTURE AND ASSETS CORPORATION v. MARRIAGE, NEAVE & Co.* - - C. A. [1896] 2 Ch. 663

**Dividends.****145. — Accretion to capital—Capital or profits.**

An appreciation in total value of capital assets, if duly realized by sale or getting in of some portion of such assets, may in a proper case be treated as available for purposes of dividend: *Lubbock v. British Bank of South America* [1892] 2 Ch. 198. The question of what is profit available for dividend depends upon the result of the whole accounts, fairly taken for the year, capital, as well as profit and loss, and although dividends might be paid out of earned profits in proper cases, although there had been a depreciation of capital, the Court did not think that a realized accretion to the estimated value of one item of the capital assets would be deemed to be profit divisible amongst the shareholders without reference to the result of the whole accounts fairly taken. *FOSTER v. NEW TRINIDAD LAKE ASPHALT Co.* - - Byrne J. [1900] W. N. 257; see [1901] 1 Ch. 208

**146. — Annual general meeting—Dividend—Accounts—Construction of articles.**

The articles of a co. provided for the submission of accounts up to a date within three months and reports thereon, the sanction of a dividend, and the transaction of the ordinary business at the annual general meeting:—

*Held*, that a final dividend could not be sanctioned except at an annual general meeting at which accounts up to the prescribed date and reports thereon were submitted. *NICHOLSON v. RHODESIA TRADING Co.*

North J. [1897] 1 Ch. 434

**147. — Bonus dividend—Capital or income.**

A bonus dividend was returned to the shareholders of a co. in the form of seventy-five fully paid new shares of 10*l.* each. The new shares were sold for 1363*l.*—

*Held*, that of this sum 750*l.* was income and the rest capital. *In re NORTHAGE. ELLIS v. BARFIELD* - - North J. [1891] W. N. 84

**COMPANY (Dividends)—continued.****148. — Capital or income.**

A co. sold its undertaking for a sum which, after deducting an amount equivalent to the paid-up capital, left a large surplus:—

*Held*, that this surplus was profit and not an accretion to capital, and might as profit be distributed in dividends. Principles on which the accounts of a trading co. should be kept. *LUBBOCK v. BRITISH BANK OF SOUTH AMERICA*

Chitty J. [1892] 2 Ch. 198

Referred to by C. A. *Verner v. General and Commercial Investment Trust*, [1894] 2 Ch. 239, 266.

**149. — Capital or income—Net profits.**

Action by a shareholder claiming an injunction against the co. paying dividend except out of net profits, paying dividend out of assets representing capital, and declaring net profits without setting apart a sum to meet contingent liabilities, as provided by the articles:—

*Held*, on the facts, not to be maintainable, on the ground that capital had not been returned to the shareholders in any form. *LEVER v. LAND SECURITIES Co.* Kekewich J. [1894] W. N. 21

**150. — Depreciation of assets.**

The articles of an investment trust co. provided for the application to dividends of receipts from the dividends, income, profits, bonuses and advantages payable in respect of the co.'s investments.

By depreciation the present value of the investments shewed a heavy loss of which some portion was irrecoverable; during the past financial year the investments produced an income which substantially exceeded the expenses of management.

On the construction of the articles, *held*, that this excess was applicable for payment of dividend notwithstanding shrinkage in the value of investments or loss of fixed capital, although where the income of a co. arises from the turning over of circulating capital no dividends can be paid unless that capital is kept up to its original value, and that it was not necessary for the co. to apply for a reduction of capital under the Companies Act of 1877 before paying a dividend, and that the Court should not under such circumstances interfere with a declaration of dividend provided it was in accordance with the articles. *VERNER v. GENERAL AND COMMERCIAL INVESTMENT TRUST* - - C. A. affirm. Stirling J. [1894] 2 Ch. 239

Followed by Stirling J. in next case.

Referred to by C. A. *In re National Bank of Wales, Ltd.*, [1899] 2 Ch. 629, 671.

**151. — Payment of dividends—Depreciation of capital.**

In the absence of any special article or contract by a co. there is nothing to compel them to keep up their fixed capital or assets to a given value and to restrain them from paying dividends till they have done so. But floating or circulating capital must be kept up, otherwise it will enter into and form part of the excess of receipts over expenditure. *WILMER v. McNAMARA & Co.*

Stirling J. [1895] 2 Ch. 245

Referred to by Kekewich J. *Bishop v. N*

**COMPANY (Dividends)—continued.**

*Smyrna and Cassaba Ry. Co.*, [1895] 2 Ch. 265, 270.

152. — *Payment of dividends*—"Profits available for dividend"—*Setting aside reserve fund*—*Articles partly excluding Table A—Companies Act*, 1862 (25 & 26 Vict. c. 89), *Sched. I, Table A, clause 74*.

The Court allowed the appeal against the decision of Kekewich J., holding that clause 74 of Table A was not excluded by implication, and that "profits from time to time available for dividend," meant the net profits after deducting all sums properly deducted by the directors, before arriving at the amount applicable to dividend. The application to a reserve fund was a proper one. *FISHER v. BLACK AND WHITE PUBLISHING CO.* — C. A. [1900] W. N. 271

— *Payment of dividends out of capital*—*Director—Misfeasance.*

See **COMPANY—Directors.** 120.

153. — *Payment out of capital—Bonâ fide estimate of assets—Validity of resolution—Civil Procedure Act*, 1833 (3 & 4 Will. 4, c. 42), s. 28.

In 1883 a resolution was passed by the shareholders of the A. Co. declaring net profits on which by the articles the directors were to have 10 per cent. by way of remuneration. The profits, which were not distributed, as a resolution was passed to wind up the co. voluntarily, were based on a balance-sheet in which assets had been greatly over-estimated, but which had been made out bonâ fide. All the creditors had been paid, and the directors claimed the 10 per cent. on the net profits declared in 1883. If the said profits were distributed as dividend a large portion of it would come out of capital:—

*Held*, that, as it was not impossible for reasonable men to have in 1883 taken the view then taken in estimating the profits, the directors were entitled to the remuneration by way of percentage they claimed. *In re PERUVIAN GUANO CO. Ex parte KEMP* Wright J. [1894] 3 Ch. 690

154. — *Payment out of capital—Over-estimating assets.*

A land co., having incurred a bad debt, wrote it off by over-estimating the value of their property. In a subsequent year they proposed to pay a dividend, although if the assets, which had depreciated, had been properly valued, no profit had been made:—

*Held*, that there was no ground for the interference of the Court. *BOLTON v. NATAL LAND AND COLONIZATION CO.*

Romer J. [1892] 2 Ch. 124

Referred to by Stirling J. *Wilmer v. McNamara & Co.*, [1895] 2 Ch. 245, 254.

155. — *Preference shares—Cumulative dividend—Payment out of net profits of each year.*

The memorandum of association of a co. contained this clause: "The capital of the co. is 150,000*l.* divided into 10,000 ordinary shares of 10*l.* each, and 5000 preference shares of 10*l.* each. The holders of preference shares shall be entitled out of the net profits of each year to a preference dividend at the rate of 10*l.* per cent. per annum on the amount for the time being paid or deemed to be paid up thereon. After payment of such

**COMPANY (Dividends)—continued.**

preferential dividend the holders of ordinary shares shall be entitled to a like dividend at the rate of 10*l.* per cent. per annum on the amount paid on such ordinary shares. Subject as aforesaid, the preference and ordinary shares, shall rank equally for dividend":—

*Held* (reversing the decision of Chitty J.), that the preference shareholders were not entitled to a cumulative dividend of 10*l.* per cent. so as to have the deficiency in one year paid out of the profits of a subsequent year before paying anything to the ordinary shareholders.

*Henry v. Great Northern Ry. Co.*, 1 De G. & J. 606, and *Webb v. Earle*, L. R. 20 Eq. 556, distinguished. *STAPLES v. EASTMAN PHOTOGRAPHIC MATERIALS CO.* — C. A. [1896] 2 Ch. 303

— *Shares issued as dividend—Apportionment.* See **SETTLED LAND—Apportionment.** 4.

**False Statements.**

*Penalty for false statement.* See *Companies Act*, 1900 (63 & 64 Vict. c. 48), s. 28. For notes thereon see [1900] W. N. 202.

— *Prospectus.*

See **Cases under COMPANY—Prospectus**

**Formation.**

156. — *Effect of—Will*—"Cease to carry on the business."

On the construction of a will, *held* that where beneficiaries turned a business into a limited co. they "ceased to carry on the business." *In re SAX.* BARNED v. SAX

North J. [1893] W. N. 104

— *Shares payable by instalments—Calls.*

See **COMPANY—WINDING-UP—Liquidator.** 112.

**Guarantee.**

*Companies limited by guarantee, Provisions as to.* See *Companies Act*, 1900 (63 & 64 Vict. c. 48), s. 27. For notes thereon see [1900] W. N. 201.

— *Company limited by guarantee—Contributories.*

See **COMPANY—WINDING-UP—Contributory.** 36.

157. — *Shares—Capital—Companies Act*, 1862 (25 & 26 Vict. c. 89), ss. 7, 14.

It is not ultra vires for a co. limited by guarantee to divide the "undertaking" into "shares or interests," and to provide for the increase from time to time in the number of members, and for the transmission of shares in a manner analogous to that in a co. having a share capital. *MALLESON v. GENERAL MINERAL PATENTS SYNDICATE, LD.*

North J. [1894] 3 Ch. 538

**Income Tax.**

See **REVENUE—Income Tax.** 83—90.

**Incorporation.**

*Conclusiveness of certificate of incorporation.* See *Companies Act*, 1900 (63 & 64 Vict. c. 48), s. 1. For notes thereon see [1900] W. N. 189.

**COMPANY—continued.****Meetings.**

See also Cases under COMPANY—WIND-  
ING-UP—Meetings.

**STATUTORY MEETING.]** *First statutory meeting of company—Extraordinary general meeting. See Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 12, 13. For notes thereon see [1900] W. N. 197 et seq.*

—Adjournment of a meeting—Power of chairman to refuse.

See NATAL. 4.

—Advertisement—Notice of meeting of debenture-holders.

See COMPANY—Debentures. 67.

**158. — Chairman—Powers.**

The function of the chairman is to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it. He has no power to adjourn or dissolve a meeting before it has finished the business for which it is convened, and if he does so the meeting is competent to resolve to appoint another chairman and go on with the business. *NATIONAL DWELLINGS SOCIETY v. SYKES*

*Chitty J. [1894] 3 Ch. 159*

**159. — Closure—Sale of assets—Amalgamation—Distribution of consideration—Meeting of shareholders.**

The objects of the A. Co. as stated by art. 3 of its memorandum were (inter alia) (a) to raise capital and invest it in such bonds, stocks, and securities as therein mentioned; (i) to sell any part of the assets and to accept the consideration in cash, shares, or other securities, and to divide any assets of the co. in specie among its shareholders; (o) to amalgamate with any persons, cos., or firms carrying on business of a like nature. The D. Co. carried on a similar business. The A. Co. agreed with the D. Co. to sell to the D. Co. all its assets (except 3325 2l. shares in the D. Co. which the A. Co. held) for 60,991l., to be satisfied as to 59,736l. by allotment of 29,868 fully paid-up shares of 2l. each in the D. Co., and the balance of 1255l. in cash or fully paid-up shares at the option of the A. Co. It was provided by the agreement that the shares so allotted and the shares in the D. Co. already held by the A. Co. were to be divided among the shareholders of the A. Co. in manner therein mentioned. It was doubtful whether the mode of division was not illegal as interfering with the rights of the shareholders under the memorandum and articles:—

*Held*, that the proposed sale being a sale of the assets of the A. Co. with a substantial exception was within (i), and that the transaction was also warranted by (o) as being an amalgamation.

*Held*, also, that the proposed division of shares, being a matter with which the D. Co. had nothing to do, did not, even if illegal, affect the validity of the agreement for sale, and that an interlocutory injunction to prevent the A. Co. from carrying the agreement into effect had been properly refused on an undertaking by the A. Co. not to divide the shares till after the trial otherwise than in accordance with the rights of

**COMPANY (Meetings)—continued.**

the shareholders under the memorandum and articles.

At a meeting of shareholders it is not competent to the majority to come determined to vote in a particular way on any question, and to refuse to hear any arguments to the contrary; but when the views of the minority have been heard, it is competent to the chairman with the sanction of a vote of the meeting to declare the discussion closed and to put the question to the vote.

At a meeting held to confirm a resolution passed by the requisite majority at a former meeting so as to make it a special resolution, it is irregular to propose an amendment to that resolution.

Decision of Stirling J. affirmed. *WALL v. LONDON AND NORTHERN ASSETS CORPORATION*  
**C. A. [1898] 2 Ch. 469**

*And see No. 168, below.*

— of Debenture-holders.

See COMPANY—Debentures. 66—68.

**160. — Notice—Irregularity—Shareholder—General meeting—Special resolutions—Directors' interest—Non-disclosure—Conditional notice.**

The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting; and pecuniary interest of a director in the matter of a special resolution to be proposed at the meeting is a material fact for this purpose.

*Kaye v. Croydon Tramways Co.*, [1898] 1 Ch 358, followed.

A notice of two meetings to be held in immediate succession to consider seriatim two alternative resolutions, one at each meeting, is not rendered an invalid notice of the second meeting by an express provision that it will only be held in the event of the first resolution not being passed at the first meeting.

*Alexander v. Simpson*, (1889) 43 Ch. D. 139, distinguished. *TIENSEN v. HENDERSON*

**Kekewich J. [1899] W. N. 45; [1899] 1 Ch. 861**

Referred to. *In re Violet Consolidated Gold Mining Co.*, [1899] W. N. 66.

**161. — Notice of meeting—Conditional notice—Validity—Form of notice—Practice—Special resolutions.**

The articles of association provided that thirty days' notice should be given to the members before every general meeting; to save time and expense, the notice of both meetings was contained in one document: this notice was dated Feb. 19, 1900, and, so far as material, was as follows: "Notice is hereby given that an extraordinary general meeting of the co. will be held at the offices of the co. on March 23, when the subjoined resolution will be proposed."

"Notice is hereby also given that an extraordinary general meeting of the co. will be held at the offices of the co. on April 7, when a report will be presented of the proceedings at the extraordinary general meeting of the co. to be held on March 23, and the subjoined resolution will, if passed by the requisite majority at that

**COMPANY (Meetings)—continued.**

meeting, be submitted for confirmation as a special resolution."

"Should the said resolution not be passed by the requisite majority at the meeting to be held on March 23, due notice will be given to the shareholders that the meeting on April 7, of which notice is now given, will not be held."

Then followed the resolution for reduction of capital of the above-named co. The meetings were held on the days named, and the resolution was passed and confirmed.

*Held*, that the notice convening the second general meeting was good, the meeting valid, and that the special resolution in this case had been duly passed and confirmed. *In re ESPUELA LAND AND CATTLE CO.* **Byrne J. [1900] W. N. 139**

**162. — Notice of meeting of directors—Notice of business to be transacted—Authority to use name of company.**

Directors of a co., being the select managing body, can at any meeting of the board deal with all affairs of the co. then requiring attention, whether ordinary or not, and previous notice of the special business is not a necessary condition of the proceedings being valid.

S., T., and W. were the directors of a newly-formed co., no shares in which had been allotted, two directors being a quorum. T. and W., without notice to S., held a meeting on Feb. 14, at which they appointed X. a director, appointed solicitors and bankers, and accepted an offer for the use of offices. On the 22nd, S., who had heard of these resolutions, obtained a memorandum, signed by five of the seven signatories to the memorandum of association, authorizing him to use the name of the co. in an action to prevent the directors from carrying out the resolutions of the 14th, and on the same day he issued a writ against T. and W., in which he and the co. were co-pts. On the same day, before the writ had been served, S. received a notice that a board meeting would be held on the 24th, not stating the nature of the business to be done, and a letter from W. stating that the business done on the 14th would be brought up again. On the 24th, S. did not attend, and T. and W. appointed X. and Y. directors, and allotted to each of themselves the number of shares which was the qualification of a director, and affirmed the resolutions of the 14th. The writ was then amended by adding X. and Y. as defts., and asking a declaration that the resolutions of the 24th were void, and an injunction to restrain the defts. from acting upon them, and to restrain X. and Y. from acting as directors. The co., pursuant to a resolution passed on the 24th, moved, by the solicitors appointed by the above resolutions, to have the name of the co. struck out as used without authority:—

*Held*, reversing the decision of North J., that the resolutions of Feb. 24 were valid, and X. and Y. duly elected directors:—

*Held*, further, that S. had used the name of the co. without authority; that, as the resolutions of Feb. 24 were valid, the motion to strike the name out was authorized; and that it must be struck out with costs to be paid by S. **LA COMPAGNIE DE MAXVILLE v. WHITLEY C. A. [1896] 1 Ch. 788**

**COMPANY (Meetings)—continued.**

— Proxies—Scheme of arrangement.

*See COMPANY—WINDING-UP—Scheme of Arrangement.* 222—225.

**163. — Proxies—Mode of counting poll—Companies Act, 1862, s. 51, Table A—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 51, 129, Sched. I., Table A, arts. 42, 43, 48, 51.**

At a meeting of shareholders of a co. the articles of which allow voting by proxy, although no poll is demanded the chairman, in ascertaining the number of votes given, must count the vote of each person who has appointed a proxy, not according to the number of shares held by him, but as one vote. *In re BIDWELL BROS.*

**V. Williams J. [1893] 1 Ch. 603**

*Overruled by C. A. Ernest v. Loma Gold Mines, Ltd., [1897] 1 Ch. 1.*

**164. — Proxies—Blanks in proxies—Meeting of shareholders—Special resolution—Show of hands—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80.**

At a meeting of the shareholders of a co. the articles of which allow voting by proxy, the chairman, in ascertaining the number of votes given on a show of hands, must count the vote of each person who holds proxies as a single vote, and not count a vote for each of the members whose proxies he holds.

*In re Bidwell Brothers, [1893] 1 Ch. 603, overruled.*

A notice convening an extraordinary general meeting to confirm a special resolution was accompanied by a circular from the secretary and directors with a proxy attached, asking for the return of the proxy in support of the resolution; by a printer's error the date of the meeting was left blank in the proxy. Several of the members executed and returned their proxies (which were duly stamped) without filling up the blanks, which were filled up by the secretary before the proxies were lodged with the company:—

*Held*, affirming the decision of Chitty J., [1896] 2 Ch. 572, that these proxies were valid within the provisions of the Stamp Act, 1891, s. 80. **ERNEST v. LOMA GOLD MINES, LTD.**

**C. A. [1897] 1 Ch. 1**

Considered by Cozens-Hardy J. *In re Hadleigh Castle Gold Mines, Ltd., [1900] 2 Ch. 419, 423.*

**165. — Quorum—Different classes of shareholders—Separate general meetings of each class—Articles of association.**

The articles of a limited co. whose capital was divided into different classes of shares provided (art. 13) that any agreement modifying the rights attached to each class must be confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, and "all the provisions hereinafter contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding or representing three-fourths of the nominal amount of the issued shares of the class." The subsequent provisions as to general meetings provided (*inter alia*) (art. 66) that the quorum

**COMPANY (Meetings)—continued.**

thereat should be members personally present, not being less than three in number, holding or representing one-tenth of the issued capital of the co.; and (art. 68) that if at an adjourned meeting a quorum was not present those members who were present should be a quorum. These articles were said to be in the common form:—

*Held* (affirming the decision of Kekewich J.), that although the provisions as to general meetings were to apply, *mutatis mutandis*, to class meetings, they must be so applied subject to the provision above quoted, which was inserted in art. 13 for the purpose of protecting the rights of the privileged class of shareholders; and accordingly at all class meetings, whether adjourned or not, the quorum must be three-fourths of the members of the class required by art. 13. *HEMANS v. HOTCHKISS ORDANANCE CO.*

**Q. A. [1898] W. N. 169 (8); [1899] 1 Ch. 115**  
— **Quorum—Directors.**

*See* **COMPANY—Directors.** 136, 137.

**166. — Resolution—Evidence—Declaration of chairman — Shareholders' meeting — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.**

Apart from fraud, the declaration of the chairman of a meeting that a special resolution has been passed is conclusive.

At a meeting of a co. duly convened to pass an extraordinary resolution to wind up voluntarily, the chairman declared the resolution carried on a show of hands; a poll was not demanded by five members. On a petition by a holder of paid-up shares to wind the co. up compulsorily, the Court refused to entertain the question whether the resolution was carried by the requisite majority.

*Young v. South African and Australian Exploration and Development Syndicate*, [1896] W. N. 60 (1); [1896] 2 Ch. 268, not followed. *In re HADLEIGH CASTLE GOLD MINES, LD.*

**Cozens-Hardy J. [1900] W. N. 148; [1900] 2 Ch. 419**

**167. — Sanctioning scheme under Act of 1870 — Meetings of shareholders—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2.**

The Court may sanction a scheme under the Act of 1870 without calling any meeting of the shareholders of the co.—at any rate if they are really not interested in the liquidation, and accordingly are not receiving anything. Where all the shares had been issued and were fully paid up, and after payment of debts and costs there would be no surplus available for distribution amongst the shareholders, the Court, without calling a meeting of the shareholders, sanctioned a scheme under which a new co. was to be formed to which the assets of the old co. were to be transferred, creditors on the old co. in respect of loans, and such trade and other creditors as should be willing to accept the same taking fully paid shares in the new co. in satisfaction of their debts, and the new co. paying to the liquidator a sum sufficient to pay creditors who should not accept shares a dividend of 6s. in the pound on their debts, and also to pay the expenses of the winding-up, including the scheme—charges, liens, and securities being left unaffected by the

**COMPANY (Meetings)—continued.**

scheme. *In re BROWNFIELDS GUILD POTTERY SOCIETY* **Wright J. [1898] W. N. 80 (4)**

— **Voting—Alteration of rights.**

*See* **COMPANY—Reduction of Capital.** 230.

**168. — Voting—Evidence—Articles of association.**

An article provided that votes tendered at a meeting and not disallowed at the meeting or an adjournment thereof should be valid for all purposes:—

*Held*, that in the absence of fraud or malafides a resolution for voluntary winding-up could not be impeached upon the ground that votes had been improperly received. *WALL v. LONDON AND NORTHERN ASSETS CORPORATION*

**North J. [1899] W. N. 10 (4); [1899] 1 Ch. 550**

*And see* No. 159, above.

**169. — Voting—Show of hands—Declaration by chairman—"Conclusive evidence"—Shareholder—Action disputing declaration—Notice of special general meeting—"General nature" of business—Sufficiency of notice—"Member"—"Member entitled to vote"—Meeting, general—Special resolution—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51, Table A, arts. 35, 37, 42.**

The declaration of the chairman at a special general meeting of shareholders under s. 51 of the Companies Act, 1862, that the special resolution has, on a show of hands, been carried, is not "conclusive evidence" of the fact so as to preclude a shareholder from disputing the validity of the resolution by legal proceedings on the ground, for instance, that it has not been carried by the statutory majority.

Although a notice under s. 51 of the Companies Act, 1862, of a special general meeting of a co. regulated by Table A sufficiently complies with art. 35 if it states the "general nature" of the business, it is nevertheless desirable, where the business is of great importance, such as the proposed substitution of new articles of association for Table A, to supplement the notice with an explanatory circular.

*Quære*, whether, in the case of a co. regulated by Table A to the Companies Act, 1862, any distinction is to be drawn between "members" who may constitute a quorum under art. 37, and "members entitled to vote" under s. 51 of the Act. *YOUNG v. SOUTH AFRICAN AND AUSTRALIAN EXPLORATION AND DEVELOPMENT SYNDICATE*

**[1896] 2 Ch. 268**

Referred to by *Cozens-Hardy J. In re Hadleigh Castle Gold Mines, Ltd.*, [1900] 2 Ch. 419 422.

— **Winding-up of company.**

*See* **COMPANY—WINDING-UP—Meetings.**

**Memorandum and Articles.**

**(Memorandum, Deed of Settlement, and Articles of Association.)**

**170. — Advertisement of order sanctioning an alteration of the memorandum of association of a company—Practice—Companies Memorandum of Association Act, 1890 (53 & 54 Vict. c. 62).**

Where an order was made, on a petition under

**COMPANY (Memorandum and Articles)—*contd.***

the Companies (Memorandum of Association) Act, 1890, sanctioning an alteration of the memorandum of association of a co., but not directing any change in the name of the co., the Court directed that the order should be advertised in the same way as the petition was advertised. *In re COPPER MINES TINPLATE CO.*

**Kekewich J. [1897] W. N. 20 (4)**

**171. — Alteration of memorandum of association—Advertisement of order confirming alteration—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), ss. 1, 2, 3.**

The Companies (Memorandum of Association) Act, 1890, contains no express direction, similar to the direction in s. 15 of the Companies Act, 1867, with regard to orders for the reduction of capital, that an order confirming an alteration of the memorandum of association shall be advertised; and although the Court has jurisdiction under s. 3 to direct such order to be advertised in a special case as a general rule, the Court will not require that course to be adopted. *In re LANCASTER BANKING CO., LD.*

**Stirling J. [1897] W. N. 3 (1)**

**172. — Boiler insurance—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 5, clause (d).**

In exercising the powers given by the Companies (Memorandum of Association) Act, 1890, s. 1, sub-s. 5 (d), the Court should regard as convenient and advantageous those things which experience and the opinions of traders reasonably shew to be of that character.

A co. sought to make extensive alterations in their memorandum, enabling them to combine other businesses of an independent though not of an unconnected character. The Court required, amongst other amendments, (1) an alteration in the name of the co.; (2) an undertaking that the extended powers should not be exercised until either the present policy-holders had assented or their policies had expired; (3) omission or modification of provisions in the altered memorandum which transgressed the reasonable limits of combination. *In re NATIONAL BOILER INSURANCE CO.*

**Kekewich J. [1892] 1 Ch. 306**

**173. — Change of objects—Alteration of memorandum of association—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.**

Petition for confirmation of an alteration in the memorandum of association of the above co. The objects of the co. in the original memorandum were to hold and work one steamship, and it was expressly provided that the co. should not have more than one steamship at the same time. The objects as intended to be altered would comprise the holding any number of steamships at the same time. No shareholder objected, and the only creditor assented.

Cozens-Hardy J. considered that such a sweeping change as was contemplated would be more properly carried out by a reconstruction, and he did not think that if any shareholder had opposed he would have confirmed the proposed alteration. But looking to the fact that no

**COMPANY (Memorandum and Articles)—*contd.***

shareholder opposed, and the expense that would be incurred in reconstruction, he did not think he ought to refuse to confirm the proposed alteration. *In re BERNICIA STEAMSHIP, LD.*

**Cozens-Hardy J. [1900] W. N. 24**

**174. — Confirmation by Court—Addition of words—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 5.**

Where a co. petitioned under s. 1 of the Act of 1890 for confirmation of special resolutions adding to the purposes of the co. "and to carry on general stores and to contract for the execution of work, and the rendering of services of all kinds":—

*Held*, that the words "to contract, &c.," were too wide; but under the power in s. 1 (5) to confirm an alteration in part, the alteration would be confirmed with the addition, "incidental thereto." *In re SPIERS & POND, LD.*

**North J. [1895] W. N. 135 (2)**

**175. — Deed of settlement previously altered by private Acts—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), ss. 1, 3.**

Petition by co. to alter its deed of settlement so as to enable it to issue debentures. The deed of settlement had already been altered by private Acts:—

*Held*, (1) that, notwithstanding the private Acts, there was jurisdiction to sanction an alteration of the deed of settlement; and (2) that the proposed alteration was one which came within sub-s. 5, s. 1, of the Companies (Memorandum of Association) Act, 1890. *In re REVERSIONARY INTEREST SOCIETY (No. 1)*

**North J. [1892] 1 Ch. 615**

**176. — Electrical purposes limited to telephones—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.**

In this case the co. were allowed to alter their memorandum so as to supply electricity, &c. for other than telephonic purposes, on condition of making a suitable change of name. *In re ORIENTAL TELEPHONE CO.*

**Romer J. [1891] W. N. 153**

**177. — Enlargements of objects of company—Confirmation—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 3, sub-s. 5.**

Petition under the Companies (Memorandum of Association) Act, 1870, for the confirmation of enlargements of the objects of the above company. The definition of the objects in the original memorandum of association (dated 1864) was contained in one paragraph. The definition of the objects in the memorandum proposed to be substituted extended over twenty-one paragraphs.

The Court was satisfied on the evidence that the extension of objects desired was required, under the changed circumstances, in the interests of the co.; but in its opinion a large part of the proposed new definition was covered by the language of the original memorandum. It was not within the scope of the Act of 1870 simply to rewrite in modern form the definition of the objects. The proposed alterations so far as they related to new objects were sanctioned. *In re CONSETT IRON CO.*

**Cozens-Hardy J. [1900] W. N. 274**



**COMPANY (Memorandum and Articles)—contd.**

178. — *Evidence—Reduction of capital—Alteration of memorandum—Companies Acts, 1867 (30 & 31 Vict. c. 131; 40 & 41 Vict. c. 26)—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62).*

In case of a petition for alteration of the memorandum, a copy of the memorandum and articles, and the original minute-book of the proceedings of general meetings, should be made exhibits to the affidavit in support. *In re OMNIUM INVESTMENT Co. V. Williams J. [1895] 2 Ch. 127*

179. — *Extension of objects—Powers of Court—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.*

The Court sanctioned resolutions extending the objects defined in the memorandum of association of a co., adding words to the language of the resolutions so as to limit the extended objects.

*In re Spiers & Pond, Ltd., [1895] W. N. 135, approved.*

*In re National Boiler Insurance Co., [1892] 1 Ch. 306, distinguished. In re FLEETWOOD ESTATE Co. North J. [1897] W. N. 20 (3)*

180. — “Government” securities—Objects—“Main purpose”—Dissentient minority—Duty of the Court—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 2, 4, 5 (a), (b).

(A) First application by a co. formed to invest in “Government” securities only for leave to alter memorandum so as to give power to invest in securities generally, refused (1) because the alteration was not an “improved means” to obtain the “main purpose” of the co.; (2) because a minority of the debenture-holders objected. The Companies (Memorandum of Association) Act, 1890, considered, and principles stated on which the Court should proceed in entertaining applications under it. *In re GOVERNMENTS STOCK INVESTMENT Co., Ltd. (No. 1)*

*Chitty J. [1891] 1 Ch. 649*

NOTE.—This case was explained in *In re Foreign and Colonial Government Trust Co., Stirling J. [1891] 2 Ch. 395, below.*

(B) *Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 3, 5 (d).*

A co. formed for the purposes of investing moneys in Foreign, Colonial, or British Government or municipal securities was allowed to alter its business so as to be able to invest its funds in the securities of any co. or corporation incorporated under Foreign, Colonial, or British law. The Court imposed a condition that the co. should alter its name so as not to mislead creditors into the belief that it only invested in Government securities. *In re FOREIGN AND COLONIAL GOVERNMENT TRUST Co. Stirling J. [1891] 2 Ch. 395*

Followed by *Kekewich J. In re Alliance Marine Assurance Co., [1892] 1 Ch. 300.*

(c) Second application for leave to alter memorandum so as to enable the co. (1) to invest in securities of any co. and not only in Government stock; (2) to create a security in favour of debenture stock-holders. A larger majority of debenture-holders consenting, the Court agreed

**COMPANY (Memorandum and Articles)—contd.**

to the suggested alteration on condition that the co. gave the debenture-holders further security by way of floating charge on the assets, and changed their name. *In re GOVERNMENT STOCKS INVESTMENT Co. (No. 2)*

*Chitty J. [1892] 1 Ch. 597*

181. — *Jurisdiction—Alteration of memorandum of association—Sanction of Court—Meaning of “Court”—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1, 2, 32, 33.*

The jurisdiction to confirm alterations in memorandums of association is vested—

(A) in the judge to whom winding-up jurisdiction is assigned by the Order of March 26, 1892. *In re MINING SHARES INVESTMENT Co.*

*V. Williams J. [1893] 2 Ch. 660*

(B) And also in a judge of the Ch. Div. *In re ISLINGTON AND GENERAL ELECTRIC SUPPLY*

*Chitty J. [1892] W. N. 81*

182. — *Jurisdiction—Company under Joint Stock Companies Act, 1856—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.*

In the case of a co. registered under the Joint Stock Companies Acts and not under the Companies Acts—

(A) *Romer J.* ordered a petition to stand over, with liberty to amend, so as to enable the co. to register under the Companies Act, 1862. *In re GENERAL CREDIT Co. [1891] W. N. 153*

(B) *Kekewich J.* sanctioned an alteration in the memorandum on the ground that registration under the Joint Stock Companies Acts is, by virtue of s. 176 of the Companies Act, 1862, equivalent for this purpose to registration under the Companies Acts, 1862 to 1890. *In re NITROPHOSPHATE AND ODAMS CHEMICAL MANURE Co.*

*Kekewich J. [1893] W. N. 141*

183. — *Jurisdiction—Alteration of memorandum—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 176—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 1; s. 3, sub-s. 2.*

Although the Act 53 & 54 Vict. c. 62 only extends in terms to cos. “registered under the Companies Acts, 1862 to 1886,” yet, inasmuch as it and those Acts are to be “construed as one Act” and by s. 176 of the Act of 1862 that Act applies to cos. formed and registered under any of the Joint Stock Companies Acts as if they had been formed and registered under the Act of 1862, the Court has jurisdiction to confirm resolutions for the alteration or definition of the objects of a co. formed before and registered under the Joint Stock Companies Act, 1856 (19 & 20 Vict. c. 47).

The decisions of *Kekewich J.* in *In re Nitrophosphate and Odams Chemical Manure Co., [1893] W. N. 141*, and *In re Hong Kong and China Gas Co., [1898] W. N. 158 (3)*, preferred to that of *Romer J.* in *In re General Credit Co., [1891] W. N. 153*, in which case s. 176 of the Act of 1862 was apparently not cited. *In re COPIAPO MINING Co.*

*Wright J. [1899] W. N. 25 (1)*

**COMPANY (Memorandum and Articles)—contd.**

**184. — Jurisdiction of Court—Alteration of memorandum of association—Company under Joint Stock Companies Act, 1856 (19 & 20 Vict. c. 47).**

On a petition under the Companies (Memorandum) Act, 1890 (53 & 54 Vict. c. 62), for the alteration of the memorandum of association of a co. registered under the Joint Stock Companies Act, 1856, the question arose whether the Court had jurisdiction to make the order. In support of the jurisdiction reference was made to *In re Nitro-phosphate and Odams Chemical Manure Co.*, [1893] W. N. 141, where Kekewich J. held that in such a case the Court had jurisdiction, on the ground that registration under the Act of 1856 is, by virtue of s. 176 of the Companies Act, 1862, equivalent for this purpose to registration under the Companies Acts, 1862 to 1890. It was, however, mentioned that in a previous case of *In re General Credit Co.*, [1891] W. N. 153, a contrary view had been intimated by Romer J. It was stated that it did not appear that the decision of Romer J. had been called to the attention of Kekewich J. in 1893, nor that the attention of Romer J., in 1891, had been called to s. 176 of the Act of 1862. Under these circumstances, Kekewich J. now adhered to his former decision, and held that the Court had jurisdiction to make the order. *In re HONG KONG AND CHINA GAS CO.*

Kekewich J. [1898] W. N. 158 (3)

**185. — Jurisdiction to confirm resolution—Alteration of memorandum—Absence of capital—Winding-up of company—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 1—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-s. 1, 2, 3.**

The High Court has jurisdiction to wind up a registered unlimited co. which has no shares and no capital, and therefore has jurisdiction to sanction an alteration of its memorandum of association. *In re NORTH OF ENGLAND IRON STEAMSHIP INSURANCE ASSOCIATION*

Cozens-Hardy J. [1900] W. N. 30; [1900] 1 Ch. 481

**186. — Marine insurance—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.**

Where a marine insurance co. proposed to alter their memorandum so as to extend their business to certain other classes of insurance connected with ships and maritime matters, an alteration in the name of the co. was required. *In re ALLIANCE MARINE INSURANCE CO.*

Kekewich J. [1892] 1 Ch. 300

**187. — Operations limited to India—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.**

On confirming an alteration in the memorandum of association of a co., the effect of which was to enlarge the area of a co.'s operations, the Court imposed the condition that the name of the co., which indicated that its operations were limited to one country, must be altered so as no longer to contain such a suggestion. *In re INDIAN MECHANICAL GOLD EXTRACTING CO.*

Romer J. [1891] 3 Ch. 538

**188. — Powers of the company—Alteration of articles—Companies Act, 1862 (25 & 26 Vict.**

**COMPANY (Memorandum and Articles)—contd.**

c. 89), ss. 16, 50—Companies Act, 1879 (42 & 43 Vict. c. 76), s. 5.

A co. cannot contract itself out of the power to alter its articles. M. took shares in the N. Co. on the faith of a prospectus, which stated 4l. per share "is to be reserved capital, which under the Act of 1879 it is not competent to the directors to call up." Art. 12 of the co.'s articles of association provided that the 4l. a share should only be called up in case of winding-up. By special resolution the co. substituted for art. 12 articles declaring that 2l. was to be called up in a certain manner, and the other 2l. only with the sanction of a general meeting:—

Held, that the co. had validly altered the articles. *MALLESON v. NATIONAL INSURANCE AND GUARANTEE CORPORATION*

North J. [1894] 1 Ch. 200

Referred to by C. A. *Peveril Gold Mines, Ltd.*, [1898] 1 Ch. 122, 130.

*Alteration (with Sanction of Court) of Memorandum or Deed of Settlement under ss. 1 and 2 of the Companies (Memorandum) Act, 1890.*

**189. — Preference shares—Increase of capital.**

A limited co., having no authority under its memorandum or articles of association to create any preference between different classes of shares, may by special resolution alter its articles so as to authorize the directors to issue preference shares by way of increase of capital.

*Hutton v. Scarborough Cliff Hotel Co.*, (1865) 2 Dr. & Sm. 521, overruled.

Decision of Kekewich J., [1896] W. N. 87 (8), reversed. *ANDREWS v. GAS METER CO.*

C. A. [1897] 1 Ch. 361

Referred to by C. A. *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 636, 672.

— Reconstruction of company—Alteration of memorandum and articles of association. See Cases under COMPANY—Reconstruction.

**190. — Registration of order—Difficulty in registration owing to the Vacation—Penalty—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), ss. 1, 2.**

The co. were unable owing to the Vacation to obtain an office copy of the order sanctioning the alteration within the fifteen days prescribed by the Act of 1890 for delivery to the Registrar of Joint Stock Companies. The registrar refused to register:—

Held, that the registrar should register, although the Court could not compel him to do so: otherwise the co. would be always "in default," and for ever liable to a daily penalty of 10l. *In re CRICIETH PIER AND HARBOUR CO.*

North J. [1891] W. N. 15

**191. — Registration of order—Enlarging time for—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 2, sub-s. 1; s. 3 sub-s. 2 General Order, Nov., 1862, rule 73.**

A resolution altering the memorandum had been passed and entered, but not in time for the co. to deliver a copy to the registrar as required by s. 2 of the Act of 1890. The Court refused to post-date the order, but enlarged the time for

**COMPANY (Memorandum and Articles)—contd.**  
delivering the copy, under the Companies Acts Rules of Nov., 1862, r. 73. *In re REVERSIONARY INTEREST SOCIETY* (No. 2)

North J. [1892] W. N. 60

192. — *Signature to memorandum of association—Subscription by infants—Certificate of incorporation—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 6, 18.

The certificate of incorporation is not conclusive to prevent the objection that the memorandum was not signed by seven persons. *In re LAXON & Co.* (No. 2)

V. Williams J. [1892] 3 Ch. 555

— Surplus assets—Distribution of.

See Cases under COMPANY—WINDING-UP—Assets.

193. — *Time—Extension of—Alteration of memorandum of association—Confirmation by Court—Registration of order—Companies (Memorandum of Association) Act, 1890* (53 & 54 Vict. c. 62), s. 2, sub-ss. 1, 2—*General Order, November, 1862, r. 73.*

On March 18 an order was made under s. 1 of the above Act, confirming an alteration of the memorandum of association of the above co. in accordance with a special resolution passed by the shareholders. The order was not passed and entered until after the expiration of the fifteen days from its date limited by s. 2 of the Act for its registration:—

*Held*, under these circumstances, that the time for registration be extended.

*In re Reversionary Interest Society*, [1892] W. N. 60 (which case had since been followed by *Romer J.*) followed. *In re BRIN'S OXYGEN Co.* — — — North J. [1899] W. N. 44

194. — *Validity of deed of settlement—Supplementary deed—Lien of company on shares—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 183, 191, 196, 209.

A supplementary deed of settlement, irregularly executed, was registered in 1861. The co. was afterwards registered under the Act of 1862 as a limited co. In 1888 the plt. purchased shares in the co. Under the powers of the supplementary deed the co. refused to register the plt. as a shareholder on the ground that his vendor was indebted to them and they had a lien on the shares. The plt. then sought to set aside the deed as irregular:—

*Held*, that, though the deed was once voidable, it was then too late to set it aside. *BOALER v. BRODHURST* (No. 1) *Stirling J.* [1892] W. N. 49

### Misrepresentation.

195. — *Action of deceit—Absence of fraud.*

*Per C. A.*: The effect of *Derry v. Peel*, (1889) 14 App. Cas. 337, is to settle once for all that an action against directors for negligent as distinguished from fraudulent misrepresentation in a prospectus cannot be maintained. Consequently, in this case, there being no fraud proved, but only gross carelessness, the appeal must be allowed, but without costs. In the absence of evidence that the engineers' reports were incorrect, *quære* whether the falsity of the statement

**COMPANY (Misrepresentation)—continued.**

that they were prepared for the directors was material.

Decision of *Romer J.*, [1890] W. N. 210, dismissed. *ANGUS v. CLIFFORD*

C. A. [1891] 2 Ch. 449

196. — *Application for shares—Company not registered.*

K. applied for shares before the co. was registered. An application was made by him to have his name removed from the register on the ground of misrepresentation in a preliminary prospectus issued by the promoters:—

*Held*, that the statement in the prospectus, though issued by the promoters before the formation of the co., was the basis of the contract between the co. and K., and was material to the contract.

Decision of *Kekewich J.*, [1892] W. N. 29, reversed. *In re METROPOLITAN COAL CONSUMERS' ASSOCIATION. KARBERG'S CASE*

C. A. [1892] 3 Ch. 1

Distinguished by *Romer J. Lynde v. Anglo-Italian Hemp Spinning Co.*, [1896] 1 Ch. 178, 183.

Followed by *C. A. Tamplin's Case*, [1892] W. N. 146, *below*.

197. — *Application for shares—Draft prospectus.*

The promoters of a co. before the formation of the co. issued a draft prospectus containing misrepresentations. The formal prospectus issued after the formation was substantially the same and equally misleading:—

*Held*, by C. A., that T., who had applied for shares on the faith of the draft prospectus only, was entitled to a rescission of his agreement to take shares, as the draft prospectus was not issued by the co.:

*Held*, also, by *Romer J.*, C., who had applied for shares on the faith of both prospectuses, was entitled to rescission.

(A) *In re CANADIAN (DIRECT) MEAT CO. CHAMPION'S CASE* *Romer J.* [1892] W. N. 94

(B) *In re CANADIAN (DIRECT) MEAT CO. TAMPLIN'S CASE* C. A. [1892] W. N. 146 *revers.*  
*Romer J.* [1892] W. N. 94

— Prospectus.

See Cases under COMPANY—Prospectus.

198. — *Transferee of shares—Rescission—Agent.*

A transferee of shares cannot obtain rescission of a contract to take shares and rectification of the register on account of misrepresentations in the prospectus, even though the transfer be but nominal (the transferor being his agent and the calls paid to him), unless the co. was informed that the appellant was only an agent. *HYSLOP v. MOREL, BROTHERS, COBBET & SON, LD.*  
*Chitty J.* [1891] W. N. 19

### Mortgages and Charges.

*Registration of mortgages and charges—Rectification of register—Entry of satisfaction—Penalties. See Companies Act, 1900* (63 & 64 Vict. c. 48), ss. 14–18. *For notes thereon see* [1900] W. N. 198 *et seq.*

**COMPANY (Mortgages and Charges)—continued.**

— Debentures.

See COMPANY—Debentures.

— Distress—Interest—Liquidators.

See COMPANY—WINDING-UP—Mortgages. 130.

199. — *Mortgage debentures—Deposit of securities in land registry—Debenture action—Mortgage Debenture Acts, 1865, 1870 (28 & 29 Vict. c. 78, ss. 10, 46; 33 & 34 Vict. c. 20, ss. 8, 9).*

The Court has no power to order securities, which have been deposited with the Registrar of the Land Registry Office by a land securities co., to be delivered up to a receiver appointed in a debenture-holder's action, or to a liquidator in the winding-up of the co., unless such securities have been redeemed or sold.

The decision of Wright J. reversed. *SOMERSET v. LAND SECURITIES CO. C.A. [1894] 3 Ch. 464*

**Offences.**

— Default in forwarding list of members to registrar—"Criminal cause or matter"—Appeal.

See APPEAL. 7.

— Proceedings against delinquent officers of co.

See Cases under COMPANY—WINDING-UP

— Proceedings against Delinquent Officers.

**Practice.**

*Service of summons on Companies facilitated. See Explanatory Memorandum to County Court Rules (May), 1899, and rules 1, 2, and 7. W. N. 1899 (May 20), p. 171. See Current Index, 1899, p. cxi.*

200. — *Evidence—Unstamped documents—Undertaking by solicitor to a company to stamp—Application to be relieved from undertaking.*

During the hearing of a motion to rectify the register of shareholders of a co. some documents were tendered in evidence on behalf of the co. The objection was taken that they were unstamped, and counsel for the co., on instructions, gave the usual undertaking that the documents should be stamped. They were then put in and read.

On motion ex parte, on behalf of the solicitor of the co., that the solicitor might be relieved from his undertaking as he never intended to give his own personal undertaking to stamp the documents, but intended the undertaking to apply to his client, the co. The stamps amounted to 500l.

Cozens-Hardy J.: An undertaking is never accepted from a co. But I cannot entertain this matter on an ex parte application. The objection was taken by the Court for the benefit of the Inland Revenue, and they ought to be heard upon it. The co. are also interested parties. Notice of this application ought to be served on both of these parties.

If an affidavit is produced by the proper officer of the co. stating in effect that the co. do not intend to appeal and do not desire the documents to be entered in the order as part of the evidence read on the motion, that will satisfy me so far as the co. is concerned. But notice must

**COMPANY (Practice)—continued.**

be given to the Inland Revenue, and when the parties are ready it can be mentioned again. *In re COOLGARDIE GOLDFIELDS, LD.*

Cozens-Hardy J. [1899] W. N. 128

201. — *Notice to company—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 23, 39.*

In the absence of evidence to the contrary, the Court will infer that a clerk in the registered office of a co. is, during business hours, and whilst the secretary is absent, so far in charge of the office that he has authority to receive a notice, so as to make it a communication to the co. *In re BREWERY ASSETS CORPORATION. TRUMAN'S CASE*

Wright J. [1894] 3 Ch. 272

— Winding-up of company.

See Cases under COMPANY—WINDING-UP

— Practice.

**Promoter.**

— Contract by promoter—Omission from prospectus—Concealment—"Fraudulent" prospectus.

See COMPANY—Prospectus. 209.

202. — *Fiduciary relation—Ratification—Ultra vires—43 Geo. 3, c. 151, s. 15.*

Promoters agreed with contractor for execution of works at a fixed price, expenses incurred in obtaining special Act to be borne by contractors. The next day, by a second agreement, two of the promoters agreed to relieve the contractors of the expenses of the Act for 17,000l. Ratification of the second agreement by the co. was alleged:—

*Held*, that the company were entitled to the benefits of this second agreement:

*Held*, also, that this was an agreement which the co. could not ratify. *MANN v. EDINBURGH NORTHERN TRAMWAYS CO.*

H. L. (Sc.) [1893] A. C. 69

203. — *Secret profit of promoter—Misfeasance—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8; Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.*

This was an appeal from the decision of Wright J., noted [1897] W. N. 174 (5); and it was held by the Court that although H. was one of the promoters of the co. within s. 10 of the Companies (Winding-up) Act, 1890, and as such could not retain against the co. any secret profit made by him at the expense of the co., the 250l. in question did not come within that rule. Upon the facts H. had not misapplied, or retained, or become liable or accountable for any money of the co., or been guilty of any misfeasance or breach of trust in relation to the co. to the extent of the money sought to be recovered by him, and the co. had no right to require H. to pay over to it the 250l. paid to him, nor any cause of action against him in respect of it. The appeal was accordingly allowed. *In re SALE HOTEL AND BOTANICAL GARDENS CO.*

C. A. [1898] W. N. 40 (2)

204. — *Secret profit by promoters—Duty of disclosure.*

A syndicate was formed to raise a fund, buy a property, and resell it to a co. or some other purchaser; the fund to be in the names of trustees

**COMPANY (Promoter)—continued.**

who were to promote and register a co. to which they should resell the property, and who if a co. should be formed were to be directors. The trustees bought up some of the charges upon the property for sums below the amount which the charges afterwards realized, and thereby made a profit for the syndicate of 20,000*l.* They bought the property for 140,000*l.*, formed a limited co. and resold the property for 180,000*l.* to the co., of which they were the first and at that time the only directors. They issued a prospectus inviting applications for shares and disclosing the two prices of 140,000*l.* and 180,000*l.* but not the profit of 20,000*l.* That some profit had been made by buying up the charges might have been discovered by a close examination of a contract which was referred to in the co.'s memorandum and articles of association and in the prospectus. Shares were issued and the co. afterwards went into liquidation:—

*Held*, that the trustees ought to have disclosed to the co. the profit of 20,000*l.*; that they had not disclosed it; that the fact that the co. could not now rescind was no bar to relief; and that the appellant as one of the trustees was bound to replace that portion of the 20,000*l.* which had been paid to the trustees as their share.

Decision of C. A., *In re Olympia, Ltd.*, [1898] 2 Ch. 153, affirmed. *GLUCKSTEIN v. BARNES*

**H. L. (E.)** [1900] **W. N. 92**; [1900] **A. C. 240**

**Prospectus.**

**FILING OF PROSPECTUS.]** *Specific requirements as to particulars of prospectus—Restriction on alteration of terms mentioned in prospectus. See Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 9–11. For notes thereon see [1900] W. N. 194 et seq.*

— Directors.

*See COMPANY—Directors.*

— Directors—Shares—Contributory.

*See COMPANY—WINDING-UP—Contributory. 34.*

**205. — Directors—Statement that directors will take shares not taken by vendor — Estoppel — Implied agreement.**

The prospectus of a co., approved and issued by the directors after the registration of the co., and inviting subscriptions for the preference shares and debenture capital, stated that the directors would take all the ordinary shares which were not taken by the vendors to the co. The vendors (who were two of the directors) and others took all the ordinary shares except 367. No ordinary shares were ever allotted to any of the other directors, and none of those directors was ever placed on the register of shareholders in respect of any ordinary shares. In the winding-up of the co., there being no evidence, except the prospectus, of any agreement between the co. and one of the non-vendor directors that he should take any ordinary shares:—

*Held*, that the prospectus was not satisfactory proof of an agreement binding the co. to allot and the director to accept such shares, and that he was not liable in respect of any ordinary shares, either on the ground of agreement or on the ground of estoppel.

**COMPANY (Prospectus)—continued.**

Decision of Wright J., [1898] **W. N. 71 (1)**, reversed. *In re MOORE BROTHERS & CO.*

**C. A. [1899] W. N. 18 (6); [1899] 1 Ch. 627**

**206. — Fraudulent misrepresentation—Shareholder—Repudiation by plea—Forfeiture of shares—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.**

Where a person is induced by a fraudulent prospectus to apply for an allotment of shares, and his shares are afterwards forfeited by his failure to pay calls, he ceases to be a shareholder and becomes a mere debtor to the co., and if he has done nothing to affirm the contract he may repudiate it and defend an action for calls on the ground of the fraud.

A prospectus which merely specifies the dates of and names of the parties to contracts in compliance with the Companies Act, 1867, s. 38, does not give notice of circumstances contained in the contracts which are material to be known and the omission of which causes the prospectus to give a false impression.

The decision of the Irish C. A., ([1895] 2 I. R. 207) affirmed. *AARON'S REEFS, LD. v. TWISS*

**H. L. (1.)** [1896] **A. C. 273**

Referred to by C. A. *In re Olympia, Ltd.*, [1898] 2 Ch. 153, 178; **H. L. (E.)** [1900] **A. C. 240.**

**207. — Fraudulent prospectus—Practice—Shareholder—Action against company and directors — Causes of action—Misjoinder—Separate relief against separate defendants—“Actio personalis moritur cum personâ”—Deceased director—Legal personal representatives, liability of—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), s. 3.**

Where an action is brought by a shareholder against the co. and its directors for relief in respect of an improperly issued prospectus, the fact that the relief claimed against the several defts. may differ in detail is no ground for objection that the action is bad as joining separate causes of action against separate defts., for in substance there is only one cause of action, namely, the improper issue of the prospectus. Neither is it improper to join in such an action the legal personal representatives of a deceased director alleged to have been a party to the issue of the prospectus.

Whether the maxim “*Actio personalis moritur cum personâ*” applies in the case of a deceased director who may have incurred liability under s. 3 of the Directors' Liability Act, 1890, *quære*.

*Gower v. Couldridge*, [1898] 1 Q. B. 348, and *Thompson v. London County Council*, [1899] 1 Q. B. 840, explained. *FRANKENBURG v. GREAT HORSELESS CARRIAGE CO.*

**C. A. [1900] W. N. 2; [1900] 1 Q. B. 504**

**208. — Intention to induce purchase of shares—Liability to purchaser—Publication of false statements confirming those of prospectus—Purchase of shares by person who had received prospectus—Liability of person causing publication.**

Where the object with which the prospectus of a co. is issued is not merely to induce application for an allotment of shares, but also to induce persons to whom it is sent to purchase shares in the market, its function is not exhausted

**COMPANY (Prospectus)—continued.**

when the co. has gone to allotment, and the person issuing the prospectus is responsible for the consequences of a false representation contained in it, and known to him at the time to be false, to any person to whom the prospectus has been sent who is induced by the false representation to purchase shares, and thereby sustains a loss:—

*Peck v. Gurney*, (1873) L. R. 6 H. L. 377, distinguished.

Where a person who has issued the prospectus of a co., containing a false representation, known to him at the time to be false, subsequently causes to be published a false representation to the same effect as that of the prospectus, with the direct intent of inducing persons to purchase shares in the co., he is responsible for the consequences of so doing to any one who, having received a prospectus, purchases shares on the faith of the false representation so published, and thereby sustains a loss. *ANDREWS v. MCKFORD*

C. A. [1896] 1 Q. B. 372

209. — *Misrepresentation—Misleading statement—“Untrue statement”—Director—Promoter—Shareholder—Contract—Rescission—Damages—Compensation—Directors’ Liability Act, 1890* (53 & 54 Vict. c. 64), s. 3, sub-s. 1.—*Contract by company, directors, or promoters—Omission from prospectus—Concealment—“Fraudulent” prospectus—Waiver clause in prospectus or application form—Catching conditions—Notice—Companies Act, 1867* (30 & 31 Vict. c. 131), s. 38.

A misleading statement in a prospectus is an “untrue statement” within s. 3, sub-s. 1, of the Directors’ Liability Act, 1890. The liability imposed by that section for any untrue statement in a prospectus is absolute and is in no way affected by the consideration whether the statement was untrue in the sense in which it was used by those who issued the prospectus. Persons issuing a prospectus containing an untrue statement can only escape liability under the statute by proving that they had “reasonable ground” for believing the statement to be true in fact.

Sect. 38 of the Companies Act, 1867—which enacts that every prospectus shall specify the dates and names of the parties to any contract entered into by the co. or the promoters, directors or trustees thereof, and that any prospectus not specifying the same shall be deemed “fraudulent” on the part of the promoters, directors and officers of the co. knowingly issuing the same—cannot be evaded by a general waiver clause in the prospectus, or in the form of application for shares, to the effect that a subscriber for shares shall waive all claim for non-compliance with the section. A waiver clause, to be effectual as against a subscriber, must fairly disclose the circumstances which confer the rights which by the clause he agrees not to enforce.

The Court will refuse to give effect, as against a shareholder, to a “tricky” waiver clause in a prospectus or application form, upon the same principles as are applicable to catching conditions of sale as between vendor and purchaser or to general words in releases.

Judgment of Kekewich J., [1899] W. N. 26(2),

**COMPANY (Prospectus)—continued.**

affirmed. *GREENWOOD v. LEATHER SHOD WHEEL Co.* — C. A. [1900] W. N. 1; [1900] 1 Ch. 421

Sect. 38 of 30 & 31 Vict. c. 131 is repealed by *Companies Act, 1900* (63 & 64 Vict. c. 48), Sched. and see s. 10 (5) of the later Act.

**210. — Misrepresentation by agent—Shares—Rescission of contract.**

A person suing a company to obtain rescission of an agreement to take shares in it must, generally speaking, bring his case under one of the following heads: (1) Where the misrepresentations are made by the directors or other the general agents of the co. entitled to act and acting on its behalf. (2) Where the misrepresentations are made by a special agent of the co. while acting within the scope of his authority, including the case of a person constituted agent by subsequent adoption of his acts. (3) Where the co. can be held affected, before the contract is complete, with the knowledge that it is induced by misrepresentation. (4) Where the contract is made on the basis of certain representations, whether the particulars thereof were known to the co. or not, and it turns out that some of them were material and untrue. *LYNDE v. ANGLO-ITALIAN HEMP SPINNING Co.* — *Romer J.* [1895] W. N. 149 (1); [1896] 1 Ch. 178

**211. — Shares—Contract—Rescission—Non-disclosure of material facts.**

Where a person applies for shares in a co. on the faith of statements contained in a prospectus issued by the co. and inviting applications for shares, and the prospectus contains no actual misrepresentation, and the shares are allotted, the applicant is not entitled to rescission of his contract merely because the prospectus did not state all the material facts pro and con, which might induce a person to apply for shares, or prevent him from applying. The applicant is only entitled to rescission on the ground of non-disclosure of facts where the facts not disclosed are such that the omission to disclose them renders the prospectus as it stands misleading. *McKEOWN v. BOUDARD PEVERIL GEAR Co.*

*Romer J.* [1896] W. N. 36 (3)

— Untrue statements in—Director’s liability—Action, Accrues of cause of.  
See LIMITATIONS, STATUTE OF. 11.

**Rates and Taxes.**

212. — *Construction of Colonial Act—Law of Cape of Good Hope, No. 3 of 1864, Sched. XVII., s. 2, Head B.*

On the construction of a Colonial Revenue Act, the J. C. held, that a co. authorized by its memorandum of association “to carry on business in any part of the world” was not liable under a section applying to companies whose regulating instrument described them as carrying on dealings in the Colony. *MARSHALL v. ORPEN*

P. C. [1895] A. C. 606

— Income tax.

See REVENUE—Income Tax. 83—90.

**Reconstruction.**

213. — *Contributory—Application for shares—*

**COMPANY (Reconstruction)—continued.***Withdrawal before allotment—Winding-up of company.*

By a reconstruction or amalgamation agreement the C. Co. and its liquidators agreed to transfer its goodwill and assets to the M. Co., part of the consideration for the transfer being that every member of the C. Co. should, in respect of each share therein held by him, "be entitled as of right to claim an allotment" of either a debenture bond, or two ordinary shares of 5*l.* each in the M. Co. credited with 1*l.* per share paid up, and the agreement provided that the M. Co. should, within a month from the date of the agreement, allot and issue the bonds and shares claimed, subject to this, that it should not be bound to allot shares to any one to whom under its articles it could have objected as a transferee of shares. The agreement further provided that a claim must be made within twenty-one days from the date thereof by sending in to the M. Co. or to the liquidators of the C. Co. a signed claim in writing, and that the liquidators should within seven days from that date give notice in writing to each member of the C. Co. stating the number of bonds or shares which he was entitled to claim as of right, with proper forms of claim. The liquidators duly gave notice to W., a shareholder in the C. Co., who within the twenty-one days signed a document, addressed to the directors of the M. Co., claiming an allotment of ten ordinary shares with 1*l.* per share paid up, and agreeing to accept the same and to pay the further moneys payable thereon when called upon. Before any acceptance of the offer or the allotment of the shares subsequently made, W. wrote to the M. Co. withdrawing his application. In the subsequent winding-up of the M. Co. the liquidator of that co. sought to have W. retained on the list of contributories in respect of the ten shares:—

*Held*, that the document sent to W. was an application which could be withdrawn by him before acceptance, and not an acceptance of a prior offer by the M. Co., and that he was not liable as a contributory. *In re METROPOLITAN FIRE INSURANCE CO.* WALLACE'S CASE

Cozens-Hardy J. [1900] W. N. 171;  
[1900] 2 Ch. 671

**214. — Dissentient members — Rights of — Articles of association—Ultra vires—Voluntary winding-up—Sale of assets to new company — Shares in purchasing company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

A co. cannot, by its articles of association, deprive members of the protection afforded to them by s. 161 of the Companies Act, 1862, in the event of their dissenting from a sale of the co.'s assets in a winding-up in consideration of shares in a new co.

A co. by its articles gave the liquidator, in the case of a voluntary winding-up, power (irrespective of the powers conferred upon him by the Companies Acts, and as an additional power), with the authority of a special resolution, to sell the undertaking and assets of the co. for shares fully or partly paid up, or the obligations of or other interest in any other co., and to make an agreement for the allotment to the shareholders direct of the proceeds of sale in proportion to

**COMPANY (Reconstruction)—continued.**

their respective interests in the co. The articles further provided that upon any sale thereunder, or under s. 161 of the Companies Act, 1862, no member should be entitled to require the liquidator either to abstain from carrying into effect the sale or the resolution authorizing the same, or to purchase his interest in the co.; but that the liquidator might, upon the request in writing of a dissentient member, sell his shares or interest and pay over to him the net proceeds thereof:—

*Held*, that the articles were ultra vires and inoperative so far as they purported to deprive dissentient shareholders of the rights conferred upon them by s. 161. *PAYNE v. CORK CO.*

Stirling J. [1900] 1 Ch. 308

**215. — Division of assets — Shareholders — Winding-up of company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

This co. was in course of voluntary liquidation for the purposes of reconstruction under s. 161 of the Companies Act, 1862. The assets had been transferred to a new co. in consideration of shares in the new co. equal in number to the shares in the old co. In pursuance of the reconstruction agreement the voluntary liquidator offered a number of shares in the new co. to each shareholder in the old co. equal to the number of shares held by him in the old co.; and sold the shares in the new co. that were not accepted by shareholders in the old co. There was no provision in the agreement for the distribution of the proceeds of sale:—

*Held*, that the purchase-money was divisible among the shareholders who had not taken up shares in the new co. in proportion to their respective holdings. *In re LAKE VIEW EXTENDED GOLD MINE (WESTERN AUSTRALIA), LD.*

Cozens-Hardy J. [1900] W. N. 44

— Liquidation of company for purposes of reconstruction—Lease—Proviso for re-entry.  
*See LANDLORD AND TENANT—Lease. 56.*

**216. — Preferred and ordinary shareholders, rights of—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 133, 161.**

A co. with ordinary shareholders and shareholders preferred as to income only went into voluntary liquidation for the purpose of reconstruction. By a resolution under s. 161 of the Act of 1862, preference shares in the new co. were allotted to the old preference shareholders:—

*Held*, that the resolution was invalid, for upon a winding-up taking place, preference and ordinary shareholders stood on an equal footing, and it was not competent for a majority of shareholders, under s. 161, to give a benefit to one class of shareholders over the other. *SIMPSON v. PALACE THEATRE, LD.*

Kekewich J. [1893] W. N. 91

**217. — Reasonable notice—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

The S. Co. was being wound up voluntarily. T., a shareholder, had changed his address without notice to the co. In a scheme to reconstruct the co. shares in the new co. with a certain sum paid up were to be offered to the shareholders. The liquidator posted on April 17 notices to the effect that shareholders must exercise their option

**COMPANY (Reconstruction)—continued.**

by April 25; this was subsequently extended to April 28. The new co. was registered on April 28, but the agreement relating to the shares was not entered into till May 3. The agreement did not limit the time within which the old shareholders were to apply for shares. T. did not know of what was occurring till May 5. On May 7 he called at the co.'s office and applied for his shares, but was told he was too late:—

*Held*, that the liquidator had been too quick, that fresh notices should have been sent to the shareholders after May 3, and that T. was entitled to the shares, or, if that was impossible, to damages. *In re SOUTH AUSTRALIAN PETROLEUM FIELDS, LD.* **V. Williams J. [1894] W. N. 189**

**218. — Sale of assets to new company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

The memorandum may exclude the operation of s. 16 of the Act of 1862, in the event of a sale by the co. of its undertakings to another co., the whole or part of the consideration for such sale being shares in the purchasing co., although at the time of the execution of the contract for sale it is contemplated to wind up the selling co. voluntarily. *COTTON v. IMPERIAL AND FOREIGN AGENCY AND INVESTMENT CORPORATION*

**Chitty J. [1892] 3 Ch. 454**

Referred to by Stirling J. *Payne v. The Cork Co., Ltd.*, [1900] 1 Ch. 308, 314.

**219. — Scheme—Agreement—Transfer or sale of undertaking to new company—Shares in new company, application for—Time limit—Appropriation by new company of unclaimed shares—Shareholders of old company, rights of—Forfeiture of Shares—Ultra vires—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

Where, on the voluntary winding-up of a co., a reconstruction agreement is entered into, pursuant to a special resolution under s. 161 of the Companies Act, 1862, between that co. and its liquidator of the one part and the new co. of the other part, for carrying out a transfer or sale of the undertaking of the old co. to the new, and providing that every holder of shares in the old co. "shall be entitled as of right" to claim an allotment of an equivalent number of shares in the new co., further provisions fixing the time within which the application for shares must be sent in to the new co., and placing the shares not applied for within that time at the disposal of the new co., are not ultra vires; and therefore a member of the old co. who is not a dissentient member within the proviso in the section, and whose application is out of time either through negligence or accident, such as absence abroad or illness, cannot compel the new co. to allot him the shares.

But whether, on an application to sanction a proposed scheme of reconstruction containing a clause placing shares not applied for by members of the old co. within a stipulated time at the disposal of the new co., the Court will sanction such a clause without some modification for the protection of members of the old co., *quære*.

Observations of Lord Esher M.R. in *Nicholl v. Eberhardt Co.*, (1889) 61 L. T. 489; 1 Megone, 402, not followed.

Decision of Kekewich J., [1899] W. N. 97,

**COMPANY (Reconstruction)—continued.**

reversed. *BURDETT-COUTTS v. TRUE BLUE (HANNAN'S) GOLD MINE - C. A. [1899] W. N. 113; [1899] 2 Ch. 616*

Referred to by C. A. *In re Canning Jarrah Timber Co. (Western Australia), Ltd.*, [1900] 1 Ch. 708, 715.

**220. — Scheme of arrangement with creditors—Sanction of Court—Underwriting agreements—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104).**

A co. having passed special resolutions for a voluntary winding-up and the adoption of a scheme of arrangement with their debenture-holders, the scheme was assented to by the statutory majority of the debenture-holders, as provided by the Joint Stock Companies Arrangement Act, 1870.

The scheme provided (inter alia) that a new co. should be formed, and that the liquidator should enter into an agreement with that co. for the transfer to it of the undertaking and assets of the old co.; that the new co. should issue debenture stock to the debenture-holders of the old co. in satisfaction of their debentures; that every shareholder in the old co. should be entitled to claim a share in the new co. in respect of each share held by him in the old co.; that the new co. should not be bound to allot any share unless the member entitled thereto should, within three weeks from the sanction of the scheme by the Court, claim his allotment and make a specified payment on account of the liability thereon; and that as regarded unclaimed shares the liquidator should use his best endeavours to sell the same, and should divide the net proceeds of sale rateably among the non-claiming members of the old co. Subject to the provisions of the scheme, the new co. was to take over and discharge all the liabilities of the old co. and to indemnify the old co.

Among the special resolutions passed by the shareholders of the old co. was one which authorized the directors and the liquidator or either of them "to procure underwriting for all or any of the capital of the new co., on such terms and conditions as they or he may approve, and to pay for the same out of the assets of the co."

In pursuance of this resolution the liquidator entered into two agreements with persons who agreed to apply for and take up all the shares in the new co. which should not be taken up by the shareholders in the old co., in consideration of a commission of 8d. per share on all the shares of the new co., 250,000 in number.

No shareholder of the old co. had given a notice under s. 161 of the Companies Act, 1862, requiring the liquidator to purchase his shares.

Upon a petition under the Joint Stock Companies Arrangement Act, 1870, for the sanction of the Court to the scheme:—

*Held*, by Cozens-Hardy J., that the underwriting agreements were illegal, and that the Court ought not to sanction the scheme.

The C. A. sanctioned the scheme on the undertaking of the liquidator (1) to pay the unsecured creditors of the old co. in full out of the assets in his hands; (2) not to act upon the reso-



**COMPANY (Reconstruction)—continued.**

lution as to underwriting, and to procure the cancellation of the underwriting agreements, and (3) that three shareholders of the old co. who opposed the scheme should, if they elected within three days to dissent from the special resolutions passed by the co., be entitled to all the statutory rights of dissentient shareholders under ss. 161 and 162 of the Companies Act, 1862. *In re CANNING JARRAH TIMBER CO. (WESTERN AUSTRALIA)* C. A. [1900] W. N. 75; [1900] 1 Ch. 708

**221. — Shares partly paid up—Registration of contract—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.**

By an agreement of March, 1897, under which the deft. co. had been reconstructed, it was provided that, as part of the consideration for the transfer of the assets of the old co. to the deft. co., the liquidator of the old co. should be entitled to have allotted to him or his nominees 200,000 shares of 10s. each in the deft. co. with 7s. 6d. per share credited thereon as paid up, upon applying for the same within two months from the date of this agreement, and making a small further payment with such application. This agreement was filed with the Registrar of Joint Stock Companies; the plt. co. having applied for 6500 of these 200,000 shares under the option so conferred upon them, the question was raised whether the filing of the above agreement was a sufficient compliance with s. 25 of the Companies Act, 1867:—

*Held*, following *Elsner and McArthur's Case*, [1895] 2 Ch. 759, that the filing of the reconstruction agreement of March, 1897, was a sufficient compliance with s. 25 of the Companies Act, 1867.

*In re Coolgardie Consolidated Gold Mines, Ltd.*, (1898) 14 Times L. R. 277, and *In re Jackson & Co.*, [1899] 1 Ch. 348, distinguished. *TRANSVAAL EXPLORING CO. v. ALBION (TRANSVAAL) GOLD MINES, LD.* — *Byrne J.* [1899] W. N. 122; [1899] 2 Ch. 370

— Voluntary winding up of company.

*See* COMPANY — WINDING-UP — Voluntary.

**Reduction of Capital.**

**222. — Assets—Investment—Surrender of part to improve value of remainder—Companies Act, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26).**

A limited co., having power to invest its capital and acting within the scope of its business as described in its memorandum, is at liberty to surrender part of a particular investment with a view to improving the remainder; and such a surrender is not a "reduction of capital" requiring the sanction of the Court within the Acts of 1867 and 1877. *THOMSON v. TRUSTEES, EXECUTORS, AND SECURITIES INSURANCE CORPORATION* — *Kekewich J.* [1895] 2 Ch. 454

**223. — Available assets—Goodwill—Reserve—Unappropriated profits—Preference shares—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 11—Companies Act, 1877 (40 & 41 Vict. c. 26).**

The Court will not confirm a reduction of capital unless satisfied that it will not work unjustly or inequitably.

**COMPANY (Reduction of Capital)—continued.**

Share capital comprised ordinary shares and shares carrying a fixed cumulative preference dividend, with no preference as to capital and no voting power. The Court refused to confirm a reduction on the ground (*inter alia*) that the reduction would benefit the ordinary shareholders at the expense of the preference shareholders.

In ascertaining the available assets of a co. for the purpose of a reduction of capital, the amounts of reserve and unappropriated profit and the value of goodwill are to be taken into account.

On an opposed petition to confirm a reduction of capital the Court will not act on the balance of speculative expert evidence as to the value of mining property. *In re BARROW HEMATITE STEEL CO.* — *Cozens-Hardy J.* [1900] W. N. 235; [1900] 2 Ch. 846

**224. — Capital in excess of requirements of company—Form of minute to be registered. In re LAMSON STORE SERVICE CO.**

*Stirling J.* [1897] 1 Ch. 875, n.

**225. — Capital "in excess of the wants of the company" — Return to shareholders — Issue of debentures—Companies Acts, 1867 and 1877.**

The Court, upon the requirements of the Companies Act, 1867, ss. 13, 14 being satisfied, confirmed a scheme of reduction under which a portion of the capital of a company was to be returned to the shareholders, although a part of the portion so returned was to be immediately borrowed from them by the company on debentures. *In re NIXON'S NAVIGATION CO.*

*Stirling J.* [1897] 1 Ch. 872

**226. — Capital lost or unrepresented by available assets—Extinction of class of shares—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 9; Companies Acts Amendment, 1877 (40 & 41 Vict. c. 26), s. 3.**

Reduction of capital no longer represented by available assets can be effected by cancelling the whole of two out of three classes of shares.

Where there are different classes of shares in a co. a loss of capital should fall on that class which according to the constitution of the co. is the proper class to bear it. *In re FLOATING DOCK CO. OF ST. THOMAS, LD.*

*Chitty J.* [1895] 1 Ch. 691

Applied by *Stirling J.* *In re London and New York Investment Corporation*, [1895] 2 Ch. 860, 867.

**227. Company which has ceased to carry on business—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 11.**

The W. Co. had ceased to carry on business, and only continued for the purpose of selling one particular piece of land:—

*Held*, that a petition to reduce the capital could not be entertained, and the provisions of the Companies Act, 1867, ss. 9–11, were not applicable, as the sole object was to distribute the assets among the shareholders. *In re WALLASEY BRICK AND LAND CO.* — *Kekewich J.* [1894] W. N. 20

**228. — Confirmation by "Court"—Jurisdiction—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 12—Companies (Winding-up) Act, 1890**

**COMPANY (Reduction of Capital)—continued.**

(53 & 54 *Vict. c. 63*), ss. 1, 2, 32, sub-ss. 2, 33—*Order of March 26, 1892.*

(A) The Order of March 26, 1892, transferring certain company cases to V. Williams J. does not apply to petitions for reduction of capital. *In re ISLINGTON AND GENERAL ELECTRIC SUPPLY*

Chitty J. [1892] W. N. 81

Considered by V. Williams J. *In re Mining Shares Investment Co.*, [1893] 2 Ch. 660.

(B) The judge to whom winding-up jurisdiction is assigned by the Order of March 26, 1892, has jurisdiction to confirm a reduction of capital when the amount of such capital, paid up or credited as paid up, exceeds 10,000*l.* *In re OCEAN QUEEN STEAMSHIP CO.*

V. Williams J. [1893] 2 Ch. 666

229. — *Confirmation by Court—Power to dispense with settling list of creditors—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 13—General Order of March 21, 1868.*

On a petition for confirmation of special resolutions to reduce capital involving the diminution of liability on unpaid capital and the return of paid-up capital to the shareholders, the Court has no power to dispense with the settling of the list of creditors required by s. 13 of the Act of 1867, even though there may be evidence before the Court that the co. has no debts unsatisfied. *In re LAMSON STORE SERVICE CO. In re NATIONAL REVERSIONARY INVESTMENT CO.*

Stirling J. [1895] 2 Ch. 726

Reported on another point, Stirling J., [1897] 1 Ch. 875, n.

230. — *Different classes of shareholders — Alteration of voting rights.*

The Court has power in a proper case to confirm a resolution for reduction of capital notwithstanding that the voting powers may be thereby affected.

*Hutton v. Scarborough Cliff Hotel Co.*, (1865) 2 Dr. & Sm. 521, and *In re Continental Union Gas Co.*, (1891) 7 Times L. R. 476, observed upon.

*In re Pinkney & Sons Steamship Co.*, [1892] 3 Ch. 125, referred to. *In re COLMER (JAMES), LD.*

Romer J. [1897] 1 Ch. 524

See also *Andrews v. Gas Meter Co.*, C. A. [1897] 1 Ch. 361.

231. — *Dispensing with words "and reduced" — Companies Act, 1877 (40 & 41 Vict. c. 26), s. 4.*

On an order being made confirming the reduction of capital of a co. carrying on business abroad, by cancelling capital lost or unrepresented by available assets, the judge having winding-up jurisdiction dispensed altogether with the further use of the words "and reduced," remarking that he generally dispensed with the words in the case of companies carrying on business abroad. *In re SUMATRA TOBACCO PLANTATIONS CO.*

Wright J. [1898] W. N. 80 (3)

232. — *Evidence — Companies Acts, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26); 1890 (53 & 54 Vict. c. 62).*

On a petition for reduction of capital a copy of the memorandum and articles of association

**COMPANY (Reduction of Capital)—continued.**

and of the minute-book of the proceedings of general meetings should be made exhibits.

Where reduction is to be effected by cancelling paid-up capital which has not been paid up in cash, it must be proved that the shares were issued pursuant to a contract duly filed under s. 25 of the Companies Act, 1867. *In re OMNIUM INVESTMENT CO.*

V. Williams J. [1895] 2 Ch. 127

233. — *Form of order—Companies Acts, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26).*

Form of minute to be registered of an order for reduction of capital where shares are not equally paid up, some calls being in arrear. *In re INTERNATIONAL CONVERSION TRUST*

North J. [1892] W. N. 100

234. — *Founders' shares—Extinguishment—Confirmation by the Court—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 53; 1867 (30 & 31 Vict. c. 131), s. 11; 1877 (40 & 41 Vict. c. 26), ss. 3, 4.*

An investment co., whose capital was divided into founders', preference, and ordinary shares, had by depreciation in the value of its investments suffered a considerable loss of capital, and there appeared to be no reasonable prospect of anything ever coming to the holders of the founders' shares, either in respect of capital or dividend. By the constitution of the co. the founders' shares were, in the event of liquidation, to bear in the first instance losses of capital. The memorandum of association provided that preference shares might be issued on such terms as the co. should by special resolution determine. Shares preferred both as to capital and dividend were issued by the directors without any special resolution having been passed; but at meetings subsequently held and attended by all classes of shareholders resolutions were unanimously passed adopting the terms under which the preference shares were issued. The co. presented a petition for the confirmation by the Court of resolutions for reduction which involved the total extinction of the founders' shares and threw the remainder of the loss upon the ordinary shares:—

*Held*, (1) that the issue of the preference shares without the passing of a special resolution was capable of ratification by the co. and had been ratified; and (2) that the scheme of reduction was not unfair and ought to be sanctioned. *In re LONDON AND NEW YORK INVESTMENT CORPORATION*

Stirling J. [1895] 2 Ch. 860

235. — *Lost capital—Preliminary expenses—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 11; Companies Act Amendment Act, 1877 (40 & 41 Vict. c. 26), s. 3.*

Application to reduce capital by an amount representing (1) deficiency on insurance fund, (2) preliminary expenses, refused, because (1) that in estimating the deficiency the value of the goodwill had not been calculated; and (2) that the effect would be that preliminary expenses might be paid out of capital, and then written off by reducing the capital. Moreover, capital properly expended in preliminary expenses is not lost capital or unrepresented by available assets within s. 3 of the Companies Act, 1877. *In re ABSTAINERS AND GENERAL INSURANCE CO.*

North J. [1891] 2 Ch. 124

**COMPANY (Reduction of Capital)—continued.**

236. — *Part of capital only—Companies Acts, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26).*

The Court may sanction a resolution reducing the whole of its original capital shares apart from any reduction of the preference capital.

*Quære*, whether the Court will sanction a reduction of part only of one class of capital. *In re AGRICULTURAL HOTEL CO.*

Kekewich J. [1891] 1 Ch. 396

237. — *Partial reduction of same class of shares—Companies Acts, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26).*

The Court has power, under the Companies Acts, 1867 and 1877, to sanction a resolution by a limited co. for a partial reduction of one class of shares, e.g., original shares already issued and fully paid up, leaving the unissued shares unreduced. But if the articles give a voting power proportionate to the holding of original shares, the Court will require an alteration in them so as to make the voting power proportionate to the reduced capital. The Court will not at once dispense with the words "and reduced," that addition being requisite to give for such period as the Court thinks reasonable warning to the public of the financial position of the co.

(A) *In re PINKNEY & SONS STEAMSHIP CO.*

Kekewich J. [1892] 3 Ch. 125

(B) *In re NEWBERRY-VAUTIN (PATENTS) GOLD EXTRACTION CO.* Stirling J. [1892] 3 Ch. 127, n.

Followed by Kekewich J. in (A).

238. — *Petition to confirm—Reduction of capital.*

The co. was incorporated in 1887 with a capital of 40,000*l.*, divided into 40,000 shares of 1*l.* each. Of these shares 30,000 were issued to the vendors as fully paid up, and 10,000 were subscribed for and paid up in full.

In 1892 the capital of the co. was increased to 100,000*l.* by the issue of 60,000 shares of 1*l.* each, the whole of which was duly issued.

The share capital having been found to be largely in excess of the requirements of the co., in March, 1899, a special resolution was passed, which was afterwards duly confirmed, whereby it was resolved that the capital of the co. should be reduced to 70,000*l.* divided into 40,000 shares of 1*l.* each fully paid up, and 60,000 shares of 10*s.* each, on which varying amounts had been paid. The resolutions in favour of the reduction were passed unanimously, and there was no opposition to the petition.

Petition to confirm reduction of capital granted. *In re PHOEBE GOLD MINING CO.*

Byrne J. [1900] W. N. 182

239. — *Practice—Petition—Evidence.*

On a petition for reduction of capital an affidavit that the necessary resolutions have been duly passed and confirmed by the shareholders is not always sufficient, but a minute of the meetings duly signed is *prima facie* evidence that the meetings have been properly convened. *In re LEICESTER MORTGAGE CO.*

Stirling J. [1894] W. N. 108, 116

240. — *Practice—Title to petition, &c.—Com-*

**COMPANY (Reduction of Capital)—continued.**

*panies Act, 1867 (30 & 31 Vict. c. 131), s. 11—General Order, March 1868, r. 2.*

The name of the co. should, as a matter of convenience, be placed first in the title to the petition, advertisements, notices, &c. *In re WOOLLEY COAL CO.* Chitty J. [1891] W. N. 19

241. — *Practice—Title of petition—Jurisdiction—Companies Acts, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26)—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1—Order of March 26, 1892—Order of Nov. 7, 1893.*

*Semble*, it is unnecessary that a petition for the reduction of capital should, besides being intitled "In the matter of the A. Co., &c., and in the matter of the Companies Acts, 1867 and 1877," be also intitled "In the matter of the Companies (Winding-up) Act, 1890." A judge acting under the Order of Nov. 7, 1893, in the absence of the winding-up judge on circuit, has jurisdiction to hear such petitions. *In re ALUMINIUM CO.* — Wright J. [1894] W. N. 6

242. — *Preference shares—Payment off—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 4.*

In pursuance of the terms of the articles a sinking fund of 20 per cent. of the profits was set aside to pay off the preference shares. Application was then made to reduce the capital by the amount so paid:—

*Held*, that this was a contract binding on both the ordinary and preference shareholders, and that the reduction as proposed did not involve a "payment to any shareholder of any paid-up capital," and was therefore permissible. No inquiry as to creditors ordered. *In re DICMO PIER CO.* — Chitty J. [1891] 2 Ch. 354

243. — *Procedure.*

Where there is no power in the articles of a co. to reduce its capital, it may do so by special resolution to take such power, and at the second meeting confirming such special resolution, to pass special resolutions exercising the power. *In re JOHN CROSSLEY & SONS*

Chitty J. [1892] W. N. 55

244. — *Purchase by company of its own shares.*

A co. formed under statutory powers purchased under authority of a special Act partly paid-up shares in the name of trustees, who eventually transferred the shares into the name of the co. Subsequently the co. was compulsorily wound up, and the liquidator sought to make a call on shareholders to the extent of the amount unpaid on the purchased shares:—

*Held*, that the effect of the purchase and transfer was to extinguish the shares, and the co. on being wound up could not be placed on the list of contributories. *In re SOVEREIGN LIFE ASSURANCE CO.* — Chitty J.

affirmed by C. A. [1892] 3 Ch. 279

245. — *Purchase by company of its own shares—Sale of assets—Companies Act, 1867 (30 & 31 Vict. c. 131, s. 9—Companies Act Amendment Act, 1877 (40 & 41 Vict. c. 26), s. 3.*

A co. sold part of its assets of an onerous nature to some shareholders. Part of the consideration was that the purchasing shareholders should surrender their shares. The co. proposed

**COMPANY (Reduction of Capital)—continued.**

to reduce their capital to the extent of the surrendered shares:—

*Held*, (1) that this was not a purchase by the co. of their own shares; (2) that the sanction of the Court was not required except for the treatment of the shares when surrendered as permanently extinguished; (3) that the application was in effect merely to authorize the co. to reduce its nominal capital to the extent of shares which it could not want when the sale had been carried out, and should be granted. *In re DENVER HOTEL CO. C. A. revers. North J. [1893] 1 Ch. 495*

Commented on by H. L. (E.) *British and American Trustee and Finance Corporation v. Couper*, [1894] A. C. 399, 402.

**246. — Purchase by company of its own shares**—*Companies Acts*, 1867 (30 & 31 Vict. c. 131), ss. 9, 11; 1877 (40 & 41 Vict. c. 26), ss. 3, 4.

The B. Co had power under its articles to reduce capital by paying off capital. The shares were divided into ordinary shares, partly paid up, and founders' shares fully paid up. The co. carried on business in England and in the U. S. This was disadvantageous, and it was determined that the co. should make over the investments in the U. S. to the shareholders there, their shares being cancelled, and that the English shareholders should take the English assets and an agreed sum by way of adjustment. A special resolution was duly passed to carry out this agreement:—

*Held*, reversing C. A., that the reduction of capital was within the powers given by the Acts of 1867 and 1877, and that as the arrangement was fair and equitable it should be confirmed. *BRITISH AND AMERICAN TRUSTEE AND FINANCE CORPORATION v. COUPER*

H. L. (E.) [1894] A. C. 399

Applied by C. A. *In re London and New York Investment Corporation*, [1895] 2 Ch. 860.

**247. — Repayment to shareholders.**

In this case less than half the shares had been issued, and all issued had been fully paid up. The paid-up capital being in excess of the requirements of the co., the Court confirmed the reduction of all the shares from 5*l.* to 3*l.*; 2*l.* in cash to be returned in respect of each fully paid-up share; confirmation subject to production of an affidavit by the chairman of the co. or some responsible person that the position of the co. had not altered since the chief clerk's certificate. *In re SAFETY OIL CO. North J. [1892] W. N. 133*

**248. — Repayment to shareholders—Power to call up again—Practice—Affidavit of debts**—*Companies Acts*, 1867 (30 & 31 Vict. c. 131), ss. 11, 16, and 1877 (40 & 41 Vict. c. 26), s. 3.

A petition under the Companies Acts, 1867 and 1877, asked for the confirmation by the Court of the reduction of the capital of a limited co. in pursuance of a special resolution which provided for the repayment to the shareholders respectively of 20*l.* per share, upon the footing that the 20*l.*, or any part thereof, might be called up again. The master's certificate, dated May 23, found that there were no debts, claims, or liabilities affecting the co. on Feb. 5, and that no claim had been made in answer to advertisements

**COMPANY (Reduction of Capital)—continued.**

issued under an order of the Court, and that the time fixed for making claims had expired:—

*Held*, on the authority of *In re Fore Street Warehouse Co.*, [1888] W. N. 155, and other cases referred to in Palmer's Company Precedents, 7th ed., Part I., p. 974, that the Court had power to sanction the proposed reduction. But the Court required that an affidavit should be made (following the language of the certificate) proving that at the present date there were no debts, &c., affecting the co. *In re WATSON, WALKER & QUICKFALL, LD. North J. [1898] W. N. 69 (7)*

**249. — Reserve fund—Appropriation to pay for shares**—*Companies Acts*, 1867 (30 & 31 Vict. c. 131), ss. 9, 11, 13, 14, 25; 1877 (40 & 41 Vict. c. 26), ss. 3, 4.

In pursuance of a clause in the articles of association, the co. formed a reserve fund and spent it on improving their fleet. Subsequently resolutions were passed, purporting to divide the reserve fund among the shareholders by issuing to them unissued shares as fully paid, to the amount of the reserve fund. Application was now made for leave to reduce the capital:—

*Held*, that whether the transaction did or did not involve a "diminution of liability in respect of unpaid capital," the second issue of shares had not in fact been paid for, as the reserve had already been spent.

Application ordered to stand over until the creditors had been ascertained. *In re EASTERN AND AUSTRALIAN STEAMSHIP CO.*

North J. [1893] W. N. 31

— Special Resolution—Irregularity—Certificate of registration.

See COMPANY—Calls. 6.

**250. — Words "and reduced"**—*Companies Acts*, 1867 (30 & 31 Vict. c. 131); 1877 (40 & 41 Vict. c. 26).

On the hearing of a petition for reduction of capital the Court will not at once dispense with the addition of the words "and reduced." *In re PINKNEY & SONS STEAMSHIP CO.*

Kekewich J. [1892] 3 Ch. 125

**Register.**

**251. — Copies—Right of debenture-holder to take**—*Companies Act*, 1862 (25 & 26 Vict. c. 89), s. 43.

The right of a creditor or member of a co. to inspect the register of mortgages under s. 43 of the Companies Act, 1862, includes a right to take copies of the register. *NELSON v. ANGLO-AMERICAN LAND MORTGAGE AGENCY CO.*

Stirling J. [1897] 1 Ch. 130

**252. — Copies—Right to take—Inspection**—*Companies Act*, 1862 (25 & 26 Vict. c. 89), s. 32.

The right to inspect the register of members of a co., which is conferred by s. 32 of the Companies Act, 1862, carries with it the right to take extracts from or to make copies of the entries in the register.

The right (also given by the section) to require a copy of the register on payment is in addition to, and not in substitution for, the above implied right.

The "register" includes the entries of the

**COMPANY (Register)—continued.**

names of persons who have been, but have ceased to be, members of the co. by reason of the forfeiture of their shares or otherwise. *BOARD v. AFRICAN CONSOLIDATED LAND AND TRADING CO.*

North J. [1897] W. N. 174 (3); [1898] 1 Ch. 596

253. — *Inspection—Register of members—Company in voluntary liquidation—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 32.*

The provisions of s. 32 of the Companies Act, 1862, with regard to the inspection of registers of members do not apply to the case of a co. in liquidation. *In re KENT COALFIELDS SYNDICATE, LD.* — — — C. A. [1898] 1 Q. B. 754

254. — *Inspection of register—Register of Mortgages—Companies Act, 1862 (c. 89), ss. 43, 156.*

The word "books" in s. 156 of the Companies Act, 1862, includes the register of mortgages required to be kept by s. 43. When an order has been made for winding up a co. by or under the supervision of the Court, the power given by s. 43 to order inspection of the register by any creditor or member of the co. no longer exists, and the only right of inspection which a creditor contributory has is such as he obtains "in conformity with the order of the Court" under s. 156. *SOMERSET v. LAND SECURITIES CO.*

V. Williams J. [1897] W. N. 29 (6)

255. — *Rectification—Jurisdiction—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 35—Companies Act, 1898 (61 & 62 Vict. c. 26).*

On an application under s. 35 of the Act of 1862 being made to the winding-up judge for rectification of the register of a co. which was not being wound up,

Wright J. said that he had no special jurisdiction in such a case, and that in cases under s. 35 of the Act of 1862, or under the Act of 1898, he would only entertain applications where the co. was in winding-up. Where there was no winding-up, such applications when in the Ch. Div. ought to be made to one of the ordinary judges of that Div. *In re BRITISH COLUMBIAN EXPLOITATION AND GOLD ESTATES, LD.*

Wright J. [1899] W. N. 32 (1)

256. — *Rectification of register—Shareholder—Underwriting letter—Acceptance—Principal and agent—Authority to apply for shares—Estoppel.*

By an underwriting letter, addressed to the Mines Co., Stark offered to subscribe or find subscribers, on or before Sept. 21, for 10,000 shares, "or such less number as may be accepted by you," in the Consort Co., which the Mines Co. were promoting, "and, in the event of my failing to comply with the terms herein stated, I authorize you, as my agent on my behalf and in my name, to apply for the number of shares (full or reduced as the case may be), guaranteed by me as above." It was agreed that the letter was irrevocable, provided that 40,000 shares were underwritten or applied for prior to the public issue of the prospectus of the Consort Co., and allotment made on or before Sept. 30. No notice of the acceptance of this offer was sent to Stark, but a form of acceptance at the foot of it was signed by the secretary of the Mines Co. The Consort Co. having been registered, the Mines Co., without any previous notice to Stark, applied on his behalf for an allotment to him of shares in

**COMPANY (Register)—continued.**

the Consort Co., and 9000 shares were accordingly allotted to him and registered in his name. Upon a motion by Stark to rectify the register by omitting his name :—

*Held*, by the C. A., that the underwriting letter did not constitute a contract binding Stark to take shares until it had been accepted by the Mines Co. and notice of acceptance had been given to him; that the authority to the Mines Co. to apply for shares in his name did not arise until he had been informed by that co. of the number of shares for which they accepted his offer, and he had failed to apply himself for that number; that he was not estopped as against the Consort Co. from denying the authority of the Mines Co. to apply for shares in his name; and that he was entitled to have his name removed from the register of members of the Consort Co.

Decision of North J. as to estoppel reversed.

*Ex parte Harrison*, (1893) 69 L. L. (N.S.) 204, distinguished. *In re CONSORT DEEP LEVEL GOLD MINES, LD.* *Ex parte STARK*

C. A. [1897] 1 Ch. 575

— *Rectification—Winding-up—Debts and liabilities incurred before—Costs incurred after—Proof.*

See COMPANY — WINDING-UP — *Proof*. 204.

257. — *Restoration of name to register—Petition—Jurisdiction—Companies Act, 1880 (43 Vict. c. 19), s. 7, sub-s. 5.*

Sect. 7, sub-s. 5, of the Companies Act, 1880, provides that a co. desiring the restoration of its name to the Register of Joint Stock Companies, from which it has been struck off by the registrar, may apply to "the superior Court in which the co. is liable to be wound up." A petition for this purpose having been presented and set down before North J. :—

*Held*, that, although North J. is not the judge to whom the winding-up of cos. has been assigned, he had jurisdiction to make the order for restoration, which was accordingly made. *In re CITY LANDS INVESTMENT CORPORATION, LD.*

North J. [1897] W. N. 162 (2)

**Registration.**

258. — *Certificate of incorporation—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 6, 18.*

The certificate given by the registrar under s. 18 of the Companies Act, 1862, is not conclusive that all the requisitions of the Act as to incorporation have been complied with. Thus, if the certificate shew that seven persons signed the memorandum, whereas only six really signed, one subscriber signing twice in different names, the co. was not properly incorporated, and therefore the Court has no jurisdiction to make a winding-up order.

In this case the C. A. being satisfied that in fact seven persons signed, the winding-up order was made. *In re NATIONAL DEBENTURE AND ASSETS CORPORATION*

C. A. affirming *Kekewich J.* [1891] 2 Ch. 505

Distinguished by V. Williams J. *In re Lacon & Co. (No. 2)*, [1892] 3 Ch. 555.

See Companies Act, 1900 (63 & 64 Vict. c. 48), Schedule.

**COMPANY (Registration)—continued.**

— Contract—Reconstruction of company—Shares partly paid up.

See **COMPANY—Reconstruction**. 221.

**259.** — *Illegal association—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4—Partnership Act, 1868 (31 & 32 Vict. c. 116), s. 1.*

Though an association of more than twenty persons if unregistered is prohibited by s. 4 of the Act of 1862, a member thereof may be convicted of embezzlement of moneys belonging thereto. *REG. v. TANKARD*

**C. C. R. [1894] 1 Q. B. 548**

**260.** — *Infants, Signature of memorandum by—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 6, 18.*

Infants are “persons” within s. 6 of the Act of 1862, and can therefore be signatories to the memorandum of association. Subsequent avoidance of the infant’s contract does not invalidate the registration of the co. or any intermediate acts affecting the rights of third persons. *In re LAXON & Co. (No. 2)*

**V. Williams J. [1892] 3 Ch. 555**

**261.** — *New name—Irrregularity—Restoring old name—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 13.*

The Court authorized a co. to adopt a new name, and the Registrar of Joint Stock Companies registered it. Subsequently it was discovered that the resolutions for changing the name were irregular and void. On an application to restore the old name:—

*Held*, that all the Court could do was to discharge its own orders and leave the co. to apply to the Bd. of Trade to vacate the existing registration and restore the old name. *In re AUSTRALASIAN MINING Co.*

**Kekewich J. [1893] W. N. 74**

**262.** — *Private partnership—Companies Act, 1862 (25 & 26 Vict. c. 89), Part VII., s. 180.*

A partnership formed, not for carrying on a business, but simply for the purpose of being incorporated under the Companies Act, 1862, in order that it may be forthwith wound up, cannot be registered as a joint stock co. under Part VII. of that Act. Whether a partnership which is constituted solely by contract between the members is a co. “duly constituted by law” under s. 180 of the Companies Act, 1862, so as to be registered under Part VII., *quære*. *REG. v. REGISTRAR OF JOINT STOCK COMPANIES. Ex parte JOHNSTON*

— **C. A. revers. Div. Ct. and affirming the decision of the Registrar; [1891] 2 Q. B. 598**

— Unregistered company — Embezzlement of property.

See **CRIMINAL LAW—Embezzlement**. 13.

### **Scheme of Arrangement.**

— Joint Stock Companies Arrangement Act, 1870, inapplicable to the Colonies.

See **VICTORIA**. 2.

— Reconstruction.

See Cases under **COMPANY—Reconstruction**.

**COMPANY—continued.**

### **Shares.**

See Cases under **COMPANY and COMPANY—WINDING-UP**.

**263.** — *Definition—Shares in company—Debenture stock.*

A bequest of all a testator’s “shares” in a public co. will not pass debenture stock. *In re BODMAN. BODMAN v. BODMAN*

**Chitty J. [1891] 3 Ch. 135**

Distinguishing by North J. *In re Weeding, [1896] 2 Ch. 364, 367.*

**264.** — *Acceptance—Withdrawal of offer before—Acceptance by post—Company—Shares—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 35, 39, 62.*

J. applied for shares in a co., but before the letter of allotment was posted—except by being delivered to a postman in a London street to be posted by him—a letter withdrawing his application was delivered at the co.’s registered office and opened by the secretary. By the rules of the Post Office town postmen are forbidden to take charge of letters for the post:—

*Held*, that the withdrawal was received by the co. before the allotment letter was posted, and that there was no contract by J. to take the shares. *In re LONDON AND NORTHERN BANK. Ex parte JONES Cozens-Hardy J. [1899] W. N. 230; [1900] 1 Ch. 220*

**ALLOTMENT, RESTRICTION AS TO.** See *Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4–8. For notes thereon see [1900] W. N. 191.*

— Deceased shareholder — Allotment of new shares—Option.

See No. 270, below.

**265.** — *Allotment—Double allotment—Memorandum of association—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 23; 1867 (30 & 31 Vict. c. 131), s. 25; 1898 (61 & 62 Vict. c. 26), s. 1.*

The certificate of incorporation of a co. operates as the issue of shares subscribed for on the memorandum of association.

Circumstances under which (distinguishing *In re Jarvis & Co., [1899] 1 Ch. 193*) shares subscribed for on the memorandum of association of a co. were held to be the same as shares subsequently applied for by and allotted to a vendor as fully paid up.

Under those circumstances the Court ordered the co. to file a contract to take the shares as fully paid up, which should operate as a sufficient contract to satisfy s. 25 of the Companies Act, 1867, and as if it had been filed on or before the issue of the shares. *In re WHITEHEAD & BROTHERS, LD. Cozens-Hardy J. [1900] W. N. 90; [1900] 1 Ch. 804*

*Sect. 25 of 30 & 31 Vict. c. 131 is repealed by Companies Act, 1900 (63 & 64 Vict. c. 48), s. 33 and Sched.*

Not followed by Kekewich J. *In re Dawnay, Ltd., [1900] W. N. 152. See No. 272, below.*

— Allotment—Improper allotment of shares to director at undervalue—Director—Misfeasance—Measure of damage.  
See **COMPANY—Directors**. 116.

**COMPANY (Shares)—continued.**

— Allotment—Withdrawal before—Contributory.  
See **COMPANY—Reconstruction**. 213.

266. — *Application for shares—Withdrawal—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 23, 39.*

Withdrawal of an application for shares may be made orally before notice of allotment is given. *In re BREWERY ASSETS CORPORATION. TRUMAN'S CASE* Wright J. [1894] 3 Ch. 272

267. — *Certificate—Estoppel—Damages—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 31.*

A share certificate issued by a co. under their corporate seal, stating that the person named in it is the owner of a specified number of shares in the co., estops the co. from afterwards denying his title to the shares; and, if the co. are unable to give him the shares, they are liable in damages by reason of their refusal to register the purchaser from him.

*Seem*, per C. A., that in such a case an action against the co. for damages can be maintained either by the person named in the certificate or by a purchaser from him. *TOMKINSON v. BALKIS CONSOLIDATED CO.*

C. A. [1891] 2 Q. B. 614; *affirm.* by H. L. (E.) [1893] A. C. 396

Referred to by Farwell J. *Dizon v. Kennaway & Co.*, [1900] 1 Ch. 833, 839.

268. — *Certificate—Share certificate—Duty of director—Putting to rest—Estoppel—Conduct—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 31.*

The duty of examining and checking share certificates issued by a co. may as a rule be properly left to the secretary. In that case a director is not estopped from denying the accuracy of a certificate passed at a board meeting at which he is present.

Whether the same rule applies to a director who signs the certificate, *quære*.

A certificate, though inaccurate, estops the co. from denying its accuracy against any person relying on it, including (unless it is based on a forged transfer lodged by him) the person to whom it is issued, and that person, if put to rest by the certificate, so as to lose his remedy against his broker or transferor, is entitled to damages against the co.

The onus of proving that there is no present effective remedy against the broker or transferor lies on the person put to rest by the certificate; the onus of proving that there was no effective remedy at the date of the certificate lies on the co.

*Knights v. Wiffen*, (1870) L. R. 5 Q. B. 660, 665, and *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396, followed and applied.

*Simm v. Anglo-American Telegraph Co.*, (1879) 5 Q. B. D. 188, distinguished. *DIXON v. KENNAWAY & Co.* — Farwell J. [1900] W. N. 94; [1900] 1 Ch. 833

— Charging order — Judgment debt — Maintenance of lunatic — Scheme.  
See **LUNACY—Charging Order**. 6.

— Charging order—Sale.  
See **CHARGING ORDER**. 1.

**COMPANY (Shares)—continued.**

269. — *Commission for placing—Stockbroker's commission.*

It is not ultra vires for a limited co. to pay brokers a reasonable commission or brokerage for placing shares. *METROPOLITAN COAL CONSUMERS' ASSOCIATION v. SCRIMGEOUR*

C. A. [1895] 2 Q. B. 604

270. — *Deceased shareholder—Increase of capital—Allotment of new shares—Option—Legal personal representative—"Member"—Companies Act, 1862 (25 & 26 Vict. c. 89), Table A, art. 27—Notice—Offer of new shares—Posting to registered address.*

"Member" in art. 27 of Table A to the Companies Act, 1862—which provides that on the increase of the capital of a co. the new shares shall be offered to the "members" in proportion to their existing shares—includes a deceased member so long as his name is on the register.

Thus, where, in the case of a co. regulated by Table A, new shares had been created by special resolution in the lifetime of a member, but were not actually offered to the members of the company until after his death:—

*Held*, that the legal personal representative of the deceased member, whose name still remained on the register, could require an allotment of the shares which the latter would, if living, have been entitled to have offered him, these shares not yet having been disposed of by the co.; but, *quære*, as to the title of the legal personal representative to the shares, if, as was not the case, the co. had sent by post a letter containing the offer directed to him at the registered address of the deceased member, or directed to the place of abode or business of the representative or his solicitor, and, not having received an answer applying for the shares within the time limited by the letter, had proceeded to dispose of them otherwise.

Where one of the articles of association of a limited co. prescribes a particular mode of allotment of new shares, *quære*, whether it is competent for the co. by special resolution to sanction a different mode of allotment without having first passed a special resolution duly altering that article. *JAMES v. BUENA VENTURA NITRATE GROUNDS SYNDICATE* — C. A. [1896] 1 Ch. 456

Referred to by C. A. *Allan v. Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656, 677.

— Exchange of—Stamp—Conveyance on sale.  
See **REVENUE—Stamps**. 156.

— Foreign company—Probate duty.  
See **REVENUE—Probate Duty**. 130.

271. — *Forfeiture—Shares partly paid up—Forfeiture—Re-allotment—Sale of shares credited with part of amount paid thereon.*

A co. under its articles had power to forfeit shares for non-payment of calls, and to sell, re-allot, or dispose of, the same as they thought fit. On its ordinary 10l. shares, calls varying from 3l. to 7l. had been paid, and a large number of these had been forfeited. In the course of proceedings for the reduction of the capital of the co., the directors proposed to change the forfeited 10l. shares into 5l. 5s. shares credited with 2l. 5s. as paid thereon, and to offer these to the holders of

**COMPANY (Shares)—continued.**

ordinary shares at the price of 30s. per each reduced forfeited share.

*Held*, affirming the decision of Romer J., that the co. were not bound to treat the forfeited shares as if nothing had been paid upon them; that this was not in effect an issue of shares at a discount; and that the article empowering the company to sell its forfeited shares was valid, and authorized the directors to deal with them in the way they proposed to do. *MORRISON v. TRUSTEES, EXECUTORS, AND SECURITIES INSURANCE CORPORATION, LD.* - - - **C. A. [1898] W. N. 154 (3)**

**272. — Identity of shares—Payment in cash—Signatory to memorandum of association—Subsequent written contract — Companies Acts, 1867 (30 & 31 Vict. c. 131), s. 25; 1898 (61 & 62 Vict. c. 26), s. 1.**

The facts of this case were substantially, with slight distinctions, identical with those in *In re F. W. Jarvis & Co.*, [1899] 1 Ch. 193. The question accordingly arose whether the decision of Romer J. in the case last cited applied, or whether the case fell within the more recent decision of Cozens-Hardy J. in *In re Whitehead & Brothers, Ltd.*, [1900] 1 Ch. 804.

*Held*, that the decision in *In re Jarvis & Co.* ought to have been followed. It did not appear from the report of *In re Whitehead & Brothers, Ltd.*, that Cozens-Hardy J. had any better evidence of identity than was before Romer J. in the former case. The distinctions relied upon in argument between this case and that before Romer J. were not sufficient standing alone to justify a departure from his decision. *In re ARCHIBALD D. DAWNEY, LD.* - **Kekewich J. [1900] W. N. 152**

*Sect. 25 of 30 & 31 Vict. c. 131 is repealed by Companies Act, 1900 (63 & 64 Vict. c. 48), s. 33 and Sched.*

**273. — Issue at a discount—Distribution of surplus assets.**

Where new shares are issued at a discount of 70 per cent. and on a voluntary winding-up there is a surplus, such surplus must be applied in paying the old shareholders 70 per cent. per share. *In re WEYMOUTH AND CHANNEL ISLANDS STEAM PACKET CO.*

**C. A. affirm. North J. [1891] 1 Ch. 66**

*See In re Railway Time, &c., Co.*, [1895] 1 Ch. 255, 262; [1897] A. C. 299.

**274. — Issue at a discount—Issue of fully paid-up original shares at a discount—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 60—Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), s. 21—Companies Clauses Act, 1869 (32 & 33 Vict. c. 48), s. 5.**

A co. governed by the Companies Clauses Consolidation Act, 1845, and the Acts amending it, may issue fully paid-up original shares at a sum less than their nominal amount in the same manner as new shares can, under the authority of those Acts, be issued. *SPATHAM v. BRIGHTON MARINE PALACE AND PIER CO.*

**Romer J. [1898] W. N. 168 (4); [1899] 1 Ch. 199**

**275. — Issue at a discount—Purchase by shareholder in the market.**

Where shares were in pursuance of a circular

**COMPANY (Shares)—continued.**

issued at a discount to old shareholders, and an old shareholder bought such shares on the market, he was held not to have constructive notice of the ultra vires act, nor to be bound to examine the register, and not liable as a contributory. *In re NEW CHILE GOLD MINING CO.*

**Stirling J. [1892] W. N. 193**

**276. — Issue at a discount—Winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 5.**

Issue of shares at a discount is not a ground for winding up the co. on the petition of a fully paid-up shareholder—even where, if the amounts unpaid were called up, there would be a surplus to be divided among the members of the co. *In re PIONEERS OF MASHONALAND SYNDICATE*

**V. Williams J. [1893] 1 Ch. 731**

*See In re Railway Time, &c., Co.*, [1895] 1 Ch. 255, 265; [1897] A. C. 299.

**277. — Issue at a discount—Ultra vires issue—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 7, 8, 12, 25, 38—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.**

The issue by a co. of nominally paid-up shares at a discount is ultra vires, and the shares are held subject to the liability to pay to the co. in cash so much of the nominal value of the shares as has not been paid, and the register will be ordered to be rectified accordingly. In this case the question was raised, not in a winding-up, but in an action by the ordinary shareholders, and the memorandum provided for the issue of capital with such conditions, &c., as the co. might direct.

*Per Lord Herschell*: In a winding-up the co. could not be entitled to call on the preference shareholders for more than the agreed payment, and then only so far as necessary for the discharge of the obligations of the co. and the costs of the winding-up. *OOREGUM GOLD MINING CO. OF INDIA v. ROPER. WALLROTH v. ROPER*

**H. L. (E.) affirm. C. A. and North J.**

**[1892] A. C. 125**

*Explained by V. Williams J. In re Pioneers of Mashonaland Syndicate*, [1893] 1 Ch. 731.

*Dicta of Lord Herschell commented on by Kekewich J. In re Railway Time, &c., Co.*, [1895] 1 Ch. 255; [1897] A. C. 299.

*Referred to by C. A. In re S. Frost & Co.*, [1899] 2 Ch. 207, 211.

**278. — Issue at a discount—Ultra vires issue.**

*Held*, that the directors of a co. established in S. Africa could not issue shares at a discount so as to make the holder liable for less than their full amount. Where shares are, in consideration of services rendered, issued at a discount, the directors are liable to the co.; but in the absence of fraud or further resulting damage to the co., no further than the amount of the discount.

*Semble*, such further resulting damage could not exceed the difference between the discount price and the value of the shares if the services and transactions founded thereon had not taken place. *HIRSCHE v. SIMS* **P. C. [1894] A. C. 664**

*Referred to by H. L. (E.) Welton v. Saffery*, [1897] A. C. 299, 325.



**COMPANY (Shares)—continued.**

279. — *Issue at a discount—Ultra vires issue—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 38; 1877 (30 & 31 Vict. c. 131), s. 25.*

A co. has not power to provide by its articles or otherwise for the issue of shares at a discount so as to render the holders thereof not liable to pay the nominal amount thereof in full.

(A) *In re RAILWAY TIME TABLES PUBLISHING Co. Ex parte WELTON C. A. [1895] 1 Ch. 255; affirmed by H. L. (E.) sub nom. WELTON v. SAFFERY - - - [1897] A. C. 299*

(B) *In re WEYMOUTH AND CHANNEL ISLANDS STEAM PACKET Co. - C. A. affirm. North J. [1891] 1 Ch. 66*

280. — *Issue of shares as fully paid—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Registered contract—Sufficiency—Statement of consideration—Property purchased described merely by reference—Rectification of register—Form of order.*

Where the contract registered under s. 25 of the Companies Act, 1867, on the issue of fully paid shares as part of the consideration for the sale of property to a co., sufficiently described the vendor and the co., and the amount and mode of payment of the purchase-money, but described the property sold merely by reference to the schedule to a previous contract:—

*Held*, on the authority of *In re Kharaskhoma Exploring and Prospecting Syndicate*, [1897] 2 Ch. 451, that the consideration for the issue of the shares was insufficiently stated, and that an order ought to be made for the rectification of the register of shareholders.

The order for rectification in such a case ought simply to direct that the name of the shareholder should be struck off the register, and ought not to direct the registration of another contract and subsequent registration of the name: *See Chadwyck Healey on Companies*, 3rd ed. p. 384. *In re MAYNARDS, LD.*

*Kekewich J. [1898] 1 Ch. 515*

*See Companies Act, 1898 (61 & 62 Vict. c. 26).*

Dissented from by C. A. *In re Frost & Co.*, [1899] 2 Ch. 207. *See next Case.*

Referred to by *Byrne J. In re Northern Croesoting and Sleeper Co.*, [1898] W. N. 158 (5).

281. — *Issue of fully paid-up shares—Registered contract—Sufficiency—Shares to be paid for otherwise than in cash—Statement of consideration—Description of property purchased—Reference to prior contract—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

A contract in writing between a vendor and a co., filed with the Registrar of Joint Stock Companies, recited that by a prior agreement of a certain date, made between the vendor and a trustee for the co., it was agreed that the vendor should sell and the co. should purchase "certain leasehold messuages, shops, and premises" and "all the goodwill of the several businesses carried on by the vendor on the same respective premises, together with all the machinery, plant, horses and carts, fixtures and fittings used in connection with the said several businesses." It also recited the incorporation of the co., and that, by an agreement made between the vendor, the trustee,

**COMPANY (Shares)—continued.**

and the co., it was provided that the purchase-money should be paid or satisfied by the allotment to the vendor of a specified number of fully paid-up shares, and payment of a specified amount in cash. The contract then witnessed that it was agreed that the co. should file "this agreement" and should allot to the vendor a specified number of fully paid-up shares, and that the same should be accepted by the vendor in satisfaction of that portion of the purchase-money which under the prior agreement was to be satisfied by the allotment of fully paid-up shares. Neither of the recited agreements was filed. On a motion, by holders of some of the fully paid-up shares issued to the vendor, to rectify the register by striking out their names:—

*Held*, that the contract which had been filed determined, within the meaning of s. 25 of the Companies Act, 1867, that payment for the shares allotted to the vendor was to be otherwise than in cash, and sufficiently stated the nature of the consideration for the issue of the shares.

Judgment of *Romer J.*, [1898] 2 Ch. 556, affirmed.

*In re Maynards*, [1898] 1 Ch. 515, dissented from. *In re S. Frost & Co.*

C. A. [1899] W. N. 83; [1899] 2 Ch. 207

Discussed by *Kekewich J. In re Robert Watson & Co.*, [1899] 2 Ch. 509.

282. — *Lien—Assignment—Lien on shares for debt due to company—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 2, 15.*

A lien amounts to an equitable charge on the shares of the debtor and is within ss. 2, 15 of the Conveyancing Act, 1881. The debtor can, therefore, require the co. on the debt being paid to assign their lien to his nominee. *EVERITT v. AUTOMATIC WEIGHING MACHINE CO.*

*North J. [1892] 3 Ch. 506*

283. — *Lien—Waiver—Lien lost or waived.*

A lien conferred on a co. by its articles of association on all shares registered in the name of a member for his debts to the co., such member's right to transfer the shares while he remains indebted being thereby made dependent on the approval of the directors, is valid. Such lien may be discharged by a new arrangement between the indebted member and the co., the terms of which are incompatible with its retention, or which shew an intention to waive it.

*BANK OF AFRICA v. SALISBURY GOLD MINING CO.*

P. C. [1892] A. C. 281

— *Mortgage—Chose in action—Power of sale.*

*See MORTGAGE—Sale. 85.*

284. — *Payment in cash—Contract in writing—Omission to file—"Inadvertence"—Sufficiency—Supplemental contract—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26), s. 1, sub-ss. 1, 4.*

By a contract in writing dated October 18, 1897, the owner of a business agreed to sell it to a co. for a specified sum of money to be paid wholly or partly in cash, shares, or debentures as the directors should determine. Subsequently the directors allotted specified shares to the vendor as fully paid up in respect of a part of the purchase-money, but no written contract to that effect was entered into. The original

**COMPANY (Shares)—continued.**

contract was not filed as required by s. 25 of the Companies Act, 1867, the omission to file it being due to the fact that the parties were ignorant of the provisions of the Act. Upon an application by the vendor for an order for the filing of the original contract with the Registrar of Joint Stock Companies under the provisions of s. 1 of the Companies Act, 1898:—

*Held*, that the omission to file the contract was due to “inadvertence” within the meaning of the Act:

*Held*, however, that the contract was not sufficient within the meaning of the Act, inasmuch as the determination by the directors as to the mode in which payment was to be made was supplemental to the original contract, and without this determination there was no complete contract:

*Held*, therefore, that there must be an order that a supplemental contract be entered into, that the supplemental contract be filed with the original contract, and that the entire contract when so filed should operate as if it had been filed at the time of the issuing of the shares. *In re JACKSON & Co. Kekewich J.* [1899] 1 Ch. 348

Distinguished by Byrne J. *Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines, Ltd.*, [1899] 2 Ch. 370.

**285. — Payment of shares in advance of calls—Interest out of capital—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 14, 19, 38; Table A, s. 7.**

The directors of a co. limited by shares may receive payment from a shareholder of any amounts remaining unpaid on his shares, and may pay out of capital interest on sums so paid up in advance of calls, either under Table A of the Companies Act, 1862 (if applicable), or under provisions to the same effect in the co.’s articles of association, provided they do so in good faith and in the honest exercise of the discretion confided to directors.

The decisions of Stirling J. and C. A., [1896] 1 Ch. 397, affirmed.

*Dale v. Martin*, 9 L. R. Ir. 498; 11 L. R. Ir. 371, approved. *LOCK v. QUEENSLAND INVESTMENT AND LAND MORTGAGE CO.*

**H. L. (E.) [1896] A. C. 461**

**286. — Sale by Court—Perishable goods—Order for sale—“Goods”—R. S. C., Order 11, r. 2.**

Shares in a limited co. can be sold by order of the Court, as coming within the words “goods, wares, or merchandise” in Order L, r. 2. *EVANS v. DAVIES* **Kekewich J.** [1893] 2 Ch. 216

**287. — Sale of assets to new company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.**

It is competent for a co. by memorandum of association to exclude the operation of s. 161 of the Act of 1862, in the event of the sale by the co. of its undertakings, the whole or part of the consideration for such sale being shares in the purchasing co., although at the time of the execution of the contract for sale a voluntary winding-up of the selling co. is contemplated. *COTTON v. IMPERIAL AND FOREIGN AGENCY AND INVESTMENT CORPORATION*

**Chitty J.** [1892] 3 Ch. 454

Referred to by Stirling J. *Payne v. The Cork Co., Ltd.*, [1900] 1 Ch. 308, 314,

**COMPANY (Shares)—continued.**

**288. — Signatory to memorandum of association for 6500 shares—Sale of business by signatory for 6500l. payable by 6500 fully paid-up shares—Same shares—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26), s. 1, sub-ss. 1 and 4.**

A co. was formed to take over the business carried on by J. J. signed the memorandum of association for 6500 shares of 1l. each. The co. was registered on Oct. 4, 1897; on Oct. 8 a contract in writing between J. and the co. was executed, whereby J. agreed to sell his business to the co. in consideration of 6500l. payable by the allotment to him of 6500 fully paid-up shares of 1l. each in the co. The 6500 shares were duly allotted to J. under the contract. No other shares other than those were ever applied for by or allotted to J., and there was evidence to shew that the 6500 shares for which J. signed the memorandum of association were considered by all parties to be the same 6500 shares issuable to him under the contract, and that J. did not intend by so signing the memorandum of association to render himself liable to take any shares other than the 6500 mentioned in the contract:—

*Held*, on motion made under s. 1, sub-ss. 1 and 4, of the Companies Act, 1898, for an order for filing a fresh contract in writing, or in the alternative for filing a memorandum specifying the consideration for which the shares were issued, that the case was not within the Act, that the contract filed under s. 25 of the Act, of 1867 was a proper and sufficient contract, and that the object of the application was not to get rid of any liability under that contract, but to obtain indirectly the decision of the Court whether or not J. was under some liability in respect of the shares for which he signed the memorandum of association, and that it was not contemplated by the Act of 1898 that it should be used for the decision of such a question, and the motion was refused. *In re F. W. JARVIS & Co.*

**Romer J.** [1898] W. N. 165 (5); [1899] 1 Ch. 193 Distinguished by Cozens-Hardy J. *In re Whitehead & Brothers, Ltd.*, [1900] 1 Ch. 804.

Approved by Kekewich J. *In re Dawnay, Ltd.*, [1900] W. N. 152.

**289. — Stockbroker’s commission—Issue of shares—Act ultra vires.**

There is nothing illegal or contrary to the policy of the Companies Acts in a co. paying stockbrokers a commission for procuring persons to take shares. *METROPOLITAN COAL CONSUMERS’ ASSOCIATION v. SCRIMGEOUR*

**C. A.** [1895] 2 Q. B. 604

See 63 & 64 Vict. c. 48, s. 8, sub-s. 3.

**290. — Surrender—Issue of new shares in exchange.**

A co. may by special resolution, vary its articles so as to give itself power to accept surrenders of old shares in exchange for new shares, in a case where the surrenders are made bona fide, and not so as to enable shareholders to escape liability. A co. which by its memorandum of association has power to issue new shares with preferential rights, both as regards payment of dividends and repayment of capital, can by

**COMPANY (Shares)—continued.**

special resolution give itself power to issue new shares with preferential rights to some of its ordinary shareholders, in consideration of their bona fide surrender of an equivalent amount of their ordinary shares. *EICHBAUM v. CITY OF CHICAGO GRAIN ELEVATORS, LD.*

**Stirling J. [1891] 3 Ch. 459**

— Tenant for life and remaindermen—Capital or income.

*See SETTLED LAND — Apportionment.*  
4—8.

**291. — Title to shares—Deceased shareholder—Scotch sequestration—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 30, 77—R. S. C., 1883, Order XVI., r. 46.**

A., domiciled in Scotland, was the holder of shares in the T. Co. A. died, and his estate was sequestered, M. being the trustee in the sequestration. The T. Co. went into liquidation, and the liquidator held money payable to the shareholders. In an action of multiplepinding M.'s claim (as trustee of the estates of a Scotch firm of merchants) was allowed, as was that of one B. :—

*Held*, that no order under Order XVI., r. 46, was necessary, but that the liquidator should pay the sum due in respect of A.'s shares to M. on the receipt of M. and B. *In re TUTICORIN COTTON PRESS CO.*

**V. Williams J. [1894] W. N. 181**

**292. — Transfer—Blank transfer—Legal title—Stamp—True consideration—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 14, 15.**

The certificate and a blank transfer of trust stock were deposited by a trustee with a bank to secure his own overdraft. The transfer was signed and sealed by the trustee, but the name of the transferee was in blank; the bank had no notice of the trust. The bank subsequently filled in their own name as transferee, and having the certificate were registered as owners :—

*Held*, that, as the transfer was not executed as a transfer to the bank, it did not pass the legal estate, and that the prior equity of the beneficiaries prevailed.

*Seemle*, the fact that the transfer was unstamped, and did not state the true consideration, did not make it invalid.

Decision of Wright J., [1893] 1 Ch. 610, affirmed. *POWELL v. LONDON AND PROVINCIAL BANK* — **C. A. [1893] 2 Ch. 555**

**293. — Transfer—Blank transfer—Title—Estoppel—Blank filled in by pledgee.**

A. gave a certificate for shares transferable otherwise than by deed to B., his broker, for sale, and handed him a blank transfer. B. pledged the blank transfer and the certificate with C. C.'s solicitor filled up the blank transfer with the name of C.'s clerk. B. never paid anything to A. on account of the shares :—

*Held*, that A. was not estopped from setting up his title against C., and that he was entitled to recover the share certificate and blank transfer. *FOX v. MARTIN — Kekewich J. [1895] W. N. 36*

**COMPANY (Shares)—continued.**

**294. — Transfer—Lien on shares—Priority of transferee.**

An executrix of an estate indebted to a co. sold shares therein to P. A dividend was declared on the shares, and subsequently P. registered the transfer. The co. in exercise of their lien appropriated the dividend to satisfy their claim against the estate :—

*Held*, that P. could stand in the position of the co. as creditor of the estate, but had no priority over the shareholders or other creditors. *In re MACMURDO. PENFIELD v. MACMURDO*

**North J. [1892] W. N. 73**

**295. — Transfer—Lien on shares—Priority.**

A. held 565 shares in a co. to which he was indebted, and whose articles gave them a primary lien for debts due to them from members. A. sold 525 shares to B., who did not know of the indebtedness; subsequently C. obtained a charging order on the remaining forty shares under a judgment obtained against A. :—

*Held*, that as between B. and A. the debt of the latter to the co. should be thrown exclusively on the forty shares, and that C. as an execution creditor could only take the beneficial interest of A. in the forty shares. *GRAY v. STONE*

**Romer J. [1893] W. N. 133**

**296. — Transfer—Priority—Equitable claim.**

As between two persons claiming title to shares registered in the name of a third person in a co. formed under the Companies Act, 1862, with articles regulating the transfer of shares, the title prior in date prevails unless the claimant second in point of time has acquired the full status of shareholder before the co. receive notice of the prior title. To be a full shareholder in this sense the transferee must be registered, or have an immediate right to be registered. It is not sufficient to claim under a valid transfer if the co. have still a right under their articles to delay or refuse registration. *MOORE v. NORTH WESTERN BANK — Romer J. [1891] 2 Ch. 599*

**297. — Transfer—Refusal to register—Cause of action—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 31.**

*Seemle*, an action for damages can be maintained either by the person named in the certificate or by a purchaser from him. *TOMKINSON v. BALKIS CONSOLIDATED CO.*

**C. A. [1891] 2 Q. B. 614**

This case was affirmed by **H. L. (E.) sub nom. BALKIS CONSOLIDATED CO. v. TOMKINSON**

**[1893] A. C. 396**

Followed and applied by *Farwell J. Dixon v. Kennaway & Co., [1900] 1 Ch. 833.*

In such a case the measure of damages is the value of the shares at the time of the refusal.

*Seemle*, the Court has no jurisdiction under s. 35 of the Companies Act, 1862, to order a co. to pay damages except in cases where an order is made for the rectification of the register.

*Note* : In this case the parties had agreed to be bound by s. 35. *In re OTTOS KOPJE DIAMOND MINES — C. A. [1893] 1 Ch. 618*

**298. — Transfer—Refusal to register—Certifi-**

**COMPANY (Shares)—continued.**

*cate—Estoppel—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 35.*

A share certificate of ownership issued by a co. is not a warranty of title, but estops the co. from afterwards denying that the person named in the certificate is the owner of the shares. If the co. refuse to register the shares on such certificate they are liable in damages.

(A) *In re OTTOS KOPJE DIAMOND MINES, LD.*  
C. A. [1893] 1 Ch. 618

(B) *BALKIS CONSOLIDATED CO. v. TOMKINSON*  
C. A. [1891] 2 Q. B. 614; *affirm.* by H. L. (E.)  
[1893] A. C. 396

299. — *Transfer—Refusal to register—Concealment of grounds of refusal—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 35.*

The rule that directors who have power to refuse to register a transfer of shares are not bound to disclose their reasons for refusing, if they have considered the question and have acted *bonâ fide*, applies to cases where their power is limited to particular grounds for refusal as well as to cases where their power is absolute. *In re COALPORT CHINA CO.* — C. A. [1895] 2 Ch. 404

300. — *Transfer—Registration of—Interlocutory injunction restraining proceedings in winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 35, 131.*

Application for an order that certain transfers of shares should be registered. It appeared that in an action of *Tiessen v. Henderson*, [1899] W. N. 45; [1899] 1 Ch. 861, *see No. 15, above*, an interlocutory injunction had been granted restraining the directors and proposed liquidator of the co. from carrying out certain resolutions for a voluntary winding-up of the co. with a view to reconstruction. There was no appeal from this interlocutory order. Under these circumstances the directors had refused to register the transfers.

Kekewich J. said that, though he was extremely reluctant to perpetuate a deadlock, he could not hold that the Court ought, if it had the power, to direct registration of these transfers, knowing that it was possible that within a reasonable time the registration might be bad by force of the statute. It could not be said that the directors were refusing to register without sufficient cause. The case, therefore, was not brought within s. 35. He accordingly refused the application, but granted leave to appeal, and directed that the applicants, if they appealed, but not otherwise, should pay the costs of the application. *In re VIOLET CONSOLIDATED GOLD MINING CO.* — Kekewich J. [1899] W. N. 66

301. — *Transfer—Rescission—Agent.*

A transference of shares cannot obtain rescission of a contract to take shares and rectification of the register on account of misrepresentation in the prospectus, even though the transfer be but nominal, the transferor being his agent and the calls paid by him, unless the co. was informed that the applicant was only an agent. *HYSLOP v. MOREL BROTHERS, COBNET & SON, LD.*

Chitty J. [1891] W. N. 19

302. — *Transfer—Restriction on free transfer—Transfer Articles—Compulsory transfer in the*

**COMPANY (Shares)—continued.**

*event of bankruptcy—Perpetuity—Fraud on bankruptcy law—Validity of articles.*

Action for a declaration that the debts were not entitled to require the transfer of the bankrupt's shares at a fixed price, and that the transfer articles of the co. were void; and for an injunction to restrain the co. from enforcing a transfer of the bankrupt's shares at any price, or alternatively at any price less than the fair and actual value of the shares.

Farwell J. said that to hold that a provision in articles which compelled a man to sell his shares for all time at a particular price and to particular persons was bad because it was repugnant to absolute ownership and tended to perpetuity would be to apply to modern co. law principles which were wholly inapplicable. The contract contained in the articles was an incident of the share, and the rule against perpetuity did not apply to personal contract. In the absence of mala fides, and the contract being a fair one equally binding on all who entered into it, there was nothing obnoxious to the bankruptcy law in such provisions as these. Action dismissed. *BORELAND'S TRUSTEE v. STEEL BROTHERS & CO.*

Farwell J. [1900] W. N. 251;  
*see* [1901] 1 Ch. 279

303. — *Transfer—Trustees—Form of order.*

(A) A vesting order of shares under s. 35 of the Trustee Act, 1850, should vest in the trustees simply "a right to call for a transfer and to transfer the stock or shares," and to receive the dividends. *In re NEW ZEALAND TRUST AND LOAN CO.*  
C. A. [1893] 1 Ch. 403

Dictum of C. A. as to form of vesting order disapproved. *In re Joliffe's Trusts*, [1893] W. N. 84.

Explained by L.JJ. *See next Case.*

(B) *Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 26—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 136, sub-s. 2, 5, 6.*

In the above case the trustees might have become liable for calls, and hence the usual form of order was departed from. *In re GREGSON*

C. A. [1893] 3 Ch. 233

Approved by C. A. *In re C. M. G. Spinster*, [1898] 2 Ch. 324.

(C) The best form of order in the case of Consols is to direct the trustees to transfer the stock into their own names. *In re JOLIFFE'S TRUSTS* — Kekewich J. [1893] W. N. 84

(D) "Stock" in the Trustee Acts, 1850, 1852, includes shares in a limited co., whether fully paid up or not. *In re NEW ZEALAND TRUST AND LOAN CO.* — C. A. [1893] 1 Ch. 403

*See now s. 50 of the Trustee Act, 1893, which embodies this decision on this point.*

304. — *Transfer after winding-up order—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 35, 87, 98, 153.*

In the case of a sale and transfer of shares in a co. after a compulsory winding-up order, the transferee is not entitled to be registered as owner of the shares without the sanction of the Court; the Court has power to order the rectification of the register of members by the inser-

**COMPANY (Shares)—continued.**

tion of such transferee's name; but the exercise of that power is discretionary, and such an order ought not to be made except on strong grounds. *In re ONWARD BUILDING SOCIETY (No. 1)*

C. A. affirm. Div. Ct. [1891] 2 Q. B. 463

Referred to by C. A. *Taylor, Phillips, and Richard's Case*, [1897] 1 Ch. 298, 309.

— Transfer of shares subject to a trust—Constructive notice—Signature of bank manager as “manager in trust.”  
See **BANKER. 5.**

**305. — Transfer — Voluntary transfer by vendor to third person.**

The rule that a person taking property under a voluntary conveyance cannot hold that property as against a previous purchaser for value from the person by whom the property has been conveyed applies in a co. *GRAHAM v. O'CONNOR*

*Kekewich J.* [1895] W. N. 157 (10)

**306. — Unclaimed dividends — Statute of Limitations.**

When a co. declares a dividend on its shares, a debt immediately becomes payable to each shareholder in respect of his dividend for which he can sue at law, and the Statute of Limitations immediately begins to run. The declaration does not make the co. a trustee of the dividend for the shareholder, and an entry of the liability in the co.'s books—at any rate when no special part of its assets is set aside as representing the dividend and no notice of the entry is given to the shareholder—does not take the case out of the statute.

*Quære*, whether, in the case of a co. under the Companies Acts, 1862 to 1890, the period of limitation is six or twenty years. *In re SEVERN AND WYE AND SEVERN BRIDGE RY. Co.*

*Romer J.* [1896] 1 Ch. 559

**307. — Underwriting—Notice.**

The plt. agreed with A., one of the promoters of a co., to underwrite a certain number of shares. By the terms of the agreement, if the plt. did not himself apply for shares by a certain date, A. was to apply in his name and receive the allotment as his agent. The plt. did not apply himself. A. accordingly applied, and a proportionate number of shares was allotted to the plt. :—

*Held*, that there was a binding contract to take the shares, and the allotment was good. *SHAW v. HENRY BENTLEY & Co. AND YORKSHIRE BREWERIES, LD.* — *North J.* [1893] W. N. 83

**308. — Underwriting contract — Register, removal of name from—Authority to apply for shares—Authority coupled with an interest.**

P. promoted a co. for the purpose of purchasing from him and working a mining property. On Feb. 21, 1896, C. signed an underwriting letter addressed to P. by which he agreed, in consideration of a commission, to subscribe for 1000 shares in the co., such number to be reduced according to the number of shares taken by the public. C. further agreed that the agreement and application should be irrevocable, and, notwithstanding any repudiation by him, should be sufficient to authorize P. to apply for shares on behalf of C. and the co. to allot them. P. by letter accepted

**COMPANY (Shares)—continued.**

these terms. The co. was incorporated on March 24, and the subscription list was advertised to open on March 27, and close on the 30th. On March 27, C., who had applied for 1000 shares, stopped the cheque he had given for the deposit, and on the 30th wrote to P. and to the secretary of the co. repudiating the agreement. P., however, on April 2, applied on behalf C. for 980 shares, which, in the events which had happened, was the number he was bound to take, according to the terms of the letter, and the co. allotted these shares to C. and put him on the register in respect of them :—

*Held* (affirming the decision of *Stirling J.*), that C. was rightly placed on the register and was not entitled to have his name removed, for that the authority given to P. by the underwriting letter to apply for shares on behalf of P. was an authority coupled with an interest, and therefore not revocable. *In re HANNAN'S EMPRESS GOLD MINING AND DEVELOPMENT CO. CARMICHAEL'S CASE* — C. A. [1896] 2 Ch. 643

Referred to by C. A. *In re Consort Deep Level Gold Mines, Ltd.*, [1897] 1 Ch. 575, 582.

— Winding-up of company.

See **COMPANY—WINDING-UP, passim.**

— Withdrawal.

See Nos. 264, 266, *above*.

— Withdrawal before allotment—Contributory.

See **COMPANY—Reconstruction. 213.**

**Unregistered Company.**

**309. — Embezzlement—Illegal association—Beneficial owners of property—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 4—Parliamentary Act, 1868 (31 & 32 Vict. c. 116), s. 1.**

A person can be convicted of the embezzlement of the property of an illegally constituted club of which he is a member, for though the club has no legal existence as an association, the members thereof may have a legal existence as beneficial owners of property. *REG. v. TANKARD*

C. C. R. [1894] 1 Q. B. 548

And see **COMPANY—WINDING-UP—Unregistered Company.**

**COMPANY—WINDING-UP.**

*Companies (Winding-up) Act, 1893, amends s. 10 of the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63).*

**STAMP DUTY.] Extension to companies of 46 & 47 Vict. c. 52, s. 144, as to exemption from stamp duty. See Finance Act, 1895 (58 Vict. c. 16), s. 16.**

**PREFERENTIAL PAYMENTS IN BANKRUPTCY.] The law regarding, in the case of companies, amended by 60 Vict. c. 19.**

*Companies Act, 1898 (61 & 62 Vict. c. 26), amends the Companies Act, 1867 (30 & 31 Vict. c. 131).*

*Companies Act, 1900 (63 & 64 Vict. c. 48), amends the Companies Acts. As to winding-up, see ss. 24–26 et seq. For notes thereon see [1900] W. N. 201.*

*The Companies Winding-up Rules, 1890, dated Nov. 26, 1890. W. N. Dec. 20, 1890; St. R. & O. 1890, pp. 232–321.*

**COMPANY—WINDING-UP—continued.**

General Rules, dated April 20, 1891, made pursuant to s. 26 of the Companies (Winding-up) Act, 1890. W. N. May 9, 1891, p. 10; St. R. & O. 1891, p. 49.

Order of the Bd. of Trade dated Feb. 13, 1891, under r. 3 (2) of the Companies (Winding-up) Rules, 1890. W. N. Feb. 21, 1891, p. 8; St. R. & O. 1891, p. 42.

Order dated Dec. 17, 1891, made by the Ld. Chanc. with the concurrence of the Treas. as to Fees under the Companies (Winding-up) Act, 1890. W. N. 1892 (Appx. of O. & R.) p. 1; St. R. & O. 1891, pp. 56, 60.

Bd. of Trade Notice dated Jan. 8, 1892, under r. 3, cl. 2, of the Companies (Winding-up) Rules, 1890. W. N. 1892 (Appx. of O. & R.) p. 2; St. R. & O. 1892, p. 44.

Bd. of Trade Notice dated Jan. 8, 1892, under r. 3, cl. 2, of the Companies (Winding-up) Rules, 1890. W. N. 1892 (App. of O. & R.) p. 8; St. R. & O. 1892, p. 46.

The "Companies Winding-up Rules, 1892," dated April 6, 1892, made under the Companies Acts, 1862 to 1890, and the Judicature Act, 1881. W. N. 1892 (Appx. of O. & R.) p. 16; St. R. & O. 1892, p. 49.

Order made by the Ld. Chanc., June 24, 1892, and approved by Treas., June 25, 1892, as to reduction of fees under Order of Dec. 17, 1891, where liquidation takes place only partly in England. W. N. 1892 (Appx. of O. & R.) p. 23; St. R. & O. 1892, p. 66.

Rules dated Aug. 10, 1892, Companies (Winding-up) Rules, Aug. 1892. W. N. 1892 (Appx. of O. & R.) p. 29; St. R. & O. 1892, p. 65.

General Rules, dated Dec. 3, 1892, made pursuant to s. 26 of the Companies (Winding-up) Act, 1890. W. N. 1892 (Appx. of O. & R.), p. 36; St. R. & O. 1892, p. 65.

General Rules, dated March 29, 1893, made pursuant to s. 26 of the Companies (Winding-up) Act, 1890. W. N. 1893 (Appx. of O. & R.) p. 3; St. R. & O. 1893, p. 51.

Order made by the Ld. Chanc. Aug. 24, 1893, and approved by Treas. Aug. 31, 1893, sanctioning a reduction in the Fees Order of Dec. 17, 1891. W. N. 1893 (Appx. of O. & R.), p. 4; St. R. & O. (1893), p. 52.

Order of the Bd. of Trade, dated Jan. 31, 1894, under r. 3 (2) of the Companies (Winding-up) Rules, 1890. W. N. 1894 (Appx. of O. & R.), p. 1.

General Rules, dated April 2, 1895 ("The Companies Winding-up Rules, 1895.") W. N. 1895 (Appx. of O. & R.), p. 3; St. R. & O. 1895, No. 638. Price  $\frac{3}{4}$ d.

Order of the Bd. of Trade, dated June 26, 1895, under r. 3 (2) of the Companies (Winding-up) Rules, 1890. W. N. 1895 (Appx. of O. & R.), p. 22.

General Rule, dated Nov. 26, 1895 ("The Companies Winding-up Rule, Nov. 1895.") W. N. 1895 (Appx. of O. & R.), p. 23; St. R. & O. 1895, No. 578. Price  $\frac{3}{4}$ d.

**COMPANY—WINDING-UP—continued.**

Rule as to attendance of parties in Chambers, being r. 173 A of the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63). W. N. 1896 (April 11), p. 87; W. N. 1896 (May 30), p. 158. See Current Index, 1896, p. lviii.

Mode of paying certain fees—Companies (Winding-up) Act, 1890—Treas. Warrant, dated Feb. 2, 1899. W. N. 1899 (Feb. 18), p. 65. See Current Index, 1899, p. lxxxvii.

Liquidator's statement of account and affidavit verifying same—Form of, in lieu of existing forms. W. N. 1899 (July 29), p. 247. See Current Index, 1899, p. lxxxviii.

Enforcement of Orders—Arrests, commitments, and execution of process—General Rules dated Dec. 28, 1899, pursuant to the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63). W. N. 1900 (Jan. 6), p. 1. See Current Index, 1900, p. lxxiii.

Generally, col. 409.

Amalgamation, col. 409.

Arbitration, col. 409.

Assets, col. 410.

Calls. See COMPANY—Calls; and COMPANY—WINDING-UP—Contributory.

Committee of Inspection, col. 419.

Compulsory Winding-up, col. 419.

Contributory, col. 420.

Costs, col. 433.

County Courts. See COUNTY COURT.

Debentures. See COMPANY—Debentures.

Defunct Companies, col. 439.

Directors. See COMPANY—Directors.

Enforcement of Orders, col. 439.

Examination of Officers, col. 439.

Examination of Witnesses, col. 442.

Execution, col. 443.

Indemnity, col. 444.

Jurisdiction, col. 445.

Liquidator, col. 446.

Meetings. See COMPANY—Meetings.

Mortgages, col. 453.

Officers, col. 454.

Official Receiver, col. 454.

Petition, col. 455.

Practice, col. 466.

Preference, col. 467.

Proceedings against Delinquent Officers, col. 469.

Proof, col. 472.

Receiver. See COMPANY—WINDING-UP—Official Receiver.

Reconstruction. See COMPANY—Reconstruction.

Rules and Orders, col. 475.

Scheme of Arrangement, col. 476.

Set-off, col. 479.

Statement of Affairs, col. 480.

Staying Proceedings, col. 481.

Unregistered Company, col. 482.

Voluntary Winding-up, col. 482.

**COMPANY—WINDING-UP—continued.****Generally.**

- Building society.  
See Cases under BUILDING SOCIETY.
- Creditor—Attachment of debt—Garnishee order—Judgment.  
See ATTACHMENT, 12.
- Foreign country—Charge on property in—Receiver—French debt—Enforcing payment.  
See COMPANY—Debentures. 60.
- Friendly society.  
See Cases under FRIENDLY SOCIETY.
- Landlord—Restraining distress.  
See DISTRESS. 4.
- Liquidation for purposes of reconstruction—Lease—Proviso for re-entry.  
See LANDLORD AND TENANT—Forfeiture. 56.
- Literary and scientific institution.  
See SCIENTIFIC SOCIETY.

**Amalgamation.**

- Call consequent on sale of undertaking—Ultra vires—Death of shareholder.  
See COMPANY—Calls. 9.
- Reconstruction of company.  
See Cases under COMPANY—Reconstruction.

**Arbitration.**

1. — *Award—Time for making—Umpire—Jurisdiction—Arbitrators “called on to act”—Notice to appoint umpire—Company—Voluntary winding-up—Reconstruction—Sale of assets—Dissentient member—Purchase of interest—“Agreement”—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 16, 161, 162—Arbitration Act, 1889 (52 & 53 Vict. c. 49), Sched. I. (c).*

The articles of association of a co. provided that, “If at any time a sale or arrangement shall be made or proposed in pursuance of s. 161 of the Companies Act, 1862, the purchase-money to be paid for the interest of any dissentient member shall be such sum of money as the liquidator can obtain by selling the shares, stock or other property to which such dissentient member would have been entitled upon the completion of the sale or arrangement had he not expressed his dissent.”

The co. resolved upon a voluntary winding-up, and authorized the liquidator to enter into an arrangement for the sale of the business and assets of the co. to a new co. :—

*Held*, that the above clause of the articles did not amount to an “agreement” within the meaning of s. 162 of the Companies Act, 1862, so as to deprive a member of the co. who dissented from the arrangements of his right under that section to have the value of his interest in the co. determined by arbitration.

Decision of Stirling J. affirmed.

*Semble*, that the “agreement” intended by s. 162 is an agreement between the dissentient member and the liquidator in the winding-up of the co.

When a notice is served upon arbitrators by

**COMPANY—WINDING-UP (Arbitration)—contd.**

one of the parties to the arbitration to appoint an umpire, they are “called upon to act” in the matter of the arbitration within the meaning of clause (c) of Sched. I. to the Arbitration Act, 1889, and the three months within which the arbitrators are by that clause bound to make their award run from the service of that notice upon them.

Decision of Stirling J., [1898] 2 Ch. 633, reversed. *BARING-GOULD v. SHARPINGTON COMBINED PICK AND SHOVEL SYNDICATE*

C. A. [1899] W. N. 73; [1899] 2 Ch. 80

Referred to by Stirling J. *Payne v. The Cork Co.*, [1900] 1 Ch. 308, 317.

See also *In re Canning Jarrah Timber Co. (Western Australia) Ltd.*, C. A. [1900] 2 Ch. 708, 717.

**Assets.****2. — Company for benefit of one person—Bankruptcy.**

A trader, being in financial difficulties, sold his business to a limited co. The subscribers to the memorandum of association of the co. were either his relatives or employees. No cash was paid by the co. for the business, and no shares were issued to the public, and all the shares that were issued were issued as fully paid up. The trader was appointed the managing director of the co. Some months afterwards a receiving order was made against the trader, and the same day the co. passed resolutions for a voluntary winding-up :—

*Held*, that the business and assets of the co. formed part of the property of the bankrupt divisible amongst his creditors, subject to a first charge thereon in favour of the bona fide creditors of the co. *In re CAREY. Ex parte JEFFREYS V. Williams, J.* [1895] 2 Q. B. 624

See *In re Carl Hirth*, C. A. [1899] 1 Q. B. 612.

— Glasgow Bank (Liquidation) Act, 1882.

See REVENUE—Income Tax. 88.

**3. — Insolvent company—Assets covered by debentures—Admitted insolvency.**

Where a petition is presented by an unsecured creditor asking that a co. may be ordered to be wound up on the ground that it is unable to pay its debts, the defence that although the co. is insolvent a winding-up order will not result in any gain to the unsecured creditors because the assets are covered by and insufficient to satisfy debentures (see *In re Chapel House Colliery Co.*, 24 Ch. D. 259) will not be accepted in the case of a private co. without the Court obtaining very full information as to what has become of the co.'s property, and whether there is reasonable ground for supposing that, by impeaching the debentures, something can be obtained for the unsecured creditors. *In re LONDON HEALTH ELECTRICAL INSTITUTE* — V. Williams, J.

[1896] W. N. 170 (3)

**4. — Investments — “Depreciation” — “Appreciation” — Earnings since liquidation — Capital or income.**

An investment made by a limited co. on capital account having fallen in value, the amount

**COMPANY—WINDING-UP (Assets)—continued.**

of depreciation was, in the half-yearly accounts, debited to revenue. When the co. afterwards went into liquidation, the investment had risen again in value, and the liquidator in his accounts credited to revenue as "appreciation" the amount which had previously been debited as depreciation:—

*Held*, that the amount credited by the liquidator to revenue as "appreciation" must be treated as income, and not as capital, it being merely a restitution to profits of what had been previously taken from profits.

Earnings by a limited co. since the commencement of its liquidation are capital and not income. *BISHOP v. SMYRNA AND CASSABA RY. CO. (No. 2)*

**Kekewich J. [1895] 2 Ch. 596**

**5. — Profits—Earnings before liquidation—Priority.**

Money standing to the revenue account of a limited co. at the date of the commencement of liquidation and representing net profits earned prior to liquidation is applicable in payment of arrears of dividend due on preference shares in priority to payment of a deficit on capital account and of the costs of liquidation. *BISHOP v. SMYRNA AND CASSABA RY. CO. (No. 1)*

**Kekewich J. [1895] 2 Ch. 265**

Distinguished by *Byrne J. In re Odessa Waterworks Co., [1897] W. N. 166 (3).*

**6. — Surplus assets—Articles of association.**

The articles of association of a co. with a nominal capital divided into 1l. shares provided that if on the winding-up of the co. the surplus assets should be insufficient to repay the whole of the paid-up capital, such surplus assets should be distributed so that as nearly as might be the losses should be borne by the members in proportion to the capital paid, or which ought to have been paid, on the shares held by them respectively at the commencement of the winding-up, other than amounts paid in advance of calls. Shortly after incorporation 100,000 shares were issued on each of which the sum of 5s. was paid up, and 25,000 further shares each of which was at once fully paid up. No calls were ever made. In the winding-up of the co., after paying debts and expenses there remained assets sufficient to repay the holders of the 25,000 shares 15s. per share, but insufficient to repay all the paid-up capital on the 125,000 shares:—

*Held*, that a call (actual or in account) of 3s. per share must be made on the holders of the 100,000 shares, so as to make these shares paid up to the extent of 8s. per share; that the amount so called must be applied in repayment of 12s. per share to the holders of the 25,000 shares, making their shares also paid up to the extent of 8s. per share, and that the assets in hand would then be divisible among the holders of the whole of the 125,000 shares pro rata.

*Ex parte Maude, (1870) L. R. 6 Ch. 51, and Birch v. Cropper, (1889) 14 App. Cas. 525, distinguished. In re ANGLO-CONTINENTAL CORPORATION OF WESTERN AUSTRALIA*

**Wright J. [1898] 1 Ch. 327**

Distinguished by *Wright J. In re Mutoscope and Biograph Syndicate, [1899] 1 Ch. 896.*

**COMPANY—WINDING-UP (Assets)—continued.****7. — Surplus assets—Articles of association—Construction of.**

The capital of a co. was 25,075l. in 25,000 shares of 1l. each, and 1500 shares of 1s. each, with power in the memorandum of association to attach any preferential rights. By clause 3 of the articles of association, the 1l. shares were to be ordinary shares, and the 1s. shares were to be founders' shares, and as between the two classes the profits of the co. distributable as dividend were to be applied as to one-fourth in paying dividends on the ordinary shares, and as to the residue in paying dividends on the founders' shares. By clause 15 every founders' share conferred fifty votes, and every ordinary share one vote. Clause 39 was as follows: "In the event of a winding-up of the co., the surplus assets available for distribution among the holders of the shares in the original capital shall belong as to one-fourth to the holders of the ordinary shares in the original capital in proportion to the ordinary shares aforesaid held by them respectively, and as to the other three-fourths to the holders of the founders' shares in the original capital in proportion to the founders' shares held by them respectively." The liquidators in the winding-up raised the question whether the true construction of the expression "the surplus assets available for distribution amongst the holders of the shares" was, (a) the surplus after discharging debts, liabilities, and costs of winding-up, and making good to the shareholders the amounts paid on their shares, or (b) the surplus after discharging debts, liabilities, and costs only:—

*Held*, that the case was governed by *In re New Transvaal Co., [1896] 2 Ch. 750*, notwithstanding the addition of the words in italics (which were omitted from the articles in that case), and that construction (a) was the proper one. *In re PEABODY GOLD MINING CORPORATION*

**Wright J. [1897] W. N. 170 (3)**

**8. — "Surplus assets," Meaning of—Construction of articles of association.**

The term "surplus assets," when used in articles of association providing for distribution among the shareholders on a winding-up taking place, has no such recognised technical meaning that the Court is bound to construe it as referring to the assets after providing only for debts, liabilities, and costs, without recouping paid-up capital.

The capital of a co. was 100,200l. in 100,000 ordinary shares and 200 founders' shares respectively of 1l. each, all of which (except one founders' share) were issued and fully paid up.

One of the articles of association was as follows: "If the co. shall be wound up, one-fifth of the surplus assets (if any) shall belong to and be divided among the holders of founders' shares, and the remaining four-fifths of such surplus assets shall belong to and be divided among the holders of ordinary shares in proportion to the amount of capital paid up on the shares held by them."

Another article had provided that the profits in each year should be applicable in or towards payment of a dividend of 8 per cent. on the amount paid up on the ordinary shares, and that



**COMPANY—WINDING-UP (Assets)—continued.**

the surplus (if any) should be divided, as to one-fifth among the holders of founders' shares, and as to the other four-fifths among the holders of ordinary shares in proportion to the amounts for the time being paid up thereon.

The co. went into voluntary liquidation, and, after providing for all debts, costs, and liabilities, a sum of about 90,000*l.* remained for distribution among the shareholders:—

*Held*, that, having regard to both articles, "surplus assets" meant the assets remaining after providing for debts, costs, and liabilities, and also recouping the paid-up capital subscribed by all the shareholders. *In re NEW TRANSVAAL CO.*

**V. Williams J. [1896] 2 Ch. 750**

Followed by *Wright J. In re Peabody Gold Mining Corporation*, [1897] W. N. 170 (3). See preceding Case.

**9. — Surplus assets.**

By the memorandum of association of the B. Co., one of its objects was to sell its undertaking and all or any part of its property with power to accept as the consideration any shares, stocks or obligations of any other co.; and the capital was divided into 6 per cent. preference shares (having a preferential right both as to capital and income) and ordinary shares. By the articles (64) the profits of each year were to be first applied in paying the preferential dividend and any arrears thereof unpaid in any previous year; (72) the holders of any class of shares might, by extraordinary resolution at a meeting of that class of holders, consent to the abandonment of any preference or priority; (134) on winding-up, if the surplus assets should be more than sufficient to repay paid-up capital, the excess should be distributed in proportion to the capital paid, or which ought to have been paid, but without prejudice to the rights of holders of shares issued on special conditions; (136) the liquidator might with the sanction of an extraordinary resolution divide assets in specie. By an agreement in writing the B. Co. agreed to sell its undertaking and property (except a sum sufficient to pay a 10 per cent. dividend to the ordinary shareholders, and a 6 per cent. dividend to the preference shareholders) to the X. Co., the consideration being a sum, payable to the B. Co., equal to 4*l.* per ordinary share and 1*l.* 4*s.* per preference share, to be satisfied in debenture stock and shares of a new co. to be called the A. Co. This agreement did not point out how the consideration was to be divided amongst the preference and ordinary shareholders, but the proposed mode of distribution was explained in a circular sent with the notices of an extraordinary meeting of the B. Co., at which, when held, it was resolved that the agreement should be approved and the directors should be authorized to carry the same into effect. The proposed mode of distribution was different from that pointed out by the articles. The debenture stock and shares in the A. Co. which formed the consideration were allotted to the B. Co., which afterwards went into voluntary liquidation, and the liquidator, who had not enough in hand to pay the dividends under the agreement without

**COMPANY—WINDING-UP (Assets)—continued.**

selling some of the stock and share consideration, applied for the direction of the Court:—

*Held*, that—in the circumstances, and without laying down any general rule—*Somes v. Currie*, (1855) 1 K. & J. 605, was an authority warranting the Court in inferring an arrival by the shareholders at an unwritten agreement for a mode of distribution different from that prescribed by the articles.

*Griffith v. Paget*, (1877) 5 Ch. D. 894, distinguished. *In re BRESTON PNEUMATIC TYRE CO.*

**Wright J. [1898] W. N. 34 (4)**

Distinguished by *Wright J. In re North West Argentine Ry. Co.*, [1900] 2 Ch. 882.

**10. — Surplus assets—Distribution—Articles of association.**

The regulations of a co. with a nominal capital in 1*l.* shares provided that if upon the winding-up the surplus assets should be more than sufficient to repay the whole paid-up capital, the excess should be distributed among the members in proportion to the capital paid or which ought to have been paid on the shares held by them respectively at the commencement of the winding-up. Some of the shares issued were fully paid up; on others only 10*s.* per share had been paid. There was an excess in the winding-up after paying debts and expenses and repaying all the paid-up capital:—

*Held*, that the excess was distributable in proportion to the capital actually paid up.

*In re Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 327, distinguished. *In re MUTOSCOPE AND BIOGRAPH SYNDICATE*

**Wright J. [1899] W. N. 77; [1899] 1 Ch. 896**

**11. — Surplus assets—Distribution not according to legal rights—Implied term in resolution—Shareholders—Powers of majority.**

The A. Co., with a capital of 550,000*l.* divided into shares of 10*l.* each, of which 35,000 were preference shares and 20,000 were ordinary shares, and with articles of association which were silent as to how the surplus assets were to be divided between the two classes of shareholders in the event of winding up, entered into an agreement, under a power in its memorandum of association, to sell its undertaking and assets to the C. Co.

Part of the consideration for the sale was a sum of 310,000*l.* stock of the C. Co., which was to be distributed among the holders of the preferred and deferred shares of the A. Co., and accepted by them in satisfaction of their interests in the property sold; and the agreement was expressed to be conditional on all necessary resolutions of the shareholders of the A. Co. being passed.

The agreement was silent as to the proportions in which the stock was to be divided between the two classes of shareholders, and so was the notice convening a meeting of the shareholders to pass a resolution approving the agreement and authorizing the directors of the A. Co. to carry the same into effect. A circular sent by the secretary of the A. Co. with the notice stated that the purchase consideration to the shareholders of 310,000*l.* stock was to be distributed among them in the proportion of 210,000*l.* to the preferred

**COMPANY—WINDING-UP (Assets)—continued.**

shareholders, and 100,000*l.* to the deferred shareholders. This suggested mode of distribution was referred to at the meeting, where it was also pointed out that the suggested mode was not in accordance with the legal rights of the two classes of shareholders in a winding-up. There were absentees from the meeting, and only a majority of the shareholders present voted for the resolution:—

*Held*, that the Court could not (as it had done in *Somes v. Currie*, (1855) 1 K. & J. 605, and *In re Beeston Pneumatic Tyre Co.*, [1898] W. N. 34; 14 Times L. R. 338) draw an inference from the facts that all the parties concerned had agreed upon a mode of distribution not in accordance with the legal rights of the two classes of shareholders, and that, unless successful proceedings could be taken against the A. Co. or its directors, or to set aside the resolution, or all individual consents of shareholders could be obtained, the liquidators must distribute the 310,000*l.* stock in accordance with the legal rights of the shareholders. *In re NORTH WEST ARGENTINE RLY. CO.* - Wright J. [1900] W. N. 243; [1900] 2 Ch. 882

**12. — Surplus assets—Distribution of surplus assets—Memorandum of association—Construction.**

Summons by liquidator to ascertain the principles upon which the surplus assets of the co. available for distribution among the shareholders ought to be distributed. The assets, after paying debts and costs of liquidation, were not sufficient to return to the shareholders in full the paid-up capital. The capital consisted of 100,000*l.*, divided into 19,960 ordinary shares of 5*l.* each, and 200 founders' shares of 1*l.* each. The founders' shares were fully paid up. Some of the ordinary shares were fully paid up. Some had only 1*l.* 15*s.* paid on them:—

*Held*, upon the construction of the clauses of the memorandum of association, that the assets in hand plus the amount of unpaid calls must be divided between all the shareholders in the proportion of 5*l.* to the holder of an ordinary share and 1*l.* to the holder of a founders' share, the holders of unpaid shares being debited with the amount of the calls which they had not in fact paid. The surplus assets must be taken to include the sums payable by the shareholders who had not paid up in full. *In re WELSH WHISKY DISTILLERY CO.* - Cozens-Hardy J. [1900] W. N. 59

**13. — Surplus, Distribution of—Shares issued at discount.**

A co. issued unallotted old shares and some new shares at a discount of 70 per cent. For some time all the shares were treated *pari passu*; but on a voluntary winding-up:—

*Held*, that the issue at a discount was *ultra vires*, and that the two classes of shares could not be treated on the same footing, and the surplus must first be applied in paying the original shareholders 70 per cent. per share. *In re WEYMOUTH AND CHANNEL ISLANDS STEAM PACKET CO.*

C. A. affirm. North J. [1891] 1 Ch. 66

Applied and followed by C. A. *In re Railway Time Tables Publishing Co. Ex parte Welton*,

**COMPANY—WINDING-UP (Assets)—continued.**

[1895] 1 Ch. 255. This case was affirmed by H. L. (E.) *sub nom. Welton v. Saffery*, [1897] A. C. 299.

**14. — Surplus, Distribution of—Rights of contributories inter se—Sale of undertaking at a profit.**

The undertaking of a canal co. formed under the Companies Acts was sold by special Act at a price which left a surplus in excess of the liabilities and the capital paid upon ordinary and preference shares. Directions by the Court as to the application of net profits made during current year of sale, and the distribution of the reserve fund for insurance and depreciation among preference and ordinary shareholders: also as to rights of shareholders to reopen past accounts.

Decision of North J., [1891] 1 Ch. 155, varied. *In re BRIDGEWATER NAVIGATION CO.*

C. A. [1891] 2 Ch. 317

Referred to by Kekewich J. *Bishop v. Smyrna and Cassaba Ry. Co.*, [1895] 2 Ch. 592, 602.

**15. — Surplus, Distribution of—Companies Acts, 1862 (25 & 26 Vict. c. 89), ss. 109, 153, sub ss. 1, 10.**

Distribution of surplus assets in a voluntary winding-up, where certain shares were fully paid and advances at interest had been made on others. *In re WAKEFIELD ROLLING STOCK CO.*

V. Williams J. [1892] 3 Ch. 165

**16. — Surplus assets—Preference shares—Revenue representing dividends never declared.**

A co. was incorporated in 1872 having a capital of 850,000*l.* in preferred and deferred shares of 20*l.* each, the preferential rights of the former being only in respect of dividend. Art. 101 was as follows: "The directors may, with the sanction of the co. at the ordinary general meeting, declare a dividend to be paid to the members in proportion to their shares, subject, however, to" arts. 105 and 102. By art. 102 no dividend was to be declared to be paid on deferred shares unless and until the net profits for the current year should have enabled the directors to declare and pay on the preferred shares a preferential dividend of 6 per cent. for that year; and after payment on deferred shares of a dividend of 6 per cent. for the current year, the residue, if any, was, subject to art. 105, to be equally divided between both classes of shareholders *pari passu* in proportion to the amounts paid up on the shares. Art. 103 enabled interim dividends to be paid, and art. 104 prohibited the declaration or payment of any dividend except out of profits. Art. 105 provided that the directors might set aside out of the profits or receipts of the co. such sum as they might think proper to form a "sinking fund" for the redemption of capital, or to a "contingency fund" to meet any unforeseen or prospective liabilities, and might further out of the profits set aside such sum as they might think proper as a reserve fund for equalising dividends, or for any other purposes of the co. The 30,000 preferred and 12,472 deferred shares which were issued were fully paid up. A large

**COMPANY—WINDING-UP (Assets)—continued.**

outlay being required for the construction of works, no dividend was ever paid on the deferred shares, but in each of the years 1875, 1887, 1889, 1893, and 1894 a dividend of 1 or  $1\frac{1}{2}$  per cent. on the preferred shares was paid. In Sept., 1895, the co. went into voluntary liquidation, and shortly afterwards the undertaking was sold. After paying creditors, a sum of about 220,000*l.* remained for division amongst the shareholders. The articles did not state how the surplus assets in case of winding-up were to be distributed. The preference shareholders claimed to have certain sums paid to them in respect of dividend before any of the balance of assets, after paying debts, was paid on account of capital:—

*Held*, that as the sums claimed in priority had not actually been declared as dividend, it was not sufficient for the preference shareholders to shew that, had the co. been a going concern, the amounts claimed in priority might have been declared as dividend, and that on the articles their claim to priority failed.

In some years prior to 1895 there were balances of revenue over expenditure—not representing cash in hand, but being a fund out of which if made good a dividend might lawfully have been declared and paid—enough to pay part of the preferential dividend of 6 per cent., and when one of the yearly dividends was declared at an ordinary meeting of the co., the following words were added to the resolution then passed: “It being understood that” a sum named “shall remain to the credit of the revenue account.” The preference shareholders claimed that out of the balance divisible a sum equal to part of the amount standing to the credit of revenue account ought to be distributed amongst them in priority as preferential dividend, either as a debt due from capital to revenue, or as a debt due from the co. to the preference shareholders:—

*Held*, that this claim failed also, as there was no agreement, but only the keeping up of a credit in the accounts in favour of revenue so as to earmark that which, when represented by cash, might be considered as available for future dividend or for any of the purposes mentioned in art. 105.

*Held*, therefore, that the balance was divisible among all the shareholders as return of capital.

*Bishop v. Smyrna Ry. Co.*, [1895] 2 Ch. 265, distinguished on the ground that under the memorandum of association in that case the preference shareholders were entitled to their preferential dividends irrespective of a declaration of dividend.

*Birch v. Cropper*, (1889) 14 App. Cas. 525, distinguished on a similar ground. *In re ODESSA WATERWORKS CO.* *Byrne J.* [1897] W. N. 166 (3)

**17. — Surplus assets—Remuneration—Debtors—Principal and agent—Jurisdiction.**

Debentures gave power to the holders to appoint a receiver to realize the assets of the co., without stating what he was to do with the surplus, or that he was to be the agent of the mortgagors. A receiver appointed under this power claimed to retain surplus assets as his remuneration, and the liquidator of the co. applied by summons in the winding-up for an

**COMPANY—WINDING-UP (Assets)—continued.**  
order fixing the remuneration, and that the balance should be paid over to him:—

*Held*, that the receiver was the agent of the mortgagee, not of the co.; and that, whether that were so or not, there was no jurisdiction to make the order on the summons, but the liquidator must bring an action against the receiver. *In re VIMBOS, LD.* — *Cozens-Hardy J.*

[1900] W. N. 23; [1900] 1 Ch. 470

**18. — Surplus assets—Undistributed assets—Payment into company's liquidation account—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 65), s. 15.**

Sect. 15 of the Companies (Winding-up) Act, 1890, is not limited to compulsory windings-ups.

Therefore in the case of (a) a co. being wound up under supervision, or (b) a co. being wound up voluntarily, the liquidator may be required by the Bd. of Trade to pay undistributed assets into the co.'s liquidation account. *In re STOCK AND SHARE AUCTION AND BANKING CO.* *In re SPIRAL WOOD CUTTING CO.* *In re HULL LAND, & Co.*

*V. Williams J.* [1894] 1 Ch. 736

**19. — Surplus assets—Unlimited company—Deed of settlement—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 109, 133.**

Sects. 109 and 133 of the Companies Act, 1862, do not supply a rule for the mode of adjusting loss of capital or of distributing surplus assets, but only supply the necessary powers for giving effect to the rights and interests of the parties. In ascertaining those rights in the case of co.'s constituted under the Companies Acts, in the absence of any provision in the memorandum or articles of association, the capital account must first be equalized, and the balance must be appropriated according to the nominal amount of the shares, and a clause in the memorandum or articles regulating the distribution of dividends will not of itself govern the distribution of surplus.

In the case of co.'s not constituted under the Acts effect must be given to any clause, in the deed under which the co. was constituted, with regard to surplus assets, but a provision as to distribution of dividends does not of itself govern the distribution of surplus.

*Somes v. Currie*, (1855) 1 K. & J. 605, and *Sheppard v. Seinde, Punjab and Delhi Ry. Co.*, (1887) 36 W. R. 1, distinguished and commented on.

By the deed of settlement under which a company was originally constituted losses were to be made good by the shareholders “in proportion to their respective shares,” profits were to be divided amongst them “according to the amount of their respective shares,” and upon a winding-up the residue, after paying debts, was to be “divided between the several proprietors”—namely, shareholders—“for the time being in proportion to their respective shares.” The shares were of 10*l.* each. Some were fully paid, others were only paid up to the extent of 6*l.* 10*s.* per share, and some of both classes had been issued at a premium. The co. was afterwards registered under Part VII. of the Companies Act, 1862, as an unlimited co. It sold its undertaking and went into voluntary liquidation, and after

**COMPANY—WINDING-UP (Assets)—continued.** payment of its debts and the costs of liquidation had a surplus more than sufficient to return all the paid-up capital:—

*Held*, that the surplus must first be applied in returning the paid-up capital, and that the balance must be distributed amongst all the shareholders in proportion to the nominal amounts of their shares, and without regard to the premiums paid by any shareholders, or the manner in which dividends were payable or had in fact been paid. *In re DRIFFIELD GAS LIGHT CO.*

**Wright J. [1898] 1 Ch. 451**

Referred to by Wright J. *In re Mutoscope and Biograph Syndicate*, [1899] 1 Ch. 896, 898.

#### Calls.

See Cases under COMPANY—Calls; and COMPANY — WINDING-UP — Contributory.

#### Committee of Inspection.

**20. — Altering Constitution of—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 91—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 6, 9, 23, 24, Sched. I, r. 6.**

Where a creditor, or a class of creditors (with a substantial interest), of a co. which is being wound up by the Court is, through no fault of his or its own, unrepresented on the committee of inspection, the Court may either (a) direct the liquidator to summon a meeting of the creditors to consider whether one or more members of the committee should be removed and some other person or persons, representative of the “aggrieved” and unrepresented creditor or creditors, appointed in substitution; or (b) may order fresh first, or further meetings of the creditors and contributories to be summoned for the following purpose of s. 6 of the Act of 1890, namely, to determine whether an application is to be made to the Court to appoint a committee of inspection, and who are to be its members if appointed. *In re RADFORD & BRIGHT, LD.*

**Wright J. [1900] W. N. 263**  
*Reported [1901] 1 Ch. 272*

#### Compulsory Winding-up.

**21. — Compulsory or supervision order—Second petition.**

Although s. 8 of the Companies (Winding-up) Act, 1890, enlarges the jurisdiction of the Court as to compulsory orders, yet a shareholder who differs from the majority must still allege and prove grounds for supposing that he will derive substantial benefit from the compulsory order before the Court will grant it, on his petition, against the wishes of the majority. A shareholder who presents a petition after notice of another petition must prove proper independent grounds, or he will be cast in costs. *In re DORÉ GALLERY, LD.* — **North J. [1891] W. N. 98**

**22. — Debt due under agreement with voluntary liquidator—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 95, 133, sub-ss. 7, 145, 161.**

A debt due from a co. under an agreement between it and its voluntary liquidators and

**COMPANY—WINDING-UP (Compulsory Winding-up)—continued.**

another person is sufficient to support a petition for winding up the co. by the Court.

Special resolutions were passed by the S. Co. for voluntary winding-up and appointing liquidators who were authorized to enter into an agreement with the U. Co. for the transfer to them of the S. Co.’s assets and liabilities. The U. Co. agreed to pay the liabilities of the S. Co., such part of which as was not covered by the assets of the S. Co. to be treated as a debt to the U. Co. from the S. Co. The liquidators were to make a call to meet such part:—

*Held*, that the liquidators were empowered by ss. 95, 133 of the Act of 1862 to enter into the agreement. *In re BANK OF SOUTH AUSTRALIA (No. 2)* — **C. A. affirm. V. Williams J. [1895] 1 Ch. 578**

[*Note in this case that In re BANK OF SOUTH AUSTRALIA, V. Williams J. [1894] 3 Ch. 722, was doubted.*]

#### Contributory.

**23. — Application for shares—Real or fictitious—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 23.**

The directors of a co. agreed, in order to make it appear that all the shares were allotted, that they should apply for the unallotted shares, it being understood that no liability should attach to them in respect of such shares. Accordingly, A. applied for certain shares in the name of his son. The son was registered as shareholder, but no allotment or call was made:—

*Held*, that this case must be governed by the law of contract, and, there being no contract by A. to take the shares, that A.’s executors were not contributories. *In re BRITANNIA FIRE ASSOCIATION. COVENTRY’S CASE*

**C. A. revers. Kay J. [1891] 1 Ch. 202**

Distinguished by Wright J. *Savigny’s Case*, [1899] W. N. 1 (2).

— Application for shares—Withdrawal before allotment.

See COMPANY—Reconstruction. 213.

**24. — Balance order—Action to enforce—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 75, 101, 102, 120.**

The co., being unable to serve a balance order on the debt, because he was out of the jurisdiction, brought an action for debt in respect of the same amount as that stated in the balance order, plus interest, and obtained leave to serve the writ out of the jurisdiction:—

*Held*, that the action was maintainable as an action for debt, although it could not have been brought to enforce the balance order.

Per C. A. A balance order is not in the nature of a judgment, but is a mere summary order for the better getting in of a portion of the assets. The original right of action of the co. for the calls is not merged in it or destroyed by it. *WESTMORELAND GREEN AND BLUE SLATE CO. v. FEILDEN*

**Kekewich J., affirm. by C. A. [1891] 3 Ch. 15**

Referred to by C. A. *Pritchett v. English and Colonial Syndicate*, [1899] 2 Q. B. 428, 434.

**25. — “Bonus” shares—Transferee for value**

**COMPANY — WINDING-UP (Contributory) — continued.**

— *Companies Act, 1862* (25 & 26 *Vict. c. 89*), s. 38; 1867 (30 & 31 *Vict. c. 131*), s. 25.

Where the original allottees of certain bonus shares had been placed on the list of contributories, the executors of a deceased transferee for value of some of such shares were put on the list. For the word "bonus," which was written across each certificate, put the transferee on his inquiry, and there was other evidence to show that he knew the circumstances of issue. *In re EDDYSTONE MARINE INSURANCE CO. (No. 3)*

Stirling J. [1894] W. N. 30

26. — *Bonus Shares—Companies Act, 1867* (30 & 31 *Vict. c. 131*) s. 25.

By a contract with a trustee for a co. about to be formed it was agreed that seventy-five out of the hundred shares of the co. should be allotted as fully paid up to the vendors as the consideration for the property thereby agreed to be sold, and this agreement was filed with the Registrar of Joint Stock Companies. Shortly after the incorporation of the co. some friends of the vendors were willing to subscribe in cash for the rest of the shares; and it was suggested that the vendors were receiving too many shares and too great a voting power, and that they should give up twenty-five of their shares to these cash subscribers. Subsequent resolutions of the board of directors, and another agreement with the co., recognised that 5000*l.* in cash had by mistake been omitted from the former agreement although it was part of the consideration, and confirmed the payment of that sum to the vendors, and subject to this alteration and to twenty-five of the seventy-five shares being distributed by the vendors among the cash subscribers, and to the approval of an extraordinary general meeting of the co., the old agreement was adopted. The new agreement was also filed with the registrar. An extraordinary meeting approved the transaction, and the co. then allotted twenty-five of the vendors' shares to the cash subscribers direct, under certificates stating that the shares were fully paid up. No invitation was given to the public to apply for shares, although it was contemplated that the public should be appealed to later on. In the winding-up of the co. certain creditors proved their debts, and the liquidator applied to have the cash subscribers (some of whom were directors at the time of the above transaction) placed on the list of contributories:—

*Held*, that if the vendors had been entitled to the twenty-five distributed shares the effect of allotting the shares to the cash subscribers direct would not have placed the latter in a worse position than if the shares had been allotted to the vendors and then transferred, but that as the vendors were never entitled to the twenty-five shares as part of the consideration, and the agreement was really between the co. and the cash subscribers for a gift of shares from the co. to the cash subscribers, the filing of the contracts did not help the subscribers, and they were liable to contribute the full nominal amount of the bonus shares in cash. *In re ALKALINE REDUCTION SYNDICATE, AMES'S CASE*

V. Williams J. [1896] W. N. 79 (1)

**COMPANY — WINDING-UP (Contributory) — continued.**

— Company purchasing its own partly-paid shares.  
See **COMPANY — Reduction of Capital.** 245.

27. — *Disclaimer of shares by trustee in bankruptcy—Damages.*

Where a trustee in bankruptcy disclaims shares and the co. goes into liquidation the liquidator is entitled to prove for damages caused by the disclaimer. *In re HALLETT. Ex parte NATIONAL INSURANCE CO.*

V. Williams J. [1894] W. N. 156

28. — *Election to avoid contract to take-shares—Effect of opposing winding-up petition as contributory—Companies Act, 1862* (25 & 26 *Vict. c. 89*), s. 35—*Companies Winding-up Rules, April, 1892, Rule 20, Form 2.*

Where a person to whom shares in a co. have been allotted has commenced proceedings, before the filing of a winding-up petition against the co., to obtain rescission of the contract (if any) to take the shares, the election thus made by him to avoid the contract is not departed from by his subsequently opposing the petition in the character of a contributory. *In re BRINSMEAD (T. E.) & SONS. TOMLIN'S CASE* — Wright J. [1897] W. N. 162 (3); [1898] 1 Ch. 104

29. — *Enforcing payment of calls made before winding-up—Application to stay proceedings till costs of discontinued action by company paid—Companies Act, 1862* (25 & 26 *Vict. c. 89*), s. 101—*R. S. C., 1883, Order xxvi., rr. 1, 4.*

A co., while a going concern, sued Y. for calls on shares alleged to be held by him. Before the action was ripe for trial the co. resolved on voluntary winding-up, and the liquidator settled Y. on the list of contributories in respect of the amount of the calls. The liquidator then by notice discontinued the action, and took out an originating summons against Y. under ss. 101 and 138 of the Companies Act, 1862, for a balance order in respect of the calls. Y.'s costs of the action having been taxed, and the liquidator having refused to pay them, Y. applied for a stay of the originating summons until payment:—

*Held*, that Y. was not entitled to the stay, but that the amount of the costs must be deducted from any sum recovered by the liquidator on the originating summons.

*Cook v. Hathway*, (1869) L. R. 8 Eq. 612, and *M'Cabe v. Bank of Ireland*, (1889) 14 App. Cas. 416, distinguished. *In re UNITED SERVICE ASSOCIATION* — Wright J. [1900] W. N. 243  
Reported [1901] 1 Ch. 97

30. — *Estoppel—Certification on transfer.*

Where a transfer for value purporting to relate to fully paid shares in a co. bears on the face of it a certification by the secretary of the co. that the share certificate has been lodged with the co., the certification amounts to a statement that a certificate of the shares described in the transfer has been lodged, and the co. is estopped from denying that the shares are fully paid up, even though no certificate has been lodged with the secretary or the certificate lodged does not say whether the shares are fully paid up or not.

*Bishop v. Balkis Consolidated Co.* (25 Q. B. D. P. 2)

**COMPANY — WINDING-UP (Contributory) — continued.**

512) observed upon. *In re CONCESSIONS TRUST. McKAY'S CASE - V. Williams J.* [1896] 2 Ch. 757

31. — *Estoppel — Shares "fully paid" — Original allottee — Companies Act, 1867 (30 & 31 Vict. c. 131), s. 55.*

Before a co. was incorporated P. gave W. 500l. on W. promising to procure an allotment to P. of one hundred fully paid 5l. shares in the co. when incorporated. W. was entitled under an agreement with the co. (which was not filed with the Registrar of Joint Stock Companies) to fully paid shares in the co., and after the co. was incorporated W. had one hundred of these shares allotted to P. as his nominee. The certificate stated untruly that the shares were fully paid. No part of the 500l. was ever paid to the co. P. sold twenty of the shares, and never repudiated any of them:—

*Held*, in the winding-up of the co., that it was estopped from denying that the shares were fully paid, and that P. was not liable as a contributory. *In re BUILDING ESTATES BRICKFIELD CO. PARBURY'S CASE - - - V. Williams J.*

[1895] W. N. 142 (2); [1896] 1 Ch. 100

Distinguished by Wright J. *Markham and Darter's Case*, [1899] 1 Ch. 414; C. A., [1899] 2 Ch. 480.

32. — *Fictitious name—Shares applied for in S.*, who was the promoter and a director of a co., applied for shares therein on an application form which he signed with another name used by him when carrying on a business. He paid the application moneys with a cheque signed in his own name. Subsequently the co. was wound up, and S. absconded and was adjudicated a bankrupt. The liquidator put the trustee in respect of the shares. The trustee applied to have his name removed on the ground that, even if the signature to the application form was that of a fictitious person, there was no contract by S. to take the shares, and he relied on *Coventry's Case*, [1891] 1 Ch. 202:—

*Held*, (a) that *Coventry's Case* was distinguishable because there was there only a pretended application for shares in order that it might appear that unallotted shares had been allotted; and (b) following *Pugh and Sharman's Case*, (1872) L. R. 13 Eq. 566, that it must be taken that S. had intended to obtain the shares himself, and therefore his estate was liable to contribute. *In re CENTRAL KLONDYKE GOLD MINING CO. SAVIGNY'S CASE - - - Wright J.*

[1899] W. N. 1 (2)

— Filing of contracts.

See Cases under COMPANY—Contract.

33. — *Filed contract—Fully paid-up shares—Consideration for issue of—Registered contract—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

In order to comply with s. 25 of the Companies Act, 1867, the filed contract with reference to the issue of fully paid shares for a consideration other than cash must state the actual consideration given for the shares, and it is not sufficient for the filed contract to recite that by a previous

**COMPANY — WINDING-UP (Contributory) — continued.**

unfiled agreement it was agreed to allot the shares "for the considerations therein mentioned."

Observations as to the particularity with which the consideration for the issue of paid-up shares must be described in the filed contract. *In re KHARASHOMA EXPLORING AND PROSPECTING SYNDICATE - C. A.* [1897] 2 Ch. 451

Referred to by C. A. *In re S. Frost & Co.*, [1899] 2 Ch. 207, 212; *Markham and Darter's Case*, [1899] 2 Ch. 480, 487.

Referred to by Kekewich J. *In re Robert Watson & Co.*, [1899] 2 Ch. 509, 512.

34. — *Filing insufficient contract—Paid-up shares—Liability of directors—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26).*

Where an objection was taken that relief under the Companies Act, 1898, could not be given where it was sought to have placed on the file a memorandum of a verbal contract different in its terms from the insufficient written contract already filed, and that the Court by ordering the filing of a contract could only relieve where there was in existence a contract in writing which could be filed, it was *held* that the Act applied where there was no written contract at all, and also where a contract had been filed which was different in its terms from the one which the applicant for relief wished to have filed, the Act being intended to deal with every kind of slip resulting in non-compliance with the Act of 1867, and that the applicant must therefore be relieved (except in respect of the shares which had been allotted for his own benefit for having subscribed in cash for certain shares) on the terms of paying the liquidator's costs. But, *held*, that the directors were not entitled to relief. *In re TOM TIT CYCLE CO. FISHER'S CASE*

Wright J. [1899] W. N. 35 (6)

35. — *File contract—Omission to—Shareholder—Relief—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26).*

Relief under the Companies Act, 1898, may be refused on the ground of matter of prejudice although it does not amount to bad faith, or gross negligence, or illegal conduct on the part of the applicant for relief.

R. sold his business to a co. of which he was to be governing director. There was a written agreement for the sale of the business which provided that the consideration for the sale should be satisfied by the allotment to R.—nothing being said about his nominees—of certain fully paid shares in the co., and this agreement was filed with the Registrar of Joint Stock Companies before the shares were issued.

S. & B. agreed with R. to help him to dispose of the shares by circulating the co.'s prospectus amongst their customers, with personal letters recommending the shares, on the terms of receiving, as nominees of R., 200 of his fully paid shares, and a sum of 6d. on each share applied for on their recommendation. Shares

**COMPANY — WINDING-UP (Contributory) —**  
*continued.*

not forming part of the shares mentioned in the agreement were afterwards allotted to S. & B. as fully paid. It was not shewn that S. & B. made any inquiry except from R. as to the truth of the prospectus (which in the opinion of the Court omitted to state the most material part of the real contract) or as to the value of the shares. In the winding-up of the co. S. & B. were placed and retained on the list of contributories:—

*Held*, that S. & B.'s application for relief under the Act of 1898 must be refused. *In re ROXBURGHE PRESS, SPIERS & BEVAN'S CASE*

Wright J. [1899] W. N. 1 (1);  
[1899] 1 Ch. 210

38. — *Guarantee—Company limited by—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 38.*

In the winding-up of a co. limited by guarantee, a member is only liable to be placed on the list of contributories in respect of the amount which by the memorandum of association of the co. he has undertaken to contribute in the event of its being wound up. Although he may be sued for sums which he is only bound to pay under the articles of association, he is not liable as a contributory in respect of such sums.

*Maxwell's Case*, (1874) L. R. 20 Eq. 585, and *McKewan's Case*, (1877) 6 Ch. D. 447, distinguished. *In re BANGOR AND NORTH WALES MUTUAL MARINE PROTECTION ASSOCIATION. BAIRD'S CASE* — Wright J. [1899] W. N. 93;  
[1899] 2 Ch. 593

37. — *Identity—Alleged contract of membership—Error of subscriber as to identity of company.*

Shortly before Nov., 1895, B. took steps with a view to becoming a Fellow of an old-established society called "The Auctioneers' Institute of the United Kingdom." In Nov., 1895, X., an officer of a recently incorporated society (with unlimited liability) named "The Institute of Auctioneers and Valuers," called on B. and asked him to become a member of it. B. believed the new society to be the old one, and in this belief, which was known to and fostered by X., B. applied for membership in the new society, and received a certificate of membership. In answer to his subsequent inquiries of the new society, untruthful statements were made to B. which resulted in his remaining in his error as to the identity of the society.—

*Held*, that the principle of *Cundy v. Lindsay*, (1878) 3 App. Cas. 459, applied; that there was not even a voidable contract to become a member, but no contract at all; and that B. was entitled to have his name removed from the list of contributories in the winding-up of the new society, although he had not before the winding-up commenced taken any step to have it declared that he was under no liability. *In re INTERNATIONAL SOCIETY OF AUCTIONEERS AND VALUERS. BAILLIE'S CASE* — Wright J. [1897] W. N. 171 (4);  
[1898] 1 Ch. 110

38. — *Limitation by articles of association—Petition, Right to—Contributory—Validity—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 82.*

The right given by s. 82 of the Companies Act, 1862, to a contributory to petition for the

**COMPANY — WINDING-UP (Contributory) —**  
*continued.*

winding-up of the co. cannot be excluded or limited by the articles of association of the co.

Decision of Byrne J. affirmed. *In re PEVERIL GOLD MINES, LD.* C. A. [1898] 1 Ch. 122

Applied by Stirling J. *Payne v. The Cork Co.*, [1900] 1 Ch. 308, 315.

39. — *Paid-up shares—Estoppel—Allottee—Certificate that shares are fully paid up.*

The appellant lent money to a limited co. upon the terms that he should have as collateral security fully paid shares in the co., and the co. handed to the appellant certificates for 10,000 shares of 1l. each. The certificates stated that he was the registered holder of the shares, and that on each of them the full amount had been paid. No money had in fact been paid upon the shares, which were issued from the co. direct to the appellant, but he did not know this, and believed the representation that they were fully paid shares. An order having been made to wind up the co., the appellant was placed on the list of contributories:—

*Held*, that since the co. had obtained the loan by a representation that the shares were fully paid, which the appellant believed and acted upon, the co. and the liquidator were estopped from alleging that the shares were not fully paid, and that the appellant was entitled to have his name removed from the list of contributories.

Decision of C. A., *In re Veuve Monnier et ses Fils, Ltd., Ex parte Bloomenthal*, [1896] 2 Ch. 525, reversed. *Sub. nom. BLOOMENTHAL v. FORD (LIQUIDATOR OF VEUVE MONNIER ET SES FILS, LD.)*

H. L. (E.) [1897] A. C. 156

Referred to by Farwell J. *Dixon v. Kennaway & Co.*, [1900] 1 Ch. 833, 842.

— Paid-up shares—Ratification and payment in cash.

See **COMPANY—Contracts. 22.**

40. — *Paid-up shares—Certificates—Statement accompanying certificate—Shares returned—Contract not registered—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 23; 1867 (30 & 31 Vict. c. 131), s. 25.*

Certain persons were promised founders' paid-up shares in a co. They received certificates, which did not state that the shares were fully paid up: they without any condition acknowledged the receipt of the certificates, which they subsequently returned on receipt of a letter from the secretary asking for the return on the ground that the shares had never been allotted:—

*Held*, that these persons were not members of the co. and must be taken off the list of contributories.

Transferees of a vendor held not liable to contribution in respect of founders' shares, the certificates of which did not state that they were fully paid up, but which were accompanied by a letter from the secretary so stating. *In re MACDONALD, SONS & Co.*

C. A. affirm. *V. Williams J.* [1894] 1 Ch. 89

Referred to by V. Williams J., *Parbury's Case*, [1896] 1 Ch. 100, 102,

**COMPANY — WINDING-UP (Contributory) —**  
*continued.*

41. — *Paid-up shares—Contract—No payment in any form registered—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 38, sub-s. 4; 1867 (30 & 31 Vict. c. 131), s. 25.*

A co., on increasing its capital, presented the original shareholders with certain shares which were issued as fully paid up, and a contract in respect of these shares was registered under s. 25 of the Act of 1867; the contract reciting that the shares were given in consideration of services rendered in promoting and advancing the interests of the company:—

*Held*, on the winding-up of the co., that the transaction was ultra vires, and that the shareholders were contributories notwithstanding the registered contract. A registered contract under s. 25 only relieves the allottees from payment in cash, but there must be payment in some other form. In this case there was no payment, the consideration being illusory. *In re EDDYSTONE MARINE INSURANCE CO. (No. 2)*

C. A. affirm. Wright J. [1893] 3 Ch. 9

Referred to by V. Williams J. in *In re Theatrical Trust, Ltd. Chapman's Case*, [1896] 1 Ch. 771.

— *Paid-up shares issued at a discount.*

*See COMPANY—Shares. 273—281.*

42. — *Partnership—Member of a firm—Application by firm—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 23.*

D., a member of a firm D. & W., signed in his own name the memorandum of the G. Co. for 100 shares, 'which was a director's qualification; he was appointed one of the first directors. D. & W. acted as agents for the co. D. & W. applied for 100 shares, which were allotted to them and paid for. D.'s name was never placed on the register. There was evidence that it was agreed that in consideration of having the agency, the firm of D. & W. were to take and pay for 100 shares, that D. signed the memorandum on the understanding that it must be signed by an individual, and it was considered necessary that he should sign the application in the firm's name:—

*Held*, if the co. chose to accept the firm as members, that was not inconsistent with D.'s agreement to take the shares; there was only an arrangement to take one set of shares. D.'s name was therefore removed from the list of contributories. *In re GLORY PAPER MILLS CO. DUNSTER'S CASE — — — C. A. revers.*

V. Williams J. [1894] 3 Ch. 473

43. — *Payment not in cash—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

If the consideration payable for shares is illusory or permits an obvious money measure to be made shewing that discount has been allowed, filing the contract under which the shares were issued with the registrar will not relieve the allottee from obligation to pay. But the Court is not bound in each case to inquire whether the price was reasonable, or whether what was given for the shares had a cash value in the market

**COMPANY — WINDING-UP (Contributory) —**  
*continued.*

equal to the nominal value of the shares. *In re THEATRICAL TRUST, LD. CHAPMAN'S CASE*

V. Williams J. [1895] 1 Ch. 771

Considered by C. A. *In re Wragg, Ltd.*, [1897] 1 Ch. 796, 832.

*See In re Eddystone Marine Insurance Co., C. A. affirm. Wright J. [1893] 3 Ch. 9.*

44. — *Procedure for declaring shareholder liable to contribution — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 133, sub-s. 138.*

If in a voluntary winding-up the liquidator believes a shareholder is liable to be put on the list of contributories (e.g., in respect of qualifying shares), the proper course is to put the shareholder on the list as a contributory, leaving him to his remedies under s. 133, sub-s. 8, of the Act of 1862; the liquidators should not apply under s. 138 for a declaration of liability and an order to direct payment of the amount found due. *In re CORNWALL BRICK, TILE, AND TERRA COTTA CO. — — V. Williams J. [1893] W. N. 9*

45. — *Purchase-moneys of vendor's property—Payment in fully paid-up shares—Issue of shares at a discount — Contract shares — Liability of vendors—Apportionment of value—Stamp duty—Value of property purchased—Inquiry into—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

Although a limited co. cannot release a shareholder from the obligation to pay for his shares either in money or money's worth, and cannot therefore issue its shares at a discount, it can, provided the contract is duly registered under the 25th section of the Companies Act, 1867, buy property at any price it thinks fit, and can pay for such property in fully paid-up shares; and the transaction will be valid and binding upon its creditors if the co. has acted in it honestly and not colourably, and has not been so imposed upon by the vendor as to be entitled to be relieved from its bargain.

The value received by the co. is measured by the price at which the co. agreed to buy the property it sought to acquire; and whilst the transaction is unimpeached that is the only value which this Court can take into consideration.

Decision of V. Williams J., [1896] W. N. 166 (5), affirmed. *In re WRAGG, LD. C. A. [1897] 1 Ch. 796*

46. — *Rectification of register—Neglect to file written contract—Companies Acts. 1862 (25 & 26 Vict. c. 89), s. 35; 1867 (30 & 31 Vict. c. 131), s. 25.*

Agreement for the sale to the P. Co. of fully-paid shares in the O. Co. in consideration of the allotment, to the holders of the shares, of fully-paid shares in the P. Co., provided that before the issue of any of the shares to be allotted a sufficient contract in writing should be filed with the Registrar of Joint Stock Companies. By mistake the contract was not filed until after the shares had been issued. On discovering the mistake, one of the allottees gave notice of motion for an order to rectify the register; but before the motion was heard the co. was ordered to be wound up:—

*Held*, that rectification should only be ordered on the terms that due provision should be made



**COMPANY — WINDING-UP (Contributory) — continued.**

for all the debts and liabilities of the P. Co. which had accrued between the dates of issuing the shares and giving the notice of motion. *In re* PRESERVATION SYNDICATE

V. Williams J. [1895] 2 Ch. 768

**47. — Rescission of contract to take shares—Time within which to take proceedings.**

Where a co. applied under the Rules of the Supreme Court, Order xiv., for leave to sign final judgment in an action for calls, and leave to defend was obtained by the shareholder upon an affidavit stating his intention to counter-claim for rescission of the contract to take shares on the ground of misrepresentation, and disclosing no other ground of defence, and this occurred before the presentation of a winding-up petition, but the counter-claim was delivered after the petition and before the winding-up order made upon it:—

*Held*, that the shareholder was not too late to apply for relief.

*Ex parte* Stevenson, (1867) 16 W. R. 95, distinguished.

Decision of Wright J., [1899] W. N. 34 (5); [1899] 1 Ch. 770, reversed. *In re* GENERAL RAILWAY SYNDICATE. WHITELEY'S CASE

C. A. [1900] W. N. 28; [1900] 1 Ch. 365

**48. — Return of cash subscription—Reduction of capital.**

A co. limited by shares was incorporated in Nov. 1897, with a nominal capital divided into 11. shares. By its articles of association (80) the qualification of a director was the holding of 100 shares, and (30, 31) a transfer of shares was required to be signed by the transferor and transferee and to be in a prescribed form. And the directors had power to accept a surrender of shares. Lord W. was asked by his solicitor, and consented, to become one of the directors in Dec., 1897, and applied in writing for 100 shares on the understanding that he was to be a director. On Jan. 11, 1898, the 100 shares were allotted to him. He acted as a director and paid 50l. on the shares, and was placed on the register of members for 100 shares, which were numbered. He was, however, of opinion that the co. had gone to allotment on an insufficient capital, and "determined to have nothing further to do with the co." if he could get back what he had paid. McAndrew and McAllister had applied for shares in the co., and the co. had more than enough shares to satisfy an allotment to them over and above the shares taken by Lord W.; but by arrangement with the co. the 50l. paid by Lord W. was returned to him, the shares allotted to him were cancelled, a note as to the cancellation being placed in the register under the entry as to his name and shares, and 100 shares bearing the same numbers were allotted to McAndrew and McAllister, who paid for them in full in cash.

In April, 1899, a winding-up order was made against the co., and, the liquidator having placed Lord W.'s name on the list of contributories for 100 shares on which nothing was paid, Lord W. applied to have his name removed therefrom.

Wright J. said that, although the articles

**COMPANY — WINDING-UP (Contributory) — continued.**

empowered the directors to accept a surrender of shares, what had happened was not intended as a surrender, and he agreed with the liquidator's counsel that a surrender would not operate so as to enable the directors to repay the applicant what he had paid on his shares. What was the effect of the purported cancellation and re-allotment? Was it a transfer or a revesting of the shares in the co.—a return of his money to the applicant, and a distinct re-allotment to McAndrew and McAllister? It was for the applicant to shew that the transaction was a transfer, and he had failed to do it. His counsel had pointed out that if the applicant was held liable, the shares would be fully paid up twice over; but that would not have been the case if to McAllister and McAndrew there had been allotted some of the other shares which the co. had at their disposal. If there had been no other unissued shares at the co.'s disposal, and the liquidator had attempted to obtain payment twice over on the same shares, the result would have been different. *In re* COMPANIES GUARDIAN SOCIETY. LORD WALLSCOURT'S CASE

Wright J. [1899] W. N. 258

**49. — Settling list—Power of official receiver—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63)—Companies (Winding-up) Rules, 1890, r. 83.**

An official receiver, when acting as provisional liquidator, can settle a list of contributories, being included in the term "liquidator" mentioned in rule 83 of the Companies (Winding-up) Rules, 1890. *In re* ENGLISH BANK OF THE RIVER PLATE (No. 1) — Chitty J. [1892] 1 Ch. 391

**50. — Shares issued at a discount—Adjustment of rights of contributories—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 38; 1867 (30 & 31 Vict. c. 131), s. 25.**

It being ultra vires for a limited co. to issue shares at a discount or by way of bonus, although authorized to do so by the articles of association, the holders of shares so issued are not thereby relieved from liability, in a winding-up, to calls for the amounts unpaid on their shares for the adjustment of the rights of contributories inter se, as well as for the payment of the company's debts and the costs of winding-up.

Decision of C. A., *In re* Railway Time Tables Publishing Co., *Ex parte* Welton, [1895] 1 Ch. 255, affirmed, Lord Herschell dissenting. *Sub nom.* WELTON v. SAFFERY H. L. (E.) [1897] A. C. 299

**51. — Shares not fully paid—Registered contract—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.**

A contract need not, in order to comply with s. 25 of the Companies Act, 1867, be made directly between the allottee of the shares and the co. the shares of which are to be issued; and it need not shew on the face of it which particular shares are to be allotted, although the onus lies on the allottee to shew that his shares are within the registered contract.

By a written agreement between the S. Co. and the trustee for the C. Co., the C. Co. agreed to purchase certain patent rights from the S. Co.,

**COMPANY — WINDING-UP (Contributory) — continued.**

and to allot to each shareholder in the S. Co. certain 11. shares in the C. Co., to be credited with 19s. paid up. The C. Co. when registered adopted this agreement by a deed indorsed thereon, and the agreement so indorsed was duly filed. E. & M., who were not shareholders in the S. Co., were allotted shares as nominees of the shareholders, and on paying 1s. per share were registered as holders of fully paid-up shares:—

*Held*, that the agreement and the indorsed deed were sufficient within s. 25 of the Act of 1867 although not executed by E. or M. *In re COMMON PETROLEUM ENGINE CO. ELSNER AND McARTHUR'S CASE* Romer J. [1895] 2 Ch. 759

Followed by Byrne J. *Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines, Ltd.*, [1899] 2 Ch. 370.

**52. — Transfer of shares during voluntary liquidation—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 38, 131, 133, 153.**

The power of a voluntary liquidator under s. 131 of the Companies Act, 1862, to sanction a transfer of shares made after the commencement of the winding-up, involves the power to alter the register of members; and the transferor is thereupon released from the liability which he was under at the commencement of the winding-up to contribute as a present member, and the transferee alone is the person to be placed on the A list of contributories.

Where successive transfers are sanctioned by the liquidator under s. 131, the ultimate transferee only is liable to contribute as a present member, the transferor and prior transferor being liable as past members.

Decision of V. Williams J., [1896] 2 Ch. 851, reversed. *In re NATIONAL BANK OF WALES. TAYLOR, PHILLIPS, AND RICKARDS' CASES*

C. A. [1897] 1 Ch. 298

**53. — Transferee of shares—Shares nominally paid up.**

A purchaser of shares nominally fully paid held to be bound by his agent's knowledge that the shares were not in fact paid up. The agent was a confidential clerk, who had investigated the co.'s affairs for the purchaser on another occasion.

Decision of Stirling J., [1891] W. N. 2, affirmed. *In re HALIFAX SUGAR REFINING CO.*

C. A. [1891] W. N. 29

**54. — Underwriting agreement—Shares.**

O. by an underwriting letter agreed with the promoter of a co. in consideration of a commission "at any time within three months if and as called upon by you to subscribe or find responsible subscribers" for certain shares, and in default authorized the promoter "to subscribe for the said shares in my name." O. was never requested to subscribe or find subscribers, but on the authority of his letter an application was made in his name and shares allotted to him:—

*Held*, that the letter did not amount to an application for allotment, but was only an authority to subscribe for shares in O.'s name if he did not subscribe or find subscribers if and when requested to do so, which he had not been.

**COMPANY — WINDING-UP (Contributory) — continued.**

Therefore his name must be excluded from the list of contributories. *In re HARVEY'S OYSTER CO. ORMEROD'S CASE*

V. Williams J. [1894] 2 Ch. 474

**55. — Underwriting letter.**

On June 17, 1892, H. signed and delivered to the promoters of a co. a letter agreeing that upon the public issue of its shares he would, in consideration of a percentage, subscribe for 400 shares. If the whole issue was bona fide subscribed for by the public, no allotment was to be made to H. The letter also contained an authority to the promoters, in the event of H. not applying for shares, to apply for them in his name, and an authority to the directors to allot them to him—"This engagement is binding on me for two months from this date." The shares were offered to the public on June 20, 21, and 22, but very few applications were made. On July 1, when the public subscription list was closed, the promoters signed a memorandum at the foot of the letter dated July 1, 1892, and accepting H.'s offer. The letter with the memorandum thereon and an application by the promoters in H.'s name were on the same day sent to the co., and the shares were thereupon allotted to H. His name was put on the register of shareholders. He knew of this, and he paid the co. the allotment money in respect of the shares, received his certificates, and on two occasions voted by proxy; but it was not shewn that he knew when the offer was accepted. The name was still on the register when the co. went into liquidation nearly two years afterwards:—

*Held*, by V. Williams J., that the promoters could not wait to see the result of the invitation to the public, and after it had failed, accept H.'s offer, and that he was not liable as a contributory:

*Held*, by Lopes and Kay L.JJ., (Lindley L.J. doubting), that the expression "This engagement is binding on me for two months" meant that the offer made by the letter was to be open for acceptance for two months; that the shares, therefore, were properly applied for in H.'s name, and that the allotment to him was valid:—

*Held*, that, whether the application for shares was authorized or not, H., having accepted them without inquiry, and having acted as a shareholder for nearly two years up to the time of the winding-up, could not now be heard to contend that he was not a shareholder. *In re HEMP, YARN AND CORDAGE CO. HINDLEY'S CASE*

C. A. [1896] 2 Ch. 121

**56. — Unlimited company — Withdrawal of members—Right to withdraw in absence of express power.**

There is nothing in the Companies Acts to prevent an unlimited co. from validly providing in its memorandum and articles for the withdrawal of members from the co., and, *semble*, it may provide for a return of capital to the members of the partnership:—

*Held*, therefore, that, where members have withdrawn in pursuance of such a power, they are under no liability in the winding-up. Whether, in the absence of an express power in the memorandum or articles, an unlimited co. can allow its

**COMPANY — WINDING-UP (Contributory) — continued.**

members to withdraw from liability as such, *quære*. *In re* BROUGH COMMERCIAL AND BUILDING SOCIETY (No. 1)

V. Williams J. [1893] 2 Ch. 242

**Costs.**

**MODE OF PAYING CERTAIN FEES.] Companies (Winding-up) Act, 1890—Treas. Warrant dated Feb. 2, 1899. W. N. 1899 (Feb. 18), p. 65. See Current Index, 1899, p. lxxxvii.**

**57. — Action commenced before winding-up.**

A shareholder commenced an action against the co. for rescission of a contract to take shares. The co. went into voluntary liquidation, and the plt., on summons in the winding-up, obtained a declaration in his favour:—

*Held*, that the costs related back to the beginning of the action and were a debt owing from the co. to him, for which he must prove in the winding-up; but that they were not costs in the winding-up which the liquidator should pay. *In re* SNYDER DYNAMITE PROJECTILE CO. PECK v. SNYDER DYNAMITE PROJECTILE CO.

Stirling J. [1893] W. N. 37

**58. — Creditor's petition—Right of creditor to winding-up order—Indemnity for costs.**

An unpaid creditor of a co. is not entitled to a winding-up order unless he can shew that the general body of the creditors will derive benefit from the order being made; it is not enough for him to shew that he himself will be benefited by it.

A co., which had not sufficient assets to satisfy the claims of its debenture-holders, took legal proceedings for the recovery of a debt and failed, and was ordered to pay costs to the successful party. The debt in question purported to form part of the security for the payment of the debentures, and had it been recovered the debenture-holders alone would have been benefited thereby. The successful party, failing to get payment of his costs from the co., applied to the Court for a winding-up order with a view to compelling the co. to enforce its right of indemnity for the costs against the debenture-holders for whose benefit the legal proceedings had been taken:—

*Held*, that, as the enforcement of the right of indemnity would confer no benefit upon the general body of the creditors, the winding-up order ought not to be granted. *In re* GREENWOOD & CO. — Div. Ct. [1900] 2 Q. B. 306

**59. — Hearing of petition.**

Where a winding-up order is made, or refused, and it is stated that there is to be "the usual order" as to costs, creditors or contributories supporting the successful side—generally the petitioner or the company—will not be allowed to receive or share in any costs if they are represented by the same solicitor as the solicitor by whom the successful side is represented—this practice having been recently adopted by V. Williams J. [N.B.—When one solicitor represents the petitioner, or co., and also persons in the same interest, the names of the persons last named should be added to the brief for the petitioner

**COMPANY—WINDING-UP (Costs)—continued.**

or co., as the case may be.—*Reporter*. *In re* BRIGHTON MARINE PALACE AND PIER CO.

Byrne J. [1897] W. N. 12 (3)

**60. — Instructions for brief—Trial of issue of fact before judge—Originating summons—R. S. C., 1883, Order LXXI., r. 1a; Appendix N, Items 81, 82, 82a.**

A petition was presented for the compulsory winding-up of a co. which was already in voluntary winding-up; but at the hearing the judge made no order except that the question was to be tried as on a summons under s. 138 of the Companies Act, 1862, "costs reserved"; he also fixed a certain date for the trial. On that date witnesses were examined, and the judge decided substantially in favour of the applicant with costs. No summons had so far been taken out, and on drawing up the order the registrar required a summons to be taken out in the voluntary winding-up. As an originating summons had previously been taken out by the liquidator for a private examination under s. 115 of the Act of 1862, on which an order had been made for an examination and reserving "liberty to apply," the registrar directed that the summons to be taken out and mentioned in the order was to be an ordinary and not an originating summons. On taxation the registrar disallowed the costs of instructions for brief:—

*Held*, that as the direction for trial treated the summons as issued in a "pending cause or matter," within the meaning of R. S. C., 1883, Order LXXI., r. 1a, the summons was not an originating summons; that although, if Appendix N to the Rules, Item 81, was construed strictly, it referred to an issue of fact directed to be tried as such, yet on taxation substance was to be regarded, and in substance the trial was of an issue of fact before a judge; and that the costs of instructions for the brief of the applicant's counsel must be allowed. *In re* CONSOLIDATED EXPLORATION AND FINANCE CO.

Wright J. [1899] W. N. 127; [1899] 2 Ch. 599

**61. — Liquidator—Costs—Shareholder—Fully paid shares—Omission to file contract—Companies Acts, 1867 (30 & 31 Vict. c. 131), s. 25; 1898 (61 & 62 Vict. c. 26).**

Where, after a winding-up has commenced, relief has been granted to a shareholder under the Companies Act, 1898, the terms, if any, imposed as a condition of obtaining the relief are in the discretion of the Court, to be exercised according to the circumstances of each case.

And where the payment of the liquidator's costs is made a condition of obtaining relief, there is no general rule as to whether the costs ought to be as between solicitor and client or party and party; but in determining this question the Court will have regard to the assistance given to the liquidator by the applicant and the reasonableness of opposing the application. *In re* FARMER'S UNITED. STEPHENSON'S CASE

Wright J. [1900] 2 Ch. 442

**62. — Liquidator's liability.**

Certain persons applied by summons to have their names removed from the list of contribu-

**COMPANY—WINDING-UP (Costs)—continued.**

stories in a winding-up. The liquidator opposed; the summons was dismissed, but on appeal, the appeal was allowed with costs:—

*Held*, that the applicants were entitled to costs only out of the assets of the co. and not against the liquidator personally. *In re E. BOLTON & Co. SALISBURY-JONES & DALE'S CASE* (No. 2) - - - **C. A. [1895] 1 Ch. 333**

**63. — Official liquidator—Costs of—Right to appeal—Order to pay costs personally.**

The principle laid down in *In re Silver Valley Mines*, (1882) 21 Ch. D. 381, that an official liquidator ordered to pay costs personally may appeal against such an order, extends to the case of an official receiver ordered to pay costs personally by a county court judge, and enables him to appeal against such an order to the Divisional Court. *In re RAYNES PARK GOLF CLUB, LD. Ex parte OFFICIAL RECEIVER*

**Div. Ct. [1899] 1 Q. B. 961**

**64. — Official receiver—Public examination.**

Official receivers, although they are officers of the Court and under the obligation to perform duties imposed on them by statute, are (with some exceptions) subject to the rules of the Court as to costs which apply to ordinary litigants. An official receiver made a report to the Court which was in accordance with s. 8, sub-s. 2, of the Companies (Winding-up) Act, 1890, so far as the meaning of that clause could be gathered from the decisions of the Courts which had then been pronounced. The Court, after considering the report, ordered a public examination of the persons named in the report, but before the examination could take place, the House of Lords, in another case (*Ex parte Barnes*, [1896] A. C. 146), decided that s. 8, sub-s. 2, required the official receiver's report to contain certain allegations which had not been made in the report in this case:—

*Held*, on a successful application to discharge the order for public examination, that the official receiver, being a litigant and in fault, must be ordered to pay the costs of the application, and that the words "out of the assets of the co." must be omitted from the order. *In re HOUNSLOW BREWERY CO. V. WILLIAMS J. [1896] W. N. 45 (6)*

**65. — Originating summons — Taxation — Counsel's fees—Companies (Winding-up) Rules, 1890, r. 78—Order of Dec. 17, 1891, Table B, Part IV.—R. S. C., 1883, Order LXV., r. 27, sub-rr. 30, 39, 40, 48; Appendix N, Title "Instructions."**

A report of the official receiver or a liquidator in support of a misfeasance summons is not on taxation to be treated as equivalent to a pleading or affidavit.

On the hearing of a misfeasance summons adjourned into Court and heard on oral evidence—as between party and party—(1) costs for official receiver's report were allowed as for drawing and copying a statement of facts; (2) instructions for brief were disallowed; (3) fees, &c., of third counsel were allowed; (4) consultations after the first one were disallowed; (5) refreshers to counsel were held to be within the taxing officer's discretion.

*Seem*, as to (2), that the rule should be

**COMPANY—WINDING-UP (Costs)—continued.**

altered to allow costs for instructions in a misfeasance case. *In re ANGLO-AUSTRIAN PRINTING AND PUBLISHING UNION*

**V. Williams J. [1894] 2 Ch. 622**

**66. — Outside litigation, Costs of — Action commenced before winding-up.**

While a co. was a going concern it commenced an action against B. The co. afterwards passed an extraordinary resolution for a voluntary winding-up, which was continued under the supervision of the Court. The liquidators obtained the leave of the winding-up Court to continue the action, but B. obtained judgment in the action against the co. with costs:—

*Held*, that the principle of *Boynton v. Boynton*, (1879) 4 App. Cas. 733, applied, and that as the liquidators had adopted the action ab initio, B. was entitled to be paid all his costs in full, and not merely the costs as from the commencement of the winding-up with liberty to prove for the costs previously incurred. *In re LONDON DRAPERY STORES - - - Wright J. [1898] 2 Ch. 684*

**67. — Second petition—Companies (Winding-up) Rules, 1892, r. 20.**

A second petitioner *held* to be entitled to costs of his petition up to time when he had notice of first petition, and allowed to share in the one set of costs allowed to creditors supporting the first petition. *In re SHEERINGHAM DEVELOPMENT CO.*

**V. Williams J. [1893] W. N. 5**

**68. — Second petition—Undertaking by first petitioner to share costs.**

A winding-up petition stood over on the terms of the order in *In re St. Thomas' Dock Co.*, (1876) 2 Ch. D. 116, including an undertaking by the co. to give the petitioner notice of any other petition. A second petitioner presented a petition, and was informed that a previous petition had been filed. The second petitioner did not communicate with the first. The co. did not inform the first petitioner of the existence of the second petition. An order for winding-up was made on the first petition:—

*Held*, that the second petitioner must have his costs.

V. Williams J. stated the course he should pursue in future, that a petition should stand over on the terms of the order in *In re St. Thomas' Dock Co. In re SCOTT AND JACKSON*

**V. Williams J. [1893] W. N. 184**

**69. — Security for—Official receivers and liquidators—Misfeasance summons—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.**

In a compulsory winding-up a small dividend only had been paid to the debenture-holders, and there was enough to pay another small dividend to them. The official receiver and liquidator took out a misfeasance summons against officers of the co., and they applied for security for their costs of the summons, the application being opposed by the official receiver and liquidator:—

*Held*, that the Court had jurisdiction at the hearing of the summons to make the official receiver and liquidator personally pay the costs, and that in considering whether it should do so it would have regard to the fact that he had opposed an application for security, and that on

**COMPANY—WINDING-UP (Costs)—continued.**  
 this ground the application for security must be refused, but without costs. *In re W. POWELL & SONS* - - - **Romer J. [1896] 1 Ch. 681**

**70. — Successful litigant — Priority — Immediate payment — Companies (Winding-up) Rules, 1890, r. 31.**

Rule 31 of the Companies (Winding-up) Rules, 1890, does not affect the priority which under the old practice attached to costs ordered to be paid by the liquidator out of the assets to a successful litigant, and the costs so directed to be paid are *prima facie* payable immediately and in full out of the net assets. The onus is on the liquidator to shew that immediate payment from the assets cannot be made, and if he shews that other persons have a prior right or are entitled *pari passu* with the successful litigant, no order for payment will be made without providing for the other claims. The date of the order gives no priority, but payment will not be indefinitely postponed until all claims come in. *In re LONDON METALLURGICAL CO.* - - - **V. Williams J. [1895] 1 Ch. 758**

*See In re United Service Association, Wright J. [1901] 1 Ch. 97, 100.*

**71. — Successful litigant—Realization.**

Certain persons successfully applied to be struck off the list of contributories, and the liquidator was ordered to pay the costs out of the assets of the co. The assets, including calls made and recovered subsequently to the order, were insufficient to pay their costs and the costs of the liquidation:—

*Held*, that they were only entitled to costs out of the assets of the co., and that an order ought not to be made for costs against the liquidator personally unless he had done something to render him personally liable. *In re STAFFORDSHIRE GAS AND COKE CO.*

**Kekewich J. [1893] 3 Ch. 523**

Overruled in next case (A).

(A) *In re BOLTON & CO. SALISBURY-JONES AND DALE'S CASE (No. 2)* **C. A. [1895] 1 Ch. 333**

(B) *Contra, In re STAFFORDSHIRE GAS AND COKE CO.* **Kekewich J. [1893] 3 Ch. 523**

**72. — Supervision order—Liquidator's costs.**

Where in a voluntary liquidation the Court directs a supervision order instead of a compulsory order as demanded by a creditor, no costs or remuneration will be allowed to the liquidator without taxation.

(A) *In re CIVIL SERVICE BREWERY CO.*

**V. Williams J. [1893] W. N. 5**

(B) *In re WATERPROOF MATERIALS CO.*

**V. Williams J. [1893] W. N. 18**

**73. — Supervision order—Petitioning creditor — Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 110, 144.**

Where on the petition of a creditor an order is made continuing a voluntary winding-up under the supervision of the Court, the costs of the liquidator incurred prior to the supervision order are payable in priority to the petitioner's costs of obtaining the order; but the latter costs are

**COMPANY—WINDING-UP (Costs)—continued.**  
 payable in priority to the costs of the liquidator under the supervision order. *In re NEW YORK EXCHANGE CO.* **Kekewich J. [1893] 1 Ch. 371**

Referred to by **C. A. In re Sanitary Burial Association, [1900] 2 Ch. 289, 296.**

**74. — Supervision order—Petitioning creditor — Companies (Winding-up) Rules, April, 1892, r. 20.**

A petition asked for a compulsory order or such other order as might seem just. At the hearing the petitioners supported a supervision order.—

*Held*, that in future if persons meant to support a supervision order and not a compulsory order they must say so in their notices, otherwise they would get no costs if a supervision order only was granted. *In re WOODBROW, HOOPER & CO.*

**V. Williams J. [1893] W. N. 38**

**75. — Voluntary winding-up—Dissolution—Jurisdiction — Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 142, 143—Taxation—Costs unnecessarily incurred—Plaintiff ordered to give security for costs—Stay of proceedings—Affidavits filed by defendant during stay.**

Notwithstanding the dissolution of a co. by reason of the expiration of three months from the registration of the return made by voluntary liquidators to the Registrar of Joint Stock Companies under s. 143 of the Companies Act, 1862, the Court has jurisdiction against the co. in a proceeding commenced after the date of the registration, but before the end of the three months, even though the hearing does not take place till after the end of the three months.

*In re Crookhaven Mining Co., (1866) L. R. 3 Eq. 69, followed.*

The authority of that case has not been impeached by *In re Pinto Silver Mining Co., (1878) 8 Ch. D. 273; In re London and Caledonian Marine Insurance Co., (1879) 11 Ch. D. 140; or Coxon v. Gorst, [1891] 2 Ch. 73.*

An order was made dismissing an action with costs, because the *plts.* had failed to comply with a previous order that they should give security for the costs of the action. That order contained the usual stay of proceedings by the *plts.* until the security should be given. Immediately before the order for security was made, the *plts.'* motion for an injunction had been ordered to stand over for a fortnight, the *deft.* undertaking to deliver to the *plts.* copies of his affidavits within ten days. In pursuance of this undertaking the *deft.* prepared his affidavits during the stay of proceedings by the *plts.* On the taxation of costs under the order dismissing the action, the taxing master held that the *deft.* ought not to be allowed the costs of his affidavits, on the ground that they ought not to have been prepared during the stay of proceedings:—

*Held*, that the taxing master had acted on a wrong principle, and that the costs of the affidavits ought not to have been disallowed upon that ground. **WHITELEY EXERCISER, LD. v. GAMAGE**

**North J. [1898] 2 Ch. 405**

Distinguished by **Stirling J. Salton v. New Beeston Cycle Co., [1900] 1 Ch. 43, 47.**

**COMPANY—WINDING-UP—continued.****County Courts.****— Jurisdiction.**

See COUNTY COURTS—COMPANIES (WINDING-UP)—Jurisdiction.

**Debentures.**

See Cases under COMPANY—Debentures.

**Defunct Companies.**

Amendment of law as to striking names of defunct companies off register. See *Companies Act*, 1900 (63 & 64 Vict. c. 48), s. 26. For notes thereon see [1900] W. N. 201.

**Directors.**

See Cases under COMPANY—Directors.

**Enforcement of Orders.**

Arrests, commitments, and execution of process. *General Rules*, Dec. 28, 1899, pursuant to the *Companies (Winding-up) Act*, 1890 (53 & 54 Vict. c. 63)—*Forms*. W. N. 1900 (Jan. 6), p. 1. See *Current Index*, 1900, p. lxxiv.

**Examination of Officers.**

Under s. 8 of the *Companies (Winding-up) Act*, 1890.

76. — *Admissibility—Companies (Winding-up) Rules*, April 1892, r. 27—*Companies (Winding-up) Act*, 1890 (53 & 54 Vict. c. 63), ss. 8 (7), 26.

The rule is not ultra vires, and is not in conflict with s. 8, sub-s. 7, of the Act, as the deposition is only to be used as evidence against other persons in the same way as an affidavit, that is to say, the witness must be produced for cross-examination if required. Validity of rules discussed. *In re LONDON AND GENERAL BANK* (No. 1) V. Williams J. [1894] W. N. 155

See also C. A. [1895] 2 Ch. 166, 673.

77. — *Duty of official receiver—Control of Board of Trade—Companies (Winding-up) Act*, 1890 (53 & 54 Vict. c. 63), ss. 8 (7), 26.

The function of official receivers under the *Companies (Winding-up) Act*, 1890, s. 8, sub-s. 2, as to reporting and applying for an order for public examination is a function which they perform as officers of the Court; and they must act on their own responsibility exclusively in the matter, and not under the direction, or subject in any way to the interference of the Bd. of Trade. PRACTICE NOTE — Per V. Williams J. [1894] W. N. 44

78. — *Fraud on outside public—Companies Act*, 1862 (25 & 26 Vict. c. 89), ss. 91, 145—*Companies (Winding-up) Acts*, 1890 (53 & 54 Vict. c. 63), s. 8.

Section 8 of the Act of 1890 is not intended to apply where charges are made against the co. of fraud only in the course of its business with the outside world, or of its conduct with persons not members of the co., and creditors will not be prejudiced by a voluntary winding-up and the absence of an examination under s. 8 of the Act of 1890. *In re MEDICAL BATTERY CO.*

V. Williams J. [1894] 1 Ch. 444

Followed by Farwell J. *In re E. Bishop & Sons, Ltd.*, [1900] 2 Ch. 254, 261.

**COMPANY—WINDING-UP (Examination of Officers)—continued.**

79. — *Further report of official receiver necessary—Companies (Winding-up) Act*, 1890 (53 & 54 Vict. c. 63), s. 8—*Companies (Winding-up) Rules*, 1890, r. 71.

An order for public examination under s. 8, sub-s. 3, of the Act of 1890 cannot be made until the official receiver has made a further report under s. 8, sub-s. 2, expressing the opinion that there has been fraud, and shewing that the persons whom it is proposed to examine have taken part in the promotion or formation of the co., or been directors or officers thereof.

(A) *In re GREAT KRUGER GOLD MINING CO. Ex parte BARNARD*

C. A. revers. V. Williams J. [1892] 3 Ch. 307

Discussed. *Ex parte Barnes*, [1896] W. N. 26 (5); [1896] A. C. 146.

(B) *In re TRUST AND INVESTMENT CORPORATION OF SOUTH AFRICA. In re BERTRAM LUIPAARD'S VLEY GOLD MINING CO.*

C. A. revers. V. Williams J. [1892] 3 Ch. 332

Explained by V. Williams J. *In re Laxon & Co.* (No. 3), [1893] 1 Ch. 210.

Explained by C. A. *In re General Phosphate Corporation* (No. 2), [1895] 1 Ch. 3, 5.

The order may be made ex parte, leaving the persons affected to move to discharge it if they allege it to have been made without jurisdiction. It is not necessary that the report should name those persons as having been parties to any fraud. *In re TRUST AND INVESTMENT CORPORATION OF SOUTH AFRICA. In re BERTRAM LUIPAARD'S VLEY GOLD MINING CO.* C. A. [1892] 3 Ch. 332

Explained by V. Williams J. *In re Laxon & Co.* (No. 3), [1893] 1 Ch. 210.

80. — *Further report of official receiver—Evidence in contradiction—Application to remove from file—Companies (Winding-up) Act*, 1890 (53 & 54 Vict. c. 63), s. 8.

Where the Court has jurisdiction to make and has exercised its discretion by making an order for public examination under s. 8 of the Act of 1890, the order will not be discharged on the ground that fraud is not sufficiently shewn by the official receiver's report on which the order is based. And where the report is made in good faith the Court will not allow evidence to be adduced to rebut the charges of fraud therein; and will not take the report off the file, or remit it to the official receiver in order that other facts, on which the person ordered to be examined relies, may be stated in the report. *In re NEW TRAVELLERS' CHAMBERS, LD.*

Romer J. [1895] 1 Ch. 395

Referred to by Wright J. *In re National Stores, Ltd.*, [1899] 2 Ch. 773, 776; C. A. [1900] 1 Ch. 27.

81. — *Further report of official receiver—Fraud imputed—Companies (Winding-up) Act*, 1890 (53 & 54 Vict. c. 63), s. 8.

The further report of the official receiver need not in terms state that fraud has been committed; it is sufficient if it state facts which suggest the

**COMPANY — WINDING-UP (Examination of Officers)—continued.**

existence of such fraud.—Companies (Winding-up) Act, 1890, s. 8, sub-s. 2.

(A) *In re LAXON & Co.* (No. 3).

V. Williams J. [1893] 1 Ch. 210

(B) *In re BIRKDALE STEAM LAUNDRY AND CARPET BEATING Co.* Div. Ct. [1893] 2 Q. B. 386

Discussed by C. A. *In re General Phosphate Corporation*, [1895] 1 Ch. 3.

82. — *Order may be made ex parte.*

An order under s. 8, sub-s. 3, of the Companies (Winding-up) Act, 1890, may be made ex parte.

(A) *In re GREAT KRUGER GOLD MINING Co. Ex parte BARNARD* C. A. [1892] 3 Ch. 307; affirmed by H. L. (E.) *sub nom. Ex parte BARNES*, [1896] A. C. 146.

(B) *In re TRUST AND INVESTMENT CORPORATION OF SOUTH AFRICA. In re BERTRAM LUIPAARD'S VLEI GOLD MINING Co.* C. A. [1892] 3 Ch. 332

Explained by V. Williams J. *In re Laxon & Co.* (No. 3), [1893] 1 Ch. 210.

Discussed by C. A. *In re General Phosphate Corporation*, [1895] 1 Ch. 3.

See No. 85, below.

83. — *Private examination—Subsequent proceedings against examinee—Inspection of deposition—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115—Companies (Winding-up) Rule, Nov., 1895.*

In Dec., 1897, in the winding-up of a co., D., one of its directors, was examined under s. 115 of the Companies Act, 1862. In March, 1898, the liquidator in the name of the co. commenced an action against the directors, including D., for alleged misfeasances, and in this action interrogatories were administered for the examination of D. Before answering, D. applied in the winding-up for liberty to inspect and take an office copy of the deposition taken at his private examination. He had already put in a full defence to the statement of claim, and offered to give an undertaking to use his best endeavours to prevent the communication of the deposition to the other depts., or their solicitors or counsel:—

*Held*, that leave to inspect and take a copy of the deposition ought to be granted. *In re MERCHANTS' FIRE OFFICE* — — — Wright J.

[1899] W. N. 10 (5); [1899] 1 Ch. 432

84. — *Promoters, directors and officers—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.*

The Court has no jurisdiction to direct any person to be publicly examined under s. 8, sub-s. 3, of the Companies (Winding-up) Act, 1890, unless the official receiver has made a "further report" under sub-s. 2 from which it appears that in his opinion, a fraud has been committed by a person in the promotion or formation of the co., or by a director or other officer of the co. in relation to the co. since its formation.

And the power to direct a public examination of the persons mentioned in sub-s. 3 does not apply to any one of them against whom a *prima facie* case of fraud has not been disclosed by the "further report" of the official receiver. *Ex parte BARNES* — H. L. (E.) [1896] A. C. 146

**COMPANY — WINDING-UP (Examination of Officers)—continued.**

85. — *Public examination—Official receiver's report — Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8, sub-s. 2, 3.*

The official receiver's further report under s. 8, sub-s. 2, of the Companies (Winding-up) Act, 1890, should include matters of information and belief, and whether an actual expression of his opinion that fraud has been committed by some person within the description in the section (not defining the person) is or is not a condition precedent to an order for public examination, it is a convenient practice which the Court will require the official receiver to follow, that he should state that facts, of which he has information and which he believes to be true, and which are set out in his report, constitute a *prima facie* case of fraud. The Court has no jurisdiction to direct such an examination unless the official receiver states expressly in his further report that in his opinion some fraud had been committed, or the facts stated in the report shew clearly that in his opinion such a fraud has been committed; and a mere suggestion of suspicion is not enough.

(A) *In re GENERAL PHOSPHATE CORPORATION. In re NORTHERN TRANSVAAL GOLD MINING Co. In re DELHI STEAMSHIP Co.*

C. A. affirm. V. Williams J. [1895] 1 Ch. 3

(B) *In re LAXON & Co.* (No. 3)

V. Williams J. [1893] 1 Ch. 210

(C) *In re BIRKDALE STEAM LAUNDRY AND CARPET BEATING Co.* Div. Ct. [1893] 2 Q. B. 386

**Examination of Witnesses.**

*Under s. 115 of the Companies Act, 1862.*

86. — *Depositions, Right to inspection of.* (A) *Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115.*

Officers of a co. and others having been examined under s. 115 of the Act of 1862, subsequent to action brought by the liquidator to rescind a contract, one of them, in cross-examination on behalf of the liquidator under commission, was asked whether certain questions had been put to him in the examination under s. 115; he said, "Yes." He was then asked if he made certain answers, when he declined to answer till his deposition was read to him. This was done. He was also told what others said in their depositions and asked whether he contradicted them:—

*Held*, that the depts. were not entitled to inspect the depositions.

*Seem*, that the witness was not entitled to refuse to answer till his depositions were read to him.

*Seem*, that the questions as to the evidence of other persons under s. 115 were improper. *NORTH AUSTRALIAN TERRITORY Co. v. GOLDSBOROUGH, MORT & Co.*

C. A. affirm. Kekewich J. [1893] 2 Ch. 381

See also COMPANY—WINDING-UP—Examination of Officers, above.

Referred to by Stirling J. *Goldstone v. Williams, Deacon & Co.*, [1899] 1 Ch. 47, 53.

(B) *Companies Act, 1862 (25 & 26 Vict. c. 89),*

**COMPANY — WINDING-UP (Examination of Witnesses)—continued.**

s. 115—*Companies (Winding-up) Rules, April 1892, rr. 11, 32.*

In a winding-up—at any rate under a compulsory order—every contributory and every admitted creditor has a right to inspect and take copies of depositions taken at a private examination, whether the evidence was given by himself or by others. *In re STANDARD GOLD MINING Co.*

V. Williams J. [1895] 2 Ch. 545

Referred to by Wright J. *In re Merchants' Fire Office*, [1899] 1 Ch. 432, 436.

87. — *Discharge order for public examination, Application to — Time — Delay — Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.*

An application for the discharge of an order for public examination made in chambers, under s. 8 of the Companies (Winding-up) Act, 1890, must be made with reasonable diligence:—

*Held*, that a delay of two months in making such an application was unreasonable, and that on that ground the application was properly dismissed.

Decision of Wright J., [1899] W. N. 215; [1899] 2 Ch. 773, affirmed. *In re NATIONAL STORES, LD.* — C. A. [1899] W. N. 233; [1900] 1 Ch. 27

88. — *Objections — Taking notes — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115.*

A witness objected to give evidence in the presence of two persons: one, the former chief clerk of the co., was employed by the liquidator in making out the accounts; the other, the clerk of the liquidator's solicitors, was employed in taking notes:—

*Held*, that the witness's objections were not valid. Notes can only be taken for the purpose of cross-examination, and must be destroyed immediately afterwards. *In re W. HESLTYNE & SON, LD.* — Stirling J. [1891] W. N. 25

89. — *Summoning, Mode of — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115.*

The proper mode of summoning a person before an examiner, under s. 115 of the Companies Act, 1862, is by a summons in chambers, and not by subpoena; the reason being that the Court must be satisfied that the person summoned is capable of giving the information mentioned in that section. *In re WESTMORELAND GREEN AND BLUE SLATE CO.*

Kekewich J. [1892] W. N. 2

90. — *Supervision order — Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 115, 147.*

In a winding-up under a supervision order the Court can of its own motion direct an examination under s. 115 of the Act of 1862. *In re LAND SECURITIES CO.* V. Williams J. [1894] W. N. 91

**Execution.**

91. — *Execution creditor—Possession of sheriff — Companies Act, 1862 (c. 89), ss. 87, 163.*

The rule under which the Court gives effect to the rights of an execution creditor when the sheriff is in possession at the date of the commencement of the winding-up, applies in favour

**COMPANY—WINDING-UP (Execution)—contd.**

of other execution creditors who, prior to such commencement, have lodged their writs of execution with the sheriff in possession. Form 366, Palmer's Co. Prec. 6th ed., vol. ii. p. 306, followed. *In re HILLE INDIA RUBBER CO. (No. 2)*

Byrne J. [1897] W. N. 20 (5)

92. — *Foreign action—Injunction—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 163.*

The S. Co. was being wound up compulsorily. The liquidator with the sanction of the Court contracted to sell the assets in Brazil (where most of the property of the co. was) to H. F., who was resident in England, obtained judgment against the co. in Brazil, and obtained an embargo on part of the assets in Brazil. F. claimed priority by Brazilian law. There were debentures exceeding the value of the assets, which had priority over other debts.

Ordered, that the embargo should be removed on the liquidator placing a sum to a separate account to meet any claim F. could establish. *In re CENTRAL SUGAR FACTORIES OF BRAZIL. FLACK'S CASE* — North J. [1894] 1 Ch. 369

93. — *Judgment creditor—Order appointing receiver—Equitable execution—"Secured creditor"—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 87, 163—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10.*

A judgment creditor of a co. obtained an order appointing a receiver of the moneys receivable in respect of the debtor's interest in a ship and her freight without prejudice to the rights of prior incumbrancers. Before the order was acted upon an order was made to wind up the co.:—

*Held*, that the order appointing a receiver did not confer on the judgment creditor any charge on the debtor's property so as to make him a secured creditor, and was not equivalent to a seizure of the property in execution:

*Held*, therefore, that in the absence of special circumstances the Court ought not in the exercise of its discretion under s. 87 of the Companies Act, 1862, to allow the order to be further proceeded with. *CROSHAW & LYNDBURST SHIP CO.*

Stirling J. [1897] 2 Ch. 154

94. — *Writ of fieri facias—Company—Winding-up — Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-s. 6.*

Although s. 1 (6) of the Companies (Winding-up) Act, 1890, gives to the county court winding up a co. "all the powers of the High Court," the county court has no jurisdiction to issue a writ of fieri facias to the sheriff to enforce by execution an order of that Court directing a person to pay moneys received by him on behalf of the co. to the liquidator. *In re BASSETT'S PLASTER CO.* — Div. Ct. [1894] 2 Q. B. 96

And see SHERIFF.

**Fraudulent Preference.**

See Cases under COMPANY—WINDING-UP —Preference.

**Indemnity.**

— Company for benefit of one person.

See BANKRUPTCY—Assets. 63.



**COMPANY—WINDING-UP—continued.****Jurisdiction.****— Building society.**

See Cases under **BUILDING SOCIETY—Winding-up.**

95. — *County court—Metropolitan courts—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-s. 3, 5.*

The metropolitan county courts have no jurisdiction to wind up cos.; and their districts are attached for winding-up purposes to the High Court. Order 29th Nov., 1890. *In re COURT BUREAU, L.D. (No. 2) Stirling J. [1891] W. N. 15*

96. — *County court—Petition presented before 1891—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1, 31.*

A petition presented but not heard before Jan. 1, 1891, will be heard by the High Court, although the amount of the paid-up capital be within the limit prescribed for winding-up in the county court, under the Companies (Winding-up) Act, 1890, s. 1, sub-s. 3. *In re LONDON & YORKSHIRE MUTUAL MONEY CLUB Co.*

North J. [1891] W. N. 2

97. — *County court—Title to property—Liquidator and stranger—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 98, 164—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63).*

A county court judge has no jurisdiction under the Companies Acts to decide questions of title to property between the liquidator and a stranger, which arose before the commencement of the winding-up. *In re LUXLEY HOTEL Co.*

Div. Ct. [1893] 1 Q. B. 248

98. — *County court—Transfer—Building Societies Act, 1874 (37 & 38 Vict. c. 42), ss. 4, 32—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-s. 5—County Court Rules, 1892, r. 146—Order of Lord Chancellor of Nov. 29, 1890.*

A transfer of winding-up proceedings can only be made to a court having jurisdiction under the Act of 1890: the City of London Court is not such a court. *In re REAL ESTATES Co.*

V. Williams J. [1893] 1 Ch. 398

And see **COUNTY COURT—Jurisdiction.**

99. — *County court—Transfer to High Court—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 3.*

The High Court has power under s. 3 of the Companies (Winding-up) Act, 1890, to transfer from a county court to the High Court a winding-up petition on which no order has been made. *In re LAXON & Co. (No. 1)*

C. A. affirm. V. Williams J. [1892] 3 Ch. 31

100. — *Industrial and provident societies—Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45), s. 17—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1, 2, 3.*

The Companies (Winding-up) Act, 1890, made no alteration in the law relating to the winding up of societies registered under the Industrial Provident Societies Act, 1876. The only court which can wind up such societies is the county court of the district in which the society has its registered office. The Companies

**COMPANY — WINDING-UP (Jurisdiction) — continued.**

(Winding-up) Act, 1890, only applies to cos. which before the passing of the Act, the High Court had power to wind up. *In re LONDON AND SUBURBAN BANK*

North J. [1892] 1 Ch. 604

But see now Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 59.

Approved by V. Williams J. *In re Real Estates Co.*, [1893] 1 Ch. 398.

See now Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8 (2).

101. — *Petition to wrong Court—Transfer—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1 (sub-s. 3, 7), 3.*

Where the paid-up capital of a co., the nominal capital of which was 250,000l., was 101l., and a petition for winding-up was presented to the High Court, an order was made for winding-up, and the proceedings were transferred to the county court. *In re MILFORD HAVEN SHIPPING Co.* — — — Romer J. [1895] W. N. 16

102. — *Scotland—Company registered in—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 81, 171, 199—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1, 32, 33.*

Petition asking for a winding-up order against a co. registered in Scotland but carrying on business in that country and in England.

The Court held, that it had no jurisdiction to make a winding-up order. The petition allowed to be withdrawn. *In re SCOTTISH JOINT STOCK TRUST* — — — Wright J. [1900] W. N. 114

103. — *Stannaries Court—Transfer—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 81, 141; Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1 (sub-s. 1, 2, 4), 3, 32.*

Where a co. is formed to work mines within the Stannaries "or elsewhere in England," but is not shewn to be actually working mines beyond the Stannaries, the jurisdiction to wind up the co. or to entertain an application in its voluntary winding-up is in the Stannaries Court, and where proceedings have been taken in that Court, the High Court will not exercise its power to retain the proceedings before itself, but will transfer them to the Stannaries Court. *In re NEW TERRAS TIN MINING Co.*

V. Williams J. [1894] 2 Ch. 344

**Liquidator.**

*Form of liquidator's Statement of Account, and Affidavit verifying same in lieu of existing Forms.* W. N. 1899 (July 29), p. 247. See Current Index, 1899, p. lxxxviii.

104. — *Appointment—Court's power to appoint additional liquidator in voluntary winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 138, 141.*

Sects. 138 and 141 of the Companies Act, 1862, enable the Court having jurisdiction to wind up cos. to appoint a liquidator in a voluntary winding-up, not only where there is no liquidator acting or in the place of a liquidator who is by the Court removed from his office, but also in any other case where due cause is shewn

**COMPANY—WINDING-UP (Liquidator)—*contd.***  
for appointing a liquidator—e.g., when an additional liquidator is required—and the appointment may be made on the application of the existing liquidator. *In re SUNLIGHT INCANDESCENT GAS LAMP CO.* — Wright J. [1900] 2 Ch. 728

105. — *Appointment—Discretion of Court—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 6, sub-ss. 1, 3—*Companies (Winding-up) Rules, 1890, r. 63.*

Under s. 6, sub-s. 1 (a) of the Companies (Winding-up) Act, 1890, the right of the majority of the creditors and contributories present at the statutory meetings to have their nominee appointed as liquidator is subject to the control of the Court, which in the exercise of its discretion may refuse to appoint the nominee or any liquidator and leave the winding-up in the hands of the official receiver. The unanimous determination of the creditors and contributories mentioned in r. 63, sub-r. 2, of the Companies (Winding-up) Rules, 1890, refers to unanimity of all the creditors and contributories at the meetings, and not to unanimity in the result of the two meetings. *In re JOHANNESBURG LAND AND GOLD TRUST CO.* Chitty J. [1892] 1 Ch. 583

106. — *Appointment—Discretion of Court—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 91.

Although the Court has directed a meeting of creditors to be called in order to ascertain the wishes of the creditors, it may yet refuse to sanction an appointment made by a large majority of those present at the meeting. In this case the Court refused to sanction the appointment made at the meeting, and instead appointed the accountant who had been directed by the Court to act as chairman of the meeting. *In re LAND DEVELOPMENT ASSOCIATION*

Kekewich J. [1892] W. N. 23

107. — *Appointment—Provisional liquidator—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 85—*Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 4, sub-s. 5.

On a petition to wind up a co. the Court has power to appoint a provisional liquidator other than the official receiver. *In re UNIONIST CLUB, LD.* — Chitty J. [1891] W. N. 64

108. — *Appointment—Provisional liquidator—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), ss. 4, 5.

Before the hearing of a petition for compulsory winding-up a co. then in voluntary liquidation, an application was made for appointment of a provisional liquidator other than the official receiver. The Court appointed the official receiver, but restricted his powers to making an application to the Court for the appointment of some one as a special manager. *In re BOUND & CO.* V. Williams J. [1893] W. N. 21

109. — *Appointment—Validity—Notice of resolution—Voluntary winding-up of company.*

As soon as a resolution for the voluntary winding-up of a co. is passed, a liquidator may be appointed without special notice; and, in the case of a voluntary winding-up by special resolution, where the notice of the confirmatory meeting includes notice of a resolution for the confirmation of the appointment of a named person as

**COMPANY—WINDING-UP (Liquidator)—*contd.***  
liquidator, and that resolution is dropped, a resolution for the appointment of another person may be proposed and carried without further notice.

Decision of Kekewich J., [1899] W. N. 258, reversed. *In re TRENCH TUBELESS TYRE CO. BETHELL V. TRENCH TUBELESS TYRE CO.*

C. A. [1900] W. N. 42; [1900] 1 Ch. 408

110. — *Appointment of liquidator after winding-up order—Official receiver—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), ss. 4, 6.

After an order for the winding-up of a co. has been made, the Court has no power to appoint a liquidator other than the official receiver until an application has been made under s. 6 of the Companies (Winding-up) Act, 1890, for the appointment of a liquidator in his place. *In re JOHN REID & SONS, LD.* — Div. Ct. [1900] 2 Q. B. 634

111. — *Appointment of new in place of retiring liquidator in voluntary liquidation—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 141.

The Court has jurisdiction under s. 141 of the Act of 1862 to appoint a new liquidator of a co. in voluntary liquidation, not only on the removal, but also on the retirement, of an existing liquidator. *In re SHEPPY PORTLAND CEMENT CO.*

Kekewich J. [1892] W. N. 184

112. — *Calls—Making immediate call—Shares payable by instalments—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 7, 38, 98, 102.

A new co. was formed for the purpose of carrying into effect a contract for the purchase of the undertaking of an existing co. By the contract which was scheduled to the articles of the new co. it was agreed that shareholders in the existing co. should be entitled in respect of their shares to certain partly paid-up shares in the new co., and should pay the balance owing for such new shares in seven half-yearly instalments. Several shareholders accepted shares in the new co. on these terms. On the winding-up of the new co., held, that the contract was only in force during the life of the new co., and did not preclude the liquidator from making an immediate call for the whole of the unpaid balance of the shares taken under it. *CORDOVA UNION GOLD CO.* Kekewich J. [1891] 2 Ch. 580

— *Contributory.*

See Cases under COMPANY—WINDING-UP—Contributory.

— *Costs.*

See COMPANY—WINDING-UP—Costs. 61—63.

113. — *Debenture-holders—Displacing receiver by liquidator—Discretion of Court.*

As a general rule of convenience the liquidator of a co. being wound up should be appointed receiver for the debenture-holders. But if the debenture-holders have appointed a receiver under a special power given them by their security, the Court will not displace him by the liquidator. In certain cases the Court will appoint a liquidator to act as manager and receiver of the business. The C. A. in the absence of special circumstances will not overrule

**COMPANY—WINDING-UP (Liquidator)—*contd.***  
the discretion of the judge of first instance refusing to displace a receiver by a liquidator.  
*In re* JOSHUA STUBBS, LD. *BARNEY v. JOSHUA STUBBS, LD.*

Kekewich J. [1891] 1 Ch. 187; affirmed by C. A. [1891] 1 Ch. 475

*See British Linen Co. v. South American and Mexican Co., C. A. [1894] 1 Ch. 108, 111.*

**114. — Debenture-holders' action — Official receiver.**

The assets of a co. including a large amount of uncalled capital were sufficient to pay the debentures. The official receiver, who was also provisional liquidator, was appointed by V. Williams J. receiver and manager, in place of the receiver and manager in a debenture-holders' action, on an undertaking by him to keep a separate account on behalf of the debenture-holders. On appeal fresh evidence was produced that a large amount of the assets consisted of securities, which required to be realized by a commercial person. The receiver in the action was appointed by C. A. receiver of these particular assets, and the official receiver receiver of the other assets. *BRITISH LINEN CO. v. SOUTH AMERICAN AND MEXICAN CO.*

V. Williams J. varied by C. A. [1894] 1 Ch. 108

**115. — Debenture-holders' action—Priority.**

The sheriff, on seizing, on behalf of an execution creditor, goods belonging to a limited co., takes, at all events before sale by him, subject to the rights of debenture-holders under debentures charging all the property of the co. Whether, after sale by the sheriff, the debenture-holders lose their priority, *quære*.

(A) *In re THE OPERA, LD.*

C. A. [1891] 3 Ch. 260 *revers. Kekewich J.* [1891] 2 Ch. 154

(B) *TAUNTON v. SHERIFF OF WARWICKSHIRE*

C. A. [1895] 2 Ch. 319 *affirm. Kekewich J.* [1895] 1 Ch. 734

*And see Cases under COMPANY—Debentures.*

— Right of liquidator after payment of creditors to recover from directors dividends improperly paid.

*See COMPANY—Directors.* 120.

**116. — Employment of solicitor—Litigation—Costs—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 12, sub-ss. 1, 4.**

On a summons intituled in an action brought by the holders of debentures charging uncalled capital and also in the winding-up, an order was made that the liquidator should call up any uncalled capital, and for this purpose should "take all necessary proceedings for enforcing such call, and out of the first moneys coming to his hands in respect thereof" should be at liberty to retain 100% to provide for his proper costs, charges, and expenses of and incidental to making the call and enforcing the same, the order being made without prejudice to any question as to the liquidator's right to apply for a further allowance for costs. The liquidator, without any further authority from the Court or the committee of inspection, employed solicitors, and instead of

**COMPANY—WINDING-UP (Liquidator)—*contd.***  
proceeding in the ordinary mode (by balance order) brought actions to recover the calls. The committee sanctioned some subsequent steps in the litigation. The taxing master allowed all the costs notwithstanding objections by the official receiver (a) that the sanction of the Court or committee had not been obtained before the commencement of the actions; (b) that the like sanction had not been obtained to the employment of the solicitors; (c) that if the order was sufficient authority the costs authorized to be incurred were limited to 100%. —

*Held*, that the order was only meant as a performance of the function thrown on the Court by sub-s. 1 of s. 12 as to sanctioning the bringing of legal proceedings, and only authorized proceedings generally, leaving it to the Court to say what they should be; that the sanction of the committee, though not obtained prior to the initiatory steps in the proceedings, justified future steps to which the sanction had been previously obtained; that sanction, under sub-s. 1, to taking proceedings did not dispense with the necessity for obtaining sanction, under sub-s. 4, to the employment of a particular solicitor; and that although the Court had power to give subsequent sanction to proceedings taken without this sanction to employ a solicitor, it would not as a rule exercise the power except in cases of urgency. Some only of the costs were therefore allowed.  
*In re LONDON METALLURGICAL CO.*

V. Williams J. [1897] 2 Ch. 262

— Sale by liquidator of undertaking—Fiduciary relation—Setting aside sale — Interest on profits.

*See VENDOR AND PURCHASER.—Interest.* 53.

**117. — First meetings of creditors and contributories—Differences—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 6—Companies (Winding-up) Rules, 1890, r. 63 — Companies (Winding-up) Rules, April, 1892, r. 25.**

Where the contributories unanimously agreed that the official receiver should be appointed liquidator, and eight creditors whose debts amounted to 12,000*l.* voted for the official receiver, and nine creditors whose debts amounted to 3000*l.* for another person, five of the eight being directors against whom allegations had been made. The Court appointed the official receiver liquidator, as there was no *prima facie* case against the directors, and their views as creditors could not be disregarded. *In re BLOXWICH IRON AND STEEL CO.* — Wright J. 1894 W. N. 111  
— First meeting of creditors.

*See COMPANY—WINDING-UP—Meetings.*

**118. — Liabilities of—Negligence—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 138.**

A liquidator is the agent of the co., and is not strictly speaking a trustee for the creditors or contributories. He is not, therefore, in the absence of fraud, mala fides, or personal misconduct, liable to them for delay in paying debts or distributing surplus assets. *KNOWLES v. SCOTT*  
*Romer J. [1891] 1 Ch. 717*

**119. — Official receiver acting as liquidator—Appeal—Companies (Winding-up) Rules, 1890,**

**COMPANY—WINDING-UP (Liquidator)—contd.**  
*rr. 110, 111, 112, 178—Companies (Winding-up) Rules, 1892, r. 3.*

An application by way of an appeal from a decision of the official receiver acting as liquidator must be made in Chambers. Rule 3 of the Companies (Winding-up) Rules, 1890, only applies to appeals from the official receiver acting as such. *In re NATIONAL WHOLEMEAL BREAD AND BISCUIT CO. Ex parte BAINES*

**V. Williams J. [1892] 2 Ch. 457**

— Preferential payments by liquidator.

*See Cases under COMPANY—WINDING-UP—Preference.*

**120. — Provisional liquidator, Appointment of—Security—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 4, sub-ss. 1, 2, 5; s. 31, sub-s. 3; s. 32, sub-s. 3—Companies (Winding-up) Rules, 1890, rr. 32, 67.**

Under r. 67 of the Companies (Winding-up) Rules, 1890, the Board of Trade has power to fix the security to be given by a liquidator before as well as after the making of a winding-up order. *In re MERCANTILE BANK OF AUSTRALIA*

**North J. [1892] 2 Ch. 204**

**121. — Provisional liquidator, Appointment of—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 4, sub-ss. 1, 2, 5; s. 31, sub-s. 3; s. 32, sub-s. 3—Companies (Winding-up) Rules, 1890, rr. 32, 67.**

Whether the Court has power under s. 4 of the Companies (Winding-up) Act, 1890, to appoint, as provisional liquidator before the making of a winding-up order, some person other than the official liquidator, *quære*.

(A) *In re MERCANTILE BANK OF AUSTRALIA*

**North J. [1892] 2 Ch. 204**

(B) *In re NORTH WALES GUNPOWDER CO.*

**C. A. [1892] 2 Q. B. 220**

*Contra* (C) *In re UNIONIST CLUB, LD.*

**Chitty J. [1891] W. N. 64**

(D) *In re BOUND & CO.*

**V. Williams J. [1893] W. N. 21**

**122. — Provisional liquidator, Appointment of—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 4, 6.**

After the winding-up order is made the official receiver becomes provisional liquidator, and the Court has no longer power to appoint any other person. *In re NORTH WALES GUNPOWDER CO.*

**C. A. revers. Div. C. [1892] 2 Q. B. 220**

Distinguished by Div. Ct. *In re John Reid & Sons, Ltd., [1900] 2 Q. B. 634, 635.*

**123. — Remuneration—Liquidator's solicitor—Costs—Petitioning creditor—Priorities—Voluntary winding-up—Supervision order—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 110, 144—Companies (Winding-up) Rules, 1890, r. 31.**

Where a co. has gone into voluntary liquidation and appointed a liquidator, and afterwards, on a creditor's petition for a compulsory order, a supervision order is made directing the petitioner's and liquidator's costs to be taxed and paid out of the assets, the liquidator's remuneration for the period from the commencement of the winding-up to the supervision order must be postponed to the taxed costs of the petitioner and of the liquidator's solicitor, and also to any

**COMPANY—WINDING-UP (Liquidator)—contd.**  
 further costs for work properly done by the solicitor by the authority of the liquidator subsequently to the order.

*In re New York Exchange Co., [1893] 1 Ch. 371, considered. In re SANITARY BURIAL ASSOCIATION, LD. - C. A. [1900] W. N. 121; [1900] 2 Ch. 289*

**124. — Restrictions on—Voluntary winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 96, 133, sub-ss. 7, 149, 151—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 6, 9, 12.**

The Court has jurisdiction, by placing restrictions on a voluntary liquidator or by dispensing with restrictions on an official liquidator, almost to turn a winding-up under supervision into a winding-up of the cause or the converse.

The Companies (Winding-up) Act, 1890, does not apply to a voluntary winding-up, but can be utilized by the Court for the purpose of putting restrictions analogous to those imposed by the legislature, where desired by the creditors, upon the powers of an official liquidator in a compulsory winding-up. Form of order. *In re WATSON & SONS, LD.*

**Chitty J. [1891] 2 Ch. 55**

— Settling list of contributories.

*See Cases under COMPANY—WINDING-UP—Contributory.*

**125. — Supervision Order—Liquidator's report.**

In future orders that voluntary liquidations shall be continued under the supervision of the Court will require the liquidator to make reports to the registrar in cos. winding up as to the progress of the winding-up, only quarterly, instead of every month, as heretofore. *In re HORNER & CO. - Wright J. [1898] W. N. 169 (7)*

**126. — Supervision order—Security—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 150.**

Where a co. is being voluntarily wound up and the winding-up is continued under a supervision order and the voluntary liquidator has not given security, if an additional liquidator is appointed by the Court he will be required to give security. *In re HAMPSHIRE LAND CO.*

**V. Williams J. [1894] 2 Ch. 632**

**127. — "Undistributed assets"—Companies Liquidation Account—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 15, sub-s. 3—Companies Winding-up Rules, 1890, r. 127D.**

In Dec., 1895, a limited co., being unable to pay the interest on its debentures, went into voluntary liquidation. On April 15, 1896, the Court sanctioned a scheme under the Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), which provided that the uncalled capital of the co. should be called up by the voluntary liquidators, and that they should thereout, by Sept. 1897, pay sums amounting to a dividend of 12s. 6d. in the pound to the debenture-holders, the balance being payable in 1902, and the interest being kept down in the meantime. Any surplus from calls, after payment of the first dividend, might be applied, according to the liquidators' discretion, for management and other expenses. The scheme also gave the liquidators power to borrow for the purpose of protecting and developing the assets. On the debenture-holders

**COMPANY—WINDING-UP (Liquidator)—contd.**

being paid off, the winding-up was to be stayed, and the co. was to resume business. By a trust deed executed in pursuance of the scheme the liquidators covenanted to apply the proceeds of the call in accordance with the scheme. In May and Sept., 1897, the liquidators filed with the Registrar of Joint Stock Companies the statements of account required by s. 15 of the Companies (Winding-up) Act, 1890; but they refused to pay into the Companies Liquidation Account the surplus of calls shewn by the accounts to be still in their hands or under their control, although directed to do so by the Bd. of Trade. On a motion by the Board for an order to comply with its direction:—

*Held*, that the money was not "undistributed assets" within s. 15, sub-s. 3, of the Act of 1890, and that the liquidators could not be called on to pay it into the Companies Liquidation Account. *In re LAND MORTGAGE BANK OF FLORIDA*

Wright J. [1898] 1 Ch. 444

**Meetings.**

See Cases under COMPANY—Meetings.

128. — *First meeting of creditors—Power to re-summon—Companies Winding-up Act, 1890 (53 & 54 Vict. c. 63), s. 6.*

Where at a first meeting of creditors the functions of that meeting have been performed, a further—not a fresh—first meeting of creditors can be summoned. *In re CHARLES REYNOLDS & Co.*  
V. Williams J. [1895] W. N. 31

129. — *Right to vote—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), Sched. I., clauses 7 and 11—Companies (Winding-up) Rules, 1890, rr. 110 and 111.*

A proof tendered by accountants for work done partly before and partly after the commencement of the winding-up, in respect of a reconstruction scheme, the total amount of the debt claimed being sworn to, *held*, not to fall within clause 7 of Sched. I. of the Companies (Winding-up) Act, 1890. A summons to expunge such proof was therefore dismissed with costs. *In re CANADIAN PACIFIC COLONIZATION Co.*

Stirling J. [1891] W. N. 122

**Mortgages.**

See also COMPANY—Mortgages and Charges.

130. — *Distress—Interest—Liquidators—Possession—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 87, 163.*

Where the liquidators and receivers of a cotton-mill co. in liquidation, and whose mill was in mortgage, took possession of the mill without any objection on the part of the mortgagee, and kept it in working order so as to prevent deterioration and to enable them to sell it as a going concern, the Court refused to give the mortgagee leave to distrain for interest accrued since the date of taking possession, holding that the possession of the liquidators and receivers was as much for the benefit of the mortgagee as of the co.

It is easier for a landlord to obtain leave to distrain for rent accrued after a winding-up

**COMPANY—WINDING-UP (Mortgages)—contd.**  
order than for a mortgagee to obtain leave to distrain for interest.

*In re Lancashire Cotton Spinning Co.*, 35 Ch. D. 656, and *In re Brown, Bayley and Dixon*, 18 Ch. D. 649, considered. *In re HIGGINSKAW MILLS AND SPINNING Co. C. A.* [1896] 2 Ch. 544

**Officers.**

— Examination of officers.

See COMPANY—WINDING-UP—Examination of Officers.

— Proceedings against delinquent officers.

See COMPANY—WINDING-UP—Proceedings against Delinquent Officers.

**Official Receiver.**

See also Cases under RECEIVER.

— Debenture-holders' action.

See COMPANY—Debentures. 76—88.

131. — *Petition by official receiver—Public examination—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 8, 14.*

It is not a matter of course to make a compulsory winding-up order under s. 14 of the Companies (Winding-up) Act, 1890, but the section applies to every case where the official receiver after such an order would possess any power which the voluntary liquidator cannot exercise, and which is necessary in order that there may be an efficient winding-up in the interests of the creditors or contributories—e.g., where misfeasance proceedings are contemplated and a public examination is absolutely necessary in order to obtain a sufficient disclosure as to the facts. *In re 1897 JUBILEE SITES SYNDICATE.*

Wright J. [1899] W. N. 86; [1899] 2 Ch. 204

132. — *Proceedings in name of official receiver.*

The official receiver is not to allow proceedings to be taken in his name simply on persons giving an indemnity, or on counsel on their behalf advising that there is a clear case. He must act on his own judgment. If there is a committee of inspection, or a committee representing the creditors, the official receiver may act on their opinion that such proceedings should be taken. PRACTICE NOTE

Per V. Williams J. [1894] W. N. 166

133. — *Proceedings in name of official receiver—Indemnity.*

The official receiver should not allow his name to be used on an indemnity being given, at any rate till the official receiver had satisfied himself, by taking counsel's opinion, as to the propriety of the proceedings, because as soon as he allows his name to be so used he ceases to have control over the proceedings. *In re ANGLO-SARDINIAN ANTIMONY Co.* — V. Williams J. [1894] W. N. 156

Referred to by V. Williams J., [1894] W. N. 166. See preceding Case.

— Report of official receiver.

See Cases under COMPANY—WINDING-UP—Examination of Officers.

134. — *Report of official receiver—Sufficiency—Finding of fraud—Order for public examination—Jurisdiction—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8—Motion to dis-*

**COMPANY—WINDING-UP (Official Receiver)—continued.**

*charge order for public examination—Time—R. S. C., Order LVIII., r. 15.*

To enable the Court to make an order, under sub-s. 3 of s. 8 of the Companies (Winding-up) Act, 1890, for a public examination of a person who is alleged to have taken part in the promotion or formation of a co. in liquidation, the further report of the official receiver under sub-s. 2 must not only state that that person had taken part in the promotion or formation, and that, in the opinion of the official receiver, fraud had been committed by him in the promotion or formation, but must also state facts shewing a basis for the official receiver's opinion, and warranting the judge in calling upon the person implicated for an explanation.

Observations as to the proper mode of framing the report.

Order of Wright J. affirmed.

*Per Wright J.:* Notice of motion to discharge an ex parte order for public examination under sub-s. 3 ought to be given within a reasonably short time.

Whether the time for giving such a notice is fixed by Order LVIII., r. 15, of the Rules of the Supreme Court, *quære*. *In re CIVIL, NAVAL AND MILITARY OUTFITTERS, LD.*

**C. A. [1899] 1 Ch. 215**

**135. — Sanction, to proceedings—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 4, 27, sub-s. 1—Companies (Winding-up) Rules, 1890, r. 165.**

The question as to when the taking of proceedings by the official receiver requires the sanction of the Court, and when the authority of the Bd. of Trade, discussed. *In re NEW ZEALAND LOAN AND MERCANTILE AGENCY CO.*

**V. Williams J. [1894] W. N. 200**

**136. — Statement of affairs—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 7.**

An order to submit a statement of affairs ought not to be made at the instance of the official receiver until the registrar has satisfied himself that the person required to make the statement had the materials for doing so. In future applications for such orders must be made to the judge himself. *In re COLUMBIAN GOLD MINES — V. Williams J. [1894] W. N. 92*

**Petition.****(Petition and Order.)**

**137. — Abuse of process—Demurrable petition—Companies Acts, 1862 (25 & 26 Vict. c. 89), s. 85; 1867 (30 & 31 Vict. c. 131), s. 40.**

Where a petition is presented ostensibly for a winding-up order, but really for another purpose, such as putting pressure on a co., the Court has an inherent jurisdiction to prevent such an abuse of process, and will do so, without requiring an action to be commenced, by restraining the advertisement of the petition, and staying all proceedings on it. *In re A COMPANY*

**V. Williams J. [1894] 2 Ch. 349**

**138. — Advertisement—Amending advertisement of petition—Companies Winding-up Rules, April, 1892, r. 19; *Ibid.* Form 3.**

Where the advertisement of a petition for

**COMPANY—WINDING-UP (Petition)—contd.**

winding-up omits the foot-note set out in Form 3 of April, 1892, the Court will not overlook the irregularity, but will require the petition to be re-advertised in the proper form.

*In re Mont de Piété of England, Ltd.* (1892) 37 S. J. 48, not followed on this point. *In re HILLIE INDIA RUBBER CO. Byrne J. [1897] W. N. 6 (4)*

**139. — Advertisement—Certificate of registrar.**

North J. stated that in future he should adopt the rule laid down by Chitty J., and not allow a winding-up petition to be called on for hearing unless the certificate of the registrar was produced that the petition had been properly advertised. *In re KERSHAW & POLE, LD.*

**North J. [1891] W. N. 202**

**140. — Advertisement—Compulsory or supervision order—Application at hearing for supervision order.**

In this case an adjournment was directed for the purpose of fresh advertisements, and eventually a supervision order reluctantly granted. *In re NEW ORIENTAL BANK CORPORATION (No. 1)*

**V. Williams J. [1892] 3 Ch. 563**

Followed by V. Williams J. *In re Civil Service Brewery Co., [1893] W. N. 5.*

**141. — Advertisement—Defect—Companies (Winding-up) Rules, 1890, r. 177—Companies (Winding-up) Rules (Feb.), 1891, rr. 2, 3; Form 2.**

A formal defect in the date fixed for the hearing held not to invalidate petition, there being no proof that any one was misled by the mistake. *In re BROAD'S PATENT NIGHT LIGHT CO.*

**North J. [1892] W. N. 5**

**142. — Advertisement—Defect—Companies (Winding-up) Rules, 1890, r. 177 (1)—Companies (Winding-up) Rules, 1892, r. 19; Form 3.**

Where the foot-note required by r. 19 and F. 3 of the Companies (Winding-up) Rules, 1892, was omitted, the Court made an order without fresh advertisement, but stated this would not form a precedent. The voluntary liquidator was allowed his costs of appearance. *In re MONT DE PIÉTÉ OF ENGLAND*

**V. Williams J. [1892] W. N. 166**

**143. — Advertisement of petition—Defunct company—Service of petition—Companies Act, 1880 (43 & 44 Vict. 19), s. 7—Companies Winding-up Rules, 1890, r. 35.**

Where the Registrar of Joint Stock Companies has struck the name of a defunct company off the register under s. 7 of the Companies Act, 1880, the proper remedy of a creditor is to petition for a winding-up order. In such a case neither the provisions as to service of the petition contained in the Rules of 1890, nor the provisions as to service contained in the Act of 1880, apply, but special directions as to service must be obtained. *In re ANGLO-AMERICAN EXPLORATION AND DEVELOPMENT CO.*

**V. Williams L.J. [1897] W. N. 152 (3); [1898] 1 Ch. 100**

**144. — Advertisement—Irregularity in advertisement—Companies (Winding-up) Rules, 1890 rr. 34, 177.**

An order made on a petition notwithstanding an irregularity in the advertisement; the Court holding, under rule 177 of the Companies Rules,

**COMPANY—WINDING-UP (Petition)—contd.**

1890, that the irregularity did not invalidate the proceedings. *In re BULL, BEVAN & Co.*

North J. [1891] W. N. 170

**145. — Advertisement—Readvertisement on amendment of petition.**

Where a petition asking for continuance of a voluntary winding-up under supervision is amended so as to ask for a compulsory order, the petition must be readvertised. *In re NATIONAL WHOLEMEAL BREAD AND BISCUIT CO.*

Kekewich J. [1891] 2 Ch. 151

**146. — Advertisement — Readvertisement on amendment of petition.**

Where a petition asks for a compulsory order or a supervision order, but at the hearing a supervision was alone applied for, held that the petition must be readvertised, and it must be shewn clearly that only a supervision order would be asked for at the hearing.

(A) *In re NEW MORGAN GOLD MINING CO.*

V. Williams J. [1893] W. N. 79

(B) *In re NEW ORIENTAL BANK CORPORATION (No. 1)*

V. Williams J. [1892] 3 Ch. 563

(C) *In re CIVIL SERVICE BREWERY CO.*

V. Williams J. [1893] W. N. 5

**147. — Advertisement—Supervision order—Readvertisement.**

In future, when a petition for winding-up is amended by inserting a prayer for a supervision order, and the petition is ordered to be readvertised as amended, the new advertisement must appear not only in the *Gazette*, but in all the newspapers in which the original advertisement appeared. *In re DOMBEY & SON*

V. Williams J. [1895] W. N. 146 (2)

**148. — Affidavit in support of petition—Defect or irregularity—Companies Winding-up Rules, 1890, rr. 36, 177 (1.).**

Where a petition for winding-up is presented by an individual and not by a co., the affidavit in support, referred to in rule 36 of the Companies Winding-up Rules, 1890, cannot be made by the petitioner's manager; and non-compliance with the rule by filing only an affidavit by a person not by the rule authorized to make the affidavit cannot be waived by the Court as a "formal defect" or an "irregularity" within the meaning of rule 177 (1.) *In re CHARTERLAND STORES AND TRADING CO.*

Wright J. [1900] W. N. 235;

[1900] 2 Ch. 870

**149. — Affidavit of service—"Sealing"—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63)—Companies (Winding-up) Rules, 1890, rr. 3, 73; Appx., Forms 14 and 15.**

There being no "seal of the Court," the Court authorized the affidavit of service of a petition to be sworn without the words in the appendix form which purports to state that the deponent had served a copy of the petition "duly sealed with the seal of the Court."

*Semble*, that a seal will be necessary to put in force Companies (Winding-up) Act, 1890, ss. 39, 40. *In re THE COURT BUREAU, LD. (No. 1)*

Stirling J. [1891] W. N. 9

**150. — Affidavit statutory, by clerk to solicitors—Petition.**

Where the petitioners for a winding-up were

**COMPANY—WINDING-UP (Petition)—contd.**

absent on the continent of Europe, the Court allowed the statutory affidavit to be made by a clerk to the solicitors acting for them, who had full knowledge of the proceedings to obtain judgment for the debt on which the petition was founded. *In re CARRARA MARBLE CO.*

V. Williams J. [1896] W. N. 87 (9)

**151. — Affidavit supporting petition—Notice of filing.**

In its observations in *In re New Weighing Machine Co.*, [1896] W. N. 48 (4), cited 9 Palmer's Company Precedents, 7th ed. p. 69, the Court did not intend to lay down the rule that notice must be given to a co. of the filing of the statutory affidavit in support of a winding-up petition against it, but only meant that when an additional or supplemental affidavit was filed notice of the filing thereof should be given in order to avoid unnecessary applications for adjournments for the purpose of answering the additional affidavit. In future it will be unnecessary to give notice of the filing of the statutory affidavit. PRACTICE DIRECTION

Wright J. (after consultation with V. Williams L.J.) [1898] W. N. 7 (10)

**152. — Affidavit supporting petition—Notice of filing.**

Although there is no express rule requiring notice to be given to the company of the filing of the statutory affidavit in support of a winding-up petition, the practice of giving notice of filing is a convenient one, and must in future be followed. *In re NEW WEIGHING MACHINE CO.*

V. Williams J. [1896] W. N. 48 (4)

**153. — Appearance—Committee of creditors—Companies (Winding-up) Rules (Feb.), 1891, r. 3.**

A notice of intention to appear at the hearing was given on behalf of six persons who were acting as a committee of the creditors. The Court refused to recognise the persons as a committee representing the creditors, and treated the notice as given solely on behalf of the persons named in it. *In re MID-KENT FRUIT FACTORY*

North J. [1892] W. N. 65

**154. — Compulsory or supervision order—Second petition—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.**

Although s. 8 of the Companies (Winding-up) Act, 1890, enlarges the jurisdiction of the Court as to compulsory orders, yet a shareholder who differs from the majority must still allege and prove grounds for supposing that he will derive substantial benefit from the compulsory order before the Court will grant it, on his petition, against the wishes of the majority. A shareholder who presents a petition after notice of another petition must prove proper independent grounds, or he will be cast in costs. *In re DORÉ GALLERY, LD.*

North J. [1891] W. N. 98

**155. — Costs—Companies (Winding-up) Rules, (Feb.), 1891.**

Costs of attending the hearing of a winding-up petition will be disallowed to all creditors who omit to state in their notice of intention to appear whether they intend at the hearing to support or oppose the petition, as required by the Companies

**COMPANY—WINDING-UP (Petition)—*contd.***

Winding-up Rules, Feb. 1891. *In re GREEN, McALLAN & FEILDEN, LD.*

Chitty J. [1891] W. N. 127

**156. — *Disputed debt.***

At the time when the winding-up petition in this case was presented, the creditor presenting it had obtained judgment against the co. for the debt on which the petition was grounded. Before the hearing of the petition the judgment had been reversed by a Div. Ct., but the petitioner had presented an appeal from that decision to the C. A. :—

*Held*, that the judgment, having been reversed, must be taken to have been wrong, and that the petition must be dismissed with costs. *In re ANGLO-BAVARIAN STEEL BALL CO.*

Cozens-Hardy J. [1899] W. N. 80

**157. — *Equitable debt.***

The P. Co. held shares in the X. Co. on which certain calls were due. The X. Co. so charged or dealt with the calls as to pass the real interest in them to Y. for value received. The X. Co. went into liquidation, and with its liquidator, but without the concurrence of Y., presented a petition for the winding-up of the P. Co. in respect of the unpaid calls :—

*Held*, without deciding whether there was an actual equitable assignment to Y., or whether he could himself have petitioned for winding-up, that no winding-up order ought to be made on the X. Co.'s petition. *In re PENTALTA EXPLORATION CO.*

Wright J. [1898] W. N. 55 (2)

**158. — *Evidence required from opponents.***

Those opposing a compulsory order for winding-up should, when connected with the co., state on affidavit such matters as are within their knowledge, as to the promotion, formation, or failure of the co., as go to negative the necessity or desirability of inquiry into such matters. And where there is a pending debenture-holder's action, the opponents to the petition should also state the date of issue of the debentures, and the consideration for such debentures. *In re J. H. EVANS & CO.*

V. Williams J. [1892] W. N. 126

**159. — *Foreign company with branch office and assets in England—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 199.***

The Court, on the assumption that the principal liquidation would take place abroad, made a compulsory order winding up a foreign co. with a branch office and assets in England, but confined the liquidator's powers to the English assets. *In re FEDERAL BANK OF AUSTRALIA*

V. Williams J. [1893] W. N. 46;

*affirm.* by C. A. [1893] W. N. 77

**160. — *Grounds for order—Allegation of fraud—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 5, 91—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.***

Compulsory order made on ground that the substratum of the co. was gone.

*Semble*, that an allegation that an investigation is necessary in consequence of fraud in the promotion is now sufficient for a compulsory order, and that a majority of shareholders cannot now force a minority to forego their statutory right of

**COMPANY—WINDING-UP (Petition)—*contd.***

investigation under s. 8 of the Act of 1890. *In re GENERAL PHOSPHATE CORPORATION (No. 1)*

V. Williams J. [1893] W. N. 142

**161. — *Grounds for order—Compulsory order for voluntary winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 91, 145—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.***

Where the control of the business and debentures was substantially in the hands of one man and his immediate family, and their nominee had been appointed both receiver and voluntary liquidator, *held*, that it was desirable in the interests of the creditors that the voluntary liquidation should not continue, but that an order for compulsory winding-up must be made. *In re MEDICAL BATTERY CO.*

V. Williams J. [1894] 1 Ch. 444

Followed by Farwell J. *In re E. Bishop & Sons, Ltd.*, [1900] 2 Ch. 254, 261.

**162. — *Grounds for order—Jurisdiction—Fraud—Shareholder's petition—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 79 sub-s. 5, 129 sub-s. 3, 145—Directors' meeting—Essential formality.***

An order to wind up a co. compulsorily will be made on the petition of a holder of a paid-up share, notwithstanding that an extraordinary resolution has been passed, under s. 129, sub-s. 3, of the Companies Act, 1862, to wind up voluntarily.

Fraud is a ground, but not the only ground, on which this jurisdiction is exercisable.

After a committee of investigation had reported in favour of proceedings against the directors of a co. to make them liable for misfeasance, an extraordinary resolution was passed to wind up the co., and steps were taken to dissolve the co. and destroy the books. The co. was ordered to be wound up on the petition of a holder of a paid-up share.

An extraordinary resolution under s. 129, sub-s. 3, of the Companies Act, 1862, to wind up a co. voluntarily :—

*Held*, ineffectual because the notices summoning the meeting had been issued by the secretary without the authority of a resolution of the directors duly assembled at a board. *In re HAYCRAFT GOLD REDUCTION AND MINING CO.*

Cozens-Hardy J. [1900] W. N. 106;

[1900] 2 Ch. 230

**163. — *Grounds for order—"Just and equitable"—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.***

A winding-up petition was presented by a creditor whose debt was payable at a future date under a scheme of arrangement under which the co. was formed. It was not alleged that the co. was at present insolvent, but that insolvency must inevitably result at an early date if the co. was continued under the conditions imposed by the scheme. The co. was registered, and carrying on business, and had its head office in New South Wales, but it had a branch office in London, and proceedings had been commenced in the Colony, in which an order had been made to summon meetings to sanction a new scheme of arrangement under a Colonial statute. It was



**COMPANY—WINDING-UP (Petition)—contd.**

admitted that the sole object of the petition was to have a scheme sanctioned in England under the Joint Stock Companies Arrangement Act, 1870. The petition was not opposed by the co. :—

*Held*, that it was just and equitable that a winding-up order should be made. *In re AUSTRALIAN JOINT STOCK BANK*

**V. Williams J. [1897] W. N. 48 (3)**

**164. — Grounds for order—“Just and equitable”**—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.

The doctrine to be gathered from early cases—that the Court will not order a company to be wound up on the ground that it is “just and equitable that the company should be wound up” (the 5th head of s. 79 of 1862) unless the facts relied on shew a case ejusdem generis with those referred to in the four preceding heads of the section—may now be disregarded; e.g., a complete deadlock as to the management of the company’s affairs is now considered a ground for making a winding-up order. *In re SAILING SHIP “KENTMERE” Co.*

**V. Williams J. [1897] W. N. 58 (2)**

**165. — Grounds for order—“Just and equitable”**—Disappearance of substratum—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.

A co. called the “Kronand Metal Co., Ltd.,” was formed to take over the business of a partnership trading as the Kronand Metal Co.; but the memorandum referred slightly to business in manufacturing metals generally as being amongst the objects of the co. A prospectus was issued (inviting subscriptions for shares) which was entirely devoted to descriptions and commendations of “Kronand Metal” and the prospects of the co. with reference to the manufacture thereof. The objects of the memorandum of association were not stated in or indorsed on the prospectus. On the faith of this prospectus R. and others took shares in the co. The co. after many months’ trading had never manufactured “Kronand Metal” in large quantities, had never made a profit on that business, had principally devoted itself to carrying on business by manufacturing articles made of brass, and, even on its entire business, had so far made a considerable loss. R. petitioned for a winding-up order on the ground that “Kronand Metal” manufacturing, the principal object and substratum of the co., was gone :—

*Held*, that as the manufacturing of goods in other metals was not entirely ancillary to the principal object, and the “Kronand Metal” business had, with “nursing”—namely, by continuing the other metal business—a chance, although a small one, of life, the substratum could not be said to be entirely gone, and that, having regard to the fact that a large majority of the shareholders opposed the petition, a winding-up order must be refused. *In re KRONAND METAL Co.*

**Wright J. [1899] W. N. 14 (5)**

**166. — Grounds for order—“Just and equitable”**—Substratum gone—Fraud—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 5.

A co. fraudulent in its inception, carrying on a small business at a loss, having no capital of its own—all the subscribed capital having found its

**COMPANY—WINDING-UP (Petition)—contd.**

way into the hands of the real, though not the ostensible, promoters—and hopelessly embarrassed by numerous actions brought by shareholders on the ground of fraud, was ordered by the C. A. (affirming, V. Williams J.) to be wound up, the Court holding that the case was one in which it was “just and equitable,” within s. 79, sub-s. 5, of the Companies Act, 1862, to make the order, that being the most effective means for recovering for the shareholders the money dishonestly retained by the real promoters.

Decision of V. Williams J., [1896] W. N. 170 (4); [1897] 1 Ch. 45, affirmed. *In re BRINSMEAD (T. E.) & SONS* **C. A. [1897] 1 Ch. 406**

**167. — Grounds for order—Shareholder’s petition—Shares issued at discount—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 5.**

That shares in a limited co. have been issued at a discount is not a ground for making a winding-up order on the petition of a fully paid-up shareholder, even if where the amounts unpaid on the shares were called up, there would be a surplus for division among the members of the co. *In re PIONEERS OF MASHONALAND SYNDICATE*

**V. Williams J. [1893] 1 Ch. 731**

Referred to by C. A. *In re Railway Time Table Publishing Co., Ex parte Welton*, [1895] 1 Ch. 255, 265; [1897] A. C. 299.

**168. — Grounds for winding-up order—“Just and equitable”**—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.

A co. was formed with the primary and principal object of taking over the undertakings, assets, and liabilities of three other cos. each of which had as its principal object an adventure in seats for the Diamond Jubilee. A loss had been made on this adventure, and all that remained to be done was to return the surplus assets to the shareholders after deducting the losses and expenses. The directors, however, were contemplating embarking on other business, which in the Court’s opinion was ultra vires the co. :—

*Held*, that it was “just and equitable” that the co. should be wound up.

*Ex parte Fox*, (1871) L. R. 6 Ch. 176, distinguished.

*Semble*, that the old rule—that the words “just and equitable” in clause 5 of s. 79 of the Companies Act, 1862, are to be construed as relating only to matters ejusdem generis with the grounds for winding-up mentioned in the earlier parts of the section—has of late been considerably relaxed. *In re AMALGAMATED SYNDICATE* - **V. Williams J. [1897] 2 Ch. 600**

**169. — Order—Drawing up order.**

A petitioner having failed to draw up the order for winding-up, the Court, in the interest of the creditors and the contributories, a debenture-holder’s action being pending, granted leave to a creditor to draw up the order. *In re SOUTH METROPOLITAN BREWING AND BOTTLING Co.*

**Kekewich J. [1891] W. N. 51**

**170. — Parties attending—Companies (Winding-up) Rules (February), 1891, r. 4, Form 3.**

Where no parties attend the hearing of a winding-up petition, the solicitor for the petitioner should for convenience file list, under

**COMPANY—WINDING-UP (Petition)—contd.**

r. 4, Form 3, of the Companies Winding-up Rules, Feb., 1891, of parties attending, with a written notice across it that no persons intended to appear, or by letter to the registrar signifying that no persons had given notice of intention to appear. *In re AUSTRALASIAN ALKALINE REDUCTION AND SMELTING SYNDICATE*

Chitty J. [1891] W. N. 209

**171. — Postponement of drawing up of order.**

*Semble*, where it is desired that an opportunity should be given for payment of the petitioner's debt and the consequent avoidance of an order, the proper course is for the petition to stand over for a fortnight, and, on being mentioned when replaced in the paper, the winding-up order will be made unless the petitioner's debt and costs is satisfied in the meantime, the position of parties to be unaltered during this period. The practice of making winding-up orders which are not to be drawn up until a future date is objected to by the registrar's office. *In re BAKER, TUCKERS & Co.*

Wright J. [1894] W. N. 33

**172. — *Primâ facie* right of creditor to order—***Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 79, 91—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.*

Apart from the Companies (Winding-up) Act, 1890, a creditor unable to obtain payment of his debt is *primâ facie* entitled to a compulsory winding-up order. The refusal of such an order is only justified when no possible benefit can result from making it. Since the Act of 1890 it is sufficient to justify a compulsory order to shew that an investigation under the Act is likely to benefit the creditors. *In re KRASNAPOLSKY RESTAURANT AND WINTER GARDEN Co.*

V. Williams J. [1892] 3 Ch. 174

**173. — Right to present—Debenture-holder—Statutory company.**

A co. formed by Act of Parliament which incorporated the Companies Clauses Act, 1845, issued debentures. The co. failing to pay the debentures, one of the debenture-holders obtained judgment against them, but failed to obtain payment of his debt:—

*Held*, that neither the fact that a debenture-holder had a right to a receiver nor the fact that the co. was formed with statutory powers for the public advantage, could deprive the debenture-holder, who had exhausted his other remedies, of his ordinary rights as a creditor to present a winding-up petition. *In re BOROUGH OF PORTSMOUTH (KINGSTON, FRATTON AND SOUTHEAST) TRAMWAYS Co.* Stirling J. [1892] 2 Ch. 362

Referred to by C. A. Marshall v. South Staffordshire Tramways Co., [1895] 2 Ch. 36, 54.

**174. — Right to present—Shareholder—Calls unpaid.**

As a general rule the Court will not hear a petition by a shareholder who is in arrear in payment of calls, but there may be circumstances in which the Court ought not to refuse to hear such a petition on terms. *In re CRYSTAL REEF GOLD MINING Co.* North J. [1892] 1 Ch. 408

**175. — Small debt.**

In future, where a petition is presented in

**COMPANY—WINDING-UP (Petition)—contd.**

respect of a small debt, no winding-up order will be made, or if made will be made without costs. *In re HERBERT STANDBRING & Co.*

Per V. Williams J. [1895] W. N. 99

**176. — Small debt—Debt of petitioner under 50l.—***Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 79, 80.*

The petitioners prayed that the co. might be wound up by the Court. The co., the registered office of which was within the metropolitan county courts district, had a nominal capital of 5000l., of which only 114l. was paid up. The petitioners were judgment creditors for 20l. 19s. 4d., and they had issued execution, which had been returned unsatisfied. They had also applied to the co. for payment, but without success. It was alleged that one of the petitioners owed the co. 12l. for calls made on shares held by him.

"The High Court is reluctant to lend itself as a collector of small debts by means of its winding-up jurisdiction, and in future winding-up orders will not usually be made where the debt is small, and when the order is made it will be without costs. *In re Herbert Standring & Co.*, [1895] W. N. 99."

Where the debt on which the petition was founded was small in amount, the petitioner should allege and make out some special ground for making a winding-up order. In the present instance a sufficient case had not been made. Petition dismissed with costs. *In re FANCY DRESS BALLS Co.* Wright J. [1899] W. N. 109

**177. — Statement as to period of petitioner's shareholding—***Companies Act, 1867 (30 & 31 Vict. c. 131), s. 40.*

The winding-up petition in this case omitted to state facts shewing that the petitioner, who was a shareholder, had held his shares for at least six months during the eighteen months prior to the commencement of the winding-up. The company was not represented at the hearing of the petition:—

*Held*, that where the co. did not appear, the Court, before making a winding-up order on a shareholder's petition, should be satisfied that the petitioner had held his shares for the period required by the Act of 1867, but this fact might be shown by affidavit, and it was unnecessary to amend the petition. *In re GLENDOWER STEAMSHIP Co.* Wright J. [1899] W. N. 114

**178. — Supervision order—Conditions—Costs.**

On the hearing of a petition for a compulsory winding-up order, the Court, at the request of the petitioner, made an order for winding-up under supervision without readvertisement of petition. *In re CIVIL SERVICE BREWERY Co.*

V. Williams J. [1893] W. N. 5

**179. — Transfer from county court to High Court—***Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 3.*

The High Court has power under s. 3 of the Companies (Winding-up) Act, 1890, to transfer from a county court to the High Court a winding-up petition on which no order has been made. *In re LAXON & Co. (No. 1)*

C. A. affirm. V. Williams J. [1892] 3 Ch. 31

**180. — Transfer from High Court to county**

**COMPANY—WINDING-UP (Petition)—contd.**

*court* — *Companies (Winding-up) Act*, 1890 (53 & 54 *Vict. c. 63*), s. 1, sub-s. 5; s. 3.

A transfer of winding-up proceedings can only be made to a Court having jurisdiction under the Act of 1890: the City of London Court is not such a Court. *In re REAL ESTATES Co.*

V. Williams J. [1893] 1 Ch. 398

See now Building Societies Act, 1894 (57 & 58 *Vict. c. 47*), s. 8, sub-s. 1.

**181. — Transfer from High Court to Stannaries Court.**

Where a co. is formed to work mines within the Stannaries "or elsewhere in England," but is not shewn to be actually working mines beyond the Stannaries, the jurisdiction to wind up the co. or to entertain an application in its voluntary winding-up is in the Stannaries Court; and where proceedings have been taken in that Court, the High Court will not exercise its power to retain the proceedings before itself, but will transfer them to the Stannaries Court. *In re NEW TERRAS TIN MINING Co.*

V. Williams J. [1894] 2 Ch. 344

**182. — Transfer to county court—Extension of objects—Paid-up capital under 10,000l.—Jurisdiction—Companies (Memorandum of Association) Act, 1890 (53 & 54 *Vict. c. 62*), s. 1—Companies (Winding-up) Act, 1890 (53 & 54 *Vict. c. 63*), ss. 1 (sub-ss. 1, 3, 7), 2.**

A co. with a paid-up capital not exceeding 10,000l. presented a petition asking for the confirmation of the High Court to alterations in its memorandum of association with reference to its objects, the petition being assigned to Wright J. as the winding-up judge. The registered office of the co. was within the district of a county court having winding-up jurisdiction.

Order made confirming the alteration as asked, but the proceedings ordered to be transferred to the county court. *In re RUGELEY GAS Co.*

Wright J. [1899] W. N. 127

**183. — Unopposed petition—Order of hearing—General Rules of Feb. 14, 1891, under Companies (Winding-up) Act, 1890, rr. 3, 4.**

North J. stated that, having regard to the provisions of the Companies Winding-up Rules, Feb. 1891, rr. 3, 4, he should treat a winding-up petition as unopposed, and hear it when first called, if no notice of opposition had been received by the registrar. The order to be of course subject to the risk of its being stopped afterwards, if it should turn out that notice of opposition had been given to the petitioner. *In re INMAN & Co.*

North J. [1891] W. N. 202

**184. — Verification—Petition by limited company—"Principal officer"—Companies (Winding-up) Rules, 1890, r. 86.**

Held, that a liquidator of the petitioning co. was a "principal officer" of the co. within r. 36 of the Companies Winding-up Rules, 1890, and therefore the proper person to make the affidavit verifying the petition. *In re REVIEW PUBLISHING Co.*

V. Williams J. [1893] W. N. 5

**185. — Withdrawal of petition—Substituting another petition—Notice of appearance—Companies (Winding-up) Rules (April), 1892, rr. 20,****COMPANY—WINDING-UP (Petition)—contd.**

21—*Companies (Winding-up) Rules of March, 1893, r. 2.*

A., B., and C. were creditors, C.'s debt being disputed. A. had petitioned, but was personally willing to withdraw his petition. A.'s solicitors had received notice from B. of his intention to appear and support. They also represented C., but no notice under r. 20 of April, 1892, had been given of C.'s intention to appear. The solicitors had at the foot of the list of appearances required by r. 21 of April, 1892, written a statement that C. intended to appear and support. An order was made substituting C. as petitioner. *In re INVICTA WORKS, LD.*

V. Williams J. [1894] W. N. 39

**Practice.**

*Attendance of parties in Chambers, Rule as to, being r. 173A of the Companies (Winding-up) Act, 1890 (53 & 54 *Vict. c. 63*). W. N. 1896 (April 11), p. 87; W. N. 1896 (May 30), p. 158. See Current Index, 1896, p. lvi.*

**186. — Amendment—Misrepresentation in prospectus.**

An alleged shareholder in a co. was allowed to amend his statement of claim for rescission, after presentation of a winding-up petition, by enlarging his original allegations of misrepresentation when discovered, but not by adding a new cause of action. *COCKSEDGE v. METROPOLITAN COAL CONSUMERS' ASSOCIATION*

Kekewich J. [1891] W. N. 132; affirm. by C. A. [1891] W. N. 148

— **Discovery—Discretion of judge—Officer of Government department.**

See **DISCOVERY—Documents.** 13, 14.

— **Interrogatories—Answer by officer of company.**

See **DISCOVERY—Interrogatories.** 48, 49.

**187. — Judgment in rem—Ship—Lien—Proceedings in foreign court—Right to retain proceeds against liquidator.**

Whilst a ship, owned by the plts., an English co., was loading at Bombay for a voyage to Hamburg, her master was induced by fraud to sign bills of lading for goods which were never put on board. The bills of lading were indorsed for value without notice of the fraud to the defts., an English banking co. By the law of Germany non-delivery of the goods specified in a bill of lading entitles the holder of the bill to a lien upon the vessel. The ship sailed, and whilst she was at sea a petition was presented for the winding-up of the plt. co., and on the day on which the ship arrived at Hamburg a winding-up order was made. On the same day the defts., who had in the meantime discovered the fraud, took proceedings in the German Court at Hamburg to arrest the ship and to enforce their lien. The German Court ordered the ship to be sold, declared the defts. to be entitled to the lien claimed, and ordered that lien to be satisfied out of the proceeds of the sale. The liquidator of the plt. co., who had not appeared in the proceedings in the German Court, brought an action in England in the name of the co. against the

**COMPANY—WINDING-UP (Practice)—contd.**

defts. to recover from them the amount which they had received under the German judgment as money had and received to the plts.' use, seeking to make them liable as trustees of the money for the benefit of the general body of the co.'s creditors :—

*Held* (affirming the judgment of Collins J., [1897] 1 Q. B. 55) that, the judgment of the German Court being a judgment in rem, the money received by the defts. under it was not subject to any trust in favour of the general body of the co.'s creditors, and that the action was not maintainable. *MINNA CRAIG STEAMSHIP CO. v. CHARTERED MERCANTILE BANK OF INDIA, LONDON AND CHINA* C. A. [1897] 1 Q. B. 460

— Petition and order.

See Cases under **COMPANY—WINDING-UP**  
—Petition.

**Preference.**

**188. — Debenture action—Preferential Payments in Bankruptcy Amendment Act, 1897** (60 & 61 Vict. c. 19), ss. 2, 3.

In an action brought to enforce debentures issued by Meaby & Co., a receiver and manager of the property comprised in the debentures was appointed on Aug. 6, 1897. A compulsory winding-up order was afterwards made against the co.; and subsequently the action was transferred to Wright J., and one Elliot took out a summons in the action asking that he might be admitted as a preferential creditor of the co. in priority to the debenture-holders in respect of a sum alleged to be arrears of salary due to the applicant from the co., and that the receiver might be ordered forthwith, out of the assets then in or coming to his hands, to pay the amount to the applicant :—

*Held*, that the proper course was to apply for an inquiry as to the preferential creditors, and the matter would then be worked out in chambers. The case must be referred to chambers. In future, in judgments in debenture actions, where there was a floating charge, a direction should be inserted for an inquiry as to preferential creditors, and the matter would then be dealt with on further consideration. *In re MEABY & CO. CLARKE v. MEABY & CO.* Wright J. [1899] W. N. 58

**189. — Debenture-holders' action—Practice—Form of judgment—Inquiry as to preferential payments—Preferential Payments in Bankruptcy Act, 1888** (51 & 52 Vict. c. 62), s. 1—*Preferential Payments in Bankruptcy (Amendment) Act, 1897* (60 & 61 Vict. c. 19), s. 2.

The plts. in a debenture-holders' action moved for judgment in the usual form, all parties consenting.

In addition to the usual accounts and inquiries, an inquiry was directed to be inserted whether there were any and what creditors entitled to preferential payment under the Preferential Payments in Bankruptcy Acts, 1888 and 1897, and what if anything was due to such creditors respectively. *In re BIRMINGHAM BREWERIES, LD. WARD v. BIRMINGHAM BREWERIES, LD.*

Stirling J. [1899] W. N. 92

**190. — Debenture-holder's action—Practice note**

**COMPANY—WINDING-UP (Preference)—contd.**

—*Preferential payments in bankruptcy—Undertaking by plaintiff—Form of order—Receiver.*

The undertaking given by the plt. in a debenture-holder's action on the appointment of a receiver who is to act at once is to be so framed as to extend to all liabilities which would be covered by the security when completed, and not only to the receiver's receipts. *In re DEBENTURE-HOLDERS' ACTIONS* — Stirling J. [1900] W. N. 58

**191. — Debentures—Floating charge—Preferential Payments in Bankruptcy (Amendment) Act, 1897** (60 & 61 Vict. c. 19), s. 3—*Receiver—Possession.*

The debentures were secured by a floating charge on the undertaking and assets of the co. The co. was not in liquidation, and no receiver had been appointed by the Court, but a receiver appointed by the debenture-holders, under a power contained in the debentures, had taken possession of the property charged by the debentures :—

*Held*, that the possession of the receiver, if not taken "by" was taken "on behalf of" the debenture-holders, that the Act consequently applied, and that an inquiry thereunder must be directed in the form now in general use. *In re BARNEY'S, LD. FALLOWS v. BARNEY'S, LD.*

North J. [1899] W. N. 103

— Fraudulent conveyance—Assignment to one man company—Act of bankruptcy.  
See **BANKRUPTCY**.

**192. — Directors' fees—Unpaid calls—Set-off.**

Within three months before the liquidation of the co. the directors, by exchanging cheques with the co., paid calls owing by them out of the directors' fees owing to them by the co. :—

*Held*, that, considering the then position of the co., this was a fraudulent preference of themselves by the directors. The effect of set-off in bankruptcy and winding-up proceedings contrasted. *In re WASHINGTON DIAMOND MINING CO.* C. A. revers. V. Williams J. [1893] 3 Ch. 95

Referred to by Wright J. *In re Auriferous Properties, Ltd.*, [1898] 1 Ch. 697.

**192A. — Fraudulent preference — Preference for conscience's sake—Companies Act, 1862** (25 & 26 Vict. c. 89), s. 164—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 48.

The preferential payment of a creditor of a co. within the three months prior to the point which, in the case of a co. is, by s. 164 of the Companies Act, 1862, equivalent to an act of bankruptcy by an individual trader is an undue or fraudulent preference if the payment is made, not merely to discharge a legal obligation, but because the directors think that it would be a hardship on the creditor and against their conscience to leave him to his right to prove in the winding-up. *In re W. BLACKBURN & CO. BUCKLEY'S CASE*

Wright J. [1899] 2 Ch. 725

**193. — Preferential payments—Liability for rates—Liquidator's possession—Companies Act, 1862** (25 & 26 Vict. c. 89), ss. 138, 163.

The test to be applied to ascertain whether a co. in liquidation is liable to payment of rates in full is whether there has been a "beneficial occupation" of the premises within the meaning of

**COMPANY—WINDING-UP (Preference)—contd.** the Rating Acts. Therefore, where a liquidator places a caretaker in possession of leaseholds on which are plant, intending to sell the premises and plant, but not to sell the business as a going concern, he must pay in full rates made after the commencement of the winding-up. *In re BLAZER FIRE LIGHTER, Ltd.*

V. Williams J. [1895] 1 Ch. 402

**Proceedings against Delinquent Officers.—**

By the "*Companies (Winding-up) Act, 1893*" (56 & 57 Vict. c. 58), an order for payment of money under 53 & 54 Vict. c. 63, s. 10, was declared to be a final judgment within 46 & 47 Vict. c. 52, s. 4, sub-s. (1) (g).

194. — *Auditors—Companies Act, 1879* (42 & 43 Vict. c. 76).

Auditors are officers of a co. within s. 10 of the Act of 1890, and if guilty of malfeasance may be made liable in proceedings under that section. *In re LONDON AND GENERAL BANK* (No. 2)

C. A. [1895] 2 Ch. 166

Followed by C. A. *In re Kingston Cotton Mills Co.*, [1896] 1 Ch. 6; [1896] 2 Ch. 279, 283.

195. — *Auditors—"Officer of company"—Balance-sheet—Companies Act, 1879* (42 & 43 Vict. c. 76), s. 7—*Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 10.

In the case of a banking co., where the auditors are appointed under s. 7 of the Companies Act, 1879, and spoken of as officers of the co. in the articles. Although it is not the duty of the auditors of a company, appointed under the Act of 1879, to consider whether its business is prudently or imprudently conducted, it is their duty to consider and report to the shareholders whether the balance-sheet exhibits a correct view of the state of the co.'s affairs, and its true financial position at the audit. They must ascertain this by examining the books of the co., and must take reasonable care that what they certify as to the co.'s financial position is true. And except in very special cases it is their duty to place before the shareholders the necessary information as to the true financial position of the co., and not merely to indicate the means of acquiring it.

An auditor presented a confidential report to the directors calling their attention to the insufficiency of the securities on which the capital of the co. was invested, and the difficulty of realizing them, but in his report to the shareholders merely stated that the value of the assets was dependent on realization, and in the result the shareholders were deceived as to the condition of the co., and a dividend was declared out of capital and not out of income:—

*Held*, that the auditor had been guilty of misfeasance under s. 10 of the Act of 1890, and was liable to make good the amount of the dividend paid. *In re LONDON AND GENERAL BANK* (No. 3)

C. A. affirm. V. Williams J. [1895] 2 Ch. 673

Referred to by C. A. *In re National Bank of Wales, Ltd.*, [1899] 2 Ch. 629, 670.

196. — *Auditor—"Officer"—Misfeasance—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 10.

**COMPANY—WINDING-UP (Proceedings against Delinquent Officers)—continued.**

An auditor may or may not be an "officer" of a co., and *prima facie* he is not; but if he is appointed to the office of auditor to the co., and acts in that office, he will be an "officer" within s. 10 of the Companies (Winding-up) Act, 1890; and in case the co. is wound up he will be liable to a misfeasance summons under that section in respect of dividends declared upon the faith of his audit; and no irregularity in his appointment would avail him as a defence. But, seeing that the word "auditor" does not occur in s. 10, the performance of auditor's work upon a given occasion by a person who has never been appointed to the office of auditor of the co. does not make that person an "officer" of the co. so as to render him liable under the section.

The decision of Stirling J. reversed. *In re WESTERN COUNTIES STEAM BAKERIES AND MILLING CO.* — — — C. A. [1897] 1 Ch. 617

197. — *Auditors—Misfeasance of officers—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 10.

An auditor of a limited co. was appointed under articles of association which, so far as they related to the audit of accounts, were in substantially the same terms as the audit clauses of Table A and as the articles of association in *In re London and General Bank*, [1895] 2 Ch. 166, although it was not a joint stock banking co.:—

*Held*, on the authority of that case, that he was an officer of the co. within s. 10 of the Companies (Winding-up) Act, 1890.

*Per V. Williams J.*: In every case where an auditor of a co. is appointed under articles of association which impose upon him the duty of examining the balance-sheet and reporting to the members whether, in his opinion, it is a full and fair balance-sheet, containing the particulars required by the articles, and properly drawn up so as to exhibit a true and correct view of the co.'s affairs, he is an officer of the co. within s. 10 of the Companies (Winding-up) Act, 1890. *In re KINGSTON COTTON MILL CO.*

C. A. [1896] 1 Ch. t

Referred to by C. A. *In re Western Counties Steam Bakeries and Milling Co.*, [1897] 1 Ch. 617, 622.

198. — *Costs—Debentures—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 10.

Moneys recovered in a winding-up (a) in proceedings under s. 10 of the Companies (Winding-up) Act, 1890, and (b) by calls on contributories, belong to the holders of debentures charging all the undertaking and property of the co., present and future, including its uncalled capital for the time being, and are not, where the total assets are not sufficient to pay the debenture-holders in full, subject to costs directed by the winding-up order to be paid out of the assets of the co.

But, *semble*, that the costs incurred by the liquidator in proceedings under s. 10 must be paid out of the money recovered in those proceedings. *In re ANGLO-AUSTRIAN PRINTING AND PUBLISHING UNION. BRABOURNE v. ANGLO-AUSTRIAN PRINTING AND PUBLISHING UNION*

V. Williams J. [1895] 2 Ch. 891

**COMPANY—WINDING-UP (Proceedings against Delinquent Officers)—continued.**

— Costs — Delinquent directors — Provision in scheme for costs of proceeding against. See **COMPANY—WINDING-UP**. 217.

199. — *Directors—Presents to directors—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.*

Directors cannot pay themselves for their services or make presents to themselves out of the co.'s assets unless authorized to do so by the instrument regulating the co. or by the shareholders at a properly convened meeting. The assets of an incorporated co., though a private co., are not the property of the shareholders for the time being, and if the directors misapply those assets by applying them to purposes for which they cannot be lawfully applied by the co. itself, the co. upon being properly set in motion can make them liable. *In re GEORGE NEWMAN & Co.* C. A. [1895] 1 Ch. 674

Referred to by C. A. *Seligman v. Prince & Co.*, [1895] 2 Ch. 617, 626.

200. — *Duties as to stocktaking—Auditors—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.*

*Held* (affirming the judgment of V. Williams J.), that where an officer of a co. has committed a breach of his duty to the co., the direct consequence of which has been a misapplication of its assets, for which he could be made responsible in an action, such breach of duty is a "misfeasance" for which he may be summarily proceeded against under the Companies (Winding-up) Act, 1890, s. 10, and it is not necessary that an action should be brought.

For some years before a co. was wound up, balance-sheets signed by the auditors were published by the directors to the shareholders in which the value of the co.'s stock-in-trade at the end of each year was grossly overstated. The auditors relied on certificates, wilfully false, given by J., one of the directors who was also manager, as to the value of the stock-in-trade. Dividends were paid for some years on the footing that the balance-sheets were correct; but if the stock-in-trade had been stated at its true value it would have appeared that there were no profits out of which a dividend could be declared. If the auditors had compared the different books and added to the stock-in-trade at the beginning of the year the amounts purchased during the year, and deducted the amounts sold, they would have seen that the statement of the stock-in-trade at the end of the year was so large as to call for explanation; but they did not do so:—

*Held*, that, it being no part of the duty of the auditors to take stock, they were justified in relying on the certificates of the manager, a person of acknowledged competence and high reputation, and were not bound to check his certificates in the absence of anything to raise suspicion, and that they were not liable for the dividends wrongfully paid.

An auditor is not bound to be suspicious where there are no circumstances to arouse suspicion; he is only bound to exercise a reasonable amount of care and skill.

Decision of V. Williams J., [1895] W. N. 160

**COMPANY—WINDING-UP (Proceedings against Delinquent Officers)—continued.**

(3); [1896] 1 Ch. 331, reversed. *In re KINGSTON COTTON MILL Co.* (No. 2)

C. A. [1896] 2 Ch. 279

201. — *Sale of claim for misfeasance—Debenture action—Companies (Winding-up) Act, 1890 (c. 63), s. 10.*

In an action to realize debentures granted by a co., which was afterwards ordered to be wound up, a summons was taken out by the official receiver and liquidator asking for the leave of the Court to take misfeasance proceedings against the directors and auditors of the co., and that the costs might be provided by the receiver in the action. A majority of the debenture-holders was opposed to misfeasance proceedings being taken at the expense of the assets covered by the debentures, and also to abandoning the claims of the debenture-holders to any sums recovered in the proceedings. A suggestion was, however, made by a debenture-holder that if there were people who believed they could make a good thing out of a misfeasance summons they would be prepared, for the right to step into the debenture-holders' shoes, to pay a substantial sum, but that the right should not be given up without anything in return:—

*Held*, that an order must be made directing the receiver to sell by auction the claim against the directors and auditors. *WOOD v. WOODHOUSE AND RAWSON UNITED*

V. Williams J. [1896] W. N. 4 (4)

— Acts ultra vires, but not fraudulent.

See **COMPANY—Directors**. 113.

**Proof.**

202. — *Amending proof—"Inadvertence"—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 6, sub-s. 2; Sched. I., r. 8.*

A creditor, the holder of a direct security, believing it to be collateral security, did not value it, and proved for the full amount of his debt. Before the liquidator was appointed he found out his mistake, and sought to amend his proof by placing a value on his security and retaining the benefit thereof and reducing the amount of his proof:—

*Held*, this was an "inadvertence" within the Winding-up Act, 1890, Sched. I., r. 8, and the Court could allow the amendment on terms as to costs. *In re HENRY LISTER & Co. Ex parte HUDDERSFIELD BANKING Co.*

North J. [1892] 2 Ch. 417

203. — *Bill of exchange—Expenses—Bill of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 51, sub-s. 2, 5; s. 57, sub-s. 1 (c); ss. 65-68, s. 97.*

Drawers of unpaid bills of exchange are entitled to prove for expenses of protest for non-payment of bills, but not for expenses of protest for better security or for commissions paid to their own bankers. *In re ENGLISH BANK OF THE RIVER PLATE. Ex parte BANK OF BRAZIL*

Chitty J. [1893] 2 Ch. 438

204. — *Costs—Rules in Bankruptcy—Shareholder—Rectification of register—Winding-up—Debts and liabilities incurred before—Costs incurred after—Contingent liability—Provable debt*

**COMPANY—WINDING-UP (Proof)—continued.**

—*Unliquidated damages—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 35, 158—*Judicature Act, 1875* (38 & 39 Vict. c. 77), s. 10—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 37.

A shareholder in a limited co. having applied, before its winding-up, for rectification of the register under s. 35 of the Companies Act, 1862, and repayment of the sum paid for his shares, obtained, after the winding-up, an order for rectification and repayment, and was admitted by the official receiver, who was also the liquidator, to prove for the sum ordered to be repaid, but not for the costs of the application:—

*Held*, by C. A. (affirming the decision of Wright J. on appeal from the official receiver), that the application not being a claim for unliquidated damages, and the register having been rectified, the sum sought to be repaid was clearly a provable debt, and accordingly that, under s. 37 of the Bankruptcy Act, 1883, made applicable to companies in liquidation by s. 10 of the Judicature Act, 1875, the costs should be added to the provable debt.

The rules as to proof in bankruptcy for costs of proceedings taken against the bankrupt before or after the bankruptcy, stated. *In re BRITISH GOLD FIELDS OF WEST AFRICA*

C. A. [1899] W. N. 73; [1899] 2 Ch. 7

— Death of shareholder — Insolvent estate — Proof debts.

See **BANKRUPTCY—Proof**. 164.

205. — *Directors' fees—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 38, *sub-s. 7*.

In the voluntary winding-up of the co. the directors (all of whom had acted and were duly qualified) claimed to prove for their remuneration. The assets were insufficient to pay them and the other creditors in full, and the liquidators applied under s. 138 of the Companies Act, 1862, to have it determined whether the directors were entitled to prove for the remuneration claimed in competition with the other creditors, having regard to s. 38 of the Act:—

*Held*, that if the case were one of a gratuity given to the directors which depended merely on their being members of the co., *Ex parte Cannon*, (1885) 30 Ch. D. 629, would be followed. But this case does not depend on membership, but, as in another case, on whether they continued in office on the terms of the articles as to remuneration. They were continued in office by the co. according to a contract made with reference to the articles, and their remuneration does not depend on membership. They are, therefore, entitled to prove in competition with the other creditors. *In re AL BISCOTT CO.*

Wright J. [1899] W. N. 115

206. — *Fully paid shares taken in payment of debt—Failure of consideration—Creditor—Payment or satisfaction of debt.*

A creditor of a co. for a sum partly secured by debentures of the co. and partly unsecured surrendered the debentures to the co. upon the terms of the co. giving him new debentures for a smaller amount and fully paid-up shares for the balance (secured and unsecured) of the debt, and he had the shares registered in the name of a trustee. In the winding-up of the co, some of

**COMPANY—WINDING-UP (Proof)—continued.**

the shares were held to be unpaid. The trustee, having been settled on the list of contributories in respect of the unpaid shares, took an assignment of the debt, and claimed to prove for the amount due on the shares:—

*Held*, that to the extent of the unpaid shares there had been no payment or satisfaction of the debt, and that the trustee was not precluded by being a member of the co. from taking an assignment of the debt and proving for the unpaid balance.

Decision of Kekewich J., [1898] W. N. 52 (1), reversed. *In re RAILWAY TIME TABLES PUBLISHING CO. Ex parte WELTON*

C. A. [1899] 1 Ch. 108; affirmed *sub nom.*

WELTON v. SAFFERY, [1897] A. C. 299

207. — *Landlord and tenant—Bankruptcy—Proof by lessor—Judicature Act, 1875* (38 & 39 Vict. c. 77), s. 10.

Amount of present and future liability under a lease for which the landlord is entitled to prove in the winding-up of the tenant co. discussed in *In re NEW ORIENTAL BANK CORPORATION* (No. 2)

V. Williams J. [1895] 1 Ch. 753

Distinguished by Romer J. *In re Panther Lead Co.*, [1896] 1 Ch. 978. See next Case.

208. — *Landlord and tenant—Proof by lessor—Creditor—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 158—*Judicature Act, 1875* (38 & 39 Vict. c. 77), s. 10.

Since the decision of the House of Lords in *Hardy v. Fothergill*, (1888) 13 App. Cas. 351, the old cases as to proofs in the winding-up of insolvent cos., in respect of their liabilities under leases, require reconsideration; and it is the duty of the Court to assist a lessor in proving in respect of an insolvent co.'s obligation as lessee, where he desires to prove at once for his loss on the footing of the lease being treated as determined.

*Seem*, that proof may at once be made in respect of all liabilities—present or future, certain or contingent—of the company as lessee.

*In re New Oriental Bank Corporation* (No. 2), [1895] 1 Ch. 753, distinguished. *In re PANTHER LEAD CO.* — — Romer J. [1896] 1 Ch. 978

209. — *Landlord and tenant—Rent—Rent due in advance—Apportionment—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 85, 87, 138, 163.

S. & Co. let a shop to a co. at a rent payable quarterly, "two quarters' rent to be always due and payable in advance if required." On Dec. 20 the co. went into voluntary liquidation, but the liquidator continued to occupy the shop. On Dec. 28 S. & Co. demanded the rent due Dec. 25 and two quarters in advance, and on refusal of payment S. & Co. distrained:—

*Held*, that the rent for the Dec. quarter must be apportioned, and that S. & Co. could only prove for the rent accruing up to Dec. 20, but that they were entitled to be paid in full for the rest of the Dec. quarter and for so much of the next two quarters as the liquidator should continue in beneficial occupation, rent during such occupation being paid by him as expenses in the winding-up; but for the remainder of those two

**COMPANY—WINDING-UP (Proof)—continued.**

quarters they could only prove in the liquidation.  
**SHACKELL & Co. v. CHORLTON & SONS**  
**Kekewich J. [1895] 1 Ch. 378**

**210. — Secured creditor—Realization of assets—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 9, sub-ss. 2, 168; Sched. II, r. 9—Bankruptcy Rules, 1886, rr. 2, 73, 75.**

A secured creditor of a co. in liquidation who has exhausted his security without satisfying his debts, is not entitled to apply the proceeds of the security in payment, first, of interest subsequent to the winding-up, and then in reduction of principal. He can only prove for the balance due to him for principal and interest at the date of the winding-up after deducting the amount received on realizing the security. He is entitled to set off profit realized since the winding-up against interest accrued during the same period. *In re LONDON, WINDSOR, AND GREENWICH HOTELS CO. QUARTERMAINE'S CLAIM.*

**Stirling J. [1892] 1 Ch. 639**

**211. — Set-off—Costs—Companies (Winding-up) Rules, 1890, rr. 110, 111, 112, 178—Companies (Winding-up) Rules, 1892, r. 3.**

A liquidator may examine into a debt owed to the co. by a person claiming to prove in order to arrive at the amount of, if any, proof to be admitted. In this case the liquidator was directed to admit the proof with liberty to apply to have it expunged if so advised. Costs of appeal from rejection of proof, but not of the proof, granted to applicants out of the assets. *In re NATIONAL WHOLESALE BREAD AND BISCUIT CO. Ex parte BAINES (No. 2) V. Williams J. [1892] 2 Ch. 457*

**212. — Work done partly before winding-up—Accountant—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), Sched. I, clauses 7 and 11—Companies (Winding-up) Rules, 1890, rr. 110 and 111.**

A claim by accountants for work done partly before and partly after the commencement of winding-up considered. *In re CANADIAN PACIFIC COLONIZATION CORPORATION, LD.*

**Stirling J. [1891] W. N. 122**

**Reconstruction.**

See Cases under **COMPANY—Reconstruction.**

**Rules and Orders.**

**213. — Application of Act—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 4, sub-ss. 1, 2, 5; s. 31, sub-s. 3; s. 32, sub-s. 3—Companies (Winding-up) Rules, 1890, rr. 32, 67.**

The Companies (Winding-up) Act, 1890, applies to a co. which has not a registered office in England, but has carried on business there. *In re MERCANTILE BANK OF AUSTRALIA*

**North J. [1892] 2 Ch. 204**

**214. — Application of Order of March 26, 1892—Business of the Courts.**

(A) Statement by Chitty J. that the order would come into effect as from May 14, 1892, in every case, unless the judge should think fit to retain any particular case under rule 1 of the Companies (Winding-up) Rules, 1892

**Chitty J. [1892] W. N. 77**

**COMPANY—WINDING-UP (Rules and Orders)—continued.**

(B) The effect of the order explained by Chitty J. The order does not relate to petitions for the reduction of capital, or to petitions for altering memorandums of association. *In re ISLINGTON AND GENERAL ELECTRIC SUPPLY*  
**Chitty J. [1892] W. N. 81**

Considered by V. Williams J. *In re Mining Shares Investment Co., [1893] 2 Ch. 660.*

**Scheme of Arrangement.**

**215. — Compromise subject to sanction of Court—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104).**

In a voluntary winding-up a scheme of arrangement under the Joint Stock Companies Arrangement Act, 1870, was agreed to by the debenture-holders, unsecured creditors, and contributories, and contained the following clause: "A proper trust deed to give effect to the provisions of this scheme relating to the existing debentures shall be prepared and executed, and such trust deed shall contain provisions for calling meetings of the holders of the existing debentures and conferring power upon a majority in number representing three-fourths in value of such holders, present, either in person or proxy, at any meeting, to make binding upon all the holders of the existing debentures any compromise or arrangement which the Court would, under the Joint Stock Companies Arrangement Act, 1870, have power to sanction if the company were in liquidation and the same had been agreed to as therein mentioned":—

*Held*, that this clause was a delegation to a majority of the debenture-holders of the powers of the Court under the Act; and that the scheme would only be sanctioned on the clause being modified by making the compromise or arrangement therein referred to subject to the sanction of the Court. *In re LAND MORTGAGE BANK OF FLORIDA - V. Williams J. [1896] W. N. 48 (5)*

**216. — Costs—Provision for Taxation—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104).**

The Court will not sanction a scheme of arrangement under the Act of 1870 which provides for the payment of costs, or the remuneration of persons whose assistance is required to carry out the scheme, unless express provision is also made for bringing in the costs and remuneration for taxation or allowance by the Court. *In re MORTGAGE INSURANCE CORPORATION*

**V. Williams J. [1896] W. N. 4 (3)**

**217. — Delinquent directors—Provision in scheme for costs of proceeding against.**

In future any scheme under the Joint Stock Companies Arrangement Act, 1870, must provide that the new co. should undertake to obey the order of the Court as to any proceedings (including the application of part of the assets of the old co. to the costs thereof) which the Court might think right to have taken against officers of the old co.

**V. Williams J. [1894] W. N. 166**

**218. — "Discount"—Prepayment of calls.**

In an ordinary commercial document the word



**COMPANY—WINDING-UP (Scheme of Arrangement)—continued.**

"discount" means rebate of interest, and not "true" or mathematical discount:—

So held, by the C. A., in the case of a scheme for arrangement with the creditors of a co. in course of liquidation by which an option was given to shareholders to prepay calls "under discount at the rate of 4 per cent. per annum."

The decision of V. Williams J. reversed. *In re LAND SECURITIES CO. Ex parte FARQUHAR*

C. A. [1896] 2 Ch. 320

**219. — Dissident creditors—Sanction of Court**—*Companies Act, 1862 (25 & 26 Vict. c. 89) s. 91*—*Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2—Stamps Act, 1891 (54 & 55 Vict. c. 39), s. 15, sub-s. 3; s. 80.*

Where there is nothing unreasonable or unfair in the scheme as between different classes of creditors, the Court will defer to the expressed opinion of the majority of the creditors. *In re ENGLISH, SCOTTISH, AND AUSTRALIAN CHARTERED BANK*

C. A. affirm. V. Williams J. [1893] 3 Ch. 385

See *In re Canning Jarrah Timber Co. (Western Australia), Ltd.*, C. A. [1900] 1 Ch. 708.

**220. — Dissident debenture-holders—Sanction of Court**—*Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2.*

The power given by the Joint Stock Companies Arrangement Act, 1870, s. 2, to sanction a scheme of arrangement between a co. in liquidation and its creditors extends to debenture-holders and other secured creditors, and enables the Court to sanction a scheme, although it deprives debenture-holders of their security wholly or in part. Considerations for the Court before sanctioning such a scheme. *In re ALABAMA, NEW ORLEANS, TEXAS AND PACIFIC JUNCTION RAILWAY CO.*

C. A. affirm. North J. [1891] 1 Ch. 213

Followed by C. A. *In re English, Scottish and Australian Chartered Bank*, [1893] 3 Ch. 385.

**221. — Effect on guarantee for debt of company—Preserving liability of old shareholders**—*Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2.*

X. deposited a sum with a bank and insured his deposit with an insurance corporation. Subsequently the bank was wound up. A scheme was framed containing no provision that sureties should not be released. It provided for the formation of a new co. to take over the business and most of the liabilities of the old co. The remaining liability of 20l. on the shares was to be called up immediately, but every shareholder in the old co. was entitled to apply for shares in the new co. equal in number to his old shares and credited with 15l. paid up, and was to be indemnified by the new co. against any calls on the old shares:—

Held, that (i.) it was unnecessary and would not be right to introduce a reservation of rights against sureties, when a scheme was sanctioned by, or under the supervision of, the Court; (ii.) it was unnecessary to insert in the order sanctioning the scheme words expressly staying actions or discharging contributories from further lia-

**COMPANY—WINDING-UP (Scheme of Arrangement)—continued.**

bility; (iii.) the Court would insist on the insertion of provisions preserving the liability of shareholders in the old co. in the memorandum and articles of the new co. *In re LONDON CHARTERED BANK OF AUSTRALIA*

V. Williams J. [1893] 3 Ch. 540

**222. — Proxies—Agent named in paper**—*Companies Act, 1862 (25 & 26 Vict. c. 89), s. 91—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2—Stamps Act, 1891 (54 & 55 Vict. c. 39), s. 15, sub-s. 3; s. 80.*

Proxy papers in which the agent is named are not irregular. *In re ENGLISH, SCOTTISH, AND AUSTRALIAN CHARTERED BANK*

C. A. affirm. V. Williams J. [1893] 3 Ch. 385

**223. — Proxies—Creditors abroad**—*Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2.*

Where there is only one liquidation, every creditor, wherever residing, is entitled to be heard thereat, but *semble*, that where there are several liquidations in different countries, only the creditors in each country may be entitled to a hearing in such country. *In re QUEENSLAND NATIONAL BANK*

V. Williams J. [1893] W. N. 128

**224. — Proxies—Creditors abroad—Stamp**—*Companies Act, 1862 (25 & 26 Vict. c. 89), s. 91—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2—Stamps Act, 1891 (54 & 55 Vict. c. 39), s. 15, sub-s. 3; s. 80.*

The Court is not bound to follow the general practice of producing proxies at meetings, when the result of so doing would be to defeat the scheme, and may act on a foreign telegram as evidence of proxy voting abroad.

Proxies in which the day of meeting is not named are good if stamped with a 10s. stamp within thirty days of being received in England under s. 15, sub-s. 3, of the Stamps Act, 1891. *In re ENGLISH, SCOTTISH, AND AUSTRALIAN CHARTERED BANK*

C. A. affirm. V. Williams J. [1893] 3 Ch. 385

**225. — Proxy—Form of**—*Joint Stock Companies Act, 1870 (c. 104).*

Proxy papers to be used at meetings to consider schemes of arrangement under the Act of 1870 should follow the office-form settled by the judge, which empowers the proxy "to vote for me, and in my name [blank] the said scheme, either with or without modification as my proxy may approve," and contains opposite the blank a marginal note as follows: "If for, insert 'for.' If against, insert 'against,' and strike out the words after 'scheme' and initial such alterations."

PRACTICE DIRECTION

V. Williams J. [1896] W. N. 56 (2)

— Reconstruction of company.

See Cases under COMPANY—Reconstruction.

**226. — Transfer to new company—Contingent liability**—*Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2.*

A. transferred the lease of mines to the B. Co., which agreed to indemnify A. thereunder. The B. Co. went into liquidation, and a scheme

**COMPANY—WINDING-UP (Scheme of Arrangement)—continued.**

was duly approved under which the C. Co. was to take over the assets and liabilities of the B. Co., and to pay the unsecured creditors. A. took out a summons in the winding-up, to have a sum deposited to meet his contingent liability for rents, &c.:—

*Held*, by C. A., affirming Wright J., that A. was bound by the scheme.

*Seem*, by Wright J., that A. could compel the C. Co. to indemnify him as from time to time he might be called on to pay anything under the leases; but the C. Co. not being a party, A.'s rights against it could not be declared.

*Quære*, per C. A., whether A. would have been entitled, apart from the scheme, to have the assets of the B. Co. impounded to meet his contingent liability under the leases. *In re MIDLAND COAL, COKE AND IRON CO. CRAIG'S CLAIM*

C. A. affirm. Wright J. [1895] 1 Ch. 267

As to the last point, see *New Oriental Bank Corporation (No. 2)*, V. Williams J., [1895] 1 Ch. 753, 755.

**Set-off.****— Costs.**

See COMPANY — WINDING-UP — Proof. 211.

227. — *Creditor-contributory—Insolvent company holding shares—Set-off of debt against calls—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 16, 38, 101—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10.*

The G. Co., Ltd., held shares in the A. Co., Ltd., and before either co. went into liquidation calls were made on the shares, and the A. Co. became indebted to the G. Co. for money lent.

The A. Co. was ordered to be wound up by the Court, and the G. Co., being insolvent, passed an extraordinary resolution for voluntary winding-up:—

*Held*, that s. 10 of the Judicature Act, 1875, did not enable the liquidator of the G. Co. to set off the debt against the calls. *In re AURIFEROUS PROPERTIES* — Wright J. [1898] 1 Ch. 691

See next Case.

228. — *Creditor-contributory—Insolvent company holding shares—Set-off of debt against calls—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 16, 38, 101—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10.*

The G. Co. Ltd., held shares in the A. Co., Ltd., and before either co. went into liquidation calls were made on the shares, and the A. Co. became indebted to the G. Co. for money lent.

The A. Co. having been ordered to be wound up by the Court, and the G. Co., which was insolvent, having passed an extraordinary resolution for voluntary winding-up, Wright J. held that s. 10 of the Judicature Act, 1875, did not enable the liquidator of the G. Co. to set off the debt against the calls: [1898] 1 Ch. 691:—

*Held*, subsequently, that in the winding-up of the A. Co. the G. Co. could not take any dividend on the debt until it had paid up all

**COMPANY—WINDING-UP (Set-off)—continued.**  
calls in the winding-up of the A. Co. *In re AURIFEROUS PROPERTIES, LD. (No. 2)*

Wright J. [1898] 2 Ch. 428

Applied by Stirling J. *In re Goy & Co.*, [1900] 2 Ch. 149, 154.

See preceding Case.

— Debentures—Liquidated demand — Hypothecation.

See COMPANY—Debentures. 92.

229. — *Mutual dealings—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10.*

The characteristic of mutuality is still as necessary under the mutual credit clause of the Bankruptcy Act, 1883, as under the mutual credit clauses of prior Bankruptcy Acts, in order that a set-off may be claimed. Where moneys of a co. are paid to a person for certain specified purposes, and after those purposes are satisfied a balance remains with the payee, he cannot, if a winding-up takes place, set off a debt owing to him by the co. unless he can shew that the balance was retained by him with the consent of the co. *In re MID-KENT FRUIT FACTORY*

V. Williams J. [1896] 1 Ch. 567

Referred to by C. A. *In re Daintrey*, [1900] 1 Q. B. 546, 562.

230. — *Rent—Option to purchase assets—Damages for breach of contract—Mutual credits.*

The K. Co. held coal mines, &c., under a lease, which provided that at the determination of the term the lessors should have an option to purchase certain plant, &c., at a valuation. In Feb., 1891, the co. went into voluntary liquidation which was continued under supervision. In Dec., 1892, the lessors obtained an order allowing them to distrain for rent accrued since the liquidation, and to re-enter. They distrained and re-entered, but an order was made by consent that the distress should be withdrawn and a valuation should be made of such plant as the lessors were entitled to buy, any question as to set-off to be determined by the Court. The lessors claimed to set off damages for breaches of covenant as to working the coal:—

*Held*, that the lessors had no right to the plant at the date of winding-up; their right arose when they exercised their option; so that the rules as to mutual dealings and set-off did not apply. That the landlord's right to preference only included what could be distrained for, and not damages for breach of covenant; therefore the lessors could only set off rent accrued since the liquidation. *In re KINGSBOVE STEEL AND IRON CO.* — Chitty J. [1894] W. N. 25

— Unpaid calls against debentures and directors' fees.

See COMPANY—Calls. 10.

**Statement of Affairs.**

231. — *Refusal by director or officer to submit statement—Jurisdiction of Court—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 7.*

Where an order has been made in a county court for the winding-up of a co., and a director

**COMPANY — WINDING-UP . (Statement of Affairs)—continued.**

or other officer of the co., having been required by the official receiver to submit to him a statement of the affairs of the co., under s. 7 of the Companies (Winding-up) Act, 1890, has refused to do so, the Court has jurisdiction to order such director or other officer to submit such statement, notwithstanding that s. 7, sub-s. 5, provides that "if any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine." *In re NEW PAR CONSOLS, LD.*

**Div. Ct. [1898] 1 Q. B. 573**

*See also* PROHIBITION. 1.

**Staying Proceedings.**

**232. — Execution — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 85—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-s. 5—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 65).**

Notwithstanding the Companies (Winding-up) Act, 1890, ss. 2, 32, and the Lord Chancellor's Order of Nov. 29, application to stay proceedings must be made to the Court in which the action is pending, and not to the Court having jurisdiction over the winding-up. *In re GENERAL SERVICE CO-OPERATIVE STORES* - **C. A. affirm. Kekewich J. [1891] 1 Ch. 496**

**233. — Execution—Company domiciled in Scotland—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 122.**

The Court refused to stay execution pending an appeal against a co. domiciled in Scotland, on the ground that an order of the C. A. would be enforceable in Scotland under s. 122 of the Companies Act, 1862. *In re QUEENSLAND MERCANTILE AND AGENCY CO. Ex parte UNION BANK OF AUSTRALIA (No. 2)* - **North J. [1891] W. N. 132**

**234. — Practice—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 89.**

After a winding-up order had been made against a co. on a creditor's petition, practically all the creditors were paid off or settled with, and the co. moved for an order rescinding the winding-up order:—

*Held*, that the proper order to be made was to stay all proceedings in the winding-up, and that the order would only be made on the notice of motion being amended so as to ask for a stay of proceedings, and by the joinder of a creditor or contributory as applicant, and on the terms of liberty being given for any dissentient creditor or the official receiver to apply within three months to remove the stay. *In re BAXTERS, LD.*

**Wright J. [1898] W. N. 60 (3)**

**235. — Scottish action—Invalidity—Relation back—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 87, 151.**

Proceedings were allowed to be continued in a Scottish action founded on arrestments made previous to the liquidation on certain bills of exchange drawn by the co., although there was evidence that the arrestments had been obtained by means of a mis-statement and were in fact invalid, the Court holding that it was bound to treat the arrestments as valid until they were

**COMPANY—WINDING-UP (Staying Proceedings)—continued.**

recalled by the Scottish Courts. Relation back of title considered. *In re WEST CUMBERLAND IRON AND STEEL CO.* - **V. Williams J. [1893] 1 Ch. 713**

**Supervision Order.**

— Costs—Supervision order.

*See* COMPANY—WINDING-UP—Costs, 72—74.

— Power of Court to order examination of witnesses.

*See* Cases under COMPANY—WINDING-UP—Examination of Witnesses.

**236. — Supervision order—Monthly report to Court—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 147.**

An order continuing voluntary winding-up of a co. under supervision of the Court was made containing a direction that liquidator should once a month report in writing to the registrar as to the progress of the liquidation and the realization of the assets. *In re PRITCHARD, OFFOR & CO.*

**V. Williams J. [1893] W. N. 153**

**237. — Voluntary liquidator—Board of Trade—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 15.**

The Bd. of Trade can enforce the provisions of s. 15 of the Act of 1890 against liquidators, not only in a winding-up by order of the Court, but also in a voluntary winding-up whether under supervision or not. *In re STOCK AND SHARE AUCTION AND BANKING CO. In re SPIRAL WOOD CUTTING CO. In re HULL LAND AND PROPERTY INVESTMENT CO.* **V. Williams J. [1894] 1 Ch. 736**

**Unregistered Company.**

**238, 239. — "More than seven members"—Res judicata — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 199.**

An unregistered co. cannot be wound up under s. 199 of the Companies Act, 1862, unless there are more than seven existing members at the time of the winding-up petition. The representatives of deceased members, trustees of bankrupt members or past members are not members in this sense. A winding-up order is not a judgment in rem, and if made improperly is not binding on strangers. *In re BOWLING AND WELBY'S CONTRACT* - **C. A. affirm. Stirling J. [1895] 1 Ch. 663**

*See also* COMPANY—Unregistered Company.

**Voluntary Winding-up.**

**240. — Compulsory order — Prejudice to creditors—Wishes of creditors—Compulsory order—Discretion of Court—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 91, 145, 149.**

The voluntary winding-up of a co. is no bar to a compulsory order if the general body of the creditors desire it, although no individual creditor proves in accordance with s. 145 of the Companies Act, 1862, that his rights will be prejudiced by a voluntary winding-up.

In such a case the right of the general body of the creditors to have effect given to their

**COMPANY — WINDING-UP (Voluntary Winding-up)—continued.**

wishes under ss. 91 and 149 is untouched by s. 145, although the *prima facie* right of an individual creditor to a compulsory order, *ex debito iustitiae*, is restricted by that section.

*In re West Hartlepool Ironworks Co.*, (1875) L. R. 10 Ch. 618, *In re Gold Co.*, (1879) 11 Ch. D. 701, and *In re The Varieties, Ltd.*, [1893] 2 Ch. 235, followed.

*In re New York Exchange, Ltd.*, (1888) 39 Ch. D. 415, and *In re Russell, Cordner & Co.*, [1891] 3 Ch. 171, distinguished. *In re E. Bishop & Sons, Ltd.* — Farwell J. [1900] W. N. 110; [1900] 2 Ch. 254

**241. — Compulsory order—Rights of majority—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 5; ss. 91, 129.**

The Court will order a compulsory winding-up notwithstanding a resolution for voluntary liquidation passed by a majority of the shareholders if the Court is satisfied that the substratum of the co. is gone, and that the resolution was not properly obtained, e.g., by the preponderating influence of one shareholder, and that there are matters requiring investigation. *In re THE VARIETIES, LD.* V. Williams J. [1893] 2 Ch. 235

Referred to by Farwell J. *In re E. Bishop & Sons, Ltd.*, [1900] 2 Ch. 254, 259.

**242. — Compulsory order, Right of creditor to—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 145—Companies (Winding-up) Rules, 1890 (53 & 54 Vict. c. 63), ss. 8, 9.**

Notwithstanding the powers conferred upon the Court by the Companies (Winding-up) Act, 1890, a creditor is not entitled to an order for the compulsory winding-up of a co. which has resolved to wind up voluntarily, unless he can shew, as provided by s. 145 of the Companies Act, 1862, that his rights will be prejudiced by the voluntary winding-up. *In re RUSSELL, CORDNER & CO.*

North J. [1891] 3 Ch. 171

Referred to by Farwell J. *In re E. Bishop & Sons, Ltd.*, [1900] 2 Ch. 254, 259.

See No. 240, above.

**243. — Compulsory order—Shareholder's petition for—Effect of voluntary winding-up.**

A petition for a compulsory winding-up order was presented by a fully paid shareholder who was supported by a considerable number of the other shareholders. Resolutions for voluntary winding-up had been passed with a view to a reconstruction, which had, however, proved abortive at the time of the hearing of the petition. There were also matters which appeared to require investigation:—

*Held*, that a compulsory winding-up order must be made, and that, in arriving at that conclusion, the fact that the voluntary winding-up was not an ordinary one, but was resolved upon with the view to a specific object which had failed, was a reason for strongly influencing the Court. *In re GUTTA PERCHA CORPORATION*

Cozens-Hardy J. [1900] W. N. 164; [1900] 2 Ch. 665

**COMPANY — WINDING-UP (Voluntary Winding-up)—continued.**

**244. — Compulsory or supervision order—Second petition—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.**

Although s. 8 of the Companies (Winding-up) Act, 1890, enlarges the jurisdiction of the Court as to compulsory orders, yet a shareholder who differs from the majority must still allege and prove grounds for supposing that he will derive substantial benefit from the compulsory order before the Court will grant it, on his petition, against the wishes of the majority. A shareholder who presents a petition after notice of another petition must prove proper independent grounds, or he will be cast in costs. *In re DORÉ GALLERY, LD.* — North J. [1891] W. N. 98

**245. — Contributory — Application for declaration of liability — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 133, sub-s. 8; s. 138.**

If a liquidator believes that a shareholder is liable to be put on the list of contributories (e.g., in respect of qualifying shares), the proper course is to put the shareholder on the list as a contributory, leaving him to his remedies under s. 133, sub-s. 8, of the Act of 1862; the liquidator should not apply under s. 138 for a declaration of liability and an order to direct payment of the amount found due. *In re CORNWALL BRICK, TILE, AND TERRA COTTA CO.* V. Williams J. [1893] W. N. 9

**246. — Debt incurred after commencement of winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 147.**

(A) There is no jurisdiction to make a supervision order on the petition of creditors whose debt has been incurred after the commencement of the winding-up, although the agreement under which the debt has arisen and the voluntary liquidation form part of one scheme. *In re BANK OF SOUTH AUSTRALIA (No. 1)*

V. Williams J. [1894] 3 Ch. 722

But see next Case.

(B) A debt due from a co. under an agreement between it and its voluntary liquidators and another person is sufficient to support a petition by that person for the winding up of the co. by the Court. *In re BANK OF SOUTH AUSTRALIA (No. 2)*

C. A. [1895] 1 Ch. 578

**247. — Injunction against—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 129.**

The plt. claimed that the co. had, by an agreement with him, contracted itself out of its statutory right to wind up voluntarily, and applied for an injunction. Application refused, on the ground that no case had been made out which would justify the Court in restraining the co. from exercising their statutory power under s. 129 of the Companies Act, 1862. *ELLIS v. DADSON AND F. A. ELLIS & CO.*

Chitty J. [1891] W. N. 43

**248. — Execution—Stay of proceedings—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 133, 138, 163.**

Where the goods of a co. have been taken in execution after the passing of the resolution for voluntary winding-up, the Court has jurisdiction

**COMPANY — WINDING-UP (Voluntary Winding-up)—continued.**

to stay further proceedings on the execution.  
**WESTBURY v. TWIGG & Co. GREGSON, CLAIMANT**  
 Div. Ct. [1892] 1 Q. B. 77

**249. — Powers of directors—Calls—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 133, sub-s. 5; s. 139.**

A general meeting of a co. in voluntary liquidation held under s. 139 of the Act of 1862 has power to elect directors, and to sanction the exercise by them of the power of enforcing calls, and selling, transferring, and forfeiting shares contained in the articles of association. *In re FAIRBAIRN ENGINEERING CO. LADD'S CASE*

North J. [1893] 3 Ch. 450

**250. — Reconstruction—Voluntary winding-up—Option of shareholders to take shares in new company—Application by shareholder—Failure of liquidator to procure allotment—Liability in damages—Jurisdiction—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 98, 133, 138, 151, 161—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 65), ss. 10, 13—Companies Winding-up Rules, 1890, rr. 89, 90.**

A scheme for the reconstruction of a co., which was in voluntary liquidation under the supervision of the Court, provided that the undertaking should be sold to a new co., and that the shareholders should have the option of taking shares in the new co. in proportion to their holding in the old. In accordance with the terms of a circular issued by the liquidator, B., a shareholder in the old co., signed an application for shares in the new co. and sent it, with a cheque for the required deposit, to the bankers of the co., who sent him a receipt therefor. The bank subsequently sent to the liquidator, at his request, a list of persons who had applied for shares, but did not include therein the name of B. The liquidator afterwards sold the whole of the shares unapplied for, together with those which should have been allotted to B. He had no assets undistributed in his hands except the proceeds of sale of the shares unapplied for, and he had no shares which he could allot to B. Upon a summons by B. in the winding-up:—

*Held*, that the Court had no jurisdiction to declare the liquidator liable in damages. *In re HILL'S WATERFALL ESTATE AND GOLD MINING CO.*

Stirling J. [1896] 1 Ch. 947

**251. — Scottish sequestration—Rent—Leave to proceed—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 87, 163.**

The Court set aside a Scottish sequestration (in the nature of distress for rent) as coming within s. 163 of the Companies Act, 1862, but gave leave to proceed with the sequestration under s. 78 on terms.

Scottish landlord's right of hypothec considered. *In re WANZER, LD.*

North J. [1891] 1 Ch. 305

**252. — Supervision order—Costs—Priority—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 110, 144.**

The rule whereby the costs of the petitioning creditor have priority applies as much to a winding-up under supervision under s. 144 of the Companies Act, 1862, as to a compulsory one under

**COMPANY — WINDING-UP (Voluntary Winding-up)—continued.**

s. 110, but does not extend to costs of the liquidator incurred previously to the supervision order. *In re NEW YORK EXCHANGE CO.*

Kekewich J. [1893] 1 Ch. 371

Referred to by C. A. *In re Sanitary Burial Association*, [1900] 2 Ch. 289, 296.

**“COMPANY INCORPORATED BY STATUTE” —**

A co. incorporated by charter under a special Act of Parliament is “a co. incorporated by Act of Parliament” within those words in an investment clause, for the co. owes its creation to the joint effect of the charter and the Act. *ELVE v. BOYTON*

C. A. [1891] 1 Ch. 501

Distinguished by Kekewich J. *In re Smith. Davidson v. Myrtle*, [1896] 2 Ch. 590.

**“COMPARATIVE COST AND CONVENIENCE.”**

See PRACTICE—Service. 219.

**COMPENSATION—Agricultural holdings.**

See LANDLORD AND TENANT—Agricultural Holdings.

- Civil servant—Abolition of office.  
See NEW SOUTH WALES. 3.
- Costs—Security for—Appeal under Workmen's Compensation Act, 1897.  
See COSTS. 61.
- Damage past and future—Laws of Victoria.  
See VICTORIA. 4.
- “Full compensation”—Costs of legal proceedings—Extra costs—Public Health—Arbitration.  
See COSTS—Taxation. 76.
- Jamaica Act—Accommodation works—Statutory officer.  
See JAMAICA. 2.
- Lands Clauses Acts.  
See LANDS CLAUSES ACTS—Compensation.
- Limitations, Statute of—Directors' Liability Act.  
See Cases under LIMITATIONS, STATUTE OF—Company.
- Lord of the manor—Allotment for turbary—Legal estate in land.  
See INCLOSURE. 4.
- Market gardeners—“Contract of tenancy.”  
See LANDLORD AND TENANT. 6.
- Minerals—Notice of intention to work—Arbitration—Duty of company to take up award.  
See RAILWAY—Minerals. 11.
- Minerals and mines.  
See Cases under MINES.
- Misdescription—Clause excluding compensation—Specific performance—Possessory title.  
See VENDOR AND PURCHASER—Conditions of Sale. 6.
- Misleading particulars—Statement by auctioneer—Specific performance.  
See VENDOR AND PURCHASER—Conditions of Sale. 11.

**COMPENSATION**—*continued.*

— Open contract—Restrictive covenants—Specific performance.  
See VENDOR AND PURCHASER. 70.

— Railway Clauses Acts.

See RAILWAY—Compensation.

— Workmen's Compensation Acts.

See CASES under MASTER AND SERVANT.

**COMPETITION**—Prize competition—Prediction of coming event—Births and deaths in London during named week.  
See LOTTERY. 3.

**COMPLETION OF PURCHASE.**

See CASES under VENDOR AND PURCHASER.

**COMPOUND.**

See POISON. 4.

**COMPOUND INTEREST**—Breach of trust—Accumulation clause—Wilful default—Rate of interest.

See TRUSTEE—Breach of Trust. 19.

**COMPOUND SETTLEMENT**—Settled Land Acts.

See CASES under SETTLED LAND.

**COMPROMISE**—*R. S. C., Nov., 1893 (Order XVI, r. 9a), relates to approval of compromises.*

— Costs—Lien—Infants.

See SOLICITOR—Lien. 99.

— Infant—Adoption on full age of lease made by trustees.

See INFANT. 3.

— Judgment of—Receiving order.

See BANKRUPTCY — Receiving Order. 201.

1. — Jurisdiction to approve compromise—Absent persons—Dissentient persons.—*R. S. C., Order XVI, r. 9a.*

The Court has jurisdiction under Order XVI, r. 9a, to approve a compromise between the parties to an action, and to make it binding on absent persons who have not assented. But the Court cannot bind those who have dissented; and if it sanctions the compromise will do so only on the terms of making provision to satisfy the full claims of the dissentients. *COLLINGHAM v. SLOPER. FOREIGN, AMERICAN AND GENERAL INVESTMENTS TRUST CO. v. SLOPER*

*C. A. [1894] 3 Ch. 716*

— Material fact not disclosed—Silence.

See SPECIFIC PERFORMANCE. 2.

2. — Mistake—Client and counsel—Statement of counsel.

Where, acting upon general instructions given by a client to compromise a litigation, counsel consents to a compromise under a misapprehension, such as where, intending to concede one thing, he inadvertently concedes another, or where counsel on both sides are not *ad idem*, neither the counsel nor the client is bound by the compromise, and the Court will set it aside.

Upon the question of the extent of the authority given by a client to his counsel to compromise litigation to which the client is a party, the Court will accept the statement of counsel if made from

**COMPROMISE**—*continued.*

his place at the bar, without requiring it to be made on oath. *HICKMAN v. BERENS*

*C. A. [1895] 2 Ch. 638*

Referred to by *C. A. Wilding v. Sanderson*, [1897] 2 Ch. 534, 544.

— Power to bind dissenting minority.

See COMPANY—Debentures. 66—68.

— Sale of business to one partner—"Assets"—

Goodwill—Canvassing old customers.

See PARTNERSHIP. 25.

— Solicitor—Compromise by party without knowledge of—Lien for costs.

See SOLICITOR—Lien. 100.

— Solicitor—Compromise of claim by—No implied authority.

See SOLICITOR—Authority. 2.

**COMPULSION OF LAW**—Money paid under.

See MISTAKE. 1.

**COMPULSORY ABSENCE**—Voters.

See PARLIAMENT—Franchise. 17—25.

**COMPULSORY PILOTAGE.**

See CASES under SHIPPING—Pilotage.

**COMPULSORY POWERS**—of School Board—Restrictive covenant.

See SCHOOLS—School Board. 8.

— Streets and buildings.

See LONDON—Streets.  
STREETS.

— of Water company.

See WATER—Supply.

**COMPULSORY PURCHASE**—of Lands.

See LAND CLAUSES ACTS,  
RAILWAY.

— Tramway.

See TRAMWAY COMPANY.

— Water company.

See WATER.

**COMPULSORY WINDING-UP OF COMPANY.**

See COMPANY—WINDING-UP, *passim*.

**CONCEALED FRAUD**—Effect of.

See LIMITATIONS, STATUTE OF. 13—16.

**CONCEALMENT**—By wife from intended husband—Pregnancy—Nullity of marriage.

See DIVORCE—Nullity. 97.

— Identity of lender—Fraud—Right of borrower to repudiate.

See CONTRACT—Illegality. 20.

— Material facts—Guarantee—*uberrima fides*.

See INSURANCE—Guarantee. 11.

**CONCILIATION ACT, 1896 (59 & 60 Vict. c. 30), makes better provision for the prevention and settlement of trade disputes.**

**CONCURRENCE**—Executors—Land transfer—Title—Conveyance.

See VENDOR AND PURCHASER. 79.

— of Husband to wife's deed.

See HUSBAND AND WIFE. 5, 31—36.

— Trustee in bankruptcy.

See VENDOR AND PURCHASER. 45.

**CONCURRENT WRIT**—Irregularity.

See PRACTICE—Service. 205.

**CONDITION**—in Bill of sale.*See* BILL OF SALE. 15, 16.

— Compliance with, in fire insurance policy—Non-suit.

*See* NEW SOUTH WALES. 26.

— Contract—Impossibility of performance—Implied condition—Measure of damages.

*See* CONTRACT—Performance. 28.

— Contract for sale—Time during which condition may be performed—Absence of express stipulation.

*See* VENDOR AND PURCHASER. 22.

— Discretion to attach, to grant of licence.

*See* THEATRE. 1.

— Exempting from responsibility—Passenger's luggage.

*See* RAILWAY—Passengers. 26.

— Implied—Contract—Sale by description—Acceptance.

*See* SALE OF GOODS. 3.

— Jurisdiction—Conditional devise to lunatic—Election—Performance of condition by committee.

*See* LUNACY—Powers. 30.

— Not to commit breach of injunction—Condition depending on one event—Liquidated damages.

*See* BOND.

— Precedent—Charge for use of sidings—Arbitration—Jurisdiction—Difference before action brought.

*See* RAILWAY—Sidings. 61.

— Precedent—Exchange contracts—Repudiation.

*See* CONTRACT. 9.

— Precedent—Warranty or—Breach—Waiver.

*See* SHIPPING—Charterparty. 25.

— Precedent—Shipment to be made between specified dates—Measure of damages.

*See* SALE OF GOODS. 5.

— Precedent—"Subject to approval of form of agreement"—Mistake—Rescission—"Wilful default."

*See* VENDOR AND PURCHASER—Rescission. 71.

— Precedent—Waiver.

*See* SPECIFIC PERFORMANCE. 12.

— Precedent to appeal—Question of law raised at trial—Request to make a note.

*See* COUNTY COURT. 12.

— Precedent as to reference to arbitration—Staying actions.

*See* ARBITRATION—Costs. 38.

— Recital and—Guarantee—Bond—Construction.

*See* NEW SOUTH WALES. 23.

— Restrictive condition—Positive covenant—Implied negative stipulation.

*See* BUILDING SCHEME. 1.

— Reverter—Common law condition—Shifting use—Rule against perpetuities—Title.

*See* VENDOR AND PURCHASER. 76.

— against particular User—Vendor and purchaser—Fraud.

*See* SPECIFIC PERFORMANCE. 5.**CONDITION**—continued.

— in Will.

*See* WILL—Condition.**CONDITIONAL FEE SIMPLE**—Reverter—Wills Act—Devise.*See* WILL—Reverter. 178.**CONDITIONAL GRANT**—Licence—Certiorari—Mandamus.*See* LICENSING ACTS. 54.**CONDITIONAL LIMITATION**—Tenant for life—"In possession."*See* SETTLED LAND. 93.**CONDITIONAL NOTICE**—Meetings of company.*See* COMPANY—Meetings. 160.**CONDITIONAL PAYMENT**—Debt—Effect of giving cheque or bill of exchange.*See* TRADE. 2.**CONDITIONAL PROMISE**—To consider a proposal favourably—Construction of contract.*See* CONTRACT—Construction. 10.**CONDITIONAL WILL**—Grant of probate.*See* PROBATE. 85.**CONDITIONS**—Breach of—Building agreement—Option to purchase.*See* LANDLORD AND TENANT. 81.**CONDITIONS OF SALE.***See* VENDOR AND PURCHASER—Conditions of Sale.**CONDONATION.***See* DIVORCE—Condonation.**CONDUCT MONEY**—Practice—Examination.*See* EVIDENCE. 30.

PROBATE. 86.

**CONFESSION**—Admissibility as evidence.*See* CRIMINAL LAW—Evidence. 17.**CONFESSION OF DEFENCE.***See* PRACTICE—Pleading. 160.**CONFLICT OF LAWS**—Bills of exchange—Transfer—Indorsement abroad—Equities.*See* BILL OF EXCHANGE. 22.1. — Contract—*Locus solutionis*—English or Scotch contract.

In a contract between persons living in different countries under different systems of law, it is a question in each case by what law the parties intended that their rights either under the whole or any part of the contract was to be interpreted. A contract between A., a Scotch distiller, and B., a merchant in London, was made in E., but was to be performed in S. It contained an arbitration clause for reference to two members of the London Corn Exchange or their umpire:—

*Held*, that the law of E., and not that of S., applied to the arbitration clause, and made it obligatory. *HAMLIN & Co. v. TALISKER DISTILLERY* — H. L. (Sc.) [1894] A. C. 202

Principles laid down applied by Kekewich J. *South African Breweries Co. Ltd. v. King*, [1899] 2 Ch. 173; C. A. [1900] 1 Ch. 273. *See* next Case.

*See* Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13).

**CONFLICT OF LAWS—continued.**

2. — *Contract—Locus solutionis—Locus contractus—Form of contract—Contract to be performed in different countries.*

By an agreement in writing, executed at Johannesburg, in the South African Republic, and made between a co. having its registered office in London, but carrying on business in South Africa, and a British subject resident at Johannesburg, the latter agreed to serve the co. as brewer or otherwise in its business carried on at Johannesburg and in the Colony of Natal and elsewhere in South Africa, and provision was made for his residence in Johannesburg. The agreement was framed in the English language and was in English form:—

*Held*, that the rights of the parties under the agreement ought to be governed by the law of the South African Republic.

Decision of Kekewich J., [1899] W. N. 98; [1899] 2 Ch. 173, affirmed. **SOUTH AFRICAN BREWERIES, LD. v. KING**

**C. A. [1900] W. N. 28; [1900] 1 Ch. 273**

3. — *Debentures—Priority—Arrestment.*

A Queensland co. issued debentures charged on uncalled capital, but did not, as was necessary to give priority in Scottish law, communicate the charge to the shareholders. Subsequently a Scottish co., in an action against the Queensland co., obtained an "arrestment" of all unpaid calls due from Scottish shareholders:—

*Held*, that, with regard to the Scottish property, the Scottish law prevailed, and that the Scottish co.'s arrestment gave them priority over the debenture-holders.

Decision of North J. [1891] 1 Ch. 536, affirmed. *In re QUEENSLAND MERCANTILE AND AGENCY CO. Ex parte AUSTRALASIAN INVESTMENT CO. Ex parte THE UNION BANK OF AUSTRALIA*

**C. A. [1892] 1 Ch. 219**

4. — *Divorce—Foreign judgment—Procedure—Irregularity—Recognition by English Court.*

A judgment or decree pronounced by the Court of a foreign country will be treated and acted upon here as final, notwithstanding any irregularity of procedure under the local law, provided the foreign Court had jurisdiction over the subject-matter and over the persons brought before it, and the proceedings do not offend against English views of substantial justice.

Thus, where a decree for divorce had been pronounced by the proper court in Florida in an undefended action by the husband against the wife on the ground of her violent and ungovernable temper, both the parties being domiciled and resident in Florida, an alleged irregularity in service of process was held not to be a ground for questioning the validity of that decree in an action brought by the wife in the English courts to enforce a claim arising out of her alleged second marriage to a British subject.

Decision of Kekewich J. reversed. **PEMBERTON v. HUGHES** — **C. A. [1899] W. N. 23 (6); [1899] 1 Ch. 781**

*See Hay v. Northcote*, Farwell J. [1900] 2 Ch. 262.

— Divorce.

*See Cases under DIVORCE—Jurisdiction.*

**CONFLICT OF LAWS—continued.**

— Federal and provincial powers.

*See Cases under CANADA.*

5. — *Foreign power of attorney.*

Question whether a power of attorney was to be governed by foreign or English law:—

*Held*, that expert evidence must be given as to whether the giver of the power intended it to be acted on in England; and that if he so intended, the extent of the authority, so far as transactions in England were concerned, must be determined by English law. **CHATENAY v. BRAZILIAN SUBMARINE TELEGRAPH CO., LD.**

**C. A. [1891] 1 Q. B. 79**

6. — *Infant—Marriage settlement—Female infant—Ratification—Repudiation—Marriage with foreigner—Change of domicile by marriage—Operation of English law.*

Prior to the marriage in 1864 of an Irish lady under twenty-one with an Austrian, marriage articles in English form were executed by her and her intended husband, by which it was declared and agreed by and between the parties thereto that, in case the marriage should take place, the then personal property and certain after-acquired personal property of the lady should be vested in trustees upon the usual trusts of an English marriage settlement. After the marriage the husband retained his Austrian domicile. In 1880 a settlement in English form, which purported to be made in pursuance of the articles, was executed by the husband and wife in Paris. The wife afterwards executed appointments of new trustees of the settlement, and in 1889 she exercised in favour of one of her daughters a power of appointment reserved to her by the settlement. In 1893 the husband and wife executed in Austria, in accordance with Austrian law, a notarial act, by which they purported to revoke and annul the marriage articles and the settlement of 1880, and to vest in the wife the unrestricted administration of all her property. In 1896 the husband and wife and their four children (all of whom had attained twenty-one) brought an action against the trustees in the Ch. Div., claiming a declaration that, by virtue of the notarial act of 1893, the marriage articles and the settlement were wholly cancelled and annulled and were void by Austrian law.

By Austrian law a husband and wife have a right to revoke their marriage contract, notwithstanding the birth of issue and acts of ratification, and this right of revocation cannot be waived, and is not lost by lapse of time:—

*Held*, that, inasmuch as upon her marriage the wife acquired the Austrian domicile of her husband and became subject to Austrian law, she never could ratify the settlement or deprive herself of the right to repudiate it, the result being that she never had the power, either before or after her marriage, of making an irrevocable contract.

Consequently the English doctrine, that the voidable contract of an infant will bind him if he does not repudiate it within a reasonable time after he attains twenty-one, had no application:—

*Held*, therefore, that the wife was not bound by the marriage articles or by the settlement,



**CONFLICT OF LAWS—continued.**

and that the revocation by the notarial act of 1893 was effectual.

Decision of Cozens-Hardy J., [1899] 2 Ch. 569, reversed. *VIDITZ v. O'HAGAN*

C. A. [1900] W. N. 103; [1900] 2 Ch. 87

— Jurisdiction of American Courts to dissolve marriage of an Englishman domiciled in this country.

See *DIVORCE—Jurisdiction*. 87.

— Lunatic, Foreign—Foreign Court—Declaration of lunacy—Money in English bank—Payment to tuteur of estate.

See *LUNACY—Practice*. 37.

7. — *Lunatic, Foreign—English property—Movables—Personal estate—Private international law—Curator—Administrateur provisoire—Right to sue in England—Order of foreign Court—Jurisdiction—Detinue—Trove—Practice—Lunatic not so found, action by—Next friend—Maintenance—Scheme—Creditors—Priority—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 117, 134—Form of judgment—Stock—Vesting order.*

An action brought in a proper case in the name of a lunatic not so found by his next friend, for the recovery of his property may, in the absence of any lunacy proceedings, be maintained without the sanction of the Court in Lunacy.

The Court in Lunacy, having property of a lunatic under its control, will, as between the lunatic and his creditors, see that proper provision is made out of the property for his maintenance, as the first and paramount consideration; but, subject to that, the Court will not withhold a creditor from exercising his legal rights.

A foreign curator or administrateur provisoire of a lunatic, not so found judicially, domiciled and resident abroad, is not necessarily an improper person to sue in this country as next friend for the recovery of the lunatic's personal property here, though, if such next friend is resident abroad, he may be required to give security for costs.

The Court in Lunacy has no jurisdiction under s. 134 of the Lunacy Act, 1890, to order the transfer of securities in this country standing in the name of or vested in a person of unsound mind, not so found, residing out of the jurisdiction of the High Court, unless his status has been altered by his being judicially declared lunatic according to the law of the place where he is residing.

G., domiciled and resident in Belgium, deposited with an English bank for safe custody, in his name, certificates and scrip for securities of great value. On his death in 1892 his widow, then also domiciled and resident in Belgium, took out administration in England to his estate, and had the securities then standing to his account, and also a sum of cash representing dividends thereon collected by the bank on his account, transferred to a new account opened by her at the bank in her own name.

In 1897 she became lunatic, though she was not so declared judicially, and was placed in a foreign lunatic asylum. D., a Belgian, was appointed by the Belgian Court her "administrateur provisoire," with power to collect and get in

**CONFLICT OF LAWS—continued.**

her personal estate, and subsequently D. obtained in England letters of administration de bonis non to G.'s estate, whereupon he brought an action in England against the bank in the names of himself and of Madame G. (the writ not stating that she was of unsound mind or that he was suing as her next friend) claiming, in his double capacity of legal personal representative of G. and of administrateur provisoire of Madame G., to have the certificates, scrip and cash standing in her name delivered up to him. North J., upon the action coming on before him for trial, took the preliminary objection that it was improperly constituted in that Madame G., being of unsound mind, could not sue without a next friend, whereupon D. was appointed next friend, and the title of the action was amended accordingly. The trial having then proceeded on that footing, North J. held that the debts, the bank, could not safely deliver the property to the plt. D. without the authority of an order of the Court in Lunacy; and also that as the action was not one for the protection of the lunatic's person or property, but in the nature of detinue, it was not a form of action in which the lunatic could sue by her next friend. The plt. D. appealed, having first obtained from the Belgian Court an order giving him leave to appeal with a view to recovering the property:—

*Held*, by C. A., (1.) that as D. and Madame G. had together a clear legal title to the property sought to be recovered, D. was entitled, suing in his own name and as next friend of Madame G., to demand the delivery of her property to him and could give the bank a good discharge; and (2.) that, in the absence of lunacy proceedings in this country, the Court was bound, on general principles of private international law, to recognise the order of the Belgian Court giving D. leave to prosecute the appeal and to obtain and give a good discharge for the property.

*Scott v. Bentley*, (1855) 1 K. & J. 281, considered and approved; *In re Barlow's Will*, (1887) 36 Ch. D. 287, discussed.

Form of judgment, including vesting order as to stock in Madame G.'s name.

Decision of North J. [1899] W. N. 107, reversed. *DIDISHEIM v. LONDON AND WESTMINSTER BANK* — — — C. A. [1900] 2 Ch. 15

Distinguished by Cozens-Hardy J. *New York Security and Trust Co. v. Keyser*, [1901] W. N. 14

8. — *Marriage—Domicil, Matrimonial—Community of goods—International law—Movable goods—French law.*

A Frenchman and Frenchwoman married in France without any contract, so that according to French law their rights inter se as to property were subject to the law of community of goods. They came to England and were permanently domiciled there. The husband became a naturalized British subject, amassed a large fortune and died in England, leaving his wife surviving and having made an English will by which he disposed of all his property:—

*Held*, that as to movable goods the rights of the wife under the French marriage law as to community of goods were not affected by change of domicil, and that the widow was entitled to

**CONFLICT OF LAWS—continued.**

the share of her husband's personal estate to which she would have been entitled if they had remained domiciled in France.

Decision of C. A., [1898] W. N. 52 (4); [1898] 2 Ch. 60, reversed and the decision of Kekewich J., [1898] W. N. 12 (3); [1898] 1 Ch. 403, restored.

*Lashley v. Hog*, (1804) 4 Paton, 581, distinguished. *DE NICOLS v. CURLIER*

H. L. (E.) [1899] W. N. 255; [1900] A. C. 21

See also next Case.

9. — *Marriage—Domicil—Change of domicil—Immovable goods—French law—Lex rei sitæ—Community of goods—Statute of Frauds*, 1676 (29 Car. 2, c. 3), ss. 4, 7.

A Frenchman and Frenchwoman married in France without any express marriage contract, so that according to the French law their rights as to property were subject to the law of community of goods. Subsequently they came to England and acquired an English domicil, and the husband amassed a large fortune, part of which he invested in real and leasehold property here. He died in the lifetime of the wife, having purported to dispose of all his property by an English will. It having been held that as to movables the wife was entitled notwithstanding the change of domicil to a one-half share under the law of community of goods, the question arose whether she was entitled on the same footing to a share of the real and leasehold property:—

*Held*, (1.) that there being here a special marriage contract defined by reference to the French Code, it had the same binding effect as an express contract, and was enforceable against the real and leasehold property in this country, subject to the question whether the Statute of Frauds required the contract to be in writing, as creating an interest in land; (2.) on the authority of *Forster v. Hale*, (1800) 5 Ves. 308; 4 R. R. 128, and *Dale v. Hamilton*, (1846) 5 Hare, 369, that the Statute of Frauds did not apply, inasmuch as this was in substance a contract for a partnership, and the property required for the purposes of the partnership was by operation of law held for those purposes:

*Held*, therefore, that the real and leasehold property was subject to the community of goods. *In re DE NICOLS. DE NICOLS v. CURLIER*

Kekewich J. [1900] W. N. 146; [1900] 2 Ch. 410

10. — *Marriage—Nullity of—Consular marriage in France—Frenchman and Englishwoman—Validity of ceremony—Consular Marriage Act*, 1849 (12 & 13 Vict. c. 68)—*Foreign Marriage Act*, 1892 (55 & 56 Vict. c. 23).

A marriage between a Frenchman and an Englishwoman duly solemnized in France under the Consular Marriage Act, 1849 (repealed and virtually re-enacted by the Foreign Marriage Act, 1892), is valid as regards form in England, though declared invalid as regards form by a French Court.

*Simonin v. Mallac*, (1860) 2 Sw. & Tr. 67, followed. *HAY v. NORTHCOTE*

Farwell J. [1900] W. N. 134; [1900] 2 Ch. 262

11. — *Mortmain—Gift of money by colonial will to be invested in land in England.*

The validity of a gift by a Colonial will made

**CONFLICT OF LAWS—continued.**

by a person domiciled in the Colony of money to be invested in land in England depends on the colonial law and not on the English Mortmain Acts. *CANTERBURY CORPORATION v. WYBURN*

P. C. [1895] A. C. 89

12. — *Movable fund in Scotland—Parties domiciled in England.*

A question between domiciled English parties as to the title to a movable fund situated in Scotland is generally a question of English law. *NORTH WESTERN BANK v. POYNTER (JOHN), SON AND MACDONALDS*

H. L. (Sc.) [1895] A. C. 56

Discussed by H. L. (Sc.) *Inglis v. Robertson*, [1898] A. C. 616, 626.

13. — *Partnership—Administration of estate of deceased partner—Foreign law—Lex fori.*

Creditors of a firm carrying on business in Spain brought an action in England, on behalf of the firm's creditors, against the executors of a member of the firm (who had died in England leaving property there) claiming that his estate, after payment of his funeral and testamentary expenses and separate debts, was liable for the firm's debts, and asking for administration on that footing. The defence was that the rights of the parties were governed by the law of Spain, under which the firm's creditors were not entitled to proceed against the separate estate of a deceased partner until after they had exhausted the property of the firm:—

*Held*, following *Bullock v. Caird* (L. R. 10 Q. B. 276), that the matter stated in the defence was mere procedure, and that the defence was bad. *In re DOETSCH. MATHESON v. LUDWIG*

Romer J. [1896] 2 Ch. 836

— *Penal law—Enforcing in foreign state—Interpretation of law—Distinction between public and private penalties.*

See INTERNATIONAL LAW. 7.

— *Pledge—Documents of title—Foreign arrestment—Goods in Scotland.*

See FACTOR. 3.

— *Power of appointment—Execution—Domiciled foreigner—Unattested will—Validity.*

See POWER. 17.

14. — *Right to question validity of decree—Scotch action—Companies Act*, 1862 (25 & 26 Vict. c. 89), ss. 87, 151.

Prior to the liquidation of a co. an action was brought in Scotland founded on arrestments made on bills of exchange. There was evidence that the arrestments had been obtained by mis-statements and were in fact invalid:—

*Held*, that the Court was bound to treat them as valid until recalled by the Scotch Courts. *In re WEST CUMBERLAND IRON AND STEEL CO.*

V. Williams J. [1893] 1 Ch. 713

15. — *Superstitious uses—Bequest to persons resident abroad—Testator resident in England.*

A domiciled Englishman gave a legacy to a Jesuit College in Victoria to be spent in masses for the souls of himself and wife. The gift was valid by the law of Victoria:—

*Held*, that English law applied and the gift was void. *In re ELLIOTT. ELLIOTT v. ELLIOTT*

North J. [1891] W. N. 9

16. — *Will in French form—Movable property*

**CONFLICT OF LAWS—continued.**

*in England—Domicil—French subjects—English marriage—Husband and wife—Change of domicil—Intention—Revocation of ante-nuptial will—Matrimonial law—Testamentary law—Private international law—Wills Act, 1837 (1 Vict. c. 26), s. 18.*

An unmarried Frenchwoman resident in England executed a holograph will in French and valid according to French law. Subsequently she set up a business in England and married there, according to English law, but without any settlement, a French refugee who had come over to escape a sentence of imprisonment passed on him by the French Court. After the marriage the business was continued by the husband and wife jointly, the husband taking in his own name leases of the business premises. About two years after the expiration of the period of prescription under the French law, the husband sold his interest in the business to his wife, assigned the leases to her, and returned to France and took up his permanent abode there. The wife remained in England and continued carrying on the business until her death:—

*Held*, by Rigby and V. Williams L.J.J. (Lindley M.R. dissenting) that the domicil of the husband, and consequently of the wife, at the time of the marriage was English, and, therefore, that the question of validity of the ante-nuptial will was governed by English and not by French law, so that the will was revoked by the marriage.

Decision of Jeune J. reversed.

*Per* Lindley M.R.: Sect. 18 of the Wills Act, 1837, does not apply to the wills of foreigners domiciled abroad.

*Per* V. Williams L.J.: The rule of English law which makes a woman's will null and void on her marriage is part of the matrimonial law, and not of the testamentary law.

Change of domicil by evidence of intention, as affecting the status of husband and wife discussed. *In re* MARTIN. LOUSTALAN v. LOUSTALAN C. A. [1900] W. N. 103; [1900] P. 211

17. — *Will—Unattested will—Domiciled foreigner—Immovables—Leaseholds—Administration with will annexed—Lex rei sitæ—Lex domicilii—Wills Act, 1837 (1 Vict. c. 26), s. 9.*

The beneficial interest in leasehold property in England will not pass under the will of a domiciled foreigner executed according to the law of his domicil, but not attested as required by the Wills Act, notwithstanding that letters of administration with the will annexed have been granted by the Probate Div. *PEPIN v. BRUYÈRE* Kekewich J. [1900] W. N. 164; [1900] 2 Ch. 504

**CONFLICT OF STATUTES—Annuity.**

*See* STATUTE. 4.

**CONJUGAL RIGHTS**—Restitution of—Substituted service of written demand for cohabitation.

*See* DIVORCE. 117.

**CONSCIENTIOUS OBJECTION**—Vaccination.

*See* VACCINATION. 1.

**CONSECRATION OF CHURCHYARDS**—Ground “adjoining” to an existing churchyard—Intervening highway.

*See* ECCLESIASTICAL LAW. 20.

**CONSENT**—Affiliation of colleges.

*See* UNIVERSITY. 1.

— Board of Agriculture.

*See* BOARD OF AGRICULTURE. 1

— Charity Commissioners.

*See* CHARITY—Commissioners. 5—9.

— Condition on marriage—Power of appointment.

*See* Cases under WILL—Marriage.

— Dismissal of bankruptcy petition by consent—Practice.

*See* BANKRUPTCY—Practice. 150.

— Leaseholds—Assignment—Default of vendor in obtaining lessor's consent—Loss of bargain—Damages.

*See* VENDOR AND PURCHASER. 26.

— Lessor's—Unreasonable refusal—Unwilling purchaser—Covenant against assignment.

*See* VENDOR AND PURCHASER. 95.

— Next of kin—Proof on motion—Lost will—Practice—Small estate.

*See* PROBATE—Lost Will. 132.

— Redemption—Mortgagee owner of limited estate.

*See* MORTGAGE—Redemption. 71.

— Riparian owner—Stream—Interruption—Local authority—“Injurious affecting.”

*See* WATER. 43.

— Secretary of State—Purchase of addition to burial ground.

*See* BURIAL. 5.

— Tenant for life—Investment clause—Personal security—Loan to tenant for life.

*See* TRUSTEE—Investments. 67.

— of Tramway company—Right to lay wires—Power to open street.

*See* TELEPHONE. 4.

**CONSENT JUDGMENT**—Effect of contract by company *ultra vires*—Terms on which contract will be set aside.

*See* CANADA. 17.

— Judgment with intent to delay creditors.

*See* CANADA. 27.

**CONSENT ORDER**—Agreed costs—Waiver of taxation—Payment out of Court.

*See* COSTS—Taxation. 81.

— Dismissing action with costs—“Judgment obtained” by defendants—Public authorities protection.

*See* COSTS. 45.

— Setting aside—Mistake.

*See* PRACTICE—Setting Aside. 237—239.

**CONSEQUENTIAL DAMAGE**—Underwriter's liability for—Cost of disposing of cargo rendered worthless by sea peril.

*See* INSURANCE—Marine. 44.

**CONSERVATORS**—of Thames.

*See* Cases under THAMES.

**CONSIDERATION**—Action on—Bill coming into hands of plaintiff after action brought.

*See* BILL OF EXCHANGE. 3.

**CONSIDERATION**—*continued.*

- Assignment of leaseholds — Stamp duty—Rent.  
See **REVENUE—Stamps**. 160.
- Bills of sale—Statement of consideration.  
See **BILL OF SALE—Consideration**. 17, 18, 20, 21.
- Company practice.  
See **Cases under COMPANY and COMPANY—WINDING-UP**.
- Illegal—Cheque—Bet on horse-race.  
See **GAMING**. 7.
- Illegal—Marriage with sister of deceased wife.  
See **SETTLEMENT**. 31.
- Post-nuptial settlement.  
See **FRAUDULENT CONVEYANCE**. 1.

**CONSIGNEE**—Bill of lading.

See **SHIPPING—Charterparty**. 26.

**CONSOLIDATION**—Bankruptcy proceedings.

See **BANKRUPTCY—Practice**. 149.

- Causes—Application by plaintiff.  
See **Cases under PRACTICE—Parties**.
  - Consolidated suits—Petition for restitution of conjugal rights—Cross-petition claiming dissolution of marriage—Right to begin.  
See **DIVORCE—Practice**. 101.
  - Libel—Practice—Jurisdiction.  
See **DEFAMATION**. 1.
  - Mortgages.  
See **MORTGAGE—Consolidation**.
  - Salvage actions—Admiralty practice.  
See **SHIPPING—Salvage**. 249.
- CONSOLS**—Charging order on.  
See **MORTGAGE—Foreclosure**. 31.
- Conversion of.  
See **Cases under NATIONAL DEBT**.
  - Right of cestui que trust to inspect—Search for incumbrances.  
See **TRUSTEE**. 55.
  - Transfer—Enforcing order for—Appointment of person to transfer.  
See **PRACTICE—Judgment**. 32.
  - Transfer—Form of order—Lunatic sole trustee—Vesting order.  
See **LUNACY**. 49.

**CONSPIRACY**—Combination of traders to engross trade.

It is not unlawful for traders to combine for the purpose of keeping trade in their own hands, or extending their trade and increasing their profits, so long as they are not actuated by personal malice or by an intention to ruin their rivals, and do not use any unlawful means.

Decision of *C. A.*, (1889) 23 *Q. B. D.* 598, affirmed. *MOGUL STEAMSHIP CO. v. MCGREGOR, GOW & CO.* — *H. L. (E.)* [1892] *A. C.* 25  
See *Huttley v. Simmons*, [1898] 1 *Q. B.* 181, 184; *Allen v. Flood*, [1898] *A. C.* 1, 23.

2. — *Conspiracy to injure a person by preventing others from dealing with him—Maliciously procuring breach of contract.*

*Collins J.* directed the jury that if the defts., members of a trade union, had induced persons

**CONSPIRACY**—*continued.*

to break contracts made with the plt. and not to enter into further contracts with him, although only with the object of compelling the plt. to adhere to the rules of the trade union, there would be malice in point of law, for which the defts. would be liable in damages, and that a malicious conspiracy to prevent persons from entering into contracts with another, made to injure him in the exercise of his lawful business, if followed by damage, was actionable:—

*Held*, that the directions were right. The right of action for maliciously procuring a breach of contract is not confined to contracts in the nature of personal service. *TEMPERTON v. RUSSELL (No. 2)* — *C. A.* [1893] 1 *Q. B.* 715

Referred to by *H. L. (E.) Allen v. Flood*, [1898] *A. C.* 1, 94.

— Intimidation—Seamen—Conspiracy and Protection of Property Act.

See **CRIMINAL LAW—Conspiracy**. 1—3.

3. — *Legal injury—Combination to induce a person not to employ another—Conspiracy to do an act not amounting to an actionable wrong—Employer and workmen.*

A conspiracy to do certain acts (not being criminally punishable) gives a right of action only where the acts agreed to be done, and in fact done, would, had they been without preconcert, have involved a civil injury to the plt., for which he would have had a right of action.

*Kearney v. Lloyd*, (1890) 26 *L. R. Ir.* 268, approved and followed. *HUTTLEY v. SIMMONS*

*Darling J.* [1898] 1 *Q. B.* 181

4. — *Trade combination—Intent to injure—Cause of action.*

Motion to strike out a statement of claim which in substance alleged that the defts. maliciously combined with others to prevent the plts. from carrying on their trade by inducing third persons not to deal with the plts., and that by means of that combination the defts. occasioned damage to the plts.

*Bigham J. (Phillimore J. contra)* held that the statement of claim disclosed no cause of action, and gave judgment for the defts. *BOOTS' CASH CHEMISTS, LANCASHIRE, LD. v. GRUNDY*

*Div. Ct.* [1900] *W. N.* 142

— Trade union—Strike—Picketing.

See **Cases under TRADE UNION**.

**CONSPIRACY, AND PROTECTION OF PROPERTY**—Strike—"Watching or besetting"—Injunction.

See **Cases under TRADE UNION**.

**CONSTABLE.**

See **POLICE**.

— Report—Libel.

See **DEFAMATION**. 19.

**CONSTRUCTION.**

See under Headings of subject-matter of Construction.

**CONSTRUCTIVE RESIDENCE.**

See **POOR LAW—Settlement**. 13.

**CONSTRUCTIVE TRUST**—Trustee de son tort.

See **TRUSTEE—Breach of Trust**. 41.

**CONSULAR MARRIAGE**—In France—Frenchman and Englishwoman—Validity of ceremony.

See **CONFLICT OF LAWS**. 10.

**CONTAGIOUS DISEASE.**

See **ANIMAL**.

**CONTANGO.**

See **STOCK EXCHANGE**. 9.

**CONTEMPT OF COURT**—Attachment.

See Cases under **ATTACHMENT**.

1. — *Attachment—Disobedience of order of Irish Court—Power of English Court*—41 Geo. 3, c. 90, s. 6.

Motion by the plt. in an action brought in the High Court of Justice in Ireland, Ch. Div., that the plt. might be at liberty to issue a writ of attachment against the deft., J. S. Newell, for his contempt in not having obeyed an order made by that Court on May 7, 1896. By an order of the Lord Chancellor, dated Aug. 10, it was ordered that the order of the Irish Court (which had been exemplified to the English Court) should be enrolled in the English High Court, and this was done on Aug. 28. The deft. was in England :—

*Held*, on the authority of *Hazleton v. Bright*, [1873] W. N. 3, and *Pennefather v. Short*, [1866] W. N. 102, 126, subject to the accuracy of those reports being verified by the registrar, that the Court had, under the Act 41 Geo. 3, c. 90, s. 6, power to make the order asked for.

Time was given to the deft., who appeared in person, to apply to the Irish Court to discharge the order of May 7, which he alleged to have been irregularly obtained. *NEWELL v. NEWELL*

North J. [1896] W. N. 160 (2)

2. — *Breach of injunction—Person not enjoined or party to action—Aiding and abetting—Committal.*

There is a clear distinction between a motion to commit a man for breach of an injunction on the ground that he was bound by the injunction, and a motion to commit a man on the ground that he has aided and abetted a deft. in a breach of an injunction. In the first case the order is made to enable the plt. to get his rights; in the second, because it is not for the public benefit that the course of justice should be obstructed.

The Court has undoubted jurisdiction to commit for contempt a person not included in an injunction or a party to the action who, knowing of the injunction, aids and abets a deft. in committing a breach of it.

Decision of North J. affirmed. *SEAWARD v. PATERSON* - - C. A. [1897] 1 Ch. 545

3. — *Camera, Proceedings in.*

It is contempt of Court to publish in a newspaper an account of proceedings which a judge had decided should not be disclosed by determining to hear the case in private. *In re MARTINDALE* - - North J. [1894] 3 Ch. 193

4. — *Circular—Libel—Interlocutory injunction.*

Interference with the course of justice by a party publishing ex parte statements is not less contempt of Court because the statements are libellous, or because the party is prepared to justify the libel, or because the libel deals with the

**CONTEMPT OF COURT**—continued.

merits of the action. Therefore the issuing by a party of a libellous circular commenting on the merits of an action will be restrained by interlocutory injunction. But the issue of a circular containing a warning merely and no comment on a pending action is not a contempt. *COATS (J. & P.) v. CHADWICK* - *Chitty J.* [1894] 1 Ch. 347

— *Committal—Duty of bankrupt.*

See **BANKRUPTCY**. 72.

— *County court—"Matter."*

See **COUNTY COURT—Appeal**. 3.

5. — *Discretion—Trustee—Debtors Act, 1878 (41 & 42 Vict. c. 54).*

In exercise of its discretion (under the Debtors Act, 1878), the Court refused to grant a writ of attachment against a trustee who had disobeyed an order to pay into Court the amount of misapplied trust money where the trustee had received no personal benefit from the breach of trust and was unable to pay. *AYLESFORD (EARL OF) v. EARL POULETT (No. 2)*

North J. [1892] 2 Ch. 60

Referred to by C. A. *In re Smith*, [1893] 2 Ch. 1, 10.

— *Divorce Court.*

See Cases under **DIVORCE—Costs**.

— *Jurisdiction—Committal—County court—Company—Winding-up.*

See **PROHIBITION**. 1.

6. — *Newspaper—Innocent loan of paper containing scandalous matter respecting a Court—Committing judge ordered to pay costs.*

Contempt of Court may be committed by publication of scandalous matter respecting the Court after adjudication as well as pending a case before it. In England committals for such contempts have become obsolete: in small colonies consisting principally of coloured populations they may still be necessary in proper cases :—

But *held*, that where the appellant was neither printer nor publisher nor writer of such scandalous matter, but had innocently lent the paper containing it to a friend without knowledge of its contents, he was neither constructively nor necessarily guilty of contempt of Court, and that the judge who committed him must pay the costs of appeal to Her Majesty in Council. *McLEOD v. ST. AUBYN* - - P. C. [1899] A. C. 549

7. — *Newspaper comments—Publication tending to influence result of proceedings.*

An application was made for an attachment against the respondents, for contempt of Court in publishing certain articles in a newspaper. It appeared that the applicant, who had been sub-editor and manager of the paper, was charged with attempted arson, and remanded. An article was then published in the paper, alluding to the facts that the property of the newspaper company was for sale, and that the applicant had been arrested, and the charge of arson was pending. That charge was dismissed, but others were preferred, on two of which the applicant was committed for trial. While he was awaiting trial an article was published, announcing that one of the respondents had purchased the paper, and appealing for support, and alluding to the charges pending against the applicant, and shortly after-

**CONTEMPT OF COURT—continued.**

wards a report was published of a meeting of a committee of a county council, at which a resolution was carried that the action of the chief constable in obtaining legal assistance for the police in the case of the prosecution pending against the applicant should be confirmed :—

*Held*, that the publications in question did not appear to be intended, and were not calculated, to prejudice the fair trial of the charges pending against the applicant, and therefore no attachment ought to issue. *REG. v. PAYNE AND COOPER* — Div. Ct. [1896] 1 Q. B. 577

**8. — Pardon.**

The prerogative of pardon extends to the remission of a sentence of a purely punitive character for contempt of Court. *In re A SPECIAL REFERENCE FROM THE BAHAMA ISLANDS*

P. C. [1893] A. C. 138

Referred to by C. A. *Seaward v. Paterson*, [1897] 1 Ch. 545, 559.

**9. — Privilege of Parliament—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52)—Bankruptcy Rules, 1886, rr. 70, 88.**

(A) Motion to commit a member of Parliament for refusing to submit to examination touching a bankrupt's affairs :—

*Held*, that the member was protected by his privilege from attachment. That the order for committal was not punitive in its nature, but a civil process to enforce obedience to the order of the Court, and that against all merely civil process the privilege protected. *In re ARMSTRONG. Ex parte LINDSAY* — V. Williams J. [1892] 1 Q. B. 327

(B) *Quære*, whether a defaulting trustee, being a peer of the realm, is privileged from arrest under a writ of attachment. *AYLESFORD (EARL OF) v. EARL POULETT* North J. [1892] 2 Ch. 60

Referred to by C. A. *In re Smith*, [1893] 2 Ch. 1.

— Privilege—Member of Parliament.

See PARLIAMENT—Privilege. 142.

**10. — Publication of comments on administration of justice—Personal abuse of judge with reference to his conduct as judge.**

The publication in a newspaper of an article containing scurrilous personal abuse of a judge, with reference to his conduct as a judge in a judicial proceeding which has terminated, is a contempt of Court punishable by the Court on summary process. *REG. v. GRAY*

Div. Ct. [1900] 2 Q. B. 36

— Receiver, interference with—Charge on property in foreign country—Enforcing payment.

See COMPANY—Debentures. 60.

**11. — Sequestration—Disobedience of order of the Court—Commitment.**

The principles on which the Court acts when it is asked to sequester the property of a co. upon the ground of disobedience to one of its orders are the same as those applicable where it is sought to commit a private individual to prison for contempt. In these cases, casual, or accidental and unintentional disobedience to an order of the Court is not enough to justify either

**CONTEMPT OF COURT—continued.**

sequestration or committal: the Court must be satisfied that a contempt of Court has been committed—in other words, that its order has been contumaciously disregarded. *FAIRCLOUGH v. MANCHESTER SHIP CANAL CO.*

C. A. [1897] W. N. 7 (13)

**12. — Witnesses, Interfering with.**

(A) Two persons interested in an action wrote to persons whom they knew would probably be called as witnesses, making charges against parties to the action :—

*Held*, that this was a contempt of Court. *WELBY v. STILL* Kekewich J. [1892] W. N. 6

(B) Party committed for attempting to intimidate witness. *BROMILOW v. PHILLIPS*

North J. [1891] W. N. 209

**CONTINGENCY—Redemption on—Debenture—Stamp duty.**

See REVENUE—Stamps. 149.

**CONTINGENT ANNUITY—Settlement estate duty—Incidence.**

See REVENUE—Estate Duty. 29, 34.

**CONTINGENT INTEREST—Construction of will.**

See WILL—Contingent Remainder. 68.

— Infants—Maintenance—Term for raising portions.

See INFANT. 30.

— Stamps, on settlement of.

See REVENUE—Stamps. 181.

**1. Woman past child-bearing.**

A. was absolutely entitled to personality in the event of B., a woman of 70, not having issue :—

*Held*, that the Court might authorize the current income and accumulations to be paid to A. *In re LOWMAN. DEVENISH v. PESTER*

C. A. [1895] 2 Ch. 348

Explained and distinguished by C. A. *In re Hocking*, [1898] 2 Ch. 567.

**CONTINGENT LEGACY—“Settlement estate duty”—Incidence.**

See REVENUE—Estate Duty. 16.

**CONTINGENT REMAINDER.**

See WILL—Contingent Remainder.

**CONTINGENT SETTLEMENT—Finance Act.**

See REVENUE—Estate Duty. 21.

**CONTINUATION ACCOUNT—Death of principal**

—Contracts for sale and repurchase after death—Liability.

See STOCK EXCHANGE. 2.

**CONTINUING CAUSE OF ACTION.**

See DAMAGES. 3.

**CONTINUING OFFENCE—Builder without power to remedy breach.**

See BUILDER.

**CONTRACT.**

Generally, col. 505.

Breach, col. 507.

Construction, col. 509.

Determination, col. 510.

Formation, col. 510.

Illegality, col. 512.

**CONTRACT—continued.***Parties*, col. 514.*Performance*, col. 514.*Personal*, col. 515.*Rescission*, col. 516.*Sub-contract*, col. 517.*Time*, col. 517.**Generally.**

1. — *Abandonment of contract—Right to sue on quantum meruit—Building on defendant's land—Evidence of new contract.*

The plt., a builder, who had contracted to erect certain buildings on deft.'s land for a lump sum, after he had done part of the work, abandoned the contract, and the deft. thereupon completed the buildings:—

*Held*, that the plt. could not recover from the deft. in respect of the work which he had done as upon a quantum meruit, there being no evidence of any fresh contract to pay for the same.

*Munro v. Butt*, (1858) 8 E. & B. 738, followed.  
*SUMPTER v. HEDGES* C. A. [1898] 1 Q. B. 673

— *Accounts—Finality of audit.*

*See ACCOUNT*. 2.

2. — *Action founded on contract—Personal injury—Negligence—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.*

An action by a passenger against a ry. co. for personal injuries caused by the negligence of the co.'s servants is founded on tort and not on contract,

(A) even though the passenger has taken a ticket. *TAYLOR v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* C. A. [1895] 1 Q. B. 134

(b) or though the negligence is an act of omission or misfeasance. *KELLY v. METROPOLITAN RY. CO.* - - - C. A. [1895] 1 Q. B. 944

(c) *MEUX v. GREAT EASTERN RY. CO.*

C. A. [1895] 2 Q. B. 387

— *Action impeaching contract.*

*See ARBITRATION—Staying Proceedings.* 55.

— *Agent.*

*See Cases under PRINCIPAL AND AGENT.*

— *Agistment.*

*See AGISTMENT*. 1.

— *Bill of exchange—Dishonour by buyer—Possession of goods—Consent of seller.*

*See SALE OF GOODS*. 7.

— *Building contract.*

*See BUILDING CONTRACT.*

— *Carriage—Delay—Owner's risk-note—Construction.*

*See RAILWAY*. 4.

— *Commonable rights—Evidence—Admissibility—Agreement for sale.*

*See COMMON*. 1.

— *Company law.*

*See COMPANY and COMPANY—WINDING-UP.*

— *Corporation—Municipal—Members of council shareholders in trading company—Validity.*

*See CORPORATION*. 5.

**CONTRACT (Generally)—continued.**

— *Costs of reasonable defence by purchaser of action against him by sub-vondee.*

*See DAMAGES*. 2.

— *“Differences”—“Cover” system—Gambling transaction—Nullity.*

*See STOCK EXCHANGE*. 3.

— *District council.*

*See DISTRICT COUNCIL*. 1.

— *Effects of company's adoption of contract made before its formation—Payment of shares in cash—Set-off.*

*See NEW SOUTH WALES*. 7.

— *Employer and workman.*

*See Cases under MASTER AND SERVANT.*

— *Fraud—Induced by, of bankrupt—Election by vendor to affirm contract—Right of trustee to redeem security at value assessed in petition.*

*See BANKRUPTCY—Secured Creditor.* 226.

— *Frauds, Statute of.*

*See FRAUDS, STATUTE OF*. 14.

— *Guarantee—Concealment of material facts—Contracts in which “uberrima fides” is required.*

*See INSURANCE, GUARANTEE*. 11.

— *“Highest net money tender”—Practice—Striking out statement of claim.*

*See TENDER*. 3.

— *Indemnity of bail to produce prisoner—Illegal contract.*

*See BAIL*.

— *Infant.*

*See INFANT—Contracts.*

— *Insurance.*

*See Cases under INSURANCE.*

— *Landlord and tenant.*

*See Cases under LANDLORD AND TENANT.*

— *Lease, Sale of—Act of bankruptcy by vendor before completion—Action to recover deposit.*

*See BANKRUPTCY*. 188.

— *Locus contractus.*

*See CONFLICT OF LAWS*. 2.

— *Locus solutionis.*

*See CONFLICT OF LAWS*. 1, 2.

— *Lunacy practice.*

*See LUNACY—Contracts.*

— *Marine insurance.*

*See Cases under INSURANCE, MARINE.*

— *Married woman.*

*See Cases under HUSBAND AND WIFE.*

— *Master and servant.*

*See Cases under MASTER AND SERVANT.*

— *Partnership.*

*See PARTNERSHIP—Contract.*

— *Party wall—Implied contract to pay half cost of—Adjoining owners.*

*See BUILDING*. 2.

— *Privity of contract—Broker, default of—Liability of client to jobber—Principal and agent.*

*See STOCK EXCHANGE*. 11.

**CONTRACT (Generally)—continued.**

- Privy of contract—Contract on behalf of intended company—New contract—Patent—Licence.  
*See COMPANY—Contracts.* 21.
- Rescission.  
*See Cases under VENDOR AND PURCHASER—Rescission.*
- Restraint of trade.  
*See Cases under RESTRAINT OF TRADE.*
- Sale of goods.  
*See SALE OF GOODS.*
- Sale of lands.  
*See Cases under VENDOR AND PURCHASER.*
- Scottish law.  
*See SCOTTISH LAW—Contracts.*
- Shipping contracts.  
*See Cases under SHIPPING.*
- Stamps.  
*See Cases under REVENUE—Stamps.*
- To take shares—Proof for injury caused by disclaimer by trustee in bankruptcy—Measure of damages.  
*See BANKRUPTCY—Proof.* 169.
- Ultra vires—Effect of consent judgment—Terms on which contract will be set aside.  
*See CANADA.* 17.
- “Use”—Construction of contract.  
*See NEW ZEALAND.* 3.
- Vendor and purchaser.  
*See Cases under VENDOR AND PURCHASER.*
- Wagering—Undischarged bankrupt—After-acquired property—Personal earnings.  
*See BANKRUPTCY.* 257—262.
- Way-leave.  
*See WAY-LEAVE.*
- Works abroad—Foreign currency—Period of conversion into English money.  
*See ACCOUNT.* 1.

**Breach.**

- Breach of contract—Construction.  
*See CANADA.* 6.
- 3. — *Contract to advance money—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.*  
By a mortgage deed A. agreed to make further advances to P. P. assigned his right under this deed to B., who gave notice to A. In forgetfulness of this notice A. made a further advance to P.:—  
*Held*, that no action lies for breach of a contract to lend money unless the contract binds some money or fund. *WESTERN WAGON AND PROPERTY Co. v. WEST* — *Chitty J. [1892] 1 Ch. 271*  
Referred to by C. A. *South African Territories v. Wallington, [1897] 1 Q. B. 692, 695.*
- 4. — *Contract of personal service—Remedy.*  
Where a manager agreed to give during a specified term his whole time to the management of the plt.'s business, but without negatively contracting not to serve any one else:—  
*Held*, that the Court would not grant an

**CONTRACT (Breach)—continued.**

- injunction restraining the manager from giving part of his time to a rival co. *WHITWOOD CHEMICAL Co. v. HARDMAN*  
C. A. reversing *Kekewich J. [1891] 2 Ch. 416*  
Distinguished by *Romer J. Ehrman v. Bartholomew, [1898] 1 Ch. 671, 673.*
- 5. — *Malicious procuring—Trade union—Right of action.*  
The right of action for maliciously procuring a breach of contract is not confined to contracts in the nature of contracts of personal service:—  
*Held*, therefore, that persons, members of a trade union, who had induced traders to break their contracts with the plt., with the object of compelling the plt. to comply with the rules of the trade union, were liable to him in damages. *TEMPERTON v. RUSSELL (No. 2)*  
C. A. [1893] 1 Q. B. 715

Referred to by H. L. (E.). *Allen v. Flood, [1898] A. C. 1, 95.*

- 6. — *Maliciously procuring discharge of servant—Right of action.*  
An action will not lie against a person who maliciously induces a master to discharge a servant if injury results thereby to the servant, though the discharge does not constitute a breach of the contract of employment. *FLOOD v. JACKSON*  
C. A. [1895] 2 Q. B. 21; [1898] A. C. 1  
— in consideration of Marriage.

*See SETTLEMENT—Construction.* 4.

- 7. — *One party—Breach by—Right of other party to repudiate—Term not going to root of contract—Railway company.*  
Appeal against a decision of North J., whereby he declared that a breach by the defts. of one clause in an agreement between themselves and the plts. entitled the plts. to determine and put an end to the whole agreement, and that it must be treated as determined. The agreement was dated June 4, 1864, and was scheduled to and confirmed by the Rhymney Railway (Northern Lines) Act, 1864 (27 & 28 Vict. c. cclxxv.). Clause 17 provided that “Except as herein mentioned neither co. shall either directly or indirectly seek any new line from one side of the [Rhymney] Valley to the other to take away the traffic of either co.” North J. held that the defts. had in 1898 committed a breach of this clause, and that the plts. were entitled to repudiate the agreement entirely.

The Court allowed the appeal, holding that, though there had been a breach of clause 17, the plts. were not entitled to repudiate the contract, but their remedy was in damages.

If there is a distinct refusal by one party to a contract to be bound by its terms in the future, the other party may treat the contract as at an end: see *Withers v. Reynolds, (1831) 2 B. & Ad. 882*; 36 R. R. 782, Preface, v.; *Hochster v. De la Tour, (1853) 2 E. & B. 678*; *Mersey Steel and Iron Co. v. Naylor, Benzon & Co., (1884) 9 App. Cas. 434, 442.* Short of such a refusal, the true principle to be deduced from all the cases was that you must ascertain whether the action of the party who was breaking the contract was such that the other party was entitled to conclude that the former no longer intended to be bound



**CONTRACT (Breach)—continued.**

by its provisions: see 9 App. Cas. 443. A breach not going to the root of the contract did not entitle the other party to repudiate: see 9 App. Cas. 444, and *Johnstone v. Milling*, (1886) 16 Q. B. D. 460, 471. In the present case there was no express refusal by the defts. to be bound by the provisions of the agreement, and it could not be said that any breach of clause 17 went to the root of the whole agreement, and defeated the substantial consideration for it. *RHYMNEY RY. CO. v. BRECON AND MERTHYR TYDFIL JUNCTION RY. CO.* - - - **C. A. [1900] W. N. 169**

**Construction.****8. — Authority of agent—Lump sum—Variation—Ratification.**

Where the plts. contracted with the agent of an absent shipowner to effect certain specified repairs (all confined to damage by stranding), and instead of doing the work as stipulated alleged that they had, on the agent's authority, done the equivalent thereto or better, and in the same contract stipulated that they should be paid for repairs due to deterioration at scheduled prices stated by them:—

*Held*, that, it appearing that the agent's authority to their knowledge was limited to the said specified repairs, they could not recover on the contract, which was an entire one, and in its entirety had never been performed:

*Held*, further, that the shipowner having taken the ship as repaired and sold, it did not thereby ratify the contract.

*Appleby v. Myers*, (1867) L. R. 2 C. P. 651, followed. **FORMAN & CO. PROPRIETARY, LD. v. THE SHIP "LIDDESDALE" P. C. [1900] A. C. 190**

**— Authority to sign—Principal and agent—Instructions to sell—Real estate.**

See **VENDOR AND PURCHASER. 16.**

**9. — Condition precedent—Exchange contracts—Repudiation.**

Where bankers contracted with A. to pay in exchange for silver sterling money or its equivalent at certain prices, but at the same time stipulated that the goods in payment for which the silver would be received should be financed through them:—

*Held*, that financing the goods was a condition precedent to the contract. But that both parties were reciprocally bound to settle reasonable terms of financing, and that as the bankers repudiated the obligation, A. was entitled to judgment on the contract. **BANK OF CHINA, JAPAN AND THE STRAITS v. AMERICAN TRADING CO. P. C. [1894] A. C. 266**

**10. — Conditional promise to consider a proposal favourably—Construction of contract—Appeal from Canada.**

*Held*, reversing the judgment of the Courts below, that a written promise by the appellants that if satisfied with the respondent as a customer they would favourably consider any application by him to renew a subsisting contract between them on its expiration does not impose a legal obligation to grant it. **MONTREAL GAS CO. v. VASEY - - - P. C. [1900] A. C. 595**

**CONTRACT (Construction)—continued.**

— Director of company.

See **Cases under COMPANY—Director.**

— Entire contract—Common transaction.

See **SOLICITOR—Retainer. 125.**

**11. — Evidence—Admissibility of extrinsic evidence—"Total cost of works"—Construction of contract.**

Words with a fixed meaning in a written contract cannot be explained by oral evidence to mean something different from what they express. Where the words used are susceptible of more than one meaning extrinsic evidence is admissible to shew what were the facts which the negotiating parties had in their minds.

Where a written contract provided that the respondent, a ry. engineer, should receive extra commission "on the estimate of 35,000*l.* in the event of my being able to reduce the total cost of the works below 30,000*l.*":—

*Held*, that evidence was rightly admitted to shew to what items of cost the estimate related. **BANK OF NEW ZEALAND v. SIMPSON P. C. [1900] A. C. 182**

— "Flotation"—British South Africa Company's Mining Ordinance.

See **CAPE OF GOOD HOPE. 4.**

**12. — Implied terms—Necessary implication—Agreement for sale of products of a business.**

The defts. agreed to sell to the plts. all brewers' grains made by the defts., at the average of the rates charged each year by certain specified firms, from July 10, 1885, until Sept. 30, 1895. In 1890 the defts. sold their business, and in consequence ceased to supply grains to the plts.:—

*Held*, that a term could not be applied in the contract to the effect that the defts. would not by any voluntary act of their own prevent themselves from continuing the sale of grains to the plts. for the period mentioned. **HAMLTON & CO. v. WOOD & CO. C. A. reversing Mathew J. [1891] 2 Q. B. 488**

**Determination.**

— Partnership—Death of partner—When contract terminated by.

See **PARTNERSHIP—Contract. 15.**

**13. — Reasonable notice.**

A lady supplying water to a local authority on the same terms as to her tenants, gave three months' notice of her intention to determine the supply:—

*Held*, that three months' notice was not sufficient. **HUNSLET GUARDIANS v. INGRAM North J. [1893] W. N. 61**

**Formation.**

**14. — Advertisement—Fulfilment of conditions—Wager—Insurance Life Act, 1774 (14 Geo. 3, c. 48), s. 2—Gaming Act, 1845 (8 & 9 Vict. c. 109).**

The proprietors of a medical preparation advertised that they would pay 100*l.* to any person who caught influenza after using the preparation in and for a certain manner and period. A person who complied with these conditions caught the influenza:—

*Held*, that the above facts established a contract which was neither a contract by way of

**CONTRACT (Formation)—continued.**

wagering (8 & 9 Vict. c. 109), nor a policy (14 Geo. 3, c. 48, s. 2), and that the 100*l.* was recoverable.

Decision of Hawkins J., [1892] 2 Q. B. 484, affirmed. *CARLILL v. CARBOLIC SMOKE BALL CO.*

C. A. [1893] 1 Q. B. 256

Referred to by Cozens-Hardy J. *Johnston v. Boyes*, [1899] 2 Ch. 73, 77.

15. — *Agreement for lease—Signature not final—Parol evidence—Escrow.*

The plt., a spinster, having signed an agreement for the lease of a house to her by the deft., the deft. subsequently signed it, and handed it to his solicitor with instructions not to part with it except on condition that the plt. obtained some responsible person to join in the lease—a condition which the plt. declined to fulfil:—

*Held*, that evidence was admissible to shew that no agreement was come to between the parties, and that the true effect of the transaction was that the deft. declined to enter into an agreement on the terms of the written document, but at the same time made a counter offer which was rejected, and that there was no agreement. *PATTLE v. HORNIBROOK* *Stirling J.* [1897] 1 Ch. 25

16. — *Author and publisher—Publishing agreement—Assignability.*

The principle established by *Stevens v. Benning* (1854) 1 K. & J. 168, *Reade v. Bentley*, (1857) 3 K. & J. 271, and *Hole v. Bradbury*, (1879) 12 Ch. D. 886, that a publishing agreement between an author and a publisher, or a firm of publishers, is personal to the individuals entering into it, and that the benefit of such an agreement is not assignable without the author's consent, applies equally to the case of a similar agreement between an author and a limited co. *GRIFFITH v. TOWER PUBLISHING CO. AND MONCRIEFF*

*Stirling J.* [1897] 1 Ch. 21

17. — *Letter in envelope taken as one document—Memorandum in writing—Name of parties—Statute of Frauds* (29 Car. 2, c. 3), s. 4—*Sale of Goods Act*, 1893 (56 & 57 Vict. c. 71), s. 4.

An envelope and a letter which is shewn by evidence to have been inclosed in it are so connected together that the envelope may be used to supply the name of one of the parties to a memorandum in writing of a contract within s. 4 of the Statute of Frauds, or s. 4 of the Sale of Goods Act, 1893. *PEARCE v. GARDNER*

C. A. [1897] 1 Q. B. 688

17A. — *Letters—Acceptance—Time—Withdrawal of offer.*

Letters accepting an open offer and withdrawing the offer were posted on the same day. The letter of withdrawal was received before the letter of acceptance:—

*Held*, nevertheless, that the withdrawal was too late. An offer which is likely to be accepted by letter is accepted when the letter is posted; but a withdrawal of such an offer dates only from the time when the fact of the withdrawal is known to the other party. *HENTHORN v. FRASER*

C. A. [1892] 2 Ch. 27

18. — *Telegram—Negotiation by telegram—Acceptance of offer not proved.*

A. telegraphed to B., "Will you sell us

**CONTRACT (Formation)—continued.**

B. H. P.? Telegraph lowest cash price?" B. telegraphed in reply, "Lowest price for B. H. P. 900*l.*" A. telegraphed, "We agree to buy B. H. P. for 900*l.* asked by you." B. did not reply:—

*Held*, that there was no contract. The final telegram was not the acceptance of an offer to sell, as there was no offer to sell, only an offer to buy, the acceptance to which must be express. *HARVEY v. FACEY* - P. C. [1893] A. C. 552

19. — *Telegraphic code—Cablegrams—Mistake—Action on contract—Onus probandi.*

Where parties have corresponded by means of a telegraphic code, it is for the plt., in an action for breach of contract, to shew that the proposal made by him and accepted by the deft. is so clear and unambiguous that the deft. cannot be heard to say that he misunderstood it. It is not a matter for the Court to construe. *FALCK v. WILLIAMS* - P. C. [1900] A. C. 176

**Illegality.**

20. — *Fraud—Loan of money—Concealment of identity of lender—Right of borrower to repudiate.*

The plt., a money-lender, advertised under a fictitious name, and the deft. borrowed money and gave a promissory note to secure the sum borrowed and interest. In an action on the promissory note the jury found that the plt. intentionally concealed his identity to induce the deft. to borrow money of him as if from another, and that the deft. was so induced; that the plt. did so fraudulently; that the deft. entered into the contract believing that he was doing so with a person of the fictitious name given by the plt., and that the deft. repudiated the contract within a reasonable time after he discovered that the plt. was the person with whom he had contracted:—

*Held*, that the fraudulent concealment by the plt. of his identity with a person whose reputation in business was such that the deft. would not have dealt with him was material to the inducement which brought about the contract, which the deft. was therefore entitled to repudiate within a reasonable time after the discovery of the fraud. *GORDON v. STREET*

C. A. [1899] 2 Q. B. 641

21. — *Illegal consideration—Stifling a prosecution—Implied condition.*

To avoid the prosecution of a relative for misappropriating moneys the plts. made up the amount misappropriated partly in cash and partly by promissory notes and a deposit of securities:—

*Held*, that the promissory notes and the deposit were founded on an illegal consideration and were void.

Decision of V. Williams J., [1891] 2 Ch. 587, affirmed. *JONES v. MERIONETHSHIRE PERMANENT BENEFIT BUILDING SOCIETY*

C. A. [1892] 1 Ch. 173

22. — *Illegal consideration—Stifling prosecution.*

The secretary of a land society was indebted thereto for moneys used by him in payment of his

**CONTRACT (Illegality)—continued.**

own debts. His wife by deed charged her property as security for these sums. An action by her to set this deed aside, on the ground that it had been executed under pressure and undue influence and to stifle a prosecution, was dismissed on the ground that though the Court below had decided in her favour, it had not found as a fact that there was any pressure or undue influence, and that the burden of proof of such pressure or influence lay upon the plt. *McCLATCHIE v. HASLAM* - C. A. [1891] W. N. 191

— Illegal contract—Bail to produce prisoner—Indemnity.  
See BAIL.

**23. — Illegal contract—Purchase of shares—Agreement to buy shares at a fictitious premium—Rigging the market.**

An agreement between two or more to purchase shares in order to induce would-be buyers of shares in a company to believe, contrary to the fact, that there was a bona fide market for its shares, and that the shares were at a real premium, is an illegal transaction and may be made the subject of an indictment for conspiracy, and no action can be maintained in respect of such agreement or purchase of shares. The Court will take judicial notice of any such criminal conspiracy appearing in the evidence even where the illegality is not pleaded. *SCOTT v. BROWN, DOERING, McNAB & Co. SLAUGHTER & MAY v. BROWN, DOERING, McNAB & Co.*

C. A. [1892] 2 Q. B. 724

Referred to by *Kennedy J. Gedge v. Royal Exchange Assurance Corporation*, [1900] 2 Q. B. 214, 220.

— Illegal stipulation, Effect of, where good consideration for contract — Coal Mines Regulation.  
See MINES. 7.

**24. — Illegality—Remoteness—Uncertainty—Statutory confirmation—Contract to give "first refusal" of land—Interest in land—Purchasers with notice—Injunction.**

An agreement scheduled to an Act of Parliament was thereby "confirmed and declared to be valid and binding upon the parties thereto":—

*Held*, that every clause of the agreement had statutory validity, so that no objection on the ground of remoteness or uncertainty could be taken.

*Sevenoaks, Maidstone and Tunbridge Ry. Co. v. London, Chatham and Dover Ry. Co.*, (1879) 11 Ch. D. 625, and *Kent Coast Ry. Co. v. London, Chatham and Dover Ry. Co.*, (1868) L. R. 3 Ch. 656, followed.

*Caledonian Ry. Co. v. Greenock and Wemyss Bay Ry. Co.*, (1874) L. R. 2 H. L. (Sc.) 347, *London, Chatham and Dover Ry. Co. v. South Eastern Ry. Co.*, (1888) 40 Ch. D. 100, and *Reg. v. Midland Ry. Co.*, (1887) 19 Q. B. D. 540, distinguished.

A racecourse co. agreed with a canal co. that if it should be at any time proposed to use their racecourse for dock purposes the racecourse co. should give the canal co. the first refusal thereof:—

*Held*, (1.) A proposed user by any intending

**CONTRACT (Illegality)—continued.**

purchaser (including the canal co.) entitled the canal co. to a first refusal.

(2.) The racecourse co. could not sell the racecourse without informing the canal co. of the actual cash price the intending purchaser was offering, and offering it to them at that price.

(3.) The right of first refusal could be enforced against an intending purchaser with notice thereof on two grounds—namely:

(a) It was an interest in the land: *London and South Western Ry. Co. v. Gomm*, (1882) 20 Ch. D. 562.

(b) While the matter rested in fieri, the Court, by an inverse application of the principle of *Willmott v. Barber*, (1880) 15 Ch. D. 96, could restrain the intending purchaser from accepting a conveyance of the legal estate in breach of his vendor's prior contract. *MANCHESTER SHIP CANAL Co. v. MANCHESTER RACECOURSE Co.*

*Farwell J.* [1900] W. N. 134; [1900] 2 Ch. 352

— Payment on void contract.

See COMPANY—Contracts. 19.

— Statute of Frauds.

See FRAUDS, STATUTE OF. 14.

**Parties.**

**25. — Joint contractors—Married woman—Res judicata.**

The rule that judgment recovered against one of two joint contractors is a bar to an action against the other applies equally when one of the joint contractors is a married woman contracting in respect of her separate property. *HOARE v. NIBLETT* - Div. Ct. [1891] 1 Q. B. 781

**Performance.**

**26. — Alternative—One alternative impossible.**

A. covenanted by deed to pay 1000*l.* to B. or to transfer to B. 1000*l.* worth of fully paid-up shares in a co. to be formed by A., the capital of such co. not to exceed 12,000*l.* A. formed a co. with a capital of 12,000*l.*, divided into 600 preference shares and 600 deferred shares of 10*l.* each, and transferred 100 of the latter to B.:—

*Held*, by *Stirling J.*, that the shares A. had agreed to transfer were to be shares in a co. in which all the shareholders stood on a footing of equality. This he had put it out of his power to perform, and must therefore perform the other alternative by paying the 1000*l.* Affirm. by C. A. on the ground that "1000*l.* worth of shares" meant shares worth 1000*l.* on the market, and that the shares transferred had no marketable value. *MOLLICHAUM v. TAYLOR*

C. A. [1895] 1 Ch. 53

— Contract to be performed in part without the jurisdiction.

See PRACTICE—Service. 199, 206—210.

**27. — Impossibility—Fire.**

Performance of a contract to employ a traveller for a fixed period is not excused because the employer ceased to carry on business after his manufactory had been destroyed by fire. *TURNER v. GOLDSMITH*

C. A. revers. *Grantham J.* [1891] 1 Q. B. 544

**CONTRACT (Performance)—continued.****28. — Impossibility of performance—Implied condition—Measure of damages.**

By a contract made in Oct., 1899, the defts. sold to the plts. a cargo of cotton-seed, to be shipped at certain Egyptian ports during the month of Jan., 1900, per steamship *Orlando*, and to be delivered to the plts. in the United Kingdom. The contract provided that, "In case of prohibition of export, blockade, or hostilities, preventing shipment, this contract or any unfulfilled part thereof is to be cancelled." In Dec., 1899, the *Orlando* was, without default on the part of the defts., stranded, and was so much damaged as to render it impossible for her to arrive at the ports of loading before the end of Jan.; and on Dec. 20 notice of that fact was given to the plts. Upon receipt of that notice the plts. might have bought in the market another cargo of cotton-seed in substitution for that sold to them by the defts., but they declined to do so. The market was rising, and by the end of Jan. the market price had risen considerably above the point at which it stood at the time when the plts. had notice of the stranding. The plts. sued the defts. for breach of their contract, claiming as damages the difference between the contract price and the market price at the end of Jan. :—

*Held*, that the contract must be read as subject to an implied condition that, in the event of the ship not arriving at the ports of loading within the stipulated time in a fit state to receive the cargo, the contract should be treated as at an end; that the implication of that condition was not excluded by the clause expressly providing for the cancellation of the contract in the specified events; and that the defts. were not liable.

*Seemle*, that if the plts. had been entitled to recover, inasmuch as they were under the circumstances bound to endeavour to mitigate the loss, the measure of their damages would have been the difference between the contract price and the market price at the date when they had notice of the stranding, and no more. *NICKOLL & KNIGHT v. ASHTON, EDRIDGE & Co. Mathew J. [1900] W. N. 116; [1900] 2 Q. B. 298*

**Personal.****29. — Of service.**

An order to justify the grant of an injunction in aid of a contract of service, there must be, if no express negative clause, at least an express negative purpose.

(A) *WHITWOOD CHEMICAL CO. v. HARDMAN*

C. A. reversing *Kekewich J. [1891] 2 Ch. 416*

(B) On the construction of certain letters, *held*, that there was a negative covenant contained therein. "*STAR*" *NEWSPAPER CO. v. O'CONNOR - Kekewich J. [1893] W. N. 114; compromised on appeal [1893] W. N. 122*  
And see Cases under **MASTER AND SERVANT—Contract.**

**30. — Contract of service—Agreement to devote whole time—Unreasonable negative stipulation—Breach of contract—Injunction—Master and servant.**

A traveller for the plts., a firm of wine mer-

**CONTRACT (Personal)—continued.**

chants, agreed to devote the whole of his attention and time to the business of the plts., and not directly or indirectly to engage or employ himself in any other business, or transact any business with any other person or persons than the plts. for a term of ten years. The traveller having left the plts.' employ and entered that of another firm, the plts. moved for an injunction to restrain him from engaging in any other business, and from acting as a traveller for any other firm of wine merchants during the term of ten years :—

*Held*, that the negative stipulations in this contract were unreasonable and ought not to be enforced, and that the application must therefore be refused. *EHRMAN v. BARTHOLOMEW*

*Romer J. [1898] 1 Ch. 671*

Followed by C. A. *Robinson & Co. v. Heuer, [1898] 2 Ch. 451.*

See also Cases under **RESTRAINT OF TRADE.**

**Rescission.****31. — Dealing with purchased property—Debentures—Intervention in debenture action.**

A bank had bought debentures in the M. Co. from the T. Co. and claimed rescission on the ground of misrepresentation; after discovery of the misrepresentation the bank attended and took an active part in a debenture action :—

*Held*, that the bank were entitled to rescission unless (a) their conduct had so injured the debentures as to make it unjust for the T. Co. to take them back, or (b) the bank had elected to keep the debentures. Until judgment the bank was entitled to keep the debentures and to protect them :—

*Held*, also, on the facts, that the bank had not lost their right to rescind. *IMPERIAL OTTOMAN BANK v. TRUSTEES, EXECUTORS, AND SECURITIES INVESTMENT CORPORATION*

*Romer J. [1895] W. N. 23*

**32. — Innocent misrepresentation—Indemnity.**

Action by lessees against their lessor claiming rescission of a lease on the ground of alleged misrepresentation, and an indemnity against all costs and charges incurred.

The plts., who were exhibitors of prize poultry, alleged that, relying on a representation by the defts.' agents that the sanitary condition of the premises was perfect, they took the lease, and placed valuable stock there. The defts. admitted that the premises were insanitary.

In order to avoid calling unnecessary evidence as to the alleged losses and expenses, it was arranged that the nature and extent of the plts.' right to indemnity, if established, should be first decided.

*Held*, that the indemnity would only extend to rights and obligations created by the contract sought to be rescinded, such as rent, rates, and repairs paid or executed under the covenants of the lease. It would not cover the losses and expenses claimed which came under the head of damages pure and simple, and could not be recovered in an action based on innocent misrepresentation.

*Newbigging v. Adam, (1886) 34 Ch. D. 532;*

**CONTRACT (Rescission)—continued.**

(1888) 13 App. Cas. 308, discussed. **WHITTINGTON v. SEALE HAYNE**

**Farwell J. [1900] W. N. 31**

— Misrepresentation.

*See SCOTTISH LAW—Contract. 9.*

**33. — Misrepresentation—Laches.**

Although, as a rule, a person who wishes to escape from a contract on the ground of misrepresentation must determine it immediately he discovers the misrepresentation, nevertheless, where a purchaser discovers that a misrepresentation made to him by the vendor is untrue, and the vendor in effect suggests that if time be given him the misrepresentation may be cured and the purchaser be put in as good a position as if the representation had been true, then the purchaser, by giving the vendor time for that purpose, does not lose his right at the end of that time, if the vendor fails to make good his suggestion, to rely on the misrepresentation as a ground for determining the contract, and to determine it accordingly. **TIBBATS v. BOULTER**

**Romer J. [1895] W. N. 152 (4)**

— One-man company—Debts of founder.

*See COMPANY—Debentures. 69.*

— Sale by directors in one character to themselves in another—Voidable contract—Damages.

*See COMPANY—Directors. 105.*

— To take shares—Contributory.

*See Cases under COMPANY—WINDING-UP—Contributory.*

**Sub-contract.**

**34. — Sub-contractor's right to property in incomplete article.**

The defts. gave a limited co. an order to construct two tanks on the deft.'s premises, for making which the co. entered into a sub-contract at a reduced price with the plt. The co. became insolvent, when the tanks (which were not fixtures, but were too heavy to move) were partially completed:—

*Held*, that the property in the tanks was in the plt., and that he had a lien on the purchase-money payable by the defts. to the co. **BEL-LAMY v. DAVEY — Romer J. [1891] 3 Ch. 540**

An appeal by the debenture-holders of the co. was dismissed by consent **C. A. [1891] W. N. 192**

**Time.**

**35. — Time limited—Option of purchase—Three months' notice—Notice by agent—Unauthorized agent—Ratification.**

Articles of partnership provided that on the death of either partner, the survivor should have the option of purchasing the deceased partner's share, upon giving notice in writing of his intention so to do within three months from the death, and that in ascertaining the value of the deceased partner's share after such notice, nothing should be allowed for the goodwill of the business. The surviving partner was of unsound mind, but notice of his intention to purchase was given on his behalf by his solicitor within three months from the death. An order was subsequently

**CONTRACT (Time)—continued.**

made under the Lunacy Acts authorizing a notice being given on his behalf, and a second notice was given accordingly, but after the three months had expired:—

*Held*, that as the option to purchase had not been exercised within the time limited there was no contract which could be confirmed by the second notice, and consequently, that the committee of the surviving partner was not entitled to the benefit of the provision in the articles.

**Holland v. King, (1848) 6 C. B. 727, followed.**

**Bolton Partners v. Lambert, (1889) 41 Ch. D. 295, distinguished. DIBBINS v. DIBBINS**

**Chitty J. [1896] 2 Ch. 348**

**CONTRACT DEBT**—Simple contract debt charged on land—Period of limitation.

*See LIMITATIONS, STATUTE OF. 30.*

**"CONTRACT MADE"**—Reservation of right to levy church rate upon any.

\* *See ECCLESIASTICAL LAW—Church Rates. 6.*

**CONTRACTOR**—Liability of principal for negligence to public body.

*See PRINCIPAL AND AGENT. 10.*

— Negligence of—Liability of owner for—Contract to raise sunken wreck in navigable river.

*See SHIPPING—Collision. 83.*

— Negligence of public body—Contract to execute works—Liability of employer.

*See NEGLIGENCE. 3.*

— Rateable occupation—Hoardings—Advertising contractor.

*See RATES—Rateability. 10.*

— Workmen's Compensation Act.

*See Cases under MASTER AND SERVANT.*

**CONTRARY INTENTION**—Locke King's Acts—Exoneration of realty.

*See Cases under WILL—Exoneration.*

**CONTRIBUTION**—Apportionment of dock charges and expenses—Ship docked for repair of sea damage.

*See INSURANCE—Marine. 47.*

— Between co-trustees—Breach of trust.

*See TRUSTEE—Breach of Trust. 21, 22.*

— By county council to maintenance of main roads.

*See HIGHWAY—Repairs. 23.*

— Gambling partnership—Bets paid by one partner—Claim.

*See GAMING. 9.*

— Mutual insurance society—Insurance by agent, member of association—Shipowner not member—Liability.

*See INSURANCE, MARINE. 63, 64.*

— Principal and surety.

*See PRINCIPAL AND SURETY—Contribution.*

— Between joint wrongdoers.

*See SCOTTISH LAW—Joint Delinquents. 21.*

**CONTRIBUTORY.**

*See COMPANY—WINDING-UP—Contributory.*

**CONTRIBUTORY MORTGAGE**—Investment—  
Breach of trust—Priority.  
*See* **TRUSTEE**. 39.

**CONTRIBUTORY NEGLIGENCE**—Collision.  
*See* Cases under **SHIPPING**—Collision.

— Fence machinery, Neglect to—Compensation  
to injured person.  
*See* Cases under **MASTER AND SERVANT**  
—**Factory Acts**.

— Level crossing—Gatekeeper's duty.  
*See* **RAILWAY**—Level Crossings. 7, 8.

— Towage—Stranding—Salvage.  
*See* **SHIPPING**—Salvage. 246.

**CONVENT**—Legacy for benefit of.  
*See* **PROBATE**—Grant of Administration.  
30.

**CONVERSION**—Absolute gift subject to execu-  
tory limitation—Reversionary interest—  
Enjoyment in specie.  
*See* **WILL**—**Absolute Gift**. 10. .

— Cheque—Forged indorsement—"Customer."  
*See* **BANKER**. 9.

— Discretionary power of postponement—Tenant  
for life and remainderman—Rate of  
interest.  
*See* **SETTLED LAND**—Interest. 58.

— Document—Damages, Measure of—Money  
had and received.  
*See* **TROVER**. 6.

— Estoppel—Proximate cause of loss—Liability  
of warehouseman.  
*See* **TROVER**. 4.

— Lunatic—Contract to purchase real estate—  
Voidable contract—Completion of pur-  
chase by committee.  
*See* **LUNACY**—Contracts. 10.

— Partition action.  
*See* **PARTITION**. 1, 2, 7, 8.

— Postponement at discretion of trustees—  
"Intermediate income."  
*See* **ACCUMULATIONS**. 4.

1. — **Power of sale—Real estate—Devolution.**  
A will devised realty on trust to raise money  
by sale or mortgage, and subject thereto to pay  
the rents and profits to A. and B. successively for  
life, and on the death of the survivor for the  
benefit of B.'s children absolutely. The will  
contained a power of sale with a trust for re-  
investment in freeholds, copyholds, or leaseholds,  
with an interim power of investment in personalty.  
The trustees sold and invested in Consols; the  
trust for re-investment was never exercised:—

*Held*, that the share of a child of B., who died  
intestate after the exercise of the power of sale  
and during the life of the last tenant for life,  
devolved on his heir. *In re* **BIRD**. **PITMAN** v.  
**PITMAN** **North J.** [1892] 1 Ch. 279

— Real estate—Co-parceners—Law of inheri-  
tance—Tracing title from "purchaser."  
*See* **INTESTACY**. 1.

2. — **Real estate—Option to purchase—**  
**Intestacy.**

A. demised premises to B. on lease with an  
option to purchase within six months of A.'s

**CONVERSION**—*continued.*

decease. A. died intestate; B. exercised the  
option:—

*Held*, that the purchase-money was personally,  
and went to the legal personal representative of  
A. *In re* **ISAACS**. **ISAACS v. REGINALD**  
**Chitty J.** [1894] 3 Ch. 506

3. — **Real estate—Partnership.**

An owner in fee of land sold an undivided  
moiety to a surveyor on terms; that payment was  
to be made by instalments, the surveyor was to  
manage the property, and neither party was to  
part with any interest without consent of other:—

*Held*, that there was no conversion of the  
realty into personalty. Principles regulating the  
devolution of land held for a partnership or  
other common object discussed. *In re* **WILSON**.  
**WILSON v. HOLLOWAY** **North J.** [1892] 2 Ch. 340

— Real estate—Postponement of sale—Interim  
rents—Enjoyment in specie.

*See* **SETTLED LAND**—**Apportionment**. 10.

4. — **Real estate—Trust for sale—Devolution.**

Where real estate is devised upon trust for  
conversion into personalty to be held upon trusts  
which partially fail, the proceeds of sale and the  
land (if any) unsold both result to the heir as  
personal estate. *In re* **RICHERSON**. **SCALES v.**  
**HEYHOE** (No. 1) — **Chitty J.** [1892] 1 Ch. 379

5. — **Real estate—Trust for sale—Remoteness.**

To create in equity a conversion of realty into  
personalty, the trust or power of sale must be  
absolute and effective. If the trust for sale is  
void for any cause, e.g., for remoteness, no con-  
version takes place.

(A) **GOODIER v. EDMUNDS**

**Stirling J.** [1893] 3 Ch. 455

(B) *In re* **WOOD**. **TULLETT v. COLVILLE**

**C. A.** [1894] 3 Ch. 381 affirm. **Kekewich J.**  
[1894] 2 Ch. 310

6. — **Realty devised in trust for sale—Partial**  
**failure of trusts.**

Where real estate is devised upon trust for  
conversion into personalty to be held upon trusts  
which in the result partially fail, the proceeds of  
the land sold and the land (if any) unsold both  
result to the heir as personal estate. *In re* **RICHERSON**. **SCALES v. HEYHOE** (No. 1)

**Chitty J.** [1892] 1 Ch. 379

7. — **Residuary gift—Successive interests—**  
**Leaseholds.**

A testator directed that the rents and profits  
of his residuary real and personal estate should  
be paid to his wife for life; and after her death  
he gave his residuary estate to others in succession,  
subject to certain annuities, and conferred on the  
annuitants a power of distress. The residuary  
estate included both freeholds and leaseholds:—

*Held*, that neither the direction to pay rents  
nor the power of distress afforded any sufficient  
indication of an intention that the leaseholds  
should be enjoyed in specie, and that they ought  
to be treated as converted at the expiration of a  
year from the testator's death, in accordance with  
the rule in *Howe v. Earl of Dartmouth*, (1802)  
7 Ves. 137 a.

*Craig v. Wheeler*, (1860) 29 L. J. (Ch.) 374,  
approved and followed.

*Crowe v. Crisford*, (1853) 17 Beav. 507, *Wear-*

**CONVERSION**—*continued.*

*ing v. Wearing*, (1856) 23 Beav. 99, and *Vachell v. Roberts*, (1863) 32 Beav. 140, commented upon. *In re GAME. GAME v. YOUNG*

**Stirling J. [1897] 1 Ch. 881**

— Retainer of unauthorized investment—Rate of interest.

*See SETTLED LAND—Interest. 57.*

8. — *Specific devise of realty subject to a lease with option to purchase.*

Testator by his will specifically devised certain freeholds, and bequeathed his residuary real and personal estate to other persons. Subsequently he made a codicil which expressly confirmed the will, but did not refer in terms to the property specifically devised. On the same day he granted a lease of the specifically devised property with an option of purchase, which was exercised after the testator's death:—

*Held*, that the confirmation of the will indicated a sufficient intention to pass to the devisee whatever interest the testator had in the property, and that the proceeds of the sale did not fall into residue. *In re PYLE. PYLE v. PYLE*

**Stirling J. [1895] 1 Ch. 724**

*And see SETTLED LAND—Apportionment, &c.*

— Trover.

*See Cases under TROVER.*

— Trust for.

*See SETTLED LAND — Apportionment. 9, 10.*

**CONVERSION OF DOCUMENT** — Damages — Measure of—Non-negotiable instrument —Money had and received.

*See TROVER. 6.*

**CONVERSION OF GOODS.**

*See Cases under TROVER.*

**CONVERSION OF NATIONAL DEBT**—Of New 3 per cent. Annuities into 2½ per cent. Consols.

*See Cases under NATIONAL DEBT.*

**CONVERSION OF STOCK INTO SHARES.**

*See COMPANY—Conversion of Stock into Shares.*

**CONVEYANCE**—Bankruptcy practice.

*See Cases under BANKRUPTCY.*

— Base fee turned into fee absolute.

*See WILL—Estate Tail. 78.*

— Company practice.

*See Cases under COMPANY—WINDING-UP.*

— Covenant against overlooking lights—Buildings “adjoining” land of vendors.

*See LIGHT AND AIR. 1.*

— Fraudulent conveyances.

*See FRAUDULENT CONVEYANCES.*

— Presumption that bed of river *ad medium flum* passes by—Rebuttal—Evidence—Admissibility.

*See WATER. 41, 45.*

— Scottish.

*See SCOTTISH LAW—Conveyance.*

— Stamp duty.

*See REVENUE—Stamps. 151—160.*

**CONVEYANCE**—*continued.*

— Vendor and purchaser.

*See VENDOR AND PURCHASER—Conveyance.*

— Voluntary conveyance.

*See VOLUNTARY CONVEYANCES.*

— Wife's.

*See Cases under HUSBAND AND WIFE.*

**CONVEYANCING AND LAW OF PROPERTY.**

*See also Cross-references to the Conveyancing and Law of Property Statutes.*

*Conveyancing Act, 1892 (55 & 56 Vict. c. 13) amends the Act of 1881 (44 & 45 Vict. c. 41).*

*Trustee Act, 1893 (56 & 57 Vict. c. 53) repeals ss. 31-38 of the Conveyancing Act, 1881, and s. 5 of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39).*

— Costs—Scale fee.

*See Cases under SOLICITOR—Costs.*

— “Die without child or children”—Executory gift over.

*See WILL—Children. 35.*

1. — *Discharge of incumbrances on sale — Question of construction as to interests in futuro—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 5.*

Upon an application to the Court under s. 5 of the Conveyancing Act, 1881, to make provision for incumbrances on land, and the sale of the land freed therefrom, the Court will decide a question of construction involving the determination of interests in futuro, if the decision of such question is necessary in order to ascertain what sum of money ought to be set aside to answer the incumbrances. On appeal the Court did not refuse to decide the question on the ground that it affected the future rights of unborn children, the interests of those children being the same as those of the existing children who were before the Court. *In re FREME'S CONTRACT*

**Kekewich J. [1895] 2 Ch. 256; C. A. [1895] 2 Ch. 778**

— Covenant against assignment without licence.

*See COVENANT. 1.*

— Illegal distress—Mortgage—Receiver.

*See DISTRESS. 11.*

— Infant—Accumulations.

*See INFANT—Maintenance. 23.*

— Lease—Forfeiture.

*See LANDLORD AND TENANT — Forfeiture.*

— Leases.

*See Cases under LANDLORD AND TENANT—Lease.*

— Light — Implied easement — Mortgagee — Power of sale.

*See LIGHT AND AIR. 14.*

— Merger—Legal estate—Expressed grant of fee—Leasehold title in equity—Intention.

*See MERGER. 2.*

— Mortgagee in possession—Specific devise by executor beneficially entitled to mortgage debt.

*See WILL—Specific Devise. 197.*

— Mortgage—Receiver—Illegal distress.

*See DISTRESS. 11.*

**CONVEYANCING AND LAW OF PROPERTY—**  
—*continued.*

## — Mortgages.

*See Cases under MORTGAGE.*

## — Power of appointment.

*See Cases under POWERS.*

## — Questions between vendor and purchaser.

*See Cases under VENDOR AND PURCHASER.*

## — Restraint on anticipation.

*See Cases under HUSBAND AND WIFE—  
Restraint on Anticipation.*

## — Trustee—Appointment.

*See Cases under TRUSTEE—Appointment.***CONVICTION**—Bar to action.*See FRIENDLY SOCIETY. 12.*

## — Effect of, on ownership of goods.

*See FACTOR. 7.*

## — Previous conviction—Evidence—Examination of defendant.

*See CRIMINAL LAW—Evidence. 18.***CO-OWNERS**—Action of restraint—Bond for safe return—Forfeiture—Jurisdiction.*See SHIPPING—Restraint. 213.*

## — Invention—Right to use—Disclosure—Injunction.

*See SECRET PROCESS.*

## — of Patent.

*See PATENT—Ownership.*

## — of Ship.

*See SHIPPING—Necessaries. 179.***CO-PARCENERS**—Joint tenants or—Devise to testator's "right heirs"—Female heirs.*See WILL—Joint Tenancy. 112.*

## — Law of inheritance—Real estate—Tracing title from "purchaser."

*See INTESACY. 1.***COPIES**—Appeals.*See APPEAL. 31.*

## — Appeals—Notes of proceedings in Court below—Summary Jurisdiction (Married Women) Act.

*See APPEAL. 36, 37.*

## — Right to take—Register of members—Inspection.

*See COMPANY—Register. 251—253.*

## — Right to inspect and take—Register of mortgages.

*See COMPANY—Register. 254.***COPYHOLD**—*Copyhold Act, 1894 (57 & 58 Vict. c. 46), consolidates the law relating to copyholds.*1. — *Admittance—Acceptance of rent—Seizure quousque—Statutes of Limitations Acts, 1833 (3 & 4 Will. 4, c. 27); 1874 (37 & 38 Vict. c. 57).*

*Held*, by C. A., affirming Wright J., that the acceptance of quit-rents by the lord of the manor in respect of copyholds from a person paying as heir or surrenderee implies an admittance of such person as tenant if the lord knows that the quit-rents are so paid:—*Held*, by C. A., varying Wright J., that the Statutes of Limitation apply to a seizure quousque of copyholds by the lord

**COPYHOLD**—*continued.*

of the manor, and begin to run when after proclamation or notice the heir fails to come in and be admitted. *ECCLESIASTICAL COMMISSIONERS v. PARR*

C. A. [1894] 2 Q. B. 420

2. — *Admittance—Seizure quousque—Implied admittance.*

The Statutes of Limitations apply to a seizure quousque of copyholds by the lord of the manor, and begin to run when after proclamation or notice the heir fails to come in and be admitted. *ECCLESIASTICAL COMMISSIONERS v. PARR*

C. A. [1894] 2 Q. B. 420

## — Custom—Fines on renewal of leases for lives—Income or capital.

*See SETTLED LAND—Copyholds. 50.*3. — *Customary obligation to repair—Custom of the manor—Breach of obligation by tenant—Remedy of lord against tenant's executors.*

The testatrix of the debts was admitted tenant for life of certain copyhold tenements of a manor. By the custom of the manor the tenants were bound to repair their tenements, and the only mode in which that obligation had been enforced had been by presentment, fine and forfeiture. Upon the death of the testatrix the premises were found to be out of repair. More than six months after the debts, as her executors, had taken upon themselves the administration of her effects, the lord brought an action against them for dilapidations:—

*Held*, that the testatrix, by accepting the tenancy according to the custom of the manor, impliedly contracted to discharge the customary obligation to repair; that for the breach of her implied contract the lord was not confined to his customary remedy by presentment, fine and forfeiture, but had a remedy by action; and that that remedy by action, sounding in contract and not in tort, survived against her executors. *BLACKMORE v. WHITE*

Lord Russell of Killowen C.J. [1898] W. N. 172(6); [1899] 1 Q. B. 293

(Commented on by Kekewich J. *In re I. (Infants)*, [1890] 1 Ch. 719, 723.

## — Enfranchisement—Fines.

*See LANDS CLAUSES ACTS. 3.*4. — *Fine on admittance—Limitation of Action—Point from which time begins to run—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3.*

The lord of a manor was entitled to an arbitrary fine on the admittance of a tenant to copyhold. He brought an action for the fine more than six years from the assessment and demand of the fine:—

*Held*, that the period of limitation began to run from the time of the admittance, and that the lord's right was therefore barred by 3 & 4 Will. 4, c. 42, s. 3. *MONCKTON v. PAYNE*

A. L. Smith L. J. [1899] 2 Q. B. 603

5. — *Heriot custom—Heriot service—Right to seize without the manor.*

A beast which is due to the lord of a manor by heriot custom may be seized without the



**COPYHOLD—continued.**

manor, although the beast has never been within the manor.

*Quære*, whether a right in the lord of a manor to take a heriot as due by heriot service can exist in the case of copyhold tenements of the manor.

**WESTERN v. BAILEY - C. A. [1897] 1 Q. B. 86**

6. — *Married woman tenant on the rolls—Declaration of trust by deed acknowledged—Effect of—"Disposition"—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77.*

A declaration of trust of copyholds by a married woman, tenant on the rolls of the manor, by a deed acknowledged under the Fines and Recoveries Act, is a "disposition" within the meaning of s. 77 of the Act, and will effectually bind the copyholds as against her customary heir. Such a case is not within the proviso of the section. **CARTER v. CARTER**

**Stirling J. [1895] W. N. 138 (5); [1896] 1 Ch. 62**

7. — *Proclamation for heir—Notice—Statutes of Limitations, 1833 (3 & 4 Will. 4, c. 27), s. 9; 1874 (37 & 38 Vict. c. 57).*

There had been no admission on the court rolls in respect of copyhold since 1786, and proclamation was made for the heir in 1876 and 1877, and B., who was in possession, sought to be admitted, but failed as he could not shew a clear title. C., a son of B., was tenant to his father for more than twenty years prior to B.'s death in 1891. C. also was not admitted, as he could not make a clear title. C. claimed that under the Statute of Limitations he had acquired a good title against the lord of the manor and B.'s customary heirs, and that the property had become freehold:—

*Held*, that C.'s contention failed. **BEIGHTON v. BEIGHTON - Romer J. [1895] W. N. 119 (7)**

8. — *Quit-rent—Copyhold quit-rent—Extinction by non-payment—Statutes of Limitations, 1833 (3 & 4 Will. 4, c. 27), s. 2; 1874 (37 & 38 Vict. c. 57), s. 1.*

A copyhold quit-rent is extinguished by non-payment for more than twelve years, and is not like a rent reserved or a lease excepted from the operation of the Statutes of Limitations (3 & 4 Will. 4, c. 27; 37 & 38 Vict. c. 57). **HOWITT v. EARL OF HARRINGTON**

**Stirling J. [1893] 2 Ch. 497**

9. — *Quit-rent—Extinction by non-payment.*

A quit-rent payable in respect of a copyhold tenement is not excepted from the operation of the Statutes of Limitations (3 & 4 Will. 4, c. 27, and 37 & 38 Vict. c. 57), and where it has remained unpaid without acknowledgment for twelve years the right to recover it is barred. **HOWITT v. EARL OF HARRINGTON**

**Stirling J. [1893] 2 Ch. 497**

— *Vesting order—Death of vendor before completion—Form of order.*

*See TRUSTEE—Vestry Order. 102.*

10. — *Waste of manor—Enfranchised copyholder—Statutory reservation of common rights—Copyhold Act, 1852 (15 & 16 Vict. c. 51), s. 45 [see now the Copyhold Act, 1894 (57 & 58 Vict. c. 46)].*

A custom that the lord with consent of the

**COPYHOLD—continued.**

homage may make grants of waste to be held on copyhold tenure, although a sufficiency of common be not left, may be a good custom, and, if proved, a grant of the waste, with the consent of the homage, i.e., the majority of the homage, may be made in spite of the opposition of a commoner, who, having enfranchised his tenement under the Copyhold Act, 1852, was no longer able to attend the manor court. **RAMSEY v. CRUDDAS**

**C. A. [1893] 1 Q. B. 228**

**COPYRIGHT.**

*Book, col. 526.*

*Design. See DESIGN.*

*Dramatic, col. 528.*

*Infringement, col. 528.*

*International, col. 532.*

*Musico, col. 535.*

*Newspapers. See COPYRIGHT—Periodical.*

*Periodical, col. 536.*

*Picture, col. 538.*

*Sculpture, col. 539.*

**Book.**

1. — *Advertisement card—Registration—Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 2, 11; 1862 (25 & 26 Vict. c. 68).*

An advertisement sheet in the shape of a hand which opened and shewed on one side the "lines of life," and on the other descriptive verses, is capable of registration as a "book," it being within the definition of a "sheet of letter-press" which is included in the word "book":—

*Held*, also, that there is sufficient registration if the proprietor of the work is registered without requiring the writer of the verses or the artist to be registered, and that the certificate of registration is *prima facie* evidence of proper registration. **HILDESHEIMER v. DUNN**

**Kekewich J. [1891] W. N. 66**

— *Book containing drawings—Registration.*

*See COPYRIGHT—Infringement. 19.*

2. — *British International Copyright—Importation into Great Britain of copies printed where the book was first published—Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 2, 11, 13, 15, 17—International Copyright Act, 1844 (7 & 8 Vict. c. 12), ss. 2, 3, 10.*

The plt. was owner of the British international copyright of a book first published in Germany. The deft. imported and sold in Great Britain copies printed in Germany by the owner of the German copyright:—

*Held*, by Lindley and Rigby L.J.J. (dissentiente Lopes L.J.), reversing the decision of Kekewich J., that the plt. was entitled to restrain this importation and sale, for that s. 10 of the International Copyright Act, which, as regards any book in which there is British international copyright, prohibits the importation into Great Britain without the consent of the proprietor of such copyright, of copies printed in any foreign country except that in which the book was first published, does not form a complete code as to the importation of copies and that s. 3, which provides that the enactments in

**COPYRIGHT (Book)—continued.**

the Copyright Act shall apply to books in which there is British international copyright in the same way as if such books had been first published here, made ss. 15 and 17 of the Copyright Act applicable to the book in question, and that as under those sections the owner of the copyright could, if the book had been first published in Great Britain, have restrained the importation of these copies, the owner of the British international copyright could do so. *Pitt v. Pitts v. George & Co.* - C. A. [1896] 2 Ch. 866

3. — *Directory — Headings — Copyright Act, 1842 (5 & 6 Vict. 45), s. 18.*

The proprietor of a trades directory has copyright in the headings, although the letterpress consist only of advertisements, and also in the arrangement of the advertisements, the Court holding that it was a fair inference that they had been composed or arranged on the terms that the plt. should have the copyright in them. *Lamb v. Evans (No. 1)* - C. A. [1893] 1 Ch. 218

affirm. *Chitty J.* [1892] 3 Ch. 462

Followed by C. A. *Robb v. Green*, [1895] 2 Q. B. 315.

4. — *Dress pattern—"Map, chart, or plan"—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2.*

A cardboard pattern sleeve containing upon it scales, figures, and descriptive words for adapting it to sleeves of any dimensions, is not the subject of copyright as a map, chart, or plan within s. 2 of the Copyright Act, 1842:—

*Semble*, it might be the subject of a patent as an instrument or tool.

*Decision of Wright J.*, [1893] 2 Ch. 377, reversed. *Hollinrake v. TruSWELL*

C. A. [1894] 3 Ch. 420

Followed by C. A. *Boosey v. Whight*, [1900] 1 Ch. 122, 125.

Referred to by H. L. (E.). *Walter v. Lane*, [1900] A. C. 539, 562.

— **Infringement—Piracy—Profits.**

*See COPYRIGHT—Infringement. 11.*

5. — *Sale of blocks—Unassignable licence—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 15.*

The plts., being registered owners of the copyright in books containing illustrations drawn by themselves, supplied copies of the drawings to persons for advertising purposes, the copies being generally printed by themselves and supplied to the customers on advertising sheets. Occasionally, for a money consideration, they supplied blocks of the drawings, so that the customers might print the designs with other matter not printed by plts.; for this purpose they sold blocks to L. There was no written agreement with or licence to L. as to the use of the blocks. Deft. with permission of L. used the blocks to print drawings which they published:—

*Held*, that the licence did not constitute an assignment of copyright, but was a mere authority to L. personally to print therefrom for his own advertisements or trade, and that plts. were entitled to an injunction restraining defts. from using the blocks.

*Semble*, an injunction would not have been granted restraining L. from personally using the

**COPYRIGHT (Book)—continued.**

blocks, although he had no written licence. *Cooper v. Stephens Romer J.* [1895] 1 Ch. 567

6. — *Time-tables—Part of work protected—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 19.*

A. printed monthly time-tables as to the train service in the neighbourhood of P., including four pages of information as to circular tours. B. printed similar tables, including the four pages as to circular tours. Interdict granted restraining B. from printing the matter as to the circular tours, but as to the remainder, *held*, that as the information in both A. and B.'s tables was derived from the books of the railway cos., it could not be said to be appropriation of A.'s work:—

*Held*, also, that although the matter as to circular tours only formed a small part of A.'s book, it could be treated as an independent work, and protected by copyright law. *Leslie v. Young and Sons* - H. L. (Sc.) [1894] A. C. 335

Referred to by C. A. *Walter v. Lane*, [1899] 2 Ch. 749, 757; [1900] A. C. 539.

**Design.**

*See DESIGNS.*

**Dramatic.**

7. — *Author—Original play—Sole liberty of representation—Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1.*

The sole liberty of representing a play vests, under s. 1 of the Dramatic Copyright Act, 1833, in the author when the work is written and finished. The first public performance confers no priority, but only fixes the period from which (if entitled to it) the endurance of the sole liberty of representation is to be calculated.

*Semble*, the sole rights in two plays, which though the same in substance are original and unaided productions, may be vested in different persons. *Reichardt v. Safté*

*Hawkins J.* [1893] 2 Q. B. 308

— **Dramatic piece—Right of performance.**

*See COPYRIGHT—Music. 29.*

8. — *Infringement—Interim injunction dissolved—Damages.*

An interim injunction was granted to restrain the deft. from acting his own dramatised version of a novel, on the ground that the novelist had already founded a drama on the novel. The injunction was dissolved at the trial.

Question as to how the undertaking as to damages was to be assessed, and what deductions were to be made as to deft.'s possible earnings if he had continued his playing tour with other pieces. *Schlesinger v. Bedford*

C. A. [1893] W. N. 57

— **International copyright—Jurisdiction to restrain infringement.**

*See Cases under COPYRIGHT—International.*

**Infringement.**

(Practice as to Infringement Generally.)

9. — *Assignment—Licence to copy—Subsequent assignment—Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 3, 4, 6.*

Action by assignee of the copyright in a

**COPYRIGHT (Infringement)—continued.**

picture against a person claiming to be a previous licensee for infringement dismissed on the ground that the assignors did not register their copyright until after the assignment, and the assignees were not registered at all. *LONDON PRINTING AND PUBLISHING ALLIANCE, LD. v. COX*

**C. A. reversing V. Williams J.,**

**Limley L.J. dissent. [1891] 3 Ch. 291**

Followed by *Kekewich J. Petty v. Taylor*, [1897] 1 Ch. 465.

**10. — Assignment — Registration — Infringement — Right of unregistered assignee to sue — Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 13, 24.**

The assignee of a copyright under 5 & 6 Vict. c. 45, must be registered before he can maintain an action for its infringement.

Dictum of Cockburn C.J. in *Wood v. Boosey*, (1867) L. R. 2 Q. B. 340, not followed. *LIVERPOOL GENERAL BROKERS' ASSOCIATION, LD. v. COMMERCIAL PRESS TELEGRAM BUREAUX, LD.*

**Kennedy J. [1897] 2 Q. B. 1**

**11. — Book — Piracy — Action on the case — Detinue — Trover — Combining causes of action — Limitation of actions — Damages — Proceeds of conversion — Profits — Delivery up of copies — Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 15, 23, 26 — Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 2.**

A proprietor of copyright in a book who has a remedy for infringement by "a special action on the case" under s. 15 of the Copyright Act, 1842, is not precluded from suing the offender, if he thinks fit, under s. 23, either in detinue or in trover, or, if necessary, in both combined; and all the remedies under both sections may be pursued by action in the Ch. Div.

In an action for infringement by a proprietor of copyright in a book, where the deft. had still in his possession some of the infringing copies and had sold others but without making any profits on the sales:—

*Held*, that the plt. was entitled, in addition to the usual injunction, to delivery-up of the copies in the deft.'s possession and to damages representing the actual amount of the proceeds of the copies sold. *MUDDOCK v. BLACKWOOD*

**Kekewich J. [1897] W. N. 158 (4);**

**[1898] 1 Ch. 58**

**12. — Costs — Right to indemnity or costs — "Full costs" — Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2 — Costs Act, 1842 (5 & 6 Vict. c. 97), s. 2 — County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116 — R. S. C., Orders XXII., r. 7; LXV., r. I.**

Where an author claimed and recovered four penalties of 40s. each for four infringements of his dramatic copyright:—

*Held*, that, although he was not entitled to costs, having recovered less than 10l. in an action of tort (s. 116, County Court Acts, 1888), yet he might have his costs taxed on the footing of obtaining a full indemnity under 5 & 6 Vict. c. 97, s. 2.

*Per C. A.*: The question of costs was governed by the statute. The Judicature Acts and Rules do not overrule the provisions of special statutes

**COPYRIGHT (Infringement)—continued.**

granting special costs in particular cases. *REEVE v. GIBSON* — **Div. Ct. affirmed by C. A. [1891] 1 Q. B. 652**

**13. — Costs — "Full costs" — Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 26 — Double Costs Act, 1842 (5 & 6 Vict. c. 97), s. 2.**

An action for infringement was dismissed "with full costs, to be taxed by the taxing master":—

*Held*, that this meant "party and party costs" only. *AVERY v. WOOD*

**C. A. affirm. North J. [1891] 3 Ch. 115**

*But see now Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (b).*

**14. — Evidence of infringement.**

Where the original picture was abroad, proof of the infringement of the copyright by photographing an engraving sworn to be an exact copy of the picture, and made under the supervision of the artist, was allowed by production of the engraving by a person who had seen the original picture. *LUCAS v. WILLIAMS & SONS*

**C. A. [1892] 2 Q. B. 113**

**15. — Injunction — Right of property in unpublished information — Action, Cause of — Procuring breach of Contract — Proof of damage.**

In order to support an action for maliciously inducing persons to break their business contracts with the plt. proof of specific damage need not be given; it is sufficient to prove facts from which it may properly be inferred that some damage must result to the plt. from the deft.'s wrongful acts.

Under a contract made between the plts. and the committee of the London Stock Exchange, valuable information as to the prices of stocks and shares from time to time during the day was collected on the Stock Exchange, and supplied to the plts. and printed on tapes and sheets of letterpress in their office. The deft., having surreptitiously obtained such information, published it in the same form before its publication by the plts.:—

*Held*, that the plts. had a right of property at common law in the information, and were entitled to an injunction to restrain the deft. from infringing that right by continuing to publish it. *EXCHANGE TELEGRAPH CO. v. GREGORY & CO.* — **C. A. [1895] W. N. 138 (6); [1896] 1 Q. B. 147**

Referred to by *Stirling J. Exchange Telegraph Co. v. Central News, Ltd.*, [1897] 2 Ch. 48, 53.

— Interim injunction dissolved — Damages.

*See COPYRIGHT — Dramatic. 8.*

**16. — Penalties — Fine arts — Principal and agent — Indecency of work and infringements — Costs — Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 6 — International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 2, sub-s. 3 — Bern Convention, art. 2.**

The joint effect of s. 2, sub-s. 3, of the International Copyright Act, 1886, and art. 2 of the Bern Convention, is that an author suing in England in respect of an infringement of foreign copyright must prove that he is entitled to protection in the country of origin of the work, but

**COPYRIGHT (Infringement)—continued.**

that right once established, his remedy depends entirely on the English law.

An author whose copyright is infringed in any manner mentioned in s. 6 of the Fine Arts Copyright Act, 1862, is entitled to recover separate penalties against every infringer, whether principal or agent, master or servant, the minimum penalty in every case being a farthing for each copy by him pirated.

*Ex parte Beal*, (1868) L. R. 3 Q. B. 387, and *Ellis v. Marshall & Son*, (1895) 64 L. J. (Q.B.) 757, followed.

Where an action in respect of infringement of copyright fails on the ground of the indecency of the work, and the indecency has been repeated in the infringements, the action will be dismissed without costs. *BASCHET v. LONDON ILLUSTRATED STANDARD CO.* *Kekewich J.* [1899] W. N. 215; [1900] 1 Ch. 73

Referred to by *Kekewich J.* *Hildesheimer v. Faulkners, Ltd.*, [1900] W. N. 170. See next Case.

17. — *Penalty*—"Every such offence"—Known coin of the Realm—*Fine Arts Copyright Act*, 1862 (25 & 26 Vict. c. 68), s. 6.

The main question between the parties was whether the penalty should be fixed at a farthing for each copy put in circulation, which would amount to 1054l. 15s. 10d. in all, or whether it should be fixed at a fraction of a farthing for each copy:—

*Held*, that "every such offence" in s. 6 referred to a repetition, copy, or other imitation, and, according to the decision in *Ex parte Beal*, (1868) L. R. 3 Q. B. 387, the plt. was entitled to a penalty for each copy circulated; the sum forfeited must be some recognised sum, not merely a sum which could be expressed in figures, but a sum which existed in reality, and which could be recovered, and, having regard to the difficulty there would be in recovering the fraction of a farthing, the Court felt obliged to fix the penalty at a farthing for each copy, though it would have been glad to have been able to avoid coming to a conclusion which would give an extravagant amount for pictures of an ephemeral character. On the defts. paying 200l. to the plt., and paying the rest of the money into court, the Court stayed execution pending an appeal.

*Ellis v. Marshall & Son*, (1895) 64 L. J. (Q.B.) 757; 11 Times L. R. 522; *Baschet v. London Illustrated Standard Co.*, [1900] 1 Ch. 73, and *Green v. Irish Independent Co.*, [1899] 1 Ir. Rep. 386, referred to. *HILDESHEIMER v. FAULKNERS, LD.* — *Kekewich J.* [1900] W. N. 170

18. — *Printers—Tortfeasors—Damages.*

Where printers know that what they are printing is a piracy, and the purposes for which it is intended to use the pirated copies when delivered, they are tortfeasors jointly with the persons for whom such copies are printed, and are jointly liable in damages to the persons whose copyright is infringed. *LAMB v. EVANS* (No. 2) — *Chitty J.* [1895] W. N. 156 (2)

19. — *Registration—Validity—Trustee or agent—Book containing drawings—Literary and*

**COPYRIGHT (Infringement)—continued.**

*artistic—Copyright Act*, 1842 (5 & 6 Vict. c. 45), s. 13—*Fine Arts Copyright Act*, 1862 (25 & 26 Vict. c. 68), ss. 1, 4.

Registration of copyright under the Copyright Act, 1842, or the Fine Arts Copyright Act, 1862, in the name of a person who is a mere agent or nominee of the proprietor of the copyright, and not a trustee of the copyright for him, is bad; and joinder of the unregistered proprietor as co-plt. with the person so improperly registered will not render an action for infringement of the copyright maintainable.

*London Printing and Publishing Alliance v. Cox*, [1891] 3 Ch. 291, followed.

Accordingly, where copyright which belonged to a limited co. was registered in the sole name of their managing director, and it was not shewn that he was a trustee of the copyright for them, an action for infringement of the copyright by the director and co. as co-plts. was held not to be maintainable.

Registration of a book under the Copyright Act, 1842, in the name of the author of the letter-press, does not confer any protection in respect of drawings which are introduced into the book as illustrations and the art copyright in which is vested in other persons.

*Grace v. Newman*, (1875) L. R. 19 Eq. 623, distinguished.

Under the Fine Arts Copyright Act, 1862, it is not necessary that any agreement in writing should be made or entered on the register where registration is in the name of the person for or on behalf of whom a drawing is made or executed for a good or valuable consideration. *PERRY v. TAYLOR* — *Kekewich J.* [1896] W. N. 167 (6); [1897] 1 Ch. 465

20. — *Tenancy in common—Copyright Act*, 1852 (15 & 16 Vict. c. 12), ss. 3, 4—*International Copyright Act*, 1886 (49 & 50 Vict. c. 33), s. 6.

Although the registered owners of a copyright take as tenants in common, and not as joint tenants, yet any one or more of them may maintain an action against a stranger for an infringement of the entire copyright. *LAURI v. RENAD* — *Per Kekewich J.* [1892] 3 Ch. 402, at p. 413

**International.**

*AUSTRIA-HUNGARY.*] *O. in C. dated April 30, 1894, bringing the copyright convention with Austria-Hungary into force as from May 11, 1894.* *St. R. & O.* 1894, p. 41.

*O. in C. dated Feb. 2, 1895, applying the O. in C. of April 30, 1894, as to copyright with Austria-Hungary to certain Colonies.* *St. R. & O.* 1895, No. 55. Price ½d.

*O. in C. dated May 11, 1895, applying the O. in C. of April 30, 1894, as to copyright with Austria-Hungary to India.* *St. R. & O.* 1895, No. 247. Price ½d.

*JAPAN.*] *O. in C. dated Aug. 8, 1899, extending Bern Convention to.* *St. R. & O.* 1899, No. 593; *Lond. Gaz.* Aug. 11, 1899, pp. 4973, 4974.

*MONTENEGRO.*] *O. in C. declaring that provisions of Os. in C. dated Nov. 28, 1887 and March*

**COPYRIGHT (International)—continued.**

7, 1898, shall cease to apply to. *St. R. & O. 1899, No. 594.*

*MONTENEGRO.*] *O. in C. dated May 16, 1893, extending the International Copyright Acts to Montenegro. St. R. & O. 1893, p. 53.*

*Reference to the whole of the previous O. in C. as to International Copyright is given in the "Index to the Statutory Rules and Orders," 1893 edition. St. O. P.*

*PROTECTION OF AUTHORS OF WORKS.*] *O. in C. dated Aug. 1, 1896, under International Copyright Acts, 1844 to 1886, extending the provisions of the Principal Order to the kingdom of Norway. St. R. & O. [1896] No. 683; Lond. Gaz. Aug. 4, 1896, p. 4421*

*O. in C. dated March 7, 1898, varying the provisions of the O. in C. of Nov. 20, 1887. St. R. & O. 1898, p. 34, No. 250.*

*HAYTI.*] *O. in C. dated May 19, 1898, extending the provisions of O. in C. of March 7, 1898, to the Republic of Hayti. St. R. & O. 1898, p. 39, No. 415.*

21. — *Application to existing works—International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 6.*

A., a French subject, had composed a polka, and first produced it in France before the O. in C. of Nov. 28, 1887, but had not acquired copyright in the United Kingdom. Before the O. in C. was gazetted, an English publisher printed the polka, and the deft., a bandmaster, bought a copy and played it before and after that date:—

*Held*, that there was evidence that the deft. had an interest arising in connection with the lawful production of the work in the United Kingdom which was subsisting and valuable when the O. in C. was published, and that he was therefore protected by s. 6 of the Copyright Act, 1886. *MOUL v. GROENINGS*

C. A. affirm. *A. L. Smith and Grantham JJ. [1891] 2 Q. B. 443*

*Explained by Chitty J. Schauer v. J. C. & J. Field, [1893] 1 Ch. 35.*

*Followed by Charles J. Hanfstaengl Art Publishing Co. v. Holloway, [1893] 2 Q. B. 1.*

— Book — Importation into Great Britain of copies printed where book was first published.

*See COPYRIGHT—Book. 2.*

— Book containing drawings — Registration — Validity.

*See COPYRIGHT—Infringement. 19.*

22. — *Dramatic work—Jurisdiction to restrain infringement—Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 1.*

Under the Dramatic Copyright Act, 1833, s. 1, and art. 2 of the Bern Convention, the English proprietor enjoys in any country of the International Copyright Union the rights which that country's law gives to natives there. Therefore, proceedings by him to restrain an infringement in that country by a British subject must be taken in the Courts and according to the law of that country; and the English Courts have no jurisdiction. "*MOROCCO BOUND*" SYNDICATE, LD. *v. HARRIS* — *Kekewich J. [1895] 1 Ch. 534*

**COPYRIGHT (International)—continued.**

23. — *Expiration of right—Copyright Act, 1852 (15 & 16 Vict. c. 12), ss. 3, 4—International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 6.*

Where a copyright has expired before the passing of the International Copyright Act, 1886, that Act creates no new right. *LAURI v. RENAD*

C. A. affirm. *Kekewich J. [1892] 3 Ch. 402*

24. — *Foreign work of art—Registration—Right to sue—Production—Copyright Act, 1842 (5 & 6 Vict. c. 45)—International Copyright Act, 1844 (7 & 8 Vict. c. 12)—Copyright Act, 1862 (25 & 26 Vict. c. 68)—International Copyright Act, 1886 (49 & 50 Vict. c. 33).*

(A) Where the O. in C. adopting the International Copyright Act, 1886, does not apply its provisions as to registration, the provisions of general Copyright Acts will apply. If a person be registered under s. 4 of the Fine Arts Copyright Act, 1862, as owner of the English copyright in a foreign picture, he can sue for infringement, although not registered under the International Copyright Acts. *FISHBURN v. HOLINGSHEAD* — *Stirling J. [1891] 2 Ch. 371*

Not followed by *Charles J. Hanfstaengl Art Publishing Co. v. Holloway, [1893] 2 Q. B. 1.*

Disapproved by C. A. *Hanfstaengl v. American Tobacco Co., [1895] 1 Q. B. 347.*

(B) *Foreign work of art—Registration—Production—Right to sue—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 13; 1862 (25 & 26 Vict. c. 68), s. 4—International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 6.*

(1) Sect. 6 of the International Copyright Act, 1886, applies to every foreign literary or artistic work produced before Dec. 8, 1887, the date at which the O. in C., Nov. 28, 1887, came into operation, whether the works were produced before or after the passing of the Act, June 25, 1886; (2) registration of a foreign work under s. 4 of the Fine Arts Copyright Act, 1862, was not a condition precedent to suing for infringement; (3) the interest contemplated by the proviso in s. 6 must be a direct subsisting pecuniary interest in the continuation of the production. *HANFSTAENGL ART PUBLISHING CO. v. HOLLOWAY*

*Charles J. [1893] 2 Q. B. 1*

Referred to by C. A. *Hanfstaengl v. American Tobacco Co., [1895] 1 Q. B. 347, 351. See next Case.*

(C) The O. in C. of Nov. 28, 1887, adopting the Bern Convention of Sept. 5, 1887, contains no provisions as to the registry and delivery of copies of foreign works of art; therefore registration under the Fine Arts Copyright Act, 1862, is not necessary to give the owner of the English copyright of such a picture a right to sue for infringement. *HANFSTAENGL v. AMERICAN TOBACCO CO.* — *C. A. [1895] 1 Q. B. 347*

Referred to by C. A. *Pitt Pitts v. George & Co., [1896] 2 Ch. 866, 871.*

25. — "*Published*" — *Produced—Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 4, 12—International Copyright Act, 1886 (49 & 50 Vict. c. 33), ss. 4, 11.*

"Published" in s. 11 of the International Copyright Act of 1886 is applicable to a painting,

**COPYRIGHT (International)—continued.**

and the country where it is first published is the country of origin mentioned in art. 2 of the Convention of Bern, so that compliance with the formalities prescribed by the laws of that country gives the owner the right to sue in this country. "Produced" in the same section means, as the case requires, published or made or performed or represented. *HANFSTAENGL v. AMERICAN TOBACCO Co.* - C. A. [1895] 1 Q. B. 347

Referred to by C. A. *Pitt Pitts v. George & Co.*, [1896] 2 Ch. 866, 871.

26. — *Saving of rights and interests previously acquired*—*Trade-mark—International Copyright Act, 1886* (49 & 50 Vict. c. 33), s. 6.

A picture was painted in Germany before Dec. 1885. In Jan. 1887, A. registered as a trade-mark a photograph of the picture, with the word "trade-mark" across it, and (subsequently to the O. in C. of Dec. 1887, extending the International Act to Germany) used reproductions of the picture without the word trade-mark on show-cards and price-lists. In 1892 B. registered himself as owner of the copyright in the picture, and brought an action against A. for infringement by the show-cards:—

*Held*, that the debts were protected by the proviso in s. 6 of the International Copyright Act, 1886, and the show-cards, being in substance a reproduction of the trade-mark, were a legitimate way of advertising the trade-mark. *SCHAUER v. J. C. & J. FIELD* - *Chitty J.* [1893] 1 Ch. 35 — *Tableaux vivants.*

See COPYRIGHT—Picture. 39, 40.

27. — "Translation"—*Copyright Act, 1852* (15 & 16 Vict. c. 12), ss. 3, 4; (49 & 50 Vict. c. 20), s. 6.

A "translation" of a foreign play, in order to be protected under the law of International Copyright, need not be absolutely literal; it is sufficient if it is substantially a translation. *LAURI v. RENAD*

Per Kekewich J. [1892] 3 Ch. 402, at p. 414

**Music.**

28. — "Copy"—"Sheet of music"—*Mechanical organ—Perforated music sheet—Musical directions for performance—Infringement—Copyright Act, 1842* (5 & 6 Vict. c. 45), ss. 2, 15.

The debts, sold for use in a mechanical organ called an "Æolian" perforated rolls of paper representing the musical score of certain songs in the music of which the plts. had the copyright. The rolls were inserted in the organ, and were unrolled by its mechanism when actuated by the performer, so that the passage of air through the perforations in the rolls into the pipes of the organ produced corresponding musical notes the pitch and duration of which were determined by the position and length of the perforations. The organ contained also stops, swells and pedals, whereby variations of pace and expression could be effected at the will of the performer; and in the margin of some of the rolls were directions as to time and expression which were also to be found in the plts.' songs:—

*Held* (affirming *Stirling J.*, [1899] W. N. 45;

**COPYRIGHT (Music)—continued.**

[1899] 1 Ch. 836), that the rolls, so far as they contained perforations, were part of the organ, and were not "copies" of "sheets of music" within the Copyright Act, 1842, and were, therefore, not an infringement of the plts.' copyright; and also (reversing *Stirling J.*), that, apart from the plts.' musical scores and when not used in connection with them, the plts.' directions as to time and expression were not protected by their copyright. *BOOSEY v. WHIGHT*

C. A. [1899] W. N. 249; [1900] 1 Ch. 122

29. — *Dramatic piece—Right of performance—Dramatic Copyright Act, 1833* (3 & 4 Will. 4, c. 15), ss. 1, 2—*Copyright Act, 1842* (5 & 6 Vict. c. 45), ss. 2, 20; 1882 (45 & 46 Vict. c. 40), s. 2—51 & 52 Vict. c. 17.

To bring a musical composition within the provisions of the Dramatic Copyright Act, 1833, it must have the characteristics of a dramatic piece, and whether it has such characteristics must be determined in each case by the nature of the composition itself.

A song that does not require for its representation either dramatic effect or scenery is not a dramatic piece, although it is intended to be sung in appropriate costume on the stage of music-halls.

When a musical composition is published, in order to entitle the owner of the right of public representation or performance thereof to sue for penalties for the unlicensed performance of such composition, the right of representation or performance must have been reserved by notice printed on every published copy, as provided by the Copyright (Musical Compositions) Act, 1882; and this is equally the case where the musical composition is also a dramatic piece within the Dramatic Copyright Act, 1833. *FULLER v. BLACKPOOL WINTER GARDENS AND PAVILION CO.*

C. A. [1895] 2 Q. B. 429

**Periodical.**

30. — *Registration of first number—Protection of subsequent numbers—Copyright Act, 1842* (5 & 6 Vict. c. 45), s. 19.

A perpetual injunction granted extending to the protection of the contents of future numbers of a periodical of which the first number had alone been registered. *BRADBURY v. SHARP*

Kekewich J. [1891] W. N. 143

And see above, Book.

31. — *News agency—Unpublished information—Copying by rival firm—Injunction.*

It is competent for a news agency to collect information from a public source and transmit it to subscribers to whom it is new upon the terms that they shall not communicate it to third parties; and the Court will interfere by injunction to restrain a subscriber from communicating such information to a third party in breach of his contract, and also to restrain a third party from inducing a subscriber to break his contract by supplying him with such information with a view to publication. *EXCHANGE TELEGRAPH CO. v. CENTRAL NEWS, LD.* *Stirling J.* [1897] 2 Ch. 48

32. — *Newspaper—Coloured plate—Periodical*

**COPYRIGHT (Periodical)—continued.**

—*Copyright Act, 1842 (5 & 6 Vict. c. 45)*—*Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68)*.

A coloured plate headed "Supplement" to a periodical registered as a newspaper under the Copyright Act, 1842, and referred to as "Our illustration for this week," though not physically attached to the newspaper, held to be part of the newspaper as regards copyright. *COMYNS v. HYDE* - - - *Stirling J. [1895] W. N. 9*

**33. — Newspaper copying from other newspaper.**

The form of expression in which news is conveyed is subject of copyright. A practice by newspapers to copy from other newspapers is no defence to a copyright action. *WALTER v. STEINKOPFF* - - - *North J. [1892] 3 Ch. 489*

**34. — Newspaper—Reports of public speeches**—*"Author" of report—Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 2, 3, 18.*

A person who makes notes of a speech delivered in public, transcribes them, and publishes in a newspaper a verbatim report of the speech, is the "author" of the report within the meaning of the Copyright Act, 1842, is entitled to the copyright in the report, and can assign the copyright.

So held by the Earl of Halsbury L.C. and Lords Davey, James of Hereford, and Brampton, Lord Robertson dissenting.

Decision of C. A., [1899] W. N. 212; [1899] 2 Ch. 749, reversed, the decision of North J. restored and the injunction made perpetual. *WALTER v. LANE*

**H. L. (E.) [1900] W. N. 178; [1900] A. C. 539**

**35. — Newspaper—Selection of horse in race—Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 18, 19.**

The announcement of the horses which a newspaper has selected as winners is not in the nature of a literary composition which can be protected under the Copyright Acts; and the publication of a race-card giving lists of the horses selected by various papers is not an infringement of the copyright in the newspapers. The Court will not define in general terms what amounts to a "literary composition." *CHILTON v. PROGRESS PRINTING AND PUBLISHING CO.*

**C. A. affirm. Kekewich J. [1895] 2 Ch. 29**

Referred to by C. A. *Exchange Telegraph Co. v. Gregory & Co.* [1896] 1 Q. B. 147, 157.

**36. — Serial published in periodical—Separate publication—Registration—Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 2, 3, 18, 19.**

The author of a contribution to a periodical who has not parted with his copyright to the proprietor of the periodical may sue an infringer before publishing his contribution in a separate form.

Where the author has registered the series of contributions to the periodical, stating as the date of first publication the date when the first part was published in the periodical, the effect of s. 19 of the Copyright Act, 1842, is that the registration protects each contribution of the series which has been subsequently so published. *JOHNSON v. GEORGE NEWNES, LD.*

**Romer J. [1894] 3 Ch. 663**

**COPYRIGHT—continued.****Picture.**

**37. — Photograph — Author — "Good and valuable consideration"—"For or on behalf of"**—*Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 1, 6.*

The "author" of a photograph within the meaning of s. 1 of the Fine Arts Copyright Act, 1862, is the person who generally controls the operation, and a person who performs the manual operations under his control and direction is not the author. A portrait taken on the terms that the photographer may sell copies, though without payment by the subject, is made for a "good and valuable consideration" within the proviso in the section: but where it is the intention of the parties that the negative shall be kept by the photographer as his own property, it is not made "for or on behalf of" the subject, and therefore the proviso does not apply. The words "any other person" in s. 6 of the Act mean any person other than the author, and consequently include the person photographed. *MELVILLE v. MIRROR OF LIFE CO.* - *Kekewich J. [1895] 2 Ch. 531*

**38. — Reproduction of substantial part—Infringement.**

The plt. was the owner of the copyright in a picture and engraving known as "Can't you talk?" which represented a collie dog seated on his haunches on a stone floor looking down at the upturned face of a child; there was a wall in the background with a door on one side through which a cat was looking; above the dog was a table on which was a tub with a spoon in it. The defts. were the owners of a periodical in which was a woodcut which almost exactly reproduced the whole of the plt.'s engraving with the exception of the child, whose position was replaced by a tortoise and two cats: the woodcut was given as an illustration of a story entitled "A Strange Visitor." On a motion for an injunction to restrain the defts. from selling any copies of this periodical and woodcut:—

*Held*, that as the defts. had taken a substantial portion of the plt.'s engraving and reproduced it in the woodcut with slightly different surroundings, this constituted an infringement of the plt.'s copyright, and that he was accordingly entitled to an injunction. *BROOKS v. RELIGIOUS TRACT SOCIETY* - *Romer J. [1897] W. N. 25 (5)*

**39. — Tableaux vivants — Illustration — Infringement—Bern Convention — Foreign law — Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 1, 2, 4, 6—International Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 2, sub-s. 3.**

H. was the owner of the copyright in pictures painted in Germany. The E. Co. exhibited at a music-hall tableaux vivants taken from the pictures. N. in a newspaper published reproductions of sketches taken from the tableaux:—

*Held*, that the representation of pictures by tableaux vivants formed by grouping in the same way as the figures in the pictures living persons in the same dress and the same attitudes is not an infringement of the copyright. *HANFSTAENGL v. EMPIRE PALACE (No. 1)*

**C. A. affirm. Stirling J. [1894] 2 Ch. 1**

On motion for injunction against the newspapers, held, by Stirling J., (1) that the news-

**COPYRIGHT (Picture)—continued.**

paper illustrations were copies of H.'s pictures, and that it made no difference that they were copies from intermediate representations which were not infringements. (2) That assuming that H.'s rights were governed by German law, he was equally entitled to succeed, and granted an injunction. *HANFSTAENGL v. EMPIRE PALACE* (No. 2). *HANFSTAENGL v. NEWNES*

**Stirling J. [1894] 3 Ch. 109**

But *held*, by C. A., reversing *Stirling J.*, that there was no infringement.

*Seem*, H.'s rights were governed by German and not by English law.

*Quære*, whether the owner of a foreign copyright in a picture can bring an action for infringement without registering his copyright in England

**C. A. [1894] 3 Ch. 109, at p. 123**

And *held*, by H. L. (E.), affirming C. A., that the sketches were not in fact copies, reproductions, or colourable imitations of the pictures. *HANFSTAENGL v. H. & R. BAINES & Co.*

**H. L. (E.) [1895] A. C. 20**

Referred to by *Stirling J.* *Boosey v. Whight*, [1899] 1 Ch. 836, 843.

**40. — *Tableaux vivants*—Painted backgrounds—Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 6.**

Where living pictures representing H.'s pictures had been exhibited with painted backgrounds, *held*, on the facts, that as to the backgrounds there had been infringement of H.'s copyright. *HANFSTAENGL v. EMPIRE PALACE* (No. 3) — **Stirling J. [1895] W. N. 76**

*HANFSTAENGL v. NEWNES*

**C. A. [1894] 3 Ch. 109**

— Foreign work of art.

*See International, above.*

**Sculpture.**

**41. — *Cast of fruit and leaves*—Copyright (Sculpture) Act, 1814 (54 Geo. 3, c. 56).**

Cast made from models of natural fruit and leaves are "new and original" "casts of" a "subject being matter of invention in sculpture" within the meaning of, and entitled to protection under, the Act 54 Geo. 3, c. 56. *CAPRONI v. ALBERTI* — **Mathew J. [1891] W. N. 200**

**COPYRIGHT—DESIGNS.**

*See DESIGNS.*

**COREA** — Merchandise, Patents, Designs, and Trade Marks.

*See FOREIGN JURISDICTION.*

**CO-RESPONDENT**—Divorce practice.

*See DIVORCE—Co-Respondent.*

**CORONER.**

*Coroners Act, 1892 (55 & 56 Vict. c. 56), amends the law as to the appointment of coroners.*

*Lincolnshire Coroners Act, 1899 (62 & 63 Vict. c. 48), constitutes the Divisions of Lincolnshire separate counties for all the purposes of the Coroners Acts.*

*Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39), constitutes the Ridings separate counties.*

**1. — Appointment—Right of county council—**

**CORONER—continued.**

*Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3, sub-ss. (x), (xi), 5, 59.*

The right of a county council, under s. 5 of the Local Government Act, 1888, to appoint coroners is confined to cases where coroners were formerly elected by the freeholders of a county under a writ de coronatore eligendo, and does not extend to cases where they were appointed by lords of franchises or otherwise than by election of the freeholders. *In re LOCAL GOVERNMENT ACT, 1888. Ex parte LONDON COUNTY COUNCIL*

**Div. Ct. [1892] 1 Q. B. 33**

— Coroner's inquisition — Sufficiency of — Pleading.

*See CRIMINAL LAW—Practice.* 60.

**2. — Jurisdiction—Treasure trove—Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 36.**

The jurisdiction of a coroner with reference to treasure trove is limited by s. 36 of the Coroners Act, 1887, to the determination of "who was the finder and who was suspected thereof." He has no jurisdiction to determine a question of title between the Crown and any other claimant. *ATTORNEY-GENERAL v. MOORE*

**Stirling J. [1893] 1 Ch. 676**

Referred to by North J. *Att.-Gen. v. Albany Hotel Co.*, [1896] 2 Ch. 696, 701.

**3. — Jury—Exemption—County Juries Act, 1825 (6 Geo. 4, c. 50), ss. 1, 2, 8, 25, 52—Juries Act, 1870 (33 & 34 Vict. c. 77), ss. 3, 9, and Sched. —Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 3.**

The exemption from service on juries which is conferred by s. 52 of the County Juries Act, 1825, and by s. 9, and the Sched. of the Juries Act, 1870, extends to service on coroners' juries. Coroner's order fining a solicitor's managing clerk for not serving on his jury quashed. *In re DUTTON* — **Div. Ct. [1892] 1 Q. B. 486**

**CORPORATE CONTRACTS AND OFFICE.**

*See Cases under CORPORATION.*

**CORPORATION.**

*Municipal Corporations Act, 1893 (56 & 57 Vict. c. 9), amends the Municipal Corporations Act, 1882, as to the division of boroughs into wards.*

**MUNICIPAL ELECTIONS.** *By the Police Disabilities Removal Act, 1893 (56 & 57 Vict. c. 6), the Police Disabilities Removal Act, 1887, was extended to municipal and other similar elections.*

**JOINT TENANCY.** *Power for corporations to hold property as joint tenants. See Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20).*

— Action for malicious prosecution against— Liability.

*See MALICIOUS PROSECUTION.* 1.

— Appeal—Interlocutory order.

*See APPEAL.*

— Apprenticeship to—Legality.

*See APPRENTICE.* 3.

— Attachment—Enforcement by, of director— Service of order.

*See ATTACHMENT.* 13.

— Betting generally.

*See Cases under GAMING.*



**CORPORATION—continued.**

1. — *Betting—By-laws—Validity—Private ground used for betting—“Place of public resort”*—*Middlesborough Improvement Act, 1877 (40 & 41 Vict. c. xxx.), s. 25.*

The Middlesborough Improvement Act, 1877, s. 25, empowers the corporation to make “such by-laws as they may think fit for the prevention of betting . . . in the public streets . . . and other places of public resort within the borough.”

The corporation made a by-law that “any person who shall frequent and use any street . . . or other place of public resort within the borough . . . for the purpose of bookmaking or betting . . . shall be liable to a penalty.”

The appellant used for the purpose of book-making an uninclosed piece of private ground within the borough, bounded by streets. Book-makers and other persons habitually used the ground for betting, but without permission from the owner. The appellant and the other book-makers conducted their business in an orderly manner, and caused no nuisance, annoyance, or obstruction. The appellant was convicted under the by-law.

*Held*, that the by-law was within the power given by the Act, and was valid; that, as the ground was in fact habitually used by the public, it was a “place of public resort,” within the meaning of the by-law; and that the appellant was rightly convicted. *KITSON v. ASHE*

Div. Ct. [1899] W. N. 16 (10);  
[1899] 1 Q. B. 425

2. — *Betting—By-law—Validity—Using streets for betting—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23.*

Sect. 23 of the Municipal Corporations Act, 1882, empowers the council of a borough to make by-laws “for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable by virtue of any Act in force throughout the borough.”

A by-law made under this section prohibited, under a penalty, any person from frequenting and using any street or other public place within the borough for the purpose of bookmaking or betting:—

*Held*, that the by-law was one which could properly be made for the good rule and government of the borough, and was, therefore, valid. *BURNETT v. BERRY* — [1896] 1 Q. B. 641

Referred to by C. A. *Thomas v. Sutters*, [1900] 1 Ch. 10, 13.

— Borough fund—Appeal against refusal of licence—Costs of chief constable.  
*See No. 10, below.*

— Borough fund—Application of—Parliamentary opposition—Costs.  
*See No. 11, below.*

— Borough vote—Registration of voters.  
*See Cases under PARLIAMENT.*

— Bridge—Accident to bridge under corporate control—Liability.  
*See CANADA. 28.*

— Buildings.  
*See Cases under STREETS.*

**CORPORATION—continued.**

— Charter to—Forfeited recognizance—Amercement.

*See REVENUE—Forfeited Recognizances.*

3. — *Contracts—Capacity of municipal corporation to contract.*

A municipal corporation subject to the Municipal Corporation Act, 1882, and a local improvement Act agreed to pay to a ry. co. an annual sum for fifteen years, to obtain toll free passage for foot passengers over a bridge belonging to the ry.:—

*Held*, that the corporation could not pay any moneys out of the borough fund nor make any borough rate or general improvement rate under either Act for the purpose of such payments; but that the agreement was void, and that the annual payment might be made out of any surplus left of the borough fund or rates after satisfying the provisions of the Acts.

Decision of C. A., (1889) 23 Q. B. D. 492, affirmed. *ATT.-GEN. v. CORPORATION OF NEW-CASTLE-UPON-TYNE* H. L. (E.) [1892] A. C. 568

4. — *Contracts—Common seal—Ratification of contract—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 22, sub-s. 2.*

Specific performance will not be decreed of a contract with a municipal corporation which is not under seal nor signed by a person authorized under seal, nor ratified under seal, nor partly performed or acted on. *OXFORD CORPORATION v. CROW* — *Romer J.* [1893] 3 Ch. 535

5. — *Contracts—Municipal corporation—Contract with trading company—Validity—Members of council shareholders in the company—Persons “directly or indirectly interested or concerned in” the contract—City of London Sewers Acts, 1848 (11 & 12 Vict. c. clxiii.), ss. 33–42, 116; 1851 (14 & 15 Vict. c. xci.), ss. 53, 57.*

By contracts the Commrs. of Sewers of the City of London contracted with an Electrical Engineering Co. for lighting the City by electricity. In Aug., 1891, the contracts were transferred to the plts., and from that date the City had been lighted by electricity under the contracts. At the date of the contracts the sole power of lighting the streets of the City was vested in the defts. acting by the commrs. under the provisions of the City of London Sewers Acts, 1848 and 1851. By the City of London Sewers Act, 1897, the commrs. ceased to exist, and their powers, duties, and liabilities became vested in the defts. In 1898 certain facts came to the knowledge of the defts. which caused them to repudiate the contracts; and thereupon the plts. brought this action, claiming a declaration that the contracts were valid and subsisting, and binding on the defts.

It appeared that at the date of the contracts some of the members of the Common Council of the defts. were shareholders of the Electrical Engineering Co., and also of the plt. co., and it was contended by the defts. that this fact rendered the contracts null and void by virtue of s. 42 of the City of London Sewers Act, 1848. That section enacts that “no person, being a commr., or a member of the Court of Aldermen, or of the Common Council of this City, shall be directly or indirectly interested or concerned in any contract

**CORPORATION—continued.**

which shall be made or entered into by or on behalf of the commrs. for the execution of any works by this Act directed or authorized to be done or executed . . . or for any other matter or thing whatever, upon pain that every such contract shall be null and void":—

*Held*, that s. 42 did not apply, and that the p<sup>ts</sup>. were therefore entitled to judgment with costs. **CITY OF LONDON ELECTRIC LIGHTING CO. v. LONDON CORPORATION**

**Farwell J. [1900] W. N. 116**

**6. — Corporate office—Chairman of improvement committee—Power of motion.**

*Seemle*, per Lopes L.J., that a power of motion from a corporate office exists with regard to the chairman of an improvement committee of a borough council, and that dishonesty and malversation on his part is an indictable offence. **BOOTH v. ARNOLD** - **C. A. [1895] 1 Q. B. 571**

**7. — Corporate office—Resignation of office—Office when vacant—Outgoing alderman—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 36, sub-ss. 1 and 2; s. 60, sub-s. 3.**

Resignation of his office by a borough alderman in the manner provided by s. 36, sub-s. 1, of the Municipal Corporations Act, 1882, will not render the office vacant until it is declared to be vacant by the borough council with the formalities prescribed by sub-s. 2; and, consequently, an alderman, who in the course of rotation is about to go out of office under s. 14, sub-ss. 6 and 7, cannot by merely resigning his office before the ordinary day of election of aldermen, and in the absence of a declaration by the council that the office is vacant, get rid of his disqualification to vote at the election of aldermen under s. 60, sub-s. 3. **PEASE v. LOWDEN** - **Div. Ct. [1899] W. N. 8 (5); [1899] 1 Q. B. 386**

**8. — Corporate property—Alienation of corporate lands.**

By ss. 108, 109 of the Municipal Corporations Act, 1882, the approval of the Treasury (now the Loc. Govt. Bd.) is essential to the terms and conditions in case of a sale of corporate lands. Therefore the purchaser cannot claim rights outside the four corners of the conveyance to him duly approved. **DAVIS v. LEICESTER CORPORATION**

**C. A. [1894] 2 Ch. 208**

Referred to by Stirling J. *Holford v. Acton Urban Council*, [1898] 2 Ch. 240, 246.

**9. — Costs—Alteration of boundaries—Liability of added area—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 54, 59.**

By a Provisional Order under the sections above referred to, confirmed by Act of Parliament, and coming into operation on Nov. 9, 1898, an area forming part of the district of the Plympton District Council was taken from that district and added to the borough of D. The order contained the following clause:—

"XV. (1.) If at the time of the commencement of this order any action or proceeding or any cause of action or proceeding is pending or existing by or against the rural district council in relation exclusively to any part of the added areas the same shall not be in anywise prejudicially affected by reason of the making of this

**CORPORATION—continued.**

order, but may be continued, prosecuted, and enforced by or against the corporation of the borough."

An action had been commenced in March, 1898, by Jackson against the council for an injunction to restrain a sewage nuisance. The houses, the sewer, and the cesspool were all within the added area, but the p<sup>lt</sup>'s land was just outside it. In May, 1899, the D. Corporation was added as deft., and in July, 1899, an undertaking was given by both defts. to the p<sup>lt</sup>., who admittedly had a good cause of action and was entitled to his costs:—

*Held*, that the action was an action pending on Nov. 9, 1898, in relation exclusively to part of the added area within Clause XV. of the order, with the result that all liability attached to the council in relation to the action was transferred to and attached to the corporation. It was unnecessary to consider whether the whole cause of action arose within the added area; it was sufficient that the houses, the sewers, and the cesspool were all within it. It was also unnecessary to consider whether, but for the order, the costs would or would not have been "general expenses" within s. 229 of the Public Health Act, 1875, chargeable upon the whole district, and not "special expenses" of the added area unless and until so determined by the Loc. Govt. Bd. The corporation must pay the costs of the p<sup>lt</sup>., the council, and the application. **JACKSON v. PLYMPTON ST. MARY RURAL DISTRICT COUNCIL**

**Cozens-Hardy J. [1900] W. N. 15**

**10. — Costs—Borough fund—Licensing appeals—Appeal against refusal of licence—Payment of costs of chief constable—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 140, sub-ss. 1-3, ss. 141-143, 190, 191, 5th Sched. Part II. clause 5 (d), clause 12—Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91), s. 2.**

A municipal corporation cannot, where there is no surplus of the borough fund, legally pay thereout costs incurred by the chief constable in opposing by direction of the council appeals against the refusal of justices to renew the licences of publicans.

*Quære*, whether if there be a surplus it can legally be applied to payment of such costs.

Decision of C. A., [1898] 1 Q. B. 604, affirmed. **TYNEMOUTH CORPORATION v. ATT-GEN.**

**H. L. (E.) [1899] W. N. 71; [1899] A. C. 293**

**— Costs—Dismissal of action against corporation. See Costs—Public Authorities Protection. 46.**

**11. — Costs—Municipal corporation—Parliamentary opposition — "Rights, privileges, and duties"—Application of borough fund—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 140, Sched. V., Part II. (12).**

An alteration in the price of gas in the district of a municipal corporation, a large consumer for public lighting and otherwise, does not affect its "rights, privileges, and duties" within the principle of the decision in *Att-Gen. v. Mayor of Brecon*, (1878) 10 Ch. D. 204.

At the instance of a gas co., suing as rate-payers, a municipal corporation, who had not

**CORPORATION—continued.**

complied with the requirements of s. 4 of the Borough Funds Act, 1872, was restrained from applying any part of its borough fund (there being no surplus) to the costs of opposition before Parliament to a bill promoted by the gas co., which would affect the price of gas. *ATT-GEN. v. SWANSEA CORPORATION*

*North J. [1898] 1 Ch. 602*

— Costs—Public authorities protection.

*See Cases under COSTS—Public Authorities Protection.*

— County council.

*See Cases under COUNTY COUNCIL.*

**12. — Defamation—Charge of corrupt practices**

— *Absence of special damage.*

The right of a corporation to sue for libel is confined to protection of their property. Where a municipal corporation sued for a libel imputing corrupt practices:—

*Held*, that, as a corporation, as distinguished from the individuals composing it, cannot be guilty of corrupt practices, the statement of claim disclosed no cause of action. *MANCHESTER CORPORATION v. WILLIAMS* *Div. Ct. [1891] 1 Q. B. 94*

Referred to by C. A. *South Hetton Coal Co. v. North Eastern News Association*, [1894] 1 Q. B. 133, 142.

**13. — Defamation—Trading company.**

Statements defamatory of a trading co. in respect of the management of its business are actionable without proof of special damage. *SOUTH HETTON COAL CO. v. NORTH EASTERN NEWS ASSOCIATION* - C. A. [1894] 1 Q. B. 133

— Dissolution—Proof—Right of the Crown—*Bona vacantia.*

*See BANKRUPTCY—Proof.* 165.

— Election—Expiry of prescribed time.

*See CANADA.* 56.

**14. — Election—Right to petition—“Candidate” — Nomination of disqualified person—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 77, 88.**

The petitioner and respondent were nominated in proper form for election to the office of councillor for a ward in a borough. The petitioner at the time of his nomination was interested in a contract with the corporation of the borough. The respondent objected to the petitioner's nomination on the ground that he was, by reason of his interest in the contract, disqualified for election. The mayor allowed the objection, and the respondent, being the only other person nominated, was declared elected. It was conceded by the respondent, upon the authority of *Pritchard v. Mayor of Bangor*, (1888) 13 App. Cas. 241, that the mayor had no jurisdiction to entertain the objection to the petitioner's nomination, but it was contended that the petitioner had no right to present a petition:—

*Held*, (1.) that the petitioner was disqualified for nomination, none the less because he might by assigning his interest in the contract have got rid of his disqualification before the date of the poll; but

*Held*, (2.) that the petitioner, although disqualified for election and nomination, having in fact been nominated in proper form, was a

**CORPORATION—continued.**

“candidate” within the meaning of s. 77, and consequently entitled under s. 88 to present a petition for the purpose of questioning the election of the respondent.

*Monks v. Jackson*, (1876) 1 C. P. D. 683, distinguished. *HARFORD v. LINSKEY*

*Div. Ct. [1899] 1 Q. B. 852*

**15. — Election of alderman—Petition—Quo warranto—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 60, 87, 225.**

At an election of an alderman, the mayor, who presided, voted for himself, causing an equality of votes. He then gave the casting vote in his own favour, and declared himself elected:—

*Held*, that the validity of the election could only be questioned by an election petition, and that a writ of quo warranto would not lie. *REG. v. MORTON* - *Div. Ct. [1892] 1 Q. B. 39*

**16. — Election of councillor—Ineligibility of women.**

Sect. 73 of the Municipal Corporations Act, 1882, which makes an election good and valid if not impeached within twelve months, does not render the election of a woman valid after the lapse of the prescribed time:—

*Held*, therefore, that the deft. was liable to the penalties under s. 41 of the same Act. *DE SOUZA v. CORDEN* - C. A. [1891] 1 Q. B. 687

— Election of county council—Death of candidate between nomination and poll.

*See COUNTY COUNCIL—Election.* 1.

**17. — Election of mayor—Validity of votes—Casting vote.**

Where a salary is attached to the office of mayor, a candidate cannot vote for himself, as he has a pecuniary interest within s. 22, sub-s. 3, of the Municipal Corporations Act, 1882. Sect. 42, sub-s. 1, which validates acts of a disqualified person in a corporate office, does not prevent an inquiry on an election petition into the validity of a vote given by such a person in virtue of such office. Sect. 12, sub-s. 1 (c), which disqualifies persons from being councillors who have a share or interest in any contract applies to a person appointed chemist to the council however small the value of the contract. Sect. 12, sub-s. 2 (a), which provides that a person is not disqualified as councillor by reason of having an interest in a lease in which the corporation is interested, applies to a letting for one day. Sect. 61, sub-s. 4, which gives in case of equality of votes a casting vote to the chairman “although not entitled to vote in the first instance,” does not prevent the chairman if not disqualified from voting in the first instance. *NELL v. LONGBOTTOM*

*Div. Ct. [1894] 1 Q. B. 767*

**18. — Election—Municipal franchise—Qualification—Continuous occupation—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 3.**

Where A. owned premises including a building where he carried on business, and A. transferred premises and business to a co. who on the same day demised the building to A. who continued to occupy it:—

*Held*, that there had been continuous occupation of the building. *TIMMIS v. ALBISTON*

*Div. Ct. [1896] 2 Q. B. 56*

**CORPORATION—continued.**

19. — *Election—Municipal franchise—Qualification—Joint occupation—Payment of rates—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 11, sub-s. 2 (a).*

Where a person was in joint occupation of licensed premises under verbal agreement with his mother, and paid the rates, although not on the rate-book as a ratepayer:—

*Held*, that he was qualified by occupation and payment of rates, and entitled to be enrolled as a Burgess within the meaning of the Municipal Corporations Act, 1882, s. 11, sub-s. 2. **UNWIN v. McMULLEN** C. A. [1891] 1 Q. B. 694

— Elective auditor of corporation—Remuneration.

*See* LOCAL GOVERNMENT. 1.

— Foreign corporation—Service—Agent—Clerk—Admiralty practice.

*See* PRACTICE—Service. 182.

— Harbour rates—Investments—Judicial factor—Curator bonis—Liability.

*See* TRUSTEE—Investments. 65.

— Highways.

*See* Cases under HIGHWAY.

— Interrogatories—Answer by officer of corporation.

*See* DISCOVERY—Interrogatories. 49.

20. — *Judicial expenses—Clerk to justices of a borough under 10,000 population with separate commission of the peace—Petty Sessions Act, 1849 (12 & 13 Vict. c. 18), s. 1—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 140—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 84.*

Sect. 84 of the Local Government Act, 1888, imposes on a county council the obligation to pay the salary of a clerk to the justices of a borough within the administrative county, with population under 10,000 and a separate commission of the peace, and all fees and costs not excluded in the fixing of the salary should be paid into the county fund. *In re* HEREFORDSHIRE COUNTY COUNCIL AND LEOMINSTER TOWN COUNCIL, AND *In re* LOCAL GOVERNMENT ACT, 1888 — **Div. Ct. [1895] 1 Q. B. 43**

Overruled by C. A. *Thetford Corporation v. Norfolk County Council*, [1898] 2 Q. B. 468.

— Liability of—Accident to bridge under corporate control.

*See* CANADA. 28.

— Libel—Malice—Privileged occasion.

*See* DEFAMATION—Libel. 15.

— London County Council and Borough Council franchise.

*See* LONDON—Electors.

— Mayor—Election of.

*See* No. 17, above.

21. — *Mayor's salary—Increase of, for illegal purpose.*

A payment made in form by way of addition to a mayor's salary is not legal unless it is a bona fide increase of salary. The corporation of Cardiff added to the mayor's salary for 1893 (1) 400*l.* as interest on 10,000*l.* they were authorized to contribute towards purchase of a site for a certain college; (2) 650*l.* for celebration of the Duke of York's marriage. The cheque for this

**CORPORATION—continued.**

sum was not paid direct to the mayor, but drawn and carried to a particular banking account:—

*Held*, that the first payment was illegal, as the local Act by which the grant of 10,000*l.* was authorized did not give power to pay interest on that sum beforehand, and it was not for the benefit of the inhabitants or improvement of the borough within s. 143 of the Municipal Corporations Act, 1882. But *held*, as to the second payment, that it was competent for the corporation to add to the mayor's salary if by reason of some event of national importance his expenditure as mayor in festivities was likely to be increased, although the manner in which the matter had been done raised a doubt as to the legality of the present payment. **ATT.-GEN. v. CORPORATION OF CARDIFF** **Romer J. [1894] 2 Ch. 337**

— Municipal courts—Jurisdiction of—Act of State—Concessions granted before cession—Rights after annexation.

*See* CAPE OF GOOD HOPE. 1.

— Parliamentary opposition—Costs—Application of borough fund.

*See* No. 11, above.

22. — *Pecuniary interest in.*

Where a salary is attached to the office of mayor a candidate cannot vote for himself. **NELL v. LONGBOTTOM** — **Div. Ct. [1894] 1 Q. B. 767**

— Police.

*See* POLICE.

23. — *Profane or obscene language—Prohibition of use of profane or obscene language—By-law made "for good rule and government," and "for prevention and suppression of nuisances"—Validity—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 16.*

The respondent was charged under a by-law made by a county council under s. 16 of the Local Government Act, 1888, which was as follows: "No person shall, in any house, building, garden, land, or other place, abutting on, or near to, a street or public place, make use of any violent, abusive, profane, indecent, or obscene, language, gesture, or conduct, to the annoyance of any person in such street or public place."

The facts were sufficient to justify a conviction if the by-law was valid, but the justices declined to convict.

*Held*, that the by-law was made for "good rule and government," and "for prevention and suppression of nuisances," within the meaning of s. 23 of the Municipal Corporations Act, 1882, and therefore was valid under s. 16 of the Local Government Act, 1888, and the respondent ought to be convicted. **MANTLE v. JORDAN**

**Div. Ct. [1897] 1 Q. B. 248**

— Proxy election—Returning officer.

*See* THAMES. 3.

— Public authorities protection.

*See* Cases under PUBLIC AUTHORITIES PROTECTION; and under COSTS — Public Authorities Protection.

24. — *Rating powers—Negligence.*

Where a local Act has incorporated a body of commrs. for public purposes and given them rating powers, the corporation is bound, unless

**CORPORATION—continued.**

the contrary be clearly shewn from the terms of the local Act, to levy a rate to satisfy a liability incurred by the negligence of their servants, and to do so notwithstanding that they have already levied rates up to the limits allowed by their Act for capital expenditure. *GALLSWORTHY v. SELBY DAM DRAINAGE COMMS.*

C. A. [1892] 1 Q. B. 348

**25. — Repair of bridges and highways—Liability for non-feasance.**

A public corporation to which an obligation to keep roads and bridges has been transferred is not liable to an action in respect of mere non-feasance, unless the legislature has shewn an intention to impose such a liability.

(A) *PICTOU (MUNICIPALITY OF) v. GELBERT*

P. C. [1893] A. C. 524

Applied by P. C. *Sydney Municipal Council v. Bourke*, [1895] A. C. 433.

(B) *COWLEY v. NEWMARKET LOCAL BOARD*

H. L. (E.) [1892] A. C. 345

(C) *OLIVER v. HORSHAM LOCAL BOARD.*

*THOMPSON v. BRIGHTON CORPORATION*

C. A. [1894] 1 Q. B. 332

(D) *MUNICIPAL COUNCIL OF SYDNEY v. BOURKE*

P. C. [1895] A. C. 433

— Sanitation.

See Cases under NUISANCES.

— Streets.

See Cases under STREETS.

— Service of writ—Foreign corporation carrying on business in England—Agent.

See PRACTICE—Service. 183.

— Stamp duty.

See REVENUE—Stamps.

— Statutory duties—Breach—Causes of action.

See CANADA. 43.

— Taxation — Liability — Municipal code of Quebec.

See CANADA. 53.

— Trading—Omnibus business—Ultra vires.

See LONDON—County Council. 38.

**26. — Ultra vires—Newspaper—Libel—Principal and agent—Action against editor—Defence of action by proprietor—Indemnity.**

A nursing association incorporated by royal charter were the proprietors and publishers of a newspaper on nursing, and employed one of the members of the association as honorary editor. An action for libel having been brought against the editor alone in respect of an article inserted in the newspaper under the express instructions of the association :—

*Held*, that as a matter of ordinary business, and apart from any question as to the legal right of the editor to be indemnified, the funds of the association could be lawfully applied in undertaking the defence of the action. *BREAY v. ROYAL BRITISH NURSES' ASSOCIATION*

C. A. [1897] 2 Ch. 272

**27. — Unwholesome meat—Offences—Damage by reason of seizure—Costs of summons—"Full compensation"—Arbitration—Findings of arbitrator—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117, 308.**

— Meat belonging to the plt. and alleged to be

**CORPORATION—continued.**

unwholesome was seized by the inspector of nuisances of the deft. corporation and condemned by a magistrate. The owner was proceeded against, but the summons was dismissed by the justice for a defect in form, and no order was made as to costs. On an arbitration under the Public Health Act, 1875, the arbitrator found that the meat was sound, and awarded the plt. compensation. In an action on the award :—

*Held*, that the finding of the arbitrator as to the soundness of the meat was conclusive; that the corporation were liable to pay to the plt. full compensation for the damage sustained by reason of the acts of the officer of the corporation; and that such full compensation included the costs to which the plt. was put in opposing the summons. *WALSHAW v. BRIGHOUSE CORPORATION*

C. A. [1899] 2 Q. B. 286

Referred to by C. A. *Barnett v. Eccles Corporation*, [1900] 2 Q. B. 423, 428.

**CORPORATION DUTY.**

See REVENUE—Income Tax. 105, 106.

**CORPORATION STOCK.**

See CHARITY—Mortmain. 44.

**CORPUS**—Income or—Tenant for life and remainderman.

See Cases under SETTLED LAND.

**CORRESPONDENCE**—Copy of—Taxation of costs.

See COSTS—Taxation. 73.

— Production of documents.

See DISCOVERY—Documents. 36, 37.

**CORROBORATION**—Affidavit of petitioner.

See DIVORCE—Practice. 100.

— Of evidence of accomplice.

See CRIMINAL LAW—Evidence. 14.

**CORRUPT AND ILLEGAL PRACTICES**—By the *Corrupt and Illegal Practices Prevention Act, 1895* (58 & 59 Vict. c. 40), making or publishing false statements concerning a candidate was declared to be an illegal practice.

— Appeal, Right of—Decision of High Court.

See APPEAL. 13.

— Error in return of election expenses—Penalties.

See PARLIAMENT. 9.

— Libel on corporation—Whether actionable.

See CORPORATION. 26.

— Municipal elections.

See CORPORATION. 14—19.

— Prosecution for, at municipal election—Private prosecutor—Defendant's right to costs, where acquitted.

See CRIMINAL LAW—Costs. 4.

**COST-BOOK MINE**—Purser's powers—*Bankruptcy petition—Right to present—Stannaries Act, 1869* (32 & 33 Vict. c. 19), ss. 2, 13.

A purser or secretary of a cost-book mine is only authorized to sue on behalf of the co. He cannot present a bankruptcy petition on their behalf in respect, e.g., of a judgment debt obtained for unpaid calls. *In re NANCE. Ex parte ASHMEAD* — — — C. A. [1893] 1 Q. B. 590

**COSTERMONGER.**

See LONDON—Streets.

**COSTS.**

*R. S. C.*, 1883, *Order LXV.*, relates to costs.

*Generally*, col. 551.

*Administration*, col. 555.

*Appeal*, col. 557.

*Apportionment*, col. 558.

*Costs of Reference*, col. 559.

*Counsel's Fees*, col. 559.

*County Court*. See **COUNTY COURT—Costs**.

*Discretion of Court*, col. 561.

*Executor*. See **Cases under EXECUTOR**.

*House of Lords*, col. 563.

*Interest on Costs*, col. 563.

*Interlocutory Applications*, col. 564.

*Lunacy—Practice*. See **LUNACY—Costs**.

*Married Woman*, col. 564.

*Payment into Court*. See **PRACTICE—Payment into Court**.

*Payment out of Court*, col. 565.

*Public Authorities Protection*, col. 565.

*Security for Costs*, col. 568.

*Set-off*, col. 570.

*Sets of Costs*, col. 571.

*Severance of Defence*, col. 571.

*Shorthand Notes*, col. 571.

*Solicitor, Personal Payment by*, col. 572.

*Taxation*, col. 572.

*Unnecessary Proceedings*, col. 575.

**Generally.**

See under heading of subject-matter of **COSTS**.

— **Accounts—Retiring partner.**

See **PARTNERSHIP**. 3.

— **Adding plaintiff without authority—Liability of solicitor.**

See **PRACTICE—Parties**. 90.

— **Admiralty practice.**

See **Cases under SHIPPING**.

— **Affidavit—"Information and belief"—Irregularity—Evidence—Inadmissibility.**

See **EVIDENCE**. 18.

— **Annuity.**

See **Cases under ANNUITY**.

— **Arbitration.**

See **Cases under ARBITRATION**.

— **Bankruptcy practice.**

See **BANKRUPTCY—Costs**.

— **Bills of sale.**

See **Cases under BILL OF SALE**.

— **Boundaries—Alteration of—Liability of added area.**

See **CORPORATION**. 9.

— **Boundary wall—Mutual gable—Half cost of erection.**

See **SCOTTISH LAW**. 49.

— **Bridges—Liability of larger quarter sessions boroughs to contribute to costs of.**

See **LOCAL GOVERNMENT**. 2.

**COSTS (Generally)—continued.**

— **Chief constable—Borough fund.**

See **CORPORATION**. 10.

— **Company practice.**

See **Cases under COMPANY and COMPANY—WINDING-UP**.

— **Commercial list—Application to enter cause in, before appearance of defendant.**

See **COMMERCIAL CAUSES**. 1.

— **Copyright.**

See **Cases under COPYRIGHT**.

1. — **Costs out of estate—Probate action—Real estate.**

In a probate action judgment was given for the plt. establishing the will (which contained specific devises of real estate, but no residuary devise), and the def't's costs were ordered to be paid out of the estate, but no order was made as to the costs of the plts. propounding the will. The deceased's estate consisted of real estate, part only of which was devised, and personal estate not sufficient to pay the costs of the action:—

*Held*, that the order of the Probate Div. could only refer to the estate over which it had jurisdiction (viz., personalty), and that the Ch. Div. had no jurisdiction except under special circumstances to order the costs in the Probate Div. to be paid out of the real estate. *In re SHAW. BRIDGES v. SHAW* Kekewich J. [1894] 3 Ch. 615

— **County council—Separate court of quarter sessions—Liability for costs of.**

See **COUNTY COUNCIL—Expenses**. 3.

— **County court.**

See **COUNTY COURT—Costs**.

— **Criminal law.**

See **CRIMINAL LAW—Costs**.

— **Crown debt—Legacy duty—Priority—Costs against the Crown.**

See **REVENUE—Legacy Duty**. 124.

— **Crown side—Case stated on appeal from quarter sessions.**

See **CROWN OFFICE**. 1.

— **Discontinuance—Costs of adjournment into court.**

See **PRACTICE—Discontinuance**. 14.

— **Distress.**

See **Cases under DISTRESS**.

2. — **District registries—Liverpool district registry—Taxation—Affidavit—Evidence—Charges and expenses of Liverpool solicitors' attendances in London—R. S. C., 1883, Order LXV. r. 27, sub-r. 43.**

The taxation of party and party costs in the Liverpool and Manchester District Registries proceeds on the same principles as obtain in the London Taxing Master's Offices, where the costs in other district registries are taxed.

There is no hard and fast rule that in no case, where proceedings have been initiated in a district registry and are heard in London on affidavit evidence only, will the costs of the country solicitors' attendance at the hearing in London be allowed.

Such costs may be allowed in very exceptional cases, where no London agent has been

**COSTS (Generally)—continued.**

employed, e.g., where charges of fraud or personal misconduct have been made and have failed.

Decision of Byrne J. affirmed. *In re DIXON. TOUSEY v. SHEFFIELD* - C. A. [1898] 2 Ch. 443

— Divorce.

See DIVORCE—Costs.

— Drain—Abating nuisance by making new.

See NUISANCE. 13.

— Drainage expenses—Capital or income.

See SETTLED LAND—Capital Money. 28.

— Drainage works required by local authority—Liability of tenant—Covenant.

See LANDLORD AND TENANT. 25.

— Election law.

See PARLIAMENT—Costs.

— Election petition.

See DISTRICT COUNCIL—Elections.

— Fraud, Charges of—Agreement—Finality of audit.

See ACCOUNT. 2.

— Highway.

See Cases under HIGHWAY.

— House of Lords.

See APPEAL. 17.

— Husband and wife.

See Cases under HUSBAND AND WIFE.

— Infant.

See Cases under INFANT.

— Judicial Committee.

See PRIVY COUNCIL—Judicial Committee. 3.

— Lancaster Court.

See Cases under LANCASTER COURT.

— Landlord and tenant.

See Cases under LANDLORD AND TENANT.

— Lands Clauses Acts.

See LANDS CLAUSES ACTS—Costs.

— Legitimacy Declaration Act.

See LEGITIMACY. 1.

— Licensing Acts.

See Cases under LICENSING ACTS.

— Liverpool Court of Passage.

See LIVERPOOL COURTS.

— Lunacy practice.

See LUNACY—Costs.

— Mayor's Court—Libel—Less than 5*l.* recovered.

See LONDON—Mayor's Court. 44.

— Mortgages.

See MORTGAGE—Costs.

— Newspaper—Innocent loan of paper containing scandalous matter respecting a Court—Committing judge ordered to pay costs.

See CONTEMPT OF COURT. 6.

— Opposing bill in Parliament—Burgh—Rates Ultra vires.

See SCOTTISH LAW. 3.

— Parliamentary opposition—Application of borough fund.

See CORPORATION. 11.

— Patent.

See Cases under PATENT.

**COSTS (Generally)—continued.**

— Partition actions.

See Cases under PARTITION.

— Party wall—Implied contract to pay half cost of—Adjoining owners.

See BUILDING. 2.

3. — Payment into court before defence—Acceptance in satisfaction—Order on plaintiff to pay defendant's costs—Jurisdiction—R. S. C., 1883, Order XXII., r. 7.

Where money has been paid into court before delivery of defence, and accepted by the plt. in satisfaction, within the time limited by Order XXII., r. 7, there is no jurisdiction to order the plt. to pay the costs of the deft. incurred between the dates of the payment into court and the acceptance in satisfaction.

Order XXII., r. 7, is applicable to cases in which there are no pleadings. *LOMER v. WATERS*

C. A. [1898] 2 Q. B. 326

— Payment into court by one defendant—Verdict for less than amount paid in—Liability of other defendant for costs.

See NEGLIGENCE. 3.

— Poor law.

See Cases under POOR LAW.

— Privilege—Bill of costs—Production of documents.

See DISCOVERY. 36.

— Probate actions.

See Cases under PROBATE.

— Prosecutions.

See Cases under CRIMINAL LAW.

— Railway.

See RAILWAY—Costs.

— of Reasonable defence by purchaser of action against him by sub-vendee.

See DAMAGES. 2.

— Receiver.

See Cases under RECEIVER.

— Revenue case.

See REVENUE—Income Tax. 115.

— Revenue case—Railway and Canal Commission.

See RAILWAY. 50.

— Settled Land Acts.

See SETTLED LAND—Costs.

— Sequestration—Payment of costs—Service.

See SEQUESTRATION. 5.

— Sewers.

See Cases under LONDON—Sewers. SEWERS.

— Sheriff's costs.

See Cases under SHERIFF.

— Solicitor's costs.

See SOLICITOR—Costs.

— Streets.

See Cases under LONDON—Streets. STREETS.

— "Testamentary expenses"—Administration on intestacy—Estate duty.

See WILL—Testamentary Expenses. 205.

— Trade-mark.

See Cases under TRADE-MARK.

**COSTS (Generally)—continued.**

- Troops summoned to preserve the peace—  
Expenses of maintenance—Liability.  
See COUNTRY COUNCIL. 10.
- Trustees.  
See Cases under TRUSTEE.
- offer of Undertaking by defendant.  
See INJUNCTION. 29.
- Underwriter's liability for consequential damage—Cost of disposing of cargo rendered worthless by sea peril.  
See INSURANCE—Marine. 44.
- Unnecessary or improper parties—Setting aside settlement.  
See SETTLEMENT. 12.
- Unwholesome meat—Findings of arbitrator.  
See CORPORATION. 27.
- Vendor and purchaser.  
See Cases under VENDOR AND PURCHASER.
- Water—Supply of, to house—Owner—Expenses.  
See WATER. 11.

**4. — Will, Construction of—Disputed devise**  
—Summons by executors—Land Transfer Act, 1897 (60 & 61 Vict. c. 65).

Summons by the executors of a testator, who died after the Land Transfer Act, 1897, came into operation, for the determination of the question whether, under the terms of the testator's will, a certain piece of freehold land was included in a specific devise, or belonged to the heir-at-law as undisposed of, the will containing no general devise of real estate. The devisees and the heir-at-law were made respondents to the summons.

*Per Kekewich J.* I am not prepared to lay down any general rule by way of guidance to myself or other judges in subsequent cases, as the matter has not been very fully argued. There is a good deal to be said in favour of the view that since the Land Transfer Act, 1897, an executor occupies the position of a trustee of real estate. But even if that be so, I am not prepared to hold that there has been any alteration of the ordinary rule as to costs in the case of a conflict between devisees and an heir-at-law. The devisees had to make out their title against the heir-at-law. They have made their claim, and failed. They are in the same position as to costs as if they had brought an action under the old law. They merely have the advantage of being saddled with lighter costs owing to the less expensive form of proceeding. The executors' costs will be taxed as between solicitor and client and charged on the property, with liberty to apply as to the same. I do not now suggest that I can make any order as to raising these costs. The costs of the heir-at-law will be taxed as between party and party and paid by the devisees. *In re PEEL. WOODCOCK v. HOLDROYD*

**Kekewich J. [1899] W. N. 208**

- Workmen's Compensation Act.  
See Cases under MASTER AND SERVANT.

**Administration.**

See also under EXECUTOR.

- 5. — Administration action—Order for payment—Defaulting trustee—Supplemental order—**

**COSTS (Administration)—continued.**

*Jurisdiction—Extravagant litigation—Disallowance of costs.*

Though the Court has no jurisdiction to alter or vary an order after it has been passed and entered, yet it may make a supplemental order; such as an order directing that the party benefited by the previous order shall not be entitled to receive any benefit under it except on certain conditions.

In an administration action an order was made in 1887 directing the trustees to raise a sum of taxed costs which they had incurred to their solicitor and to pay into court the amount when raised. The trustees raised the amount but, instead of paying it into court, allowed their solicitor to retain it in payment of his costs, although no order for actual payment had been made. In 1892 the trustees obtained orders directing certain further costs to be taxed and paid to them, and those orders were duly passed and entered; but before they had been acted upon Kekewich J. was informed of the default of the trustees under the order of 1887, and moreover that the taxed costs directed to be raised by that order amounted to about one-third of the value of the whole estate, and had mostly been incurred in fruitless and unnecessary proceedings carried out under the advice of the trustees' solicitor. He accordingly made an order supplemental to the orders of 1892, directing that, although the taxation of costs under those orders should be proceeded with, none of those costs should be paid to the trustees until they had first complied with the order of 1887. On appeal that supplemental order was affirmed.

Observations on the jurisdiction of the Court as to disallowing costs improperly incurred in an administration action.

*Brown v. Burdett*, (1877) 37 Ch. D. 207, discussed. *In re SCOWBY. SCOWBY v. SCOWBY*

**C. A. [1897] 1 Ch. 741**

**6. — Settlement—Appointment.**

By the exercise of the usual special power of appointment in a marriage settlement, portions of a fund were appointed to several children and the residue to another child:—

*Held*, following *In re Orford, Cartwright v. Duc del Balzo*, [1896] 1 Ch. 257, that the costs of an action to administer the trusts of the settlement fund with consequential inquiries must be paid rateably out of the appointed shares.

More than one appointment of sums having been made to some of the children:—

*Held*, that only one set of costs should be allowed in respect of each child, such set where there had been separate mortgages by any child of the severally appointed sums, to be apportioned rateably between the several appointments to such child and paid to the first mortgagee of each such appointed sum. *In re HILL'S SETTLEMENT TRUSTS. HILL v. EQUITABLE REVERSIONARY INTEREST SOCIETY*

**Stirling J. [1896] W. N. 177 (1)**

**7. — Will—Partial appointment.**

The donee, under a will, of a special power of appointment by deed or will over the residue of the testator's estate exercised the power by



**COSTS (Administration)—continued.**

appointing portions only of the fund, the residue going as in default of appointment:—

*Held*, that the costs of an action to administer the testator's estate must be borne rateably by the appointed share and the unappointed residue. *In re HILL'S ESTATE. HILL v. EQUITABLE REVERSIONARY INTEREST SOCIETY*

Stirling J. [1896] W. N. 177 (2).

**Appeal.**

— Appeal—Consent of guardians.

See RATES—Appeal. 4.

8. — *Costs in discretion of judge—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49—Costs of examination as to debtor's means and of garnishee proceedings—R. S. C., 1883, Orders XLII., rr. 32, 34; XLV., r. 9.*

The plt. having obtained judgment and being unable to obtain payment of his debt, obtained, under Order XLII., r. 32, an order to have the debtor examined as to his means. The debtor on his examination admitted having a retiring pension and a balance at his bankers. The plt. then obtained a garnishee order against the bankers, and by that means recovered part of his debt. He then applied for his costs of the examination proceedings and of the garnishee proceedings. The master refused to make any order, on the ground, as was stated by affidavit, that the practice in the Q. B. Div. was to treat such proceedings as a luxury, the costs of which the plt. could not throw on the deft. The plt. appealed; the judge in chambers dismissed the appeal, as was stated; on the same ground, and refused leave to appeal. The plt. applied to the C. A., who gave leave, and he then appealed against the order in chambers:—

*Held*, that as by the express terms of the Judicature Act, 1873, s. 49, no appeal will lie from any order as to costs which are left to the discretion of the Court except by leave of the judge making such order, and the costs in question were, by the terms of Order XLII., r. 34, and Order XLV., r. 9, in the discretion of the judge, the appeal must be dismissed, though the Court stated their inability to understand the practice alleged to exist in the Q. B. Div. that examination of a debtor as to his means, and proceedings to attach debts due to him, were luxuries the costs of which the debtor ought not to be called on to pay. *ADLINGTON v. CONYNGHAM*

C. A. [1898] 2 Q. B. 492

9. — *Costs on higher scale—Special grounds—R. S. C., Order LXV., r. 9.*

An appeal lies on the question whether any facts exist constituting special grounds for allowing costs on the higher scale under Order LXV., r. 9. *PAYNE v. CHISHOLM C. A. [1891] 1 Q. B. 531*

— Lunacy—Costs of inquiry.

See LUNACY—Costs. 11.

— Pauper appeals, Practice as to costs in—Appeal from New Zealand.

See HUSBAND AND WIFE. 75.

— Quarter sessions—Appeal to—Order for maintenance—Sum adjudged to be paid more than 3l.

See POOR LAW. 9.

**COSTS (Appeal)—continued.**

— Quarter sessions—Appeal to—Payment by treasurer of county or borough—Vagrancy.

See JUSTICES. 4.

— Special leave to appeal—Condition as to costs—Practice.

See CANADA. 15.

— Summary Jurisdiction (Married Women) Act—Appeal—Notes of proceedings in Court below.

See APPEAL. 36.

— Summary Jurisdiction (Married Women) Act. See CASES UNDER HUSBAND AND WIFE

— Summary Jurisdiction.

10. — *Trustee—"Costs, charges and expenses"—Discretion of judge—Leave to appeal—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49—R. S. C., Order LXV., r. 1.*

Where costs are in the discretion of the judge, the C. A. will assume that he has exercised his discretion, and will not entertain an appeal, unless it is satisfied that he has not exercised his discretion, but has applied some rule which he considered as excluding it.

*The City of Manchester*, (1880) 5 P. D. 221, followed. *Charles v. Jones*, (1886) 33 Ch. D. 80, not followed.

An appeal from an order for payment of "costs, charges and expenses" will not lie as to "costs" only, if the order is right as to "charges and expenses."

*Charles v. Jones*, 33 Ch. D. 80, followed on this point. *In re Chennell*, (1878) 8 Ch. D. 492, not followed. *Bew v. Bew*

C. A. [1899] W. N. 132; [1899] 2 Ch. 467

11. — *Trustee's costs in another action—R. S. C., 1883, Order LXV., r. 1—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49.*

A judgment with costs was given in the Q. B. Div. against a trustee who detained title-deeds. He then took out a summons in the Ch. Div. and got an order for payment of these costs out of the trust estate:—

*Held*, that an appeal lay to the C. A., since the question was not one of costs within Order LXV., r. 1, but of charges and expenses alleged to have been incurred in the execution of the trusts. *In re BEDDOE. DOWNES v. COTTAM*

C. A. [1893] 1 Ch. 547

**Apportionment.**

12. — *Claim and counter-claim—Admission of claim subject to counter-claim.*

On a trial before judge without a jury the claim was admitted by defts. subject to a counter-claim, and the costs of the action were allowed to plts. and of the counter-claim to the defts. On taxation the plts. claimed to be allowed the general costs of the action as if they had recovered the amount claimed less the counter-claim:—

*Held*, that the costs of the claim and counter-claim must be taxed as if they were separate actions.

Decision of Div. Ct., [1891] W. N. 87, reversed. *FINSKA ANGFARTYGS AKTIEBOLAGET v. BROWN, TOOGOOD & Co.*

C. A. [1891] W. N. 116

**COSTS (Apportionment)—continued.**

13. — *Partnership action—Costs how payable—Debt from partnership to one of the partners—Priority.*

In a partnership action the partnership assets consisted of a fund in court:—

*Held*, that the fund should be applied first in paying a debt due to one partner on loan account, then in placing the partners on a footing of equality as regarded capital, that the surplus should be applied in payment of the costs of the action, and that the rest of the costs should be borne by the partners in proportion to their interests. *ROSS v. WHITE*

C. A. [1894] 3 Ch. 326

14. — *Plaintiff successful as to one-third of claim—Costs—Discretion of judge—R. S. C., Order LXV., r. 1.*

The plt., resident in Cheshire, sued in Middlesex debt, resident in Flintshire, for 640*l.*, and recovered a verdict for 200*l.* Ordered, under Order LXV., r. 1, that the plt. should be allowed as against the debt. one-third of his costs, to be taxed as if the trial had been at Chester, and that the debt. should be allowed against the plt. two-thirds of his costs, to be taxed on the trial as held in Middlesex. *ROBERTS v. JONES. WILEY v. GREAT NORTHERN RY. CO.*

Hawkins J. [1891] 2 Q. B. 194

15. — *Plaintiff successful on only one issue.*

Of two issues involved in an action plt. succeeded in one only, and an order was made to tax and set off debt.'s costs relative to issue on which he was successful, and to tax plt.'s costs of rest of action:—

*Held*, that the proper course in the Ch. Div. was to apportion the costs ratably between the issues, and not to construe the order as giving the plt. all his costs, except so far as they had been increased by the issue on which he had failed. *JENKINS v. JACKSON*

C. A. [1891] 1 Ch. 89

**Costs of Reference.**

See Cases under ARBITRATION—Costs.

16. — *Reference to special referee—Costs of action—R. S. C., Order XXXVI., r. 59.*

An action was referred to a special referee with the full powers of a judge of the High Court, and the referee directed that the debts. recover against the plt. the costs of the action and of the award:—

*Held*, that the costs of the action included the costs of the reference. *PATTEN v. WEST OF ENGLAND IRON, TIMBER, AND CHARCOAL CO.*

Div. Ct. [1894] 2 Q. B. 159

**Counsel's Fees.**

— Moneys received by solicitor for client.

See SOLICITOR. 30.

17. — *Refreshers—"Clear day"—Second day.*

(A) The right to a refresher fee can only arise where the trial has lasted a "clear day" beyond the first five hours, whether "clear day" means a separate day of the week or only an additional

**COSTS (Counsel's Fees)—continued.**

period of five hours. *WALKER v. CRYSTAL PALACE DISTRICT GAS CO.*

Div. Ct. [1891] 2 Q. B. 300

NOTE.—But contra, see (B), (C) and (D) below.

Dissented from by Butt J. *The Courier*, [1891] P. 355.

And by Div. Ct. *O'Hara, Matthews & Co. v. Elliott & Co.*, [1893] 1 Q. B. 362.

(B) A collision case extended over two hours and a quarter on the first day, and five hours and a half on the second day. On taxation of costs, between party and party, refresher fees were allowed to the counsel of the successful party in respect of the last two and three-quarter hours on the second day:—

*Held*, that the taxing officer had a discretion to allow some refresher fee for any time during which the trial was substantially prolonged beyond five hours. *THE "COURIER"*

Butt J. [1891] P. 355

Followed by Div. Ct. *O'Hara, Matthews & Co. v. Elliott & Co.*, [1893] 1 Q. B. 362.

Applied by Bruce J. *The Hestia* (No. 2), [1895] W. N. 100.

(C) A case before a jury lasted four and a half hours the first day, and five hours the second:—

*Held*, that the counsel ought to be allowed refreshers for work done on the second day after the expiration of the time necessary to make up five hours, because such work was done on a "clear day" subsequent to the expiration of the five hours within the meaning of Order LXV., r. 27, sub-r. 8. *O'HARA, MATTHEWS & CO. v. ELLIOTT & CO.* - Div. Ct. [1893] 1 Q. B. 362

Applied by Bruce J. *The Hestia*. See below.

(D) Where two salvage actions were tried together, and the evidence in the first action was, so far as applicable, to be used in evidence in the second action:—

*Held*, that the attendance of counsel was necessary during the hearing of both actions, and that refreshers should be allowed. *THE "HESTIA"* (No. 2) Bruce J. [1895] W. N. 100

— Refreshers to counsel—County court practice.

See COUNTY COURT—Costs. 26.

— Special allowance where no local bar.

See COUNTY COURT—Costs. 24.

18. — *Three counsel.*

Costs of three counsel allowed, as between party and party, in a case raising many questions of law. *DASHWOOD v. MAGNIAC* (No. 2)

Chitty J. [1892] W. N. 54

19. — *Three counsel—Costs of, allowed—Lunacy—R. S. C., Order LXV., r. 27, sub-rr. 9, 47.*

Costs of three counsel allowed in a Lunacy inquiry of unusual length and difficulty. *In re CATHART* (No. 2) - C. A. [1893] W. N. 107

— Trustees—Costs of severance—Allowance of two counsel—Taxation.

See TRUSTEE—Costs. 45.

**County Court Scale.**

See Cases under COUNTY COURT—Costs.

**COSTS—continued.****Discretion of Court.**

*Order LXV., r. 1, and s. 5 of the Judicature Act, 1890, relate to the discretion of the Court as to costs.*

**20. — Compulsory purchase under special Act—Costs of payment out—Jurisdiction—R. S. C., 1883, Order LXV., r. 1—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.**

Sect. 5 of the Judicature Act, 1890, gives the Court jurisdiction over the costs in a petition for payment out of purchase-money of property purchased compulsorily under a special Act (in this case Michael Angelo Taylor's Act (57 Geo. 3, c. xxiv.), which contains no provision as to the costs of applications for payment out of purchase-money.

Judgment of Chitty J., [1894] 1 Ch. 53, affirmed. *In re FISHER* C. A. [1894] 1 Ch. 450

Referred to by C. A. *In re Wrexham, Mold and Connah's Quay Ry. Co.*, [1900] 1 Ch. 261, 269.

**21. — Costs of former trial to abide "result" of second trial—Refusal of certificate for costs.**

In an action of tort a new trial had been granted, with a direction that costs of the former trial should follow the "result" of the second trial, and at the new trial a verdict was found for one farthing damages, and the judge refused a certificate for costs:—

*Held*, that "result" meant the result of the new trial with regard to costs, and that the plt. was not entitled to any costs of the first trial. *BROTHERTON v. METROPOLITAN DISTRICT RY. JOINT COMMITTEE* - C. A. [1894] 1 Q. B. 666

**22. — Default of defence.**

Where a plt. moved for judgment in default of defence under Order xxvii., r. 11, the judge has the same discretion as to costs under Order LXV., r. 1, as in all other cases, with which the C. A. will not interfere unless there has been a disregard of principle or misapprehension of facts. *YOUNG v. THOMAS* C. A. [1892] 2 Ch. 134

**23. — "Good cause"—Action tried with a jury—Order LXV., r. 1.**

In an action for breach of contract to put house drainage in proper order, the plt. made a claim for special damage consequent on illness which broke out in his family, acting on the opinion of his doctor that the illness arose from defective drainage. The plt. succeeded in the action, but failed on this claim, and the judge gave the deft. the costs of the items of special damage on which the plt. had failed:—

*Held*, that there was "good cause" for the order. *FORSTER v. FARQUHAR*

C. A. [1893] 1 Q. B. 564

**24. — Habeas corpus—Judicature Act, 1890 (53 & 54 Vict. c. 44), ss. 4, 5.**

The right to grant a writ of habeas corpus not being confined to the Crown side of the Q. B. Div., there is jurisdiction when granting an application for habeas corpus to order the deft. to pay the costs of the application under s. 5 of the Judicature Act, 1890. *REG. v. JONES*

Div. Ct. [1894] 2 Q. B. 382

**COSTS (Discretion of Court)—continued.**

**25. — Jurisdiction—Order LXV., rr. 1, 20—Costs already dealt with under Order XIV., r. 9 (a).**

On an application under Order XIV., r. 1, the judge at chambers, on appeal from an order of a master, gave liberty to defend, and directed that the costs of the application to the master, and of the appeal, should be costs in the cause. At the trial, before a judge without a jury, judgment was entered for the plt. with costs, less the costs of the proceedings under Order XIV.:—

*Held*, that the judge at the trial had no jurisdiction with regard to costs dealt with by an order of a judge at chambers, and that his judgment must be varied accordingly. *KOOSSEN v. ROBE* - - - C. A. [1897] W. N. 25 (9)

**26. — Prohibition—Rule absolute without pleadings.**

The right to grant prohibition not being exclusively in the jurisdiction of the Crown side of the Q. B. Div., the High Court, in making a rule absolute for prohibition without pleadings, may make an order as to costs under s. 5 of the Judicature Act, 1890. *REG. v. LONDON COUNTY (JUSTICES OF) (No. 3)* C. A. [1894] 1 Q. B. 453

**27. — Proper place of trial—"For good cause"—Costs—Discretion of judge.**

Where the place of trial of country cases has been improperly fixed, the Court has jurisdiction in its discretion to disallow the costs of the successful plt. so far as increased by the improper selection of the venue. *ROBERTS v. JONES. WILLEY v. GREAT NORTHERN RY. CO.*

*Hawkins J.* [1891] 2 Q. B. 194

— Revenue appeals.

*See REVENUE.* 100, 115, 124.

**28. — Stay of proceedings—Company in liquidation—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 85—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.**

Where an order is made staying proceedings in an action brought against a co. which is being voluntarily wound up to the plt.'s knowledge when the writ issued, the Court or judge has power to order the plt. to pay the costs of the application. *FREEMAN v. GENERAL PUBLISHING CO.* -

Div. Ct. [1894] 2 Q. B. 380

— Trade-mark—Infringement.

*See TRADE-MARK.* 1.

**29. — Trustee's costs—Retaining out of estate—Judge making no order as to costs.**

Where, on an originating summons calling on a trustee for his accounts, the judge does "not think fit to make an order as to the costs," it operates as a judicial decision that the trustee is not entitled to his costs of the action, and is inconsistent with his retaining them out of the estate. *In re HODGKINSON. HODGKINSON v. HODGKINSON*

C. A. [1895] 2 Ch. 190

**Executors.**

*See Cases under EXECUTOR.*

**Higher and Lower Scale.**

*Order LXV., rr. 7, 8, 9 relate to costs on the higher and lower scale.*

**COSTS (Higher and Lower Scale)—continued.**

30. — *Higher scale—Allegations of fraud—R. S. C., 1883, Order LXV., r. 9.*

An allegation of fraud is not in itself a special ground, within Order LXV., r. 9, sufficient to enable the Court to order costs to be paid on the higher scale, although the action be one which involves a great deal of investigation and a lengthy trial. *ASSETS DEVELOPMENT CO. v. CLOSE BROTHERS & Co.* — *Buckley J.*

[1900] W. N. 176; [1900] 2 Ch. 717

31. — *Special grounds—Jurisdiction.*

Before a judge can allow fees on the higher scale in App. N., there must be special grounds. On the question whether there be special grounds, an appeal lies. Unless special grounds be shewn, the Court will not interfere with the judge's discretion. *PAINE v. CHISHOLM*

C. A. [1891] 1 Q. B. 531

32. — *Special grounds—Action for misrepresentation as to public-house takings.*

The trial of an action for deceit as to the takings of a public-house lasted seven days:—

*Held*, that the action involved no difficulty sufficient to justify an order for costs on the higher scale. *PAINE v. CHISHOLM*

C. A. [1891] 1 Q. B. 531

33. — *Special grounds—Scientific evidence—Admiralty action—Plans—R. S. C., Order LXV., r. 9.*

In an Admiralty action relating to a claim for damages against a port authority for not keeping the bed of the harbour in a proper condition for ships to lie on at low water, a defence was raised that the damage sustained was due to the inherent weakness of the injured ship, which made it necessary to call a number of scientific witnesses and to prepare plans shewing the strength in construction of the ship:—

*Held*, that the plts. were entitled to costs on the higher scale, on the ground that the case was special in its nature, and had been so presented as greatly to facilitate its trial. *THE "ROBIN"* — *Jeune J.* [1892] P. 95

34. — *Special grounds—Scientific expert evidence—Patent action—R. S. C., 1883, Order LXV., r. 9.*

In an action for infringement of an electrical patent, the decision depended on questions not of law but of electrical science, and most of the witnesses were experts in science:—

*Held*, that costs should be allowed on the higher scale under Order LXV., r. 9. *HOPKINSON v. ST. JAMES' AND FALL MALL ELECTRIC LIGHTING CO.* — *Romer J.* [1893] W. N. 5

#### House of Lords.

— Injunction—Offer of undertaking by defendant. *See INJUNCTION.* 29.

— Successful pauper appellant—Practice. *See APPEAL.* 17.

#### Interest on Costs.

35. — *Costs paid to solicitor on undertaking to refund—Successful appeal—Repayment.*

At the trial of this action judgment was given

**COSTS (Interest on Costs)—continued.**

for the plts., with costs. The defts. intending to appeal, it was ordered that they should pay the amount of the plts.' taxed costs to their solicitors, on their personal undertaking to refund the amount in case the appeal should succeed. The C. A. reversed the decision, and ordered that the plts. should pay the defts.' costs in both courts. The defts. had paid 1105*l.* to the plts.' solicitors, this being the amount of the plts.' taxed costs. In drawing up the order of the C. A. the registrar inserted a direction that the plts. should pay the 1105*l.* to the defts., together with interest thereon, from the date of payment to the plts.' solicitors up to the date of the judgment of the C. A. The C. A. had not given any express direction for the payment of interest. The plts. objected to pay the interest, and moved to vary the order accordingly:—

*Held*, that the direction for payment of interest must be omitted.

*Per Lindley M.R.*: The direction for payment of interest ought not to be inserted as a common form. He would not express any opinion whether the Court had power to order interest to be paid. *EDGE & SONS v. W. GALLON & SON*

C. A. [1899] W. N. 137

36. — *Order for costs—Judgments Act, 1838 (1 & 2 Vict. c. 110), ss. 17, 18, 20—R. S. C., 1883, Order XLII., rr. 14, 16.*

An interlocutory order directing the payment of costs by one person to another comes within s. 18 of the Judgments Act, 1838, and carries interest on the costs thereby awarded as from the date of such an order. *TAYLOR v. ROE (No. 3)*

*Stirling J.* [1894] 1 Ch. 413

#### Interlocutory Applications.

37. — *Costs reserved.*

Where interlocutory applications have been ordered to stand to the trial and are not then mentioned to the judge, the costs of such applications are to be treated as costs in the action and taxed accordingly, and need not be mentioned in the judgment. Where interlocutory applications have been disposed of, but the costs have been reserved, such costs are not to be mentioned in the judgment or order, or allowed on taxation, without the special direction of the judge. *BRITISH NATURAL PREMIUM PROVIDENT ASSOCIATION v. BYWATER* — *Byrne J.* [1897] 2 Ch. 531

#### Married Woman.

38. — *Restraint on anticipation—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.*

In view of s. 2 of the Married Women's Property Act, 1893, where an action by a married woman is dismissed with costs, the words "with liberty to apply for payment out of any property which is subject to a restraint on anticipation," should be added to the order. *DAVIES v. TREHARRIS BREWERY CO. Chitty J.* [1894] W. N. 198

39. — *Restraint on anticipation—Proceeding instituted.*

(A) The words "proceeding instituted" in s. 2 of the Married Women's Property Act, 1893,

**COSTS (Married Woman)—continued.**

do not include a motion or appeal by a married woman deft. *HOOD BARRS v. CATHCART* (No. 2)

C. A. affirm. North J. [1894] 3 Ch. 376

This case was approved by H. L. (E.). *Hood Barrs v. Heriot*, [1897] A. C. 177.

Followed by Chitty J. *Hollington v. Dear*, [1895] W. N. 35.

(B) A counter-claim is included in those words. *HOOD BARRS v. CATHCART* (No. 4)

Div. Ct. [1895] 1 Q. B. 873

(C) A petition presented by a married woman deft. is not included. *HOLLINGTON v. DEAR*

Chitty J. [1895] W. N. 35

40. — *Security for costs—Appeal—Married woman—Attachment—Order LVIII., r. 15.*

The question whether an order shall be made for security for the costs of an appeal to the C. A. is in all cases a matter for the discretion of the Court.

*Semble*, however, that, as a general rule, such an order will not be made where the appeal is against an order for attachment. *HOOD BARRS v. HERIOT* — — — C. A. [1896] 2 Q. B. 375

See *Hood Barrs v. Heriot*, H. L. (E.) [1897] A. C. 177.

41. — *Set-off—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2—R. S. C., Order LXV., r. 27, sub-s. 21.*

In an action against a married woman, judgment was recovered against her, execution as to costs recoverable in the action being limited to her separate property. Subsequently, after the married woman had become a widow, the plts. became liable to her for costs in other proceedings:—

*Held*, that the plts.'s costs in the first action could be set off against costs payable to deft. personally on the subsequent proceedings. *PELTON BROTHERS. v. HARRISON* (No. 2)

C. A. [1892] 1 Q. B. 118

**Payment into Court.**

— Payment into court on admission.

See Cases under PRACTICE—Payment into Court.

**Payment out of Court.**

42. — *Petition—Service on parties bound by scheme under City of London Parochial Charities Act, 1883.*

The costs of service of a petition for payment out of Court on various corporations and public bodies, disallowed, as being unnecessary, since the parties might have been joined as co-petitioners. An application to limit the general costs to such as would have been incurred if the application as to sums under 1000*l.* had been by summons was refused. *In re Rector and Churchwardens of St. Albans, Wood Street*

Kekewich J. [1891] W. N. 204

— Practice.

See Cases under PRACTICE—Payment out of Court.

**Public Authorities Protection.**

43. — *Act done in execution of Act of Parliament—Public Highway—Action of trespass—Costs*

**COSTS (Public Authorities Protection)—contd.**

*as between solicitor and client—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (b)—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 26.*

A landowner denying that a road over his land was a public highway, and threatening proceedings against any person using it, two officials of the county council were directed by the council, acting under the provisions of the Local Government Act, 1894, s. 26, to use the road for the purpose of formally testing the right, which they accordingly did. The landowner thereupon brought an action of trespass against them, but at the trial it was found that the road was a public highway, and judgment was given for the defts.:—

*Held*, that, the acts in respect of which the action was brought having been done by the defts. in pursuance or execution or intended execution of the Local Government Act, 1894, s. 26, the case came within the Public Authorities Protection Act, 1893, s. 1, and therefore the defts. were entitled to costs to be taxed as between solicitor and client under that section. *GREENWELL v. HOWELL* — C. A. [1900] W. N. 49; [1900] 1 Q. B. 535

44. — *Action against public authority—Discretion to deprive successful defendants of costs—R. S. C., Order LXV., r. 1—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (b).*

The Public Authorities Protection Act, 1893, s. 1 (b), which provides that, wherever in an action within the Act a judgment is obtained by the deft., it shall carry costs to be taxed as between solicitor and client, does not take away the discretion given to the judge at the trial by Order LXV., r. 1, to deprive the successful deft. of costs for good cause:—

So *held*, affirming the judgment of Lord Russell of Killowen C.J.

What constitutes "good cause" within Order LXV., r. 1, discussed. *BOSTOCK v. RAMSEY* URBAN DISTRICT COUNCIL

Lord Russell of Killowen C.J. [1899] W. N. 261; [1900] 1 Q. B. 357; C. A. [1900] W. N. 169; [1900] 2 Q. B. 616

45. — *Consent order dismissing action with costs—Costs—Taxation—Action against public authority—"Judgment obtained" by defendants—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (b).*

In an action against a county council for acts done by them in pursuance of the Local Government Act, 1894, an order was made in chambers by consent that the action be dismissed, and that the plt. do pay to the defts. their taxed costs of the action:—

*Held*, that the defts. had obtained judgment within the meaning of s. 1 (b) of the Public Authorities Protection Act, 1893, and that the costs must therefore be taxed as between solicitor and client. *SHAW v. HERTFORDSHIRE COUNTY COUNCIL* — C. A. [1899] W. N. 103; [1899] 2 Q. B. 282

Referred to by C. A. *Bostock v. Ramsey* Urban Council, [1900] 2 Q. B. 616, 627.

46. — *Dismissal of action against corporation*

**COSTS (Public Authorities Protection)—contd.**

—“*Action*”—*Injunction*—*Costs as between solicitor and client*—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1, sub-ss. (b), (c).

The word “*action*” as used in s. 1 of the Public Authorities Protection Act, 1893, includes all actions in the Ch. Div., whether actions for an injunction or actions partly for an injunction and partly for damages. Therefore in any such action against a public authority judgment for the defts. carries the right to an order for costs to be taxed as between solicitor and client, and the Court has no discretion in the matter. *HARROP v. OSSETT CORPORATION*

**Romer J. [1898] 1 Ch. 525**

Referred to by *Romer J. Toms v. Clacton Urban District Council*, [1898] W. N. 61 (10). See next case.

47. — *Dismissal of action against public authority*—*Costs as between solicitor and client*—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1, sub-s. (b).

An action was brought against an urban district council claiming an injunction to restrain the defts. from using certain portions of land purchased by them for a cemetery on the ground that the plt. was entitled to the benefit of s. 9 of the Burial Act, 1855 (18 & 19 Vict. c. 128), prohibiting interments within 100 yards of a dwelling-house without the consent of the occupier. The action having been tried and dismissed, the defts. asked for costs as between solicitor and client under s. 1, sub-s. (b), of the Public Authorities Protection Act, 1893, citing *Harrop v. Ossett Corporation*, [1898] 1 Ch. 525:—

*Held*, that the action was brought against the defts. for an “act done in pursuance of a public duty,” and that the Act consequently applied, and the defts. were entitled to costs as between solicitor and client. *TOMS v. CLACTON URBAN DISTRICT COUNCIL*

— **Romer J. [1898] W. N. 61 (10)**

48. — *Judgment for defendants*—*Action for acts done in execution of Statute*—*Costs as between solicitor and client*—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1.

By the Public Authorities Protection Act, 1893, s. 1, judgment for the deft. in an action brought in respect of acts or alleged defaults in execution of an Act of Parliament, or of any public duty or authority, carries costs as between solicitor and client. This provision does not apply to appeals.

Decision of C. A., reported as *Fielding v. Morley Corporation*, [1899] 1 Ch. 1, affirmed. *FIELDEN v. MORLEY CORPORATION*

**H. L. (E.) [1900] W. N. 40; [1900] A. C. 133**

49. — *Judgment for defendant with costs*—*Taxation*—*Costs as between solicitor and client*—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1, sub-s. (b).

Where a deft., a public authority, in an action falling within the Public Authorities Protection Act, 1893, succeeds, so that substantially the deft. obtains judgment, the deft. is entitled under the Act to costs to be taxed as between solicitor and client, notwithstanding that the judgment

**COSTS (Public Authorities Protection)—contd.**

as drawn up merely directs the plt. to pay the deft.’s costs without directing how such costs are to be taxed. The omission of such a direction will not deprive the deft. of the benefit of the statute, the Court having no discretion in the matter when once it is clear that in substance judgment has been obtained by the deft. It is not necessary that the judgment itself should shew on its face that the action was one falling within the Act.

*Finlay v. Seaton*, (1808) 1 Taunt. 210, *Forman v. Dawes*, (1843) 11 M. & W. 730, and *Lister v. Leather*, (1858) 4 K. & J. 425, discussed. *NORTH METROPOLITAN TRAMWAYS CO. v. LONDON COUNTY COUNCIL* — **Romer J. [1898] 2 Ch. 145**

Referred to by C. A. *Bostock v. Ramsey Urban Council*, [1900] 2 Q. B. 616, 643.

**Security for Costs.**

*Order LXV., rr. 6, 6A, relate to security for costs.*

50. — *Appeal*—*Security for costs, ordered but not given*—*Application by appellant for stay of execution.*

An appellant, having been ordered to give security (10*l.*) for the costs occasioned by his appeal, but not having yet given the security, applied to the Court to stay execution, pending the appeal, under the order appealed from:—

*Held*, that the application for stay of execution was a proceeding in the appeal, and that the Court could not listen to it until the security had been given. *IN RE CORPORATION OF BRITISH INVESTORS* — **C. A. [1897] W. N. 36 (3)**

51. — *Delay*—*Application after delivery of defence*—*R. S. C., 1883, Order LXV., r. 6.*

The Court has under Order LXV., r. 6, of the Rules of the Supreme Court, 1883, a discretion to order security for costs to be given at any stage of the proceedings, and there is no hard and fast rule that the application for security must be made before any material step is taken in the action. Accordingly, an application by a deft. for security to be given by the plt. is not too late merely because it is made after the delivery of the defence. The rule laid down in *Martano v. Mann*, (1880) 14 Ch. D. 419, and *Lydney and Wiggool Iron Ore Co. v. Bird*, (1883) 23 Ch. D. 358, applied.

Decision of Kekewich J. reversed. *IN RE SMITH. BAIN v. BAIN* **C. A. [1896] W. N. 88 (16)**

52. — *Foreign company*—*Appellant resident abroad*—*Assets within the jurisdiction*—*Fluctuating assets.*

There is no hard and fast rule that a person resident abroad must give security for costs. Such residence makes a *prima facie* case for requiring security, but *held*, that a foreign co. resident abroad need not give security for the costs of an appeal where it could shew sufficient goods within the jurisdiction to answer the costs of the proceeding. *IN RE APOLLINARIS CO.’S TRADE-MARKS (No. 1)* — **C. A. [1891] 1 Ch. 1**

53. — *Foreign company*—*Trade-mark*—*Application to expunge mark*—*Right of foreign company to appeal.*

A foreign co. which had no address for service

**COSTS (Security for Costs)—continued.**

in this country, but who appeared and submitted to the jurisdiction, *held* to be entitled to be added as respondents to a motion for expunging a trademark registered by them without giving security for costs. *In re LA SOCIÉTÉ ANONYME DES VERRERIES DE L'ÉTOILE* (No. 1)

Stirling J. [1893] W. N. 119

54. — *Foreign defendant resident abroad—Counter-claim substantially amounting to defence—Discretion.*

Where a counter-claim was set up by a deft. resident out of the jurisdiction which arose out of the same transaction as the claim, and amounted substantially, although not technically, to a defence to the action:—

*Held*, that the Court had a discretion to refuse to order security for costs to be given. *NECK v. TAYLOR* — C. A. [1893] 1 Q. B. 560

55. — *Foreign plaintiff—Temporary residence within the jurisdiction—R. S. C., Order LXV., r. 6 (a).*

The words of Order LXV., r. 26 (a), which require a foreigner "temporarily resident within the jurisdiction" to give security for costs, have an elastic meaning:—

*Held*, that they did not apply to a foreigner who shewed that his business engagements would keep him in England for nearly twelve months. *MICHELIS v. EMPIRE PALACE CO.*

C. A. [1892] W. N. 38

56. — *Foreign plaintiff resident abroad—Action on foreign judgment.*

Where a foreigner resident out of the jurisdiction brings an action in this country, the fact that the action is brought on a foreign judgment recovered in proceedings in which the deft. appeared does not affect the right of the deft. to security for costs. *CROZAT v. BROGDEN*

C. A. [1894] 2 Q. B. 30

57. — *Foreign plaintiff resident abroad—New trial.*

Where in an action by a foreigner resident abroad who has given security for costs of the action under an order made at chambers, the deft. succeeds and the plt. moves for a new trial, application should be made at chambers to increase the amount of the security, and an appeal from chambers in such a case lies direct to the C. A. *BENTSEN v. TAYLOR, SONS & CO.* (No. 1) — C. A. [1893] 2 Q. B. 193

58. — *Foreigner resident abroad—General inquiry—Claimant to fund in court—Person in position of plaintiff.*

As a general rule a claimant under a general inquiry cannot be required to give security for costs.

Where a solicitor was ordered to pay into court a fund in his hands belonging to a client subject to the claims of certain alleged incumbancers thereon, and an inquiry was directed who was entitled thereto, a foreign claimant resident out of the jurisdiction was ordered to give security for costs upon the ground that, in the special circumstances of the case, the inquiry was equivalent to an interpleader issue in which the claimant was in the position of a plt. *In re MILWARD & Co.* — C. A. [1900] W. N. 42;

[1900] 1 Ch. 405

**COSTS (Security for Costs)—continued.**

— *Forma pauperis.*

See Cases under PRACTICE — *Forma Pauperis.*

— *New trial—Foreign plaintiff resident abroad.*

See No. 57, above.

59. — *New trial, Motion for—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1—R. S. C., Order LVIII., r. 15.*

As a general rule security for costs will not be ordered against an applicant for a new trial.

*HECKSCHER v. CROSLLEY* C. A. [1891] 1 Q. B. 224

— *Payment into court as security for costs—Denial of liability.*

See BANKRUPTCY — *Secured Creditor.* 231.

60. — *Person resident abroad—Respondent to petition for revocation of patent—Actor.*

A patentee, resident out of the jurisdiction, who comes in as a respondent to a petition to revoke his patent is in no sense an "actor" in the meaning of the observations of the Court in *Apollinaris Co. v. Wilson*, (1886) 31 Ch. D. 632, and the fact that he would or might be required to begin does not for the present purpose put him in the position of a plt., and the fact that he was or might be defending on behalf of others was immaterial. *In re MILLER'S PATENT*

Kekewich J. [1894] W. N. 4

61. — *Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37)—Appeal under—Security for costs of appeal—R. S. C., Order LVIII., r. 15.*

The ordinary rule of practice of the C. A. as to ordering security for the costs of an appeal is applicable to appeals under the Workmen's Compensation Act, 1897. *HALL v. SNOWDON, HUBBARD & CO.* — C. A. [1899] 1 Q. B. 593

62. — *Writ—Indorsement of plaintiff's address—Wrong address indorsed—Motion to set aside writ—Plaintiff out of jurisdiction—R. S. C., Order IV., r. 1.*

On a motion by the deft. to set aside the writ and the service thereof, on the ground that the true address of the plts. was not indorsed thereon, the plts. being an American co. out of the jurisdiction, and the deft. not being able to find them at the address given in England:—

*Held*, that the proper order to make was, that the plts. should give security for costs and pay the costs of the motion. *PITTSBURG CRUSHED STEEL CO. v. JACOB MARX & CO.*

North J. [1897] W. N. 36 (5)

**Sequestration.**

See Case under SEQUESTRATION.

**Set-off.**

63. — *House of Lords—R. S. C., 1883, Order LXV., r. 14.*

The Appeal Committee after final judgment has been given in the appeal will not set off costs due by an appellant in the H. L. against balance costs due to the appellant as the result of a decision in the C. A. If there is a probability of any question of costs or any other matter arising after and as incident to the appeal, the matter ought to be mentioned at the hearing. *RUSSELL v. RUSSELL* — H. L. (D.) [1898] A. C. 307

**COSTS (Set-off)—continued.**

— Married woman, Action against.

See HUSBAND AND WIFE. 47.

**64. — Solicitor's lien—Independent proceedings**

— *R. S. C.*, 1883, *Order LXV.*, rr. 14, 27, sub-r. 21.

Costs incurred in the High Court cannot be set off against costs obtained in the county court, although the proceedings are between the same parties. *Order LXV.*, r. 14, does not apply to costs in independent proceedings. *HASSELL v. STANLEY*

*Chitty J.* [1896] 1 Ch. 607

See also *In re BASSETT*

*V. Williams J.* [1896] 1 Q. B. 219

**Sets of Costs.**

**65. — Settled land—Tenant for life—Costs of sale—Separate solicitors—Settled Land Act, 1882** (45 & 46 Vict. c. 38), s. 2, sub-s. 6; s. 21, sub-s. x; s. 53.

Twenty-five persons had been declared by an order of the Court to have the powers of a tenant for life. On a sale of the settled property the vendors employed one solicitor to conduct the sale, but in carrying out the sale, four of them, or their incumbancers, employed other solicitors to peruse and complete:—

*Held*, that there was nothing to disentitle the four persons from employing separate solicitors, and that their costs should be allowed out of the proceeds of the sale. *SMITH v. LANCASTER*

*C. A.* reversing *Kekewich J.* [1894] 3 Ch. 439

**Severance of Defence.**

**66. — Administration action—Practice—Apportionment of costs—Right of appeal—Judicature Act, 1873** (36 & 37 Vict. c. 66), s. 49—*R. S. C.*, 1883, *Order LXV.*, r. 1.

A trustee ought not to be deprived of his costs out of the trust estate merely on the ground that he has severed from his co-trustee in his defence to an action to administer the estate.

He ought to have an opportunity of explaining the reasons for his severance, so that the Court may be able to decide judicially whether the severance was improper.

The allowance of the costs of a trustee out of the trust estate is not a matter "left to the discretion of the Court" within the meaning of s. 49 of the Judicature Act, 1873; and consequently a trustee has a right to appeal against an order depriving him of costs out of the estate, and giving the whole of the costs to his co-trustee.

Decision of *Kekewich J.* reversed. *In re ISAAC. CRONBACH v. ISAAC*

*C. A.* [1897] 1 Ch. 251

— Allowance of two counsel—Taxation—Trustees.

See TRUSTEE—Costs. 45.

— Builder—Indemnity—Third party procedure.

See LIGHT AND AIR. 14.

— Separate sets of costs—Probate action.

See PROBATE. 92.

**Shorthand Notes.**

— Consultations with counsel—Shorthand notes.

See NEW SOUTH WALES. 11.

**67. — Motion for new trial—Summing up of judge.**

Application having been made, on behalf of

**COSTS (Shorthand Notes)—continued.**

the successful party on a motion for judgment or a new trial of the action, that the costs of a shorthand writer's notes of the summing-up of the judge at the trial might be allowed: *Lord Esher M.R.* (having consulted all the other judges of the *C. A.*) said that there was no hard and fast rule that such costs would never be allowed, but they would be allowed only in very exceptional cases. The present case was not an exceptional one, and therefore the costs would not be allowed. *ANDREWS v. MOCKFORD*

*C. A.* [1896] 1 Q. B. 372, at p. 385

— Particulars of objections—Practice.

See PATENT—Practice. 30—33.

**68. — Transcript of judgment—Reported case.**

Costs of a transcript of shorthand notes of judgments of Lord Justices allowed though a full report of the case had been published. *In re CATHCART* (No. 2)

*C. A.* [1893] W. N. 107

**Solicitor, Personal Payment by.**

— Bankruptcy of client—Submission to pay.

See SOLICITOR—Costs. 26.

— Generally.

See Cases under SOLICITOR—Costs.

**69. — Personal order to pay—Notice, Omission to give—Absence of material witness—*R. S. C.*, 1883, *Order LXV.*, r. 11.**

On application for adjournment of a trial owing to the illness of a material witness, the solicitors may be ordered to pay the costs of the day where they fail to give proper notice of such illness, if known by them in time to keep the case out of the list. *SHORTER v. TOD-HEATLY*

*Kekewich J.* [1894] W. N. 21

— Repayment of costs—Reversal of judgment.

See SOLICITOR—Costs. 71.

**70. — Unauthorized use of plaintiff's name—Right of defendants to apply for payment of costs by solicitors.**

Where an action is brought in the name of a person as plt. without his authority, and he subsequently repudiates the action, the defs., on application in the action, may obtain an order for payment of their costs by the solicitor who issued the writ.

So *held*, in a case where an infant was joined as co-plt. by solicitors on the assumption that he was of full age.

*Frieker v. Van Grutten*, [1896] 2 Ch. 649, considered and applied. *GEILINGER v. GIBBS*

*Kekewich J.* [1897] 1 Ch. 479

**Taxation.**

**71. — Appeal—Number of copies of documents to be furnished.**

On an appeal relating to the construction of a will one copy only was furnished for the use of the Lords Justices, the reason alleged for this course being that the taxing masters were chary of allowing the cost of three copies in a small case. The Lords Justices protested against the notion that it was possible for the Court to perform its duty properly in construing a will or other instrument unless a copy of such instrument was provided for the use of each member



**COSTS (Taxation)—continued.**

of the Court, and intimated that the cost of copies so provided ought to be allowed on taxation. **NOTE ON PRACTICE**

C. A. [1897] W. N. 8 (15)

**72. — Common order for taxation, how obtained.**

The Court has jurisdiction to make a common order to tax either on summons, or motion, or petition of course, or on writ of summons. *In re FENTON* — **Kekewich J.** [1894] W. N. 128

— Copyright—Infringement—Solicitor and client costs.

See **COPYRIGHT—Infringement.** 12, 13.

**73. — Correspondence.**

The allowance or taxation of the costs of copies of correspondence used at the trial is a matter for the discretion of the taxing master; but in exercising his discretion he ought to ascertain how much was necessary and proper to be supplied to counsel or the Court for the proper argument and decision of the case. **BUDGETT v. BUDGETT** (No. 2) **Kekewich J.** [1895] 1 Ch. 202

Referred to by **Kekewich J.** *In re Margetts*, [1896] 2 Ch. 263, 265.

**74. — Counter-claim.**

In an action where there is a claim and counter-claim, the party ordered to pay or receive the costs of the action pays or receives the whole of such costs as if there were no counter-claim.

The party ordered to pay or receive the costs of the counter-claim pays or receives the costs occasioned by the counter-claim, and in determining what they are, costs which have been saved by a counter-claim being brought instead of a cross-action are not to be taken into account.

Costs which have been incurred partly in support of or in opposition to a defence, and partly in support of or in opposition to a counter-claim, must be apportioned by the taxing master, but no costs incurred in the action which have not been increased by reason of the counter-claim are to be apportioned.

*Saner v. Bilton*, (1879) 11 Ch. D. 416, and *Shrapnel v. Laing*, (1888) 20 Q. B. D. 334, considered.

Decision of **Channell J.**, affirming the decision of the taxing master, reversed. **ATLAS METAL CO. v. MILLER** — **C. A.** [1898] 2 Q. B. 500

— County court registrar—Taxation by.

See **BANKRUPTCY—Costs.** 76.

**75. — Discretion and duty of taxing master.**

Where the taxing master has gone through the whole of the pleadings and evidence the Court will not interfere with his discretion. The judge ought not to go into matters of detail.

(A) **BUDGETT v. BUDGETT** (No 2)

**Kekewich J.** [1895] 1 Ch. 202

(B) **OLIVER v. ROBBINS**

**Kekewich J.** [1894] W. N. 199

— In district registry.

See **PRACTICE—District Registry.** 19, 20.

**76. — "Full compensation" — Extra costs —**

**Local government—Damage by reason of exercise of powers of Act—Costs of legal proceedings—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 308.**

"Full compensation" for damage sustained

**COSTS (Taxation)—continued.**

by reason of the exercise of any of the powers of the Act under s. 308 of the Public Health Act, 1875, does not include extra costs of legal proceedings which have been incurred, over and above the taxed party and party costs, by a person against whom the local authority has unsuccessfully proceeded under the Act.

Proceedings having been taken under ss. 94–96 of the Public Health Act, 1875, by the respondents, a local authority, against the appellant in respect of a nuisance, an order to abate the nuisance was made against the appellant by the justices. He appealed against the order to quarter sessions, who dismissed the appeal, subject to a case. On the hearing of the case a Div. Ct. ordered that the order of quarter sessions should be quashed with costs, and that the respondents should pay to the appellant his costs of the appeal to the High Court to be taxed. The costs of the two appeals were taxed and paid to the appellant. In prosecuting the appeals the appellant reasonably incurred costs to a greater amount than the taxed costs which he received, and he claimed from the respondents the difference between the taxed costs and the amount so expended by him, as compensation under s. 308 of the Public Health Act, 1875:—

*Held*, that he was not entitled to recover the amount so claimed by him.

Decision of Div. Ct., [1900] W. N. 96; [1900] 2 Q. B. 104, affirmed. **BARNETT v. ECLES CORPORATION** — **C. A.** [1900] W. N. 145; [1900] 2 Q. B. 423

**77. — Representation order—R. S. C., 1883, Order XVI., r. 32; Order LXV., r. 1.**

On deciding as to the construction of a will, representation orders were made in respect of each of the three classes of persons interested:—

*Held*, that costs should be given as between solicitor and client. *In re DAVIES, JENKINS v. DAVIES* — **Kekewich J.** [1891] W. N. 104

**78. — Service—Claim for liquidated demand—Payment of debt and costs—Further costs of substituted service—Taxation—Fixed costs—R. S. C., Order III., r. 7; Order LXV., r. 27, sub-r. 38—Practice Rule 18.**

Appeal from an order of a judge at chambers refusing a review of taxation of costs. The writ of summons was specially indorsed with a claim for 410*l.* and three guineas costs. An order was obtained for substituted service. The amount indorsed on the writ was paid, within four days of service, to the plt.'s solicitors, who demanded in addition 2*l.* 10*s.* for the cost attending the substituted service, and that sum was paid under protest. The deft. obtained an order to tax under Order III., r. 7. The plt.'s solicitors carried in a bill for 6*l.* 4*s.* 8*d.*, the extra amount over the sum received being for costs subsequently incurred. The master indorsed the order "Costs allowed at 4*l.* 3*s.*," that is, three guineas the amount indorsed on the writ and 1*l.* for fixed costs of substituted service under the Central Office Practice Rule 18, and he directed that the plt. should pay the costs of the order and taxation. The plt. put in objections to which the master answered that he had taxed according to the invariable rule of practice, after consulting

**COSTS (Taxation)—continued.**

the head of the Writ Department. The plt. applied for an order to review the taxation, which was refused by Lawrance J., who gave leave to appeal. *FLATAU v. CULLEN*

C. A. [1899] W. N. 206

**79. — Taxing master's reasons.**

The taxing master should in all cases shew to both parties the reasons he is prepared to submit to the Court for the disallowance of any item. *DASHWOOD v. MAGNIAC* (No. 2)

Chitty J. [1892] W. N. 54

**80. — Trustee's costs—Statute-barred items.**

Where there is a direction to ascertain the costs, charges, and expenses of trustees, statute-barred costs should be included, for the Statutes of Limitation bar the remedy, not the debt, and the object of the order is to give effect to the trustee's right of indemnity, which extends to fair claims of every kind, and not merely to those enforceable by action. *BUDGETT v. BUDGETT* (No. 2) - - *Kekewich J.* [1895] 1 Ch. 202

Referred to by *Kekewich J.* In *re Margetts*, [1896] 2 Ch. 260, 265.

**81. — Waiver of taxation—Agreed costs—Consent order—Payment out of court.**

It is not the practice to pay agreed costs to solicitors, without the personal knowledge of the party interested in such payment; therefore upon an application, by consent of plts. and defts., for leave to alter an order of November 30, 1897, by waiving taxation of costs thereby directed, and for payment out of a fund in court of an agreed amount of costs to the plts.' solicitor, the Court directed a letter to be written by the solicitor to the person interested in the fund, and held that, upon production to the registrar of a letter in reply waiving taxation and consenting to payment of the agreed amount of costs, the order might be annulled as asked. In *re COSIER. HILL BROS. v. HUMPHREYS* *Romer J.* [1898] W. N. 8 (12)

**82. — Witnesses' expenses—R. S. C., 1883, Order LXV., r. 27, sub-rs. 9, 37.**

Allowances for travelling and hotel expenses of witnesses are in the discretion of the master, and are not regulated by the common law scale of 1853. *EAST STONEHOUSE LOCAL BOARD v. VICTORIA BREWERY CO.* *North J.* [1895] 2 Ch. 514

**83. — Witnesses' expenses—Scientific witnesses—Preparatory experiments.**

Fees charged by scientific witnesses in patent actions for time occupied in making experiments preparatory to the trial will be allowed on taxation. *LEONHARDT v. KALLE*

Chitty J. [1895] W. N. 97

— Taxation by county court registrar.

See *BANKRUPTCY—Costs.* 76.

**Unnecessary Proceedings.****84. — Next friend—Useless litigation.**

The costs of unsuccessful litigation by next friend should not be paid out of the estate.

(A) Observations of *Lindley L.J.* In *re FISH. BENNETT v. BENNETT* C. A. [1893] 2 Ch. 413, 422

(B) In *re HICKS. LINDON v. HEMERY* *North J.* [1893] W. N. 138

**COSTS—continued.****Witnesses.**

— Expenses of witnesses.

See *above, Taxation.*

**CO-SURETY.**

See *PRINCIPAL AND SURETY—Contribution.* 1—3, 7.

**COTTAR—Registration of voters.**

See *PARLIAMENT—Franchise.* 44.

**COTTON CLOTH FACTORIES ACT, 1897.**

See *MASTER AND SERVANT—Factory Acts.*

**COUNCIL—County.**

See *COUNTY COUNCIL.*

— District.

See *DISTRICT COUNCIL.*

— Parish.

See *PARISH COUNCIL.*

**COUNSEL.**

See *BARRISTER.*

**"COUNSELLING" COMMISSION OF OFFENCE**

— Cruelty to animals—Information—Summary jurisdiction.

See *JUSTICES.* 5.

**COUNTER-CLAIM.**

See *PRACTICE—Pleading.* 149—155.

— Action by foreign Sovereign—Discovery.

See *INTERNATIONAL LAW.* 4.

— Costs—Taxation.

See *COSTS.* 12, 74.

**COUNTERPART—Of lease, Costs of.**

See *SOLICITOR—Costs.* 58.

**COUNTY—Contribution for special purpose—**

County rate basis—Apportionment.

See *RATES—Rateability.* 16.

— Council.

See *COUNTY COUNCIL.*

— County rate.

See *Cases under RATES.*

— Transfer of part of one county to another county—Adjustment of liabilities.

See *LOCAL GOVERNMENT—Transfer.* 6, 7.

**COUNTY COUNCIL.**

*Election, col.* 576.

*Expenses, col.* 577.

*Powers, col.* 579.

**Election.**

*County Councils (Elections) Act, 1891* (54 & 55 Vict. c. 68), amends the law as to *County Council Elections.*

*Power to county councils to remove difficulties at, under Local Government Act, 1894* (56 & 57 Vict. c. 73). See *Local Government (Elections) Act, 1896* (59 & 60 Vict. c. 1).

*DISQUALIFICATION.] Members of Local Authorities Relief Act, 1900* (63 & 64 Vict. c. 46), relieves members of county councils and others.

*ELECTIONS.] County Councils (Elections) Amendment Act, 1900* (63 & 64 Vict. c. 13), amends the *County Councils (Elections) Act, 1891* (54 & 55

**COUNTY COUNCIL (Election)—continued.**

*Vict. c. 68*), as to date of holding quarterly meeting of county councils.

1. — *Election of county council—Practice—Death of candidate between nomination and poll—Duty of returning officer to countermand poll—Municipal Corporations Act, 1882* (45 & 46 *Vict. c. 50*), s. 58—*Ballot Act, 1872* (35 & 36 *Vict. c. 33*), s. 1.

Where, at a contested election for a county council, a candidate dies between the nomination and the poll, it is the duty of the returning officer for the division in which he was a candidate to countermand notice of the poll. *REG. v. STEWART* Div. Ct. [1898] 1 Q. B. 552

2. — *Incapacity of women—Municipal Corporations Act, 1882* (45 & 46 *Vict. c. 50*), ss. 41, 73—*Local Government Act, 1888* (51 & 52 *Vict. c. 41*), ss. 2, 75.

Sect. 73 of the *Municipal Corporations Act, 1882*, which makes an election good and valid if not impeached within twelve months, does not render the election of a woman valid after the lapse of the prescribed time:—

*Held*, therefore, that the deft. was liable to the penalties under s. 41 of the same Act. *DE SOUZA v. COBDEN* - C. A. [1891] 1 Q. B. 687

**Expenses.**

3. — *Borough having population under 10,000—Separate court of quarter sessions—Liability for costs—Salary of recorder—Fees of clerk of the peace—Salary of clerk to justices—Local Government Act, 1888* (51 & 52 *Vict. c. 41*), ss. 35, 38, 84.

In the case of boroughs having a separate court of quarter sessions and commission of the peace, which contained according to the census of 1881 a population of less than 10,000, the *Local Government Act, 1888*, has not transferred the obligation of paying the salary of the recorder, the fees of the clerk of the peace, and the salary of the clerk of the borough justices from the borough to the county council.

Appeal from *Wills J.*, [1898] 1 Q. B. 141, dismissed, and cross-appeal allowed.

Decision in *Ex parte Kent County Council and Council of Sandwich*, [1891] 1 Q. B. 389, and *In re County Council of Herefordshire*, [1895] 1 Q. B. 43, to the contrary, overruled. *THETFORD CORPORATION v. NORFOLK COUNTY COUNCIL*

C. A. [1898] 2 Q. B. 468

4. — *Expenses of pauper lunatics—Power to fix amount of charge—Lunacy Act, 1853* (16 & 17 *Vict. c. 97*), s. 54—*Local Government Act, 1888* (51 & 52 *Vict. c. 41*), ss. 62, 86.

The committee which the county council appoints for visiting asylums cannot, as the old visiting committee could, fix the amount which a corporation must pay towards the maintenance of its pauper lunatics. The amount must be fixed by agreement or by arbitration. *HOWLETT v. MAIDSTONE CORPORATION* C. A. [1891] 2 Q. B. 110

5. — *Expenses of quarter and petty sessions—Municipal Corporations Act, 1882* (45 & 46 *Vict. c. 50*), ss. 169, 248, sub-s. 2, 5—*Local Government Act, 1888* (51 & 52 *Vict. c. 41*), s. 35, sub-s. 2, 5; s. 38, sub-s. 5; s. 100.

(A) *Semble*, that under the *Local Government Act, 1888*, where the population of a borough

**COUNTY COUNCIL (Expenses)—continued.**

having a separate court of quarter sessions is 10,000 or upwards, the expenses of quarter and petty sessions are payable out of the borough rates; where the population is under 10,000, out of the county rate. *Ex parte COUNTY COUNCIL OF KENT AND COUNCIL OF DOVER* (No. 1). *Ex parte COUNTY COUNCIL OF KENT AND COUNCIL OF SANDWICH* - Div. Ct. [1891] 1 Q. B. 389; affirm. by C. A. [1891] 1 Q. B. 725

Overruled by C. A. *Thetford Corporation v. Norfolk County Council*, [1898] 2 Q. B. 468. See No. 3, above.

(B) The salary of the clerk to the justices of a borough having a separate commission of the peace, but no separate court of quarter sessions, and a population under 10,000, is payable out of the county rate, all fees and costs received by the clerk not excluded in the fixing of his salary are payable to the county fund. *In re COUNTY COUNCIL OF HEREFORDSHIRE AND LEOMINSTER TOWN COUNCIL, and In re LOCAL GOVERNMENT ACT, 1888* - Div. Ct. [1895] 1 Q. B. 43

Overruled by C. A. *Thetford Corporation v. Norfolk County Council*, [1898] 2 Q. B. 468. See No. 3, above.

6. — *Main roads in county divided into hundreds—Highways and Locomotives (Amendment) Act, 1878* (41 & 42 *Vict. c. 77*), s. 20—*Local Government Act, 1888* (51 & 52 *Vict. c. 41*), ss. 11, 23, 68.

Where an order has been made under s. 20 of the *Highways Act, 1878*, declaring every main road to be repairable by the hundred, and one half the expenses to be repayable out of a special rate in the hundred, the repairs are "general county purposes," and the county fund should be recouped from the *Exchequer Contribution Account* so much of the expenses as is not provided by the special rate in the hundred. *REG. v. DOLBY* (No. 2) - Div. Ct. [1892] 2 Q. B. 736

7. — *Main roads—Footways, repair of, in urban district.*

The *Local Government Act, 1888*, s. 11 (2), imposes on the county council the duty of contributing to the cost of maintaining and repairing, in an urban sanitary district, the footways on the sides of disturnpiked roads, which were constituted main roads by s. 13 of the *Highways and Locomotives (Amendment) Act, 1878*. *In re BURSLEM CORPORATION AND STAFFORDSHIRE COUNTY COUNCIL* - C. A. [1895] W. N. 146 (4); [1896] 1 Q. B. 24

Affirmed by H. L. (E.). *Derby County Council v. Urban District of Matlock Bath and Scarthin Nick*, [1896] A. C. 315.

8. — *Main roads maintained by urban authority—Local Government Act, 1888* (51 & 52 *Vict. c. 41*), ss. 11, 35.

Where an urban authority retains the powers and duties of maintaining the main roads in its district, the amount to be paid to it by the county council in respect of such main roads can only be settled, in default of agreement, by the arbitration of the *Local Government Board*. *In re BEDFORDSHIRE COUNTY COUNCIL AND BEDFORD URBAN SANITARY AUTHORITY*

Div. Ct. [1894] 2 Q. B. 786

**COUNTY COUNCIL (Expenses)—continued.**

9. — *Police—Cost of maintenance—Borough force—Constables from other force—Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 24, sub-s. 2 (j)—*Police Act, 1890* (53 & 54 Vict. c. 45), s. 25.

A borough maintaining its own police is entitled under s. 24, sub-s. 2 (j), of the Local Government Act, 1888, to be paid by the county council one-half of the cost of the pay and clothing of extra police temporarily added from another police force under s. 25 of the Police Act, 1890, and paid for by agreement. *REG. v. COUNTY COUNCIL OF WEST RIDING OF YORKSHIRE*

C. A. [1895] 1 Q. B. 805

10. — *Troops summoned to preserve the peace—Expenses of maintenance—Liability—Mandamus.*

Troops were brought into a county, on the application of the county magistrates, for the purpose of suppressing riots, and preserving peace and order in the county. By agreement with the magistrates certain tradesmen supplied the troops with food and lodging while quartered in the county.

On an application for a mandamus to the county council to pay for the food and lodging supplied:—

*Held*, affirming the judgment of the Div. Ct., [1899] W. N. 60; [1899] 2 Q. B. 26, that no duty was imposed by law on those who administered the county funds to pay the expenses of the maintenance of the troops, and a mandamus could not be granted. *REG. v. GLAMORGAN COUNTY COUNCIL. Ex parte MILLER*

C. A. [1899] W. N. 138; [1899] 2 Q. B. 536

**Powers.**

*Highways and Bridges Act, 1891* (54 & 55 Vict. c. 63), confers further powers with respect to main roads and other highways and bridges on county councils and other authorities.

*Local Government Act, 1894* (56 & 57 Vict. c. 73), gives further powers, with respect to parish and district councils, to county councils.

*Rules of the Supreme Court dated Aug. 10, 1892, as to determining questions under s. 29 of the Local Government Act, 1888, as to the transfer of powers to county councils.* W. N. 1892 (Appx. of O. & R.), p. 29; St. R. & O. 1892, p. 908.

11. — *Appeal as to transfer of powers—Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 29.

The jurisdiction of the High Court upon questions submitted to them under s. 29 of the Local Government Act, 1888, was consultative only, and not judicial. Consequently no appeal can lie from their decision.

*Decision of Div. Ct. [1891] 1 Q. B. 725, affirmed. Ex parte COUNTY COUNCIL OF KENT AND THE COUNCIL OF THE BOROUGH OF DOVER AND SANDWICH* (No. 2) C. A. [1891] 1 Q. B. 725

*But see now Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 70, and Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 5.

— *By-law—Validity—Betting in streets.*

*See GAMING.* 29—32.

— *By-law—Validity—Prohibition of obscene language.*

*See STREETS.* 38.

**COUNTY COUNCIL (Powers)—continued.**

12. — *Coroners—Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 3, sub-ss. (x), (xi); s. 59.

The right of a county council to appoint coroners is confined to cases where coroners were formerly elected by the freeholders under a writ de coronatore eligendo, and does not extend to cases where they were appointed by lords of franchises or otherwise than by election by freeholders. *In re THE LOCAL GOVERNMENT ACT, 1888. Ex parte LONDON COUNTY COUNCIL*

Div. Ct. [1892] 1 Q. B. 33

— *London County Council.*

*See Cases under LONDON.*

— *Music and dancing.*

*See Cases under MUSIC AND DANCING.*

13. — *Police districts—Police Act, 1840* (3 & 4 Vict. c. 88), ss. 3, 27, 28—*Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 3, sub-s. 1; s. 9, sub-s. 1.

The power to divide a county into police districts is vested in the standing joint committee. *Ex parte LEICESTERSHIRE COUNTY COUNCIL AND THE STANDING JOINT COMMITTEE OF THE COUNTY OF LEICESTER*

Div. Ct. [1891] 1 Q. B. 53

— *Rivers Pollution Prevention Act—Enforcement of, by county council.*

*See Cases under WATER—Pollution.*

14. — *Poor-rate—Industrial school.*

The county council are rateable to the poor-rate in respect of the occupation of an industrial school established by justices under the Industrial Schools Acts, 1866 and 1872, and vested in the council by the Local Government Act, 1888. *DURHAM COUNTY COUNCIL v. CHESTER-LE-STREET ASSESSMENT COMMITTEE*

Div. Ct. [1891] 1 Q. B. 330

*And see Cases under RATES—Rateability.*

**COUNTY COUNCIL (LONDON).**

*See LONDON—County Council.*

**COUNTY COURT.**

*The County Court Rules, 1892, dated Feb. 5, 1892.* St. R. & O. 1892, p. 108.

*The County Court Rules, July, 1892, dated Aug. 5, 1892.* W. N. 1892 (Appx. of O. & R.) p. 34; St. R. & O. 1892, p. 163.

*Rules dated Feb. 25, 1895, as to proceedings in Appeals under s. 10 of the Finance Act, 1894.* 1895 W. N. (Appx. of O. & R.), p. 3; St. R. & O. 1895, No. 111, L. 6. Price 1d.

**FEES AND STAMPS.] Treas. Order, dated Nov. 22, 1894, varying the Order of Jan. 1889, as to High Bailiff's fee for default Summons.** W. N. 1894 (Appx. of O. & R.), p. 6; Lond. Gaz., Dec. 18, 1894, p. 7455.

*The County Court Rules, 1895, dated Ap. 8, 1895.* 1895 W. N. (Appx. of O. & R.), pp. 4—21; St. R. & O. 1895, No. 206, L. 10. Price 3d.

*County Court Rules dated April 15, 1896.* W. N. 1896 (May 17), p. 139. *See Current Index, 1896, p. lx.*

*Order of Sec. of State, dated Oct. 26, 1896.* W. N. 1896 (Nov. 28), p. 307. *See Current Index, 1896, p. lxxviii.*

**COUNTY COURT—continued.**

*County Court Rules* (Dec.), 1896, dated Nov. 19, 1896. **W. N. 1896** (Nov. 28), p. 307. See *Current Index*, 1896, p. lxxvii.

*County Court Rules* (March), 1897, dated Feb. 15, 1897, and *Explanatory Memorandum*. **W. N. 1897** (Feb. 20), p. 63; (March 6), p. 75. These Rules have been annulled by the Rule Committee. **W. N. 1897** (May 8 and 15), pp. 157, 159.

**FEES.** Order as to—*Liverpool and Manchester District Registries*. **W. N. 1897** (Jan. 2), p. 6.

**HOLIDAYS.** Annual Vacation at Christmas. **W. N. 1897** (Dec. 11), p. 344. See *Current Index*, 1897, p. lxi.

**STANNARIES.** By the *Stannaries Court (Abolition) Act*, 1896 (59 & 60 Vict. c. 45), the Court of the Vice-Warden is abolished.

**STANNARIES COURT.** Fees under the *Stannaries Court (Abolition) Act*, 1896. Order as to. **W. N. 1897** (May 15), p. 159. See *Current Index*, 1897, p. lxiii.

**STANNARIES COURT.** Jurisdiction—*County Court (Stannaries Jurisdiction) Rules*, 1897, dated Feb. 15, 1897. **W. N. 1897** (Feb. 20), p. 61. See *Current Index*, 1897, p. lxiii.

**STANNARIES COURT.** Jurisdiction—Order dated Dec. 16, 1896, under the *Stannaries Court (Abolition) Act*, 1896. **W. N. 1897** (Jan. 23), p. 43. See *Current Index*, 1897, p. lxvi.

**BANKRUPTCY JURISDICTION.** Bankruptcy and Companies—Order of the Lord Chancellor, dated May 28, 1898, as to the jurisdiction of County Courts in Bankruptcy and Companies Winding-up. **W. N. 1898** (June 25), p. 241. See *Current Index*, 1898, p. lix.

*County Court Rules* (May), 1899, dated April 18, 1899, and which came into force on May 30, 1899. **W. N. 1899** (April 29), p. 147; *Explanatory Memorandum*, **W. N. 1899** (May 20), p. 171. See *Current Index*, 1899, pp. xcii., cxi.

*County Courts Districts and County Courts Admiralty, Bankruptcy and Companies (Winding-up) Jurisdiction Orders in Council*, 1899. See *Rules and Orders of Court published in the Weekly Notes during the year 1899*. See *Current Index*, 1899, p. lxix.

**BANKRUPTCY JURISDICTION.** See *O. in C.* dated May 19, 1899. **W. N. 1899** (July 1), p. 235. See *Current Index*, 1899, p. cxv.

**COMPANIES (WINDING-UP) JURISDICTION.** See *Os. in C.* dated May 19, 1899. **W. N. 1899** (July 1), p. 235. See *Current Index*, 1899, p. cxv.

*County Courts (Investment) Act*, 1900 (63 & 64 Vict. c. 47), amends the law with regard to the investment of money paid into a county court.

*County Courts (Districts) Postponement Order*, No. 10, postpones the coming into operation of certain provisions of "The County Courts (Districts) Order in Council, 1899," as to London. **W. N. 1900** (July 28), p. 221. See *Current Index*, 1900, p. lxxv.

*County Court Rules* (Nov.) 1900, dated Nov. 27,

**COUNTY COURT—continued.**

1900. **W. N. 1900** (Dec. 8), p. 321. See *Current Index*, 1900, p. lxxv.

Generally, col. 582.

Admiralty Jurisdiction and Practice.

See SHIPPING.

Appeal, col. 582.

Costs, col. 585.

Execution, col. 590.

Jurisdiction, col. 591.

Practice, col. 595.

Receiver, col. 597.

Transfer and Remittal, col. 597.

Winding-up, col. 598.

**Generally.**

— Distress — Privileged from — Bedstead — "Bedding."

See DISTRESS. 12.

— Employers' liability.

See Cases under MASTER AND SERVANT.

— Infants.

See INFANT.

**Admiralty Practice and Jurisdiction.**

See Cases under SHIPPING.

**Appeal.**

*Supreme Court of Judicature (Procedure) Act*, 1894 (57 & 58 Vict. c. 16), regulates appeals from County Courts to Divisional Courts.

— Admiralty case.

See Cases under SHIPPING—Appeal.

— Bankruptcy.

See Cases under BANKRUPTCY—Appeal.

1. — *City of London Court—Judge's notes—Shorthand notes—County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 121.

On an appeal from the City of London Court on the ground of misdirection as it is impossible to request the judge to make a note at the time when the point arises, as the point does not arise till the close of the summing-up, the judge is not bound to furnish a copy of his note. Therefore an appellant is entitled to obtain a transcript of the notes taken by the shorthand writer employed by the corporation, and the costs thereof, but only such costs as are necessary; in ordinary cases only the costs of the summing-up ought to be allowed. **BARBER v. BURT**  
Div. Ct. [1894] 2 Q. B. 437

2. — *Claim not exceeding 20l.—Counter-claim, exceeding 20l.—Right of appeal without leave—County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 120.

The absolute right of appeal given by s. 120 of the County Courts Act, 1888, in actions of contract and tort, where the debts or damage claimed exceeds 20l., extends to cases where the debt's counter-claim exceeds 20l., although the claim of the plt. is below that amount. **SMITH v. GILL**  
— — — Div. Ct. [1896] 2 Q. B. 166

3. — *Contempt of Court—"Matter"—County*

**COUNTY COURT (Appeal)—continued.**

*Courts Act, 1888* (51 & 52 *Vict. c. 43*), ss. 48, 120, 186.

An order of a county court judge fining a person for assaulting a county court bailiff in the execution of his duty is not appealable, as the proceeding is not a "matter" within s. 186 of the County Courts Act, 1888:

*Semble*, that a proceeding, in respect of which there is a form of summons appended to the rules, is a "matter" within the s., although there is no rule prescribing how it shall be commenced. *LEWIS v. OWEN* - Div. Ct. [1894] 1 Q. B. 102

4. — *Death of party to appeal.*

Where after entry of an appeal from a county court one of the parties dies, the High Court has jurisdiction to add his personal representative. *BLAKEWAY v. PATTESHALL*

Div. Ct. [1894] 1 Q. B. 247

5. — *Extension of time—R. S. C., Order LIX., r. 16.*

No distinction or practice ought to be recognised, as governing the exercise of the discretion vested in the Court, between applications for extension of time made previous to the trial and applications made after judgment. *CUSACK v. LONDON AND NORTH WESTERN RY. CO.*

C. A. [1891] 1 Q. B. 347

— *Formâ pauperis—Crown side.*

*See PRACTICE—Formâ Pauperis.* 23.

6. — *Injunction—Action claiming less than 20l. damages—County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120.

In an action for trespass in the county court the plt. claimed 40s. damages and an injunction. The judge having given judgment for the plt. for damages and an injunction:—

*Held*, that the deft. might appeal against so much of the judgment as granted the injunction without first obtaining the leave of the judge, notwithstanding the provisions of s. 120 of the County Courts Act, 1888. *BRUNE v. JAMES*

Div. Ct. [1898] 1 Q. B. 417

— *Limited leave to appeal to Court of Appeal.*

*See DISTRESS.* 10.

7. — *New trial—Order for—County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120.

Whether the verdict was against the weight of evidence is a question of fact for the county court judge. If to the decision of that question he apply the rule of law stated by the H. L. (E.) in *Metropolitan Ry. Co. v. Wright*, (1886) 11 App. Cas. 152, there is no appeal from his decision.

Judgment of Div. Ct. [1891] 2 Q. B. 496, affirmed. *How v. LONDON AND NORTH WESTERN RY. CO.* - C. A. [1892] 1 Q. B. 391

8. — *New trial—Refusal to grant—County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120.

An appeal lies against the refusal of a county court judge to grant an application for a new trial, on the ground that his decision was wrong in point of law. *POLE v. BRIGHT*

Div. Ct. [1892] 1 Q. B. 603

9. — *Non-direction—Practice—County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120.

The rule that no appeal lies from a county court except upon a point of law taken at the

**COUNTY COURT (Appeal)—continued.**

trial applies to the case of an omission by the judge in his summing-up to give the jury proper and necessary directions as to the law. The party desirous of appealing on the ground of such non-direction must take the objection at the time so as to give the judge an opportunity of correcting his direction. *CLIFFORD v. THAMES IRONWORKS AND SHIPBUILDING CO.* Div. Ct. [1898] 1 Q. B. 314

10. — *Point of law not raised at trial—Employers' Liability Act, 1880* (43 & 44 *Vict. c. 42*)—*County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120.

Under s. 120 and the following clauses of the County Courts Act, 1888, there is no right of appeal from a county court, except upon a question of law raised and submitted to the county court judge at the trial. *SMITH v. BAKER & SONS* - H. L. (E.) [1891] A. C. 325

11. — *Probate—"Point of law"—Probate Act, 1857* (20 & 21 *Vict. c. 77*), ss. 54 to 58; (21 & 22 *Vict. c. 95*), s. 11—*County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120.

A decision by a county court judge, that he could not revoke a grant of letters of administration in the absence of fraud, is a decision on a point of law from which an appeal lies under the joint operation of ss. 54-58 of the Court of Probate Act, 1857, and s. 120 of the County Courts Act, 1888. *COPELAND v. SIMISTER*

Div. Ct. [1893] P. 16

— *Prohibition to judge of county court—Practice and procedure.*

*See PROHIBITION.* 1-5.

12. — *Question of law raised at trial—Request to make a note—Condition precedent to appeal—County Courts Act, 1888* (51 & 52 *Vict. c. 43*), s. 120—*R. S. C., 1883, Order LIX., r. 8.*

It is a condition precedent to the right of appeal to the High Court from the judgment of a county court judge, under the County Courts Act, 1888, s. 120, that the question of law relied on in support of the appeal shall be raised at the trial, but a request to the judge to make a note is not a condition precedent, and therefore if the notes of the judge are not produced, the Court has jurisdiction, under R. S. C., 1883, Order LIX., r. 8, if satisfied that the question of law was raised at the trial, to hear the appeal upon other evidence, though a request to make a note has not been made. *WOHLGEMUTH v. COSTE*

Div. Ct. [1899] 1 Q. B. 501

13. — *Refusal of leave to appeal by Divisional Court—Jurisdiction of Court of Appeal to give leave to appeal—Practice—Judicature Act, 1894* (57 & 58 *Vict. c. 16*), s. 1, sub-s. 5.

This was an action tried in the county court, in which judgment was given for the plt. On appeal to the Div. Ct. the judgment was affirmed, and leave to appeal was refused. Application was made by the deft. *ex parte* to the C. A. for leave to appeal, which was granted.

By the COURT: It seems to be clear that this matter has been already before the Court, and that it has been decided that such a case as the present is within s. 1, sub-s. 5, of the Judicature Act, 1894. The preliminary objection that where leave to appeal has been refused by a Div. Ct.

**COUNTY COURT (Appeal)—continued.**

there is no appeal to the C. A., therefore, cannot be sustained, and the case must be heard. *GODMAN v. MOSES* - C. A. [1900] W. N. 179

14. — *Service of—Notice of appeal—R. S. C., Order LIX., r. 12.*

The notice of motion referred to in R. S. C., Order LIX., r. 12, must be served on the respondent's solicitors within the twenty-one days prescribed. Service on the London agents is not sufficient. *POWELL v. THOMAS*

Div. Ct. [1891] 1 Q. B. 97

14A. — *Rivers Pollution Act, 1876—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 120–124.*

An appeal from a county court on the merits under s. 11 of the Act of 1876 is, by s. 124 of the County Courts Act of 1888, brought within s. 120. *KIRKHEATON DISTRICT LOCAL BOARD v. AINLEY, SONS, & Co.* - Per Bowen and Smith L.JJ. [1892] 2 Q. B. 274

Referred to by Div. Ct. and C. A. In re *County Council of Derbyshire v. Mayor, &c., of Derby*, [1896] 2 Q. B. 58, 299. This case was affirmed by H. L. (E.) [1897] A. C. 550.

15. — *Stamp objection—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 164—R. S. C., 1888, Order XXXIX., r. 8.*

An appeal to the High Court does not lie from the ruling of a county court judge that a document tendered in evidence at the trial of an action before him is sufficiently stamped and admissible. *MANDER v. RIDGWAY* Div. Ct. [1898] 1 Q. B. 501

**City of London Court.**

See LONDON—City of London Court.

**Costs.**

*Order LXV., r. 12, relates to taxation on the County Court scale of costs in actions brought in the High Court.*

*Copies of documents made for use in Court where counsel not employed. See Explanatory Memorandum to County Court Rules (May), 1899, and rule 67. W. N. 1899 (May 20), p. 173. See Current Index, 1899, p. cxi.*

16. — *Action founded on tort—Contract of agistment—Bailment—Negligence—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.*

An action founded on the common law liability of a bailee is an action founded on tort within the meaning of s. 116 of the County Courts Act, 1888. *TURNER v. STALLIBRASS*

C. A. [1898] 1 Q. B. 56

17. — *Action involving question of title to hereditament.*

Action in High Court for damage to reversion by interference with flow of water through a pipe on deft.'s land, to which plt. claimed to be entitled. Deft. refused to admit plt.'s title to the easement, pleaded licence from plt.'s tenant, and paid 40s. into court. Plt. took out the 40s. in satisfaction. The premises in respect of which the easement was claimed exceeded 50l. per annum.—

Held, that the action could not have been commenced in the county court, because a question of title to a hereditament arose which that Court

**COUNTY COURT (Costs)—continued.**

had no jurisdiction to try; and that, therefore, the plt., although he had recovered less than 10l. in an action of tort, was entitled to his costs of the action, notwithstanding the provisions of the County Courts Act, 1888, s. 116. *HOWORTH v. SUTCLIFFE* - C. A. [1895] 2 Q. B. 358

18. — *Action not maintainable on County Court Order—Order for payment of costs.*

An action is not maintainable upon an order of a county court for payment of costs. *FURBER v. TAYLOR* - C. A. [1900] W. N. 180; [1900] 2 Q. B. 719

19. — *Action of contract—Judgment, Amount of—50l. recovered—R. S. C., Order LXV. r. 12—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.*

Where exactly 50l. is recovered in an action of contract brought in the High Court, the costs must be taxed on the county court scale; the express words of Order LXV., r. 12, applying that scale where a "sum not exceeding 50l." is recovered, prevailing over the inference from the words "but less than 50l." in s. 116 County Courts Act, 1888. *MILLINGTON v. HARWOOD*

C. A. [1892] 2 Q. B. 166

20. — *Action of tort or contract.*

An action brought by a ry. passenger against a ry. co. for personal injuries caused by the negligence or misfeasance of a servant of the co., whether the passenger has or has not a ticket, is an action of tort within s. 116 of the County Courts Act, 1888.

(A) *TAYLOR v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. Co.*

C. A. [1895] 1 Q. B. 134

(B) *KELLY v. METROPOLITAN RY. Co.*

C. A. [1895] 1 Q. B. 944

(C) *MEUX v. GREAT EASTERN RY. Co.*

C. A. [1895] 2 Q. B. 387

21. — *Action struck out for want of jurisdiction—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 89, 113, 114.*

Where an action in a county court is struck out for want of jurisdiction under s. 114 of the County Courts Act, 1888, the Court may, if it shall think just, award costs against the defendant. *WATSON v. PETS (No. 2)* - Div. Ct. [1899] W. N. 10 (6); [1899] 1 Q. B. 430

22. — *Administration action—Discretion of registrar over taxation—Insolvency of estate—County Court Rules, 1889, Order L. A., r. 20.*

The costs of the administrator in an administration action in the county court are discretionary fees or allowances within the meaning of Order L. A., r. 20, of the County Court Rules, 1889. Upon the taxation of such costs the registrar may take into account the fact that the estate is insolvent, and may disallow items which would be allowed in the case of a solvent estate.

Per Wills J.: In such a case the administrator's right to costs should be confined to such costs as are necessary for the protection of the estate. *PAIN v. BOWDEN* [1896] 2 Q. B. 301

23. — *Application for judgment under Order XIV.—Leave to defend—Case remitted to county court—Costs of application under Order XIV. to be costs in the cause—County Courts Act, 1888*

**COUNTY COURT (Costs)—continued.**

(51 & 52 Vict. c. 43), ss. 65, 116—*R. S. C.*, 1883, Order XIV., r. 9 (a).

In an action to recover under a contract a sum above 20*l.*, but less than 50*l.*, the plt. applied for judgment under Order XIV. The deft. obtained leave to defend on payment of the amount claimed into court, and the money was paid in. An order was subsequently made on the application of the plt., and affirmed by a judge at chambers, remitting the action to the county court, and directing that the costs of the application under Order XIV. should be costs in the cause. On appeal:—

*Held*, that as the case was not brought within s. 116 of the County Courts Act, 1888, or Order XIV., r. 9 (a), there was no jurisdiction to make the order as to the costs of the application under Order XIV.

*Quere*, whether an order purporting to make costs under Order XIV. costs in a county court action could be made at the hearing under Order XIV., r. 9 (a). *DUNN v. APPLETON*

**C. A. [1898] 1 Q. B. 564**

**24. — *Fees to counsel*—Special allowance where no local bar.**

In a taxation of costs in a county court on the higher scale, the special item No. 86 which may be allowed by order of the judge to counsel where there is no local bar in, or within twenty miles of, the court town, can only be allowed once in the same case, although the counsel engaged may have been present in court on more than one occasion. *ATKINSON v. MAYOR, &c., OF CARLISLE*

**[1896] 1 Q. B. 393**

**25. — Higher and lower scale—Solicitor and client—Party and party—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 118.**

Where the sum claimed is over 10*l.*, but the sum recovered is under 10*l.*, costs as between party and party must be taxed on the lower scale; but the taxing officer may, as between solicitor and client, allow a larger sum, so that it does not exceed the higher scale. *In re LANGLOIS AND BIDEN*

**C. A. [1891] 1 Q. B. 349**

**26. — Refreshers to counsel.**

A county court has jurisdiction to allow refreshers to counsel when a case cannot be heard on the day fixed for hearing, "and is adjourned for want of time." *HEAP v. PEART*

**Div. Ct. [1891] 1 Q. B. 110**

**27. — Remitted action—Judgment in High Court for part of claim—Scale applicable in county court—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 65.**

In an action of contract brought in the High Court, upon an application for judgment under Order XIV., an order was made that the plt. be at liberty to sign final judgment for a sum of 27*l.*, part of the amount claimed, with costs to be taxed; that the defts. have leave to defend as to a sum of 2*l.* odd, which was the residue of the claim then remaining in dispute and that the action be tried in the county court under s. 65 of the County Courts Act, 1888. The defts. paid the 27*l.* and taxed costs, and afterwards the plt. lodged the writ and order in the county court. At the trial in the county court the plt. recovered the 2*l.* odd, with costs:—

*Held*, that he was entitled to a taxation of his

**COUNTY COURT (Costs)—continued.**

costs on the lower scale in use in county courts where the sum recovered exceeds 2*l.* but does not exceed 10*l.*, and not on the higher scale (Col. B.), where the sum recovered exceeds 20*l.* but does not exceed 50*l.*

*Keeble v. Bennett*, [1894] 2 Q. B. 329, distinguished. *BAILEY v. WATSON & CO.*

**Div. Ct. [1898] 2 Q. B. 270**

Overruled by *C. A. White v. Headland's Patent Electric Storage Battery Co.* [1899] 1 Q. B. 507, 509.

**28. — Remitted action—Judgment under Order XIV. for part of claim—Judgment for defendant in county court—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 113.**

In an action brought in the High Court to recover 20*l.* 2*s.* as the price of goods sold and delivered, an order was made under Order XIV. by which leave was given to the plt. to sign judgment for 8*l.* 14*s.* if that amount was not paid within seven days, and leave was given to the deft. to defend as to the residue of the claim, and it was ordered, under s. 65 of the County Courts Act, 1888, that the action should be tried in the county court. The deft. paid the sum of 8*l.* 14*s.* under the order, and at the trial in the county court judgment was given for him, no order being made as to costs:—

*Held*, that, the plt. having succeeded in the action in recovering the sum of 8*l.* 14*s.* the deft. was not entitled to costs, although he had obtained judgment in the county court. *WRIGHT AND SONS v. BULL*

**Div. Ct. [1900] 2 Q. B. 124**

**29. — Remitted action—Judgment under Order XIV. for part of claim—Recovery in county court of residue—Scale applicable in county court—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 65.**

In an action brought in the High Court to recover 73*l.* 8*s.* 3*d.* as the price of goods sold and delivered an order was made under Order XIV. by which leave was given to the plt. to sign judgment for 53*l.* 8*s.* 3*d.*, and leave was given to the defts. to defend as to the residue of the claim, and it was ordered under s. 65 of the County Courts Act, 1888, that the action should be tried in the county court. The plt. signed judgment for 53*l.* 8*s.* 3*d.* under the order, and at the trial in the county court he recovered judgment for 20*l.* the residue of his claim, and costs:—

*Held*, that the plt. was entitled to have his costs in the county court taxed upon the scale applicable where the amount recovered exceeds 50*l.*

*Keeble v. Bennett*, [1894] 2 Q. B. 329, approved of.

*Bailey v. Watson & Co.*, [1898] 2 Q. B. 270, overruled. *WHITE v. HEADLAND'S PATENT ELECTRIC STORAGE BATTERY CO.*

**C. A. [1899] W. N. 15 (6); [1899] 1 Q. B. 507**

Referred to by *Div. Ct. Wright & Son v. Bull*, [1900] 2 Q. B. 124, 127.

**30. — Remitted action—Payment of part of claim—Transfer as to remainder—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 65.**

Where in an action in the High Court for



**COUNTY COURT (Costs)—continued.**

more than 50*l.*, part was paid in under Order xiv., and the action remitted to a county court as to remainder, and that was paid in in the county court :—

*Held*, that plt. had recovered the whole amount in the action, and was therefore entitled to costs on Scale C (over 50*l.*). *KEEBLE v. BENNETT*

Div. Ct. [1894] 2 Q. B. 329

Referred to by C. A. *White v. Headland's Patent Electric Storage Battery Co.*, [1899] 1 Q. B. 507, 511.

31. — *Remitted action—Practice—Taxation—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 65, 118.

The provision of s. 118 of the County Courts Act, 1888, which prevents the recovery by a solicitor from his client of costs incurred in a county court, unless they have been allowed on taxation, only relates to cases in which there is an application for taxation. Therefore the solicitor may recover such costs without taxation, where there has been no application for it, and the client is no longer entitled to taxation.

By Lord Esher M.R. and Lopes L.J.: Where an action in the High Court has been remitted to the county court, the above-mentioned provision of the County Courts Act, 1888, does not affect a solicitor's right to recover the costs incurred in the High Court before the order remitting the action. *CUBISON v. MAYO*

C. A. [1896] 1 Q. B. 246

32. — *Remitted action—Sum recovered less than 20*l.*—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 65, 116.

An action of contract, which could have been brought in the county court, was commenced in High Court and remitted, after some proceedings, to the county court, where less than 20*l.* was recovered :—

*Held*, that the plt. was not entitled to any costs. *WHITE v. COHEN* C. A. [1893] 1 Q. B. 580

33. — *Remitted action—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 65, 116.

An action of contract brought in the High Court for more than 50*l.* was remitted to the county court after the plts. had recovered less than 20*l.* under Order xiv. They recovered in all less than 50*l.* :—

*Held*, that plts. were not entitled to costs on the Supreme Court scale in respect of the part of the proceedings which had taken place in the High Court. *WILSON v. STATHAM*

Div. Ct. [1891] 2 Q. B. 261

— *River Pollution Prevention Acts—Costs under.*

See *WATER*.

34. — *Security for costs—Jurisdiction—Remitted action—Bankruptcy of plaintiff—Joinder of trustee—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 65, 94.

Where an action of contract, brought in the High Court, is ordered to be tried in a county court, under s. 65 of the County Courts Act, 1888, and before the plt. has lodged the original writ and the order with the registrar of the county court, he becomes bankrupt, and a trustee is appointed, and an order is made joining the trustee as plt. in the action, the judge of the county

**COUNTY COURT (Costs)—continued.**

court has no jurisdiction to order the trustee to give security for the costs of the action under s. 94. *HEMMING v. DAVIES*

Div. Ct. [1898] 1 Q. B. 660

35. — *Signature of particulars—County Court Rules, 1889, Order XXVII., r. 4, Sched. "Costs."*

The rule requiring particulars and copies to be signed by the solicitor in order that he may claim costs, is satisfied if the particulars be signed by the solicitor's clerk in pursuance of a general or special authority for that purpose. *FRANCE v. DUTTON* Div. Ct. [1891] 2 Q. B. 208

— Admitted set-off.

See *COUNTY COURT—Jurisdiction*. 42.

36. — *Sum less than 10*l.* recovered in action founded on tort—Action "which could have been commenced in a county court"—Practice—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 116.

An action is one which "could have been commenced in a county court" within the meaning of the County Courts Act, 1888, s. 116, if it is an action of a kind which a county court can entertain, although the amount claimed by the plt. may exceed the limit of the county court jurisdiction. *Goldhill v. Clarke*, (1893) 68 L. T. 414, disapproved of; *Lovejoy v. Cole*, [1894] 2 Q. B. 861, followed. *SOLOMON v. MULLINER AND MOTOR CARRIAGE SUPPLY CO.* C. A. [1900] W. N. 260; see [1901] 1 K. E. 76

— *Taxation—Power of Board of Trade to review*  
See *BANKRUPTCY—Costs*. 76.

*WORKMEN'S COMPENSATION ACT, 1897* (60 & 61 Vict. c. 37).] *Treasury Order, dated June 16, 1898, regulating Fees under the. W. N. 1898* (Dec. 17), p. 407. See *Current Index, 1898*, p. cxxxix.

**Execution.**

37. — *Judgment recovered in High Court for amount of debt—Order made in county court for payment of debt by instalments—Execution—Debtors Act, 1869* (32 & 33 Vict. c. 62), s. 5—*County Court Rules, 1889, Order XXV., r. 26.*

If a creditor, who has recovered judgment against his debtor in the High Court, afterwards obtains from a county court judge an order under s. 5 of the Debtors Act, 1869, for payment of the debt by instalments, he cannot, so long as that order is in force, issue execution upon his judgment in the High Court.

The dicta of Cave J. in *In re Ives, Ex parte Addington*, (1886) 16 Q. B. D. 670, 671, dissented from, and the principle of *Jones v. Jenner*, (1856) 25 L. J. (Ex.) 319, approved. *MONTGOMERY & CO. v. DE BULMES* - C. A. [1898] 2 Q. B. 420

38. — *Sale of goods claimed by third party—Title of purchaser—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 156.

Where, a claim having been made to goods taken in execution by the bailiff of a county court, the claimant does not make the deposit or give the security required by s. 156 of the County Courts Act, 1888, and the bailiff sells the goods under the authority given by that section, the sale gives the purchaser a good title to the goods, although they were the property of the claimant at the time of the seizure. *GOODLOCK v. COUSINS*

C. A. [1897] 1 Q. B. 558

**COUNTY COURT (Execution)—continued.**

39. — *Stay—Sufficient cause—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 153.*

The mere inability of a debt, to pay owing to want of means is not a "sufficient cause," within s. 153 of the County Courts Act, 1888, to give the judge jurisdiction to stay execution. *ATTENBOROUGH v. HENSCHEL* Div. Ct. [1895] 1 Q. B. 833

40. — *Practice—High bailiff—Fees—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 154, 160.*

Where the high bailiff of a county court seizes goods under a warrant of execution, and subsequently distrains on other goods of the judgment debtor to satisfy a claim for rent made by the landlord under s. 160 of the County Courts Act, 1888, the execution and distress are to be treated as separate proceedings, and the high bailiff is entitled to a separate set of possession fees in respect of each proceeding. *In re BROSTER. Ex parte PRUDDAH*

Div. Ct. [1897] 2 Q. B. 429

**Jurisdiction.**

41. — *Acquiescence—Prohibition—Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), s. 24.*

Where total absence of jurisdiction appears on the face of the proceedings in a county court, the Supreme Court is bound to grant prohibition although the applicant may have acquiesced in the exercise of jurisdiction by the county court. *FARQUHARSON v. MORGAN*

C. A. [1894] 1 Q. B. 552

And see Cases under PROHIBITION.

42. — *Admitted set-off—Admission by plaintiff only—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 57—Rules of Supreme Court, 1883, Order LXV., r. 12.*

Where a set-off is admitted on the writ by the plt. and adopted and acquiesced in throughout the proceedings by the deft., it is an admitted set-off within s. 57 of the County Courts Act, 1888. *LOVEJOY v. COLE*

Div. Ct. [1894] 2 Q. B. 861

43. — *Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61)—Registrar referee—County Court Rules, 1889, Order XL., r. 7—Costs.*

So much of Order XL., r. 7, of the County Court Rules, 1889, as provides that an application to appoint a referee under the Agricultural Holdings Act, 1883, may be disposed of by the registrar unless one of the parties gives written notice of his desire to be heard before the judge, is ultra vires and bad.

A referee or umpire making an award under the Act cannot order costs to be paid as between solicitor and client. *In re GRIFFITHS & MORRIS*

Div. Ct. [1895] 1 Q. B. 866

44. — *Arrears of rent-charge—Action by trustees of charity—Prohibition—Title in question—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 41—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 60.*

The plts., trustees of a charity, sued in the county court to recover arrears of a rent-charge of 10*l.* a year issuing out of the defts.' land.

**COUNTY COURT (Jurisdiction)—continued.**

The summons referred to the Charitable Trusts Act, 1853, and leave to proceed had been obtained under that Act.

On an application for a prohibition:—

*Held*, that the action was not "proceedings under this Act," within the meaning of s. 41 of the Charitable Trusts Act, 1853, and therefore the jurisdiction of the county court was not excluded by that section:

*Held*, also, that the title which came in question, within the meaning of s. 60 of the County Courts Act, 1888, was the title to the rent-charge, not the title to the land, and therefore the value of the hereditaments in dispute did not exceed 50*l.* by the year, and the county court had jurisdiction. *BASSANO v. BRADLEY*

[1896] 1 Q. B. 645

45. — *Cause of action—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74.*

In an action to recover the price of goods sold and delivered the default in payment is part of the cause of action. Therefore, where A., who carried on business at B., sold and delivered goods to G., the contract being made and the goods delivered out of the jurisdiction of the Court at B., but payment was to be made at B., held that the Court at B. had jurisdiction. *NORTHEY STONE CO. v. GIDNEY*

C. A. affirm. Div. Ct. [1884] 1 Q. B. 99

46. — *Cause of action, Action in district in which, arose—Practice—Leave to commence action—Discretion as to grant or refusal—Validity of rule—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74—County Court Rules, 1889, Order v., r. 9a.*

On an application, under s. 74 of the County Courts Act, 1888, for leave to commence an action in the county court in the district of which the cause of action wholly or in part arose, the county court judge or registrar has a discretion as to the grant or refusal of leave, and is not bound to grant leave when it is shewn that the cause of action wholly or in part arose within that district.

Order v., r. 9a, of the County Court Rules, 1889, by which on such applications the judge or registrar shall exercise his discretion in each case as to the grant or refusal of leave in accordance with the circumstances, is not ultra vires, or repugnant to the statute, but is valid. *REG. v. TURNER (JUDGE) AND HODGSON*

Div. Ct. [1897] 1 Q. B. 445

47. — *Certiorari—Order made in exercise of bankruptcy jurisdiction.*

Certiorari does not lie to bring up an order of a county court judge made when exercising bankruptcy jurisdiction.

The decision of C. A., [1898] 2 Q. B. 680, affirmed. *SKINNER v. NORTHALLERTON COUNTY COURT JUDGE* - H. L. (E.) [1899] W. N. 96; [1899] A. C. 439

— City of London Court.

See LONDON—City of London Court.

— Company—Winding-up.

See COMPANY—WINDING-UP—Jurisdiction.

**COUNTY COURT (Jurisdiction)—continued.**

— Company—Winding-up—Jurisdiction—Commitment for contempt.

See PROHIBITION. 1.

48. — *Contempt of court—Solicitors Act, 1843* (6 & 7 Vict. c. 73), ss. 2, 35, 36—*County Court Act, 1846* (9 & 10 Vict. c. 95), s. 113—*Solicitors Act, 1860* (23 & 24 Vict. c. 127), s. 26—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 162.

A county court judge has no jurisdiction under s. 26 of the Solicitors Act, 1860, to commit for contempt an unqualified person who has acted in a county court action. *Reg. v. Judge of Brompton County Court* - - - Div. Ct.

[1893] 2 Q. B. 195

49. — “Easement”—*Jurisdiction to try questions involving right to—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 56, 60.

The deft. claimed as an “easement” the right, as one of the public, to ground his barge on the bed of a navigable river:—

*Held*, that the county court judge had no jurisdiction to try the case. The jurisdiction to try cases involving easements given by the County Courts Act, 1888, s. 60, only applies to easements in respect of which there exist dominant and servient tenements. *Hawkins v. Rutter*

Div. Ct. [1892] 1 Q. B. 668

Approved by C. A. *Howorth v. Sutcliffe*, [1895] 2 Q. B. 358, 362, 364.

50. — *Executory agreement for lease.*

The deft. entered on premises of value over 500*l.* under an executory agreement for a lease. He subsequently gave six months’ notice and left. An action was brought for rent in the county court:—

*Held*, that the equitable doctrine that a person who enters under such an agreement is to be treated as in under its terms can only be applied where the court in which the action is brought has concurrent jurisdiction in law and equity, and that the plt. could not recover. *Foster v. Reeves* - - - C. A. affirm. Div. Ct.

[1892] 2 Q. B. 255

51. — *Infringement of patent—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 56.

The right or privilege granted by letters patent for a new invention is a “franchise” within the meaning of s. 56 of the County Courts Act, 1888, and, therefore, an action in which the validity of a patent comes in question cannot be tried in a county court. *Reg. v. Judge of the Halifax County Court* C. A. [1891] 2 Q. B. 263

52. — *Interpleader—House agent—Action for commission—Claims by different parties.*

The plts., auctioneers, sued the deft. for 35*l.* 12*s.*, agreed commission, in respect of the sale of a house. A second firm of auctioneers claimed 25*l.* from the deft., for commission in respect of the same sale of the same house.

*Held*, that the county court could not give the deft. relief by way of interpleader. *Greatorex v. Shackle* - - - Div. Ct. [1895] 2 Q. B. 249

53. — *Lunatic—Vesting order—Lunacy Act, 1890* (53 & 54 Vict. c. 5), ss. 132, 133.

A county court judge has no jurisdiction under the Lunacy Act, 1890, s. 132, to make a

**COUNTY COURT (Jurisdiction)—continued.**

vesting order for the transfer of stock standing in the name of a lunatic. *In re Noyce*

Div. Ct. [1892] 1 Q. B. 97; affirm. by C. A. [1892] 1 Q. B. 642

Referred to by C. A. *In re Shortridge (A Person of Unsound Mind)*, [1895] 1 Ch. 278, 286.

54. — *Neglect to levy execution—Action against high bailiff—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 35, 43, 49.

An action will lie to recover damages against the high bailiff of a county court, at the suit of a party aggrieved by his neglect in the performance of his duties as high bailiff, notwithstanding the provisions of s. 49 of the County Courts Act, 1888, enabling the county court judge, in such cases, to order the high bailiff to pay damages to the party aggrieved. *Watson v. White*

[1896] 2 Q. B. 9

55. — *Question of title—County Courts Act, 1888* (51 & 52 Vict. c. 43), ss. 56, 60, 116.

The plt. sued in the High Court for damage to his reversion by reason of the deft.’s interference with the flow of water through a pipe under the deft.’s land to which the plt. claimed to be entitled in respect of his premises. The deft. refused to admit the plt.’s title to the easement claimed, pleaded leave and licence from the plt.’s tenant, and, while denying liability, brought 40*s.* into court. The plt. took the 40*s.* out of court in satisfaction of his claim. The yearly value of the premises in respect of which the easement was claimed exceeded 50*l.*:—

*Held*, that the action could not have been commenced in the county court, because a question of title to a hereditament arose which that Court had no jurisdiction to try. *Howorth v. Sutcliffe* - - - C. A. [1895] 2 Q. B. 358

56. — *Remitted action—Counter-claim—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 65.

A plt. claiming 25*l.* recovered 8*l.* under Order xiv. discontinued. The deft. had counter-claimed. A master of the High Court then remitted the counter-claim of 18*l.* 10*s.* to the City of London Court:—

*Held*, that under s. 65 of the County Courts Act, 1888, there was no jurisdiction to remit the counter-claim. *Reg. v. Judge of the City of London Court* (No. 1) Div. Ct. [1891] 2 Q. B. 71

57. — *Remitted action—Unliquidated damages—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 65.

(A) The claim of a plt. for unliquidated damages cannot be remitted to a county court under s. 65 of the County Courts Act, 1888, even where the writ is indorsed with a claim for a specified sum. *Bassett v. Tong* - - - Div. Ct.

[1894] 2 Q. B. 332

Referred to by C. A. *Guilford v. Lambeth*. See next Case.

(B) An action of contract brought in the High Court for a sum not exceeding 100*l.*, to which a counter-claim for unliquidated damages is pleaded, can be remitted to the county court. *Guilford v. Lambeth*

Div. Ct. [1894] 2 Q. B. 332; affirm. by C. A. [1895] 1 Q. B. 92

**COUNTY COURT (Jurisdiction)—continued.**

58. — *Remitting action to—Practice—Transfer of action, when made—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 66.

Where an order has been made for the remission of an action to a county court under the County Courts Act, 1888, s. 66, the action remains in the High Court, until the plt. has lodged the original writ and the order with the registrar of the county court in accordance with the section; and, consequently, until that has been done the High Court still has jurisdiction to make an interlocutory order in the action. *D'ERRICO v. SAMUEL* - - - C. A. [1896] 1 Q. B. 163

— *Stannaries Court—Jurisdiction in winding-up cases—Transfer.*

See **COUNTY COURT—Winding-up.**

59. — *Tithe—Redemption money—Tithe Act, 1891* (54 & 55 Vict. c. 8), s. 10, sub-s. 4.

A county court has jurisdiction under ss. 2, 10, sub-s. 4, of the Tithe Act, 1891, to make an order for recovery of redemption money and expenses. *REG. v. PATERSON* - - - Div. Ct. [1895] 1 Q. B. 31

— *Transfer to and from county court.*

See **COMPANY—WINDING-UP—Petition.** 179—182.

60. — *Writ of fieri facias—Company—Winding-up—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 1, sub-s. 6.

Although s. 1, sub-s. 6, of the Companies (Winding-up) Act, 1890, gives to the county court winding up a co. "all the powers of the High Court," the county court has no jurisdiction to issue a writ of fieri facias to the sheriff to enforce by execution an order of that Court directing a person to pay moneys received by him on behalf of the co. to the liquidator. *In re BASSETT'S PLASTER CO.* - - - Div. Ct. [1894] 2 Q. B. 96

**Practice.**

**HIGH BAILIFF.] Inquiry and indorsement on summons against registered company—County Court Rules (May), 1899. W. N. 1899 (April 29), p. 147. See Current Index, 1899, p. xcii.**

*Payment into Court—Money paid in with denial of liability—County Court Rules (May), 1899, Order IX., r. 17aa. W. N. 1899 (April 29), p. 147. See Current Index, 1899, p. xcii.*

**DISCONTINUANCE, CONFESSION, ADMISSION, AND PAYMENT INTO OR OUT OF COURT.] County Court Rules (May), 1899, Order IX. W. N. 1899 (April 29), p. 149. See Current Index, 1899, p. xcii.**

61. — *Discovery—Married Woman—County Court Rules, 1892, Order XV., r. 47.*

Where a judgment or order has been obtained against a married woman for the recovery or payment of money, an order may under Order xxv., r. 52, of the County Court Rules, 1892, be made for her examination as to her separate estate. *COUNTRESS OF AXLESFORD v. GREAT WESTERN RY. CO.* - - - C. A. [1892] 2 Q. B. 626

— *Interlocutory application—Subsequent action in High Court raising same question. See PRACTICE—Pleading.* 164.

**COUNTY COURT (Practice)—continued.**

62. — *Jurisdiction of registrar—Power to strike out counter-claim—Prohibition—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 90—*County Court Rules, 1889, Order XXII., r. 6.*

Where a registrar on a default summons gave judgment without further proof of the debt and struck out the counter-claim:—

*Held*, that even if he was wrong in so doing, it was a matter for appeal and not for prohibition. *HOOPER v. HILL* - - - C. A. affirm. Div. Ct. [1894] 1 Q. B. 659

— *Jurisdiction generally.*

See **COUNTY COURT—Jurisdiction.**

63. — *Notice of statutory defence—Statute of Frauds, s. 17—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 4—*County Court Rules, 1889, 1892, 1895, Order x., r. 18 (a).*

In an action on a contract for the sale of goods of the value of 10l. the defence of the Statute of Frauds (as re-enacted by the Sale of Goods Act, 1893) is a "statutory defence" within the meaning of Order x., r. 18 (a), of the County Court Rules, 1889, and the deft. if he intends to rely on it must give notice of it under rule 10. *BRUTTON v. BRANSON* Div. Ct. [1898] 2 Q. B. 219

64. — *Payment into court—Denial of liability—County Court Rules, 1889, Order IX., r. 11, Form 104 (a).*

In an action in the county court to recover 27l. for work done, the defts. paid 10l. into court without denial of liability:—

*Held*, that the payment into court merely admitted a liability to the extent of 10l., and that except as to that amount the defts. were not precluded from shewing that the work was not done at their request. *HENNELL v. DAVIES* Div. Ct. [1893] 1 Q. B. 367

65. — *Right of audience of solicitors—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 72.

A solicitor who has taken out his certificate and who is employed as managing clerk by a firm of solicitors has no right of audience in matters in which his employers are retained, although he has the entire management of the proceedings, as he is not "the solicitor acting generally in the action." *REG. v. OXFORDSHIRE COUNTY COURT JUDGE* - - - Div. Ct. [1894] 2 Q. B. 440

— *Special defence—Notice—Statutes of Limitation.*

See **LIMITATIONS, STATUTE OF.** 37.

66. — *Rules—Practice of county court—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 164—*County Court Rules, 1892, r. 146.*

*Semble*, that s. 164 of the County Courts Act, 1888, gives power to frame such rules only as regulate the practice of the county court, and not, e.g., to frame a rule in the terms of s. 3, sub-s. 5, of the Companies (Winding-up) Act, 1890. *In re PORTSEA ISLAND BUILDING SOCIETY*

V. Williams J. [1893] 3 Ch. 205

— *Liverpool Court.*

See **Cases under LIVERPOOL COURTS.**

67. — *"Statutory defence"—Notice of injury—Employers' Liability Act, 1880* (43 & 44 Vict.

**COUNTY COURT (Practice)—continued.**

c. 42), s. 4—*County Court Rules*, 1889, *Order X*, rr. 10, 18.

In an action under the Employers' Liability Act, 1880, the deft. cannot rely upon the defence that the notice of injury required by s. 4 of the Act has not been given, unless he has given notice that he intends to rely upon it as a "statutory defence" pursuant to Order x., rr. 10 and 18, of the County Court Rules. *CONROY v. PEACOCK* - Div. Ct. [1897] 2 Q. B. 6

68. — *Summons issued out of district—Affidavit, Form of—Claim exceeding 5l.—County Courts Act*, 1888 (51 & 52 Vict. c. 43), ss. 74, 86—*County Court Rules*, 1889, *Form 14 a—R. S. C.*, *Order V*, rr. 9 a, 10.

In the affidavit for leave to issue a default summons out of the district, paragraph 4 of the Form 14a of the County Court Rules, 1892 (that deft. is not a domestic or menial servant, &c.), is not material when the amount exceeds 5l., and it is not necessary to insert the paragraph. The marginal note to the paragraph is incorrect. *GORDON v. EVANS* - C. A. [1894] 1 Q. B. 248

— Workmen's compensation—New trial—Jurisdiction of county court judge.

See MASTER AND SERVANT—Practice. 92.

**Receiver.**

See also CASES UNDER RECEIVER.

REMUNERATION—NEGLECT.] *As to appointment of receiver by way of equitable execution, &c. See Explanatory Memorandum to County Court Rules (May)*, 1899, and rules 18 to 23. W. N. 1899 (May 20), p. 171. See *Current Index*, 1899, p. exi.

**Transfer and Remittal.**

69. — *Remittal—"Convenient"—Court—County Courts Act*, 1888 (51 & 52 Vict. c. 43), ss. 65, 74.

Under s. 65 of the Act of 1888, a judge in chambers has jurisdiction to send actions of contract for an amount under 100l. for trial in the county court "in which the action might have been commenced," whether by leave or as of right, or "in any Court convenient thereto," i.e., convenient to the parties. *BURKILL v. THOMAS* - Div. Ct. [1892] 1 Q. B. 99; affirm. by C. A. [1892] 1 Q. B. 312

70. — *Remittal—"Action"—Tort—Counter-claim—County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 66.

In an action in the High Court the deft. counter-claimed for damages for slander, the deft. became bankrupt, and the action was stayed except as to the counter-claim. The plt. sought to have security for costs, or else to have the action remitted:—

*Held*, that the counter-claim for tort was not an "action" within the meaning of s. 66 of the County Courts Act, 1888, and there was no jurisdiction to remit it. *DELOBBEL-FLIPO v. VAERTY* Div. Ct. [1893] 1 Q. B. 663

And see COUNTY COURT—Jurisdiction. 56—58.

71. — *Remittal—Jurisdiction of high court—*

**COUNTY COURT (Transfer and Remittal)—contd.**  
*County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 65—*R. S. C.*, *Order XVII.*, r. 8.

(A) A deft. to a case in the High Court died intestate, and, before an administrator was appointed, the case was remitted. An application was subsequently made by the administrator to the High Court on the ground that the remittal did not apply to him. Application refused. After a case has once been remitted, although irregularly, to a county court, all proceedings must be taken in that court. The High Court has no longer jurisdiction to make an order in the action. *DUKE v. DAVIS*

Div. Ct. [1893] 2 Q. B. 107; affirm. by C. A. [1893] 2 Q. B. 260

(B) *County Courts Act*, 1888 (51 & 52 Vict. c. 43), Pt. III., c. 65; Pt. IV., s. 116.

After transfer from the High Court to the county court, a High Court judge has no jurisdiction to make any order in the action. *HARRIS & SONS v. JUDGE* - C. A. [1892] 2 Q. B. 565

Followed by C. A. *Dunn v. Appleton*, [1898] 1 Q. B. 564, 566.

— Remitted action—Costs.

See COUNTY COURT—Costs. 23, 27—33.

72. — *Transfer—Building society—Winding-up—County Court Rules*, 1892, r. 146.

Notwithstanding r. 146 of the County Court Rules, 1892, there is no power to transfer to the High Court the winding-up of a society registered under the Building Societies Act, 1874. *In re REAL ESTATES CO.* - V. Williams J. [1893] 1 Ch. 398

But see now the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8.

**Winding-up.**

73. — *Stannaries Court—Jurisdiction in winding-up cases—Transfer.*

Where a co. is formed to work mines within the Stannaries "or elsewhere in England," but is not shewn to be actually working mines beyond the Stannaries, the jurisdiction to wind up the co. or to entertain an application in its voluntary winding-up is in the Stannaries Court, and where proceedings have been taken in that Court, the High Court will not exercise its power to retain the proceedings before itself, but will transfer them to the Stannaries Court. *In re NEW TERRAS TIN MINING CO.*

V. Williams J. [1894] 2 Ch. 344

**COUNTY FRANCHISE.**

See Cases under PARLIAMENT—Franchise.

**COUPON**—For interest of perpetual bond—*Re-issue.*

See REVENUE—Stamps. 142.

**"COUPON COMPETITION"**—Office used for betting—Events relating to horse-races. See GAMING. 6.

**COURSING**—Rabbits—Cruelty to animals.

See CRIMINAL LAW. 8.

**COURT**—*Jurisdiction.*

*Held*, on an appeal from the Supreme Court of Trinidad and Tobago, that that Court, sitting

**COURT—continued.**

in appeal, could not exercise a jurisdiction not possessed by the Court of first instance. *ATT.-GEN. FOR TRINIDAD AND TOBAGO v. ERICHE*

P. C. [1893] A. C. 518

**COURT OF CHANCERY OF LANCASTER.**

See LANCASTER COURT.

**COURT OF PASSAGE, LIVERPOOL.**

See LIVERPOOL COURTS.

**COVENANT.**

See also Cases under LANDLORD AND TENANT.

— Apprenticeship deed.

See APPRENTICE, *passim*.

1. — *Assignment—Covenant against, without licence—Licence to assign—“Fine or sum of money in the nature of a fine”—Deposit by way of security—Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 3.*

A building lease, which had been granted under a building contract relating also to other property, contained an absolute covenant not to assign without licence. The lessors on being applied to for a licence to assign refused to grant it unless the lessee would deposit with them 2000*l.* as a further security for the performance by him of the unperformed part of the building contract:—

*Held* (affirming the decision of Stirling J.), that the deposit with the lessors of a sum of money which, if the lessee performed the building contract, would revert to him, was not payment of a “fine or sum of money in the nature of a fine” within the meaning of the Conveyancing Act, 1892, s. 3, and that the lessors might lawfully require such a deposit as a condition for granting the licence. *In re Cosh’s Contract*

C. A. [1897] 1 Ch. 9

— Assignment, Qualified covenant against—Unwilling purchaser—Lessor’s consent—Unreasonable refusal.

See VENDOR AND PURCHASER—Contract. 26.

— Bill of sale.

See Cases under BILL OF SALE.

— Breach—Person not enjoined aiding in—Injunction.

See CONTEMPT OF COURT. 2.

2. — *Building estate—Restriction as to number of houses—“House”—Flat—Construction of covenant.*

A building containing several residential flats constitutes only one house within the meaning of the word “house” in a covenant not to erect more than a certain number of houses, unless there is some context which cuts down or alters the popular interpretation of the word.

Decision of Cozens-Hardy J., [1900] W. N. 23, affirmed. *KIMBER v. ADMANS*

C. A. [1900] W. N. 43; [1900] 1 Ch. 412

— Building scheme—Residential estate.

See BUILDING ESTATE. 2.

3. — *Building scheme—Restrictive covenant—Prior purchaser—Benefit—Burden.*

The deft., a lessee of an assign of Drummond with notice of the covenants, having sold beer,

**COVENANT—continued.**

wine, and spirits in a house on a certain plot A, the plts. brought this action to restrain him.

*Held*, that there was a building scheme as to the whole of the property, and the sales though at different times all formed part of one transaction. But the question, as stated in *Nottingham Patent Brick and Tile Co. v. Butler*, (1886) 15 Q. B. D. 261; 15 *ib.* 778, was whether the stipulations were meant by the vendor and understood by the buyers to be for the common advantage of the several purchasers. Now, Drummond bought before the auction, and, although the plan shewed that the vendor intended to include Drummond’s property in the scheme, there was nothing to shew that Drummond had any intention to take the benefit or subject himself to the burden of the scheme as regards the other purchasers. His conveyance was inconsistent with any such intention. He could, therefore, not have enforced the scheme, and he was consequently not bound by it for want of reciprocity. So far, therefore, as they relied on the scheme, the plts.’ claim failed. But they also claimed as assigns of the benefit of Drummond’s covenants. This was not expressly assigned, but it was sufficient if the vendor represented or contracted that the purchasers should have the benefit: *Benals v. Cowlishaw*, (1878) 9 Ch. D. 125; (1879) 11 *ib.* 866.

Now, the particulars, plan, and stipulations in the present case, coupled with the fact that lot 7 was expressly described as a site for an hotel or tavern, raised an irresistible inference that the vendor intended and contracted that the purchasers of lot 7 should have the benefit of Drummond’s covenant not to use the land as a site for licensed premises. The plts. were, therefore, entitled to enforce the covenant, as assigns of the vendor, and the injunction must go.

Decision of Kekewich J., [1900] W. N. 22, affirmed. *NALDER AND COLLYER’S BREWERY Co. v. HARMAN* — C. A. [1900] W. N. 180

— Compensation—Specific performance—Open contract—Restrictive covenants.

See VENDOR AND PURCHASER. 70.

— Contract affecting land—Writ—Service out of the jurisdiction.

See PRACTICE—Service. 206.

— Death—Breach of covenant—Liability for, after lessor’s death—Liability of lessor’s general estate.

See NEW ZEALAND.

— Drainage expenses—Costs.

See Cases under LONDON—Sewers.

— For title by committee.

See LUNACY—Sales. 43.

— Giving of time.

See Cases under PRINCIPAL AND SURETY—Discharge.

— Implied—Recital of agreement.

See INFANT. 42.

— Implied, against incumbrancers—“Outgoings”—Private street works.

See STREETS. 34.

— Implied covenants for title—Mistake—Rectification—Parol evidence.

See VENDOR AND PURCHASER—Contract. 28.

**COVENANT—continued.**

- Joint owners—When construed as several or joint and several—Survivorship.  
*See* PATENT—Joint Grant. 13.
- Landlord and tenant.  
*See* Cases under LANDLORD AND TENANT.
- Lease—Diversion of spring—"Stream."  
*See* WATER—Water Rights. 38.
- Leaseholds—Tenant for life and remainderman—Liability.  
*See* WILL—Leaseholds. 119.
- Liability of tenant for life.  
*See* Cases under SETTLED LAND—Leaseholds.
- Light—Conveyance—Covenant against overlooking lights—Buildings "adjoining" land of vendors.  
*See* LIGHT AND AIR. 1.
- by Mortgagee to make further advances—Tacking—Priorities.  
*See* MORTGAGE. 49.
- Not to molest—Separation—Divorce proceedings.  
*See* HUSBAND AND WIFE—Separation. 68.
- Partnership articles.  
*See* Cases under PARTNERSHIP.
- Patent—Joint grant—Title—Survivorship.  
*See* PATENT—Joint Grant. 13.

**4. — "Private residence"—School—Boarding and lodging scholars attending school—Breach of covenant.**

A covenant not to use a house "for any trade or manufacture, or for any other purpose than a private residence," is broken by using it as a boarding-house for scholars attending a school in the neighbourhood kept by the owner of the house in question.

Such user practically converts the house from a "private residence" to the business of a boarding-house. *HOBSON v. TULLOCH*

*Romer J. [1898] 1 Ch. 424*

- for Quiet enjoyment—Compensation—Purchase of land subject to lessee—Injury to lessee.  
*See* RAILWAY. 3.
- Restraint of trade.  
*See* Cases under RESTRAINT OF TRADE.
- Restrictive—Building estate.  
*See* BUILDING ESTATE. 2.
- Restrictive—Continuance of loan—Redemption—Collateral advantage—Injunction.  
*See* MORTGAGE. 62.
- Restrictive condition and covenant.  
*See* BUILDING SCHEME. 1, 2.

**5. — Restrictive covenant—Benefit—Covenant running with the land—Covenant enforceable in equity—"One message"—"House"—"Private residence"—"Residential flat."**

When the benefit of a restrictive covenant has been once clearly annexed to one piece of land, there is a presumption that it passes by an assignment of that land, and it may be said to run with the land in equity as well as at law, without proof of special bargain or representation on the assignment of the land. The covenant in

**COVENANT—continued.**

such a case runs with the land because the assignee has purchased something which inhered in or was annexed to the land which he bought. The purchaser's ignorance of the existence of the covenant does not defeat the presumption, though it may be rebutted by proof of facts inconsistent with it.

The owners of building land and their mortgagees conveyed a plot of the land in fee to a purchaser, who entered into a covenant with the mortgagors (but not with the mortgagees) that no more than one message or dwelling-house should at any one time be erected or be standing on the plot, and that such message should be adapted for and used as and for a private residence only. The conveyance stated that the covenant was entered into with intent that it might so far as possible bind the premises thereby conveyed and every part thereof, into whosever hands the same might come, and might enure to the benefit of the mortgagees, their heirs and assigns, and others claiming under them to all or any of their lands adjoining or near to the premises.

The mortgagors afterwards conveyed another plot of land near to the first in fee to a purchaser who had no knowledge of the covenant entered into by the purchaser of the first plot:—

*Held*, that assigns of the second plot could enforce the restrictive covenant against an assign of the first plot.

*Decision of Farwell J., [1899] W. N. 223, affirmed.*

*Held* also, that the erection on the first plot of a large block of buildings, which were to be occupied as residential flats, would be a breach of the covenant.

The covenant having been released by the mortgagors (so far as they lawfully could) as regarded the number of houses to be erected, the purchaser's devisee covenanted with the mortgagors that every message to be erected on the land should be adapted for and used as and for a private residence only:—

*Held*, that the erection of the proposed building would be a breach of the covenant also.

An injunction was accordingly granted to restrain the assign of the first plot from erecting such a block of buildings upon it. *ROGERS v. HOSEGOOD* - - - *C. A. [1900] W. N. 157; [1900] 2 Ch. 388*

Referred to by *Farwell J. Muller v. Trafford, [1901] 1 Ch. 61.*

**6. — Restrictive covenant—Occupier—Injunction.**

A person was in joint or sole occupation of a house, and managing the business in it, with notice of the covenants restricting its user, and was using the house in a way forbidden by the restrictive covenants:—

*Held*, that an injunction could be granted restraining him from such user. A mere occupier is liable to such an injunction. *MANDER v. FALOE (No. 1) - - - C. A. [1891] 2 Ch. 554*

**— Restrictive covenant—Rescission.**

*See* VENDOR AND PURCHASER—Rescission. 66—68.

**COVENANT—continued.**

7. — *Restrictive covenant—Tied public-house—Mortgagor and mortgagee—Assigns—Underlessee—Notice.*

The owner of a leasehold public-house, subject to a first mortgage, made a second mortgage to the partners in "John Brothers," brewers, in consideration of an advance by them out of their partnership account, the partners being first described separately and afterwards referred to as John Brothers.

By a separate deed of the same date, made between the same parties described as in the second mortgage, the mortgagor in further consideration of the advance covenanted with "John Brothers, their executors, administrators, and assigns," to bind the house to "John Brothers" for the entire supply of beer, wines, and spirits so long as he, his executors, administrators or assigns, should be in possession or occupation.

Both mortgages were subsequent to the Conveyancing Act, 1881.

The transferee of the first mortgage and the assign of the equity of redemption, then in possession, having together made an underlease to the deft., a publican, with notice of the covenant, the plts., who had purchased the business of John Brothers together with their right of supply to the public-house, and had taken a transfer of the second mortgage and an assignment of the benefit of the deed of covenant, sought to enforce the tie against the deft. :—

*Held*, on the construction and intention of the deeds, that—

1. The benefit of the covenant was not limited to the original firm of John Brothers, but ran with their business.

2. The covenant bound any one deriving title under the original mortgagor, including an underlessee with notice, who, though not an assign, could be bound in equity by a restrictive covenant.

3. The deft., though apparently deriving title to his underlease under the first mortgagee as well as under the mortgagor in possession, must, according to the rule in *Roach v. Wadham*, (1805) 6 East, 289, be considered to hold under the better title, which, having regard to s. 18, sub-s. 1, of the Conveyancing Act, 1881, was that derived from the mortgagor in possession. He could not, therefore, set up the paramount title of the first mortgagee against the plts.

4. On the above grounds the plts. were entitled to enforce the tie against the defts. *JOHN BROTHERS ABERGAW BREWERY CO. v. HOLMES*

*Kekewich J.*, [1899] W. N. 257;  
[1900] 1 Ch. 188

— Right of one tenant in common to sue without joining the others.

*See TENANCY IN COMMON.* 1.

— Running with land—Covenant for quiet enjoyment—Injunction—Damages—Compensation.

*See RAILWAY.* 3.

— in Separation deed.

*See Cases under HUSBAND AND WIFE—Separation.*

— Settlement—Covenants to settle.

*See SETTLEMENT—Covenants.*

**COVENANT—continued.**

— Sewers—Drainage expenses.

*See Cases under LONDON—Sewers.*

— Stamp duty—Agreement to execute mortgage.

*See REVENUE—Stamps.* 167.

— "Tied" public-house—"Clog" on redemption—Covenant by mortgagor to take beer from mortgagee only.

*See MORTGAGE.* 60.

— for Title.

*See VENDOR AND PURCHASER.* 28, 81, 82.

— To pay—Legacy of same amount—Satisfaction.

*See SCOTTISH LAW.* 37.

— To pay money at a certain time—Interest.

*See INTEREST.* 1.

— To pay water rate—Water supplied for trade purposes.

*See WATER.* 29.

— "Usual covenants"—Purchase of leaseholds.

*See VENDOR AND PURCHASER.* 25.

**COVENT GARDEN MARKET**—Parties—Representative action.

*See PRACTICE—Parties.* 113.

"COVER"—Contract.

*See STOCK EXCHANGE.* 3, 6.

— Gambling contracts.

*See GAMING.* 28.

**COWSHEDS.**

*See DAIRY.*

**CREDITORS' DEED**—Construction of.

*See DEED.* 3.

**CREMATION—Faculty.**

The Ecclesiastical Court will not grant a faculty for the removal of remains after burial for cremation.

*Semble*, that where there has been a cremation under the directions of the deceased there is no legal objection to the burial of the resulting ashes in consecrated ground accompanied with the use of the Burial Service. *In re DIXON.*

*Consist. Ct. of London* [1892] P. 386

**CREW SPACE**—Limitation of liability—Exemption from registry—"Tons burden"—

"Tonnage."

*See SHIPPING.* 164.

"CRIMINAL CAUSE OR MATTER"—Appeal.

*See APPEAL.* 7—11.

— Appeal to Privy Council.

*See PRIVY COUNCIL—Judicial Committee.* 4.

**CRIMINAL LAW.**

[EXPENSES OF WITNESSES, &c.] *Regs. made by the Secy. of State, dated Feb. 27, 1895, under the Criminal Justice Administration Act, 1851, altering the regs. as to costs and expenses in criminal prosecutions.* St. R. & O. 1895, No. 106. L. 5. Price ½d.

*Regs. made by the Secy. of State dated Dec. 21, 1895, under the Criminal Justice Administration Act, 1851.* St. R. & O. 1895, No. 585. Price ½d.

*Criminal business at Assizes—Report—General*



**CRIMINAL LAW—continued.**

*Council of the Bar. W. N. 1899 (July 1), p. 236.*  
*See Current Index, 1899, p. cxviii.*

*Generally, col. 605.*

*Bail. See BAIL.*

*Burglary, col. 606.*

*Conspiracy, col. 606.*

*Costs, col. 607.*

*Cruelty to Animals, col. 607.*

*Cruelty to Children, col. 608.*

*Embezzlement, col. 609.*

*Evidence, col. 610.*

*False Pretences, col. 613.*

*Felony, col. 615.*

*Fine or Imprisonment, col. 616.*

*Forgery, col. 616.*

*Larceny, col. 616.*

*Malicious Damage, col. 618.*

*Malicious Prosecution. See MALICIOUS PROSECUTION.*

*Offences against Morality, col. 619.*

*Offences against the Person, col. 619.*

*Offences against Property, col. 620.*

*Offences by Public Officers, col. 621.*

*Offences against the State, col. 621.*

*Practice, col. 622.*

**Generally.**

— Betting.

*See Cases under GAMING.*

— Chancel—Criminal suit against rector for non-repair of—Appeal—Jurisdiction.

*See ECCLESIASTICAL LAW. 57.*

— Churchwarden—Criminal suit against.

*See ECCLESIASTICAL LAW. 9, 10.*

— Desertion—Husband absconding under criminal charge.

*See DIVORCE—Desertion. 66.*

— Drunkenness.

*See DRUNKENNESS.*

— Duty of churchwardens to obtain faculty before removing human remains.

*See ECCLESIASTICAL LAW. 10.*

— Extradition.

*See EXTRADITION.*

— Foreign enlistment.

*See FOREIGN ENLISTMENT.*

— Fugitive offenders.

*See EXTRADITION—Fugitive Criminals.*

— Gaming.

*See Cases under GAMING.*

— Habitual drunkards.

*See DRUNKENNESS.*

— Libel.

*See DEFAMATION—Libel.*

— Misdemeanour—Discharge of bankrupt—Refusal of.

*See BANKRUPTCY—Discharge. 88.*

— New Zealand Criminal Code—Marital coercion.

*See NEW ZEALAND. 4.*

**CRIMINAL LAW (Generally)—continued.**

— Nuisance.

*See Cases under NUISANCE.*

— Person induced by misrepresentation to commit crime—Right of action.

*See FOREIGN ENLISTMENT ACT. 2.*

— Picketing—"Watching and besetting"—Injunction.

*See Cases under TRADE UNION.*

— Servant—Criminal liability of master for act of servant.

*See MASTER AND SERVANT. 71, 72.*

— Slander.

*See DEFAMATION—Slander.*

— Theft—Loss by—Entry by opening unlocked shop door—"Actual forcible and violent entry."

*See INSURANCE—Burglary. 5.*

— Theft by servant of railway company.

*See RAILWAY—Negligence. 16.*

— Trustee convicted of felony—Appointment of new trustee.

*See TRUSTEE—Appointment. 8.*

— Vagrancy.

*See Cases under VAGRANCY.*

— Will—Beneficiary convicted of wilful murder of testatrix—Certificate of conviction not admissible.

*See LANCASTER COURT. 1.*

**Bail.**

*See BAIL.*

**Burglary.**

*The Burglary Act, 1896 (59 & 60 Vict. c. 57), provides for the trial of burglaries by Courts of Quarter Sessions.*

**Conspiracy.**

1. — *Intimidation—Seamen—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 7, 16.*

Sect. 16 of the Conspiracy and Protection of Property Act, 1875, which enacts that the Act shall not apply to seamen, means seamen as defined by the Merchant Shipping Acts—that is to say, persons employed or engaged on board ship. The section, therefore, does not exempt from the punishments prescribed by the Act persons whose calling or occupation is the sea, but who are not actually so employed or engaged. *REG. v. LYNCH*

*C. C. R. [1898] 1 Q. B. 61*

2. — *Intimidation—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7.*

In a conviction under s. 7 of the Conspiracy and Protection of Property Act, 1875, the "acts which he had a legal right to do" must be specified. *REG. v. MCKENZIE*

*Div. Ct. [1892] 2 Q. B. 519*

Referred to by *C. A. J. Lyons & Sons v. Wilkins, [1899] 1 Ch. 255, 266.*

3. — *Intimidation—Trade union—Threat of strike unless employer ceases to employ workmen not members—(6 Geo. 4, c. 129), s. 3—Trade Union Act, 1871 (34 & 35 Vict. c. 31), ss. 2, 3—Criminal Law—Violence, &c., Act, 1871 (34 & 35*

**CRIMINAL LAW (Conspiracy)—continued.**

*Vict. c. 32*, s. 1—*Conspiracy and Protection of Property Act, 1875* (38 & 39 *Vict. c. 86*), ss. 3, 7, sub-s. 1.

A threat to strike unless the employer ceases to employ non-union men is not intimidation within s. 7 of the Conspiracy and Protection of Property Act, 1875. *CONNOR v. KENT. GIBSON v. LAWSON. CURRAN v. TRELEAVEN*

Lord Coleridge C.J., Mathew, Cave,

A. L. Smith and Charles JJ. [1891] 2 Q. B. 545

See *J. Lyons & Sons v. Wilkins, C. A.* [1896]

1 Ch. 811, 824; *Allen v. Flood, H. L. (E.)* [1898]

A. C. 1, at p. 17.

**Costs.**

*Regs. of Secy. of State dated Feb. 27, 1895.*  
*St. R. & O. 1895, No. 106, L. 5. Price ½d.*

*Regs. of Secy. of State dated Dec. 21, 1895.*  
*St. R. & O. 1895, No. 585, L. 34. Price ½d.*

*Regs. made by the Secy. of State governing the allowances to prosecutors and witnesses in criminal prosecutions. Offic. & Parl. Publ. 1896, April. Price 1d.*

**COSTS.]** *Order, dated Sept. 7, 1896, made by the Secy. of State as to the allowances to witnesses in Criminal Prosecutions. St. R. & O. 1896, No. 835. Price ½d.*

*Regs. made by Secy. of State governing the allowances to prosecutors and witnesses in criminal prosecutions. St. R. & O. 1899, various. Price 1d.*

4. — *Corrupt practices at municipal election, Prosecution for—Private prosecutor—Defendant's right to costs where acquitted—Corrupt Practices Prevention Act, 1854* (17 & 18 *Vict. c. 102*), s. 12—*Corrupt and Illegal Practices Prevention Act, 1883* (46 & 47 *Vict. c. 51*), s. 53—*Municipal Elections (Corrupt and Illegal Practices) Act, 1884* (47 & 48 *Vict. c. 70*), s. 30.

Where a private prosecutor prefers an indictment charging the commission of a corrupt practice at a municipal election, the deft., if acquitted of the charge, is entitled to recover from the prosecutor the costs sustained by reason of the indictment. *REG. v. LAW*

*Bucknill J.* [1900] 1 Q. B. 605

5. — *Costs—Obstruction of highways—16 & 17 Vict. c. 30, s. 5.*

On removing by certiorari an indictment containing seven counts into the High Court, the prosecutors bound themselves to pay the deft.'s costs if she were acquitted on the indictment. The deft. was acquitted on five out of the seven counts:—

*Held*, that this was not acquittal within the meaning of the recognizance, and the deft. could not claim her costs. *REG. v. BAYARD*

*Div. Ct.* [1892] 2 Q. B. 181

[NOTE.—16 & 17 *Vict. c. 30, s. 5*, was repealed by the Statute Law Revision Act, 1892, as being superseded by the Crown Office Rules, 1886.]

**Cruelty to Animals.**

And see under ANIMAL.

*Wild Animals in Captivity Protection Act, 1900* (63 & 64 *Vict. c. 33*), is an Act for the prevention of cruelty to wild animals in captivity.

**CRIMINAL LAW (Cruelty to Animals)—contd.**

6. — *Caged lions—Domestic animals—Cruelty to Animals Acts, 1849* (12 & 13 *Vict. c. 92*), ss. 2, 29; 1854 (17 & 18 *Vict. c. 60*), s. 3.

Lions kept in a cage and kept in subjection and made to jump over a board are not "domestic animals" within 12 & 13 *Vict. c. 92, s. 29*, and 17 & 18 *Vict. c. 60, s. 3*, and an information for treating them cruelly was held bad. *HARPER v. MARCES* — *Div. Ct.* [1894] 2 Q. B. 319

Referred to by *V. Williams J. Yates v. Higgins*, [1896] 1 Q. B. 166, 168. See next Case.

See also 63 & 64 *Vict. c. 33, s. 1.*

7. — "Domestic animal"—*Tame seagull—Cruelty to Animals Act, 1849* (12 & 13 *Vict. c. 92*), ss. 2, 29—*Cruelty to Animals Act, 1854* (17 & 18 *Vict. c. 60*), s. 3.

The respondents were charged, under the Cruelty to Animals Act, 1849, s. 2, with cruelly ill-treating a tame seagull. The bird had been the property of its owner for three years, and was used by her in her business as a photographer. It was tame, and was kept in a field. One wing having been pinioned, it could not fly, but could get out of the field by going down a river. It would go to its owner when called, and feed from the hand:—

*Held*, that the seagull was not a "domestic animal," within the meaning of the Cruelty to Animals Acts, 1849, s. 29, and 1854, s. 3, and therefore the respondents could not be convicted. *YATES v. HIGGINS* — *Div. Ct.* [1896] 1 Q. B. 166

See 63 & 64 *Vict. c. 33, s. 1.*

8. — *Rabbit coursing—"Domestic animals"—Cruelty to Animals Acts, 1849* (12 & 13 *Vict. c. 92*), ss. 2, 29; 1854 (17 & 18 *Vict. c. 60*), s. 3.

Persons who have captured and kept wild rabbits for coursing, and who have ill-treated the rabbits during the coursing, cannot be convicted of cruelty to animals, rabbits in this case not being "domestic animals" within 12 & 13 *Vict. c. 92, s. 29*, and 17 & 18 *Vict. c. 60, s. 3*. *APLIN v. PORRITT* *Div. Ct.* [1893] 2 Q. B. 57

See 63 & 64 *Vict. c. 33, s. 1.*

**Cruelty to Children.**

*Prevention of Cruelty to Children Act, 1894* (57 & 58 *Vict. c. 41*), consolidates the law for the prevention of cruelty to children.

— Examination of defendant—Previous conviction.

See CRIMINAL LAW—Evidence. 18.

9. — *Manslaughter—Infant child—Neglect to procure medical aid—Conscientious objection to medical aid—"Wilfully neglect"—Prevention of Cruelty to Children Act, 1894* (57 & 58 *Vict. c. 41*), s. 1.

The prisoner was charged with the manslaughter of his infant child, of which he had the custody. He belonged to a sect who objected on religious grounds to calling in medical aid, and to the use of medicine, and he had wilfully and deliberately abstained from providing medical aid and medicine, which were necessary for the child, though he knew it to be dangerously ill, but in other respects he had done all he could

**CRIMINAL LAW (Cruelty to Children)—*contd.***

in the best interests of the child. Medical aid would have prolonged, and probably saved, the child's life, and the prisoner had the means to procure medical aid:—

*Held*, that there was evidence that the prisoner had wilfully neglected the child in a manner likely to cause injury to its health, within the meaning of the Act, and having thereby caused or accelerated its death, he was rightly convicted of manslaughter. *REG. v. SENIOR* - C. C. R. [1898] W. N. 168 (7); [1899] 1 Q. B. 283

**10. — Proof of age of child—Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41).**

On the trial of an indictment for unlawfully and wilfully neglecting children under the age of sixteen, contrary to the Prevention of Cruelty to Children Act, 1894, the children were not produced before the Court, and the only evidence as to their ages was that of two persons who said that they had seen the children and stated what they believed were their respective ages, all of them being under sixteen, and that of the mistress of a school who said that the elder children attended a public elementary school, and she believed they were within the statutory age limit:—

*Held*, that there was evidence proper to be left to the jury that the children were under sixteen. *REG. v. COX* C. C. R. [1898] 1 Q. D. 179

**Embezzlement.****11. — Assistant overseer — Parish council—Local Government Act, 1893 (56 & 57 Vict. c. 73), s. 5, sub-ss. 1, 2 (c); s. 81, sub-s. 3.**

Although by s. 5, sub-s. 1, of the Local Government Act, 1894, the power of appointing and revoking the appointment of assistant overseers in rural parishes having a parish council is transferred to the parish council, an assistant overseer becomes when appointed the servant, not of the parish council, but of the inhabitants of the parish; and in an indictment for embezzling money collected by him from the ratepayers, he is correctly so described, and the money so embezzled is rightly laid as the property of the inhabitants. *REG. v. SMALLMAN*

C. C. R. [1896] W. N. 157 (1); [1897] 1 Q. B. 4

**12. — Clerk or servant—Director of company—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68.**

A director of a limited co., who is also employed as a servant to collect money for the co., is liable to be convicted of embezzlement of such money as a clerk or servant of the co. *REG. v. STUART* - C. C. R. [1894] 1 Q. B. 310

**13. — Illegal association—Beneficial owners of property—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4—Partnership Act, 1868 (31 & 32 Vict. c. 116), s. 1.**

A person can be convicted of the embezzlement of the property of an illegally constituted club of which he is a member, for though the club has no legal existence as an association, the members thereof may have a legal existence as beneficial owners of property. *REG. v. TANKARD*

C. C. R. [1894] 1 Q. B. 548

— Larceny.

See CRIMINAL LAW—Larceny.

**CRIMINAL LAW—*continued.*****Evidence.**

*Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), amends the law of evidence.*

**14. — Accomplice — Corroboration — Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3, sub-s. 1.**

It is not the law that a prisoner must necessarily be acquitted in the absence of corroborative evidence, and the evidence must be laid before the jury in each case. It is the practice to warn the jury that they ought not to convict unless they think that the evidence of an accomplice is corroborated. *In re MEUNIER*

Div. Ct. [1894] 2 Q. B. 415

**15. — Admissibility — Evidence of criminal acts other than those charged—Criminal Law Amendment Act, 1883 (46 Vict. No. 17), s. 423.**

Evidence tending to shew guilt of criminal acts other than those charged is not admissible except upon the issue whether the acts charged were designed or accidental, or unless to rebut a defence otherwise open. M. and his wife were convicted of the murder of an infant, received from its mother on representations as to their willingness to adopt it on payment of a sum inadequate to its support beyond a very limited time, and whose body was found buried in the garden of a house occupied by them:

*Held*, that evidence of other infants having been received from their mothers on like representations and terms, and that bodies of infants had been found buried in the gardens of several houses occupied by the prisoners, was relevant to the issue. *MAKIN v. ATTORNEY-GENERAL FOR NEW SOUTH WALES* - P. C. [1894] A. C. 57

— Admissibility—Proof of guilty knowledge—Acts in respect of which defendant had been previously acquitted.

See CRIMINAL LAW—False Pretences. 28.

**16. — Admissibility—Public examination of bankrupt—Parol evidence of bankrupt's admissions—The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 17, sub-s. 8.**

By s. 17, sub-s. 8, of the Bankruptcy Act, 1883, on the public examination of a debtor he "shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him":—

*Held*, that sub-s. 8 did not exclude any other mode of proving the debtor's admissions made at his public examination; so that, on the trial of an indictment against a bankrupt for misdemeanours under the Debtors Act, 1869, where notes of his public examination had been taken but not read over by or to or signed by him, parol evidence of the person who took the notes was admissible to prove such admissions. *REG. v. ERDHEIM* - C. C. R. [1896] 2 Q. B. 260

**17. — Confession.**

Before a confession can be received in evidence of criminality it must be proved affirmatively that the confession was free and voluntary, that is, that it was not preceded by any inducement

**CRIMINAL LAW (Evidence)—continued.**

held out by any person in authority to make a statement. In this case the inducement was held out by the employer of the prisoner to his relatives, and it was inferred, but not proved, that it was communicated to the prisoner. No sufficient proof was given that the confession was free and voluntary:—

*Held*, that it was inadmissible in evidence. *REG. v. THOMPSON* C. C. R. [1893] 2 Q. B. 12

18. — *Examination of defendant—Previous conviction—Prevention of Cruelty to Children Act, 1894* (57 & 58 Vict. c. 41)—*Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), ss. 1, 6.

The appellant was charged before a court of summary jurisdiction with an offence under the Prevention of Cruelty to Children Act, 1894, and gave evidence on his own behalf as that Act permits. He was asked in cross-examination whether he had not been previously convicted of a similar offence, and answered that he had. The Criminal Evidence Act, 1898, s. 1, enables "every person charged with an offence" to give evidence on his own behalf; but (f) "a person charged and called as a witness in pursuance of this Act" shall not be asked or required to answer any question tending to shew that he has been convicted of any other offence than that with which he is charged. By s. 6 "this Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act."

The court of summary jurisdiction convicted the appellant:—

*Held*, that s. 1 of the Criminal Evidence Act, 1898, applied; that the evidence of the appellant's previous conviction was wrongly admitted, and, therefore, that the conviction was bad. *CHARNOCK v. MERCHANT* Div. Ct. [1900] W. N. 10; [1900] 1 Q. B. 474

— False pretences—Proof of guilty knowledge.

See **CRIMINAL LAW—False Pretences**. 28.

19. — *Fabricating evidence for future use.*

It is the custom among merchants on the arrival of a cargo of grain to take samples sealed by both buyer and seller, in case arbitration proceedings might be necessary. The deft, who had been appointed to take the samples, tampered with the sample-bags, and substituted inferior grain with intent that the samples so altered should be used in evidence:—

*Held*, that this was an indictable misdemeanour at common law. *REG. v. VREONES*

C. C. R. [1891] 1 Q. B. 360

20. — *Handwriting, proof of, by comparison—Skilled witness*—(28 & 29 Vict. c. 18), s. 8.

A witness giving evidence to prove handwriting need not have gained his skill in comparing handwriting in the way of his profession or business. It is sufficient if he is experienced. *REG. v. SILVERLOCK* C. C. R. [1894] 2 Q. B. 766

— Letter written by defendant—Opinion of witness as to meaning.

See **CRIMINAL LAW—False Pretences**. 29.

21. — *Map of inclosure award whether admissible to prove boundaries of highway.*

A map of an inclosure award is inadmissible

**CRIMINAL LAW (Evidence)—continued.**

to prove the boundaries of a highway against a deft. on an indictment for obstructing a highway, whose property is adjacent to the highway, and who was not subject to the jurisdiction of the Inclosure Comms. in making their award. *REG. v. BERGER* - - Div. Ct. [1894] 1 Q. B. 823

22. — *Misreception of evidence—Prisoners jointly indicted—Case stated on behalf of one prisoner only—Crown Cases Act, 1848* (11 & 12 Vict. c. 78), s. 2.

Where two prisoners jointly indicted have been convicted, and a question has been reserved for the consideration of the Court for Crown Cases Reserved on behalf of one of them, that Court has power, under 11 & 12 Vict. c. 78, s. 2, if it shall be of opinion that the objection raised is valid and that it affects the conviction of both prisoners, to quash the conviction of the other prisoner as well as that of the prisoner on whose behalf the question has been reserved. *REG. v. SAUNDERS* - - C. C. R. [1899] 1 Q. B. 490

23. — *Perjury—Materiality.*

All false statements wilfully and corruptly made by a witness as to matters which affect his credit are material, and he is liable to be convicted of perjury in respect of them. A person charged with selling beer without a licence swore falsely that on a previous charge he had not authorized a plea of guilty, and that such plea was without his knowledge and against his will:—

*Held*, that as such statements affected his credit as a witness they were material, and that he was rightly convicted of perjury. *REG. v. BAKER* - - C. C. R. [1894] 1 Q. B. 797

24. — *Rape—Particulars of complaint made by prosecutrix.*

Upon the trial of an indictment for rape, or other kindred offences against women or girls, the fact that a complaint was made by the prosecutrix shortly after the alleged occurrence, and the particulars of such complaint, may, so far as they relate to the charge against the prisoner, be given in evidence on the part of the prosecution, not as being evidence of the facts complained of, but as evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and as negating consent on her part. *REG. v. LILLYMAN*

C. C. R. [1896] 2 Q. B. 167

25. — *Refraining from giving evidence, Comment on prisoner—New South Wales Criminal Law and Evidence Amendment Act* (55 & 56 Vict. No. 5).

Comments by a judge in his summing-up on the fact that a deft. who is competent to give evidence has not tendered himself as a witness are lawful, but may not be expedient. *KORS v. REG. Ex parte KORS* P. C. [1894] A. C. 650

26. — *Right of counsel for prosecution to sum up where prisoner gives evidence—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), ss. 2, 3.

Where, upon the trial of an indictable offence, the person charged gives evidence in his own behalf, but does not call witnesses, the counsel for the prosecution is entitled, immediately after the person charged has given his evidence, to

**CRIMINAL LAW (Evidence)—continued.**

sum up the case for the Crown, and in so doing to comment upon the evidence given by the person charged. *REG. v. GARDNER* C. C. R. [1898] W. N. 150 (4); [1899] 1 Q. B. 150

— Right of Court to comment on prisoner's failure to give evidence.

See **CRIMINAL LAW—False Pretences.**  
30.

**False Pretences.**

*Explanation to be given of "false pretences."*  
See *Summary Jurisdiction Act, 1899* (62 & 63 Vict. c. 22), s. 3 and Sched.

*Summary Jurisdiction as to False Pretences—Circular letter dated Aug. 14, 1899, issued by Secy. of State to clerks to justices in petty sessional divisions, calling attention to the extension of the magistrates' jurisdiction in dealing with indictable offences contained in the Summary Jurisdiction Act, 1899* (62 & 63 Vict. c. 22).

27. — *Athletic sports—Competitor in handicap—False statements as to name and performances—Attempt to obtain prize.*

On the trial of an indictment for attempting to obtain property by false pretences the following facts were proved.

Entries for two handicaps were sent to the secretary of an athletic meeting, in the name of Sims, containing statements as to the recent performances of Sims, which were very moderate, and in consequence Sims was given long starts. The entries were not written by either Sims or the prisoner. At the meeting the prisoner, who was a good runner, personated Sims, who was absent, and came in first in both races. After the first race the handicapper asked the prisoner whether he was really Sims, whether the performance given in the entry form was really his, and whether he had never won a race, as stated in the entry. He answered these questions, falsely, in the affirmative:—

*Held*, that the attempt to obtain the prizes was not too remote from the pretence, that the case was rightly left to the jury, and the prisoner was properly convicted.

*Reg. v. Larner*, (1880) 14 Cox C. C. 497, disapproved. *REG. v. BUTTON*

C. C. R. [1900] W. N. 176; [1900] 2 Q. B. 597

28. — *Evidence—Admissibility—Proof of guilty knowledge—Acts in respect of which defendant had been previously acquitted.*

The deft. was indicted for obtaining a cheque by falsely pretending that another cheque, which he then gave to the prosecutor, was a good and valid order for the payment of money. The prosecutor deposed that he gave his cheque to the deft. on the faith of the deft.'s statement that a cheque, which the deft. then gave to the prosecutor, was a good cheque. The cheque given by the deft. was dishonoured. The deft. stated that when he gave the cheque he expected a payment which would have enabled him to meet it. The deft. was acquitted. He was then tried on a second indictment, charging him with obtaining from other persons three sums of money on three cheques which were dishonoured. To prove guilty knowledge the prosecutor in the first case

**CRIMINAL LAW (False Pretences)—continued.**

was called and gave the same evidence as in the first case. Deft. was convicted, and the question as to the admissibility of the evidence was reserved:—

*Held*, by Lord Russell of Killowen C.J., Mathew, Grantham, Wright, Darling, and Channell JJ. (Bruce and Ridley JJ. dissenting), that the evidence which had been given on the first indictment, upon which the deft. had been tried and acquitted, was legally admissible upon the trial of the second indictment, for the purpose of proving guilty knowledge, and the conviction was right. *REG. v. OLLIS* - - - C. C. R. [1900] W. N. 154; [1900] 2 Q. B. 758

29. — *Evidence—Letter written by defendant—Opinion of witness as to meaning.*

Upon the trial of an indictment for obtaining goods by false pretences, a letter written by the deft. to the prosecutor respecting the goods was put into the hands of the prosecutor, who was asked what opinion he formed as to the position or occupation of the deft. upon the receipt of the letter:—

*Held*, that, although the question of the proper inference to be drawn from the letter was for the jury, the question was admissible to shew the inference in fact drawn from it by the prosecutor.

A deft. who has been convicted upon an indictment charging him with obtaining credit for goods by false pretences cannot be afterwards convicted upon a further indictment charging him with larceny of the same goods. *REG. v. KING* - - - C. C. R. [1897] 1 Q. B. 214

30. — *Evidence of subsequent frauds—Right of prisoner to give evidence before grand jury—Right of Court to comment on prisoner's failure to give evidence—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1.

On the trial of an indictment for obtaining eggs by false pretences, it was proved that the prisoner had falsely represented by advertisements in newspapers that he was carrying on a bona fide dairyman's business. Evidence was admitted that subsequent to the transaction in question he had obtained eggs from other persons by means of similar advertisements:—

*Held*, that the evidence was properly admitted. The Criminal Evidence Act, 1898, does not confer on a prisoner the right of giving evidence on his own behalf before the grand jury, nor does it deprive the Court of the right to comment on the failure of the prisoner to give evidence at the trial. *REG. v. RHODES*

C. C. R. [1899] 1 Q. B. 77

31. — *False pretences—Form of indictment.*

(A) An indictment for obtaining or attempting to obtain money by false pretences must aver the person to whom the false pretences were made and the person from whom the money was obtained or attempted to be obtained. *REG. v. SOWERBY* - - - C. C. [1894] 2 Q. B. 173

(B) 28 & 29 Vict. c. 18, s. 8. But a count in an indictment charging that A., by causing to be inserted in a newspaper a fraudulent advertisement (setting it out), did falsely pretend to the subjects of Her Majesty the Queen that

**CRIMINAL LAW (False Pretences)—continued.**

(setting out the false pretence), by means of which false pretence he obtained a cheque from C., though inartistically drawn, was held sufficient. *REG. v. SILVERLOCK* C. C. R. [1894] 2 Q. B. 766

(c) *Larceny Act*, 1861 (24 & 25 Vict. c. 96), s. 95.

An indictment under s. 95 of the *Larceny Act*, 1861, charging the receiving goods knowing the same to have been unlawfully obtained by false pretences, is good, although it does not specify the nature of the pretences. *TAYLOR v. REG.* - - - Div. Ct. [1895] 1 Q. B. 25

Referred to by Hawkins J. *Reg. v. Riley*, [1896] 1 Q. B. 309, 312.

32. — *Jurisdiction—False pretences made in Scotland—Goods obtained in England—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 11, sub-s. 13; s. 13, sub-s. 1.

The debt, who carried on business in the county of Durham, obtained goods on credit in that county from a traveller of the prosecutors by means of false representations made by the defendant to the prosecutors in Glasgow, in which place they carried on business:—

*Held*, that the offence was properly triable in the county of Durham.

*Per* Hawkins, Wills and Bruce JJ., on the ground that the offence consisted in obtaining the goods, and not in making the false pretences whereby they might be obtained, and that therefore an English Court has jurisdiction to try a charge of obtaining goods by false pretences where the goods have been obtained within the jurisdiction of the Court dealing with the charge, although the false representations may have been made beyond the jurisdiction of the English Courts.

*Per* Wright J., on the ground that, under the circumstances disclosed in the case, the possession of the goods by the defendant might be treated as a possession in the county of Durham under a representation made in Glasgow and continuing in the county of Durham.

*Rez v. Buttery*, cited in 4 B. & A. at p. 179, and *Pearson v. McGowan*, (1825) 3 B. & C. 700, discussed. *REG. v. ELLIS* - - - C. C. R.

[1898] W. N. 162 (2); [1899] 1 Q. B. 230

33. — *Obtaining credit by fraud—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 13, sub-s. 1.

The debt. ordered a meal in a restaurant; he made no verbal representation at the time as to his ability to pay, nor was any question asked him with regard to it. After the meal he said that he was unable to pay, and that he had (as was the fact) only one halfpenny in his possession:—

*Held*, that he could not be convicted of the offence of obtaining goods by false pretences, but that he was liable to be convicted of obtaining credit by means of fraud within the meaning of s. 13, sub-s. 1, of the *Debtors Act*, 1869. *REG. v. JONES* - - - C. C. R. [1897] W. N. 167 (4); [1898] 1 Q. B. 119

**Felony.**

*Separation of juries in cases of felony permitted by 60 Vict. c. 18.*

**CRIMINAL LAW—continued.****Fine or Imprisonment.**

*Release of prisoner on payment of portion of fine.* See 62 & 63 Vict. c. 11, s. 1.

*Fine or imprisonment (Scotland and Ireland) Act*, 1899 (62 & 63 Vict. c. 11), assimilates the law of Scotland and of Ireland as to imprisonment in default of payment of Fines to that of England.

**Forgery.**

34. — *Obtaining money by forged instrument—Forged telegram—Forgery Act*, 1861 (24 & 25 Vict. c. 98), s. 38.

The prisoner was indicted under s. 38 of the *Forgery Act*, 1861, for obtaining certain money by means "of a certain forged instrument, to wit, a forged telegram." It appeared that the prisoner, who was a clerk in a post office, sent to a bookmaker a telegram offering a bet on a certain horse for a certain race. The telegram purported to have been handed in prior to the running of the race, and the bookmaker accepted the bet and ultimately paid the amount won on that understanding. In reality the telegram was despatched by the prisoner after he had received the news that the race had been won by the horse in question:—

*Held*, by Hawkins, Mathew, and Wills JJ. (*Lord Russell of Killowen C.J.* and *V. Williams J.* doubting), that the telegram was a forged instrument within the meaning of s. 38, and that the indictment was good. *REG. v. RILEY*

C. C. R. [1896] 1 Q. B. 309

**Larceny.**

*JURISDICTION.] The Larceny Act*, 1896 (59 & 60 Vict. c. 52), amends the law with respect to the jurisdiction exercisable in cases relating to the receipt or possession of stolen property.

— Allegation of reasonable suspicion—Search-warrant.

See JUSTICES. 12.

35. — *Animus furandi—Function of jury.*

Upon a trial for larceny the question whether the goods were taken animo furandi is a question of fact for the jury.

A prisoner was indicted for stealing milk; at the conclusion of the case the jury announced that they were not agreed upon their verdict. They were then asked by the chairman whether they believed the evidence for the prosecution, and answered the question in the affirmative; the chairman then directed a verdict of guilty to be entered:—

*Held*, that the conviction was bad, there having been no finding by the jury that the prisoner had acted animo furandi. *REG. v. FARNBOROUGH* - C. C. R. [1895] 2 Q. B. 484

— Embezzlement.

See CRIMINAL LAW—Embezzlement.

— False pretences.

See CRIMINAL LAW—False Pretences.

36. — *Misappropriation by agent—Acceptances—Larceny Act*, 1861 (24 & 25 Vict. c. 96), s. 75.

Certain bills accepted by the prosecutors were delivered to the prisoner to be discounted.

**CRIMINAL LAW (Larceny)—continued.**

The drawer's name was not then filled in. Subsequently the name was filled in and the bills discounted. The prisoner, in breach of a written agreement, misappropriated the money:—

*Held*, that the acceptances, at the time of their delivery, were securities for the payment of money within the meaning of s. 75 of the Larceny Act, 1861. **REG. v. BOWERMAN**

**C. C. R. [1891] 1 Q. B. 112**

**37. — Misappropriation by agent—Money intrusted for safe custody—Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 75, 76—Extradition Act, 1870 (33 & 34 Vict. c. 52).**

An agent who is intrusted with money without any direction in writing with a view to investment and misappropriates it is guilty of an offence within s. 76 of the Larceny Act, 1861. A bailee cannot be convicted of larceny when he is at liberty or is bound to convert the article delivered to him into something else before returning it or delivering it to the person to whom he is instructed to deliver it.

Written instructions are essential to constitute an offence within s. 75 of the Larceny Act, 1861. *In re BELLENCOTRE*

**Div. Ct. [1891] 2 Q. B. 122**

**38. — Money paid or deposited under contract induced by fraud.**

Where the owner of money or goods parts with the possession of them under a contract induced by fraud, but does not intend to part with the property in them until the other party to the contract has fulfilled his part of the bargain, the person so fraudulently obtaining possession of the money or goods may be convicted of larceny by a trick. **REG. v. RUSSETT**

**C. C. R. [1892] 2 Q. B. 312**

— Reasonable suspicion — Search-warrant — Legality.

*See JUSTICES. 12.*

**39. — Receiving.**

A servant of carriers removed a parcel in their dépôt to a different part of the premises and redirected it to the prisoners. The carrier's superintendent being informed of this, inspected the parcel, replaced it in the place selected by the thief, and sent it to the prisoners, who received it. The conviction was quashed on the ground that the carriers, having resumed possession before the receipt by the prisoners, the parcel had ceased to be stolen property. **REG. v. VILLENSKY** — **C. C. R. [1892] 2 Q. B. 597**

**40. — Receiving — Property stolen by wife from husband—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16.**

Two prisoners, a man and a woman, were indicted for stealing property in a dwelling-house, and, in a second count, for receiving the same property. The woman was the prosecutor's wife, and the man had lodged in their house. After he left, the woman packed up the property in question, and sent it to the man, and afterwards left the house, and joined him, and the two lived together. The property was found in their possession. The jury found the woman guilty of stealing, and the man of receiving. The ques-

**CRIMINAL LAW (Larceny)—continued.**

tion was reserved, whether the man could be indicted for receiving the property:—

*Held*, that, as the stealing by a wife of her husband's property did not amount to a felony either at common law or by virtue of the Larceny Act, 1861, but was made a criminal offence by the Married Women's Property Act, 1882, ss. 12, 16, the man was not liable to be convicted under the Larceny Act, 1861, s. 91, of receiving property stolen by the woman from her husband, and the conviction was wrong.

**Reg. v. Smith, (1870) L. R. 1 C. C. 266, approved and followed. REG. v. STREETER**

**C. C. R. [1900] W. N. 176; [1900] 2 Q. B. 601**

**41. — Restitution of stolen property—Current coin of the realm—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100.**

A coin which is current coin of the realm may be sold as a curiosity, and in such a case, if the seller is a thief who has stolen it from the owner and who has subsequently been prosecuted to conviction, an order for its restitution to the owner may be made under s. 100 of the Larceny Act, 1861:—

*Seem*, that no such order could be made if the coin had been passed into circulation as current money, although it might be possible to identify it.

A thief stole from the respondent a five-pound gold piece (which by Royal proclamation had been made current coin of the realm) and changed it with the appellant, who was a dealer in curiosities, for five sovereigns:—

*Held*, that under the circumstances the coin had not been received by the appellant as current coin, and that an order might be made under s. 100 of the Larceny Act, 1861, ordering the appellant to restore it to the respondent. **MOSS v. HANCOCK** — **Div. Ct. [1899] 2 Q. B. 111**

**Malicious Damage.**

*Maliciously setting fire to woods, heath, gorse, &c. See Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), Sched.*

**42. — Assertion of right—Using more force than necessary—Malicious Injuries to Property Act, 1861 (24 & 25 Vict. c. 97), s. 51.**

On the trial of an indictment for malicious damage to property under 24 & 25 Vict. c. 97, s. 51, where the defence set up is a claim of right, the proper direction to the jury is: "Did the defts. do what they did in the exercise of a supposed right?" adding that if, on the facts before them, the jury come to the conclusion that the defts. did more damage than they could reasonably suppose to be necessary for the assertion or protection of that right, then the jury may properly and ought to find the defts. guilty of malicious damage under s. 51. **REG. v. ULEMS**

**C. C. R. [1898] 1 Q. B. 556**

**43. — Milk—Adding water to—Fraudulent motive—Absence of malice—Malicious Injuries to Property Act, 1861 (24 & 25 Vict. c. 97), s. 52.**

A milk-carrier who damages his employer's milk by adding water to it, with no intention of injuring his employer, but in order to make a profit for himself by increasing the bulk of the

**CRIMINAL LAW (Malicious Damage)—*contd.***

milk, is guilty of an offence under s. 52 of the Malicious Injuries to Property Act, 1861.

*Hall v. Richardson*, (1889) 54 J. P. 345, disapproved. *ROPER v. KNOTT*

Div. Ct. [1898] 1 Q. B. 868

44. — *Trespass on grass field—Actual damage—Malicious Injuries to Property Act, 1861* (24 & 25 Vict. c. 97), s. 52.

The appellant, a trespasser, walked across a grass field of the respondent. The grass was long, and the appellant did damage to the grass to the value of 6d. :—

*Held*, that he was liable to be summarily convicted under s. 52 of the Malicious Injuries to Property Act, 1861, which makes it an offence to “wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever . . . for which no punishment is hereinbefore provided.” *GAYFORD v. CHOULER* — Div. Ct. [1898] 1 Q. B. 316

**Malicious Prosecution.**

See MALICIOUS PROSECUTION.

**Offences against Morality.**

— Betting.

See Cases under GAMING.

45. — “*Brothel*”—*Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 13, sub-s. 1.

A woman who occupies a house and is therein visited by men who have immoral intercourse with her cannot be convicted of keeping a brothel, where she is the only woman so occupying or using the house. *SINGLETON v. ELLISON*

Div. Ct. [1895] 1 Q. B. 607

— Brothel—Prosecution for keeping.

See JUSTICES. 1.

**Offences against the Person.**

46. — *Aiding and abetting—Felonious wounding—Unlawful wounding.*

Upon the trial of an indictment against two prisoners charging one with feloniously wounding with intent to do grievous bodily harm, and the other with aiding and abetting in the commission of the felony, if the principal be convicted of the misdemeanour of unlawfully wounding the second prisoner may be convicted of aiding and abetting him therein. *REG. v. WAUDEY* C. C. R. [1895] 2 Q. B. 482

47. — *Attempt, Evidence of—Discharge of loaded arms—Offence against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 18.

Evidence that the prisoner tried to fire a loaded revolver, and would have fired but for the forcible interference of bystanders :—

*Held*, sufficient proof of an offence within 24 & 25 Vict. c. 100, s. 18. *REG. v. DUCKWORTH* C. C. R. [1892] 2 Q. B. 83

48. — *Carnal knowledge of girl between thirteen and sixteen—Aiding and abetting—Criminal Law Amendments Act, 1885* (48 & 49 Vict. c. 69), s. 5.

A girl between thirteen and sixteen, who aids and abets a male person in having carnal connection with her, or solicits and incites such

**CRIMINAL LAW (Offences against the Person)—*continued.***

person to have such connection, has not committed any criminal offence. *REG. v. TYRRELL*

C. C. R. [1894] 1 Q. B. 710

49. — *Carnal knowledge of girl under thirteen—Emission—Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 4.

To prove the offence of unlawfully and carnally knowing a girl under the age of thirteen, under s. 4 of the Criminal Law Amendment Act, 1885, it is not necessary to prove emission. *REG. v. MARSDEN* — C. C. R. [1891] 2 Q. B. 149

50. — *Carnal knowledge of girl under thirteen by male under fourteen—Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 4.

A male under fourteen cannot be convicted under s. 4 of the Criminal Law Amendment Act, 1885, of carnal knowledge of a girl under thirteen. *REG. v. WAITE* — C. C. R. [1892] 2 Q. B. 600

51. — *Carnal knowledge—Power to convict of indecent assault—Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), ss. 4, 9.

A male under fourteen who is tried on an indictment under s. 4 of the Criminal Law Amendment Act, 1885, for carnal knowledge of a girl under thirteen, though entitled to acquittal for that offence, may under s. 9 of the Act be convicted of indecent assault. Whether he might have been convicted of an attempt at rape, *quære*. *REG. v. WILLIAMS* C. C. R. [1893] 1 Q. B. 320

52. — *Indecency—Procuring commission of act of gross indecency—“Another male person”—Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 11.

By s. 11 of the Criminal Law Amendment Act, 1885, “any male person who . . . procures . . . the commission by any male person of any act of gross indecency with another male person shall be guilty of a misdemeanour” :—

*Held*, that where the prisoner had procured the commission by another male person of an act of gross indecency with the prisoner himself the offence was complete. *REG. v. JONES AND BOWERBANK* — C. C. R. [1896] 1 Q. B. 4

53. — *Manslaughter—Neglect of person of full age.*

A woman living with and entirely maintained by her aunt so neglected her in illness by not supplying her with food nor medical and other assistance that she died :—

*Held*, that the woman was properly convicted of manslaughter. *REG. v. INSTAN* C. C. R. [1893] 1 Q. B. 450

— Rivers pollution—Interrogatories—Whether proceedings civil or criminal.

See DISCOVERY—Documents. 39.

**Offences against Property.**

And see CRIMINAL LAW, *passim*.

54. — *Debtors Act, 1869* (32 & 33 Vict. c. 62) s. 13, sub-s. 2—*Intent to defraud creditors.*

A plt. in an action to recover unliquidated damages is not until recovery of judgment a “creditor” of the debt. within the meaning of s. 13, sub-s. 2, of the Debtors Act, 1869, which



**CRIMINAL LAW (Offences against Property)—continued.**

makes it a misdemeanour for any person to make any gift, delivery, or transfer of or any charge upon his property with intent to defraud his creditors or any of them.

A debt. to such an action, who has, during the pendency of the action, but before judgment, given a bill of sale over his furniture with intent to defeat any judgment which the plt. may obtain, cannot therefore be convicted under that subsection of having made a charge on his property with intent to defraud the plt. in the action. *REG. v. HOPKINS AND FERGUSON*

**C. C. R. [1896] 1 Q. B. 652**

**55. — Demanding money with menaces—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 44.**

In order to constitute the offence of sending a letter demanding money with menaces within s. 4 of the Larceny Act, 1861, it is not essential that the "menace" should be a threat of injury to the person or property of the prosecutor, or a threat to accuse him of a crime; the offence may be committed if there be a threat to accuse him of misconduct not amounting to an offence against the criminal law. *REG. v. TOMLINSON*

**C. C. R. [1895] 1 Q. B. 706**

Referred to by H. L. (E). *Allen v. Flood*, [1898] A. C. 1, 17.

— False pretences—Form of indictment for offences involving.

See **CRIMINAL LAW—False Pretences**. 31.

**56. — "Obtaining credit"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 31—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 18.**

An intent to defraud is not a material ingredient in the offence of "obtaining credit" within the section. *REG. v. DYSON*

**C. C. R. [1894] 2 Q. B. 176**

**Offences by Public Officers.**

**57. — Misconduct by an overseer.**

An offence by an overseer, within the meaning of s. 51 of the Parliamentary Registration Act, 1843, is not an indictable misdemeanour. The criminal liabilities of public officers considered. *REG. v. HALL* — **Charles J.**

[1891] 1 Q. B. 747

Followed. *Saunders v. Holborn District Board of Works*, [1895] 1 Q. B. 64, 69.

**Offences against the State.**

— Political offence.

See **EXTRADITION**.

**58. — Uttering counterfeit coin—Previous conviction—Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), ss. 9, 12, 37.**

In ss. 9, 12 of the Coinage Offences Act, 1861, "conviction" means only the finding by the jury of a verdict of guilty or a plea of guilty. Therefore a person so found guilty, and released on recognisance to come up for judgment when called on, when convicted again is a person who has been "previously convicted." *REG. v. BLABY*

**C. C. R. [1894] 2 Q. B. 170**

**CRIMINAL LAW—continued.****Practice.**

**59. — Adding counts to indictment for offences not included in summons—Procedure—Administration of Justice Act, 1848 (11 & 12 Vict. c. 42), s. 5—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43)—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3—Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 1—Criminal Law Act, 1867 (30 & 31 Vict. c. 35), s. 1—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17.**

Where a person accused of an offence triable summarily elects, under s. 17 of the Summary Jurisdiction Act, 1879, to be tried by a jury, the accused may be committed for trial in respect of any indictable offence disclosed by the depositions; and in cases to which the Vexatious Indictments Act, 1859, does not apply, or in which the operation of that Act is limited by 30 & 31 Vict. c. 35, s. 1, counts may be added in respect of any indictable offence disclosed by the depositions, although the accused was not summoned in respect thereof. *REG. v. BROWN*

**C. C. R. [1895] 1 Q. B. 119**

Referred to by Hawkins J., [1897] 1 Q. B. 579, 599.

— Appeal—Jurisdiction—"Criminal cause or matter."

See **APPEAL**. 7—11.

— Appeal from justices.

See **Cases under JUSTICES**.

— Appeal to Privy Council—Practice.

See **PRIVY COUNCIL—Judicial Committee**. 4.

— Bankruptcy offences.

See **BANKRUPTCY—Offences**.

**60. — Coroner's inquisition—Sufficiency of—Pleading.**

A coroner's inquisition stated that the cause of the death of the deceased was injury resulting from a fall into a quarry, and that "by the neglect of" (three named persons) "to fence or cause to be fenced the said quarry the said" (deceased) "fell therein, and that therefore the said" (three persons) "did feloniously kill" the deceased:—

*Held*, that as the inquisition qualified the finding of manslaughter by a statement of the ground of the finding, and that statement shewed no legal ground for it, the inquisition was bad on the face of it, and might be quashed. *REG. v. CLERK OF ASSIZE OF OXFORD CIRCUIT*

**Div. Ct. [1897] 1 Q. B. 370**

— Jury—Trial at Gibraltar should be by.

See **GIBRALTAR**. 1.

**61. — Libel—Form of indictment—"Maliciously"—Libel Act, 1843 (6 & 7 Vict. c. 96), s. 5.**

An indictment for libel alleging that the libel was "unlawfully" published is good although it does not allege that the libel was published "maliciously," as s. 5 of the Libel Act, 1843, does not create a new offence nor define an old one, but merely enjoins the punishment for an existing common law offence.

*Seem*, that if it had been necessary to allege malice, the defect was cured by verdict. *REG. v. MUNSLOW* — **C. C. R. [1895] 1 Q. B. 758**

**CRIMINAL LAW (Practice)—continued.****62. — New trial—Obstruction of highway.**

When a deft. is found guilty on an indictment in the Q. B. Div. of obstructing a highway, a new trial may be granted for misdirection, misreception of evidence, and verdict against evidence. *REG. v. BERGER* - Div. Ct. [1894] 1 Q. B. 823

— Special leave to appeal in criminal cases—Jurisdiction.

See JAPAN. 1.

**63. — Subpoena duces tecum — Detention of property for purposes of trial—Justices Protection Act, 1848 (11 & 12 Vict. c. 44), s. 5—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 9.**

Where articles are produced in court by witnesses, it is right and necessary for the Court to preserve and retain them so that they may be always available for the purposes of justice till the trial is concluded. The possessory title of a purchaser not in market overt of stolen goods is divested by his production of them in court under a subpoena duces tecum. *REG. v. LUSHINGTON. Ex parte Otto* - Div. Ct. [1894] 1 Q. B. 420

**64. — Time of commencing prosecution—Misdemeanour—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 5, 9.**

By s. 5 of the Criminal Law Amendment Act, 1885, it is a misdemeanor to unlawfully carnally know a girl between the ages of thirteen and sixteen, and there is a proviso that no prosecution for that offence shall be commenced more than three months after the commission of the offence. By s. 9 on the trial of an indictment for rape, the deft. may, if the jury think the facts warrant it, be acquitted of the felony and convicted of the misdemeanor under s. 5. The deft. was committed for trial for rape, the offence having been committed less than three months before his committal for trial. On his trial, which took place more than three months after the commission of the offence, he was indicted only for the misdemeanor under s. 5, and convicted:—

*Held*, that the prosecution for the misdemeanor of which he was convicted was commenced less than three months from the commission of the offence so as to comply with the proviso to s. 5. *REG. v. WEST* C. C. R. [1897] W. N. 175 (6); [1898] 1 Q. B. 174

**65. — Writ of error—Dispensing with attendance of plaintiff in error in cases of felony.**

Where a person convicted of felony alleges error upon the record, the Court may, if the plt. in error be in custody, dispense with his attendance in court upon the argument of the writ of error. *RICHARDS v. REG.* [Div. Ct. [1897] 1 Q. B. 574

**CROFTER—Registration of voters.**

See PARLIAMENT—Franchise. 44.

**CROSS-EXAMINATION—Admission of evidence of respondent against co-respondent—Right to cross-examine.**

See DIVORCE—Evidence. 75.

— Alimony—Answer of husband—Registrar—Discretion.

See DIVORCE—Alimony. 3.

— Costs — Proof in solemn form — Notice by defendant of intention to cross-examine only.

See PROBATE—Grant of Probate. 91.

**CROSS-EXAMINATION—continued.**

— Documents—Rejection.

See EVIDENCE. 33.

— Unstamped document.

See EVIDENCE. 43.

— Witness called by judge—Right to cross-examine.

See EVIDENCE. 46.

**CROSS PROCEEDINGS—Action by foreign sovereign—Discovery.**

See INTERNATIONAL LAW. 4.

**CROSSING VESSELS IN RIVERS—Regulations for preventing collisions.**

See CHINA. 2.

**CROWN FIEF—Law of Jersey.**

See JERSEY. 1, 2.

**CROWN—Act of State — Concessions granted before cession—Rights after annexation.**

See CAPE OF GOOD HOPE. 1.

1. — Action for ejectment—Equitable defence.

In an action of ejectment by the Crown a deft. may set up any equitable defence which would be good against a private plt.

Judgment held to have been rightly entered for the deft. where a concluded contract with the Crown was proved, entitling him to the issue of a grant of the land in suit. *ATT.-GEN. FOR TRINIDAD AND TOBAGO v. BOURNE*

J. C. [1895] A. C. 83

2. — *Bona vacantia—Failure of heirs—Right of Crown—Proceeds of sale of land under Settled Land Act, 1882 (45 & 46 Vict. c. 38).*

A testator, who died in 1882, by his will dated in 1879, devised freehold land to his wife for life, and appointed trustees and executors of his will, but made no further or other devise. There was no heir-at-law of the testator forthcoming. The widow, as tenant for life, sold the land under the powers of the Settled Land Act, 1882, trustees for the purposes of the Act having previously been appointed. The purchase-money was paid to the trustees, who on the death of the widow converted the securities on which the money was invested and retained the proceeds, amounting to 1900*l*. The question was whether the Crown or the trustees were entitled to the money:—

*Held*, that the tenant for life being dead, the money was held by the trustees for the heir, if any, and there being no heir, the Crown was entitled to the money, in its existing state, and not as insisting upon the reconversion of it into land: *Taylor v. Haygarth*, (1844) 14 Sim. 8, distinguished. Declaration that the Crown was entitled to the fund as bona vacantia, and the residue, after payment of costs, charges, and expenses, to be paid accordingly, and, as the trustees had converted the securities, to carry interest at 4 (and not 3) per cent. from the conversion until payment. *In re BOND. PANES v. ATT.-GEN.*

*Kekewich J.* [1900] W. N. 122;

see [1901] 1 Ch. 15

— Bona vacantia—Proof—Corporation—Dissolution—Right of the Crown.

See BANKRUPTCY—Proof. 165.

**CROWN—continued.****3. — Charters.**

The power of the Crown in 1720 as to the grant of charters considered by Lindley L.J.

At that date a prerogative charter could confer the right to sue and be sued, to use a common seal, and to make by-laws, but could not confer a monopoly or render the persons incorporated liable for calls. *ELVE v. BOYTON*

C. A. [1891] 1 Ch. 501, at p. 507

Distinguished. *In re Smith, Davidson v. Myrtle*, [1896] 2 Ch. 590.

— Civil servants—Power to dismiss at pleasure.  
*See NEW SOUTH WALES. 3—5.*

**4. — Civil service—Tenure of office—Power of dismissal at pleasure.**

Servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. *DUNN v. REG.*

C. A. [1895] W. N. 160 (4); [1896] 1 Q. B. 116

Referred to P. C. *Gould v. Stuart*, [1896] A. C. 575.

**5. — Colonial servants of the Crown.**

A colonial government is on the same footing as the home government as to the employment and dismissal of servants of the Crown; and in the absence of special contract they hold their offices during the pleasure of the Crown:—

Where A. during the absence on leave of B. was gazetted to act temporarily in his office and was dismissed before B.'s leave expired:—

*Held*, that A. had no cause of action. *SHENTON v. SMITH* - - - P. C. [1895] A. C. 229

Referred to by C. A. *See preceding Case.*

— Contract made by public servant of—Liability.  
*See PRINCIPAL AND AGENT. 11.*

— Costs against the Crown—Crown debt—Legacy duty—Priority.  
*See REVENUE—Legacy Duty. 124.*

— Exclusive user by—Exemption.  
*See RATES—Rateability. 21.*

— Executors — Proceeds of sale of realty not effectually disposed of.  
*See ESCHEAT. 1.*

— Exemption from rates of property of volunteer corps.  
*See RATES. 19.*

— Foreshore—Sea.  
*See FISHERY. 4.*

— Gold mines—Rights of Crown.  
*See MINES. 10.*

— Liability of servants of the Crown—Prerogative—Jurisdiction.  
*See TRESPASS. 2.*

**6. — Military service—Engagement made with military officer by the Crown—Petition of right.**

No engagement made by the Crown with any of its military or naval officers in respect of services either present, past, or future, can be enforced in any court of law. *MITCHELL v. THE QUEEN* - - - C. A. [1896] 1 Q. B. 121, n.

**7. — Pardon.**

The prerogative of pardon extends to cases of

**CROWN—continued.**

imprisonment for contempt of Court. *In re A*  
SPECIAL REFERENCE FROM THE BAHAMA ISLANDS

P. C. [1893] A. C. 138

Referred to by C. A. *Seaward v. Paterson*, [1897] 1 Ch. 545, 559.

— Pension—Right to—Victoria Public Service Act, 1890—"Prosecutor for the Queen."  
*See VICTORIA. 10.*

**8. — Prerogative of Crown—Action between subjects involving rights of the Crown—Transfer to revenue side—Information by Attorney-General—Stay of proceedings.**

In an action of trespass in a county court against tenants of the Crown, a question affecting the rights of the Crown over certain land was involved. Judgment was given in the county court for the plt. for damages and an injunction, against which the defts. appealed. The Att.-Gen. then filed an information against the plt. praying for a declaration of the rights of the Crown in the matter:—

*Held*, that the Crown was entitled to an order for the transfer of the county court appeal to the revenue side of the Q. B. Div. and for a stay of proceedings therein until after the hearing of the information. *LORD STANLEY OF ALDERLEY v. WILD & SON* - C. A. [1899] W. N. 255: [1900] 1 Q. B. 256

**9. — Prerogative of Crown—Practice—Transfer—Venue—Mode of trial—Selection of Court—Surface of highway.**

Action brought in the Ch. Div. by the Att.-Gen. at the relation of the corporation of Sunderland, and by the corporation as co-plt., in effect to compel the defts. to restore the surface of a highway in the district of the corporation alleged to have been deprived of lateral support by the excavations of the defts. or their predecessors.

This was an application by the defts. for the transfer of the action to the Q. B. Div. to be tried at the Durham Assizes by a special jury. The main ground for the application was that it was desirable that there should be a view of the locus in quo. The application was resisted on the ground that it was an interference with the prerogative right of the Crown to select its own Court; and also on the merits.

Kekewich J. said that if he had to decide this question simply on the ground of convenience he would be in favour of transferring the action to the Q. B. Div. to be tried at the Durham Assizes; but, with regard to the mode of trial, when an action was transferred to another Division, he thought that the better practice was to leave it to the discretion of the judge of that Division to determine whether the action should be tried with or without a jury, and whether with a special or a common jury. Without presuming to interfere with the exercise of that discretion, having regard to the fact that this case would involve the examination of plans, he could see some advantages in having it tried by a judge without a jury. There remained the important question whether the Att.-Gen., suing not strictly ex officio but at the relation of others, had at the present time a prerogative right to select the tribunal in which the action should be

**CROWN—continued.**

tried; but in the view which he took it was unnecessary to decide that question. He had always attached great weight to the discretion of the plaintiff in determining in what Division an action should be brought, but that was not conclusive because there were cases in which that discretion might be exercised so as to interfere with the administration of justice. But the discretion of the Att.-Gen. differed from the discretion of an ordinary plt., because the Att.-Gen. did not give his fiat without a full consideration of the facts of the case, and he should not feel justified in interfering with the exercise of that discretion except in a very strong case. Application refused. *ATT.-GEN. v. WILSON*

**Kekewich J. [1900] W. N. 263**

**10. — Prescription against Crown.**

The Crown, not being named in s. 3 of the Prescription Act, 1832, is not bound by it; consequently no right of light can be obtained by virtue of that section over lands in possession of the Crown, whether held directly or through trustees. The general words in s. 2, in which the Crown is named, do not apply to an easement of light, which is exclusively governed by s. 3 and subsequent ancillary sections.

(A) *PERRY v. EAMES. SALAMAN v. EAMES. MERCERS' CO. v. EAMES*

**Chitty J. [1891] 1 Ch. 658**

(B) *WHEATON v. MAPLE & CO.*

**C. A. [1893] 3 Ch. 48**

— Priority of Crown debts—Debts due to Boards of Education—Law of Newfoundland.  
*See NEWFOUNDLAND. 1.*

— Priority over simple contract creditors.  
*See COLONY. 6.*

— Priority—Specialty and simple contract debts.  
*See EXECUTOR—Insolvent Estates. 38.*

— Rateability.  
*See RATES—Rateability. 18—21.*

— Relations between Crown and provinces.  
*See CANADA. 38.*

— Right of the Crown—Discovery—Production of documents.  
*See DISCOVERY—Documents. 15.*

**11. — Treasure trove.**

The jurisdiction of a coroner with reference to treasure trove is limited by s. 36 of the Coroners Act, 1887, to the determination of "who was the finder and who was suspected thereof." He has no jurisdiction to determine a question of title between the Crown and any other claimant. *ATT.-GEN. v. MOORE Stirling J. [1893] 1 Ch. 676*

Referred to by North J. *Att.-Gen. v. Albany Hotel Co., [1896] 2 Ch. 696, 701.*

**12. — Treaty—Interference with private rights—Acts of State.**

*Quære*, whether the Crown has the power of compelling its subjects to obey the provisions of a treaty made to terminate or avert war, or interfering with private rights, without the authority of the Legislature. The municipal Courts have jurisdiction to inquire as to the validity, inter-

**CROWN—continued.**

pretation, &c., treaties, &c., under which private rights have been interfered with. *WALKER v. BAIRD - - - P. C. [1892] A. C. 491*

— Trespass—Prerogative of the—Action against Lords of the Admiralty.  
*See TRESPASS. 2.*

**CROWN LANDS—Fees in office of land revenue.**  
*See LAND REVENUE.*

— Laws of New South Wales.  
*See Cases under NEW SOUTH WALES.*

**CROWN OFFICE.**

*The Crown Office Rules, 1886, relate to the procedure and practice of the Crown Office.*

**1. — Appeal from quarter sessions—Costs—R. S. C., Order LXV., r. 1—Judicature Act, 1890 (53 & 54 Vict. c. 44), ss. 4, 5.**

The practice on the Crown side of the Q. B. Div. is preserved unaltered by s. 4 of the Judicature Act, 1890; and there is no power to give costs to a successful appellant in a case stated by quarter sessions, on an appeal against a poor-rate, and brought up by order instead of certiorari. *LONDON COUNTY COUNCIL v. WEST HAM OVERSEERS (No. 2)*

**C. A. [1892] 2 Q. B. 173**

*But see Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 2, sub-s. 3.*

Referred to by Chitty J. *In re Fisher, [1894] 1 Ch. 53, 55; C. A. [1894] 1 Ch. 450.*

**2. — Mandamus—Prerogative writ.**

The Court will not refuse to grant a prerogative writ of mandamus in every case in which an action of mandamus would lie. *REG. v. LONDON AND NORTH WESTERN RY. CO.*

**Div. Ct. [1894] 2 Q. B. 512**

**3. — Mandamus—Prerogative writ—Second application.**

A second application for a prerogative writ of mandamus to compel a corporation to perform a statutory duty will not be entertained after the first has been discharged, on the ground that no demand and refusal have been made. *REG. v. BODMIN JUSTICES*

**Div. Ct. [1892] 2 Q. B. 21**

— Pauper, Appeal by.

*See PRACTICE—Formâ Pauperis.*

**CROWN SIDE.**

*See CROWN OFFICE.*

*PRACTICE—Formâ Pauperis. 23.*

**CROWN SUITS ACT—Company—Executor de son tort—Liability to pay probate duty.**  
*See REVENUE—Probate Duty. 134.*

**CRUCIFIX.**

*See Cases under ECCLESIASTICAL LAW—Faculty.*

**CRUELTY—Divorce practice.**

*See Cases under DIVORCE.*

— Prevention of cruelty to animals.

*See ANIMALS.*

**CRIMINAL LAW—Cruelty to Animals.**

— Prevention of cruelty to children.

*See CRIMINAL LAW—Cruelty to Children.*

**CRUELTY**—*continued.*

- Summary Jurisdiction (Married Women) Act, 1895.  
*See Cases under HUSBAND AND WIFE—Summary Jurisdiction.*

**CUBICLE**—Registration of voters.  
*See PARLIAMENT—Franchise.* 128, 129.

**CULPA LATA**—Annual accounts—Liability of trustees.  
*See TRUSTEE—Breach of Trust.* 23.

**CURATOR**—English property—Right to call for transfer.  
*See LUNACY—Vesting Order.* 46.

**CURATOR BONIS.**  
*See SCOTTISH LAW—Lunacy.* 26.

— Investments — Liability — Judicial factor — Harbour rates.  
*See TRUSTEE—Investments.* 65.

**CURTESY OF ENGLAND.**  
*See Cases under TENANT BY THE CURTESY.*

**CURTILAGE**—"Premises within the same curtilage."  
*See LONDON—Sewers.* 60.

**CUSTODY**—Infant—Practice—Irish Divorce Bill.  
*See DIVORCE—Children.* 21.

— Infant children.  
*See INFANT—Custody.*

— Library catalogue—Will—Incorporated document.  
*See PROBATE.* 98.

— Lunatic.  
*See Cases under LUNACY—Custody.*

— Parish documents—Justices—Jurisdiction—Order for removal.  
*See PARISH COUNCILS.* 1.

— Power of Ordinary as to, and disposal of records.  
*See ECCLESIASTICAL LAW—Custody of Records, &c.*

— Title-deeds.  
*See TITLE-DEEDS.*

— Title-deeds—Person having powers of tenant for life—Possession.  
*See SETTLED LAND.* 95—97.

— Trustees — Investment — Convertible securities—Bearer bonds—Bankers.  
*See TRUSTEE—Custody of Title-deeds, &c.* 47.

**CUSTOM**—Charterparty—Construction — Extent of exclusion of custom.  
*See SHIPPING—Charterparty.* 16.

— Copyholds—Repairs—Breach of obligation by tenant—Remedy of lord against tenant's executors.  
*See COPYHOLD.* 3.

— Copyholds—Fines on renewal of leases for lives — Income or capital.  
*See SETTLED LAND—Copyholds.* 50.

— Grants of manorial waste.  
*See COPYHOLD.* 10.

**CUSTOM**—*continued.*

— Hiring domestic servants—Reasonableness.  
*See MASTER AND SERVANT.* 68.

— Inconsistency with contract—Charterparty.  
*See SHIPPING—Charterparty.* 21.

— London.  
*See Cases under LONDON—Custom.*

1. — *Parish bull and boar—Parson—Great tithes, charge on—Inclosure Act—Allotment of lands in lieu of tithes—Transfer of liability to custom.*

Where, under an Inclosure Act, lands have been allotted "in satisfaction and discharge of" the great tithes, the burden of keeping up a custom that the parson as owner of the great tithes shall provide and keep a bull and boar for the common use of the parishioners is not, in the absence of express words in the Act to that effect, shifted to the allottees of those lands. *LANCHBURY v. BODE - Kekewich J. [1898] 2 Ch. 120*

— Reasonableness.  
*See BUILDING CONTRACT.* 2.

— Reasonableness — Contract — Notice — Determination.  
*See MASTER AND SERVANT.* 68.

— Trade—Reputed ownership—Assignment of debt—Bill of exchange.  
*See BANKRUPTCY—Order and Disposition.* 127.

2. — *Validity—Recreation—Custom laid in inhabitants of more parishes than one.*

A custom for the inhabitants of several adjoining or contiguous parishes to exercise the right of recreation over land situate in one of such parishes is bad. *EDWARDS v. JENKINS*

*Kekewich J. [1895] W. N. 142 (4); [1896] 1 Ch. 308*

**CUSTOMERS**—Broker, bankruptcy of—Surplus in hands of official assignee of Stock Exchange—Title of trustee in bankruptcy.  
*See BANKRUPTCY—Trustee.* 252, 253.

— Canvassing—Injunction.  
*See Cases under PARTNERSHIP—Goodwill.*

— Cheque—Defective title—Receiving payment for a "customer"—Liability of banker.  
*See BANKER.* 9.

— Closing account—Mortgage to secure amount owing on account current—Power of sale.  
*See BANKER.* 3.

— Disclosure of names of customers — Patent action—Account of profits.  
*See PATENT—Discovery.* 3.

— Effect of crediting, with amount of cheque deposited — Effect of drawee bank certifying cheque—Usage.  
*See NEWFOUNDLAND.* 2.

— Soliciting.  
*See RESTRAINT OF TRADE.* 15, 16.

— Soliciting customers — Sale of business — Goodwill.  
*See Cases under PARTNERSHIP—Goodwill.*

**CUSTOMERS**—*continued.*

— Trade secrets.

*See* MASTER AND SERVANT — Trade Secrets.**CUSTOMS AND INLAND REVENUE.***See* Cases under REVENUE.**CUSTOMS TARIFF ACT, 1894**—Laws of Canada

— Date of importation of goods.

*See* CANADA. 8.**CY-PRÈS**—Charity—Failure of objects.*See* FRIENDLY SOCIETY. 6, 7.

— Charity—Gift to.

*See* CHARITY—Gift to Charity. 20, 21.**CYPRUS.****Law of Cyprus.**

— Admiralty jurisdiction in.

*See* FOREIGN JURISDICTION.**CYPRUS (Law of Cyprus)**—*continued.*

— British jurisdiction in.

*See* FOREIGN JURISDICTION.

— Extradition.

*See* EXTRADITION.**1. — Legitimacy**—*Roman Catholic Ottoman subjects—Law of marriage.*

By the law of Cyprus the legitimacy of a Roman Catholic Ottoman subject is to be ascertained by the canon law of his Church. By the canon law illegitimate children are legitimated by the marriage of their parents authorized by dispensation. By the Hatti Humaïoun of 1856 and the Cyprus Statute Law of April 11, 1884, succession is regulated by creed, and that the right to inherit follows from the establishment of legitimacy. *PARAPANO v. HAPPAZ*

**P. C. [1894] A. C. 165**

## D.

**DAIRY**—*Dairies, Cowsheds, and Milkshops Order*, 1899, dated Feb. 7, 1899. **St. R. & O. 1899, p. 470, No. 135.**

1. — *Air-space—Power of local authority to regulate—Contagious Diseases (Animals) Act*, 1878 (41 & 42 Vict. c. 74), s. 34—*Dairies, Cowsheds, and Milkshops Order*, 1885, s. 13.

The power given by the Contagious Diseases (Animals) Act, 1878, and the Dairies, Cowsheds, and Milkshops Order, 1885, to local authorities to make regulations for prescribing and regulating the ventilation of dairies and cowsheds, permits a local authority to make regulations respecting air-space in such places. **BAKER v. WILLIAMS**

**Div. Ct. [1898] 1 Q. B. 23**

— Non-removal of milk—"Building."

*See* NUISANCE. 18.

— Milk—Sale—Written warranty—"Milk to be pure new milk."

*See* ADULTERATION. 26.

**DAMAGE.**

*See* DAMAGES.

**DAMAGES**—Admiralty practice.

*See* Cases under SHIPPING.

— Agent, Authority of—Consideration moving from the principal—Special damage.

*See* PRINCIPAL AND AGENT. 4.

— Book—Piracy—Infringement—Profits.

*See* COPYRIGHT. 11.

1. — *Compensation—Statutory right to commit damage.*

Where a right is given by statute to do acts causing damage to other person's property, subject to the payment to such person of compensation, and the statute provides a special tribunal for assessing the amount of compensation, if such tribunal becomes non-existent, a person whose property has been damaged by the exercise of the statutory right is entitled to have the amount of compensation assessed in the High Court. **BENTLEY v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.**

**Romer J. [1891] 3 Ch. 222**

2. — *Contract—Costs of legal proceedings—Sale of goods—Sub-sale—Costs of reasonable defence by purchaser of action against him by sub-vendee.*

The plt., a coal merchant at Cardiff, having contracted with shipowners for the supply of coal to their steamers there, entered into a contract with the defts., who were colliery proprietors also carrying on business at Cardiff, for the supply to him of coal, which was expressly stated to be for shipment in those steamers. The defts. committed a breach of their contract in not supplying coal under it with reasonable despatch, in consequence of which the supply of coal to one of the steamers by the plt. was delayed and the steamer was detained. The shipowners thereupon made a claim of 150*l.* upon the plt. in respect of her detention, and subsequently brought an action against him to enforce their claim. The

**DAMAGES**—continued.

plt. gave notice of the claim and action to the defts., who repudiated all liability, and refused to take up the defence, stating however that they considered the claim preposterous, and the amount of it excessive. The plt. thereupon defended the action, paying 20*l.* into court, and at the trial he succeeded in shewing that the sum so paid in was sufficient. He then brought an action against the defts. for breach of their contract. The judge at the trial found that the course taken by the plt. in defending the action against him was reasonable:—

*Held*, that the plt. was entitled under the rule in **Hadley v. Baxendale**, (1854) 9 Ex. 341, to recover from the defts. as damages the amount of the costs reasonably incurred by him in defending the action against him over and above the amount which he had received for costs as between party and party from the plt. in that action.

**Hammond & Co. v. Bussey**, (1887) 20 Q. B. D. 79, followed.

**Baxendale v. London, Chatham and Dover Ry. Co.**, (1874) L. R. 10 Ex. 35, discussed. **AGIUS v. GREAT WESTERN COLLIERY CO.**

**C. A. [1899] W. N. 11 (8); [1899] 1 Q. B. 413**

— Contract — Impossibility of performance — Implied condition.

*See* CONTRACT. 28.

— Contract to take shares—Proof for injury caused by disclaimer by trustee in bankruptcy.

*See* BANKRUPTCY. 169.

— Conversion of document—Non-negotiable instrument—Money had and received.

*See* TROVER. 6.

— Copyright:

*See* Cases under COPYRIGHT.

— Covenants—Landlord and tenant.

*See* Cases under LANDLORD AND TENANT.

— Covenant running with land—Covenant for quiet enjoyment—Injunction—Compensation.

*See* RAILWAY—Compensation. 3.

— Debentures—Breach of contract.

*See* COMPANY—Debentures. 93.

— Directors—Misfeasance—Improper allotment of shares to director at undervalue.

*See* COMPANY—Directors. 116.

— Distress—Damage feasant.

*See* DISTRESS. 5.

— Divorce—Condonation.

*See* DIVORCE. 28.

— Divorce — Married woman — Knowledge of co-respondent—Absence of evidence—Direction to jury.

*See* DIVORCE. 35.

— Divorce Court—Bankruptcy of co-respondent—Provable debt—Judgment summons.

*See* BANKRUPTCY—Proof. 184.

**DAMAGES—continued.**

— by Flood — Artificial watercourse — Sluice-gate—Obligation of owner to repair—Easement.  
See WATER. 37.

— Gas—Neglect or refusal to supply.  
See GAS. 1.

— Gas company—Statutory powers—Nuisance—Excavation—Injunction—Ancient lights, Interference with.  
See SUPPORT. 1.

— Husband and wife living apart—Separation caused by wife—Subsequent adultery.  
See HUSBAND AND WIFE. 75.

— Implied grant — Derogation — Measure of damages.  
See LANDLORD AND TENANT—Landlord's Liability. 70, 71.

*Order XXXVI, rr. 56–58, relates to writs of inquiry and references as to damages.*

3. — *Inquiry as to damages — Continuing cause of action—R. S. C., Order XXXVI, r. 58.*

In an inquiry as to damages in respect of a continuing cause of action, the damages are to be assessed down to the date when the assessment takes place. *HOLE v. CHARD UNION*  
C. A. [1894] 1 Ch. 293

4. — *Inquiry as to damages for illegal detention.*

An inquiry was directed as to damages occasioned by detention of cargoes of guano, but the judgment contained no declaration that the detention had been illegal, nor defined the period of time during which it continued. The chief clerk assessed the damages on the assumption that the detention lasted from the arrival of the cargoes at their ports of discharge until the date of the judgment, although prior to the judgment a receiver had been appointed of the cargoes in controversy:—

*Held* (1) that the illegal detention ceased on the appointment of the receiver; (2) that damages for the actual period of illegal detention should be computed at 5 per cent. on the value of the cargoes, and 4 per cent. on the damages so ascertained from the cesser of the illegal detention. *PERUVIAN GUANO CO. v. DREFFUS*

H. L. (E.) [1892] A. C. 166

Referred to by C. A. *In re A. B. & Co. (No. 2)*, [1900] 2 Q. B. 429, 440.

5. — *Inquiry—Writ of—Appeal.*

An assessment of damages under a writ of inquiry is for purposes of appeal equivalent to the trial of the action. *WILLIAM RADAM'S MICROBE KILLER CO. v. LEATHER*

C. A. [1892] 1 Q. B. 85

And see INJUNCTION. 14.

— Instalments—Purchase-money payable by—Omission to pay last instalment—Reputation of contract—Specific performance.

See VENDOR AND PURCHASER—Contract. 35.

— Interest on bond.

See HUSBAND AND WIFE—Bond. 27.

**DAMAGES—continued.**

— Irrigation — Land slides—Liability—Injunction.

See CANADA. 22.

— Leaseholds—Assignment—Lessor's consent—Default of vendor in obtaining—Loss of bargain.

See VENDOR AND PURCHASER. 26.

— Libel — Action for—Publication in foreign country.

See DEFAMATION—Libel. 29.

— Light, Interference with.

See Cases under LIGHT AND AIR.

— Liquidated damages—Condition not to commit breach of injunction—Condition depending on one event.

See BOND.

— Liquidated damages—Penalties for delay—Extras.

See BUILDING CONTRACT. 3.

— Liquidated damages—Penalty—Public-house.

See LANDLORD AND TENANT. 13.

— Malicious damage.

See CRIMINAL LAW—Malicious Damage.

— to Manufacturer—Underselling—Trade competition.

See TRADE. 1.

6. — *Mischievous animal—Evidence of scienter—Feroocious dog—Negligence.*

In order to support an action for damages for the bite of a dog it is necessary to shew that the dog had to the deft.'s knowledge bitten or attempted to bite some person before it bit the plt.; it is not sufficient to shew that it had to the deft.'s knowledge attacked and bitten a goat. *OSBORNE v. CHOCQUEEL*

Div. Ct. [1896] 2 Q. B. 109

— Misrepresentation — Wrongful act done by deceased person — “Actio personalis moritur cum persona.”

See EXECUTOR. 6.

— New trial—Practice.

See CANADA. 14.

7. — *Non-completion of works—Penalty.*

A contractor bound himself to pay a certain sum as liquidated damages in the event of non-completion of sewerage works by a specified date:—

*Held*, that, as the sums were to be paid on a single event only, viz., on the non-completion of works, they were to be regarded as liquidated damages and not as penalties. *LAW v. LOCAL BOARD OF REDDITCH* C. A. [1892] 1 Q. B. 127

— Obstructions—Payable for removal of—Collision clause.

See INSURANCE—Marine. 38.

— Parties—Separate causes of action.

See PRACTICE—Parties. 118.

— Passenger's luggage—Condition exempting from responsibility.

See RAILWAY—Passengers. 26.

— Patent—Infringement.

See Cases under PATENT.

8. — *Refusal to transfer shares—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 35.*

The measure of damages for refusal to register



**DAMAGES—continued.**

a transfer of shares is the value of the shares at the time of refusal. *In re OTTOS KOPJE DIAMOND MINES* - - - C. A. [1893] 1 Ch. 618

- Remoteness—Contractor of works.  
See PRINCIPAL AND AGENT. 10.
- Remoteness—Nervous shock.  
See ACTION. 2.
- Remoteness—Policy—Collision—Loss by detention during repairs.  
See INSURANCE—Marine. 34.
- Remoteness—Public body.  
See PRINCIPAL AND AGENT. 10.
- Repairs—Lease and sub-lease.  
See Cases under LANDLORD AND TENANT.

**9. — Restraining sale of shares.**

The question in this case was as to the damages payable under an undertaking given when an interlocutory injunction was granted to a plt. in an action which was subsequently dismissed:—

*Held*, that the amount payable was the difference between the price of the shares when the injunction was granted and their price when the summons for a sale was issued. *MANSSELL v. BRITISH LINEN CO. BANK*

Romer J. [1892] 3 Ch. 159

- Sale by directors in one character to themselves in another—Voidable contract—Rescission.  
See COMPANY—Directors. 105.
- Salvage—Practice—Solicitors' undertaking—Arrests.  
See SHIPPING—Salvage. 247.

**10. — Samoa—Suit relating to land in.**

In a suit for the recovery of land in Samoa, *held*, that the measure of damages was the value of the produce which the lands were capable of yielding at the time they were taken possession of, after deducting the expenses of management. However wilful and long-continued the trespass may have been, there is no law which authorizes the disallowance of such expenses or the infliction of a penalty on the defts. beyond the loss sustained by the plt. *MARTHUR & Co. v. CORNWALL* - - - P. C. [1892] A. C. 75

- Sewers—Duty of local authority to make—Remedy for default.  
See SEWERS. 2.
- Shipment to be made between specified dates—Condition precedent.  
See SALE OF GOODS. 5.
- Shooting accident.  
See TRESPASS. 1.
- Special damage—Slander.  
See DEFAMATION—Slander. 36.
- Stranding—Duty of harbour authority.  
See Cases under SHIPPING—Harbour.
- Subsidence—Liability of lessee.  
See MINES—Leases. 13.
- Support—Right to lateral—Adjacent lands—Escape of pitch—Injunction.  
See SUPPORT. 1, 2.
- To cargo—Deviation—Bill of lading.  
See Cases under SHIPPING—Deviation.

**DAMAGES—continued.**

- To cargo by heat—Bill of lading—Exceptions—"Accidents of the seas."  
See SHIPPING—Exceptions. 129.
- Trespass by tipping spoil—Measure of damages.  
See TRESPASS. 3.
- Trover.  
See Cases under TROVER.
- Trustee carrying on business—Tort—Right of trustee to indemnity.  
See TRUSTEE. 53.
- Undertaking as to—Crown—Interlocutory injunction.  
See INJUNCTION. 10.
- Unliquidated—Bankruptcy of defendant—Making trustee a party.  
See PRACTICE—Parties. 88.
- Unliquidated—Damages for misrepresentation.  
See EXECUTOR. 6.
- Voluntary settlement—Life interest determinable on bankruptcy.  
See BANKRUPTCY. 263.
- Waiving tort and claiming profits—Wrong to public.  
See TORT. 2.
- Waste—Sub-demise for purpose of rubbish shoot—Injunction.  
See WASTE. 2.
- Waste by tenant for life—Dilapidation of buildings—Depreciation of marsh lands.  
See SETTLED LAND. 89.

**DAMNUM ABSQUE INJURIA**—Underselling—Damage to manufacturer—Misrepresentation—Trade competition.  
See TRADE. 1.

**DANGEROUS MACHINERY**—Factories and workshops—Accident to workman—Compensation  
See MASTER AND SERVANT—Factories Acts. 63, 64.

**DANGEROUS PERFORMANCES ACT, 1897** (60 & 61 Vict. c. 52), extends the age under which the employment of young persons in dangerous performances is prohibited.

**DANGEROUS STRUCTURE.**

- See Cases under LANDLORD AND TENANT—Landlord's Liability.
- London buildings.  
See LONDON—Buildings. 11, 12.

**DANUBE**—Navigation—Collision.  
See SHIPPING—Collision. 58.

**DAY**—Lay day—Bill of lading.  
See SHIPPING—Demurrage. 109, 110.

— Running day—Bill of lading.  
See SHIPPING—Demurrage. 114.

**DE PREROGATIVA REGIS**—Conditional devise to lunatic—Jurisdiction—Election—Performance of condition by committee.  
See LUNACY. 30.

**DEAD**—Prayers for.  
See ECCLESIASTICAL LAW—Faculty. 33.

**DEATH**—of alleged Adulterer before suit—Practice.

See **DIVORCE**. 36.

— Allotment of new shares—Deceased shareholder—Legal personal representative. See **COMPANY—Shares**. 270.

— of Appointees in lifetime of donee of power—Lapse.

See **POWERS**. 43.

— of Candidate between nomination and poll—Election of county council.

See **COUNTY COUNCIL**. 1.

— Contract—Non-completion before death of landowner—Right of devisee to have contract completed at cost of landowner's personal estate.

See **BUILDING CONTRACT**. 4.

— Declaration by deceased member against interest—Act of ownership.

See **EVIDENCE**. 1.

— of Defendant between trial and judgment—Date of judgment.

See **PRACTICE—Judgment**. 31.

— Diary of deceased solicitor.

See **EVIDENCE**. 6.

— Director—"Actio personalis moritur cum persona"—Liability of director.

See **COMPANY—Prospectus**. 207.

— Judgment debtor—Charging order—Leave to issue execution against executor.

See **EXECUTION ORDER**. 2.

— Member of company.

See **COMPANY**. 9.

— Notice of meeting—Deceased member.

See **COMPANY—Calls**. 7.

— Objects of fund—Unapplied surplus—Maintenance of individuals—Resulting trust for subscribers.

See **TRUST**. 5.

— Partner.

See Cases under **PARTNERSHIP**.

— Partners—Action against partners in firm name—Death of partner after appearance—Form of defence of surviving partner.

See **PRACTICE—Pleading**. 159.

— of Petitioner—Variation of settlements.

See **DIVORCE**. 120.

— Power of appointment—Death of excepted object.

See **POWERS**. 2.

— Presumption of—Practice—Affidavit.

See **EVIDENCE**. 40.

— Presumption of death—Probate.

See **PROBATE—Presumption of Death**.

— Registration of voters.

See **PARLIAMENT—Franchise**. 45, 46.

— Shareholder—Insolvent estate—Proof of debts—Liability to future calls.

See **BANKRUPTCY—Proof**. 164.

— Survivor—Death of both legatees before determination of life interest.

See **WILL—Survivor**. 203.

**DEATH—continued.**

— of Vendor before completion—Copyholds—Vesting order—Form of order.

See **TRUSTEE—Vesting Order**. 102.

— Witness—Judge's note of evidence—Admissibility.

See **DIVORCE—Evidence**. 79.

**DEATH DUTIES.**

See Cases under **REVENUE**.

**DEBENTURE.**

See **COMPANY—Debentures**.

**DEBT**—Acknowledgment—Promise by one of several executors.

See **LIMITATIONS, STATUTE OF**. 3.

— Assignment.

See Cases under **ASSIGNMENT**.

— Bankruptcy—Practice.

See Cases under **BANKRUPTCY**.

— Charge on land—Legal remainder—Receiver—"Actual delivery in execution."

See **JUDGMENT DEBT**. 1.

— Conditional payment—Effect of giving cheque or bill of exchange.

See **TRADE**. 2.

— Executor—Payment of assets to official receiver without retaining debt—Mistake—Repayment—Effect of vesting order.

See Cases under **EXECUTOR**.

— Garnishee order—Action upon—Judgment—Company—Winding-up—Creditor.

See **ATTACHMENT**. 12.

— Imprisonment for.

See Cases under **IMPRISONMENT**.

— Legacy—Recital—Erroneous statement of indebtedness.

See **WILL—Falsa Demonstratio**. 89.

— Limitations, Statute of.

See Cases under **LIMITATIONS, STATUTE OF**.

1. — *Locality of debt.*

Though a debt has no absolute local existence, yet it is a well-settled rule that it possesses an attribute of locality. A simple contract debt is within the area of the local jurisdiction within which the debtor for the time being resides. The locality of a specialty debt is where the specialty is found at the time of the creditor's death. **COMMRS. OF STAMPS v. HOPE**

**P. C. [1891] A. C. 476**

Referred to by Cozens-Hardy J. *In re Maudslay, Sons & Field, Maudslay v. Maudslay, Sons & Field*, [1900] 1 Ch. 602, 608.

— Maintenance—Sum due under maintenance order—Recoverable as a civil debt—Summary jurisdiction.

See **POOR LAW**. 8.

— Mortgage by partner to secure debt of partnership—Sufficiency of partnership assets.

See **PARTNERSHIP**. 41.

— Poor law.

See Cases under **POOR LAW**.

— Preference—Specialty and simple contract debts.

See **EXECUTOR**. 25.

**DEBT**—*continued.*

— Proof for, in bankruptcy.

See Cases under **BANKRUPTCY**—**Proof.**

— Receiver—Part payment by—Acknowledgment—Statute of Limitations.

See **MORTGAGE**—**Receiver.** 57.2. — *Satisfaction of, by legacy*—*Legacy to creditor of greater amount.*

A testator was indebted to B. in a sum payable within three months of A.'s death. A. left to B. a legacy of greater amount than the debt. No time was fixed for payment of the legacy:—

*Held*, that the debt was not satisfied by the legacy. *In re HORLOOK. CALHAM v. SMITH*

Stirling J. [1895] 1 Ch. 516

— Set-off of debt against calls—Creditor-contributory—Insolvent company holding shares—Winding-up of company.

See **COMPANY**—**WINDING-UP**—**Set-off.** 227.

— Shares—Fully paid shares taken in payment of debt—Proof—Failure of consideration.

See **COMPANY**—**WINDING-UP**—**Proof.** 206.

— Specialty and simple contract.

See **EXECUTOR**—**Administration.** 25.

— Statute-barred debt—Retainer.

See **EXECUTOR**—**Retainer.** 60.

— Trust for payment of debts—Family arrangement—Liability of estate.

See **SETTLEMENT.** 3.**DEBTORS ACT, 1869.**

See Cross-references under the Statute 32 & 33 Vict. c. 62, in the Table of Statutes judicially considered.

**DECEIT**—Action of—Misrepresentation.See **COMPANY**—**Misrepresentation.** 195.

1. — *Action for*—*Practice*—*Infringement*—*Evidence*—*Inspection*—*View by judge*—*R. S. C., 1883, Order L., r. 4.*

Action by plts. for an injunction to restrain deft., a rival omnibus proprietor, from running omnibuses painted and lettered in imitation of plts.' omnibuses. At the trial, after hearing the evidence of plts.' secretary and panel-painter or writer, Farwell J., with the consent of the parties, inspected plts.' and deft.'s rival omnibuses, and then stated his conclusion that the painting and lettering of deft.'s omnibus was calculated to deceive the casual passenger; whereupon the plts. did not offer any evidence of actual deception, and in the result an injunction was granted:—

*Held*, that the evidence called by the plts. was wholly insufficient to support the conclusion arrived at by the learned judge below. In an action for deceit such as this, a view by a judge under Order L., r. 4, and an impression derived by him from that view that the deft.'s article so closely resembled the plts.' as to be calculated to deceive, could not take the place of evidence of deceit. In the present case evidence of actual deception should have been called in support of the plts.' case. Appeal allowed. *LONDON GENERAL OMNIBUS CO. v. LAYELL*

C. A. [1900] W. N. 249

**DECEPTION**—Trade name—Similarity of name—Company.

See **TRADE NAME.** 2.— **"DEDUCING" TITLE**—Solicitors' remuneration.See Cases under **SOLICITOR**—**Costs.****DEDUCTIONS**—Income tax.See Cases under **REVENUE**—**Income Tax.**

— Legacies and bequests.

See Cases under **WILL**—**Absolute Gift.**

— Miners' wages—Coal mines.

See **MINES**—**Coal Mines.** 6.

— Rent.

See **LANDLORD AND TENANT**—**Rent.**

— Succession duty.

See Cases under **REVENUE**—**Succession Duty.****DEED**—Custody.See **TITLE-DEEDS.**

— Delivery to one of several grantees—Evidence—Admissibility.

See **MORTGAGE**—**Escrow.** 15. 1

— Effect of recitals in—Notice—Estoppel.

See **RECITALS.** 1.

— Execution of—Presumption.

See **POWERS.** 13.

1. — *General words*—*Things ejusdem generis*—*Construction of deed.*

† Where in the operative part of a deed general words follow an enumeration of particular things, these words are *prima facie* to be construed as having their natural and larger meaning, and are not to be restricted to things *ejusdem generis* with those enumerated unless there is something which shews an intention so to restrict them. *ANDERSON v. ANDERSON* C. A. [1895] 1 Q. B. 749

Referred to by C. A. *In re Stockport Ragged Industrial and Reformatory Schools*, [1898] 2 Ch. 687, 696.

— Lost deeds—Secondary evidence.

See **VENDOR AND PURCHASER.** 101.

2. — *Reservation of right to work mines*—*Right, whether exclusive.*

A clause in a conveyance *in fee*, executed in 1783, and reserving liberty to work mines, *held* not to operate as an exception and reservation of the mines and minerals, but only as a grant by the deft.'s predecessor in title of a right to work them:—

*Held*, further, that there was in the deed no indication of an intention to grant an exclusive mining licence sufficient to rebut the established presumption against such an exclusive licence.

Decision of V. Williams J., [1891] 3 Ch. 504, affirmed. *DUKE OF SUTHERLAND v. HEATHCOTE*

C. A. [1892] 1 Ch. 475

3. — *Resulting trust.*

The partners in a business, by a deed reciting the inability of the firm to pay their creditors, assigned the business and property to trustees upon certain trusts for the creditors. The deed contained no provision for the eventuality of a surplus, but that eventuality occurred:—

*Held*, that there was, on the construction of the deed, an absolute disposal for the benefit of the creditors, and no resulting trust for the

**DEED—continued.**

assignors could be implied. *SMITH v. COOKE*.  
*STOREY v. COOKE*

**H. L. (E.)** [1891] A. C. 297 reversing C. A. and restoring *Kekewich J.* (1890) 45 Ch. D. 38

Applied by C. A. *Cunnack v. Edwards*, [1896] 2 Ch. 679, 684.

4. — *Rule in Shelley's Case*, (1581) 1 Co. Rep. 93.

Gift to A. for life with an ultimate limitation "to the use of such person as at the decease of A. shall be his heir-at law and of the heirs and assigns of such person":—

*Held*, that the rule in *Shelley's Case* did not apply, and that A. took merely a life estate with a contingent remainder in fee to the person who at his death answered the description of his heir or co-heirs-at-law. *EVANS v. EVANS* (No. 1)

C. A. [1892] 2 Ch. 173

5. — *Separation deed between man and woman not married—Resumption of co-habitation.*

In a separation deed between A. and B., who was living with him as his mistress, A. covenanted to pay an annuity to B. during her life. They resumed co-habitation, and the man died:—

*Held*, that the resumption of co-habitation did not cause the annuity to cease.

*Secus* in the case of a separation deed between husband and wife. *In re ABDY. RABETH v. DONALDSON* (No. 2) — C. A. [1895] 1 Ch. 455

— Title-deeds.

*See* TITLE-DEEDS.

— Title-deeds — Possession — Priority — Negligence.

*See* COMPANY—Debentures. 52.

— Title-deeds—Purchaser for value without notice — Omission to require production —

Equitable mortgage—Priority.  
*See* MORTGAGE—Priority. 48.

— Title-deeds—Vendor and purchaser.

*See* VENDOR AND PURCHASER—Title-deeds.

**DEED OF ARRANGEMENT.**

*See* BANKRUPTCY—Deed of Arrangement.

**DEED OF GIFT.**

*See* VENDOR AND PURCHASER—Conveyance. 49.

**DEED OF SEVERANCE.**

*See* Cases under JOINT TENANCY.

**DEEDS.**

*See* DEED.

**DEFACEMENT—Cabman's licence.**

*See* HACKNEY CARRIAGES.

**DEFAMATION.**

*Libel*, col. 643.

*Slander*, col. 651.

**Libel.**

— Circular commenting on merits of an action.

*See* CONTEMPT OF COURT. 4.

— Circulation of newspaper—Interrogatories.

*See* DISCOVERY—Interrogatories. 50.

1. — *Consolidation of actions—Practice—*

**DEFAMATION (Libel)—continued.**

*Jurisdiction—Law of Libel Amendment Act*, 1888 (51 & 52 Vict. c. 64), s. 5.

There is jurisdiction under the Law of Libel Amendment Act, 1888, s. 5, to make an order consolidating actions of libel brought by the same person against several defts. in respect of the same or substantially the same libel before the delivery of defences in the action. *STONE v. PRESS ASSOCIATION* — C. A. [1897] 2 Q. B. 159

2. — *Corporation—Joint stock trading company—Statements injurious to trade—Fair comment.*

An action for libel lies at the suit of a joint stock co. for statements defamatory of the character of the co. in respect of the management of their business, without proof of special damage. The sanitary condition of cottages let by a colliery co. to its workmen is a matter of public interest, and fair comment thereon is not libellous. *SOUTH HETTON COAL CO. v. NORTH EASTERN NEWS ASSOCIATION* — C. A. [1894] 1 Q. B. 133

3. — *Corporation—Municipal Corporation—Charge of corrupt practices—Absence of special damage.*

The right of a corporation to sue for libel is confined to the protection of their property. In an action by a municipal corporation for a libel imputing corruption:—

*Held*, that as a corporation, as distinguished from the individuals composing it, cannot be guilty of corrupt practices, the statement of claim disclosed no cause of action. *MANCHESTER CORPORATION v. WILLIAMS*

Div. Ct. [1891] 1 Q. B. 94

Referred to by C. A. *South Hetton Coal Co. v. North Eastern News Association*, [1894] 1 Q. B. 133, 142.

— Costs — Mayor's Court—Less than 5*l.* recovered.

*See* LONDON—Mayor's Court. 44.

4. — *Criminal prosecution—Newspaper appeal from order of judge allowing prosecution—Law of Libel Amendment Act*, 1888 (51 & 52 Vict. c. 64), s. 8.

An appeal does not lie from an order made by a judge at chambers, under s. 8 of the Law of Libel Amendment Act, 1888, allowing a criminal prosecution to be commenced against the proprietors, &c., of a newspaper for a libel published therein. *Ex parte PULBROOK*

Div. Ct. [1892] 1 Q. B. 86

— Discovery—Inspection of documents.

*See* DISCOVERY. 23, 24.

5. — *Falsehood, imputation of.*

Where the name "Ananias" had been applied to A.'s newspaper:—

*Held*, that there was no necessary implication of wilful and deliberate falsehood to A., and that whether it was used extravagantly or for the purpose of conveying an imputation on A. was a question for the jury. *AUSTRALIAN NEWSPAPER CO. v. BENNETT* — P. C. [1894] A. C. 284

— Foreign State, action by—Counter-claim.

*See* PRACTICE—Pleading. 150.

— Form of indictment for.

*See* CRIMINAL LAW—Practice. 61.

**DEFAMATION (Libel)—continued.****6. — Innuendo—Issue.**

*Held*, in this case, that the question of the construction of letters alleged to be defamatory should be left to the jury. **JOHN RITCHIE & Co. v. SEXTON** - - **H. L. (Sc.) [1891] W. N. 59**

**7. — Interlocutory injunction.**

The deft. in a libel action after losing the case continued to publish documents repeating the libels complained of. The plt. commenced an action for an injunction and damages:—

*Held*, that the Court had jurisdiction to grant an interlocutory injunction to restrain further publication of the libel;

(A) but such injunction refused on the ground that there was no such danger of injury to the plt. in person or property as to make it right to grant it. **SALOMONS v. KNIGHT**

**C. A. affirm. North J. [1891] 2 Ch. 294**

(B) Injunction granted. **COLLARD v. MARSHALL Chitty J. [1892] 1 Ch. 571**

**8. — Interlocutory injunction—Contempt of Court.**

The issue by a party of a circular containing libellous ex parte statements and comments on the merits of an action is a contempt of Court which will be restrained by interlocutory injunction. **COATS (J. & P.) v. CHADWICK**

**Chitty J. [1894] 1 Ch. 347**

**9. — Interlocutory injunction—Exhibition of effigy—Discretion.**

Before the Court will grant an interlocutory injunction restraining publication of an alleged libel, it must be satisfied that the case is so clear that a verdict for the deft. would be set aside. M. had been tried for murder in S. and a verdict of not proven was found. T. exhibited an effigy of M. in London, and L. did the same at Birmingham, in both cases in close proximity to "the Chamber of Horrors," and connected by reference with the scene of the murder:—

*Held*, by Div. Ct., that the exhibitions were clearly libellous, and that M. was entitled to an injunction till trial. Some evidence of M.'s consent was produced before C. A., which held that the case was not clear enough to entitle M. to an injunction:

*Held*, also (Lord Halsbury *diss.*), that an injunction should only be granted in cases where a verdict for the deft. would be set aside as unreasonable:

*Held*, also, *per* Lord Halsbury and Davey L.J., that the jurisdiction to issue injunctions in cases of libel is not confined to trade libels. **MONSON v. TUSSAIDS, LD.** **MONSON v. L. TUSSAUD**

**Both Courts [1894] 1 Q. B. 671**

Dictum of Lord Halsbury not followed by C. A. **Kitts v. Moore, [1895] 1 Q. B. 253, 264.**

**10. — Interlocutory injunction—Newspaper.**

(A) An injunction to restrain the sale of a newspaper containing an alleged libel, refused, the Court holding that the truth of the libel ought to be determined by a jury, and the action transferred to the Q. B. Div. **PLUMBLY v. PERRYMAN** - - **North J. [1891] W. N. 64**

(B) There is jurisdiction to grant an interlocutory injunction to restrain the sale of a newspaper containing a libellous article, but the

**DEFAMATION (Libel)—continued.**

jurisdiction should only be exercised under very special circumstances:—

*Held*, *per* full C. A. (Kay L.J. *diss.*), that the circumstances of the case did not warrant an injunction. **BONNARD v. PERRYMAN**

**C. A. (reversing North J.) [1891] 2 Ch. 269**

Referred to by C. A. **J. Lyons & Sons v. Wilkins, [1896] 1 Ch. 811, 827.**

**11. — Justification—Particulars.**

A review of plt.'s book stated that the plt. was "by his own confession, a most barefaced liar":—

*Held*, that plt. was entitled to particulars specifying the pages in the book at which the several passages relied on by the defts. in support of their defence of justification occurred, and the first and last words of such passages. **DEVEREUX v. CLARKE & Co.** - **Div. Ct. [1891] 2 Q. B. 582**

**12. — Justification—Particulars.**

In a libel action where the charge against the plt. in the alleged libel is general, a deft. pleading justification must state in his particulars the facts upon which he relies in support of his justification. **ZIERENBERG v. LABOUCHERE**

**C. A. [1893] 2 Q. B. 183**

Dictum explained. **Waynes Merthyr Co. v. D. Radford & Co., [1896] 1 Ch. 29, 34.**

— Maintenance by third party of action for.

*See* **SOLICITOR—Champertry. 4.**

— Newspaper—Defence of action by proprietor—*Ultra vires.*

*See* **CORPORATION. 26.**

— Newspaper—Inspection of original manuscript.

*See* **DISCOVERY—Documents. 24.**

**13. — Practice—Misdirection—New trial—“Substantial wrong or miscarriage”—Action for libel—R. S. C., Order XXXIX., r. 6.**

In an action for libel the judge misdirected the jury in favour of the plt. upon a material part of the libel and the jury gave a verdict for large damages. The C. A. thought that the nature of the libel was such that the jury would have been entitled to give, and would probably have given, the same verdict, even if the direction had been the other way, and refused the deft.'s application for a new trial on the ground that in their opinion no "substantial wrong or miscarriage" had been occasioned by the misdirection, within the meaning of Order XXXIX., r. 6:—

*Held*, reversing the decision of the C. A., that since the assessment of damages is the peculiar province of the jury in an action for libel, and since the jury had not had the deft.'s real case submitted to them and might in assessing the damages, have been influenced by the misdirection, there had been a substantial wrong or miscarriage within Order XXXIX., r. 6, and that there must be a new trial. **BRAY v. FORD**

**H. L. (E.) [1896] A. C. 44**

**14. — Practice—Payment into court—Newspaper—Pleading—Libel Act, 1843 (6 & 7 Vict. c. 96), s. 2—R. S. C., Order XXII., r. 1.**

The defts. in an action for a libel published

**DEFAMATION (Libel)—continued.**

in a newspaper pleaded by way of defence, in accordance with the Libel Act, 1843, s. 2, that the libel was published without actual malice, and without gross negligence, an apology, and payment into court of 5*l*. The jury at the trial found that the libel was published without actual malice, but not without gross negligence, and that the apology was sufficient, and they assessed the damages at 5*l*. :—

*Held*, that the defts., having made the payment into court as part of a defence under the Libel Act, 1843, s. 2, and having failed at the trial on that defence, were not entitled to avail themselves of the payment into court as being made under Order xxii., r. 1, and therefore the plt. was entitled to judgment. **OXLEY v. WILKES** C. A. [1898] 2 Q. B. 56

**15. — Privileged occasion—Absolute privilege—Communication made by officer of state in course of official duty.**

A communication made by Secretary of State in Council for India to the Parliamentary Under-Secretary to enable the latter to answer a question asked in the House of Commons with regard to the treatment of an officer in the army, by the Indian military authorities, is absolutely privileged, being made by an officer of state to his subordinate in the course of his official duty :—

*Held*, that an action for defamation founded on such a statement could not possibly be maintainable; and should, therefore, be dismissed as vexatious. **CHATTERTON v. SECRETARY OF STATE FOR INDIA IN COUNCIL** C. A. [1895] 2 Q. B. 189

**16. — Privileged occasion—Extract from Register of County Court Judgments.**

The publication without malice in a journal for the protection of tradesmen of a mere copy of what is contained in a register of judgments which by statute the public have a right to inspect is privileged. **SEARLES v. SCARLETT** C. A. [1892] 2 Q. B. 56

**17. — Privilege—Judicial proceeding—Petition for order for reception of lunatic—Defamatory statement in particulars—Immunity from action—Lunacy Act, 1890 (53 & 54 Vict. c. 5).**

A justice of the peace, or other judicial authority, to whom an application is made, under the Lunacy Act, 1890, on a petition for an order for the reception and detention of a lunatic, is acting judicially, and consequently defamatory statements made in the course of the proceedings are not actionable. **HODSON v. PARE** C. A. [1899] 1 Q. B. 455

**18. — Privileged occasion—Report of judicial proceedings.**

The publication without malice of a fair and accurate report of proceedings in open court before magistrates upon an ex parte application for a summons for perjury is privileged. **KIMBER v. PRESS ASSOCIATION** C. A. [1893] 1 Q. B. 65

**19. — Privileged occasion—Constable—Publication ordered by justices—Report.**

Where the justices for a borough, to facilitate business, at the general annual licensing meeting ordered the head constable to issue to persons having business at the meeting copies of his

**DEFAMATION (Libel)—continued.**

report stating grounds of objection to renewal of licences :—

*Held*, that the publication was upon a privileged occasion, and that in the absence of express malice an action for libel would not lie against the head constable for defamatory statements in the grounds of objection. **ANDREWS v. NOTT BOWER** — C. A. [1895] 1 Q. B. 888

**20. — Privileged occasion—Excess of privilege—Defamation—Malice.**

The appellant acted for some time as agent to an insurance co. at his own offices. After some correspondence as to a change of terms upon which the parties could not agree, the co.'s secretary sent to persons who insured through the appellant a circular stating that the agency of the appellant at his offices had "been closed by the directors." The appellant having brought an action for libel against the co. the judge ruled that the statement was capable of a defamatory meaning but that the occasion was privileged. The jury found a verdict for the plt., that the statement was a libel, that it was untrue, and that the defts. had exceeded the privilege, but did not find actual malice :—

*Held*, that judgment must be for the co., on the grounds that the statement was not capable of a defamatory meaning, that it was true, that the occasion was privileged, that the finding of the jury as to excess of privilege was insufficient, and that there was no evidence of malice for the jury.

Decision of C. A., [1895] 2 Q. B. 156, affirmed. **NEVILL v. FINE ART AND GENERAL INSURANCE CO.** — H. L. (E.) [1896] W. N. 171 (5); [1897] A. C. 68

**21. — Privileged occasion — Licensing committee—Justices' Protection Act (11 & 12 Vict. c. 44), ss. 8, 9—Local Government Act (51 & 52 Vict. c. 41), ss. 3, 28, 78.**

The functions of a county council in respect of granting licences for music and dancing are not judicial, but administrative only :—

*Held*, therefore, that a councillor is not entitled to absolute immunity for words spoken to the committee, but only to the ordinary privilege attaching to a privileged occasion. **ROYAL AQUARIUM AND SUMMER AND WINTER GARDEN SOCIETY v. PARKINSON** C. A. [1892] 1 Q. B. 431

Referred to by C. A. **Hodson v. Pare**, [1899] 1 Q. B. 455, 457.

**22. — Privileged occasion—Monthly circular to servants.**

The defts. in a printed monthly circular issued to their servants stated they had dismissed the plt. for gross neglect of duty :—

*Held*, that the occasion was privileged, in the absence of evidence of malice or abuse of authority, as it was clearly to the interest of the defts. that their servants should know that gross misconduct would be followed by dismissal. **HUNT v. GREAT NORTHERN Ry. Co. (No. 2)** C. A. [1891] 2 Q. B. 189

**23. — Privileged occasion—Onus probandi.**

A communication, injurious to the character of another, if made bona fide from a sense of duty, legal, moral or social, is privileged, and the onus

**DEFAMATION (Libel)—continued.**

of proving malice or that the deft. was not acting from a sense of duty lies on the plt.

(A) *JENOURE v. DELMEGE*

P. C. [1891] A. C. 73

(B) *STUART v. BELL* C. A. [1891] 2 Q. B. 341

(C) *BRAY v. FORD*

H. L. (E.) [1896] A. C. 44, 46

24. — *Privileged occasion—Solicitor—Letter written in discharge of duty—Publication to clerks.*

A solicitor, acting on behalf of his client, wrote and sent to the plt. a letter containing defamatory statements about her; the letter was dictated to one clerk and copied into the letter-book by another:—

*Held*, that the occasion was privileged, since the communication, if made by the solicitor direct to the plt., would have been privileged, and the publication to the clerks was necessary and usual in the discharge of his duty to his clients, and was made in the interest of his client. *BOXSIUS v. GOBLET FRÈRES*

C. A. [1894] 1 Q. B. 842

25. — *Privileged occasion—Solicitor—Letter written in discharge of duty.*

A solicitor, on behalf of his client, gave written notice to an auctioneer not to part with the proceeds of sale of goods intrusted to him for sale on the ground that the owner of the goods had committed an act of bankruptcy:—

*Held*, that the occasion was privileged, since the solicitor was acting in the ordinary course of his duty to his client, and that the occasion would have been privileged if the client had himself written the letter. *BAKER v. CARRICK*

C. A. [1894] 1 Q. B. 838

26. — *Privileged occasion—Statement made to person believed to have interest or duty.*

A libel is not privileged because the person making the same honestly and reasonably believed that the person to whom it was made had an interest or duty in the matter, if as a fact that person has not such interest or duty. *HEBDITCH v. MACILWAIN*

C. A. [1894] 2 Q. B. 54

27. — *Publication—Circulating library—Book circulated in ignorance of libel contained in it—Negligence.*

The proprietors of a circulating library circulated copies of a book which, unknown to them, contained a libel on the plt. In an action for libel brought against them by the plt., they failed to shew that it was not through negligence on their part that they did not know that the book contained the libel when they circulated it:—

*Held*, that they were liable as publishers of the libel.

*Emmens v. Pottle*, (1885) 16 Q. B. D. 354, discussed. *VIZETELLY v. MUDIE'S SELECT LIBRARY, LD.*

C. A. [1900] 2 Q. B. 170

28. — *Publication—Copying letter.*

It is the duty of a person sending a letter which may be libellous to write it himself and mark it private, and if a copy be necessary to copy it himself:—

*Held*, in this case there had been a publication both to the deft.'s clerks who wrote and copied the letter and to the plt.'s clerks who opened and

**DEFAMATION (Libel)—continued.**

read the letter in their usual course of duties, and that neither occasion was privileged. *PULLMAN v. HILL & Co.*

C. A. [1901] 1 Q. B. 524

Distinguished by C. A. *Boxsius v. Goblet Frères*, [1894] 1 Q. B. 842.

29. — *Publication in a foreign country—Alleged libel—Action for damages—Jurisdiction—Procedure—Pleading.*

An action will lie in this country in respect of an act committed outside the jurisdiction if the act is wrongful both in this country and in the country where it was committed; but it is not necessary that the act should be the subject of civil proceedings in the foreign country.

The rule enunciated in *Phillips v. Eyre*, (1870) L. R. 6 Q. B. 1, and *The M. Moxham*, (1876) 1 P. D. 107, applied. *MACHADO v. FONTES*

C. A. [1897] 2 Q. B. 231

30. — *Trade libel—Advertisement—Rival traders.*

An action will not lie for a false statement disparaging a trader's goods without special damage.

An injunction will not be granted where no action lies.

*Quære*, whether an action will lie in any case for disparaging a trader's goods merely by saying that some other trader's goods are better either generally or in some specified respect.

W., proprietor of V.'s food for infants, &c., bought from M. and sold to his customers M.'s infants' food. W. was in the habit of affixing to the wrappers on M.'s food a label stating that V.'s food was far more nutritious and healthful than any other:—

*Held*, by H. L. (E.), reversing C. A. and restoring *Romer J.*, that W.'s conduct did not amount to a trade libel, but was merely a puff by a rival trader. *MELLIN v. WHITE*

C. A. and *Romer J.* [1894] 3 Ch. 276;

H. L. (E.) [1895] A. C. 154

Referred by C. A. *Hubbuck & Sons v. Wilkinson, Heywood & Clark*, [1899] 1 Q. B. 86, 91.

31. — *Trade libel—Injury to trade—Placard—Circular—Injunction—Jurisdiction.*

The Court has power to restrain by injunction on interlocutory motion the publication of placards and circulars containing false statements injurious to trade. *COLLARD v. MARSHALL*

*Chitty* [1892] 1 Ch. 571

And see No. 34, below.

32. — *Trade libel—Intimidating circular—Injunction.*

Where a trade union published a poster headed "T.'s black list," giving the names of non-union men employed by T.:—

*Held*, by Kekewich J., that as on the evidence the principal motive was to injure T. and his non-union workmen, and as the injury was being inflicted from day to day, T. and his workmen were entitled to an interlocutory injunction against the trade union and their servants, &c., and against the secretary and other officers who were defts. by name without addition. *TROLLOPE v. LONDON BUILDING TRADES FEDERATION*

*Kekewich J.* [1895] W. N. 29

Affirmed by C. A. on the ground that a prima

**DEFAMATION (Libel)—continued.**

facie case had been made out that the defts. had gone further than they were entitled to do, and that they had refused to give an undertaking not to continue the publication.

C. A. [1895] W. N. 45

**33. — Trader—Disparagement of goods—Slander of goods—Comparison of plaintiff's goods with those of defendant—Cause of action—R. S. C., Order xxv, rr. 2, 4.**

H., a manufacturer of zinc paint, by his statement of claim alleged that the deft. W. was "falsely and maliciously" publishing in China and Japan copies of a report of experiments testing the zinc paints of H. and W., in which report the experimenter certified that W.'s paint had a slight advantage over H.'s, but that for all practical purposes they could be regarded as equal. The statement of claim went on to allege that the report, and each statement in it, was untrue, that H.'s paint was not equal or inferior, but superior to W.'s, and that H. had by reason of the premises been injured in his business and credit. W. applied to strike out the statement of claim as shewing no reasonable cause of action. The master made an order for striking out the statement of claim unless within a limited time H. amended it by alleging special damage with full particulars. Kennedy J. discharged this order:—

*Held*, on appeal, that a statement by a trader that his own goods are superior to those of another trader, even if untrue and the cause of loss to the other trader, gives no cause of action; that the allegation that the statement was made maliciously could not convert a statement *prima facie* lawful into one *prima facie* unlawful; that the allegation and proof of special damage would not improve the plt.'s case; and that judgment in the action must be entered for the deft. under Order xxv., r. 4. **HUBBUCK & SONS, LD. v. WILKINSON, HEYWOOD & CLARK, LD.**

C. A. [1899] 1 Q. B. 86

— Untrue statement—Unauthorized use of name—Injury—Libel.  
See NAME. 1.

**34. — Words not actionable per se—Injury to trade.**

In an action for words not actionable per se, but constituting an untrue statement maliciously published, which statement is intended or reasonably likely to produce, and in the ordinary course of things does produce, a general loss of business as distinct from the loss of particular known customers, evidence of such general loss of business is admissible, and sufficient to maintain the action. **RATCLIFFE v. EVANS**

C. A. [1892] 2 Q. B. 524

And see Nos. 30—33, above.

Referred to by C. A. **Hubbuck & Sons v. Wilkinson, Heywood & Clark**, [1899] 1 Q. B. 86, 94.

**Slander.**

*Slander of Women Act, 1891 (54 & 55 Vict. c. 51), amends the law relating to the slander of women.*

**DEFAMATION (Slander)—continued.**

**35. — Imputation on town councillor of drunkenness and unfitness for office.**

With respect to offices not of profit, an action for slander will not lie in the absence of proof of special damage unless the imputation be one which if true would be a ground for removing the plt. from his office. **ALEXANDER v. JENKINS**

C. A. [1892] 1 Q. B. 797

Referred to by C. A. **Booth v. Arnold**, [1895] 1 Q. B. 571, 575.

**36. — Imputation on town councillor of misconduct in public office—Special damage, absence of.**

Words importing dishonesty or malversation in a public office of trust are actionable per se although the office be not one of profit, and special damage need not be proved. **BOOTH v. ARNOLD**

C. A. [1895] 1 Q. B. 571

— Interrogatories—Action for slander.

See DISCOVERY—Interrogatories. 58.

— Misjoinder of plaintiffs.

See PRACTICE—Parties. 106.

— Privileged occasion—County councillor—Licensing committee.

See MUSIC AND DANCING. 3.

**37. — Privileged occasion—Presence of reporters.**

A statement was made by a member of a board of guardians at a meeting of the board at which reporters were present:—

*Held*, that the privilege which would attach to statements, if made before guardians only, was not taken away by the presence of reporters or the public. **PITTARD v. OLIVER**

C. A. [1891] 1 Q. B. 474

**38. — Privileged occasion—Repeating suspicions as to servant to master.**

The deft. told S., who was a guest in his house, that the police had informed him that S.'s valet was suspected of theft. S. thereupon dismissed his valet, who sued the deft. for slander:—

*Held*, by C. A. (Lopes L.J. diss.), that, the occasion was privileged, the deft. being under a moral and social, if not a legal, obligation to communicate to S. the information he had received from the police. **STUART v. BELL**

C. A. [1891] 2 Q. B. 341

Referred to by C. A. **Nevill v. Fine Art and General Insurance Co.**, [1895] 2 Q. B. 156, 165; **H. L. (E.)** [1897] A. C. 68.

And see **Jenoure v. Delmege**, P. C. [1891] A. C. 73.

— Striking out embarrassing pleadings.

See PRACTICE—Pleading. 162.

**DEFENCE.**

See Cases under PRACTICE—Pleadings.

**DEFUNCT COMPANIES.**

See COMPANY—Defunct Companies.

**DELAY—Admiralty practice.**

See Cases under SHIPPING.

— Charging order—Application to discharge—

Ex parte proceedings—Practice.

See BANKRUPTCY. 67.



**DELAY**—*continued.*

- Charterparty—Exceptions—Lock-out—Accident to railway.  
*See SHIPPING.* 131.
- Clause allowing deviation at premium to be arranged—Policy.  
*See INSURANCE—Marine.* 46.
- Completion of contract for sale of lands—"Default"—Interest.  
*See VENDOR AND PURCHASER.* 52.
- Contract of carriage—Owner's risk note—Construction.  
*See RAILWAY.* 4.
- Demurrage obligation, Continuance of—Delay at loading port.  
*See SHIPPING—Demurrage.* 105.
- Divorce proceedings.  
*See Cases under DIVORCE.*
- Express trust—Statutes of Limitations.  
*See FRAUDS, STATUTE OF.* 23.
- In enforcing order for costs against co-respondent—Execution.  
*See DIVORCE.* 48.
- In proving will—Loss of interest.  
*See EXECUTOR.* 41.
- Penalties for—Liquidated damages—Extras.  
*See BUILDING CONTRACT.* 3.
- Probate duty paid under protest—Application for refund.  
*See NEW SOUTH WALES.* 38.
- Purchase by trustee—Express trust.  
*See TRUSTEE.* 84.
- Reasonable—"Punctual" payment.  
*See MORTGAGE.* 39.
- Sale by directors in one character to themselves in another—Voidable contract—Rescission—Damages.  
*See COMPANY—Directors.* 105.
- Sale of reversion—Equitable interest.  
*See SPECIFIC PERFORMANCE.* 4.
- Solicitors' lien—Charging order—Property recovered for company—Application after winding-up.  
*See SOLICITOR.* 10.

**DELIVERY**—Antecedent to gift—Essentials to gift.

- See DONATIO MORTIS CAUSÂ.* 2.
- Time allowed for taking—Charge for use of sidings—Jurisdiction of arbitrator.  
*See RAILWAY.* 62.

**DELIVERY ORDER**—*Pledge—Registration—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), ss. 3, 4; 1882 (45 & 46 Vict. c. 43), s. 8.*

A "delivery order" on furniture warehousemen does not require registration as a bill of sale. *GRIGG v. NATIONAL GUARDIAN ASSURANCE CO.*  
*Per Kekewich J. [1891] 3 Ch. 206*

**DELUSIONS**—Will—Relevancy—Capacity.  
*See WILL.* 171.**DEMAND**—For rates—Written or verbal.  
*See RATES—Recovery.* 66.**DEMONSTRATIVE LEGACY**—Specific legacy or—Construction of will.  
*See WILL—Legacy.* 124.**DEMURRAGE.***See SHIPPING—Demurrage.***DENMARK.***See PATENT.*  
*TRADE-MARK.***DENTIST**—Right to be registered—Qualification.  
*See MEDICAL PRACTITIONER.* 1.**"DEPENDANTS"**—Workmen's Compensation Act, 1897.*See MASTER AND SERVANT.* 9, 10.**DEPOSIT**—By way of security—Licence to assign.  
*See COVENANT.* 1.—Cheque for—Custom—Sale of land by auction—Refusal to accept highest bidder.  
*See VENDOR AND PURCHASER.* 50.—in respect of Inspection of documents.  
*See DISCOVERY.* 2.—Parliamentary—Deposits and bonds.  
*See PARLIAMENT—Deposits and Bonds.* 1, 2, 3.—Vendor and purchaser.  
*See VENDOR AND PURCHASER—Deposit.*—Wagering—Agreement by way of—Recovery of deposit from stakeholder.  
*See GAMING.* 9.—With bank.  
*See INSURANCE.* 13.**DEPOSIT NOTE**—Banker's—Indorsement and delivery—Equitable assignment.  
*See VOLUNTARY GIFT.* 1.**DEPOSITION**—In suit to perpetuate testimony—Evidence—Admissibility.  
*See COMMON.* 1.—Inspection of deposition—Private examination—Subsequent proceedings against examinee.  
*See COMPANY—WINDING-UP.* 86.—Office copy of—Discovery—Production of documents—Privilege.  
*See DISCOVERY.* 28.**DEPRECIATION**—Of capital—Assets.  
*See COMPANY—WINDING-UP—Assets.* 4.**DEPRIVATION**—Sentence of—Subsequent deposition by bishop.  
*See ECCLESIASTICAL LAW.* 47.**DERELICT VESSELS.***See SHIPPING—Derelict Vessels.***DEROGATION**—From grant—Building land—Light.  
*See VENDOR AND PURCHASER.* 40.—from Grant—Landlord's liability.  
*See LANDLORD AND TENANT.* 70, 71.**DESCENT**—Co-parceners—Tracing title from "purchaser."  
*See INTTESTACY.* 1.**DESCRIPTION**—of Deponent—Affidavit.  
*See EVIDENCE.* 15.—Property in foreclosure order nisi.  
*See MORTGAGE—Foreclosure.* 19.—Witness and grantee of bill of sale—Address and description.  
*See BILL OF SALE.* 1—8.

**DESCRIPTIVE WORD**—Trade-mark.

See Cases under TRADE-MARK.

## — Trade name.

See Cases under TRADE NAME.

**DESERTION.**

See DIVORCE—Desertion.

## — Limitations of time for proceeding.

See HUSBAND AND WIFE. 91.

## — Maintenance—Neglect to provide.

See HUSBAND AND WIFE. 92.

## — Wages—Forfeiture—Deductions.

See SHIPPING—Seamen. 265.

**DESIGNS (COPYRIGHT IN DESIGN).**

See also under COPYRIGHT.

Rules in proceedings before Judicial Committee of Privy Council under Patents, Designs and Trade Marks Act, 1883, s. 25. **W. N. 1897** (Dec. 11), p. 343. See Current Index, 1897.

**FEES.** Notice under the Public Offices Fees Act, 1879, and Patents, Designs, and Trade Marks Act, 1883. **W. N. 1898** (Dec. 3), p. 397. See Current Index, 1898, p. xcix.

**REGISTRATION OF DESIGN.** New rule substituted for rule 6 of Designs Rules, 1890. See Designs Rules, dated Sept. 15, 1898. **W. N. 1898** (Dec. 17), p. 408. See Current Index, 1898, p. xcvi.

Practice, col. 655.

Registration, col. 656.

**Practice.****1. — Amendment—Particulars of objections—Terms.**

(A) The rule of practice in patent actions that a deft. will be allowed to amend his particulars of objections on terms that the plt. may elect to discontinue his action, and the deft. bear the costs subsequent to the delivery of his first particulars, applied by North J. in an action to restrain infringement of copyright in registered designs. **MORRIS, WILSON & Co. v. COVENTRY MACHINISTS Co.** — **North J.** [1891] 3 Ch. 418

(b) But held by C. A. (commenting on this case) that the discretion to allow amendment of particulars in an action for infringement is not affected by any practice as to the terms on which such amendment will be allowed. **WOOLLEY v. BROAD** (No. 2) — **C. A.** [1892] 2 Q. B. 317

**2. — Interrogatories—Penal action—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 58.**

An action to recover the 50*l.* allowed to the registered proprietors of the registered design for a contravention of s. 58 of the Patents, &c., Act, 1883, is a penal action, and therefore the plt. cannot interrogate the deft. **SAUNDERS v. WIEL** (No. 1) — **C. A.** [1892] 2 Q. B. 321

Referred to by Div. Ct. **Derby Corporation v. Derbyshire County Council**, [1896] 2 Q. B. 53, 58; [1897] A. C. 550.

**3. — Right to sue — Unregistered licensee—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 58, 59.**

A person with the sole right of selling, under a verbal licence, goods manufactured under a registered design, has no right to sue for an infringement, or for injuries in respect of the

**DESIGNS (Practice)—continued.**

same, such right belonging exclusively to the registered proprietor. **WOOLLEY v. BROAD** (No. 1) Div. Ct. [1892] 1 Q. B. 806

**Registration.****4. — Infringement of design—Pattern, shape, and configuration—Infringement—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 60—Designs Rules, 1883, r. 9.**

The plts. registered a design for an upright hexagonal metal stove, the sides of which had the representation in metal work of a church window, of a particular style of architecture, with tracery above and below, the design being registered as applicable to pattern, shape, and configuration. The defts. produced a hexagonal upright stove with a design of a church window, of a different style of architecture, with different tracery, but the general appearance of the stove was very similar to that of the plts.' stove:—

Held, reversing the decision of Kekewich J., [1895] 2 Ch. 593, that the defts.' stove was an obvious imitation of the plts.' stove and an infringement of his copyright.

**Hecla Foundry Co. v. Walker, Hunter & Co.**, (1889) 14 App. Cas. 550, applied.

Where a design is registered as applicable to pattern, shape and configuration, the registration applies to the design as a whole, and it is protected although in one of those particulars it may not be novel. The owner of a registered design is not deprived of his right to protection merely because he places on the articles which he sells, besides the registered number of his design, other numbers which ought not to be there. Where a design is registered, and before the expiration of the term of protection the same design with an unimportant variation is registered, the original design may be copied as soon as the original term of protection expires, provided the variation is not copied. **JOHN HARPER & Co. v. WRIGHT AND BUTLER LAMP MANUFACTURING Co.** — **C. A.** [1895] **W. N.** 146 (3); [1896] 1 Ch. 142

Referred to by C. A. *In re Clarke's Design* [1896] 2 Ch. 38, 51.

**5. — "New and original design"—Patents, &c., Act, 1883, s. 47.**

It is not necessary for registration that the design should be novel in its subject-matter. It is sufficient if the application of the design to some article of manufacture be novel. A design in metal for handles of spoons representing a view of Westminster Abbey taken from a photograph, held to be a proper subject for registration. **SAUNDERS v. WIEL** (No. 2)

**C. A.** [1893] 1 Q. B. 470

Referred to by C. A. *In re Clarke's Design*, [1896] 2 Ch. 38, 44.

**6. — "New or original" — Registration of design — Applicable for pattern — "Pattern" — Marking articles—Statutory requirements—"All proper steps"—Coffin plates—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 47, 51, 60—Designs Rules, 1880, r. 9.**

The term "design" in s. 60 of the Patents, &c., Act, 1883, was not intended to be used in any

**DESIGNS (Registration)—continued.**

technical sense as excluding anything that would ordinarily fall within it; and "pattern" as used in that section might include "shape" or "configuration" or "ornament."

The decision of the C. A., *In re Rollason's Registered Design*, [1898] 1 Ch. 237, affirmed. **HEATH & SONS, LD. v. ROLLASON**

**H. L. (E.) [1898] A. C. 499**

7. — *Registration—Designs—Shape—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 47, 60—Patents, &c., Act, 1888 (51 & 52 Vict. c. 50).*

C. registered a design for a "Lamp for electric lighting, applicable for its shape." It was, in fact, a design for a lamp-shade, consisting of a reflecting screen which had been commonly used for gas lights, and a ventilating top not materially differing from those which had been used before for gas, except that a chimney which was required for gas lights, but not for electric lights, was omitted:—

*Held* (reversing the decision of North J.), that what C. had registered was substantially the old form of lamp-shade with the omission of the chimney, which was useless when the shade was to be applied to electric lights, and that there was no such originality or novelty in the design as to make it a proper subject of registration. *In re CLARKE'S DESIGN* — **C. A. [1896] 2 Ch. 38**

Referred to by C. A. *In re Rollason's Registered Design*, [1898] 1 Ch. 237, 246; **H. L. (E.) [1898] A. C. 499.**

**DESPATCH MONEY**—Bill of lading.

*See SHIPPING.* 33.

**DETENTION**—Property for production at trial abroad.

*See CRIMINAL LAW.* 63.

**EXTRADITION.** 1.

## —Ship—Insufficient depth of water—Charter-party.

*See SHIPPING.* 38.

**DETERMINATION OF CONTRACT**—Contract—Hiring of domestic servants—Custom—Reasonableness.

*See MASTER AND SERVANT.* 68.

## —Tenancy.

*See LANDLORD AND TENANT—Determination of Tenancy and Holding Over.*

## —Tenancy at will—Doing of repairs by landlord.

*See LIMITATIONS, STATUTE OF.* 44.

## —Tenancy at will—Mortgage—Creation of fresh tenancy.

*See LIMITATIONS, STATUTE OF.* 43.

## —Trust—Road taken over by local authority.

*See CHARITY.* 23.

**DETINUE** — Book — Piracy — Infringement — Combining causes of action.

*See COPYRIGHT.* 11.

## —Conversion — Demand and refusal — Time when beginning to run.

*See LIMITATIONS, STATUTE OF.* 17.

1. — *Lease fraudulently obtained—Conversion—Demand and refusal—Statute of Limitations.*

A lease belonging to the plt. was fraudulently deposited with B. B. became bankrupt and the

**DETINUE**—continued.

lease was handed to the deft. by the trustee as security. Both B. and deft. were ignorant of the fraud:—

*Held*, that the Statute of Limitations only began to run from the date of demand by the plt. and refusal by the deft., and not from the receipt of the deed by B.

*Quære*, whether the original receipt of the lease by B. was sufficient evidence of conversion by him. **MILLER v. DELL**

**C. A. [1891] 1 Q. B. 468**

Referred to by Stirling J. *London and Midland Bank v. Mitchell*, [1899] 2 Ch. 161, 166.

2. — *Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 40.*

A magistrate's order, under s. 40 of the Metropolitan Police Act, 1839, for the delivery of goods detained is no bar to an action for special damage arising out of the same detention. **MIDLAND RY. CO. v. MARTIN & CO.**

**Div. Ct. [1893] 2 Q. B. 172**

3. — *Property by finding—Chattels found on private property—Ring found in pool of water.*

The possessor of land is generally entitled, as against the finder, to chattels found on the land.

The deft., while cleaning out, under the plts.' orders, a pool of water on their land, found two rings. He declined to deliver them to the plts., but failed to discover the real owner. In an action of detinue:—

*Held*, that the plts. were entitled to the rings. *Bridges v. Hawkesworth*, (1851) 21 L. J. (Q.B.) 75, distinguished. **SOUTH STAFFORDSHIRE WATER CO. v. SHARMAN** — **Div. Ct. [1896] 2 Q. B. 44**

## —Trover—Combining causes of action—Piracy.

*See COPYRIGHT.* 11.

**DEVASTAVIT** — Executor — Breach of trust — Reliance on solicitor — Relief from liability.

*See TRUSTEE—Breach of Trust.* 25.

## —Executor guilty of—Breach of trust—Court's power to excuse.

*See TRUSTEE—Breach of Trust.* 26.

**DEVIATION**—Drainage of group of houses by combined operation—Subsequent deviation—Sewer—Nuisance.

*See LONDON—Sewers.* 55.

## —“Lateral deviation.”

*See STATUTES—Generally.* 15.

## —Policy—Delay—Clause allowing deviation at premium to be arranged.

*See INSURANCE—Marine.* 46.

## —Shipping.

*See SHIPPING—Deviation.*

**DEVICE**—Trade-mark.

*See Cases under TRADE-MARK.*

**DEVISE**—Construction of will.

*See Cases under WILL.*

**DEVISEES**—Representation in action—“Class.”

*See PRACTICE—Parties.* 114.

**DIARY**—Entries in—Admissibility as evidence.

*See EVIDENCE.* 7.

## —Of deceased solicitor—Admissibility.

*See EVIDENCE.* 6.

- DIE**—For making fictitious stamp—Possession  
“without lawful excuse.”  
*See* POST OFFICE. 1.
- “**DIFFERENCES**”—Contract—“Cover” system  
—Gambling transaction—Nullity.  
*See* STOCK EXCHANGE. 3.
- DIGNITY**—Former wife marrying a commoner—  
Continued use of title derived from  
former husband—Injunction.  
*See* HUSBAND AND WIFE — Title of  
Honour. 96.
- DILAPIDATION**—Buildings—Waste by tenant  
for life—Depreciation of marsh lands—  
Damages.  
*See* SETTLED LAND. 89.
- DIRECTIONS**—Summons for.  
*See* PRACTICE—Summons for Directions.
- DIRECTORS.**  
*See* COMPANY—Directors.
- Building society—Ultra vires.  
*See* BUILDING SOCIETY—Ultra vires. 10.
- DIRECTORY**—Copyright.  
*See* COPYRIGHT—Book. 3.
- Work done by paid canvassers — Right of  
employer.  
*See* Cases under MASTER AND SERVANT  
—Trade Secrets.
- DISAPPEARANCE**—Of person entitled—Grant  
of administration—Necessity for cita-  
tion.  
*See* PROBATE—Grant of Administration.  
28.
- Trustee.  
*See* TRUSTEE—Vesting Order. 105.
- DISBURSEMENTS**—Insurance of.  
*See* INSURANCE—Marine. 23.
- by Master.  
*See* SHIPPING—Lien. 160.
- DISC**—Overloading—Liability of owner for act of  
master.  
*See* SHIPPING. 185.
- DISCHARGE**—Attachment.  
*See* ATTACHMENT. 6.
- Bankrupt—After-acquired property.  
*See* ECCLESIASTICAL LAW. 73.
- Bankrupt—Practice.  
*See* BANKRUPT—Discharge.
- Discretion of Lunacy Commissioners.  
*See* LUNACY. 13.
- Receiver and manager—Final account—Right  
to indemnity.  
*See* RECEIVER—Discharge. 26.
- Ship.  
*See* Cases under SHIPPING—Demurrage.
- Statutory—Securities.  
*See* INSURANCE. 12.
- Surety.  
*See* PRINCIPAL AND SURETY—Discharge.
- Time for applying to discharge order—Public  
examination.  
*See* COMPANY—WINDING-UP—Examina-  
tion. 87.
- DISCLAIMER**—Bankruptcy practice.  
*See* BANKRUPTCY—Disclaimer.
- Partial disclaimer—Property in England and  
abroad.  
*See* TRUSTEE—Disclaimer. 49.
- Patent—Practice.  
*See* PATENT—Disclaimer.
- Trade-mark.  
*See* Cases under TRADE-MARK.
- DISCONTINUANCE**—Licence—Public-house—  
Lease—Covenant.  
*See* LANDLORD AND TENANT. 18.
- Non-suit.  
*See* PRACTICE—Discontinuance.
- Practice.  
*See* PRACTICE—Discontinuance.
- Of user by one for several years—Former  
concurrent user by two firms.  
*See* TRADE NAME. 4.
- DISCOUNT**—Commercial meaning of.  
*See* COMPANY—WINDING-UP. 218.
- Issue of shares at a discount.  
*See* COMPANY—Shares. 273—279.
- DISCOVERY.**  
*Order XXXI. relates to Discovery. The Order  
was amended by R. S. C. of Nov., 1893.*  
*When granted, col. 660.*  
*Deposit, col. 660.*  
*Documents, col. 661.*  
*Interrogatories, col. 672.*  
*Particulars, col. 676.*  
*Infants—See Explanatory Memorandum to  
County Court Rules (May), 1899, and rule 24.  
W. N. 1899 (April 29), p. 149; (May 20), p. 171.  
See Current Index, 1899, pp. xcii., xci.*
- When granted.**
1. — *Discretion.*  
There is no hard and fast rule as to the class  
of cases in which particulars will be ordered to  
be delivered before discovery, or discovery to be  
given before particulars; but the Court will, in  
the exercise of its discretion, look at all the cir-  
cumstances in each case. *WAYNES MERTHYR  
Co. v. D. RADFORD & Co.*  
*Chitty J. [1895] W. N. 150 (4); [1896] 1 Ch. 29*
- Deposit.**
- Order XXXI., r. 26, requires a deposit in Court  
as security for the costs of discovery.*
2. — *Further deposit—Inspection of documents  
referred to in answer to interrogatories—R. S. C.,  
Order XXXI., rr. 15, 17, 18, 26.*  
Where interrogatories have been delivered,  
and the deposit of 5*l.* required by Order XXXI.,  
r. 26, on an application for discovery of docu-  
ments made, and the affidavit in answer refers to  
documents, an order can be made for inspection  
of such documents under rules 15, 18, without  
requiring a further deposit. *MOORE v. PEACHEY*  
*Div. Ct. [1891] 2 Q. B. 707*
3. — *Increase deposit—Application to—Time  
—Object of deposit, R. S. C., Order XXXI., r. 26.*  
The Court has jurisdiction to order an in-  
crease in the deposit, although the application is

**DISCOVERY (Deposit)—continued.**

not made at time when order for discovery was made.

The object of the deposit required by Order xxxi, r. 26, is to prevent harsh and oppressive use of the machinery of discovery, by requiring a pledge of good faith on the part of the person seeking it. *COOKE v. SMITH*

**C. A. [1891] 1 Ch. 509, 519**

On another point, see *Smith v. Cooke*, [1891] A. C. 297.

4. — *Several defendants—Discovery of documents—R. S. C., Order xxxi, r. 26.*

A plt. who brings an action for one and the same cause against several defts. is entitled to discovery of documents from all of them on payment of one sum of 5*l.*, even where they sever in their defence. *JOYCE v. BEALL*

**Div. Ct. [1891] 1 Q. B. 459**

5. — *Several defendants—Discovery of documents—Interrogatories—R. S. C., Order xxxi, r. 6.*

A plt. who brings an action against several defts. who sever their defences and appear by different solicitors must pay into court under Order xxxi, r. 26, separate sums of 5*l.* both for discovery of documents and for leave to serve interrogatories. *LIVERPOOL AND MANCHESTER AERATED BREAD AND CAFÉ CO. v. FIRTH*

**Stirling J. [1891] 1 Ch. 367**

Commented on by Div. Ct. *Joyce v. Beall*, [1891] 1 Q. B. 459, 462. See preceding Case.

**Documents.****(Documents, Production and Inspection of.)**

6. — *Affidavit of documents—Description—Sufficiency.*

In an action for trespass, the defence to which was right of way, plts. filed an affidavit of documents, which described certain documents as numbered 1 to 26, and tied up in a bundle marked A, and initiated by B. —

*Held*, that the affidavit was sufficient, as it sufficiently described the documents to enable the Court to make and enforce an order for their production. *BUDDEN v. WILKINSON*

**C. A. reversing Div. Ct.**

**[1893] 2 Q. B. 432**

Followed by C. A. *Milbank v. Milbank*, [1900] 1 Ch. 376, 384.

7. — *Affidavit of documents—Description—Sufficiency.*

Where an affidavit of documents is made under a common order for discovery of documents, it is not enough to tie the documents in bundles and number each bundle. Each document must be identified by being specifically marked, and if they are tied up in bundles a description must be given of the character of the documents in each bundle. *COOKE v. SMITH*

**C. A. [1891] 1 Ch. 509**

On another point, see *Smith v. Cooke*, [1891] A. C. 297.

8. — *Banking account—Inspection of—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), s. 7.*

An order for inspection of entries in a banker's

**DISCOVERY (Documents)—continued.**

books under s. 7 of the Bankers' Books Evidence Act, 1879, will as a general rule be made only where they are entries in an account which is in form or substance the account of one of the parties to the litigation. If the Court has jurisdiction under that section to order inspection of the banking account of a person not concerned with the litigation, it will exercise that jurisdiction with the greatest caution.

The plt. sued to rescind a contract for purchase by him of shares in a co. from the deft., on the ground that the deft. had induced him to enter into the contract by misrepresentations, one of which was that the co. had a certain large balance at its bankers at that time. Before the action was set down for trial the plt. applied to the Court under s. 7 of the Bankers' Books Evidence Act, 1879, for liberty to inspect and take copies of any accounts of the co. in their bankers' books. Kekewich J. made an order for inspection with the qualification, "but such inspection is to be limited to shewing the balance of the said co. in the books of the said bankers on the 2nd of Dec., 1895" :—

*Held*, that this order must be discharged.

*POLLOCK v. GARLE*

**C. A. [1897] W. N. 152 (7); [1898] 1 Ch. 1**

9. — *Bankers' books—Legal proceeding in England—Order to inspect bankers' books in Scotland—Practice—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), ss. 7, 10.*

In a legal proceeding in England, the Court or a judge has power, under s. 7 of the Bankers' Books Evidence Act, 1879, on the application of any party to the proceeding, to order that such party shall be at liberty, for the purposes of such proceeding, to inspect and take copies of any entries in a banker's book in either of the other divisions of the United Kingdom. *KISSAM v. LINK* — — — — — **[1896] 1 Q. B. 574**

10. — *Bankers' books, Inspection of—Privilege—Affidavit of documents—Sealing up entries—Subpoena duces tecum—Bankers' Book Evidence Act, 1879 (42 & 43 Vict. c. 11), s. 7.*

A plt. in obedience to an order of the Court had produced her pass-books, sealing up certain parts which she swore were irrelevant to the matters in issue. An application was then made under the Bankers' Books Evidence Act, 1879, to inspect the bankers' books :—

*Held*, that it must be refused as an attempt to get behind the privilege which allowed the party producing documents to seal up irrelevant matter :—

*Held*, also, that an application to issue a subpoena duces tecum for the bankers to produce the books must be refused without prejudice to any application to the judge at the trial. *In re WOOD. PARNELL (formerly O'SHEA) v. WOOD*

**C. A. [1892] P. 137**

Approved of by C. A. *South Staffordshire Tramways Co. v. Ebbsmith*, [1895] 2 Q. B. 669, 676.

11. — *Bankers' books, Inspection of—Privilege—Entries not relevant—Account of person not party to action—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), s. 7.*

The jurisdiction to order inspection of entries

**DISCOVERY (Documents)—continued.**

in bankers' books under s. 7 of the Bankers' Books Evidence Act, 1879, ought to be exercised in conformity with the general law as to discovery, by which a party to an action is entitled to refuse discovery of entries which he swears to be irrelevant.

Therefore, where the debt, in an action stated on affidavit that entries in his banking account were irrelevant to the matters in dispute :—

*Held*, that an order for inspection of those entries before the trial ought not to be made under the above-mentioned Act.

*Seem*, inspection of entries in a banker's books relating to an account kept in the name of a person not a party to the action can be ordered under the Bankers' Books Evidence Act, 1879, where the Court is satisfied that those entries will be admissible in evidence against a party to the action at the trial; but such an order ought not to be made unless very strong grounds are shown for thinking that there are entries in the account which are material to the case of the party asking for inspection. *SOUTH STAFFORDSHIRE TRAMWAYS CO. v. EBBESMITH*

C. A. [1895] 2 Q. B. 669

12. — *Commission issued by Court in another part of the United Kingdom—Persons not parties to the proceedings—Commissions for taking Affidavits Act, 1843 (6 & 7 Vict. c. 82), s. 5.*

The only process intended to be enforced by 6 & 7 Vict. c. 82, s. 5, is the production of documents as ancillary to the examination of a witness; and there is not jurisdiction to make an order amounting to discovery against persons not parties to the action. *BURCHARD v. MACFARLANE. Ex parte TINDALL*

C. A. [1891] 2 Q. B. 241

— Company—Balance-sheets furnished for income-tax assessment.

*See* DISCOVERY. 14.

— Company—Books—Right to take free copies.

*See* DISCOVERY. 21.

— Deposition—Private examination—Subsequent proceedings against examinee.

*See* COMPANY—WINDING-UP. 83.

13. — *Company—Documents—Action by shareholder of company—Allegation of conspiracy to defraud company—Company made defendants—Obligation on company to make discovery of documents—Objection by defendant that discovery may tend to criminate him—Objection must be taken on oath—R. S. C., Order XXXI., r. 12.*

An action was brought by a shareholder in a co., on behalf of himself and other the shareholders of the co., against the directors and another deft. alleging a conspiracy to defraud the co., and that they had been defrauded thereby, and claiming damages to be paid to the co. The co. were made defts. :—

*Held*, that the co. were an "other party" to the action within the meaning of Order XXXI., r. 12, and could be called on to make discovery of documents :—

*Held*, also, that an objection by a deft. that the discovery of documents may tend to criminate him can only be taken to the production of the documents alleged to have that effect, and not to the order for discovery, and must be taken

**DISCOVERY (Documents)—continued.**

upon oath. *SPOKES v. GROSVENOR AND WEST END RY. TERMINUS HOTEL CO.*

C. A. [1897] 2 Q. B. 124

— Company—Register of members.

*See* CASES UNDER COMPANY—Register.

14. — *Company—Winding-up—Production of documents—Income tax returns—Discretion of judge—Officer of Government department—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115.*

Under s. 115 of the Companies Act, 1862, the judge has a discretion as to making an order for the production of documents, and the C. A. will not readily interfere with the exercise of his discretion, though it has jurisdiction to do so in a proper case.

The liquidator of a co., in order to obtain evidence in support of a misfeasance summons which he had issued against the directors of the co. and the auditors, applied under s. 115 for an order that the surveyor of taxes should attend for examination and produce some balance-sheets of the co. which had been delivered to him for the purpose of assessment of income tax. The surveyor objected to produce these documents, and the Board of Inland Revenue supported his objection by a resolution that their production would be "prejudicial and injurious to the public interests and service" :—

*Held*, by Wright J., [1899] W. N. 259, that an order for production ought not to be made under s. 115 :

*Held*, by C. A., that the exercise by the judge of his discretion ought not to be interfered with.

*Per* Romer L.J. : The question for decision was not necessarily the same as that which might arise, on the hearing of the misfeasance summons, with regard to a subpoena for the production of the documents in question.

*Per* Wright J. : It is not in every case essential that the principal officer of a Government department should himself attend in court to take such an objection to the production of documents in the possession of the department. In many cases the Court will be satisfied of the validity of the objection by other evidence—e.g., by the affidavit of a responsible officer. *In re JOSEPH HARGREAVES, LD.* - - C. A. [1900] W. N. 13; [1900] 1 Ch. 347

— Copies—Right to take.

*See* No. 21, below.

— County court.

*See* COUNTY COURT—Practice. 61.

15. — *Crown, Right of the—Information—Production of documents—Ownership of foreshore and bed of river—Crown Suits, &c., Act, 1865 (28 & 29 Vict. c. 104), ss. 13, 14, 15, 16—Rules of Court for regulating the Procedure and Practice in Suits by English Information (Easter Term, 1866), rr. 4 (1), 5 (5).*

By information in the Q. B. Div. (Queen's Remembrancer's side) against a corporation, the Att.-Gen. on behalf of the Crown claimed a declaration that the foreshore and bed of a river within certain limits belonged to the Crown. The defts. by their answer claimed to be owners of the same foreshore and bed, within the limits of a port and including the part claimed by the Crown, and to be also conservators of the river;

**DISCOVERY (Documents)—continued.**

and they set out a list of documents relating to the part claimed by the Crown, and alleged that they had no other relevant documents. The Crown did not except to the answer within the time limited by the Rules of Easter Term, 1886:—

*Held*, that the Crown had the same right of discovery against the corporation as a subject had against a subject in an ordinary action, and that the omission to except to the answer was no bar to such right:

And *held* further, that the Crown was entitled to discovery not only of the documents relating to the parts of the river claimed by the information, but also of anything which might tend to shew that the debts were not absolute owners of the foreshore and bed of the river to the extent which they claimed to be, including all their acts of ownership as conservators or otherwise, and the documents relating thereto.

The principles of *Att.-Gen. v. London Corporation*, (1850) 2 Mac. & G. 247, and *Att.-Gen. v. Emerson*, (1882) 10 Q. B. D. 191, applied. *ATT.-GEN. v. NEWCASTLE-UPON-TYNE CORPORATION*

C. A. [1897] 2 Q. B. 384

— Evidence.

*See* Cases under EVIDENCE.

— Foreign Sovereign—Action by—Cross-proceedings.

*See* INTERNATIONAL LAW. 4.

16. — *In forma pauperis—Action in—Case laid before counsel—Inspection, Right to—Exhibit to affidavit—R. S. C., Order XVI., rr. 23, 24.*

A plt. suing in *forma pauperis* cannot be ordered to produce for inspection by the deft. the case laid before counsel under Order XVI., r. 23, and his opinion thereon, even where they have been made exhibits to the affidavit filed in accordance with Order XVI., r. 24.

*In re Hinchliffe*, [1895] 1 Ch. 117, distinguished. *SLOANE v. BRITAIN STEAMSHIP CO.*

C. A. [1897] 1 Q. B. 185

17. — *Infant.*

An infant party to an action cannot be compelled to make discovery of documents. *CURTIS v. MUNDY* — — Div. Ct. [1892] 2 Q. B. 178

*But see now Order XXXI., r. 29, added by R. S. C., Nov. 1893.*

18. — *Infant—Next friend—Affidavit of documents—R. S. C., Order XXXI., r. 12—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100.*

The next friend of an infant plt. is not a "party" to the action who can be ordered to make discovery of documents. *SCOTT v. CONSOLIDATED BANK* *Kekewich J.* [1893] W. N. 56

*But see now Order XXXI., r. 29, added by R. S. C., Nov. 1893.*

19. — *Inspection—Documents forming part of defendants' case only—Affidavit conclusive.*

In an action for an alleged misrepresentation in the prospectus of a co. the statement complained of was that 12,500 persons had enrolled themselves as annual subscribers to the co. In an affidavit of documents the defts. stated that they had in their possession 12,500 applications by persons wishing to be enrolled as annual sub-

**DISCOVERY (Documents)—continued.**

scribers to the co., but that they objected to produce them on the ground that they were part of the evidence supporting the defts.' case, and did not support or tend to support the plt.'s case, and contained nothing impeaching the case of the defts.;—

*Held*, that the plt. was not entitled to inspection of the applications. *FRANKENSTEIN v. GAVIN'S HOUSE-TO-HOUSE CYCLE CLEANING AND INSURANCE CO.* — — C. A. [1897] 2 Q. B. 62

20. — *Inspection—Documents referred to in affidavit—Order XXXI., rr. 15-18.*

Notice of motion to set aside an award on the ground of misconduct of an arbitrator having been given, an affidavit was sworn by the arbitrator for the purpose of being used by the party in whose favour the award was made at the hearing of the motion. This affidavit referred to certain letters which had passed between that party's solicitor and the arbitrator. The affidavit was not filed, but a copy of it had been furnished to the opposite party:—

*Held*, that the letters were documents referred to in an affidavit within the meaning of Order XXXI., r. 15, and therefore a judge had jurisdiction to make an order for inspection of them under rule 18 of the order. *In re FENNER and LORD*

C. A. [1897] 1 Q. B. 667

21. — *Inspection of books—Right to take free copies—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 156.*

An order had been made in the ordinary form (*see Palmer's Company Precedents*, 7th ed. vol. ii. pp. 112, 113) giving the applicant liberty to inspect documents in the possession of the liquidator at all reasonable times, and to take copies at his own expense; and the question was raised whether the applicant was at liberty to take the copies and extracts himself, or only to have copies furnished to him on paying for the same:—

*Held*, that the order had been made in the ordinary form—to take copies—which meant to take copies without paying for them. *In re ARAUCO CO.* — *Wright J.* [1899] W. N. 134

22. — *Lease—Forfeiture of, Action for—Affidavit of documents—Interrogatories—R. S. C., Order XXXI., rr. 1, 2, 12.*

In an action to enforce a forfeiture of a lease for breach of covenant the Court will not grant discovery of documents or leave to administer interrogatories for the purpose of establishing the forfeiture.

*Pye v. Butterfield*, (1864) 5 B. & S. 829, approved of. *Seaward v. Dennington*, (1896) 44 W. R. 696, overruled. *MEXBOROUGH (EARL OF) v. WHITWOOD URBAN DISTRICT COUNCIL*

C. A. [1897] 2 Q. B. 111

— Libel—Interrogatories.

*See* DISCOVERY—Interrogatories. 50, 51.

23. — *Libel—Particulars of justification—Inspection of documents—R. S. C., Order XXXVI., r. 37.*

In an action for libel, if the deft. puts in a plea of justification and delivers particulars in support of his plea, the issues to be tried under that plea are limited to the matters referred to in the particulars; and the deft. can only obtain

**DISCOVERY (Documents)—continued.**

discovery of documents relating to those matters. *YORKSHIRE PROVIDENT LIFE ASSURANCE CO. v. GILBERT & RIVINGTON* C. A. [1895] 2 Q. B. 148

24. — *Libel in newspaper—Original manuscript—Discretion—Inspection of documents—R. S. C., Order XXXI., r. 18.*

In an action against the proprietors of a newspaper for a libel published therein the defts., who had admitted the publication of the libel and pleaded an apology and payment into court, stated in an affidavit of documents made by them that they had in their possession a manuscript which they objected to produce on the ground that it was the original contribution to them, and that which was published by them as admitted in their defence:—

*Held*, that an order ought not to be made for inspection by the plt. of the manuscript.

*Hennessy v. Wright*, (1888) 24 Q. B. D. 445, followed. *Bustros v. White*, (1876) 1 Q. B. D. 423, considered. *HOPE v. BRASH*

C. A. [1897] 2 Q. B. 188

— Omission to require—Title-deeds—Purchaser for value without notice—Equitable—mortgage—Priority.

*See* MORTGAGE—Priority. 48.

25. — *Order to attend and produce documents—Third party—Right of person summoned to raise objections to production—R. S. C., Order XXXVII., r. 7.*

An order to attend and produce documents before a special examiner of the Court under Order XXXI., r. 7, is in the nature of a subpoena duces tecum. It may be made ex parte and on a person not a party to the action. Any legal objection to production of any particular document can be made at the examination. The rule cannot be used for private inspection, but must have reference to some proceeding in the litigation. *In re SMITH. WILLIAMS v. FRERE*

North J. [1891] 1 Ch. 323

— Patent action.

*See* PATENT—Discovery. 3.

26. — *Photographs of documents—R. S. C., Order XXXI., r. 14; Order L., r. 3.*

The Court has power to allow a party to an action to take photographs of documents in the possession of the other party. *LEWIS v. EARL of LONDESBOROUGH* Div. Ct. [1893] 2 Q. B. 191

27. — *Policy of insurance on transit by post—Discovery before delivery of defence—Order for production (underwriters)—R. S. C., 1883, Appx. K, No. 19.*

Title-deeds, insured for transit in the post by land and sea, were lost. The policy was in the form of an ordinary Lloyd's policy, altered so as to include transit by land as well as by sea. Defts., before delivery of defence, applied for discovery, as on a marine policy of the various documents specified in the form Appx. K, No. 19:—

*Held*, that they were only entitled to an affidavit of documents in the ordinary form under Order XXXI., r. 12, and that the peculiar practice prevailing in marine insurance actions did not apply. *HENDERSON v. UNDERWRITING AND AGENCY ASSOCIATION* Div. Ct. [1891] 1 Q. B. 557

Distinguished by C. A. *China Traders' In-*

**DISCOVERY (Documents)—continued.**

*urance Co. v. Royal Exchange Assurance Corporation*, [1898] 2 Q. B. 187, 191.

28. — *Privilege—Accounts—Office copy of deposition—Production of documents.*

In an action against G. and her trustee in bankruptcy for breaches of trust committed by her as administratrix of her deceased husband's estate, the plaintiff's solicitors had prepared certain accounts which were produced to her on examination before an examiner, and admitted by her to be correct. The action was afterwards compromised, and the depositions of G., to which the accounts were exhibited, were entered as read in the order of compromise. The accounts related to transactions between G. and a firm of bankers with whom she had (in alleged breach of trust) deposited securities belonging to her husband's estate, to secure advances to herself. In another action by the same plts. against the bank, the defts. claimed production (1) of the accounts, and (2) of the office copy of G.'s depositions, both of which were in the plt.'s possession.

*Held*, that the accounts were privileged, but the copy depositions was not.

*North Australian Territory Co. v. Goldsborough, Mort & Co.*, [1893] 2 Ch. 381, followed. *GOLDSTONE v. WILLIAMS, DEACON & CO.*

*Stirling J.* [1898] W. N. 148 (3); [1899] 1 Ch. 47

29. — *Privilege—Affidavit of documents—Production—Matter tending to impeach case of party claiming privilege—Information by Attorney-General—Claim of Crown to foreshore.*

On an information by the Att.-Gen. claiming on behalf of the Crown a declaration of title to foreshore, it was ordered by a Div. Ct. that the deft. should make a further affidavit of discovery and should produce for inspection by the informant all documents therein specified except such as the deft. should by his affidavit identify and state to relate solely to the case of the deft. and to contain nothing impeaching the case of the deft. or supporting the case of the informant:—

*Held*, by C. A., on the authority of *Morris v. Edwards*, (1890) 15 App. Cas. 309, that the order must be varied by striking out the words "impeaching the case of the deft. or," as the deft.'s affidavit would be sufficient to support an objection to produce documents without those words. *ATT.-GEN. v. NEWCASTLE-UPON-TYNE CORPORATION*

C. A. [1899] 2 Q. B. 478

— Privilege—Bankers' books, inspection of.  
*See* Nos. 8—11, above.

30. — *Privilege—Documents in previous action—Secondary evidence.*

The deft. in an action to try a right of fishery, after judgment had been given for the plt., accidentally discovered certain documents prepared for the defence of a previous action dealing with the same subject-matter, which action was defended at the cost of a predecessor in title of the plt.'s. The plt. obtained possession of the documents after copies of them had been taken by the deft. The deft. having appealed:—

*Held*, (1) following *Minet v. Morgan*, (1873) L. R. 8 Ch. 361, that the documents remained privileged, (2) following *Lloyd v. Mostyn*, (1842)



**DISCOVERY (Documents)—continued.**

10 M. & W. 478, that the debt. was not precluded on the ground of privilege from giving secondary evidence of their contents.

*Wheeler v. Le Marchant*, (1881) 17 Ch. D. 675, is not inconsistent with *Minet v. Morgan*. *CALCRAFT v. GUEST* - C. A. [1898] 1 Q. B. 759

Referred to by *Stirling J. Goldstone v. Williams, Deacon & Co.*, [1899] 1 Ch. 47, 52.

31. — *Privilege—Fraud, Charge of—Solicitor and client—Inspection by judge—R. S. C.*, 1883, *Order XXXI.*, r. 19a, sub-r. 2.

Where fraud is alleged against a debt, communications between himself and his solicitor as to the subject-matter of the alleged fraud are not privileged from production, there being no distinction in this respect between a crime and a civil fraud; and it is immaterial for this purpose whether the solicitor is or is not a party to the alleged fraud.

The practice as to inspection by the judge himself, under *Order XXXI.*, r. 19a, sub-r. 2, of documents for which privilege is claimed, discussed. *WILLIAMS v. QUEBRADA RY., LAND AND COPPER CO.* - *Kekewich J.* [1895] 2 Ch. 751

32. — “*Privilege—Irrelevancy—Production of documents—Sealing up—Relevancy—Inspection by Court or judge—Jurisdiction—R. S. C.*, 1883, *Order XXXI.*, r. 19a, sub-r. 2.

The word “privilege” in *Order XXXI.*, r. 19a, sub-r. 2, is not to be construed in a narrow sense so as to exclude the case of an objection to discovery based on the ground of irrelevancy. It includes any ground on which inspection is sought to be resisted. *EHRMANN v. EHLMANN*

*Stirling J.* [1896] 2 Ch. 826

33. — *Privilege—Lunacy.*

Inspection will not be permitted to a litigating party who applies for it before the trial of the litigation in order to find out his adversary's case. The doctrine of privilege and the principles applicable to inspection discussed and explained with special reference to documents in the custody of the Court in Lunacy. *In re STRACHAN*

C. A. [1895] 1 Ch. 439

Referred to by *Stirling J. Goldstone v. Williams, Deacon & Co.*, [1899] 1 Ch. 47, 54.

34. — *Privilege—Mode of claiming—Documents relating to plaintiff's own case only.*

In an action for trespass to which a defence of right of way was pleaded, it was sworn by the plt. in his affidavit of documents that a certain bundle of documents related solely to the plt.'s case, and not to that of the defts., and did not tend to support it, and protection from production was claimed:—

*Semble*, (1) that it was not necessary to swear that the documents did not tend to impeach the plt.'s case; (2) that the documents were privileged. *BUDDEN v. WILKINSON*

C. A. [1893] 2 Q. B. 432

35. — *Privilege—Order to attend and produce documents.*

A claim of privilege for documents ordered to be produced under *Order XXXI.*, r. 7, can be made at the time and place where production is ordered.

*In re SMITH, WILLIAMS v. FRERE*

North J. [1891] 1 Ch. 323

**DISCOVERY (Documents)—continued.**

36. — *Privilege—Solicitor and client—Bills of costs—Correspondence between solicitor and client relating to litigation—Records of proceedings at chambers—Production of documents—Practice—R. S. C.*, *Order XXXI.*, r. 19a.

Mere records of what takes place in chambers in the course of a hostile litigation in the presence of parties on both sides are not privileged from production. There is no distinction, for this purpose, between proceedings in chambers and proceedings in open court.

Correspondence which is protected on the ground of professional privilege is not rendered liable to discovery merely because it contains statements of fact as to what has taken place in chambers in the course of hostile litigation and in the presence of parties on both sides.

Where privilege was claimed for certain entries in bills of costs relating to litigation on the ground that they were copies of or extracts from notes or memoranda made by the solicitor pending the litigation for the purpose of enabling him to conduct the litigation on his client's behalf, and there was nothing in the affidavit by which privilege was claimed inconsistent with the entries being mere notes by the solicitor or his clerk of what had taken place in chambers in the presence of both parties, the Court exercised its discretion under *Order XXXI.*, r. 19a, to open and inspect the sealed entries. *AINSWORTH v. WILDING*

*Stirling J.* [1900] W. N. 132; [1900] 2 Ch. 315

37. — *Privilege—Solicitor and client, Communications between—Evasion of statute—Production of documents.*

The privilege from production of confidential communications between a solicitor in his professional capacity and his client does not extend to communications which came into existence for the purpose of the client's procuring advice as to the mode in which he might evade the provisions of a colonial statute imposing a duty in respect of property. *REG. v. BULLIVANT*

C. A. [1900] 2 Q. B. 163

38. — *Privilege—Transcript of shorthand-writer's notes—Bankruptcy—Examination—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52).*, s. 27.

A solicitor to a trustee in bankruptcy held, in his official capacity, a private examination of the bankrupt and others, with a view of advising the trustee whether he should commence an action against the bankrupt for the purpose of setting aside a transfer of the bankrupt's business as being in fraud of his creditors. On bringing the action, the trustee declined to produce a short-hand transcript of the examination:—

*Held*, that the transcript was privileged, and need not be produced. *LEAROYD v. HALIFAX JOINT STOCK BANKING CO.*

*Stirling J.* [1893] 1 Ch. 686

Referred to by *C. A. Calcraff v. Guest*, [1898] 1 Q. B. 759, 762.

39. — *Rivers, Pollution of—Proceedings in county court whether civil or criminal—Right of complainant to interrogate—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75).*, ss. 3, 10.

Where a statute creates an offence and em-

**DISCOVERY (Documents)—continued.**

powers a county court to make an order requiring any person to abstain from committing the offence, and also to impose a penalty upon any person disobeying the order, the county court may in proceedings taken to obtain an order grant discovery against the deft. since discovery in proceedings to obtain an order could not expose the deft. to a penalty.

So held with regard to ss. 3, 10 of the Rivers Pollution Prevention Act, 1876.

Decisions of Div. Ct., [1896] 2 Q. B. 53, and C. A., [1896] 2 Q. B. 297, affirmed. **DERBY CORPORATION v. DERBYSHIRE COUNTY COUNCIL**

**H. L. (E.) [1897] A. C. 550**

**40. — Sealing up—Production of books—Common order—Liberty to seal up irrelevant entries—Form of order giving liberty to cover up without sealing.**

A party to an action, who has obtained against his opponent the common order for production and inspection of books and documents, giving liberty to the opponent to seal up such parts of the books as do not relate to the matters in question, is not entitled to insist upon the actual sealing up of such parts of the books where so doing would interfere with the conduct of the opponent's business or be oppressive; and the covering up upon oath of the irrelevant parts of such books is a sufficient compliance with the order. **GRAHAM v. SUTTON, GARDEN & Co. C. A. [1897] 1 Ch. 761**

— Ship's papers—Action by underwriters against re-insurer—Practice.

See **INSURANCE—Marine. 70.**

— Solicitor and client—Privilege.

See Nos. 36, 37, above.

**41. — Solicitor's lien — Production of documents—"Possession or power"—R. S. C., 1883, Order XXXI., r. 12.**

It is not an answer to an application for production of documents that they are in the hands of the respondent's former solicitors who claim a lien over them for costs, and that he disputes the bill; but the order for production will contain liberty to apply in case he really cannot obtain the documents. **LEWIS v. POWELL**

**Stirling J. [1897] 1 Ch. 678**

**42. — Subpoena duces tecum—Motion to set aside—Costs—R. S. C., Order XXXVII., r. 30; Order LXX., r. 1.**

An action was brought against the Royal College of Surgeons as to certain rights of access to or user of the College Hall. The secretary was subpoenaed to produce at the trial a mass of documents, some of which had been decided by the C. A. to be irrelevant. The secretary moved to set aside the subpoena:—

Held, that the subpoena was oppressive, and that the secretary was entitled to have it discharged with costs. **STEELE v. SAVORY**

**Romer J. [1891] W. N. 195**

**43. — Trade-mark cases—Form of order for production—R. S. C., Order XXXI., r. 12.**

In a proceeding to remove trade-marks from the register after all the evidence was concluded except the cross-examination of two witnesses,

**DISCOVERY (Documents)—continued.**

the applicant took out a summons for discovery of documents:—

Held, by Kekewich J., that an order should be made, but that in trade-mark cases the common order for discovery should not be used, and directed (1) that discovery should be given by the member of the respondent firm to be examined in Court; (2) that the discovery should be limited to documents relating to certain specified questions; (3) that notwithstanding the generality of the order it should not be obligatory to set forth a schedule or otherwise to mention all the labels or other documents constituting a class, but that it should suffice as regarded each class to mention a specimen or specimens fairly representative of the whole:—

Held, by C. A. (reversing the decision of Kekewich J.), that this order was oppressive at that stage of the proceedings, and must be discharged without prejudice to any order which the judge might make at the trial as to production of documents, the respondents undertaking to state the labels on which they relied, and to produce documents in court. *In re WILLS' TRADE-MARKS* - **C. A. [1892] 3 Ch. 201**

**44. — Traders—Rival traders—Inspection—Discretion to refuse general inspection—Interrogatories—R. S. C., Order XXXI., rr. 1, 12.**

An action was brought by the Att.-Gen. at the relation of tramcar makers against a tramway co. to restrain it from using its capital in excess of its statutory powers to make tramway rolling-stock. General inspection of documents, including all the deft. co.'s books, was asked for:—

Held, that to make such an order would be to expose all the books of the deft. co. to the inspection of rivals in trade.

Order refused, but interrogatories allowed as to capital or moneys applied in making rolling-stock. **ATT.-GEN. v. NORTH METROPOLITAN TRAMWAYS Co. - North J. [1892] 3 Ch. 70**

— Vendor and purchaser.

See Cases under **VENDOR AND PURCHASER.**

**Interrogatories.**

By **R. S. C. Nov. 1893, Order XXXI. was amended as to interrogatories.**

By **R. S. C. Nov. 1893, r. 13. no interrogatories may be administered unless allowed by a judge.**

**45. — Admission of facts—Particulars.**

Action to set aside an agreement on the ground of fraud.

The plt. applied for leave to deliver certain interrogatories mainly directed to obtaining admissions of facts alleged in the statement of claim.

Per Kekewich J.: The modern practice of exacting particulars and admission of facts not really in dispute, added to the large means of discovery by disclosure of documents and, where occasion requires it, inspection of premises or machinery, has rendered unnecessary and inconvenient interrogatories of the ancient type which were always open to objection. My practice is to decline applications for leave to administer interrogatories where the object is to demand admissions of fact alleged by the interrogating party, and denied or not admitted by the oppo-

**DISCOVERY (Interrogatories)—continued.**

nent, or to obtain information which may equally well be supplied by particulars. As regards admissions of fact, it is often urged, as it was here, that a litigant will hesitate to state on oath what he will without hesitation state in pleadings, and that there is difficulty in otherwise obtaining admission of facts, even though not really in dispute; and it is further urged that an admission by an affidavit in answer to interrogatories is useful in limiting the issues to be tried, and therefore in reducing the time occupied by the trial and the costs. I recognise the importance of this in the abstract; but practically I find that the interrogated party seldom makes such clean admissions as secure the advantages aimed at, and, failing that, little if anything is gained. As regards facts not really in dispute, I believe that the power of requiring admissions is not sufficiently used. If parties insist, as they generally do, on asking their opponents to admit as facts, dates and events about which there is room for doubt or argument, of course the endeavour to obtain admissions breaks down; but if the demand is limited to facts not really in dispute, that is, which can be admitted cleanly, or subject to some simple qualification, I find that it is generally acceded to, and the power which the Court has of throwing the costs on any one who has increased them by declining reasonable admissions is not forgotten. The right to particulars, though sometimes attempted to be abused, is of the greatest value, and often gives a litigant far more information than can be obtained by an answer to interrogatories, especially when the particulars are aided, as they generally are, by discovery of documents bearing on them. If the plt. had submitted some short interrogatories directed mainly to paragraphs 11 and 12 of the defence, I should have been disposed to allow them, and even now I am not prepared to say that the plt. cannot so modify the submitted interrogatories as to obtain leave to deliver in a shortened and altered form; but, as he does not propose to do this, and my objections go to a very large proportion of lengthy interrogatories, I think it better to refuse the application altogether, making the costs those of the defts. in any event.

The C. A. dismissed the appeal without prejudice to any further application that the plt. might make as to getting some of the interrogatories allowed by the judge in chambers. Defts.' costs of the appeal to be theirs in any event. *CLARKE v. CLARKE*

C. A. [1899] W. N. 130

46. — *Allowance of interrogatories by judge—Objection to answer—R. S. C., Order XXXI., rr. 1, 6.*

In a partnership action, A. and R. were defts. as executors of a deceased partner W., R. was a deft. on his own account. An order was made in re W.'s estate, giving A. the conduct of the defence on behalf of the executors. The plt. exhibited interrogatories to A. and R., which were laid before the judge and allowed (with alterations):—

*Held*, that A.'s being appointed to defend the suit on behalf of W.'s estate did not affect plt.'s

**DISCOVERY (Interrogatories)—continued.**

right to interrogate R. The allowance by a judge of interrogatories does not amount to a decision that a party is bound to answer them, but leaves him at liberty to take any objection to answering which he might otherwise have taken. An appeal from the allowance of interrogatories by a judge will not be allowed unless the judge has gone on a wrong principle or done substantial injustice. *PEEK v. RAY* C. A. [1894] 3 Ch. 232

47. — *Answer—Sufficiency—Agents of testator—Executor, how far bound to inquire.*

When a man is interrogated about acts done in the presence of persons employed by him, their knowledge is his knowledge, and he is therefore bound, in order to enable him to answer, to make inquiry of those persons, whether they be servants or agents, such as bankers and solicitors. This rule does not apply to an executor interrogated as to actions done by his testator twenty years before his death in presence of his bankers, &c., as an executor has no duty to inquire into the actions of his testator so long before his death. *ALLIOTT v. SMITH* Kekewich J. [1895] 2 Ch. 111

48. — *Company—Action against—Application to interrogate member—Notice of application—R. S. C., Order XXXI., r. 5.*

Where a joint stock co. being a party to an action, an application is made by the opposite party for an order allowing the delivery of interrogatories to a member of the co. under Order XXXI., r. 5, notice of the application ought, as a rule, to be served upon him. *CHADDOCK v. BRITISH SOUTH AFRICA CO.*

C. A. [1896] 2 Q. B. 153

— *Company—Discovery of documents.*

See *DISCOVERY—Documents*, 13, 14.

49. — *Corporation—Interrogatories—Answer by officer of corporation—Practice—R. S. C., Order XXXI., rr. 1, 5, 24.*

An officer of a co., answering on their behalf interrogatories administered to them in an action, is only bound to answer as to his knowledge acquired in the course of his employment by the co., and as to the result of inquiries made by him of the other officers and agents of the co. with regard to their knowledge acquired in the same way.

He is not bound to answer as to his own knowledge, or to make inquiries of the other officers or agents of the co. as to their knowledge, acquired accidentally or in some other capacity.

The answer of an officer of a co. on their behalf, being their answer, can be read against them, and they can only be required to answer as to that with respect to which an individual litigant in their position would have been bound to answer. *WELSBACH INCANDESCENT GAS LIGHTING CO. v. NEW SUNLIGHT INCANDESCENT CO.*

C. A. [1900] W. N. 120; [1900] 2 Ch. 1

50. — *Libel—Circulation of newspaper.*

The plt. in an action for libel against the proprietors of a local newspaper having administered an interrogatory to the defts. asking how many copies were printed and circulated of the issue of the newspaper which contained the

**DISCOVERY (Interrogatories)—continued.**

alleged libel, the defts. answered that a considerable number of copies of that issue were printed and published:—

*Held*, that the answer was sufficient.

*Parnell v. Walter*, (1890) 24 Q. B. D. 441, overruled on this point. *WHITTAKER v. SCARBOROUGH POST NEWSPAPER CO.*

**C. A. [1896] 2 Q. B. 148**

**51. — Libel — Evidence in mitigation of damages—R. S. C., Order XXXVI., r. 37.**

Where the deft. has within the time limited by Order XXXVI., r. 37, furnished particulars to the plt. as to the evidence he intends to give in mitigation of damages in an action for defamation, the deft. can administer interrogatories as to the matters referred to in the particulars. *SCAIFE v. KEMP & Co.*

**Div. Ct. [1892] 2 Q. B. 319**

— Libel—Particulars of justification.

*See DISCOVERY—Particulars.* 61, 62.

**52. — Penal action—Designs.**

An action to recover the 50*l.* allowed to the registered proprietor of a registered design for a contravention of s. 58 of the Patents, &c., Act, 1883, is a penal action, and, therefore, the pltff. is not entitled to interrogate the deft.

Decision of Div. Ct., [1892] 2 Q. B. 18, affirmed. *SAUNDERS v. WIEL* (No. 1)

**C. A. [1892] 2 Q. B. 321**

Referred to by Div. Ct. *Derby Corporation v. Derbyshire County Council*, [1896] 2 Q. B. 53, 58; [1897] A. C. 550.

**53. — Principal resident abroad—Action in name of agent—Staying action till discovery made.**

Where the agent of a principal resident abroad brings an action in his own name, the deft. is entitled to discovery to the same extent as if the principal were the plt., and to have the action stayed until discovery is made. *WILLIS & Co. v. BADDELEY* - **C. A. [1892] 2 Q. B. 324**

Referred to by C. A. *China Traders' Insurance Co. v. Royal Exchange Assurance Corporation*, [1898] 2 Q. B. 187, 190.

**54. — Privileged documents — Power to administer interrogatories as to contents—R. S. C., Order XXXI., r. 1.**

There is no power to administer interrogatories as to the contents of documents privileged from inspection. *EMMOTT & Co. v. WALTERS*

**Div. Ct. [1891] W. N. 79**

— Privilege—Documents, Production and inspection of.

*See DISCOVERY—Documents.* 28—38.

**55. — Relevancy — Previous transactions between the same parties—R. S. C., Order XXXI. r. 1.**

An interrogatory is not admissible if the facts stated in answer to it would not be relevant evidence in chief on an issue in the action. Where it was alleged that D. and C., a bankrupt, had carried on business in buying and selling land in co-partnership, and a declaration was claimed that a certain piece of land belonged to D. and C. in co-partnership:—

*Held*, that interrogatories as to particulars of

**DISCOVERY (Interrogatories)—continued.**

previous transactions between the parties were not relevant to the issue in the action; and oppressive. *KENNEDY v. DODSON*

**C. A. [1895] 1 Ch. 334**

**56. — Rival traders—Affidavit as to documents.**

In an action by the Att.-Gen. at the instance of tramcar makers to restrain a tramway co. from making tramway rolling stock:—

*Held*, that limited interrogatories as to the capital employed by the tramway co. in the manufacture in question should be allowed. *ATT.-GEN. v. NORTH METROPOLITAN TRAMWAYS CO.* - **North J. [1892] 3 Ch. 70**

— Rivers, Pollution of.

*See DISCOVERY—Documents.* 39.

**57. — Setting aside or striking out—R. S. C., Order XXXI., r. 7.**

Order XXXI., r. 7, applies whether leave has or has not been obtained to administer interrogatories. If the interrogatories looked at as a whole are unreasonably or vexatiously exhibited, or are prolix, oppressive, unnecessary, or scandalous (i.e., within the rule), the Court may set aside or strike out the whole, though one or more taken alone may be unobjectionable. *OPPENHEIM & Co. v. SHEFFIELD* - **C. A. [1893] 1 Q. B. 5**

*But see now* r. 13 of R. S. C. Nov. 1823, substituted for O. XXXI., r. 2, of R. S. C. 1883.

**58. — Slander—Action for—R. S. C., Order XXXI., r. 1.**

In an action for slander the plt. administered the following interrogatories to the deft.:—

“Did you on or about March 1, or when, speak the following words of the plt.” (setting out the words alleged in the statement of claim to have been spoken by the deft. of the plt.), “or words to that effect.”

“Were the said words spoken in the presence of two persons named in the statement of claim, and other persons, or any and which of them?”

*Held*, that these were proper interrogatories, and that the deft. must answer them.

Decision of Lawrance J. reversed. *DALGLISH v. LOWTHER* - **C. A. [1899] W. N. 133; [1899] 2 Q. B. 590**

— Traders—Rival traders.

*See No. 44, above.*

**Particulars.**

*Order XIX., rr. 6, 7, relate to particulars.*

— Admission of facts.

*See No. 45, above.*

**59. — Covenant in restraint of trade—Special damage—Particulars of plaintiffs' claim.**

In an action for breach of a covenant in restraint of trade, the defts. admitted that the covenant had been broken, and the plts. were granted an inquiry as to damages sustained by him, and an order on the defts. was made for an affidavit of documents:—

*Held*, by North J., that the plts. must make a statement in writing of the heads under which they claimed damage, and that the time for filing the deft.'s affidavit of documents should be

**DISCOVERY (Particulars)—continued.**

extended till fourteen days after the particulars were filed :—

*Held*, by C. A., (1) that as the plts. were ignorant of the breaches of covenant they could only comply with the order by setting out every imaginable ground of damage; (2) that the order did not amount to an order for particulars of damage; (3) that it was useless, as it could not be complied with without inspection of the defts.'s books. Order discharged. **MAXIM NORDENFELT GUNS AND AMMUNITION CO. v. NORDENFELT** (No. 2) — **C. A. [1893] 3 Ch. 122**

— Defamatory statement in—Petition for order for reception of lunatic—Libel—Privilege.

*See* **DEFAMATION—Libel. 17.**

— on Election petition.

*See* **PARLIAMENT — Election Petition. 12—15.**

**60. — Fraud—Order XIX., r. 6.**

There is no hard and fast rule as to the class of cases in which particulars will be ordered to be delivered before discovery, or discovery to be given before particulars; the Court will exercise its discretion upon all the circumstances in each case.

In an action in which the plts. alleged that they had lost business by reason of the fraudulent acts of the defts., giving one specific instance of fraud in their statement of claim (which was admitted by the defts.), and alleging that "on divers other occasions" the defts. had taken orders from "divers other persons" for coal from the plts.' colliery, and fraudulently supplied coal not purchased from the plts. :—

*Held*, that as the defts. had means of ascertaining from their books whether other frauds of the kind alleged had been committed, which the plts. had not, the defts. were not entitled to particulars before giving discovery.

Dictum of Kay L.J. in *Zierenberg v. Labouchere*, [1893] 2 Q. B. 189, explained. **WAYNES MERTHYR CO. v. D. RADFORD & CO.**

**Chitty J. [1895] W. N. 150 (4); [1896] 1 Ch. 29**

— Interrogatories—Admission of facts.

*See* **DISCOVERY—Interrogatories. 45.**

**61. — Libel—Justification.**

A review of plt.'s book stated that the plt. was "by his own confession a most barefaced liar" :—

*Held*, that plt. was entitled to particulars specifying the pages in the book at which the several passages relied on by the defts. in support of their defence of justification occurred, and the first and last words of such passages. **DEVEREUX v. CLARKE & CO. — Div. Ct. [1891] 2 Q. B. 582**

**62. — Libel — Justification — Order XIX., rr. 6, 7.**

In an action of libel where the charge against the plt. in the alleged libel is general in its nature, a deft. who pleads a justification must state in his particulars the facts on which he relies in support of his justification, with the same precision as in an indictment; till he has

**DISCOVERY (Particulars)—continued.**

done this his defence is bad and he is not entitled to discovery. **ZIERENBERG v. LABOUCHERE**

**C. A. [1893] 2 Q. B. 183**

Dictum in, explained by Chitty J. **Waynes Merthyr Co. v. D. Radford & Co., [1896] 1 Ch. 29.**

Referred to by C. A. **Yorkshire Provident Life Assurance Co. v. Gilbert and Rivington, [1895] 2 Q. B. 148, 151, 154.**

— Parliamentary election petition.

*See* **PARLIAMENT — Election Petition. 12—15.**

— Patents.

*See* **PATENT—Discovery.**

**63. — Privilege—Particulars—Production—Inspection—R. S. C., Order XIX., rr. 6, 7; Order XXXI., rr. 15, 19A (2).**

A deft. may be ordered to give particulars of documents referred to in his pleading, even though he has in an affidavit of documents effectually claimed for those documents privilege from production.

The right to particulars and the right to production are distinct and independent rights.

The plt. claimed a declaration that she was entitled (subject to incumbrances) in fee simple to an estate of which the deft. was in possession, and her title to which he denied.

By his defence the deft. said (paragraph 3) that the mortgagees had, in the valid exercise of their statutory power of sale, sold and conveyed the estate to him for valuable consideration, and that he purchased the same in good faith and without notice of any claim which the plt. might have had to the estate in priority to the title of the mortgagees, and the deft. relied on his title as such bona fide purchaser, and he said (paragraph 4) that he had remortgaged the property so purchased by him to the same mortgagees, and that the action could not be maintained in their absence.

The deft. made an affidavit of documents by which he sufficiently claimed protection from production for a bundle of documents which included the deeds by which the transactions referred to in paragraphs 3 and 4 of the defence had been carried out :—

*Held*, that, notwithstanding this claim to protection, the deft. must give particulars of those transactions—namely, the date of the sale and conveyance to him by the mortgagees, and what was the valuable consideration for the same; the date of the remortgage by him, and for how much it was given.

Decision of Kekewich J. reversed. **MILBANK v. MILBANK — C. A. [1900] W. N. 35; [1900] 1 Ch. 376.**

**64. — Recovery of land—Heir-at-law, Claim as.**

(A) In an action for the recovery of land as heir-at-law of an intestate, the deft. is entitled as a matter of course to particulars shewing the links of relationship to the intestate relied on by the plt. as constituting his heir-at-law. **PALMER v. PALMER Div. Ct. [1892] 1 Q. B. 319**

(B) In an action to establish title as heir-at-law of an intestate an order was made on the plt. to deliver particulars of how he claimed to

**DISCOVERY (Particulars)—continued.**

be heir-at-law, shewing the links of relationship on which he relied :

*Held*, that the proper order in such a case was to direct the plt. to give the best pedigree he could from the materials in his possession.  
**BLACKLIDGE v. ANDERTON**

**C. A. [1893] W. N. 112**

— of Sale.

*See Cases under VENDOR AND PURCHASER.*

— Solicitor's clerk signing particulars.

*See COUNTY COURT—Costs.* 35.

**65. — Terms of order—Dismissal of action.**

Where a plt. is ordered to give particulars, under Order xix., r. 7, one of the terms of the order may be that the action shall be dismissed unless proper particulars are delivered within a certain time. **DAVEY v. BENTINCK**

**C. A. affirm. Div. Ct. [1893] 1 Q. B. 185**

**DISCRETION**—Acceptance of letters of request — Faculty—Licence of Secretary of State before opening of vault not required.

*See ECCLESIASTICAL LAW—Faculty.* 29.

— of Charity Commissioners.

*See Cases under CHARITY—Charity Commissioners.*

— Common accounts refused at the trial—Misconduct of trustee.

*See ACCOUNT.* 6.

— Costs.

*See Cases under COSTS.*

— Discovery—Company—Winding-up—Production of documents.

*See DISCOVERY—Documents.* 14.

— Divorce practice.

*See Cases under DIVORCE.*

— Guardianship of infant.

*See INFANT.* 23.

— Heirlooms—Sale by tenant for life.

*See HEIRLOOMS.* 4.

— Justices—Licence—Offences—Application by owner for authority to carry on business.

*See LICENSING ACTS.* 9.

— Leave to commence action—Grant or refusal.

*See COUNTY COURT—Jurisdiction.* 46.

— Lunacy—Practice.

*See Cases under LUNACY.*

— Of court to refuse adjudication.

*See BANKRUPTCY.* 39.

— Of ordinary.

*See ECCLESIASTICAL LAW—Faculty.*

— Receiver—Appointment—Legal estate.

*See RECEIVER.* 2.

— Rescission—Receiving order—Arrangement with creditors.

*See BANKRUPTCY.* 195.

— of Registrar—Costs—Insolvency of estate.

*See COUNTY COURT—Costs.* 22.

— Solicitor—Certificate—Discretion of registrar to refuse.

*See SOLICITOR.* 110.

— To attach condition to grant of licence.

*See THEATRE.* 1.

**DISCRETION—continued.**

— Trustees.

*See TRUSTEE—Discretion.*

— Trust for benefit and advancement of legatee — Discretion.

*See WILL.* 127.

**DISEASES OF ANIMALS.**

*See ANIMAL.*

**DISSENTAIL**—Value of expectancies—Proof—Remit.

*See SCOTTISH LAW—Entail.* 15.

**DISHONOUR**—Bill of exchange.

*See BILL OF EXCHANGE.* 4, 5.

**DISMISSAL**—Bankruptcy petition.

*See BANKRUPTCY.* 141, 150.

— Civil servant—Laws of New South Wales.

*See NEW SOUTH WALES.*

— Servant.

*See MASTER AND SERVANT—Dismissal.* 57.

— Wrongful—Contract for employment.

*See ARBITRATION.* 6.

**DISORDERLY HOUSE**—"Brothel"—Offences against morality.

*See CRIMINAL LAW.* 45.

— Property used as a disorderly house—Specific performance.

*See VENDOR AND PURCHASER.* 72.

— Room used for "public entertainment on Sunday"—"Keeper" of room—Person managing or conducting "entertainment."

*See SUNDAY.* 3.

"**DISPOSITION**"—Settlement of personal property—Estate duty—Exemption.

*See REVENUE—Estate Duty.* 23.

**DISPOSSESSION**—Land—Inference from equivocal acts—Real property limitation.

*See LIMITATIONS, STATUTE OF.* 32.

**DISQUALIFICATION**—Arbitrator—Bias.

*See ARBITRATION—Arbitrator.* 11—13.

— Bankruptcy.

*See BANKRUPTCY—Disqualification.*

— "Candidate"—Nomination of disqualified person—Election—Right to petition.

*See CORPORATION.* 14.

— Incompatible offices—Clerk to justices.

*See JUSTICES.* 50.

— Justice.

*See JUSTICES—Disqualification.*

— Member of school board—Sale of materials to contractor with board.

*See SCHOOLS—School Board.* 5.

— Registration of voters.

*See Cases under PARLIAMENT.*

— School board member.

*See SCHOOLS—School Board.* 3—5.

**DISSOLUTION**—Building society.

*See BUILDING SOCIETY—Dissolution.*

— Company.

*See COMPANY—WINDING-UP, passim.*

**DISSOLUTION—continued.**

- Corporation—Proof—Right of the Crown—*Bona vacantia.*  
See **BANKRUPTCY—Proof.** 165.
- Costs incurred after, of partnership—Liability.  
See **SOLICITOR.** 90.
- Distribution of assets.  
See **SCIENTIFIC SOCIETY.** 2.
- Friendly society.  
See **FRIENDLY SOCIETY.** 4.
- Marriage.  
See **Cases under DIVORCE.**
- Partnership.  
See **PARTNERSHIP—Dissolution.**
- Partnership—Registration of trade-mark.  
See **TRADE-MARK.** 53.
- Trade union—Unexpended funds—Resulting trust.  
See **TRADE UNION.** 3.

**DISTINCTIVE WORD.**

See **Cases under TRADE-MARK—Registration.**

**DISTRESS.**

*Law of Distress Amendment Act, 1895 (58 & 59 Vict. c. 24), amends the law as to distress.*

*Rules dated Nov. 29, 1895, under the Law of Distress Amendment Act, 1895. W. N. 1896 (Jan. 18) p. 35; Current Index, 1896, p. lxxviii.*

*Rule dated Feb. 13, 1896, stating date of commencement of Act. W. N. 1896 (Feb. 22) p. 59; re-issued and dated March 26, 1896. Current Index, 1896, p. lxxviii.*

1. — *Bailiff—Acting as bailiff—Uncertificated person—Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 7.*

A managing director of a co. was held liable for a trespass for levying in person a distress for rent upon the goods of one of the co.'s tenants, he not having a written certificate from the county court judge to act as a bailiff. *HOGARTH v. JENNINGS* — **C. A. [1892] 1 Q. B. 907**

2. — *Bankruptcy—"Rent accrued due prior to date of order of adjudication"—Apportionment Act, 1870 (33 & 34 Vict. c. 35)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 42, Sched. H, r. 9.*

Where a tenant becomes bankrupt during the currency of a quarter, so much of the quarter's rent as is apportionable to the part of the quarter prior to the adjudication is, by the Apportionment Act, 1870, "rent accrued due prior to the date of adjudication" within s. 42 of the Bankruptcy Act, 1883, and the landlord is entitled upon the expiry of the quarter to distrain upon the goods of the bankrupt. *In re HOWELLS. Ex parte MANDLEBERG & Co.*

**Div. Ct. [1895] 1 Q. B. 844**

3. — *Bill of exchange for rent due—Suspension of remedy.*

Where a tenant gave his landlord a bill of exchange for rent due:—

*Held*, that there was evidence to go to the jury of an agreement by the landlord to suspend his right of distress during the currency of the bill. *PALMER v. BRAMLEY*

**C. A. [1895] 2 Q. B. 405**

**DISTRESS—continued.**

— Collection of taxes—Powers of collectors—Expiration of collector's year.

See **REVENUE—Collection of Taxes.** 11.

4. — *Company—Winding-up (voluntary)—Landlord—Restraining distress—Bill of exchange for rent—Debentures—Receiver—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 87, 138, 163.*

H. granted a lease to X. which was purchased by a co., but no assignment of it was taken. The co., however, entered into occupation of the demised premises, and gave H. bills of exchange for rent overdue, which bills were dishonoured. After the dishonour the co. passed an extraordinary resolution for voluntary winding-up, and then the landlord distrained for the rent on the co.'s chattels. These, however, were subject to a floating security contained in debentures covering all the co.'s assets, which were insufficient in value to satisfy the debenture debt. No receiver had been appointed. The liquidators having moved to restrain the landlord from proceeding with the distress:—

*Held*, (1) that, but for the existence of the debentures, and notwithstanding *Ex parte Clemence*, (1883) 23 Ch. D. 154 (which the Court declined to follow), the landlord would have been restrained, as he had a right to prove in the winding-up; but (2) that, as the assets were covered by the debentures and were insufficient to satisfy the debenture debt, the liquidator had no right to intervene, following on this point *Ex parte Purcell*, (1887) 34 Ch. D. 646, and that the non-appointment of a receiver made no difference. *In re HARPUR'S CYCLE FITTINGS CO. Wright J. [1900] W. N. 187; [1900] 2 Ch. 731*

5. — *Damage feasant—For what damage things may be distrained.*

Trespassing animals may be distrained for damage feasant for injuries to other animals as well as damage to the freehold. *BODEN v. ROSCOE*

**Div. Ct. [1894] 1 Q. B. 608**

6. — *Entry—Getting over wall into yard.*

A bailiff, in order to distrain for rent, climbed over a wall into the backyard of the house, and entered and distrained:—

*Held*, that the distress was lawful. *LONG v. CLARKE*

**C. A. affirm. Collins J. [1894] 1 Q. B. 119**

7. — *Entry—Outer door—"A man's house is his castle."*

The effect of this maxim is to extend the immunity to the outer door not only of all dwelling-houses, but also of all buildings whatsoever, and to the outer gates of all inclosures as regards both distress and execution.

The decision of *Bowen L.J.*, [1893] W. N. 67, affirmed. *AMERICAN CONCENTRATED MEAT CO. v. HENDRY*

**C. A. [1893] W. N. 82**

Discussed. *Hodder v. Williams*, **C. A. [1895] 2 Q. B. 663, 668.**

8. — *Execution—Judgment against lessee for years—Writ of elegit—Judgment creditor tenant by elegit—Liability to indemnify lessee against payment of rent—Distress—Practice.*

C., who was lessee of land for a term of years, mortgaged the same to the plts. by way of sub-

**DISTRESS—continued.**

demise, less the last three days of the term, and covenanted to pay the rent and perform the covenants in the lease. The deft., who was the owner of the demised property subject to C.'s term, recovered judgment against her in the Q. B. Div. for two quarters' rent, and sued out a writ of *elegit* under which the sheriff, after inquisition, delivered the property to him. After the inquisition the plts. appointed a receiver under their mortgage. The deft. recovered nothing under his judgment and took no further steps under the *elegit*, but afterwards distrained on the property for a further half-year's rent. In an action to restrain the distress:—

*Held*, (1) that, assuming the deft. was by virtue of the *elegit* an assignee of C.'s term, he only took it for a limited purpose, and could not be treated (on the principle of *Moule v. Garrett*, (1872) L. R. 7 Ex. 101) as surety for her and bound to indemnify her against the payment of the rent; (2) that the property was delivered to the deft., not in respect of the mere reversion expectant on the determination of the sub-demise, but to the extent of C.'s interest as mortgagor in possession; that that interest was determined by the appointment of the receiver, and consequently the title of the deft. as tenant by *elegit* had either been extinguished or suspended:

*Held*, therefore, that the deft. was entitled to distrain. *JOHNS v. PINK*

*Stirling J.* [1900] 1 Ch. 296

9. — *Expiration of tenancy—New tenancy—8 Anne, c. 14, ss. 6, 7.*

The right to distrain after the expiration of a tenancy given by 8 Anne, c. 14, ss. 6, 7, does not apply where the tenant remains in possession of part of the demised premises under a new tenancy created by agreement. *WILKINSON v. PEEL*

*Div. Ct.* [1895] 1 Q. B. 516

10. — *Goods impounded on premises—Man in possession—Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 10—Practice—Appeal from county court—Limited leave to appeal to Court of Appeal.*

Where goods distrained for rent by a landlord have been impounded on the premises under 11 Geo. 2, c. 19, s. 10, it is not requisite that any one on the landlord's behalf should be left in possession of the goods.

*Decision of Div. Ct.*, [1899] W. N. 12 (10); [1899] 1 Q. B. 470, affirmed.

In an appeal from a county court to a Div. Ct., leave to appeal on one point having been given by the Div. Ct., the C. A. confined the argument to the point as to which leave to appeal had been given, and refused to allow the appellant to go into another point which had been raised in the county court and in the Div. Ct. *JONES v. BERNSTEIN* — — *C. A.* [1900] 1 Q. B. 100

— *Guardians levying—Receiver in lunacy.*

*See LUNACY.* 40.

11. — *Illegal distress—Mortgage—Receiver—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 19, sub-s. 1 (iii.); s. 24, sub-ss. 1, 2, 3.*

Where a receiver of the rents of mortgaged property has been appointed by the mortgagee, the mortgagor cannot distrain without the re-

**DISTRESS—continued.**

ceiver's authority even after the receiver has refused to do so. *WOOLSTON v. ROSS*

*Cozens-Hardy J.* [1900] W. N. 24; [1900] 1 Ch. 788

— *Jurisdiction of justices as to validity of warrant.*

*See JUSTICES.* 16.

— *Distress—Chattels of lessee on adjoining mine.*

*See MINES.* 8.

— *Penalty—Public undertaking.*

*See TRAMWAY.* 12.

— *Poor-rate.*

*See RATES—Recovery.* 62.

12. — *Privileged from distress—Bedstead—“Bedding”—Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 4—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 147.*

The “bedding” privileged from distress for rent under the Law of Distress Amendment Act, 1888, and the County Courts Act, 1888, includes a bedstead used by the tenant as part of his sleeping accommodation. *DAVIS v. HARRIS*

*Div. Ct.* [1900] W. N. 17; [1900] 1 Q. B. 729

— *Rates.*

*See RATES—Recovery.* 62—64.

— *Rates—Priority of bill of sale.*

*See BILL OF SALE—Priority.* 43.

13. — *Receiver appointed—Prior incumbrancer in possession—Motion—Costs.*

Where a landlord is in possession before a receiver is appointed, he need not apply for leave to proceed with his distress, and if he does apply, he will not be allowed costs. *ENGEL v. SOUTH METROPOLITAN BREWING AND BOTTLING CO. (No. 1)* — — *Stirling J.* [1891] W. N. 31

— *Rent—Scottish sequestration.*

*See COMPANY—WINDING-UP.* 251.

14. — *Taxes—Sum due not exceeding 20l.—Charges for man in possession—Real possession—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), s. 1—Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17).*

By the Distress (Costs) Act, 1817, no person making a distress for rent where the sum demanded and due does not exceed 20l. shall receive more than the charges fixed in the schedule to the Act, and “no person or persons whatsoever shall make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done.” By the Distress (Costs) Act, 1827, the provisions of the previous Act were extended to distresses for assessed taxes or other rates or taxes where the sum demanded and due does not exceed 20l.

Where goods are distrained for taxes less in amount than 20l., the collector who distrains has no right to the statutory charge for a man in possession unless he has remained in real possession, or unless there is an agreement binding on the person whose goods are distrained to pay such charges. *LUMSDEN v. BURNETT*

*C. A.* [1898] 2 Q. B. 177

15. — *Third party's goods—Right to distrain—Want of title in lessor—Estoppel.*

Though a tenant who has been let into pos-



**DISTRESS**—*continued*.

session of land by a lessor is estopped from disputing his lessor's title, third persons not claiming possession of the land under the tenant are not so estopped. A person who lets land to which he has no title cannot distrain for arrears of rent due from his tenant the goods of a third person brought on the premises by the tenant's licence. *TADMAN v. HENMAN*

Charles J. [1893] 2 Q. B. 168

16. — *Waiver of right of re-entry*—Action to recover possession—Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 210.

A distress for rent is not a waiver of the landlord's right of re-entry, so as to prevent him from maintaining an action to recover possession, under s. 210 of the Common Law Procedure Act, 1852. *THOMAS v. LULHAM*

C. A. revers. Mathew J. [1895] 2 Q. B. 400

**DISTRIBUTION**—Assets—Dissolution of society.

See SCIENTIFIC SOCIETY. 2.

— Period of—Advancement—Interest.

See WILL—Advancement. 24.

— Period of—Gift to class—Lapse—Survivorship.

See WILL. 49.

— Postponed period of—Conditional institution—Succession—Vesting.

See SCOTTISH LAW—Succession. 44.

**DISTRIBUTIONS, STATUTE OF**—"Intestate"—"Next of kin in blood"—Settlement—Construction.

In a gift to next of kin a reference to the death of the propositus intestate imports division among blood relations according to the Statute of Distributions.

Consols were settled on trust after the death of M. A. Gray for "the next of kin in blood to the said M. A. Gray . . . in case she had so died intestate and unmarried":—

Held, that children of deceased brothers and sisters of M. A. Gray were entitled as well as living brothers and sisters to share in the fund. *In re GRAY'S SETTLEMENT*. *AKERS v. SEARS*

North J. [1896] 2 Ch. 802

**DISTRICT COUNCILS.**

By the Local Government Act, 1894 (56 & 57 Vict. c. 73) urban sanitary authorities were called Urban District Councils, and Rural District Councils were established in all rural districts.

*Expenses of Members of Rural District Councils attending Local Government Conferences, Order of the Local Government Board (No. 34,707), dated Dec. 28, 1896, as to payment of.* St. R. & O. 1896, No. 1115.

*Oaths—Exemption of chairman—See Chairmen of District Councils Act, 1896 (59 & 60 Vict. c. 22).*

*District Councils (Water Supply Facilities) Act, 1897 (60 & 61 Vict. c. 44), gives facilities for a pure water supply in Rural Districts.*

*Contracts*, col. 686.

*Elections*, col. 686.

*Powers*, col. 686.

**DISTRICT COUNCILS**—*continued*.**Contracts.**

1. — *Pecuniary penalty—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 174, sub-s. 2.*

It is imperative that a contract by an urban authority, whereof the value exceeds 50*l.*, shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed, and in the absence of such provision the contract cannot be enforced against the urban authority. *BRITISH INSULATED WIRE CO. v. PRESCOT URBAN DISTRICT COUNCIL*

Div. Ct. [1895] 2 Q. B. 463

On appeal, the appeal was dismissed on the understanding that the Loc. Govt. Bd. would sanction payment of the arrears, and that a new contract with a penalty clause should be executed

C. A. [1895] 2 Q. B. 538

**Elections.**

*Rural Councils—Rural District Councillors' Election Order, 1898, dated Jan. 1, 1898.* St. R. & O. 1898, p. 302, No. 2.

*Urban Councils—Urban District Councillors' Election Order, 1898, dated Jan. 1, 1898.* St. R. & O. 1898, p. 264, No. 1.

2. — *Election petition—Costs—Ballot Act, 1872 (35 & 36 Vict. c. 33).*

M., a candidate in a district council election, duly withdrew his name, but his name was accidentally printed on the ballot papers, but not in the notice of poll, numerous copies of which were posted in the ward. At the election the returning officer told many of the voters that M. was not a candidate. M. obtained thirty-four votes:—

Held, that the election was void, and that the petition should be allowed with costs against the respondents other than the returning officer. Liability of returning officer for costs discussed. *WILSON v. INGHAM* — Div. Ct. [1895] W. N. 99

See also Cases under PARLIAMENT.

3. — *Nomination paper—Validity of Election—Finality of returning officer's decision—Rural District Councillors' Election Order, 1898, r. 7 (2).*

A nomination paper of a candidate for election as a rural district councillor is not invalid by reason of its having been signed by the proposer and seconder before the name of the candidate was filled in. *COX v. DAVIES*

Div. Ct. [1898] 2 Q. B. 202

**Powers.**

— Drainage.

See SEWERS.

— Highways.

See HIGHWAY.

— Nuisances.

See Cases under NUISANCE.

— Streets.

See Cases under STREETS.

**DISTRICT COUNCILLORS AND GUARDIANS (TERM OF OFFICE) ACT, 1900 (63 & 64 Vict. c. 16), makes further provision for the term of office of district councillors and guardians.**

**DISTRICT REGISTRY**—Practice.

See PRACTICE—District Registry.

**DISTRICT SURVEYOR**—Powers of.

See LONDON—Buildings. 29.

**"DISUSED BURIAL GROUND"**—Faculty.

See Cases under ECCLESIASTICAL LAW—Faculty.

**DITCH**—Hedge and—Acts of joint ownership—Presumption.

See BOUNDARY. 1.

**DIVERSION**—Highway.

See HIGHWAY—Diversion.

**DIVIDED PARISHES ACT, 1876.**

See Cases under POOR LAW.

**DIVIDEND**—Apportionment—Income or capital.

See WILL—Dividends. 76.

## — Bankruptcy practice.

See BANKRUPTCY—Dividends.

## — Company practice.

See COMPANY—Dividends.

## — Income tax, Deduction of.

See REVENUE—Income Tax. 92.

## — Receiver of dividends of stock in Bank of England.

See LUNACY. 38.

**DIVORCE.**

*Alimony (Maintenance and)*, col. 687.

*Bigamy*, col. 692.

*Children*, col. 693.

*Collusion*, col. 694.

*Condonation*, col. 694.

*Co-respondent*, col. 696.

*Costs*, col. 699.

*Cruelty*, col. 702.

*Desertion*, col. 703.

*Evidence*, col. 705.

*Facilitation of Marriage*, col. 707.

*Judicial Separation*. See HUSBAND AND WIFE—Summary Jurisdiction.

*Jurisdiction*, col. 707.

*Lunacy*, col. 709.

*Maintenance*, col. 687.

*Nullity (Nullity of Marriage)*, col. 709.

*Practice*, col. 711.

*Restitution of Conjugal Rights*, col. 717.

*Separation*. See HUSBAND AND WIFE—Separation.

*Settlements (Variation of Settlements)*, col. 718.

*Summary Jurisdiction*. See HUSBAND AND WIFE—Summary Jurisdiction.

*Title of Honour*. See HUSBAND AND WIFE—Title of Honour.

**Alimony.****(Maintenance and Alimony.)**

1. — *Accord and satisfaction—Consideration—Matrimonial Causes Act, 1866 (29 & 30 Vict. c. 32).*

A. obtained a divorce from her husband, in the course of which an order was made that the

**DIVORCE (Alimony)—continued.**

husband should pay her 40*l.* per annum. A. married again, and when 16*l.* was due under the order A. and her husband agreed, by writing not under seal, in consideration of a payment of 10*l.*, to give up all claim to future payments under the order:—

*Held*, that the agreement, being for the release of all payments under the order in consideration of the payment of a sum less than what was actually due and payable, was void for want of consideration, and did not prevent A. from enforcing payment of subsequent instalments in arrear. UNDERWOOD v. UNDERWOOD

C. A. revers. *Jeune P.* [1894] P. 204

2. — *Alienation—Maintenance—Decree against husband—Divorced wife—Alienation Divorce Act, 1857 (20 & 21 Vict. c. 85), s. 32—Divorce and Matrimonial Causes Act Amendment Act, 1866 (29 & 30 Vict. c. 32), s. 1—Rules of Dec. 26, 1865, rr. 95 to 103.*

Sums of money ordered under s. 1 of the Divorce and Matrimonial Causes Act Amendment Act, 1866, to be paid by a husband for the maintenance of his divorced wife, are a purely personal allowance, and so long as the order subsists can neither be alienated nor released.

The decision of the President affirmed. WATKINS v. WATKINS C. A. [1896] P. 222

Referred to by V. Williams J. *Kerr v. Kerr*, [1897] P. 439, 442.

3. — *Answer of husband—Cross-examination—Registrar—Discretion—Restitution of conjugal rights—Divorce Court Rules, 1865, rr. 86, 191—Practice—Proceedings in chambers—Evidence—Note of registrar or master.*

Upon a petition before the registrar for alimony pendente lite, the wife is not entitled as a matter of course, under rules 86 and 191 of the Divorce Court Rules, 1865, to an order for cross-examination of her husband upon his answer, even though there may be a great discrepancy between the amount of his income as alleged by her in the petition and the amount as stated in his answer.

Whether the husband should be ordered to attend for cross-examination is a matter entirely for the discretion of the registrar, and the Court will not interfere with the exercise of his discretion unless satisfied that he has either proceeded on a wrong principle or has exercised his discretion wrongly.

Where there is no very great discrepancy between the two figures, it is not the practice of the Court to order the attendance of the husband for cross-examination.

Where a wife in her petition for alimony pendente lite put the income of her husband, a baronet, at 70,000*l.* a year, while the husband in his answer put it at 16,600*l.* only, supporting his statement by full and detailed particulars, the registrar, on the hearing of the petition, and the judge on appeal from him, refused an application by the wife for an order on the husband to attend for cross-examination, and allotted the wife 3000*l.* a year as alimony. On appeal to the C. A. :—

*Held*, that 3000*l.* a year was an adequate allowance for the wife pendente lite, and that as the registrar had properly exercised his discretion

**DIVORCE (Alimony)—continued.**

in allotting that sum, the Court would not interfere by ordering the husband to attend for cross-examination as to his means.

On an appeal from an order of a registrar or master the Court will only recognise a note of the registrar or master as evidence of what took place before him, an affidavit by either party being inadmissible. *SYKES v. SYKES*

C. A. [1897] P. 306

Referred to by *Jeune P. Kettlewell v. Kettlewell*, [1898] P. 138, 141.

**4. — Arrears—Proof for in bankruptcy.**

Arrears of alimony under an order of the Divorce Div. accrued after the receiving order but before discharge cannot be proved for by the wife in the husband's bankruptcy. *In re HAWKINS. Ex parte HAWKINS*

Div. Ct. [1894] 1 Q. B. 25

Referred to. *Kerr v. Kerr*, [1897] 2 Q. B. 439, 440.

**5. — Dum sola et casta clause.**

(A) Provision made for maintenance of a wife proved guilty of adultery without the insertion of a *dum sola et casta* clause. *LANDER v. LANDER*

Hannen P. [1891] P. 161

Distinguished by *G. Barnes J. Edwards v. Edwards*, [1894] P. 33.

Referred to by *Jeune P. Kettlewell v. Kettlewell*, [1898] P. 138, 142.

(B) There is no general rule that a *dum sola et casta* clause must be inserted in an order granting permanent maintenance, unless there be some reason for omitting it. Circumstances which should guide the Court considered. *WOOD v. WOOD*

C. A. [1891] P. 272

Followed by *Jeune P. Kettlewell v. Kettlewell*, [1898] P. 138, 142. See No. 10, below.

**6. — Injunction—Practice—Dissolution of marriage—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 32.**

Where, a wife having obtained a decree nisi for the dissolution of her marriage, an order had been made pursuant to s. 32 of the Matrimonial Causes Act, 1857, that the husband should secure a sum for her maintenance, and that, for that purpose, it should be referred to one of the conveying counsel of the Ch. Div. to draw a deed, the Court granted an injunction restraining the husband, his servants and agents, from dealing with certain of his property until the execution of the deed. *NEWTON v. NEWTON*

G. Barnes J. [1895] W. N. 152 (5); [1896] P. 36

**7. — Judicial separation—Practice—Injunction—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 22.**

Where, in a suit by a wife for judicial separation, an order for alimony pendente lite had been made against the husband, the Court refused to restrain the husband from dealing with certain of his property. *CARTER v. CARTER*

G. Barnes J. [1896] P. 35

**8. — Jurisdiction—Nullity.**

As a rule a marriage de facto carries the right to alimony pendente lite until it is finally declared to be void. There is jurisdiction to order alimony

**DIVORCE (Alimony)—continued.**

pendente lite in a husband's suit for nullity of marriage, on the ground that the wife was within the prohibited degrees. The application may be made by the wife after a decree nisi has been pronounced, if the decree has not been made absolute, even though the time at which it might have been made absolute has passed. *FODEN v. FODEN*

C. A. [1894] P. 307

**9. — Misconduct of wife—Judicial separation—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 17.**

Following the old Ecclesiastical Court, the Court has jurisdiction to grant permanent alimony to a wife against whom a decree of judicial separation has been made on account of her misconduct, and has also power from time to time to vary such order. *GOODDEN v. GOODDEN*

Jeune J. [1891] P. 395;

affirm. by C. A. [1892] P. 1

**10. — Permanent maintenance—Clause “dum sola et casta”—Large income—Settled property that of husband alone—Test of what would have been an adequate jointure.**

A wife obtained a divorce from her husband on the ground of his adultery and cruelty. The income of the husband had been 19,000*l.* a year, and the wife, who had herself brought nothing into settlement, had 1400*l.* a year under her marriage settlement.

The Court, on the petition of the wife for permanent maintenance, considering that 3000*l.* a year would have been an adequate jointure for the widow of a man in the husband's position, granted her 1600*l.* a year in addition to her present allowance, the additional 1600*l.* a year to be payable “*dum sola et casta vixerit.*”

*Sykes v. Sykes*, [1897] F. 306, and *Wood v. Wood*, [1891] P. 272, followed. *KETTLEWELL v. KETTLEWELL* (1)

Jeune P. [1898] P. 138

**11. — Permanent maintenance—Clause “dum sola” without “et casta.”**

An order for permanent maintenance may be made containing a clause “*dum sola vixerit*” without the addition of “*et casta.*” *SMITH v. SMITH*

Jeune P. [1898] P. 29

**12. — Permanent maintenance—Payment to wife without settlement—Costs—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 32.**

Where, on a petition for permanent maintenance by a wife, who had obtained a divorce from her husband on the ground of adultery and desertion, it appeared that the husband had not been heard of for several years, and that there was a sum of 320*l.* standing to his credit in an action in the Chanc. Div., the Court ordered the wife's costs to be paid out of the fund and the balance to be paid to her for her and her children's maintenance.

*Morris v. Morris*, (1861) 31 L. J. (P. M. & A. 33), followed. *STANLEY v. STANLEY*

G. Barnes J. [1898] P. 227

**13. — “Property of wife”—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 32.**

An annual sum which the Court had on dissolution ordered under s. 32 of the Matrimonial Causes Act, 1857, to be paid to the wife, held to be “property of the wife,” even though the deed

**DIVORCE (Alimony)—continued.**

to secure it had not been executed. The wife was therefore allowed to prove as a creditor in the administration of the husband's estate. *In re TATHAM. BENSAUDE v. HASTINGS*

**Stirling J. [1892] W. N. 150**

**14. — Respondent's income—Partnership profits—Order under Matrimonial Causes Act, 1857, or the Act of 1856.**

Where the husband's income under certain circumstances is liable to be greatly reduced, the inclination of the Court will be to make an order for an annual sum under the Act of 1866 rather than under that of 1867.

A wife obtained a decree nisi for dissolution. The husband was partner in a firm; by the partnership deed he was only allowed to draw a limited amount of the profits without leave of his partner:—

*Held*, by H. L. (E.), *revers. C. A.* and restoring *Jeune P.*, that the husband must be ordered (under the Act of 1866) to secure permanent maintenance for the wife on the basis of one-third of his average profits, and not on the basis of one-third of the amount he was allowed to draw. *HANBURY v. HANBURY* (No. 2)

**Jeune P. [1894] P. 102; C. A. [1894] P. 315;**

**H. L. (E.) [1895] A. C. 417**

**15. — Respondent's income—Voluntary allowance to husband—Practice.**

Where in a suit for dissolution of marriage or for judicial separation there has been a full inquiry into the husband's means upon an application for alimony pendente lite, the amount of permanent alimony or permanent maintenance to be allotted to the wife will be determined upon the evidence then given, without a repetition of such inquiry upon the petition for permanent alimony or maintenance.

For the purpose of determining the amount of permanent alimony or maintenance, recourse may be had to income of which the husband has no legal power to enforce the payment.

A husband, who was largely indebted to his brother, was in receipt of a voluntary allowance from him so long as he should remain out of the country:—

*Held*, that the voluntary allowance was properly included in the husband's income for the purpose of fixing the amount of permanent maintenance. *BONSOR v. BONSOR*

**Jeune P. [1897] P. 77**

**16. — Respondent's means.**

In a wife's petition for dissolution of marriage she applied for alimony pendente lite. The husband filed a balance-sheet, shewing a loss on his whole business for the year, and the registrar made an order on him and his partner to produce their account-books. They accordingly produced a ledger for the last year, but refused to allow it to be inspected:—

*Held*, that the registrar had power under rule 191 to require an inspection of the ledger, and a writ of attachment issued to enforce compliance with his order. *CAREW v. CAREW*

**Jeune P. [1891] P. 360**

**17. — Respondent's means.**

In an application for alimony pending suit by the husband for dissolution of marriage, the wife

**DIVORCE (Alimony)—continued.**

is entitled to require that the husband shall state on oath the net profits of his business; but, except in a very strong case, the Court will not call for documents which would disclose partnership accounts. *TONGE v. TONGE*

**Jeune J. [1892] P. 51**

Referred to by C. A. *Sykes v. Sykes*, [1897] P. 306, 311.

— Separation deed.

*See Cases under HUSBAND AND WIFE—Separation.*

**18. — Separation deed—Allowance for wife's maintenance—Subsequent alteration of circumstances—Dissolution of marriage—Judicial separation—Alimony—Maintenance and education of children—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 32, 35—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), ss. 4, 5—Matrimonial Causes Act, 1866 (29 & 30 Vict. c. 32), s. 1.**

Notwithstanding that by an agreement for separation, made between a husband and wife on withdrawal of the wife's petition for divorce, the wife has agreed to accept from the husband a specified sum for maintenance, to be paid in any event whether the marriage should thereafter be dissolved or not, the Court has power under the Divorce Acts, after a decree for dissolution on a fresh petition by the wife based on misconduct of the husband since the agreement, to disregard the agreement and order permanent alimony to be paid to her at a rate exceeding the amount specified in the agreement, if the husband's means on inquiry permit: at all events, if the agreement does not contain an express covenant by the wife not to sue for increased alimony in the event of a divorce grounded on future misconduct of the husband. But whether such a covenant is valid, *quære*.

Again, when by a separation deed the wife has agreed to accept a specified sum for maintenance, the deed to become void if the marriage is afterwards "dissolved" for any future misconduct by either party, the Court has a similar power to order the payment of permanent alimony to the wife after a decree for judicial separation by reason of the husband's misconduct since the execution of the deed, if there has been such an alteration of circumstances as renders it unjust that the wife should be bound by the deed.

The statutory power of the Court in relation to the maintenance and education of the children after a decree for judicial separation or for dissolution of marriage is not affected by any previous agreement between the parents.

*Gandy v. Gandy*, (1882) 7 P. D. 168; (1885) 30 Ch. D. 57, considered and explained. *BISHOP v. BISHOP. JUDKINS v. JUDKINS*

**C. A. [1897] P. 138**

— Summary jurisdiction.

*See Cases under HUSBAND AND WIFE—Summary Jurisdiction.*

**Bigamy.**

**19. — Ignorance of law—Discretion of Court—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.**

A husband and wife separated by agreement

**DIVORCE (Bigamy)—continued.**

in writing, and the husband, believing that by the effect of such agreement the marriage was legally dissolved, married again. On discovering his mistake he again cohabited with his wife. She subsequently committed adultery. The Court, under the special circumstances, granted the man a divorce, notwithstanding his bigamy. *WHITWORTH v. WHITWORTH*

G. Barnes J. [1893] P. 85

**Children.**

20. — *Access to children—Wife guilty of adultery—Divorce Act, 1857* (20 & 21 Vict. c. 85), s. 35; *Matrimonial Causes Act, 1859* (22 & 23 Vict. c. 61), s. 4.

The Court is not precluded from making an order giving the divorced wife access to her children, but as a general rule such an order will not be made. *HANDLEY v. HANDLEY*

C. A. [1891] P. 124

21. — *Custody—Irish divorce bill—Infant.*

In an Irish divorce bill, although no separate action has been instituted in Ireland to obtain the custody of infant children after a decree for separation a mensâ et thoro has been pronounced, the House of Lords will sanction a clause giving the custody of the children to the innocent party. *Mrs. Addison's Case*, (1801) Macq. Prac. H. L. p. 598, followed. *HART'S DIVORCE BILL*

H. L. (D.) [1898] A. C. 305

22. — *Custody—Setting aside order.*

On it being shewn that the mother, the petitioner, was no longer fit for the custody of her children, the order was set aside and the custody given to the husband, but the wife's maintenance was not reduced. *WITT v. WITT*

Jeune J. [1891] P. 163

23. — *Children over sixteen—Jurisdiction.*

(A) The Court has no power to make orders as to children over sixteen, either in regard to custody, education, or maintenance. *BLANDFORD v. BLANDFORD*

Butt P. [1892] P. 148

Overruled by C. A. *Thomasset v. Thomasset*,

[1894] P. 295.

(B) Nor to continue orders for the payment of sums for the maintenance of such children. *OLIVER v. OLIVER* - Jeune J. [1892] W. N. 84

(C) The Court has power to make orders respecting the custody, maintenance and education of children until they attain the age of twenty-one years. *THOMASSET v. THOMASSET*

C. A. revers. Jeune P. [1894] P. 295

Referred to by C. A. *Bishop v. Bishop, Judkins v. Judkins*, [1897] P. 138, 154.

(D) The Court has power under s. 45 of the Act of 1857 to vary settlements in favour of children over sixteen. *MIDWINTER v. MIDWINTER*

Jeune P. [1893] P. 93

Referred to by C. A. *Thomson v. Thomson*, [1896] P. 263, 270.

24. — *Discovery—Infant.*

Practice of Divorce Court as to discovery considered. Discovery ought not to be required from a party to divorce proceedings when it is sought for no other purpose than to prove such party guilty of adultery. Whether an order for

**DIVORCE (Children)—continued.**

discovery cannot be made against an infant in proceedings for divorce, *quære*. *REDFERN v. REDFERN* - C. A. [1891] P. 139

[But see now R. S. C., Nov. 1893, Order XXXI, r. 29, St. R. & O. 1883, p. 550.]

**Collusion.**

25. — *Condonation of adultery suppressed by collusion—Intervention—Costs—Matrimonial Causes Act, 1860* (23 & 24 Vict. c. 144), s. 7.

A wife obtained a decree nisi; subsequently she condoned the offences. There was collusion to suppress the condonation. The husband committed adultery after the condonation:—

*Held*, (1) that collusion to suppress the fact of condonation after decree nisi was sufficient ground for refusing to make decree absolute; (2) that facts establishing such collusion were "material facts" within the *Matrimonial Causes Act, 1857*, s. 7; (3) that as the suit was not completed till decree absolute, the petition, though not presented, had been prosecuted in collusion; (4) that such collusion might be brought forward by the Queen's Proctor under s. 7 of the Act of 1860, and was ground for rescinding decree nisi. *ROGERS v. ROGERS* Jeune P. [1894] P. 161

Followed by Jeune P. *Churchward v. Churchward*, [1895] P. 7, 24.

26. — *Findings in former suit—Rescission of decree nisi for collusion.*

A wife petitioned for divorce; the jury found that the husband had been guilty of adultery and cruelty; the Queen's Proctor intervened, and the decree nisi was set aside for collusion and suppression of material facts. Afterwards the husband petitioned for a divorce:—

*Held*, that the rescission of the decree did not prevent the findings of the jury in the former suit being conclusive evidence in the second.

Decision of Jeune P., [1893] P. 185, affirmed. *BUTLER v. BUTLER* (No. 1) - C. A. [1894] P. 25

27. — *What amounts to—Matrimonial Causes Act, 1857, 1860* (20 & 21 Vict. c. 85), s. 30; (23 & 24 Vict. c. 144), ss. 5, 7.

If the initiation of a suit be procured, and its conduct (especially if abstinence from defence be a term) provided for by agreement, that constitutes collusion, though no one can put his finger on any fact falsely dealt with or withheld. The various definitions of collusion reviewed and considered. *CHURCHWARD v. CHURCHWARD*

Jeune P. [1895] P. 7

**Condonation.**

28. — *Adultery subsequent to condonation.*

Adultery subsequent to condonation makes the condonation alone no ground for rescinding decree nisi. *ROGERS v. ROGERS*

Jeune P. [1894] P. 161

Followed by Jeune P. *Churchward v. Churchward*, [1895] P. 7, 24.

29. — *Conduct conducing to adultery—Verdict of jury—Discretion—Dissolution of marriage—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 31.

On a petition by a husband for the dissolution of his marriage, adultery by the wife was

**DIVORCE (Condonation)—continued.**

admitted, but the jury found that the petitioner had been guilty of "wilful neglect or misconduct conducing to the adultery" within the meaning of s. 31 of the Matrimonial Causes Act, 1857.

It appeared that the parties were domestic servants. The respondent had had an illegitimate child by the petitioner before the marriage. During their married life, between 1883 and 1894, the petitioner was abroad for long periods with his master; and the respondent meanwhile kept a lodging-house, the petitioner remitting to her regularly an adequate weekly allowance. The parties lived unhappily owing to the enforced separation. In 1894 a child was born, the result, as the respondent admitted, of the adultery imputed to her in the petition.

The Court, notwithstanding the verdict of the jury, pronounced a decree nisi for the dissolution of the marriage, but directed that it should not be made absolute until the petitioner had secured to the respondent, by a proper deed, the annual sum of 20*l.*, payable in equal monthly instalments, commencing from the date of the decree nisi, during their joint lives, *dum sola et casta vixerit*. **PARRY v. PARRY**

**G. Barnes J. [1896] P. 37**

**30. — Damages—Costs—Divorce and Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 3), 33, 59.**

A husband petitioned for divorce on the ground of his wife's adultery with A. and B. He claimed damages and costs against A., and costs against B. The jury found that the respondent had committed adultery with A. and B., but that the adultery with A. had been condoned. The petitioner was not aware of the adultery with B. when he condoned that with A. **Jeune P.** dismissed A. from the suit and gave him his costs, and granted a decree nisi on the adultery with B.:

*Held*, by C. A., (1) that condonation is not avoided by previous undisclosed adultery with another; (2) that condonation is a bar to a judgment for damages, and (3) that the petitioner may be ordered to pay the co-respondent's costs. **BERNSTEIN v. BERNSTEIN (No. 2)**

**C. A. [1893] P. 292**

**31. — Damages—Second petition.**

A husband having presented a petition charging his wife with adultery with A. condoned the offence, and allowed the petition to be dismissed. Subsequently he presented a second petition, charging adultery with B., and obtained leave to add the charges in the first petition against A., and to insert a claim for damages against A.:

*Held*, on motion to dismiss A. from the suit, that the condonation was no bar to the claim for damages. **BERNSTEIN v. BERNSTEIN (No. 1)**

**Jeune P. [1892] P. 375**

*But see BERNSTEIN v. BERNSTEIN (No. 2)*

**[1893] P. 292**

**32. — Decree nisi not made absolute—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 30.**

A wife obtained a decree nisi, but no steps were taken to make it absolute. Believing she was free to do so, she went through a form of

**DIVORCE (Condonation)—continued.**

marriage with a man with whom she lived until his death: subsequently she resumed cohabitation with her husband, but left him on the ground of his cruelty. On her petition, *held* that the Court was entitled to make the original decree absolute. **MOORE v. MOORE**

**G. Barnes J. [1892] P. 382**

This case was followed by **Jeune P. Rogers v. Rogers, [1894] P. 161. See DIVORCE—Collusion. 25.**

**33. — Deed of separation.**

In a suit for judicial separation the husband pleaded that his wife had committed adultery. She replied that the adultery had been condoned by a covenant in a separation deed not to commence or prosecute proceedings in relation to antecedent offences. There was no other condonation, nor had the parties again cohabited:—

*Held*, that the covenant was not equivalent to condonation, and that the husband might plead the wife's former misconduct in answer to her petition. **GOOCH v. GOOCH Jeune P. [1893] P. 99**

**34. — Conduct—Inducing adultery.**

Neither a hastily expressed wish that the wife should go and live with her eventual seducer, nor the husband refusing absolutely an allowance to support his wife unless she returns to live with him or some of her relations ready and willing to take her, is in either case conduct inducing adultery.

1st Case. **TODD'S DIVORCE BILL. 2nd Case. SCOVELL'S DIVORCE BILL**

**H. L. [1896] W. N. 60 (3)**

**Co-respondent.**

— Bankruptcy of co-respondent — Damages — Provable debt—Judgment summons.

*See BANKRUPTCY—Proof. 166.*

— Costs, order for, against co-respondent.

*See DIVORCE—Costs. 46—49.*

**35. — Damages—Married woman—Knowledge of co-respondent—Absence of evidence—Direction to jury.**

Where in a petition by the husband for divorce on the ground of adultery claiming damages against the co-respondent, no evidence was given on behalf of the petitioner that the co-respondent knew that the respondent was a married woman:—

*Held*, that damages might, nevertheless, be assessed against the co-respondent.

The rules at common law in actions for crim. con. applied to claims for damages in divorce cases; and the direction of **Tindal C.J.** in **Calcraft v. Harborough (Earl of), (1831) 1 C. & P. 499**, at p. 501, adopted and followed by **G. Barnes J. LORD v. LORD**

**G. Barnes J. [1900] P. 297**

**36. — Death of alleged adulterer before suit—Motion to dispense with making co-respondent—Practice.**

Where, in a petition for dissolution of marriage, adultery is charged with a person who died before the institution of divorce proceedings, the petitioner must apply to the Court for an order to be excused from making him a co-re-

**DIVORCE (Co-respondent)—continued.**

spondent, even though adultery be charged against a second person who has been made a co-respondent to the suit. *SLAYTOR v. SLAYTOR AND JACKSON* — *Jeune P. [1897] P. 85*

37. — *Dispensing with co-respondent—Practice—Husband's petition—Confession by wife—Name of alleged adulterer.*

In a petition by the husband for dissolution of marriage, it was alleged (par. 3) that about the end of 1896 the respondent committed adultery with a man whose name was unknown to the petitioner, and that in consequence thereof she, on Aug. 14, 1897, gave birth to a child of which the petitioner was not the father.

In par. 5 it was further alleged that from Sept. 1897, until the date of the petition (Oct. 25, 1900), the respondent frequently committed adultery with men unknown; and that (par. 5) between June 19, 1900, and Aug. 11, 1900, at a certain address the respondent committed adultery with men unknown.

Upon application to the Court to proceed without citing any person as co-respondent, it appeared that diligent attempts had been made to trace a man, whose name was given by the respondent at the time she was served with the citation and copy petition as "Alfred Lamb," whom she said resided at St. Michael's, in the city of Liverpool, and whom she stated to have been employed by a well-known shipping firm as a foreman cattleman on one of that firm's steamers. The respondent at the same time stated that she did not know this man's address more definitely, but that he resided, when at home, with his mother.

From the affidavits filed in support of the motion, it appeared that, upon inquiries being made of the firm named by the respondent, they stated that no cattleman were in fact employed by them, but were engaged by other persons interested in the conveyance of the cattle. Further inquiries had failed to trace any such person.

*Jeune P.* ordered the petition (par. 3) to be amended by alleging that at about the end of 1896 the respondent "committed adultery with a man whose name is believed to be Alfred Lamb, in consequence whereof she on Aug. 14, 1897, gave birth to a child of which your petitioner was not the father, but of which it is believed that the man whose name is believed to be Alfred Lamb is the father." The amended petition need not be re-served on the respondent under the circumstances; but the petitioner must cite "Alfred Lamb" by advertisements to be settled in the registry. *THOMPSON v. THOMPSON*

*Jeune P. [1900] W. N. 254*

38. — *Intervention—Answer containing no claim for cross-relief—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 28—Matrimonial Causes Act, 1866 (29 & 30 Vict. c. 32), s. 2.*

A husband, in his answer to a petition by his wife for dissolution of marriage, made a counter-charge against her of adultery with a specified person, without claiming cross-relief, or "such further or other remedy as the nature of the case may require":—

*Held*, that the Court had no power to allow the alleged adulterer to intervene.

**DIVORCE (Co-respondent)—continued.**

*Wheeler v. Wheeler and Rhodes, (1889) 14 P. D. 154, considered. HARROP v. HARROP G. Barnes J. [1899] P. 61*

Followed. *See next Case.*

39. — *Intervention—Wife's petition—Husband's answer—Counter-charge of adultery—Cross-petition—Third party, application by—Jurisdiction—Matrimonial Causes Acts, 1857, 1866 (20 & 21 Vict. c. 85, s. 28; 29 & 30 Vict. c. 32, s. 2)—Appeal to House of Lords—Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 9.*

Where a husband in his answer to his wife's petition made a counter-charge against her of adultery with a person named, but did not ask for any relief whatever beyond the simple dismissal of the petition:—

*Held*, by C. A., affirming *Jeune J.*, that under the circumstances the answer could not be treated as a cross-petition under s. 2 of the Matrimonial Causes Act, 1866, but merely as an ordinary defence, and that therefore the Court had no jurisdiction, on the opposition of the husband, to allow the alleged adulterer to intervene.

*Harrop v. Harrop, [1899] P. 61, followed.*

Application under s. 9 of the Supreme Court of Judicature Act, 1881, for leave to appeal to the House of Lords refused. *LOWE v. LOWE*

*C. A. [1899] W. N. 71; [1899] P. 204*

40. — *Practice—Leave to proceed without co-respondent—Discretion of judge—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 28.*

The mere belief of a petitioner, founded on the evidence then before him, that a person accused of being the adulterer is not guilty, is not in itself sufficient to excuse him from making that person a co-respondent; if, however, the Court is satisfied that no evidence can be obtained against the accused person, it may exercise its discretion under s. 28 of the Matrimonial Causes Act, 1857, and allow the petitioner to proceed without joining him as co-respondent.

*Jones v. Jones, [1896] P. 165, and Saunders v. Saunders, [1897] P. 89, considered and explained. EDWARDS v. EDWARDS Jeune P. [1897] P. 316*

41. — *Practice—Leave to proceed without—Petition for divorce—Discretion of judge—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 28—Divorce Court Rules, 1865, rr. 4, 6.*

The discretion given to the judge, by s. 28 of the Matrimonial Causes Act, 1857, to allow a petition for a divorce to proceed, on special grounds, without making any co-respondent, is to be exercised with regard to the principles laid down in or to be gathered from the Act and the Rules, and to the circumstances of each particular case, and cannot be fettered by any general rule of practice.

The rule laid down in *Jones v. Jones, [1896] P. 165*, at p. 170, disapproved as a rule of general application.

A husband, who had been absent from England for more than two years, ascertained, when he returned home, that his wife had recently given birth to a child, of which he was not the father. She registered the birth of the child, giving her own name as the mother, but without

**DIVORCE (Co-respondent)—continued.**

giving the name of any father. She took out a bastardy summons against H., whom she alleged to be the father of the child, but, at the time appointed for its hearing, she did not appear, and the summons was struck out. The husband did not believe that H. was the father of the child, and his solicitor, after making careful inquiry, was unable to obtain any evidence against H. H. was prepared to swear that he had never had intercourse with the wife. The husband presented a divorce petition, in which he alleged that the wife had committed adultery with a man whose name was unknown to him:—

*Held*, that the husband should be allowed to proceed with the petition without naming any co-respondent.

Decision of G. Barnes J. reversed by the C. A., A. L. Smith L.J. dissenting. **SAUNDERS v. SAUNDERS** - - - C. A. [1897] P. 89

Explained by Jeune P. *Edwards v. Edwards*, [1897] P. 316. See preceding Case.

**42. — Practice—Necessity for making a person co-respondent—Inability to prove adultery—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 28, 33.**

Where the relief sought by the petitioner is on the ground of adultery alleged to have been committed with a man, who is alive, and whose name and identity are known, the petitioner must make that person a co-respondent; and the Court ought not to excuse him from so doing, merely because he finds that he cannot obtain evidence which will prove his case as against that co-respondent.

So *held* by G. Barnes J., with the assent of Sir F. Jeune, President. **JONES v. JONES** [1896] P. 165

Considered by Jeune P. *Edwards v. Edwards*, [1897] P. 316, 319.

**43. — Substituted service—Necessity of affidavit by petitioner—Rules of 1865, rr. 10, 11, 12, 13.**

On an application to allow substituted service of a petition on a co-respondent, there should be an affidavit by the petitioner. **WILLIAMS v. WILLIAMS AND POCOCK**

G. Barnes J. [1896] P. 153

**Costs.**

**44. — Attachment—Order on respondent to pay petitioner's costs.**

Where a respondent, who had been ordered after decree nisi to pay a certain sum into Court to meet the petitioner's costs, had not complied with the order, the Court refused to issue an attachment, but varied the order by directing the payment to be made to the petitioner's solicitor, on the undertaking that he should lodge it in Court. **HART v. HART**

Jeune J. [1891] W. N. 162

**45. — Attachment—Security for costs—Undischarged bankrupt.**

An undischarged bankrupt respondent failed to comply with an order to give security for the wife's costs. He was proved to be in the posses-

**DIVORCE (Costs)—continued.**

sion of means not under the control of the trustee in bankruptcy:—

*Held*, that the bankruptcy did not prevent the Court from attaching him. **SHINE v. SHINE**

Jeune P. [1893] P. 289

**46. — Co-respondent—Bankruptcy notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (e), 1 (g).**

Order for payment of costs by co-respondent in decree nisi (afterwards made absolute) *held* not to be a final judgment on which a bankruptcy notice could issue. *In re BINSTED. Ex parte DALE* - - - C. A. [1893] 1 Q. B. 199

**47. — Co-respondent—Death before payment—Receiver.**

A co-respondent condemned in the costs of a divorce action died before payment. His estate being less than the costs, the petitioner was appointed receiver subject to the right of the co-respondent's widow to take out administration and give security for the unpaid costs; the right to be exercised within one week. **WADDELL v. WADDELL** - Butt P. [1892] P. 226

**48. — Co-respondent—Order for costs against—Practice—Delay in enforcing order—Leave to issue execution.**

Where a decree nisi for dissolution of marriage has been made with costs against the co-respondent, and no steps have been taken for upwards of six years to enforce the order for costs, application should be made to the Court for an order that the petitioner be at liberty to issue execution against the co-respondent. **GOODWIN v. GOODWIN AND ARNOLD**

Jeune P. [1897] P. 87

**49. — Co-respondent out of jurisdiction.**

Where a co-respondent appeared unconditionally and then filed an answer alleging his domicile was foreign, the Court dismissed him from the suit, but gave him only his costs of appearance. **GRANGE v. GRANGE**

Jeune P. [1892] P. 245

**50. — Discretion—Divorce Court Act, 1857 (20 & 21 Vict. c. 85), s. 51—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49—Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 20—Divorce Court Rules, 158, 159, 199, 201.**

Under s. 51 of the Divorce Act, 1857, the costs of any suit or proceeding under the Act are at the discretion of the Court, and the C. A. is precluded by s. 49 of the Judicature Act, 1873, and s. 20 of the Appellate Jurisdiction Act, 1876, from reviewing the exercise of such discretion. **RUSSELL v. RUSSELL (No. 1)** - C. A. [1892] P. 152

**51. — Enforcing order.**

Injunction granted restraining respondent from parting with specific property until the petitioner had the opportunity of enforcing her order as to costs. **BREWIS v. BREWIS**

Jeune P. [1893] W. N. 6

**52. — Pauper—Divorce Act, 1857 (20 & 21 Vict. c. 85), s. 51.**

Subject to the discretion of the Court under s. 51 of the Divorce Act, 1857, it is the practice in the Probate Div. to allow a husband suing in forma pauperis for dissolution of marriage only his or his solicitor's costs out of pocket, including



**DIVORCE (Costs)—continued.**

those of the certificate, and in the latter case a reasonable sum for office expenses, against the co-respondent :—

*Seemle*, per Jeune P., that a barrister or a solicitor may receive fees from such pauper petitioner, and that a solicitor not assigned by the Court, but employed by such pauper petitioner, can sue his client on a retainer; also that the respondent and co-respondent may, if successful, obtain an order for full costs against such pauper petitioner; also that there is no clear rule of practice as to whether the respondent should obtain an order for security for costs against such pauper petitioner; but each case must be dealt with on its own merits.

Decision of Jeune P., [1895] P. 276, affirmed. **RICHARDSON v. RICHARDSON** C. A. [1895] P. 346

See *In re Raphael*, Kekewich J., [1899] 1 Ch. 853; C. A. [1899] W. N. 212.

**53. — Pauper petitioner—Practice—Intervention of Queen's Proctor.**

A pauper petitioner, who is unsuccessful upon the intervention of the Queen's Proctor, is liable to be condemned in the full costs of the intervention. **WHITE v. WHITE**

Jeune P. [1898] P. 124

**54. — Queen's Proctor's costs—Co-respondent—Matrimonial Causes Act, 1860, 1878 (23 & 24 Vict. c. 144), s. 7; (41 & 42 Vict. c. 19), s. 2.**

A co-respondent ordered to pay the costs of the Queen's Proctor's intervention. **TAPLEN v. TAPLEN** — Collins J. [1891] P. 283

**55. — Unnecessary charges of cruelty.**

Where the communication of venereal disease is charged as cruelty, and such communication is the only evidence of adultery, the costs of other charges of cruelty will, on a wife's successful petition for dissolution, be disallowed. **ASH v. ASH** — G. Barnes J. [1893] P. 222

**56. — Wife's costs—Abortive trial.**

(A) At the trial of a petition by a husband for divorce the jury disagreed, and were discharged without giving a verdict. The Court, upon the application of the wife, made an order that her costs of the hearing should be taxed and paid in full, and refused to limit such costs to the amount deposited in Court. **HURLEY v. HURLEY**

Collins J. [1891] P. 367

Followed by Butt P. See next Case.

(B) In a divorce action the husband and wife mutually charged each other with adultery. On the trial the jury found for the husband, but were unable to agree on the counter-charge against the wife :—

*Held*, that the wife was entitled to her costs. **DELAFORCE v. DELAFORCE**

Butt P. [1892] W. N. 68

**57. — Wife's costs—Attachment.**

The Court refused to attach a petitioner, who had not complied with an order to secure a sum for his wife's costs, on his shewing want of means as the reason for non-compliance. **CLARKE v. CLARKE** — Jeune J. [1891] P. 278

**58. — Wife's costs—Bond to wife's solicitor—Divorce Court Act, 1857 (20 & 21 Vict. c. 85), s. 51**

**DIVORCE (Costs)—continued.**

—*Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49—Appellate Jurisdiction Act, 1867 (39 & 40 Vict. c. 59), s. 20—Divorce Rules, 158, 159, 199, 201—Appeal.*

Where the Court has not allowed the wife any costs the bond given by the husband to the wife's solicitor cannot be enforced against him. The question of costs being in the discretion of the Court there is no appeal from the decision of the Court refusing to allow such a bond to be enforced. **RUSSELL v. RUSSELL (No. 1)**

C. A. [1892] P. 152

**59. — Wife's costs pendente lite—Rules of Dec. 26, 1865, r. 158 (1).**

Mode in which discretion of Court is to be exercised. **ALLEN v. ALLEN (No. 2)**

C. A. [1894] P. 134

**60. — Wife's costs—Solicitor's lien.**

The C. A. has jurisdiction to order the husband's costs of an unsuccessful appeal by the wife to be paid out of money paid by him into court to defray the wife's costs at the hearing. Such an order will not be made to the prejudice of the lien of the wife's solicitor, even where the appeal was hopeless, unless he has so conducted himself as to justify so strong a measure. **HALL v. HALL** — C. A. [1891] P. 302

Referred to by C. A. **Russell v. Russell**, [1892] P. 152, 156.

**Cruelty.**

**61. — Delay—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31—Matrimonial Causes Act, 1859 (23 & 24 Vict. c. 144), s. 5.**

In this case the Court, without giving an opinion as to whether a long course of neglect and immorality involving great mental trouble on the wife, but without actual violence, amounted to legal cruelty :—

*Held*, that a delay of twenty years, not satisfactorily explained, prevented the petitioner from obtaining redress. **BEAUCLERK v. BEAUCLERK (No. 1)** — C. A. affirming Butt J. [1891] P. 189

Referred to by Jeune P. **Beauclerk v. Beauclerk (No. 2)**, [1895] P. 220, 222.

**62. — Discretionary bar—Findings of adultery against respondent and co-respondent and of cruelty against petitioner—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 31, 32.**

On a husband's petition the jury found that the respondent and co-respondent had committed adultery, and that the petitioner had been guilty of cruelty but not of adultery; but there was no finding as to whether the cruelty had conduced to the adultery. G. Barnes J., in the exercise of his discretion, and being of opinion that the cruelty had not conduced to the adultery, granted decree nisi, not to be made absolute till petitioner had secured to the respondent, by deed, an allowance of 36l. per annum, dum sola et casta vixerit. **EDWARDS v. EDWARDS** G. Barnes J. [1894] P. 33

Referred to by Jeune P. **Pryor v. Pryor**, [1900] P. 157, 159.

**63. — Legal cruelty.**

A long course of systematic neglect and insult involving danger to the wife's health, although

**DIVORCE (Cruelty)—continued.**

not accompanied by actual violence, constitutes legal cruelty. *BETHUNE v. BETHUNE*

**Hannen P. [1891] P. 205**

Commented on by Butt P. *Beauclerk v. Beauclerk*, [1891] P. 189.

**64. — Unfounded charges.**

A false charge of having committed an unnatural criminal offence brought by a wife against her husband, although persisted in, is not sufficient evidence of legal cruelty to support a petition by the husband for judicial separation. But such conduct on the part of the wife justifies the Court in refusing to accede to her petition for restitution of conjugal rights. *RUSSELL v. RUSSELL* (No. 2) — — — **C. A. [1895] P. 315**

**Desertion.**

**65. — Definition—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 21.**

Separation by consent and desertion distinguished. *MAHONY v. MCCARTHY*

**Jeune J. [1892] P. 21**

**66. — Criminal charge—Husband absconding under.**

Where it appeared that more than two years before a wife's petition for dissolution, her husband, who had formed an adulterous connection with another woman, had absconded in order to avoid criminal proceedings, falsely stating to her that he intended to be away only for a short time, and had since concealed his address from her, the Court, on the authority of *Drew v. Drew*, (1888) 13 P. D. 97, found him guilty of desertion. *WYNNE v. WYNNE*

**Jeune P. [1898] P. 18**

**67. — "Desertion"—Husband's refusal to discharge adulterous servant—Consequent separation by wife—Decree.**

Upon a wife's petition for divorce on the grounds of desertion and adultery, it appeared that the respondent had refused to break off relations with and to discharge a servant with whom, when taxed, he admitted that he had committed adultery. The petitioner thereupon left the house, and, although overtures were subsequently made by the respondent for a resumption of cohabitation, the petitioner never returned home, owing to the persistent refusal of the respondent to discharge the servant in question:—

*Held*, that the conduct of the husband constituted "desertion" within the meaning of the Divorce Acts. *KOCH v. KOCH*

**G. Barnes J. [1899] P. 221**

**68. — Desertion without previous cohabitation.**

There may be desertion without previous cohabitation.

Where a husband and wife separated immediately after their marriage, and never cohabited, but it appeared that it was the husband who refused to cohabit, the wife having been always willing to do so, the Court found that the husband had been guilty of desertion. *DE LAUBENQUE v. DE LAUBENQUE* — — — **Jeune P. [1898] W. N. 154 (4); [1899] P. 42**

**69. — Husband's adultery—Refusal to lead chaste life—Wife unable to continue cohabitation.**

In order to constitute desertion, there must be

**DIVORCE (Desertion)—continued.**

a cessation of cohabitation and an intention on the part of the accused party to desert the other.

It is not always, or necessarily, the guilty party who leaves the matrimonial home: the party who intends to bring the cohabitation to an end, and whose conduct in reality causes its termination, commits the act of desertion.

There is no substantial difference between the case of a husband who intends to put an end to a state of cohabitation and does so by leaving his wife, and that of a husband who, with the like intent, obliges his wife to separate from him.

In a case where a husband is carrying on an adulterous intercourse with another woman or other women, although he does not bring the adulteress into the matrimonial home and commit adultery with her there, the wife may express her willingness to remain with him on condition that he give up the connection complained of; and, if the husband refuse to do so, and the wife withdraw from cohabitation in consequence of the refusal, the husband is guilty of desertion, as he must be taken to intend the consequences of his action. The situation then produced is just the same as if the guilty husband left his wife. At the end of two years the statutory offence of desertion is complete, and the wife is entitled to relief on that ground. *SICKERT v. SICKERT*

**G. Barnes J. [1899] P. 278**

— "Reasonable cause."

*See SCOTTISH LAW—Divorce. 12.*

**70. — Refusal by wife, without cause, of marital intercourse — Subsequent adultery of husband — Wife's desertion no bar to relief—Decree of judicial separation.**

A wife who, without cause, refuses to permit marital intercourse to her husband, cannot allege desertion without reasonable cause by him if in consequence he refuses to live with her, and is herself in such circumstances guilty of desertion without reasonable cause.

Desertion without reasonable excuse for two years and upwards is no bar to a petition for judicial separation on the ground of subsequent adultery. *SYNGE v. SYNGE*

**Jeune P. [1900] P. 180**

**71. — Unreasonable delay in presenting petition—Matrimonial Causes Acts, 1857, 1884 (20 & 21 Vict. c. 85), s. 31; 47 & 48 Vict. c. 68), s. 5.**

In 1890 the petition of a wife who married in 1858, but had lived apart from her husband since 1870 under a separation deed, was dismissed for unreasonable delay. Subsequently she obtained a decree for restitution. A decree nisi was granted for desertion (i.e., for non-compliance with the restitution decree) and adultery. The question of the extent to which the impediment of delay is avoided by obtaining a restitution decree considered. *BEAUCLECK v. BEAUCLECK* (No. 2)

**Jeune P. [1895] P. 220**

*And see DIVORCE—Nullity. 94.*

*DIVORCE—Practice. 100.*

**72. — What amounts to.**

A husband and wife were living apart under a separation deed, by which the husband covenanted to make weekly payments to the wife. The husband having ceased to make the pay-

**DIVORCE (Desertion)—continued.**

ments, the wife offered to resume cohabitation; but the husband refused to do so. The wife then applied for an order for maintenance under the Married Women's (Maintenance in Case of Desertion) Act, 1886 (49 & 50 Vict. c. 52).—

*Held*, that, in order to constitute desertion within the Act, the parties must be living together as man and wife when the desertion takes place; that the husband's refusal of the wife's offer to resume cohabitation did not constitute desertion; and that there was therefore no evidence of desertion. *REG. v. LERESCHE*

**C. A. [1891] 2 Q. B. 418**

Referred to by *Jeune P. Bradshaw v. Bradshaw*, [1897] P. 24, 26.

[*The Married Women Maintenance in Case of Desertion Act, 1886, was repealed, and further provision made by the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*]

**Evidence.**

**73. — Admissibility—Acts of adultery subsequent to date of petition—Practice.**

Evidence of acts of adultery subsequent to the date of the petition may be admitted for the purpose of shewing what inference the Court ought to draw from evidence of previous acts of familiarity. *WALES v. WALES*

**G. Barnes J. [1900] P. 63**

**74. — Admissibility—Entry in official document—Queen's Regulations—Non-commissioned officer—Decree.**

Wife's petition for dissolution of marriage on the grounds of cruelty and adultery.

At the hearing the cruelty was proved by the petitioner and duly corroborated; but, in the absence on active service of a military doctor who was said to have attended the respondent while stationed in London in Jan. and Feb., 1899, counsel for the petitioner tendered, as the only available evidence of the adultery alleged in the petition, the evidence of a staff-sergeant who knew the respondent very well as the husband of petitioner, and who produced from the regimental headquarters an army form (No. B. 178), from which it appeared that W. G. Gleen, who was a non-commissioned officer, was admitted into the C Block Station Hospital on Jan. 20, 1899, suffering from gonorrhoea, and that he remained in hospital for twenty-nine days.

On behalf of the petitioner, it was submitted that this "medical history sheet" was evidence of the facts therein stated, and counsel referred to the Regulations for Army Medical Services, 1897, rr. 200, 208, and 443, and cited *Wallace v. Cook*, (1804) 5 Esp. 117 (see *Watson v. King*, (1815) 4 Camp. 272; 16 R. R. 790), and several other authorities summarized in *Roscoe's Nisi Prius*, ed. 1900, pp. 213, 214.

The Court held that the case was proved, and pronounced a decree nisi with costs, and gave the petitioner the custody of the two children of the marriage. *GLEEN v. GLEEN*

**Jeune P. [1900] W. N. 258**

**75. — Admission of evidence of respondent against co-respondent—Right to cross-examine.**

The evidence of one party cannot be received

**DIVORCE (Evidence)—continued.**

as evidence against another unless the latter has an opportunity of cross-examination. Therefore, in a divorce suit, if the respondent's evidence tends to incriminate the co-respondent, and the co-respondent is not allowed to cross-examine, the judge should distinctly direct the jury to disregard that evidence as against the co-respondent.

*Seem*, that the co-respondent has a right to cross-examine the respondent as to any evidence tending to incriminate him. *ALLEN v. ALLEN* (No. 1) — **C. A. [1894] P. 248**

**76. — Decree in previous suit.**

On a petition by a wife for dissolution of her marriage on the ground of adultery coupled with desertion, the decree in a previous suit in which her husband had been co-respondent was produced. This decree stated that the jury found that the respondent had been guilty of adultery with the co-respondent, and that he had been condemned in costs, but contained no finding by the jury that the co-respondent had been guilty of adultery with the respondent.—

*Held*, that the decree was not by itself sufficient evidence of adultery against the husband. *RUCK v. RUCK* **G. Barnes J. [1896] P. 152**

**77. — Identification—Use of photographs—Practice.**

In matrimonial cases, except under very special circumstances, the Court will not act upon identification by a photograph only. *FRITH v. FRITH AND PAICE* — **G. Barnes J. [1896] P. 74**

— Identity—Nullity suit.

See *DIVORCE—Nullity of Marriage*. 92.

**78. — Irish Divorce Bill—Evidence taken in India.**

Evidence taken in India on commission, and received and acted on by the Q. B. Div. of the High Court of Justice in Ireland, admitted to be used on the second reading of an Irish divorce bill. *JONES' DIVORCE BILL*.

**H. L. (D.) [1899] A. C. 348**

**79. — Judge's note of evidence—Admissibility—Divorce bill—Substituted service—Deceased witness.**

A certified copy of the judge's notes of the evidence of a witness called by the petitioner at the hearing of a petition for divorce *a mensâ et thoro* cannot, in case of the death of the witness, be received as proof of the matters deposed to by him upon the second reading of a bill for divorce presented by the petitioner. *GRIFFIN'S DIVORCE BILL* — **H. L. (D.) [1896] A. C. 133**

**80. — Marriage—Colonial marriage—Evidence of validity—Practice—Colony of Hong-Kong.**

Where, upon the hearing of a petition to dissolve a marriage which had been celebrated in the Colony of Hong-Kong, it was stated on behalf of the petitioner that the only legal expert available to give evidence of the validity of the marriage, according to the laws and Ordinances of Hong-Kong, demanded a prohibitive fee, the Court gave leave to prove the marriage by reading an affidavit of an ex-Governor of the Colony, who was not a member of the legal profession, but who deposed that he was conversant with

**DIVORCE (Evidence)—continued.**

the laws and ordinances in force in the Colony.  
**COOPER-KING v. COOPER-KING**

**G. Barnes J. [1900] W. N. 32; [1900] P. 65**

**81. — Marriage, Evidence of—Proof of marriage between Christians in British India—Indian Act XV. of 1872 (The Indian Christian Marriage Act of 1872)—Births' and Deaths' Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 38—List of registers and records in the custody of the Registrar-General at Somerset House.**

The solemnization of a marriage between Christians in British India is proved by the production of a certificate of the marriage from the India Office. **WESTMACOTT v. WESTMACOTT**

**G. Barnes J. [1899] P. 183**

**82. — Marriage in Burma—Evidence of validity—Practice.**

In addition to the evidence of the petitioner, all that is required to prove the validity of a marriage of a British officer in Burma is to subpoena an official from the War Office and for him to produce the "Army Marriage Register," which is kept pursuant to the Army Acts. **ADAMS v. ADAMS** **G. Barnes J. [1900] W. N. 32**

— Marriage solemnized on board British warship without licence or banns.  
**See MARRIAGE. 2.**

**Jactitation of Marriage.**

**83. — Acquiescence of petitioner.**

The jury found that the petitioner had at a former period acquiesced in the representation of the respondent that she was his wife, but could not agree whether there was a legal marriage:—

**Held**, on this finding, that the petition must be dismissed. **THOMPSON v. ROURKE (No. 2)**

**Barnes J. [1893] P. 11; affirm. by C. A. [1893] P. 70**

**Judicial Separation.**

— **See Cases under HUSBAND AND WIFE—Summary Jurisdiction.**

**Jurisdiction.**

**84. — Domicil—"Matrimonial domicil."**

The permanent domicil of the spouses within a territory is necessary to give the territorial Court jurisdiction so to divorce a vinculo that its decree to that effect shall have extra-territorial authority in international law. The so-called "matrimonial domicil" said to be created by bonâ fide residence of the spouses within a territory of a less degree of permanence than is required to fix their true domicil cannot be recognised as creating such jurisdiction. Decisions of English and Scottish Courts as to matrimonial domicil considered. **LE MESURIER v. LE MESURIER** — **P. C. [1895] A. C. 517**

Commented on by **G. Barnes J. Armytage v. Armytage, [1898] P. 178, 185.**

**85. — Domicil—Matrimonial home—Residence within jurisdiction at commencement of suit—Cruelty committed outside jurisdiction—Apprehension of further acts of cruelty—Powers of Ecclesiastical Court to grant relief—Judicial**

**DIVORCE (Jurisdiction)—continued.**

**separation—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 7, 22, 25, 26.**

By the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 22, "In all suits and proceedings, other than proceedings to dissolve any marriage, the said Court shall proceed and act and give relief on principles and rules which, in the opinion of the said Court, shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts have hitherto acted and given relief."

In a proceeding for a divorce a mensa et thoro on the ground of cruelty, where the parties resided within its jurisdiction at the commencement of the suit, an Ecclesiastical Court would have granted relief irrespective of their domicil, and it would have made no difference that the necessity for protection arose in consequence of cruelty committed outside its jurisdiction, where the apprehension of further acts of cruelty remained.

The petitioner for a judicial separation had been, before her marriage, a domiciled Englishwoman. Her husband's domicil was in Australia, where, after her marriage, she resided with him. Owing to cruelty committed by him while they were travelling in Italy, she sought the protection of her parents in England, and established a home for herself and her children in this country. He followed her here and required her to return to him with the children, which she was afraid to do owing to her apprehension of a repetition of the cruelty. At the commencement of the suit both parties were living within the jurisdiction:—

**Held**, that the Court, exercising the power of the Ecclesiastical Court under the section, had jurisdiction to entertain the suit. **ARMYTAGE v. ARMYTAGE** — **G. Barnes J. [1898] P. 178**

**86. — Domicil.**

Two persons born in France of parents born in England but resident in France, were married in England, but subsequently resided in France. The husband on coming of age had made a declaration of his intention to retain British nationality, and he and his father contemplated return to England. He deserted his wife and went to the Australian colonies:—

**Held**, that the domicil of the parties was English. **GOULDER v. GOULDER**

**Lopes L.J. [1892] P. 240**

— Domicil—Co-respondent out of jurisdiction.

**See DIVORCE—Costs. 49.**

— Domicil, Scottish.

**See SCOTTISH LAW—Divorce. 12.**

**87. — Foreign divorce—Domicil.**

An American married an Englishman domiciled in England. Husband and wife lived in England for a short time, when the wife went to America on a visit. The wife never returned. Subsequently she obtained a divorce in Pennsylvania on the ground of the husband's cruelty, and remarried:—

**Held**, that the Courts of Pennsylvania had no jurisdiction to divorce a British subject domiciled in this country who had never submitted himself to its jurisdiction, and that the remarriage of the

**DIVORCE (Jurisdiction)—continued.**

wife in America entitled the husband to a decree for divorce in England. *GREEN v. GREEN*

*G. Barnes J. [1893] P. 89*

**88. — Witnesses examined by foreign tribunal.**

In a petition for dissolution the co-respondent filed an Act on petition denying the jurisdiction. The petitioner had obtained an order for examination of witnesses at Vienna, which was suspended pending the hearing of the Act on petition; in the meantime he applied to the Court at Vienna to summon witnesses before it. On the application of the respondent an injunction was granted restraining him from further prosecuting the Viennese proceedings. *ARMSTRONG v. ARMSTRONG*

*Jenne J. [1892] P. 98*

**Lunacy.****89. — Insanity, how far a defence.**

(A) Though a wife is subject to insane delusions on certain points, if at the time she commits adultery she is capable of appreciating the nature of the act and its probable consequences, her insanity is not a defence to a petition by her husband for dissolution. *YARROW v. YARROW*

*Butt P. [1892] P. 92*

(B) Assuming that insanity is a defence to proceedings for divorce, the plea of insanity to be good must state that the insanity is lasting and abiding without hope of recovery or amelioration, and not that it is merely recurrent or intermittent.

*Quære*, whether insanity can under any circumstances afford a defence to a petition for divorce. Rights of wife where husband is subject to dangerous mania considered. *HANBURY v. HANBURY*

*Butt P. [1892] P. 222*

**90. — Practice—Respondent a person of unsound mind—No appearance to citation—Appointing guardian ad litem—Obligation upon petitioner to apply—Divorce (Additional) Rules, 1875, r. 196—R. S. C., Order XIII., r. 1.**

Where a respondent, in a suit for dissolution of marriage, is a person of unsound mind not so found by inquisition, it is incumbent upon the petitioner, even though suing in form *pauperis*, to apply for an order that some proper person be assigned guardian of the respondent. *GILES v. GILES*

*G. Barnes J. [1899] W. N. 224; [1900] P. 17*

**Nullity.****(Nullity of Marriage.)**

—*Alimony*—Power to order, notwithstanding nullity of marriage.

*See* *DIVORCE—Alimony*. 8.

**91. — Coercion.**

According to the petitioner, the respondent threatened that he would blow his brains out if she refused to marry him there and then. According to the officiating clergyman, she went through the ceremony without any sign of unwillingness. The marriage was never consummated:—

*Held*, that the facts were insufficient to rebut the presumption of consent; that the marriage was valid, and that the suit must be dismissed. *COOPER v. CRANE*

*Collins J. [1891] P. 369*

**DIVORCE (Nullity)—continued.****92. — Evidence of identity—Nullity suit.**

The Court requires formal evidence of the respondent's identity to be given in an undefended suit for nullity of marriage. *H. (OTHERWISE G.) v. H.*

*G. Barnes J. [1900] W. N. 130*

**93. — Nullity of marriage—Duress.**

On the trial of a petition for a declaration of nullity of marriage, on the ground of duress, the following facts appeared. The petitioner, a girl of seventeen, went through the ceremony of marriage with the respondent in a church on June 5, 1889. He was a friend of her brother's. She had met him only a few times, and he had never spoken to her of marriage, or professed affection for her. She stated that on the day in question her mother told her they were going for a drive, and that they drove to the church, where they found the respondent: that she thought she was being betrothed to him, and would not have submitted even to that if she had not been so much under her mother's influence, that she did what she was told; that, on leaving the church, she threw away the ring; that she had never seen the respondent since; and that none of her family then knew what had happened except her mother, who died in 1890. A few days before, the respondent had obtained a marriage licence, falsely stating in his affidavit that the petitioner's father consented to the marriage. On June 5 he sailed for South Africa with the petitioner's brother, and on their arrival told him of the marriage. Her brother returned in 1889, but did not mention the matter to any member of his family except his mother, who told him to say nothing about it. In 1893 the petitioner went through the ceremony of marriage with another man. In the same year the respondent wrote to her father from South Africa, claiming her as his wife.

The Court, upon consideration of the evidence, found that the petitioner had never consented to marry the respondent, but had gone through the ceremony as one of betrothal, and in doing so had been to such an extent under the influence of her mother and the respondent that she was not a free agent, and granted a decree nisi of nullity. *FORD v. STIER*

*G. Barnes J. [1896] P. 1*

**94. — Impotence—Delay—Sincerity.**

A wife, seven years after her marriage, took proceedings for nullity on the ground that (as the fact was) the marriage had not been consummated owing to the impotence of her husband. It appeared that the impossibility of sexual intercourse had caused unhappy relations between the petitioner and the respondent, in consequence of which they had separated, but that since the filing of the petition she had offered to return to him:—

*Held*, that the conduct of the petitioner had not been such as to constitute an estoppel by reason of want of sincerity, and that she was entitled to a decree of nullity. *L. (OTHERWISE B.) v. B.*

*Jenne P. [1895] P. 274*

**95. — Impotence—Marriage settlements—Petition for variation—"Property settled"—Matrimonial Causes Act, 1859; 1878 (22 & 23 Vict. c. 61, s. 5; 41 & 42 Vict. c. 19, s. 3).**

The jurisdiction of the Court, conferred by

**DIVORCE (Nullity)—continued.**

the 5th section of the Matrimonial Causes Act, 1859, and extended by the 3rd section of the Matrimonial Causes Act, 1878, to inquire into the existence of ante-nuptial and post-nuptial settlements, and to make orders varying the same, is not limited to any particular class of nullity cases, but includes all cases in which a decree of nullity has been pronounced, upon whatsoever ground.

“Property settled,” within the meaning of the two sections, refers only to that particular property the benefit of which is, by the marriage settlement, conferred in the ordinary way on the parties or their children, and does not extend to or include the whole estate of the respondent, out of which the “property settled” may have been carved and which may be all mentioned in the schedules appended to the marriage settlement.

The Court has no power to bring into the settlement a fund or estate which is not to come into settlement until a certain event shall happen, before that event happens in fact. *DORMER v. WARD* G. Barnes J. [1900] P. 130; reversed by C. A. [1901] P. 20

**96. — Non-consummation—Inference—Nullity Suit.**

It is open to the Court to draw from non-consummation after cohabitation the inference of some latent incapacity on the part of the respondent.

The principle laid down by the Court (Jeune P.) in *F. v. P.* (falsely called *F.*), (1896) 75 L. T. (N.S.) 192, followed and extended to the converse case of a male respondent. *B. (OTHERWISE H.) v. B.* G. Barnes J. [1900] W. N. 130; see [1901] P. 39

**97. — Pregnancy of wife by another man at time of marriage—Concealment by wife from intended husband—Fraud.**

Concealment by a woman from her husband at the time of her marriage of the fact that she is then pregnant by another man does not render the marriage null and void. *MOSS v. MOSS (OTHERWISE ARCHER)* Jeune P. [1897] P. 263

**98. — Scottish divorce.**

A husband's petition for divorce having been dismissed the parties, all of whose domicile was English, resorted to Scotland, and by agreement through a common agent, commenced divorce proceedings there. The Ct. of Sess. pronounced a decree of divorce, and the respondent and co-respondent were married in the Isle of Man:—

*Held* (1), that the Ct. of Sess. had no jurisdiction to dissolve the first marriage; (2) that the second marriage was null and void. *BONAPARTE v. BONAPARTE* — G. Barnes J. [1892] P. 402

**Practice.**

**99. — Affidavit of petitioner—Necessity for corroboration of—Dissolution of marriage—Co-respondent—Leave to proceed without making a co-respondent — Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 28—Rules of 1865, rr. 4, 5.**

Where, upon a motion for leave to proceed without making a co-respondent, it appeared that the affidavit of the petitioner was not corrob-

**DIVORCE (Practice)—continued.**

rated, the Court ordered an adjournment in order that an affidavit in corroboration might be filed, and stated that, in future, if the affidavit of the petitioner were not corroborated, any such motion would probably be dismissed. *BARBER v. BARBER* G. Barnes J. [1896] P. 73

**100. — Confirming decree nisi—Delay.**

Where a wife had obtained a decree nisi but delayed more than a year without taking steps to obtain the final decree:—

*Held*, on an application by the respondent, that the petitioner must apply within a week to make the decree absolute or the petition would be dismissed. *LEWIS v. LEWIS*

Jeune J. [1892] P. 212

— Conflict of laws — Foreign judgment — Irregularity—Recognition by English Court.

See CONFLICT OF LAWS. 4.

**101. — Consolidated suits—Petition for restitution of conjugal rights—Answer alleging adultery—Cross-petition, claiming dissolution of marriage—Questions for jury—Onus probandi—Right to begin.**

Where a wife petitioned for restitution of conjugal rights, and the husband in answer alleged that she had committed adultery, and, in a cross-petition, claimed the dissolution of his marriage on that ground:—

*Held*, that the husband's counsel ought to begin. *SMITH v. SMITH* Jeune P. [1900] P. 66

**102. — Damages—Measure of—Husband and wife living apart—Separation caused by wife—Subsequent adultery.**

Upon a husband's petition for dissolution of marriage claiming damages, it appeared that the husband and wife separated after a cohabitation of only a few months on account of the wife's overbearing and insulting conduct and language towards her husband, culminating in actual violence to him on more than one occasion.

It was proved, and not denied, that, rather more than a year after the separation, the co-respondent, who had been acting as her solicitor, committed adultery with the respondent, and that this improper intimacy continued for about twelve months:—

*Held*, that, notwithstanding the separation and the fact that it had been caused by the violent conduct of the respondent towards the petitioner, the latter was entitled to some damages; that the fact of the co-respondent's frequent adultery having rendered reconciliation absolutely out of the question was a material element for consideration in fixing damages; and, that the jury were entitled to consider also, and to decide as a matter to be inferred from all the circumstances of the case, whether the respondent and co-respondent had not misconducted themselves together at a time anterior to the date proved by affirmative evidence and admitted and alleged by the co-respondent as the first date when adultery took place between himself and the respondent.

*Weedon v. Timbrell*, (1793) 5 T. R. 357, and *Malcomson v. Givins*, *The Times*, Feb. 27, 1873, considered. *EVANS v. EVANS*

Jeune P. [1899] P. 195

**DIVORCE (Practice)—continued.**

103. — *Decree nisi—Petition for maintenance—Enforcing order—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 32.

Sect. 32 of the Matrimonial Causes Act, 1857, coupled with the General Rules and Regulations, rr. 96, 102, enable the Court before a decree nisi has been made absolute to confirm the registrar's report approving of maintenance, to order the husband to secure the maintenance on the decree being made absolute, and until then to restrain him from parting with so much of his property as would not leave sufficient for the security.

Form of order. *WATERHOUSE v. WATERHOUSE*  
C. A. [1893] P. 284

104. — *Decree nisi rescinded—Resumption of cohabitation—Queen's Proctor intervening.*

A husband petitioner after decree nisi forgave his wife and resumed cohabitation with her. On affidavits to this effect by the husband and wife, the Court rescinded the decree and dismissed the petition, without requiring the Queen's Proctor to file a formal plea. *FLOWER v. FLOWER*

Jenne P. [1893] P. 290

105. — *Discretion, Judicial—Adultery of the wife—Cruelty of the husband—Discretionary bar—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 31—*Decree.*

The discretion conferred upon judges of the Divorce Court by s. 31 of the Matrimonial Causes Act, 1857, is not an absolute or arbitrary, but a judicial discretion, and is intended to be exercised in conformity with the former practice of the House of Lords. Cruelty on the part of a petitioner, in order to bar a claim for a divorce, must either have led to the adultery of the respondent, or be entirely wanton and unprovoked in its character.

In considering what terms should be imposed upon a petitioner who has been found guilty of cruelty towards the respondent, the Court takes into consideration all the facts of the particular case before it, and considers the interests not merely of the parties, but of the child or children (if any) of the marriage.

Where the means of the petitioner (husband) were very small and uncertain, and the respondent's parents, whose character and goodwill were unquestioned, had offered to look after the only child of the marriage, the Court, in granting a decree, assented to an arrangement which had been arrived at between the parties subsequently to the verdict, whereby the formal custody of the child was given to the respondent and no allowance was ordered against the petitioner. *PRYOR v. PRYOR* — Jenne P. [1900] P. 157

106. — *Discretion of Court—Misconduct of petitioner—Adultery—Wife's petition—Wilful neglect or misconduct of husband conducing to wife's adultery—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 31.

The circumstances to be considered by the Court in exercising its discretion under s. 31 of the Divorce and Matrimonial Causes Act, 1857, to grant a divorce to a wife who has been guilty of adultery, include the case of the husband causing or conducing to her adultery by his own wilful neglect or misconduct.

A husband, who had treated his wife with

**DIVORCE (Practice)—continued.**

great cruelty during cohabitation, finally deserted her and went to live with another woman. More than seven years after the desertion the wife, not knowing whether her husband was alive, and without making inquiry, commenced to live with another man; the cohabitation continued long after the time when it came to the wife's knowledge that her husband was alive. Subsequently, and after the wife had ceased to live in adultery, her husband was convicted under the Criminal Law Amendment Act, 1885, of an aggravated offence on a young girl not amounting to rape:—

*Held*, that under the circumstances the wife's adultery did not disentitle her to a decree of dissolution of marriage. *SYMONS v. SYMONS*

Jenne P. [1897] P. 167

107. — *Divorce bill—Definitive decree of divorce—Action for criminal conversation—Standing Orders, Nos. 175, 177—Domiciled Irishman—Jurisdiction of the English Court—Evidence taken in India.*

Great caution ought to be observed in allowing a petition for divorce to proceed in the English Divorce Court where there is ground for supposing that the parties are domiciled out of the jurisdiction.

It is not necessary for the first reading of an Irish divorce bill that a definitive sentence of divorce à mensâ et thoro should have been pronounced in the Irish Courts.

Where in the proceedings upon an Irish divorce bill it appears that no action for criminal conversation has been brought against a co-respondent who was not domiciled and could not be served in Ireland, the House of Lords may allow the bill for divorce to be received.

Where there is no means of enforcing the warrant of the House of Lords to take evidence in parts of India, the evidence as taken and used in a previous suit in the English Court of Divorce may be allowed to be used quantum valeat.

*Le Mesurier v. Le Mesurier*, [1895] A. C. 517, referred to. *SINCLAIR'S DIVORCE BILL*

H. L. (D.) [1897] A. C. 469

108. — *Intervention—Decree nisi—Queen's Proctor intervening—Alleged adulterer not allowed to intervene.*

(A) A wife obtained a decree nisi. The Queen's Proctor intervened on the ground that the petitioner was living in adultery with A. A took out a summons to intervene:—

*Held*, that he was not a party, and could not be permitted to intervene. *GRIEVE v. GRIEVE*

Jenne P. [1893] P. 288

Referred to by G. Barnes J. *Harrop v. Harrop*, [1899] P. 61, 63.

(B) A wife obtained a decree nisi. The Queen's Proctor intervened on the ground of collusion, &c., and during the trial obtained leave to add a charge that the petitioner had committed adultery with A. A took out a summons to intervene:—

*Held*, that he was not a party, and could not be permitted to intervene. *CAREW v. CAREW*

G. Barnes J. [1894] P. 31

Referred to by G. Barnes J. *Harrop v. Harrop*, [1899] P. 61, 63.

**DIVORCE (Practice)—continued.**

109. — *Jury, Questions for—Husband's petition—Delay—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 31.

Where the Queen's Proctor intervened to prevent a decree nisi obtained by a husband being made absolute on the ground of unreasonable delay in presenting the petition, the proper questions for the jury were held to be, When did the petitioner first know or have reason to believe that the respondent had committed adultery? and when did the petitioner first take action in order to obtain a divorce? *BROUGHAM v. BROUGHAM*

Jeune P. [1895] P. 288

110. — *Jury, Trial by—Jactitation of marriage.*

It is not the practice to order a suit of jactitation of marriage to be tried by a jury if no defence has been put in. *THOMPSON v. BOURKE* (No. 1) — — — C. A. [1892] P. 244

111. — *New trial, Motion for—Enlargement of time—Imposition of terms—Divorce suit—Supreme Court of Judicature Act, 1890* (53 & 54 Vict. c. 44), s. 1—*R. S. C., Order LXIV., r. 7.*

By virtue of the Supreme Court of Judicature Act, 1890, which provides that from and after Oct. 20, 1890, every motion for a new trial, in any cause or matter in the High Court which has been tried with a jury, shall be heard and determined by the C. A., the practice with regard to a new trial of a divorce cause is regulated (not by the practice under the Matrimonial Causes Acts but) by the practice of the C. A., and consequently rule 7 of Order LXIV. of R. S. C. applies, and empowers the Court to grant an enlargement of the time within which to move for a new trial of the cause, and as a condition of so doing to impose terms on the party who makes the application.

In 1892 a wife petitioned for a judicial separation on the ground of her husband's adultery. The husband by his answer denied the adultery, and also alleged that, at the time of his marriage with the petitioner, she had a husband living. At the trial in Jan., 1895, the jury found on the evidence that the husband had committed adultery, and that at the time of the marriage the first husband was dead. A decree for judicial separation was made. In Sept., 1895, the first husband (who had not been heard of since 1858) returned to England. In Oct., 1895, the second husband presented a petition for declaration of nullity of marriage. The wife pleaded the verdict and decree in the former suit as an estoppel. At the trial G. Barnes J. was satisfied of the identity of the man who had returned; but held that he could not make a decree of nullity while the verdict and decree in the first suit stood unimpeached. The second husband (with the leave of the C. A.) moved in the first suit for an enlargement of the time within which to apply for a new trial:—

*Held*, that the application ought to be granted, but only on the terms of the applicant undertaking to secure the payment to the respondent during their joint lives of an allowance for her maintenance, the amount of which was fixed by the Court. *WILKINS v. WILKINS*

C. A. [1896] P. 108

**DIVORCE (Practice)—continued.**

112. — *New trial—Notice of setting down for—Surprise—Divorce Court Rules, rr. 44, 47.*

The solicitor of the petitioner for a divorce wrote to the respondent's solicitor a letter, headed with the title of the cause, in which he said, "I have set this cause down for trial." No other notice was served:—

*Held*, that this letter was a sufficient notice, within rule 44 of the Divorce Court Rules, of the cause having been set down for trial.

The respondent's solicitor, in the belief that a more formal notice ought to be given, did not watch the cause list, and the cause came on for trial without his knowledge, and a decree for a divorce was made in the absence of the respondent. She applied for a new trial on the ground of surprise.

The Court ordered a new trial on the undertaking of the solicitor personally to pay the costs thrown away. *FLUISTER v. FLUISTER AND HUTTON* C. A. [1896] W. N. 176 (15); [1897] P. 22

113. — *Petitions—Full names and titles of parties to be stated.*

Parties should be described in petitions and proceedings properly and accurately. If this is not done, mistakes may be made and the identity of parties kept back. *BROUGHAM v. BROUGHAM*

Jeune P. [1900] W. N. 130

114. — *Rape—Dissolution of marriage—Divorce Act, 1857* (20 & 21 Vict. c. 85), s. 27.

A respondent, who had been convicted under s. 4 of the Criminal Law Amendment Act, 1885, of an attempt to have unlawful and carnal knowledge of a girl under the age of thirteen, was found to have been guilty of rape, and a decree nisi granted for the dissolution of his marriage. *COFFEY v. COFFEY* G. Barnes J. [1898] P. 169

115. — *Rehearing—Application for—Practice—Supreme Court of Judicature Act, 1890* (53 & 54 Vict. c. 44), s. 1—*Rules of Divorce Court, 1865, as amended in August, 1885, rule 62.*

An application for rehearing of a divorce cause tried by a judge without a jury must be made to a Div. Court of the Probate, Divorce, and Admiralty Div. according to rule 62 of the Divorce Rules, and not to the C. A., the Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1, applying only to causes or issues tried with a jury. *SMITH v. SMITH*

C. A. [1897] P. 293

116. — *Sequestration—Practice—Right of sequestrators—Money held by third person, not party to the action—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 52.

The right of sequestrators to attach moneys, alleged to be held by third persons for the judgment debtor, but denied by them to be so held, cannot be determined upon a motion in a suit to which the third persons are not parties, unless they appear and submit to the jurisdiction of the Court.

A co-respondent in a divorce suit not having paid the damages assessed against him by the jury, a writ of sequestration was issued against his property, in pursuance of which the sequestrators applied by a motion in the suit for an order calling upon the trustees of his marriage settlement to pay into court any moneys in their



**DIVORCE (Practice)—continued.**

hands belonging to him. The trustees disputed their liability to the co-respondent, and the jurisdiction of the Court to make the order:—

*Held*, that, as the trustees were not parties to the suit, and disputed their liability to the co-respondent, and the jurisdiction of the Court, the Court had no power to make the order on motion in the suit. **CRAIG v. CRAIG AND HAMP**

**G. Barnes J. [1896] P. 171**

**117. — Service—Substituted service of written demand for cohabitation—Restitution of conjugal rights—Rules of 1869, r. 175.**

Where the intended respondent in a suit for restitution of conjugal rights had left the country, and letters addressed to him by his wife at his last known residence and place of business respectively, and containing a written demand for cohabitation, had been returned through his solicitors, who declined to furnish her with her husband's address, the Court allowed substituted service of the demand for cohabitation required by rule 175 to be made on the husband's solicitors. *In re TUCKER* **G. Barnes J. [1897] P. 83**

**Restitution of Conjugal Rights.**

— Alimony pendente lite—Cross-examination—Registrar—Discretion.

*See* **DIVORCE—Alimony. 3.**

**118. — Conduct of petitioner—"Desertion without reasonable cause"—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), s. 5.**

By the Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), s. 5, "If the respondent shall fail to comply with a decree of the Court for restitution of conjugal rights, such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation may be forthwith instituted, and a sentence of judicial separation may be pronounced, although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights."

In a suit for restitution of conjugal rights brought by a second wife, it appeared that differences had arisen between her and her husband, due to her inability to agree with her stepchildren, his daughters by the former marriage, and that she had in consequence left her home, and her husband had refused to receive her back:—

*Held*, on consideration of the evidence, that the wife had done nothing to disentitle her to maintain a suit for desertion without reasonable cause, within the meaning of s. 5 of the Matrimonial Causes Act, 1884, as interpreted by the *C. A.* in *Russell v. Russell*, [1895] P. 315; affirmed by *H. L. (D.)* [1897] A. C. 395, and that she was therefore entitled to a decree for restitution of conjugal rights. *OLDROYD v. OLDROYD* **G. Barnes J. [1896] P. 175**

**119. — Practice—Decree—Service out of jurisdiction.**

The fact that a decree for restitution of conjugal rights has been served upon a respondent when temporarily resident out of the jurisdiction does not vitiate its effect, if it also appear that the respondent was, for all practical purposes, as

**DIVORCE (Restitution of Conjugal Rights)—continued.**

capable of complying with the decree, within the time limited therein, as if he had been served in this country. **DICKS v. DICKS**

**G. Barnes J. [1899] P. 275**

— Substituted service of written demand for cohabitation.

*See* **DIVORCE—Practice. 117.**

— Varying settlement.

*See* Cases under **DIVORCE—Settlements.**

**Separation.**

*See* Cases under **HUSBAND AND WIFE—Separation.**

**Settlements.**

(Variation of Settlements).

**120. — Application by executor of deceased petitioner—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 3—Restraint on anticipation—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 39.**

*Held*, by *C. A.*, affirming the decision of the President, that the power of altering marriage settlements given to the Court by s. 5 of the Matrimonial Causes Act, 1859, and s. 3 of the Matrimonial Causes Act, 1878, is limited to such alterations as are for the personal benefit of the husband, wife or children of the marriage. Where, therefore, a petitioner dies after obtaining a decree absolute for dissolution of the marriage and after presenting a petition for variation of the marriage settlement, and there are no children of the marriage, the petition for variation abates by the death of the petitioner, and the proceedings cannot be continued by his personal representatives for the benefit of his estate.

On a decree nisi for divorce being made on the petition of the husband, terms were arranged that the petitioner should secure the respondent 120*l.* a year for life, and that she should consent to their marriage settlement being annulled:—

*Held*, by *C. A.*, that, as the respondent was by the marriage settlement restrained from anticipation, this agreement was not binding on her, and that the objection could not be remedied under the powers given to the Court by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 39. *THOMSON v. THOMSON*

**C. A. [1896] P. 263.**

**121. — Colonial decree of nullity (20 & 21 Vict. c. 85, s. 45; 22 & 23 Vict. c. 61), s. 5.**

There is no jurisdiction to entertain a petition to vary settlements based on a decree of nullity of marriage obtained in a Colonial Court. *MOORE (FALSELY CALLED BULL) v. BULL*

**Jeune J. [1891] P. 279**

**122. — Extinction of husband's interest (22 & 23 Vict. c. 61), s. 5.**

A marriage was dissolved on the wife's petition. There had been a settlement of property, practically the whole of which came from the wife. The settlement contained a provision that after the husband's death, if the wife married again she could appoint half the income to the second husband for life, and appoint half the

**DIVORCE (Settlements)—continued.**

capital among the children of the second marriage:—

*Held*, that the proper settlement to be made should extinguish the husband's beneficial interest and powers of consent, &c., as if he were dead, but should not accelerate the wife's power to re-settle, which should only be exercised on the death of the first husband. *POLLARD v. POLLARD* - - - *Jeune P.* [1894] P. 172

Referred to by *G. Barnes J. Hartopp v. Hartopp*, [1899] P. 65, 71.

**123. — Inquiry before final decree—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45—Matrimonial Causes Act, 1860 (23 & 24 Vict. c. 14), s. 6.**

The Court has jurisdiction before pronouncing a final decree for the dissolution of a marriage to direct an inquiry as to the wife's property, so that it may be in a position to order a settlement as soon as the final decree is pronounced. Otherwise, if the property were subject during coverture to a restraint on anticipation, the wife, by marrying again immediately after the decree, might put it out of the power of the Court to order the settlement. On directing such an inquiry the Court will order the husband to give security for the costs of the inquiry. *MIDWINTER v. MIDWINTER* (No. 1) - - *C. A.* [1892] P. 28

**124. — Interest of children — Variation of settlements — Wife's power of appointment to Husband—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.**

By the Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5, "The Court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of their respective parents as to the Court shall seem fit."

The principle of the decisions on the section is that, where the breaking up of the family life has been caused by the fault of the respondent, the Court ought to place the petitioner and the children in a position as nearly as circumstances will permit the same as if the family life had not been broken up.

Where, therefore, a wife, whose marriage had been dissolved on the ground of her adultery, had under her marriage settlement "power of appointment in her husband's favour, if he should survive her, over a fund, which, apart from the exercise of the power, would upon her death have vested in the children of the marriage, and this was the husband's only interest in his wife's property under the settlement, the Court held that, as it was reasonable to suppose that, if the family life had continued, she would have exercised the power in his favour, the income should, after her death, be paid to him during his lifetime.

*Noel v. Noel*, (1885) 10 P. D. 179, *Crisp v. Crisp*, (1872) L. R. 2 P. & M. 426, *Forsyth v. Forsyth*, [1891] P. 363, *Pollard v. Pollard*, [1894]

**DIVORCE (Settlements)—continued.**

P. 172, and *Hipwell v. Hipwell*, [1892] P. 147, considered. *HARTOPP v. HARTOPP*

*G. Barnes J.* [1899] P. 65

**125. — Intervener.**

Where an intervener's name has been struck out of the title of the petition, the Court will not reinsert it in proceedings for variation of settlements. *CONNEMARA v. CONNEMARA*

*Butt P.* [1892] P. 102

**126. — Mistake—Variation of settlement—Relief in equity—Jurisdiction—Terms—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5—Married woman—Disposition of real and personal estate—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 1, 77—Malins' Act (20 & 21 Vict. c. 57).**

By a post-nuptial settlement executed in 1877, and acknowledged by the wife under the Fines and Recoveries Act, property of the wife was settled upon trusts for the benefit of the husband and wife and the issue of the marriage; and the husband and wife covenanted for the settlement of the wife's after-acquired property. In Nov. 1893, the marriage was dissolved on the ground of the adultery of the wife. In Dec. 1893, the husband presented a petition for variation of the settlement, setting out the funds subject to the trusts thereof; and the wife by her answer admitted the same to be correct. On April 24, 1894, a consent order was made on the petition varying the settlement by directing payment of certain annual sums to the husband and the only child of the marriage. The wife, having married the co-respondent, brought an action for a declaration that certain property which upon the petition for variation had been assumed by all parties to be bound by the settlement was not so bound. The Court being of opinion that the property in question was not included in the settlement, and that the terms of the order for variation had been agreed to by the parties under a common mistake, granted relief to the plaintiff, but upon the terms that any application to the Divorce Court, under s. 45 of the Act 20 & 21 Vict. c. 85, for a further settlement upon the husband and child of the marriage, should be dealt with in all respects as if it had been made before April 24, 1894, and was being considered by the Court on that day.

Real estate which devolved upon the wife upon the intestacy of her father, who died in 1893, was held not to be at the date of the settlement an "estate" in land within the meaning of s. 77 of the Fines and Recoveries Act; and interests in personal estate, to which she became entitled under the will of a testator who was living at the date of the settlement, were held not to be "future interests" of which she could dispose under the provisions of Malins' Act.

The "future interests" contemplated by the Act are interests to which, at the date of the disposing deed, the married woman has some existing title at law or in equity. *ALLCARD v. WALKER*

*Stirling J.* [1896] 2 Ch. 369

**127. — Parties domiciled in Scotland at the time of the marriage (22 & 23 Vict. c. 61), s. 25.**

The Court has power to entertain a petition

**DIVORCE (Settlements)—continued.**

for variation of settlements although the petitioner and respondent were domiciled in S. at the time of the marriage, and although the settlements were made in the Scotch form. *FORSYTH v. FORSYTH* - - - **Jeune P. [1891] 363**

Referred to by G. Barnes J. *Hartopp v. Hartopp*, [1899] P. 65, 71.

— Petition for variation of marriage settlement — Marriage settlements — “Property settled” — Nullity — Impotence.  
See **DIVORCE—Nullity**. 95.

**128. — Reconveyance—Failure of limitations in settlement — Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.**

M. obtained a divorce from his wife. The limitations in the marriage settlement after a life interest to M. and before remainder to M. all failed with the exception of a remainder to M.'s children by any subsequent marriage:—

*Held*, that an order could and should be made under s. 5 of the Matrimonial Causes Act, 1859, for the reconveyance of the property to M. absolutely. *MEREDYTH v. MEREDYTH*

**Jeune P. [1895] P. 92**

**129. — Varying settlement — Restitution of Conjugal Rights.**

Considerations for the Court as to the variation of settlements in favour of the husband where the wife refuses compliance with the decree. *SWIFT v. SWIFT*

**Hannen P. [1891] P. 129**

*This case was explained by C. A. MICHELL v. MICHELL (No. 1), [1891] P. 208. See next Case.*

**130. — Varying settlement — Restraint on anticipation.**

*Per C. A.*: A restraint on anticipation prevents the Court from ordering a settlement for the benefit of the husband of the property of a wife who refuses to comply with a decree for restitution of conjugal rights. *MICHELL v. MICHELL (No. 1)* - - - **C. A. [1891] P. 208;**

**revers. Jeune J. [1891] P. 166**

The husband's petition for a settlement under s. 3 of the Matrimonial Causes Act, 1884, was accordingly dismissed, but without costs. *MICHELL v. MICHELL (No. 2)*

**Jeune J. [1891] P. 305**

**131. — Wife's costs.**

Where the husband was unable to pay the costs of the wife's petition:—

*Held*, that the settlement made on the marriage might be varied in order to raise the costs of the suit and the petition for variation, although the husband had brought nothing into the settlement. *HIPWELL v. HIPWELL*

**Butt P. [1892] P. 147**

Referred to by G. Barnes J. *Hartopp v. Hartopp*, [1899] P. 65, 72.

**132. Wife's property on husband and children — Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 35, 45.**

On a petition for the variation of settlement of a guilty wife, the Court settled a fixed amount of the wife's property on the husband, independently of any fluctuation in the value of property, and refused to insert a *dum solus* clause or to

**DIVORCE (Settlements)—continued.**

limit the children's allowance to sixteen years of age. *MIDWINTER v. MIDWINTER (No. 2)*

**Jeune P. [1893] P. 93**

— Damages recovered—Voluntary settlement.

See **BANKRUPTCY — Voluntary Settlement**. 263.

**Summary Jurisdiction.**

See Cases under **HUSBAND AND WIFE — Summary Jurisdiction**.

**Title of Honour.**

— Former wife marrying a commoner—Continued use of title derived from former husband—Injunction.

See **HUSBAND AND WIFE — Title of Honour**. 97.

**DOCK.**

**DOCK OWNERS, LIABILITY OF.] See Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32).**

**1. — Control of dock-master — Obstruction—Requisition — Penalty — Shipping — West India Docks Act, 1831 (1 & 2 Will. 4, c. lii.), s. 101.**

By s. 101 of the West India Docks Act, 1831, a penalty is imposed on every master or person in charge of any ship, lighter, &c., who places or suffers it to remain in the river Thames within 200 yards of any of the dock entrances, unless for the purpose of coming into or going out of the docks; and every master, &c., of any ship, barge, &c., so placed within such distance who does not immediately remove it from within such distance “on being thereunto required by the dock-master or dock-masters” is made liable to a fine for every hour that “such obstruction shall remain after such requisition made.”

Notices requiring the removal of vessels from within the prohibited distance were signed beforehand in blank by the dock-master, and, upon a vessel mooring within that distance, the date and the name of the vessel were filled up by the lockman, who, if the person in charge refused to move, served him with the notice without consulting the dock-master as to the removal of that particular vessel:—

*Held*, that the notice, although only signed in blank by the dock-master and filled in by his subordinate, was a good requisition by the dock-master:

*Held*, further, that in order to constitute an offence under the section there need not be an actual or imminent obstruction to any particular ship or to the traffic generally, a vessel moored within the prohibited distance constituting (if not removed upon notice) an obstruction within the meaning of the section. *DUCKHAM v. GIBBS*

**Div. Ct. [1900] 1 Q. B. 394**

**2. — Dock company—Statutory powers—By-laws.**

Regulations issued by a dock co. under its special Act and the Harbour Clauses Act, 1847, but not confirmed as by-laws in manner prescribed by s. 85 of the latter Act:—

*Held*, not to be binding on a shipping co. using the dock, save by agreement. A shipping co. is not entitled save by agreement to have berths

**DOCK**—*continued*.

appropriated for ships or other special accommodation. **LONDON ASSOCIATION OF SHIPOWNERS AND BROKERS v. LONDON AND INDIA DOCKS JOINT COMMITTEE** — — **C. A. [1892] 3 Ch. 242**

. Referred to by **H. L. (E.) Barraclough v. Brown**, [1897] A. C. 615, 624.

— Dock expenses — Apportionment — Ship surveyed while in dock for Lloyd's classification.

See **INSURANCE—Marine**. 47.

— Rating of dock.

See **RATES—Rateability**. 22—24.

— Workmen's Compensation Act.

See **MASTER AND SERVANT—Compensation**. 11, 12, 48, 49, 51, 52.

**DOCUMENTS** — Ancient document tendered in support of ancient possession.

See **EVIDENCE**. 1.

— Custody—Order for removal of parish documents—Justices—Jurisdiction.

See **PARISH COUNCIL**. 1.

— Custody and disposal—Power of Ordinary.

See **ECCLIASTICAL LAW**. 11.

— Discovery.

See **Cases under DISCOVERY**.

— Not in possession of vendor—Expense of obtaining.

See **VENDOR AND PURCHASER**. 100.

— Production and inspection of documents.

See **Cases under DISCOVERY—Documents**.

— In solicitor's possession before action—Third parties—Right to production.

See **SOLICITOR**. 97.

— Title-deeds—Right to possession—Tenant for life.

See **SETTLED LAND**. 97.

**DOGS**—*Importation of Dogs Order of 1897*. **Lond. Gaz. May 7, 1897, p. 2540.**

*Rabies Order and Muzzling Order*. **Lond. Gaz. March 23, 1897, pp. 1678, 1682.**

*Importation of Dogs (Amendment) Order of June 14, 1898*. **Lond. Gaz. June 14, 1898, p. 3636.**

*Dogs (Landing from Ireland) Order, dated July 26, 1899*. **Lond. Gaz. July 28, 1899, p. 4651.**

— Dog licence.

See **REVENUE—Dog Licence**. 12.

— Mischievous animal—Evidence of scienter—Ferocious dog—Negligence.

See **DAMAGES**. 6.

**DOLUS MALUS**—Priority of unregistered transfer—Registered transfer set aside—Law of Natal.

See **NATAL**. 2.

“**DOMESTIC ANIMALS**”—Cruelty.

See **Cases under CRIMINAL LAW—Cruelty to Animals**.

“**DOMESTIC PURPOSES**”—Used exclusively for Explosions.

See **BOILER**. 2.

**DOMICIL**—*Children of British-born subjects resident in France*.

Question as to domicile of children born in

**DOMICIL**—*continued*.

France of British-born subjects resident in France. **GOULDER v. GOULDER**

**Lopes L.J. [1892] P. 240**

2. — *Definition.*

(A) The domicile of a person is that place or country in which his habitation is fixed without any present intention of removing therefrom.

*In re CRAIGNISH. CRAIGNISH v. HEWITT*

**C. A. [1892] 3 Ch. 180**

(B) The permanent domicile of the spouses within a territory is necessary to give the territorial court jurisdiction so to divorce a vinculo that its decree to that effect shall have extra-territorial authority in international law. The so-called “matrimonial domicile” said to be created by bona fide residence of the spouses within a territory of a less degree of permanence than is required to fix their true domicile cannot be recognized as creating such jurisdiction. Decisions of English and Scottish Courts as to matrimonial domicile considered. **LE MESURIER v. LE MESURIER**

**P. C. [1895] A. C. 517**

Commented on by **G. Barnes J. Armytage v. Armytage**, [1898] P. 178, 185.

3. *Domicil of origin.*

Where the domicile of birth is changed during infancy by a change of the domicile of the father, the changed domicile is not the domicile of origin of the infant. *In re CRAIGNISH. CRAIGNISH v. HEWITT*

**C. A. [1892] 3 Ch. 180**

4. — *Fatherless infant—Re-marriage of mother—Change of mother's domicile.*

The mother of fatherless infants has a power of changing their domicile vested in her for their welfare, and she may abstain from exercising it when she changes her own domicile. **B.**, a widow with children all domiciled in **S.**, re-married **N.** (a domiciled Scotchman). Subsequently **N.** went to reside in **E.**, and **B.** and all her children except **C.** followed him and acquired an English domicile. **C.** continued to live with an aunt in **S.** till her death in her twenty-second year:—

*Held*, that **B.** had abstained from changing **C.**'s domicile when she changed her own, and that **C.** retained her Scotch domicile. *In re BEAUMONT*

**Stirling J. [1893] 3 Ch. 490**

— Foreign bankruptcy—English domicile—Forfeiture.

See **WILL—Forfeiture**. 98.

5. — *Foreign divorce—Domicil.*

An American married an Englishman domiciled in **E.** Husband and wife lived in **E.** for a short time, when the wife went to America on a visit. The wife never returned. Subsequently she obtained a divorce in Pennsylvania on the ground of the husband's cruelty, and re-married:—

*Held*, that the Courts of Pennsylvania had no jurisdiction to divorce a British subject domiciled in this country who had never submitted himself to its jurisdiction. **GREEN v. GREEN**

**Barnes J. [1893] P. 89**

— Foreign domicile—Will made in execution of power—Limited or general grant.

See **PROBATE**. 55.

**DOMICIL**—*continued.*

- Divorce bill—Domiciled Irishman—Jurisdiction of the English Court.  
*See* DIVORCE. 107.
- Lunacy—Foreign domicile—Foreign Court—Declaration of lunacy—Money in English bank—Payment to tuteur.  
*See* LUNACY. 37.
- Marriage—Change of domicile—Immovable goods—French law—Lex rei sitæ—Community of goods—Statute of Frauds.  
*See* CONFLICT OF LAWS. 9.
- Marriage, Change of domicile by—Marriage with foreigner—Settlement—Infant—Ratification—Repudiation.  
*See* CONFLICT OF LAWS. 6.
- Marriage—Matrimonial domicile—Movable goods—French law.  
*See* CONFLICT OF LAWS. 8.
- Payment out of court—Infants domiciled in France—French law—Right of father to receive children's money.  
*See* PRACTICE—Payment out of Court. 141.
- Power of appointment—Domiciled foreigner—Unattested will—Validity.  
*See* CONFLICT OF LAWS. 17.
- Queensland—Laws of—Succession and Probate Duties Act, 1892—Succession defined.  
*See* QUEENSLAND. 6.
- Residence within jurisdiction at commencement of suit—Cruelty committed outside jurisdiction.  
*See* DIVORCE. 85.
- Scottish—Divorce.  
*See* SCOTTISH LAW—Divorce. 12.
- Will—Donee of power a domiciled Frenchwoman—Holograph will of donee in French language unattested.  
*See* POWERS. 18.
- Will—French subjects—English marriage—Change of domicile—Intention—Revocation of ante-nuptial will.  
*See* CONFLICT OF LAWS. 16.

**DONATIO MORTIS CAUSÂ**—*Bonds deposited in safe.*

The delivery of the key of a wardrobe in which was kept the key of a safe accompanied by the words "take the bonds, all is yours," held to pass the bonds in the safe. *MUSTAPHA v. WEDLAKE* - Mathew J. [1891] W. N. 201

NOTE.—In a will case the gift of a desk "and its contents," among which was the key of a tin box containing securities, was held to give no title to the contents of the box. *In re ROBSON. ROBSON v. HAMILTON* Chitty J. [1891] 2 Ch. 559

**2. — Essentials to gift—Delivery antecedent to gift.**

The rule that delivery of a chattel is essential in order to constitute a valid donatio mortis causâ is satisfied by an antecedent delivery of the chattel alio intuitu to the donee. *CAIN v. MOON* Div. Ct. [1896] 2 Q. B. 283

- Inventory duty—Delivery.  
*See* REVENUE—Inventory Duty. 116.

**DONATIO MORTIS CAUSÂ**—*continued.***3. — Nuncupative will—Validity.**

An old lady, shortly before her death and in anticipation thereof, expressed a desire to give all her property to the deft. upon certain conditions, and directed him to record her wishes in writing, which he did. The document purported to give to the defendant all the property she might have at her death, subject to his settling up her affairs, seeing to her burial, and making certain specified payments to named charities. She then delivered to the deft. a deposit note and share certificate, saying, "Take charge of them. If I get better you will bring them back; if not, you will know what to do with them." She subsequently told him where to find some gold and notes, but gave him no further directions as to them:—

*Held*, that, looking at the transaction as a whole, the intention of the deceased was that the specific articles should be dealt with simply as part of the property which she meant to dispose of as from her death, and over which she meant to reserve dominion during her life; that consequently there was no valid donatio mortis causâ. *In re DASH. SOLICITOR TO THE TREASURY v. LEWIS* Stirling J. [1900] W. N. 186; [1900] 2 Ch. 812

**DORMANT ACTION**—Sequestration.

*See* SEQUESTRATION. 4.

**DORMANT PARTNER**—Grantor—Gentleman of no occupation.

*See* BILL OF SALE. 5.

**DOUBLE PORTION**—Legacy.

*See* WILL—Satisfaction. 190.

**DOWER**—*Abatement—Widow's charge—Intestates' Estates Act, 1820 (53 & 54 Vict. c. 29), ss. 2, 4.*

Dower out of real estate of an intestate is subject to abatement in respect of the widow's charge of 500*l.* imposed on the intestate's estate by the Intestates' Estates Act, 1890. *In re CHARRIERE. DURET v. CHARRIERE*

North J. [1896] 1 Ch. 912

**2. — Annuity in satisfaction of dower—Priority—Dower Act, 1833 (3 & 4 Will. 3, c. 105), s. 12.**

Where a testator by his will disposes of all his real estate, out of which, if he died intestate, his widow would be entitled to dower, and gives a legacy to his wife which he declares to be in satisfaction of her dower, and also other legacies, and dies seised of real estate, his widow is not entitled to priority under s. 12 of the Dower Act, 1833, over the other legatees in the event of the personal estate being insufficient to pay all the legatees in full. *In re GREENWOOD. GREENWOOD v. GREENWOOD* Chitty J. [1892] 2 Ch. 295

**3. — Right to—Cesser of life estate—Estate pur autre vie—Special occupant.**

Where the husband's equitable estate in possession was severed from his legal estate in remainder by the interposition of a succession of estates tail which might possibly have arisen:—

*Held*, that his widow was not entitled to dower. *In re MICHELL. MOORE v. MOORE* Stirling J. [1892] 2 Ch. 87

**DRAIN.**

See **LONDON—Sewers.**  
**SEWERS.**

— Repair of—Substituting new drain—Glasgow Police Acts.  
See **SCOTTISH LAW—Sewers.** 39.

**DRAMATIC WORK**—Copyright in.

See **COPYRIGHT—Dramatic.**

**DRAWINGS**—Applicable for pattern—Registration of design.

See **DESIGN.** 6.

— Book containing—Registration—"Proprietor."  
See **COPYRIGHT.** 19.

**DREDGER**—Loss of use of—Collision—Remoteness of damage.

See **SHIPPING—Collision.** 61.

**DRESS-PATTERN.**

See **COPYRIGHT—Book.** 4.

**DRIVER**—Negligence—Workmen's Compensation Act.

See **MASTER AND SERVANT—Master's Liability.** 78.

**DRUGS**—Sale of food and.

See Cases under **ADULTERATION.**

**DRUNKARD.**

*Inebriates Act, 1898 (61 & 62 Vict. c. 60), provides for the treatment of habitual inebriates.*

*Inebriates Act, 1899 (62 & 63 Vict. c. 35), amends the Inebriates Act, 1898 (61 & 62 Vict. c. 60), as to (1.) Expenses of prosecution; (2.) Power to deal summarily with offences.*

*Control of guardians over orphans and children of persons unfit to have control of them. See Poor Law Act, 1899 (62 & 63 Vict. c. 37), s. 1, sub-s. 1 (iii.).*

— Clergyman.

See **ECCLESIASTICAL LAW—Offences by Clergymen.** 48, 59.

**DRUNKARD**—continued.

— Imputation of.

See **DEFAMATION—Slander.** 35.

— Incapacity resulting from drunkenness—Wilful refusal or neglect of person to maintain himself.

See **VAGRANCY.** 2.

— Offence under Licensing Acts.

See **LICENSING ACTS—Offences.**

**DUE DILIGENCE**—Exceptions.

See **SHIPPING.** 133.

**DUM CASTA CLAUSE.**

See **DIVORCE—Alimony.** 5.

— Covenant to pay annuity—Covenant not to molest.

See **HUSBAND AND WIFE—Separation.** 68—71.

**DUPLICATE ENTRIES**—Notice of selection—Appeal from revising barrister.

See **PARLIAMENT.** 119.

**DURATION**—Annuity.

See **ANNUITY.** 7.

**DURESS**—Nullity of marriage.

See **DIVORCE—Nullity.** 93.

**DUTCH LAW**—Collision—Compulsory pilotage—Liability of owner.

See **SHIPPING.** 189.

**DUTY**—Public revenue.

See Cases under **REVENUE.**

"**DWELLING-HOUSE IN ENGLAND.**"

See **BANKRUPTCY—Petition.** 142.

**DWELLING-HOUSES.**

See **SMALL DWELLINGS ACQUISITION.**

— Public revenue.

See Cases under **REVENUE—House Duty.**

## E.

**EARNINGS**—Appointment of receiver of—Equitable execution.

See RECEIVER. 4.

— Investments—Earnings since liquidation—Capital or income.

See COMPANY—WINDING-UP—Assets. 4.

— Profits—Earnings before liquidation—Priority.

See COMPANY—WINDING-UP—Assets. 5.

— Undischarged bankrupt.

See Cases under BANKRUPTCY—Undischarged Bankrupt.

— Workmen's Compensation Act.

See MASTER AND SERVANT—Compensation. 13—24.

**EASEMENT**—Abandonment—Evidence to shew.

Evidence to shew abandonment of an easement considered. *JAMES v. STEVENSON*

P. C. [1893] A. C. 162

— Air.

See Cases under LIGHT AND AIR.

— Artificial watercourse—Sluice-gate—Obligation of owner to repair.

See WATER. 37.

## 2. — County Court jurisdiction.

The deft. claimed as an easement the right, as one of the public, to ground his barge on the bed of a navigable river:—

*Held*, that the county court judge had no jurisdiction to try the case, the jurisdiction to try cases involving the title to easements given by the County Courts Act, 1883, s. 60, only applying to easements in respect of which there exist dominant and servient tenements. *HAWKINS v. RUTTER* - Div. Ct. [1892] 1 Q. B. 668

Approved by C. A. *Howorth v. Sutcliffe*, [1895] 2 Q. B. 358, 362, 364.

— Grant of new easement—"Conveyance of property"—Scale fee.

See SOLICITOR. Costs. 39.

— Issue of fact as to variation of easement claimed—Question of fact not submitted to jury.

See JAMAICA.

3. — *Lands Clauses Act*—Taking of easement under—"Land."

An easement taken under the Lands Clauses Act, 1845, is taken as "land," but the procedure for compensation is different from that when the soil is taken, and the remedy is under s. 68 of the Act. *LONDON SCHOOL BOARD v. SMITH*

*Kekewich J.* [1895] W. N. 37

— Light and air.

See Cases under LIGHT AND AIR.

4. — *Opening locks on river*—Dominant and servient tenement—Prescription—Presumption of legal origin—Lost grant—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 2.

An easement, exercised for the benefit of the

**EASEMENT**—continued.

dominant estate, is not invalid merely because from the very nature of the right its exercise by the dominant estate confers some benefit upon other tenements.

The corporation of Godmanchester as owners of certain lands had for more than 200 years opened as of right the gates of certain sluices or locks belonging to the appellant upon the River Ouse in time of flood or likelihood of flood in order to prevent damage to those lands:—

*Held*, that the easement was good and was none the worse because the exercise of it also benefited lands belonging to other persons; and that the corporation could maintain their right either by s. 2 of the Prescription Act, 1832, or by the fiction of a lost grant.

Decision of C. A., [1896] 1 Ch. 214, affirmed. *SIMPSON v. GODMANCHESTER CORPORATION*

H. L. (E.) [1897] A. C. 693

— Support—Working minerals.

See MINES—Working Generally. 24—31.

5. — *Tramway agreement*—Personal or real right—Removal of tramway.

Where a servitude, such as a right of way for a tramway, is claimed as having been granted by an instrument in writing subscribed by the proprietor of the land burdened, the fact that the dominant tenement has not been acquired at the date of the instrument cannot, after it has been actually acquired, prevent the servitude from becoming a legal accessory to the dominant tenement, provided the servitude was so used as to give reasonable notice of the burden to any person in whom the property of the land might subsequently become vested. And although the instrument granting the privilege was in terms which might appropriately be employed in the constitution of a personal obligation only, that is not conclusive against the constitution of a proper burden upon the land, if it be matter of reasonable inference from the terms of the document, or the circumstances of the case, that the constitution of a real servitude was what the parties contemplated.

An agreement between the proprietor of the estate of W., the feuars of part of that estate, and a ry. co., provided for the use and construction by the ry. co. of a tramway through the lands of W., including the lands of the feuars:—

*Held* (Lord Morris dissenting), reversing Ct. of Sess., (1897) 24 R. 1148, that the privilege of working the tramway as long as it continued was intended to bind, and did bind, all singular successors of the feuars in their lands. *NORTH BRITISH RY. CO. v. PARK YARD CO.* -

H. L. (Sc.) [1898] A. C. 643

6. — *Tunnel*—Occupation not exclusive, but paramount—Rateability of.

Land may be occupied in the enjoyment of

**EASEMENT—continued.**

an easement so as to make the occupier liable to poor rate, and that although the owner of the soil may have reserved rights of possession subordinate to the paramount rights he has granted. The test of rateability is not whether the rights granted are corporeal or incorporeal, but whether there is occupation, which is a question of fact. *HOLWELL UNION AND HALKYN PARISH v. HALKYN DISTRICT MINES DRAINAGE CO.*

H. L. (E.) [1895] A. C. 117

7. — *Tunnel under highway—Exclusive occupation—Real Property Limitation Act, 1833* (3 & 4 Will. 4, c. 27), s. 2—*Statute of Limitations, 1874* (37 & 38 Vict. c. 57), s. 1.

A tunnel under a highway held to be an hereditament and not an easement, and therefore as defts. had been in exclusive possession for more than twelve though less than twenty years they had acquired a statutory title as against the owner of the sub-soil of the highway. *BEVAN v. LONDON PORTLAND CEMENT CO.*

Romer J. [1892] W. N. 151

8. — *Water—Implied grant of supply of—Equitable mortgagor.*

A. was the owner of two freehold and adjoining properties, Broadhaven House and Swanswell. In and prior to June, 1897, Broadhaven House was supplied with water from a well on Swanswell through a line of pipes. In Jan., 1895, A. created an equitable mortgage in favour of a bank by a deposit of the deeds of Swanswell with an agreement to execute a legal mortgage. In April, 1895, A. conveyed Broadhaven House for value to the plt., the conveyance being "with the appurtenances." In July, 1895, A. executed a legal mortgage of Swanswell to the bank. In Sept., 1897, the bank, in exercise of their power of sale, sold and conveyed Swanswell to the deft., who at the time was aware of the existence of the line of pipes.

The deft. had given the plt. notice to remove the pipes; the plt. brought this action for an injunction to restrain the deft. from disturbing them:—

*Held*, that the principle of *Beddington v. Atlee*, (1887) 35 Ch. D. 317, applied, and that, as the equitable mortgage was prior to the conveyance of Broadhaven House to the plt., there was no implied grant of the supply of water from Swanswell, and, consequently, that the action could not be maintained. *DAVIES v. THOMAS*

Byrne J. [1899] W. N. 244

— *Way—Right of.*

See Cases under WAY.

"**EBOLINE**"—Registration.

See TRADE-MARK. 42.

"**ECCLESIASTICAL CHARITY**"—Churchwarden trustees.

See CHARITY. 2.

**ECCLESIASTICAL COMMISSION.** *Circulars issued by the Comms. to their metropolitan lessees with reference to the transfer to the lessees of their reversions.* Parl. Paper, 1893 (99). Price, 3d.

**ECCLESIASTICAL COMMISSIONERS.**

See ECCLESIASTICAL LAW.

**ECCLESIASTICAL LAW.**

*The Clergy Discipline Act, 1892* (55 & 56 Vict. c. 32), makes provision as to offences by "clergy-men."

"*The Clergy Discipline Rules, 1892*," regulating procedure under 55 & 56 Vict. c. 32. St. R. & O. 1892, p. 258.

*Additional Rule dated March, 1893, amending r. 22 of the Clergy Discipline Rules, 1892.* St. R. & O. 1893, p. 73.

*Scale of Fees and Costs dated March, 25, 1893, under the Clergy Discipline Act, 1892.* St. R. & O. 1893, p. 804.

*Order of the Privy Council dated Dec. 10, 1895, approving table of Ecclesiastical Fees and Payments.* St. R. & O. [1895] No. 580.

*Glebe Rules and Fees.* See ECCLESIASTICAL LAW—Glebe.

**LOANS BY QUEEN ANNE'S BOUNTY.]** *Incumbents of Benefices Loans Extension Act, 1896* (59 & 60 Vict. c. 13), extends the time for the repayment of Loans granted by Queen Anne's Bounty to Incumbents.

*Benefices Act, 1898* (61 & 62 Vict. c. 48), amends the law relating to the patronage of benefices, and to their avoidance on sequestration, and to amend the *Pluralities Acts, 1835 and 1885.*

*Union of Benefices Act, 1898* (61 & 62 Vict. c. 23), amends the *Union of Benefices Act, 1860.*

**CLERGY DISCIPLINE ACT, 1892.]** *Draft rule dated April 29, 1898, in substitution for rule 34 of the rules under the above Act.* Lond. Gaz. May 3, 1898, p. 2755.

**SUFFRAGAN BISHOP.]** *Suffragan Bishops Act, 1898* (61 & 62 Vict. c. 11), explains the Act of 26 Hen. 8, c. 14.

*Benefices Act, 1898* (61 & 62 Vict. c. 48)—*Benefice Rules, 1898, which came into operation on Jan. 1, 1899.* W. N. 1899 (Jan. 7), p. 1. See Current Index, 1899, p. lxxix.

*Benefices Rules, 1899* (dated March 15, 1899). W. N. 1899 (March 18), p. 79; corrections, W. N. 1899 (March 25), p. 91. See Current Index, 1899, p. lxxiii.

*Notice under the Public Offices Fees Act, 1879.* W. N. 1899 (Aug. 19), p. 260. See Current Index, 1899, p. lxxxvii.

**RATES.]** *Exemption of owner of tithe rent-charge attached to a benefice from one-half of rates to which Act applies.* See *Tithe Rentcharge (Rates) Act, 1899* (62 & 63 Vict. c. 17).

*Church affairs and charities—Provisions as to.* See London Government Act, 1899 (62 & 63 Vict. c. 14), s. 18.

Generally, col. 732.

Advowson, col. 733.

Church, col. 734.

Church Rates, col. 735.

Churchwardens, col. 736.

Custody of Records, &c., col. 738.

Faculty, col. 738.

Glebe, col. 751.

Income Tax. See REVENUE—Income Tax.

Offences by Clergymen, col. 752.

Parish Clerk, col. 754.



**ECCELESIASTICAL LAW—continued.***Parsonage House, col. 754.**Pews, col. 754.**Practice, col. 756.**Repairs, col. 756.**Ritual, col. 756.**Sale of Property, col. 758.**Sequestration, col. 758.**Simony, col. 760.***Generally.**

— Augmentation of benefice—Charge upon land.  
*See RENT-CHARGE.*

— Bishop—Discretion under Public Worship Act.  
*See ECCELESIASTICAL LAW—Ritual. 62.*

— Burial.  
*See Cases under BURIAL.*

— “Ecclesiastical charity”—Parish council—Appointment of trustees—Churchwarden trustees.  
*See CHARITY. 2.*

— Income tax—Assembly hall used for church purposes.  
*See REVENUE—Income Tax. 77.*

— Income tax—Chaplain’s salary—Charitable institution.  
*See REVENUE—Income Tax. 75.*

— Income tax—Church manse.  
*See REVENUE—Income Tax. 78, 79.*

— Incumbent’s fees.  
*See BURIAL. 1.*

— Non-ecclesiastical charity—Churchwarden trustees.  
*See CHARITY. 2.*

— Parish—Creation—Civil and canonical jurisdiction—Laws of Quebec.  
*See CANADA. 57.*

— Registration of voters—Canons residentiary.  
*See PARLIAMENT—Franchise. 41, 42.*

— Registration of voters—Lay brother—Service franchise.  
*See PARLIAMENT—Franchise. 126.*

— Registration of voters—Religious community.  
*See PARLIAMENT—Franchise. 131—133.*

— Scottish law—Church.  
*See SCOTTISH LAW—Church.*

— Tithe rent-charge—Liability to repair chancel—Deductions.  
*See RATES—Rateability. 56.*

— Vicar—Lands allotted to vicar “and his successors”—Application of capital money.  
*See SETTLED LAND. 126.*

**Advowson.**

1. — Description—“Real estate in the county of L.”—Surrounding circumstances—Will—Intention.

An advowson in gross, though not aptly described as a hereditament or real estate “situate” or “in” a particular county or place, may pass under a devise of “all other my real estate in the county of L.” where the surrounding circumstances or the presumed intention of the testator admit of such a construction.

**ECCELESIASTICAL LAW (Advowson)—contd.**

*Crompton v. Jarratt, (1885) 30 Ch. D. 298, examined and distinguished.*

A testator gave one of his sons the option of acquiring a family estate, “and all other my real estate in the county of L.” at a certain price, as part of his share under the will, and, in the event of his exercising such option, devised to him the said estates absolutely. The testator owned two advowsons, both situate in the county of Lincoln, and close to the estate which he had purchased at the time of buying the said estate. The son having exercised his option to take the estate at the price named by the testator, the question was now raised whether the advowsons, being in gross, passed under the words “other real estate in the county of L.”:—

*Held*, under the circumstances, that these words were sufficient to pass the advowsons to the son. *In re HODGSON. TAYLOR v. HODGSON*

**Romer J. [1898] 2 Ch. 545**

2. — Presentation to living—Roman Catholic patron—Benefice Act, 1713 (13 Anne, c. 13)—The Universities of Cambridge and Oxford Act, 1877 (40 & 41 Vict. c. 48), ss. 28, 45.

A presentation by a college on the nomination of a Roman Catholic patron held to be absolutely void under 13 Anne, c. 13. *BOYER v. BISHOP OF NORWICH* P. C. [1892] A. C. 417 (affirm. Arches Ct.) [1892] P. 41

— Presentation office fees.

*See FEES—Presentation Office.*

— Purchase of—Gift to promote spread of Evangelical principles.

*See CHARITY. 16.*

3. — *Quare impedit—Usurpation—Exchange.* As between patrons with alternate turns of presentation to a benefice, a presentation on an exchange of livings must be reckoned as a turn. If one patron wrongfully usurp the turn of another, the order of turns of presentation is not thereby altered, but the ousted patron after six months loses his turn, and cannot require by usurping against the wrongdoer by way of retaliation.

On this point there is no distinction between usurpation by a stranger and by a person party or privy to the title. *KEEN v. DENNY*

**Chitty J. [1894] 3 Ch. 169**

— Sale of advowson in gross—Freehold property.

*See SOLICITOR—Costs. 77.*

— Will—Failure of gift—Bequest of trust funds to be applied for or towards purchase of advowsons or presentations.  
*See CHARITY. 16.*

**Church.**

4. — Church Building Acts—Church land taken by public body—Application of purchase-money—Power of Ecclesiastical Commissioners—Church Building Act, 1840 (3 & 4 Vict. c. 60), s. 19.

A piece of land having been in 1846, under the authority of the Church Building Acts then in force, voluntarily granted in fee to the Church Building Comrs. for ecclesiastical purposes, a church was built thereon. The whole of the land was inclosed, and in 1849 the church was

**ECCLESIASTICAL LAW (Church)—continued.**

consecrated. So much of the land as was not actually occupied by the church was not consecrated. In 1891 the London County Council, under their statutory powers, purchased part of the unconsecrated inclosure, and the purchase-money was paid into court under the Lands Clauses Consolidation Act, 1845. The purchased land was afterwards conveyed by the vicar to the county council. Upon a summons by the vicar for payment out:—

*Held*, that, notwithstanding the consecration, the Ecclesiastical Commrs. (as the successors of the Church Building Commrs.) had power, under s. 19 of the Church Building Act, 1840, with the consent of the original donor of the land, to direct that the purchase-money should be applied to the vicar for payment out:—

*Held*, also, that the payment of part of the principal money remaining due upon a mortgage to the Governors of Queen Anne's Bounty of the glebe, profits, and emoluments of the vicarage, made by a former vicar to secure the repayment of a loan made to him by the governors for the purchase of a vicarage-house, was an ecclesiastical purpose within the meaning of s. 19. *Ex parte* LONDON COUNTY COUNCIL. *Ex parte* VICAR OF CHRIST CHURCH, EAST GREENWICH

North J. [1896] 1 Ch. 520

— Endowment of.

See CHARITY—Gift to Charity. 16.

— Pews.

See Cases under ECCLESIASTICAL LAW—Pews.

— Repair of church.

See BURIAL. 4.

— Scottish law.

See SCOTTISH LAW—Church.

5. — Site of church—New street—Paving expenses—Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 13.

Where part of the site of a church is consecrated, the whole freehold of the site vests, under s. 13 of the Church Building Act, 1845, in the incumbent: the Ecclesiastical Commrs. thereupon cease to be owners, and are not liable to contribute towards the cost of paving a new street. PLUMSTEAD DISTRICT BOARD OF WORKS v. ECCLESIASTICAL COMMRS. FOR ENGLAND

Div. Ct. [1891] 2 Q. B. 361

— Site of church—Open space—Burial ground.

See BURIAL. 6.

And see ECCLESIASTICAL LAW, *passim*.

**Church Rates.**

6. — Abolition—Reservation of right to levy church rate under local Act upon "any contract made" or for good and valuable consideration—The Burials Act, 1852 (15 & 16 Vict. c. 85), s. 36—Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 103), s. 5.

The "contract made" or good consideration given mentioned in s. 5 of the Compulsory Church Rate Abolition Act, 1868, must be found in or gathered from the local Act.

On the construction of the Marylebone local Acts:—

**ECCLESIASTICAL LAW (Church Rates)—contd.**

*Held*, that there was no power to levy a rate. REG. v. VESTRY OF ST. MARYLEBONE

C. A. [1895] 1 Q. B. 771

7. — Assessment—"Full annual rent or value"—Church Rate, *St. Nicholas, Harwich Act*.

By a local Act (1 & 2 Geo. 4, c. cxiv.), s. 8, the churchwardens of a parish were required to make a rate "on the full annual rent or value" of all houses rateable to the relief of the poor:—

*Held*, that "full annual rent or value" meant full net annual value, and that the rate could not be made on the gross estimated rental. ROSE v. WATSON

Div. Ct. [1894] 2 Q. B. 93

**Churchwardens.**

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), the civil functions of churchwardens were transferred to parish councils.

8. — Admission of by Archdeacon—Power of bishop to inhibit—Ministerial act.

The admission by an archdeacon of persons elected to the office of churchwarden is a ministerial act, and the bishop has no power to inhibit the archdeacon from performing it.

*Re* v. SIMPSON, (1726) 1 Str. 609, followed. REG. v. SOWIER - Div. Ct. [1900] W. N. 257; see [1901] 1 Q. B. 66

9. — Criminal suit against churchwarden—Jurisdiction—Duty of churchwarden with respect to collections at morning and evening service—Alms dish—Usage of church—Control of churchwardens over moneys collected for church expenses.

By the accustomed practice of a parish church, when collections from the congregations were made either at the morning or the evening service on Sundays, the collecting bags were brought after the collection up to the chancel steps and placed in the alms dish there held by the minister for the purpose of receiving the same and placing them on the Communion Table. One of the churchwardens of the parish was charged in a criminal suit with having committed offences against ecclesiastical law in that during the time he held office he had at the morning service on one Sunday and the evening service on another Sunday vexatiously refused to place the bag in which he had collected money from the congregation in the alms dish in accordance with the above practice. At the hearing these charges were sufficiently proved:—

*Held*, that, in so deviating from the practice in use in the matter, the respondent had offended against the laws ecclesiastical, and that he ought to follow such practice for the future unless otherwise ordered by the bishop.

Where collections for ordinary church expenses are made at the morning and evening services in parish churches, the churchwardens are the proper custodians of the moneys collected, and such moneys should be placed by them at a bank to an account in their joint names.

*Semble*: For unreasonably refusing to sign a joint cheque on such account for the payment of proper church expenses a churchwarden is liable to be articulated in a criminal suit in the Ecclesiastical Court. HOWELL v. HOLDROYD

Consist. Ct. of Wakefield [1897] P. 198

**ECCLIASTICAL LAW (Churchwardens) —**  
*continued.*

— “Ecclesiastical charity”—Parish council—  
Churchwarden trustees.  
*See* CHARITY. 2.

10. — *Criminal suit against churchwardens—Jurisdiction—Duty of churchwardens to obtain faculty before removing human remains—Burial Act, 1857 (20 & 21 Vict. c. 81), s. 23—Faculty to carry out directions in Order in Council for preventing vaults becoming dangerous to public health.*

The churchwardens of a parish church wholly closed for burials, who, purporting to act under the provisions of an Order in Council under the 23rd section of the Burials Act, 1857, directing the removal and reinterment elsewhere of human remains underneath the church, do or cause to be done the acts therein directed without obtaining a faculty from the Ordinary, are guilty of an offence against the laws ecclesiastical, in respect of which they may be cited to appear to answer articles to be administered to them in a criminal suit.

The 23rd section of the Burial Act, 1857, provides (*inter alia*) that it shall be lawful for Her Majesty, upon the representation of one of Her Majesty's principal secretaries of State, by and with the advice of Her Privy Council from time to time, to order such acts to be done by or under the direction of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid.

Orders in Council issued under the above section and served on the churchwardens of a parish church ordered that the churchwardens or the persons having the care of the vaults under the church should adopt or cause to be adopted the following measures, namely, that the whole of the human remains lying beneath the floor of the church should be removed, and reburied in a specified cemetery or in some other legal burial ground. In consequence of the service of these Orders in Council, the churchwardens, without having obtained any faculty from the Ordinary, pulled down all the pews in the church, took up the flooring and monumental slabs in the same, and removed certain coffins and human remains buried thereunder, for the purpose of reintering them elsewhere. It appeared that burials in the parish had been by law wholly discontinued in the year 1853, and that since that year no burial was recorded to have taken place there:—

*Held*, that the acts of the churchwardens, not having been authorised by a faculty, were illegal, and the Orders in Council afforded no justification for what had been done by them; such Orders being either wholly *ultra vires* or to be construed as merely directing an application for a faculty to carry out their terms:

*Held*, also, that, on the petition of the rector of the parish church and the churchwardens, a faculty might issue authorising for sanitary reasons the removal of the remains and their re-interment in consecrated ground. *LEE v. HAWTREY* — Consist. Ct. of London [1898] P. 63

**ECCLIASTICAL LAW (Churchwardens) —**  
*continued.*

- Election as vestry clerk.  
*See* QUO WARRANTO. 4.
- Income of charity estates—Anticipation of rents—Charge on charitable property.  
*See* CHARITY. 1.
- Trustee, with overseers, of parish lands.  
*See* LIMITATIONS, STATUTE OF. 23.
- Trustees—Non-ecclesiastical charity.  
*See* CHARITY. 2.

**Custody of Records, &c.**

11. — *Power of Ordinary to make orders as to the custody and disposal of records deposited amongst archives of dioceses—Document of special historical interest to citizens of foreign sovereign State—Comity—Delivery up for transmission to Massachusetts of manuscript history of voyage of “Mayflower” and Plymouth plantation, containing entries of births, deaths, and marriages.*

On the petition of the Ambassador of the United States of America, the Chancellor of the Diocese of London directed that the manuscript known as “The Log of the *Mayflower*,” and containing the history of the voyage of that vessel to America in 1620 and of the then new-founded Plymouth plantation, together with entries of the births, marriages, and deaths of many of the first settlers in New England and their immediate descendants, should—as a record of the greatest national interest and importance to the President and citizens of the United States—be delivered out of the custody of the officials of the See of London to the Ambassador for the purpose of being transmitted to America, and there deposited under the official custody of the Governor of Massachusetts for the time being, on the conditions that a photographic facsimile reproduction of the manuscript, verified by affidavit, should be deposited in the registry of the Consistory Court of London, and that all proper facilities should be afforded by the future custodians of the original to persons desiring to make searches therein or of obtaining extracts therefrom, and that a certificate of the due delivery thereof, signed by the Governor of Massachusetts, of having received it, and testifying his acceptance of its custody on the conditions imposed, be transmitted to the registrar.

The Ambassador of the United States having ceased to hold office since the decree was made, the Court did not think fit to vary the decree; for in taking charge of the manuscript he was to act not as ambassador, but as the personal delegate of the Court. *In re THE LOG OF THE MAYFLOWER* — Consist. Ct. of London [1897] P. 208

**Faculty.**

12. — *Burial—Burial Act, 1857 (20 & 21 Vict. c. 81), s. 23.*

(A) Where an Order in Council is issued under s. 23 of the Burials Act, 1857, directing the removal and reinterment of human remains under a church, a faculty is necessary for carrying out the Order. *RECTOR, &c., OF ST. MICHAEL BASSISHAW v. PARISHIONERS OF SAME*  
Consist. Ct. of London [1893] P. 233

(B) *Burial Act, 1857 (20 & 21 Vict. c. 81), s. 23.*  
And it is the duty of the Consistory Court

**ECCLESIASTICAL LAW (Faculty)—continued.**

to grant a faculty directing the churchwardens to remove the remains. In this case provisoes were inserted in the faculty for the safeguard of the fabric of the church, and for authorising the families of persons buried in the vaults to remove the remains of their relatives to any consecrated burial-ground they might select. Costs of the faculty declared to be incidental to the carrying out of the Order in Council. **RECTOR, &c., OF ST. MARY-AT-HILL WITH ST. ANDREW HUBBARD v. PARISHIONERS OF SAME** **Consist. Ct. of London** [1892] P. 394

Followed in preceding case.

**13. — Burial—Cremated remains—Interment of in parish church closed for burials—Urn containing cremated remains—Church Building Act, 1818 (58 Geo. 3, c. 45), s. 80—Burials Act, 1853 (16 & 17 Vict. c. 134), s. 3—Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 83—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 343, Sched. V., Part. III.**

On an application for a faculty to place in a niche in the wall of a church closed for burials by Order in Council a sealed urn containing the cremated ashes of a dead body:—

*Held*, that the provisions prohibiting "burial" did not apply to the depositing of cremated ashes, and that there was jurisdiction to grant the faculty, but that the placing of the urn in the wall might be inconvenient:

*Held*, also, that as there were no objections on sanitary grounds to placing the urn below the floor of the church, a faculty for that purpose might issue, subject to a proper fee to the incumbent for the interment.

*Semle*, cremated remains cannot lawfully be interred in a parish church except under a faculty from the Ordinary. *In re KEER*

**Consist. Ct. of London [1894] P. 284**

**14. — Burial—Cremation.**

Where both burial and cremation are desired, the cremation must come first. The Court will not grant a faculty for the removal of remains after burial for cremation. But the ashes of a cremated person may be buried in consecrated ground. *In re DIXON* **Consist. Ct. of London** [1892] P. 386

**15. — Chancel screen—Confirmatory faculty for retention of chancel screen of carved figures representing Our Lord on the Cross, the Virgin Mary, and St. John—Representation of historical scene not likely to be object of superstitious reverence.**

A figure of Our Lord upon the Cross was in 1880 placed in a parish church above, and on the centre of the screen separating the chancel from the nave; and in 1893 there were placed on one side thereof a figure of the Virgin Mary, and on the other side thereof a figure of St. John. All the figures were carved in wood, were about 2 ft. 9 in. in height, the central figure being rather higher than the two others, and all had been placed in the church without the sanction of a faculty. There was not in the church anything of the nature of a rood-loft or rood-stairs, and no candles were round or in front of the figures. In 1896 the rector and churchwarden of

**ECCLESIASTICAL LAW (Faculty)—continued.**

the parish instituted a cause of faculty praying the Ordinary to authorize by faculty the retention of the three figures on the screen, and filed affidavits stating that the services of the church had been conducted in accordance with the directions of the Book of Common Prayer, and that there was not and had not been anything in the said services or in the attitude of those attending the services to indicate or suggest any probability of worship, adoration, or any superstitious reverence being paid to the figures on the screen. No person appeared to oppose the grant of the faculty.

The Chancellor of the Diocese of Norwich ordered the faculty to issue as prayed. **RECTOR, &c., OF BARSHAM, SUFFOLK v. PARISHIONERS, &c., OF THE SAME** **Consist. Ct. of Norwich** [1896] P. 256

See next Case.

**16. — Chancel screen, Restoration of—Figures of Our Lord upon the Cross, St. Mary, and St. John—Architectural decorations not likely to be abused by superstitious reverence.**

A crucifix with the accompanying figures of the Virgin Mary and St. John is not forbidden by law to be erected on a chancel screen, but may be placed in that position in a parish church under a faculty where the Ordinary is satisfied that it is not likely to be abused by superstitious reverence being paid to it.

A faculty authorizing the restoration in a parish church of a stone chancel screen or interior chancel arch of pre-Reformation date by placing on three existing pedestals springing from ornamental tracery in the upper parts of such screen or interior arch three stone figures without gilding or painting, each two feet three inches high—one, the central figure, representing Our Lord upon the Cross, and the other two representing respectively the Virgin Mary and St. John—was granted by the Consistory Court of St. Albans on the Ordinary being satisfied that the figures would be for the purpose of architectural decoration only, and that there was no ground for reasonable apprehension that they would be abused or made the subject of superstitious reverence. **GREAT BARFIELD (VICAR OF) v. ALL HAVING INTEREST** - **Consist. Ct. of St. Albans** [1897] P. 185

**17. — Chancel screen gates—Discretion—Refusal of faculty—Figures on chancel screen representing Our Lord upon the Cross, the Virgin Mary, and St. John—Evidence—Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 7—Select vestry—Effect of resolution of meeting of pew-renters of parochial chapel of ease.**

A petition by the vicar and churchwardens of the parish church of R., and the chapelwardens of a chapel of ease in the parish of R., asking for a faculty to authorize the erection in the chapel of a chancel screen with gates, and with a crucifix and figures of the Virgin Mary and St. John placed on the top of the screen, was supported by a resolution of a meeting of the pew-renters of the chapel. The vestry for ecclesiastical purposes of the parochial area in which both the parish church and the chapel of ease were situate, was a select vestry of the whole civil parish of R.,

**ECCLESIASTICAL LAW (Faculty)—continued.**

which comprised a larger area than the parochial area above mentioned, and the vestry had passed no resolution either in favour of or against the grant of the faculty:—

*Held,*

(i.) That a resolution of the select vestry might be dispensed with.

(ii.) That a faculty for chancel screen gates ought not to be granted.

(iii.) That a faculty for a crucifix with or without figures on either side placed on a chancel screen ought not to be granted. **RICHMOND (VICAR OF) AND CHAPELWARDENS OF ST. MATTHIAS, RICHMOND v. ALL PERSONS HAVING INTEREST, &c.** — **Consist. Ct. of Rochester [1897] P. 70**

Referred to. *Great Barfield (Vicar of) v. All having Interest.* See preceding Case.

**18. — Chancel screen gates — Discretion of Ordinary.**

The rector, &c., of a parish petitioned for a faculty to erect a chancel screen with gates, which when shut would cut off communication from the nave to the chancel, and it appeared that the gates would be kept open during divine service and closed at other times, and would be a protection to the contents of the chancel.

*A. Held,* by the Chancellor of St. Albans, that the grant of a faculty would be an exercise of his discretion in opposition to the decision of the Court of Arches in *Bradford v. Fry*, (1878) 4 P. D. 93, but intimated that he would grant a faculty for the screen without the gates. **RECTOR, &c., OF ST. ANDREW, ROMFORD v. ALL PERSONS HAVING INTEREST, &c.** **Consist. Ct. of St. Albans [1894] P. 220**

*B. Held,* by the Chancellor of London, on being satisfied in his discretion that the erection would be of utility, that the faculty should be granted.

(A) **ST. JAMES NORLAND (VICAR, &c.) v. PARISHIONERS OF THE SAME**

**Consist. Ct. of London [1894] P. 256**

(B) **ST. PETER'S, EATON SQUARE (VICAR, &c.) v. PARISHIONERS OF SAME**

**Consist. Ct. of London [1894] P. 350**

**19. — Churchyard—Conversion of to secular uses—Burials Act, 1852 (15 & 16 Vict. c. 85), s. 44.**

(A) A faculty refused for widening the roadway bounding the churchyard by throwing into the road a strip of consecrated ground which had been added to the churchyard. In this case (i.) the proposed widening would have enabled (a) a pathway to be made on the side of the road adjoining the churchyard, and (b) the expense of fencing part of the burial ground to be provided for; and (ii.) burials had been prohibited in the slip of ground proposed to be taken. *In re PLUMSTEAD BURIAL GROUND*

**Consist. Ct. of Rochester [1895] P. 225**

Referred to by **Consist. Ct. of Peterborough. St. Nicolas, Leicester (Vicar of) v. Langton** [1899] P. 19, 32.

(B) A faculty granted for a similar purpose. In this case burials had taken place in the part proposed to be taken, and the faculty was opposed

**ECCLESIASTICAL LAW (Faculty)—continued.**

by owners of graves proposed to be interfered with. **HOVE, ST. ANDREW'S (VICAR, &c.) v. MAWN** **Consist. Ct. of Chichester [1895] P. 228, n.**

**20. — Consecration — Ground "adjoining" to an existing churchyard—Intervening highway—Consecration of Churchyards Act, 1867 (30 & 31 Vict. c. 133).**

Land may adjoin and may be added to an existing churchyard within the meaning of the Consecration of Churchyards Act, 1867, although it is separated therefrom by a highway.

A plot of ground separated from a churchyard by a highway about twenty feet wide was held to be "adjoining to an existing churchyard" within the meaning of the Act. *In re BARONESS BATEMAN AND PARKER'S CONTRACT*

**Kekewich J. [1899] W. N. 30(1); [1899] 1 Ch. 599**

— "Adjoining" premises.

See LANDLORD AND TENANT. 36.

**21. — Disused burial ground, faculty for erection of churchyard wall with arcade on—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3—Open Spaces Act, 1887 (50 & 51 Vict. c. 32), ss. 4, 14—Meaning of "building"—Refusal of faculty for pictures at east end of chancel of parish church—Discretion—Wishes of parishioners—Evidence—Memorials.**

A faculty for the erection on a disused burial ground of a churchyard wall, one side of which would be so built as to form an arcade or covered way for the protection from the weather of frescoes proposed to be painted on the panels of that side of the wall which would be inside the churchyard, was granted, the Ordinary being of opinion that the wall or structure in question was not a "building" prohibited to be erected on a disused burial ground by the Disused Burial Grounds Act, 1884, and the Open Spaces Act, 1887.

Where the vestry of a parish and the petitioners are unanimous, or substantially so, in favour of accepting a presentation picture of merit for the decoration of their parish church, the introduction of the picture into the church may be properly sanctioned by a faculty, unless the picture appears to be likely to be abused by superstitious reverence, or be otherwise inappropriate in a church, or be such as might reasonably give offence to present or future parishioners; but where it was proposed that such a picture should be introduced into the church of an admirably worked parish, and conscientious objections which might be entertained by members of the congregation, without disparagement to the views of others in favour of it, were taken to it as a church decoration by a substantial minority of resident parishioners who were members of the Church of England, and it appeared that its introduction into the church would offend the religious feelings of that minority and introduce discord into the parish where it had never existed before, it was held to be the duty of the Court to refuse to grant a faculty for its introduction.

Instance of a faculty suit in which memorials and counter-memorials signed by parishioners were admitted in evidence by consent. **VICAR**

**ECCLESIASTICAL LAW (Faculty)—continued.**

OF ST. BOTOLPH, ALDERSGATE WITHOUT v. PARISHIONERS OF SAME Consist. Court of London [1900] P. 69

**22. — Disused churchyard—Flights of steps and entrances.**

Faculty granted allowing construction of flights of steps and entrances thereto in two disused churchyards in the City of London for the purpose of giving access to chambers for the transformation and storing of electricity adjoining the churchyards. *In re* ST. BENET SHEREHOG. *In re* ST. NICHOLAS ACONS

Consist. Ct. of London [1893] P. 66 n.

**23. — Disused churchyard—Public garden—Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 5.**

Faculty granted to allow use of closed churchyard as a public garden, subject to certain rules as to vaults still kept in repair. VICAR, &c., OF ST. BOTOLPH WITHOUT ALD GATE v. PARISHIONERS OF SAME (No. 2) Consist. Ct. of London [1892] P. 173

**24. — Disused churchyard—Transformer chambers for electric lighting—1 & 2 Vict. c. c., Royal Exchange Act, 1842 (5 & 6 Vict. c. cli.).**

Faculty granted allowing construction of chambers under two disused churchyards in the City of London for the storing and transformation of electricity:—

*Held*, also, that the fact that one churchyard was vested by local Acts in the corporation, to the intent that it might for ever remain unbuilt on and unused for any purpose except such ornamental purpose as the bishop should approve, did not preclude the Court from granting the faculty. *In re* ST. NICHOLAS COLE ABBEY. *In re* ST. BENET FINK, CHURCHYARD

Consist. Ct. of London [1893] P. 58

Referred to by Consist. Ct. of Peterborough. *St. Nicolas, Leicester v. Langton*, [1899], P. 19, 32.

**25. — Disused churchyard—Widening road (14 & 15 Vict. c. xci.), s. 25.**

Faculty granted to sanction an agreement to give up part of a closed churchyard to widen a roadway, and for the removal of the bodies disturbed by the arrangement to a country cemetery.

Jurisdiction as to the removal of bodies considered. VICAR, &c., OF ST. BOTOLPH WITHOUT ALD GATE v. PARISHIONERS OF SAME (No. 1). COMMS. OF SEWERS OF CITY OF LONDON, &c. v. SAME - Consist. Ct. of London [1892] P. 161

Not followed by Consist. Ct. of Rochester. *In re Plumstead Burial Ground*, [1895] P. 225, 240.

Referred to by Consist. Ct. of Peterborough. *St. Nicolas, Leicester v. Langton*, [1899] P. 19, 31.

**26. — Exhumation for purposes of Verification—Jurisdiction of ordinary over all bodies buried in consecrated ground—Licence of Secretary of State—Burial Act, 1857 (20 & 21 Vict. c. 81), s. 25.**

The jurisdiction of the Ordinary over all bodies buried in consecrated ground is not affected by s. 25 of the Burial Act, 1857, which requires the licence of a Secretary of State for the removal

**ECCLESIASTICAL LAW (Faculty)—continued.**

of any body from any place of burial unless it be removed from one consecrated place of burial to another by faculty granted by the Ordinary.

The Ordinary may grant a faculty for the exhumation, for the purpose of identification, of a body which has been buried in consecrated ground, and the licence of the Secretary of State is not a condition precedent to the grant, although the faculty may be inoperative until the licence has been obtained.

*Semble*: A body buried in consecrated ground cannot be removed without the sanction of the Ordinary. REG. v. DR. TRISTRAM, JUDGE OF CONSISTORY COURT OF LONDON

Div. Ct. [1898] 2 Q. B. 371

Referred to by Dr. Tristram. *Druce v. Young*, [1899] P. 84, 99.

**27. — Footpath across churchyard for use of parishioners and public—Proviso for closing footpath one day in the year.**

In a faculty granted for a fenced-in footpath across a closed parish churchyard for the use of the parishioners with right of way for the public, a proviso was inserted for the footpath to be closed on one day in the year in order to shew that it remained an integral portion of the churchyard with certain limitations on its use. ST. JOHN THE BAPTIST, CARDIFF (VICAR OF) v. PARISHIONERS OF SAME - Consist. Ct. of Llandaff [1898] P. 155

**28. — Interest requisite for promotion of faculty suit—Parishioners having names on rate-book—Ornaments of the church—Architectural decorations—Crucifixes—Ornaments Rubric—3 & 4 Edw. 6, c. 10—Refusal of confirmatory faculty—Churchwardens—Undertaking to replace Tables of Commandments—Canon 82 of Canons of 1603—Tabernacle for reception of Reserved Sacrament.**

A crucifix is neither a lawful church ornament nor an architectural decoration the retention of which in a church can be authorized by faculty, and where a crucifix has been introduced into a parish church the Ordinary has jurisdiction to direct its removal by the churchwardens without proof that it is likely to have superstitious reverence paid to it.

A parishioner of a parish in the City of London whose name is on the rate-book as occupier of a room in the parish taken solely to enable him to bring a civil suit in the court, has a sufficient interest to promote a cause of faculty to obtain the removal of unlawful church ornaments out of the parish church of the parish of which he is a parishioner.

The curate in charge of a parish in which the incumbent was non-resident introduced into the parish without lawful authority two crucifixes, one a movable crucifix of brass about eighteen inches high placed on a Tabernacle for the Reserved Sacrament standing on the Retable in the chancel of the church, and the other a crucifix three feet in height affixed to the north wall of the church by the side of and slightly above the level of the pulpit; and during his tenure of office, from about 1880 to 1894, there were in the church, besides these crucifixes and Tabernacle, a censer and the Stations of the Cross; incense was used in the church, and during the Com-

**ECCLESIASTICAL LAW (Faculty)—continued.**

munion Service the wine was mixed with water. Between 1894 and 1898 a succeeding curate, the crucifixes and Tabernacle still remaining in the church, introduced there a picture of the Virgin Mary, and the next year a shrine to the Virgin Mary called an "Altar of Repose," and a statue of the Madonna and Child; and services were conducted in the church in which the crucifixes were used by the minister and members of the congregation for superstitious purposes. Afterwards an application was made by three parishioners for a faculty to authorize the removal of the crucifixes out of the church, and the incumbent and churchwardens appeared as opponents, and prayed for a confirmatory faculty for the retention of the crucifixes.

It appeared that several past churchwardens and many of the parishioners had disapproved of and protested against the introduction and retention of the crucifixes, and that in 1898 another curate in charge had been appointed, whilst there was no evidence that during the time he had been the officiating minister the crucifixes had been used superstitiously.

It further appeared that before the hearing of the suit the Tabernacle for the Reserved Sacrament had been removed out of the church:—

*Held*, that the Court must refuse the prayer for a confirmatory faculty, and issue a faculty directing and authorizing the churchwardens as officers of the Ordinary to remove the crucifixes out of the church, because—first, they were either in themselves illegal church ornaments or illegal architectural decorations; and, secondly, if not in themselves illegal as church ornaments or architectural decorations, they were—having regard to the facts that they were introduced into the church for superstitious purposes, and were so used for nearly twenty years, and might be so used again, and had been a cause of offence to several churchwardens and parishioners, some of whom, though supporting a resolution of vestry against the petitioners, did not thereby express any opinion for their retention—articles and things the retention of which in the church it would be an unwise exercise of the discretion of the Court to authorize.

*Semble*: A Tabernacle for the reception of the Reserved Sacrament is not a lawful church ornament. **KENSIT v. RECTOR OF ST. ETHELBURGA, BISHOPSGATE WITHIN** Consist. Ct. of London [1900] P. 80

**29. — Jurisdiction — Acceptance of letters of request granted in aid of probate action—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 29—Judicature Act Amendment Act, 1875 (38 & 39 Vict. c. 77), s. 18—Discretion—6 & 7 Will. 4, c. cxxvii., s. 4—Burials Act, 1857 (20 & 21 Vict. c. 81), s. 25—Jurisdiction to decree faculty for opening a vault and coffin in consecrated burial ground for the purpose of identification and to remove remains there buried—Licence of Secretary of State before opening vault not required.**

The Chancellor of the Diocese of London, in the exercise of his judicial discretion, may accept letters of request, signed by the President of the Probate, Divorce, and Admiralty Divs., requesting that in aid of the trial of an issue in a

**ECCLESIASTICAL LAW (Faculty)—continued.**

probate action a faculty may be granted authorizing the opening of a vault in a consecrated burial ground in the diocese, and the opening and inspection of a coffin there buried, for the purpose of identification, and issue a faculty to give effect to such letters of request:—

*Held*, that the Court, in the exercise of its discretion, would accept the letters of request, reject the evidence tendered on behalf of the opponents, and decree a faculty to issue according to the tenor of the letters of request:—

*Held*, also, that s. 25 of the Burial's Act, 1857, did not require that a proviso should be inserted in the faculty that the faculty was granted subject to the licence of one of Her Majesty's principal Secretaries of State.

*Semble*, that the faculty might be lawfully acted upon without any such licence having been obtained. **DRUCE v. YOUNG**

Consist. Ct. of London [1899] P. 84

**30. — Jurisdiction—Erection on churchyard closed for burials—Schools and parish hall to be used for mission services—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3—Meaning of "enlargement of church, chapel, meeting-house, or other places of worship."**

The 3rd section of the Disused Burial Grounds Act, 1884, provides that after the passing of that Act it shall not be lawful to erect any buildings upon any disused burial ground (defined by that Act to mean a burial ground in respect of which an Order in Council has been made for the discontinuance of burials therein in pursuance of the Burials Acts, 1852 and 1853), except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship:—

*Held*, that the Ordinary had, without infringing the above section, jurisdiction to authorize by faculty the rebuilding and extension by way of enlargement of schools and a parish hall erected on a disused burial ground within the Act, and which were used for mission services for adults and children, and which it was intended to use when rebuilt for the same purposes supplemental to the services in the parish church, and to meet the growing wants of the parish. **VICAR OF ST. JAMES THE LESS, BETHNAL GREEN v. PARISHIONERS OF SAME** — Consist. Ct. of London [1899] P. 55

**31. — Jurisdiction—Grant of faculty for use as public street of portion of consecrated cemetery or churchyard closed for burials, and setting back of cemetery or churchyard wall—Retention of cause.**

The Ordinary has jurisdiction to grant a faculty authorizing a portion of a consecrated cemetery or churchyard, closed for burials by Order in Council to be used for widening a public street. Any faculty granted for this purpose should contain exact particulars of the measurements of the portion of the cemetery or churchyard proposed to be used for the widening.

The rector and churchwardens of a parish church in the diocese of Exeter, and the corporation of a borough in which a consecrated cemetery forming an addition to the parish churchyard was situate, petitioned the Ordinary for a faculty to authorize a strip of the cemetery being used for widening an adjoining public street, and the

**ECCLESIASTICAL LAW (Faculty)—continued.**

boundary wall of the cemetery being set back so as to form the boundary wall between the remaining portion of the cemetery and the widened street. It appeared that the street proposed to be widened was only 16 feet wide, and too narrow for the traffic along it, and that the proposed widening would be not only for the general convenience and safety of the public, but particularly of the rector and his parishioners, to the former of whom and the churchwardens moreover, by way of consideration, a sum of money was intended to be paid by the corporation. It also appeared that the strip of the cemetery proposed to be thrown into the street had been closed for interments under an Order in Council, and that the proposed alteration of the width of the street had been unanimously approved by the parish vestry. The Chancellor of the Diocese of Exeter refused to issue citation, being of opinion that he had no jurisdiction to grant the faculty prayed for. The petitioners appealed to the Arches Court of Canterbury.

The Dean of Arches allowed the appeal, retained the cause, and, the allegations in the petition having been verified by affidavit, decreed a faculty to issue in accordance with the prayer of the petitioners. *In re BIDEFORD PARISH. Ex parte RECTOR, &C., OF BIDEFORD*

Arches Ct. of Canterbury [1900] W. N. 184;  
[1900] P. 314

**32. — Memorials by parishioners against a faculty—Evidence.**

(A) *Held*, to be admissible. VICAR OF TETBURY v. CHURCHWARDENS, &C., OF TETBURY  
Consist. Ct. of Gloucester [1892] P. 271, u.

(B) *Held*, not to be admissible. NICKALLS v. BRISCOE  
Consist. Ct. of Rochester [1892] P. 269

**33. — Memorial inscription—Prayers for the dead.**

So much of an application as prayed for a faculty for placing in a church the words "De caritate tua ora pro anima H. mortuæ," was rejected by the Chancellor in the exercise of his discretion. *EGERTON v. ALL OF ODD RODE*

Consist. Ct. of Chester [1894] P. 15

**34. — Military colours, Affixing of, to walls of chancel of parish church—Jurisdiction—Interest—Member of Parliament—St. Margaret's, Westminster—Churchwardens—Confirmatory faculty.**

The Ordinary has jurisdiction to authorize by faculty the affixing of military colours as church ornaments to the walls of the chancel of a parish church where it appears that a former rector of the church has approved of their being placed in the chancel.

The rector of a parish church has no legal right without the sanction of a faculty to remove out of the chancel church ornaments, such as military colours, placed there without a faculty in a permanent position with the concurrence of a former rector and former churchwardens.

A member of the Commons House of Parliament has a sufficient interest to institute a faculty suit in respect of alterations in or additions to the parish church of St. Margaret's, Westminster:—

*Semble*, the churchwardens of a parish church

**ECCLESIASTICAL LAW (Faculty)—continued.**

to which military colours, no longer required for use in Her Majesty's service, have been presented, have vested in them the legal property in the colours for the purpose of safe custody in all cases where the colours are not affixed to the freehold. *VINCENT v. EYTON*

Consist. Ct. of London [1897] P. 1

**35. — Pathway—Exclusive right to use of pathway across closed churchyard—Construction or faculty—Refusal to grant subsequent faculty derogating from previous grant—Ecclesiastical Leasing Acts, 1842 and 1858 (5 & 6 Vict. c. 108; 21 & 22 Vict. c. 57)—Practice—Refusal of Appellate Court to interfere with discretion of Ordinary.**

In 1891 a faculty issued from the registry of the Consist. Ct. of London authorizing the rector and churchwardens of a parish in the City of London, in conjunction with a co. owning premises abutting on the churchyard of the parish—a churchyard closed for burials under Order in Council—to make a pathway inclosed on the sides by railings, across the churchyard from the co.'s premises to a public thoroughfare on the opposite side of the churchyard, provided a specified rent was paid to the rector and his successors during a term of years. The faculty recited an agreement between the rector and churchwardens and the co. whereby the former agreed to concur in granting to the co. a right of way over the pathway afterwards authorized by the faculty for the term, and on payment of the rent there mentioned; all the works to be done at the co.'s costs, and "such right of footway to be for themselves their tenants and any others authorized by them in common with the rector and churchwardens and any others authorized by the rector and churchwardens." In 1892, after the co. had done and paid for the works and whilst the term of years was still unexpired, the rector and churchwardens agreed with other owners of premises abutting on the churchyard adjacent to the co.'s premises to concur in granting to such owners a right of footway over the pathway made under the faculty of 1891, subject to the rights of the co., and also over a new footpath to be made over a piece of the churchyard to join the footpath so already made, and petitioned the Consist. Ct. of London for a faculty to make a new footpath and to remove a portion of the above-mentioned railings; the owners of the premises desiring the right of way over the two footpaths intervening in support of the petition:—

*Held*, by the Consist. Ct. of London, that the faculty asked for must be refused, as the faculty of 1891 had granted to the co. and their assigns the enjoyment for a term of years not yet expired of the pathway made under that faculty to the exclusion of the other occupiers of premises abutting on the churchyard, and the Ordinary ought not to sanction by faculty anything being done in derogation of the exclusive right so granted:

*Held*, further, by the same Court, that the operation of the Ecclesiastical Leasing Acts of 1842 and 1858 is confined to glebe lands and property of that description, and does not extend to enable the incumbent of a parish, with the consent of the patron of the living and the Eccle-



**ECCELESIASTICAL LAW (Faculty)—continued.**

siastical Commrs., to grant leases of or rights over all or any portion of the churchyard of the parish:

*Held*, on appeal by the Arches Court of Canterbury, that the construction put on that faculty by the Court below was correct, and, the grant or refusal of the faculty prayed being in the discretion of the Ordinary, by whom that discretion had been properly exercised, the Appellate Court ought not to interfere, and the appeal must be dismissed.

Observations by the Chancellor of the Diocese of London as to the practice of the Consist. Ct. of London on the grant of faculties for the formation and use of private pathways across churchyards closed for burials, and as to the provisos to be inserted in such faculties. *RECTOR, &c., OF ST. GABRIEL, FENCHURCH STREET v. CITY OF LONDON REAL PROPERTY CO.* - Consist. Ct. of London, [1896] P. 95

Referred to by Consist. Ct. of Peterborough. *St. Nicholas, Leicester* (Vicar of) *v. Langton*, [1899] P. 19, 32.

**36. — Refusal of confirmatory faculty—“Stations of the Cross”—Crucifixes—Communion rails—Tables of Ten Commandments, Lord’s Prayer, and Apostles’ Creed—Chancel Platform—Darkening of windows in chancel—Lamps reflecting light on Communion Table—Faculty—Communion Table—Reredos—Second Communion Table in side chapel.**

The incumbent of a parish church having without a faculty, and contrary to the vote of the vestry and the wishes of the parishioners, introduced into the church pictures representing the “Stations of the Cross” proved to have been used superstitiously and four crucifixes, placed curtains over the Ten Commandments, the Lord’s Prayer, and the Apostles’ Creed engraved on the east chancel wall, and darkened the chancel by affixing permanent blinds on the east window and a side chancel window, the Court ordered that within three months the “Stations of the Cross,” the crucifixes, and the curtains should be removed out of the church by the incumbent, and the outside blinds over the above-mentioned windows taken down by him.

If the incumbent should not comply with the order of the Court within three months of its date, the Court would be prepared to issue a faculty to the parishioners’ churchwarden to carry out the order.

The erection in the chancel of a Communion Table with a reredos in substitution for the Communion Table formerly there, though made by the incumbent in opposition to a vote of the vestry, was sanctioned by a confirmatory faculty from the Court, on the ground of its being an artistic improvement to the church, subject to the platform on which the Communion Table stood being extended round the north end of the Table so as to enable the minister to officiate during the Communion Service standing at the north end.

The Court also sanctioned by confirmatory faculty the erection in the church of a side chapel with a Communion Table in it, though objected to by the parishioners, subject to the chapel being

**ECCELESIASTICAL LAW (Faculty)—continued.**

separated from the church on a plan to be approved of by the Court.

*Sieveling v. Kingsford*, (1866) 36 L. J. (Ecc.) 1, followed. *In re ST. MARK’S, MARYLEBONE ROAD.* VICAR OF ST. MARK’S *v.* PARISHIONERS OF ST. MARKS Consist. Ct. of London [1898] P. 114

**37. — Removal of human remains.**

Jurisdiction as to the removal of bodies considered, and provisions as to exemption of family vaults which will be inserted in faculties. Inclination of Court to consult wishes of persons interested. *RECTOR, &c., OF ST. HELEN’S, BISHOPSGATE, WITH ST. MARY OUTWICH v. PARISHIONERS OF SAME* Consist. Ct. of London [1892] P. 259

**38. — Removal of human remains and use of strip of closed churchyard for widening of public highway, Faculty for—Joint petition by incumbent and churchwardens and highway authority—Practical necessity for proposed works—Issue of faculty to incumbent and churchwardens.**

Where it appeared that the widening of a public highway abutting on a churchyard of a parish church would be a benefit both to the congregation attending the church and to the public in general, and that in the opinion of the highway authority—a municipal corporation—it was practically necessary that the widening should be effected by including therein a strip of the churchyard closed for burials by Order in Council, a faculty was granted to the incumbent and churchwardens of the church authorizing the removal of human remains interred in the portion of the churchyard required for the widening and the setting back of the churchyard fence so as to throw such portion of the churchyard into the highway on the Ordinary being satisfied that an adequate consideration would be paid by the corporation in return for the rights sanctioned.

The corporation had joined in petitioning for the faculty, but was omitted from the grant, the Ordinary being of opinion that it was preferable that the grant should be made to individuals. *VICAR OF ST. NICHOLAS, LEICESTER v. LANGTON*

Consist. Ct. of Peterborough [1899] P. 19

**39. — Reredos—Triptych—Painted panels—Sculptured figure.**

A faculty was granted for a reredos of oak eight feet high, consisting of a triptych with panels of which the wings could be closed; on the centre panel was a painting of the Last Supper, and on the side ones of the Agony in the Garden and the Risen Christ with the Marys at the Tomb. The reverse side of the wings were plain. The whole was surmounted by carved figures of Our Lord, Moses, and Elias and angels. The faculty was subject to the condition that the triptych was always to remain open during divine service. *VICAR, &c., OF ST. JOHN, PENDLEBURY v. PARISHIONERS OF THE SAME*

Consist. Ct. of Manchester [1895] P. 178

Referred to by Consist. Ct. of Norwich. *Barsham, Suffolk* (Rector, &c., of) *v. Parishioners of Same*, [1899] P. 256, 260.

**40. — Rood loft—Rood beam—Rood—Wooden figures on rood beam—Chancel screen gates—Side screens—Choir stalls.**

A faculty was applied for to retain the follow-

**ECCLESIASTICAL LAW (Faculty)—continued.**

ing works introduced without a faculty: a chancel screen without gates, a rood loft resting on the screen, a rood beam with crucifix with figures of the Virgin Mary and St. John on it; and for the erection of the following new works: the placing on the rood beam of two other figures, gates to the chancel screen, screens across the aisles, and choir stalls with screens behind them:—

*Held*, that the rood loft and wooden figures were illegal, but that as the property in the church required protection a faculty could issue for the chancel screen, for gates to the same, for the aisle screens with gates, and for the choir stalls and screens. **VICAR, &c., OF ST. JOHN THE BAPTIST, TIMBERHILL v. RECTORS, &c., OF ST. JOHN THE BAPTIST, TIMBERHILL**

**Consist. Ct. of Norwich [1895] P. 71**

Referred to by **Consist. Ct. of St. Albans. Great Bardfield (Vicar of) v. All having Interest, [1897] P. 185, 187.**

**41. — Second communion table—Separation of side chapel.**

Before granting a faculty for a second Communion Table in a side chapel the Court should be satisfied that the side chapel is separated from the aisle by trellis work or otherwise so as to indicate that it is a side chapel authorised to be used when the chancel or nave is not used for divine service. **VICAR, &c., OF ST. PETER'S, EATON SQUARE v. PARISHIONERS OF THE SAME**

**Consist. Ct. of London [1894] P. 350**

**42. — Stained glass window in chancel.**

The discretion of the Ordinary as to granting or refusing a faculty for a stained glass window in a chancel is the same as if it were sought to place the window in any other part of the church. **NICKALLS v. BRISCOE**

**Archds Ct. of Canterbury [1892] P. 269**

**Glebe.**

*Rules made by the Bd. of Agric., Aug., 1892, and approved by the Ld. Chanc., as to the sale of Glebe land under the Glebe Lands Act, 1888. St. R. & O. 1892, p. 11.*

*Glebe Lands Act, 1888 (51 & 52 Vict. c. 20)—Sale of Glebe Land Rules, dated March 15, 1897. W. N. 1897 (April 24), p. 117. See Current Index, 1897, p. lxviii.*

*Exchanges of glebe for other land, and of land for tithe rent-charge—Inclosure, &c., Expenses Act, 1868 (31 & 32 Vict. c. 89). W. N. 1900 (May 19), pp. 143, 144. See Current Index, 1900, p. xc.*

— **Boundary of glebe—Church of Scotland.**

*See SCOTTISH LAW—Church. 4.*

**43. — Lands allotted to vicar "and his successors"—Settlement—Improvements—Capital money—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 69—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2, 21, 32—Settled Land Act, 1887 (50 & 51 Vict. c. 30), ss. 1, 2.**

An award, pursuant to an Inclosure Act, of lands in respect of glebe to M. and his successors, vicars of C., is not an instrument limiting an estate or interest in land "to or in trust for any persons by way of succession" so as to constitute a settlement within the meaning of s. 2, sub-s. 1,

**ECCLESIASTICAL LAW (Glebe)—continued.**

of the Settled Land Act, 1882. But where part of lands awarded to the vicars of C. pursuant to an Inclosure Act had been taken by a rly., and the purchase-money paid into Court, then by the combined operation of s. 32 of the Settled Land Act, 1882, and s. 69 of the Lands Clauses Act, 1845, and upon the authorities, such money may be dealt with as capital money arising under the Settled Land Acts; and the Court has discretionary jurisdiction under the Settled Land Act, 1887, to authorize the application of them in the redemption of terminable rent-charges on glebe, created under the Land Improvement Act, 1864. *Ex parte VICAR OF CASTLE BYTHAM. Ex parte MIDLAND RY. CO. — Stirling J. [1895] 1 Ch. 348*

**44. — Mines in glebe lands—Ecclesiastical Commissioners—Right to injunction against illegal mining—13 Eliz. c. 10; 13 Eliz. c. 20; 14 Eliz. c. 11; 14 Eliz. c. 14; 5 & 6 Vict. c. 108, ss. 6, 20; 21 & 22 Vict. c. 57, ss. 1, 2, 10.**

After the passing of the restraining statutes of Elizabeth, the opening of mines in glebe lands, and the letting of mines by the incumbent, even with the consent of the patron and ordinary, were illegal until the passing of 5 & 6 Vict. c. 108, which enabled the mines to be leased with the consent of the Ecclesiastical Commissioners.

The Ecclesiastical Commissioners can maintain an action to restrain the working of mines in glebe lands otherwise than under a lease sanctioned by them.

An incumbent cannot lawfully continue, or authorize a tenant, to work mines in glebe lands which have been unlawfully opened. **ECCLESIASTICAL COMMRS. v. WODEHOUSE**

**Romer J. [1895] 1 Ch. 552**

— **Sale by vicar—Purchase by trustee of settled estate—Successive tenants for life—Charge on trust estate—Vendor's lien. See VENDOR AND PURCHASER—Lien. 56, 56A.**

**Income Tax.**

*See REVENUE—Income Tax. 74, 75, 77—79, 110, 113.*

**Offences by Clergymen.**

**45. — Appeal—Security for costs—Church Discipline Act (3 & 4 Vict. c. 86), s. 15.**

Security for costs ordered on appeal in a criminal suit promoted by the respondent under the Church Discipline Act, 1840 (3 & 4 Vict. c. 86), it being shown that the appellant was in a state of poverty, and had not paid any of the costs of the original suit. **O'MALLEY v. BISHOP OF NORWICH — Archds Ct. of Canterbury [1892] P. 175**

**46. — Brawling—Liability of clergyman for — Penalty — Churchyard — Ecclesiastical Courts Act, 1860 (23 & 24 Vict. c. 32), s. 2.**

Sect. 2 of 23 & 24 Vict. c. 32, which provides that "any person" who shall be guilty of riotous, violent, or indecent behaviour in any churches, chapels, or churchyards shall be liable to a penalty, applies as well to persons in Holy Orders as to laymen. **VALLANCEY v. FLETCHER**

**Div. Ct. [1897] 1 Q. B. 265**

**ECCLESIASTICAL LAW (Offences by Clergymen)**  
—continued.

47. — *Deprivation—Sentence in Consistory Court—Subsequent deposition by bishop—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 8.*

Where a clergyman is deprived by sentence of the Consistory Court, and it appears to the bishop of the diocese that such clergyman ought also to be deposed from Holy Orders, the sentence of deposition, under the Clergy Discipline Act, 1892, s. 8, need not be delivered concurrently with that of deprivation, but may be passed at a subsequent time. *REG. v. DURHAM (LORD BISHOP OF)* — *C. A. [1897] 2 Q. B. 414*

48. — *Drunkenness—Habitual Drunkenness—Stale charges.*

A bishop refused to institute a clergyman to a new living on the ground of habitual drunkenness in his past cure:—

*Held*, that the bishop was not limited in his inquiries to the period prescribed for prosecution in the Church Discipline Act, 1840. Amount of proof necessary to justify this refusal, and the staleness of the charges considered. *MARRINER v. BISHOP OF BATH AND WELLS*

*Archies Ct. of Canterbury [1893] P. 145, n.*

*See also No. 50, below.*

49. — “*Preaching*” — “*Ministration*” — “*Ornaments of the minister*”—*Black gown in Pulpit—Custom—Long usage—Will—Charitable legacy—Gift for endowment of church—Continuing condition.*

A testatrix bequeathed 1500*l.* towards the endowment of a church, provided certain conditions were carried out in every particular, and under this stipulation alone was her executor empowered to pay it. One of the conditions, called by the testatrix an “abiding condition,” was “that the black gown shall be worn in the pulpit, unless there shall be any alteration in the law rendering it illegal.”

The fund being in court in an action to administer the estate of the testatrix:—

*Held*, by C. A. (Lord Russell of Killowen C.J., Lindley and A. L. Smith L.J.J.), agreeing with North J., [1892] 1 Ch. 95, that the condition was a continuing condition, so as to entitle the incumbent of the church to the income of the fund from time to time so long as he performed the condition.

It is not illegal for a clergyman of the Church of England to wear a black gown in the pulpit when preaching, the legality of the black gown in preaching being sanctioned by the continuous usage of centuries uncontrolled by positive law or judicial decision.

Decision of North J. affirmed.

Dictum of Sir R. Phillimore in *Elphinstone v. Purchas*, (1870) L. R. 3 A. & E. 91, disapproved of.

*Ridsdale v. Clifton*, (1877) 2 P. D. 276, considered.

*In re ROBINSON. WRIGHT v. TUGWELL*

*C. A. [1897] 1 Ch. 85*

50. — *Scandalous conduct—Proof of drunkenness—Practice—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), ss. 2, 12.*

The offence of “occasioning scandal and evil

**ECCLESIASTICAL LAW (Offences by Clergymen)**  
—continued.

report” is not an offence which can be legally tried under the Clergy Discipline Act, 1892. Practice of the Court stated as to admitting to proof in a criminal suit charges of habitual drunkenness and of acts of drunkenness, the precise dates of which the prosecutor cannot specify. *BISHOP OF ROCHESTER v. HARRIS*

*Consist. Ct. of Rochester [1893] P. 137*

*See also No. 48, above.*

— *Simony.*

*See ECCLESIASTICAL LAW—Simony.*

**Parish Clerk.**51. — *Appointment of—Sequestration.*

The rights and position of an incumbent after sequestration, except so far as they are interfered with by the express terms of the Sequestration Act, 1871, remain unaltered. It is he, therefore, and not the curate in charge, who is the proper person to appoint a new parish clerk. *LAWRENCE v. EDWARDS (No. 1) Chitty J. [1891] 1 Ch. 144*

52. — *Nature of office.*

The office of a parish clerk is a temporal not an ecclesiastical office. *LAWRENCE v. EDWARDS (No. 2)* — *Chitty J. [1891] 2 Ch. 72*

*See now Local Government Act, 1894 (57 & 58 Vict. c. 73), s. 17.*

**Parsonage House.**53. — *Application of purchase-money.*

Where part of a churchyard had been sold under a private Act, and the purchase-money had been paid into Court:—

*Held*, that the application of the money in buying a house unsuitable for a vicarage, and altering it so as to become suitable, was the same as in buying a house that had been made suitable by the vendor, and that the application could be allowed. *Ex parte VICAR OF ST. BOTOLPH, ALDGATE* — *North J. [1894] 3 Ch. 544*

**Pews.**

54. — *Jurisdiction—Re-pewing of portion of new parish church originally appropriated to school children—Absence of power in Ordinary to authorize the creation of pew-rents—Position of parishioners subscribing to church expenses—Church Building Act, 1818 (58 Geo. 3, c. 45), ss. 75, 77, 84, 85—Church Building Act, 1822 (3 Geo. 4, c. 72), ss. 36, 37—Churchwardens.*

The seats in a new parish church were in 1885 allotted by the Ecclesiastical Commrs. as follows: two pews for the vicar of the parish and his family: 315 sittings to be let to pew-renters; 222 sittings as free seats, and seventy-two sittings as seats for children, in the expectation that the population of the parish would in the main be composed of working men. This expectation was not realised, and in 1898 the vicar and churchwardens of the parish applied to the Ordinary to authorise by faculty the substitution of pews for adults in the place of the seventy-two sittings allotted as children's seats as above mentioned, and the letting of the substituted pews at pew-rents to be expended in church improvements and expenses:—

*Held*, that the Ordinary had no jurisdiction

**ECCLESIASTICAL LAW (Pews)—continued.**

to grant a faculty appropriating to other purposes seats allotted by the Ecclesiastical Commrs. as free seats or authorizing the letting of any seats to pew-renters, but that a faculty might be decreed in his discretion for the substitution of pews for adults in which the churchwardens might seat parishioners in the place of the seventy-two sittings for children: the allotment of such sittings having been made by the Ecclesiastical Commrs. without statutory authority.

*Semble*, the churchwardens of a church built under the Church building Acts may in seating the parishioners in seats in the church not appropriated to pew-renters or allotted as free seats by the Ecclesiastical Commrs. give a preference to applicants who voluntarily subscribe to a fund for church improvements and expenses. *VICAR OF ST. SAVIOUR, WESTGATE-ON-SEA v. PARISHIONERS OF SAME, HOUSEMAN INTERVENING*

Commissary Ct. of Canterbury [1898] P. 217

55. — *Pew in church—Right appurtenant to a house—Prescription.*

A pew may be annexed to a dwelling-house by a faculty, and a faculty may be presumed upon evidence of exclusive possession and repair for a long period. Long-continued user, inconsistent with mere possession by permission of the churchwardens, held to have established the right to a pew, although there was no evidence of any faculty, and there was evidence that the pew had been originally acquired under circumstances which would not confer a legal right.

*PHILIPPS v. HALLIDAY* H. L. (E.) [1891] A. C. 228  
affirm. C. A. 23 Q. B. D. 48

Referred to by Charles J. *Stileman-Gibbard v. Wilkinson*, [1897] 1 Q. B. 749, 760.

56. — *Pew in chancel—Site of ancient pew—Right appurtenant to house in parish—Prescription—Evidence—Exclusive possession—Acts of ownership other than repair—Lay rector—Right to chief seat in chancel.*

The claimant of a right by prescription to a pew in the chancel of a parish church in respect of his ownership and occupancy of an ancient house in the parish must, as against the Ordinary, prove, not merely exclusive possession of the pew by himself and his predecessors, but also some act of user or assertion of proprietary right inconsistent with mere possession by permission of the churchwardens. The right to such a pew is subject to the burden of repair, but it is unnecessary to prove actual repair where evidence is given of other such acts of user or assertion of proprietary right, repair being only one of many possible acts of user. Upon such proof being given, a lost faculty should be presumed.

The removal of the woodwork of a pew in the chancel and the substitution of chairs for the former seats is an act of ownership or assertion of proprietary right inconsistent with any right in the Ordinary, and, together with exclusive possession, is sufficient to prove the claimant's right; such removal will not amount to an abandonment of the right, unless it be coupled with circumstances indicating an intention to abandon.

Re-lining a pew is not an act of repair.

*Semble*, per Charles J.: The right of the lay rector to the chief seat in the chancel of the

**ECCLESIASTICAL LAW (Pews)—continued.**

parish church is not confined to a single seat for his personal occupation. *STILEMAN-GIBBARD v. WILKINSON* Charles J. [1897] 1 Q. B. 749

**Practice.**

57. — *Appeal—Jurisdiction—Criminal suit against rector for non-repair of chancel—Repairs done by churchwardens—Practice—Dismissal of appeal without hearing argument—Surrogate.*

Where on an appeal by promoters it appeared from the process transmitted to the Archies Registry that the Court below had no jurisdiction over the cause in which the appeal was asserted, and might be liable to be stopped by a writ of prohibition if it entertained the appeal, the Court of Archies, having before it an application by the appellants for leave to proceed with the appeal, notwithstanding the proper time for filing the appellants' proxy had elapsed, dismissed the appeal with costs without hearing arguments from either the appellants or the respondent.

The Ecclesiastical Courts have no jurisdiction to entertain a criminal suit against a lay rector who has neglected to perform his duty of repairing the chancel of the church of which he is the rector, unless the chancel was out of repair at the time of the institution of the suit. *NEVILLE v. KIRBY* Consist. Ct. of Lichfield [1898] P. 160

— *Appeal—Security for costs.*

See No. 45, above.

58. — *Special leave to appeal—Frivolous Application—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 4, sub-s. 2.*

Leave to appeal will not be given under the Clergy Discipline Act, 1892, s. 4, sub-s. 2, in respect of the facts unless there is a *prima facie* case; and, in the absence of even a definite suggestion to that effect, an application for leave is idle and frivolous. *In re EVANS v. WOODS. Ex parte WOODS* — P. C. [1900] A. C. 338

**Repairs.**

59. — *Jurisdiction—Criminal suit promoted by churchwardens against lay rector to compel repair of chancel—Monition.*

The articles in a criminal suit promoted by the churchwardens of a parish against the lay rector of a parish church, charged that the chancel of the church was in a very dilapidated condition, and that the respondent, though legally bound to repair it, had for four years refused and neglected to do so. On the respondent giving an affirmative issue to the articles and submitting to judgment, the Ordinary pronounced that the respondent had offended against the ecclesiastical law, and admonished him to do the repairs required. *MORLEY v. LEACROFT* Consist. Ct. of Southwell [1896] P. 92

**Ritual.**

60. — *Ablution.*

Ablution, if not part of the communion service, is lawful.

Per Archbishop of Canterbury in *READ v. BISHOP OF LINCOLN* — — — [1891] P. 9; affirm. by P. C. [1892] A. C. 644

**ECCELESIASTICAL LAW (Ritual)—continued.****61. — *Agnus Dei.***

The singing by the choir of "The Agnus" before and during the reception of the elements is not illegal. *READ v. BISHOP OF LINCOLN*

**Archbishop of Canterbury [1891] P. 9;**  
**affirm. by P. C. [1892] A. C. 644**

**62. — *Bishop's discretion—Staying proceedings—Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), ss. 8, 9.***

(A) A representation was sent to the Bishop of London requesting him to allow proceedings to have the reredos in St. Paul's removed as being unlawful. The bishop refused, his reasons being based on his view that such litigation, in his opinion, entailed mischievous results:—

*Held*, by C. A., that his answer was sufficient. *ALLCROFT v. BISHOP OF LONDON*

**C. A. (1889) 24 Q. B. D. 213;**  
**affirm. by H. L. (E.) [1891] A. C. 666**

Referred to by Consist. Ct. of St. Albans. *Great Bardfield (Vicar of) v. All having Interest*, [1897] P. 185, 189.

(B) In this case the representation was the same as in the former one, except that it alleged that the reredos had in fact encouraged idolatrous practices. The bishop, relying on his former consideration of the question, refused the petition:—

*Held*, by Hawkins J. and H. L. (E.), that the answer was sufficient. *REG v. LONDON (BISHOP OF)* - - - **Div. Ct. [1891] 2 Q. B. 48;**

**affirm. by H. L. (E.) [1891] A. C. 666**

*Held*, in both cases, by H. L. (E.), that whether the reasons of the bishop were good or bad, he had acted within his jurisdiction, and honestly exercised his discretion and judgment. *ALLCROFT v. LORD BISHOP OF LONDON. LIGHTON v. LORD BISHOP OF LONDON*

**H. L. (E.) [1891] A. C. 666**

**63. — *Church Discipline Act—Duration of admonition to abstain from illegal acts—Church Discipline Act (3 & 4 Vict. c. 86).***

Admonitions to abstain from illegal acts in the future were granted in 1885 and 1886, and for disobedience to them the clerk was imprisoned and suspended for some time. In 1891 application was made to enforce these admonitions for fresh offences alleged to be committed in 1890:—

*Held*, that the application ought not to be granted, such admonitions not being intended to be effective during the whole of the offender's life. *HAKES v. COX*

**Ch. Ct. of York [1892] P. 110**

**64. — *Concealing manual Acts.***

Performing manual acts whilst standing in such a position that they cannot be seen by the communicants is illegal. *READ v. BISHOP OF LINCOLN* - **Arch. of Canterbury [1891] P. 9**

*See next Case.*

**65. — *Eastward position.***

It is not illegal for the priest to stand at the N. end of the W. side of the table from the commencement of the Communion Service to the ordering of the bread and wine before the Prayer of Consecration. *READ v. BISHOP OF LINCOLN*

**Arch. of Canterbury [1891] P. 9;**  
**affirm. by P. C. [1892] A. C. 644**

**ECCELESIASTICAL LAW (Ritual)—continued.****66. — *Finality.***

The rule as to the finality of decisions of the Privy Council is not equally binding as regards decisions which relate to ritual and ecclesiastical practice and depend to some extent on the accuracy of historical research. *READ v. BISHOP OF LINCOLN* - **P. C. [1892] A. C. 644**

**67. — *Lighted candles.***

Two candles, not required for the purpose of giving light, were alight throughout the celebration on the table without objection on the part of the respondent, who was officiating as bishop; there was no evidence either of a ceremonial use of the lights, or that the respondent had introduced them as unlawful ornaments:—

*Held*, that the respondent was not responsible therefor, and that his making no objection thereto was not an ecclesiastical offence. *READ v. BISHOP OF LINCOLN*

**Arch. of Canterbury [1891] P. 9;**  
**affirm. by P. C. [1892] A. C. 644**

**68. — *Making sign of the Cross.***

Making the sign of the Cross during the absolution and benediction is illegal, for it is a ceremony additional to the ceremonies of the Church. *READ v. BISHOP OF LINCOLN*

**Arch. of Canterbury [1891] P. 9;**  
**[1892] A. C. 644**

**69. — *Mixed chalice.***

The mixing of wine with water in and as part of the Communion Service is, but the use of a cup mixed beforehand is not, illegal. *READ v. BISHOP OF LINCOLN*

**Arch. of Canterbury [1891] P. 9;**  
**affirm. by P. C. [1892] A. C. 644**

**70. — *Monition.***

Where promoters have established the commission of an ecclesiastical offence, they are not entitled as of right to a monition; the archbishop is entitled, on being satisfied that the offence will not be repeated, to accept the assurance of future submission. *READ v. BISHOP OF LINCOLN* - **P. C. [1892] A. C. 644**

— *Parish clerk, Appointment of.*

*See ECCELESIASTICAL LAW—Parish Clerk.*  
**51.**

**Sale of Property.**

*Canons' houses, sale of—Application of proceeds of.* *See Manchester Canonries Act, 1899 (62 & 63 Vict. c. 28).*

— *Ecclesiastical land granted by bishop to grantee for life, but during his tenure of an ecclesiastical office.*

*See SETTLED LAND—Settlement.* **126.**

**Sequestration.**

**71.—*Effect on status of incumbent—Sequestration Act, 1871 (34 & 35 Vict. c. 45), ss. 1, 5, 6.***

The rights and position of an incumbent after sequestration remain unaltered, except so far as they are interfered with by the express terms of the Sequestration Act, 1871. *LAWRENCE v. EDWARDS (No. 1)* **Chitty J. [1891] 1 Ch. 144**

*See also Lawrence v. Edwards (No. 2), Chitty J. [1891] 2 Ch. 72*

**72. — *Jurisdiction—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 52—Inability of***

**ECCLIASTICAL LAW (Sequestration)—contd.**

*Ordinary to relax sequestration where bankruptcy of incumbent of sequestered living discharged—Sequestration Act, 1871 (34 & 35 Vict. c. 45), ss. 1-4.*

The Ordinary has no jurisdiction to relax the sequestration of the benefice of a bankrupt clergyman if the debts provable in the bankruptcy are unpaid, although the bankrupt has obtained his order of discharge.

The 52nd section of the Bankruptcy Act, 1883, provides that "where a bankrupt is a beneficed clergyman the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of *levavi facias* founded on a judgment against the bankrupt."

The incumbent of a benefice having been adjudged a bankrupt, a sequestration of the profits of the benefice was granted under the above section by the bishop of the diocese, who appointed a sequestrator of the benefice, and (after the sequestration had been in force for more than six months) a stipendiary curate to serve the cure, assigning to the latter a yearly stipend. Subsequently an order was made in the bankruptcy discharging the bankrupt, and he applied by petition to the Consist. Ct. of the diocese praying the Court to relax the sequestration, to direct the discharge of the sequestrator, and to revoke the appointment of the stipendiary curate. The trustee in the bankruptcy opposed the application, and objected that the debts provable in the bankruptcy still remained in part unsatisfied:—

*Held*, by the Chancellor of the Diocese of Winchester, that so much of the application as asked for the relaxation of the sequestration and the discharge of the sequestrator must be refused, as the Ecclesiastical Court had no jurisdiction to determine the question whether the discharge of the bankrupt acted as a satisfaction of the sequestration:

*Held*, also, by the same judge, that the remainder of the application ought to be referred to the bishop to be dealt with in his discretion.

*In re LAWRENCE*

Consist. Ct. of Winchester [1896] P. 244

*See next Case.*

**73. — Sequestration of benefice — Beneficed clergyman — Bankruptcy — Discharge of bankrupt — After-acquired property — Future profits — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 30, 52.**

A beneficed clergyman having been adjudicated a bankrupt in April, 1889, the trustee in the bankruptcy, on May 31, 1889, obtained from the bishop a sequestration of the profits of the benefice, by which the sequestrator was directed, after making certain payments, to pay the residue of the profits to the trustee. On May 9, 1894, the bankrupt obtained an order of discharge. He then brought an action against the trustee, claiming a declaration that, as against the trustee, the *pl't.* from and after the date of the discharge was entitled to receive the profits of

the benefice, and an injunction to restrain the *deft.* from receiving the residue thereof:—

*Held*, that for this purpose there was no distinction between the Bankruptcy Act, 1869, and the Bankruptcy Act, 1883; that the profits of the benefice accruing due after the discharge were not after-acquired property of the bankrupt; and, on the authority of *Ex parte Chick* (1879) 11 Ch. D. 731, that the trustee in the bankruptcy was, notwithstanding the discharge, entitled to receive the residue of the profits under the sequestration until the debts provable in the bankruptcy had been paid. The action was accordingly dismissed. *LAWRENCE v. ADAMS*

North J. [1896] W. N. 158 (2)

*See previous Case.*

**Simony.**

**74. — False declaration under Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122)—Meaning of "offence against morality not being a question of doctrine or ritual"—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), ss. 2, 12—Clergy Discipline Act, 1892, Procedure Rules, r. 34.**

The 2nd section of the Clergy Discipline Act, 1892, provides, *inter alia*, that if a clergyman is alleged to have been guilty of any immoral act, immoral conduct, or immoral habit, or of any offence against the laws ecclesiastical, being an offence against morality and not being a question of doctrine or ritual, he may be prosecuted by any person approved by the bishop, and tried in the Consist. Ct. of the diocese in which he holds preferment; and by the 34th rule of the Procedure Rules made under the Act, a clergyman holding no preferment may be prosecuted under the Act in the Consist. Ct. of the diocese in which he resides.

The complaint in a criminal suit lodged in the registry of the Consist. Ct. of London at the instance of a person approved by the bishop, charged the *deft.*, a clergyman resident in the diocese, with having been guilty of offences against the laws ecclesiastical, being offences against morality and not being a question of doctrine or ritual, by having within the five years last past, and within the diocese, been guilty of simony, and knowingly made a false declaration against simony under the Clerical Subscription Act, 1865. The defendant brought in an answer denying that the offences alleged in the complaint were offences against the laws ecclesiastical, being offences against morality within the meaning of the 2nd section of the Clergy Discipline Act, 1892, and at the hearing of the issues of law raised on the pleadings, contended that the Consist. Ct. of London had no jurisdiction to entertain the suit:—

*Held*, by the Ordinary, that the Consist. Ct. of London had jurisdiction in the suit under the Clergy Discipline Act, 1892. *LEE v. FLACK*

Consist. Ct. of London [1896] P. 138

**75. — Immorality—Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122)—False declaration against simony—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), ss. 2, 12.**

*Held*, that in order to punish the offence of simony in a clerk resort cannot be had to the

**ECCLESIASTICAL LAW (Simony)**—*continued.*

provisions of the Clergy Discipline Act of 1892, but proceedings must still be taken under the Act of 1840. The immorality against which the Act of 1892 is directed is so defined by ss. 2 and 12 as to exclude simony from its scope :

*Held*, also, that a false declaration against simony under the Clerical Subscription Act of 1865 cannot be isolated from the charge of simony and brought within the scope of the Act of 1892. **BENEFICED CLERK v. LEE** P. C. [1897] A. C. 226

**ECUADOR**—*Treaty of Oct. 18, 1880, between Great Britain and Ecuador denounced.* Lond. Gaz. May 27, 1898, p. 3212.

**EDUCATION ACTS.**

*See* Cases under SCHOOLS.

**"EFFECTS"**—Devise and bequeath of—Whether including realty.  
*See* WILL—Words. 213.

**EFFIGY**—Exhibition of.

*See* INJUNCTION. 15.

**EGYPT** — *Correspondence respecting Lawsuit brought against Egyptian Government in regard to appropriation of money for expenses of Dongola Expedition. 1897. [C. 8306.] Price 5d.*

— Foreign Jurisdiction Act, 1890.

*See* FOREIGN JURISDICTION.

**EJECTMENT**—Crown—Action by—Prerogative Equitable defence.

*See* CROWN. 1.

— Defence to action of.

*See* PRACTICE—Writ. 286.

— Fiscal Sale.

*See* CEYLON. 2.

— Mortgagor in possession — Ejectment for breach of covenant.

*See* LANDLORD AND TENANT. 79.

— Receiver — Disputed title — Defendant in possession.

*See* RECEIVER. 10.

— Setting aside verdict—Withdrawal of facts from jury.

*See* JAMAICA. 3.

**"EJUSDEM GENERIS."**—General words.

*See* DEED—Construction. 1.

**"ELDEST SON"**—Settlement—Construction.

*See* SETTLEMENT—Construction. 5.

— Will—Construction.

*See* WILL—Eldest Son. 77.

**ELECTION**—Absolute gift—Gift on condition.

*See* Will. 168.

— After-acquired property—Compensation.

*See* INFANT—Settlement. 39.

— Conditional devise to lunatic—Jurisdiction—Performance of condition by committee.

*See* LUNACY. 30.

— Married woman—Property—Contract.

*See* HUSBAND AND WIFE. 17.

— Possible issue—Declaration by Court—Form of order.

*See* INFANT. 21.

— To rescind contract to take shares.

*See* COMPANY—WINDING-UP. 28, 47.

**ELECTION**—*continued.*

— Waiver of tort — Joint tortfeasors — Compromise by accepting proceeds of sale—Action of trover against the other.  
*See* TROVER. 9.

**ELECTION LAW**—*Local Government (Elections) Act, 1896 (59 & 60 Vict. c. 1), continues temporarily certain powers for the removal of difficulties at elections under the Local Government Act, 1894 (56 & 57 Vict. c. 73).*

— County councils' elections.

*See* COUNTY COUNCIL.

— District council.

*See* DISTRICT COUNCIL.

— London county electors' disqualification.

*See* LONDON—Electors.

— Married woman — Qualification — Ownership of property in parish.

*See* LOCAL GOVERNMENT.

— Municipal.

*See* CORPORATION.

— Municipal election—Prosecution for corrupt practices at—Private prosecutor—Defendant's right to costs where acquitted.

*See* CRIMINAL LAW—Costs. 4.

— Parish Council.

*See* PARISH COUNCIL.

— Parliament.

*See* Cases under PARLIAMENT.

— School board.

*See* Cases under SCHOOLS—School Board.

— Thames Conservancy Board.

*See* THAMES. 3.

**ELECTRIC LIGHTING** — *Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), incorporates in one Act certain provisions usually contained in Provisional Orders made under the Acts relating to Electric Lighting.*

*APPLICATION FOR LICENCES, &c.] Rules dated Sept. 1899, with respect to applications for licences and provisional orders, &c., under the Electric Lighting Acts, 1882 to 1890. St. R. & O. 1899, p. 1822.*

— Powers of urban authority as to electric lighting.

*See* STREETS. 11.

— Power to lay wires underground—Right to excavate streets.

*See* CANADA—Quebec. 63.

— Use of disused churchyard.

*See* ECCLESIASTICAL LAW—Faculty. 24.

**ELECTRICITY**—Vibration—Nuisance.

*See* NUISANCE. 9.

**ELEGIT**—Earnings of business — Receipts of theatre—Equitable execution.

*See* RECEIVER. 4.

— Sheriff—Duty to file writ and inquisition.

*See* SHERIFF. 16.

**ELEMENTARY EDUCATION ACTS.**

*See* SCHOOLS.

**EMBARRASSING PLEADINGS**—Joinder of pilot as defendant.

*See* SHIPPING. 206.

**EMBEZZLEMENT.**

*See* CRIMINAL LAW—Embezzlement.

**EMPLOYER AND WORKMAN.**

*See* Cases under MASTER AND SERVANT.

**EMPLOYMENT—Children.**

*See* SCHOOLS—Attendance of Children. 1.

— on Sunday—Jews.

*See* MASTER AND SERVANT — Factory Acts. 61.

**EN VENTRE SA MÈRE** — Children — “Issue living” — Child en ventre sa mère.

*See* WILL—Children. 42.

— Illegitimate children en ventre sa mère.

*See* SETTLEMENT. 7.

**ENDOWED SCHOOL.**

*See* Cases under CHARITY—Commissioners.

**“ENDOWMENT.”**

*See* Cases under CHARITY.

**ENFRANCHISEMENT** — Copyholds — Lands taken by railway.

*See* LANDS CLAUSES ACT. 3.

— Copyhold—Rights as to common.

*See* Cases under COMMON.

COPYHOLD.

**ENGINES**—Damage to steamship.

*See* SHIPPING—Average. 13.

— Trade fixture—Hiring agreement.

*See* FIXTURES. 7.

**ENGINEERING WORK**—Employment on, in, or about—Workmen's Compensation Act.

*See* MASTER AND SERVANT—Compensation. 25.

**ENGROSSMENTS**—Probate pieces and — Non-contentious business.

*See* PROBATE—Practice Note. 133.

**ENLARGEMENT**—Objects of company.

*See* Cases under COMPANY—Memorandum.

**ENLISTMENT.**

*See* FOREIGN ENLISTMENT.

**ENROLMENT**—Presumption of.

*See* LIMITATIONS—STATUTE OF.

**ENTAIL**—Estate Duty.

*See* REVENUE—Estate Duty. 24.

— Scottish Law.

*See* SCOTTISH LAW—Entail. 15.

**ENTERTAINMENT**—Sunday observance.

*See* SUNDAY. 3.

**ENTRY**—Power of.

*See* Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50), s. 5.

— Forcible entry—Removing roof of house.

*See* LANDLORD AND TENANT. 45.

— Land under oral agreement.

*See* FRAUDS, STATUTE OF. 12.

— Power of, by constable on licensed premises.

*See* LICENSING ACTS. 45.

— Shop door—Entry by opening—Loss by theft —“Actual forcible and violent entry.”

*See* INSURANCE—Burglary. 5.

— To distrain.

*See* DISTRESS.

**ENTRY—continued.**

— Water-closets—Jurisdiction—Order for entry on premises—Local authority.

*See* WATER-CLOSETS. 2.

**ENVELOPE**—Letter and, taken as one document —Statute of Frauds.

*See* CONTRACT.

**EPILEPTIC CHILDREN**—Elementary education.

*See* SCHOOLS.

**EQUITABLE ASSIGNMENT**—Banker's deposit note—Indorsement and delivery.

*See* VOLUNTARY GIFT. 1.

— Debt—Notice—Debtor and creditor—Negotiable instrument.

*See* ASSIGNMENT.

— Judgment debt—Bankruptcy notice.

*See* BANKRUPTCY. 15.

— Lease—“Assigns”—Option to purchase.

*See* LANDLORD AND TENANT. 80.

**EQUITABLE CHARGE.**

*See* COMPANY—Debenture.

**EQUITABLE DEFENCE**—Crown suits.

*See* CROWN.

**EQUITABLE EXECUTION**—Bankruptcy practice.

*See* Cases under BANKRUPTCY.

— Charge on land—Receiver—Legal remainder —Sale—“Actual delivery in execution.”

*See* JUDGMENT DEBT. 1.

— Company practice.

*See* Cases under COMPANY and COMPANY

— WINDING-UP.

— Receiver.

*See* RECEIVER. 14.

**EQUITABLE INTEREST**—Sale of reversion—Delay.

*See* SPECIFIC PERFORMANCE. 4.

**EQUITABLE JURISDICTION** — Underground trespass—Fraud — Statute of Limitations.

*See* NEW SOUTH WALES. 20.

**EQUITABLE MORTGAGE.**

*See* Cases under COMPANY—Debentures. MORTGAGE.

— Of shares in a company to secure debt—Foreclosure action after debt barred.

*See* LIMITATIONS, STATUTE OF. 27.

**EQUITABLE SUB-MORTGAGE** — Conflicting equities—Notice—Priority.

*See* MORTGAGE. 14.

**EQUITABLE SECURITY**—Debenture.

*See* COMPANY—Debentures. 52.

**EQUITABLE TENANT FOR LIFE,**

*See* Cases under SETTLED LAND.

**EQUITY OF REDEMPTION** — Investment — Capital money.

*See* SETTLED LAND. 61.

— Mortgages.

*See* MORTGAGE—Redemption. 58.

— Purchase in England of—Property situate out of the United Kingdom—Agreement for sale—Stamp.

*See* REVENUE—Stamps. 169.



**EQUITY TO SETTLEMENT.**

See SETTLEMENT—Equity to Settlement.

**ERROR**—Writ of—Dispensing with attendance of plt.

See CRIMINAL LAW—Practice. 65.

**ESCHEAT**—Bastardy—Grant of administration—Practice.

See PROBATE. 22.

1. — *Proceeds of sale of realty not effectually disposed of*—Executors or the Crown entitled—*Intestate Estates Act, 1884* (47 & 48 Vict. c. 71), ss. 4, 7.

A testatrix died without an heir, having devised a house of which she was legally seised in fee simple to her executors, upon trust for sale, and out of the proceeds to pay her debts, funeral expenses, and legacies. There was no gift of residue:—

*Held*, that the balance of proceeds of sale, after paying the debts, expenses, and legacies, did not belong to the executors for their own benefit, but escheated to the Crown. *In re WOOD. ATT.-GEN. v. ANDERSON* Romer J. [1896] 2 Ch. 596

**ESCROW**—Agreement for lease—Signature not final.

See CONTRACT. 15.

— Deed—Delivery to one of several grantees—Evidence—Admissibility.

See MORTGAGE. 15.

— Mortgage by deposit—Conflicting equities—Priority.

See MORTGAGE. 14.

**ESTATE AGENT**—Authority to find a purchaser—Contract by agent.

Instructions given to estate agents to find a purchaser and negotiate a sale, *held* not to amount to an authority to bind the vendor by a contract. To bind the vendor there must be an express authority to the agent to enter into a contract on behalf of the vendor. *CHADBURN v. MOORE*

Kekewich J. [1892] W. N. 126

**ESTATE DUTY.**

See REVENUE—Estate Duty.

**ESTATE PUR AUTRE VIE**—*Special occupant*—*Devolution of estate*—*Intestacy*—*Wills Act, 1837* (1 Vict. c. 26), s. 6.

A testator who died in 1873 devised his real estate to trustees upon trust to pay the rents and profits unto and for the benefit of his three daughters, A., B., and C., and their issue, in equal shares for and during the term of their natural lives respectively, and the life of the longer liver of them. On the death of A., leaving three children, the Court had decided that these children became absolutely entitled in thirds to A.'s share; two of A.'s children having since died intestate:—

*Held*, that no special occupant having been designated, the interest of A.'s deceased children passed to their respective legal personal representatives under s. 6 of the *Wills Act* (1 Vict. c. 26).

*Wall v. Byrne*, (1845) 2 J. & Lat. 118, and *Philpotts v. James*, (1784) 3 Doug. 425, distinguished. *In re SHEPPARD. SHEPPARD v. MAN-NING* - - - Romer J. [1897] 2 Ch. 67

**ESTATE PUR AUTRE VIE**—*continued.*

2. — *Special occupant*—*Devolution of estate*—*Wills Act* (1 Vict. c. 26), s. 6.

An estate pur autre vie was created by the conveyance of the appellant's life estate in lands to the appellant and the respondent to hold to the use of them and their heirs upon certain trusts, with a declaration that all the estates and interests conveyed to the respondent were conveyed to her as trustee for an infant:—

*Held*, that the infant's equitable estate was not an estate to him and his heirs, and that there being no "special occupant" the infant's estate upon his death passed to his administratrix under s. 6 of the *Wills Act* (1 Vict. c. 26).

The decision of the C. A. in *Ireland* ([1895] 1 I. R. 44) affirmed. *EARL OF MOUNTCASHELL v. MORE-SMYTH* - [1896] A. C. 158

**ESTATE TAIL**—Will.

See WILL—Estate Tail.

**ESTOPPEL.**

— Admission by married woman as to proviso defeating her interest.

See HUSBAND AND WIFE. 43.

— Appointment — Recital — Construction of settlement.

See SETTLEMENT. 33.

1. — *Assistance in prior action by person under indemnity to defendant*—"Privies in estate"—*Estoppel by record*.

A resolution purporting to be in pursuance of power to compromise contained in a debenture trust deed given by the A. Co. was passed by a majority of debenture-holders, for accepting, in lieu of debentures, shares in the B., the purchasing co. Dissident debenture-holders recovered judgment against the A. Co. for arrears of interest on the ground that there were no circumstances of difficulty which enabled the majority to bind the minority to the compromise; the B. Co. assisted in the defence and paid the costs thereof:—

*Held*, in a subsequent action by the dissident debenture-holders suing on behalf of all the holders to enforce against the B. Co. and the lands assigned to them by the A. Co., that the debenture charge (which through want of registration was not valid according to the local law) that the B. Co. were not estopped by the former judgment from adducing evidence to shew that through non-registration of the charge and other circumstances difficulties bringing the power of compromise into play had arisen.

A purchaser of land cannot be estopped as privy in estate by a judgment in an action against his vendor commenced after the purchase when such purchaser has given the vendor an indemnity and has assisted him in defending an action by a third person; in subsequent proceedings the purchaser is estopped only between the vendor and the purchaser. *MERCANTILE INVESTMENT AND GENERAL TRUST CO. v. RIVER PLATE TRUST, LOAN AND AGENCY CO.*

Romer J. [1894] 1 Ch. 578

— Authority to apply for shares—Underwriting letter.

See COMPANY—Shares. 307, 308.

**ESTOPPEL—continued.**

— Bailee—Right to set up *jus tertii*.

See INTERPLEADER. 1.

2. — *Bailment—Attornment by bailee—Warehouseman—Estoppel en pais—Property in goods obtained by fraud—Jus tertii—Trover—Measure of damages.*

The owner of goods lying at a warehouse was induced by the fraud of F. to instruct the warehouseman to transfer the goods to F.'s order. F. then sold the goods to an innocent purchaser, who before paying the price obtained a statement from the warehouseman that he held the goods to the purchaser's order. On the discovery of F.'s fraud the warehouseman refused to deliver to H. In an action of trover by the purchaser against the warehouseman:—

*Held*, that the warehouseman having attorned to the purchaser, was estopped from impeaching his title.

*Seemle*, per Lord Halsbury, that the true owner, having enabled F. to hold himself out as the owner, could not set up his title against that of an innocent purchaser from F. *HENDERSON & Co. v. WILLIAMS*

C. A. [1895] 1 Q. B. 521

3. — *Bailment—Bailor and bailee—Jus tertii.*

A bailee of goods cannot avail himself of the title of a third person to goods as a defence to an action of detinue, except by shewing that he is defending the action on behalf and by the authority of such third person. *ROGERS, SONS & Co. v. LAMBERT & Co.* C. A. [1891] 1 Q. B. 318

— Bill of exchange.

See BILL OF EXCHANGE. 2.

— Contract by company *ultra vires*—Effect of consent judgment.

See CANADA. 17.

— Contract of indemnity—Evidence.

See NEW SOUTH WALES. 10.

— Contributory—Certificate that shares are fully paid-up.

See COMPANY—WINDING-UP—Contributory. 30, 31.

— Conversion—Proximate cause of loss—Liability of warehouseman.

See TROVER. 4.

— Director parting with qualifying shares.

See CHARGING ORDER. 3.

— Divorce.

See DIVORCE—Nullity. 94.

— Divorce proceedings.

See Cases under DIVORCE—Collusion.

— Ejectment—Law of Western Australia.

See AUSTRALIA. 4.

4. — *Judgment—Practice—Administration—Res judicata—Person not a party or bound by judgment—Cognizance of former proceedings—Accepting benefit of judgment—Estoppel by conduct—Absent parties—Class representation—Rules of Supreme Court, 1883, Order XVI., rr. 11, 32.*

A person not a party to an action or summons, nor technically bound by the judgment, but fully cognizant of the proceedings who stands by and deliberately takes the benefit of a decision on the construction of a will under which a particular fund is distributed, is estopped by his

**ESTOPPEL—continued.**

conduct, where the circumstances are identical, from reopening any of the questions covered by the former judgment by means of a fresh action or summons relating to another fund under the same will, though claiming in respect of a different interest.

An order appointing some one to represent a class, such as next of kin, is not binding on one of the next of kin who has a distinct and independent interest in another capacity. *In re LART. WILKINSON v. BLADES.*

Chitty J. [1896] 2 Ch. 788

5. — *Judgment by consent.*

A judgment by consent creates an estoppel to the same extent as a judgment, where the Court has exercised a judicial discretion. *In re SOUTH AMERICAN AND MEXICAN CO. Ex parte BANK OF ENGLAND.* — C. A. [1895] 1 Ch. 37

6. — *Judgment for salvage in Admiralty Court—Action against underwriter—Defence that loss did not arise from perils insured against—Ship—Marine insurance.*

The captain of a steamer that had, during a voyage, run short of coal engaged a steam trawler to tow her to her port of discharge. The owner of the trawler brought an action in the Admiralty Court and recovered a sum of money for salvage. In an action by the owner of the steamer to recover, from an underwriter who had insured the ship against perils of the sea, the amount paid under the judgment:—

*Held*, that the debt. was not concluded by the judgment of the Admiralty Court from setting up that the loss did not arise from any of the perils insured against. *BALLANTYNE v. MACKINNON* — C. A. [1896] 2 Q. B. 455

Considered by Collins J. *Minna Craig Steamship Co. v. Chartered Mercantile Bank of India, London and China*, [1897] 1 Q. B. 55, 61.

— Licence—Renewal—Objection on same grounds as previous objection to transfer. See LICENSING ACT. 21.

— Married woman—Restraint on anticipation—Admission of cesser of interest. See HUSBAND AND WIFE. 43.

7. — *Misrepresentation.*

The defts., trustees of a will, sold parcels of land (X.) to B., which he mortgaged to C. Subsequently B. induced one of the defts. to sell to him a piece of land (Y.) which, though B. represented the contrary, was in fact part of X. B. mortgaged Y. to D., the plt. Eventually C. took possession. The plt. then sued the defts. for compensation for loss caused by their misrepresentation, or, in the alternative, for breach of covenant for title:—

*Held*, (1) that the second conveyance of Y. did not contain such a distinct averment that the defts. were seised at the time of this conveyance as would estop them from denying that they were so seised; (2) that as the plt. had no legal estate with which the covenants could run, he could not sue on the covenants; (3) that the plt. had no remedy for misrepresentation by the defts., the representation having been made honestly. Whether, if the conveyance had been in terms sufficient to create an estoppel, the defts. could

**ESTOPPEL—continued.**

have successfully pleaded fraud by B., *quære*.  
**ONWARD BUILDING SOCIETY v. SMITHSON**

**C. A. revers. Kekewich J. [1893] 1 Ch. 1.**

—Prospectus—Statement that directors will take shares not taken by vendor—Implied agreement.

*See COMPANY—Prospectus.* 205.

—Receipt—Mortgagor's signature induced by fraud of his solicitor—"Non est factum",  
 —Title of mortgagee.

*See MORTGAGE.* 56.

—Recitals in deed, Effect of.—Notice.

*See RECITALS.* 1.

**8. — Res judicata—Metropolitan Police Court Act, 1839 (2 & 3 Vict. c. 71), s. 40.**

(A) To constitute a good plea of *res judicata*, it must be shewn that the former suit was one in which the plt. might have recovered precisely what he seeks in the second.

A magistrate's order under s. 40 of the Metropolitan Police Act, 1839, is no bar to an action for special damage arising out of the same detention. **MIDLAND RY. CO. v. MARTIN & CO.**

**Div. Ct. [1893] 2 Q. B. 172**

(B) To establish the plea of *res judicata* the judgment relied on must have been pronounced by a Court having concurrent or exclusive jurisdiction on the question claimed to have been adjudged, and have given judgment directly upon such question. **ATT.-GEN. FOR TRINIDAD AND TOBAGO v. ERICHE**

**P. C. [1893] A. C. 518, 523**

(c) H. had from time immemorial repaired a highway *ratione tenuræ*. In 1782 the highway became vested in trustees who materially altered it. In 1866 the Court decided that H. was not liable to be rated for the repair of the highways in the district, but the fact of the alteration was not brought before the Court:—

*Held*, that this decision did not make the case *res judicata*, as the fact of the alteration had not been brought to the attention of the Court. **HEATH v. WEAVERHAM (OVERSEERS, &C., OF)** — — — **Div. Ct. [1894] 2 Q. B. 108**

Referred to by H. L. (E.). **Dalton Overseers v. North Eastern Ry., [1900] A. C. 345, 351.**

*See also HIGHWAY—Repairs.* 11.

**INTERPLEADER.** 4.

—*Res judicata* — Decision quashing previous rate.

*See HIGHWAY.* 11.

—*Res judicata*—Validity of patent.

*See PATENT.* 12.

**9. — Res judicata—Will—Validity—Probate action—Citation of parties—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 63.**

Where the heir-at-law of a testator is made deft., as one of the testator's next of kin, in a probate action to establish his will, and appears and contests its validity in the action, he cannot afterwards dispute the validity of the will in respect of real estate affected by it, notwithstanding that he was not cited to appear in the action as heir-at-law. **BEARDSLEY v. BEARDSLEY**

**Div. Ct. [1899] 1 Q. B. 746**

**ESTOPPEL—continued.**

—Sale by agent.

*See FACTOR.* 8.

**10. — Settlement of land by grantor having no title—Entry of tenant for life under settlement and acquisition by him of possessory title—Rights of remaindermen—Statutes of Limitations—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34.**

Where a grantor, who has no title, purports by deed to convey a piece of land to A. for life with remainders over, and A. enters upon the land under the deed, and afterwards acquires a good title by possession against the true owner, A. and his privies are respectively estopped, as against the remaindermen, from disputing the validity of the deed.

**Hawksbee v. Hawksbee, (1853) 11 Hare, 230, Anstee v. Nelms, (1856) 1 H. & N. 225, and Board v. Board, (1873) L. R. 9 Q. B. 48, approved and adopted.**

The doctrine of *Board v. Board*, L. R. 9 Q. B. 48, is no part of the law of will, and applies to estates taken under instruments of whatever character.

*Per Lindley and Rigby L.JJ.*: It is difficult to reconcile *Kernaghan v. M'Nally, (1861) 12 Ir. Ch. Rep. 89, with Scott v. Nixon, (1843) 3 D. & War. 388.*

The decision of Stirling J., [1897] 1 Ch. 440, affirmed. **DALTON v. FITZGERALD**

**C. A. [1897] 2 Ch. 86**

**11. — Sewage Works—Order to execute—Matter of Record—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 3.**

By s. 3 of the Rivers Pollution Prevention Act, 1876, it is made an offence to permit sewage to flow into a "stream" from a sewer constructed at the date of the passing of the Act without using the best practicable means to render the sewage harmless. And by s. 20 the term "stream" is defined to include only such tidal waters as may be determined by the Loc. Govt. Bd. by order. Jurisdiction is by the Act given to the county court to make an order restraining the further commission of the offence, and ordering the offenders to execute the necessary sewage works to render the sewage harmless, and to inflict penalties for disobedience to such order.

Proceedings having been taken in a county court under the Act against the defts. for permitting sewage to flow into a certain river, and neglecting to use the best practicable means to render the sewage harmless, the defts. consented to an order declaring them to have committed the alleged offence and ordering them to execute the necessary sewage works to prevent its continuance. At the date of that order the defts. were under the belief that the part of the river into which the sewage flowed was non-tidal. Subsequently the defts., having been summoned for penalties for disobedience of the order, sought to shew that the part of the river into which the sewage flowed was tidal water, and that as there had been no order of the Loc. Govt. Bd. declaring it to be a stream, they had committed no offence:—

*Held*, that the order of the county court was

**ESTOPPEL—continued.**

equivalent to a judgment, and that the defts. were estopped from disputing that they had committed the alleged offence, or from contending that the order of the Court in so far as it applied to the locus in quo was without jurisdiction. *JOINT COMMITTEE OF THE RIVER RIBBLE v. CROSTON URBAN COUNCIL*

Div. Ct. [1897] 1 Q. B. 251

— Sewers—Agreement to admit foreign sewage  
— Laches and acquiescence—Injunction  
— Public body.

See *LONDON—Sewers*. 62.

— Sewers—Liability to repair.

See *LONDON—Sewers*. 61.

— Share certificate—Duty of director—Putting to rest.

See *COMPANY—Shares*. 267, 268.

12. — *Shares—Transfer of shares.*

A. gave a certificate for shares transferable, by writing not under seal to B., his broker, for sale, and handed him a blank transfer. B. pledged the blank transfer and the certificate with C. C.'s solicitor filled up the blank with the name of C.'s clerk. B. never paid anything to A. on account of the shares:—

*Held*, that A. was not estopped from setting up his title against C. *FOX v. MARTIN*

*Kekewich J.* [1895] W. N. 36

— Stamp of larger amount than necessary—Negligence.

See *BILL OF EXCHANGE*. 2.

13. — *Statement operating as an estoppel.*

A statement to operate as an estoppel must be clear and unambiguous. The doctrine of estoppel as applicable to innocent misrepresentations discussed and explained. *LOW v. BOUVIERE*

C. A. [1891] 3 Ch. 82

Referred to by Stirling J. *In re Wyatt White v. Ellis*, [1892] 1 Ch. 188. This Case affirm. by H. L. (E.) *sub nom. Ward v. Pemberton*, [1893] A. C. 369.

— Surrender by operation of law—Determination of tenancy—Estoppel by conduct.

See *LANDLORD AND TENANT*. 40.

— Voluntary settlement—Setting aside—Rectification—Power of appointment.

See *SETTLEMENT*. 29.

— Workmen's Compensation Act—Time for making claim.

See *Cases under MASTER AND SERVANT—Practice*.

**ETIQUETTE OF THE BAR** — *Fees—Brief—Public Analyst practising at the Bar*. W. N. 1899 (Jan. 21), p. 45. See *Current Index*, 1899, p. exxii.

**EVANGELICAL PRINCIPLES**—Gift to promote spread of—Purchase of advowsons.

See *CHARITY*. 16.

**EVICTIO**N—Of grantee from part of land—Grant or reservation—Apportionment of rent-charge—Acreage or value.

See *RENT-CHARGE*. 1.

**EVIDENCE.**

See also under *SPECIFIC TITLES*.

*Order XXXVII. relates to evidence generally.*

**EVIDENCE—continued.**

*Criminal Evidence Act*, 1898 (61 & 62 Vict. c. 36), *amends the law of evidence*.

— Admiralty practice.

See *Cases under SHIPPING*.

— Admissibility of evidence.

See *EVIDENCE, passim*.

1. — *Admissibility—Ancient Document tendered in support of ancient possession—Act of ownership—Declaration of deceased person against interest—Admission by tenant as to landlord's title.*

In an action brought to determine the title to certain land, the plt. tendered in evidence an ancient document coming from the proper custody which purported to be signed by M., a tenant of a predecessor in title of the deft., and which stated that J., a predecessor in title of the plt., had been persuaded to stop all proceedings at law that he then had against M. for wilfully and without leave bringing his sheep and cattle on to J.'s freehold land therein specified (which was assumed to be part of the land in dispute) for which wilful trespass M. bound himself to pay 16s. costs, and that he would for the future keep his own and other people's sheep and cattle from trespassing on the said land to the utmost of his power:—

*Held*, that the document was admissible in evidence, not as an admission by the tenant as to title, in which case it would not be evidence against the landlord, but as evidence of an act of ownership by a predecessor in title of the plt.:—

Decision of Byrne J. reversed.

The principle of *Malcolmson v. O'Dea*, (1863)

10 H. L. C. 593, applied.

*Papendick v. Bridgwater*, (1855) 5 E. & B. 166, distinguished. *BLANDY-JENKINS v. EARL OF DUNRAVEN* - - C. A. [1899] W. N. 88; [1899] 2 Ch. 121

— Admissibility—Ancient facts,

See *No. 24, below*.

2. — *Admissibility—Arbitration—Setting aside award—Admission by Arbitrator.*

Evidence of an admission out of court by an arbitrator that he made his award improperly, is not admissible in support of an application to set aside the award. *In re WHITELEY AND ROBERTS' ARBITRATION*

*Kekewich J.* [1891] 1 Ch. 558

3. — *Admissibility—Company—Winding-up—Depositions—Companies (Winding-up) Act*, 1890, ss. 8 (7), 26—*Companies (Winding-up) Rules*, April, 1892, r. 27.

Depositions taken at the public examination of witnesses under the Companies (Winding-up) Act, 1890, can be used as evidence against other persons in the winding-up, subject to a right to require the witness to be produced for cross-examination. *In re LONDON AND GENERAL BANK (No. 1)* - - V. Williams J. [1894] W. N. 155

4. — *Admissibility—Contract—Ambiguous subject-matter.*

Where a written agreement to purchase a leasehold interest was ambiguous on the face of it:—

*Held*, that evidence adduced, not to contradict

**EVIDENCE—continued.**

the written agreement, but to shew what was the subject-matter, was admissible. *CLARKE v. COLEMAN* - - C.A. [1895] W. N. 114 (2)

**5. — Admissibility—Contract—Letter signed by agent's clerk.**

In an action for specific performance of a contract for sale of land, the purchaser relied on four letters purporting to be written by the vendor's agent. Two of these were signed by the agent's clerk: and in the last, which was signed by the agent, there was no reference to these two:—

*Held*, that parol evidence to connect the two sets of letters was inadmissible. *POTTER v. PETERS* - - Kekewich J. [1895] W. N. 37

**6. — Admissibility—Diary of deceased solicitor.**

*Held*, that entries in the diary of a deceased solicitor are not admissible evidence of the truth of the statements contained in them as against a third party.

*Rawlins v. Rickards*, (1860) 28 Beav. 370, doubted as being apparently inconsistent with *Bright v. Legerton*, (1861) 2 De G. F. & J. 606, 617. *ECROYD v. COULTHARD*

*North J.* [1897] W. N. 25 (7); [1897] 2 Ch. 554  
This case was affirmed by C. A., [1898] 2 Ch. 358.

**7. — Admissibility—Entries in solicitor's diary.**

*Semble*, that to make entries in a diary admissible as evidence after the decease of the writer, it must be shewn that they were written in pursuance of some duty on the part of the person making them, and not merely for the personal convenience of the writer. Entries in the diary of a deceased solicitor were tendered in evidence in a controversy as to the validity of a post-nuptial settlement which he had prepared:—

*Held*, that the solicitor in making the entries had no duty to make them. *HOPE v. HOPE* (No. 2) - - C. A. [1893] W. N. 20

*And see preceding Case.*

**8. — Admissibility—Notice of intention to read evidence taken in other cause.**

Order xxxvii., r. 3, has the effect only of doing away with the necessity of an order to read evidence taken in another action, but does not affect the admissibility of the evidence in the cause in which it is sought to read it. *PRINTING TELEGRAPH AND CONSTRUCTION CO. OF THE AGENCE HAVAS v. DRUCKER*

C. A. [1894] 2 Q. B. 801

**9. — Admissibility—Historical works.**

Where it is important to ascertain ancient facts of a public nature, historical works may be referred to as evidence thereof. *READ v. BISHOP OF LINCOLN* - - P. C. [1892] A. C. 644

**10. — Admissibility—Medical evidence—Virility.**

The Court refused to admit medical evidence as to permanent want of virility of a man seventy-two years of age, for the purpose of allowing immediate distribution of a fund. *P— v. N—* - - North J. [1896] W. N. 175 (13)

**— Admissibility—Ownership of bed of river—Presumption.**

*See WATER.* 41, 45.

**EVIDENCE—continued.**

**11. — Admissibility—Power of appointment—Intention.**

Where a bequest is not *prima facie* specific, and can be satisfied out of the testator's own property, evidence as to the state of the testatrix's property at the time of her will and death is not admissible to prove that the bequest was meant to be an exercise of a power of appointment. *In re HUDDLESTON.* BRUNO v. EYSTON

Kekewich J. [1894] 3 Ch. 595

Referred to by Stirling J. *In re Milner*, [1892] 1 Ch. 563, 565.

**12. — Admissibility—Promissory note insufficiently stamped.**

A promissory note insufficiently stamped is not admissible in evidence to prove the receipt of the money for which the note was given. *ASHLING v. BOON* Kekewich J. [1891] 1 Ch. 568

*See Birchall v. Bullough*, Div. Ct. [1896] 1 Q. B. 325, 326.

**13. — Admission—Severability of statement.**

A statement made in Jan. 1893, to the effect, "I have not banked any money this last eight months, as I have dissolved partnership with my brother last April":—

*Held*, that the statement was evidence to go to a jury that A. was still a partner in June, 1893. *BROWN v. WREN BROS.*

Div. Ct. [1895] 1 Q. B. 390

Order xxxviii. relates to affidavits and depositions.

— Applicant reading respondent's affidavits before his own—Practice.  
*See SOLICITOR.* 100.

**14. — Affidavit—Commissioner (22 Vict. c. 16, s. 1; 52 Vict. c. 10, s. 1).**

An affidavit will not be taken off the file because it was sworn before a commr. who has been struck off the rolls, but whose commission has not been revoked. *WARD v. GAMGEE*

Stirling J. [1891] W. N. 165

— Company—Winding-up—Affidavit in support of petition—"Defect or irregularity."  
*See COMPANY—WINDING-UP.* 148.

**15. — Affidavit—Description of deponent—"Gentleman"—R. S. C., 1883, Order xxxviii., rr. 8, 14.**

One of the deponents to an affidavit, a solicitor, was described therein only as "gentleman":—

*Held*, that the vagueness of the description did not justify the refusal to file the affidavit. It is only in affidavits as to the fitness of trustees that the value of the deponent's evidence ought to be supported by a better description than the vague term of "gentleman." *In re DODSWORTH.* SENCE V. DODSWORTH Chitty J. [1891] 1 Ch. 657

**— Affidavit—Documents.**

*See Cases under DISCOVERY—Documents.*

**16. — Affidavit—Exhibit—Right to inspect.**

Irrespective of any questions as to discovery, property, or privilege, if a document is made an exhibit to an affidavit, any person who has a right to inspect and take copies of the affidavit has

**EVIDENCE—continued.**

a similar right as to the exhibit also. *In re HINCHLIFFE* (No. 1) - C. A. [1895] 1 Ch. 117

Referred to by C. A. *Sloane v. Britain Steamship Co.*, [1897] 1 Q. B. 185, 187.

— Affidavit, Exhibit to—Discovery—Case laid before counsel.

See **DISCOVERY—Documents.** 16.

**17. — Affidavit—Fitness of proposed trustees.**

A statement that proposed trustees are “persons in good credit in the neighbourhood in which they respectively carried on business,” held to be a sufficient statement of their pecuniary means. *In re SMITH'S POLICY TRUSTS. SMITH v. SMITH*

**Kekewich J. [1894] W. N. 68**

— Affidavit—Form—Foreclosure—Non-payment of mortgage debt.

See **MORTGAGE—Foreclosure.** 35.

— Affidavit—Garnishee—Sufficiency.

See **ATTACHMENT.** 7.

**18. — Affidavit—Information and belief—Practice—Interlocutory motion—Insufficient affidavit—R. S. C., Order XXXVIII., r. 3.**

An affidavit or information and belief founded on statements made to the deponent by an informant, who declined to repeat them on affidavit unless subpoenaed, was not admitted on an interlocutory motion, in a case where the informant might have been but was not subpoenaed, and no irremediable injury could result from the exclusion of the evidence. *In re ANTHONY BIRRELL PEARCE & Co. DOIG v. ANTHONY BIRRELL PEARCE & Co. GROOS v. SAME* - **Kekewich J. [1899] W. N. 76; [1899] 2 Ch. 50**

**19. — Affidavit—“Information and belief”—Irregularity—Inadmissibility—Costs—R. S. C., 1883, Order XXXVIII., r. 3.**

An affidavit of information and belief, not stating the source of the information or belief, is irregular, and therefore inadmissible as evidence, whether on an interlocutory or a final application; and a party or solicitor attempting to use such an affidavit will do so at his peril as to costs. *In re J. L. YOUNG MANUFACTURING Co. YOUNG v. J. L. YOUNG MANUFACTURING Co.*

**C. A. [1900] W. N. 234; [1900] 2 Ch. 753**

— Affidavit—Necessity for corroboration of petitioner's—Practice.

See **DIVORCE—Practice.** 99.

— Affidavit—Notice of filing.

See **COMPANY—WINDING-UP.** 152.

— Affidavit—of execution—Sworn before solicitor of grantee—Validity.

See **BILL OF SALE.** 9.

— Affidavit—Payment out of Court—Married woman—Affidavit of no settlement.

See **PRACTICE—Payment out of Court.** 143.

— Affidavit—Presumption of death—Practice.

See **EVIDENCE.** 40.

**20. — Affidavit—Production of office copy—Practice.**

The party on whose behalf an affidavit is filed is the person who is bound to produce the office copy, if a copy be required. *MARSHALL v. NATIONAL PROVINCIAL BANK OF ENGLAND*

**Kekewich J. [1892] W. N. 34**

**EVIDENCE—continued.**

— Affidavit—Sealing—Petition—Affidavit of service—Petition.

See **COMPANY—WINDING-UP.** 149.

— Affidavit—Service—Affidavit of service of order disobeyed—Non-service of copy—Dispensation.

See **ATTACHMENT.** 4.

— Affidavit—Service—Non-service of copy—Waiver.

See **ATTACHMENT.** 2.

**21. — Affidavit—Service of copies—Time—Bankruptcy Rules, 1886, rr. 27, 29.**

As a general rule copies of affidavits in support of a bankruptcy application should be served with the notice of motion. *In re WELLS. Ex parte COLLINS* **V. Williams J. [1892] W. N. 96**

— Affidavit—Statutory, made by clerk to solicitors—Petition.

See **COMPANY—WINDING-UP.** 151.

— Affidavit—Summons issued out of district—Claim exceeding 5l.

See **COUNTY COURT—Practice.** 63.

— Affidavit—Sworn before commissioner who has been struck off the rolls.

See **No. 13, above.**

**22. — Affidavit sworn before “correspondent” of party's solicitor—R. S. C. 1883, Order XXXVIII., r. 16.**

Affidavits were sworn before a country solicitor, who was the “correspondent” of the plt.'s London solicitors:—

*Held*, that they must be taken off the file as being insufficient under Order XXXVIII., r. 16. *PARKINSON v. CRAWSHAY*

**Kekewich J. [1894] W. N. 85**

— Affidavit—Verifying Cause of Action—Writ specially indorsed.

See **PRACTICE—Writ.** 280.

**23. — Agent of Foreign Power—Right of Government not recognised by British Government to sue.**

In two actions injunctions were applied for to restrain the defts. from parting with money belonging to the Republic of Chili. The motions were supported by affidavits of R., describing himself as confidential agent of the Government of Chili, and making statements as to a state of civil war in Chili:—

*Held*, that R. had given no proof that he was the agent of the Republic, nor even of one of the parties now at war in that country. *REPUBLIC OF CHILI v. ROTHSCHILD. REPUBLIC OF CHILI v. BARING* **Kekewich J. [1891] W. N. 138**

— Ambiguity—Will—Admissibility of evidence.

See **WILL—Evidence.** 83—83b.

— Ambiguity in charterparty—Bill of lading.

See **SHIPPING—Charterparty.** 15, 16.

**24. — Ancient facts.**

Where it is necessary to ascertain ancient facts of a public nature historical works may be referred to. *READ v. BISHOP OF LINCOLN*

**P. C. [1892] A. C. 644**

— Appeal—Judge's notes of oral evidence in Court below.

See **APPEAL.** 31.

**EVIDENCE—continued.**

25.—*Appeal from comptroller referred by Board of Trade to Court—Trade Mark Rules, 1890, r. 23.*

On an appeal from the decision of the comptroller to register a trade-mark, the Bd. of Trade referred the appeal to the Court, on motion for directions as to evidence. An order was made for the motion to be set down in the witness list, affidavits to be filed by the parties, and the motion to be heard on the statutory declarations used before the comptroller, and the above-mentioned affidavits and the cross-examination in court of any deponent as to whom notice to cross-examine should be given by the other side. *In re ROGER'S TRADE-MARK*

North J. [1894] W. N. 173

— Arbitration—Practice.

See Cases under ARBITRATION.

— Arrest on warrant—No evidence—Power to bind over.

See GAMING. 2.

— Authority of inland revenue officer, Proof of—Jurisdiction.

See JUSTICES. 7.

— Bankers' books.

See Cases under BANKER.

— Bankrupt's public examination, notes of.

See BANKRUPTCY. 100.

26. — *Commission—Subject-matter of action—Sending out of jurisdiction for identification—H.S.C., 1883, Order XXXVII., r. 5; Order L., r. 3.*

Where witnesses are to be examined on commission out of the jurisdiction of the Court, an order may be made that the subject-matter of the action shall be sent out of the jurisdiction for the purpose of identification by the witnesses. *CHAPLIN v. PUTTICK. LAING, CLAIMANT*

C. A. [1898] 2 Q. B. 160

27. — *Commission to take evidence abroad—Practice—Examination of witnesses abroad—Letters of request—Dissolution of partnership.*

A commission or letters of request for the examination of witnesses abroad ought not to be issued unless the evidence which it is proposed to obtain is evidence directly material to an issue in the cause, and not merely evidence which may be incidentally useful in corroboration of other evidence.

In an action for a dissolution of a partnership in England between wine merchants, on the ground of alleged misconduct of the deft, the plts. alleged that the deft. had bribed an employee of Pickford & Co. to inform him of the names and addresses of persons to whom Pickford & Co. forwarded wines on behalf of Continental wine merchants, so that the firm might canvass those persons for orders, and that this became known, and brought the firm into bad repute. The books of Pickford & Co. during the period to which this charge related had been destroyed. The plts. set out a list of the names and addresses of the persons and firms to and by whom wines had been sent through Pickford & Co., and applied for letters of request to examine witnesses in Germany for the purpose of proving that wines were forwarded on their behalf during the period in question by Pickford & Co. *Stirling J.*

**EVIDENCE—continued.**

ordered the letters of request to issue unless the deft. made admissions as to the forwarding of wines by Pickford & Co. :—

*Held*, that this order ought to be discharged, for that the evidence sought did not tend to prove bribery, though it might be useful in corroboration of direct evidence of bribery, and that it was not reasonable to require the admissions suggested, as the matters could not be within the deft.'s own knowledge, and he could only obtain information about them by writing to rival tradesmen. *EHRMANN v. EHRMANN*

C. A. [1896] 2 Ch. 611

28. — *Commission to take evidence of party abroad—Defendant's application—Discretion—R. S. C. 1883—Order XXXVII., r. 5.*

In granting or refusing a commission to take evidence abroad there is a material difference between a foreign plt. and a foreign deft., and the Court will not regard the case of a deft. with the same strictness as that of a plt. who has chosen his own forum. *Prima facie*, a foreigner who is sued in this country is entitled to a commission to examine him in the place where he lives.

(A) Defts., who were foreigners resident abroad, were temporarily in England when action was brought, were served, and entered appearance. They then returned abroad, and applied for a commission to examine them and their witnesses resident abroad. The Court was satisfied that the defts. had not gone abroad to avoid or delay the trial :—

*Held*, that the defts. were entitled to the commission. *ROSS v. WOODFORD*

Chitty J. [1894] 1 Ch. 38

(B) A deft. resident in Canada was served in London with a writ in an English action. He applied for a commission to take his own evidence in Canada. His presence in London had not been for the purpose of defending the action :—

*Held*, that he was entitled to the commission, and was not bound to attend the trial personally. *NEW v. BUENS* — C. A. [1894] W. N. 196

29. — *Company—Reduction of capital.*

(A) On a petition for reduction of the capital of a co., evidence is required that the meetings at which the necessary resolutions were passed and confirmed were properly convened. *In re LEICESTER MORTGAGE CO.*

Stirling J. [1894] W. N. 108

(B) A copy of the memorandum and articles and of the minute-book of the proceedings at general meetings should be exhibited, and where reduction is to be effected by cancelling paid-up capital it must be proved that the shares to be cancelled were issued under a contract duly filed. *In re OMNIUM INVESTMENT CO.*

V. Williams J. [1895] 2 Ch. 127

— Company practice.

See Cases under COMPANY and COMPANY—WINDING-UP.

— Company in liquidation.

See COMPANY—WINDING-UP—Examination of Witnesses.

30. — *Conduct money—Judgment debtor—Examination—R. S. C., Order XLII., r. 32; Order*

**EVIDENCE—continued.**

XXXVII, r. 9; Order LII, r. 4; Order LXX, r. 1.

Order XXXVII, r. 9, does not apply to the case of a judgment debtor brought up under Order XLII, r. 32, for examination in chambers as to his property or means of satisfying the judgment. He is only entitled to what, under the circumstances, is a reasonable sum for conduct money, and the Court will not interfere with the master's exercise of his discretion as to what is reasonable. *RENDELL v. GRUNDY* - C. A. [1895] 1 Q. B. 16

— Contract to carry—Passenger—Ticket—Conditions.

See *CARRIER*. 1.

— Copyright—Infringement.

See *COPYRIGHT—Infringement*.

31. — *Corroboration—Evidence Act, 1869* (32 & 33 Vict. c. 68), s. 2.

Silence is not evidence of an admission, unless there are circumstances which render it more reasonably probable that a man would answer the charge made against him than that he would not. *Per BOWEN L.J. in WIEDEMANN v. WALPOLE* - C. A. [1891] 2 Q. B. 534, at 539

32. — *Corroboration—Extradition Act, 1870* (33 & 34 Vict. c. 52), s. 3, sub-s. 1.

Absence of corroboration of the evidence of an accomplice does not entitle the accused as a matter of law to be acquitted by a jury or not to be committed for trial: *per Cave J. In re MEUNIER* Div. Ct. [1894] 2 Q. B. 415, at p. 418

— Costs.

See *Cases under Costs*.

— Criminal matters.

See *Cases under CRIMINAL LAW*.

33. — *Cross-examination—Documents—Rejection.*

On the trial of an action referred to a special referee, a witness in cross-examination was asked if he had any letters relating to the cause of action. He produced a mass of correspondence. Counsel proposed to call for them seriatim, and read each and cross-examine on them. This the referee refused to allow on the ground that it would occupy an inordinate time. Counsel then wished to put the letters in en bloc, have copies, and then examine them at his leisure. This was also refused:—

*Held*, that the proper course would have been to ask for an adjournment to examine the correspondence, and select what was material. *In re MAPLIN SANDS* - C. A. [1894] W. N. 184 affirm. *Kekewich J.* [1894] W. N. 141

34. — *Declaration—Evidence—Admission—Consent.*

A declaration of the Court is a judicial act, and should not be made on admissions or by consent, but only when the Court is satisfied by evidence. To save expense such evidence may be produced before the chief clerk, who, without making a certificate, may inform the Court if he is satisfied, and in that case the order may go. *WILLIAMS v. POWELL*

*Kekewich J.* [1894] W. N. 144

— Diary of deceased's solicitor.

See *Nos. 6, 7, above*.

**EVIDENCE—continued.**

— Divorce practice.

See *Cases under DIVORCE*.

35. — *Dormant funds—Supreme Court Funds Rules, 1886*, r. 101.

Where funds in an action had been dormant since 1872, they were transferred to the trustee in bankruptcy of a person entitled without strict proof of the existence of creditors in a position to be paid. *PRATT v. WILLIS. GRAY v. WILLIS*

*North, J.* [1895] W. N. 9

— Easement—Abandonment of easement.

See *EASEMENT*. 1.

— Escrow—Deed—Delivery to one of several grantees.

See *MORTGAGE*. 15.

Order XXXVII, rr. 39–52, relate to examiners of the Court.

36. — *Examiner—Limitation of time for completion of examination—R. S. C. 1883, Order XXXVII, rr. 5, 39.*

*Kekewich J.* stated, that in making an order for examination before an examiner he should limit the time within which the examination must be completed. *GEDYE v. PELLING*

*Kekewich J.* [1892] W. N. 44

37. — *Examiner—Special examiner—Country cases—R. S. C. 1883, Order XXXVII.*

The practice of the Court is not to appoint a special examiner even in a country case, where the expense of sending down an examiner of the Court would be extravagant with reference to the amount in dispute. Application to appoint a commissioner of oaths as special examiner refused. *BADDELEY v. BAILEY*

*Kekewich J.* [1893] W. N. 56

— Foreign power of attorney.

See *CONFLICT OF LAWS*. 5.

38. — *Foreign State—Status and boundaries of—Practice—Judicial cognizance—Application to Foreign Office.*

The Court takes judicial cognizance not only of the status, but also of the boundaries of foreign States, and if in doubt will apply for information to the Secretary of State for Foreign Affairs, whose reply is conclusive. *FOSTER v. GLOBE VENTURE SYNDICATE, LD.*

*Farwell J.* [1900] W. N. 69; [1900] 1 Ch. 811

— Fraud—Solicitor to both parties.

See *MORTGAGE*. 15.

— Frauds, Statute of.

See *Cases under FRAUDS, STATUTE OF*.

— Identity of parcels—Admissibility of parol evidence—Statute of Frauds.

See *VENDOR AND PURCHASER*. 30.

— Lease—Agreement for—Signature not final—Escrow.

See *CONTRACT—Formation*. 15.

— Memorials by parishioners against a faculty.

See *ECCLESIASTICAL LAW—Faculty*. 32.

— Nuisance.

See *Cases under NUISANCE*.

39. — *Official referee's report—No motion to vary—R. S. C. 1883, Order XXXVII, r. 54.*

When the official referee has made his report on accounts and inquires directed by judgment,



**EVIDENCE—continued.**

and no motion has been made to vary his report, the Court cannot go into the evidence which was before him. *In re FITTON. HARDY v. FITTON* Stirling J. [1893] W. N. 201

— Parol—Admissibility—Written agreement. See NEW SOUTH WALES. 21.

— Parol—Statute of Frauds—Purchase as trustee. See FRAUDS, STATUTE OF. 23.

— Prescription—Fishing—Public right—Non-tidal waters. See FISHERY. 12.

— Prescription—Pew in chancel—Exclusive possession. See ECCLESIASTICAL LAW—Pews. 56.

— Presumption—Deed more than thirty years old. See POWERS. 13.

— Presumption—Rebuttal—Inclosure Act—Award. See WATER. 45.

40. — *Presumption of death—Affidavit—Practice—Probate Division.*

On an application for leave to depose as to the death of a person who had disappeared, the affidavit of the applicant referred to letters from that person which were not produced or accounted for, and did not explain the delay which had occurred in making the application, and there was no corroborative statement or belief of the death:—

*Held*, that the hearing must be adjourned for a further and better statement. *IN THE GOODS OF CLARKE - - JEUNE P.* [1896] P. 287

— Presumption of death—Probate practice. See PROBATE—Presumption of Death. 138.

41. — *Privilege—Solicitor and client—Conversation between one party and the solicitor of the other—Joint consultations.*

All statements made at joint consultations between parties and their respective solicitors or counsel, even though made by one party to the solicitor or counsel of the other, are privileged: so also is a statement made by one party to the solicitor of the other at an interview between them alone, held at the request of that other party. *ROCHEFOUCAULD v. BOUSTEAD*

*Kekewich J.* [1896] W. N. 74 (2)

See also upon other points, *Rochefoucauld v. Boustead*, C. A. [1897] 1 Ch. 196; C. A. [1898] 1 Ch. 550.

— Probate practice.

See Cases under PROBATE.

— Production and inspection of documents.

See Cases under DISCOVERY.

42. — *Promissory note—Admissibility—Insufficiently stamped.*

A promissory note insufficiently stamped is not admissible in evidence to prove the receipt of the money for which the note was given. *ASHLING v. BOON - Kekewich J.* [1891] 1 Ch. 568

See *Birchall v. Bullough*, Div. Ct. [1896] 1 Q. B. 325, next Case.

**EVIDENCE—continued.**

43. — *Promissory note—Unstamped document—Cross-examination—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14, sub-s. 4.*

In an action for money lent, an insufficiently stamped promissory note, purporting to be signed by the deft. and expressed to be given for money lent, was put into the deft.'s hands by the plts.' counsel for the purpose of refreshing his memory and obtaining from him an admission of the loan:—

*Held*, that the plts. were entitled to use the note for that purpose, notwithstanding the provisions of the Stamp Act, 1891, that an instrument not duly stamped "shall not be given in evidence or be available for any purpose whatever." *BIRCHALL v. BULLOUGH*

Div. Ct. [1896] 1 Q. B. 325

— Rectification of deed.

See SETTLEMENT—Rectification. 29.

— Reports of Chancery visitors.

See LUNACY—Practice. 33.

— Sale of land.

See FRAUDS, STATUTE OF. 17, 18.

— Select vestry—Resolution of meeting of pew renters.

See ECCLESIASTICAL LAW—Faculty. 17.

— Service by post—Notice.

See PRACTICE—Service. 225.

— Special damage—Injury to trade.

See DEFAMATION—Libel. 30—33.

— Statement of counsel.

See COMPROMISE. 2.

— Trade-mark—Evidence of intent to deceive.

See TRADE NAME. 7.

— Unstamped documents.

See COMPANY—Practice. 200.

— Will—Construction of.

See WILL—Evidence. 83.

— Will—Execution—Denial by attesting witness.

See BERMUDAS.

— Witness, Attesting—Bill of sale.

See BILL OF SALE. 1.

44. — *Witness—Conduct money—Judgment debtor—Examination.*

See No. 40, above.

— Witness—Examination of.

See ARBITRATION—Arbitrators. 10.

45. — *Witness—Right of plaintiff to call defendant after deft.'s case closed.*

After deft.'s case is closed, the plt. will not be allowed to call the deft. as witness, unless there has been some representation by the other side that the deft. would be examined in support of his own case. *BARKER v. FURLONG*

*Romer J.* [1891] 2 Ch. 172

46. — *Witness called by judge—Right to cross-examine.*

When a witness is called by the judge neither party has a right to cross-examine without leave of the judge. If the evidence is adverse to either party, leave should be given to cross-examine with reference to his answers, but a general fishing cross-examination should not be allowed. *COULSON v. DISBOROUGH*

C. A. [1894] 2 Q. B. 316

**EVIDENCE—continued.**

—Scientific witness, fees of.

See COSTS.

PATENT—Practice. 27, 28.

47. — *Witness—Subpoena—Time—Practice—R. S. C., 1883, Order XXXVII., rr. 26–34.*

Motion to discharge writs of subpoena served on the ground that they were taken out at such early time and under such circumstances as amounted to an oppressive abuse of the process of the Court.

North J., without laying down any rule as to the earliest time at which a writ of subpoena should be taken out, considered that in these cases there had been an abuse of the process of the Court, and discharged the writs. He observed that a subpoena runs only for the current sittings, and there was no possibility that the trial could take place during the present sittings. LONDON AND GLOBE FINANCE CORPORATION *v.* KAUFMAN - - North J. [1899] W. N. 240

—Witness—Writing to.

See CONTEMPT OF COURT. 12.

**EXAMINATION—Arbitration.**

See ARBITRATION—Arbitrators. 10.

—Bankruptcy.

See BANKRUPTCY—Examination.

—Bankrupt's admissions, parol evidence of—Admissibility.

See CRIMINAL LAW—Evidence. 16.

—Company practice.

See Cases under COMPANY and COMPANY—WINDING-UP.

—Costs—Proof in solemn form—Notice by defendant of intention to cross-examine only.

See PROBATE. 91.

—Cross-examination.

See under CROSS-EXAMINATION.

—Examiner of Court.

See EVIDENCE. 36, 37.

—Lunatic.

See LUNACY.

—Of persons other than judgment debtor—Inquiry as to separate property.

See HUSBAND AND WIFE. 50.

—Separate examination—Married woman—Practice.

See HUSBAND AND WIFE. 58.

—Witness—Conduct-money.

See EVIDENCE. 30, 44.

**EXCAVATION—Gas company—Statutory powers—Nuisance—Injunction.**

See SUPPORT. 1.

—Powers of vestries, &c., to prohibit.

See LONDON—Streets. 73.

—Streets—Underground wires.

See CANADA. 63.

**EXCEPTED PERILS.**

See Cases under SHIPPING—Exceptions.

**EXCEPTIONS.**

See SHIPPING—Exceptions.

**EXCHANGE—Shares—Stamp—Conveyance on sale.**

See REVENUE—Stamps. 156.

**EXCHANGE CONTRACTS—Contracts to pay sterling in exchange for silver.**

See CONTRACT—Construction. 9.

**EXCISE.**

See under REVENUE.

**EXECUTION.**

Order XLII., r. 83A, added to [1896] W. N. (Ap. 11), p. 37, confirmed [1896] W. N. (June 6), p. 185. See Current Index, 1896, p. lv.

See SHERIFF, *passim*.

—Affidavit of—Sworn before solicitor of grantee—Validity.

See BILL OF SALE. 9.

—Bankruptcy practice.

See BANKRUPTCY—Execution.

—Bill of sale—Sale of goods by sheriff.

See BILL OF SALE. 48.

—Company—Winding-up.

See COMPANY—WINDING-UP—Execution.

—County Court practice.

See COUNTY COURT—Execution.

—Date of—Filing copy of bill of sale and affidavit—Validity.

See BILL OF SALE. 27.

—Death of judgment debtor—Leave to issue execution against executor.

See CHARGING ORDER. 2.

—Debt—Garnishee order, action upon.

See ATTACHMENT. 12.

—Equitable—Charge on land—Legal remainder—Receiver—"Actual delivery in execution."

See JUDGMENT DEBT. 1.

—Equitable execution—Receiver.

See Cases under RECEIVER.

—Equitable execution—Receiver—Secured creditor.

\* See COMPANY—WINDING-UP. 93.

—Examination of persons other than judgment debtor—Inquiry as to separate property.

See HUSBAND AND WIFE. 50.

—Foreign action—Injunction.

See COMPANY—WINDING-UP. 92.

—Goods seized in—Interpleader—Application of proceeds of sale.

See INTERPLEADER. 3.

—Goods seized in—Floating security—Rights of debenture-holders.

See COMPANY—Debentures. 56.

—Irish judgment—Debt.

See JUDGMENT DEBT. 4.

—Judgment—"Action on a contract."

See RAILWAY—Practice. 39.

—Judgment recovered in High Court for amount of debt—Order made in county court for payment by instalments.

See COUNTY COURT—Execution. 37.

—Leave to issue—Order for costs—Delay.

See DIVORCE—Costs. 48.

—Neglect to levy—Action against high bailiff.

See COUNTY COURT—Jurisdiction. 54.

—On property of retired partner.

See PRACTICE—Service. 227.

—Power of attorney—Presumption.

See POWERS OF ATTORNEY. 1.

**EXECUTION—continued.**

- Receiver—Appointment of—Priority.  
See COMPANY—WINDING-UP. 93.
- Receiver—Future earnings.  
See JUDGMENT DEBT. 5.
- Sale of goods claimed by third party—Title.  
See COUNTY COURT—Execution. 38.
- Seizure of goods in—Interpleader—Payment into court by claimant—Seizure of the goods by another execution creditor.  
See INTERPLEADER. 2.
- Stay—Sufficient cause.  
See COUNTY COURT—Execution. 39.
- Stay of—Security for costs ordered but not given.  
See COSTS—Security for Costs. 50.
- Warrant of—Judgment in rem—Sale of ship—Jurisdiction.  
See SHIPPING—Practice. 202.
- Writ of fieri facias—Company winding-up.  
See COMPANY—WINDING-UP. 94.

**EXECUTION CREDITOR.**

See Cases under BANKRUPTCY—Execution.

- Lunatic—Priority—Maintenance.  
See LUNACY. 19.
- Possession of sheriff.  
See COMPANY—WINDING-UP. 91.
- Sale by sheriff—Sheriff directed to withdraw.  
See BILL OF SALE. 48.

**EXECUTION OF PROCESS—Assets, Commitments, and.**  
See COMPANY—WINDING-UP—Enforcement of Orders.

**EXECUTION OF WILL.**

See PROBATE—Execution.

**EXECUTOR (EXECUTORS AND ADMINISTRATORS).**

*Accounts.* See ACCOUNT.  
*Administration,* col. 785.  
*Costs,* col. 793.  
*Insolvent Estates,* col. 795.  
*Investments,* col. 797.  
*Liabilities,* col. 797.  
*Powers,* col. 799.  
*Retainer,* col. 801.

**Accounts.**

See Cases under ACCOUNT.

**Administration.**

- Absent parties—Accepting benefit of judgment.  
See ESTOPPEL. 4.
- Acknowledgment by one of two executors and trustees—Arrears of interest—Mortgage.  
See LIMITATIONS, STATUTE OF. 2, 3.
- Administration Bond.  
See PROBATE—Administration Bond.
- Annuity—Deficiency of assets—Right to payment.  
See ANNUITY. 6.

**EXECUTOR (Administration)—continued.**

- Annuity—Insolvent estate—Appropriation of capital sum—Married woman—Restraint on anticipation.  
See ANNUITY. 8.

**1. — Appropriation to provide for deferred legacies.**

The testator by his will gave immediate legacies, and legacies deferred until the death of his wife. The wife re-married, and her interest under the will was thereby reduced to the receipt of a life annuity:—

*Held*, that the deferred legatees were entitled to have 2½ per cent. Consols of a present value equal to the amount of their respective legacies set aside; and that if 2½ per cent. were purchased, and they were liable to be reduced to 2½ per cent., one-tenth more in value should be purchased. *In re TREDWELL. JEFFRAY v. TREDWELL* (No. 2) — North J. [1891] W. N. 201

**2. — Assent to legacy.**

That an executor has made general payments to or for the benefit of a legatee of leaseholds or other property is not (in the absence of representations on the subject by the executor to the legatee) sufficient to enable the Court to infer that the legacy has been assented to. *THORNE v. THORNE* Romer J. [1893] 3 Ch. 196

**3. — Attorney—Distribution of estate.**

Summons in the matter of the estate of T. R. who died in England a domiciled Englishman possessed of personal estate situate entirely in England. He died intestate, leaving a widow and children resident abroad. Plt. had obtained letters of administration of the estate of the deceased as attorney for the widow, the debt to the summons. She had not been otherwise constituted the legal personal representative of the deceased anywhere. All debts had been paid. The object of the summons was to determine whether the plt. ought to hand over the assets to the widow, his principal, or distribute them himself among the next of kin.

*Held*, that the attorney could not take a good discharge from the widow. *In re RENDELL. WOOD v. RENDELL*

Cozens-Hardy J. [1900] W. N. 257

**— Bankruptcy.**

See BANKRUPTCY, *passim*.

**4. — Bankruptcy — Injunction restraining executor from further acting as executor—Jurisdiction.**

The Court has jurisdiction to restrain an executor who has become bankrupt since the death of the testator from further acting as executor; and, if there is a co-executor willing to continue to act, will not require the appointment of a receiver. *BOWEN v. PHILLIPS* Kekewich J. [1897] 1 Ch. 174

**— Bastardy—Escheated land—Land Transfer Act.**

See PROBATE—Grant of Administration. 22.

**5. — Blended funds—Interest on moneys paid out of one Court fund in aid of another.**

An annuity charged on fund No. 1 abated each year when the income of that fund fell

**EXECUTOR (Administration)—continued.**

beneath a certain amount. In the course of administration obligations on fund No. 1 were paid out of the capital of another fund:—

*Held*, that interest at 4 per cent. should be allowed out of the income of fund No. 1 on the amount for the time being owing to fund No. 2. *SYER v. GLADSTONE* North J. [1892] W. N. 178

— Breach of trust—Liability.

See Cases under **TRUSTEE—Breach of Trust.**

— Concurrence of all executors—Land transfer—Title—Conveyance.

See **VENDOR AND PURCHASER.** 79.

— Customary obligation to repair—Remedy of lord against tenant's executors.

See **COPYHOLD.** 3.

6. — *Damages for misrepresentation, claim for—Wrongful act done by deceased person—Benefit to his estate—Unliquidated damages—“Actio personalis moritur cum personā”—Administration action.*

The purchaser from a testator of certain worthless shares in a limited co. claimed to be entitled to prove in an administration action for damages for misrepresentation against the testator's estate, and assessed his damages at 250*l.*, the price paid by him for the shares:—

*Held*, that where, as here, there was nothing among the assets of the deceased that at law or in equity belonged to the claimant, and the damages which had been done to him were unliquidated and uncertain, the executors of the wrong-doer could not be sued merely because his estate might have benefited by the wrong complained of; that the damages claimed were none the less unliquidated and uncertain from the fact that the claimant might be able to prove that the measure of his damages was the amount of the purchase-money paid for the shares, and that, for these reasons, the claim could not be allowed. *In re DUNCAN. TERRY v. SWEETING*

Romer J. [1899] W. N. 14 (1); [1899] 1 Ch. 387

— Death duties.

See Cases under **REVENUE—Estate Duty.**

— Death of judgment debtor—Leave to issue execution against executor.

See **CHARGING ORDER.** 2.

7. — *Debts, Certificate of—Res judicata—Scottish judgment—Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), s. 3.*

A claimant against an estate obtained a Scottish judgment, and registered it in England under the Judgments Extension Act, 1868, and also claimed in the administration. The chief clerk by his final certificate excluded the claim as barred by the Statute of Limitations:—

*Held*, by North J., that the claim was barred by the certificate, and injunction continued restraining the claimant from enforcing his judgment:

*Held*, by C. A., that the claimant was, under the Act of 1868, in the same position as if on the day of registration he had obtained judgment for the amount in an English Court, and was entitled to prove in the administration. Order varied by restraining the claimant from enforcing the judg-

**EXECUTOR (Administration)—continued.**

ment, but admitting him as a creditor in the administration action for the amount of his judgment and the costs of registering it. *In re LOW. BLAND v. LOW.* — C. A. [1894] 1 Ch. 147

Discussed by C. A. *In re 4 Bankruptcy Notice*, [1898], 1 Q. B. 382, 386.

8. — *Debt owing to estate barred by Statute of Limitations.*

A testator who had in his lifetime advanced to three of his sons various sums, taking acknowledgments therefor, by his will gave to such sons certain specified freeholds and leaseholds, and also gave them certain shares in his residuary estate. The right of action (if any) in respect of the advances had become barred by the Statute of Limitations:—

*Held*, that the three sons ought to bring into account, as against their respective shares of the residue, any sums due by them respectively to the testator at the day of his death, with interest at 4 per cent. from that date:—

*Held*, also, that the sons were entitled to the properties specifically given to them, without making good what (if anything) they owed to the testator's estate. *In re AKERMAN. AKERMAN v. AKERMAN* — Kekewich J. [1891] 8 Ch. 212

Referred to by North J. *In re Watson*, [1896] 1 Ch. 925, 931.

Referred to by Stirling J. *In re Goy & Co.*, [1900] 2 Ch. 149, 153.

— Debts—Order in which funds applied in payment of—Power of appointment.

See **LIMITATIONS, STATUTE OF.** 24.

9. — *Debts—Pecuniary legatee—Marshalling—Real estate charged with debts.*

A testator bequeathed a pecuniary legacy to his son B. The personal estate was insufficient to pay the legacy in full after payment of debts and funeral and testamentary expenses:—

*Held*, that B. was entitled to have the assets marshalled so as to stand in the place of creditors against the real estate so far as the debts, funeral and testamentary expenses had been paid out of the personalty. *In re SALT. BROTHWOOD v. KEELING* — Chitty J. [1895] 2 Ch. 203

— Debts chargeable on foreign assets—Probate.

See **VICTORIA.** 11.

— De son tort—Liability to pay probate duty.

See **REVENUE—Probate Duty.** 134.

— Devastavit—Breach of trust—Relief from liability.

See **TRUSTEE—Breach of Trust.** 25—27.

— Documents in solicitor's possession before action—Third parties—Right to production.

See **SOLICITOR—Lien.** 97.

— Escheat to Crown—Proceeds of sale of realty not disposed of.

See **ESCHEAT.**

— Estate duty.

See **REVENUE—Estate Duty.**

— Executor—Absolute gift subject to executory limitation—Reversionary interest—Conversion—Enjoyment in specie.

See **WILL—Absolute Gift.** 10.

**EXECUTOR (Administration)—continued.**

— Exoneration of real estate—Locke King's Act  
— "Contrary intention."  
See Cases under **WILL—Exoneration.**

— Guilty of devastavit—Breach of trust—Court's power to excuse.  
See **TRUSTEE—Breach of Trust.** 25, 26.

10. — *Foreign land—Trusts for sale—Devise on trusts void under foreign law.*

Where a testator devises lands situate in a foreign country on trusts void under the foreign law and there is a trust for sale valid under that law, the trustees must hold the proceeds of sale upon the trusts declared by the will. Until sale the proceeds of the unsold land devolve in accordance with the foreign law. *In re PIERCY. WHITTHAM v. PIERCY* North J. [1895] 1 Ch. 83

11. — *Form of judgment—Special inquiries.*

The business of a testator whose estate was the subject of an administration action had been carried on by the executors after his death, and creditors of the business so carried on took out an originating summons and asked that special inquiries might be directed. The Court refused the application. *In re BACH. WALKER v. BACH. LLOYD'S BANK v. BACH*

Kekewich J. [1892] W. N. 108

12. — *Identity of executor—Ambiguity—Extrinsic evidence.*

(A) Where there is ambiguity as to the identity of an executor, evidence of surrounding circumstances is admissible to clear up that ambiguity:—

Semble, that evidence of declarations by the testator is not admissible in such a case. *IN THE GOODS OF CHAPPELL* - Jeune J. [1894] P. 98

(B) *IN THE GOODS OF ASHTON*

Jeune J. [1892] P. 83

13. — *Land situate in foreign country—Trust for sale—Devise on trusts void under foreign law.*

Where a testator devises lands situate in Italy on trusts void under the Italian law, and there is a trust for sale valid under that law, the trustees must hold the proceeds of the sale upon the trusts declared by the will. The rents of the unsold land till sale devolve in accordance with Italian law. *In re PIERCY. WHITTHAM v. PIERCY* - North J. [1895] 1 Ch. 83

14. — *General and special—"Personal representatives" of surviving trustee—Appointment of special and general executors by will of surviving trustee—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 31.*

Sect. 31 of the Conveyancing Act, 1881, does not authorize an appointment of trustees in continuation to himself by a sole surviving trustee by his will. The persons in possession of a general grant of probate of the will of a surviving trustee are his "personal representatives" within s. 31 of the Conveyancing Act, 1881, and their deed of appointment of new trustees is valid, notwithstanding the appointment of special executors in that behalf and their subsequently obtaining a limited grant of probate. *In re PARKER'S TRUSTS* Kekewich J. [1894] 1 Ch. 707

— Grant of administration.

See **PROBATE—Grant of Administration.**

**EXECUTOR (Administration)—continued.**

— Heirlooms.

See Cases under **HEIRLOOMS.**

— Heirlooms—Tapestry.

See **FIXTURES.** 4.

15. — *Infant—Legacy to infant appointed executor—Interest.*

A legacy to an infant appointed executor does not carry interest until the infant attains twenty-one and acts as executor. *In re GARDNER. LONG v. GARDNER* (No. 1) - North J. [1892] W. N. 164

— Insolvent estate.

See Cases under **BANKRUPTCY.**

— Judicial trustee—Appointment—Application by beneficiary—Sole executor—Discretion of Court.  
See **TRUSTEE—Judicial Trustees.** 72.

16. — *Legatees adopting creditor's action.*

Where a creditor's action has been brought for the administration of the estate of a testator or intestate, the legatees or next of kin cannot avail themselves of that action for the purpose of obtaining administration and distribution of the surplus of the estate, even though the creditor is willing to give up the conduct of the action through his interest in it having ceased. In such a case the proper course is—as under the old practice—for the legatees or next of kin to commence a fresh action for administration, the proceedings in the creditor's action being stayed. *In re AINSWORTH. COCKCROFT v. SANDERSON*

Kekewich J. [1895] W. N. 153 (9).

17. — *Liability of real estate for payment of debts and legacies—Exoneration of personal estate.*

Land belonging to a tenant in tail in possession was delivered in execution under a writ of elegit. The judgment debtor died, and gave no direction exonerating his personal estate from the debt.

*Held*, that Locke King's Acts were not applicable, and that the judgment debt was not chargeable on the land in exoneration of the personal estate. *In re ANTHONY. ANTHONY v. ANTHONY* (No. 2) Kekewich J. [1893] 3 Ch. 498

— Locke King's Acts—Exoneration of real estate—Exoneration of personal estate.

See Cases under **WILL—Exoneration.**

18. — *Locke King's Acts—Vendor's lien—Building agreement.*

A building agreement provided for leases with ground-rents up to 180*l.* a year; and, at the option of the lessor, for further leases on payment by her of twenty-two years' purchase of the further ground-rents. The lessor executed the option, and died before completion:—

*Held*, that her devisees took the land included in the agreement subject to discharging the amount payable in respect of the further leases. *In re KIDD. BROOMAN v. WITTHALL*

North J. [1894] 3 Ch. 558

— Lunacy practice.

See Cases under **LUNACY.**

19. — *Moneys representing specific legacy—Debt owing to estate.*

Where a debtor to a testator's estate is a specific legatee of the profits of a business represented by moneys in the hands of the executors,

**EXECUTOR (Administration)—continued.**

they may retain such moneys as against the debt.  
*In re TAYLOR. TAYLOR v. WADE*

**Chitty J. [1894] 1 Ch. 671**

**20. — Mortgage debt—"Contrary intention"—Exoneration—Locke King's Act, 1854 (17 & 18 Vict. c. 113).**

A direction to pay out of a specified fund "all and every liability which he (testator) might have incurred during life or that might remain unpaid at his death" held not to exonerate certain realty specifically devised from a mortgage thereon. *In re HOOPER. ASHFORD v. BROOKS*

**Kekewich J. [1892] W. N. 151**

— Mortgagee in possession—Specific devise by executor beneficially entitled to mortgage debt.

*See WILL—Specific Devise. 197.*

— Not express trustee for next of kin—Title of heir-at-law and next of kin barred by Statute of Limitations.

*See CHARITY. 47.*

— Notice to, of calls.

*See COMPANY—Calls. 9.*

— Personally left to executor—Probate duty.

*See REVENUE—Probate Duty.*

**21. — Practice—Adding as parties—Suit—R. S. C., 1883, Order XVI., r. 11; Order XXVIII., r. 11 Order XL., r. 3.**

(A) In a beneficiary's action for administration of an estate, after judgment was passed and entered, in the course of inquiries in chambers it was found that an executor who had not proved at first had come in and proved. The plt. moved to amend pleadings and judgment by adding the executor as deft. :—

*Held*, that the better course was to order that the executor submitting to be bound as if originally joined, further proceedings should be carried on against him as if he had been an original deft. *In re DRACCP. FIELD v. DRACUP*

**North J. [1892] W. N. 43**

(B) In an action for general account against a surviving executor and trustee, it is not necessary that the representative of a deceased trustee or executor should be made a party by the plt. There is power to add such representative under Order XVI., rr. 11, 48, if the deft. requires it, and the circumstances of the case render it advisable. *In re HARRISON. SMITH v. ALLEN*

**Chitty J. [1891] 2 Ch. 349**

**22. — Practice—Administration action—Plaintiff in representative capacity—Action on behalf of all creditors—Title of action—R. S. C., 1883, Order III., r. 4.**

If the writ in a creditor's action for the administration of real and personal estate does not shew that the plt. is suing on behalf of all the other creditors of the deceased, this fact ought to appear in the title of the statement of claim, and not merely in the body thereof.

*Eyre v. Cox*, (1876) 24 W. R. 317, explained. *In re TOTTENHAM. TOTTENHAM v. TOTTENHAM*

**North J. [1896] 1 Ch. 628**

— Practice—Parties.

*See PRACTICE—Parties. 78, 86, 91—94, 114—117.*

**EXECUTOR (Administration)—continued.**

**23. — Practice—Payment of sums under 107.**

In view of the present facilities for transmitting money through the post office and otherwise, in future no exception will be made in the case of small sums from the general practice, and such sums will not in future be paid to the solicitor of the plts. as formerly. *In re BELL. BELL v. BELL*

**Kekewich J. [1894] W. N. 9**

— Probate Duty.

*See Cases under REVENUE—Probate Duty.*

— Probate of will.

*See Cases under PROBATE.*

— Receiver—Appointment of.

*See Cases under RECEIVER.*

— Revocation of administration.

*See PROBATE—Revocation of Administration.*

**24. — Practice—Secured creditor—Proof—Interest—Rules of administration—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10.**

In an action to administer an insolvent estate, a secured creditor realised his security and proved for the balance of his debt; the debts proved were paid in full :—

*Held*, that a question between that creditor and the general creditors as to interest was not governed by the rules in bankruptcy. *In re HENLEY. ALCOCK v. HENLEY*

**North J. [1896] W. N. 154 (6)**

— Practice—Set-off—Mutual dealings.

*See BANKRUPTCY—Set-off. 236.*

**25. — Preference—Specialty and simple contract debts—Administration of Estates Act, 1869 (Hinde Palmer's Act, 32 & 33 Vict. c. 46).**

Simple contract debts cannot be paid in preference to specialty debts in the case of an insolvent estate. *In re HANKEY. CUNLIFFE SMITH v. HANKEY*

**North J. [1899] W. N. 10 (1); [1899] 1 Ch. 541**

**26. — Priorities of equitable interests—Notice—Executor-legatee—Equitable assets—Mortgage.**

The rule—that a purchaser for value, of an asset of the testator, from an executor who is also residuary legatee, acquires a title free from the claims of unsatisfied creditors of the testator, if the purchaser took without notice of the unsatisfied debts or of anything which made it improper for the executor so to deal with the asset—applies in the case of equitable as well as legal assets; provided that neither the executor nor the Court administering the testator's estate still retain control over the asset, as, e.g., in *Noble v. Brett* (1858), 24 Beav. 499, and *Hooper v. Smart* (1875), 1 Ch. D. 90.

In 1878 the registered holder of ry. stocks covenanted to pay an annuity to the trustees of a settlement during the joint lives of himself and his wife and the life of the survivor. In 1882 he died having bequeathed all his property to his widow, and appointed her his executrix. The widow proved the will, and by various deeds from 1886 to 1892 transferred the stocks to her bankers to secure a debt of her own. In Dec., 1892, the widow gave an equitable charge on the stocks to the plt. to secure advances made

**EXECUTOR (Administration)—continued.**

to her. Neither the bankers nor the plt. when taking their respective securities had knowledge or notice that any debt of the testator remained unpaid, or that the widow was not entitled to deal with the stocks as she did, and the plt. before he had notice that there was any indebtedness of the testator, gave notice of his charge to the bankers. The bankers sold the stocks, and, having retained the amount owing to them, paid the balance into court:—

*Held*, that the plt.'s charge on the balance had priority over the claims of the settlement trustees. **GRAHAM v. DRUMMOND**

**Romer J. [1896] 1 Ch. 968**

— Probate duty.

*See Cases under* **REVENUE—Probate Duty.**

— Sale of leaseholds by—Title.

*See* **VENDOR and PURCHASER—Title. 84.**

**27. — Scottish testator—English and Scotch realty—Annuities—Charitable legacies.**

A domiciled Scotsman by his will left his whole estate, real and personal, on trust, after paying debts and certain legacies and annuities, &c. for divers charitable institutions, and directed that his affairs should be administered according to the law of S. He left English and Scottish realty, and sufficient personalty to satisfy all debts, legacies and annuities, &c. It was conceded that the charitable gifts, so far as payable out of English realty were void. By Scottish law debts, testamentary and funeral expenses, and legacies are a primary charge on moveable or personal estate, and annuities are a primary charge on heritable or real estate:—

*Held*, that the Scottish law applied and the annuities must be borne by the English and Scottish realty rateably. *In re* **HEWIT. LAWSON v. DUNCAN**

**Romer, J. [1891] 3 Ch. 568**

— Trustee.

*See Cases under* **TRUSTEE.**

— Valuation of testator's estate—Bank shares.

*See* **VICTORIA. 13.**

— Vouching accounts.

*See* **ACCOUNT. 7.**

### **Costs.**

**28. — Account duty—Costs—Successive appointments.**

Where a person having a life interest and power of appointment, exercised it successively by deeds and will.

*Held*, that the account duty and costs of administration were payable out of the several sums appointed rateably. *In re* **SHAW. TUCKET v. SHAW**

**North J. [1895] 1 Ch. 343**

**29. — Accounts—Administration action—Administrator—Disallowed claim—Balances—Payment into court—Interest—Next of kin—Unsuccessful probate action—Distribution—Setting off administrator's costs—Assignees, rights of.**

An administrator is entitled to his costs of an administration action even though the action has been caused by a claim by him for the allowance of certain payments made by him out of the estate and subsequently disallowed in his accounts in the action; provided the claim was

**EXECUTOR (Costs)—continued.**

made under an honest mistake, and was neither fraudulent nor monstrous. Nor, if he complies with an order for payment into court of the balance representing the payments so disallowed, is he, in the absence of special circumstances, chargeable with interest thereon.

By the judgment in a probate action, unsuccessfully brought by two of the children and next of kin of a father who had died leaving a will, against the executor for revocation of the probate, the defendant's costs were ordered to be taxed and to be paid by the plts. Subsequently, in an action for administration of the estate of the mother, who had died intestate, the defendant, her administrator, who was the same person as the executor of the father, paid into court in that action a balance which had been found due from him in taking the accounts. On a summons in that action for the distribution of that balance among the several persons entitled to the intestate's estate, two of whom were the assignees of the shares of the two next of kin plts. in the probate action:—

*Held*, that the deft. was entitled to set off his costs of the probate action, which had been taxed but not yet paid, against the shares of the two assignees, whose assignments were dated one before and the other after the judgment in the probate action:—

*Taylor v. Taylor*, (1875) L. R. 20 Eq. 155, followed. *In re* **JONES. CHRISTMAS v. JONES**

**Kekewich J. [1897] 2 Ch. 190**

**30. — Apportionment of costs—Real and personal estate—"Testamentary expenses."**

A testatrix provided that in case the proceeds of her real and leasehold property (except certain specified houses being her only realty) should be insufficient to pay her debts, funeral and testamentary expenses and legacies, the deficiency should be payable out of her personal estate. Judgment having been given for the administration of the real and personal estate:—

*Held*, on further consideration, that, notwithstanding the direction in the will as to the payment of testamentary expenses, the costs of the action must, so far as they had been increased by the administration of the real estate, be borne by that estate. *In re* **COPLAND**

**North J. [1895] W. N. 137 (1)**

— Claim by widow—Costs—Postponements.

*See* **EXECUTOR—Insolvent Estates. 34.**

— Costs of severance—Trustees—Allowance of two counsel—Taxation.

*See* **TRUSTEE—Costs. 45.**

— Disallowance of costs—Extravagant litigation.

*See* **COSTS—Administration. 5.**

— Discretion of registrar—Insolvency of estate.

*See* **COUNTY COURT. 22.**

— Interest on—"Person liable."

*See* **SOLICITOR—Costs. 50.**

**31. — Jurisdiction—Trustee—Personal profit.**

Under an order made on further consideration in an administration action costs were paid to solicitors in the action. They paid over half the profit costs to a solicitor trustee, one of the defts. in the action:—

*Held*, that there was no jurisdiction on

**EXECUTOR (Costs)—continued.**

summons in the action to order the deft. trustee to pay into court the amount of profit costs paid to him. *In re THORPE. VIFONT v. RADCLIFFE*

North J. [1891] 2 Ch. 360

**32. — Practice—Real estate—Personal representative.**

Upon the further consideration of a creditors' action for the administration of a testator's real and personal estate, the executrix, who was a deft., asked that her costs as between solicitor and client and her proper charges and expenses might be paid out of moneys representing proceeds of sale of real estate.

The personal estate available for payment of debts was wholly insufficient, but it appeared from the master's certificate that the executrix had received, and properly accounted for personal estate to a considerable amount:—

*Held* that, to the extent of the amount of personal estate so received and accounted for by the executrix, she was entitled to be indemnified and paid her solicitor and client costs and charges and expenses out of the proceeds of sale of the realty, but that the balance of her costs, if any, would be payable as between party and party out of the proceeds of sale of real estate. *In re HARRYS. HARRYS v. HOWELLS*

Byrne J. [1900] W. N. 147

— Severance in defence—Right of appeal.

*See* COSTS—SEVERANCE. 66.

— Solicitor—Costs—Foreign documents—Translations.

*See* SOLICITOR—COSTS. 47.

— Solicitor-executor—Profit costs—Power to charge—Insolvent estate.

*See* SOLICITOR—SOLICITOR TRUSTEE. 134.

**33. — Specific legacy—Costs of realization—Residuary estate.**

Where reasonable costs were incurred in realising a specifically bequeathed mortgage debt in India, and had been deducted from the amount received by the Indian attorney of the English exors.:—

*Held*, that these were properly chargeable by exors. against the residuary estate, and that the specific legatee was entitled to be reimbursed out of the residue. *In re BROMIE. HOOD v. HALL*

Chitty J. [1893] W. N. 161

**Insolvent Estates.**

**34. — Claim of widow—Costs—Postponement—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 3.**

In determining whether the estate of a deceased person is insolvent the costs of administration must be taken into account. By the combined effect of s. 10 of the Judicature Act, 1875, and of s. 3 of the Married Women's Property Act, 1882, the claim of a widow for a debt due from the insolvent estate of her husband is postponed to the claims of the other creditors. *In re LENG. TARN v. EMMERSON* — C. A. [1895]

1 Ch. 652

*See next Case.*

**35. — Creditors—Priorities—Voluntary debt Priorities—Judicature Act, 1875 (38 & 39 Vict.**

**EXECUTOR (Insolvent Estates)—continued.**

c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 40, sub-s. 4.

The effect of s. 10 of the Judicature Act, 1875, is to introduce into the administration of the estates of deceased insolvents by the Ch. Div. the rule in bankruptcy that voluntary creditors are to be paid *pari passu* with creditors for value.

Decision of Cozens-Hardy J., [1900] W. N. 175; [1900] 2 Ch. 676, affirmed. *In re Maggi*, (1882) 20 Ch. D. 545, and *Smith v. Morgan*, (1880) 5 C. P. D. 337, disapproved. *In re WHITAKER. WHITAKER v. PALMER*

C. A. [1900] W. N. 239; *see* [1901] 1 Ch. 9

**36. — Executor—Right of retainer—Hinde Palmer's Act, 1869 (32 & 33 Vict. c. 46).**

A. died leaving an estate of 4700*l.* and owing to B. his executrix a specialty debt of 1937*l.*, as also a simple contract debt of 1146*l.* and owing a specialty debt of 1745*l.* to C., and other simple contract debts amounting to 7854*l.*:—

*Held*, that B. first took her specialty debt in full, that the balance would then be apportioned in the proportions of 1745*l.* to 9000*l.* (the total amount of simple contract debts), that C. would take the whole amount apportioned to specialty debts, and that B. would retain her simple contract debt in full out of the amount apportioned to simple contract debts, and the remainder would go among the simple contract creditors. *In re BRIGGS. EARP v. BRIGGS*

Chitty J. [1894] W. N. 162

Applied by Stirling J. *In re Bentinck*, [1897] 1 Ch. 673.

Referred to by North J. *In re Hankey*, [1899] 1 Ch. 541, 543.

— Insolvent testator—Debt due to executor—Retainer in specie.

*See* BANKRUPTCY—RETAINER. 219.

**37. — Priority—Rates—Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1, sub-s. 6; s. 3—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10.**

The priority as to rates and wages conferred by the Preferential Payments in Bankruptcy Act, 1888, applies in the case of a deceased insolvent whose estate is being administered in the Chancery Division where the date of his death occurs after the commencement of the Act, Dictum of Lindley L.J. in *In re Leng*, [1895] 1 Ch. 652, 656, approved and followed. *In re HEYWOOD. PARKINGTON v. HEYWOOD*

Stirling J. [1897] 2 Ch. 593

Referred to Cozens-Hardy. *In re Whitaker*, C. A. [1901] 1 Ch. 9.

**38. — Specialty and simple contract debts—Crown debt—Priority—Administration of assets—Hinde Palmer's Act (32 & 33 Vict. c. 46).**

A testator died insolvent after 1870 owing specialty and simple contract debts, including a simple contract debt to the Crown. The assets were more than sufficient for payment of the Crown debt after satisfying the specialty debts:—

*Held*, having regard to 32 & 33 Vict. c. 46, that the assets ought first to be apportioned rateably between the specialty and simple contract debts, and that the Crown debt ought then to be



**EXECUTOR (Insolvent Estates)—continued.**

taken out of the amount apportioned to the simple contract debts.

The principle of *Wilson v. Coxwell*, (1883) 23 Ch. D. 764, *In re Jones*, (1885) 31 Ch. D. 440, and *In re Briggs*, [1894] W. N. 162, applied.

*In re Williams' Estate*, (1872) L. R. 15 Eq. 270, distinguished. *In re BENTINCK. BENTINCK v. BENTINCK* - - *Stirling J.* [1897] 1 Ch. 673

Referred to by North J. *In re Hankey*, [1899] 1 Ch. 541, 543.

**Investments.**

39. — *Settlement — Investment — Lord St. Leonards' Act*, 1860 (23 & 24 Vict. c. 38), s. 10—*R. S. C.*, 1883, *Order XXII.*, r. 17.

The Court will not invest trust funds in securities prohibited by the settlor.

*In re Wedderburn's Trusts*, (1878) 9 Ch. D. 112, not followed. *OVEY v. OVEY*.

*Cozens-Hardy J.* [1900] 2 Ch. 524

— Trustee.

See Cases under **TRUSTEE—Investments.**

**Liabilities.**

40. — *Action against executor who has not proved—Fiscal sale of testator's property.*

A creditor of a testator cannot sue a person named in the will as executor, unless he has either administered or obtained a grant of probate; and a sale in execution of a judgment in such an action does not bind the testator's estate.

An order for probate without an actual grant does not prove the will or shew an acceptance of the trusts of the will by the executor. Letters of administration, even if irregularly granted, are valid till revoked. *MOHAMIDU MOHIDEEN HADJIAR v. PITCHAY* - *P. C.* [1894] A. C. 437

41. — *Breach of duty—Wilful default—Omission to enable secured creditor to realise his security—Loss of interest—Action by residuary legatee—Will—Neglect to take out probate.*

The executors appointed by a testator did not prove the will until nearly seven years after his death. Part of the testator's estate consisted of moneys payable under a policy of insurance on the life of the testator, which he had equitably mortgaged to his bankers as security for a larger amount. The insurance society would not pay over the moneys without production of the probate, and for nearly seven years the executors paid the bankers or their transferee out of the estate interest at 5 per cent. on their debt.

After production of the probate the insurance co. paid over the policy moneys to the bankers' transferee, together with interest at 1 per cent. per annum from the time when such moneys became payable; and the difference between the interest thus received and paid was 157l. 14s. 8d.

The executors never had sufficient assets in their hands to pay all the testator's debts; and it was

*Held*, that the executors could not be ordered to account on the footing of wilful default or breach of duty by reason of this loss of interest to the estate.

*Per Chitty L.J.*: On taking the common accounts of their receipts, executors can properly

**EXECUTOR (Liabilities)—continued.**

be, and often are, charged with a devastavit arising on the accounts themselves.

*Per V. Williams L.J.*: No action would lie for neglect to take out probate, and the pl't's only remedy would be by citing the executor in the Probate Div.

The decision of North J., [1897] 1 Ch. 422, affirmed. *In re STEVENS. COOKE v. STEVENS.*

*C. A.* [1897] W. N. 175 (7); [1898] 1 Ch. 162

42. — *Co-executor—Liability for default of—Putting assets into sole control of one executor—Unnecessary act.*

An executor who does an act by which his co-executor obtains sole possession of assets of the testator is only liable for misapplication by his co-executor if the act was "unnecessary." Such an act is not unnecessary if done in the regular course of business. A. made his wife B., J., and C. his executors. A. was the registered holder of certain American ry. shares; these shares could either be sold as registered shares or be unregistered and then sold as shares to bearer; the latter was the ordinary course of business. J. requested B. and C. to unregister the shares. This was done. J. misappropriated part of the proceeds, and absconded within eleven months of A.'s death:—

*Held*, (1.) that unregistering the bonds and handing them to J. to sell were not "unnecessary" acts, and that B. and C. were not liable for J.'s misappropriation; (2.) that as J. was trusted by A., and as B. and C. had no reason to suspect him, there had been no such delay in calling upon J. for an account as to make B. and C. liable. *In re GASQUOINE. GASQUOINE v. GASQUOINE* - - *C. A.* [1894] 1 Ch. 470

42A. — *Duties and liabilities—Inquiry as to his testator's transactions.*

It is no part of an executor's duties to inquire into transactions of his testator twenty years before his death. *ALLIOTT v. SMITH*

*Kekewich J.* [1895] 2 Ch. 111

— Highway repairs—Liability for.

See **HIGHWAY—Repairs.** 16.

— Mistake in payment of probate duty.

See **REVENUE—Probate Duty.** 133.

43. — *Payment of liabilities—Transfer of shares—Lien of company—Priority.*

An executrix of an estate which was indebted to a co. sold shares therein to P. A dividend was declared on the shares, and subsequently P. registered the transfer. The co., in exercise of their lien, appropriated the dividend to satisfy the executrix's debt:—

*Held*, that P. could stand in the position of the co. as creditor, but had no priority. *In re MACMURDO. PENFIELD v. MACMURDO*

*North J.* [1892] W. N. 73

44. — *Statute-barred debt—Payment—Liability.*

Though as a general rule an executor may pay a statute-barred debt, he may not pay such a debt when it has been judicially declared to be statute-barred. Whether an executor may pay a statute-barred debt against the declared wish of his co-executor, *quære*.

An executor against the wish of his co-executor

**EXECUTOR (Liabilities)—continued.**

paid a debt which had been declared, on an administration summons, to be statute-barred:—

*Held*, that both he and the payee who had received the money through the wrongful act of her agent, and that agent who had notice of all the facts, were liable to refund. *MIDGELEY v. MIDGELEY* - C. A. [1893] 3 Ch. 282

Referred to by Kekewich J. *Budgett v. Budgett*, [1895] 1 Ch. 202, 215.

**45. — Statute of Limitations — Originating summons.**

A residuary legatee has a right to compel an executor to plead the statute against an old claim, and may enforce the right on an originating summons.

Objects of procedure under *Order L.V. rr. 3, 4*, considered. *In re WENHAM. HUNT v. WENHAM*  
North J. [1892] 3 Ch. 59

Referred to by Kekewich J. *Budgett v. Budgett*, [1895] 1 Ch. 202, 217.

**Powers.****46. — Appropriation of assets—Residue.**

Executors may appropriate specific assets to a trust share of residue, or transfer them to the legatee of a share, in advance of final division.

Executors entitled to two-fifths of a residue, the other three-fifths being settled, before final division transferred securities, since risen in value, at the market price, to one of themselves as part of his fifth share:—

*Held*, that, though there was no corresponding appropriation in respect of the settled shares, the transaction was valid against the beneficiaries. *In re RICHARDSON. MORGAN v. RICHARDSON*  
North J. [1896] 1 Ch. 512

Referred to by Stirling J. *In re Nickels*, [1898] 1 Ch. 630, 635.

**47. — Assent to legacy—Part of residue.**

Executors let the residuary legatee into possession of a mine, part of the residue, without any assignment of their interests and before all the debts were paid. The legatee was sued as the person in possession for not remedying breaches of covenant. He claimed that the executors were the persons to be sued:—

*Held*, that his possession was complete and he was the proper deft. because (1) that no assignment by the executor was necessary; (2) that an executor could assent to the bequest as regarded a part of the residue only without thereby assenting as to the rest of it. *AUSTIN v. BEDDOE* - North J. [1893] W. N. 78

**48. — Carrying on business—Executors supplying goods.**

Principle on which an executor, who had been managing an hotel belonging to the testator's estate, and supplying it with wine and spirits from his own business and beer of his own brewing, was to account for profits and receive his allowances. *In re WILLIAMS. MORGAN v. WILLIAMS* - North J. [1892] W. N. 81

**49. — Carrying on business — Priorities of creditors—Indemnity.**

(A) A testator's business was carried on by

**EXECUTOR (Powers)—continued.**

his executors under the provisions of his will and with the assent of his creditors, and was properly carried on. Questions considered—(1) the relative rights of the creditors of the testator and the subsequent trade creditors of the executors against the assets of the testator's estate at the time of his death, and against the assets subsequently acquired for the estate by carrying on the business; (2) the executors' right to indemnity; and (3) the right of the trade creditors to avail themselves of that indemnity:—

*Held*, that the executors were entitled (in priority to the testator's creditors) to be indemnified against the liabilities which they had properly incurred, and that the indemnity was not limited to that portion of the assets which had come into existence or had changed its form since the testator's death. *DOWSE v. GORTON*  
C. A. 40 Ch. D. 536; varied by H. L. (E.). [1891] A. C. 190

Referred to by Byrne J. *In re Raybould*, [1900] 1 Ch. 199, 200.

(B) The principle that an executor carrying on a testator's business with the assent, either express or implied, of the testator's creditors is entitled (in priority to the testator's creditors) to be indemnified out of the estate against the liabilities properly incurred by him in carrying on the business, is applicable where a receiver and manager has been appointed in an administration action to carry on the business in succession to the executor, and whether the will does or does not contain a power to carry on the business. *In re BROOKE. BROOKE v. BROOKE* (No. 2)

Kekewich J. [1894] 2 Ch. 600

Referred to by C. A. *West London Syndicate v. Inland Revenue Commrs.*, [1898] 2 Q. B. 507, 532.

(C) Where the trustees and executors of a will carried on the testator's business after his death and incurred trade debts, and were in default in rendering proper accounts, but were not in default in payment of money:—

*Held*, that to deprive them of their indemnity they must be in default in payment and not merely in rendering accounts, and that the trade creditors were entitled to prove against the estate through the right of the trustees to indemnity. *In re KIDD. KIDD v. KIDD*

Kekewich J. [1894] W. N. 73

**50. — Mortgage of assets—Mortgage to building society.**

An executor is not entitled on behalf of the estate to take shares in a building society or to make the estate liable for him as a shareholder. A mortgage by an executor to a building society, though made to secure not only money advanced, and interest thereon, but all moneys becoming due from him as a shareholder, is not wholly void as against the beneficiaries, but is good as against the beneficiaries to the extent of the money advanced and reasonable interest, provided that the advance was made in good faith to the executors as such. *THORNE v. THORNE*  
Romer J. [1893] 3 Ch. 196

**51. — Powers after renouncing probate.**

A testator gave the residue of his estate to

**EXECUTOR (Powers)—continued.**

such charities "as my executors herein named may select":—

*Held*, on the construction of this particular will, that the power was given to the executors in their official capacity and was exerciseable only by those who had proved. *CRAWFORD v. FORSHAW*

C. A. [1891] 2 Ch. 261 revers. *Kekewich J.*  
40 Ch. D. 642

52. — *Power of sale—Devise of land charged with legacies.*

A charge of legacies on land devised beneficially in fee or in tail does not give executors a power of sale. *In re REBBECK. BENNETT v. REBBECK*  
*Chitty J.* [1894] W. N. 68

53. — *Power to appropriate specific portion of assets.*

Although there is no special power in a will to appropriate specific portions of the estate, the executor has power to do so: otherwise it would be impossible in many cases to wind up the estate. A residuary legatee has power to accept such an appropriation in accord and satisfaction of his share or of part of his share. *In re LEPINE. DOWSETT v. CULVER*

C. A. revers. *Kekewich J.* [1892] 1 Ch. 210

Referred to by *Stirling J.* *In re Nickels*, [1898] 1 Ch. 630, 635.

**Retainer.**

54. — *Form of administration bond—Right of retainer—Administration to creditor—Decree for administration.*

The personal representative may still retain his own debt, notwithstanding a decree for administration made in a suit by other creditors, notwithstanding the assets out of which he seeks to retain came to his hands after the decree, and notwithstanding the present form of a creditor's administration bond, which provides for a due course of administration "rateably and proportionably and according to the priority required by law and not unduly preferring his own debt or the debts of any other of the creditors of the deceased by reason of being an administrator as aforesaid."

*Nunn v. Barlow*, (1824) 1 S. & S. 588, examined and followed. *Jones v. Evans*, (1876) 2 Ch. D. 420, distinguished. *DAVIES v. PARRY*

*Romer J.* [1899] 1 Ch. 602

But see now Note of Probate Practice, [1899] W. N. 262—**PROBATE—Administration Bond.** 8.

55. — *Right of retainer—Administrator—Retainer.*

The suit of *Dowding v. Mellish* was instituted some years previously to 1851 for the administration of the estate of R. Bradshaw. The suit of *Pulman v. Meadows* was a creditor's suit instituted in 1851 for the administration of the insolvent estate of J. Mills. A sum of Consols in court in the suit of *Dowding v. Mellish* had recently been transferred to the credit of that suit to the account of the share of J. Mills. The applicant in this summons was a creditor of the estate of, and now administrator with the will annexed, of J. Mills. On his application the sum in court to the account of the share of J. Mills in the suit of *Dowding v. Mellish* had been

**EXECUTOR (Retainer)—continued.**

transferred to the suit of *Pulman v. Meadows*. The object of this summons was to determine whether, in exercise of an administrator's right of retainer, the applicant was entitled to the sum in court:—

*Held*, that the applicant was not entitled to the fund in court. *PULMAN v. MEADOWS*

*Cozens-Hardy J.* [1900] W. N. 273

56. — *Right of retainer—Annuity.*

An administratrix, an annuitant under covenant by her intestate, whose estate is insolvent, is entitled to retain all arrears falling due during administration, but only to prove for the value of her future annuity. *In re BEEMAN. FOWLER v. JAMES* *North J.* [1895] W. N. 151 (1); [1896] 1 Ch. 48

57. — *Right of retainer—Legatee debtor to testator—Bankruptcy of legatee.*

A father deposited with a bank a sum of 2400*l.* (money of his own) as a continuing security for any amount which might from time to time be owing to the bank by a firm in which two of his sons were the only partners. Interest on the deposit was from time to time paid by the bank to the father. By his will the father gave legacies and shares of residue to the two sons. At the date of his death the sons owed 8858*l.* to the bank, and the sons were afterwards adjudicated bankrupts. The bank proved in the bankruptcy for the whole 8858*l.* No dividend having yet been paid in the bankruptcy, but it being admitted to be improbable that the estate would realize enough to pay the bank in full, and that the bank would ultimately appropriate the deposit of 2400*l.* towards the payment of the firm's debt:—

*Held*, that the trustees of the father's will were not entitled to retain the legacies and shares thereby bequeathed to the sons against the liability of the father's estate as surety to the bank, but that the trustee in the bankruptcy was entitled to receive those legacies and shares. *In re BINNS. LEE v. BINNS*

*North J.*  
[1896] 2 Ch. 584

58. — *Right of retainer—Debt—Assertion of right—Insolvent Testator—Administration order—Official receiver, vesting in—Vesting order, effect of—Payment of assets to official receiver without retaining debt—Mistake—Repayment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125, sub-ss. 1, 2, 5, 9.*

An executor who is a creditor of his testator is not bound, in order to preserve his right of retainer out of the assets he has got in, to assert his right before occasion arises, as on an attempt to take assets out of his possession: if he asserts it then, his right will be protected, unless he has done some act, by release or otherwise, to deprive himself of it.

When an order has been made under s. 125, sub-ss. 1, 2, of the Bankruptcy Act, 1883, for the administration of the estate of an insolvent testator, thus vesting the estate in the official receiver under sub-s. 5, the effect of the order is to vest in the official receiver so much only of the estate as is properly distributable among the creditors, and not to deprive third parties of any rights which they have acquired to withdraw

**EXECUTOR (Retainer)—continued.**

from distribution assets in their possession and which they have a right to retain.

Thus, such an order does not deprive an executor creditor of his legal and equitable right of retainer out of the assets which he has got in, even though by mistake and in ignorance of his rights he has paid over the assets to the official receiver under the administration order; nor is he deprived of that right by proving for his debt in the bankruptcy, if on discovering his error he withdraws his proof. In that case he is entitled to be repaid the sum he would have been entitled to retain had the assets been still in his possession.

Decision of Wright J., [1899] W. N. 41, [1899] 1 Q. B. 905, affirmed. *In re* RHOADES. *Ex parte* RHOADES

C. A. [1899] 2 Q. B. 347

— Right of retainer—Debt—Insolvent estate.

See **EXECUTOR—Insolvent Estate**. 36.

— Right of retainer—Debt—Insolvent testator—Retainer in specie.

See **BANKRUPTCY—Retainer**. 219.

59. — *Right of retainer—Debt due from bankrupt legatee.*

A surety for a mortgagor bequeathed to him a share of the residue of his estate, subject to the life interest of the testator's widow. After the death of the testator the mortgagor became bankrupt. He never obtained a discharge, and the bankruptcy was never closed. Neither the mortgagees nor the testator's executors proved in the bankruptcy. After the bankruptcy the executors made some payments to the mortgagees in pursuance of the testator's liability under his contract of suretyship:—

*Held*, that, on the death of the tenant for life, the executors were entitled, notwithstanding the bankruptcy, to retain out of the mortgagor's share of the residue the amount of the payments which they had thus made to the mortgagees, with interest thereon at 4 per cent. *In re* WATSON. *TURNER v. WATSON* - North J. [1896] 1 Ch. 925

Referred to by North J. *In re* Binns, [1896] 2 Ch. 584. See No. 57, above.

Referred to by Stirling J. *In re* Goy & Co., *Ld.*, [1900] 2 Ch. 149, 153.

60. — *Right of retainer—Debtor and creditor—Statute-barred debt—Payment out of Court.*

In 1890 an inquiry was directed as to the persons interested in a fund standing to the account of the legal personal representative of G. H., deceased, the surviving partner in several firms. G. H. had died in 1842, and the fund had been carried to this account in 1883. In 1892 it was found that one-fourth of the fund belonged to G. H., and on Aug. 10, 1893, in the presence of his administrator de bonis non, an order was made carrying over the share of G. H. to a separate account, and directing an inquiry as to the persons beneficially interested in it. F. H. was a creditor of G. H., but his debt had been barred by the Statute of Limitations. Before the inquiry had been answered the personal representative of F. H., who was also administrator de bonis non of G. H., claimed to have the fund paid out to her as legal personal representative of G. H., the object being to exer-

**EXECUTOR (Retainer)—continued.**

cise a right of retainer over the fund for the debt due to her as personal representative of F. H.:—

*Held*, by Stirling J., that the Court will not order a fund to be paid out to an executor or administrator having the legal title to a statute-barred debt merely in order to enable him to acquire a right of retainer thereout:—

*Held*, on appeal, that even if the Court would otherwise have done so, the representative of G. H. could not ask to have the fund paid out to her when the effect of so doing would be to defeat the inquiry which had been directed in the presence of the then legal personal representative of G. H. *TREVOR v. HUTCHINGS*

C. A. [1896] 1 Ch. 844

61. — *Right of retainer—Administration—Delay—Indemnity—Debt—Surety.*

In an administration action an executor does not lose his right of retainer merely by reason of delay—such as not claiming his right until after the chief clerk has made his certificate under the judgment—or by the fact of his having paid the assets into court or to a receiver, provided the delay can be satisfactorily explained and there are assets against which he can exercise his right.

The right of indemnity belonging to an executor who is surety for an unpaid debt of his testator creates an equitable debt in respect of which he may exercise the right of retainer.

*In re* Harrison, (32 Ch. D. 395) considered.

*In re* GILES. JONES v. PENNEFATHER

Kekewich J. [1896] 1 Ch. 956

62. — *Right of retainer—Mortgage by intestate—Surety—Administratrix—Specialty creditor.*

A., being entitled for life to certain leasehold property with remainder to B., mortgaged the same to secure 800*l.* B. joining in the mortgage so as to bind her estate in remainder; and A. covenanted with B. to pay all monies secured by the mortgage, and to keep indemnified the estate and interest of B. in the premises against all such moneys; and further, in case B. should at any time thereafter pay any money for the redemption of the premises, forthwith to repay such money with interest.

A. died intestate in 1893 without having paid the mortgage debt, and administration was granted to B., who duly paid the interest:—

*Held*, in a creditor's action for the administration of A.'s estate, that B. was at law a specialty creditor in respect of the whole debt, and was entitled to retain the assets of the intestate in her hands to answer the debt. *In re* ALLEN. ADCOCK v. EVANS - Chitty J.

[1896] 2 Ch. 345

63. — *Right of retainer—Notice—Following assets—Creditor of higher degree—Succession duty—Plene administravit.*

The settled rule that an executor who pays creditors without notice of the existence of a creditor of higher degree, is not liable to account for the sums so paid at the instance of that creditor applies to the retainer by an executor of a debt due to himself.

*Blake v. Gale*, (1886) 32 Ch. D. 571, 577, distinguished.

By the exercise of a joint power of appoint-

**EXECUTOR (Retainer)—continued.**

ment, 112,000*l.*, representing real estate, was withdrawn from a settlement and paid to a son in the lifetime of his father. The son died in 1895, leaving an estate worth 3200*l.* His executrix distributed the estate among creditors of equal degree, retaining the bulk of it in satisfaction of a debt of her own. The father having died in 1896, succession duty became payable, and the trustees of the settlement claimed that the duty on the 112,000*l.* ought to be paid out of the son's estate in priority to the other creditors:—

*Held*, that the executrix having distributed the assets without notice of this debt, *bonâ fide* and without undue haste, the estate had been fully administered; and that the trustees, though creditors of a higher degree, had no right to follow the assets retained by the executrix in discharge of her own debt. *In re FLUYDER, WINGFIELD v. ERSKINE* — **Romer J.** [1898] 2 Ch. 562

**64. — Right of retainer—Order reserving right of retainer—Payment under order to creditor in higher degree.**

In a creditor's action for the administration of the real and personal estate of a testatrix, one of the executors was found to be a simple contract creditor of the estate to an amount exceeding 250*l.* By an order made in the action the executors were directed to pay, "out of moneys in their hands forming part of the testatrix's outstanding personal estate," a sum of 250*l.* to certain specialty creditors of the testatrix, but the order was to be "without prejudice to any question of retainer" by the executors or either of them. The 250*l.* was paid accordingly. Subsequently a receiver was appointed to get in the estate. The question was whether the right of retainer by the executor who was a creditor was lost or preserved to the extent of the 250*l.* so paid away:—

*Held*, that the case was within the principle of *Richmond v. White*, (1879) 12 Ch. D. 361, as explained in *In re Compton, Norton v. Compton*, (1885) 30 Ch. D. 15. The payment must be treated as made for the convenience of administration, and, as it was expressly made out of the outstanding personal estate, the fact that it was to creditors in a higher degree made no difference, though the case might have been otherwise if the payment had been to a secured creditor out of the subject-matter of his security:

*Held*, therefore, that to the extent of the 250*l.* the right of retainer was preserved. *In re LANCE. SHARP v. REBBECK* **Kekewich J.** [1900] W. N. 29

**65. — Right of retainer—Pauper—Deceased pauper—Guardians.**

The executor of a deceased pauper can retain a debt due to himself before satisfying the claim of the guardians for maintenance during the last year of the pauper's life. *LAVER v. BOTHAM & SONS, CHESTERFIELD UNION (GUARDIANS), CLAIMANTS* — **Div. Ct.** [1895] 1 Q. B. 59

— Retainer—Payment into court at instance of executor.

**See PRACTICE — Payment into Court.**  
132.

**EXECUTOR DE SON TORT**—Testator foreign subject domiciled abroad—Liability to pay probate duty.

*See* **REVENUE—Probate Duty.** 134.

**EXECUTORY AGREEMENT**—Special occupant.

*See* **Cases under ESTATE PUR AUTRE VIE.**

**EXECUTORY DEVISE.**

*See* **Cases under WILL—Contingent Remainder.**

**EXECUTORY INSTRUMENT** — Absolute gift subject to—Reversionary interest—Conversion—Enjoyment in specie.

*See* **WILL—Absolute Gift.** 10.

— Ancient document—Contemporaneous usage or interpretation—Construction.

*See* **WAX-LEAVE.** 1.

**EXECUTORY LIMITATION** — Contingent remainder or—Appointment.

*See* **POWERS—Validity.** 46.

**EXEMPTION**—Duty.

*See* **Cases under REVENUE.**

— Duty—Third-class passengers—Extra charge for reserved carriage.

*See* **RAILWAY—Passengers.** 21.

— From liability as to goods.

*See* **SHIPPING—Exceptions.**

— From registry—Limitation of liability—"Tons burden"—"Register tonnage."

*See* **SHIPPING—Limitation of Liability.** 165.

— Oaths.

*See* **Chairmen of District Councils Act, 1896 (59 & 60 Vict. c. 22).**

— Poor-rate.

*See* **Cases under RATES.**

— Rate—Highway—Liability to repair fractions tenure—Sum paid in discharge of liability.

*See* **HIGHWAY—Repairs.** 26.

— Rates.

*See* **RATES.**

— Taxes and assessments—City of London—Statute—Implied repeal.

*See* **STATUTES.** 7.

**EXERCISE**—Power of appointment.

*See* **Cases under POWERS—Exercise.**

— Power of attorney.

*See* **POWER OF ATTORNEY.**

**EXHIBIT**—Affidavit.

*See* **EVIDENCE.** 16.

**EXHUMATION**—For purposes of verification—Licence of Secretary of State—Faculty.

*See* **ECCLIESIASTICAL LAW.** 26.

**EXONERATION**—Liability of real estate for payment of debts and legacies—Personal estate.

*See* **EXECUTOR.** 17—20.

— Rent-charge—Sale of part of land.

*See* **SETTLED LAND.** 105.

— Separate estate—Restraint on anticipation—Payment of husband's debts.

*See* **HUSBAND AND WIFE.** 51.

— Will, Construction of.

*See* **WILL—Exoneration.**

**EXPECTANCY**—Resulting trust—Cestui qui trust dead—Failure of gift.  
See **TRUST**. 4.

— Value of expectancies—Disentail—Proof—Remit.  
See **SCOTTISH LAW**. 14.

**EXPECTANT OR PRESUMPTIVE SHARE**—Advancement clause—Impossibility of issue—Woman past child-bearing.  
See **WILL**—Advancement. 20.

**EXPERIMENTS**—Preparatory to trial of patent action.  
See **PATENT**—Practice. 28.

**EXPERTS**—Evidence of—Will—Obliteration.  
See **PROBATE**—Grant of Probate. 112.

**EXPULSION**—Member of trade union—Injunction—Illegal objects.  
See **TRADE UNION**. 10.

**EXTENSION**—Of patent.  
See **PATENT**—Prolongation.

**EXTINGUISHMENT**—Founders' shares.  
See **COMPANY**—Reduction of Capital. 226, 234.

— Landlord's title—Hotch-potch clause—Non-payment of rent—Absolute title of tenant.  
See **WILL**—Advancement. 23.

— Mortgage—Statute of Limitations.  
See **LIMITATIONS, STATUTE OF**—Mortgages. 26.

— Power of appointment.  
See **POWERS**—Extinction.

— Tolls—Prescriptive right—Extinguishment of old franchise by statutes.  
See **TOLLS**. 1.

**EXTORTION**.  
See **BANKRUPTCY**—Receiving Order. 211.  
**CRIMINAL LAW**—Offences against property. 55.

— Liability of sheriff.  
See **SHERIFF**. 8.

## EXTRADITION.

By the *Extradition Act, 1895* (58 & 59 Vict. c. 33), the Acts of 1870 and 1873 were amended so far as respects the magistrate by whom and the place in which the case may be heard and the criminal held in custody.

Reference to the whole of the *Extradition Orders in Council under the Extradition Acts issued prior to 1891* is given in the "*Index to the Statutory Rules and Orders*," 1893 edit. **St. O. P.** The following is a list of the *O. in C.* issued since Dec. 31, 1889, with references to the annual volumes of *Statutory Orders in which they are printed*—

**ARGENTINE REPUBLIC.**] *O. in C. dated Jan. 29 1894, applying the Extradition Acts, 1870–1873, to the Argentine Republic and the Treaty of May 22, 1889.* **St. R. & O. 1894, p. 78.**

**BELGIUM.**] *O. in C. dated Nov. 27, 1896, applying the Extradition Acts to Belgium.* **St. R. & O. 1896, No. 1081, p. 101.**

## EXTRADITION—continued.

**REPUBLIC OF BOLIVIA.**] *O. in C. dated Oct. 20, 1898, applying the Extradition Acts, 1870 to 1895, to.* **Lond. Gaz. Oct. 25, 1898, p. 6201.**

**BRITISH GUIANA.**] *Surrender of fugitive criminals.—O. in C. dated July 7, 1897, extending s. 18 of the Extradition Act, 1870, to colony of British Guiana.* **St. R. & O. 1897, p. 120, No. 574.**

**BRITISH INDIA.**] *O. in C. dated Nov. 21, 1895, directing that the Extradition (India) Act, 1895, shall have effect in British India as if part of the Extradition Acts, 1870, and 1873.* **St. R. O. 1895, No. 568. Price 3d.**

**CHILE—FUGITIVE CRIMINALS.**] *O. in C. dated Aug. 9, 1898, applying the Extradition Acts, 1870 to 1895, to Republic of Chile.* **Lond. Gaz. Aug. 12, 1898, p. 4839; Parl. Paper [C. 9051].**

**CYPRUS.**] *"The Cyprus Extradition O. in C. 1895."* **St. R. & O. 1895, No. 136. Price 3d.**

*"The Cyprus Extradition O. in C. 1895, No. 2."* **St. R. & O. 1895, No. 582. Price 3d.**

**FRANCE.**] *O. in C. dated Feb. 22, 1896, applying the Extradition Acts to France. Operation of said Acts is suspended within Dominion of Canada.* **Lond. Gaz. Feb. 25, 1896, p. 1117; St. R. & O. 1896, No. 54, p. 104.**

**FRENCH GUIANA AND TRINIDAD.**] *O. in C. dated Nov. 20, 1894, as to extradition from French Guiana to Trinidad.* **St. R. & O. 1894, p. 116.**

**GERMAN PROTECTORATES.**] *O. in C. dated Feb. 2, 1895, applying the Extradition Acts, 1870–1873, to the German Protectorates in Africa, New Guinea, and Pacific Ocean and the Treaty of May 5, 1894.* **St. R. & O. 1895, No. 58. Price 3d.**

**ITALY—SAN MARINO, REPUBLIC OF—FUGITIVE CRIMINALS.**] *O. in C. directing that the Extradition Acts shall apply to.* **St. R. & O. 1900, No. 168; Lond. Gaz. April 17, 1900, p. 2491.**

**LIBERIA.**] *O. in C. dated March 10, 1894, applying the Extradition Acts to Liberia and the Treaty of Dec. 16, 1892.* **St. R. & O. 1894, p. 88.**

**MONACO.**] *O. in C. dated May 9, 1892, applying the Extradition Acts to Monaco and the Treaty of Dec. 17, 1891.* **St. R. & O. 1892, p. 455.**

**NETHERLANDS.**] *Fugitive Criminals O. in C. dated Feb. 2, 1899, directing that the Extradition Acts shall apply.* **St. R. & O. 1892, p. 731, No. 83.**

**ORANGE FREE STATE.**] *O. in C. dated March 20, 1891, applying the Extradition Acts to the Orange Free State and the Treaty of June 25, 1890.* **St. R. & O. 1891, p. 279.**

**PORTUGAL.**] *O. in C. dated March 3, 1894, applying the Extradition Acts to Portugal and the Treaty of Oct. 17, 1892.* **St. R. & O. 1894, p. 95.**

**PORTUGUESE INDIA.**] *Foreign Office notification, Mar. 9, 1891, of the termination on Jan. 14, 1892, of the Treaty of Dec. 26, 1878, as to extradition from the Indian possessions of Portugal.* **Lond. Gaz. March 10, 1891, p. 1339.**

**ROUMANIA.**] *O. in C. dated April 30, 1894, applying the Extradition Acts to Roumania and the Treaties of Mar. 31, 1893, and Mar. 13, 1894.* **St. R. & O. 1894, p. 105.**

**STRAITS SETTLEMENTS.**] *O. in C. dated*

**EXTRADITION—continued.**

Oct. 26, 1896, amending previous Orders as to extradition from Straits Settlements. *S. R. & O. 1896, No. 679, p. 579.*

URUGUAY.] *O. in C. dated Nov. 24, 1891, applying the Extradition Acts to the Republic of Uruguay and the Protocol of Mar. 20, 1891. St. R. & O. 1891, p. 285.*

1. — *Detention of property for purpose of trial abroad—Extradition Act, 1870 (33 & 34 Vict. c. 52, s. 9; 11 & 12 Vict. c. 44, s. 5).*

On the hearing of an application to extradite a person accused of theft abroad, O., a witness, produced certain articles under a subpoena duces tecum which he had purchased from the prisoner. After the magistrate had committed the prisoner to await the Secretary of State's warrant, he orally directed a constable to take charge of the property for production at the trial abroad. O. applied, under 11 & 12 Vict. c. 44, s. 5, for an order directing the property to be given up to him:—

*Held*, that the magistrate was functus officio when he had committed the prisoner, and any subsequent direction as to the property, whether given or omitted, was not an act relating to the duties of his office, and that the Court had no jurisdiction to make the order.

*Held*, further, that assuming the Court had such jurisdiction, O.'s possessory title (if any) had been lawfully divested by their passing out of his possession under the subpoena duces tecum, and therefore that he was not entitled to the relief asked. *REG. v. LUSHINGTON. Ex parte OTTO.*

Div Ct. [1894] 1 Q. B. 420

2. — *Evidence of accomplice—Corroboration—One committal for two offences—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3, sub-s. 1.*

M. was charged with causing two explosions in France, one of which caused loss of life. On an application for a writ of habeas corpus, it was objected that (1) there was no evidence of the identity of the prisoner with the person accused; (2) that the charges depended on the uncorroborated evidence of an accomplice; (3) that there were two charges and one committal:—

*Held*, that (1) the evidence of identity was sufficient; (2) that the evidence of the accomplice was corroborated, and, even if it were not, that the magistrate had discretion as to whether the evidence was sufficient for committal; (3) that separate committals were not necessary. *In re MEUNIER* — Div. Ct. [1894] 2 Q. B. 415

3. — *Falsification of accounts—“Faux”—“Faux en écritures de commerce”—Extradition treaty with France, Art. 3 (2, 18)—Code Pénal, Art. 147—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 83—Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24).*

The offence in English law of fraudulent falsification of accounts by a director, public officer, or member of a public company is an offence within art. 147 of the French Code Pénal, and is covered by the expression “faux en écritures de commerce” in that article. Although it may not amount to forgery according to English law, that offence is an extradition

**EXTRADITION—continued.**

crime within the French version of art. 3 (2) of the extradition treaty with France, and within the English version of art. 3 (18) of the same treaty, and also within the Extradition Acts. *In re ARTON (No. 2)* [1896] 1 Q. B. 509

See also next Case.

4. — *Jurisdiction—Bona fides of Demand for Surrender—Offence of a Political Character—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3, sub-s. 1.*

Where the surrender of a fugitive criminal is demanded by the Government of a friendly State for offences within the provisions of the Extradition Act, 1870, and of the extradition treaty with that State, the Court has no jurisdiction to inquire whether the demand for surrender is made in good faith and in the interests of justice.

The provision of s. 3, sub-s. 1, of the Extradition Act, 1870, by which a fugitive criminal shall not be surrendered if he proves to the satisfaction of the Court that the requisition for his surrender has been made with a view to try or punish him for an offence of a political character, applies only to an offence of a political character which has been already committed. *In re ARTON (No. 1)* — [1896] 1 Q. B. 108

See also previous Case.

5. — *Political offence—Habeas Corpus—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3 (1).*

The decision of a magistrate, who commits a prisoner for extradition, that the offence charged is not of a political nature, is subject to review by the Court on an application for habeas corpus. Definition of a crime incidental to and forming part of a political disturbance is a political offence. *In re CASTIONI*

Div. Ct. [1891] 1 Q. B. 149

To constitute a political offence there must be two parties in the State each seeking to impose the government of their choice on the other. The definition includes anarchist crimes. *In re MEUNIER* Div. Ct. [1891] 2 Q. B. 415

6. — *Sufficiency of charge—Fraud by a bailee—24 & 25 Vict. c. 96, ss. 75, 76; 33 & 34 Vict. c. 52.*

In order to justify the extradition of the subject of a foreign State, there must be evidence of an act committed; by him in the foreign country amounting to an offence against the law of such country, and which, if committed in England, would amount to an offence against English law. *In re BELLENCONTRE*

C. A. [1891] 2 Q. B. 122

7. — *Surrender of British subjects—Treaty with Belgium—Person “liable to be surrendered”—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 6.*

By s. 6 of the Extradition Act, 1870, “where this Act applies in the case of any foreign State, every fugitive criminal of that State, who is in or suspected of being in any part of Her Majesty's dominions . . . shall be liable to be apprehended and surrendered in manner provided by this Act.”

By a treaty made between this country and Belgium the contracting parties undertook to deliver up to each other reciprocally fugitive

**EXTRADITION—continued.**

offenders accused of certain specified offences; but it was expressly provided that “in no case, nor on any consideration whatever, shall the high contracting parties be bound to surrender their own subjects, whether by birth or naturalisation.”

The surrender of a British subject was demanded by the Belgian Government in respect of certain extradition offences of the commission of which there was sufficient *prima facie* evidence to justify his extradition, and an order for his committal was made by a magistrate with a view to his surrender:—

*Held*, that the accused, although a British subject, was a person “liable to be surrendered” within the meaning of s. 6 of the Extradition Act, 1870, and that the order of committal was rightly made.

Under the provisions of the treaty with Belgium, the ordinary proceedings in extradition may be taken in the case of a British subject; it

**EXTRADITION—continued.**

is not necessary that in each particular case the surrender should be the result of negotiations between the respective Governments and of an express consent by the British Government to the extradition. *In re GALWEY*

[1896] 1 Q. B. 230

**EXTRAORDINARY EXPENSES—Highways.**

*See* Cases under **HIGHWAY—Repairs.**

**EXTRAORDINARY TITHE.**

*See* **TITHE.**

**EXTRAORDINARY TRAFFIC—Highways.**

*See* Cases under **HIGHWAY—Repairs.**

— **Locomotives.**

*See* **LOCOMOTIVES.**

**EXTRINSIC EVIDENCE—Contract—“Total cost of works.”**

*See* **CONTRACT. 11.**

— **Intention—Will—Construction.**

*See* **WILL—Evidence. 83—83B.**



## F.

**FACTOR**—Bill of exchange—Dishonour by buyer  
—Possession of goods—Consent of seller.  
*See* SALE OF GOODS. 7.

1. — *Hire and purchase agreement—Construction—Property in goods.*

*Held*, on the construction of a hiring agreement, that the parties having plainly expressed their intention that, in a certain event, the property should not pass to the hirer, that event having happened the property did not pass, and the transaction was therefore not within the Bills of Sale Acts. *McENTIRE v. CROSSLEY BROTHERS*

H. L. (I.) [1895] A. C. 457

— Judicial factor—Curator bonis—Liability—Harbour rates.

*See* TRUSTEE—Investments. 65.

2. — “*Mercantile agent*”—*Person employed to sell on commission—Factors Act, 1889* (52 & 53 Vict. c. 45), ss. 1, 2.

B., who was employed by the plts. to sell goods at a salary and on commission, pledged, without authority, some articles with the defts., who received them in good faith and in the ordinary course of business:—

*Held*, that B. was not a mercantile agent within the meaning of the Factors Act, 1889, s. 1, and therefore s. 2 of that Act afforded no defence. The meaning of “mercantile agent” explained. *HASTINGS v. PEARSON*

Div. Ct. [1893] 1 Q. B. 62

Distinguished by Bruce J. *Shenstone & Co. v. Hillon*, [1894] 2 Q. B. 452. *See* No. 4, below.

3. — *Pledge—Documents of title—Foreign arrestment—Conflict of laws—Goods in Scotland—Factors Acts, 1889, 1890* (52 & 53 Vict. c. 45, ss. 3, 9; 53 & 54 Vict. c. 40, s. 1).

Where goods are lodged in warehouses in Scotland a pledgee of the goods must, to make effective all real rights which depend on the constructive delivery of the goods, give notice of the pledge to the warehouse-keeper.

The Factors Act, 1889, extended to Scotland by the Factors (Scotland) Act, 1890, enacts—s. 3: “A pledge of the documents of title to goods shall be deemed to be a pledge of the goods”; and s. 1: “For the purposes of this Act” (sub-s. 5) “The expression ‘pledge’ shall include any contract, pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.” Sect. 9 prescribes that the effect of delivery or transfer of the documents of title of the goods under any pledge, &c., by a person who having bought the goods obtains with the consent of the seller possession of the goods or documents of title, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Goods were stored by G., a domiciled Englishman, in a bonded warehouse in Glasgow, trans-

**FACTOR**—*continued.*

ferred into the name of G. as owner; and the warehouse-keeper issued to G. delivery orders showing that the goods were held to G.’s order “or assigns by indorsement hereon.” G. obtained a loan from I., an English merchant, and delivered to him in England a letter of hypothecation bearing that he deposited a part of the goods with him in security, with power of sale, and G. indorsed and handed to I. the delivery warrants. I. did not intimate or give notice of the right he had acquired to the warehouse-keeper. R. & B., claiming as personal creditors of G., arrested the goods in the hands of the warehouse-keeper in order to found jurisdiction against G. in Scotland; and then raised an action against him in the Scottish Court, upon dependence of which they again arrested the goods, claiming through the arrestment a preferable right thereto:—

*Held*, affirming the decision of the majority of the whole Scottish judges, (1897) 24 R. 758 that the case was governed by the law of Scotland, and that the right of the pledgee, I., in the goods was defeated by the arrestment executed by R. & B., I. not having intimated his pledge to the warehouse-keeper:

*Held*, also, that s. 3 of the Factors Act, 1889, was merely intended to define the full effect of the pledge of the documents of title made by a mercantile agent, and that it had no application to the case of the pledge of the documents of title by one in the position of G., who was not a mercantile agent within the meaning of the Act; nor was G. a pledgor within s. 9 of the same Act. *INGLIS v. ROBERTSON*

H. L. (Sc.) [1898] A. C. 616

— Possession of document of title—Consent of seller—Stoppage in transitu.  
*See* SALE OF GOODS. 7.

4. — *Possession—Delivery—“Mercantile agent”—Hiring agreement—Factors Act, 1889* (52 & 53 Vict. c. 45), s. 9.

A. let a piano to B. under a hiring agreement by which B. was to pay as hire monthly instalments, and when all the instalments were so paid the piano was to become the property of B. C., an auctioneer, in good faith and with no knowledge of A.’s rights, received the piano, sold it, and paid the proceeds to B.:—

*Held*, that C. had agreed to buy and obtained with consent of A. possession of the piano; that delivery by B. to C. had the same effect as if B. was a mercantile agent; that “delivery under any agreement for sale” was not confined to delivery to the receiver pursuant to a sale by the deliveror; that “agreement for sale, pledge, or other disposition” included a delivery of goods to be sold by the receiver for the benefit of the deliveror, and that therefore C. was protected from liability by s. 9 of the Act. *SHENSTONE & CO. v. HILTON* — — Bruce J. [1894] 2 Q. B. 452

**FACTOR**—*continued.*

5. — *Possession under agreement—Option to purchase—Hiring agreement—Pledge by hirer—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 9.*

The expression in s. 9 of the Factors Act, 1889, "a person having agreed to buy goods," means a person who has bound himself by agreement to buy, and does not include a person having an option to buy, the owner being bound to sell if the option is exercised.

A person who merely hires goods with an option of purchase cannot give a good title to a pledgee, under s. 9 of the Factors Act, 1889, until he has paid all his instalments and exercised his option. *Decision of C. A., [1894] 2 Q. B. 262, reversed. HELBY v. MATTHEWS*

H. L. (E.) [1895] A. C. 471

Followed by C. A. *Payne v. Wilson*, [1895] 2 Q. B. 537.

6. — *Sale of goods—Possession of goods under hire and purchase agreement—Factors Act, 1889 s. 9.*

A. being in possession of furniture under a hire and purchase agreement made with B., sold and delivered the same, before the last payment had accrued due or been paid, to C. :—

*Held*, that the sale to C., who had acted in good faith and without notice of B.'s rights, was valid under s. 9 of the Factors Act, 1889. *LEE v. BUTLER*

C. A. [1893] 2 Q. B. 318

Distinguished by H. L. (E.) *Helby v. Matthews*, [1895] A. C. 471. *See* No. 5, above.

7. — *Sale of goods—Conviction of hirer—Larceny Act, 1860 (24 & 25 Vict. c. 96), ss. 3, 100—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 9—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 21, 24, 25, sub-s. 2.*

Where a person having possession of goods under a hire and purchase agreement sells them to a purchaser in good faith and without notice, the conviction of the hirer for larceny as a bailee of the goods does not divest the purchaser of the property in them. *PAYNE v. WILSON* — Div. Ct.

[1895] 1 Q. B. 653; this decision reversed by C. A. [1895] 2 Q. B. 537

8. — *Sale of goods—Sale by agent—Condition against selling without further authority—Estoppel—Factors Act, 1825 (6 Geo. 4, c. 94), s. 4; (52 & 53 Vict. c. 45), s. 1, sub-s. 1; s. 2, sub-s. 1.*

B. entrusted a table-top to G., who was a dealer in similar articles. The table-top was not to be sold to any person or at any price without B.'s authorization. If sold, the cheque was to be handed to B. intact, who was to pay a commission. G. sold the table to E. for 200l. without B.'s authorization. E. was to pay S. 170l. to satisfy a judgment S. had against G., and 30l. to G. E. gave S. a diamond valued between them at 120l. and 50l. in cash :—

*Held*, that G. was acting altogether outside his authority in selling, and therefore E. acquired no title, and B. was not estopped from disputing E.'s title :

*Held*, also, that as the table was never entrusted for sale, and as the mode of payment was not in accordance with the ordinary course of business, E. was not protected by the Factors

**FACTOR**—*continued.*

Act in force at the time (6 Geo. 4, c. 94, s. 4). *BIGGS v. EVANS* — *Wills J.* [1894] 1 Q. B. 88

**FACTORY.**

*See* MASTER AND SERVANT — **Factory Acts.**

**FACULTY.**

*See* ECCLESIASTICAL LAW — **Faculty.**

**FAIR COMMENT**—Joint stocktrading company—Statements injurious to trade.

*See* DEFAMATION—**Libel.** 2.

**FAIRS**—Markets and—By-laws.

*See* MARKET AND FAIRS. 1.

"**FAIRWAY**"—Definition of.

*See* SHIPPING—**Collision.** 65.

**FALKLAND ISLANDS**—Colonial Probates Act, 1892.

*See* PROBATE—**Colonial Probates Act.**

— **Death Duties.**

*See* REVENUE—**Estate Duty.**

**FALSA DEMONSTRATIO**—Construction of will.

*See* Cases under **WILL**—**Falsa Demonstratio.**

— **Parcels**—Right of way—Misdescription—Construction of Lease.

*See* LANDLORD AND TENANT—**Lease.** 75.

**FALSE DESCRIPTION**—"Physician."

*See* MEDICAL PRACTITIONER. 3.

**FALSE IMPRISONMENT**—By manager of a public house.

*See* MASTER AND SERVANT. 83.

— **Returning from training.**

*See* ARMY AND NAVY—**Volunteers.** 8.

**FALSE PRETENCES.**

*See* CRIMINAL LAW—**False Pretences.**

**FALSE REPRESENTATION**—Right of action—Person induced by misrepresentation to commit crime.

*See* FOREIGN ENLISTMENT ACT. 2.

1. — *Trade rivalry—Unfair competition—Fraud—Testimonials, improper use of—Cause of action—Interlocutory injunction.*

The plt. having invented a system of treating diseases by hot air, there appeared in a medical paper an article containing a favourable account of this system, with particulars of its application to specific cases. The deft., who was the inventor of a rival system of hot-air treatment, circulated amongst the patients of the plt. a pamphlet containing extracts from this article, but the extracts omitted all mention of the plt.'s name, and were so made as to induce the belief that the article, and the specific statements of fact therein, related to the deft.'s system. There was evidence that some of the plt.'s patients were misled by these extracts, but no evidence of any actual damage. Upon motion for injunction :—

*Held*, by *Stirling J.*, [1899] W. N. 125, that, in the absence of any attempt by the deft. to pass off his system as the plt.'s, the Court ought not to interfere by way of interlocutory injunction.

*Franks v. Weaver*, (1847) 10 Beav. 297; 8 L. T. (O.S.) 510, explained and distinguished.

The principle of *Batty v. Hill*, (1863) 1 H. & M.

**FALSE REPRESENTATION**—*continued*.

264, followed. *TALLERMAN v. DOWSING RADIANT HEAT Co.* — C. A. [1899] W. N. 234; [1900] 1 Ch. 1

— What constitutes—Trade name—Colourable imitation of name—Right to injunction. *See CANADA.* 24.

**FALSE STATEMENTS**—Penalty.

*See COMPANY—False Statements.*

**FALSE TRADE DESCRIPTION** — Merchandise marks.

*See Cases under TRADE-MARK—Merchandise Marks.*

**FALSE WARRANTY**—Scienter—Sale of food and drugs.

*See ADULTERATION.* 24.

**FALSEHOOD**—Imputation of.

*See DEFAMATION—Libel.* 5.

— Justification—Particulars.

*See DEFAMATION—Libel.* 11.

**FAMILY ARRANGEMENT**—Representations inducing consent to—Reduction.

*See SCOTTISH LAW—Contract.* 8.

— Trust for debts—Liability of estate.

*See SETTLEMENT.* 3.

**FANCY WORD**—Trade-mark—Registration.

*See Cases under TRADE-MARK.*

**FARE**—Passengers.

*See RAILWAY—Passengers.* 22.

**FARM**—Market garden, conversion into—"Ameliorating waste"—"Improvements."

The conversion of a farm into a market garden is not necessarily a breach of a covenant to cultivate "according to the best rules of husbandry," and buildings, such as hot-houses, erected on a farm, and rendering it more profitable, are "improvements" within the Agricultural Holdings Act, 1883. *MEUX v. COBLEY*

*Kekewich J.* [1892] 2 Ch. 253

**FATAL ACCIDENTS**—Alien—Negligence of British subject—Cause of action outside jurisdiction.

*See NEGLIGENCE.* 1.

— Limitation of action—Neglect in execution of Act of Parliament.

*See PUBLIC AUTHORITIES PROTECTION.* 3.

— Transfer of action—Decree for limitation of liability in the Admiralty Division.

*See PRACTICE—Trial.* 264.

**FATHER**—Rights over children.

*See Cases under INFANT—Custody.*

**FEDERAL GOVERNMENT**—Conflict between powers of and of Provincial—Dominion and Constitutional law.

*See Cases under CANADA.*

**FEE AND LIFE-RENT**—Agricultural leases—Powers of life-renter to grant.

*See SCOTTISH LAW—Landlord and Tenant.* 25.

— Succession duties—Estate duty.

*See SCOTTISH LAW—Succession.* 42.

**FEES.**

*Bankruptcy.* *See BANKRUPTCY.*

*Burial.* *See BURIAL.*

*Clerk of the Crown in Chancery,* col. 818.

*Company.* *See COMPANY and COMPANY—WINDING-UP.*

*County Court.* *See COUNTY COURT.*

*Directors'.* *See COMPANY—Directors.*

*District Surveyor's.* *See LONDON COUNTY—Buildings.* 29.

*Ecclesiastical Court.* *See ECCLESIASTICAL LAW.*

*Justices.* *See JUSTICES.*

*Land Charges.* *See LAND CHARGES.*

*Land Registry.* *See LAND REGISTRY.*

*Land Registry (Middlesex Deeds).* *See MIDDLESEX REGISTRY.*

*Land Revenue.* *See LAND REVENUE.*

*Land Transfer.* *See LAND TRANSFER.*

*Liverpool District Registry.* *See LIVERPOOL COURTS.*

*Patent Office.* *See PATENT—Patent Office.*

*Presentation Office,* col. 818.

*Registration of Trade-marks.* *See TRADE-MARK.*

*Sheriffs.* *See SHERIFF.*

— Ship—Transfer—Registration.

*See SHIPPING—Practice.* 210.

*Clerk of the Crown in Chancery.*

*Order of Lord Chancellor dated June 20, 1871, appointing the fees to be taken.* St. R. & O. 1899, p. 1563.

*Presentation Office.*

*Order of Lord Chancellor dated July 18, 1871, appointing the fees to be taken in the office of the Lord Chancellor's Secretary of Presentations.* St. R. & O. 1899, p. 1566.

**FELONY**—Separation of juries in cases of felony permitted by 60 Vict. c. 18.

— Bankruptcy, Felony connected with.

*See BANKRUPTCY.* 88.

— Dispensing with attendance of plaintiff in error.

*See CRIMINAL LAW—Practice.* 65.

**FEMALE PARTY**—Description.

*See PRACTICE—Writ.* 276.

**FEMALE TENANT FOR LIFE**—Right to possession—Equitable tenant for life.

*See SETTLED LAND.* 96.

**FENCE**—British Columbian Cattle Protection Acts.

*See CANADA.* 26.

— Liability of owner of fence adjoining highway—Defective condition—Injury to child.

*See NUISANCES.* 10.

— Machinery.

*See MASTER AND SERVANT—Factory Acts.*

— Railway company.

*See RAILWAY—Fences.*

**FERTILIZERS AND FEEDING STUFFS.**

See ADULTERATION — Fertilizers and Feeding Stuffs.

**FICTITIOUS NAME**—Shares applied for in.

See COMPANY—WINDING-UP—Contributory. 32.

**"FICTITIOUS OR NON-EXISTENT PERSON."**

— Liability of bank for payment of forged bills.

See BILL OF EXCHANGE. 7.

**FIDEI COMMISSUM**—Will—Jus accrescendi.

See CEYLON. 1.

**FIDUCIARY RELATION**—Concealed fraud.

See LIMITATIONS, STATUTE OF. 13.

— Concealment—Setting aside sale—Liability of liquidator—Interest on profits.

See VENDOR AND PURCHASER. 53.

— Director—Contracts with company—Declaration of interest—Collateral profits.

See COMPANY—Directors. 103.

— Directors, duties of—Sale by directors in one character to themselves in another.

See COMPANY—Directors. 103.

— Independent advice.

See SETTLEMENT. 34.

— Mortgagor and mortgagee.

See MORTGAGE. 15.

— Principal and agent—Statute of Limitations.

See PARTNERSHIP. 1, 32.

— Ratification—Promotion—Ultra vires.

See COMPANY. 202.

— Solicitors.

See SOLICITOR—Fiduciary Relation.

**FIERI FACIAS**—Writ of—Company—Winding-up.

See COUNTY COURT—Jurisdiction. 60.

— Writ of—Collision—Unpaid balance of damages.

See SHIPPING—Collision. 57.

**FIGURES**—Sculptured.

See ECCLESIASTICAL LAW—Faculty. 39.

**FIIJ**—APPEALS FROM FIIJ.] *O. in C. dated Feb. 22, 1878, regulating appeals from the Supreme Court of Fiji to Her Majesty in Council. St. R. & O. 1899, p. 1588.*

**Application of Colonial Probates Act, 1892.**

See PROBATE—GRANT OF PROBATE—Colonial Probates Act.

**Death Duties.**

See REVENUE—Estate Duty.

**Law of Fiji.**

1. — *Boundaries of town—Construction of proclamation—High-water mark on the sea-shore.*

By proclamation the western boundary of a town was declared to be the sea-coast at high-water mark and the eastern boundary to be a specified distance therefrom:—

*Held*, that reclaimed foreshore was within the town, the western boundary of which was the high-water mark for the time being, and the eastern boundary that fixed absolutely by the proclamation. *SMART & CO. v. TOWN BOARD OF SUVA*

P. C. [1893] A. C. 301

**FILING**—Company practice.

See Cases under COMPANY and COMPANY—WINDING-UP.

— Filing copy of bill of sale and affidavit—Date of execution.

See BILL OF SALE. 27.

**FINAL JUDGMENT**—Bankruptcy notice founded on.

See BANKRUPTCY—Act of Bankruptcy. 9.

**FINANCE ACTS.**

See Cases under REVENUE.

**FINANCING**—Condition precedent—Exchange contracts—Repudiation.

See CONTRACT—Construction. 9.

**FINE**—Admittance to copyhold—Limitation of action—Point from which time begins to run.

See COPYHOLD. 4.

— Copyholds — Enfranchisement — Compensation.

See LANDS CLAUSES ACT. 3.

— Engaging seamen for foreign ship—Civil debt.

See SHIPPING.—Seamen. 258.

— Forfeited recognizance — Amercement—Construction of charter to corporation.

See REVENUE—Forfeited Recognizances.

— Licence to assign—Deposit by way of security.

See COVENANT. 1.

— Mitigation of statutory—Jurisdiction.

See JUSTICES. 8.

— Penalty for non-payment—Offences—Street musician.

See MUSIC AND DANCING. 5.

— Release of prisoner on payment of portion of fine.

See CRIMINAL LAW—Fine or Imprisonment.

— Renewal of leases for lives—Copyholds—Income or capital.

See SETTLED LAND—Copyholds. 50.

**FINE ARTS**—Copyright.

See Cases under COPYRIGHT.

— Royal College of Music—Rates—Exemption—Scientific societies.

See RATES. 36.

**FIRE.**

*False Alarms of Fire Act, 1895 (58 & 59 Vict. c. 23), imposes a penalty for giving False Alarms of Fire.*

*Parish Fire-engines Act, 1898 (61 & 62 Vict. c. 38), enables parish councils to borrow fire-engines.*

1. — *Control of premises on fire—Right to exclude the public—Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 32—Public Health Act (38 & 39 Vict. c. 55), s. 171.*

A fire brigade provided by a local authority has control of the premises where a fire takes place, and may exclude the public, including volunteer fire brigades. *CARTER v. THOMAS*

Div. Ct. [1893] 1 Q. B. 673

2. — *Expenses of use of fire-engine—Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 33.*

The expense of sending engines to extinguish fires outside their district incurred by a local

**FIRE**—*continued.*

authority is to be borne by the person receiving the rack-rent of the land or building where the fire occurs. *SALE v. PHILLIPS*

*Div. Ct. [1894] 1 Q. B. 349*

—Hydrants—Right of waterworks company to use—User without consent of London County Council.

*See WATER. 12.*

—Insurance.

*See INSURANCE—Fire. 7—10.*

—Policy—Coal cargo—Heating—Discharge and sale—Loss of freight.

*See INSURANCE—Marine. 52.*

—Policy—Compliance with condition in policy—Non-suit.

*See NEW SOUTH WALES. 26.*

—Policy—Insurance—Ship stranded—Subsequent destruction by fire.

*See INSURANCE—Marine. 48.*

**FIREARMS**—Attempt to discharge—Evidence.

*See CRIMINAL LAW.*

**FIRE-PLUG.**

*See WATER—Supply. 13.*

**FIRM**—Application for shares by a firm.

*See COMPANY—WINDING-UP—Contributory. 42.*

**FISCAL SALE**—Law of Ceylon.

*See CEYLON. 2, 3.*

**FISHERY.**

*Sea, col. 821.*

*Salmon and Freshwater, col. 823.*

*Sea.*

**BELGIAN DECLARATION.] Notice bringing pt. 1 of the Fisheries Act, 1891 (54 & 55 Vict. c. 37), into operation on Sept. 15, 1891. Lond. Gaz. Sept. 8, 1891, p. 4777.**

**NORTH SEA FISHERIES.] By the North Sea Fisheries Act, 1893 (56 & 57 Vict. c. 17), the Act of 1888 was repealed.**

*Bd. of Trade notice dated April 11, 1894, fixing the day for the Act of 1893 to come into force. St. R. & O. 1894, p. 123.*

*O. in C. dated April 30, 1894, making regs. under s. 5 of the Act of 1893 as to licences under art. iii. of the scheduled convention. St. R. & O. 1894, p. 124.*

**SEAL FISHERY.] O. in C. dated June 23, 1891, under the Seal Fishery (Behring's Sea) Act, 1891 (51 & 52 Vict. c. 19). Lond. Gaz. June 24, 1891, p. 3365.**

*O. in C. dated May 16, 1893 ("The Seal Fishery (Behring's Sea) O. in C. 1893"). Lond. Gaz. May 19, 1893, p. 2899.*

*By the Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict. c. 21), the Act of 1893 was repealed and fresh provision made.*

*O. in C. dated Nov. 21, 1895 ("The Seal Fisheries (North Pacific) O. in C. 1895"). St. R. & O. 1895, 569. Price ½d.*

*By the Behring Sea Award Act, 1894 (57 & 58 Vict. c. 2), the Behring Sea Award was carried into effect.*

**FISHERY (Sea)**—*continued.*

*O. in C. dated April 30, 1894 ("The Behring Sea Award O. in C. 1894"). St. R. & O. 1894, p. 129.*

*O. in C. dated Feb. 2, 1895 ("The Behring Sea Award O. in C. 1895"). St. R. & O. 1895, No. 61. Price ½d.*

**BY-LAWS.] Regs. made by Bd. of Trade, dated Nov. 9, 1894, with respect to the making of by-laws under the provisions of the Sea Fisheries Regulation Acts, 1888 to 1894. St. R. & O. 1899, p. 1828.**

**FOREIGN BOATS.] O. of Bd. of Customs, dated April 2, 1884, directing that the provisions of the Customs Consolidated Act, 1876, and the Acts amending the same, shall apply to foreign sea fishing boats. St. R. & O. 1899, p. 1587.**

**1. — Oysters—Foreign Oysters—Sale in close seasons.—Fisheries Oyster, Crab and Lobster Act, 1877 (40 & 41 Vict. c. 42), s. 4.**

Oysters taken in foreign waters and relaid and stored until wanted for sale, in English waters, where they do not breed, may be sold in the close season. *ROBERTSON v. JOHNSON*

*Div. Ct. [1893] 1 Q. B. 129*

**2. — Sea fisheries—Fisheries committee—Appointment of officer—Conditions as to expenditure—Power of one of several councils to impose—Sea Fisheries Regulation Act, 1888 (51 & 52 Vict. c. 54), s. 6.**

By s. 6, sub-s. 1, of the Sea Fisheries Regulation Act, 1888, "Subject to any restrictions or conditions as to expenditure made by the council or councils by whom a local fisheries committee is appointed, the committee may appoint such fishery officers as they deem expedient" for the purposes therein specified:—

*Held*, that the restrictions and conditions as to expenditure in connection with the appointment of a particular officer cannot be made after the officer has been appointed.

*Semble*, that where a local fisheries committee has been appointed by more county or borough councils than one, it is open to any one of such councils to make restrictions or conditions as to expenditure under the above section without the assent of the other councils. *REG. v. MAYOR, & C., OF PLYMOUTH V. Williams J. [1896] 1 Q. B. 158*

*Considered by Div. Ct. Reg. v. North Riding of Yorkshire County Council, [1899] 1 Q. B. 201, 212. See next Case.*

**3. — Sea fisheries—Fisheries committee—Conditions as to expenditure—Power of one of several councils to oppose—Sea Fisheries Regulation Act, 1888 (51 & 52 Vict. c. 54), s. 6, sub-s. 1.**

Where a local sea fisheries committee contains representatives of more than one county or borough council, it is not open to any one of such councils to make conditions or restrictions as to expenditure under s. 6, sub-s. 1 of the Sea Fisheries Regulation Act, 1888, but the conditions or restrictions referred to in that subsection can only be imposed by the common agreement of all the councils represented on the committee.

*Reg. v. Mayor, & C., of Plymouth, [1896] 1 Q. B. 158, considered. REG. v. NORTH RIDING OF YORKSHIRE COUNTY COUNCIL*

*Div. Ct. [1899] 1 Q. B. 201*

**FISHERY (Sea)—continued.****4. — Several fishings in tidal waters—Fore-shore of the sea.**

Primâ facie the Crown is entitled to every part of the foreshore of the sea between high and low water-mark. But, proof of the ownership of a several fishery over part of the foreshore raises a presumption against the Crown that the freehold of that part is in the owner of the fishery.

ATT.-GEN. v. EMERSON

H. L. (E.) [1891] A. C. 649

Referred to by North J. *Ecroyd v. Coult-hard*, [1897] 2 Ch. 554, 571; C. A. [1898] 2 Ch. 358.

**Salmon and Freshwater.****5. — Boundary — Fishings ex adverso glebe lands—Salmon fishings.**

Where in a pending cause it appears that the Crown has a primâ facie claim to the salmon fishings in dispute, the Court ought to direct intimation to be made to the Crown authorities; and stay the action pending their decision to appear or bring a separate action.

The pursuer's lands of Ardoe and the defender's lands of Banchory marched inland, and were both bounded by the River Dec. But at the river there was interjected between these two estates the glebe of Banchory-Devenick, which extended along the river front 350 yards. The minister had no title to the salmon fishings. The titles of Ardoe and Banchory included the salmon fishings "belonging to" the lands; but these titles contained no express grant to the fishings ex adverso the glebe. The pursuer admitted that the defender had an exclusive right to the fishings eastward from a drain leading to the river from the offices of the manse, but he claimed the exclusive right from the east march of Ardoe up to the same drain, a space of 135 yards. The defender maintained that the fishings in question belonged to him, as being ex adverso of his lands of Kirkton of Banchory :—

*Held*, reversing the decision of the Ct. of Sess., 21 R. 282, that it was a matter of reasonable inference from the proof that the glebe included no part of the lands of Kirkton, but did include portions of Banchory and Ardoe, and that the disputed fishings remained with Ardoe. OGSTON v. STEWART

H. L. (Sc.) [1896] A. C. 120

— British North America Act—Rivers and lake — Fishing lake.

See CANADA. 21.

**6. — Fishery district — Limits — Tributary — Salmon Fisheries Act, 1865 (28 & 29 Vict. c. 121) — Liverpool Corporation Waterworks Act, 1880 (43 & 44 Vict. c. cxliii.).**

A Secretary of State's certificate under the Salmon Fishery Acts, 1861 to 1876, defined the limits of the Severn Fishery District as including "so much of the River Severn and of all of the tributaries of the said river" as was situate within certain counties :—

(A) *Held*, that a reservoir, formed by damming the valley and enclosing the waters of the River Vyrnwy, was not a "tributary" of the Severn, and, therefore, not within the Severn fishery district, although the Vyrnwy was formerly a "tributary" of the Severn, and water still over-

**FISHERY (Salmon and Freshwater)—continued.**

flowed from the reservoir into the Severn. GEORGE v. CARPENTER — Div. Ct. [1893] 1 Q. B. 505

(B) *Held*, that a brook running into a river which in turn ran into the Severn was a tributary of the Severn within the certificate. EVANS v. OWENS — Div. Ct. [1895] 1 Q. B. 237

7. — Fishery—Salmon—Device to catch fish—Nets—"Other like instrument"—Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), s. 8—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 18.

A fishing net with an illegally small mesh is not a "like instrument" to a snare within the meaning of s. 8 of the Salmon Fishery Act, 1861, as extended by s. 18 of the Salmon Fishery Act, 1873; and, therefore, the mere possession of such a net, although with the intention of catching salmon by means thereof, is not an offence within those Acts. JONES v. DAVIES

Div. Ct. [1898] 1 Q. B. 405

**8. — Illegal methods—Fixed engines—Toot and haul net—Prescription.—Salmon Fishery Acts.**

The toot and haul net used in the estuary of the Tay is fastened by a rope at one end to the shore. The net is then placed on a boat or coble; the boat with its net is pulled out by means of an overhaul rope to an anchor in the stream; the boatman on reaching the anchor attaches the net at about twenty yards from its end to a floating rope fastened to the anchor; the end of the net is then turned inward towards the shore forming a bend or hook, and the men on shore haul the net taut. Another rope attached to the boat keeps the net upright. The net is retained in this upright position until a fish strikes it, when the outer end is freed and hauled in by fishermen on shore so as to encircle the fish :—

*Held*, affirming the decision of the Ct. of Sess. (1899) 1 F. 651, that this mode of fishing for salmon was an illegal method within the meaning of the Salmon Fishery Acts.

**SECOND APPEAL.****Salmon fishing—Hang nets—Illegal methods.**

The drift or hang nets used in the River Tay are from 80 to 220 yards long and 12 to 19 feet in depth, and are shot into the river about an hour before the turn of the tide both at high and low water, when the current is least. They are run out of a boat over the stern, in a straight line across the river, and followed with the current by a man in a boat, who, when he sees or feels the net struck by a fish, rows to the spot and captures the fish entangled in the net, or, if the fish is getting away, he secures it with a gaff. The net is not fixed to any post on the shore :—

*Held*, reversing the decision of the Ct. of Sess., that fishing in the tidal portions of the River Tay with drift or hang nets was an illegal method of fishing for salmon within the meaning of the Salmon Fishery Acts. WEDDERBURN v. DUKE OF ATHOLL. DUKE OF ATHOLL v. GLOVER INCORPORATION OF PERTH H. L. (Sc.) [1900] A. C. 403

— Inclosure Act—Waste land—Bed of river—Right of fishing—Reservation to lord of manor—Territorial rights.  
See WATER. 45.

**9. — Justice present at meeting of conservancy board — Disqualification — Salmon fisheries —**

**FISHERY (Salmon and Freshwater)—continued.**  
*Salmon Fishery Act, 1865* (28 & 29 Vict. c. 121), ss. 27, 61.

A justice who is present at a meeting of a conservancy board when a resolution is passed to take proceedings for the violation of provisions of the Salmon Fisheries Acts is disqualified from adjudicating on proceedings so authorized, notwithstanding s. 61 of the Salmon Fishery Act, 1865. *REG. v. HENLEY*

Div. Ct. [1892] 1 Q. B. 504

Referred to Lawrance J. *Reg. v. Burton, Ex parte Young*, [1897] 2 Q. B. 468, 472.

10. — *Licence, or grant of incorporeal hereditament—Profit à pendre—Disturbance of rights of grantee—Action by owner of incorporeal hereditament.*

E. granted by deed to the plts. for a term of years "the exclusive right of fishing" in a defined part of the River C., with a proviso that "the right of fishing hereby granted shall only extend to fair rod and line angling, and to netting for the sole purpose of procuring fish-baits. The debt. wrongfully discharged into the stream water loaded with sediment, the effect of which was to drive away the fish and injure the breeding:—

*Held*, by the C. A., that the grant did not give "mere licence to fish, but a right to fish and to carry away the fish caught; but this was a profit à pendre, and was an incorporeal hereditament; and that the plts. had a right of action against any one who wrongfully did any act by which the enjoyment of the rights given to them by the deed was prejudicially affected.

Decision of Kekewich J. affirmed. *FITZGERALD v. FIRBANK* C. A. [1897] 2 Ch. 96

Referred to by North J. *Ecroyd v. Coulthard*, [1897] 2 Ch. 54, 565; C. A. [1898] 2 Ch. 358.

11. — *Offences under Salmon Fishery Acts—Justice—Summary proceedings—Limitation of time—Recovery of penalties—Salmon Fishery Act, 1873* (36 & 37 Vict. c. 71), s. 62—*Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 11.

The effect of s. 62 of the Salmon Fishery Act, 1873, and s. 11 of the Summary Jurisdiction Act, 1848, is that a penalty for an offence under the Salmon Fishery Acts may be recovered summarily if the complaint be made within six months from the commission of the offence. *MORRIS v. DUNCAN* [1898] W. N. 148 (4);

Div. Ct. [1899] 1 Q. B. 4

— Ownership of bed of river—Presumption—Rebuttal—Evidence—Admissibility. See WATER. 41.

12. — *Public right—Non-tidal waters.*

The public cannot by prescription or otherwise obtain a legal right to fish in a non-tidal river even though it is navigable. But evidence of fishing by the public as of right is admissible, but not conclusive, as evidence in derogation of a claim to a several fishery.

(A) *SMITH v. ANDREWS*

North J. [1891] 2 Ch. 678

(B) *BLOUNT v. LAYARD*

C. A. [1891] 2 Ch. 681, n.

(C) *HINDSON v. ASHEY* C. A. [1896] 2 Ch. 1

(D) *ECROYD v. COULTHARD*

C. A. [1898] 2 Ch. 358.

**FISHERY (Salmon and Freshwater)—continued.**

— Riparian owner—Several fishery—Accretions. See WATER. 41, 45.

13. — *Trout stream—Erection of weir or dam—Injunction—Fresh-water fishery.*

The erection in a river or stream (whether frequented by salmon or not) of a weir whereby non-migratory fish are prevented from reaching the upper portions of the stream, constitutes an injury to the owners of fisheries on those upper waters, in respect of which they may have a cause of action on damage shewn. *BARKER v. FAULKNER* Stirling J. [1898] W. N. 69 (8)

**FIXTURES—Agricultural holdings—Buildings.**

See LANDLORD AND TENANT—Agricultural Holdings. 10.

— Mortgage of fixtures.

See FIXTURES, *passim*.

— Mortgage of land together with fixed machinery—Non-registration—Invalidity.

See BILL OF SALE. 40.

1. — *Movable Chattels—Annexation to freehold—Stuffed-bird collection—Mansion-house—Settled estate—Tenant for life.*

A bird gallery in a settled mansion-house contained a valuable collection, commenced over sixty years ago, of stuffed birds, which were attached to movable wooden trays placed in iron glass-fronted cases affixed to the walls of the gallery.

In an action between the present tenant for life of the mansion-house and the trustee in bankruptcy of the late tenant for life:—

*Held*, that the contents of the cases were not to be treated as annexed to the freehold, but were movable personal chattels, and as such belonged to the trustee in bankruptcy of the late tenant for life.

The decision of Kekewich J. affirmed.

*D'Eyncourt v. Gregory*, (1860) L. R. 3 Eq. 382, discussed. *VISCOUNT HILL v. BULLOCK*

C. A. [1897] 2 Ch. 482

2. — *Purchase and hire agreement—Rights of mortgagee against owner of fixtures.*

By leaving a mortgagor in possession the mortgagee impliedly authorizes him to carry on his business and to hire and bring in such fixtures as are necessary for his trade, and agree with the owners as to their removal.

A. held a nursery garden under lease from B. and agreed with C. to supply him with hot water apparatus on the hire and purchase system for a sum payable by instalments; the apparatus to remain C.'s property until payment of the last instalment, and on default of payment C. to be at liberty to remove the same. B. joined in the agreement (which was not under seal) to enable C. to do this. Afterwards A. mortgaged his land to D. who had no notice of the agreement. After the mortgage, C., who had no notice thereof, set up the apparatus which was fixed in brickwork:—

*Held*, that C. was entitled to remove the apparatus on default of payment by A. *GOUGH v. WOOD & CO.* C. A. [1894] 1 Q. B. 713

Discussed by C. A. *Huddersfield Banking Co. v. H. Lister & Son, Ltd.*, [1895] 2 Ch. 273; *Hobson v. Gorringe*, [1897] 1 Ch. 182.

**FIXTURES—continued.****3. — Rights of mortgagee against owner of trade fixtures.**

By leaving a mortgagor in possession the mortgagee impliedly authorizes him to carry on his business, and to hire and bring in such fixtures as are necessary for his trade, and to agree with the owners as to their removal, and cannot claim to include in his security trade fixtures set up or removed under such agreements. *Gough v. Wood & Co.* - **C. A. [1894] 1 Q. B. 713**

Discussed by *C. A. Huddersfield Banking Co. v. H. Lister & Son, Ltd.*, [1895] 2 Ch. 273; *Hobson v. Gorringe*, [1897] 1 Ch. 182.

**4. — Tapestry—Heirlooms—Will—Executor and heir.**

Tapestry which had been cut and pieced so as to cover the walls of a room and the spaces left by the doors and mantelpiece, and hung by being nailed to wooden battens let into the plaster and nailed to the brickwork:—

*Held*, to pass as a fixture under a devise of the mansion-house.

*D'Eyncourt v. Gregory*, (1866) L. R. 3 Eq. 382, followed. *Norton v. Dashwood*

**Chitty J. [1896] 2 Ch. 497**

Referred to *Kekewich J. Viscount Hill v. Bullock*, [1897] 2 Ch. 55, 63.

**5. — Trade fixtures—Contract for erection of trade machinery to be paid for by instalments—Prior mortgage of premises including machinery thereafter erected—Failure of mortgagor to pay instalments of purchase-money—Right of vendor to remove machinery.**

A co., lessees of a colliery, mortgaged it together with all machinery then standing or thereafter to be erected, and subsequently entered into a contract for the erection of machinery to be paid for by instalments, such machinery to remain the property of the vendors until fully paid for. On the failure of the mortgagor to pay the instalments the vendors were held entitled to remove their machine notwithstanding proceedings by the mortgagees to enforce their security. *Cumberland Union Banking Co. v. Maryport Hematite Iron and Steel Co.* *In re Maryport Hematite Iron and Steel Co. (No. 2)*

**North J. [1892] 1 Ch. 415**

Followed by *C. A. Gough v. Wood & Co.*, [1894] 1 Q. B. 713, see No. 2, above.

Discussed by *C. A. Huddersfield Banking Co. v. Henry Lister & Son, Ltd.*, [1895] 2 Ch. 273, 282; *Hobson v. Gorringe*, [1897], 1 Ch. 182.

**6. — Trade fixtures—Contract for erection of trade machinery to be paid for by instalments.**

A co., lessees of a colliery, mortgaged it together with all machinery then standing or thereafter to be erected, and subsequently entered into a contract for the erection of machinery to be paid for by instalments, such machinery to remain the property of the vendors until fully paid for. On the failure of the mortgagor to pay the instalments the vendors were held entitled to remove their machine notwithstanding proceedings by the mortgagees to enforce their security. *Cumberland Union Banking Co. v. Maryport*

**FIXTURES—continued.**

*Hematite Iron and Steel Co. (No. 2). In re Maryport Hematite Iron and Steel Co.*

**North J. [1892] 1 Ch. 415**

Followed by *C. A. Gough v. Wood*, [1894] 1 Q. B. 713.

Discussed by *C. A. Hobson v. Gorringe*, [1897] 1 Ch. 182.

**7. Trade fixture—Hiring agreement—Gas engine—Mortgage of trade premises—Entry of mortgagee into possession—Right of removal by owner.**

In determining whether or not a chattel has become a fixture, the intention of the person affixing it to the soil is material only so far as it can be presumed from the degree and object of the annexation.

*Holland v. Hodgson*, (1872) L. R. 7 C. P. 328, explained.

*Wood v. Hewett*, (1846) 8 Q. B. 913, and *Lancaster v. Eve*, (1859) 5 C. B. (N.S.) 717, distinguished.

A gas engine was let out on the hire and purchase system under an agreement in writing, which provided that it should not become the property of the hirer until the payment of all the instalments, and should be removable by the owner on the failure of the hirer to pay any instalment. The engine was affixed to freehold land of the hirer by bolts and screws to prevent it from rocking, and was used by him for the purposes of his trade. Default having been made in the payment of the instalments, the engine was claimed by the owner, and also by a mortgagee of the land, who took his mortgage after the hiring agreement and without notice of it, and had entered into possession while the engine was still on the land:—

*Held*, that the engine was sufficiently annexed to the land to become a fixture, and that any intention to be inferred from the terms of the hiring agreement that it should remain a chattel did not prevent it from becoming a fixture; and consequently that it passed to the mortgagee as part of the freehold:

*Held*, further, that even if a licence to remove the engine could be implied from the mortgagee leaving the mortgagor in possession, the entry of the mortgagee into possession determined such licence.

*Gough v. Wood & Co.*, [1894] 1 Q. B. 713, and *Cumberland Union Banking Co. v. Maryport Hematite Iron and Steel Co.*, [1892] 1 Ch. 415, discussed. *Hobson v. Gorringe*

**C. A. [1897] 1 Ch. 182**

**— Trade machinery.**

See **BILL OF SALE**. 38—40.

**— Valuation of fixtures, crops, &c.—Sale by tenant for life.**

See **SETTLED LAND**. 45.

**FLAGGING FOOTWAY — Apportionment of expenses.**

See **LONDON—Streets**. 68.

**FLATS—Conversion of part of residential, into a club.**

See **INJUNCTION**. 32.



**FLATS**—*continued.*

—Covenant by landlord to appoint resident porter.

See SPECIFIC PERFORMANCE. 7.

1. — *Implied obligation—Common scheme.*

An injunction granted to restrain the conversion into a club of a large part of a building constructed for occupation in residential flats, at the instance of a tenant under an agreement in common form binding her to rules adapted to residential purposes. *HUDSON v. CRIPPS*

North J. [1895] W. N. 161 (5)

—Liability of landlord to persons using staircase—Implied agreement.

See LANDLORD AND TENANT. 68.

—Restrictive covenant—Benefit—Covenant running with the land—"Private residence"—"Residential flats"

See COVENANT. 2, 5.

—Whether separate "buildings"—District surveyor's fees.

See LONDON—Buildings. 29.

**FLOATING CHARGE**—Debentures.

See CASES UNDER DEBENTURES.

"**FLOATING SECURITY**"—What is a "floating security" discussed in *BRUNTON v. ELECTRICAL ENGINEERING CORPORATION* *Kekewich J.* [1892] 1 Ch. 434, at p. 439

—Debentures.

See COMPANY—Debentures. 48—58.

—Debentures—Transfer.

See FRAUDS, STATUTE OF. 5.

—Debenture-holders—Parties.

See MORTGAGE—Foreclosure. 27.

**FLOOD**—Damage by—Artificial watercourse—Sluice-gate—Obligation of owner to repair.

See WATER. 37.

—Flooding by sewers—Nuisance—Liability.

See SEWERS. 6.

"**FLOTATION**"—Contract—Construction—British South Africa Company's Mining Ordinance.

See CAPE OF GOOD HOPE. 4.

**FOG**—Collision of vessels.

See SHIPPING—Collision. 63—66.

**FOLLOWING ASSETS**—Protection of creditors—Voluntary assignment of policy—Creditors' administration action.

See FRAUDULENT CONVEYANCE. 5.

—Retainer—Notice—Creditor of higher degree—Plene administravit.

See EXECUTOR—Retainer. 63.

**FOOD**—Unsound food, Destruction of—Duty of magistrate—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 47.

Where proceedings are taken before a magistrate under s. 47 of the Public Health (London) Act, 1891, for the condemnation as diseased, or unsound, or unwholesome, or unfit for the food of man, of an article seized by a medical officer of health or sanitary inspector under the provisions of that section, the magistrate has no jurisdiction to inquire whether the article was intended for the food of man, but is bound to order its destruc-

**FOOD**—*continued.*

tion upon being satisfied that it is in fact diseased, or unsound, or unwholesome, or unfit for the food of man. *THOMAS v. VAN OS*

Div. Ct. [1900] 2 Q. B. 448

2. — *Unsound fruit—Found in the possession of any person—Public Health (London) Act, 1891, s. 47 (3).*

A. sold walnuts which turned out to be unsound. A notice was posted in his shop to the effect that the walnuts were sold on the condition that the buyer should sort them and destroy any which were unsound. A. was charged under s. 47, sub-s. 3, of the Public Health (London) Act, 1891, and elected to be tried on indictment. The jury were directed to find him guilty if he sold the walnuts when unfit for the food of man, unless he proved that he did not know and had no reason to believe they were so, and were told to disregard the printed notice: *Held*, by C. C. R. (Mathew J. dissent), that the conviction must be quashed: *Held*, by C. C. R. (Mathew J. dissent.), that the vendor can only be convicted under sub-s. 3 where the article is liable to be seized after it has got into the possession of the purchaser: *Held*, by Hawkins, Grantham, Charles, Lawrance, Wright, Bruce, and Kennedy JJ., that the jury should have been asked whether the sale was subject to the notice, and whether the walnuts were sold for the food of man: *Held*, by Mathew and Cave JJ., that assuming the notice was embodied in the contract of sale, that A. was not thereby relieved from the duty imposed by the sub-section, and that the jury should not be asked whether the walnuts were sold for the food of man: *Held*, by Mathew J., that when A. sold the walnuts they were sold to be used for food when unsound, and were, therefore, liable to be seized under the sub-section, and that the conviction should be affirmed. *REG. v. DENNIS*

C. C. R. [1894] 2 Q. B. 458

3. — *Unsound meat—Guilty knowledge.*

On a summons under s. 117 of the Public Health Act, 1875, charging a person with having unsound meat on his premises for sale, it is not necessary to shew that the defendant had personal knowledge of the condition of the meat. *BLAKER v. TILSTONE* Div. Ct. [1894] 1 Q. B. 345

4. — *Unsound meat—Not exposed for sale.*

A person having in his possession unsound meat intended for human food can be convicted under s. 117 of the Public Health Act, 1875, notwithstanding that he has not exposed the meat for sale. *MALLISON v. CARR*

Div. Ct. [1891] 1 Q. B. 48

5. — *Unsound meat—Seized but not condemned—Full compensation.*

The owner of meat seized as unsound and brought before a justice for condemnation under ss. 116, 117 of the Public Health Act, 1875, is not entitled as of right to attend and give evidence in defence of the meat; but the justice may, if he thinks fit, hear evidence tendered by the owner; and if the justice after so doing refuses to condemn the meat the full compensation to which the owner will be entitled under s. 308 will include the costs reasonably incurred in resisting the condemnation of the meat.

**FOOD**—continued.

Decision of Div. Ct., [1893] 1 Q. B. 679, affirmed.  
*In re BATER AND BIRKENHEAD CORPORATION*

C. A. [1893] 2 Q. B. 77

Distinguished by C. A. *Barnett v. Eccles Corporation*, [1900] 2 Q. B. 423, 428.

6. — *Unsound meat*—Not exposed for sale—*Nuisances Removal Act*, 1863 (26 & 27 Vict. c. 117), s. 2.

A person sending bad meat to market cannot be convicted under the *Nuisances Removal Act*, 1863, s. 2, unless the meat has been actually exposed for sale; mere ownership of the meat is not sufficient. *PARLOW v. TERRETT*

Div. Ct. [1891] 2 Q. B. 107

[*Sect. 2 was repealed and further provision made by the Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), s. 47.]

**FOOD AND DRUGS**—Sale of.

See Cases under **ADULTERATION**.

**FOOTPATH**—Bridge—Mandamus.

See **RAILWAY**. 56.

— Evidence of liability to repair *ratione tenuræ*—Remedy against a person so liable to repair.

See **HIGHWAY**. 19.

— Faculty—Proviso for closing footpath across churchyard on one day in the year.

See **ECCLESIASTICAL LAW**. 27.

**FOOTWAY**.

See **HIGHWAY**. 19-21.

WAY, RIGHT OF.

**FORCIBLE ENTRY**—Landlord and tenant—Removing roof of house.

See **TRESPASS**. 4.

**FORECLOSURE**—Absent debenture-holder—Floating security.

See **COMPANY**—**Debentures**. 54.

— Debentures.

See **COMPANY**—**Debentures**. 31, 41.

— Mortgagers.

See **MORTGAGE**—**Foreclosure**.

— Mortgage of reversion—Arrears of interest—Statute-barred debt—Retainer.

See **SETTLED LAND**. 89.

**FOREIGN ACTION**—Embargo—Company—Winding-up.

See **INJUNCTION**. 7.

— Injunction—Execution.

See **COMPANY**—**WINDING-UP**—**Execution**. 92.

**FOREIGN ARRESTMENT**—Pledge—Documents of title—Conflict of laws—Goods in Scotland.

See **FACTOR**. 3.

**FOREIGN ASSETS**—Debts chargeable on—Probate.

See **VICTORIA**. 11.

**FOREIGN BANKRUPTCY**—Forfeiture—English domicil.

See **WILL**—**Forfeiture**. 98.

**FOREIGN CO-DEFENDANT**—Adding—Residence abroad—Discretion of Court.

See **PRACTICE**—**Parties**. 77.

**FOREIGN COMPANY**—Agent for, assessed in his own name—Income tax.

See **REVENUE**—**Income Tax**. 90.

— Certificates of shares transferable in this country.

See **REVENUE**—**Probate Duty**. 130.

— With branch office and assets in England.

See **COMPANY**—**WINDING-UP**—**Petition**. 159.

**FOREIGN COPYRIGHT**.

See **COPYRIGHT**—**International**.

**FOREIGN CORPORATION**—Carrying on business in England—Service of writ—Agent—Jurisdiction.

See **PRACTICE**—**Service**. 183.

**FOREIGN COUNTRY**—Charge on property—French debt—Enforcing payment.

See **COMPANY**—**Debentures**. 60.

— Copyright—Infringement.

See **INJUNCTION**. 9.

— Delivery up of document of interest to—Comity.

See **ECCLESIASTICAL LAW**—**Custody of Records, &c.** 11.

— Divorce proceedings in—Separation—Covenant not to molest.

See **HUSBAND AND WIFE**—**Separation**. 68.

— Lunatic—English persons lawfully detained abroad.

See **LUNACY**—**Custody**. 13.

— Publication of libel in—Action for damages—Jurisdiction.

See **DEFAMATION**—**Libel**. 29.

**FOREIGN COURT**—Absent foreigner—Personal action.

See **INTERNATIONAL LAW**. 6.

— Decree of—Irregularity—Nullity—Jurisdiction—Recognition by English Courts.

See **CONFLICT OF LAWS**. 7.

— Execution—Company registered in Scotland.

See **COMPANY**—**WINDING-UP**. 102, 233.

— Judgment in rem—Ship—Liquidator.

See **COMPANY**—**WINDING-UP**—**Practices**. 187.

— Scottish action—Invalidity—Relation back.

See **COMPANY**—**WINDING-UP**. 235.

**FOREIGN CURATOR**—Lunatic—Residence out of jurisdiction—English stocks and shares—Transfer.

See **LUNACY**—**Vesting Order**. 46.

**FOREIGN CURRENCY**—Contract—Works abroad—Period of conversion into English money.

See **ACCOUNT**. 1.

**FOREIGN DIVORCE**—Domiciled Englishman—Jurisdiction of foreign Court.

See **DIVORCE**—**Jurisdiction**. 87.

**FOREIGN DOCUMENTS**—Translations—Solicitor—Costs—Administration.

See **SOLICITOR**—**Costs**. 47.

**FOREIGN DOMICIL**—Conflict of laws.

See Cases under **CONFLICT OF LAWS**.

**FOREIGN DOMICIL**—*continued.*

— Grant of administration.

*See PROBATE*—Grant of Administration.  
33, 34, 55.

— Lunacy.

*See LUNACY.* 13, 29, 36, 37.**FOREIGN ENLISTMENT ACT**—*Area of operation of Act—Pleading—Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90).*

By s. 11 of the Foreign Enlistment Act, 1870, "If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty, prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue: (1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence."

*Held*, that, if there be an unlawful preparation of an expedition by some person within Her Majesty's dominions, any British subject who assists in such preparation will be guilty of an offence even though he renders the assistance from a place outside Her Majesty's dominions.

By s. 2 of the said Act, "This Act shall extend to all the dominions of Her Majesty." And by s. 3, "This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation."

An indictment alleged that "within the limits of Her Majesty's dominions and after the coming into operation therein of the Act called 'The Foreign Enlistment Act, 1870,' certain offences against the said Act were committed:—

*Held*, that the indictment sufficiently alleged the Act to have been in operation in that part of Her Majesty's dominions in which the alleged offences were committed. *REG. V. JAMESON*

[1896] 2 Q. B. 425

2. — *False representation—Right of action—Person induced by misrepresentation to commit crime—Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), s. 11.*

Where a person is induced by the fraudulent misrepresentation of another to do an act which, in consequence of such misrepresentation, he believes to be neither illegal or immoral, but which is in fact a criminal offence, he has a right of action against the person so inducing him for damages sustained by him in consequence of his having done such act. *BURROWS v. RHODES AND JAMESON*  
*Div. Ct. [1899] 1 Q. B. 816*

3. — *When foreign States begin to be "at war"*  
—*Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), s. 8.*

A State is at war within the meaning of the Foreign Enlistment Act as soon as hostilities have in fact begun, whether war has been formally declared or not, and that it is an offence to do any of the acts prohibited by s. 8 with the knowledge that hostilities have in fact begun, whether the British Government has officially notified the existence of the state of war by a declaration of

**FOREIGN ENLISTMENT ACT**—*continued.*

neutrality or not. *UNITED STATES OF AMERICA v. PELLY*  
*Bigham J. [1899] W. N. 12 (9)*

**FOREIGN FIRM**—Action against—Service.  
*See PRACTICE—Service.* 108.

— Branch in England—Liability.  
*See PARTNERSHIP.* 40.

— *Lex fori*—Action against deceased partner.  
*See CONFLICT OF LAWS.* 13.

— Parties—Some members resident abroad—Amendment of writ—Fresh causes of action.  
*See PRACTICE—Parties.* 82.

— Security for costs.  
*See COSTS—Security for Costs.* 52—58.

— Stamp—English trade-mark and goodwill.  
*See REVENUE—Stamps.* 161.

**FOREIGN GAME**—Sale without excise licence.  
*See REVENUE—Game Licence.* 49.

**FOREIGN-GOING SHIP**—Coasting trade.  
*See SHIPPING—Pilots.* 187.

**FOREIGN JUDGMENT**—Action on.  
*See COSTS—Security for Costs.* 56.

— Divorce—Irregularity—Recognition by English Court.  
*See CONFLICT OF LAWS.*

**FOREIGN JURISDICTION.**

*Reference to the whole of the Foreign Jurisdiction Orders in Council under the Extradition Acts issued prior to 1891 and (Jan. 1, 1893) in force is given in the "Index to the Statutory Rules and Orders," 1893 edit. St. O. F.*

*The following is a list of the Orders in Council issued subsequently to Dec. 31, 1890:—*

*AFRICA.] O. in C. dated May 9, 1891, revoking O. in C. of Jan. 27, 1885, and June 30, 1890, as to South Africa. St. R. & O. 1891, p. 235.*

*O. in C. dated July 30, 1891, amending this last Order. St. R. & O. 1891, p. 298.*

*O. in C. dated Dec. 12, 1891, extending the Fugitive Offenders Act, 1881, to certain places in South Africa. St. R. & O. 1891, p. 307.*

*O. in C. dated June 28, 1892 ("The Africa O. in C. 1892"). St. R. & O. 1892, p. 485.*

*O. in C. dated July 17, 1893 ("The Africa O. in C. 1893"). St. R. & O. 1893, p. 308.*

*O. in C. dated July 18, 1894 ("The Matabeleland O. in C. 1894"). St. R. & O. 1894, p. 133.*

*O. in C. dated Oct. 3, 1895, as to the validity of certain marriages solemnized within the limits of the Matabeleland O. in C. 1894. St. R. & O. 1895, No. 407. Price ½d.*

*O. in C. dated June 29, 1896, as to exercise of British jurisdiction in certain territories in South Africa. St. R. & O. 1896, No. 576, p. 117.*

*O. in C. dated Jan. 15, 1897, amending the Amatongaland O. in C. 1896. St. R. & O. 1897, p. 133, No. 82.*

*O. in C. dated July 7, 1897 ("The East Africa O. in C. 1897"). St. R. & O. 1897, p. 134, No. 575.*

*AFRICA—LAGOS PROTECTORATE.] O. in C. dated Dec. 27, 1899. St. R. & O. 1899, p. 625, No. 993.*

*AFRICA—NORTH-EASTERN RHODESIA.] O. in*  
2 E

**FOREIGN JURISDICTION—continued.**

*C. Jan. 29, 1900. St. R. & O. 1900, No. 89; Lond. Gaz. Feb. 9, 1900, p. 901.*

**EAST AFRICA PROTECTORATE.]** *O. in C. dated Oct. 7, 1899. St. R. & O. 1899, p. 616, No. 757; Lond. Gaz. Oct. 17, 1899, p. 6233.*

**CHINA, JAPAN, AND COREA.]** *Merchandise Marks Act, 1887—Patents, Designs, and Trade Marks Acts, 1883 to 1888) O. in C. dated Feb. 2, 1899. St. R. & O. 1899, p. 639, No. 82.*

*O. in C. dated Oct. 7, 1899. St. R. & O. 1899, p. 964, No. 759; Lond. Gaz. Oct. 17, 1899, p. 6241.*

**CHINA—CHINA AND COREA.]** *Consular and Marriage Fees O. in C. 1900. Lond. Gaz. Feb. 6, 1900, p. 783; St. R. & O. 1900, No. 90.*

*Supreme Court O. in C. dated March 3, 1900. Lond. Gaz. March 9, 1900, p. 1618; St. R. & O. 1900, No. 167.*

**CHINA, JAPAN, AND COREA.]** *China, Japan, and Corea (Supreme Court) O. in C. dated July 14, 1899. St. R. & O. 1899, p. 641, No. 572.*

**CHINA, JAPAN, AND COREA—JAPAN.]** *O. in C. dated Oct. 7, 1899, declaring that certain provisions of previous O. in C. shall cease to be in force within Japan. St. R. & O. 1899, p. 642, No. 756.*

**CYPRUS.]** *O. in C. dated May 9, 1892, approving Proclamation as to Currency. St. R. & O. 1892, p. 41.*

*O. in C. dated Nov. 23, 1893, applying the Colonial Courts of Admir. Act, 1890, with certain exceptions and qualifications, to the Supreme Court of Cyprus. St. R. & O. 1893, p. 309.*

*The Cyprus Coinage Order, 1895, dated Feb. 2, 1895. St. R. & O. 1895, No. 65. Price 1d.*

*The Cyprus Extradition Order, 1895, dated March 8, 1895. St. R. & O. 1895, No. 136. Price 1d.*

*The Cyprus Extradition Order, 1895, No. 2, dated Dec. 12, 1895. St. R. & O. 1895, No. 582. Price ½d.*

**GAMBIA, TERRITORIES ADJACENT TO.]** *O. in C. dated Nov. 23, 1893, regulating British jurisdiction within territories adjacent to the Gambia. St. R. & O. 1893, p. 311; Lond. Gaz. Nov. 28, 1893, p. 6961.*

**JAPAN.]** *O. in C. dated Oct. 7, 1899. Lond. Gaz. Oct. 17, 1899, p. 6234.*

**MOROCCO.]** *O. in C. dated May 9, 1892 ("The Morocco Fees O. in C. 1892"). St. R. & O. 1892, p. 85.*

**OTTOMAN EMPIRE.]** *O. in C. dated Feb. 23, 1891, as to Fees in Consular Courts. Order of Oct. 26, 1875, revoked, and Order of 1873 amended. St. R. & O. 1891, p. 309.*

*O. in C. Nov. 24, 1891, ("The Ottoman Tribunals O. in C. 1891"). St. R. & O. 1891, p. 305.*

*The Ottoman Dominions (Prisoners' Removal) Order in Council, 1895, dated Feb. 2, 1895. St. R. & O. 1895, No. 53. Price ½d.*

*"The Ottoman Dominions (Courts) O. in C. 1895," dated March 8, 1895. St. R. & O. 1895, No. 139. Price ½d.*

**NORTHERN NIGERIA.]** *O. in C. dated Dec. 27, 1899. St. R. & O. 1899, p. 628, No. 994.*

**FOREIGN JURISDICTION—continued.**

**OTTOMAN EMPIRE.]** *The Ottoman Dominions (Supreme Court) O. in C., 1896. St. R. & O. 1896, No. 693, p. 120.*

**OTTOMAN EMPIRE—EGYPT.]** *O. in C. dated Aug. 8, 1899. Schedule of Orders repealed. See St. R. & O. 1899, p. 643, No. 595; Lond. Gaz. Aug. 11, 1899, p. 4949.*

**PACIFIC.]** *O. in C. dated March 15, 1893 ("The Pacific O. in C. 1893"). St. R. & O. 1893, p. 312.*

*[This O. in C. repeals and consolidates the Western Pacific Orders in Council of 1877, 1879, and 1880.]*

**PACIFIC OCEAN—ELLICE AND GILBERT ISLANDS AND SOLOMON ISLANDS.]** *O. in C. dated Nov. 26, 1897, as to powers which may be exercised by Deputy Commrs. or Residents under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). St. R. & O. 1897, p. 158, No. 884.*

*The Pacific O. in C. 1893, Amendment Order, 1899, dated Aug. 8, 1899. St. R. & O. 1899, p. 704, No. 596.*

**PERSIAN COAST AND ISLANDS.]** *O. in C. dated Oct. 3, 1895 ("The Persian Coast and Islands O. in C. 1895"). St. R. & O. 1895, No. 408. Price ½d.*

**SIERRA LEONE, TERRITORIES ADJACENT TO.]** *O. in C. Aug. 24, 1895, as to British jurisdiction in territories adjacent to Sierra Leone. St. R. & O. 1895, No. 397. Price ½d.*

**SOMALI AND BRUNEL.]** *(Repeal) O. in C. 1900. St. R. & O. 1900, No. 57; Lond. Gaz. Jan. 16, 1900, p. 281.*

**SOMALILAND PROTECTORATE.]** *O. in C. dated Oct. 7, 1899. Lond. Gaz. Oct. 17, 1899, p. 6235; St. R. & O. 1899, p. 705, No. 758.*

**SOUTHERN NIGERIA.]** *O. in C. dated Dec. 27, 1899. St. R. & O. 1899, p. 634, No. 995.*

**SOUTHERN RHODESIA—NATURALIZATION.]** *O. in C. dated March 7, 1899. St. R. & O. 1899, p. 621, No. 180.*

**SOUTHERN RHODESIA.]** *O. in C. dated Feb. 2, 1899. St. R. & O. 1899, p. 620, No. 81.*

**TURKEY.]** *See OTTOMAN EMPIRE, above.*

**WEST AFRICA.]** *Lagos Protectorate O. in C. Dec. 27, 1899. Lond. Gaz. Jan. 5, 1900, p. 74.*

**WEST AFRICA.]** *Nigerian O.'s in C. Dec. 27, 1899. Lond. Gaz. Jan. 5, 1900, pp. 69, 71.*

**ZANZIBAR.]** *1890. Nov. Foreign Office Notification of assumption of British Protectorate over the dominions of the Sultan of Zanzibar. Lond. Gaz. Nov. 4, 1890, p. 5802.*

*O. in C. dated March 16, 1892 ("The Zanzibar O. in C. 1892"). St. R. & O. 1892, p. 488; Lond. Gaz. March 18, 1892, p. 1590.*

*O. in C. dated May 16, 1893 ("The Zanzibar Trade Marks O. in C. 1893"). St. R. & O. 1893, p. 405.*

*O. in C. dated July 17, 1893 ("The Zanzibar (Jurisdiction) O. in C. 1893"). St. R. & O. 1893, p. 406.*

*O. in C. dated July 7, 1897. St. R. & O. 1897, p. 159, No. 576.*

**FOREIGN JURISDICTION—continued.****1. — Jurisdiction of Consular Courts in Japan —Counter-claim against Japanese plaintiff.**

By treaty the British Courts and the Japanese territorial Courts have exclusive jurisdiction over claims against British and Japanese subjects respectively. Accordingly, the Consular Courts have no jurisdiction to entertain a counter-claim in an action by a Japanese plt. against a British deft. *IMPERIAL JAPANESE GOVERNMENT v. PENINSULAR AND ORIENTAL STEAM NAVIGATION CO.*

P. C. [1895] A. C. 644

**2. — Powers of judge of Consular Court.**

The Consular Court of Madagascar was by O. in C. of Feb. 4, 1869, vested with plenary civil jurisdiction over all British subjects within its limits, though it was not created in the sense of English law a Court of Record:—

*Held*, that a judge of such a Court is entitled to the same degree of protection which is accorded by the law of England to the judge of a Court of Record; and that an action for damages will not lie against him for dismissing without proof an action which he held to be vexatious. *HAGGARD v. PÉLICIER FRÈRES*

P. C. [1892] A. C. 61

NOTE.—The Madagascar Court is now made a Court of Record under the Africa O. in C. of Oct. 15, 1889: see observations of

P. C. [1892] A. C. at p. 65

**3. — Practice of Consular Courts in Japan.**

There is no authority expressed in or to be implied from the rules of the Supreme Court of China and Japan to warrant the joinder in one suit of different and, distinct causes of action not being causes of action by and against the same parties. *PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. TSUNE KIJIMA*

P. C. [1895] A. C. 661

Referred to by C. A. *Stroud v. Lawson*, [1898] 2 Q. B. 44, 50.

— Special leave to appeal in criminal cases.

See JAPAN.

**4. — Western Pacific—Jurisdiction of High Commissioner's Court.**

In a suit in the High Commissioner's Court for the recovery of land in Samoa, and for damages for conversion of its produce, it appeared that the defts. did not dwell within the bounds of the said islands, but that they had a store in Samoa, affixed to which was a signboard with the name of their firm, where they carried on business by servants and agents:—

*Held*, that under the Pacific Islanders' Protection Acts, 1872, 1875, the Foreign Jurisdiction Acts, 1843–1875, the O. in C. of Aug. 13, 1877, and the Treaty between H. M. and the King of Samoa of Aug. 28, 1879, the defts. were within the jurisdiction of the Court, and that the latter was competent to grant the relief prayed. *McARTHUR & CO. v. CORNWALL*

P. C. [1892] A. C. 75

NOTE.—The jurisdiction over Samoa of the above Court was abrogated by the Treaty of June 14, 1889, between H. M., the U. S., and Germany, establishing a Supreme Civil Court for the island: see observations of P. C.

[1892] A. C. at p. 81

**FOREIGN LAWS.**

See Cases under CONFLICT OF LAWS.

DOMICIL.

INTERNATIONAL LAW.

— Charterparty construction—English or German law—Non-delivery of goods  
See SHIPPING—Charterparty. 22.

**1. — English will as to land in Italy—Invalidity of Trusts by Italian law.**

Case in which was considered the effect of Italian law on a trust in the will of an English testator to sell certain lands in Sardinia and apply the proceeds. *In re PIERCY. WHITWHAM v. PIERCY* — North J. [1895] 1 Ch. 83

**FOREIGN LIQUIDATION—Equitable execution.**

See RECEIVER. 7.

**FOREIGN LUNATIC—Curator—Right to sue in England—Order of foreign Court—Jurisdiction.**

See CONFLICT OF LAWS. 7.

— Entitled to real estate in England—Practice.  
See LUNACY. 29.

**FOREIGN MANUFACTURER—Posting patented article to England—Infringement**  
See PATENT—Infringement. 6.**FOREIGN MARRIAGE.**

See Cases under CONFLICT OF LAWS.  
MARRIAGE.

**FOREIGN MORTGAGE.**

See REVENUE—Probate Duty. 135.

**FOREIGN OFFICE—Collection of treaties between Great Britain and Foreign Powers, and of the Laws, Decrees, and Os. in C. concerning the same.**  
See TREATY.**FOREIGN OYSTERS—Sale in close season.**

See FISHERY. 1.

**FOREIGN PATENT—Lapse.**

See PATENT—Prolongation. 41, 42.

**FOREIGN POWER OF ATTORNEY.**

See CONFLICT OF LAWS. 5.

**FOREIGN PRINCIPAL—Exercising trade in United Kingdom.**

See REVENUE—Income Tax. 97.

**FOREIGN PRISON-MADE GOODS ACT, 1897 (60 & 61 Vict. c. 63), prohibits their importation.****FOREIGN RECEIVER—Power to give receipts—Belgian law.**

See RECEIVER. 4.

**FOREIGN SECURITY—Made or issued in United Kingdom—Stamp duty.**

See REVENUE. 162.

**FOREIGN SHIP—Engaging seamen for—Fine—Civil debt.**

See SHIPPING. 258.

— Admiralty practice.

See SHIPPING—Necessaries. 180, 181.

**FOREIGN SOVEREIGN—Action by—Discovery—Cross proceedings.**

See INTERNATIONAL LAW. 4.

— Proof of status of sovereign—Jurisdiction.

See INTERNATIONAL LAW. 5.

**FOREIGN STATE**—Action by—Counter-claim—Libel.

See PRACTICE—Pleadings. 150.

— Action by—Cross proceedings—Discovery.

See INTERNATIONAL LAW. 4.

— Status and boundaries of—Judicial cognizance—Practice—Application to Foreign Office.

See EVIDENCE. 38.

**FOREIGN STATEMENT**—General average payable per—Dutch law.

See INSURANCE—Marine. 57.

**FOREIGN SUBJECT**—Payment out of court—Jurisdiction.

See LUNACY. 36.

**FOREIGN TRIBUNAL**—Jurisdiction.

See DIVORCE. 87.

**FOREIGN WILL.**

See WILL—Foreign Will.

**FOREIGNER**—Bankruptcy notice.

See BANKRUPTCY—Act of Bankruptcy. 12.

— Conflict of laws.

See Cases under CONFLICT OF LAWS.

— Estate duty.

See REVENUE—Estate Duty. 26.

— Power of appointment.

See POWERS—Exercise. 17.

— Receiving order—Jurisdiction—Foreigner resident abroad but trading in England.

See BANKRUPTCY—Receiving Order. 198.

— Receiving order in lieu of committal—Jurisdiction.

See BANKRUPTCY—Receiving Order. 197.

— Security for costs.

See COSTS. 52—58.

— Succession duty—Disposition by foreigner domiciled abroad—Property situate abroad—Disposition to English company.

See REVENUE—Estate Duty. 26.

— Testator foreign subject domiciled abroad—Company—Executor de son tort—Liability to pay probate duty.

See REVENUE—Probate Duty. 134.

**FORESHORE**—SALES, &c.] *Statement. From Jan. 1, 1892, to Dec. 31, 1896. Parl. Paper, 1897 (285). Price 2½d.*

— Crown lease—Injunction—Limits of public user.

See SEASHORE.

#### 1. — Definition.

Where in a proclamation setting out boundaries the high-water mark is specified:—

*Held*, that the high-water mark for the time being is meant, and that reclaimed foreshore is included. *SMART & Co. v. TOWN BOARD OF SUVA* P. C. [1893] A. C. 301

— Discovery—Claim of Crown to foreshore—Matter tending to impeach case of party claiming privilege.

See DISCOVERY—Documents. 29.

— Discovery—Production of documents—Right of the Crown.

See DISCOVERY—Documents. 15.

**FORESHORE**—*continued.*

— Nuisance on—Pollution of river.

See WATER. 4.

— Rights of the Crown.

See FISHERY. 4.

— Right to fix moorings as incident to navigation.

See THAMES. 9.

**FOREST OF DEAN**—Gale.

See TRUST. 3.

**FORFEITED RECOGNIZANCE.**

See REVENUE—Forfeited Recognizances. 48.

**FORFEITURE**—Bankruptcy practice.

See Cases under BANKRUPTCY.

— Benefit under Will.

See Cases under WILL—Condition. WILL—Forfeiture.

— Bond for safe return—Jurisdiction—Co-ownership—Action of restraint.

See SHIPPING—Restraint. 213.

— Lease.

See LANDLORD AND TENANT—Forfeiture.

— Lease—Affidavit of documents.

See DISCOVERY—Documents. 22.

— Licence.

See Cases under LICENSING ACTS.

— Power of Minister to declare a forfeiture of conditional purchases.

See NEW SOUTH WALES. 22.

— Railway ticket.

See Cases under RAILWAY—Passengers.

— Settlement—Construction.

See SETTLEMENT—Forfeiture.

— Shares—Deceased member—Registered address—Notice.

See COMPANY—Shares. 270.

— Shares—Prospectus—Fraudulent misrepresentation—Repudiation.

See COMPANY. 206.

— Shares—Re-allotment—Sale of shares credited with part of amount paid thereon.

See COMPANY—Shares. 271.

— Shares—Reconstruction—Scheme—Appropriation by new company of unclaimed shares.

See COMPANY—Reconstruction. 219.

— Wages—Deductions.

See SHIPPING—Seamen. 265.

— Will.

See WILL—Forfeiture.

**FORGERY**—Forged transfers.

*By the Forged Transfers Act, 1891 (54 & 55 Vict. c. 54), Purchasers of Stock were Preserved from Losses by Forged Transfers.*

*By the Forged Transfers Act, 1892 (55 & 56 Vict. c. 36), the Act of 1891 was explained.*

— Alteration—Negligence—Estoppel.

See BILL OF EXCHANGE. 2.

— Cheque—"Customer"—Liability of banker.

See BANKER. 19.

— Forged telegram—Obtaining money by.

See CRIMINAL LAW—Forgery. 34.

**FORGERY**—*continued.*

- Indorsement—Payment to bonâ fide holder—Right to recover money.  
*See BILL OF EXCHANGE.* 15.
- Payment of forged documents purporting to be bills.  
*See BANKER.* 18.

**FORGETFULNESS**—Breach of covenant—Right of re-entry—Equitable relief against forfeiture.  
*See LANDLORD AND TENANT.* 60.

- Dismissal—Contract—Misconduct of servant.  
*See MASTER AND SERVANT.* 57.

**FORMÂ PAUPERIS.**

*See PRACTICE*—Formâ Pauperis.

**FORMATION**—Company.

*See COMPANY*—Formation.

- Contract.

*See CONTRACT*—Formation.

**FORTUNE TELLER**—Pretending to tell fortunes.  
*See VAGRANCY.* 1.

**FOUNDERS' SHARES.**

*See COMPANY*—Reduction of Capital. 234.

*COMPANY*—WINDING-UP—Contributory. 40.

**FRANCE.**

*See FRENCH LAW.*

**FRANCHISE OF ELECTORS.**

*See Cases under PARLIAMENT*—Franchise.

**FRANCHISE OF PATENT.**

*See COUNTY COURT*—Jurisdiction. 51.

**FRAUD**—*New issue as to negligence.*

Where charges of fraud and deceit have failed, the person making them will not be allowed to raise new issues as to negligence on appeal. *CONNECTICUT FIRE INSURANCE CO. v. KAVANAGH* F. C. [1892] A. C. 473

- “Actual”—Solicitor and client.  
*See MORTGAGE*—Priority. 52.
- Act of bankruptcy—Indirect motive of petitioner.  
*See NEW SOUTH WALES.* 1.
- Agents.  
*See PRINCIPAL AND AGENT.* 1, 12—14.
- Bankruptcy law.  
*See Cases under BANKRUPTCY.*
- Company matters.  
*See Cases under COMPANY.*
- Concealed fraud—Duties and liabilities—Breach of Trust.  
*See TRUSTEE.* 79, 80.
- “Concealed fraud.”  
*See LIMITATIONS, STATUTE OF.* 13—16.
- Concealment of identity of lender—Fraud—Right of borrower to repudiate.  
*See CONTRACT.* 20.
- Costs—Charge of fraud—Agreement—Finality of audit.  
*See ACCOUNT.* 2.

**FRAUD**—*continued.*

- Costs—Higher scale—Allegations of fraud.  
*See COSTS.* 30.
- Dealing with purchased property—Debentures—Intervention in debenture action—Rescission.  
*See CONTRACT*—Rescission. 31.
- Finding of fraud—Report of official receiver—Sufficiency—Order for public examination.  
*See COMPANY*—WINDING-UP. 134.
- Fund in court—Payment out to wrong person—Replacement.  
*See PRINCIPAL AND AGENT.* 14.
- Imitation of rival traders' goods—Injunction.  
*See TRADE NAME.* 5.
- Judgment obtained by—Fresh action to set aside judgment—Jurisdiction.  
*See PRACTICE*—Setting Aside. 240, 241.
- Limitations, Statutes of.  
*See LIMITATIONS, STATUTES OF*—Fraud.
- Misrepresentation—Laches.  
*See CONTRACT*—Rescission. 33.
- Negligence—Stamp of larger amount than necessary.  
*See BILL OF EXCHANGE.* 2.
- Not on members of a company—Fraud on outside public.  
*See COMPANY*—WINDING-UP—Examination of Officers. 78.
- Obtaining credit by fraud—Debtors Act.  
*See CRIMINAL LAW*—False Pretences. 33.
- Power—Fraud on.  
*See POWERS*—Exercise. 19.
- Pregnancy—Concealment by wife from intended husband—Nullity of marriage.  
*See DIVORCE*—Nullity. 97.
- Promissory note returned to maker—Liability of maker on note—Overdue note—Holder “in his own right.”  
*See BILL OF EXCHANGE.* 19.
- Property in goods obtained by—Jus tertii—Trover.  
*See ESTOPPEL.* 2.
- Prospectus.  
*See Cases under COMPANY*—Prospectus.
- Receipt—Mortgagor's signature induced by fraud of his solicitor—“Non est factum”—Estoppel—Title of mortgagee.  
*See MORTGAGE.* 56.
- Shares—Restriction on free transfer—Validity of articles—Fraud on bankruptcy law.  
*See COMPANY*—Shares. 302.
- Solicitor to both parties—Representation to lender by agent of borrower.  
*See MORTGAGE.* 15.
- Trade rivalry—Improper use of testimonials—Interlocutory injunction.  
*See FALSE REPRESENTATION.*
- Trade mark—As to user of.  
*See TRADE-MARK*—Registration. 39.
- Underground trespass—Equitable jurisdiction—Statute of Limitations.  
*See NEW SOUTH WALES.* 20.

**FRAUD—continued.**

— Vendor and purchaser—Conditions against particular user.

See SPECIFIC PERFORMANCE. 5.

**FRAUDS, STATUTE OF (29 Car. 2, c. 3).—Section 3**  
—Surrender of lease—Parol consent—Statute of Frauds (29 Car. 2, c. 3), s. 3—Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3.

Parol consent of an old tenant to a new lease does not operate as a surrender of the old lease by operation of law or otherwise, so as to take the case out of the operation of s. 3. There is no surrender by operation of law unless the old tenant give up possession to the new tenant at or about the time of the grant of the new lease to which he assents. *WALLIS v. HANDS*

*Chitty J. [1893] 2 Ch. 75*

— Agents.

See PRINCIPAL AND AGENT. 1, 12—14.

— Condition precedent—Specific performance—Mistake—Rescission—"Wilful default."

See VENDOR AND PURCHASER. 21.

— Contract—Acceptance of offer.

See VENDOR AND PURCHASER. 14.

2. — Section 4—Correspondence referring to a formal contract—Specific performance.

Where a vendor wrote to an intending purchaser accepting his offer, and incloses a contract for his signature, if the contract contains stipulations not contained in the previous correspondence, e.g., restriction of commencement of title, limitation of time for completion, and requirement of a deposit, which was returned unsigned:—

*Held*, that an action for specific performance must be dismissed, as no definite arrangement had been arrived at. *JONES v. DANIEL*

*Romer J. [1894] 2 Ch. 332*

— Deposit—Cheque for—Custom—Refusal to accept highest bidder.

See VENDOR AND PURCHASER. 50.

3. — Section 4 — Guarantee — Indemnity — Verbal promise—Statute of Frauds (29 Car. 2, c. 3), s. 4.

A promise by deft. to indemnify plt. against a liability which plt. is about to contract with a third person is not within s. 4 of the statute.

An oral promise by deft. to plt. that, if plt. would accept certain bills for a firm in which deft.'s son was a partner, deft. would provide plt. with funds to meet the bills, is a promise of indemnity and not of guarantee, and therefore not required to be in writing. *GUILD & Co. v. CONRAD*

*C. A. [1894] 2 Q. B. 885*

4. — Section 4 — Guarantee — Indemnity — Statute of Frauds (29 Car. 2, c. 3) s. 4.

*Per Kekewich J. and C. A.* The recital in a will that the testator has guaranteed a firm in respect of a debt is a sufficient note or memorandum signed by the testator:—

*Held*, however, by *C. A.*, that in this case the agreement was not a guarantee, but an agreement to indemnify against loss, and did not therefore require a memorandum in writing. *In re HOYLE. HOYLE v. HOYLE* Both Courts [1893] 1 Ch. 84

— Identity of parcels—Admissibility of parol evidence.

See VENDOR AND PURCHASER. 30.

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—contd.**

5. — Section 4—Interest in land—"Floating security"—Debentures—Transfer.

Where debentures are charged on the property of the co.: and the property includes land:—

*Held*, that a contract for the sale of the debentures is a contract for an interest in land within s. 4. The fact that the security is a "floating security" makes no difference. *DRIVER v. BROAD*

*Mathew J. [1893] 1 Q. B. 539;*

*affirm. by C. A. [1893] 1 Q. B. 744*

Referred to by *Cozens-Hardy J. Wallace v. Evershed*, [1899] 1 Ch. 891, 894.

6. — Section 4—Interest in land—Machinery—Statute of Frauds (29 Car. 2, c. 3), s. 4—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31); 1882 (45 & 46 Vict. c. 43).

Certain machinery held to be an interest in land within the section. *JARVIS v. JARVIS*

*North J. [1893] W. N. 138*

— Letter and envelope taken as one document.

See CONTRACT. 17.

7. — Section 4—Letter signed by purchaser on paper on which vendor's name and address printed—Vendor and purchaser—Statute of Frauds (29 Car. 2, c. 3), s. 4.

The plt., who lived at 285, St. Ann's Road, went to the Warwick Castle Hotel, which was kept by the deft., on April 3, 1899, when, after some conversation about the sale of a piece of land, the plt. took out of a paper-rack a sheet of the note-paper used in the hotel, at the head of which were printed the following words: "The Warwick Castle Hotel, Pier Avenue, Clacton-on-Sea, Sole Proprietor, Wm. Thos. Hook." The plt. then wrote on the paper—as he alleged, at the deft.'s dictation—as follows: "285, St. Ann's Road, Stamford Hill, N. April 3, '99. T. Hook, Esq. Dear Sir,—I hereby agree to give you the sum of 590l. for the piece of land at the corner of Marine Parade and Tower Road. Please instruct your solicitor to forward the contract to me. (Signed) F. J. Hucklesby, 6 Marine Parade." The plt. brought an action for specific performance of the contract between the parties alleged to be contained in the letter. The deft. pleaded the Statute of Frauds:—

*Held*, that the printed heading formed no part of the letter. The object of such a heading was to give information as to the place to which any reply was to be given, but by adding the address at St. Ann's Road the plt. had in effect struck out the printed address.

*Schneider v. Norris*, (1814) 2 M. & S. 286; 15 R. R. 250; *Evans v. Hoare*, [1892] 1 Q. B. 593, and *Torret v. Cripps*, (1879) 27 W. R. 706, distinguished.

The deft. had written no part of the document, and the mere fact that the document, written by the plt., contained the deft.'s name was not sufficient. No memorandum had been signed by him. If it had been proved that the deft. dictated the document, and thus did something equivalent to saying, "Sign that as the contract between us," there might have been a contract. But no such dictation took place. The words as to instructing a solicitor also shewed that the document was not



**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—*contd.***

to be a contract or something containing terms which were to be embodied in a formal contract. They meant, "Send me the document which is a contract within the Act." Action dismissed. **HUCKLESSY v. HOOK** **Buckley J. [1900] W. N. 45**

8. — *Section 4—Liability undertaken at the request of another—Statute of Frauds (29 Car. 2, c. 3), s. 4.*

If A. undertakes a liability at the request of B. and upon a promise by B. to pay to A. what he pays under the liability, B.'s promise is not within the statute. *In re BOLTON'S ESTATE, MORANT v. BOLTON* **Chitty J. [1892] W. N. 114; affirmed by C. A. [1892] W. N. 163**

An appeal was dismissed on the ground that on the evidence it was for B.'s own debt A. had rendered himself responsible, and that the statute had therefore no application.

**C. A. [1892] W. N. 163**

Followed by **C. A. Guild & Co. v. Conrad, [1894] 2 Q. B. 885.**

— *Marriage—Domicil. Change of—Immovable goods—French law—Lex rei sitæ—Community of goods.*

*See CONFLICT OF LAWS. 9.*

9. — *Memorandum—Lessee not named—Person who paid 50l.—Sufficient description—Landlord and tenant—Agreement for further lease.*

A landlord verbally agreed to grant his tenant, the assign of an existing lease of the Warden Arms, a further lease of twenty-four years for a fine of 50l., on receipt of which sum in cash the landlord signed and handed to the tenant the following memorandum:—

" . . . . Dear Sir,—In consideration of you having this day paid me the sum of 50l. . . . I hereby agree . . . to grant you . . . a further lease of 24 years . . . of . . . the Warden Arms . . . to run immediately after the expiration of . . . the now existing lease. . . . "

The name of the proposed lessee was not stated in this memorandum:—

*Held*, that, for the purposes of the Statute of Frauds, the proposed lessee was sufficiently described as the person who had paid the 50l.

Whether the reference to a further lease would by itself have identified the proposed lessee with the existing tenant, *quære*. **CARR v. LYNCH** — **Farwell J. [1900] W. N. 69; [1900] 1 Ch. 613**

10. — *Section 4—Memorandum—Purchaser's name filled in by auctioneer's clerk.*

Where at a sale, L., the highest bidder for a lot, gave his name and address to the auctioneer's clerk, and followed him to the table where the clerk filled in the blanks in a printed memorandum with L.'s name and address, but L. refused to sign the memorandum, and ultimately refused to complete:—

*Held*, that there was a sufficient signature on behalf of L., and that there must be judgment for specific performance. **SIMS v. LANDRAY**

**Romer J. [1894] 2 Ch. 318**

11. — *Section 4—Notice to quit—Commencement of tenancy—"On" or "from" day specified*

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—*contd.***

— *Agreement not to be performed within a year—Oral agreement.*

Where a house was let on a yearly tenancy and there was an oral agreement to extend the tenancy beyond a year:—

*Held*, that the oral agreement was invalid under the Statute of Frauds, there being no fresh demise. **SIDEBOTHAM v. HOLLAND**

**C. A. [1895] 1 Q. B. 378**

12. — *Section 4—Oral agreement—Letting for non-continuous period—Entry—Payment of rent on account—Right of landlord to recover balance of rent—Statute of Frauds (29 Car. 2, c. 3), s. 4.*

The plt. orally agreed to let a piece of waste ground to the deft. for three successive Bank holidays; the deft. was to have exclusive possession of the ground on those days, and to pay 45l. for the use of the ground, paying an instalment of 15l. for each of the three days. The deft. entered and occupied the land on the first of the three days, and after entry paid the first instalment of 15l.; he refused to occupy the ground on the other two days, or to pay to the plt. the balance of the rent. In an action by the plt. to recover the two remaining instalments, the deft. contended that the claim was barred by the Statute of Frauds, s. 4:—

*Held*, that there having been an entry for the purpose of occupation under an agreement for a single letting (although the period of the agreed letting was not continuous) at a single rent, and a payment of rent on account of the entry, the plt.'s right to recover the balance was not affected by the fact that the agreement was not in writing, and the Statute afforded no defence to the claim. **SMALLWOOD v. SHEPPARDS**

**Div. Ct. [1895] 2 Q. B. 627**

— *Oral contract—Part payment.*

*See SALE OF GOODS. 2.*

13. — *Part performance—Agreement for lease—Increased rent—Payment of rent—Parol evidence.*

A landlord having verbally agreed with his yearly tenants to grant them a lease for twenty-one years of the messuage held by them (without the inclusion in the lease of any additional property) at an increased rent, the tenants for some time afterwards paid the increased rent:—

*Held*, that the decision in **Nunn v. Fabian, (1865) L. R. 1 Ch. 35** (as explained by **Baggallay L.J. in Humphreys v. Green, (1882) 10 Q. B. D. 148, 156**), applied, notwithstanding anything laid down in **Maddison v. Alderson, (1883) 8 App. Cas. 467**; that the payment of rent was a sufficient part performance to take the case out of the Statute of Frauds; and that parol evidence of the agreement was therefore admissible. **MILLER & ALDWORTH, LD. v. SHARP**

**Byrne J. [1899] W. N. 16 (12);**

**[1899] 1 Ch. 622**

14. — *Section 4—Part performance—Contract—Possession taken before, but continued after, parol contract—Statute of Frauds (29 Car. 2, c. 3), s. 4.*

Possession taken before, but continued after, a parol contract for a lease may, if unequivocally referable to the contract, constitute part per-

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—contd.**

formance, taking the case out of the Statute of Frauds.

A contract for a lease of land for more than three years was, after negotiation, entered into and reduced into writing in the form of a draft lease, which, however, was not signed by the intended lessor. Shortly before the contract was made, the intended lessee was let into possession, and he subsequently continued in possession and paid rent according to the terms of the draft lease:—

*Held*, that, although the entry into possession was antecedent to the contract, yet the subsequent continuance in possession being, under the circumstances, unequivocally referable to the contract, constituted a part performance sufficient to take the case out of the Statute of Frauds. **HODSON v. HEULAND**

**Kekewich J. [1896] 2 Ch. 428**

**15. — Section 4—Part performance—Contract relating to interest in land—Allegation of partnership—Resulting trust—Admission of parol evidence—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

The plt. alleged that he and the deft. had had several transactions together as partners in joint adventures, and that in April, 1898, they determined to acquire certain property with a view to mining for gold. He further alleged that he and the deft. arranged with the owner of the property for the grant of a lease to the deft. on behalf of himself and the plt., and that a lease and a Crown licence were granted to the deft. on behalf of himself and the plt. The deft. had since worked the mine, but had refused to recognise the plt.'s title or interest, and wrongfully claimed to be entitled to the sole benefit of the lease and licence. The plt. claimed a declaration that the deft. was trustee of one moiety of the property for him, and consequent relief:—

*Held*, that the plea of the Statute of Frauds must be allowed. Before parol evidence could be admitted as to the contract it was necessary to show that a partnership existed. It was not enough merely to plead a partnership in order to get rid of the defence of the statute. The case was governed by *Caddick v. Shidmore*, 2 De G. & J. 52, which was binding on the Court. The authorities relied upon by the plt. as to the statute being used as an instrument of fraud were all cases of trust. Here there could be no trust unless the partnership were proved. The law was laid down in *Britain v. Rossiter*, (1883) 11 Q. B. D. 123, and *Maddison v. Aderson*, (1883) 8 App. Cas. 467. **ISAACS v. EVANS**

**Farwell J. [1899] W. N. 261**

— Practice—Notice of statutory defence—Sale of goods.

**See COUNTY COURT—Practice. 63.**

**16. — Section 4—Principal and agent—Contract—Memorandum in writing—Signature by agent “thereunto lawfully authorized”—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

A letter written by an agent within the scope of his authority, which refers to and recognises an unsigned document as containing the terms of a contract made by his principal, is a sufficient memorandum of the contract within the 4th section of the Statute of Frauds, and it is not

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—contd.**

necessary, in order to satisfy the statute, that the principal should have authorized the agent to sign the letter as a record of the contract.

*Smith v. Webster*, (1876) 3 Ch. D. 49, discussed. **JOHN GRIFFITHS CYCLE CORPORATION v. HUMBER & CO.** **C. A. [1899] 2 Q. B. 414**

**17. — Section 4—Sale of land—Description of Vendor—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

Specific performance of an agreement made with the “agents of the vendor” refused, because neither in the agreement nor subsequent correspondence was the vendor sufficiently identified to satisfy s. 4 of the statute. **COOMBS v. WILKES**

**Romer J. [1891] 3 Ch. 77**

**18. — Section 4—Sale of land—Letters signed by agent's clerk.**

In an action for specific performance, to which s. 4 of the statute was pleaded, the purchaser relied on four letters purporting to be written by the vendor's agent; two of which were signed by the agent's clerk:—

*Held*, that parol evidence could not be admitted to connect the letters signed by the clerk with those signed by the agent. **POTTER v. PETERS**

**Kekewich J. [1895] W. N. 37**

**19. — Specific performance—Agreement for lease—Concluded agreement.**

*Held*, that there was no concluded agreement between the parties. There was no agreement on the part of the plts. to take the lease unless the house was put into a satisfactory sanitary state, and no agreement by the deft. to put the house into a satisfactory sanitary state, and, although that condition might have been waived by the plts. there was no waiver of the condition before the date of repudiation, and the parties were never ad idem.

Decision of *Kekewich J.*, [1899] W. N. 40, reversed. **MORITZ v. KNOWLES** **C. A. [1899] W. N. 83**

— Signature by auctioneer's clerk on behalf of purchaser.

**See PRINCIPAL AND AGENT. 1.**

**20. — Section 4—Sufficiency of signature—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

An agreement to serve for three years, in the form of a letter addressed to the defts., was signed by the plt. The defts.' name was inserted at the beginning of the letter by a duly authorized agent, but the letter not otherwise signed by them:—

*Held*, that the defts.' name, so inserted, was a sufficient signature by them to satisfy s. 4 of the statute. **EVANS v. HOARE**

**Div. Ct. [1892] 1 Q. B. 59**

— Settlement—Mistake—Non-execution of a power—Death of donee—Parol evidence. **See SETTLEMENT—Rectification. 29.**

**21. — Section 4—Vendor's name—Agent for vendor—Reference to formal contract—Vendor and purchaser—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

The vendor's name was omitted from the conditions of sale by auction of a house and from the indorsed form of contract to be signed by a purchaser. The house was not sold at the

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—contd.**

auction; but subsequently the deft. sent a letter addressed on the face of it to J. & Co., who were the auctioneers, offering to purchase the house for 350*l.*, and stating that if his offer was accepted he would "sign contract on auction particulars." J. & Co. replied by letter stating that on behalf of their client (who was the vendor), naming her, they accepted the offer "subject to contract as agreed. We enclose draft contract." The draft was identical with the contract embodied in the conditions of sale and indorsement, except that the draft stated the vendor's name; but the deft. never signed it:—

*Held*, (1.) that as the offer contained the names of both contracting parties (though one was only agent of an undisclosed vendor), on its acceptance there was a valid contract within the Statute of Frauds; (2.) that the acceptance was absolute and unconditional, inasmuch as a form of contract definitive in all its terms was identified by the offer, and that signature to the form of contract was unnecessary.

*Morris v. Wilson*, 5 Jur. (N.S.) 168, followed.

**FILBY v. HOUNSELL** *Romer J. [1896] 2 Ch. 737*

**22. — Sections 4, 7—Pleading statute—Practice—Amendment—Statute of Frauds, 1677 (29 Car. 2, c. 3), ss. 4, 7.**

The statute must be pleaded if intended to be relied on as a defence; but it is not necessary to plead any particular section. Where, however, the deft. pleaded s. 4, he was not allowed to amend or avail himself of s. 7. *JAMES v. SMITH*  
**Kekewich J. [1891] 1 Ch. 384**

The C. A., without dealing with the application of the Statute of Frauds, *held* that the plt. had not established the fact of agency. *JAMES v. SMITH*  
**C. A. [1891] W. N. 175**

Referred to by C. A. *Rochevoucauld v. Boustead*, [1897] 1 Ch. 196, 206. *See next Case.*

**23. — Section 7—Evidence—Admissibility of parol evidence—Statute of Frauds (29 Car. 2, c. 3), s. 7—Purchase as trustee—Express trust—Statutes of Limitations—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 49—Delay—Taking accounts before official referee—Practice—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 13, 14—Rules of Supreme Court, 1883, Order XXXIII., rr. 2, 3, 4.**

Prior to 1873 the plt., a married woman, was owner of certain estates in Ceylon subject to a considerable mortgage. In 1873 the mortgagees sold and conveyed the estates to the deft., who, without the privity of the plt., raised large sums by mortgage of them, and afterwards became bankrupt in 1879, and obtained his discharge in 1880. The estates were afterwards sold by the mortgagees. The plt.'s case was that the deft. had purchased the estates as trustee for her subject to a lien for his advances. In 1880 the deft.'s trustee in bankruptcy repudiated the plt.'s title. The deft. never expressly did so, and the plt. never gave either of them to understand that she had given up her claim; but she took no active steps to assert it till 1894, when she commenced an action against the deft. asking for a declaration that the deft. purchased as a trustee for her, and for an account of his dealings

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—contd.**

with the property, and payment of what should be found due from him. The deft. pleaded—(1) that the estates were conveyed to him as beneficial owner; (2) that the trust alleged by the plt. was not evidenced by any writing signed by the deft., and that the Statute of Frauds was a defence; (3) that the plt.'s claim, if proved, was barred (a) by the deft.'s bankruptcy; (b) by the Statutes of Limitations; (c) by laches and delay. *Kekewich J.* held that no trust was proved, and dismissed the action on the first ground. The C. A., being of opinion that the evidence, which partly consisted of letters signed by the deft., completely proved that the deft. purchased as a trustee for the plt., and held the estates as such trustee subject to a lien for his expenditure:—

*Held*, that even if the letters signed by the deft. did not contain enough to satisfy s. 7 of the Statute of Frauds, parol evidence was admissible; and as the whole of the evidence taken together established that the deft. had purchased as a trustee, the plt. was entitled to a decree.

The Statute of Frauds does not prevent proof of a fraud, and it is a fraud for a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land as his own. Therefore a person claiming land conveyed to another may prove by parol evidence that it was so conveyed on trust for the claimant, and may obtain a declaration that the grantee is a trustee for him.

*Bartlett v. Pickergill*, (1759) 1 Eden, 515, is inconsistent with a series of later decisions, and is not now law.

A trust thus established is an express trust within the definition given in *Soar v. Ashwell*, [1893] 2 Q. B. 390, and the Statute of Limitations, therefore, is no defence to the claim; nor is the bankruptcy of the grantee, if governed by the Bankruptcy Act, 1869, a defence to an action for an account of his dealings with the estates, since by s. 49 of that Act bankruptcy does not bar the claims of a cestui que trust.

The deft. knew that land held by the deft. was claimed by the plt. as having been conveyed to the deft. as a trustee for her; and in the correspondence between them he never denied her title, though he never expressly admitted it. The plt. took no proceedings for twelve years after the correspondence between them had ceased:—

*Held*, that as she had done nothing actively to lead the deft. to suppose that she had given up her claim, there was nothing against her but the lapse of time; and that the mere lapse of time in a case of express trust was not a bar.

A very difficult account directed to be taken by an official referee instead of in chambers, on account of the great saving of time which would thus be effected. *ROCHEVOUCAULD v. BOUSTEAD*

**C. A. [1897] 1 Ch. 196**

*See also Rochevoucauld v. Boustead*, C. A. [1898] 1 Ch. 550.

Referred to by V. Williams J. *In re Gallard*, [1897] 2 Q. B. 8, 15.

**24. — Statute of Frauds (29 Car. 2, c. 3), ss. 7, 8—Creation or declaration of trust of lands**

**FRAUDS, STATUTE OF (29 Car. 2, c. 3)—*contd.***

—*Assignment of leaseholds by wife to husband for limited purpose.*

The Duchess of M., for the purpose of enabling her husband to raise money, assigned a lease to him, which he mortgaged; there was evidence that he intended to re-assign the lease, subject to the mortgage, to the Duchess, but this was never done. On his death a creditor's action was brought for administration of his estate, in which the Duchess claimed to be entitled to the lease subject to the mortgage:—

*Held*, that the equity of redemption belonged to the Duchess, as the Statute of Frauds cannot be used to cover what would amount to a fraud. *In re DUKE OF MARLBOROUGH. DAVIS v. WHITEHEAD* Stirling J. [1894] 2 Ch. 133

— Agents.

See **PRINCIPAL AND AGENT**. 1, 12—14.

**25.** — Section 17—"Memorandum"—Connecting documents—"Acceptance."

Three documents were advanced as forming a memorandum of a parol contract—(1) An invoice signed by plts. only; (2) An advice-note from the deft.'s carrier stating amount of goods but not the price, with the deft.'s indorsement thereon rejecting the goods; and (3) a letter from the deft. to the plts. referring to his rejection of the goods:—

*Held*, not to constitute a memorandum within s. 17.

*Held*, also, that inspection of the goods by the deft. at the carrier's wharf did not amount to an "acceptance." *TAYLOR v. SMITH*

C. A. [1893] 2 Q. B. 65

[*By the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 17 of the Statute of Frauds was repealed and re-enacted, with a definition of "acceptance."*]

Referred to by C. A. *Abbott & Co. v. Wolsey*, [1895] 2 Q. B. 97, 102.

**FRAUDULENT CONVEYANCE**—*By the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), it was provided that voluntary conveyances if bona fide are not to be avoided under 27 Eliz. c. 4.*

— Assignment to one-man company.

See **BANKRUPTCY—Act of Bankruptcy**. 4.

— Bankruptcy practice.

See **Cases under BANKRUPTCY—Preference and BANKRUPTCY—Voluntary Settlement**.

**1.** — *Consideration—Bankruptcy—Post-nuptial settlement—Intent to defeat and delay creditors*—13 Eliz. c. 5—*Bankruptcy Act, 1883 (c. 52), s. 47.*

In Oct., 1894, the bankrupt, who was married and had then recently attained the age of twenty-one years, executed a post-nuptial settlement whereby he settled property upon trust for himself for life, or until he should charge or incur his life interest, with a gift over for the benefit of his wife and children. The consideration for the settlement was a covenant by his mother to pay him during her life an annuity of 50*l.* per annum, and a covenant by his brother to pay him an annuity of 25*l.* per annum until a certain event, when the brother was to be repaid. The settlement had been induced by

**FRAUDULENT CONVEYANCE—*continued.***

the mother and brother with the view of saving the bankrupt's property, as he was a man of very extravagant habits and had already during his minority incurred debts to a considerable amount. A sum of 3000*l.* was left out of the settlement to pay these debts, and was handed to him for that purpose. In May, 1895, the bankrupt charged his life interest under the settlement, and in Oct., 1895, a receiving order was made against him. The trustee claimed that the settlement was void both under s. 47 of the Bankruptcy Act, 1883, and also under 31 Eliz. c. 5:—

*Held*, that the settlement was not void under s. 47, as the covenant of the mother was a sufficient consideration for it; and further, that it was not void under the Statute of Elizabeth, as the evidence failed to show that it was executed with intent to defeat and delay creditors. *In re TETLEY - V. Williams* [1896] W. N. 86 (2)

— Discretionary trust to pay future debts—Intent to defeat and delay future creditors.

See **BANKRUPTCY—Voluntary Settlements**. 264.

**2.** — *Purchaser for value without notice—Protection of creditors—Fraudulent Conveyance Act, 1571 (13 Eliz. c. 5, ss. 1, 5).*

By a settlement void against creditors under 13 Eliz. c. 5, s. 2, a reversionary life interest was reserved to the settlor, which he subsequently charged by way of equitable mortgage to a person who advanced his money without notice that the settlement was fraudulent:—

*Held*, that s. 5 protected a subsequent purchaser, without notice, of any interest under such a settlement, whether the interest was legal or equitable, and the deed impeached was not void in respect of his interest. *HALIFAX JOINT STOCK BANK v. GLEDHILL - Kay J.* [1891] 1 Ch. 31

**3.** — *Shares—Calls—Residuary legatee—Protection of creditors.*

T., by the will of her late husband, took all his property, including shares in a co. She did not transfer the shares into her own name. Four years after a call was made on the shares. T. transferred by deed all the property except the shares to L., who covenanted to lodge, clothe, and feed T.:—

*Held*, that the "debts" of the testator included liabilities which sooner or later might have to be discharged, and that the deed was void as against creditors of the testator. *In re TROUGHTON. RENT AND GENERAL COLLECTING AND ESTATE CO. v. TROUGHTON*

Kekewich, J. [1894] W. N. 154

**4.** — *Voluntary assignment of policy of assurance—Investment of policy moneys by assignee—Creditors' administration action—Following assets—Protection of creditors (13 Eliz. c. 5).*

A testator voluntarily assigned two policies of assurance to his niece, who on the death of the testator, which happened shortly afterwards, received the policy moneys and invested them with other moneys of her own upon mortgage. The testator's estate proved to be insolvent. In a creditors' administration action the validity of

**FRAUDULENT CONVEYANCE**—*continued*.

these assignments was impeached under 13 Eliz. c. 5, and the plts. moved for an order for payment into court of the policy moneys, or for a receiver :—

*Held*, that, if the fund existed in specie, it would be assets of the testator, assuming the assignments to be within the Statute of Elizabeth, and the Court would have jurisdiction to secure the fund for the benefit of the creditors until the determination of that question; and that there had been no such alteration in the nature of the fund as to oust the jurisdiction of the Court, the fund being still in the hands and under the control of the assignee, although not in its original shape; and, accordingly, the Court exacted an undertaking from the assignee not to receive the moneys secured by the mortgages, so far as they represented the policy moneys, and not to deal with the mortgages except with the sanction of the Court. *In re MOUAT. KINGSTON COTTON MILLS CO. v. MOUAT*. - - - *Stirling J.*  
[1899] W. N. 37 (1); [1899] 1 Ch. 831

5. — **Voluntary gift**—*Subsequent conveyance for value*—*Protection of creditors*.

A voluntary gift for charitable purposes is not covinous within 27 Eliz. c. 4, and is not avoided by a subsequent conveyance for value. *RAMSAY v. GILCHRIST* - - - *P. C.* [1892] A. C. 412

And see Cases under **BANKRUPTCY**—**Voluntary Settlement**.

**FRAUDULENT MOTIVE**—Malicious injuries to property—Adding water to milk—Absence of Malice.

See **CRIMINAL LAW**.

**FRAUDULENT PREFERENCE**—*Bankruptcy*.

See **BANKRUPTCY**—**Fraudulent Preference**.

**COMPANY**—**WINDING-UP**—**Preference**.

**FREEHOLD LEASE**—*Interesse termini*.

See **LANDLORD AND TENANT**. 73.

**FREEMAN FRANCHISE**—*Borough vote*.

See **PARLIAMENT**—**Franchise**. 48.

**FREIGHT**—*Insurance*.

See Cases under **INSURANCE**—**Marine**.

— *Shipping*.

See Cases under **SHIPPING**—**Freight**.

**FRENCH GUIANA**—*Extradition from*.

See **EXTRADITION**.

**FRENCH LAW**—**INTERNATIONAL EXHIBITION AT PARIS**.] *O. in C. dated Feb. 2, 1899. Lond. Gaz. Feb. 3, 1899, p. 682.*

— **Consular marriage in France**—**Frenchman and Englishwoman**—**Validity of ceremony**.

See **CONFLICT OF LAWS**. 10.

— **Debt**—**Debenture-holders**—**Charge on property in foreign country**—**Receiver—Enforcing payment**—**Contempt**.

See **COMPANY**—**Debentures**. 60.

— **Domicil**.

See Cases under **DOMICIL**.

— **Extradition**.

See **EXTRADITION ACTS**.

**FRENCH LAW**—*continued*.

— **Marriage**—**Domicil**, **Change of**—**Immovable goods**—**Lex rei site**—**Community of goods**—**Statute of Frauds**.

See **CONFLICT OF LAWS**. 9.

— **Matrimonial domicil**—**International law**—**Movable goods**—**Community of goods**.

See **CONFLICT OF LAWS**. 8.

— **Payment out of court**—**Infants domiciled in France**—**Right of father to receive children's money**.

See **PRACTICE**—**Payment out of Court**. 141.

— **Will**—**Power of appointment**.

See **POWERS**—**Exercise**. 22, 23.

— **Will in French form**—**Marriage in England**—**Revocation of will by marriage**—**Change of domicil**.

See **CONFLICT OF LAWS**. 16.

— **Will proved abroad**—**Probate of copy**.

See **PROBATE**. 127.

**FRIENDLY SOCIETY**.

By the "*Friendly Societies Act, 1893*" (56 & 57 Vict. c. 30), the *Friendly Societies Acts* were amended as to the stating of a special case on a question of law.

By the *Friendly Societies Act, 1895* (58 & 59 Vict. c. 26), the Act of 1875 was amended as to Appeals and as to divers other particulars.

The *Treasury Regs., 1896. St. R. & O. 1896, No. 18. Price 3½d.*

*Friendly Societies Act, 1896* (59 & 60 Vict. c. 25), consolidates the law relating to Friendly and other societies, and repeals certain Acts.

*Collecting Societies and Industrial Assurance Companies Act, 1896* (59 & 60 Vict. c. 26), consolidates the Acts relating to Friendly Societies and Industrial Assurance Companies which receive contributions and premiums by means of collectors.

*Guide Book of the Friendly Societies office. Offic. & Parl. Publ. April, 1896. Price 6d.*

*Regs., dated Jan. 1, 1897, made by the Treasury under the Friendly Societies Act, 1896, and the Collecting Societies and Industrial Assurance Companies Act, 1896. St. R. & O. 1897, p. 181, No. 6. Price 3d.*

*Regs., dated June 15, 1897, made by the Treasury under the Friendly Societies Act, 1896. St. R. & O. 1897, p. 231, No. 428. Price ¾d.*

*Societies' Borrowing Powers Act, 1898* (61 & 62 Vict. c. 15), empowers certain societies to borrow money from persons and corporations other than members.

*Friendly Societies, Industrial and Provident Societies, and Trade Unions—Index to Reports of Chief Registrar of Friendly Societies for the 21 years, 1875 to 1895, inclusive. Parl. Paper, 1897-98. Price 3½d. Report for the year 1896. Parl. Paper, 1897. 97-II. Price 3d.*

*County Court Rules (Nov.) 1900, Order XLI. A. W. N. 1900 (Dec. 8), p. 325. See Current Index, 1900, p. lxxxiii.*

1. — *Alteration of Rules, Effect of*.

Sec. 27 of the *Friendly Societies Act, 1855* (18 & 19 Vict. c. 63), enacted that friendly

**FRIENDLY SOCIETY—continued.**

societies might alter, amend, or rescind their rules or make new rules.

A rule of a friendly society made at a time when that Act was in force provided that "No new rule shall be made, nor any of the rules herein contained or hereafter to be made shall be amended, altered, or rescinded, unless with the consent of a majority of the members present at a general meeting":—

*Held*, that that rule of itself conferred an independent power of altering the rules of the society, which power survived notwithstanding the repeal of the Act.

A person became a member of a friendly society at a time when the rules of the society contained a general provision that the rules might be altered. After he had become entitled under the rules to a benefit from the funds of the society in the nature of a superannuation allowance, and whilst he was in actual receipt of it, the rules of the society were so altered as to have the effect of depriving him of that benefit in case of a breach by him of the altered rules. To such alteration of the rules he did not assent except in so far as the fact of joining the society which had a general power of alteration constituted an assent:—

*Held*, that he was bound by the alteration.  
**SMITH v. GALLOWAY** Div. Ct. [1898] 1 Q. B. 71

2. — *Bankrupt treasurer—Preferential claim—Friendly Societies Act, 1875* (38 & 39 Vict. c. 60), s. 15 (7)—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 40—*Preferential Payments in Bankruptcy Act, 1888* (51 & 52 Vict. c. 62), s. 2 (1).

The trustees of a friendly society have, under s. 15, sub-s. 7, of the Act of 1875, a preferential claim on the assets of their treasurer, when bankrupt, for the balance due from him to the society at the commencement of his bankruptcy, even though he has not in possession the moneys in specie, and they cannot be traced. *In re MILLER*.  
*Ex parte* OFFICIAL RECEIVER

C. A. affirm. Div. Ct. [1893] 1 Q. B. 327  
See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 35 (b).

3. — *Dispute—Arbitration—Misconduct of arbitrators—Jurisdiction of justices—Friendly Societies Act, 1875* (38 & 39 Vict. c. 60), s. 22.

In an arbitration between a member of a friendly society and the society, the arbitrators excluded the claimant from the room during the examination of two witnesses, and gave him no opportunity of cross-examining them. By one of the rules of the society, "where no decision is made on a dispute within forty days of application for reference to arbitration, the member may apply to a court of summary jurisdiction":—

*Held*, that as the arbitrators had given a decision which was valid until set aside, the jurisdiction of justices to hear the complaint did not arise. **BACHE v. BILLINGHAM**

C. A. [1894] 1 Q. B. 107  
See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68 (b).

4. — *Dissolution—Infant members—Branch composed of minors—Governing committee—Friendly Societies Act, 1855* (18 & 19 Vict. c. 63),

**FRIENDLY SOCIETY—continued.**

ss. 9, 13, 15, 25, 27—*Friendly Societies Act, 1875* (38 & 39 Vict. c. 60), ss. 6, 15, sub-s. 8; s. 25.

In 1873 a friendly society, called the "Loyal Social Design Lodge," instituted a society to be called the juvenile branch of the lodge, and drew up rules for it which were registered and certified. The society was to consist of persons between the ages of six and eighteen. By rule 3, it was to be "governed" by a committee of eight appointed by the lodge. It was provided by rule 21 that no rules should be altered without the consent of a majority of members present at a special meeting. The members having been reduced to six persons about sixteen years of age, one of the members and the fathers of the rest on their behalf, without the consent of the committee, signed an instrument for dissolution of the society and distribution of its funds under the Friendly Societies Act, 1855, s. 13, and the Friendly Societies Act, 1875, s. 25, and the dissolution was advertised. The trustees in whom the property of the society was vested brought an action to set aside the instrument. *Keke-wich J.* held that it must be set aside, on the ground that the fathers had no sufficient authority to sign on behalf of their children:—

*Held*, by the C. A., that as the Act of 1875 preserved the rules of old societies so far as they were not contrary to the Act, rule 3 was still in force; that it was to be considered a fundamental rule of the society from which the members could not escape; that the members could not dissolve the society without the consent of the committee; and that the instrument of dissolution must be set aside.

Whether, if the infant members had power by themselves to dissolve the society by signing an instrument of dissolution, an instrument signed for them by their fathers, guardians, or agents would suffice, *quære*. **RUPD v. JAMES**

C. A. [1896] 2 Ch. 554

5. — *Dissolution—Right of appeal—Friendly Societies Act, 1875* (38 & 39 Vict. c. 60), s. 25, sub-s. 8 (e).

A member has no right of appeal under s. 25, sub-s. 8 (e), of the Act of 1875, against an award of the chief registrar dissolving the society, merely on the ground that he is dissatisfied with the provision made for settling his claims. **WILMOT v. GRACE** — Div. Ct. [1892] 1 Q. B. 812

See now 59 & 60 Vict. c. 25, s. 80, sub-s. 5.

[See now r. 58 and Form AY of the *Friendly Societies Regs.*, 1890, which differ from those referred to in the above case.]

6. — *Failure of objects—Poverty—"Charity"—Charitable legacy—Lapse—Cy-près.*

In 1800 a friendly society was established to provide, by subscriptions, contributions, and fines, an "invested fund" for the relief, by means of annuities, of members, their widows and children, in distressed circumstances.

By the will of a testator who died in 1893 a legacy of 500*l.* was bequeathed to the society for the purposes thereof. At that time there were only three annuitants living, being widows of deceased members, and there was only one member remaining, who was also sole surviving trustee of the "invested fund," which was amply

**FRIENDLY SOCIETY—continued.**

sufficient to provide for the three annuities. Subsequently two of the three annuitants died.

On an originating summons by the executors of the will against the sole surviving member, sole surviving annuitant, and the residuary legatees, to ascertain whether the society was entitled to the legacy:—

*Held*, (1.) that the society was a "charity" within *Commissioners for Special Purposes of the Income Tax v. Pemsel* ([1891] A. C. 531); (2.) that it was a charity existing at the testator's death and therefore the legacy had not lapsed; and (3.) that the legacy, not being required for the remaining annuity, was applicable *cy-près*.

*Cunnack v. Edwards* [1896] 2 Ch. 679 distinguished. *In re BUCK, BRUTY v. MACEY*

**Kekewich J. [1896] 2 Ch. 727**

*See next Case.*

**7. — Failure of objects — Surplus or unexpended funds—Charity—Cy-près—Bona vacantia—Resulting trust.**

In 1810 a society was established to raise a fund, by the subscriptions, fines and forfeitures of its members, to provide annuities for the widows of its deceased members. In 1830 the rules were revised, and the society conformed to the provisions of the Friendly Societies Act, 1829, but the objects of the society were in no way altered. By 1879 all the members had died. The last widow-annuitant died in 1892, the society then having a surplus or unexpended fund of 1250*l.*:—

*Held*, that there was no resulting trust in favour of the legal personal representatives of the members of the society; that the society was not a "charity," and therefore the unexpended fund was not applicable *cy-près* to charitable purposes; and that the fund passed to the Crown as *bona vacantia*.

Decision of Chitty J. [1895] 1 Ch. 489 reversed. *CUNNACK v. EDWARDS*

**C. A. [1896] 2 Ch. 679**

Referred to by Byrne J. *In re Printers' Transferrers Amalgamated Trade Protection Society*, [1899] 2 Ch. 184, 189.

**8. — Industrial assurance company—Offences—Assurance on life—Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), s. 2—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), ss. 4, 28.**

A society registered under the Companies Acts, but not under the Friendly Societies Acts, 1875, *held* to be a society within s. 28 (2) of the Act of 1875. *NEWBOLD FRIENDLY SOCIETY v. BARLOW*

**Div. Ct. [1893] 2 Q. B. 128**

**9. — Jurisdiction — Dispute as to title to be member—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 22—Friendly Societies Act, 1895 (58 & 59 Vict. c. 26), s. 10, sub-s. 1.**

The Friendly Societies Act, 1895, s. 10, sub-s. 1, merely extended the period during which s. 22 of the Friendly Societies Act, 1875, was applicable to disputes within it, and did not extend the provisions of that section to a class of disputes not previously within it, namely, disputes as to the title of a person to be a member of the society. The jurisdiction of the Court

**FRIENDLY SOCIETY—continued.**

was therefore not ousted with regard to such disputes by those enactments.

*Prentice v. London*, (1875) L. R. 10 C. P. 679, and *Willis v. Wells*, [1892] 2 Q. B. 225, followed. *PALLISER v. DALE* **C. A. [1897] 1 Q. B. 257**

**10. — Jurisdiction—Dispute between member and society—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 22.**

Sect. 22 of the Act of 1875 and the rules of a society *held* to apply only to disputes arising between members and the society, and not to include a dispute as to whether a person who has been expelled from a society is entitled to be reinstated. *WILLIS v. WELLS*

**Div. Ct. [1892] 2 Q. B. 225**

*But see now the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68 (1).*

**11. — Life Insurance—Friendly Societies Act, 1850 (13 & 14 Vict. c. 115), s. 2 (1).**

The provisions of s. 2 (1) of the Act of 1850, enabling a member of a friendly society to insure his life for the benefit of his widow, &c., are not affected by s. 2 of 14 Geo. 3, c. 48, which require the name of the person for whose benefit a policy is effected to be inserted therein. *ATKINSON v. ATKINSON*

**Chitty J. [1895] W. N. 114 (3)**

**12. — Misappropriation by officer—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 16, sub-s. 9.**

Where a friendly society avail themselves of their statutory remedy against a defaulting officer, under s. 16, sub-s. 9, of the Act of 1875, and the officer is convicted and punished under the proceedings so taken, and ordered to repay the moneys received by him for the society, the society's remedy by action is barred. *VERNON v. WATSON* — **Div. Ct. [1891] 1 Q. B. 400; affirm. by C. A. [1891] 2 Q. B. 288**

*See 59 & 60 Vict. c. 25, s. 87, sub-s. 3.*

**13. — Nomination by member—Amount insured exceeding 100*l.*—Revocation by subsequent will—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 15, sub-s. 3.**

A nomination made by a member of a friendly society under s. 15, sub-s. 3, of the Friendly Societies Act, 1875, to an amount not exceeding 100*l.* is valid, although the total amount payable by the society on the death of the nominator exceeds that sum. Such a nomination is not revocable in any manner other than that prescribed by the sub-section, and therefore is not revocable by a subsequent will of the nominator. Decision of Mathew J., [1898] 1 Q. B. 469, reversed. *BENNETT v. SLATER* **C. A. [1898] W. N. 150 (5); [1899] 1 Q. B. 45**

**14. — Treasurer—Secretary—Officer of the society—"By virtue of his office"—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 15, sub-s. 7).**

Under the rules of a friendly society a treasurer was appointed, whose duty was to render an account of all moneys received and paid by him, to take charge of the funds, and pay all demands; and also a secretary, whose duty was to keep the accounts and perform the usual secretarial duties. The secretary, with the knowledge and consent

**FRIENDLY SOCIETY**—*continued*.

of the trustees of the society and the treasurer, received moneys of the society and misapplied them. On his death an action was commenced to administer his estate, and a claim was carried in by the trustees of the society to be paid in full in priority to other creditors.

*Held*, following *Ex parte Fleet* (4 D. G. & Sm. 52), that though an officer of the society the secretary had not received the moneys so misapplied by virtue of his office within sub s. 7 of s. 15 of the Friendly Societies Act, 1875, so as to give the trustees a priority. *In re ABERDEIN. HAGON v. ABERDEIN* - - - Chitty J. [1896] W. N. 154 (5)

**FRIVOLOUS APPLICATION**—Practice—Clergy Discipline Act, 1892—Special leave to appeal.

*See* ECCLESIASTICAL LAW—Practice. 58.

**FRIVOLOUS AND VEXATIOUS ACTION**—Staying proceedings.

*See* PRACTICE. 164.

**"FROM"**—Duration of policy—From Nov. 24, 1887—Day excluded—Accident.

*See* INSURANCE—Accident. 2.

**FRONTAGER.**

*See* Cases under LONDON—Streets.

SEWERS.

STREETS.

**FROST**—Gas supply interrupted by.

*See* GAS. 4.

**FROZEN MEAT**—Warranty—Seaworthiness—Fitness of refrigerating machinery.

*See* SHIPPING. 143.

**FRUIT**—Unsound—Found in the possession of any person.

*See* FOOD. 2.

**FUGITIVE CRIMINALS**—Extradition of.

*See* EXTRADITION.

**FUGITIVE OFFENDERS**—Committal to await return—Powers to admit to bail.

*See* BAIL. 1.

**"FULL ANNUAL RENT OR VALUE."**

*See* ECCLESIASTICAL LAW—Church Rates. 7.

**FUNDS IN COURT**—Revivor.

*See* Cases under PRACTICE—Revivor. 177.

**FURNISHED HOUSE**—Implied condition of fitness for occupation.

*See* LANDLORD AND TENANT. 67.

**FURNITURE**—The words "furniture and articles of household use or ornament" in a will held not to pass an altar-stone and relics placed in a private chapel. *PETRE v. FERRERS*

*Romer J.* [1891] W. N. 171

—Policy on ship—What included under term "furniture."

*See* INSURANCE—Marine. 55.

**FURNITURE WAREHOUSERS**—Delivery order—*Bills of Sale Acts*, 1878, 1882 (41 & 42 Vict. c. 31), ss 3, 4, (45 & 46 Vict. c. 43), s. 8.

A "delivery order" on furniture warehousemen, even if given for the purpose of giving effect to a contract of pledge, does not require registration as a bill of sale. *GRIGG v. NATIONAL GUARDIAN ASSURANCE CO.* *Per Kekewich J.* [1891] 3 Ch. 206

**FURTHER ADVANCES**—Additional stamp.

*See* REVENUE—Stamps. 171.

**FURTHER CONSIDERATION.**

*See* PRACTICE—Further Consideration.

**FUTURE EARNINGS**—Judgment debtor—Equitable execution.

*See* RECEIVER. 3.



## G.

**GALE**—In Forest of Dean.

See TRUST. 3.

**GAMBIA**—Death Duties.

See REVENUE—Estate Duty.

— British jurisdiction in territories adjoining.

See FOREIGN JURISDICTION.

**GAME**—*Excise licence*—*Foreign game*—*Game Licences Act*, 1860 (23 & 24 Vict. c. 90), s. 14—*Stamp Act*, 1861 (24 & 25 Vict. c. 91), s. 17.

An excise license to deal in game under the Game Licences Act, 1860, s. 14, is not required to enable a person to deal in England in game which has been killed abroad. *PUDNEY v. ECCLES* — Div. Ct. [1893] 1 Q. B. 52

But see now the Customs and Inland Revenue Act, 1893 (56 & 57 Vict. c. 7), s. 2.

2. — *Ground game*—*Occupier of land*—*Alienation of right to kill*—*Ground Game Act*, 1880 (43 & 44 Vict. c. 47), ss. 1, 2, 3.

The plt., who was occupier of a farm with the sole right of taking game and rabbits on it, in 1889 agreed in writing to let to the deft. for an annual sum the sole right of killing all winged game, hares and rabbits "on the farm":—

*Held*, that this agreement was not made void by s. 3 of the Ground Game Act, 1880. *MORGAN v. JACKSON* — Div. Ct. [1895] 1 Q. B. 885

3. — *Ground game*—"Occupier of land"—*Owner occupying his own land*—*Ground Game Act*, 1880 (43 & 44 Vict. c. 47), s. 1.

An owner occupying his own land is an "occupier of land" within the meaning of the Ground Game Act, 1880, s. 1.

The owner of land granted to the plt. a lease of the exclusive right of sporting upon the land, and subsequently, during the currency of the lease, sold and conveyed the freehold to the deft., who entered into occupation of the land. The deft. caused the rabbits on the land to be trapped, claiming as occupier a right to do so under the provisions of the Ground Game Act, 1880, whereupon the plt. brought an action against him for infringement of the plt.'s exclusive right of sporting:—

*Held* (by V. Williams L.J. and Romer L.J., A. L. Smith L.J. dissenting), that the deft., being the occupier, was entitled under the Ground Game Act, 1880, to kill the ground game, none the less because he happened to be also the owner.

Decision of Wright J., [1899] 2 Q. B. 436, affirmed. *ANDERSON v. VICARY*

C. A. [1900] W. N. 128; [1900] 2 Q. B. 287

4. — *Ground game*—*Right given to occupier*—*Agreement to alienate*—*Advantage in consideration of forbearing to exercise*—*Agreement to leave game unshot*—*Claim for compensation*—*Landlord and tenant*—*Ground Game Act*, 1880 (43 & 44 Vict. c. 47), s. 3.

A statement of claim alleged that the plt.

**GAME**—*continued*.

became tenant to the deft. of a farm, induced by a promise that, if the plt. left the ground game unshot for the deft.'s benefit, the deft. would compensate the plt. for damage done to the plt.'s crops by the ground game; that the plt. allowed the ground game to go unshot, and the deft. shot over the farm; and the growing crops of the plt. were damaged by the ground game, and the plt. claimed compensation.

The deft. pleaded that the agreement was void in law by reason of the Ground Game Act, 1880, s. 3, and the statement of claim disclosed no cause of action.

On argument of the point raised on the pleadings:—

*Held*, that the agreement purported to alienate the right given by the Act to the occupier to kill and take the ground game, and purported to give the occupier an advantage in consideration of his forbearing to exercise his right, within the meaning of s. 3, and was therefore void, and the plaintiff was not entitled to recover. *SHERRARD v. GASCOIGNE* — Div. Ct. [1900] W. N. 129; [1900] 2 Q. B. 279

— Interference with shooting rights—Trespass on highway.

See WAY, RIGHT OF. 11.

5. — *Sporting rights*—*Reservation severable as to ground game and winged game*—*Ground Game Act*, 1880 (43 & 44 Vict. c. 47), s. 3.

Sect. 3 of the Ground Game Act, 1880, which "makes void "every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act," avoids them only so far as they are contrary to the provisions of the Act. Where, therefore, a lease of a farm contains a reservation to the lessor of the exclusive right of the lessor and his friends to enter upon the farm for the purpose of sporting, the reservation is severable; and, although void as to the ground game as being in contravention of the provisions of the Act, is nevertheless good as to the winged game. *STANTON v. BROWN* Div. Ct. [1900] 1 Q. B. 671

**GAMING (BETTING AND GAMING)**—*By the Betting and Loans (Infants) Act*, 1892 (55 & 56 Vict. c. 4), inciting infants to bet was rendered penal.

*By the Gaming Act*, 1892 (55 & 56 Vict. c. 9), the Gaming Act, 1845 (8 & 9 Vict. c. 109), was amended as to the repayment of gambling debts.

— Gaming Act, 1892—Retrospectivity.

See No. 21, below.

1. — *Account of winnings*, *Right to*—*Agreement to share profits in betting transaction*.

Where A. and B. entered into a partnership to share profits of betting on races, and A. advanced money for the purpose of the partnership:—

*Held*, that as B. had received money on

**GAMING—continued.**

account of A. and the betting part of the transaction was purely collateral, A. was entitled to have an account. *HARVEY v. HART*

*Stirling J. [1894] W. N. 72*

2. — *Arrest on warrant—Power to bind over—Evidence—Betting-house—Person found therein*—33 *Hen. 8, c. 9, s. 9*—2 *Geo. 2, c. 28, s. 9*—*Gaming Act, 1845 (8 & 9 Vict. c. 109), ss. 3, 6, First Schedule—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 2, 3, 11.*

A person who is found in a betting-house, and is arrested on a warrant, under 16 & 17 *Vict. c. 119, s. 11*, can be bound over, under 33 *Hen. 8, c. 9, s. 9*, no more to play, haunt, or exercise, from thenceforth at any gaming-house, notwithstanding that there is no evidence against him, beyond the fact of his having been found in such betting-house. *MURPHY v. ARROW*

*Div. Ct. [1897] 2 Q. B. 527*

— *Bankrupt—After-acquired property—Personal earnings—Interpleader—Wagering—Contract.*  
See *BANKRUPTCY—Undischarged Bankrupt*. 259.

3. — *Club—Place used for betting—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*

S. 1 of the Betting Act, 1853, does not apply to the case of members of a bona fide club betting with each other in the club. *DOWNES v. JOHNSON*

*Div. Ct. [1895] 2 Q. B. 203*

4. — *Common gaming house—User of house or room for unlawful gaming—Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), s. 4.*

By s. 4 of the Gaming Houses Act, 1854, "any person, being the owner or occupier, or having the use of any house, room, or place, who shall open, keep, or use the same for the purpose of unlawful gaming being carried on therein," is made liable on summary conviction to a penalty not exceeding 500*l*.

The debt, with three friends whom he met went to his house for the purpose of having a game of cards; after playing whist, they played for money a game called "German Bank," which the jury found to be an unlawful game. There was no evidence that they or any one else had ever played an unlawful game of cards at the debt's house on any other occasion:—

*Held*, that the debt. could not be convicted under the above section of using the house or room for the purpose of unlawful gaming being carried on therein:

*Held*, also, that the question whether a particular game of cards is an unlawful game is a question of law for the judge, and not of fact for the jury. *REG. v. DAVIES*

*C. C. R. [1897] 2 Q. B. 199*

— *Contract—"Differences"—"Cover" system—Gambling transaction—Nullity.*  
See *STOCK EXCHANGE*. 3, 6.

5. — *Conviction for keeping room for betting.*

S. 1 of the Betting Act, 1853, deals with two distinct offences, viz.:—Opening, keeping and using places for the purpose of—(1) betting with persons resorting thereto, and (2) receiving money as deposit on bets.

(A) Though the second offence is not proved,

**GAMING—continued.**

a conviction for the first offence is good. *BOND v. PLUMB* — *Div. Ct. [1894] 1 Q. B. 169*

Referred to by *C. A. Powell v. Kempton Park Racecourse Co., [1897] 2 Q. B. 242, 274; H. L. (E.) [1899] A. C. 143. See No. 14, below.*

(B) *Administration of Justices Act, 1848 (11 & 12 Vict. c. 42), s. 25—Jervis Act, 1848 (11 & 12 Vict. c. 42)—Gaming Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3—Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 1—Criminal Law Act, 1867 (30 & 31 Vict. c. 35), s. 1—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).*

It is not necessary for a conviction for keeping a house for the purpose of betting with persons resorting thereto to prove any actual resorting, and it is enough to shew that the house was opened and advertised as a betting-house. But if evidence of resorting is relied on, it must be of physical "resorting" as that term is used in its ordinary sense. *REG. v. BROWN*

*C. C. R. [1895] 1 Q. B. 119*

Referred to by *Hawkins J. Hawke v. Dunn, [1897] 1 Q. B. 579, 599. See No. 15, below.*

6. — *"Coupon competition"—Office used for betting—Events relating to horse-races—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1.*

The debt was the occupier of an office and the proprietor of a newspaper published weekly at that office. Each number of the paper contained a notice of what was called a "coupon competition"—that is to say, of a promise by the debt. to pay a certain specified sum of money to such persons as should correctly guess the result of a certain horse-race then shortly about to be run, and should write their guesses upon certain forms called "coupons," which were issued with each number of the newspaper, and should return the coupons so filled up to the debt.'s office, together with the sum of one penny in respect of each guess made. A large number of persons every week sent in to the debt.'s office coupons filled up as aforesaid, accompanied by remittances of money. The debt. was upon these facts convicted under the Betting Act, 1853, of having unlawfully kept the office for the purpose of money being received by her as the consideration for undertakings to pay thereafter money on events relating to horse-races:—

*Held*, that the conviction was right. *REG. v. STODDART* — *C. C. R. [1900] W. N. 258*  
*Reported [1901] 1 Q. B. 177.*

7. — *Illegal consideration—Cheque—Bet on horse-race—9 Anne, c. 14—Gaming Act, 1835 (5 & 6 Will. 4, c. 41), s. 1.*

Where a cheque was given by the debt. in payment of bets upon horse-races lost by him, and indorsed by the payee to the plt. for value with notice of the consideration for which it was given:—

*Held*, that the plt. could not maintain an action upon the cheque, as it must be deemed by virtue of 5 & 6 Will. 4, c. 41, to have been given for an illegal consideration. *WOOLF v. HAMILTON*

*C. A. [1898] 2 Q. B. 357*

— *Judgment in respect of wagering transaction.*  
See *BANKRUPTCY—Scheme of Arrangement*. 224.

**GAMING—continued.**

8. — *Lottery—Newspaper—Betting Acts*, 1853 (16 & 17 Vict. c. 119), ss. 1, 3, 4; 1874 (37 & 38 Vict. c. 15), s. 3, sub-s. 3.

The defts. published a newspaper containing coupons to be filled up by purchasers of the paper with the names of the horses selected by the purchasers as likely to come in first, second, third, and fourth in a race. For every coupon filled up after the first the purchaser paid a penny, and the defts. promised a prize of 100l. for naming the first four horses correctly:—

*Held*, that the transaction was not a lottery, nor betting, and the defts. were not liable to be convicted either for selling chances in a lottery or for keeping their office as a betting-house. *STODDART v. SAGAR*. *SAGAR v. STODDART*

Div. Ct. [1895] 2 Q. B. 474

Referred to by C. A. *Hull v. Cox*, [1899] 1 Q. B. 198, 200.

9. — *Partnership—Money paid in respect of agreement void under 8 & 9 Vict. c. 109—Agreement by way of gaming or wagering—Gambling partnership—Bets paid by one partner—Claim for contribution—Gaming Act*, 1892 (55 & 56 Vict. c. 9), s. 1.

Where one person advanced money to another for the purpose of making bets on horses on their joint account, and the money so advanced was lost on such bets:—

*Held*, that, by reason of the provisions of the Gaming Act, 1892, the person who had advanced the money could not maintain an action against the other for half of the amount so lost.

*Tatam v. Reeve*, [1893] 1 Q. B. 44, approved of. *SAFFERY v. MAYER* C. A. [1900] W. N. 242; see [1901] 1 Q. B. 11

— Partnership, Gambling.

See PARTNERSHIP—Accounts. 4, 5.

10. — “Place”—*Defined place where betting carried on—Betting Act*, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.

The respondent, a bookmaker, and his clerk entered inclosed grounds in which horse-races were being carried on, and put up a cane structure about five feet high with four legs or supports, and having on the top a board on which were painted the words “Bob Patch” (the respondent’s name), “London. All in run or not—pay first past the post.” Before each race the odds offered by the respondent against the various horses running were written on the board. He stood on a box placed close to the structure, and invited people to bet with him; and, assisted by his clerk who stood near, made bets on each race with backers of the horses running:—

*Held*, on these facts that the respondent had used a “place for the purpose of betting with persons resorting thereto,” within the meaning of 16 & 17 Vict. c. 119, s. 1. *BROWN v. PATCH*

Div. Ct. [1899] W. N. 46; [1899] 1 Q. B. 892

11. — “Place” used for betting—*Archway in street—Betting Act*, 1853 (16 & 17 Vict. c. 119), ss. 1, 3—*Criminal Law*.

The prisoner was in the habit of going to an archway which was a private thoroughfare leading from a public street into a yard containing dwelling-houses, stables, and workshops, for the

**GAMING—continued.**

purpose of betting with persons resorting to him there:—

*Held*, that the archway was a “place” within the meaning of the Betting Act, 1853, and that the prisoner was rightly convicted under that Act.

*Powell v. Kempton Park Racecourse Co.*, [1897] 2 Q. B. 242; [1899] A. C. 143, considered. *REG. v. HUMPHREY* C. C. R. [1898] 1 Q. B. 875

12. — “Place” used for betting—“*Betting with persons resorting thereto*”—*Betting Act*, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.

The respondent, a professional bookmaker, was charged with using a certain place called “The Pit Heap” for the purpose of betting with persons resorting thereto upon contingencies concerning horse-races.

The Pit Heap was a piece of ground, comprising about one-eighth of an acre, bounded by various buildings and hoardings and a row of posts and a road. It was occasionally occupied by shows, for which rent was paid to the owner; otherwise the public had free access. On the day in question no one was in personal charge of it. On that day the Lincolnshire Handicap was run. In the morning a crowd began to assemble on the Pit Heap, and soon afterwards the appellant came on to the ground, and stationed himself at a point on it, with his back against a hoarding, where he remained about three hours. During that time men in the crowd came to him, gave him money, and made bets with him on the Lincolnshire Handicap, of which he made entries in his betting-book.

The justices found that the spot where the appellant stood was a “place,” and was used by him “for the purpose of betting with persons resorting thereto,” within the meaning of the Betting Act, 1853.

On a case stated:—

*Held*, that the decision of the justices was right, and the appellant was rightly convicted under s. 3. *McINANEY v. HILDRETH*

Div. Ct. [1897] 1 Q. B. 600

13. — “Place” used for betting—“*Betting with persons resorting thereto*”—*Payments of bets made elsewhere—Betting Act*, 1853 (16 & 17 Vict. c. 119), s. 1.

The respondent, a bookmaker, was charged with using the bar of a beerhouse for the purpose of betting with persons resorting thereto. He went to the beerhouse on several days, at the same hour in the evening of each day, and persons who had made bets with him elsewhere, and had won, came to the beerhouse, and he paid the bets to them in the bar.

On a case stated by a police magistrate:—

*Held*, that paying bets, previously made elsewhere, was not using the bar for the purpose of betting with persons resorting thereto, within the meaning of the Betting Act, 1853, s. 1, and the respondent could not be convicted. *BRADFORD v. DAWSON*

Div. Ct. [1897] 1 Q. B. 307

14. — “Place” used for betting—*Racecourse—Inclosure on “Place kept and used”—Betting Act*, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.

Adjacent to a racecourse there was an uncovered inclosure of about a quarter of an acre,

**GAMING—continued.**

fenced in by iron rails, to which when race-meetings were held the public were admitted by the owners of the racecourse on payment of an entrance fee. Among the five hundred to two thousand persons so admitted were always one or two hundred professional bookmakers, and most of the persons admitted, other than the bookmakers, went for the purpose of backing horses with the bookmakers, but some did not bet at all. The bookmakers, who were accompanied by their clerks, did not use any apparatus such as a desk, stool, umbrella, or tent, but any particular bookmaker was usually to be found in or near the same part of the inclosure, calling out the odds to attract backers. In some cases the backers were required by the bookmakers to deposit their stakes; in others credit was allowed. This use of the inclosure was known to and permitted by the owners thereof:—

*Held*, affirming the decision of the C. A., [1897] 2 Q. B. 242 (Lords Hobhouse and Davey dissenting), that the inclosure so used was not "a place opened, kept or used" for the purposes prohibited by the Betting Act, 1853.

*Held, contra* (by Lord Hobhouse and Davey), that the inclosure was a "place kept and used" by the owners for the purpose of the bookmakers who used it betting with persons resorting thereto, and (by Lord Davey) for the purpose also of the bookmakers receiving deposits of money on bets, and that the case fell within the Act.

*Hawke v. Dunn*, [1897] 1 Q. B. 579, overruled. *POWELL v. KEMPTON PARK RACECOURSE CO.*

**H. L. (E.) [1899] W. N. 32 (3); [1899] A. C. 143**

Referred to by Div. Ct. *Belton v. Bushy*, [1899] 2 Q. B. 380, 383.

**15. — "Place" used for — Inclosure on racecourse—Betting by bookmaker in various parts of inclosure—"Betting with persons resorting thereto"—Betting Act, 1853 (16 & 17 Vict., c. 119), ss. 1, 3.**

The respondent, a professional bookmaker, was charged with unlawfully using a certain place, to wit, an inclosure situated upon a racecourse, for the purpose of betting with persons resorting thereto, on contingencies relating to horse-races.

The inclosure was contained within the racecourse, which was itself inclosed. Admittance was obtained by payment—to the racecourse of 1s., to the inclosure of 1l. At a race-meeting the respondent, accompanied by his clerk, was admitted within the inclosure, where he shouted the odds against the horses about to run, inviting persons to bet with him. The backer in each case was required to pay the money for which he backed the horse to the respondent, and received a ticket bearing the names of the respondent and the horse, and the odds laid. If the horse won the respondent repaid to the backer his stake, and paid him the odds. The respondent did not confine himself to any fixed spot in the inclosure, and had no apparatus to denote the spot where he carried on his operations, but moved about and made bets in various parts. He had no control over the management of the inclosure.

On a case stated by justices:—

**GAMING—continued.**

*Held*, that the inclosure was a "place," and was used for the purpose of the respondent "betting with persons resorting thereto," within the meaning of the Betting Act, 1853, s. 1, and therefore the respondent was liable to be convicted under s. 3. *HAWKE v. DUNN*

**Div. Ct. [1897] 1 Q. B. 579**

Overruled by H. L. (E.). *Powell v. Kempton Park Racecourse Co.*, [1899] A. C., 143. See preceding Case.

**16. — "Place" used for purposes of betting—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 3.**

The respondent was in the habit of going to a certain piece of ground, which was bounded on one side by a hoarding and on two other sides by stays supporting the hoarding, for the purpose of betting with persons resorting thereto:—

*Held*, that the piece of ground was a "place" within the meaning of 16 & 17 Vict. c. 119, s. 3, and that the respondent ought to have been convicted under that section. *LIDDELL v. LOFT-HOUSE*

**Div. Ct. [1896] 1 Q. B. 295**

Referred to by Darling J. *Brown v. Patch*, [1899] 1 Q. B. 892, 896.

**17. — Principal and broker—Illeged gambling transactions—Quebec, Law of—Gaming Act, 1845 (8 & 9 Vict. c. 109).**

Art. 1927 of the Civil Code of Lower Canada (Quebec) does not differ substantially from s. 18 of the Gaming Act, 1845, and renders null and void all contracts by way of gaming and wagering. *FORGET v. OSTIGNY* **P. C. [1895] A. C. 318**

**18. — Public-house, Bar of—Place "used" for betting—Betting Act, 1853 (16 & 17 Vict. 119), s. 3.**

A bookmaker was in the habit of attending at the bar of a licensed beerhouse daily at certain hours for the purpose of betting with persons resorting thereto, and he carried on there a business of ready-money betting with the knowledge and permission of the licensed occupier of the beerhouse. His hours of attendance at the beerhouse were known to his customers, who came there for the purpose of transacting betting business with him. The beerhouse keeper had no interest in the bets made, and the bookmaker had no interest in or control over the business of the beerhouse or the house itself:—

*Held*, that the bookmaker "used" the bar of the beerhouse for the purposes prohibited by the Betting Act, 1853. *BELTON v. BUSBY AND WOODS*

**Div. Ct. [1899] W. N. 115; [1899] 2 Q. B. 380**

**19. — Public-house—Using public-house bar for betting with persons resorting thereto—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1.**

On each of three days the deft. was in the bar of a beerhouse, and persons came in, took slips of paper which were hanging on the wall, wrote on them the names of the horses they wished to back, and handed the slips with the money inclosed to deft. On one day he received two slips containing money in the bar, but as a rule he went outside and received the slips and money on the doorstep of the house:—

*Held*, that there was evidence to go to the jury that deft. had used the bar for the purpose

**GAMING—continued.**

of betting with persons resorting thereto on each of the days. *REG. v. WORTON*

C. C. R. [1895] 1 Q. B. 227

Referred to by *Hawkins J. Hawke v. Dunn*, [1897] 1 Q. B. 579, 597. See No. 15, above.

**20. — Public-house—Using public-house tap-room for betting.**

The respondent was the occupier of a beer-house, and it was shown that he knowingly permitted a bookmaker to come into the taproom and use the room for the purpose of betting with persons who frequented the beerhouse:—

*Held*, that, although the bookmaker did not occupy any fixed part of the room, the respondent was guilty of an offence under ss. 1, 3 of the Betting Act, 1853. *HORNSEY v. RAGGETT*

Div. Ct. [1892] 1 Q. B. 20

Referred to by *H. L. (E.). Powell v. Kempton Park Racecourse Co.*, [1899] A. C. 143, 173.

— Public resort—Betting—Private ground used for—“Place of public resort”—By-laws—Validity.

See CORPORATION. 1, 2.

**21. — Recovery—Money paid “in respect of” bets—Gaming Act, 1892 (55 & 56 Vict. c. 9).**

The Gaming Act, 1892, is not retrospective:—

*Held*, therefore, that a person who has paid betting losses for another, before the Act was passed, may still bring an action to recover the money so paid. *KNIGHT v. LEE*

Div. Ct. [1893] 1 Q. B. 41

**22. — Recovery—Money paid “in respect of” bets—8 & 9 Vict. c. 109—Gaming Act, 1892 (55 & 56 Vict. c. 9), s. 1.**

The deft. asked the plt. to pay money to four men, which he did. The money was due to them from the deft. on betting transactions, but there was no evidence that the plt. knew that the payments were for bets:—

*Held*, that the money was paid in respect of a gaming contract within s. 1 of the Gaming Act, 1892, and that the plt. could not recover. *TATAM v. REEVE* — Div. Ct. [1893] 1 Q. B. 44

**23. — Speculative purchases of stock—Stock-broker.**

Where a stockbroker is employed to make and makes actual contracts for the purchase and sale of stocks, in each case completed by delivery and payment, on behalf of a principal whose object is not investment but speculation, the broker's contracts are not gaming contracts within the Gaming Act, 1845. *FORGET v. OSTIGNY*

P. C. [1895] A. C. 318

**24. — Speculative transactions in shares—Anonymous associations or syndicates—Natal, Law of.**

The law of Natal does not render it illegal for any person or association to buy and sell shares as a speculation. *LAUGHTON v. GRIFFIN*

P. C. [1895] A. C. 104

**25. — Stakeholder—Action to recover stake—Gaming Act, 1845 (8 & 9 Vict. c. 109).**

Money deposited with a stakeholder to abide the result of a foot-race between the depositor and a third person is not money paid under or in

**GAMING—continued.**

respect of a wagering contract within the Gaming Act, 1892, and therefore, if demanded by the depositor from the stakeholder before payment over to the third person, can be recovered by action. *O'SULLIVAN v. THOMAS*

Div. Ct. [1895] 1 Q. B. 698

Referred to by *C. A. Burge v. Ashley & Smith, Ltd.*, [1900] 1 Q. B. 744, 746.

**26. — Stakeholder—Recovery of deposit from—Shareholder—Wagering—Agreement by way of—Gaming Act, 1845 (8 & 9 Vict. c. 109)—Gaming Act, 1892 (55 & 56 Vict. c. 9), s. 1.**

The Gaming Act, 1892, s. 1, does not prevent the recovery by the depositor from the stakeholder of money deposited to abide the event of a wager.

*O'Sullivan v. Thomas*, [1895] 1 Q. B. 698, approved of. *BURGE v. ASHLEY & SMITH, LD.*

C. A. [1900] W. N. 63; [1900] 1 Q. B. 744

— Stock Exchange—Gaming and wagering contracts.

See Cases under STOCK EXCHANGE.

**27. — Stock Exchange—Payment of differences—Money deposited as cover—Action to recover back money—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.**

In an action to recover back money deposited as cover for differences which might arise on gambling transactions in stocks and shares, it appeared that the money was treated by the defts., to the knowledge of the plt., as appropriated to meet his losses to the defts., and that the whole amount had been so appropriated before the plt. gave notice to terminate the gambling transaction:—

*Held*, that the plt. could not recover.

The Gaming Act, 1845, applies equally to money or valuable things deposited with the other party to the bet as to those deposited with a stakeholder. *STRACHAN v. UNIVERSAL STOCK EXCHANGE (No. 2)* — C. A. [1895] 2 Q. B. 697

Referred to. *In re Cronmire*, C. A. [1898] 2 Q. B. 383, 395.

**28. — Stockbroker—Purchase and sale of shares—Payment of differences—Balance due from broker—Purchase of shares from broker—Balance to be taken in payment—Breach of contract by not delivering—“Cover”—“Money deposited to abide the event”—Bankruptcy—Proof—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.**

Gaming contracts between a stockbroker and his client, for differences on the sale and purchase of stocks and shares, resulted in a balance in favour of the client. It was agreed that the broker should sell certain stock to the client which he would accept in payment of the balance due to him, and in pursuance of this agreement a contract note was forwarded by the broker. The stock was not delivered, and the client sought to prove in bankruptcy, against the estate of the broker, for damages for non-delivery of the stock:—

*Held*, reversing the judgment of *Wright J.*, that, as the balance resulting from the gambling transactions could not have been recovered from the broker, there was no consideration for the promise to deliver the stock, and no proof could be admitted in respect of the non-delivery.

**GAMING—continued.**

The client had deposited money with the broker as cover to secure him against loss on the gaming transactions which had resulted in a balance in favour of the client:—

*Held*, affirming the judgment of Wright J., that, the money deposited not having been used for the purpose for which it was deposited, proof in respect of the amount was admissible. *In re CROMMIE. Ex parte WAUD*

C. A. [1898] 2 Q. B. 383

29. — *Streets—Betting—Wagering—London County Council—By-law—Validity—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 16—Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 23.*

A by-law made by the London County Council provided that “no person shall frequent and use any street or other public place, on behalf either of himself or any other person, for the purpose of bookmaking, or betting, or wagering, or agreeing to bet or wager, with any person, or paying or receiving, or settling bets”:—

*Held*, that this by-law was within the power conferred by s. 23 of the Municipal Corporations Act, 1882 (applied to county councils by s. 16 of the Local Government Act, 1888), to make by-laws for the “good rule and government” of the county; that it was not repugnant to s. 23 of the Metropolitan Streets Act, 1867, and was reasonable, and therefore valid.

Decision of Kekewich J. affirmed.

*White v. Morley*, [1899] 2 Q. B. 34, and *Burnett v. Berry*, [1896] 1 Q. B. 641, approved.

*Strickland v. Hayes*, [1896] 1 Q. B. 290, and *Calder and Hebble Navigation Co. v. Pilling*, (1845) 14 M. & W. 76, distinguished. *THOMAS v. SUTTERS* — C. A. [1900] 1 Ch. 10

30. — *Streets—Betting in streets—Statutory enactment—Local Government—By-law—Repugnancy—Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 23.*

A by-law made by the London County Council provided that no person should frequent and use any street or other public place for the purpose of betting, under a penalty. By s. 23 of the Metropolitan Streets Act, 1867, any three or more persons assembled together in any part of a street for the purpose of betting shall be deemed to be obstructing the street, and each of them shall be liable to a penalty:—

*Held*, that the by-law was not repugnant to s. 23, and was valid. *WHITE v. MORLEY*

Div. Ct. [1899] W. R. 67; [1899] 2 Q. B. 34

Approved of by C. A. *Thomas v. Sutters*, [1900] 1 Ch. 10. See preceding Case.

31. — *Streets—Betting in—Local authority—London County Council—By-law—Validity—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 16—Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 23.*

A by-law made by the London County Council provided that “no person shall frequent and use any street or other public place, on behalf either of himself or any other person, for the purpose of bookmaking, or betting, or wagering, or agree-

**GAMING—continued.**

ing to bet or wager, with any person, or paying or receiving, or settling bets”:—

*Held*, that this by-law was within the power conferred by s. 23 of the Municipal Corporations Act, 1882 (applied to county councils by s. 16 of the Local Government Act, 1888), to make by-laws for the “good rule and government” of the county; that it was not repugnant to s. 23 of the Metropolitan Streets Act, 1867, and was reasonable, and therefore valid.

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*Strickland v. Hayes*, [1896] 1 Q. B. 290, and *Calder and Hebble Navigation Co. v. Pilling*, (1845) 14 M. & W. 76, distinguished. *THOMAS v. SUTTERS* — C. A. [1899] W. N. 206 [1900] 1 Ch. 10

32. — *Street—Wagering in street—Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38), s. 3.*

In order to convict on an information charging a person that he did unlawfully bet, by way of wagering, in a certain street, with certain articles used as a means of such wagering, to wit, written papers and coins, contrary to the Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38), s. 3, it is necessary to allege and prove that he was guilty of wagering or gaming at some game or pretended game of chance. *RIDGEWAY v. FARNDALE* — Div. Ct. [1892] 2 Q. B. 309

33. — *Sweepstake—House used for purpose of a—Criminal law—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*

A person who permits his house to be used for the sale of tickets and the receipt of purchase-money for such tickets in an ordinary sweepstake on a horse-race does not commit any offence against the Betting Act, 1853. *REG. v. HOBBS*

C. C. R. [1892] 2 Q. B. 647

— Undischarged bankrupt—After-acquired property—Wagering contract—Stakes claimed by trustee.

See BANKRUPTCY. 259.

34. — *Unlawful games—“Baccarat”—“Chemin de fer,” 33 Hen. 8, c. 9, s. 11; 17 & 18 Vict. c. 38, s. 4.*

In a covenant in a lease not to play “baccarat,” “chemin de fer baccarat” is included. “Chemin de fer baccarat” is an unlawful game in the same sense as is “baccarat banque.” *FAIRLOUGH v. WHITMORE*

*Stirling J.* [1895] W. N. 52

— Lottery—Newspaper.

See No. 8, above.

35. — *Wager—Advertisement—Fulfilment of conditions.*

The proprietors of a medical preparation advertised that they would pay 100l. to any person who caught influenza after using the preparation in and for a certain manner and period. A person who complied with these conditions caught the influenza:—

*Held*, that the above facts established a contract which was neither a contract by way of wagering within the Gaming Act, 1845, nor a

**GAMING**—*continued*.

policy within 14 Geo. 3, c. 48, s. 2, and that the 100l. was recoverable. *CARLILL v. CARBOLIO SMOKE BALL CO. Hawkins J. [1892] 2 Q. B. 484; affirmed by C. A. [1893] 1 Q. B. 256*

36. — *Wagering—Agreement by way of loan of money to pay deposit—Condition for repayment on winning stakes—Right to recover loan—Gaming Act, 1892 (35 & 56 Vict. c. 9), s. 1.*

The Gaming Act, 1892, enacts that any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered void by the Gaming Act, 1845, shall be null and void, and no action shall be brought or maintained to recover any such sum of money.

The deft. entered into a wagering contract with a third party and money was paid by the plt. at the request of the deft. to a stakeholder to abide the event of the wager. The money was to be repaid by the deft. if he received the stakes, which he did. In an action to recover the money:—

*Held*, that the payment made by the plt. to the stakeholder was made in respect of a contract made void by the Gaming Act, 1845, and the contract to repay it was within the terms of the Gaming Act, 1892, and was void. *CARNEY v. PLIMMER — C. A. [1897] 1 Q. B. 634*

Referred to by C. A. *Burge v. Ashley & Smith, Ltd., [1900] 1 Q. B. 744, 748.*

**GARDEN**—*Covenant to keep a garden “open and unbuild upon” —Urinal.*

*Semble*, the erection of a public urinal may not be a breach of a covenant to keep a garden open and unbuild upon, and may not be a nuisance. *GRAHAM v. CORPORATION OF NEWCASTLE-ON-TYNE Kekewich J. [1892] W. N. 134*

*See also [1893] 1 Q. B. 643.*

2. — *Disused churchyard — Public garden—Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34) s. 5.*

Faculty granted to allow use of closed churchyard as a public garden, subject to certain rules as to vaults still kept in repair. *VICAR, &C., OF ST. BOTOLPH WITHOUT ALDGATE v. PARISHIONERS OF SAME (No. 2) Consist. Ct. of London [1892] P. 173*

— *Market-garden — “Agricultural land” — “Buildings.”*

*See RATES—Rateability. 34.*

**GARDENER**—*Market gardener.*

*See MARKET-GARDEN.*

**GARNISHEE.**

*See Cases under ATTACHMENT.*

**GAS**—*Arrears of gas rate—Refusal to supply receiver until arrears due from company paid—Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 16—Gas Light and Coke Company's Act, 1872 (35 & 36 Vict. c. xxxiii.), s. 18.*

A limited co. (M. & Co.) was supplied with gas by a gas co. In Feb., 1896, P. was appointed manager and receiver of the business of M. & Co. by debenture-holders, and shortly afterwards P. and S. were appointed by the Court joint receivers and managers in an action on behalf of a higher class of debenture-holders. They

**GAS**—*continued*.

entered and carried on the business, and were supplied with gas by the gas co. At the time when P. was appointed there was due to the gas company 90l. for gas supplied to M. & Co. The gas co. threatened to cut off the supply unless the 90l. arrears was paid, and the receiver brought an action to restrain them. Kekewich J. granted an injunction to restrain them from doing so, holding that the receivers were new tenants entitled in their own right to a supply of gas without liability for the arrears due from M. & Co.:—

*Held*, on appeal, that the relation of the plts. to M. & Co. was not that of incoming and outgoing tenant, but of caretaker and owner, and that the plts. were in no better position against the gas company than M. & Co. were, and could not claim a supply of gas except on payment of the arrears. *PATERSON v. GAS LIGHT AND COKE CO. — C. A. [1896] 2 Ch. 476*

Referred to by C. A. *In re Marriage, Neave & Co., [1896] 2 Ch. 663, 676.*

2. — *Gasworks—Statutory Duty—Breach—Remedy—Whether action lies—Supply of gas—Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), ss. 11, 12, 36.*

An action will not lie against a gas co., to which the provisions of the Gasworks Clauses Act, 1871, apply, for damages sustained by a consumer by reason of their failure to give him a supply of gas sufficient in amount and in purity to satisfy the requirements of the Act. The consumer's only remedy is to proceed for penalties under s. 36 of the Act. *CLEGG, PARKINSON & CO. v. EARBY GAS CO. [1896] 1 Q. B. 592*

— *Income tax on profits of corporation.*

*See REVENUE—Income Tax. 106.*

3. — *“Occupier” — Supply — Payment of arrears—Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), ss. 11, 39—Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 16—Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125) ss. 4, 14–19, 39—Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41) ss. 11, 39.*

A gas co. cut off the gas from premises, then occupied by the official receiver, until all the arrears owing by the debtor were paid. The receiver paid under protest:—

*Held*, that the trustee in bankruptcy could not recover the money so paid, for the receiver was not in the position of an incoming tenant to whom gas must be supplied without payment of arrears, but the occupation of the debtor continued notwithstanding the receiving order. *In re SMITH. Ex parte MASON*

*V. Williams J. [1893] 1 Q. B. 323*

Referred to by C. A. *Paterson v. Gas Light and Coke Co., See No. 1, above.*

— *Right to stop supply of gas generally—Law of Canada.*

*See CANADA. 9.*

4. — *Statutory obligation—Supply interrupted by exceptional frost—Richmond Gas Act, 1867 (30 & 31 Vict. c. c.)—Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41) ss. 24, 26—Richmond Gas Act, 1881 (44 & 45 Vict. c. xxxv.).*

A gas co. was by its special Acts required to

**GAS**—*continued.*

supply a statutory minimum of gas to the public lamps in Richmond for a fixed annual sum per lamp. The gas co. failed to supply the statutory quantity of gas during a severe frost, and the corporation declined, in consequence, to pay the full amount of the statutory annual charge for each lamp:—

*Held*, that the failure of the co., through vis major, to fulfil their statutory obligation did not excuse the corporation from fulfilling theirs, and that they must pay the full annual charge per lamp, although they did not receive the full amount of gas. *In re RICHMOND GAS CO. AND RICHMOND (SURREY) CORPORATION*

Div. Ct. [1893] 1 Q. B. 56

— Surface, Letting down—Gas company—Statutory powers—Nuisance—Ancient lights, Interference with—Injunction.  
*See* SUPPOT. 1.

— Wires underground—Power to lay wires underground—Right to excavate streets.  
*See* CANADA. 63.

**GAS FLOAT**—Salvage—Jurisdiction—County court.  
*See* SHIPPING—Salvage. 239.

**GAS MAINS**—Rating of.  
*See* RATES—Rateability. 26.

**GATES**—Chancel screen.  
*See* ECCLESIASTICAL LAW—Faculty. 15—18.

**GAVELKIND**—Title deduced from infant heir.

Circumstances under which a purchaser of gavelkind land was held entitled to refuse to accept the title, infant heirs in gavelkind being proved to have executed feoffments to the vendor upon an insufficient consideration. *In re MASKELL AND GOLDFINCH'S CONTRACT*

Stirling J. [1895] 2 Ch. 525

**GENERAL AVERAGE**—Marine Insurance.  
*See* Cases under INSURANCE—Marine.

— Shipping.  
*See* SHIPPING—Average.

**GENERAL COUNCIL OF THE BAR**—Criminal business at Assizes—Report. W. N. 1899 (July 1), p. 236. *See* Current Index, 1899, p. cxviii.

Retainer—Rule 20—Etiquette—Public Analyst practising at the Bar. W. N. 1899 (Jan. 21), p. 45. *See* Current Index, 1899, p. cxix.

Non-payment of counsel's fees. W. N. 1899 (Oct. 28), p. 312. *See* Current Index, 1899, p. cxix.

Etiquette—Report. W. N. 1900 (Dec. 8), p. 331. *See* Current Index, 1900, p. xc.

Re the proportion of the Fees of Junior Counsel to those of their Leaders in Civil proceedings—Report. W. N. 1900 (Dec. 8), p. 329. *See* Current Index, 1900, p. lxxxviii.

**GENERAL MEETINGS**—Company practice.  
*See* COMPANY—Meetings.

**GENERAL ORDERS AND RULES.**

For List of Rules and Orders of Court judicially considered during 1891—1900, *see* Table of Rules judicially considered, at p.

**GENERAL WORDS**—Adjoining houses—Simultaneous conveyance of houses to different persons—Right of way.  
*See* WAY, RIGHT OF.

— Building land—Light—Derogating from grant.  
*See* VENDOR AND PURCHASER. 40.

— Things ejusdem generis—Construction of deed.  
*See* DEED. 1.

**GEOGRAPHICAL NAME**—Invented name—"Eboline."  
*See* TRADE-MARK—Registration. 40.

**GERMANY**—German protectorates in Africa, New Guinea, and Pacific—Extradition from.  
*See* EXTRADITION.

— Tonnage of ships.  
*See* SHIPPING—Tonnage.

**GIBRALTAR.**

Application of Colonial Probates Act, 1892, to.  
*See* PROBATE—Colonial Probates Act, 1892.

**Death Duties.**

*See* REVENUE—Estate Duty.

Regs. dated Dec. 19, 1898, for control of Admiralty Waters at. Lond. Gaz. Jan. 13, 1899, pp. 223—225.

1. — Criminal jurisdiction and procedure—Supreme Court at Gibraltar—Morocco Consular Court—Trial at Gibraltar should be by jury.

The Consular Court of Morocco and the Supreme Court of Gibraltar having a concurrent jurisdiction in the matter of an offence charged against the appellant, he was arrested in London and ordered by the Q. B. Div. to be tried before the Supreme Court at Gibraltar.

*Held*, that as an incident to that order he was entitled to be tried according to the procedure of that Court, that is (see s. 38 of the Gibraltar Order in Council), by a jury. *SPILSBURY v. REG.*  
P. C. [1899] A. C. 392

**GIFT TO CHARITY.**

*See* Cases under CHARITY—Gift to Charity.

**Satisfaction of Debt by Legacy.**

*See* DEBT. 2.

**1.—Verbal gift—Sufficiency.**

A husband assigned his furniture for valuable consideration to his wife's father. The father subsequently gave it verbally to the wife. The furniture had not been moved from the husband's house:—

*Held*, that manual delivery was not necessary to complete the verbal gift to the wife, but that possession was given and taken, and that the gift was complete and good against the husband's creditors. *KILPIN v. RATLEY. RATLEY CLAIMANT*  
Div. Ct. [1892] 1 Q. B. 582

— Voluntary gift.  
*See* Cases under VOLUNTARY GIFT.

— Will—Gift by.  
*See* Cases under WILL.



**GIRL**—Carnal knowledge of.See **CRIMINAL LAW**. 48—51.**GLASGOW BANK LIQUIDATION ACT, 1882**—

Income tax—Profits and gains.

See **REVENUE**—Income Tax. 88.**GLASGOW POLICE ACTS**—Repair of drain—  
Substituting new drain.See **SCOTTISH LAW**—Sewers. 39.**GLASSHOUSE**—“Improvements”—“Ameliorating waste”—*Agricultural Holdings (England) Act*.

Glasshouses erected on a farm for the growth of hothouse produce for the market held to be “improvements” within the *Agricultural Holdings Act, 1883*. *MEUX v. COBLEY*

Kekewich J. [1892] 2 Ch. 253

—Rating—Market garden—“Agricultural land.”

See **RATES**—Rateability. 34.**GLEBE**.See **ECCLESIASTICAL LAW**—Glebe.**GOLD COAST**—Application of Colonial Probates Act, 1892, to.See **PROBATE**—Colonial Probates Act, 1892.

—Death duties.

See **REVENUE**—Estate Duty.**Law of the Gold Coast.**1. — *Bankruptcy—Jurisdiction.*

The Supreme Court of the Gold Coast had no bankruptcy jurisdiction in 1877, and therefore could not act as an auxiliary to the English Court under s. 74 of the *Bankruptcy Act, 1869*. *CALLENDER, SYKES & Co. v. COLONIAL SECRETARY OF LAGOS AND DAVIES*. *WILLIAMS v. DAVIES*

P. C. [1891] A. C. 460

2. — *Barrister and solicitor—Order striking off the roll reversed—Practice.*

Where the Court, having rightly acquitted a barrister and solicitor of fraudulent intent in having antedated a mortgage deed which he had drawn for the mortgagor, and in having inserted in it the sum of 250*l.* for 150*l.*, nevertheless removed his name from the roll for having put the mortgage in evidence on behalf of the mortgagee in an interpleader suit without informing the Court that the date was false:—

*Held*, that the second charge fell with the first, there being no evidence that the appellant had any reason to believe that the mortgagee had not, as he stated in evidence, advanced the consideration mentioned in the deed at or before the date it bore; and it also appearing that it was immaterial to the question at issue on the interpleader whether the deed was antedated or not. *Ex parte RENNER* — P. C. [1897] A. C. 218

**GOLD MINES.**See **MINES**—Gold Mines.**GOLF**—Agreement—Lease or licence—Interest in land—Golf ground—Fencing round putting greens—Custom.

By agreement the defts. agreed to let and the plts. to take all that full and free right and liberty for the plts. and other members of the club and their friends to play golf on the fields in question exclusive of all other persons. The

**GOLF**—continued.

plts. were empowered to do all such work as they might deem requisite for preparing and laying of putting greens, mowing and keeping down rank or rough grass, and otherwise laying out and improving the golf course and for keeping the same in condition. They had power to put up a movable pavilion and to put up stiles over the hedges. The defts. agreed not to mow the fields, but to keep them grazed. The plts. had put up posts round the putting greens with a single iron wire round to keep cattle and horses from the putting greens. The defts. had removed the posts and wire, which they complained of as being dangerous to horses and cattle, and as interfering with grazing on the putting greens. The plts. claimed a mandatory injunction to compel the defts. to restore the fences. The defts. put in a counter-claim for damages for (inter alia) mowing more grass than the agreement allowed, and injury to a horse from the wire fencing, and an injunction to restrain the plts. from fencing in the putting greens. They raised, among other defences, the contention that the agreement was a mere licence and terminable at the defts.’ option, and not an agreement for a lease:—

North J. *held*, on the evidence of custom as to fencing putting greens, that no agreement to allow the greens to be fenced in could be implied; that the agreement did not give the plts. the exclusive right to occupy any part of the land, and amounted to a mere licence. He dismissed the action and gave the defts. assessed damages and costs. He refused them an injunction on the ground that, there being a mere licence they could revoke; an injunction would be futile. *EDWARDS v. SUMMERTON*

North J. [1899] W. N. 120

**GOODS**—Advertising goods for sale at wholesale price—*Damnum absque injuria*.See **TRADE COMPETITION**.

— Carriage of by sea.

See Cases under **CARRIER** and under **SHIPPING**—Charterparty.

— Distress.

See Cases under **DISTRESS**.

— Factor.

See Cases under **FACTOR**.

— Larceny of.

See Cases under **CRIMINAL LAW**—**Larceny**.1. — *Pledge to person in possession—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 25, sub-s. 1.*

A merchant sold wine stored in the cellars of a warehouseman, and afterwards pledged the wine to the warehouseman for advances made in good faith without notice of the sale:—

*Held*, that the pledge conferred no title to the wine. *NICHOLSON v. HARPER*

North J. [1895] 2 Ch. 415

— Sale of.

See Cases under **SALE OF GOODS**.

— Slander of—Comparison of plaintiff’s goods with those of defendant—Cause of action.

See **DEFAMATION**. 33.**GOODWILL**—Assignment—Validity.See **TRADE-MARK**—Registration. 40.

**GOODWILL**—*continued.*

- English trade-mark and—Foreign firm.  
*See* REVENUE—Stamps. 161.
- Leasehold interest in licensed house—Conveyance on sale.  
*See* REVENUE—Stamps. 152.
- Partnership.  
*See* PARTNERSHIP—Goodwill.
- Public-house—Real Estate Charges Act.  
*See* MORTGAGE—Rights of Mortgagee. 75.
- Stamp — Conveyance on sale — Contract “made” in the United Kingdom.  
*See* REVENUE—Stamps. 157.

**GOVERNMENT**—Agent of executive—Liability of servant of the Crown.  
*See* TRESPASS. 2.**GOVERNOR**—Power to appoint judges.  
*See* COLONY. 4.— Power to pardon—Contempt of Court.  
*See* COLONY. 3.**GRAIN**—Duty payable—Grain brought into port of London for sale.  
*See* LONDON—Grain Duty. 42.**GRANT**—Construction of deed of grant.  
*See* CANADA. 34.— Derogating from—Light—Building estate.  
*See* VENDOR AND PURCHASER. 40.— Incorporeal hereditament — Disturbance of rights of grantee.  
*See* FISHERY. 10.— Light and air.  
*See* Cases under LIGHT AND AIR.— Lost—Opening locks on river—Prescription.  
*See* EASEMENT. 4.— Reservation from grant — Redrock and coal neither having any commercial value—Injunction.  
*See* MINES. 23.— Reservation or—Eviction of grantee from part of land—Apportionment of rent-charge—Acreage or value.  
*See* RENT-CHARGE. 1.— Tolls—Prescriptive right—Extinguishment of old franchise by statute.  
*See* TOLLS. 1.— Water—Implied grant of supply of water—Equitable mortgagor.  
*See* EASEMENT. 8.— Way, right of.  
*See* Cases under WAY, RIGHT OF.**GRANT AD COLLIGENDUM**—Administration with the will annexed—Necessity for citation of heir-at-law.  
*See* PROBATE. 40.— Next of kin abroad—Necessity for the immediate sale of a business.  
*See* PROBATE. 47.**GRANT OF ADMINISTRATION.***See* Cases under PROBATE—Grant of Administration.**GRANT OF PROBATE.***See* Cases under PROBATE—Grant of Probate.**GRASS FIELD**—Trespass on—Actual damage—Malicious injury to property.  
*See* CRIMINAL LAW. 44.**GRAVEL**—Digging of.  
*See* Commons Act, 1899 (62 & 63 Vict. c. 30), s. 8.— Digging, for roads—Justices—Jurisdiction.  
*See* COMMON. 2.— Gravel pits—Direction to carry on business till, were exhausted.  
*See* WILL—Perpetuity. 161.**GRAZING**—Income tax—Grazing and shootings over farm—Separate leases.  
*See* REVENUE—Income Tax. 99.**GRAZING CONTRACT**—No parting with possession by occupier—Borough vote.  
*See* PARLIAMENT—Franchise. 49.**GREECE**—*Naturalization laws.* Parl. Papers, 1896 [C. 7869]. Price  $\frac{1}{2}$ d.**GREENHOUSE**—Ancient lights—Prescription—“Building”—Injunction.  
*See* LIGHT AND AIR. 9.**GREENWICH HOSPITAL ACT, 1898** (61 & 62 Vict. c. 24), amends the *Greenwich Hospital Acts* 1865 to 1892.**GRENADA (ISLAND OF).***See* PROBATE — Colonial Probates Act, 1892.**GROCER**—Assistant to, whether a “workman.”  
*See* MASTER AND SERVANT—Contract. 55.“**GROGGING**” — Prohibition against grogging casks which have contained spirits.  
*See* Finance Act, 1898 (61 & 62 Vict. c. 10), s. 4.**GROUND GAME.***See* Cases under GAME.**GROUND-RENT** — Costs of sanitary works — Leasehold houses—Capital or income.  
*See* SETTLED LAND. 62, 65.**GUARANTEE** — Bond — Construction — Recital and condition.  
*See* NEW SOUTH WALES. 23.— Charterparty — Colliery guarantee — Strike clause—Colliery on strike.  
*See* SHIPPING—Charterparty. 20.— Companies limited by guarantee, Provisions as to.  
*See* COMPANY—Guarantee.— Effect of, in Bankruptcy—Appropriation of money as payment — Construction of agreement.  
*See* BANKRUPTCY—Proof. 172, 173.— Frauds, Statute of.  
*See* FRAUDS, STATUTE OF. 3, 4.— Insurance.  
*See* INSURANCE—Guarantee.— Interest—Appropriation of payments—Banking account — Interest converted into principal.  
*See* INTEREST. 3.— *Lis alibi pendens*—Staying proceedings.  
*See* SHIPPING—Practice. 199.

**GUARANTEE**—*continued.*

— Release—Renewal—Variation.

*See* BILL OF EXCHANGE. 9.

— Surety.

*See* Cases under PRINCIPAL AND SURETY.**GUARANTEE SOCIETY**—Receiver and manager

—Surety—Premiums—Allowances.

*See* PARTNERSHIP—Receiver. 42.**GUARANTY**—Cautionary obligation.*See* SCOTTISH LAW—Guaranty. 16.**GUARD (RAILWAY)**—Whether a “workman”

—Sick and Accident Fund.

*See* MASTER AND SERVANT—Truck. 106.**GUARD-BOX**—Stop-cock—Repair—Right to break up street—Negligence.*See* WATER—Supply. 16.**GUARDIAN**—Costs—Jurisdiction of House of Lords over costs.*See* POOR LAW. 1.

— Grant of administration to clerk of—Pauper lunatic—Small intestacy.

*See* PROBATE—Grant of Administration. 54.

— Infant.

*See* Cases under INFANT.

— Poor Law.

*See* Cases under POOR LAW.**GUARDIAN AD LITEM.***See* INFANT—Guardian ad Litem.

— Divorce practice.

*See* DIVORCE—Lunacy. 90.

— Probate action.

*See* PROBATE—Grant of Probate. 97.**GUERNSEY**—*Appeals from—Order in Council dated May 13, 1823, and July 15, 1835, regulating appeals from Guernsey to Her Majesty in Council. St. R. & O. 1899, pp. 1677, 1680.*

— Telephone wires—Illegal stretching of telephone wires across public streets—Powers of local authority—Removal of wires.

*See* TELEPHONE. 2.**GUEST**—Loss of property—Liability of innkeeper.*See* INNKEEPER. 1, 2.

— Right of innkeeper to give notice to leave.

*See* INNKEEPER. 5.**GUILTY KNOWLEDGE.***See* FOOD. 3.**GUN BARREL PROOF ACT, 1868**—*Rules and regs. dated March 10, 1896, in lieu of those repealed. Lond. Gaz. March 24, 1896, p. 1889.***GUN LICENCE**—“Vermin”—Rabbits.*See* REVENUE—Gun Licence. 50.

## H.

**HABEAS CORPUS**—Appeal—Custody of infant.*See* APPEAL. 16.

— Costs—Discretion of Court.

*See* COSTS—Discretion of Court. 24.

— Extradition.

*See* EXTRADITION. 5.1. — *Impossibility of obeying writ.*

The Q. B. Div. made and the C. A. affirmed an order absolute for the issue of a writ of habeas corpus on the application of the mother of a boy against B., who before the commencement of the proceedings had without authority handed the boy over to a person to be taken to Canada:—

*Held*, by the H. L. (E.), that the writ was properly issued, on the ground that the applicant was entitled to have the facts fully investigated on the return:

*Semble*, that the writ ought not to be issued in cases where a person has at some time prior to its issue unlawfully detained or wrongfully parted with the custody of another:

*Semble*, also, that it is a good return to state that the detention had ceased before the issue of the writ. Decision of C. A., (1890) 24 Q. B. D. 283, affirmed with variation. *BARNARDO v. FORD*. *GOSAGE'S CASE* — H. L. (E.) [1892] A. C. 326

*See* Custody of Children Act, 1891 (54 & 55 Vict. c. 3), s. 3.

— Infant—Custody.

*See* Cases under INFANT—Custody.2. — *Practice—Civil proceedings—Necessary wiliness in custody—Motion or petition—Form of order.*

Upon motion that a writ of habeas corpus might issue to the governor of one of Her Majesty's prisons to bring up a person (in prison for contempt) to give evidence in an action in the Ch. Div., the Court made an order in accordance with Form V. given at p. 89 of *Seton on Decrees*, 1891 ed. vol. i., the order not to be given out until the probable date of trial should be ascertained, and then the date to be filled in by the registrar:—

*Semble*, the practice as stated in the Annual Practice (1897), p. 727, will not be followed. *JENKS v. DITTON* — Stirling J.

[1897] W. N. 56 (4)

**HACKNEY CARRIAGE**—Penalties for defrauding cabmen—Amendment of the law—*See* London Cab Act, 1896 (59 & 60 Vict. c. 27).

*Hackney and stage carriages*—O. dated Aug. 18, 1897, made under the Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115) by Secy. of State. St. R. & O. 1897, p. 477, No. 736.

Os. of Secy. of State dated April 26 and July 5, 1899, in pursuance of Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115). St. R. & O. 1899, No. 327; Lond. Gaz. July 14, 1899, p. 4345.

1. — *Cab—Negligence of driver—Liability of***HACKNEY CARRIAGE**—continued.

registered proprietor—London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86).

So far as the public is concerned, the registered proprietor of a hackney carriage is responsible for the acts of the driver whilst he is plying for hire, as if the relationship of master and servant existed between them, even though it does not in fact exist. *KEEN v. HENRY*

C. A. [1894] 1 Q. B. 292

2. — *Cab—"Place"—Railway station—Refusal of driver to drive hirer into station—London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), s. 17.*

By s. 17 of the London Hackney Carriage Act, 1853, "Every driver of a hackney carriage who shall refuse to drive such carriage to any place within the limits of this Act, not exceeding six miles, to which he shall be required to drive any person hiring or intending to hire such carriage," shall be liable to a penalty:—

*Held*, that the interior of a ry. station, although the private property of the ry. co., is a "place" within the meaning of the section. *Ex parte KIPPINS* Div. Ct. [1896] W. N. 158 (7);

[1897] 1 Q. B. 1

3. — *Driver's licence—Defacement—Chair-marking—"Matter of complaint"—Hackney Carriage Act, 1843 (6 & 7 Vict. c. 86), ss. 8, 22.*

Where the foreman of a cab-owner inserted two dates of leaving the service of the cab-owner in the appropriate column of a driver's licence, and also added his name:—

*Held*, that the entries were not in compliance with s. 8 of the Hackney Carriage Act, 1843, but amounted to a defacement of the licence, and that such defacement was a "matter of complaint" within s. 22 of the Act, and that though it was not alleged that the driver had actually been refused employment, there was evidence of loss or damage upon which the magistrate could award compensation. *NORRIS v. BIRCH*

Div. Ct. [1895] 1 Q. B. 639

— Negligence of driver.

*See* MASTER AND SERVANT. 77—82.

— Remedy for non-payment of cab fare.

*See* JUSTICES. 2.**HALL**—Office or—Inhabited house duty.*See* REVENUE—House Duty. 55, 56.**HANDWRITING**—Proof of, by comparison—Expert.*See* CRIMINAL LAW—Evidence. 20.**HARBOUR.***See* SHIPPING—Harbour.**HARBOUR AUTHORITY.***See* SHIPPING—Harbour.**HARBOUR DUES**—Quays—Rateability.*See* RATES—Rateability. 42.

**HARBOUR MASTER.**

See Cases under SHIPPING—Harbour.

**HARBOUR RATES**—Investment—Judicial factor—Curator bonis—Liability.

See TRUSTEE—Investments. 65.

**HARES**—Alienation of right to kill.

See GAME. 2—5.

**HASTINGS IMPROVEMENT ACT, 1885**—Drain, Liability to repair.

See SEWERS—Repairs. 31.

**HAVERING-ATTE-BOWER**—*O. in C. dated May 9, 1892, uniting the liberty of Havering-atte-Bower with the County of Essex.* St. R. & O. 1892, p. 104; Lond. Gaz. May 13, 1892, p. 2793.

**HAWKER**—Penalty—Sale by licensed hawkers of goods for which licence unnecessary. See MARKETS AND FAIRS.

**HEAT**—Damage to cargo by—Bill of lading—Exceptions—"Accidents of the seas." See SHIPPING—Exceptions. 129.

—Discharge and sale—Coal cargo—Policy—Loss of freight. See INSURANCE—Marine. 52.

—Nuisance—Injunction—Restaurant—Adjoining premises. See NUISANCES. 4.

**HEDGE**—Presumption—Acts of joint ownership. See BOUNDARY. 1.

**HEIGHT**—Of buildings. See LONDON—Buildings. 15, 16.

**HEIR**—Gift to for life. See WILL—Words. 216.

**HEIR-AT-LAW**—Grant of administration. See PROBATE—Grant of Administration. 39, 40.

**HEIRLOOMS**—Precatory trust—Words of request. See WILL—Precatory Trust. 170.

1. — *Sale of heirlooms—Application of proceeds of sale in repairing unsold heirlooms—Salvage—Jurisdiction—Settled Land Act, 1882 (45 & 46 Vict. c. 38) s. 37, sub-s. 2.*

The Court has jurisdiction to authorise trustees to pay out of the proceeds of sale of heirlooms the expenses of the repair and renovation of other heirlooms, consisting of pictures, settled by the same will and remaining unsold. *In re* COUNTESS WALDEGRAVE. EARL WALDEGRAVE v. EARL OF SELBORNE

North J. [1899] W. N. 240

2. — *Sale of heirlooms—Discretion of Court—Tenant for life, Extravagance of.*

*In re* HOPE'S SETTLEMENT

Chitty J. [1899] 2 Ch. 691, n.

3. — *Sale of heirlooms—Fetter on power of sale under Act—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 37, 51.*

There is no jurisdiction to sanction *ex post facto*, under s. 37 of the Settled Land Act, 1882, the sale of heirlooms, but where they have been sold to advantage the Court will protect the trustees by directing them to take no steps for the recovery of those sold. *In re* AMES. AMES v. AMES - - North J. [1893] 2 Ch. 479

**HEIRLOOMS—continued.**

4. — *Sale of heirlooms—Onus of proof—Tenant for life, Extravagance of—Remaindermen, Wishes of—Settlor, Intention of—Discretion of Court—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 37—Appeal—Hearing before two judges—Supreme Court of Judicature Act, 1889 (62 & 63 Vict. c. 6).*

A tenant for life applying to the Court under s. 37 of the Settled Land Act, 1882, for leave to sell heirlooms with a view to obtaining an increased income, must shew that the proposed sale is in the interests of all parties entitled under the settlement, and the fact of his having got himself into difficulties by his own extravagance is not a circumstance which will have any weight with the Court in favour of a sale.

If the application is for leave to sell an heirloom of unique character and historical repute, such as a famous jewel or work of art, the Court, in the exercise of the judicial discretion given to it by the Act, will have regard to the intention of the settlor and also to the wishes and feelings of the remaindermen.

Decision of Byrnes J., [1899] W. N. 78, affirmed on appeal before two judges of the Court of Appeal under the Supreme Court of Judicature Act, 1899.

Decision of Chitty J. in *In re Hope's Settlement*, [1899] 2 Ch. 691, n., approved of. *In re* HOPE. DE CETTO v. HOPE

C. A. [1899] W. N. 113; [1899] 2 Ch. 679

See also No. 6, below.

5. — *Sale of heirlooms—Settlement of chattels as—Land charged with jointures and portions—Sale of heirloom—Vendor and purchaser—Land purchased with proceeds—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. 7; s. 22, sub-ss. 5, 7; s. 24, sub-ss. 2, 4, 5; s. 37.*

Where land is settled and chattels are also settled to devolve with the land as heirlooms, the settled land being charged with jointures and portions for younger children, on a sale of the heirlooms under s. 37 of the Settled Land Act, 1882, and the investment of the proceeds in land, the land so purchased is not subject to the charges created by the settlement affecting the land settled.

*In re Duke of Marlborough's Settlement*, (1886) 32 Ch. D. 1, observed upon. *In re* DUKE OF MARLBOROUGH AND GOVERNORS OF QUEEN ANNE'S BOUNTY - - Romer J. [1897] 1 Ch. 712

— Tapestry—Executor and heir.

See FIXTURES. 4.

6. — *Tenant for life—Making good loss—Retaining income—Recouping trust estate—Right of trustees.*

Under a will certain chattels were settled so as to devolve with the estates as heirlooms; the tenant for life was to be allowed the use and enjoyment of the heirlooms, but the trustees were directed to see that they were adequately insured against loss or damage by fire and properly preserved at the expense of the usufructuary thereof for the time being. In pursuance of this direction the tenant for life had been allowed to keep possession of the heirlooms, some of which he had kept in his rooms in London. The tenant

**HEIRLOOMS**—*continued.*

for life got into pecuniary difficulties, and some of these heirlooms were distrained upon by his landlord for arrears of rent and sold. The value of those that had been thus sold had been estimated at 550*l.* The tenant for life had been adjudicated a bankrupt and had obtained his discharge, but his life interest had been sold by the trustee in bankruptcy. The question now raised was whether the trustees could retain income, as against the purchaser from the trustee in bankruptcy, to make good the amount lost to the trust estate by the sale of the heirlooms:—

*Held*, that the trustees were entitled to be paid out of income the loss the trust estate had suffered by reason of the carelessness of the tenant for life in allowing his landlord to distrain on these heirlooms; the tenant for life had had the benefit of the money produced by the sale of these chattels in the payment of his debt; and the trustees had a right to retain the income until the loss was made good to the estate, and this right to retain was superior to the right of the trustee in bankruptcy, or of any persons claiming through him. *In re HOPE. DE CETTO v. HOPE* — *Byrne J.* [1900] W. N. 76

*See also No. 4, above.*

— Trust for person entitled to “actual” possession of realty—Absolute gift.  
*See WILL—Absolute Gift.* 4.

**“HELD OUT OR RECOMMENDED TO THE PUBLIC.”**

*See REVENUE—Stamps.* 165.

**HERIOT**—Right to seize without the manor.

*See COPYHOLD.* 5.

**HERITABLE SECURITY.**

*See SCOTTISH LAW—Heritable Securities.*

— Conveyance on sale—Ad valorem duty.

*See REVENUE—Stamps.* 151.

“**HERITOR**”—Church and manse—Assessment of way-leave.

*See WATER—Water Rates.* 30.

**HEYWOOD.**

*See SALFORD HUNDRED COURT.*

“**HIGH SEAS**”—Foreign ship—Foreign port—Action in rem—Necessaries.

*See SHIPPING—Necessaries.* 180.

**HIGHER SCALE**—Costs.

*See Cases under COSTS.*

*SOLICITOR—Costs.*

**HIGHWAY.**

*In General, col. 888.*

*Diversion, col. 889.*

*Extraordinary Traffic. See HIGHWAY—Repairs.*

*Limitations, Statute of. See LIMITATIONS, STATUTE OF—Highway.*

*Locomotives on Highways. See LOCOMOTIVE.*

*Obstruction, col. 889.*

*Property in, col. 891.*

*Railways. See RAILWAY—Fences.*

*Rate. See HIGHWAY—Repairs.*

**HIGHWAY**—*continued.*

*Repairs, col. 891.*

*Tolls, col. 898.*

*Trespass, col. 898.*

*The Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63) conferred further powers with respect to main roads and other highways and bridges on County Councils and other Authorities.*

*Local Government Act, 1894 (56 & 57 Vict. c. 73) makes provision for the transfer of highways to the control of District Councils.*

— Locomotives on Highways Acts.

*See LOCOMOTIVES.*

**In General.**

*See LONDON—Streets.*

**STREETS.**

— Closing lane.

*See CANADA.* 19.

— Digging gravel for road—Justices—Jurisdiction.

*See COMMON.* 2.

— as to Easements of way.

*See Cases under WAY, RIGHT OF.*

— Evidence of boundaries.

*See CRIMINAL LAW—Evidence.* 21.

— “Extension” of roads.

*See CHINA.* 1.

— Faculty for removal of human remains for widening road.

*See ECCLESIASTICAL LAW.* 20, 25, 31.

— Fences—Railway companies.

*See RAILWAY—Fences.*

— Interference with road—Penalty for not substituting sufficient road.

*See RAILWAY—Roads and Streets.* 57.

— Intervening—Consecration—Ground “adjoining” to an existing churchyard.

*See ECCLESIASTICAL LAW—Faculty.* 20.

— Limitations, Statutes of.

*See LIMITATIONS, STATUTES OF—Highway.*

— Locomotives.

*See LOCOMOTIVE.*

1. — *Lowering surface of street—Mains and pipes of water company thereunder—Powers and duties of highway authority—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 98—Town Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 61.*

A water co. in exercise of statutory powers laid down pipes under the surface of a street, and the highway authority of the district afterwards, in exercise of the power in that behalf given by s. 98 of the Metropolis Management Act, 1855, proposed to lower the surface of the street, and to do so without altering or disturbing the position of the pipes, but so as to leave only a few inches of soil over them.

In an action by the water co. to restrain the highway authority from lowering the surface of the street without at the same time lowering the pipes of the co. to a corresponding depth under the new surface:—

*Held*, that the 98th section of the Act of 1855 did not impose upon the highway authority,

**HIGHWAY (In General)**—*continued.*

when exercising the power thereby given to them of altering the level of a street, any express or implied duty to exercise also at their own expense the power by the same section given of altering the position of the pipes thereunder, for the benefit of the water co., in a case where the highway authority did not require for their own purposes to interfere with such pipes.

The decision of Kekewich J. reversed.

*Gas Light and Coke Co. v. Vestry of St. Mary Abbots*, (1885) 15 Q. B. D. 1, distinguished; *Geddis v. Bunn Reservoir Proprietors*, (1878) 3 App. Cas. 430, distinguished and explained. **SOUTHWARK AND VAUXHALL WATER CO. v. WANDSWORTH DISTRICT BOARD OF WORKS**

**C. A. [1898] 2 Ch. 603**

— Pasturage—Prescription—Profit a prendre—Surveyor of highways.

See **INCLOSURE**. 5.

— Pathway.

See **ECCLESIASTICAL LAW**. 35.

— Sewers.

See Cases under **SEWERS**.

— Soil of—Street in town—Right of adjoining owner—Ad medium filum via.

See **VENDOR AND PURCHASER—Conveyance**. 43.

— Steam-roller—Licence—"Used" within the county.

See **LOCOMOTIVE**. 1.

— Streets.

See Cases under **STREETS**.

— Surface-water sewers—"Sewage or filthy water."

See **SEWERS**. 32.

— Tunnel under highway—Exclusive occupation.

See **EASEMENT**. 7.

— Way, Right of.

See Cases under **WAY, RIGHT OF**.

**Diversion.**

2. — Fixing notice—"End of highway"—*Highway Act*, 1835 (5 & 6 Will. 4, c. 50), s. 85.

Section 85 of the *Highway Act*, 1835, requires certain notices to be fixed at the end of the highway before the highway can be diverted:—

*Held*, that "end of the highway" meant the end of the portion proposed to be diverted. **REG. v. JUSTICES OF SURREY (No. 1)**

**Div. Ct. [1892] 1 Q. B. 633;**

**affirm. by C. A. [1892] 1 Q. B. 867**

**Extraordinary Traffic.**

See **HIGHWAY—Repairs**.

**Locomotives on Highways.**

See Cases under **LOCOMOTIVE**.

**Obstruction.**

**BARBED WIRE.]** By the *Barbed Wire Act*, 1893 (56 & 57 Vict. c. 32), provision was made for preventing the use of barbed wire for fences in thoroughfares.

3. — Driver leaving horse unattended while "passing upon" highway—*Highways Acts*, 1835 (5 & 6 Will. 4, c. 50), s. 78.

Section 78 of the *Highway Act*, 1835, which

**HIGHWAY (Obstruction)**—*continued.*

makes it an offence for the driver of any carriage to be at such distance from it "whilst it shall be passing upon the highway that he cannot have the direction and government of the horses or cattle drawing the same," applies where the driver leaves the carriage standing by the roadside. **PHYTHIAN v. BAXENDALE**

**Div. Ct. [1895] 1 Q. B. 768**

4. — Liability of surveyor—*Highway Act*, (5 & 6 Will. 4, c. 50), s. 56.

A heap of stones was left on a highway by a person employed by the surveyor to repair the road. The surveyor did not know of the obstruction:—

*Held*, that he was not liable for an offence under s. 56 of the *Highway Act*, 1835. **HARDCASTLE v. BIELBY** **Div. Ct. [1892] 1 Q. B. 709**

5. — Reasonable user—Loading and unloading of goods—Public nuisance—Injunction.

In a case of doubt or difficulty the right of the occupier of premises abutting on a highway to make a reasonable use of it, for the purpose of loading and unloading goods at his premises, must yield to the public right of unobstructed passage along the highway.

It is in each case a question of degree whether the exercise of this private right of access to premises, which must of necessity involve some obstruction of the highway, is or is not reasonable, and in determining this question regard must be had to all the facts of the case.

Traders carrying on a large business in a populous town, at premises situate in a street the roadway of which was less than twenty feet wide, kept as many as six vans at once during every alternate hour in the daytime loading and unloading goods at their premises, thus occupying half the width of the street, and seriously obstructing the passage of vehicles through it:—

*Held*, that this was an unreasonable use of the highway, and that it amounted to a public nuisance the continuance of which must be restrained by injunction. **ATT.-GEN. v. BRIGHTON AND HOVE CO-OPERATIVE SUPPLY ASSOCIATION**

**C. A. [1900] W. N. 12; [1900] 1 Ch. 276**

6. — Removal of obstruction—Local authority—Powers—*Public Health Act*, 1875 (38 & 39 Vict. c. 55), s. 149—*Local Government Act*, 1894 (56 & 57 Vict. c. 73), s. 26.

An urban district council has power to remove encroachments upon any highway vested in it by s. 149 of the *Public Health Act*, 1875, without first taking proceedings, summarily or by indictment, against the person alleged to have encroached. **REYNOLDS v. URRAN DISTRICT COUNCIL OF PRESTEIGN** **[1896] 1 Q. B. 604**

Considered by Stirling J. *Murray v. Epsom Local Board*, [1897] 1 Ch. 35, 39.

— Subsidence caused by mining operations—Absence of appreciable damage—Right to support.

See **MINES**. 27.

7. — Trees—Right to prune or lop—"Lop"—*Highway Act*, 1835 (5 & 6 Will. c. 50), s. 65.

"Lop," as used in s. 65 of the *Highway Act*, 1835, means to cut off the branches laterally, and the section does not authorise justices or the

**HIGHWAY (Obstruction)—continued.**

surveyor to cut off the tops of any trees. *UNWIN v. HANSON*  
**C. A. [1891] 2 Q. B. 115**

**Property in Highway.**

**8. — Conveyance of adjoining land — Ad medium filum vis.**

Where a piece of land adjoining a highway is conveyed, the soil of the highway ad medium filum is presumed to pass by the conveyance. But the presumption may be rebutted. Mere reference to a plan the measurement and colouring of which excludes the highway does not rebut this presumption; but where (1) the highway and the other land on the ordnance map referred to in the deed are numbered separately, (2) the valuation of timber does not include the trees on the highway, (3) the measurement and colouring of the plan excludes the highway:—

*Held*, that these circumstances taken together rebutted the presumption. *PRYOR v. PETRE*

**C. A. [1894] 2 Ch. 11**

**9. — Vestry—Presumptions of lawful origin—Ownership—Presumption of grant for purpose not requiring enrolment—Statute of Limitations—Charitable Uses Act, 1835 (9 Geo. 2, c. 36), s. 3—Poor Relief Act, 1819 (59 Geo. 3, c. 12), s. 17.**

The vestry of a parish had let the grazing on a highway made under an inclosure award ever since the award, viz., for 115 years:—

*Held*, (1) that a lawful origin must be presumed from the long usage; (2) that the lawful origin to be presumed in this case was, that the soil of the highway had been granted to churchwardens and overseers, as trustees, under the Charitable Uses Act, of lands belonging to the parish; (3) with regard to enrolment of the grant, that in the absence of proof of non-enrolment an enrolment if necessary might be presumed, or it might be presumed that no enrolment was necessary in this particular case; and (4) that the parish had consequently gained a title under the statute to the soil of the highway, subject to the public right of way. *HAIGH v. WEST*

**C. A. [1893] 2 Q. B. 19**

**Railways.**

*See* RAILWAY—Fences.

**Rate.**

*See below*, Repairs.

**Repairs.**

**10. — Action against highway authority—Time.**

Action against an urban authority for negligence when acting in its capacity of a highway authority:—

*Held*, that such an action must be brought within the three months prescribed by s. 109 of the Highway Act, 1835, and that it was not sufficient if the action were brought within the six months prescribed by s. 264 of the Public Health Act, 1875. *GRAHAM v. NEWCASTLE-UPON-TYNE CORPORATION* (No. 2)

**C. A. [1893] 1 Q. B. 643**

[Sect. 109 of the Highway Act, 1835, and s. 264 of the Public Health Act, 1875, were repealed and further provision made by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).]

**HIGHWAY (Repairs)—continued.**

**11. — Exemption from highway rate—Liability to repair ratione tenuræ—Alteration of highway—Estoppel—Res judicata—Highways Act, 1835 (5 & 6 Will. c. 50), s. 33.**

The appellants had from time immemorial repaired a certain highway ratione tenuræ, and were consequently exempt from contributing to the repair of other highways in the districts. In 1782 the highway was placed under trustees who materially altered it. In 1862 the trust expired, but the appellants, believing that their liability still existed, continued to repair the highway. In 1866 the Court of Q. B. decided that they were not liable to be rated for the repair of the highways in the district, but the fact of the alteration of the highway by the trustees was not brought before the Court. In 1892 the highway was declared a main road, and the appellants ceased to repair it:—

*Held*, that the duty to repair ratione tenuræ and with it the exemption from being rated had come to an end by the alteration of the highway by the trustees:—

*Held*, also, that the previous decision did not make the case res judicata, as the fact of the alteration had not been brought to the attention of the Court. *HEATH v. WEAVERHAM OVERSEERS*  
**Div. Ct. [1894] 2 Q. B. 108**

**12. — Excessive weight—Extraordinary traffic—“Person by whose order such weight or traffic has been conducted”—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.**

The respondent contracted with several persons for the delivery to him of materials required for his residence, the prices including carriage to be payable and the property in the materials to pass on delivery and acceptance at his residence. The materials were conveyed by a certain highway. The respondent knew that the contractors intended to send the materials by that highway by traction engines and trucks, but he did not employ or pay the carriers or give directions as to the route or the mode of conveyance. Extraordinary expenses having been incurred by the highway authority by reason of the damage caused by excessive weight passing along the highway or extraordinary traffic thereon, within s. 23 of the Highways and Locomotives (Amendment) Act, 1878:—

*Held*, that the respondent was not a “person by whose order such weight or traffic had been conducted” within the meaning of that section, and that he was not liable for the expenses.

Decision of **C. A. [1897] 1 Q. B. 351**, affirmed. *KENT COUNTY COUNCIL v. LORD GERARD*

**H. L. (E.) [1897] A. C. 633**

**13. — Extraordinary traffic—Extraordinary expenses—Certificate of surveyor—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.**

A certificate of the surveyor to a highway board as to extraordinary expenses incurred upon highways in their district is not bad by reason of the fact that it includes more than one highway, and does not particularize or describe the highways included. A separate certificate need



**HIGHWAY (Repairs)—continued.**

not be given in respect of each highway. **WIRRAL HIGHWAY BOARD v. NEWELL**

**Div. Ct. [1895] 1 Q. B. 827**

**14. — Extraordinary traffic — Extraordinary expenses — Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.**

“Extraordinary traffic,” as distinct from “excessive weight,” includes all such continuous or repeated user of the road by a person’s vehicles as is out of the common order of traffic, and as may be calculated to damage the highway and increase the expenditure on its repair. **HILL v. THOMAS**

**C. A. [1893] 2 Q. B. 333**

Followed by **C. A. Etherley Grange Coal Co. v. Auckland District Highway Board, [1894] 1 Q. B. 37.**

**15. — Extraordinary traffic — Extraordinary expenses — Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.**

(A) Carrying stone from a quarry held to be extraordinary traffic, so as to make the appellant liable for extraordinary expenses for repairs. In this case stone traffic was found to be a recognised business in the neighbourhood, but not the ordinary or recognised traffic of the road in question. **WHITEBREAD v. SEVENOAKS HIGHWAY BOARD**

**Div. Ct. [1892] 1 Q. B. 8**

(B) Contractors carrying for purposes of a battery 9000 loads of shingle and cement held liable for extraordinary traffic. **HILL v. THOMAS**

**C. A. [1893] 2 Q. B. 333**

(C) In determining whether traffic is “extraordinary” regard must be had, not to all the roads in the neighbourhood, but to the particular road in question. Therefore colliery owners, who since 1890 had carted large quantities of coal to a railway station via a particular road, were held liable for extraordinary traffic, though other coal owners ordinarily used other roads in a similar manner. **ETHERLEY GRANGE COAL CO. v. AUCKLAND DISTRICT HIGHWAY BOARD**

**C. A. [1894] 1 Q. B. 37**

**16. — Extraordinary traffic — Liability of executors — Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.**

Proceedings under s. 23 of the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), are in the nature of an action for a personal tort, and therefore cannot be taken against an executor. **STORY v. SHEARD**

**Div. Ct. [1892] 2 Q. B. 515**

**17. — Extraordinary traffic — Person by or in consequence of whose order such traffic has been conducted — Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23 — Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12.**

The defts., on March 2, 1898, entered into a contract with a firm to carry out for them certain building operations; and on March 16, 1898, they entered into another contract with another firm for the erection of temporary buildings. The work under the first contract was completed on April 15, 1899, and under the second contract on Sept. 23, 1899. In the course of executing these contracts extraordinary traffic was conducted over certain highways within the plt.’s highway district, and they were put to extraordinary

**HIGHWAY (Repairs)—continued.**

expenses in repairing them. In an action commenced on Dec. 22, 1899, to recover those expenses from the defts. :—

**Held**, that the plts. were entitled to succeed, since the extraordinary traffic had been conducted “by or in consequence of” the order of the defts., within the meaning of s. 12 of the Locomotives Act, 1898, but that the proceedings to recover the amount in respect of the damage caused in the execution of the first contract were too late, having been commenced more than six months after the completion of that contract. **EPSOM URBAN COUNCIL v. LONDON COUNTY COUNCIL**

**Bigham J. [1900] 2 Q. B. 751**

**18. — Extraordinary traffic — Person by whose order traffic is conducted — Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.**

Contractors contracted to deliver ballast, and arranged with owners of traction engines to convey the ballast from their wharf to the place of delivery. They exercised no control over the user of the engines, the weights carried, or the route. The carriage of the ballast caused extraordinary traffic whereby the road was damaged :—

**Held**, that the contractors were the persons liable as the persons by whose order such traffic, the aggregate amount of which had caused the damage, had been conducted. **KENT COUNTY COUNCIL v. VIDLER**

**C. A. [1895] 1 Q. B. 448**

**19. — Footpath — Evidence of liability to repair ratione tenuræ — Remedy against a person so liable to repair.**

The deft. was the occupier of two adjoining fields through which ran a public footpath crossing the fence between the two fields by means of a stile. The deft. and his predecessors in occupation had occasionally done slight repairs to the footpath and the stile; but there was no evidence that he or they had ever been required by the highway authority to do so. The plt., who was using the footpath as a member of the public, fell in getting over the stile, in consequence of the stile being out of repair, and was injured. He sued the deft., charging that he was liable to repair ratione tenuræ :—

**Held**, that the fact of the repairs done by the deft. and his predecessors, being consistent with such repairs having been done by them for their own benefit, was no evidence of any liability to repair ratione tenuræ.

**Quære**, whether an action will lie against a person liable to repair a public way ratione tenuræ for special damage suffered by a member of the public in consequence of the way being out of repair. **RUNDLE v. HEARLE**

**Div. Ct. [1898] 2 Q. B. 83**

— Footway and bridle-path — Inclosure award — Right of way.

**See INCLOSURE. 2.**

— Footways — Flagging — Apportionment of expenses.

**See LONDON — Streets. 67, 68.**

**20. — Footways — Repair of, in urban districts — Main road — Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 13 —**

**HIGHWAY (Repairs)—continued.**

*Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11.*

A county council is liable under the Local Government Act, 1888, s. 11, sub-s. 2, to contribute towards the costs of maintaining and repairing in an urban district the paved footways upon or at the sides of disturnpiked roads which have become main roads under the Highways and Locomotives (Amendment) Act, 1878, s. 13. *In re Mayor, &c., of Burslem and County Council of Staffordshire*

**C. A. [1896] 1 Q. B. 24**

Approved of by H. L. (E.) *Derby County Council v. Matlock Bath, &c.,* [1896] A. C. 315. See next Case.

**21. — Footways—Repair of, in urban districts — Main road—Highways and Locomotives (Amendment) Act, 1878 (41 and 42 Vict. c. 77), s. 13—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11.**

A county council is liable under the Local Government Act, 1888, c. 41, s. 11, sub-s. 2, to make to the urban authority an annual payment towards the costs of the maintenance and repair in an urban district of the paved footpaths upon or at the sides of disturnpiked roads which have become main roads under the Highways and Locomotives (Amendment) Act, 1878, c. 77, s. 13.

The decisions to this effect in *In re Warminster, &c.* (25 Q. B. D. 450), and *In re Burslem, &c.*, [1896] 1 Q. B. 24, approved. **DERBY COUNTY COUNCIL v. URBAN DISTRICT OF MATLOCK BATH AND SCARTHIN NICK** **H. L. (E.) [1896] A. C. 315**

**22. — Liability of urban authority for non-repair.**

A local authority is not liable to an action for damages for injuries caused by non-repair of a highway or of a bridge thereon.

(A) **MUNICIPALITY OF PICTOU v. GELBERT**  
**P. C. [1893] A. C. 524**

(B) **MUNICIPAL COUNCIL OF SYDNEY v. BOURKE**  
**P. C. [1895] A. C. 433**

(C) **COWLEY v. NEWMARKET LOCAL BOARD**  
**H. L. (E.) affirm. C. A. and Denman J. [1892] A. C. 345**

In this case the local authority were held not to be liable for injuries caused to the plt. owing to a drop in the level of the footway made by an adjoining landowner without the sanction of the authority. The question of breach of statutory duty considered.

(D) Where a local authority properly inserted (A) a man-hole, (B) a sewer-grating in the highway, both of which were in good repair, but projected in consequence of non-repair of the highway by the same local authority, who were in each case the road as well as the sewer authority, and caused damage to the plt. :—

*Held*, that the only breach of duty of the authority was in not repairing the highway, for which no action would lie.

(a) **THOMPSON v. BRIGHTON CORPORATION**  
**C. A. [1894] 1 Q. B. 332**

(b) **OLIVER v. HORSHAM LOCAL BOARD**  
**C. A. [1894] 1 Q. B. 332**

**23. — Main roads—Maintenance by urban authority—Contribution by County Council—Arbi-**

**HIGHWAYS (Repairs)—continued.**

*tration—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 11, 35.*

Where an urban authority retains the powers and duties of maintaining the main roads in its district, the amount to be paid to it by the county council in respect of such main roads can only be settled, in default of agreement, by the arbitration of the Loc. Govt. Bd. *In re BEDFORDSHIRE COUNTY COUNCIL AND BEDFORD URBAN SANITARY AUTHORITY -* **Div. Ct. [1894] 2 Q. B. 786**

**24. — Main roads in county divided into hundreds.**

Where an order has been made under s. 20 of the Highways and Locomotives Amendment Act, 1878, declaring every main road to be repairable by the hundred in which it was situate and one-half the expenses to be repayable out of a special rate in the hundred, the repairs are "general county purposes" within ss. 11, 23, 68, of the Local Government Act, 1888, and the county fund should be recouped from the Exchequer Contribution Account, so much as is not provided by the special rate in the hundred. **REG. v. DOLBY (No. 2).**

**Div. Ct. [1892] 2 Q. B. 736**

**25. — Rate—Highway parish without church—Publication—Poor Act, 1743-4 (17 Geo. 2), c. 3, s. 1—Highway Act, 1835 (5 & 6 Will. 4, c. 50, s. 27—Parish Notices Act, 1837 (7 Will. 4, 1 Vict. c. 45), s. 2—Poor Rate Act, 1882 (45 & 46 Vict. c. 20), s. 4.**

A highway rate was made for H., a highway parish, which was neither a poor-law nor an ecclesiastical parish, and in which there was no consecrated building. Notice of the rate was posted on a schoolroom and a Wesleyan chapel as being conspicuous places in H.

*Held*, that this was due publication. **REG. v. WOLFEASTAN** **Div. Ct. [1893] 2 Q. B. 451**

**26. — Exemption—Liability to repair ratione tenuræ—Sum paid in discharge of liability—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 33—Highway Act, 1862 (25 & 26 Vict. c. 61), s. 35.**

In a hamlet forming part of a township all the highways were repairable by the occupiers of lands ratione tenuræ, and highway rates were not leviable by reason of the exemption in the Highway Act, 1835, s. 33. A ry. co. occupied lands in the hamlet, and, prior to the after-mentioned order, were liable ratione tenuræ to repair a portion of a highway therein. An order was made by justices under the Highway Act, 1862, s. 35, by which it was declared that all the highways in the hamlet should be parish highways, and be repaired by the highway board of the district in which the hamlet was situated. The order fixed the sums to be paid by the respective occupiers of lands previously liable to repair ratione naturæ "in full discharge of all claims thereafter in respect of the repair and maintenance of the highways" as provided by the Act. These sums were nominal in amount. They were duly paid. The co. were subsequently rated in respect of their lands in the hamlet for expenses incurred in the repair of highways within the district, including those in the hamlet :—

*Held*, that the order did not operate to deprive

**HIGHWAY (Repairs)—continued.**

the ry. co. of their previously existing exemption from highway rates, and that the co. were exempt from payment of so much of the rate as was levied in respect of the repair of highways in the hamlet.

Decision of the C. A. (reversing the judgment of Div. Ct., [1898] 2 Q. B. 66), [1899] W. N. 64; [1899] 1 Q. B. 1026, affirmed. **DALTON OVERSEERS v. NORTH EASTERN RY. CO.**

**H. L. (E.) [1900] W. N. 126; [1900] A. C. 345**  
—Repairable by inhabitants at large—Frontages—Paving.

See Cases under **STREETS—Paving, &c., Expenses.**

—“Repairable by the inhabitants at large”—Sewering.

See Cases under **SEWERS—Repairs.**

**27. — Repairable *ratione tenuræ*—Person liable—Owner not in occupation of land—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25, sub-s. 2.**

By s. 25, sub-s. 2, of the Local Government Act, 1894, “Where a highway repairable *ratione tenuræ* appears . . . not to be in proper repair, and the person liable to repair the same fails when requested so to do . . . to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.”—

*Held*, that an owner of lands who was not the occupier of them was not “the person liable to repair the highway” within the meaning of the section. **CUCKFIELD RURAL DISTRICT COUNCIL v. GORING** Div. Ct. [1898] 1 Q. B. 865

Approved of by C. A. *Daventry Rural Council v. Parker*, [1900] 1 Q. B. 1, 4. See next Case.

**28. — Repairable *ratione tenuræ*—Recovery of expenses of repair—Person liable—Owner not in occupation—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25, sub-s. 2.**

By s. 25, sub-s. 2, of the Local Government Act, 1894, “Where a highway repairable *ratione tenuræ* appears . . . not to be in proper repair, and the person liable to repair the same fails when requested so to do . . . to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expense of so doing.”—

*Held*, that an owner of lands who was not the occupier of them was not “the person liable to repair the highway” within the meaning of the section.

**Cuckfield Rural Council v. Goring**, [1898] 1 Q. B. 865, approved. **DAVENTRY RURAL COUNCIL v. PARKER** C. A. [1899] W. N. 210; [1900] 1 Q. B. 1

**29. — Repairable *ratione tenuræ*—Recovery of expense of repair—Person liable—Owner not in occupation—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25, sub-s. 2.**

By s. 25, sub-s. 2, of the Local Government Act, 1894, “Where a highway repairable *ratione tenuræ* appears . . . not to be in proper repair, and the person liable to repair the same fails when

**HIGHWAY (Repairs)—continued.**

requested so to do . . . to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.”—

*Held*, that an owner of lands who was not the occupier of them was not “the person liable to repair the highway” within the meaning of the section.

**Cuckfield Rural Council v. Goring**, [1898] 1 Q. B. 865, approved. **DAVENTRY RURAL COUNCIL v. PARKER** C. A. [1900] 1 Q. B. 1

—Road transferred to local authority—Failure of trust.

See **CHARITY. 23.**

**30. — Surveyor—Debt incurred by predecessor—Liability—Highway Act, 1835 (5 & 6 Will. 4, c. 50).**

An action does not lie against a surveyor of highways appointed under the Highway Act, 1835, for the price of materials supplied to his predecessor for the repair of highways where such predecessor died insolvent after having received from the parish sufficient money to pay for the materials. **FRODINGHAM IRON AND STEEL CO. v. BOWSER** Div. Ct. [1894] 2 Q. B. 791

**Tolls.**

**31. — Turnpike Acts—Tolls—Exemption—Carriage employed in Military Service of Crown—Army Act, 1881 (44 & 45 Vict. c. 58), s. 143.**

The exemption from payment of toll in passing along a turnpike road or over a bridge contained in s. 143 of the Army Act, 1881, in favour of carriages “employed” in the military service of the Crown and conveying officers or soldiers of the regular forces on duty does not extend to the private carriage of an officer used by him for his own convenience while on duty. **CRAIG v. NICHOLAS** Div. Ct. [1900] 2 Q. B. 444

**Trespass.**

See Cases under **TRESPASS.**

—Action of trespass—Public authorities protection—Costs as between solicitor and client.

See **COSTS. 43.**

**32. — Trespass to land—Use of highway otherwise than as such.**

The plt. was possessed of land which was crossed by a highway. A trainer of race-horses had agreed with the plt. for the use of some of his land for the training and trial of race-horses. A view of the land so used was obtainable from the highway on the plt.’s land. The deft. was one of the proprietors of a publication which gave accounts of the doings of race-horses in training. On the occasion in respect of which the action was brought, the deft. walked backwards and forwards on a portion of the highway on the plt.’s land, about fifteen yards in length, for a period of about an hour and a half, watching and taking notes of the trials of the race-horses on the plt.’s land. The plt. having brought an action of trespass against him in respect of his user of the highway as aforesaid, and the jury having found for the plt.:

*Held*, that the deft.’s acts had exceeded the

**HIGHWAY (Trespass)—continued.**

ordinary and reasonable user of a highway as such to which the public are entitled, he therefore was guilty of a trespass on the plt.'s land.

*Harrison v. Duke of Rutland*, [1893] 1 Q. B. 142, followed. *HICKMAN v. MAISEY*

C. A. [1900] W. N. 72; [1900] 1 Q. B. 752

**HIRE AND PURCHASE AGREEMENT.**

See Cases under FACTOR.

— Whether requiring registration.

See BILL OF SALE. 30.

**HIRE OF SHIP**—Cesser of hire during inefficiency of ship.

See SHIPPING—Charterparty. 35.

**HIRING**—In consideration of yearly payment—Stamp.

See REVENUE—Stamps. 140.

— Lightship, Loss of use of—Hire of substitute

— Collision—Remoteness of damage.

See SHIPPING—Collision. 72.

— Servant.

See MASTER AND SERVANT—Hiring.

— Severable covenant—Injunction.

See RESTRAINT OF TRADE. 19.

**HOARDING—Building.**

A hoarding erected for advertising purposes held not to be a "building" within a covenant against erecting any building. *FOSTER v. FRASER*

*Kekewich J.* [1893] 3 Ch. 158

See also ADVERTISING STATION.

— Dangerous structures—Disturbance of pavement—Duty to restore pavement after hoarding removed.

See LONDON—Buildings. 11.

— Rateable occupation—Advertising contractor.

See RATES—Rateability. 11.

**HOLDING OVER.**

See LANDLORD AND TENANT—Determination of Tenancy and Holding Over.

**HOLOGRAPH WILL**—Power of appointment—

Donee of power a domiciled Frenchwoman—Holograph will of donee in French language unattested.

See POWERS—Exercise. 18.

**HONG KONG**—Appeals from—Additional instructions, dated Jan. 21, 1846, for permitting appeals to be made to the Queen in Council from the Supreme Court of Hong Kong. *St. R. & O.* 1899, p. 1681.

— Application of Colonial Probates Act, 1892.

See PROBATE—Colonial Probates Act.

— Death Duties.

See REVENUE—Estate Duty.

— Marriage—Evidence of validity—Practice—Colonial marriage.

See DIVORCE—Evidence. 80—82.

**"HONOUR" POLICY.**

See INSURANCE—Marine. 59.

**HOP-GROUND.**

See TITHES. 2.

**HORSES.** *Exportation of. O. of Bd. of Agriculture dated Nov. 25, 1898, as to. Lond. Gaz. Nov. 25, 1898, p. 7394.*

**HORSES—continued.**

— Plant—Specific description.

See BILL OF SALE. 53.

**HORSE-RACE**—Selection of winner.

See COPYRIGHT—Periodical. 35.

**HOSPITAL**—Exemption from house tax.

See REVENUE—House Duty. 57.

— Small-pox hospital.

See NUISANCES. 11, 12.

**HOTCHPOT**—Construction of will.

See Cases under WILL—Advancement.

— Settlement.

See Cases under SETTLEMENT—Hotchpot.

— Settlement without the clause.

See POWERS—Exercise. 21.

**HOTEL.**

See INN.

**HOUSE.**

See BUILDINGS.

LONDON—Buildings.

STREETS.

"HOUSE"—Flat—Building estate.

See COVENANT. 2.

**HOUSE AGENT**—Interpleader—Action for commission—Claims by different parties.

See COUNTY COURT—Jurisdiction. 52.

**HOUSE DUTY.**

See REVENUE—House Duty.

**HOUSE OF COMMONS.**

See Cases under PARLIAMENT.

— Offences—Sale without licence—Sale by servant of the House.

See LICENSING ACTS. 43.

**HOUSE OF LORDS**—Appeals to House of Lords

—Practice.

See APPEAL. 17—23.

— Appeal to—Practice.

See DIVORCE—Co-respondent. 39.

1. — *Death of a Law Lord who has heard an appeal in the House of Lords, but dies before delivery of the judgment. See LORD ADVOCATE v. WEMYSS* - *H. L. (Sc.)* [1899] W. N. 124

2. — *Practice—House of Lords decision—Res judicata—Tramways, Compulsory purchase of—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 43.*

A decision of the H. L. upon a question of law is conclusive and binds the House in subsequent cases. An erroneous decision can be set right only by an Act of Parliament. *LONDON TRAMWAYS CO. v. LONDON COUNTY COUNCIL*

*H. L. (E.)* [1898] A. C. 375

— Practice—Set-off of costs.

See COSTS—Set-off. 63.

**HOUSE REFUSE**—Scavenging—Refuse of trade.

See Cases under LONDON—Removal of Refuse.

**HOUSE TAX.**

See REVENUE—House Duty.

**HOUSEHOLD FRANCHISE.**

See Cases under PARLIAMENT—Franchise.

**HOUSING OF THE WORKING CLASSES**—*Housing of the Working Classes Act, 1896* (59 & 60 Vict. c. 31), amends the *Act of 1890, c. 70*, as to re-vesting of lands.

*Housing of the Working Classes Act, 1900* (63 & 64 Vict. c. 59), amends Part III. of the *Housing of the Working Classes Act, 1890* (53 & 54 Vict. c. 70).

— Party dissatisfied with award of arbitrator—Refusal of leave to appeal.  
See **APPEAL**. 32.

**HUMAN REMAINS**—Faculty for removal of, for widening public highway.  
See **ECCLESIASTICAL LAW**—Faculty. 10.

**HUNDRED**—Roads repairable by—Repairs.  
See **HIGHWAY**—Repairs. 24.

### HUSBAND AND WIFE.

*Married Women's Property Act, 1893* (56 & 57 Vict. c. 63), amends the *Married Women's Property Act, 1882* (45 & 46 Vict. c. 75).

**INCOME TAX.** *Married woman*—Exemption of income arising from business of wife. See *Finance Act, 1897* (60 & 61 Vict. c. 24), s. 5.

*Marriage Act, 1898* (61 & 62 Vict. c. 58), amends the law relating to the attendance of Registrars at marriages in Nonconformist places of worship.

*County Court Rules (May), 1899, Order v. (Married Women suing); Order XLIII. (Form of Judgment against Married Women).* **W. N. 1899** (April 29), p. 147; (**May** 20), p. 171. See **Current Index, 1899, p. xcii.**

Generally, col. 901.

*Bankruptcy*, col. 908.

*Bond*, col. 909.

*Contracts*, col. 910.

*Conveyance*, col. 911.

*Costs*. See **COSTS**—**Married Woman**.

*Divorce*. See **DIVORCE**.

*Equity to Settlement*. See **SETTLEMENT**—**Equity to Settlement**.

*Marriage Contract*, col. 913.

*Practice*, col. 913.

*Probate*, col. 914.

*Restraint on Anticipation*, col. 915.

*Separation*, col. 922.

*Summary Jurisdiction*, col. 924.

*Title of Honour*, col. 930.

Generally.

1. — **Absolute interest**—**Interest for life for separate use with general testamentary power of appointment to exors.**—*Married Woman's Property Act, 1882* (45 & 46 Vict. c. 75), ss. 1, 2.

The effect of the Act of 1882 is to place married women in the same position as femes sole or men so far as the effect of the release of a general power of appointment is concerned, and by virtue of the Act the life interests and interests in reversion of married women are alike limited to their separate use, and the two interests coalesce on release of an intervening power of appointment. *In re DAVENPORT. TURNER v. KING* - - **Kekewich J. [1895] 1 Ch. 361**

### HUSBAND AND WIFE (Generally)—continued.

— **Advances**—Purchases by husband in names of wife and daughter—Account—Law of Quebec.

See **CANADA**. 50.

2. — **After-acquired property**—**Covenant by husband alone that after-acquired property of wife shall be settled**—**Marriage settlement**.

A marriage settlement contained a covenant by the husband alone that all the real and personal estate above a certain value which should at any time during the coverture by any means be acquired by the wife or the husband in her right should forthwith be settled upon the trusts of the settlement. The wife was a party to and executed the deed. During the coverture she became entitled under the will of her father to certain real estate:—

*Held*, that the property in question was bound by the covenant. *In re HADEN. COLING v. HADEN* - - **Stirling J. [1898] 2 Ch. 220**

— **Annuity**—Appropriation of capital sum—Restraint on anticipation.  
See **ANNUITY**. 8.

3. — **Ante-nuptial contract**—**Personal liability**.

The personal liability of a married woman at common law upon contracts made by her before marriage is not taken away by the Act of 1882.

A., a spinster, accepted a bill of exchange, and subsequently married. B., the holder of the bill, applied for judgment under Order XIV. A. alleged, in her affidavit, by way of defence, that she had subsequently married:—

*Held*, that B. was entitled to judgment against A. personally. **ROBINSON, KING & Co. v. LYNES**  
**Div. Ct. [1894] 2 Q. B. 577**

— **Appointment to husband**—**Liability of appointed fund to debts**.  
See **POWERS**. 31.

4. — **Assignment of reversionary interest**—**Legal chose in action**—**Policy** (20 & 21 Vict. c. 57).

The words "any personal estate whatsoever," in the Matrimonial Causes Act, 1857, are wide enough to include, and do include, a legal chose in action, such as a policy of insurance effected in a married woman's own name, and should not be confined to such equitable choses in action as a legacy or other moneys or securities held in trust for her. **WITHERBY v. RACKHAM**

**Chitty J. [1891] W. N. 57**

— **Bankruptcy practice**.

See **Cases under BANKRUPTCY**.

5. — **Base fee**—**Fee simple absolute**—**Acknowledgment**—**Concurrence**—**Fines and Recoveries Act** (3 & 4 Will. 4, c. 74), ss. 1, 15, 19, 40, 77—*Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 1; s. 2.

A base fee created by vendors, when spinsters, can be turned into a fee simple absolute by the vendors, if married since 1882, without acknowledgment or the concurrence of their husbands. *In re DRUMMOND AND DAVIES' CONTRACT* - - **Chitty J. [1891] 1 Ch. 524**

— **Bond**—**Interest on**—**Loan to husband**—**Penalty**—**Statute of Limitations**.

See **HUSBAND AND WIFE**—**Bond**. 27.

**HUSBAND AND WIFE (Generally)—continued.**

— Breach of trust at instigation of tenant for life  
— Married woman—Indemnity.

See **TRUSTEE—Breach of Trust.** 30, 34.

— Claim of widow against insolvent estate of husband.

See **EXECUTOR—Insolvent Estates.** 34.

— Costs.

See **Cases under COSTS — Married Woman.**

6. — *Damages recovered — Tort to wife — Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 2; s. 5.

An amount awarded to a wife as damages for personal injuries is her separate property:—

*Held*, therefore, a garnishee order attaching the money to answer a judgment debt of the husband, who had been a co-plt. in the action, was invalid. **BEASLEY v. RONEY**

**Div. Ct. [1891] 1 Q. B. 509**

7. — *Debts—General power of appointment—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 3, 4; s. 4.

Under the Act of 1882, s. 1 (3), (4), and s. 4, property appointed by a married woman by will under a general power became on her death liable to her debts and other liabilities even though she had no separate estate at the time she contracted them. *In re ANN. WILSON v. ANN*

**Kekewich J. [1894] 1 Ch. 549**

[But see now the *Married Women's Property Act, 1893*, by which s. 1, sub-s. 3, 4, of the Act of 1882 was repealed.]

Referred to by C. A. *In re Hughes*, [1898] 1 Ch. 529, 535.

— Deed of settlement by wife's father—Rights of husband and wife in settled estate—Claim of husband's heir.

See **JERSEY.** 3.

— Dissolution of marriage.

See **Cases under DIVORCE.**

— Divorce.

See **Cases under DIVORCE.**

— Estate duty—Property settled by husband or wife—Exemption—Postponement.

See **REVENUE—Estate Duty.** 28.

8. — *Gift by will—Separate shares.*

Where there is a gift to a class which includes a husband and wife, the husband and wife take separate shares. *In re GUE. SMITH v. GUE* — **North J. [1892] W. N. 132**

— Gift to son and wife in succession—Remarriage of son after date of will.

See **WILL—Marriage.** 141.

— Grant of administration—Limited administration—Will of married woman.

See **PROBATE—Grant of Administration.** 51, 52, 55.

— Guardianship of infant.

See **Cases under INFANT—Custody.**

— Infant—Settlement by.

See **Cases under INFANT—Settlements.**

9. — *Interlocutory injunction—Married woman without separate estate.*

An interlocutory injunction was granted at the instance of a married woman, although it was urged that her undertaking in damages was

**HUSBAND AND WIFE (Generally)—continued.**

illusory, she not having any separate estate.

**PIKE v. CAVE — Kekewich J. [1893] W. N. 91**

— Joint income—Assessment of husband on wife profits.

See **REVENUE—Income Tax.** 100.

10. — *Joint tenancy—Covenant to settle after-acquired property.*

A husband and wife covenanted to settle the wife's after-acquired property. P. executed a voluntary settlement with an ultimate trust in favour of his next of kin of whom the wife was one of three:—

*Held*, that on the death of P. the joint interest of the wife was severed by the operation of the covenant to settle after-acquired property. *In re HEWETT. HEWETT v. HALLETT*

**North J. [1894] 1 Ch. 362**

11. — *Joint tenancy—Dissolution of marriage—Landlord & Tenant Act, 1704* (4 & 5 Anne, c. 3), s. 27; *Married Woman Act, 1882* (45 & 46 Vict. c. 75), ss. 1, 5.

Land were conveyed before the commencement of the Act of 1882 to a husband and wife and to the survivor in fee:—

*Held*, that so long as the marriage lasted, husband and wife were tenants by entireties, but that after the marriage was dissolved each became a joint tenant, and the wife's interest belonged to her separate use, and that she was entitled to an account as from the date of the divorce.

Other estates were conveyed after the commencement of the Act in terms which but for their marriage would have given them a joint estate:—

*Held*, that the wife had therein a joint estate to her separate use, and that she had a right to an account of the rents and profits as from the date when the husband and wife ceased to live together. **THORNLEY v. THORNLEY**

**Romer J. [1893] 2 Ch. 229**

— Joint will—Husband and wife.

See **PROBATE—Grant of Probate.** 104.

12. — *Liability of husband—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 3; s. 23.

A., by deed of gift, gave property to his wife for her "own proper use and benefit." A. died, and the wife subsequently married the debt, and after 1882 borrowed money of the plt. She died intestate, and the plt. sued her husband, who had taken possession of the property:—

*Held* (1), that the property was separate property, and bound by the wife's contract; (2) that it passed to her husband *jure mariti*, and administration was unnecessary; (3) that the husband was the personal representative of his wife within s. 23 of the Act of 1882, and liable to the extent of the property. **SURMAN v. WHARTON**

**Div. Ct. [1891] 1 Q. B. 491**

Followed by **Cozens-Hardy J. In re Wheeler's Settlement Trusts**, [1899] 2 Ch. 717, 722.

13. — *Life assurance policy—Married Women's Property Act, 1870* (33 & 34 Vict. c. 93), s. 10.

In 1877 A. insured his own life, and the policy declared that the funds of the co. should be liable to the payment of the sum insured to the wife

**HUSBAND AND WIFE (Generally)—continued.**

and children of the assured, pursuant to the provisions of the Married Women's Property Act, 1870, s. 10. A. died in 1891, leaving a widow and children :—

*Held*, that the widow and children took as joint tenants. *In re DAVIES' POLICY TRUSTS*

**Chitty J. [1892] 1 Ch. 90**

— Lodger franchise—Sole tenant.

*See* PARLIAMENT—Franchise. 82.

— Lunatic—Right of husband to be appointed committee of person of lunatic wife.

*See* LUNACY—Custody. 14.

— Marital coercion—New Zealand Criminal Code.

*See* NEW ZEALAND. 4.

14. — *Marriage of Scotsman with Englishwoman—jus mariti—Ante-nuptial contract.*

On the marriage of a Scotsman with an Englishwoman upon whom property has already been settled, an ante-nuptial contract confirming the wife in her rights according to English law is desirable so as to preclude the husband from setting up on his wife's death a claim *jure mariti* to her property under Scottish law. *In re CRAIGNISH. CRAIGNISH v. HEWITT*

**C. A. [1892] 3 Ch. 180**

— Marriage settlement.

*See* CASES UNDER SETTLEMENT.

— "Married woman"—Construction of will.

*See* WILL—Absolute Gift. 8.

15. — *Paraphernalia—Gift by husband to wife of jewels—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 2, 17.*

The Married Women's Property Act, 1882, has not abolished the general law as to gifts of paraphernalia.

A., who married after the passing of the Act, gave his wife presents of jewellery, as birthday presents, and she to his knowledge kept the jewels in her possession, or in a bank in cases stamped with her initials. It also appeared that he made the presents in the same manner and with the same words as in making her presents before marriage, and till he took proceedings for a divorce never suggested that the jewels were only lent to her. Most of the presents were made on Christmas Days or her birthdays, or as "peace offerings" after disputes :—

*Held*, that the jewels were not paraphernalia, but the separate property of the wife. *TASKER v. TASKER*

**Jeune P. [1895] P. 1**

— Policy—Trust for wife and children—Appointment of trustees.

*See* INSURANCE—Life. 16.

16. — *Possession—Sale of goods—Receipt for purchase-money.*

As since the passing of the Act of 1882 a husband and wife stand in the same position as two men formerly did where possession as between them is doubtful, it follows the title to the goods. *Per Lord Esher M.R. and Davey L.J. in RAMSAY v. MARGRETT*

**C. A. [1894] 2 Q. B. 18**

— Power of appointment.

*See* CASES UNDER POWERS.

— Power of appointment—Release—Married woman.

*See* POWERS. 40.

**HUSBAND AND WIFE (Generally)—continued.**

17. — *Protection order—Married woman—Feme sole—Property—Contract—Debts and Liabilities—Assets—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 21, 25, 26—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 4.*

A married woman, while under a protection order obtained by her under s. 21 of the Matrimonial Causes Act, 1857, is in the position of a feme sole as regards all property coming to her after the date of the order (s. 25), and also for all purposes of contract (s. 26); so that her execution by will since the Married Women's Property Act, 1882, of a general power of appointment created subsequently to the date of the protection order makes the property appointed liable, under s. 4 of the latter Act, for debts or liabilities incurred by her while under the order, even though they may have been incurred before that Act, s. 4 extending to an appointment since the Act by a married woman who had debts and liabilities existing at the date the Act came into operation.

Decision of Kekewich J. affirmed. *In re HUGHES. BRANDON v. HUGHES*

**C. A. [1898] 1 Ch. 529**

18. — *Protection order—Restraint on anticipation—Receiver—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 21, 25, 26.*

A married woman, who was entitled to an equitable life interest in the rents of certain premises for her separate use without power of anticipation, was deserted by her husband and obtained a protection order under the Matrimonial Causes Act, 1857. She afterwards executed a mortgage of her life interest covenanting to pay the mortgage debt. Judgment was obtained against her as a feme sole in an action on the covenant :—

*Held*, that, although the Act allowed a married woman with a protection order to sue and be sued as a feme sole, it did not apply to property to which she was entitled before the protection order; consequently the restraint on anticipation prevailed, and no receiver of the property could be appointed. *HILL v. COOPER*

**C. A. [1893] 2 Q. B. 85**

Distinguished by Kekewich J. *In re Hughes, C. A. [1898] 1 Ch. 535.*

— Rates—Procedure for recovery of—Married woman—Owner.

*See* RATES—Recovery. 62.

— Receiver—Appointment—Jurisdiction—Married woman—Costs.

*See* RECEIVER. 18, 19.

— Receiving—Property stolen by wife from husband—Larceny.

*See* CRIMINAL LAW—Larceny. 40.

— Receiving order—Married woman.

*See* BANKRUPTCY. 35.

— Scottish law.

*See* SCOTTISH LAW—Husband and Wife.

— Security for costs—Appeal—Attachment.

*See* COSTS—Married Woman. 40.

— Separate examination—Title of petition.

*See* SETTLED LAND—Practice. 100.

**HUSBAND AND WIFE (Generally)—continued.****19. — Separate property.**

The meaning of separate property discussed by Kay L.J. in *Pelton Bros. v. Harrison* C. A. [1891] 2 Q. B. 422 at p. 425

See Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.

— Separate property—Restraint on anticipation.

See Cases under **HUSBAND AND WIFE—Restraint on Anticipation.**

— Separation and separation deed.

See **HUSBAND AND WIFE—Separation.**

— Separation—Summary jurisdiction.

See Cases under **HUSBAND AND WIFE—Summary Jurisdiction.**

**20. — Sequestration—Separate property—Restraint on anticipation—Income accruing after date of order—Married Women's Property Act, 1893 (45 & 46 Vict. c. 75), s. 1; 1893 (56 & 57 Vict. c. 63), ss. 1, 2.**

C., a married woman who was tenant for life of real estate for her separate use without power of anticipation, disobeyed three orders to pay taxed costs to H., and leave was given on Jan. 15, 1894, to issue a writ of sequestration against her separate property, not subject to restraint on anticipation. The writ was issued on Feb. 8; after March 25, L., an agent of C., received rents of property, subject to restraint on anticipation, and paid them over to C. H. applied for an injunction restraining C. from receiving the rents due on March 25, or in the alternative, for leave to issue a second writ of sequestration. H., also, applied for an order that L. should pay the rent over to the sequestrators:—

*Held*, by C. A., affirm. North J., that the material date was that of the order to pay the costs, at that date the March rents were not due, and could not be affected by the sequestration without anticipating them:

*Held*, also, that a second sequestration could not affect anything not affected by the first, therefore both motions must be dismissed:

*Held*, also, by C. A., that s. 2 of the Married Women's Property Act, 1893, does not give jurisdiction to alter the effect of an order made before the Act came into operation. *In re Lumley*. *Ex parte Hood Barrs*

C. A. [1894] 3 Ch. 135; see [1897] A. C. 177

— Settlement.

See Cases under **SETTLEMENT.**

— Settlement by infant.

See **INFANT—Settlement.**

— Summary Jurisdiction (Married Women) Act—Appeals—Notes of proceedings in Court below.

See Nos. 94—96.

**21. — Tenancy by the curtesy—Real estate of wife—Devolution—Married Women's Property Act, 1893 (45 & 46 Vict. c. 75), ss. 1 (sub-s. 1), 5.**

The Act of 1893 does not deprive a husband of his tenancy by the curtesy in his wife's undisposed real estate on her death. *Hope v. Hope*

*Stirling J.* [1892] 2 Ch. 336

**22. — Validity of contract—Married Women's Property Act, 1893 (45 & 46 Vict. c. 75), s. 1, sub-s. 2, 3, 4.**

A married woman cannot contract so as to

**HUSBAND AND WIFE (Generally)—continued.**

bind her separate property under the Act of 1893 unless she has some separate property at the date of the contract. If she have some separate estate at the time, a charge on it will affect after-acquired property, but not otherwise. A restraint on alienation or anticipation of income given to a woman is of no avail unless the income is given to her for her separate use. Where in a will there are no words expressly giving a married woman income for her separate use, a subsequent restriction on alienation will not create a separate use by implication. *Stogdon v. Lee* — C. A. [1891] 1 Q. B. 661

But see now Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1 (a).

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 694.

— Will—Married woman.

See **WILL—Married Woman.**

**23. — Will—Death of husband—Re-execution—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 3.**

Sect. 3 of the Married Women's Property Act, 1893, applies to every will of a married woman who dies after the date of the Act. *In re Wylie, Wylie v. Moffat*

*Romer J.* [1895] 2 Ch. 116

**24. — Will before Act of 1893—Property acquired under the Act—Married Women's Property Act, 1893 (45 & 46 Vict. c. 75), ss. 1, 5.**

A married woman, dying in the lifetime of her husband, can leave, by will during coverture and made before the Act of 1893, property acquired under that Act. *In re Bowen*. *James v. James* — *Chitty J.* [1892] 2 Ch. 291

— Will—French subjects—English marriage—Change of domicile—Intention—Revocation of ante-nuptial will.

See **CONFLICT OF LAWS**. 16.

— Will—Probate.

See **HUSBAND AND WIFE—Probate.**

**Bankruptcy.**

— Bankruptcy notice—Married woman trading separately from husband in firm name.

See **BANKRUPTCY—Receiving Order**. 203—205.

**25. — Bankruptcy of wife—Bankruptcy Acts, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5; 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136.**

A bankruptcy notice cannot issue against a married woman in respect of a judgment obtained against her separate estate, for the bankruptcy notice can only require the person served to pay the judgment debt, whereas the judgment against a married woman is not personal, but merely binds her separate estate. *In re Hannah Lynes*. *Ex parte Lester & Co.*

C. A. [1893] 2 Q. B. 113

Referred to by C. A. *In re Clark*, [1896] 2 Q. B. 476, 479.

— Judgment against married woman—Death of husband—Bankruptcy notice.

See **BANKRUPTCY—Act of Bankruptcy**. 18, 19.



**HUSBAND AND WIFE (Bankruptcy)—contd.**

— Loan by wife to husband for purposes unconnected with his business—Proof.  
See *BANKRUPTCY—Proof*. 174.

— Married woman—“Carrying on trade”—“Absenting himself”—“Undischarged debts”—Receiving order.  
See *BANKRUPTCY—Act of Bankruptcy*. 35.

26. — *Separate estate—Restraint on anticipation—Separate trading—Death of husband—Title of trustee in bankruptcy—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5; s. 19—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 152.*

Where a married woman, entitled to separate estate with a restraint on anticipation, trades separately from her husband and becomes bankrupt, her separate estate, subject to the restraint on anticipation, vests in her trustee in bankruptcy and, on the death of her husband in her lifetime, is assets for her creditors.

In such a case the restraint on anticipation is in the nature of an incumbrance which is removed by the death of the husband.

*Pellon Brothers v. Harrison*, [1891] 2 Q. B. 422, discussed. *In re WHEELER'S SETTLEMENT TRUSTS*. BRIGGS v. RYAN

Cozens-Hardy J. [1899] W. N. 141;  
[1899] 2 Ch. 717

**Bond.**

27. — *Bond by husband—Interest on bond—Marriage settlement—Wife's property—Life interest—Separate use—Restraint on anticipation—Trust fund—Loan to husband—Bond by husband to trustees—Interest-bearing security—Penalty—Damages—Express trust—Bond in husband's possession—Presumption of payment—Statute-barred debt—4 & 5 Anne, c. 16, ss. 12, 13 (c. 3 in 1 Rev. Stat. p. 784)—Statute of Limitations—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 5.*

By a marriage settlement, dated in 1847, a fund belonging to the wife was vested in trustees in trust for investment “on real or personal securities bearing interest,” with power of varying investments with the written consent of the husband and wife or the survivor, and to pay the income to the wife for her separate use without power of anticipation, then to the husband for life, and after the death of the survivor, as to the capital, upon the trusts therein mentioned.

In 1852 the trustees, on the written consent of the wife, lent the trust fund in cash to the husband on the security of his bond in a penal sum, conditioned for repayment to the trustees of the sum advanced with interest at 4 per cent. per annum six months after date. The bond contained no stipulation in terms for payment of interest beyond the six months.

The husband and wife lived together in amity for more than twenty years after the date of the bond, the wife dying in 1876 and the husband in 1896. At his death the bond was found in his possession. He never, either during his wife's lifetime or afterwards, paid any interest on the bond or gave any written acknowledgment of his indebtedness under it:—

*Held*, affirming *Byrne J.*, [1899] W. N. 134; [1899] 2 Ch. 561, that the bond debt was not

**HUSBAND AND WIFE (Bond)—continued.**

barred by the Statute of Limitations (3 & 4 Will. 4, c. 42), s. 5, on the grounds (1.) that the bond, being a penalty bond, was an interest-bearing security carrying interest (though not mentioned) beyond the date fixed for payment of the debt; (2.) that as the husband and wife had lived together in amity it was unnecessary, in order to prevent the statute from running, to go through the formality of the husband paying the interest to the trustees, the trustees paying it to the wife, and the wife paying it to the husband; and (3.) that, as the husband took with full notice that the money lent was trust money and liable to investment on interest-bearing security, he was in the position of an express trustee: *Soar v. Ashwell*, [1893] 2 Q. B. 390, 396:

*Held*, also, that no presumption of discharge of the bond arose from the mere fact of its being in the obligor's possession at his death.

Sections 12 and 13 of the statute 4 & 5 Anne, c. 16, merely recognised and confirmed the doctrine, previously established by the Court of Equity, that, in the case of a bond with a penalty, the true intent of the penalty was to secure payment, not only of the stated principal money and interest on the day fixed, but also of subsequent interest down to the actual payment of the principal, although the bond contained no stipulation for interest beyond the day fixed. Under that statute the interest is payable as interest, and not as damages for non-payment on the day fixed.

The nature of single and penalty bonds, and the liability to interest on them respectively, discussed.

*Bonafous v. Rybot*, (1763) 3 Burr. 1370, *Spickernell v. Hotham*, (1854) Kay, 669, *Amos v. Smith*, (1862) 1 H. & C. 238, *Cook v. Fowler*, (1874) L. R. 7 H. L. 27, and *Soar v. Ashwell*, [1893] 2 Q. B. 390, discussed. *In re DIXON*. HEYNES v. DIXON - C. A. [1900] W. N. 144; [1900] 2 Ch. 561

**Contracts.****28. — Joint contractors—Res judicata.**

The rule that judgment recovered against one of two joint contractors is a bar to an action against the other applies equally when one of the joint contractors is a married woman contracting in respect of her separate property. *HOARE v. NIBLETT* - Div. Ct. [1891] 1 Q. B. 781

**29. — Reversion—Election.**

A separation deed executed in 1875, not acknowledged by the wife, provided for payment by the husband of an annuity to the wife; who covenanted to release, when discover a reversionary life interest in real and personal estate:—

*Held*, that on the death of the husband the wife was not bound to release her life interest by having received the annuity.

The doctrine of election by a married woman discussed. *HARLE v. JARMAN* - North J. [1895] 2 Ch. 419

30. — *Unity of person—Husband's liability—Contract by wife—Fraud by wife—Tort—Liability of husband—Practice—Action against wife—Joinder of husband—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2.*

Although a husband is not liable on his wife's contract, he is liable for any fraud or other tort

**HUSBAND AND WIFE (Contracts)—continued.**

committed by her during the coverture, unless it is directly connected with the contract and is the means of effecting or inducing it and is part of the same transaction. That liability, which existed before the Married Women's Property Act, 1882, is not affected by the Act, nor is the remedy of the party injured limited by the Act to the wife's separate estate, if any.

Thus, where since the Act a contract had been entered into by K., a married woman, with E., under which E. was to pay K. a sum of money in a certain event, and subsequently K. induced E. to pay her the money by a false representation that the event had happened, it was *held* (1) by Byrne J., [1899] W. N. 244; [1900] 1 Ch. 203, and by the C. A., that as the contract had not been induced by the fraud and was altogether independent of it, K.'s husband was liable to E. in damages for his wife's fraud; and (2)

*Held*, by the C. A., that the Married Women's Property Act, 1882, did not exempt the husband from his liability.

*Liverpool Adelphi Loan Association v. Fairhurst*, (1854) 9 Ex. 422, *Wright v. Leonard*, (1861) 11 C. B. (N.S.) 258, on the first point, and *Seroka v. Kattenburg*, (1886) 17 Q. B. D. 177, on the second, approved of.

The expression "need not be joined" in s. 1, sub-s. 2, of the Act does not mean that, whenever a plt. is suing a married woman in contract or in tort, he "shall not" join the husband with her, but only that the joinder, which was formerly necessary, is now unnecessary if the plt. is seeking to obtain satisfaction out of the wife's separate estate alone. *EARLE v. KINGSCOTE*

C. A. [1900] W. N. 162; [1900] 2 Ch. 585

**Conveyance.**

**31. — Jurisdiction of Chancery Division—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 91—Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34.**

Refusal by the judge of the Ch. Div. to make an order under s. 91 of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 71), dispensing with the husband's concurrence in a wife's conveyance.

*Semble*, under special circumstances the Ch. Div. may exercise concurrent jurisdiction with the Q. B. Div. in this behalf. *In re ELLEN GILES*

Stirling J. [1894] W. N. 73

**32. — Married woman—Trustee—Sale of real estate held on trust for sale—Conveyance to purchaser—Concurrence of husband—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 18, 24.**

The Married Women's Property Act, 1882, does not enable a woman married since the commencement of the Act, being a trustee of real estate for sale, to convey to a purchaser except with the concurrence of her husband, and by a deed acknowledged by her. *In re HARENESS AND ALLSOPP'S CONTRACT*

North J. [1896] 2 Ch. 358

Referred to by Kekewich J. *In re Brooke and Fremelin's Contract*, [1898] 1 Ch. 647, 650.

**33. — Wife's conveyance—Married woman—Mortgagee—Separate property—Conveyance to purchase by mortgagor and mortgagee—Married**

**HUSBAND AND WIFE (Conveyance)—continued.**

*Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 5—Acknowledgment of deed unnecessary.*

A married woman, to whom, subsequently to the Married Women's Property Act, 1882, real estate is conveyed by way of mortgage to secure money belonging to her as her separate property, and convey to a purchaser from the mortgagor without the concurrence of her husband, or acknowledgment of the deed of conveyance by her under the Fines and Recoveries Act.

The decision in *In re Harkness and Allsopp's Contract*, [1896] 2 Ch. 358, distinguished, as not being applicable to the case of a married woman who is a mortgagee, and not a trustee. *In re BROOKE AND FREMLIN'S CONTRACT*

Kekewich J. [1898] 1 Ch. 647

**34. — Wife's reversionary chose in action—Malins' Act (20 & 21 Vict. c. 57).**

Previous to their marriage husband and wife agreed to settle, inter alia, a policy of insurance on the life of another, to which the wife was entitled under an instrument made previous to 20 & 21 Vict. c. 57. A memorandum of this agreement was signed by the husband only before the marriage, and after the marriage the husband only executed the settlement. The wife subsequently assigned the policy to the trustees of the settlement. After this the wife in exercise of a power under the settlement mortgaged the policy:—

*Held*, that the wife had by her conduct elected to confirm the settlement, and was therefore bound thereby, and that the mortgage was valid. *GREENHILL v. NORTH BRITISH AND MERCANTILE INSURANCE CO.*

Stirling J. [1893] 3 Ch. 474

Referred to by North J. *Harle v. Jarman*, [1895] 2 Ch. 419, 425.

**35. — Wife's reversionary interest in personality—Instrument made before Malins' Act—Malins' Act (20 & 21 Vict. c. 57).**

A., by will made before Dec. 31, 1857, gave to H., a married woman, a reversionary interest in her residuary estate. By a codicil subsequent to the above date, A. gave additional legacies:—

*Held*, that the "instrument" under which H. took was the will which was made prior to the date of operation of 20 & 21 Vict. c. 57. *In re ELCOM. LAYBORN v. GROVER-WRIGHT*

C. A. [1894] 1 Ch. 303

**36. — Wife's reversionary life interest—Assignment—Married woman—Beneficial interest in trust money invested on mortgage of realty—"Estate"—"Interest in land"—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 1, 77—Mortmain Act (9 Geo. 2, c. 36), s. 3.**

In a case not falling within Malins' Act (20 & 21 Vict. c. 57):—

*Held*, by Lindley and A. L. Smith, L.JJ. (Kay L.J. dissentiente), that a married woman's equitable reversionary life interest in a sum of money properly invested by her trustees upon a mortgage of land, is an interest in land within s. 77 of the Fines and Recoveries Act, so that she can dispose thereof by deed acknowledged and with her husband's concurrence.

The decision of Stirling J., [1895] W. N.

**HUSBAND AND WIFE (Conveyance)**—*continued*.  
143 (8), reversed. *In re Newton's Trusts* (23 Ch. D. 181) overruled. **MILLER v. COLLINS**  
C. A. [1896] 1 Ch. 573

**Costs.**

*See* **COSTS—Married Woman.**

**Divorce.**

*See* **DIVORCE.**

**Equity to Settlement.**

*See* **SETTLEMENT—Equity to Settlement.**

**Marriage Contract.**

37. — *Promise by wife's father to leave her "a share" of his estate—Specific performance.*

In 1873 a father, prior to the marriage of his daughter, in a letter to her intended husband stated: "You are of course aware that with my large family Eliza will have little fortune. She will have a share of what I leave after the death of her mother, who I wish to leave in comfortable independence if I should leave her a widow." The intended husband accepted the letter as giving him some rights, and the marriage took place. The father afterwards acquired a large fortune, and died in 1898. His wife predeceased him. By his will he left a legacy of 2000*l.* to the daughter, and gave the residue of his estate equally between six of his other seven children. The daughter and her husband claimed by virtue of the letter to be entitled to an equal eighth share of the father's estate:—

*Held*, first, that the letter did not constitute a contract by the father, but was merely an expression of his intentions; secondly, that if it were a contract, it was an obligation to leave, not an equal eighth share, but some portion or share of his estate to the daughter, and was fulfilled by the legacy. *In re FICKUS*. **FARINA v. FICKUS**  
**Cozens-Hardy J.** [1900] W. N. 4;  
[1900] 1 Ch. 331

**Practice.**

38. — *Attachment—Process—Married woman administratrix—Order for payment into court—Form of Order—Non-compliance with order—Debtors Act, 1869 (32 & 33 Vict. c. 62), ss. 4, 5—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2; ss. 18, 24—R. S. C., 1883, Order XLII., rr. 4, 24.*

Where a married woman administratrix is ordered to pay into court a sum of money belonging to the estate of the intestate and shewn by her account of the intestate's personal estate to be in her possession, in the absence of any evidence that she has committed a devastavit, the order should be in the common form and should not be restricted to payment out of her separate estate; and if she fails to comply with the order the Court has jurisdiction to make an order for attachment against her.

*Scott v. Morley*, (1887) 20 Q. B. D. 120, explained and distinguished.

But *semble*, if the object of the order had been, not for the better securing of the fund, but to compel the married woman to make good a loss occasioned by her devastavit, the order should have been made in the form prescribed in

**HUSBAND AND WIFE (Practice)**—*continued*.

*Scott v. Morley*, and she would not have been liable to attachment for non-compliance with it.

*In re TURNBULL*. **TURNBULL v. NICHOLAS**

**Stirling J.** [1899] W. N. 229; [1900] 1 Ch. 180

— **Costs**—Action by or against—Married woman.

*See* **Cases under COSTS—Married Woman.**

— **Costs.**

*See* **HUSBAND AND WIFE—Restraint on Anticipation.** 44—47.

39. — *Form of judgment—Action against widow on contract made during coverture.*

Where judgment is recovered in an action against a widow upon a contract entered into by her during coverture after the passing of the Married Women's Property Act, 1882, and before the passing of the Married Women's Property Act, 1893, the plaintiff is not entitled to a judgment in the ordinary form as though the debt were a *feme sole*; he can only sign judgment in the form settled by the C. A. in *Scott v. Morley*, (1887) 20 Q. B. D. 120, in an action against a married woman, with such verbal alterations as are necessary to adapt that form to a judgment against a widow. **SOFTLAW v. WELCH**

C. A. [1899] W. N. 113; [1899] 2 Q. B. 419

— **Payment out of Court**—Married woman—Affidavit of no settlement.

*See* **PRACTICE—Payment out of Court.** 143.

40. — *Title of petition for appointment of trustees—Policy by husband for benefit of wife—Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 10.*

A widow, whose husband died in 1898, petitioned for the appointment of trustees to receive payment of the money secured by a policy of assurance effected by him in 1874, under the Married Women's Property Act, 1870, and expressed to be for her benefit:—

*Held*, that the petition was properly entitled only in the matter of the Act of 1870.

*In re Soutar's Policy Trusts*, (1884) 26 Ch. D. 236, not followed.

*In re Adam's Policy Trusts*, (1883) 23 Ch. D. 525; 48 L. T. 727, and the opinion expressed by *Stirling J.* in *In re Turnbull*, [1897] 2 Ch. 415, followed. *In re KUYPER'S POLICY TRUSTS*

**North J.** [1898] W. N. 151 (9); [1899] 1 Ch. 38

**Probate.**

*See* **Cases under PROBATE.**

— **Joint will**—Death of wife.

*See* **PROBATE—Grant of Probate.** 104.

— **Grant of administration to husband.**

*See* **PROBATE—Grant of Administration.** 51, 52, 55.

41. — *Married woman—Will—Invalid bequest—Grant of general probate to husband—Implied assent to will.*

Since the coming into operation of the amended rules 15 and 18 of the Probate Rules (Non-Contentious Business), which provide that probate of the will of a married woman shall take the form of ordinary grants of probate without any exception or limitation, a husband who obtains probate of his wife's will in general form

**HUSBAND AND WIFE (Probate)—continued.**

is not deemed to have assented to the will as a disposition of property which she had no right to dispose of by will without his assent.

Decision of Stirling J., [1898] 1 Ch. 637, affirmed.

*Held*, further, that upon the true construction of the will the property in dispute was not included in the bequest, and, therefore, that the question of assent did not arise. *In re ATKINSON. WALLER v. ATKINSON* C. A. [1899] W. N. 51; [1899] 2 Ch. 1

— Will of wife founded on invalid protection order—Desertion.

See PROBATE—Grant of Probate. 106.

**Restraint on Anticipation.****42. — Absolute gift—Direction for “payment.”**

A testatrix bequeathed a share of her residuary estate to trustees in trust for her brother for life, and after his decease in trust for one of her nieces, and the will contained a declaration that the shares of nieces “should be paid to their separate use free from the control of any present or future husband without power of anticipation.” The brother being dead:—

*Held*, on the authority of *In re Bown*, (1884) 27 Ch. D. 411, that the niece was entitled to immediate payment of her share notwithstanding the words restraining anticipation. *In re FEARON. HOTCHKIN v. MAYOR* — Kekewich J. [1896] W. N. 175 (12)

**43. — Admission of cessor of interest—Estoppel—Separate estate—Married woman.**

A married woman was entitled to the income of property during her life, for her separate use without power of anticipation, subject to a proviso that on a specified event her interest should cease, and the property be held in trust for her husband. In order to assist her husband to make an arrangement with a creditor, she executed a deed-poll, whereby she admitted (believing then that it was true, though, as she afterwards alleged, it was not in fact true) that the event mentioned in the proviso had occurred, and that her life interest had determined, and she released that interest in favour of her husband. On the faith of this deed the creditor entered into arrangements with the husband for his benefit. The wife subsequently, notwithstanding the deed, claimed to receive the income of the property during her life:—

*Held*, that she could not by admission or estoppel or in any other way by her own act get rid of the protection afforded by the restraint on anticipation, and that her right to receive the income was unaffected by her admission contained in the deed-poll.

Decision of Kekewich J., [1897] 2 Ch. 223, affirmed. *LADY BATEMAN v. FABER*

C. A. [1898] 1 Ch. 144

See *Lady Bateman v. Faber*, Kekewich J., [1899] W. N. 241; C. A. [1900] W. N. 157.

**44. — Appeal by married woman defendant—Costs — “Proceeding instituted” — Married Women’s Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.**

An appeal by a woman from a judgment in an action in which she is defendant is not a “pro-

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

ceeding instituted” within the meaning of the Married Women’s Property Act, 1893, c. 63, s. 2, and an order cannot be made under that section for the payment of the costs of the opposite party out of her separate property which is subject to a restraint upon anticipation. The section applies only to an action or other litigation initiated by a woman.

*Hood Barrs v. Cathcart*, [1894] 3 Ch. 376, approved. *HOOD BARRS v. HERIOT*

H. L. (E.) [1897] A. C. 177

**45. — Costs—Suit without next friend—Married Women’s Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2; s. 19.**

Where costs are ordered to be paid by a married woman, suing under the Married Women’s Property Act, 1882, without a next friend, payment of them can be enforced against any separate property to which she is entitled free from restraint on anticipation at the time when the order to pay costs is made. The restraint on anticipation ceases, as to any sums forming part of the income, so soon as they come into the trustees’ hands:—

*Held*, therefore, that the trustees could pay their costs out of arrears of income detained in their hands by an administration order. *Cox v. BENNETT* — C. A. [1891] 1 Ch. 617

See now s. 2 of the Married Women’s Property Act, 1893 (56 & 57 Vict. c. 63).

See also *Pillers v. Edwards*, [1894] W. N. 212.

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 690, 694.

**46. — Costs where there is a restraint on anticipation — Married Women’s Property Act, 1893 (56 & 57 Vict. c. 63), s. 21.**

(A) Where an action by a married woman is dismissed with costs, the words “with liberty to apply for payment out of any property which is subject to a restraint on anticipation” should be added to the order. *DAVIES v. TREHARRIS BREWERY Co.* — Chitty J. [1894] W. N. 198

See now s. 2 of the Married Women’s Property Act, 1893.

(B) An order made before the Act of 1893 for costs against a married woman, restraint from anticipation in proceedings instituted by herself cannot be enforced under the Act of 1893. *In re LUMLEY. Ex parte HOOD BARRS*

C. A. [1894] 3 Ch. 135

**47. — Costs—Set-off—Married Women’s Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2—R. S. C., Order LXV., r. 27, sub-s. 21.**

An action against a married woman, which she lost, execution as to costs recoverable in the action was limited to her separate property. Subsequently, after the married woman had become a widow, the plaintiff became liable to her for costs in other proceedings:—

*Held*, that the pltf’s costs in the first action could be set off against costs payable to deft. personally on the subsequent proceedings. *PELTON BROTHERS v. HARRISON* (No. 2)

C. A. [1892] 1 Q. B. 118

Followed by C. A. *Softlaw v. Welch*, [1899] 2 Q. B. 419, 426.

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

48. — *Execution—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-ss. 1, 2, 3, 4; s. 19.

(A) A judgment could not be enforced under the Act of 1882 by any kind of process against arrears of the income of the separate estate of a married woman restrained from anticipation, accruing due after the date of the judgment.

*Seem*, that the Act of 1893 does not alter the effect of a married woman's contracts on property restrained from anticipation. *HOOD BARRS v. CATHCART* (No. 1)

C. A. [1894] 2 Q. B. 559

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 690, 693.

(B) A restraint on anticipation attached to rents in arrear, but not yet received:—

*Held*, that a receiver could not be appointed by way of equitable execution of such rents. *FILLERS v. EDWARDS* C. A. [1894] W. N. 212

49. — *Husband's debts—Conveyancing and Law of Property Act, 1881* (44 & 45 Vict. c. 41), s. 39.

On application under s. 39 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), to remove a married woman's restraint on anticipation for the purpose of paying her husband's debts:—

*Held*, that the Act was not intended to apply in such a case. *In re S—'s SETTLEMENT*. *G. v. C.—* — *Kekewich J.* [1893] W. N. 127

50. — *Inquiry as to separate estate—Practice—Execution—Married woman—Examination of person other than judgment debtor—R. S. C., 1883, Order XXXVII., r. 28; Order XLII., r. 32.*

A direction that an inquiry is to be held as to the estate of a married woman against whom judgment has been obtained, with a view to ascertain if she has separate property free from restraint on anticipation, does not authorize the examination of any person other than the judgment debtor. *HOOD BARRS v. HERIOT. Ex parte BLYTH* — C. A. [1896] 2 Q. B. 338

51. — *Indemnity against husband—Order removing restraint—Separate estate—Restraint on anticipation—Practice in chambers—Married woman—Payment of husband's debts—Exoneration—Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 39.

A wife entitled under a settlement to a life interest in property subject to a restraint from anticipation obtained from the Court, for the purpose of raising money to pay off her husband's debts, two orders under s. 39 of the Conveyancing Act, 1881, charging her life interest with the sums of 23,000*l.* and 22,000*l.* She afterwards brought an action against her husband for a declaration that he was liable to indemnify her against the two charges created on her separate property for the payment of his debts, and the action was dismissed by *Kekewich J.* (*see* [1897] W. N. 159 (6); [1898] 1 Ch. 47).

Upon appeal, it was *held* that, under the circumstances of the case, no inference could be drawn in favour of the wife of any right to be indemnified by her husband, and the appeal was dismissed.

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

The doctrine that if a wife charges her separate property to pay her husband's debt she is *primâ facie* regarded as lending, and not giving him the money raised, and as entitled to have the property exonerated by him, is purely equitable. It is based upon an inference to be drawn from the circumstances of each case, and there may be circumstances which prevent it from arising: so that until an inference in favour of the wife arises, there is no presumption for the husband to rebut.

In cases where orders have been made under s. 39 of the Act of 1881, it is the order of the Court which binds the estate of the wife, and not what she does when the restraint on anticipation is removed; and although it might be convenient for the order to indicate the husband's liability to indemnify the wife in cases where it is intended he should be liable to do so, the silence of the order in this respect does not negative the existence of the wife's right to indemnity where it can be inferred from the circumstances. *PAGET v. PAGET* — — — C. A. [1898] 1 Ch. 470

Referred to. *Barron v. Willis*, [1899], 2 Ch. 578, 586.

— Insolvent estate—Separate estate—Restraint in anticipation—Appropriation of capital sum—Administration.  
*See ANNUITY. 8.*

52. — *Judgment after cessation of coverture—Separate property—Restraint upon anticipation—Wife's contracts during coverture—Married Women's Property Act, 1893* (56 & 57 Vict. c. 63), s. 1.

By the Married Women's Property Act, 1893, s. 1, "Every contract hereafter entered into by a married woman . . . (a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract; (b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and (c) shall also be enforceable by process of law against all property which she may thereafter while discover be possessed of or entitled to: Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating."

A married woman, who was possessed of separate property the income of which she was restrained from anticipating, entered into a contract, and was subsequently divorced. Judgment having then been obtained against her, it was sought to enforce it by means of a garnishee order attaching income which had accrued due to her from this property subsequently to the divorce:—

*Held*, that this income was protected by the proviso to the section, and could not be attached. *BARNETT v. HOWARD. UNION BANK OF LONDON, GARNISHEES* — — — C. A. [1900] W. N. 179; [1900] 2 Q. B. 784

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

53. — *Judgment against married woman—Arrears of income—Married Women's Property Act, 1882, c. 75, ss. 1, 19.*

Where a married woman is entitled to property for her separate use without power of anticipation, the restraint on anticipation does not apply to income accrued due: and a judgment creditor may enforce the judgment against income which has accrued due at or before the date of the judgment.

The reasoning on this point in *Hood Barrs v. Cathcart* [1894] 2 Q. B. 559, 570 overruled.

Decision of C. A. [1895] 2 Q. B. 212 reversed. *HOOD BARRS v. HERIOT*

H. L. (E.) [1896] A. C. 174

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 690, 693.

54. — *Judgment against married woman—Arrears of income due after judgment—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 19.*

Where a married woman has separate estate restrained from anticipation, the Married Women's Property Act, 1882, does not enable a judgment to be enforced against arrears of income to which the restraint applies, accruing due after the date of the judgment: and the decision of the C. A. to that effect in *Hood Barrs v. Cathcart* [1894] 2 Q. B. 559 is not affected by the judgment of the H. L. in *Hood Barrs v. Heriot* [1896] A. C. 174. WHITELEY v. EDWARDS

C. A. [1896] 2 Q. B. 48

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 690, 693.

55. — "*Proceedings instituted*" — *Married Women's Property Act, 1882, 1893 (45 & 46 Vict. c. 75, s. 1, (56 & 57 Vict. c. 63), ss. 1, 2.*

(A) Whether the words "proceeding instituted" in s. 2 of the Act of 1893 include a motion or appeal by a married woman *deft., quare*. *In re LUMLEY. Ex parte HOOD BARRS*

C. A. [1894] 3 Ch. 135; *see* [1897] A. C. 177

(B) *Held*, not to include such motion or appeal or step in an action. *HOOD BARRS v. CATHCART* (No. 2) C. A. [1894] 3 Ch. 376

Followed by Chitty J. *Hollington v. Dear*, [1895] W. N. 25.

(C) Sect. 2 of the Married Women's Property Act, 1893, applies to suits commenced prior to and pending at the date of the Act. *In re GODFREY. THORNE-GEORGE v. GODFREY*

C. A. [1895] W. N. 12

(D) A counter-claim by a married woman *deft.* is a "proceeding instituted" by her within the Married Women's Property Act, 1893, s. 2, and such counter-claim having been dismissed there is jurisdiction to order the costs to be paid out of her separate property notwithstanding any restraint on anticipation.

Where an order has been made dismissing an application by such a *deft.*, with costs, the Court or judge has jurisdiction in a subsequent order appointing a receiver to direct that those costs

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

should be paid out of property subject to restraint. *HOOD BARRS v. CATHCART* (No. 4)

Div. Ct. [1895] 1 Q. B. 873

(E) A petition presented by a married woman, in an action in which she is *deft.*, is not a "proceeding instituted," so as to render the restrained property liable for costs. *HOLLINGTON v. DEAR*

Chitty J. [1895] W. N. 35

56. — *Removal by Court of restraint—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 39.*

Restraint on anticipation of property settled on a married woman for life, with remainder to her husband for life, was, under the circumstances, removed till further order, to the extent of allowing the income to be applied in payment of premiums on policies on the husband's life, and towards keeping down interest on mortgages in which she had purported to join with her husband, on the mortgagee undertaking to reduce the rate of interest, and not to enforce payment of the principal without leave of the Court.

*In re MILNER'S SETTLEMENT*

Romer J. [1891] 3 Ch. 547

57. — *Removal by the Court—"Benefit"—Payment of debts incurred through extravagance—Married woman—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 39.*

The Court will not make an order under s. 39 of the Conveyancing Act, 1881, in a case where it is sought to remove the restraint on anticipation merely for the purpose of raising money for the payment of debts incurred through the extravagance of the married woman or her husband.

The decision of Chitty J., [1896] 1 Ch. 901 affirmed. *In re POLLARD'S SETTLEMENT*

C. A. [1896] 2 Ch. 552

58. — *Separate examination—Practice—Married woman—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 50—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 5—Woman married before, but property acquired after, Act of 1882.*

Where a woman, married before the commencement of the Married Women's Property Act, 1882, is a party to an application under the Settled Estates Act, 1877, relating to property her interest in which was acquired after the commencement of the Act of 1882, she need not be examined separately as provided by s. 50 of the Act of 1877.

*In re Harris's Settled Estates*, (1884) 28 Ch. D. 171, applied and followed. *In re BATT'S SETTLED ESTATES* —

Kekewich J. [1897] 2 Ch. 65

59. — *Separate examination dispensed with—Married woman—Settled Estates Acts, 1877 (40 & 41 Vict. c. 18), s. 50.*

The Court dispensed with the separate examination under s. 50 of the Settled Estates Act, 1877, of a woman, married before 1883, consenting to a sale of land, she being an object of a discretionary trust as to income during her husband's life. *In re TESSEYMAN'S SETTLED ESTATE*

North J. [1897] W. N. 167 (6)

60. — *Separate use.*

A restraint on alienation or anticipation of

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

income given to a woman is of no avail unless the income is given to her for her separate use. A gift to her separate use will not be implied from the mere existence of a restraint on anticipation. *STODDON v. LEE* C. A. [1891] 1 Q. B. 661

But see now Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1 (a).

Referred to by C. A. *In re Lumley*, [1896] 2 Ch. 694.

**61. — Separate use, Legacy for—Seizure by husband—Statute of Limitations—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12.**

A woman who was married in 1854 received in 1876 a legacy of 300*l.* given for her separate use, but was forcibly deprived of the money by her husband, who knew that it was a legacy. During the husband's lifetime the wife frequently asked him for the money; but no proceedings to recover it were taken until after his death, which occurred in 1894:—

*Held*, that the husband was affected with notice of the separate use, and was a trustee of the money for his wife; that the Statute of Limitations was no defence to proceedings by her against his executors; and that the wife was entitled to be paid the amount of the legacy, with interest at 4 per cent. from the date of her husband's death. *WASSELL v. LEGGATT*

Romer J. [1896] 1 Ch. 554

**62. — "Separate use"—Married woman, Gifts to—"Sum of money not exceeding 200*l.*"—Sums under different titles—Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 7.**

A wife married in 1877 became, under the will of a testator who died in 1880, entitled to a sum of 180*l.* and also to an unascertained share of residue assumed to somewhat exceed the sum of 20*l.*:—

*Held*, as between the husband and wife, that, although the wife took the 180*l.* and share of residue under the same instrument, she did so under different titles, and therefore s. 7 of the Married Women's Property Act, 1870, must be applied to each sum separately and not to both in the aggregate, so that the 180*l.*, being by itself "a sum of money not exceeding 200*l.*," belonged to the wife "for her separate use." *In re DAVIES*. *HARRISON v. DAVIS* — — — *Kekewich J.* [1897] 2 Ch. 204

**63. — Separate use—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).**

A restraint on anticipation may, in a settlement made since the Married Women's Property Act, 1882, come into operation, be effectually annexed to a life estate thereby given to her, though not in terms limited to her separate use, and only made separate estate by force of the Act.

Such restraint is not invalidated by the life estate being given without impeachment of waste.

Decision of North J., [1893] W. N. 13, affirmed. *In re LUMLEY. Ex parte HOOD BARRS*

C. A. [1896] 2 Ch. 690

— Tenant by the courtesy.

See SETTLED LAND. 117.

**HUSBAND AND WIFE (Restraint on Anticipation)—continued.**

**64. — Widow—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2, 4.**

Deft. was sued after the death of her husband in respect of a liability incurred by her during coverture, and judgment was recovered against her limited to her separate property not subject to any restriction against anticipation:—

*Held*, that the removal by reason of her husband's death of the restraint on anticipation did not make property subject to such restriction liable. *FELTON BROTHERS v. HARRISON*

C. A. [1891] 2 Q. B. 422

Referred to by Cozens-Hardy J. *In re Wheeler's Settlement Trust*, [1899] 2 Ch. 717, 722.

See Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.

**65. — Widow—Money brought into court—Right of successful plaintiff to money so brought in.**

The deft., a married woman possessed of separate property not subject to any restraint on anticipation, entered into a covenant for payment of a sum of money. On an action on the covenant, the deft., who had in the meantime become a widow, obtained leave to defend on payment of 500*l.* into court under Order XIV. Judgment having been given for the plt.:—

*Held*, that he was entitled to have the 500*l.* paid out to him forthwith. *BIRD v. BARSTOW*

C. A. [1892] 1 Q. B. 94

**Separation.****(Separation and Separation Deeds.)**

**66. — Acts committed before or subsequent to date of separation deed.**

A proviso that the covenants, &c., of a deed shall be void if a petition be filed for divorce, &c., for acts committed before or subsequent to date of deed is severable. Therefore that part of the deed which relates to acts committed "before" being valid a declaration that the covenants, &c., are void can be made. *BRUNTON v. DIXON*

Chitty J. [1892] W. N. 105

— Condonation.

**See DIVORCE. Condonation.**

**67. — Authority of husband—Husband's rights.**

Where a wife refuses to live with her husband, he is not entitled to keep her in confinement in order to enforce restitution of conjugal rights. *REG. v. JACKSON* — C. A. [1891] 1 Q. B. 671

**68. — Covenant not to molest—Divorce proceedings in foreign country—Separation by agreement.**

Where a deed of separation between husband and wife contains a covenant by the former not to molest the latter, the taking proceedings in a foreign court to procure a divorce is not of itself, and without evidence of an intention to annoy, a breach of the covenant.

Decision of Wright J., [1897] 2 Q. B. 304, reversed. *HUNT v. HUNT* C. A. [1897] 2 Q. B. 547

**69. — Covenant to pay annuity—Covenant not to molest—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2.**

Husband and wife separated by deed. The

**HUSBAND AND WIFE (Separation)—continued.**

husband covenanted to pay the wife an annuity; and she covenanted not to molest, annoy, or interfere with her husband. The deed contained no *dum casta* clause:—

*Held*, that the fact of the wife's committing adultery resulting in the birth of a child was no defence to an action by her for arrears of the annuity. **SWEET v. SWEET**

Div. Ct. [1895] 1 Q. B. 12

70. — *Covenant to pay annuity—Resumption of cohabitation.*

*Semble*, an annuity payable under a separation deed between husband and wife ceases to be payable if cohabitation is resumed. *In re* **ABDY. RABBETH v. DONALDSON** (No. 2)

C. A. [1895] 1 Ch. 455

71. — *Covenant to pay annuity—Separate use.*

Covenant by husband in a separation deed to pay annuity for wife's separate use during joint lives. The annuity was in arrear on the death of husband:—

*Held*, that the separate use came to an end on the death of husband and did not bind the arrears. **STODGON v. LEE**

C. A. [1891] 1 Q. B. 661

*But see now* Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1 (a).

Referred to by C. A. *In re* **Lumley**, [1896] 2 Ch. 694.

72. — *Dissolution of marriage—Separation deed.*

A husband having been guilty of cruelty, he and his wife separated upon the terms of a deed by which they agreed that neither party should take proceedings against the other for dissolution of marriage or judicial separation on the ground of previous misconduct, but that the deed should be void in case the marriage should be dissolved or a judicial separation granted on the ground of subsequent misconduct by either. The husband afterwards committed adultery. He did not plead the deed in answer to his wife's petition.

The Court granted a decree nisi for the dissolution of the marriage.

*Rose v. Rose*, (1882) 7 P. D. 225; (1883) 8 P. D. 98, distinguished. **DOWLING v. DOWLING**  
**G. Barnes J. [1898] P. 228**

73. — *Intercourse while living apart—Evidence of cohabitation—Separation agreement.*

Husband and wife entered into a deed of separation under which the husband covenanted to pay a weekly sum to the wife during their joint lives if they should so long live separate from one another. While they were living apart, acts of connubial intercourse took place. In an action by the wife to recover arrears of payments due under the deed:—

*Held*, that the fact that intercourse had taken place was not of itself conclusive evidence that the separation had come to an end so as to make the deed of no effect. **ROWELL v. ROWELL**

C. A. [1900] 1 Q. B. 9

— Judicial separation.

*See* Cases under **HUSBAND AND WIFE—Summary Jurisdiction.**

74. — *Marriage contract under French law* (47 & 48 Vict. c. 61), s. 14.

**HUSBAND AND WIFE (Separation)—continued.**

The question in this case was as to the power of the registrar of the Divorce Court under the terms of a separation agreement to determine certain questions of French law, and to vary the conditions of a marriage contract made under that law. **DE RICCI v. DE RICCI**

**Jeune J. [1891] P. 378**

— Retainer of trust property to satisfy annuity—Separation deed.

*See* **TRUSTEE—Retainer. 99.**

75. — *Setting aside—Suit to set aside—Separation and annuity deed—Discredited fraudulent representations—Subsequent adultery of wife—Practice as to costs in pauper appeals—Laws of New Zealand.*

A deed of separation and annuity will not be set aside at the instance of the husband on the ground of fraudulent representations by the wife as to her innocence which were discredited by him at the time of its execution, nor on the ground of subsequent adultery, when the deed contains no condition as to chastity.

Decree reversed with such costs as are payable in the Colony in pauper appeals; the appellant to be entitled to such costs of the appeal as she would be entitled to according to the rule which prevails in the H. L., which rule is adopted by the Board. **WASTENEYS v. WASTENEYS**

**P. C. [1900] A. C. 446**

**Summary Jurisdiction.**

76. — *Aggravated assault—Jurisdiction—Separation order by Justices—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 4—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

Where a separation order has been made under the Matrimonial Causes Act, 1878, s. 4, against a husband convicted of an aggravated assault upon his wife, and such order does not contain a provision for the wife's maintenance, there is no jurisdiction to make a summary order for maintenance. **WOODHEAD v. WOODHEAD**

Div. Ct. [1895] P. 343

[NOTE.—Sect. 4 is repealed and further provision made by the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).]

77. — *Allowance for wife—Husband's earnings—Mode of assessing proportion to be allowed—Separation order—Practice—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

In assessing the amount which a husband is to be ordered to pay for the support of his wife who has obtained a separation order against him under the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), courts of summary jurisdiction are to be guided by the principles and practice upon which allotments of alimony are made in cases of judicial separation in the High Court. **COBB v. COBB**

Div. Ct. [1900] P. 294

78. — *Appeals—Practice—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 11.*

Upon an appeal to the Probate, Divorce and Admiralty Div. from the decision of a court



**HUSBAND AND WIFE (Summary Jurisdiction)**  
—continued.

of summary jurisdiction under the Summary Jurisdiction (Married Women) Act, 1895, the practice under the Divorce Acts has no application, and it is not necessary that any case should be stated or filed. The practice in such appeals is governed by Order LIX., rr. 4A, 7, 8, 10, 11, 12, and 16. *SWOFFER v. SWOFFER*

Div. Ct. [1896] P. 131

79. — *Summary Jurisdiction—Appeal from Justices—Mode of Appeal—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 11.*

There is no power in a court of summary jurisdiction to state a case for the opinion of the Q. B. Div. upon a point of law arising on an application for an order under the Summary Jurisdiction (Married Women) Act, 1895; the only mode in which their decision can be questioned is by an appeal to the Probate, Divorce and Admiralty Div. under s. 11 of that Act. *MANDERS v. MANDERS* Div. Ct. [1897] 1 Q. B. 474

80. — *Appeal—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 43—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 4.*

A husband was convicted under 24 & 25 Vict. c. 100, s. 43, of an aggravated assault, and an order was made by the justices giving the wife a judicial separation and maintenance. The husband appealed:—

*Held*, that there was no appeal against the conviction. The appeal against the order made on the conviction dismissed on its merits. *LEWIN v. LEWIN* — Jeune J. [1891] P. 254

81. — *Costs—Judicial separation—Practice—Agreement for settlement of suit—Separation deed—Costs.*

The parties to a wife's suit for judicial separation entered into an agreement for the settlement of it, which provided (inter alia) that a separation deed should be executed; that the husband should pay the wife's taxed "costs of suit"; and that the agreement might be made a rule of Court:—

*Held*, that the costs of and incident to the preparation and settlement of the deed were not "costs of suit" which the husband was bound to pay.

Decision of Jeune P. ([1896] P. 75) affirmed. *LANCASTER v. LANCASTER* — C. A. [1896] P. 118

82. — *Costs—Separation order—Practice—Husband's appeal—Case remitted to justices—Wife's costs—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

Where a wife has obtained an order under the Summary Jurisdiction (Married Women) Act, 1895, she is entitled to her costs of supporting that order upon appeal, even though she should prove unsuccessful in the Div. Ct.

A husband and wife separated in 1887, when a document headed "Memorandum of Agreement" was signed by them and witnessed by a solicitor. Twelve years later the wife returned from abroad, went to her husband's house, and was refused admission. She thereupon took out a summons against her husband under the Sum-

**HUSBAND AND WIFE—(Summary Jurisdiction)**  
continued.

mary Jurisdiction (Married Women) Act, 1895, charging her husband with neglect to maintain her, and by such neglect causing her to leave and live separate and apart from him. The husband and wife were the only witnesses before the justices, who made an order for separation and allowance in favour of the wife.

*Held*, that as the document was conclusive one way or the other, and as the justices had not had all the evidence before them to enable them properly to test its validity, the case must go back for rehearing; but the appellant was ordered to pay the respondent's costs on the appeal. *MEDWAY v. MEDWAY*

Div. Ct. [1900] P. 141

83. — *Summary jurisdiction—Costs of summary proceedings—Separation order—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 38), ss. 4, 5.*

By ss. 4 and 5 of the Summary Jurisdiction (Married Women) Act, 1895, any married woman, whose husband shall have been guilty of certain specified kinds of misconduct towards her, may apply to a court of summary jurisdiction for an order under the Act, and the Court may make an order containing various specified provisions for her protection, including (s. 5, sub-s. (d)) "a provision for payment by the applicant or the husband, or both of them, of the costs of the Court, and such reasonable costs of either of the parties as the Court may think fit." The solicitor acting for a married woman in an application, which was unsuccessful, to a court of summary jurisdiction for an order under the Act, brought an action for his costs against the husband. The court of summary jurisdiction had not made, or been asked to make, any provision for the costs:—

*Held*, that the action could not be maintained, because the Act intended to exclude any remedy in respect of costs other than that specified in s. 5, sub-s. (d). *CALE v. JAMES*

Div. Ct. [1897] 1 Q. B. 418

84. — *Cruelty—"Legal cruelty"—Judicial separation—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 22, and 1884 (47 & 48 Vict. c. 68).*

A false charge of having committed an unnatural criminal offence brought by a wife against her husband, although published to the world and persisted in after she did not believe in its truth, is not sufficient evidence of legal cruelty to entitle the husband to a judicial separation:—

So *held*, by the majority of the House of Lords (Lords Herschell, Watson, Macnaghten, Shand, and Davey; Lord Halsbury L.C., Lords Hobhouse, Ashbourne, and Morris dissenting).

The effect of the Matrimonial Causes Act, 1884, debated, but not decided. *EARL RUSSELL v. COUNTESS RUSSELL* (No. 2)

H. L. (D.) [1897] A. C. 395

85. — *Cruelty—Retrospective operation of section—Persistent cruelty—Summary jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4.*

The provision of s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, giving

**HUSBAND AND WIFE (Summary Jurisdiction)**  
—continued.

jurisdiction under the Act to a court of summary jurisdiction in cases where a husband has been guilty of persistent cruelty to his wife, thereby causing her to live apart from him, is retrospective in its operation, and applies to acts of cruelty committed before the Act came into force. *LANE v. LANE* - Div. Ct. [1896] P. 133

86. — *Desertion—Limitation of time for proceedings—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), s. 4—11 & 12 Vict. c. 43, s. 11.

For the purpose of proceedings under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, the desertion of a married woman by her husband is a continuing act; an application by the wife for an order under that section need not, therefore, be made within six months of the commencement of the desertion. *HEARD v. HEARD*

Div. Ct. [1896] P. 188

87. — *Desertion—Neglect to provide reasonable maintenance—Cohabitation—Jurisdiction of justices—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), s. 4.

In order to give jurisdiction to justices under so much of s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, as provides that any married woman, whose husband shall have deserted her, or been guilty of wilful neglect to provide reasonable maintenance for her, and shall by such neglect have caused her to leave and live separately and apart from him, may apply to a court of summary jurisdiction for an order under the Act, it is essential that there should be a cohabitation which is broken by the act of the husband; but such cohabitation does not necessarily imply that the parties must be living together continually under one roof.

A married female domestic servant, who never lived with her husband under the same roof, was visited from time to time by him at the house of her mistress, and a child (which subsequently died) was born of the marriage in a lying-in hospital. The husband refused to receive his wife in the house where he lodged, or to give her any help towards her maintenance:—

*Held*, that the cohabitation was sufficient to give jurisdiction to the justices under the above section to make an order under the Act.

*Fitzgerald v. Fitzgerald*, (1869) L. R. 1 P. & M. 694, and *Reg. v. Leresche* [1891] 2 Q. B. 418 explained and distinguished. *BRADSHAW v. BRADSHAW* - Div. Ct. [1897] P. 24

88. — *Desertion—Wife's petition—Judicial separation.*

A wife suing for divorce on the ground of adultery and cruelty failed to prove the cruelty. It was also proved that the wife had deserted her husband before he committed adultery:—

*Held*, that notwithstanding her desertion, the wife was entitled to convert her petition for divorce into a petition for judicial separation.

*DUPLANY v. DUPLANY* Jeune J. [1892] P. 53  
Considered by Jeune P. *Synge v. Synge* [1900] P. 180, 201.

89. — *Evidence—Offences against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 43—*Matrimonial Causes Act, 1878* (41 & 42 Vict. c. 19), s. 4.

**HUSBAND AND WIFE (Summary Jurisdiction)**  
—continued.

*Matrimonial Causes Act, 1878* (41 & 42 Vict. c. 19), s. 4.

A husband who has been convicted by justices of an aggravated assault upon his wife is entitled to give evidence before them on an application by her for a separation order under s. 4 of the Matrimonial Causes Act, 1878. *JONES v. JONES* Div. Ct. [1895] P. 201

See Note to No. 76, above.

90. — *Evidence—Rescinding separation order—"Fresh evidence"—Definition—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 7.

"Fresh evidence" within the meaning of the Summary Jurisdiction (Married Women) Act, 1895, s. 7, to confer jurisdiction to rescind a separation order previously made under s. 4, must be such as would afford ground for a new trial or rehearing in any other class of case. It must be evidence which could not reasonably have been made available at the date of the order, or it must relate to something which has happened since the date of the order, and which affords ground for revision within the terms of the Act under which the order was made. *JOHNSON v. JOHNSON* - Jeune P. [1900] P. 19  
— *Evidence—Notes of proceedings.*

See Nos. 94—96, below.

91. — *Maintenance—Jurisdiction of justices—Persistent cruelty causing wife to live separately—Wilful neglect to provide reasonable maintenance causing wife to live separately—Limit of time for proceeding—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 8—*Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 11.

By the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4, "Any married woman . . . whose husband shall have been guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to leave and live separately and apart from him, may apply to any court of summary jurisdiction . . . for an order or orders under this Act."

By s. 8, "All applications under this Act shall be made in accordance with the Summary Jurisdiction Acts."

By the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11, "In all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made, and such information shall be laid, within six calendar months from the time when the matter of such complaint or information respectively arose."

Persistent cruelty by a husband to a wife, and wilful neglect by him to provide reasonable maintenance for her, in consequence of which he causes her to leave and live separately and apart from him, within the meaning of s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, are not continuing offences. The limit of

**HUSBAND AND WIFE (Summary Jurisdiction)**  
—continued.

time imposed by the reference in s. 8 to s. 11 of the Summary Jurisdiction Act, 1848, applies, and the complaint must in each case be made within six calendar months of the offence. **ELLIS v. ELLIS** - Div. Ct. [1896] P. 251

Referred to by Div. Ct. **Medway v. Medway**, [1900] P. 141, 143.

**92.** — *Maintenance—Neglect to provide—Evidence of means—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4—Appeal—Costs of wife when unsuccessful respondent.*

Upon the hearing by a court of summary jurisdiction of a summons taken out by a married woman under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, charging her husband with wilful neglect to provide reasonable maintenance for her, the Court, before making an order, must be satisfied that the husband either is in receipt of actual earnings, or has the capability of earning a livelihood; evidence of means cannot be entirely dispensed with.

Where a married woman is an unsuccessful respondent in an appeal to the Probate, Divorce, and Admiralty Div. under the Summary Jurisdiction (Married Women) Act, 1895, the Court, without laying down any binding rule of practice, will in ordinary cases follow the practice in matrimonial causes, and order her costs of the appeal to be paid by the husband. **EARNSHAW v. EARNSHAW** - Div. Ct. [1896] P. 160

**93.** — *Maintenance—Reduction of—Discretion of justices—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 4.*

The justices have a discretion to grant or refuse a summons to reduce the amount of maintenance ordered to a wife. **REG. v. HUGGINS (No. 1)** - Div. Ct. [1891] W. N. 88

See Note to No. 76, above.

**94.** — *Note of the evidence—Justices—Duty of Clerk to justices—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 4, 5, 11—Appeal to Probate Division.*

On an application by a married woman for an order for judicial separation, custody of children, or maintenance, under s. 5 of the Summary Jurisdiction (Married Women) Act, 1895, it is the duty of the clerk to the justices to make a note of the evidence and of the reasons for the decision, and supply the note, should there be an appeal, to the Prob. Div. **ROBINSON v. ROBINSON**

Div. Ct. [1898] P. 153

**95.** — *Notes of proceedings—Separation order—Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 4.*

On an appeal by a husband against an order of justices made under this section, it appeared that no notes of the evidence or of the reasons for the decision could be produced.

The Court said that this omission was most inconvenient and unsatisfactory, and led to serious and unnecessary expense, and that they

**HUSBAND AND WIFE (Summary Jurisdiction)**  
—continued.

hoped that in future notes of the evidence and of the reasons for decisions under the Act would be sent to them. **JAGGER v. JAGGER**

**Jeune P. and G. Barnes J.**  
[1896] W. N. 63 (2)

**96.** — *Notes of proceedings—Practice—Summary Jurisdiction (Married Women) Act, 1895 (c. 39).*

Upon the hearing of an appeal under the Summary Jurisdiction (Married Women) Act, 1895, the Court said that it would be a great convenience if, on the hearing of applications under that Act, the magistrates' clerks would take notes of the proceedings and forward them (in case of appeal) to the Probate, Divorce and Admiralty Div.; and also if the magistrates would in all cases say shortly on what grounds of fact or law they based their decision. **HARLING v. HARLING** - **Jeune P. and G. Barnes J.**

[1896] W. N. 28 (12)

**Title of Honour.**

**97.**—*Married woman—Dignity—Incorporeal hereditament—Marriage with a peer of the realm—Divorce—Former wife marrying a commoner—Continued use of title derived from former husband—Courtesy title—Jactitation of marriage—Injunction.*

Where the marriage of a commoner with a peer of the realm has been dissolved by decree at the instance of the wife, and she afterwards, on marrying a commoner, continues to use the title she acquired by her first marriage, she does not thereby, though having no legal right to the user, commit such a legal wrong against her former husband, or so affect his enjoyment of the incorporeal hereditament he possesses in his title, as to entitle him, in the absence of malice, to an injunction to restrain her use of the title.

A man has no such property in his name as to entitle him to prevent a woman, not his wife, claiming to be such, unless she does so maliciously.

Decision of **G. Barnes J.**, [1900] P. 118, reversed. **COWLEY v. COWLEY**

**C. A.** [1900] W. N. 180; [1900] P. 305

**HYDRANTS**—Fire hydrants—Right of water-works company to use—User without consent of the London County Council. See **WATER**. 12.

**HYPOTHEC**—Scottish law—Landlord's right of sequestration.

See **COMPANY—WINDING-UP—Staying Proceedings**. 233.

**HYPOTHECARY PRIVILEGE**—Builder's privilege—Law of Quebec. See **CANADA**. 5.

**HYPOTHECATION**—Liquidated demand—Floating security—Set-off. See **COMPANY—Debentures**. 92.

**HYPOTHETICAL TENANT**—Sewage works. See **RATES—Rateability**. 49.

## I.

**IDENTIFICATION**—Of name with goods by user  
—Trade name—Injunction.  
*See* NEW SOUTH WALES. 48.

— Sending out of jurisdiction for—Evidence—  
Commission—Subject-matter of action.  
*See* EVIDENCE. 26.

— Use of Photographs—Evidence.  
*See* DIVORCE—EVIDENCE. 77.

**IDENTITY**—Concealment of identity of lender—  
Fraud—Right of borrower to repudiate.  
*See* CONTRACT—Illegality. 20.

— Error of subscriber as to, of company—Alleged  
contract of membership.  
*See* COMPANY—WINDING-UP—Contribu-  
tory. 37.

— Evidence—Nullity suit.  
*See* DIVORCE—Nullity. 92.

— Parcels—Admissibility of parol evidence—  
Statute of Frauds.  
*See* VENDOR AND PURCHASER. 30.

**IGNORANCE OF LAW**—Bigamy—Bar to divorce.  
*See* DIVORCE—Bigamy. 19.

**ILLEGALITY**—Consideration for settlement—  
Marriage with sister of deceased wife.  
*See* SETTLEMENT. 31.

— Contract—Bail to produce prisoner—In-  
demnity.  
*See* BAIL. 1.

— Of contract.  
*See* CONTRACT—Illegality.

**ILLEGALLY DEALING**—Intoxicating liquors—  
Unlicensed premises—Buyer.  
*See* LICENSING ACTS. 40.

**ILLEGITIMACY**—Settlement.  
*See* SETTLEMENT—Construction. 7.

— Settlement of poor—Illegitimate pauper—  
Birthplace—Derivative settlement of  
parent.  
*See* POOR LAW. 16.

— Will, Construction of.  
*See* WILL—Illegitimacy.

**ILLEGITIMATE CHILD**—Custody.

The authorities do not establish the proposi-  
tion that the legal rights of the mother of an  
illegitimate child as to its custody are the same  
as those of the father of a legitimate child. But  
*semble*, that the obligation cast on the mother of  
an illegitimate child by 4 & 5 Will. 4, c. 76, s. 71,  
to maintain it till it attains the age of sixteen,  
involves a right to its custody. *Per* Lords  
Herschell and Field in *BARNARD v. McHUGH*  
H. L. (E.) [1891] A. C. 388

— Reparation to parents on death of illegitimate  
child.

*See* SCOTTISH LAW—Negligence. 30.

**ILLNESS**—Of executor.

*See* PROBATE—Grant of Administration.  
23, 68.

**ILLUSTRATION**—In newspaper.

*See* COPYRIGHT—Picture. 39.

**IMMIGRATION**—Alien's rights—Victorian  
Chinese Act.  
*See* VICTORIA. 1.

**IMMORALITY**—False declaration against simony  
—Clerical Subscription Act, 1865.  
*See* ECCLESIASTICAL LAW—Simony. 75.

— Maintenance—Education—Bringing up—  
Immoral home—Breach of trust—  
Trustee's discretion—Control of Court.  
*See* INFANT. 32.

**IMMUNITY CLAUSE**—Breach of trust—Liability  
of trustee—Negligence.  
*See* TRUSTEE—Breach of Trust. 29.

**IMPLICATION**—Gift "after decease" of wife—  
Life estate—Intestacy.  
*See* WILL—Residue. 175.

— Of obligation not to use information obtained  
during service.  
*See* MASTER AND SERVANT—Trade  
Secrets. 100.

**IMPOTENCE.**

*See* Cases under DIVORCE—Nullity.

**IMPOUNDING**—Goods—Distress—Man in  
possession.  
*See* DISTRESS. 10.

**IMPRISONMENT**

*for Contempt of Court, col. 932.*

*for Debt, col. 932.*

*for Offences, col. 934.*

*for Contempt of Court.*

1. — *Interfering with witness.*

(A) Party committed for attempting to inti-  
midate a witness. *BROMILOW v. PHILLIPS*

North J. [1891] W. N. 209

(B) Persons interested in an action committed  
for writing to the probable witnesses in the action  
making charges against parties to the action.  
*WELBY v. STILL* (No. 1)

Kekewich J. [1892] W. N. 6

*for Debt.*

2. — *Debtors Act, 1869* (32 & 33 Vict. c. 62), s. 4  
— *Default in payment of a sum of money.*

An order was made in interpleader proceed-  
ings that the sheriff should sell and pay A., the  
claimant, the execution creditor B. undertaking  
to make good any deficiency. There was a  
deficiency, and an order was made that B should  
pay A. within four days: B. failed to do so:—

*Held*, that the case was one of "default in  
payment of a sum of money" within s. 4 of the  
*Debtors Act, 1869* (32 & 33 Vict. c. 62), and that  
an order for commitment could not be made.

*BUCKLEY v. CRAWFORD. TOWNEND, CLAIMANT*  
Div. Ct. [1893] 1 Q. B. 105

**IMPRISONMENT (for Debt)—continued.**

3. — *Debtors Act*, 1869 (32 & 33 Vict. c. 62), ss. 4, 5—“Execution” of judgment—*Judgments Extension Act*, 1868 (31 & 32 Vict. c. 54), ss. 1, 4.

An order for committal of a debtor upon a judgment summons under the Act of 1869 is not “execution” of the judgment: therefore there is no jurisdiction under ss. 1, 4 of the *Judgments Extension Act*, 1868, to make such an order in relation to an Irish judgment. *In re WATSON. Ex parte JOHNSTON.* JOHNSTON v. WATSON

C. A. affirm. [1893] 1 Q. B. 21

4. — *Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 4, sub-s. 3—*Partner—Fiduciary capacity.*

One partner receiving assets of the partnership on account of himself and his co-partners, is not liable to imprisonment under s. 4, sub-s. 3, of the *Debtors Act*, 1869, as a person acting in a fiduciary capacity. *PIDDOCKE v. BURT*

Chitty J. [1894] 1 Ch. 343

5. — *Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 4, sub-s. 4—*Solicitor—Bankrupt—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), ss. 9, 10.

Notwithstanding s. 9 of *Bankruptcy Act*, 1883, a writ of attachment will issue against a solicitor under s. 4, sub-s. 4, of the *Debtors Act*, 1869, for default in payment of a sum of money, although the solicitor has become bankrupt since the date of the order for payment. *In re EDYE (A SOLICITOR) — Chitty J. [1891] W. N. 1*

— *Debtors Act*, 1869, s. 4, sub-s. 4—*Solicitor—Default in payment of balance due to client.*

See *SOLICITOR—Liability.* 86.

6. — *Debtors Acts*, 1869 and 1878, s. 4 (3) — *Trustee — Bankrupt trustee — Discretion of Court.*

The prohibition in s. 9 of the *Bankruptcy Act*, 1883, does not take away the jurisdiction of the Court to order, under s. 4, sub-s. 3, of the *Debtors Act*, 1869, the committal or attachment of a defaulting trustee against whom a receiving order in bankruptcy has been made, for such commitments are not to be regarded simply as a form of civil process, but are punitive.

*Per C. A.*, reversing *Kekewich J.*, a trustee is not dishonest and fraudulent merely because he neglects his trust, and thereby wrongs those whom it is his duty to protect. He is not therefore liable to attachment on that ground. *In re SMITH. HANDS v. ANDREWS — Kekewich J. varied by C. A. [1893] 2 Ch. 1*

7. — *Debtors Act*, 1878 (41 & 42 Vict. c. 54)—*Trustee—Discretion of Court.*

In the exercise of its discretion under the *Debtors Act*, 1878, the Court refused to allow a writ of attachment to issue against a trustee.

*Quære*, whether such trustee, being a peer of the realm, was privileged from arrest. *EARL OF AYLESFORD v. EARL POULETT (No. 2)*

North J. [1892] 2 Ch. 60

Referred to by C. A. *In re Smith.* See preceding Case.

— *Rates—Distress and imprisonment.*

See *RATES—Recovery.* 62, 63.

**IMPRISONMENT—continued.****for Offences.**

*By the Penal Servitude Act*, 1891 (54 & 55 Vict. c. 69), further provision was made as to the punishment of offences by imprisonment.

And see *CRIMINAL LAW, passim.*

— Household franchise—Confinement to camp for military offence.

See *PARLIAMENT—Franchise.* 20.

— Immunity of members of Provincial House of Assembly.

See *CANADA—Nova Scotia.* 39.

— Release of prisoner on payment of portion of fine.

See *CRIMINAL LAW—Fine or Imprisonment.*

— Returning from training—Assault and false imprisonment—Obedience to order of superior officer.

See *ARMY AND NAVY—Volunteers.* 8.

**IMPROVEMENT COMMITTEE**—Chairman of—Corporate office.

See *CORPORATION.* 6.

**IMPROVEMENT OF LAND ACT**, 1899 (62 & 63 Vict. c. 46), amends previous enactments.

**IMPROVEMENTS**—Compensation for.

See Cases under *LANDLORD AND TENANT—Agricultural Holdings.*

— “Improvement charge” — “Improvement area.”

See *LONDON.* 69.

— Mortgages.

See *MORTGAGE—Sale.* 82.

— Partition action.

See *PARTITION.* 5, 6.

— Permanent building erected by lease—Right to removal.

See *CAPE OF GOOD HOPE.* 5.

— Settled Land Acts.

See Cases under *SETTLED LAND.*

1. — *Tenant in common—Mortgage—Sale.*

The present value of improvements due to expenditure by a tenant in common in fee of one half, and tenant for life of the other half, of real estate (not exceeding the expenditure) allowed in distributing the surplus proceeds of sale by a paramount mortgagee among the persons entitled to the equity of redemption. *In re COOK'S MORTGAGE. LAWLEDGE v. TYNDALL — North J. [1896] 1 Ch. 923*

Referred to by *Stirling J. Hill v. Hickin, [1897] 2 Ch. 579, 581.*

— Will—Real estate — Repairs — Absence of power to mortgage.

See *POWER.*

**“IN CASE THE PARTIES DIFFER.”**

See *PRACTICE—Judgment.* 35.

**“INADVERTENCE”**—Amendment of proof.

See *COMPANY—WINDING-UP—Proof.* 202.

— Secured creditor—Omission to value security.

See *BANKRUPTCY—Secured Creditor.* 230.

**INCAPACITY—Executor.**

See PROBATE—Grant of Administration.  
23.

**INCLOSURE.**

*Commons Act, 1899 (62 & 63 Vict. c. 30), amends the Inclosure Acts, 1845 to 1882, and the law relating to Commons and Open Spaces.*

*Inclosure, &c., Expenses Act, 1868 (31 & 32 Vict. c. 89)—Fees to be taken in respect of transactions under the Tithe and other Acts, in accordance with the provisions of the. W. N. 1900 (May 19), p. 143. See Current Index, 1900, p. xc.*

1. — *Award, Finality of—Mistake—Inclosure Acts, 1845 (8 & 9 Vict. c. 118, s. 105; 1848 (11 & 12 Vict. c. 99), ss. 13, 14—Commons Act, 1876 (39 & 40 Vict. c. 56), s. 33.*

Land belonging to a stranger was by mistake included in a partition made under the Inclosure Acts. In an action to enforce the award against the stranger:—

*Held*, (1) that s. 105 of the Inclosure Act, 1845 (8 & 9 Vict. c. 118), did not make an award under the Inclosure Acts conclusive as to the title of the allottee; and (2) that in this case the award, not having been made on the application of persons not interested in the land within s. 13 of the Act of 1848 (11 & 12 Vict. c. 99), was made without jurisdiction and could not be enforced. *JACOB V. TURNER*

*Collins J. [1892] 1 Q. B. 47*

— *Award—Presumption that bed of river ad medium flum passes.*  
*See WATER. 41, 45.*

2. — *Award—Right of way—Footway and bridle-path.*

Where an inclosure award had allotted a road fifteen feet wide as a footway and bridle-path:—

*Held*, that the public were entitled to use the whole width of the road, and not merely a part sufficient (i.e., 3½ ft.) for the purposes of a footway and bridle-path. *PULLIN V. REFFELL*

*Romer J. [1891] W. N. 39*

*Sect. 109 of Highway Act, 1835 (5 & 6 Will. 4, c. 50) was repealed by 56 & 57 Vict. c. 61.*

— *Charge on great tithes—Allotment of lands in lieu of tithes—Transfer of liability to custom.*

*See CUSTOM. 1.*

— *Commons.*

*See Cases under COMMON.*

— *Corporation duty, Liability of allotment to.*  
*See REVENUE—Income Tax. 66.*

— *Highway—Ownership of soil.*

*See LIMITATIONS, STATUTE OF. 20.*

3. — *Manorial rights—Reservation of mines—Working powers.*

Under an Inclosure Act, part of a common was allotted to the lord of the manor, in compensation for his right to the soil of the common, and the residue to the commoners; and the Act provided that nothing therein contained should prejudice the right of the lord to the royalties incident to the common, but that he and all persons claiming under him should at all times thereafter hold and enjoy the mines and other royalties "in as full ample and beneficial manner to all intents and purposes as he or they could or

**INCLOSURE—continued.**

might have held and enjoyed the same in case this Act had not been made," provided always that in case the owner for the time being of the royalties, or any person claiming under him, should work any mines lying under any of the allotments, the person working the same should make reasonable satisfaction for the damage and spoil of the 'ground to the person for the time being in possession of such ground:—

*Held*, that the Act conferred on the owner for the time being of the mines, as incident to the enjoyment thereof, all usual working powers, which included the right of sinking shafts on any of the allotments for the purpose of winning and carrying away minerals under any part of the common.

*Bell v. Love (1883) 10 Q. B. D. 547; (1884) 9 App. Cas. 286, discussed. HAYLES V. PEASE AND PARTNERS, LD. - - - Stirling J. [1899]*

*W. N. 15 (9); [1899] 1 Ch. 567*

— *Mines—Right to support of surface—Inclosure Acts.*

*See MINES. 30.*

— "Place" used for betting.

*See Cases under GAMING.*

4. — *Turbary—Allotment for—Legal estate in land—Compensation to lord of manor—Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 34, 73, 76.*

An allotment of land made in pursuance of ss. 34 and 73 of the Inclosure Act, 1845, to the churchwardens and overseers of a parish in trust to allow the occupiers of certain ancient cottages in the parish to get turf therefrom vests the legal estate in the land in the churchwardens and overseers.

*Att.-Gen. v. Meyrick, [1893] A. C. 1, and Reg. v. Inclosure Commrs., (1871) 23 L. T. 778, distinguished. SIMCOE V. PETHICK*

*C. A. [1896] 2 Q. B. 555*

5. — *Unallotted land—Adjoining owner—Lord of the manor—Prescription—Profit a prendre—Pasturage—Surveyor of highways.*

An Inclosure Act provided for the allotment of land to the lord of the manor in compensation for all right of soil:—

*Held*, that the soil of land set out as a private road in pursuance of the Act was vested in the allottees of the adjacent land ad medium flum.

The herbage of a road was by an inclosure award made in 1822 allotted to the surveyor of highways for depasturing sheep only, in aid of rates. For more than fifty years the surveyor had let the pasturage for cattle and horses. The Court presumed an enlargement of the right to depasture by grant from the owners of the soil to the surveyor. *NEAVESON V. PETERBOROUGH RURAL COUNCIL*

*Covens-Hardy J.*

*[1900] W. N. 244; see [1901] 1 Ch. 22*

— *Waste land—Bed of river—Reservation to lord of manor—Territorial rights.*

*See WATER. 45.*

**INCOMBUSTIBLE MATERIALS—Buildings.**

*See LONDON—Buildings. 27.*

**INCOME—Bankrupt.**

*See Cases under BANKRUPTCY—Assets and under BANKRUPTCY—Undischarged Bankrupt.*

**INCOME**—*continued.*

- Capital or—Tenant for life and remaindermen.  
See Cases under SETTLED LAND—Appor-  
tionment.
- “Intermediate income.”  
See ACCUMULATIONS. 4.
- Property in Ireland.  
See LUNACY—Maintenance. 25.

**INCOME TAX.**

See REVENUE—Income Tax.

**INCORPORATED LAW SOCIETY**—Inquiry—Discretion.

See SOLICITOR—Misconduct. 114.

- Jurisdiction of Committee.  
See SOLICITOR—Misconduct. 116.

**INCORPORATION**—Company.

See COMPANY—Incorporation.

- Conditions of charterparty—Bill of lading—Freight.  
See SHIPPING—Charterparty. 36.
- Probate—Will—Library catalogue.  
See PROBATE. 98.
- Testamentary papers.  
See PROBATE—Grant of Probate. 102.

**INCORPORATION OF INDEPENDENT WILLS**

—English and foreign—Practice.

See PROBATE. 121.

**INCORPOREAL HEREDITAMENT**—Licence, or grant of—Disturbance of rights of grantee.

See FISHERY. 10.

- Title of honour.

See HUSBAND AND WIFE. 97.

**INCUMBRANCE**—Costs of incumbrancers.

See PARTITION. 4.

- Discharge—Application of capital money—See SETTLED LAND. 37.
- Mortgages.  
See Cases under MORTGAGE.
- Private street—Improvements charge on premises—Date—Vendor and purchaser.  
See STREETS. 34.
- Sale by second mortgagee—Costs of vendor's solicitor.  
See SOLICITOR. 63.
- Tenant for life.  
See VENDOR AND PURCHASER—Conveyance. 45.

**INDECENCY**—Infringement of copyright—Costs.

See COPYRIGHT. 16.

- Procuring commission of act of indecency—“Another male person.”  
See CRIMINAL LAW. 52.

**INDEMNITY.**

See COMPANY—WINDING-UP, *passim*.

- Bail to produce prisoner—Illegal contract.  
See BAIL. 1.
- Bill of lading—Indemnity clause—Third-party notice.  
See SHIPPING—Charterparty. 27.

**INDEMNITY**—*continued.*

- Contract of—Estoppel—Evidence as to abandonment of claim.  
See NEW SOUTH WALES. 10.
- Contract—Rescission—Innocent misrepresentations—Indemnity.  
See CONTRACT. 32.
- Contract of—Subrogation.  
See INSURANCE—Fire. 9.
- Contract of—Validity—Seizure by belligerent government of property of its own subjects.  
See INSURANCE—Marine. 30.
- Costs by way of.  
See COPYRIGHT—Infringement. 12.
- Costs of justices—Indemnity costs, Right to—Appeal against refusal to renew licence.  
See LICENSING ACTS. 48.
- Directors—Money paid out of capital to shareholders—Order on directors to replace it—Right to indemnity from shareholders.  
See COMPANY—Directors. 108.
- Executor's right.  
See EXECUTOR—Powers. 49.
- Executor—Surety—Right of retainer.  
See EXECUTOR—Retainer. 61.
- Fraud upon creditors—Debts of founder  
See COMPANY. 69.
- Frauds, Statute of.  
See FRAUDS, STATUTE OF. 3, 4.
- Lease—Covenant by assignee to indemnify assignor—Breach of covenant before assignment.  
See LANDLORD AND TENANT. 30.
- Lease—Successive assignments—Covenants—“Property” of bankrupt.  
See LANDLORD AND TENANT. 11.
- Libel—Action for against editor—Defence of action by proprietor.  
See CORPORATION. 26.
- Payment of husband's debts—Separate estate—Restraint on anticipation.  
See HUSBAND AND WIFE. 51.
- Principal and agent—Duty of agent to sue.  
See INSURANCE—Marine. 60.
- Receiver and manager—Final account—Discharge—Right to indemnity.  
See RECEIVER. 26.
- Recital in will—Promise.  
See FRAUDS, STATUTE OF. 3.
- Rent—Payment by lessee—Liability of sub-lessee.  
See LANDLORD AND TENANT. 87.
- Stamp duty—Policy of insurance against accident—Employer and workman.  
See REVENUE—Stamps. 164.
- Stock Exchange—Wrongful sale by broker.  
See PRINCIPAL AND AGENT. 21.
- Subrogation—Benefit of contract entered into by assured.  
See INSURANCE—Fire. 9.
- Third party—Builder—Severance of defence—Costs.  
See LIGHT AND AIR. 14.

**INDEMNITY—continued.**

— Trustee.

See **TRUSTEE—Indemnity.**

— Trustees of will.

See **EXECUTOR—Powers.** 49.

— Trustee's right of—Purchase of land by trustee of settled estates—Entry by tenant for life—Nonpayment of principal.

See **VENDOR AND PURCHASER—Lien.** 56.

— Ultra vires—Money paid by directors to shareholders—Right of directors to indemnity.

See **COMPANY—Directors.** 113.

— Winding-up order, Right of creditor to.

See **COMPANY—WINDING-UP.** 58.**INDIA.****Death Duties.**See **REVENUE—Estate Duty.****Extradition.**See **EXTRADITION.****Pensions.**See **BANKRUPTCY—Assets.** 61.**Salaries, &c., of Judges.**

*Rules dated May 11, 1891, fixing the salaries, &c., of the Judges of the High Courts in India.*  
**St. R. & O. 1891, p. 314.**

— Evidence taken in—Irish divorce bill.

See **DIVORCE—Evidence.** 78.

— Pension—Payment to trustee.

See **BANKRUPTCY—Assets.** 61.

— Proof of marriage between Christians in British India—Evidence.

See **DIVORCE—Evidence.** 81.**INDIAN ARMY PENSION DEFICIENCY FUND**

— Increase of annuity and reduction of rate of interest. See *Finance Act, 1896 (59 & 60 Vict. c. 28), s. 37.*

— **INDIAN RESERVES**—Liability to pay annuities in respect thereof.See **CANADA.** 10.— **INDICTMENT**—Form of—Procedure.See **CRIMINAL LAW—Practice.** 61.— **INDORSEMENT**—Bill of exchange.See **BILL OF EXCHANGE.** 10, 11.

— Forgery—Cheque—Liability.

See **BANKER.** 19.

— Writ.

See **Cases under PRACTICE—Writ.****INDUSTRIAL ASSURANCE COMPANY.**See **FRIENDLY SOCIETY.** 8.**INDUSTRIAL AND PROVIDENT SOCIETY.**

*Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), consolidates and amends the laws relating to Industrial and Provident Societies.*

*Treas. Reg. dated Jan. 1, 1894, were made under the Industrial and Provident Societies Act, 1893. St. R. & O. 1894, p. 153 (No. 731).*

*Industrial and Provident Societies Act, 1894 (57 & 58 Vict. c. 8), amends the Act of 1893 as to the island of Jersey.*

**INDUSTRIAL AND PROVIDENT SOCIETY—continued.**

*Industrial and Provident Societies (Amendment) Act, 1895 (58 & 59 Vict. c. 30), further amends the Act of 1893.*

**COLLECTING SOCIETIES.]** *Industrial Assurance Companies, 1896 (59 & 60 Vict. c. 26), consolidates the law relating to Friendly Societies, &c., which receive contributions and premiums by means of collectors.*

*Provident Nominations and Small Intestacies Act, 1883 (46 & 47 Vict. c. 47), repealed so far as relates to registered societies by the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), 3rd Schedule.*

*County Court Rules (Nov.), 1900, Ord. XLI. A. W. N. 1900 (Dec. 8), p. 325; see Current Index, 1900, p. lxxxii.*

1. — *Application of profits*—"Lawful purpose"—*Strike—Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45), s. 12, sub-s. 7.*

The application to "any lawful purpose" of the profits of an industrial society, authorized by s. 12, sub-s. 7, of the Industrial and Provident Societies Act, 1876, must be taken to mean an application to any lawful purpose ejusdem generis with the general purposes of the society:—

*Held, therefore, that a contribution to a strike fund was illegal. WARBURTON v. HUDDERSFIELD INDUSTRIAL SOCIETY*

**Div. Ct. [1892] 1 Q. B. 213; affirm. by C. A. [1892] 1 Q. B. 817**

*But see now Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 10, sub-s. 6.*

2. — *Debentures—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 17.*

Debentures issued by a society registered under the Industrial and Provident Societies Acts, and charging the society's personal chattels by way of security for the payment of money, are not exempted by s. 17 of the Bills of Sale Act (1878) Amendment Act, 1882, from the statutory requirements in respect of bills of sale.

*In re Standard Manufacturing Co., [1891] 1 Ch. 627, distinguished. GREAT NORTHERN RY. CO. v. COAL CO-OPERATIVE SOCIETY*

**V. Williams J. [1896] 1 Ch. 187**

3. — *Intestacy of member—Power of committee to distribute property—Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45), s. 11, sub-s. 6—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 27.*

By s. 27 of the Industrial and Provident Societies Act, 1893, if any member of a society entitled to property therein dies intestate without having made any nomination thereof then subsisting, the committee may without letters of administration distribute the same among such persons as appear to them on such evidence as they deem satisfactory to be entitled by law to receive the same:—

*Held, that the power of the committee to distribute the property was entirely discretionary, and that they could not be compelled by action to exercise their discretion. ESCRITT v. TODMORDEN CO-OPERATIVE SOCIETY*

**Div. Ct. [1896] 1 Q. B. 461**



**INDUSTRIAL AND PROVIDENT SOCIETY—continued.****4. — Winding-up—Jurisdiction.**

A society registered under the Industrial and Provident Societies Act, 1876, is not within the Companies Winding-up Act, 1890, and cannot be wound up under that Act, and can only be wound up by the proper county court under the Act of 1876, and the County Court Acts. *In re LONDON AND SUBURBAN BANK*

North J. [1892] 1 Ch. 604

But see now Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 38.

Approved by V. Williams J. *In re Real Estates Co.*, [1893] 1 Ch. 398.

See now Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8, sub-s. 2.

**5. — Winding-up — Jurisdiction of County Court—Industrial and Provident Societies Acts, 1876, 1893 (39 & 40 Vict. c. 45), s. 17; (56 & 57 Vict. c. 39), ss. 58, 59—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.**

The enactments from time to time in force for the winding-up of cos. in the Ch. Div. held to apply to the winding-up of a registered industrial society which was pending in a county court at the passing of the Industrial and Provident Societies Act, 1893, and had not been transferred to the High Court under s. 59 of that Act. *In re FERNDALE INDUSTRIAL CO-OPERATIVE SOCIETY* — — Div. Ct. [1894] 1 Q. B. 828

**INDUSTRIAL SCHOOLS.**

See SCHOOLS—Industrial and Reformatory Schools.

— Charity Commissioners — Jurisdiction — Consent.

See CHARITY. 8.

**INEBRIATES.**

See DRUNKENNESS.

**IN FORMÂ PAUPERIS—Practice.**

See PRACTICE—Formâ Pauperis.

**INFANT.**

*Custody of Children Act, 1891 (54 & 55 Vict. c. 3)*, amends the law relating to the custody of children.

By the "Betting and Loans (Infants) Act, 1892 (55 & 56 Vict. c. 4), inciting infants to bet or to borrow money was rendered penal.

By the *Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41)*, which repealed and consolidated the law as to cruelty to children, provision was made as to the custody of children.

*Infant Life Protection Act, 1897 (60 & 61 Vict. c. 57)*, amends the law for their better protection.

*Direction of Secy. of State, dated Nov. 26, 1897, as to the manner in which an abstract of the provisions of the Infant Life Protection Act, 1897, shall be published by Local authorities. St. R. & O., 1897, p. 239, No. 826.*

*Infant suing—Discovery and inspection—See Explanatory Memorandum to County Court Rules (May) 1899, and rules 3 to 5 and rule 24. W. N. 1899 (May 20), p. 171. See Current Index, 1899, p. cxi.*

**INFANT—continued.**

*Guardian ad litem—Appointment of—See Explanatory Memorandum to County Court Rules (May) 1899, and rules 8 to 13. W. N. 1899 (May 20), p. 171. See Current Index, 1899, p. cxi.*

*Mines (Prohibition of Child Labour Underground) Act, 1900 (63 & 64 Vict. c. 21).*

*Betting and Loans (Infants) Act, 1892 (55 & 56 Vict. c. 4), s. 2, amended as to presumption of knowledge of infancy.*

*See Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 5.*

*Generally, col. 942.*

*Contracts, col. 943.*

*Costs. See INFANT—Practice.*

*Custody, col. 946.*

*Election, col. 948.*

*Maintenance, col. 949.*

*Necessaries, col. 953.*

*Offences by, col. 954.*

*Practice, col. 954.*

*Settlements, col. 955.*

*Ward of Court, col. 957.*

**Generally.**

— Accumulations.

*See INFANT—Maintenance. 23, 24.*

— Borrowing member—Mortgage for advances—Repudiation on attaining twenty-one.

*See BUILDING SOCIETY. 7.*

— Cestui que trust—Breach of trust—New trustees—Liability of retiring trustees.

*See TRUSTEE—Breach of Trust. 38.*

— Contingent remainders—Intermediate rents—Legal and equitable limitations.

*See WILL. 74.*

— Costs.

*See INFANT—Practice. 36, 37.*

— Gavelkind lands—Title.

*See VENDOR AND PURCHASER. 85.*

**1. — Jurisdiction.**

The jurisdiction of the Court over the real estate of an infant with regard to sale or raising money for the benefit of the infant or the state considered. *In re DE TEISSIER'S SETTLED ESTATES. In re DE TEISSIER'S TRUSTS. DE TEISSIER v. DE TEISSIER*

Chitty J. [1893] 1 Ch. 153

Followed by North J. *In re Lord De Tabley*, [1896] W. N. 162 (16).

Referred to by Kekewich J. *In re Montagu*, [1897] 1 Ch. 685, 690. This case was affirmed by C. A. [1897] 2 Ch. 8.

*See also Stanford v. Roberts, Buckley J. [1901], W. N. 16.*

— Lease by.

*See SPECIFIC PERFORMANCE. 1.*

— Legacy to.

*See WILL—Legacy. 129.*

**2. — Management of land during minority—**

*Appointment of trustees—Practice—Infant taking*

**INFANT (Generally)—continued.**

by descent—*Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 42, sub-s. 1.

Summons by the mother and guardian of an infant, for the appointment of trustees, under and for the purposes of s. 42 of the *Conveyancing Act*, 1881, of lands to which the infant was entitled in fee simple in possession as the heir-at-law of a deceased great-uncle intestate, since the *Land Transfer Act*, 1897, had come into operation, and of whose estate the mother of the infant had been appointed administratrix. The personal estate had been administered and the debts paid. The mother disclaimed her rights (if any) as trustee under the *Land Transfer Act*, 1897 (60 & 61 Vict. c. 65), or s. 43 of the *Conveyancing Act*:—

*Held*, following *In re Glover*, [1899], 1 Ir. 337, that s. 42, sub-s. 1, extended to lands descended. The Court would have hesitated to make an appointment of trustees adversely to the mother's rights as guardian or otherwise, but she having disclaimed, the order in the terms of the summons could properly be made. *In re COWLEY*

**Cozens-Hardy J.** [1900] W. N. 264;  
see [1901] 1 Ch. 38

— Neglect to procure medical aid—Conscientious objection—*Manslaughter*.

See *CRIMINAL LAW*. 9, 53.

— Partner—*Act of Bankruptcy*.

See *BANKRUPTCY—Act of Bankruptcy*. 23.

— Partnership.

See *PARTNERSHIP—Infants*.

— Partition action—Real estate of infant—Order for sale.

See *PARTITION*. 1.

— Payment out of court—Infants domiciled in France—French law—Right of father to receive children's money.

See *PRACTICE—Payment out of Court*. 141.

— Settled Land Acts.

See *SETTLED LAND—Infants*.

— Signature—Instrument of dissolution of building society.

See *BUILDING SOCIETY*. 4.  
*FRIENDLY SOCIETY*. 4.

— Signature of memorandum of association by.

See *COMPANY—Registration*. 260.

— Solicitors' costs—Compromise—Lien—Judgment.

See *SOLICITOR—Lien*. 99.

— Vesting order—Form and effect of.

See *TRUSTEE—Vesting Order*. 106.

**Contracts.**

3. — *Adoption on full age of lease made by trustees—Compromise—Lapse of time—Coal mines.*

The right of an owner of entailed and unentailed estates adjoining the sea to work coal below low water-mark was challenged by the Crown during his minority. The trustees of the unentailed lands, who were also curators of the minor, entered into a transaction with the Crown whereby the trustees on their part accepted a lease of the whole coal below low water-mark ex

**INFANT (Contracts)—continued.**

adverso the whole estates, and the Crown agreed not to claim damages in respect of the coal worked in the past. Shortly after the proprietor came of age, but in ignorance of his rights, he accepted an assignment of the lease, and also obtained from the Crown a reduction of the royalty payable, and a modification of the mode of working the coal. Fourteen years after the proprietor came of age he raised an action for declarator that the trustees had no right to sign the agreement in respect of the entailed estate, and that their whole agreement with the Crown was null; and, secondly, that his actings while he was ignorant of his rights did not imply adoption of the agreement and lease.

*Held*, that the respondent the proprietor was barred by lapse of time coupled with his actings.

The decision of Ct. of Sess., (1896) 24 R. 216, reversed. *LORD ADVOCATE v. WEMYSS*

**H. L. (Sc.) [1899] W. N. 124**

4. — *Apprenticeship deed—Benefit of Infant—Employers and Workmen Act*, 1875 (38 & 39 Vict. c. 90), ss. 5, 6.

A clause in an apprenticeship deed provided that the master need not pay wages to the apprentice during any lock-out of his workmen, but gave liberty to the apprentice to get work elsewhere:—

*Held*, that the provision was so much to the detriment of the infant that the apprenticeship deed was void, and not enforceable under ss. 5, 6 of the *Employers and Workmen Act*, 1876. *CORN v. MATTHEWS* **C. A. [1893] 1 Q. B. 310**

Referred to by Div. Ct. *Green v. Thompson*, [1899] 2 Q. B. 1, 5.

5. — *Apprenticeship deed—Contract not for benefit of infant—Employers and Workmen Act*, 1875.

By a deed of apprenticeship of an infant it was provided that the apprentice should serve for a term of years, excepting the usual holidays and days on which the master's business should be at a standstill through accident beyond the control of the master, and that during the said term, excepting and subject as aforesaid, the master should pay the apprentice wages for her services:—

*Held*, that the provision that the master should not be liable to pay wages to the apprentice during the excepted period was not so disadvantageous to her as to render the apprenticeship deed incapable of being enforced against her under the *Employers and Workmen Act*, 1875.

*Corn v. Matthews*, [1893] 1 Q. B. 310, distinguished. *GREEN v. THOMPSON*

**Div. Ct. [1899] 2 Q. B. 1**

— Apprenticeship deed—Covenant to pay premium.

See No. 34, below.

6. — *Debt incurred during infancy—Infants Relief Act*, 1874 (37 & 38 Vict. c. 62), s. 2.

An acceptance given by an infant to compromise an action brought subsequent to his majority for a debt incurred during infancy:—

*Held*, to be merely a ratification of the original contract, or a promise after full age to pay a debt

**INFANT (Contracts)—continued.**

contracted during infancy, and, therefore, avoided by s. 2 of the Infants Relief Act, 1874. *SMITH v. KING* - - Div. Ct. [1892] 2 Q. B. 543

— Lease of coal—Adoption—Coal below low water-mark—Barony title.

— See *MINES*. 12.

7. — *Railway shall not be liable for negligence, Contract that.*

A rly. contracted with colliers, that in consideration of reduced fares, the co. should not be liable for negligence, and further that the infants' executors, administrators, and relatives should indemnify the ry. against any action under Lord Campbell's Act:—

*Held*, that in the case of an infant the contract was so far prejudicial as to be unfair to him, and was therefore not binding on him. *FLOWER v. LONDON AND NORTH WESTERN RY. CO.*

C. A. [1894] 2 Q. B. 65

8. — *Repudiation—Shares—Right to recover.*

An infant applied for shares in a co., and paid the amount due on application and allotment. No dividend was received by her, nor did she attend any meetings. While still under age she brought an action to remove her name from the register and for the return of the moneys. The co. then went into liquidation.

*Held*, that the only advantage the infant got was the allotment of the shares and the fact that her name was for a time on the register, which was not sufficient to support the contract, and that she was entitled to prove in the liquidation for the amount paid for the shares. *HAMILTON v. VAUGHAN-SHEERIN ELECTRICAL ENGINEERING CO.*

Stirling J. [1894] 3 Ch. 589

9. — *Service, Contract of.*

A contract entered into by an infant by which he gets employment, coupled with a bargain on his part that he will not compete in business with his master after his service ceases, *held* to be beneficial to the infant, and therefore good. *EVANS v. WARE*

North J. [1892] 3 Ch. 502

10. — *Service, Contract of—Insurance against accident—Exoneraton of employer.*

An infant entered the service of a ry. co., and agreed to become a member of an insurance society and to be bound by its rules. The ry. co. contributed to the funds of the society. The rules provided compensation for other accidents than those covered by the Employers Liability Act, 1880, but restricted the compensation to less than the amount which could be recovered under that Act, which contained provisions forfeiting benefits in default of notice of an accident, in case of various breaches of the regulations, and referring disputes to arbitration:—

*Held*, that the agreement to become a member of the society and to be bound by its rules was part of a contract of service into which an infant was competent to enter:—

*Held*, also, that the contract was an answer to an action against the ry. co. by the infant under the Act, for the restrictive covenants were such as an insurance society might reasonably make for the protection of its funds; and the contract taken as a whole was for the benefit of the infant

**INFANT (Contracts)—continued.**

and binding on him. *CLEMENTS v. LONDON AND NORTH WESTERN RY. CO.*

C. A. [1894] 2 Q. B. 482

Custody.

11. — *Action in England for judicial separation against domiciled Scotchman—Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 5.*

A wife had brought an action in England for judicial separation from her husband, a domiciled Scotsman, and had removed the children to England, and the Ct. of Sess. had by interlocutor ordered her to give custody of them. On her undertaking to abandon the proceedings in England and to commence without delay an action in Scotland the H. L. recalled the interlocutor and remitted the cause to the Ct. of Sess. to sist the proceedings pending the decision of such action: the wife to have interim custody of the children, and the husband reasonable access. *GIBBS (or STEVENSON) v. STEVENSON*

H. L. (Sc.) [1894] W. N. 104

12. — *Appointment of guardian by mother—Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 3, sub-s. 2, s. 13.*

The provisional appointment or nomination by a mother, during the father's lifetime, under s. 3, sub-s. 2, of the Guardianship of Infants Act, 1886, of guardians of her infant child after her death, should be, in form, an appointment of guardians to act "jointly with the father." Conditions on which the Court will, after the mother's death, confirm such appointment or altogether displace the father considered. *In re G—(AN INFANT)*

Kekewich J. [1892] 1 Ch. 292

13. — *Appointment of guardian by mother—Removal—Jurisdiction—Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 3, sub-s. 2, s. 13.*

The jurisdiction of the Court, so far as it relates to infants not wards of Courts, is limited to the appointment and removal of guardians. The Court has jurisdiction to remove a guardian appointed by the mother under the Act of 1886, if satisfied that it is for the benefit of the infant to do so. The parents of two children were Roman Catholics. After the father's death the mother became a Protestant, and appointed as guardian a Protestant lady, who took care of the children for some time during the mother's lifetime, and brought them up as Protestants. The Court under the circumstances refused to remove the guardian appointed by the mother. *In re McGRATH (INFANTS)* North J. [1892] 2 Ch. 496; affirm. by C. A. [1893] 1 Ch. 143

Referred to by C. A. *In re Newton*, [1896] 1 Ch. 740, 747.

14. — *Guardianship—Mother surviving sole guardian—Religion—Protestant parents—Remarriage of mother—Roman Catholic husband—Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 2—Discretion of the Court.*

Under the Guardianship of Infants Act, 1886, where there is no guardian appointed by the father in existence, the mother, if surviving the father, is entitled to be the sole guardian of an infant child of the marriage; and although the Court has power in such case, both under the

**INFANT (Custody)—continued.**

Act and of its own jurisdiction, to appoint a guardian to act jointly with the mother, the fact that the mother has married a second husband of a faith different to that which she professes and in which the infant is being educated, is not of itself sufficient to justify the exercise of the power, so long as there is no personal misconduct or interference with the proper bringing up of the infant.

The Court will only interfere where it is shewn that, having regard to the real benefit of the infant, it ought to do so.

Appeal from *Kekewich J.* allowed. *In re X. v. Y.* - - C. A. [1899] W. N. 15 (8); [1899] 1 Ch. 526

**15. — Guardianship—Parental authority—Wards of Court—Religious education—Misconduct of father.**

Although by law it is the right of the father to have the care and custody of his infant children and to have them brought up in his own religion, the welfare of the infants is the paramount consideration, and the Court has jurisdiction in a proper case to deprive a father of the custody of his children, and to disregard his wishes as to their religious education. The conduct of a living father may be such as to compel the Court to exercise this jurisdiction.

A Roman Catholic father allowed his two infant children by a deceased Protestant wife to be brought up in the Protestant faith until one of them was fifteen and the other eleven years of age, and his conduct to them, in the view of the Court, shewed that he had abdicated his parental rights. The children were wards of Court, and the father, being desirous of resuming his parental authority, applied to the Court for an order that the children might thenceforth be brought up in the Roman Catholic faith:—

*Held*, by C. A., affirming the judgment of *Kekewich J.*, that it would be injurious to the welfare of the children that their religious training should be altered, and that, having regard to the conduct of the father and the circumstances of the case, his application must be refused. *In re NEWTON (INFANTS)* C. A. [1896] 1 Ch. 740

**16. — Guardianship—Religion.**

Where an orphan, the child of a Protestant father and Roman Catholic mother, had been left without a guardian, the Court, considering only the welfare of the child, but having due regard to the wishes of the father as to her religious education, ordered her to be delivered to the mother's cousin, a Protestant, to be brought up as a Protestant, although the child had been, with the father's consent, baptized as a Roman Catholic. An antenuptial agreement as to the religion of the children is not binding on the father nor on the Court. *In re VIOLET NEVIN (AN INFANT)* - - - Chitty J.

[affirm. by C. A. [1891] 2 Ch. 299

**17. — Guardianship—Talfourd's Act (2 & 3 Vict. c. 54)—Custody of Infants Act, 1873 (36 & 37 Vict. c. 12)—Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 5.**

Under s. 5 of the Guardianship of Infants Act, 1886, the Court has, after taking into account the various considerations mentioned in

**INFANT (Custody)—continued.**

that section, full jurisdiction to override entirely the common law rights of a father in relation to the custody of his infant children.

In "having regard to . . . the conduct of the parents and the wishes as well as of the mother as of the father," the Court will not treat the parents in an unequal manner or differently the one from the other, but will take the whole conduct and wishes of both parents into consideration.

The Court will in a proper case give a mother the custody of her infant children, notwithstanding that the mother may have been guilty of matrimonial misconduct. *In re A. AND B. (INFANTS)* - - C. A. [1897] 1 Ch. 786

**18. — Illegitimate child—Rights of mother—Guardianship.**

(A) In determining who is entitled to have the custody and control over an illegitimate child, the Court, in exercising its jurisdiction with a view to the benefit of the child, will primarily consider the wishes of the mother. *REG. v. BARNARDO. JONES' CASE*

C. A. affirm. Div. Ct. [1891] 1 Q. B. 194; affirm. by H. L. (E.) *sub nom.* *BARNARDO v. McHUGH* [1891] A. C. 388

(B) The authorities do not establish the proposition that the legal rights of the mother of an illegitimate child as to its custody are the same as those of the father of a legitimate child. But *semble*, that the obligation cast on the mother of an illegitimate child by 4 & 5 Will. 4, c. 76, s. 71, to maintain it till it attains the age of sixteen, involves a right to its custody. *Per Lords Herschell and Field in BARNARDO v. McHUGH*

H. L. (E.) [1891] A. C. 388

*But see* Custody of Children Act, 1891 (54 & 55 Vict. c. 3), s. 3.

— *Habeas corpus*—Considerations other than paternal rights.

*See CANADA. 44.*

— *Irish Divorce Bill*—Practice.

*See DIVORCE—Evidence. 78.*

**19. — Paternal authority controlled by external considerations.**

The extent to which the Court will interfere with a father's legal power over his children considered in a case where the common law as modified by a Canadian statute framed on the principle of Talfourd's Act applied. *SMART v. SMART*

P. C. [1892] A. C. 425

**20. — Right of parent to guardianship.**

The Court will consider the interests of the child if it be essential, and for its interests will refuse the legal guardian the custody of the child even without misconduct on the guardian's part. *REG. v. GYNGALL* C. A. [1893] 2 Q. B. 232

*And see* Cases under *DIVORCE—Children.*

**Election.**

**21. — Possible issue—Declaration by Court—Form of order.**

By settlement J. B. settled certain freehold houses upon trust for each of his four children, the defts. J., A., M. and S., for life with remainder for their respective children in fee simple.

**INFANT (Election)—continued.**

Subsequently J. B. by will purported to dispose again of the property comprised in the settlement, giving it in a manner inconsistent with the settlement, and he had given other property upon trusts in favour of his said four children and their issue similar in every respect to the trusts declared by the settlement. The property given by the will was in each case of greater value than that given by the settlement. J. had children who were infants. A., M. and S. were spinsters. A. was a person of unsound mind not so found by inquisition, and she appeared by her guardian ad litem.

The trustees of the settlement, who were also the trustees and executors of the will, took out a summons asking (1) whether it would be for the benefit of the issue or possible issue of the said four defts. that the said defts. should respectively elect for themselves and their issue to take under the will and not under the settlement; and (2) that it might be declared that each of the said four defts. and his or her issue respectively took under the will and not under the settlement.

Kekewich J. made the following order: It appearing by the evidence that it is for the benefit of the deft. A. and of the issue or possible issue of the defts. J., A., M. and S. that the said defts. should elect for themselves and their issue to take under the provisions of the above-mentioned will and not under the provisions of the above-mentioned settlement, this Court doth declare that they ought so to elect, and that each of the said defts. J., A., M. and S. and his or her issue respectively take under the provisions of the above-mentioned will and not under the provisions of the above-mentioned settlement.

*In re* BARNETT. *BAKER v. BARNETT*

Kekewich J. [1900] W. N. 81

**Maintenance.****22. — Accounts—Guardian and ward—Maintenance and establishment of pupil heir.**

Where the mother is the sole guardian of the heir to large estates the sum allowed the mother for the upkeep of establishment and education of the heir ought to be such sum as prudent guardians would allow to her "as mother." To decide what is a reasonable sum all the circumstances of each case must be considered; the governing consideration being what is for the interest of the heir.

Whether the guardian of a minor heir is a relative or not, strict yearly accounts of the administration of the minor's property ought to be kept. *BARNES (or ROSS) v. ROSS*

H. L. (Sc.) [1896] A. C. 625

**23. — Accumulations—Vested life interest—Right to fund accumulated during minority—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43, sub-ss. 2, 3.**

Where a testator gave to an infant an immediate vested life interest in his residuary estate:—

*Held*, that the income which accumulated, after maintenance, between the testator's death and the infant's marriage, belonged to her absolutely and was not an accretion to capital, the

**INFANT (Maintenance)—continued.**

immediate gift shewing an intention (sub-s. 3) to exclude the provisions of sub-s. 2, s. 43, of the Conveyancing Act, 1881. *In re HUMPHREYS. HUMPHREYS v. LEVETT* - C. A. [1893] 3 Ch. 1

**24. — Accumulations—Trust—Validity—Remoteness—Discretion of trustees—Time for exercise—Power to resort to past accumulations—Will—Construction.**

A testator bequeathed to trustees the residue of his personal estate, upon trust for investment and to apply the whole income, or such part thereof as his trustees or trustee for the time being in their absolute discretion should think fit, in or towards the maintenance, education, apprenticeship, or in any other manner for the benefit of the child or children of the testator's sister, until they should respectively attain the age of twenty-three, and to accumulate and invest as capital any unapplied portion of the income. And upon further trust, as to both capital and income of the investments, to stand possessed thereof upon trust for the child, if only one, or all the children, if more than one, of the sister who, either before or after her decease, should attain twenty-three (such children, if more than one, to take in equal shares as tenants in common), and the issue of such of the children of the sister as might be then dead, such issue taking only as tenants in common the share which their respective parents would have taken if living.

The testator died in Feb., 1888. His sister, who was a widow, had only two children, a daughter who attained twenty-three on March 10, 1892, and a son who was born on May 28, 1874. On Jan. 30, 1889, upon a summons issued by the trustees of the will, the sister's two children being defts., the Court was of opinion that the bequest of the residuary personalty to her children was void for remoteness, but that the persons to take the residuary personalty could not be determined till her death. And it was ordered that the trustees should accumulate the surplus income until further order. The trustees had never applied any part of the income under the discretionary trust for maintenance, &c., but had accumulated the whole in accordance with the order. Upon a summons in 1895 by the sister's two children:—

*Held*, that the trust for maintenance was distinct from the trust of the capital of the residuary personalty, and was valid; that the trustees could now exercise the discretion given to them by the will; that in their absolute discretion they might now apply all or any part of the income which accrued down to March 10, 1892, and of the accumulations thereof, in or towards the maintenance, &c., of the two plts., and similarly might apply all or any part of the income from March 10, 1892, and of the accumulations thereof, and of the future income and accumulations until the younger plt. should attain twenty-three for his maintenance, &c. *In re WISE. JACKSON v. PARROTT*

North J. [1896] 1 Ch. 281

**25. — Advancement.**

The legal operation and effect of clauses for maintenance and advancement where no legal

**INFANT (Maintenance)—continued.**

estate is vested in the trustees, discussed and stated. *DEAN v. DEAN* Chitty J. [1891] 3 Ch. 150

Followed by North J. *Symes v. Symes*, [1896] 1 Ch. 272, 277.

26. — *Child above sixteen—Divorce cause—Matrimonial Causes Acts, 1857, 1859 (20 & 21 Vict. c. 85), s. 35; (22 & 23 Vict. c. 61), s. 4.*

The Court has power to make orders in a divorce cause respecting the custody, maintenance, and education of children during the whole period of their infancy—that is, till they attain the age of twenty-one years. *THOMASSET v. THOMASSET* — C. A. revers. *Jeune P.* [1894] P. 295

And see Cases under **DIVORCE—Children.**

Referred to by C. A. *Bishop v. Bishop. Judkins v. Judkins*, [1897] 138, 154.

27. — *Contingent gift of leaseholds—Share vesting at twenty-one—Separation from general estate—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.*

A testator gave leasehold property upon trust to pay the income to his daughter during her life, and after her death to transfer the same to all her children, in equal shares, the shares to vest at twenty-one, and in the case of daughters at twenty-one or marriage. The testator gave his residuary estate upon certain trusts. The daughter died leaving several children, all infants:—

*Held*, that the effect of the bequest being to separate the leaseholds from the general estate of the testator, the intermediate income until one of the children attained a vested interest was applicable to the maintenance of the infants. *Kidman v. Kidman*, 40 L.J. (Ch.) 359, followed. *Furneaux v. Rucker*, [1879] W. N. 139, disapproved. *In re WOODIN. WOODIN v. GLASS*

C. A. revers. North J. [1895] 2 Ch. 309

28. — *Contingent interest—Intermediate income—Gift to members of class for life contingently on attaining twenty-one—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.*

(A) A testator gave his residuary estate, subject to certain annuities, to a class for life, contingently on their attaining twenty-one:—

*Held*, that the surplus income could not be employed for the maintenance of infants, but belonged to such of the class as had attained twenty-one, and that s. 43 of the Conveyancing Act, 1881, did not apply. *In re JEFFERY. BURT v. ARNOLD* — North J. [1891] 1 Ch. 671

This case was overruled in *In re Holford. Holford v. Holford*, C. A. [1894] 3 Ch. 30, (D) below.

Referred to by North J. *In re Jeffery. Arnold v. Burt*, [1895] 2 Ch. 577.

(B) *Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.* Trustees held to have power under s. 43 of the Conveyancing Act, 1881, to devote, for the maintenance of infants, the intermediate income of property in which the infants had, under a will, an interest contingent on their coming of age while all the class are infants and unmarried.

**INFANT (Maintenance)—continued.**

Whether the first infant who attains twenty-one would be entitled to the whole income, *quære.*

(a) *In re BURTON'S WILL. BANKS v. HEAVEN* Chitty J. [1892] 2 Ch. 38, at p. 46

(b) *In re ADAMS. ADAMS v. ADAMS* North J. [1893] 1 Ch. 329

*In re ADAMS* was overruled in *In re Holford. Holford v. Holford*, (D) below.

(c) *In re CALDWELL* [1894] W. N. 13

(c) Where a testator gave a fund to grand-nephews and nieces in equal shares as tenants in common contingents on their attaining twenty-one, and where some of the class had, and others had not, attained that age:—

*Held*, that the income belonged to those of the class who had attained twenty-one in equal shares as tenants in common, notwithstanding that the will directed the income of the share of each of the class during minority to be paid to the parent forming the connecting link with the testator for the exclusive benefit of such parent. *In re CALDWELL. HAMILTON v. HAMILTON*

Kekewich J. [1894] W. N. 13

See now next Case.

(D) *Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.* A testator gave his residuary personality on trust to divide it equally between such of a class of six as should attain twenty-one. One of the class who had alone attained twenty-one, *held* entitled to one-sixth of the original capital and of the accumulated fund and income down to the time of her interest vesting, but not to the income of the remaining five-sixths of the capital of the fund during the suspense of vesting: the income of such five-sixths being applicable, under s. 43 of the Conveyancing Act, 1881, during the suspense to the maintenance of the five infants. *In re HOLFORD. HOLFORD v. HOLFORD* — C. A. affirm. Chitty J. [1894] 3 Ch. 30

*Held* by Romer J. not to apply in *In re Aberill*, [1898] 1 Ch. 523.

(E) *Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.* Property was settled on trust for such members of a class (capable of increase) as should attain twenty-one:—

*Held*, that the accumulated income was divisible into as many shares as there were members in existence; that one share was payable to each adult; and one share was applicable under s. 43 of the Conveyancing Act, 1881, for the maintenance of each infant. *In re JEFFERY. ARNOLD v. BURT* — North J. [1895] 2 Ch. 577

29. — *Contingent interest—Intermediate income—Right to—Specific contingent legacy—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.*

Where there is a specific gift to an infant on attaining twenty-one, the intermediate income does not pass.

But where a specific legacy is segregated from the mass of the testator's estate, to go as a contingency it carries with it all accretions to the contingent legatee on the happening of the contingency.

Therefore, where stock was bequeathed on trust for such of a class as shall attain twenty-one, *held* that the members of the class on attain-

**INFANT (Maintenance)—continued.**

ing twenty-one were entitled to the intermediate income, and by s. 43 of the Conveyancing Act, 1881, the trustees had power to allow maintenance out of the income. *In re CLEMENTS. CLEMENTS v. PEARSALE Chitty J. [1894] 1 Ch. 665*

Applied by C. A. *In re Woodin. Woodin v. Glass, [1895] 2 Ch. 309.*

**30. — Contingent interests—Settled estates—Terms for raising portions.**

Where portions are given to younger children under a settlement made by a father, or other person standing in loco parentis, and the settlement contains no provision for the maintenance of the children, interest by way of maintenance for the children during minority will be allowed on their portions although their interests are contingent. *In re GREAVES' SETTLED ESTATES. JONES v. GREAVES Farwell J. [1900] W. N. 144; [1900] 2 Ch. 683*

**31. — Contingent interest—Trustees—Discretion—Jurisdiction of Court to interfere.**

A testator declared that after the decease or marriage again of his wife, his trustees should apply the whole or such part of the income of the expectant share of any child for or towards the maintenance, &c., of such child. The widow married again, and the trustees declined to make her an allowance towards the infant's maintenance:—

*Held*, that there was no absolute trust to apply the income for the maintenance, but a discretionary trust, equivalent to a power, and that the Court would not interfere with the bonâ fide exercise of the trustees' discretion. *In re BRYANT. BRYANT v. HICKLEY*

*Chitty J. [1894] 1 Ch. 324*

**32. — Education—Bringing up—Immoral home—Trustee's discretion—Control of Court—Breach of trust—Guardian—Schoolmistress—Landlord of lodgings.**

A trustee who, in pursuance of a trust to maintain, educate, and bring up infants, brings them up in an immoral home, commits a breach of trust.

Bequest of a fund to a wife during her widowhood, "she maintaining, educating, and bringing up" the testator's unmarried infant sons and unmarried daughters. The widow, while duly maintaining and educating the children, lived in adultery with a married man in the home she provided for them:—

*Held*, that this was a breach of the trust imposed on her, and that the Court could administer the fund.

*Castle v. Castle, (1857) 1 De G. and J. 352, followed. In re G. (INFANTS) — Kekewich J. [1899] W. N. 38 (2); [1899] 1 Ch. 719*

— Legacy to infant by parent—Interest by way of maintenance.

*See WILL—Legacy. 130.*

— Poor-law settlement.

*See Cases under POOR LAW.*

— "Refuse or neglect" to reside in mansion-house.

*See WILL—Condition. 62.*

**Necessaries.**

**33. — "Necessaries"—Bill of exchange—Acceptance—Infants Relief Act, 1874 (37 & 38 Vict.**

**INFANT (Necessaries)—continued.**

c. 62, s. 1); *Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 22.*

An infant cannot bind himself by the acceptance of a bill of exchange, even although the bill be given for the price of necessities supplied to him during infancy, and such an acceptance is wholly void. *In re SOLTYKOFF. Ex parte MARGRETT — — C. A. [1891] 1 Q. B. 413*

**34. — "Necessaries"—Payment of premium.**

A covenant under seal was entered into by an infant, with the consent of his guardian, that he would pay what was held to be a reasonable premium, if he were taught the business to which he was apprenticed. In an action to recover the balance of the premium, the jury found that the deed was a provident and proper arrangement, and necessary if the infant wished to learn the business, and that the premium was fair and reasonable, and that instruction had been given under the deed:—

*Held*, that the liability of the infant for necessary instruction duly provided stood on the same footing as that for ordinary necessities supplied to him, and that the master could recover for the instruction as necessities without reference to the covenant. *WALTER v. EVERARD*

*C. A. affirm. Grantham J. [1891] 2 Q. B. 369*

**35. — "Necessaries"—Infant performing at music halls—Theatrical agent.**

An infant who earned her living by performing at music halls employed a theatrical agent to procure her engagements on commission. The agent procured her engagements and the infant had the benefit of them. In an action by the agent for the commission:—

*Held*, that infancy was a defence. *LOFTHOUSE v. BROWN — — Div. Ct. [1898] W. N. 52 (2)*

**Offences by.**

— Education Acts.

*See Cases under SCHOOLS.*

— Offences against the person.

*See Cases under CRIMINAL LAW—Offences against the Person.*

**Practice.****36. — Costs—Jurisdiction—Infant defendant ordered to pay costs.**

Where an injunction was granted to restrain an infant deft. from representing that the business carried on by him was connected with the business carried on by the plt.:—

*Held*, that the Court had jurisdiction to order the infant deft. to pay the costs of the action.

*Chubb v. Griffiths, (1865) 35 Beav. 127, and Lemprière v. Lange, (1879) 12 Ch. D. 675, followed. WOOLF v. WOOLF Kekewich J. [1898] W. N. 173 (10); [1899] 1 Ch. 343*

**37. — Costs of useless litigation by next friend.**  
Costs of unsuccessful litigation by next friend.

(A) Observations of Lindley L.J. *In re FISH. BENNETT v. BENNETT C. A. [1893] 2 Ch. 413, 422*

(B) *In re HICKS. LINDON v. HEMERY North J. [1893] W. N. 138*

— Discovery—Infant plaintiffs.

*See DISCOVERY—Documents. 17.*

**INFANT (Practice)—continued.**

— Discovery—Infants—Next friend.

See DISCOVERY—Documents. 18.

**Settlements.****38. — After-acquired property (18 & 19 Vict. c. 43) s. 1.**

By s. 1 of the Infants Settlement Act, 1855, an infant is empowered, with the sanction of the Court, to enter into a covenant to settle after-acquired property; and such a covenant will apply to and bring within the settlement an interest acquired by the settlor under the will of a person who dies after the execution of the settlement, as being property in expectancy within s. 1 of the Act. *In re JOHNSON. MOORE v. JOHNSON* North J. [1891] 3 Ch. 48

**39. — After-acquired property — Election — Compensation.**

Covenant by husband and infant wife in an antenuptial settlement, drawn in the ordinary form but not approved by the Court, to settle the wife's present and future property. On the marriage being dissolved, a declaration was sought that the covenant was inoperative:—

*Held*, (1) that the covenant was inoperative, except as to property which had already fallen into possession; (2) that if the wife elected to avoid the covenant her reversionary interests in other property under the settlement and in a house settled by deed of even date recited in the settlement should be impounded to compensate those who lost by her election, but that such compensation was subject to the restraints on anticipation. *HAMILTON v. HAMILTON*

North J. [1892] 1 Ch. 396

**40. — After-acquired property — Wife an infant — Deed by wife on majority affirming settlement—Not acknowledged.**

Where a wife after attaining twenty-one by deed affirms a settlement executed by her before marriage whilst an infant, such settlement is binding on her, even though it be unacknowledged and contain a covenant to settle after-acquired property. *In re HODSON. WILLIAMS v. KNIGHT* Chitty J. [1894] 2 Ch. 421

Referred to by North J. *Harle v. Jarman*, [1895] 2 Ch. 419, at p. 428.

**41. — Appointment—Death under twenty-one — Infants Settlement Act, 1855 (18 & 19 Vict. c. 43), ss. 1, 2.**

In order to make a settlement on her marriage, an infant, with the sanction of the Court, exercised a general power of appointment. The infant died under age and without issue:—

*Held*, that, as she was not tenant in tail, the appointment was good, notwithstanding her death under age; that by the appointment she had, subject to the settlement, made the property her own, and that, on failure of the limitations in the settlement, it passed to her husband as her administrator. Sect. 2 of the Infants Settlement Act, 1855, does not avoid appointment under s. 1, except where the infant is tenant in tail. *In re SCOTT. SCOTT v. HANBURY*

North J. [1891] 1 Ch. 298

— Ratification — Marriage settlement — Repudiation—Rectification.

See CONFLICT OF LAWS. 6.

**INFANT (Settlements)—continued.**

**42. — Repudiation—Married woman—Separate estate—Settlement by infant—Subsequent repudiation—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 2, 19—Construction—Recital of agreement—Implied covenant.**

The principle stated in *Hancock v. Hancock*, (1888) 38 Ch. D. 78—namely, that s. 19 of the Married Women's Property Act, 1882, prevents s. 5 of that Act from interfering with any settlement which would have bound the property if the Act had not been passed—applies also to s. 2 and to settlements by which the wife is not bound.

*Stevens v. Trevor-Garrick*, [1893] 2 Ch. 307, followed.

An ante-nuptial settlement made between the intended husband, the intended wife (an infant), and trustees recited an agreement that property belonging to the wife and then in the hands of the trustees should be settled. By the testatum the wife, in pursuance of the agreement, declared that the trustees should hold the property on certain trusts. There was no declaration or covenant by the husband. On attaining twenty-one the wife repudiated the settlement:—

*Held*, that there was an agreement between the husband and the trustees, and that the recital of that agreement was operative as between the parties to it, although unaccompanied by any obligation binding on the infant wife. The husband's marital right was affected by the agreement; there was, therefore, a settlement which would have bound the property if the Married Women's Property Act, 1882, had not been passed, and the wife was not entitled to have the trust funds transferred to her as her separate estate. *BUCKLAND v. BUCKLAND*

Buckley J. [1900] W. N. 159; [1900] 2 Ch. 534

**43. — Repudiation—Reasonable time—Costs.**

Covenant to settle after-acquired property. A husband sought, five years after he came of age, to set aside a marriage settlement which had been made when he was an infant. The settlement was for his benefit as an infant, but had not been confirmed by the Court:—

*Held*, by H. L. (E.) and by C. A. (revers. *Romer J.*) that (1) the settlement was voidable, not void; (2) the repudiation came too late; (3) in order to establish the invalidity of an infant's repudiation of a contract after he comes of age, it is not necessary to shew his knowledge of the facts and of his rights, as in a case of waiver, acquiescence, or election. *CARTER v. SILBER. CARTER v. HASLUCK* *Romer J.* [1831] 3 Ch. 553;

C. A. [1892] 2 Ch. 278; A. C. affirm.

by H. L. (E.) *sub nom.* *EDWARDS v. CARTER* [1893] A. C. 360

**44. — Repudiation—Reasonable time.**

(A) Application to set aside a settlement made in 1857, without the sanction of the Court, on the marriage of the applicant, then an infant. Nothing was received under the settlement until 1890:—

*Held*, that the repudiation was made in reasonable time, as there was no reason why the applicant should take any steps in the matter until the settlement took effect. *In re JONES. FARRINGTON v. FORRESTER* North J. [1893] 2 Ch. 461



**INFANT (Settlements)—continued.**

(B) Application made in 1890 after divorce to set aside settlement made in 1879, held to be made in reasonable time. *HAMILTON v. HAMILTON*

**North J. [1892] 1 Ch. 396**

**45. — Repudiation — Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 2, 19.**

An infant on her marriage in 1890 joined with her husband in assigning a sum to trustees of her settlement:—

Held, that the sum was effectually included in the settlement by the husband's assignment, and could not be dealt with by the wife, notwithstanding her disavowing the settlement on attaining twenty-one. Effect of ss. 2, 19, of the Married Women's Property Act, 1882, considered. *STEVENS v. TREVOR-GARRICK*

**Chitty J. [1893] 2 Ch. 307**

Referred to by Buckley J. *Buckland v. Buckland*, [1900] 2 Ch. 534, 538.

— Settled Land Acts.

See **SETTLED LAND—Infants.**

— Signature to instrument of dissolution of society.

See **BUILDING SOCIETY. 4.**

— Tenant in tail in possession—Form of vesting order.

See **TRUSTEE—Vesting Order. 106.**

— Variation of settlements—Interest of children — Wife's power of appointment to husband.

See **DIVORCE—Settlements. 124.**

**46. — Wife an infant—Deed by wife on marriage affirming settlement.**

Where a wife after attaining twenty-one by deed affirms a settlement executed by her before marriage whilst an infant, such settlement is binding on her, even though it be unacknowledged and contain a covenant to settle after-acquired property. *In re HODSON. WILLIAMS v. KNIGHT* — **Chitty J. [1894] 2 Ch. 421**

Applied by Cozens-Hardy J. *Viditz v. O'Hagan*, [1899] 2 Ch. 569, 575. This Case was reversed by C. A., [1899] 2 Ch. 87.

**Ward of Court.**

**47. — Enforcement of order for custody — Sergeant-at-arms—Tipstaff—Proper officer—Form of order.**

Notwithstanding the changes made by the Judicature Acts, there still is such an officer as the "Sergeant-at-Arms attending the Court," and he is the proper officer to execute and enforce all orders for the production or custody of a ward of Court. *G — v. L*

**Chitty J. [1891] 3 Ch. 126**

**48. — Marriage after attaining twenty-one—Settlement.**

A. obtained leave of the Court to pay his addresses to a ward of Court on an undertaking that he would abide by the directions and orders of the Court. No directions were given or applied for. Immediately after the ward came of age she made a settlement of her property, giving a joint power of appointment to husband and wife in priority to the other trusts, and the

**INFANT (Ward of Court)—continued.**

marriage was arranged to take place without the consent of the Court:—

Held, that A.'s undertaking operated only so long as the lady continued to be a ward of Court, and A. would not be committing a contempt in marrying, and that the Court had no jurisdiction to restrain the parties from marrying, or the ward from disposing of her property, as she pleased. *BOLTON v. BOLTON* — **C. A. [1891] 3 Ch. 270**

**INFECTIOUS DISEASES — Public Health Act, 1896 (59 & 60 Vict. c. 19), makes further provision as to Epidemic, Endemic and Infectious Diseases and repeals Acts relating to Quarantine. The Public Health (Ports) Act, 1896 (59 & 60 Vict. c. 20), assigns powers under Infectious Disease Prevention Act, 1890, to port sanitary authority.**

*Notification—Infectious Disease (Notification) Extension Act, 1899 (62 & 63 Vict. c. 8), extends the Act of 1889 to districts (Huddersfield Corporation excepted) in which it has not been adopted.*

— Infectious disorder—Order of removal.

See **JUSTICES. 11.**

**IN FORMÂ PAUPERIS.**

See **PRACTICE—Formâ Pauperis.**

**INFORMATION—Attorney-General's powers—**

Laws of Quebec.

See **CANADA. 55.**

— By whom it may be laid.

See **MINE. 16.**

— Consent in writing of chief constable—Sunday observance.

See **SUNDAY. 2.**

— "Counselling" commission of offence — Cruelty to animals—Summary jurisdiction.

See **JUSTICES. 5.**

— Discovery—Production of documents—Right of the Crown.

See **DISCOVERY—Documents. 15, 29.**

— Dismissal—Costs—Jurisdiction.

See **JUSTICES. 3.**

— Larceny — Reasonable suspicion — Search-warrant.

See **JUSTICES. 12.**

— Prerogative of Crown—Transfer to revenue side—Information by Attorney-General — Stay of proceedings.

See **CROWN. 8, 9.**

— Right of private person to prefer.

See **DISEASES OF ANIMALS ACT.**

— Two offences in one information—Jurisdiction.

See **JUSTICES. 23, 24.**

**INFRINGEMENT—Copyright.**

See **COPYRIGHT.**

— Design.

See **DESIGN.**

— Patent.

See **PATENT.**

— Trade-mark.

See **TRADE-MARK.**

— Trade name.

See **TRADE NAME.**

**INHABITED HOUSE DUTY.**

See **REVENUE—House Duty.**

**INHERITANCE**—Co-parceners or joint tenants  
—Devise to testator's "right heirs"—  
Female heirs.

See **WILL**. 112.

**INHERITANCE ACT, 1833** — Co-parceners —  
"Purchaser" tracing title from.

See **INTESTACY**. 1.

**INHIBITION**—Churchwarden—Admission of by  
Archdeacon—Bishop to inhibit.

See **ECCLIASTICAL LAW** — **Church-wardens**. 8.

**INJUNCTION.**

Order *L.* relates to interlocutory orders as to  
injunctions.

1. — *Agreement by infant and adult—Re-  
pudiation—Specific performance.*

An infant and adult who were joint tenants  
entered into an agreement with the plt. to grant  
a lease. The plt. sued for specific performance  
of the agreement and for an injunction against  
granting a lease to any other person:—

*Held*, that an injunction could only be  
granted where a case was made out for specific  
performance, that specific performance by the  
infant was out of the question, and on the  
evidence could not be had against the adult:  
therefore the plt. was not entitled to an injunc-  
tion. **LUMLEY v. RAVENSCROFT**

**C. A. revers. Day J. [1895] 1 Q. B. 683**

— **Air.**

See **Cases under LIGHT AND AIR.**

— **Alimony**—Order for—Enforcement of.

See **DIVORCE—Alimony**. 6, 7.

— **Ancient lights**—Prescription—Greenhouse—  
"Building."

See **LIGHT AND AIR**. 9.

— **Appeal**—Action claiming less than 20*l.*  
damages.

See **COUNTY COURT—Appeal**. 6.

— **Arbitration**—Unfitness of arbitrator.

See **ARBITRATION—Arbitrators**. 20.

2. — *Arbitration—Judicature Act, 1873 (36 &  
37 Vict. c. 66), s. 25, sub-s. 8.*

The Court has jurisdiction to restrain by  
injunction proceedings in an arbitration where  
an action is pending impeaching the agreement  
containing the submission. **KITTS v. MOORE**

**C. A. [1895] 1 Q. B. 253**

3. — *Breach of contract—Contract of service.*

(A) An injunction ought not to be granted in  
the case of an agreement which though negative  
in form is affirmative in substance. An agree-  
ment in writing between plt. and deft. provided  
that deft. should employ plt. and that deft.  
would not, except in case of misconduct or  
breach of the agreement, require plt. to leave  
his employ:—

*Held*, that though the clause was negative in  
form it was affirmative in substance, and that an  
injunction against breach thereof should not be  
granted. **DAVIS v. FOREMAN** — **Kekewich J.**  
[1894] 3 Ch. 654

(B) Where a manager agreed to give during  
a specified term his whole time to the manage-

**INJUNCTION—continued.**

ment of the plt.'s business, but without nega-  
tively contracting not to serve any one else:—

*Held*, that the Court would not grant an  
injunction restraining the manager from giving  
part of his time to a rival co. **WHITWOOD  
CHEMICAL CO. v. HARDMAN** — **C. A. revers.**  
**Kekewich J. [1891] 2 Ch. 416**

Applied by **Kekewich J. Star Newspaper Co.  
v. O'Connor, [1893] W. N. 114.**

Distinguished by **Romer J. Ehrman v.  
Bartholomew, [1898] 1 Ch. 670.**

4. — *Breach of contract—Theatrical engage-  
ment.*

Deft., an actor, agreed with plt., a theatrical  
manager, to act and to understudy as a member  
of plt.'s co. for a certain time, subject to certain  
rules, by one of which he was prohibited from  
acting at any other theatre without permission.  
Deft. acted elsewhere without permission. Plt.  
applied for an injunction to restrain deft. from  
acting at any theatre other than that where  
plt.'s company played. Deft. in an affidavit in  
opposition to the application alleged that plt.  
had verbally promised that deft. should act in  
certain parts, but had not kept the promise:—

*Held*, that the negative stipulation against  
acting elsewhere could be enforced by injunction,  
that the alleged verbal promise could not, with-  
out evidence of bad faith on the part of deft., be  
considered in construing the contract, that the  
allotting of parts to deft. was no part of the  
contract, and that an injunction ought to be  
granted. **GRIMSTON v. CUNNINGHAM**

**Div. Ct. [1894] 1 Q. B. 125**

— **Breach of injunction—Aiding and abetting—  
Committal.**

See **CONTEMPT OF COURT**. 2.

— **Bridge, Injunction to restrain building of—  
—Accommodation works.**

See **RAILWAY**. 68.

— **Building estate.**

See **Cases under BUILDING ESTATE.**

5. — *Company—Directors.*

The Court has jurisdiction to grant an injunc-  
tion restraining directors of a co. from excluding  
one of their number from board meetings, and  
from interfering with him in the discharge of his  
duties as a director. **TURNBULL v. WEST RIDING  
ATHLETIC CLUB (LEEDS)**

**Kekewich J. [1894] W. N. 4**

6. — *Company—Voluntary winding-up—Com-  
panies Acts 1862 (25 & 26 Vict. c. 89) s. 129.*

The Court will not except in a very strong  
case interfere by injunction to prevent the exer-  
cise by a co. of its statutory power to put an end  
to its existence by voluntary winding-up. **ELLIS  
v. DADSON**

**Chitty J. [1891] W. N. 43**

7. — *Company—Winding-up—Foreign action  
—Embargo—Companies Act, 1862 (25 & 26 Vict.  
c. 89) s. 163.*

In the winding-up of an English co. a sale of  
assets abroad was sanctioned by the Court. A  
creditor of the co. resident in England obtained  
judgment in the foreign Court, and levied an  
embargo on the assets abroad. He was ordered  
to remove the embargo on terms of a sum being

**INJUNCTION—continued.**

placed to a separate account to meet any claim he might establish. *In re CENTRAL SUGAR FACTORIES OF BRAZIL.* FLACK'S CASE

North J. [1894] 1 Ch. 369

8. — *Company—Winding-up—Petition—Companies Acts, 1862, 1867 (25 & 26 Vict. c. 89) s. 85; (30 & 31 Vict. c. 131) s. 40.*

Where a petition is not presented bonâ fide to obtain a winding-up order, but really for another purpose, such as putting pressure on the co., the Court has inherent jurisdiction to prevent such an abuse of process, and will do so by restraining the advertisement of the petition and staying all proceedings on it. *In re A Co.*

V. Williams J. [1894] 2 Ch. 349

— Condition not to commit breach of—Condition depending on one event—Liquidated damages.

See BOND. 1.

— Contingent interest—Presumptive next of kin. See WILL—Contingent Gift. 67.

— Continuance of loan—Redemption—Restrictive covenant—Collateral advantage. See MORTGAGE—Redemption. 62.

— Contract of service—Agreement to devote whole time—Breach of contract. See CONTRACT. 30.

— Contract to give "first refusal" of land—Interest in land—Purchaser with notice. See CONTRACT. 24.

— Copyright.

See Cases under COPYRIGHT.

9. — *Copyright—Infringement—Foreign country—Copyright Act, 1883 (3 & 4 Will. 4, c. 15).*

The Court has no jurisdiction to grant an injunction to restrain the infringement, in a foreign country comprised in the International Copyright Union, by an English subject of an English dramatic copyright. "*MOROCCO BOUND*" SYNDICATE, LD. v. HARRIS

Kekewich J. [1895] 1 Ch. 534

10. — *Crown, Action on behalf of—Interlocutory injunction—Attorney-General—Undertaking in damages.*

In granting an interlocutory injunction at the instance of the Att.-Gen. on behalf of the Crown, the Court will not, as a general rule, require the Att.-Gen. to give the undertaking in damages usually required from an ordinary plt. as a condition of his obtaining such an injunction.

Decision of North J., [1896] W. N. 88 (14), affirmed. ATT.-GEN. v. ALBANY HOTEL CO.

C. A. [1896] W. N. 90 (5); [1896] 2 Ch. 696

— Divorce practice.

See Cases under DIVORCE.

— Costs—Dismissal of action against corporation. See Cases under COSTS—Public Authorities Protection.

— Covenant running with land—Covenant for quiet enjoyment—Damages—Compensation.

See RAILWAY. 3.

— Executor—Injunction restraining executor from further acting as executor. See EXECUTOR. 4.

**INJUNCTION—continued.**

11. — *Executors of a deceased judgment creditor.*

Executors of a deceased judgment creditor are not entitled to apply for an injunction against the judgment debtor's dealing with his property, since they have no substantive right against the debtor's property to which the injunction would be ancillary. *NORBURN v. NORBURN*

Div. Ct. [1894] 1 Q. B. 448

12. — *Ex parte—Suppression of facts—Discharge without cross notice.*

If on a motion for an injunction, or in the alternative for continuance of an interim injunction already obtained ex parte, it appears that the interim order was irregularly obtained by suppression of facts, the Court may discharge the ex parte order without a cross notice of motion. *BOYCE v. GILL*

Kekewich J. [1891] W. N. 108

13. — *Ex parte—Suppression of material facts.* A solicitor in applying for an ex parte injunction suppressed the fact, which he thought immaterial, that he had himself begun bankruptcy proceedings against his client; the result being that the undertaking in damages proved worthless:—

*Held*, that the solicitor had committed a serious error of judgment, for which he was personally liable both in costs and under the undertaking as to damages. *SCHMITTEN v. FAULKES*

Chitty J. [1893] W. N. 64

— Foreshore—Crown lease—Limits of public user.

See SEASHORE.

— Fresh-water fishery—Trout stream—Erection of weir or dam.

See FISHERY. 13.

— Gas company—Statutory powers—Nuisance—Excavation—Ancient lights, interference with.

See SUPPORT. 1.

— Glebe lands—Lease of Mines—Ecclesiastical Commissioners—Right to injunction against illegal mining.

See ECCLESIASTICAL LAW—Glebe. 44.

— Guardians of the poor—Out-door relief—Strikes.

See POOR LAW.

— Highway—Obstruction—Reasonable user—Loading and unloading of goods.

See HIGHWAY. 5.

14. — *Inquiry as to damages—Damages up to date of certificate.*

The plts. brought action against the defts. for an injunction to restrain them from polluting a stream. Chitty J. at the trial granted a perpetual injunction against the C. Union, to be suspended till Aug. 25, 1890, and directed an inquiry into damages. The defts. continued to pollute the stream, and in 1893 the chief clerk gave his certificate, certifying the damages up to the date of the certificate, July 24, 1893:—

*Held*, that it was right to certify damages down to the date of the certificate, as there was a continuing cause of action within the meaning of Order xxxvi., r. 58. *HOLT v. CHARD UNION*

C. A. [1894] 1 Ch. 293

**INJUNCTION—continued.**

— Interference with flow of water—Tunnel for draining mine—*Mala fides.*

See **WATER.** 39.

— Interim—Appeal from.

See **APPEAL.** 24.

— Interim—Appeal from—Trespass—New South

Wales Mining on Private Lands Act.

See **NEW SOUTH WALES.** 37.

15. — *Interlocutory—Exhibition of effigy—Libel—Discretion—Judicature Act, 1873* (36 & 37 *Vict. c. 66*), s. 25, sub-s. 8.

Before the Court will grant an interlocutory injunction restraining publication of an alleged libel, it must be satisfied that the case is so clear that a verdict for the deft. would be set aside. The plt. had been tried for murder in Scotland, and a verdict of not proven had been found. The defts. exhibited an effigy of the plt. in London, and L. did the same at Birmingham, in both cases in close proximity to the "chamber of horrors," and connected by reference to the scene of the murder:—

*Held*, by Div. Ct., that the exhibitions were clearly libellous, and that M. was entitled to an injunction till trial. Some evidence of the plt.'s consent was produced before C. A., which held that the case was not clear enough to entitle the plt. to an injunction:—

*Held*, also, Lord Halsbury diss., that an injunction should only issue in cases where a verdict for the deft. would be set aside as unreasonable:—

*Held*, also, *per* Lord Halsbury and Lopes L.J., that the jurisdiction to issue injunctions in cases of libel is not confined to trade libels. **MONSON v. TUSSAIDS, LD.** **MONSON v. L. TUSSAID**

**C. A. [1894] 1 Q. B. 671**

Dictum of Lord Halsbury commented on by **C. A., Kitts v. Moore, [1895], 1 Q. B. 253, 264.**

16. — *Interlocutory—Libel.*

(A) An injunction to restrain the sale of a newspaper containing an alleged libel, refused, the Court holding that the truth of the libel ought to be determined by a jury in the Q. B. **DIV. PLUMBLY v. PERRYMAN**

**North J. [1891] W. N. 64**

(b) There is jurisdiction to grant an interlocutory injunction to restrain the sale of a newspaper containing a libellous article, but the jurisdiction should only be exercised under very special circumstances:—

*Held, per* full C. A. (Kay L.J. diss.), that the circumstances of the case did not warrant an injunction. **BONNARD v. PERRYMAN**

**C. A. revers. North J., both Courts**

**[1891] 2 Ch. 269**

Discussed by Chitty J. **Collard v. Marshall, [1892] 1 Ch. 571.**

Followed and discussed by C. A. **Monson v. Tussaids, LD., [1894] 1 Q. B. 671.**

(c) The issue by a party of a circular containing libellous *ex parte* statements and comments on the merits of an action is a contempt of Court which will be restrained by interlocutory injunction. **COATS (J. & P.) v. CHADWICK**

**Chitty J. [1894] 1 Ch. 347**

(d) **COLLARD v. MARSHALL**

**Chitty J. [1892] 1 Ch. 571**

**INJUNCTION—continued.**

— Interlocutory—Strike—"Watching or besetting."

See **TRADE UNION.** 11—13.

— Interlocutory—Trade rivalry—Fraud—Improper use of testimonials.

See **FALSE REPRESENTATION.** 1.

17. — *Jurisdiction—Injunction—Proceedings before justices—Public Health (Buildings in Streets) Act, 1888* (51 & 52 *Vict. c. 52*), s. 3 — *R. S. C., 1883, Order XXV., r. 5.*

The Court will not interfere by way of injunction or declaration of right where the Legislature has pointed out a mode of procedure before a magistrate; unless (it seems) in very special circumstances.

*Lord Auldland v. Westminster District Board of Works, (1872) L. R. 7 Ch. 597, Kerr v. Preston Corporation, (1876) 6 Ch. D. 463, and Stannard v. Vestry of St. Giles, Camberwell, (1882) 20 Ch. D. 190, considered. GRAND JUNCTION WATERWORKS CO. v. HAMPTON URBAN DISTRICT COUNCIL*

**Stirling J. [1898] 2 Ch. 331**

Referred to by C. A. *Att.-Gen. v. Merthyr Tydfel Union, [1900] 1 Ch. 516, 550.*

18. — *Jurisdiction to grant.*

Sect. 25 (8) of the Judicature Act, 1873, has not enlarged the jurisdiction of the Court, so as to enable it to grant an injunction where, before the Act, it could not have done so. **KITTS v. MOORE** — **C. A. [1895] 1 Q. B. 253**

— Land acquired for specific purpose—Application of part not required to another permanent purpose—Local Government Board—Jurisdiction.

See **LOCAL GOVERNMENT—LANDS.** 3.

19. — *Lands Clauses Act—Easement—Land—Right of way.*

Where land taken under the Lands Clauses Act included a private road, over which A. claimed a right of way, A., not having been paid compensation, pulled down a hoarding surrounding the land:—

*Held*, that an injunction would go against A., as his remedy was under s. 68 of the Lands Clauses Act. **LONDON SCHOOL BOARD v. SMITH**

**Kekewich J. [1895] W. N. 37**

20. — *Legal remedy—Quo warranto—Judicature Act, 1873* (36 & 37 *Vict. c. 66*), s. 25, sub-s. 8.

Where, independently of the Judicature Act, 1873, there is a right which can be asserted either at law or in equity, then s. 25 (8) of the Act provides that where it is right in order to do effectual justice an injunction may be granted. A member of a school board having been improperly declared to be disqualified, an injunction was granted restraining the board from electing a new member in his place, notwithstanding he had a remedy by quo warranto. **RICHARDSON v. METHLEY SCHOOL BOARD**

**Kekewich J. [1893] 3 Ch. 510**

Followed by **Kekewich J. Turnbull v. West Riding Athletic Club (Leeds), LD., [1894] W. N. 4.**

— Level crossing—Speed of trains.

See **RAILWAY—Level Crossings.** 10.

— Light—Ancient lights.

See **Cases under LIGHT AND AIR.**

**INJUNCTION—continued.**

— **Mandatory**—Form of—Pulling down buildings—Practice.

See **STREETS**. 4.

— **Mandatory**—Illegal breaking up of street—Local authority—Extent of ownership.

See **LONDON—Streets**. 91.

— **Mandatory**, action for—Death of plaintiff.

See **PRACTICE—Parties**. 91.

**21. — Mandatory—Pulling down wall.**

(A) There is power to grant a mandatory injunction in a proper case. The plt. sought a mandatory injunction to pull down a wall which obstructed his ancient lights. He had not been guilty of any delay or acquiescence, and the obstruction to light was material:—

*Held*, that the defts. should be ordered to pull the wall down, and that the plt. was not bound to accept damages by way of remedy. **SHIEL v. GODFREY & Co.**

**Kekewich J. [1893] W. N. 115**

(B) A party wall held in common separated the gardens of the plts. and defts. The plts. pulled down part of the wall and rebuilt it as part of an addition to their house, with concrete foundations and footings extending further into the property of the defts. than the original foundation. At the height of the old wall they set back the new wall half the thickness of the old wall:—

*Held*, that the plts. were entitled to a partition of the wall vertically and longitudinally. A mandatory injunction against permitting the foundation and footings to remain on defts. land refused. **MAYFAIR PROPERTY CO. v. JOHNSTON**

**North J. [1894] 1 Ch. 508**

See *Johnston v. Mayfair Property Co.*, **North J.**, [1893] W. N. 73.

— **Minerals**—Reservation from grant—Redrock and coal neither having any commercial value.

See **MINES—Working**. 23.

**22. — Mortgage by undischarged bankrupt—Sale by mortgagees.**

An undischarged bankrupt mortgaged a reversion. The mortgagees put it up for sale subject to the rights of the trustee in the bankruptcy:—

*Held*, that there was no jurisdiction to grant an injunction restraining the sale. *In re EVELYN*. *Ex parte* **GENERAL PUBLIC WORKS AND ASSETS CO.** — **V. Williams J. [1894] 2 Q. B. 302**

**23. — Motion by defendant—No counter-claim filed—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 3—R. S. C., 1885, Order L, r. 6.**

A deft. who has not filed a counter-claim cannot apply for an injunction against the plt. unless the relief sought is incidental to or arising out of the relief sought by the plt. If the deft. desires any other relief before the time arrives for delivery of a counter-claim, he must issue a writ in a cross-action. **CARTER v. FEY**

**C. A. affirm. Kekewich J. [1894] 2 Ch. 541**

**24. — Notice of action—Interlocutory mandatory injunction—Evading service of writ.**

The deft. was erecting a building near the plt.'s house. The plt. warned the deft. that if the

**INJUNCTION—continued.**

building were continued he would sue to restrain it as an obstruction of his ancient lights. After action brought the deft. evaded service of the writ for several days, and in the meantime continued the building till substituted service on him was effected:—

*Held*, that the deft.'s evasion of the writ brought the case within the principle of *Daniel v. Ferguson*, [1891] 2 Ch. 27, and that the plt. was entitled to an interlocutory mandatory injunction ordering the deft. to pull down so much of the building as had been erected after the plt. had warned the deft. that he intended to bring an action. **VON JOEL v. HORNSEY**

**C. A. affirm. Kekewich J. [1895] 2 Ch. 774**

**25. — Notice of motion—Service out of jurisdiction.**

*Semble*, that leave to serve notice of motion for an injunction with the writ out of the jurisdiction cannot be granted. **MANITOBA AND NORTH WEST LAND CORPORATION v. ALLAN**

**North J. [1893] 3 Ch. 432**

— **Noxious trade**—Reasonable use of property.

See **NUISANCES**. 21.

— **Nuisance.**

See **Cases under NUISANCES**.

**26. — Nuisance anticipated—Quia timet action—Small-pox hospital.**

An injunction to restrain an apprehended future nuisance will not be granted unless the applicant can shew a strong case of probability that the apprehended mischief will in fact arise. The defts. proposed to establish a small-pox hospital in an adjoining district. The plts. contended that the nature of the scheme and the position selected constituted it a public nuisance dangerous to the health of the neighbourhood:—

*Held*, that the plts. had failed to shew a probability that the apprehended danger would arise.

*Quare*, whether the public benefit derivable from the existence of the hospital did not counter-balance the alleged dangers from its institution. **ATT.-GEN. v. MANCHESTER CORPORATION**

**Chitty J. [1893] 2 Ch. 87**

**27. — Nuisance—Noise—Music.**

Action between two neighbours, each of whom asked for an injunction to restrain musical noises on the part of the other. Injunction granted against deft. restraining him from making noises in his house so as to vex or annoy plt. **CHRISTIE v. DAVEY**

**North J. [1893] 1 Ch. 316**

**28. — Nuisance — Noise — Noise caused by several persons.**

The acts of two or more persons may taken together constitute such a nuisance that the Court will restrain all from such acts, although the nuisance caused by the act of any one of them taken alone would be inappreciable and would not be restrained by injunction. **LAMBTON v. MELLISH**. **LAMBTON v. COX**

**Chitty J. [1894] 3 Ch. 163**

Referred to by **C. A. Sadler v. Great Western Rly. Co.**, [1895] 2 Q. B. 688, 693.

— **Nuisance—Sewers—Claim of right—Prescriptive right in third parties.**

See **SEWERS**. 25.

**INJUNCTION—continued.****29. — Offer of undertaking by defendant—Costs.**

In an action to restrain the infringement of a patent a deft., on being served with the writ, offered to undertake not to infringe, to give the other relief claimed by the writ, and to pay the plt.'s costs. Notwithstanding this offer the plt. delivered a statement of claim and particulars of breaches. The deft. then delivered a defence; and the plt. moved for judgment in the terms of the statement of claim:—

*Held*, that the plt. ought to have accepted the undertaking offered; and, on the deft.'s giving the undertaking, the Court declined to grant an injunction, giving to the plt. costs down to the date of the offer and the costs of the day's appearance, and to the deft. the other costs subsequent to the offer. **JENKINS v. HOPE**

**North J. [1895] W. N. 161 (6); [1896] 1 Ch. 278**

— Partition — Injunction on against building encroachment.

*See* PARTITION. 12.

**30. — Partner of unsound mind—Interference with business.**

The Court has jurisdiction to restrain a partner of unsound mind from interfering in the partnership affairs so as to injure the partnership business during the pendency of an action for dissolution on the ground of such unsoundness. **J—v. S—Stirling J. [1894] 3 Ch. 72**

— Partner making list of customers.

*See* Cases under PARTNERSHIP—Goodwill.

— Patent—Infringement.

*See* Cases under PATENT.

— Picketing — “Watching and besetting” — “Wrongfully and without legal authority.”

*See* TRADE UNION. 8, 11—13.

— Practice — Claim for damages — Joinder — Separate causes of action.

*See* PRACTICE—Parties. 118.

— Preaching on the beach—Nuisance.

*See* SEASHORE.

**31. — Prospective injury.**

Where it is proved that a proposed building will injure a legal right of light, the owner of the right is, in the absence of special circumstances, entitled to an injunction to restrain the erection of the building.

*Quære*, whether in such a case the Court would have jurisdiction to give damages for the prospective injury in lieu of the injunction. **MARTIN v. PRICE — C. A. revers. Kekewich J. [1894] 1 Ch. 276**

Followed by **C. A. Shelfer v. City of London Electric Lighting Co., [1895] 1 Ch. 287, 311, 316; Jordonson v. Sutton, Southwater & Drypool Gas Co., [1899] 2 Ch. 217.**

— Public body—Infringement of statute—Evidence of injury—Speed of trains.

*See* RAILWAY—Level Crossings. 10.

**32. — Residential flat—Implied obligation—Common scheme.**

An injunction was granted to restrain the conversion into a club of a large part of a building, adapted to occupation in residential

**INJUNCTION—continued.**

flats, at the instance of a tenant who held under an agreement in a common form binding the tenants to rules suitable only for residential purposes. **HUDSON v. CRIPPS North J. [1896] 1 Ch. 265**

— Riparian owner — Spring — Alteration of natural flow.

*See* WATER. 42.

— Riparian owner — Stream—Alteration of flow — “Injurious affecting.”

*See* WATER. 43.

— Sale of business—Floating charge.

*See* COMPANY—Debentures. 51.

— Schoolmaster, Restraining dismissal of — Management.

*See* CHARITY. 39.

— Service out of jurisdiction.

*See* PRACTICE—Service. 212.

— Severable covenant—Contract of hiring and service.

*See* RESTRAINT OF TRADE. 19.

— Sewage, Agreement to admit foreign—Public body—Estoppel—Laches and acquiescence.

*See* LONDON—Sewers. 62.

**33. — Statutory powers—Electric lighting—Vibration—Right of reversioner to sue—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 10, 12, sub-s. 2; ss. 17, 32—Electric Lighting Act, 1888 (51 & 52 Vict. c. 12)—Lord Cairns' Act (21 & 22 Vict. c. 27).**

In a case of continuing actionable nuisance, the jurisdiction of the Court to award damages instead of an injunction ought only to be exercised under very exceptional circumstances.

*Per* A. L. Smith L.J.: Damages may be given instead of an injunction, when the following requirements are all found in conjunction, viz., where the injury to the plt.'s rights is—(i.) small; (ii.) capable of being estimated in money; (iii.) capable of being adequately compensated by a small sum; (iv.) when an injunction would be oppressive. **SHELFER v. CITY OF LONDON ELECTRIC LIGHTING CO. MEUX'S BREWERY CO. v. THE SAME (No. 1) C. A. [1895] 1 Ch. 287**

— Support—Right of lateral—Adjacent lands—Escape of pitch—Damages.

*See* SUPPORT. 2.

**34. — Suspension of injunction—Court to which application should be made.**

A judge of the High Court has jurisdiction to extend the period of suspension of an injunction granted by C. A. and suspended by that Court. **SHELFER v. CITY OF LONDON ELECTRIC LIGHTING CO. MEUX'S BREWERY CO. v. THE SAME (No. 2) — C. A. [1895] 2 Ch. 388**

**35. — Threat of proceedings—Offer of all that could be obtained on motion—Costs.**

Where on a threat of proceedings the deft. through his solicitor writes to the plt. offering all that he could obtain on an interlocutory motion, and there is no suggestion that the offer would not be carried out, and notwithstanding plt. brings his action and moves for an injunction, such motion will be refused with costs. **SNUGES v. SEYD & KELLY'S CREDIT INDEX CO.**

**Chitty J. [1894] W. N. 95**

**INJUNCTION—continued.**

— Title of honour—Divorce—Former wife marrying a commoner—Continued use of title derived from former husband.

See HUSBAND AND WIFE—Title of Honour. 97.

**36. — Trade libel—Intimidating circular.**

Where a trade union published a poster headed "T.'s Black List," giving the names of T.'s non-union workmen:—

*Held*, by Kekewich J., that as on the evidence the principal motive was to injure T. and the non-union men, and as the injury was being inflicted from day to day, T. and the non-union men were entitled to an injunction against the trade union and their servants, &c., and against the secretary and other officers, who were defts. by name without addition.

Affirmed by C. A. on the ground that a *prima facie* case had been established that the defts. had gone beyond what they were entitled to do, and had refused to give an undertaking to desist pending the action. *TROLLOPE v. LONDON BUILDING TRADES FEDERATION*

Kekewich J. [1895] W. N. 29;  
C. A. [1895] W. N. 45

— Trade-mark.

See Cases under TRADE-MARK.

— Trade name.

See Cases under TRADE NAME.

— Trade name—Colourable imitation of name—What constitutes false representation.

See CANADA. 24.

— Trade name—Identification of name with goods by user.

See NEW SOUTH WALES. 48.

**37. — Trade name—Misleading advertisements—Form of order.**

The defts. issued advertisements, cards, and circulars, calculated to lead to the belief that the deft.'s business was the same as or a branch of the plt.'s business:—

*Held*, that it was a case for granting perpetual injunction to prevent the defts. advertising or carrying on their business without clearly distinguishing their business from that of the plt. *WOLMERSHAUSEN v. WOLMERSHAUSEN & CO.*

Chitty J. [1892] W. N. 87

— Trade, Restraint of—Illegal objects—Expulsion of member—Jurisdiction of Court.

See TRADE UNION. 10.

**38. — Trade secrets.**

A former servant can be restrained from using forms copied by him from those used by his employer, and from using copies or extracts from a register of persons with whom his employer did business for the purpose of canvassing them.

(A) *LOUIS v. SMELLIE*

C. A. [1895] W. N. 115 (7)

(B) *ROBB v. GREEN* C. A. [1895] 2 Q. B. 315  
affirm. *Hawkins J.* [1895] 2 Q. B. 1

(C) *LAMB v. EVANS* (No. 1) - C. A. [1893]  
1 Ch. 218 affirm. *Chitty J.* [1892] 3 Ch. 462

Followed by C. A. *Robb v. Green*, [1895]  
2 Q. B. 315.

— Trellis screen, Erection of.

See LANDLORD AND TENANT. 12.

**INJUNCTION—continued.**

**39. — Undertaking as to damages—Principle of assessment of damages.**

Where an interim injunction is dissolved only such damages are to be awarded under the undertaking as naturally flow from the grant of the injunction. An interim injunction was granted to restrain breach of copyright by dramatising a novel. The defts. had made considerable profits by his drama. On dissolution of the injunction he claimed that damages payable on the plt.'s undertaking should include loss of profits on the tour of a dramatic co. which was to include his drama in their repertory:—

*Held*, that the damages must be limited to the profit lost on the drama to which the injunction applied. *SCHLESINGER v. BEDFORD*

C. A. [1893] W. N. 57

**40. — Undertaking as to damages—Married women without separate estate.**

It is not a sufficient ground for refusing an interlocutory injunction to a married woman that her undertaking in damages will be illusory, she not having any separate estate. *PIKE v. CAYE*

Kekewich J. [1893] W. N. 91

**41. — Undertaking as to damages—Suppression of facts.**

Where a solicitor applying for an *ex parte* injunction suppressed material facts as to the solvency of his client:—

*Held*, that he should be made personally liable on the client's undertaking as to damages and for the costs. *SCHMITTEN v. FAULKES*

Chitty J. [1893] W. N. 64

— Vacant land—Deposit of filth by third parties.

See NUISANCE. 40.

— Waste—Lease to construct a reservoir—Subdemise for purpose of rubbish shoot.

See WASTE. 2.

— Water—Irrigation—Land slides. Liability for damages.

See CANADA. 22.

**42. — Where action does not lie.**

An injunction will not be granted restraining the disparagement of a trader's goods where an action does not lie. *MELLIN v. WHITE*

H. L. (E.) [1895] A. C. 154 affirm. *Romer J.*  
and revers. C. A. [1893] 3 Ch. 276

— Witnesses examined by foreign tribunal.

See DIVORCE—Jurisdiction. 88.

**INJURIOUS TO HEALTH—Ingredient or matter.**

See Cases under ADULTERATION.

**INLAND REVENUE.**

See Cases under REVENUE.

**INN—Agreement for sale—Transfer of licence—Interim protection.**

See VENDOR AND PURCHASER—Contract. 32.

— Bar of public-house—Place "used" for betting.

See GAMING. 18.

— Covenant—Liquidated damages—Penalty.

See LANDLORD AND TENANT. 13.

— "Discontinuance" of public-house licence—Covenant.

See LANDLORD AND TENANT. 18.

**INN—continued.**

- Forfeiture — Protection of underlessee — Vesting order—Variation in amount of rent.  
*See* LANDLORD AND TENANT.
- Goodwill of business—Real Estate Charges Act.  
*See* MORTGAGE. 75.
- Improvements — Definition—"Building purposes."  
*See* SETTLED LAND. 27.
- Inhabited house duty.  
*See* REVENUE—Inhabited House Duty.
- Leasehold interest in licensed house—Goodwill—Conveyance on sale—Stamp.  
*See* REVENUE—Stamps. 152.
- Licence.  
*See* Cases under LICENSING ACTS.
- Licence duty—Office occupied with certificated house—Stables.  
*See* REVENUE—Licence Duty. 128.
- Mortgage—Clogging the equity of redemption—"Tied" public-house.  
*See* MORTGAGE. 58.
- Part of building used for dwelling-house approaches.  
*See* LONDON. 26.
- Rateable value—Evidence of advantageous situation and business done.  
*See* RATES—Rateability. 31.
- Rateability—Poor-rate—Assessment—Competition of brewers—"Tied" houses.  
*See* RATES—Rateability. 30.
- Restrictive beer covenant — Public-house — Lease.  
*See* LANDLORD AND TENANT. 17.
- Restrictive covenant — Prohibiting sale of beer and spirits—Continuing covenant broken for an uninterrupted period of twenty-four years—Waiver.  
*See* VENDOR AND PURCHASER. 68.
- Restrictive covenant—"Tied" public-house—"Clog" on redemption—Covenant by mortgagor to take beer from mortgagee only.  
*See* MORTGAGE—Redemption. 60.
- Restrictive covenant—Tied public-house—Mortgagor and Mortgagee—Assigns—Under-lessee—Notice.  
*See* COVENANT. 7.
- Restrictive covenant prohibiting sale of beer and spirits—Waiver.  
*See* VENDOR AND PURCHASER. 68.
- Restrictive covenant—Covenant not to buy wines except from lessor.  
*See* LANDLORD AND TENANT. 15.
- Shop Hours Act—Hotel—Domestic servant.  
*See* SHOP. 2.
- Usual public-house contract—Uncertainty.  
*See* VENDOR AND PURCHASER. 73.

**INNKEEPER—Liability—"Guest"—Loss of property.**

The plt., being on his way from his place of

**INNKEEPER—continued.**

business in Liverpool to his home outside the town, went into the dining-room of an hotel in Liverpool, kept by the defts., to get a meal, and put his overcoat in a place where coats were ordinarily kept in that room. The coat was missing when he had finished his meal. Sleeping accommodation for guests at the hotel was provided if required; but a great number of people used it every day for the purpose of dining there only:—

*Held*, that there was sufficient evidence to establish the relation of innkeeper and guest between the defts. and the plt. so as to make them liable for the loss of the coat without proof of negligence on their part. *ORCHARD v. BUSH & Co.* Div. Ct. [1898] 2 Q. B. 284

2. — *Liability—Loss of guest's property—Onus probandi* (26 & 27 Vict. c. 41), s. 1.

To relieve an innkeeper of his statutory liability under 26 & 27 Vict. c. 41, to the extent of 30*l.* for loss of a guest's property, the innkeeper must shew contributory negligence on the part of the guest. To enable the guest to claim more than 30*l.*, he must shew that the loss occurred through the "wilful act, default, or neglect" of the innkeeper:—

*Held*, by C. A. on the facts, that neither party had proved default by the other:

*Held*, by A. L. Smith J. and Fry L.J., that the plt. was not a "guest," and the innkeeper was not liable. *MEDAWAR v. GRAND HOTEL CO.* — — — C. A. (Fry L. J. diss.)

revers. A. L. Smith J. [1895] 2 Q. B. 11

3. — *Lien—Goods of third person.*

A commercial traveller who travelled for the plt. went in the course of their business to stay as a guest at the deft.'s inn. While he was there the plt. sent to him certain parcels of goods for sale in the district. The deft. at the time they were received into his inn had express notice that the goods were the property of the plt., but he received them as the baggage of the traveller, who subsequently failed to pay for his board and lodging in the inn:—

*Held*, that the deft. had a lien upon the goods in respect of the debt. *ROBBINS & Co. v. GRAY* — — — Div. Ct. [1895] 2 Q. B. 78; affirm. by C. A. [1895] 2 Q. B. 601

4. — *Music—Innkeeper providing piano—Public Health Acts Amendment Act, 1890* (53 & 54 Vict. c. 59), s. 51.

A licensed victualler had in the public smoke-room of his house a pianoforte on which customers were in the habit of playing for the amusement of themselves and others resorting to the room. He made no extra charge either for the use of the piano or for the entertainment thus afforded, nor did he pay or encourage the performers. He was convicted under s. 51 of the Public Health Acts Amendment Act, 1890, for having kept or used the room for public entertainment without a licence for the purpose:—

*Held*, that the conviction was wrong. *BREARLEY v. MORLEY* — — — Div. Ct. [1899] W. N. 84; [1899] 2 Q. B. 121

5. — *Obligation to lodge traveller—Guest losing character of traveller—Cesser of right to*



**INNKEEPER**—*continued.*

*lodging*—Right of innkeeper to give notice to leave.

The common law liability of an innkeeper to receive and lodge a guest attaches only so long as the guest is a traveller, and a person who has been received at an inn as a traveller does not necessarily continue to reside there in that character. Whether at any given time during his residence he is still a traveller is a question of fact, and one of the ingredients for determining this fact is the length of time that has elapsed since his arrival. If the guest has lost the character of traveller the innkeeper is not bound to supply him with lodging, but is entitled, on giving reasonable notice, to require him to leave. *LAMOND v. RICHARD* C. A. [1897] 1 Q. B. 541

**INN OF CHANCERY**—Voluntary association—Failure of objects.  
See CHARITY. 33.

**INNOCENT MISREPRESENTATION** — Indemnity.  
See CONTRACT. 32.

**INNOCENT PURCHASER** — Infringement of trade-mark—Dealings of small amount—Costs.  
See TRADE-MARK. 1.

**INNS OF COURT**—Consolidated regulations of the four Inns of Court as to the admission of students, calls to the bar, &c. W. N. July 18, 1891, p. 321.

**INQUEST.**  
See CORONER.

— Sufficiency of—Pleadings—Coroner.  
See CRIMINAL LAW.

**INSANE DELUSIONS** — Will — Relevancy — Capacity.  
See WILL. 171.

**INSANITY.**  
See Cases under LUNATIC.  
— Probate—Grant of administration.  
See PROBATE—Grant of Administration. 53, 54.

— Wife.  
See Cases under DIVORCE—Lunacy.

**INSOLVENCY**—Administration.  
See Cases under EXECUTOR—Insolvent Estates.

— Bankruptcy practice.  
See Cases under BANKRUPTCY.  
— Creditor-contributory — Insolvent company holding shares—Set-off of debt against calls—Winding-up of company.  
See COMPANY—WINDING-UP. 50.

— Insolvent estate—Solicitor-executor—Power to charge.  
See SOLICITOR. 134.

— Priority—Rates—Preferential payments in bankruptcy—Administration.  
See EXECUTOR. 37.

**INSPECTION**—Discovery.  
See Cases under DISCOVERY.

**INSTALMENTS**—Purchase-money payable by—Omission to pay last instalment—Repudiation of contract—Specific performance—Damages.  
See VENDOR AND PURCHASER—Contract. 35.

— Under bill of sale.  
See BILL OF SALE. 34.

— Under mortgage—Fixtures.  
See FIXTURES. 5.

**INSTRUCTIONS**—Brief—Costs.  
See COMPANY—WINDING-UP—Costs. 60.

**"INSTRUMENT"**—Conveyance.  
See HUSBAND AND WIFE. 35.

— Whether bill of sale or not.  
See Cases under BILL OF SALE.

**INSURANCE.**  
*Companies Act, 1896 (59 & 60 Vict. c. 26), consolidates the Acts relating to Friendly Societies and Industrial Assurance Companies which receive contributions and premiums by means of collectors.*

*Stamp duty—Finance Act, 1896 (59 & 60 Vict. c. 28), s. 13, extends s. 116 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), as to composition on policies.*

*Accident, col. 974.*

*Burglary, col. 975.*

*Fire, col. 976.*

*Guarantee, col. 977.*

*Life, col. 979.*

*Marine, col. 982.*

**Accident.**

1. — Policy—Construction of—"External" injury.

A policy insured against accidents caused by "violent accidental external and visible means," but not against accidents arising from "natural disease or weakness or exhaustion consequent upon disease." The plt. injured his knee while stooping to pick up something from the floor. He had never suffered from any weakness of the knees or knee-joint:—

*Held*, that this accident arose from "external means," and also by "violent accidental and visible" means within the meaning of the policy. *HAMLYN v. CROWN ACCIDENTAL INSURANCE CO.*

C. A. [1893] 1 Q. B. 750

2. — Policy—Construction of—"From."

A policy insured against "claims for personal injury in respect of accidents caused by vehicles for twelve calendar months from Nov. 24, 1887," to the amount of "250*l.* in respect of any one accident." A tramcar was overturned, forty persons injured, and compensation to the amount of 833*l.* claimed. The defts. said the overturning was one accident, and refused to pay more than 250*l.*:—

*Held*, that "any one accident" meant "injury in respect of which a person claimed compensation," and the defts. were liable for the 833*l.* "From *held* to exclude Nov. 24, 1887, and to include Nov. 24, 1888, the day of the accident. *SOUTH STAFFORDSHIRE TRAMWAYS CO. v. SICKNESS AND ACCIDENT ASSURANCE ASSOCIATION*

C. A. & Div. Ct. [1891] 1 Q. B. 402

Referred to by North J. *Sheffield Corporation*

**INSURANCE (Accident)—continued.**

*v. Sheffield Accident Assurance Association*, [1898] 1 Ch. 203, 209.

See **INFANT—Contracts**. 10.

**3. — Policy — Contract — Renewal — Continuation of old contract — New contract — Policy money — Insolvency — Creditors' deed.**

Accident policy renewable yearly so long as the assured pays the specified premium in advance and the insurance co. consent to receive it, and requiring the assured at each renewal to give notice of any change in his state of health since the payment of the last premium, with power for the co. in such case to determine the policy.

Upon the payment of the premium for each year, an entirely new contract arises for that year only, and the amount payable under it on the accidental death of the assured in the current year for which a premium has been paid is not affected by any assignment or other obligation made or entered into by the assured in any previous year and not extending to after-acquired property. *Stokell v. Heywood*

*Kekewich J.* [1896] W. N. 65 (1); [1897] 1 Ch. 459

**4. — Policy covering accident sustained in discharge of insured's duty — Nervous shock arising from fright — Right to recover under policy.**

The plt. was a signalman in the employment of the defts., a ry. co., who entered into a contract of insurance with him, by which they agreed to pay a weekly allowance in case of his being incapacitated from employment by reason of accident sustained in discharge of his duty in the co.'s service, such insurance to be absolute for all accidents, however caused, occurring to the insured in the fair and ordinary discharge of his duty. The plt. in the discharge of his duty endeavoured to prevent an accident to a train by signalling to the driver, and the excitement and fright arising from the danger to the train produced a nervous shock which incapacitated him from employment. In an action to recover from the defts. the weekly allowance:—

*Held*, that the plt. had been incapacitated by accident within the meaning of the policy. *Pugh v. London, Brighton and South Coast Ry. Co.* C. A. [1896] 2 Q. B. 248

Referred to by *Wright J. Wilkinson v. Downton*, [1897] 2 Q. B. 57, 60.

— **Stamps**—"Policy of insurance against accident"—Workmen's compensation. See **REVENUE—Stamps**. 164.

**Burglary.**

**5. — Burglary and housebreaking — Loss by theft — Entry by opening unlocked shop door — Breaking open show-case — "Actual forcible and violent entry."**

A policy of insurance on stock-in-trade recited that the assured was desirous of effecting an insurance "against loss or damage by burglary and housebreaking as hereinafter defined," and the risk insured against was expressed to be loss of the property insured "by theft following upon actual forcible and violent entry upon the premises wherein the same is herein stated to be situate." The insured property, which was stated in the policy to be situate on premises

**INSURANCE (Burglary)—continued.**

No. 78, Strand, was in a shop at that address, the front door of which was shut, but not locked or bolted, and access to the shop could be obtained by turning the handle of the door. In the early morning before business hours, during the temporary absence of a servant of the assured, some person opened the front door, entered the shop and, breaking open a locked-up compartment or show-case within, which formed a portion of the shop, stole therefrom part of the insured property.—

*Held* (reversing the judgment of a Div. Ct., [1898] 2 Q. B. 136), that the loss which occurred as above mentioned was not covered by the policy. *In re George and the Goldsmiths' and General Burglary Insurance Association* C. A. [1899] W. N. 27 (5); [1899] 1 Q. B. 595

**6. — Insurance against burglary — Execution of policy — Retaining possession of policy — Completed contract — Recital — Waiver of prepayment of premium.**

A proposal for an insurance of goods against loss by burglary having been made by the plt. to the deft. co. on Dec. 14, 1895, the seal of the co. was affixed to a policy in conformity with the proposal at a meeting of the directors upon Dec. 27, and the policy was signed by two directors of the co. and their secretary. The policy recited that a premium had been paid for an insurance against loss by burglary from Dec. 14, 1895, to Jan. 1897, and purported to insure the plt.'s goods accordingly. It contained a provision that no insurance by way of renewal or otherwise should be held to be effected until the premium due thereon should have been paid. Upon the night of Dec. 26, or early in the morning of Dec. 27, a loss of goods included in the policy by burglary had taken place. The policy remained in the hands of the co., and nothing was paid by way of premium:—

*Held*, that the policy constituted a completed contract of insurance; that by the recital therein the defts. had waived the condition for prepayment of the premium; and therefore that the policy had attached. *Roberts v. Security Co.*

C. A. [1897] 1 Q. B. 111

**Fire.**

— **Compliance with condition in policy — Non-suit — Practice.**

See **NEW SOUTH WALES**. 26.

**7. — Condition precedent — Arbitration.**

A condition in a policy required that where a difference arose as to the amount payable in case of fire, the matter should be referred to arbitrators to be chosen by the parties; and also, that before an award no action should be brought:—

*Held*, that an award as to damage was a condition precedent to bringing the action. *Caledonian Insurance Co. v. Gilmour*

H. L. (Sc.) [1893] A. C. 85

**8. — Condition precedent — Warranty.**

A policy was taken out which the plt. warranted to be identical in rate, terms, and interest with the policies of two other companies. The policy, as a fact, differed considerably from both:—

*Held*, that the warranty was a condition pre-

**INSURANCE (Fire)—continued.**

cedent to the existence of any obligation, and the breach in the warranty avoided the policy.  
**BARNARD v. FABER** C. A. [1893] 1 Q. B. 340

9. — *Contract of indemnity — Remedies of assured against third parties—Right of insurer to subrogation—Renunciation of remedies by assured—Right of insurer to recover value of remedies renounced.*

A policy of fire insurance being a contract of indemnity, the insurer is entitled to recover from the assured, not merely the value of any benefit received by him by way of compensation from other sources in excess of his actual loss, but also the full value of any rights or remedies of the assured against third parties which have been renounced by him and to which, but for such renunciation, the insurer would have a right to be subrogated. Decision of Collins J. affirmed, [1896] 2 Q. B. 377. **WEST OF ENGLAND FIRE INSURANCE CO. v. ISAACS**

C. A. [1897] 1 Q. B. 226

— Equitable tenant for life—Liability—Covenants.

See **SETTLED LAND**. 108.

— Ship stranded—Subsequent destruction by fire.

See **INSURANCE—Marine**. 48.

10. — *Warranty of truth of statements in proposal—Condition.*

Where in the proposal for a policy of insurance against fire the applicant warrants the statements therein to be true, a contract on the part of the insured that the facts are such as they are represented to be is imported. **HAMBROUGH v. MUTUAL LIFE INSURANCE CO. OF NEW YORK** — — — C. A. [1895] W. N. 18

**Guarantee.**

11. — *Concealment of material facts—Uberrima fides.*

On the application of the appellant the respondent, an underwriter at Lloyd's, underwrote an instrument in the form of a policy whereby he guaranteed the solvency of a person who was surety for the repayment by the borrower of money lent by the appellant. The respondent made no inquiry as to the rate of interest payable by the borrower or as to the circumstances of the loan, and no information was given to him on those points. In fact the interest was over 30 per cent. and the borrower was unable to repay the loan. In an action on the policy the jury found that the transaction was not one of exceptional risk:—

*Held*, that the non-disclosure of the rate of interest and the circumstances of the loan did not constitute a defence, there being no evidence that those facts were material to the only risk undertaken by the respondent, namely, the solvency of the surety.

Decision of C. A., [1899] 1 Q. B. 782, granting a new trial, reversed. **SEATON v. BURNAND**. **BURNAND v. SEATON** H. L. (E.) [1900] W. N. 48; [1900] A. C. 135

12. — *Securities—Contract to insure payment of debenture at maturity—Postponement of date*

**INSURANCE (Guarantee)—continued.**

*of maturity by special resolution of debenture-holders—Liability of insurer.*

The plt., the holder of a debenture in a co. which matured for payment on Nov. 4, 1895, effected a policy of insurance with the defts. which, after reciting that the debenture matured on that day and that the plt. had paid a premium for insurance until that date, guaranteed to the plt. the due payment of the principal money secured by the debenture, if the debtors should make default for more than three calendar months in payment of any principal money due "under the debenture." Subsequently, by a special resolution of the debenture-holders, which was neither assented to nor dissented from by the plt., the date for payment of the debentures of the co. was postponed. The plt.'s debenture was not paid off on Nov. 4, 1895, nor in three calendar months after that date:—

*Held*, that, assuming the special resolution to be valid, the contract was nevertheless one of insurance against the default of the co. to pay the amount of the debenture on the original date; that there had been a default by the co. to pay money due under the debenture within the meaning of the policy; and that the plt. was therefore entitled to recover the amount of the policy from the defts., who were entitled on payment to be subrogated to the plt.'s rights as modified by the special resolution. **FINLAY v. MEXICAN INVESTMENT CORPORATION**

Charles J. [1897] 1 Q. B. 517

Referred to by C. A. **Seaton v. Heath, Seaton v. Burnand**, [1899] 1 Q. B. 782, 790. This case was reversed by H. L. (E.) [1900] A. C. 135. See preceding Case.

13. — *Securities—Deposit with bank—Insurance or suretyship—Statutory discharge.*

By a document headed "policy of insurance" the defts. guaranteed to the plt. the "assured" payment of a deposit with a bank in a Colony if the bank should make default in payment. The bank made default. Subsequently a scheme of arrangement was sanctioned by a meeting of creditors and the Colonial Court. Under a Colonial statute the scheme was binding on the plt. who, however, did not assent to the scheme:—

*Held*, by C. A. (affirm. Div. Ct.), that the defts. were liable on their contract notwithstanding the scheme of arrangement.

*Per* Lord Esher M.R. and Lopes L.J., the contract was one of insurance against the default of the bank to pay. Therefore the defts. were liable to pay, but were entitled to be subrogated to the rights of the plt. under the scheme of arrangement.

*Per* Kay L. J., whether the contract was one of insurance or one of suretyship, the scheme of arrangement operated to discharge the bank under the statute and not by way of accord and satisfaction, and did not defeat the right vested in the plt. under the contract upon default made by the bank. **DANE v. MORTGAGE INSURANCE CORPORATION** C. A. [1894] 1 Q. B. 54

Referred to by C. A. **Seaton v. Heath, Seaton v. Burnand**, [1899] 1 Q. B. 782, 790. This case was reversed by H. L. (E.) [1900] A. C. 135. See No. 11, above.

**INSURANCE—continued.****Life.**

*Payment into Court—Life Assurance Companies (Payment into Court) Act, 1896 (59 & 60 Vict. c. 8), gives power to life assurance companies to pay money into Court in certain cases.*

*Rules dated July 29, 1896, under this Act. W. N. 1896 (Aug. 1), p. 229; Rule in substitution of that printed on Aug. 1, 1896 (p. 229). W. N. 1896 (Oct. 31), p. 291. See Current Index, 1896, p. lvi.*

*Rule 41a, dated Aug. 10, 1896, as to lodgment schedule of moneys paid into Court. W. N. 1896 (Aug. 29), p. 243. See Current Index, 1896, p. lvi.*

— Deposit—Payment out—Jurisdiction.

*See PRACTICE—Payment out of Court. 139.*

**14. — Friendly society.**

An insurance by a member of a friendly society therein effected under 13 & 14 Vict. c. 115, s. 2 (1), does not fall within 14 Geo. 3, c. 48, s. 2, and does not therefore require to have inserted the name of the person for whose benefit it is effected. *ATKINSON v. ATKINSON*

*Chitty J. [1895] W. N. 114 (3)*

— Income tax—Participating policy-holders—Return of premium by way of bonus—Annual profits or gains.

*See REVENUE—Income Tax. 101.*

**14A. — Insurable interest—14 Geo. 3, c. 48, ss. 1, 3.**

A promise by plt. to the mother of a child, the plt.'s step-sister, to take care of the child:—

*Held*, to give an insurable interest so far as to secure repayment of the expenses undertaken by her. *BARNES v. LONDON, EDINBURGH AND GLASGOW LIFE INSURANCE CO.*

*Div. Ct. [1892] 1 Q. B. 864*

— Keeping up premiums as between tenant for life and remainderman—Apportionment. *See SETTLED LAND—Apportionment. 12.*

**15. — Knowledge of agent—Construction of policy.**

An illiterate person, blind of one eye, signed, at the request of an agent of an insurance co., an application for a policy on a form which stated that he had no physical infirmity. The policy agreed to pay 250*l.* for (inter alia) the loss of one eye and 500*l.* for total blindness. The insured lost his remaining eye by an accident:—

*Held*, that the knowledge of the agent that the insured was blind of one eye affected the co., that the policy was good, and the insured could recover as for total blindness. *BAWDEN v. LONDON, EDINBURGH AND GLASGOW LIFE INSURANCE CO.*

*C. A. [1892] 2 Q. B. 534*

— Life salvage.

*See Cases under INSURANCE—Marine. SHIPPING—Salvage.*

— Lloyd's policy—Life salvage.

*See INSURANCE—Marine. 76.*

— Mortgage—Surrender of policy—Payment "in the meantime"—Payment by mortgagor or his agent.

*See LIMITATIONS, STATUTE OF. 29.*

**INSURANCE (Life)—continued.**

— Mortgagee taking possession of real estate—Redemption action—Right to redeem policy separately.

*See MORTGAGE—Redemption. 64, 67.*

— Policy—Estate Duty—Settled property.

*See REVENUE—Estate Duty. 35.*

— Policy—Payment of premium by notes discounted and then dishonoured.

*See CANADA—Ontario. 46.*

— Policy—Succession duty.

*See REVENUE—Succession Duty. 185.*

**16. — Policy—Trust for wife and children—Appointment of trustees—Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 10—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 11, 22.**

A policy for the benefit of a wife and children effected under s. 10 of the Married Women's Property Act, 1870, by a husband who dies after the commencement of the Married Women's Property Act, 1882, does not vest in the legal personal representatives of the husband in trust for the beneficiaries as provided by s. 11 of the Act of 1882, but a trustee must be appointed under s. 10 of the Act of 1870.

*In re Adam's Policy Trusts*, (1883) 23 Ch. D. 525, and *In re Soutar's Policy Trust*, (1884) 26 Ch. D. 236, discussed. *In re TURNBULL. TURNBULL v. TURNBULL* *Stirling J. [1897] 2 Ch. 415*

**17. — Policy in favour of wife and children—Joint tenancy—Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 10.**

In 1877, A. insured his own life, and the policy declared that the funds of the co. should be liable to the payment of the sum insured to the wife and children of the assured, pursuant to the provisions of the Married Women's Property Act, 1870. A. died in 1891, leaving a widow and children:—

*Held*, that the widow and children took as joint tenants. *In re DAVIES' POLICY TRUSTS*

*Chitty J. [1892] 1 Ch. 90*

**18. — Policy in favour of wife—Death of insured through crime of wife—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11.**

The executors of a person who has effected an insurance on his life for the benefit of his wife can maintain an action on the policy notwithstanding that his death was caused by a felonious act of his wife. The trust created by the policy under s. 11 of the Married Women's Property Act, 1882, having been defeated by reason of her crime, the insurance money becomes part of the assured, and as between his legal representatives and the insurers no question of public policy arises to afford a defence to the action. *CLEAVER v. MUTUAL RESERVE FUND LIFE ASSOCIATION*

*C. A. [1892] 1 Q. B. 147*

— Premiums—Voluntary payment by settlor—Bankruptcy by settlor—Policy moneys—Proportion not represented by each premium.

*See BANKRUPTCY—Voluntary Settlement. 269.*

**19. — Provision for wife and children of assured—Wills Act, 1837 (7 Will. 4, 1 & 2 Vict. c. 26), s. 27.**

**INSURANCE (Life)—continued.**

A policy of insurance gave a power of nomination to the assured, and provided that in default the moneys should go to his widow and children. The will of the insured, who never made any nomination, disposition or charge affecting the policy, contained a gift of residue, but did not refer to the policy or to sums due on any assurances:—

*Held*, that the policy was valid and that the moneys were distributable under the provisions of the policy, and not as residuary estate. *In re DAVIES. DAVIES v. DAVIES*

North J. [1892] 3 Ch. 63

— Remedies of insurers—Subrogation.

See QUEENSLAND. 3.

20. — *Repudiation of assurer's liability—Action for declaration of liability brought before death of assured.*

P. insured his life with the defts., and assigned the policy to the plt. After two premiums had been paid, the defts. refused to receive any further premium, and repudiated liability on the policy. Plt. brought an action in the lifetime of P., claiming a declaration that the policy was valid, and an injunction to restrain the defts. from repudiating it:—

*Held*, that, on the defts. undertaking that if an action was hereafter brought on the policy they would not rely as a defence on the non-payment of premiums on the due-days, the action would be dismissed. *HONOUR v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES*

Buckley J. [1900] W. N. 67; [1900] 1 Ch. 852

21. — *Salvage premiums—Reimbursement.*

On an assignment of leaseholds subject to a mortgage to an insurance co. which was collaterally secured by a policy, it was agreed that the policy should belong to the vendor, who was to pay the premiums. This he failed to do, and the purchaser had to pay several premiums to prevent the mortgage being called in. The policy finally lapsed, but the insurance co. ex gratia allowed the surrender value, which was less than the salvage premiums, and wrote the amount off the mortgage debt. The vendor claimed to have a lien on the leaseholds for the amount, and a declaration that he as surety stood in the place of the mortgagees of the policy. Claim dismissed. *TIPPETT v. STRUTT*

North J. [1891] W. N. 112

— Succession duty.

See REVENUE—Succession Duty. 185.

— Title-deeds—Custody of—Retention of personal estate.

See VENDOR AND PURCHASER—Title-deeds. 99.

— Validity of life policy—Lawful holder.

See CANADA. 11.

— Voluntary settlement—No provision for keeping policies on foot.

See BANKRUPTCY—Voluntary Settlement. 269.

22. — *Warranty of truth of statements in proposal—Condition.*

Where in the proposal for a policy of life insurance the applicant warrants the statements therein to be true, a contract on the part of the

**INSURANCE (Life)—continued.**

insured that the facts are such as they are represented to be is imported. *HAMBROUGH v. MUTUAL LIFE INSURANCE CO. OF NEW YORK*

C. A. [1895] W. N. 18

**Marine.**

23. — *Abandonment—Cash advances for ship's disbursements—Prepaid freight—Rights of underwriter on ship.*

The plts. were insurers of the hull and machinery of the defts.' steamship whilst on a voyage from Pensacola to West Hartlepool. The vessel stranded at the entrance to the latter harbour, and was abandoned by the defts. to the plts. as a constructive total loss, but the cargo of timber was subsequently delivered. At Pensacola the sum of 1677l. 19s. 10d. had been advanced to the master by the charterers, under a clause in the charterparty, by which "Sufficient cash for ship's ordinary disbursements at port of loading to be advanced the master by the charterers or their agents at the (agreed) exchange, ship paying 2½ per cent. commission, including insurance. Master to give his draft, on owners or consignees, as required and customary to cover same, which shall be paid out of the first freight collected." The defts. accepted from the consignees of the cargo, who held the master's draft for value, the freight less the above sum; but the plts. claimed the gross freight as a benefit incident to the ship:—

*Held*, by C. A. (Lord Esher M.R., Lopes and Kay L.J.J.), affirming the decision of Bruce J., [1895] P. 293, that the defts., in accounting to the plts. for the freight, were entitled to deduct the sum of 1677l. 19s. 10d., as, by the terms of the charterparty, the cash advanced at Pensacola was equivalent to prepaid freight, and, as such, did not pass to the plts. on the abandonment of the vessel and subsequent delivery of the cargo. *THE "RED SEA"* — — C. A. [1896] P. 20

24. — *Articles of association imported into policy—Alteration not legally passed—Condition.*

A. insured a ship with the M. Co. The policy imported the articles of association into the contract. Five years before the contract the co. altered their articles by adding "it shall be a condition of this insurance that the assured shall keep one-fifth (of the value of such ship) uninsured." This article was not legally confirmed, but was registered and printed on the back of the policy. A. also insured his ship with another co., so that altogether he had insured for more than four-fifths of the ship's value:—

*Held*, that notwithstanding the irregularity in the procedure by which the article had been altered, it was binding on A., and that, having broken the condition, he could not recover on the policy. Decision of Ct. of Sess., (1893) 20 R. 442, affirmed. *MUIRHEAD v. FORTH AND NORTH SEA STEAMBOAT MUTUAL INSURANCE ASSOCIATION*

H. L. (S.) [1894] A. C. 72

25. — *Attachment of risk.*

An open policy insured goods "as interest may appear or be hereafter declared" to any port of Spain west of Gibraltar, and thence inland through Spain. There was a marginal note providing that deviation or change of route not

**INSURANCE (Marine)—continued.**

included in the policy was to be covered at a premium to be arranged. The plts. declared under the policy a consignment of goods which had in fact, but not to their knowledge, been shipped on a vessel bound to a port east of Gibraltar. The vessel was lost west of Gibraltar before touching any Spanish port:—

*Held*, that the risk had never attached, and debts. were not liable. *SIMON, ISRAEL & Co. v. SEDGWICK* - - **C. A. affirm. Wright J. [1893] 1 Q. B. 303**

**26. — Attachment of risk — Policy — Ships "sailing" on or after a specified date.**

In an action on a policy of marine insurance on goods in ships "sailing on or after March 1," it appeared that the ship in question had finished loading her cargo before ten o'clock at night on Feb. 29, and, having previously cleared the Custom House, was then ready to proceed to sea; but by a regulation of the port ships were not permitted to go out to sea after dark. At ten o'clock the master, with the object of keeping his crew on board so as to be ready to start early in the morning, moved the ship away from the wharf about five hundred yards out into the river and there anchored. In so moving the ship, he placed her in a slightly more advantageous position for starting than she would have been in if she had remained at the wharf, but the gaining of that advantage was no part of the master's motive in moving her. On the following morning, March 1, she proceeded on her voyage:—

*Held* (affirming the judgment of Mathew J., [1898] 1 Q. B. 27), that the ship sailed on March 1, and not on Feb. 29, and that the policy attached. *SEA INSURANCE Co. v. BLOGG*

**C. A. [1898] 2 Q. B. 398**

— Average—General average.

*See Nos. 56, 57, below.*

**27. — Average—General average loss—Policy—Ship valued for policy at less than real value—Salvage—Liability of underwriter.**

The debts. insured the plts.' ship for 33,000*l.*, the ship being valued in the policy at that sum. During the currency of the policy a general average loss was sustained and a salvage claim had also to be paid. In the salvage action and the average statement the value of the ship was fixed at 40,000*l.*, and the rights of all parties were adjusted on that footing. In an action on the policy:—

*Held*, that the debts. were only liable to make good to the plts. thirty-three-fortieths of the salvage and general average losses. *STEAMSHIP BALMORAL Co. v. MARTEN*

**Bigham J. [1900] 2 Q. B. 748**

— Average—Shipping practice.

*See SHIPPING—Average.*

**28. — Barratry of master—Perils of the sea—Mortgagee of ship.**

Upon an advance of money to enable the borrower to carry out an arrangement by which he was to become part-owner of a ship, and to be appointed her captain, which arrangement was afterwards carried out, it was agreed that the advance should be secured by a mortgage of his shares in the ship, and that he should cause an

**INSURANCE (Marine)—continued.**

insurance to be effected on the ship to cover the mortgagee's interest. An insurance was effected, upon the instructions of the mortgagor and the co-owners of the ship, by the ship's husbands as well in their own names as for and in the name or names of all and every other person or persons to whom the same should appertain in part, or in all, against, among other things, perils of the sea and barratry of the master and mariners. It being alleged by way of defence to an action upon the policy of insurance by the executors of the mortgagee that the ship had been wilfully cast away by her captain, the mortgagor:—

*Held*, upon the argument of a preliminary question in the action, that, assuming the ship to have been so cast away, the mortgagee was nevertheless entitled to recover upon the policy of insurance in respect of a loss by perils of the sea, if he had nothing to do with the appointment of the mortgagor as captain; or in respect of a loss by barratry of the master, if he had taken part in his appointment.

The decision of Mathew J., [1897] 2 Q. B. 42, affirmed. *SMALL v. UNITED KINGDOM MARINE MUTUAL INSURANCE ASSOCIATION*

**C. A. [1897] 2 Q. B. 311**

— Bottomry—Maritime risk—Maritime interest.

*See SHIPPING—Bottomry. 14.*

**29. — Capture—Notice of abandonment—Recovery of ship after action brought—Total loss.**

A ship, insured under a policy covering war risks, was, whilst carrying contraband of war destined for one of two belligerent governments, captured by a cruiser belonging to the other. Thereupon the shipowners gave to the underwriters notice of abandonment, which was refused; and shortly afterwards they commenced an action on the policy. Subsequently, the war being at an end, the prize court of the captors decreed the ship to be returned to her owners:—

*Held*, that the return of the ship after the commencement of the action did not disentitle the owners to recover as for a total loss. *RUYS v. ROYAL EXCHANGE ASSURANCE CORPORATION*

**Collins J. [1897] 2 Q. B. 135**

**30. — Capture—Property of alien enemy—Existing state of war—Intention to wage war—Seizure by belligerent government of property of its own subjects—Contract of indemnity—Validity.**

The principle of law which invalidates insurance of an alien enemy's property does not apply to insurance against seizure by a belligerent government of the property of its own subjects.

Gold, the property of a co. carrying on business in the Transvaal, was insured with British underwriters, by a policy containing a clause against capture, for transit from mines in the Transvaal to the United Kingdom, and during transit was seized by the Transvaal Government. The policy was made, and the loss occurred, before the actual commencement of hostilities between Her Majesty's Government and the Transvaal. The co. sued on the policy, and the underwriters defended on the ground that the plaintiffs were alien enemies, and the loss was by arrest, restraint, or detention by the Transvaal Government, incidental to actual or expected hostilities against Her Majesty, and made for a

**INSURANCE (Marine)—continued.**

purpose connected therewith, namely, to supply that Government with funds with which to levy war on Her Majesty. It was agreed that no dilatory plea should be set up based upon the fact that the plt. co. was alien and could not sue while the war lasted, but the case should be dealt with as if the war were over:—

*Held*, that the intention of the Transvaal Government to wage war subsequently could not be treated as creating an actual state of war, and that the commencement of the war, which took place a few days later, could not have the effect of making the seizure a hostile act:—

*Held*, also, that the subsequent breaking out of war did not invalidate the contract of insurance, and the plts. were entitled to recover. **DRIEFONTAIN CONSOLIDATED GOLD MINES v. JANSON. WEST RAND CENTRAL GOLD MINES Co. v. DE ROUGE MONT** **Mathew J. [1900] 2 Q. B. 339**

**31. — Chartered freight—"Cancelling of charter"—Delay through perils of the sea.**

A policy of insurance upon freight contained a provision "No claim arising from the cancelling of any charter . . . shall be allowed." The vessel was delayed by perils of the sea; no agreement to set aside the charter was made, but the voyage contemplated by the charter became impossible:—

*Held*, that the charter had not been cancelled within the meaning of the provision, and that the assured were entitled to recover upon the policy. *In re JAMIESON AND NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCIATION*

**C. A. [1895] 2 Q. B. 90**

Judgment of Div. Ct. [1895] 1 Q. B. 510 reversed.

**32. — Chartered freight—Loss of hire.**

A ship was chartered from the plts. on terms that the hire should cease if and while the ship was out of repair preventing the working of the ship for more than 24 working hours. The plts. insured the chartered freight against the ordinary perils, including fire; the ship was damaged by fire, and the hire ceased for 15 days:—

*Held*, that the plts. were entitled to recover on their policy as the loss of hire was the direct result of one of the perils insured against. *The "ALPS"* **G. Barnes J. [1893] P. 109**

Followed and approved by C. A. *The Bedouin*, [1894] P. 1.

*See next Case.*

Referred to by C. A. *Brankelow Steamship Co. v. Canton Insurance Office*, [1899] 2 Q. B. 178, 188.

**33. — Chartered freight—Loss of hire—Non-communication of material facts.**

A ship was chartered from the plts. on terms that the hire should cease if and while the ship was out of repair for more than twenty-four hours. By a slip initialled by deft. the insured risk was described as "freight chartered <sup>and</sup> <sub>or</sub> as if chartered on board or not on board" for three months "one-third diminishing each month." By the policy the insured risks were "of the seas, &c." in the usual form. Payment of hire ceased from an accident caused by sea perils for

**INSURANCE (Marine)—continued.**

twenty-eight days. An action was brought on the policy to recover the hire so lost:—

*Held*, that the deft. was liable as the hire ceased through the peril insured against, that, though the whole freight might eventually be earned, the loss due to the postponement fell on the policy, and that the description on the slip sufficiently gave the deft. notice that he was insuring freight under a time charter containing the twenty-four hours' clause. *The "BEDOUIN"*

**C. A. affirm. G. Barnes J. [1894] P. 1**

Referred to by C. A. *Asfar & Co. v. Blundell*, [1896] 1 Q. B. 123, 134.

**34. — Collision—Loss by detention during repairs—Damages—Remoteness—Construction of policy.**

Barges were insured against loss or damage, which the insured should sustain, or become liable to others for, by reason of the collision of the barges with any other vessel. The barges having been damaged by collision, the insured claimed damages for loss in consequence of detention of the barges during repairs:—

*Held*, that, in order to be recoverable, the loss must be proximately caused by the perils insured against, and that the damages claimed were too remote, and could not be recovered under the policy. *SHELBORNE & Co. v. LAW INVESTMENT AND INSURANCE CORPORATION, LD.*

**Kennedy J. [1898] 2 Q. B. 626**

**35. — Collision clause—Construction—Sum paid "in respect of injury to such other ship or vessel itself"—Expenses of removal of wreck.**

By a collision clause in a policy of marine insurance on ship the underwriters agreed that, if the ship assured should come into collision with any other ship or vessel, and the assured should in consequence thereof be found liable to pay, and should pay, any sums, not exceeding the value of the ship assured "in respect of injury to such other ship or vessel itself, or to the goods and effects on board thereof, or for loss of freight then being earned by such other ship or vessel," they would pay the assured a certain proportion of the sums so paid, but it was provided that this agreement should not be construed as extending to any sums the assured might become liable to pay in respect of loss of life or personal injury to individuals from any cause whatever.

The ship assured having come into collision with and sunk a tug in a river, commissioners acting under statutory powers removed the wreck, and claimed the expenses of so doing from the tug-owners, who paid them, and recovered the amount so paid in the Court of Admiralty from the assured:—

*Held*, that the collision clause did not cover the sum so recovered from the assured, inasmuch as it was not paid "in respect of injury to such other ship or vessel itself." *BURGER v. INDEMNITY MUTUAL MARINE ASSURANCE Co.*

**C. A. [1900] W. N. 145; [1900] 2 Q. B. 348**

**36. — Collision clause—"Piers or similar structures."**

Where a ship was lost through being driven by the wind and sea against a sloping bank artificially formed outside the breakwater of a

**INSURANCE (Marine)—continued.**

harbour by laying down loose boulders in the sea to protect the breakwater:—

*Held*, that the loss came within the words "loss through collision with piers or similar structures" in a policy of re-insurance. **UNION MARINE INSURANCE Co. v. BORWICK**

**Mathew J. [1895] 2 Q. B. 279**

**37. — Collision clause—Proviso—Construction.**

A proviso to the collision clause in a policy read as follows: "This clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers consequent on such collision":—

*Held*, that damages paid to owners of a ship sunk in collision with the assurers' ship in respect of the removal of the sunken ship under statutory powers was covered by the proviso, and not recoverable from the insurers. **THE "NORTH BRITAIN"** - **C. A. reversing G. Barnes J. [1894] P. 77**

Referred to by **C. A. Burger v. Indemnity Mutual Marine Assurance Co. [1900] 2 Q. B. 340, 350.**

**38. — Collision clause—Proviso—Construction of proviso** "that this clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers."

A collision clause in a policy of marine insurance, covering damages payable in respect of a collision with another vessel, contained a proviso "that this clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers." The insured vessel came into collision with another vessel, which sank and was removed as an obstruction by commissioners under statutory powers. Both vessels were to blame for the collision. The owners of the insured vessel paid as damages to the owners of the sunken vessel a moiety of the sum which the latter had paid to the commissioners for the expenses of the removal, and made a claim upon the underwriters in respect of the moiety:—

*Held*, that the proviso must be construed as a business document prepared by men of business for their own use, and as business men would understand it: that it was not confined to payments made directly by the assured to the persons who caused the obstruction to be removed, but included indirect payments such as the moiety in question, and that the underwriters were not liable.

**The North Britain, [1894] P. 77, approved. TATHAM, BROMAGE & Co. v. BURR. THE "ENGINEER"** - **H. L. (E.). [1898] A. C. 382**

Referred to by **C. A. Burger v. Indemnity Mutual Marine Assurance Co., [1900] 2 Q. B. 348, 350.**

**39. — Collision clause—Proximate cause.**

A ship was insured against collision with any object, but not against perils of the sea. Her paddle-wheel came into collision with a snag in a river, and the cover of the condenser was broken. The water entered the ejection-pipe and came in

**INSURANCE (Marine)—continued.**

through the hole in the condenser. The ejection-pipe was plugged, and so long as the ship was at anchor this stopped any damage; but on her being towed into dock, the wash of the water threw out the plug, and the ship had to be beached to save the crew:—

*Held*, that the collision was the proximate cause of the injury, and that the hole in the condenser was a continuing cause of damage and the real cause of the loss of the ship, and therefore the policy covered the loss. **REISCHER v. BORWICK** - **C. A. affirm. Kennedy J. [1894] 2 Q. B. 548**

**40. — Collision clause—Sunken wreck.**

A policy of re-insurance covered the risk of loss or damage through "collision with (inter alia) any sunken wreck." The ship ran aground and was found to be resting on the wreck of a steamer, the ribs of which projected through the sand; she subsequently shifted on to a bank of iron ore which had once formed part of a ship's cargo:—

*Held*, that the damage in both cases was "through collision with sunken wreck" within the clause in the policy. **THE "MUNROE"**

**G. Barnes J. [1893] P. 248**

**41. — Collision clause—Tug and tow.**

A policy insuring the ship *N.* from the Clyde (in tow) to Cardiff, contained a collision clause. While in tow the *N.*'s tug came into collision with and sunk another vessel, whose owners recovered damages against ship and tug:—

*Held*, that the collision of the tug with the injured vessel was a collision with the *N.* within the policy. **MCCOWAN v. BAINE. THE "NIOBE"**

**H. L. (Sc.) [1891] A. C. 401**

Referred to by **Jeune J. The Englishman v. The Australia, [1894] P. 239, 244.**

**42. — Constructive total loss.**

The doctrine of constructive total loss applies only as between an underwriter and his assured, and cannot be invoked as between shipowner and charterer. **Per Lord Esher M.R. ASSICURAZIONI GENERALI v. SS. BESSIE MORRIS Co.**

**[1892] 1 Q. B. 571;**

**C. A. [1892] 2 Q. B. 652, at p. 657**

**43. — Constructive total loss—Loss by fire—"Burnt."**

A ship is not "burnt" within the meaning of the memorandum in a Lloyd's policy unless the injury by fire is considerable enough to constitute a substantial burning of the ship as a whole. **THE "GLENLIVET"** **G. Barnes J. [1893] P. 164;**

**varied by C. A. [1894] P. 49**

— Contract in writing — Misrepresentation — Burden of proof.

**See NEW SOUTH WALES. 30.**

**44. — Cost of disposing of cargo rendered worthless by sea peril—Insurance on ship—Perils of the seas—Consequential damage, underwriter's liability for.**

A ship, insured under a time policy on hull and materials, machinery and boilers, against perils of the seas and all other perils, losses, and misfortunes which might come to her hurt, detriment, or damage, was, during the currency



**INSURANCE (Marine)—continued.**

of the policy, injured through a collision in the Thames whilst making for London, her port of destination, a hole being knocked in her bottom. Her cargo, cotton seed, through the action of the water and mud which came through the hold, became rotten, offensive, and worthless, and neither the cargo owners nor their underwriters would pay freight or take delivery. After the collision part of the cargo was put into lighters in order to allow the ship to be taken into dry dock, where she was temporarily patched. Subsequently she was towed to the Millwall Dock to discharge the rest of the cargo, and thereupon the sanitary authority of the district ordered her to abate the nuisance caused by the offensive condition of the cotton seed and to remove it. The ship accordingly was taken down to Dagenham Pier, and her cargo was there discharged by contractors on to land belonging to them. In an action on the policy by the shipowners to recover from their underwriter the cost of dealing with the cargo between the date of the collision and the date of its arrival at Dagenham, and also the contractors' charges for discharging and disposing of it there:—

*Held*, that the plts. were not entitled to recover any of such cost or charges.

Judgment of Bigham J., [1898] 1 Q. B. 821, affirmed. *FIELD STEAMSHIP CO. v. BURR*  
C. A. [1899] 1 Q. B. 579

**45. — Damage to part of goods insured—Cost of examining undamaged part.**

L. insured goods in cases free from average under 3 per cent., average to be recoverable on each package separately or on the whole. Part of the goods were damaged, and the whole was unpacked and examined, and the damaged part sold:—

*Held*, that the underwriters were not liable for any expenses incurred in relation to any part of the cargo other than those cases which contained goods that had been damaged. *J. LYSAGHT, LD. v. COLEMAN*

C. A. affirm. *WILLS J.* [1895] 1 Q. B. 49

**46. — Deviation — Delay — Clause allowing deviation at premium to be arranged.**

The plts. insured with the defts. by a Lloyd's policy a box containing bullion "at and from Boodinni to London," in a P. & O. steamer, "including all risks of every description from the mines by escort to railway station at Raichur (forty miles) thence by rail (400 miles) to Bombay, thence to London." The policy contained a clause covering the assured "in the event of deviation or change of voyage at a premium to be hereafter arranged." At Raichur the station-master improperly refused to receive the box at other than owner's risk rate, and the official in charge of it took it for safety to the plts.' head office at Secunderabad, 170 miles from Raichur, and off the route from that place to Bombay; the box was kept there for a month in the plts.' safe while arrangements were being made with the ry. co. The box was then taken to Raichur and forwarded by the prescribed route to London, where upon arrival a bar of gold was found to be missing; it had in fact been

**INSURANCE (Marine)—continued.**

stolen while the box was in the plts.' office at Secunderabad:—

*Held*, that the taking of the box to Secunderabad was a necessary act done in the prosecution of the insured journey, and was within the scope of the adventure; that the risk was always a transit risk; that the delay at Secunderabad was unreasonably long, and that there was at that place an unjustifiable deviation not covered by the premium paid, but that, being a deviation in the course of the voyage, it was covered by the deviation clause in the policy, and the defts. were therefore liable. *HYDERABAD (DECCAN) CO. v. WILLOUGHBY* — Bigham J. [1899] 2 Q. B. 530 — Discovery—Documents.

*See DISCOVERY—Documents.* 27.

**47. — Dock expenses—Ship docked for repair of sea damage—Ship surveyed while in dock for Lloyd's classification — Apportionment of dock charges and expenses—Contribution.**

There is no principle of law which requires a person to contribute to an outlay merely because he has derived a material benefit from it.

During a voyage covered by a policy of marine insurance a vessel was damaged by a peril insured against and was therefore put into dry dock for the necessary repairs. The survey of the vessel for renewing her classification was not due, but the owners (without causing delay or increase of dock expenses) took advantage of her being in dry dock to have the survey made, and her classification was renewed:—

*Held*, that the expenses of getting the vessel into and out of the dock, as well as those incurred in the use of the dock, fell upon the underwriters alone, and could not be apportioned between them and the owners.

Decisions of Mathew J., [1897] 2 Q. B. 456, and C. A. [1898] W. N. 35 (6); [1898] 1 Q. B. 722, reversed.

*The Vancouver Case (Marine Insurance Co. v. China Transpacific Steamship Co.)*, (1886) 11 App. Cas. 573, distinguished. *RUABON STEAMSHIP CO. v. LONDON ASSURANCE*

H. L. (E.) [1899] W. N. 254; [1900] A. C. 6

— Estoppel—Judgment.

*See ESTOPPEL.* 6.

**48. — Fire, Insurance against—Ship stranded and depreciated in value—Subsequent destruction by fire.**

The plt.'s vessel was insured by the defts. by a valued time policy against loss or damage by fire. While so insured she stranded, and sustained such injuries that the cost of repairing her would have been greater than her value when repaired. Thirty-six hours afterwards she was completely destroyed by fire.

In an action by the plts. on the policy:—

*Held*, that the defts. were liable for the full amount for which they had insured the vessel. *WOODSIDE v. GLOBE MARINE INSURANCE CO.*

Mathew J. [1896] 1 Q. B. 105

**49. — Freight—Commencement of risk—Time of engagement of goods—Loading port.**

By a policy on freight "at and from any port or ports of loading on the west coast of South America to any port or ports of discharge in the

**INSURANCE (Marine)—continued.**

United Kingdom" the freight was to be covered "from the time of the engagement of the goods."

Goods were engaged for the vessel which was to earn the freight, and were ready for shipment in her at the time of her loss, which occurred before she arrived at her first loading port on the west coast of South America:—

*Held*, by C. A. (Lord Esher M.R., Kay and A. L. Smith L.J.J.), affirming the decision of G. Barnes J., [1896] P. 154, that the "engagement" clause must be construed with reference to the voyage described in the policy, and, therefore, as the vessel had not arrived at her first loading port on the west coast of South America, the risk had not attached. *THE "COPERNICUS"*

C. A. [1896] P. 237

50. — *Freight—Loss of—Time policy—Exception—"Claim consequent on loss of time"—Loss of time arising from peril of the sea.*

A time policy of insurance on freight was warranted "free from any claim consequent on loss of time, whether arising from a peril of the sea or otherwise." During a voyage the steamer's main shaft broke through a peril of the sea and the vessel returned to her port of loading. It was there found that the necessary delay for repairs would frustrate the objects of the adventure, and the charterers, as they were entitled to do by the foreign law applicable, put an end to the charter and the freight was lost. In an action on the policy for total loss of freight:—

*Held*, that the claim was consequent on loss of time within the meaning of the exception, and that the underwriters were not liable.

The decision of the C. A., [1897] 1 Q. B. 29, affirmed. *BENSAUDE v. THAMES AND MERSEY MARINE INSURANCE CO.*

H. L. (E.) [1897] A. C. 609

Referred to by Mathew J. *Turnbull, Martin & Co. v. Hull Underwriters' Association*, [1900] 2 Q. B. 402, 405.

51. — *Freight—Loss of—Exception—"Claim consequent on loss of time."*

A policy of insurance was effected on the outward voyage of a steamer from London to Australian ports for freight expected to be earned on the homeward voyage, the subject-matter being described as "upon freight of frozen meat, chartered or as if chartered"; the policy was warranted "free from any claim consequent on loss of time, whether arising from a peril of the sea or otherwise." The ship, which was a general ship, having three of her five holds fitted with refrigerating machinery for frozen meat, arrived at Sydney on her outward voyage, and while discharging her outward cargo a serious fire broke out on board which destroyed the refrigerating apparatus, in consequence of which it became impossible to carry frozen meat upon the return voyage to England. In an action on the policy for total loss of freight on frozen meat:—

*Held*, that the case could not be distinguished from *Bensaude v. Thames and Mersey Marine Insurance Co.*, [1897] A. C. 609, on the ground that the freight was not chartered freight; that the claim was therefore consequent on loss of time within the meaning of the exception, and that the underwriters were not liable. *TURNBULL,*

**INSURANCE (Marine)—continued.**

*MARTIN & Co v. HULL UNDERWRITERS' ASSOCIATION, LD.* — *Mathew J.* [1900] 2 Q. B. 402

52. — *Freight—Loss of—Policy—Construction—Coal cargo—Heating—Discharge and Sale—Peril of "Fire . . . and all other losses and misfortunes."*

The plts. chartered their vessel to carry a cargo of coals from Newcastle, New South Wales, to Valparaiso at 15s. per ton payable on delivery, and they effected insurances with the defts. underwriters on the freight upon the ship by policies which insured against fire and "all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the subject-matter of the insurance or any part thereof."

The vessel only delivered a portion of the cargo at her port of discharge as, a few days after starting on the voyage, she was compelled to put into Sydney owing to the heating of the coals, and, on the recommendation of surveyors, the larger portion of the cargo was discharged and sold, entailing a consequent loss of freight:—

*Held*, by G. Barnes J., that the defts. were liable to make good to the plts. the loss of freight as a partial loss under the policies, for, though no part of the coal was ever actually on fire, it was reasonably certain that, if the vessel had continued on her direct voyage, the temperature of the coal would have risen until spontaneous combustion ensued, involving, in all probability, the destruction of ship and cargo by fire, so that there was an existing condition of things producing imminent danger of fire, not merely a fear of fire, or, if it was not a loss by fire, it was a loss ejusdem generis covered by the words "all other losses and misfortunes." *THE "KNIGHT OF ST. MICHAEL"* *G. Barnes J.* [1898] P. 30

Referred to by C. A. *Iredale v. China Traders' Insurance Co.*, [1900] 2 Q. B. 515, 518.

53. — *Freight—Lump chartered freight—Loss not by perils insured against—Cesser of liability clause—Loss of bill of lading freight—Waiver of lien for chartered freight.*

Shipowners effected a policy of marine insurance on chartered freight under a charterparty, by which a ship was chartered for a voyage at a lump freight, and it was provided that the master should sign bills of lading at any rate of freight the charterers might require, but not under chartered rates, or difference to be settled in cash on signing bills of lading, that the charterers' liability should cease upon shipment of the cargo, provided the cargo was worth the freight, dead freight, and demurrage on arrival at the port of discharge, and that the vessel should have a lien on the cargo for recovery of all freight, dead freight, demurrage, and all other charges whatsoever. The charterers loaded the ship with a general cargo, and the master signed bills of lading, by which the goods mentioned in each bill of lading were made deliverable to the consignees thereof upon payment of the bill of lading freight in respect of those goods. The total amount of the bill of lading freight on the goods shipped exceeded the amount of the chartered freight. On the voyage the ship ran aground, and a certain portion of the cargo was in consequence jettisoned or otherwise lost. The

**INSURANCE (Marine)—continued.**

ship, having been floated again, ultimately completed her voyage with the remainder of the cargo, which was worth the freight, dead freight, and demurrage on arrival of the ship. Owing to the loss of cargo as before mentioned, the amount of the bill of lading freight received by the ship-owners was less than that of the chartered freight. The shipowners brought an action against the underwriters on the policy to recover the difference between the two amounts:—

*Held*, that the action was not maintainable, the loss not having been occasioned by a peril of the sea, but by the plts.' own action in not so framing the bills of lading as to preserve to themselves their lien over the whole cargo for the chartered freight. **BRANKELOW STEAMSHIP CO. v. CANTON INSURANCE OFFICE LD.**

**C. A. [1899] 2 Q. B. 178**

**54. — Freight—Valued policy—Over value.**

Plts., whose vessel was on the way to N., insured the homeward freight with defts. for 1500*l.* on "freight valued at 5500*l.*" The value at that time was reasonable, but the ship was unavoidably delayed and freights fell, and she sailed with a full cargo the freight on which was 3250*l.*, of which 952*l.* was paid in advance. The vessel was wrecked and 2298*l.*, the freight at risk, was lost. Plts. collected 3250*l.* from other insurers and claimed 1500*l.* from defts. The defts. contended that the valuation must be opened, and that, on the actual amount of freight at risk, the plts. had been fully indemnified under other policies:—

*Held*, that the valuation was binding, but that 1611*l.* must be deducted from the 5500*l.*, being a sum proportional to the 952*l.* prepaid freight, leaving 3889*l.* the value at risk, and that as plts. had already received 2298*l.*, so they were entitled to recover 639*l.* and a small return of premium from defts. **THE "MAIN"**

**G. Barnes J. [1894] P. 320**

**55. — "Furniture," what included under term—Policy on ship.**

Where a ship was usually employed in the Black Sea grain trade, and it was necessary under the circumstances of that trade that she should be provided with separation cloths and dunnage mats for the proper carriage of her cargo:—

*Held*, (affirming the judgment of Bigham J., [1899] 2 Q. B. 401), that a time policy upon the ship and her furniture covered a loss of such cloths and mats, although at the time when the loss occurred the vessel was not engaged in the before-mentioned trade, and the cloths and mats were not in use but stowed away in the forepeak. **HOGARTH v. WALKER**

**C. A. [1900] W. N. 127; [1900] 2 Q. B. 283**

**56. — General average—Ship in ballast—Chartered homeward freight—"Foreign statement" clause.**

A policy was granted on chartered homeward freight—general average payable "as per foreign statement if required." Expenses were incurred in harbour by ship on outward voyage in ballast, but not for preservation either of ship or freight, and included in an average statement purporting to be made up in accordance with American law:—

*Held*, that as the ship was under charter

**INSURANCE (Marine)—continued.**

outward bound to her loading port, and the only persons interested in the ship and chartered freight were the ship-owners, there could not be any general average loss for which the underwriters were liable under the policy, and, that as there was no need for any foreign adjustment, the foreign statement clause had no effect. **THE "BRIGELLA."** — **G. Barnes J. [1893] P. 189**

Not followed by **Mathew J. Montgomery & Co. v. Indemnity Mutual Marine Insurance Co.**, [1901] 1 Q. B. 147.

**57. — General average payable per foreign statement—Adjustment—Dutch law.**

Plts. insured a ship and freight with defts. by two policies. Each provided that general average should be payable per foreign statement, and contained a sue and labour clause, and covered loss through negligence of the master. The bills of lading exempted strandings, even if occasioned by the master's negligence. The ship was stranded through such negligence, and expenses were incurred. At the port of discharge in Holland a statement was prepared of the general average expenses, and the proportions due from ship, freight, and cargo. The defts. paid their share of these, but the consignees were held by the Dutch Courts not to be liable for general average:—

*Held*, that the foreign statement was conclusive between assured and underwriter as to what were general average expenses and as to their apportionment, and that the assured could not select certain items out of the expenses and allege that by English law they were particular average on the ship, or particular charges recoverable under the sue and labour clause. **THE "MARY THOMAS"**

**C. A. affirm. G. Barnes J. [1894] P. 108**

Referred to by **C. A. Milburn & Co. v. Jamaica Fruit Importing and Trading Co. of London**, [1900] 2 Q. B. 540, 547.

**58. — Goods not in ship at time of stranding—Freight—Valued policy.**

A cargo of maize was insured for a fixed sum, including a sum for advance on freight. It was described as consisting of two separate lots to be shipped at different ports. The policy covered all risks in craft, and contained a warranty against particular average unless the ship or craft were stranded. The ship, after taking in the first lot, stranded between the foreign ports, but got off, reached the second port, and took on board the second lot of maize which had been waiting in craft, *i.e.*, in lighters. The whole cargo was damaged on the homeward voyage:—

*Held*, that particular average could not be adjusted on the maize not on board the ship at the time of the stranding, and that the insurance "in craft" only related to damage done while on craft:—

*Held*, also, that the policy was to be treated as a policy on valued goods, and not a policy where the advanced freight was separately insured.

*Held*, also, that a merchant valuing his goods for a valued policy has a right to value them as

**INSURANCE (Marine)—continued.**

at the port of destination, i.e., to include freight. *THAMES AND MERSEY MARINE INSURANCE CO. v. PITTS, SON & KING*

Div. Ct. [1893] 1 Q. B. 476

59. — “Honour” policies—“Hull and machinery”—“Disbursements.”

Plt. effected a time policy on the hull and machinery of a vessel, warranting a certain part of the value uninsured. He had also effected by “honour” policies insurance on “disbursements”:—

*Held*, by Kennedy J. and C. A., that the “honour” policies being on “disbursements” did not cover any part of the subject-matter of the policies on the hull and machinery, and therefore did not infringe the warranty.

*Held*, also, by Kennedy J., that the “honour” policies, though void in law under 19 Geo. 2, c. 37, were effective to infringe such a warranty. *Sed quære per C. A. RODDICK v. INDEMNITY MUTUAL MARINE INSURANCE CO. — Kennedy J. [1895] 1 Q. B. 836; C. A. [1895] 2 Q. B. 380*

60. — *Indemnity—Principal and agent—Duty of agent to sue.*

Plts. hired deft.’s tug and agreed to indemnify deft. against all loss, damage, expenses, or costs to which deft. might be put by reason of collision or otherwise, and plt. agreed to keep the tug fully insured and to indemnify deft. to the extent of the money received by him under the insurance. A barge of plt.’s while in tow of the tug caused a collision, and plts. had to pay damages, costs, &c. Deft. had insured the tug for part only of its value. The insurers refused to pay the damages, costs, &c.; whereon deft. offered to hand the policies over to plts.; but plts. required deft. either to sue the underwriters or to pay the damages, &c., as damages for breach of contract. On deft.’s refusal plts. commenced proceedings and sued deft., who paid into Court the proportion of the damages on the uninsured part of the tug’s value:—

*Held*, that deft. was entitled to judgment as he had not broken his contract, and was not bound without an indemnity to sue the underwriters. *WILLIAMS, TORREY & CO. v. KNIGHT. THE “LORD OF THE ISLES”*

Bruce J. [1894] P. 342

61. — *Live cattle—All risks, including mortality from any cause whatsoever—Detention in port of refuge—Extra fodder—Suing and labouring clause.*

A marine policy of insurance on live cattle against all risks, including mortality from any cause whatsoever, renders the insurer liable, under the suing and labouring clause, for the extra cost of fodder supplied to the cattle whilst the vessel in which they are shipped is detained in a port of refuge for necessary repairs due to perils of the sea, for there is danger of total loss unless the expense is incurred. *THE “POMERANTIAN” — G. Barnes J. [1895] P. 349*

62. — *Misrepresentation—Burden of proof.*

Where insurers resist payment of a risk on the ground of misrepresentation, the burden is on them to prove very clearly the making of the

**INSURANCE (Marine)—continued.**

misrepresentation. *DAVIES v. NATIONAL FIRE AND MARINE INSURANCE CO. OF NEW ZEALAND*

P. C. [1891] A. C. 485

63. — *Mutual insurance.*

On the construction of a mutual insurance policy, *held* that no one but a member of the association could sue thereon. *MONTGOMERIE v. UNITED KINGDOM MUTUAL STEAMSHIP ASSOCIATION, LD.*

Wright J. [1891] 1 Q. B. 370

64. — *Mutual insurance society—Action for contributions—Insurance by agent, member of association—Shipowner not member—Liability.*

The plts., a mutual insurance association, sued the defts. for contributions or premiums payable in respect of an insurance of the defts.’ ship in the plts.’ club.

By the policy, which was in the form of a Lloyd’s policy, and subject to the plts.’ memorandum and articles of association and rules, the defts.’ manager insured the ship in his own name, and for, and in the names of, all persons to whom the same might appertain. By the memorandum one of the objects of the association was the mutual insurance “of ships which the members may be authorised to insure in their own names.” The articles defined a member as any person who, on behalf of himself, or of any other person, insures any ship in the association, and empowered a committee of the association to assess the members rateably in order to provide a fund to meet losses, and stipulated that the association should not be liable for losses, except to the extent of the fund which it could recover from members or persons liable. The rules provided for payment of premiums, for which the ships were to be assessed.

The defts. authorised the manager of their ship to enter her in the club, which he did, and he so became a member of the club, within the meaning of the plts.’ memorandum and articles of association, and personally liable to pay the contributions or premiums, which, under the articles of association and the rules, might be levied by the committee of the club. He became insolvent, and unable to pay, and the plts. sued the defts., as being the persons on whose behalf, and for whose benefit, the insurance was effected:—

*Held*, that the defts., being owners of an insurable interest, were the persons for whom the insurance was effected, that there was nothing in the memorandum and articles of association, or the rules, to exclude their liability to pay the premiums, and the plts. were entitled to recover.

*United Kingdom Mutual Steamship Assurance Association v. Nevill*, (1887) 19 Q. B. D. 110, distinguished. *BRITISH MARINE MUTUAL INSURANCE CO. v. JENKINS — Bigham J. [1899] W. N. 262; [1900] 1 Q. B. 299*

65. — *Negligence of master—Loss by—Master also part owner—Policy.*

In an action by the owners of a ship, including the master, on a policy of marine insurance, for loss within the perils insured against, the fact that the loss arose through the negligent navigation of the master, not amounting to wilful negligence, affords no defence to his claim. *TRINDER,*

**INSURANCE (Marine)—continued.**

**ANDERSON & Co. v. THAMES AND MERSEY MARINE INSURANCE Co. TRINDER, ANDERSON & Co. v. NORTH QUEENSLAND INSURANCE Co. TRINDER, ANDERSON & Co. v. WESTON, CROCKER & Co.**

**C. A. [1898] 2 Q. B. 114**

**66. — Particular average—Stranding—Cargo not on board.**

A ship carrying rice, a parcel of which was insured with a special memorandum warranted free from particular average unless the ship be stranded, was obliged to put into port for repairs. While there, her whole cargo being on shore, she was stranded :—

*Held*, that the insurers were not liable. **THE "ALSACE LORRAINE" G. Barnes J. [1898] P. 209**

**67. — Policy—Clause partly in print, partly in writing.**

A policy of marine insurance expressed to be on freight of meat, "at or from M. V. to any ports in the Rivers P., P. and U.," provided "that the assurance shall commence from the loading on board at M. V." It was known to both parties that meat could not be loaded at M. V. The words "M. V." were in writing, the rest of the clause being in print :—

*Held*, that the clause was to be rejected as being absolutely inapplicable, and that the policy attached. **HYDARNES STEAMSHIP Co. v. INDEMNITY MUTUAL MARINE ASSURANCE Co.**

**C. A. [1895] 1 Q. B. 500**

**reversing Wills J. [1894] 2 Q. B. 590**

**68. — Policy on stock to be conveyed out and home by registered letter.**

B. sent certificates of Stock to F. at A. by registered letter. F. was to obtain new coupon sheets and return certificates and coupons to B. B. obtained from the defendants a policy upon the certificates, &c., on board "the ship or vessel called the Post Office Conveyances, Registered" "at and from London to A. and back to London," "including all risk of whatsoever nature until safely returned to B." F. misappropriated the stock :—

*Held*, that the intention was to insure a single adventure beginning with the delivery of the certificates to the post office and ending with the delivery to B. of the certificates and coupons, and that the defendants were liable under the policy. **BARING BROTHERS & Co. v. MARINE INSURANCE Co. Cave J. [1893] W. N. 164**

**69. — Policy—Subscription by syndicate—Contract whether joint or several.**

A number of underwriters, styling themselves the S. Syndicate, by their manager underwrote a policy of marine insurance, the form of their subscription of which was as follows: "The S. Syndicate, C., Manager." Then followed the names of the individual members of the syndicate, against each of which names was written a certain fractional proportion of the total sum insured. The policy contained a special clause entitling the assured "by way of security for the performance of the obligations of the subscribing underwriters and of each and every of them" to the benefit by way of charge upon any policies of reinsurance that might be effected by them. The policy was in other respects in the form of an

**INSURANCE (Marine)—continued.**

ordinary Lloyd's policy, the assurers being thereby expressed to bind themselves "each one for his own part" :—

*Held*, that on the face of the policy the contract of the assurers was several and not joint, and that they were individually liable only for the proportions standing against their respective names. **TYSER v. SHIPOWNERS' SYNDICATE (RE-ASSURED) Mathew J. [1896] 1 Q. B. 135**

**70. — Practice—Discovery of ship's papers—Action by underwriter against re-insurer.**

In an action by an underwriter on a policy of marine insurance brought by him against a re-insurer, the latter is entitled to discovery of ship's papers. **CHINA TRADERS' INSURANCE Co. v. ROYAL EXCHANGE ASSURANCE CORPORATION**

**C. A. [1898] 2 Q. B. 187**

**71. — Premium—Liability of broker for Custom—"Company's policy."**

The rule of law, founded on mercantile custom, by which the broker, and not the assured, is liable to the underwriter for the premium upon a policy of marine insurance, is not limited to the ordinary form of Lloyd's policy, but extends also to a "company's policy," which contains a promise by the assured to pay the premium. **UNIVERSO INSURANCE Co. OF MILAN v. MERCHANTS' MARINE INSURANCE Co. C. A. [1897] 2 Q. B. 93**

*Judgment of Collins J. [1896] W. N. 160 (6); [1897] 1 Q. B. 205, affirmed.*

**72. — Re-insurance—Collision clause—Collision with sunken barge—Policy.**

The plt. underwrote a time policy on a steamer, containing a clause that if the steamer should come into collision with any other vessel, and the insured should have to pay damages, the insurers would pay.

The deft. underwrote a policy of re-insurance, on the same steamer, for the same period, subject to the same clauses and conditions as the original policy, and to pay as might be paid thereon, but only to pay all claims for loss or damage done or received through collision.

During the period covered the steamer struck a barge, which had just been struck by collision with another vessel, and the steamer was damaged. The barge was raised next day, and sailed to her home port, and was repaired :—

*Held*, that, although, at the moment when the steamer struck her, the barge could not have been navigated, yet, as she became navigable as soon as she was raised, there was a collision between two navigable vessels, in respect of which the plt. was entitled to recover on the policy of re-insurance. **CHANDLER v. BLOSS**

**Bingham J. [1898] 1 Q. B. 32**

**73. — Re-insurance—Contract "to pay as may be paid" on original policy.**

The W. Co. having insured a ship re-insured part of the rate with the E. Co. and paid the premium. The re-insurance policy contained the following clause: "Being a re-insurance applying to the lines of the W. Co., policy No. , subject to the same terms and conditions as the original policy, and to pay as may be paid thereon." The ship suffered damage by perils insured against :—

*Held*, that payment by the co. on the original

**INSURANCE (Marine)—continued.**

policy was not a condition precedent to recovery on the policy of re-insurance. *In re EDDYSTONE MARINE INSURANCE CO. Ex parte WESTERN INSURANCE CO.* - **Stirling J. [1892] 2 Ch. 423**

**74. — Reinsurance — Policy — “Open cover”**  
—Sum insured not specified—Contract for sea insurance—Validity—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 93, 95.

By a document called an “open cover” the deft., with other underwriters, agreed to re-insure the plts. to the extent of the excess, over certain amounts mentioned in the document, upon risks undertaken by them from time to time, on goods shipped by certain steamship lines therein mentioned. The limit of the excess on any one ship and the proportion of this amount taken by each underwriter were specified. Goods which were insured by the plts. on a steamship of one of the lines, were lost by a peril insured against, and the plts. paid the insurance and sued the deft. for his proportion of the excess:—

*Held*, that the document was a “contract for sea insurance” with s. 93, sub-s. 1, of the Stamp Act, 1891, which by that sub-section was not valid unless expressed in a policy of sea insurance, and that, as it did not specify “the sum or sums insured” as required by sub-s. 3, it was invalid as a policy of sea insurance, and could not be stamped and sued on as such, nor could it be sued on as a contract to issue a policy.

Judgment of Mathew J., reported [1898] 1 Q. B. 829, affirmed. **HOME MARINE INSURANCE CO. v. SMITH** - **C. A. [1898] 2 Q. B. 351**

— Salvage — Judgment for — Action against underwriter.

*See* **ESTOPPEL. 6.**

— Salvage, Life—Contract with passengers—Tender.

*See* **SHIPPING—Salvage. 241.**

**75. — Re-insurance—“Subject to same terms as original policy”—Policies in existence at date of re-insurance—Policies coming into existence subsequently—Limit of liability of re-insurer.**

A time policy of insurance on a ship was expressed to be “a re-insurance of policy or policies” (here there was a blank space not filled in) “and subject to the same terms, conditions, and clauses as original policy or policies and to pay as may be paid thereon.” The assured had underwritten two time policies on the ship, and these were in force when the re-insurance was effected. Subsequently, during the currency of the re-insurance policy, the two other policies came to an end, and he underwrote a fresh time policy of insurance of the same subject-matter, differing as to the valuation of the ship and in other respects from the two earlier policies. A loss occurred and was paid under the fresh policy:—

*Held*, that the original policies referred to in the re-insurance policy were the policies then in existence, and that the liability of the re-insurer did not extend to losses which might be incurred by the assured under a policy not containing the same terms, conditions, and clauses as the original policies.

Judgment of Kennedy J., [1898] 1 Q. B. 739,

**INSURANCE (Marine)—continued.**

reversed. **LOWER RHINE AND WÜRTEMBERG INSURANCE ASSOCIATION v. SEDGWICK**

**C. A. [1899] 1 Q. B. 179**

**76. — Salvage, Life—Lloyd’s policy—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 544, 552.**

Life salvage paid under the Merchant Shipping Act, 1894, s. 544, is not recoverable upon a Lloyd’s policy in the usual form. **NOURSE v. LIVERPOOL SAILING SHIP OWNERS’ MUTUAL PROTECTION AND INDEMNITY ASSOCIATION** - **C. A.**

**[1896] 2 Q. B. 16**

**77. — Seaworthiness—Implied warranty of.**

By a policy of marine insurance on cattle it was provided that the fittings of the ship were to be approved by Lloyd’s surveyor. The fittings were in fact so approved. During the voyage a large number of the cattle died, owing partly to the insufficiency of the appliances for ventilation and partly to the insufficient number of cattle-men appointed to attend to them:—

*Held*, that the ship was unseaworthy in both respects, that the implied warranty of seaworthiness was not excluded by the provision as to the approval of the fittings, and that the underwriters were not liable. **SLEIGH v. TYSER**

**Bigham J. [1900] 2 Q. B. 333**

— Stamp duty—Time policy, including a number of ships.

*See* **REVENUE—Stamps. 163.**

— Subrogation—Remedies of insurers—Effect of payment under policy.

*See* **QUEENSLAND. 3.**

**78. — Termination of risk—“Final port”—Construction of policy.**

A ship was insured by the plts. “at and from Sydney to Newcastle, N.S.W., while there and thence to any port or ports place or places on the West Coast of South America . . . while there and thence to any port or ports” in the United Kingdom. . . . The plts. re-insured with the defts. a portion of their risk by a policy which was expressed to be “at and from Newcastle, N.S.W., to any port or ports place or places in any order on the West Coast of South America and for thirty days after arrival in final port however employed.”

The ship sailed with a cargo of coal from Newcastle, N.S.W., and proceeded to Valparaiso, on the West Coast of South America, where she discharged her cargo; she there loaded a small quantity of ballast and sugar and sailed for Talcahuano, another port on that coast, in order to finish loading there a cargo for the United Kingdom; before reaching Talcahuano she was totally lost, the loss occurring more than thirty days after her arrival at Valparaiso:—

*Held*, that the expressions in the re-insurance policy, “port or ports place or places” and “final port,” were not limited to ports or places of discharge and final port of discharge respectively, but must be construed to include ports or places of loading and final port of loading for the voyage to the United Kingdom; and that the plts., who had paid the claim of the owner on the original policy, were therefore entitled to recover

**INSURANCE (Marine)—continued.**

from the defts. on the policy of re-insurance.  
**CROCKER v. STURGE** - **Mathew J.**

[1897] 1 Q. B. 330

**79.—Time policy—Repairs to ship—Particular average loss—Subsequent total loss—Assured not liable for cost of repairs—Non-liability of underwriters.**

A vessel, under a charter to load home, sustained damage on the outward voyage which was repaired on arrival at the port of loading, and a payment on account of the particular average loss was made to the shipowners by the underwriters on a time policy on hull and machinery.

The repairs were paid for at the port of loading by the charterers as disbursements secured by a draft in their favour (including commission and insurance), signed by the master, pledging the ship for repayment on safe arrival at the port of discharge. This draft was insured by the charterers. The vessel was totally lost on the homeward voyage; and the underwriters on the time policy paid for a total loss, but the shipowners brought an action against them to recover the balance of the particular average loss. The underwriters counter-claimed for a return of the payment on account:—

**Held**, first, that the shipowners could not recover as they were never personally liable for the cost of the repairs, and had sustained no loss, the amount of the draft, on the loss of the ship, having been paid to the charterers by their insurers; secondly, that the underwriters were entitled to a return of the amount paid on account, as a payment made without prejudice and under a mistake of fact. **THE "DORA FORSTER"**

**G. Barnes J.** [1900] p. 241

**80.—Time policy—Warranty—Amount insured.**

A warranty in a time policy that a vessel shall not be insured beyond a named amount means that it shall not be effectively insured to a larger amount; such a warranty is not broken by the owner taking out a new policy to cover the probable deficiency upon a policy effected with an underwriter who becomes insolvent, although the total nominal amount insured is thereby made to exceed the amount limited by the warranty.

A time policy upon hull and machinery of a steamship valued at 12,000*l.* contained a proviso, "Warranted 2400*l.* uninsured." The owner effected time policies to the total amount of 9600*l.*, one of the policies being effected with a syndicate to the amount of 5000*l.* During the currency of the policies the syndicate stopped payment, and eventually the large majority of its members became insolvent. The owner, estimating that the syndicate policy was not effective for more than 2000*l.*, took out further policies upon the ship for 3000*l.* The ship was lost, and the total amount that the owner could in the most favourable event recover upon all the policies was less than 9600*l.*:—

**Held**, that there had been no breach of the warranty. **GENERAL INSURANCE CO. OF TRIESTE, LD. (ASSICURAZIONI GENERALI) v. CORY**

**Mathew J.** [1897] 1 Q. B. 335

**INSURANCE (Marine)—continued.**

**81.—Valued policy—Constructive total loss.**

Where a ship has been sunk in deep water, the underwriters cannot escape liability as for a total constructive loss by gratuitously intervening and taking upon themselves, between the date of notice of abandonment and the time when legal proceedings are commenced under the policy, the expenses of raising the insured vessel and saving her from being a constructive total loss. And such a gratuitous expenditure will not relieve the underwriters from their contractual liability.

The test whether a ship has become a constructive total loss is the same in English as in Scottish law, although these laws may differ in regard to the date at which the test ought to be applied. In considering whether a constructive total loss has occurred, the question is whether a shipowner of ordinary prudence and uninsured would have gone to the expense of raising a sunken ship and repairing her.

A ship insured under a valued policy was struck by a squall and sunk in harbour. The underwriters received notice of abandonment from the insured; but before action brought they, by a large expenditure of their own, raised the ship and claimed that, as the ship could at the date of the action have been repaired by the expenditure of less money than her total value, the loss was not a total but a partial one:—

**Held**, reversing the decision of Ct. of Sess., (1897) 24 R. 893, that the underwriters could not change a constructive total loss into a partial loss by intervening and raising the ship at their own expense. **SAILING SHIP "BLAIRMORE" Co. v. MACBREDIE**

**H. L. (Sc.)** [1898] A. C. 593

**82.—Wagering policy—Insurable interest—"P.p.i. clause"—"Ship"—Marine Insurance Act, 1745 (19 Geo. 2, c. 37), s. 1.**

A policy of marine insurance whereby the assured is entitled to be indemnified against loss in respect of the non-arrival of a ship at a certain port by a certain date is a policy of insurance on the ship within the meaning of 19 Geo. 2, c. 37, s. 1.

Where, on the trial of an action, the plt.'s case discloses that the transaction which is the basis of his claim is illegal, the Court cannot properly ignore the illegality or give effect to the claim, even if the illegality be not pleaded or relied on by the defts. The Court will, therefore, not enforce a policy of marine insurance which is illegal under 19 Geo. 2, c. 37, s. 1, by reason of its containing a clause that the policy itself is to be deemed a full and sufficient proof of interest, although that defence is not set up by the underwriters. **GEDGE v. ROYAL EXCHANGE ASSURANCE CORPORATION**

**Kennedy J.** [1900] 2 Q. B. 214

**83.—Warranty of truth of statements in proposal—Condition.**

Where in the proposal for a policy of marine insurance the applicant warrants the statements therein to be true, a contract on the part of the insured that the facts are such as they are represented to be is imported. **HAMBROUGH v. MUTUAL LIFE INSURANCE CO. OF NEW YORK**

**C. A.** [1895] W. N. 18

**INTENT**—Guilty intent—Selling food deficient in quality.

See **ADULTERATION**. 19.

— Merchandise marks—False trade description—Absence of intent to deceive—Liability.

See **TRADE-MARK**. 4.

**INTERDICT**—Descriptive name.

See **TRADE NAME**. 3.

— Snow—Street—Obstruction—Tramways.

See **NUISANCE**. 29.

**INTERESSE TERMINI**—Covenant for quiet enjoyment—Trespass—Damages.

See **LANDLORD AND TENANT**. 73.

— Freehold leases.

See **LANDLORD AND TENANT**. 74.

**INTEREST**—Acknowledgment—Presumption of payment by devisee in fee also tenant for life of the money.

See **LIMITATIONS, STATUTE OF**. 4, 6.

— Acknowledgment by one of two executors and trustees—Mortgage—Arrears.

See **LIMITATIONS, STATUTE OF**. 2.

— Advances.

See **WILL—Advancement**. 19.

— Arrears of.

See **SETTLED LAND**. 13.

— Bankruptcy—Proof.

See **BANKRUPTCY**. 175, 176.

— Bill of sale.

See **BILL OF SALE**. 35.

— Bond—Damages.

See **BOND**. 1.

— Bond—Loan to husband—Bond by husband to trustees—Statute of Limitations.

See **HUSBAND AND WIFE**. 27.

— Calls—Payment of shares in advance of—Interest out of capital.

See **COMPANY**. 7.

— Charge on waterworks.

See **CHARITY—Mortmain**. 51.

— Company practice.

See **Cases under COMPANY and COMPANY—WINDING-UP**.

— Contingent legacy.

See **WILL—Legacy**. 122.

— Contract for sale of lands—Delay in completion—"Default."

See **VENDOR AND PURCHASER**. 52.

— Costs—Interest on.

See **COSTS—Interest on Costs**.

— Costs—Administration action—"Person liable."

See **SOLICITOR**. 50.

— Costs paid to solicitor on undertaking to refund—Successful appeal—Repayment.

See **COSTS—Interest on Costs**. 35.

1. — *Covenant to pay a sum of money within six calendar months after death—Time certain—Interest—3 & 4 Will. 4, c. 42, s. 28.*

A testator covenanted that his executors or administrators should pay a sum of 2000*l.* within six calendar months after his decease. Default

**INTEREST**—*continued.*

was made in payment of the sum at the time named:—

*Held*, that the sum carried interest from the time named to the date of payment; the sum being "payable at a certain time" within the meaning of s. 28 of 3 & 4 Will. 4, c. 42.

*Knapp v. Burnaby*, (1861) 9 W. R. 765, followed. *In re HORNER*. *FOOKS v. HORNER*

*Chitty J.* [1896] 2 Ch. 188

2. — *Date from which to run—Gift of money to be laid out in the purchase of an annuity—Legacy—Construction of will.*

A testator gave to his executors the sum of 1000*l.* "to be laid out by them in the purchase of an annuity for the life of my daughter M. :—

*Held*, that the gift was not of an annuity, but was an ordinary trust legacy followed by a direction for the application of the money, and that consequently interest only commenced to run twelve months after the testator's death. *In re FRIEND*. *FRIEND v. YOUNG*

*Stirling J.* [1898] W. N. 26 (6)

— Debentures—Overdrawing banker's account—Subrogation.

See **RAILWAY—Powers**. 30.

— Debentures—Statutes of Limitations.

See **COMPANY—Debentures**. 63.

— Default in payment of—Seizure of goods—Relief.

See **BILL OF SALE**. 35.

— Delay by vendor.

See **VENDOR AND PURCHASER—Interest**. 52.

— Disallowed claim—Balances—Payment into court.

See **EXECUTOR**. 29.

— Fiduciary relation—Interest on profits—Setting aside sale—Sale by liquidator of undertaking of company.

See **VENDOR AND PURCHASER**. 53.

— Liability of interest to income-tax—Decree for repayment of price with interest.

See **REVENUE—Income Tax**. 102.

— Money lent to borrowing member of benefit society—Income tax.

See **REVENUE—Income Tax**. 71.

— on Legacy.

See **WILL—Legacy**. 122.

— Limitations, Statute of—Arrears of interest.

See **SETTLED LAND**. 13.

3. — *Limitations, Statute of—Continuing guarantee—Appropriation of payments—Banking account—Interest converted into principal.*

In an action on a guarantee it appeared that the debt had guaranteed to the plts., a banking co., payment of all monies which might be owing to them in account with a customer with interest, commission, and other banking charges; and it was provided that the guarantee should be a continuing guarantee, and should not be withdrawn except by six months' written notice from the guarantor. The plts. made advances to the customer by honouring his overdrafts from time to time down to a period more than six years before the action, but made no advances subsequently to that period, and the customer paid



**INTEREST**—*continued.*

sums in to his account with the bank against his liability from time to time down to a period within six years before the action. At the end of each half-year the plts. debited him in account with the interest for the half-year on the amount owing by him from time to time, and carried forward the balance to his debit as the amount owing at the commencement of the next half-year:—

*Held*, that the plts.' right of action upon the guarantee in respect of the sums advanced by them to the customer was barred by the Statute of Limitations, but that the action was maintainable in respect of interest which had accrued due from the customer within six years before the action and had not been paid.

The rule with regard to the appropriation of payments by which interest is presumed to be paid before principal is not applicable in the case of interest on an overdrawn account which according to the practice of bankers has been from time to time converted into principal. *PARR'S BANKING CO. v. YATES* C. A. [1898] 2 Q. B. 460

- Limitations, Statute of—Debenture stock.  
See COMPANY—Debentures. 35.
- Limitations, Statute of—Loan to husband—Bond by husband—Interest on bond.  
See HUSBAND AND WIFE—Bond. 27.
- Loss of—Executor—Wilful default—Breach of duty.  
See EXECUTOR—Liabilities. 41.
- Mortgages.  
See MORTGAGE—Interest.
- Mortgage—Winding-up of company—Distress.  
See COMPANY—WINDING-UP—Mortgages. 130.
- Partition—Sale—Set-off.  
See PARTITION. 14.
- Payment by devisee.  
See LIMITATIONS, STATUTE OF. 6.
- Proof—Bankruptcy practice.  
See BANKRUPTCY—Proof. 175, 176.
- Rate of—Breach of trust—Accumulation clause—Wilful default—Compound interest.  
See TRUSTEE—Breach of Trust. 19.

4. — *Rate of interest—Interest on moneys.*  
*Semble*, where interest is payable under 3 & 4 Will. 4, c. 42, s. 28, the Court is not bound to give interest at the rate of 5 per cent., but will follow the current rate of interest at the time.

Observations of Kekewich J. as to the rate of interest which should be allowed in judicial proceedings. *LONDON, CHATHAM AND DOVER RAILWAY CO. v. SOUTH EASTERN RAILWAY CO.*

*Per Kekewich J.* [1892] 1 Ch. 120;  
H. L. (E.) [1893] A. C. 429

- Rate to be charged.  
See TRUSTEE—Interest. 57.
- Scheme of arrangement—Debt carrying interest exceeding 5 per cent.—Bankruptcy Act, 1890—Retrospective effect.  
See BANKRUPTCY. 223.
- Settled Land Acts.  
See SETTLED LAND—Interest.

**INTEREST**—*continued.*

- Solicitor's bill of costs—"Person liable."  
See SOLICITOR. 59.
- Trustee.  
See TRUSTEE—Interest.
- Ultra vires—Payment of interest on shares—New rules—Known insolvency at time of passing.  
See BUILDING SOCIETY. 12, 13.
- Varying with profits—Partnership—Contract  
See BANKRUPTCY—Proof. 138.
- Vendor and purchaser.  
See VENDOR AND PURCHASER—Interest.

5. — *When payable.*

Where the instrument under which a sum is payable makes the day of payment depend on a future contingent event, such time is not a time certain within 3 & 4 Will. 4, c. 42, s. 28, and such sum does not carry interest unless there has been a demand for payment with notice that interest would be claimed, and interest cannot be given as damages for detention of the debt. *LONDON, CHATHAM AND DOVER RAILWAY CO. v. SOUTH EASTERN RAILWAY CO.*

C. A. revers. Kekewich J. [1892] 1 Ch. 120;  
affirm. by H. L. (E.) [1893] A. C. 429

See *In re Kingston Cotton Mill Co.*, C. A. [1896] 1 Ch. 9.

Referred to by Chitty J. *In re Horner*, [1896] 2 Ch. 188, 191.

- "Wilful default" — Condition precedent — Specific performance — Mistake — Rescission.  
See VENDOR AND PURCHASER. 71.
- Writ—Claim for interest specially indorsed on writ.  
See PRACTICE—Writ. 283.

6. — *Wrongful taking of minerals — Interest on compensation.*

A claim was made in 1891 to add interest to damages certified in an action brought in 1871 for minerals wrongfully taken:—

*Held*, that, although interest at 4 per cent. might have been granted at the trial, it was too late to grant it after twenty years.

*Held*, also, that the action was an equitable action for an account of profits made out of a trespass, and not an action for money had or received, or one for trover or trespass de bonis asportatis, within 3 & 4 Will. 4, c. 32, s. 29, so that damages could not be given in the nature of interest. Decision of Stirling J., (1890) 44 Ch. D. 694, affirmed. *PHILLIPS v. HOMFRAY*

C. A. [1892] Ch. 1 465

**INTEREST (DISQUALIFYING)**—Disqualification of justice by.  
See Cases under JUSTICES—Disqualification.

**INTERIM INCOME.**

See WILL—Income. 108, 109.

**INTERIM INJUNCTION**—Appeal from.

See APPEAL. 24.

- Appeal from—Trespass—New South Wales Mining on Private Lands Act.  
See NEW SOUTH WALES. 37.

**INTERIM USER**—Land not immediately required for purpose for which it was acquired.

See LOCAL GOVERNMENT. 4.

**INTERLOCUTORY INJUNCTION.**

See INJUNCTION. 15, 16.

**INTERLOCUTORY MOTION**—Information and belief—Insufficient affidavit.

See EVIDENCE. 18.

**INTERLOCUTORY ORDER**—Appeal.

See APPEAL. 19, 25—27, 50—52.

**INTERNATIONAL COPYRIGHT.**

See COPYRIGHT—International.

**INTERNATIONAL LAW.**

See also Cases under CONFLICT OF LAWS and under DOMICIL.

1. — *Alien's rights.*

An alien has not a legal right enforceable by action to enter British territory. *MUSGROVE v. CHUN TEEONG TOY* — P. C. [1891] A. C. 272

2. — *Ambassador, immunities of—Statute of Limitations—Diplomatic Privileges Act, 1708 (7 Anne, c. 12, s. 3).*

The immunity of a foreign ambassador from process in the country extends for such a reasonable period after the presentation of his letters of recall as is necessary for him to wind up his official business and prepare for his return home; he is not deprived of his immunity if his successor is appointed during that period. The Limitation Act, 1623, does not begin to run against the creditors of an ambassador of a foreign State while he is in this country and duly accredited during the period above referred to. The provisions of Order XI. as to service of writs out of the jurisdiction does not annul the right under 4 Anne, c. 16, to bring an action on the return from beyond seas of a person against whom there is a right of action.

Decision of Div. Ct., [1894] 1 Q. B. 533, affirmed. *MUSURUS BEY v. GADBAN*

C. A. [1894] 2 Q. B. 352

— Conflict of laws.

See Cases under CONFLICT OF LAWS.

— Copyright.

See COPYRIGHT—International.

3. — *Divorce—Jurisdiction—Domicil.*

The only domicil internationally accepted as giving the Courts of a territory power to pronounce a decree of divorce a vinculo internationally valid is permanent domicil within the territory. Mere "matrimonial domicil" does not create such jurisdiction. *LE MESURIER v. LE MESURIER* — P. C. [1895] A. C. 517

Discussed by G. Barnes J. *Armytage v. Armytage*, [1898] P. 178, 185.

— Domicil.

See Cases under DOMICIL.

4. — *Foreign sovereign, Action by—Discovery*

— *Cross proceedings—Counterclaim for damages struck out.*

A foreign sovereign suing in the courts of this country submits to the jurisdiction to the extent only that (1) he must give discovery; (2) cross proceedings in mitigation of the relief claimed by him can be taken against him.

**INTERNATIONAL LAW—continued.**

A foreign State sued to restrain dealing with, and for the appointment of a new trustee of, funds lodged in England in the names of a trustee for the pits. and a trustee for the debts. who hold a concession from the pits. for the construction of a ry. in their territory. A counter claim for damages in respect of alleged breaches of the terms of the concession was struck out. *SOUTH AFRICAN REPUBLIC v. LA COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD*

North J. [1898] 1 Ch. 190

5. — *Foreign sovereign—Jurisdiction—Proof of status of sovereign.*

The English Courts have no jurisdiction over an independent foreign Sovereign unless he submits to the jurisdiction in the face of the Court. Therefore, where a foreign Sovereign resides in England, and enters into a contract under an assumed name as if a private individual, he is not liable to be sued for a breach of the contract. A certificate from the Foreign or Colonial Office is conclusive as to the status of such a Sovereign. *MIGHELL v. SULTAN OF JOHORE*

C. A. affirm. Div. Ct. [1894] 1 Q. B. 149

Referred to by Farwell J. *Foster v. Globe Venture Syndicate, Ltd.*, [1900] 1 Ch. 811, 813.

6. — *Foreign tribunal.—Absent foreigner—Personal action.*

No territorial legislation can give jurisdiction which any foreign Court ought to recognise against absent foreigners who owe no allegiance or obedience to the Power which so legislates.

In all personal actions the Courts of the country in which the debt. resides, not the Courts of the country where the cause of action arose, should be resorted to.

*Ex parte* money decrees passed by the Court of F. against a person who had been treasurer of F., but at the date of suit had ceased to be such, and was resident in J., of which State he was a domiciled subject, held to be a nullity by international law. *SIRDAR GURDYAL SINGH v. RAJAH OF FARIDKOTE* — P. C. [1894] A. C. 670

Referred to by C. A. *Pemberton v. Hughes*, [1899] 1 Ch. 781, 791.

7. — *Penal laws—Enforcing in foreign state—Interpretation of law—Distinction between public and private families.*

By a law of the State of New York penalties were inflicted on debtors for "misrepresentation." The penalties were paid to the creditors in satisfaction *pro tanto* of their debt. The New York Courts had decided that actions for these penalties were criminal actions. An action was brought in an Ontario Court upon a judgment of a New York Court under this statute:—

Held, that these actions, being by a subject to enforce in his own interest a liability for the protection of his private rights, were remedial and not penal within the rule of international law which prohibits the Courts of one state from executing the penal laws of another state:

Held, also, that it was the duty of the Ontario Court to decide whether the New York statute was remedial or fully penal, and that it was not bound by the interpretation of the New York Courts. *HUNTINGTON v. ATTRILL*

P. C. [1893] A. C. 150

**INTERNATIONAL LAW—continued.**

— Copyright.

See COPYRIGHT—International.

**INTERPLEADER.**

Order LVII. relates to interpleader.

Amendment as to interpleader practice, Order LVII. W. N. 1896 (April 11), p. 87, confirmed W. N. 1896 (June 6), p. 185. See Current Index, 1896, p. lvi.

As to County Courts, W. N. 1896 (May 16) p. 139; (Nov. 28) p. 307. See Current Index, 1896, p. lxi.

— Appeal—Issue tried without a jury.

See APPEAL. 28.

— Appeal—Summary decision.

See APPEAL. 29.

— Appeal—Time for appealing.

See APPEAL. 51.

— Execution against firm—Bankruptcy of one partner.

See BANKRUPTCY—Assets. 57.

1. — Bailee—Estoppel—Right to set up *jus tertii*—R. S. C. Order LVII., rr. 1, 2.

Where wharfingers, with whom goods were stored, had written a letter to a bank, stating that they held the goods to the bank's order, on the faith of which statement the bank advanced money on the goods, and subsequently that bank and another bank claimed the goods adversely to one another:—

*Held*, on an application by the wharfingers for relief by way of interpleader, that, assuming the before-mentioned letter to constitute an estoppel, nevertheless an interpleader order might be made restraining the claimants from proceeding against the wharfingers in respect of their claims except in respect of any claim which the first-mentioned bank might have upon the letter, and directing the trial of an issue between the two banks on the question to which of them the goods belonged.

*Attenborough v. St. Katharine's Dock Co.*, (1878) 3 C. P. D. 450, dicta in, followed. *Ex parte MERSEY DOCKS AND HARBOUR BOARD*

C. A. [1899] W. N. 19 (9); [1899] 1 Q. B. 546

— Bankrupt—After-acquired property—Personal earnings—Wagering contract.

See BANKRUPTCY—Undischarged Bankrupt. 259.

2. — Goods in execution—Seizure of—Payment into court by claimant—Seizure of the goods by another execution creditor—Goods claimed by claimant—Further payment into court.

Where goods seized in execution under a judgment have been claimed and the claimant has paid into court money to abide the event of an interpleader issue between himself and the execution creditor, and the goods are again seized in execution by another judgment creditor and again claimed by the claimant and an interpleader issue is ordered, to prevent the goods being sold the claimant must pay money into court as security to the second execution creditor, and to abide the event of the second interpleader. *KOTCHIE v. GOLDEN SOVEREIGNS, LD. BRIGHT, CLAIMANT* — C. A. [1898] 2 Q. B. 164

**INTERPLEADER—continued.**

3. — Goods seized in execution—Order for sale—Application of proceeds of sale—"In such manner and upon such terms as may be just"—R. S. C., Order LVII., r. 12.

By Order LVII., r. 12, "When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just."

A sheriff seized goods in execution under a judgment of the High Court. The goods were claimed by the grantee of a bill of sale, as security for a debt due to him from the judgment debtor. The debt was payable, with interest at a high rate per cent., by instalments extending over a period of several months, the greater part of which had not expired. The sheriff interpleaded, and a judge at chambers, on the application of the judgment creditor, under Order LVII., r. 12, ordered the sale of the goods, and the payment to the claimant of the balance of his debt with interest at the agreed rate, but only up to the time of such payment. On appeal:—

*Held*, by Lord Esher M.R. and A. L. Smith L.J., Rigby L.J. dissenting, that the power of the judge to make an order as to the application of the proceeds of the sale upon such terms as may be just was not limited by the practice of the Courts of Equity in suits for redemption, that the judge had power to make the order, and that the order was just. *FORSTER v. CLOWSER*

C. A. [1897] 2 Q. B. 362

Followed by *Cozens-Hardy J. West v. Diprose*, [1900] 1 Ch. 337, 340.

4. — Goods taken in execution—Deposit by claimant—Deposit paid out to judgment creditor—Second execution—Estoppel—County Court Act, 1888 (51 & 52 Vict. c. 43) s. 156.

A claimant in interpleader deposited the value of the goods to abide the event of the issue. She failed to establish her claim, and the money was paid to the judgment creditor in part satisfaction. The judgment creditor levied again on the same goods:—

*Held*, that the judgment creditor by taking the deposit out of court was estopped in respect of the same judgment from disputing that the claimant was the owner of the goods. *HADDOW v. MORTON* Div. Ct. [1894] 1 Q. B. 95; affirm. by C. A. [1894] 1 Q. B. 565

Referred to by *C. A. Kotchie v. Golden Sovereigns, Ltd.*, [1898] 2 Q. B. 164, 166. See No. 2, above.

— House agent—Action for commission.

See COUNTY COURT—Jurisdiction. 52.

5. — Intervention by creditor with priority before money handed over.

Where the goods of a co. are taken in execution and money paid by debenture holder to sheriff to stop the sale, but the money is not handed over to the execution creditor, the holder of a debenture constituting a charge by way of

**INTERPLEADER**—*continued.*

floating security over all the property of the co. may still intervene so as to oust the execution creditor.

*Quære*, in case of actual sale and payment of the money to the execution creditor. **TAUNTON v. SHERIFF OF WARWICKSHIRE**

[1895] 1 Ch. 734; C. A. [1895] 2 Ch. 319

6. — *Issue not tried—Sheriff—Costs—R. S. C., Order LVII. r. 15.* Goods seized by the sheriff under a *fi. fa.* were claimed by the claimant. The sheriff obtained an interpleader order for an issue to be tried in the county court. The landlord claimed for rent, which the execution creditor did not meet. The sheriff went out of possession, and the issue was not tried. An application was made by the sheriff to discharge the order for trial of the issue, and by the execution creditor that the claim should be barred and the costs and those of the sheriff paid by the claimant:—

*Held*, that the execution creditor should pay the sheriff his costs, and that the claimant should pay to the execution creditor half the sheriff's costs from the date of claim. **LAWSON v. CARTER**

Div. Ct. [1894] W. N. 6

7. — *Jurisdiction of district registrar.*

A district registrar has no jurisdiction under the R. S. C., 1883, to make an interpleader order. **HOOD & SONS v. YATES**

Div. Ct. [1894] 1 Q. B. 240

But see now *O. XXXV., r. 5A*, of R. S. C. Aug. 1894.

Commented on by C. A. **TOWNEND v. KIRKHAM**, [1898] 1 Q. B. 51.

8. — *Money in hands of sheriff to abide order of Court—Right of sheriff to retain till order.*

In interpleader proceedings an order was made transferring the proceedings to the county court, the claimants to be at liberty to pay a sum of money to the sheriff for the release of the goods seized, "to abide the order of the county court." The execution creditor abandoned his claim, and the claimants had judgment, but the judge refused as unnecessary an order as to the money in the hands of the sheriff. The sheriff refused to pay and the claimants brought an action against him for money had and received:—

*Held*, that the sheriff was not bound to pay over without an order of the county court. **DISCOUNT BANKING CO. OF ENGLAND AND WALES v. LAMBARDE**

C. A. [1893] 2 Q. B. 329

9. — *Receivership order—Liquidation.*

Judgment creditors of a French co. obtained *ex parte* an order for a receiver of the co.'s interest in goods in the possession of a firm in E., and subject to a lien in their favour. The co. then went into liquidation in France. An issue was directed to try the title to the net proceeds of the goods as between the liquidator of the co. and the judgment creditors:—

*Held*, that the receivership order operated as equitable execution, and that the judgment creditors were entitled to the proceeds of the goods. **LEYASSEUR v. MASON & BARRY, LD.**

C. A. [1891] 2 Q. B. 73

**INTERPLEADER**—*continued.*

— Sheriff's costs—Notice of receiving order—Bankruptcy.

See **SHERIFF**. 12, 13.

10. — *Value of the goods—County Court Rules, 1889, Order L. A., r. 12.*

The "value of the goods" within Order L. A., r. 12, of the County Court Rules, 1889, is the amount (plus the damages) found by the judge to be the value of the goods seized, and not the amount (plus the damages) paid into Court. **STUDHAM v. STANBRIDGE**

Div. Ct. [1895] 1 Q. B. 870

And see **COUNTY COURT—Jurisdiction**. 52.

**INTERPRETATION**—of Foreign penal statute.

See **INTERNATIONAL LAW**. 7.

— of Rules and Orders.

See "Table of Rules and Orders" judicially considered.

— of Statutes.

See **STATUTES**.

TABLE OF STATUTES judicially considered during the years 1891—1900.

**INTERROGATORIES**—Discovery.

See **DISCOVERY—Interrogatories**.

**INTERVENTION**—Co-respondent.

See **DIVORCE—Co-respondent**. 38, 39.

— Of Queen's Proctor—Practice.

See **DIVORCE—Practice**. 108.

**INTESTACY**—*Provident Nominations and Small Intestacies Act, 1883, c. 47, repealed so far as relates to registered societies.* See **Friendly Societies Act, 1896** (59 & 60 Vict. c. 25).

1. — *Co-parceners—"Purchaser," tracing title from—Real estate—Inheritance, law of—Descent—Heir-at-law—Issue—Ancestor standing in place of—Inheritance Act, 1883 (3 & 4 Will. 4, c. 106), ss. 1, 2—Real estate of lunatic—Sale—Conversion—Lunacy Regulation Act, 1853 (16 & 17 Vict. c. 70), ss. 124, 135—[Repealed by 53 Vict. c. 5, s. 342].*

The doctrine of **Cooper v. France**, (1850) 19 L. J. (Ch.) 313—that on the death intestate of a co-parcener, a co-heiress of the purchaser of land, her son, notwithstanding s. 2 of the Inheritance Act, 1833, stands in her place quoad her share—applies equally in favour of her more remote lineal descendants.

Accordingly, on the death intestate of a son of such a co-parcener, it was *held* that the entire share descended on the nephew of such son (the nephew being a grandson of the co-parcener), and that no part thereof descended to the descendants of a sister of the co-parcener.

The purchase-money of a lunatic's descended moiety of land sold in 1863 under s. 124 of the Lunacy Regulation Act, 1853, *held*, under s. 135, transmissible, upon his death intestate, in precisely the same manner as the descended moiety if the same had not been sold. *In re MATSON*. **JAMES v. DICKINSON** **Kekewich J.** [1897] 2 Ch. 509

— Dower—Widow's charge.

See **DOWER**. 1.

**INTESTACY**—*continued.*

- Grant of administration.  
See Cases under PROBATE—Grant of Administration.
- Member of society—Power to distribute property.  
See INDUSTRIAL AND PROVIDENT SOCIETY. 3.
- “Next of kin in blood”—Settlement.  
See DISTRIBUTIONS, STATUTE OF.
- Partial—Terce, jus relictae, and legitim.  
See SCOTTISH LAW—Succession. 46.

2. — Partial — Rights of widow under the *Intestate Estates Act, 1890* (53 & 54 Vict. c. 29).

The Intestates' Estates Act, 1890, does not, like the Statute of Distributions (22 & 23 Car. 2, c. 10), apply to cases of partial intestacy. The phrase “testamentary expenses” in s. 6 of the first named Act is a slip in the drafting, and means expenses of letters of administration and of administration generally. *In re TWIGG. TWIGG v. BLACK* Chitty J. [1892] 1 Ch. 579 And see EXECUTOR and PROBATE, *passim*.

- Proceeds of sale of realty not disposed of.  
See ESCHEAT. 1.
- Special occupant—Devolution of estate.  
See ESTATE PUR AUTRE VIE. 1, 2.
- Trust to accumulate income beyond twenty-one years.  
See ACCUMULATIONS. 5.
- Will—Remoteness—Vesting—Maintenance.  
See WILL. 167.

**INTESTATES' ESTATES.**

See DOWER. 1.

**INTIMIDATION**—Employer and workman.

See Cases under CONSPIRACY.

## — Trade Union.

See Cases under TRADE UNION.

**INTOXICATING LIQUORS.**

See Cases under LICENSING ACTS.

**INVENTED WORD**—Registration.

See Cases under TRADE-MARK.

**INVENTION**—Right to use—Co-owners—Disclosure—Injunction.

See SECRET PROCESS.

**INVENTORY DUTY**—Stamp duty.

See REVENUE—Inventory Duty. 117.

**INVESTMENT**—*Funds in Court—Order XXII., r. 17 A.—Rule dated Feb. 10. W. N. 1897 (Feb. 20), p. 61. See Current Index, 1897, p. lxxxvi.*

- Administration action.  
See EXECUTOR—Investments.
- By wife of accumulations—Covenant to settle after-acquired property.  
See SETTLEMENT. 13.
- Exercise of option to invest on real securities—Validity of gift.  
See CHARITY. 38.
- Improper—Breach of trust—Relief from liability.  
See TRUSTEE—Investments. 64.

**INVESTMENT**—*continued.*

- Increase of value of investments—Appointment.  
See POWERS. 15.
- Investment trust company—Profits or gains.  
See REVENUE—Income Tax. 85.
- Settled Land Acts.  
See SETTLED LAND—Investments.
- Trustees.  
See TRUSTEE—Investments.
- Trustees' powers of investment—Deposits with banks—Law of Victoria.  
See VICTORIA. 3.
- Workmen's Compensation Act—Investment for benefit of dependants.  
See MASTER AND SERVANT—Compensation. 30.

**IRELAND**—Appeals to House of Lords.

See APPEAL. 19, 20.

1. — Clergyman's residence—Agreement for a letting for—Erection of huts for evicted tenants.

*Held*, on the construction of an inartificially drawn agreement for a lease made in 1839 for providing a residence for a Roman Catholic priest, that the erection of huts on the demised premises for the protection and shelter of evicted tenants was inconsistent with the purpose for which the holding had been let. The decision of *Ir. C. A., (1891) 29 L. R. Ir. 230* affirmed. *KEHOE v. MARQUIS OF LANSDOWNE*

H. L. I. [1893] A. C. 451

- Disobedience of order of Irish Court—Power of English Court.  
See CONTEMPT OF COURT. 1.
- Irish Divorce Bill—Evidence taken in India.  
See DIVORCE—Evidence. 78.
- Irish Divorce Bill — Infant — Custody — Practice.  
See DIVORCE—Children. 21.
- Irish judgment — “Execution” — Enforcing judgment in England.  
See JUDGMENT DEBT. 4.

2. — Marriage in Protestant Episcopal church — Certificate — Proof of marriage — Evidence.

A copy of an entry in the register of marriages, duly certified by the clergyman of the church where the marriage so registered has been solemnised, is sufficient to prove a lawful marriage according to the rites and ceremonies of the Protestant Episcopal Church of Ireland. *WHITTON v. WHITTON* Jeune P. [1900] P. 178

- Registration of voters.  
See Cases under PARLIAMENT.

**IRREGULARITY**—Bankruptcy notice.

See BANKRUPTCY—Act of Bankruptcy. 13, 14.

- Company—Borrowing powers.  
See COMPANY—Borrowing Powers. 2.
- Foreign judgment—Divorce—Recognition by English Court.  
See CONFLICT OF LAWS. 4.

**IRREGULARITY**—*continued*.

- Notice of general meeting—Directors' interest  
—Non-disclosure.

See **COMPANY**—**Meetings**. 160.

- Partnership—Dissolution—Bankruptcy petition against one late partner.

See **BANKRUPTCY**—**Partnership**. 137.

- Service.

See **ATTACHMENT**. 14.

- Service of writ out of the jurisdiction.

See **PRACTICE**—**Service**. 202, 205, 213.

- IRRELEVANCY**—Production of documents—Privilege.

See **DISCOVERY**—**Documents**. 10, 11, 40.

- Striking out pleadings—Practice.

See Cases under **PRACTICE**—**Pleading**.

- IRREMOVABILITY OF PAUPER**—Settlement.

See Cases under **POOR LAW**.

- IRRIGATION**—Land slides—Injunction—Liability for damages.  
See **CANADA**. 22.

**ISLE OF MAN (CUSTOMS) ACT, 1898 (61 & 62 Vict. c. 27)**, amends the law with respect to customs duties in the Isle of Man.

- “**ISSUE**”—“Children”—Construction of will.

See Cases under **WILL**—**Children**.

**ISSUE LIVING.**

See **WILL**—**CHILDREN**. 42.

- ISSUE OF SHARES**—Company—Practice.

See Cases under **COMPANY** and **COMPANY**  
—**WINDING-UP**.

- ITALY**—San Marino, Republic of.

See **EXTRADITION**.

- Administration.

See **EXECUTOR**—**Administration**. 13.

## J.

**JACTITATION OF MARRIAGE.**

See **DIVORCE**—Jactitation of Marriage.

- Title of honour—Former wife marrying a commoner—Continued use of title derived from former husband—Injunction. See **HUSBAND AND WIFE**—Title of Honour. 97.

**JAMAICA.**

Application of Colonial Probates Act, 1892.

See **PROBATE**—Colonial Probates Act.

**Law of Jamaica.**

- 1. — **Bankruptcy**—**Jurisdiction**—**Annulment**—**Act of Bankruptcy**—**Assignment**—**Bankruptcy Law**, 1879, s. 151—**Act No. 17 of 1877**, s. 10.

The judge sitting in bankruptcy has jurisdiction to revoke a provisional order or annul an adjudication under s. 151 of the Bankruptcy Law, 1879. An application for that purpose need not be made to the full Court under s. 10 of Law No. 17 of 1877. An assignment of the whole of a debtor's property, in consideration of a contemporaneous advance and promise of further assistance "in order to enable the debtor to carry on his business, and in the reasonable belief that he would thereby be enabled to do so," is not an act of bankruptcy. **ADMINISTRATOR-GENERAL OF JAMAICA v. LASCELLES, DE MERCADO & CO. In re REES' BANKRUPTCY** - P. C. [1894] A. C. 135

- 2. — **Compensation**—**Accommodation works**—**Statutory officer**—**Law 12 of 1889**, ss. 20, 29.

Where by a Colonial Act the promoters of a ry. were authorised to take lands, through a Government officer, compensation being payable by the Government, and the owners of the land were entitled to such accommodation works as may be fixed by agreement when the amount of the compensation is being settled:—

*Held*, that as the statutory power of assessing compensation was entrusted to the officer, the making of agreements for accommodation works was within the scope of his authority, and he could within reasonable limits bind the co., although the statutory duty of paying for such works was imposed on the co. **WEST INDIA IMPROVEMENT CO. v. ATT.-GEN. OF JAMAICA**

P. C. [1894] A. C. 243

- **Libel**—**Privileged occasion**—**Onus probandi**.

See **DEFAMATION**—**Libel**. 23.

- **Mortgagor and mortgagee**—**Sale by mortgagee** after previous sale to himself—**Rights of purchaser**—**Right of mortgagee to cost of improvements**.

See **MORTGAGE**—**Sale**. 82.

- 3. — **Practice**—**Misdirection**—**Withdrawal of facts from jury**—**Setting aside verdict**—**Ejectment action**.

Where, in an action of ejectment, the plts.' title is admitted, it is misdirection to withdraw the facts from the jury (who could not agree)

**JAMAICA (Law of Jamaica)—continued.**

and direct a verdict for the defts. on the ground that the plts. had not proved possession during any part of the statutory period. Evidence having been submitted which, if believed, proved their possession of part of the lands sued for, a new trial was rightly ordered. **KINGSTON RACE STAND v. MAYOR AND COUNCIL OF KINGSTON**

P. C. [1897] A. C. 509

- 4. — **Practice**—**Trial**—**New trial**—**Question of fact not submitted to jury**—**Issue of fact as to variation of easement claimed**—**Jamaica Code of Civil Procedure**, s. 438.

In an action by the respondents for damages in respect of a nuisance committed by the appellants and for an injunction, it was alleged that the appellants, who had a prescriptive right to load, unload, and store coals on their wharf in such manner as to spread their coal dust over the respondents' wharf, had within twenty years so extended the site of their operations and altered the structure of their works and the conduct of their business as to produce injurious effects not covered by any prescriptive right. The question submitted was whether the appellants' works taken as a whole had by their extension been rendered more injurious than before to the respondents' works taken as a whole. The jury found that there had been no increase in inconvenience and discomfort to the respondents, and a verdict was entered for the appellants. On motion before the Full Court judgment was given for the respondents, on the ground that the change in the incidence of the dust produced by the extension and alteration of site and works so altered the nature of the easement as to constitute a new wrong:—

*Held*, on appeal, that the question whether by this extension and alteration there had been a variation in the kind of servitude imposed on the respondents substantial enough to cause a new and appreciable wrong was a question of fact which had not been submitted to the jury, and that there must be a new trial.

Under s. 438 of the Jamaica Code of Civil Procedure the Court cannot decide a question of fact never submitted to the jury, though it may draw inferences of fact not inconsistent with the findings. **ROYAL MAIL STEAM PACKET CO. v. GEORGE & BRANDAY** P. C. [1900] A. C. 480

- **Property in**—**Probate duty**—**Local situation** of asset.

See **REVENUE**—**Probate Duty**. 135.

- 5. — **Railway bonds**—**Agreement with Government**—**Error in confirming law**—**Construction**—**Yearly or half-yearly bonds**—**Accounts**.

By an error in the wording of the law confirming an agreement between the colonial government and a ry. co., certain second mortgage bonds bearing guaranteed interest, the amount of which was to depend on the yearly earnings, were treated as half-yearly bonds with interest

**JAMAICA (Law of Jamaica)—continued.**

contingent on half-yearly profits. Bonds were then issued in terms of the agreement and not of the law, and by a certificate of the Government were erroneously certified to be according to the law:—

*Held*, (1) that, reading agreement and law together, the bonds should be treated as yearly bonds, and the accounts should be taken at the end of each year, and not on the footing that there was to be a rest at the end of every half-year; (2) that the costs of the issue of the bonds could not be charged against their income to the prejudice of the holders; (3) that the amount chargeable for stores on the expenditure of any year must be regulated by what was fair in the interest of all concerned. *JAMAICA RY. CO. v. ATT.-GEN. OF JAMAICA* **P. C. [1893] A. C. 127**

**6. — Trade-mark — Registration of Trade Marks Law, 1888—“Club Soda.”—Alleged misrepresentation of his goods by the plaintiff.**

In an action by the appellant, who had registered his English trade-mark of “Club-Soda,” in Jamaica, under Law 17 of 1888, it appeared that the respondents persisted in selling their goods under the same name in a way calculated to deceive:—

*Held*, that the appellant was not disentitled to relief merely because he had printed on his label the words “manufactured in Ireland by H.M. Royal Letters Patent.” Those words, explained by the evidence to relate to patented machinery, did not necessarily represent or induce belief contrary to the fact that the ingredients of their article were patented. *COCHRANE v. MACNISH & SON* **P. C. [1896] A. C. 225**

Followed by *C. A. Powell v. Birmingham Vinegar Brewery Co.*, [1896] 2 Ch. 54, 84. This case was affirmed by *H. L. (E.)* [1897] A. C. 710.

**JAPAN—As to registration of patents, designs, and trade-marks.** *Lond. Gaz. Jan. 8, 1897, p. 125.*

*Protection of patents, trade-marks, &c., extended to British subjects.* *Lond. Gaz. Jan. 1, 1897, p. 3.*

**DESERTERS.] Apprehension of seamen who desert from British merchant ships in that country.** *St. R. & O. 1898, No. 419. Price 3d.* *Lond. Gaz. Feb. 4, 1898, pp. 646, 668; May 20, p. 3132.*

*Consular and Marriage Fees O. in C. 1900.* *St. R. & O. 1900, No. 91; Lond. Gaz. Feb. 6, 1900, p. 779.*

— Copyright.

*See* COPYRIGHT—International.

— Crossing vessels in rivers—Regulations for preventing collisions.

*See* CHINA. 2.

— Jurisdiction of Consular Courts.

*See* FOREIGN JURISDICTION. 1.

— Merchandise, Patents, Designs, and Trade Marks.

*See* FOREIGN JURISDICTION.

**1. — Practice — Special leave to appeal in criminal cases—Consular Court in Japan—Juris-**

**JAPAN—continued.**

*diction—Foreign Jurisdiction Act (6 & 7 Vict. c. 94).*

Under the Foreign Jurisdiction Act (6 & 7 Vict. c. 94) Her Majesty has power to constitute for Japan a Court by O. in C. with a jury of five with jurisdiction over Her Majesty's subjects.

The rule as to special leave to appeal in criminal cases laid down in *In re Dillet*, (1887) 12 App. Cas. 459, re-affirmed. *Ex parte CAREW* **P. C. [1897] A. C. 719**

**JERSEY—Appeals from—O. in C. dated May 19, 1871, and July 15, 1835, regulating appeals to Her Majesty in Council from the island of Jersey.** *St. R. & O. 1899, pp. 1680, 1684.*

**Law of Jersey.**

**1. — Crown fiefs—Alienation in mortmain.**

Where land held of the Crown as seigneur is brought into mortmain the purchaser is bound to pay to the Crown the indemnity due by law in respect of the consequent loss or diminution in value of the seigneurial rights. But the Crown is also not entitled to interpose a nominal vassal to pay duties or service in respect of the property. For ascertaining the indemnity the Court should fix the percentage to be paid by the purchaser, but refer it to experts to value the property. *ATT.-GEN. AND RECEIVER-GENERAL FOR JERSEY v. TURNER* **P. C. [1893] A. C. 326**

**2. — Crown fiefs—Liability of prévôt.**

The Crown has the right to demand of the Queen's prévôt receveur in the parish of St. John personally the payment of the rents due, par assemblage, in respect of its fief whether or no he has received the contributions from his tenants. The Crown is under no obligation to furnish the prévôt with a list of the contributors. *ATT.-GEN. AND RECEIVER-GENERAL FOR JERSEY v. LE MOIGNAN* **P. C. [1892] A. C. 402**

**3. — Deed of settlement by wife's father—Rights of husband and wife in settled estate—Claim of husband's heir.**

By the law of Jersey a conveyance of real estate by a husband to his wife, stante matrimonio, to the prejudice of his lawful heirs, is invalid.

Where, by a deed of family arrangement, it appeared that a husband and his wife, separated quant aux biens, each took from her father (subject to a charge of an annuity in his favour) a conjoint interest in the settled lands during their joint lives, with the chance of the fee on survivorship:—

*Held*, that the deed was in no sense a conveyance by the husband of any interest acquired by him thereunder; and that on his death before his wife his interest ceased and could not pass to his heirs. *BROOMER v. ARTHUR* **P. C. [1898] A. C. 777**

**4. — Inheritance — Collateral succession — Right of representation.**

The principle of representation with regard to personal and acquired real estate, introduced by the Jersey enactments of Feb. 13, 1851, and March 26, 1873, is complete and general, and subject to no exception. Therefore the granddaughter of an elder sister of the deceased was



**JERSEY (Law of Jersey)—continued.**

held to be principal heir in preference to the son of a younger sister. *DE QUETTEVILLE v. HAMON (PERRÉ)* - - - **P. C. [1893] A. C. 532**

**JETTISON OF CARGO.**

See **SHIPPING—Average**. 9.

**JEWS—Employment of, on Sunday.**

See **MASTER AND SERVANTS—Factory Acts**. 61.

— **Marriage—Validity—Domiciled British subjects** — Prohibited degrees of consanguinity—Lex domicilii.  
See **MARRIAGE**. 1.

**JOINDER—Actions.**

See **Cases under PRACTICE—Parties**.

— **Admiralty practice.**

See **SHIPPING—Practice**. 205—207.

— **Counter-claim—Cause of action against plaintiff by defendant jointly with another person.**

See **PRACTICE**. 149.

— **Husband—Action against wife—Fraud by wife—Tort—Liability of husband.**

See **HUSBAND AND WIFE**. 30.

— **Parties.**

See **Cases under PRACTICE—Parties**.

— **Trustee in bankruptcy—Security for costs—Jurisdiction.**

See **COUNTY COURT—Costs**. 34.

**JOINT CONTRACTORS—Adding defendants.**

See **PRACTICE—Parties**. 80, 81.

— **Judgment signed against one—Release of other.**

See **PRACTICE—Setting Aside**. 242.

**JOINT DEBTORS—Bankruptcy notice against one of.**

See **BANKRUPTCY—Act of Bankruptcy**. 14.

**JOINT DELINQUENTS.**

See **SCOTTISH LAW—Joint Delinquents**.

**JOINT GRANT—Patent.**

See **PATENT—Joint Grant**.

**JOINT GUARANTOR—Discharge.**

See **PRINCIPAL AND SURETY**. 8.

**JOINT LESSEE—Notice of abandonment by a—Joint gold-mining lease—Law of New South Wales.**

See **MINES**. 9.

**JOINT OCCUPATION—Registration of voters.**

See **PARLIAMENT—Franchise**. 50—57.

**JOINT OR SEVERAL LIABILITY—Policy—Subscription by syndicate.**

See **INSURANCE—Marine**. 69.

**JOINT PATENTEES—Covenant by—When construed as several or joint and several—Survivorship.**

See **PATENT**. 13.

**JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870—Inapplicable to the Colonies.**

See **VICTORIA**. 2.

**JOINT STOCK COMPANY.**

See **Cases under COMPANY**.

— **In the nature of a—Statute—Construction.**

See **SCIENTIFIC SOCIETY**. 1.

**JOINT TENANCY.**

**CORPORATIONS.] Power for corporations to hold property as joint tenants. See Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20).**

— **Absolute gift—Secret trust—Notice.**

See **TRUST**. 7.

— **Devise in—Contingent remainder.**

See **WILL—Contingent Remainder**. 75.

— **Husband and wife.**

See **HUSBAND AND WIFE**. 10, 11.

— **Policy of insurance.**

See **INSURANCE—Life**. 17.

— **Registration of voters—Joint or sole occupation.**

See **PARLIAMENT—Franchise**. 50—57.

1. — **Severance—Covenant to settle after-acquired property.**

H., M. and A. became entitled as joint tenants under a voluntary settlement made by P. M. had previously entered into a covenant in an antenuptial settlement to settle after-acquired property. H. then died. M. and A. executed a deed of severance, assigning the funds to trustees, one moiety for the benefit of each of them:—

*Held*, that on the death of P. the joint interest of M. was severed by the operation of the covenant to settle after-acquired property. *In re HEWETT. HEWETT v. HALLETT*

**North J. [1894] 1 Ch. 362**

2. — **Severance—Effect of marriage—Lease by husband of one joint tenant and the other joint tenant.**

The marriage of a woman having a joint estate in freeholds or leaseholds does not operate as a severance of her joint tenancy; nor does the granting of a lease by the husband and the other joint tenant, reserving the rent to the lessors jointly, necessarily effect a severance of the wife's joint tenancy. *PALMER v. RICH* **Stirling J. [1896] W. N. 174 (7); [1897] 1 Ch. 134**

3. — **Severance—What constitutes.**

In order to amount to severance of a joint tenancy the act of a joint tenant must be such as to preclude him from claiming by survivorship any interest in the subject-matter of the joint tenancy. A joint tenant of a fund in court took out a summons to have his share paid out to him. but died before any order had been made on the summons:—

*Held*, that there had been no severance.

*Seem*, that it would have been otherwise had an order been made. *In re WILKS. CHILD v. BULMER* - - - **Stirling J. [1891] 3 Ch. 59**

— **Tacking—Further advance—Second mortgage—Trustees.**

See **MORTGAGE**. 91.

— **Will—Construction.**

See **WILL—Joint Tenancy**.

4. — **Will—Devise—“All and every the children.”**

A devise of realty to “all and every the

**JOINT TENANCY**—*continued.*

children of A. their heirs and assigns for ever," held to create a joint tenancy. *BINNING v. CHITTY J. [1895] W. N. 116 (16)*

**JOINT TORTFEASORS**—Admiralty practice.

See **SHIPPING**—Collision. 67, 68, 86.

— Release.

See **Cases under RELEASE.**

— Scottish Law.

See **SCOTTISH LAW**—Joint Delinquents. 21.

**JOINTURE**—Deeds executed by successive tenants for life under powers conferred by will—Sale by tenant for life.

See **SETTLED LAND.** 133.

— Estate duty—"Without any deduction whatsoever"—Assessment of duty—Limited owner.

See **REVENUE**—Estate Duty. 36.

— Portions.

See **Cases under POWERS.**

— Sale of heirlooms—Land purchased with proceeds.

See **HEIRLOOMS.** 5.

— Settlement.

See **SETTLEMENT**—Jointures.

— Test of what would have been an adequate jointure—Permanent maintenance.

See **DIVORCE**—Alimony. 10.

**JOINT WILL**—Husband and wife.

See **PROBATE**—Grant of Probate. 104.

**JUDGE**—Consular Court—Africa Order in Council of Feb. 4, 1869—Immunity from action.

By O. in C. dated Feb. 4, 1869, the Consular Court of Madagascar was invested with plenary civil jurisdiction over all British subjects within the area specified by the order, but was not expressly created a Court of Record. The judge of the Court was sued for abuse of his judicial powers:—

*Held*, that while sitting and acting as judge he was entitled to the same protection as the judge of an English Court of Record, and that an action of damages would not lie against him for dismissing without proof an action which he held to be vexatious, since in so doing, however inadequate his reasons, he was acting within his jurisdiction. *HAGGARD v. PELICIER FRÈRES*  
**P. C. [1892] A. C. 61**

2. — Court of Record of Colony—Act done in exercise of judicial office—Malicious motive—Immunity from action.

No action lies against a judge of the Supreme Court of the Colony in respect of any act done by him in his judicial capacity, even though he acted oppressively and maliciously, to the prejudice of the plt. and to the perversion of justice. *ANDERSON v. GORRIE* — **C. A. [1895] 1 Q. B. 668**

— Judge's notes—Condition precedent to appeal — Question of law raised at trial — Request to make a note.

See **COUNTY COURT**—Appeal. 12.

— Judge's notes—Practice—Appeal—Notes of oral evidence in Court below.

See **APPEAL.** 36.

**JUDGE**—*continued.*

— Judge's notes.

See **COUNTY COURT**—Appeal. 1, 12.

— Personal abuse of judge with reference to his conduct as judge—Publication of comments.

See **CONTEMPT OF COURT.** 10.

— Salaries, &c., of Indian judges.

See **INDIA.**

3. — Statutory limitation of power to appoint judges.

The Governor of a Colony having constitutional government cannot without express legislative sanction appoint judges of the Superior Court in excess of the number for whose salary legislative provision has been made. The law of England as to the appointment of judges reviewed and adopted as applicable to such colonies. *BUCKLEY v. EDWARDS* **P. C. [1892] A. C. 387**

**JUDGMENT.**

See **Cases under PRACTICE**—Judgment.

**JUDGMENT CREDITOR**—Bankruptcy.

See **Cases under BANKRUPTCY.**

— Charging orders on fund in lunacy.

See **LUNATIC**—Maintenance. 17.

**JUDGMENT DEBT**—Charge on land—Legal remainder—Receiver—Equitable execution—"Actual delivery in execution"—Judgments Acts, 1838, 1864 (1 & 2 Vict. c. 110, s. 13; 27 & 28 Vict. c. 112, ss. 1, 4)—Practice—Sale—Summons—Petition—R. S. C., Order LV., r. 9 B.

A judgment debt is not enforceable as a charge against the judgment debtor's legal remainder in real estate: nor does an order obtained by the judgment creditor appointing a receiver constitute an "actual delivery in execution" within s. 1 of the Judgments Act, 1864, entitling the creditor to a sale of the remainder under s. 4.

Decision of North J. affirmed.

*Per North J.*: An application by a judgment creditor for a sale under s. 4 of the Judgments Act, 1864, for the recovery of his debt, is now more properly made by summons and not by petition: R. S. C., Order LV., r. 9 B. *In re HARRISON AND BOTTOMLEY* — **C. A. [1899] W. N. 15 (7); [1899] 1 Ch. 465**

Referred to by Stirling J. *Johns v. Pink*, [1900] 1 Ch. 296, 306.

2. — Charge on land—Reversion—Judgments Acts, 1838 (1 & 2 Vict. c. 110), s. 13; 1864 (27 & 28 Vict. c. 112), s. 1.

A remainder in real estate to a married woman contingent on her having no children is an interest to which s. 1 of the Judgments Act, 1864, applies, and the judgment creditor does not get a charge under s. 13 of the Act of 1838. *HOOD BARRS v. CATHCART* (No. 5)

**North J. [1895] 2 Ch. 411**

— Charging order—Shares—Maintenance of lunatic—Scheme.

See **LUNACY**—Maintenance. 20.

— Charging order—Shares held in own right.

See **CHARGING ORDER.** 3.

**JUDGMENT DEBT—continued.****3. — Debtor's reversionary interest in personality.**

There is no jurisdiction to make a declaration of charge upon a judgment debtor's reversionary personally in favour of a judgment creditor who has been appointed receiver of such property. *FLEGG v. PRENTIS*

*Stirling J. [1892] 2 Ch. 428*

— Equitable assignment of—Bankruptcy notice.  
*See BANKRUPTCY—Act of Bankruptcy.*  
15.

**4. — Execution — Irish judgment — Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), ss. 1, 4 — Debtors Act, 1869 (32 & 33 Vict. c. 62), ss. 4, 5.**

The procedure by judgment summons under the Debtors Act, 1869, is not "execution" of the judgment debt within s. 4 of the Judgments Extension Act, 1868, and consequently an English Court has no jurisdiction to issue a judgment summons for the purpose of enforcing a registered Irish judgment. *In re WATSON. Ex parte JOHNSTON. JOHNSTON v. WATSON*

*C. A. [1893] 1 Q. B. 21*

Followed by *C. A. In re A Bankruptcy Notice, [1898] 1 Q. B. 383.*

**5. — Execution—Receiver—Future earnings.**

There is no jurisdiction to appoint a receiver of the future earnings of a judgment debtor, by way of equitable execution of a judgment. *HOLMES v. MILLAGE*

*C. A. revers. Div. Ct. [1893] 1 Q. B. 551*

Considered. *Cadogan v. Lyric Theatre, C. A., [1894] 3 Ch. 338.*

*And see RECEIVER.*

— Joinder of one or more in same bankruptcy notice.

*See BANKRUPTCY—Act of Bankruptcy.*  
17.

**6. — Partnership firm—Receiving order.**

Where a firm includes an infant partner judgment cannot be recovered against the firm simply, but may be recovered against the defendants other than the infant partner; nor can a receiving order be made on or against the firm simply.

(A) *In re BEAUCHAMP BROTHERS. Ex parte BEAUCHAMP C. A. [1894] 1 Q. B. 1; varied by H. L. (E.) sub nom. LOVELL & CHRISTMAS*

*[v. BEAUCHAMP [1894] A. C. 607*

(B) *HARRIS v. BEAUCHAMP BROTHERS (No. 2)*

*C. A. [1894] 1 Q. B. 801*

[NOTE.—This case seems to be overruled by (A).]

*And see Cases under BANKRUPTCY—Partnership.*

— Receiver and manager—Preferential payments — Proper outgoings—Compensation.

*See RAILWAY. 55.*

**JUDGMENT DEBTOR**—Bankruptcy of—Costs—Property recovered—Charging order on dividend.

*See SOLICITOR. 15.*

— Death of—Administration order—Sale by Sheriff.

*See BANKRUPTCY—Execution. 103, 106.*

**JUDGMENT DEBTOR—continued.**

— Death of—Leave to issue execution against executor.

*See CHARGING ORDER. 2.*

— Examination of—Conduct money.

*See EVIDENCE. 30.*

— Execution—Sale by sheriff—Payment of rent out of proceeds.

*See BANKRUPTCY—Execution. 104.*

— Receiving order in lieu of committal — Foreigner.

*See BANKRUPTCY — Receiving Order. 197.*

— Sale of interest in land.

*See PRACTICE—Originating Summons. 74.*

**JUDGMENTS EXTENSION ACT, 1868**—Bankruptcy notice—Scottish judgment registered in England.

*See BANKRUPTCY—Act of Bankruptcy. 24.*

**JUDICIAL ACT**—Of returning officer.

*See THAMES. 3.*

**JUDICIAL COMMITTEE.**

*See PRIVY COUNCIL — Judicial Committee.*

**JUDICIAL EXPENSES**—Of corporation.

*See CORPORATION. 20.*

**JUDICIAL FACTOR** — Investments — Curator bonis—Liability—Harbour rates.

*See TRUSTEE—Investments. 65.*

**JUDICIAL INQUIRY**—Domestic forum—Personal interest of member of tribunal.

A person who is acting in a judicial character must stand in such a relation to the matter of inquiry that he cannot be reasonably suspected of any bias. If he has any pecuniary interest however small in the result of the proceedings he will be disqualified from acting. *ALLINSON v. GENERAL MEDICAL COUNCIL.*

*C. A. [1894] 1 Q. B. 750*

Referred to by Div. Ct. *Reg. v. Burton, [1897] 2 Q. B. 468, 473.*

**JUDICIAL SEPARATION.**

*See Cases under HUSBAND AND WIFE—Summary Jurisdiction.*

**JUDICIAL TRUSTEE.**

*See TRUSTEE—Judicial Trustees.*

**JURISDICTION.**

*See Cases under Heading of Subject-matter of JURISDICTION.*

**JURY**—Separation of juries in cases of felony permitted by the Juries Detention Act, 1897 (60 Vict. c. 18).

*Special Juries Act, 1898 (61 Vict. c. 6), amends the law as to special juries.*

1. — *Exemption — Coroner's jury — Common Juries Act, 1825 (6 Geo. 4. c. 50) ss. 1, 2, 8, 25, 52 — Juries Act, 1870 (33 & 34 Vict. c. 77) ss. 3, 9, Sched.—Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 3.*

The exemption of solicitors' managing clerks from service on juries which is conferred by s. 52 of the County Juries Act, 1825, and by s. 9,

**JURY**—*continued.*

and the Sched. of the Juries Act, 1870, extends to service on coroners' juries. *In re DUTTON*

**Div. Ct. [1892] 1 Q. B. 486**

— Question of fact not submitted to jury—New trial—Issue of fact as to variation of easement claimed.  
*See JAMAICA. 4.*

-- Right to be tried by jury—Justices—Summary jurisdiction.  
*See JUSTICES. 14.*

— Trial at Gibraltar should be by.  
*See GIBRALTAR. 1.*

— Trial by—Admiralty jurisdiction—County court—Practice.  
*See SHIPPING—Practice. 196.*

— Trial by—Exchequer prosecutions.  
*See REVENUE. 172.*

-- Trial by—Jurisdiction of Court of Chancery of County Palatine of Lancaster.  
*See LANCASTER COURT. 1.*

— Trial by jury.  
*See PRACTICE—Trial. 256, 257.*

— Withdrawal of facts from—Misdirection.  
*See JAMAICA. 3.*

**JUS ACCRESCENDI**—Will—Construction—Fidei commissum.  
*See CEYLON. 1.*

**JUS TERTII**—Bailor and bailee—Fraud.  
*See ESTOPPEL.*

— Right to set up—Bailee—Estoppel.  
*See INTERPLEADER. 1.*

**JUSTICES.**

*Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), amends the law relating to the Summary Jurisdiction of Magistrates in reference to Married Women.*

*Rule and Schedule of Additional Forms dated Nov. 5, 1895, under the Summary Jurisdiction Acts. St. R. & O. 1895, 423, L. 24. Price 3d.*

*Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), amends the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).*

*Generally, col. 1027.*

*Appeals to High Court, col. 1038.*

*Appeals to Quarter Sessions, col. 1040.*

*Clerk to Justices, col. 1042.*

*Disqualification, col. 1042.*

*Jurisdiction and Practice. See JUSTICES—Generally.*

**Generally.**

[NOTE.—Under this sub-heading are included Cases relating to the JURISDICTION OF JUSTICES AND PRACTICE generally.]

— Apprenticeship deed—Contract not for benefit of infant.  
*See INFANT. 4, 5.*

— Bastardy laws.  
*See Cases under BASTARDY.*

— Bastardy laws—Simultaneous applications to several justices.  
*See BASTARDY. 4.*

**JUSTICES (Generally)**—*continued.*

— Betting.

*See Cases under GAMING.*

— Betting—Private ground used for—"Place of public resort"—By-law—Validity.  
*See CORPORATION. 1.*

— Bicycle.

*See Cases under BICYCLE.*

— Bread—Sale otherwise than by weight.

*See BREAD.*

1.—*Brothel—Prosecution for keeping brothel—Disorderly Houses Acts, 1751–2 (25 Geo. 2, c. 36), s. 5, 6, 7; (58 Geo. 3, c. 70), s. 7—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13.*

It is not necessary to proceed by information in proceedings under s. 13 of the Criminal Law Amendment Act, 1885. A justice is bound to issue his warrant for the arrest of a person accused by two inhabitants of a parish of keeping a disorderly house, in accordance with the provisions of 25 Geo. 2, c. 36, s. 6, which applies to summary proceedings under s. 13 of the Criminal Law Amendment Act, 1885. *REG. v. NEWTON*  
**Div. Ct. [1892] 1 Q. B. 648**

— Buildings.

*See Cases under BUILDINGS.*

**LONDON—Buildings.**  
**STREETS.**

— "Candidate"—Nomination of disqualified person—Election—Right to petition.  
*See CORPORATION. 14.*

— Coal.

*See Cases under WEIGHTS AND MEASURES.*

— Continuing offence—By-law—Builder without power to remedy breach.

*See BUILDER.*

2.—*Cab-fare—Order to pay cab-fare and costs—Imprisonment—Railway Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 145—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 66—Summary Jurisdiction Acts, 1879 (42 & 43 Vict. c. 49), ss. 6, 35; 1884 (47 & 48 Vict. c. 43), ss. 4, 5.*

An order to pay a cab-fare and costs under s. 66 of the Towns Police Clauses Act, 1847, is an order to pay a "sum of money claimed to be due and recoverable on complaint to a court of summary jurisdiction" within s. 6 of the Summary Jurisdiction Act, 1879, and is therefore not enforceable by imprisonment, but only as a civil debt under s. 35 of the latter Act. *REG. v. KERSWILL* - - - **Div. Ct. [1895] 1 Q. B. 1**

3.—*Costs—Dismissal of information—Order against complainant for costs—Summary Jurisdiction Acts, 1848 (11 & 12 Vict. c. 43), s. 22; 1879 (42 & 43 Vict. c. 49), ss. 35, 47.*

An order for costs made against a complainant whose information is dismissed may, where no sufficient distress is found, be enforced by committal if it is proved that the complainant has or has had since the date of the order means to pay. *REG. v. LORD MAYOR OF LONDON. Ex parte BOALER*  
**Div. Ct. [1893] 2 Q. B. 146**

4.—*Costs of appeal to quarter sessions—Payment by treasurer of county or borough—"Place"—Vagrant Act, 1824 (5 Geo. 4, c. 83), s. 9.*

By s. 9 of the Vagrant Act, 1824, upon an

**JUSTICES (Generally)—continued.**

appeal to quarter sessions against a conviction under the Act, the justices in quarter sessions are empowered to order the treasurer of "the county, riding, division, or place in which the offence shall have been committed," to pay the prosecutor's costs.

A county borough had a separate commission of the peace, but not a separate court of quarter sessions. An appeal from a conviction under the Act by the borough justices having been successfully brought to the quarter sessions for the county, an order was made by quarter sessions upon the borough treasurer for payment of the prosecutor's costs:—

*Held*, that the word "place" in the section must be construed as *ejusdem generis* with "county, riding, division," and meant a place having a separate court of quarter sessions; and that the order of quarter sessions was therefore wrongly made upon the borough treasurer, and should have been made upon the treasurer of the county. *REG. v. WEST RIDING JUSTICES*

**Div. Ct. [1900] 1 Q. B. 291**

— Costs of chief constable—Payment of—Borough fund—Appeal against refusal of licence.  
*See CORPORATION.* 10.

— Costs of summary proceedings.  
*See HUSBAND AND WIFE — Summary Jurisdiction.* 81—83.

— Criminal law.  
*See Cases under CRIMINAL LAW.*

— Cruelty to animals.  
*See Cases under CRIMINAL LAW—Cruelty to Animals.*

5. — Cruelty to animals—Offence punishable upon summary conviction—Information—"Counselling" commission of offence—*Summary Jurisdiction Act*, 1848 (11 & 12 *Vict. c. 43*), s. 5—*Cruelty to Animals Act*, 1849 (12 & 13 *Vict. c. 92*), s. 2.

A person who has counselled the commission of an offence punishable on summary conviction may, under s. 5 of the *Summary Jurisdiction Act*, 1848, be convicted upon an information which charges him with having committed such offence as a principal offender.

A debt, was, therefore, held liable to conviction upon an information which charged him with having cruelly ill-treated a horse by causing it to be worked in an unfit state contrary to s. 2 of 12 & 13 *Vict. c. 92*, although the offence proved was that he had knowingly counselled the owner of the horse to cause the act of cruelty to be done. *BENFORD v. SMIS* **Div. Ct. [1898] 2 Q. B. 641**

— Cruelty to children.  
*See Cases under CRIMINAL LAW—Cruelty to Children.*

— Dock-master—Control of—Obstruction—*West India Docks.*  
*See DOCK.* 1.

— Duty of—Dog licence—Certificate of exemption.  
*See REVENUE—Dog Licence.* 12.

6. — Election to be tried on indictment—Adding counts to indictment for offences not included in summons—*Indictable Offences Act*, 1848 (11 & 12

**JUSTICES (Generally)—continued.**

*Vict. c. 42*), s. 25—*Summary Jurisdiction Act*, 1848 (11 & 12 *Vict. c. 43*)—*Betting House Act*, 1853 (16 & 17 *Vict. c. 119*), ss. 1, 3—*Vexatious Indictments Act*, 1859 (22 & 23 *Vict. c. 17*), s. 1—*Criminal Law Amendment Act*, 1867 (30 & 31 *Vict. c. 35*), s. 1—*Summary Jurisdiction Act*, 1879 (42 & 43 *Vict. c. 49*), s. 17.

Where a person accused of an offence triable summarily elects, under s. 17 of the *Summary Jurisdiction Act*, 1879, to be tried by a jury, the accused may be committed for trial in respect of any indictable offence disclosed by the depositions; and in cases to which the *Vexatious Indictments Act* does not apply, or in which the operation of that Act is limited by 30 & 31 *Vict. c. 35*, s. 1, counts may be added in respect of any indictable offence disclosed by the depositions, although the accused was not summoned in respect thereof. *REG. v. BROWN*

**C. C. R. [1895] 1 Q. B. 119**

Referred to by *Hawkins J. Hawke v. Dunn*, [1897] 1 Q. B. 579, 599.

— Employment of child by parent "for purposes of gain."

*See SCHOOLS.* 1.

— Engaging seamen for foreign ship—Fine—Civil debt.

*See SHIPPING—Seamen.* 258.

— Examination of defendant—Previous conviction—Prevention of cruelty to children.  
*See CRIMINAL LAW—Evidence.* 18.

7. — Excise prosecution—Officer of Inland Revenue—Proof of authority—*Excise Act*, 1827 (7 & 8 *Geo. 4. c. 53*), s. 71—*Inland Revenue Regulation Act*, 1890 (53 & 54 *Vict. c. 21*), ss. 21, 24.

Where in an information by an inland revenue officer for excise penalties an allegation is made that the Inland Revenue Commrs. had ordered the prosecution, such allegation is sufficient proof of such order without further or other evidence, since the provisions of s. 71 of 7 & 8 *Geo. 4. c. 53*, are not impliedly repealed by ss. 21, 24 of the *Inland Revenue Regulation Act*, 1890. *DYER v. TULLEY* — — — [1894] 2 Q. B. 794

— Factory Acts.

*See Cases under MASTER AND SERVANT Factory Acts.*

— False pretences.

*See Cases under CRIMINAL LAW—False Pretences.*

— False trade description—Oral statement—Description in invoice written at purchaser's request.  
*See TRADE-MARK.*

8. — Fine—Mitigation of statutory fine—*Jurisdiction—Summary Jurisdiction Act*, 1879 (42 & 43 *Vict. c. 49*), s. 4—*Cotton Cloth Factories Act*, 1889 (52 & 53 *Vict. c. 62*), s. 13.

The power given to courts of summary jurisdiction by s. 4 of the *Summary Jurisdiction Act*, 1879, to reduce the prescribed amount of a fine, if it be imposed as in respect of a first offence, does not enable them to reduce the prescribed amount of the fine imposed by s. 13 of the *Cotton Cloth Factories Act*, 1889, which enacts that where there is a contravention of or non-compliance

**JUSTICES (Generally)—continued.**

with the provisions of the Act, and after written notice from the inspector the acts are continued or not remedied, the occupier of the factory is to be liable, on summary conviction, for the first offence to a penalty of not less than 5*l.* nor more than 10*l.* **OSBORN v. WOOD BROTHERS**

Div. Ct. [1896] W. N. 174 (6);  
[1897] 1 Q. B. 197

— Fugitive offender—Committal to await return  
—Power to admit to bail—Jurisdiction.  
*See* BAIL. 1.

— Hawker, licensed—Sale by, of goods for which licence unnecessary—Penalty.  
*See* MARKETS AND FAIRS. 2.

— House used for purpose of a sweepstake—  
Betting Act—Criminal law.  
*See* GAMING. 33.

9. — *Industrial Schools Act, 1866* (29 & 30 Vict. c. 118), s. 14.

The *Industrial Schools Act, 1866* (29 & 30 Vict. c. 118), does not contain a code of criminal procedure and is not punitive in its character, but is intended for the protection of children coming within its operation. Where, therefore, a child apparently under fourteen years of age is charged before a court of summary jurisdiction with larceny, and the charge is dismissed, but evidence is given that he frequents the company of reputed thieves, he may be sent to an industrial school under s. 14 of the Act without being brought afresh before the Court by summons or otherwise upon a substantive charge under that section. **REG. v. JENNINGS** Div. Ct. [1895] W. N. 142 (7)

10. — *Infectious disease—Order for removal to hospital—Finality of order—Justices—Jurisdiction—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 124.

The validity of an order for the removal to a hospital of a person suffering from a dangerous infectious disease, made ex parte by a single justice under s. 124 of the *Public Health Act, 1875*, cannot be inquired into upon the hearing of a summons under that section before a court of summary jurisdiction for obstructing the execution of the order. **REG. v. DAVEY**

Div. Ct. [1899] 2 Q. B. 301

11. — *Infectious disorder—Order for removal of patient—"Proper lodging or accommodation"—Justices—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 124.

Sect. 124 of the *Public Health Act, 1875*, enables justices to order the removal to a hospital of any person suffering from a dangerous infectious disorder who is "without proper lodging or accommodation." Where it was proved that a person suffering from such a disorder had proper lodging and accommodation, so far as he himself was concerned, at his father's house, but that he could not be properly isolated and there would be danger of infection to the other inmates of the house if he remained there:—

*Held*, that there was evidence that he was "without proper lodging or accommodation" within the meaning of s. 124. **WARWICK v. GRAHAM**

— Div. Ct. [1899] W. N. 88;  
[1899] 2 Q. B. 191

**JUSTICES (Generally)—continued.**

— Information—Consent in writing of chief constable.

*See* SUNDAY. 2.

12. — *Information—Sufficiency of information—Allegation of reasonable suspicion of larceny—Specification of goods alleged to be stolen—Search-warrant—Legality of warrant.*

A search-warrant may be issued on an allegation of reasonable suspicion of larceny.

On an application to a justice of the peace for a search-warrant, the sworn information upon which the application was made stated that the informant "hath just and reasonable cause to suspect and doth suspect that W. J. has in his possession certain property belonging to" (the informant), "and that he has requested the said W. J. to allow him to search several boxes which the said W. J. has had packed ready to be taken away, and which he refuses to be looked through." The justice issued his warrant, which was executed. In an action of trespass alleging that the information was insufficient, and that the warrant was consequently illegal and without jurisdiction:—

*Held*, affirming the judgment of the Lord Chief Justice, [1896] 2 Q. B. 418, that it is not necessary in such an information to allege that a larceny has in fact been committed, but that it is enough to allege a suspicion that a larceny has been committed; that it is not necessary to specify in the information the particular goods for which a search is desired; that the information in question substantially averred that the informant suspected certain property of his to have been stolen; and that it was sufficient to give the justice jurisdiction. **JONES v. GERMAN**  
C. A. [1897] 1 Q. B. 374

13. — *Intimidation—Conviction—Conspiracy and Protection of Property Act, 1875* (38 & 39 Vict. c. 86), s. 7.

In a summary conviction under s. 7 of the *Conspiracy or Protection of Property Act, 1875*, for intimidation, the acts which the person had a legal right to do must be specified. **REG. v. MCKENZIE** — Div. Ct. [1892] 2 Q. B. 519

Referred to by C. A. *J. Lyons & Sons v. Watkins*, [1899] 1 Ch. 255, 266.

— Jurisdiction—Desertion—Maintenance.  
*See* HUSBAND AND WIFE.

— Jurisdiction—Digging gravel for roads.  
*See* COMMON. 2.

— Jurisdiction under Lands Clauses Acts.  
*See* Cases under LANDS CLAUSES ACTS.

— Jurisdiction under Licensing Acts.  
*See* Cases under LICENSING ACTS.

— Jurisdiction—Margarine Act, 1887.  
*See* ADULTERATION—Margarine.

— Jurisdiction under Public Health Acts.  
*See* Cases under NUISANCE.

14. — *Jurisdiction—Right to be tried by jury—Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 17, sub-s. 2.

Where a person appears before a court of summary jurisdiction, charged with an offence to which s. 17 of the *Summary Jurisdiction Act, 1879*, applies, the Court ought, in pursuance of

**JUSTICES (Generally)—continued.**

sub-s. 2, to inform him of his right to be tried by a jury before he pleads to the charge. If he be not informed of that right and, after the charge has been gone into, pleads guilty, the conviction is bad.

*Semble*: It is immaterial whether or not he knew of his right to be tried by a jury, and immaterial whether or not the Court knew, before the proceedings commenced, that he meant to plead guilty in the course of the case. *REG. v. COCKSHOTT* - Div. Ct. [1898] 1 Q. B. 582

— Jurisdiction—Truck Act—Absence of workman without leave.  
*See MASTER AND SERVANT*. 91.

— Licensing Acts.  
*See Cases under LICENSING ACTS*.

— Licensing Acts—Hearing and determination according to law.  
*See MANDAMUS*. 3.

— Local government.  
*See LOCAL GOVERNMENT*.

— Lodging-house, common—Liability to penalty for keeping—Charitable institution—Non-registration.  
*See LODGING-HOUSE*. 1, 2.

— London Building Act—Service of notices.  
*See Cases under LONDON—Buildings*.

15. — *Lunacy—Justices acting under s. 299, sub-s. 1, of the Lunacy Act, 1890 (53 & 54 Vict. c. 5)—Power to state special case.*

Application made by a relieving officer of a union for an order under s. 299, sub-s. 1, of the Lunacy Act, 1890, directing him to seize a sum of money standing in the Post Office Savings Bank in the name of a lunatic who had become chargeable to the union for the purpose of paying the expenses of maintenance and incidental expenses incurred or to be incurred in relation to the lunatic. The justices having declined to make the order, the relieving officer applied to them to state a special case for the opinion of the Court. The justices stated a case subject to the question whether they had any power to state it:—

*Held*, that the justices when acting under s. 299 were not acting as a court of summary jurisdiction, and had consequently no power to state a case under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 11). *In re WILLIAM BETHELL* - Div. Ct. [1899] W. N. 47

— Lunatic, pauper — Reception order — Workhouse situate outside union.  
*See LUNACY—Powers*. 31.

— Maintenance order.  
*See Cases under POOR LAW*.

— Malicious damage to property.  
*See Cases under CRIMINAL LAW—Malicious Damage*.

— Married women—Summary Jurisdiction (Married Women) Act, 1895.  
*See Cases under HUSBAND AND WIFE—Summary Jurisdiction*.

— Merchandise marks.  
*See TRADE-MARK—Merchandise Marks*.

**JUSTICES (Generally)—continued.**

— Merchandise marks—Criminal liability of master for act of servant.  
*See MASTER AND SERVANT*. 72.

— Milk.  
*See ADULTERATION—Milk*.

— Mitigation of statutory fine.  
*See No. 8, above*.

— Nuisance by sewerage—Drainage by houses—Want of structural convenience—Liability of owners.  
*See SEWERS*. 26.

— Overseer, assistant—Right to rate-books—Appointment.  
*See PARISH COUNCILS*. 2.

— Nuisances and sanitation.  
*See Cases under Nuisance*.

— Patent agents—Registration—Validity of rules—Saving of rights acquired.  
*See PATENT—Registration*. 49.

— “Physician”—False description.  
*See MEDICAL PRACTITIONER*. 3.

— Poor law.  
*See Cases under POOR LAW*.

— Poor-rates.  
*See Cases under RATES*.

16. — *Poor-rate—Distress warrant—Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), ss. 7, 10—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, sub-s. 11.*

Justices sitting to hear an application to issue a distress warrant for the non-payment of poor-rates are a court of summary jurisdiction within s. 13, sub-s. 11, of the Interpretation Act, 1889, not necessarily exercising a merely ministerial duty, but are authorized to inquire into the validity of the objections taken by the party summoned, and may state a case for the opinion of the High Court. *FOURTH CITY MUTUAL BUILDING SOCIETY v. CHURCHWARDENS, &C., OF EAST HAM* - Div. Ct. [1892] 1 Q. B. 661

17. — *Poor-rate—Rate-book not conclusive.*

The overseers of a parish summoned A. for non-payment of rates. A. was on the rate-book, but on the hearing of the summons tendered evidence to shew he was only a caretaker. The justices declined to hear the case, considering the rate-book conclusive, and made an order for payment:—

*Held*, that the rate-book was not conclusive, and that the justices were bound to hear the case. *REG. v. LONDON JUSTICES (No. 1)*

Div. Ct. [1893] W. N. 86  
PRISONS.] *Rule dated April 6, 1899, under s. 29 of Summary Jurisdiction Act, 1879, as to application of sums paid under s. 9 of Prison Act, 1898. ST. R. & O. 1899, No. 204, L. 6.*

— Public authorities protection.  
*See PUBLIC AUTHORITIES PROTECTION*.

— Rates.  
*See Cases under RATES*.

— Rates—Estoppel—Res judicata—Decision quashing previous rate.  
*See HIGHWAY*. 11.

**JUSTICES (Generally)—continued.**

— Rates—Exemption—Sum paid in discharge of liability to repair rations tenuræ.  
See HIGHWAY. 26.

— Rates—Statute—Implied repeal—Exemption from taxes and assessments—City of London.  
See STATUTE. 7.

— Receiving—Property stolen.

See CRIMINAL LAW—Larceny. 39, 40.

18. — *Res judicata*—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 40.

To constitute a good plea of *res judicata*, it must be shown that the former suit was one in which the plt. might have recovered precisely what he seeks in the second.

A magistrate's order under s. 40 of the Metropolitan Police Act, 1839, is no bar to an action for special damage arising out of the same detention. MIDLAND RY. CO. v. MARTIN & CO.  
Div. Ct. [1893] 2 Q. B. 172

— Sale of food and drugs.

See Cases under ADULTERATION.

— Salmon—Device to catch fish—Nets.

See FISHERY. 7.

— Salmon Fishery Acts—Recovery of penalties—Limitation of time.

See FISHERY. 11.

— School board—Disqualification of member.

See SCHOOLS—School Board. 5.

— Seamen—Wages—Advances.

See SHIPPING—Seamen. 266.

19. — *Separation order—Evidence*—(24 & 25 Vict. c. 100), s. 43—*Matrimonial Causes Act*, 1878 (41 & 42 Vict. c. 19), s. 4.

A husband who has been convicted by justices of an aggravated assault upon his wife is entitled to give evidence on an application by her to them for a separation order under s. 4 of the *Matrimonial Causes Act*, 1878. JONES v. JONES - - - JEUNE P. [1895] P. 201

— Separation order—Husband and wife.

See Cases under HUSBAND AND WIFE—Summary Jurisdiction.

— Servant—Misconduct of—Forgetfulness—Contract—Dismissal.

See MASTER AND SERVANT. 57.

— Sewers.

See LONDON—Sewers.  
SEWERS.

— Street.

See LONDON—Streets.  
STREETS.

— Summary Jurisdiction.

See Cases under JUSTICES.

— Summary Jurisdiction (Married Women) Act.

See Cases under HUSBAND AND WIFE—Summary Jurisdiction.

— Thames navigation—By-law—Waterman on tug to assist in navigation—Ultra vires.  
See THAMES. 12.

20. — *Time—Computation of—Cruelty to Animals Act*, 1849 (12 & 13 Vict. c. 92), s. 14.

By s. 14 of the Prevention of Cruelty to Animals Act, 1849, any complaint is to be made within one calendar month after the alleged

**JUSTICES (Generally)—continued.**

offence. On June 30 a complaint was made in respect of an offence committed on May 30:—

*Held* to be in time, the day on which the offence was committed being excluded from the computation of time. RATCLIFFE v. BARTHOLOMEW - - - Div. Ct. [1892] 1 Q. B. 161

21. — *Time—Limitation of—Conviction—Public Health (London) Act*, 1891—*Closing order—Summary Jurisdiction Act*, 1848 (11 & 12 Vict. c. 43), s. 11—*Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), s. 5, sub-s. 9.

The limitation of six months, within which complaint must be made, imposed by s. 11 of the Summary Jurisdiction Act, 1848, applies to proceedings for acting contrary to a closing order, in breach of s. 5, sub-s. 9, of the Public Health (London) Act, 1891, and therefore a conviction for such an offence, which imposes a fine in respect of every day during a period exceeding six calendar months, is bad. REG. v. SLADE. *Ex parte SAUNDERS* Div. Ct. [1895] 2 Q. B. 247

22. — *Time—Limitation of—Rate—Summons—Summary Jurisdiction Act*, 1848 (11 & 12 Vict. c. 43), s. 11.

Sect. 11 applies to the hearing of a summons before justices for arrears of water-rate, and where the sum accrued due more than six months before the date of the summons the justices have no jurisdiction. EAST LONDON WATERWORKS CO. v. CHARLES

Div. Ct. [1894] 2 Q. B. 730

— Limitation of—Recovery of penalties—Summary proceedings.

See FISHERY. 11.

— Trespass on grass-field—Actual damage—Malicious injury to property.  
See CRIMINAL LAW. 44.

— Turnpike Act—Tolls—Exemption—Carriage employed in military service of Crown.  
See HIGHWAY. 31.

23. — *Two informations on same facts—Hearing of second information before decision of first.*

Where two informations are brought on the same facts, different offences being charged, and the justices are not entitled to hear the evidence on the second information before deciding the first, *held*, a conviction after such a course of procedure is bad. HAMILTON v. WALKER

Div. Ct. [1892] 2 Q. B. 25

24. — *Two offences—Information disclosing two offences—Summary Jurisdiction Act*, 1848 (11 & 12 Vict. c. 43), ss. 1, 10.

Though a prosecutor may be required to elect on which charge he will proceed, the inclusion of two offences in one information is a "defect in substance" within the meaning of s. 1 of the Summary Jurisdiction Act, 1848, and no objection to the information can be allowed in respect of it. RODGERS v. RICHARDS

Div. Ct. [1892] 1 Q. B. 555

— Unsound food, Destruction of—Duty of magistrate.

See FOOD. 1.

25. — *Unsound meat—Guilty knowledge—Public Health Act*, 1875 (38 & 39 Vict. c. 55), ss. 116, 117.

On a summons under s. 117 of the Public



**JUSTICES (Generally)—continued.**

Health Act, 1875, charging a person with having unsound meat on his premises for sale, it is not necessary to show that the defendant had personal knowledge of the condition of the meat. **BLAKER v. TILLSTONE** Div. Ct. [1894] 1 Q. B. 345

**26. — Unsound meat—Not exposed for sale—Public Health Act, 1875** (38 & 39 Vict. c. 55), ss. 116, 117.

A person having in his possession unsound meat intended for human food can be convicted under s. 117 of the Public Health Act, 1875, notwithstanding that he has not exposed the meat for sale. **MALLINSON v. CARR**

Div. Ct. [1891] 1 Q. B. 48

**27. — Unsound meat—Seized but not condemned—Full compensation—Public Health Act, 1875** (38 & 39 Vict. c. 55), ss. 116, 117, 308.

The owner of meat seized as unwholesome and brought before a justice for condemnation under ss. 116, 117 of the Public Health Act, 1875, is not entitled as of right to attend and give evidence in defence of the meat; but the justice may, if he thinks fit, hear evidence tendered by the owner; and if the justice after so doing refuses to condemn the meat, the full compensation to which the owner will be entitled under s. 308 will include the costs reasonably incurred in resisting the condemnation of the meat. *In re BATER AND BIRKENHEAD CORPORATION*

Div. Ct. [1893] 1 Q. B. 679;

affirm. by C. A. [1893] 2 Q. B. 77

— **Vaccination — Conscientious objection — Requirement of production of birth certificate.**

See **VACCINATION. 1.**

**28. — Vaccination—Previous conviction.**

If a person has been fined for disobedience to an order for the vaccination of a child, he cannot be fined a second time for disobedience under the same order. **REG. v. PORTSMOUTH JUSTICES**

Div. Ct. [1892] 1 Q. B. 491

— **Vaccination officer—Duty of guardians to appoint—Mandamus.**

See **VACCINATION. 3.**

— **Vagrancy—Wilful refusal or neglect of person to maintain himself—Incapacity resulting from drunkenness.**

See **VAGRANCY. 2.**

— **Vagrant Acts—Pretending to tell fortunes—Intent to deceive—Rogue and vagabond.**

See **VAGRANCY. 1.**

— **Water tower—Effect of Public Health Acts on subsequent special water company's Act—By-laws—Buildings.**

See **BUILDINGS. 3.**

— **Water.**

See **Cases under WATER.**

— **Water-closets.**

See **Cases under WATER-CLOSETS.**

— **Weight indicated exceeding weight of article sold—"False or unjust."**

See **WEIGHTS AND MEASURES. 2.**

— **Wooden structure used in connection with traffic of railway—Licence of county council.**

See **LONDON. 32.**

**JUSTICES (Generally)—continued.**

**29. — Jurisdiction of High Court—Right to recover expenses in Court of Summary Jurisdiction—Wrecks, removal of—Harbours, Docks, and Piers Clauses Act, 1847** (10 & 11 Vict. c. 27), s. 56.

Where a statute gives a right to recover expenses in a court of summary jurisdiction from a person who is not otherwise liable, there is no right to come to the High Court for a declaration that the applicant has a right to recover the expenses in a court of summary jurisdiction: he can only take proceedings in the latter court.

The construction of s. 56 of the Harbours, Docks, and Piers Clauses Act, 1847, adopted in *The Crystal*, [1894] A. C. 508, applied to s. 47 of the Aire and Calder Navigation Act, 1889 (52 & 53 Vict. c. xxxii.). **BARRACLOUGH v. BROWN**

H. L. (E.) [1897] A. C. 615

Referred to by C. A. *Att.-Gen. v. Merthyr Tydfil Union*, [1900] 1 Ch. 516, 550.

**Appeal.**

[Appeals generally. See Cases under **APPEAL.**]

**Appeals to the High Court.**

**30. — Case stated—Number of counsel heard.**

Upon the argument of a special case only one counsel is heard on each side, except when the case is stated upon an order of sessions, when it is brought before the Court upon an order nisi to quash, and then all the counsel instructed on both sides may be heard. **SPURLING v. BANTOFT**

Div. Ct. [1891] 2 Q. B. 384

**31. — Case stated — Poor-rate — Summary Jurisdiction Act, 1884** (47 & 48 Vict. c. 43), ss. 7, 10—*Interpretation Act, 1889* (52 & 53 Vict. c. 63), s. 13, sub-s. 11.

Justices acting on the hearing of an application for a distress warrant to enforce poor-rates sit as a court of summary jurisdiction, and may state a case for the High Court as to any question of law raised by the application. **FOURTH CITY MUTUAL BUILDING SOCIETY v. CHURCHWARDENS AND OVERSEERS OF EAST HAM**

Div. Ct. [1892] 1 Q. B. 661

**32. — Case stated—Service of notice—Waiver—Summary Jurisdiction Act, 1879** (42 & 43 Vict. c. 49), s. 33—*Summary Jurisdiction Rules, 1886*, r. 18.

It is necessary that all the justices who may have heard the case be served with the written notice requiring them to state a special case. Service on those who signed the decision, in this case two out of the five justices, is not sufficient. If the statute, 20 & 21 Vict. c. 43, be not strictly complied with, the High Court has no jurisdiction to hear the appeal, notwithstanding that the respondent is willing to waive the informality. **WESTMORE v. PAINE** Div. Ct. [1891] 1 Q. B. 482

**33. — Case stated—Service of notice—Summary Jurisdiction Act, 1857** (20 & 21 Vict. c. 43), s. 2.

The High Court has no jurisdiction to hear an appeal by way of case stated under 20 & 21 Vict. c. 43, s. 2, unless the appellant has given the respondent notice in writing of the appeal with a copy of the case before transmitting the case to the High Court. **EDWARDS v. ROBERTS**

Div. Ct. [1891] 1 Q. B. 302

**JUSTICES (Appeals to the High Court)—*contd.***

**34. — Case stated—Service of notice—Licensing Act.**

Justices, when sitting to grant licences under the Alehouse Act, 1828, are a court of summary jurisdiction within the meaning of the Interpretation Act, 1889, s. 13, sub-s. 11, and service of notice of appeal by case stated from them is governed by s. 33 of the Summary Jurisdiction Act, 1879, and is sufficient if served on their clerk only. *REG. v. JUSTICES of PONTYPOOL.*

*REG. v. JUSTICES of GLAMORGANSHIRE*

**C. A. affirm. Div. Ct. [1892] 1 Q. B. 621**

Overruled by H. L. (E). *Boulter v. Kent Justices*, [1897] A. C. 556, 564.

**35. — Case stated—Transmission—(20 & 21 Vict. c. 43), s. 2.**

The transmission to the Court of a case stated under 20 & 21 Vict. c. 43, includes lodging the case in the Crown Office within the statutory period. *ASPINALL v. SUTTON*

**Div. Ct. [1894] 2 Q. B. 349**

— Case stated under Quarter Sessions Act, 1849. See *APPEAL*. 41.

**36. — Certiorari—Bastardy—Power of Supreme Court to inquire into validity of justices' order—Bastardy Law Amendment Act, 1872 (35 & 36 Vict. c. 65), ss. 3, 4.**

In proceedings to enforce an order of justices the High Court will not hear evidence to impeach their decision on the facts; but in proceedings to bring up and quash their order the Court is bound to consider the evidence before the justices, but is not bound to confine itself to that evidence, and may hear other evidence to arrive at a determination on the question of jurisdiction:

*Held*, therefore, that the Court had power to inquire into the validity of the service of a bastardy order, as the jurisdiction of the justices only attaches on proof that the summons was duly served; and *held*, that in this case the service was held to be bad, because not served at the putative father's "last place of abode," which was his then American residence, and not the house he occupied when last in England. *REG. v. FARMER*

**C. A. [1892] 1 Q. B. 637**

Referred to by Div. Ct. *Reg. v. Webb*, [1896] 1 Q. B. 487, 490.

— Costs—Crown office—Appeal from quarter sessions.

See *CROWN OFFICE*. 1.

— Criminal cause or matter—Application to enforce general district rate.

See *APPEAL*. 11.

— Husband and wife—Appeal from justices.

See *HUSBAND AND WIFE—Summary Jurisdiction*. 78—80, 94—96.

— Licensing justices—Appeal from.

See *Cases under LICENSING ACTS*.

**37. — Mandamus—Power of Supreme Court to inquire into jurisdiction of justices—Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), ss. 5, 6—Summary Jurisdiction Acts, 1848 (11 & 12 Vict. c. 43), s. 27; 1879 (42 & 43 Vict. c. 49), ss. 31, 32,**

**JUSTICES (Appeals to the High Court)—*contd.***

55; 1884 (47 & 48 Vict. c. 43), s. 6—*Interpretation Act*, 1889 (52 & 53 Vict. c. 63), s. 13, sub-s. 11.

The High Court has jurisdiction to correct a mistake made by justices as to the extent of their own jurisdiction by certiorari, mandamus or prohibition according to the circumstances of the case, or by mandamus where jurisdiction is declined by certiorari, or prohibition where it is usurped; and for the purpose must examine into the extent of the jurisdiction of the justices. Justices cannot give themselves jurisdiction by an erroneous finding either of fact or of law. Decision of Div. Ct., [1895] 1 Q. B. 214, affirmed. *REG. v. LONDON JUSTICES (No. 4)*

**C. A. [1895] 1 Q. B. 616**

Referred to by Div. Ct. *Reg. v. Staffordshire Justices*, [1898] 2 Q. B. 231, 235.

**38. — Mandamus—Matrimonial causes—Separation order—Maintenance—Reduction of.**

Rule nisi for justices to determine an application for a summons to reduce the amount of an allowance ordered to a wife:—

*Held*, that as the justices had a discretion to grant or refuse the summons, and had exercised it bona fide, the rule must be discharged. *Matrimonial Causes Act*, 1878, s. 4. *REG. v. HUGGINS (No. 1)*

**Div. Ct. [1891] W. N. 88**

*Sec. 4 of the Matrimonial Causes Act*, 1878, was repealed by s. 12 of the *Summary Jurisdiction (Married Women) Act*, 1895 (58 & 59 Vict. c. 39), and further provision made.

**Appeals to Quarter Sessions.**

**39. — Costs—Taxation out of sessions—Consent.**

*Seem*, per Lord Halsbury and A. L. Smith L.J., that where no consent has been given to taxation out of sessions a subsequent court of quarter sessions has no jurisdiction to make an order on the clerk of the peace to tax the costs.

*Per* Lord Herschell, in H. L. (E.): The practice to tax out of sessions has become so common, that the slightest evidence of consent would suffice. *MIDLAND RY. CO. v. EDMONTON UNION*

**C. A. (Lindley L.J. diss.)**

**[1895] 1 Q. B. 357; affirm. by H. L. (E.)**

**[1895] A. C. 485**

Discussed by H. L. (E.). *West Ham Union v. Churchwardens, &c., of St. Matthew, Bethnal Green*, [1896] A. C. 477, 485.

Followed by C. A. *Manchester, Sheffield, & Lincolnshire Ry. Co. v. Doncaster Union, C. A.*, [1897] 1 Q. B. 117, 121.

— Costs—Expenses of, in boroughs over and under 10,000 inhabitants.

See *COUNTY COUNCIL—Expenses*. 3.

**40. — Deposit in lieu of recognizance.**

Although justices may allow a deft. who wishes to appeal to quarter sessions to make a deposit instead of entering into recognizances, the deposit must be made strictly in accordance with s. 31, sub-s. 3, of the *Summary Jurisdiction Act*, 1879, i.e., within three days after giving notice of appeal that the justices allowing the deposit may have the notice of appeal before them:—*Held*, therefore, that a deposit made

**JUSTICES (Appeals to Quarter Sessions)—*contd.***  
 before giving notice was invalid. *REG. v. ANGLESEA JUSTICES* (No. 2) - *Div. Ct. [1892]*  
**2 Q. B. 29**

**41. — Recognizance—Court before which recognizance to be entered into—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, sub-s. 3.**

(A) The recognizance to prosecute an appeal from an order of a court of summary jurisdiction under s. 13 (3) of the Summary Jurisdiction Act, 1879, may be entered into before any court of summary jurisdiction, whether acting for the same county as the Courts from whose order the appeal is brought or not. *REG. v. DURHAM JUSTICES* - *Div. Ct. [1895]* **1 Q. B. 801**

(B) *Deposit instead of recognizance—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, sub-s. 2, 3.*

Although justices may allow a deft. who wishes to appeal to quarter sessions to make a deposit instead of entering into recognizances, the deposit must be made strictly in accordance with s. 31, sub-s. 3, of the Summary Jurisdiction Act, 1879, *i.e.*, within three days after giving notice of appeal that the justices allowing the deposit may have the notice of appeal before them:—

*Held*, therefore, that a deposit made before giving notice was invalid. *REG. v. ANGLESEA JUSTICES* (No. 2) *Div. Ct. [1892]* **2 Q. B. 29**

**42. — Sentence—Procedure at hearing—Jurisdiction to quash conviction.**

An appeal may be brought to quarter sessions against a summary conviction on the sole ground that the sentence was excessive, and the conviction may be quashed on that ground.

Where the respondent does not appear before the quarter sessions the Court is justified in quashing the conviction, inasmuch as by the procedure on such appeals the respondent has to begin and prove the matters complained of. *REG. v. SURREY JUSTICES* - *Div. Ct. [1892]*  
**2 Q. B. 719**

**43. — Service of notice of appeal—Practice—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, sub-s. 2.**

(A) Under s. 31, sub-s. 2, of the Summary Jurisdiction Act, 1879, notice of appeal is sufficient if addressed to and served on the justices' clerk, and it is not necessary that it should be addressed to the convicting justices. *REG. v. ESSEX JUSTICES*  
*Div. Ct. [1892]* **1 Q. B. 490**

(B) Sect. 31 of the Summary Jurisdiction Act, 1879, applies to appeals from licensing justices to quarter sessions. Service of notice of appeal on some of the justices or their clerk and the chief constable of the county *held* sufficient. *REG. v. GLAMORGANSHIRE JUSTICES. REG. v. PONTYPOOL JUSTICES* - *C. A. [1892]* **1 Q. B. 621**

Overruled by *H. L. (E.) Boulter v. Kent Justices*, [1897] *A. C.* 556.

**44. — Service of notice of appeal on solicitor of party—Duration of solicitor's authority—Summary Jurisdiction Act, 1879, s. 31, sub-s. 2.**

A., a solicitor, represented B. in a successful application for an affiliation order. Subsequently

**JUSTICES (Appeals to Quarter Sessions)—*contd.***  
 a notice of appeal was given to A., who accepted it on behalf of B.:—

*Held*, that A.'s authority to represent B. terminated when the order was obtained, and, therefore, the service of the notice of appeal on A. was invalid. *REG. v. JUSTICE OF OXFORDSHIRE C. A. [1893]* **2 Q. B. 149**

**45. — Summary conviction after election to be tried summarily for indictable offence—Summary Jurisdiction Act, 1879, ss. 12, 19.**

Where a person charged before a court of summary jurisdiction with an indictable offence elects to be dealt with summarily under s. 12 of the Summary Jurisdiction Act, 1879, and is convicted, he has no right of appeal under s. 19 of the Act, which relates only to appeals from convictions under past or future Acts. *REG. v. LONDON JUSTICES. Ex parte LAMBERT*  
*Div. Ct. [1892]* **1 Q. B. 664**

#### Clerk to Justices.

— Clerk to justices to borough under 10,000 population—Judicial expenses.  
*See COUNTY COUNCIL—Expenses.* **3.**

— Disqualification — Justice — Incompatible offices.

*See JUSTICES—Disqualification.* **50.**

— Duty of Clerk to — Summary Jurisdiction (Married Women) Act—Appeal to Probate Division.

*See HUSBAND AND WIFE — Summary Jurisdiction.* **93.**

#### Disqualification.

**46. — Appeal against Poor-rate—16 Geo. 2, c. 18, ss. 1, 3—27 & 28 Vict. c. 39, s. 6.**

Justices at borough and county petty and special sessions are not disqualified from hearing appeals against poor-rate, notwithstanding that they are—

(A) rated in the parish in which such rate was made. *REG. v. BOLINGBROKE*  
*Div. Ct. [1893]* **2 Q. B. 347**

(B) *Justice of Peace Act, 1742-3 (16 Geo. 2, c. 18), ss. 1, 3*, or are chargeable with the rate appealed against. *Ex parte OVERSEERS OF WORKINGTON* - *C. A. [1894]* **1 Q. B. 416**

**47. — Bias—General rule—Medical Act, 1858 (21 & 22 Vict. c. 90), ss. 28, 29.**

The law as to bias as disqualifying a person from acting judicially considered. *ALLINSON v. GENERAL MEDICAL COUNCIL*

*C. A. [1894]* **1 Q. B. 750**

Referred to by *Div. Ct. REG. v. BURTON*, [1897]  
**2 Q. B. 468, 472.**

**48. — Bias—Pecuniary interest as ratepayer.**

A justice who was a ratepayer of the parish and who moved a resolution at a vestry meeting calling upon the deft. to remove a heap from the side of the highway, *held* to be disqualified from adjudicating on a summons against the deft., on the grounds (1) that his acts afforded a reasonable suspicion of bias; (2) that he had a pecuniary interest as a ratepayer in the result of the summons. *REG. v. GAISFORD*  
*Div. Ct. [1892]* **1 Q. B. 381**

**JUSTICES (Disqualification)—continued.**

49. — *Bias—Probability of—Interest—Prosecution by Council of Incorporated Law Society—Adjudication by ordinary member of society—Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 1.*

On the hearing of a summons for falsely pretending to be a solicitor, contrary to s. 12 of the Attorneys and Solicitors Act, 1874, a magistrate, who was a practising solicitor, and an ordinary member of the Incorporated Law Society, sat and adjudicated. The proceedings were taken by the council of the Incorporated Law Society, who alone had power to direct prosecutions, ordinary members having no control over the proceedings of the society.

On the argument of an order nisi for a certiorari to quash the conviction:—

*Held*, that the circumstances did not shew any probability of bias on the part of the magistrate, that he was not disqualified by his membership of the Incorporated Law Society, either as having a pecuniary interest in the proceedings, or as being a prosecutor, and therefore he was justified in adjudicating. *REG. v. BURTON. Ex parte YOUNG*

*Div. Ct. [1897] 2 Q. B. 468*

50. — *Incompatible offices—Clerk to justices.*

The position of clerk to justices is incompatible with that of justice of the peace; and therefore where a person who held the office of clerk to justices was elected to another office which carried with it the position of justice of the peace,

**JUSTICES (Disqualification)—continued.**

his acceptance of the latter office vacated that of clerk to the justices. *REG. v. DOUGLAS*

*Div. Ct. [1898] 1 Q. B. 560*

51. — *Interest—Membership of interested class—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 204), s. 361.*

In a summons against a person for continuing in charge of a ship after a qualified pilot has offered to take charge of her, a qualified pilot belonging to the pilotage district in which the offence is alleged to have been committed has such an interest as disqualifies him from acting as a justice, although by the nature of his employment he is not brought into competition with unqualified pilots. *REG. v. HUGGINS*

*Div. Ct. [1895] 1 Q. B. 563*

52. — *Salmon Fishery Act, 1865—Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), ss. 27, 61.*

A justice who is present at a meeting of a conservancy board when a resolution is passed to take proceedings for the violation of provisions of the Salmon Fishery Acts, is disqualified from adjudicating on proceedings so authorized, and the disqualification is not removed by s. 61 of the Salmon Fishery Act, 1865. *REG. v. HENLEY*

*Div. Ct. [1892] 1 Q. B. 504*

Referred to by *Div. Ct. Reg. v. Burton*, [1897] 2 Q. B. 468, 472.

**JUSTIFICATION—Bicycle—Arrest of rider without proper light.**

*See BICYCLE. 1.*

## K.

“**KEEPER**”—Of house used for public entertainment.

*See SUNDAY. 3.*

**KEY**—Delivery of key.

*See DONATIO MORTIS CAUSÆ. 1.*

— Gift by will of desk containing key.

*See WILL—Words. 211.*

## L.

**LABEL**—Distinctive word—"Addition" to mark.

See **TRADE-MARK**. 21.

—Sale of food and drugs.

See **Sale of Food and Drugs Act, 1899** (62 & 63 Vict. c. 51), ss. 11, 12.

**LABUAN**—Death duties.

See **REVENUE—Estate Duty**.

**LACHES**—Action for revocation of letters of administration—Acquiescence.

See **PROBATE—Revocation**. 145.

—*Lis pendens*—Registration.

See **MORTGAGE—Priority**. 44.

—Registration of trade-mark—Publici juris—User.

See **TRADE-MARK**. 45.

—Sewers—injunction—Public body—Es-toppel.

See **LONDON—Sewers**. 62.

—Underground trespass—Equitable jurisdiction—Fraud—Statute of Limitations.

See **NEW SOUTH WALES**. 20.

**LAGOS.**

Application of Colonial Probates Act, 1892.

See **PROBATE—Colonial Probates Act**.

**Death Duties.**

See **REVENUE—Estate Duty**.

**Law of Lagos.**

1. — *Bankruptcy—Land of bankrupt in Lagos vests in trustee under Act of 1869—Jurisdiction of Supreme Court.*

The English Bankruptcy Act of 1869 applies to all H. M.'s Dominions, and, therefore, an adjudication under that Act operates to vest in the trustee in bankruptcy the bankrupt's title to real estate situate in Lagos, subject to any requirements prescribed by the local law as to the conditions necessary to a transfer of real estate. The Supreme Court of Gold Coast Colony had no bankruptcy jurisdiction in 1877, and could not act as auxiliary to the English Court of Bankruptcy under s. 74 of the Bankruptcy Act, 1869. **CALLENDER, SYKES & Co. v. COLONIAL SECRETARY OF LAGOS AND DAVIES. WILLIAMS v. DAVIES** - - - **P. C. [1891] A. C. 460**

**LAIBAGE**—Rateable value—Evidence of receipts and expenditure—Admissibility of evidence.

See **RATES—Rateability**. 32.

**LAKE**—Cleansing—Duty of tenant for life.

Cleansing an ornamental lake or pond is not a duty imposed on a tenant for life by the ordinary repairing clause in a settlement by will.

The decision of *Chitty J.* affirmed. **DASHWOOD v. MAGNIAC (1)**

**C. A. (Kay L.J. diss.) [1891] 3 Ch. 306**

**LANCASTER COURT.****Chancery Court.**

**GENERAL RULES.**] "*The Chancery of Lancaster Rules, 1894,*" dated Dec. 10, 1894. **St. R. & O. 1894, p. 191 (No. 486).**

**JUDICIAL TRUSTEES.**] *Application to Palatine Courts. See Judicial Trustee Rules, 1897, r. 30, dated Aug. 31, 1897. W. N. 1897 (Sept. 18), p. 267; Current Index, 1897, p. lxxviii.*

**TRUSTEES.**] *Proceedings under the Trustee Act, 1893 (56 & 57 Vict. c. 46). General Order and Rules of the Court of Chancery of the County Palatine of Lancaster, dated Dec. 19, 1893. St. R. & O. 1896, p. 712.*

1. — *Jurisdiction of Court of Chancery of County Palatine of Lancaster—Trial by jury—Will—Beneficiary convicted of wilful murder of testatrix—Action by next of kin of testatrix for declaration that beneficiary's interest forfeited—Evidence—Certificate of conviction not admissible—Lord Cairns' Act (21 & 22 Vict. c. 27)—Sir John Rolfe's Act (25 & 26 Vict. c. 42).*

A certificate of a conviction upon an indictment for felony is in a civil proceeding *res inter alios acta*, and is not admissible as evidence of the fact that the person charged committed the felony in respect of which he was convicted. This rule has not been affected by recent alterations in the law of evidence at criminal trials.

The Court of Chancery of the County Palatine of Lancaster has jurisdiction under Lord Cairns' Act to direct that any question of fact arising in a suit or proceeding be tried by a special or common jury before the Court itself, and has jurisdiction under Sir John Rolfe's Act to direct an issue to try any question of fact by a jury at the Assizes.

By her will Y. gave, devised, and bequeathed a moiety of her residuary real and personal estate to W., who was tried, convicted, and sentenced to death (though subsequently reprieved) for the wilful murder of Y. In an action by the next of kin of Y. for a declaration that W. had, by reason of his felonious act in wilfully murdering the testatrix, forfeited all his beneficial interest in the moiety of her residuary personal estate (there being no real estate), and for a declaration that the testatrix died intestate as to such moiety, the plts. tendered as conclusive proof that W. murdered the testatrix a certificate under the 14 & 15 Vict. c. 99, s. 13, of the trial, conviction, and sentence of W. for the wilful murder of the testatrix:—

*Held*, that such certificate was not only not conclusive proof of the fact alleged, but was not even admissible as evidence of the fact in the civil proceedings.

Upon summons by W. to have the question of fact of the alleged wilful murder of the testatrix by him tried before the Vice-Chancellor with a jury:—

*Held*, that the Court had jurisdiction under

**LANCASTER COURT (Chancery Court)—contd.**

Lord Cairns' Act to direct the question of fact to be tried by a jury before itself, and under Sir John Rolt's Act to direct an issue to try the question of fact by a jury at the Assizes; that this was a question of fact which ought to be tried by a jury; and that, under the circumstances, such question would be better tried before a judge and jury at the Assizes. *YATES v. KYFFIN-TAYLOR AND WARK*

**The Vice-Chancellor [1899] W. N. 141**

2. — *Practice—Costs—Taxation—Higher and lower scales—Matter in question under amount of 300l.—Chancery Court of Lancaster—Orders of November 27th and 28th, 1884.*

The Order of the Chancery Court of the County Palatine of Lancaster of Nov. 28, 1884, "as to Court Fees and Solicitors' Costs," which prescribes the fees and costs to be allowed "in any case in Court under the amount or value of 300l.," applies only to cases under that amount or value to which, but for that order, the lower scale of fees and costs established by the Order of Nov. 27, 1884, as to Court Fees and Solicitors' Costs would have applied. *In re MANCHESTER REAL ICE SKATING AND SUPPLY CO.*

**C. A. [1900] W. N. 63; [1900] 1 Ch. 573**

3. — *Practice—Enforcing order—Defendant out of jurisdiction—Court of Chancery of Lancaster Acts, 1850, 1854 (13 & 14 Vict. c. 43, s. 15; 17 & 18 Vict. c. 82, s. 7).*

B., one of the defendants in an action commenced in the Chancery Court of the County Palatine of Lancaster (Liverpool District), entered an appearance in that action by his solicitors on May 12, 1897. By the judgment in the action, dated July 8, 1897, it was declared that a payment made by another deft., W., to B., to the knowledge of the latter out of trust moneys in the hands of W., was a breach of trust to which B. was a party, and that the sum paid ought to be considered as money then in the possession or under the control of B. as a trustee or person acting in a fiduciary capacity; and it was thereby ordered and adjudged that W. and B. should within seven days after service of the judgment pay the amount into Court. The judgment was served on B., but neither he nor W. paid the amount in, and on January 17, 1898, on motion by the plts., the Palatine Court gave leave to the plts. to serve a writ of attachment on B. for his disobedience to the judgment. By reason of B. residing at Bishop Auckland, out of the jurisdiction of the Palatine Court, the order could not be enforced without the assistance of the High Court. The plts. moved *ex parte* to make the order an order of the High Court under s. 15 of the Court of Chancery of Lancaster Act, 1850:—

*Held*, that notwithstanding s. 7 of the Court of Chancery of Lancaster Act, 1854, this was the proper step to be taken to enforce the order. *DUNMORE v. WHARAM*

**Byrne J. [1898] W. N. 15 (7)**

4. — *Practice—Transfer of judgment to High Court—Production of "transcript" of judgment of Palatine Court—Costs.*

Sect. 15 of 13 & 14 Vict. c. 43 must be strictly complied with, and where a plt. against whom

**LANCASTER COURT (Chancery Court)—contd.**

judgment has been given does not reside, and has no goods, in the County Palatine, an *ex parte* motion may be made to make the judgment of the High Court, but a transcript of the judgment and not the original judgment must be produced. An order for transfer carries the costs of the motion. *DUKE v. CLARKE*

**North J. [1894] W. N. 100**

**LAND.**

*Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), amends previous enactments.*

*Meaning of "Land," col. 1048.*

*Registration, col. 1048.*

**Meaning of "Land."**

1. — *Coal mines.*

"Land" does not include coal mines in s. 33 of the Lighting and Watching Act, 1833.

The decisions of Div. Ct., [1894] 1 Q. B. 567, and C. A., [1894] 2 Q. B. 11, affirmed. *THURSBY v. BRIERCLIFFE-WITH-EXTWISTLE CHURCHWARDS, &c.* — **H. L. (E.) [1895] A. C. 32**

— *Local Government Board — Jurisdiction — Land acquired for specific purpose — Application of part not required to another permanent purpose. See LOCAL GOVERNMENT. 3.*

**Registration.**

— *Colonial laws.*

*See List under PRIVY COUNCIL—Privy Council Appeals.*

**LAND REGISTRY.] Land Registry (New Buildings) Act, 1900 (63 & 64 Vict. c. 19), enacted for the acquisition of property for building a new Land Registry Office and other public offices in London and for purposes connected therewith.**

*Fees payable under the Land Registry Act, 1862, &c. W. N. 1900 (Dec. 22), p. 335. See Current Index, 1900, p. xziv.*

*Fees payable under the Land Transfer Acts. W. N. 1900 (Dec. 22), p. 335. See Current Index, 1900, p. xziv.*

— *Land Transfer Act.*

*See LAND TRANSFER.*

— *in Middlesex.*

*See MIDDLESEX REGISTRY.*

2. — *Mortgage debentures—Deposit of securities with registrar.*

The Court has no power to order securities which have been deposited with the registrar of the Land Registry Office by a land securities co. to be delivered up to a receiver appointed in a debenture-holder's action or to a liquidator in the winding-up of the co., unless such securities have been redeemed or sold.

The decision of Wright J. reversed. *SOMERSET v. LAND SECURITIES CO. C. A. [1894] 3 Ch. 464*

3. — *Registration of purchaser with indefeasible title—Sale by mortgagee under statutory power of sale—Evidence that power has arisen—Land Registry Act, 1862 (25 & 26 Vict. c. 53), s. 17—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 21, sub-s. 2.*

The question in this case was as to the

**LAND (Registration)—continued.**

evidence required to shew that the power of sale had arisen acting under which mortgagees had conveyed to the applicant for registration:—

*Held*, that an affidavit by the purchaser was insufficient which denied knowledge but did not deny notice of any objection to registration. *In re TRITTON* — North J. [1891] W. N. 194 — in Yorkshire.

See YORKSHIRE.

**LAND CHARGES—Agricultural holdings.**

See Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50), s. 3.

*Land Charges Act, 1900* (63 & 64 Vict. c. 26), amends the law relating to charges on land and to matters connected therewith.

*Order of Ld. Chanc. dated Aug. 3, 1900, to the effect that s. 1 of Land Charges Act, 1900, shall come into operation on Sept. 1, 1900.* W. N. 1900 (Aug. 18), p. 234. See Current Index, 1900, p. xcii.

**FEES, RULE AS TO.]** *Land Charges Registration and Searches Act, 1888* (51 & 52 Vict. c. 51), and *Land Charges Act, 1900* (63 & 64 Vict. c. 26). W. N. 1900 (Sept. 8), p. 245. See Current Index, 1900, p. xcii.

**LAND REGISTRY.**

See LAND.

**LAND REVENUE—CROWN LANDS.]** *Office of land revenue records and enrolments—Treas. warrants dated Dec. 21, 1896, and Sept. 4, 1897, prescribing fees payable in Office of Land Revenue, &c., for enrolments, certified copies and searches; "Expedition" fees.* St. R. & O. 1899, pp. 1574, 1576.

**LAND TAX.**

See REVENUE—Land Tax.

**LAND TRANSFER.**

*Land Transfer Act, 1897* (60 & 61 Vict. c. 65), establishes a real representative and amends the *Land Transfer Act, 1875* (38 & 39 Vict. c. 87).

*Draft order under, as to place of registry and as respects County of London on and after July 1, 1898, registration of title to land to be compulsory on sale.* W. N. 1897 (Dec. 4), p. 340; Current Index, 1897, p. lxxix.

*Provisional Land Transfer Rules, 1897.* W. N. 1898 (Jan. 8), p. 5, rescinded by r. 279 of the *Land Transfer Rules, 1898*; Current Index, 1898, p. lxxxiv.

*Land Transfer Rules and Forms, 1898.* W. N. 1898 (Aug. 20), p. 283; Current Index, 1898, p. lxi.

*Memorandum as to Land Transfer Rules, W. N. 1898* (Oct. 8), p. 327; Current Index, 1898, p. lx.

*The several portions of county of London mentioned where registration of title to land is to be compulsory.* W. N. 1898 (July 23), p. 263; (Oct. 29), p. 373; Current Index, 1898, p. xciv.

*Memorandum as to compulsory registration in the County of London.* W. N. 1898 (Dec. 17), p. 412; Current Index, 1898, p. xcvi.

*Operation postponed to Jan. 1, 1899.* W. N.

**LAND TRANSFER—continued.**

1898 (Sept. 24), p. 319; Current Index, 1898, p. xciv.

*Order as to Fees.* W. N. 1898 (Nov. 19), p. 389; Current Index, 1898, p. xciv.

*Registrar may proceed with registration until Jan. 1, 1899, notwithstanding the Land Transfer Rules, 1898.* W. N. 1898 (Nov. 5), p. 380; Current Index, 1898, p. xciv.

*Land Transfer Rules, June, 1899, which came into operation on July 17, 1899.* W. N. 1899 (June 3), p. 183; (July 8), p. 239; *explanatory Observations thereon*, (July 8), p. 240; Current Index, 1899, pp. cxxiii., cxxiv.

*Originating summons to ascertain heir-at-law, &c. New rule.* R. S. C. Ord. LV., r. 4a. W. N. 1899 (Aug. 12), p. 255; Current Index, 1899, p. cxxviii.

LONDON.] *Memorandum as to registration of title in the county of.* W. N. 1899 (Sept. 30), p. 287; Current Index, 1899, p. cxxv.

*Postponement of operation of O. in C. dated July 18, 1898, as regards certain portions of.* W. N. 1899 (Oct. 21), p. 299; (Dec. 9), p. 359; Current Index, 1899, p. cxxvi.

— Administration—Bastardy—Escheat.

See PROBATE. 22.

— Administration—Grant to heir-at-law of intestate wife, passing over husband.

See PROBATE. 39.

— Administration—Practice—Real estate—Application by heir-at-law.

See PROBATE. 62.

— Administration with the will annexed—Grant ad colligendum—Necessity for citation of heir-at-law.

See PROBATE. 40.

— Costs—Will—Construction—Disputed devise—Summons by executors.

See COSTS. 4.

— Executors—Concurrence of all executors—Conveyance.

See VENDOR AND PURCHASER—Title. 79.

— Middlesex Deeds—Rectification of register.

See MIDDLESEX REGISTRY.

**LANDLORD AND TENANT.**

*Agricultural Holdings, col. 1051.*

*Compensation for Improvements.* See LANDLORD AND TENANT—Agricultural Holdings.

*Covenant, col. 1055.*

*Determination of Tenancy and Holding Over, col. 1064.*

*Distress.* See DISTRESS.

*Entry, col. 1066.*

*Flats, col. 1066.*

*Forfeiture, col. 1066.*

*Furnished House, col. 1074.*

*Landlord's Liability, col. 1074.*

*Lease, col. 1075.*

*Mortgages, col. 1079.*

*Option to Purchase, col. 1079.*

**LANDLORD AND TENANT—continued.***Rent*, col. 1080.*Scotland.* See **SCOTTISH LAW—Landlord and Tenant.***Specific Performance*, col. 1082.*Surrender*, col. 1082.*Underlease*, col. 1083.**Agricultural Holdings.**

*Tenants Compensation Act*, 1890 (53 & 54 Vict. c. 57), amends the law with respect to compensation due to tenants on land under mortgage.

By the *Market Gardeners' Compensation Act*, 1895 (58 & 59 Vict. c. 27), the *Agricultural Holdings (England) Act*, 1883, was amended and extended as to Market Gardens.

*Rating of occupiers of agricultural land amended by Agricultural Rates Act*, 1896 (59 & 60 Vict. c. 37).

*Agricultural Holdings Act*, 1900 (63 & 64 Vict. c. 50), amends the law relating to *Agricultural Holdings*.

*Agricultural Holdings (England) Acts*, 1883 to 1900, &c.—*County Court Rules (Nov.)*, 1900, *Ord. XL A. W. N.* 1900 (Dec. 8), p. 323. See *Current Index*, 1900, p. lxxix.

— *Agricultural lease* — “Determination of tenancy” — “Separation of the crop.” See **SCOTTISH LAW — Landlord and Tenant**, 22.

— *Agricultural rates.*

See **RATES**, 16, 34,

1. — *Compensation for crops* — “Allotment,” what is—*Lease—Allotments and Cottage Gardens Compensation for Crops Act*, 1887 (50 & 51 Vict. c. 26), s. 4.

By s. 4 of the *Allotments and Cottage Gardens Compensation for Crops Act*, 1887, “allotment” means (inter alia) “any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden.”—

*Held*, that a piece of land less than two acres in extent, occupied by a seedsman for the purpose of his business, and having in it vegetables, fruit trees, and flowering plants which he sold, was not “cultivated as a garden,” and was, therefore, not an “allotment” within the definition in s. 4. *COOPER v. PEARSE* *Div. Ct.* [1896] **W. N.** 40 (3); [1896] 1 **Q. B.** 562

2. — *Compensation for improvements—Agreement—Right of tenant under agreement—Agricultural Holdings (England) Act*, 1883 (46 & 47 Vict. c. 61), s. 57.

SECT. 57 of the *Agricultural Holdings Act*, 1883, provides that “a tenant shall not be entitled to claim compensation by custom or otherwise than in manner authorized by this Act in respect of any improvement for which he is entitled to compensation under or in pursuance of this Act.”—

*Held*, that this provision only applied to a tenant claiming compensation under the Act, and did not exclude the right of a tenant to claim, under an agreement outside the Act, compensation for improvements in respect of which

**LANDLORD AND TENANT (Agricultural Holdings)—continued.**

he might have claimed compensation under the Act. *In re PEARSON AND FANSON*,

*Div. Ct.* [1899] 2 **Q. B.** 618

3. — *Compensation for improvements—Agreement—Tenant giving up possession before expiration of term—Agricultural Holdings (England) Act*, 1883 (46 & 47 Vict. c. 61), s. 57.

A tenant of agricultural land and his landlord agreed that the land should be given up before the expiration of the term, and that the tenant should receive compensation in respect of feeding stuffs, which is an improvement comprised in the 1st sched. to the *Agricultural Holdings Act*, 1883, and of three other matters not mentioned in the Act. The amount to be paid was to be ascertained by two valuers appointed by the landlord and the tenant respectively. In an action by the tenant to recover the amount agreed on by the valuers:—

*Held*, that such an agreement between landlord and tenant is not prohibited by the *Agricultural Holdings Act*, 1883; that the claim not being for compensation under the Act, the procedure under the Act did not apply to it; and that the plaintiff was entitled to recover in the action. *NEWBY v. ECKERSELEY*

**C. A.** [1899] 1 **Q. B.** 465

Referred to. *In re Pearson and Fanson*, *Div. Ct.* [1899] 2 **Q. B.** 618, 627, 630. See preceding Case.

4. — *Compensation for improvements—Arbitration—Landlord's counter-claim—Agricultural Holdings (England) Act*, 1883 (46 & 47 Vict. c. 61), ss. 6, 7, 24.

In an arbitration under the *Agricultural Holdings Act*, 1883, where a greater amount is awarded to the landlord in respect of waste and breaches of covenant than is awarded to the tenant as compensation for improvements, the landlord cannot recover the balance under the procedure given by the Act. *In re HOLMES AND FORMBY* — *Div. Ct.* [1895] 1 **Q. B.** 174

Distinguished. *In re Lloyd and Tooth*, **C. A.** [1899] 1 **Q. B.** 559, 563. *No. 7, below.*

5. — *Compensation for improvements—Charge on holdings—Agricultural Holdings (England) Act*, 1883 (46 & 47 Vict. c. 61), ss. 29, 61.

Under the *Agricultural Holdings Act*, 1883, the executors of a landlord, tenant for life, who have been compelled under the Act to pay compensation for improvements to an outgoing tenant, who had claimed compensation and whose tenancy had been determined before the death of the landlord, are entitled to a charge upon the holding in respect of the amount which they have so paid.

Decision of *V. Williams J.* reversed. *GOUGH v. GOUGH* — **C. A.** [1891] 2 **Q. B.** 665

6. — *Compensation for improvements—“Contract of tenancy”—Tenancy from year to year—Market Gardeners' Compensation Act*, 1895 (58 & 59 Vict. c. 27), s. 4—*Agricultural Holdings (England) Act*, 1883 (46 & 47 Vict. c. 61), s. 61.

By an agreement dated Oct. 22, 1886, the owner of a piece of land let the same to a tenant from Sept. 29, 1886, at the rent of 19l. 12s. a



**LANDLORD AND TENANT (Agricultural Holdings)—continued.**

year, payable quarterly on the four usual quarters for payment of rent in every year, and the tenant agreed to pay the said rent at the times aforesaid, and to use the said premises as garden ground only, and to manure, crop, and cultivate the same in a husbandlike manner, and it was agreed that the tenancy might be determined by either party giving to the other three calendar months' notice to quit, or of his intention of quitting, as the case might be, on any day of the year. The land so let was used by the tenant as a market-garden. In Oct. 1896, the landlord gave the tenant notice to quit. The tenant claimed compensation for improvements under s. 4 of the Market Gardeners' Compensation Act, 1895, which is to be read as part of the Agricultural Holdings Act, 1883:—

*Held*, that the agreement created a tenancy from year to year, and therefore the tenant came within s. 4 of the Market Gardeners' Compensation Act, 1895, as having held under a "contract of tenancy" as defined by s. 61 of the Agricultural Holdings Act, 1883.

*Doe v. Grafton*, (1852) 18 Q. B. 496, commented on. **KING v. EVERSFIELD**

**C. A. [1897] W. N. 83 (1); [1897] 2 Q. B. 475**

**7. — Compensation for improvements—Counter-notice of claim by landlord—Arbitration—Award to landlord of amount in excess of tenant's claim—Enforcement of award—Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), ss. 6-9, 22—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 12.**

An outgoing tenant of a farm gave due notice of intention to claim from the lessor compensation for improvements under the Agricultural Holdings Act, 1883, and the lessor gave due notice of intention to counter-claim against the tenant for breaches of covenant. After the expiration of the time for giving notices of claim prescribed by the Act, both parties gave notices of further claims, some of which were in respect of matters not within the Act. Referees and an umpire having been appointed in pursuance of the Act, before the reference proceeded, an agreement in writing was made between the parties by which all matters in difference as stated in the claims and counter-claims were referred to the referees and umpire already appointed under the Act, and it was agreed that all the said matters shall be dealt with in one award only of the said referees or umpire. The referees disagreeing, the umpire made an award by which he found that a certain amount was due from the lessor to the tenant, and a larger amount was due from the tenant to the lessor, and awarded that the tenant should pay the balance to the lessor. The amount not being paid:—

*Held*, that leave might be given to the lessor to enforce the award in the same manner as a judgment or order to the same effect under s. 12 of the Arbitration Act, 1889. *In re LLOYD AND TROTH* - **C. A. [1899] 1 Q. B. 559**

**8. — Compensation for improvements—Notice of claim—Determination of tenancy—Agricultural**

**LANDLORD AND TENANT (Agricultural Holdings)—continued.**

*Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), s. 7.*

A tenant of a farm on a yearly tenancy was by the terms of his lease to hold the land from Feb. 2 and the buildings from May 1. In June, 1896, he gave notice to the landlord of his intention to deliver up the land on Feb. 2, 1897, on which latter date he duly delivered up possession of the land. On Feb. 26, 1897, he gave notice to the landlord under the Agricultural Holdings Act, 1883, claiming compensation for unexhausted improvements; and on May 1, 1897, he gave up possession of the buildings.

By s. 7 of the said Act notice of claim for compensation must be given two months at least before the determination of the tenancy:—

*Held*, that the tenancy determined within the meaning of the Act on Feb. 2 and not on May 1, and that the notice of claim was consequently too late. **MORLEY v. CARTER - Div. Ct. [1897]**

**W. N. 153 (8); [1898] 1 Q. B. 8**

— Compensation for improvements—Removal—Right of—Permanent buildings erected by lessee.

*See CAPE OF GOOD HOPE. 5.*

**9. — "Determination of tenancy."**

"Determination of tenancy" in s. 7 of the Agricultural Holdings (Scotland) Act, 1883 (46 & 47 Vict. c. 62), which is identical with the section in the English Act, means the time when the tenant finally gives up possession of his "holding." **BLACK v. CLAY**

**H. L. (Sc.) [1894] A. C. 368**

*See Morley v. Carter*, [1898] 1 Q. B. 8, 11. *No. 8, above.*

**10. — "Improvements"—Glasshouses—"Ameliorating waste"—Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), ss. 34, 54.**

A covenant to farm in a husbandlike manner according to the practice of the neighbourhood is not broken by erecting glasshouses for the growth of garden produce, if, as in this case, many of the neighbouring farms were wholly or partially cultivated as market gardens.

*Per curiam*, the glasshouses in question were "improvements" within the Agricultural Holdings Act, 1883. **MEUX v. COBLEY**

**Kekewich J. [1892] 2 Ch. 253**

*See Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50), s. 4.*

— Market gardens—Compensation.

*See No. 6, above.*

— Market gardens.

*See Market Gardeners' Compensation Act, 1895 (58 & 59 Vict. c. 27).*

— Prohibition—County court—Want of jurisdiction—Acquiescence.

*See PROHIBITION. 4.*

— Small holdings.

*See SMALL HOLDINGS.*

**Compensation for Improvements.**

*See Cases under LANDLORD AND TENANT—Agricultural Holdings.*

**LANDLORD AND TENANT**—*continued.***Covenant.**

See also under COVENANT.

- Assignment—Covenant not to assign.  
See No. 14, below.

11. — *Assignment—Successive assignments—Covenants to pay rent and indemnify assignors—Bankruptcy of first assignee—Purchase by lessee of bankrupt's right to indemnity—Release of bankrupt's estate—"Property" of bankrupt—Chose in action—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 20, 44, 50, sub-s. 5, 56, 57, 168.*

A lessee assigned the lease to assignee No. 1, who assigned it to assignee No. 2, each assignment containing a covenant by the assignee to pay the rent, and keep his assignor indemnified against the covenants in the lease.

Assignee No. 1 became bankrupt, assignee No. 2 died, and the lessee, who had been called upon to pay the rent, bought from the bankrupt's trustee, and took an assignment of, the bankrupt's right to indemnity, withdrawing a proof he (the lessee) had carried in, and releasing the estate of the bankrupt:—

*Held*, that the right of the trustee in bankruptcy of assignee No. 1 to sue the executors of assignee No. 2 upon his covenant to indemnify was "property" within the meaning of s. 168 of the Bankruptcy Act, 1883, and assignable by the trustee; and that damages in an action by the trustee against the executors would not be confined to the dividend payable to the lessee in respect of his proof against the estate of assignee No. 1, but extended to the whole amount of the obligation under the covenants to pay and indemnify entered into by such assignee:

And *held* also, upon the construction of the deed of assignment and release, that the lessee had acquired the right of the trustee to sue the executors of assignee No. 2, and that the release did not extend to all the estate of the bankrupt, but that the asset assigned to the lessee must be excluded from it.

The judgment of North J., [1898] W. N. 18 (4), affirmed. *In re PERKINS. POYSER v. BRYFUS*

C. A. [1898] 2 Ch. 182

- Breach of covenant—Forfeiture—Relief.

See Cases under LANDLORD AND TENANT—Forfeiture.

12. — *Building and annoyance—Covenant against—Erection of trellis screen—Adjoining lessees—Injunction.*

The lessee of a plot in a building estate covenanted not to erect or build thereon any building except a stable, &c., and also not to do anything that might be an annoyance, &c., to any tenant of the lessor. On a house being erected on an adjoining plot 20 feet from the lessee's boundary and facing it, the lessee put a trellis-work screen 12 feet high on the top of the boundary wall which was 8 feet high:—

*Held*, (1) that on the construction of the deed "building" therein included any erection, and that therefore the screen was a breach of the covenant against building; (2) that on the facts the screen interfered with the adjoining tenant's pleasurable enjoyment of his house, and was

**LANDLORD AND TENANT (Covenant)**—*contd.*

therefore a breach of the covenant against annoyance. *WOOD v. COOPER* — *Romer J.*  
[1894] 3 Ch. 671

- Death—Liability for breach after lessor's death—Liability of lessor's general estate.  
See NEW ZEALAND. 6.

— Licence for sale of wine and beer—Implied covenant by tenant not to surrender.  
See No. 90, below.

13. — *Liquidated damages—Penalty—Public-house—Offence under Licensing Acts*

The lease of a public-house contained a covenant not to contravene the provisions of any Licensing Act so as to be convicted in any court, and in that event to pay to the landlord 50*l.* by way of liquidated damages:—

*Held*, that the 50*l.* was payable as liquidated damages, and could not be relieved against as a penalty. *WARD v. MONAGHAN*

C. A. [1895] W. N. 123 (8)

- Not to assign—Covenant against assignment without licence—Deposit as a condition for granting licence.  
See COVENANT. 1.

14. — *Not to assign without licence, Covenant—Licence not to be unreasonably withheld—Refusal because lessor desires possession.*

A lease contained a covenant by the lessee not to assign without licence, "such licence not to be unreasonably withheld in the case of any respectable and responsible person who may be the proposed assignee," and a clause for re-entry on breach of any of the covenants of the lease. The lessor withheld a licence to assign because he desired to obtain possession of the premises. In an action by the lessor to recover possession for breach of the covenant:—

*Held*, that the licence had been unreasonably withheld, and that the lessor was not entitled to recover. *BATES v. DONALDSON*

C. A. [1896] 2 Q. B. 241

- Not to buy beer, &c., covenant.  
See No. 17, below.

15. — *Not to buy wines except from lessor, his successors or assigns, Covenant—Hotel—Lessee's covenant—Proviso for abatement of rent—Covenant running with the land—Assignment of wine business—Assignment of lease.*

A lease by a wine merchant of an hotel for thirty years at a rent of 1500*l.* a year contained a covenant by the lessee with the lessor, his heirs and assigns, that he, the lessee, would not during the term buy or sell on the premises any foreign wines other than should have been supplied by the lessor, his successors or assigns; and it was provided that so long as the lessee should observe this covenant the lessor should allow the lessee an abatement of 75*l.* from each quarter's rent.

The lessor died during the term. The plts., who were his executors, sold his wine business to the firm of W. & P.; and the lessee assigned the lease of the hotel to the defts. The defts. claimed that, so long as they continued to buy wines from W. & P., they were entitled to the abatement from each quarter's rent; but the plts. insisted that, when the ownership of the wine business and the ownership of the reversion upon the lease

**LANDLORD AND TENANT (Covenant)—contd.**

were severed, the covenant to buy wines ceased to be operative, and consequently that the defts. were not entitled to the benefit of the proviso:—

*Held*, (1.) that, although the covenant to buy wines did not in terms include the assigns of the lessee, the burden of it ran with the tenant's interest under the lease, and (2.) that the assigns of the lessee were still bound by the covenant and entitled to the benefit of the proviso for abatement of rent.

The decision of Kekewich J. affirmed. **WHITE v. SOUTHBEND HOTEL CO. — C. A. [1897] W. N. 36 (6); [1897] 1 Ch. 767**

**16. — Not to carry away hay and straw, Covenant—Penalty—Damages—Stipulations of varying importance—Lease of farm.**

Where a lease of a farm contained a covenant by the lessees not to sell hay or straw off the premises during the last twelve months of the term, but to consume the same upon the premises, and provided that an additional rent of 3*l.* per ton should be payable by way of penalty for every ton of hay or straw so sold, and it appeared that there was a substantial difference between the manurial value of hay and that of straw:—

*Held*, that the sum so made payable was a penalty and not liquidated damages. **WILLSON v. LOVE — C. A. [1896] 1 Q. B. 626**

— Production of deeds—Contract for lease—Right of lessee to acknowledgment or covenant for production.

*See* **VENDOR AND PURCHASER. Title-deeds. 97.**

**17. — Public-house—Restrictive beer covenant—Assignment of reversion.**

By lease made in 1889 between A. H., described as "The Brewery, Nechells, Birmingham, brewer (hereinafter called 'the lessor')," and N., described as a "beer retailer (hereinafter called 'the lessee')," the lessor demised unto the lessee a beerhouse for fourteen years. The lease contained the following covenant: "And the lessee hereby covenants with the lessor" "that he, the lessee, his executors, administrators, lessees, tenants, and assigns, and all other persons for the time being carrying on the business of a beer retailer or publican upon the said premises will and shall during the said term of years hereby granted deal exclusively with the lessor or his firm of H. & Sons or his or their successors in business for all beers, ales, porter, stout (except bottled stout), and other like articles which shall be sold or consumed upon the said hereby demised premises, or shall be brought thereon to be so sold or consumed; and will not nor shall during the said term on any pretence whatsoever purchase, take in, or receive, or have in his or their possession, or directly or indirectly sell or dispose of, or permit the sale, disposal, or consumption, in or upon the said premises of any such articles other than such as shall have been purchased or taken of the lessor or his firm or his or their successors in business, provided that he or they shall be willing to supply the same at the price and terms usually charged by the lessor or his firm to his or their tenants." The lease also contained a declaration that "where the context allows the expressions 'the lessor'

**LANDLORD AND TENANT (Covenant)—contd.**

and 'the lessee' used in these premises include besides the said A. H. his executors, administrators, and assigns, besides the said N. his executors, administrators, and assigns." The lease was afterwards assigned to the deft. J., who carried on on the premises the business of a beer retailer and publican. A. H., in 1891, assigned the reversion expectant on the lease to a co., which, in 1896, assigned such reversion to the plt. co. H. & Sons were still carrying on their business at the brewery at Nechells. The deft. refused to deal exclusively with the plt. co. for his beers, and that co. brought an action for an injunction to restrain him from buying his beers elsewhere. He was willing to buy his beers from H. & Sons:—

*Held*, that the covenant, as explained by the interpretation clause, restricted the dealings in beer to dealings with the lessor, his executors, administrators, or his firm while he was a member thereof; that the lessor, his executors, administrators, or assigns were the persons to dictate to the tenant as to where he was to purchase his beers; and that the plt. co. was entitled to the injunction. **BIRMINGHAM BREWERIES, LD. v. JAMESON — Byrne J. [1898] W. N. 15 (8)**

This decision was reversed on appeal. *See* **RECORD OF BUSINESS C. A. [1898] W. N. 45, 145**

— Restrictive wine covenant—Hotel.

*See* No. 15, above.

**18. — Public-house licence—"Discontinuance" of—"Assigns"—Underlessee.**

The lessee of a public-house covenanted to conduct the business so as to afford no ground for "discontinuing the licence":—

*Held*, that read with the context "discontinuing" meant not refusing to renew but forfeiting the licence.

Decision of C. A., [1898] 1 Q. B. 716, affirmed. **BRYANT v. HANCOCK & CO.**

**H. L. (E.) [1899] W. N. 118; [1899] A. C. 442**

**19. — Quiet enjoyment—Breach by erection of buildings on adjoining land causing lessee's chimneys to smoke.**

The deft. was the owner of two adjoining pieces of land. On one of these he erected a house which he demised to the plt., with whom he covenanted for quiet enjoyment without any interruption or disturbance from or by the lessor, or any person lawfully or equitably claiming under him. The deft. then erected on the other piece of land buildings of such a height that they caused the chimneys of the plt.'s house to smoke badly:—

*Held*, that the deft. had broken his covenant. **TEBB v. CAVE — Buckley J. [1900] W. N. 45; [1900] 1 Ch. 642**

**20. — Quiet enjoyment—Derogation from grant—Right to establish market—"Prescribed limits"—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 166.**

A cattle salesman occupied premises under leases granted by a municipal corporation with covenants for quiet enjoyment, and used the premises for the sale of cattle. The corporation, after the grant of the leases, acting as urban sanitary authority, established a cattle market in the

**LANDLORD AND TENANT (Covenant)—*contd.***

borough, and published a list of tolls. The salesman was convicted of selling cattle on the said premises, which were within the borough, but not within the limits of the market:—

*Held*, (1.) that the creation of the borough market was not a derogation from the grant of the leases; (2.) that the leases gave no right to sell cattle within s. 166 of the Public Health Act, 1875, with which the corporation could not interfere by establishing a market; (3.) that the salesman was liable to a penalty under s. 13 of the Markets and Fairs Clauses Act, 1847. **SPURLING v. BANTOFT** - Div. Ct. [1891] 2 Q. B. 384

— Quiet enjoyment—Injunction—Purchase by railway company of reversion on lease—Covenant running with land.  
*See RAILWAY*. 3.

— Quiet enjoyment—Interesse termini—Trespass.  
*See No. 73, below.*

**21. — Quiet enjoyment—Interruption—Breach of covenant against assignment—Subsequent assignment of reversion—Re-entry by assignees of reversion—Consent judgment.**

The deft. was the lessee of a shop, the lease containing a covenant by him not to assign or underlet the premises. There was a condition for re-entry upon breach of any of the covenants in the lease. The deft. let the premises to the plt. for the remainder of the term, this lease containing a covenant by the deft. for quiet enjoyment of the premises by the plt. without any interruption by the deft. or any person lawfully claiming through him. Subsequently the original lessor assigned the reversion, and the assignees of the reversion brought an action against the deft. to recover possession of the premises as upon the breach of covenant against assignment. The deft. gave the plt. notice of the action, telling him that there was no defence, and signed a consent to judgment for possession, under which the plt. was evicted:—

*Held*, that, as the deft. had a good defence to the action, the breach of covenant having occurred before the assignment of the reversion, the act of the deft. in consenting to judgment for possession was the cause of the interruption of the plt.'s enjoyment, and was therefore a breach of the covenant for quiet enjoyment. **COHEN v. TANNAR** C. A. [1900] W. N. 162; [1900] 2 Q. B. 609

**22. — Quiet enjoyment—Mine—Underground water.**

The deft. leased a mine to the P. Co. and subsequently an adjoining mine at a higher level to the plt. The plt.'s lease contained a covenant for quiet enjoyment. The P. Co., while properly working their mine, tapped a large body of underground water, which, after flooding them out, rose up into the plt.'s mine:—

*Held*, that the deft. was not liable under the covenant. **HARRISON, AINSIE & Co. v. LORD MUNCASTER** - C. A. [1891] 2 Q. B. 680

**23. — Quiet enjoyment—Underlease—Interruption—Re-entry by original lessor for breach of covenant.**

An assignee of an underlease sued the sub-

**LANDLORD AND TENANT (Covenant)—*contd.***

lessor for breach of a covenant for quiet enjoyment on the ground that the superior landlord had re-entered for breach of a covenant in the head lease:—

*Held*, that an interruption from the superior landlord was not an interruption from "any person claiming by, through, or under" the sublessor, and therefore was not a breach of the covenant for quiet enjoyment in the sub-lease. **KELLY v. ROGERS** - C. A. [1892] 1 Q. B. 910

— Rates—Covenant to pay water rate—Water supplied for trade purposes.

*See WATER—Water Rates*. 29.

— Rates and taxes—Sanitary nuisance—Expenses of abating.

*See LONDON—Sewers*. 52—54.

— Rates and taxes—Tramway—Covenant by tenant to keep free from all expenses whatever.

*See SCOTTISH LAW*. 24.

**24. — Rates, taxes, and assessments—Covenant to pay—Street—Expenses of paving—Summary recovery from owner—Claim by owner against tenant—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.**

Expenses of paving, &c., a street, recovered in a summary manner, by an urban authority, from the owner of premises outside the metropolis, under the Public Health Act, 1875, s. 150, cannot be recovered by the owner from his tenant, under a covenant by the tenant to pay "all rates, taxes, and assessments whatsoever, which now are, or during the term shall be, imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax."

**BAYLIS v. JIGGENS** - Channell J. [1898] W. N. 64 (3); [1898] 2 Q. B. 315

**25. — Rates, taxes, &c.—Drainage works required by local authority, Cost of—Liability of tenant—Covenant by tenant to pay and discharge "all taxes, rates, duties and assessments payable in respect of the demised premises"—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 85; 1862 (25 & 26 Vict. c. 102), ss. 64, 96.**

A tenant covenanted with his landlord that he would pay and discharge "all taxes, rates, duties and assessments whatsoever, which now are, or hereafter shall become, payable for or in respect of the premises hereby demised, or any part thereof, whether parliamentary, parochial or otherwise, except the landlord's property tax":—

*Held*, that under this covenant the tenant was liable to pay the cost of drainage works, the execution of which was required by the local authority under s. 85 of the Metropolis Management Act, 1855.

Decision of Byrne J., [1899] W. N. 30 (2), affirmed.

**Brett v. Rogers**, [1897] 1 Q. B. 525, approved. **FARLOW v. STEVENSON** - C. A. [1900] 1 Ch. 128

— Repair—Landlord under no covenant to—Liability of landlord—Dangerous condition of demised premises.

*See No. 69, below.*

**LANDLORD AND TENANT (Covenant)—contd.**

26. — "*Repair, maintain, and uphold*"—*Inherent defect in premises.*

A lessee covenanted to repair and maintain the demised premises. The house, which was old, became dangerous owing to faults in the foundation, and had to be pulled down:—

*Held*, that the lessee was not liable on his covenant for the cost of rebuilding.

The age and condition of a house at the beginning of the tenancy are to be taken into consideration in deciding whether there has been a breach of a general covenant to repair. *LISTER v. LANE* — C. A. [1893] 2 Q. B. 212

— Repairs—Continuing breach.

See No. 32, below.

27. — Repairs—Damages, Measure of—Breach of covenant.

The proper measure of damages in an action, brought after the expiration of the term for a breach of covenant to repair, is the cost of putting the premises into the state of repair required by the covenant. The fact that the incoming tenant has effected the repairs at his own cost will not deprive the lessor of his right to recover the full damages. *JOYNER v. WEEKS*

C. A. [1891] 2 Q. B. 31

28. — Repairs—Damages—Measure of—Breach of covenant.

Principle upon which damages for non-repair of premises should be assessed in an action brought after the termination of the lease, where the lessor had in a previous action for the same object obtained money as damages from the lessee, but no repairs had been effected. *HENDERSON v. THORN* Div. Ct. [1893] 2 Q. B. 161

29. — Repairs—Damages—Measure of—Lease and sub-lease—Covenants to keep and yield up in repair.

Where a lease contains covenants to keep the demised premises in repair and to deliver them up in good repair, and a sub-lease is granted containing similar covenants with notice to the sub-lessee of the original lease, and the lessee brings an action against the sub-lessee for breach of his covenant to keep in repair, it is right in assessing the damages to take into account the liability of the lessee upon the covenants in the original lease.

Decision of C. A., [1895] 2 Ch. 377, affirmed. *CONQUEST v. EBBETTS* — H. L. (E.) [1896] W. N. 87 (10); [1896] A. C. 490

30. — Repairs—Indemnity—Mesne assignment—Covenant by assignee to indemnify assignor—Breach of covenant before assignment—Liability.

A lease, the reversion on which was vested in the plt., contained a covenant by the lessee to repair and keep in repair the demised premises. By virtue of divers mesne assignments and other acts in the law the term had become vested in the defts., the executors of a deceased assignee of the lease. They, as "trustees," assigned the premises, which were then out of repair, for the residue of the term to an assignee, who covenanted with them thenceforth to pay the rent reserved by the lease, and perform the lessee's covenants therein contained, and to keep them indemnified from the payment and performance

**LANDLORD AND TENANT (Covenant)—contd.**

thereof respectively. The premises remaining out of repair, the plt. subsequently brought an action against the defts. for breach of the covenant to repair, and they brought in their assignee as third party. The plt. having recovered damages against the defts. in the action:—

*Held*, that the third party was liable under his covenant to indemnify them against those damages. *GOOCH v. CLUTTERBUCK*.

C. A. [1899] W. N. 96; [1899] 2 Q. B. 148

31. — Repairs—Lease to trustee—Covenant by lessee to repair—Occupation by *cestui que trust*—Liability of *cestui que trust* for breach of trustee's covenant.

A lease of a house contained a covenant by the lessee for himself and his assigns to repair, and also a declaration that the lessee held the premises in trust for the deft. The deft. occupied the premises during the whole of the term, as it was intended by the parties that she should do, and she paid the rent. Upon the expiry of the term the premises were out of repair:—

*Held*, that the fact of the deft. having the beneficial interest in the lease did not, either by itself or coupled with the fact of occupation by her, create any equitable liability in her for the breach of the lessee's covenant. *RAMAGE v. WOMACK* Wright J. [1899] W. N. 246; [1900] 1 Q. B. 116

32. — Repairs—Notice of breach—Continuing breach—Breach after expiration of notice—Right to re-enter—Rent due before action—Joinder of claim for possession and claim for rent—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-s. 1.

A lease contained a general covenant to repair and a covenant to repair within three months after notice. The premises being out of repair, the lessor gave notice to the lessee under the Conveyancing Act, 1881, to repair within a given time. Three days after the expiration of the notice a quarter's rent became due. No repairs having been done by the tenant, the lessor brought an action to recover possession, and in the action claimed the quarter's rent:—

*Held*, that, the breach of covenant being a continuing one, no new notice was required in respect of the non-repair after the expiration of the time specified in the notice, and that the claim for rent did not affect the right to possession in respect of non-repair after the date when the rent fell due. *PENTON v. BARNETT*

C. A. [1898] 1 Q. B. 276

Referred to by Kekewich J. *In re Serle*, [1898] 1 Ch. 652, 656.

33. — Repairs—Underlessee—Liability of—Breach of covenant.

An underlessee (even though of the whole premises in the head lease) is not as between himself and the original lessor a "lessee" within s. 2 (1) of the Conveyancing Act, 1892, and therefore the lessor is not entitled to recover from him the costs of solicitor and surveyor incurred in preparing a schedule of defects in repair.

The decision of Div. Ct., [1894] 1 Q. B. 472, reversed. *NIND v. NINETEENTH CENTURY BUILDING SOCIETY* — C. A. [1894] 2 Q. B. 226

**LANDLORD AND TENANT (Covenant)—contd.**

— Restrictive covenant.

See *LANDLORD AND TENANT, passim*.

— Restrictive covenant—Occupier—Injunction.

See *COVENANT*. 6.

— Restrictive covenant—Tied public-house—Assigns—Underlessee—Notice.

See *COVENANT*. 7.

**34. — Sub-letting—Breach—Measure of damages.**

A lessee, in breach of his covenant not to sublet without the written consent of the lessor, sublet his premises to a turpentine distiller. The house was burnt down:—

*Held*, that the loss caused by the fire was the natural result of the breach of covenant, and was, therefore, recoverable as damages in the action. *LEPLA v. ROGERS* **Hawkins J. [1893] 1 Q. B. 31**

— Sub-letting—Mistake—Forgetfulness—Equitable relief against forfeiture.

See *No. 66, below*.

**35. — Trade—Covenant by lessor not to let adjoining land for purposes of—Lessee not entitled to enforce covenant as to user between lessee of adjoining land and lessor.**

The deft. W., the owner of a row of houses, let No. 3 to H. as a shop for carrying on a specified business. The lessee covenanted to use the premises for that business only, and the lessor covenanted not to let any of the other houses for the purposes of the same business. The plt. was the assignee of H.'s lease, continuing the business.

Afterwards W. let No. 1 to the deft. B., taking a covenant from B. to use the premises only for the purposes of another specified business.

The deft. B. sold various articles which, as the Court found, were comprised in the plt.'s business:—

*Held*, that W. had broken no covenant of his own, and was not bound to sue B. for the breach of his covenant with W. at the request of the plt., who was neither covenantee nor assignee of B.'s covenant; and the plt., therefore, could sue neither W. nor B.

*Kemp v. Bird*, (1877) 5 Ch. D. 549, 974, followed, notwithstanding *Fitz v. Iles*, [1893] 1 Ch. 77. *ASBURY v. WILSON* — **Kekewich J. [1900] 1 Ch. 66**

**36. — Trading—Covenant against allowing—“Adjoining” premises.**

“Adjoining premises” do not include all the houses in a block of buildings, but are confined to the next-door premises.

The view expressed by Parke J. in *Rez v. Hodges*, (1829) Mood. & M. 341, that “ground cannot be properly said to adjoin a house, unless it is absolutely contiguous, without anything between them,” adopted. *VALE & SONS v. MOORGATE STREET AND BROAD STREET BUILDINGS, LD.* **Cozens-Hardy J. [1899] W. N. 52**

Distinguished by Buckley J. *Ind. Coope & Co. v. Hamblin*, [1900] W. N. 24; but this case was reversed by C. A. [1900] W. N. 270.

— Ground “adjoining” to an existing churchyard.

See *ECCLIASTICAL LAW*. 20.

**LANDLORD AND TENANT (Covenant)—contd.**

**37. — “Usual covenants”—Public-house—Agreement for lease—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9.**

Question as to what are “usual covenants” in the lease of a public-house, and as such to be inserted in a lease where the contract is silent as to covenants. *In re LANDER AND BAGLEY'S CONTRACT* — **Chitty J. [1892] 3 Ch. 41**

— “Usual covenants”—Purchase of leaseholds. See *VENDOR AND PURCHASER—Contract*. 25.

**Determination of Tenancy and Holding Over.**

— “Determination of tenancy”—Agricultural holdings.

See *No. 9, above*.

**38. — Determination—Notice—Sufficiency of notice.**

In the case of a lease determinable at the end of seven years by six months' notice, a letter by the lessee stating that he would not be able to stop over the first seven years of his term unless his rent was reduced held to be sufficient to determine the lease.

Decision of Div. Ct., [1895] 1 Q. B. 231, affirmed. *BURY v. THOMPSON*

**C. A. [1895] W. N. 44; [1895] 1 Q. B. 696**

**39. — Determination—Notice to quit—Yearly tenancy—Commencement of tenancy—“At”—“From.”**

A yearly tenancy was expressed in the agreement to commence “on” May 19, and the apportioned rent to the next quarter-day, June 24, was to be paid on signing the agreement, and the future rent to be paid on the usual quarter-days, and in a subsequent year six months' notice to quit was given for May 19:—

*Held*, that the tenancy commenced on May 19 and not on June 24, and expired at midnight on May 18:

*Held*, also (A. L. Smith L.J. doubting), that the notice for the anniversary of the commencement of the tenancy was sufficient, and that there was no distinction between tenancies commencing “at” a particular time or “on” a particular day and “from” the same day:

*Held*, also, that an oral agreement to continue the tenancy beyond a year was invalid under the Statute of Frauds, there being no fresh demise.

Decision of Bruce J. reversed. *SIDEBOTHAM v. HOLLAND* — **C. A. [1895] W. N. 3; [1895] 1 Q. B. 378**

**40. — Estoppel by conduct—Surrender by operation of law—Determination of tenancy.**

The deft. was tenant to the plt. from year to year of a Lady Day holding. In Dec., being desirous of surrendering his tenancy at an earlier date than that for which he could then give a valid notice to quit, he entered into an oral agreement with the plt. to surrender at the following Midsummer. On the faith of this agreement the plt., with the deft.'s knowledge and assent, sold the premises to a purchaser with the right to possession at Midsummer. At Midsummer the deft. refused to give up possession; whereupon the plt. brought ejectment:—

*Held*, that the action was maintainable upon

**LANDLORD AND TENANT (Determination of Tenancy and Holding Over)**—*continued.*

the grounds: (1.) that the agreement of Dec., although bad as an agreement to surrender by reason of its not being in writing, as required by the Statute of Frauds, amounted to an acceptance of a new tenancy to end at Midsummer, and that the acceptance of that new tenancy worked a surrender of the old one by operation of law; and (2.) that the deft. by his conduct in allowing the plt. to contract an obligation to his purchaser on the faith of the agreement was estopped from disputing that his original tenancy was one which terminated at Midsummer. **FENNER v. BLAKE**

Div. Ct. [1900] W. N. 17; [1900] 1 Q. B. 426

**41. — Holding over—Implied yearly tenancy—Implication of law.**

If a tenant remain in possession by consent after the expiration of a lease, and there is no stipulation to the contrary, the law implies a yearly tenancy on such of the terms of the former lease as are not inconsistent with such a tenancy.

The implication in this case was confirmed by the terms of a letter containing a notice to quit, sent after the expiration of the original lease. **DOUGAL v. MCCARTHY** C. A. [1893] 1 Q. B. 736

**42. — Holding over—Telephone wire—Notice determining tenancy—Acceptance of rent—Waiver of notice.**

In 1889 the N. Co. supplied a telephone wire and apparatus to K. for three years at a rent payable quarterly; upon the expiration of the term the parties continued the agreement by mutual consent. On Dec. 30, 1893, the last day of a quarter, the N. Co. gave notice terminating the agreement forthwith and demanded rent up to Dec. 31, being one day beyond the quarter. The rent was paid and accepted by the N. Co. On motion to restrain the N. Co. from cutting the wire:—

*Held*, that the agreement created the relation of landlord and tenant between the N. Co. and K., and therefore the acceptance of rent for a day beyond the notice determining the tenancy acted as a waiver of that notice. An injunction granted restraining the N. Co. from interfering with the wire and apparatus.

Rules as to injunction ordering specific performance considered. **KEITH, PROWSE & Co. v. NATIONAL TELEPHONE CO.**

**Kekewich J.** [1894] 2 Ch. 147

**43. — Notice to quit—Yearly tenancy—"End of the current year"—Determination of tenancy.**

A tenant held premises on a yearly tenancy from Lady Day to Lady Day. On March 24, 1898, her landlord gave her notice to quit and deliver up the premises "on June 24, 1898, or at the end of your current year's tenancy":—

*Held*, that the notice must be construed in accordance with the intention of the landlord, and that since it was impossible to suppose that it was intended to be a notice to quit on March 25, 1898, when the current year's tenancy expired, it must be taken to be a good notice to quit the premises on March 25, 1899.

**Doe v. Culliford**, (1824) 4 D. & R. 248, followed.

**Doe v. Morphet**, (1845) 7 Q. B. 577, dissented from. **WRIEDE v. DYER** Div. Ct. [1900] 1 Q. B. 23

**LANDLORD AND TENANT (Determination of Tenancy and Holding Over)**—*continued.***44. — Weekly tenancy—Determination—Necessity for notice—Injury caused by defective repair of demised premises.**

A weekly tenancy is not determined without notice at the end of each week. The continuance of the tenant's occupation on the expiration of each week does not render the landlord liable for the defects then existing, as if there had been a re-letting. **BOWEN v. ANDERSON**

Div. Ct. [1894] 1 Q. B. 164

**Distress.**

*See Cases under DISTRESS.*

**Entry.**

— Distress.

*See Cases under DISTRESS.*

**45. — Forcible entry—Removing roof of house—Injury to furniture—Action of trespass—Recovery of Tenements Act, 1838 (1 & 2 Vict. c. 74).**

On a tenant refusing to quit after due notice, justices issued a warrant ordering him to give up possession within twenty-one days. On the same day a builder under the landlord's orders began to remove the tiles of the house, preparatory to rebuilding, and in so doing damaged the tenant's furniture. The tenant sued for trespass and damage:—

*Held*, (1) that the landlord's common law right of entry was not suspended by the issuing of the possession warrant; (2) that the removal of the tiles did not amount to a forcible entry, and the tenant had no cause of action. **JONES v. FOLEY**

Div. Ct. [1891] 1 Q. B. 730

— Re-entry—Forfeiture.

*See Cases under LANDLORD AND TENANT*

— Forfeiture.

**Flats.**

— Block of offices—Dangerous staircase—Landlord's liability.

*See No. 68, below.*

**46. — Covenant—Specific performance—Porter—Residential flats.**

Specific performance of a covenant by the landlord to appoint a resident porter to a building let in flats refused on the ground that to enforce the complete performance of the covenant (i.e., that the porter should perform certain duties for the tenants) would require supervision which the Court could not undertake.

The decision of A. L. Smith J., [1892] 1 Ch. 427, reversed. **RYAN v. MUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION**

C. A. [1893] 1 Ch. 116

Referred to by **Kekewich J.** *Davis v. Foreman*, [1894] 3 Ch. 634, 638.

— Restrictive covenant—User—Private residence.

*See COVENANT.* 2, 5.

**Forfeiture.**

**47. — Assign, Covenant not to—Equitable assignment—Declaration of trust—Condition against**

**LANDLORD AND TENANT (Forfeiture)—contd.**

*assignment for benefit of creditors*—"Disposing of the land leased"—*Notice before action*—*Service on "lessee"*—*Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 24, sub-s. 4—*Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 14, sub-ss. 1, 6 (i); s. 67, sub-s. 2.

By a lease the lessee covenanted not to assign or underlet the demised premises without the consent of the lessor, and there was a proviso for re-entry on breach of any of the covenants, or if the lessee should (inter alia) execute an assignment for the benefit of his creditors. The lessee executed an assignment of all his real and personal property, except that of a leasehold tenure, to a trustee for the benefit of his creditors, and he declared that he would stand possessed of all his leasehold property upon trust for the trustee and to assign and dispose of the same in such manner as the trustee should direct for the purposes of the deed. The trustee entered into possession of the demised premises, but no legal assignment of them was executed. The lessor served upon the trustee a notice alleging as ground of forfeiture the execution by the lessee of the assignment. In an action against the lessee to recover possession of the premises:—

*Held*, that, as there had been no legal assignment of the premises, there had been no breach of the covenant against assignment:

*Held*, also, that the condition against assignment for the benefit of creditors was not a condition against disposing of the land leased within the meaning of s. 14, sub-s. 6 (i), of the Conveyancing Act, 1881, and therefore service of notice on the lessee under s. 14, sub-s. 1, was necessary before the lessor could enforce his right of re-entry; and that service of the notice on the trustee under the deed was not a sufficient compliance with the provisions of s. 14, sub-s. 1, and s. 67, sub-s. 2, of the Act.

A condition against the disposing of the land leased within the meaning of s. 14, sub-s. 6 (i), of the Conveyancing Act, 1881, means a condition which on its face is against the disposing of the land leased. *GENTLE v. FAULKNER*

C. A. [1900] 2 Q. B. 267

48. — *Bankruptcy*—*Forfeiture on bankruptcy of lessee or assigns*—*Assignment of lease*—*Subsequent bankruptcy of lessee*.

In a lease there was a covenant not to assign without the consent in writing of the lessor, "such consent not to be withheld to a respectable and responsible tenant," and a proviso for re-entry if (inter alia) "the lessee, his executors, administrators, or assigns should become bankrupt." The lessee assigned, with the consent of the lessor, and subsequently to such assignment became bankrupt:—

*Held*, that the proviso for re-entry referred only to the bankruptcy of the person who for the time being was possessed of the term, and that consequently no forfeiture had been incurred.

*Quare*, whether the right to enforce a forfeiture on the bankruptcy of the lessee is affected by an annulment of the bankruptcy. *SMITH v. GROWER*

Wright J. [1891] 2 Q. B. 394

Referred to by C. A. *Horsely Estate, Ltd. v. Steiger*, [1899] 2 Q. B. 79, 89. See No. 56, below,

**LANDLORD AND TENANT (Forfeiture)—contd.**

49. — *Bankruptcy of lessee*—*Relief*—*Under-lessee*—*Conveyancing Acts, 1881, 1892* (44 & 45 Vict. c. 41, s. 14, sub-ss. 2, 6; 55 & 56 Vict. c. 13, s. 4).

The provisions of s. 4 of the Conveyancing Act, 1892 (enabling the Court to grant relief to an underlessee upon forfeiture by the lessee), extend to cases in which the Court would have no power to grant relief to the lessee himself.

The conditions on which relief ought in such a case to be granted to the underlessee considered.

The history of the statutory power to grant relief against forfeiture traced. *CHOLMELEY SCHOOL, HIGHGATE v. SEWELL* (No. 2)

Charles J. [1894] 2 Q. B. 906

50. — *Building—Repairs—Covenant to build*—*Covenant to repair*—*Continuing breach*—*Waiver—Recovery of possession*—*Notice of breach*—*Sufficiency—Relief against forfeiture*—*Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 14.

The p<sup>l</sup>ts. demised to the defts. a piece of land, and the defts. covenanted within twelve months to erect certain buildings thereon, and also at all times during the term of the lease to keep the premises "so to be erected as aforesaid in good and substantial repair, and the same in good and substantial repair" to deliver up at the expiration of the term. The lease contained a proviso for re-entry on breach of any of the lessees' covenants. The buildings were never erected, but the p<sup>l</sup>ts. accepted the quarter's rent which accrued next after the expiration of the twelve months limited for the erection of the buildings. The p<sup>l</sup>ts. afterwards served upon the defts. a notice under the Conveyancing Act, 1881, s. 14, referring to the building covenant only, and calling upon the defts. to erect the buildings. In an action for recovery of possession:—

*Held*, that the building covenant was broken once for all at the expiration of the twelve months, and was not a continuing covenant; that the repairing covenant implied an obligation to erect the buildings, and there was, therefore, a continuing breach of it; but that inasmuch as the notice under the Conveyancing Act only referred to the building covenant as to the breach of which there was a waiver, and did not mention the breach of the repairing covenant, the notice was insufficient and the action failed. *JACOB v. DOWN* - *Stirling J.* [1900] W. N. 99;

[1900] 2 Ch. 156

— *Discovery—Affidavit of documents.*

See *DISCOVERY—Documents.* 22.

51. — *Notice—Sufficiency—Breach of covenant*—*Right to possession*—*Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 14.

A notice served by a lessor on his lessee under s. 14 of the Conveyancing Act, 1881, merely informing the lessee that he "has not kept the same premises well and sufficiently repaired," and the party and other walls thereof," is not sufficient, as it does not direct the attention of the lessee to the particular breaches complained of, so as to give him an opportunity of remedying them before an action is brought against him.

*Fletcher v. Nokes*, [1897] 1 Ch. 271, followed.

The fact that such a notice sufficiently speci-



**LANDLORD AND TENANT (Forfeiture)—*contd.***

fies other breaches of covenant which are complained of will not make the notice sufficient within the section. *In re SERLE. GREGORY v. SERLE* **Kekewich J. [1898] 1 Ch. 652**

Distinguished by Buckley J. *Pannell v. City of London Brewery Co.*, [1900] 1 Ch. 496. See No. 53, below.

**52. — Notice — Validity — Procedure — Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14.**

A notice under s. 14 (1) of the Conveyancing Act, 1881, requiring the lessee to remedy a breach of covenant is good, though it does not require payment of compensation in money. A writ and not an originating summons is the proper mode to raise the question of the validity of such a notice.

The decision of North J., [1892] 2 Ch. 328, affirmed. *LOCK v. PEARCE* **C. A. [1893] 2 Ch. 271**

Referred to by Buckley J. *Pannell v. City of London Brewery Co.*, [1900] 1 Ch. 496, 501. See next Case.

**53. — Notice bad in part—Breach of covenant —Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14.**

A notice under s. 14 of the Conveyancing Act, 1881, referring to several distinct alleged breaches of covenant is not invalidated in toto because it turns out that although some of the alleged breaches have occurred the others have never taken place, or that the lessor is not entitled to rely on them.

*Horsely Estate, Ltd. v. Steiger*, [1899] 2 Q. B. 79, and *In re Serle*, [1898] 1 Ch. 652, distinguished. **PANNELL v. CITY OF LONDON BREWERY CO.**

**Buckley J. [1900] W. N. 16; [1900] 1 Ch. 496**

**54. — Notice of "particular breach" of covenant — Sufficiency of notice — Action to recover possession — Damages — Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-s. 1.**

The notice to be served by a lessor on his lessee, under s. 14, sub-s. 1, of the Conveyancing Act, 1881, "specifying the particular breach of covenant complained of," to entitle the lessor to enforce by action a right of re-entry for the breach, must be given in such detail as will enable the lessee to understand what is complained of, so that he may have an opportunity of remedying the breach before action brought.

A mere general notice of breach of a specified covenant is not sufficient.

A notice by a lessor to his lessee that "you have broken the covenants for repairing the inside and outside of the houses" (describing them) contained in a specified lease:—

**Held**, to be insufficient, and on this ground an action by the lessor to recover possession of the demised houses for breach of covenant was dismissed with costs:

**Held**, also, that the lessor could not maintain the action for damages for the breach. **FLETCHER v. NOKES** — **North J. [1897] 1 Ch. 271**

Followed by Kekewich J. *In re Serle*, [1898] 1 Ch. 652. See No. 51, above.

**55. — Re-entry—Chose in action—Assignment of lease by trustee in bankruptcy—Relief.**

The jurisdiction to grant a lessee relief against

**LANDLORD AND TENANT (Forfeiture)—*contd.***

forfeiture for non-payment of rent is not confined to cases where the lessor has re-entered under legal process, but extends to cases where the lessor has recovered possession without the aid of the Court. In such a case an order may be made declaring that the lessee may hold the lands according to the lease, without any new lease. This right is a chose in action, and in the case of a bankrupt vests in his trustee, who is entitled to assign it to a purchaser. **HOWARD v. FANSHAWE** — **Stirling J. [1895] 2 Ch. 581**

**56. — Re-entry — Proviso for — Condition against liquidation—Winding-up of company—Condition running with the land—Covenant not to assign or underlet—Notice before action for forfeiture—Reasonable notice—Conveyancing Acts, 1881, 1892 (44 & 45 Vict. c. 41, s. 14, sub-ss. 1, 6; 55 & 56 Vict. c. 13, s. 2, sub-s. 2).**

The reversion on the lease was conveyed to the plts. and the lease was assigned by the lessees with the plts.' consent to the defts., an individual and a joint stock co. The deft. co. subsequently passed a resolution for a voluntary winding-up, not by reason of insolvency, but for the purpose of reconstruction with additional capital:—

**Held**, that the deft. co. had entered into liquidation within the meaning of the condition contained in the lease; and,

**Semble**, that the condition ran with the land.

**But held**, also, that a sufficient notice under s. 14, sub-s. 1, of the Conveyancing Act, 1881, was a condition precedent to enforcing the forfeiture, the effect of s. 2, sub-s. 2, of the Conveyancing Act, 1892, being to take the case of a forfeiture on bankruptcy or liquidation out of sub-s. 6 of s. 14 of the Conveyancing Act, 1881, for a year from the date of the bankruptcy or liquidation; and that the notice given was not sufficient, and therefore the action was not maintainable.

A lease contained a covenant by the lessees for themselves and their assigns not to assign or underlet the premises without the consent of the lessors, which was not to be unreasonably withheld. Assignees of the lease entered into an agreement for the sale thereof by which it was provided that at a certain period, though the purchase might not then be completed, the purchasers should be let into possession of the premises, and should from that day pay the rents and outgoings in respect of the same. The purchasers were let into possession under that agreement, the purchase remaining uncompleted:—

**Held**, that so letting them into possession was not a breach of the covenant against assignment or underletting without the consent of the lessors.

Judgment of Hawkins J., [1898] 2 Q. B. 259, reversed. **HORSEY ESTATE, LTD. v. STEIGER AND PETRIFITE CO.** — **C. A. [1899] W. N. 82; [1899] 2 Q. B. 79**

Discussed by Buckley J. *Pannell v. City of London Brewery Co.*, [1900] 1 Ch. 496.

**57. — Re-entry—Relief—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14.**

A lessee cannot apply under s. 14 of the Conveyancing Act, 1881, for relief against re-

**LANDLORD AND TENANT (Forfeiture)—contd.**

entry or forfeiture after the lessor has actually re-entered.

Decision of Kekewich affirmed. *ROGERS v. RICE* — C. A. [1892] 2 Ch. 170

See now Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 2, sub-s. 1,

**58. — Re-entry—Right of—Breach of covenant—Covenant not to sub-let without landlord's consent—Mistake—Forgetfulness—Equitable relief against forfeiture.**

In a lease for years the lessees covenanted not to underlet, assign, or part with the possession of the premises, or any part thereof, without the consent in writing of the lessors, such consent not to be unreasonably withheld. The lease contained a power to re-enter upon breach of any of the covenants. The lessees, without asking for the consent of the lessors, underlet a part of the premises to a tenant who already occupied under the lessors, and to whom no objection could have been reasonably taken. In an action by the lessors to recover possession of the premises for breach of covenant:—

*Held*, that the fact that the breach of covenant had been committed through forgetfulness, or because the lessees thought it unimportant, did not form a ground for giving them equitable relief against forfeiture for breach of the covenant, and that the plts. were entitled to succeed in the action.

*Barrow v. Isaacs & Son*, [1891] 1 Q. B. 417, followed.

*Hyde v. Warden*, (1877) 3 Ex. D. 72, questioned. *EASTERN TELEGRAPH CO. v. DENT*

C. A. [1899] 1 Q. B. 835

**59. — Relief — Compensation for breach of covenant — Ejectment — Solicitor's and surveyor's costs of preparing notice—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14.**

The "compensation" for breach of covenant which a lessee is liable to pay under s. 14 of the Conveyancing Act, 1881, does not include the costs incurred by the lessor in consulting and employing a solicitor and surveyor in respect of the preparation of the notice required by that section. *SKINNERS' CO. v. KNIGHT*

C. A. [1891] 2 Q. B. 542

Overruled. See Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 2, sub-s. 1.

**60. — Relief—Parties necessary—Original lessee—Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 1.**

Mortgages by way of underlease applied for relief against a forfeiture for non-payment of rent, but did not make the original lessee, against whom the forfeiture had gone, a party to the application:—

*Held*, that relief ought not to be given in the absence of the original lessee. *HARE v. ELMS*

Div. Ct. [1893] 1 Q. B. 604

Referred to by Stirling J. *Howard v. Fanshawe*, [1895] 2 Ch. 581, 589.

**61. — Relief—Repairs—Breach of covenant—Conveyancing Acts, 1881, 1892 (44 & 45 Vict. c. 41, s. 14; 55 & 56 Vict. c. 13, ss. 2, 4).**

A lessee who in obedience to a notice from his

**LANDLORD AND TENANT (Forfeiture)—contd.**

lessor under s. 14, sub-s. 1, of the Conveyancing Act, 1881, remedies the breach of covenant specified and makes the compensation demanded, and thereby renders unnecessary an application to the Court under sub-s. 2 for relief from forfeiture for such breach, is not relieved under the provisions of that Act within the meaning of s. 2, sub-s. 1, of the Conveyancing Act, 1892, that expression referring not to s. 14, sub-s. 1, of the Act of 1881, but to relief granted by the Court under that Act or the Act of 1892.

The decision of Div. Ct., [1894] 1 Q. B. 472, reversed. *NIND v. NINETEENTH CENTURY BUILDING SOCIETY* C. A. [1894] 2 Q. B. 226

**62. — Relief—Underlessee—Breach of covenant not to assign—Negligence—Conveyancing Acts, 1881, 1892 (44 & 45 Vict. c. 41, s. 14; 55 & 56 Vict. c. 13, s. 4).**

The Court has jurisdiction under the Conveyancing Act, 1892, to relieve an underlessee against a forfeiture of the original lease, though such forfeiture was occasioned by breach of a covenant not to assign or underlet without licence, and therefore could not be relieved against in favour of the lessee under the Conveyancing Act, 1881, with which the later Act is to be read together. This jurisdiction, however, will be exercised with caution and sparingly, and the underlessee asking for its exercise must shew that he is blameless, and has taken all precautions which a reasonably cautious and careful person would use.

Where, therefore, L. purchased an underlease under a contract which did not give him a right to call for the title of the original lessee, who was bound by covenant not to assign or underlet without licence, and he purchased with the intention of laying out a considerable sum upon the property:—

*Held*, that L. had been guilty of negligence in entering into such a contract, that he was precluded from properly investigating the title, and that relief against a forfeiture by the original lessee for breach of the covenant ought not to be granted to him. *IMRAY v. OAKSHETTE*

C. A. [1897] 2 Q. B. 218

**63. — Relief—Underlease—Protection of underlessee—Vesting order—Public-house—Discretion of Court—Variation in amount of rent—Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 4.**

Action by lessors to recover possession of a tavern let on lease to C. & Co. for a term of years at a yearly rent of 300*l.* The lease gave a power of re-entry to the lessors if and whenever the lessees or their assigns being a co. should enter into liquidation whether compulsory or voluntary. By underlease C. & Co., in consideration of a premium of 8000*l.*, sub-let the tavern to the deft. F. for a period of years at a yearly rent of 800*l.*, reducible to 300*l.* so long as he should get his beers from C. & Co. This the deft. F. had always done.

Subsequently C. & Co. and two other brewing cos. amalgamated, and for this purpose each of the amalgamating cos. went into voluntary liquidation.

Plts. claimed that the liquidation of C. & Co.,

**LANDLORD AND TENANT (Forfeiture)—*contd.***

was a forfeiture of the lease. Deft. F. counter-claimed for an order under the Conveyancing Act, 1892, vesting in him the demised premises for the residue of the underlease:—

*Held*, on the authority of *Horsey Estate, Ltd. v. Steiger*, [1899] 2 Q. B. 79, that there was a forfeiture, and that the lease and the underlease were absolutely gone. The Legislature by s. 4 of the Conveyancing Act, 1892, did not revive the underlease, but vested a new estate in the underlessee. The vesting might be for part of the term or of part of the property, but it could not be for any longer term than the original subdemise. The section conferred upon the Court a very wide discretion as to the conditions upon which a vesting order should be granted, and enabled it to impose such conditions as the circumstances of each particular case might require. The covenant as to buying beer from C. & Co. would, of course, not be inserted in the new lease. Upon the evidence the rent of 300l. was too small a rent to pay for the tavern if it was not a tied house. There would be a reference to chambers to consider what was a fair rent. *EWART v. FRYER* *Kekewich J.* [1900] W. N. 82; this case was affirmed by C. A. [1901] W. N. 2; [1901] 1 Ch. 499

**64. — Relief—Underlessee — Vesting order — Practice — Defence and counter-claim — Conveyancing Acts, 1881, 1892 (44 & 45 Vict. c. 41, ss. 14, 69; 55 & 56 Vict. c. 13, s. 4).**

An application by an underlessee for a vesting order under s. 4 of the Conveyancing Act, 1892, may be made by defence and counter-claim in the lessor's action for possession. *CHOLMELEY SCHOOL, HIGHGATE v. SEWELL* (No. 1) — Div. Ct. [1893] 2 Q. B. 254

**65. — Relief—Underlessee of part of premises — Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14.**

The Court cannot relieve an underlessee of part of the demised premises from a forfeiture incurred for breach of covenant to repair contained in the head lease. *BURT v. GRAY*

Div. Ct. [1891] 2 Q. B. 98

Approved of by C. A. *NIND v. NINETEENTH CENTURY BUILDING SOCIETY* [1894] 2 Q. B. 226

See now Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 4.

**66. — Relief—Underletting—Mistake—Forgetfulness.**

A tenant, contrary to his covenant, underlet without the written consent of the landlord. The onus, if asked, must have been granted. The mission was solely due to the solicitor forgetting to examine the head lease. The landlord claimed to re-enter:—

*Held*, that omission to ask for consent due to the forgetfulness of the tenant's agent was not a mistake in respect of which the Court could grant equitable relief against forfeiture for breach of covenant. *BARROW v. ISAACS & SON*

C. A. [1891] 1 Q. B. 417

Followed. *Eastern Telegraph Co. v. Dent*, A. [1899] 1 Q. B. 835. No. 58, above.

**LANDLORD AND TENANT—*continued.*****Furnished House.**

**67. — Fitness for occupation—Continuance of condition during term.**

On the letting of furnished lodgings there is no implied agreement that the lodgings shall continue fit for occupation during the term. *SARSON v. ROBERTS* C. A. [1895] 2 Q. B. 395

**Landlord's Liability.**

**68. — Block of offices—Dangerous staircase—Implied agreement to repair.**

The deft. owned a building and let different floors separately as chambers and offices, retaining in his own possession and control the staircase, which was the only means of access:—

*Held*, that there was by implication an agreement by the landlord with his tenants to keep the staircase in repair, and therefore a duty on the landlord's part towards persons having business with the tenants and using the staircase to keep it in repair. *MILLER v. HANCOCK*

C. A. [1893] 2 Q. B. 177

**69. — Dangerous condition of demised premises — Landlord under no covenant to repair—Injury to person using premises—Liability of landlord—Negligence.**

A landlord who lets an unfurnished house in a dangerous condition, he being under no liability to keep it in repair, is not liable to his tenant, or to a person using the premises, for personal injuries happening during the term, and due to the defective state of the house. *LANE v. COX*

C. A. [1897] 1 Q. B. 415

**70. — Implied grant—Derogation—Measure of damages—Damage by vibration caused by lessor on adjacent land.**

A lessor sued a lessee for rent. The lessee counter-claimed for damages from a nuisance caused by the lessor, who worked a pump on land adjacent to that leased, and caused a house on it to be useless. The house was old at the commencement of the term, and the vibration would not have injured a reasonably solid house:—

*Held*, that the lessor was liable under an implied obligation not to derogate from his grant, and could not therefore rely upon any defence by user of adjoining property so as to interfere with the stability of the demised premises founded on the state of the house at the commencement of the term:—

*Held*, also, that the lessee was entitled to damages, not only for the value of the term, but also for expenses which were a natural consequence of the lessor's tort, such as the expense of removing his business. *GROSVENOR HOTEL CO. v. HAMILTON* C. A. [1894] 2 Q. B. 836

**71. — Lease for express purpose—Derogation from grant—Easement—Access of air.**

The grantor of land to be used for a particular purpose is under an obligation to abstain from doing anything on his adjoining property which would prevent the land granted from being used for the purpose for which the grant was made. An easement to access of air is not acquired by a grant in general terms, and not for a specific purpose, except where such right is enjoyed through a definite aperture or definite

**LANDLORD AND TENANT (Landlord's Liability)—continued.**

channel. M. sold the goodwill of a business and leased the premises on which it was carried on to A. A. covenanted to carry on the business during the term, and M. covenanted for quiet enjoyment. M. died. L. & Co. purchased land from his representatives, including the parcel leased to A. and adjoining land, and erected buildings thereon, which obstructed the access of air necessary to A.'s business:—

*Held*, that L. & Co. were under an obligation to abstain from doing anything on the adjoining land which would substantially interfere with the carrying on of the business. A. by a revocable licence from M. put up certain ventilators which were obstructed by L. & Co.'s buildings:—

*Held*, that as the licence was revocable A. was not entitled to an injunction, but was entitled to an inquiry as to damages. *ALDIN v. LATIMER CLARKE, MUIRHEAD & Co.*

*Stirling J. [1894] 2 Ch. 437*

**72. — Premises let in floors—Injury from overflowing cistern—Negligence of plumber.**

The deft. was the owner of premises to which water was laid on, and he had a cistern on the fourth floor. The plt. became tenant of the ground floor, and took his supply of water from the deft. A leakage from the cistern having been noticed by the plt., he informed the deft., who instructed a competent plumber to remedy it. In consequence of the negligence of the plumber an overflow occurred, which damaged the plt.'s goods:—

*Held*, that the deft. was not liable, since the plt. had assented to the water being on the premises, and therefore the deft., by instructing a competent plumber to remedy the leakage, had discharged his duty to the plt. *BLAKE v. WOOLF*

*Div. Ct. [1898] 2 Q. B. 426*

**Lease.**

*By the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), the Act of 1881 was amended.*

— Agreement for—Signature not final—Parol evidence

*See CONTRACT—Formation. 15.*

— Agreement for lease—Statute of Frauds.

*See Cases under FRAUDS, STATUTE OF.*

— Agricultural holdings.

*See LANDLORD AND TENANT—Agricultural Holdings.*

— Bribe from lessee—Receipt of—Validity.

*See SETTLED LAND—Leases. 67.*

— Building estate—Restriction as to number of houses—Flat.

*See COVENANT. 5.*

— Clergyman's residence—Agreement for letting for—Erection of huts for evicted tenants.

*See IRELAND. 1.*

— Costs.

*See Cases under SOLICITOR.*

— Covenants.

*See LANDLORD AND TENANT—Covenant.*

**LANDLORD AND TENANT (Lease)—continued.**

— Determination of tenancy.

*See LANDLORD AND TENANT—Determination of Tenancy and Holding Over.*

— Distress.

*See Cases under DISTRESS.*

— Entry.

*See LANDLORD AND TENANT—Entry.*

— Fines on renewal of lease for lives—Copyholds—Income or capital.

*See SETTLED LAND. 50.*

— Forfeiture.

*See LANDLORD AND TENANT—Forfeiture.*

— Glebe lands—Ecclesiastical leasing—Contract for sale by vicar—Non-payment of principal—Vendor's lien.

*See VENDOR AND PURCHASER—Lien. 56, 56A.*

— Gold lease application—Appeal from interim injunction—Trespass—New South Wales Mining on Private Lands Act.

*See NEW SOUTH WALES. 37.*

— Gold mines.

*See MINES—Gold Mines.*

— Golf ground—Lease or licence—Interest in land.

*See GOLF.*

— Ground game.

*See Cases under GAME.*

— Improvements—Permanent building by lessee—Right of removal.

*See CAPE OF GOOD HOPE. 5.*

— Income tax—Power of landlord to pay, with right of recovery.

*See FINANCE ACT, 1898 (61 & 62 Vict. c. 10), s. 10.*

— Income tax—Separate leases of grazing and shootings over farm.

*See REVENUE—Income Tax. 99.*

— Income tax on renewal fines.

*See REVENUE—Income Tax. 95.*

— Infant—Adoption on full age of lease made by trustees.

*See INFANT—Contracts. 3.*

**73. — Interesse termini—Covenant for quiet enjoyment—Trespass—Damages.**

A person having only an interesse termini cannot maintain an action on a covenant for quiet enjoyment; nor an action for trespass, nor for damages. *WALLIS v. HANDS*

*Chitty J. [1893] 2 Ch. 75*

**74. — Interesse termini—Freehold leases—Surrender of Leases Act, 1730 (4 Geo. 2, c. 28), s. 6.**

The phrase is not applicable to freehold leases. *ECCLESIASTICAL COMMISSIONERS v. TREEMER*

*Chitty J. [1893] 1 Ch. 166*

— Joint tenancy.

*See Cases under JOINT TENANCY.*

— Liability of landlord.

*See LANDLORD AND TENANT—Landlord's Liability.*

— Limitations, Statute of—Agreement for lease.

*See LIMITATIONS, STATUTE OF.*

**LANDLORD AND TENANT (Lease)—continued.**

— Lunatic.

*See* LUNACY—Leases.

— Merger—Agreement for lease—Life estate—Intention—Benefit.

*See* MERGER. 1.

— Minerals.

*See* MINES—Leases.

— Mortgage.

*See* LANDLORD AND TENANT—Mortgages.

— Option to purchase.

*See* LANDLORD AND TENANT—Option to Purchase.75. — *Parcels—Right of way—Misdescription—Falsa demonstratio—Common mistake—Rectification—Construction of lease.*

Where in a grant or devise the description of parcels is made up of more than one part, and one part is true and the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected as falsa demonstratio, and will not vitiate the grant or devise. The doctrine is not to be confined to cases where the first part of the description is true and the latter untrue, it being immaterial in what part of the description the falsa demonstratio occurs.

Rooms on the second floor of Nos. 13 and 14, Old Bond Street were demised, together with free ingress and egress for the lessee "through the staircase and passages of No. 13" to and from the demised premises: there was no staircase in No. 13 leading to the demised premises, but there was a staircase in No. 14:—

*Held*, upon the evidence, that there had been a common mistake, the intention of the parties being that the lessee should have the use of the staircase of No. 14, and that accordingly the doctrine of falsa demonstratio did not apply; but the Court ordered the lease to be rectified by the substitution of the staircase of "No. 14" for that of "No. 13," thus in effect affirming the order of *Romer J.*, [1898] W. N. 81 (8); [1898] 2 Ch. 551. *COWEN v. TRUEFIT, Ltd.*

C. A. [1899] W. N. 102; [1899] 2 Ch. 309

— Premium on leases—Execution of power of appointment over real estate.

*See* POWER. 5.

— Proof by lessor—Winding-up of insolvent company.

*See* COMPANY—WINDING-UP—Proof. 207—209.

— Quiet enjoyment—Covenant for.

*See* No. 19—23, 73, above.

— Recovery of possession

*See* Cases under LIMITATIONS, STATUTE OF—Possession.

— Re-entry—Forfeiture.

*See* LANDLORD AND TENANT—Forfeiture.

— Rent.

*See* LANDLORD AND TENANT—Rent.

— Rescission—Innocent misrepresentation—Indemnity.

*See* CONTRACT—Rescission. 32.

— Sale of leaseholds—Deeds recited but not abstracted in chief.

*See* Vendor and PURCHASER—Title. 86.**LANDLORD AND TENANT (Lease)—continued.**

— Settled land.

*See* SETTLED LAND—Leases.

— Severance—Effect of marriage.

*See* JOINT TENANCY. 2.

— Specific performance.

*See* LANDLORD AND TENANT—Specific Performance.

— Sporting rights.

*See* Cases under GAME.

— Stamp—Yearly payment for automatic machine.

*See* REVENUE—Stamps. 140.

— Stamp—Yearly payment for telephonic communication.

*See* REVENUE—Stamps. 140.

— Surrender.

*See* LANDLORD AND TENANT—Surrender.

— Tenant at will—Doing of repairs by landlord—Determination of will.

*See* LIMITATIONS, STATUTE OF—Tenancy at Will. 44.

— Tenant for life and remainderman.

*See* Cases under SETTLED LAND.

— Underlease.

*See* LANDLORD AND TENANT—Underlease.76. — *Validity—Consideration—Receipt clause—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18, sub-s. 6; s. 55. § ~ ~*

A lease was granted for ninety-nine years in consideration, *inter alia*, of moneys expended on building:—

*Held*, on the evidence, that the lease was invalid under s. 18, sub-s. 6, of the Conveyancing Act, 1881, as not reserving the best rent without any fine being taken:

*Held*, also, that the statement of the consideration was not a "receipt" which would give a purchaser of the lease the benefit of s. 55 of the same Act. *RENNER v. TOLLEY*

Stirling J. [1893] W. N. 90

— Valuation of fixtures, crops, &amp;c.—Sale by tenant for life.

*See* SETTLED LAND. 45.77. — *Waste—"Ameliorating waste"—"Improvements."*

To obtain an injunction against a tenant to restrain waste it must be proved that what the tenant is doing is prejudicial to the inheritance. If it improves the value of the land it is not waste. "Ameliorating waste" discussed. *MEUX v. COBLEY* — *Kekewich J.* [1892] 2 Ch. 253

— Waste—Sub-demise for purpose of rubbish shoot—Alteration of demised premises.

*See* WASTE. 2.

— Water—Covenant—Diversion of spring—"Stream."

*See* WATER—Water Rights. 38.

— Water rate—Covenant to pay—Water supplied for trade purposes.

*See* WATER—Water Rates. 29.

**LANDLORD AND TENANT—continued.****Mortgages.**

— Lease—By mortgagor in possession—Foreclosure by mortgagee—Lease binding on mortgagee.

See **MORTGAGE—Lease.** 41.

78. — *Mortgage—Subsequent lease by mortgagor—Notice to pay rent to mortgagee.*

A mortgagor let the mortgaged premises subsequently to the mortgage:—

*Held*, that the mere fact of the tenant remaining in possession after notice to pay rent to the mortgagees was not evidence of an agreement that he should become tenant to the mortgagees. **TOWERNSON v. JACKSON** C. A. [1891] 2 Q. B. 484

79. — *Mortgagor in possession—Ejectment for breach of covenant—Re-entry—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 5.*

The Judicature Act, 1873, s. 25, sub-s. 5, does not give to a mortgagor in possession of land, subject to a lease, the right to re-enter for breach of the covenants of the lease. **MATTHEWS v. USHER** C. A. [1900] 2 Q. B. 535

79A. — *Relation of landlord and tenant under attornment clause in mortgage—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18.*

A mortgagor in possession leased to A., pursuant to s. 18 of the Conveyancing Act, 1881, the mortgagees not being parties:—

*Held*, that A.'s lease was binding on the mortgagees. **WILSON v. QUEEN'S CLUB**

**Romer J. [1891] 3 Ch. 522**

**Option to Purchase.**

80. — *"Assigns"—Equitable assignees—Possession—Notice—Waiver.*

Decision of **Romer J.**, [1898] W. N. 150 (7); [1899] 1 Ch. 86, reversed on the facts; the correspondence between the parties shewing that the contracting parties had proceeded on the assumption that the plts., though equitable assignees only of the lease, were entitled to exercise the option of purchase thereby given, and also shewing that the deft., the reversioner in fee, had waived the notice required by the lease to be given of the intention to exercise the option. **FRIARY HOLROYD AND HEALEY'S BREWERIES, LD. v. SINGLETON** C. A. [1899] W. N. 96; [1899] 2 Ch. 261

81. — *Building agreement—Interest of tenant after exercise of option—Breach of conditions—Power of landlord to determine.*

By a building agreement the deft. agreed to erect certain buildings, and carry out certain works, on the plt.'s land within a specified time, and "forthwith to proceed" with and complete the works, when a lease for ninety-nine years was to be granted; the agreement provided that if the deft. did not perform the several stipulations therein contained, the plt. might by notice in writing determine the agreement and re-enter; it also contained an option to the deft. to purchase the freehold. The plt. being dissatisfied with the slow progress made by the deft., gave him notice to determine the agreement; but the deft. having previously given notice to the plt. of his intention to exercise the option to purchase, declined to

**LANDLORD AND TENANT (Option to Purchase)—continued.**

give up possession. On an action by the plt. to restrain the deft. from trespassing on or interfering with the plt.'s possession of the land:—

*Held*, on the evidence, that the deft. had made default in not "forthwith proceeding" to carry out the stipulations of the agreement; but that as there was no condition precedent that the deft. should not have committed any breach of the conditions contained in the building agreement, the option to purchase was well exercised, and a binding contract was thereby made for the sale and purchase of the property; that the determination of the leasing part of the building agreement by the notice given to the deft. for breach of its conditions, did not destroy or affect the contract for sale created by the exercise of the option to purchase; and that the plt.'s action must therefore be dismissed.

The rights and position of a purchaser in the interval between the commencement of the contract and the completion of the purchase discussed. **RAFFETY v. SCHOFIELD**

**Romer J. [1897] 1 Ch. 937**

— Machinery—Rent—Damages for breach of contract.

See **COMPANY—WINDING-UP—Set-off.** 230.

82. — *Option to purchase within prescribed time—Construction of clause—Date of notice.*

A lease contained an option to purchase the leasehold premises within three years on giving six months' previous notice:—

*Held*, that the notice, to be in time, must be given so as to fall within the three years, i.e., not later than two and a half years after the period began to run. **RIDDELL v. DURNFORD**

**Chitty J. [1893] W. N. 30**

**Rent.**

See also under **RENT.**

— Arrears of rent—Lien—Priority—Payment by sheriff—Indemnity.

See **BANKRUPTCY—Execution.** 104.

— "Best rent."

See **SETTLED LAND—Leaser.** 67.

83. — *Company—Winding-up—Proof by lessor.*

The rule laid down in **Hardy v. Fothergill**, (1888) 13 App. Cas. 351, does not apply where a lessor is proving, in respect of the liability of his lessee under a subsisting lease, whether the lessee is an insolvent co. which is being wound up, or is a bankrupt.

Where such a co. was the lessee of land for fourteen years, with a power to determine the lease at the end of seven years on paying the rent and performing the covenants up to date, and the winding-up took place before the end of seven years:—

*Held*, that the lessor was entitled to claim in respect of the liability of the co. as if the lease had been for fourteen years certain. *In re NEW ORIENTAL BANK CORPORATION* (No. 2)

**V. Williams J. [1895] 1 Ch. 753**

Distinguished by **Romer J.** *In re Panther Lead Co.*, [1896] 1 Ch. 978.

**LANDLORD AND TENANT (Rent)—continued.**

84. — *Company—Winding-up—Proof for rent—Advance rent—Apportionment.*

A. let a shop to a co., rent payable quarterly, "two quarters' rent to be always due and payable in advance if required." On Dec. 20 the co. went into voluntary liquidation, but the liquidator continued to occupy the shop. On Dec. 28 A. demanded the rent due Dec. 25 and two quarters in advance, and on refusal of payment A. distrained:—

*Held*, by Kekewich J., that the rent for the Dec. quarter must be apportioned, and that A. could only prove for the rent accruing up to Dec. 20, but that they were entitled to be paid in full for the rest of the Dec. quarter and so much of the next two quarters as the liquidator should continue in beneficial occupation; but for the remainder of those two quarters they could only prove in the liquidation. *SHACKELL & Co. v. CHORLTON & SONS* Kekewich J. [1895] 1 Ch. 378

— Distress — Chattels of lessee on adjoining mines.

See MINES—Distress. 8.

— Distress for rent.

See Cases under DISTRESS.

— Eviction, Apportionment on—Rent payable in advance.

See APPORTIONMENT. 1.

— Non-payment of rent—Hotchpot clause—Absolute title of tenant.

See WILL—Advancement. 23.

85. — *Payable in advance if required—Demand—Distress—Reasonable notice.*

A tenant agreed to pay his rent "quarterly on the usual quarterly days and always if required in advance":—

*Held*, (1) that the effect of this agreement was that the rent was due throughout in advance; (2) that whether any demand was made or not the demand might be made at any time during the currency of the quarter, and distress might follow immediately on demand, if delay would defeat the landlord's remedy. *LONDON AND WESTMINSTER LOAN AND DISCOUNT CO. v. LONDON AND NORTH WESTERN RY. CO.*

Div. Ct. [1893] 2 Q. B. 49

86. — *Re-entry for non-payment of rent—Construction of proviso.*

Proviso granting right of re-entry "if and whenever any one quarter's rent should be in arrear for twenty-one days and no sufficient distress could be found":—

*Held*, that the landlord could enforce the proviso after levying a distress which was only sufficient to pay two out of the three quarters' rent owing. *SHEPHERD v. BERGER*

C. A. [1891] 1 Q. B. 597

— Rent, repairs, and renewal fines—Apportionment between tenant for life and remainderman.

See SETTLED LAND. 10.

87. — *Sub-lease by assignee—Liability of sub-lessee—Rent reserved by original lease—Payment by lessee—Indemnity—Money paid.*

The lessees of premises having assigned the term, the assignee mortgaged the premises by

**LANDLORD AND TENANT (Rent)—continued.**

way of sub-demise. The mortgage provided that, upon default by the mortgagor, the mortgagees might enter into possession, or receipt of the rents and profits of the premises, and demise or sell the same, and out of moneys so received by them, whether as rents and profits or purchase-money, should in the first place pay the rent reserved by the original lease. The mortgagees, having entered into possession, did not pay rent which accrued due under the lease while they were in possession. The lessees, having been compelled to pay it, sued the mortgagees to recover the amount so paid by them:—

*Held*, that the action was not maintainable.

*Moule v. Garrett*, (1870) L. R. 5 Ex. 132; (1872) 7 Ex. 101, distinguished. *BONNER v. TOTTENHAM AND EDMONTON PERMANENT INVESTMENT BUILDING SOCIETY*

C. A. [1898] W. N. 165 (10); [1899] 1 Q. B. 161

88. — *Tithe rent-charge—Payment by tenant—From what rent deduction may be made.*

Each deduction in respect of a payment of tithe rent-charge under s. 80 of the Tithe Act, 1836, should be made from the next payment of rent, and cannot be brought into account in the payment of any subsequent rent. *DAWES v. THOMAS*

— C. A. [1892] 1 Q. B. 414

**Scotland.**

See SCOTTISH LAW — Landlord and Tenant.

**Specific Performance.**

89. — *Agreement—Personal arrangement or lease for lives.*

By an agreement premises were let upon certain conditions, the landlord agreeing (inter alia) that if the said conditions were kept and the rent paid on the usual quarter days he would not raise the rent of the premises nor terminate the tenancy of the tenant or his wife. Upon an action of ejectment:—

*Held*, that the tenant was entitled to a lease of the premises for the lives of himself and his wife (who was living). The lease to be settled by the Court in case the parties differ.

*Duxbury v. Sandiford*, (1898) 78 L. T. (N.S.) 230, questioned and not followed.

This case was reversed by C. A. (1899) 80 L. T. (N.S.) 552; *Record of Business*, [1898] W. N. 161. *MARDELL v. CURTIS*

*Cozens-Hardy J.* [1899] W. N. 93

— Covenant—Porter—Residential flats.

See No. 46, above.

**Surrender.**

90. — *Covenant—Licence for sale of wine and beer—Implied covenant by tenant not to surrender.*

A lease of licensed premises contained a covenant not to carry on any other business than that of retailer of tobacco, wine, and beer to be consumed off the premises, with a proviso for re-entry in case of the tenant ceasing to carry on such business:—

*Held*, that there was no implied obligation on the tenant not to surrender the licence.

**LANDLORD AND TENANT (Surrender)—contd.**

Decision of North J., [1897] W. N. 39 (7), affirmed. *LACON v. LACEY*

C. A. [1897] W. N. 46 (3)

See upon another point. *LACEY v. LACON & Co.* — — — [1899] A. C. 222

— Determination of tenancy—Estoppel by conduct.

See No. 40, above.

91. — *Parol consent—Statute of Frauds.*

Parol consent of an old tenant to a new lease does not operate as a surrender of the old lease by operation of law or otherwise, so as to take the case out of the operation of the Statute of Frauds, s. 3. There is no surrender by operation of law, unless the old tenant give up possession to the new tenant at or about the time of the grant of the new lease to which he assents. *WALLIS v. HANDS* *Chitty J. [1893] 2 Ch. 75*

92. — *Underleases—Effect of surrender on—Conveyance as "beneficial owner"—Implied covenants for title—Secret incumbrances.*

S., the deft., conveyed as "beneficial owner" lands to B., who sold them to the plt. S. had previously granted a lease to B. which B. had surrendered, but without informing S. that he had, when lessee, granted sub-leases by way of mortgage. After B. had bought the land the sub-leases were discovered, and B. claimed damages from S. for breach of covenant against incumbrances implied in his conveyance as beneficial owner:—

*Held*, by C. A., that the sub-lessees claimed through S.; that the term had not been merged by the surrender so as to exclude the sub-leases, and consequently, as S.'s covenant ran with the land, and B.'s fraud did not, S. was liable to the plt. for damages.

The decision of ROMER J., [1892] W. N. 115, reversed. *DAVID v. SABIN* C. A. [1893] 1 Ch. 523

**Underlease.**

— Covenant—Quiet enjoyment—Re-entry by original lessor for breach of covenant.

See No. 23, above.

93. — *Covenants—Sub-lease—Implied covenants for title or for quiet enjoyment—Duration of covenants.*

A. held a term of years in a house and sub-leased it to B. by indenture for a term exceeding his own term, acting by mistake but in good faith. The sub-lease did not contain the word "demise," nor any express covenants for title or for quiet enjoyment:—

*Held*, that, assuming that in the absence of the word "demise" either of such covenants could be implied in the lease, the duration of the covenant was limited by that of the lessor's own estate, and that consequently the plts. could not recover.

The decision of Lord Russell of Killowen C.J., [1895] 1 Q. B. 820, affirmed. *BAYNES & Co. v. LLOYD & SONS* — C. A. [1895] 2 Q. B. 610

— Effect of surrender on underleases.

See No. 92, above.

94. — *Grant or assignment of—Title—"Lease-*

**LANDLORD AND TENANT (Underlease)—contd.**

*hold reversion"*—*Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 3, sub-s. 1; s. 13, sub-s. 1.

On a contract to underlet, or to assign an underlease, the underlessee or purchaser has a right to call for the lease of the lessor or assignor. "Leasehold reversion" (Conveyancing Act, 1881, s. 13, sub-s. 1, s. 3, sub-s. 1), a title to which need not be shewn to an underlessee or assignee, means the leasehold reversion to the lease out of which the sub-lease is to be granted, and not the reversion to the underlease. *GOSLING v. WOOLF*

Div. Ct. [1893] 1 Q. B. 39

95. — *Renewal, Covenant for—Personal covenant—Covenant running with land—Perpetuity—Assignee of reversion—32 Hen. 8, c. 34, s. 2.*

D. A., who was sub-lessee of certain premises, demised the same to F. for the residue of the term then vested in him less the last days thereof, and covenanted for himself, his executors, administrators and assigns, that in case he should obtain from the freeholder, his heirs or assigns, any extension of the term for which he then held the premises, then he, his executors, administrators or assigns, would grant to F. a new lease for such extended term as would include the unexpired residue of the original term granted to F., and the further term, less the last days thereof, which might be granted to D. A. by the freeholder, his heirs or assigns. D. A. died, and his reversion became vested in the deft., who surrendered his term to the freeholder and obtained from him a new lease for an extended term, subject to existing underleases. F. having died, the plt. acquired from his executors his interest in the premises, and then claimed specific performance of D. A.'s covenant with F.:—

*Held*, (1) on the construction of the covenant, that it was personal to D. A. alone, and did not bind his representatives; (2) that the covenant was not strictly a covenant for renewal, and did not on that account run with the land; but, assuming that it did run with the land, the doctrine of perpetuity had no application; and (3), following *Brereton v. Tuohy*, (1858) 8 Ir. C. L. Rep. 190, *Kent v. Stoney*, (1859) 9 Ir. Ch. Rep. 249, and *Coey v. Pascoe*, (1899) Ir. Ch. 125, that the covenant ran with the reversion which was vested in the covenantor at the time when he entered into the covenant; and, consequently, that the statute 32 Hen. 8, c. 34, s. 2, did not apply. On these grounds the action was dismissed. *MULLER v. TRAFFORD*

*Farwell J. [1900] W. N. 251; see [1901] 1 Ch. 54*

— Sale of underlease—Scale charge.

See *SOLICITOR—Costs*. 35.

— Underlessee—Forfeiture—Relief.

See Nos. 62-66, above.

— Underlessee—Restrictive covenant—Tied public-house—Mortgagor and mortgagee—Assigns—Notice. See *COVENANT*. 7.

**LANDOWNER—Railway company—Way-leave**

— Construction—Ancient document—Contemporaneous usage or interpretation.

See *WAY-LEAVE*.



**LANDS CLAUSES ACTS.***Compensation*, col. 1085.*Costs*, col. 1089.*Practice Generally*, col. 1091.*Superfluous Lands*, col. 1092.**Compensation.**

1. — *Apportionment—Minerals—Apportionment of compensation moneys between capital and income—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 69.*

Minerals were bought by a ry., and the proceeds paid into court. A tenant for life claimed the whole sum or at least an apportioned part, on the ground that, being unimpeachable for waste, he might have gotten all the minerals in his lifetime :—

*Held*, that as the case was governed by s. 69 of the Lands Clauses Act, 1845, there could be no apportionment of capital, and he was only entitled to the income. *In re ROBINSON'S SETTLEMENT TRUSTS* Chitty J. [1891] 3 Ch. 129

2. — *Compulsory purchase—Charitable land—Payment into court—Reinvestment—Costs—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 69, 76, 80.*

Petition for the investment in the name of the official of charitable property of money in court paid in by the Corporation of Leeds as the purchase-money for land vested in the official trustee of charitable land on trust for the Leeds Grammar School, taken under compulsory powers by the Leeds Corporation. The amount of purchase-money was determined by arbitration between the governors of the Leeds Grammar School and the corporation. A dispute arose between the parties as to whether the purchase-money ought to be paid into court. The corporation insisted that the trustees and the official trustee of charitable land could and ought, with the concurrence of the Charity Commrs., give a good discharge for the purchase-money. They paid the money into court, as under s. 76 of the Lands Clauses Act, 1845.

The Court considered the purchase an ordinary compulsory purchase from a party under disability, and that the purchase-money was necessarily paid into Court, and made the common order for the corporation to pay the costs of the petition. *In re LEEDS GRAMMAR SCHOOL*

Cozens-Hardy J. [1900] W. N. 250

3. — *Copyholds—Enfranchisement—Fines—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 95, 96, 97.*

A ry., which had taken copyholds in 1873, was required by the lord to enfranchise in 1887 :—

*Held*, that in view of the obligation imposed by the Lands Clauses Act, 1845, ss. 96, 97, on the co. to enfranchise within one month of taking copyholds or three months from the enrolment of the conveyance, the compensation for enfranchisement must be assessed on the value of the lands at the time when they were taken or the conveyance enrolled; but fines payable on other occasions, e.g., on the death of a lord, were to be assessed on the value of the land when the fines

**LANDS CLAUSES ACTS (Compensation)—contd.**

became due after the taking and prior to the enrolment of the conveyance.

The decision of Stirling J., [1891] 3 Ch. 443, reversed. *LOWTHER v. CALEDONIAN RY. CO.*

C. A. [1892] 1 Ch. 73

See also *In re Marquis of Salisbury and London and North Western Ry. Co.*, Jessel M.R. [1892] 1 Ch. 75, n.

— *Costs.*

See **LANDS CLAUSES ACTS—Costs.**

— *Covenant for quiet enjoyment—Injury to lessee—Statutory powers.*

See **RAILWAY. 3.**

4. — *Easement—School site—Right of way—Compensation—Injunction—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 68.*

An easement taken under the Lands Clauses Act, 1845, is taken as "land," but the procedure for compensation is different from that when the soil is taken and the remedy of the owner of the tenement over which the easement is taken is under s. 68 of the Act. *LONDON SCHOOL BOARD v. SMITH—* Kekewich J. [1895] W. N. 37

5. — *Interest less than a year—Magistrate's power—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 85, 121.*

If a notice to treat is given but not acted on the notice is of no effect. The question whether a magistrate has power to determine the amount of compensation under s. 121 of the Lands Clauses Act, 1845, depends on whether the tenure be yearly or less at the time when possession taken, not what it was when the abortive notice was given. *REG. v. KENNEDY*

Div. Ct. [1893] 1 Q. B. 533

Considered and explained. See next Case.

6. — *Interest less than a year—Taking part of land—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 85, 121.*

N. held land on lease for thirty years from 1889, determinable as to the whole or part by the lessor by three months' notice. A ry. with compulsory powers for the purchase of land gave N. notice to treat as to part of the land. N.'s lessor then gave him three months' notice as to that part of the land. During the currency of the notice the ry. took possession. The compensation was assessed by a metropolitan magistrate :—

*Held*, that assuming that N. was entitled to compensation for damage to the residue of the term in respect of the adjoining lands, the magistrate had no jurisdiction under s. 121 to assess it, and that he had only jurisdiction to assess compensation for the value of N.'s interest in the land taken and for damage to the adjoining lands during the currency of the notice. *BEXLEY HEATH RY. CO. v. NORTH* C. A. [1894] 2 Q. B. 579

7. — *Mine—Lease of colliery—Right of lessee to sink shaft in land of lessor not included in demise—Reasonable approval of lessor—Compensation—Lands injuriously affected—Railway company—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 68.*

A lease of a colliery with its buildings, pits, shafts, and works, together with the veins of coal

**LANDS CLAUSES ACTS (Compensation)—*contd.***

under a specified acreage of adjoining land the surface of which was not included in the demise contained a proviso that the lessee might at any time during the term sink a pit or pits in any part of the lands the surface of which was not demised, but so that the position of the pits should be subject to the reasonable approval of the lessor. The lessor having contracted to sell a portion of the surface to a ry. co., the co. gave to the lessee a notice to treat in respect of his interest in the surface of the land taken by them, and the lessee gave to the lessor notice under the lease of his intention to sink a pit in the land so taken :

*Held*, that the right to sink a pit in the land the surface of which was not included in the demise, although subject to the reasonable approval of the lessor, gave the lessee an interest in land which was the subject of compensation under s. 68 of the Lands Clauses Act, 1845. *In re* **MASTERS AND GREAT WESTERN RY. CO.**

**Div. Ct. [1900] 2 Q. B. 677**

— Minerals—Notice of intention to work—Arbitration—Duty of company to take up award.

*See* **RAILWAY. 11.**

— Minerals under canals—Right to support of surface.

*See* **MINES. 38.**

— Minerals under railways.

*See* Cases under **RAILWAY—Minerals.**

**8. — Part of a building—Manufactory—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 92.**

Where a ry. co. propose to take part of a building, another part of which is used as a manufactory, they are taking part of the manufactory, and therefore bound to take the whole thereof. *BROOK v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* **Chitty J. [1895] 2 Ch. 571**

**9. — “Part of house”—Material detriment to remainder—Access over land taken—Railway company—“Road”—Power of company to grant right of way—Arbitration—Finality of Scottish award—Right of one tenant in common—Lands Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 19), s. 90—Railways Clauses (Scotland) Act (8 & 9 Vict. c. 33), ss. 46, 49, 60.**

A ry. co. were entitled by a section in their special Act, notwithstanding s. 90 of the Lands Clauses (Scotland) Act, 1845, to take a portion of certain houses or other buildings or manufactories scheduled in their Act without being obliged to take the remainder, if the portion taken could, in the opinion of the authority to whom the question of disputed compensation should be submitted, be severed from the remainder of the property without material detriment thereto. The co. gave notice to treat for 232 square yards, a portion of the scheduled property, which formed an access used jointly by the respondents and another firm. The respondents required the ry. co. to take the whole of their property. A statutory submission to arbitration containing the question, whether or not the portion of land containing the 232 square yards could be severed from the remainder of

**LANDS CLAUSES ACTS (Compensation)—*contd.***

the property of the respondents without material detriment, reserving only the question whether s. 90 of the Lands Clauses (Scotland) Act, 1845, applied, was entered into. Before the arbitrator the ry. co. offered to allow access to the remainder of the respondents' property under a bridge over the portion taken. The arbitrator found that the portion containing 232 square yards could not be severed without material detriment to the remainder of the respondents' property, and awarded compensation upon the assumption that the co. were bound to take the whole premises. In an action to recover the amount awarded :—

*Held*, affirming the judgment of the Second Division of the Court of Session, (1898) 35 Soc. L. R. 404, that whether the arbitrator was right or wrong in declining to take the offer of the co. into consideration in assessing the compensation, his award, until set aside by a proper process, was binding on the Court, and could not be reviewed.

*Gonty v. Manchester, Sheffield and Lincolnshire Ry. Co.*, [1896] 2 Q. B. 459, distinguished. *CALEDONIAN RY. CO. v. TURCAN*

**H. L. (Sc.) [1898] A. C. 256**

**10. — Part of property—Railway company—Statutory right to take portion of property—Exception if “material detriment” to remainder—Access over land taken—Power of company to grant right of way—Arbitration—Power of arbitrator to consider sufficiency of access—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 92—Special case stated by arbitrator—Costs in Court of Appeal—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 20.**

A ry. co., under their special Act, were entitled, notwithstanding s. 92 of the Lands Clauses Act, 1845, to take a portion of certain houses or other buildings or manufactories scheduled in their Act without being obliged to take the remainder, if the portion taken could, in the opinion of the authority to whom the question of disputed compensation should be submitted, be severed from the remainder of the property without material detriment thereto. The co. gave notice to treat for a portion of certain property, and, before the arbitrator appointed under the Lands Clauses Act to assess compensation, they undertook to provide access to the remainder of the property by means of a right of way over the portion taken. On a case stated by the arbitrator in his award :—

*Held*, that the arbitrator was entitled, in determining whether there would be “material detriment” to the remainder of the property arising from the taking of a portion, to take into consideration all the circumstances of the case, including the sufficiency of the proposed access :

*Held*, also, that as the giving the proposed right of way over the lands of the co. was not inconsistent with the purposes for which the lands were taken, the co. had power to grant it.

*Mulliner v. Midland Ry. Co.*, (1879) 11 Ch. D. 611, commented on.

The C. A. has power under the Arbitration Act, 1889, to deal with the costs of an appeal on an award stated in the form of a special case for the opinion of the Court.

*Holliday v. Wakefield Corporation*, 20 Q. B. D. 699; [1891] A. C. 81; no longer applies in such a

**LANDS CLAUSES ACTS (Compensation)—contd.**

case. *GONTY v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* C. A. [1896] 2 Q. B. 439

Distinguished. *Caledonian Ry. Co. v. Turcan, H. L. (Sca.)* [1898] A. C. 256.

See preceding Case.

— Person injuriously affected—Restrictive covenant.

See *SCHOOL—School Board.* 8.

11. — *Public park—Land let for—Power to re-enter if compulsorily taken.*

The claimants demised land to a corporation at a low rent on condition of its being laid out and maintained as a public park. The lease contained a proviso that in case any part of the land should be compulsorily taken under the powers of any Act of Parliament it should be lawful for the claimants to re-enter upon and repossess it. Part of the land having been compulsorily taken by a ry. co. under the powers of an Act of Parliament:—

*Held*, that the claimants were entitled to the commercial value of the land taken as freed from the lease, and not merely to the capitalised value of the rent paid therefor by the corporation. *In re MORGAN AND LONDON AND NORTH WESTERN RY. CO.* — Div. Ct. [1896] 2 Q. B. 469

12. — *School—Injurious affection—Intention to use land for particular purpose—Special adaptability.*

The claimants bought some land with the intention of building a school upon it, for which purpose it was specially adaptable. Before they had begun to build they received notice from a ry. co. to treat for the purchase of part of the land. In consequence of the construction of the ry. the part of the land not taken by the co. would be rendered less suitable for the purpose of a school; and there was no other site in the neighbourhood equally suitable for the purpose:—

*Held*, that in assessing the compensation payable to the claimants their intention to use the site for a school ought to be taken into consideration, although they had done nothing towards carrying that intention into execution. *BAILEY v. ISLE OF THANET LIGHT RYS. CO.*

Div. Ct. [1900] 1 Q. B. 722

**Costs.**

*Sheriffs Act, 1887* (50 & 51 Vict. c. 55)—*Scale of sheriff's fees for inquiries under the Lands Clauses Act, 1845* (8 & 9 Vict. c. 18). W. N. 1900 (Sept. 8), p. 245. See *Current Index, 1900*, p. xcvi.

*Lands Clauses (Taxation of Costs) Act, 1895* (58 & 59 Vict. c. 11), provides as to fees for taxing costs in compensation inquiries and arbitrations.

— Appeal—Costs in Court of—Special case.

See No. 10, above.

13. — *Arbitration—Award taken up and fees paid by landowner—Taxing Master's certificate—Lands Clauses Act, 1845* (8 & 9 Vict. c. 18), ss. 34, 35.

If a landowner whose claim against a ry. co. for the purchase-money of land compulsorily

**LANDS CLAUSES ACTS (Costs)—continued.**

taken has been allowed, and who is entitled to the costs of the arbitration, pay the umpire's fees himself, and takes up the award instead of waiting for this to be done by the co., he cannot recover from the co. the sum so paid.

A decision of the taxing master disallowing the sum so paid as costs in the arbitration is conclusive, and is not subject to review by the Court. *EARL OF SHREWSBURY v. WIRRAL RYS. COMMITTEE* C. A. [1895] 2 Ch. 812

But see now the *Lands Clauses (Taxation of Costs) Act, 1895* (58 & 59 Vict. c. 11).

14. — *Arbitration—Offer made by company—Compensation—Land compulsorily taken—Lands Clauses Act, 1845* (8 & 9 Vict. c. 18), s. 34.

A ry. co. seeking to acquire land under the provisions of the *Lands Clauses Act, 1845*, an arbitration took place under that Act to determine the amount of compensation to be paid by them to the owner of the land. The co. had previously made an offer of the sum of 11,000*l.* Part of the landowner's claim was in respect of damage that would be caused to the residue of his land, which was building land, by cutting it off from the natural outfall for its drainage. When the parties came before the arbitrator, it was agreed between them that a right should be reserved to the landowner of making a sewer, for the purpose of draining his land, under the ry. and land of the company; and consequently no claim in respect of such damage as before mentioned was ultimately submitted to the arbitrator. The arbitrator awarded the sum of 10,029*l.* to the landowner:—

*Held*, that, although the sum awarded was less than the amount of the co.'s offer, the co. were liable under s. 34 of the *Lands Clauses Act, 1845*, to pay the costs of the arbitration to the landowner on the ground that the award was not in respect of the same subject-matter as that in respect of which the offer was made. *MILES v. GREAT WESTERN RY. CO.* C. A. [1896] 2 Q. B. 432

15. — *Letters of administration, Taking out—Compulsory taking of land—Payment of purchase-money into court—Lands Clauses Act, 1845* (8 & 9 Vict. c. 18), ss. 80, 82.

Leaseholds which stood limited by will to one for life and subject thereto to a class of children and grandchildren of the testator absolutely, were, during the life tenancy, taken compulsorily by a ry. co. and the purchase-money paid into court. On the death of the tenant for life the fund, which was divisible into eleven shares, was ordered to be distributed. All the original legatees and the executors had died since the payment into court, and, for the purpose of obtaining payment out, letters of administration were taken out to the estates of all the deceased beneficiaries:—

*Held*, following *Ex parte Kelly*, (1893) 31 L. R. Ir. 137, and *Ex parte Rorke*, [1894] 1 Ir. R. 146, that the co. must pay the costs of taking out the letters of administration. *In re LLOYD AND NORTH LONDON RY. CO. (CITY BRANCH) ACT, 1861* Stirling J. [1896] 2 Ch. 397

16. — *Petition for payment of income of funds in court representing purchase-money under Lands*

**LANDS CLAUSES ACTS (Costs)—continued.**

*Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 80—R. S. C. Order LV., r. 2 (7).*

*Seem*, that the undertakers must bear the costs of a petition where the necessity for a petition instead of a summons arises from the complicated nature of the settlement to which the lands were subject. *In re JACKSON*

**North J. [1894] W. N. 50**

**17. — Petition for payment of purchase-money out of court.**

Where an Act enabling a public body to take land compulsorily contains no provision as to the costs of payment out of court of moneys paid in, the Court has jurisdiction under s. 5 of the Judicature Act, 1890, to order the public body to pay the costs of and incidental to a petition for payment out.

Judgment of Chitty J., [1894] 1 Ch. 53, affirmed. *In re FISHER* **C. A. [1894] 1 Ch. 450**

Referred to. *In re Wrexham, Mold and Connah's Quay Ry. Co.*, C. A. [1900] 1 Ch. 261, 269.

**18. — Reinvestment of purchase-money—Apportionment—Form of order—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 80.**

The general rule, that the costs of reinvestment in land of funds paid into court under the Lands Clauses Act, 1845, by different public bodies are to be borne equally by the different bodies, does not apply when there is great inequality in the amounts as paid by the different bodies, but the scale fee, surveyor's fee, and ad valorem stamp duty will be apportioned rateably between the different bodies. *In re BISHOPSGATE FOUNDATION*  
**Chitty J. [1894] 1 Ch. 185**

**19. — Reinvestment of purchase-money—Petitioner's costs limited to costs of summons—R. S. C., Order LV., r. 2—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 80.**

Three sums of Consols in court represented the investment of purchase-money received from three ry. cos., A., B., and C., in respect of lands of a charity taken by them. The A. co., in whose case the amount exceeded 1000*l.*, had agreed to pay 40*l.* in lieu of costs. On petition for the transfer of the Consols to the official trustees of charitable funds:—

*Held*, that the costs of the B. and C. cos. must be limited to the amount which would have been payable on a summons. *ATT.-GEN. v. ST. JOHN'S HOSPITAL, BATH*  
**North J. [1893] 3 Ch. 151**

**Practice Generally.****20. — Notice to treat—Tunnel—Subsoil—"Appropriate and use"—Easement—"Land"—Entry on lands before agreement—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 2, 18, 68, 84, &c.**

Where the special Act of a ry. co. gave them the right to make a tunnel and to "appropriate and use" the subsoil of plt.'s land for that purpose without wholly taking the land:—

*Held*, that "appropriate" meant appropriate by way of purchase, that in having bought the subsoil the co. were taking "land" and not merely an easement, and that consequently notice to treat under the Lands Clauses Act,

**LANDS CLAUSES ACTS (Practice Generally)—continued.**

1845, must be given before appropriating and using the subsoil. *FARMER v. WATERLOO AND CITY Ry. Co.* **Kekewich J. [1895] 1 Ch. 527**

**21. — Payment out of deposit—Service—Dormant fund—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 85–87.**

Payment out of court to a co. was ordered of sums deposited by them many years ago under s. 85 of the Lands Clauses Act, 1845, without service on the landowners or their representatives; the purchase-money in each case having been paid and there being evidence that the deposits had been accidentally overlooked. *Ex parte MIDLAND Ry.*  
**North J. [1894] W. N. 38**

**Superfluous Lands.****22. — Pre-emption—Compulsory sale—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 127–129.**

Land acquired by the A. ry. co. for the purposes of their undertaking was, within the period prescribed by statute for the sale by that co. of their superfluous lands, compulsorily purchased by the B. ry. co.:—

*Held*, that such compulsory sale afforded no ground for inferring that the land was not required by the A. co. for the purposes of their undertaking and was thus superfluous land within the Lands Clauses Act, 1845; and accordingly that the right of pre-emption under s. 128 of that Act did not arise.

*Lord Carington v. Wycombe Ry. Co.* (1868) L. R. 3 Ch. 377, and *Hobbs v. Midland Ry. Co.*, (1882) 20 Ch. D. 418, discussed.

Judgment of Kekewich J., [1895] W. N. 116 (13), reversed. *DUNHILL v. NORTH EASTERN Ry. Co.* **C. A. [1896] 1 Ch. 121**

**23. — Sale—Covenant to resell a portion—Invalidity of sale—Extent of—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 127.**

A ry. co. sold superfluous lands with a covenant to resell certain portions to them if required:—

*Held*, that though the covenant rendered void under s. 127 of the Lands Clauses Act, 1845, the sale of these portions, the sale of the remainder was valid. *RAY v. WALKER*

**Div. Ct. [1892] 2 Q. B. 88**

**24. — Terminus—Land adjoining—Negotiations by railway company to sell—Lease of portion—Lands Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 19), s. 120.**

The directors of a ry. co., before the expiration of ten years from the time limited by the special Act for the completion of their works, considered proposals for the purchase from the co. of land adjoining one of their terminal stations, and after the ten years had expired they also considered proposals, and eventually leased a portion for the building of a district post-office. The adjoining landowner claimed the land as "superfluous land" within the meaning of s. 120 of the Lands Clauses (Scotland) Act, 1845:—

*Held*, affirming the decision of the First Division of the Court of Session, (1897) 24 R. 1156; 34 Sco. L. R. 828, that whether the land had become superfluous or not was a question of

**LANDS CLAUSES ACTS (Superfluous Lands)—**  
*continued.*

mixed law and fact; and that on the evidence the land had not become superfluous.

*London and South Western Ry. Co. v. Blackmore*, (1870) L. R. 4 H. L. 610, distinguished.  
*MACFIE v. CALLANDER AND OBAN RAILWAY COMPANY* — H. L. (Sc.) [1898] A. C. 270

**LANDS CLAUSES ACTS—Rateability of under-**  
**taking.**

*See RATES—Rateability.* 40, 41.

**LANDS TITLES REGISTRY ACT** — Registered  
title—Adverse possession.

*See BRITISH HONDURAS.* 1.

**LANE**—Closing lane—Railway company.

*See CANADA.* 19.

**LAPSE**—Charity—Failure of objects—Cy-près.

*See FRIENDLY SOCIETY.* 6.

— Death of appointees in lifetime of donee of power.

*See POWERS.* 43.

— Of foreign patent—Prolongation.

*See PATENT.* 41.

— Of gift by will.

*See Cases under WILL—Lapse.*

**LARCENY.**

*See CRIMINAL LAW—Larceny.*

**LAUNDRIES**—Application of Factory Acts to.

*See Factory and Workshop Act, 1895*  
(58 & 59 Vict. c. 37), s. 22.

**"LAWFUL PURPOSE"**—Subscription to strike  
fund.

*See INDUSTRIAL SOCIETY.* 1.

**"LAW REPORTS."**

*Citation of cases.*] Observations of Keke-  
wich J. as to authority of cases not reported in  
**THE LAW REPORTS.** *OWEN v. RICHMOND*  
[1895] W. N. 29

**LAY DAYS**—Demurrage.

*See SHIPPING—Demurrage.* 102, 109,  
110, 118.

**LAY RECTOR**—Repair of chancel.

*See ECCLESIASTICAL LAW.* 59.

— Right to chief seat in chancel—Prescription.

*See ECCLESIASTICAL LAW—Pews.* 56.

**LEASE.**

*See Cases under LANDLORD AND TENANT.*

**LEASEHOLDS**—Abstract—Assignment,

*See VENDOR AND PURCHASER.* 1.

— Assignment—Lessor's consent—Default of  
vendor in obtaining—Loss of bargain—  
Damages.

*See VENDOR AND PURCHASER—Contract.*  
26.

— Assignment—Stamp duty—Consideration—  
Rent.

*See REVENUE—Stamps.* 160.

— Conversion — Residuary gift — Successive  
interests.

*See CONVERSION.* 7.

— Conveyance on sale—Leasehold interest in  
licensed house—Goodwill.

*See REVENUE—Stamps.* 157.

**LEASEHOLDS—continued.**

— Covenants—Rent—Repairs—Liability.

*See WILL—Leaseholds.* 119.

— Domiciled foreigner—Unattested will—Im-  
movables — Administration with will  
annexed.

*See CONFLICT OF LAWS.* 17.

— Leasehold area — Crown Lands Acts — Re-  
sumed area.

*See NEW SOUTH WALES.* 18.

— Leases.

*See Cases under LANDLORD AND TENANT.*

— Non-disclosure of onerous covenants.

*See VENDOR AND PURCHASER—Contract.*  
24.

— Sale of leaseholds.

*See VENDOR AND PURCHASER—Title.* 84.

— Sale of leaseholds—Scale fee.

*See SOLICITOR—Costs.* 57.

— Settled Land Acts — Tenant for life and  
remainderman.

*See SETTLED LAND—Leaseholds.*

— Stamp duty—"Conveyance or transfer or  
sale"—Assignment—Consideration—  
Rent.

*See REVENUE—Stamps.* 152.

— Waste—Tenant for life and remainderman.

*See WASTE.* 3.

**LEASING POWERS**—Settled Land Acts.

*See Cases under SETTLED LAND—Leases.*

**LECTURE**—Sunday observance.

*See SUNDAY.* 3.

**LEEWARD ISLANDS**—*O. in C. dated Nov. 29,*  
1898, *assenting to Bill to amend the Leeward*  
*Islands Act, 1871.* **St. R. & O. 1898, p. 1291.**

*Appeals from—O. in C. dated March 24, 1880,*  
*regulating appeals from the Supreme Court of the*  
*Leeward Islands to Her Majesty in Council.* **St.**  
**R. & O. 1899, p. 1592.**

— Colonial Probates Act, 1892.

*See PROBATE.*

— Death duties.

*See REVENUE—Estate Duty.*

**LEGACY.**

*See Cases under WILL.*

**LEGACY DUTY.**

*See REVENUE—Legacy Duty.*

**LEGAL ESTATE**—Conflicting equities—Priority  
of mortgages

*See MORTGAGE—Priority.* 54.

— Devise to trustees.

*See VENDOR AND PURCHASER—Title.* 80.

— Failure of beneficiaries.

*See TRUSTEE—Legal Estate.* 76.

**LEGITIMACY**—*Declaration of—Petition under*  
*the Legitimacy Declaration Act, 1858* (21 & 22  
Vict. c. 93), ss. 4, 5, 7, 8, 11—*Costs.*

In proceedings on a petition under the Legi-  
timacy Declaration Act, 1858, the Court has  
jurisdiction to order a person who has been cited  
and who has intervened and opposed the petition  
to pay the petitioner's costs.

*Per Butt P.: The Att.-Gen. is not liable*  
2 N 2

**LEGITIMACY**—*continued*.

to pay and cannot receive costs in such proceedings.

Decision of Butt P., [1892] P. 217, affirmed.  
**BAIN v. ATT.-GEN.** — **G. A. [1892] P. 261**

2. — *Legitimation per subsequens matrimonium* — *Inheritance of land in England* — *Domicil*.

A child legitimized by the subsequent marriage of its parents under the law of their domicile can take English land as a legitimate child under a devise by will of realty. *In re GREY'S TRUSTS.* **GREY v. STAMFORD** — **Stirling J. [1892] 3 Ch. 88**

3. — *Legitimation per subsequens matrimonium* — *Roman Catholic Ottoman subjects* — *Canon law*.

By the canon law of the Roman Catholic Church illegitimate children of a Roman Catholic father and orthodox mother are legitimized by the marriage of their parents authorized by dispensation. **PARAPANO v. HAPPAZ**

**P. C. [1894] A. C. 165**

**LENDER**—Money-lender.

See **MONEY-LENDER**.

**LETTER OF INSTRUCTION**—Ambiguity—Unexecuted testamentary documents—Debt.

See **PROBATE**—**Grant of Probate**. 79.

**LETTER**—Contract—Letter signed by purchaser on paper on which vendor's name and address printed.

See **FRAUDS, STATUTE OF**. 7.

— Contract by letters—Acceptance and withdrawal of offer—Time.

See **CONTRACT**. 17A.

— Envelope and letter taken as one document—Statute of Frauds.

See **CONTRACT**. 17.

— Payment into court—On admissions.

See **PRACTICE**—**Payment into Court**. 125.

— Service by post—Notice—Public Health Act.

See **PRACTICE**—**Service**. 224, 225.

**LETTERS OF ADMINISTRATION**.

See **Cases under PROBATE**.

**LETTERS OF ALLOTMENT**—Letters of renunciation—Increase of duty on.

See **Finance Act, 1899 (62 & 63 Vict. c. 9), s. 9**.

**LETTERS OF REQUEST**—Acceptance of—Faculty—Jurisdiction—Licence of Secretary of State before opening vault not required.

See **ECCLESIASTICAL LAW**. 29.

— Examination of witnesses abroad—Practice.

See **EVIDENCE**. 27.

**LETTERS PATENT**.

See **PATENT**—**Letters Patent**.

**LEVEL CROSSINGS**.

See **RAILWAY**—**Level Crossings**.

**LEX FORI**—Administration of estate of deceased partner.

See **CONFLICT OF LAWS**. 13.

**LEX REI SITE**—Marriage—Domicil, Change of—Immovable goods—French law—Community of goods—Statute of Frauds.  
 See **CONFLICT OF LAWS**. 9.

**LIABILITY**.

See under Heading of Subject-matter of **LIABILITY**.

“**LIABLE TO BE SEIZED**”—Unsound fruit.

See **FOOD**. 1.

**LIAR**—Falsehood, imputation of.

See **DEFAMATION**—**Libel**. 5.

— Justification—Particulars.

See **DEFAMATION**—**Libel**. 11, 12.

**LIBEL**.

See **DEFAMATION**—**Libel**.

**LIBERTIA**—Extradition.

See **EXTRADITION**.

**LIBERTY**.

See **HAVERING-ATTE-BOWER**.

**LONDON**—Sessions.

**LIBERTY OF THE SUBJECT**—Motion to commit

—Leave to appeal.

See **APPEAL**. 33.

**LIBRARY**.

*Public Libraries Act, 1892 (55 & 56 Vict. c. 53), consolidates and amends previous Acts.*

*Public Libraries (Amendment) Act, 1893 (56 & 57 Vict. c. 11), amends the Public Libraries Act, 1892.*

*Local Government Act, 1894 (56 & 57 Vict. c. 73), 2nd sched., amends the Public Libraries Act, 1892.*

*Libraries Offences Act, 1898 (61 & 62 Vict. c. 53), provides for the punishment of offences in libraries.*

— Income tax—Public free library—Subscription library.

See **REVENUE**—**Income Tax**. 109.

— Income tax—Public library—Literary or scientific institution—Exemption.

See **REVENUE**—**Income Tax**. 105.

— Libel—Publication—Book—Circulating library.

See **DEFAMATION**—**Libel**. 27.

— Library catalogue—Probate—Will—Incorporated document—Custody.

See **PROBATE**—**Grant of Probate**. 98.

**LICENCE**.

See **Cases under LICENSING ACTS**.

— Armorial bearings—Licence to carry.

See **REVENUE**. 10.

— Book—Sale of blocks—Unassignable licence.

See **COPYRIGHT**.

— Brewer's licences—Direct taxation.

See **CANADA**. 42.

— Copyright—Licence to copy—Subsequent assignment.

See **COPYRIGHT**.

— County council—Exemption—Wooden structure used in connection with traffic of railway.

See **LONDON**—**Buildings**. 32.

**LICENCE—continued.**

- Covenant against assignment without—Deposit by way of security.  
*See COVENANT.* 1.
- “Discontinuance” of—Public-house—Lease.  
*See LANDLORD AND TENANT—Covenant.* 18.
- Excise.  
*See Cases under REVENUE.*
- Faculty—Jurisdiction—Licence of Secretary of State before opening vault not required.  
*See ECCLESIASTICAL LAW.* 26, 29.
- Fishing—Right to fish and carry away the fish caught—Profit à prendre.  
*See FISHERY.* 10.
- Foreign Game—Licence to sell.  
*See REVENUE—Game Licence.* 49.
- Golf ground—Lease or licence—Interest in land.  
*See GOLF.* 1.
- Music and dancing.  
*See LONDON—Music and Dancing.*
- Not to be unreasonably withheld.  
*See LANDLORD AND TENANT.* 14.
- Patent.  
*See PATENT—Licence.*
- Pawnbroker's.  
*See PAWNBROKER.*
- Public-house—Contract for sale of—Transfer of licence.  
*See VENDOR AND PURCHASER—Contract.* 32.
- 1. — *Revocation—Breach of contract by licensor—Licensee's right of action—Posting advertisements on hoarding.*  
Plt. and deft. agreed orally that deft. should let his wall to plt. for bill-posting, at 2l. 10s. a year, plt. to erect a hoarding, on which the bills were to be posted. Plt. erected the hoarding, posted bills, and made several payments. Deft. gave notice to plt. that the hoarding must be removed, and nearly a month later deft. took it down.  
In an action to recover damages for breach of contract :—  
*Held*, that, although the permission to post bills was a licence, and therefore, not being by deed, was revocable, the action was maintainable for breach of contract, and therefore plt. was wrongly nonsuited.  
*Wood v. Leadbitter*, (1845) 13 M. & W. 838, distinguished. *KERRISON v. SMITH*  
Div. Ct. [1897] 2 Q. B. 445
- Steam-roller—“Used” within the county.  
*See LOCOMOTIVE.* 1.
- Theatre—Discretion to attach condition to grant.  
*See THEATRE.* 1.
- Water—Licence to take—Public well—Local authority—Injunction.  
*See WATER.* 43.
- Waterman or lighterman—Judicial order.  
*See CERTIORARI.* 1.

**LICENSING ACTS.**

*In General*, col. 1098.  
*Licence*, col. 1098.  
*Offences*, col. 1105.  
*Police*, col. 1111.  
*Practice*, col. 1111.

**In General.**

- Canada Temperance Act—Construction.  
*See CANADA.* 13.
- Licence—Lease of public-house—Breach of covenant.  
*See LANDLORD AND TENANT.* 15, 17, 18.
- Liquor laws—Power of prohibition—Distribution of legislative powers.  
*See CANADA.* 13.
- Stage licence, Grant of—Condition.  
*See THEATRE.* 1.

**Licence.**

- Appeals.  
*See LICENSING ACTS—Practice.* 47—53.
- Canada, Laws of.  
*See CANADA.* 12, 13.
- Jurisdiction of justices.  
*See LICENSING ACTS, passim.*

1. — *New licence—Confirmation of provisional licence—Rules of practice imposing condition on right to oppose—Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 37, 43.*

By s. 37 of the Licensing Act, 1872, a grant of a new licence in counties by licensing justices is not valid unless confirmed by the county licensing committee. By s. 43, any person who opposes before licensing justices the grant of a new licence, and no other person, may oppose the confirmation of the grant by the confirming authority; by the same section power is given in counties to the justices in quarter sessions to make rules as to the proceedings to be adopted for confirmation of new licences.

A court of quarter sessions, acting under s. 43, made a rule that every person intending to oppose the confirmation of any provisional licence before the county licensing committee must, within seven days after the grant of the provisional licence, give notice to the applicant and to the clerk of the peace of his intention to oppose the confirmation :—

*Held*, that the rule was ultra vires, as imposing a condition upon the statutory right to oppose the confirmation of the licence not imposed or authorized by the statute. *REG. v. BRID. Ex parte NEEDLES* - - Div. Ct. [1898] 2 Q. B. 340

2. — *Notice of application for certificate—Computation of time—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 7—Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 40, 43, 50.*

The twenty-one days' notice required by s. 7 of the Wine and Beerhouse Act, 1869, is to be computed, not from the first day of the licensing sessions, but from the day on which the application is actually heard. *REG. v. POWNALL*

Div. Ct. [1893] 2 Q. B. 158  
— Notice of objection and opposition—Renewal.  
*See Nos.* 13—17, below.

**LICENSING ACTS (Licence)—continued.**

— Notices.

*See also Nos. 3—5, 12—17, below.*

3. — *Notices—Sufficiency—Justices proceeding on insufficient notice—Mandamus to hear and determine—Premises taken for public purpose—Application for licence in respect of other premises—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 14—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 7—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 40.*

The holder of a licence in respect of a house about to be pulled down for a public purpose gave the notices required by s. 14 of the Alehouse Act, 1828, of his intention to apply for a licence in respect of another house not then licensed. The notices given did not comply with the provisions of s. 40 of the Licensing Act, 1872. The licensing justices at a special session granted the application upon information that the notices were in order. A rule nisi having been obtained for a writ of mandamus to the justices to hear and determine the application according to law:—

*Held*, by a Div. Ct., that the notices were not in order, and that the justices had acted without jurisdiction, but that, as they had heard and determined the application, a mandamus ought not to issue:

*Held*, by C. A., that the notices were good, as the specific provisions with regard to them in s. 14 of the Alehouse Act, 1828, had not been expressly or impliedly repealed by s. 40 of the Licensing Act, 1872. *REG. v. NICHOLSON*

C. A. [1899] 2 Q. B. 455

4. — “*Off licence*”—*Order sanctioning removal—Application for new licence—Notice of application—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 50.*

The holder of an “off licence” for the sale of beer, wine and spirits in respect of certain premises applied at the general annual licensing meeting for a renewal of that licence. He also applied for a new licence of a similar description in respect of other premises, having given the notices requisite in applications for new licences, but not those requisite in applications for orders for removal. The licensing justices granted the application for the new licence on condition that he gave up the licence for the first-mentioned premises and ceased forthwith to carry on the sale of beer, wine and spirits there. The applicant agreed to do this and the new licence was granted:—

*Held*, that this was neither in form nor in substance an order sanctioning the removal of a licence, and that the justices had an absolute discretion to grant the new licence.

Decisions of the Q. B. D. and C. A. (*Reg. v. Thornton, Ex parte Lacon & Co.*, [1897] 2 Q. B. 308; [1898] 1 Q. B. 334) reversed. *LACEY v. LACON & CO.*

H. L. (E.) [1899] W. N. 35 (9); [1899] A. C. 222

5. — *Removal of licence-holder—Application by new tenant—Notice—Alehouse Act, 1828 (9 Geo. 4, c. 61), ss. 4, 14—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 40, sub-s. 2; s. 74.*

When a licence is applied for by a new tenant under s. 14 of the Alehouse Act, 1828, on the

**LICENSING ACTS (Licence)—continued.**

ground that the occupier has removed therefrom and yielded up possession, s. 40, sub-s. 2, of the Licensing Act, 1872, does not apply, and it is not necessary to give fourteen days’ notice of the application; and there is nothing in the Acts to warrant the justices in requiring fourteen days’ notice as a sufficient notice. *REG. v. HUGHES*

Div. Ct. [1893] 2 Q. B. 530

6. — *Renewal—Beerhouse—Licensed premises not used for sale of beer for long period—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 8.*

A beerhouse licence had been continuously renewed in respect of premises which had been licensed prior to May, 1869; but the licence had not been exercised and no beer had been sold on the premises for a long period:—

*Held*, that this fact gave the justices no jurisdiction to refuse to renew the licence to a new tenant who intended to carry on the premises as bona fide licensed premises, but that they were still limited to the four grounds of objection specified in s. 8 of the Wine and Beerhouse Act, 1869.

*Reg. v. Cotham*, [1898] 1 Q. B. 802; *Symons v. Wedmore*, [1894] 1 Q. B. 401, discussed. *MACKRELL v. BRENTFORD JUSTICES* — Div. Ct. [1900] W. N. 141; [1900] 2 Q. B. 387

7. — *Renewal—Beerhouse—Licensed on May 1, 1869—Pulled down for public purpose—Transfer—Discretion of justices—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 14—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8, 19.*

Justices have a general discretion under s. 14 of the Alehouse Act, 1828, to refuse the transfer of licence of a beerhouse granted before May 1, 1869, and thenceforward renewed from time to time which is about to be pulled down for a public purpose, and are not limited to the four grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869. *TRAYNOR v. JONES*

Div. Ct. [1894] 1 Q. B. 83

8. — *Renewal—Beerhouse licensed on May 1, 1869—Refusal—Justices bound to state grounds—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8, 9.*

When justices refuse an application for the renewal of a beerhouse which was licensed on May 1, 1869, and has been continuously so licensed, they must at the time of refusal state the grounds of their refusal; otherwise a mandamus to hear and determine the application will be granted. *REG. v. THOMAS*

Div. Ct. [1892] 1 Q. B. 426

9. — *Renewal—Discretion of Court of summary jurisdiction—Forfeiture of licence—Application by owner for authority to carry on business—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 15.*

A licensed person having become disqualified from holding a licence in consequence of his having been convicted of selling spirits without a licence, the owner of the premises applied to a Court of summary jurisdiction under s. 15 of the Licensing Act, 1874, for authority to carry on the business on the same premises until the next special sessions: see *Ex parte Flinn & Son*, [1899] 2 Q. B. 154. (*See No. 42, below.*) The premises in question were licensed premises on



**LICENSING ACTS (Licence)—continued.**

May 1, 1869, and the licence had since been renewed from time to time, and therefore a renewal or transfer of the licence could only be refused on one or more of the four grounds specified in the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8, 19.

The Court of summary jurisdiction, however, heard evidence on other grounds of objection than the four specified in that Act, and refused the application on such other grounds, but at the direction of the Court stated this special case for their opinion:—

*Held*, that the Court of summary jurisdiction could only refuse the application on one of the four specified grounds, and that, as they had not done so, they had no power to refuse to the owner of the premises authority to carry on the same business upon the same premises until the next special sessions for licensing purposes under s. 15 of the Licensing Act, 1874. Case remitted. *Ex parte FLINN & SONS*

Div. Ct. [1899] W. N. 135

See also No. 42, below.

10. — *Renewal—Discretion of justices—Licensing Acts*, 1828 (9 Geo. 4, c. 61), s. 1; 1872 (35 & 36 Vict. c. 94), s. 42; 1874 (37 & 38 Vict. c. 49), s. 26.

The discretion of justices as to granting or refusing a licence by way of renewal under the Licensing Acts, 1828, 1872, and 1874, in respect of exciseable liquors to be drunk on the premises is absolute, provided it be exercised judicially.

The licensing justices have a discretion to refuse the renewal on the ground of remoteness from police supervision, and the character and necessities of the neighbourhood.

Decision of C. A. (1888) 22 Q. B. D. 239, affirmed. *SHARP v. WAKEFIELD*

H. L. (E.) [1891] A. C. 173

Referred to by Div. Ct. *Reg. v. County Council of West Riding of Yorkshire*, [1896] 2 Q. B. 386, 388.

11. — *Renewal—New Tenant—Refusal of renewal to—Subsequent application for licence by second new tenant—Jurisdiction of justices—Alehouse Act*, 1828 (9 Geo. 4, c. 61), s. 14.

An application was made under s. 14 of the Alehouse Act, 1828, for a licence by a second new tenant after refusal of renewal to new tenant and expiry of licence:—

*Held*, that the justices had jurisdiction to grant the application. *BALDWIN v. DOVER JUSTICES*

Div. Ct. [1892] 2 Q. B. 421

12. — *Renewal—Notice of appeal—Service—Power of justices to state a case—Alehouse Act*, 1828 (9 Geo. 4, c. 61), ss. 27, 37—*Summary Jurisdiction Acts*, 1879 (42 & 43 Vict. c. 49), ss. 31, 33; 1884 (47 & 48 Vict. c. 43), s. 7—*Interpretation Act*, 1889 (52 & 53 Vict. c. 63), s. 13, sub-s. 11.

Licensing justices are “a court of summary jurisdiction” (Interpretation Act, 1889, s. 13, sub-s. 11), and appeals from them are governed by s. 31 of the Summary Jurisdiction Act, 1879. Licensing justices have therefore power to state a case. A notice of appeal by case stated to quarter sessions was served on the justices’ clerk,

**LICENSING ACTS (Licence)—continued.**

the head constable, and on several, but not all, of the justices:—

*Held*, that the service on the clerk was in itself sufficient. *REG. v. GLAMORGANSHIRE JUSTICES. REG. v. PONTYPOOL JUSTICES*

C. A. [1892] 1 Q. B. 621

Overruled by H. L. (E.). *Boulter v. Kent Justices*, [1897] A. C. 556.

13. — *Renewal—Notice of objection—Omission to state grounds of refusal—Wine and Beerhouse Acts*, 1869, 1870 (32 & 33 Vict. c. 27, ss. 8, 19; 33 & 34 Vict. c. 29, s. 7)—*Licensing Acts*, 1872, 1874 (35 & 36 Vict. c. 94, s. 42; 37 & 38 Vict. c. 49, s. 26).

On appeal from refusal of a licence all the objections which were open before the justices are open before the quarter sessions. The holder of a licence, the renewal of which could only be refused on one or more of four grounds specified in the Wine and Beerhouse Acts, 1869, 1870, had been served with notice of objection in due time. The justices refused the renewal, but omitted to state on what ground. The holder appealed to quarter sessions, and was not served with fresh notice of objection. At the appeal he contended that as the justices had stated no ground for their decision the appeal should be granted. The Court overruled this contention, and proceeded to hear the case on its merits. The appellant then withdrew, declining to take further part in the proceedings. The Court heard the appeal and dismissed it, giving no ground for the refusal:—

*Held*, that the appeal had been heard and determined. *Ex parte GORMAN*

H. L. (E.) [1894] A. C. 23

14. — *Renewal—Notice of opposition—Notice not purporting to be by direction of justices—Wine and Beerhouse Act*, 1869 (32 & 33 Vict. c. 27), ss. 8, 19—*Licensing Act*, 1872 (35 & 36 Vict. c. 94), s. 42.

That a notice given under s. 42 of the Licensing Act, 1872, does not state on its face that it is given by direction of the justices is an irregularity which is waived by the appearance of the appellant. An appeal in such a case to quarter sessions is a rehearing; and that Court can entertain and decide on any objection raised by the notice. *WHIFFEN v. MALLING JUSTICES*

C. A. [1892] 1 Q. B. 362

15. — *Renewal—Notice of opposition—Person holding temporary authority to carry on business under 5 & 6 Vict. c. 44, s. 1—Licensing Act*, 1872 (35 & 36 Vict. c. 94), s. 42—*Special case stated by justices—Proper party to be respondent—Summary Jurisdiction Act*, 1879 (42 & 43 Vict. c. 49), s. 33.

A person holding an interim authority under 5 & 6 Vict. c. 44, s. 1, to carry on business is not a “licensed person” applying for a renewal of “his” licence, within s. 42 of the Act of 1872, and is therefore not entitled to the notice therein mentioned.

Where a case is stated under s. 33 of the Summary Jurisdiction Act, 1879, as to refusal of a licence, the superintendent of police who had opposed the licence, and to whom notice of appeal

**LICENSING ACTS (Licence)—continued.**

had been given, held to be rightly constituted respondent. *PRICE v. JAMES*

**C. A. [1892] 2 Q. B. 428**

Discussed by Div. Ct. *Symons v. Wedmore*, [1894] 1 Q. B. 401.

Referred to by C. A. *Reg. v. London Justices*, [1895] 1 Q. B. 616, 635.

**16. — Renewal—Notice of opposition—Service—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 42.**

The written notice under s. 42 of the Licensing Act, 1872, of intention to oppose the renewal of a licence need not be served on the holder personally. It is sufficient if it be left with a servant on the licensed premises. *Ex parte PORTINGELL* — **C. A. [1892] 1 Q. B. 15**

**17. — Renewal—Notice of opposition—Service—Time—Adjourned meeting—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 42, sub-s. 2.**

The words in s. 42, sub-s. 2, of the Licensing Act, 1872, which require notice of opposition to a renewal to be served on the licensed person "not less than seven days before the commencement of the general annual licensing meeting," must be taken to mean the commencement of the adjourned meeting for the part of the petty sessional division in which the licensed house is situate, and not necessarily the first annual meeting in the division. *REG. v. ANGLESEY JUSTICES* (No. 1) **Div. Ct. [1892] 1 Q. B. 850**

**18. — Renewal—Objection—Request for adjournment—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 42.**

At the general annual licensing meeting for a borough, a request was made by the head constable that the renewal of the licence of a beerhouse which had been licensed prior to May, 1869, should be withheld until the adjourned meeting, and the justices accordingly adjourned the granting of the renewal:—

*Held*, that this request amounted to the making of an objection within the meaning of the proviso to s. 42, sub-s. 2, of the Licensing Act, 1872, and gave the justices jurisdiction to refuse the renewal at the adjourned meeting on one of the four grounds specified in s. 8 of 32 & 33 Vict. c. 27. *HAWKINS v. BRIDGWATER JUSTICES* **Div. Ct. [1900] 2 Q. B. 382**

**19. — Renewal—Objection in open court—Postponement—Licensing Acts, 1872, 1874 (35 & 36 Vict. c. 94, s. 42; 37 & 38 Vict. c. 49, s. 26).**

An objection to the renewal of a licence made in open court at the general annual licensing meeting is a good "objection made" within the meaning of the proviso to s. 42 of the Licensing Act, 1872, although neither the grounds nor the nature of the objection are stated by the objector, and upon such an objection being made the justices have power to postpone the application to an adjourned meeting.

Judgment of Div. Ct., [1894] 2 Q. B. 273, affirmed. *DAYKIN v. PARKER*

**C. A. [1894] 2 Q. B. 556**

**20. — Renewal—Objection on ground of disorderly character of house—Evidence of convictions of previous tenants—Licensing Act, 1872,**

**LICENSING ACTS (Licence)—continued.**

1874 (35 & 36 Vict. c. 94, s. 42; 37 & 38 Vict. c. 49, s. 26).

An objection on the ground of the disorderly character of house, as evidenced by convictions of previous tenants, may be a good ground under s. 8 of the Act of 1869 for refusing to renew a licence of an old beerhouse, although no charge is made against the character of the applicant or his management of the house. *REG. v. MISKIN HIGHER JUSTICES* **Div. Ct. [1893] 1 Q. B. 275**

**21. — Renewal—Objection on same grounds as previous objection to transfer—Estoppel—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8, 19.**

Where, upon an application for the transfer of a licence to sell beer by retail on or off premises licensed prior to May 1, 1869, an objection is made upon one of the four grounds enumerated in s. 8 of the Wine and Beerhouse Act, 1869, but the justices in the exercise of their discretion grant the transfer, the same objection upon the same facts may be taken at the next general annual licensing meeting to the renewal of the licence, and the renewal may be refused on that ground. *SMITH v. SHANN*

**Div. Ct. [1898] 2 Q. B. 347**

**22. — Renewal—"Real resident holder and occupier"—Beer House Act, 1840 (3 & 4 Vict. c. 61), s. 1.**

The mere fact that the tenant in occupation of a beerhouse carries on the sale of beer therein as the salaried employee of his landlords, a brewery company, to whom he is accountable for the profits, does not involve as a conclusion of law that he is not the real resident holder and occupier of the house within the meaning of s. 1 of the Beer House Act, 1840:—

So held by the C. A.

Objectors to the renewal of a licence have no right to be heard on an appeal to quarter sessions or in the High Court on a case stated by the quarter sessions:—

So held by the Div. Ct. *NIX v. NOTTINGHAM JUSTICES* — **C. A. [1899] W. N. 106; [1899] 2 Q. B. 294**

**23. — Renewal—Right to apply—Application by person other than licensed person.**

The holder of a licence to sell by retail beer and cider on the premises applied for a renewal at the general annual licensing meeting, and was refused. At the adjourned general annual licensing meeting, S., who had in the meantime become tenant and occupier, applied for a renewal of the licence, which had not expired:—

*Held*, that S. was a person entitled to apply for renewal, although he was not the licensed person. *SYMONS v. WEDMORE*

**Div. Ct. [1894] 1 Q. B. 401**

**24. — Transfer—Grant of licence to "new tenant"—Jurisdiction of justices—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 14—Change of occupancy—Beerhouse.**

In Sept., 1890, justices granted a special transfer licence to a new tenant under s. 14 of the Alehouse Act, 1828. The licence expired on Oct. 10, 1890, and on Jan. 3, 1891, the tenant made a second application under the same section

**LICENSING ACTS (Licence)—continued.**

for another licence to carry him on until Oct., 1891:—

*Held*, that the justices had no jurisdiction to entertain a second application under the section.

Decision of Div. Ct., [1891] 1 Q. B. 718, affirmed. *REG. v. POWELL*

C. A. [1891] 2 Q. B. 693

25. — *Transfer—Justices—Jurisdiction—Outlying district of county—Transfer to other county—County Police Act, 1840 (3 & 4 Vict. c. 88), s. 2.*

The transfer of an outlying district of a county to another county under the County Police Act, 1840, s. 2, does not effect a transfer of the licensing jurisdiction in that district to the justices of that other county. *REG. v. WORCESTERSHIRE JUSTICES*. *REG. v. WARWICKSHIRE JUSTICES* -

C. A. [1898] W. N. 160 (10);  
[1899] 1 Q. B. 59

26. — *Transfer—Premises pulled down—Person to apply—Alehouse Act, 1828 (9 Geo. 4, c. 61), ss. 4, 14—Practice—Mandamus—Costs.*

Where a licensed house is pulled down for the purpose of public improvements, and application is made under s. 14 of the Alehouse Act, 1828, for the grant to the person whose house has been pulled down of a licence in respect of other fit and convenient premises, the application must be made by a licensed person who was keeping the old premises as an inn at the time of their demolition.

Where a person, who has successfully opposed the granting of a licence, subsequently successfully shews cause against the making absolute of a rule nisi for a mandamus to the licensing justices or to quarter sessions, the Court has a discretion to grant him the costs of shewing cause against the rule, although licensing justices are not a court of summary jurisdiction.

*Boulter v. Kent Justices*, [1897] A. C. 556, considered. *REG. v. YORKSHIRE (JUSTICES FOR THE WEST RIDING OF)*. *Ex parte SHAW*

Div. Ct. [1898] 1 Q. B. 503

27. — *Transfer refused—Licence “in force”—Licensing Act, 1828 (9 Geo. 4, c. 61), s. 14—Wine and Beerhouse Acts, 1869 (32 & 33 Vict. c. 27), ss. 8, 19; 1870 (33 & 34 Vict. c. 29), s. 7.*

Justices refused to renew a licence, dating from before May 1, 1869, in consequence of a conviction for permitting drunkenness on the premises. Before the licence expired on Oct. 10 the tenant gave up his house, and the new tenant applied for a transfer of the licence. His notice of application was given on Oct. 9, and his application was made on Nov. 17, under s. 14 of the Alehouse Act, 1828:—

*Held*, that the licence had not been continuously “in force” from before May 1, 1869, to the date of the application within s. 19 of the Wine and Beerhouse Act, 1869, and therefore a refusal to transfer need not be confined to one of the four grounds mentioned in that section.

Decision of C. A., [1893] 1 Q. B. 635 (reversing Div. Ct. [1893] 1 Q. B. 281), affirmed. *FREER v. MURRAY* -

H. L. (E.) [1894] A. C. 576

**Offences.**

28. — *Club—Proprietary club—Selling liquors to members without a licence—Licensing Acts, 1828*

**LICENSING ACTS (Offences)—continued.**

(6 Geo. 4, c. 81), s. 26; 1834 (4 & 5 Will. 4, c. 85), s. 17; 1860 (23 & 24 Vict. c. 27), s. 19; 1872 (35 & 36 Vict. c. 94), s. 3.

A. visited a proprietary club of which he was neither a member nor a shareholder, and asked for spirits. He was then and there elected an honorary member pending inquiries, and supplied with spirits. The club had no licence for the sale of intoxicants:—

*Held*, that the proprietors might be convicted for selling without a licence. *BOWYER v. PERCY SUPPER CLUB* - Div. Ct. [1893] 2 Q. B. 154

29. — *Drunken person—Sale to, by servant contrary to instructions—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13.*

The Licensing Act, 1872, s. 13, makes it an offence for any licensed person to sell any intoxicating liquor to any drunken person. The respondent, a licensed person, gave orders to his servants that no drunken persons were to be served; during his absence one of his servants sold intoxicating liquor to a drunken person:—

*Held*, that the respondent was guilty of an offence under the section for he was liable for the act of his servant, that act having been done by the servant within the general scope of his employment, although contrary to the orders of his master. *COMMISSIONERS OF POLICE v. CARTMAN* - Div. Ct. [1896] 1 Q. B. 655

30. — *Drunkenness—Being found drunk on licensed premises after closing hours—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12.*

A customer, not being an inmate or lodger, who is found drunk in a public-house after the closing hour and after the premises are in fact closed, may be convicted under s. 12 of the Licensing Act, 1872, of being found drunk on licensed premises. Licensed premises do not cease to be licensed premises for the purposes of that section by reason of the fact that after the hour of closing they are no longer open to the public.

*Lester v. Torrens*, (1877) 2 Q. B. D. 403, considered. *REG. v. PELLY* - Div. Ct. [1897] 2 Q. B. 33

31. — *Drunkenness—Permitting drunkenness on premises—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13.*

(A) A licensed person who sells intoxicating liquor on his premises to a drunken person is liable to be convicted under s. 13 of the Licensing Act, 1872, of the offence of permitting drunkenness to take place on his premises. *EDMUNDS v. JAMES* - Div. Ct. [1892] 1 Q. B. 18

(B) It is not necessary to constitute the offence of permitting drunkenness on licensed premises within s. 13 of the Licensing Act, 1872, to shew that a drunken person was served with drink on the premises. *HOPE v. WARBURTON*

Div. Ct. [1892] 2 Q. B. 134

(C) If the licensed person was ignorant that the person found on the premises was drunk, he cannot be convicted of permitting drunkenness under s. 13 of the Licensing Act, 1872. *SOMERSET v. WADE* - Div. Ct. [1894] 1 Q. B. 574

**LICENSING ACTS (Offences)—continued.**

32. — *Keeping open during prohibited hours—Licensing Act, 1874* (37 & 38 *Vict. c. 49*), s. 9.

In order to constitute the offence of opening or keeping open licensed premises for the sale of intoxicating liquor during prohibited hours, within the meaning of s. 9 of the Licensing Act, 1874, there must be means of access to customers to the interior of the premises from the outside. If therefore the outer doors are closed at the closing hour, so as to prevent access from the outside, the offence of keeping open the premises during prohibited hours is not proved by evidence that customers, who were on the premises before closing time, remained there and were supplied with liquor afterwards, although such evidence might justify a conviction under the same section for selling intoxicating liquor during prohibited hours. *JEFFREY v. WEAVER*

Div. Ct. [1899] 2 Q. B. 449

33. — *Keeping open premises during prohibited hours—Theatres—Licensing Acts, 1872* (35 & 36 *Vict. c. 94*), s. 72; 1874 (37 & 38 *Vict. c. 49*), ss. 3, 9.

The Licensing Act, 1874 (which is to be read as one with the Licensing Act, 1872), provides (ss. 3, 9) that all premises in which intoxicating liquors are sold by retail shall be closed at certain specified times; and penalties are imposed on persons keeping open such premises during the prohibited times. Sect. 72 of the Licensing Act, 1872, provides that "nothing in this Act shall affect or apply to the sale of intoxicating liquors by proprietors of theatres, in pursuance of the Acts in that behalf":—

*Held*, that s. 72 of the Act of 1872 did not apply to exempt the proprietor of a theatre, who held an excise licence to sell intoxicating liquors by retail at his theatre, from the provisions, with respect to closing, contained in the Act of 1874. *GALLAGHER v. RUDD* — — — Div. Ct.

[1897] W. N. 153 (9); [1898] 1 Q. B. 114

34. — *Place not authorized by licence—Sale at—Appropriation of goods sold—Licensing Act, 1872* (35 & 36 *Vict. c. 94*), s. 3.

A brewer at Burnley, having an off-licence for the sale of beer by retail, sent round a traveller to obtain orders at Accrington. The traveller handed to the consumer at whose house he called a printed and stamped post-card, addressed to the brewery; the traveller wrote on the post-card the quantity of ale required, and the customer signed the post-card, which was then posted by the traveller. The post-card contained a request to the brewer to supply the quantity of ale named weekly until further notice, and concluded as follows: "I assent to the appropriation by you to this order at your brewery of goods of the above description and in a deliverable state." The brewer's carter selected at the brewery, in accordance with such an order, six bottles of ale, one of which he labelled with the customer's name and address, and placed them in a coop or box together with six other bottles for another customer, one of which was also labelled. The goods (with others) were then placed on a lorry, and ultimately delivered at the customer's house, where they were paid for on delivery:—

**LICENSING ACTS (Offences)—continued.**

*Held*, that there had been a complete sale and appropriation of the goods at the brewery at Burnley, and that the brewer could not be convicted under s. 3 of the Licensing Act, 1872, of selling intoxicating liquor at a place where he was not authorized by his licence to sell the same.

*Pletts v. Campbell*, [1895] 2 Q. B. 229, distinguished. *PLETTS v. BEATTIE*

Div. Ct. [1896] 1 Q. B. 519

35. — *Place not authorized by licence—Sale at—Licensing Act, 1872* (35 & 36 *Vict. c. 94*), s. 3.

A brewer, having an off-licence for the sale of beer by retail, was in the habit of sending round his cart containing jars of beer; the jars were delivered from the cart at the customers' houses in pursuance of orders given by the customers at their houses to the carter in the previous week, the price being paid to the carter in the week succeeding delivery. There was no label or mark upon the jars to shew that any particular jar had been appropriated to any particular customer:—

*Held*, that the sale of the beer must be taken to have been at the house of the customer and not at the licensed premises. *PLETTS v. CAMPBELL*

Div. Ct. [1895] 2 Q. B. 229

Distinguished by Div. Ct. *Pletts v. Beattie*, [1896] 1 Q. B. 519. See preceding Case.

36. — *Traveller—"Bonâ fide traveller"—Refreshment on Sunday—Licensing Act, 1874* (37 & 38 *Vict. c. 49*), ss. 9, 10.

A railway porter, who to get to his duties was obliged to go more than six miles from his home, was, as far as reasonable refreshment went, *held* to be a bonâ fide traveller within s. 10 of the Licensing Act, 1874. *COWAP v. ATHERTON*

Div. Ct. [1893] 1 Q. B. 49

37. — *Traveller—"Bonâ fide traveller"—Refreshment on Sunday—Licensing Act, 1874* (37 & 38 *Vict. c. 49*), ss. 9, 10.

The test whether a man is a bonâ fide traveller, who may be served with drink during prohibited hours, is the object of his journey. If the object of the journey is solely to obtain drink which the man cannot obtain at home, he is not a bonâ fide traveller, even though he journey the necessary three miles; and the publican who served him, if he knew the man's object, may be convicted of the offence of selling during prohibited hours. *PENN v. ALEXANDER*

Div. Ct. (Cave J. diss.) [1893] 1 Q. B. 522

38. — *Traveller—"Bonâ fide traveller"—Sale to, for consumption off licensed premises—Licensing Act, 1874* (37 & 38 *Vict. c. 49*), s. 10.

The provision in s. 10 of the Licensing Act, 1874, that "Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to bonâ fide travellers," does not authorize the licensed person to sell for consumption off the premises intoxicating liquor during the time at which the premises are required to be closed. *MOUNTFIELD v. WARD*

Div. Ct. [1897] 1 Q. B. 326

39. — *Traveller—Falsely pretending to be a*

**LICENSING ACTS (Offences)—continued.**

*traveller—Person arriving at or departing from railway station—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 25; 1874 (37 & 38 Vict. c. 49), s. 10—Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), s. 4.*

A person who, after taking a ticket at a railway station, obtains intoxicating liquor at the refreshment-room at the station during prohibited hours and then leaves by train, even though he took the ticket in order to obtain the intoxicating liquor before starting, cannot be convicted under s. 25 of the Licensing Act, 1872, of obtaining intoxicating liquor during closing hours by falsely representing himself to be a traveller, but is within the exemption in s. 10 of the Licensing Act, 1874, in favour of persons arriving at or departing from a railway station by railroad.

WILLIAMS v. MACDONALD

Div. Ct. [1899] 2 Q. B. 308

40. — *Unlicensed premises—“Illegally dealing in intoxicating liquors”—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 17.*

A person found on unlicensed premises is, until the contrary be proved, to “be deemed to be there for the purpose of illegally dealing in intoxicating liquors,” within s. 17 of the Licensing Act, 1874, if he be there for the purpose of buying liquors. “Illegal dealing” is not confined to selling liquors. MCKENZIE v. DAY

Div. Ct. [1893] 1 Q. B. 289

41. — *Without licence—Sale—Disqualification from holding licence—Application by owner for authority to carry on business—Beerhouse licensed before 1869—Limitation of discretion of justices to refuse application—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8, 19; Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 3; 1874 (37 & 38 Vict. c. 49), s. 15.*

The holder of a licence to sell beer to be consumed on and off the premises, which had been continuously in force from a date anterior to 1869, having forfeited this licence in consequence of his conviction for selling spirits without a licence, the owner of the premises applied to a court of summary jurisdiction, under s. 15 of the Licensing Act, 1874, for authority to carry on the same business on the same premises until the next special licensing sessions:—

*Held*, that the court of summary jurisdiction had no authority to refuse this application on any ground other than those specified in s. 8 of the Wine and Beerhouse Act, 1869. *Ex parte* FLINN & SONS (No. 2).

Div. Ct. [1899] 2 Q. B. 607.

See next Case.

42. — *Without licence—Sale—Disqualification from holding licence—Application by owner for authority to carry on business—Jurisdiction to make order—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 3; 1874 (37 & 38 Vict. c. 49), s. 15.*

By the Licensing Act, 1872, s. 3, no person shall sell by retail intoxicating liquor without being licensed, subject to penalties, for the first offence of 50l. or one month's imprisonment, for the second offence of 100l. or three months, and in the case of a second offence, “he may, by order of the Court by which he is tried, be disqualified for any term not exceeding five years from hold-

**LICENSING ACTS (Offences)—continued.**

ing any licence for the sale of intoxicating liquors.”

By the Licensing Act, 1874, s. 15, “Where any licensed person is convicted for the first time of” (inter alia) “selling spirits without a spirit licence . . . and in consequence either becomes personally disqualified or has his licence forfeited,” the owner of the premises may apply for authority to carry on the business.

A licensed person was convicted on the same day of two separate offences, for selling spirits without a spirit licence on two different days, and, on the second conviction, was ordered to be disqualified from holding a licence. The owner applied for authority to carry on the business. The justices held that they had no jurisdiction to hear and determine the application.

*Held*, that the words in s. 15 of the Act of 1874, “for the first time,” govern the words “becomes personally disqualified or has his licence forfeited,” as well as the words specifying the offences, and therefore the owner was entitled to apply, and the justices had jurisdiction to make an order. *Ex parte* FLINN & SONS.

Div. Ct. [1899] W. N. 94; [1899] 2 Q. B. 154

See also No. 9, above.

43. — *Without licence—Sale—House of Commons—Sale by servant of the House—Charge against servant—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.*

The provisions of s. 3 of the Licensing Act, 1872, imposing penalties for unlawful sale of liquor without a licence, do not apply to a servant selling liquor, the property of his master, by his master's order.

The respondent, a servant of the House of Commons, sold liquor, the property of the House, at a bar within the precincts of the House. The purchaser of the liquor was not a member of either House of Parliament, and the place where it was sold was not licensed for the sale of liquor.

On a case stated on an information charging the respondent with unlawfully selling liquor which he was not licensed to sell, contrary to s. 3 of the Licensing Act, 1872:—

*Held*, that the respondent was not guilty of an offence against the Act, and could not be convicted. WILLIAMSON v. NORRIS

Div. Ct. [1898] W. N. 151 (8); [1899] 1 Q. B. 7

44. — *Without licence—Selling intoxicating liquors—Sale by holder of licence after temporary authority granted to another—Alehouse Act, 1842 (5 & 6 Vict. c. 44), s. 1—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.*

The respondent, being the duly licensed keeper of a beerhouse, remained in possession of the premises and sold beer thereon after a temporary authority to carry on the business on the same premises had been granted, under s. 5 & 6 Vict. c. 44, s. 1, to another person in contemplation of the transfer of the licence and the possession of the premises to him:—

*Held*, that the respondent was not liable to be convicted under s. 3 of the Licensing Act, 1872, of the offence of selling intoxicating liquors without a licence. ANDREWS v. DENTON

Div. Ct. [1897] 2 Q. B. 37

**LICENSING ACTS—continued.****Police.**

45. — *Power of police constable to enter on licensed premises—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 16.*

By s. 16 of the Licensing Act, 1874, "Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises":—

*Held*, that a constable cannot under the above section demand admission to the licensed premises unless he has reasonable ground for suspecting that some violation of the said Acts is taking place or is about to take place thereon. **DUNCAN v. DOWDING** Div. Ct. [1897] 1 Q. B. 575

46. — *Supplying liquor to police constable on duty—Knowledge of licensed victualler—Mens rea—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 16, sub-s. 2.*

Sect. 16, sub-s. 2, of the Licensing Act, 1872, does not apply where the licensed victualler bona fide believes that the police constable is off duty. **SHERRAS v. DE RUTZEN**

Div. Ct. [1895] 1 Q. B. 918

Referred to by Div. Ct. *Derbyshire v. Howlston*, [1897] 1 Q. B. 772, 777.

Referred to by P. C. *Bank of New South Wales v. Piper*, [1897] A. C. 383, 390.

**Practice.**

47. — *Appeal—Costs—Appeal from licensing justices—Objection to licence—Party to appeal—Order for costs against objector—Court of summary jurisdiction—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, sub-s. 11.*

Justices at a licensing meeting are not a court of summary jurisdiction; a refusal of licensing justices to renew a licence is not "a conviction or order"; and appeals to quarter sessions against the refusal to grant a licence are not regulated by s. 31 of the Summary Jurisdiction Act, 1879.

At a licensing meeting a person objected to the renewal of a licence, and it was refused. On appeal to quarter sessions the objector did not appear, and the renewal was granted:—

*Held*, that the court of quarter sessions had no power to make an order for costs against the objector.

Decision of C. A., [1896] 2 Q. B. 306, reversed.

*Reg. v. Glamorganshire Justices*, [1892] 1 Q. B. 621, overruled. **BOULTER v. KENT JUSTICES**

H. L. (E.) [1897] A. C. 556

Referred to by Div. Ct. *Reg. v. West Riding of Yorkshire Justices*, [1898] 1 Q. B. 503; *Reg. v. Staffordshire Justices*, [1898] 2 Q. B. 231, 235; *Reg. v. Manchester Justices*, [1899] 1 Q. B. 571, 575.

Referred to by H. L. (E.). *Tynemouth Corporation v. Att.-Gen.*, [1899] A. C. 293, 301.

48. — *Appeal—Costs—Appeal from refusal of licence—Summary Jurisdiction Acts—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 29.*

As regards an appeal against a refusal to

**LICENSING ACTS (Practice)—continued.**

renew a licence, s. 29 of the Alehouse Act, 1828, has not been repealed; but it does not apply to the costs of justices who make themselves "parties" within the Summary Jurisdiction Act, 1879, s. 31, sub-s. 5, to an appeal by taking an active part in opposing the appeal.

When an appeal is dismissed quarter sessions have a discretion as to the costs of justices who thus make themselves "parties" to the appeal, and if they have exercised their discretion by refusing to give the justices their costs, the High Court cannot interfere by mandamus.

Appeals to quarter sessions from justices acting in their jurisdiction under the Licensing Acts are now regulated by the Summary Jurisdiction Acts, 1848, 1879, and 1884. But these Acts do not repeal s. 29 of the Alehouse Act, 1828.

Decision of Div. Ct., [1895] 1 Q. B. 214, affirmed. *REG. v. LONDON JUSTICES (No. 4)*

C. A. [1895] 1 Q. B. 616

Referred to by Div. Ct. *Reg. v. Staffordshire Justices*, [1898] 2 Q. B. 231, 235.

49. — *Appeal—Costs—Licence—Renewal—Appeal against refusal to renew licence—Costs of justices—Indemnity costs, Right to—Mandamus—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 29.*

Where licensing justices, who had been served with notice of appeal against their refusal to renew a licence, had appeared at quarter sessions and acted as respondents to the appeal:—

*Held*, that s. 29 of the Alehouse Act, 1828, made it imperative, upon the dismissal of the appeal, for the court of quarter sessions to entertain an application by the licensing justices for an order upon the appellants to pay them such sum by way of costs as should in the opinion of the court of quarter sessions be sufficient to indemnify them from all costs and charges to which they might have been put in consequence of their having had notice of the appeal served upon them.

*Reg. v. London Justices*, [1895] 1 Q. B. 616, not followed. *REG. v. WORCESTERSHIRE JUSTICES*

C. A. [1900] 2 Q. B. 576

50. — *Appeal—Costs—Refusal to renew licence—Appearance of licensing justices in opposition to appeal—Power of quarter sessions to give costs against justices so opposing—Alehouse Act, 1828 (9 Geo. 4, c. 61), ss. 27, 29.*

Where, upon an appeal to quarter sessions against a refusal by licensing justices to renew a licence, the licensing justices appear and oppose the renewal, the quarter sessions have no power under s. 27 of the Alehouse Act, 1828, to order the licensing justices to pay costs to the appellant in the event of the appeal being allowed. *REG. v. STAFFORDSHIRE JUSTICES*

Div. Ct. [1898] 2 Q. B. 231

51. — *Appeal—Costs—Taxation—Justices—Quarter sessions—Jurisdiction—Costs of appeal—Costs of licensing justices on successful appeal—Order to pay costs incurred by clerk to justices—Taxation—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 29.*

By s. 29 of the Alehouse Act, 1828, power is given to a court of quarter sessions, where a

**LICENSING ACTS (Practice)—continued.**

judgment of licensing justices is reversed upon appeal, to order "that the treasurer of the county or place in and for which such justice whose judgment shall have been so reversed shall have acted on the occasion when he shall have given such judgment shall pay to such justice or to whomsoever he shall appoint such sum as shall in the opinion of such Court be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been put" in consequence of his having had served upon him notice of the intention of the party to appeal.

An order of quarter sessions, made upon the allowance of an appeal from the licensing justices of a borough, and directing the borough treasurer to pay to the clerk of the borough justices a certain sum of money for the reasonable costs, charges, and expenses to which he has been put in supporting the order of the licensing justices is bad, it not being an order for payment of a sum which in the opinion of the Court will "indemnify the justices" from the costs to which they have been put.

Where an order is made under the above section, the amount of the costs, if not ascertained by the Court itself, should be ascertained by the taxation of the clerk of the peace, and his taxation should be adopted by the Court, during the currency of the sessions; the costs can only be taxed out of sessions by consent. *REG. v. WINDER*  
**Div. Ct. [1900] 2 Q. B. 666**

— Appeal—Costs of chief constable—Payment of—Appeal against refusal of licence—Borough fund.  
*See CORPORATION. 10.*

— Appeal—Notice of—Service.  
*See No. 12, above.*

— Appeal—Right of—Licensing officer—Jurisdiction of Supreme Court.  
*See NATAL. 5.*

**52. — Appeal to quarter sessions—Justices equally divided—Justice withdrawing—Adjournment—Alehouse Act, 1828 (9 Geo. 4, c. 61), ss. 9, 27.**

SECT. 9 of the Alehouse Act, 1828, which enacts that questions as to granting, &c., of licences "shall be determined by the majority of justices, not disqualified, who shall be present," does not apply to appeals to quarter sessions. On the hearing of such an appeal the justices were equally divided, and the power of adjournment being doubted, one of the justices in favour of the appeal withdrew, and the appeal was dismissed:—

*Held*, affirming the decision of C. A., that the appeal had been heard and determined. *Ex parte EVANS* - - - **H. L. (E.) [1894] A. C. 16**

**53. — Appeal to quarter sessions—Onus of proof—Refusal to renew without evidence—Licence—Renewal—Licensing Act, 1872 (35 & 36 Vict. c. 91), s. 42—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 27.**

On an appeal to quarter sessions against the refusal of licensing justices to renew a licence, the quarter sessions are not entitled to refuse to

**LICENSING ACTS (Practice)—continued.**

renew the licence without evidence of any ground of objection to its renewal:—

So *held*, reversing the decision of a Div. Ct., [1900] 2 Q. B. 5. *EVANS v. CONWAY JUSTICES*

**C. A. [1900] W. N. 132; [1900] 2 Q. B. 224**

**54. — Jurisdiction—Excess of—Certiorari—Mandamus.**

At a general annual licensing meeting an application was made for a licence to sell in toxicating liquors. The justices granted the licence upon the applicant paying to them a sum of money, which money they intended to apply in reduction of the rates of the borough, or for some other similar public purpose. Certain persons, who had appeared before the justices in opposition to the application, then obtained a rule for a certiorari to bring up the licence to be quashed, and also a rule for a mandamus to hear and determine the application for a licence according to law:—

*Held*, that the rule for a mandamus must be made absolute, on the ground that the objectors had a right to be heard before the licensing justices according to law, that the justices in annexing to the grant of the licence the condition of the payment of money shewed that they had allowed their decision to be influenced by extraneous considerations, and that the hearing under such circumstances was equivalent to no hearing at all; but that the rule for a certiorari must, on the authority of *Reg. v. Sharman*, [1898] 1 Q. B. 578 [*see No. 56, below*], be discharged on the ground that the grant by licensing justices of a licence to sell intoxicating liquor is not a judicial order. *REG. v. BOWMAN*

**Div. Ct. [1898] 1 Q. B. 663**

Referred to by Div. Ct. *Reg. v. Cotham*, [1898] 1 Q. B. 802, 806.

**55. — Jurisdiction—Excess of—New licence—Confirmation of—Certiorari.**

The confirming authority whose confirmation is, under the provisions of the Licensing Acts, necessary to the validity of certain classes of new licences, sit as a court, and therefore, if a licence granted to a person not qualified by law to hold it or in other respects granted without jurisdiction is confirmed by them, a writ of certiorari will lie to bring it up to be quashed.

*Reg. v. Sharman*, [1898] 1 Q. B. 578, distinguished. *REG. v. MANCHESTER JUSTICES*

**Div. Ct. [1899] W. N. 18 (6); [1899] 1 Q. B. 571**

**56. — Jurisdiction of justices—Application for new licence—Power to require witnesses to be sworn—Certiorari—Mandamus.**

On the hearing, at a general annual licensing meeting, of an application for a new licence for a hotel, witnesses were called on behalf of persons who opposed the granting of the licence, and these witnesses gave evidence on oath. Another person then appeared to oppose, and proposed to make statements of fact. The justices required that he should be sworn. He refused, and they declined to hear him, and granted the licence.

On an application for a certiorari, or for a mandamus to the justices to hear and determine:—

*Held*, that the certiorari ought not to be

**LICENSING ACTS (Practice)—continued.**

granted, and *semble*, that, as the justices at the licensing meeting were not acting as a court of summary jurisdiction, but in an administrative capacity, certiorari would not lie :

*Held*, also, that the justices were acting within their jurisdiction in refusing to hear statements not made upon oath, and a mandamus must be refused. *Reg. v. SHARMAN. Ex parte DENTON*

*Div. Ct. [1898] 1 Q. B. 578*

Followed by *Div. Ct. Reg. v. Bowman*, [1898] 1 Q. B. 663. *See No. 54, above.*

Referred to by *Div. Ct. Reg. v. Cotham*, [1898] 1 Q. B. 802, 806.

Distinguished by *Div. Ct. Reg. v. Manchester Justices*, [1899] 1 Q. B. 571.

— Renewal of licence.

*See Nos. 6—23, above.*

— Service—Notice of opposition—Renewal.

*See Nos. 16, 17, above.*

— Transfer of licence.

*See Nos. 24—27, above.*

**LIEN**—Advances on improper security—Lien on company's own shares—Duty of director. *See COMPANY—Directors. 120.*

— Cloak-room—Lien for charges—Goods deposited by bailees.

*See RAILWAY—Stations. 63.*

— Innkeeper—Goods of third person.

*See INNKEEPER. 3.*

— Loss of bill of lading freight—Waiver of lien for chartered freight.

*See INSURANCE—Marine. 53.*

— Maritime lien.

*See SHIPPING—Lien.*

— Railway company—Costs—Deposit.

*See RAILWAY—Practice. 36.*

— Shares — Calls — Alteration of articles — Retrospective operation.

*See COMPANY—Calls. 7.*

— Shares for debt of shareholder to company.

*See COMPANY—Shares. 282, 283.*

— Solicitors' costs—Charging order—"Property recovered or preserved" in bankruptcy proceedings—Jurisdiction.

*See BANKRUPTCY. 67.*

— Solicitor's lien.

*See SOLICITOR—Lien.*

— Trustees' lien on making good breach of trust.

*See TRUSTEE—Breach of Trust. 33.*

— Vendor and purchaser.

*See VENDOR AND PURCHASER—Lien.*

**LIFE INSURANCE.**

*See INSURANCE—Life.*

**LIFE INTEREST**—Hotchpot—Valuation.

*See SETTLEMENT. 27.*

**LIFE SALVAGE.**

*See SHIPPING—Salvage. 241, 242.*

**LIFE-RENT** — Minerals—Rents and profits—

Opened quarries.

*See MINES. 14.*

— Rents and profits—"Opened" mines.

*See MINES. 14.*

**LIFE-RENT—continued.**

— Scottish law.

*See SCOTTISH LAW. 25, 42.*

**LIGHT AND AIR**—"Adjoining"—Conveyance—Covenant against overlooking lights—Buildings "adjoining" vendors' land.

The deft. by deed covenanted with the plts. that from time to time and at all times thereafter, "in the erection of any buildings adjoining the hereditaments of the vendors edged blue in the said plan," he would not "insert or permit to be inserted any lights overlooking such other hereditaments of the vendors." The deft. laid out the land conveyed for building purposes and built houses on it, the backs of which were from twenty to twenty-six feet from the boundary fence separating the two properties, the intervening space being used as gardens or areas belonging to the houses. There were windows in the backs of the houses from which a bowling green on the plt.'s land, let to a first-class bowling club, could be seen. The plts. sought an injunction to restrain the alleged breaches of covenant and damages.

*Held*, that the deft.'s houses did not "adjoin" the plts.' property in the sense of the particular covenant in question, which related to "buildings"—not "houses"—adjoining. For the covenant to apply, there must have been buildings "adjoining" in the ordinary sense of the word.

Decision of Buckley J., [1900] W. N. 24, reversed. *IND, COOPE & Co. v. HANBLIN*

*C. A. [1900] W. N. 270*

**2. — Air—Right to access of air.**

The grantor of land to be used for a particular purpose is under an obligation to abstain from doing anything on his adjoining land which would prevent the land granted from being used for that particular purpose.

A grant of land in general terms and not made for a specific purpose does not give the grantee an easement to the access of air over adjoining property, except where such a right is enjoyed through a definite aperture or a definite channel. *ALDIN v. LATIMER CLARKE, MUIRHEAD & Co.*

*Stirling J. [1894] 2 Ch. 437*

**3. — Air—Right to uninterrupted current of air—Stagnation of air—Nuisance—Injunction.**

A right to have air come over a neighbour's land in a particular channel to a particular place may be established by immemorial user; but in the absence of actual contract, no one can claim a right to have the general current of air over his neighbour's property kept uninterrupted: *per C. A. [1895] 2 Ch. 389.*

Judgment of C. A. varied by consent. *CHASTEE v. ACKLAND H. L. (E.) [1897] A. C. 155*

— Air—Space — Power of local authority to regulate—Cowsheds.

*See DAIRY. 1.*

**4. — Building agreement—Right to light—Equitable easement.**

On July 25, 1883, Earl Cadogan entered into a building agreement with S., by which it was agreed that during the period therein mentioned S. might enter upon the six plots of land mentioned in the first schedule and should build



**LIGHT AND AIR—continued.**

upon plot 1, at an expense of not less than 1000*l.* each, three houses to be fit for occupation by Christmas, 1890. Plans and elevations were to be submitted to the Earl; separate leases to be granted of the houses when roofed in and drained. Clause 25 prohibited S. from sub-letting the land or any part of it except by way of agreement to builders before the leases were granted; and clause 32 provided that the agreement was intended to operate as an agreement only and not as an actual demise, or to give S. any legal interest in such parts of the land as for the time being remained unleased. S. was not bound to commence building before Sept. 29, 1887, when an existing lease would expire. On March 25, 1889, before any house had been built pursuant to the above agreement, Earl Cadogan sold and conveyed to C. and others some adjoining land without their having notice of the agreement. In 1891 a lease of a house on plot 1 was granted to the personal representative of S., who in the same year granted a long underlease of it to the plt. The land sold to C. and others was now vested in the defts., who were building thereon in such a way as seriously to obstruct the access of light to the plt.'s premises.

Kekewich J. held that the building agreement gave S. a legal right which prevented the Earl from dealing with his other property in derogation of that right:—

*Held*, on appeal, that the agreement gave S. no legal easement over any other part of the Earl's property, and that the defts., being purchasers for value without notice, were not affected by any equitable right. The injunction was therefore dissolved. *PRINSEP v. BELGRAVIAN ESTATE, LD.* - C. A. [1896] W. N. 39 (1)

— Building estate—Implied grant—Derogating from grant.

See VENDOR AND PURCHASER—Conveyance. 40.

5. — *Crown—Prescription against—Ancient lights—Property vested in trustees—Sale by trustees—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 1, 2, 3.*

The Crown, not being named in s. 3 of the Prescription Act, 1832, is not bound by it, and, consequently, no right of light can be obtained by virtue of that section over land in possession of the Crown, whether held directly or through trustees. The general words in s. 2, in which the Crown is named, do not apply to an easement of light, which is governed exclusively by s. 3 and subsequent ancillary sections. *PERRY v. EAMES. SALAMAN v. EAMES. MERCERS' CO. v. EAMES* - Chitty J. [1891] 1 Ch. 658

Approved by C. A. in next case.

6. — *Crown—Prescription against—Lessee of Crown—Presumption of lost grant—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 2, 3.*

Sec. 2 of the Prescription Act, 1832, does not apply to the easement of light, s. 3 does not bind the Crown, and in the case of lights dating from 1852 a lost grant will not be presumed against the Crown acting through the Commrs. of Woods:—

*Held*, also, that the plt. could not establish a right against the Crown lessees for their term,

**LIGHT AND AIR—continued.**

inasmuch as an easement, if acquired by prescription, must be absolute and not for a term of years.

*Perry v. Eames*, [1891] 1 Ch. 658, approved. *WHEATON v. MAPLE & CO.* C. A. [1893] 3 Ch. 48

7. — *Devise of house to one and of land adjoining to another—Right of light to windows over the land.*

The owner in fee of a house and an adjoining field over which the light required for the windows of the house passed devised the house to A. and the field to B.:—

*Held*, that the right to light over the field passed to the devisee of the house, and that the devisee of the land had no right to obstruct the light. *PHILLIPS v. LOW Chitty J.* [1892] 1 Ch. 47

8. — *Extinguishment of easement—Rebuilding.*

In order to preserve in a new building the right to light enjoyed by the old building, it must be shewn that some defined part of an ancient window admitted access of light through the space occupied by a defined part of an existing window. *PENDARVES v. MONRO*

North J. [1892] 1 Ch. 611

— Hoarding—Obstruction to light by—Injunction.

See BUILDING ESTATE. 1.

— Gas company—Statutory powers—Ancient lights, interference with—Injunction.

See SUPPORT. 1.

9. — *Greenhouse—"Building"—Ancient lights—Prescription—Injunction—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.*

A greenhouse is a "building" within s. 3 of the Prescription Act (2 & 3 Will. 4, c. 71), and therefore, if it has ancient lights, may be protected by injunction against interference with the access of light.

*Harris v. De Pinna*, (1886) 33 Ch. D. 238, considered. *CLIFFORD v. HOLT*

Kekewich J. [1898] W. N. 168 (2); [1899] 1 Ch. 698

— Implied grant—Derogating from grant.

See VENDOR AND PURCHASER—Conveyance. 40.

10. — *Inchoate right—Commencement of right of action—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 3, 4.*

An inchoate title under the Prescription Act cannot be treated as complete even if effectual interruption before the title becomes absolute is impossible.

In an action to restrain interference with access of light, an interlocutory injunction was granted; but so as not to prevent building up to the height of houses removed more than nineteen and less than twenty years before action brought. *LORD BATTERSEA v. COMMRS. OF SEWERS FOR THE CITY OF LONDON* - North J. [1895] 2 Ch. 708

11. — *Inchoate right—Light enjoyed for more than nineteen but less than twenty years—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.*

An injunction to protect an inchoate right which in a few months would ripen under s. 3 of the Prescription Act, 1832, into an absolute and indefeasible right to ancient lights refused, and

**LIGHT AND AIR—continued.**

the plts. left to their remedy when the twenty years had expired. *BRIDEWELL HOSPITAL GOVERNORS v. WARD, LOCK, BOWDEN & Co.*

**Kekewich J. [1892] W. N. 194**

**12. — Leasehold — Injunction or damages — Future injury — Lord Cairns' Act (21 & 22 Vict. c. 27), s. 2 — Special circumstances — Jurisdiction.**

As a rule, where threatened injury to light is substantial and there is no imperfection in the plt.'s title to relief (as by laches) injunction is the proper remedy. Whether the Court has jurisdiction to award damages by way of compensation for an injury threatened and intended but not yet committed, *quære*. In this case Kekewich J. awarded damages instead of an injunction, but the C. A. discharged the order and granted an injunction as regards the threatened obstruction. *MARTIN v. PRICE*

**C. A. [1894] 1 Ch. 276**

Followed by *C. A. Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287, 311, 316; *Jordeson v. Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217.

**13. — Leasehold — Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.** A tenant who by twenty years' enjoyment has obtained a right of light over other property of his landlord, retains the right if he continue in occupation of the house after the expiration of his lease. *ROBSON v. EDWARDS*

**North J. [1893] 2 Ch. 146**

**14. — Mortgagee — Power of sale — Injunction — Implied easement — Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6, sub-ss. 2, 4, 5; s. 19 — Third party procedure — Co-defendants — Builder — Indemnity — R. S. C., 1883, Order XVI., r. 55.**

Though a mortgagee when selling under the statutory power of sale has not the same full power over the property as an absolute owner, he can convey the property to a purchaser with all the legal incidents accompanying the grant, and, on a sale of part of the property comprised in the mortgage, can give to the purchaser thereof an implied easement of light over the unsold portion.

In an action for an injunction against an adjoining owner and his builder to restrain an interference with light and for trespass, the builder severed in his defence from his employer and appeared separately at the trial, when an injunction was granted with costs against the deft., the adjoining owner:—

*Held*, under the circumstances, that the builder was entitled to complete indemnity, and to an order for the payment of his solicitor and client costs by his co-deft. *BORN v. TURNER*

**Byrne J. [1900] W. N. 122; [1900] 2 Ch. 211**

**15. — Obstruction — Actio personalis — Continuation of obstruction — Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 2.**

The continuance of an obstruction to ancient lights is an "injury committed" in respect of property within the meaning of 3 & 4 Will. 4, c. 42, s. 2, giving rise to a cause of action *de die in diem*, and therefore an action in respect of the continuance of the obstruction in the lifetime of the person who caused it may be maintained

**LIGHT AND AIR—continued.**

against his executors or administrators notwithstanding that the obstructing building was completed more than six calendar months before his death.

*Woodhouse v. Walker*, (1880) 5 Q. B. D. 404, followed. *JENKS v. VISCOUNT CLIFDEN*

**Kekewich J. [1897] 1 Ch. 694**

**16. — Obstruction — Injunction — Declaration — Rebuilding — Evidence of intention to preserve ancient lights — User — Interruption — Abandonment — Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 3, 4.**

In an action to restrain the obstruction of ancient lights in respect of premises which have been rebuilt, evidence of the plt.'s intention to preserve ancient lights upon the rebuilding is unnecessary.

"Interruption" in s. 3 of the Prescription Act bears the same meaning as in s. 4, and refers to an adverse obstruction, and not to a mere discontinuance of user.

The question whether there has been an actual enjoyment of the use of light under the Prescription Act for the statutory period is a question of fact to be determined according to the circumstances of each case.

The plts., who had rebuilt their premises, claimed a right to ancient lights in respect of portions of three windows in the new building which coincided with portions of three windows in the old building. A great part of the coincident area had been, in the case of two of the windows, boarded up, and, in the case of the third window, covered with shelving, for more than a year before action brought; but the shelving allowed a substantial amount of light to pass through into the building:—

*Held*, that, as to the two first windows, there had been such a discontinuance of user as to prevent the acquisition of any right by the plts.; *secus* as to the third.

In the circumstances of the case the Court made a declaration of the plts.' right in lieu of granting an injunction, the deft. undertaking to submit the plans of his proposed building to the plts. *SMITH v. BAXTER* - [1900] W. N. 87; [1900] 2 Ch. 138

**17. — Obstruction — Mandatory injunction — Ancient lights — Pulling down wall.**

A mandatory injunction for the pulling down of an obstructing wall granted. *SHEL v. GONFREY & Co.* - **Kekewich J. [1893] W. N. 115**

**18. — Obstruction — Mandatory injunction — Erection of buildings after notice — Attempt to anticipate injunction — Pulling down.**

After service of writ the deft. hurried on with his buildings in the hope that when once up the Court might decline to order them to be pulled down. The Court, without entering into the merits of the case, ordered the wall to be pulled down, being satisfied that the plt. would have been entitled to an injunction for the purpose of keeping matters in statu quo.

Decision of Stirling J. affirmed. *DANIEL v. FERGUSON* - **C. A. [1891] 2 Ch. 27**

Followed by *C. A. Von Joel v. Hornsey*, [1895] 2 Ch. 774. *See next Case.*

**LIGHT AND AIR—continued.****19. — Obstruction—Mandatory injunction—Evading service of writ—Pulling down.**

The deft. was erecting a building near the plt.'s house. The plt. warned the deft. that if the building were continued he would sue to restrain it as an obstruction of his ancient lights. After action brought the deft. evaded service of the writ for several days, and in the meantime continued the building till substituted service on him was effected:—

*Held*, that the deft.'s evasion of the writ brought the case within the principle of *Daniel v. Ferguson*, [1891] 2 Ch. 27, and that the plt. was entitled to an interlocutory mandatory injunction ordering the deft. to pull down so much of the building as had been erected after the plt. had warned the deft. that he intended to bring an action.

The decision of Kekewich J. affirmed. *VON JOEL v. HORNSEY* C. A. [1895] 2 Ch. 774

**20. — Obstruction—Reservation in lease of right to obstruct light—"Adjoining or contiguous"—Covenant—"Assign"—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.**

A reservation in a lease of the right to obstruct light prevents the lessee from acquiring a right to light under s. 3 of the Prescription Act, 1832. Where the document of title is sufficient to pass the soil ad medium flum via, houses on opposite sides of a street are adjacent or contiguous to each other. *HAYNES v. KING*

*North J.* [1893] 3 Ch. 439

**21. — Skylights—Obstruction—Injunction.**

There is no difference as to the easement of light between skylights and other windows. *HARRIS v. KINLOCH & Co.*

*Kekewich J.* [1895] W. N. 60

**22. — Special light for extraordinary purpose—Photography—Prescription—Injunction.**

A person who is in the present enjoyment of an access of light to his premises for a special or extraordinary purpose, such as taking photographic portraits, may obtain an injunction against interference with that access of light, even though he may not have been in the enjoyment of it for that special or extraordinary purpose for the full statutory period of twenty years.

*Lanfranchi v. Mackenzie*, (1867) L. R. 4 Eq. 421, not followed. *LAZARUS v. ARTISTIC PHOTOGRAPHIC Co.* — *Kekewich J.* [1897] 2 Ch. 214

**23. — Special light for extraordinary purposes—Wool-sorting.**

Under an implied grant of light sufficient light for ordinary business purposes alone is granted and not light for special purposes, e.g. wool-sorting. *CORBETT v. JONAS*

*Kekewich J.* [1892] 3 Ch. 137

And see *Aldin v. Latimer Clarke, Muirhead & Co.*, *Stirling J.* [1894] 2 Ch. 437.

**24. — Special quantity of light—Use of premises for purposes requiring special quantity of light—Measured right—Prescription.**

The plt.'s windows had for twenty years received an extraordinary amount of light; but although during the whole of that period the premises were suitable for the purposes of a business requiring an extraordinary amount of

**LIGHT AND AIR—continued.**

light, they had in fact been used for those purposes during only a portion of the period. The deft., by the erection of a building, materially diminished the amount of light passing through the windows, but left sufficient for all ordinary purposes:—

*Held*, that the plt. had no cause of action.

*Quere*, whether it would have made any difference if the premises had been used during the whole of the statutory period for purposes requiring an extraordinary amount of light. *WARREN v. BROWN Wright J.* [1900] 2 Q. B. 722

**25. — Unfinished house—Light and air—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 3, 4.**

In the case of a right to light and air arising through prescription, the time from which prescription is to be computed commences when the exterior walls with the window spaces are completed and the building roofed in, although the window sashes and the glass be not put in nor the interior finished till some time afterwards. *COLLIS v. LAUGHER Romer J.* [1894] 3 Ch. 659

**LIGHT DUES.**

See Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44).

— "Port charges."

See SHIPPING—Charterparty. 43.

**LIGHT RAILWAYS.**

See RAILWAY—Light Railways.

**LIGHTED CANDLES—Communion Service.**

See ECCLESIASTICAL LAW—Ritual. 67.

**LIGHTERMAN—Waterman and.**

See THAMES. 4, 5, 12.

**LIGHTHOUSE—Poor-rate—Rateability—Dues.**

See RATES. 33.

**LIGHTING.**

See ELECTRIC LIGHTING.

— Valuation (Metropolis) Act, 1869—Gross value

— Artizans' dwellings—Cost of lighting and cleaning common stair.

See RATES—Rateability. 12.

**LIGHTING RATES—Brickfield—Land.**

See RATES. 35.

**LIGHTING STREETS—Power of urban authority.**

See STREETS—Lighting.

**LIGHTING AND WATCHING RATE.**

See STREETS—Lighting.

**LIGHTS—Collision.**

See Cases under SHIPPING—Collision.

— Thames navigation—Side-lights.

See THAMES. 10, 11.

**LIGHTSHIP—Loss of use of—Hire of substitute—Collision—Damages.**

See SHIPPING—Collision. 72.

**LIMITATION—By articles of association—Winding-up—Contributory—Right to petition.**

See COMPANY—WINDING-UP. 38.

— Legal and equitable—Contingent remainders—Infants—Intermediate rents.

See WILL. 74.

**LIMITATION OF ACTIONS**—Book—Piracy—Infringement—Combining causes of action.

See **COPYRIGHT**. 11.

— Nuisance order—Costs of obtaining and enforcing.

See **NUISANCES**. 14.

— Public authorities protection.

See **Cases under PUBLIC AUTHORITIES PROTECTION**.

**LIMITATION OF LIABILITY**.

See **SHIPPING—Limitation of Liability**.

**LIMITATION OF TIME**.

See **LIMITATIONS, STATUTE OF**.

— Fences—Liability to make, &c.

See **RAILWAY**. 6.

— For payment of debt by guardians.

See **POOR LAW—Guardians**. 1—3.

— For renewal of writ.

See **PRACTICE—Writ**. 300.

— Reconstruction of company—New shares, claim for.

See **COMPANY—Reconstruction**. 219.

— Revivor.

See **PRACTICE—Revivor**. 175—177.

— Summary proceedings.

See **JUSTICES**. 20—22.

— Unclaimed funds or dividends—Liability to account.

See **BANKRUPTCY—Trustee**. 243.

— Water rate—Recovery.

See **WATER**. 35.

**LIMITATION, WORDS OF**.

— Effect in will—Life estate.

See **WILL—Absolute Gift**. 6, 7.

**LIMITATIONS, STATUTE OF**.

*Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), provides for the limitation of actions against certain authorities and persons.*

*In General, col. 1123.*

*Absence, col. 1124.*

*Acknowledgment, col. 1124.*

*Bailment, col. 1126.*

*Bankruptcy, col. 1126.*

*Company, col. 1127.*

*Copyholds. See COPYHOLD.*

*Fraud, col. 1127.*

*Highway, col. 1130.*

*Interest. See INTEREST. 3.*

*Legacy, col. 1131.*

*Mortgages, col. 1132.*

*Possession, col. 1134.*

*Power of Appointment, col. 1136.*

*Practice, col. 1136.*

*Surety, col. 1138.*

*Tenancy at Will, col. 1138.*

*Trustees. See TRUSTEE—Limitations, Statute of.*

**In General.**

— Bond in husband's possession—Loan to husband—Interest on bond.

See **HUSBAND AND WIFE—Bond**. 27.

**LIMITATIONS, STATUTE OF (In General)—continued.**

— Boundary—Hedge and ditch—Presumption—Acts of joint ownership.

See **BOUNDARY**. 1.

— Interest.

See **INTEREST**. 3.

— Nuisance order, costs of obtaining and enforcing.

See **NUISANCES**. 14.

— Pauper—Maintenance.

See **LUNACY—Maintenance**. 22.

— Principal and agent—Fiduciary relation—Liability.

See **PARTNERSHIP**. 32.

— Public Authorities Protection Act.

See **Cases under PUBLIC AUTHORITIES PROTECTION**.

— Rent—Hotchpot clause—Set-off.

See **WILL—Advancement**.

— Retainer—Right of—Statute-barred debt.

See **EXECUTOR—Retainer**. 60.

— Retainer—Statute-barred debt.

See **TENANT FOR LIFE**.

— Rights of beneficiaries whose trustees are barred—Interest in land.

See **NEW SOUTH WALES**. 27.

— Solicitor's bill of costs.

See **SOLICITOR—Costs**. 59.

— Title of heir-at-law and next of kin barred by—Executor not express trustee for next of kin.

See **CHARITY**. 47.

— Trustees.

See **TRUSTEE—Limitations, Statute of**.

— Waste—Liability of estate of late tenant for life.

See **WASTE**. 6.

#### Absence.

1. — *Absence beyond seas—Ambassador—Limitations Acts, 1623 (21 Jac. 1, c. 16); 1704 (4 Anne, c. 16), s. 19.*

The statute does not run against the creditors of a person beyond seas, notwithstanding the provisions of Order XI. as to service of writs out of the jurisdiction. Nor does it run against the creditors of an ambassador during the time he is accredited and for such a reasonable time afterwards as will enable him to wind up his official business, even if his successor is duly accredited during that time.

Decision of Div. Ct., [1894] 1 Q. B. 533, affirmed. **MUSURUS BEY v. GADBAN**

**C. A. [1894] 2 Q. B. 352**

#### Acknowledgment.

2. — *Executor—Acknowledgement by one of two executors and trustees—Mortgage—Arrears of interest—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42.*

An acknowledgment by one of two executors and devisees in trust of real estate against the wishes of the other that more than six years' interest is due on a mortgage created by their testator cannot be treated as the valid act of the

**LIMITATIONS, STATUTE OF (Acknowledgment)**  
—continued.

two in their capacity of trustees, and is not a good acknowledgment within s. 42 of the Real Property Limitation Act, 1833. *ASTBURY v. ASTBURY* - *Stirling J. [1898] 2 Ch. 111*

3. — *Executor—Acknowledgment of debt—Promise by one of several executors—Lord Tenderden's Act (9 Geo. 4, c. 14), s. 1*

An acknowledgment of a debt within Lord Tenderden's Act made by one of several executors as executor binds the testator's estate, and on the death of the executor who makes the acknowledgment an order may be made in an administration action for payment of the debt out of assets remaining unadministered in the hands or under the control of the surviving executors. *In re MACDONALD. DICK v. FRASER*

*Stirling J. [1897] 2 Ch. 181*

4. — *Part payment—Payment of interest—Presumption of payment—Money charged on land—Devisee also tenant for life of money charged—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

A testator, by his will dated Jan. 11, 1845, devised his real estate and bequeathed his personal estate to trustees, upon trust for sale and to hold the proceeds of sale upon trust to pay his debts, and to hold the residue on trust to pay the income to his wife for her life, with remainder in trust for his children living at her death, or the issue of those then dead leaving issue then living. By a codicil dated Jan. 30, 1855, the testator revoked the devise of real estate contained in his will so far as regarded certain specified closes of land, and he devised those closes to his wife for her life, with remainder to his two sons in equal shares as tenants in common in fee. The whole of the real estate was subject to a charge of 3000*l.* created by a predecessor of the testator. In 1865 the trustees sold the greater part of the real estate (other than that specifically devised by the codicil), and out of the proceeds paid the 3000*l.*, and some of the testator's own debts. The widow died in 1895. After the sale until her death she received the income of the residue of the proceeds of sale and also the rents of the unsold land, including those of the specifically devised land. She never gave to the trustees any acknowledgment of the liability of the specifically devised land to bear a proportionate part of the 3000*l.*, or paid to them any part of the 3000*l.*, or any interest thereon:—

*Held*, that *In re England*, [1895] 2 Ch. 820, applied, and that the widow being under no legal obligation to pay any part of the 3000*l.* or any interest thereon, the right of the persons interested in the real estate (other than that specifically devised) to compel contribution out of the specifically devised estate to the payment of the 3000*l.* was barred by s. 8 of the Real Property Limitation Act, 1874. *In re ALLEN. BASSETT v. ALLEN* - *North J. [1898] 2 Ch. 499*

5. — *Part payment to stranger—Promissory note—Part payment to payee after indorsement—Limitations Act, 1623 (21 Jac. 1, c. 16).*

The maker of a promissory note repaid the same by instalments to the original holder, after

**LIMITATIONS, STATUTE OF (Acknowledgment)**  
—continued.

the latter had indorsed it over to the plts., to whom one payment was communicated:—

*Held*, that such payments were not acknowledgments of the debt so as to prevent the statute running, as there was no authority to receive payment on behalf of the plts. *STAMFORD, SPALDING, AND BOSTON BANKING CO. v. SMITH*

*C. A. [1892] 1 Q. B. 765*

6. — *Payment of interest by devisee in fee, being also tenant for life of the money—Presumption—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

A testator, having covenanted for the payment of a sum of money after his death, to be held upon trusts under which his son was tenant for life, and charged the same with interest upon certain land, by his will devised the land, subject to the charge, to his son in fee. The money was never raised, nor any interest actually paid in respect of it, but the son entered into possession of the land, and for more than twelve years received the rents and profits:—

*Held*, that the son not being liable to pay the interest no presumption of payment by him, on the ground of any duty to keep down the charge, could be made; and therefore that the claim of the trustees under the covenant against the testator's personal estate was barred by the Real Property Limitation Act, 1874, s. 8.

*Decision of Kekewich J. [1895] 2 Ch. 100. affirmed. In re ENGLAND. STEWARD v. ENGLAND*

*C. A. [1895] 2 Ch. 820*

Followed by *North J. In re Allen*, [1898] 2 Ch. 499, *No. 4, above.*

7. — *Payment of interest by tenant for life of equity of redemption—Statute of Limitations Act, 1833 (3 & 4 Will. 4, c. 42), s. 5.*

Payment of interest by tenant for life of a settled equity of redemption is sufficient to keep alive the right of action on the covenant of the settlor within 3 & 4 Will. 4, c. 42, s. 5. *DIBB v. WALKER* - *Chitty J. [1893] 2 Ch. 429*

Referred to by Kekewich J. *In re England*, [1895] 2 Ch. 100, 107. *See preceding Case.*

— *Receiver—Part payment by—Inference of promise to pay.*

*See MORTGAGE. 57.*

**Bailment.**

8. — *Money deposited for safe custody—Statute of Limitations, 1623 (21 Jac. 1, c. 16), s. 3.*

Time does not begin to run under 21 Jac. 1, c. 16, against a person who has entrusted money to another person for safe custody until demand, though it was contemplated that the bailee might use the money in business. *In re TIDD. TIDD v. OVERELL* - *North J. [1893] 3 Ch. 154*

**Bankruptcy.**

— *Receiving order—Annulment—Payment into court—Payment out after six years.*

*See BANKRUPTCY—Receiving Order. 196.*

9. — *Trustee in bankruptcy.*

The Statutes of Limitation run against a

**LIMITATIONS, STATUTE OF (Bankruptcy)—**  
*continued.*

trustee in bankruptcy just as it would against the bankrupt himself. *In re MANSEL. Ex parte NORTON* - - - C. A. [1892] W. N. 32

**Company.**

— Directors.

*See COMPANY—Directors.* 118, 119.

**10. — Directors—Liability of—State demand**  
—*Winding-up of company*—21 Jac. 1, c. 16.

The Statute of Limitations is no bar to an action seeking to make directors liable for the payment of interest out of capital, for the directors are in the position of trustees. *In re SHARPE. In re BENNETT. MASONIC AND GENERAL LIFE ASSURANCE Co. v. SHARPE* C. A. [1892] 1 Ch. 154

*See now the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.*

Referred to by Stirling J. in *Lock v. Queensland Investment and Land Mortgage Co.*, [1896] 1 Ch. 397, 402. This case was affirmed by H. L. (E.) [1896] A. C. 461.

Referred to by C. A. *In re National Bank of Wales*, [1899] 2 Ch. 629, 669.

**11. — Directors—Untrue statements in prospectus—Action by shareholder for compensation**  
—*Accrual of cause of action—Directors Liability Act, 1890 (53 & 54 Vict. c. 64), s. 3—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3.*

Sect. 3 of the Civil Procedure Act, 1833, which provides that "all actions for penalties, damages or sums of money given to the party grieved by any statute" must be brought within two years after the cause of action, applies only to penal actions—i.e., actions for penalties, or damages or sums of money in the nature of penalties, and does not apply to an action by a shareholder in a co., under s. 3 of the Directors Liability Act, 1890, to recover from the directors compensation for loss or damage sustained by him by reason of untrue statements in the prospectus of the co. on the faith of which he subscribed for his shares.

*Seem*, that the cause of action in such a case accrues at the time when the shares are subscribed for, and that the action must, under the statute 21 Jac. 1, c. 16, be brought within six years from that date.

Decision of Kekewich J., [1899] 2 Ch. 523, affirmed. *THOMSON v. LORD CLANMORRIS*

C. A. [1900] W. N. 80; [1900] 1 Ch. 718

— Interest—Debenture stock.

*See COMPANY—Debentures.* 26.

— Public Authorities Protection Act—Company incorporated to manage pier and harbour  
—Dividends.

*See PUBLIC AUTHORITIES PROTECTION.* 2.

— Unclaimed dividends.

*See COMPANY—Shares.* 336.

**Copyholds.**

*See COPYHOLDS.*

**Fraud.**

**12. — Agent—Fraud of—Mortgage—Sale—Constructive notice—Trustee—Cause of action,**

**LIMITATIONS, STATUTE OF (Fraud)—*contd.***

*Commencement of—Statute of Limitations, 1623 (21 Jac. 1, c. 16)—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.*

A., the first mortgagee of property, sold under his power of sale in 1878. S., a solicitor, conducted the sale for him. S. received the sale money, paid A.'s debt, and retained the surplus, accounting for it by a receipt purporting to be on behalf of the second mortgagee. S. applied the surplus to his own use and paid interest until 1891 thereon to the second mortgagee, as if the second mortgage was still in existence. In 1891 S. became bankrupt, when the second mortgagee discovered the true facts and brought an action against A. for an account of the sale money and payment to him of what was due on the second mortgage:—

*Held*, by Romer J. (1) that S. did not pay the interest as A.'s agent, and therefore the payments did not keep alive B.'s claim against A.; (2) that A. was not privy to S.'s fraud, though he had been negligent in not seeing that S. applied the surplus property; (3) therefore that B.'s claim against A. was barred by the Statute of Limitations and the Trustee Act, 1888, s. 8:

*Held*, by C. A. and H. L. (E.), that B.'s cause of action accrued in 1878, when A. committed an innocent breach of trust; that A. was not liable under the exception in s. 8 of the Trustee Act, 1888, either as having been "party or privy" to the fraud, or as having "still retained" the money sought to be recovered:

*Held*, also, that the fraud of S. was not committed as A.'s agent or for A.'s benefit, so as to render A., although innocent, responsible for the fraud. The exception in s. 8 as to property "still retained" by the trustee is confined to cases where the trustee has actually under his control the trust property or its proceeds when the action is brought:

*Held*, by H. L. (E.), that fraud or non-discovery of fraud cannot be relied on to take a case out of the Statute of Limitations unless it is the fraud of or in some way imputable to the person who invokes the aid of the statute.

Decisions of Romer J., [1893] 3 Ch. 530, and C. A. [1894] 1 Ch. 599, affirmed. *THORNE v. HEARD AND MARSH* H. L. (E.) [1895] A. C. 495

Discussed by C. A. *How v. Earl Winterton*, [1896] 2 Ch. 626, 638.

**13. — Concealed fraud—Fiduciary relation—Partnership accounts—New partnership.**

Where a father and his two sons had carried on business in partnership from 1870 to 1886, when the father died, and the sons carried on the business till 1893, when one of them died, and the other alleged concealed fraud by his brother before 1886:—

*Held*, first, that although the old partnership was terminated by the death of the father, the Statute of Limitations was no bar to taking the accounts before that date, the accounts having been carried on into the new partnership without interruption or settlement; secondly, that if the statute had applied, the concealed fraud would have been a bar to its operation, although such fraud might have been discovered at the time by the use of due caution; a partner being entitled

**LIMITATIONS, STATUTE OF (Fraud)—*contd.***

to rely on the good faith of his co-partners.  
**BETJEMANN v. BETJEMANN C. A. [1895] 2 Ch. 474**

**14. — Concealed fraud—Misrepresentation of co-partner—Misappropriation of client's money—Statute of Limitations (21 Jac. 1, c. 16).**

The plt. deposited sums of money at various times with a firm of solicitors for investment. The moneys were embezzled by a clerk, but representations were made on behalf of the firm that the investments had been made and interest was paid:—

*Held*, that the Trustee Act, 1888, did not apply so as to enable the innocent partner to plead the Statute of Limitations as a bar to the action. **MOORE v. KNIGHT**

**Stirling J. [1891] 1 Ch. 547**

**15. — "Concealed fraud"—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 26—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.**

In this case it was held that the conduct of the mother in wilfully keeping from her daughter the knowledge that she was entitled to property amounted to a concealed fraud within s. 26 of 3 & 4 Will. 4, c. 27, and that the statute did not begin to run until after the death of the mother. This case exactly fell within the definition of concealed fraud given by Kindersley V.-C. in *Petre v. Petre*, (1852) 1 Drew. 371, at p. 397, except that the Vice-Chancellor was there dealing with a fraud committed by the person who was to benefit by it; but if the concealment was for the purpose of benefiting some other person, or for the purpose of preventing the rightful owner from exercising his rights, it would fall within the substance of the definition. That definition had been adopted by Stirling J. in *Lawrance v. Lord Norreys*, (1888) 39 Ch. D. 213, 224, and the definition of Lord Herschell in the same case, (1890) 15 App. Cas. 210, 214, was entirely in harmony with it. The daughter was, therefore, entitled to possession. *In re McCallum*. **McCALLUM v. McCALLUM**

**Kekewich J. [1900] W. N. 36**

The C. A. allowed the appeal (Rigby J. dissenting), being of opinion that there was a "concealed fraud" within the meaning of s. 26. But that the fraud must be that of the person who was setting up the statute, or of some one through whom he claimed title to the property, and held that the plaintiff's title was barred by the statute. *In re McCallum*. **McCALLUM v. McCALLUM**

**C. A. [1900] W. N. 261**

*Reported [1901] 1 Ch. 143*

**16. — Concealed fraud—Time when right of action accrues—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 26.**

To enable a plt. to take advantage of s. 26 of the Real Property Limitation Act, 1833, he must shew (1) concealed fraud; (2) that he or his predecessors were deprived of their estate by the fraud; (3) that the fraud could not have been discovered by reasonable diligence within the statutory period.

*Held*, in this case, that the plt. failed to shew any fraud, and that the act which he alleged was fraudulent had been known for forty years. **WILLIS v. EARL HOWE C. A. [1893] 2 Ch. 545**

**LIMITATIONS, STATUTE OF (Fraud)—*contd.***

**17. — Detinue—Conversion—Demand and refusal—Time, when beginning to run—Lease fraudulently deposited—Statute of Limitations, 1623 (21 Jac. 1, c. 16).**

A lease belonging to plt. was fraudulently deposited with B., and, when B. became bankrupt, it was assigned to the deft. Both B. and the deft. were ignorant of the fraud:—

*Held*, that the statute began to run when the plt. had a complete cause of action against the deft., i.e. when he demanded the deeds and was refused them, and not from the receipt of the deeds by B.

*Quære*, whether, in any case, the original receipt of the lease by B. was sufficient evidence of conversion by him. **MILLER v. DELL**

**C. A. [1891] 1 Q. B. 468**

Referred to by Stirling J. *London and Lancashire Bank v. Mitchell*, [1899] 2 Ch. 161, 166.

— Equitable jurisdiction—Underground trespass—Laches.

*See* NEW SOUTH WALES. 20.

— Express trust—Parol evidence.

*See* FRAUDS, STATUTE OF. 23.

**18. — Partner—Fraud by co-partner—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.**

The Trustee Act, 1888, does not entitle an innocent partner in a firm of solicitors to plead the Statute of Limitations against a client suing the firm for misappropriation of his moneys by one of his firm. **MOORE v. KNIGHT**

**Stirling J. [1891] 1 Ch. 547**

**Highway.**

**19. — Highway authority—Negligence—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 109—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 144, 264.**

Action against urban authority for damages for negligence when acting as highway authority:—

*Held*, that such an action must be brought within the three months prescribed by s. 109 of Highway Act, 1835, and it was not sufficient if it were brought within the six months prescribed by s. 264 of the Public Health Act, 1875. **GRAHAM v. NEWCASTLE-UPON-TYNE CORPORATION (No. 2) C. A. [1893] 1 Q. B. 643**

[*But see now Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), repealing 5 & 6 Will. 4, c. 50, s. 109, and 38 & 39 Vict. c. 55, s. 164.*]

**20. — Highway, soil of—Ownership—Vestry—Presumptions of lawful origin—Presumption of grant for purpose not requiring enrolment.**

The vestry of a parish had let the grazing on a highway made under an inclosure award ever since the award, viz., for 115 years:—

*Held*, (1) that a lawful origin must be presumed from the long usage; (2) that the lawful origin to be presumed in this case was, that the soil of the highway had been granted to churchwardens and overseers, as trustees, under the Charitable Uses Act (9 Geo. 2, c. 36), of lands belonging to the parish; (3) with regard to enrolment of the grant, that in the absence of proof of

**LIMITATIONS, STATUTE OF (Highway)—*contd.***

non-enrolment an enrolment if necessary might be presumed, or it might be presumed that no enrolment was necessary in this particular case; and (4) that the parish had consequently gained a title under the statute 3 & 4 Will. 4, c. 27, to the soil of the highway, subject to the public right of way. *HAIGH v. WEST*

C. A. [1893] 2 Q. B. 19

**Interest.**

— Statutes of Limitations.

See *INTEREST*. 3.

**Legacy.**

21. — *Action to recover—Legacy—No express trust—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 8—*Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 2.

Where an estate was to be held by the executors on certain trusts so far as trusts were declared, and subject to the payment of legacies as to which no trust was declared, and then on trust for the residuary legatee:—

*Held*, that there was no express trust declared of the legacies, and therefore plt.'s right was barred. *In re BARKER. BUXTON v. CAMPBELL*

North J. [1892] 2 Ch. 491

Referred to by Stirling J. *In re Lacy*, [1899] 2 Ch. 149, 157.

— Husband and wife—Legacy for separate use—Seizure by husband.

See *HUSBAND AND WIFE*. 61.

22. — *Suit to recover legacy—Express trust—Implied trust—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 8.

A suit to recover a legacy from an executor is within the Real Property Limitation Act, 1874, s. 8, unless the legacy is vested in him on express trusts. A mere constructive trust will not prevent the statute from being a bar. *In re DAVIS. EVANS v. MOORE*

C. A. [1891] 3 Ch. 119

Referred to by Stirling J. *In re Owen*, [1894] 3 Ch. 220, 225; *In re Lacy*, [1899] 2 Ch. 149, 159.

23. — *Legacy charged on contingent reversionary interest in land—Remedy by foreclosure or sale—"Present right to receive"—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), ss. 1, 2, 8.

A, who had an interest in land contingent on the death of B, without issue, devised the same to C, and charged it after her death with pecuniary legacies. C. died in 1880; part of the legacies were paid. B. died in 1893:—

*Held*, that as "a present right to receive" the legacies accrued in 1880, and as the unpaid balance might have been raised by sale or mortgage, and not by way of foreclosure, the right to recover such balance was statute-barred:—

*Held*, also, that although an equitable mortgage of a reversionary interest in land is not barred till twelve years after the interest falls in, that doctrine does not apply unless the person entitled to the charge had a right of foreclosure. *In re OWEN*

— Stirling J. [1894] 3 Ch. 220

**LIMITATIONS, STATUTE OF—*continued.*****Mortgages.**

24. — *Charge on land—Term of years—Express trust—Two sums secured by one term—Power of trustees, entitled to raise one sum, to raise the other also—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), ss. 8, 10—*Power of appointment—Exercise by residuary bequest in will—Assets—Administration—Order in which funds applied in payment of debts—Wills Act, 1837* (7 Will. 4 and 1 Vict. c. 26), s. 27.

A conveyance of land to trustees for a term of years upon trust to raise specific sums of money is an express trust within s. 10 of the Real Property Limitation Act, 1874.

Where land is conveyed to trustees for a term of years upon trust to raise two sums of money, and it is held, in an action brought to recover both sums, that they are entitled to enter and raise one of these sums, but that the other is barred by the Real Property Limitation Act, 1874, the right to raise the second sum is not preserved by the success of the action in respect of the first sum.

Where a power of appointment is exercised by a general bequest in a will the property appointed is included in and passes by the bequest according to the terms of the will, and not as if a separate execution of the power were read into the will. The property is therefore not necessarily postponed, as a fund liable for payment of his debts, to other assets of the testator. *WILLIAMS v. WILLIAMS. In re HARTLEY. WILLIAMS v. JONES* — North J. [1900] 1 Ch. 152

25. — *Deficiency on sale—Contract to pay difference on realization—Cause of action—Time of accrual of—Postponement—Statute of Limitations, 1623* (21 Jac. 1, c. 16), s. 3.

A. borrowed money from B. to purchase certain scrip, and handed the scrip to B. as security for the loan, which was repayable in 1883. If the loan remained unpaid B. had power to sell, and A. agreed to pay any deficiency. The loan was not paid, and B. realized, in 1889, the proceeds not amounting to the whole advance. A. died in 1891 without any further payment or acknowledgment:—

*Held*, that the cause of action in respect of the whole of the debt accrued in 1883 and not in 1889, and therefore that a claim for the difference by the lender against the estate of the borrower was barred by the Statute of Limitations. *In re McHENRY. McDERMOTT v. BOYD. BARKER'S CLAIM* — C. A. [1894] 3 Ch. 290

26. — *Extinguishment of title of second mortgagee—Possession of mortgagor—Vesting of legal estate—Limitation Acts, 1833* (3 & 4 Will. 4, c. 27), s. 34; 1874 (37 & 38 Vict. c. 57), s. 8.

Sect. 34 of the Act of 1833 applies as between a mortgagee and a mortgagor in possession, and in favour of the latter, although a prior mortgage has been in existence during the earlier part of such statutory period. The effect of barring the mortgagee's title is to vest the legal estate in the mortgagor, and therefore, if he afterwards grants a mortgage to another person, that person may rely on such extinguishment of title in support of his own claim as first mortgagee, although the



**LIMITATIONS, STATUTE OF (Mortgages)—*contd.***  
 mortgagor does not rely on the statute and has, after the expiration of the statutory period, given his co-defendant a written acknowledgment.  
**KIBBLE v. FAIRTHORNE**

**Romer J. [1895] 1 Ch. 219**

**27. — Foreclosure action after debt barred — Mortgage of personal property—Equitable mortgage of shares in a limited company to secure simple contract debt.**

Where a bank had an equitable charge on shares in a limited company to secure a simple contract debt and after the debt was barred brought an action to enforce their security by foreclosure or sale:—

*Held*, that the bank was not deprived of their remedy against the property by the fact that the personal remedy for the debt was barred, and that, there being no Statute of Limitations applicable to foreclosure of a mortgage of personal property, the security was enforceable. **LONDON AND MIDLAND BANK v. MITCHELL**

**Stirling J. [1899] W. N. 92; [1899] 2 Ch. 161**

— Mortgagee taking possession of real estate—Redemption action—Right to redeem policy separately.

*See* **MORTGAGE—Redemption. 67.**

— Payments by receiver.

*See* **MORTGAGE—Receiver. 57.**

**28. — “Person claiming under a mortgage” — Possession adverse to mortgagor—Real Property Limitation Act, 1837 (7 Will. 4 and 1 Vict. c. 28).**

In 1886 the owner of one undivided moiety of premises, which had been during the previous eleven years in the sole possession of the owners of the other moiety, mortgaged his moiety; and in 1890, the premises having in the meantime continued and still continuing to be in the sole possession of the owners of the other moiety, he executed a conveyance of his moiety, subject to the mortgage, to the plt., who subsequently paid off the mortgage:—

*Held*, that the plt. did not, on paying off the mortgage, become a “person claiming under a mortgage” within the meaning of the Real Property Limitation Act, 1837, which, as modified by the Real Property Limitation Act, 1874, s. 9, give such a person a period of twelve years from the last payment of any part of the principal money or interest secured by the mortgage for bringing an action to recover the land:—

*Held*, also, that the Real Property Limitation Act, 1837, does not confer a new right of entry on the mortgagee where at the date of the mortgage a person is in possession adversely to the mortgagor, and the Statute of Limitations has already begun to run in his favour against the mortgageor.

**Doe v. Massey, (1851) 17 Q. B. 373**, distinguished and considered. **THORNTON v. FRANCE C. A. [1897] 2 Q. B. 143**

**29. — Mortgage—Policy of Assurance — Surrender of policy—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8—Payment “in the meantime”—Payment by mortgagor or his agent.**

In 1871 A. mortgaged a contingent rever-

**LIMITATIONS, STATUTE OF (Mortgages)—*contd.***  
 sionary interest in certain property together with a policy of assurance on his own life for 2500l. for securing the sum of 2500l. The mortgage contained the usual covenants for payment of the principal and interest with power of sale and surrender of the policy. A. never made any payment in respect of the principal or interest of the mortgage debt, nor paid any of the premiums on the policy, which was kept up by the mortgagee. In 1893 the mortgagee surrendered the policy to the office for the sum of 1468l. 14s. A. had no notice of the surrender. The mortgagee died in 1895 and A. died in 1899:—

*Held*, in an action by the representative of the mortgagee against the representatives of A., claiming that the security might be enforced, that the receipt by the mortgagee of the surrender value of the policy was not a payment of principal or interest within the meaning of s. 8 of the Real Property Limitation Act, 1874, so as to entitle the plaintiff to recover on the covenant contained in the mortgage.

*In re Conlan's Estate, (1892) 29 L. R. Ir. 199*, discussed.

The words “in the meantime” in the section include a period between the time of the commencement of the action or suit and a time when the remedy for the debt would otherwise have been barred.

**Harty v. Davis, (1850) 13 Ir. L. Rep. 23**, approved. *In re LORD CLIFDEN. ANNALY v. AGAR-ELLIS* **Byrne J. [1900] W. N. 93; [1900] 1 Ch. 774**

**30. — Simple contract debt charged on land—Personal action—Period of Limitation—Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.**

Where an action is brought to recover a simple contract debt, and the money sought to be recovered is charged on land, the period of limitation is that imposed by the Limitation Act, 1623, and has not been enlarged to twelve years by the Real Property Limitation Act, 1874.

Judgment of Lord Russell C.J., [1898] 2 Q. B. 223, reversed.

**Sutton v. Sutton, (1882) 22 Ch. D. 511**, distinguished. **BARNES v. GLENTON C. A. [1899] 1 Q. B. 885**

Referred to by **Stirling J. London and Midland Bank v. Mitchell, [1899] 2 Ch. 161, 165. See No. 27, above.**

### Possession.

— Adverse possession—“Person claiming under a mortgage.”

*See* No. 28, above.

— Adverse possession—Registered title.

*See* **BRITISH HONDURAS. 1.**

**31. — Agreement for lease—Right of recovery at Common Law defeated by Equity—Implied trust—Real Property Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), ss. 2, 7; 1874 (37 & 38 Vict. c. 57), ss. 1, 9.**

Where land was the subject of a building agreement under which the builders or their nominees were entitled to a lease at a peppercorn

**LIMITATIONS, STATUTE OF (Possession) — continued.**

rent, and in fact no lease was ever applied for or granted:—

*Held*, that the statute did not begin to run against the landlord, since they had not an effective right of entry or action for the recovery of land, as any attempt to recover possession would have been immediately defeated by an application to a Court of Equity to enforce the performance of the agreement for a lease.

*Semble*, per Kay L.J., that a person let in under such an agreement is a *cestui que trust* within the meaning of the proviso to s. 7 of the Real Property Limitation Act, 1833, and that therefore the section does not apply. WARREN v. MURRAY C. A. [1894] 2 Q. B. 648

**32. — Dispossession of land—Inference from equivocal acts—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 3.**

The defts. were the owners of two fields between which was a strip of land separated from them by hedges. This strip had been conveyed to the defts. with the fields, but the plts. had a right of way over it to a field belonging to them. The strip was originally open at both ends, the end farthest from the plts.' field communicating with a public road. More than twelve years before the commencement of the action the plts. had erected a gate at each end of the strip, and had since kept these gates locked, the keys being retained by themselves or their tenants. The gate at the road end of the strip was placed upon the strip; it was not clear whether the other gate was placed on the strip or on the plts.' own land. The action was brought to restrain the defts. from trespassing on the strip. There was no evidence that the plts. had erected the gates with the intention of excluding the defts. from the strip:—

*Held*, that, as the act of the plts. in erecting and locking the gates was in its nature equivocal and might have been done merely with the intention of protecting the plts.' right of way from invasion by the public, the defts. had not been dispossessed of the strip of land, and the plts. had not acquired a title to it under the Statute of Limitations. The action was accordingly dismissed. LITLEDALE v. LIVERPOOL COLLEGE

C. A. [1899] W. N. 228; [1900] 1 Ch. 19

**33. — Freehold lease—Recovery of possession—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 29.**

In 1805 A. granted a freehold lease to B. for lives; the last of such lives dropped in 1874. In 1807 B. granted a sub-lease to C. of part of the property for ninety-nine years, determinable on the dropping of the same lives as in the over lease. The sub-lease therefore ran out in 1874. In 1832 the representatives of B. surrendered the 1805 lease to A., who granted a new freehold lease for lives; the last of these lives dropped in 1891. The plts. claiming through A. had since 1839 received the rents under the lease of 1832; defts. claiming through C. had since 1874 been in actual possession without title:—

*Held*, that as the lease of 1832 was valid under s. 6 of Geo. 2, c. 28, the plts.' right to sue did not accrue till 1891, and therefore defts. were not

**LIMITATIONS, STATUTE OF (Possession) — continued.**

entitled to the benefit of the Statute of Limitations. ECCLESIASTICAL COMMISSIONERS v. TREEMER

Chitty J. [1893] 1 Ch. 166

— Mortgages.

See Nos. 26—28, *above*.

— Possessory title—Rights of remaindermen.

See ESTOPPEL. 10.

**Power of Appointment.**

**34. — Settlement—General power of appointment—Appointment by will—Appointees—"Reading in"—Real Property Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), ss. 1, 2, 3, 20; 1874 (37 & 38 Vict. c. 57), ss. 1, 2.**

At and prior to Lady Day, 1876, a plot of land then forming part of the Devon settled estates was held by S. as tenant from year to year under an agreement dated in 1852. S. continued in possession down to his death in 1889, and after that date his representatives continued in possession. No rent was ever paid in respect of this plot of land after Lady Day, 1876.

Under a settlement dated in 1857 the Devon estates, including the reversion in the plot of land expectant on the tenancy of S., stood limited in the events which happened to the use of the eleventh Earl of Devon for life, remainder to the use of the twelfth Earl for life, remainder to such uses as the eleventh Earl should by deed or will appoint. This power was exercised by the eleventh Earl by his will, whereby he appointed the estates to H. and others as trustees. The eleventh Earl died in 1888, and on his death the twelfth Earl succeeded to the possession of the estates, and died in 1891 without having recovered the land in question. On the death of the twelfth Earl the remainder limited to H. and his co-trustees fell into possession, and the question was whether their estate was barred by the Statutes of Limitations:—

*Held*, that the case fell within the latter part of s. 2 of the Real Property Limitation Act, 1874, and that the twelfth Earl, being the person last entitled to a particular estate, and not being in possession or receipt of the profits of the land in question when his interest determined by his death in 1891, H. and his co-trustees had a further period of six years from that time to bring their action, and therefore that their estate was not barred. *In re* EARL OF DEVON'S SETTLED ESTATES. WHITE v. EARL OF DEVON. *In re* STEER. STEER v. DOBELL

Chitty J. [1896] 2 Ch. 562

**Practice.**

**35. — Cause of action—Instalment of interest becoming due—Statute of Limitations, 1623 (21 Jac. 1, c. 16).**

The plt. lent money to the deft. in 1880 under an agreement, which recited an agreement for a loan for five years, "subject to the power to call in the same at an earlier period in the events hereinafter mentioned." The deft. agreed to pay interest, and the plt. not to call in the money for five years if the deft. should regularly pay interest. It was provided that if deft. should

**LIMITATIONS, STATUTE OF (Practice)—contd.**

make default in any quarterly payment of interest for twenty-one days the plt. might call in the principal. No interest was ever paid. The plt. commenced his action within six years from the end of 1885:—

*Held*, that the Statute of Limitations was a good defence, for that the time began to run from the earliest time at which the plt. could have brought his action—i.e., twenty-one days after the first instalment of interest became due. *REEVES v. BUTCHER* - C. A. [1891] 2 Q. B. 509

**36. — Cause of action, Accrual of—Subsidence caused by excavation—Continuous subsidence—Local sanitary authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 264.**

Objection that the right of action against a local authority, arising from subsidence of sewer, was lost, from the plt. not taking proceedings within six months:—

*Held*, that a further subsidence which took place within six months before action constituted a distinct cause of action in respect of which proceedings could be taken. *CRUMBIE v. WALLSEND LOCAL BOARD* - C. A. [1891] 1 Q. B. 503

**37. — County Court—Special defence—Notice—County Court Rules, 1895, Order x., rr. 14a, 18a.**

In an action in the county court, a notice of the special defence of a Statute of Limitations is sufficient if the statement in the notice follows, without any addition, form 95a in the Appendix to the County Court Rules, 1895, which is, "that the claim for which the defendant is summoned is barred by a Statute of Limitation," and the defendant need not specify the particular statute on which he intends to rely. *EATON v. TAPLEY*

Div. Ct. [1899] W. N. 60; [1899] 1 Q. B. 953

**38. — Executor—Administration—Residuary legatee—Originating summons.**

A residuary legatee has a right to compel executors to plead the statute against an old claim and may enforce the right on an originating summons. *In re WENHAM. HUNT v. WENHAM*

North J. [1892] 3 Ch. 59

Referred to by Kekewich J. *Budgett v. Budgett*, [1895] 1 Ch. 202, 217.

**39. — Judgment in personal action—"Judgment"—Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), s. 40; (3 & 4 Will. 4, c. 42), s. 3; 1874 (37 & 38 Vict. c. 57), s. 8—Judgments Act, 1861 (27 & 28 Vict. c. 112), s. 1.**

In 1878 A. recovered judgment on a covenant against B. In 1892, both A. and B. being dead, and the judgment still unsatisfied, an application by the legal personal representatives of A. under R. S. C., Order XVII., r. 4, that proceedings might be carried on between them and the representatives of B., was refused on the ground that the remedy was barred.

The expression "judgment" in s. 8 of the Real Property Limitation Act, 1874, refers to judgments generally, and is not restricted to judgments which operate as charges on land.

Decision of Div. Ct., [1893] 1 Q. B. 25, affirmed. *JAY v. JOHNSTONE*

C. A. [1893] 1 Q. B. 189

**40. — Judgment not charged on land—"Judg-**

**LIMITATIONS, STATUTE OF (Practice)—contd.**  
*ment*"—*Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

"Judgment," in s. 8 of the Real Property Limitation Act, 1874, applies to judgments generally, and is not restricted to judgments which operate as charges on land. *HEBBLETHWAITE v. PEEVER* Collins J. [1892] 1 Q. B. 124

Followed by Div. Ct. *Jay v. Johnstone*, [1893] 1 Q. B. 25; affirm. by C. A. [1893] 1 Q. B. 189. See preceding Case.

**Surety.**

**41. — Collateral debt—Surety—Mortgage—Statute of Limitations, 1833 (3 & 4 Will. 4, c. 42), s. 3.**

If a surety promise to pay a debt on demand as collateral security, a demand is necessary before action can be brought. The statute, therefore, begins to run, not from the time when the debt becomes due, but from the demand. *In re J. BROWN'S ESTATE. BROWN v. BROWN*

Chitty J. [1893] 2 Ch. 300

Referred to by Kekewich J. *Edwards v. Walters*, [1896] 2 Ch. 157, 162.

**42. — Mortgage—Surety for payment of mortgage debt.**

A mortgage deed contained a joint and several covenant by the mortgagor and a surety to pay the principal sum "on demand" and interest from the date of the deed. The surety died in 1872 before demand, and no claim was made on his estate in respect of the mortgage till 1889:—

*Held*, that the right of action against the surety's estate did not accrue until the making of that claim. *In re BROWN'S ESTATE. BROWN v. BROWN*

Chitty J. [1893] 2 Ch. 300

Referred to by Kekewich J. *Edwards v. Walters*, [1896] 2 Ch. 157, 162.

**Tenancy at Will.**

**43. — Determination—Really—Mortgage—Creation of fresh tenancy—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 2, 7.**

A tenancy at will is determined by a legal mortgage of the premises by the owner, and knowledge of the mortgage by the tenant at will.

After the mortgage a new tenancy at will may be created between the parties so as to cause the Statute of Limitations (3 & 4 Will. 4, c. 27) to begin to run. *JARMAN v. HALE*

Div. Ct. [1899] 1 Q. B. 994

**44. — Determination of will—Tenant at will—Doing of repairs by landlord.**

Where a person is in possession of premises as tenant at will without payment of rent, the fact that the landlord enters the premises without objection on the part of the tenant for the purpose of doing repairs does not amount to a determination of the will so as to interrupt the acquisition by the tenant of a title under the Statutes of Limitations. *LYNES v. SNAITH*

Div. Ct. [1899] W. N. 16 (13); [1899] 1 Q. B. 486

**Trustees.**

See Cases under TRUSTEE—Limitations, Statute of.

**LIMITED ADMINISTRATION**—Grant of administration.

See Cases under PROBATE.

**LIMITED OWNERS' RESIDENCES ACT, 1870**—Rent-charge—Priority.

See MORTGAGE—Priority. 53.

**LION**—Caged lions—Domestic animals.

See CRIMINAL LAW—Cruelty to Animals. 6.

**LIQUIDATED DAMAGES.**

See Cases under DAMAGES.

**LIQUIDATED DEMAND.**

See PRACTICE—Writ. 279.

**"LIQUIDATED SUM"**—Future partnership—Petitioning creditor's debt.

See BANKRUPTCY—Act of Bankruptcy. 29.

**LIQUIDATION OF COMPANY.**

See Cases under COMPANY—WINDING-UP.

**LIQUIDATOR.**

See COMPANY—WINDING-UP—Liquidator.

**LIS PENDENS**—Caveat proceedings—Receiver before probate.

See PROBATE. 105.

— **Lis alibi pendens**—Arrest—Action in rem—Guarantee—Staying proceedings.

See SHIPPING. 57.

1. — *Personal estate*—Registration—Assignment.

The doctrine of *lis pendens* is confined to realty and leaseholds, and does not apply to goods and chattels. *WIGRAM v. BUCKLEY*

C. A. [1894] 3 Ch. 483

2. — *Registration*—Order vacating—Vendor and purchaser—Specific performance—Incorporating order in judgment—*Lis Pendens Act, 1867* (30 & 31 Vict. c. 47), s. 2.

A specific performance action, which had been registered by the plt as a *lis pendens*, was at the trial dismissed with costs. Upon the application of the deft. the Court included in the judgment an order, under 30 & 31 Vict. c. 47, s. 2, vacating the registration unless the plt. set down an appeal from the judgment within a fortnight. *BAXTER v. MIDDLETON*

Kekewich J. [1898] 1 Ch. 313

**"LITERARY AND SCIENTIFIC INSTITUTION"**

—Income tax.

See REVENUE—Income Tax. 108, 109.

**LITERARY INSTITUTIONS.**

See Cases under SCIENTIFIC SOCIETY.

**LITIGATION**—Rescission of contract.

See VENDOR AND PURCHASER—Rescission. 63, 64.

**LIVERPOOL COURTS.**

*Liverpool Court of Passage Act, 1893* (56 & 57 Vict. c. 37), better defines the jurisdiction of the Court and improves its procedure.

*Liverpool Court of Passage Act, 1896* (59 & 60 Vict. c. 21), amends the Procedure of the Court as to (1) Appeals, (2) Costs, (3) Transfer of trial to county court.

FEES.] Order as to—*Liverpool and Manchester District Registries*. W. N. 1897 (Jan. 2), p. 1.

**LIVERPOOL COURTS**—continued.

Notice to the District Registrars of the High Court of Manchester and Liverpool. W. N. 1900 (Dec. 22), p. 337. See Current Index, 1900, p. xevi.

1. — *Appeal*—*Inferior Court*—*Liverpool Court of Passage Act, 1893* (56 & 57 Vict. c. 37), s. 10.

Under s. 10 of the *Liverpool Court of Passage Act, 1893*, an appeal from that Court lies direct to the C. A. and not to a Div. Ct. *ANDEBSON v. DEAN* — C. A. [1894] 2 Q. B. 222

2. — *Appeal*—*Practice*—*Liverpool Court of Passage Act, 1893* (56 & 57 Vict. c. 37), ss. 6, 9, 10.

Appeal from an interlocutory order made by the judge of the Court of Passage, Liverpool, ordering further particulars; leave to appeal had been granted by the judge of the Court of Passage.

Upon objection taken that s. 9 of the *Liverpool Court of Passage Act, 1893*, by implication limited the right of appeal from the judge of the Court of Passage, Liverpool, to appeals from the issues at the trial:—

Held, that ss. 6 and 10 of the Act taken together give a right of appeal in all cases, which is not cut down by s. 9. *HUNTER v. JACOBSON*

C. A. [1899] W. N. 82

3. — *Cattle market*—*Special Act*—*Liverpool New Cattle Market Act*—2 Will. 4, c. viii.—Construction.

The Court held, upon the construction of the above Act, (1) that no charge could be imposed in excess of the sums specified in the Act for any use of the market to which the public were entitled under the Act; and (2) that the Cattle Market Co. thereby incorporated could not by any by-law throw upon the public using the market any burden which ought by law to be borne by the co. itself; but that (3) so long as the public using the market were not prejudiced, there was nothing to prevent the co. from agreeing to give special accommodation or facilities to persons desiring to have them, upon such terms as to payment as such persons might be willing to accept. *ATT.-GEN. OF DUCHY OF LANCASTER v. LIVERPOOL NEW CATTLE MARKET CO.*

C. A. [1896] W. N. 30 (2)

— *Costs*—*Taxation*—Charges and expenses of Liverpool solicitors' attendances in London.

See COSTS. 2.

4. — *Jurisdiction*—*Invalidity of rule empowering registrar to give summary judgment*—*County Courts Admiralty Jurisdiction Acts, 1868* (31 & 32 Vict. c. 71), ss. 10, 13, 23, 25; 1869 (32 & 33 Vict. c. 51), ss. 1, 6.

A rule made by the assessor under s. 6 of the *County Courts Admiralty Jurisdiction Act, 1869*, conferring jurisdiction on the registrar to give summary judgment in actions for liquidated demands in Admiralty actions, held to be ultra vires. *FELLOWS v. OWNERS OF THE "LORD STANLEY"* — Div. Ct. [1893] 1 Q. B. 98

But see now the *Liverpool Court of Passage Act, 1893* (56 & 57 Vict. c. 37), ss. 6, 7, 8.

**LIVERPOOL COURTS—continued.**

5. — *Practice—Rules of Court—Judgment under Order XIV.*

The Liverpool Court of Passage has not the powers which are given to the High Court by Order XIV. of the R. S. C. 1883. *Ex parte SPELMAN* - - - C. A. [1895] 2 Q. B. 174

— Rates—Exemptions—Land used as railway for public conveyance.

See RATES. 44.

**LLANDUDNO IMPROVEMENT ACT, 1854 —**

Rating—Land used as a railway.

See RATES. 45.

**LLOYD'S**—*Derelict vessels, notice of, to be given to, and information to be published by.* See *Derelict Vessels Report Act, 1896* (59 & 60 Vict. c. 12).

— Lloyd's classification—Ship surveyed while in dock for—Apportionment of dock expenses.

See INSURANCE—Marine. 47.

— Lloyd's policy—Life salvage.

See INSURANCE—Marine. 76.

**LOAN**—In consideration of share of profits—Postponement to other creditors.

See PARTNERSHIP. 16.

— Money-lender.

See MONEY-LENDER.

— Partnership or loan—Trader—Proof.

See BANKRUPTCY—Proof. 180.

— Redemption without consent of lender—Guardians of the poor.

See POOR LAW. 4.

— Proof—Loan to firm on terms of sharing profits—Subsequent advances—Postponement—Dissolution of firm.

See BANKRUPTCY—Proof. 178.

— To husband—Bond, Interest on—Statute of Limitations.

See HUSBAND AND WIFE—Bond. 27.

— To pay deposit—Agreement by way of wagering.

See GAMING. 36.

— To tenant for life—Investment clause—Personal security—Consent of tenant for life.

See TRUSTEE—Investments. 67.

**LOCAL GOVERNMENT.**

*In General, col. 1142.*

*Auditors, col. 1142.*

*Bridges, col. 1143.*

*Buildings. See BUILDINGS.*

*Burial Acts. See BURIAL.*

*Costs. See COSTS.*

*County Council. See COUNTY COUNCIL.*

*Cowsheds. See DAIRY.*

*District Council. See DISTRICT COUNCILS.*

*Drains. See SEWERS.*

*Elections. See ELECTION LAW.*

*Highways. See HIGHWAY.*

*Infectious Diseases. See INFECTIOUS DISEASES.*

*Land, col. 1143.*

*Local Government Board, col. 1144.*

**LOCAL GOVERNMENT—continued.**

*Municipal Corporation. See CORPORATION.*

*Nuisance. See NUISANCES.*

*Parish Council. See PARISH COUNCIL.*

*Poor Law. See POOR LAW.*

*Rates. See RATES.*

*Sewers. See SEWERS.*

*Stock Transfer, col. 1144.*

*Streets. See STREETS.*

*Transfer, col. 1144.*

*Unions, col. 1145.*

*Water. See WATER.*

*Water-closets. See WATER-CLOSETS.*

**In General.**

— Bicycle—Arrest of rider riding without proper light—Justification.

See BICYCLE. 1.

— Embezzlement—Assistant overseer—Parish council.

See CRIMINAL LAW—Embezzlement. 11.

— Guardians of poor—Jurisdiction—Persons entitled to relief—Powers of Local Government Board.

See POOR LAW. 10.

— Public authorities protection.

See PUBLIC AUTHORITIES PROTECTION.

— Rates.

See Cases under RATES.

— Repairable ratione tenuræ—Recovery of expense—Person liable—Owner not in occupation.

See HIGHWAY. 19.

— Revising barrister—Jurisdiction—Parochial electors' list—Ownership and occupation claims.

See PARLIAMENT. 147.

— Sanitary convenience—Stable—Workplace—Persons in attendance—Calmen.

See LONDON—Sanitary Convenience. 51.

— Sewers and drains.

See SEWERS.

— Streets.

See LONDON—Streets.

STREETS.

— Telephone wires—Illegal stretching of, across public streets—Powers of local authority—Removal of wires.

See TELEPHONE. 2.

— Vaccination—Legal right to apply for mandamus.

See MANDAMUS. 4.

— Vaccination—Power of officer to take proceedings without authority from guardians.

See VACCINATION. 8.

**Auditors.**

1. — *Audit of accounts—Extent of duty of auditor—Elective auditor of corporation—Remuneration—Local authority—Municipal corporation—Urban authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 246—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 25.*

The duty of an auditor of an urban sanitary

**LOCAL GOVERNMENT (Auditors)—continued.**

authority in auditing the accounts of the authority is not confined to ascertaining whether there are vouchers for each item of the accounts submitted to him, but extends to investigating whether the payments represented by the vouchers are authorized, or are without authority, or otherwise illegal or improper.

Elective auditors of a municipal borough are not entitled to remuneration for their services. **THOMAS v. DEVONPORT CORPORATION**

C. A. [1900] 1 Q. B. 16

**Bridges.**

2. — *Bridges (not being county bridges) taken over by county council—Liability of larger quarter sessions boroughs to contribute to cost of—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 6, 35, sub-s. 2.*

The exercise by a county council of the powers conferred on them by s. 6 of the Local Government Act, 1888, of purchasing or taking over existing bridges not then being county bridges, or erecting new bridges, or maintaining, repairing, or improving any bridges so purchased, taken over, or erected, is a "purpose for which the quarter sessions of the county" were "authorized to incur cost" within the meaning of s. 35, sub-s. 2; and consequently a quarter sessions borough, not being a county borough, but containing a population of 10,000 or upwards, which, by reason of its liability to repair the bridges within the borough, was at the passing of the Act exempt from contributing to the costs of the then existing county bridges, cannot be assessed to county contributions in respect of costs incurred by the county council in the exercise of any of the above-mentioned powers. **BURY ST. EDMUND'S CORPORATION v. WEST SUFFOLK COUNTY COUNCIL**

Div. Ct. [1898] 2 Q. B. 246

**Lands.**

— Costs—Alteration of boundaries—Liability of added area.

See **CORPORATION**. 9.

3. — *Powers of local authority—Land acquired for specific purpose—Application of part not required to another permanent purpose—Local Government Board—Jurisdiction—Injunction—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 175, 295.*

Sect. 175 of the Public Health Act, 1875, which empowers the Local Government Board to direct that any lands acquired by a local authority in pursuance of any powers contained in the Act, and not required for the purpose for which they were acquired, shall not be sold, does not enable the Board to direct that those lands shall be applied permanently to any purpose inconsistent with the original purpose.

A local authority have no power to apply permanently land which they have acquired for one purpose to another purpose inconsistent with the original purpose, even though the land cannot possibly be required for that original purpose, and they will be restrained from so doing at the suit of the Att.-Gen. and the land-

**LOCAL GOVERNMENT (Lands)—continued.**

owner from whom the land not required was purchased.

Decision of Kekewich J., [1900] 1 Ch. 51, affirmed. **ATT.-GEN. v. HANWELL URBAN COUNCIL**

C. A. [1900] W. N. 138; [1900] 2 Ch. 377

4. — *User of lands—Interim user—Land not immediately required for the purpose for which it was acquired—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 175.*

Where land has been acquired by an urban authority under the powers of the Public Health Act, 1875, and only part of the land so acquired is immediately required for the purposes for which it was acquired, while the remaining part may be ultimately required for the same purposes, it is not incumbent on the urban authority to sell the vacant land under s. 175 of the Act; but they may retain the same, and use it for some other lawful purpose, such as a recreation ground or the like, provided care is taken to prevent any rights being acquired over it by the public or otherwise which would prevent or interfere with its use whenever required for the ultimate purpose for which it was acquired.

**Att.-Gen. v. Southampton Corporation**, (1858) 1 Giff. 363, and **Bayley v. Great Western Ry. Co.**, (1884) 26 Ch. D. 434, discussed and distinguished. **ATT.-GEN. v. TEDDINGTON URBAN COUNCIL**

Romer J. [1898] 1 Ch. 66

Followed by Kekewich J. **Att.-Gen. v. Hanwell Urban Council**, [1900] 1 Ch. 51; C. A. [1900] W. N. 138; [1900] 2 Ch. 377.

**Local Government Board.**

**DETERMINATION OF DIFFERENCES.] Local Government (Determination of Differences) Act, 1896 (59 & 60 Vict. c. 9), amends certain provisions of the Local Government Act, 1888 (51 & 52 Vict. c. 44), s. 11.**

5. — *Arbitration in differences between local authorities—Procedure—Power of Court to order statement of special case—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11, sub-s. 3; ss. 63, 87—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 24.*

Where under the Local Government Act, 1888, differences are to be determined by the arbitration of the Loc. Govt. Bd., the Board must proceed under s. 63, and they or the arbitrator appointed by them may be compelled under the Arbitration Act, 1889, to state a case for the opinion of the Court. **In re KENT COUNTY COUNCIL AND SANDGATE LOCAL BOARD**

Div. Ct. [1895] 2 Q. B. 43

**Stock Transfer.**

**Local Government (Stock Transfer) Act, 1895 (58 & 59 Vict. c. 32), amends the Local Government Act, 1894, so far as regards the transfer of any stock, share, or security standing in the name of, or dividends payable to, a local authority.**

**Transfer.**

6. — *Transfer of part of one county to another county—Adjustment of liabilities—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 62.*

By an order made under the Local Govern-

**LOCAL GOVERNMENT (Transfer)**—*continued.*

ment Act, 1888, part of the county of B. was transferred to the county of H. The portion so transferred contained no county bridges and no main roads:—

*Held*, that the arbitrator appointed by the Loc. Gov. Bd. under s. 62 had power to award to the county of B. a sum of money in respect of the loss to that county of an area which contributed to expenditure on bridges and main roads without involving the county in any corresponding outlay on its own account. *In re* BUCKINGHAMSHIRE COUNTY COUNCIL AND HERTFORDSHIRE COUNTY COUNCIL — Div. Ct.

[1899] 1 Q. B. 515

*See next Case.*

7. — *Transfer of part of one union to another union*—*Adjustment of property and liabilities*—*Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 68.

By an order under the Local Government Acts, 1888 and 1894, part of a township within the area of a union was detached from it and transferred to another union. On a claim by the union from which the transfer had been made for an adjustment, under s. 68 of the Local Government Act, 1894, of the property, debts, and liabilities affected by the transfer:—

*Held*, that any such adjustment must be made between the two unions, and not between the union from which the transfer had been made and the area transferred:

*Held*, also, that any consideration which bore on the question whether, and to what extent, the union from which the area had been taken had been injured financially by the change, would be properly taken into consideration in making an adjustment.

Judgment of Div. Ct., [1898] 2 Q. B. 206, affirmed. *In re* ROCHDALE UNION AND HASLINGDEN UNION — C. A. [1899] 1 Q. B. 540

*See preceding Case.*

*See also* London Government Act, 1899 (62 & 63 Vict. c. 14), s. 16.

### Unions.

— Transfer of part of one union to another union — Adjustment.

*See preceding Case.*

### LOCAL VENUES

—Abolition.

*See PRACTICE*—Trial. 270.

### LOCKE KING'S ACTS.

*See* Cross—references under Statutes 17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34.

**LOCKS**—Opening locks on river—Prescription—Lost grant.

*See* EASEMENT. 4.

### LOCOMOTIVES.

*Locomotive Threshing Engines Act, 1894* (57 & 58 Vict. c. 37), removes certain restrictions on the use of such engines.

*Locomotives on Highways Act, 1896* (59 & 60 Vict. c. 36), amends the law with respect to their use on highways.

*Regulations under s. 5 of this Act as to petro-*

### LOCOMOTIVES

—*continued.*

*leum which came into operation on May 15, 1900, and repealed the regulations dated Nov. 3, 1896.* Lond. Gaz. May 8, 1900, p. 2928.

*Light Locomotives on Highways Order, 1896, dated Nov. 9, 1896.* St. R. & O. 1896, p. 158, No. 952. Price 3d.

*Locomotives Act, 1898* (61 & 62 Vict. c. 29), amends the law with respect to the use of locomotives on highways, and with respect to extraordinary traffic.

CONSTRUCTION OF WHEELS OF LOCOMOTIVES ON HIGHWAYS.] *Order dated Nov. 4, 1898.* W. N. 1898 (Dec. 17), p. 412. *See* Current Index, 1898, p. xevii.

*Locomotives on Highways Act, 1896* (59 & 60 Vict. c. 36), s. 5—*Regulations as to Petroleum which came into operation on May 15, 1900, and repealed the regulations dated Nov. 3, 1896.* Lond. Gaz. May 8, 1900, p. 2928.

— Extraordinary traffic.

*See* Cases under HIGHWAYS—Repairs.

1. — *Licence*—*Passing through county*—“*Used within the county*”—*Steam-roller*—*Highways and Locomotives Act, 1878* (41 & 42 Vict. c. 77), s. 32.

The Highways and Locomotives Act, 1878, provides by s. 32 that “A county authority may . . . make . . . by-laws for granting annual licences to locomotives used within their county.” And by a by-law made by the London County Council under that section it was provided that “No locomotive shall be used on any highway within the county of London until an annual licence for the use of the same shall have been obtained from the council by the owner thereof:—

*Held*, that a steam-roller which was not at the time being employed in road-making, but was merely passing through the country to a destination outside, was being “used within the county” within the meaning of the section and the by-law. LONDON COUNTY COUNCIL v. WOOD — Div. Ct. [1897] 2 Q. B. 482

— Negligence—Fire from engine.

*See* RAILWAY—Negligence. 18.

2. — *Negligent management of locomotive on highway by hirer*—*Liability of owner of traction engine*—*Master and servant*—*Locomotives Act, 1865* (28 & 29 Vict. c. 53), ss. 3, 7.

The deft., who was the owner of a traction engine, to which his name and address were affixed, as required by the Locomotives Act, 1865, s. 7, let the same to A., through the negligent management of whom personal injuries were occasioned to the plt., who was being driven in a carriage upon the highway:—

*Held*, that the deft. was not liable. SMITH v. BAILEY — C. A. [1891] 2 Q. B. 403

**LOCUS SOLUTIONIS** — Contract — English or Scotch contract.

*See* CONFLICT OF LAWS. 1.

— Locus contractus—Contract to be performed in different countries.

*See* CONFLICT OF LAWS. 2.

**LODGER FRANCHISE**—Registration of voters.

See Cases under **PARLIAMENT—Franchise**.

**LODGERS**—"Private residence"—Boarding and lodging scholars attending school.

See **COVENANT**. 4.

**LODGING**—Cesser of right to—Notice to leave.

See **INNKEEPER**. 5.

## — Fitness for occupation—Furnished house.

See **LANDLORD AND TENANT**. 67.

**LODGING-HOUSE** — *Common lodging-house — Liability to penalty for keeping—Charitable institution — Non-registration — Common Lodging Houses Acts, 1851 (14 & 15 Vict. c. 28); 1853 (16 & 17 Vict. c. 41).*

(A) Sect. 3 of the Common Lodging Houses Act, 1853, provides that "a person shall not keep a common lodging-house, unless his name as the keeper thereof be entered in the register kept under" the Common Lodging Houses Act, 1851.

The respondent kept a house or "shelter" for the reception of male lodgers as part of a social scheme carried on by a body called the Salvation Army, the lodgers being admitted by the officials in charge under certain regulations made for the carrying out of the objects of the scheme. The lodgers were charged 4d. a night or 2s. a week for a bed or bunk in an open dormitory and the use in common with the other occupants of a sitting or meeting room and a kitchen; the occupants provided their own food, which they might cook at the kitchen fire. The officials in charge had a discretionary power to admit persons for a less payment or for no payment at all. Drunken or disorderly men were not admitted, or, if admitted, were turned out, the occupants being of the same class as the occupants of common lodging-houses, except that some of those received were so dirty that they would not be received in a common lodging-house. The shelter was kept for charitable or religious objects, and not for purposes of gain; the charges were the same as at common lodging-houses kept for commercial profit, but no profit was in fact made out of the shelters carried on under the scheme. The respondent's name was not entered in the register of common lodging-houses as the keeper of the shelter:—

*Held*, that the fact that the shelter was kept for charitable or religious objects and not for purposes of gain did not take it out of the operation of the Common Lodging Houses Acts, 1851 and 1853; that the shelter was a common lodging-house within the meaning of those Acts, and that the respondent had been guilty of the offence of keeping a common lodging-house without having his name registered as the keeper thereof.

*Booth v. Ferrett*, (1890) 25 Q. B. D. 87, overruled. *LOGSDON v. BOOTH*

Div. Ct. [1900] W. N. 5; [1900] 1 Q. B. 401

(B) The respondent kept a house for the reception of male lodgers which was not carried on for the sake of making a profit, but solely for the purpose of assisting the poorer classes. The lodgers were charged 6d. or 8d. a night, and for this each lodger got the use of a common dining-hall and sitting-room and the right to the exclusive occu-

**LODGING-HOUSE**—*continued.*

pation of a cubicle which contained a bed, and which was separated from the rest of the dormitory by walls about 6½ feet high made of tiles. A certain number of the lodgers were of a better class than the inhabitants of an ordinary common lodging-house, but substantially the lodgers were of that description. Drunken and disorderly men, and men who were suspected of being criminals or verminous, were not admitted, but all other men were admitted on payment. The house was not registered as a common lodging-house:—

*Held*, that since the inmates of the house were persons of the poorer class who were likely to be in a dirty and insanitary condition, and since they occupied at least part of the house in common, it was a common lodging-house within the meaning of the Common Lodging Houses Acts, 1851 and 1853, and ought to have been registered. *LOGSDON v. TROTTER*

Div. Ct. [1900] 1 Q. B. 617

**LONDON.**

*Boundaries and Boroughs*, col. 1149.

*Buildings*, col. 1149.

*By-laws*, col. 1160.

*Cabs*. See **HACKNEY CARRIAGE**.

*Canals*, col. 1160.

*City of London Court*, col. 1160.

*Commons*. See **COMMON**.

*Contracts*, col. 1161.

*County Council*, col. 1161.

*County Courts*, col. 1161.

*Custom*, col. 1162.

*Drains*. See **LONDON—Sewers**.

*Electors*, col. 1162.

*Grain Duty*, col. 1162.

*Hackney Carriages*. See **HACKNEY CARRIAGE**.

*Loans*, col. 1162.

*Local Government*, col. 1162.

*Mayor's Court*, col. 1162.

*Music and Dancing*. See **MUSIC AND DANCING**.

*Nuisances*. See **NUISANCES**.

*Penalties*, col. 1164.

*Police*. See **POLICE**.

*Poor Law*, col. 1164.

*Rates*. See **RATES**.

*Removal of Refuse*, col. 1164.

*Sanitary Convenience*, col. 1165.

*Sessions*, col. 1165.

*Sewers*, col. 1165.

*Slaughter-houses*, col. 1171.

*Street Musician*. See **MUSIC AND DANCING**.

*Streets*, col. 1171.

*Tithe*, col. 1181.

*University of London*. See **UNIVERSITY —University of London**.

*Unsound Food*. See **FOOD**.

*Vestries*, col. 1181.



**LONDON—continued.***Water.* See *WATER*.*Water-closets.* See *WATER-CLOSETS*.*Other References,* col. 1182.**Boundaries and Boroughs.**

*London Government Act, 1899* (62 & 63 Vict. c. 14), Order dated May 15, 1900, constituting the Metropolitan Boroughs and fixing boundaries, &c., Lond. Gaz. June 5, 1900, p. 3567.

**Buildings.**

**NOTE.**—As to Cases relating to places outside the County of London—

See Cases under **BUILDINGS**.

By the *London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), the Public and Local Acts affecting buildings in the County of London and certain of such Acts relating to new streets were consolidated and amended.

Regulations were made by the *London County Council* in Nov., 1894, as to applications for sanction or consent under the *London Building Act, 1894*.

Regulations as to procedure and fees were made by the Tribunal of Appeal constituted under s. 184 of the Act, and were approved by the Lord Chancellor on March 1, 1895.

*London Building Act, 1898* (61 & 62 Vict. c. cxxvii.), amends the *London Building Act, 1894* (57 & 58 Vict. c. cxxiii.).

1. — *Building line—Architect—Certificate—Corner house—Street in which building is situate—Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), s. 75.

When an application is made to a magistrate under the *Metropolis Management Act, 1862*, s. 75, sub-s. 1, for an order to demolish a building on the ground that it is beyond the line decided by the superintending architect to be the line of building of the street in which the building is situate, the question whether the building is in that particular street of which the line has been so laid down is to be decided by the superintending architect's certificate, and not by the magistrate to whom the application is made. *ALLEN v. LONDON COUNTY COUNCIL*

C. A. [1895] 2 Q. B. 587

2. — *Building line—Architect—Certificate.*

In case of a summons for infringing on the building line, the fact that the summons was taken out before the date of the architect's certificate as to what the line of buildings was does not affect the validity of an order made after the issue of the certificate. *LAVY v. LONDON COUNTY COUNCIL*

C. A. [1895] 2 Q. B. 577

Referred to by Div. Ct. *London County Council v. Pryor*, [1896] 1 Q. B. 330, 333.

3. — *Building line—Architect—Certificate—Pulling down buildings—Time for making complaint—Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 11—*Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), s. 75.

The six months during which the local authority can get an order for pulling down buildings erected beyond the building line begin to run

**LONDON (Buildings)—continued.**

from the time when the builder began to build beyond the line which is afterwards certified to be the building line, and not from the date on which the architect makes his certificate. *LONDON COUNTY COUNCIL v. CROSS*. C. A. [1892] W. N. 80

See now *London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), s. 166, and *Lavy v. London County Council*, C. A. [1895] 2 Q. B. 577. See preceding Case.

4. — *Building line—Building begun before creation of—Right of owner to continue—What amounts to a “Building, structure, or erection”—Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), s. 75.

(A) A. deposited with the vestry plans for a shop adjoining a newly laid out street, and made the footings for the external walls on two sides of the shop, one of which faced the street, and raised the wall to 12 ft. on that side. At that date there were no other buildings on either side of the street. Two years after he built a row of buildings on the same side of the street 10 ft. further back. He then leased the site of the shop to B., who continued the erection of the shop without consent of the *London County Council*. Two months later the superintending architect decided that the building line was that of the row of houses.

Held, by C. A., that what B.'s lessor had put up did not amount to a building, structure or erection within s. 75 of the *Metropolis Management Act, 1862*, and that B.'s acts amounted to the first erection of such a building, and that an order that B. should demolish so much of the building as he had erected in front of the building line was rightly made.

*Semble* (per Esher M.R. and Davey L.J.), that s. 75 does not prevent the subsequent completion of a building existing in an unfinished state when the building line is established.

Decision of Div. Ct., [1894] 1 Q. B. 227, affirmed, but on different grounds. *WENDON v. LONDON COUNTY COUNCIL*

C. A. [1894] 1 Q. B. 812

Explained by Div. Ct. and C. A. *Lavy v. London County Council*, [1895] 1 Q. B. 915, 919; [1895] 2 Q. B. 577, 581. See No. 5, below.

(B) The erection of a building in front of the building line was begun in 1883, abandoned for a while, and continued in 1885. Order of magistrate for demolition held valid. *NATHAN v. METROPOLITAN BOARD OF WORKS*

[1894] 1 Q. B. 230, n.

5. — *Building line—“Building, structure, or erection”—Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), s. 75.

The question whether a wall is a “building, structure, or erection,” within s. 75 of the *Metropolis Management Act, 1862*, depends on the height of the wall and the purpose for which it is built. A forecourt of a house had been for many years bounded by a dwarf wall about 3 ft. high. The owner pulled this down and built a wall 11 ft. high, which was to be used for exhibiting advertisements and also as boundary to the forecourt:—

Held, that the original dwarf wall was not a

**LONDON (Buildings)—continued.**

"building, structure, or erection," and that so long as it existed the site on which it stood was to be regarded as vacant land; but that the substituted wall was a building, structure, or erection, and that the magistrate had jurisdiction to order its demolition.

Decision of Div. Ct., [1895] 1 Q. B. 915, affirmed. *LAVY v. LONDON COUNTY COUNCIL*

C. A. [1895] 2 Q. B. 577

Referred to by Div. Ct. *London County Council v. Pryor*, [1896] 1 Q. B. 330, 333.

6. — *Building line—Old building, Site of—General line of buildings—Land occupied with house—New street—Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), ss. 74, 75.

A new street was formed in the metropolis, opening at a right angle into an existing street in which there was a continuous row of houses with forecourts in front and gardens behind. The plan for the new street submitted to the London County Council contained a note stating that two of the above-mentioned houses were (among others) to be pulled down, and the new street, as shewn by the plan, occupied the whole site of one of them with the forecourt and garden belonging thereto, and part of the site of the other and of the forecourt and garden belonging thereto, which were respectively 48 and 90 ft. in depth. These houses having been pulled down, the owner of the last-mentioned of them was erecting on so much of its site and the forecourt and garden on each side of it as was not thrown into the new street a block of buildings fronting to the new street, which projected beyond the general line of buildings in that street as fixed by the superintending architect of the county council:—

*Held*, that he was not building on the site of a previously existing building within the meaning of s. 74 of the Metropolis Management Act, 1862, and therefore was infringing the provisions of s. 75 of that Act, which forbids the erection of buildings beyond the general line of buildings in the street.

*Lord Auckland v. Westminster District Board of Works*, (1872) L. R. 7 Ch. 597, distinguished.

Decision of Div. Ct., [1896] 1 Q. B. 330, affirmed. *LONDON COUNTY COUNCIL v. PRYOR*

C. A. [1896] 1 Q. B. 465

7. — *Building line—Projections—Pillar encroaching on public footway—General Paving (Metropolis) Act, 1817* (57 Geo. 3, c. xix.), s. 72—*Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 119—*Metropolitan Building Act, 1855* (18 & 19 Vict. c. 122), s. 26.

F. built shops on the side of a public street more than 30 ft. wide, and erected pillars projecting more than 9 inches beyond the building line on to the footway. For this he was convicted under s. 72 of Michael Angelo Taylor's Act:—

*Held*, that the conviction must be quashed (1) because Michael Angelo Taylor's Act, s. 72, is impliedly repealed by Metropolis Management Act, 1855, s. 119; (2) because the projections complained of were authorized by s. 26 of the

**LONDON (Buildings)—continued.**

*Metropolitan Building Act, 1855. FORTESCUE v. VESTRY OF ST. MATTHEW, BETHNAL GREEN*

Div. Ct. [1891] 2 Q. B. 170

*Sect. 26 was repealed and further provision made by the London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), ss. 73, 164.

Referred to by Div. Ct. *Kruse v. Johnson*, [1898] 2 Q. B. 91, 102.

8. — *Building line—Rebuild, Intention to—Open spaces—Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), s. 75.

A new house had been built on the site of some old buildings, with an open space in front. This new house was pulled down, and the plt. wished to build fresh houses up to the line of the old building:—

*Held*, that the site of the old buildings was open ground and subject to s. 75 of the Metropolis Management Act, 1862, and that plt. must conform to the building line of the street. *WORLEY v. VESTRY OF ST. MARY ABBOTTS, KENSINGTON* — North J. [1892] 2 Ch. 404

NOTE.—*Sect. 75 was repealed and further provision made by the London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), s. 22.

9. — *Building line—Stations—Special Act—Metropolis Management Acts, 1862* (25 & 26 Vict. c. 102), s. 75; 1882 (45 & 46 Vict. c. 14), s. 10—*Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 40, sub-s. 8.

*Held*, that the provisions of the appellants' special Act, relating to their powers for erecting stations, were inconsistent with those of s. 75 of the Metropolis Management Act, 1862, and so far repealed that section. The magistrate had therefore no jurisdiction to make an order on the appellants to pull down so much of their station as projected beyond the "general line" of buildings. *CITY AND SOUTH LONDON RY. CO. v. LONDON COUNTY COUNCIL*

C. A. [1891] 2 Q. B. 513

*Sect. 75 was repealed and further provision made by the London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), ss. 22, 31.

Followed by Div. Ct. *London County Council v. London School Board*, [1892] 2 Q. B. 611.

10. — *Completed building—Offence—Notice—Proceedings by district surveyor—Metropolitan Building Act, 1855* (18 & 19 Vict. c. 122), ss. 45, 46, 105.

A building was completed without the proper notices to the district surveyor:—

*Held*, that, as the building was completed, s. 105 of the Metropolitan Building Act, 1855, did not enable the surveyor to take any proceedings under ss. 45 and 46, as these sections only applied to buildings in the course of erection. *SMITH v. LEGG* — Div. Ct. [1893] 1 Q. B. 398

*Sects. 45, 46, 195 of the Metropolitan Building Act, 1855, were repealed, and further provision made by the London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), ss. 151, 152, 153, 193.

Followed by Div. Ct. *Wallen v. Lister*, [1894] 1 Q. B. 312, 315.

11. — *Dangerous structure—Erection of*

**LONDON (Buildings)—continued.**

*shores and hoarding—Disturbance of pavement—Duty to restore pavement after hoarding removed—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 106, 107.*

Where the London County Council, acting under the powers conferred on them by Part IX. of the London Building Act, 1894, have, for the purpose of securing a dangerous structure, erected shores and a hoarding, and have taken up portions of the pavement to allow of the shores and the uprights of the hoarding being fixed in the ground, the duty of replacing the pavement after the shores and hoarding have been removed lies upon the owner of the premises and not upon the county council. *CRISP v. LONDON COUNTY COUNCIL* - - - **Wills J. [1899] 1 Q. B. 720**

**12. — Dangerous structure—Jurisdiction of magistrate—Order for demolition—Metropolitan Buildings Act, 1855 (18 & 19 Vict. c. 122), s. 73.**

A justice of the peace has jurisdiction under s. 73 of the Metropolitan Buildings Act, 1855, to order the owner of a dangerous structure to take down or secure the same, even though such structure is not adjacent to a highway and therefore not dangerous to the public. *LONDON COUNTY COUNCIL v. HERRING*.

**Div. Ct. [1894] 2 Q. B. 522**

*Sec. 73 was repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 107.*

— Dangerous structures notice—Sanitary works—Costs—Capital or income—Leasehold house.

*See SETTLED LAND. 65.*

— Exemption from Act—Gasworks.

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxiii.), s. 9.*

**13. — Exemption from operation of Act—Contract entered into before passing of Act—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 212.**

The exemption from the operation of the London Building Act, 1894, contained in s. 212 of that Act in favour of buildings to be carried out under a contract entered into before the passing of the Act applies not merely to buildings to be erected under a contract with a builder according to definite plans and specifications, but also to buildings to be erected under a building agreement for the development of a building estate, the complete performance of which may extend over a period of years. *TANNER v. OLDMAN*

**Div. Ct. [1895] W. N. 139 (7); [1896] 1 Q. B. 60**

— Flats—Surveyor's fees.

*See No. 29, below.*

**14. — Flue built against party structure—“Surrounded with new brickwork”—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 64, sub-s. 18.**

Sec. 64, sub-s. 18, of the London Building Act, 1894, provides that “A flue shall not be built in or against any party structure unless it be surrounded with new brickwork at least four inches in thickness, properly bonded” :—

*Held*, that “new brickwork” means brickwork new at the time of the building of the flue,

**LONDON (Buildings)—continued.**

and does not include a party wall dividing two houses, if previously constructed, however recently.

In 1895 the deft. in rebuilding his house, which adjoined the pls.' house in the City of London, constructed some new flues against the party wall, using that wall as one side of each flue, the other three sides of each flue being built for the first time with new bricks. The party wall had been rebuilt three years previously :—

*Held*, that the flues were not surrounded with new brickwork within the meaning of the Act.

*AERATED BREAD CO. v. SHEPHERD*

**North J. [1897] W. N. 33 (9)**

— Gas company, saying for.

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 9.*

**15. — Height of buildings—Continuing offence—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), ss. 85, 107.**

Buildings to a prohibited height were completed in Feb. 1893. In Dec. 1893 the county council gave written notice to the owner that he would be held liable to penalties if the building were continued at the prohibited height. In March, 1894, a summons for these penalties was taken out :—

*Held*, that the continuance at a prohibited height, after notice, of a building already erected was a continuing offence within s. 85 of the Metropolis Management Act, 1862, and that complaint had been made within six months next after the commission or discovery of the offence. *LONDON COUNTY COUNCIL v. WORLEY*

**Div. Ct. [1894] 2 Q. B. 826**

*Sec. 85 was repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 49.*

**16. — Height of buildings—Corner house—Building erected on the side of a new street—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 85.**

A house built at the corner of an old street and of a new street is “erected on the side of a new street” within s. 85 of the Metropolis Management Act, 1862, although its main frontage is in the old street. *LONDON COUNTY COUNCIL v. LAWRENCE & SONS*

*Sec. 85 was repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 47, 49.*

— Height of working-class dwellings in certain streets.

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 4.*

— Notice—Party structures.

*See Nos. 20—22, below.*

**17. — Notice—Service of—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 188—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 1.**

By s. 188 of the London Building Act, 1894, any notice, order, or other document required to be served under that Act, the service of which is not provided for by the Summary Jurisdiction

**LONDON (Buildings)—continued.**

Acts, may be served, if no person be found on the premises to which it relates, by fixing a copy on some conspicuous part of the building to which it relates. By s. 1 of the Summary Jurisdiction Act, 1848, a summons issued upon any information or complaint shall be served by delivering it to the person to whom it is directed, or by leaving it with some person for him at his last or most usual place of abode. A summons issued upon a complaint made under the London Building Act, 1894, and addressed "To the owner" of a building alleged to be in a dangerous condition, was served by fixing a copy of the summons on a conspicuous part of the building. The premises were said to be unoccupied. The owner did not appear on the summons:—

*Held*, that, in the absence of evidence that reasonable inquiry had been made to find out who was the owner so that he could be served under s. 1 of the Summary Jurisdiction Act, 1848, the provisions of s. 188 of the London Building Act, 1894, were not applicable, and therefore that the service was bad. **REG. v. MEAD** - **Div. Ct. [1897] W. N. 153 (11); [1898] 1 Q. B. 110**

*But see now* London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 5.

**18. — Notice to builder to conform to Act—Order of magistrate to enforce compliance—Completion of building between notice and order—Jurisdiction—Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 45, 46.**

A justice has no jurisdiction to make an order under the Metropolitan Building Act, 1855, s. 46, to comply with the requisitions of a notice from the district surveyor under s. 45, when the building has been completed and the builder has given up possession before the date of such order, although the notice was served on the builder before completion. **WALLEN v. LISTER**

**Div. Ct. [1894] 1 Q. B. 312**

*Sects. 45, 46 were repealed and further provision made by the London Building Act, 1894, ss. 151, 152.*

**19. — Notice to set back—Forecourt or space—Boundary wall—London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 14.**

Sect. 14 of the London Building Act, 1894, does not empower the London County Council to give notice requiring the owner or occupier of land, upon part of which he has erected a new building, to set back an old boundary wall, forming the boundary of a space left between the new building and a street, so that the wall shall not be at less than the prescribed distance from the centre of the roadway of the street. **LONDON COUNTY COUNCIL v. AYLESBURY DAIRY CO.**

**Div. Ct. [1897] W. N. 153 (10);**

**[1898] 1 Q. B. 106**

*But see now* London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 3.

— Notice — Wooden "structure" — Temporary erection.

*See* Nos. 30, 31, below.

**20. — Party structure — Notice by building owner — "Owner" — "Adjoining owner" — "Alterations in buildings" — Injunction—Metropolitan**

**LONDON (Buildings)—continued.**

*Building Act, 1855 (18 & 19 Vict. c. 122), ss. 3, 82, 85, sub-s. 1.*

A tenant of rooms in a house under a three years' agreement is an "adjoining owner" within the meaning of s. 85 of the Metropolitan Building Act, 1855, and as such is entitled to the three months' notice before the "building owner" can make any alterations which affect his premises. Service of the notice on the landlord of the whole house is not sufficient. **FILLINGHAM v. WOOD**

**Chitty J. [1891] 1 Ch. 51**

*Sect. 85 of the Metropolitan Management Act, 1855, was repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 90.*

— Party structure, Flue built against—"Surrounded with new brickwork."

*See* No. 14, above.

**21. — Party structure notice — Adjoining "owner"—Possession of premises under building agreement—London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 5, sub-ss. 29, 32; s. 90.**

The word "owner" in s. 5, sub-ss. 29 and 32, and in s. 90 of the London Building Act, 1894, as therein defined, includes a person who has entered upon land and erected buildings under an agreement for a lease, although no lease has been executed and although the agreement is expressed not to operate as a demise but to give only a right to enter upon the premises for the purpose of performing the agreement.

A person in that position is accordingly entitled as an "adjoining owner" to receive from an adjacent "building owner" the notice and particulars of proposed works required by s. 90 of the Act, and it is not sufficient to give notice to the intending lessor.

Injunction granted, in these circumstances, to restrain a building owner from proceeding with his works without the statutory notice to the intending lessee of the adjoining premises. **LIST v. THARP** - **Chitty J. [1897] 1 Ch. 260**

**22. — Party wall—Building owner—Notice—Sufficiency—London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 90.**

A party-wall notice, given by a building owner to an adjoining owner under s. 90 of the London Building Act, 1894, ought to be so clear and intelligible as to enable the adjoining owner to see what counter-notice he should give under the provisions of the Act. **HOBBS, HART & CO. v. GROVER** - **C. A. [1898] W. N. 154 (2); [1899] 1 Ch. 11**

**23. — Party wall — London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), ss. 59, 75.**

By s. 75 of the London Building Act, 1894, certain buildings of the warehouse class must be "divided by party walls," and party walls by other provisions of the Act must be constructed according to specified requirements. A building, to which s. 75 would apply, was proposed to be erected, some portions of it being of a much greater height than others, and the walls which divided the higher from the lower portions were to be carried up above the roof of the lower so as to form the outside walls of the higher:—

*Held*, that s. 75 only made a wall a party wall in

**LONDON (Buildings)—continued.**

respect of its dividing one portion of the building from another; so that the walls in question would cease to be party walls when carried up above the roof of the lower portions of the proposed building. *DRURY v. ARMY AND NAVY AUXILIARY CO-OPERATIVE SUPPLY, LD.*

Div. Ct. [1896] 2 Q. B. 271

24. — *Party wall—Terrace houses—Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 3, 83.*

The front of the deft.'s house was set back behind the line of the plt.'s front wall. On rebuilding the deft. claimed the side wall of the plt.'s house as a party wall, not only where the houses touched (which was admitted), but also where the wall projected beyond the face of his own house:—

*Held*, that the projecting part of the side wall was not a party wall. *JOHNSTON v. MAYFAIR PROPERTY CO.* North J. [1893] W. N. 73

*Sects. 3, 83, were repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), ss. 5, 88.*

*See also Johnston v. Mayfair Property Co., North J. [1894] 1 Ch. 508.*

25. — *Plans—Rebuilding on old site—Certified plans of old building—London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 43.*

By s. 43 of the London Building Act, 1894, a person who is desirous of building a domestic building on the site of a domestic building existing at the passing of the Act may submit to the district surveyor for certification "plans shewing the extent of the previously existing domestic building in its several parts," and on getting a certificate of the accuracy of the plans may build without regard to the restrictions imposed by the Act upon the erection of new buildings, provided he does not deviate in any respect from the certified plans:—

*Held*, that the plans which he must get certified under that section as a condition of the right of so building are not confined to ground-plans, but include plans shewing sections and elevations and the areas of the several floors. *PAYNTER v. WATSON* - Div. Ct. [1898] 2 Q. B. 31

26. — *Public-house—Part of building used for Dwelling-house—Approaches—London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 74, sub-s. 2.*

A fully licensed public-house is not a building "used in part for purposes of trade or manufacture and in part as a dwelling-house" within the meaning of s. 74, sub-s. 2, of the London Building Act, 1894; so that the means of approach to the part used as a dwelling-house need not be constructed of fire-resisting materials as required by that section. *CARRITT v. GODSON & SON* - Div. Ct. [1899] 2 Q. B. 193

— *Railway company—Saving for railway statutory purpose.*

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 3 (4).*

27. — *Roof—Material partly combustible and partly incombustible—Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 19 (1).*

A roof covered with materials consisting of woven iron wire coated with an oleaginous com-

**LONDON (Buildings)—continued.**

pound, held not to be covered with an "incombustible" material, although only the coating would ignite and burn away, leaving the wire-work uninjured. *PAYNE v. WRIGHT* - Div. Ct. [1892] 1 Q. B. 104; appeal dismissed by C. A.

for want of jurisdiction, Feb. 1, 1892

*Sect. 19 was repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 61.*

28. — *School board—Right to build within prescribed distance of centre of roadway—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 19, 20; Metropolitan Management and Buildings Act, 1878 (41 & 42 Vict. c. 32), ss. 4, 6.*

The London School Board held to be entitled to build on land they had acquired under a provisional order (duly confirmed) within 20 ft. of the centre of a roadway; ss. 4, 6 of the Metropolitan Building Acts (Amendment) Act, 1878, being overridden by the special Act. *LONDON COUNTY COUNCIL v. LONDON SCHOOL BOARD*

Div. Ct. [1892] 2 Q. B. 606

*Sects. 4, 6 are repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), ss. 5 (3), (4), (5), 13, 16, 17, 21.*

— *Service of summonses and orders relating to dangerous or neglected structures.*

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 5.*

— *Stock Exchange buildings to be "public building."*

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 8.*

— *Streets.*

*See Cases under LONDON—Streets.*

29. — *Surveyor's fees—Flats—Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 27, r. 2; ss. 49-51.*

*Held*, that separate sets of chambers under one roof are not buildings within Sched. II., Pt. I., of the Metropolitan Building Act, 1855, so as to enable the district surveyor to charge a separate fee for each set of chambers. *MOIR v. WILLIAMS* C. A. [1892] 1 Q. B. 264

*Sects. 49-51 and the Schedule are repealed and further provision made by the London Building Act, 1894 (57 & 58 Vict. c. cccxiii.), s. 74 (3), Sched. III.*

— *Temporary structure, Court may order demolition of.*

*See London Building Act, 1898 (61 & 62 Vict. c. cxxxvii.), ss. 6, 7.*

30. — *Wooden shed—Canal—Building "used for the purposes" of the canal—Erection of new buildings—Notice—Exemption—Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 6, 38.*

*Held*, that a woodshed, erected by a canal co. on one of their wharves for the use of their tenants was not a building "used for the purposes" of the canal (s. 6) so as to exempt the co., before building it, from the obligations, as to notices to the district surveyor, imposed by s. 38 of the Metropolitan Building Act, 1855. *COOLE v. LOVEGROVE* - Div. Ct. [1893] 2 Q. B. 44

*Sects. 6, 38 of the Metropolitan Building Act, 1855, were repealed and further provision made by*

**LONDON (Buildings)—continued.**

*the London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 145, 201 (8).*

Distinguished by Div. Ct. *Elliot v. London County Council*, [1899] 2 Q. B. 277, 281.

**31. — Wooden structure—Building notice—Temporary erection—“Structure”—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 145.**

By s. 145 of the London Building Act, 1894, “Where a building or structure or work is about to be begun . . . the builder or other person causing or directing the work to be executed shall serve on the district surveyor a building notice respecting the building or structure or work.”

The owners of a certain large building situate in London called the Agricultural Hall, which was used for the purpose of public exhibitions or shows, were possessed of certain movable seating consisting of tiers of wooden platforms and capable of accommodating upwards of 3000 persons, which seating they from time to time erected for the accommodation of the spectators at such of the exhibitions as required it:—

*Held*, that such seating was not a “building structure or work” within the meaning of the above section; and that the owners of the hall were not thereby required to serve a building notice on the district surveyor upon each occasion on which they re-erected the seating. *VENNER v. McDONELL* Div. Ct. [1897] 1 Q. B. 421

**32. — Wooden structure—Licence of County Council—Exemption—Structure used in connection with traffic of railway company—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 86.**

The appellants, coal merchants, were in the habit of having coal consigned to them by ry. to London, where it was delivered to them at a wharf in the coal yard of the ry. co. By the permission of the ry. co. the appellants erected in the coal yard a small wooden structure which they used as a coal office. The use of this coal office by the appellants was a matter of convenience to the ry. co. in that it contributed to the speedy clearing of the coal trucks from the co.’s sidings:—

*Held*, that the structure in question was “used in connection with the traffic of the ry. co.,” within the meaning of s. 86 of the London Building Act, 1894, and that its erection did not require the licence of the respondents under s. 84. *ELLIOT v. LONDON COUNTY COUNCIL*

Div. Ct. [1899] 2 Q. B. 277

**33. — “Wooden structure or erection of a movable or temporary character”—Metropolis Management and Building Act, 1882 (45 & 46 Vict. c. 14), s. 13.**

(A) A bungalow of wood and corrugated iron was erected on a piece of ground for exhibition and sale, but was not there used or occupied, or intended to be so:—

*Held*, that it was not a “wooden structure or erection of a movable or temporary character” within s. 13 of the Metropolis Management and Building Acts (Amendment Act), 1882, and did not require a licence from the county council. *LONDON COUNTY COUNCIL v. HUMPHREYS, LD.*

Div. Ct. [1894] 2 Q. B. 755

(B) A wooden building on wheels and roofed

**LONDON (Buildings)—continued.**

with zinc used as a foreman’s office during building operations, and as a pay office in the builder’s yard when not so used:—

*Held*, not to be a “wooden structure or erection of a movable or temporary character” within s. 13 of the Act of 1882, so as to require a licence. *LONDON COUNTY COUNCIL v. PEARCE*

Div. Ct. [1892] 2 Q. B. 109

*Sect. 13 was repealed and further provision made by the London Building Act, 1894, s. 84.*

**By-laws.**

*Metropolis Management Acts Amendment (By-laws) Act, 1899 (62 & 63 Vict. c. 15), amends the law with respect to By-laws.*

**Cabs.**

*See HACKNEY CARRIAGE.*

**Canals.**

*Canals Protection (London) Act, 1898 (61 & 22 Vict. c. 16), provides for the protection of dangerous places on canals in the County of London.*

— Building “used for the purposes” of a canal.

*See LONDON—Buildings. 30.*

**City of London Court.**

**34. — Company, winding-up—Transfer—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-s. 5; s. 3; Order of Ld. Chanc. of Nov. 29, 1890.**

A transfer of winding-up proceedings can only be made to an inferior Court having jurisdiction under the Companies (Winding-up) Act, 1890, over cos. in liquidation. The City of London Court is not such a Court, as it has no bankruptcy jurisdiction. *In re REAL ESTATES Co.*

*V. Williams J.* [1893] 1 Ch. 398

*See now Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8 (1).*

**35. — Jurisdiction—Cause of action arising in City of London—Leave to issue process—London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxvii.), s. 39 (Local)—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 74, 185.**

Process in an action in the City of London Court may be issued without leave of the judge or registrar where the deft. does not dwell or carry on business in the City of London, but the cause of action arose wholly or in part therein. In this respect s. 74 of the County Courts Act, 1888, does not repeal s. 39 of the London (City) Small Debts Extension Act, 1852. *FELTON v. BOWER & Co.*

Div. Ct. [1900] W. N. 25; [1900] 1 Q. B. 598

**36. — Jurisdiction—Defendant employed in the City—London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxvii.), s. 39—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 74, 185.**

The jurisdiction given to the City of London Court by s. 39 of London (City) Small Debts Extension Act, 1852, over defts. who do not dwell or carry on business, but only “have employment” within the City, is not taken away by ss. 74, 185 of the County Courts Act, 1888, which assimilates the jurisdiction and procedure of the

**LONDON (City of London Court)—continued.**

City Court to that of a county court. The statutes conferring jurisdiction on the City of London Court reviewed at length. *KUTNER v. PHILLIPS*

Div. Ct. [1891] 2 Q. B. 267

Distinguished by Div. Ct. *Felton v. Bower & Co.*, [1900] 1 Q. B. 598, 602.

— Jurisdiction and procedure.

See also **LONDON—County Courts.**

37. — *Pro forma judgments—New trial.*

It is not competent for the judge of the City of London Court, when there is a conflict of evidence in a case without a jury, to give judgment *pro forma* in favour of the party to whom his mind inclines, and to grant a new trial before a jury as a matter of course to the other party. *MARSHALL v. BLUMAN* Div. Ct. [1893] W. N. 184

— Statute—Implied repeal—Exemption from taxes and assessments.

See **STATUTE. 7.**

**Commons.**

See **COMMON.**

**Contracts.**

— Contract with trading company—Validity—Members of council shareholders in the company.

See **CORPORATION. 5.**

**County Council.**

See also **Cases under LONDON generally.**

38. — *Trading—Omnibus business—Public authority—Ultra vires—Municipal trading—London County Tramways Act, 1896 (59 & 60 Vict. c. li.), s. 2.*

Action by Att.-Gen. at relation of a number of omnibus proprietors, and the omnibus proprietors suing as ratepayers, for a declaration that the London County Council had no power to apply their county fund in running the omnibuses:—

*Held*, that the county council were carrying on a business, as omnibus proprietors distinct from that of working tramways, neither expressly nor impliedly authorized, and made the declaration claimed. *ATT.-GEN. v. LONDON COUNTY COUNCIL* - *Cozens-Hardy J.* [1900] W. N. 100

**County Courts.**

See also **COUNTY COURT, passim.**

*County Courts (Districts) Postponement Order as to London. Reprint from W. N. 1900 (July 28), p. 221. See Current Index, 1900, p. lxxv.*

— City of London Court.

See **LONDON—City of London Court.**

39. — *Jurisdiction—Winding-up Companies.*

The effect of the order of Nov. 29, 1890, is to deprive these county courts of any winding-up jurisdiction under the Winding-up Act, 1890, and to attach their districts, for the purpose of winding-up, to the High Court. *In re COURT BUREAU* (No. 2) - *Stirling J.* [1891] W. N. 15

And see **COMPANY—WINDING-UP—Jurisdiction.**

— Sessions.

See **LONDON—Sessions.**

**LONDON—continued.****Custom.**

40. — *Ancient lights—Prescription against Crown.*

The custom as to ancient lights (abolished by the Prescription Act, 1832), considered. *PERRY v. FAMES. SALAMAN v. FAMES. MERCERS' CO. v. FAMES Chitty J.* [1891] 1 Ch. 658, at p. 667

Approved by C. A. *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48.

41. — *Market overt.*

A sale in a showroom on the first floor above a shop is not a sale in market overt.

*Semble*, that the custom of market overt in the City of London does not apply where the shopkeeper is the purchaser and not the seller of the goods. *HARGREAVE v. SPINK*

*Willis J.* [1892] 1 Q. B. 25

See **Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).**

**Drains.**

See **LONDON—Sewers.**

**Electors.**

**QUALIFICATION.] London County Council Electors Qualification Act, 1900 (63 & 64 Vict. c. 29), assimilates the county council and borough council franchise in London.**

**REGISTRATION OF ELECTORS.] London Registration (Temporary) O. in C. 1900. Lond. Gaz. March 9, 1900, p. 1612; St. R. & O. 1900, No. 166, L. 8.**

**Grain Duty.**

42. — “*Grain brought into the port of London for sale*”—*Manufacture of grain into other articles—Metage on Grain (Port of London) Act, 1872 (35 & 36 Vict. c. c.), s. 4.*

The Metage on Grain (Port of London) Act, 1872 (c. c.), s. 4, which entitles the corporation of London to a duty “in respect of all grain brought into the port of London for sale,” applies only to grain brought in for sale as grain, and not to grain brought in to be ground into meal, or manufactured into other articles of commerce, and then sold.

Decision of C. A., [1895] 2 Q. B. 652, affirmed. *COTTON v. VOGAN & Co.*

*H. L. (E.)* [1896] A. C. 457

**Hackney Carriages.**

See **HACKNEY CARRIAGE.**

**Loans.**

*Metropolitan Consolidated 3½ per Cent. Stock—held to be impure personality.*

See **CHARITY.**

**Local Government.**

*London Government Act, 1899 (62 & 63 Vict. c. 14), makes better provision for Local Government in London.*

**Mayor's Court.**

“*The Mayor's Court of London Rules, 1892,*”

**LONDON (Mayor's Court)—continued.**

dated May 27, 1892. *St. R. & O.* 1892, p. 498; [1892] *W. N.* (Appx. of O. & R.) pp. 22-28.

*O. in C.* June 28, 1892, applying s. 23 of the *Partnership Act*, 1890, to the *Mayor's Court of London*. *St. R. & O.* 1892, p. 520; *Lond. Gaz.* July 1, 1892, p. 3789.

*O. in C.* June 28, 1892, applying the whole of the *Arbitration Act*, 1889, except s. 17, to the *Mayor's Court of London*. *St. R. & O.* 1892, p. 518; *Lond. Gaz.* July 1, 1892, p. 3788.

43. — *Appeal, Notice of—Extension of time—Practice—Mayor's Court of London Procedure Act*, 1857 (20 & 21 *Vict. c. clvii.*)—*R. S. C.*, *Order LIX.*, r. 16.

*Order LIX.*, r. 16, does not give the High Court power to extend the time for giving notice of appeal under s. 8 of the *Mayor's Court of London Procedure Act*, 1857. *KIRBY v. NORTH BRITISH AND MERCANTILE INSURANCE CO.*  
*C. A.* [1896] 2 *Q. B.* 99

44. — *Costs—Libel—Less than 5l. recovered—Practice—Mayor's Court of London Act*, 1857 (20 & 21 *Vict. c. clvii.*), s. 11—*Rules of 1890 and 1892.*

The fact that in a particular case no scale of costs is provided by the *Mayor's Court of London Rules*, 1890, is not in itself sufficient to shew that that Court has no inherent jurisdiction to order costs in the cases not specifically provided for.

*Semble*, that in actions for libel tried in the *Mayor's Court of London*, in which less than 5l. is recovered, the Court has jurisdiction to order costs to be paid to the plt., beyond court fees and allowances to witnesses, although no scale is provided by the rules for such a case. *HALL v. LAUNSPACH* — *C. A.* [1898] 1 *Q. B.* 513

45. — *Costs—Security for—Practice—Appeal to High Court—Mayor's Court of London Procedure Act*, 1857 (20 & 21 *Vict. c. clvii.*)—*R. S. C.*, *Order LIX.*, rr. 10-17.

Sect. 8 of the *Mayor's Court of London Procedure Act*, 1857, is not repealed by *R. S. C.*, *Order LIX.*, rr. 10-17, and security for costs has to be given before an appeal from the *Mayor's Court* in an action to recover more than 20l. can be heard by the *Div. Ct.* *MORGAN v. BOWLES*  
*Div. Ct.* [1894] 1 *Q. B.* 236

Approved of by *C. A.* *Kirby v. North British and Mercantile Insurance Co.*, [1896] 2 *Q. B.* 99, 101.

46. — *Prohibition—Cause of action—Agreement to transfer shares in company to be formed—Action for specific performance—Proof of formation of company—Company not registered within jurisdiction.*

The plt. brought an action on the equity side of the *Mayor's Court of London* for specific performance of an agreement to transfer to him a certain number of shares in a co. to be formed, or in the alternative for damages exceeding 50l. The bill of complaint alleged the formation of the co., which, as appeared by the affidavits, had been registered in Scotland:—

*Held*, that proof of the formation of the co. being a material part of the claim both for specific performance and for damages, the whole

**LONDON (Mayor's Court)—continued.**

cause of action did not arise within the jurisdiction, and the defts. were entitled to a prohibition. *BOWLER v. BARBERTON DEVELOPMENT SYNDICATE*  
*C. A.* [1897] 1 *Q. B.* 164

47. — *Removal of action to High Court—"Fitting case"—Certiorari—Borough and Local Courts of Record Act*, 1872 (35 & 36 *Vict. c. 89*), *Sched.*, cl. 12.

A deft. cannot as of right have his action removed from an inferior Court merely because the "case is fit to be tried in the superior Courts." He must satisfy the judge of the superior Court that it "ought" to be tried there, or is "more fit" to be tried there than in the inferior Court. Clause 12 of *Sched. of Borough and Local Courts of Record Act*, 1872, explained. *BANKS v. HOLLINGSWORTH*  
*C. A.* [1893] 1 *Q. B.* 442

**Music and Dancing.**

*See* MUSIC AND DANCING.

**Nuisances.**

*See* Cases under NUISANCES.

**Penalties.**

— *Application of—Sale of margarine.*

*See* ADULTERATION—Margarine. 16.

**Police.**

*See* POLICE.

**Poor Law.**

*ELECTION OF GUARDIANS.] Guardians (London) Election Order*, 1898, dated Jan. 21, 1898. *St. R. & O.* 1898, p. 609 (No. 15).

**Rates.**

*See* Cases under RATES.

**Removal of Refuse.**

48. — *Refuse—"House refuse"—Clinkers from furnaces in steam laundry—Public Health Act*, 1875 (38 & 39 *Vict. c. 55*), ss. 4, 42.

Clinkers from a steam laundry are not "house refuse" within s. 42 of the *Public Health Act*, 1875, and the local authority is not bound to remove them. *LONDON AND PROVINCIAL LAUNDRY CO. v. WILLESDEN LOCAL BOARD*  
*Div. Ct.* [1892] 2 *Q. B.* 271

49. — *Refuse—Street refuse—Snow—Liability to action for non-removal of—Scavengers—Public Health (London) Act*, 1891 (54 & 55 *Vict. c. 76*), s. 29.

Sect. 29 does not give any right of action to a person suffering special damage from a breach of the duty of the sanitary authority to remove street refuse. *SAUNDERS v. HOLBORN DISTRICT BOARD OF WORKS* — *Div. Ct.* [1895] 1 *Q. B.* 64

50. — *Refuse of trade, manufacture, or business—Clinkers from furnaces in hotel—Scavengers—Metropolis Management Act*, 1855 (18 & 19 *Vict. c. 120*), s. 128.

Clinkers from the furnaces of a hotel, used for electric lighting, warming, and cooking, are not "refuse of a trade, manufacture, or business"



**LONDON (Removal of Refuse)—continued.**

within s. 128, and therefore the scavengers are bound to remove them without payment. *St. MARTIN'S-IN-THE FIELDS VESTRY v. GORDON*

**C. A. [1891] 1 Q. B. 61**

*Sect. 155 of the Metropolis Management Act, 1855, was repealed and further provision made by the Public Health (London) Act, 1891, s. 33.*

**Sanitary Convenience.**

**51. — Stable—Workplace—Persons in attendance—Cabmen—Local government—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 38.**

*Sect. 38 of the Public Health (London) Act, 1891, enacts that every factory, workshop, or workplace shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in or in attendance at such building:—*

*Held, that a stable-yard and stables at which a large number of cabmen were daily in attendance for the purpose of hiring cabs was a workplace within the meaning of the section, and must, therefore, be provided with sufficient and suitable sanitary conveniences for the cabmen.* **BENNETT v. HARDING**

**Div. Ct. [1900] 2 Q. B. 397**

**Sessions.**

*O. in C. dated April 30, 1894, uniting the liberty of the Tower of London with the County of London.* **St. R. & O. 1894, No. 122, p. 205.**

*Order of the Home Secy. dated March 24, 1892, approving scheme for regulating the holding of Quarter Sessions for the County of London as provided by s. 42, sub-s. 7, of the Local Government Act, 1888.* **St. R. & O. 1862, p. 587; Lond. Gaz. Mar. 29, 1892, p. 1851.**

**NOTE.**—*The publication of the London Gazette of Jan. 15, 1892, was made in error and is now cancelled.*

*Quarter Sessions (London) Act, 1896 (59 & 60 Vict. c. 55), makes provisions relating to the offices of Chairman and Deputy Chairman of the Court of Quarter Sessions for the County of London.*

**Sewers.**

**NOTE.**—*As to cases relating to places outside the County of London—*

*See SEWERS.*

— *Cost of drainage works required by local authority—Liability of tenant—Covenant.*

*See LANDLORD AND TENANT.*

— *Cost of sanitary works.*

*See SETTLED LAND. 66.*

**52. — Landlord and tenant—Covenant—Rates, taxes, and other charges—Payment of—Sanitary nuisance — Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 4, 11.**

(A) A lessee covenanted to pay all rates, taxes, and other charges imposed on the lessor in respect of the premises, and to repair. The lessor was compelled by the local authority to

**LONDON (Sewers)—continued.**

put a drain in repair which, by the neglect of the lessee, was out of order:—

*Held, that his expenses in so doing were a charge imposed on the lessor which he was entitled to recover from the lessee.* **SMITH v. ROBINSON**

**Div. Ct. [1893] 2 Q. B. 53**

(B) The tenant from year to year of premises was ordered by the sanitary authority under s. 4 of the Public Health (London) Act, 1891, to abate a nuisance due to structural defects in the drains:—

*Held, that he was entitled to recover the expenses of obeying the order from his landlord under s. 11, sub-s. 1, of the Act.* **GEHARDT v. SAUNDERS**

**Div. Ct. [1892] 2 Q. B. 452**

*Followed by C. A. Andrew v. St. Olave's Board of Works, [1898] 1 Q. B. 775.*

*Referred to by Bruce J. Cree v. St. Pancras Vestry, [1899] 1 Q. B. 693, 695.*

**53. — Covenant by lessee to pay "all taxes, rates, duties, assessments, and impositions" — Notice by sanitary authority to lessor to abate nuisance by making new drain — Expenses incurred in complying with notice—Liability of lessee—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).**

The deft., who was the lessee of the plt., covenanted to "pay the land tax, sewers rate, and all other taxes, rates, duties, assessments, and impositions, parliamentary, parochial, or otherwise, which now are or shall at any time during this demise be assessed or imposed on or in respect of the said demised premises." Very shortly after the commencement of the lease the sanitary authority served a notice on the plt., as owner, under the Public Health (London) Act, 1891, directing him to abate a nuisance on the premises, and for that purpose to take up a defective drain and lay a new drain throughout the premises. The plt. incurred expenses in complying with the notice, and sued the deft. to recover the amount:—

*Held, that the obligation to lay the new drain was a "duty imposed in respect of the premises," and that the deft. was liable to pay to the plt. the amount expended by her in complying with the notice of the sanitary authority.* **BRETT v. ROGERS**

**Div. Ct. [1897] 1 Q. B. 525**

*Approved of. See next Case.*

**54. — Covenant by tenant—Rates, taxes, &c.—Drainage works required by local authority, Cost of—Liability of tenant—Covenant by tenant to pay and discharge "all taxes, rates, duties and assessments payable in respect of the demised premises"—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 85; 1862 (25 & 26 Vict. c. 102), ss. 64, 96.**

A tenant covenanted with his landlord that he would pay and discharge "all taxes, rates, duties and assessments whatsoever, which now are, or hereafter shall become, payable for or in respect of the premises hereby demised, or any part thereof, whether parliamentary, parochial or otherwise, except the landlord's property tax":—

*Held, that under this covenant the tenant was liable to pay the cost of drainage works, the*

**LONDON (Sewers)—continued.**

execution of which was required by the local authority under s. 85 of the Metropolis Management Act, 1855.

Decision of Byrne J., [1899] W. N. 30 (2), affirmed.

*Brett v. Rogers*, [1897] 1 Q. B. 525, approved. *FARLOW v. STEVENSON* — C. A. [1900] 1 Ch. 128

**55. — Drain—Combined drainage—Drainage of contiguous houses by combined operation—Subsequent unauthorized connection with drain from adjoining premises—Nuisance—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.**

Four houses in the metropolis were in 1874 drained by a combined operation under an order of the vestry. A drain from the stable of an adjoining house was afterwards, without the knowledge of the vestry, connected with this drain, and the drainage from the stable turned into it. Subsequently a nuisance arose owing to the defective drainage of the four houses, and the then owner of the houses, who had not authorized or known of the making of the connection with the drain from the stable, was required by the vestry to abate the nuisance :—

*Held*, that the unauthorized connection of the drainage from the stable with the drain from the four houses converted the latter into a sewer, and that therefore the owner was not liable to abate the nuisance. *GEEN v. NEWINGTON VESTRY* Div. Ct. [1898] 2 Q. B. 1

Referred to by Div. Ct. *Greater London Property Co. v. Foot*, [1899] 1 Q. B. 972, 975. See next Case.

**56. — Drain—Combined drainage—Drainage of group of houses by combined operation—Nuisance—Order of local authority—Subsequent deviation—Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.**

In 1879 an order of the vestry was obtained under the Metropolis Local Management Act, 1855, for draining a group of eleven houses by a combined operation. It was subsequently discovered that there had been a deviation in the course of the drain from the plan signed by the surveyor, but there was no evidence that any houses other than those on the plan were drained by the combined operation :—

*Held*, that a mere deviation in the course of the drain was not sufficient to convert it into a sewer, and that the vestry was not therefore liable for its repair. *GREATER LONDON PROPERTY CO. v. FOOT* — Div. Ct. [1899] 1 Q. B. 972

**57. — “Drain”—Combined drainage—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 68, 250.**

A pipe carrying the sewage of two houses in a metropolitan parish into the main sewer was vested in and repairable by the vestry under the Metropolis Management Act, 1855, being a “sewer” within the definition of that word in s. 250. Subsequently the owner of one of the houses disconnected his sewage, so that thereafter the pipe was “used for the drainage of one building only” within the definition of “drain” in the same section :—

*Held*, that the pipe did not, upon such disconnection taking place, become a drain repair-

**LONDON (Sewers)—continued.**

able by the owner of the house still served by it, but remained a sewer vested in and repairable by the vestry. *ST. LEONARD, SHOREDITCH, VESTRY v. PHELAN* — Div. Ct. [1896] 1 Q. B. 533

**58. — Drain or sewer—Repair, Liability to—Effect of builder's disobeying order of sanitary authority—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.**

Where a builder unlawfully, in 1887, built four houses drained into one construction, and subsequently sold them to different persons :—

*Held*, that the purchasers were not estopped from setting up that the construction was a “sewer” within s. 250 and not a drain, and that the duty of repairing lay on the sanitary authority.

Decision of Div. Ct., [1895] 2 Q. B. 208, affirmed. *KERSHAW v. TAYLOR*

C. A. [1895] 2 Q. B. 471

Followed by Chitty J. *Florence v. Paddington Vestry*, [1895] W. N. 143 (9).

Referred to by Div. Ct. and C. A. *Reg. v. Bethnal Green Vestry*, [1896] 2 Q. B. 95, 97, 319, 325; [1898] A. C. 190.

**59. — Drain or sewer—Repair, Liability to—“Sewer.”**

In 1894 the plt. had purchased two freehold houses in Paddington; shortly afterwards he received from the defts. a notice to repair a defective drain; the plt. accordingly opened up his drain, when he for the first time discovered that it had been connected with and received the drainage from other premises at the rear, belonging to a different owner. The plt. thereupon claimed repayment by the defts. of what he had expended upon the work, on the ground that the drain was a “sewer” within the meaning of the Local Management Act, 1855. It appeared that the connection with the plt.'s drain had been made some thirty years ago, without the authority of the vestry, and that the plt. when he purchased had made no special inquiry as to the drainage :—

*Held*, that the plt.'s drain was a “sewer,” and that he was entitled to be repaid the money he had expended in repairing it. *FLORENCE v. PADDINGTON VESTRY*

Chitty J. [1895] W. N. 143 (9)

**60. — “Drain” or “sewer”—Repair, Liability to—Premises within the same curtilage—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.**

(A) P. owned two blocks of apartments divided by a causeway 20 ft. wide, of which one end was closed by a wall and the other opened into a public thoroughfare. Access to one block was from the causeway—to the other from the street; in the causeway was a dustbin for the common use of the apartments. The premises were drained by branch drains from the several apartments running into a main drain which ran into a sewer :—

*Held*, that the two blocks were premises within the same curtilage, and the main drain was therefore a “drain” and not a “sewer” within s. 250.

Decision of Div. Ct., [1895] 1 Q. B. 33, affirmed

**LONDON (Sewers)—continued.**

(Rigby L.J. dissenting). *PILBROW v. ST. LEONARD, SHOREDITCH, VESTRY* C. A. [1895] 1 Q. B. 433

(B) B. owned an arcade consisting of a central passage with shops and houses on both sides. There was no right of way along the passage, which was roofed and closed by gates at either end. The premises were drained by a construction which ran down the centre and received in its course the drainage of the houses.

*Held*, that the construction was not a drain "used for the drainage of premises within the same curtilage," and was therefore a "sewer" within s. 250 and not a "drain," and was vested in and repairable by the vestry. *ST. MARTIN-IN-THE-FIELDS VESTRY v. BIRD*

C. A. [1895] 1 Q. B. 428

Referred to by C. A. *Reg. v. Bethnal Green Vestry*, [1896] 2 Q. B. 319, 324; [1898] A. C. 190.

61. — *Drain or sewer—Repair, Liability to—Drain—Sewer made without approval of vestry or Metropolitan Board of Works—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 68, 69, 74, 250; 1862 (25 & 26 Vict. c. 102), ss. 47, 48, 61.*

The fact that the requisite sanction and approval for the making of a sewer in the metropolis was not obtained from the vestry or Metropolitan Board of Works does not prevent it, when made, from being a sewer within the meaning of the Metropolis Management Acts, and as such vested in the vestry and repairable by them.

In 1866 the owner of a block of houses in the metropolis laid down a pipe to carry off the drainage from them, and connected the pipe with a sewer belonging to the vestry in a neighbouring street. There was no evidence of any notice having been given to the vestry, or of any order having been made by them, or of their sanction or of the approval of the Metropolitan Board of Works having been obtained, under the Metropolis Management Act, 1855, or the Amendment Act, 1862:—

*Held*, that the probable inference of fact was that the pipe was laid with the sanction of the vestry and the approval of the Metropolitan Board of Works required by the Acts; but that whether that was so or not the pipe was a sewer within the meaning of s. 250 of the Act of 1855, and was consequently vested in the vestry and repairable by them. Decision of C. A., [1896] 2 Q. B. 319, affirmed. *BETHNAL GREEN VESTRY v. LONDON SCHOOL BOARD*

H. L. (E.) [1898] A. C. 190

62. — *Foreign sewage, Agreement to admit—Public body—Injunction—Ultra vires—Estoppel—Laches and acquiescence—Drainage and sewage—Metropolitan drainage system—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 135, 138, 140, 250; 1862 (25 & 26 Vict. c. 102), s. 61.*

Under s. 61 of the Metropolis Management Amendment Act, 1862, the vestry of a parish within the metropolitan area cannot, even with the consent of the London County Council, enter into a binding agreement to receive sewage from a district without the metropolitan area.

The reasoning of Hall V.-C. in *Metropolitan*

**LONDON (Sewers)—continued.**

*Board of Works v. London and North Western Ry. Co.*, (1880) 14 Ch. D. 521; (1881) 17 Ch. D. 246, approved.!

Where the plts., the vestry of a parish within the metropolitan area, made an arrangement with certain landowners of a district without the metropolitan area (now represented by the defts., the urban district council) whereby the discharge of some sewage from the defts.' district into a sewer belonging to the plts. had been permitted for many years, and this additional sewage had increased so as periodically to choke up the plts.' sewer:—

*Held*, that this arrangement operated in law merely as a revocable licence, and that the plts., being a public body with public duties to perform, were not estopped or precluded by laches or acquiescence from bringing an action for an injunction to restrain the defts. from using the sewer; but

*Held*, that, having regard to the conduct of the plts. and to the difficulty in which an injunction would place the defts. by compelling them to close their sewers, the Court ought only to make a declaration that the defts. were not entitled to send sewage from their district into the plts.' sewer without the consent of the plts.

Decision of Kekewich J. reversed. *ISLINGTON VESTRY v. HORNSEY URBAN COUNCIL*

C. A. [1890] W. N. 74; [1900] 1 Ch. 695

63. — *New sewer substituted for old—Connecting drain—Expenses—Metropolis Management Act (18 & 19 Vict. c. 120), ss. 69, 73.*

Where, in consequence of the provision by a vestry under the Metropolis Management Act, 1855, s. 69, of a new sewer in substitution for an old one into which a house was previously drained, it became necessary to make a new drain connecting the house with the new sewer:—

*Held*, that s. 73 of the Act did not apply, and the vestry could not under that section recover the expense of making the new drain from the owner of the house. *ST. MARTIN-IN-THE-FIELDS VESTRY v. WARD* C. A. [1896] W. N. 161 (8); [1897] 1 Q. B. 40

64. — *Main sewer—Nuisance—Jurisdiction of justices—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 2, sub-s. 1 (b).*

By the Public Health (London) Act, 1891, s. 2, sub-s. 1 (b), for the purposes of the Act, any watercourse or drain, so foul, or in such a state, as to be a nuisance or injurious or dangerous to health, is a nuisance liable to be dealt with summarily under the Act:—

*Held*, that this provision does not apply to public sewers, and therefore justices have no jurisdiction to make a summary order on the London County Council in respect of a main sewer, vested in the council, and forming part of the main drainage system of London. *FULHAM VESTRY v. LONDON COUNTY COUNCIL*

Div. Ct. [1897] 2 Q. B. 76

65. — *Pollution of river by sewage—Order to vestry to construct sewer—Powers of County Council—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 69, 135, 138.*

Certain houses being drained directly into the Thames, the London County Council, in order

**LONDON (Sewers)—continued.**

to prevent the continued pollution of the river, purporting to act under s. 138 of the Metropolis Management Act, 1855, made an order upon the vestry of the parish in which the houses were situate to make a new sewer according to a specified plan to carry the drainage of the houses into the nearest main sewer:—

*Held*, that the council had no power under s. 138 to make the order. *REG. v. ST. GEORGE, HANOVER SQUARE, VESTRY*

Div. Ct. [1895] 2 Q. B. 275

— Public authorities protection—Act done in pursuance of Act of Parliament—Limitation of action.

*See* PUBLIC AUTHORITIES PROTECTION. 3.

— Rateability of sewers—Pumping station—Beneficial occupation—Hypothetical tenant.

*See* RATES. 49.

— Rates—Incidence of sewers rate or its equivalent.

*See* London Government Act, 1899 (62 & 63 Vict. c. 14), s. 12.

— Volunteer corps—Storehouse and drill-hall—Sewerage and drainage—Exemptions.

*See* ARMY AND NAVY. 7.

**Slaughter-houses.**

66. — *Validity of by-law—Improper slaughtering of cattle by servant contrary to instructions—Liability of occupier.*

By-laws made under the repealed Slaughter-houses (Metropolis) Act, 1874, but kept in force by s. 142, sub-s. 2 (b), of the Public Health (London) Act, 1891, make it an offence for the licensed occupier of a slaughter-house to slaughter sheep in the pound of the slaughter-house or in view of other sheep. During the absence of the respondent, the licensed occupier of a slaughter-house, his foreman, in direct disobedience of his orders and in order to save himself trouble, slaughtered a sheep in the pound in view of other sheep:—

*Held*, that the by-law was good and that the respondent was guilty of an offence under it, for he was liable for the act of his servant, that act having been committed within the general scope of his employment, although contrary to the orders of his master. *COLLMAN v. MILLS* - Div. Ct.

[1896] W. N. 175 (10); [1897] 1 Q. B. 396

**Streets.**

NOTE.—As to cases relating to places outside the County of London—

*See* STREETS.

— Betting in streets.

*See* Cases under GAMING.

67. — *Flagging footway—Apportionment of expenses—Metropolis Management Act, 1862, Amendment Act, 1890 (53 & 54 Vict. c. 54), s. 1.*

The cost of flagging a footway under s. 1 should be apportioned between the owners on both sides of the road, or on both sides of the section of the road in which the footway is situate, subject to the proviso in s. 1 as to

**LONDON (Streets)—continued.**

charging houses at a greater rate than land. *PADDINGTON VESTRY v. NORTH METROPOLITAN RAILWAY AND CANAL CO.*

Div. Ct. [1894] 1 Q. B. 633

68. — *Flagging footway—Apportionment of expenses—Frontager—Open spaces—“Owner”—Lease held by vestry—Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), ss. 3, 5—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 250; 1890 (53 & 54 Vict. c. 54), s. 1.*

A vestry acquired an open space in a square, the roads in which were streets within the Metropolis Management Acts, by assignment of a lease. The vestry were to use the space as a public garden, and on failure to so use it to re-assign:—

*Held*, that the vestry was the “owner” of the open space, and chargeable with a proportion of expenses of flagging the footway of the roads. *ST. MARY, ISLINGTON v. COBBETT*

Div. Ct. [1895] 1 Q. B. 369

— Footways.

*See* HIGHWAY—Repairs. 20, 21.

69. — *“Improvement charge”—“Improvement area”—“Lands all or any part of which abut” on a street—London County Council (Improvements) Act, 1897 (60 & 61 Vict. c. cccxlii.), s. 42, sub-s. 1 (c).*

By the London County Council (Improvements) Act, 1897, the London County Council were empowered (inter alia) to widen Tottenham Court Road, and to place an “improvement charge” on property included within an “improvement area,” which was for this purpose defined, by s. 42, sub-s. 1 (c), as meaning “the lands all or any part of which front or abut upon the west side of Tottenham Court Road between Oxford Street and Hanway Street.”

A music-hall which had a frontage on Oxford Street, where the principal entrance was, had also an entrance from Tottenham Court Road to the pit and gallery, the proprietors of the hall having acquired a leasehold interest in a house in Tottenham Court Road for the purpose of making that entrance. In order to make it they removed the lower portion of the party wall which separated the house from the hall, but they entered into a covenant to replace the wall at the end of the lease. They were owners in fee of part of the land on which the hall stood, and were leaseholders of the remainder:—

*Held*, that, as the whole of the property, including the entrance to the pit and gallery, was occupied for one purpose, it could not be said that only the house in Tottenham Court Road abutted on that road, and that consequently the power of the London County Council to place an improvement charge on the music-hall was not limited to the house in Tottenham Court Road. *THE OXFORD, LD. v. LONDON COUNTY COUNCIL* - North J. [1898] 2 Ch. 491

70. — *New street—Commencing to form or lay out street without leave of county council—London Building Act, 1894 (57 & 58 Vict. c. cccviii.), s. 7.*

In order that a road or carriageway may be a street within the meaning of s. 7 of the London

**LONDON (Streets)—continued.**

Building Act, 1894, it is not necessary that it should be intended or used for public carriage traffic.

The owner of a building estate, of about four acres in extent, commenced to lay out a road which communicated at one end with a public carriageway; the other end of the road ran into a square, about which it was intended to build a continuous line of houses or flats; houses or blocks of flats were also to be built along each side of the road itself, the total length of the road being about 600 ft. It was further intended to erect gates at the point where the road ran out of the public carriageway, and to keep a porter to open and shut the gates. The road was not intended for public use, but solely for the use of the occupiers of the houses in the road and square, and of their visitors and tradespeople. The owner had not obtained the consent of the London County Council before commencing the work:—

*Held*, that the road was a street within the meaning of s. 7 of the London Building Act, 1894, and that the owner was properly convicted under that section of having commenced to form or lay out a street for carriage traffic without having first obtained the sanction of the London County Council.

*Wood v. London County Council*, (1895) 64 L. J. (M. C.) 276, overruled. *ARMSTRONG v. LONDON COUNTY COUNCIL*

Div. Ct. [1900] 1 Q. B. 416

71. — *New street—Commencing to form street—London Building Act, 1894* (57 & 58 Vict. c. cccxiii.), s. 8.

A row of houses having been erected along the side of a street forming part of a building estate, the respondent erected a shop on land purchased from the freeholder of the estate on the same side of the street and fronting to it, but separated from the end house of the row by an intervening vacant space of the width of 40 ft., which is the statutory width of a street intended for carriage traffic. There was a side door leading from the shop into the vacant space. At the back of the shop he also erected a stable, the only access to which for carriages and horses was along the vacant space. This space, which was the property of the freeholder of the estate, was marked on the estate plan as a proposed street, but at the time of the erection of the shop and stable it had not been in fact laid out by the freeholder as a street; and, although the respondent expected that it would be laid out as a street, there was no contract by the freeholder that it should be so laid out:—

*Held*, that, as the respondent had no control over the soil of the vacant space, he did not by erecting the shop and stable commence to form a street within the meaning of s. 8 of the London Building Act, 1894. *LONDON COUNTY COUNCIL v. DIXON* - - Div. Ct. [1899] 1 Q. B. 496

72. — *New street—"Direct communication"—London Building Act, 1894* (57 & 58 Vict. c. cccxiii.), s. 9, sub-s. 4.

Sect. 9 of the London Building Act, 1894, gives power to the county council to refuse their sanction to the formation of a new street where

**LONDON (Streets)—continued.**

such street would not afford "direct communication" between two existing streets:—

*Held*, that the question whether a proposed new street did or did not afford such direct communication was a question of fact, with the decision of which the Court would not interfere. *WOODHAM v. LONDON COUNTY COUNCIL*

Div. Ct. [1898] 1 Q. B. 863

73. — *New street—Excavation—Powers of vestry or district board—Metropolis Management Amendment Act, 1890* (53 & 54 Vict. c. 66), s. 6.

Under s. 6, where a street has been laid out or is intended to be laid out on land on which no excavation has as yet taken place, the vestry or district board has no power absolutely to prohibit excavation to a greater extent than that allowed by the saving clause, but can only impose conditions as to the levelling and making a proper foundation for the street. *WANDSWORTH DISTRICT BOARD v. BIRD* - - Div. Ct. [1892] 1 Q. B. 481

74. — *"New street"—Paving expenses—Apportionment—Evidence—Metropolis Management Acts, 1855* (18 & 19 Vict. c. 120), s. 105; 1862 (25 & 26 Vict. c. 102), s. 77.

The apportionment by a district board of works, under s. 77 of the Act of 1862, of their expenses, under s. 105 of the Act of 1855, in paving a new street is not conclusive for all purposes.

On the hearing of a summons against an owner to enforce payment of his apportioned share of such expenses, evidence may be given that the alleged amount has not been actually expended, or that it includes other than paving expenses. *REG. v. MARSHAM*

C. A. [1892] 1 Q. B. 371

Explained by C. A. *Stroud v. Wandsworth Board of Works*, [1894] 2 Q. B. 1.

Referred to by C. A. *Metropolitan District Ry. Co. v. Fulham Vestry*, [1895] 2 Q. B. 445, 448.

75. — *"New street"—Paving expenses—Apportionment—Mode of—Frontager—Metropolis Management Acts, 1855* (18 & 19 Vict. c. 120), s. 105; 1862 (25 & 26 Vict. c. 102), s. 112.

A road, which was a turnpike road down to 1865 and previously to 1869 of a rural character, subsequently became a new street in the ordinary sense of the term by the erection of buildings alongside it:—

*Held*, that it was within the terms of s. 105 of the Act of 1855, and that therefore the district board might pave it under that section and charge the expenses upon the frontagers:

*Held*, also, that the fact that slight temporary repairs had been previously done by the district board to the footway of the road by tar-painting it did not prevent them from exercising the powers given by the section.

The principle on which the expenses of paving a new street have been apportioned by a district board amongst the owners liable in respect thereof cannot be questioned in any court.

*Semble*, by A. L. Smith and Rigby L. J.J., that the commrs., trustees, and other authorities referred to by s. 112 of the Act of 1862 are authorities having control of the pavements or

**LONDON (Streets)—continued.**

highways generally in the parish or place, and do not include turnpike trustees. *DAVIS v. GREENWICH BOARD OF WORKS*

C. A. [1895] 2 Q. B. 219

76. — *New street—Paving expenses—Apportionment—Mode of—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 77.*

In making, under s. 77 of the Act of 1862, an apportionment of the expenses, or estimated expenses, of paving a new street, the local authority is not bound to charge the owners of land bounding on such street rateably inter se, according to frontage or otherwise, and the apportionment cannot, in the absence of mala fides, be questioned. *METROPOLITAN DISTRICT RY. CO. v. FULHAM VESTRY* — — — C. A. [1895] 2 Q. B. 443

77. — *New street—Paving expenses—Cemetery company—"Owners of land"—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 105, 250; 1862 (25 & 26 Vict. c. 102), s. 77.*

A cemetery co. were by statute prohibited from selling any of their consecrated land, but were empowered to make profits by selling exclusive rights of burial. A new street was made abutting on the consecrated part of the cemetery:—

*Held*, that the co. were owners of land within the definition of s. 250 of the Metropolis Management Act, 1855, and were liable to contribute to the expenses of paving the new street. *ST. GILES, CAMBERWELL v. LONDON CEMETERY CO.*

Div. Ct. [1894] 1 Q. B. 699

78. — *New street—Paving expenses—Church site—Vesting of, in incumbent—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 105, 250.*

Where part of the site of a church is consecrated, the whole freehold of the site vests, under s. 13 of the Church Building Act, 1845, in the incumbent: the Eccles. Commrs. thereupon cease to be owners, and are not liable to contribute towards the cost of paving a new street. *PLUMSTEAD BOARD OF WORKS v. ECCLES. COMMRS.*

Div. Ct. [1891] 2 Q. B. 361

79. — *New street—Paving expenses—Covenant to bear charges—Charge upon landlord in respect of premises—Expenses of paving new street—Claim by district board—Payment by landlord—Right to recover from tenant—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 105, 250; 1862 (25 & 26 Vict. c. 102), ss. 77, 96.*

By a covenant in a lease of land in the metropolis the tenant was liable to bear, pay, and discharge, charges, duties, assessments, and impositions, charged, assessed, or imposed, upon the premises, or upon the landlord in respect thereof. The lease was determinable by six months' notice. The landlords gave notice to determine it, and contracted to sell the property. The district board of works gave notice to the landlords of apportionment of expenses of paving a new street, under the Metropolis Management Act, 1855, s. 77, fixing no date for payment. The landlords paid the amount claimed. The work was commenced after the notice to determine the lease had expired.

In an action by the landlords to recover under

**LONDON (Streets)—continued.**

the covenant the amount paid by them to the district board:—

*Held*, that the words of the covenant included the expenses of paving the new street, and that, when the district board gave notice to the landlords of the apportionment and charge, the charge became operative, and the landlords became liable to pay the amount, and were entitled to recover it from the tenant under the covenant:

*Held*, also, that the landlords were owners of the premises, within the meaning of the Metropolis Management Act, 1855, s. 250, until the date fixed by the contract of sale for completion.

*Thompson v. Lapworth*, (1868) L. R. 3 C. P. 149, followed. *WIX v. RUTSON* — — — *Bruce J.* [1899] 1 Q. B. 474

80. — *"New street"—Paving expenses—Erection of houses—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 105, 250; 1862 (25 & 26 Vict. c. 102), ss. 77, 112.*

A road was made through agricultural land in the year 1877, under statutory powers. The statute provided that when the road was completed it should be a public highway of the parish, and repairable in like manner as any other highway of the parish should from time to time be repairable. The road was accordingly taken over and the carriage-way kept in repair by the local authority. No houses were built adjoining the road until 1890, when houses were erected on one side. In 1896 houses were erected on the other side of the road, and the local authority declared the road to be a new street, directed that it should be paved, and apportioned the estimated expense between the appellants and other frontagers. The appellants were summoned for non-payment of their contributions. The magistrate who heard the summonses found as a fact that the road became a new street for the first time after the erection of houses therein. On a case stated:—

*Held*, that s. 105 of the Metropolis Management Act, 1855, as amended by s. 77 of the Metropolis Management Act, 1862, had not the effect of making the road a new street on its construction in 1877; that the magistrate was justified in finding that it became a new street for the first time after the erection of houses therein; and that the local authority had power to pave it and to apportion the estimated expense between the frontagers. *ALLEN v. FULHAM VESTRY* — — — C. A. [1899] 1 Q. B. 681

81. — *"New street"—Paving expenses—Liability—Adjoining owners—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 105, 250; 1862 (25 & 26 Vict. c. 102), s. 112.*

Question whether roadway and an ancient footpath formed a "new street" so as to make adjoining owners liable for paving expenses. The maintenance of the roadway had not been taken over before Jan. 1, 1856, and neither roadway nor footpath had been since taken over by the road authority, but the vestry had from time to time temporarily repaired the footway by tar-paving it:—

*Held*, that both roadway and footpath formed a "new street" within s. 112 of the Metropolis

**LONDON (Streets)—continued.**

**Management Act, 1862. WILSON v. ST. GILES, CAMBERWELL** Div. Ct. [1892] 1 Q. B. 1

Followed by C. A. *Davis v. Greenwich Board of Works*, [1895] 2 Q. B. 219.

**82. — "New street"—Paving expenses—Liability of frontagers—Lapse of time since road became new street—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105.**

In 1883 a highway, the greater part of which was then paved, became a "new street" within the meaning of s. 105 of the Metropolis Management Act, 1855, which enables a metropolitan vestry or district board to pave any "new street" not paved to their satisfaction, and to charge the expense on the owners of the houses forming the street. From 1883 to 1899 the district board, and the vestry who succeeded them, repaired the footways and carriageway of the street as surveyors of highways. In 1899 the vestry resolved to exercise their powers under s. 105, and required the owners to pay the apportioned expenses of paving the street:—

*Held*, distinguishing *Bonella v. Twickenham Local Board*, (1887) 20 Q. B. D. 63, that, as neither the board nor the vestry had exercised their powers under s. 105 before 1899, the vestry were then entitled to exercise them, notwithstanding the time which had elapsed since the road became a new street.

A road may become a "new street" within s. 105 of the Metropolis Management Act, 1855, although all the land on one side of it is building land upon which no building has been erected. *SIMMONDS BROTHERS, LD. v. FULHAM VESTRY*

Div. Ct. [1900] 2 Q. B. 188

**83. — "New street"—Paving expenses—Liability of frontagers—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 105; 1862 (25 & 26 Vict. c. 102), ss. 77, 112.**

A road which had been laid out since the passing of the Act of 1862, and was therefore a new street within the definition in s. 112 of that Act, had upon one side a house and no other building, and upon the other side a house at one end and a chapel and hall at the other; no new buildings had been erected upon either side of the road for more than twenty years, nor was there any probability of the vacant plots of land on either side being built upon for some years:—

*Held*, that a magistrate was justified in finding that the road was not a new street for the purposes of s. 105 of the Act of 1855 or s. 77 of the Act of 1862, and that the local authority could not, therefore, recover from the frontagers the expenses of paving the road. *ST. MARY, BATTERSEA v. PALMER* — Div. Ct. [1897] 1 Q. B. 220

Referred to by C. A. *Allen v. Fulham Vestry*, [1899] 1 Q. B. 681, 686.

**84. — "New street"—Paving expenses—Liability—Old highway converted into street by building—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 105; 1862 (25 & 26 Vict. c. 102), s. 112.**

An ancient country highway which became a "new street" in the popular sense, by the erection of buildings fronting it about 1855, is within s. 105 of the Metropolis Management Act, 1855,

**LONDON (Streets)—continued.**

and the expenses of paving it may be charged on the owners. *ST. GILES, CAMBERWELL v. CRYSTAL PALACE CO.* — C. A. [1892] 2 Q. B. 33

Followed by C. A. *Davis v. Greenwich Board of Works*, [1895] 2 Q. B. 219, 226.

**85. — "New street"—Paving expenses—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), ss. 105, 250; 1862 (25 & 26 Vict. c. 102), ss. 77, 112.**

The mere fact that the maintenance of the paving and roadway of a road within the metropolis had not previously to 1862 been taken into charge by the highway authority of the parish is not enough to constitute the road a "new street" within the meaning of s. 105 of the Act of 1855, and s. 77 of the Act of 1862. *ARTER v. HAMMER-SMITH VESTRY* Div. Ct. [1897] 1 Q. B. 646

**86. — Obstruction—Coke—Loading or unloading coal—Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 15.**

Coke is not "coal" within the meaning of s. 15 of the Act of 1867, which prohibits the loading or unloading of "coal" on or across the footway between certain hours, and imposes a penalty for so doing. *FLETCHER v. FIELDS*

Div. Ct. [1891] 1 Q. B. 790

**87. — Obstruction—Costermongers—Statute—Repeal by implication—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxix.), s. 65—Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 6; 31 & 32 Vict. c. 5, s. 1.**

(A) Sect. 65 of Michael Angelo Taylor's Act, which empowers vestries to proceed summarily against obstructions in streets by barrows, stalls, &c., is impliedly repealed by the Metropolitan Streets Act, 1867. *SUMMERS v. HOLBORN BOARD OF WORKS* — Div. Ct. [1893] 1 Q. B. 612

But see next Case.

(B) Sect. 65 of Michael Angelo Taylor's Act is not repealed as to costermongers by the Metropolitan Streets Act, 1867, s. 6, and the Amendment Act of 1867, s. 1;—

*Held*, also (Kay L.J. dissentiente), that so long as costermongers conform to the police regulations, they could not be interfered with under Michael Angelo Taylor's Act; but if they violated the regulations, they could be proceeded against under that Act, or the Act of 1867. *KEEP v. ST. MARY'S, NEWINGTON.* *AUSTIN v. ST. MARY'S, NEWINGTON* — C. A. [1894] 2 Q. B. 524

**88. — Obstruction—Hanging out articles in front of house—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxix.), s. 65—Metropolitan Management Act, 1855 (18 & 19 Vict. c. 120), s. 119.**

Sect. 65 of Michael Angelo Taylor's Act is not impliedly repealed by s. 119 of the Metropolis Management Act, 1855, as to hanging out articles in front of a house. *WYATT v. GEMS*

Div. Ct. [1893] 2 Q. B. 225

See also preceding Case.

— Offences—Betting in street—Wagering.

See Cases under GAMING.

**89. — Offences—Exposing goods for sale on carriageway—Penalty—Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 60—Metropolitan**

**LONDON (Streets)—continued.**

*Streets Act Amendment Act, 1867 (31 & 32 Vict. c. 5), s. 1—Police Regulations of Dec. 28, 1869.*

Sect. 60, sub-s. 7, of the Metropolitan Police Act, 1839, renders liable to a penalty every person who exposes anything for sale upon any carriage-way or footway so as to cause an annoyance or obstruction in any thoroughfare within the metropolitan police district. By police regulations made under the Metropolitan Streets Act Amendment Act, 1867, and issued on December 28, 1869, costermongers, street hawkers, itinerant traders, and their barrows, carts, and stalls, are made liable to be removed from any street and public way in which they create an obstruction to the traffic or are an annoyance to the inhabitants :—

*Held*, that such regulations did not impliedly repeal s. 60, sub-s. 7, of the Metropolitan Police Act, 1839, nor had they the effect of superseding the penalty imposed by that sub-section.

WANDSWORTH BOARD OF WORKS v. PRETTY

Div. Ct. [1899] 1 Q. B. 1

— Offences—Obstruction in streets.

*See Nos. 86—88, above.*

— Offences—Removal of refuse.

*See Cases under LONDON—Removal of Refuse.*

90. — *Private street—Repair of carriage-road—“Necessary works of repair”—Recovery of expenses—Metropolis Management Amendment Act, 1890 (53 & 54 Vict. c. 66), s. 3.*

Under s. 3 of the Act of 1890, which empowers certain local authorities to execute any necessary works of repair upon carriage-roads, it is for the local authority and not for the magistrate before whom they seek to recover the expenses to decide as to the necessity of the works.

Decision of Div. Ct., [1894] 1 Q. B. 64, affirmed.

STROUD v. WANDSWORTH BOARD OF WORKS

C. A. [1894] 2 Q. B. 1

Referred to by C. A. *Metropolitan District Ry. Co. v. Fulham Vestry*, [1895] 2 Q. B. 443, 447.

91. — *Vesting of streets—Subsoil—Extent of ownership—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 96—Illegal breaking up of street—Mandatory injunction.*

*Held*, that the decision of the House of Lords in *Tunbridge Wells Corporation v. Baird*, [1896] A. C. 434, as to the extent to which the soil of a street is vested in a local authority, under s. 149 of the Public Health Act, 1875, applies to the similar vesting in a local authority under s. 96 of the Metropolis Management Act, 1855, so that the soil of a street is vested in a vestry under s. 96 only so far “as is necessary for the control, protection and maintenance of the street as a highway for public use.”

An electric lighting co. had illegally broken up the surface of a street within the district of a vestry in the metropolis, and placed their pipes and wires at a depth of about 2 ft. below the surface :—

*Held*, that the vestry were not by virtue of s. 96 the owners of the soil of the street at that depth, and that, although the co. had acted illegally in breaking up the street, the vestry

**LONDON (Streets)—continued.**

could not maintain an action for a mandatory injunction to compel the co. to remove their pipes and wires, there being no continuing trespass upon or interference with any right of the vestry.

Decision of JEUNE P. (to whom the above case was not cited) reversed. *ST. MARY, BATTERSEA, VESTRY v. COUNTY OF LONDON AND BRUSH PROVINCIAL ELECTRIC LIGHTING CO.*

C. A. [1899] W. N. 12 (11); [1899] 1 Ch. 474

92. — *Widening streets—Compulsory powers—Compensation—Owner's costs—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxix.), s. 82—Metropolitan Streets Act, 1862 (25 & 26 Vict. c. 102), s. 73.*

Where land has been taken compulsorily, under Michael Angelo Taylor's Act, by the vestry of a metropolitan parish for the purpose of widening a street, and the owner's compensation has been assessed by a jury, he is not entitled to be paid by the vestry his costs of the trial. *REG. v. LONDON JUSTICES (No. 5)*

Div. Ct. [1895] 1 Q. B. 881

93. — *Widening streets—Compulsory powers—Costs of petition for payment of purchase-money—57 Geo. 3, c. xxix.*

The Court has jurisdiction, under s. 5 of the Supreme Court of Judicature Act, 1890, to make a local authority pay the costs incidental to a petition for payment out of court of purchase-money of lands taken under 57 Geo. 3, c. xxix.

The judgment of Chitty J., [1894] 1 Ch. 53, affirmed. *In re FISHER* C. A. [1894] 1 Ch. 450

Referred to by C. A. *In re Wrexham, Mold and Connah's Quay Ry. Co.*, C. A. [1900] 1 Ch. 261, 269.

94. — *Widening streets—Compulsory powers—House—Taking part of—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxix.), s. 80, 82.*

Where the authority having control of the streets in a London district bona fide adjudge that part of a house obstructs the widening of a street, under some circumstances they have authority to take such part, and the owner cannot compel them to take the whole. Per curiam, they can do so when the taking will not involve a substantial alteration of the character and condition of the house, or substantially interfere with the convenience of the occupier, or render it necessary to make structural alterations in order to carry on a different or more limited business than before. *GORDON v. ST. MARY ABBOTS, KENSINGTON*

Div. Ct. [1894] 2 Q. B. 742

Referred to by Kekewich J. *Aldis v. London Corporation*, [1899] 2 Ch. 169, 171. *See next Case.*

95. — *Widening streets—Compulsory powers—House—Taking whole—Part only required—Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), s. 80.*

A local authority requiring part of a house for the purpose of widening a street under Michael Angelo Taylor's Act cannot give notice to treat for and take the whole house against the wishes of the owner, unless they prove that the remainder is useless to him; and this is so, even though the removal of the part actually required would destroy the identity of the house.



**LONDON (Streets)—continued.**

as a house, to such an extent that the owner might have compelled them to take the whole if they had given notice to treat for part only.

**ALDIS v. LONDON CORPORATION**

**Kekewich J. [1899] W. N. 76;**  
[1899] 2 Ch. 169

**96. — Widening street—Power to take part of house—Metropolis Management—Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), ss. 80, 82.**

A vestry requiring part of a house for the purpose of widening a street under Michael Angelo Taylor's Act may be compelled by the owner to take the whole as a condition of taking the part, if the removal of the part will substantially injure the enjoyment of the house in the manner in which it was formerly enjoyed.

So held on the authority of *Gordon v. Vestry of St. Mary Abbots, Kensington*, [1894] 2 Q. B. 742.  
**GIBBON v. PADDINGTON VESTRY**

**Stirling J. [1900] W. N. 180;**  
[1900] 2 Ch. 794

**Tithe.**

*London (City) Tithes Act, 1881—Inclosure &c., Expenses Act, 1868 (31 & 32 Vict. c. 89). Reprint from W. N. 1900 (May 19), pp. 143, 144. See Current Index, 1900, p. xc.*

**University of London.**

See **UNIVERSITY OF LONDON.**

**Unsound Food.**

See **Cases under Food.**

**Vestries.**

**NOTE.—As to Cases relating to places outside the County of London—**

See **VESTRY.**

*Local Government Act, 1894 (56 & 57 Vict. c. 73), alters the qualification for election to vestries and district boards.*

*The Vestrymen and Auditors (London) Election Order, dated March 25, 1898. St. R. & O. 1898, No. 244.*

**97. — Misapplication of rates—Injunction.**

It is illegal for a vestry to spend money out of the rates for the purpose of inducing persons not to pay the charges of a water co. for a fixed bath.  
**ATT.-GEN. v. CAMBERWELL VESTRY**

**North J. [1894] W. N. 163**

But see now **Metropolis Water Act, 1897 (60 & 61 Vict. c. 56), s. 2.**

**98. — Notice of cause of action—Mistake—Sufficiency of Notice—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 106.**

A notice stating a cause of action against a vestry for something done or intended to be done under the **Metropolis Management Act, 1862**, is not invalid within s. 106 of the Act because by mistake the place where the alleged injury occurred is incorrectly given, provided the inaccurate statement is not calculated to deceive the defts.  
**MADDEN v. KENSINGTON VESTRY**

**Div. Ct. [1892] 1 Q. B. 614**

By the **Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 106 of the Metropolis**

**LONDON (Vestries)—continued.**

*Management Act, 1862, was repealed and other provisions substituted.*

— Sewer made without approval of vestry—Liability to repair.

See **LONDON—Sewers. 61.**

**99. — Vestryman's qualification—Rating—Occupation—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 6; 1856 (19 & 20 Vict. c. 112), s. 8.**

A tenant of premises rated at 125*l.* who sublets the greater part and retains for his personal occupation a portion which is over 40*l.* in rateable value, but not separately assessed, is qualified as a vestryman under the Act.

Decision of *Denman J.*, [1892] 1 Q. B. 616, reversed. **GORDON v. WILLIAMSON**

**C. A. [1892] 2 Q. B. 459**

**100. — Vestryman's qualification—Rating—Quo warranto—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 6.**

A quo warranto information will lie in respect of the office of vestryman created by the Act of 1855. A person who occupies and is rated in respect of premises of insufficient value, and also allows himself to be rated in respect of other premises, a club, which he does not occupy, is not qualified as a vestryman under the Act.  
**REG. v. SOUTTER**

**C. A. [1891] 1 Q. B. 57**

By the **Local Government Act, 1894 (56 & 57 Vict. c. 73)**, the provisions of the **Metropolis Management Act, 1855**, as to the qualification of vestrymen were repealed and further provision made.

**Water.**

See **WATER—Supply under Metropolis Water Acts.**

**Water-closets.**

See **WATER-CLOSETS.**

**Other References.**

— Commons—Effect of scheme for regulation under **Metropolitan Commons Act, 1866. See COMMON. 7.**

— Metropolitan police courts—Appeal to quarter sessions—Order for maintenance—Practice.  
See **POOR LAW. 9.**

— Unsound food, Destruction of—Duty of magistrate.  
See **FOOD. 1, 2.**

**LONDON AGENT**—Covenant not to act for clients of master's firm.

See **SOLICITOR—Articled Clerk. 1.**

**LONDON ASSURANCE COMPANY.**

The history of this corporation traced and considered. **ELVE v. BOYTON**

**C. A. [1891] 1 Ch. 501**

Distinguished by *Kekewich J.* In *re Smith*, [1896] 2 Ch. 590.

**LONDON COUNTY COUNCIL (TOWER BRIDGE SOUTHERN APPROACH) ACT, 1895—**

Valuation—Tied public-house.

See **RATES. 31.**

**LORD MAYOR'S COURT.**

See Cases under LONDON — Mayor's Court.

**LORD OF MANOR**—Compensation—Allotment for turbary—Legal estate in land.

See INCLOSURE. 4.

**LOST WILL**—Probate.

See PROBATE—Lost Will.

**LOTS**—Sale by auction—Solicitors' remuneration.

See SOLICITOR—Costs. 60.

**LOTTERY**—"Missing word" competition—Illegal contract—Right of competitors to return of their contribution—Wager—Lottery Act, 1802 (42 Geo. 3, c. 119), s. 1.

A paragraph was published in a newspaper with the last word omitted. Competitors were invited to guess the omitted word, and send it in on a coupon issued with the newspaper, with one shilling. The fund so formed was divisible among the successful guessers. The word chosen was purely arbitrary, and the competition involved no skill.—

*Held*, that the competition was a lottery within 42 Geo. 3, c. 119, and illegal, that the fund was not impressed by any trust which the Court could administer, and *semble* that, notwithstanding the illegality of the competition, the unsuccessful competitors had a right to a return of their contributions, enforceable by action at law. Fund paid out to the newspaper proprietor on terms as to costs. *BARCLAY v. PEARSON*

*Stirling J. [1893] 2 Ch. 154*

**2. — Newspaper—Place used for betting—Lottery Acts, 1802 (42 Geo. 3, c. 119), s. 2; 1823 (4 Geo. 4, c. 60), s. 41.**

The defts. published a newspaper containing coupons to be filled up by purchasers of the paper with the names of the horses selected by the purchasers as likely to come in first, second, third, and fourth in a race. For every coupon filled up after the first the purchaser paid a penny, and the defts. promised a prize of 100*l.* for naming the first four horses correctly:—

*Held*, that the transaction was not a lottery, nor betting, and the defts. were not liable to be convicted either for selling chances in a lottery or for keeping their office as a betting-house. *STODDARD v. SAGAR. SAGAR v. STODDARD*

*Div. Ct. [1895] 2 Q. B. 474*

Referred to by C. A. *Hall v. Cox*, [1899] 1 Q. B. 198, 200.

**3. — Prize competition—Prediction of coming event—Births and deaths in London during named week.**

The deft. published a newspaper containing an offer of a money prize for a correct prediction of the number of births and deaths in London during a named week. Competitors, who were not limited to one prediction, were to fill in the predicted numbers on coupons which were published in the issue of the paper which contained the offer:—

*Held*, that the competition, not being one the result of which depended entirely on chance, was not a lottery. *HALL v. COX*

*C. A. [1899] 1 Q. B. 198*

**LUGGAGE**—Passengers'.

See RAILWAY—Passengers. 25—27.

— Loss of luggage—Free pass by railway and steamer—Conditions of non-liability—Limitation suit.

See SHIPPING. 167.

**LUMP SUM**—Award—Evidence taken on matters not referred—Jurisdiction of arbitrators.

See ARBITRATION—Award. 27.

**LUMPING DEBTS AND SECURITIES**—Proof—Bills of exchange.

See BANKRUPTCY—Proof. 163.

**LUNACY.**

*In General*, col. 1185.

*Actions by and against*, col. 1185.

*Bankruptcy*, col. 1185.

*Charging Order*, col. 1186.

*Contracts*, col. 1187.

*Costs*, col. 1188.

*Custody*, col. 1188.

*Divorce*. See DIVORCE—Lunacy.

*Leases*, col. 1189.

*Lunatic Asylums*, col. 1189.

*Maintenance*, col. 1189.

*Powers*, col. 1193.

*Practice*, col. 1195.

*Receiver*, col. 1197.

*Sales*, col. 1198.

*Scottish Law*. See SCOTTISH LAW—Lunacy.

*Vesting Order*, col. 1199.

*Lunacy Act, 1891 (54 & 55 Vict. c. 65)*, amends the *Lunacy Act, 1890 (53 & 54 Vict. c. 5)*.

*Order dated Jan. 26, 1891, made by the Ld. Chan. with the consent of the Treas. prescribing allowances for subsistence, &c., to Masters and Visitors in Lunacy. St. R. & O. 1891, p. 477.*

*The Rules in Lunacy, 1892, dated Feb. 6, 1892. These Rules came into operation on March 1, 1892. St. R. & O. 1892, p. 594; [1892] W. N. (Appx. of O. & R.) p. 7; St. O. P. Price 4d.*

*Order dated Aug. 11, 1892, as to the taking of fees by Stamps, under s. 148 of the Lunacy Act, 1890. St. R. & O. 1892, p. 628; [1892] W. N. (Appx. of O. & R.) p. 36.*

*"The Rules in Lunacy, 1893," dated June 15, 1893, and coming into operation July 1, 1893. St. R. & O. 1893, p. 432; St. O. P. [1893] W. N. (Appx. of O. & R.) p. 3.*

*Regulations dated April 17, 1895, as to instruments and appliances for the mechanical restraint of lunatics. St. R. & O. 1895, p. 417 (No. 212). Price 4d.*

*Rules dated June 26, 1895, made by the Commrs. in Lunacy with the approval of the Ld. Chan. St. R. & O. 1895, p. 420 (No. 281). Price 2d.*

*County Court Rules (May), 1899, Order v., r. 12b (Person of Unsound Mind Suing); Order VII. A (Appointment of Guardians ad litem). W. N. 1899 (April 29), p. 147; Current Index, 1899, p. xov.*

*Draft rule as to applications for a traverse*

**LUNACY**—*continued.*

and *supersedes and vesting orders.* W. N. 1900 (Aug. 11), p. 298. See *Current Index*, 1900, p. xciii.

**In General.**

- Appointment of receiver—Lunatic—Rights of third parties.  
See **VENDOR AND PURCHASER—Lien.** 55.
- Grant of administration.  
See **PROBATE—Grant of Administration.** 53, 54, 56, 65, 68.
- Justices acting under Lunacy Act—Power to state special case.  
See **JUSTICES.** 15.
- Partner of unsound mind—Interference with business.  
See **INJUNCTION.** 30.
- Petition for order for reception of lunatic—Defamatory statement in particulars—Privilege.  
See **DEFAMATION—Libel.** 17.
- Second grant—Lunacy of single administrator.  
See **PROBATE—Grant of Administration.** 65.
- Sole executrix a lunatic—Grant of administration.  
See **PROBATE—Grant of Administration.** 68.
- Will—Relevancy—Capacity—Insane delusions.  
See **WILL—Relevancy.** 171.

**Actions by and against.**

1. — *Master in Lunacy—Jurisdiction—Leave to bring action in name of lunatic—Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 27.*

A Master in Lunacy has jurisdiction under the Lunacy Act, 1891, s. 27, sub-s. 1, to authorize the committee of a lunatic to bring an action in the name of the lunatic in respect of an alleged breach of trust by the trustees of a will under which the lunatic is a beneficiary. *In re HINCHLIFFE* (No. 2) C. A. [1895] W. N. 147 (6)

— Parties—Trustee in bankruptcy added as defendant to action.  
See No. 3, *below*.

**Bankruptcy.**

2. — *Jurisdiction of Court—Adjudicating lunatic bankrupt—Committee—Title of trustee—Application of lunatic's property—Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), s. 47; 1890 (53 & 54 Vict. c. 71), s. 1—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 117, 120.*

Upon a person being found lunatic, the jurisdiction of the Court in Lunacy immediately attaches to his property, including the discretionary powers vested in the Court by the Lunacy Act, 1890, ss. 117, 120, of applying his property for his benefit, and cannot be ousted by a subsequent adjudication in bankruptcy made without the consent of the Court, even assuming such adjudication to be valid (as to which, *quære*); and therefore the trustee taking the lunatic's property under such an adjudication can only do

**LUNACY (Bankruptcy)**—*continued.*

so subject to the jurisdiction in Lunacy. *In re FARNHAM* (No. 1) — C. A. [1895] 2 Ch. 799

Referred to by Stirling J. *Farnham v. Milward & Co.*, [1895] 2 Ch. 730, 735.

Explained and referred to by C. A. *In re Farnham* (No. 2), [1896] 1 Ch. 836; *In re Clarke*, [1898] 1 Ch. 336, 340.

Referred to by Wright J. [1899] 2 Q. B. 57, 60.

3. — *Parties—Trustee in bankruptcy added as defendant to action—Right of trustee to have action stayed as against him—R. S. C., 1883, Order XVI., r. 17; Order XXV., r. 4—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 117, 120—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 132.*

Where an action has been brought by the committee of a lunatic, and the lunatic is subsequently adjudicated bankrupt, the right of action vests in his trustee in bankruptcy; and if the trustee declines to prosecute the action he cannot be added as a deft. against his will. Where he has been so added, he is entitled to have the action stayed as against him. *FARNHAM v. MILWARD & Co.* Stirling J. [1895] 2 Ch. 730

4. — *Payment into court in the lunacy—Property under control of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 102, sub-s. 2—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 120.*

The Court in Lunacy has no jurisdiction to order the trustee in the bankruptcy of a lunatic to pay into court to the credit of the lunacy moneys in his possession or control, for the purpose of enabling the committee to apply the same for the benefit of the lunatic.

*In re Farnham*, [1895] 2 Ch. 799, explained. *In re FARNHAM* (No. 2) C. A. [1896] 1 Ch. 836

Referred to by C. A. *In re Clarke*, [1898] 1 Ch. 336, 340.

**Charging Order.**

— Enforcing payment of costs.

See **CHARGING ORDER.** 4.

5. — *Funds in court—Administration—Practice.*

The rule of administration in Lunacy that the obligations of a lunatic are postponed to the needs of the lunatic does not affect funds in the High Court.

A judgment creditor of a lunatic obtained a charging order on funds of the lunatic in court. The balance only of the funds, after satisfying the charge, was transferred to Lunacy. *In re BROWN. LLEWELLIN v. BROWN Cozens-Hardy J.* [1900] W. N. 37; [1900] 1 Ch. 489

6. — *Shares—Judgment debt—Form of order—Costs—Maintenance of Lunatic—Scheme.*

A proper scheme for the maintenance of a lunatic having been made by a master, and it being found that the shares in question were not required for his maintenance, a judgment creditor is entitled to enforce his charging order on the shares by sale, notwithstanding that it had been obtained subsequently to the exercise of the jurisdiction of the Court in Lunacy. *In re HUNT* C. A. [1900] 2 Ch. 54, n. 2 Q

**LUNACY (Charging Order)—continued.**

7. — *Validity—Judgment creditors—Priority—Death of lunatic—Judgments Act, 1838* (1 & 2 Vict. c. 110), s. 14; 1840 (3 & 4 Vict. c. 82), s. 1.

The effect of a charging order made in favour of a judgment creditor under the Judgments Act, 1838, does not depend upon the capacity of the judgment debtor to give a valid charge, but upon the validity of the judgment. Creditors of a lunatic whose debts were incurred before the lunacy obtained judgments against him, and also charging orders on a fund in court, which were not in terms enforceable till the death of the lunatic or further order:—

*Held*, that they had a valid charge on the fund in priority to the claims of the lunatic's administratrix. *In re LEAVESLEY*

C. A. [1891] 2 Ch. 1

**Contracts.**

8. — *Capacity to contract—Averment of knowledge of other contracting party—Onus of proof.*

Where a deft. in an action on contract, whether executory or executed, sets up the defence that he was insane when the contract was made, in order to succeed in his defence he must shew that at the time of the contract his insanity was known to the plt. *IMPERIAL LOAN CO. v. STONE*

C. A. [1892] 1 Q. B. 599

9. — *Contract by lunatic before lunacy—Contract executed or executory—Vesting order—Lunacy Act, 1890* (53 & 54 Vict. c. 5), s. 135.

M. by writing agreed to sell leaseholds to A. & B. for a sum of which part was to be paid down, and the balance at the end of five years. Possession was given, and the first payment made. After this M., who resided abroad, was there found lunatic, and a curator appointed with authority to receive the balance. On a petition by the curator and A. & B., an order was made, under s. 135 of the Lunacy Act, 1890, vesting the leaseholds in A. & B.; such order to be dated and drawn up after payment of the balance with interest to the curator. *In re PAGANI. In re PAGANI'S TRUST*

C. A. [1892] 1 Ch. 236

10. — *Contract by lunatic to purchase real estate—Voidable contract—Completion of purchase by committee—Conversion.*

A person of sound mind entered into a contract to purchase real estate: the purchaser was subsequently found by inquisition to be of unsound mind, and a committee of his estate was appointed. The Master in Lunacy directed the committee to complete the purchase, and the purchase-money was provided out of the lunatic's personal estate. The lunatic having died intestate:—

*Held*, that the direction to the committee to complete the purchase amounted to an election by the Lunacy authorities to adopt the voidable contract entered into by the lunatic, and consequently that a conversion had been effected and the estate descended as realty. *BALDWIN v. SMITH*

Byrne J. [1900] W. N. 58; [1900] 1 Ch. 588

**LUNACY—continued.****Costs.**

— Enforcing payment of costs.

See CHARGING ORDER. 4.

11. — *Inquiry—Alleged lunatic found of sound mind—Wife's estate—Appeal—Charging order—Lunacy Act, 1890* (53 & 54 Vict. c. 5), s. 109.

The L.J.J. have authority, under s. 109 of the Lunacy Act, 1890, to direct that the costs of an inquiry into the mental condition of a married woman should be paid out of her separate estate, including costs incurred after the finding that she was of sound mind. Payment of these costs may be enforced by directing a transfer of Consols. Such an order is not a charging order, and is not bound by the procedure laid down in Order XLVI., r. 1 (1). An appeal lies to the C. A. from a decision of the L.J.J. as to costs of an inquiry in Lunacy.

Judgment of the L.J.J. sitting as judges in Lunacy, [1892] 1 Ch. 549, affirmed. *In re CATHCART* (No. 1) — C. A. [1893] 1 Ch. 466

On taxation of the costs, (i.) the shorthand notes of the judgments and (ii.) three counsel were allowed, as the case was of unusual length and difficulty. *In re CATHCART* (No. 2)

C. A. [1893] W. N. 107

— Solicitor—Client alleged lunatic—Pending petition for inquisition—Suppression—Misconduct.

See SOLICITOR—Misconduct. 117.

**Custody.**

12. — *Discharge—Certificate of medical practitioners—Discretion of commissioners—Lunacy Act, 1890* (53 & 54 Vict. c. 5), s. 49.

The Commissioners of Lunacy have a discretion to refuse to order the discharge of a lunatic from detention notwithstanding the production to them of the certificates of two medical practitioners certifying under s. 49 of the Lunacy Act, 1890, that the lunatic may be discharged without risk of injury to himself or the public. *REG. v. LUNACY COMRS.*

Div. Ct. [1897] 1 Q. B. 630

13. — *Foreign country—Person "lawfully detained"—English person lawfully detained abroad—Lunacy Act, 1890* (53 & 54 Vict. c. 5), s. 116, sub-s. 1, cl. (c).

The expression "lawfully detained as a lunatic though not so found by inquisition," as used in s. 116, sub-s. 1, clause (c), of the Lunacy Act, 1890, means "lawfully detained" under the provisions of that Act, i.e., within the jurisdiction; and does not apply to an Englishman detained in a foreign country in accordance with the laws of that country. *In re WATKINS*

C. A. [1896] 2 Ch. 336

NOTE.—The Act of 1890 does not extend to Scotland or Ireland save as expressly provided: see s. 2 of the Act.

14. — *Married woman lunatic—Right of husband to be appointed committee of the person.*

The husband of a lunatic has no absolute right to be appointed committee of her person; the Court has full jurisdiction to do as it may

**LUNACY (Custody)—continued.**

think best for the comfort of the lunatic. *In re DAVY* - - - C. A. [1892] 3 Ch. 38

**Divorce.**

See **DIVORCE—Lunacy.**

**Leases.**

15. — *Power of leasing—Person lawfully detained as lunatic—Person appointed to exercise the powers of a committee over the estate—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 6, 62—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 120.*

The person appointed to act, under s. 116 of the Lunacy Act, 1890, as committee of the estate of a person lawfully detained as a lunatic though not so found by inquisition may by leave of a judge exercise the power of leasing vested in the lunatic as tenant for life under the Settled Land Act, 1882.

*In re Baggs*, [1894] 2 Ch. 416, n., distinguished. *In re SALT*

C. A. [1895] W. N. 156 (5);  
[1896] 1 Ch. 117

**Lunatic Asylums.**

16. — *Rates on asylum—Expenses of pauper lunatics.*

Parochial and other rates charged upon the asylum buildings are payable out of the maintenance account under s. 283 of the Lunacy Act, 1890. *REG. v. DOLBY* (No. 1)

Div. Ct. [1892] 2 Q. B. 301

— *House tax.*

See **REVENUE—House Duty.** 57, 58.

**Maintenance.**

— *Bankruptcy.*

See **LUNACY—Bankruptcy.**

17. — *Charging order—Insufficiency of fund.*

Creditors of a lunatic not so found by inquisition obtained charging orders on a fund in court. The master approved a scheme for the maintenance of the lunatic which would gradually exhaust the capital of the fund:—

*Held*, that a proper allowance should be made for the maintenance of a lunatic, though the effect might be to destroy the creditors' security; and that the creditors were not entitled to impound so much of the capital as was sufficient to satisfy their claims. *In re PLENDERLEITH*

C. A. [1893] 3 Ch. 332

Referred to by C. A. *In re Clarke*, [1898] 1 Ch. 336, 340.

Referred to by Cozens-Hardy J. *In re Brown*, [1900] 1 Ch. 489, 490.

18. — *Common order—Liability of committee of person to account—Form of inquiry.*

The committee of the estate of a lunatic was authorized by an order of March, 1896, in the common form, to pay to the committee of the person 2500*l.* per annum for the lunatic's maintenance; the order also provided for the keeping up of a considerable establishment, and that the committee of the person should be at liberty to

**LUNACY (Maintenance)—continued.**

reside in the lunatic's own house and have the use of the horses, carriages, and other effects of the lunatic. As a matter of convenience to the committee of the person, the allowance was paid quarterly in advance. A quarterly payment of 625*l.* was made on Oct. 29, 1896, and thirteen days afterwards the lunatic died. The executors of the lunatic claimed to be repaid the sum of 528*l.*, being the proportionate part of the quarter's allowance for the period subsequent to the death of the lunatic; or, in the alternative, an inquiry what was properly payable for the maintenance of the lunatic during the thirteen days, and brought an action to enforce this claim:—

*Held*, that, as the lunatic had not been maintained for the whole year, the executors were entitled to receive from the committee of the person such portion of the yearly allowance as had not been properly expended for the purposes of the lunatic; and an inquiry was directed what sum ought to be allowed to the committee of the person during the time the lunatic was maintained, regard being had to the order of March, 1896, with liberty to apply in chambers for any balance that might be found due to the lunatic's estate, and as to costs.

Circumstances under which committees of the person may be called upon to account considered.

*In re Ponsonby*, (1842) 3 D. & War. 27, explained. *STRANGWAYS v. READ*

Romer J. [1898] 2 Ch. 419

19. — *Execution creditor—Priority—Sale—Jurisdiction—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 117, 120.*

The Court in Lunacy will not allow property of a lunatic in its custody to be applied in paying his creditors without first providing for his maintenance; but it has no jurisdiction to interfere with the rights of creditors to seize and sell by legal process property of the lunatic which at the time of seizure is not in the custody of the Court.

The issuing of a summons in lunacy does not withdraw the property of the lunatic from legal process by a creditor until an order is made shewing that the Crown has actually taken the property under its protection.

A judgment creditor of a person not found lunatic by inquisition, after receiving notice of the pendency of a summons in lunacy for the appointment of a receiver under s. 116 of the Lunacy Act, 1890, issued a *f. fa.* under which the goods of the debtor were seized before any order was made upon the summons. A receiver was afterwards appointed while the goods were in the possession of the sheriff:—

*Held*, that the Court had no jurisdiction to order a sale of the goods under s. 117 of the Lunacy Act, 1890, for the maintenance of the alleged lunatic in priority to the claims of the creditor.

*In re Winkle*, [1894] 2 Ch. 519, distinguished. *In re CLARKE* - - - C. A. [1898] 1 Ch. 336

Referred to by Cozens-Hardy J. *In re Brown*, [1900] 1 Ch. 489, 491.

20. — *Judgment creditor—Execution—Receiver—Maintenance of lunatic—Maintenance of wife—*

**LUNACY (Maintenance)—continued.**

*Priorities—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 117—Form of order.*

Where a creditor had obtained judgment and issued execution against a lunatic not so found, and the wife of the lunatic had obtained an order appointing her interim receiver pending a scheme which provided for the maintenance of herself and of the lunatic, and the sheriff had given up possession to her:—

*Held*, that the maintenance of the wife of a lunatic was not provided for by s. 117 of the Act of 1890, and that that provision must be struck out of the scheme. The rights of the execution creditor were subject to the maintenance allowed to the lunatic. But the order must be without prejudice to the rights of the creditor between himself and other creditors notwithstanding that the sheriff had given up possession.

Form of order for maintenance of a lunatic where a judgment creditor has obtained execution. *In re WINKLE* C. A. [1894] 2 Ch. 519

Referred to by North J. *Winkle v. Bailey*, [1897] 1 Ch. 123, 127.

Distinguished by C. A. *In re Clarke*, [1898] 1 Ch. 336.

Referred to by Cozens-Hardy J. *In re Brown*, [1900] 1 Ch. 489, 490.

— Pauper—Expenses.

*See COUNTY COUNCIL—Expenses. 4.*

**21. — Pauper lunatic—Application of property—Jurisdiction—Discretion—Person of unsound mind not so found—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 299.**

Sect. 299 of the Lunacy Act, 1890—which enables a justice to order the application to the expenses of maintenance of a lunatic chargeable to any union or local authority of any property of the lunatic more than sufficient to maintain his family, if any—does not affect the jurisdiction of the Court in Lunacy as to the application of the lunatic's property.

A man who was taken in charge as a wandering lunatic, and placed in a pauper lunatic asylum, had in his possession a sum of about 337*l.* His only other property was a 10*l.* share in a co-operative society and some furniture of small value. He had carried on business as a market gardener. He had not been found lunatic by inquisition. He was sixty-four years of age and his wife was sixty. He had a daughter aged twenty, who lived with her mother, and seven grown-up sons, who did not contribute to their mother's support:—

*Held*, that the discretion of the Court as to the application of the lunatic's property would be properly exercised by allowing out of the fund (the capital being used for the purpose) the sum of 26*l.* a year to the guardians as the cost of his maintenance in the asylum, and the sum of 25*l.* a year to the wife, and an order was made accordingly.

*Per V. Williams L.J.*: *Seemle* that, after the making of the order the lunatic would no longer be in the position of a pauper lunatic. *In re TYE* C. A. [1900] W. N. 8; [1900] 1 Ch. 249

**LUNACY (Maintenance)—continued.**

**22. — Pauper—Limitation Act, 1623 (21 Jac. 1, c. 16).**

A lunatic not so found by inquisition was maintained in a pauper lunatic asylum by the guardians of the S. Union for sixteen years prior to her death in 1898. In 1895, the lunatic having become entitled to a fund, a receiver was appointed in Lunacy; and thereupon the guardians gave notice of a claim for past and future maintenance to the Master in Lunacy, who replied that the claim would be borne in mind in dealing with the fund. The fund was, however, not recovered by the Lunacy authorities till after the death of the lunatic, and was afterwards transferred to the Chancery Div. In an action by the guardians against the legal personal representative of the lunatic for arrears of maintenance:—

*Held*, that the plaintiffs were entitled only to six years' arrears from the commencement of the action.

*In re Newbegin's Estate*, (1887) 36 Ch. D. 477, followed.

*Stedman v. Hart*, (1854) Kay, 607, distinguished. *In re WATSON. STAMFORD UNION v. BARTLETT - Stirling J.* [1898] W. N. 154 (5); [1899] 1 Ch. 72

**23. — Pauper—Union in which lunatic has acquired exemption from removal—Order for payment—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 287, 294.**

An order is rightly made by justices *ex parte*, under ss. 287, 294 of the Lunacy Act, 1890, for the maintenance of a pauper lunatic in an asylum by the union in which she had acquired by residence a status of irremovability. *REG. r. BRUCE* Div. Ct. [1892] 2 Q. B. 136

*And see POOR LAW—Settlement. 17.*

**24. — Pauper lunatics, Expenses of—Parochial rates on asylum buildings—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 283.**

Parochial and other rates chargeable on asylum buildings are payable as part of the "expenses of maintenance and other expenses of each pauper lunatic in the asylum," within s. 283 of the Lunacy Act, 1890. *REG. r. DOLBY (No. 1)*

Div. Ct. [1892] 2 Q. B. 301

— Pauper lunatic—Expenses of.

*See COUNTY COUNCIL. 4.*

**25. — Percentage on income of property in Ireland remitted to England for maintenance—Lunacy Regulation (Ireland) Act, 1871 (31 & 35 Vict. c. 22), ss. 109, 114—Lunacy Acts, 1840 (53 & 54 Vict. c. 5), ss. 148, 149; 1891 (54 & 55 Vict. c. 65), s. 27, sub-s. 3—Lunacy Rules, 1892, r. 126.**

A percentage is not payable on the remittance to England of the amount allowed out of property in Ireland by the Court of Lunacy in Ireland (to which a percentage on the clear annual income is paid) for maintenance of a lunatic resident in England, and having English committees. *In re GREHAN - - C. A. (Smith L.J. diss.)* [1895] 2 Ch. 12

**26. — Power of appointment—Release of fund subject to—Dealings with fund inconsistent with**

**LUNACY (Maintenance)—continued.**

*exercise of power—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116 (e), 117, 120, 128.*

The only property of a widow of unsound mind was a life interest in a fund over which she had a power of appointment to children or remoter issue. The income was under that specified in the Lunacy Act, 1890, s. 116 (e), and insufficient for her support. Her son, the only person entitled in default of appointment, applied to raise money for her maintenance out of capital.

The Court, though unable to release the power, remitted the application to the master, with an intimation that the order might be made without prejudice to any question which might arise if the lunatic appointed. *In re HIRST*

C. A. [1892] W. N. 177

**Powers.**

27. — *Attachment—Writ of—Compulsory order for examination—Jurisdiction of master—Lunacy Acts, 1890 (53 & 54 Vict. c. 5), s. 94, sub-s. 2; 1891 (54 & 55 Vict. c. 65), s. 26, Sched.*

A master who is holding an inquisition in Lunacy has power to order a writ of attachment to issue against an alleged lunatic for the purpose of enforcing his attendance, but as a matter of convenience and discretion it is more desirable that he should refer such matters to the L.J.J. sitting in open Court. *Lunacy Act, 1891, s. 26, sub-s. 2. In re B—(No. 2)*

C. A. [1892] 1 Ch. 459

— *Curator bonis—Discretion of Court to refuse cognition.*

See SCOTTISH LAW—Lunacy. 26.

28. — *Examination, Application for—Opposition by alleged lunatic—Petition for inquiry—Pending proceedings—Master in Lunacy.*

An order to examine an alleged lunatic against his will can be made by a master, and, if necessary, by the Court, but no such order should be made adversely to a person, pending a petition, unless the master or other person conducting the inquiry inform the Court that such an order is necessary to enable him to come to a decision. Whether a master can enforce such an order when made by him in a case where there is no jury, *quære. In re B—(No. 1)*

C. A. [1891] 3 Ch. 274

Referred to by C. A. *In re B—(No. 2)*, [1892] 1 Ch. 459, 461.

29. — *Foreign lunatic entitled to real estate in England—Application for inquiry into state of mind—Jurisdiction—Practice.*

Princess Soltykoff was born in the United States in 1860. She married a Russian prince who died in 1893. After his death she bought an estate at Slough. In 1896 she became lunatic while residing in Paris, and was found a lunatic there, and a committee of her person and estate was appointed by the proper French authority. The estate at Slough was vacant, and owing to the lunacy could not be let. An application was now made by her brother for an inquiry into her state of mind with a view to the Slough estate being managed under the jurisdiction in lunacy. The French committee approved of the proceeding, but did not join in the application as

**LUNACY (Powers)—continued.**

he was advised in France that the heir-at-law had a better locus standi. The Court of Appeal directed the applicant to apply to the French committee to join in the application, which would remove some of the difficulties which their Lordships felt, and intimated that if this amendment were made they would do what they could for the applicants, the case not to be restored to the paper, but to go before the judge attending to lunacy. *In re PRINCESS SOLTYKOFF*

C. A. [1898] W. N. 77 (5)

30. — *Jurisdiction—Conditional devise to lunatic—Resettlement of lunatic's estate—Election—Performance of condition by committee—Statute De Prerogativa Regis (17 Edw. 2, c. 10)—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 108, sub-s. 2; ss. 117, 120, 124.*

A lunatic can accept a devise imposing an onerous condition if it be for his benefit so to do.

In considering whether or not it is for the benefit of a lunatic to comply with a condition, the Court should act for the lunatic as if he were a person of sound mind and guided by reasonable motives.

The main purpose of the Act De Prerogativa Regis is to preserve the lands and tenements of a lunatic, and the provision therein restricting alienation ought not to be construed as prohibiting the Court from giving up, on behalf of a lunatic, an interest in his real estate in order thereby to preserve or to acquire for him a larger and more beneficial interest.

The jurisdiction of the Court in Lunacy is not confined to the cases enumerated in the Lunacy Act, 1890, and the specific provisions in Part IV. of the Act are enabling and not restrictive clauses.

The object of s. 124 of the Act is to remove any possible doubt as to the jurisdiction of the Court to order subsidiary acts to be done when exercising its statutory jurisdiction.

A lunatic entitled to a base fee in estate C. had other lands of value devised to him for life with remainder to his issue in tail on condition that he should within a certain period resettle estate C. to the uses of the devised estates.

In the opinion of the Court it was for the benefit of the lunatic that the condition should be performed :—

*Held*, that although the statutory powers conferred by the Lunacy Act, 1890, did not in terms authorize the Court to direct the committee of the lunatic's estate to elect on behalf of the lunatic in such a case, the Court in Lunacy had under its general jurisdiction power to direct the committee to perform the condition on his behalf and to resettle estate C., and under the circumstances ought to exercise such power, notwithstanding that the resettlement of estate C. would cut down the interest of the lunatic therein. *In re EARL OF SEFTON*

C. A. [1898] 2 Ch. 378

31. — *Reception order—Jurisdiction of justice Pauper lunatic—Workhouse situate outside union—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 56—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 14, 24.*

By s. 14 of the Lunacy Act, 1890, provision

**LUNACY (Powers)—continued.**

is made for bringing paupers who are lunatics and proper to be sent to an asylum before "a justice having jurisdiction in the place where the pauper resides." A pauper who was chargeable to a union became a lunatic while residing in the workhouse infirmary, which was situate outside the boundaries of the union:—

*Held*, that a justice having jurisdiction in the union to which the workhouse belonged had power to deal with the case, since s. 56 of the Poor Law Amendment Act, 1844, applied, and the workhouse must, therefore, be considered as situated in the parish to which the lunatic was chargeable. *REG. v. BELL*

Div. Ct. [1900] 2 Q. B. 391

— Partition—Lunatic out of jurisdiction—Conveyance.

See PARTITION. 9.

**32. — Settlement of stock—Order authorizing persons to exercise power of appointment of trustees on lunatic's behalf and vesting in named appointees right to call for transfer—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 128, 129, 142—Costs.**

There is jurisdiction under ss. 128, 129 of the Lunacy Act, 1890, to make an order authorizing the committee of a lunatic to appoint as trustees named persons, and to vest in such appointees the right to call for a transfer. The power of appointment is a fiduciary power. Where the settlement comprises bank annuities there should be for the guidance of the Bank something in the nature of a certificate by the master of the exercise of the deed of appointment. The Court declined to order the Bank to pay the costs of the application. *In re SHORTRIDGE*

C. A. [1895] 1 Ch. 278

Referred to by C. A. *In re C. M. G., Spinster*, [1898] 2 Ch. 324, 328.

**Practice.**

— Actions by and against lunatics.

See LUNACY—Actions by and against.

— Costs.

See LUNACY—Costs.

— Foreign lunatic—English property—Curator—Right to sue in England—Order of foreign Court—Maintenance.

See CONFLICT OF LAWS. 7.

**33. — Inspection—Reports of "Chancery visitors"—Lunatic not so found—Evidence—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 184, 185, 186—Costs.**

Reports made by Chancery visitors under s. 184 of the Lunacy Act, 1890, should be destroyed on the death of the lunatic, and even if not destroyed they cannot be used as evidence. e.g., as to the testamentary capacity of the alleged lunatic. *ROE v. NIX*

Barnes J. and L.J.J. [1893] P. 55

**34. — Inspection—Reports of medical men—Right of alleged lunatic to see report—Proof of witness to be called—Lunacy Acts, 1890 (53 & 54 Vict. c. 5), s. 94; 1891 (54 & 55 Vict. c. 65), s. 26, sub-s. 2.**

A doctor, after examining the alleged lunatic, under s. 26 of the Lunacy Act, 1891, made a

**LUNACY (Practice)—continued.**

report which the alleged lunatic claimed a right to see:—

*Held*, that the report was in the nature of a proof of the evidence which the witness was prepared to give at the hearing, and was as much privileged from inspection by the other side as the proof of any other witness's evidence. *In re B—(No. 3) — C. A. [1892] 3 Ch. 194*

**35. — Inspection of documents—Privilege.**

No one is allowed to inspect documents in the custody of the Court in Lunacy without an order of one of the masters or of a judge in Lunacy. Inspection of the reports made to the Court by its own medical advisers is never permitted. But, with this exception, liberty to inspect documents will be given to any person who can satisfy the master or a judge that he wants it for a reasonable and proper purpose, provided that the lunatic, if living, is not injured thereby. After the death of the lunatic, the general rule is to allow inspection to any person claiming an interest in his property who can satisfy the Court as above mentioned. As a matter of law, privilege is no bar to inspection in Lunacy. Inspection will not be permitted to a litigating party who applies for it before the trial of the litigation in order to find out his adversary's case. The doctrine of privilege and the principles applicable to inspection discussed and explained. *In re STRACHAN*

C. A. [1895] 1 Ch. 439

Referred to by Stirling J. *Goldstone v. Williams, Deacon & Co.*, [1899] 1 Ch. 47, 54.

**36. — Payment out of Court—Foreign subject—Lunatic ward of Foreign Court entitled to fund in Court in this country—Jurisdiction.**

An application was made by a lady who had been found a lunatic by the Royal Bavarian Court, and had been made a ward of that Court on that ground, by her next friend, who was a judge of that Court, that a fund standing to her credit in the Chancery Div. and representing the share to which she was entitled under her parents' marriage settlement might be paid out to the deposit commission of the Bavarian Court. The deposit commission (which consisted of the above-mentioned judge and another official) was attached to the Court for the purpose of taking charge of the funds of its wards and of giving receipts for the same. The lunatic was the daughter of a German father and an English mother, and she and her nearest living relatives were domiciled German subjects:—

*Held*, that the Court had jurisdiction to make an order for payment out of the fund, and that the order ought to be made.

*In re Barlow's Will*, (1887) 36 Ch. D. 287, distinguished. *In re DE LINDEN. In re SPURRIER'S SETTLEMENT. DE HAYN v. GARLAND* Stirling J. [1897] 1 Ch. 453

Followed by Kekewich J. *In re Chatard's Settlement*, [1899] 1 Ch. 712, 718; *Thiery v. Chalmers, Guthrie & Co.*, [1900] 1 Ch. 80.

**37. — Payment to tuteur—Foreign domicil—Foreign Court—Declaration of lunacy—Tuteur of estate—Money in English bank.**

Where there has been a foreign judicial de-



**LUNACY (Practice)—continued.**

claration of the status of lunacy of a lunatic resident and domiciled abroad, and the tuteur of the estate appointed in pursuance of that declaration is entitled under the foreign law to take possession thereof, and to give valid discharges for all moneys, stocks, funds, and securities forming part thereof, an application by the lunatic and the tuteur for the transfer or payment of the lunatic's English property to the tuteur may be and generally ought to be granted, and that whether the property is a trust fund under the control of the Court or is merely a debt due to the estate.

*In re Brown*, [1895] 2 Ch. 666, and *In re De Linden*, [1897] 1 Ch. 453, followed.

*Didisheim v. London and Westminster Bank*, [1899] W. N. 107; 43 Sol. J. 642; 81 L. T. 108, distinguished. [This case was reversed by C. A. [1900] 2 Ch. 15. See CONFLICT OF LAWS. 2.]

*Semble*, the tuteur may apply in his own name without joining the lunatic. *THIERY v. CHALMERS, GUTHRIE & Co.* - *Kekewich J.* [1900] 1 Ch. 80

— Respondent a person of unsound mind.—No appearance to citation — Appointing guardian ad litem.

See DIVORCE. 9.

**Receiver.**

38. — *Dividends—Mental infirmity—Title of order—Lunacy Acts*, 1890, 1891 (53 & 54 Vict. c. 5, ss. 108, 116, 146, 333; 54 & 55 Vict. c. 65, s. 27, sub-s. 4)—*Rules in Lunacy*, 1892, Sched. Form 1 (c).

The judge or Master in Lunacy has jurisdiction under s. 46 of the Act of 1890 to make an order appointing a receiver of dividends on stock standing in the Bank of England in the name of a person incapable "through mental infirmity arising from disease or age," and the Bank may safely act on such an order; but as it is unusual to appoint a receiver of dividends on bank stock, the better course is to bring the stock into court. Such an order should not be entitled "in Lunacy." *In re BROWN*

C. A. [1894] 3 Ch. 412

39. — *Order appointing receiver—Person of unsound mind not so found—Person "lawfully detained"—Expiry of period of detention—Effect of—Lunacy Act*, 1890 (53 & 54 Vict. c. 5), s. 116, sub-s. 1 (c).

An order made by a Master in Lunacy under s. 116, sub-s. 1 (c), appointing a receiver and manager of the property of a person of unsound mind not so found, who at the date of the order was "lawfully detained" under a reception order, does not necessarily come to an end when the reception order expires and the person to whom it refers ceases to be lawfully detained; but a further order of the Court is required to discharge it, and the Court will not make such order unless satisfied that the person in question is no longer subject to the delusions which may have led to the detention. *In re B. A. S.*

C. A. [1898] 2 Ch. 392

40. — *Pauper lunatic—Guardians levying distress—Receiver in Lunacy—Lunacy Act*, 1890 (53 & 54 Vict. c. 5), s. 299.

Where a receiver in Lunacy of funds of a

**LUNACY (Receiver)—continued.**

lunatic in a pauper asylum had been appointed, an injunction was granted to restrain the guardians from levying a distress against trustees of the fund to enforce a magisterial order for payment of the fund to the guardians.

Sub-s. 2 of s. 299 of the Lunacy Act, 1890, operates only as a discharge to trustees of a lunatic's property; and *In re Newbegin's Estate*, (1887) 36 Ch. D. 477, is not an authority that a magistrate's order under sub-s. 1 in respect of property in the hands of the trustees cannot be enforced. *WINKLE v. BAILEY*

North J. [1896] W. N. 175 (11); [1897] 1 Ch. 123

**Sales.**

41. — *Consideration—Perpetual rent-charge—Sale of lunatic's real estate—Lunacy Act*, 1890 (53 & 54 Vict. c. 5), ss. 117, 120.

Under ss. 117, 120 of the Lunacy Act, 1890, the Court has power to sanction the sale of a lunatic's estate in consideration of a perpetual rent-charge, and will exercise such power if satisfied that sale will be for the benefit of the lunatic. *In re WARE* - C. A. [1892] 1 Ch. 344

42. — *Consideration of shares in a company, Sale of property in—Jurisdiction—Person of unsound mind not so found—Lunacy Act*, 1890 (53 & 54 Vict. c. 5), s. 117.

There is no jurisdiction under s. 117 of the Lunacy Act, 1890, to authorize the sale of the property of a lunatic or person of unsound mind in consideration of shares in a co. *In re A. B.*

C. A. [1899] W. N. 233

— Contract by lunatic.

See CASES UNDER LUNACY—Contracts.

— Co-parceners—Tracing title from "purchaser"

— Real estate—Conversion.

See INTESTACY. 1.

43. — *Covenants for title by committee—Conveyance "as beneficial owner"—Lunatic tenant for life—Sale of lunatic's estate under Settled Land Acts—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 7, sub-s. 1 (A)—*Settled Land Act*, 1882 (45 & 46 Vict. c. 38), ss. 3, 4, 20, 55, 62—*Lunacy Act*, 1890 (53 & 54 Vict. c. 5), ss. 120, 122, 124.

Sect. 124 of the Lunacy Act, 1890, enabling the committee of a lunatic on his behalf to execute and do all such assurances and things for giving effect to any order under the Act as the judge directs, must be construed as giving the Court jurisdiction to authorize a committee who is selling the lunatic's property under an order in that behalf, not only to convey the same on his behalf, but also on his behalf to enter into with the purchaser the covenants usual and proper in such a conveyance, including the ordinary covenants for title.

*In re Fox*, (1886) 33 Ch. D. 37, is not a decision that in no case can the Court authorize the committee of a lunatic to enter into any covenants on his behalf. *In re RAY*

C. A. [1896] 1 Ch. 468

— Jurisdiction—Maintenance—Execution creditor—Priority.

See No. 20, above.

**LUNACY (Sales)—continued.**

44. — *Power of sale—Exercise—Tenant for life—Lunatic not so found—Settled Land Act, 1882* (45 & 46 *Vict. c. 38*), ss. 3, 53, 62.

B., a lunatic not so found but lawfully detained, was tenant for life with power to appoint new trustees, but with no power of sale:—

*Held*, that there was no jurisdiction to authorize a sale. *In re BAGGS*

L.J.J. [1894] 2 Ch. 416, n.

Distinguished by C. A. *In re X.*, [1894] 2 Ch. 415, 419; *In re Salt*, [1896] 1 Ch. 117.

Referred to by C. A. *In re Shortridge*, [1895] 1 Ch. 278, 284.

45. — *Power of sale vested by settlement in tenant for life—Order authorizing exercise of power—Lunacy Act, 1890* (53 & 54 *Vict. c. 5*), ss. 116, 120, 128.

Where a person incapable of managing his affairs within s. 116, sub-s. 1 (d), of the Lunacy Act, 1890, had a power of sale over settled estates of which he was tenant for life:—

*Held*, that the Court had jurisdiction under ss. 120, 128 to authorize a sale by a person authorized under ss. 116, 120 to receive the rents, &c., of such estates. *In re X.* C. A. [1894] 2 Ch. 415

**Scottish Law.**

See SCOTTISH LAW—Lunacy.

**Vesting Order.**

*Vesting orders to be by summons unless the judge or master directs a petition.* See W. N. 1900 (Aug. 11), p. 229. See *Current Index, 1900*, p. xciii.

46. — *Foreign curator—Lunatic resident out of jurisdiction—English stocks and shares—Transfer, Order for—“Vested”—Discretion—Maintenance of lunatic—Lunacy Act, 1890* (53 & 54 *Vict. c. 5*), ss. 134, 341.

The foreign curator of the property and person of a lunatic resident out of the jurisdiction is not entitled as of right to an order under s. 134 of the Lunacy Act, 1890, for the transfer to him of English stocks or shares standing in the name of the lunatic, although “vested” in the curator under that section. The Court has, under that section and its general jurisdiction in Lunacy over the personal property of a lunatic, a discretion as to making or refusing the order, and, therefore, as a condition for obtaining the order, the curator must first satisfy the Court by evidence that the property is required for the maintenance or other purposes of the lunatic.

*In re Brown*, [1895] 2 Ch. 666, considered. *In re KNIGHT* — C. A. [1898] 1 Ch. 257

Referred to by Kekewich J. *In re Chatard's Settlement*, [1899] 1 Ch. 712, 718.

47. — *Jurisdiction of master—Appointment of person to exercise power of appointing new trustees—Lunacy Acts, 1890* (53 & 54 *Vict. c. 5*), s. 116, sub-s. 1 (c), 2; ss. 128, 129, 135; 1891 (54 & 55 *Vict. c. 65*), s. 27, sub-s. 1.

By virtue of s. 27, sub-s. 1, of the Lunacy Act, 1891, a Master in Lunacy when, under s. 128 of the Lunacy Act, 1890, appointing a person to exercise a power of appointing new trustees which is vested in a person lawfully detained as a

**LUNACY (Vesting Order)—continued.**

lunatic, has jurisdiction also, under s. 129, to make an order vesting the trust property in the new trustees when appointed. *In re FULLER*

C. A. [1900] W. N. 170; [1900] 2 Ch. 551

Distinguished by C. A. *In re Langdale*, [1900] W. N. 248. See [1901] 1 Ch. 3. *Next Case.*

48. — *Jurisdiction of master—Trust property—Lunacy Act, 1890* (53 & 54 *Vict. c. 5*), ss. 116–130, 136; 1891 (54 & 55 *Vict. c. 65*), s. 27, sub-s. 1.

A Master in Lunacy has not jurisdiction to make a vesting order as to trust property which, new trustees having been already appointed, remains vested in the old trustees, one of whom is a lunatic. A vesting order in such a case is not part of the administration or management of the lunatic's estate within s. 27, sub-s. 1, of the Lunacy Act, 1891, which confers jurisdiction on a master.

*In re Fuller*, [1900] 2 Ch. 551, distinguished. *In re LANGDALE* — C. A. [1900] W. N. 248; see [1901] 1 Ch. 3

— Partition—Lunatic out of jurisdiction—Conveyance.

See PARTITION. 9.

49. — *Transfer of Consols—Form of order—Lunatic sole trustee—Stock—Lunacy Act, 1890* (53 & 54 *Vict. c. 5*), s. 136, sub-s. 1, 4; ss. 137, 142.

A person of unsound mind not so found being sole trustee of a sum of Consols, the Judge in Lunacy, upon the application of A. B., made an order under the Acts of 1890 and 1891, that the right to call for a transfer of, and to transfer into his own name the Consols standing in the name of the lunatic, and to receive the dividends thereon, should vest in A. B., and that he should transfer the Consols into his own name to be held by him upon the trusts applicable thereon. The Bank of England refused to act upon an order in this form upon the ground that under s. 137 of the Lunacy Act of 1890 some proper officer of the bank should have been appointed to make the transfer:—

*Held*, that the order made by the Judge in Lunacy was right, and that the bank must act upon it, and must allow the Consols to be transferred accordingly.

*In re Gregson*, [1893] 3 Ch. 233, approved.

*Per Chitty L.J.*: The 137th section of the Lunacy Act, 1890, applies, so far as the 136th is concerned, only to sub-s. 4 thereof. *In re C. M. G.* — C. A. [1898] 2 Ch. 324

50. — *Trustee—Lunatic trustee—Appointment of new trustees—Jurisdiction—Practice—Lunacy Act, 1890* (53 & 54 *Vict. c. 5*), ss. 116–119, 133–143, 342—*Trustee Act, 1893* (56 & 57 *Vict. c. 53*), ss. 25–41.

The High Court has jurisdiction under the Trustee Act, 1893, to appoint a new trustee in the place of a sole surviving trustee who is a lunatic not so found.

The High Court has not jurisdiction in such a case to make a vesting order.

*Semble*, where a vesting order is required, resort should be had to the Lunacy jurisdiction. *In re M.* — Stirling J. [1899] 1 Ch. 79

**LUNACY (Vesting Order)—continued.**

51. — *Trustee—Reduction of number of trustees—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 135, 136.*

Where one of four trustees had been found lunatic by inquisition, the Court made an order vesting the trust estate in the three remaining trustees. *In re LEON* - C. A. [1892] 1 Ch. 348

— Trustees, apportionment of new — Lunatic trustee.

See **TRUSTEE—Vesting Order.** 107.

52. — *Victoria, Colony of—Person resident abroad—"Vested"—Transfer to Master in Lunacy in Victoria—Jurisdiction—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 134—Victoria Lunacy Act, 1890 (54 Vict. No. 1113), ss. 3, 124, 130, 131, 182, 229.*

B. resident in Victoria was declared lunatic by the Supreme Court, and the Master in Lunacy was appointed to manage her property, which

**LUNACY (Vesting Order)—continued.**

consisted of English stocks standing in her name:—

*Held*, that the Court in Lunacy in England had jurisdiction to order a transfer of the stock to the Master in Lunacy in Victoria, and being satisfied that all the stock was required for B.'s support and maintenance made the order prefaced with a statement that the stock was "vested" in the master within the meaning of s. 134 of the Lunacy Act, 1890. "Vested" in that section includes the right to obtain and deal with, without being actual owner of the lunatic's personal estate. *In re BROWN* - C. A. [1895] 2 Ch. 666

Discussed by Stirling J. *In re De Linden*, [1897] 1 Ch. 453, 457.

Considered by C. A. *In re Knight*, [1898] 1 Ch. 257.

Followed by Kekewich J. *In re Chatard's Settlement*, [1899] 1 Ch. 712, 718; *Thiery v. Chalmers, Guthrie & Co.*, [1900] 1 Ch. 80.

## M.

- MACHINERY** — dangerous and defective — Employers' liability.  
See Cases under MASTER AND SERVANT.
- Examination of in coal mine.  
See MINES—Coal Mines. 4.
- Mortgage of.  
See BILL OF SALE. 38—40.
- Trade — Mortgage — Non-registration — Invalidity.  
See BILL OF SALE. 44.
- MADAGASCAR**—Consular Court.  
See FOREIGN JURISDICTION. 2.
- MAGISTRATES.**  
See JUSTICES.
- MAINTENANCE**—Death of objects of fund—Unapplied surplus—Resulting trust for subscribers.  
See TRUST. 5.
- Divorce—Practice.  
See Cases under DIVORCE.
- Husband and wife.  
See Cases under HUSBAND AND WIFE.
- Infant.  
See Cases under INFANT—Maintenance.  
WILL—Advancement.  
WILL—Children.
- Lunatic.  
See LUNACY—Maintenance.
- Pauper.  
See Cases under POOR LAW.
- School.  
See CHARITY—Charity Commissioners. 13.
- Undischarged bankrupt.  
See Cases under BANKRUPTCY—Undischarged Bankrupt.
- Wilful refusal or neglect of person to maintain himself—Incapacity resulting from drunkenness.  
See VAGRANCY. 2.
- MAINTENANCE OF SECURITY.**  
See BILL OF SALE. 24, 26.
- MAINTENANCE OF SUIT.**  
See Cases under SOLICITOR—Champerty.
- MAJORITY**—Owners of ship.  
See SHIPPING—Sale. 214.
- Power to bind minority of debenture-holders.  
See COMPANY—Debentures. 66—68.
- Shareholders.  
See COMPANY—WINDING-up—Voluntary. 241.
- MALICE**—*Allegation of malice.*  
(A) A right of action cannot be extended by alleging malice where without malice there would be no cause of action. *CHAFFERS v. GOLDSMID* Per Wills J. [1894] 1 Q. B. 186 at p. 191  
(B) No use of property which would be legal if due to a proper motive can become illegal
- MALICE**—*continued.*  
because it is prompted by a motive which is improper or malicious. *BRADFORD CORPORATION v. PICKLES* - - H. L. (E.) [1895] A. C. 587  
See dictum of Lord Shand. *Allen v. Flood*, [1898] A. C. 1, 167.
- Libel.  
See Cases under DEFAMATION—Libel.
- Maliciously inducing employer to discharge servant—intent to injure.  
See ACTION. 1.
- MALICIOUS ARREST.**  
See SHIPPING—Arrest. 6.
- MALICIOUS DAMAGE.**  
See CRIMINAL LAW—Malicious Damage.
- MALICIOUS PROSECUTION** — Corporation — Action against—Liability.  
Conceded at the bar that an action for malicious prosecution will lie against a corporation.  
Decision of Darling J., [1899] W. N. 8 (4); [1899] 1 Q. B. 392, affirmed. *CORNFORD v. CARLTON BANK LD.*  
C. A. [1899] W. N. 211; [1900] 1 Q. B. 22
2. — Criminal proceeding — Tramway Company—Proceedings against passenger for refusing to pay fare.  
Proceedings under s. 51 of the Tramways Act, 1870, against a passenger for refusing to pay his fare are proceedings in respect of a criminal offence, so that an action for malicious prosecution will lie against the person taking them. *RAYSON v. SOUTH LONDON TRAMWAYS CO.*  
C. A. [1893] 2 Q. B. 304
- Mens rea—Statutory offence.  
See NEW SOUTH WALES. 29.
3. — Reasonable and probable cause—Honest belief of prosecutor—Evidence of malice.  
Held, the absence of reasonable and probable cause is some evidence from which malice may be inferred. But a finding by a jury that the debt, in an action for malicious prosecution honestly believed in the guilt charged by him will negative any inference which depended solely on such evidence. In the absence of any other evidence of indirect motive, a finding of the jury that the debt was actuated by malice cannot be supported. *BROWN v. HAWKES*  
C. A. [1891] 2 Q. B. 718
- "MALICIOUSLY."**  
See ACTION. 1, 4.  
CRIMINAL LAW—Practice. 61.  
DEFAMATION—Libel, *passim*.
- MALTA.**  
O. in C. relative to validity of unmixed and mixed marriages in Malta. Parl. Papers, 1896, [C. 7982]. Price 3d.  
Appeals from Malta—O. in C. dated Dec. 18, 1824, for regulating appeals to Her Majesty in Council from the decisions of the Supreme Council of Justice at Malta. St. R. & O. 1899, p. 1688.

**MALTA**—*continued.*

1. — *Primogenitura* — Presumption that prescribed Order of Succession is "regular."

The presumption of Maltese law is in favour of a primogenitura of lands in Malta being "regular," so as in each line of descent to admit female in default of male issue of the last holder in that line, in preference to male collaterals descended from a common ancestor:—

*Held*, also, the natural construction of the deed of primogenitura, executed in 1702, was to the same effect. *SCBERRAS TRIGONA v. SCBERRAS D'AMICO*. P. C. [1892] A. C. 69

**MANAGEMENT**—Of charity.

See CHARITY—Management.

— Company.

See COMPANY—Management.

— Railway.

See RAILWAY—Management.

**MANAGER**—Bank.

See BANKER. 5.

— Bankruptcy practice.

See BANKRUPTCY—Manager.

— Discharge of receiver and manager—Final account—Right to indemnity.

See RECEIVER—Discharge. 26.

— Managing director — Servant — Preferential payments in bankruptcy.

See COMPANY—Directors. 114.

— Foreclosure.

See RECEIVER—Mortgage. 30.

MORTGAGE—Foreclosure.

— Preference — Private Manager — Pledge — Trust for creditors—Right in security.

See BANKRUPTCY. 158.

— Receiver and.

See RECEIVER—Manager.

— Receiver and—Borrowing powers.

See COMPANY. 1.

— Salary—Extra work done by receiver—Allowances—Guarantee society

See PARTNERSHIP. 42.

— Syndicate for speculation in shares—Power of manager.

See NATAL. 3.

**MANAGER IN TRUST**—The words "manager in trust" appended to the signature of a bank manager primarily import that he is a trustee for his employers, and not that he stands in a fiduciary position to any other person. *LONDON AND CANADIAN LOAN AND AGENCY Co. v. DUGGAN*. P. C. [1893] A. C. 506

**MANAGING CLERK** — Audience, Right of — Solicitor.

See COUNTY COURT—Practice. 65.

— Jury—Exemption.

See CORONER. 3.

**MANAGING OWNER**—Ship.

See SHIPPING—Managing Owner.

**MANCHESTER**—*Manchester Canonries Act, 1899* (62 & 63 Vict. c. 28), amends s. 20 of the *Parish of Manchester Division Act, 1850* (13 & 14 Vict. c. 41)—Application of proceeds of sale of canons' houses.

Notice to the District Registrars of the High

**MANCHESTER**—*continued.*

Court at Liverpool and. W. N. 1900 (Dec. 22), p. 337. See *Current Index, 1900*, p. xciv.

— Manchester Ship Canal (Surplus Lands) Act, 1893—Illegality of contract.

See CONTRACT. 24.

**MANDAMUS** — Alternative remedy — Legal remedy—Duty of guardians to appoint vaccination officer.

See VACCINATION. 3.

1. — *Mandamus* — Alternative Remedy — Scheme under Endowed Schools Act, 1869 (32 & 33 Vict. c. 56) — Construction — Jurisdiction of Charity Commissioners.

A scheme, made under the Endowed Schools Act, 1869, for the management of Christ's Hospital School provides that a certain number of the Council of Almoners shall be appointed by the governors of the school on the nomination of the London School Board; and, by clause 143, that "any question affecting the regularity or the validity of any proceeding under this scheme shall be determined conclusively by the Charity Commrs." Upon an application by the school board for a mandamus to compel the Charity Commrs. to decide a question which had arisen between the school board and the governors—namely, whether a lady could under the scheme be appointed an almoner:—

*Held*, that the mandamus ought not to issue.

By Wright and Bruce J.J. on the ground that the applicants had alternative convenient and effectual remedies—namely, by proceedings to have the question decided under the Charitable Trusts Act, 1853, s. 28, or by action against the governors in the ordinary courts:

By Wright J., also on the ground that the question which the Charity Commrs. were asked to decide was not a question affecting the regularity or the validity of any proceeding under the scheme within the meaning of clause 143. *REG. v. CHARITY COMMRS.*

Div. Ct. [1897] 1 Q. B. 407

— Building plans—Refusal to approve.

See STREETS—Building Plans. 9.

— County Council—Troops summoned to preserve the peace—Expenses of maintenance—Liability.

See COUNTY COUNCIL. 9.

— Footpath—Bridge.

See RAILWAY. 56.

— Illegal stoppage of pension.

See POLICE. 3.

— Inspection of register of unclaimed stock.

See BANK OF ENGLAND. 1.

2. — *Lands Clauses Act*—Arbitration—Award.

A prerogative writ of mandamus will be granted to compel a ry. co. to take up an award of compensation when made under the Lands Clauses Act. *REG. v. LONDON AND NORTH-WESTERN Ry. Co.* Div. Ct. [1894] 2 Q. B. 512

— Licensing Acts.

See Cases under LICENSING ACTS.

3. — *Licensing Acts*—Justices—Hearing and determination according to law—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 4.

By 9 Geo. 4, c. 61, s. 4, licensing justices at

**MANDAMUS—continued.**

special transfer sessions have power to license persons, "intending to keep inns theretofore kept by other persons being about to remove from such inns," to sell exciseable liquors by retail. Justices, acting under that section, granted a licence by way of transfer from a person who was not and had not been in occupation of the premises in respect of which he held it, and no exciseable liquors had been sold upon those premises for many years:—

*Held*, that as the justices had disregarded the provisions of the statute giving them jurisdiction, and must have acted upon some considerations altogether outside that statute, they had not heard and determined the matter according to law, and that a mandamus ought to go commanding them so to hear and determine it. *Reg. v. COTHAM* Div. Ct. [1898] 1 Q. B. 802

Referred to by Div. Ct. *Reg. v. Manchester Justices*, [1899] 1 Q. B. 571, 576; *Mackrell v. Brentford Justices*, [1900] 2 Q. B. 387, 390.

4. — *Prosecutor—Legal right to apply for mandamus—Vaccination Acts, 1867 to 1874—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76)—General Order of Local Government Board under Vaccination Acts (Oct. 31, 1874).*

A metropolitan district board of works applied for a mandamus to the guardians of the poor of the district, commanding them to enforce the provisions of the Vaccination Acts generally in their district, and particularly in certain specified instances. The board of works were the sanitary authority of the district, and charged by the Public Health (London) Act, 1891, with the duty of putting in force the powers vested in them relating to public health and local government, some of which powers relate to and include the prevention of infectious diseases, including small-pox:—

*Held*, that the board of works had no legal specific right to enforce the performance by the guardians of their duties under the Vaccination Acts, and therefore were not entitled to a mandamus. *Reg. v. LEWISHAM UNION*

Div. Ct. [1897] 1 Q. B. 498

5. — *Refusal to receive evidence properly tendered—Jurisdiction—Paving expenses.*

On the hearing of a summons against an owner to enforce payment of his apportioned share, under s. 77 of the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), of the expenses of paving a new street, a magistrate declined to hear that the alleged amount had not been actually expended, or that it included other than paving expenses:—

*Held*, (1) upon the construction of the statute, that the evidence was legally admissible; (2) that in rejecting it the magistrate had declined jurisdiction over a distinct branch of the inquiry open before him, and that the appropriate remedy was by mandamus to hear and determine the matter of the complaint. *Reg. v. MARSHAM*

C. A. [1892] 1 Q. B. 371

Explained by C. A. *Stroud v. Wandsworth Board of Works*, [1894] 2 Q. B. 1.

Referred to by C. A. *Metropolitan District Ry. Co. v. Fulham Vestry*, [1895] 2 Q. B. 443, 448.

**MANDAMUS—continued.**

6. — *Royal warrant—Secretary of State for War—Pay and retiring allowances—Army Act, 1881 (44 & 45 Vict. c. 58), s. 136.*

A mandamus will not lie against the Secretary of State for War to compel him to carry out the terms of a royal warrant regulating the pay and retiring allowances of the officers and soldiers of the army, inasmuch as no legal duty towards such officers and soldiers is imposed upon the Secretary of State either by statute or at common law, and his position is merely that of agent to the Crown, and he is only liable to answer to the Crown. *Reg. v. SECRETARY OF STATE FOR WAR*

C. A. [1891] 2 Q. B. 326

7. — *Second application after discharge of first—Fresh materials.*

The Court will not grant a second rule for a prerogative writ of mandamus where the first has been discharged, even though a demand and refusal have taken place since the discharge of the first. *Reg. v. BODMIN JUSTICES*

Div. Ct. [1892] 2 Q. B. 21

— Separation order—Maintenance—Reduction of—Discretion of justices.

*See HUSBAND AND WIFE—Summary Jurisdiction.* 92A.

— Sewers—Duty of local authority to make—Remedy for default.

*See SEWERS.* 2.

— To enforce judgment—Delay in commencement of action—Retrospective rate.

*See RATES.* 68.

**MANDATORY INJUNCTION.**

*See Cases under INJUNCTION.*

**MANITOBA—Law of Manitoba.**

*See Cases under CANADA.*

**MANOR—Common.**

*See COMMON.*

— Customary obligation to repair—Breach of obligation by tenant—Remedy of lord against tenant's executors.

*See COPYHOLD.* 3.

— Mines—Reservation of—Working powers—Manorial rights.

*See INCLOSURE.* 3.

— Right to seize without the manor—Heriot.

*See COPYHOLD.* 5.

**MANSION-HOUSE—Settled Land Acts.**

*See SETTLED LAND—Mansion-house.*

**MANSLAUGHTER.**

*See Cases under CRIMINAL LAW.*

**MANUSCRIPT**—Inspection of original—Libel in newspaper.

*See DISCOVERY.* 24.

**MAORI—Will of Maori.**

*See NEW ZEALAND.* 10.

**MAP.**

*See COPYRIGHT—Book.* 4.

*CRIMINAL LAW—Evidence.* 21.

**MARGARINE.**

*See ADULTERATION—Margarine.*

**MARGARINE, AND MARGARINE CHEESE, ENGLAND.]** *Order of Loc. Govt. Bd., dated Feb. 26,*

**MARGARINE—continued.**

1900, as to registration of manufactories and of premises of wholesale dealers in margarine and margarine cheese. *St. R. & O.* 1900, No. 123.

**MARINE INSURANCE.**

See *INSURANCE—Marine.*

**MARITAL COERCION—New Zealand Criminal Code.**

See *NEW ZEALAND.* 4.

**MARITIME LIEN.**

See *Cases under SHIPPING—Lien.*

**MARKETS AND FAIRS.**

*Markets and Fairs (Weighing of Cattle) Act, 1891 (54 & 55 Vict. c. 70), amends the Markets and Fairs (Weighing of Cattle) Act, 1887 (50 & 51 Vict. c. 27).*

*The Markets and Fairs (Weighing of Cattle) Returns (England) Order, 1896, dated Dec. 27, 1895. St. R. & O. 1895, No. 598. Price ½d.*

—Borough franchise—Occupiers of stalls.

See *PARLIAMENT—Franchise.* 138.

1. —By-laws—*Ultra vires*—Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 42 —Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 32, sub-s. 2.

The Diseases of Animals Act, 1894, s. 32, sub-s. 2, incorporated with the said Act the Markets and Fairs Clauses Act, 1847, and s. 42 of the latter Act provides that the undertakers (authorized by the special Act to regulate a market or fair) may, from time to time, make such by-laws as they think fit (*inter alia*) "For regulating the use of the market-place and fair, and the buildings, stalls, pens, and standings therein; and for preventing nuisances or obstructions therein, or in the immediate approaches thereto."

A local authority purporting to act in the exercise of the powers of the above Acts made a by-law to the effect that sale-rings at a public market belonging to it should not "be used for private sales, or for sales to any limited number of persons, or for sales in which any class of the public are excluded from bidding or buying":—

*Held*, affirming the decision of Ct. of Sess. (1899) 1 F. 665; 36 S. L. R. 458 (Lord Shand dissenting), that the by-law was not *ultra vires*. *SCOTT v. GLASGOW CORPORATION*

*H. L. (Sc.) [1899] W. N. 119; [1899] A. C. 470*

—Cattle market—Charges—Special Act.

See *LIVERPOOL COURTS.* 3.

—Pedlar selling in market.

See *PEDLAR.*

2. —Sale within prescribed limits—Licensed hawkers—Exemption—Sale by licensed hawkers of goods for which licence unnecessary—Penalty—Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 13.

A licensed hawkers, although he is selling goods for which a hawkers licence is not required, is "a licensed hawkers" within the meaning of s. 13 of the Markets and Fairs Clauses Act, 1847, and, therefore, is not liable to the penalty imposed by the Act upon every person "other than a licensed hawkers" who, after the market-place is open for public use, sells within the prescribed limits articles in respect of which

**MARKETS AND FAIRS—continued.**

tolls are by the special Act authorized to be taken in the market. *LLANDUDNO URBAN DISTRICT COUNCIL v. HUGHES* Div. Ct. [1900] W. N. 26; [1900] 1 Q. B. 472

3. —Statutory market—Disturbance—Liability to penalty—Sale of cattle—Derogation from grant—Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 13—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 166.

A cattle salesman occupied premises under leases granted by a municipal corporation with covenants for quiet enjoyment, and used the premises for the sale of cattle. The corporation, after the grant of the leases, acting as urban authority, established a cattle market in the borough, and published a list of tolls. The salesman was convicted of selling cattle on the said premises, which were within the borough, but not within the limits of the market:—

*Held*, (1) that the creation of the borough market was not a derogation from the grant of the leases; (2) that the leases gave no right to sell cattle within s. 166 of the Public Health Act, 1875, with which the corporation could not interfere by establishing a market; (3) that the salesman was liable to a penalty under s. 13 of the Markets and Fairs Clauses Act, 1847. *SPURLING v. BANTOFT* - Div. Ct. [1891] 2 Q. B. 384

4. —Statutory market—Rival market—Infringement.

The plts. held a cattle market under the Birmingham Corporation Consolidated Act, 1883, s. 90 whereof imposed a penalty on any person for selling, &c., any animal "except in some market or fair lawfully authorized or in his own dwelling-house, shop, or place of business," or in those of the intended buyer. Six pig-dealers in Birmingham formed an association, and opened premises there for the sale of pigs. The premises consisted of a yard roofed with glass and divided into pens, a caretaker's house, and a room for the use of the public. Each of the six dealers rented a portion of the pens, &c., for the use of his business:—

*Held*, that the premises did not come within the above exception, that the plts.' statutory rights were being infringed, and an injunction granted. *BIRMINGHAM CORPORATION v. FOSTER*

*Romer J. [1894] W. N. 43*

And see *PEDLAR.*

**MARKET GARDEN.**

By the Market Gardeners' Compensation Act, 1895 (58 & 59 Vict. c. 27), the law as to compensation for improvements executed in or upon market gardens was amended.

—Breach of covenant in agricultural lease—Glass-houses.

See *LANDLORD AND TENANT—Agricultural Holdings.* 10.

—Compensation—Market gardener—"Contract of tenancy."

See *LANDLORD AND TENANT—Agricultural Holdings.* 5.

—Rating—"Agricultural land"—"Buildings"—Glass-houses.

See *RATES.* 34.

**MARKET OVERT**—Sale in show-room above shop—*Custom of City of London.*

Jewels were sold to a jeweller in the City of London in a show-room over his shop which customers were allowed to enter only by special invitation :—

*Held*, that the sale was not a sale in market overt in accordance with the custom of the City of London.

*Seem*, that that custom does not apply where the shopkeeper is the purchaser and not the seller. *HARGREAVE v. SPINK.*

*Wills J. [1892] 1 Q. B. 25*

*See Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).*

## MARKETABLE SECURITY.

*See REVENUE—Stamps. 175.*

## MARRIAGE.

*By the Foreign Marriage Act, 1891 (54 & 55 Vict. c. 74), the Foreign Marriage Acts were amended. [This Act was repealed by that of 1892 (55 & 56 Vict. c. 23).]*

*Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), consolidates the law as to marriages of British subjects abroad.*

*Marriage Act, 1898 (61 & 62 Vict. c. 58), amends the law relating to the attendance of Registrars at marriages in Nonconformist places of worship.*

*Marriages Validity Act, 1899 (62 & 63 Vict. c. 27), removes doubts as to the validity of certain marriages.*

*Rules and Regs. under Marriage Act, 1898 (61 & 62 Vict. c. 58), for guidance of Authorized Persons and of Trustees or Governing Bodies of Registered Buildings in which Marriages may be solemnized without the presence of a Registrar. Made by the Registrar-General, Feb. 21, 1899. Approved by Loc. Govt. Bd., Feb. 22, 1899. St. R. & O. 1899, pp. 885, 913, Nos. 77, 78. Price 2½d. and 1d.*

— In Burma—Evidence of validity.

*See DIVORCE. 82.*

— Colonial marriage—Evidence of validity.

*See DIVORCE. 80.*

— Condition—Will.

*See WILL—Condition. 139.*

— Consular marriage—Consular marriage in France—Frenchman and Englishwoman—Validity of ceremony.

*See CONFLICT OF LAWS. 10.*

— Deceased wife's sister—Settlement—Illegality.

*See SETTLEMENT. 31.*

— Divorce.

*See Cases under DIVORCE.*

— Domicil—Conflict of laws.

*See Cases under DOMICIL.*

— Effect of—Joint tenancy—Severance.

*See JOINT TENANCY. 2.*

— International law.

*See Cases under CONFLICT OF LAWS, DOMICIL, and INTERNATIONAL LAW.*

— Ireland—Marriage in Protestant Episcopal Church—Certificate—Proof of marriage—Evidence.

*See IRELAND. 2.*

## MARRIAGE—continued.

— Remarriage—Gift to son and his wife and children in succession—Remarriage of son after date of will.

*See WILL—Marriage. 141.*

— Remarriage—Guardianship—Protestant parents—Mother surviving—Sole guardian—Roman Catholic husband.

*See INFANT. 14.*

— Remarriage—Widow—Gifts over accelerated.

*See WILL—Forfeiture. 91.*

— Restraint on marriage.

*See Cases under WILL—Marriage.*

— Revocation of will by—Change of domicile.

*See CONFLICT OF LAWS. 16.*

1. — *Validity—Capacity to contract—Domiciled British subjects—Jews—Prohibited degrees of consanguinity—Solemnization according to Jewish rites—Lex domicilii—Marriage Acts, 1835 (5 & 6 Will. 4, c. 54), s. 2; 1836 (6 & 7 Will. 4, c. 85), s. 2; 1840 (3 & 4 Vict. c. 72), s. 5.*

The capacity of persons professing the Jewish religion who are also domiciled British subjects to contract marriage is regulated by the law of England.

Therefore, where a marriage was solemnized abroad according to Jewish rites between a niece and her maternal uncle, both the contracting parties being at the time of the solemnization domiciled British subjects and adherents of the Jewish faith, and the marriage being valid by the Jewish law :—

*Held*, that the marriage was invalid. *In re DE WILTON. DE WILTON v. MONTEFIORE [1890] W. N. 163; [1900] 2 Ch. 481*

2. — *Validity—Solemnization by clergyman of the Established Church on board a British warship without licence or banns—Subsequent adultery—Dissolution of marriage.*

A marriage between British subjects, solemnized on board an English man-of-war at a foreign station by a clergyman of the Established Church without licence or banns, is valid.

The petitioner, an officer in Her Majesty's army, was married in 1884 to the respondent, also a British subject, on board one of Her Majesty's ships, then lying at Limasol, in Cyprus, where the petitioner was stationed. The ceremony was performed by the chaplain of the vessel, a clergyman of the Established Church. There had been no publication of banns, and no licence had been obtained :—

*Held*, that there had been a valid marriage according to the common law of this country, and that, upon proof of the respondent's adultery, the petitioner was entitled to a decree nisi for dissolution of the marriage. *CULLING v. CULLING*

*[1896] P. 116*

**MARRIAGE CONTRACT**—Promise by wife's father to leave her "a share" of his estate—Specific performance.

*See HUSBAND AND WIFE. 37.*

— Scottish marriage contract.

*See Cases under SCOTTISH LAW—Husband and Wife.*

## MARRIAGE SETTLEMENT.

*See Cases under SETTLEMENT.*



**MARRIED WOMAN.**

See HUSBAND AND WIFE.

**MARSH LANDS**—Depreciation of—Waste by tenant for life—Damages.

See SETTLED LAND. 89.

**MARSHALLING.**

See EXECUTOR—Administration. 9.

CHARITY—Gift to Charity. 24.

— Assets—Bottomry—Necessaries.

See SHIPPING—Necessaries. 178.

— Mortgage estate — Pecuniary legatee and annuitants—Priorities.

See WILL. 147.

— Redemption of two properties.

See MORTGAGE—Redemption. 65.

— Will—Debts and legacies.

See WILL—Charge of Debts, &c. 33.

**MASTER**—Jurisdiction of—Regulation of railways.

See RAILWAY. 47.

— Master in Lunacy—Powers and jurisdiction.

See LUNACY—Powers. 27, 28.

— Note of registrar of—Evidence—Proceedings in chambers.

See DIVORCE. 3.

**MASTER AND SEAMAN.**

See Cases under SHIPPING—Seamen.

**MASTER AND SERVANT.**

*Conciliation Act, 1896 (59 & 60 Vict. c. 30), makes better provision for the prevention and settlement of trade disputes.*

*Truck Act, 1896 (59 & 60 Vict. c. 44), amends the Truck Acts, 1831 and 1887.*

*Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), amends the law as to compensation to workmen for accidental injuries.*

WORKMEN'S COMPENSATION ACT, 1897.] *Workmen's Compensation Rules, 1898, dated May 27, 1898. W. N. 1898 (June 18), p. 213. See Current Index, 1898, p. cix.*

*Appeals under. See W. N. 1898 (July 9), p. 253; (Aug. 13), p. 279. See Current Index, 1898, p. cvii.*

*Fees under—County Courts. See W. N. 1898 (Dec. 17), p. 407. See Current Index, 1898, p. cxxxix.*

MEDICAL REFEREES.] *Regulations, dated May 2, 1898, made by Secy. of State and the Treasury as to Appointment and Payment of Medical Referees in England and Wales. W. N. 1898 (June 25), p. 239. See Current Index, 1898, p. cxxxix.*

*Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37)—Costs, &c.—The Workmen's Compensation Rules, September 1st, 1899. W. N. 1899 (Sept. 9), p. 271. See Current Index, 1899, p. cxxviii.*

AGRICULTURE.] *Workmen's Compensation Act, 1900 (63 & 64 Vict. c. 22), extends the benefits of the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), to workmen in agriculture.*

*In General, col. 1214.*

*Compensation, col. 1214.*

*Compromise. See COMPROMISE.*

**MASTER AND SERVANT**—continued.

*Contract, col. 1233.*

*Dismissal, col. 1234.*

*Factory Acts, col. 1234.*

*Hiring, col. 1237.*

*Intimidation, col. 1238.*

*Master's Liability, col. 1238.*

*Practice, col. 1244.*

*Trade Secrets, col. 1247.*

*Truck, col. 1248.*

**In General.**

— Director—Exclusive right to services.

See COMPANY—Directors. 102.

— Maliciously inducing employer to discharge—Interference with trade.

See ACTION. 1.

— Managing director of a company—Preferential payments in bankruptcy — "Clerk or servant."

See COMPANY—Directors. 114.

— Policy of insurance against accident—Stamp duty.

See REVENUE—Stamps. 164.

— Railway servants.

See RAILWAY—Railway Servants.

— Receipt — Money received by servant on account of master and handed over to fellow-servant — Acknowledgment of receipt by fellow-servant.

See REVENUE—Stamps. 178.

— Scottish law.

See SCOTTISH LAW—Master and Servant.

— Seamen.

See Cases under SHIPPING—Seaman.

— Service franchise—Registration of voters.

See PARLIAMENT—Franchise. 121—137.

— Shops.

See Cases under SHOP.

— Stamps—"Policy of insurance against accident"—Workmen's compensation.

See REVENUE—Stamps. 164.

**Compensation.**

1. — "Accident"—Injury by accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

The word "accident," as used in the Workmen's Compensation Act, 1897, involves the idea of something fortuitous and unexpected.

Where a workman suffers injury while doing his ordinary work in his ordinary way, and the primary and efficient cause of the injury is his diseased or impaired physical condition at the time, the injury is not caused by accident within the meaning of the Act. Where, however, injury is caused to a workman by some fortuitous and external event, it is caused by accident within the meaning of the Act, although the injury may be aggravated by his physical condition at the time of the accident. *HENSEY v. WHITE. LLOYD v. SUGG & Co. WALKER v. LILLESALL COAL Co. C. A. [1900] 1 Q. B. 481*

**MASTER AND SERVANT (Compensation)—**  
*continued.*

2. — *Building—Construction or repair—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7.

The House reversed the decision of the C. A., [1899] 1 Q. B. 1018, and restored the award of the county court judge, the respondents to pay the appellant her costs here and below, to be taxed in the manner usual when the appellant sues in formâ pauperis, Lords Shand and Lindley dissenting. *HODDINOTT v. NEWTON, CHAMBERS & Co.* — **H. L. (E.) [1900] W. N. 269**

See also *Maude v. Brook*, [1900] 1 Q. B. 575, 578.

— Building constructed by means of a scaffolding. See Nos. 41, 42, below.

3. — *Building—Height of—Personal injury to workman—Construction or repair—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

A building, which measured twenty-eight feet in height from the ground to the parapet and thirty-six feet to the ridge of the roof, was erected as stables for an omnibus company. Six months after its completion and after the commencement of its use as stables the company employed a firm of ironmasters to strengthen the building by introducing iron stays which were fastened to the girders and the upright iron columns supporting the building. A workman in the employ of the ironmasters, while standing inside the building at a height of eight feet from the ground upon a structure composed of scaffold boards resting on ledgers secured to the iron columns and supported in the middle by trestles, fell while lifting one of the iron stays and received injuries which proved fatal:—

*Held*, that the building was a building exceeding thirty feet in height within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897; that for the purposes of that section it was immaterial whether the scaffolding was inside or outside the building; but that the building was not being "constructed or repaired," and that therefore the employment was not "an employment on, in or about a building which exceeds thirty feet in height and is either being constructed or repaired by means of a scaffolding," within the meaning of that section. *HODDINOTT v. NEWTON, CHAMBERS & Co.*

**C. A. [1899] 1 Q. B. 1018**

Referred to by C. A. *Maude v. Brook*, [1900] 1 Q. B. 575, 578.

4. — *Building exceeding thirty feet in height—Employment—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

Internal communication between a building over thirty feet high and an adjoining building less than that height, coupled with the fact that the same business is carried on in both buildings, is not evidence to justify a finding that the lower building is a part of the higher and that a workman injured while engaged in demolishing the lower building is employed on the demolition of a building exceeding thirty feet in height within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897. *RIXSON v. PRITCHARD & RENWICK* — **C. A. [1900] 1 Q. B. 800**

**MASTER AND SERVANT (Compensation)—**  
*continued.*

5. — *Building exceeding thirty feet in height—Personal injury by accident—Employment—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1; s. 7, sub-s. 1.

Where an accident happens to a workman employed on, in, or about a building in the course of construction which, although intended when completed to exceed thirty feet in height, does not at the time of the accident exceed that height, the Workmen's Compensation Act, 1897, does not apply. *BILLINGS v. HOLLOWAY*

**C. A. [1899] 1 Q. B. 70; [1898] W. N. 159 (8)**

6. — *Building not exceeding thirty feet in height—Machinery—Compensation for injury by accident—Employment—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

The Workmen's Compensation Act, 1897, applies to employment on, in, or about a building on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof, although the building does not exceed thirty feet in height. *MELLOR v. TOMKINSON & Co.* — **C. A. [1899] W. N. 8 (2); [1899] 1 Q. B. 374**

7. — *Building repaired by means of a "scaffolding"—"Repairs"—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

The outside of a house, more than thirty feet high, was being painted by workmen using ladders for the purpose; one of the men was killed by the breaking of the rung of the ladder on which he was standing. There was a board, one end of which was tied to a rung of one of the ladders, the other end resting on the sill of a window:—

*Held*, that the house was not being constructed or repaired by means of a scaffolding, and that the Act did not apply.

Painting the outside of a house is not "repair," nor are ladders "scaffolding" within the meaning of the above section. *WOOD v. WALSH & SONS* — **C. A. [1899] W. N. 35 (8); [1899] 1 Q. B. 1009**

Referred to by C. A. *Maude v. Brook*, [1900] 1 Q. B. 575, 581.

Distinguished by C. A. *Mason v. A. R. Dean, Ltd.*, [1900] 1 Q. B. 770, 773.

8. — *Contractor—Independent contractor—Plumber—Negligence—Liability of employer—Dangerous work on highway—Collateral negligence.*

The defendants, a telephone co., were lawfully engaged in laying telephone wires along a street. They passed the wires through tubes which they laid in a trench under the level of the pavement. The defendants contracted with a plumber to connect these tubes at the joints with lead and solder to the satisfaction of the defendants' foreman at the sum of 12s. per joint. There was evidence that the work was done by the plumber under the supervision of the defendants' foreman, and that one of their men was assisting him in it. In order to make the connections between the tubes, it was necessary to obtain a flare from a benzoline lamp, which could not be done without the application of heat to the lamp. The lamp used for the purpose was

**MASTER AND SERVANT (Compensation) —**  
*continued.*

provided with a safety-valve. The plumber, for the purpose of obtaining the necessary flare, dipped the lamp into a caldron of melted solder, which was placed over a fire on the footway for the purpose of the work, and which was unprotected by any screen or tent. Dipping the lamp into the solder would have been a proper and usual mode of obtaining the flare provided the lamp had been in good order. The safety-valve of the lamp not being in working order, as the plumber ought to have known, the lamp exploded, with the result that the plt. who was passing on the highway was splashed by the molten solder and thereby injured. In an action by him against the defts. in the City of London Court for damages in respect of the injuries so occasioned to him, the deputy judge held that the plumber was not doing the work as an independent contractor, but under the defts.' supervision and control, and that the defts. were responsible for his negligence as above mentioned. —

*Held* (reversing the Div. Ct., [1899] 1 Q. B. 221), that the judgment of the deputy judge was right on the grounds, first, that there was evidence that the defts. and the plumber were jointly engaged in the performance of the work under such circumstances as to render the defts. liable for the negligence of which the plumber had been guilty; and, secondly, that, even if the plumber were an independent contractor, the defts., having authorized the performance upon a highway of work, which from its nature was likely to involve danger to persons using the highway, were bound to take care that those who executed the work for them did not negligently cause injury to such persons. *HOLLIDAY v. NATIONAL TELEPHONE CO.*

C. A. [1899] W. N. 119; [1899] 2 Q. B. 392

9. — “*Dependants*”—*Workmen's Compensation Act, 1897* (60 & 61 *Vict. c. 37*), s. 7, sub-s. 2.

*Held*, that, in order to bring himself within the Act as a “*dependant*,” an applicant for compensation must shew that he was to some extent dependent upon the earnings of the deceased workman for the ordinary necessities of life, having regard to his class and position in life; it is insufficient that he merely derived pecuniary benefit from such earnings. Whether an applicant is in that sense a dependant is a question of fact in each particular case. *SIMMONS v. WHITE BROTHERS* — C. A. [1899] W. N. 32 (2); [1899] 1 Q. B. 1005

Discussed by H. L. (E.) *Main Colliery Co. v. Davies*, [1900] A. C. 358.

10. — *Dependants—Evidence of dependency on child's earnings—Standard of living—Workmen's Compensation Act, 1897* (60 & 61 *Vict. c. 37*), s. 7, sub-s. 2.

A father earning wages may be in part dependent upon the earnings of his child within the meaning of the *Workmen's Compensation Act, 1897*, and there is evidence upon which the father may be found to be in fact so dependent and to be entitled to compensation for the death of the child, where it is proved that the child contributed to the family wages fund, that the

**MASTER AND SERVANT (Compensation) —**  
*continued.*

father received the contribution and spent it in maintaining himself and his family.

Whether there is dependency is entirely a question of fact in each case, irrespective of the standard of living in the neighbourhood or the class to which the family belong. The Act sets up no such standard; the actual means of living and expenditure need alone be regarded. (See the judgments of Earl of Halsbury L.C. and Lord Davey; *Lord Shand contra.*)

*Simmons v. White Brothers*, [1899] 1 Q. B. 1005, discussed. *MAIN COLLIERY CO. v. DAVIES*

H. L. (E.) [1900] A. C. 358

— *Dependants, Investment for benefit of.*

*See No. 30, below.*

11. — *Dock—Loading from—Employment on, in or about a factory—Machinery to which any provision of the Factory Acts applies—Steam-winch on ship in dock loading from lighter alongside—Factory and Workshop Act, 1895* (58 & 59 *Vict. c. 37*), s. 23—*Workmen's Compensation Act, 1897* (60 & 61 *Vict. c. 37*), s. 7.

By s. 7, sub-s. 2, of the *Workmen's Compensation Act, 1897*, “*factory* . . . includes any . . . machinery or plant to which any provision of the *Factory Acts* is applied by the *Factory and Workshop Act, 1895*.”

By s. 23, sub-s. 1, of the *Factory and Workshop Act, 1895*, certain provisions of the *Factory Acts* are to have effect “as if every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process . . . were included in the word *factory*.”

A stevedore's labourer sustained injury by an accident while employed on board a steamer lying in dock in loading cargo on to the steamer from a lighter lying alongside; the cargo was lifted out of the lighter and lowered into the hold by means of a steam-winch on the ship's deck:—

*Held*, that loading from the lighter into the ship was not loading from the dock; that the steam-winch was not a factory, it not being machinery used in the process of loading from a dock, wharf, quay or warehouse within the meaning of s. 23 of the *Factory and Workshop Act, 1895*, and that the workman was not entitled to compensation under the *Workmen's Compensation Act, 1897*. *HENNESSEY v. McCABE*

C. A. [1900] 1 Q. B. 491

Followed by C. A. *Spencer v. Livett, Frank & Son*, [1900] 1 Q. B. 498, 501. *See next Case.*

12. — *Dock—Repairs done to ship in dock—“Factory”—“Shipbuilding yard”—“Premises in which ships are made, finished or repaired”—Workmen's Compensation Act, 1897* (60 & 61 *Vict. c. 37*), s. 7—*Factory and Workshop Act, 1878* (41 & 42 *Vict. c. 16*), s. 93, *Sched. IV., Part II.* (24).

The fact that repairs are being done to a ship in a dock does not make the dock a “*shipbuilding yard*” within the meaning of the *Factory and Workshop Act, 1878, Sched. IV., Part II.* (24), and therefore a “*factory*” within the mean-

**MASTER AND SERVANT (Compensation)—**  
*continued.*

ing of s. 7 of the Workmen's Compensation Act, 1897. *SPENCER v. LIVETT, FRANK & SON*

C. A. [1900] W. N. 34; [1900] 1 Q. B. 498

13. — *Amount of compensation—Review of weekly payment—Workmen's Compensation Act 1897 (60 & 61 Vict. c. 37), Sched. I., clause 12.*

An application under Sched. I., clause 12, of the Workmen's Compensation Act, 1897, for the review of a weekly payment cannot be entertained, where there has been no change in the circumstances of the case since the weekly payment was awarded.

*Per A. L. Smith and Romer L.JJ. (V. Williams L.J. doubting). CROSSFIELD & SONS, LD. v. TANIAN* — C. A. [1900] 2 Q. B. 629

14. — *Amount of compensation—Weekly earnings—Accident causing injury—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clauses 1 (b), 2.*

Sched. I., clause 2, of the Workmen's Compensation Act, 1897, which provides that in fixing the amount of a weekly payment regard is to be had to the difference between the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, does not operate so as necessarily to cut down the maximum rate of compensation allowed by clause 1 (b) of the schedule. *ILLINGWORTH v. WALMSLEY*

C. A. [1900] 2 Q. B. 142

15. — *Earnings—Average weekly earnings—Alteration of character of employment and rate of pay—Accident to workman—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., 1 (b).*

A workman was employed for a period of twelve months by the same employer. During that period the character of his employment was altered and the amount of his wages increased. At the end of the twelve months he met with an accident which partially incapacitated him:—

*Held*, that the change in the character of the employment did not affect the compensation to which he was entitled under the first schedule to the Workmen's Compensation Act, 1897, which should be arrived at from his average weekly earnings during the whole of the previous twelve months. *PRICE v. J. MARSDEN & SONS*

C. A. [1899] 1 Q. B. 493

16. — *Earnings—Average weekly earnings—Break in employment—Injury to workman resulting in death—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 1 (a), (i).*

A workman met with an accident which incapacitated him from work for eleven months; he then went back to work with the same master, being employed on a different class of work and at lower wages. About eighteen months after resuming work he met with a fatal accident arising out of and in the course of his employment:—

*Held*, that in ascertaining the workman's average weekly earnings for the purpose of assessing the compensation payable to his dependants under Sched. I., clause 1 (a), (i), of the Workmen's Compensation Act, 1897, regard could only be had to the period of employment between his

**MASTER AND SERVANT (Compensation)—**  
*continued.*

return to work and the date of the accident, and that, this period being less than three years, the amount of compensation was 156 times his average weekly earnings during that period. *APPLEBY v. HORSELEY CO.* C. A. [1899] 2 Q. B. 521

17. — *Earnings—Average weekly earnings—Break in employment—Strike—Personal injury by accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 1 (b).*

A workman was employed by a firm of coal-owners from Oct. 3, 1897, to March 31, 1898, when the workman went out on strike and the contract of employment was duly determined by notice. He remained on strike for five months, and on Sept. 12, 1898, again entered the service of the same employers under a fresh contract of employment containing different terms; on Oct. 3, 1898, he was injured by an accident arising out of and in the course of his employment:—

*Held*, that the period of employment contemplated by Sched. I., clause 1 (b), was a substantially continuous employment during which the relation of master and servant substantially existed between the employer and workman, and that therefore, in ascertaining the workman's average weekly earnings, regard could only be had to the period of employment between the end of the strike and the date of the accident, the employment before the strike having been duly determined by the act of the parties. *JONES v. OCEAN COAL CO.* — [1899] 2 Q. B. 124

18. — *Earnings—Average weekly earnings—Continuous employment—Employment for two days a week—Earnings outside employment—Work for same or other employers—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), 1st Sched. (1), (b).*

A workman was under an agreement to work for his employers on the nights of Thursday and Friday in each week, for a period extending over two weeks, and at a fixed rate of wages for each night. During the rest of each week he worked at times for the same employers, when they had work to give him, and at other times for other firms carrying on a similar business to that of the employers. The workman was injured during the third week of his employment under the agreement. He claimed compensation, and an award was made in his favour based on the weekly wages earned by him in respect of the two nights a week during which he worked under the agreement. On appeal:—

*Held*, that the employment for two nights a week was a continuous one, and that the earnings on those two nights were properly taken into account in determining the weekly payment to be made to the applicant:—

*Held*, also, that the amount received for casual work done for the same or different employers could not be taken into account in estimating the average weekly earnings of the applicant. *HATHAWAY v. ARGUS PRINTING CO.*

C. A. [1900] W. N. 247; see [1901] 1 Q. B. 96

19. — *Earnings—Average weekly earnings—Deductions from wages—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), 1st Sched. (1) (a).*

The application was made by the widow of a

**MASTER AND SERVANT (Compensation) — continued.**

man who met with his death by an accident while working in a colliery. His full wages were 1l. 10s. 11d. a week, but from this sum was deducted 6d. a week for lamp oil supplied by the employers. The award was made on the basis of the wages as they stood without the deduction:—

*Held*, that the principle on which the award was based was correct. **HOUGHTON v. SUTTON HEATH AND LEE GREEN COLLIERIES Co.**

**C. A. [1900] W. N. 256; see [1901] 1 Q. B. 93**

**20. — Earnings — Average weekly earnings before accident — Average amount — Review of weekly payment — Workman able to earn after accident — Apprenticeship — Value of tuition — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), 1st Sched. (2), (12).**

An apprentice sustained an injury to his right hand which prevented his working as a skilled artisan, and the indenture of apprenticeship was cancelled. On an application for compensation under the Workmen's Compensation Act, 1897, he obtained an award of a weekly payment based on his wages for the previous year. He returned to the employment of the same employers as a workman, at weekly wages higher than his wages at the time of the accident, but less than those that would be ordinarily paid to a workman employed on the same class of work, since the injury he had sustained affected his ability to earn full wages. On an application by the employers for the review and termination of the weekly payment, the county court judge dismissed the application, on the ground that the workman was earning less, by a sum equal to the amount of the weekly payment awarded than if he had had the use of his right hand. On appeal:—

*Held*, that, on a review of a weekly payment made by award under the Act, the test to be applied is the difference between the amount of the average earnings before the accident and the average amount which the workman is able to earn after the accident; that in the absence of evidence of advantages incidental to the employment, and capable of being appraised at a money value, the earnings before the accident must be determined by the wages received; that the decision of the county court judge was wrong, and that the weekly payment should be reduced to a nominal sum.

*Semble*, that the value of the tuition given to an apprentice should not be taken into account in arriving at the amount of his average weekly earnings. **POMPHREY v. SOUTHWARK PRESS**

**C. A. [1900] W. N. 256; see [1901] 1 Q. B. 86**

**21. — Earnings of Apprentice — Measure of compensation — Employers' Liability Act (43 & 44 Vict. c. 42), s. 3.**

By the Employers' Liability Act, 1880, s. 3, the amount of compensation recoverable under the Act is limited to a sum equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade, employed during those years in the like employment, and in the district in which the workman is employed.

**MASTER AND SERVANT (Compensation) — continued.**

The plt. was apprenticed to the defts., and received a salary of 1s. a week for the first year, increasing 1s. a week each year. In the fifth year, when he was earning 5s. a week, he was injured, and brought an action to recover compensation under the Act. Evidence was given that at the end of the fifth year, when the plt. would be out of his apprenticeship, he would be able to earn from 14s. to 18s. a week, and the compensation was assessed at 80l.:—

*Held*, that the amount which the plt. could earn when out of his apprenticeship could not be taken into consideration, but only the amount of his actual earnings as an apprentice; and the amount of the judgment must therefore be reduced. **NOEL v. REDBUTH FOUNDRY Co.**

**[1896] 1 Q. B. 453**

**22. — Emergency — Act done upon — Accident arising out of or in course of employment — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.**

An accident happening to a workman who, while in his master's employment and on his master's work, does upon an emergency an act in the interests of his master outside the scope of what he was employed to do, and suffers injury while doing the act, is within the purview of the Workmen's Compensation Act, 1897.

A fireman employed in a coal-mine was in the course of his duty carrying a report of the state of the mine from the pit's mouth to the office; the horse drawing the tramway truck in which he was riding ran away, and in endeavouring to stop it he fell and was killed:—

*Held*, that the accident arose out of or in the course of the workman's employment within the meaning of s. 1, sub-s. 1, of the Act. **REES v. THOMAS** — **C. A. [1899] 1 Q. B. 1015**

**23. — Employment for less than two weeks — Employment to which Act applies — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1; Sched. I., clause 1 (b).**

In order to obtain the benefit of the Workmen's Compensation Act, 1897, a workman must have been for at least two weeks in the employment of the employer, in whose service he sustained the injury for which he seeks compensation. **LYSONS v. ANDREW KNOWLES & SONS, LD.**

**C. A. [1900] W. N. 55; [1900] 1 Q. B. 780**

This case was reversed by H. L. (E.). See **[1901] W. N. 2; [1901] A. C. 79.**

Followed by **C. A. Stuart v. Nixon [1900] 2 Q. B. 95. See next Case.**

**24. — Employment for less than two weeks — Death caused by accident — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), First Schedule (1), (a), (i).**

The dependants of a workman whose death has been caused by an accident arising out of and in the course of his employment are not entitled to compensation under the Workmen's Compensation Act, 1897, unless the workman at the time of the accident has been for at least two weeks in the employment of the employer.

**Lysons v. Andrew Knowles & Sons, Ltd.,**  
2 R 2

**MASTER AND SERVANT (Compensation)—***continued.*[1900] 1 Q. B. 780, followed. **STUART v. NIXON & BRUCE****C. A. [1900] W. N. 92; [1900] 2 Q. B. 95**

This case was reversed by H. L. (E.). See [1901] W. N. 2; [1901] A. C. 79.

**25. — Engineering work—Employment on, in, or about—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.**

A harbour was being dredged by a steam dredger belonging to the harbour commrs., the mud being discharged from the dredger into hoppers, which when full were taken by a tug out to sea and there emptied, the workmen employed by the commrs. on the dredger going on the hoppers for that purpose. One of the workmen so employed by the commrs. on the dredger went in his turn on a hopper full of mud to sea to help in discharging it, and was drowned:—

*Held*, that at the time of the accident the workman was not employed on, in, or about an engineering work within the meaning of s. 7 of the Act. **CHAMBERS v. WHITEHAVEN HARBOUR COMMRS.** — **C. A. [1899] 2 Q. B. 132**

**26. — Factory—Employment "about" a—Accident to workman—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.**

A cart, belonging to the owners of a factory, was standing in a street, close to the entrance to the factory yard, in a position in which it was usually loaded. A workman in the employment of the factory owners was engaged in loading the cart, and was injured while doing so. On a claim for compensation under the Workmen's Compensation Act, 1897, the county court judge, before whom the claim came, *held* that the employment was "about" a factory within the meaning of s. 7, sub-s. 1, and awarded compensation. On appeal:—

*Held*, that the section includes the case of employment in proximity to a factory, and that consequently it was a question for the arbitrator to determine whether, as a matter of fact, the employment was in proximity to the employers' factory. **POWELL v. BROWN**

**C. A. [1898] W. N. 165 (8); [1899] 1 Q. B. 157**

Referred to by C. A. **Louth v. Ibbotson**, [1899] 1 Q. B. 1003; **Chambers v. Whitehaven Harbour Commrs.**, [1899] 2 Q. B. 132, 135; **Fenn v. Miller**, [1900] 1 Q. B. 788, 793.

**27. — Factory—Employment "about" a—Personal injury by accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.**

A carter, in the employment of the owners of a factory, was injured while unloading goods from a cart of his employers at a distance of a mile and a half from the factory. On a claim for compensation under the Workmen's Compensation Act, 1897, the county court judge, before whom the claim came, *held* that the employment was not "about" a factory within the meaning of s. 7, sub-s. 1, of the Act:—

*Held*, that, while employment "about" a factory included employment in close proximity to a factory, the county court judge had rightly

**MASTER AND SERVANT (Compensation)—***continued.*

found as a fact that employment at the distance of a mile and a half was not employment "about" a factory within the meaning of the Act.

**Powell v. Brown**, [1899] 1 Q. B. 157, followed. **LOWTH v. IBBOTSON** — **C. A. [1899] 1 Q. B. 1003**

*And see* References to preceding case.

**28. — Factory—Employment "about" a—Personal injury by accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.**

Employment "about" a factory means employment about the locality of the factory, and does not include employment about the business of the factory at a distance from the factory itself.

A builder was erecting houses on a building estate which was in course of development; on the estate was a barn containing a steam-engine and mortar-mill, which were used for the purposes of the building operations, and which constituted a factory within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897. The respondent, a labourer in the builder's employment, whose duty it was to fetch water in a cart from a brook at some distance along the main road for the mortar-mill and buildings, was injured while returning with the cart at a spot about 110 to 160 yards distant from the engine and mortar-mill owing to the horse running away:—

*Held*, that there was no evidence upon which the county court judge could properly find that the employment of the respondent was employment "about" a factory within the meaning of the Act. **FENN v. MILLER**

**C. [1900] W. N. 64; [1900] 1 Q. B. 788****29. — Factory—Third party, factory of a—Employment on or in or about a factory—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.**

The expression "employment by the undertakers . . . on or in or about a . . . factory" in s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, means employment by the undertakers on, in, or about their own factory. A workman, therefore, who is sent by his employers on their business to the factory of a third party, and is there injured by accident, is not entitled to compensation under the Act. **FRANCIS v. TURNER BROTHERS** — **C. A. [1900] 1 Q. B. 478**

**30. — Investment for benefit of dependants—Proceedings by legal personal representative of workman—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clauses 4, 5, 6, 7.**

Where an application for compensation under the Workmen's Compensation Act, 1897, is made by the legal personal representative of a deceased workman on behalf of himself and other dependants of the workman, the county court judge or other arbitrator has jurisdiction under Sched. I., clauses 4-7, to order so much of the compensation as is allotted to the dependants to be paid to the county court registrar for investment in his name on their behalf, and is not compelled to order it to be paid to the legal personal representative. **DANIEL v. OCEAN COAL CO.**

**C. A. [1900] W. N. 109; [1900] 2 Q. B. 250**

**MASTER AND SERVANT (Compensation)—**  
*continued.*

**31. — Machinery — Accident to workman — "Arising out of and in the course of the employment"—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.**

A boy was employed in a pottery; his duty was to make balls of clay and hand them to the woman working at a machine, and he was forbidden to interfere in any way with the machinery. He sustained an injury through attempting to clean the machine while the woman was temporarily absent:—

*Held*, that the accident did not arise out of or in the course of his employment, and therefore he was not entitled to compensation under the Workmen's Compensation Act, 1897. *Lowe v. PEARSON* - - C. A. [1899] W. N. 2 (3); [1899] 1 Q. B. 261

**32. — Machinery to which any provision of the Factory Acts applies—Dangerous machinery in a factory—Accident to workman—Employment in, on, or about a factory—Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37), ss. 4, 23—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.**

A workman was employed in a shed to look after a steam-engine connected with a mortar pan for mixing mortar for use on a building near at hand. While so employed he sustained personal injuries through an accident:—

*Held*, that, as the engine was being temporarily used for the purpose of the construction of a building, the provisions mentioned in s. 23 of the Factory and Workshop Act, 1895, had effect as if the shed were a factory; so that a provision of the Act, namely s. 4 relating to the power to make an order as to a dangerous machine used in a factory, applied to the engine, which therefore came within the definition of a factory in s. 7 of the Workmen's Compensation Act, 1897, and compensation could be claimed under that section. *McNICHOLAS v. DAWSON & SON*

C. A. [1899] 1 Q. B. 773

Referred to by C. A. *Fenn v. Miller*, [1900] 1 Q. B. 788, 790.

**33. — Medical examination—Notice of accident not given—Right of employer to—Examination of workman by medical practitioner — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 2; First Schedule, s. (3).**

Where a workman, who took proceedings under the Workmen's Compensation Act, 1897, had not given notice of the accident as required by s. 2 of the Act, but the employers raised no objection to his claim on that ground:—

*Held*, that, although the workmen had not given notice of the accident, the employers were entitled to require him to submit himself for medical examination in pursuance of s. (3) of the First Schedule of the Act; and that the county court judge had no jurisdiction to impose any term upon them as a condition of the workman's being bound to do so. *OSBORN v. VICKERS, SONS & MAXIM* - - C. A. [1900] 2 Q. B. 91

**34. — Negligence—Defect in plant or machinery—Knowledge of workman—Risk voluntarily incurred—"Volenti non fit injuria."**

While a workman was in the course of his

**MASTER AND SERVANT (Compensation)—**  
*continued.*

employment descending from an elevated tramway belonging to his employers, his foot slipped, and he fell to the ground, receiving injuries which caused his death. The employers had provided no ladder or other safe means of ascending to and descending from the tramway. In an action brought by the widow of the deceased against his employers under the Fatal Accidents Act, 1846, to recover damages in respect of his death, the jury found (1.) that the defts. had not exercised due care to have the tramway in a safe and proper condition so as to protect their servants working upon it against unnecessary risks; (2.) that it was dangerous to descend from the tramway without a ladder; (3.) that the deceased had the same means of knowing that it was dangerous as the defts. had; and (4.) that the deceased did know that it was dangerous:—

*Held*, that, in the absence of any finding by the jury that the deceased had agreed to undertake the risk of descending from the tramway without a ladder or other safe means of descent, the plt. was entitled to judgment upon the findings of the jury.

*Smith v. Baker & Sons*, [1891] A. C. 325, followed. *WILLIAMS v. BIRMINGHAM BATTERY AND METAL CO.* - - C. A. [1899] W. N. 106; [1899] 2 Q. B. 338

**35. — Partial incapacity—Accident causing personal injury—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 1 (b), clause 2.**

The sole test of the right of a workman to a weekly payment under Sched. I., clause (b), of the Workmen's Compensation Act, 1897, in respect of partial incapacity for work, is his wage-earning capacity after the accident which caused the injury in respect of which compensation is sought. Where therefore a workman, although put to a different class of work after the accident, receives from his employers the same wages that he previously received from them, he is not entitled to a weekly payment in respect of partial incapacity after his return to work, his right to compensation being limited to a weekly payment in respect of total incapacity (after the second week) during his absence from work occasioned by the accident. *IRONS v. DAVIS & TIMMINS, LD.* - - C. A. [1899] 2 Q. B. 330

Followed by C. A. *Pomphrey v. Southwark Press*, [1900] W. N. 256; [1901] 1 Q. B. 86.

**36. — Partial incapacity—Disablement from earning full wages at work at which employed—Personal injury—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (a).**

A workman was employed as foreman in a carpet-weaving factory; his principal duty was to supervise the hands, but he also to the knowledge of his employer used to set up and adjust the machines. While adjusting a machine he received an injury necessitating the amputation of his thumb; he continued however to attend regularly to his work, only absenting himself from the factory for a sufficient time to enable him to have his hand dressed. He was incapacitated by the accident from setting up and adjusting the machines, and his work was afterwards

**MASTER AND SERVANT (Compensation)—**  
*continued.*

confined to the supervision of the hands. His employer continued to pay his wages at the same rate after as before the accident; but it was admitted that, should he leave his employer's service, his wage-earning power as a foreman in any other factory would be materially decreased:—

*Held*, that as the workman had been prevented by reason of the accident from doing a substantial part of the work at which he had previously earned his wages, he had been disabled for two weeks from earning full wages "at the work at which he was employed" within the meaning of s. 1, sub-s. 2 (a), of the Workmen's Compensation Act, 1897:

*Held*, further, that, as the workman had hitherto suffered no pecuniary loss, the proper course was to make a declaration of the liability of the employer, leaving the amount and duration of the compensation to be fixed upon an application under Sched. I., clause 12, to vary the award, should the workman at any future time be unable by reason of the accident to earn the same wages.

CHANDLER v. SMITH C. A. [1899] W. N. 112; [1899] 2 Q. B. 506

— Quay—"Undertakers."

See Nos. 48, 49, below.

**37. — Railway—Engine cleaner—Accident arising out of and in course of employment—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.**

An engine-cleaner, who had been employed by a ry. co. at their station at K., was directed by his employers to work in a new engine-shed at H., about four miles distant. The workman, who lived near K., was conveyed by the ry. co. free of charge in one of their trains to their station at H., reaching there a short time before the hour for commencing work in the shed, and was taken back free of charge at the end of his day's work. While crossing the line at the station at H. in order to get to his work in the engine-shed, and shortly before the hour at which work began, he was killed by a passing train:—

*Held*, that the employment of the workman commenced when he got into the train to be conveyed to his work, and not on his arrival at the engine-shed, and that the accident arose out of and in the course of his employment within the meaning of s. 1, sub-s. 1, of the Workmen's Compensation Act, 1897. HOLMES v. GREAT NORTHERN RY. CO. — C. A. [1900] 2 Q. B. 409

— Railway—Ticket-collector.

See No. 45, below.

**38. — Railway—Workman going to work—Accident arising out of and in course of employment—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.**

A firm of contractors, under a contract with a ry. co. for the widening of their line, were ballasting a siding which was separated from the main line by several lines of rail. The siding could only be reached by walking for a considerable distance through the premises of the ry. co., and the workmen were advised by the contractors, with the authority of the ry. co., to enter the premises by a gate, from which a path led by the side of the ry. to the siding which was being

**MASTER AND SERVANT (Compensation)—**  
*continued.*

ballasted; it was not necessary, while following this route, to go upon the main line. On a foggy morning, seven minutes before the hour for the commencement of the day's work, a workman in the employ of the contractors, while on his way to his work at the siding, was run over and killed on the main line about 150 yards from the locality of his work:—

*Held*, by A. L. Smith L.J. and V. Williams L.J. (Romer L.J. dissenting), that it was no part of the contract of employment that the employment should include the time taken in getting to and from the work, that under the circumstances the contractors owed no duty to the workman while proceeding to his work, and that therefore the accident did not arise out of and in the course of the employment of the workman within the meaning of s. 1, sub-s. 1, of the Workmen's Compensation Act, 1897.

Per A. L. Smith L.J.: A workman who is injured in a place not under his employer's control while going to or returning from his work is not within the provisions of the Workmen's Compensation Act, 1897. HOLNESS v. MACKAY & DAVIS C. A. [1899] W. N. 65; [1899] 2 Q. B. 319

**39. — Railway refreshment room—Employment to which Act applies—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7—Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 3.**

Employment by a ry. co. in a ry. refreshment room, to which the only entrance for the public is from the station platform, is not employment on or in or about a ry. within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897. MILNER v. GREAT NORTHERN RY. CO.

C. A. [1900] W. N. 55; [1900] 1 Q. B. 795

**40. — Railway station, Erection of—Railway company—Accident to contractor's workman—Work ancillary to business of undertakers—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 4, 7.**

The erection of a ry. station is work "which is merely ancillary or incidental to, and is no part of, or process in, the trade or business" of a ry. co. within the meaning of s. 4 of the Workmen's Compensation Act, 1897; and therefore the ry. co. are not liable to pay compensation under that Act to the workman of a contractor, who has contracted with them to do such work, in respect of an injury occasioned to the workman in the execution of it. PEARCE v. LONDON AND SOUTH WESTERN RY. CO.

C. A. [1900] W. N. 93; [1900] 2 Q. B. 100

**41. — Scaffolding, Building constructed by means of—Structure of trestles and boards within building—Whether scaffolding question of fact for arbitrator—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.**

By s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, the Act is to apply (inter alia) to employment "on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding."

A new house more than thirty feet high had been roofed in and the external scaffolding removed. The applicant was engaged in plaster-



**MASTER AND SERVANT (Compensation)—**  
*continued.*

ing the walls and ceiling in one of the rooms, and in order to reach his work was standing on a structure of trestles with boards on them. While at work in this manner, he met with an accident, for which he claimed compensation. An arbitrator appointed by a county court judge decided that the structure was not a scaffolding and refused to make an award of compensation, but referred the matter to the county court judge, who reversed the decision of the arbitrator and awarded the compensation provisionally settled by the arbitrator. On appeal:—

*Held*, that the question whether the structure was a scaffolding or not was a question of fact for the arbitrator, and that his finding was not open to review. **FERGUSON v. GREEN**

**C. A. [1900] W. N. 247; see [1901] 1 Q. B. 25**

**42. — Scaffolding—Building constructed by means of a—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.**

By s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, the Act is to apply (inter alia) to employment "on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding."

A new house more than thirty feet high had been roofed in, and workmen employed by the builder were plastering the walls and ceilings inside the house, for which purpose trestles and boards were being used. One of the men, while standing on the floor of the top landing plastering the wall, fell down the well of the staircase, there being no railing, and was killed. At that time other workmen were at work plastering some of the rooms, and were standing on boards placed across trestles four feet high in order to enable them to reach the ceilings and upper part of the walls. A county court judge having awarded compensation to the widow of the deceased:—

*Held* (Collins L.J. dissenting), that there was evidence to justify a finding of the county court judge that the arrangement of trestles and boards was a scaffolding within the meaning of s. 7, sub-s. 1, of the Act, and that the employment of the deceased was therefore one to which the Act applied. **MAUDE v. BROOK**

**C. A. [1900] 1 Q. B. 575**

**43. — Ship unloading in dock—Personal injury by accident—Employment on or about machinery or plant—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1; s. 7, sub-ss. 1, 2.**

Where a ship was unloading in a dock by means of a crane on the quay hired by her owners, and a workman employed by them in unloading her was killed by the explosion of a case of percussion-caps which he was placing in a basket attached to the chain of the crane for the purpose of its being hoisted out of the ship on to the quay:—

*Held*, that the accident arose out of and in the course of the workman's employment on or about machinery used in the process of unloading to a quay within the meaning of the Workmen's Compensation Act, 1897, and therefore the Act applied to it. **WOODHAM v. ATLANTIC TRANSPORT CO.** — **C. A. [1899] 1 Q. B. 15**

**MASTER AND SERVANT (Compensation)—**  
*continued.*

**44. — Ship unloading in dock—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.**

A workman employed on board a ship lying in dock is not employed on, in, or about a dock, and is therefore not employed on or in or about a factory within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, whether the dock itself is a factory within the meaning of sub-s. 2 of that section or not. **FLOWERS v. CHAMBERS** — **C. A. [1899] W. N. 65; [1899] 2 Q. B. 142**

Referred to by **C. A. Hennessey v. McCabe, [1900] 1 Q. B. 491, 497.**

— Staying proceedings—Arbitration.

*See No. 95, below.*

— Strike—Average weekly earnings.

*See No. 17, above.*

**45. — Ticket-collector—Accident to workman "arising out of and in the course of the employment"—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.**

A ticket-collector got upon the footboard of a train after it had started, not for any object of his employment, but for his own pleasure. In getting off he was injured:—

*Held*, that the accident was not one "arising out of" his employment within s. 1, and that compensation was not recoverable under the Act. **SMITH v. LANCASHIRE AND YORKSHIRE RAILWAY CO.** **C. A. [1899] W. N. 165 (7); [1899] 1 Q. B. 141**

— Time for making claim for compensation.

*See Nos. 96—98, below.*

**46. — "Undertaker"—Construction of building—Contractor for supply of labour—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.**

An employer who, under a contract with a firm engaged in building operations on their own premises, supplies the labour for the brickwork, the workmen so supplied, although paid by him, being under the control while at work of the foreman of the building owners, is not an undertaker within the meaning of the Workmen's Compensation Act, 1897. **PERCIVAL v. GARNER**

**C. A. [1900] 2 Q. B. 406**

**47. — "Undertaker"—Construction of building—Employment—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.**

Where a building over thirty feet high is being constructed by means of a scaffolding, and the work of construction is being carried out by several persons not acting jointly, but each of them contracting with the building owner for the constructing of a separate substantial part of the building, each of them is an "undertaker" within the meaning of s. 7, sub-s. 2, of the Workmen's Compensation Act, 1897, and is liable to compensate the workmen employed by him for personal injury sustained by them in the course of their employment. Every workman employed by the undertaker upon the building is within the Act, whatever may be the nature of his own particular work. **MASON v. A. R. DEAN, LD.**

**C. A. [1900] W. N. 48; [1900] 1 Q. B. 770**

Distinguished by **C. A. Cass v. Butler, [1900] 1 Q. B. 777, 779. See No. 50, below.**

**MASTER AND SERVANT (Compensation)—**  
*continued.*

48. — “Undertakers” — “Factory” — Quay, Ship alongside of — “Actual use or occupation” — *Workmen’s Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1, 2 — *Factory and Workshop Act*, 1895 (58 & 59 Vict. c. 37), s. 23, sub-s. 1.

Where the owners of a ship moored alongside of a quay, who acted as their own stevedores, had the use of the portion of the quay, alongside of which their ship lay, for the purpose of unloading the ship’s cargo on to the quay, and a workman employed by them was killed through an accident arising out of and in the course of his employment on the quay :—

*Held*, that the shipowners, having the “actual use” of a portion of the quay within the meaning of the *Factory and Workshop Act*, 1895, s. 23, sub-s. 1, were “undertakers” in respect of a factory within the meaning of the *Workmen’s Compensation Act*, 1897, s. 7, and liable to make compensation to the dependants of the workman under that Act. *MERRILL v. WILSON, SONS & CO.*

**C. A. [1900] W. N. 248; see [1901] 1 Q. B. 35**

49. — “Undertaker” — Quay, Machinery used in loading from a — Occupier — Person using machinery — *Workmen’s Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7 — *Factory and Workshop Act*, 1895 (58 & 59 Vict. c. 37), s. 23, sub-s. 1.

A person using machinery in the process of loading a ship from a quay is an occupier of a factory within s. 23, sub-s. 1, of the *Factory and Workshop Act*, 1895, and therefore an “undertaker” within the *Workmen’s Compensation Act*, 1897, s. 7. *CARRINGTON v. BANNISTER & CO.*

**C. A. [1900] W. N. 247; see [1901] 1 Q. B. 20**

50. — “Undertaker” — Sub-contractor — *Workmen’s Compensation Act*, 1897 (60 & 61 Vict. c. 37), ss. 4, 7.

A sub-contractor is not an undertaker within the meaning of the *Workmen’s Compensation Act*, 1897. *CASS v. BUTLER*

**C. A. [1900] W. N. 49; [1900] 1 Q. B. 777**

51. — Wharf — Employment on, in, or about a factory — *Workmen’s Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7.

A wharf at the side of a canal, on which no machinery is used, is not a factory within the meaning of s. 7 of the *Workmen’s Compensation Act*, 1897, unless it is a wharf to which some provision of the *Factory Acts* is applied by the *Factory and Workshop Act*, 1895. *HALL v. SNOWDEN, HUBBARD & CO.*

**C. A. [1899] 2 Q. B. 136**

52. — Wharf — Timber-yard — Employment on, in, or about a factory — *Factory and Workshop Act*, 1895 (58 & 59 Vict. c. 37), s. 23 — *Workmen’s Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7.

For the purpose of unloading timber from timber-ships a dock board provided quay or wharf space running inland for 150 yards from the water’s edge; at the further end of this space was a fence with gates at intervals, behind which came a series of yards leased by the dock board to different timber merchants for storing their timber, the whole being the property of the dock board, and separated by a wall from the surrounding property. A workman employed by a firm of carpenters was killed while moving a log of timber

**MASTER AND SERVANT (Compensation)—**  
*continued.*

in one of the yards leased to a firm of timber merchants :—

*Held* (Rigby L.J. dissenting), that the word “wharf” as used in s. 23 of the *Factory and Workshop Act*, 1895, and s. 7, sub-s. 2. of the *Workmen’s Compensation Act*, 1897, must be construed in its ordinary and popular signification of a place contiguous to water over which goods pass in the process of loading and unloading, that the yard where the accident happened was not a wharf within the meaning of those sections, and that the employment of the deceased was therefore not one to which the *Workmen’s Compensation Act*, 1897, applied. *HADDOCK v. HUMPHREY* **C. A. [1900] 1 Q. B. 609**

53. — “Workman” — Person employed in coal mine by contractor — Liability of mine-owner — Working “under a contract with an employer” — *Coal Mines Regulation Act*, 1887 (50 & 51 Vict. c. 58) — *Employers and Workmen Act*, 1875 (38 & 39 Vict. c. 90), s. 10 — *Employers’ Liability Act*, 1880 (43 & 44 Vict. c. 42), s. 8.

By s. 8 of the *Employers’ Liability Act*, 1880 the expression “workman” means any person to whom the *Employers and Workmen Act*, 1875, applies; and by s. 10 of the *Act* of 1875 a “workman” means “any person who, being a labourer, . . . miner, or otherwise engaged in manual labour, . . . has entered into or works under a contract with an employer,” whether the contract be express or implied.

By the special rules of a colliery made under s. 51 of the *Coal Mines Regulation Act*, 1887, the manager of the mine was made responsible for the control, management, and direction of the mine, and was to appoint such competent persons as might be necessary for carrying out the provisions of the *Act*, and all persons employed in or about the mine were to obey his directions; and the chargeman in each shift was to have charge of the sinking operations.

E. entered into a contract with the owners of the colliery to sink a shaft in their coal mine. By the contract E. (who was therein called the contractor) was to provide such sinkers, &c. as might be necessary for the execution of the work, and was to be paid a certain sum per fathom sunk. E. employed and paid the sinkers, he himself acting as “chargeman” in charge of the sinking operations. One of the sinkers, while engaged upon the work, was killed by a block of wood falling upon him, and his administratrix brought an action against the colliery owners under the *Employers’ Liability Act*, 1880, to recover damages for his death :—

*Held*, that E. was an independent contractor that the deceased was not a “workman” who had entered into or worked under a contract with the colliery owners as his employers within the meaning of s. 10 of the *Employers and Workmen Act*, 1875; and that therefore the *Employers’ Liability Act*, 1880, did not apply;

*Held*, also, that the control given by the *Coal Mines Regulation Act*, 1887, and by the special rules of the mine, to the manager over all persons in the mine, did not make E. and the sinkers employed by him “workmen” in the employ-

**MASTER AND SERVANT (Compensation)—**  
*continued.*

ment of the colliery owners within the meaning of s. 10 of the Act of 1875. *MARROW v. FLIMBY AND BROUGHTON MOOR COAL AND FIRE BRICK CO.* C. A. [1898] 2 Q. B. 588

**Compromise.**

See Cases under COMPROMISE.

**Contract.**

54. — *Breach of contract—Damages—Miner—Refusal to work—Trade union—Employers and Workmen Act, 1875.*

The defts., who were workmen belonging to a union, refused to go down a pit in cages with non-union men, but offered a few minutes afterwards to go down by themselves, which was not permitted by the under-manager of the master:—

*Held*, that the refusal to go down was a breach of contract, and that the defts.' action, being preconcerted, entitled the plt. to substantial damages:—

*Held*, also, that the master's refusal to let them go down when they offered to do so was not a breach of contract. *BOWES AND PARTNERS, LD. v. PRESS* - C. A. [1894] 1 Q. B. 202

55. — *Grocer's assistant—Leaving without notice—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10.*

The test whether an employee is engaged in manual labour within the meaning of the Employers and Workmen Act, 1875, is whether such labour is his real and substantial employment, or whether it is incidental or accessory to such employment. A grocer's assistant is not a person engaged in manual labour within s. 10 of the Act, although in the course of his duties he has incidentally to do many things involving manual labour. *BOUND v. LAWRENCE*

C. A. [1892] 1 Q. B. 226

— *Infant—Contract not for benefit of—Apprenticeship deed.*

See INFANT—Contracts. 4, 5.

56. — *Restraint of trade—Reasonableness—Limit of space—Limit of time—Injunction—Evidence of reasonableness inadmissible.*

An agreement made in 1894 between the plt., a hardware manufacturer at Dudley, and the deft., a young man of twenty-four, on the deft. entering the plt.'s service, contained a restrictive clause, that the deft. would not, during his service or after the determination thereof, divulge to any person the secrets of the plt. or the mode of conducting his business, or any part thereof, or any information with regard to the same, or after the determination of such service work for or serve any other person or firm carrying on the same kind of business, or any part thereof, within a radius of twenty-five miles from the plt.'s works at Dudley, without his consent. In 1897 the deft. left the plt.'s service, and in 1899, without his consent, entered the service of a firm carrying on a business similar to that of the plt. about three miles from his works:—

*Held*, affirming *Stirling J.*, that the plt. was entitled to an injunction, since the restrictive

**MASTER AND SERVANT (Contract)—contd.**

clause was not void either as being unreasonable for the plt.'s protection, or as being unlimited in point of time and so binding the deft. during his whole life.

In an action by a trader against his servant for breach of a contract restricting him from serving a rival trader, evidence from persons in the trade giving their views as to the reasonableness or unreasonableness of the contract is inadmissible, since the reasonableness of a contract depends on its true construction and legal effect and is consequently a question for the Court alone. *HAYNES v. DOMAN* C. A. [1899] 2 Ch. 13

**Dismissal.**

— *Contract for employment—Wrongful dismissal.*

See ARBITRATION. 6.

— *Maliciously inducing employer to discharge servant—Intent to injure.*

See ACTION. 1.

— *Implied obligation of servant—Improper use of information.*

See Cases under MASTER AND SERVANT—Trade Secrets.

57. — *Misconduct of servant—Forgetfulness—Contract.*

A single instance of forgetfulness by a servant, by reason of which damage is caused to a valuable machine of which he has the care and management, may constitute such neglect of duty as to justify his master in dismissing him without notice. *BASTER v. LONDON AND COUNTY PRINTING WORKS* - Div. Ct. [1899] W. N. 53; [1899] 1 Q. B. 901

58. — *Wrongful dismissal—Dissolution of partnership.*

A partnership agreed to employ the plt. as their agent for a fixed period. Before the period expired two of the partners retired. The continuing partners offered to employ the plt. on the same terms for the remainder of the period; the plt. refused:—

*Held*, that the dissolution operated as a wrongful dismissal of the plt., but that he was only entitled to nominal damages. *BRACE v. CALDER* - - - C. A. [1895] 2 Q. B. 253

**Factory Acts.**

*Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), amends the law relating to Factories and Workshops.*

*Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37), further amends the law relating to Factories and Workshops.*

*Cotton Cloth Factories Act, 1897 (60 & 61 Vict. c. 58), gives power to make regulations.*

*Factory Acts—Reference to the Os. of Secy. of State granting special exemptions under the Acts issued prior to 1891 is given in the "Index to the Statutory Rules and Orders," 1893 edit. St. O. P. The subsequent Orders are published in the annual volumes of Statutory Rules and Orders, 1890—1900.*

59. — *Employment of children—Cleaning machinery—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 9.*

By s. 9 of the Factory and Workshop Act,

**MASTER AND SERVANT (Factory Acts)—*contd.***

1878, "a child shall not be allowed to clean any part of the machinery in a factory while the same is in motion by the aid of steam, water, or other mechanical power":—

*Held*, that "the same" meant "the machinery" and not the "part" cleaned; so that this section prohibited allowing a child, while a machine was in motion, to clean any fixed part, which did not move, of the machine. **PEARSON v. BELGIAN MILLS COMPANY**

**Div. Ct. [1896] 1 Q. B. 244**

**60. — Employment of young person during prohibited hours — Working for amusement — Master and servant—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), ss. 17, 83, 94.**

A young person in the employment of the occupiers of a spinning mill during the time allowed for a meal oiled part of the machinery of the mill. He stated that he did so contrary to orders, and for his own amusement:—

*Held*, that he was working in what he did, and that, therefore, he was employed during prohibited hours contrary to the provisions of the Factory and Workshop Act, 1878, and that the occupiers of the mill were liable to a fine under s. 83 of that Act. **PRIOR v. SLAITHWAITE SPINNING CO.**

**Div. Ct. [1898] 1 Q. B. 881**

**61. — Employment on Sunday—Jews—"Open for traffic"—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 51.**

By s. 21 of the Factory and Workshop Act, 1878, "A . . . young person or woman shall not (save as is in this Act specially excepted) be employed on Sunday in a . . . workshop."

By s. 51, "No penalty shall be incurred by any person in respect of any work done on Sunday in a . . . workshop by a young person or woman of the Jewish religion, subject to the following conditions:—"

"(2) The . . . workshop . . . shall not be open for traffic on Sunday."

The occupier of a workshop, wherein young persons and women of the Jewish religion were employed on Sunday, carried on there the business of making button-holes for tailors on garments delivered to him by them for that purpose.

The workshop was open to his customers on Sunday for the purpose of enabling them to send or fetch away garments in pursuance of contracts previously made, but not for the purpose of their giving fresh orders:—

*Held*, that the workshop was not thereby "open for traffic on Sunday" within the meaning of s. 51, so as to deprive the occupier of the exemption afforded by that section. **GOLDSTEIN v. VAUGHAN**

**Div. Ct. [1897] 1 Q. B. 549**

**62. — "Factory"—"Non-textile factory"—"Bleaching and dyeing works"—Process of hooking, lapping, making up, and packing cloth—41 & 42 Vict. c. 16, s. 93, Sched. IV., Part I., s. 2.**

Premises, in which the processes of hooking, lapping, making up, and packing cloth are carried on, are a "factory" within the meaning of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 93, and Sched. IV., Part I., s. 2, even if none of such processes are carried on as

**MASTER AND SERVANT (Factory Acts)—*contd.***

incidental to bleaching and dyeing. **ROGERS v. MANCHESTER PACKING CO.**

**Div. Ct. [1898] 1 Q. B. 344**

— Fines—Cotton Cloth Factories Act, 1889.

*See JUSTICES. 8.*

**63. — Machinery — Dangerous machinery — Fencing—Duty to fence—Factory and Workshops Acts, 1878 (41 & 42 Vict. c. 16), s. 5; 1891 (54 & 55 Vict. c. 75), s. 6.**

"All dangerous parts of the machinery" in s. 6 of the Factory and Workshop Act, 1891, is not limited to such part of the machinery as supplies or conveys the motive power by which the industrial operations of the factory are immediately effected, but applies to all the machinery in the factory, and includes an upper die which forcibly descends on a lower die for the purpose of shaping tin plates. **REDGRAVE v. LLOYD & SONS, LD.**

**Div. Ct. [1895] 1 Q. B. 876**

**64. — Machinery — Dangerous machinery — Shuttle flying out of loom—Obligation to fence—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 5, sub-s. 3—Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), s. 6, sub-s. 2.**

By s. 5, sub-s. 3, of the Factory and Workshop Act, 1878, as amended by s. 6, sub-s. 2, of the Factory and Workshop Act, 1891, "all dangerous parts of the machinery" in a factory shall be securely fenced or otherwise rendered safe.

The occupier of a cotton factory was summoned under the above section for neglecting to fence the shuttles of his looms. It appeared that shuttles do occasionally in the process of weaving fly out from the bed upon which they slide to and fro (called the shuttle-race) under circumstances which render them dangerous to any persons who happen to be in the line of flight. The flying out of the shuttles may be caused by the negligence of the weaver in charge of the machine, or by reason of some foreign substance getting accidentally into the shuttle-race, or by defect in the yarn:—

*Held*, that the obligation to fence under the above section was not confined to machinery which was dangerous in itself in the ordinary course of careful working; and that the shuttles, even though not in themselves defective, were "dangerous parts of the machinery" if any of the above-mentioned causes of their flying out of the shuttle-race were likely to occur with any degree of frequency. **HINDLE v. BIRTWISTLE**

**Div. Ct. [1897] 1 Q. B. 192**

— Mitigation of statutory fine—Jurisdiction.

*See JUSTICES. 8.*

**65. — Neglect to fence machinery—Compensation to injured person—Contributory negligence—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 82.**

By s. 82 of the Factory and Workshop Act, 1878, "If any person is killed or suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery . . . the occupier of the factory or workshop shall be liable to a fine not exceeding 100*l.*, the whole or any part of which may be applied for the benefit of the injured person or his family or otherwise as a Secretary of State determines":—

*Held*, that, where a person has been injured

**MASTER AND SERVANT (Factory Acts)**—*contd.*  
by the occupier's neglect to fence, the fact that the injury was proximately caused by such contributory negligence on the part of the injured person as would have debarred him from maintaining a civil action is no answer to a complaint under the above section. *BLENKINSOP v. OGDEN*

Div. Ct. [1898] 1 Q. B. 783

66. — *Neglect to fence machinery—Penalty—Statutory duty—Action on statute—Master and servant—Common employment—Factory and Workshop Act, 1878* (41 & 42 Vict. c. 16), s. 5, sub-s. 4; ss. 81, 82, 86, 87.

An action will lie in respect of personal injury occasioned to a workman employed in a factory through a breach by his employer, the occupier of the factory, of the duty to maintain fencing for dangerous machinery imposed upon him by s. 5, sub-s. 4, of the Factory and Workshop Act, 1878.

The defence of common employment is not applicable in a case where injury has been caused to a servant by the breach of an absolute duty imposed by statute upon his master for his protection. *GROVES v. WIMBORNE* (LORD)

C. A. [1898] 2 Q. B. 402

— Quarries — Modifications of application of Factory Acts to.

See Quarries Act, 1894 (57 & 58 Vict. c. 42), s. 3.

— Rating of cotton mill — Stoppage during strikes.

See RATES—Rateability. 15.

— Refuse—Duty of local authority to make sewer.

See SEWERS.

67. — *Underground bakehouse—Premises vacant at commencement of Act—Factory and Workshop Act, 1895* (58 & 59 Vict. c. 37), s. 27, sub-s. 3.

By s. 27, sub-s. 3, of the Factory and Workshop Act, 1895, "A place underground shall not be used as a bakehouse unless it is so used at the commencement of this Act." Premises which had long been used as an underground bakehouse were vacant at the commencement of the Act, but their owner was seeking a tenant for them as a bakehouse:—

*Held*, that they were used as a bakehouse at the commencement of the Act. *SCHWERZERHOF v. WILKINS* — Div. Ct. [1898] 1 Q. B. 640

### Hiring.

— Contract of service—Agreement to devote whole time—Breach of contract.

See CONTRACT. 4.

68. — *Contract—Custom as to hiring domestic servants—Reasonableness—Notice during first fortnight—Determination at end of first month.*

A custom with regard to the hiring of domestic servants, to the effect that, in the absence of special contract, there is a right, on the part of either the master or the servant, to determine the service, at the end of the first calendar month, by notice given at or before the expiration of the first fortnight, is not a notorious custom of which the Courts will take judicial notice but where

**MASTER AND SERVANT (Hiring)**—*continued.*

such a custom is relied on, its existence must be proved by evidence in each particular case.

Such a custom is not unreasonable; and therefore, if, in any particular case, its existence were sufficiently proved by evidence, the Court would give effect to it. *MOULT v. HALLIDAY*

Div. Ct. [1897] W. N. 171 (5); [1898] 1 Q. B. 125

— Contract of hiring—Severable covenant—Injunction.

See RESTRAINT OF TRADE. 19.

### Intimidation.

— Combination to induce a person not to employ another.

See Cases under CONSPIRACY.

### Master's Liability.

— Coat in charge of waiter.

See BAILMENT. 5.

69. — *Contractor and sub-contractor—Common employment—Negligence.*

In an action to recover damages for injury caused by the negligence of the deft.'s servant, the defence of common employment is not applicable unless the injured person and the servant whose negligence caused the injury were not only engaged in a common employment, but were in the service of a common master.

Decision of C. A., (1889) 23 Q. B. D. 508, reversed. *JOHNSON v. LINDSAY & Co.* (No. 1)

H. L. (E.) [1891] A. C. 371

Referred to by H. L. (E.) *Hedley v. Pinkney & Sons Steamship Co.*, [1894] A. C. 222, 226.

70. — *Crane—Servant lent to another firm—Negligence.*

The defts. lent a crane with a man in charge to another firm. While under the orders of the other firm, the man in charge worked the crane negligently and injured the plt. :—

*Held*, that, although the man remained the general servant of the defts., yet as he was not yet under their control, they were not responsible for his negligence. *DONOVAN v. LAING, WHARTON AND DOWN CONSTRUCTION SYNDICATE*

C. A. [1893] 1 Q. B. 629

Considered by Lord Russell C.J. *Jones v. Scullard*, [1898] 2 Q. B. 565, 573.

71. — *Criminal act done by servant in course of his employment—Conviction of servant—Release from civil proceedings for the same cause—Scope of servant's employment—Offences Against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 45.

The deft.'s servant in the course of his employment assaulted the plt. and was fined for the assault. The plt. brought an action against the deft. for the assault:—

*Held*, that the mere fact of the assault being criminal and not merely tortious did not affect the deft.'s liability for the acts of his servant, and that the relief given under s. 45 of the Offences Against the Person Act, 1861, from civil proceedings for the assault was personal to the servant and did not extend to the deft.

*Per Rigby L.J.*: "Scope of authority" and "course of employment" are equivalent terms,

**MASTER AND SERVANT (Master's Liability)—**  
*continued.*

and both extend the master's liability beyond the actual authority given to the servant. *DYER v. MUNDAY* - - C. A. [1895] 1 Q. B. 742

72. — *Criminal liability of master for act of servant—Sale of goods to which false trade description is applied—Merchandise Marks Act, 1887* (50 & 51 Vict. c. 28), s. 2, sub-s. 2.

The provisions of s. 2, sub-s. 2, of the Merchandise Marks Act, 1887, which make it an offence to sell goods to which a forged trade-mark or false trade description is applied, make a master criminally liable for acts done by his servants in contravention of the section when acting within the general scope of their employment, although contrary to their master's orders, unless the master can shew that he has acted in good faith and has done all that it was reasonably possible to do to prevent the commission of offences by his servants. *COPPEN v. MOORE* (No. 2) - - Div. Ct. [1898] 2 Q. B. 306

Applied by Div. Ct. *Christie, Manson and Woods*, [1900] 2 Q. B. 522, 527.

See Cases under TRADE-MARK — Merchandise Marks.

73. — *Defect in condition of plant—Guard temporarily removed from circular saw—Employers' Liability Act, 1880* (43 & 44 Vict. c. 42), s. 1, sub-s. 1.

The plt. was employed at the deft.'s saw mills to assist one of their sawyers who was engaged at a circular saw. The deft. had provided the saw with a sufficient guard or fence under the bench for the prevention of accidents. The guard was moveable for the purpose of removing the sawdust which collected under the bench. The sawyer for his own purposes improperly removed the guard, and whilst the guard was off the plt. fell against the saw and was injured :—

*Held*, that the absence of the guard was a defect in the condition of the machinery within s. 1, sub-s. 1, of the Employers' Liability Act, 1880.

*Willets v. Watt & Co.*, [1892] 2 Q. B. 92, distinguished. *TATE v. LATHAM & SON*

C. A. [1897] 1 Q. B. 502

74. — *Defect in condition of way—Uncovered catch-pit.*

In the floor of one of the defts.' workshops was a catch-pit generally covered with a lid. While the plt. was uncovered for a temporary purpose, the plt., a workman of the deft., passing over the premises in the course of his business, fell into the pit and was injured :—

*Held*, that the floor of the shop where the plt. was passing was a way within s. 1, sub-s. 1, of the Employers' Liability Act, 1880, but that the removal of the cover was not a defect in the condition of the way. *WILLETS v. WATT & CO.*

C. A. [1892] 2 Q. B. 92

Distinguished by C. A. *Tate v. Latham & Son*, [1897] 1 Q. B. 502.

75. — *"Defect in condition of works"—Dangerous wall—Employers' Liability Act, 1880* (43 & 44 Vict. c. 42), s. 1.

A builder was engaged in pulling down an old house. After removal of the roof and pull-

**MASTER AND SERVANT (Master's Liability)—**  
*continued.*

ing down of part of the walls, a workman received injuries owing to the fall of a wall which had not been properly shored up :—

*Held*, that the dangerous condition of the wall was "a defect in the condition of the works connected with or used in the business of the deft., for which the deft. was liable under the Employers' Liability Act, 1880. *BEANNIGAN v. ROBINSON* - - Div. Ct. [1892] 1 Q. B. 344

76. — *Defective gear—Personal injuries—Damage—Common employment—Master and seaman.*

An accident was caused to a seaman through a defective rope, which was in a proper condition when supplied, but had got frayed through use :—

*Held*, that the owners were not responsible to the seaman for the captain (a fellow workman) not keeping it in repair. *GORDON v. PYPE*

H. L. (Sc.) [1892] W. N. 169

77. — *Driver—Bailee for hire—Negligence of servant.*

The deft. hired a carriage and horse from the plts. His coachman, instead of taking them, as was his duty, to the stable, drove for his own purposes in another direction. While he was thus engaged, the carriage and horse were injured owing to his negligent driving :—

*Held*, that the deft. was liable under his contract as bailee in respect of the consequences of his servant's breach of duty to himself. *COURÉ CO. R. MADDICK* Div. Ct. [1891] 2 Q. B. 413

78. — *Driver—Negligence—Employer and Workman—"Person in charge or control of locomotive engine or train upon a railway"—Employers' Liability Act, 1880* (43 & 44 Vict. c. 42), s. 1, sub-s. 5.

The Employers' Liability Act, 1880, by s. 1, sub-s. 5, enacts that where personal injury is caused to a workman by reason of the negligence of any person in the service of the employer "who has the charge or control of any . . . locomotive engine or train upon a ry.," there shall be the same right of compensation against the employer as if the workman had not been in his service :—

A "person who has the charge or control of a train" does not necessarily cease to have charge of it, within the meaning of the Act, because some of the carriages are uncoupled from one another and from the engine in order that they may be separately dealt with. And those words do not necessarily point only to one person who is in charge of the whole train, but may include persons who have duties to perform in respect of parts of the train.

An engine-driver, employed with his fireman in the discharge of loaded wagons on a ry., took a locomotive engine and several wagons to a point on an incline, and there proceeded with the engine and one of the wagons to the place of discharge, intending to return for the other wagons in due course. The fireman uncoupled the remaining wagons and scotched them to prevent them running down the incline. One of the wagons broke away, ran down the incline, and killed a workman

**MASTER AND SERVANT (Master's Liability)—**  
*continued.*

in the service of the same employers. There was evidence that the method of scotching adopted was unsafe and was known to and approved by the engine-driver. The representative of the deceased having brought an action for compensation against the employers:—

*Held*, reversing the decision of the Q. B. D. and C. A., that there was evidence for the jury that the death was caused by reason of the negligence of a person who had the charge or control of a train within the meaning of the Act, since either the engine-driver had the charge or control, or the fireman had, and there was evidence of negligence in both. **MCCORD v. CAMELL & Co.** - **H. L. (E.) [1896] A. C. 57**

— Driver, Negligence of — Cab — Liability of registered proprietor.

*See HACKNEY CARRIAGE. 1.*

**79. — Driver—Negligence of servant—Liability of master—Intervening act of third party—Effective cause of damage.**

There is no rule of law to prevent a master being liable for negligence of his servant whereby opportunity was given for a third person to commit a wrongful or negligent act immediately producing the damage complained of. Whether the original negligence was an effective cause of the damage is a question of fact in each case.

The deft. employed a man to drive a cart, with instructions not to leave it, and a lad, who had nothing to do with the driving, to go in the cart and deliver parcels to the customers of the defts. The driver left the cart, in which the lad was, and went into a house. While the driver was absent the lad drove on and came into collision with the plt.'s carriage. In an action to recover for the damage caused by the collision:—

*Held*, that the negligence of the driver in so leaving the cart was the effective cause of the damage, and that the deft. was liable. **ENGELHART v. FARRANT & Co.** **C. A. [1897] 1 Q. B. 240**

**80. — Driver—Omnibus driven by conductor—Onus of proving authority—Negligence of servant.**

At the end of a journey the conductor of an omnibus belonging to the deft., in the absence of the driver, and apparently for the purpose of turning the omnibus in the right direction for the next journey, drove it through some by-streets at a considerable pace, and while so doing negligently ran into and injured the plt. At the trial the plt. gave no evidence that the conductor was authorized by the defts. to drive the omnibus in the absence of the driver. At the close of the plt.'s case judgment was entered for the defts. On appeal:—

*Held*, by A. L. Smith and Romer L.J.J., that the plt. had not discharged himself from the burden cast upon him of shewing that the injury was due to the negligence of a servant of the defts. acting within the scope of his employment, and that the defts. were entitled to judgment.

By V. Williams L.J., that in general, if, in the absence of the driver of an omnibus, an accident occurs while the conductor is driving, it would be for the proprietor to shew that the act was unauthorized, but that the facts of the particular case negatived the giving of authority,

**MASTER AND SERVANT (Master's Liability)—**  
*continued.*

and that the defts. were entitled to retain the judgment. **BEARD v. LONDON GENERAL OMNIBUS Co.** - **C. A. [1900] 2 Q. B. 530**

**81. — Driver—Scope of servant's employment—Extent of authority—Case of emergency.**

Where the driver of deft.'s omnibus was too drunk to drive, A. volunteered to do so, and, with the acquiescence of the driver and of the conductor, drove the omnibus home, and on the way injured the plt.:—

*Held*, that under the circumstances it was not necessary for the servants in charge of the omnibus to authorize A. to drive, and therefore the deft. was not liable for A.'s negligence; *quære*, if it had been necessary, whether the deft. would have been liable.

Decision of Div. Ct., [1895] 1 Q. B. 557, reversed. **GWILLIAM v. TWIST**

**C. A. [1895] 2 Q. B. 84**

Distinguished by C. A. **Beard v. London General Omnibus Co.**, [1900] 2 Q. B. 530, 534.

**82. — Driver—Servant of one person hired by another to drive his carriage—Liability of hirer for negligence of driver.**

The deft. was the owner of a brougham, horses, and harness which he kept at a livery-stable. The keeper of the livery-stable was in the habit of supplying the deft. with one of his own servants to drive the brougham. One day, whilst the brougham was being driven with one of the deft.'s horses, the driver, owing to his negligence, as the jury found, lost control of the horse, which dashed through the window of the plt.'s shop and did damage. The man who was driving the brougham at the time of the accident had continuously driven the deft. for the preceding six weeks, and at the time of the accident was wearing a suit of livery which had been supplied to him by the deft.:—

*Held*, that upon these facts there was evidence on which a jury might find that the driver at the time of the accident was acting as the servant of the deft., so as to render the deft. responsible for the consequences of his negligence. **JONES v. SCULLARD** Lord Russell of Killowen C.J. [1898] 2 Q. B. 565

**83. — False imprisonment by manager of a public-house.**

The plt. by mistake tendered a foreign gold coin at a public-house in payment for refreshments. He discovered and rectified the mistake, but was subsequently arrested at the instance of the person managing the bar for the deft.:—

*Held*, that the manager had no implied authority by reason of his position to make the arrest, as his employer's property was no longer in danger, and the arrest was made only for the purpose of vindicating the criminal law in respect of an offence which the plt. was supposed to have already committed. **ABRAHAMS v. DEAKIN**

**C. A. [1891] 1 Q. B. 516**

**84. — Fire lighted on land and spreading to other land—Scope of servant's employment—Negligent disregard of special directions.**

The C. Co. contracted with W. to fell and burn bush on their land. W., at the request of

**MASTER AND SERVANT (Master's Liability)—continued.**

the co. and on its behalf, let the felling and burning of an additional piece of bush to N., who negligently and improperly lighted a fire and allowed it to spread to B.'s land, disregarding special stipulations in the contract as to the time at which such fire should be lit:—

*Held*, that the C. Co. was liable for the damage, and could only escape liability by shewing that the act of N. was that of a trespasser and not within the scope of the contract. **BLACK v. CHRISTCHURCH FINANCE Co. P. C. [1894] A. C. 48**

Discussed by C. A. *Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392, 400.

— Locomotive, Bailee of—Negligent management by hirer.

See **LOCOMOTIVES. 2.**

**85. — Obedience to foreman's orders—Negligence.**

The plt. was a workman in the employ of builders who were erecting a house. The defts. contracted with the builders to construct a lift in the house, and the plaintiff, at their request, was selected by the builder's foreman to assist D., their man, in putting up the lift. In obeying D.'s orders plt. received an injury:—

*Held*, that the plt. was at the time a workman of the defts. and bound to conform to D.'s orders, and that the defts. were liable for his injuries. **WILD v. WAYGOOD - C. A. [1892] 1 Q. B. 783**

— Omnibus driven by conductor—Onus of proving authority.

See **No. 80, above.**

**86. — Ship's crew and stevedores—Common employment.**

In an action to recover damages for injury caused by the deft.'s servant, the defence of common employment does not apply unless the plt. was at the time of the injury in the deft.'s actual employment in the relationship of master and servant. Where the defts. were stevedores and the plt. a servant of the shipmaster on whose ship the injury was caused by the negligence of a servant of the stevedores:—

*Held*, that the defence of common employment was not available. **CAMERON v. NYSTROM**

**P. C. [1893] A. C. 308**

**87. — Shipowner and stevedores—Common employment—Negligence.**

Under a contract to discharge a ship the whole work was not to be done by the stevedores, but the shipowners were to control and employ members of the crew to work the tackle:—

*Held*, that the shipowners were liable for injury to a servant of the stevedores occasioned by the negligence of a winchman who was a member of the crew and not in the employ nor under the control of the stevedores. **UNION STEAMSHIP Co. v. CLARIDGE**

**P. C. [1894] A. C. 185**

Discussed by C. A. *Marrow v. Flimby, &c.*, *Brick Co.*, [1898] 2 Q. B. 588, 607.

**88. — Ships belonging to same owner—Common employment.**

The masters and crews of two different ships

**MASTER AND SERVANT (Master's Liability)—continued.**

belonging to the same owners are not in common employment. **THE "PETREL"**

**Jeune P. [1893] P. 320**

**89. — Volenti non fit injuria.**

When a workman engaged in an employment not in itself dangerous is exposed to danger arising from an operation in another department over which he has no control—the danger being created or enhanced by the negligence of the employer—the mere fact that he undertakes or continues in such employment with full knowledge and understanding of the danger is not conclusive to shew that he has undertaken the risk so as to make the maxim, "*Volenti non fit injuria*" applicable in case of injury. The question whether or he has so undertaken the risk is one of fact and not of law. This is so both at common law and in cases arising under the Employers' Liability Act, 1880. **SMITH v. BAKER & SONS - H. L. (E.) [1891] A. C. 325**

Followed by C. A. *Williams v. Birmingham Battery and Metal Co.*, [1899] 2 Q. B. 338.

**Practice.**

*Employers' Liability Act, 1880 (43 & 44 Vict. c. 42)—Amendment as to time of delivery of summons for services. See Explanatory Memorandum to County Court Rules (May), 1899, and rule 66. W. N. 1899 (May 20), p. 173. See Current Index, 1899, p. cxi.*

**90. — Committal order, Jurisdiction to make—**"Enforceable as a county court judgment"—Default in payment of compensation—*Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. II. (8)—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*

The memorandum of the compensation awarded by an arbitrator under the Workmen's Compensation Act, 1897, when recorded in the manner prescribed by Sched. II. (8) of the Act, may be enforced by order of committal under the Debtors Act, 1869, c. 5. **BAILEY v. PLANT**

**C. A. [1900] W. N. 248; see [1901] 1 Q. B. 31**

— Costs—Security for—Appeal under Workmen's Compensation Act, 1897.

See **COSTS—Security for Costs. 61.**

— Joinder of several causes of action.

See **PRACTICE. 95.**

— Joinder of plaintiff—Several causes of action.

See **PRACTICE. 97.**

**91. — Justices, Jurisdiction of—Absence of workman without leave—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 4—Truck Act, 1896 (59 & 60 Vict. c. 44), s. 1.**

The jurisdiction of a court of summary jurisdiction under the Employers and Workmen Act, 1875, to hear and determine a dispute under that Act between an employer and a workman is not ousted by reason of the agreement of service being one to which the provisions of s. 1 of the Truck Act, 1896, apply. **BUXTON LIME FIRMS Co. v. HOWE - [1900] 2 Q. B. 232**

**92. — New trial—Jurisdiction of county court judge—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 3.**

A county court judge sitting to hear an



**MASTER AND SERVANT (Practice)**—*continued.*  
application for compensation under the Workmen's Compensation Act, 1897, is acting as an arbitrator only, and has no jurisdiction to grant a new trial. *MOUNTAIN v. PARR*

C. A. [1899] W. N. 35 (7); [1899] 1 Q. B. 805

93. — *Notice of claim—Indemnity as between respondents—Undertakers and contractor—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 4—Workmen's Compensation Rules, 1898, rr. 19–23.*

Where the undertakers and a contractor with them are made respondents to an application for compensation under the Act, and the undertakers claim under s. 4 of the Act to be entitled to an indemnity against the contractor, they must, under rule 23 of the Workmen's Compensation Rules, 1898, file a notice of such claim five clear days before the day of hearing in the same manner as is prescribed by rule 19 in the case of a claim for indemnity by a respondent against a third party. *APPLEBY v. HORSELEY CO.*

C. A. [1899] W. N. 90; [1899] 2 Q. B. 521

94. — *Second action—Remedies—Jurisdiction of justices—Proceedings against servant—Continuous breach of contract—Further proceedings—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 4.*

By the Employers and Workmen Act, 1875, s. 4, a dispute between an employer and a workman may be determined by a court of summary jurisdiction, provided that the Court shall not exercise jurisdiction where the amount claimed exceeds 10*l.*

On Oct. 22 the respondents agreed to employ the appellant, and he agreed to serve them, for fifty-two weeks, at specified weekly wages. On Nov. 16 the appellant left his work, and did not return.

On Dec. 16 the respondents took proceedings, under the Act, in a court of summary jurisdiction, against the appellant, and recovered 10*l.* damages for his absence from Nov. 16 to 28. Afterwards the respondents took further proceedings in the same court to recover another 10*l.* for the appellant's absence from Nov. 30 to Dec. 12. On a case stated:—

*Held*, that the jurisdiction of the Court, being limited to 10*l.*, was exhausted by the judgment in the first case, and therefore the respondents were not entitled to recover in the second case. *JAMES v. EVANS & CO.* — — — Div. Ct.

[1897] 2 Q. B. 180

— Second action for same injury—Death of workman after first action brought.

See SCOTTISH LAW—*Master and Servant*. 28.

95. — *Staying proceedings—Action for damages—Contract for service—Arbitration clause—Wrongful dismissal—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*

A contract for the employment of the plt. by the defts. as their agent for the sale of maize and other products for seven years, at a remuneration by commission, provided that “any dispute arising in connection with” the contract should be referred to arbitration pursuant to the arbitration clause in the by-laws of the Liverpool Corn Trade Association. The arbitration clause in those by-

**MASTER AND SERVANT (Practice)**—*continued.*  
laws provided that “all disputes arising out of transactions connected with the trade” should be referred to arbitrators, and that neither contracting party should bring any action against the other in respect of any dispute until the dispute had been settled by the arbitrators. Disputes as to the plt.'s conduct as agent were subsequently referred to arbitrators, who made an award adverse to the plt. whereupon the defts. dismissed him. The plt. then brought an action against the defts. for damages for wrongful dismissal:—

*Held*, reversing *Philimore J.*, that the dispute in the action was within the arbitration clauses in the contract and by-laws, and that the defts., having always been “ready and willing” to refer the dispute to arbitration, were entitled to have the action stayed under s. 4 of the Arbitration Act, 1889.

*Renshaw v. Queen Anne Mansions Co.*, [1897] 1 Q. B. 662, followed.

*Davis v. Starr*, (1889) 14 Ch. D. 242, explained. *PARRY v. LIVERPOOL MALT CO.*

C. A. [1900] W. N. 2; [1900] 1 Q. B. 339

96. — *Time for commencing proceedings—Arbitration—“Claim for compensation”—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 2, sub-s. 1.*

By s. 2, sub-s. 1, of the Workmen's Compensation Act, 1897, proceedings for the recovery under that Act of compensation for an injury are not to be maintainable unless notice of the accident has been given as soon as practicable, “and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury. . . .”

“The claim for compensation” means, not the initiation of proceedings before the tribunal by which the compensation is to be assessed, but a notice of a claim for compensation sent to the workman's employer.

A workman who had been injured in the course of his employment sent to his employers within six months a notice of the accident, and also a notice stating that he claimed compensation for the injury received by him. More than six months after the accident he filed a request for arbitration in the county court:—

*Held*, that the proceedings were in time.

Decision of C. A., [1900] W. N. 73; [1900] 2 Q. B. 145, reversed and the award of the county court judge restored. *POWELL v. MAIN COLLIERY CO.* — — — H. L. (E.) [1900] W. N. 144; [1900] A. C. 366

Referred to by C. A. *Wright v. John Bagnall & Sons, Ltd.*, [1900] 2 Q. B. 240, 243. See next Case.

97. — *Time for making claim for compensation—Claim made more than six months after accident—Employers debarred from raising objection—Estoppel—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 2, sub-s. 1.*

The provision of s. 2, sub-s. 1, of the Workmen's Compensation Act, 1897, which requires the claim for compensation to be made within six months of the occurrence of the accident causing the injury, is not necessarily an absolute bar to proceedings for the assessment of compen-

**MASTER AND SERVANT (Practice)—continued.**

sation commenced after six months by an injured workman, and the county court judge or other arbitrator has jurisdiction to inquire whether there are any circumstances in the case to debar the employer from raising that defence. An agreement arrived at between the parties shortly after the accident that there is a statutory liability on the employer to pay compensation, the amount of compensation being left open for future settlement, is evidence upon which the judge or arbitrator may properly find that the employer is estopped from setting up the defence that the request for arbitration was not filed within six months of the accident. *WRIGHT v JOHN BAGNALL & SONS, LD.*

**C. A. [1900] W. N. 92; [1900] 2 Q. B. 240**

Distinguished by C. A. See next Case.

**98. — Time for making claim for compensation—Claim made more than six months after accident—Estoppel—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 2, sub-s. 1.**

A workman having been injured by an accident, his employers paid him weekly through an insurance company one-half the amount of his wages, taking a receipt which expressed that the money was received "on account of compensation which may be or become due to me under the Workmen's Compensation Act, 1897"; the payments continued to be made for ten months after the accident, when they ceased. The workman then filed a request for arbitration in the county court:—

*Held*, that there being no evidence of any admission on the part of the employers of their liability under the Act to pay compensation, they were not estopped from taking the objection that the request for arbitration was out of time.

*Wright v. John Bagnall & Sons, [1900] 2 Q. B. 240, distinguished. RENDALL v. HILL'S DRY DOCKS AND ENGINEERING CO.*

**C. A. [1900] W. N. 113; [1900] 2 Q. B. 245**

**99. — Unsuccessful action against employer—Accident causing personal injury—Right to assessment of compensation under Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (b), 4.**

Where a workman, who has been injured by an accident arising out of and in the course of his employment, brings an unsuccessful action to recover damages against his employer, and is desirous of having compensation for his injury assessed under the Workmen's Compensation Act, 1897, he must follow the procedure prescribed by s. 1, sub-s. 4, of that Act, and must apply then and there to the judge trying the action for an assessment of compensation; he cannot at a subsequent date initiate independent proceedings against his employer by a request for arbitration under that Act. *EDWARDS v. GODFREY*

**C. A. [1899] W. N. 72; [1899] 2 Q. B. 333**

**Trade Secrets.**

**100. — Implied obligation of servant—Abuse of confidence—Improper use of information acquired during service.**

A clerk in the employment of a firm of mechanical engineers two days before leaving

**MASTER AND SERVANT (Trade Secrets)—continued.**

their service compiled a table of dimensions of various engines made by them. He did it for his own purposes and without their knowledge and consent:—

*Held*, that he had committed an abuse of the confidence ordinarily existing between clerk and employer, or the implied contract arising from their confidential relations, that a servant shall not use except for the purposes of service opportunities which the service gives him of gaining information. *MERRYWEATHER v. MOORE*

**Kekewich J. [1893] 2 Ch. 518**

**101. — Implied obligation of servant—Improper use of information—Liability.**

A manager copied from the order-book a list of names and addresses of his master's customers, and on leaving his employment used the list to solicit orders from them:—

*Held*, that there was an implied term of the contract of service not to use to the master's detriment information obtained in the course of the service, and that the manager was liable to his former master in damages to an injunction.

Decision of *Hawkins J.*, [1895] 2 Q. B. 1, affirmed. *ROBB v. GREEN*

**C. A. [1895] 2 Q. B. 315**

**102. — Implied obligation of servant—Tailor's cutter.**

An injunction granted restraining a tailor from using paper patterns copies of those cut by him when cutter under a former master. Unreported; and referred to by *Chitty J.*

Canvassers were employed to obtain advertisements for a directory from traders in particular districts. They proposed on the expiration of their agreements to assist several publications in obtaining similar advertisements:—

*Held*, that so to use the materials obtained under the agreement would be a breach of the implied terms thereof.

Decision of *Chitty J.*, [1892] 3 Ch. 462, affirmed. *LAMB v. EVANS*

**C. A. [1893] 1 Ch. 218**

Followed by C. A. *Robb v. Green*, [1895] 2 Q. B. 315.

**103. — Information acquired during service—Copies from employer's books.**

A former servant is not justified in using forms copied by him from those used by his former employer, or in using copies or extracts from a register of persons with whom his employer did business, for the purpose of canvassing them, and can be restrained from doing so by injunction. *LOUIS v. SMELLIE*

**C. A. [1895] W. N. 115 (7)**

**Truck.**

*Truck Act, 1896 (59 & 60 Vict. c. 44) amends the Truck Acts.*

*Truck Act, 1896 (59 & 60 Vict. c. 44)—O. by Sec. of State dated March 3, 1897, exempting from provisions of Act persons engaged in weaving cotton in Lancashire, Cheshire Derbyshire and West Riding of Yorkshire. St. R. & O. 1897, p. 459, No. 299.*

*O. by Sec. of State, dated July 30, 1897,*

**MASTER AND SERVANT (Truck)—continued.**

*exempting from provisions of Act persons engaged in iron ore and ironstone mines and limestone quarries in districts of Lancashire, Cumberland and Yorkshire.* St. R. & O. 1897, p. 460, No. 629.

**104.** — *Payment otherwise than in current coin — Deductions from sick and accident fund*—Truck Act, 1831 (1 & 2 Will. 4 c. 37), ss. 1, 2, 3, 4, 24.

A payment made by a master at the instance of a servant, to discharge an obligation of the servant, or to place the money in the hands of a person in whose hands the servant desires it to be placed, is a payment to the servant as much as if current coin had been placed in the servant's hands. H. entered into the service of A., and signed an agreement to conform to all regulations of A.'s works. One regulation was that all servants were to become members of a sick and accident club. By the rules of this club weekly payments were made to the club, and relief given to members in case of sickness or accident. H. received each week a ticket shewing the wages due, and the weekly deduction for the club, and the balance was paid to H. H. never required or received relief from the club:—

*Held*, that within ss. 3 and 4 of the Truck Act, 1831, H. had been paid the entire amount of wages in current coin, and that H. was not entitled to recover from A. the amount of the weekly deductions:

*Held*, also, that even assuming (but without deciding) that there was a contract avoided by s. 2 of the Act, A., by making the weekly payments to the club with H.'s assent, had discharged his obligations to H.

Decision of C. A. *Hewlett v. Allen & Sons*, [1892] 2 Q. B. 662, affirmed sub. nom. *HEWLETT v. ALLEN* — H. L. (E.) [1894] A. C. 383

Referred to by C. A. *Phillips v. London School Board*, [1898] 2 Q. B. 447, 450.

**105.** — *Payment otherwise than in current coin — Sick and accident fund* — Porter — Truck Acts, 1831 (1 & 2 Will. 4 c. 37), s. 23; 1887 (50 & 51 Vict. c. 46), s. 6.

Sec. 6 of the Truck Amendment Act, 1887, does not apply to written contracts excepted by s. 23 of the Truck Act, 1831. Therefore deductions made weekly in pursuance of the contract of service of a porter's wages to the sick and funeral allowance fund of the ry. co. are legal. *LAMB v. GREAT NORTHERN RY. CO.*

Div. Ct. [1891] 2 Q. B. 281

Distinguished by C. A. *Hewlett v. Allen & Sons*, [1892] 2 Q. B. 662, 674. This case was affirmed by H. L. (E.) [1894] A. C. 383. See preceding Case.

Referred to by C. A. *Phillips v. London School Board*, [1898] 2 Q. B. 447, 452.

**103.** — *Sick and accident fund*—Guard of a goods train—"Workman"—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10—Truck Act, 1887 (50 & 51 Vict. c. 46).

The plt. was guard of a goods train. His main duties were to guard and conduct the train and to marshal the trucks; but it was also his duty at times to help in coupling and uncoupling

**MASTER AND SERVANT (Truck)—continued.**

and unloading trucks. He was by the terms of his employment bound to contribute to a sick and accident fund by deductions made from his wages and not returned if he left his service. He sued to recover the sums compulsorily deducted, as illegally deducted under the Truck Acts:—

*Held*, that he was not "a workman" within s. 10 of the Employers and Workmen Act, 1875, and was not a person to whom the provisions of the Truck Acts applied. *HUNT v. GREAT NORTHERN RY. CO. (No. 1)*

Div. Ct. [1891] 1 Q. B. 601

**MATERIAL FACTS**—Concealment—Contracts in which "uberrima fides" is required.

See **INSURANCE**—Guarantee. 11.

— Concealment of.

See **SHIPPING**. 150.

— Non-disclosure of.

See **SPECIFIC PERFORMANCE**. 2.

**MATRIMONIAL CAUSES ACTS.**

See Cases under **DIVORCE**.

**MAURITIUS**—Appeals from Mauritius—O. in C. dated April 13, 1831, Oct. 23, 1851, and Dec. 12, 1894, making better provision for the administration of justice in Mauritius. St. R. & O. 1899, pp. 1693, 1697, 1701.

**MAXIMS OF LAW.**

1. — "*Actio personalis moritur cum persona.*"

(A) *Damages for misrepresentation.* In re DUNCAN — — Romer J. [1899] 1 Ch. 387

(B) *Liability of partners.* BLYTH v. FLADGATE Stirling J. [1891] 1 Ch. 337

2. — "*A man's house is his castle.*"

This maxim considered at length by Bowen L.J. The effect of the maxim is to extend the immunity to the outer door not only of all dwelling-houses, but also of all buildings whatsoever, and to outer gates of all inclosures as regards both distress and execution.

The decision of Bowen L.J. [1893] W. N. 67, affirmed. *AMERICAN CONCENTRATED MEAT CO. v. HENDRY* — C. A. [1893] W. N. 82

But see *Hodder v. Williams*, C. A. [1895] 2 Q. B. 663, 668.

3. — "*Damnum absque injuria*"—Underselling—Damage to manufacturer. AJELLO v. WORSLEY Stirling J. [1898] 1 Ch. 274

4. — "*Debitor non presumitur donare.*" JOHNSTONE v. HAVILAND H. L. (Sc.) [1896] A. C. 95

5. — *Deceased person, Wrongful act done by*—Claim for damages for misrepresentation. In re DUNCAN — — [1899] 1 Ch. 387

6. — *Deceased director*—Liability of legal personal representatives. FRANKENBURG v. GREAT HORSELESS CARRIAGE CO.

C. A. [1900] 1 Q. B. 504

This maxim has a very limited application in Scotland. *WOOD v. GRAY & SONS* Per Lord Watson H. L. (Sc.) [1892] A. C. 576, at p. 580

7. — "*Ignorantia juris nemini excusat.*" See WHITWORTH v. WHITWORTH.

G. Barnes J. [1893] P. 85  
2 S

**MAXIMS OF LAW**—*continued.*

8. — "*Nemo debet bis vexari pro una et eadem causa.*"

This maxim applies also in Scotland. *WOOD v. GRAY & SONS*

*Per Lord Field* [1892] A. C. 576 at p. 583

9. — "*Si sine liberis decesserit.*" *HUGHES v. EDWARDS* - H. L. (Sc.) [1892] A. C. 583

10. — *Uberrima fides*—Concealment of material facts. *SEATON v. BURNAND*.

H. L. (E.) [1900] A. C. 135

11. — "*Volenti non fit injuria.*"

(A) The effect of this maxim considered. *SMITH v. BAKER & SONS*

H. L. (E.) [1891] A. C. 325

(B) *BRABANT & Co. v. KING*.

P. C. [1895] A. C. 632

(C) *WILLIAMS v. BIRMINGHAM BATTERY METAL Co.* - C. A. [1899] 2 Q. B. 338

**MAYOR**—Election.

*See CORPORATION.* 17.

— Salary.

*See CORPORATION.* 21.

**MAYOR'S COURT (OF LONDON).**

*See Cases under LONDON*—Mayor's Court.

**MEASURE.**

*See WEIGHTS AND MEASURES.*

**MEAT**—Unsound.

*See FOOD.* 3—6.

**MEDICAL AID**—Conscientious objection to—Neglect to procure medical aid—Infant child—Manslaughter.

*See CRIMINAL LAW.* 9.

**MEDICAL PRACTITIONER**—Dentist—Right to be registered—Qualification—Articled pupil at passing of Act—Dentists' Act, 1878 (41 & 42 Vict. c. 33), ss. 6 (c), 7, 37.

A person who was, at the time of the passing of the Dentists Act, 1878, articled as a pupil within the meaning of s. 37, applied to have his name placed upon the Dentists' Register. He had not made the declaration required by s. 7:—

*Held*, that the proviso in s. 7 applies to persons whose qualification is given by s. 37, and that, therefore, the applicant, not having made the declaration, was not entitled to be registered.

Judgment of Div. Ct. [1897] 1 Q. B. 764, affirmed. *REG. v. MEDICAL COUNCIL.*

C. A. [1897] 2 Q. B. 203

— Lunacy—Practice.

*See LUNACY.* 12, 34.

— Medical referees—Workmen's Compensation Act, 1897.

*See MASTER AND SERVANT.*

2. — Medical register—Erasure of name for misconduct—Power of Court to review decision—Medical Act, 1858 (21 & 22 Vict. c. 90), ss. 28, 29.

A medical man is guilty of infamous conduct in a professional respect within s. 29 of the Medical Act, 1858, if in the pursuit of his profession he has done something with regard to it which would reasonably be considered as disgraceful or dishonourable by his professional

**MEDICAL PRACTITIONER**—*continued.*

brethren of good repute and competency. *ALLINSON v. GENERAL MEDICAL COUNCIL*

C. A. [1894] 1 Q. B. 750

Referred to by Div. Ct. *Reg. v. Burton*, [1897] 2 Q. B. 468, 473.

3. — "Physician"—False description—Medical Act, 1858 (21 & 22 Vict. c. 90), s. 40—Medical Act, 1886 (49 & 50 Vict. c. 48), s. 6.

A licentiate of the Society of the Apothecaries of London under a diploma granted by that body since 1886, although duly registered as a medical practitioner under the Medical Acts and entitled to practise medicine, surgery and midwifery, is not entitled to describe himself as a physician; but such a description, though incorrect, does not subject him to the penalty imposed by s. 40 of the Medical Act, 1858, unless it be also made wilfully and falsely. *HUNTER v. CLARE*

Div. Ct. [1899] 1 Q. B. 635

4. — Practising without a certificate—Whether more than one penalty recoverable—Apothecaries Act, 1815 (55 Geo. 3, c. 194), s. 20.

The deft. practised as an apothecary without a certificate, and on one day gave advice and supplied medicine to three persons. He was sued for three penalties under s. 20 of the Apothecaries Act, 1815, for acting or practising as an apothecary without a certificate:—

*Held*, that acting or practising applied to an habitual or continuous course of conduct, and that each attendance did not constitute a separate offence, and that the deft. was liable only to one penalty. *APOTHECARIES Co. v. JONES*

Div. Ct. [1893] 1 Q. B. 89

— Right of employer to examination of workman by—Workmen's Compensation Act. *See MASTER AND SERVANT.* 33.

**MEDICINE**—Cruelty to children—Neglect to provide medical aid.

*See CRIMINAL LAW.* 9.

— Stamp duty.

*See REVENUE*—Stamps. 165.

**MEDIUM FILUM VIE.**

*See HIGHWAY.* 8.

*LIGHT AND AIR.* 20.

*VENDOR AND PURCHASER*—Conveyance. 43.

**MEMBER**—School board—Disqualification.

*See SCHOOLS*—School Board. 3—5.

**MEETINGS**—Company.

*See COMPANY*—Meetings.

**MEMBER OF SOCIETY**—Retirement—Acceptance.

*See VOLUNTARY ASSOCIATION.* 1.

**MEMORANDUM AND ARTICLES OF ASSOCIATION.**

*See Cases under COMPANY*—Memorandum and Articles.

**MEMORIAL INSCRIPTION.**

*See ECCLESIASTICAL LAW*—Faculty. 33.

**MEMORIALS**—Evidence—Admissibility.

*See ECCLESIASTICAL LAW.* 21, 32.

**MENS REA**—Malicious prosecution—Statutory offence.

*See NEW SOUTH WALES.* 20.

**MENS REA—continued.**

— Sale of food in altered state.  
See ADULTERATION. 18.

**MERCHANDISE MARKS.**

See TRADE-MARK—Merchandise Marks.

**MERCHANT SHIPPING.**

See Cases under SHIPPING.

**MERGER—Agreement for lease—Life estate—Intention—Benefit—Tenant for life.**

The principle applicable to the merger of charges in equity applies also to the merger of leases. The Court is guided by the intention; and, in the absence of express intention, either in the instrument or by parol, the Court looks to the benefit of the person in whom the two estates become vested.

If a tenant for life in remainder takes a beneficial lease or an agreement therefor, and subsequently becomes tenant for life in possession, the presumption is against merger in equity.  
INGLE V. JENKINS Farwell J. [1900] W. N. 140;  
[1900] 2 Ch. 368

— Debt—Merger in judgment—Petitioning creditor's debt.

See BANKRUPTCY—Petition. 144.

— Estate duty—Life estate—Surrender to remainderman—"Interest ceasing on death of deceased."

See REVENUE—Estate Duty. 41, 42.

2. — Legal estate—Equitable interest—Intention—Vendor and purchaser—Estate of vendor—Expressed grant of fee—Leasehold title in equity—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 63.

H. was entitled to certain houses for a term of ninety-nine years (less one day) by way of mortgage from W. W. was entitled to the property for the original term subject to the mortgage, and H. was entitled to the reversion in fee expectant on the determination of the original term. Under these circumstances W. conveyed the property to H. for the unexpired residue of the original term, and H. covenanted to indemnify W. against the rents and covenants in the lease and the principal and interest secured by the mortgage. H. afterwards conveyed by way of sale to W. in fee, the conveyance being expressly "subject to and with benefit of the lease," and W. then conveyed to the plts. in fee "subject to and with benefit of the lease." H. subsequently purported to convey by way of mortgage in fee to the deft., who had no notice of the plt.'s title:—

Held, that whether the original term had merged in the reversion or not, yet, inasmuch as H. and W. had dealt with one another on the footing that the term was to be deemed in existence, it would be inequitable to allow it to be treated as at an end. H. had therefore, when he purported to convey the fee to the deft., an equitable estate to the extent of the leasehold interest, which, under s. 63 of the Conveyancing Act, 1881, passed to the deft., and the plts. were bound to give effect to it.

The question whether two equitable estates are merged or not is one of intention. Whether this rule applies where a merger of legal estate

**MERGER—continued.**

has actually taken place, *quære*. THELLUSSON v. LIDDARD — Stirling J. [1900] W. N. 146;  
[1900] 2 Ch. 635

3. — Life estate and estate *pur autre vie*—Intention—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 4.

A tenant for life granted her estate to the next tenant for life, subject to a rent-charge payable to her during her life. The grantee died before grantor, having devised his interest to plts. A remainderman claimed that there had been a merger of the life estate and the estate *pur autre vie*, and that he took the estate discharged of the rent-charge:—

Held, that s. 25, sub-s. 4, of the Judicature Act, 1873, applied, and that having regard to the intention of the parties manifest on the face of the deed of grant there was no merger of the estates of the first and second tenant for life.  
SNOW v. BOYCOTT Kekewich J. [1892] 3 Ch. 110

— Life interest and reversion held in different rights.

See POWER. 42.

— Mortgages.

See MORTGAGE—Merger.

— Prescriptive right—Extinguishment of old franchise by statute.

See TOLLS. 1.

**MERSEY CHANNELS ACT, 1897** (60 & 61 Vict. c. 21). Power given to make rules for preventing collisions in Mersey Channels.

— Admiralty practice.

See SHIPPING, *passim*.

**MESNE PROFITS**—Appealable amount.

See PRIVY COUNCIL—Judicial Committee. 2.

**METAGE**—Of grain.

See LONDON—Grain Duty. 42.

**METALLIFEROUS MINES.**

See Cases under MINES—Metalliferous Mines.

**METROPOLITAN CONSOLIDATED 3½ PER CENT. STOCK**—Held to be impure personality.

See CHARITY. 49.

**METROPOLIS.**

See Cases under LONDON.

**MIDDLESEX REGISTRY.**

Middlesex Registry Act, 1891 (54 & 55 Vict. c. 10), makes temporary provision for the business of the Middlesex Registry of Deeds.

By the Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), the Middlesex Registry of Deeds was transferred to the Land Registry, and provision made for the conduct of the business thereof.

RULES.] Rules dated Feb. 8, 1892, made by the Ld. Chanc. under the Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64). These rules are in substitution for all rules subsisting before Aug. 5, 1891. [1892] W. N. (Appx. of O. & R.) p. 4; St. R. & O. 1892, p. 638.

Regs. dated Mar. 24, 1892, made by the Regis-  
2 S 2

**MIDDLESEX REGISTRY—continued.**

*trav.* [1892] W. N. (Appx. of O. & R.) p. 15; St. R. & O. 1892, p. 645.

*Reg. dated Ap. 19, 1892, amending the Note to Form 1 of Land Registry (Middlesex Deeds) Rules, 1892.* [1892] W. N. (Appx. of O. & R.) p. 21; St. R. & O. 1892, p. 645.

*Fees.] Fee O. dated Feb. 11, 1892, made under the Land Registry (Middlesex Deeds) Act, 1891.* St. R. & O. 1892, p. 644.

*Treas. O. dated Ap. 27, 1892, as to fees payable under the Land Registry (Middlesex Deeds) Act, 1891.* St. R. & O. 1892, p. 645.

*Fees payable under the Land Registry (Middlesex Deeds) Act, 1891.* W. N. 1900 (Dec. 22), p. 335. See *Current Index, 1900*, p. xciv.

—“Conveyance”—Title of official receiver under Bankruptcy Act, 1883.

See **BANKRUPTCY—Receiver.** 193.

—Costs—“Completion of conveyance.”

See **SOLICITOR.** 61.

—Purchase of lands in Middlesex—Registration—Costs—Taxation—“Completion of conveyance.”

See **SOLICITOR.** 61.

1. — *Rectification of the register—Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), s. 1—Land Transfer Acts, 1875 (38 & 39 Vict. c. 87), s. 95; 1897 (60 & 61 Vict. c. 65), s. 7, sub-s. 2.*

Where a Court of competent jurisdiction has decided that a person is entitled to land registered under the Middlesex Registry Acts, and as a consequence of the decision is of opinion that a rectification of the register is required, the Court may not only declare that the register ought, but may also order it, to be rectified. **STEPHENSON v. YORKE** **Buckley J. [1900] W. N. 44; [1900] 1 Ch. 505**

**MILITARY MATTERS.**

See *Cases under ARMY AND NAVY.*

**MILITARY COLOURS**—Affixing to walls of chancel—Faculty.

See **ECCLESIASTICAL LAW—Faculty.** 34.

**MILK.**

See **DAIRY.**

—Sale of milk.

See **ADULTERATION—Milk.**

**MILK CHURN**—Gauge indicating quantity contained.

See **WEIGHTS AND MEASURES.** 1.

**MINES—MINES AND MINERALS.**

*In General,* col. 1256.

*Coal Mines,* col. 1257.

*Distress,* col. 1258.

*Gold Mines,* col. 1259.

*Infants,* col. 1260.

*Leases,* col. 1260.

*Metalliferous Mines,* col. 1263.

*Railway Company.* See **RAILWAY—Minerals.**

*Settled Land.* See **SETTLED LAND—Mines.**

*Working Generally,* col. 1263.

**MINES—continued.****In General.**

—Arbitration—Duty of company to take up award—Compensation—Notice of intention to work.

See **RAILWAY—Minerals.** 11.

—Boiler explosions in.

See **BOILER—Explosions.** 1.

—British Columbia Coal Mines Regulations—Naturalization and aliens—Chinamen.

See **CANADA.** 30.

—Employers' Liability Act—Liability of mine-owner—Working “under a contract with an employer.”

See **MASTER AND SERVANT.**

—Free miner's certificate—Precious metals.

See **CANADA.** 29.

—“Flotation”—Contract—Construction—British South Africa Company's Mining Ordinance.

See **CAPE OF GOOD HOPE.** 4.

1. — *Mounds of refuse produced in iron manufacture—Minerals—Chattels.*

Plt. demised coal and iron mines to a co., which, in manufacturing iron from ironstone, produced large quantities of refuse (consisting principally of protoxide of iron and silica) called “tap-cinder” or “puddlers' taps.” This refuse, which was at the time unsaleable, was thrown on the demised land and accumulated in large mounds. On the determination of the lease plts. demised the land and minerals to defts., who only worked the coal, and did not add to the mounds. Afterwards defts. purchased the “stores and other effects” on the land from plts. The tap cinder in the meantime had acquired a commercial value, and large quantities of it were sold by defts. :—

*Held,* that plts. were entitled to the mounds and to an account of the proceeds of sale, inasmuch as the mounds, although they might have been removed by the company during its lease, were not chattels passing under the sale of the stores and effects, and were not iron, or ironstone mines, seams, veins, or beds, opened or unopened, or minerals within the meaning of the defts.' lease. **BOILEAU v. HEATH**

**Bigham J. [1898] 2 Ch. 301**

—Railway companies.

See **RAILWAY—Minerals.**

2. — *River—Pollution of by mine water—Right to have purity of water preserved.*

A mine owner is not entitled as against lower riparian owners to utilize a natural stream flowing on the surface of his land for the discharge of the water which is pumped out of his mine (1) to increase largely the volume of the stream so as (2) to pollute the stream, or *semble* (3) so to alter the quality or character of the water of the stream as to render it materially less serviceable for the uses of the lower owners.

Decision of Ct. of Sess., (1892) 19 R. 1083 affirmed. **JOHN YOUNG & Co. v. BANKIER DISTILLERY Co.** — **H. L. (Sc.) [1893] A. C. 691**

**MINES—(In General)—continued.**

— Stamp—Receipt for compensation for not working coal adjacent to railway—Right of support.

See **REVENUE—Stamps.** 179.

— Strike clause — Charterparty — Colliery on strike—Colliery guarantee.

See **SHIPPING—Charterparty.** 20.

— Subscriptions to coal owners' association—Deductions.

See **REVENUE—Income Tax.** 81.

— Water required for mining purposes — Monopoly of supply.

See **CAPE OF GOOD HOPE.** 2.

3. — *Wrongful taking of minerals—Form of action—Interest on compensation—Delay—Limitation Act, 1832 (3 & 4 Will. 4, c. 42), s. 29—Judgments Act, 1837 (1 & 2 Vict. c. 110), ss. 17, 18.*

A claim was made in 1891 to add interest to damages certified in an action brought in 1871 for minerals wrongfully taken :—

*Held*, that, although interest at 4 per cent. might have been granted at the trial, it was too late to grant it after twenty years :—

*Held*, also, that the action was an equitable action for an account of profits made out of a trespass, and not an action for money had or received, or one for trover or trespass de bonis asportatis, within 3 & 4 Will. 4, c. 32, s. 29, so that damages could not be given in the nature of interest.

Decision of Stirling J., (1890) 44 Ch. D. 694, affirmed. **PHILLIPS v. HOMFRAY**

**C. A. [1892] 1 Ch. 465**

**Coal Mines.**

*Coal Mines (Check Weighers) Act, 1894 (57 & 58 Vict. c. 52), amends the provisions of the Coal Mines Regulation Act, 1887, with respect to check weighers.*

*Coal Mines Regulation Act, 1896 (59 & 60 Vict. c. 43), amends the Act of 1887 (50 & 51 Vict. c. 58).*

4. — *Examination of machinery, guides and conductors—Record of report of examination—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 49, r. 5.*

Sect. 49, r. 5, of the Coal Mines Regulation Act, 1887, requires the report of the examination made every twenty-four hours of the guides and conductors to be recorded, as well as the report of the examination made weekly of the shafts. **SCOTT v. BOULD** — Div. Ct. [1895] 1 Q. B. 9

5. — *Lighting and watching rate—Land.*

Coal mines are "property (other than land) rateable to the relief of the poor," and therefore rateable on the higher scale under s. 33 of the Lighting and Watching Act, 1833.

Decisions of Div. Ct. [1894] 1 Q. B. 567; and **C. A. [1894] 2 Q. B. 11**, affirmed. **THURSBY v. BRIERCLIFFE-WITH-EXTWISTLE CHURCHWARDS**

**E. L. (E.) [1895] A. C. 32**

6. — *Wages—Deductions—Payment by weight of mineral—Coal Mines Regulation Acts, 1872*

**MINES—(Coal Mines)—continued.**

(35 & 36 Vict. c. 76), s. 17; 1887 (50 & 51 Vict. c. 58), s. 12, sub-s. 1.

The plts. were employed in the defts.' collieries to cut large coal at wages which depended on the weight gotten. The coal was cut as large coal, but a considerable amount of small coal was produced in the conveyance of the coal to the pit's mouth and screening it. The coal raised was screened at the pit's mouth, and the defts. made deductions from the plts.' wages in respect of the small coal found in it. The plts. sued the defts. for the amounts so deducted :—

*Held*, that the small coal was part of "the mineral contracted to be gotten" within s. 12, sub-s. 1, of the Coal Mines Regulation Act, 1887, and that the deductions were illegal, and the plts. were therefore entitled to recover :—

*Held*, also, that the sums allowed for the small coal were to be at the same rate as that paid for the large coal.

Decision of Div. Ct. [1891] 1 Q. B. 496, affirmed. **BRACE v. ABERCARN COLLIERY CO. HUGGINS v. LONDON AND SOUTH WALES COLLIERY CO.**

**C. A. [1891] 2 Q. B. 699**

7. — *Wages—Illegal stipulations in contract—Other stipulations, whether valid—Payment by weight of minerals—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 12.*

A miner contracted with a colliery co. not to leave his employment without giving fourteen days' notice. The contract contained among other things a clause allowing deductions in respect of dirt sent up with the coal, and special regulations as to testing the amount of coal sent up which deprived the miner of payment for coal where the tub sent up contained over a certain proportion of dirt :—

*Held*, (1.) that the stipulation was contrary to s. 12 of the Coal Mines Regulation Act, 1887, because in certain events the miner would not get any wage for the amount of mineral gotten by him; (2.) that the illegality of the stipulation as to the deductions did not vitiate the whole contract, nor prevent the co. from enforcing the other stipulations of the contract. **KEARNEY v. WHITEHAVEN COLLIERY CO.**

**C. A. [1893] 1 Q. B. 700**

**Distress.**

8. — *Lease—Distress—Power to distrain for rent in arrear—Chattels of lessee on adjoining mine—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), ss. 4, 6—Registration of lease—Company—Voluntary winding-up—Distress—Receiver—Rights of debenture-holders' receiver.*

A mining co. (now in liquidation) were lessees, from separate lessors, at certain rents and royalties, of two adjoining coal-mines A and B. There was no shaft on mine B, and the company worked both mines by means of a shaft on mine A. In each of the leases the lessor reserved to himself express power to distrain for rent in arrear, not only upon chattels belonging to the lessees on the demised premises, but also upon chattels belonging to the lessees in or about "any adjoining or neighbouring collieries." In Oct., 1896, the

**MINES (Distress)—continued.**

lessors of mine B levied a distress upon chattels belonging to the lessees on mine A:—

*Held*, reversing the decision of Stirling J., [1896] W. N. 166 (3), (1.) that having regard to the nature of the demise and the manner in which the minerals were worked, the power to distrain upon chattels belonging to the lessees upon adjoining or neighbouring mines did not constitute the mining lease a bill of sale within the meaning of the Bills of Sale Act, 1878, so as to require registration under the Bills of Sale Acts; and *held* also (2.) that the distress, having been levied before the commencement of the winding-up of the company, and before a receiver was effectively appointed on behalf of the debenture-holders of the company, was valid against the debenture-holders.

*Per the C. A.*: This last decision is in accordance with *Biggerstaff v. Rowatt's Wharf Co.*, [1896] 2 Ch. 93, and not inconsistent with *In re Opera, Limited*, [1891] 3 Ch. 260.

*Per Stirling J.*: The Court will not at the instance of the liquidator restrain further proceeding under a distress levied by the landlord of a limited company before the commencement of the winding-up, but not completed by sale, unless there are special reasons rendering it inequitable to allow the distress to go on; but *semble*, the Court has jurisdiction under the Companies Act, 1862, both in a compulsory and a voluntary winding-up, to restrain by injunction further proceedings under such distress.

The fact that a distress had been levied between the passing and confirmation of a special resolution for a voluntary winding-up is not a ground for such injunction.

The doctrine of *Tennent v. City of Glasgow Bank*, (1879) 4 App. Cas. 615, does not apply to a contest between different classes of creditors.

*Pullbrook v. Ashley*, (1887) 56 L. J. (Q.B.) 376, explained and approved by the C. A. in *RE ROUNDWOOD COLLIERY CO. LEE v. ROUNDWOOD COLLIERY CO.* C. A. [1897] 1 Ch. 373

**Gold Mines.**

— Compensation—Arbitration—Laws of Nova Scotia.

*See CANADA.* 38.

— Gold lease application—Appeal from interim injunction—Trespass.

*See NEW SOUTH WALES.* 37.

9. — Joint gold-mining lease—Notice of abandonment by a joint lessee—Law of New South Wales.

Written notice by a joint holder of a gold-mining lease to his co-lessees that he is unable to contribute to the joint expenses, and that they may do as they like with it, is an abandonment of his beneficial interest therein. The subsequent working of the lease by the respondent, a co-lessee, out of his own resources is an acceptance of the abandonment:—

*Held*, that neither the retiring lessee nor, on his bankruptcy, his official assignee was entitled to any share of the price realized by the respondent's sale of the lease. *PALMER v. MOORE*

P. C. [1900] A. C. 293

**MINES (Gold Mines)—continued.**

10. — Royal mine—Rights of Crown—"Gold mine"—Gold mixed with base metals—Royal Mines Acts, 1688 (1 Will. & M. c. 30), ss. 1, 2, 3, 4; 1693 (5 Will. & M. c. 6), ss. 2, 3.

The relaxation of the prerogative right of the Crown as to gold mines effected by 1 Will. & M. c. 30, and 5 Will. & M. c. 6, does not apply to a mine worked simply as a gold mine even where the gold is mingled with other minerals, and such a mine cannot be worked by a subject even on his own land without a Crown licence.

*Per North J.*: The Crown cannot be called upon to exercise its right of pre-emption until the ore has been cleaned and ready for sale. *ATT.-GEN. v. MORGAN* C. A. [1891] 1 Ch. 432

*NOTE*.—1 Will. & M. c. 30, repealed except as to s. 3. *See S. L. R.* 1867.

**Infants.**

*Mines (Prohibition of Child Labour Underground) Act, 1900* (63 & 64 Vict. c. 21), prohibits child labour underground in mines.

— Adoption on full age of lease made by trustees—Compromise—Lapse of time.

*See INFANT.* 3.

**Leases.**

11. — Agreement for lease of undivided moiety of mineral property—Specific performance.

The Court will decree specific performance of an agreement for a lease of an undivided moiety of mineral property.

*Price v. Griffith*, (1851) 1 D. M. & G. 80, discussed and explained. *HEXTER v. PEARCE*

*Farwell J.* [1900] 1 Ch. 341

12. — Barony title—Coal below low water-mark—Lease.

The doctrine of possession by prescriptive working of minerals applicable to the foreshore *ex adverso* of a barony, granted with parts and pertinents, cannot be extended to a barony granted with power to work minerals *infra fluxum maris*, because these words shew that the grant is limited to the minerals under the foreshore only. Nor can such prescriptive use be extended to a third barony where a barony with a bounding charter lies between.

*Quære*, whether the doctrine can be extended to cover minerals running from the foreshore under the sea-bed.

**Adoption—Minor—Lease of coal.**

The right of a proprietor of estates adjoining the sea to work the coal below low-water mark was challenged by the Crown during the proprietor's minority. The estates to which the minor had succeeded consisted in part of entailed and in part of unentailed lands. The administration of the unentailed lands was vested in the testamentary trustees of the minor's father, who were also curators of the minor. These trustees, without the concurrence of the minor, entered into a transaction with the Crown whereby they on their part accepted a lease of the whole coal below low-water mark *ex adverso* of both the entailed and unentailed lands, and the Crown agreed not to claim damages in respect of coal



**MINES (Leases)—continued.**

which had been worked in the past. After the proprietor came of age, he accepted an assignment of the lease, and subsequently applied for and obtained from the Crown a reduction of the royalty payable under the lease, and a modification of the whole mode of working the coal. When the proprietor so acted in regard to the lease, he was unaware that he had a claim to some of the coal below low-water mark. In an action brought by the proprietor fourteen years after he had reached majority, concluding, *inter alia*, for a declarator that he was not bound by the lease:—

*Held*, reversing the decision of the Ct. of Sess., (1897), 24 R. 216, that the actings of the proprietor after he came of age barred him from challenging the lease. **LORD ADVOCATE v. WEMYSS** - - **H. L. (Sc.) [1900] A. C. 48**

**13. — Compensation clause—Subsidence—Injury to land and buildings—Liability of lessee—Damage caused by act of lessee's predecessor in title.**

Mines were granted by deed, with power to the grantee and his assigns to work, making reasonable compensation for all damage occasioned to the surface of the lands, or to buildings thereon, by the exercise of the powers by the indenture granted:—

*Held*, following *Davis v. Treharne*, (1881) 6 App. Cas. 460, that damage by subsidence was not covered by the compensation clause, and therefore the assigns of the grantee were liable to an action to recover damages for injury done to the surface of the land by subsidence caused by working the mines.

A lessee of underground strata is not liable in damages to the owner of buildings on the surface, who has acquired a right to have the buildings uninjured by underground workings, for injury occasioned to the buildings by reason of subsidence happening during the currency of the lease, caused, not by any act of commission on the part of the lessee, but resulting from an excavation made in the underground strata by the lessee's predecessor in title prior to the date of the lease.

Therefore, where the plts.' buildings, erected more than twenty years before action, on land, the mines under which were worked by the defts. under a lease, were injured, during the currency of the lease, and within six years before action, by subsidence caused, not by the acts of the defts., but by the acts of their predecessor in title, done prior to the date of the lease:—

*Held*, that the defts. were not liable. **GREENWELL v. LOW BEECHURN COAL CO.**

**Bruce J. [1897] 2 Q. B. 165**

— Distress.

*See* **MINES—Distress. 8.**

— Infant—Adoption on full age of lease made by trustees—Compromise—Lapse of time.

*See* **INFANT. 3.**

**14. — Life-rent—Rent and profits—"Opened" mines.**

By ante-nuptial contract of marriage dated 1882, in English form, G., the absolute owner of the estate of C., bound herself to convey, and did

**MINES—(Leases)—continued.**

convey, her estate to trustees. The settlement contained the usual power of sale, and in the meantime the trustees were to lease the unsold parts, and to hold the net proceeds of such sales, as well as net rents and profits of the estate until sold, upon trusts thereafter declared, "with such powers of leasing the lands and hereditaments and other powers necessary and expedient in the execution of the trust." The trusts were declared, and it was provided that until the estate should be sold the trustees were to apply the rents and profits to the persons and for the purposes to which the annual income of the money arising from the sale of the estate would be paid under the trust. Under the trust the annual income of the proceeds of the sale of the estate was to be paid to G. during her life, and after her death to her husband, and after their deaths the trustees were to hold the trust premises and the annual income thereof for the children of the marriage as the parents should appoint. There was one child of the marriage. Stone quarries on a portion of the estate had been worked at intervals for about a century; but during 1882, and for four years before 1882, no quarries had been worked. In 1895, the estate not having been sold, the trustees leased the stone in forty-five acres, including the portion already worked, at a fixed rent with a royalty on the amount of stone sold:—

*Held*, reversing the decision of the Ct. of Sess., (1898) 25 R. 475, that the quarries at the date of the marriage settlement were "opened mines," and the rent and royalty fell to be paid to G. as annual income from the estate, and did not fall to be accumulated for the benefit of the child of the marriage. **GREVILLE-NUGENT v. MACKENZIE** **H. L. (Sc.) [1899] W. N. 226; [1900] A. C. 83**

**15. — Open or unopened mine—Pieces of land separated by narrow strip belonging to different owner—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 4.**

An estate settled by the will of a testator comprised two pieces of land separated by a narrow intervening strip of land which belonged to different owners. Under the whole of the lands there was a valuable seam of coal. The piece of land on the north side of the strip had been demised by the settlor to a colliery co., who had worked the coal. The piece of land on the south side of the strip had not been demised by the settlor, nor had the coal thereunder been worked in any way; but it appeared that if the intervening strip had belonged to the testator the coal could have been worked from the pit or shaft sunk by the colliery co. On a petition by the tenant for life under the will for the sanction of the Court, under the Settled Estates Act, 1877, to a proposed mining lease of a portion of the land on the south side of the strip:—

*Held*, that, by reason of the intervention of the strip of land, the mine to be leased must be deemed to be a separate unopened mine, and that therefore three-fourths of the rent under the lease must be set apart and invested. *In re MAYNARD'S SETTLED ESTATE* - **Kekewich J. [1899] W. N. 108; [1899] 2 Ch. 347**

**MINES (Leases)—continued.**

— Rents and royalties from mining leases — Accumulations—Tenants for life—Remainderman.

See ACCUMULATIONS. 6.

— Tenant for life.

See SETTLED LAND—Mines. 80—83.

**Metalliferous Mines.**

16. — *Inspector of mines—Agent—Information, by whom it may be laid*—11 & 12 Vict. c. 43, s. 10—*Metalliferous Mines Regulation Act, 1872* (35 & 36 Vict. c. 77), s. 35.

An information against the owner or agent of a mine for an offence under the Metalliferous Mines Regulation Act, 1872, which can be prosecuted before a court of summary jurisdiction may, if the inspector of mines of the district has determined to prosecute, be laid in his name by an agent duly authorized by him in that behalf. *FOSTER v. FIFE* - - [1896] 2 Q. B. 104

17. — *Offences—Guides—Metalliferous Mines Regulation Act, 1872* (35 & 36 Vict. c. 77), s. 23, sub-s. 10—“Working shaft.”

A shaft is a “working shaft” within the meaning of the Metalliferous Mines Act, 1872, so as to require guides, when it is being used by workmen for the purposes of the mine, even though the minerals are not yet gotten. *FOSTER v. NORTH HENDRE MINING CO.*

Div. Ct. [1891] 1 Q. B. 71

**Railway Company.**

See RAILWAY—Minerals.

**Settled Land.**

See SETTLED LAND—Mines.

**Working Generally.**

— Compensation—Lease of colliery—Right of working lessee to sink shaft in land of lessor not included in demise.

See LANDS CLAUSES ACTS.

18. — *Compensation for not working—Prospective injury—Waterworks Clauses Act, 1847.*

Although mines are “lands” within s. 6 of the Waterworks Clauses Act, 1847, the relations of mine-owners and waterworks undertakers are specially governed by ss. 18 to 27 of the Act, so that a mine-owner cannot claim against a waterworks undertaking compensation for prospective injury, which may be caused by his not being able at some future date to work his mine to its utmost. He must wait for compensation until the injury arises.

Decision of C. A., 20 Q. B. D. 699, affirmed. *HOLLIDAY v. WAKEFIELD CORPORATION*

H. L. (E.) [1891] A. C. 81

No longer applicable in such a case. See *In re Gonty and Manchester, Sheffield and Lincolnshire Ry. Co.*, C. A., [1896] 2 Q. B. 439. See *In re Lord Gerard and L. & N. W. Ry. Co.*, C. A., [1895] 1 Q. B. 464. Next Case.

19. — *Compensation for not working—Purchase*

**MINES (Working Generally)—continued.**

*by railway company of all subjacent strata except coal.*

Where a ry. co. purchase under their statutory powers the underlying minerals as well as the surface of land, the rights which arise from the purchase as between co. and vendor are determined by the mining clauses ss. 75–85 of the Railways Clauses Act, 1845, and not on the common law; and their mutual rights are not altered by the fact that the co. has taken some of the underground strata as well as surface, and the landowner cannot recover compensation for ungoten coal until the time arrives for working the pits.

Decision of Div. Ct., [1894] 2 Q. B. 915, affirmed. *In re LORD GERARD AND THE LONDON AND NORTH WESTERN RY. CO.*

C. A. [1895] 1 Q. B. 459

20. — *Compensation for not working—Special Act—Special remedy—Jurisdiction of Chancery Division.*

A special Act consolidating the provisions of various Acts relative to canal navigation from the Trent to the Mersey, directed that questions relating to compensation for not working mines should be tried before a justice of assize and a special jury in the county where the question arose:—

*Held*, that the Chancery Div. had no jurisdiction to try the action. *HANLEY AND BUCKNALL COAL CO. v. NORTH STAFFORDSHIRE RY. CO.*

Kekewich J. [1891] W. N. 93

— Gold lease application—Appeal from interim injunction—Trespass—Mining on Private Lands Act.

See NEW SOUTH WALES. 37.

— Glebe lands—Ecclesiastical commissioners—Right to injunction against illegal mining.

See ECCLESIASTICAL LAW. 44.

21. — *Licence to work minerals—Construction of deed—Right, whether exclusive—Setting aside lease.*

In 1783, by a deed of exchange, lands were granted in fee to the plt.'s predecessor in title with a reservation of coal and minerals. The minerals were not worked, but in 1865 the grantor's successors in title demised the coal under part of the land to A. In 1877 the then owner of the lands demised the coal under another part to the plt., who did not then know of his rights under the deed of 1783. In an action to establish plt.'s right to the minerals:—

*Held*, that (1.) *Lord Mountjoy's Case* (Godb. 17; Anderson 307) does not decide that a licence to dig coal cannot be exclusive, and although there is a *prima facie* presumption against such a licence being exclusive, the intention to exclude the grantor need not appear by express words. (2.) That the reservation was not an exception of the minerals, but a grant of a right to work them, and was not exclusive, and that the grantor could himself work minerals so long as he did not disturb the grantee in any working in progress.

Decision of V. Williams J. [1891] 3 Ch. 504, affirmed. *DUKE OF SUTHERLAND v. HEATHCOTE*

C. A. [1892] 1 Ch. 475

**MINES (Working Generally)—continued.**

22. — *Negligently letting loose water confined in mine by cutting drifts—Damage to house over mine—Liability—Coal mine.*

LITTLEDALE v. EARL OF LONSDALE, reported (1793-94) 2 H. Bl. 267, 299; 2 Anstr. 356; 5 Bro. P. C. 519. — [1899] 2 Ch. 233, n.

— Notice of intention to work minerals—Compensation—Arbitration—Duty of company to take up award.  
See RAILWAY. 11.

— Railway company—Right to support of surface.  
See RAILWAY—Minerals. 11.

23. — *Reservation from grant—Redrock and coal neither having any commercial value—Injunction.*

The defts. were the lessees of certain lands under a lease dated September 30, 1860, granted by the predecessor in title of the plaintiff.

The lease contained the following reservation: "Except nevertheless and always reserved out of this demise all mines and minerals within or under the said land."

The defts. had, for the purpose of obtaining water, commenced to construct a borehole eighteen inches in diameter, and had already bored through a stratum of redrock and a layer of coal from six to eight inches in thickness:—

*Held*, that although the substances in question could not (as was admitted) be worked at a profit at the present time, they fell within the reservation in the lease as being substances which had "a use and a value of their own independent of and separable from the rest of the soil," and that the plts. were entitled to an injunction to restrain the defts. from boring or removing any mines or minerals in or under the land.

*Heat v. Gill*, (1872) L. R. 7 Ch. 699; *Earl of Jersey v. Neath Union*, (1889) 22 Q. B. D. 555, and *Lord Provost and Magistrates of Glasgow v. Farie*, (1888) 13 App. Cas. 657, examined and explained. JOHNSTONE v. CROMPTON & Co.

Byrne J. [1899] W. N. 93; [1899] 2 Ch. 190

— Reservation of mines — Working powers — Manorial rights.  
See INCLOSURE. 3.

— Reservation of right to work mines.  
See DEED. 2.

24. — *Subsidence—Injury to adjoining land and buildings—Liability of owner—Damage caused by act of owner's predecessor in title.*

The owner of minerals is not liable for damage caused to neighbouring land by subsidence occasioned by the working of the minerals by his predecessor in title, although the damage did not actually occur until after the owner came into possession.

*Greenwell v. Low Beechburn Coal Co.*, [1897] 2 Q. B. 165, followed: *Darley Main Colliery Co. v. Mitchell*, (1886) 11 App. Cas. 127, considered. HALL v. DUKE OF NORFOLK — Kekewich J. [1900] W. N. 138; [1900] 2 Ch. 493

25. — *Support—Right of—Conveyance of mines without surface—Letting down surface.*

In an action by a grantor against grantees to

**MINES (Working Generally)—continued.**

restrain them from working mines in such a manner as to cause subsidence of or injury to lands or buildings thereon it was *held*, that the grantees were not entitled to let down the surface of the lands, and that the grantor was entitled to an injunction to restrain them from so doing, even though the result might be to compel them to close their works entirely.

*Davis v. Treharne*, (1881) 6 App. Cas. 460, applicable.

Decision of North J., [1899] W. N. 2 (4), affirmed. *EARL OF WESTMORELAND v. NEW SHARLSTON COLLIERIES CO.*

C. A. [1899] W. N. 88

26. — *Support—Right of—Canal—Apprehended danger to canal from working of mine—Undertaking by canal company not to sue.*

*Held*, on the construction of the Rochdale Canal Act, 1794, that an owner of mines adjacent to but not under the canal did not come within s. 39 and was under no statutory liability towards the canal co. in working his mines; consequently that if the working of such mines near the canal would not endanger or damage the further working of the mines, although it might cause some damage to the canal, the owner could not under s. 40 insist against the will of the co. upon minerals being left for the security and preservation of the canal and upon receiving satisfaction from the co. therefore, the co. being willing that the owner should work as he pleased, and preferring from time to time to bear the expense of the necessary repairs to the canal rather than compensate the owner for his unworked minerals:—

*Quere*, as to the propriety of the terms imposed by the C. A.

Decision of C. A. [1894] 2 Q. B. 632 affirmed. *CHAMBERS COLLIERY CO. v. ROCCHDALE CANAL CO.* — H. L. (Ex.) [1895] A. C. 564

Followed by *Byrne J. New Moss Colliery Co. v. Manchester, Sheffield and Lincolnshire Ry. Co.*, [1897] 1 Ch. 725.

27. — *Support—Right to—Highway—Subsidence caused by mining operations—Absence of appreciable damage—Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77), s. 27.*

A ry. co. constructed a ry. crossing a highway on the level. Subsequently a colliery co. worked mines beneath the highway, so that a gradual subsidence of ten feet took place. No actual damage was done to the highway, but the ry. by keeping their line on its old level formed an embankment obstructing the highway:

*Held*, by Div. Ct., that the colliery co. was not liable in damages for the obstruction to the highway:

*Held*, also, *per Collins J.*, that, assuming that the highway was vested in a sanitary authority, the subsidence having been substantial, the authority, notwithstanding that they had suffered no appreciable damage, were entitled to judgment with nominal damages for the injury to their proprietary right. *ATT.-GEN. v. CONDUIT COLLIERY CO.* Div. Ct. [1895] 1 Q. B. 301

— Support—Right to—Railway company.

See RAILWAY—Minerals, 11,

**MINES—(Working Generally)—continued.**

— Support—Right to—Working—Undertaking not to sue.

See CANAL. 1.

**28.** — Support of Surface—Right to—Canal—Special Act—Right of navigation—Subjacent mines.

The special Act empowering the construction of a canal provided for compensation to landowners whose lands were used or damaged:—

*Held*, that the Act impliedly gave a right of support for the canal to the same extent as if the lands had been actually taken, so as to prevent the landowners from working their subjacent mines. An injunction granted against working subjacent coal so as to let the canal down.

Decision of Kekewich J., [1892] 2 Ch. 432, reversed. LONDON AND NORTH WESTERN RY. CO. v. EVANS — C. A. [1893] 1 Ch. 16

Applied by Kekewich J. *Great Western Ry. Co. v. Cefn Cribwr Brick Co.*, [1894] 2 Ch. 157, 166.

Referred to by North J. *Bradford Corporation v. Pickles*, [1894] 3 Ch. 53, 67, but this case was reversed on appeal, [1895] 1 Ch. 145; [1895] A. C. 587; *Jordeson v. Sutton, Southcoates and Drypool Gas Co.*, [1898] 2 Ch. 614, 621: C. A. [1899] 2 Ch. 218.

**29.** — Support of surface—Right to—Buildings, Destruction of—Construction of deed.

A conveyance of mines with full powers of working does not entitle the mineral owner to let down the surface without making compensation, unless the right to do so is conferred upon him by express words or by necessary implication. *Twyerould v. Chambers Colliery Co.*

C. A. [1892] W. N. 27

**30.** — Support of surface—Right to—Inclosure Act—Manorial rights—Allotments—33 Geo. 2, c. xii.—Damage to surface—Compensation.

A common had been allotted under an inclosure Act, which provided that the lord of the manor should enjoy all mines without making any satisfaction. The Act further provided for the payment of compensation to persons injured by mining by the other holders of allotments in the same township. The lessees of the lord worked mines, and caused the surface to subside:—

*Held*, that the lessees were entitled so to work the mines as to let down the surface, and that the compensation clauses must be treated as indicating the measure of compensation provided by the legislature. *Thompson v. Mein*

Kekewich J. [1893] W. N. 202

**31.** — Support of surface—Right to—Inclosure Acts—General rules for construction of—Compensation Clause, Presence or absence of.

The general canons of construction of inclosure Acts as to the mutual rights of mine and surface owners are as follows: (1) Where the ownerships are severed, *prima facie* the surface owner has a right to support for his tenement, and this is strengthened by the absence of a compensation clause. (2) The onus of rebutting this presumption lies on the mineowner, and a limited

**MINES—(Working Generally)—continued.**

compensation clause is not sufficient to effect this rebuttal. *Bell v. Earl of Dudley*

Chitty J. [1895] 1 Ch. 182

Where great damage was expressly mentioned in and contemplated by an inclosure Act, and provision for relief provided, an injunction to restrain working was refused. *Ibid.*

“**MINISTRATION**”—Preaching.

See ECCLESIASTICAL LAW. 49.

**MINORITY**—Debenture-holders.

See COMPANY—Debentures. 66—68.

— Owners of ship.

See SHIPPING—Sale. 244.

— Shareholders.

See COMPANY—WINDING-UP—Voluntary. 241.

**MISAPPROPRIATION**—by executor.

See EXECUTOR—Liabilities. 42.

— Trust funds—Interest.

See TRUSTEE—Breach of Trust. 35.

**MISCHIEVOUS ANIMAL**—Evidence of scienter—Negligence.

See DAMAGES. 6.

**MISCONDUCT**—Arbitrators.

See ARBITRATION—Arbitrators. 16—19.

— Breach of trust.

See CASES under TRUSTEE—Breach of Trust.

— Mortgagor.

See MORTGAGE—Priority. 45.

— Salvors—Wreck and salvage.

See SHIPPING—Salvage. 243, 244.

— Solicitor.

See SOLICITOR—Misconduct.

— Umpire—Bias.

See ARBITRATION. 19.

— Widow—Grant of administration to son of intestate.

See PROBATE. 39.

**MISDEMEANOUR.**

See CRIMINAL LAW, *passim*.

**MISDESCRIPTION**—Conditions of sale—Clause excluding compensation—Specific performance—Possessory title.

See VENDOR AND PURCHASER—Conditions of Sale. 6.

— Parcels—Right of way—Falsa demonstratio—Construction of lease.

See LANDLORD AND TENANT. 75.

— Specific gift.

See WILL—Legacy. 132.

**MISDIRECTION**—New trial—“Substantial wrong or miscarriage.”

See DEFAMATION—Libel. 13.

— Withdrawal of facts from jury—Setting aside verdict.

See JAMAICA. 3.

**MISFEASANCE**—of directors and officers.

See COMPANY and COMPANY—WINDING-UP, *passim*.

**MISJOINDER.**

See PRACTICE—Parties. 104—108.

**MISREPRESENTATION**—Claim for damages for—Wrongful act done by deceased person—"Aetio personalis moritur cum personâ."

See EXECUTOR—Administration. 6.

## —Company.

See COMPANY—Misrepresentation.

## —Conveyance obtained by fraud.

See ESTOPPEL. 7.

## —Innocent—Common mistake—Equitable right of donor to recover.

See VOLUNTARY GIFT. 2.

## —Innocent—Rescission of contract—Indemnity.

See CONTRACT. 32.

## —Mortgages—Merger.

See MORTGAGE—Merger. 42.

## —Profits of property sold.

See SCOTTISH LAW—Contract. 9.

## —Representations as to credit.

See SCOTTISH LAW. 32.

## —Right of action—Person induced by misrepresentation to commit crime.

See FOREIGN ENLISTMENT ACT. 2.

## —Sale by directors in one character to themselves in another—Voidable contract.

See COMPANY—Directors. 105.

## —by Trustee.

See ESTOPPEL. 7.

## —Underselling—Damage to manufacturer—Damnum absque injuria.

See TRADE. 1.

## —Use of word "patent"—Expired patent.

See TRADE-MARK. 2.

## —Use of word "trade-mark"—Unregistered trade-mark.

See TRADE-MARK. 63, 64.

## —Vendor's agent—Rescission—Noise—Nuisance—Boys' school.

See VENDOR AND PURCHASER—Rescission. 67.

**"MISSING WORD" COMPETITION.**

See LOTTERY. 1.

**MISTAKE**—Act confirming agreement.

See JAMAICA. 5.

## —Award under Inclosure Act.

See INCLOSURE. 1.

## —Bill of lading—Description of goods—"Marked and numbered as in margin."

See SHIPPING—Charterparty. 32.

## —Bona fide holder of bill of exchange—Right to recover money.

See BILL OF EXCHANGE. 15.

## —Common mistake—Innocent misrepresentation—Equitable right of donor to recover.

See VOLUNTARY GIFT. 2.

## —Consent order—Setting aside—Jurisdiction—Mutual mistake.

See PRACTICE—Setting Aside. 237—239.

## —Contract—Action on—Onus probandi—Cablegrams.

See CONTRACT. 19.

**MISTAKE**—continued.

## —Conveyance—Written contract—Covenant for title—Rectification—Parol evidence.

See VENDOR AND PURCHASER. 48.

## —Counsel.

See COMPROMISE. 2.

## —Demand note for arrears of poor-rate.

See RATES—Recovery. 65.

## —Dismissal of action—Extension of time.

See MORTGAGE.

## —Executor—Assets, payment of, to official receiver without retaining debt—Repayment.

See EXECUTOR—Retainer. 58.

## —Lease—Parcels—Right of way—Misdescription—Common mistake—Rectification.

See LANDLORD AND TENANT. 75.

## 1. — Money paid under compulsion of law—Money credited in claim—Receipt in full given—Want of bona fides—Action for recovery of money.

The plts. sued the deft. for work and labour done. In the writ they by mistake credited the deft. with the payment of a sum on account and claimed the balance. The deft. knowing that they had made a mistake paid the balance and obtained from them a receipt for the whole sum due from him to them. Subsequently, having discovered their mistake, the plts. brought an action to recover from the deft. the sum wrongfully credited to him, as money had and received to their use:—

*Held*, that, although the receipt had been given under compulsion of legal process, the deft. could not rely upon it as a defence to the action since he had not acted bona fide, and that the plts. were therefore entitled to recover the sum claimed. *WARD & Co. v. WALLIS*

*Kennedy J. [1900] 1 Q. B. 675*

## 2. — Money paid under compulsion of law—Summons—Withdrawal.

The rule that money paid under compulsion of legal process cannot be recovered back applies, although the process never terminated in a final order or judgment, and although it may have been withdrawn before action brought for the recovery back, and although the payment was made under a mistake of fact. The defts. summoned the plt. to recover his proportion of paving expenses assessed on him in respect of premises alleged to abut on a certain street. The plt., before the hearing, paid the money under the mistaken belief that his premises abutted on the street in question, and the summons was withdrawn. On discovery of his error he sued to recover the sum paid as money paid under a mistake of fact:—

*Held*, that the plt. could not recover. *MOORE v. FULHAM VESTRY* *C. A. [1895] 1 Q. B. 399*

## —Omission to ask landlord's consent to assign.

See LANDLORD AND TENANT. 60, 66.

## —Plan—Rectification—Parol evidence.

See VENDOR AND PURCHASER—Contract. 28.

## —Registration of voters.

See Cases under PARLIAMENT.

**MISTAKE**—*continued.*

- Setting aside judgment by consent.  
See **PRACTICE—Setting Aside.** 237—239.
- Settlement—Non-execution of a power—Death of donee—Parol evidence.  
See **SETTLEMENT—Rectification.** 30.
- Settlement—Variation—Terms.  
See **DIVORCE.** 126.
- Specific performance—Condition precedent—Rescission—"Wilful default."  
See **VENDOR AND PURCHASER.** 71.
- Statute.  
See **STATUTES.** 10, 11.
- Telegraphic instructions.  
See **SHIPPING—Charterparty.** 47.
- Voluntary gift of property.  
See **CHARITY.** 35.
- Will—Probate.  
See **Cases under PROBATE.**

**MOLESTATION**—Separation.

See **HUSBAND AND WIFE—Separation.** 68, 69.

**MONEY HAD AND RECEIVED**—Conversion of document—Measure of damages—Non-negotiable instrument.

See **TROVER.** 6.

## — Principal and agent.

See **Cases under PRINCIPAL AND AGENT.**

**MONEY-LENDER** — *Money-lenders Act, 1900 (63 & 64 Vict. c. 51), amends the law with respect to persons carrying on business as money-lenders.***MONITION**—Criminal suit to compel repair of chancel.

See **ECCLESIASTICAL LAW.** 59.

## — Ecclesiastical offence.

See **ECCLESIASTICAL LAW.** 70.

**MONUMENTS**—Protection of ancient monuments.

See **ANCIENT MONUMENTS.**

**MOORINGS**—Right to fix, as incident to navigation—Foreshore.

See **THAMES.** 9.

**MOROCCO**—Consular Court—Trial at Gibraltar should be by jury.

See **GIBRALTAR.** 1.

**MORTGAGE.**

*In General, col. 1272.*

*Apportionment, col. 1274.*

*Attornment Clause, col. 1274.*

*Building Society. See BUILDING SOCIETY—Mortgage.*

*Consolidation, col. 1275.*

*Costs, col. 1276.*

*Debentures. See COMPANY—Debentures.*

*Escrow, col. 1277.*

*Fixtures. See FIXTURES.*

*Foreclosure, col. 1279.*

*Interest, col. 1284.*

*Landlord and Tenant. See LANDLORD AND TENANT—Mortgages,*

*Leases, col. 1285.*

**MORTGAGE**—*continued.*

*Liability of Mortgagee, col. 1286.*

*Limitations, Statute of. See LIMITATIONS, STATUTE OF—Mortgages.*

*Merger, col. 1286.*

*Practice, col. 1286.*

*Priority, col. 1287.*

*Receipt, col. 1292.*

*Receiver, col. 1292.*

*Redemption, col. 1293.*

*Rights of Mortgagee, col. 1298.*

*Sale, col. 1300.*

*Settled Lands Acts. See SETTLED LAND—Mortgages.*

*Shares, col. 1303.*

*Shipping. See SHIPPING—Mortgage.*

*Solicitor Mortgagee. See SOLICITOR—Solicitor Mortgagee.*

*Tacking col. 1304.*

*Transfer, col. 1305.*

*Validity, col. 1306.*

**In General.**

## — Absence of power to mortgage—Improvements—Repairs.

See **POWERS.** 6.

## — Absolute assignment of debt with proviso for redemption—Implication of power to redeem.

See **ASSIGNMENT.** 4.

## — Accounts—Moiety of patent mortgaged to owner of other moiety.

See **PATENT—Ownership.** 17.

## — Agent—Liability of mortgagor's.

See **PRINCIPAL AND AGENT.** 13.

## — Claim by mortgagees to prove—Mode of procedure.

See **BANKRUPTCY—Proof.** 176.

## — Barratry as against mortgagee of master's interests.

See **INSURANCE—Marine.** 28.

## — Company—Mortgages.

See **COMPANY—WINDING-UP—Mortgages.**

## — Company—Mortgages and charges.

See **COMPANY—Mortgages and Charges.**

## — Contributory—Investment—Breach of trust.

See **TRUSTEE.** 39.

## — Estate duty.

See **Cases under REVENUE—Estate Duty.**

## — Existing at testator's death—Insufficient security.

See **TRUSTEE.** 42, 68.

## — Extinguishment.

See **LIMITATIONS, STATUTE OF—Mortgages.** 26.

## — Fixtures.

See **FIXTURES.** 5.

## — Land Transfer Acts.

See **LAND TRANSFER.**

## — Married woman mortgagee—Conveyance to purchaser by mortgagor and mortgagee—Acknowledgment unnecessary.

See **HUSBAND AND WIFE.** 33.

**MORTGAGE (In General)**—*continued.*

- Mortgagee in possession—Specific devise by executor beneficially entitled to mortgage debt.  
*See WILL—Specific Devise.* 197.
- Occupation rent due from one of several co-owners—Set-off against mortgagee of his share.  
*See PARTITION.* 15.
- Partner—By partner to secure debt of partnership—Devise of mortgagor's real estate—Sufficiency of partnership assets.  
*See PARTNERSHIP.* 4.
- Patent.  
*See PATENT—Ownership.* 17.
- Probate duty—Foreign mortgage.  
*See REVENUE—Probate Duty.* 135.
- Railway—Section of railway capable of sale.  
*See CANADA.* 33.
- Receiver.  
*See DISTRESS.* 11.
- Reconveyance to building society.  
*See REVENUE—Stamps.* 168.
- Register of mortgages—Company practice.  
*See COMPANY.* 254.
- Registration—Priority—Unregistered ante-nuptial settlement.  
*See CEYLON.* 6.
- Restrictive covenant—Tied public-house—Assigns—Underlessee—Notice.  
*See COVENANT.* 7.
- Sanction of Court—Romilly's Act.  
*See CHARITY.* 40.
- Settled property—Annuity.  
*See REVENUE—Estate Duty.* 38.
- Ship.  
*See SHIPPING—Mortgage.*
- Solicitor mortgagee.  
*See Cases under SOLICITOR—Solicitor Mortgagee.*
- Stamp duty.  
*See REVENUE—Stamps.* 166—171.
- Surety—Discharge.  
*See PRINCIPAL AND SURETY—Discharge.* 13.
- Taxable income—Land and Income Tax Assessment Act.  
*See NEW SOUTH WALES.* 24.
- Title—Notice of trusts of mortgage money—Mortgagee not one of the original trustees—Objection—Sufficiency.  
*See VENDOR AND PURCHASER—Title.* 88.
- Trade machinery—Non-registration—Power of sale—Invalidity.  
*See BILL OF SALE.* 40.
- Trade premises—Engine—Hiring agreement.  
*See FIXTURES.* 7.
- Undischarged bankrupt—Surplus assets—After-acquired property—Successive bankruptcies—Rights of trustees.  
*See BANKRUPTCY—Undischarged Bankrupt.* 262.
- Value of property passing on death of tenant for life.  
*See REVENUE—Estate Duty.* 38.

**MORTGAGE (In General)**—*continued.*

- Vesting declaration—New trustees.  
*See TRUSTEE—Vesting Order.* 108.
- Water—Implied grant of supply of water—Equitable mortgagor.  
*See EASEMENT.* 8.
- Waterworks, Mortgage on—Pure or impure personality.  
*See CHARITY.* 51.

**Apportionment.**

1. — *Mortgage of share in moieties—Covenant for further assurance.*

A person absolutely entitled to a moiety of an estate and contingently to the other moiety mortgaged both moieties, and subsequently sold his contingent moiety for value. The conveyance did not mention the mortgage, but contained a covenant for further assurance.

In a partition action, *held*, that the absolute moiety must bear the mortgage debt, as the effect of the covenant for further assurance was to enable the covenantee to call on the covenantor to pay off the mortgage. *In re JONES. FARRINGTON v. FORRESTER* - North J. [1893] 2 Ch. 461

Applied by North J. *In re Cook's Mortgage*, [1896] 1 Ch. 923, 925.

Referred to by Stirling J. *Hill v. Hickin*, [1897] 2 Ch. 579, 581.

*See also Williams v. Williams, Kekewich J.* [1899] W. N. 66.

2. — *Tenant for life and remaindermen—Apportionment of loss.*

A settled mortgage fell into arrear during a tenancy for life; a receiver entered and applied the net rent in part payment of interest. The mortgage property was afterwards realized, the proceeds being insufficient:—

*Held*, that the proceeds were apportionable between the estate of the tenant for life and the remaindermen, in the proportion the arrears of interest during the life tenancy bore to the subsequent arrears added to the capital.

*In re Foster. Lloyd v. Carr*, (1890) 45 Ch. D. 629, not followed. *LYON v. MITCHELL*

North J. [1899] W. N. 27 (6)

- Trust estate along with trustee's own property—Breach of trust—Apportionment.  
*See TRUSTEE—Breach of Trust.* 36.

**Attornment Clause.**

3. — *Death of mortgagor—Occupation and payment of interest by heir—Bankruptcy of heir—Distress.*

A mortgage contained the usual attornment clause; the mortgagor attorned tenant to the mortgagees, and during his life paid the interest on the mortgage; he died intestate, and his heir-at-law entered into possession and for a time continued to pay the interest. The mortgagees subsequently distrained for arrears of interest:—

*Held*, that the original tenancy was determined by the death of the mortgagor, and no new tenancy was created between the mortgagees and the heir by the mere payment of interest. *SCOBIE v. COLLINS*

V. Williams J. [1895] 1 Q. B. 375

**MORTGAGE (Attornment Clause)—continued.**

4. — *Lease—Building lease by mortgagors in possession.*

A mortgagor in possession leased to A., the lease being made pursuant to s. 18 of the Conveyancing Act, 1881, and the mortgagees not being parties :—

*Held*, that A.'s lease was binding on the mortgagees. *WILSON v. QUEEN'S CLERK*

**Romer J. [1891] 3 Ch. 522**

5. — *Lease—Notice to pay rent.*

A mortgagor let the mortgaged premises subsequently to the mortgage :—

*Held*, that the mere fact of the tenant remaining in possession after notice to pay rent to the mortgagees was not evidence of an agreement that he should become tenant to the mortgagee.

*TOWERSON v. JACKSON* **C. A. [1891] 2 Q. B. 484**

6. — *Practice—Power to enter and determine the tenancy—Tenancy at will—Action by mortgagee for possession—R. S. C., Order III., r. 6 (F); Order XIV.*

A mortgage deed contained a clause by which the mortgagor attorned tenant from year to year to the mortgagee at a yearly rental payable half-yearly, and a further clause by which the mortgagee might at any time, without giving any previous notice of his intention so to do, enter upon and take possession of the premises, and determine the tenancy created by the attornment. The rent was in arrear, and the mortgagee brought an action to recover possession, and applied for an order for recovery of the premises under Order XIV. :—

*Held*, that the claim to recover possession was founded on the determination of a tenancy at will, and not on forfeiture, and that the writ could be specially indorsed under Order III., r. 6 (F), and judgment signed under Order XIV.

*KEMP v. LESTER* **C. A. [1896] 2 Q. B. 162**

**Building Society.**

*See BUILDING SOCIETY—Mortgage.*

**Consolidation.**

7. — *Assignment of equity of redemption by one deed to one person.*

The doctrine of consolidation of mortgages laid down in *Vint v. Padget*, (1858) 2 D. & J. 611, and other cases to the same effect has been too long established to be now overthrown.

Therefore where the owner of different properties mortgages them to different persons and the mortgagees afterwards become united in title, the holder of the mortgages has a right to consolidate them, and to refuse to be redeemed as to one without payment of what is due to him on all, not only as against the mortgagor, but also as against a person to whom the mortgagor has by one deed assigned the equity of redemption of all the properties, although the assignment is made before the mortgagees become united in title.

Decisions of *Romer J.* and the *C. A.*, *Pledge v. Carr*, [1894] 2 Ch. 328; [1895] 1 Ch. 51, affirmed, *sub nom. PLEDGE v. WHITE*

**H. L. (E.) [1896] A. C. 187**

8. — *Assignment of one equity of redemption before union of both mortgages in one person.*

Where two first mortgages on different prop-

**MORTGAGE (Consolidation)—continued.**

ties by the same mortgagor to different mortgagees become united for the first time in one person after the mortgagor has (by way either of sale or mortgage) assigned the equity of redemption to one of the properties, the two first mortgages cannot be consolidated as against the assignee of that equity of redemption, although both mortgages were created before the assignment, and not the less so when the equity comes into the hands of pious incumbrancers of both properties. Decision of *Romer J.*, [1894] 2 Ch. 321, affirmed. *MINTER v. CARR* **C. A. [1894] 3 Ch. 498**

— *Redemption.*

*See MORTGAGE—Redemption.* 61.

**Costs.****(Costs and Charges.)**

9. — *“Completed mortgage”—Scale fee.*

The scale charge in Part I. of Sched. I. of the General Order of 1882 does not apply to a covering deed executed by a co. to trustees for securing debentures which by the non-issue of debentures may never have come into actual operation, as being a “completed mortgage.” *In re BIRCHAM*

**C. A. [1895] 2 Ch. 786**

10. — *“Deducing” title—Mortgage of leaseholds.*

Mere production of a deed is not deduction of a title.

A solicitor acting for a mortgagor of leaseholds who only produces the leases cannot be said to “deduce” title under Sched. I., Part I., of the General Order of 1882, and is not entitled to the scale fee. *WELBY v. STILL* (No. 3)

**Kekewich J. [1894] 3 Ch. 641**

11. — *Investigation of title—New mortgage or further charge.*

A tenant for life owed, inter alia, 192,000*l.* to an insurance co. By a private Act the trustees were empowered to raise moneys to pay the debts of the tenant for life. They borrowed 232,000*l.* of the co. The co. retained enough to pay their debt, and handed the balance to the trustees :—

*Held*, that the solicitors were entitled to regard the transaction as a new mortgage of 232,000*l.* requiring a fresh investigation of title, and not as a further charge within rule 10 of Sched. I., Part I., of the General Order of 1882, of 48,000*l.* on an old mortgage, the title to which had already been investigated, and were entitled to the scale fee on a mortgage for 232,000*l.*

*EARL OF AXLESFORD v. EARL POULETT*

**C. A. revers. North J. [1891] 1 Ch. 248**

— *Negotiating loan—Scale fee.*

*See SOLICITOR—Costs.* 62.

12. — *Profit costs—Foreclosure—Redemption—Solicitor mortgagee—Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 3—Retrospective effect.*

In April, 1893, upon a foreclosure summons by a solicitor mortgagee, an order was made directing an account of what was due to the plt. for principal, interest, and taxed costs of the action, followed by provisions for redemption by one of the debts, on payment of what should be found due, and foreclosure in default of payment.



**MORTGAGE (Costs)—continued.**

On February 19, 1898, on the further consideration of the action, an order was made referring it to the taxing master to tax the plt.'s costs of the action:—

*Held*, that the rights of the parties were ascertained by the first order, which must be construed by the then existing law, and that the plt. was not entitled, by reason of the passing of the Mortgages Legal Costs Act, 1895, to charge profit costs.

Decision of Cozens-Hardy J. affirmed. *DAY v. KELLAND* - - - [1900] W. N. 234; C. A. [1900] 2 Ch. 745

13. — *Profit costs—Retrospectivity—Mortgages Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 3.*

Though the law as to costs of solicitor mortgages has been altered by the Mortgages' Legal Costs Act, 1895, s. 3, and though that section is retrospective, it does not affect judgments of the Court, which were right at the time they were given. *EYRE v. WYNN-MACKENZIE*

C. A. [1896] 1 Ch. 135

— Redemption—Sufficiency of tender.

See **MORTGAGE—Redemption.** 63.

**Debentures.**

See **COMPANY—Debentures.**

**Escrow.**

14. — *Priority—Mortgage by deposit—Legal estate—Conflicting equities—Trust for sale—Breach of trust—Trustee and cestui que trust—Execution of deed—Receipt in body of deed—Fraud—Notice—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 2 (viii.), 54 (1), 55 (1).*

In 1887 freeholds were mortgaged to a building society by H. to secure advances. In Oct., 1892, H. died, having devised these freeholds to N. upon trust for sale. In Dec., 1892, C., the solicitor who acted for the society, and also for H., and, after his death, for N., having fraudulently represented to the society that notice to pay off their mortgage had been given, procured the statutory receipt to be indorsed on the mortgage of 1887, and obtained possession of the title-deeds of the property: the money owing to the society was never paid off, N. at this time being unaware of the existence of the mortgage, N. shortly afterwards agreed to sell the property to C., who was at this time in good repute and supposed to be well off, and by a deed of Dec. 29, 1892, which recited the trust for sale in H.'s will, N., in consideration of 700*l.* paid to him by C. at or before the execution of the deed the receipt whereof N. thereby acknowledged, conveyed the property to C. in fee. The purchase-money was not in fact paid. This conveyance and the other title-deeds, except the mortgage of 1887 and the statutory receipt, were shortly afterwards deposited by C. with the plaintiffs as security for an advance of 650*l.* In 1893, C. was adjudicated bankrupt, his frauds were discovered, and he was convicted and sentenced. The plts. now claimed to enforce their security against the society, and against C. and his cestui que

**MORTGAGE (Escrow)—continued.**

trust. It was admitted that the society had priority over N. and his cestui que trust, and the main contention was between the plts. and the society, and the plts. and N. and his cestui que trust:—

*Held*, that the society were entitled under the circumstances to shew that they had never been paid off, that the statutory receipt and the mortgage of 1887 were delivered only as an escrow, and the mortgage not having been paid off, and the legal estate being still in the society, they had priority over the plts.

*Held* also, that the conveyance of Dec. 1892, was not void as between the plts. and N. and his cestui que trust; that as N. had authority to deal with the property, the plts., in the absence of express notice, were entitled to rely on the receipt in the body of the deed, and had priority over the cestui que trust: *Shropshire Union Railways and Canal Co. v. Reg.*, L. R. 7 H. L. 496, distinguished:

*Held* further, that for the purposes of the present case there was no material distinction between agency and trust, and that the principles laid down by *Perry Herrick v. Attwood*, 2 De G. & J. 21, and approved in *Brockslesby v. Temperance Permanent Building Society*, [1895] A. C. 173, applied. *LLOYD'S BANK, LD. v. BULLOCK*

[1896] 2 Ch. 192

Referred to by Farwell J. *King v. Smith*, [1900] 2 Ch. 425, 430.

15. — *Mortgagor and mortgagee—Deed—Delivery to one of several grantees—Evidence—Admissibility—Fraud—Solicitor to both parties—Agency—Representation to lender by agent of borrower.*

In an action by a co. to set aside a mortgage on the grounds (1) that the mortgage was only an escrow and not intended to become operative as a complete deed until the money was paid to the mortgagors; and (2) that the mortgagees never gave and that the co. never got the mortgage consideration:—

*Held*, that the mortgage was valid and binding on the co., for (1) it was sealed and delivered by the co. as a perfect deed and immediately operative, and was not merely an escrow; and (2) the co. had by their conduct enabled their manager and banker to represent to the mortgagees that their, the mortgagees', money was invested on the security of the co.'s property.

*Wall v. Cockerell*, (1863) 9 Jur. (N.S.) 447, and *Coupe v. Collyer*, (1890) 62 L. T. (N.S.) 927, distinguished.

A deed may be delivered as an escrow notwithstanding that it is delivered to a person who is a party taking under it. Where there are several grantees and one of them is also solicitor of the grantor and of the other grantees and the deed is delivered to him, evidence is admissible to shew the character in which and the terms upon which the deed was so delivered. See *per Cur.* at pp. 621, 622. *LONDON FREEHOLD AND LEASEHOLD PROPERTY Co. v. BARON SUFFIELD*

C. A. [1897] 2 Ch. 608

**Fixtures.**

See **FIXTURES.**

**MORTGAGE—continued.****Foreclosure.**

**STAMPS.] Foreclosure decrees—Removal of doubt as to 54 & 55 Vict. c. 39, ss. 54, 57, so far as regards. See Finance Act, 1893 (61 & 62 Vict. c. 10), s. 6.**

**16. — Account—Practice—Bankrupt mortgagor—Assessed value of security—Special circumstances—Chief clerk's certificate.**

Any special circumstance or fact affecting the amount due from the mortgagor to the mortgagee in a foreclosure action—such as a valuation of the security in bankruptcy—should be pleaded or brought to the attention of the Court before the usual foreclosure judgment is made, in order that a direction may be given to the chief clerk to have regard, in taking the account, to such special circumstance or fact; if this is not done at the trial no such question can be subsequently raised on taking the account. *SANGUINETTI v. STUCKEY'S BANKING CO.* — *Chitty J.* [1893] 1 Ch. 502

— Company—Equitable mortgage of shares in a company to secure debt—Foreclosure action after debt barred.

See **LIMITATIONS, STATUTE OF.** 27.

— Conveyance on sale—Stamp.

See **REVENUE—Stamps.** 158.

— Costs—Solicitor mortgagee—Profit costs.

See **MORTGAGE—Costs.** 12.

**17. — Deceased mortgagor—Representative for the action—R. S. C., 1883, Order XVI., r. 46.**

After order nisi for foreclosure and certificate, the mortgagor died insolvent and without representatives. An order was obtained appointing the mortgagor's brother his representative for the action, and an application was made for foreclosure absolute:—

*Held*, that in the absence of a properly constituted representative of the estate of the deceased the order must be refused. *AYLWARD v. LEWIS*

*North J.* [1891] 2 Ch. 81

**18. — Default of appearance—Filing order for revivor—Dispensing with service—R. S. C., 1883, Order LXVII., r. 4.**

Order LXVII., r. 4, applies to an order of revivor, and therefore, where the deft. has entered no appearance, it is sufficient to file the order without serving it on the defts. *JACKSON v. KILHAM* — *Kekewich J.* [1891] W. N. 171

**19. — Disregard of foreclosure order—Notice of motion to attach.**

In a foreclosure action the order absolute, as drawn up by the registrar, did not name any time within which possession was to be given, and consequently the memorandum required by Order XL., 1. 5, was not indorsed thereon. After possession had been obtained under a writ of possession, the deft. retook possession:—

*Held*, that a writ of attachment was the proper remedy and could issue notwithstanding the absence of an indorsed order. *In re HIGG'S MORTGAGE.* *GODDARD v. HIGG*

*Kekewich J.* [1894] W. N. 73

**20. — Interest—Redemption before time fixed by foreclosure proceedings.**

An order for foreclosure having been made in the common form, and a certificate having also

**MORTGAGE (Foreclosure)—continued.**

been made in the common form appointing the last day of six calendar months from the date of the certificate as the time for redemption, on payment of the principal money with interest up to that day and costs:—

*Held* (affirming the decision of *Romer J.*), that the mortgagor could not claim to redeem on an earlier day on payment of the principal money with interest up to the time of payment only and the costs. *HILL v. ROWLANDS*

*C. A.* [1897] 2 Ch. 361

See also on another point. *Hill v. Rowlands*, [1896] 2 Q. B. 124.

**21. — Interest—Action for.**

(A) If a mortgagee in a foreclosure action obtains a personal order for payment of the principal with interest down to the date of the certificate, a second action to recover arrears of interest is unnecessary. *EARL POULETT v. VISCOUNT HILL* — *C. A.* [1893] 1 Ch. 277

Explained by *C. A.* See next Case.

(B) Where a mortgagee appointed a receiver, who received rents, and afterwards the mortgagee brought an action specially indorsing the writ with a claim for the mortgage debt and interest, and applied for judgment under Order XIV.:—

*Held*, that the mere fact of a receiver having been appointed did not prevent the application of Order XIV., but, as there appeared to be a question as to what on the true state of the account as between the mortgagor and mortgagee was due to the latter, leave to defend must be granted. *LYNDE v. WATHMAN*

*C. A.* [1895] 2 Q. B. 180

**22. — Judgment, Form of—Receiver—Practice.**

(A) Form of judgment nisi for foreclosure and appointment of a receiver with a direction to take in moneys coming into the hands of the receiver before foreclosure absolute, so as to prevent the necessity of opening the foreclosure. *BARBER v. JECKELLS* — *Kekewich J.* [1893] W. N. 91

See *Lusk v. Sebright*, [1894] W. N. 134, below (C).

Referred to by *North J.* *Simmons v. Blundy*, [1897] 1 Ch. 19, below (D).

(B) On motion for judgment in default of appearance in a foreclosure action, in the absence of special circumstances, the Court will not insert in the foreclosure judgment a direction that any person redeeming the premises may, or the plt. in the event of foreclosure absolute may, apply to have moneys in the hands of receiver transferred to him. *CHESTON v. WELLS*

*North J.* [1893] 2 Ch. 151

(C) In a foreclosure action a receiver had been appointed, and the plt. submitted to be charged with a sum certain in the hands of the receiver. The minutes of the proposed judgment were in the form in *Barber v. Jeckells* ([1893] W. N. 91; *Seton on Judgments*, vol. iii., p. 2142, add. to p. 1577), but concluded (as the form in *Seton*, vol. ii., p. 1577, No. 4) with the words "Liberty to the deft. redeeming or to the plt. in the event of foreclosure to apply at chambers for payment of any money paid into

**MORTGAGE (Foreclosure)—continued.**

Court by the receiver or in his hands." The Court approved of the following words being substituted. "Liberty to any party to apply at chambers for payment of any money paid into Court by the receiver or in his hands." *Lusk v. SEBRIGHT* **Kekewich J. [1894] W. N. 134**

Referred to by North J. See next Case.

(D) In a foreclosure action in which a receiver of rents and profits had been appointed:—

*Held*, that the judgment ought to direct that in taking the account the plt. should be charged with the amount (if anything) paid into court by the receiver, and such a sum as should be in the receiver's hands at the date of the certificate, and with such a sum (if any) as the plt. should submit to be charged with in respect of rents and profits to come into the receiver's hands prior to the order for foreclosure absolute.

Form in Seton's Judgments, 5th ed. vol. iii. p. 2142, varied. *SIMMONS v. BLANDY*

**North J. [1896] W. N. 171 (7); [1897] 1 Ch. 19**

**23. — *Lis pendens*—Mortgage of book debts—Foreclosure action—Receiver—Injunction—Laches—Judgments Act, 1839 (2 & 3 Vict. c. 11), s. 7.**

The doctrine of *lis pendens* is confined to realty and leaseholds, and does not include goods and chattels.

B. mortgaged book debts to W., who gave no notice to the debtors. W. commenced an action for foreclosure which was registered as a *lis pendens*, and obtained an order for a receiver and an injunction restraining B. from dealing with them. The receiver gave no notice to the debtors. Subsequently B. assigned the book debts to the L. Co., who gave notice to the debtors. The L. Co. had no notice of the action or of the order for an injunction and receiver, unless the registration of the *lis pendens* amounted to constructive notice:—

*Held*, that the doctrine of *lis pendens* did not apply, and that the L. Co. had priority.

Decision of Chitty J. reversed. *WIGRAM v. BUCKLEY* — **C. A. [1894] 3 Ch. 483**

**24. — Non-payment—Affidavit of—Foreclosure absolute.**

Foreclosure absolute granted on production to the registrar of affidavits by an agent of one plt. and by the other plt. who was travelling abroad that no payment had been made in respect of the mortgage debt. The deft. did not appear. *DOCKSEY v. ELSE*

**North J. [1891] W. N. 65**

**25. — Parties—Practice.**

In a foreclosure action by first mortgagee against puisne mortgagees and the trustees and executors of the will of the deceased mortgagor:—

*Held*, that the estate was sufficiently represented by the trustees and executors, and the decree could be made, although the other defts. did not appear. *In re MITCHELL. WAYELL v. MITCHELL* **Kekewich J. [1892] W. N. 11**

**26. — Parties—Plaintiff not to be joined as co-defendant.**

A man cannot be both plt. and deft. in

**MORTGAGE (Foreclosure)—continued.**

an action. Amendment of writ and pleadings ordered in a foreclosure action by first mortgagee to which he was also made a co-deft. *WAYELL v. MITCHELL* — **Kekewich J. [1891] W. N. 86**

**27. — Parties—Debenture-holders—"Floating security."**

The trustees of a co., by its authority, gave a legal mortgage in fee of its land to the plts. Subsequently the co. issued debentures to secure principal sums and interest which were thereby charged on all its undertaking and present and future property. It was also provided that the debentures were "all to rank *pari passu* in point of charge as a floating security on the property" thereby charged. The principal moneys thus charged were only to become payable in certain events, none of which had happened.

The plts. commenced a foreclosure action to which they made not only the trustees and the co., but also all the debenture-holders defts. At the trial it was objected on behalf of the debenture-holders that they were unnecessarily joined as parties:—

*Held*, that the debenture-holders had an immediate equitable charge; that the working out of a foreclosure decree in their absence was not a dealing with its property by the co. in the ordinary course of its business; and that they were properly made parties to the action. *WALLACE v. EVERSHED* — **Cozens-Hardy J. [1899] W. N. 58; [1899] 1 Ch. 891**

**28. — Parties—Executors—R. S. C., 1883, Order XVI., r. 8.**

On a summons by vendors of real estate who claimed title under a foreclosure decree, *held*, that an executor fully represented all the beneficiaries under a will, and that it was unnecessary to join infant beneficiaries as co-defts. with such executors to the foreclosure action in which the decree was made. *In re BOOTH AND KETTLEWELL'S CONTRACT* — **North J. [1892] W. N. 156**

**29. — Parties—Representative for purposes of action—Legal personal representative—R. S. C., 1883, Order XVI., r. 46.**

A number of debenture-holders whose debentures gave them a charge on the property subject to the plt.'s mortgage were parties to a foreclosure action. One of these parties died: by his will he left his wife executrix; she had not proved, and was herself a party in respect of debentures in her own right:—

*Held*, that she should be appointed representative of the deceased for the purposes of the action, until some other legal personal representative of the deceased was duly appointed. *SCOTT v. STREATHAM AND GENERAL ESTATES CO.*

**Romer J. [1891] W. N. 153**

**30. — Possession—Delivery of—Ex parte order—Affidavit of service of motion.**

Where in the summons, by which an action for foreclosure is commenced, possession is not claimed, an order for delivery of possession should not be made *ex parte*, but order made subject to production to registrar of affidavit of service of notice of motion. *LE BAS v. GRANT*

**North J. [1895] W. N. 28**

**MORTGAGE (Foreclosure)—continued.**

**31. — Possession—Transfer of Consols—Charging order on stock—R. S. C., 1883, Order LI., r. 5a.**

Acting by analogy to cases where delivery of possession of real estate had been ordered with the order for foreclosure absolute, though the order nisi did not provide for such delivery, and there had been no claim for delivery, the Court ordered a transfer of Consols, although the transfer had not been claimed or provided for by the order nisi. **RICKETTS v. RICKETTS**

**North J. [1891] W. N. 29**

**32. — Possession, Writ of—Identification of property—Form of order—R. S. C., 1883, Order XLVII., rr. 1, 2—Appendix H, Forms 7a, 8.**

For greater convenience of identification, in case a writ of possession may be necessary, orders nisi for delivery of possession should, after the words "the said mortgaged hereditaments," contain a description of the property contained in the mortgage deed. If the description be not in the order nisi, it should be added to the order absolute if it proceed to order delivery of possession. **THYNNE v. SARL** **North J. [1891] 2 Ch. 79**

**33. — Power of attorney—Foreclosure absolute.**

An order absolute for foreclosure can be drawn up although the solicitor who attends at the appointed time for payment has no power of attorney. **KING v. HUGH**

**North J. [1895] W. N. 60**

**34. — Practice—Claim for account, foreclosure, or sale—Foreclosure judgment in chambers—Summons for directions—R. S. C., 1883, Orders xv., xxx.**

The plt., a mortgagee, by his writ claimed the usual accounts and inquiries, foreclosure, or sale; in his summons for directions under Order xxx., the plt. also asked for the usual order for accounts and inquiries, and for foreclosure or sale; and upon the hearing of this application the master made the usual order for account and foreclosure. No objection was taken by the deft. to the order at the time it was made, but he subsequently moved in Court to discharge it, on the ground, first, that on a summons for directions the Court had no power to make an order for foreclosure; and, secondly, that even under Order xv. the Court had no power to make such an order, except in very simple cases, and then not in chambers:—

*Held*, by Romer J., that as the deft. had received ample notice of the nature of the relief claimed, and had not questioned the jurisdiction of the master to make the order for foreclosure, it was not necessary for the Court now to consider whether any technical objection could be successfully made to the joinder of a summons under Order xv. to one under Order xxx.; but the practice, in simple undefended cases, was a convenient one, and a saving of expense to all parties, to get the order for foreclosure made at once. In his Lordship's opinion the Court had jurisdiction to make an order for foreclosure under Order xv. in chambers in accordance with the decision in *Smith v. Davies*, (1884) 28 Ch. D. 650. It was too late now to raise any objection

**MORTGAGE (Foreclosure)—continued.**

to the order, and the motion would be refused with costs.

*Held*, by C. A., affirming the decision of Romer J., [1899] W. N. 23 (8), upon the principle of *Dyott v. Neville*, [1887] W. N. 35, that the deft., not having raised the objection in chambers, could not raise it afterwards. **HORTON v. BOSSON** **C. A. [1899] W. N. 38 (4)**

**35. — Receipt of rents after day fixed for redemption — Form of affidavit — Foreclosure absolute.**

Where a mortgagee receives rents after default is made in payment of the principal and interest on the day fixed for redemption, but before the affidavit of such default is sworn, an order for final foreclosure will nevertheless be granted without any further account.

Form of affidavit in support of an application for foreclosure absolute discussed. **NATIONAL PERMANENT MUTUAL BENEFIT BUILDING SOCIETY v. RAFER** **Chitty J. [1892] 1 Ch. 54**

— Receiver and manager.

*See Cases under RECEIVER—Mortgage.*

**36. — Redemption—Several defendants—Form of judgment.**

On a motion for judgment for foreclosure plts. were mortgagees by demise, and certain of the defts. debenture-holders claiming a charge. The Court directed the following form of judgment, fixing one time for all the defts. to redeem, and "in the event of such redemption the defts. or deft. making the same are or is to be at liberty to apply as they or he may be advised for the addition to this judgment of any further accounts and directions consequential thereon which, by reason of such redemption, the Court may think just," proceeding as in Seton, 5th ed. vol. ii. p. 1628, but supplying "not" there accidentally omitted as to giving notice to plt. **BIDDULPH v. BILLITER STREET OFFICES CO.**

**North J. [1895] W. N. 98**

**37. — Re-opening foreclosure—Increase of value of mortgaged property before foreclosure absolute.**

Where the value of the mortgaged property, a policy of insurance, had increased by the death of person insured after the last day appointed for payment, but before foreclosure absolute, the Court ordered the foreclosure to be reopened with subsequent accounts and a fresh period for redemption. **BEATON v. BOULTON**

**Stirling J. [1891] W. N. 30**

— Reversion — Arrears of interest — Statute-barred debt—Retainer.

*See SETTLED LAND—Mortgages.* 89.

— Sale or foreclosure.

*See Cases under MORTGAGE—Sale.*

— Statute-barred debt — Personal property — Foreclosure action.

*See LIMITATIONS, STATUTE OF.* 27.

**Interest.**

— Action for—Foreclosure.

*See MORTGAGE—Foreclosure.* 21.

— Arrears—Transfer of mortgage—Assignment of equity of redemption—Proof.

*See BANKRUPTCY—Proof.* 176.

**MORTGAGE (Interest)—continued.****38. — Notice—Interest in lieu of notice—Equitable mortgage.**

An equitable mortgagee by a deposit of title deeds of land, accompanied by a memorandum of deposit, is not entitled to six months' notice before he is bound to accept a tender of the amount due, nor to six months' interest in lieu of notice, the inference from the form which the transaction takes being that the loan is merely temporary. *FITZGERALD'S TRUSTEE v. MELLERSH* (No. 2) — *Chitty J. [1892] 1 Ch. 385*

**39. — "Punctually" paid—Proviso that interest should be "punctually" paid—Mortgage deed—Construction.**

A mortgage deed contained an agreement that the payment of the principal money thereby secured should not be required by the mortgagees until the expiration of three years from the date of the deed "if in the meantime every half-yearly payment of interest shall be punctually paid":—

*Held*, by the C. A. (reversing the judgment of Kekewich J.), [1897] W. N. 175 (9), that payment "punctually" meant "payment on the day fixed for payment," and that payment nine days after such fixed day was not good payment. *LEEDS AND HANLEY THEATRE OF VARIETIES v. BROADBENT* — *C. A. [1898] 1 Ch. 343*

**40. — Right to six months' interest in lieu of notice.****(A) Legal mortgage—Payment off—Reversion.**

It is a settled rule that after default in payment of the mortgage money in accordance with the terms of a deed, the mortgagor must give the mortgagee six calendar months' notice of his intention to pay him off, or must pay him six months' interest. If the mortgagee has demanded payment or taken steps to compel payment no notice is required, but there is no other exception to the above rule founded on the nature of the mortgaged property. *SMITH v. SMITH*

*Romer J. [1891] 3 Ch. 550*

**(B) Equitable mortgage by deposit.**

The rule above stated does not apply to an equitable mortgage by deposit of title-deeds. *FITZGERALD'S TRUSTEE v. MELLERSH* (No. 2)

*Chitty J. [1892] 1 Ch. 385*

**Landlord and Tenant.**

*See* LANDLORD AND TENANT—Mortgages.

**Leases.**

— **Illegal distress—Receiver.**

*See* DISTRESS. 11.

— **Light—Implied easement—Mortgagee—Power of sale.**

*See* LIGHT AND AIR.

**41. — Lease by mortgagor in possession—Occupation lease—Inclusion of incorporeal hereditament—Mansion-house, furniture, and sporting rights—Foreclosure by mortgagee—Lease binding on mortgagee—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18.**

A mortgagor of land while in possession leased for fourteen years the mortgaged house, together with the furniture in it and land adjoining it, and the sporting rights over the remainder of the mortgaged land, which had been let, before the

**MORTGAGE (Leases)—continued.**

mortgage was created, to agricultural tenants, with a reservation of sporting rights, the mortgagee having foreclosed:—

*Held*, that the lease was valid as against the mortgagee under s. 18 of the Conveyancing Act, 1881.

Judgment of Bigham J., [1900] 1 Q. B. 346, affirmed. *BROWN v. PETO*

*C. A. [1900] W. N. 185; [1900] 2 Q. B. 653*

**Liability of Mortgagees.**

— **Partnership—Scope of—Liability for acts of one partner—Deposit of securities payable to bearer.**

*See* PARTNERSHIP—Liabilities. 39.

**Limitations, Statute of Limitations.**

*See* LIMITATIONS, STATUTE OF—Mortgages.

**Merger.**

**42. — Two properties—Mortgagor trustee of one, beneficial owner of other—Loan by third party on promise to transfer mortgage—Misrepresentation—Part payment to first mortgagee with money lent—Second mortgage of one property only—Right of second mortgagee to a charge on both properties comprised in first mortgage.**

C., being entitled as a trustee for his wife to property X. and beneficially to property Y., mortgaged both properties, with the consent of his wife, to T. to secure 2000*l.* C. afterwards requested M. to lend him 1200*l.* to pay off an existing mortgage on X., promising to transfer the mortgage to him, but without disclosing the fact that X. belonged to his wife or informing him of the amount of, or that Y. formed part of the security for, the first mortgage.

M. advanced the 1200*l.*, and C. applied 1000*l.* of that sum in paying off part of the 2000*l.* owing to T., and afterwards executed a mortgage of X. to M. to secure the 1200*l.* so advanced by him:—

*Held*, that when M. advanced the 1200*l.* on the above promise by C., and the 1000*l.* was applied in part payment to T., the charge on both X. and Y. was kept alive in equity in favour of M.

*Patten v. Bond*, (1889) 60 L. T. 533, followed.

*Held*, further, that M. did not lose the benefit of his charge by taking the equitable mortgage executed by C. on X., the charge thereby given not operating as a release or extinguishment of the prior charge and there being no reason for presuming a merger of the securities.

There is no merger at law even of a lower in a higher security if the remedy given by the latter is not co-extensive with that given by the former: *Bell v. Banks*, (1841) 3 Man. & G. 258. *CHETWYND v. ALLEN* *Romer J. [1899] 1 Ch. 353*

**Practice.**

**43. — Originating summons—Application by mortgagor without offering to redeem—R. S. C., Order LIV. A, r. 1.**

Under Order LIV. A, r. 1, a mortgagor may apply by originating summons for the determination of a question of construction arising under

**MORTGAGE (Practice)—continued.**

the mortgage deed without offering to redeem. Where the mortgagor of a reversionary interest applied under the rule for the determination of the question whether she was entitled to redeem during the period fixed by the mortgage deed for the continuance of the loan:—

*Held*, that the Court was bound to decide the question, and ought not to require the mortgagor to offer to redeem. *In re NORBS. NORBS v. LAW REVERSIONARY INTEREST SOCIETY*

**Kekewich J. [1896] 2 Ch. 830**  
**Priority.**

— **Escrow.**

*See* **MORTGAGE—Escrow. 14.**

**44. — Laches—Lis pendens—Registration.**

Book debts were assigned by way of mortgage. The mortgagee gave no notice of assignment to the debtors, but subsequently brought an action to enforce the mortgage, which he registered as a lis pendens. The mortgagors then assigned the book debts to a bank which gave notice to the debtors:—

*Held*, (1.) that the bank was not affected by notice of the lis pendens; (2.) that even if it had been the mortgagees had lost priority by their laches. *WIGRAM v. BUCKLEY*

**C. A. [1894] 3 Ch. 483**

**45. — Misconduct of mortgagor—Co-executors and legatees in trust of mortgagee—Negligence by one of them—Title to deeds.**

A mortgagor, under pretence of obtaining money to pay off mortgagees, obtained the deeds from B., one of the executors of the mortgagee, who was tenant for life under the mortgagee's will. The mortgagor sent back a parcel purporting to contain the deeds, but which, as appeared on the death of B., did not contain certain title-deeds, which the mortgagor subsequently pledged to a bank, executing as regards the property in one deed a legal assignment:—

*Held*, that the surviving executor, who was also reversioner, was entitled to priority over the bank and to delivery up of the title-deeds. *In re INGHAM. JONES v. INGHAM*

**Stirling J. [1893] 1 Ch. 352**

**46. — Negligence—Duty to inquire as to title of mortgage—Railway stock.**

The plt. obtained a loan from A. on the security of ry. stock. He afterwards directed his broker to obtain a loan from the broker's bank to pay off the first loan, and the stock was transferred by A. to the bank for a nominal consideration. The bank only lent to their customers, and believed that the loan was made to the broker. The broker afterwards paid off the loan, sold the stock, and misappropriated the proceeds:—

*Held*, that the bank was not liable. *MARSHALL v. NATIONAL PROVINCIAL BANK OF ENGLAND*

**Kekewich J. [1892] W. N. 34**

**47. — Negligence—Getting in legal estate—Equitable mortgagees—Fraud of mortgagor—Title-deeds.**

A., having purchased an estate, granted two mortgages of the same—(1.) to the plts. by forged deeds, and (2.) to the deft. by true deeds. A. absconded, and the deft. discovered the forgery, and also that the legal estate was not in A., as A.

**MORTGAGE (Priority)—continued.**

believed, but was then and at the time when A. purchased, in the mortgagees of A.'s vendors. The deft. induced these mortgagees to convey the legal estate to the vendors on condition that they in turn conveyed it to the deft.:—

*Held*, that the legal estate had not been inequitably acquired, and that it gave the deft. priority over the plts. Cases considered in which the acquisition of the legal estate will give a subsequent innocent equitable mortgagee priority over a prior equitable mortgagee.

Observations by Lord Macnaghten as to the extent of negligence necessary to postpone a prior equitable mortgagee, and the judgment of Kay J.

Decision of C. A. (reversing Kay J.). [1891] 1 Ch. 8, affirmed. *TAYLOR v. RUSSELL*

**H. L. (E.) [1892] A. C. 244**

Referred to by North J. *London and County Banking Co. v. Goddard*, [1897] 1 Ch. 642, 651.

**48. — Notice—Equitable mortgage by deposit of deeds—Subsequent purchaser for value without notice—Negligence—Omission to require production of title-deeds.**

In order that a purchaser for value, who has acquired the legal estate without notice of a prior equitable mortgage of the property, may be postponed to that mortgage, it is not necessary to shew that he has been guilty of fraud, or negligence amounting to fraud; it is sufficient that he has been guilty of negligence so gross as to render it unjust to deprive the prior mortgagee of his priority.

Observations upon *Ratcliffe v. Barnard*, (1871) L. R. 6 Ch. 652, 654.

A purchaser, by an agent who was not a solicitor, purchased property and obtained a conveyance of the legal estate without notice of a prior equitable mortgage by deposit of the title-deeds. The agent inquired about the deeds, and was told by the vendor that they were in his possession, but that they would not be delivered up because they related also to other property. The agent did not ask for production of the deeds, and they were not produced, nor was any abstract of title delivered. By the conveyance to the purchaser the vendor acknowledged the right of the purchaser to production of the documents of title mentioned in a schedule, and to delivery of copies, and undertook for the safe custody thereof. The documents mentioned in the schedule were the deeds which had been deposited with the mortgagee. On the subsequent discovery of the mortgage:—

*Held*, that under the circumstances the mortgagee was entitled to priority over the purchaser.

Decision of Romer J., [1898] W. N. 172 (4), affirmed. *OLIVER v. HINTON*

**C. A. [1899] W. N. 102; [1899] 2 Ch. 264**

**49. — Notice—Further advances after notice of second mortgage—Covenant to make further advances—Life interest—Trust over on alienation—Words of futurity—Retrospective operation—Voluntary settlement by mortgagor after mortgage—Tacking.**

*Held*, by the C. A., that the doctrine of *Hopkinson v. Rolt*, (1861) 9 H. L. C. 514, that, after notice of a subsequent incumbrance, a first

**MORTGAGE (Priority)—continued.**

mortgagee cannot, as against that incumbrancer, tack to his debt further advances made by him to the mortgagor, applies to further advances made in pursuance of an obligation or covenant on the part of the first mortgagee entered into at the time of the first mortgage.

A settlement contained a trust for payment of the income of the trust fund to A. for life "or until he shall assign, charge or incumber, or affect to assign, charge or incumber" the same:—

*Held*, by the C. A., that under the circumstances this trust had not a retrospective operation so as to include past acts.

The owner of a life interest in personal estate, who had already mortgaged it, mortgaged it a second time to two persons, his uncles, who had no notice of the first mortgage. One of the conditions of the second mortgage was, that the mortgagor should make a settlement of his life interest, so that that interest should be made determinable on alienation by him, with a trust in that event for the application of the income, at the discretion of the trustees, for the maintenance, support or benefit of the settlor, his wife (if any) and children or remoter issue, and his sisters and their children or remoter issue, and a settlement to that effect was executed contemporaneously with the execution of the second mortgage. At the date of the second mortgage the first mortgagee had not given notice of his mortgage to the trustees of the will which created the life interest, and he did not give them notice until nine months afterwards, before which time notice of the second mortgage and of the settlement had been given to them. Notice of the first mortgage was given to the second mortgagees about five weeks after the notice to the trustees:—

*Held*, by the C. A., that the uncles were entitled, in respect of their original advance and all further advances made by them to the nephew before they received notice of the first mortgage, to priority over the first mortgagee, but that the settlement must be treated as voluntary, and that the first mortgage was entitled to priority over it.

Decision of Kekewich J., [1898] 1 Ch. 488, reversed. *WEST v. WILLIAMS*

C. A. [1898] W. N. 169 (9); [1899] 1 Ch. 132

— Notice—Priorities of equitable interests.

See EXECUTOR—Administration. 26.

**50. — Notice of mortgage—Property held on trust.**

A husband and wife mortgaged property left them by will without disclosing a marriage settlement under which the wife's share was settled. The mortgagees inquired of the trustees of the will if there were any incumbrances. One trustee, who was ignorant of the settlement, replied he was not aware of any. The other, who knew of the settlement, returned an evasive answer. The mortgagees lent the money without further inquiry:—

*Held*, that the trustees of the settlement were entitled to the property in priority to the mortgagees by virtue of the knowledge of the settlement possessed by one trustee.

Decision of C. A. *In re Wyatt. White v.*

**MORTGAGE (Priority)—continued.**

*Ellis*, [1892] 1 Ch. 188, affirmed. *Sub nom. WARD v. DUNCOMBE* H. L. (E.) [1893] A. C. 369

Referred to by Stirling J. *Mack v. Postle*, [1894] 2 Ch. 449, 455; *In re Wasdale*, [1899] 1 Ch. 163.

Referred to by C. A. *Stephens v. Green*, [1895] 2 Ch. 148, 152, 159.

**51. — Receivership deed—Equitable charge—Annuity—Notice.**

A. covenanted on his daughter's marriage to pay her an annuity, and to secure the same gave a receivership deed over land of which he was tenant for life:—

*Held*, that the receivership deed created an equitable charge having priority over a subsequent incumbrancer who took with notice.

Decision of Romer J. [1893] W. N. 146, affirmed. *CRADOCK v. SCOTTISH PROVIDENT INSTITUTION* - - - C. A. [1894] W. N. 88

**52. — Registration—Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54, ss. 7, 14)—Deposit of deeds—Solicitor and client—Notice—"Actual fraud."**

The Yorkshire Registries Act, 1884, applies to a charge by deposit of deeds unaccompanied by a memorandum of deposit.

The priorities given by the Act are not to be altered except in cases of actual fraud, which means fraud importing grave moral blame.

In 1889 certain beneficiaries under a will deposited with a bank the title-deeds of an estate in Yorkshire to secure an overdraft by the trustees in order that the trustees might be guaranteed against loss in carrying on the testator's business. This was done with the knowledge and approval of J., a solicitor, who represented one of the trustees in this matter. The charge was never registered. J. subsequently took a mortgage of the same property and registered it, and he claimed priority over the bank. The bank, being satisfied with the personal security of the trustees, did not contest the claim:—

*Held*, that J. was guilty of actual fraud in taking advantage of a defect in the bank's security to defeat the interests of his client, and that he was not entitled to the protection of the Act. *BATTISON v. HOBSON*

Stirling J. [1896] 2 Ch. 403

**53. — Rent-charge—Limited Owners' Residences Act, 1870 (33 & 34 Vict. c. 56), s. 9.**

A testator, who died in 1870, by his will, made in 1867, devised his freehold estates to trustees for the term of 2000 years from his death upon the trusts thereafter declared, and subject thereto to the use of his son for his life, with remainder to the first and other sons of the son successively in tail male, with remainders over. The trusts of the term were, in case his personal estate not otherwise disposed of by his will should be insufficient to satisfy his debts, and funeral and testamentary expenses, and the pecuniary legacies bequeathed by his will, then by mortgage of the hereditaments comprised in the term, or any part thereof, to raise in aid of his personal estate so much money as should be sufficient to

**MORTGAGE (Priority)—continued.**

satisfy the same debts, expenses and legacies. In June, 1875, the tenant for life in possession of the settled estates created a rent-charge, terminable in 1900, which was charged on the settled estates under the Limited Owners' Residences Act, 1870. After the date of this rent-charge the trustees of the 2000 years' term executed several mortgages of parts of the settled estates for the purposes of their trust:—

*Held*, that, at the date of the creation of the rent-charge, the term of 2000 years was, within the meaning of s. 9 of the Limited Owners' Residences Act, 1870, an "incumbrance affecting the land charged," and that the mortgages created under the trusts of the term were entitled to priority over the rent-charge. **PROVIDENT CLERKS' MUTUAL LIFE ASSURANCE ASSOCIATION v. LAW LIFE ASSURANCE SOCIETY**

North J. [1897] W. N. 73 (6)

— Mortgage on ship.

See Cases under SHIPPING—Mortgage.

54. — *Sub-mortgages—Real estate—Equitable estates—Conflicting equities—Notice.*

An equitable sub-mortgagee by deposit made by a legal mortgagee of land has an equitable estate in land, and therefore, as between two such equitable sub-mortgagees, the doctrine of obtaining priority by notice does not prevail. Thus the equitable sub-mortgagee who is later in time does not obtain priority over the earlier by being the first to give notice to the original mortgagee.

*In re Richards*, (1890) 45 Ch. D. 589, considered. **HOPKINS v. HEMSWORTH**

Kekewich J. [1898] 2 Ch. 347

55. — *Transfer of mortgage without notice to mortgagor—Payment of mortgage debt by mortgagor—Fraud of mortgagor's solicitor—Priority of mortgagor and subsequent transferee.*

The question for decision was which of two innocent parties was to suffer by reason of the fraud of a solicitor named Harrison:—

*Held*, that, assuming the transfer to Harrison to have operated as an assignment and conveyance to him in his personal capacity, and not as a trustee for the deft., the result must follow that the mortgage debt immediately became discharged, and that he held the property as trustee for the plt. On the evidence the Court was unable to hold that at the time of the transfer Harrison had constituted himself a trustee of this particular security for the deft., and consequently the deft., having taken the transfer from Harrison without the privity of the mortgagor, could only hold it against the mortgagor subject to the state of account between Harrison and the mortgagor, and as between them the debt was non-existent: that the mortgagor had never lost the right to redeem, and that directly the agent who had received the amount to pay off the mortgage became himself the transferee, the debt was extinguished, and no transferee from him could treat the debt as a subsisting charge upon the property: the plt. therefore was entitled to priority, and to have a reconveyance from the deft. **TURNER v. SMITH**

Byrne J. [1900] W. N. 273

**MORTGAGE—continued.****Receipt.**

56. — *Receipt in the body thereof—Mortgagor's signature induced by fraud of his solicitor—"Non est factum"—Estoppel—Title of mortgagee—"Solicitor"—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 54, 56.*

Two trustees advanced money on a mortgage of realty. S., one of the trustees, paid the money to E., a solicitor, who produced to him the mortgage deed executed by K. as the mortgagor. The deed, which contained the usual receipt for the money in the body of it, was handed over by E. to S., who retained it. K. who was not a man of much education, and employed E. from time to time in relation to his property, and had implicit confidence in E., had signed the deed on his advice, but did not know that it was a mortgage and had not instructed E. to obtain a mortgage. E. misappropriated the money and absconded. On discovery of the fraud K. brought an action against the trustees to set aside the mortgage:—

*Held*, that under the circumstances K. was estopped by his conduct from denying (1.) that the mortgage was valid, and (2.) that E. had authority to receive the mortgage money.

The expression, "a solicitor" who produces a deed, in s. 56 of the Conveyancing Act, 1881, discussed.

Dictum of North J. in *Day v. Woolwich Equitable Building Society*, (1888) 40 Ch. D. 491, questioned. **KING v. SMITH** — **Farwell J.** [1900] W. N. 134; [1900] 2 Ch. 425

**Receiver.**

57. — *Debt—Simple contract—Part payment by receiver—Promise to pay, Inference of—Acknowledgment—Business—Receiver and manager—Executor of mortgagor, agent for—Statute of Limitations (21 Jac. 1, c. 16), s. 3—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 24.*

H., the owner of a business, mortgaged it to S. to secure an annuity, the mortgage deed providing that S. might exercise the power of appointing a receiver under s. 24 of the Conveyancing Act, 1881, and, further, that the receiver might, if so directed in writing by S., "manage and carry on the business as he might think fit." H. continued to carry on the business from the date of the mortgage, and in doing so became indebted to the plt. for work done in connection with the business. The debt was unsecured, but it was arranged between H. and the plt. that H. should pay it off by fixed instalments. In June, 1891, after having paid some of the instalments, H. died leaving an executrix, and then, S.'s annuity being in arrear, S. by writing under the power conferred by the mortgage deed appointed a receiver of the business "with full power to manage and carry on the same as he might think fit." In Aug. 1891, the receiver paid the plt. a further instalment in reduction of his debt.

In a creditor's administration action commenced in July, 1897, by the plt. against H.'s executrix:—

*Held* (affirming **Byrne J.**, [1898] W. N. 155 (6)), that the balance of the plt.'s debt was not



**MORTGAGE (Receiver)—continued.**

statute-barred, inasmuch as the receiver had, under the combined powers of s. 24 of the Conveyancing Act and of the mortgage deed, and also as agent for H.'s executrix, as he had been for H. himself (Conveyancing Act, 1881, s. 24, sub-s. 2), authority to continue paying the debt by instalments, and that there was, as incident to his authority, an implied promise that the balance should be paid out of H.'s assets:—

Whether, if the case had rested solely upon the power of appointing a receiver under s. 24 of the Conveyancing Act, the receiver would have been justified in making a payment on account of the plaintiff's unsecured debt, *quære*. *In re HALE*. LILLEY v. FOAD - C. A. [1899] W. N. 83; [1899] 2 Ch. 107

— Building society mortgage.

See BUILDING SOCIETY—Mortgage.

**Redemption.**

58. — “Clog” on equity of redemption—“Fetter”—Collateral advantage—Presumption of pressure on mortgagor.

A mortgagee may stipulate in his mortgage deed for a collateral advantage for himself beyond the repayment of the sum advanced and interest, and may enforce the bargain against his mortgagor, provided it is not unconscionable or oppressive; and there is no presumption, in the absence of evidence to the contrary, that the collateral advantage was given by the mortgagor under pressure. A “clog” or “fetter” on a mortgagor's equity of redemption, explained.

*Biggs v. Hoddinott*, [1898] 2 Ch. 307, followed.

Decision of *Byrne J.* [1899] W. N. 19 (8); [1899] 1 Ch. 747, reversed. *SANTLEY v. WILDE*

C. A. [1899] W. N. 132; [1899] 2 Ch. 474

Explained and distinguished by C. A. *Rice v. Noakes & Co.*, [1900] 2 Ch. 445. See No. 60, below.

59. — “Clog” on redemption—Agreement subject to condition to be satisfied before the period fixed for redemption—Option to purchase—Conditional sale.

In this case it was held that it was competent for mortgagees and mortgagor to enter into an arrangement with respect to the equity of redemption. Here there was a condition which had to be satisfied, if at all, before the right of redemption arose at law. The effect of the satisfaction of that condition was that there never was any right to redeem at law; the transaction was therefore a conditional sale, and no equity of redemption ever came into existence. Unless there was a legal right to redeem, there was no right which equity could extend. If the plts. within five years elected to enter into the partnership, there never would be a mortgage for the purposes of the maxim, “Once a mortgage always a mortgage.” The plts. by electing to enter into partnership had become purchasers, and the question of clogging the equity of redemption did not arise; they were entitled to repayment of the purchase-money and interest, and an inquiry as to damages, and the debt was entitled to an order for reconveyance. *LISLE v. REEVE*

Buckley J. [1900] W. N. 264

**MORTGAGE (Redemption)—continued.**

60. — “Clog” on redemption—“Tied” public-house—Mortgage of leasehold public-house—Covenant by mortgagor to take beer during the term from mortgagee only.

The rules “once a mortgage always a mortgage,” and that the equity of redemption of a mortgage must not be “clogged,” are still in force, and the meaning of them is that a mortgagor on payment of the debt secured by the mortgage is entitled to have the mortgaged property restored to him in its entirety, unfettered, and undiminished in value.

In a mortgage of a leasehold public-house by a licensed victualler to brewers the mortgagor covenanted with the mortgagees that he and all persons deriving title under him should not during the continuance of the term, and whether any money should or should not be owing on the security of the mortgage, use or sell in the house any malt liquors except such as should be purchased of the mortgagees:—

Held, that this covenant was a “clog” on the equity of redemption, and that the plt., on payment of all that was due upon the security, was entitled to have a reconveyance of the property, or at his option a transfer of the security, free in either case from the “tie.”

Decision of *Cozens-Hardy J.*, [1899] W. N. 229; [1900] 1 Ch. 213, affirmed.

*Santley v. Wilde*, [1899] 2 Ch. 474, explained and distinguished. *RICE v. NOAKES & CO.*

C. A. [1900] W. N. 150; [1900] 2 Ch. 445

**61. — Consolidation.**

By indenture of Aug. 11, 1891, T. mortgaged certain freeholds to B. and H. to secure the repayment of an advance made by them out of moneys belonging to them on a joint account. By indenture of Dec. 6, 1892, T. mortgaged the same freeholds together with some leaseholds to H. alone. T. subsequently died, having appointed executors to whom he devised all his real estate upon certain trusts.

On June 24, 1897, the executors assigned the leaseholds to R., subject to the mortgage of Dec. 6, 1892. Upon a summons by R. to redeem the mortgage of Dec. 6, 1892, H. claimed to be entitled to consolidate with it the prior mortgage to B. and himself:—

Held, that the two mortgages were not united in one and the same hand within the rule as established by *Jennings v. Jordan*, (1881) 6 App. Cas. 698, and *Pledge v. White*, [1896] A. C. 187; and that the doctrine of consolidation did not, therefore, apply. *RILEY v. HALL*

Stirling J. [1898] W. N. 81 (9)

— Consolidation—Assignment of one equity of redemption before union of both mortgages in one person.

See MORTGAGE—Consolidation. 8.

62. — Continuance of loan—Restrictive covenant—Mortgagor and mortgagee—Collateral advantage—Injunction.

A mortgagee may stipulate for a collateral advantage at the time and as a term of the advance, provided the equity of redemption is not thereby fettered, and the bargain is a fair and reasonable one, entered into between the parties while on equal terms, without any im-

**MORTGAGE (Redemption)—continued.**

proper pressure, unfair dealing, or undue influence.

*Jennings v. Ward*, (1705) 2 Vern. 520, explained and distinguished.

*Mainland v. Upjohn*, (1889) 41 Ch. D. 126, discussed and applied.

A mortgage of an hotel to a brewer contained a covenant by the mortgagors that during the continuance of the security they would deal exclusively with the mortgagee for all beer and malt liquor sold on the mortgaged premises. The deed also contained the usual provisos for the continuance of the loan for five years. The mortgagors having ceased to purchase beer of the mortgagee, he now moved for an injunction to restrain the breach of this covenant; the mortgagors also claimed to be entitled to redeem before the expiration of the five years:—

*Held*, by Romer J., that the provisos for the continuance of the loan were valid, and that the mortgagors were not entitled at present to redeem. This decision was not appealed from.

*Held*, further, by Romer J. and by the C. A., that as the covenant entered into by the parties for the purchase and supply of beer during the continuance of the security was a reasonable one, which did not in any way clog the redemption or give the mortgagee any undue advantage, it ought to be enforced by injunction. *Biggs v. Hoddinott*. *HODDINOTT v. BIGGS*

C. A. [1898] 2 Ch. 307

Followed by C. A. *Santley v. Wilde*, [1899] 2 Ch. 474.

Discussed by C. A. *Rice v. Noakes & Co.*, [1900] 2 Ch. 445, 453.

**63. — Costs—Sufficiency of tender.**

A tender to mortgagees in possession, reserving the right to tax the mortgagees' costs and to review their account:—

*Held*, not to be a conditional tender but a tender under protest and good, so as to deprive the mortgagees of their costs in the redemption action, which ensued on their refusing to accept the tender, supposing, on inquiry, the tender was found to be sufficient in amount. *GREENWOOD v. SUTCLIFFE*

C. A. [1892] 1 Ch. 1

— Estate duty—Equity of redemption—Settled property.

See REVENUE—Estate Duty. 38.

**64. — Fetter on redemption—Policy of insurance—Construction of contract—Right to policy money.**

As part of a loan transaction the lenders insured the life of the borrower against his father's, in a society of which they were trustees, for three times the amount of the loan, and paid the premiums till the borrower's death. By agreement, if the borrower paid the principal premiums and compound interest before the death of his father, the lenders were to assign the policy to him; if, on the other hand, he predeceased his father without having paid all such amounts, the policy was to belong wholly to the lenders, subject to their settling the debt out of the policy moneys. The borrower predeceased his father, without ever paying any part of the debt:—

*Held* (Lord Hannen diss.), that the borrower's

**MORTGAGE (Redemption)—continued.**

representative were entitled to the policy moneys after deducting all sums due; for the transaction was a mortgage, and that a clause in a mortgage of a policy that on the happening of a certain event the whole of the proceeds of the policy shall belong to the mortgagee, is void as a restriction on redemption.

Decision of C. A. (*Marquess of Northampton v. Pollock*), [1890] 45 Ch. D. 190, affirmed. *Sub nom.* SALT v. MARQUESS OF NORTHAMPTON

H. L. (E.) [1892] A. C. 1

Referred to by Kekewich J. *Eyre v. Wynne-Mackenzie*, [1894] 1 Ch. 218, 227.

Referred to by Cozens-Hardy J. *Rice v. Noakes & Co.*, [1900] 1 Ch. 213, 218.

**65. — Marshalling—Two properties—Priority—Apportionment.**

The debt was first mortgagee of certain paper mills and of a reversion to personality; the plt. became second mortgagee of the paper mills and the reversion, and subsequently became third mortgagee of the paper mills. He then transferred the third mortgage to the debt, and released the paper mills from the second mortgage, thereby becoming second mortgagee of the reversion only. The plt. then foreclosed on the reversion against subsequent incumbrancers, and claimed on paying off the debt's mortgage on the reversion to have the first mortgage against the mills conveyed to him:—

*Held*, that the plt. had a right on paying off the first mortgage to have both properties conveyed to him, but that he could not tack his charge to the first mortgage on the mills, that the payment so made must be apportioned between the securities according to their value, and that the debt, in turn might redeem the mills on payment of so much of the first charge as was properly apportioned to them. *FLINT v. HOWARD*

C. A. [1893] 2 Ch. 54

**66. — Parties—Tenants in common.**

In a redemption action by mortgagees of the interests of tenants in common, whether of an undivided share or of the entirety, all the tenants in common or persons claiming under them are necessary parties. *BOLTON v. SALMON*

Chitty J. [1891] 2 Ch. 48

**67. — Policy—Real estate—Life policy—Redemption action—Mortgagee taking possession of real estate—Statutory title—Lapse of time, mortgagee barred by—Right to redeem policy separately—Analogy of statute, application of—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 7.**

Where real estate and a life policy have been included in one mortgage to secure one indivisible sum, the mortgaged properties being subject to one and the same proviso for redemption, and the mortgagee has been in possession of the real estate for more than twelve years without any acknowledgment of the mortgagor's title, so that the mortgagor's right to redeem the real estate has become barred by s. 7 of the Real Property Limitation Act, 1874, his right to redeem the policy is also barred—not by analogy to the statute, but because, it having become impossible for the mortgagor to require a reconveyance of the real estate, it has become equally impossible,

**MORTGAGE (Redemption)—continued.**

according to the rules regulating the administration of mortgages in a court of equity, for him to require a reassignment of the policy, the real estate and the policy together constituting one security for the debt. *CHARTER v. WATSON*

**Kekewich J. [1899] 1 Ch. 175**

**68. — Practice—Redemption action—Order—Payment into court—Default—Dismissal of action—Mistake—Extension of time—Jurisdiction.**

In a redemption action an order was made giving the plt. leave to lodge the mortgage money in court, and that "in default of such lodgment within two months from the date of this order, the action be dismissed with costs." Under a bona fide mistake the plt. failed to lodge the money in court until after the two months fixed by the order:—

*Held*, that, notwithstanding the expiration of the two months, the action was not dead, but that the Court had jurisdiction, at the instance of the plt., to extend the time limited by the order so as to include the actual date of lodgment. *COLLINSON v. JEFFERY*

**Kekewich J. [1896] 1 Ch. 644**

**69. — Purchase of equity of redemption—Payment of mortgage debt by purchaser—Presumption of intention to keep alive security.**

The purchaser of an equity of redemption took an assignment of a charge upon the property and paid off the incumbrancer. There being no evidence in the deed or the circumstances of any intention to extinguish the charge and it being for the purchaser's benefit to keep it alive:—

*Held*, reversing the decision of the C. A., [1896] 1 Ch. 726, that the charge was not extinguished. *LIQUIDATION ESTATES PURCHASE CO. v. WILLOUGHBY* - **H. L. (E.) [1898] A. C. 321**

**70. — Purchase of equity of redemption—Transfer of mortgage—Intention to keep security alive.**

Where the owner of an equity of redemption pays off and takes an assignment of the mortgage, and the evidence shews an intention to keep alive the security, it is not extinguished, but enures for the benefit of the owner of the equity of redemption. *THORNE v. CANN*

**H. L. (E.) [1895] A. C. 11**

*See Liquidation Estates Purchase Co. v. Wiloughby*, [1896] 1 Ch. 726, 734; [1898] A. C. 321.

Referred to by *Jeune P. The Ripon City*, [1898] P. 78, 87.

— Purchaser of legal estate—Constructive notice. *See VENDOR AND PURCHASER—Conveyance. 44.*

**71. — Remainderman—Consent of tenant for life or for limited estate.**

A testator, having mortgaged land in fee, devised it (as the Court construed his will) to his wife during the minority of his two sons, and directed that when they were of age the property should be equally divided between his wife and children, whichever of them might be living at that time. After the testator's death the widow mortgaged her interest under the will to the original mortgagee, and died while the sons were

**MORTGAGE (Redemption)—continued.**

still infants. The infants, by a next friend, brought an action against the mortgagee to redeem the testator's mortgage:—

*Held*, on the authority of *Ravald v. Russell*, (1830) Younge, 9; 34 R. R. 257, that, during the continuance of the widow's limited estate, the plts. were not entitled to redeem the testator's mortgage without the consent of the mortgagee as owner of the limited estate. *PROUT v. COCK*

**North J. [1896] 2 Ch. 808**

**72. — Repayment—Supposed owner—Intention to keep security alive.**

Where a person claiming to be owner of an equity of redemption, but whose title to a share of the property is disputed in a pending action, pays off the mortgage and takes a reconveyance, an intention will be presumed on his part to keep the mortgage alive against the share in dispute. *In re PRIDE. SHACKELL v. COLNETT*

**Stirling J. [1891] 2 Ch. 135**

**73. — Tender—Principal, interest and costs—Notice—Six months' interest—Enforcing security—Mortgagee taking possession.**

The rule that a mortgagee who has demanded payment of his mortgage debt, or has taken steps to compel payment of it cannot refuse tender of his principal, interest and costs on the ground that he is entitled to six months' notice or six months' interest in lieu of notice, applies whether the time fixed for payment by the proviso for redemption in the mortgage deed has expired or not; and the rule also applies where the mortgagee has entered into possession of the mortgaged property, entry into possession being, in effect, a demand for payment.

*Brown v. Cole*, 14 Sim. 427; 14 L. J. (Ch.) 167, considered. *BOVILL v. ENDLE*

**Kekewich J. [1896] 1 Ch. 648**

Referred to by C. A. *Ex parte Wickens*, [1898] 1 Q. B. 543, 548.

— Tender—Sufficiency of—Costs.

*See No. 63, above.*

**Rights of Mortgagee.**

**74. — General charge—"All my real and personal estate"—Uncertainty—Public policy—Validity.**

A general charge for value on all the existing property of the mortgagor is not void for uncertainty if the property to which it attaches can be ascertained at the time of enforcement. Such a charge is not contrary to public policy. *In re KELCEY. TYSON v. KELCEY* - **Kekewich J. [1899] W. N. 133; [1899] 2 Ch. 530**

**75. — Goodwill of business—Public-house—Real Estate Charges Act, 1854 (Locke King's Act, 17 & 18 Vict. c. 113).**

On Aug. 12, 1871, a public-house, of which the mortgagor was the owner in fee, subject to a lease for thirty-one years from Dec. 25, 1849, was mortgaged by him to secure 1507l. At this time the mortgagor was, as underlessee, occupying the house, and carrying on there the business of a licensed victualler. The goodwill of the business was not expressly included in the mortgage. On Jan. 24, 1873, the original lease was surrendered to the mortgagor. He continued

**MORTGAGE (Rights of Mortgagee)—continued.**

to carry on the business in the house until his death on Nov. 20, 1873, and the business was afterwards carried on by the tenant for life under his will, until she died in 1897. The house and the goodwill were then sold by the trustee of the will (who had previously paid off the mortgage debt) for 11,550*l.*, of which 2617*l.* was apportioned as the value of the goodwill:—

*Held*, that, having regard to the existence of the lease, the goodwill did not pass to the mortgagee by the mortgage deed; that it did not accrue to him by the surrender of the lease; and that, as he had never taken possession, he had not acquired the goodwill de facto:

*Held*, therefore, that the mortgage debt must be borne by the residue of the purchase-money, after deducting the apportioned value of the goodwill.

Observations upon *Lewis v. Lewis*, (1871) L. R. 13 Eq. 218. *In re BENNETT. CLARKE v. WHITE* - North J. [1898] W. N. 173 (8);

[1899] 1 Ch. 316

76. — *Share in trust fund, Mortgage of—Receipt of whole fund by mortgagee.*

W., being entitled in reversion to one-eighth of a sum of 8000*l.* bequeathed to trustees, assigned it by way of mortgage to G., with power to give receipts in the name of W. or otherwise, with a proviso for redemption. On the death of the tenant for life of the fund, J., to whom the mortgage had been transferred, claimed to receive from the trustees 1000*l.*, the whole amount of the share, the sum due on the mortgage being only about 400*l.* The trustees of the will, who had received notice of subsequent incumbrances, expressed themselves willing to pay to J. what was due on his mortgage, but declined to pay over to him the whole share. J. took out an originating summons to compel payment:—

*Held* (reversing the decision of Kekewich J.), that the trustees were not bound to pay over the whole share to J., and that the summons must be dismissed. *In re BELL. JEFFERY v. SAYLES*

C. A. [1895] W. N. 139 (8); [1896] 1 Ch. 1

Approved of by C. A. *Hockey v. Western*, [1898] 1 Ch. 350.

— *Tenant for life—Payment by—Presumption of intention to keep alive charge.*

*See SETTLED LAND—Mortgages.* 88.

77. — *Trust fund, Mortgage of share in—Right of mortgagee to receive whole amount of share—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 22, sub-s. 1.*

A member of a land society mortgaged his share in the society to the plt. (another member of the same society) by a deed to which the powers conferred by the Conveyancing Act, 1881, Part IV., were incident. The mortgagor died intestate, and there was no legal personal representative of his estate. A sum of money having become due to the mortgagor's estate from the society, the plt., relying upon his power to give a receipt under s. 22, sub-s. 1, of the Act, claimed to have the whole amount paid to him as mortgagee. The trustees, however, not being furnished with an account and having reason to believe it questionable how much was due on the mortgage,

**MORTGAGE (Rights of Mortgagee)—continued.**

offered to pay the plt. so much of the money as upon taking an account should be found due to him, but declined to pay him without such an account.

In an action by the plt. to recover the money from the trustees, it was held by Kekewich J., upon the authority of *In re Bell*, [1896] 1 Ch. 1, that the trustees were entitled to act as they had done; and, upon their undertaking to pay the money into court under the Trustee Act, 1893 (56 & 57 Vict. c. 53), the action was dismissed.

Upon appeal it was held by the Court that the trustees could not be said to have acted unreasonably; that the decision in *In re Bell* (of which their Lordships approved) was applicable; and that the judgment of Kekewich J. must be affirmed. *HOCKEY v. WESTERN*

C. A. [1898] 1 Ch. 350

**Sale.**

— *Conditions of sale—Costs—Conveyance—Mortgagees' concurrence.*

*See VENDOR AND PURCHASER.* 9.

78. — *Conduct of sale by mortgagor—Terms—Reserved price—Security for costs—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25.*

Under s. 25 of the Conveyancing Act, 1881, the Court has jurisdiction to give leave to a mortgagor to sell the mortgaged estate out of court, even where notice by the mortgagee to pay off has been given and has expired, when it appears that the sale will be more successfully conducted by the mortgagor. But in making the order the Court will limit the time for sale, fix a reserve price sufficient to cover the sum due for principal, interest, and costs, and will require the mortgagee to deposit in court a sufficient sum as security for costs. *BREWER v. SQUARE*

Kekewich J. [1892] 2 Ch. 111

79. — *Conduct of sale by fourth mortgagee—Terms—Insufficient security—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25.*

The first mortgagees, valuing the security at little more than their loan, claimed absolute foreclosure against all subsequent mortgagees. A fourth mortgagee, valuing the property considerably higher, demanded a sale and the conduct of the sale. The fourth mortgagee's claim was allowed on condition that he paid into Court 10 per cent. on his valuation, to guarantee the first mortgagees against loss. *NORMAN v. BEAUMONT*

Stirling J. [1893] W. N. 45

80. — *Foreclosure or sale—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25.*

Foreclosure decreed and order for sale refused on the grounds that (1) an application for sale had already been refused at chambers, and no fresh evidence in favour of sale had been adduced; (2) the security was insufficient; (3) the property was not suitable for sale in one lot. *PROVIDENT CLERKS' MUTUAL LIFE ASSURANCE ASSOCIATION v. LEWIS*

North J. [1892] W. N. 164

81. — *Foreclosure action—Sale altogether out of Court—Reserved biddings and remuneration of auctioneer to be fixed by judge—Form of order—R. S. C., 1883, Order LI., r. 1a.*

In a foreclosure action where an order was

**MORTGAGE (Sale)—continued.**

made for sale out of court, but the reserved biddings and remuneration of the auctioneer to be fixed by the judge, the Court treated the sale as one altogether out of court, and directed the insertion in the minutes of the declaration required by Order LI., r. 1A, that the Court was satisfied by the evidence that all persons interested in the estate were before the Court. *CUMBERLAND UNION BANKING Co. v. MARYPORT HEMATITE IRON AND STEEL Co. (No. 1)*

**Chitty J. [1892] 1 Ch. 92**

**82. — Improvements—Right of mortgagee to cost of—Sale by mortgagee after previous sale to himself—Rights of purchaser.**

A mortgagee, his power of sale on default having arisen, sold by auction ostensibly to a third person, really to himself. He subsequently sold the same with improvements he had made to H. The mortgagor brought a suit for redemption:—

*Held*, (1) that on the evidence the sale by the mortgagee to himself was not fraudulent; (2) that the sale to H. was a valid exercise of the power of sale and extinguished the right to redeem; (3) though it was the mortgagee's duty to account to the mortgagor until the power of sale was validly exercised and to offer to do so, it was not H.'s duty to give notice to the mortgagor or to see to the application of the purchase-money; (4) that the mortgagee should be allowed the cost of his improvements so far as they had enhanced the value of the premises. *HENDERSON v. ASTWOOD. ASTWOOD v. COBBOLD. COBBOLD v. ASTWOOD* — — — **P. C. [1894] A. C. 150**

— Mortgagee vendor—Statutory power of sale—Defective exercise—Title.

*See VENDOR AND PURCHASER—Title. 83.*

— Partnership—Mortgage of share—Sale of share—Rights of mortgagee.

*See PARTNERSHIP—Accounts. 8.*

**83. — Power of sale—Action to set aside sale—Laches.**

The mortgagee of a reversionary interest sold it under the power of sale in January, 1888. The reversioner had notice of the sale, and he then took legal advice as to his rights, but he took no steps to impeach the sale until December, 1897, when he commenced an action to set it aside. The reversion had fallen into possession in April, 1897:—

*Held*, that, by reason of his laches, the plaintiff could not maintain the action.

Decision of *Cozens-Hardy J.* [1899] 1 Ch. 873, affirmed. **NUTT v. EASTON**

**C. A. [1899] W. N. 239; [1900] 1 Ch. 29**

— Power of sale—Banker and customer—Closing account—Mortgage to secure amount owing on account current.

*See BANKER. 3.*

**84. — Power of sale—Building society—Power limited to trustees for the time being of the society—Transfer without concurrence of mortgagor—Exercise of power by person not a trustee of the society—Invalidity.**

A member of a building society mortgaged property to the trustees of the society to secure

**MORTGAGE (Sale)—continued.**

the repayment by instalments of an advance, and the mortgage deed empowered "the trustees or trustee for the time being of the society," in case of default, to sell the mortgaged property. The mortgage was afterwards, without the concurrence of the mortgagor, transferred to R., who was not a member of the society, and he put up the property for sale purporting to act under the power:—

*Held* (assuming, but not deciding the validity of the transfer), that, upon the construction of the deed, the power of sale could not be exercised by any person other than the trustees or trustee for the time being of the society, and that the vendor could not make a good title to the property. *In re RUMNEY AND SMITH C. A. [1897] 2 Ch. 351*

**85. — Power of sale—Chose in action—Shares in company.**

Where shares in a co. are mortgaged and no time is fixed for payment of the mortgage debt, a mortgagee who has acquired the legal title to the shares has an implied power of sale on the failure of the mortgagor to pay after the lapse of a reasonable time. *DE VERGES v. SANDEMAN, CLARK & Co.* — **Farwell J. [1900] W. N. 252; see [1901] 1 Ch. 70**

— Sale by second mortgagee—Costs of vendor's solicitor.

*See SOLICITOR—Costs. 63.*

— Salvage expenditure—Debentures subject to prior mortgages.

*See COMPANY—Debentures. 91.*

**86. — Tenants in common—Purchase by one co-tenant—Sale to one of several mortgagees—Mortgagee, Duties of.**

The only obligation incumbent on a mortgagee selling under and in pursuance of a power of sale in his mortgage is that he should act in good faith. In determining whether the mortgagee's conduct in that respect comes up to the required standard regard must be had to the circumstances of the particular case.

Mortgagees under a mortgage by two tenants in common, one of whom became bankrupt, sold by private contract to the other for a sum equal to the exact amount due in respect of the mortgage for principal, interest and costs, the bulk of the purchase-money being left on the security of the property:—

*Held*, under the circumstances that the transaction was a proper exercise of the power of sale, and that the sale was valid for all purposes, giving rise to no claim on the part of the bankrupt's estate either against the mortgagees or against the purchaser.

There is no fiduciary relation between tenants in common of real estate as such. Nor can one tenant in common of real estate by leaving the management of the property in the hands of his co-tenant impose upon him an obligation of a fiduciary character.

Decision of the *C. A.*, [1896] 1 Ch. 762, affirmed. **KENNEDY v. DE TRAFFORD**

**H. L. (E.) [1897] A. C. 180**

Referred to by *Cozens-Hardy J.* *Nutt v. Easton*, [1899] 1 Ch. 873, 877; *C. A.* [1900] 1 Ch. 29.

**MORTGAGE (Sale)—continued.**

— Title—Notice of trusts of mortgage money—Mortgagee not one of the original trustees.

See VENDOR AND PURCHASER—Title. 88.

**Settled Land Acts.**

See SETTLED LAND—Mortgages.

**Shares.**

87. — *Profits in hands of receiver—Rights of mortgagee as against receiver.*

Money was lent in 1886 on the security of a transfer of shares. The mortgagee did not register the transfer until 1892. H., the mortgagor, had died in 1889, and in a creditors' action instituted in that year to administer his estate a receiver was appointed to whom debentures were issued as representing arrears of dividend on the shares. The mortgagee claimed these debentures as being in custodia legis, having previously valued his security and proved for the balance of his debt:—

*Held*, that the debentures were not in custodia legis for the benefit of the mortgagee, but in the hands of the receiver as assets, and that the receiver was in the position of an executor. *In re HOARE. HOARE v. OWEN*

**Stirling J. [1892] 3 Ch. 94**

**Shipping.**

See SHIPPING—Mortgage.

**Solicitor Mortgagee.**

See Cases under SOLICITOR—Solicitor Mortgagee.

*Mortgagees' Legal Costs Act, 1895 (58 & 59 Vict. c. 25) amends the law as to the costs of solicitor mortgagees.*

88. — *Profit costs.*

A solicitor mortgagee is not entitled to profit costs whether the business is undertaken by the solicitor on behalf of himself solely or on behalf of himself jointly with some one else. *In re DOODY. FISHER v. DOODY. HIBBERT v. LLOYD*

**C. A. [1893] 1 Ch. 129**

But his partners, if any, are entitled to a share of such profit costs proportionate to their interest in the partnership.

(A) *In re DOODY. FISHER v. DOODY*

**Stirling J. [1893] 1 Ch. 129**

[This point did not come before the C. A.]

(B) *WELBY v. STILL (No. 2)*

**Kekewich J. [1893] W. N. 91**

[Rendered obsolete as to costs of solicitor mortgagee by 58 & 59 Vict. c. 25, s. 2.]

89. — *Profit costs—Partnership.*

(A) A solicitor mortgagee was a member of a firm of solicitors which sent in to the mortgagor a bill of costs relating to the mortgaged property:—

*Held*, that he was not precluded from shewing that by arrangement between himself and his partners he was not entitled to any share of the profit costs. *In re ROLLIT & SONS*

**Kekewich J. [1893] W. N. 195**

**MORTGAGE (Solicitor Mortgagee)—continued.**

(B) A solicitor mortgagee cannot, in the absence of express agreement, charge the mortgagor with any profit costs, either in respect of work done in connection with the mortgaged estate as solicitor to the mortgagor, or of collecting, &c., the income for the mortgagor where the mortgage is of a life interest; but *semble*, a partner of the solicitor mortgagee may receive remuneration for his trouble. A covenant in a mortgage of a life estate to a solicitor mortgagee for payment "of every other sum of money which may hereafter be advanced or paid by the mortgagee to or on account of or become owing to the mortgagee by the mortgagor," does not include profit costs either as solicitor to the mortgagor or as his agent for collecting, &c., the income. For such a covenant is as to profit costs void as clogging the equity of redemption. The Court will allow the mortgagor to surcharge and falsify settled accounts so far as regards such costs, unless the mortgagee can prove that the mortgagor was fully acquainted with his legal rights as to such costs. *EYRE v. WYNN-MACKENZIE*

**Kekewich J. [1894] 1 Ch. 218**

[Rendered obsolete as to costs of solicitor mortgagee by 58 & 59 Vict. c. 25, s. 2.]

90. — *Profit costs—Redemption.*

A solicitor mortgagee who defends a redemption action for himself is entitled to costs out of pocket, but not to remuneration for personal trouble. The objection to allowance of profit costs in such a case need not be taken at the hearing, but may be taken before the taxing master after judgment in the redemption action embodying the common order to tax. *STONE v. LICKORISH* - - **Stirling J. [1891] 2 Ch. 363**

**Tacking.**

91. — *Further advance—Second mortgage—Trustees—Joint tenants.*

In Oct. 1861, certain property was mortgaged to A., B., and C., who were trustees, as joint tenants to secure 3000*l.* and interest.

In Feb. 1866, the same property was mortgaged to L. to secure 3500*l.* and interest.

In Oct. 1876, a further charge was executed in favour of the first mortgagees to secure 1500*l.* and interest.

A. died in May, 1883, and B. died in Jan. 1889. B., who was a solicitor, acted for all parties on the occasions of the creation of all three securities, and had actual notice of the second mortgage and of the further advance when they were created, but he failed to communicate the fact of the second advance to his co-mortgagees, and they had no personal knowledge of its existence at the date of the further advance:—

*Held*, that the plts., who were the successors in title as trustees of the first mortgagees, were not entitled to tack the amount due in respect of the further advance to the amount due on the first mortgage so as to postpone the debts, who represented the second mortgagee.

In the case of a mortgage of real estate to joint tenants to secure a debt due to them jointly, it cannot be said as against strangers that any

**MORTGAGE (Tacking)**—*continued.*

one portion of the security or of the debt belongs to any one of the mortgagees: each is entitled to the whole; and if notice of a second incumbrance is given to any one of them that creates an equity against one in respect of the whole sufficient to prevent any tacking. *FREEMAN v. LAING*

Byrne J. [1899] W. N. 99; [1899] 2 Ch. 355

**Transfer.**

— Priority—Transfer of mortgage without notice to mortgagor—Fraud of mortgagor's solicitor.

See **MORTGAGE—Priority.** 55.

92. — *Transfer of mortgage without notice to mortgagor—Sale of mortgaged property by mortgagor and original mortgagee as unincumbered—Payment of mortgage debt by mortgagor to original mortgagee—Omission to call for title-deeds—Constructive notice of transfer.*

The owner of real estate mortgaged it in fee to his solicitor, who shortly afterwards transferred the mortgage to a client, the title-deeds and the mortgage deed, on which the transfer was indorsed, being handed over to the transferee. The transferee omitted to give notice of the transfer to the mortgagor, and he was ignorant of it. Afterwards the property was sold and was conveyed as free from incumbrances by the mortgagor and the original mortgagee to the purchaser by a deed (prepared by the solicitor) which contained false recitals, the mortgage and the transfer of it being suppressed.

The purchase-money was received by the solicitor, who out of it retained the mortgage debt and interest, and paid over the balance to his client, the mortgagor. The purchaser had no notice of the mortgage. The mortgagor did not call for the title-deeds or the mortgage deed when the mortgage was paid off, but left everything to his solicitor, the original mortgagee, and signed what he told him to sign. The solicitor paid the interest on the mortgage debt to the transferee until he absconded, when the fraud was discovered. The purchaser then claimed to hold the property free from the mortgage:—

*Held*, by Cozens-Hardy J., that, as the mortgagor had been a party to the false recitals in the conveyance to the purchaser, and had not called for the title-deeds when the mortgage debt was retained by the solicitor out of the purchase-money, he could not claim as against the transferee the benefit of the ordinary rule that payments made by a mortgagor to a mortgagee without notice of a transfer are good as against the transferee; and that the purchaser had no better equity against the transferee.

*Semble*, the negligence of a mortgagor, who is entitled on payment off of the mortgage to have the mortgage deed and the title-deeds delivered to him and who omits to ask for them, is greater than the negligence of a transferee of the mortgage who omits to give notice of the transfer to the mortgagor.

*Held*, by the C. A., that, inasmuch as the evidence shewed the mortgagor had placed himself entirely in the hands of his solicitor, and

**MORTGAGE (Transfer)**—*continued.*

constituted him his general agent in the transactions, the knowledge of the solicitor must be imputed to him, and he must be treated as having had notice of the transfer of the mortgage; and consequently the payment of the mortgage debt to the solicitor was not effectual as against the transferee, and the mortgage must be treated as still subsisting in her favour, and the purchaser must hold the property subject to it, but with a right to be indemnified against it by the mortgagor. *DIXON v. WINCH*

C. A. [1900] 1 Ch. 736

**Validity. ]**

93. — *Breach of trust—Operation.*

A mortgage of a term of years by a legal personal representative solely for his own benefit, which is bad as a breach of trust, cannot be treated as, at all events, operating on such estate as he can pass in his character of legal personal representative. *In re SCOTT & ALVAREZ'S CONTRACT. SCOTT v. ALVAREZ*

Per Kekewich J. [1895] 1 Ch. 596, at p. 625

This case was partly affirmed and partly reversed by C. A., [1895] 2 Ch. 603.

Referred to by Kekewich J. *In re Wallis & Barnard's Contract*, [1899] 2 Ch. 515, 521.

— Mortgage of land together with fixed machinery—Bills of Sale Acts—Non-registration.

See **BILL OF SALE.** 40.

94. — *Salary of workhouse chaplain—Public policy—Public officer—Bankruptcy.*

A chaplain of a workhouse, whose salary was paid out of the local poor-rate, mortgaged his salary and afterwards became bankrupt:—

*Held*, (1) that the mortgage was not void as against public policy, for a clergyman with a cure of souls is not a public officer unless his salary be paid out of national funds and his duties of a public nature; (2) that the salary, subject to the charge, vested in the trustee in bankruptcy. *In re MIRAMS*

Cave J. [1891] 1 Q. B. 594

Referred to by H. L. (E.). *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25, 45.

**MORTMAIN.**

See **CHARITY—Mortmain.**

**MOTHER**—Custody of infant.

See **Cases under INFANT—Custody.**

**MOTION**—Practice.

See **PRACTICE—Motions.**

**MOVABLE GOODS**—French law—Marriage—Community of goods.

See **CONFLICT OF LAWS.** 8.

**MUNICIPAL CODE OF QUEBEC**—Art. 712, sub-s. 3—Corporation—Liability to taxation.

See **CANADA.** 53.

**MUNICIPAL CORPORATION.**

See **CORPORATION.**

**MUNICIPAL ELECTION**—Prosecution for corrupt practices at—Private prosecutor—Defendant's right to costs where acquitted.

See **CRIMINAL LAW**—Costs. 4.

**MURDER**—Murder of insured by wife in whose favour insurance had been effected.

See **INSURANCE**—Life. 18.

## MUSIC AND DANCING.

*By the Music and Dancing Licences (Middlesex) Act, 1894 (57 & 58 Vict. c. 15), the Middlesex County Council were given certain licensing powers, and the Public Entertainments Act, 1875, and ss. 2, 3 of the Disorderly Houses Act, 1751, were repealed as to Middlesex.*

*Regs. were made by the London County Council on Feb. 9, 1892, under the Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict. c. 32), ss. 11, 12, 13, with respect to the requirements for the protection from fire of theatres, houses, rooms, and other places of public resort within the County of London.*

-- Copyright—Infringement of—"Sheet of music"—Perforated roll of paper for use in mechanical organ.

See **COPYRIGHT**—Music. 28.

-- Copyright in music—Dramatic piece—Right of performance.

See **COPYRIGHT**—Music. 29.

1. — House kept open for music—Certificate of county council—Buildings—Metropolis Management and Building Act, 1878 (41 & 42 Vict. c. 32), s. 12.

Sect. 12, which requires, for houses, &c., kept open for dancing or music, a certificate from the London County Council that such house is in accordance with the regulations as to construction made by the council in pursuance of the Act, applies to houses not actually licensed under 25 Geo. 2, c. 36, or 6 & 7 Vict. c. 68. *REG. v. HANNAY* — Div. Ct. [1891] 2 Q. B. 709

— How far a nuisance.

See **NUISANCE**. 19.

— Injunction for nuisance caused by.

See **INJUNCTION**. 27.

— Innkeeper providing piano—Public Health Acts.

See **INNKEEPER**. 4.

2. — Licensing committee—Judicial proceedings.

A county council, in determining applications for music and dancing licences, is acting judicially, and is bound by the same principles as are binding on justices in trying cases:—

*Held*, therefore, that where members of the committee appeared by counsel to oppose applications, although they did not vote, the proceedings were void. *REG. v. LONDON COUNTY COUNCIL. Ex parte AKKERSDYK. Ex parte FERMENTIA*

Div. Ct. [1892] 1 Q. B. 190

[This case was distinguished in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson, C. A. [1892] 1 Q. B. 431.*]

Referred to by *Stirling J. Murray v. Epsom Local Board, [1897] 1 Ch. 35, 39.*

## MUSIC AND DANCING—continued.

3. — Licensing committee—Privilege—Defamation—Justices Protection Act, 1848 (11 & 12 Vict. c. 44), ss. 8, 9—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3, 28, 78.

The functions of a county council in respect of granting licences for music and dancing are not judicial, but administrative only:—

*Held*, therefore, that a councillor is not entitled to absolute immunity for words spoken to the committee, but only to the ordinary privilege attaching to a privileged occasion:—

*Held*, also, that notice of action was not necessary under ss. 8, 9 of the Justices Protection Act, 1848. *ROYAL AQUARIUM and SUMMER and WINTER GARDEN SOCIETY v. PARKINSON*

C. A. [1892] 1 Q. B. 431

Referred to by C. A. *Hodson v. Pare, [1899] 1 Q. B. 455, 457.*

4. — Playing music or singing after request to desist—By-law—Reasonableness—Power to review where there is no appeal from the Divisional Courts.

In determining the validity of by-laws made by public representative bodies, such as county councils, the Court ought to be slow to hold that a by-law is void for unreasonableness. A by-law so made ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it.

A county council, claiming to act under their statutory powers, made a by-law prohibiting any person from playing music or singing in any public place or highway within fifty yards of any dwelling-house after being requested by any constable, or an inmate of such house, or his or her servant, to desist:—

*Held*, by Lord Russell of Killowen C.J., Sir F. H. Jeune, Pres. of P. D. and A. Div., Chitty L.J., Wright, Darling, and Channell JJ. —Mathew J. dissenting—that the by-law was valid.

*Semble*: In cases where there is no appeal from the Divisional Courts, a specially constituted Divisional Court appointed by the Chief Justice of England has power to review, and if it thinks fit to differ from, previous decisions of Divisional Courts on the same subject. *KRUSE v. JOHNSON*

Div. Ct. [1898] 2 Q. B. 91

Referred to by C. A. *Thomas v. Sutters, [1900] 1 Ch. 10, 13.*

— Royal College of Music—Rates—Exemption—Scientific society.

See **RATES**—Rateability. 36.

5. — Street musician—Non-payment of fine—Imprisonment—2 & 3 Vict. c. 47, s. 77; 27 & 28 Vict. c. 55, s. 1.

A street musician was convicted under 27 & 28 Vict. c. 55, s. 1, and fined 40s. for playing in a public thoroughfare after being requested by a householder to depart, and committed for one month in default of payment of the fine:—

*Held*, that the conviction and sentence were good. Under s. 77 of the Metropolitan Police



**MUSIC AND DANCING**—*continued.*

Act, 1839, an offender may be imprisoned for one month for non-payment of a fine, although the imprisonment fixed for the original offence be only three days. *REG. v. HOPKINS*

**Div. Ct. [1893] 1 Q. B. 621**

**6.** — *Street musician—Right of householder to order street musician to depart—Duty to give reason—Metropolitan Police Act, 1864 (27 & 28 Vict. c. 55), s. 1.*

By s. 1, any householder within the metropolitan police district may require any street musician to depart from the neighbourhood of his house "on account of the illness or on account of the interruption of the ordinary occupations or

**MUSIC AND DANCING**—*continued.*

pursuits of any inmate of such house, or for other reasonable or sufficient cause":—

*Held*, that the householder making the requisition must give to the street musician his reason for doing so. *SHIELDS v. HOWARD*

**Div. Ct. [1896] W. N. 155 (7); [1897] 1 Q. B. 84**

**MUTUAL CREDIT**—In bankruptcy.

*See* **BANKRUPTCY—Set-off.** 235.

**MUTUAL DEALINGS**—Set-off.

*See* **BANKRUPTCY—Set-off.** 235—237.

**COMPANY—WINDING-UP.** 229.

**MUTUAL INSURANCE.**

*See* **INSURANCE—Marine.** 63, 64.

## N.

**NAME**—Bill of sale—Validity—Grantor known only under assumed name—Bill registered under true name.  
*See* BILL OF SALE. 7.

— Company—Alteration—Mistake—Remedy.  
*See* COMPANY—Registration. 261.

— Dissolution of marriage—Dignity or title of honour—Continued use of, derived from former husband—Injunction to restrain.  
*See* HUSBAND AND WIFE. 96.

— Dissolution of partnership—Right to use name of old firm—Liabilities—Solicitors.  
*See* PARTNERSHIP. 24.

— Firm—Registration as trade-mark.  
*See* TRADE-MARK—Registration. 46.

— Firm name—Conveyance of freehold shop—Vendor's name over door—Vendor's right to erasure.  
*See* PARTNERSHIP. 29.

— Shares applied for in fictitious name—Contributory.  
*See* COMPANY—WINDING-UP. 23.

— Similarity of—Deception—Injunction.  
*See* TRADE NAME.

— Trade name.  
*See* TRADE NAME.

1. — *Unauthorized use of name—Untrue statement—Injury—Libel.*

If an untrue statement be made involving an unauthorized use of a man's name, and if it can be proved that such user has caused him injury, or is calculated to cause him injury in his property, business, or profession, it can be restrained even although it be neither libellous nor defamatory: *Dockrell v. Dougal*, (1899) 80 L. T. (N.S.) 556, and *White v. Mellin*, [1895] A. C. 154, discussed. *HAWKER v. STOURFIELD PARK HOTEL CO.*

*Byrne J. [1900] W. N. 51*

— Will—Appointment of executors—Executor described by wrong surname.  
*See* PROBATE. 75.

# **NAME AND ARMS CLAUSE.**

*See* WILL—Name and Arms Clause.

# **NARROW CHANNEL—Collision.**

*See* Cases under SHIPPING—Collision.

# **NATAL.**

*Appeals from Natal—O. in C. dated July 19, 1870, regulating appeals from the Supreme Court of Natal to Her Majesty in Council. St. R. & O. 1899, p. 1702.*

# **Application of Colonial Probates Act, 1892.**

*See* PROBATE—Colonial Probates Act.

# **Laws of Natal.**

1. — *Company—Lien on members' shares.*

A lien may validly be conferred upon a co. by its articles of association on all shares registered in the name of a member for his debts to the co.,

# **NATAL (Laws of Natal)—continued.**

making the member's title to transfer his shares while he remains indebted dependent on the approval of the directors. *BANK OF AFRICA v. SALISBURY GOLD MINING CO.*

*P. C. [1892] A. C. 281*

2. — *Dolus malus—Priority of unregistered transfer—Registered transfer set aside.*

In a suit against the executor dative of a deceased registered owner of lands in Natal and his transferee to set aside the transfer, it appeared that the plt. had taken a transfer from the owner in his lifetime, paid the purchase money, and received the title-deeds, but had omitted to complete registration, though he had placed a resident agent in possession and management. It also appeared that the defendants had obtained orders from the Court for delivery of certified copies of such title-deeds as having been lost, and for sale by the executor dative by private contract, concealing the fact that the occupier of the lands held under an alleged lawful possession which might possibly be accompanied by possession of the title-deeds, and thereafter effected and registered their transfer:—

*Held*, that this constituted *dolus malus* within the meaning of Roman-Dutch law; that the said transfer must be set aside; and that the plt. had a locus standi to maintain the suit. *Crowly v. BERGTHEIL*

*P. C. [1895] A. C. 374*

3. — *Gaming—Syndicate for speculation in shares—Power of manager.*

The law of Natal does not render it illegal for any person or association to buy and sell shares as a speculation.

A was a member of a syndicate formed to buy and sell shares as a speculation. The syndicate bought and sold from and to other associations, of which A. was not a member, but some of his associates were:—

*Held*, that such dealings were not necessarily beyond the authority of the manager; which authority, under the circumstances, was not limited to operations in the open market. *LAUGHTON v. GRIFFIN*

*P. C. [1895] A. C. 104*

4. — *Practice—Appeal—Company—Construction of articles of association—Power of chairman to refuse adjournment of a meeting—Special leave to appeal given at the hearing.*

At the hearing of an appeal it appeared doubtful whether the order appealed against was a final judgment or had the effect of a definitive sentence; but it also appeared that the questions in controversy on the face of the pleadings were of much importance, and that a determination of them might put an end to further litigation. Accordingly special leave to appeal was granted.

An article of association provided that "the chairman may with the consent of the members present at any meeting adjourn the same, &c.":—

*Held*, that upon the true construction thereof,

**NATAL (Laws of Natal)—continued.**

the chairman is not bound to adjourn a meeting, even though a majority of those present desire the adjournment: and that he can, after rejecting a motion for adjournment, declare a provisional agreement specified in the circular convening the meeting to be confirmed.

*Semle*, such confirmation is not affected by any statement of the chairman as to its effect even if incorrect. **SALISBURY GOLD MINING CO. v. HATHORN** — **P. C [1897] A. C. 268**

**5. — Practice—Appeal—Right of—Licensing officer—Jurisdiction of Supreme Court—Law 18 of 1897, ss. 5 and 6—Construction.**

Under Natal Law 18 of 1897, ss. 5 and 6, an appeal lies to the town council alone from a decision of its licensing officer.

No appeal lies from the decision of the town council. A summons for a writ of review thereof by the Supreme Court issued under Law 39 of 1896, s. 8, cannot in appeal be treated as for a writ of certiorari contrary to the plain intention of the parties and of the Court below. **VAUDA v. NEWCASTLE CORPORATION** **P. C. [1899] A. C. 246**

**6. — Practice — Verdict — Jurisdiction of Court as to setting aside—Law of Natal.**

The law of Natal does not authorize judges to set aside a verdict as if they were a court of appeal upon questions of fact.

Where a jury had found that a binding agreement had been entered into between appellant and respondents, and had given a verdict for damages for its breach:—

*Held*, that by the law of Natal the verdict could not be set aside unless it were one which the jury could not reasonably find. **PEARSE v. SCHWEDER & Co.** **P. C. [1897] A. C. 520**

**7. — Watercourse—Right to construct—Right to divert streams—Grant of land—Construction of reservation.**

Where in a grant of land a right is reserved to make watercourses over it for the public use and benefit by order of Government:—

*Held*, that such reservation may include, and in the circumstances of this case did include, a right to divert water from streams in the land and to use the water so diverted. **REMFRY v. SURVEYOR-GENERAL OF NATAL**

**P. C. [1896] A. C. 558**

**8. — Will — Contract by spouses to bring themselves within the law—Registration—Mutual will—Natal Law No. 22 of 1863, s. 7—Construction.**

By s. 7 of Natal Law No. 22 of 1863, passed to prevent community of goods attaching to certain marriages, persons married in South Africa can bring themselves under its provisions by a registered written instrument to that effect:—

*Held*, that, by the true construction of that section, if the instrument is unregistered it is inoperative for all purposes and as between the parties.

Where husband and wife, not within Law No. 22, by mutual will directed their executors to sell the testator's estate as soon as convenient after the testator's death without specifying a date for payment of legacies directed by the

**NATAL (Laws of Natal)—continued.**

testator, and so soon after the death of the testatrix as may be to pay the legacies directed by her:—

*Held*, that by the true construction of the will the testator's legacies were payable at his death. The intention to dispose of everything was apparent, and the words did not necessitate the suspension of payment of testator's legacies with consequent intestacy as to the resulting income. **TAYLOR v. B. STURROCK. W. STURROCK v. B. STURROCK** — **P. C. [1900] A. C. 225**

**NATIONAL DEBT—National debt conversion—Annuity—Will—Charge on capital—National Debt Conversion Act, 1888 (51 & 52 Vict. c. 2), s. 20 (3).**

A will provided that trustees should appropriate and invest in Government stock "such a sum of money as will, when invested, be sufficient with the income thereof to produce two weekly sums of 15s. each, and shall maintain the same as a fund to answer the said two weekly sums," and provided for the destination of the capital set aside when it should fall in. By reason of the conversion into 2½ per cent. Consols, the income became insufficient:—

*Held*, that the annuities were charged on the capital of the fund, and the provisions of s. 20 (3) of the Act did not override the provisions of the will, and that the annuitants were entitled to be paid in full. **PACK v. DARBY**

**North J. [1895] W. N. 123 (6)**

**2. — National Debt Conversion—Bequest of 3 per cent. annuities—National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), s. 25, sub-s. 2.**

The first part of s. 25 (2) of the National Debt (Conversion) Act, 1888, includes all dispositions of stock, whether by will or any other instrument, while the second part of the sub-s. deals only with specific bequests of stock.

North J.'s explanation of the sub-section in **Duke of Northumberland v. Percy**, [1893] 1 Ch. 298, 303, adopted. *See next Case.* In re **HOWELL-SHEPHERD. CHURCHILL v. ST. GEORGE'S HOSPITAL** — **Kekewich J. [1894] 3 Ch. 649**

**3. — National Debt conversion — Right to substitute 2½ per cent. for 3 per cent. Annuities —National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), s. 21, sub-s. 1; s. 25, sub-s. 2.**

A deed creating a perpetual rent-charge provided for the redemption thereof by the transfer of a specified amount of 3 per cent. Annuities:—

*Held*, that under s. 25 (2) of the National Debt (Conversion) Act, 1888, the creators of the rent-charge were entitled to redeem it by transferring the same amount of new 2½ per cent. stock created under the Act. **DUKE OF NORTH-UMBERLAND v. PERCY** **North J. [1893] 1 Ch. 298**

Adopted by **Kekewich J.** In re **Howell-Shepherd**, [1894] 3 Ch. 649. *See preceding Case.*

— Unclaimed stock, Inspection of register of.

*See* **BANK OF ENGLAND.**

**NATIONAL SCHOOL—Dismissal of schoolmaster.**  
*See* **CHARITY.** 39.

— Street—"Owners"—Recovery of expenses.

*See* **STREETS—Paving, &c., Expenses.**  
31.

**NATIVE LAND COURTS ACTS**—Laws of New Zealand.

See NEW ZEALAND. 8.

**"NATURAL" REPRESENTATIVES.**

See WILL—Words. 221.

**NATURALIZATION.**

**ALIENS.]** *Regs. dated Oct. 20, 1897, made by Secy. of State for Home Department for purpose of carrying into effect the provisions of the Naturalization Act, 1870 (33 & 34 Vict. c. 14). St. R. & O., 1898, p. 3, No. 13.*

**RETURN AS TO NATURALIZED ALIENS.]** *A list of the persons to whom certificates of naturalization have been granted by the Secy. of State under the Naturalization Act, 1870, is published every month in the Lond. Gaz. An annual return of the certificates granted during the year is also published as a Parl. Paper.*

— Chinamen—Legislative power—Ultra vires.  
See CANADA. 30.

**NAVIGABLE RIVER**—Riparian proprietor—Sale of water power artificially created.  
See CANADA. 62.

**NAVIGATION**—Collision.See SHIPPING—Collision, *passim*.**NAVY.**

See ARMY AND NAVY.

**NECESSARIES**—Admiralty practice.

See SHIPPING—Necessaries.

— Bill of exchange—Acceptance.

See INFANT—Necessaries. 33.

— Infant.

See INFANT—Necessaries.

— **"NECESSARY OR PROPER PARTY"**—Service—

Out of the jurisdiction.

See PRACTICE—Service. 216—229.

— **NECESSITY**—Way of—Defined way—Grant.

See WAY, RIGHT OF. 7.

— **NEGLECT**—Absence of—Action for trespass to the person.

See TRESPASS. 1.

— **Agistment**—Contract of—Action founded on tort.

See AGISTMENT.

1. — **Alien**—Injury causing death—Negligence of British subject—Cause of action outside jurisdiction—*Fatal Accidents Acts, 1846 and 1864 (9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95).*

The provisions of the *Fatal Accidents Acts, 1846 and 1864*, by which damages can be recovered for death caused by negligence, do not apply for the benefit of aliens abroad, and therefore the representative of an alien whose death has been caused by the negligence of a British subject, outside the jurisdiction of the Court, cannot maintain an action to recover damages in respect of the death. *ADAM v. BRITISH AND FOREIGN STEAMSHIP CO.*

Darling J. [1898] 2 Q. B. 430

— Bailor.

See Cases under BAILMENT.

— Bill of Exchange.

See Cases under BILL OF EXCHANGE.

**NEGLECT**—continued.

— Breach of trust—Immunity clause—Liability of trustee.

See TRUSTEE—Breach of Trust. 29.

2. — **Charterer**—Liability of, for defective condition of ship—Breach of duty.

The deft. chartered for a single voyage a vessel which was at the time at sea and in ballast. The charterparty declared that she was in every way fit for the service, and provided that she should be so maintained by the owners. On the afternoon of April 5 the vessel was put at the deft.'s disposal in dock, and two hours afterwards the loading began, the deft. having contracted with a stevedore for the purpose who had engaged the plt. amongst others to carry out the work. Fifteen minutes later the plt., in the course of his work, had to descend a ladder leading into the hold. It came adrift, and the plt. fell, sustaining injuries for which he sued the deft. :—

*Held*, that the deft. was liable to the plt., since it was his duty under the circumstances to make some inspection of the vessel before allowing the stevedore and his men to go on board her, and since the slightest inspection would have revealed the defective state of the ladder. *MARNEY v. SCOTT* Bigham J. [1899] 1 Q. B. 986

— **Contractor**—Liability of owner for negligence of—Sunken wreck in navigable river—Contract to raise.

See SHIPPING—Collision. 83.

— Contribution between joint delinquents.

See SCOTTISH LAW—Joint Delinquents. 21.

— **Contributory**—Evidence as to injury by—Spiked wall.

See NUISANCES. 30.

— **Corporation**—Costs—Solicitor and client—Appeal.

See COSTS—Public Authorities Protection. 46.

— Death of illegitimate child.

See SCOTTISH LAW—Negligence. 39.

— Employer's liability.

See Cases under MASTER AND SERVANT.

— **Factory Acts.**

See MASTER AND SERVANT—Factory Acts.

— **General average**—Charterparty—Bill of lading—Negligence clause.

See SHIPPING—Average. 8.

— **Harbour.**

See Cases under SHIPPING—Harbour.

— **Infant child**—Conscientious objection to medical aid—Neglect to procure medical aid—Man-laugher.

See CRIMINAL LAW. 9.

— **Landlord—Tenant.**

See Cases under LANDLORD AND TENANT—Landlord's Liability.

— **Law agent**—Liability of, for negligence.

See SCOTTISH LAW. 10.

— **Libel**—Publication—Circulating library—Book circulated in ignorance of libel contained in it.

See DEFAMATION—Libel. 27.

**NEGLIGENCE—continued.**

- Limitation of action—Fatal Accidents Act—Neglect in execution of Act of Parliament.  
*See PUBLIC AUTHORITIES PROTECTION.* 3.
- “Management” of vessel—Bill of lading incorporating the Harter Act—Damage to cargo.  
*See SHIPPING—Charterparty.* 28.
- Master and servant.  
*See Cases under MASTER AND SERVANT.*
- Master of ship.  
*See SHIPPING—Exceptions.* 135—137.
- Mischievous animal—Evidence of scienter.  
*See DAMAGES.* 6.
- Mortgagee.  
*See MORTGAGE—Priority.* 45—48.
- Negotiable instrument—Transfer.  
*See NEGOTIABLE INSTRUMENT.*
- Partner.  
*See PARTNERSHIP—Liabilities.* 31.
- Policy—Loss by negligence of master—Master also part owner.  
*See INSURANCE—Marine.* 65.
- Principal and agent.  
*See Cases under PRINCIPAL AND AGENT.*

3. — *Public body—Contract to execute works—Negligence of contractor—Liability of employer—Practice—Separate defence of two defendants—Payment into court by one defendant—Verdict for less than amount paid in—Liability of the other defendant for costs.*

A district council, acting under the Public Health Act, 1875, s. 150, employed a contractor to make up a highway, which was used by the public, but had not become repairable by the inhabitants at large. In carrying out the work the contractor negligently left on the road a heap of soil, unlighted and unprotected. A person walking along the road after dark fell over the heap and was injured. In an action against the district council and the contractor to recover damages for the injuries sustained:—

*Held*, that as, from the nature of the work, danger was likely to arise to the public using the road, unless precautions were taken, the negligence of the contractor was not casual, or collateral to his employment, and the district council were liable.

Where two debts are sued, and put in separate defences, and one of them has paid money into court exceeding the amount ultimately recovered in the action, the other debt cannot avail himself of the payment into court by his co-deft. as a satisfaction of the cause of action against himself, and, on the failure of his defence, the plt. is entitled to have judgment entered against him for costs.

Judgment of Bruce J., reported [1898] 2 Q. B. 112, affirmed. *PENNY v. WIMBLEDON URBAN DISTRICT COUNCIL* — C. A. [1899] W. N. 65; [1899] 2 Q. B. 72

Followed by C. A. *The Snark*, [1900] P. 105.

- Railway companies.  
*See Cases under RAILWAY—Negligence; Passengers.*

**NEGLIGENCE—continued.**

- Relief—Underlessee.  
*See LANDLORD AND TENANT.* 62.
- Servant.  
*See Cases under MASTER AND SERVANT.*
- Shipping.  
*See Cases under SHIPPING.*
- Solicitor.  
*See Cases under SOLICITOR.*
- Surveyor.  
*See SURVEYOR.*
- Third person.  
*See BAILMENT.*
- Title-deeds—Omission to require production—Purchaser for value without notice—Equitable mortgage—Priority.  
*See MORTGAGE—Priority.* 47, 48.
- Title-deeds.  
*See Cases under TITLE-DEEDS.*
- Trustee.  
*See Cases under TRUSTEE.*
- Valuer.  
*See VALUER.*

**NEGOTIABLE INSTRUMENT.**

- Bills of exchange.  
*See Cases under BILLS OF EXCHANGE.*

1. — *Bona fide holder for value—Obligation of transferee to inquire.*

A person taking a negotiable instrument in good faith and for value obtains a valid title, though he takes from one who had none.

In the absence of circumstances to create suspicion as to the title of a transferor of a negotiable instrument, the transferee is not bound to make any inquiries into such title. Decision of C. A. *Simmons v. London Joint Stock Bank*, [1891] 1 Ch. 270, reversed. *LONDON JOINT STOCK BANK v. SIMMONS* H. L. (E.) [1892] A. C. 201

Followed by North J. *Bentinck v. London Joint Stock Bank*, [1893] 2 Ch. 120.

Referred to by H. L. (Sc.) *Thomson v. Clydesdale Bank*, [1893] A. C. 282, 293.

Referred to by C. A. *Manchester Trust v. Furness*, [1895] 2 Q. B. 539, 545.

- Cheque.

*See Cases under BANKER.*

2. — *Debenture payable to bearer—Usage—Company.*

The plts., a limited co., were possessed of certain debentures, issued by an English co. in England and payable to bearer, which by reason of the conditions indorsed thereon were not promissory notes. These debentures were kept in a safe, the key of which was entrusted to the plts.' secretary. The secretary, in fraud of the plts., took the debentures from the safe and pledged them with the defts. for advances made to him by them. The defts. received the debentures in good faith. It was proved that the usage in the mercantile world and on the Stock Exchange for many years had been to treat such debentures as negotiable instruments transferable by mere delivery:—

*Held*, that, although the plts. were not estopped by their conduct from denying the defts.' title, yet the defts. were entitled to the debentures.

**NEGOTIABLE INSTRUMENT—continued.**

tures as against the plts. on the ground that the debentures were negotiable instruments by delivery.

*Crouch v. Crédit Foncier of England*, (1873) L. R. 8 Q. B. 374, has been in effect overruled by *Goodwin v. Roberts*, (1875) L. R. 10 Ex. 337; (1876) 1 App. Cas. 476. **BECHUANALAND EXPLORATION CO. v. LONDON TRADING BANK**

**Kennedy J. [1898] 2 Q. B. 658**

— Debtor and creditor—Equitable assignment of debt—Notice.

See **ASSIGNMENT**. 1.

— Deposit of securities by broker—Inquiry by transferee.

See **STOCK EXCHANGE**. 9.

**3. — Negligence of transferee—Railway bond.**

More negligence on the part of the transferee of a negotiable instrument to avail himself of means at his disposal to detect the bad title of the transferor, cannot be pleaded as a defence to an action on the instrument by the transferee.

Foreign railway bonds “to bearer” dependent on a deed of trust referred to in the bonds, held to be negotiable instruments according to the law merchant. **VENABLES v. BARING BROTHERS & CO.**

**Kekewich J. [1892] 3 Ch. 527**

**4. — Words prohibiting transfer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 8, 73, 76.**

In order to prevent a cheque, drawn payable to order, being negotiable, the intention must be clearly expressed. Crossing the cheque to the payee's account at a particular bank is not sufficient. Conditions necessary for rendering a cheque not negotiable considered. **NATIONAL BANK v. SILKE**

**C. A. [1891] 1 Q. B. 435**

**NEGOTIATING FEE—Conveyancing.**

See **Cases under SOLICITOR**.

**NEGOTIATION—Bill of Exchange.**

See **Cases under BILL OF EXCHANGE**.

— By telegram.

See **CONTRACT—Formation**. 18.

**NEPHEWS AND NIECES—Bequest to.**

See **Cases under WILL—Class**.

**NERVOUS SHOCK—Damage—Remoteness.**

See **ACTION**. 2.

**NETS—Salmon Fishery Acts—Illegal methods.**

See **FISHERY**. 7, 8.

**NET PROFITS—Construction of articles.**

See **COMPANY—Directors**. 140; **Dividend**. 149, 155.

**NEW RIVER COMPANY—Rate—Trade purposes.**

See **WATER—Water Rates**. 29.

**NEW SOUTH WALES.**

Application of Colonial Probates Act, 1892.

See **PROBATE—Colonial Probates Act**.

**Law of New South Wales.**

— Administration suit—Separate account, Fund carried to — Assignment — Notice — Equity against assignee.

See **ACCOUNT**. 4.

**1. — Bankruptcy—Act of bankruptcy—Juris-**

**NEW SOUTH WALES (Law of New South Wales) —continued.**

*dictio of bankruptcy judge—Rule of Procedure, No. 51, ultra vires—Registrar's judgment inadmissible—Indirect motive of petitioner—Fraud.*

Under the New South Wales Bankruptcy Acts, 1887–8, an act of bankruptcy may be constituted by non-compliance with a bankruptcy notice under s. 4, sub-s. 2, of the principal Act. Ample discretion is vested in the judge to grant or refuse a sequestration order founded on the notice, and if granted to discharge or annul it. But no jurisdiction is given by the Acts to annul an act of bankruptcy or declare that it never was committed; and cannot be given by a rule of procedure framed under s. 119, which on its true construction does not authorize a rule purporting to create a jurisdiction in excess of that conferred by the Act.

The “full written judgment” of the registrar whose order refused the respondent's petition of sequestration against the appellant was rightly held to be inadmissible in evidence in an action against the respondent for having maliciously presented his petition. The respondent was bound by the registrar's discretion as to making or refusing the order, not by his opinion upon points which he had no jurisdiction to determine.

*Ex parte Vitoria*, [1894] 2 Q. B. 387, approved.

It is neither fraud nor an abuse of process to petition for a sequestration order with an indirect motive, that is, for a purpose other than the equal distribution of the testator's assets, as, for example, to exclude the appellant from a partnership; secus if such order would in the circumstances be unsuitable, and enable the petitioner fraudulently to defeat the rights of others whether legal or equitable.

*Ex parte Wilran*, (1820) 5 Madd. 1, approved. **KING v. HENDERSON**

**P. C. [1898] A. C. 720**

**2. — Bill of sale—Delay in possession and registration—Validity.**

Where A. advanced money in good faith to a person who appeared to be solvent, taking a bill of sale which included all the debtor's stock in trade, book debts, and other property, but without taking delivery or registering the bill of sale until just in time to prevent its being avoided under the (New South Wales) Bills of Sale Act:—

*Held*, that his title thereunder prevailed against the debtor's official assignee, no intent being shewn to have existed at the date thereof to defeat or delay creditors. **MORRIS v. MORRIS**

**P. C. [1895] A. C. 625**

— Cablegrams—Mistake—Action on contract—Onus probandi.

See **CONTRACT—Formation**. 19.

**3. — Civil servant—Civil Service Act, 1884 (48 Vict. No. 24), ss. 10, 46—Abolition of office—Compensation.**

Although New South Wales “Civil Service Act, 1884,” deprives the Crown of its right to dismiss its civil servants summarily without following the procedure prescribed therein, yet it does not take away the right of the Crown to abolish a civil office:—

*Held*, that the holder of an abolished office,

# **NEW SOUTH WALES (Law of New South Wales)** —continued.

unless entitled to a superannuation allowance under the Act of 1884, is not by the true construction of ss. 10 and 46 entitled as for breach of contract to any other compensation. It is at the option of the Government whether he should be offered an equivalent office. *YOUNG v. WALLER*.

**P. C. [1898] A. C. 661**

*See also next Case.*

## **4. — Civil servant—Dismissal of—New South Wales Act (59 Vict. c. 25), s. 58—Construction—Retrospective effect.**

Retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language.

*Midland Ry. Co. v. Pye*, (1861) 10 C. B. (N.S.) 191, approved:—

*Held*, that the New South Wales Act (59 Vict. c. 25), s. 58, which enacts that "Nothing in this Act or in the Civil Service Act of 1884 shall be construed or held to abrogate and restrict the right of the Crown as it existed before the passing of the said Civil Service Act to dispense with the services of any person employed in the public service," is not retrospective in its operation:

*Held*, that the respondent, who had been dismissed from the public service before the said Act came into operation, but not in manner prescribed by the Act of 1884, was not affected by the provisions of the later Act, which only apply to persons actually employed in the public service at and after the date thereof. *YOUNG v. ADAMS*.

**P. C. [1898] A. C. 469**

*See also preceding Case.*

## **5. — Civil servants of the Crown—Power to dismiss at pleasure—Law of New South Wales—Civil Service Act, 1884 (48 Vict. No. XXIV.).**

The Crown has by law, whether in England or New South Wales, power to dismiss at pleasure either its civil or military officer, on condition to that effect being an implied term of the contract of service except where it is otherwise expressly provided:—

But *held*, that certain provisions of the New South Wales Civil Service Act of 1884, being manifestly intended for the protection and benefit of the officer, are inconsistent with such a condition, and consequently restrict the power of the Crown in that respect. *GOULD v. STUART*.

**P. C. [1896] A. C. 575**

Referred to by P. C. *Young v. Adams*, [1898] A. C. 469, 473.

## **6. — Company — Arbitration — Reference of suit.**

The arbitration provisions in the Companies Act (37 Vict. No. 19) only apply to voluntary arbitrations to which the co. has submitted under its common seal, and not to references by order of a judge under s. 12 of the Arbitration Act, 1892 (55 Vict. No. 32).

Accordingly, an arbitrator under the latter Act need not make the declaration before a justice prescribed by s. 113 of the former Act. *ZELMA GOLD MINING Co. v. HOSKINS*.

**P. C. [1895] A. C. 100**

## **7. — Company—Contract—Effect of company's adoption of contract made before its formation—**

# **NEW SOUTH WALES (Law of New South Wales)** —continued.

*Payment of shares in cash—Set-off—New South Wales Companies Act, 1874 (37 Vict. No. 19), s. 57—Imperial Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.*

A co. does not by its adoption of a contract of purchase made before its formation by persons purporting to act on its behalf incur any contractual relation with or obligation to the vendor.

*In re Johannesburg Hotel Co.*, [1891] 1 Ch. 119, approved.

But where a co. on completion of conveyances to it by the vendor gave credit to him for moneys placed in his hands as promoter on the terms of the co.'s prospectus by intending shareholders and specifically appropriated by them in payment pro tanto for their shares, registered the shares in their names, and at the same time obtained credit in respect of the payment from the vendor on account of the purchase-money:—

*Held*, that this was a payment in cash to the company in respect of those shares within the meaning of s. 57 of the New South Wales Companies Act, 1874, which is substantially identical with s. 25 of the Imperial Companies Act, 1867. *NORTH SYDNEY INVESTMENT AND TRAMWAYS Co. v. HIGGINS*.

**P. C. [1899] A. C. 263**

## **8. — Company—Contract—Shares deemed to be fully paid up—Liability—Law of New South Wales—Companies Act, 1874, No. 19, s. 57—English Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25.**

Where the members of a syndicate resolved to form a co., distributing the shares therein rateably amongst themselves according to the extent of their interests in the syndicate property, the same to be deemed in great part paid up, and a deed of sale of their property was executed by their trustees to a trustee for the company, afterwards filed with the registrar and adopted by the directors, which embodied the above resolution:—

*Held*, that the deed of sale was not a contract within the meaning of s. 57 of the Colonial Act of 1874, corresponding with s. 25 of the English Companies Act of 1867, so as to protect the shares from liability to calls in respect of the amounts which were to be deemed as paid up. It did not effect a genuine transfer of property in respect of which shares deemed to be paid up formed part of the consideration; nor were any legal rights or liabilities created thereby.

*Hartley's Case* (L. R. 10 Ch. 157) distinguished. *SMITH v. BROWN* —

**P. C. [1896] A. C. 614**

Referred to by V. Williams J. *In re Wragg, Ltd.*, C. A. [1897] 1 Ch. 796, 804.

Referred to by Stirling J. *In re Nixon's Navigation Co.*, [1897] 1 Ch. 872, 874.

## **9. — Company—Debentures—First charge on uncalled capital.**

Under the Companies Act (37 Vict. No. 19), identical for this purpose with the English Act of 1862, a co. limited by shares can create a charge upon its uncalled capital so as to confer priority in the winding-up.

Where the memorandum of association autho-

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

rized the receipt of money on loan or deposit and "upon any security of the co. or upon the security of any property of the co." :—

*Held*, that this authorized a charge upon the whole uncalled capital. **NEWTON v. ANGLO-AUSTRALIAN INVESTMENT CO. (DEBENTURE-HOLDERS)** — **P. C. [1895] A. C. 244**

Discussed and followed by Chitty J. *Jackson v. Rainford Coal Co.*, [1896] 2 Ch. 340.

Commented on and explained by C. A. *In re Mayfair Property Co.*, [1898] 2 Ch. 28.

— Contract—Admissibility of extrinsic evidence — "Total cost of works."

*See* **CONTRACT—Construction.** 11.

— Contract—Rescission—Title of trustee for sale who has purchased for himself—Effect of beneficiaries consenting—Intermediate sale to third party.

*See* **VENDOR AND PURCHASER—Rescission.** 60.

10. — *Contract of indemnity—Estoppel—Evidence as to abandonment of claim.*

The plt. and deft. jointly guaranteed to a bank payment of a certain cash bond, the plt. agreeing with the deft. to indemnify him from all liability thereunder. Seven years afterwards the bank released the guarantors from liability on payment by each of 1000*l*.

In a suit by the plt. to declare the agreement of indemnity discharged, and to restrain the deft. from continuing his action thereon :—

*Held*, that in the absence of a contract to discharge it, the deft. could not be estopped from enforcing it by any representation, express or implied, of his intention to abandon it. To raise an equity on behalf of the plt. there must have been misrepresentation of existing facts.

*Jordan v. Money*, 5 H. L. C. 183, approved. **CHADWICK v. MANNING** **P. C. [1896] A. C. 231**

11. — *Costs—Consultations with counsel—Shorthand notes of evidence—Expenses of witnesses.*

Where a taxing master had directed (1.) that fees for consultations should be ascertained by the number of consultations allowed, (2.) that costs of witnesses should be ascertained at a uniform rate of fourteen days' subsistence when the witness was examined twice, and seven days when examined only once :—

*Held*, that the first direction was right, and that the master need not inquire into the length of the consultations and the importance of the occasions on which they were held, but that the second direction was erroneous, for that the case of each witness properly called should be considered, and a reasonable allowance made having regard to the character of his evidence and the probability of his having to be recalled. **COMM. FOR RYS. v. O'ROURKE**

**P. C. [1896] A. C. 594**

12. — *Criminal law—Crown case reserved—Inadmissibility of evidence*—26 *Vict.* No. 17, s. 423.

Sec. 423 of the Criminal Law Amendment Act, 1883 (46 *Vict.* No. 17), does not on its true construction empower the Court to affirm a con-

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

viction where the evidence submitted to the jury was inadmissible, and might have influenced the jury. **MAKIN v. ATT.-GEN. FOR NEW SOUTH WALES** **P. C. [1894] A. C. 57**

13. — *Criminal law—Jurisdiction—Bigamy committed without the Colony—Criminal Law Amendment Act, 1883* (46 *Vict.* No. 17), s. 54.

The words of s. 54 of the Criminal Law Amendment Act, 1883 (46 *Vict.* No. 17), relating to bigamy, must be intended to apply to persons actually within the jurisdiction of the Legislature, and consequently there is no jurisdiction in the Colony to try a person for the offence of bigamy alleged to have been committed in the United States of America. **MACLEOD v. ATT.-GEN. FOR NEW SOUTH WALES**

**P. C. [1891] A. C. 455**

14. — *Criminal law—Prisoner competent witness—Comment on prisoner refraining from giving evidence*—55 *Vict.* No. 5.

A prisoner applied for special leave to appeal in a criminal matter on the ground that the judge misdirected the jury in commenting upon the prisoner having refrained from giving evidence in a case in which he was a competent but not compellable witness :—

*Held*, that the comment was according to law, and not precluded by the Criminal Law Amendment Act (55 *Vict.* No. 5), s. 6. **KORS v. R. & C. Ex parte KORS** **P. C. [1894] A. C. 650**

*See* 63 & 64 *Vict.* c. 12, s. 9 (73).

15. — *Crown lands—Alienation—Conditional purchase—Construction of Act 25 Vict.* No. 1.

(A) A conditional purchase of lands under the Crown Lands Alienation Act, 1861 (25 *Vict.* No. 1), made in the name of an infant by a person who paid the deposit and balance of purchase-money, and at his own expense made the statutory improvements, and continued to occupy the land as part of the run of which it had before purchase been part :—

*Held*, that neither the infant when he came of age nor the person who had advanced the money were statutory purchasers, as the conditions of the Act had not been complied with. **TOOTH v. POWER** — **P. C. [1891] A. C. 284**

[The conditional purchase clauses of 25 *Vict.* No. 1, on which this decision rested, were in effect superseded by 39 *Vict.* No. 13.]

(B) Where the appellant effected a conditional purchase under s. 22 of the Crown Lands Alienation Act, 1861, of land adjoining to Crown land which had been previously granted to him in fee simple under s. 25 :—

*Held*, that he did not become thereby a holder of an original conditional purchase within the meaning of s. 42 of 48 *Vict.* No. 18, so as to obtain the right to make additional conditional purchases under that section :

*Held*, further, that even if s. 22 of the repealed Act of 1861 did confer upon him as the fee-simple holder of land the right claimed, s. 2, sub-s. (b), of the later Act was inoperative to preserve such right. **ABBOTT v. MINISTER FOR LANDS**

**P. C. [1895] A. C. 425**



**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

16. — *Crown Lands Acts, 1884 (48 Vict. No. 18), s. 102; 1895 (58 & 59 Vict. No. 18), ss. 10, 11, 13—Application for additional conditional purchase—Respondent barred under one Act, in time under the other.*

Under the Crown Lands Act, 1884, the land in suit had been reserved for a public purpose by notification on July 4, 1896.

On January 9, 1897, the notification was revoked, and it was notified in the *Gazette* of that day that it was set apart for homestead selections under ss. 10 and 13 of the Crown Lands Act of 1895:—

*Held*, that the respondent's application on February 11, 1897, to take the land as an additional conditional purchase, though within the forty days of grace prescribed by s. 11 of the later Act, was nevertheless barred as having been made before the expiry of the sixty days' delay prescribed by s. 102 of the Act of 1884.

*Colless v. Minister for Lands*, [1899] A. C. 90, followed. MINISTER FOR LANDS v. HARRINGTON

P. C. [1899] A. C. 408

17. — *Crown Lands Acts—Reference by Land Appeal Court to Supreme Court—Effect of decision.*

In a suit by the respondent against the appellant to recover certain lands, it appeared that in an appeal to the Land Court to which the respondent and the Minister for Lands were parties, and of which the appellant had notice as a party interested, a reference was made to the Supreme Court, which decided that at the date of the appellant's application for them the lands were not Crown lands, and therefore not open for selection:—

*Held*, that this decision was conclusive and could not be reopened. GARNSEY v. FLOOD

P. C. [1898] A. C. 687

18. — *Crown Lands Acts—Resumed area—Leasehold area—Crown Lands Act, 1895 (58 & 59 Vict. No. 18), ss. 5, 11.*

Under s. 5 of the Crown Lands Act, 1895, leasehold area becomes resumed area after notification to that effect in the *Gazette*. A grant to a tenant on the expiry of his lease of a preferential occupation licence in regard to his holding does not under the Crown Lands Acts change its character to that of a resumed area. Nor does a *Gazette* announcement of such licence operate as a notice that the area affected has been resumed:—

*Held*, accordingly, that the appellant had no title to apply before notification under s. 5 for a conditional lease of land held under a licence; and that s. 11 of the same Act (which only saves existing rights) did not avail him. COLLESS v. MINISTER FOR LANDS

P. C. [1899] A. C. 90

Followed. See next Case.

19. — *Crown Lands Act, 1889 (53 Vict. No. 21), s. 8, sub-s. 6—Special case stated by Land Court—Duty of Supreme Court—Law of New South Wales.*

*Held*, that under the Crown Lands Act of 1889, s. 8, sub-s. 6, it is the duty of the Supreme Court to hear a case stated by the Land Court in

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

pursuance of that sub-section, and to return it to the Land Court with a decision on the question submitted. The Land Court has jurisdiction to state it; and if stated without due precision, the Supreme Court can return it for amendment. HILL, CLARK & CO. v. DALGETY & CO.

P. C. [1898] A. C. 343

20. — *Equitable jurisdiction—Underground trespass—Fraud—Statute of Limitations—Champerly—Laches.*

Although courts of equity are not within the words of the Statute of Limitations, yet they are within its spirit and meaning, and have uniformly adopted its rules.

Where the appellants had furtively for a series of years taken the respondents' coal by means of a wilful and secret underground trespass; and no laches was attributable to the respondents in not discovering the existence of the wrongful workings by the appellants:—

*Held*, on a summons issued by the latter in the winding-up of the appellant company, that they were entitled to recover from the appellants the market value of all the coal worked and gotten by them from the respondents' land, no allowance being made for the cost of working.

To such a claim the Statute of Limitations has no application. So long as there has been no laches by the party defrauded, it is immaterial whether or not there have been on the part of the wrongdoer active measures to prevent detection:—

*Held*, that an agreement between the respondents and their lessees (under a lease executed before discovery of the trespass) by which the former were indemnified against costs of suit on terms of paying to their lessees 92½ per cent. of the amount recovered was not champertous.

*Ecclesiastical Commissioners for England v. North Eastern Ry. Co.*, (1877) 4 Ch. D. 845, disapproved. BULLI COAL MINING CO. v. OSBORNE

P. C. [1899] A. C. 351

21. — *Evidence—Admissibility—Parol evidence—Written agreement.*

Parol evidence cannot be said to be improperly admitted as contradicting or varying a written agreement, when it relates to the circumstances under which the plt.'s name was appended to a document which was no part of the agreement, but which was placed before him for signature by the deft. after the agreement was concluded. BANK OF AUSTRALASIA v. PALMER

P. C. [1897] A. C. 540

22. — *Forfeiture—Crown Lands Act, 1884 (48 Vict. No. 18), s. 13, sub-s. 2; ss. 14, 18, 19, 20, 39—Power of the minister to declare a forfeiture of conditional purchases—Finality of finding of Land Board.*

*Held*, that any reference to the Land Board on an issue of fact which, if found against the conditional purchaser, involves the forfeiture of his purchase, must, even if framed under s. 13, sub-s. 2, of the Crown Lands Act of 1884, be tried in manner prescribed by s. 14, and that the finding thereon is final under s. 20.

If the finding is that the statutory require-

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

ments have not been complied with, s. 39 gives a discretionary power to the Minister to declare a forfeiture. That power is not swept away by the Act of 1889, which established a Land Court to hear appeals from the Land Board in lieu of the Minister to whom such appeals lay under ss. 18 and 19 of the Act of 1884. *ATT.-GEN. FOR NEW SOUTH WALES v. WALTERS*

**P. C. [1898] A. C. 460**

**23. — Guarantee — Bond — Construction — Recital and condition.**

The respondent with others gave a joint and several guarantee to the appellant bank limited to 2500*l.* in respect of overdrafts by a customer. Subsequently he with others gave a joint and several bond reciting a desire for advances to the same customer over and above that amount, and securing repayment of the balance of account current.

In an action brought both on the guarantee and bond, the former was held to be invalid; but

*Held*, that the condition of the bond, being plainly to secure repayment of all moneys advanced by the bank and not merely those in excess of the said 2500*l.*, could not be controlled by any recital not plainly inconsistent therewith.

*AUSTRALIAN JOINT STOCK BANK, LD. v. BAILEY*

**P. C. [1899] A. C. 396**

**24. — Income tax — Taxable income — Mortgages — Land and Income Tax Assessment Act, 1895 (59 Vict. No. 15), ss. 27, 28, sub-s. 1 — Construction.**

Under the New South Wales Land and Income Tax Assessment Act, 1895, s. 27, the taxable amount of the respondent's income was limited to the amount of its income derived from mortgages; under s. 28, sub-s. 1, certain expenses incurred by the taxpayer "in the production of his income" were to be deducted:—

*Held*, that by the true construction of the sub-section the respondent was entitled to deduct all expenses incurred in the production not merely of its mortgage income, but of its income as a whole. *COMMISSIONERS OF TAXATION v. TEECE*

**P. C. [1899] A. C. 254**

**25. — Insolvency — Payment of debt — Knowledge of insolvency — 25 Vict. No. 8.**

Where a creditor has such a knowledge of the debtor's affairs as to be aware that the debtor is insolvent (within the meaning of 25 Vict. No. 8), payment by the debtor of his debt is invalid against the assignee in insolvency, and the payment may be recovered. *NATIONAL BANK OF AUSTRALASIA v. MORRIS* **P. C. [1892] A. C. 287**

**26. — Insurance, fire — Compliance with condition in policy — Non-suit — Practice.**

Where, in an action on a fire policy, the plaintiffs' evidence shewed that they could have complied with the condition as to giving within fifteen days a detailed account of their loss "as the nature and circumstances of the case will admit" much more fully and completely than they had done:—

*Held*, that they were rightly non-suited, since even if the question of compliance were for the

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

jury, a verdict could not have been reasonably given in their favour. *HIDDLE v. NATIONAL FIRE AND MARINE INSURANCE COMPANY OF NEW ZEALAND* — — — **P. C. [1896] A. C. 372**

**27. — Interest in land — New South Wales Real Property Act, 1862 (26 Vict. No. 9), s. 117 — Construction — Limitation — Sect. 122 — Rights of beneficiaries whose trustees are barred — Bankruptcy.**

Where a rent-charge or annuity is held by trustees to be applied by them for the maintenance and education of children or the survivor:—

*Held*, that the children take a joint interest therein, but that the shares of the minors are to be applied as directed.

The interest of each child is an interest in land within the meaning of the New South Wales Real Property Act, s. 117.

Where the estate out of which the rent-charge issued passed to a bankrupt's assignee under a certificate of title negligently granted to the bankrupt free of incumbrance:—

*Held*, in an action brought by the beneficiaries against the Registrar-General for compensation out of the assurance fund created by the said Act, that their rights, being under the Act independent of the trustees and being saved by the provisions of the Act (see s. 122) in regard to persons under disability, could be enforced notwithstanding that their trustees' rights were barred. *WILLIAMS v. PAPWORTH*

**P. C. [1900] A. C. 563**

**— Joint gold-mining lease — Notice of abandonment by a joint lessee.**

*See MINES — Gold Mines. 9.*

**28. — Land Acts — Reserved lands — Revocation of reserve — Improvements.**

Under the Land Acts, 1861, 1875, 1880, 1884, it is not competent for the governor, with the advice of his council, to sell improved land by appraisement to the holder, where it had been temporarily reserved from sale, and such reservation had not been revoked. *RICKETSON v. BARBOUR* — — — **P. C. [1893] A. C. 194**

**29. — Malicious prosecution — Mens rea — 11 Vict. No. 4, s. 7 — Construction — Statutory offence.**

By s. 7 of Act 11 Vict. No. 4, a sale of wool under a lien "with a view to defraud," without the written consent of the lienor is made a punishable offence; a like sale of stock is made so independently of a like intent.

In an action for malicious prosecution thereunder, it appeared that the plt. had sold stock of which the deft. bank was lienor without intent to defraud, and with the bank's oral consent:—

*Held*, that on the true construction of the above section, an intent to defraud was not an element of the statutory offence charged, that this was matter for decision by the judge, and that a verdict must be entered for the deft.

An intention to offend against the penal provisions of an act constitutes mens rea; and was proved by the plt.'s knowledge that there was no written consent. *BANK OF NEW SOUTH WALES v. PIPER*

**P. C. [1897] A. C. 383**

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.**30. — Marine insurance—Contract in writing—Misrepresentation—Burden of proof.**

Though there is no positive law in New South Wales requiring contracts of marine insurance to be in writing, yet the general authority given to the agent of an insurance co. must be to make contracts in the ordinary way, and that is by writing.

Where insurers resist payment of a risk on the ground of misrepresentation, the burden is on them to prove very clearly the making of the misrepresentation. *DAVIES v. NATIONAL FIRE AND MARINE INSURANCE COMPANY OF NEW ZEALAND* — P. C. [1891] A. C. 485

**— Marriage settlement—Volunteers.**

*See SETTLEMENT — Voluntary Settlement.* 35.

**31. — Marriage settlement—Rights of volunteers.**

A limitation in a marriage settlement in favour of an illegitimate child of the settlor may be defeated, as a limitation in favour of a volunteer, by a subsequent conveyance to a purchaser for value, unless such a result would defeat other limitations within the marriage settlement. *DE MESTRE v. WEST* — P. C. [1891] A. C. 264

Followed by *C. A. Att.-Gen. v. Jacobs-Smith*, [1895] 2 Q. B. 341.

**32. — Municipal corporation—Non-repair of street—Liability—43 Vict. No. 3, s. 67.**

A municipal corporation was sued for damages for the death of the plt.'s husband, occasioned by their alleged negligence in allowing a street vested in them to fall into disrepair:—

*Held*, (1) that the statutes creating the corporation and the Act vesting the street in them (3 Vict. No. 3), imposed no statutory obligation on them to repair the street, and (2) that the plt. had no cause of action. *MUNICIPAL COUNCIL OF SYDNEY v. BOURKE* P. C. [1895] A. C. 433

Referred to by P. C. *Brabant & Co. v. King*, [1895] A. C. 632, 638.

**33. — Municipal rates—Exemptions—31 Vict. No. 12, s. 163.**

Lands not the property of Her Majesty, but occupied by a municipality for the purposes of water supply, are within the exemption of s. 163 of the Municipalities Act, 1867 (31 Vict. No. 12). *COUNCIL OF THE BOROUGH OF RANDWICK v. AUSTRALIAN CITIES INVESTMENT CORPORATION*

P. C. [1893] A. C. 322

**34. — Nullum Tempus Act (9 Geo. 3, c. 16) applies to the Colony—Australian Courts Act, 1828 (9 Geo. 4, c. 83).**

*Held*, that the Imperial Nullum Tempus Act (9 Geo. 3, c. 16) is in force in New South Wales; and that it applies to lands which have never been dealt with by the Crown.

9 Geo. 4, c. 83, *prima facie* on its true construction applies that Act to the Colony. Its operation to that effect cannot be restricted by confining the laws and statutes thereby applied to those relating to procedure; or by shewing that a specific exception in the applied Act preserving

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

the Crown's right could not operate in the circumstances of the Colony. *ATT.-GEN. FOR NEW SOUTH WALES v. LOVE* P. C. [1898] A. C. 679

**35. — Parliamentary allowance to members—Law of New South Wales—53 Vict. No. 12, s. 2—Construction.**

According to the true construction of the Parliamentary Representatives' Allowance Act (53 Vict. No. 12), s. 2, an annual grant to "every member of the Legislative Assembly now serving or hereafter to serve therein," applies to every successive Legislative Assembly of the Colony, and is not limited to the particular Assembly existing at the date of the Act. *ATT.-GEN. FOR NEW SOUTH WALES v. RENNIE*

P. C. [1896] A. C. 376

**36. — "Permanent common"—Common of pasturage—Crown Lands Alienation Act, 1861 (25 Vict. No. 1), s. 5.**

Where by notice under s. 5 of the Crown Lands Alienation Act, 1861, which authorizes the dedication of Crown lands for any pasturage common or other public purpose, the Crown dedicates lands as a "permanent common":—

*Held*, that this dedication meant that the lands should go for ever for the common or public enjoyment, so as to bring them within the Public Parks Act, 1854 (18 Vict. No. 33), and did not create a common of pasturage. *SYDNEY MUNICIPAL COUNCIL v. ATT.-GEN. FOR NEW SOUTH WALES* P. C. [1894] A. C. 444

**37. — Practice—Appeal from interim injunction—Trespass—New South Wales Mining on Private Lands Act, 1894 (57 Vict. No. 32), ss. 8, 13—Gold lease application.**

Appeals from interlocutory injunctions, of an essentially temporary kind, will not be encouraged.

Where an interim injunction had been granted restraining the appellant from trespassing or mining upon land covered by the private gold lease application of the respondent, who under s. 8 of the New South Wales Mining on Private Lands Act, 1894, had obtained a miner's right and authority, and under s. 13 had made application not yet granted at date of suit for a twenty years' lease:—

*Held*, that the respondent, having a definite statutory right to apply for a lease, had a locus standi to apply for an injunction which should be maintained till discharged by the Court. *CROWDACE v. ZOBEL* — P. C. [1899] A. C. 258

**38. — Probate duty paid under protest—Application for refund—Delay—Stamp Duties Acts of 1880 (44 Vict. No. 3) and 1886 (50 Vict. No. 10).**

Where executors paid probate duty partly under mistake of law and partly with a reservation of their right to have the excess refunded without regard to delay, and it was subsequently decided in another case that no duty at all was payable as claimed:—

*Held*, that an application made nine years later for a mandamus to state a case for the Full Court was not brought within a reasonable time, and must be refused. *BROUGHTON v. COMMISSIONER OF STAMP DUTIES* P. C. [1899] A. C. 251

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

39. — *Real Property Acts* (26 Vict. No. 9; 41 Vict. No. 18)—*Caveat—Onus probandi as between applicant and caveator in possession.*

On an application to bring land under the Real Property Acts (26 Vict. No. 9 and 41 Vict. No. 18), when the applicant shews a complete documentary title and proves that he was in possession within twenty years before the commencement of the proceedings, the burden of proof to defeat the applicant's title is on the caveator in possession. *SOLLING v. BROUGHTON*.

P. C. [1893] A. C. 556

40. — *Real Property Acts—Caveat—Waiver of lapse*—26 Vict. No. 9, s. 21.

An applicant to bring lands under the Real Property Act (26 Vict. No. 9) filed his case in Court under s. 21 more than three months after a caveat had been lodged, and thereafter obtained an order that the caveator should file her case, which she did:—

*Held*, that by applying for the order he had waived his right to have the caveat set aside as lapsed under s. 23. *WILSON v. MCINTOSH*.

P. C. [1894] A. C. 129

41. — *Real Property Acts—Registered Mortgage—Sale by auction—Notice*—7 Vict. No. 16, ss. 11, 22—22 Vict. No. 1, s. 18.

A. sold certain lots of an estate by auction to B., and subsequently mortgaged the whole estate to C., who knew that certain unspecified portions of the estate had been sold:—

*Held*, that according to the Colonial Acts (7 Vict. No. 16, ss. 11, 22, and 22 Vict. No. 1, s. 18) C. gained no priority from registration, but took subject to B.'s purchase. *SYDNEY AND SUBURBAN MUTUAL BUILDING AND LAND INVESTMENT ASSOCIATION v. LYONS*.

P. C. [1894] A. C. 260

42. — *Real Property Acts—Succession—Wife's realty*—Act 26 Vict. No. 20, ss. 1, 2.

By 26 Vict. No. 20 the wife's realty in the Colony after the husband's tenancy by the curtesy has expired devolves on the wife's next of kin, and not on her heir-at-law. *FLIMLEY v. SHEPHERD*.

P. C. [1891] A. C. 244

43. — *Revenue—Income tax—Assessment—Income from ore produced in New South Wales and sold outside it*—*New South Wales Income Tax Act*, 1895 (59 Vict. No. 15), s. 15, sub-ss. 3, 4.

Where income was in part derived from the extraction of ore from the soil of New South Wales Colony, and from the conversion in the latter Colony of the crude ore into a merchantable product:—

*Held*, that this income was assessable under the New South Wales Land and Income Tax Assessment Act of 1895, s. 15, sub-ss. 3, 4, notwithstanding that the finished products were sold exclusively outside the Colony.

*In re Tindal*, (1897) 18 N. S. W. L. R. 378, overruled. *COMMISSIONERS OF TAXATION v. KIRK*.

P. C. [1900] A. C. 588

44. — *Ship—Average bond—Average statement—No duty to employ an average stater.*

Where, by an average bond executed at the port of discharge, consignees of cargo undertook

**NEW SOUTH WALES (Law of New South Wales)**  
—continued.

to furnish to the shipowners a correct account and particulars of the value of the goods delivered, in order that the amount of average contribution to which they were liable might be ascertained and adjusted "in the usual manner":—

*Held*, that these words did not imply as a condition of the obligation that the shipowners should employ an average stater at the port of discharge.

*Simonds v. White*, (1824) 2 B. & C. 805, explained.

A shipowner may make out his own average statement, and is not bound to employ an average stater either at the port of discharge or elsewhere. *WAVERTREE SAILING SHIP CO. v. LOVE*.

P. C. [1897] A. C. 373

45. — *Stamp duties—Probate—Locality of debt.*

In order that an asset may be liable to probate duty under the Stamp Duties Acts (44 Vict. No. 3, 50 Vict. No. 10) it must be such as the grant of probate confers the right to administer, and therefore one which exists within the local area of the Colonial jurisdiction. A simple contract debt is within the local area of the jurisdiction within which the debtor for the time being resides; a specialty debt is within the local area in which it is found at the creditor's death. *COMMISSIONERS OF STAMPS v. HOPE*.

P. C. [1891] A. C. 476

Referred to by Cozens-Hardy, J. *In re Maudslay, Sons & Field*, [1900] 1 Ch. 602, 603.

46. — *Streets—Public Works Act, 1888* (51 & 52 Vict. No. 37)—*Sydney Corporation Act of 1879* (43 Vict. No. 3), s. 67—*Construction—Vesting—Diverting a street into a tramway not a taking of property for public purposes.*

*Held*, that diverting a street into a tramway is not a taking of property within the meaning of the New South Wales Public Works Act:

*Held*, further, that the Sydney Corporation Act of 1879, which vests public ways in the municipal council, does not so vest them in proprietary right, which alone gives claim for compensation, but only for purposes incidental to the exercise of municipal authority. *SYDNEY MUNICIPAL COUNCIL v. YOUNG*.

P. C. [1898] A. C. 457

47. — *Trade-mark—Publici juris—User—Laches.*

The A. Co. in 1889 registered in New South Wales the word "Maizena" under the Colonial Trade Marks Act of 1865, but had allowed the name to be used in the Colony for twenty-four years as a term descriptive of the article and not of their own manufacture thereof:—

*Held*, that the word had become publici juris and was no longer registrable, and that as the B. Co., though they had applied the word to their own manufacture, had not tried to pass it off as that of the A. Co. by the use of packets, &c., calculated to deceive, but had stated the name of the maker, &c., the B. Co. could not be restrained from using the word. *NATIONAL STARCH MANUFACTURING CO. v. MUNN'S PATENT MAIZENA AND STARCH CO.*

P. C. [1894] A. C. 275

48. — *Trade name—"Flaked Oatmeal"—Term*

**NEW SOUTH WALES (Law of New South Wales)**

—continued.

*of ordinary description—Identification of name with goods by user—Injunction.*

Where the plts. without relying on their registered trade-mark, which consisted in part of the term "Flaked Oatmeal," claimed that they had by use so intimately identified the term with their goods that the use of it by the defs. in their trade-mark had the effect of passing off their goods as the plt.'s goods:—

*Held*, that the term being one of ordinary and not exclusive description, and being applicable to the def't.'s goods as well as the plt.'s, and the def't.'s user thereof not having been proved to have had or to be calculated to have the above effect, the suit must be dismissed with damages resulting from the grant of an interim injunction.

*Reddaway v. Banham*, [1896] A. C. 199, approved. *PARSONS v. GILLESPIE*

P. C. [1898] A. C. 239

— Trust property Act, 1862—Purchase in England of equity of redemption—Stamps.  
*See REVENUE—Stamps.* 169.

49. — *Trustee—Appointment—Vesting order—16 Vict. No. 19, ss. 30, 32.*

Where an application for the appointment of a new trustee in the place of one incapacitated is, in the opinion of the Court, duly made and served, the Court has power, under 16 Vict. No. 19, ss. 30, 32, to appoint as prayed, and also to make a vesting order. According to the rule and practice in the Colony, it can direct the master to appoint, and the vesting follows the appointment without any subsequent order. *PLOMLEY v. RICHARDSON and WRENCH, LD.*

P. C. [1894] A. C. 632

50. — *Water—Levying water-rate—Lands outside rateable limits—By-laws—Construction—Act XXVII. of 1892, s. 35.*

Where the appellants were authorized by their incorporating Act (XXVII. of 1892), s. 35, to make by-laws levying a water-rate "in respect of lands and tenements distant not more than sixty yards from any main . . . although such lands or premises are not actually connected with any main":—

*Held*, that they had no authority to levy a rate on lands without the prescribed limit merely because such lands formed one holding with other lands within the prescribed limit. *HUNTER DISTRICT WATER SUPPLY and SEWERAGE BD. v. NEWCASTLE WALLSEND COAL CO.*

P. C. [1896] A. C. 82

— Will—Accumulations—Rents and royalties from mining leases—Tenants for life—Remaindermen.

*See ACCUMULATIONS.* 6.

— Will—Alternative devise—Vested interests—Divesting—Construction of will.

*See WILL—Vested Interests.* 210.

51. — *Will before adoption of Wills Act—Words of gift without limitation—"Estate"—"Property."*

By the English law of wills prior to the Wills Act, 1837 (adopted in the Colony in 1840) words of gift conveyed only a life estate unless the

**NEW SOUTH WALES (Law of New South Wales)**

—continued.

devise contained words of limitation, and the use of the words "estate" or "property" would not enlarge the gift if used only by way of reference, and not in the operative part of the devise. *HILL v. BROWN* — P. C. [1894] A. C. 125

52. — *Will—Residue—Referential trusts do not duplicate charges.*

Trusts of residue created by reference to other trusts are not to be read as creating a duplication of charges on the estate in the absence of indication of the testator's clear intention to that effect. *TREW v. PERPETUAL TRUSTEE CO.*

P. C. [1895] A. C. 264

Referred to by Romer J. *In re Marquis of Bristol*, [1897] 1 Ch. 949.

**NEW STREET.**

*See Cases under LONDON—Streets. STREETS.*

**NEW TRIAL.***See PRACTICE—New Trial.***NEW ZEALAND.**

*Appeals from—O. in C. dated May 16, 1871, regulating appeals from the Supreme Court of New Zealand to Her Majesty in Council. St. R. & O. 1899, p. 1706.*

**Application of Colonial Probates Act, 1892.***See PROBATE—Colonial Probates Act.***Death Duties.***See REVENUE—Estate Duty.***Law of New Zealand.**

1. — *Banker and customer—Account not earmarked as trust account—Set-off.*

Where a co. received from the respondents trust moneys paid them to the credit of a separate account between it and the appellant bank, and failed:—

*Held*, in an action by the respondents, that, as the bank was not shewn to have received the moneys as trust funds, or to have received during the currency of the account notice of their trust character, the bank was entitled to set them off against its own claim against the co. in liquidation. *UNION BANK OF AUSTRALIA, LD. v. MURRAY-AYNSLEY* — P. C. [1896] A. C. 693

2. — *Charitable trusts—Exemption from duty—Charitable Gifts Duties Exemption Act, 1883 (46 & 47 Vict. No. 46), ss. 2, 3—Land and Income Assessment Act, 1891 (54 & 55 Vict. No. 18), s. 16, sub-s. 1—Amendment Act, 1892 (55 & 56 Vict. No. 54), s. 3, sub-s. 4—Construction.*

*Held*, that a gift by will, for the maintenance and education of boys who are orphans or the sons of parents in straitened circumstances, is "charitable" within the meaning of the New Zealand Exemption Act, 1883, s. 3; notwithstanding that the educational institute to be formed is directed to be managed by the members, and its inmates to be instructed in the tenets of a particular religious sect:—

*Held*, also, that the institute, being an educational endowment in perpetuity vested in trustees without personal interest therein, the whole bene-

**NEW ZEALAND (Law of New Zealand)—*contd.***

ficial interest belonging exclusively and inalienably to the public, is a public institution within the meaning of s. 2:

*Held*, further, that the income derivable under the gift is exempt from taxation by s. 16, sub-s. 1, of the Land and Income Assessment Act, 1891, and by s. 3 of the amending Act of 1892 read therewith. *DILWORTH v. COMM. OF STAMPS. DILWORTH v. COMM. FOR LAND AND INCOME TAX*

**P. C. [1899] A. C. 99**

**3. — Contract—Construction—Use.**

The respondents contracted with the appellants not to "erect or assist, or be in any way concerned or interested in the erection of or use of freezing works at Bluff," and thereafter contracted with W. first to purchase all frozen meat produced at his works at Bluff, and secondly to purchase his works at the expiration of their contract with the appellants, together with additional works to be completed by that date:—

*Held*, that neither of these contracts with W. was a breach of the contract with the appellants, by the true construction whereof use means the manufacturing use, and does not include the uses contemplated by the respondents in either of their purchases. *SOUTHLAND FROZEN MEAT AND PRODUCE EXPORT CO. v. NELSON BROTHERS, LD.*

**P. C. [1898] A. C. 442**

**4. — Husband and wife—Marital coercion—**

*Leave to appeal granted under a misapprehension of fact—Practice—New Zealand Criminal Code, 1893 (57 Vict. No. 56), s. 24.*

Where the jury found that the prisoner, a married woman, had acted under her husband's control in the commission of an offence, for which they were jointly charged but separately tried, but it appeared that there was no evidence to that effect, and that the question should not have been left to the jury:—

*Held*, that whatever the true effect of s. 24 of the New Zealand Criminal Code as to marital compulsion, leave to appeal from an order affirming the conviction had been granted under a misapprehension of fact, and that the appeal must be dismissed. *BROWN v. ATT.-GEN. FOR NEW ZEALAND* —

**P. C. [1898] A. C. 234**

**5. — Judges of the Supreme Court—Statutory**

*limitation of power to appoint judges—Supreme Court Judges Act, 1858, s. 2.*

Under the Supreme Court Judges Act, 1858, and the Supreme Court Act, 1882, the power of the governor to appoint judges is restricted to judges to whom an ascertained salary is payable by law at the time of their appointment. *BUCKLEY v. EDWARDS*

**P. C. [1892] A. C. 387**

**6. — Landlord and tenant—Covenant by**

*lessor—Construction as to whether it runs with the reversion—Liability for breach after lessor's death—Liability of lessor's general estate—Rights of specific devisees of reversion.*

A lease under seal contained a covenant by the lessor to finish laying down 1000 acres, part of the land demised, in good English grass within a year. The deed contained a subsequent declaration "that there shall not be implied in this lease any covenant or provision whatever on the part of either of the parties hereto":—

*Held*, that the covenant must be construed as

**NEW ZEALAND (Law of New Zealand)—*contd.***

qualified and controlled by the declaration. Accordingly, it did not run with the reversion; and, not being incident to the relation of landlord and tenant, liability for breach thereof properly fell to be borne by the general estate of the deceased lessor.

Even if, as held by the Court below, it was unqualified and ran with the reversion, it was not a charge thereon. As between the specific devisees of the reversion and the general estate, the latter should primarily bear a liability which in its nature is not incident to the relation of landlord and tenant, but was incurred preparatory thereto. *ECCLES v. MILLS*

**P. C. [1898] A. C. 360**

Referred to by Kekewich J. *In re Gjers*, [1899] 2 Ch. 54, 58.

**7. — Legislative powers—Proceedings against absentees without service—15 & 16 Vict. c. 72.**

The Colonial legislature has power under the Imperial Act (15 & 16 Vict. c. 72) to subject to its tribunals persons who are neither by themselves nor their agents present in the Colony. Whether a judgment against an absentee without service of the writ will be enforced by the Courts of another country is a question for those Courts, and does not affect the constitutional validity of the Colonial law. *ASHBURY v. ELLIS*

**P. C. [1893] A. C. 339**

**8. — Poututu Jurisdiction Act, 1889 (53 Vict. No. 7)—Effect of proceedings in the Validation Court—Native Land Court Acts, 1886 and 1888 (50 Vict. No. 24), ss. 75, 78; (52 Vict. No. 37), s. 24—Jurisdiction to rehear—Right of appeal.**

The presumption is that a subsequent general enactment is not intended to interfere with a special enactment, unless the intention so to do is very clearly manifested:—

*Held*, that current proceedings in the Native Land Court under a specially enabling Act called the New Zealand Poututu Jurisdiction Act, 1889, were not stayed by the commencement of proceedings in the Validation Court; notwithstanding the general provision contained in the Act establishing the latter Court to the effect that commencement of proceedings therein shall operate as a stay of proceedings in any other Court in respect of the same matters:

*Held*, also, that the jurisdiction to rehear—that is to entertain an appeal—given by the Native Land Courts Acts of 1886 and 1888 is not confined to cases where the title to particular land has been the only question decided by the Court of First Instance; but extends to cases where the decision is embodied in the same decree with other matters not of an appealable nature.

Under the special Poututu Act orders as to title to land are also appealable in the same way; and *held* accordingly that the appellant was entitled thereunder to a rehearing of judgments concerning the title to Poututu lands, and that the Native Land Court had jurisdiction to grant such rehearing, proceedings therein not being stayed by the respondents' commencement of proceedings in the Validation Court. *BARKER v. EDGER*

**P. C. [1898] A. C. 748**

**NEW ZEALAND (Law of New Zealand)—*contd.***

- Principal and agent—Authority of agent—Consideration moving from the principal—Special damage.

See **PRINCIPAL AND AGENT**. 4.

9. — *Railway—Effect of an Order in Council retaining a railway as Government property—Rights of debenture-holders—New Zealand Railways Construction and Land Act, 1881 (44 & 45 Vict. No. 37), ss. 123, 125, 126.*

Under New Zealand Railways Construction and Land Act, 1881, ss. 125 and 126, the Governor of the Colony, having taken possession of a railway under s. 123, is empowered on the happening of events in the later section specified to declare his intention to retain the ry. as Government property:—

*Held*, that on publishing an Order in Council giving effect to such intention, his title to the ry. is absolute and paramount, and that the rights of debenture-holders whose debentures were authorized by a later Act in 1884 to be a first charge on the ry. fall with the co.'s title. *COATES v. REG.* — — **P. C. [1900] A. C. 217**

- Separation and annuity deed—Suit to set it aside—Discredited fraudulent representations—Subsequent adultery of wife. See **HUSBAND AND WIFE—Separation**. 75.

- Will — Lost will — Evidence — Presumption that it was destroyed by testator—Presumption against fraudulent abstraction. See **WILL—Lost Will**. 138.

10. — *Will of Maori—Probate.*

The rules which govern Courts of Probate must not be relaxed in the case of alleged testamentary papers executed by Maoris on their death-beds. *DONNELLY v. BROUGHTON*

**P. C. [1891] A. C. 435**

See **PROBATE—Execution**.

**NEWFOUNDLAND—Bank—Priority of Crown debts—58 Vict. c. 3—Debts due to boards of education—Education Acts of 1892 and 1893.**

Newfoundland Act 58 Vict. c. 3, passed for the winding-up and liquidation of a bank, provided that priority be given to all debts and claims due to the Crown or to the Government or revenues of the Colony:—

*Held*, that balances in the books of the bank to the credit of the various boards of education in the Colony were not such debts and claims as aforesaid. It appeared that the boards were not constituted by the Education Acts of 1892 and 1893 mere agents of the Government, but had a discretionary power, independent of the Government, in expending such balances. *FOX v. GOVERNMENT OF NEWFOUNDLAND*

**P. C. [1898] A. C. 667**

2. — *Banker and customer—Effect of drawee bank certifying cheque—Usage—Effect of crediting customer with amount of cheque deposited.*

Unless a specific usage is proved, the only effect of a drawee bank initialling a cheque drawn upon it is to certify that it has funds of the drawer in its hands sufficient to meet its payment:—

*Held*, that the respondent bank, by accepting a deposit of a certified cheque and crediting the

**NEWFOUNDLAND—*continued.***

depositor with the amount thereof in her account, must be deemed to have accepted it for the purpose of cashing it as the depositor's agent, and could not, in the absence of express agreement to that effect, be deemed to have acquired title to it in consideration of the credit entry, and thus to have gratuitously guaranteed its payment by the drawee bank. *GADEN v. NEWFOUNDLAND SAVINGS BANK*

**P. C. [1899] A. C. 281**

- Death duties.

See **REVENUE—Estate Duty**.

**NEWPORT HARBOUR, BY-LAWS, Art. 13.**

See **SHIPPING—Collision**. 75.

**NEWS AGENCY—Unpublished information—**

Right of property.

See **COPYRIGHT—Periodical**. 31.

**NEWSPAPER—Advertisement of lottery in.**

See **LOTTERY**. 2.

- Copyright in.

See **Cases under COPYRIGHT—Periodical**.

- Criminal libel in newspaper—Appeal.

See **DEFAMATION—Libel**. 4.

- Discovery—Original manuscript—Libel.

See **DISCOVERY—Documents**. 24.

- Innocent loan of paper containing scandalous matter respecting a Court—Committing judge ordered to pay costs.

See **CONTEMPT OF COURT**. 6.

- Libel—Defence of action by proprietor—Ultra vires.

See **CORPORATION**. 26.

- Libel in—Inspection of original manuscript.

See **DISCOVERY—Documents**. 24.

- Practice.

See **DEFAMATION—Libel**. 4, 10, 14.

1. — *"Publication"—"Sporting paper."*

A newspaper is published when and where it is offered to the public by the proprietor; it may be published in more than one place, and where its proprietor has two offices in two different towns, at each of which he offers for sale or distribution copies of his paper, the paper is published at each office.

On the sale of *Bell's Life in London* the vendors agreed with the purchaser not to print or publish any sporting paper within ten miles of a certain London street:—

*Held*, that the publication within this area of a paper containing no racing or betting odds, but merely recording such amateur sports as cricket, football, cycling, and running, was not a breach of the agreement. *McFARLANE v. HULTON*

**Cozens-Hardy J. [1899] W. N. 46; [1899] 1 Ch. 884**

- Publication tending to influence result of proceedings.

See **CONTEMPT OF COURT**. 7.

- Reports of public speeches — "Author's" report.

See **COPYRIGHT**. 34.

**NEXT FRIEND.**

See **PRACTICE—Next Friend**.

**NEXT OF KIN.**

SUPREME COURT FUNDS RULES, 1894. *List or statement of unclaimed money in Court.* See *Lond. Gaz.* March 2, 1899, p. 1313.

— Grant of administration.

See *Cases under PROBATE.*

— Presumptive next of kin—Injunction, Right to—Contingent interest.

See *WILL—Contingent Gift.* 67.

-- Words as if she had died a "spinster and intestate"—Child of former marriage.

See *SETTLEMENT—Construction.* 11.

**NIECE.**

See *WILL—Class.* 52, 53.

**NOISE—Music.**

See *NUISANCE.* 19.

— Noise caused by several persons.

See *INJUNCTION.* 27, 28.

— Noise in street.

See *NUISANCE.* 20.

— Nuisance—Boys' school—Misrepresentation by vendor's agent—Rescission.

See *VENDOR AND PURCHASER—Rescission.* 67.

— Nuisance—Cesser before trial—Injunction—Practice.

See *NUISANCE.* 5.

— Street musician.

See *MUSIC AND DANCING.* 5, 6.

**NOMINATION**—By member—Revocation by subsequent will.

See *FRIENDLY SOCIETY.* 13.

— Disqualified person—Election—Right to petition—"Candidate."

See *CORPORATION.* 14.

— To living.

See *ECCELESIASTICAL LAW—Advowson.* 2.

**NON-DIRECTION**—County court—Appeal—Practice.

See *COUNTY COURT—Appeal.* 9.

**NON-JUDICIAL DAY**—Expiry of prescribed time.

See *CANADA.* 56.

**NONSUIT.**

See *Cases under PRACTICE—Discontinuance.*

**NON-USER**—Registration—Expunging—Non-user and no bona fide intention to sue.

See *TRADE-MARK—Registration.* 47.

**NORTH-WEST TERRITORIES.**

See *CANADA—North-West Territories.*

**NOTES**—Summary Jurisdiction (Married Women) Act—Appeals—Notes of proceedings in Court below.

See *APPEAL.* 36.

HUSBAND AND WIFE—Summary Jurisdiction. 94, 95.

**NOTICE**—Abating nuisance.

See *Cases under NUISANCE—Water-closets.*

— Acceptance—Authority to apply for shares.

See *COMPANY—Shares.* 308.

**NOTICE—continued.**

— Appeal, Notice of—Poor-rate.

See *Cases under RATES.*

— Arbitrator—Appointment of—Notice to concur.

See *ARBITRATION—Arbitrator.* 8.

— Bankruptcy laws.

See *Cases under BANKRUPTCY.*

— Breach of covenants.

See *PRACTICE—Originating Summons.* 67.

— Breach of covenant to repair—Right to re-enter.

See *LANDLORD AND TENANT.* 32.

— Breach of trust.

See *CANADA.* 51.

— Building notice—London Building Acts.

See *Cases under LONDON—Buildings.*

— Chose in action—Priority—Notice to existing trustees—Death or retirement of trustees.

See *ASSIGNMENT.* 5.

— Clog on equity of redemption—Notice to pay off principal.

See *MORTGAGE—Redemption.* 58—60.

— Company—Winding-up.

See *Cases under COMPANY—WINDING-UP—Voluntary.*

— Compensation for improvements, Claim for—Agricultural Holdings Act.

See *LANDLORD AND TENANT—Agricultural Holdings.*

— "Constructing" waterworks—Extension of existing waterworks.

See *WATER—Supply.* 10.

— Constructive.

See *VENDOR AND PURCHASER—Title.* 89.

— Custom as to hiring servants—Reasonableness.

See *MASTER AND SERVANT—Hiring.* 68.

— Deceased member—Registered address—Forfeiture of shares.

See *COMPANY.* 270.

— Determining contract to supply water.

See *CONTRACT—Determination.* 13.

— Determining guarantee.

See *Cases under PRINCIPAL AND SURETY—Discharge.*

— Determining tenancy.

See *LANDLORD AND TENANT—Determination of Tenancy and Holding Over.*

— Dishonour—Bank with several branches—Notice to wrong branch.

See *BILL OF EXCHANGE.* 5.

— Dormant action.

See *SEQUESTRATION.* 4.

— Effect of on mortgagee of ship.

See *SHIPPING—Mortgage.* 175.

— Effect of recitals in deed—Estoppel.

See *RECITALS.* 1.

— Equitable assignment of debt—Debtor and creditor—Negotiable instrument.

See *ASSIGNMENT.* 1.



**NOTICE—continued.**

- Filing — Affidavit supporting winding-up petition.  
See COMPANY—WINDING-UP. 151, 152.
- Forfeiture of lease—Breach of covenant.  
See Cases under LANDLORD AND TENANT—Forfeiture.
- Highway, diversion of.  
See HIGHWAY—DIVERSION. 2.
- Hiring of domestic servants—Custom—Reasonableness.  
See MASTER AND SERVANT—Hiring. 68.
- Irregularity — General meeting — Director's interest — Non-disclosure — Conditional notice.  
See COMPANY—Meetings. 160.
- Licence—Assignment—Registration—Priority — Equitable rights.  
See PATENT—Licence. 15.
- Licensing Acts.  
See Cases under LICENSING ACTS.
- London Building Acts.  
See Cases under LONDON—Buildings.
- Meeting of debenture-holders.  
See COMPANY—Debentures. 66—68.
- Meetings of company.  
See COMPANY—Meetings. 160—162.
- Mortgage—Notice to redeem.  
See MORTGAGE—Interest. 38, 40.
- Mortgage — Transfer of mortgage without notice to mortgagor — Constructive notice of transfer.  
See MORTGAGE—Transfer. 92.
- Mortgage—Priority.  
See Cases under MORTGAGE—Priority.
- Necessity for notice—Administration de bonis non—Grant to attorney.  
See PROBATE. 21.
- Objection—Registration of voters.  
See Cases under PARLIAMENT.
- Of objection—Valuation list.  
See RATES. 71.
- Onerous covenants—Duty of vendor to disclose.  
See VENDOR AND PURCHASER. 24.
- Option to purchase—Time for giving.  
See LANDLORD AND TENANT. 80.
- Option of purchase—Unauthorized agent — Ratification.  
See CONTRACT. 35.
- Overdraft—Private account—Payment in of trust money—Liability of bank.  
See BANKER. 21.
- Parliamentary deposits.  
See PARLIAMENT—Deposits and Bonds.
- Paving.  
See LONDON—Streets.  
STREETS.
- Practice—Special defence—Statutes of Limitation—County court.  
See LIMITATIONS, STATUTE OF. 37.
- Priority—Mortgages.  
See Cases under MORTGAGE—Priority.
- Priorities of equitable interests.  
See EXECUTOR. 26.

**NOTICE—continued.**

- Purchaser with notice—Contract to give “first refusal” of land — Interest in land — Injunction.  
See CONTRACT. 24.
- Restrictive covenant—Tied public-house—Mortgagor and mortgagee — Assigns — Underlessee.  
See COVENANT. 7.
- Retainer — Following assets — Creditor of higher decree—Plene administravit.  
See EXECUTOR—Retainer. 63.
- Secret trusts—Joint tenants.  
See TRUST. 7.
- Service by post—Evidence—Practice.  
See PRACTICE. 225.
- Service of notice—Vaccination, Act.  
See VACCINATION. 5.
- Setting down for trial—Practice—Surprise.  
See DIVORCE—Practice. 112.
- Sewering and draining.  
See LONDON—Sewers.  
SEWERS.
- Stop order.  
See PRACTICE—Stop Order.
- Streets.  
See LONDON—Streets.  
STREETS AND BUILDINGS.
- Sufficiency of — Breach of covenant — Forfeiture.  
See LANDLORD AND TENANT. 50—54, 56.
- Sufficiency of—Meeting—Sale of undertaking — Compensation to directors.  
See COMPANY—Meetings. 169.
- Third party—Surviving partners.  
See PRACTICE—Third Party. 253.
- Third party notice.  
See SHIPPING. 27.
- To leave—Right of innkeeper to give.  
See INNKEEPER. 5.
- To quit—Yearly tenancy—“End of the current year.”  
See LANDLORD AND TENANT. 43.
- Trial—Assizes — Summons for directions — Jurisdiction.  
See PRACTICE. 261.
- Trustees.  
See Cases under TRUSTEE.
- Trusts of mortgage money—Mortgagee not one of the original trustees — Title — Objection—Sufficiency.  
See VENDOR AND PURCHASER—Title. 88.
- Validity of—Power to expel partner—Arbitration.  
See PARTNERSHIP. 9.
- Waiver — Lease — Option of purchase — “Assignus”—Equitable assignees — Possession.  
See LANDLORD AND TENANT. 80.

**NOTICE OF MOTION.**

See PRACTICE—Motions.

**NOVA SCOTIA—Laws of.**

See CANADA—Nova Scotia.

**NOVATION**—Banker—Overdraft—Honouring without knowledge of customer—Authority.

See **BANKER**. 23.

—Principal and surety.

See **PRINCIPAL AND SURETY—Discharge**. 17.

—Transfer from current to deposit account—Liability of deceased partner.

See **PARTNERSHIP—Liabilities**. 37.

**NOXIOUS TRADE**—Injunction—Reasonable use of property.

See **NUISANCES**. 21.

## NUISANCES.

*Public Health (London) Act, 1891, Amendment Act, 1893 (54 & 55 Vict. c. 76), amends and consolidates the laws relating to Public Health in London.*

*Public Health (London) Act, 1893 (56 & 57 Vict. c. 47), amends the Public Health (London) Act, 1891.*

### 1. — Abatement after notice and request.

Refusal to grant a mandatory injunction to remove an inhabited house which obstructs a private right of way does not necessarily deprive the persons entitled to the right of way of the right after proper notice and request to pull the house down.

Where a building alleged to be obstructive was in the hands of a receiver appointed by the Court, leave was given to persons complaining of the obstruction to exercise their common law rights of abatement with a view to testing the justice of their claim. **LANE v. CAPSEY**

**Chitty J. [1891] 3 Ch. 411**

2. — *Abatement notice—Service of on person not liable—Work done in obedience to notice—Recovery of expense from person liable—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 4, sub-ss. 1, 4; s. 11, sub-s. 1.*

The drainage of two adjoining houses situate in the metropolis being so defective as to be a nuisance, the sanitary authority served a notice under s. 4, sub-s. 1, of the Public Health (London) Act, 1891, upon the owner of the houses requiring him to abate the nuisance. The drainage of the houses was carried away by means of a single pipe, and the owner, being under the belief that this combined system of drainage had been authorized by an order of the sanitary authority, and that the liability to repair the pipe consequently lay upon him under the provisions of the Metropolis Management Act, 1855, executed the works prescribed by the notice. In fact, the combined plan of drainage had not been authorized by any such order, and the liability to repair the pipe was by that Act imposed upon the sanitary authority. On discovery of the mistake he sought to recover from the sanitary authority the expense he had incurred:—

*Held*, (1.) that as non-compliance with the notice would have rendered him *primâ facie* liable to a penalty under s. 4, sub-s. 4, of the Act of 1891, he was practically compelled to do the work, and that he could consequently recover the expense as money paid at the sanitary authority's request; (2.) that the "expenses of carrying the order into effect" mentioned in s. 11 include the

## NUISANCES—continued.

expenses of doing work in obedience to an abatement notice, and that consequently the owner, whether he was compelled to do the work or not, could under that section recover the expense from the sanitary authority as the persons by whose default the nuisance was caused.

**Gebhardt v. Saunders**, [1892] 2 Q. B. 452, followed. **ANDREW v. ST. OLAVE'S BOARD OF WORKS** — **Div. Ct. [1898] 1 Q. B. 775**

Referred to by **Bruce J. Cree v. St. Pancras Vestry**, [1899] 1 Q. B. 693, 695.

### 3. — Abatement without notice of overhanging tree.

The owner of land which is overhung by trees growing on his neighbour's land is entitled without notice, if he does not trespass on his neighbour's land, to cut the branches so far as they overhang—and however long they have overhung—his land. **LEMMON v. WEBB**

**C. A. revers. Kekewich J. [1894] 3 Ch. 1; affirm. by H. L. (E.) [1895] A. C. 1**

Referred to by **Lord Russell C.J. Reynolds v. Presteign Urban Council**, [1896] 1 Q. B. 604, 609.

### 4. — Adjoining premises — Alterations — Reasonable use of a building—Injunction.

In considering cases of nuisance between owners of adjoining houses the Court will have regard to the question whether the person alleged to have created the nuisance is making a reasonable use of his property.

Observations of **Kekewich J. in Reinhardt v. Mentasti**, (1899) 42 Ch. D. 685, 690, questioned. **SANDERS-OLARK v. GROSVENOR MANSIONS CO.**

**Buckley J. [1900] W. N. 136; [1900] 2 Ch. 373**

### 5. — Cesser before trial—Liberty to apply—Injunction—Noise—Remedies.

Action for an injunction to restrain a nuisance by noise caused by the defts. in carrying on their dairy business and for damages. The noise was caused by the delivery of the churns, washing them, sending out the milk on perambulators, and in other ways:—

*Held*, that though there was at one time a serious noise and annoyance, which was unavoidable unless the business was managed with very special care, and in fact carried on in a manner different to that of every other branch, yet as the time of the trial approached the business had in fact been carried on so as no longer to cause a nuisance. The plt. therefore had a good cause of action when he instituted the proceedings; but as the nuisance had now ceased, it would be contrary to the practice of the Court to grant an injunction, or even to give liberty to apply: **Carr & Co. v. Bath Gas Light and Coke Co.** [Unreported. See next Case.] If the nuisance recommenced, the plt. could start a fresh action. There would, therefore, be no injunction, but the plt. would recover 40s. damages and costs. **DUNNING v. GROSVENOR DAIRIES, LD.**

**Joyce J. [1900] W. N. 265**

### 6. — Cesser before trial—Practice—Injunction—Pollution of river.

Action for an injunction to restrain the defts. from polluting the river Avon by the discharge of their residual products and for damages. The

**NUISANCES—continued.**

defts. denied the nuisance. Between the issue of the writ and the trial the defts. ceased to discharge their residual products into the river, so that, unless their servants were guilty of carelessness or laziness and threw the products into the river, the nuisance could not recur:—

*Held*, that though the plts. had a good cause of action at the date of the writ, they had no longer any such cause of action. They might take an inquiry as to damages at their own risk, but liberty to apply would not be reserved. The continuous cause of the nuisance had disappeared, and, if anything was attributable to the acts of the defts.' servants, those acts would be isolated and contrary to the orders of the defts. An injunction was, therefore, out of the question, and it would not be in accordance with the practice of the Court to reserve liberty to apply. The plts. would have their costs. *CARR & Co. v. BATH GAS LIGHT AND COKE CO.*

*Stirling J. [1900] W. N. 265, n.*

— Conditions of sale—"Outgoings"—Notice by sanitary authority to abate nuisance.  
*See VENDOR AND PURCHASER. 12, 13.*

— Costs of abating, by making new drain.  
*See LANDLORD AND TENANT.*

— Cowsheds.  
*See DAIRY.*

— Disorderly house—Sale of property used as a  
—Specific performance.  
*See VENDOR AND PURCHASER. 72.*

— Drains and sewers.  
*See Cases under LONDON—Sewers.*

*7. — Electrical disturbance in wires of telephone company by operations of electric tramway.*

A tramway co. acting under a provisional order of the Bd. of Trade conferred by Act of Parliament, and using the best known system of electrical traction, caused electrical disturbance in the wires of a telephone co. acting under licence from the Postmaster-General:—

*Held*, that the tramway co. were not liable for nuisance caused by exercise of their statutory authority to use electricity. *NATIONAL TELEPHONE CO. v. BAKER Kekewich J. [1893] 2 Ch. 186*

**8. — Electricity.**

A person who without statutory authority creates on his own land an electric current for his own purposes and discharges it into the earth beyond his control is responsible for damage caused by the current to the same extent as if he had so discharged a stream of water brought by him on his land. *NATIONAL TELEPHONE CO. v. BAKER — Kekewich J. [1893] 2 Ch. 186*

**9. — Electric lighting—Injunction—Statutory powers—Electric lighting—Vibration—Right of reversioner to sue.**

In a case of continuing actionable nuisance, the jurisdiction of the Court to award damages, instead of an injunction, ought only to be exercised under very exceptional circumstances:—

*Per A. L. Smith L.J.*, damages may be given instead of an injunction, when the following requirements are all found in conjunction, viz., where the injury to the plt.'s rights is—(i.) small; (ii.) capable of being estimated in money;

**NUISANCES—continued.**

(iii.) capable of being adequately compensated by a small sum; (iv.) when an injunction would be oppressive. *SHELTER v. CITY OF LONDON ELECTRIC LIGHTING CO. MEUX'S BREWERY CO. v. THE SAME (No. 1) — C. A. [1895] 1 Ch. 287; [1895] 2 Ch. 388*

Referred to by *C. A. Jorden v. Sutton, Southcoates and Drypool Gas Co., [1899] 2 Ch. 217.*

**10. — Fence adjoining highway—Defective condition—Injury to child using highway—Proximate cause of injury—Liability of owner of fence.**

The deft. was the owner of a fence abutting on a highway. The plt., a child of four years of age, attracted by some boys at play on the other side of the fence, put his foot on it, and it fell on and injured him. In an action for damages for the injuries so sustained, the jury found that the fence was very defective, but actually fell through the plt. standing wholly or partly on it, though not for the purpose of climbing over it:—

*Held*, that the defective fence being a nuisance, and the cause of the injuries to the plt., the deft. was liable. *HAROLD v. WATNEY*

*C. A. [1898] 2 Q. B. 320*

— Gas company—Statutory powers—Excavation Injunction.  
*See SUPPORT. 1.*

— Highway.  
*See Cases under HIGHWAY.*

**11. — Hospital—Small-pox hospital—Injunction—Anticipated Nuisance—Quia timet action.**

Any one seeking an injunction to restrain an alleged future nuisance, public or private, must shew a strong case of probability that the apprehended mischief will in fact arise. Application for an interim injunction to restrain defts. erecting a small-pox hospital, refused, on the ground that there was not sufficient evidence of any probability of danger from the erection of the hospital. *ATT.-GEN. v. MANCHESTER CORPORATION*

*Chitty J. [1893] 2 Ch. 87*

**12. — Hospital—Small-pox hospital—"Other noxious or offensive business"—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 112, 131, 285.**

A local authority may, under s. 131 of the Act of 1875, erect a hospital outside their district without the consent of the authority of the district in which the hospital is to be erected. A small-pox hospital is not an "other noxious or offensive business" within the meaning of s. 112, so as to require such consent under s. 285 of the Act. *WITHINGTON LOCAL BOARD OF HEALTH v. MANCHESTER CORPORATION — C. A. [1893] 2 Ch. 19*  
— "House refuse"—Clinkers from steam laundry.

*See LONDON—Removal of Refuse. 48.*

**13. — Landlord and tenant—Abating nuisance—Liability of owner to recoup occupier—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 4, 11.**

A tenant from year to year held entitled under s. 11 of the Public Health (London) Act, 1891, to recover from the owner the costs and expenses of abating a nuisance arising from a structural defect in house drain, though no notice under s. 4 (3) of the Public Health (London) Act, 1891, as to defects of a structural character had been

**NUISANCES—continued.**

served on the owner and no "nuisance order" had been obtained from the sanitary authority under s. 5. *GEHARDT v. SAUNDERS*

Div. Ct. [1892] 2 Q. B. 452

Followed by Div. Ct. *Andrews v. St. Olave's Board of Works*, [1898] 1 Q. B. 775.

Referred to by Bruce J. *Cree v. St. Pancras Vestry*, [1899] 1 Q. B. 693, 695.

14. — *Limitation of actions—Nuisance order, costs of obtaining and enforcing—Summary Jurisdiction Act*, 1848 (11 & 12 Vict. c. 43), s. 11—*Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), ss. 11, 117.

The limitation imposed by 11 & 12 Vict. c. 43, s. 11, of the time within which complaints or informations may be made or laid before justices applies to actions in the county court, brought under the *Public Health (London) Act*, 1891, s. 11, to recover costs and expenses incurred in and about obtaining and carrying into effect a nuisance order; so that such actions must be commenced within six months from the time when the costs and expenses were incurred. *HAMMERSMITH VESTRY v. LOWENFELD*

Div. Ct. [1896] 2 Q. B. 278

15. — *Local authority, Action by—Right to sue if summary proceedings inadequate—Public Health Act*, 1875 (38 & 39 Vict. c. 55), s. 107.

The *Public Health Act*, 1875, enacts in s. 107 that any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, "cause any proceedings to be taken" against any person in any superior court of law or equity to enforce the abatement or prohibition of any nuisance:—

*Held*, that such proceedings must be ordinary proceedings known to the law, and that, in the absence of special damage, a local authority cannot sue in respect of a public nuisance except by action in the nature of an information with the sanction of the Attorney-General.

*Wallasey Local Board v. Gracey* (36 Ch. D. 593) approved. *TOTTENHAM URBAN DISTRICT COUNCIL v. WILLIAMSON & SONS, LD.*

C. A. [1896] 2 Q. B. 353

Referred to by North J. *Stoke Parish Council v. Price*, [1899] 2 Ch. 277, 281.

16. — *Local authority, Powers of.*

A local authority may act as relators in an action brought by the Att.-Gen. for the purpose of abating a public nuisance, and may by themselves maintain an action for damages for a nuisance affecting property of which they are the actual owners. *ATT.-GEN. v. LOGAN*

Div. Ct. [1891] 2 Q. B. 100

17. — *Local authority—Sanitary authority—Allowing sewage to cause nuisance in adjoining district—Injunction—Metropolis Act*, 1855 (18 & 19 Vict. c. 120), ss. 68, 69, 85, 86, 250—*Nuisances Removal Act*, 1855 (18 & 19 Vict. c. 121), ss. 8, 11, 12.

Where a nuisance was caused outside the County of London by sewers and drains of houses within the county, which were working properly for the purposes for which they were designed and constructed:—

*Held*, that the local authority of the district

**NUISANCES—continued.**

in which the nuisance is created could not obtain a remedy by injunction against the metropolitan sanitary authority from whose district the sewage flowed. *ATT.-GEN. v. CLERKENWELL VESTRY*

Romer J. [1891] 3 Ch. 527

Referred to by Romer J. *Stretton's Derby Brewery Co. v. Derby Corporation*, [1894] 1 Ch. 431, 443.

Referred to by Byrne J. *Eastwood Brothers, Ltd. v. Honley Urban Council*, [1900] 1 Ch. 781, 787.

18. — *Milk—Non-removal of—Nuisances and sanitation—"Building"—Dairies, Cowsheds, and Milk Shops Order*, 1885.

No. 29 of the Regulations of the London County Council as to Dairies, Cowsheds, and Milk Shops provides that every purveyor of milk shall, on any outbreak of infectious disease within the building or upon the premises in which he keeps milk coming to his knowledge, remove all milk for sale from such building until it has been disinfected.

The respondent, a purveyor of milk, was tenant of a three-storied building, each floor of which was adapted for separate occupation, but with a central staircase common to each. He occupied the ground-floor for the purpose of his business, sub-let the first floor, and occupied the second floor as a residence for himself and his family. One of his children had scarlet fever in a room on the second floor:—

*Held*, that this was an outbreak of infectious disease within the building in which the respondent kept milk, and, therefore, that the non-removal from the ground-floor of milk for sale there was an infringement by him of the above regulation. *LONDON COUNTY COUNCIL v. EDWARDS*

Div. Ct. [1898] 2 Q. B. 75

19. — *Music.*

The giving of musical lessons by a teacher of music and practising does not constitute a legal nuisance to a neighbour. The making of noises on musical instruments to vex or annoy a neighbour is a nuisance. *CHRISTIE v. DAVEY*

North J. [1893] 3 Ch. 316

— *Noise—Boys' school—Misrepresentation by vendor's agent—Rescission.*

*See VENDOR AND PURCHASER.* 67.

20. — *Noise in street—By-law—Proof.*

A by-law of a borough made it an offence to make any noise in any of the streets to the annoyance of the inhabitants:—

*Held*, that on a summons for breach of the by-law by crying newspapers in the street it was not necessary to prove that more than one inhabitant had in fact been annoyed. *INNES v. NEWMAN*

Div. Ct. [1894] 2 Q. B. 292

— *Notice to abate—Power to require sufficient water-closets.*

*See Cases under WATER-CLOSETS.*

21. — *Noxious trade—Reasonable use of property—Injunction.*

Action by the Att.-Gen., at the relation of the board of works for the Wandsworth district, to restrain an alleged nuisance to the inhabitants of the neighbourhood.

The defts. carried on the trade of fat melters

**NUISANCES—continued.**

at Southfields, and the nuisance complained of was alleged to arise from noxious gases emanating from the defts'. works. The Court found that the defts. were carrying on their trade in a reasonable manner, and took precautions to prevent it from causing a nuisance to their neighbours.

Kekewich J., in granting an injunction, said that his judgment in *Reinhardt v. Mentasti*, (1889) 42 Ch. D. 685, had been much misunderstood. He thought there that when once the Court was satisfied that the deft. was creating a nuisance, the fact that he was doing what was reasonable from his own point of view was no defence. In *Sanders-Clark v. Grosvenor Mansions Co.*, [1900] 2 Ch. 373, Buckley J. appeared to think that the view taken by him in *Reinhardt v. Mentasti* differed from the view of Lord Selborne L.C. in *Ball v. Ray*, (1873) L. R. 8 Ch. 467. Nothing could have been further from his intention. *Reinhardt v. Mentasti* had also been criticised in Garratt on Nuisances as departing from *Bamford v. Turnley*, (1860) 3 B. & S. 62; but he thought that it was entirely in accordance with the principles there laid down. The question might be put in this way: Could a man reasonably commit a nuisance? He thought that the answer to be gathered from *Bamford v. Turnley* was that he could not. If he was committing a nuisance he could not be said to be acting reasonably. In this case the defts. had taken precautions to prevent their trade from being a nuisance to their neighbours, and from their own point of view they were acting reasonably; but from the point of view above stated they were not acting reasonably, since upon the evidence they were committing a nuisance.

ATT.-GEN. v. COLE

Kekewich J. [1900] W. N. 272

— Obscene language—Prohibition of use of.

See STREETS. 38.

22. — *Offensive trade—Notice to abate—Condition precedent to complaint—Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), ss. 2, 4, 21.

Sec. 4 of the Public Health (London) Act, 1891, applies only to the classes of nuisances enumerated in s. 2, and not to the nuisances arising from offensive trades dealt with by s. 21. A service of a notice requiring the abatement of a nuisance is not a condition precedent to the jurisdiction of a magistrate to hear a complaint as to a nuisance arising from an offensive trade. *BIRD v. ST. MARY ABBOTS, KENSINGTON (VESTRY)*

Div. Ct. [1895] 1 Q. B. 912

— Overhanging trees—Right to cut.

See No. 38, below.

23. — “Owner”—Premises not let at a rack-rent—*Sub-lease—Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), s. 141.

Where the lessee of premises not let at a rack-rent has sub-let them for his whole term less a few days, the rent reserved and the covenants being the same as in the original lease, the sub-lessee and not the lessee is the “owner” of the premises within s. 141 of the Public Health (London) Act, 1891. *TRUMAN, HANBURY, BUXTON & CO. v. KERSLAKE* - Div. Ct. [1894] 2 Q. B. 774

**NUISANCES—continued.**

24. — *Owner—Procedure where owner of premises is not known or cannot be found—Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), s. 128.

A summons to answer a complaint by a sanitary authority to a petty sessional court under s. 4 (2) of the Public Health (London) Act, 1891 alleging the existence of a nuisance on premises, is good in form though it is addressed to “the owner” of the premises (describing them) merely without further name or description. Such a summons is a document within s. 128 of the Act, and may be properly served by delivering it to some person on the premises. *REG. v. MEAD*

Div. Ct. [1894] 2 Q. B. 124

— Preaching on beach between high and low water-mark.

See FORESHORE.

— Removal of refuse.

See Cases under LONDON—Removal of Refuse.

— Right to uninterrupted current of air—Stagnation of air.

See LIGHT AND AIR. 3.

25. — *River—Foreshire of navigable river—Liability of owner of foreshore to abate nuisance—Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76), s. 4, sub-s. 1, 3 (b).

Sec. 4 (1) of the Public Health (London) Act, 1891, must be read with the proviso in s. 4 (3) (b). Where the person causing the nuisance cannot be found, the liability of the owner of the premises to abate it only arises where it is shewn that it continues by his act, default, or sufferance. Under their Acts the Thames Conservancy are owners of the soil and subsoil of the river for certain specified purposes only, and are not owners for the purposes of s. 4 of the Public Health (London) Act, 1891. *THAMES CONSERVANCY v. LONDON PORT SANITARY AUTHORITY* - Div. Ct. [1894] 1 Q. B. 647

[The Thames Conservancy Acts were repealed and consolidated by the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii).]

— Rivers Pollution Prevention Act.

See WATER—Pollution.

26. — *River pollution—Sewer “made for profit.”*

By s. 13 of the Public Health Act, 1875, all sewers are vested in the local authority, except sewers made for profit:—

Held, that a sewer made by a landowner to collect the drainage of his cottages was not “made for profit” within the meaning of the section, and therefore, after the local authority had accepted the sewer, they and not the landowner were liable for any nuisance caused by the sewer. *FERRAND v. HALLS LAND AND BUILDING CO.* C. A. [1893] 2 Q. B. 135

Distinguished by *Romer J. Minehead Local Board v. Luttrell*, [1894] 2 Ch. 178.

Referred to by *Stirling J. Croydsale v. Sunbury-on-Thames Urban Council*, [1898] 2 Ch. 515, 519.

Considered by C. A. *Sykes v. Sowerby Urban Council*, [1900] 1 Q. B. 584, 590.

**NUISANCES—continued.**

— Sewers and drains.

See Cases under LONDON—Sewers.

SEWERS—Nuisance.

27. — *Smelting works—Common law rights—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 334.*

The fact that certain businesses are excluded from summary proceedings for nuisance by s. 334 of the Public Health Act, 1875, does not relieve them from liability for a public nuisance in a suit by the Att.-Gen., nor from the ordinary common law liability to an owner whose property is damaged by it. *ATT.-GEN. v. LOGAN*

Div. Ct. [1891] 2 Q. B. 100

28. — *Smoke—Abatement notice—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 94.*

The occupier of a factory, the chimney of which caused a nuisance by sending forth black smoke, was served by the local authority with a notice under s. 94 of the Public Health Act, 1875, requiring him within a specified time to abate the same, and for that purpose to abstain at all times from doing or suffering to be done anything which would cause a recurrence of the nuisance:—

*Held*, that the notice was good, and that it was unnecessary that it should go on to require the execution of any works or the doing of anything as a means to the abatement. *MILLARD v. WASTALL* — — Div. Ct. [1898] 1 Q. B. 342

29. — *Snow and salt—Obstruction of street—Tramways—Interdict.*

A tramway co. after a heavy fall of snow cleared their track by means of a snow-plough and heaped up the snow upon the sides of the streets; they then scattered salt upon the rails and in the vicinity; the town council did not take any immediate steps to remove the briny slush so produced, and it was left upon the streets:—

*Held*, reversing the decision of the Ct. of Sess., (1896) 23 R. 340, that a legal nuisance had been committed which was not sanctioned by either the special or the general Tramways Acts, and that the default, if any, of the town council did not affect the primary liability of the tramway co. *OGSTON v. ABERDEEN DISTRICT TRAMWAYS CO.*

[1896] W. N. 175 (14); H. L. (Sc.) [1897] A. C. 111

30. — *Spiked wall—Contributory negligence.*

In front of a window of defts.' shop, and immediately abutting on a public highway, was a low wall eighteen inches high, defts.' property, on the top of which was a row of sharp spikes. The plt., a child of five, was found standing by the wall, bleeding from a wound such as might have been caused by her falling upon the spikes:—

*Held*, that there was evidence to go to the jury that the injury was caused by the wrongful act of the defts. in maintaining the nuisance while the plt. was using the highway in a proper manner. *FENNA v. CLARE & CO.*

Div. Ct. [1895] 1 Q. B. 199

31. — *Stables—Tramway company—Special Act—Injunction.*

A tramway co. was formed under a special

**NUISANCES—continued.**

Act to work a line by horse traction. The line did not expressly provide for stables and contained no compulsory powers for taking land. The co. built stables which caused a nuisance:—

*Held*, that the co. were not justified by their statutory powers in using the stables so as to cause a nuisance, and that it was no defence to prove that reasonable care had been taken to prevent it. *RAPIER v. LONDON TRAMWAYS CO.*

C. A. [1893] 2 Ch. 588

32. — *Statutory works—Water company.*

Statutory authority was given to a water co. to sink a shaft. In doing so the co. caused noise by the pumps employed, but reasonable care and skill and precaution were used to mitigate annoyance to neighbours and no negligence was shown:—

*Held*, that the annoyance being temporary and for a lawful object did not amount to a nuisance in law. *HARRISON v. SOUTHWARK AND VAUXHALL WATER CO.*

V. Williams J. [1891] 2 Ch. 409

33. — *Statutory works—Tramway company.*

Statutory authority was given to a tramway to use electricity in traction:—

*Held*, that they were not liable for damages for disturbance by discharge of their electricity of the wires of a telephone co. *NATIONAL TELEPHONE CO. v. BAKER*

Kekewich J. [1893] 2 Ch. 186

See *Shelfer v. City of London Electric Lighting Co.*, C. A. [1895] 1 Ch. 287; [1895] 2 Ch. 388.

34. — *Temporary annoyance in execution of lawful works.*

Temporary annoyance caused by the execution of works in the ordinary user of land is not an unlawful nuisance where all reasonable skill and care is used to avoid annoyance to neighbours. *HARRISON v. SOUTHWARK AND VAUXHALL WATER CO.*

V. Williams J. [1891] 2 Ch. 409

35. — *Theatre—Crowd at—Injunction—Obstruction to highway—Costs.*

An action was brought for a nuisance caused by the collection of crowds before the doors of a theatre. Before the hearing it was abated by the police. The Court refused an injunction, but granted costs. *BARBER v. PENLEY*

North J. [1893] 2 Ch. 447

36. — *Theatre—Obstruction to highway.*

The obstruction of access from a highway to premises adjacent to a theatre by reason of the assembling of a crowd in the highway previously to the opening of the doors of the theatre constitutes a private nuisance to the owner of the adjacent premises. The law of nuisance from obstruction of a highway discussed. *BARBER v. PENLEY*

— North J. [1893] 2 Ch. 447

37. — *Tree near boundary of field.*

It is not a nuisance to allow a yew tree to grow so near the boundary of a neighbour's land as to be eaten by his cattle, unless they can reach the tree without trespassing.

*Secus*, where there is a liability to fence against the neighbour's cattle. *PONTING v. NOAKES*

Div. Ct. [1894] 2 Q. B. 281

38. — *Trees overhanging land.*

L.'s ancient oak trees overhung W.'s land, and had done so to W.'s knowledge for fifteen

**NUISANCES—continued.**

years; they were not dangerous to life or health. W. cut off the overhanging branches without giving notice to L.:—

*Held*, that the overhanging branches constituted a nuisance.

Decision of C. A., [1894] 3 Ch. 1, affirmed. *LEMMON v. WEBB* H. L. (E.) [1895] A. C. 1

Referred to by Div. Ct. *Reynolds v. Presteign Urban Council*, (1896) 12 R. 604, 609.

**39. — Tree—Poisonous tree—Injury to cattle—Duty to fence.**

Plt. and defts. occupied adjoining fields separated by a fence and ditch the property of the defts.: the fence was next to defts.' field: near the fence there was a yew tree, the branches of which projected over the ditch, but no part of them extended over the plt.'s field. The defts. were under no liability to fence against the plt.'s cattle. The plt.'s cattle ate of the branches extending over the ditch and died:—

*Held*, that the defts. were not liable, because there was no duty on the defts. to prevent the plt.'s cattle having access to the yew branches. *PONTING v. NOAKES* Div. Ct. [1894] 2 Q. B. 281

**40. — Vacant land in metropolis—Deposit of filth by third parties—Continuing nuisance—Common law duty of landowner—Injunction—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 30, 35, 138, 141.**

The deft. was the owner and occupier of a vacant piece of land in the metropolis. He had surrounded it by a hoarding, but people threw filth and refuse over, and broke up the hoarding, so that the condition of the land and the use to which it was put constituted a continuing public nuisance. In an action by the Att.-Gen. at the relation of the vestry of the parish:—

*Held*, that it was a common law duty of the owner of the piece of land to prevent it from being so used as to be a public nuisance; and that the Att.-Gen. was entitled to an injunction to enforce the performance of that duty. *ATT.-GEN. v. TOD HEATLEY* C. A. [1897] 1 Ch. 560

**41. — Vestry—Committee—Approval of acts of by vestry—Ratification—Act made criminal by relation — Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 58.**

A committee, appointed by a metropolitan vestry under s. 58 for the purpose (inter alia) of executing the Metropolis Management Acts, so far as they related to the public health of the parish, being informed by the sanitary inspector that a nuisance existed upon certain premises endangering the health of the inhabitants, directed the inspector to serve notice upon the

**NUISANCES—continued.**

owner of the premises under the said Acts requiring him to abate the nuisance, and in default to take proceedings. The inspector, in pursuance of such direction, served the required notice, and, upon the owner failing to comply with it, laid an information against him for penalties under the said Acts, and a summons was issued. After the issue of the summons and before the hearing of the information, the vestry by resolution approved the acts of the committee in causing the notice to be served and the information to be laid:—

*Held*, that the approval of the vestry, although given after the service of the notice and the issue of the summons, was sufficient, and that the owner was liable to be convicted. *FIRTH v. STAINES* Div. Ct. [1897] 2 Q. B. 70

— Vibration—Electricity.

See Nos. 7—9, above.

— Unsound food, fruit and meat.

See Cases under FOOD.

— Urinals—Construction of, below surface of ground—"Public place."  
See STREETS. 1.

**42. — Water company—Statutory works, execution of—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 12.**

A water co. in the exercise of their statutory powers sank a shaft and thereby caused a temporary annoyance to the plts. by the noise of their pumps. The pumps used were of the kind usual for such works, but other pumps causing noise, but otherwise less convenient, could have been used:—

*Held*, that the co. had not exceeded their statutory power nor executed it negligently, and were not liable for nuisance. *HARRISON v. SOUTH-WARK AND VAUXHALL WATER CO.*

V. Williams J. [1891] 2 Ch. 409

— Water-closets—Power to require sufficient—Notice to abate.

See Cases under WATER-CLOSETS.

**NULLITY OF MARRIAGE.**

See Cases under DIVORCE—Nullity.

**NULLUM TEMPUS ACT—Law of New South Wales.**

See NEW SOUTH WALES. 34.

**NUN—Service franchise—Separate dwellings—Nuns in convent—Office, service or employment.**

See PARLIAMENT—Franchise. 134.

**NONCUPATIVE WILL—Validity.**

See DONATIO MORTIS CAUSÆ. 3.

## O.

**OATHS.**

*Commrs. for Oaths Act, 1891 (54 & 55 Vict. c. 50), amends the Commrs. for Oaths Act, 1889.*

*Exemption—Chairmen of District Councils Act, 1896 (59 & 60 Vict. c. 22).*

**OBJECTION.**

*See SPECIFIC TITLES.*

**OBLITERATION**—Words of will before alteration whether “apparent” — Evidence of experts.

*See PROBATE.* 81.

**OBSCENE LANGUAGE**—Prohibition of use of—By-law—Validity.

*See STREETS.* 38.

**OBSTRUCTION**—Control of dock-master—West India Docks.

*See DOCK.* 1.

— Light.

*See Cases under LIGHT AND AIR.*

— Streets.

*See LONDON—Streets.* 86—88.

— Way, Right of.

*See HIGHWAY—Obstruction.*

*NUISANCE.*

*WAY, RIGHT OF.* 29.

**OBTAINING CREDIT**—Offences — Intent to defraud.

*See BANKRUPTCY.* 123.

**OCCUPATION**—Beneficial.

*See RATES—Rateability.* 37.

— of Bank by manager.

*See REVENUE—Income Tax.* 70.

— Qualification for vestryman—Metropolis.

*See LONDON—Vestries.* 99, 100.

**OCCUPATION FRANCHISE**—Vote.

*See PARLIAMENT, FRANCHISE, passim.*

**OCCUPATION RENT**—Due from one of several co-owners—Set-off—Sale.

*See PARTITION.* 15.

**“OCCUPIER”**—Gasworks Clauses Act, 1871. s. 39.

*See GAS.* 3.

**OFFENCES.**

*See SPECIFIC TITLES.*

**OFFENSIVE BUSINESS**—Covenants in restraint of trade.

*See RESTRAINT OF TRADE.* 14.

**OFFENSIVE TRADE.**

*See NUISANCES.* 21.

**OFFICERS AND OFFICES**—Appointment—Conditions as to expenditure.

*See FISHERY.* 2.

— Bankruptcy practice.

*See BANKRUPTCY, passim.*

— Company practice.

*See COMPANY AND COMPANY—WINDING-UP, passim.*

**OFFICERS AND OFFICES—continued.**

— Crown servant—Tenure by—Prerogative of the Crown.

*See CROWN.* 8, 9.

— Inland revenue—Officer of—Proof of authority.

*See JUSTICES.* 7.

— Naval officer—Right to resign commission.

*See ARMY AND NAVY.* 2.

— Naval officer on board his ship—Service of writ on, out of jurisdiction.

*See PRACTICE—Service.* 214.

— Resignation—Office when vacant—Outgoing alderman.

*See CORPORATION.* 7.

— Right to enforce terms of royal warrant.

*See MANDAMUS.* 6.

— Of State—Privileged communication.

*See DEFAMATION—Libel.* 15.

— Pension—Retired officer.

*See BANKRUPTCY—Appropriation.* 48.

**OFFICIAL RECEIVER.**

*See RECEIVER.*

**OFFICIAL REFEREE.**

*See ARBITRATION.*

**“OFF-LICENCE”**—Licensing Acts.

*See LICENSING ACTS.* 4.

**OMNIBUS**—Driven by conductor—Onus of proving authority—Negligence of servant.

*See MASTER AND SERVANT.* 80.

— Omnibus business—Municipal trading—Ultra vires.

*See LONDON—County Council.* 38.

**ONTARIO**—Laws of.

*See CANADA.*

**ONUS PROBANDI**—Collision—Inevitable accident.

*See SHIPPING—Collision.* 50, 54.

— Contract—Action on—Cablegrams—Mistake.

*See CONTRACT.* 19.

— Innkeepers' liability.

*See INNKEEPER.* 2.

— Libel—Privilege.

*See DEFAMATION—Libel.* 23.

— Omnibus driven by conductor—Onus of proving authority—Negligence of servant.

*See MASTER AND SERVANT.* 80.

— Will—Grant of probate.

*See PROBATE.*

— Will of Maori—Probate.

*See NEW ZEALAND.* 10.

**OPEN SPACES**—Commons.

*See COMMON.*

— Disused burial ground.

*See BURIAL.* 2, 3.



**OPEN SPACES**—*continued.*

— Faculty for erecting a churchyard wall with arcade on disused burial ground.  
*See ECCLESIASTICAL LAW—Faculty.* 21.

— Flagging footway—Frontager—Owner.  
*See LONDON—Streets.* 68.

— Site of church.  
*See BURIAL.* 6.

**OPTION**—Charterer's, as to place of discharge.  
*See SHIPPING—Demurrage.* 119.

— To purchase.  
*See CONTRACT—Time.* 35.  
*LANDLORD AND TENANT—Option to Purchase.*

— To purchase, possession of goods under.  
*See FACTOR—Hire Agreement.* 5.

— Settled Land Acts.  
*See SETTLED LAND—Option.*

**ORAL AGREEMENT.**

*See Cases under FRAUDS, STATUTE OF, SALE OF GOODS.*

**ORAL EVIDENCE.**

*See Cases under EVIDENCE.*

**ORANGE FREE STATE.**

*See EXTRADITION.*

**ORDER.**

*See SPECIFIC TITLES.*

**ORDERS OF COURT**—*See Table of Rules and Orders of Court judicially considered during the years 1891—1900.*

**ORDINARY**—Discretion of—Faculty.

*See ECCLESIASTICAL LAW—Faculty.* 18.

— Jurisdiction of—Sequestration.  
*See ECCLESIASTICAL LAW—Sequestration.* 72.

**ORGAN**—Infringement of copyright—Mechanical organ—Musical directions for performance.

*See COPYRIGHT.* 28.

**ORIGINATING SUMMONS.**

*See PRACTICE—Originating Summons.*

— Costs—Instructions for brief—Trial of issue of fact before judge.

*See COMPANY—WINDING-UP—Costs.* 65.

**"OUTGOINGS"**—Drainage expenses—Improvements—Capital or income.

*See SETTLED LAND.* 62, 64.

— Private street works—Apportionment of expenses—Vendor and purchaser—Implied covenant against incumbrances.  
*See STREETS—Private Streets.* 34.

— Railway company—Judgment debt—Receiver and manager—Preferential payments—Priority.

*See RAILWAY—Receiver and Manager.* 55.

**"OUTGOINGS"**—*continued.*

— Railway company—"Proper outgoings in respect of the undertaking."  
*See RAILWAY—Costs.* 38.

— Vendor and purchaser.  
*See VENDOR AND PURCHASER—Charges and Outgoings.*

**OVERCROWDING**—of Train—Passenger.  
*See RAILWAY—Passengers.* 29.

**OVERDRAFT.**

*See BANKER.* 21—24.

**OVERHANGING BUILDINGS**—Right of owner to raise—Parcels.

*See VENDOR AND PURCHASER—Contract.* 31.

**OVERHANGING TREES.**

*See NUISANCES.* 37—39.

**OVERLOADING**—Of ship—Merchant Shipping Acts.

*See Cases under SHIPPING—Overloading.*

**OVERSEERS.**

*Local Government Act, 1894 (56 & 57 Vict. c. 73), alters the mode of appointing overseers in rural parishes.*

— Assistant overseer—Right to rate-books—Appointment.

*See PARISH COUNCIL.* 2.

— Embezzlement—Parish council.

*See CRIMINAL LAW—Embezzlement.* 2.

— Preparation of registers by—Misconduct.

*See PARLIAMENT.* 141.

**OWNER**—Buildings.

*See LONDON—Buildings.*

— Nuisances.

*See NUISANCE.*

— Paving, &c., expenses.

*See LONDON—Streets.*

*STREETS—Paving, &c., Expenses.*

— Settled land.

*See Cases under SETTLED LAND.*

— Shipping.

*See SHIPPING—Managing Owner.*

**OWNERSHIP**—Act of—Declaration of deceased person against interest.

*See EVIDENCE.* 1.

— Patent.

*See PATENT—Ownership.*

— Reputed ownership.

*See BANKRUPTCY—Reputed Ownership.*

**OXFORD.**

*See UNIVERSITY.*

**OYSTERS**—Foreign oysters—Sale in close time.

*See FISHERY.* 1.

## P.

**PACIFIC OCEAN**—British jurisdiction over.  
See FOREIGN JURISDICTION.

— German protectorate.  
See EXTRADITION.

— Seal fishery.  
See FISHERY.

**PALATINE COURT OF LANCASTER.**  
See Cases under LANCASTER COURT.

**PARAPHERNALIA.**  
See HUSBAND AND WIFE. 15.

**PARCELS**—Conveyance, Form of—General words  
—Summons—Practice.  
See VENDOR AND PURCHASER—Conveyance. 41.

— Identity—Admissibility of parol evidence—  
Statute of Frauds.  
See VENDOR AND PURCHASER—Contract. 30.

— Overhanging building.  
See VENDOR AND PURCHASER—Contract. 31.

— Right of way—Misdescription—Common mistake—Rectification.  
See LANDLORD AND TENANT. 75.

**PARDON**—Prerogative—Contempt of Court.  
See CONTEMPT OF COURT. 8.

**PARENT AND CHILD**—Custody of children.  
See Cases under INFANT—Custody.

**PARISH**—Boundary—Alteration—Public or local Act.

Lands in the parish of St. Pancras were purchased as a burial ground for the parish of Bloomsbury under 9 Anne, c. 22, and 10 Anne, c. 11, and on consecration became part of the latter parish. By Order in Council burials were discontinued in the burial ground, and the parish of St. Pancras applied to the county council, under s. 57 of the Local Government Act, 1888, for an order retransferring the burial ground to St. Pancras. The council gave notice of their intention to hold an inquiry. The parish of Bloomsbury applied for a prohibition:—

*Held*, that the section gives a county council power to amend any part of a public and general Act, which is of a local and personal nature, that the clauses of the statute of Anne relating to the burial ground were local and personal, and that the council had power to make an order. REG. 1. LONDON COUNTY COUNCIL

C. A. affirm. Div. Ct. [1893] 2 Q. B. 454

— Creation—Law of Quebec.  
See CANADA. 57.

— Ownership of soil of highway.  
See LIMITATIONS, STATUTE OF.

— Parish clerk.  
See ECCLESIASTICAL LAW—Parish Clerk.

— Parish council.  
See PARISH COUNCIL.

**PARISH**—continued.

— Parochial electors.  
See PARLIAMENT—Franchise. 102, 103.

**PARISH COUNCIL.**  
*In General*, col. 1360.  
*Constitution and Election*, col. 1360.  
*Custody of Documents*, col. 1360.  
*Hiring and Taking Lands*, col. 1361.  
*Overseers*, col. 1361.

#### In General.

*Parish Fire Engines Act*, 1898 (61 & 62 Vict. c. 38), enables parish councils to borrow fire-engines.

#### Constitution and Election.

*Local Government Act*, 1894 (56 & 57 Vict. c. 73), establishes and regulates parish councils and meetings, and makes provision as to the first elections of parish councils and meetings.

*Registration Acceleration Act*, 1894 (57 & 58 Vict. c. 32), accelerates the registration of parochial electors in the year 1894.

*Parish Councillors—Election of in 1896—Circular—County councils—Parish councils—Rural district councils—Feb. 18, 1896—Loc. Gov. Bd. Price 1d. each.*

*Local Government Act*, 1897 (60 Vict. c. 1), amends the law as to qualifications for elections to parish councils, &c.

**PARISH COUNCILLORS' ELECTION.] Order**, 1897, No. 35,900, dated Jan. 23, 1897. **St. R. & O. 1897, No. 51.**

*Parish Councillors (Tenure of Office) Act*, 1899 (62 & 63 Vict. c. 10), enables them to hold office for three years.

— “Ecclesiastical charity” — Appointment of trustees—Churchwarden trustees.  
See CHARITY. 2.

— Qualification of parochial electors.  
See PARLIAMENT—Franchise. 102, 103.

#### Custody of Documents.

1. — *Custody of parish documents—Tithe apportionment—Local Government Act*, 1894 (56 & 57 Vict. c. 73), s. 17, sub-s. 8—*Justices—Jurisdiction—Order for removal of parish documents—Tithe Act*, 1860 (23 & 24 Vict. c. 93), s. 28.

A parish council has power, under s. 17, sub-s. 8, of the Local Government Act, 1894, to direct that the copy of the tithe apportionment of the parish in the custody of the incumbent of the parish under 6 & 7 Will. 4, c. 71, s. 64, shall be removed from his custody and deposited with the council.

Where the parish council has given such a direction, and the county council has affirmed it, a court of summary jurisdiction has jurisdiction,

**PARISH COUNCIL** (Custody of Documents)—*continued.*

under s. 28 of 23 & 24 Vict. c. 93, to make an order enforcing the removal. *LEWIS v. POOLE*  
Div. Ct. [1898] 1 Q. B. 164

**Hiring and Taking Lands.**

*Order of the Loc. Govt. Bd. dated May 20, 1895, as to compulsory hiring of land for allotments under s. 10 of the Local Government Act, 1894.* St. R. & O. 1895, No. 462.

*Order of the Loc. Govt. Bd. dated May 21, 1895, as to compulsory hiring of land for allotments under s. 10 of the Local Government Act, 1894, Adaptations of Lands Clauses Acts.* St. R. & O. 1895, No. 464.

*Order of the Loc. Govt. Bd. dated May 22, 1895, as to taking of lands under s. 9 of the Local Government Act, 1894, by parish and district councils.* St. R. & O. 1895, No. 466.

*Open Spaces—Delegation of Powers.* See Commons Act, 1899 (62 & 63 Vict. c. 30).

**Overseers.**

*Order of the Loc. Govt. Bd. dated Feb. 9, 1895, as to the appointment of overseers by parish councils.* St. R. & O. 1895, No. 447.

*O. of the Loc. Govt. Bd. dated Feb. 9, 1895, as to appointment of overseers by parish meetings.* St. R. & O. 1895, No. 450.

2. — *Assistant overseer—Right to rate-books—Appointment—Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 5, sub-s. 1.

When the overseers of a parish have expressed their intention of collecting the rates themselves, but the parish council have by resolution appointed an assistant overseer, the Court will grant a mandamus to the overseers to deliver to the assistant overseer the rate-books and all other books in their custody as overseers, for the purpose of enabling him to perform the duties of his office.

*Semble*, the appointment of overseers and assistant overseers under s. 5, sub-s. 1, of the Local Government Act, 1894, is complete by election by the parish council, and no document is required beyond a minute of the appointment. *REG. v. POWELL. Ex parte WILLIAMS*

Div. Ct. [1899] 1 Q. B. 396

— *Embezzlement.*

See CRIMINAL LAW. 11.

**PARISH FIRE-ENGINES ACT, 1898** (61 & 62 Vict. c. 38), enables parish councils to borrow fire-engines.

**PARK**—Compensation—Compulsorily taken by railway company.

See LANDS CLAUSES ACTS—Compensation. 11.

— *Rateable value—Beneficial occupation—London County Council.*

See RATES—Rateability. 37.

1. — *Right to sue—Parties—Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 8, sub-s. 1 (e), (f).

A parish council cannot in their own name without the Att.-Gen. maintain an action to

**PARK**—*continued.*

enforce a right of the inhabitants of the parish to the use of a well or spring of water. *STOKE PARISH COUNCIL v. PRICE*

North J. [1899] W. N. 74; [1899] 2 Ch. 277

**PARLIAMENT.**

*Absence.* See PARLIAMENT—Franchise. 17—25.

*Amendment.* See PARLIAMENT—Franchise. 27—36.

*Appeal.* See PARLIAMENT—Franchise. 37, 38.

*Costs*, col. 1362.

*Deposits and Bonds*, col. 1362.

*Election Expenses*, col. 1364.

*Election Petition*, col. 1365.

*Franchise*, col. 1366.

*Joint Occupation.* See PARLIAMENT—Franchise. 50—57.

*Lodger Franchise.* See PARLIAMENT—Franchise. 58—86.

*Municipal Franchise.* See CORPORATION.

*Notice of Claim.* See PARLIAMENT—Franchise. 87, 88.

*Objection.* See PARLIAMENT—Franchise. 89—100.

*Overseers' Duties*, col. 1403.

*Private Bills*, col. 1403.

*Privilege*, col. 1403.

*Registration of electors.* See Cases under PARLIAMENT—Franchise.

*Returning Officer*, col. 1403.

*Revising Barrister*, col. 1403.

*Service Franchise.* See PARLIAMENT—Franchise. 121—137.

**Costs.**

— *Election expenses.*

See No. 9, below.

— *Parliamentary opposition—Application of borough fund.*

See CORPORATION. 11.

— *Taxation—Parliamentary proceedings—Solicitors—London and country certificates.*

See SOLICITOR—Costs. 40.

**Deposits and Bonds.**

*Parliamentary Deposit and Bonds Act, 1892* (55 & 56 Vict. c. 27), makes provision for the release and cancellation of certain deposits and bonds.

1. — *Abortive undertaking—Application of deposit—Parliamentary Deposits and Bonds Act, 1892* (55 & 56 Vict. c. 27), s. 1, sub-s. 2.

Deft. co. was formed to obtain a provisional order to enable them to construct and work a tramway. Their scheme proved abortive, and resolutions were duly passed to wind up the co. voluntarily, and appointing a liquidator. This was an application to determine how the parliamentary deposit should be applied. There were no landowners or local authority whose rights had been interfered with, or persons mentioned in s. 1, sub-s. 2, of the Parliamentary Deposits

**PARLIAMENT (Deposits and Bonds)**—*continued.*  
and Bonds Act, 1892, as entitled to compensation:—

*Held*, following the principle of *In re Colchester Tramways Co.*, [1893] 1 Ch. 309, and dissenting from *Ex parte Bradford Tramways Co.*, [1893] 3 Ch. 463, that the liquidator was entitled as against the depositors only to his costs in relation to the application of the deposit and not to his general costs of liquidation, and an inquiry directed as to the persons entitled to share in the deposit. *TURPIN v. SOMERTON, &c., TRAMWAY CO.* **Cozens-Hardy J. [1900] W. N. 94**

2. — *Jurisdiction of Court to make an order for repayment of deposit*—*Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27), s. 1.*

The Court has no jurisdiction under s. 1 of the Parliamentary Deposits and Bonds Act, 1892, to make an order for the repayment of a deposit made on behalf of a co. until the time limited for the completion of the works has expired, the co.'s compulsory powers for the purchase of lands have expired, and the co. has acquired no lands, given no notices, and raised no capital, and has passed a resolution to abandon the undertaking. *Ex parte CHAMBERS* **North J. [1893] 1 Ch. 47**

3. — *Paper company*—*Parliamentary agent*—*Promotion expenses*—*Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27), s. 1.*

A co. authorized by statute had never had any existence except its statutory incorporation. Claims were made against the parliamentary deposit by the solicitors and their parliamentary agents for the co.'s bill, and by holders of Lloyd's bonds, and a judgment against the co. for the expenses of carrying through one of the bills:—

*Held*, that none of these persons was a creditor of the co. *In re MANCHESTER, MIDDLETON, AND DISTRICT TRAMWAYS CO.* **Kekewich J. [1893] 2 Ch. 638**

4. — *Payment out*—*Notices*—*Creditors.*

A ry. co. had completed and opened for traffic all its undertaking, except a small part, the time for completion of which had expired:—

*Held*, that notices to landowners only were sufficient before payment out of the deposits. The co. not being insolvent or abandoned, the question of the rights of the creditors of the co. generally did not arise under s. 1, sub-s. 2, of the Act of 1892, and the Court, in the exercise of the discretion given by sub-s. 3, would dispense with notices to them. *In re HULL, BARNSELY AND WEST RIDING JUNCTION RY.*

**Chitty J. [1893] W. N. 83**

5. — *Payment out*—*Priority of claims*—*"Creditors."*

Persons who lent money to promoters of the undertaking to enable them to make the deposit are "creditors" entitled under s. 1 (2) of the Act of 1892 to share in the deposit fund *pari passu* with other creditors of the undertaking. "Creditors" in the sub-section is not limited to the creditors of a particular part of the undertaking, which has been abandoned, but includes creditors of the co. generally. *Ex parte BRADFORD AND DISTRICT TRAMS AND TRAMWAYS CO.*

**Stirling J. [1893] 3 Ch. 463**

Dissenting from *by Cozens-Hardy J. Turpin*

**PARLIAMENT (Deposits and Bonds)**—*continued.*  
*v. Somerton, &c., Tramway Co.*, [1900] W. N. 94.  
*See No. 1, above.*

6. — *Payment out*—*Priority of claims*—*"Creditors."*

The distinction between "meritorious" and "non-meritorious" creditors has since the Act of 1892, ceased to exist, and all creditors have a claim on the deposit in priority to the depositors.

(A) *In re HULL, BARNSELY AND WEST RIDING JUNCTION RY.* **Chitty J. [1893] W. N. 83**

(B) *Ex parte BRADFORD AND DISTRICT TRAMWAYS CO.* **Stirling J. [1893] 3 Ch. 463**

Dissenting from *Cozens-Hardy J. Turpin v. Somerton, &c., Tramway Co.*, [1900] W. N. 94.

(C) *In re MANCHESTER, MIDDLETON AND DISTRICT TRAMWAYS CO.* **Kekewich J. [1893] 2 Ch. 638**

7. — *Tramway company*—*Abandonment*—*Evidence*—*Board of Trade notice of non-completion.*

An application for the payment out of court of the parliamentary deposit on the abandonment of a tramway was supported by affidavit, but no Bd. of Trade notice under s. 18 of the Tramway Act, 1870, was produced:—

*Held*, that the notice was the only evidence which the Court ought to receive, unless satisfied beyond all dispute that it could not be produced. *In re DUDLEY AND KINGSWINFORD TRAMWAYS*

**Kekewich J. [1893] W. N. 162**

8. — *Tramway company*—*Liquidator*—*Board of Trade Rules, Aug., 1886, r. 22.*

The parliamentary deposit required by the Bd. of Trade in the case of a tramway co. is not part of the general assets of the co.: it is only made assets for the special purpose of paying the creditors of the co.

Where a tramway co. was being wound up, *held* that the liquidator was not a creditor of the co. nor entitled to receive out of the deposit the general costs of the liquidation or his own remuneration, but only his costs with reference to the application of the deposit. *In re COLCHESTER TRAMWAYS CO.*

**North J. [1893] 1 Ch. 309**

### Election Expenses.

9. — *Return of election expenses*—"Transmit"—*Error in return*—*Penalties*—*Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 33, 34.*

In sub-s. 1 of s. 33 of the Corrupt and Illegal Practices Prevention Act, 1883 (which provides that, within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate at that election shall "transmit" to the returning officer a true return respecting his election expenses), the word "transmit" means "send," and, therefore, if the return is posted to the returning officer within the thirty-five days, the sub-section is complied with, although the return does not reach him until after the expiration of that period.

The fact that the return of election expenses transmitted to the returning officer under s. 33 contains an error does not make it a nullity so as to render the candidate liable to the penalties

**PARLIAMENT (Election Expenses)**—*continued*.  
imposed by sub-s. 5 of that section upon a candidate for sitting or voting before the return required by the Act has been transmitted. *MAC-KINNON v. CLARK* - C. A. [1893] 2 Q. B. 251

#### Election Petition.

*A copy of the shorthand writers' notes of the judgments in all election petitions since the general election of 1892 forms the Parl. Paper, 1893 (25). Price 11½d.*

#### 10. — Amendment—Appeal.

An order of a Div. Ct., consisting of two election judges, rescinding an order amending an election petition, on the ground that the judge who made it, not being on the rota of election judges, had no jurisdiction, is a decision on a point of law within s. 14 of the Judicature Act, 1881, and no appeal lies therefore to the C. A. without the leave of the Div. Ct. *SHAW v. RECKITT*  
Div. Ct. [1893] 1 Q. B. 779;  
C. A. [1893] 2 Q. B. 59

*See now* Supreme Court of Judicature Act, 1894 (57 & 58 Vict. c. 16).

11. — *Changing place of trial*—"Special circumstances"—*Parliamentary Elections Act, 1868* (31 & 32 Vict. c. 125), s. 11. sub-s. 11.

There is no jurisdiction under s. 11, sub-s. 11, of the Parliamentary Elections Act, 1868, to order a change in the place of trial of an election petition without special circumstances. The mere fact that a trial could be more cheaply and conveniently held in some place other than the borough or county where the election took place does not amount to "special circumstances."  
*LAWSON v. CHESTER MASTER*

Div. Ct. [1893] 1 Q. B. 245

12. — *Particulars—Offences subsequent to date of petition.*

An election petition, after alleging that the respondent had been guilty of bribery, treating and undue influence, further charged him with the commission of "other corrupt and illegal practices before, during and after the election":—

*Held*, that it was not competent to the petitioner to include in his particulars, or to give evidence of, offences alleged to have been committed after the date of the petition, the petition not having been amended within the time limited for amendment. *CREMER v. LOWLES* (*HAGGERSTON ELECTION PETITION*)

C. A. [1896] 1 Q. B. 504

13. — *Particulars—Scrutiny—Claim of seat*—*Election Petition Rules, 1868*, rr. 6, 7.

Where a petitioner asks for a scrutiny of votes and claims the seat if the scrutiny be in his favour, r. 7 of the Election Petition Rules, 1868, applies to the exclusion of r. 6, and the Court has no jurisdiction to order particulars other than those specified in r. 7, or to enlarge the time for their delivery. *MUNRO v. BALFOUR*

Div. Ct. [1893] 1 Q. B. 113

Followed by C. A. *See next Case.*

14. — *Particulars—Scrutiny—Claim of seat*—*Election Petition Rules, 1868*, rr. 6, 7.

Rule 6 of the Election Petition Rules, 1868, does not apply in the case of a claim for the seat

**PARLIAMENT (Election Petition)**—*continued.*

for an unsuccessful candidate on the ground that he had a majority of lawful votes. In such a case rule 7 is exclusively applicable, and therefore an order for particulars cannot be made.

*Munro v. Balfour*, [1893] 1 Q. B. 113, followed.  
*FURNESS v. BERESFORD.* (*THE YORK ELECTION PETITION*) - C. A. [1898] 1 Q. B. 495

15. — *Particulars—Time for delivery*—*Election Petition Rules, 1868*, r. 6.

Although the general practice may be that particulars under r. 6 of the Election Petition Rules, 1868, should be delivered within seven clear days before the trial of the petition, there is no inflexible rule to that effect. The matter is in the discretion of the Court, and must depend upon the particular circumstances of each case.

*RUSHMERE v. ISAACSON* - Div. Ct.  
[1893] 1 Q. B. 118

16. — *Right of subject to petition Parliament.*

The right of the subject to petition Parliament does not give him a right of action against any member of the House of Commons for refusing to present his petition. *CHAFFERS v. GOLDSMID*

Div. Ct. [1894] 1 Q. B. 186

#### Franchise.

*EXPENSES.* By the "Registration of Electors Act, 1891" (54 & 55 Vict. c. 18), the *Parliamentary Registration Act, 1878* (41 & 42 Vict. c. 26), s. 30, was applied to registration expenses in a parish situate in a parliamentary and not in a municipal borough.

*ORDERS.* The *Registration Order, 1895*, dated March 8, 1895. *St. R. & O. 1895*, No. 140, L. 8. Price 4d. *Lond. Gaz.* March 19, 1895, pp. 1633-1672.

*Police Disabilities Removal Act, 1893* (56 & 57 Vict. c. 6), extends the *Police Disabilities Removal Act, 1887*, to municipal and other similar elections.

*REMOVAL OF DISABILITIES.* *Electoral Disabilities Removal Act, 1891* (54 & 55 Vict. c. 11), removes certain disabilities caused by absence or break of residence which prevented persons being registered as voters at parliamentary and local elections.

17. — *Absence—Compulsory absence—Detention in police office—Admission to bail—Subsequent fine—Household franchise.*

G. was arrested, during the qualifying year and lodged in the police office, on the charge of being drunk and disorderly in a public street. On the day of his arrest, and after a custody of some hours, he was admitted to bail. He appeared before the magistrates at the Petty Sessions Court on the next day, was convicted and fined 5s. and costs, which he thereupon paid:—

*Held*, that G.'s detention in the police office did not operate as a break in his inhabitant occupancy of his dwelling-house, and that he was entitled to the franchise. *CRIGLINGTON v. GALLAGHER*, (1889) 26 L. R. Ir. 134 C. A. (Ir.) [1897] W. N. 106

18. — *Absence—Compulsory absence during part of the qualifying period—Fine for drunken-*

**PARLIAMENT (Franchise)—continued.**

*ness not paid at rising of Court—Detention in waiting room of goal for twenty minutes—Household franchise.*

P. M. was fined by the Mayor of Londonderry for being drunk and disorderly, and in default of payment he was sentenced to be imprisoned. The fine was not paid at the rising of the Mayor's Court, and P. M. was taken to the waiting-room of the goal before being placed in a cell. After being in the waiting-room twenty minutes the fine was paid, and he was discharged :—

*Held*, that P. M., who was otherwise entitled to the franchise, was not disqualified by such detention. *McCARRON v. CHAMBERS*, (1890) 28 L. R. Ir. 294 C. A. (Ir.) [1897] W. N. 107

19. — *Absence—Compulsory absence during part of qualifying year—(a) Imprisonment upon conviction, with option of paying a fine—(b) Remand followed by acquittal—(c) Remand followed by conviction, or admission of guilt, and immediate discharge.*

1. D., who was convicted of a criminal offence, and sentenced to fourteen days' imprisonment, with the option of paying a fine, not having availed himself of the alternative, underwent his term in gaol during the qualifying year :—

*Held*, by the C. A. (affirming the decision of the revising barrister), that he was not entitled to be registered as a voter in respect of the inhabitant household franchise.

2. C., who was charged before justices with a criminal offence, was, during the qualifying year, remanded to gaol for a week in consequence of his refusal to give bail for his reappearance before them at the end of that period. On the expiration of the week he was brought before them again, when the charge against him was dismissed, and he was discharged :—

*Held*, by Sir Michael Morris C.J. and Barry L.J. (diss. FitzGibbon L.J.), reversing the decision of the revising barrister, that having been ultimately proved innocent, C.'s detention in gaol did not operate as a break in his inhabitant occupancy of his dwelling-house, and that he was entitled to be registered as a voter in respect of the inhabitant household franchise.

3. M. was brought before justices on a criminal charge, and remanded to gaol for two days during the qualifying year. Upon being brought up again on the expiration of the two days he either pleaded guilty or was convicted (it did not clearly appear which), but, in the exercise of the bench's discretion, was discharged :—

*Held* (affirming the decision of the revising barrister), that, having been lawfully (as his guilt proved) detained in gaol during portion of the qualifying year, there was a break in his inhabitant occupancy of his dwelling-house, and he was not entitled to be registered as a voter in respect of the inhabitant household franchise.

*Rez v. Mitchell*, (1809) 10 East, 511, *Powell v. Guest*, (1864) 18 C. B. (N.S.) 72, and *Ford v. Hart*, (1873) L. R. 9 C. P. 273, discussed. *DONNELLY v. GRAHAM*, *CONNOLLY v. RIDDALL*, *MARTIN v. HANRAHAN* (No. 2), (1888) 24 L. R. Ir. 127

C. A. (Ir.) [1897] W. N. 103

20. — *Absence—Compulsory absence during part of the qualifying period—Militia sergeant—*

**PARLIAMENT (Franchise)—continued.**

*Imprisonment—Confinement to camp for military offence—Household franchise—54 Vict. c. 11.*

A sergeant in a militia regiment, ordinarily resident in Londonderry, while on training with his regiment at Buncrana, was sentenced to be a prisoner at large for forty-eight hours on a charge of drunkenness. The effect of the sentence was that he was not allowed outside the camp lines during the period :—

*Held*, that he was not thereby disqualified as an inhabitant occupier in respect of his residence in Londonderry. *O'CONNELL v. HOLLAND*, [1900] 2 Ir. R. 448 C. A. (Ir.) [1900] W. N. 224

21. — *Absence—Compulsory absence from qualifying premises during part of each week—Household franchise—County vote.*

The claimant was tenant of a house in which his family resided, but by the terms of his employment, as servant at a hotel, the claimant was obliged to remain in the hotel for six days and six nights in each week; the remaining day and night in each week being spent by him in his own house :—

*Held*, that the claimant was entitled to the franchise in respect of the house. *McKENDRICK v. BUCHANAN*, (1886) 20 L. R. Ir. 206

C. A. (Ir.) [1899] W. N. 172

22. — *Absence from house during repairs—Household franchise.*

A labourer worked for an employer, by whom he was given, in addition to his wages, a house at a shilling a week; during the qualifying period he lived in two houses, living in one from July 2 to August 22, while alterations were being made in the other, but he only paid rent for one house during this period, and made no succession claim :—

*Held* (diss. Sir P. O'Brien C.J.), that he was not entitled to the franchise. *TORISH v. HENDERSON* (1894) 2 Ir. R. 155

C. A. (Ir.) [1897] W. N. 112

23. — *Absence—Compulsory absence—Imprisonment for part of day—Household franchise.*

Imprisonment after conviction for part of a day does not disqualify. *HOLLAND v. HAGAN*, [1895] 2 Ir. R. 551 C. A. (Ir.) [1897] W. N. 108

24. — *Absence—Compulsory absence—Temporary detention pending trial—Household franchise.*

Imprisonment for a week pending a trial on a criminal charge which had not taken place at the date of the Revision Sessions does not disqualify, as innocence must be presumed until conviction. *CHARLTON v. MORRIS*, [1895] 2 Ir. R. 541

C. A. (Ir.) [1897] W. N. 107

25. — *Absence—Imprisonment—Constructive residence—County franchise—Inhabitant occupier—Election law—48 Vict. c. 3, ss. 2, 7 (4); 31 & 32 Vict. c. 48, s. 3.*

A man occupied a dwelling-house as the ordinary habitation of himself and his family during the qualifying period, but was in prison during a portion of that period :—

*Held*, that his compulsory absence did not interrupt the continuity of his inhabitancy to prevent his acquiring a qualification to vote as an "inhabitant occupier" in the sense of the

**PARLIAMENT (Franchise)—continued.**

Representation of the People Acts, 1868 and 1884. *WATT v. MCGUIRE*, (1888) 16 R. 263

Registration App. Ct. (Sc.) [1897] W. N. 109

26. — *Alms which by the law of Parliament disqualify from voting—Borough vote—Reform Act, 1832 (2 & 3 Will. 4, c. 45), s. 36.*

For more than a year previous to July 15, 1896, the appellant was a brother of a hospital at Hull and occupied a room therein, in respect of which he was rated for the relief of the poor, and was in receipt of a weekly allowance of 7s. with medical attendance and coals.

The hospital was founded in 1384 for feeble or old men and women "so long as they are necessitous." The property from which the revenues were derived was granted to the master, brethren, and sisters and their successors for ever, and is still vested in them. By subsequent schemes the brethren and sisters were elected by the corporation of Hull and were removable at their pleasure. This power of removal had, however, never been exercised. The brethren had hitherto voted without objection in parliamentary elections:—

*Held*, that the appellant was not disqualified from voting by the receipt of alms within the meaning of s. 36 of the Reform Act, 1832. *COWEN v. TOWN CLERK OF KINGSTON-UPON-HULL*

Div. Ct. [1897] 1 Q. B. 273

— Allowances to members—Construction of Act. See NEW SOUTH WALES. 35.

27. — *Amend, Power of revising barrister to—Description of qualifying property—Franchise—Registration—Borough vote—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 13.*

The claimant for a borough vote entered by mistake in the fourth column of his notice of claim, as the description of qualifying property, 202, Gordon Road and 31, Monk Street. It was proved that he had occupied 202, Gordon Road and 33, Monk Street in immediate succession for the qualifying period, and the revising barrister altered 31 into 33, and allowed the claim:—

*Held*, that the revising barrister had power to make the amendment. *KITCHEN v. JOHNSON*

Div. Ct. [1899] 1 Q. B. 95

28. — *Amendment—Borough vote—Revising barrister—Transfer from one list to another—Parliamentary Registration Act (6 & 7 Vict. c. 18), ss. 15, 38; 41 & 42 Vict. c. 36, s. 24; s. 28, sub-s. 1, 12, 13, 15.*

A revising barrister cannot transfer the name of a voter on Division 3 of the list (burgess qualification only) to Division 1 (parliamentary and municipal qualification) upon a declaration by the elector that he is entitled to both qualifications, unless he has made a claim to be placed on Division 1. *LORD v. FOX*

Div. Ct.

[1892] 1 Q. B. 199

29. — *Amendment—Claim—Household franchise—Borough vote—Claim omitting number of qualifying house—Power to amend—Exercise of, how far obligatory—Mistake—List—Representation of the People (Ireland) Act, 1885 (48 Vict. c. 17), s. 27 (1) and (5), and Form 21.*

A person claiming the borough franchise as

**PARLIAMENT (Franchise)—continued.**

a rated occupier, or as an inhabitant householder, must insert in his claim the number (if any) of every house included in his qualifying premises.

In the event of the omission of the number in such a case, the revising barrister has power to supply the mistake; but it is not obligatory upon him to do so where there has been no official mistake; and the Court of Appeal will not interfere with the exercise of his discretion.

*Mathews v. Magrath*, (1868) Ir. R. 3 C. L. 127, observed upon. *LAVRY v. KINGSBERRY and BLACK*, (1886) 20 L. R. Ir. 387

C. A. (Ir.) [1898] W. N. 118

30. — *Amendment—Claim—Household franchise—Borough vote—Registration of voters—Description of qualification—Qualifying premises occupied in succession—Power of revising barrister to amend claim—Representation of the People (Ireland) Act, 1885 (48 Vict. c. 17), s. 4.*

Where a person's right to be admitted to the franchise depends upon his occupation of different premises in immediate succession, his claim must set forth and describe the several qualifying premises, and if it omit to do so, the revising barrister has no power, under s. 4 of the Registration (Ireland) Act, 1885 (48 Vict. c. 17), to amend or correct it. *DEMPSEY v. KEEGAN* (1885) 18 L. R. Ir. 280

C. A. (Ir.) [1898] W. N. 117

31. — *Amendment—Claim—Omission of description of qualifying property—Registration of Voters (Scotland) Act, 1856 (19 & 20 Vict. c. 58), s. 46.*

In a claim for enrolment as a voter in the Eastern Division of the county of Fife, as "tenant of house, Newburgh," the column headed "street, lane, or other place where the property is situated" was left blank:—

*Held*, that the Registration of Voters (Scotland) Act, 1856, s. 46, did not authorize the sheriff to allow the claim to be amended by filling up the blank. *OSBORNE v. MELVILLE*, (1899) 2 F. 266

C. A. (Sc.) [1900] W. N. 231

32. — *Amendment—Claim—Successive claim—Description of qualification—Power to amend—Defective claim—Household franchise—Borough vote—Representation of the People (Ireland) Act, 1885 (48 Vict. c. 17), ss. 4, 27 (Cf. 41 & 42 Vict. c. 26, s. 28 (13) (England)).*

The statements on the face of a claim to be admitted to the parliamentary franchise must be sufficient to constitute a legal franchise of some defined character, and then, if the facts proved turn out to be insufficient to establish a legal franchise of that character, but one to establish a legal franchise of another character, the claimant may be registered.

If the legal nature of the qualification derived from the premises mentioned in the claim is not sufficiently stated, the claim can be amended; but no qualifying property which is not mentioned can be added.

M. claimed to be registered as an "inhabitant occupier" in respect of the premises 1, Cottage Row, in the borough of Londonderry. The claim described the qualifying premises as "dwelling-house, 1, Cottage Row, in immediate succession from dwelling-house, Corbett Street, London-

**PARLIAMENT (Franchise)—continued.**

derry." It was proved that M. had gone to reside at No. 1 in September, 1885, from No. 8, Cottage Row, which latter premises he had occupied for about three weeks immediately after the house in Corbett Street, where he had resided since before July 25, and that the premises so intermediately occupied had been omitted from the claim, owing to the claimant's considering it unnecessary to enter them:—

*Held*, affirming the decision of the revising barrister, that the claim was defective in not setting out all the qualifying premises, and that the revising barrister had no power to amend it in this respect.

*Ford v. Hoar*, (1884) 14 Q. B. D. 537, questioned. *MELAUGH v. CHAMBERS*, (1886) 20 L. R. Ir. 286 C. A. (Ir.) [1898] W. N. 119

**33. — Amendment—County vote—Ownership list—Revising barrister—Description of qualification.**

A revising barrister cannot amend the third column of the owners' list by substituting "leasehold" for "freehold" as the description of the qualifying property. *PLANT v. POTTS*

C. A. [1891] 1 Q. B. 256

Referred to by Div. Ct. *Soutter v. Roderick*, [1896] 1 Q. B. 91, 96.

**33A. — Amendment—Description of qualification—Elections Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 12, 13.**

A. claimed to have his name inserted in Division 1 of the list of voters, the "nature of the qualification" being stated as "dwelling-house—successive," the "description of the qualification" being that of two houses: it appeared that A. had lived at the latter of them for the whole of the qualifying period:—

*Held*, that the revising barrister had no power to amend the claim, as the qualification for occupation of successive houses was different from that for occupation of a single house; and that it made no difference whether words were sought to be added or struck out, or whether the list of voters or the claim was sought to be amended.

(A) *MANN v. JOHNSON* - Div. Ct. [1893] W. N. 196

Followed.

(B) *HURCUM v. HILLEARY*

C. A. [1894] 1 Q. B. 579

**34. — Amendment—Description—Qualification—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28—Registration Order, 1895, Sched. II., Part I., s. 19, i. (b.).**

A person who claimed to have his name entered in the list of occupiers of a parliamentary borough inserted in his claim under the head of "Nature of Qualification" the word "dwelling-house," and under that of "Description of Qualifying Property" the words "69 Richmond Road, 3 Hamilton Square." The revising barrister amended the statement of the nature of qualification by inserting the word "successive" after the word "dwelling-house":—

*Held*, that, as on a reasonable construction of the claim the qualification stated must be taken to refer to successive occupation, the revising

**PARLIAMENT (Franchise)—continued.**

barrister had power to make the amendment. *SOUTTER v. RODERICK* [1895] W. N. 156 (7); [1896] 1 Q. B. 91

**35. — Amendment—Description of qualification—Power to amend—Representation of the people (I.) Act, 1885 (48 Vict. c. 17), s. 4—Relevancy of evidence adduced with view of amendment—Registration of voters.**

The claimant appeared on the register as an inhabitant occupier in respect of a house rated at 10s. He was not entitled to have his name retained upon the register as an inhabitant occupier, but it was proved at the revision that he was further rated at above 10l. for land situate in the same electoral division, and was, in respect thereof, qualified to be registered as a voter for the division. The revising barrister was required, on behalf of the claimant, to amend the qualification stated, and to transfer the claimant's name to the list of rated occupiers. The revising barrister refused to do so, on the ground that the evidence offered at the revision was evidence of a qualification different from that described in the register, and that he had therefore no power to make such amendment and transfer:—

*Held*, by the C. A., that the revising barrister's decision was right. *WILSON v. BUCHANAN*, (1886) 20 L. R. Ir. 213 C. A. (Ir.) [1898] W. N. 124

**36. — Amendment—Lodger claim—"Mistake"—Revising barrister.**

A lodger claimed as sole tenant of a bedroom and as joint tenant of a sitting-room, stating his lodgings were of the yearly value of 10l. and upwards. The revising barrister, being satisfied that the bedroom alone was of the value of 10l. struck out the reference to the joint tenancy, and allowed the vote:—

*Held*, that this was a "mistake" in the description of the qualification, which the barrister could amend. *REG. v. McKELLAR*

Div. Ct. [1893] 1 Q. B. 121

And see Nos. 60—86, below.

**37. — Appeal—Borough vote—Duplicate entries—Elector's notice of selection—Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 17, 18, 39, 42—Elections Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 14—Registration of Electors Act, 1885 (48 & 49 Vict. c. 15), s. 59, Sched. 3, Form (P)—Registration Order, 1889, Sched. 3, Form (P).**

No appeal lies from a decision of a revising barrister upon the validity of a notice given by an elector, under s. 28, sub-s. 14, of the Parliamentary and Municipal Registration Act, 1878, in the case of duplicate entries in the list of voters for a borough, selecting the entry to be retained for voting. *REG. v. LIVERPOOL (REVISING BARRISTER)*

Div. Ct. [1895] 1 Q. B. 155

Distinguished by Div. Ct. *Jones v. Munro*, [1899] 1 Q. B. 109, 115.

**38. — Appeal—Competency—Question of law—Registration Amendment (Scotland) Act, 1885 (48 Vict. c. 16), s. 22.**

In a case stated for appeal under the Registration Amendment (Scotland) Act, 1885, s. 22, the question of law was, "Whether in the cir-



**PARLIAMENT (Franchise)—continued.**

cumstances above detailed, I rightly refused to entertain the claim?"

Opinion per Lord Kinnear, that this was not a proper form of question, in respect that it did not put a specific question of law. **ANDREWS v. ARMSTRONG**, (1897) 25 *Rettie*, 95

**C. A. (Sc.) [1899] W. N. 170**

**39. — Bankruptcy—Borough vote—Occupation franchise.**

A claimant in respect of the occupation of a house as tenant became bankrupt during the qualifying period. The trustee did not interfere with the property, and the landlord continued to accept rent from the bankrupt:—

*Held*, that he had been in continuous occupation as a tenant within s. 3 of the Representation of the People Act, 1867, and that the fact that s. 20 of the Bankruptcy Act, 1883, had vested the property in the trustee, did not deprive the bankrupt of his right to vote. **MACRAY v. MCGUIRE** **Div. Ct. [1891] 1 Q. B. 250**

**40. — Borough franchise—Failure to pay poor-rate—Partial payment of consolidated rate without specific appropriation to poor-rate—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 5.**

The claim of a person to be registered as a borough voter as inhabitant occupier of a dwelling-house was objected to on the ground that he had not paid the poor-rates due by him on the preceding May 15. He had been assessed for 2s. 8d. of consolidated parish rates, of which 1s. 6d. was poor-rate, and he had paid 2s. on account, but this payment was not appropriate to poor-rate:—

*Held*, that the claimant had not paid the poor-rate, and was not entitled to be registered. **BELL v. GALT**, (1897) 24 *R. 376*.

**Registration App. Ct. (Sc.) [1898] W. N. 111**

**41. — Canons residentiary—Borough vote—Occupation franchise—Parliament Act, 1832 (2 & 3 Will. 4, c. 45), s. 27—Representation of the People Act, 1885 (48 & 49 Vict. c. 3), ss. 5, 7, sub-s. 7.**

Canons residentiary of a cathedral who occupy the qualifying premises for three months only in the year are not entitled to a vote. **ROWLAND v. PRITCHARD** **Div. Ct. [1893] W. N. 34**

**42. — Canons residentiary—County vote—Freehold qualification—Ecclesiastical Commissioners Act, 1840 (4 & 5 Vict. c. 39), s. 25.**

Canons residentiary of a cathedral who are entitled under 4 & 5 Vict. c. 39, s. 25, to a fixed share in the corporate revenues, have no freehold qualification in respect of shares in the freehold lands of the corporation. **HARRIS v. PHILLIPS**

**Div. Ct. [1891] 1 Q. B. 267**

**43. — Clerk in hydropathic establishment—Election law.**

A clerk in the employment of a hydropathic co. occupied as sole occupant a room in the building belonging to the co. No particular room was expressly stipulated for him, but when he entered on his employment a room was given to him, which he had occupied for ten years; part of its furniture belonged to him. He took no meals in this room, but either in the ser-

**PARLIAMENT (Franchise)—continued.**

vants' hall, or in the reception-room. During about four months in winter he left the room thus occupied by him, and lived in a smaller and more comfortable room. No one occupied the other room in his absence; he was entitled to use it, and he moved from the one to the other of his own choice. The house steward had a room in the building set apart for him, but usually resided in a separate house in the neighbouring village:—

*Held*, that the clerk inhabited a "dwelling-house" in the sense of the 3rd section of the Reform Act of 1884, and that the "dwelling-house" was not inhabited by any person under whom he served, and that, therefore, he was entitled to be registered. **BALLINGAL v. MENZIES**, (1886) 14 *R. 127*

**Registration App. Ct. (Sc.) [1897] W. N. 95**

**44. — Cottar—Inhabitant occupier as tenant—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 3—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), ss. 2 and 7—Crofters Holdings Act, 1886 (49 & 50 Vict. c. 29), ss. 9 and 34.**

A cottar, who had built his house himself on a site pointed out by the representative of the proprietor of the ground, but who had no contract with the proprietor and paid no rent, claimed to be enrolled in the roll of voters for the county as an inhabitant occupier as tenant of the house, in virtue of the Representation of the People (Scotland) Act, 1868, s. 3—extended to counties by the Representation of the People Act, 1884, ss. 2 and 7. Under the Crofters Holdings (Scotland) Act, 1886, ss. 9 and 34, the claimant had a right to compensation for permanent improvements, if removed from his holding:—

*Held*, that he was not an inhabitant occupier as tenant within the meaning of the Representation of the People Acts, and was not entitled to be entered on the roll. **CAMPBELL v. MACLACHLAN**, (1898) 1 *Fraser*, 212

**C. A. (Sc.) [1899] W. N. 176**

**45. — Death of tenant—Household franchise—Occupation as tenant—Tenant dying intestate—Sole next of kin in occupation—Letters of administration.**

On the death intestate of the tenant of a house who had left Ireland, his father, who was his sole next of kin, and had been residing in the house, continued in occupation during the qualifying year, and paid the rent, without taking out letters of administration:—

*Held*, that the father was entitled to be registered as an inhabitant householder.

After the expiration of the qualifying period the father took out letters of administration to his son:—

*Held*, that the letters did not relate back for the purposes of the franchise. **HOLLAND v. CHAMBERS (JOHN DOHERTY'S CASE)**, [1894] 2 *L. R. Ir.* 285 - **C. A. (Ir.) [1897] W. N. 117**

**46. — Death of tenant—Rated occupier—Occupation as tenant—Father of claimant dying intestate—Claimant accepted as tenant—Consent of other next of kin—Joint or sole occupation.**

The claimant's father had been tenant from year to year of the qualifying premises. He died

**PARLIAMENT (Franchise)—continued.**

intestate, leaving his widow and one son (the claimant) sole next of kin. The widow and the claimant continued to live on the farm during the qualifying period. The claimant had been accepted by the landlord as tenant. The revising barrister, on these facts being proved, allowed the case to stand for the attendance of the widow to prove that she had released her claim on the farm. She did not attend, and the revising barrister disallowed the vote, on the ground that the claimant was not in sole occupation:—

*Held* (diss. FitzGibbon L.J.), that there was evidence to support the finding of the revising barrister, and that his decision should be affirmed. *GORMLEY v. BUCHANAN*, [1894] 2 Ir. R. 299

C. A. (Ir.) [1899] W. N. 156

47. — *Flats—House let in—Landlord living on premises—Inhabitant occupier or lodger—Onus of proof—Household franchise—Borough vote.*

Where the claimant, his landlord, and a third person were each occupiers of a separate flat of the house rented by the landlord, and all three used the stairs, hall-door, and yard in common, the revising barrister having decided that the claimant was not an inhabitant occupier, but a lodger:—

*Held* that, on the facts, the onus lay on the claimant of shewing that he was an inhabitant occupier and not a lodger, and that he had failed to do so.

*Held* also, that the manner in which other houses in the street were occupied was not material to the question, as each claimant's case must be decided upon its own facts.

*Per* FitzGibbon L.J., the revising barrister is bound to find the facts: and he having determined as a fact that the claimant occupied part only of a dwelling-house, and not a separate dwelling-house, and there being no conclusive evidence the other way, the Court could not determine, as a matter of law, that the claimant was an inhabitant occupier. *CAMPBELL v. CHAMBERS*. (WILLIAM CAMPBELL'S CASE), (1886) 20 L. R. Ir. 355

C. A. (Ir.) [1899] W. N. 86

48. — *Freeman franchise—Borough vote—Divided borough—Change of place of abode—Notice of claim—Redistribution of Seats Act, 1885* (48 & 49 Vict. c. 23), s. 14.

It is not necessary for a freeman who, during the qualifying period, has changed his place of abode from a residence within one division of a borough to another within the borough or the seven miles limit to serve a fresh notice of claim.

In the case of a divided borough, if the revising barrister finds that the place of abode of a freeman is wrongly stated on the list, he is bound, on proof of the true place of abode and that the same is within the qualifying radius, in the case of a duly qualified freeman, to correct the place of abode as stated in the list, and to assign the freeman to the right division for the purpose of voting. *NAGLE v. CAMPBELL*, [1896] 2 Ir. R. 326

C. A. (Ir.) [1899] W. N. 185

49. — *Grazing contract—No parting with possession by occupier—Occupation franchise—Borough vote.*

M. was a rated occupier in respect of three fields, which were grazed by L. under a parol

**PARLIAMENT (Franchise)—continued.**

yearly contract. There was a gate to each field, of which the keys were given up by L. each year. The rates were paid by M., and L. paid 14*l.* a year for the grazing. M.'s brother, who acted as his agent, kept a master key of the outer and principal gate, but did not inform L. that he did so. L. made no use of the fields except for grazing.

A person who lets the eatage of his grass does not cease to occupy as tenant:—

*Held*, that M. was entitled to remain on the list of rated occupiers. *O'SHEA v. MEARA*, (1868) Ir. Rep. Registry and Land Appeals, p. 1

C. A. (Ir.) [1899] W. N. 177

— Joint lodger.

*See* Nos. 58—86, below.

50. — *Joint occupier—Description of nature of qualification—"Dwelling-house joint"—County vote—Reform Act, 1832* (2 & 3 Will. 4, c. 45), ss. 20, 27—*Representation of the People Act, 1867* (30 & 31 Vict. c. 102), ss. 3, 27; 1884 (48 & 49 Vict. c. 3), ss. 2, 5, 7.

The qualification of two persons on the list of voters for a county was described as "dwelling-house joint." Objection was taken on the ground that such a qualification was expressly forbidden by law. The dwelling-house was of more than sufficient value to give 10*l.* a year annual value to each joint occupier:—

*Held*, that the claim, although bad as a claim for the household franchise, was good as a claim for occupation franchise. *BAGLEY v. BUTCHER*

Div. Ct. [1898] 1 Q. B. 67

51. — *Joint or sole occupation—Household franchise—Inhabitant householder—Occupation as tenant—Father of claimant dying intestate—Rent receipts given to claimant—Consent of other next of kin—Agreement.*

The tenant of a farm died intestate, leaving a son and two daughters his sole next of kin, who resided together on the farm which they worked, and were supported out of the produce. The son obtained in his own name receipts for the rent of the farm. An agreement was given in evidence on behalf of the voter, dated July 13, 1896, by which, after reciting that he had been, with the consent of his sisters, accepted as tenant of the farm, his sisters agreed to abandon all claims they might have, or might have had, as next of kin of their father, or otherwise, on the farm:—

*Held*, that the son was in occupation of the premises as sole tenant and entitled to the franchise. *GIBSON v. RIDDELL*, [1899] 2 Ir. R. 354

C. A. (Ir.) [1899] W. N. 173

52. — *Joint or sole occupation—Household franchise—Occupation as tenant—Father of claimant dying intestate—Purchase of a farm by his widow out of his assets—Claimant accepted as tenant—Consent of other next of kin.*

The tenant of a farm died intestate, leaving a widow, a son, and a daughter. The widow sold the farm and purchased another holding, on which she and her son and daughter continued to reside. The widow had some years ago returned her son's name as the tenant, and he was so accepted by the landlord, and had fixed a fair rent in his own name. The mother stated that

**PARLIAMENT (Franchise)—continued.**

she had no claim on the farm, but that she was to get her support there:—

*Held*, reversing the decision of the revising barrister, that the son was in occupation of the premises as tenant, and entitled to the franchise. *M'KEEVER v. BUCHANAN*, [1894] 2 Ir. R. 312

C. A. (Ir.) [1899] W. N. 159

**53. — Joint or sole occupation — Occupation franchise—Occupation as tenant—Grandfather of claimant dying intestate—Consent of other next of kin—Claimant accepted as tenant.**

The claimant's grandfather was tenant of the qualifying premises. He died many years ago. No personal representation to him was taken out, but his two sons (claimant's father and uncle) remained in occupation of the premises, the claimant's father being treated as the tenant by the landlord. On his father's death the claimant was accepted as tenant by the landlord. During the qualifying period the claimant's uncle and the next of kin of the claimant's father all resided together on the premises. It was alleged that the claimant's father made a will, but no probate of same was obtained, nor were letters of administration to his estate taken out. The revising barrister, on these facts being proved, allowed the case to stand for the attendance of the claimant's uncle and his father's other next of kin, to prove that they had released their claims or had assented to any change of tenancy. None of them attended, and no further evidence was given. The revising barrister held that the grandfather died intestate, that the uncle still continued to occupy the premises as one of his next of kin, without having released his claim on the farm. He also held that he had not sufficient legal evidence to enable him to hold that the next of kin of the claimant's father (other than the claimant himself) had released their interest or ceased to occupy the farm as such next of kin jointly with the claimant as joint occupiers:—

*Held*, that the decision of the revising barrister should be affirmed. *ARBUCKLE v. BUCHANAN*, [1894] 2 Ir. R. 339

C. A. (Ir.) [1899] W. N. 180

**54. — Joint or sole occupation—Onus of proof—Occupation franchise—Father of voter dying intestate—Voter accepted as tenant—Consent of other next of kin.**

The father of the voter was the prior tenant of the qualifying premises. He died intestate in 1881, leaving his widow and the voter (his son) his only next of kin him surviving, and in occupation of the qualifying premises. In 1882 the voter fixed by agreement the fair rent of the holding under the Land Law (Ireland) Act, 1881, and was thenceforth treated as tenant by the landlord. The voter stated that he was accepted by the landlord as tenant, with his mother's consent. The mother all along lived on the farm, and was maintained by its produce. She was not examined to prove that she consented to the change in the tenancy, nor was any evidence given that she had surrendered her rights under her husband's intestacy, nor, on the other hand, was evidence produced by the objector to shew that she made any claim upon the farm.

**PARLIAMENT (Franchise)—continued.**

The revising barrister held that the mother had not relinquished her claim on the qualifying premises, that there was in fact a joint beneficial occupation by the voter and his mother, and accordingly struck the voter's name off the register:—

*Held* (diss. FitzGibbon L.J.), that there was evidence on which the revising barrister might so find, and that his decision should be affirmed. *BROWN v. BUCHANAN*, [1894] 2 Ir. R. 318

C. A. (Ir.) [1899] W. N. 160

**55. — Joint or sole occupation — Qualifying premises devised by tenant to his son subject to right of widow to reside therein—Household franchise—County vote.**

The deceased yearly tenant of a house and farm devised his tenancy to his son, giving, by his will, a right to his widow to reside in the house, so long as the son was unmarried. The son was still unmarried, and the widow was still residing in the house. In all other respects the son was qualified as an inhabitant householder in respect of the premises:—

*Held* (affirming the decision of the revising barrister), that the son was entitled to the franchise.

The mere fact that another person has an incorporeal right to reside in the house does not disqualify for the franchise as inhabitant householder an otherwise qualified tenant of the house. *TORISH v. LOVE*, [1894] 2 Ir. R. 372

C. A. (Ir.) [1898] W. N. 93.

**56. — Joint owners of dwelling-house occupying separate apartments—Household franchise.**

Joint owners of a dwelling-house cannot, by separate occupation of apartments therein, individually acquire, each in respect of his apartment, the parliamentary franchise as an inhabitant occupier. *ALEXANDER v. BURKE*. *MOUNT ARGUS CASE*, (1887) 22 L. R. (Ir.) 458

C. A. (Ir.) [1899] W. N. 178

**57. — Joint tenancy in law—Separate occupation in fact—"Owner or tenant"—County vote—30 & 31 Vict. c. 102, s. 3, sub-s. 2.**

A claim to be placed on the register of voters may be sustained by each of two persons, who are joint tenants of an entire holding, consisting of separately rated dwelling-houses and land, pay a single rent, and accept receipts in their joint names, but live each in one of the dwelling-houses separately, and work portions of the land severally, and the remainder jointly.

Decision of the revising barrister reversed. *TORISH v. CLARK* (*STARBS CASE*), (1885) 18 L. R. (Ir.) 289

C. A. (Ir.) [1897] W. N. 112

**58. — Lodger—Landlord living on premises—Dwelling-house—Household franchise—Borough vote.**

Where the revising barrister finds as a fact that a voter, during the qualifying period, separately occupied as a separate dwelling-house, two rooms on a flat in a tenement house, having the exclusive control of the said rooms, and the use of the stairs, yard, &c., in common with the other inmates of the tenement house, the fact that the landlord also resided in the house does

**PARLIAMENT (Franchise)—continued.**

not per se as a matter of law disfranchise the voter.

Where the inmates of such a house are otherwise duly qualified, in order to deprive them of the franchise as inhabitant householders, the landlord must so reside upon the premises as to retain his quality of master, reserving to himself a general control and dominion over the whole structure. *M'LAUGHLIN v. CHAMBERS*, [1896] 2 Ir. R. 497

**C. A. (Ir.) [1898] W. N. 90**

**59. — Lodger franchise—Annual value—Appeal—Competency—Question of law—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), ss. 4 and 22.**

A sheriff having rejected a claim to be enrolled as a lodger voter, on the ground that the lodgings occupied by the claimant were not of the statutory value of 10*l.*, if let unfurnished, the claimant obtained a case for appeal under s. 22 of the Act. The case stated that the claimant had the exclusive use of one room in a house of two rooms and a kitchen; that the rent of the whole house was 12*l.* 10*s.*; that the claimant paid 8*s.* a week for the room; that in his declaration he declared the annual value of the room, if let unfurnished, to be 10*l.* 8*s.*, this sum being half of the total sum paid by him for the year; that it was usual in Registration Courts to assume, as matter of agreement and for convenience, that half of the rent paid for lodgings was for the use of the bare rooms and half for attendance and use of furniture; but that the sheriff held as matter of fact that the value of the claimant's room, if let unfurnished, was less than 10*l.* yearly.

The following question was stated in the case as the question of law: "Whether, in determining the value of the room, if let unfurnished, the sheriff was right in taking into consideration all the circumstances admitted and proved, or was bound to accept the claimant's declaration in his claim and oath, and the fact that 8*s.* per week was paid for the lodging, as by themselves conclusive?"

The Court dismissed the appeal, holding that the case presented no question of law for judgment. *HAMILTON v. FERGUSON*, (1897) 25 Rettie, 94 - - - **C. A. (Sc.) [1899] W. N. 169**

**60. — Lodger franchise—Annual value—Proof—Valuation-roll—Registration Amendment (Scotland) Act, 1885 (48 & 49 Vict. c. 16), s. 14.**

The Registration Amendment (Scotland) Act, 1885, enacts, s. 14: "In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim shall, for the purposes of revision, be *prima facie* evidence of his qualification."

A claimant set forth in his declaration that he had been for the statutory period tenant of a room which was of the clear yearly value, if let unfurnished, of 10*l.* or upwards (the statutory amount). No objection to the claim was lodged, but the sheriff *ex proprio motu* ascertained from the valuation roll that the house of which the room was a part (and which consisted of three rooms in all) was entered therein at the annual value of 12*l.* 10*s.* He thereupon rejected the claim.

The Court reversed the judgment of the

**PARLIAMENT (Franchise)—continued.**

sheriff, and remitted to him to add the claimant's name to the roll, holding there was no evidence to rebut the *prima facie* evidence of the declaration. **DANIEL FLYNN'S CASE**

**C. A. (Sc.) [1900] W. N. 230**

**61. — Lodger franchise—Bedroom in hotel taken for the year—Permission to hotel proprietor to let the room during the lodger's absence.**

R. M. occupied a bedroom in an hotel by the year, and had the use of a sitting-room. The lodgings were of the requisite value. He gave leave to the hotel proprietor to let the bedroom while he was absent on vacation, and the money paid by such persons was received by the proprietor of the hotel.

*Held*, that R. M. was entitled to the franchise **KELLY v. CHAMBERS (McConnell's Case)**, (1890)

**C. A. (Ir.) [1897] W. N. 125**

**62. — Lodger franchise—Claim—Amendment—Registration of Voters (Scotland) Act, 1856 (19 & 20 Vict. c. 58), s. 46.**

The Registration of Voters (Scotland) Act, 1856, s. 46, enacts: "No misnomer or inaccurate or defective description of any person, place, or thing named or described, in any schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in any way prevent or abridge the operation of this Act with respect to such person, place, or thing, provided that such person, place, or thing shall be so denominated in such schedule, list, register, or notice, as to be commonly understood; and it shall be lawful to any sheriff in his Registration Court, or to any Court of Appeal, if it shall appear to him or to such Court that there has been no wilful purpose to mislead or deceive, and that such misnomer or inaccurate or defective description was not such as to mislead or deceive, to allow any verbal, clerical, or casual error in any such schedule, list, register, or notice to be corrected or supplied."

A claimant for enrolment as a lodger voter in a burgh had, during the statutory twelve months, occupied lodgings in three houses successively, but in his claim the last occupied of these houses only was set forth. The claim having been objected to, the sheriff allowed the claim to be amended by adding to the description of that house a description of the two other houses. The sheriff having admitted the claim, the objector appealed. It appeared from the case that the sheriff was satisfied that the failure to mention the two houses in the claim "arose from a casual error":—

*Held*, that the sheriff had power to allow the amendment to be made.

*Gray v. Craig*, (1892) 20 Rettie, 81, followed. *Campbell v. Alexander*, (1868) 7 Macph. 283, distinguished. *ROSS v. CARBERY*, (1897) 25 Rettie, 98 - - - **C. A. (Sc.) [1899] W. N. 171**

**63. — Lodger franchise—Claim—Declaration—Refusal of claimant to answer citation—Registration Amendment (Scotland) Act, 1885 (48 Vict. c. 16), s. 14.**

The Registration Amendment (Scotland) Act, 1885, s. 14, enacts:—"In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim shall, for the pur-

**PARLIAMENT (Franchise)—continued.**

poses of revision, be *prima facie* evidence of his qualification."

A claimant for enrolment as a lodger, who had produced a declaration in statutory form, was cited by an objector to give evidence as to the validity of his claim. The claimant failed to appear at the Registration Court, but counsel for him moved that his claim should be admitted on the ground that his declaration was *prima facie* evidence of his qualification. The sheriff held that the claimant was bound to appear, but continued the case until an adjourned Court on a day specified, in order to give him an opportunity of appearing, and also intimated that a re-citation was unnecessary, and that the claimant's failure to appear at the adjourned Court, without some very special reason assigned for his non-appearance, would lead to the claim being rejected. The claimant not having appeared at the adjourned diet, and no reason having been assigned for his non-appearance, the sheriff rejected the claim.

*Held*, that the claim had rightly been rejected.

*Stirling v. Fletcher*, (1895) 23 Rettie, 120, followed. **ANDREWS v. ARMSTRONG**, (1897) 25 Rettie, 95  
**C. A. (Sc.) [1899] W. N. 170**

**64. — Lodger franchise—Claim and declaration — Presumption — Registration Amendment (Scotland) Act, 1885 (48 Vict. c. 16), s. 14.**

The Registration Amendment (Scotland) Act, 1885, s. 14, enacted: "In the case of a person claiming to vote as a lodger the declaration annexed to his notice of claim shall, for the purposes of revision, be *prima facie* evidence of his qualification."

A person claiming the lodger franchise produced at the Registration Court a claim accompanied by the statutory declaration. The claim being objected to, the sheriff-substitute, after a proof, rejected the claim, proceeding upon the sole evidence of the assessor, who deposed that he had been informed by some persons unnamed that during the year preceding the qualifying year the claimant had only occupied exclusively one room which was not of the statutory value, and that he did not know whether he had occupied any other room during the qualifying year.

In an appeal *held* that the claim fell to be allowed, in respect that the evidence upon which the sheriff-substitute had proceeded was incompetent, and that the statutory presumption in favour of the qualification had not been rebutted.

**DALGLEISH v. DODDS**, (1894) 22 Rettie, 198  
**C. A. (Sc.) [1899] W. N. 165**

**65. — Lodger franchise—Claim and declaration—Presumption—Wilful refusal of claimant to answer citation as witness—The Registration Amendment (Scotland) Act, 1885 (48 Vict. c. 16), s. 14.**

The Registration Amendment (Scotland) Act, 1885, by s. 14, enacted: "In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim shall, for the purposes of revision, be *prima facie* evidence of his qualification."

A person, claiming the lodger franchise in respect of a bedroom occupied by him in his father's house, produced at the Registration Court

**PARLIAMENT (Franchise)—continued.**

a notice of claim accompanied by the statutory declaration. The claim was objected to upon the allegation that the claimant had no contract with his father. The objector proposed to prove this by the evidence of the claimant himself, whom he had duly cited to attend. The claimant having failed to attend the diet, the sheriff continued the case to an adjourned diet, to which the claimant was again cited. The claimant again failed to attend, and the objector led no evidence against the claim. The sheriff sustained the claim.

In a special case obtained by the objector, the sheriff stated that he considered himself bound by the case of *Dalgleish v. Dodds*, (1894) 22 Rettie, 198, to admit the claim, otherwise he would have held the claimant as confessed, and rejected it.

The Court *held* that the case of *Dalgleish v. Dodds* did not apply, and (*diss.* Lord Kincairney) that the sheriff should have given effect to his view of the evidence and refused the claim.

**STIRLING v. FLETCHER**, (1895) 23 Rettie, 120  
**C. A. (Sc.) [1899] W. N. 166**

**66. — Lodger franchise—Claim not signed by claimant—Contemporaneous ratification of signature—Insufficiency—31 & 32 Vict. c. 49, s. 4, sub-s. 3; s. 5—48 Vict. c. 17, Sched. I, Part III, Form No. 31.**

A lodger's claim to be admitted to the franchise must (if he can write) be signed or marked by his own hand; and in such a case his name being subscribed to the claim by another person, at the request and in presence of the claimant, is insufficient. **HANBIDGE v. BEVERIDGE** (CONLAN'S CASE), (1889) 26 L. R. Ir. 423

**C. A. (Ir.) [1897] W. N. 132**

**67. — Lodger franchise—Claim not signed by claimant—Subsequent ratification of signature—Insufficiency.**

The subsequent ratification of an originally unauthorized signature to a lodger's claim is an insufficient signature of the claim, within s. 5 of the Representation of the People (Ireland) Act, 1868 (31 & 32 Vict. c. 49). **JONES v. BEVERIDGE** (KEARNS' CASE), (1886) 20 L. R. Ir. 382.

**C. A. (Ir.) [1897] W. N. 131**

**68. — Lodger franchise—Claim stating rent as "10l. and upwards," and as "included in salary"—Revising barrister's power to amend as "mistake"—48 Vict. c. 17, s. 27, sub-s. 2.**

It is essential that every lodger claimant should state in his claim whether he pays rent for his lodgings or not, what is the specific amount of any rent he pays, and to whom he pays it; and, in the event of his occupying lodgings without paying rent, he must specifically shew that he is exonerated by agreement from doing so without their losing the essential character of lodgings.

A claim by a lodger stated the "amount of rent paid" as "10l. and upwards, included in salary," and another like claim by another lodger stated such rent at "10l. and upwards" only. The revising barrister was called upon by the claimants to amend the claims (as having been so filled by "mistake") by inserting specific amounts for the rent payable; but he was of

**PARLIAMENT (Franchise)—continued.**

opinion that he had no power to do so, and rejected the claims:—

*Held*, by the C. A. (May C.J., Porter M.R., and FitzGibbon, Barry, and Naish L.J.J.), that the revising barrister had power, if necessary, to amend the claims by inserting a specific sum for the rent payable, if he had sufficient materials before him for the purpose; but, by Porter M.R., that the claim required no amendment. *CLARKE v. TORISH (CASE OF AIKEN AND OTHERS)*, (1885)

C. A. (Ir.) [1897] W. N. 127

69. — *Lodger franchise—Clear yearly value—Representation of the People (Ireland) Act, 1868* (31 & 32 Vict. c. 49), s. 4, sub-s. 2.

The clear yearly value or market value of lodgings is to be ascertained by what they will really bring—that is, as much as the lessor can obtain by open competition. *MC CREA v. BUCHANAN*, (1889) 26 L. R. (Ir.) 129

C. A. (Ir.) [1898] W. N. 112

70. — *Lodger franchise—Clerk—Bedroom in employer's house.*

A clerk who separately occupies a furnished bedroom, of sufficient value, in the house of his employer, but is not bound to do so, and could discharge his duties equally well if he resided elsewhere, is entitled to be registered as a lodger; although, if he ceased to reside in the house, he would receive an increase of salary as an equivalent for the loss of the bedroom, and would be obliged to give up possession of it at once if he ceased to do business for, or was dismissed by, his employer. *PARKER v. CHAMPION*, (1870) Ir. Rep. Registry and Land Appeals, p. 75

C. A. Ir. [1899] W. N. 178

71. — *Lodger franchise—Column of claim for "Amount of rent paid" filled in: "Estimated rent, 5s. weekly"—Claimant declining to amend.*

Where a claimant, in respect of furnished lodgings, inserted in the column of his claim headed "Amount of rent paid" the words "Estimated rent, 5s. weekly," and the claim not having been validly objected to, he relied upon the declaration before the revising barrister, and declined to amend:—

*Held* (affirming the decision below), that the claimant's name must be expunged. *BRADLEY v. COLQUHOUN* (1886) 20 L. R. Ir. 378

C. A. (Ir.) [1897] W. N. 130

72. — *Lodger franchise—Column of claim for "Amount of rent paid" filled in "Part salary"—Amendment.*

Where a person claiming the lodger franchise filled in the column of the claim headed "Amount of rent paid" with the words "Part salary," and at the hearing before the revising barrister gave no evidence, but merely relied on the declaration appended to his claim, and the revising barrister was willing, if it was necessary and he had power to do so, to amend the claim by substituting the words "Estimated value, 10l.," and ultimately admitted the claim:—

*Held* (reversing the decision below), that the claim was defective in form, and that the proposed amendment would not have cured it. *JONES v. BEVERIDGE (KAVANAGH'S CASE)*, (1886) 20 L. R. Ir. 380

C. A. (Ir.) [1897] W. N. 130

**PARLIAMENT (Franchise)—continued.**

73. — *Lodger franchise—Description of objector's "calling"—"Agent"—Power to amend.*

Where the witness to a claim for the lodger franchise described himself therein as "agent," he being, in fact a registration agent, and the revising barrister amended accordingly, although holding the original description sufficient:—

*Held* (affirming the decision of the revising barrister), that the description of "agent" was sufficient.

Whether there was power to amend, *quære*. *CAMPBELL v. CHAMBERS (HARRIS' CASE)*, (1887) 22 L. R. Ir. 460 — C. A. (Ir.) [1897] W. N. 133

74. — *Lodger franchise—Evidence of value—Valuation roll—Declaration as evidence of qualification.*

A doctor claimed as a lodger in respect of the occupation of two rooms and a surgery in a house. The rent paid for the furnished lodgings was 8s. a week, amounting to 20l. 16s. per annum. The claimant was objected to on the ground that the annual value of the whole house, as shewn by the valuation roll, was 5l., and that the value of the lodgings, which formed only part of the house, could not therefore be of the clear yearly value, if let unfurnished, of 10l. The sheriff having regard to the rent actually paid, held that the lodgings were of the required value, and admitted the claim.

The Court affirmed the decision, holding that the entry in the valuation roll was only an element in the proof, and that the sheriff was not precluded from forming his own judgment on the value of the rooms occupied by the claimant, and that there was no ground in law for interfering with his decision on what was a question of fact. *KELLIE v. LITTLE*, (1897) 24 R. 379

Registration App. Ct. (Sc.) [1898] W. N. 112

75. — *Lodger franchise—Exclusive use of bedroom—Joint use of sitting room—Alteration of claim after signature.*

A lodger with the exclusive use of one room under the annual value of 10l. cannot qualify himself for the franchise by adding thereto any portion of the annual value of another room which he occupies jointly with other lodgers in the same house. (*Diss.*, FitzGibbon L.J.)

A lodger claim and declaration cannot, without the knowledge of the claimant, be altered after it is duly signed and attested. *HAY'S CASE (GALLAGHER v. HAY)*; *EDMISTON AND ORMSBY'S CASE (GALLAGHER v. EDMISTON AND ORMSBY)*; *MAXWELL'S CASE (GALLAGHER v. MAXWELL)*, (1892) 32 L. R. (Ir.) 166 — C. A. (Ir.) [1897] W. N. 134

76. — *Lodger franchise—Hotel, Rooms in—Constructive occupation—Representation of the People Act, 1884* (48 & 49 Vict. c. 3), ss. 2, 7, sub-s. 5—*Representation of the People (Scotland) Act, 1868* (31 & 32 Vict. c. 48), s. 4.

B., a boarder in an hotel, personally occupied rooms reserved for his use under a contract with the landlord from July, 1892, to July 31, 1894, with the exception of July, August, and September, 1893, when he was absent on account of ill-health. He did not give up the rooms, and was entitled to possession of them during this period. During his absence his landlord, without his

**PARLIAMENT (Franchise)—continued.**

knowledge, for thirteen days allowed other persons to occupy the rooms, and charged them for their occupancy. During this period the landlord did not charge B. for the rooms. B. claimed to be registered as a county voter, in respect of occupancy as a lodger during the year from July 31, 1893, to July 31, 1894:—

*Held*, that B.'s occupancy was not suspended during his temporary absence on account of ill-health, and that his right to the franchise was not affected by the landlord letting the rooms without his knowledge. **MALCOLM v. BROWNE**, (1894) 22 R. 188. **Registration App. Ct. (Sc.)** [1897] W. N. 124

**77. — Lodger franchise—Interrupted residence—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 4.**

A shipping clerk claimed to have his name entered on the roll of voters of the burgh of Leith as a lodger. Under contract with his father he had had, during the period required by the Representation of the People (Scotland) Act, 1868, s. 4, sub-s. 2, the exclusive right of occupancy of a room in his father's house in Leith of the value required by the Act, and he had occupied this room from Friday evening until Monday morning of each week. During the rest of the week he generally occupied lodgings in Dundee, where he was employed by Leith ship-owners, who had an agency in Dundee, but he occasionally occupied the room in Leith for a night in the middle of a week. During his absence this room was unoccupied. He was not enrolled, and had not claimed to be enrolled, as a voter in Dundee:—

*Held (dub. Lord Kincairney)*, that the claimant had not sufficiently complied with the condition as to residence contained in the Representation of the People (Scotland) Act, 1868, s. 4, sub-s. 3. **MILLER v. BRUCE**, (1899) 2 F. 265

**C. A. (Sc.)** [1900] W. N. 230

**78. — Lodger franchise—Joint lodger—Power to amend claim—Burgh Voters' Act, 1856 (19 & 20 Vict. c. 58), s. 46.**

A person who occupied jointly with his brother lodgings which were of the annual value of 20*l.* if let unfurnished, stated in his claim to be enrolled as a burgh voter that he was a lodger tenant, and that the lodgings, if let unfurnished, were of the annual value of 10*l.* or upwards. The sheriff amended the claim by prefixing the word "joint" to the words "lodger tenant," and by substituting 20*l.* for 10*l.* as the annual value.

*Held*, that the sheriff was entitled to make the amendment. **GRAY v. CRAIG**, (1892) 20 R. 81

**Registration App. Ct. (Sc.)** [1897] W. N. 134

**79. — Lodger franchise—Person rated as occupier.**

A person whose name is on the rate-books as a rated occupier is not entitled to be registered as a lodger in the same premises, though otherwise duly qualified for the lodger franchise in respect of the premises. **CAMPBELL v. CHAMBERS (SIMPSON'S CASE)**, (1886)

**C. A. (Ir.)** [1897] W. N. 121

**80. — Lodger franchise—Qualified lodger only claiming as inhabitant householder—Revising bar-**

**PARLIAMENT (Franchise)—continued.**

*risters' power to amend—31 & 32 Vict. c. 49, s. 4—48 Vict. c. 17, s. 4.*

Where a person claims the franchise as an inhabitant householder, and his name duly appears on the town clerk's list as a claimant in respect of that qualification, but on the revision it turns out that his true qualification would be that of a lodger, if he had claimed as such:—

*Held*, on appeal, that the revising barrister had no power, under s. 4 of the Parliamentary Registration (Ireland) Act, 1885 (48 Vict. c. 17), to expunge the name from the list on which it appears, and insert it with the true qualification in the originally appropriate list, or on a special list to be framed for its reception. **CULLEN v. PATTERSON** (1885) **C. A. (Ir.)** [1897] W. N. 126

**81. — Lodger franchise—Residence—Absence from lodgings during part of the year—Representation of the people (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 4.**

A son occupied, as a lodger, rooms of the statutory value in his father's house, for which he paid rent to his father, residing in them during nine months of the year. During the remaining three months he was absent in the country, and the house was shut up, but he had access to it at any time he desired:—

*Held*, that he had been resident during the statutory period required by the 4th section of the Representation of the People (Scotland) Act, 1868. **FALCONER v. DUNLOP**, (1890) 18 R. 342.

**Registration App. Ct. (Sc.)** [1897] W. N. 124

**82. — Lodger franchise—"Sole tenant"—Husband and wife—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 4.**

A man occupied lodgings in a burgh of sufficient value, and for the requisite period, to entitle him to be enrolled as a lodger in the roll of voters for the burgh. His wife lodged with him:—

*Held*, that he was "sole tenant" within the meaning of the Representation of the People Act, 1868, s. 4, and was entitled to be entered in the roll of voters as a lodger. **HAMILTON v. PATON**, (1898) 1 Fraser, 208. **C. A. (Sc.)** [1899] W. N. 175

**83. — Lodger franchise—Sons living in family—Payment of rent.**

*Held*, that sons living in family with their parents, and occupying and paying rent for rooms, of which they have the exclusive use, to the requisite value, may be enrolled as lodgers, and the payments made by them may be either in money or in money's worth.

Where sons living in family with their parents pay for the exclusive use each of a separate bedroom and jointly of a parlour, their claim to be enrolled as lodgers is not defeated by the fact that the rest of the family daily take breakfast with them in the parlour. **BROWN v. MARTIN**, (1885) 13 R. 159

**Registration App. Ct. (Sc.)** [1897] W. N. 121

**84. — Lodger franchise—Son living with father—No contract.**

*Held*, that a son who was allowed by his father, without contract or payment of rent, the sole use of two rooms in the father's house of the requisite yearly value, was not entitled to be

**PARLIAMENT (Franchise)—continued.**

enrolled as a lodger. *MACDONALD v. DICKSON*, (1888) 16 R. 143

**Registration App. Ct. (Sc.) [1897] W. N. 123**

**85. — Lodger franchise — Son living with mother—Separate occupation of bedroom—Joint use of sitting rooms—Bedroom of insufficient value —31 & 32 Vict. c. 43, s. 4.**

A son, as a lodger, paid his mother rent for the exclusive use of a bedroom, and for the joint use with her of other rooms. The clear annual value of his rights of use or occupation was sufficient, but the value of the bedroom taken alone was insufficient.

*Held*, that he did not occupy lodgings of the statutory value, "separately and as sole tenant," and was therefore not entitled to the franchise under the Representation of the People (Scotland) Act, 1868, s. 4. *GRAY v. DEUCHAR*, (1890) 18 R. 341

**Registration App. Ct. (Sc.) [1897] W. N. 123**

**86. — Lodger, Inhabitant occupier or—Household franchise—"Dwelling-house"—Representation of the People Act, 1884 (48 Vict. c. 3), s. 3—Parliamentary Registration (Ireland) Act, 1885 (48 Vict. c. 17), Sched. 1, Part 3, Form 34.**

The fact that the landlord of a house let out in separate tenements lives in the house is a vital element to be considered in determining whether or not the occupiers of such tenements are lodgers, or qualified as inhabitant householders under the Representation of the People Act, 1884, and, as an all but universal rule, will prevent their successfully claiming the franchise in respect of such occupation otherwise than as lodgers.

The decision of such cases depends upon the effect of evidence given to establish a matter of fact; but it is a question of law whether any given matter of fact is conclusive upon the law, or whether there is any evidence to sustain any given findings of fact.

In order to constitute lodgings which will qualify for the franchise, the part of the house occupied by the claimant must be part of one "dwelling-house"; and in the case of an inhabitant occupier of part of a house, claiming as such, it must be shown that the part which he occupies is in itself one separate "dwelling-house," and not merely part of one. *HOGAN v. STERRETT*, (1886) 20 L. R. Ir. 344

**C. A. (Ir.) [1898] W. N. 83**

— Lodger—Old lodger's list—Omission of name of borough.

*See No. 101, below.*

— Municipal franchise.

*See CORPORATION.* 18, 19.

**87. — Notice of claim—Agent's clerk—Signature.**

A notice of claim was signed in the appellant's name by agent's clerk instead of by the authorized agent:—

*Held*, that the notice was good. *BROWN v. TOMES* — **Div. Ct. [1891] 1 Q. B. 253**

**88. — Notice of claim—Lodger claim—Signature—Presence of witnesses.**

The claim of a lodger to be registered as a parliamentary elector is invalid unless the attest-

**PARLIAMENT (Franchise)—continued.**

ing witness is present when it is signed. *BODY v. HALSE. HUNT v. HALSE. FENNING v. HALSE*  
**Div. Ct. [1892] 1 Q. B. 203**

**89. — Objection—Declaration—Evidence in absence of claimant.**

A., whose vote had been objected to, made a declaration stating his qualification pursuant to s. 26 of the Parliamentary and Municipal Registration Act, 1878, but did not attend. Evidence was given that the premises mentioned in the declaration had not been occupied by A. during the qualifying period:—

*Held*, that the revising barrister had power to receive the evidence. *TRAINOR v. STARBRUCK*  
**Div. Ct. [1893] W. N. 196**

**90. — Objection—Notice of—Occupiers' list—Power of amendment—Mistake—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 2.**

The mistakes in notices of objection which a revising barrister is empowered to correct under s. 28 of 41 & 42 Vict. c. 26, include mistakes of law.

In a notice of objection to the retention of a person's name on the occupiers' list of voters in a borough the objector described himself as "on the list of parliamentary electors and burgesses" for a certain parish in the borough, but incorrectly inserted as his place of abode his shop, which was his qualifying property, and at which, though he spent the greater part of the day there, he did not reside. His reason for so doing was that his shop was situate in the borough and his place of abode was at some distance from the borough, and he thought he ought to give his address within the borough. No one was misled by the misstatement:—

*Held*, that the misstatement of the place of abode was a mistake which the revising barrister had power to amend.

Decision of Div. Ct., [1898] W. N. 155 (7); [1899] 1 Q. B. 102, affirmed. *PRESOTT v. LEE*  
**C. A. [1899] W. N. 107; [1899] 2 Q. B. 273**

**91. — Objection—Notice of—Omission of polling district—Date of signing notice—Onus of proof—Evidence—Registration of voters.**

In a borough which had been divided into polling districts a notice of objection served on a voter omitted to state the particular polling district to which the voter objected to be longed:—

*Held* (affirming the decision of the revising barrister), that the notice of objection was bad.

The objector could not swear that he signed several notices of objection on the days they purported to bear date, but the notices were duly signed by him before they were served, and they were duly served within the limits of time for giving such notice:—

*Held* (reversing the decision of the revising barrister), that the general *prima facie* presumption that all documents are made on the day they bear date applies to notices of objection. *KENNY v. KENEALY*, [1895] 2 I. R. 544.

**C. A. (Ir.) [1898] W. N. 115**

**92. — Objection—Notice of—Omission to state place of abode—Practice—Franchise—Regis-**



**PARLIAMENT (Franchise)—continued.**

*tration — Registration Order, 1895, Sched. I., Form 5 (a.)*

Notice of objection to the name of the respondent being retained on the ownership portion of the register was sent by the appellant by post to the respondent, and was duly received by him. The appellant omitted to insert in the body of the notice the respondent's place of abode as described in the register, as required by the Registration Order, 1895, Sched. I., Form 5 (a), but, with the intention of saving postage, placed it on the back of the notice, where it served as the postal address of the respondent:—

*Held*, that the notice of objection was good, although it did not strictly follow the form prescribed by the Order. *LINFORTH v. BUTLER*

Div. Ct. [1899] 1 Q. B. 116

93. — *Objection—Notice of—Personal service at place of abode as described in list—Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69), ss. 26, 113.*

An objector purported to serve a notice of objection to the retention of a name upon a list of voters, by putting the notice under the door of the house which was described in the list as the place of abode of the voter. The objector knew that the voter did not reside there; he knew where he resided, and he knew that there was no probability of the voter getting the notice.

*Held*, that the notice of objection had not been duly served.

*Watson v. Pitt*, (1848) 5 C. B. 77, followed.

*Gifford v. Overseers of St. Luke's, Chelsea*, (1889) 24 Q. B. D. 141, and *Allen v. Greensill*, (1847) 4 C. B. 100, considered. *MAGEE v. MORTIMER*, (1890) 28 L. R. Ir. 251

C. A. (Ir.) [1898] W. N. 102

94. — *Objection—Notice of—Qualification of objector—Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), s. 17.*

An objector is qualified under s. 17 of the Registration Act, 1843, for the purposes of his objection if his name be on the list of voters prepared by the overseers at the time when he makes the objection, notwithstanding that before the objection is heard the objector's name has been struck off the list by the revising barrister. *PEASE v. TOWN CLERK OF MIDDLESBROUGH*

Div. Ct. [1893] 1 Q. B. 127

95. — *Objection—Notice of—Service—"Ordinary course of post"—Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 17, 100.*

Notices of objection to soldier voters were posted so as to have been delivered in time elsewhere in the borough except in barracks. Letters addressed to barracks were not delivered by postmen, but fetched from the post office by orderlies:—

*Held*, that as by the "ordinary course of post," within s. 100 of the Parliamentary Voters' Registration Act, 1843, the notices would have been delivered in time, they had been served in time, and that the fact that by the action of the military authorities or the Post Office, or both, the ordinary delivery had been displaced by an extraordinary one, did not affect the objector, and that due service was proved by production of

**PARLIAMENT (Franchise)—continued.**

duplicate notices stamped by the Post Office under s. 100.

Decision of Div. Ct. [1894] 1 Q. B. 265, reversed. *KEMP v. WANKLYN*

C. A. [1894] 1 Q. B. 583

96. — *Objection—Notice of—Service of objection at place of abode as described in list—Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69), s. 36.*

A notice of objection, if intended to be served by hand, must be left at the place of abode of the person objected to, as stated in the list, as provided by 13 & 14 Vict. c. 69, s. 36, and such service is not made bad because the person serving the notice may know that the person objected to does not live there, and may also know where he lives.

*Gifford v. Overseers of St. Luke's, Chelsea*, (1889) 24 Q. B. D. 141, not followed; *Magee v. Mortimer*, (1890) 28 L. R. Ir. 251, distinguished. *GAGE v. M'DAID*. *DUNLEAVY v. M'DAID*. *MILLIGAN v. M'DAID*. *M'DAID v. CAMPBELL*, Lawson's Notes of Decisions (1896), p. 137

C. A. Ir. [1898] W. N. 104

97. — *Objection—Notice of—Service through post-office—No postal delivery—"The ordinary course of post"—Parliamentary Voters (Ireland) Act, 1850 (13 & 14 Vict. c. 69), s. 113.*

Sect. 113 of the Parliamentary Voters (Ireland) Act, 1850, providing for the sending of notices of objection through the post, assumes that in every case the postal service is capable, "in the ordinary course of post," of reaching the place of abode of a voter or claimant—that is, that in every case such notice can be "sent by the post" to its destination within a time ascertainable as "in the ordinary course of post"; and wherever an objector takes advantage of the postal service, he must show by evidence, probable or demonstrative, that in such "ordinary course" his notice, posted when and where it was posted, would reach its destination at latest on Aug. 20.

The "ordinary course," of which evidence must be given by the objector, must include and cover the transit from the nearest post-office to the place of abode mentioned in the address, and he must show what the time is which this transit ordinarily requires. Accordingly, where the evidence was only that the transit was casual and uncertain, and the time which it, in ordinary course, required had not been determined by the revising barrister, the service of a notice of objection, which reached the local post-office, within about a mile of which the voter resided, on the morning of Aug. 20, but was not actually delivered at his place of abode till the 22nd, was held insufficient within the section. *DOOGAN v. COLQUHOUN*, (1886) 20 L. R. Ir. 361

C. A. (Ir.) [1899] W. N. 148

98. — *Objection—Notice of—Signature.*

A notice of objection given to overseers is not rendered invalid by the mere fact that the signature of the objector precedes the names of the voters objected to, instead of being placed after them as prescribed in the form. *SUTTON v. WADE*. *GALE v. OVEREND*. *MOORE v. ATKINSON*

Div. Ct. [1891] 1 Q. B. 269

**PARLIAMENT (Franchise)—continued.****99. — Objection—Notice of—Signature—Sufficiency—Place of abode of objector.**

Notices of objection to certain county voters were signed by "J. B., of B. Terrace, on the register of electors for the township of Bodmin borough," but omitted to state in what town the terrace was situated. The revising barrister found as a fact that no one had been deceived by the omission:—

*Held*, that the description of the objector's abode was sufficient. **HICKS v. STOKES**

**Div. Ct. [1893] 1 Q. B. 124**

**100. — Objection—Notice of—Status of objector—Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69).**

Notice of objection to a list of voters or claimants for a city, town, or borough may be effectually given by a person whose name is actually inserted in the list of persons entitled to vote, though the objector is incapable of voting by reason of having been reported guilty of corrupt practices by judges at the trial of an election petition. **BARR v. CHAMBERS**, (1890) 22 L. R. Ir. 264

**C. A. (Ir.) [1898] W. N. 101**

**101. — Old lodgers' list—Omission of name of borough—Borough vote.**

The omission of the name of the borough in a claim to be on the old lodgers' list of voters is a mistake which the revising barrister has power to amend and ought to amend under s. 28, sub-s. 2, of the Parliamentary and Municipal Registration Act, 1878. **TREADGOLD v. GRANTHAM (TOWN CLERK)**

**Div. Ct. [1895] 1 Q. B. 163**

**102. — Parochial elector—Parish in parliamentary borough—Freemen—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 2, sub-s. 1; s. 75, sub-s. 2.**

The fact of a person being on the list of freemen for a parliamentary borough does not entitle him to have his name entered in the parochial electors' list for a parish within the borough, even though he may reside within the parish; the list of freemen not being a "portion of the parliamentary register of electors relating to the parish" within the meaning of s. 2, sub-s. 1, of the Local Government Act, 1894. **HART v. BEARD**—

**Div. Ct. [1895] W. N. 156 (4);**

**[1896] 1 Q. B. 54**

**103. — Parochial elector—Ownership—Qualification—Woman—Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 2, 43, 44.**

A woman, whether married or single, is not qualified by reason of ownership of property to be a parochial elector.

Decision of Div. Ct., [1895] W. N. 147 (5); [1896] 1 Q. B. 1, affirmed. **DRAX v. FFOOKS**

**C. A. [1896] 1 Q. B. 238**

**104. — Permissive user of room allotted to claimant—Household franchise—Occupation as owner or tenant—Inhabitant householder.**

During the qualifying year, and for some time previously, a separate room in the dwelling-house of the claimant's father was allotted by him to the claimant, who slept in and occupied the room, separately and exclusively for his own purposes, as his own. The claimant's father was

**PARLIAMENT (Franchise)—continued.**

sole tenant of the premises, and had control of the door and the rest of the house:—

*Held*, that the claimant was not entitled to the franchise. **CLARKE v. BUCHANAN (DOHERTY'S CASE)**, (1886) 20 L. R. Ir. 201

**C. A. (Ir.) [1897] W. N. 113**

**105. — Poor-law relief by father of claimant, Receipt of—Disqualification—Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69), s. 111—Costs of appeal—Form of order.**

Where the father of a claimant had received poor-law relief during the qualifying period, but no evidence was given before the revising barrister of the claimant's ability to support his father during any part of the time the latter had been in receipt of such relief:—

*Held* (affirming the decision below), that the claimant was not disqualified.

Form of order as to costs of unsuccessful appeal against retention of name on voters' list, where town clerk sole respondent. **M'DERMOTT v. CHAMBERS (M'LAUGHLIN'S CASE)**, (1887) 22 L. R. Ir. 432

**C. A. (Ir.) [1898] W. N. 100**

**106. — Poor-law relief by parent of claimant, Receipt of—Disqualification—Poor Relief (Ireland) Act, 1837 (1 & 2 Vict. c. 56), ss. 54, 57—Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69), s. 111.**

The receipt of poor-law relief during the qualifying period by the parent of a claimant is not a disqualification. **DOHERTY v. CHAMBERS**, (1887) 22 L. R. Ir. 434

**C. A. (Ir.) [1898] W. N. 100**

**107. — Poor-law relief, Receipt of—Disqualification—Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69), s. 11—29 & 30 Vict. c. 38.**

Application for a receipt of provision, under 29 & 30 Vict. c. 38, for the interment of a deceased member of his family during the qualifying year is sufficient to disqualify the recipient, though otherwise entitled to the franchise, from being registered as a parliamentary voter. **KERR v. CHAMBERS**, (1886) 20 L. R. Ir. 207

**C. A. (Ir.) [1898] W. N. 122**

**108. — Postman employed at a distance from constituency—Inhabitant occupier—County vote—Electoral Disabilities Removal Act, 1891 (54 Vict. c. 11), s. 2.**

A postman employed as such in Edinburgh was tenant of a house at Milnathort in Kinross-shire, where his family resided. He spent his annual summer holiday with his family at Milnathort, and at periods varying from one month to two months he came to Milnathort on Saturday evening and remained there till the following Sunday evening. At other times he lived in lodgings in Edinburgh. He was never absent from Milnathort consecutively for more than two months.

*Held*, that he was not an inhabitant occupier of the house at Milnathort, in respect that he had not the necessary residential qualification, and was not entitled to be retained in the register of voters for the county of Kinross. **RINTOUL v. FALCONER**, (1898) 1 Fraser, 207

**C. A. (Sc.) [1899] W. N. 174**

**PARLIAMENT (Franchise)—continued.**

109. — *Rated occupier—Owner liable to pay rates—Rates unpaid—No notice given to occupier.*

A claimant is not entitled to the franchise as a rated occupier where the rates, payable in respect of the qualifying premises, have not been paid, though the owner, and not the occupier, is the person liable to pay the rates, and though no notice of the rates being in arrear was given to the occupier as required by the 30 & 31 Vict. c. 102, s. 28. *CLARKE v. BUCHANAN.* (CARLIN'S CASE), (1886) 20 L. R. Ir. 244

C. A. (Ir.) [1898] W. N. 109

110. — *Rates—Inhabitant occupier—Non-payment of old arrears of rates—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3, sub-s. 4—Poor Law Amendment (Ireland) Act, 1849 (12 & 13 Vict. c. 104), s. 19.*

The occupier of premises is not disqualified by the non-payment of arrears of rates due in respect of the premises, the recovery of which has become barred by statute, as against him, previously to December 31 in the qualifying year. *M'GRATH v. BUCHANAN*, (1889) 26 L. R. Ir. 124

C. A. (Ir.) [1898] W. N. 109

111. — *Rating—Household franchise—Occupation.*

A person will not be disentitled to the franchise as an inhabitant occupier by reason of his permitting, as an act of kindness, another person to live on his premises, even though he and such person were, to his knowledge, rated as joint occupiers of the premises. *CAMPBELL v. CHAMBERS.* *GALLAGHER'S CASE*, (1886) 20 L. R. Ir. 239

C. A. (Ir.) [1899] W. N. 147

112. — *Rating—Inhabitant occupier.*

A. was an occupier of premises B. previously to July 20, 1888, and up to May 6, 1889, on which date he became an occupier, in immediate succession, of premises C., and so continued during the remainder of the qualifying year. He was rated for the premises B. in the rate for the year 1888, the rate having been made for that year in March, 1888, and duly paid by him. Premises C. consisted of a new house, which was not included in the rate for the year 1889, made on March 4 in that year, not having been then valued for the purpose of being rated:—

*Held*, that A. was entitled to the franchise.

*Devine's Case*, Lawson's Notes of Decisions, (1887) p. 12, distinguished. *CRIGLINGTON v. ANDERSON*, (1889) 26 L. R. Ir. 131.

C. A. (Ir.) [1898] W. N. 94

113. — *Rating—Inhabitant occupier.*

The inhabitant occupier, during the whole or part of the qualifying period, of a dwelling-house which was rateable, and ought to have been rated, but was not rated for the relief of the poor to a rate which was made during the qualifying period, and during his occupation, is not entitled to the franchise.

A dwelling-house which ought to have been so rated was not rated, but was subsequently valued, and the amount which the rate ought to have been tendered, and a claim to be rated was served on the guardians under the provisions of 13 & 14 Vict. c. 69, s. 110.

*Held*, that the tender and claim had no effect.

**PARLIAMENT (Franchise)—continued.**

A. was an inhabitant occupier of a rated dwelling-house previously to July 20, 1889, up to a date in the qualifying period, subsequent to the striking of the only rate made during the qualifying period, when he went into occupation in immediate succession of another house in which he continued to reside during the remainder of the qualifying period. The second house had formerly been rated, but having fallen into ruin was omitted from the rate-book for several years before and in the qualifying year. Subsequently to the striking of the rate in the qualifying period, the house was repaired and became liable to be rated:—

*Held*, that the case was undistinguishable from *Criglington v. Anderson*, (1889) 26 L. R. Ir. 131, and that A. was entitled to the franchise.

B. was an inhabitant occupier of a dwelling-house which was marked in the rate-book as "exempt" under the provisions of 48 Vict. c. 3, s. 9, sub-s. 9, and was not rated. The revising barrister decided that the house was not, by law, exempt, and should have been rated to the rate made during the qualifying period, and expunged B.'s name from the register of voters:—

*Held*, that even if the house was not, by law, exempt, it was not the function of the revising barrister to revise the rate-book or the valuation roll, and that B. was entitled to the franchise.

*Torish v. McCormack*, Lawson's Notes of Decisions (1890), p. 19, distinguished. *M'GAFFIGAN v. RIDDALL.* *M'CREADY v. CHAMBERS.* *HINDS v. CHAMBERS.* *RIDDALL v. M'ALEER.* *MOOREHEAD v. TORISH*, (1890) 28 L. R. Ir. 257

C. A. (Ir.) [1898] W. N. 95

114. — *Rating—Joint rated occupiers—Premises taken solely to obtain votes—Occasionality—Sole occupation—Occupation of sub-tenant or licensee—Occupation franchise.*

Prior to March, 1892, two sons lived with their father in premises of which he was tenant, and which it became desirable to take down and rebuild. In March, 1892, it was arranged that the sons should become the joint tenants of the other premises, and be jointly rated in respect of the same, in order to qualify themselves for the franchise. As soon as the assignment was completed the father and the two sons moved into the premises, of which the sons thus became the tenants, and resided there till Aug. 1893, when all three moved back into the premises of which the father was tenant and which had been rebuilt in the interval. The sons paid the rent and the poor-rates of the premises of which they were tenants, but the father was surety for the payment of the rent, and paid all the household expenses of the establishment, including the maintenance of his two sons. The revising barrister held that the arrangement for obtaining the tenancy of the house in the case of the sons was not *bonâ fide*, and that the father was the sole occupier of the house, and disallowed the votes.

*Held* (reversing the revising barrister), that the sons were entitled to the franchise as joint rated occupiers of the premises of which they were tenants. *MOONEY v. CHAMBERS*, [1894] 2 Ir. R. 374

C. A. (Ir.) [1899] W. N. 183

**PARLIAMENT (Franchise)—continued.**

**115. — Rating—"Owner or tenant"—Trustee—Parochial house—Joint rated occupier—Occupation franchise.**

The Roman Catholic bishop of the diocese, who was also priest of the parish of T., along with his administrator and two curates, occupied the parochial house for the qualifying period, each having separate rooms in the house, and using the rest of it in common. The premises were held by trustees under a fee-farm grant in trust for the parish. Among the trustees were the bishop, the administrator, and the curates; two of them having been trustees for some years, and the other two having been appointed during the qualifying year. The trustees who were in occupation were jointly rated for the premises: the bishop had the power, but had not exercised it during the qualifying year, of removing or promoting his administrator and curates to another parish; but he could not in any other way deprive them of their respective rooms in the premises:—

*Held*, that the bishop, the administrator, and the two curates occupied as tenants, and were entitled to the franchise as rated occupiers. **HOLLANDS v. CHAMBERS. O'DOHERTY'S CASE, (1892) 32 L. R. Ir. 156 - C. A. (Ir.) [1899] W. N. 153**

**116. — Borough vote—Occupation franchise—Rating of qualifying property—Parliament Act, 1867 (30 & 31 Vict. c. 102), s. 3, sub-ss. 2, 3, s. 26—Poor Rate Assessment, 1869 (32 & 33 Vict. c. 41), s. 19—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9, sub-s. 2 (d) s. 32; 1884 (47 & 48 Vict. c. 3), s. 9, sub-s. 9.**

The inhabitant occupier of a dwelling-house which though rateable has not been rated and for which no poor-rate had been paid is not entitled either to the parliamentary or the municipal franchise. **PALMER v. WADE. WADE v. PALMER Div. Ct. [1894] 1 Q. B. 268**

**117. — Residence—Election law—Household qualification—Inhabitant occupier—31 & 32 Vict. c. 48, s. 3; 48 Vict. c. 3, ss. 2, 7 (4).**

Residence for three or four months in a country house by a person who resides for the rest of the year in a house in town does not entitle him as inhabitant occupier of a country house. **STEWART v. MCFADZEAN, (1890) 18 R. 349**

**Registration App. Ct. (Sc.) [1897] W. N. 110**

**118. — Residence—Sufficiency of—Borough occupation franchise—Election law—Reform Act, 1832 (2 & 3 Will. 4, c. 65), s. 11.**

A person, who was on the list of voters in Glasgow as an inhabitant occupier, resided in a villa of the annual value of 60*l.* in Ayr for four consecutive months of the year, and for five days in each of the two preceding months, and the rest of the year in Glasgow:—

*Held*, under the special circumstances of the case, that he had fulfilled the conditions of residence contained in s. 11 of the Reform Act of 1832, and was therefore entitled to the occupation franchise for the borough of Ayr. **SIM v. GALT, (1892) 20 R. 84 - Registration App. Ct. (Sc.) [1897] W. N. 111**

**119. — Selection—Notice of—Appeal from revising barrister—Franchise—Registration—**

**PARLIAMENT (Franchise)—continued.**

**Borough vote—Duplicate entries—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 14.**

The appellant, whose name was on the list of voters for a borough in respect of his place of abode, duly claimed to have it also inserted on the list in respect of his place of business, and gave to the revising barrister a notice of selection in proper form, selecting the entry of his place of business as the one to be retained for voting. The revising barrister allowed the claim, but held that at the time the notice of selection was given there was no duplicate entry on the list of voters to which the notice could apply, and he accordingly marked the entry in respect of the appellant's place of abode as the entry to be retained for voting:—

*Held*, that the revising barrister was right, and that no appeal lay from his decision. **LLOYD JONES v. MUNRO Div. Ct. [1899] 1 Q. B. 109**

**120. — Separate dwelling—Household franchise—Inhabitant occupier of room let unfurnished in house inhabited by landlord—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 7, sub-s. 4.**

The tenant of a house consisting of three rooms let one room unfurnished to a sub-tenant, who furnished it and inhabited it with his family. The only access to this room was through the other two rooms inhabited by the principal tenant, who had exclusive possession of the key of the house door.

*Held*, that as the principal tenant had retained the control of access and egress by the house door, the sub-tenant was not entitled to the franchise as an inhabitant occupier of a separate dwelling.

**Bradley v. Baylis, Morfe v. Noris, Kirby v. Biffen, (1881) 8 Q. B. D. 195, followed. BISHOP v. DUFFY, (1894) 22 R. 192**

**Registration App. Ct. (Sc.) [1898] W. N. 88**

**121. — Service franchise—"Boots" in hydropathic establishment—Manager living in house.**

The "boots" in a hydropathic establishment occupied a servant's bedroom, and took his meals with the other servants in the servants' hall. The manager, who had control of the servants and the right to engage and dismiss them, occupied rooms in the establishment, which was under one roof, the entrance being by a door from the main corridor of the building:—

*Held*, that the "boots" inhabited the same dwelling-house as the manager, and that he served under him, and that he was not entitled to be registered as an inhabitant occupier. **COLQUHOUN v. YOUNG, (1897) 25 R. 101**

**Registration App. Ct. (Sc.) [1898] W. N. 114**

**122. — Service franchise—Butler in draper's warehouse—Bedroom on separate flat—Dwelling-house.**

A draper's warehouse consisted of a tenement of several flats, the ground flat being devoted to the business premises, while the upper flats were devoted to sitting-rooms and bedrooms for the firm's servants. The manager occupied rooms on the second flat, and a butler occupied, for his exclusive use, a bedroom on an upper flat. The flats were all reached by a common stair. There

**PARLIAMENT (Franchise)—continued.**

was no other communication between the flat occupied by the manager and that occupied by the butler. The manager was entrusted with a general supervision of the whole domestic arrangements provided for the servants, and had power to dismiss the domestic servants, including the butler:—

*Held*, that the butler was entitled to be regarded as an "inhabitant occupier" of a dwelling-house, in respect (1) that the premises he occupied were not inhabited by the manager, and (2) that he did not serve under the manager. *FALCONER v. M'GUFFIE*, (1891) 19 R. 295

Registration App. Ct. (Sc.) [1897] W. N. 96

**123. — Service franchise—Coachman—"Dwelling-house"—Part of a house—Occupation by virtue of service—Separate bedroom—Joint user of sitting-room—General control of house—Coachman living over stable—Borough vote—Representation of the People Act, 1884 (48 Vict. c. 3), s. 3.**

H., a servant, occupied exclusively, by virtue of his service, a furnished bedroom in a dwelling-house belonging to his master, and had, in common with another young man, the use of a sitting-room in the same house. All the furniture belonged to the master, who did not reside in the house, but had free access at all times to every portion of it except H.'s bedroom, and had access to that whenever he asked H. for the key, which he had a right to demand whenever he chose. The bedrooms were made up by a charwoman, who was paid by the master, and did not reside on the premises:—

*Held*, by May C.J. and Barry and Naish L.J.J., following *Strirling v. Halse*, (1885) 16 Q. B. D. 246, and reversing the decision of the revising barrister (*diss.* Porter M.R. and FitzGibbon L.J.), that H. was entitled to the franchise.

R. was the foreman of a shop and place of business in which a number of young men were employed. By virtue of that employment he and they lived in a separate house, in which he had a bedroom that he occupied exclusively. He and the other employees took their meals in a common sitting-room, and the only other resident in the house was a servant, paid by the employer to attend to the occupants. R. had a latchkey for the hall door, and had also charge of the other keys, and it was his duty to see that the doors were locked and the occupants within doors every night.

*Held*, affirming the decision of the revising barrister (*dub.* FitzGibbon L.J.), that R. was entitled to the franchise.

C., as his employer's coachman, occupied a room over her stable, and was treated by her as a domestic servant. The stable was in her yard, and was portion of the curtilage of her dwelling-house, the house and yard being all included under the same number in the poor-rate book. There was a separate gateway and gate from the yard into a back lane, and also a wicket leading from the yard into the lane. The gate and wicket formed the only access to the yard, except by going through the employer's house, and were under her control. Another of her servants cleaned out C.'s room:—

*Held*, affirming the decision of the revising

**PARLIAMENT (Franchise)—continued.**

barrister, that C. was not entitled to the franchise. *HASSON v. CHAMBERS*. *CROSSAN v. CHAMBERS*. *LYNCH v. BUCHANAN (Re RICHEY)*, (1885) 18 L. R. Ir. 68 — C. A. (Ir.) [1897] W. N. 85

**124. — Service franchise—Coachman—Room over stable—Election law.**

A coachman had the exclusive use and control of a room over the stable furnished as a bedroom, in which he kept his clothes and dressed, but he took his meals in the mansion-house occupied by his master, and slept there as a caretaker. He claimed to be enrolled as a voter in respect that he inhabited the room over the stable as a dwelling-house by virtue of service:—

*Held*, that he was not entitled to the franchise in respect that the dwelling-house which he inhabited was not the room over the stable but the mansion-house, which was inhabited by the person under whom he served. *CAMPBELL v. MORRIS*, (1895) 23 R. 118 Registration App. Ct. (Sc.) [1897] W. N. 101

**125. — Service franchise—Gardener exclusively occupying bedroom over master's coach-house, and taking his meals there—"Dwelling-house"—48 Vict. c. 3, s. 3.**

Where W.'s gardener, during the qualifying period, exclusively occupied a bedroom over W.'s coach-house, in which bedroom he took his meals, which were prepared by W.'s cook, and sent to him from W.'s house, the coach-house containing W.'s carriages, and being situate in a detached walled yard, separated from his house by an avenue, but included in the grounds surrounding it:—

*Held* (reversing the decision of the revising barrister), that the gardener was entitled to the franchise.

*Crossan v. Chambers*, (1885) 18 L. R. Ir. 68, distinguished. *HOLLY v. BURKE*, (1887) 22 L. R. Ir. 463 — C. A. (Ir.) [1897] W. N. 91

**126. — Service franchise—Lay brother—Election law.**

A lay brother in a Roman Catholic mission had exclusive use of a bedroom in the mission-house. The head clergyman of the mission and other persons resided in the house. The lay brother performed the ordinary duties of a domestic servant, prescribed by the head clergyman. He was not subject to dismissal by any person living in the house, but he held himself bound to obey as a servant the orders of the head clergyman:—

*Held*, that he was not entitled to the franchise under 48 Vict. c. 3, s. 3, as the house was also inhabited by a person under whom he served. *CRUISE v. ANNAN*, (1892) 20 R. 79

Registration App. Ct. (Sc.) [1897] W. N. 94

**127. — Service franchise—Miner out on strike—Occupation after service determined—Election law.**

A miner who occupied a dwelling-house, by virtue of his contract of employment, having gone out on strike, his employer, on Aug. 24, 1887, obtained decree of objection. The decree had not been extracted, and he still occupied the house on Oct. 6, 1887, when the sheriff pro-

**PARLIAMENT (Franchise)—continued.**

ceded to consider his claim to be put on the roll of voters:—

*Held*, that having left his employment and suffered decree of objection to go out against him, he was not in occupation by virtue of any right, and was, therefore, not entitled to be put on the roll. *STRACHAN v. BINNIE*, (1888) 15 R. 380

Registration App. Ct. (Sc.) [1897] W. N. 99

**128. — Service Franchise—Policeman—Cubicle —Borough vote.**

A policeman had exclusive occupation by virtue of his service of a cubicle in a dormitory at police barracks, which received light, air, and ventilation in common with others from the space above the top of the partitions; he kept the key of his cubicle and was entitled to lock it up at any time:—

*Held*, that the cubicle was not “separately occupied as a dwelling” so as to entitle the policeman to the franchise.

*Quære*, whether a bedroom is occupied as a dwelling when the occupant dwells also partially in other rooms. *BARNETT v. HICKMOTT*

Div. Ct. [1895] 1 Q. B. 691

See next Case.

**129. — Service franchise—Policeman—Cubicle —“Dwelling-house”—“Part of house separately occupied as a dwelling”—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3.**

The appellant had, by virtue of his service as a policeman, the exclusive occupation of a cubicle in a dormitory at a police station. The cubicle was separated from the rest of the dormitory, which contained a number of similar cubicles, by wooden partitions which did not reach the ceiling. The atmosphere of the dormitory was common to all the cubicles, and a gas-light was shared by them in common. A lavatory and mess-room were provided for the policemen who occupied these cubicles in another part of the police station. The policemen occupying the cubicles were subject to the control of a superior officer, who had power to impose restrictions upon their use of the cubicles inconsistent with the rights which a person ordinarily exercises in respect of his own dwelling:—

*Held* (Rigby L.J. dissenting), that the cubicle was not part of a house separately occupied as a dwelling within the meaning of the Parliamentary and Municipal Registration Act, 1878, s. 5, and that the appellant was therefore not entitled to the franchise in respect of it under the Representation of the People Act, 1884, s. 3. *CLUTTERBUCK v. TAYLOR*

C. A. [1896] 1 Q. B. 395

**130. — Service franchise—Policeman—Separate dwelling—Constable in barracks.**

A constable residing in police barracks had the exclusive use of a room, of which he kept the key. He slept in the room, and when off duty was entitled to use it and receive visitors in it. Separate common rooms were provided in the barracks for meals and recreation. The right of the constable to the room was contingent on his remaining in the force, and the barracks were

**PARLIAMENT (Franchise)—continued.**

subject to the control of the chief constable, who might at any time remove the constable from barracks, order him to change his bedroom, or keep certain hours, order him to give up the key of his room on ceasing to occupy it, forbid him to receive visitors in his room, and order him to open the door so as to let any person in authority enter:—

*Held*, that the constable inhabited the “dwelling-house” within the meaning of s. 3 of the Representation of the People Act, 1884, and that the “dwelling-house” was not inhabited by any person under whom he served, and that therefore he was entitled to be registered. *WALLACE v. BORRIE*, (1897) 24 R. 376

Registration App. Ct. (Sc.) [1898] W. N. 113

**131. — Service franchise — Religious community, Member of—Election law.**

M., a Roman Catholic clergyman, a member of a religious community, along with other members, resided in college buildings, held in trust for the community, he having the exclusive use of one room. He had various religious duties to perform, subject to the orders and directions of the rector, who resided in the college. There was no contract of employment of any kind. He was maintained in the college.

M. claimed to be enrolled as a voter under s. 3 of the Representation of the People Act, 1884:—

*Held*, that assuming that M. occupied his separate room in virtue of some office, service, or employment, he was disqualified in respect that the rector under whom he served resided in the same house. *MONYHAN'S CASE*, (1894) 22 R. 195

Registration App. Ct. (Sc.) [1897] W. N. 100

**132. — Service franchise — Religious community, Member of—Joint occupancy—Separate bedroom—Election law.**

A clergyman, a member of a religious community, inhabited a house along with two other clergymen and two lay brothers. He claimed to be enrolled under 48 Vict. c. 3, s. 3, as “occupant in virtue of service of dwelling-house” under certain trustees. Each member of the community had the exclusive use of a separate bedroom, of which he kept the key. The public rooms were open to all, and they dined together in the refectory. The claim was objected to on the ground that the claimant was a joint occupant only:—

*Held*, that the claim was good.

*Ballingal v. Menzies*, (1886) 14 R. 127, followed. *WALSHE v. ANNAN*, (1892) 20 R. 83

Registration App. Ct. (Sc.) [1897] W. N. 97

**133. — Service franchise — Religious educational community—College bedroom constituting “dwelling-house”—President residing in the college — Superior-general of community non-resident—41 & 42 Vict. c. 26, s. 5—48 Vict. c. 3, s. 3.**

Each teacher in a college conducted by a religious community had, as such, during the qualifying period, the exclusive use of a separate bedroom in the college by virtue of his office or employment as a teacher in the college, which was managed by a resident principal, under the supreme control of the Superior-General of the

**PARLIAMENT (Franchise)—continued.**

community, who himself lived in Paris. The revising barrister having found that each bedroom so occupied constituted a "dwelling-house" for the purpose of the franchise, and was not inhabited by the person by whom the teachers were employed, or under whom they served:—

*Held*, on appeal (affirming the decision of the revising barrister), that the teachers were entitled to the franchise.

*Stribbling v. Halse*, (1885) 16 Q. B. D. 246, and *Hasson v. Chambers*, (1885) 18 L. R. Ir. 68, followed. *ALEXANDER v. BURKE* (THE FRENCH COLLEGE CASE). *ALEXANDER v. BURKE* (ST. JOSEPH'S COLLEGE CASE), (1887) 22 L. R. Ir. 443

G. A. (Ir.) [1897] W. N. 92

**134. — Service franchise—Separate dwellings—Nuns in convent—Office, service, or employment.**

The claimants were nuns residing at a convent in the town of E. Each of them occupied a separate bedroom, and was subject to the control of the Lady Superioress, who could at any time change the occupants from one room to another, or arrange to have more than one occupant of a single room. She could refuse to allow a nun to receive a visitor to her room, demand admission to the room, and require the nuns to give up the keys.

The nuns took their meals together in the refectory, and occupied in common other general rooms in the convent; they received no remuneration, and were under no contract of employment. The premises were vested in the Roman Catholic Bishop of Clogher, the parish priest, and the senior curate of E., all for the time being, upon trust for the benefit of the Roman Catholic inhabitants of E. The convent was governed by rules subject to the supreme authority of the bishop:—

*Held*, that the nuns were not inhabitant occupiers of separate dwellings within the meaning of s. 3 of the Representation of the People Act.

*Semble*, the nuns did not occupy their rooms by virtue of any office, service, or employment. *BANNON v. HANRAHAN*, [1900] 2 Ir. 455

G. A. (Ir.) [1900] W. N. 226

**135. — Service franchise—Soldier—Commissioned officer—Election law.**

A soldier, who had, in respect of his position in the army, lived with his family in separate apartments in barracks for the qualifying period, is entitled as a servant of the Queen to be enrolled on the register of voters as tenant of a "dwelling-house":—

*Held*, further, that commissioned officers, who each had the exclusive occupation of a bedroom for the qualifying period, but took their meals in a mess-room, to which they had a common right, were also entitled.

*Atkinson v. Collard*, (1885) 16 Q. B. D. 254, followed. *GAY v. MCGILL*, (1887) 15 R. 90

Registration App. Ct. (Sc.) [1897] W. N. 98

**136. — Service franchise—Son managing mother's farm—Election law.**

The manager of a farm, of which his mother was tenant, had the exclusive use or occupation of a bedroom in the farmhouse, by virtue of his employment. His mother and sisters also resided

**PARLIAMENT (Franchise)—continued.**

in the farmhouse, and he took his meals along with them in another room in the house:—

*Held*, that the whole farmhouse was inhabited by the person under whom he served, and, therefore, he was not entitled to be registered as an "inhabitant occupier of a dwelling-house" in respect of his occupancy of the bedroom. *PHILLIP v. ROXBURGH*, (1888) 16 R. 261

Registration App. Ct. (Sc.) [1897] W. N. 96

**137. — Service franchise—Son working on father's farm with no contract of service—Election law.**

A son worked as a farm servant on his father's farm, but without any contract of service. He took his meals in family with his father, and received from him what money he required from time to time. He had the exclusive use, rent-free, of a room in a cottage on the farm, which was occupied by his grandmother, but paid no rent for the house to his father:—

*Held*, that he was not entitled as an inhabitant occupier by virtue of service, as there was no proof that his occupancy was connected with service. *AITCHISON v. LOTHIAN*, (1890) 18 R. 337

Registration App. Ct. (Sc.) [1897] W. N. 93

**138. — Stands in market—Borough vote—Occupation franchise—Parliament Act, 1832 (2 & 3 Will. 4, c. 45), s. 27.**

The lessee of a market sublet the area to occupiers of stands for annual payments of over 10l. The spaces occupied were not marked or enclosed, but precise position of each was known to the lessee, the occupier, and the occupiers of the other stands:—

*Held*, that the occupiers were entitled to the borough occupation franchise. *HALL v. METCALFE*

Div. Ct. [1892] 1 Q. B. 208

**139. — Successive occupation, (a) by virtue of service, and as an ordinary tenant; (b) by virtue of service only—30 & 31 Vict. c. 102, ss. 3, 26 & 48 Vict. c. 3, s. 3—Household franchise.**

A claim to the household franchise may be sustained by combining a series of occupations of dwelling-houses during the qualifying period, (a) partly by virtue of service, and partly as ordinary tenant; or (b) wholly by virtue of service. *TORISH v. CLARK*. (*MONAGHAN'S CASE*), (1885) 18 L. R. Ir. 285

G. A. (Ir.) [1897] W. N. 102

**140. — Weekly tenant—Notice to quit—Summons for possession—Relation back of tenancy—Household franchise.**

In order to compel payment of arrears of rent, each of several weekly tenants of dwelling-houses was served with a notice to quit, which expired during the qualifying period. Each of the tenants continued in possession of his dwelling-house after the expiration of the notice to quit for a substantial period. While so overholding, each of the tenants was served with a summons for possession. In some of these cases before, and in others after, a decree for possession was obtained, a new contract of tenancy was made, whereby it was arranged that the several tenants should continue to hold upon the old terms, and that the new tenancy was to be deemed to have commenced in each case on the

**PARLIAMENT (Franchise)—continued.**

expiration of the old one. It was further agreed that each tenant should pay off his arrears of rent :—

*Held* (reversing the decision of the recorder of Londonderry), that the new contract was not capable of relating back for the purposes of the franchise, and that therefore none of the weekly tenants were entitled to the franchise. **HOLLAND v. CHAMBERS (DEVINE'S CASE), [1894] 2 Ir. R. 442 C. A. (Ir.) [1897] W. N. 115**

**Overseers' Duties.**

**141. — Misconduct—Indictable misdemeanour—Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), s. 51.**

An offence by an overseer, with respect to preparation of the register, within the meaning of s. 51 of the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18) is not an indictable misdemeanour, since the statute creates the duties of the overseer and prescribes the penalties for default in their execution. **REG. v. HALL**

**Charles J. [1891] 1 Q. B. 747**

Followed by Div. Ct. **Saunders v. Holborn District Board of Works, [1895] 1 Q. B. 64, 69.**

**Private Bills.**

— Payment out of capital.

*See* **SETTLED LAND. 52.**

**Privilege.**

**142. — Contempt of Court.**

On a motion to commit a member of Parliament for refusing to submit to examination touching a bankrupt's affairs :—

*Held*, that the member was protected by his privilege, as the order for committal sought would be not punitive in its nature, but a civil process to enforce obedience to the order of the Court. *In re ARMSTRONG. Ex parte LINDSAY*

**V. Williams J. [1892] 1 Q. B. 327**

**143. — Contempt of Court—Trustee.**

*Quære*, whether a peer of Parliament is privileged from attachment for contempt in not obeying an order to pay into Court the amount of misapplied trust money. **EARL OF AYLESFORD v. EARL POULETT (No. 2) North J. [1892] 2 Ch. 60**

Referred to by C. A., *In re Smith, [1893] 2 Ch. 1.*

**Registration of Electors.**

*See* Cases under **PARLIAMENT—Franchise.**

**Returning Officer.**

**144. — Charges—Taxation.**

A returning officer whose charges have been taxed under s. 4 of the Parliamentary Elections (Returning Officers) Act, 1875, must return to each candidate out of his deposit, whether a party to the taxation or not, a proportionate part of the amount which has been disallowed. **MARTIN v. TOMKINSON**

**Div. Ct. [1893] 2 Q. B. 121**

**Revising Barrister.**

— Appeal from—Competency—Question of law.

*See* **PARLIAMENT—Franchise. 38.**

**PARLIAMENT (Revising Barrister)—continued.**

— Appeal from—Notice of selection.

*See* **PARLIAMENT—Franchise.**

**145. — Closing lists, Revising barrister—Right of voter to be heard in answer to objection—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 9, 10.**

By s. 28, sub-s. 9, of the Parliamentary and Municipal Registration Act, 1878, "Subject as herein and otherwise by law provided the revising barrister shall retain the name . . . of every person objected to unless the objector appears . . . in support of his objection." By sub-s. 10, "If the objector so appears the revising barrister shall require him, unless he is an overseer, to prove that he gave the notice of objection required by law to be given by him, and to give *prima facie* proof of the ground of objection, . . . and unless such proof is given to his satisfaction shall, subject as herein and otherwise by law provided, retain the name of the person objected to."

A notice of the revision of the lists of parliamentary and municipal electors for a borough stated that the lists for a certain parliamentary division of the borough would be closed at a certain sitting of the revision court. At the termination of that sitting the revising barrister, being satisfied that there were no claimants or persons objected to who desired to be heard, declared the lists closed. Upon the occupiers' list was the name of a certain voter who was objected to by an objector who was not an overseer, but at the time of the lists being declared closed no person had applied to be heard either in support of the voter's right to be on the list or in support of the objection thereto, although both the objector and the agent of the person objected to had been present throughout the sittings of the court. On the following day the revising barrister allowed the objector to prove service of notice of objection and to give *prima facie* proof of the ground of objection; while he at the same time refused to hear evidence on behalf of the voter in opposition to the objection, on the ground that, the lists having been closed, his application to be heard was too late; and he expunged the voter's name from the list :—

*Held*, that, notwithstanding the provisions of the above-mentioned sections, the revising barrister was justified in so doing. **REG. v. SODEN**

**Div. Ct. [1897] 1 Q. B. 188**

**146. — Closing list, Revising barrister—Parliamentary, &c., Registration—6 & 7 Vict. c. 18, s. 41; 28 & 29 Vict. c. 36, s. 15.**

A notice of the revision of the lists of parliamentary and municipal electors for a borough stated that the lists for a certain parliamentary division of the borough would be closed at a certain sitting of the Revision Court. At the termination of that sitting the revising barrister, having ascertained that there were no other claimants or persons objected to present who desired to be heard, declared the list closed. On the following day he proceeded in open court to read out and initial the names which he expunged from or inserted in the list. Certain claimants, on their names being thus read out, applied for the first time to be heard in support



**PARLIAMENT (Revising Barrister)**—*continued*.  
of their claims. The revising barrister declined to hear them on the ground that they were then too late and expunged their names from the list:—

*Held*, affirming the judgment of the Div. Ct. [1896] 1 Q. B. 499, that the claimants had under the circumstances no right to be heard. *REG. v. SODEN* — C. A. [1896] 1 Q. B. 634

**147. — Jurisdiction—Parochial Electors' Lists**  
—*Ownership and occupation claims—Parliamentary and local government registration—Local Government Act, 1894 (56 & 57 Vict. c. 73)—Registration order, 1895—Forms.*

The Local Government Act, 1894, imposes upon a revising barrister the duty of revising, in counties, lists of persons entitled, in respect of their ownership of property in a parish, to vote as parochial electors only; also lists of persons claiming to have their names entered on the ownership part of the separate list of parochial electors of the parish, and lists of persons claiming to have their names entered on the separate list of parochial electors in respect of their occupation of property in the parish. *REG. v. NASH* — Div. Ct. [1900] 1 Q. B. 103

— Power to amend.

*See* **PARLIAMENT—Franchise.** 27—36.

## **PAROCHIAL ASSESSMENT.**

*See* **Cases under RATES.**

**PAROCHIAL ELECTOR**—Lists—Revising barrister—Jurisdiction.

*See* **Cases under PARLIAMENT—Revising Barrister.**

— Registration of voters.

*See* **PARLIAMENT—Franchise.** 102, 103.

**"PAROCHIAL PURPOSE"**—Application of fees.

*See* **BURIAL.** 4.

## **PARSONAGE HOUSE.**

*See* **ECCLIESIASTICAL LAW—Parsonage House.**

**PARTICULARS**—Discovery.

*See* **DISCOVERY—Particulars.**

— Election petition.

*See* **PARLIAMENT—Election Petition.** 12—15.

## **PARTIES.**

*See* **PRACTICE—Parties.**

**PARTITION**—*Conversion—Practice—Partition action—Real estate of infant—Request—Order for sale—Carrying over infant's share—Partition Act, 1876 (39 & 40 Vict. c. 17), s. 6.*

The judgment in a partition action, brought by an infant as sole plt. by his next friend, contained a request for sale by the plt. and, other persons, defts., claiming to be entitled to the entirety of the property, directed a sale, if the parties other than the infant plt. were found entitled to a moiety, and reserved liberty to apply for a sale if it should appear that the defts. were not so entitled; the master having certified that the defts. were entitled to a moiety, the property was sold under the judgment without further order. The infant having died before the proceeds of sale were paid out of court:—

*Held*, that there had been no conversion of

**PARTITION**—*continued.*

the infant's share, and that it must be dealt with as realty.

*Semble*, the law laid down by *Foster v. Foster*, (1875) 1 Ch. D. 588, still holds good, notwithstanding the Partition Act, 1876, s. 6, and the dicta of Jessel M.R. in *Wallace v. Greenwood*, (1880) 16 Ch. D. 362.

Where an infant by a next friend is one of several plts. by counsel requesting a sale, and a sale is ordered upon this request, the proceeds of the infant's share ought to be earmarked as real estate.

*Howard v. Jalland*, [1891] W. N. 210, examined and approved. *In re NORTON.* NORTON v. NORTON

*Byrne J.* [1899] W. N. 216; [1900] 1 Ch. 101

**2. — Conversion—Real estate—Partition action—Sale—Distribution—Payment to trustees having power of sale—"Persons absolutely entitled"—Partition Act, 1868 (31 & 32 Vict. c. 40), s. 8—Leases and Sales of Settled Estates Act, 1856 (19 & 20 Vict. c. 120), s. 23.**

Real estate was sold in a partition action, and under an order, made in 1877, a share of the proceeds of sale was paid to the trustees of the will of a testator who died possessed of the share. The will gave a power of sale to the trustees, but did not authorize them to invest in the purchase of lands. One of the beneficiaries under the will died intestate:—

*Held*, that his share devolved on his legal personal representative and not on his heir.

*In re Hobson's Trusts*, 7 Ch. D. 708, has not been overruled by *In re Smith*, (1888) 40 Ch. D. 386. *In re MORGAN.* SMITH v. MAY

*Stirling J.* [1900] W. N. 151; [1900] 2 Ch. 474

**3. — Costs—Incumbered shares—Incumbrancers—Separate sets of costs.**

In a partition action only one set of costs can be allowed for each share. If some of the shares are incumbered, and some not, the incumbrancers cannot each have a separate set of costs out of the general estate, but each share must bear the costs of its own incumbrances. *CATTON v. BANKS*

*Kekewich J.* [1893] 2 Ch. 221

Followed by *Chitty J.* *Ancell v. Rolfe*, [1896] W. N. 9 (8). *See next Case.*

**4. — Costs—Incumbered shares—One set of costs for each share—Discretion of Court—Partition action.**

In a partition action the chief clerk had certified that the property was divisible into six shares, two of which only were incumbered:—

*Held*, on further consideration, that only one set of costs in respect of each share ought to be allowed. *Catton v. Banks*, [1893] 2 Ch. 221, followed on this point. The time for ascertaining the shares of the persons interested in the property is the date of the chief clerk's certificate. The Court has a general discretion as to the costs, and as a rule will not allow parties representing an incumbered share any additional costs incurred by reason of such incumbrance, which, unlike a settlement or assignment, creates no further subdivision of a share. *ANCELL v. ROLFE*

*Chitty J.* [1896] W. N. 9 (8)

**PARTITION—continued.**

5. — *Improvements—Contribution—Mortgage of share in moieties—Covenant for further assurance.*

A tenant for life of property and owner in fee of a moiety of the property borrowed money on mortgage, which with other money was expended in permanent improvements:—

*Held*, that the present value of the improvements (not exceeding the amount of the mortgage) must be borne rateably by both moieties.

A person absolutely entitled to one moiety of an estate and contingently to the other moiety, mortgaged both moieties, and subsequently sold his contingent moiety for value. The conveyance did not mention the mortgage, but contained a covenant for further assurance. In a partition action, *held*, that the absolute moiety must bear the mortgage debt, as the effect of the covenant for further assurance was to enable the covenantee to call on the covenantor to pay off the mortgage.

*In re JONES. FARRINGTON v. FORRESTER*

North J. [1893] 2 Ch. 461

Applied by North J. *In re Cook's Mortgage*, [1896] 1 Ch. 923, 925.

Referred to by Stirling J. *Hill v. Hickin*, [1897] 2 Ch. 579, 581.

See also *Williams v. Williams*, Kekewich J., [1899] W. N. 66.

6. — *Improvements—Permanent improvements—Form of judgment—Practice.*

Action by the tenant for life of one moiety of land against the owner in fee of the other moiety, who was in occupation of the land, claiming a declaration of title as to a moiety and possession. The writ was now amended by claiming partition, or sale and distribution of the proceeds. It was stated that the deft. had erected buildings and effected permanent improvements and repairs on the land. There were several other similar actions relating to other properties in which improvements had been in like manner effected by the defts. or their predecessors in title.

It was now proposed that, in lieu of the form of inquiry given in Seton on Judgments, 5th ed. vol. ii. p. 1565, Form No. 10, the judgments in the several actions should respectively contain, *mutatis mutandis*, an account and inquiry as follows: "An account of the moneys, if any, expended by the deft. [or his predecessors in title] in permanent improvements to the said hereditaments since November 18, 1898" (the date of the conveyance under which the title of the parties was derived), "and an inquiry as to the extent to which the present value of such hereditaments has been increased by such expenditure." The words in square brackets were to be inserted in cases where title was derived through a person who made the expenditure.

Kekewich J., referring to *In re Cook's Mortgage, Lawledge v. Tyndall*, [1896] 1 Ch. 923, said that he had himself made many orders according to the form in Seton; but, in view of the recent authorities, the form now proposed appeared to be preferable in the present case, and the judgment would, accordingly, go in that form. *WILLIAMS v. WILLIAMS* — Kekewich J. [1899] W. N. 66

**PARTITION—continued.**

— Infant—Practice—Partition action—Real estate of infant—Request—Order for sale—Conversion—Carrying over infant's share.

See No. 1, above.

7. — *Infant—Sale—Request by infant—Conversion—Supreme Court Fund Rules, 1886, r. 21.*

The mere request by solicitors or counsel for an infant does not operate as an election by the infant to take as personally. The funds, therefore, to be carried over must be stated to be real estate as required by rule 21 of the Supreme Court Fund Rules, 1886. *HOWARD v. JALLAND*

Kekewich J. [1891] W. N. 210

Examined and approved of by Byrne J. *In re Norton*, [1900] 1 Ch. 101. See No. 1, above.

8. — *Infants entitled to one undivided third—Form of judgment—Partition action—Practice.*

Form of judgment in action for sale in lieu of partition, where infant plts. are entitled to one undivided third, declaring infants, in event of a sale taking place, to be trustees for the purchaser, and directing conveyance by next friend. *DAVIS v. INGRAM*

Kekewich J. [1897] 1 Ch. 477

9. — *Lunatic out of jurisdiction—Conveyance—Partition Act, 1868 (31 & 32 Vict. c. 40), s. 7—Vesting order—Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 9, 20, 30.*

In a partition action one of the defts., the tenant in tail of an undivided share, was a lunatic out of the jurisdiction:—

*Held*, that the lunatic was a trustee of the share, and that under s. 9 of the Trustee Act, 1850, there was power to make a vesting order. The Court, under s. 20 of the Act, appointed the chief clerk a person to convey the lunatic's undivided share, and ordered the purchase-money of that share to be paid into court as money liable to be invested in land subject to the same limitations as the lunatic's undivided share. *CASWELLS v. SHEEN*

North J. [1893] W. N. 187

10. — *Mortgage—Equitable mortgage of share—Priority as between mortgagees not having gone into possession and co-owners of mortgagor.*

A., who was entitled to a share of the proceeds of property which had been sold in a partition action, had created an equitable charge thereon in favour of B. A., who had been in possession and in receipt of the rents of part of the property, had retained more than his share of such rents:—

*Held*, that the rents received by A. in excess of his share must be brought into account as between him and his co-owners, in priority to B., who, not having gone into possession, as he might have done, could not be in a better position than A., his mortgagor. *HECKLES v. HECKLES*

Stirling J. [1892] W. N. 188

Commented on by Stirling J. *Hill v. Hickin*, [1897] 2 Ch. 579.

— Mortgage—Set-off of occupation rent as against mortgagee of his share.  
See No. 15, below.

**PARTITION—continued.**

— Mortgage of share in moieties—Covenant for further assurance.  
*See No. 5, above.*

**11. — Parties—Partition action—Mortgage—Dismissal as against mortgagees.**

To an action for partition brought by the owner of the equity of redemption of an undivided share of land subject to mortgages affecting the whole, and the plt.'s mortgagee and the over-riding mortgagees were made parties. On a motion to dismiss the action as against the mortgagees as disclosing no reasonable cause of action:—

*Held*, that they had been wrongly joined, not being necessary or proper parties to a partition action. *SINCLAIR v. JAMES*

**North J. [1894] 3 Ch. 554**

**12. — Party wall—Trespass—Mandatory injunction.**

Notwithstanding the abolition of the writ of partition, a tenant in common is entitled as of right to a partition of the common property subject to the provisions for sale contained in the Partition Act, 1868. A party wall held in common separated the gardens of the plts. and deft. The plts. pulled down part of the wall and rebuilt it as part of an addition to their house, with concrete foundations and footings extending further into the property of the deft. than the original foundation. At the height of the old wall they set back the new wall half the thickness of the old wall:—

*Held*, that the plts. were entitled to a partition of the wall vertically and longitudinally. A mandatory injunction against permitting the foundation and footings to remain on deft.'s land refused. *MAYFAIR PROPERTY CO. v. JOHNSTON*

**North J. [1894] 1 Ch. 508**

*See Johnston v. Mayfair Property Co.*, *North J.* [1893] *W. N.* 73.

**13. — Sale—Power to give receipts.**

Trustees under the Acts can give a good receipt for purchase-money of land sold in a partition action. *PYNE v. PHILLIPS*

**North J. [1895] *W. N.* 8**

**14. — Sale—Set-off—Interest—Partition Act, 1868 (31 & 32 Vict. c. 40), s. 6.**

In a partition action real estate was sold in lots with liberty to the co-owners to bid. One of them bought certain lots and was allowed to set off part of the purchase-money against his share of the funds:—

*Held*, that he should neither gain nor lose by the transaction. Ordered that he should pay such interest as the purchase-money would have earned if paid into court, i.e., 3 per cent. *In re DRACUP. FIELD v. DRACUP*

**North J. [1894] 1 Ch. 59**

**15. — Sale—Set-off as against mortgagee of his share—Occupation rent due from one of several co-owners.**

In a partition action where it had been certified by the master that a certain sum was due from H., a co-owner of the property forming the subject of the action, in respect of occupation

**PARTITION—continued.**

rent (he not having been tenant of his co-owners):—

*Held*, upon a sale of the property, that the sum so certified could not be set off as against a mortgagee of H.'s share, though it might have been set off against him personally.

*Heckles v. Heckles*, [1892] *W. N.* 188, commented on. *HILL v. HICKIN*

**Stirling J. [1897] 2 Ch. 579**

— Solicitors, Change of—Lien—Partition action.  
*See SOLICITOR—Lien.* 98.

**PARTNERSHIP.**

*Partnership Act*, 1890 (53 & 54 Vict. c. 39), declares and amends the law of partnership.

*Generally*, col. 1410.

*Accountants*, col. 1411.

*Accounts*, col. 1411.

*Arbitration*, col. 1413.

*Bankruptcy*, *see* **BANKRUPTCY—Partnership.**

*Contracts*, col. 1414.

*Dissolution*, col. 1415.

*Goodwill*, col. 1417.

*Infants*, col. 1423.

*Liabilities*, col. 1420.

*Mortgages*, col. 1423.

*Practice*, col. 1423.

*Receiver*, col. 1424.

*Sale*, col. 1424.

**Generally.**

— Allegation of partnership—Contract—Resulting trust—Part performance.

*See* **FRAUDS, STATUTE OF.** 15.

— Bankruptcy—Practice.

*See* **Cases under BANKRUPTCY—Practice.**

— Company—Application by firm.

*See* **COMPANY—WINDING-UP—Contributory.** 42.

1. — *Fiduciary capacity—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 4, sub-s. 3.

A partner receiving money on account of himself and partner does not receive it in a fiduciary capacity within s. 4, sub-s. 3, of the Debtors Act, 1869. *PIDDOCKE v. BURT*

**Chitty J. [1894] 1 Ch. 343**

— Lunatic partner.

*See* **INJUNCTION.** 30.

— Proof—"Share of profits"—"Loan."

*See* **BANKRUPTCY—Proof.** 180.

2. — *Real estate—Conversion.*

Principles regulating the devolution of land held for a partnership or other common object discussed. *In re WILSON. WILSON v. HOLLOWAY*

**North J. [1893] 2 Ch. 340**

— Solicitors.

*See* **SOLICITOR—Partnership.**

— Stamps—Contract note—Penalties for insufficient stamping.

*See* **REVENUE—Stamps.** 172.

— Stamps—Transfer of property.

*See* **REVENUE—Stamps.** 150.

**PARTNERSHIP (Generally)—continued.**

— Trade-marks—Application by partners for separate registration of identical marks used by old firm.

See **TRADE-MARK—Registration.** 53.

**Accountants.**

3. — *Retiring partner—Audit—Stock-taking—Costs, charges, and expenses—Trustee—Administration—Capital and income.*

A partner, on retiring from his firm, left his capital, 15,000*l.*, in the business under an agreement with the continuing partners that it should be a debt due from them to him and bearing interest until repayment. The agreement contained a stipulation that the outgoing partner should have free access to the books at all times, and various provisions intended to satisfy the outgoing partner from time to time of the solvency of the business; upon breach of any one of these provisions he was to be at liberty to call in his capital. The outgoing partner subsequently died, having by his will bequeathed his residuary estate, which included his capital in the business, to a trustee upon trusts for one for life and for others in remainder:—

*Held*, that the trustee was at liberty to employ accountants and valuers for an audit and stock-taking once a year if desired, or oftener if special circumstances so required; and that the expenses thereof were costs, charges, and expenses properly incurred by the trustee in the execution of the trusts of the will and for the benefit of the whole estate, and were therefore payable out of capital and not out of income. *In re BENNETT. JONES v. BENNETT* — **C. A. [1896] 1 Ch. 778**

**Accounts.**

4. — *Betting—Accounts—Illegal business—Bookmaking and betting—Intention of partners—User of "place" for purpose of betting—Account, Action for—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 3.*

The fact that one partner has been guilty of illegal acts in the conduct of the partnership business is no defence to an action for account by the other partner, where the objects of the partnership were not illegal, and the innocent partner at the time of entering into the partnership intended that it should be carried on lawfully. The *plt.* and *def.* were partners in a bookmaker's and betting business, which was carried on by the *def.*; the *plt.* claimed an account of the profits of the partnership, and the *def.* contended that, having regard to the nature of the business, no such relief could be obtained:—

*Held*, that as a bookmaking and betting business could be carried on without contravening the Betting Act, 1853, and that as the *plt.* when he entered into this partnership contemplated that the business would be so carried on in the usual way, the fact that the *def.* had acted illegally was immaterial, and the *plt.* was entitled to the account claimed. *THWAITES v. COULTHWAIT* — **Chitty J. [1896] 1 Ch. 496**

Referred to by Div. Ct. *Hawke v. Dunn*, [1897] 1 Q. B. 579, 593.

**PARTNERSHIP (Accounts)—continued.**

5. — *Betting—Agreement to share profits in betting transaction—Right to account of winnings—Principal and agent.*

Where A. and B. entered into a partnership to share profits of betting on races, and A. advanced money for the purpose of the partnership:—

*Held*, that as B. had received money on account of A. and the betting part of the transaction was purely collateral, A. was entitled to have an account. *HARVEY v. HART*

**Stirling J. [1894] W. N. 72**

— Bets paid by one partner—Claim for contribution—Gambling partnership.  
See **GAMING.** 9.

6. — *Death of partner before actual taking of account.*

A partner died ten days after the termination of the partnership year 1890–1, and before the account for that year was taken:—

*Held*, on the construction of the articles, that the rights of the parties were governed by an account to be taken for that year, and not by the signed accounts for 1889–90.

Decision of *Romer J.*, [1893] 1 Ch. 391, affirmed. *HUNTER v. DOWLING (No. 1)*

**C. A. [1893] 3 Ch. 212**

7. — *Death of partner before actual taking or signing of account—Goodwill.*

A partner died after the termination of a partnership year, but before the taking of the account for that year. At the date of his death negotiations were on foot for the sale of leaseholds and plant belonging to the partnership to a *ry. co.*, which ultimately resulted in a sale. The price included a sum for goodwill:—

*Held*, that the deceased partner's share included an apportioned part of the price of the leaseholds and plant, but no part of the price of the goodwill. *HUNTER v. DOWLING (No. 2)*

**North J. [1895] 2 Ch. 223**

8. — *Mortgage of share—Sale of share—Rights of mortgagee—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 31, sub-s. 1, 2.*

Action by a mortgagee of a share in a partnership to enforce his security on dissolution.

By indenture dated Sept. 12, 1899, made between the partners, reciting that the accounts to June 30, 1899, had been made up and approved by the partners, the partnership was dissolved as from June 30, 1899, and the mortgagor conveyed his share to D. for the sum of 500*l.*, agreed on for the purchase thereof, D. covenanting to discharge the outstanding liabilities.

*Held*, that sub-s. 1 of s. 31, which bound the mortgagee to accept accounts of profits agreed during the continuance of the partnership, did not apply to the case of a sale of the mortgagor's share. To hold otherwise would be tantamount to striking out sub-s. 2, as it would allow the partners to say that the mortgagee was not entitled to an account to ascertain the mortgagor's share on dissolution because the mortgagor had agreed to take a certain sum for his share. The *plt.* was not bound by the sale, but was entitled to a charge on the share as

**PARTNERSHIP (Accounts)—continued.**

ascertained by the account at the date of dissolution, and to an account from that date.

Decision of Farwell J., [1900] W. N. 77, affirmed. **WATTS v. DRISCOLL** [1900] W. N. 261

**Arbitration.**

9. — *Agreement to refer—Power to expel partner—Validity of notice—Bona fides—Notice of dissolution—Motion to stay proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*

Articles of partnership provided that a partner might be expelled for breach of certain acts therein specified, and that if any question should arise whether a case had happened to authorize the exercise of this power, such question should be referred to arbitration. The defts. served a notice on the plt. to determine the partnership on the ground that he had committed a breach within the expulsion clause, but gave no details of the particular act complained of; the plt. thereupon brought an action to restrain the defts. from acting on this notice; the defts. moved to stay proceedings and refer all matters in dispute to arbitration:—

*Held*, that the preliminary question whether or not the notice of expulsion was valid was one more suitable for decision by the Court than by an arbitrator, and that as there was a suggestion of a fraudulent exercise of the power of expulsion, the Court, in the exercise of its discretion, ought not to stay proceedings and enforce a reference.

A partner is not entitled to spring a notice of dissolution on his co-partner without giving him some preliminary warning of the cause of complaint, and an opportunity of meeting the case alleged against him. **BARNES v. YOUNGS**

**Romer J. [1898] 1 Ch. 414**

**10. — Arbitration clause.**

The question whether there ought to be a dissolution of partnership cannot be referred to arbitration, although it be one of the questions which were intended to come within the arbitration clause in the partnership articles. **TURNELL v. SANDERSON** - **Kekewich J. [1891] W. N. 71**

11. — *Arbitration clause—Action for dissolution—Motion to stay proceedings—Form of order.*

By articles of partnership between the plt. and the defts. it was provided that "all matters in difference in relation to the partnership affairs" should be referred to arbitration. Disputes arose between the partners of such a character as to render the continuance of the partnership difficult, and this action was brought for the dissolution of the partnership. The defts. moved for a stay of proceedings and reference to arbitration, and the plt. moved for the appointment of a receiver:—

*Held*, that the Court ought to put a broad construction on the terms of this arbitration clause and to hold that the question whether there ought to be a dissolution was covered by it, as being one of the affairs of the partnership. As to the form of the order, it was to be observed that **Chitty J. in Vawdrey v. Simpson, [1896] 1 Ch. 166**, was reported to have said that he referred the matters in dispute to arbitration in accordance with the submission, but nevertheless

**PARTNERSHIP (Arbitration)—continued.**

the mandatory part of the order was in the simple form. That form would therefore be followed, but, inasmuch as the Court did not now think fit to appoint a receiver, though it might think fit to do so at a later stage, the order would be expressed to be without prejudice to the motion for a receiver. **MACHIN v. BENNETT**

**Kekewich J. [1900] W. N. 146**

**12. — Arbitration clause—Receiver.**

The mere fact of dissolution of a partnership does not give one partner an absolute right, as against his co-partners, to have a receiver appointed of the partnership business; nor, on the other hand, is the jurisdiction of the Court to appoint a receiver ousted by an arbitration clause, but where there is such a clause the Court may appoint a receiver and stay all proceedings in an action for dissolution. **PRINCE v. RONGORONI** - **Stirling J. [1892] 1 Ch. 633**

13. — *Arbitration clause—Return of premium—Motion to stay.*

Articles of partnership provided for arbitration in case of difference between the partners. In an action for dissolution, one of the partners claimed the return of premium paid by him. The deft. moved for stay of proceedings and reference to arbitration. The plt. objected that the arbitrator would be unable to determine whether the premiums should be refunded:—

*Held*, that the arbitrator would have power under a reference to award dissolution, including, if necessary, return of premiums, and that proceedings should be stayed and the matters in dispute referred to arbitration. **BELFIELD v. BOURNE** - **Stirling J. [1894] 1 Ch. 521**

See **Machin v. Bennett, Kekewich J. [1900] W. N. 146, No. 11, above.**

**Bankruptcy.**

See **BANKRUPTCY—Partnership.**

**Contracts.**

14. — *Contract of service—Exclusive right to services.*

The analogy between directors and partners is incomplete, and the same director may act for two rival cos., though he may not disclose to one information confidentially obtained from the other. **LONDON AND MASHONALAND EXPLORATION CO. v. NEW MASHONALAND EXPLORATION CO.**

**Chitty J. [1891] W. N. 165**

15. — *Death of partner—Contract with—Partnership—Contract with—Death of partner—When contract terminated by.*

A partnership, consisting of the defts. and another person, carried on the business of music-hall proprietors under the name of the A. Co. The plt., a troupe of music-hall performers, entered into a contract with the A. Co. to give certain performances at the co.'s music-hall. The plt. had no knowledge of the persons of whom the co. consisted. After the making of the contract and before the time for performance arrived the deft.'s partner died:—

*Held*, that the contract was not of such a personal character on the part of the partnership

**PARTNERSHIP (Contracts)—continued.**

as to be put an end to by the death of the deceased partner, and that it could be enforced against the defts., the surviving partners. *PHILLIPS v. ALHAMBRA PALACE CO.*

Div. Ct. [1900] W. N. 253; see [1901] 1 Q. B. 59

16. — *Loan in consideration of share of profits—Contract not in writing—Postponement to other creditors in bankruptcy—Partnership Act, 1890* (53 & 54 Vict. c. 39), s. 2, sub-s. 3 (d), s. 3.

The rights of a person who advances money by way of loan to another engaged in business, on a contract that the lender shall share in the profits of the business, are postponed under s. 3 of the Partnership Act, 1890, in case the person to whom the money has been advanced is adjudged a bankrupt, until the claims of the other creditors have been satisfied, whether the contract to advance the money be oral or in writing. *In re FORT. Ex parte SCHOFIELD*

C. A. [1897] 2 Q. B. 495

17. — *Option of purchase—Application of provisions in articles to partnership at will.*

Articles of partnership gave A., one of the partners, an option of purchase on the determination of the term by effluxion of time. The term having expired the business was continued as a partnership at will:

*Held*, that on the dissolution of the partnership the provisions of the original articles applied and that A. was entitled to purchase. *DAW v. HERRING* *Stirling J.* [1892] 1 Ch. 284

— *Quasi-partnership—Loan—Interest varying with profits—Bankruptcy.*

See *BANKRUPTCY—Partnership*. 138.

18. — *Receipt of share of profits—Implied agreement for partnership—Land employed in business—Conversion—Partnership Act, 1890* (53 & 54 Vict. c. 39), s. 20.

Under the Partnership Act, 1890, as before the Act, though the receipt of a share of profits of a business is *prima facie* evidence of partnership, yet all the circumstances must be regarded, and an inference drawn from them as a whole.

Partners borrowed money on the security of freeholds of which they were tenants in common, and expended the money in improving part of the freehold in which the business was carried on:—

*Held*, that s. 20 (3) of the Act applied, and that none of the freehold had become partnership property so as to descend as personality. *DAVIS v. DAVIS* — *North J.* [1894] 1 Ch. 393

**Dissolution.**

19. — *Agent—Effect on contract to employ agent.*

A partnership agreed to employ B. as their agent for a fixed period. Before the period expired two of the partners retired. The continuing partners offered to employ B. on the same terms for the remainder of the period. B. refused:—

*Held*, that the dissolution operated as a wrongful dismissal of B., but that he was only entitled to nominal damages. *BRACE v. CALDER*

C. A. [1895] 2 Q. B. 253

**PARTNERSHIP (Dissolution)—continued.**

— *Arbitration.*

See *Cases under PARTNERSHIP—Arbitration*.

20. — *Assets, Application of—Costs—Partnership action—Debt from partnership to one of the partners—Priority.*

In a partnership action the partnership assets consisted of a fund in court:—

*Held*, that the fund should be applied first in paying a debt due to one partner on loan account, then in placing the partners on a footing of equality as regarded capital, that the surplus should be applied in payment of the costs of the action, and that the rest of the costs should be borne by the partners in proportion to their interests. *ROSS v. WHITE* C. A. [1894] 3 Ch. 326

— *Bankruptcy of partners.*

See *Cases under BANKRUPTCY—Partnership*.

21. — *Date—Partnership at will—Action for dissolution—Date of issue or of service of writ.*

In an action claiming a declaration of the date of the dissolution of a partnership at will between the plt. and the deft., and to have an account taken of the partnership dealings, and the affairs of the partnership wound up by the Court:—

*Held*, that the partnership had been dissolved as from October 19 (the date of the service of the writ) and not from October 18 (the date of the issue of the writ). Vide *Shepherd v. Allen*, (1864) 33 Beav. 577. *UNSWORTH v. JORDAN*

*North J.* [1896] W. N. 2 (5)

22. — *Death of partner—Remuneration of surviving partner for carrying on business at a loss.*

A partner who carries on a business after dissolution of the partnership by the death of a partner with the concurrence of the executors of the deceased partner and for the benefit of the firm, is not entitled to any remuneration for his services unless the business has been carried on at a profit. *In re ALDRIDGE, ALDRIDGE v. ALDRIDGE*

*North J.* [1894] 2 Ch. 97

— *Deceased partner—Administration of estate of—Lex fori.*

See *CONFLICT OF LAWS*. 13.

— *Deceased partner's share—Option of purchase.*

See *CONTRACT—Time*. 35.

— *Examination of witnesses abroad—Letters of request.*

See *EVIDENCE*. 27.

— *Goodwill.*

See *PARTNERSHIP—Goodwill*.

23. — *Joint creditor—Bankruptcy of all partners.*

After dissolution one partner brought a partnership action, and a receiver and manager was appointed. A judgment creditor of the firm obtained on April 4 an order for the receiver to pay him his debt and costs. On April 5 all the partners were adjudicated bankrupt, but there was no joint adjudication against the firm. In drawing up the order the registrar dated the same May 16, to let in an affidavit of the latter fact:—

*Held*, that the judgment creditor was not

**PARTNERSHIP (Dissolution)—continued.**

entitled to an order for payment of his debt and costs, as the interest of each partner had vested in his trustee in bankruptcy before May 16, and because he had acquiesced in the post-dating of the order. *MITCHELL v. WEISE. Ex parte FRIEDHELM* - - *Chitty J. [1892] W. N. 139*

**24. — Name—Right to use of name of old firm—Solicitor's business.**

Upon the dissolution of a partnership, without any sale or assignment of the goodwill of the business, and without any provision as to the use of the firm name, each of the partners is entitled to carry on business under that name, provided that he does not by so doing expose his former partners to any risk of liability.

Whether there will be any such risk is a matter to be determined having regard to the circumstances of each case.

*Plts.* claimed the exclusive right to use the name "Burchell" or "Burchells," and to restrain *defts.* from using either of those names in any way as part of their firm name:—

*Held*, by *Byrne J.*, [1900] *W. N.* 29, on motion for an injunction, that the right to the injunction depended upon *plts.* establishing that any use of the word "Burchell" as part of the name of *defts.* firm would expose *plts.* to risk of liability, and, the Court not being satisfied that either of the *plts.* would be under any tangible risk of liability if *defts.* were (as they said they were willing to do) to practise as "Burchell, Wilde & Co.," especially if *plts.* were to use a style carrying their initials, or were to take the name of "Burchells & Burchell," made no order on the motion:

*Held*, by the *C. A.*, that, subject to the above limitation, the *defts.* were entitled to use the name "Burchell & Co.," though it would be more satisfactory if they would undertake to continue to use (as they had done since the hearing by *Byrne J.*) the name "Burchell, Wilde & Co."

*Gray v. Smith*, (1889) 43 *Ch. D.* 208, distinguished.

The case of *Banks v. Gibson*, (1865) 34 *Beav.* 566, must be read subject to the qualification that the use of the old name must not expose the other partners to liability. *BURCHELL v. WILDE*

*C. A.* [1900] *W. N.* 63; [1900] 1 *Ch.* 551

— Partnership debt—Retirement of partner.

See *PRINCIPAL AND SURETY—Discharge.* 12.

— Proof—Loan to firm on terms of sharing profits—Subsequent advances—Postponement—Dissolution of firm.

See *BANKRUPTCY—Proof.* 178.

**Goodwill.**

**25. — Canvassing old customers—Injunction—Dissolution—Action for—Compromise—Sale of business to one partner—"Assets."**

A. and B. had formerly carried on business in partnership, and B. had brought an action for rescission of the partnership on the ground of misrepresentations by A. This action was compromised on the terms that judgment should be entered for B. for 1200*l.* the partnership to be dissolved, A. retaining the "assets." The good-

**PARTNERSHIP (Goodwill)—continued.**

will was not specifically mentioned in the terms of the compromise. A. subsequently brought another action to restrain B. from canvassing the customers of the old firm. Upon motion for an interlocutory injunction:—

*Held*, that the relationship of vendor and purchaser existed between the parties, that B. was subject to the ordinary obligations of a vendor, and that consequently, upon the authority of *Trego v. Hunt*, [1896] *A. C.* 7, A. was entitled to an injunction.

*Gray v. Smith*, (1889) 43 *Ch. D.* 208, and *Pearson v. Pearson*, (1884) 27 *Ch. D.* 145, considered. *JENNINGS v. JENNINGS*

*Stirling J.* [1898] 1 *Ch.* 378

Referred to by *Romer J.* *In re David and Matthews*, [1899] 1 *Ch.* 378, 381.

**26. — Canvassing old customers—Soliciting customers—Sale of business.**

One of two partners bought out the other under their articles. The articles provided that the outgoing partner might set up a similar business in the neighbourhood:—

*Held*, that the proviso was merely declaratory, and did not authorize solicitation of old customers. *GILLINGHAM v. BEDDOW*

*Cozens-Hardy J.* [1900] *W. N.* 115; [1900] 2 *Ch.* 242

**27. — Death of one partner—Sale of business to surviving partner—"Effects and securities"—Carrying on business under style of old firm—Canvassing old customers—Appraiser—Partnership articles.**

The law with regard to the disposal of goodwill on the dissolution of a partnership, and as to surviving or continuing partners' right to set up a rival business, discussed and explained.

L. and D. formerly carried on business as co-partners under the style of L. & D. On the death of L. in 1876 D. and M. entered into partnership under articles whereby it was provided that the style of the firm should be the same as before—namely, L. & D.; and (amongst other things) that "in case of the death of one of the partners a general account of the position shall be made, including all effects and securities of whatsoever nature that they possess, and the value of such effects and securities be estimated as at the date of such decease." There was also a provision for the appointment of an appraiser.

The partnership expired by the death of D. in 1896, whereupon an appraiser was agreed upon between D.'s personal representative and M., who subsequently appointed the same person arbitrator.

Questions arose before the arbitrator whether he ought to consider the question of goodwill and set a value thereon, and whether in considering the goodwill he should appraise the value thereof on the footing that, if it were sold, M. would be at liberty to carry on a rival business, but without any right to solicit customers of the old firm, and whether or not under the name of L. & D. The arbitrator stated a special case for the opinion of the Court in accordance with s. 19 of the Arbitration Act, 1889:—

*Held*, that the arbitrator ought to consider

**PARTNERSHIP (Goodwill)—continued.**

the question of goodwill (if any), and to set such a value upon it as he might consider to have been attached to the business at the death of D., and that the value (if any) of the goodwill ought to be appraised on the footing that, if it were sold, the surviving partner would be at liberty to carry on a rival business, but would not have the right to solicit any person who was a customer of the old firm prior to the death of D., or the right to carry on business under the name of L. & D. *In re DAVID AND MATTHEWS*

Romer J. [1899] 1 Ch. 378

**28. — "Goodwill"—Sale of—Canvassing old customers.**

Where the goodwill of a business is sold (without further provision), the vendor may set up a rival business, but he is not entitled to canvass the customers of the old firm, and may be restrained by injunction from soliciting any person who was a customer of the old firm prior to the sale to continue to deal with the vendor, or not to deal with the purchaser.

The same principle is applicable to the case where a person has been taken into partnership on the terms that on the expiration of the partnership the goodwill of the business shall belong solely to the other partner.

*Labouchere v. Dawson*, (1872) L. R. 13 Eq. 322, approved.

The reasoning in *Pearson v. Pearson*, (1884) 27 Ch. D. 145, overruled.

Decision of C. A., [1895] 1 Ch. 462, reversed, and an injunction granted on the principle above stated. *TREGO v. HUNT*

H. L. (E.) [1896] A. C. 7

Applied by Stirling J. *Jennings v. Jennings*, [1898] 1 Ch. 378.

Referred to by C. A. *West London Syndicate v. Inland Revenue*, [1898] 2 Q. B. 507, 523.

Referred to by Romer J. *In re David and Matthews*, [1899] 1 Ch. 378, 384.

Referred to by Cozens-Hardy J. *Gillingham v. Biddow*, [1900] 2 Ch. 242, 244.

**29. — Partner's covenant—Restriction against trading—Assignment of goodwill—Benefit of covenant—Firm name—No express assignment—Vendor and purchaser—Conveyance of freehold shop—Vendor's name over door—Vendor's right to erasure.**

The benefit of a partner's covenant not to carry on a similar business to that of the partnership during a fixed period from the commencement thereof passes by an assignment of the goodwill of the partnership.

*Jacoby v. Whitmore*, (1883) 49 L. T. 335, applied.

Unless the right to use the firm name is expressly assigned, the assignee of the goodwill must not use the name so as to expose any partner to liability.

*Semble*, if the firm name merely consists of the surname of a partner with the addition of the words "& Co.," and the partner has not used the firm name as his own except in connection with the firm, there is no appreciable risk that its user will expose him to liability.

*Burchell v. Wilde*, [1900] 1 Ch. 551, applied.

**PARTNERSHIP (Goodwill)—continued.**

A purchaser bought a freehold shop with the vendor's name carved thereon, but did not use the name in his business:—

*Held*, that the vendor could not compel him to erase it. *TOWNSEND v. JARMAN* - Farwell J. [1900] W. N. 172; [1900] 2 Ch. 698

**Infants.**

**30. — Infant partner—Judgment debt.**

(A) Judgment can be obtained and execution against the partnership property issued in the case of a firm one of the partners of which is an infant. *HARRIS v. BEAUCHAMP BROTHERS*

C. A. [1893] 2 Q. B. 534

(B) Where one partner in a firm is an infant, judgment cannot be recovered or execution issued or bankruptcy proceedings taken against the firm simply, but recovery, &c., may be had against the firm "other than the infant partner." *LOVELL & CHRISTMAS v. BEAUCHAMP*

H. L. (E.) [1894] A. C. 607

**Liabilities.****— Bankruptcy.**

See Cases under **BANKRUPTCY—Partnership.**

**31. — Breach of trust by co-partner—Negligence.**

Money was entrusted to a firm of solicitors for investment:—

*Held*, (1) that the firm was liable for breach of trust committed by a partner in lending trust money of a client on improper security; (2) that the liability extended to the estate of a deceased partner; (3) that judgment recovered from one partner did not discharge the liability of the others. *BLYTH v. FLADGATE. MORGAN v. BLYTH. SMITH v. BLYTH* Stirling J. [1891] 1 Ch. 337

Referred to by Byrne J. *In re Turner*, [1897] 1 Ch. 536, 541.

**32. — Death of one partner—Transactions subsequent to death—Liability of estate of deceased partner—"Debts or obligations"—Contract of agency—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 9—Statute of limitations—Principal and agent—Fiduciary relation—Payment on account—Appropriation by creditor to statute-barred items.**

Prior to 1895, E. & Co., manufacturers, had employed F. & Co. to sell goods for them on commission. The course of business was for E. & Co. to send goods to F. & Co., who would forward them to the purchasers, receive the purchase-money, and, after deducting their commission, account to E. & Co. for the balance. In Jan., 1895, one of the partners in F. & Co. died, and the business was then carried on by the surviving partner. Shortly before the death F. & Co. had procured an order for goods, none of which were delivered until after the death, when they were sent to the surviving partner, who forwarded them to the purchaser and received the purchase-money, but did not account for it. In 1896 E. & Co. obtained judgment against the surviving partner for the balance of the account due to them from F. & Co., but nothing was recovered



**PARTNERSHIP (Liabilities)—continued.**

under that judgment. On a claim by E. & Co. to prove against the estate of the deceased partner:—

*Held* (1), as to the transactions which took place after the death, that the contract of agency between F. & Co. and E. & Co. was determined by the death, and consequently that no "debt or obligation" within s. 9 of the Partnership Act, 1890, had been incurred while the deceased was a partner, and his estate was not liable; and (2.) as to the rest of the account, that the existence of the fiduciary relation of principal and agent did not prevent the application of the Statute of Limitations.

In 1894 E. & Co. had presented an account to F. & Co. shewing a balance due to E. & Co. This account included items which had accrued due within six years, and also items under the heading "Consignment Account," nearly all of which were statute-barred. The figures of the account were not agreed by either party; but F. & Co. paid to E. & Co. 300*l*. "on account," which was credited in E. & Co.'s books to the "consignment account":—

*Held*, that the appropriation of the 300*l*. by E. & Co. to the consignment account did not take the case out of the statute; but that the payment amounted to an acknowledgment by F. & Co. that there was an account between them and E. & Co. on which a balance of more than 300*l*. would be payable, from which a promise to pay that balance when ascertained must be inferred:

*Held* further, that the sum of 100*l*. paid by the surviving partner to E. & Co., for which credit was given in arriving at the balance sought to be proved, could not now be appropriated by E. & Co. to items in respect of which the estate of the deceased partner had been held not to be liable.

*Mills v. Fowkes*, (1839) 5 Bing. N. C. 455, and *Nash v. Hodgson*, (1855) 6 D. M. & G. 474, distinguished. **FRIEND v. YOUNG**

**Stirling J. [1897] 2 Ch. 421**

**33. — Duty to co-partners—Use of confidential information.**

A partner who by information acquired as a partner makes profits in any kindred or competing business must account for those profits to the firm. *Secus*, if he use the information for purposes which are wholly without the scope of the partnership business.

A member of a firm of shipbrokers assisted in forming a joint stock co. for building ships. In doing so he used information obtained as a partner and occasionally the name and office-paper of his firm. He was paid for his services in forming the co., and made a director of it. He threatened to set up as a shipbroker under the name of his old firm:—

*Held* (1), by Kekewich J. and C. A., that he must be restrained from so using his firm's name; (2) by C. A., reversing Kekewich J., that as the business of the new co. was without the scope of the partnership and did not compete, an account of profits could not be decreed. **AAS v. BENHAM**

**C. A. [1891] 2 Ch. 244**

**34. — Execution against firm—Sale of partner-****PARTNERSHIP (Liabilities)—continued.**

*ship property — Bankruptcy of one partner — Interpleader.*

When execution has been levied against a firm for a partnership debt, and one partner presents his petition in bankruptcy within 14 days, and a receiving order is made against him, s. 11, sub-s. 2, of the Bankruptcy Act, 1890, does not apply, and the official receiver is not entitled to the net proceeds of sale in the hands of the sheriff. **DIBB v. BROOKE & SONS**

**Div. Ct. [1894] 2 Q. B. 338**

**35. — Judgment against one partner—Charge upon interest—Right to account—Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 23, 31.**

Where a separate judgment creditor of a partner has obtained a charging order on his interest under s. 23, sub-s. 2, of the Partnership Act, 1890, he only has such remedies as if the charge had been made by the partner, and except under special circumstances an order will not be made on the other partners for an account. **BROWN, JANSEN & Co. v. A. HUTCHINSON & Co. (No. 2)**

**C. A. [1895] 2 Q. B. 126**

**36. — Misrepresentation by co-partner—Misappropriation of client's moneys.**

The plt. deposited sums of money at various times with a firm of solicitors for investment. The moneys were embezzled by a clerk, but representations were made on behalf of the firm that the investments had been made and interest was paid:—

*Held* (1), that an innocent partner was bound by the misrepresentations of the firm which prevented the client from discovering the misappropriation until many years after the misappropriation occurred; (2) that the Trustee Act, 1888, did not apply so as to enable the innocent partner to plead the Statute of Limitations as a bar to the action; (3) that the client could prove against the separate estates of the partners in case the joint estate was insufficient. **MOORE v. KNIGHT**

**Stirling J. [1891] 1 Ch. 547**

**37. — Novation—Transfer from current to deposit account—Liability of deceased partner.**

Shortly after the death of G., a partner in a bank, T. transferred a sum from his current account to a deposit account. T. subsequently paid into and drew out of his current account sums exceeding that transferred. The bank stopped payment:—

*Held*, that the transaction was the same as if T. had drawn a cheque for the sum, and paid the proceeds into the deposit account. It was an entirely fresh contract, and G.'s estate was discharged. *In re HEAD*. **HEAD v. HEAD (No. 2)**

**C. A. [1894] 2 Ch. 236**

**38. — Payment of interest by firm—Liability of retired member of firm—Statute of Limitations.**

A. retired from a firm. His retirement was not gazetted. Interest on a loan continued to be paid by the firm in the firm's name, in accordance with the deed of dissolution which stipulated for payment and discharge of the loan:—

*Held*, that the statute did not begin to run, notwithstanding s. 14 of the Mercantile Law Amendment Act, 1856, for under the circumstances the payment of interest after his retirement by the continuing partners must be taken

**PARTNERSHIP (Liabilities)—continued.**

to be made by them on his behalf and as his agents. Decision of Romer J. [1894] 1 Ch. 724, affirmed. *In re TUCKER. TUCKER v. TUCKER* (No. 2) C. A. [1894] 3 Ch. 429

39. — *Scope of partnership—Deposit of securities to bearer—Solicitor—Liability for Acts of one partner—Mortgage—Partnership Act, 1890* (53 & 54 Vict. c. 39), ss. 11, 12.

A. applied to R., a member of a firm of solicitors, to obtain a loan on mortgage of land. R. obtained the mortgage from clients of his firm, but falsely told A. that the mortgagees required collateral security, and obtained securities to bearer from R. On previous occasions A. had deposited security with R.'s firm to secure loans. The firm was in the habit of holding securities to bearer for their clients:—

*Held*, that it was within the scope of R.'s apparent authority to take custody of the securities, and that his partners were liable for a misappropriation by him of the securities. Decision of Kekewich J. reversed. *RHODES v. MOULES*

C. A. [1895] 1 Ch. 236

Referred to by North J. *Mara v. Browne*, [1895] 2 Ch. 69, 86; but this case was reversed by C. A. [1896] 1 Ch. 199.

Referred to by Kekewich J. *Marsh v. Joseph*, [1897] 1 Ch. 213, 232.

40. — *Separate debt of partner—Judgment creditor—Receiver—Foreign firm—Branch office in England—Partnership Act, 1890* (53 & 54 Vict. c. 39), s. 23.

Sect. 23 of the Partnership Act, 1890, which enables a judgment creditor of a partner to obtain a receiver of his interest in the partnership applies to a foreign firm having a branch in England. *BROWN, JANSEN & CO. v. A. HUTCHINSON & CO.* (No. 1) C. A. [1895] 1 Q. B. 737

See also C. A. [1895] 2 Q. B. 126.

— Use of name by uncertified solicitor—Ratification—Liability—Replacement of lost fund.

See PRINCIPAL AND AGENT. 13.

**Mortgages.**

41. — *Mortgage by partner to secure debt of partnership—Devise of mortgagor's real estate—Sufficiency of partnership assets—Real Estate Charges Act, 1854* (*Locke King's Act*, 17 & 18 Vict. c. 115).

The Real Estate Charges Act, 1854 (*Locke King's Act*), does not apply to the case of a charge created by one partner on his separate real estate to secure a debt of the partnership, when at the time of his death the partnership assets are sufficient to answer all the debts of the partnership.

Decision of Romer J., [1898] 1 Ch. 667, affirmed. *In re RITSON. RITSON v. RITSON* C. A. [1898] W. N. 166 (11); [1899] 1 Ch. 128

**Practice.**

— Action against partners in firm name—Death of partner after appearance—Form of defence of surviving partner.

See PRACTICE—Fleeting. 159.

**PARTNERSHIP (Practice)—continued.**

— Parties.

See CASES under PRACTICE—Parties.

— Service.

See CASES under PRACTICE—Service.

**Receiver.**

42. — *Manager and receiver—Salary, Undertaking to act without—Allowances—Security—Guarantee society—Surety—Premiums—Extra work done by receiver.*

By a judgment for dissolution of a partnership between two agricultural implement makers, the deft., one of the partners, was appointed receiver and manager, and undertook to act without salary. He carried on the business very successfully for more than eighteen months, and then purchased it with the sanction of the Court. He was a skilled mechanic, and during his receivership worked in the business as a common workman. In his accounts he claimed to be allowed two premiums of 25*l.* each paid to a guarantee society which had become surety for his duly accounting, and the sum of 2*l.* per week for the manual work done by him as a workman. The master allowed both items:—

*Held*, (by Kekewich J.), that a receiver and manager appointed without salary or remuneration was entitled to be allowed in his accounts premiums paid by him to a guarantee society as his surety, and that the two premiums ought therefore to be allowed, but that the 2*l.* per week ought not, for that the receiver, being in a fiduciary position, could not employ himself. The decision on the first point was not appealed from:

*Held*, by C. A., that the 2*l.* per week ought also to be allowed, for that, although the receiver had acted irregularly and run great risk in not asking for wages at the time of his appointment, he was entitled to be paid for services which had proved beneficial to the estate, and which it was no part of his duty as receiver and manager to perform. *HARRIS v. SLEEP*

C. A. [1897] 2 Ch. 80

**Sale.**

43. — *Power of attorney, Sale of business under—Specific performance—Waiver by purchaser.*

Four partners traded under the firm of A. & Co. One resident abroad gave B., a co-partner, power of attorney to a second to sell or concur in selling any of his property. The partner in England agreed to sell their business as a going concern, B. concurring also as A.'s attorney. The agreement contained provisions entitling the purchaser to carry on business as A. & Co. and a covenant by the partner not to trade within fifty miles of the seat of the partnership business:—

*Held*, (1) that stipulations in the agreement as to deferred capital did not constitute a new partnership, but only a mode of paying the agreed price, and were within the power of attorney; (2) that the licence to trade as A. & Co., and the agreement not to trade if not authorized by the power, were stipulations in favour of the purchaser and could be waived by him.

*Semble*, that the agreement not to trade was

**PARTNERSHIP (Sale)**—*continued.*

authorized by the power of attorney, as a going concern could not be sold to advantage with such a stipulation.

*Quære*, whether the authority to trade as A. & Co. was within the power. *HAWKSEY v. OUTRAM* — C. A. [1892] 3 Ch. 359

Distinguished by *Kekewich J. Lloyd v. Nowell*, [1895] 2 Ch. 744.

**PARTY STRUCTURE**—London Buildings Acts.

See LONDON—Buildings. 20—24.

**PARTY WALL**—Adjoining owners—Implied contract to pay half cost of party wall.

See BUILDING. 2.

— London Building Acts.

See LONDON—Buildings. 20—24.

— Trespass—Mandatory injunction.

See PARTITION. 12.

**"PASSING UPON."**

See HIGHWAY—Obstruction. 3.

**PASSENGER**—Distressed seamen—Compulsory pilotage—Merchant Shipping Act.

See SHIPPING—Pilotage. 192.

— Railway companies.

See RAILWAY—Passengers.

— Ticket—Conditions—Evidence.

See CARRIER. 1.

— Tramway.

See TRAMWAY. 9—11.

**PASTURAGE**—Surveyor of highways—Lord of the manor—Prescription—Profit à prendre.

See INCLOSURE. 5.

**PATENT.**

*Patents, Designs, and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), amends and consolidates the law. Amended by *Patents, Designs, and Trade Marks Acts, 1885* (48 & 49 Vict. c. 63); *1886* (49 & 50 Vict. c. 37); *1888* (51 & 52 Vict. c. 50).

APPLICATION FOR PATENT, &c.] *New rule substituted for rule 8 of the Patent Rules, 1890. See Patent Rules, dated Sept. 15, 1898. W. N. 1898* (Dec. 17), p. 408. See *Current Index, 1898*, p. xcvi.

FEES.] *Notice under the Public Offices Fees Act, 1879, and Patents, Designs, and Trade Marks Act, 1883. W. N. 1898* (Dec. 3), p. 397. See *Current Index, 1898*, p. xcix.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.] *Rules dated Nov. 26, 1897, in proceedings before Judicial Committee of Privy Council under Patents, Designs, and Trade Marks Act, 1883, s. 25. Extension of Terms by Judicial Committee W. N. 1897* (Dec. 11), p. 343. See *Current Index, 1897*, p. lxxx.; *St. R. & O. 1899*, p. 1837.

*In General*, col. 1426.

*What can be Subject of*, col. 1426.

*Amendment of Specification. See PATENT*

— *Practice.* 20—24.

*Costs. See PATENT—Practice.* 25—28.

*Disclaimer. See PATENT — Practice.* 20—24.

*Discovery*, col. 1426.

*Exhibition*, col. 1426.

**PATENT**—*continued.*

*Infringement*, col. 1427.

*Joint Grant*, col. 1430.

*Letters Patent*, col. 1432.

*Licence*, col. 1432.

*Ownership*, col. 1433.

*Particulars of Objections. See PATENT — Practice.* 30—34.

*Patent Agents*, col. 1433.

*Patent Office*, col. 1434.

*Practice*, col. 1434.

*Prior Publication*, col. 1438.

*Prolongation*, col. 1439.

*Registration*, col. 1441.

*Revocation*, col. 1441.

*Threats*, col. 1441.

*Utility*, col. 1444.

*Validity*, col. 1444.

**In General.**

— Colonial—Conveyance on sale—Stamp.

See REVENUE—Stamps. 154.

— Designs.

See Cases under DESIGNS.

— Use of word "patent"—Expired patent.

See TRADE-MARK. 2.

**What can be Subject of.****1. — New invention, what is.**

An invention is different from a discovery, and a discovery is not subject-matter for a patent unless it is an addition not only to knowledge, but to known inventions, and produces either a new and useful thing or result, or a new and useful mode of producing an old thing or result. *Per Lindley L.J. LANE FOX v. KENSINGTON AND KNIGHTSBRIDGE ELECTRIC LIGHTING CO. (No. 2)*

C. A. [1892] 3 Ch. 424, at p. 428

**2. — Pattern sleeve.**

*Semble*, that a cardboard pattern sleeve may be the subject of a patent as an instrument or tool. *HOLLINRAKE v. TRUSWELL*

C. A. [1894] 3 Ch. 420

Followed by C. A. *Boosey v. Whight*, [1900] 1 Ch. 122, 125.

Referred to by H. L. (E.). *Walter v. Lane*, [1900] A. C. 539, 562.

**Discovery.****3. — Account of profits—Disclosure of names of customers—Patent action.**

In an action for the infringement of a patent the defts. were ordered to account for profits:—

*Held*, that the defts. must disclose the names and addresses of their customers.

*Powell v. Birmingham Vinegar Brewery Co.*, (1896) 14 Rep. Pat. Cas. 1, followed. *SACCHARIN CORPORATION v. CHEMICALS AND DRUGS CO.*

C. A. [1900] W. N. 185; [1900] 2 Ch. 556

**Exhibition.**

*O. in C. dated Feb. 2, 1899, applying certain provisions of the Patents, Designs, and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), to the

**PATENT (Exhibition)—continued.**

*International Exhibition to be held at Paris in 1900.* St. R. & O. 1899, p. 601, No. 80.

**Infringement.**

4. — *Colourable use of invention as a separate tool—Infringements after action.*

Where A. sent out tools (colourably as hand-tools) which when affixed to a machine of A.'s turned it into a machine having B.'s inventions in it:—

*Held*, that this was an infringement although the tools were capable of being shewn detached from the machine as a novel tool. *SHOE MACHINERY CO. v. CUTLAN* (No. 1)

Romer J. [1895] W. N. 102

See also same case, [1896] 1 Ch. 108, 667, Nos. 8, 12, *below*.

— *Discovery—Account of profits—Disclosure of names of customers.*

See **PATENT—Discovery**. 3.

5. — *Foreign-made article—Evidence—Presumption—Injunction—Damages—Alternative relief.*

In an action by patentees of an article exclusively manufactured abroad, claiming an injunction and damages for the user of the patented article in England, the only evidence of infringement adduced was that of an expert, who deposed that the plts.' patents related to three separate and distinct modes of producing the article in question; that it was not possible to tell, from an examination of any particular parcel, under which process it had been produced, but that it must have been produced under one or other of these three processes. The deft. called no evidence, and claimed a nonsuit:—

*Held*, that the plts. were not entitled to any injunction, as they had not proved that any particular patent had been infringed. On the question of damages, the Court found as a fact that the plts.' patents covered every possible mode of producing the patented article, and that one of these patents must therefore have been infringed, and that the nature and extent of the wrong done to the plts. did not depend upon the particular patent infringed. An inquiry was therefore directed, without mentioning any particular patent, whether any and what damages had been sustained by the plts. by reason of the user by the deft. of the patented article.

*Scmble*: It is not always essential to establish the particular alternative under which relief is claimed, provided that the rights of the plt. and the obligations of the deft. are identical under each of the alternatives, and that the alternatives exhaust every possible contingency and are mutually exclusive. *SACCHARIN CORPORATION, LD. v. QUINCEY* — — — *Cozens-Hardy J.* [1900] W. N. 115; [1900] 2 Ch. 246

6. — *Foreign manufacturer—Sale of patented article abroad and delivery in England—Posting patented article to England—Transporting patented article within the United Kingdom—User.*

A trader in England ordered goods from a foreign manufacturer in Switzerland to be sent by post to England. The manufacturer addressed

**PATENT (Infringement)—continued.**

the goods to the trader in England and delivered them to the Swiss Post Office, by whom they were forwarded to England. The goods were manufactured according to an invention protected by an English patent:—

*Held*, that since the contract of sale was completed by delivery to the Post Office in Switzerland, and since the Post Office was the agent of the buyer and not of the vendor, the vendor had not made, used, exercised or vended the invention within the ambit of the patent, and that the patentee had no right of action against the vendor for an infringement of the patent.

The decision of C. A., [1897] 2 Ch. 322, affirmed. *BADISCHE ANILIN UND SODA FABRIK v. BASLE CHEMICAL WORKS, BINDSCHEDLER*

H. L. (E.) [1897] W. N. 167 (8); [1898] A. C. 200

Referred to by *Cozens-Hardy J. Saccharin Corporation v. Reitmeyer & Co.*, [1900] 2 Ch. 659, 663.

7. — *Improvements in an old machine, Patent for—Extent of protection—Appeal from Ceylon.*

Where a patent had been granted (in Ceylon) merely for improvements upon the mechanism of an old and known machine:—

*Held*, that the patentee's exclusive right thereto could not be permitted to exceed the exact terms of his specification; and that the deft.'s improvements which had the same object, but were effected in a manner not strictly corresponding to the specification, were not an infringement of his patent. *BROWN v. JACKSON*

P. C. [1895] A. C. 446

8. — *Judgment against defendant—Leave after trial for defendant to adduce further evidence on appeal—Application for to Court of Appeal—Jurisdiction—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 29—R. S. C., 1883, Order LVIII, r. 4.*

Anticipation was one of the grounds of defence to an action for infringement of patent, and the judge held the patent to be valid and granted an injunction against the deft. After the trial the deft. gave notice of appeal, and applied to the C. A. for leave to amend his particulars of objections, and to adduce further evidence of anticipations at the hearing of the appeal:—

*Held*, that under the Judicature Acts, and under rule 4 of Order LVIII, the C. A. had jurisdiction to make the order, but that on the merits leave ought not to be granted in the present case:

With reference to the exercise by the C. A. of the powers conferred by Order LVIII, r. 4, a patent action is in the same position as any other action.

*Cropper v. Smith*, (1884) 26 Ch. D. 700; (1885) 10 App. Cas. 249, observed upon. *SHOE MACHINERY CO. v. CUTLAN* (No. 2)

C. A. [1895] W. N. 143 (10); [1896] 1 Ch. 108

See also *Shoe Machinery Co. v. Cutlan*, [1895] W. N. 102, No. 4, *above*, and [1896] 1 Ch. 667, No. 12, *below*.

9. — *Patented articles bought in England and sent abroad for sale—"Making use of" the inven-*

**PATENT (Infringement)—continued.**

*tion—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), Sched. I., Form D—Measure of Damages.*

The defts. bought in England articles which infringed the plts.' patent, and sent them to their branch business house in Paris, where they were sold to various foreign purchasers:—

*Held*, that the transport of the articles within the United Kingdom under the circumstances was "making use" of the invention within the meaning of the patent, and constituted an infringement thereof.

The principles as to the assessment of damages discussed in *Pneumatic Tyre Co. v. Puncture Proof Pneumatic Tyre Co.*, (1899) 16 Rep. Pat. Cas. 209, applied. **BRITISH MOTOR SYNDICATE v. TAYLOR**

**Stirling J. [1900] W. N. 43; [1900] 1 Ch. 577**

The C. A. affirmed the decision of Stirling J. *Minter v. Williams*, (1835) 4 Ad. & E. 251, considered. **BRITISH MOTOR SYNDICATE v. TAYLOR & SON C. A. [1900] W. N. 239; [1901] 1 Ch. 122**

10. — *Repair or reconstruction of patented article—Article manufactured at request of patentee's agent—Injunction.*

The plts. under their patent manufactured a pneumatic tyre for cycles, which consisted of a rubber or elastic tyre lined in canvas in combination with two wires for securing the same to the rims of the wheels. The deft., at the request of an agent of the plt. company, who brought him one of the plts.' tyres, which was old and worn out, placed over the old wires a new canvas cover and a new rubber tyre. The agent had been sent by the plts. to find out whether the deft. was infringing their patent, but there was nothing to shew that the agent was authorized by them to request the deft. to do what he did:—

*Held*, that what the deft. had done went beyond fair repair of the tyre, and amounted to its reconstruction, and that he had therefore infringed the plts.' patent:

*Held*, also, that the plts. were not estopped by the act of their agent from complaining of the infringement.

*Kelly v. Batchelar*, (1893) 10 Rep. Pat. Cas. 289, distinguished, on the ground that in that case the plts. had authorized their agent to direct the deft. to construct an article infringing their patent.

*Held*, further, that, though only the one act of infringement by the deft. was proved, and there was no evidence of any threat by him to infringe again, yet, as he had accepted the order from the plts.' agent in the ordinary course of his business, it must be assumed that he would accept similar orders again, if they were offered to him, and consequently that he must be restrained by injunction from infringing the patent. **DUNLOP PNEUMATIC TYRE CO. v. NEAL**

**North J. [1899] W. N. 39; [1899] 1 Ch. 807**

11. — *Sale in England of an article made abroad by the use of material manufactured by the patented process—Certificate that validity of patent has come in question—"Subsequent action"—Costs—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 31.*

Action for infringement of a patent for the manufacture of ortho-toluene-sulpho-chloride, a

**PATENT (Infringement)—continued.**

coal-tar product used in the manufacture of saccharin. After the ortho-toluene-sulpho-chloride had been manufactured it was necessary for the production of saccharin first to change the chlorine for an amide group, and then to oxidize into saccharin and water. The defts. imported into and sold in this country saccharin made in Switzerland by the use of ortho-toluene-sulpho-chloride manufactured by a process substantially similar to that protected by the plts.' patent, and they contended that the nature of the ortho-toluene-sulpho-chloride was so changed by the subsequent operations that the importation of saccharin was not an infringement of the patent:—

*Held* (following on one point a previous decision of North J.), that the patent was valid, and also that defts. were indirectly making use of the patented invention, and that the question was covered by the principle of the decisions in *Elmslie v. Boursier*, (1869) L. R. 9 Eq. 217, and *Von Heyden v. Neustadt*, (1880) 14 Ch. D. 230. If the patented process were the last stage in the production of the article sold, the importation and sale of the product would plainly be an infringement, and it was not the less so because the article sold was manufactured by the use of the patented process with the subsequent use of certain other processes. Injunction therefore granted, and defts. ordered to pay the costs.

Costs as between solicitor and client, in accordance with s. 31 of the Patents, &c., Act, 1883, disallowed on the ground that a "subsequent action" meant an action commenced after a certificate had been granted: *Automatic Weighing Machine Co. v. International Hygienic Society*, (1889) 6 Rep. Pat. Cas. 475. **SACCHARIN CORPORATION, LD. v. ANGLO-CONTINENTAL CHEMICAL WORKS, LD.** — **Buckley J. [1900] W. N. 95**

12. — *Validity upheld—Res judicata—Estoppel—Second action between same parties—Validity denied on different grounds.*

In an action by a patentee claiming damages for an infringement and an injunction, the deft. denied the infringement. He also denied the validity of the patent alleging, amongst other things, that it had been anticipated by certain specifications.

The Court upheld the validity of the patent, but granted no injunction or damages on the ground that the evidence as to the alleged infringement was, under the circumstances, not admissible. In a second action between the same parties in respect of the same patent, the deft. again denied the validity of the patent, alleging that it had been anticipated by certain specifications which were not before the Court in the first action, and which he had discovered since that action:—

*Held*, that the validity of the patent was res judicata, and that the judgment in the first action estopped the deft. from again denying the validity of the patent. **SHOE MACHINERY CO. v. CUTLAN (No. 3)** — **Romer J. [1896] 1 Ch. 667**

**Joint Grant.**

13. — *Survivorship—Sale—Agreement—Assignment—Covenants for title—Constructing covenants as joint or joint and several—Deceased*

**PATENT (Joint Grant)—continued.**

*grantee—Legal personal representative—Concurrence of, in assignment—Practice—Action—Counter-claim—Separate causes of action—Appeal—Cross-notice—Cross-appeal—R. S. C., 1883, Order LVIII., r. 6.*

In 1882 letters patent were granted to L. and J. in the then usual form of grant to two patentees, namely, to them, "their executors, administrators, and assigns," to the end that L. and J., "their executors, administrators, and assigns, and every of them" should have and enjoy the full benefit and sole use and exercise of the patented invention. This and other patents granted to L. and J. in the same form had been taken out with a view to selling them and sharing the profits of sale. By an agreement under seal made in 1883 between L. and J. of the one part, and the plt. co. of the other part, the former agreed to sell, assign, and transfer to the latter all the patents. Clause 7 thereof was as follows: "The assignment and transfer of the said letters patent . . . shall be prepared by and at the costs of the said co. and shall be expressed to be made in pursuance of this agreement and in consideration of the payment of" the purchase-money, "and the said vendors and all other necessary parties, if any, shall at the cost of the said co. execute such assignments to the said co. or as they shall direct, and such assignments respectively shall contain a covenant by the said vendors that all the letters patent thereby assigned . . . are valid and in nowise void or voidable, and also such other covenants and provisions as may be reasonably required by the said co. for giving effect to the sale hereby agreed to be made." L. died in 1888, and after his death, the patents not having yet been assigned, though the purchase-money had, it was alleged, been paid, the co. brought an action against J. and the administratrix of L., claiming (1.) an order on the defts. to assign the patents; (2.) damages for breach of the agreement and of the warranty therein contained; and (3.) repayment of part of the purchase-money on the ground that some of the patents had been declared invalid. L.'s administratrix then counter-claimed for payment by the co. of a sum alleged to be due to her upon the agreement under a judgment pronounced by the French Court in an action brought against her in France by the co. in 1889, the judgment being based upon the ground that as L.'s administratrix she had, under the agreement, separate rights against the co. At the trial of the English action and counter-claim, Cozens-Hardy J. dismissed both, [1899] 2 Ch. 289, 301, on the grounds (1.) that L.'s administratrix had no interest in the patents inasmuch as the interest created by the form of grant in each case was a joint interest only, so that J. took the whole by survivorship; and (2.) that the obligation created by clause 7 of the agreement was only a joint—not joint and several—covenant to assign the patents and to covenant in the assignment for their validity, and that therefore L.'s administratrix was not bound to enter into any covenant. On appeals by both the co. and L.'s administratrix:—

*Held*, by C. A., reversing the decision of Cozens-Hardy J., [1899] 2 Ch. 289, that the obligation created by clause 7 was that L. and J. had

**PATENT (Joint Grant)—continued.**

jointly covenanted to assign the patents, and that the assignment should contain joint and several covenants by them that the patents were valid, and that the co. was entitled to relief against L.'s administratrix on that footing: also that L.'s administratrix was entitled on her counter-claim to have the amount alleged to be due to her under the French judgment ascertained.

A cross-notice under R. S. C., 1883, Order LVIII., r. 6, by the respondent to an appeal can only be given in relation to the subject-matter of the action, and cannot be extended to some other matter not the subject of the action. For example, where an action and counter-claim founded on separate and distinct causes of action have each been dismissed with costs, and the plt. on the counter-claim appeals, it is irregular for the plt. in the action, that is, the respondent to the appeal, if he desires to appeal also, to give a cross-notice under R. S. C., 1883, Order LVIII., r. 6. In such a case, the causes of action being separate and distinct, his proper course is to bring a cross-appeal and not to give a cross-notice. **NATIONAL SOCIETY FOR THE DISTRIBUTION OF ELECTRICITY BY SECONDARY GENERATORS v. GIBBS** C. A. [1900] W. N. 102; [1900] 2 Ch. 280

**Letters Patent.**

14. — *Construction—"Exercise"—English sale—Delivery abroad.*

An English merchant, who in pursuance of a contract made in England, delivers a patented article at a foreign port to an English importer, does not make, use, exercise, or vend the protected invention within the realm. **SACCHARIN CORPORATION, LD. v. REITMEYER & CO.**

Cozens-Hardy J. [1900] W. N. 159; [1900] 2 Ch. 659

**Licence.**

15. — *Agreement for sale—Assignment—Registration—Title—Priority—Notice—Equitable rights—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 23, 87.*

By an agreement in writing W., the registered proprietor of a patent, agreed for value to assign it to the plts. Before that agreement had been registered W. granted a licence to use the patent to S., who forthwith registered the licence. S., before he took his licence, was informed by W. of the agreement with the plts., which W. stated to be no longer in force. Subsequently the plts. registered their agreement and took an assignment, which they duly registered:—

*Held*, affirming the decision of Kekewich J., [1898] 2 Ch. 137, that under the proviso in s. 87 of the Patents, &c., Act, 1883, S., having had before he took his licence express notice of the plts.' agreement, could not assert against them his legal title by prior registration, and that the licence was void as against the plts. **NEW IXION TYRE AND CYCLE CO. v. SPILSBURY**

C. A. [1898] 2 Ch. 484

— Burden attaching to property—Privity of contract—New contract.

*See COMPANY—Contracts.* 21.

16. — *Exclusive licence—Non-payment of*

**PATENT (Licence)—continued.**

*royalty—Improvements introduced by licensee—Revocation.*

A. granted to B. an exclusive licence to work A.'s patent, B. covenanting (1) to pay the royalties, (2) to push the sale, (3) to keep proper books. Power was given to B. to revoke, but no such power was given to A. A. purported to revoke the licence, (1) for non-payment of the royalties, (2) failing to push the sale, (3) for wilful deviation from the specifications, &c. B. brought an action for an injunction. A. counter-claimed for a declaration that the licence was revoked by his notice, and for the payment of the royalty:—

*Held*, by Romer J., that non-payment of the royalty did not entitle A. to revoke, that the 2nd and 3rd grounds were not founded on fact, and that B. was entitled to the injunction, and A. to judgment for the royalties due:

*Held*, by C. A., that on the construction of the licence there was an implied covenant not to revoke, and that the obligations imposed by the document were inconsistent with its being revocable, and that there was no such breach of the conditions as would entitle A. to revoke. *GUYOR v. THOMSON* - C. A. [1894] 3 Ch. 388

**Ownership.**

— Co-owners—Custody of documents in title.

See **PATENT—Registration.** 49.

17. — *Co-owner by purchase or charge—Patent worked by mortgagee co-owner—Profits received as mortgagee.*

The general rule that a co-owner of a patent is entitled to work it for his own benefit applies also in the case of assignees or mortgages of shares in a patent:—

*Held*, therefore, in an action to redeem the mortgaged moiety of a patent, that the mortgagee, not having received royalties, was not obliged to account for the profits made while he was the holder of the mortgage.

Decision of C. A., [1892] 2 Ch. 13, affirmed. *STEERS v. ROGERS* H. L. (E.) [1893] A. C. 232

**Patent Agents.**

*Register of Patent Agents Rules, 1891, dated Nov. 18, 1891. St. R. & O. 1891, p. 573.*

18. — *Register of Patent Agents Rules, 1889—Validity—Ultra vires—Title to sue—Patents Acts, 1883, 1888 (46 & 47 Vict. c. 57, s. 101; 51 & 52 Vict. c. 50, s. 1).*

The Patents, &c., Act, 1888, provided for the making of rules, applying thereto s. 101 of the Act of 1883, which enacted that general rules after being laid before Parliament "shall be of the same effect as if they were contained in this Act." The Register of Patent Agents Rules, 1889, were made under this power, and duly laid before Parliament. They provided for registry of certain persons and for an annual fee. L., a person entitled to be registered, was registered, but refused to pay the annual fee:—

*Held*, that the rules were intra vires:

*Held*, also (Lord Morris dissent.), the rules, having laid before Parliament for forty days without being questioned, had statutory authority,

**PATENT (Patent Agents)—continued.**

and that it was not within the province of the Courts to question their validity:

*Held*, also, that the only remedy for breach of the rules was that thereby prescribed, namely, a fine on summary conviction. *INSTITUTE OF PATENT AGENTS v. LOCKWOOD*

H. L. (Sc.) [1894] A. C. 347

Referred to by V. Williams J. *In re London and General Bank* (No. 1), [1894] W. N. 155.

Principle adopted by Wright J. *Baker v. Williams*, [1898] 1 Q. B. 23, 25.

Referred to by Div. Ct. *Starey v. Graham*, [1899] 1 Q. B. 406, 413.

19. — *Registration—Validity of Rules—Saving of rights acquired—Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57), s. 101, and 1888 (51 & 52 Vict. c. 50), ss. 1, 27—Register of Patent Agents Rules, 1889 and 1891—Patent Rules, 1890.*

The Register of Patent Agents Rules, 1889, are valid and in force; and therefore a patent agent who has been bona fide in practice prior to the passing of the Patents, &c., Act, 1888, and who is consequently entitled under s. 1, sub-s. 3, of that Act to be registered as a patent agent, must pay before registration the fee prescribed by those rules.

The right which a person had prior to the passing of the Patents, &c., Act, 1888, to practise as a patent agent and describe himself as such, is not a "right acquired" which is saved from the operation of the Act by s. 27. *STAREY v. GRAHAM* - - Div. Ct. [1899] 1 Q. B. 406

**Patent Office.**

*Patent Office (Extension) Act, 1897 (60 & 61 Vict. c. 25), provides for acquisition of land for extension of the Patent Office.*

O. of Ld. Chanc. dated July 18, 1871, appointing the fees to be taken in Great Seal Patent Office. *St. R. & O. 1899, p. 1565.*

**Practice.**

20. — *Amendment of specification—Disclaimer—Practice—Petition for revocation pending—Application for leave to amend—Discretion of Court—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 19.*

The granting or refusing leave to apply to amend a specification by way of disclaimer, under s. 19 of the Patents, &c., Act, 1883, is still a matter for the judicial discretion of the Court, and this discretion has been in no way interfered with by *Moser v. Marsden*, 13 Rep. Pat. Cas. 24, and *Deeley v. Perkes*, [1896] A. O. 496. *In re DELLWICK'S PATENT Chitty J.* [1896] 2 Ch. 705

21. — *Amendment of specification—Disclaimer—Revocation—Patent Act, 1883 (46 & 47 Vict. c. 57), ss. 19, 26.*

Where on a petition for revocation of a patent the judge holds that all the claims are bad and orders the patent to be revoked and this order is entered on the Register of Patents, the Court of Appeal, if it is of opinion that one claim is valid, may reverse the order below and order that the patent be revoked, unless within three months, or such further time as the Court may allow, the

**PATENT (Practice)—continued.**

patentee obtain leave to amend his specification by disclaiming all the claims except the valid one.

Decision of C. A. *In re Deeley's Patent*, [1895] 1 Ch. 687, reversed. *Sub nom. DEELEY v. PERKES* H. L. (E.) [1896] A. C. 496

Considered by C. A. *Ludington Cigarette Machine Co. v. Baron Cigarette Machine Co.*, [1900] 1 Ch. 508.

22. — *Amendment of specification—Disclaimer—Practice—Patent Action—Petition for revocation—Liberty to apply for leave to amend by disclaimer—Conditions to be imposed—Form of order—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), ss. 18, 19, 20.

The owners of a patent for a machine having brought an action for its infringement, the defendants presented a petition for its revocation. The plaintiffs then asked for liberty to apply at the Patent Office for leave to amend their specification by way of disclaimer:—

*Held*, affirming the decision of Kekewich J. [1899] W. N. 243, that, under the special circumstances of the case, the Court, in giving the liberty asked for, ought to impose the condition (similar to that which was imposed by the House of Lords in *Deeley v. Perkes*, [1896] A. C. 496, 500; 13 Rep. Pat. Cas. 581) that the plaintiffs should not bring or maintain any action for infringement of the patent in respect of any machines or parts of machines made prior to the date of the order.

In *Deeley v. Perkes* the House of Lords did not lay down any general practice as to the conditions to be imposed in such cases, but imposed that condition by reason of the peculiar circumstances of that case. *LUDINGTON CIGARETTE MACHINE CO. v. BARON CIGARETTE MACHINE CO. In re PITT'S PATENT*, No. 9858 of 1892

C. A. [1900] W. N. 50; [1900] 1 Ch. 508

23. — *Amendment of specification—Pending action for infringement—Patents, &c., Act, 1883*, ss. 18–21; 1888, s. 5.

Before the issue of a writ in an infringement action the comptroller gave leave to amend a specification on certain conditions. The conditions were accepted, and amendment was made after the issue of the writ:—

*Held*, that as both the acceptance and actual amendment related back to the time of giving leave, neither constituted a proceeding the taking of which was prohibited while an infringement action was pending. *ANDREW v. CROSSLEY. CROSSLEY v. ANDREW* — C. A. [1892] 1 Ch. 492

24. — *Amendment of specification—Pending action or proceeding for revocation—“Disclaimer, correction, or explanation”—Patents, &c., Act, 1883–1888* (46 & 47 Vict. c. 57; 51 & 52 Vict. c. 50), ss. 18–20.

The word “disclaimer” in s. 19 of the Patents, &c., Act, 1883, must be read strictly, and not as including “correction or explanation.”

Where, therefore, an action for infringement or proceeding for revocation of a patent is pending, the Court has no power under s. 19 to order that the patentee shall be at liberty to apply at the Patent Office for leave to amend his specification by way of correction or explanation.

Liberty to apply can only be given where the

**PATENT (Practice)—continued.**

proposed amendment is by way of “disclaimer.”

*In re OWEN'S PATENT* — — — *Stirling J.*  
[1898] W. N. 151 (11); [1899] 1 Ch. 157

— Costs—Particulars of objections.

*See Nos. 31–33, below.*

25. — *Costs—Shorthand notes—Practice—Particulars of objections—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 29, sub-s. 6.

Particulars of an objection to a patent for want of novelty delivered by a deft. enumerated specifications of prior patents. The plaintiffs' patent was held novel, but bad for nonconformity. The Court certified that the particulars of such of the specifications as had been of assistance in deciding the question of nonconformity were “reasonable and proper, without regard to the general costs of the case.”

The cost of transcripts of shorthand notes of evidence for the purpose of appeal allowed. *CASTNER KELLNER ALKALI CO. v. COMMERCIAL DEVELOPMENT CORPORATION*

C. A. [1899] W. N. 50; [1899] 1 Ch. 803

26. — *Costs—Shorthand notes—Solicitor and client—Patent action.*

Where on the trial of a patent action it was agreed in open court between counsel for the parties with the sanction of the judge that a shorthand writer's note of the evidence to be taken on behalf of the parties jointly should be used as the record of the evidence for the purposes of the trial:—

*Held*, that the solicitor of a party to the action was entitled to charge his client with money disbursed as his share of the cost of taking the shorthand note.

*In re Blyth and Fanshawe*, (1882) 10 Q. B. D. 207, distinguished. *OSMOND v. MUTUAL CYCLE AND MANUFACTURING SUPPLY CO.*

C. A. [1899] 2 Q. B. 488

27. — *Costs—Scientific witnesses—R. S. C.*, 1883, Order LXV., r. 9.

In an action for infringement of an electrical patent, the decision depended on questions not of law but of electrical science, and most of the witnesses were experts in science:—

*Held*, that costs should be allowed on the higher scale under Order LXV., r. 9. *HOPKINSON v. ST. JAMES' AND PALM MALL ELECTRIC LIGHTING CO.* *Romer J.* [1893] W. N. 5

28. — *Costs—Scientific witnesses—Preparatory experiments.*

Fees charged by scientific witnesses in patent actions for time occupied in making experiments preparatory to the trial will be allowed on taxation. *LEONHARDT v. KALLE*

*Chitty J.* [1895] W. N. 97

— Disclaimer.

*See PATENT—Practice.* 20–24.

— Discovery.

*See PATENT—Discovery.* 3.

— Evidence—Leave after trial for defendant to adduce further evidence on appeal.

*See PATENT—Infringement.* 8.

29. — *Opposition to grant—Right to be heard in opposition—Interest in patent—Patents, &c.,*



**PATENT (Practice)—continued.**

*Acts*, 1883 (46 & 47 Vict. c. 57), ss. 11, 95; 1888 (51 & 52 Vict. c. 50), s. 4.

The Patents, &c., Act, 1883, s. 11, as amended by the Patents, &c., Act, 1888, s. 4, does not confer the right to oppose the grant of a patent, on the ground that the invention has been patented in this country on an application of prior date, upon a person who has no interest in the prior patent or the patent applied for. *REG. v. COMPTROLLER-GENERAL OF PATENTS, DESIGNS, AND TRADE MARKS* - **C. A. [1899] 1 Q. B. 909**

30. — *Particulars — Costs — Certificate of reasonableness—Judgment in default of appearance—Patents, &c., Act*, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 6.

In an action for infringement of a patent in which judgment for the plts. was given in default of appearance by the defts. :—

*Held*, that, notwithstanding the default in appearance, the Court had jurisdiction, under s. 29 of the Patents, &c., Act, 1883, to certify that the plts.' particulars of breaches were reasonable and proper. *PNEUMATIC TYRE CO. v. J. PARR & CO.* - **North J. [1896] W. N. 88 (13)**

31. — *Particulars of objections—Case not brought to trial—Costs—Patents, &c., Act*, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 6.

The operation of s. 29, sub-s. 6, of the Act of 1883 is not confined to cases where the action is brought to trial.

In the absence (however arising) of a certificate under that sub-section, the costs of particulars cannot be recovered under an order for payment of the costs of the action. *MIDDLETON v. BRADLEY* - **Stirling J. [1895] 2 Ch. 716**

Approved of by *Romer J. Wilcox & Gibbs v. Jones*, [1897] 2 Ch. 71, 72.

32. — *Particulars of objections—Certificate of reasonableness—Costs.*

(A) Where in an action for infringement in which the plts. offered no evidence, and which was dismissed with costs, the defts. applied for a certificate that their particulars of objections were reasonable, under the circumstances the Court was unable to give the required certificate and the costs of the particulars. *MANDLEBERG v. MORLEY* (No. 1) **Stirling J. [1893] W. N. 157**

(B) A. brought an action for infringement of a patent against B. B. by his pleadings alleged (inter alia) that the patent was invalid for the reasons in the particulars of objections delivered with the defence. A. submitted to have the action dismissed :—

*Held*, that in the absence of evidence the Court had no means of judging whether the particulars were "reasonable and proper," and could not therefore give a certificate that they were so, to entitle B. to the costs of them on taxation. *MANDLEBERG v. MORLEY* (No. 2) **Stirling J. [1895] W. N. 9**

33. — *Particulars of Objections—Discontinuance of action for infringement—Costs—Certificate—Patents, &c., Act*, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 6.

Where the plt. in an action for infringement of a patent gives notice of discontinuance before the pleadings are closed and there is no evidence

**PATENT (Practice)—continued.**

before the Court as to the nature of the patent, the Court cannot inquire into the facts of the case merely for the purpose of determining whether the defendant ought to be given a certificate that his particulars of objection were reasonable and proper, so that he may be entitled to the costs of them on taxation. *WILCOX & GIBBS v. JAMES* - **Romer J. [1897] 2 Ch. 71**

34. — *Particulars of objections—Sufficiency of specification.*

In a patent action for infringement defts. denied validity of plt.'s patent. In their particulars of objections they said (inter alia) that the plt.'s specification "does not sufficiently describe and ascertain the nature of the alleged invention and the manner in which the same is to be performed, and does not sufficiently distinguish which of the matters and things therein described the plt. claims to have invented, and which of the same he does not claim to have invented :—

*Held*, that the particulars were insufficient, and that they ought to state the grounds on which the specification was alleged to be insufficient. *HEATHFIELD v. GREENWAY*

**North J. [1893] W. N. 170**

35. — *Parties—Adding defendant—R. S. C.*, 1883, *Order XVI.*, r. 11.

In an action for the infringement of a patent, the foreign manufacturer of the machine which was alleged to be a violation of the patent applied to be added as a deft. on the ground that the original deft. would not properly defend the action :—

*Held*, that the applicant was not entitled to be joined, as he was only indirectly and commercially interested in the issues between the parties. *MOSER v. MARSDEN*

**C. A. [1892] 1 Ch. 487**

36. — *Service abroad—Petition for revocation of patent—R. S. C.*, 1883, *Order XI.*, r. 1.

(A) Where one of the respondents to a petition for revocation of a patent was out of the jurisdiction, and could not be served with the petition, ordered that notice of the presentation of the petition should be given him, that the petition should go into the witness list, but unless he appeared by counsel the petition should not come on for hearing without leave of the judge. *In re KAY'S PATENT* - **Stirling J. [1894] W. N. 63**

(B) The Court cannot give leave to serve a petition for revocation on a foreigner resident abroad, but may proceed if satisfied that sufficient notice has been given to the foreign parties affected. *In re GÖRZ and HÖGH'S PATENT*

**North J. [1895] W. N. 105**

**Prior Publication.**

37. — *Inference of fact—Foreign publication sold in this country.*

A patent held invalid on the ground that it was sufficiently proved that there had been prior publication in a foreign magazine published in the United Kingdom. *PICKARD & CURREY v. PRESCOTT* - **H. L. (Sc.) [1892] A. C. 263**

38. — *Test of—Prior public user.*

The validity of a patent was challenged on

**PATENT (Prior Publication)—continued.**

the ground of prior publication founded upon a description in the specification of an earlier patent:—

*Held*, that, whether the specification of the earlier patent was sufficient to disclose the invention to the public was whether the description in the specification would convey to men of science and employers of labour information enabling them to understand and to give specific directions for making the machine, and not the sufficiency or insufficiency of the specification to guide a skilled workman itself. **ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CORPORATION v. KING, BROWN & CO. — H. L. (Sc.) [1892] A. C. 367**

**Prolongation.****39. — Inadequate remuneration—Five years' prolongation.**

Where an invention was of conspicuous merit, and it appeared that as regards its application to one of its purposes the patentee had received for an exclusive licence to use it certain shares in companies formed for that purpose, the value of which shares was largely dependent on the prolongation of the patent, and that with respect to its application to all other purposes the patentee, who had done his best to push his invention, had received nothing at all if the accounts were made up on the basis of a reasonable allowance to himself for his services in working his patents:—

*Held*, that the patentee, who had fairly kept and presented his accounts, should be allowed a five years' prolongation. **IN re PARSONS' PATENT P. C. [1898] A. C. 673**

**40. — Insufficient accounts.**

The accounts filed on a petition for prolongation shewed, not the result of the books, but an accountant's correction of them, and the books themselves had been kept in such a way that without a very long, minute, and laborious investigation it was impossible to say whether the patentee had or had not been adequately remunerated:—

*Held*, that the petition must be dismissed, as it was not shewn that petitioner had not been adequately remunerated. **IN re LAKE'S PATENT P. C. [1891] A. C. 240**

**41. — Lapse of foreign patent—Extension—Discretion—Patent Act, 1852 (15 & 16 Vict. c. 83), s. 25.—Patents, &c., Act, 1883, s. 25, sub-s. 4.**

S. patented an invention in the United Kingdom before the passing of the Act of 1883; he subsequently patented it in seven foreign countries. Two of these patents had lapsed:—

*Held*, that according to the rule laid down in s. 25, sub-s. 4, of the Act of 1883, there was discretion to extend the patent whether or not it was the first granted, with due regard to the circumstances connected with the foreign patents. **IN re SEMET AND SOLVAY'S PATENT P. C. [1895] A. C. 78**

**42. — Lapse of prior foreign patent—Notice—Prolongation and confirmation—Patent Act, 1852 (15 & 16 Vict. c. 83), s. 25.**

A petition was presented for the prolongation of a patent granted in 1877; a prior foreign patent for the same invention had lapsed in 1888.

**PATENT (Prolongation)—continued.**

The invention was then discovered not to be new, and a further petition was presented under 5 & 6 Will. 4, c. 83, for confirmation and extension of the patent:—

*Held*, (1) that s. 113 of the Act of 1883 saved the right to apply for confirmation of patents within 5 & 6 Will. 4, c. 83, but (2) that the English patent ceased under s. 25 of 15 & 16 Vict. c. 83, on the expiration of the prior foreign patent, and could not be prolonged or confirmed under the Act of 1835 or the Act of 1883. The rule as to notices was relaxed in this case. **IN re JABLOCHOFF'S PATENT P. C. [1891] A. C. 293**

Distinguished by **P. C. Marshall's Patent, [1891] A. C. 430, No. 48, below.**

**43. — New patent—Prolongation of term for ten years.**

Where it appeared that an invention was of considerable merit, that there were great difficulties in introducing it, and that the petitioner had incurred loss in his endeavours so to do, their Lordships recommended a new patent for the term of ten years. **IN re CURRIE AND TIMMIS' PATENT P. C. [1898] A. C. 347**

**44. — Non-user of invention—Presumption of non-utility rebutted.**

Where an invention has not been brought into use during the term of the letters patent, but such non-user is satisfactorily accounted for, and the invention is one of great merit, an extension may be granted. **SOUTHBYS' PATENT P. C. [1891] A. C. 432**

**45. — Petition by assignee of inventor.**

Although the effect of the Act of 1883 (46 & 47 Vict. c. 57) is to confirm an assignee's right to petition for prolongation of his patent, he cannot succeed without shewing that the original inventor has been inadequately remunerated. **IN re HOPKINSON'S PATENT P. C. [1897] A. C. 249**

**46. — Petition by assignee of inventor.**

An extension of a patent will not be granted to the assignee of an inventor unless the inventor would himself have been entitled thereto, and will himself derive benefit directly or indirectly therefrom. **IN re BOWER-BARFF PATENT P. C. [1895] A. C. 675**

**47. — Petition for prolongation—Novelty consisting in the combination—Absence of unusual merit—Losses referable to want of business skill.**

Where letters patent had been granted for "improvements in steam generators," and it was shewn that the invention consisted of the combination of various parts all or most of which were admittedly not new at the date of the letters patent; an extension was refused in the absence of evidence that the invention was of unusual merit.

Where patentees had incurred losses, these cannot be regarded as evidence of inadequate remuneration if attributable to unskillfulness in conducting their business. **IN re THORNYCROFT'S PATENT P. C. [1899] A. C. 415**

**48. — Time for filing petition—Patent Act, 1835 (5 & 6 Will. 4, c. 83)—Patents Act, 1839 (2 & 3 Vict. c. 67).**

Where a petition for prolongation had been

**PATENT (Prolongation)—continued.**

presented within six months before the patent (granted in 1877) had expired:—

*Held*, that it was excluded both by 5 & 6 Will. 4, c. 83, and by 2 & 3 Vict. c. 67. **MARSHALL'S PATENT** — P. C. [1891] A. C. 430

**Registration.**

49. — *Equitable assignment of a share—Co-owners—Custody of documents of title—Patents, &c., Act, 1883, ss. 23, 85, 87, 90—Patent Rules, 1883, rr. 65, 68, Form 4.*

An equitable assignment of a patent, or a share or interest in it, may be put upon the register. Sect. 85 of the Act of 1883 only excludes notices of trusts. *In re CASEY'S PATENTS.* STEWART v. CASEY

C. A. [1892] 1 Ch. 104

**Revocation.**

50. — *Evidence as to prior user—Admissibility of evidence—Petition.*

An action for infringement of the patent the subject of this petition, brought by the respondent to the present petition, having failed, the Court being satisfied that the invention had been used prior to the date of the patent at one place out of several referred to, this petition was brought to have the patent declared void, the petitioner relying solely on the instance which had satisfied the Court in the prior action.

A witness on the part of the petitioner stated that he had seen the invention used at the particular place relied on, and in cross-examination he stated that he had seen it used also at other places referred to prior to the date of the patent.

The respondent asked to be allowed to adduce evidence as to the prior user at such other places:—

*Held*, that the evidence was inadmissible, on the ground that if admitted it would be allowing the respondent to go into matters not relevant to the question at issue for the sole purpose of discrediting the witness and disproving the answers to questions put to him on cross-examination. *In re HAGGENMACHEE'S PATENTS*

Romer J. [1898] 2 Ch. 280

**Threats.**

— *Damages—Report of referee.*

*See ARBITRATION—Official Referee.* 45.

51. — *Definition—Patents, &c., Act, 1883, s. 32.*

Threats in s. 32 of the Act of 1883 are not confined to threats by circular or advertisement, but include all threats of legal proceedings except those excluded by the provisos to the section. *SKINNER & Co. v. SHEW & Co. (No. 1)*

C. A. [1893] 1 Ch. 413

52. — *Equitable assignees—Injunction—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 32, 46, 87.*

The registered owner of a patent commenced an action against the plts. for infringement. Defts., who had an agreement with the registered owner that he should assign the patent to them,

**PATENT (Threats)—continued.**

threatened a customer of the plts. with proceedings for an alleged infringement of the patent, but took no steps themselves against the plts:—

*Held*, that they must be restrained, because they had no legal rights in the patent, and, if they had, they themselves had not taken action to restrain the infringements. *KENSINGTON AND KNIGHTSBRIDGE ELECTRIC LIGHTING Co. v. LANE FOX ELECTRICAL Co.* Stirling J. [1891] 2 Ch. 573

53. — *General circular—Due diligence—Action to restrain threats—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 32.*

A printed notice was sent out by the deft. to the effect that his patent rights in respect of certain wrappers in which his wares were made up were being infringed, and warning persons against such infringement. The plts., rival manufacturers, sued the deft. for threats. The deft. had previously sued the plts. for infringement and for passing off their goods as his; but his patent was revoked:—

*Held*, (1) that the plts. were "persons aggrieved"; (2) the circular was not a mere general warning, but a "threat" within s. 32 of the Patents Act, 1883; (3) also, that the infringement action was not prosecuted with due diligence.

*Per Lindley L.J.*: Sect. 32 applies to an intended infringement as well as to actual infringement. *JOHNSON v. EDGE*

C. A. [1892] 2 Ch. 1

54. — *Interim injunction—Undertaking in damages—Form of order.*

In an interim order restraining threats the undertaking in damages usually included in an interim injunction should not be inserted. *FENNER v. WILSON*

Kekewich J. [1893] 2 Ch. 656

55. — *Privileged communication.*

In an action to restrain threats of legal proceedings under s. 35 of the Act of 1883, no defence can be based on the ground that what the deft. did was done bona fide, or that it was done on a privileged occasion, e.g., in answer to a private inquiry. *SKINNER & Co. v. SHEW & Co. (No. 1)*

C. A. [1893] 1 Ch. 413

56. — *Third party, Letter directed against—Injunction—Expired patent—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 32.*

A co. owned a patent for gas buoy lanterns that had expired, and also owned patents for improvements which were still running, and had for some years supplied B. with gas buoy lanterns made under the patents. B. having given D. an order for gas buoy lanterns, which were founded to some extent on the expired patent, the managing director of the co. wrote B.: "I am much surprised at this. I am afraid that this matter will lead to a great deal of difficulty and unpleasantness, and you must not be surprised if my co. applies for an injunction against D. to restrain him from selling his gas buoy lanterns":—

*Held*, that under the circumstances the letter was a threat within the meaning of s. 32 of the Patent Act, 1883, and that D. was accordingly

**PATENT (Threats)—continued.**

entitled to an injunction against the co. in the terms of the section. *DOUGLASS v. PINTSCH'S PATENT LIGHTING CO.*

Romer J. [1896] W. N. 155 (9);  
[1897] 1 Ch. 176

57. — "*Threats*"—*Continuance of action after dismissal of infringement action—Patents Act, 1883 (46 & 47 Vict. c. 57), s. 32.*

On Jan. 13, 1896, an action was commenced by the Howard Football Syndicate against William Sykes, under s. 32 of the Patents Act, 1883, to restrain the deft. from threatening any person with legal proceedings in respect of the manufacture, use, sale, or purchase of footballs made by the plt. co. and alleged to be an infringement of a patent belonging to the deft. The plts. also claimed damages for injury to their trade and business by reason of the deft.'s threats. On Jan. 14, 1896, the plts. gave notice of motion for an interlocutory injunction. Pending the hearing of this motion the deft., on Jan. 22, 1896, commenced an action against the plts. for infringement of his patent, and on Jan. 31, 1896, it was ordered that the plts.' motion in the threats action should stand over generally, pending the action for infringement, and that no further proceedings should be taken in the meantime in the threats action. On March 6, 1896, the deft. delivered his statement of claim in the infringement action, and on May 18, 1896, the plts. delivered their defence, with notice of objections. The infringement action was tried on Feb. 25, 1897, when it was dismissed with costs, on the ground (inter alia) that the deft.'s patent was invalid by reason of prior user. On March 29, 1897, the plts. delivered their statement of claim in the threats action, in which they alleged that the deft. did not prosecute the infringement action with due diligence. On April 28, 1897, the deft. took out a summons asking that the threats action might be dismissed, with costs as between solicitor and client, on the ground that the same was frivolous and vexatious, and that the statement of claim disclosed no ground of action in law. On June 19, 1897, on the petition of the plts., Romer J. made an order for the revocation of the deft.'s patent:—

*Held*, that no order ought to be made on the deft.'s summons, and that the costs should be reserved to the trial of the threats action. *HOWARD FOOTBALL SYNDICATE, LD. v. SYKES*

North J. [1897] W. N. 81 (10)

58. — "*Threats*"—*Damages—Evidence.*

Plts. obtained an injunction restraining defts. from threatening legal proceedings, and an inquiry into damages was ordered. Plts. alleged that they had lost the benefit of a contract with the C. Co. in consequence of defts.' threats:—

*Held*, that a letter from the co.'s solicitor to plt.'s declining to continue negotiations in consequence of defts.' threats was admissible in evidence:—

*Held*, also, that the measure of damages was the profit plts. would have derived from the proposed contract if it had been carried out. *SKINNER & CO. v. SHEW & CO. (No. 2)*

North J. [1894] 2 Ch. 581

**PATENT—continued.****Utility.**

59. — *Utility.*

A very small amount of utility is sufficient to support a patent. Utility, in patent law, does not mean abstract, or comparative, or competitive, or commercial utility; but, as applied to an invention, it means that the invention is better than the preceding knowledge of the trade as to a particular fabric, better than in some respect though not necessarily in every respect. For instance, an invention is useful by which an article good, though not so good as one previously known, can be produced more cheaply by a different process. And an invention is useful when the public are thereby enabled to do something which they could not do before, or to do in a more advantageous manner something which they could do before—or in other words, an invention is patentable which offers the public a useful choice. *WELSCH INCANDESCENT GAS LIGHT CO. v. NEW INCANDESCENT (SUNLIGHT PATENT) GAS LIGHTING CO.*

Buckley J. [1900] W. N. 51; [1900] 1 Ch. 843

**Validity.**

60. — *County court jurisdiction—Infringement of patent.*

The right or privilege granted by letters patent for a new invention is a "franchise" within the meaning of s. 56 of the County Courts Act, 1888, and, therefore, an action for infringement of patent in which the validity of a patent comes in question, is excluded from the jurisdiction of the County Court.

Decision of Div. Ct. [1891] 1 Q. B. 793, affirmed. *REG. v. JUDGE OF THE HALIFAX COUNTY COURT* — C. A. [1891] 2 Q. B. 263

61. — *Provisional and complete specification—Variation—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 5, sub-s. 3, s. 26.*

In order that a patent may be valid, the provisional specification must describe the true nature of the invention, and the invention must be the same as that claimed in the complete specification. The law on this point is not altered by the Patents Act, 1883: a patentee of an invention for tapping beer barrels added to his complete specification a description of a part of his invention not stated in the provisional specification, and found to be the only novel or useful part of the invention:—

*Held*, that the provisional specification did not comply with the rule. *NUTTALL v. HARGREAVES* — C. A. [1892] 1 Ch. 23

62. — *Provisional and complete specification—Variation—Nature of invention—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 5, sub-s. 3, 26.*

A patent is invalid even if the invention is novel: (1) where the patent claimed in the complete specification is not the same as that claimed in the provisional specification; (2) where the patent when first granted is not useful for the main purpose for which it was designated; (3) where the specification was insufficient to enable an electrician of ordinary skill to carry it out at the time of first granting.

Decision of A. L. Smith J., [1892] 2 Ch. 66,

**PATENT (Validity)—continued.**

affirmed. *LANE - FOX v. KENSINGTON AND KNIGHTSBRIDGE ELECTRIC LIGHTING CO. (No. 2)*  
C. A. [1892] 3 Ch. 424

**PATENT AGENTS RULES (REGISTER OF), 1889 and 1891.**

See **PATENT**. 18, 19.

**PATENT MEDICINE.**

See **POISON**. 3.

**PATENT RULES, 1890.**

See **PATENT**. 19.

**PATENTS OF PRECEDENCE—Power to issue—Powers of provincial legislature.**

See **CANADA**. 41.

**PATHWAY.**

See **HIGHWAY**.

**PATRONAGE.**

See **CHARITY—Commissioners**. 12.

**PATTERN—of Sleeve.**

See **COPYRIGHT—Book**. 4.

**PATENT—What can be Subject of**. 2.

—Registration of design.

See **DESIGN**. 6.

**PAUPER—Costs—House of Lords—Pauper appellant.**

See **APPEAL**. 17.

—Grant of administration to clerk of guardians.

See **PROBATE**. 54.

—Lunatic pauper—Maintenance.

See **LUNACY—Maintenance**. 22—24.

—Poor Law.

See **Cases under POOR LAW**.

—Right to sue as.

See **DIVORCE—Costs**. 52, 53.

**PRACTICE—Formâ Pauperis**. 23—29.

**PAUPERS' CONVEYANCE (EXPENSES) ORDER, 1898.**

See **POOR LAW—Statutes and Orders**.

**PAVEMENT—Disturbance of—Duty to restore pavement after hoarding removed.**

See **LONDON—Buildings**. 11.

**PAVING—Expenses for.**

See **Cases under LONDON—Streets**.  
**STREETS**.

**PAWNBROKER—Licence—Magistrate's certificate—Exemption from necessity of obtaining certificate—Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 39.**

The exemption in s. 39 of the Pawnbrokers Act, 1872, in favour of licensed pawnbrokers at the commencement of that Act, that they should not require a magistrate's certificate, is personal to them and their representatives, and is not confined to the business which they were engaged in at the commencement of the Act. *REG. v. INLAND REVENUE. OHLSON'S CASE. GARLAND'S CASE*

Div. Ct. [1891] 1 Q. B. 485

And see **Cases under PLEDGE**.

**PAYMENT—Appropriation.**

See **Cases under APPROPRIATION**.

—Appropriation of payments—Banking account.

See **BANKER**. 1.

**PAYMENT—continued.**

—Appropriation of payments—Partial ademption.

See **WILL—Ademption**. 18.

—Creditor—Proof—Fully-paid shares taken in payment of debt—Failure of consideration.

See **COMPANY—WINDING-UP—Proof**. 206.

—Interest on shares—Ultra vires—New rules—Known insolvency at time of passing.

See **BUILDING SOCIETY**. 12.

—Money paid by directors ultra vires to shareholders—Indemnity.

See **COMPANY—Directors**. 108.

—Of shares in cash—Set-off—Effect of company's adoption of contract made before its formation.

See **NEW SOUTH WALES**. 7.

—Oral contract—Part payment—Statute of Frauds.

See **SALE OF GOODS**. 2.

—Part performance—Agreement for lease—Increased rent.

See **FRAUDS, STATUTE OF**. 13.

—Proviso that interest should be "punctually" paid.

See **MORTGAGE—Interest**. 39.

—Receipt of, for customer—Crossed cheque.

See **BANKER**. 8.

—Receiver—Statute of Limitations.

See **MORTGAGE—Receiver**. 57.

—Shares.

See **COMPANY—Shares**. 284, 285.

—Solicitor and client.

See **SOLICITOR—Costs**. 22.

**PAYMENT INTO COURT.**

See **PRACTICE—Payment into Court**.

**PAYMENT OUT OF COURT.**

See **PRACTICE—Payment out of Court**.

**PEACE—Preservation of—Expenses of maintaining troops—Liability—Mandamus.**

See **COUNTY COUNCIL**. 9.

**PEDLAR—Certificate—Market—Using horse and cart—Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 13—Pedlars Acts, 1871 (34 & 35 Vict. c. 96), ss. 3, 6; 1881 (44 & 45 Vict. c. 45), s. 2.**

A person holding a pedlar's certificate is only entitled to the exemption provided by the Markets and Fairs Clauses Act, s. 13, as extended by the Pedlars Act, 1871, s. 6, from the penalty for selling within the limits of a market tollable articles whilst he is acting as a pedlar within the definition of that term in s. 3 of the last-mentioned Act. Therefore the holder of such a certificate who uses a horse and cart and sells tollable articles in a market is liable to a penalty. *WOOLWICH LOCAL BD. v. GARDINER*

Div. Ct. [1895] 2 Q. B. 497

Referred to by Div. Ct. *Llandudno Urban Council v. Hughes*, [1900] 1 Q. B. 472.

**PENAL SERVITUDE—By the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), the law relating to Penal Servitude and the Prevention of Crime was amended.**

**PENAL STATUTE**—International law.*See* ECCLESIASTICAL LAW. 7.**PENALTY**—Common lodging-house—Liability for keeping—Charitable institution—Non-registration.  
*See* LODGING-HOUSE.— Copyright—Indecency of work and infringements—Costs.  
*See* COPYRIGHT. 16.— Covenant not to carry away hay and straw.  
*See* LANDLORD AND TENANT. 16.— Delay—Liquidated damages—Extras.  
*See* BUILDING CONTRACT. 3.— False statement.  
*See* COMPANY—False Statements.— Fine arts—Infringement.  
*See* COPYRIGHT. 16, 17.— For not substituting road for road interfered with.  
*See* RAILWAY—Roads. 57.— Insufficient stamping—Contract note.  
*See* REVENUE—Stamps. 172.— Loan to husband—Bond by husband to trustees—Interest on—Statute of Limitations.  
*See* HUSBAND AND WIFE. 27.— Neglect to fence machinery—Common employment.  
*See* Cases under MASTER AND SERVANT.— Non-completion of works.  
*See* DAMAGES. 7.— Obstruction—Control of dock-master—Requisition—West India Docks.  
*See* DOCK. 1.— Probate duty.  
*See* REVENUE—Probate Duty. 134.— Recovery.  
*See* DISCOVERY—Interrogatories.— Recovery of—Limitation of time—Justices—Summary proceedings  
*See* FISHERY. 11.— Return of election expenses—"Transmit"—Error in return.  
*See* PARLIAMENT—Election Expenses. 9.— Sale by licensed hawkers of goods for which licence unnecessary.  
*See* MARKETS AND FAIRS. 2.— Sheriff—Extortion by.  
*See* SHERIFF. 8, 9.— Streets—Offences—Exposing goods for sale on carriageway.  
*See* LONDON—Streets. 89.— Who may take proceedings—Metropolis Water Act.  
*See* WATER. 20.**PENDENTE LITE**—Alimony.*See* Cases under DIVORCE—Alimony.— Duration of grant.  
*See* PROBATE—Grant of Administration. 61.**PENDING ACTION**—Payment into court with denial of liability—Bankruptcy before trial.*See* BANKRUPTCY—Practice. 153.**PENDING ACTION**—continued.

— Right of creditor to sue administrator.

*See* PROBATE—Grant of Administration. 60.**PENSION**—Assets—Indian pension—Payment to trustee—Discretion.*See* BANKRUPTCY—Assets. 61.— Cancellation—Incapacity by infirmity.  
*See* POLICE.— Retired officer—Appropriation of bankrupt's pay.  
*See* BANKRUPTCY—Appropriation. 48.— Right to—Victoria Public Service Act, 1890—"Prosecutor for the Queen"—"Prosecuting barrister."  
*See* VICTORIA. 10.— Special duty allowance—"Annual pay."  
*See* POLICE. 4.**PERFORMANCE**—of Contract.*See* CONTRACT—Performance.— Prevented by a misfortune beyond control of either party—Towage.  
*See* SHIPPING—Salvage. 251.— Specific performance.  
*See* SPECIFIC PERFORMANCE.

VENDOR AND PURCHASER—Specific Performance.

**PERILS OF THE SEA.***See* INSURANCE—Marine. 28, 31, 44, 50.  
SHIPPING. 111.**PERIODICAL**—Publication in.*See* COPYRIGHT—Periodical. 36.**PERJURY.***See* CRIMINAL LAW. 23.**PERPETUATING TESTIMONY**—Deposition in suit—Evidence—Admissibility.*See* COMMON. 1.**PERPETUITY.***See* CHARITY—Gift to Charity. 26, 36, 37.*See* WILL—Perpetuity.— Personal covenant—Covenant running with land.  
*See* LANDLORD AND TENANT. 95.— Rule against perpetuities—Power of appointment among children—Remoteness.  
*See* POWERS—Validity. 44—46.— Rule against perpetuity—Reverter—Common law condition—Shifting use.  
*See* VENDOR AND PURCHASER—Title. 76.— Shares—Restriction on free transfer—Compulsory transfer in event of bankruptcy.  
*See* COMPANY—Shares. 302.**PERSONALTY**—Pure or impure—Mortmain.*See* Cases under CHARITY—Mortmain.**PETITION.***See* Cases under subject-matter of PETITION.**PETITION OF RIGHT**—Appeals from judgment on—Practice.*See* CANADA. 6.— Officer—Liability to dismissal.  
*See* Cases under CROWN.

**PEW.**

See ECCLESIASTICAL LAW—Pews.

**PHARMACY ACTS**—*Pharmacy Acts Amendment Act, 1898 (61 & 62 Vict. c. 25), amends the Pharmacy Acts, 1852 and 1868.*

— Poison—Sale of.

See POISON.

**PHOTOGRAPHY**—Copyright in photographs.

See COPYRIGHT—Picture. 37.

— Documents, power of Court to allow photographs to be taken of.

See DISCOVERY—Documents. 26.

— Light—Extraordinary purpose—Prescription.

See LIGHT AND AIR. 22.

— Reference to character of goods.

See TRADE-MARK. 24.

— Use of photographs—Identification—Evidence.

See DIVORCE—Evidence. 77.

**PIANO.**

See FACTOR. 4, 5.

— Innkeeper providing piano—Music—Public Health Acts.

See INNKEEPER. 4.

**PICTURE**—Copyright in.

See COPYRIGHT—International.

COPYRIGHT—Picture.

— Faculty for pictures at east end of chancel of parish church refused.

See ECCLESIASTICAL LAW—Faculty. 21.

— Pledge of picture—Foreclosure—Sale.

See PLEDGE. 3.

**PICKETING**—"Watching and besetting"—Injunction.

See Cases under TRADE UNION.

**PIER**—Collision of ship with pier.

See SHIPPING. 98.

1. — *Liability to repair—Clyde Navigation Acts, 1839 (3 & 4 Vict. c. cxviii.), s. 11; 1858 (21 & 22 Vict. c. cxlix.), s. 76.*

On the construction of the special Acts of the Clyde navigation trustees:—

*Held*, that the Clyde trustees were under no obligation to repair the damage done to a pier at Erskine Ferry by a ship navigating the Clyde, on the ground that the pier was no part of the trustees' undertaking.

Decision of Ct. of Sess., (1891) 18 R. 197, reversed. **TRUSTEES OF CLYDE NAVIGATION v. LORD BLANTYRE** H. L. (Sc.) [1893] A. C. 703

**PILOTAGE.**

See SHIPPING—Pilotage.

**PIRACY**—Book—Infringement—Combining causes of action.

See COPYRIGHT. 11.

**PIRATES**—Bill of lading.

See SHIPPING—Exceptions. 139.

**PITCH**—Account—Entries disallowed—Discretion of Court.

See ACCOUNT. 3.

— Escape of—Adjacent lands—Right to lateral support—Injunction—Damages.

See SUPPORT. 2.

**PITCH—continued.**

— Stratum of—Surface—Subsidence—Right of support.

See SUPPORT. 1.

**PLACE**—Used for betting.

See Cases under GAMING.

**PLACARD**—Libel—Injury to trade.

See DEFAMATION—Libel. 31.

**PLAN**—Building plans.

See Cases under LONDON—Buildings.

STREETS—Building Plans.

— Copyright in.

See COPYRIGHT—Book. 4.

— Costs on higher scale allowed.

See COSTS. 9.

— Mistake—Rectification—Parol evidence.

See VENDOR AND PURCHASER—Contract. 28.

**PLANT**—Defect in condition of—Employers' Liability Act.

See Cases under MASTER AND SERVANT.

— Specific description—Substitution—Horses.

See BILL OF SALE. 53.

**PLAY**—Copyright in.

See COPYRIGHT—Dramatic. 7.

**PLEADING.**

See PRACTICE—Pleading.

**PLEDGE**—*Bill of lading—Sale of goods in trust.*

The law of Scotland as well as the law of England is that a pledgee may redeliver the goods to the pledgor for a limited purpose without thereby losing his rights under the contract of pledge.

The pledgees of a bill of lading returned it to the pledgors to obtain delivery and sell on behalf of the pledgees, and account for the proceeds towards satisfaction of the debt:—

*Held*, that the pledgees' security was not affected, and that they were entitled to the proceeds of the cargo as against the diligence of general creditors of the pledgors. **NORTH WESTERN BANK v. POYNTER, SON, AND MACDONALDS** H. L. (Sc.) [1895] A. C. 56

Discussed by H. L. (Sc.) *Inglis v. Robertson*, [1898] A. C. 616, 626.

2. — *Bill of lading—Trover—Bills of Lading Act, 1855.*

Pledgees of goods are entitled to maintain trover in respect of a wrongful delivery of the goods, even where at the date of the wrongful delivery they had not acquired their title to the goods. **BRISTOL AND WEST OF ENGLAND BANK v. MIDLAND RY. CO.** C. A. [1891] 2 Q. B. 653

— Blank transfer—Certificate of shares.

See COMPANY—Shares. 293.

— Deposit of principal's securities by broker.

See BANKER. 25, 26.

— Contract—Sale or return of goods.

See SALE OF GOODS. 4.

— Document of title—Foreign arrestment—Conflict of laws—Goods in Scotland.

See FACTOR. 3.

— Factor.

See Cases under FACTOR.

**PLEDGE**—*continued.*

— Hiring agreement—Pledge by hirer.

See **FACTOR**. 5.

3. — *Pictures—Foreclosure—Sale.*

The remedy of the pledgee of a picture is by order for sale, not foreclosure. **FRASER v. BYAS**

**North J. [1895] W. N. 112 (5)**

— Preference—Private manager—Trust for creditors—Right in security.

See **BANKRUPTCY**. 158.

— Shipowner's liability.

See **SHIPPING—Charterparty**. 41, 42.

4. — *Tender of amount due.*

Where there has been no tender by the pledgor to the pledgees, a mere assertion by the pledgee that the goods are his own property does not amount to a waiver of tender or determine the special property in the goods. **YUNGMAUN v. BRIESMANN** - - **C. A. [1892] W. N. 162**

— To person in possession.

See **GOODS**. 1.

**PLENE ADMINISTRATIVIT**—Retainer—Following assets—Creditor of higher degree—Notice.

See **EXECUTOR—Retainer**. 63.

**POISON**—*Balsam of aniseed.*

A preparation of balsam of aniseed containing morphine as an ingredient held to be a compound containing a scheduled poison within the Pharmacy Act, 1868. **PHARMACEUTICAL SOCIETY v. ARMSON** - - **C. A. [1894] 2 Q. B. 720**

2. — *Chlorodyne.*

Chlorodyne containing as an ingredient chloroform and morphine held to be a compound containing a scheduled poison within the Pharmacy Act, 1868. **PHARMACEUTICAL SOCIETY v. PIPER & Co.**

**Div. Ct. [1893] 1 Q. B. 686**

3. — *Patent medicine—Proprietary medicine.*

A grocer sold in the ordinary course of his business a bottle of proprietary medicine, not protected by letters patent, and containing as one of its ingredients two of the poisons scheduled to the Pharmacy Act, 1868:—

*Held*, that it was not a patent medicine, although so called, and consequently it did not come in the exception in s. 16 in favour of patent medicines, i.e., medicines which were the subject of letters patent; that its sale must be conducted in accordance with the regulations to be observed on sale of poisons, under s. 17 of the Pharmacy Act, 1868.

(A) **PHARMACEUTICAL SOCIETY v. PIPER & Co.**

**Div. Ct. [1893] 1 Q. B. 686**

Approved in (B) **PHARMACEUTICAL SOCIETY v.**

**ARMSON**

**C. A. [1894] 2 Q. B. 720**

4. — *Sale—Compound containing a scheduled poison.*

A compound containing a poison scheduled to the Pharmacy Act, 1868, is included in the prohibition in s. 15 of the Act against the sale of such poisons by other than registered chemists and druggists.

(A) **PHARMACEUTICAL SOCIETY v. PIPER & Co.**

**Div. Ct. [1893] 1 Q. B. 686**

Approved in (B) **PHARMACEUTICAL SOCIETY v.**

**ARMSON**

**C. A. [1894] 2 Q. B. 720**

**POISON**—*continued.*

5. — *Sale—Medicine containing poison—Infinitesimal quantity.*

A person not being a chemist within the meaning of the Pharmacy Act, 1868, does not commit an offence against s. 15 of that Act by selling a medicine containing an infinitesimal quantity of poison as defined by the Act. **PHARMACEUTICAL SOCIETY v. DELVE**

**Div. Ct. [1894] 1 Q. B. 71**

6. — *Sale of poisons—Order taken by agent—"Seller"—Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15.*

Section 15 of the Pharmacy Act, 1868, imposes a penalty upon any person "who shall sell" poisons without being duly qualified. The deft., who kept a florist's shop at W. and was not duly qualified to sell poisons, took from one of his customers an order for a "weed-killer," manufactured by a limited co. at L. and containing poison. The deft. did not keep any of the weed-killer in stock; but, in accordance with his usual practice, took the order, received from the customer the price of the quantity ordered, gave him a receipt, and forwarded the order to the co. at L., who thereupon supplied the customer with the weed-killer. The deft. received from the co. a commission of 25 per cent. in respect of all sales effected on orders sent to them by him. In an action for a penalty under s. 15:—

*Held*, that there was evidence to support a finding that the deft. was not the person who had the conduct and management of the sale, and, therefore, that he was not the seller of the poison within the meaning of the Act. **PHARMACEUTICAL SOCIETY v. WHITE**

**Div. Ct. [1900] W. N. 10; [1900] 1 Q. B. 454**

**POLICE.**

*Police Disabilities Removal Act, 1893 (56 & 57 Vict. c. 6), extends the Police Disabilities Removal Act, 1887, to municipal and other similar elections.*

*Police Act, 1893 (56 & 57 Vict. c. 10), amends the Police Acts.*

*CONTRIBUTIONS BY TOWN COUNCILS.] General O. of the Secy. of State dated Dec. 19, 1893, and made under s. 2 (3) of the Police Act, 1893, as to contributions by town councils to the Police Pension Fund. St. R. & O. 1893, p. 461.*

*Pension—Treasury determination, dated Jan. 30, 1896, declaring the Metropolitan Police Fund to be a public fund within s. 4 of the Superannuation Act, 1892. St. R. & O. 1896, No. 17. Price ½d.*

*Metropolitan Police Courts (Holidays) Act, 1897 (60 & 61 Vict. c. 14), enables the Courts to be closed on Special Bank Holidays.*

*Metropolitan Police Courts Act, 1897 (60 & 61 Vict. c. 26), transfers expenses of Police Courts to Metropolitan Police Fund, &c.*

*Police (Property) Act, 1897 (60 & 61 Vict. c. 30), provides for disposal of property in possession of the police.*

*POLICE (PROPERTY) ACT, 1897.] Regs. dated Feb. 14, 1898, made by Secy. of State in pursuance of s. 2 of the. Parl. Paper, 1898 (79). Price ½d.*

*Receiver, powers of, extended by Metropolitan*



**POLICE—continued.**

*Police (Borrowing Powers) Act, 1897 (60 & 61 Vict. c. 42).*

*Metropolitan Police Courts Act, 1898 (61 & 62 Vict. c. 31) amends the Metropolitan Police Courts Act, 1898.*

*Metropolitan Police Act, 1899 (62 & 63 Vict. c. 26), amends the law with respect to the salaries and allowances of the Commissioner, Receiver, and Assistant Commissioners of the Metropolitan Police.*

**METROPOLITAN POLICE DISTRICT. POLICE.]**  
*Regs. dated March 5, 1900, as to payment of pensions, gratuities, and allowances granted under Police Act, 1890. St. R. & O. 1900, No. 201.*

— Chief constable—Payment of costs of—  
Licensing appeals—Borough fund.  
*See CORPORATION. 10.*

1. — *Detention of goods—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 40.*

A magistrate's order under s. 40 of the Metropolitan Police Courts Act, 1839, is no bar to an action for special damage arising out of the same detention. *MIDLAND RY. CO. v. MARTIN & CO.*

*Div. Ct. [1893] 2 Q. B. 172*

— Information—Consent in writing of chief constable—Practice.  
*See SUNDAY. 2.*

— Justices—Jurisdiction—Outlying district of county—Transfer to other county.  
*See LICENSING ACTS. 25.*

— Licensing Acts.  
*See LICENSING ACTS—Police.*

2. — *Maintenance—Cost of—Borough—Constables from other force—Contribution by county council.*

A borough maintaining its own police is entitled under s. 24, sub-s. 2 (j), of the Local Government Act, 1888, to be paid by the county council one-half of the cost of the pay and clothing of extra police temporarily added from another police force under s. 25 of the Police Act, 1890, and paid for by agreement. *REG. v. COUNTY COUNCIL OF WEST RIDING OF YORKSHIRE C. A. [1895] 1 Q. B. 805*

— Metropolitan police courts—Appeal to quarter sessions—Order for maintenance.  
*See POOR LAW—Relief. 9.*

— Officer—Passenger—Inspector of weights and measures—Conveyance at reduced rate.  
*See RAILWAY—Passengers. 24.*

3. — *Cancellation—Pension—Constable—Incapacity by infirmity—Police authority—Attendance for medical examination—Collateral purpose—Illegal stoppage of pension—Mandamus—Police Act, 1890 (53 & 54 Vict. c. 45), s. 1 (a), (b); s. 5, sub-s. 1, 3, 4, 7; s. 12.*

The power conferred upon a police authority by the Police Act, 1890, s. 5, of requiring a pensioner to attend to be examined by a medical practitioner selected by them at a particular time and place, for the purpose of satisfying them that his incapacity to serve continues, cannot be exercised by the police authority for any collateral purpose.

A police authority has no power under s. 5,

**POLICE—continued.**

sub-s. 4, of the Act to cancel a pension without requiring the pensioner to serve again.

A police authority has power to fix the time and place for the examination of the pensioner by the medical practitioner whom they may select under the provisions of s. 5 of the Police Act, 1890.

A police authority, on July 12, 1894, resolved that their former chief constable, to whom they had granted a pension on the ground of incapacity by infirmity, should attend at Warwick on a specified day and hour for the purpose of being examined by two doctors as to his state of health, and that if he failed to do so his pension should be cancelled.

The pensioner had been declared bankrupt in 1891, and in 1892 a warrant had been issued for his arrest, on the ground that he being out of England had not attended his adjourned examination in bankruptcy. He had been residing in Portugal since April, 1892; but in March, 1893, he had come to England for a day or two, and had been examined by a doctor, selected by the police authority, who had certified his continuing incapacity. He did not attend in compliance with the resolution of July 12, 1894, and the police authority cancelled his pension:—

*Held*, upon the evidence, that the police authority had used their statutory power of requiring the pensioner's attendance at Warwick, not for the purpose of satisfying themselves as to his continued incapacity, but for the purpose of assisting the Bankruptcy Court; and, consequently, that they had exceeded their jurisdiction, and the pensioner was entitled to a mandamus calling upon the police authority to shew cause why they should not pay him the arrears of his pension. *REG. v. LORD LEIGH. In re KINCHANT C. A. [1897] 1 Q. B. 132*

4. — *Pension—Special-duty allowance—“Annual pay”—Police Act, 1890 (53 & 54 Vict. c. 45), Sched. I., rr. 1, 11.*

By the Police Act, 1890, a constable who has completed a certain number of years approved service is entitled to a pension, which is to be calculated on the amount of his “annual pay” at the date of his retirement.

A constable was appointed by the commissioners of police to attend permanently on special duty at the House of Lords. For that special duty, which he discharged for several years up to the time of his retirement, he received the sum of 1s. a day in addition to his ordinary pay:—

*Held*, by Channell J. (Bucknill J. dissenting), that the extra remuneration for the special duty formed no part of his “pay” for the purposes of the calculation of his pension:—

*Held*, further, by Channell and Bucknill JJ., that for the purposes of calculating pension “annual pay” means three hundred and sixty-five times the amount of the daily pay, not fifty-two times the amount of the weekly pay. *UPPERTON v. RIDLEY Div. Ct. [1900] 1 Q. B. 680*

— Police districts—Authority to divide county.

*See COUNTY COUNCIL—Powers. 12.*

— Power of constable to stop person riding without light.

*See BICYCLE. 1.*

**POLICE**—*continued*.

- Power of, to enter on licensed premises.  
See LICENSING ACTS—Police. 45.
- Registration of voters.  
See PARLIAMENT—Franchise. 128—130.
- Report—Libel.  
See DEFAMATION.
- Streets—Offences—Exposing goods for sale on carriageway—Penalty.  
See LONDON—Streets. 89.
- Supplying drink to constable on duty.  
See LICENSING ACTS.

**POLICY OF INSURANCE.**

See Cases under INSURANCE.

**POLITICAL OFFENCES.**

See EXTRADITION.

**POLITICAL AND RELIGIOUS PURPOSES**—Gift for.

See CHARITY—Gift to Charity. 27.

**POLL**—Mode of counting proxies where no poll demanded.

See COMPANY—Meetings. 163.

**POLLUTION**—Rivers—Cesser before trial—Injunction—Practice.

See NUISANCES. 25, 26.

## — Rivers and water.

See Cases under WATER—Pollution.

## — Sewage and drainage.

See SEWERS—Pollution.

**POND**—Cleansing.

See SETTLED LAND—Ponds. 91.

**PONDOLAND**—Cape of Good Hope—Laws of.

See CAPE OF GOOD HOPE. 6.

**POOR**—Gift to.

See CHARITY—Gift to Charity. 28, 29.

**POOR LAW.**

*Statutes and Orders*, col. 1455.

*In General*, col. 1456.

*Guardians*, col. 1456.

*Relief (Maintenance and Relief)*, col. 1457.

*Settlement*, col. 1459.

**Statutes and Orders.**

**ELECTION OF GUARDIANS.** By s. 20 of the *Local Government Act*, 1894 (56 & 57 Vict. c. 73), the law relating to the election and qualification of guardians was amended.

By the *Poor Law Officers' Superannuation Act*, 1896 (59 & 60 Vict. c. 50), certain allowances, &c., to Poor Law Officers and Servants are provided for.

*Poor Law Officers Superannuation Act*, 1896 (59 & 60 Vict. c. 50), amended by 60 & 61 Vict. c. 28, as respects female nurses.

*Poor Law Act*, 1897 (60 & 61 Vict. c. 29), amends the law with respect to borrowing money by guardians and managers of district schools and asylums, and explains the *Metropolitan Poor Act*, 1867.

*Instruction of children in workhouses and in separate and district schools.* General O. of the Loc. Govt. Bd. dated Jan. 30, 1897. *Lond. Gaz.* Feb. 2, 1897, p. 625; *St. R. & O.* 1897, No. 59.

**POOR LAW (Statutes and Orders)**—*continued*.

*Apprenticeship of pauper children*—General O. of Loc. Govt. Bd. *Lond. Gaz.* Feb. 22, 1898, p. 1126.

*Metropolitan Poor Act*, 1898 (61 & 62 Vict. c. 45), amends s. 69 of the *Metropolitan Poor Act*, 1867, as to the expenses payable out of the *Metropolitan Common Poor Fund*.

*Paupers' Conveyance (Expenses) Order*, 1898, rescinds previous Order under *Paupers' Conveyance (Expenses) Act*, 1870 (33 & 34 Vict. c. 48). *Lond. Gaz.* Feb. 8, 1898, p. 773.

*Poor Law Unions Association (Expenses) Act* 1898 (61 & 62 Vict. c. 19), provides for the establishment of a Poor Law Union Association in England and Wales, and to enable boards of guardians to contribute to the expenses of the association.

**ELECTION OF GUARDIANS.** The *Guardians (London) Election Order*, 1898, dated Jan. 21, 1898. *St. R. & O.* 1898, No. 15, p. 609.

*Poor Law Act*, 1899 (62 & 63 Vict. c. 37), amends s. 1 of the *Poor Law Act*, 1889 (52 & 53 Vict. c. 56), and s. 4 of the *Paupers' Inmates Discharge and Regulation Act*, 1871 (34 & 35 Vict. c. 108).

**GUARDIANS.** Appointment of subordinate officers, O. of Loc. Govt. Bd. dated Sept. 7, 1899, as to. *St. R. & O.* 1899, p. 967, No. 675.

*Guardians—Expenses*—General O. of Loc. Govt. Bd. dated Feb. 17, 1899, under *Poor Law Union Association (Expenses) Act*, 1898 (61 & 62 Vict. c. 19). *St. R. & O.* 1899, p. 966, No. 104.

*Poor Removal Act*, 1900 (63 & 64 Vict. c. 23), amends the law relating to the removal of paupers from England to Ireland.

**In General.**

## — Disqualification—Registration of voters.

See PARLIAMENT—Franchise.

## — Poor-rates.

See Cases under RATES.

## — Receiver in lunacy—Pauper lunatic—Guardians levying distress.

See LUNACY—Receiver.

## — Superannuation allowance, contribution for—Income tax—Salary—Deductions.

See REVENUE—Income Tax. 111.

## — Vagrancy—Wilful refusal or neglect of person to maintain himself—Incapacity resulting from drunkenness.

See VAGRANCY. 2.

**Guardians.**

1. — *Limitation of time for payment of debt—Jurisdiction of House of Lords over costs—Costs of appeal in House of Lords—Poor Law (Payment of Debts) Act*, 1859 (22 & 23 Vict. c. 49), ss. 1, 4.

An order of this House for payment of the costs of an appeal without specifying the amount does not constitute a “debt, claim or demand lawfully incurred or become due” within the meaning of the *Poor Law (Payment of Debts) Act*, 1859, ss. 1, 4, until the amount has been certified by the Clerk of the Parliaments under the Standing Orders, and the time for payment

**POOR LAW (Guardians)—continued.**

limited by that Act runs from the date of the certificate and not from the date of the order.

This House has an inherent jurisdiction, independent of statute, over costs in proceedings before itself.

Decision of C. A., [1895] 1 Q. B. 662, reversed. *WEST HAM UNION v. ST. MATTHEW, BETHNAL GREEN (CHURCHWARDENS, &c., OF) (No. 2)*

H. L. (E.) [1896] A. C. 477

2. — *Limitation of time for payment of debt—Commencement of "proceedings"—Application for taxation of costs—Poor Law (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49), ss. 1, 4.*

An application to the clerk of the peace to tax costs awarded by quarter sessions is not a commencement of proceedings within s. 4 of the Poor Law (Payment of Debts) Act, 1859, so as to take the debt out of the operation of s. 1.

*Quære*, whether before taxation of the costs there was any debt, claim, or demand incurred or become due.

Decision of C. A., [1895] 1 Q. B. 357, affirmed. *MIDLAND RY. CO. v. EDMONTON UNION*

H. L. (E.) [1895] A. C. 485

3. — *Limitation of time for payment of debt—Costs—Date from which limited time runs—Judgment for costs in the Supreme Court—Allocatur of master—Poor Law (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49), s. 1.*

A judgment of the C. A. for payment by guardians of the poor of the costs of an appeal does not constitute a "debt, claim, or demand lawfully incurred or become due" within the meaning of the Poor Law (Payment of Debts) Act, 1859, s. 1, until the amount has been determined on taxation, and the time for payment limited by that Act runs from the date of the allocatur, and not from the date of the judgment. *MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO. v. DONCASTER UNION C. A. [1897] 1 Q. B. 117*

Discussed by H. L. (E.). *West Ham Union v. Churchwardens, &c., of St. Matthew, Bethnal Green, [1896] A. C. 477, at p. 485. See No. 1, above.*

4. — *Loan for term of years—Redemption without consent of lender—Poor Law Loans Act, 1871 (34 & 35 Vict. c. 11), s. 2.*

Guardians of the poor who have since April 24, 1871 (the date of the passing of the Poor Law Loans Act, 1871) borrowed moneys, to be repaid at stipulated times, cannot even with the authority of an order of the Loc. Govt. Bd. under s. 2 of the Act compel the lender to accept against his will repayment otherwise than in accordance with the contract.

Decision of C. A., [1897] 1 Ch. 335, affirmed. *WEST DERBY UNION v. METROPOLITAN LIFE ASSURANCE SOCIETY - H. L. (E.) [1897] A. C. 647*

**Relief.****(Maintenance and Relief.)**

5. — *Costs of maintenance—Payment to guardians—Periodical payment—Pauper entitled—Divided Parishes and Poor Law Act, 1876 (39 & 40 Vict. c. 61), s. 23.*

Where an application was made to justices by guardians for an order under s. 23 of the Divided Parishes, &c., Act, 1876, on a friendly society

**POOR LAW (Relief)—continued.**

alleged to be bound to make periodical payments to a pauper, and the right of the pauper to the payments in question was disputed:—

*Held*, that the magistrates had no jurisdiction, as it is a condition precedent to proceedings under s. 23 that the right of the pauper to such payments should be undisputed. *REG. v. RICHARDSON - Div. Ct. [1894] 2 Q. B. 233*

6. — *Costs of maintenance—Practice—Suspended order—Poor Law Act, 1834 (4 & 5 Will. c. 76), s. 4—Poor Law Act, 1849 (12 & 13 Vict. c. 103), s. 16.*

An application for an order for costs of maintenance under orders of removal, which have been suspended because of the ill-health of the pauper, must be made by summons and not *ex parte*. *REG. v. WILKINSON*

*Div. Ct. [1891] 1 Q. B. 722*

7. — *Costs of maintenance—Property of deceased pauper—Reimbursement of guardians—Executor's right of retainer—Poor Law Act, 1849 (12 & 13 Vict. c. 103), s. 16.*

Guardians are not preferential but ordinary creditors against the estate of a deceased pauper for the expenses of the maintenance of the pauper for the last twelve months of the pauper's life, and the pauper's executor can retain a debt due to himself before satisfying the claim of the guardians. *LAYER v. BOTHAM & SONS. CHESTERFIELD UNION CLAIMANTS*

*Div. Ct. [1895] 1 Q. B. 59*

8. — *Maintenance—Sum due under maintenance order—Recoverable as a civil debt—Poor Relief Act, 1601 (43 Eliz. c. 2), s. 6—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 6, 35.*

Money due under an order of justices made upon a person for the maintenance of his father under 43 Eliz. c. 2, s. 6, is recoverable before a court of summary jurisdiction as a civil debt and not as a penalty; and an order of justices for the payment of the money so due cannot be enforced by imprisonment in default of distress, unless it be proved that the person in default has since the date of the latter order had the means to pay the sum in respect of which he has made default. *In re GAMBLE - Div. Ct. [1898] W. N. 173 (7); [1899] 1 Q. B. 305*

— *Maintenance of pauper lunatic.*

*See LUNACY—Maintenance.*

9. — *Maintenance, Order for—Practice—Appeal to quarter sessions—43 Eliz. c. 2—Order to pay 2s. 6d. a week—Sum adjudged to be paid more than 3l.—Metropolitan Police Court Act, 1839 (2 & 3 Vict. c. 71), s. 50.*

An order of a metropolitan police magistrate to pay 2s. 6d. weekly towards the relief and maintenance of a certain pauper for and during so long a time as she shall be chargeable is not an order in which the sum adjudged to be paid is more than 3l., so as to give a right of appeal to quarter sessions under s. 50 of 2 & 3 Vict. c. 71. *REG. v. LONDON JUSTICES. Ex parte GREENWICH UNION - Div. Ct. [1900] 1 Q. B. 438*

10. — *Strike of workmen—Guardians of the poor—Persons entitled to relief—"Sudden and urgent necessity"—Able-bodied men unwilling to*

**POOR LAW (Relief)—continued.**

work—"Idle and disorderly persons"—Prosecution by guardians—Powers of Local Government Board—Jurisdiction of High Court—Injunction—Public authority—Practice—Declaration of right—Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3—Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), ss. 15, 52, 54—Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91), s. 4—R. S. C., 1883, Order XXV., r. 5.

The classes of persons who are entitled to poor law relief are still (notwithstanding subsequent legislation) the same as those mentioned in s. 1 of the Act of 43 Eliz. c. 2.

Able-bodied men who can, if they choose, obtain work which will enable them to maintain themselves, their wives and families, but who, by reason of a strike or otherwise, refuse to accept that work, are not entitled to relief, except that, if they become physically incapable of working, the guardians may, to prevent their starving, give them temporary relief. But in that case the guardians are to prosecute them under the Vagrancy Act, 1824, s. 3, as "idle and disorderly persons." The wives and children of such men, however, are entitled to relief, though they themselves are not.

Seem also, that men who are prevented from accepting work by fear of physical violence are entitled to relief.

A general strike of workmen does not of itself create a case of "sudden and urgent necessity" within the meaning of s. 54 of the Poor Law Amendment Act, 1834.

The High Court has jurisdiction to restrain guardians from applying the poor-rates improperly. But this jurisdiction does not interfere with the power of the Loc. Gov. Bd. under s. 4 of the Poor Law Audit Act, 1848, to remit improper payments by guardians which have been disallowed by the auditor.

The plts. claimed an injunction to restrain the defts. from applying the rates in the relief of able-bodied men who could have obtained work, but who refused to accept it, and also a declaration of the illegality of such an application of the rates. At the trial of the action the plts. did not ask for an injunction:—

*Held*, that the Court had jurisdiction, and ought to make a declaration that any payment out of the rates for setting to work or for the relief of able-bodied men who could at the time obtain and perform work at wages sufficient to support themselves and their wives and families (if any) was unlawful and ought to be disallowed by the auditor of the guardians' accounts. But the declaration was not to include relief given to or for the wives and children of such men, and was in no way to affect the power of the Loc. Govt. Bd. to remit such disallowed payments, although unlawfully made, under any statute enabling them to do so.

Decision of *Romer J.*, [1899] W. N. 38 (3), reversed. *ATT.-GEN. v. MERTHYR TYDFIL UNION*  
C. A. [1900] W. N. 56; [1900] 1 Ch. 516

**Settlement.**

11. — *Birth settlement—Division of parish in which pauper was born—Loss of birth settlement—*

**POOR LAW (Settlement)—continued.**

13 & 14 Car. 2, c. 12, s. 21—*Divided Parishes Act*, 1876 (39 & 40 Vict. c. 61), ss. 1, 3, 8—*Local Government Act*, 1894 (56 & 57 Vict. c. 73), ss. 1 sub-s. 3, 67, 68, 75.

The decision in *Reg. v. Inhabitants of Tipton*, (1842) 3 Q. B. 215, as to the settlement of paupers established the rule that the settlement in a parish gained by birth therein is a settlement in the parish as an entity, and not in any particular township of it, and if after a birth settlement has been gained in it the parish is divided by Act of Parliament into two or more separate parishes, so that it ceases to exist as one entire parish, the birth settlement gained in the old parish ceases to exist also.

This rule has been so long established and so frequently applied, that it cannot now be altered by the Court; and accordingly it was applied by C. A., affirming the decision of *Collins and Ridley JJ.*, in the case of a parish which had become two separate parishes by the operation of the *Local Government Act*, 1894, s. 1, sub-s. 3. *DORKING UNION v. ST. SAVIOUR'S UNION*

C. A. [1898] 1 Q. B. 594

12. — *Computation of time of residence—Irremovability—Exclusions—Patient in hospital—Poor Removal Act*, 1846 (9 & 10 Vict. c. 66), s. 1—*Divided Parishes Act*, 1876 (39 & 40 Vict. c. 61), s. 34.

The residence for a term of three years which confers a settlement under the *Divided Parishes Act*, 1876, is residence for three consecutive years, under the conditions provided by the Act.

*Dorchester Union v. Weymouth Union*, (1885) 16 Q. B. D. 31, approved.

The period during which a person is a patient in a hospital must be excluded in computing the time necessary for his acquisition of a settlement under the *Divided Parishes Act*, 1876.

Judgment of *Div. Ct.*, [1897] 1 Q. B. 438, affirmed. *ST. OLAVE'S UNION v. CANTERBURY UNION*  
C. A. [1897] 1 Q. B. 682

13. — *Constructive residence—Seaman—Divided Parishes Act*, 1876 (39 & 40 Vict. c. 61), s. 34.

Where during a seaman's absence at sea his wife removed to lodgings at A., where he joined her on his return:—

*Held*, that in the absence of any evidence of the wife's having her husband's authority to take the lodgings, he could not be treated as having constructively resided there for the period between the wife's going to A. and his joining her there. *WEST HAM UNION v. CARDIFF UNION*

*Div. Ct.* [1895] 1 Q. B. 766

14. — *Derivative settlement of father—Child under sixteen—Divided Parishes Act*, 1876 (39 & 40 Vict. c. 61), s. 35.

A man who had acquired no settlement for himself since he was sixteen years old, and whose father's settlement was "derivative," left children under sixteen chargeable to the parish:—

*Held*, that the children took the settlement of their father, and that as it could not be shewn what settlement he derived from his father without inquiring into the derivative settlement of his father, the children's settlement was the

**POOR LAW (Settlement)**—*continued.*

parish in which their father was born. **BATH UNION v. BERWICK-ON-TWEED UNION**

Div. Ct. [1892] 1 Q. B. 731

15. — *Derivative settlement of mother—Child under sixteen—Second marriage of mother—Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), s. 35.*

The children under sixteen of a first husband do not take the settlement acquired by their mother on her second marriage. **Llanelly Union v. Neath Union**

Div. Ct. [1893] 2 Q. B. 38

16. — *Illegitimate pauper—Birthplace—Derivative settlement of parent—Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), s. 35.*

On inquiry as to the place of settlement of an illegitimate pauper, it was proved that the pauper was born in P. and the pauper's mother in S., and that neither of them had acquired a settlement of her own. Facts were proved upon which the Court held that the father of the pauper's mother had a settlement and that the pauper's mother derived that settlement from him, but did not make the necessary inquiries to ascertain what that settlement was, and adjudged that the pauper's settlement was in P. where she was born:—

*Held*, affirming the decision of C. A., that the adjudication was right; that the case came within the third paragraph of s. 35 of the Divided Parishes Act, 1876, and that since it could not be shewn what settlement the pauper derived from her mother without inquiring into the derivative settlement of the mother, the pauper must be deemed to be settled in the parish where she was born. **PLYMOUTH UNION v. AXMINSTER UNION**

H. L. (E.) [1898] A. C. 586

17. — *Lunatic pauper—Removability.*

The temporary absence of a pauper lunatic from the union "on trial" does not constitute such a breach of residence as to put an end to the status of irremovability which the lunatic had acquired. **REG. v. BRUCE**

Div. Ct. [1892] 2 Q. B. 136

18. — *Removal of pauper—Irremovability—Break of residence—Intention of pauper to reside permanently in another union.*

A pauper whose original settlement was in the C. Union had by residence become irremovable in the E. Union, and was sent to the E. Workhouse. She desired to be sent to the C. Workhouse, in which her son was, and she therefore obtained her discharge from the E. Workhouse and went to reside for a week with a relative in another union in order to break her status of irremovability in the E. Union. She then returned to the E. Workhouse for the purpose of being sent to the C. Union:—

*Held*, that an order for her removal from the E. Union to the C. Union was rightly made. **CAMBRIDGE UNION v. EDMONTON UNION**

Div. Ct. [1900] 2 Q. B. 111

19. — *Removal of pauper before 1876—Subsequent residence without relief—"Pauper removed"—39 & 40 Vict. c. 61, s. 36.*

A pauper who has been removed from the place of her original settlement can, notwith-

**POOR LAW (Settlement)**—*continued.*

standing s. 36 of the Divided Parishes Act, 1876, acquire a fresh settlement there if she returned before the passing of the Act and has resided without relief. The words in s. 36, "pauper removed before the passing of the Act," which forbid the acquisition of a fresh settlement, are to be restricted to those paupers who had been removed and who still remained paupers when the Act was passed. **BRIGHTON PARISH v. STRAND UNION**

C. A. affirm. Div. Ct. [1891] 2 Q. B. 156

20. — *Residence apart from parent while under sixteen—9 & 10 Vict. c. 66, s. 1—11 & 12 Vict. c. 111, s. 1—39 & 40 Vict. c. 61, s. 34.*

A pauper whose father died when she was a baby resided from the age of fourteen to eighteen in a certain parish; her mother lived in another union:—

*Held*, that although the pauper was living away from her family, the proviso in 11 & 12 Vict. c. 111, applied, and therefore that the time before the pauper was sixteen ought not to be reckoned in determining the period of three years required to constitute irremovability, and, therefore, she had not acquired that status.

Decisions of Div. Ct. and C. A., [1892] 2 Q. B. 65, 676, reversed. **WEST HAM UNION v. ST. MATTHEW, BETHNAL GREEN CHURCHWARDENS (No. 1)**

H. L. (E.) [1894] A. C. 230

As to costs (242, n.), see now Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 2 (3).

**POOR-RATE.**

See Cases under RATES.

**PORT**—Harbour authority—Damage—Towage

—Contract to exercise reasonable care and skill.

See SHIPPING—Harbour. 156.

— Liability to clear a port of sunken ship.

See VICTORIA. 15.

— "Port."

See SHIPPING—Deviation. 122.

**PORTER**—Residential flats—Covenant.

See LANDLORD AND TENANT. 46.

**PORTIONS**—Double portions.

See WILL—Satisfaction. 190.

— Jointure—Construction of power.

See POWERS—Construction. 4.

— Rule against double portions.

See POWERS—Construction. 9.

— Sale of heirlooms—Land purchased with proceeds.

See HEIRLOOMS. 5.

— Terms for raising portions—Infants—Contingent interests—Maintenance.

See INFANT. 30.

**PORTRAIT**—"Distinctive device"—Registration.

See TRADE-MARK—Registration. 24.

**PORTUGAL**—Extradition.

See EXTRADITION.

**POSSESSION**—Adverse title by.

See LANDLORD AND TENANT. 80, 82.

— in Foreclosure action.

See MORTGAGE—Foreclosure. 30—32.

**POSSESSION—continued**

- Goods, Under agreement for sale of.  
See **FACTOR**. 5.
- Joinder of claim for possession and claim for rent.  
See **LANDLORD AND TENANT**. 32.
- Limitations, Statutes of.  
See **LIMITATIONS, STATUTES OF—Possession**.
- Settled land.  
See **SETTLED LAND—Possession**.
- Sheriff, in notice of receiving order to.  
See **SHERIFF**. 12.
- Title by—True title shewn.  
See **PRESCRIPTION**.
- of Title-deeds.  
See Cases under **TITLE-DEEDS**.
- “Without lawful excuse”—Die for making fictitious stamp.  
See **POST OFFICE**. 1.

**POSSESSORY TITLE**—Conditions of sale—Misdescription—Clause excluding compensation—Specific performance.  
See **VENDOR AND PURCHASER**. 6.

- Statutes of Limitations—Rights of remainders.  
See **ESTOPPEL**. 10.

**POST.**

See **POST OFFICE**.

**POST-DATED CHEQUE.**

See **BANKER**. 13.

**POST-NUPTIAL SETTLEMENT.**

See **BANKRUPTCY—Voluntary Settlement**. 269.

**POST OFFICE.**

*Conveyance of Mails Act*, 1893 (56 & 57 Vict. c. 38), makes further provision for the conveyance of *H.M.’s mails*.

**TELEGRAMS.** *Post Office and Telegraph Act*, 1897 (60 & 61 Vict. c. 41), makes provision as to delivery of telegrams.

**POSTAGE STAMPS.** *Imitation of*. *Lond. Gaz.* June 4, 1897, p. 3131.

*Post Office (Guarantee) Act*, 1898 (61 & 62 Vict. c. 18), makes better provision for the guarantee of postal facilities by local authorities.

*Post Office Guarantee (No. 2) Act*, 1898 (61 & 62 Vict. c. 59), extends to Borough and Urban District Councils the powers to guarantee postal and telegraphic facilities already possessed by Rural Councils.

- Acceptance by post—Withdrawal of offer before acceptance—Shares.  
See **COMPANY—Shares**. 264.

- Contract by letters.

See **CONTRACT—Formation**. 17A.

- “Ordinary course of post.”

See **PARLIAMENT—Franchise**. 95.

1. — *Postage stamps*—Die for making fictitious stamp—Possession “without lawful excuse”—*Post Office (Protection) Act*, 1884 (47 & 48 Vict. c. 76), s. 7 (c).

By s. 7 (c) of the *Post Office (Protection) Act*, 1884, “a person shall not make, or, unless he

**POST OFFICE—continued.**

shews a lawful excuse, have in his possession, any die, plate, instrument, or materials for making any fictitious stamp.”

The proprietor of a newspaper circulating among stamp-collectors and others caused a die to be made for him abroad, from which imitations or representations of a current colonial postage-stamp could be produced. The only purpose for which the die was ordered by him, and was subsequently kept in his possession, was for making upon the pages of an illustrated stamp catalogue or newspaper, called “*The Philatelist’s Supplement*,” illustrations in black and white and not in colours of the colonial stamp in question, this special supplement being intended for sale as part of his newspaper:—

*Held*, that the possession of a die for making a false stamp, known to be such to its possessor, was, however innocent the use that he intended to make of it, a possession without lawful excuse within the meaning of the above section. *DICKINS v. GILL*. — *Div. Ct.* [1896] 2 Q. B. 310

- Posting patented article to England—Infringement.

See **PATENT—Infringement**. 6.

- Postman employed at a distance from constituency—Registration of voters.

See **PARLIAMENT—Franchise**. 108.

- Service by post—Evidence—Notice.

See **PRACTICE—Service**. 225.

- Service through post office—No postal delivery—Registration of voters.

See **PARLIAMENT—Franchise**. 97.

**POSTPONEMENT.**

See **WILL**.

- To other creditors—Loan in consideration of share of profits.

See **PARTNERSHIP**. 16.

**POUNDAGE—Sheriff’s.**

See Cases under **SHERIFF**.

- Sheriff—Receiving order—Execution—Sale.

See **BANKRUPTCY**. 215.

**POUTUTU JURISDICTION ACT**—Laws of New Zealand—Native Land Courts Acts.

See **NEW ZEALAND**. 8.

**POWER OF ATTORNEY—Bill of sale.**

A valid bill of sale may be executed by attorney, and the grantee of the bill of sale is not necessarily excluded from being the attorney. *FURNIVALL v. HUDSON*. *North J.* [1893] 1 Ch. 335

Referred to by *North J. Dennison v. Jeffs*, [1896] 1 Ch. 611, 616.

- Execution of—Presumption.

See **POWERS. Exercise**. 13.

- Executor’s attorneys, grant to.

See **PROBATE**. 115.

- Exercise by person not a trustee of building society—Invalidity.

See **MORTGAGE—Sale**. 84.

- Foreign power of attorney.

See **CONFLICT OF LAWS**. 5.

- Principal and agent—Construction of power of attorney.

See **CANADA**. 60.

**POWER OF ATTORNEY—continued.**

- Refusal to execute—Property abroad.  
See **BANKRUPTCY**. 72.
- Sale of business under—Waiver.  
See **PARTNERSHIP—Sale**. 43.

**2. — Validity—Real estate—Will—Gift among persons sui juris—Charge of debts and legacies—Trustees—Vendor and purchaser—Title.**

A testator, after directing payment of his debts, funeral and testamentary expenses, and bequeathing several legacies, gave his residuary real and personal estate to trustees, as to certain parts of his real estate, upon trusts by way of settlement; and as to the residue of his real and personal estate, he gave the same to four persons, all sui juris, absolutely. And he declared that his trustees should have power to sell his real estate at such times as they should deem expedient, and should hold the proceeds upon the trusts of his will.

The trustees, purporting to exercise their power of sale, sold part of the real estate comprised in the latter residuary gift:—

*Held*, as between the vendors and the purchaser, that the power of sale was valid, not on the ground that the testator shewed any intention that it should be exercised for the purpose of division among the beneficiaries, but on the ground that the debts and legacies were charged on the real estate under the doctrine in *Greville v. Browne*, (1859) 7 H. L. C. 689, and that the power of sale was intended to be exercised for the purpose of raising money to pay the same if required.

*In re Lord Sudeley and Baines & Co.*, [1894] 1 Ch. 334, and cases there cited, discussed. *In re Dyson and Fowke*

**Kekewich J.** [1896] 2 Ch. 720

- Vendor and purchaser.  
See Cases under **VENDOR AND PURCHASER—Title**.

**POWER OF SALE—Appointment to trustees for objects—Trust for sale—Legal estate.**  
See **POWERS—Exercise**. 34.

- Banker and customer—Closing account—Mortgage to secure amount owing on account current.  
See **BANKER**. 3.
- Exercise.  
See **LUNACY—Sales**. 44, 45.  
**WILL—Perpetuity**. 162, 163, 165.
- Invalidity—Remoteness.  
See **WILL—Perpetuity**. 162.
- Mortgages.  
See **MORTGAGE—Power of Sale**.
- Partner—Power of sale of business.  
See **PARTNERSHIP—Sale**.
- Real estate—Devolution.  
See **CONVERSION**. 1.
- Settled Land Acts.  
See Cases under **SETTLED LAND—Sale**.
- Tramway.  
See **TRAMWAY**. 3.
- Trade machinery—Mortgage—Non-registration—Invalidity.  
See **BILL OF SALE**. 44.

**POWER OF SALE—continued.**

- Trustees.  
See Cases under **TRUSTEE—Purchase and Sale**.

**POWERS.**

See Cases under Heading of Subject-matter of **POWERS**.

**I. Power of Appointment**, col. 1466.

**II. Power of Attorney.** See **POWER OF ATTORNEY**.

**III. Power of Sale.** See **POWER OF SALE**.

**I. POWER OF APPOINTMENT.**

*In General*, col. 1466.

*Construction*, col. 1467.

*Exercise*, col. 1471.

*Extinction (Release and Extinguishment)*, col. 1480.

*Fraud on Power.* See **POWERS—Exercise**. 19—21.

*Limitations, Statute of.* See **LIMITATIONS, STATUTE OF—Power of Appointment**.

*Release.* See **POWERS—Extinction**.

*Validity*, col. 1482.

**In General.**

- Appointment — Administration — Order in which funds applied in payment of debts.  
See **LIMITATIONS, STATUTE OF**. 24.
- Appointment—Trustees.  
See Cases under **TRUSTEE—Appointment**.
- Appointment—Trustees for purposes of Settled Land Acts.  
See Cases under **SETTLED LAND**.
- Estate duty—Incidence—Will in exercise of power of appointment—Direction to pay testamentary expenses.  
See **WILL—Testamentary Expenses**. 206.
- Investment by trustees.  
See Cases under **TRUSTEE—Investments**.
- Jointuring—Divorce—Second marriage.  
See **SETTLEMENT—Jointures**. 28.
- Leasing—Tenant for life.  
See Cases under **SETTLED LAND**.
- Poor rates.  
See Cases under **RATES**.
- Reversionary interest—Power of appointment—Recital—Estoppel—Construction of settlement.  
See **SETTLEMENT—Validity**. 33.
- Variation of settlements—Interest of children—Wife's power of appointment to husband.  
See **DIVORCE—Settlements**. 124.
- Voluntary settlement—Setting aside—Rectification.  
See Cases under **SETTLEMENT—Voluntary Settlement**.
- Voters—Registration of—Disqualification—Receipt of poor-law relief.  
See **PARLIAMENT—Franchise**. 105—107.

**POWERS (In General)—continued.**

— Will made in execution of limited power of appointment.

See **WILL—Revocation**, 188.

**Construction.****1. — Condition precedent—Act of God.**

A father appointed a fund to his daughter on condition that she married with his consent. The father became lunatic and was unable to give his consent, and the daughter married without it:—

*Held*, that the condition, which had become incapable of fulfilment by the act of God, was a condition precedent, and the appointment did not take effect. *In re HARRIS. FITZROY v. HARRIS*

**North J. [1891] W. N. 76**

**2. — General or limited power of appointment**

— Words of exception—Death of excepted object—General devise—Execution of power—Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26), s. 27.

A settlement created a power to appoint by deed or will to any persons "not being her said present husband or any friend or relative of his." The donee, after her husband's death, made a will consisting of a general devise of all her realty and personality:—

*Held*, that the power was not a power "to appoint in any manner" the donee might "think proper" within s. 27 of the Wills Act, 1837; and that the general devise was not an exercise of the power:

*Held*, further, that a reservation in a mortgage of the subject-matter of the power by the donee thereof of the equity of redemption to the donee, her heirs, &c., or as she or they should direct, instead of to the uses of the settlement conferring the power, did not get rid of the original power.

*Semble*, a power of appointment by deed or will in favour of any person "except A," may become a general power through A. being dead at the time the power is exercised, and thus be exercisable by a general devise under s. 27 of the Wills Act. *In re BYRON'S SETTLEMENT. WILLIAMS v. MITCHELL*

**Kekewich J. [1891] 3 Ch. 474**

— General power of appointment.

See **Cases under POWERS—Exercise**.

**3. — Implication, Gift by—Power coupled with a trust—Gift to A. for life—Power of disposition by A. amongst a class—Gift over in default of appointment.**

Where there is a gift to A. for life with a power to A. to appoint among a class, but no gift to the class, and no gift over in default of appointment, the Court is not bound, without more, to imply a gift to the class in default of the power being exercised.

In order to imply a gift there must be a clear indication in the will that the testator intended the power to be regarded in the nature of a trust, so that the class or some of the class should take.

A testatrix bequeathed to her husband a life interest in certain real property, and gave "him power to dispose of all such property by will amongst our children." The will contained no gift over in default of appointment. There were

**POWERS (Construction)—continued.**

children, but the husband died intestate without having exercised the power of disposition:—

*Held*, that the power conferred on the husband was a mere power and not one coupled with a trust, and that consequently there was no gift to the children by implication, and that the heir-at-law of the testatrix was entitled.

*Brown v. Higgs*, (1799) 4 Ves. 708; *Burrough v. Philcox*, (1840) 5 My. & Cr. 73; *Re Caplin's Will*, (1865) 2 Dr. & Sm. 527; *Re White's Trusts*, (1860) Joh. 656, discussed, examined, and distinguished.

*Healy v. Donmery*, (1853) 3 Ir. C. L. Rep. 213, discussed and followed. *In re WEEKES' SETTLEMENT*

**Romer J. [1897] 1 Ch. 289**

**4. — Jointure—Portions—Construction of Power.**

*Primâ facie*, a jointure is an estate to the wife for life to take effect on the death of the husband.

*Jamieson v. Trevelyan*, (1854) 10 Ex. 269, explained.

A testator devised his real estates in strict settlement, subject to a trust for the accumulation of the rents and profits for a period of twenty-one years from his death, and he empowered every person becoming tenant for life under the will by deed or will (1) to appoint a rent-charge for any wife for her life or any less period; (2) to charge the devised estates with portions in favour of younger children; (3) to charge the said estates in the meantime with an annual sum not exceeding 4 per cent. interest upon the expectant portions of the children for their maintenance and education, such powers to take priority over the trust for accumulation. The first power was referred to in the will as a power of jointuring, and followed the form in Davidson's Conveyancing Precedents save for the omission of the words "by way of jointure." The second and third powers conferred on the donee an absolute discretion as to the mode and time of payment:—

*Held*, (1) that the first power did not authorize an appointment to a wife to take effect in the lifetime of her husband; (2) that the third power authorized an appointment of interest by a father in favour of his infant children to be made payable to himself as their guardian, and that such an appointment was not invalidated by the fact that the father had the means to support his children. *In re DE HOUGHTON. DE HOUGHTON v. DE HOUGHTON*

**Stirling J. [1896] 2 Ch. 385**

**5. — Leases of part of real estate after date of will—Premiums on leases—Execution of power of appointment over real estate.**

The question was whether the hereditaments and property representing premiums for granting leases of certain parts of an estate and paid to the trustees of the will passed under the appointments.

*Held*, that the hereditaments and property went as unappointed.

*Gale v. Gale*, (1856) 21 Beav. 349; *Blake v. Blake*, (1880) 15 Ch. D. 481; *In re Johnstone's Settlement*, (1880) 14 Ch. D. 162; *Collinson v. Collinson*, (1857) 24 Beav. 269, considered. *In re MOSES. BEDDINGTON v. BEDDINGTON*

**Byrne J. [1900] W. N. 182**



**POWERS (Construction)—continued.**

6. — *Mortgage—Absence of power to mortgage—Will—Real estate—Trust for sale—Postponement of sale—Improvements—Repairs.*

A testator gave his real and residuary personal estate to trustees in trust for sale, with a power of postponement in the usual form, followed by a power (also in common form) during such postponement to manage and let the real estate and to make out of the income or capital of his real and personal estate any outlay they might consider necessary for renewals of leases, improvements, repairs, premiums on policies or otherwise for the benefit or in respect of his real or personal estate. The will contained no express power to raise money by mortgage or charge:—

*Held*, that the trustees had power to raise money by mortgage or charge of the real estate for the purpose of repairing houses forming part of the real estate. *In re BELLINGER. DURELL v. BELLINGER* - **Kekewich J. [1898] 2 Ch. 534**

7. — *Payment of account duty—Specific appointees—Residuary appointees.*

By a will, certain specific sums were appointed to some of testator's children, and the residue of the trust fund to another child. The will contained no direction that the specifically appointed sums should be paid free of duty:—

*Held*, that the matter was one of intention, and as the appointor had shewn no intention of burdening the residuary fund with the whole charge, each share must bear its proportion of the account stamp duty. *In re CROFT. DEANE v. CROFT* - **Kekewich J. [1892] 1 Ch. 652**

Distinguished by Stirling J. *In re Bourne*, [1893] 1 Ch. 188.

Distinguished by Kekewich J. *In re Foster*, [1897] 1 Ch. 484, 487.

8. — *Power to appoint income—Settlement.*

Trustees were directed after the death of H. to stand possessed of the income of a fund in trust for such persons as H. by will should appoint, with a gift over in default of appointment:—

*Held*, that the power to appoint income carried the power to appoint the capital. *In re L'HERMINIER. MOUNSEY v. BUSTON*

**North J. [1894] 1 Ch. 675**

9. — *Special power—Appointment to one of several objects of power—Subsequent appointment among all the objects equally—Loco parentis, Person in—Double portions, Rule against—Legacy—Prepayment in testator's lifetime—Satisfaction.*

Decision of Stirling J., [1897] 2 Ch. 574, reversed on appeal, it appearing from the evidence that the child to whom appointments of sums amounting to one-third of the fund had been made by deed had in the lifetime of the appointor accepted these sums in prepayment or anticipation of the one-third appointed to her by the will of the appointor. *In re ASHTON. INGRAM v. PAPILLON* **C. A. [1897] W. N. 178 (2); [1898] 1 Ch. 142**

10. — *Successive appointments—Account duty—Costs.*

Where a person having a life interest and

**POWERS (Construction)—continued.**

power of appointment exercised it successively by deeds and will:—

*Held*, that the duty and costs of administration were payable out of the several sums appointed rateably. *In re SHAW. TUCKET v. SHAW* - **North J. [1895] 1 Ch. 343**

11. — *Succession duty, Incidence of—Stock sufficient to raise a "net" sum—Special power of appointment.*

The donee of a special power of appointment contained in a settlement appointed that so much of the stocks and securities held by the trustees "as shall be sufficient to raise the net sum of 2000l." should, subject to the life interest therein of the appointor, "henceforth belong and be vested in" E., an object of the power, "and be held in trust for him":—

*Held*, that the appointee took the fund free from succession duty.

*Banks v. Braithwaite*, (1862) 32 L. J. (Ch.) 35, questioned. Decision of Stirling J., [1897] 1 Ch. 888, reversed. *In re SAUNDERS. SAUNDERS v. GORE* - **C. A. [1898] 1 Ch. 17**

— *Validity of appointment.*

*See Cases under POWERS—Validity.*

12. — *Wife's property—Limitation to wife, "her heirs and assigns, or otherwise as she shall direct"—Power of appointment—Estate in fee—Real estate.*

The Court held upon the construction of the settlement that it would be putting too great a strain upon the words "or otherwise as she shall direct" to say that they gave a power of disposition only apart from ownership.

If it had been intended to give a power of appointment, the power would probably have been inserted before the words of limitation. But the settlement went on to use similar words in the ultimate limitation to the husband, "his heirs, executors, administrators and assigns for his and their own use and benefit, or otherwise as he or they shall direct." It was not suggested that these words gave the husband a power of appointment apart from ownership, and there was no sound reason for construing the words of limitation to the wife differently. To hold that the settlement gave her a general power of appointment would practically place her in her husband's power and enable him to wheedle her property out of her, in which case she would forfeit the protection which the settlement was expressly intended to give her. Moreover, a general power of disposition during coverture would be inconsistent with the limited power of leasing given to the husband and wife during coverture. It was not necessary to say that the words in question were mere surplusage: the object of them was simply to explain how the wife might exercise her ownership—to shew how she might, if she chose, dispose of her property, that is, by giving a direction to her trustees so as, under any proposed disposition, to avoid the necessity for double conveyances. The words were commonly used by conveyancers, and were usually to be found in the proviso for redemption or reconveyance in a mortgage deed: in that case no one had ever suggested that the words gave

**POWERS (Construction)—continued..**

the mortgagor a power of disposition apart from ownership. Appeal dismissed. *FOXWELL v. VAN GRUTTEN* - C. A. [1900] W. N. 97

**Exercise.**

13. — *Attorney, Execution by—Appointment—Evidence—Presumption—Deed more than thirty years old—Appointment under special power purporting to be executed by attorney of donee—Power of attorney not produced.*

Where a deed, more than thirty years old, purports to be an appointment under a special power, and to be executed by the attorney of the donee of the power, although, by reason of the antiquity of the deed, the execution of it by the attorney as such ought to be presumed, yet there is no rule of law which requires or justifies the presumption by the Court that the attorney was duly authorized to execute the power.

Where, therefore, in support of such a deed, no power of attorney was produced, nor any evidence forthcoming as to the purport or contents of any such power, it was held that the title of the appointees claiming under the deed was not made out. *In re AIREY. AIREY v. STAPLETON*

*Kekewich J. [1896] W. N. 174 (5); [1897] 1 Ch. 164*

14. — *Covenant that wife's power should be exercised only in favour of settlement trustees.*

The Court will not decree specific performance of a contract to leave property by will made by a mere donee of a power of testamentary appointment. But where a wife in breach of such a covenant exercised her power in favour of her husband and others:—

*Held*, that the executors of the wife's will were liable in damages to the settlement trustees to the extent of the assets come to their hands. *In re PARKIN. HILL v. SCHWARZ*

*Stirling J. [1892] 3 Ch. 510*

15. — *Extent of exercise—Power to appoint invested fund—Appointment of specified sums of cash—Increase in value of investments.*

A father by his will gave to trustees a sum of 30,000*l.* (to be invested as he directed), upon trust to pay the interest and annual proceeds thereof to his daughter during her life, and after her death the same sum, together with the interest and annual proceeds thereof, was to be held on such trusts as the daughter should appoint in favour of her children or grandchildren, with a trust over in default of appointment.

The daughter by her will recited verbatim the gift in the father's will, and then, in exercise of the power, appointed that "the said sum of 30,000*l.*, together with the interest and the annual proceeds thereof, by the said will of my father to be held in trust for me, my children and grandchildren, and over which I have such power of appointment as aforesaid," should after her death be held by the trustees of her father's will upon trust as to 1000*l.* "part thereof" for her daughter Emmeline; upon trust as to five sums of 1000*l.*, 4000*l.*, 6000*l.*, 6000*l.*, and 6000*l.* respectively, each of which was described as "other part of the said sum of 30,000*l.*," on trust for five others of her children respectively, and upon trust as to another sum of 6000*l.*, which was

**POWERS (Exercise)—continued.**

described as "the residue of the said sum of 30,000*l.*" for her other child. At the time of her death the securities on which the 30,000*l.* had been invested were worth 39,000*l.*:—

*Held*, by Kekewich J., [1899] W. N. 126, that only the sum of 30,000*l.* was effectually appointed by the will, and that the excess of 9000*l.* must go as in default of appointment.

*Held*, by the C. A., that the testatrix was dealing with the fund as an invested fund, and that the whole of it was appointed in the proportions indicated by her will. *In re CRUDDAS. CRUDDAS v. SMITH*

C. A. [1900] W. N. 81; [1900] 1 Ch. 730

— Foreign domicile—Will made in execution of power of appointment—Administration with will annexed.

*See PROBATE—Grant of Administration. 34.*

16. — *Foreign domicile of testatrix—Capacity to dispose of property—Power of appointment—Exercise by will.*

A domiciled Frenchwoman having, under an English settlement, a special power of appointment by will over funds in England, can exercise the power in such a way as to dispose of the property in a manner inconsistent with her position under the law of France. The exercise of such a power is not a disposition of property belonging to the testatrix. *POUEY v. HORDERN*

*Farwell J. [1900] W. N. 37; [1900] 1 Ch. 492*

17. — *Foreigner—Conflict of laws—Power of appointment—Personal property—Execution—Domiciled foreigner—Unattested will—Validity—Construction—Administration with will annexed—Wills Act, 1837 (1 Vict. c. 26), ss. 9, 10, 27—Lord Kingsdown's Act (24 & 25 Vict. c. 114), s. 1.*

A will of a domiciled foreigner, which is valid by the law of the testator's domicile and has been recognised as a valid will in this country by the Probate Div., is capable of operating as an execution of a power of appointment by will over personal estate under an English instrument, although the formalities required by ss. 9 and 10 of the Wills Act have not been observed.

*D'Huart v. Harkness*, (1865) 34 Beav. 324, followed and approved.

*In re Kirwan's Trusts*, (1883) 25 Ch. D. 373, and *Hummel v. Hummel*, [1898] 1 Ch. 642, distinguished, on the ground that they apply only to wills which owe their validity to Lord Kingsdown's Act (24 & 25 Vict. c. 114).

Although as a general rule a will is to be construed according to the law of the testator's domicile, this rule does not apply where there are indications on the face of the will that the testator wrote it with reference to the law of some other country.

A domiciled French subject, having a general power of appointment over a fund under an English instrument, left all her property to her husband by a holograph will made in French form and unattested. The will was valid by the law of France, and letters of administration with the will annexed were granted in this country. The will contained indications that it was in-

**POWERS (Exercise)—continued.**

tended to take effect in England as well as in France:—

*Held*, (1.) that it was competent for the testatrix to execute the power by a will in this form, notwithstanding ss. 9 and 10 of the Wills Act; (2.) that the same rules of construction ought to be applied to it as would be applied to an English will in the same terms and of the same date, including the rule of construction introduced by s. 27 of the Wills Act:

*Held*, therefore, that the general bequest operated as a valid execution of the power in favour of the husband. *In re PRICE. TOMLIN v. LATTER* - - *Stirling J.* [1900] W. N. 36; [1900] 1 Ch. 442

Referred to by Farwell J. *Pouey v. Hordern*, [1900] 1 Ch. 492, 494. See preceding Case.

Considered by Byrne J. *Barretto v. Young*, [1900] 2 Ch. 339.

— Foreigner—French will.

See Nos. 22, 23, below.

18. — *Foreigner—General power of appointment—Power to be exercised by will attested by two witnesses—Donee of the power a domiciled Frenchwoman—Holograph will of donee in French language unattested.*

A testator by his will dated in 1822 bequeathed the residue of his personal estate to trustees upon trust for his children in equal shares, the shares of such of them as were daughters to vest in them at twenty-one, but to be retained by the trustees upon trust to pay the income to such daughters for their lives, and, after the decease of each daughter, to pay the principal and the accumulation (if any) of the dividends "to such person or persons, upon such trusts and for such intents and purposes, as she by her last will and testament in writing, or any writing in the nature of, or purporting to be, her last will and testament, or any codicil or codicils thereto to be respectively executed by her in the presence of and attested by two or more credible witnesses shall, notwithstanding her coverture, direct, or appoint, or give, or bequeath the same; and, in default of any such direction or appointment, gift, or bequest, unto such person or persons as at the time of her decease shall be her next of kin."

The testator died in 1824. The plt., who was one of the daughters of the testator and a domiciled Frenchwoman, by her will dated in 1894, and two codicils dated in 1899, all in the French language and all unattested, made divers bequests, and died in Nov. 1899.

The will and codicils were admitted to probate, being good in accordance with French law, but invalid according to English law:—

*Held*, upon the petition of the surviving daughter of the testatrix, who claimed to be her sole next of kin, for payment out of a sum of bank stock standing to the account of the plt., that the will of the testatrix did not operate as a good execution of the power contained in the will of her father, not having been executed in accordance with the formalities required by the will.

It is not enough where special formalities are

**POWERS (Exercise)—continued.**

required by the instrument creating the power that the instrument purporting to execute the power should be a will according to the law of domicile, but in cases where the provisions of the Wills Act do not apply the will must comply with the terms of the power.

*In re Price*, [1900] 1 Ch. 442, and *In re Kirwan's Trusts*, (1883) 25 Ch. D. 373, considered.

*BARRETTO v. YOUNG*

*Byrne J.* [1900] W. N. 153; [1900] 2 Ch. 339

19. — *Fraud on power—Appointment—Gift over on changing religion—Remoteness.*

By a settlement made in 1847 on the marriage of W. property was settled upon trust to pay the income to W. for life, and after her death for such one or more of the children of the marriage in such shares and subject to such conditions and limitations and in such manner as W. should appoint by deed. There were three children of the marriage, T. J., and H., and in 1890 W. by deed appointed that after her death one-third of the property should be held in trust for T., another third in trust for J., and as to the remaining third upon trust to pay the income to H., if not then a member of the Roman Catholic Church or of any sisterhood, or until she should become a member of either, and, subject as aforesaid, as to the capital and income, to T. and J. W. died in 1893, and in 1895 H. became a member of a sisterhood:—

*Held* (1), following *Hodgson v. Halford*, (1879) 11 Ch. D. 959, that the appointment of H.'s third was not a fraud on the power, and (2), in accordance with the dicta in *Boughton v. James*, (1814) 1 Coll. C. C. 26, 46, that the appointment was not open to objection on the ground of remoteness. *WAINWRIGHT v. MILLER*

*Byrne J.* [1897] 2 Ch. 255

Approved of by Kekewich J. *In re Gage*, [1898] 1 Ch. 498.

20. — *Fraud on power—Condition attached—Exercise—Validity.*

A will empowered A. to appoint a fund among her children or remoter issue. The donee made an appointment to certain of the objects of a power with a condition attached requiring the release of a claim against the donee:—

*Held*, that the appointment could not be severed from the condition, and was made for the purpose of increasing the estate of the donee for the benefit of her residuary legatee and was void in toto as a fraud on the power. *In re PERKINS. PERKINS v. BAGOT*

*North J.* [1893] 1 Ch. 283

21. — *Fraud on power—Hotspot clause inserted—Objects of power.*

A settlement creating a power of appointment contained no hotspot clause. The donee, in exercising the power by will, provided that, in the event of there being any lapse in the appointment by reason of any of the objects of the power dying in his, the donee's, lifetime, then and in that case no child taking any share under the appointment should be entitled to any part of the lapsed share without bringing his or her appointed share into hotspot:—

*Held*, that the appointment was effectual and

**POWERS (Exercise)—continued.**

the hotchpot clause valid, notwithstanding that the effect was to benefit persons not objects of the powers. *In re BUCKLEY'S TRUSTS*

Kekewich J. [1893] W. N. 95

22. — *French will—Gift of "tous les biens et droits mobiliers"—Real estate—Sale—Conversion—Re-investment in stock—Wills Act, 1837 (1 Vict. c. 26), s. 27—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 34.*

A. had a general power of appointment over a fund. B. devised a share of freehold property to trustees for A. on the same trusts as the said fund. The freehold property was vested by a private Act in trustees for sale. It was sold and the proceeds invested in the purchase of other freehold land. In a partition action this land was sold, and A.'s share paid into court, and invested in Metropolitan Board of Works Stock. A. married a domiciled Frenchman, and died leaving a will in French which gave to T. "all the personal property and rights (tous les biens et droits mobiliers) which I shall leave at my death, and which shall form part of my succession":—

*Held*, that the fund was personal estate, and that the will was a good exercise of the power and covered all the personal estate of the donee. *In re HARMAN. LLOYD v. TARDY*

Kekewich J. [1894] 3 Ch. 607

23. — *French will—Unattested will—General power—Execution of power—Wills Act, 1837 (1 Vict. c. 26), ss. 9, 10, 27—Lord Kingsdown's Act (24 & 25 Vict. c. 114), s. 1.*

A daughter of a testator had under his will a general power of appointment by will over a share of his residuary estate. The daughter died in France, having while residing there made a disposition of her property by a writing signed by her but not attested, the writing being in form a valid will according to French law:—

*Held*, that the writing, even if admissible to probate under s. 1 of Lord Kingsdown's Act (24 & 25 Vict. c. 114), did not operate as an execution by the daughter of her general power of appointment by will, since it had not been attested by two or more witnesses as required by ss. 9 and 10 of the Wills Act (1 Vict. c. 26).

*In re Kirwan's Trusts*, (1883) 25 Ch. D. 373, followed.

*D'Huart v. Harkness*, (1865) 34 Beav. 324, considered. *HUMMEL v. HUMMEL*

Kekewich J. [1898] 1 Ch. 642

Distinguished by Stirling J. *In re Price*, [1900] 1 Ch. 442.

24. — *General bequest—Intention—Evidence as to state of property admissibility—Execution of power—Special power.*

Where the donee of a power exercisable by deed or will of appointing to children made a will dividing among her children and their issue "all my property of every kind," but making no express reference:—

*Held*, that the will did not operate as an exercise of the power, and that the gift being general, evidence to shew that the testator was intending to dispose not only of her own property, but also of that over which she had a

**POWERS (Exercise)—continued.**

power of appointment, was inadmissible. *In re HUDDLESTON. BRUNO v. EYSTON*

Kekewich J. [1894] 3 Ch. 595

Referred to by Stirling J. *In re Milner*, [1899] 1 Ch. 563, 565.

25. — *General power—Ineffectual appointment—Residuary bequest—Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26), s. 27.*

The donee of a general power of appointment appointed the fund by will on trust to convert, and after paying legacies to pay the residue to A. if living at the death of the donee's wife:—

*Held*, that, if the donee had not by the exercise of the power made the property his own for all purposes, he had nevertheless attempted to exercise the power, though in an ineffectual manner. Consequently the property did not go as in default of appointment or to the testator's next of kin, but to the residuary legatee under s. 27 of the Wills Act. *In re ELEN. THOMAS v. McKECKINE*

Stirling J [1893] W. N. 90

— General power—Infant donee.

*See INFANT—Settlement. 41.*

26. — *General power—Married woman—Exercise by will—Appointee predeceasing appointor.*

A married woman had a general power of appointment over a message, which went in default of appointment to her husband. She made a will in which she made no difference in property which belonged to her and property over which she had a power of disposition, demising the message to her husband. He predeceased her:—

*Held*, that she had shewn an intention that the message should be deemed hers, and that therefore it went to her heir-at-law. *COXEN v. ROWLAND*

[1894] 1 Ch. 406

Distinguished by Romer J. *In re Boyd*, [1897] 2 Ch. 232.

27. — *General power—Married woman—Separate estate—"Debts or other liabilities."*

When the will of a married woman, made in the exercise of a general power, comes into operation by her death, the property so appointed becomes liable to her debts and liabilities as if it had been separate estate at the time she entered into the contracts. *In re ANN. WILSON v. ANN*

Kekewich J. [1894] 1 Ch. 549

Discussed by Kekewich J. *In re Hughes*, [1898] 1 Ch. 529, 535.

28. — *In trust for another, Appointment to one beneficiary—Transfer.*

The donee of a power of appointment over certain settled funds exercisable in favour of (inter alios) A. and B. appointed (inter alia) one sixth share to A., and declared in the deed exercising the power that another sixth was appointed to A. upon trusts for the benefit of B.:—

*Held*, that the trustees of the settlement ought to retain the one-sixth appointed to A. in trust for B. and not to transfer it to the trustee under the appointment. *In re TYSSSEN. KNIGHT-BRUCE v. BUTTERWORTH* North J. [1894] 1 Ch. 56

Referred to by Kekewich J. *In re Paget*, [1898] 1 Ch. 290, 296.

**POWERS (Exercise)—continued.****28A. — Joint appointment—Revocation.**

A husband and wife had a joint power of appointment exercisable by deed or will with or without power of revocation and new appointment, and in default of joint appointment the survivor had a similar power. They exercised the power with this proviso: "The appointments . . . are made subject to the power of revocation and new appointment mentioned in" the settlement. The appointment recited only the joint power. After the wife's death the husband executed a deed revoking the joint appointment and made a new appointment:—

*Held*, (1) that the donees in exercising the power could reserve a power of revocation to the survivor; (2) that they had reserved such power to the survivor. *In re HARDING*. ROGERS v. HARDING — C. A. affirming North J. [1894] 3 Ch. 315

**29. — Limited power of appointment—Will giving the power dated subsequently to will purporting to exercise the power—Wills Act, 1837 (1 Vict. c. 26), ss. 24, 27.**

H. H. the younger, by his will dated in 1881, gave all the residue of the property over which at the time of his death he should have a disposing power to trustees upon trust for sale and conversion, and directed them to pay the yearly income arising from his trust estate to his wife for life or widowhood.

H. H. the elder, father of H. H. the younger, by his will dated in 1893, empowered each child of his by his or her will, or any codicil thereto, to appoint to or in favour of his or her wife or husband the whole or any part of the yearly income of his or her share of his (the testator's) residuary estate for the life of such wife or husband, and directed that a sum of 4000*l.* thereby directed to be raised should be held upon the same or the like trusts and subject to the same or the like powers and provisions as were thereinbefore declared with respect to the share of H. H. the younger in the residue. H. H. the elder died in 1895, and H. H. the younger in 1899 leaving a widow and three children. H. H. the younger had no power of appointment exercisable in favour of his widow other than the power contained in the will of his father:—

*Held*, that the will of H. H. the younger did not operate as a valid appointment under the power conferred upon him by the will of his father.

*Stillman v. Weedon*, (1848) 16 Sim. 26, discussed and considered.

A power of appointment is not well exercised by will which, together with a codicil thereto, has been executed before the will giving the power. *In re HAYES*. TURNBULL v. HAYES

Byrne J. [1900] W. N. 139; [1900] 2 Ch. 332

**30. — Limited power—Exercise by will—General words of appointment—General powers—No reference to limited power—Intention.**

A testatrix had two general powers of appointment in addition to a limited power to appoint the income of certain property to her husband for life. By her will, which contained no reference to the limited power or to the property subject thereto, she gave, devised, and bequeathed all

**POWERS (Exercise)—continued.**

her real and personal estate, and appointed all real and personal estate over which she might have a power of appointment unto her husband absolutely:—

*Held*, that the testatrix had clearly expressed her intention of exercising every power she had in favour of her husband, and that the limited power was therefore exercised. *In re SHARLAND*.

*In re REW*. REW v. WIFFELL

Kekewich J. [1899] W. N. 140; [1899] 2 Ch. 536

**31. — Married woman—General power of appointment—Exercise of power—Liability of appointed fund to debts—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 4.**

A married woman had power, in the event of her husband surviving her, to appoint the income of a fund to him during his life. She had also, in the same event, a general power to appoint by will the capital of the fund as she should think fit. By her will she appointed out of the capital of the fund several sums, including 1100*l.* to D. "in satisfaction of a debt to that amount due from me to her." And she further appointed that (subject as aforesaid) the trustees should pay the whole of the income of the fund to her husband during his life. The husband survived her. There was in fact no debt due from her to D., but there was a debt of 1100*l.* due from her husband to D., and the evidence satisfied the Court that, in the appointment of the 1100*l.*, she intended to refer to that debt.

She had at her death separate property applicable to the payment of her debts, but that property was insufficient for the purpose by more than 1100*l.* Some time after her death the husband paid the debt to D.

*Held*, that the appointment had not failed, but was effective, and that the 1100*l.* must be applied in payment of the debts of the testatrix. *In re HODGSON*. DARLEY v. HODGSON

North J. [1899] W. N. 30 (3); [1899] 1 Ch. 666

**32. — Married woman—Restraint on anticipation—General power of appointment—Power exercised by deed.**

Where a married woman is tenant for life with power to appoint at her decease, the mere fact that she is restrained from anticipating her life interest is no ground for holding that the power is a power exercisable by will only. *In re WADDINGTON*. BACON v. BACON

Romer J. [1897] W. N. 6 (8)

**33. — Policy of life insurance—Power of nomination by assured—Will not referring to policy.**

A bequest of residue held not to be an exercise of a power of nomination contained in an insurance policy. *In re DAVIES*. DAVIES v. DAVIES

North J. [1892] 3 Ch. 63

**34. — Real estate—Devise to us—Power of sale—Appointment to trustees for objects—Trust for sale—Legal estate.**

A testator devised real estate to the use of his daughter for life, with remainder to the use of such of her children, for such estates or interests and in such manner as she should by will appoint, and in default of appointment to the use of her children as tenants in common.

**POWERS (Exercise)—continued.**

And he empowered the trustees of his will to sell the property with the consent in writing of the persons for the time being in possession under the foregoing limitations if adult, and if not, then at the discretion of the trustees.

By her will the daughter, in exercise of her power, appointed the real estate to trustees in trust for sale and to stand possessed of the proceeds upon trusts for her children:—

*Held*, that the legal estate was well appointed by the daughter's will to her trustees in trust for sale, and that they were therefore the proper persons to sell.

An appointment of real estate under a power to trustees for objects of the power passes the legal estate in it as effectively as if the property appointed were money instead of land.

*Kenworthy v. Bate*, (1802) 6 Ves. 793, and *Cowx v. Foster*, (1860) 1 J. & H. 30, discussed. *In re PAGET. In re MELLOR. MELLOR v. MELLOR Kekewich J.* [1898] 1 Ch. 290

35. — *Revocation and new appointment—Exercise by deed with power of—Subsequent general devise—Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26), s. 27.*

When a general power of appointment of real estate by deed or will has been completely exercised by deed, a power of revocation and new appointment being at the same time reserved, a general devise of real estate by the subsequent will of the donee of the power will not per se amount, by virtue of s. 27 of the Wills Act, to an exercise of the power of revocation and new appointment. *In re BRACE. WELCH v. COLT North J.* [1891] 2 Ch. 671

36. — *Special power of appointment—Bequest of residue to object of power—Intention to exercise—Construction of will.*

Testatrix, who was entitled to a special power of appointment of a life interest in certain funds in favour of her husband, by her will, dated in 1882, gave legacies to persons not objects of the power out of her separate estate, or out of the estate and effects over which she had any disposing power, and then proceeded: "I give bequeath and appoint all the residue of my estate and effects whatsoever and wheresoever unto my husband absolutely." Testatrix had no other testamentary power of appointment. She died in 1883 leaving her husband her surviving:—

*Held*, that the power had been exercised. *In re MILNER. BRAY v. MILNER Stirling J.* [1899] W. N. 27 (7); [1899] 1 Ch. 563

37. — *Unappointed—Exercise of power of appointment—One-third to son of donee of power—One-sixth to each of the two daughters—No appointment of the remaining two-sixths—Will—"Wish them to pass directly to my said two daughters"—Son not to share in "unappointed parts."*

A testator bequeathed 15,000*l.* to trustees upon trust for J. B. for her life, and on her death in trust for her three children, H. B., J. W., and A. W., in such shares as J. B. should by will or codicil appoint, and in default of appointment in trust for her three children equally as tenants in common.

J. B., by a codicil to her will, appointed two-sixths of the fund in trust to pay the income to

**POWERS (Exercise)—continued.**

her son H. B. until he should assign, charge, or otherwise dispose thereof; and on such event happening, then in trust during his life, and after his death for his children (if any) as therein mentioned, and if no children in trust to be equally divided between all her children and grandchildren then living per capita; and she appointed one-sixth in trust for her daughter J. W. as therein mentioned, and one-sixth in trust for her daughter A. W. as therein mentioned, and declared as follows: "I make no appointment of the other two-sixths parts of the said sum of 15,000*l.*, as I wish them to pass directly to my said two daughters, so as to give them an immediate vested and disposable interest therein, and I also declare that neither my son nor his children (if any) shall take any share or interest in the said unappointed parts of the said trust funds":—

*Held*, that the last mentioned two-sixths parts of the funds went as unappointed among the three children of J. B. *In re JACK. JACK v. JACK Romer J.* [1899] W. N. 6 (5); [1899] 1 Ch. 374

38. — *"Wife"—Power to husband by deed or will to appoint income to "his wife"—Appointment by husband to his then wife—Subsequent appointment in favour of his second wife.*

By a post-nuptial settlement power was given to a husband by deed or deeds to appoint a fund, after the determination of his own interest therein, amongst his children, subject to a proviso empowering him by deed or will to appoint one-fourth of the income to "his wife" for her life. The husband in exercise of these powers by deed irrevocably appointed one-fourth of the income in favour of his then wife for her life, and, "subject and without prejudice to the trust" in her favour "thereinbefore limited, if the same should take effect," he appointed the fund amongst his two daughters (who were adults) and his one son (who was under age) in equal thirds, reserving, as to his son, a power of revocation which he subsequently exercised by irrevocably appointing one-third of the fund to such son absolutely. The then wife afterwards died; the husband married again; and on his second marriage he purposed by deed irrevocably to appoint one-fourth of the income of the fund to his second wife during her life:—

*Held* by C. A. (affirming the decision of Kekewich J.), that the appointment of income in favour of the second wife was ineffectual. *In re HANCOCK. MALCOLM v. BURFORD-HANCOCK C. A.* [1896] 2 Ch. 173

Applied by Farwell J. *Foakes v. Jackson*, [1900] 1 Ch. 807.

**Extinction.****(Release and Extinguishment.)**

39. — *Joint donees—Conveyance by one donee and persons entitled in default—Concurrence of other donee—Respective estates and interests—No reference to Power—Power in defeasance—Implied release—Appointment—Execution—Limited power.*

Any dealing with an estate by the donee of a

**POWERS (Extinction)—continued.**

power inconsistent with the exercise of that power releases it.

A husband and wife had a joint power, and subject thereto the survivor had a separate power, to appoint property among certain objects. The husband and wife and the persons entitled in default of appointment executed a deed whereby the wife (with her husband's consent) and those persons according to their several and respective estates and interests as beneficial owners assigned the property to an object. The joint power was not referred to. The wife died, and the husband appointed the property to other objects:—

*Held*, that, whether or not the deed of assignment operated as a joint appointment, and (*semble*) it did so operate, it released the husband's separate power, and his subsequent appointment was inoperative.

*In re Hancock*, [1896] 2 Ch. 173, applied.  
**FOAKES v. JACKSON**

**Farwell J. [1900] W. N. 68; [1900] 1 Ch. 807**

**40. — Release—Validity—Married woman—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 52.**

*In Farwell on Powers*, 2nd ed. p. 18, the following passage occurs: "It is submitted that it was always competent to a married woman to release her power over personalty vested in possession, and that she may now by deed unacknowledged release her power over any property whether real or personal, and whether in possession or reversion, and whether she is restrained from anticipation or not, under the provisions of the Conveyancing Act, 1881, s. 52."

*Stirling J.* expressed his agreement with the view taken in *Farwell on Powers*. He held that the case came within s. 52, and that the release was valid. *In re CHISHOLM'S SETTLEMENT.*  
**HEMPHILL v. HEMPHILL**

**Stirling J. [1900] W. N. 128**

**41. — Tenant for life—Power to appoint among children—Extinction of power—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 52.**

The fact that a release of a limited power of appointment will result in a benefit to the donee of the power is not sufficient to make the release fraudulent and void. The doctrines applicable to the fraudulent exercise of a power of appointment do not apply to the release of a power not coupled with a duty.

A father, tenant for life under his marriage settlement, had, in the events which had happened, an exclusive power to appoint for the benefit of a daughter or her issue, and in default of appointment the fund went to the daughter absolutely; the father, being in want of money, released this power, and subsequently he and his daughter mortgaged their interests in the fund for 10,000*l.*, the whole of which was paid to the father, and applied by him for his own purposes:—

*Held*, that the release was valid.

*Smith v. Houlton*, (1859) 26 Beav. 482, and *In re Radcliffe*, [1892] 1 Ch. 227, discussed and applied. *In re SOMES.* **SMITH v. SOMES**

**Chitty J. [1896] 1 Ch. 250**

**42. — Tenant for life—Right to call for a transfer of share of deceased child intestate—Life interest and reversion held in different rights—**

**POWERS (Extinction)—continued.**

*Merger—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 52.*

A tenant for life, after releasing his power of appointment among his children, claimed to have the share of one of his two sons, who had died a bachelor after the age of twenty-one, and intestate, transferred to him:—

*Held*, (1) that the release was a valid exercise of the power, and that the father was entitled as administrator of his son to his reversionary interest; (2) that the father's interest and the son's interest being held by the former in different rights there was no merger, and that the fund must remain with the trustees of the settlement so long as the father's life interest continued; (3) that on executing a surrender of his life interest the father was entitled to a transfer of a moiety of the fund.

*Order of North J.*, [1891] 2 Ch. 662, varied.  
*In re RADCLIFFE.* **RADCLIFFE v. BEWES**

**C. A. [1892] 1 Ch. 227**

Applied by *Chitty J.* *In re Somes*, [1896] 1 Ch. 250.

Referred to by *C. A. Att.-Gen. v. Beech*, [1898] 2 Q. B. 147, 153; [1899] A. C. 53.

**Fraud on Power.**

*See POWERS—Exercise.* 19—21.

**Validity.**

— Appointment, Power of.

*See POWERS—Construction, passim.*

**43. — Lapse—Appointment by will—General power—Death of appointees in lifetime of donee of power—Destination of appointed fund.**

A testatrix, who had a general testamentary power of appointment over 5000*l.*, after reciting the power, bequeathed the said sum of 5000*l.* and also all the residue of her real and personal estate not otherwise disposed of by her equally among her eight nephews and nieces, by name, and appointed an executor; by a codicil she gave various legacies out of her "own moneys," and by another codicil she referred to the fact that she had by her will given "a certain fund therein named," and also the residue of her estate, to her said nephews and nieces. The testatrix was possessed of considerable personal estate in addition to the 5000*l.* Two of the appointees having died in the lifetime of the testatrix:—

*Held*, that she had not indicated a sufficient intention to make this 5000*l.* her own for all purposes, and consequently that two-eighths of the fund lapsed, and went as in default of appointment.

*In re Davies' Trusts*, (1871) L. R. 13 Eq. 163, discussed and followed.

*In re Pinède's Settlement*, (1879) 12 Ch. D. 667, *In re Ickeringill's Estate*, (1881) 17 Ch. D. 151, and *Cozen v. Rowland*, (1894) 1 Ch. 406, distinguished. *In re BOYD.* **KELLY v. BOYD**

**Romer J. [1897] 2 Ch. 232**

**44. — Perpetuities, Rule against—Remoteness—Appointment—Marriage settlement—Power of appointment among children—Exercise of power—Appointment to daughters "who shall hereafter marry"—Appointment of income between daughters**

**POWERS (Validity)—continued.**

*while unmarried—Gift over on death or marriage of surviving unmarried daughter to other children and any daughters then married.*

By a marriage settlement in 1793 a fund was settled in trust for the husband and wife successively for life with remainder for children of the marriage as the husband and wife should jointly appoint. In 1835, there being then seven children of the marriage, including three unmarried daughters, the husband and wife appointed out of the fund 1500*l.* to be paid to each of the three unmarried daughters "who should thereafter marry"; and, so long as those three daughters, or any or either of them, should be living and unmarried, directed that the income of the residue of the fund should be paid to them, or such of them as should from time to time be living and unmarried, equally; and "in case one or two only of them should marry" (which happened) then that, after the death or marriage of such one as should be last living and unmarried, the capital of the residue should be paid to the four other children and such of the three unmarried daughters "as should marry as aforesaid," equally:—

*Held*, (1) that the ultimate gift over of the residue of the fund was void for remoteness, as the class was not necessarily ascertainable within twenty-one years after the death of the survivor of the appointors; (2) that the appointment of the three sums of 1500*l.* was also void for remoteness, as it could not be ascertained whether a daughter would marry within twenty-one years after the death of the survivor of the appointors; and (3) that the appointment of the income of the residue of the fund to the three unmarried daughters was a valid appointment of one-third to each daughter so long as she was living and unmarried; but, so far as it purported to be a gift over of such one-third on her marriage, was void for remoteness.

*Wainwright v. Miller*, [1897] 2 Ch. 255, approved. *In re GAGE*, *HILL v. GAGE*

**Kekewich J. [1898] 1 Ch. 498**

**45. — Perpetuities, Rule against—Remoteness.**

Limitations depending upon a prior limitation which is void for remoteness are themselves invalid; but this rule does not apply to the gifts over in default of appointment, unless the gifts are themselves obnoxious to the rule against perpetuities. *In re ABBOTT*, *PEACOCK v. FRIGOTT*

**Stirling J. [1893] 1 Ch. 54**

**46. — Remoteness—Contingent remainder or executory limitation—Settlement.**

In exercise of a power created by a marriage settlement of real estate (executed in 1819) the husband and wife by deed (executed in Sept., 1848) jointly appointed that the estate should after the death of the survivor of them (they being tenants for life under the settlement) be to the use of the three children then born (naming them) of the only son of the marriage, and all other his child and children who should be living at the death of the survivor of the appointors, and to the heirs and assigns of such of them as should attain the age of twenty-five, equally as tenants in common. But in case either of the three named children of the son and any such

**POWERS (Validity)—continued.**

other child and children as aforesaid should die under twenty-five, then immediately after his or her death to the use of the survivors or other of them, their, his, or her heirs and assigns. Provided that, in case the appointment intended to be thereby made to the after-born children of the son should from any cause fail of effect, the appointors did thereby further declare that the deed should operate as an appointment of the hereditaments to the three then born children of the son, or such of them as should attain twenty-five, their respective heirs and assigns. The husband died in 1867, and his widow died in Nov. 1873. There were seven children of the son, all of whom were then living, but only the three elder ones had attained twenty-five. The other four attained twenty-five subsequently:—

*Held*, that the limitations of the deed of appointment took effect as legal contingent remainders on the death of the widow; that each of the seven children of the son took one-seventh of the property for life; and that the three who had attained twenty-five at the death of the widow took the remainder in fee (subject to the life estates) equally between them as tenants in common.

*In re Lechmere and Lloyd*, (1881) 18 Ch. D. 524, distinguished. **SYMES v. SYMES**

**North J. [1896] 1 Ch. 272**

— Remoteness—Fraud on power.

*See POWERS—Exercise.* 19.

**47. — Will—Power of appointment.**

A will, duly executed according to English law, invalid under the law of the testator's domicile, operates as an exercise of a power in a settlement to appoint personal property in England. *In re MERLIN*, *THURBURN v. MERLIN*

**North J. [1898] W. N. 56 (3)**

**PRACTICE.**

*NOTE.—The cases digested under this heading affect the practice of the Supreme Court generally: for cases as to practice and procedure of other Courts see COUNTY COURT, ECCLESIASTICAL LAW, PRIVY COUNCIL, JUSTICES; for cases as to procedure in special matters, see APPEAL, BANKRUPTCY, COMPANY, COSTS, CRIMINAL LAW, DIVORCE, EVIDENCE, LUNACY, PROBATE, SHIPPING.*

*Rules and Orders of Court judicially considered. See Table of Rules and Orders of Court judicially considered during the years 1891—1900.*

*Accounts. See ACCOUNTS.*

*Admiralty. See SHIPPING.*

*Amendment, col. 1486.*

*Appeal. See APPEAL.*

*Appearance, col. 1487.*

*Arbitration. See ARBITRATION.*

*Attachment. See ATTACHMENT.*

*Chambers, col. 1488.*

*Charging Order. See CHARGING ORDER.*

*Commercial Causes. See COMMERCIAL CAUSES.*

*Compromise. See COMPROMISE.*

*Consent Order, col. 1489.*

*Costs. See COSTS.*



**PRACTICE—continued.**

*Counter-claim.* See **PRACTICE—Pleadings**, 149—155.  
*Course of Business*, col. 1489.  
*Crown Office.* See **CROWN OFFICE**.  
*Declaration.* See **EVIDENCE**.  
*Discontinuance*, col. 1490.  
*Discovery.* See **DISCOVERY**.  
*District Registry*, col. 1491.  
*Divorce.* See **DIVORCE**.  
*Evidence.* See **EVIDENCE**.  
*Examiner.* See **EVIDENCE**.  
*Execution.* See **EXECUTION**.  
*Forma Pauperis*, col. 1492.  
*Frisolous and Vexatious Proceedings.* See **PRACTICE—Pleadings**, 164—169.  
*Further Consideration*, col. 1494.  
*Garnishee.* See **ATTACHMENT**.  
*Injunction.* See **INJUNCTION**.  
*Inquiry as to Damages.* See **DAMAGES**.  
*Inspection of Property.* See **ARBITRATION**, 48.  
*Interpleader.* See **INTERPLEADER**.  
*Interrogatories.* See **DISCOVERY—Interrogatories**.  
*Joinder of Actions and Parties.* See **PRACTICE—Parties**.  
*Judgment*, col. 1495.  
*Jurisdiction*, col. 1498.  
*Lis Pendens.* See **LIS PENDENS**.  
*Mandamus.* See **MANDAMUS**.  
*Motions*, col. 1498.  
*New Trial*, col. 1499.  
*Next Friend*, col. 1501.  
*Non-suit.* See **PRACTICE—Discontinuance**.  
*Official Referee.* See **ARBITRATION—Official Referee**.  
*Originating Summons*, col. 1502.  
*Particulars.* See **DISCOVERY—Particulars**.  
*Parties*, col. 1504.  
*Payment into Court*, col. 1517.  
*Payment out of Court*, col. 1523.  
*Pleadings*, col. 1525.  
*Prohibition.* See **PROHIBITION**.  
*Quo Warranto.* See **QUO WARRANTO**.  
*Receiver.* See **RECEIVER**.  
*Rehearing*, col. 1532.  
*Reply*, col. 1532.  
*Review*, col. 1532.  
*Revivor*, col. 1533.  
*Sales by the Court*, col. 1534.  
*Security for Costs.* See **COSTS—Security for Costs**.  
*Sequestration.* See **SEQUESTRATION**.  
*Service*, col. 1534.  
*Set-off*, col. 1548.  
*Setting aside*, col. 1549.  
*Special Case*, col. 1552.

**PRACTICE—continued.**

*Staying Proceedings*, col. 1553.  
*Stop Order*, col. 1553.  
*Summons for Directions*, col. 1554.  
*Third Party*, col. 1554.  
*Transfer.* See **TRANSFER**.  
*Trial*, col. 1556.  
*Undertakings*, col. 1560.  
*Witness.* See **EVIDENCE**.  
*Writ*, col. 1561.

**Accounts.**

See **Cases under ACCOUNT**.

**Admiralty.**

See **Cases under SHIPPING**.

**Amendment.**

*Order XXVIII.* relates to amendment.

1. — *Admission—Liberty to withdraw admission and amend pleading—R. S. C.*, 1883, *Order XXVIII*, rr. 1, 6.

Leave to withdraw an admission and amend pleading granted on terms of payment of money into court. *HOLLIS v. BURTON*

**C. A.** [1892] 3 Ch. 226

Explained by North J. *In re Beeny*, [1894] 1 Ch. 499, 501.

— *Bankruptcy notice—Irregularity—Amendment—Joint debtors.*

See **BANKRUPTCY—Act of Bankruptcy**, 14.

— *Bankruptcy petition.*

See **BANKRUPTCY—Petition**, 139, 140.

— *Claim—Voters.*

See **PARLIAMENT—Franchise**, 27—36.

2. — *Frauds, Statute of—Pleading—Practice R. S. C.*, 1883, *Order XIX*, r. 15.

Amendment refused where the debt. had pleaded the wrong section of the statute. *JAMES v. SMITH* — *Kekewich J.* [1891] 1 Ch. 384

The C. A., without dealing with the application of the Statute of Frauds, held that the plt. had not established the fact of agency

**C. A.** [1891] W. N. 175

— *Lords of the Admiralty—Action against.*

See **TRESPASS**, 2.

3. — *Marking of copy delivered to opposite party—R. S. C.*, *Order III*, r. 6 (f); *Order XXVIII*, rr. 9, 10.

The directions of *Order XXVIII*, r. 9, as to marking an amended indorsement or pleading with the dates of the order for amendment and of the amendment do not extend to the copy delivered to the opposite party under *Order XXVIII*, r. 10. *HANMER v. CLIFTON*

**Div. J.** [1894] 1 Q. B. 238

— *Patent—Specification of.*

See **PATENT—Practice**, 20—24.

— *Petition—Adding petitioning creditors—Time.*

See **BANKRUPTCY—Petition**, 139.

4. — *Slip in decree—Clerical mistake in judgment—Correction—Judicature Act (Ireland)*, 1877

**PRACTICE (Amendment)—continued.**

(40 & 41 Vict. c. 57), s. 25—*R. S. C. (Ireland)*, 1891, *Order XXVIII*, r. 11.

(A) Under the "Slip Order" of the Irish Rules (which is identical with R. S. C., *Order XXVIII*, r. 11), held that the Court has power to correct a slip in a decree made in 1853, it not being shewn that any rights of other parties had intervened. *HATTON v. HARRIS*

**H. L. (I.) [1892] A. C. 547**

Followed by *P. C. Milson v. Carter*, [1893] A. C. 638. *See next Case.*

Referred to by *Stirling J. Stewart v. Rhodes*, C. A. [1900] 1 Ch. 386, 394.

(B) The Court has power at any time to correct an error in a decree or order arising from a slip or accidental omission, whether there is or is not a general order to that effect. *MILSON v. CARTER*

**P. C. [1893] A. C. 638**

**5. — Specific performance, Action for—Alternative claim for damages—Pleadings—Leave to amend.**

In an action for specific performance of an agreement to take a lease of a house, or in the alternative for damages, the plt. had before the trial given the deft. notice of his intention to let the house to another person, and in pursuance of such notice had so done. At the hearing counsel for the plt. limited his case to a claim for damages only, and concluded his opening without asking for leave to amend his pleadings.

The deft., relying upon *Hipgrave v. Case*, (1885) 28 Ch. D. 350, then took the objection that the plaintiff, having by his own act rendered specific performance impossible, was not entitled to damages. Counsel for the plaintiff in reply asked for leave to amend. The Court gave leave to amend upon the terms that the deft. should be treated as being in the same position as if the action had been brought in the Q. B. Div. for damages only. *NICHOLSON v. BROWN*

**Stirling J. [1897] W. N. 52 (13)**

— Trade-mark.

*See TRADE-MARK*. 17, 51.

— Writ.

*See SHIPPING—Practice*. 198.

**Appeal.**

*See CASES UNDER APPEAL.*

**Appearance.**

*Order XII. relates to appearance.*

**6. — Amendment of writ—Second appearance.**  
A second appearance is not necessary to a writ amended and re-served after the first appearance so as to become a writ specially indorsed under *Order III*, i. 6. *PAXTON v. BAIRD*

**Div. Ct. [1893] 1 Q. B. 139**

— Default of appearance—Trial without pleadings—Motion for judgment.

*See PRACTICE—Pleading*. 170.

**7. — Female guardian ad litem—Description in statement of claim—R. S. C., *Order XII*, r. 8—*Practice Masters' Rules* (5).**

On appearance by a female as guardian ad

**PRACTICE (Appearance)—continued.**

litem it must be stated whether she is covert or sole. *LONDON AND COUNTY BANKING Co. v. BRAY Chitty J. [1893] W. N. 130*

Referred to by *Div. Ct. Roberts v. Plant*, C. A. [1895] 1 Q. B. 597, 601.

**8. — Female parties, Description of.**

On appearance of a female in Ch. Div. it should be stated whether she is covert or sole.

(A) *TOFIELD v. ROBERTS*

**Romer J.**

**[1894] W. N. 74**

(B) *In re POINONS*

**- Kekewich J.**

**[1891] W. N. 139**

**9. — Non-appearance—Party to action.**

A deft. who is served is a party even if he does not appear: *per Lindley L.J. In re EVANS. EVANS v. NOTON* (No. 1)

**C. A. [1893] 1 Ch. 252**

Referred to by *Cozens-Hardy J. D. v. A. & Co.*, [1900] 1 Ch. 484, 488.

**10. — Under protest.**

Appearance under protest reserving a right to object to the jurisdiction is no waiver of irregularity in service. *FIRTH v. DE LAS RIVAS*

**Div. Ct. [1893] 1 Q. B. 768**

**Arbitration.**

*See CASES UNDER ARBITRATION.*

**Attachment.**

*See CASES UNDER ATTACHMENT.*

**Chambers.**

*Order LIV. relates to applications and proceedings in chambers.*

*Order LV. relates to chambers in the Chancery Division.*

*Rule as to attendance of parties in chambers, being r. 173A of the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63). W. N. 1896 (April 11), p. 87; [1896] W. N. (May 30), p. 158.*

— Appeal—Chancery Division.

*See APPEAL*. 1—4.

**11. — Application referred from chambers—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1.**

Where the appeal from chambers is to the C. A. under the Judicature Act, 1894, the power of a judge in chambers to refer to the Div. Ct. has gone, and there is no power to refer to C. A. The proper course is for the judge to make an order and give leave to appeal if necessary. *HOOD BARRS v. CATHCART* (No. 3)

**C. A. [1895] W. N. 32**

— Application to set aside agreement as to costs. *See SOLICITOR—Costs*. 21.

— Judge at chambers—Jurisdiction—Costs on inquiry before Incorporated Law Society. *See SOLICITOR—Costs*. 49.

**12. — Jurisdiction—Transfer of actions—County court.**

Under s. 65 of the County Courts Act, 1888, a judge in chambers has jurisdiction to send actions of contract where the claim does not exceed 100*l.* for trial in the county court "in which the action might have been commenced," whether by *leave*

**PRACTICE (Chambers)—continued.**

or as of right, or "in any court convenient thereto"—that is, convenient to the parties.

Decision of Div. Ct., [1892] 1 Q. B. 99, affirmed. *BURKILL v. THOMAS*

C. A. [1892] 1 Q. B. 312

— Proceedings in chambers—Evidence—Note of registrar or master.

See *DIVORCE—Alimony*. 3.

— Records of proceedings at—Discovery—Production of documents—Privilege.

See *DISCOVERY—Documents*. 36.

— Restraint on anticipation, Order removing.

See *HUSBAND AND WIFE*. 51.

**Charging Order.**

See Cases under *CHARGING ORDER*.

**Commercial Causes.**

See Cases under *COMMERCIAL CAUSES*.

**Compromise.**

See Cases under *COMPROMISE*.

**Consent Order.**

Order *XLI.*, rr. 9, 10, relates to drawing up orders for judgment by consent.

**13. — Enlargement of time for doing act.**

An order made by consent cannot be altered without consent. A consent order was made for the transfer within a limited time of shares by the deft. to the plt. co. It was passed and entered but not served on the deft. nor complied with. On motion by the plts. to enlarge the time for compliance;—

*Held*, that this could not be done without the deft.'s consent. *AUSTRALASIAN AUTOMATIC WEIGHING MACHINE CO. v. WALTER*

North J. [1891] W. N. 170

**Costs.**

See Cases under *COSTS*.

**Counterclaim.**

See *PRACTICE—Pleadings*. 149—155.

**Course of Business.**

Kekewich J. read the following announcement as to the future conduct of business in the Ch. Div.:—

From the commencement of Hilary Sittings, 1901, there will be a new distribution of work in the Ch. Div. It is intended that all the six judges shall be grouped in pairs, and that one of each pair shall in turn take witness actions only, the other devoting himself to non-witness business, including chamber summonses.

Joyce J. will be associated with Kekewich J., the other pairs being Byrne and Buckley JJ. and Cozens-Hardy and Farwell JJ.

In Hilary Sittings the witness action lists will be taken by Kekewich, Byrne, and Cozens-Hardy JJ. to the exclusion of all other business, except such motions and summonses as, being pending before them at the conclusion of the present sittings, it is convenient that they should

**PRACTICE (Course of Business)—continued.**

dispose of, and except also applications in matters with which they are familiar, and which, for that reason, it is convenient that they should dispose of rather than others. On the other hand, the non-witness business only, including chamber summonses, will be taken during the same sittings by Farwell, Buckley and Joyce JJ.; but nevertheless they will dispose of any witness actions pending before them which it is more convenient that they should try; and will leave to the other judges those cases with which such other judges are familiar above referred to.

The above redistribution of business will involve some alteration of chamber arrangements. One of Farwell J.'s masters, namely, Master Binns Smith, will be transferred to Kekewich and Joyce JJ. and Master Satow to Cozens-Hardy and Farwell JJ., and these masters will take with them the business to which they have hitherto attended under Farwell J. The Liverpool and Manchester business (now assigned to Farwell J.) will be assigned to Cozens-Hardy and Farwell JJ. *PRACTICE NOTE*

Kekewich J. [1900] W. N. 262

*Transfer of Actions*. W. N. 1900 (Dec. 22), p. 336; see *Current Index*, 1900, p. xciii.

*Transfer of Chambers*. W. N. 1900 (Dec. 22), p. 337; see *Current Index*, 1900, p. xciii.

*Transfer of Masters*. W. N. 1900 (Dec. 22), p. 337; see *Current Index*, 1900, p. xciii.

*Notice to the District Registrars of the High Court of Justice*. W. N. 1900 (Dec. 22), p. 337; see *Current Index*, 1900, p. xciv.

*Notice to the District Registrars of the High Court at Manchester and Liverpool*. W. N. 1900 (Dec. 22), p. 337; see *Current Index*, 1900, p. xciv.

**Crown Office.**

See Cases under *CROWN OFFICE*.

**Discontinuance.**

Order *XVI.* relates to discontinuance.

— Costs—Particulars of objection.

See *PATENT—Practice*. 33.

**14. — Jurisdiction—"Court or a judge"—Costs of adjournment into Court—R. S. C., 1883, Order *XXVI.*, r. 1.**

Upon the question how the costs of an adjournment into court should be borne:—

*Held*, that the master had jurisdiction in applications under Order *XXVI.*, r. 1, to make an order for the judge. That where the master is prepared to make for a judge a proper order, if, at the instance of the party resisting the order, the matter is adjourned to the judge in chambers, or into court, the costs of the adjournment are in the discretion of the judge. That special care should be taken in reference to the costs of adjournment in cases where, from the nature of the application, it was clear that the proper necessary costs of the application must be borne by the applicant. Upon the merits:—

*Held*, that the plts. must pay the costs of the summons, but the defts. must bear the costs of the adjournment, with a set-off. *Lambton & Co. v. Parkinson*, (1887) 35 W. R. 545, was not

**PRACTICE (Discontinuance)—continued.**

applicable, as the duties of masters in the Ch. Div. and the Q. B. Div. were quite different. *In re Watts*, (1882) 22 Ch. D. 1, was a case between mortgagee and mortgagor, and was not intended to lay down any general rule. *LLOYD'S BANK, LD. v. PRINCESS ROYAL COLLIERY CO.*

*Byrne J.* [1900] **W. N.** 99

15. — *Jurisdiction—Unauthorized use of plaintiff's name—Discontinuance of action—Motion to strike out name—Costs—Judicature Act, 1875* (38 & 39 Vict. c. 77), s. 21—*R. S. C.*, 1883, *Order XXVI.*, r. 1; *Order LXII.*, r. 2.

A co. named as co-plt.s in an action served notice of motion to strike out their name, and asked that the solicitors who had issued the writ might be ordered to pay the co.'s costs, on the ground that their name had been used without their authority. Before the motion could be heard the solicitors served a notice wholly discontinuing the action:—

*Held*, that, notwithstanding the discontinuance, the Court had jurisdiction to make the order asked for. *GOLD REEFS OF WESTERN AUSTRALIA, LD. v. DAWSON* — *North J.*

[1896] **W. N.** 171 (8); [1897] 1 **Ch.** 115

16. — *Non-suit—R. S. C.*, *Order XXVI.*, rr. 1–4.

A plt. cannot now elect to be nonsuited; if he offers no evidence at the trial the deft. is entitled to a verdict.

*Decision of C. A.*, [1898] **W. N.** 26 (4); [1898] 1 **Q. B.** 636, affirmed. *Fox v. STAR NEWSPAPER CO.* *H. L. (E.)* [1899] **W. N.** 255; [1900] **A. C.** 19

— *Non-suit—Fire insurance—Compliance with condition in policy.*

*See NEW SOUTH WALES.* 26.

17. — *Non-suit—Jurisdiction.*

A judge at the trial of an action cannot, after the case has been opened, non-suit the plt. without his consent, and without hearing the evidence tendered by him. *FLETCHER v. LONDON AND NORTH WESTERN RY. CO.*

*C. A.* [1892] 1 **Q. B.** 122

— *Non-suit without plt.'s consent—Non-suit without hearing evidence.*

*See PRACTICE—New Trial.* 55.

— *Stay of proceedings.*

*See PRACTICE—Staying Proceedings.*

18. — *Trade-mark—Rectification of register—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 90.

*Quære*, whether *Order XXVI.*, r. 1, applies to discontinuance of an application to rectify the register of trade-marks. *In re DYSON'S TRADE-MARKS* — *North J.* [1891] **W. N.** 176

### Discovery.

*See Cases under DISCOVERY.*

### District Registry.

*Order XXXV.* relates to proceedings in District Registries.

A new rule, 5A, was added by the Rules of the Supreme Court, Aug. 1894.

*Directions to the District Registrars of Liverpool and Manchester were issued by Kekewich J. under Order XXXV.*, r. 11.

**PRACTICE (District Registry)—continued.**

19. — *Costs—Common order to tax on originating petition of course—R. S. C.* 1883, *Order XXXV.*, rr. 6, 6A, sub-s. 2: *Order LXII.*, r. 18.

A registrar of the District Registry of Liverpool or Manchester has no jurisdiction to make a common order for taxation of a bill of costs on an originating petition of course.

*Per Lindley L.J.*: He may make a common order to tax in causes or matters properly proceeding in his district. *In re PORRETT*

*C. A.* [1891] 2 **Ch.** 433

20. — *Costs—Review of taxation—Retaxation by Master of Supreme Court—R. S. C.*, *Order XXXV.*, r. 4; *Order LXV.*, r. 27, sub-r. 41.

In a case in which final judgment had been entered in a district registry, and the taxation of costs had commenced before, and objections had been carried in and dealt with by the district registrar, it was *held*, that under *Order XXXV.*, r. 4, and *Order LXV.*, r. 27, sub-r. 41, a judge had jurisdiction in the exercise of his discretion to order that the items referred to in the objections should be referred to a taxing master of the Supreme Court for retaxation. *STEVENS v. GRIFFIN* — *C. A.* [1897] 2 **Q. B.** 368

21. — *Interpleader—Jurisdiction—R. S. C.*, *Order XXXV.*, r. 6.

A district registrar has no jurisdiction to make an interpleader order. *HOOD & SONS v. YATES*

*Div. Ct.* [1894] 1 **Q. B.** 240

*But see now Order XXXV.*, r. 5A, added by the *R. S. C.*, Aug. 1894.

Commented on by *C. A.* *Townend v. Kirkham*, [1898] 1 **Q. B.** 51.

22. — *Setting aside judgment in default of appearance—Jurisdiction of registrar—R. S. C.*, 1883, *Order XXXV.*, rr. 1–6.

A district registrar has by virtue of *Order XXXV.*, r. 6, jurisdiction concurrent with that of a master under the rules to set aside or vary a final judgment signed in default of appearance in an action proceeding in the district registry.

*Hood & Sons v. Yates*, [1894] 1 **Q. B.** 240, commented upon. *TOWNEND v. KIRKHAM*

*C. A.* [1897] **W. N.** 163 (8); [1898] 1 **Q. B.** 51

### Divorce.

*See Cases under DIVORCE.*

### Evidence.

*See Cases under EVIDENCE.*

### Examiner.

*See Cases under EVIDENCE.*

### Execution.

*See Cases under EXECUTION.*

### Formâ Pauperis.

*Order XVI.* rr. 22–31 relates to proceedings by or against paupers.

By the *Appeal (Formâ Pauperis) Act, 1893* (56 & 57 Vict. c. 22), power to refuse leave to appeal in *formâ pauperis* was given to the House of Lords.

**PRACTICE (Formâ Pauperis)—continued.**

23. — *Appeal—Crown side—Appeal from County Court—R. S. C., 1883, Order XVI., r. 22; Order LXVIII., rr. 1, 2.*

The rule of practice forbidding proceedings in formâ pauperis on the Crown side of the Q. B. Div. only applies to litigation between the Crown and a subject, and not to appeals from county courts, although the latter are entered in the Crown paper. *CLEMENTS v. LONDON AND NORTH WESTERN RY. CO.* C. A. [1894] 2 Q. B. 482, 486

Referred to by Div. Ct. *Biggs v. Dagnall*, [1895] 1 Q. B. 207, 208.

24. — *Appeal—Special leave—Application for leave to appeal in formâ pauperis.*

Application for leave to appeal in formâ pauperis to the C. A. by a party who has not sued or defended in formâ pauperis in the Court below must be made ex parte to the C. A. Upon such an application the provisions of Order XVI., rr. 22, 23, 24, as to proceedings by or against paupers, must be followed by analogy, as though they were in terms made applicable to appeals. *Ex parte GOLDBERG* - C. A. [1893] 1 Q. B. 417

25. — *Appeal—Special leave—Security for costs.*

A party who has sued or defended in formâ pauperis in the Court below is entitled to appeal as a pauper without either giving security for costs or obtaining special leave. *BIGGS v. DAGNALL* - Div. Ct. [1895] 1 Q. B. 207

26. — *Appeal in formâ pauperis—Special leave to appeal—Jurisdiction to order a stay of sale in execution—Appeals from the Windward Islands and the Royal Court of St. Lucia.*

Where a petitioner had obtained leave to appeal in regular form, an order granting leave to prosecute it in formâ pauperis was made.

On petition for special leave to appeal (1) from a decree in a matrimonial separation suit, (2) in a mortgage suit, (3) from an order for execution of the last-mentioned decree:—

*Held*, that there being ground for appealing from the mortgage decree, the leave should be extended to both suits, which were mixed up together.

Their Lordships have no jurisdiction to order a stay of sale in execution. *QUINLAN v. CHILD. QUINLAN v. QUINLAN. Ex parte QUINLAN*

P. C. [1900] A. C. 496

— Case laid before counsel—Inspection.

*See* DISCOVERY—Documents. 16.

— Costs—Security for—Alleged poverty.

*See* PRACTICE—New Trial. 56.

— Costs in pauper appeals—Appeal from New Zealand.

*See* HUSBAND AND WIFE—Separation. 75.

27. — *Costs of successful pauper suitor.*

The costs to be allowed to a successful pauper suitor considered—

(A) In the House of Lords. *JOHNSON v. LINDSAY & CO. (No. 2) H. L. (E.)* [1892] A. C. 110; *Ex parte SALMON, C. A.* [1899] W. N. 212

(B) in Divorce cases; the ante-Judicature practice at Chancery and Common Law reviewed. *RICHARDSON v. RICHARDSON* - - - *Jeune P.* [1895] P. 276; C. A. [1895] P. 346

**PRACTICE (Formâ Pauperis)—continued.**

28. — *Notice of motion—Signature of solicitor—Plaintiff in default—Power to impose terms as to payment of costs—R. S. C., Order XVI., r. 29.*

A person admitted to sue in formâ pauperis, to whom no solicitor has been assigned, may move the Court without the signature of a solicitor to his notice of motion.

Where a pauper suitor is in default, and asks for indulgence, he may be required as a condition of the grant of such indulgence to pay the costs occasioned by his default. *JACOBS v. CRUSHA* C. A. [1894] 2 Q. B. 37

**Frivolous and Vexatious Proceedings.**

*See* PRACTICE—Pleadings. 164—169.

**Further Consideration.**

*Order XXXVI., r. 21, relates to setting down causes in the Ch. Div. for further consideration.*

29. — *Setting down—Notice to persons served with notice of judgment, but not having entered appearance—R. S. C., Order XVI., rr. 40, 41, 42; Order XXXVI., r. 21.*

Plt. was a residuary legatee of R., who died in 1860. In 1893 an order was made for accounts and inquiries in pursuance of an originating summons. Notice of this order was served on other residuary legatees, who did not enter an appearance. A memorandum of this service was duly entered, the chief clerk made his certificate, and the action was set down for further consideration:—

*Held*, that it was not necessary to give the other residuary legatees notice of the setting down. It was a matter for the discretion of the judge, and in the absence of some special reason such notice need not be given. *In re ROLFE. Fyson v. JOHNSON* - North J. [1894] W. N. 77

**Garnishee.**

*See* Cases under ATTACHMENT.

**Injunction.**

*See* Cases under INJUNCTION.

**Inquiry as to Damages.**

*See* DAMAGES. 3—5.

**Inspection of Property.**

— Referee's power to order—Concurrent jurisdiction of Court.

*See* ARBITRATION. 48.

**Inspection of Documents.**

*See* Cases under DISCOVERY.

**Interpleader.**

*See* Cases under INTERPLEADER.

**Interrogatories.**

*See* Cases under DISCOVERY—Interrogatories.

**Joinder of Actions.**

*See* Cases under PRACTICE—Parties.

**PRACTICE—continued.****Joinder of Parties.**

See Cases under **PRACTICE—Parties.**

**Judgment.****(Orders and Judgments.)**

See Cases under **Specific Titles.**

— Absent defendants—Motion for judgment.  
See No. 38, below.

— Absent parties—Accepting benefit of judgment.

See **ESTOPPEL**. 4.

— Admiralty practice.

See Cases under **SHIPPING**.

— Arrests, commitments, and execution of process.  
See **COMPANY—WINDING-UP—Enforcement of Orders.**

30. — *Assignment of judgment.*

*Semble*, that an application for an assignment of a judgment under s. 5 of the Mercantile Law Amendment Act, 1856, except in the case of an administration action, should be by action and not by motion. *THE "ENGLISHMAN" AND THE "AUSTRALIA" (No. 2) — Bruce J. [1895] P. 212*

— Consent judgment.

See **ESTOPPEL**. 5.

*County Courts—see Explanatory Memorandum to County Court Rules (May), 1899, and rules 26 to 35. W. N. 1899 (May 20), p. 171. See Current Index, 1899, p. cxi.*

31. — *Date of judgment.*

Between the trial of an action and the delivery of judgment one of the debts died:—

*Held*, that the judgment must be dated as of the last day of the trial. *Per North J. ECROYD v. COULTHARD*  
— [1897] 2 Ch. 554;  
C. A. [1898] 2 Ch. 358

— Death of judgment debtor—Charging order—Leave to issue execution against executor.

See **CHARGING ORDER**. 2.

— Debt.

See Cases under **JUDGMENT DEBT**.

— by Default.

See **SHIPPING**. 197.

32. — *Enforcing order—Transfer of Consols—Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 14.*

A married woman deft. refused to obey an order to transfer Consols, part of her separate estate:—

*Held*, that there was jurisdiction under s. 14 of the Judicature Act, 1884, to nominate a person to execute the transfer on behalf of the deft. *In re LUMLEY (No. 1)*  
North J. [1893] W. N. 13

33. — *Entry—Order not entered—Nunc pro tunc.*

An order appointing trustees under the Settled Land Act, 1882, was drawn up, but not passed or entered. The order had been acted upon and one of the trustees had died. The Court on an ex parte application allowed the order to be redrawn, passed, and entered nunc pro tunc. *In re JONES. BULLIS v. JONES*  
Stirling J. [1891] W. N. 114

**PRACTICE (Judgment)—continued.**

— Estoppel.

See **ESTOPPEL**. 4—6.

— Execution—"Action on a contract."

See **RAILWAY—Practice**. 39.

— Execution—Sequestration.

See Cases under **SEQUESTRATION**.

— Execution—Sheriffs.

See Cases under **sheriff**.

— Final judgment.

See **BANKRUPTCY**. 8—11.

— Form of, in debenture-holders' action.

See **COMPANY—Debentures**. 42.

— Form of, in foreclosure action.

See **MORTGAGE—Foreclosure**. 22.

34. — *Form of—Partnership—Infant partner.*

Judgment cannot be recovered against a firm simply of which one partner is an infant, but may be recovered against the debts. "other than" the infant partner. *In re BEAUCHAMP BROTHERS. Ex parte BEAUCHAMP* C. A. [1894] 1 Q. B. 1  
varied by H. L. (E.) sub nom. *LOVELL & CHRISTMAS v. BEAUCHAMP* [1894] A. C. 607

35. — *Form of—Specific performance—Purchaser's action—Form of judgment—"In case the parties differ."*

Where in a purchaser's action for specific performance judgment is obtained in default of defence, the words "in case the parties differ" should be omitted from the direction that the vendor should execute a proper conveyance to be settled by the judge. The omission of these words does not necessitate a reference to the conveying counsel; it was only necessary that the document should be initialed in chambers. *BAXENDALE v. LUCAS*

*Kekewich J. [1895] W. N. 30*

— In rem—Proceedings in foreign court—Liquidator.

See **COMPANY—WINDING-UP—Practice**. 187.

— In rem—Warrant of execution—Sale of ship—Jurisdiction.

See **SHIPPING**. 202.

36. — *Joint debtors—Judgment against one of two joint debtors—Effect as regards the other—Pleading—Costs.*

The rule in *King v. Hoare*, (1844) 13 M. & W. 494, that a judgment against one of two joint debtors is a bar to proceedings against the other, applies where both joint debtors are originally made debts. to and enter appearances in the same action, and judgment by consent has been obtained against one of them in that action.

The observations of Bowen L.J. in *In re Hodgson*, (1885) 31 Ch. D. 177, 188, followed.

Where one joint debtor has consented to judgment, the other, if he wishes to avail himself of the judgment as a defence, should plead it. A debtor not so pleading was ordered to pay costs up to the time of the consent judgment. *McLEOD v. POWER*  
Byrne J. [1898] 2 Ch. 295

— "Judgment"—Statutes of Limitations.

See **LIMITATIONS, STATUTE OF**. 39.

— Lancaster Court—Transfer.

See **PRACTICE—Trial**. 269.

**PRACTICE (Judgment)—continued.**

37. — *Leave to sign judgment—Judgment not signed or entered—Judgment creditor—Priority—R. S. C., 1883, Order XIV., r. 1; Order XLI., rr. 3, 4.*

An order under Order XIV., r. 1, giving liberty to sign final judgment for the amount claimed by the writ of summons, is not equivalent to signing or entry of judgment, so as to give a judgment creditor's right of priority to a plt. who has failed to follow up the order by signing judgment under Order XLI. *In re GURNEY. CLIFFORD v. GURNEY* Kekewich J. [1896] 2 Ch. 863

— Married woman.

See HUSBAND AND WIFE. 52—54.

Order XL. relates to motions for judgment.  
Order XLI. relates to entry of judgment.

38. — *Motion for judgment—Absent defendants—R. S. C., Order XXVII., r. 12.*

In an action against several defts. some consented to a perpetual injunction, and the action was set down as a short cause motion for judgment with agreed minutes against the consenting defts. The others were not served:—

*Held*, that the motion should be treated as interlocutory and proceedings in the action stayed as against the consenting defts. except so far as necessary to carry out the terms of the consent. *COOKE v. GILBERT*

North J. [1892] W. N. 111, and note at p. 128

39. — *Motion for judgment—Application for—Dismissal—Renewal of application—Order XIV., r. 1.*

Where, on an application to enter final judgment under Order XIV., r. 1, unconditional leave to defend has been given in consequence of a technical defect in the writ, the plt. may, after the defect has been cured, make a second application for final judgment. *DOMBEY & SON v. PLATFAIR BROTHERS* — C. A. [1897] 1 Q. B. 368

40. — *Motion for judgment—Notice to co-defendants—R. S. C., 1883, Order XL., r. 7.*

Where issues have been tried and determined in favour of some of the defts., notice of motion for judgment must be given to the others. *BOALER v. BRODHURST* (No. 2)

Stirling J. [1892] W. N. 121

— Motion for judgment—Service—Several defendants.

See PRACTICE—Service. 226.

— Motion for judgment—Trial without pleadings—Default of appearance.

See PRACTICE—Pleadings. 156—158.

— Reversal of—Repayment of costs—Solicitor.

See SOLICITOR—Costs. 71.

— Scottish judgment registered in England—Bankruptcy notice.

See BANKRUPTCY—Act of Bankruptcy. 41.

— Setting aside judgment.

See Cases under PRACTICE—Setting Aside.

41. — *Varying minutes—Appeal.*

There is no appeal to the C. A. from the refusal of a judge to vary minutes. The appeal must be from the judgment itself. *JAMES v. JONES* (No. 1) — C. A. [1892] W. N. 104

**PRACTICE—continued.****Jurisdiction.**

See Specific Titles.

42. — *Failure of special statutory tribunal—Power to assess damages in High Court.*

Where by reason of the abeyance of the special statutory tribunal it is impossible to assess compensation as directed by a special Act, the amount of compensation can be assessed in an action in the High Court. *BENTLEY v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.*

Romer J. [1891] 3 Ch. 222

43. — *Jurisdiction of judge of Court of Appeal to make orders in the Chancery Division.*

Sect. 51 of the Judicature Act, 1873, and the letters of request of the Lord Chancellor to the Lords Justices to act as additional judges of the Ch. Div. gives the Lords Justices jurisdiction to make orders in the Ch. Div. *In re BLAKE*

L.J.J. [1895] W. N. 51

44. — *Trespass to land in foreign country—Venue.*

The Supreme Court has no jurisdiction to entertain an action for damages in respect of trespass to land situated in a foreign country. Order XXXVI. (abolishing local venue) confers no new jurisdiction.

Decision of C. A., [1892] 2 Q. B. 358, reversed. *BRITISH SOUTH AFRICA CO. v. COMPANHIA DE MOÇAMBIQUE*

H. L. (E.) [1893] A. C. 602

Referred to by Darling J. *Adam v. British and Foreign Steamship Co.*, [1898] 2 Q. B. 430, 432.

**Lis Pendens.**

See Cases under LIS PENDENS.

**Mandamus.**

Order LII. relates to actions of mandamus.

See Cases under MANDAMUS.

**Motions.**

Order LII. relates to motions.

45. — *Copy of notice for judge.*

A copy of the notice of motion should be supplied in the Ch. Div. for the use of the judge; otherwise he may refuse to hear the motion. *BARTLETT v. WEST METROPOLITAN TRAMWAYS CO. (No. 1)* — North J. [1893] W. N. 139;

[1893] 3 Ch. 437; [1894] 2 Ch. 286

Disapproved (but not on this point) by C. A. *Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36.

— Dispense with making co-respondent.

See DIVORCE. 99.

— Hearing of, by Court of Appeal.

See APPEAL. 4, 56.

— Interlocutory—Information and belief—Insufficient affidavit.

See EVIDENCE. 18.

— Judgment, Motion for.

See PRACTICE—Judgment. 38—40.

— Petition or—Necessary witness in custody

See HABEAS CORPUS. 2.

**PRACTICE (Motions)—continued.**

— Time—Motion to discharge order for public examination.

See COMPANY—WINDING-UP. 87.

— Vivâ voce evidence—Practice.

See BANKRUPTCY—Practice. 151.

**New Trial.**

Order XXXIX. relates to new trials.

47. — *Appeal—Official referee—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1.*

The Judicature Act, 1890, s. 1, only applies to motions for new trials in cases tried with a jury. In a case tried before an official referee, the motion must be made to a Div. Ct. GOWER v. TOBITT C. A. [1891] W. N. 6

47. — *Appeal—Official referee.*

Where under s. 14 of the Arbitration Act, 1889, a question has been referred for trial to the official referee, there is an appeal to the C. A. without leave from an order of the Div. Ct. on an application to review the decision of the official referee. MUNDAY v. NORTON

C. A. [1892] 1 Q. B. 403

48. — *Appeal—Writ of inquiry—Assessment of damages before under-sheriff and jury—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1.*

Where there has been a trial before the under-sheriff and a jury for the assessment of damages in an action in the High Court, an application for a new trial must be made to the C. A. and not to a Div. Ct. WILLIAM RADAM'S MICROBE KILLER CO. v. LEATHER

C. A. [1892] 1 Q. B. 85

— Canada—Laws of—Practice—Verdict—Judgment—Damages.

See CANADA. 14.

49. — *Conflict of evidence—Order for new trial reversed.*

Where there is evidence both ways it cannot be said that the jury might not reasonably arrive at a verdict in favour of either party. BRISBANE MUNICIPAL COUNCIL v. MARTIN

P. C. [1894] A. C. 249

50. — *Conflict of evidence—Verdict against weight of evidence.*

The verdict of a jury should not be set aside merely because the judge who tried the case is of opinion that it is against the weight of the evidence; but his opinion is an element to be considered in determining whether the verdict is so contrary to the evidence as to call for a new trial. In an action to revoke probate of a will a jury found that the testator was of unsound mind:—

*Held*, that the verdict was against the weight of the evidence, the medical evidence being insufficient, and the other evidence of incapacity relating to irrelevant circumstances, and being contradicted by deponents as to actual transactions with the testator and to his conduct and condition at the time of the execution of the will. AITKEN v. McMECKAN P. C. [1895] A. C. 310

51. — *Dismiss for want of prosecution, Application to.*

Where a new trial has been granted, but the action is not duly set down for trial, an applica-

**PRACTICE (New Trial)—continued.**

tion to dismiss the action for want of prosecution is not to be made to C. A., but may be made in chambers. ROBERTS v. FRENCH

C. A. [1895] W. N. 22

— Enlargement of time—Imposition of terms.

See DIVORCE—Practice. 111.

52. — *Entering judgment—Jurisdiction—Motion for new trial—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1—R. S. C., Order LVIII., r. 4.*

The C. A. has jurisdiction, on a motion for a new trial under the Judicature Act, 1890, to direct judgment to be entered for either party, instead of ordering a new trial. ALLOCK v. HALL — C. A. [1891] 1 Q. B. 444

— Highway, Obstruction of.

See CRIMINAL LAW—Practice. 62.

53. — *Libel—Evidence of innuendo—Ananias.*

Where the name "Ananias" had been applied to plt.'s newspaper the jury found for the defts. in a libel action:—

*Held*, that the use of the word as applied to the newspaper did not necessarily impute wilful and deliberate falsehood to the plt., and that whether it was used extravagantly or for the purpose of conveying an imputation on the plt. was for the jury. AUSTRALIAN NEWSPAPER CO. v. BENNETT — P. C. [1894] A. C. 284

54. — *Liverpool Court of Passage—Judicature Acts, 1873 (36 & 37 Vict. c. 66), s. 45; 1890 (53 & 54 Vict. c. 44), s. 1.*

Under s. 10 of the Liverpool Court of Passage Act, 1893, an appeal from that Court lies direct to the C. A. and not to a Div. Ct. ANDERSON v. DEAN — C. A. [1894] 2 Q. B. 222

— Misdirection—"Substantial wrong or miscarriage."

See DEFAMATION—Libel. 13.

— Motion for—Legatee preparing will in his own favour—Findings of jury.

See PROBATE. 111.

55. — *Non-suit without plaintiff's consent—Non-suit without hearing evidence.*

A judge has no power to non-suit a plt. without the consent of his counsel, when he has not heard the plt.'s evidence, but has only heard his counsel's statement of his case. Where a judge has done so, a new trial will be granted. FLETCHER v. LONDON & NORTH WESTERN RY. CO.

C. A. [1892] 1 Q. B. 122

— Question of fact not submitted to jury—Issue of fact as to variation of easement claimed.

See JAMAICA. 4.

56. — *Security for costs—Alleged poverty.*

The C. A., following the practice of the Q. B. D., will not make an order for security for the costs of a new trial on the ground of the appellant's poverty. HECKSCHER v. CROSBY

C. A. [1891] 1 Q. B. 224

— Security for costs.

See Cases under COSTS—Security for Costs.

57. — *Stay of execution.*

Applications to stay execution pending a



**PRACTICE (New Trial)—continued.**

motion for a new trial, in a case tried with a jury, must be made to the judge. The C. A. will not grant an application, except under special circumstances. Allegations of misdirection, verdict against evidence, evidence insufficient to support verdict, are not special circumstances. *MONK v. BARTRAM*

C. A. [1891] 1 Q. B. 346

— Surprise—Notice of setting down for trial.

See *DIVORCE—Practice*. 112.

— Verdict—Judgment—Damages—Laws of Canada.

See *CANADA*. 14.

— Workmen's Compensation Act—Jurisdiction of county court judge.

See *MASTER AND SERVANT*. 92.

**Next Friend.**

*Order XVI., rr. 11, 16, 20, and Order XXXI., r. 29, relate to proceedings by and against the next friend of an infant.*

58. — *Female guardian ad litem*—*R. S. C., Order XII., r. 8—Practice Masters' Rules (5).*

The memorandum of appearance ought always to shew the status of a female guardian ad litem of an infant defendant. A married woman is ineligible as a guardian ad litem. Amendment of statement of claim ordered as to description of status of female guardian ad litem of deft. *LONDON AND COUNTY BANKING CO. v. BRAY*

*Chitty J. [1893] W. N. 130*

59. — *Married woman suing without next friend—Costs.*

Where costs are ordered to be paid by a married woman, suing under the Married Women's Property Act, 1882, without a next friend, payment of them can be enforced against any separate property to which she is entitled free from restraint on anticipation at the time when the order to pay costs is made. The restraint on anticipation ceases, as to any sums forming part of the income, so soon as they come into the trustees' hands:—

*Held*, therefore, that the trustees could pay their costs out of arrears of income detained in their hands by an administration order. *Cox v. BENNETT* — — — C. A. [1891] 1 Ch. 617

See now s. 2 of the Married Women's Property Act, 1893 (56 & 57 Vict. c. 63).

See also *Pillers v. Edwards*, [1894] W. N. 212

60. — *Useless litigation—Costs.*

Costs of unsuccessful litigation by next friend should not be ordered to be paid out of the estate.

(A) *Observations of Lindley L.J. In re FISH. BENNETT v. BENNETT* C. A. [1893] 2 Ch. 413, 422

(B) *In re HICKS. LINDON v. HEMERY*

*North J. [1893] W. N. 138*

**Non-suit.**

See *PRACTICE—Discontinuance*.

**Official Referee.**

See *Cases under ARBITRATION—Official Referee*.

**PRACTICE—continued.****Originating Summons.**

*Order LIV., rr. 4B—4C, Order LIV.A, Order LV., and Order LXXI., r. 1A, relate to originating summonses (R. S. C., Aug. 1894).*

61. — *History—"Originating summonses."*

The history of the introduction of originating summonses traced by Lindley L.J. in *In re HOLLOWAY. Ex parte PALLISTER*

C. A. [1894] 2 Q. B. 163

62. — *Accounts—Trustees—Wilful default—R. S. C., Order LV., rr. 3, 4.*

The defts. in an administration action sought by originating summons to have a judgment for accounts amended, by inserting a direction that the accounts and inquiries ordered to be delivered by the plt.'s trustees should be taken on the footing of wilful default:—

*Held*, that such a direction could not be made on originating summons, notwithstanding that the persons charged with such default were plts. submitting to account. *In re HENGLER. FROWDE v. HENGLER (No. 2)*

*Kekewich J. [1893] W. N. 37*

63. — *Administration—Creditor's action.*

An originating summons was taken out by a judgment creditor for the administration of the estate of an intestate married woman, the deft. being her husband who had not yet taken out administration:—

*Held*, that it did not fall within Order LV. and was entirely bad, there being no personal representative of the estate before the Court. *In re LEASK. RICHARDSON v. LEASK*

*Kekewich J. [1891] W. N. 159*

64. — *Administration—Procedure.*

On an originating summons for administration the rights of the parties are the same as if an administration action had been begun and decree made therein. *In re WENHAM. HUNT v. WENHAM* — *North J. [1892] 3 Ch. 59*

Referred to by *Kekewich J. Budgett v. Budgett*, [1895] 1 Ch. 202, 217.

65. — *Construction of deed—R. S. C., Order LIV.A, r. 1—Application by mortgagor without offering to redeem.*

Under Order LIV. A, r. 1, a mortgagor may apply by originating summons for the determination of a question of construction arising under the mortgage deed without offering to redeem.

Where the mortgagor of a reversionary interest applied under Order LIV., r. 1, for the determination of the question whether, according to the true construction of the mortgage deed she was entitled to redeem during the period fixed by the deed for the continuance of the loan:—

*Held*, that the Court was bound to decide the question, and ought not to put the mortgagor on the terms of offering to redeem. *In re NOBBS. NOBBS v. LAW REVERSIONARY INTEREST SOCIETY*

*Kekewich J. [1896] 2 Ch. 830*

66. — *Construction of instrument—Form of summons.*

An originating summons to obtain the opinion of the Court on the construction of an instrument should state the questions categorically, and not in such general terms as "who are or is

**PRACTICE (Originating Summons)—continued.**

entitled to" the property in question. *In re* **HARMAN, LLOYD v. TARDY**

**Kekewich J. [1894] 3 Ch. 607**

**67. — Conveyancing Act, 1881—Notice.**

Questions as to the validity of notices under s. 14, sub-s. 2, of the Conveyancing Act, 1881, requiring a lessee to remedy a breach of covenant, cannot be raised by originating summons.

Decision of North J., [1892] 2 Ch. 328, affirmed. **LOCK v. PEARCE**

**C. A. [1893] 2 Ch. 271**

Referred to by Buckley J. **Pannell v. City of London Brewery Co.**, [1900] 1 Ch. 496.

**68. — Debenture-holders' action.**

Foreclosure can be ordered in a debenture-holders' action commenced by originating summons. **OLDREY v. UNION WORKS, LD.**

**Kekewich J. [1895] W. N. 77**

See also *In re Continental Oxygen Co.*, [1897] 1 Ch. 511.

**69. — Definition.**

The definition of "originating summons" in Order LXII., r. 1A, as "a summons by which proceedings are commenced without writ" means a summons by which proceedings which under the old Chancery practice would have been commenced by writ or bill in Chancery, are now commenced without writ, and is a substitute for an action or suit. *In re* **HOLLOWAY. Ex parte PALLISTER**

**C. A. [1894] 2 Q. B. 163**

**70. — Description of female plaintiff—R. S. C., Order r. r. 2—Practice Masters' Rules (5).**

A female plt. to an originating summons should state whether she is a married woman or spinster, or otherwise.

(A) *In re* **POINONS. SUTTON v. MARTIN**

**Kekewich J. [1891] W. N. 139**

(B) **LONDON AND COUNTY BANKING CO. v. BRAY**

**Chitty J. [1893] W. N. 130**

(C) **TOFIELD v. ROBERTS** - **Romer J.**

**[1894] W. N. 74**

— Foreclosure—Appointment of receiver.

See **RECEIVER.**

**71. — Further consideration—Chambers.**

Where an order is made on an originating summons in chambers adjourning further consideration, the action ought to be heard on further consideration in chambers and not in Court. If a contrary course be pursued, any additional costs caused by the hearing in Court costs will be disallowed. *In re* **GLASSON. GLASSON v. GLASSON** - **Kekewich J. [1893] W. N. 85**

**72. — Parties—Deceased person—Absence of representatives.**

In making an order on an originating summons which may affect the estate of a deceased person, the Court must be guided by Order XVI., r. 46, and to render the order binding on the estate of the deceased it should appear on the face thereof that the Court had its attention called to the matter, either dispensed with the attendance of the representative of the estate or appointed someone to represent it. *In re* **RICHERSON. SCALES v. HEYHOE (No. 2)**

**Chitty J. [1893] 3 Ch. 146**

**PRACTICE (Originating Summons)—continued.**

**73. — Payment out of court under Lands Clauses Acts.**

An application for payment out under the Lands Clauses Acts where title depends on construction of a will must be by petition, and not by originating summons. Order LV., r. 2 (1), is not applicable to a case where there is a question of construction, though that question may be an easy one.

*Semble*, the practice on this point is not uniform. *In re* **HICKS**

**Kekewich J. [1894] W. N. 55**

**74. — Sale of judgment debtor's interest in land—Judgments Act, 1861 (27 & 28 Vict. c. 112)—R. S. C., 1883, Order LV., r. 9 B; Order LXX., r. 1.**

Where an application for the sale of a judgment debtor's interest in land was made by petition instead of by originating summons:—

*Held*, that this was an irregularity which could be cured under Order LXX., r. 1. The petitioners were allowed only the costs which would have been properly incurred on a summons, and the sum so allowed them was reduced by the amount by which the respondents' costs exceeded the costs which would have been incurred by them if the application had been by summons. *In re* **MARTIN AND VARLOW**

**North J. [1894] W. N. 223**

— Service out of the jurisdiction.

See **PRACTICE—Service.** 196.

**75. — Solicitor—Summons for delivery of papers.**

A summons entitled "in the matter of a solicitor" and bearing a 3s. stamp was issued for the delivery up to a former client of deeds and papers:—

*Held*, that such a summons was not an originating summons, but an ordinary summons. *In re* **HOLLOWAY. Ex parte PALLISTER**

**C. A. [1894] 2 Q. B. 163**

But see now Order LIV., r. 4F. **R. S. C., Aug., 1894, r. 7.**

**76. — Statute of Limitations—Executor—Residuary legatee—R. S. C., 1883, Order LV., rr. 3, 4.**

A residuary legatee may compel executors to plead the statute against an old claim and may enforce the right on an originating summons. *In re* **WENHAM. HUNT v. WENHAM**

**North J. [1892] 3 Ch. 59**

Referred to by **Kekewich J. Budgett v. Budgett**, [1895] 1 Ch. 202, 217.

**Particulars.**

See Cases under **DISCOVERY — Particulars.**

**Parties.**

Order XVI. relates to parties.

Order XVI., r. 1 (*Parties*) altered. [1896] **W. N. (Oct. 31), p. 291. See Current Index, 1896, p. lvii.**

By Order XXI., r. 20, pleas and defences in abatement are forbidden.

By Order XVII., r. 1, no cause or matter abates

**PRACTICE (Parties)—continued.**

by death of a party where the cause of action survives.

77. — *Abatement—Discretion—Foreigner resident out of jurisdiction—Limitations Act, 1833* (3 & 4 Will. 4, c. 42), s. 8.

The Court has a discretion under Order XVI, r. 11, as to adding necessary parties, to be exercised on the principles on which pleas in abatement succeeded or failed. *WILSON, SONS & CO. v. BALCARRES BROOK STEAMSHIP CO.*

C. A. [1893] 1 Q. B. 422

— Absent, accepting benefit of judgment — Practice.

See *ESTOPPEL*, 4.

78. — *Adding defendant — Administration action—Executor—R. S. C., 1883, Order XVI, r. 11; Order XXVIII, r. 11; Order XLI, r. 3.*

In a beneficiary's action for administration of an estate, after judgment was passed and entered, in the course of inquiries in chambers it was found that an executor who had not proved at first had come in and proved. The plt. moved to amend pleadings and judgment by adding the executor as deft. —

*Held*, that the better course was to order that the executor submitting to be bound as if originally joined, further proceedings should be carried on against him as if he had been an original deft. *In re DRACUP. FIELD v. DRACUP*

North J. [1892] W. N. 43

79. — *Adding defendant — Affreightment — "Question involved in the cause or matter"—R. S. C., Order XVI, r. 11—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 493-496.*

In an action by a shipowner against consignees, who had no property in the cargo, for a declaration of title to money deposited by them with a warehouseman under s. 496 of the Merchant Shipping Act, 1894: —

*Held*, that there was jurisdiction under Order XVI, r. 11, to order that the shippers of the cargo should be added as defts. in the action, in order that they might counter-claim against the plt. damages for short delivery and injury to cargo. *MONTGOMERY v. FOY, MORGAN & CO.*

C. A. [1895] 2 Q. B. 321

80. — *Adding defendant — Co-contractors — Foreigner resident abroad—Plea in abatement—R. S. C., Order XVI, r. 11—Limitations Act, 1833 (3 & 4 Will. 4, c. 42), s. 8.*

An action was brought against one only of two co-contractors, the other being a foreigner resident out of the jurisdiction: —

*Held*, that the deft. was not entitled, as of right, to an order under Order XVI, r. 11, to have the foreign co-contractor added as deft.: —

*Semble*, that Order XVI, r. 11, gives a discretion to the Court, and the discretion should be exercised in accordance with the principles upon which the old pleas in abatement would have succeeded or failed. *WILSON, SONS & CO. v. BALCARRES BROOK STEAMSHIP CO.*

C. A. [1893] 1 Q. B. 422

81. — *Adding defendant — Co-contractors — Service—Stay.*

A plt. brought an action against one of three joint contractors. The deft. obtained an order

**PRACTICE (Parties)—continued.**

that the two others should be joined. Both were within the jurisdiction, but only one was served with the writ: —

*Held*, that the action should not be stayed for non-service, as plt. had done his best to serve the third deft. *ROBINSON v. GEISEL*

C. A. [1894] 2 Q. B. 685

82. — *Adding defendant—Foreign firm—Firm of which some members were resident abroad—Amendment of writ—Fresh causes of action—R. S. C., 1883, Order XI, r. (g)—Service out of the jurisdiction.*

In an action against an English firm an order was obtained ex parte to add as defts. a Calcutta firm consisting of the members of the English firm and one other person, and writ amended to include claims against Calcutta firm for breaches of agreement committed in India: —

*Held*, that the original writ was wrongly issued against the Calcutta firm, some of the partners being out of the jurisdiction, but leave given to amend the original writ by adding by name the members of the English firm, and those of the Calcutta firm who were within the jurisdiction, and to further amend by adding claims against the Calcutta firm. *INDIGO CO. v. OGILVY* — — — C. A. [1891] 2 Ch. 31

— Foreign firm—Service.

See *PRACTICE—Service*. 181-191.

83. — *Adding defendants—Joinder of defendants—Alternative relief—Claim against charterer for not loading cargo—Claim against agent for breach of warranty of authority—Order XVI, rr. 5, 7, 11.*

In an action against the defts. for breach of warranty of authority, it appeared that they had assumed to act as agents in entering into a charterparty for loading the plt.'s vessel with a cargo which was not supplied. The plt., being in doubt as to whether the defts. had or had not authority, applied to add alleged principals as defts.: —

*Held*, that the plt. were entitled to do so on the authority of *Honduras Ry. Co. v. Tucker*, (1877) 2 Ex. D. 301, and *Massey v. Heynes & Co.*, (1888) 21 Q. B. D. 330, which are not affected by the decision of the H. L. in *Smurthwaite v. Hannay*, [1894] A. C. 494. *BENNETTS & CO. v. McILWRAITH & CO.* — C. A. [1896] 2 Q. B. 464

Referred to by C. A. *Thompson v. London County Council*, [1899] 1 Q. B. 840, 843.

84. — *Adding defendant — Joint promisees, Action by one of two—Refusal of other to join as co-plaintiff — Power to add as co-defendant — Pleading.*

One of two joint promisees can maintain an action on the contract, making the other joint promisee a co-deft. if, after tender of an indemnity against costs, he refuses to be joined as a co-plt. *CULLEN v. KNOWLES*

Bigham J. [1898] 2 Q. B. 380

— Adding defendant — Lunatic adjudicated bankrupt—Trustee in bankruptcy added as deft. to action—Right of trustee to have action stayed as against him.

See *LUNACY—Bankruptcy*. 3.

**PRACTICE (Parties)—continued.****85. — Adding defendant—Patent action.**

In an action for the infringement of a patent, the foreign manufacturer of the machine which was alleged to be a violation of the patent applied to be added as a deft., on the ground that the original deft. would not properly defend the action:—

*Held*, that the applicant was not entitled to be joined, as he was only indirectly and commercially interested in the issues between the parties. *MOSEY v. MARSDEN*

C. A. [1892] 1 Ch. 487

See *Montforts v. Marsden*, C. A. [1895] 1 Ch. 11, 17.

**86. — Adding defendant—Representative of deceased trustee or executor—R. S. C., Order XVI., rr. 6, 11, 48.**

In an action for general account against a surviving executor and trustee, it is not necessary that the representative of a deceased trustee or executor should be made a party by the plt. There is power to add such representative under Order XVI., rr. 11, 48, if the deft. requires it, and the circumstances of the case render it advisable. *In re HARRISON. SMITH v. ALLEN* (No. 1)

Chitty J. [1891] 2 Ch. 349

**87. — Adding defendant—Time for application—R. S. C., 1883, Order XVI., rr. 11, 12.**

Plt. brought an action against a county council, and the guardians of two unions appointed by the Court to represent themselves and other unions interested, for a declaration as to the persons interested in and entitled to deal with profits made in respect of a county lunatic asylum after the delivery of statement of claim. The council of a county borough claimed to be added as a party on the ground that its district contributed to the maintenance of the asylum. Motion ordered to stand over till the trial. *PROCTER v. CHESHIRE COUNTY COUNCIL*

North J. [1891] W. N. 24

**88. — Adding parties—Bankruptcy of a defendant—Making trustee a party—Unliquidated damages—R. S. C., 1883, Order XVII., rr. 4, 6—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37, sub-s. 1.**

A shareholder in a co. commenced an action against the co. and H., its vendor and promoter, claiming, as against the co., rescission of his contract to take shares with rectification of the register, on the ground of misrepresentation in the prospectus; and as against H. a declaration that the prospectus was fraudulent within s. 38 of the Companies Act, 1867 (30 & 31 Vict. c. 131), damages and an indemnity, and a declaration that H. was liable, under the Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), to pay the plt. compensation.

H. having become bankrupt, the plt. obtained an order, under R. S. C., Order XVII., r. 4, to carry on proceedings against his trustee in bankruptcy. On a motion by the trustee to discharge this order:—

*Held*, that so far as the action against H. was one for deceit, or based on s. 38 of the Companies Act, 1867, the claims were not provable in bankruptcy by virtue of s. 37, sub-s. 1, of the Bank-

**PRACTICE (Parties)—continued.**

ruptcy Act, 1883, and therefore the trustee was not a necessary party; so far as the claim against H. was based on the Directors' Liability Act, 1890, if it was not provable in bankruptcy, then the trustee was not a necessary party; if it was provable, then the proper course for the plt. to pursue was to go into the Bankruptcy Court and prove his claim; for these reasons the motion must succeed, and the order allowing the plt. to carry on proceedings against the trustee must be discharged. *GREENWOOD v. HUMBER & Co. (PORTUGAL), LD. ROMER J.* [1898] W. N. 162 (3)

**89. — Adding parties—Pending action—Receiving order in bankruptcy against defendant—"Change or transmission of interest or liability"—Official receiver—Carrying on proceedings against—R. S. C., 1883, Order XVII., r. 4—Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52); 1890 (53 & 54 Vict. c. 71).**

An official receiver in bankruptcy, having no estate or interest vested in him nor any power conferred on him by the Bankruptcy Acts of bringing or defending actions, stands in a different position from a trustee in a bankruptcy, or a trustee of any composition or scheme in bankruptcy.

Accordingly the making, after the commencement of an action, of a receiving order against a deft. does not cause any such change or transmission of interest or liability within the meaning of Order XVII., r. 4, as to render it necessary or desirable that the official receiver should be made a party to the action.

Such a transmission of interest or liability within rule 4 of the order would, however, take place when an adjudication order was made, or when a composition or scheme was approved by the Court. *In re BERRY. DEFFIELD v. WILLIAMS* [1896] 1 Ch. 939

**90. — Adding plaintiff without authority—Stay of proceedings—Costs—Liability of solicitor—R. S. C., 1883, Order XVI., r. 11—"Own consent in writing."**

Rule 11 of Order XVI. of R. S. C., 1883, provides that no person shall be added as a plt. or as the next friend of a plt., in an action "without his own consent in writing thereto":—

*Held*, that the consent must be the consent of the party himself in writing, and signed by him; and the consent in writing of his solicitor on his behalf, signed by the solicitor, though written and signed in his presence, would not be sufficient to bind him.

Decision of Kekewich J. reversed.

Where a person has been made a plt. in an action without proper authority, and orders have, without his knowledge, been made against him, under which he is liable to pay costs to the defts., the practice is, in accordance with the rule laid down in *Reynolds v. Howell*, (1873) L. R. 8 Q. B. 398, and followed in *Nurse v. Durnford*, (1879) 13 Ch. D. 761, and *Newbiggin-by-the-Sea Gas Co. v. Armstrong*, (1879) 13 Ch. D. 310, to direct a stay of proceedings in the name of the person named as plt., and all proceedings against him in the action since he was added as plt., and to strike out his name for the purpose of future proceedings. The solicitor who wrongly made him a party will be ordered to pay all his costs, and

**PRACTICE (Parties)—continued.**

all the costs which he has been ordered to pay, and also all the debts' costs (the costs of the person named as plt. as between solicitor and client, and the costs of the debt. as between party and party), and such costs will include the costs of the application by the person named as plt. to be dismissed from the proceedings. **FRICKER v. VAN GRUTTEN** - C. A. [1896] 2 Ch. 649

Applied by Kekewich J. *Geilinger v. Gibbs*, [1897] 1 Ch. 479.

*Order XVII. relates to change of parties by death, &c.*

— Change of parties—After remittal of case to county court.

See **COUNTY COURT**. 71.

**91. — Change of parties—Death of plaintiff—Survival of cause of action—Action for mandatory injunction—Statutory duty on part of defendants—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 299—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 7.**

An action was commenced by a manufacturer for a mandamus to compel the debts., under the Public Health Act, 1875, s. 15, and the Rivers Pollution Prevention Act, 1876, s. 7, to make a sewer to enable the plt. to dispose of the liquids proceeding from his factory. The plt. died, and his executors applied to be substituted as pls.:—

*Held*, that as the alleged cause of action arose out of a statutory duty to the deceased it survived to his executors. **PEEBLES v. OSWALDTWISTLE URBAN COUNCIL** C. A. [1896] 2 Q. B. 159

See also upon another point, [1898] A. C. 387.

**92. — Change of parties—Ex parte application—Irregularity.**

An order obtained in an administration action after judgment and ex parte, and without the consent of the surviving plt., adding the executrix of a deceased plt. as a co-plt., *held* to be irregular and discharged with costs. *In re HOLMES*. **FARRAR v. EDDLESTONE**

**North J. [1892] W. N. 117**

— Change of parties—Foreclosure action—Representative for purposes of action—Legal personal representative.

See **MORTGAGE—Foreclosure**. 29.

**93. — Change of parties—Representative of deceased person—Absence.**

An order construing a will was made on originating summons in the absence of A., who represented the next of kin of the testator. No order was made dispensing with the presence of A., or appointing any person to represent the estate. A. had not taken out letters of administration:—

*Held*, that A. was not bound by the order. An order made under Order XVI., r. 46, to be binding on the estate of a deceased person should state that the Court had its attention called to the matter and dispensed with the presence of the legal personal representative or appointed someone to represent him. *In re RICHMOND*. **SCALES v. HEYHOE** (No. 2)

**Chitty J. [1893] 3 Ch. 146**

**94. — Change of parties—Representative of deceased party to appeal from county court.**

Where, after entry of an appeal from a county

**PRACTICE (Parties)—continued.**

court one of the parties dies, the High Court has jurisdiction to add his personal representative. **BLAKEWAY v. PATTESHALL**

**Div. Ct. [1894] 1 Q. B. 247**

— Contract.

See **CONTRACT—Parties**. 25.

— Divorce petitions—Full names and titles of parties to be stated.

See **DIVORCE—Practice**. 113.

— Female parties, Description of.

See **PRACTICE—Appearance**. 7, 8.

— Foreclosure.

See **MORTGAGE—Foreclosure**. 25—29.

— Infants.

See **INFANT—Practice**. 36, 37.

*Order XVIII. relates to joinder of causes of action.*

*Order XVIII., r. 2, forbids the joinder without leave with claims for the recovery of land of all but certain excepted causes of action.*

— Joinder of actions and parties.

See **SHIPPING—Practice**. 205—207.

**95. — Joinder of actions—Recovery of land—Injunction—Breach of covenant—R. S. C., Order XVIII., r. 2; Order XXXVI. r. 58.**

The writ was indorsed for recovery of land, mesne profits, and damages for breach of covenant, and also for an injunction to restrain further breach or damage. Objection was taken that the claim for injunction was wrongfully joined, being without leave, to the action for recovery of land:—

*Held*, that the demand, being only for an interlocutory injunction, which is merely a substitute for damages between the issue of the writ and trial, did not offend against Order XVIII., r. 2. **READ v. WOTTON**

**Stirling J. [1893] 2 Ch. 171**

**96. — Joinder of causes of action—Consolidation of causes—Application by plaintiff—Order XLIX., r. 8.**

An application under Order XLIX., r. 8, to consolidate causes pending in the same Division may be made by the plt. **MARTIN v. MARTIN & Co.** - C. A. [1897] 1 Q. B. 429

**97. — Joinder of causes of action—Joinder of several plaintiffs in respect of several causes of action.**

(A) Several shippers shipped bales of cotton by a general ship on similar bills of lading. On her arrival the number of bales was short. Some of the landed goods could not be identified, their marks having become obliterated. These were sold and the proceeds divided rateably among the consignees. Sixteen holders of bills of lading and seven consignees joined in one action against the shipowner for non-delivery of the bales specified in their bills of lading:—

*Held*, (1.) that the causes of action of the several pls. were separate and distinct, and could not be joined in one action either under Order XVI. or Order XVIII.; (2.) that Order XVI.

**PRACTICE (Parties)—continued.**

deals merely with the parties to an action, and does not relate to the joinder of causes of action.

Decision of C. A., [1893] 2 Q. B. 412, reversed.  
**SMURTHWAITE v. HANNAY**

**H. L. (E.) [1894] A. C. 494**

Followed by *North J. Hunt v. Worsfold*, [1896] 2 Ch. 224.

Distinguished by G. Barnes J. *The Maréchal Suchet*, [1896] P. 233.

Discussed by C. A. *Carter v. Rigby & Co.*, [1896] 2 Q. B. 113; *Bennetts & Co. v. M'Ilvraith & Co.*, C. A. [1896] 2 Q. B. 464; *Thompson v. London County Council*, [1899] 1 Q. B. 840, 844.

(b) In a suit in Admiralty under Lord Campbell's Act (9 & 10 Vict. c. 93) numerous plts. sought to recover damages as due to each plt. or group of plts. for damages caused by death of Japanese sailors in a maritime collision alleged to have been due to the defts.'s negligence:—

*Held*, the causes of action being distinct and different could not be joined. **PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. TSUNE KIJIMA**  
**P. C. [1895] A. C. 661**

Referred to by C. A. *Stroud v. Lawson*, [1898] 2 Q. B. 44, 50.

**98. — Joinder of causes of action—Joinder of plaintiffs—Several causes of action—County Court Rules, 1889, Order III., r. 1; Order XLIV., r. 18—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 6, sub-s. 3.**

Order XLIV., r. 18, of the County Court Rules does not enlarge the power of joinder of plts. given by Order III., r. 1, nor allow of persons being joined as plts. in actions under the Employers' Liability Act who could not have been so joined in actions of other kinds.

By the flooding of a mine of the defts. fifty miners, who were in their employment, were drowned. Thereupon fifty persons, being relatives respectively of the deceased miners, joined in bringing an action in the county court against the defts. under Lord Campbell's Act and the Employers' Liability Act in respect of their deaths, which were alleged to have been caused by the negligence of the defts. or of their servants:—

*Held*, that, as their causes of action were several, they could not be joined in one action. **CARTER v. RIGBY & CO. C. A. [1896] 2 Q. B. 113**

Referred to by C. A. *Stroud v. Lawson*, [1898] 2 Q. B. 44, 49.

Referred to by Stirling J. *Universities of Oxford and Cambridge v. George Gill & Sons*, [1899] 1 Ch. 55.

**99. — Joinder of causes of action—Recovery of land—Action for recovery of land—Joinder of other causes of action—Leave of Court—Waiver of irregularity—R. S. C., Order XVIII., r. 2; Order LXX., r. 2.**

The plt. claimed a declaration that an alleged mortgage of land to the deft. created no charge on the land comprised in it, and he claimed possession of the land. The plt. claimed alternatively an account of what was due on the mortgage, and redemption. The plt. was a judgment creditor of the mortgagor; he had obtained an

**PRACTICE (Parties)—continued.**

order appointing him receiver of the rents of the land, and the order had been registered. On a summons by the deft. to stay all proceedings in the action, on the ground that no leave of the Court had been obtained to join another cause of action with the action for the recovery of the land:—

*Held*, that, though the deft. had entered an appearance to the writ, it was not too late for him to take the objection: but

*Held*, that the plt. was entitled without leave to ask for possession of the land in either alternative—immediate possession if the mortgage was invalid, and possession on payment of what should be found due if the mortgage was valid.

*Mulckern v. Doerks*, (1884) 53 L. J. (Q.B.) 526, is overruled by *Wilmott v. Freehold House Property Co.*, (1884) 51 L. T. (N.S.) 552, and *Smurthwaite v. Hannay*, [1894] A. C. 494. **HUNT v. WORSFOLD — North J. [1896] 2 Ch. 224**

— Joinder—Separate causes of action.

*See Nos. 119, 120, below.*

**100. — Joinder of defendants—Separate causes of action against all and against some of defendants—R. S. C., 1883, Order XVI., r. 5; Order XVIII., rr. 1, 8.**

Where several defts. are sued, a claim for damages in respect of a tort alleged against some of them cannot be combined with a claim for damages in respect of a separate tort alleged against all. **GOWER v. COULDRIDGE**

**C. A. [1898] 1 Q. B. 348**

Explained by C. A. *Frankenburg v. Great Horseless Carriage Co.*, [1900] 1 Q. B. 504.

— Joinder of pilot as defendant—Action in rem.

*See SHIPPING—Practice.* 206.

— Joinder of plaintiffs—Separate causes of action—Salvage actions.

*See SHIPPING—Practice.* 207.

**101. — Joinder of plaintiffs—Separate causes of action—Same defendants—R. S. C., Order XVI., r. 1—Company—Prospectus—Untrue statements—Repudiation after action brought—Reasonable public notice—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), s. 3, sub-s. 1 (c).**

Four persons, each of whom separately took debentures on the faith of the statements in a prospectus and covering letter issued by the directors of a co., joined as co-plts. in an action against the directors, claiming damages for misrepresentations contained in the prospectus and covering letter:—

*Held*, that, as the several causes of action were the same and arose out of the same transaction, and were against the same defendants, the action was properly constituted.

A director of a co., being aware that a prospectus was being issued to the public inviting subscriptions for debentures, did not trouble to read it, abstained from inquiry as to its contents, and refrained from giving any notice under the Act. On action brought against him for damages for untrue statements in the prospectus:—

*Held*, that after action brought it was too late for him to repudiate the prospectus, and that he was liable.

*Seemle*, repudiation of a prospectus by state-

**PRACTICE (Parties)—continued.**

ment of defence is not "reasonable public notice" within the meaning of the Act. *DRINCQUIER v. WOOD* - - *Byrne J.* [1898] *W. N.* 152 (13); [1899] 1 Ch. 393

102. — *Joinder of plaintiffs—Separate causes of action—Same transaction—R. S. C., 1883, Order XVI., r. 1.*

A plt. in his statement of claim on his own behalf claimed damages from the defts., who were directors of a co., for inducing him by fraud to purchase shares in the co., and stated in his particulars of the alleged fraud (among other things) that the defts. had declared and paid a dividend on the shares of the co. when there were no profits; and he claimed in the same action on behalf of himself and all other the shareholders of the co. a declaration that the payment of the dividend as aforesaid was ultra vires and illegal, and judgment against the defts. for repayment of the amount of the dividend to the co. :—

*Held*, that the plt. was not entitled under Order XVI., r. 1, to join both causes of action in one action, as the right to relief claimed in his personal capacity and the right to relief claimed by him as representing the shareholders did not arise out of the same transaction or series of transactions within the meaning of the rule above mentioned. *STROUD v. LAWSON*

*C. A.* [1898] 2 Q. B. 44

Followed by *Stirling J. Universities of Oxford and Cambridge v. George Gill & Sons.* [1899] 1 Ch. 55; *Walters v. Green*, [1899] 2 Ch. 696, 702.

Referred to by *Byrne J. Drincquier v. Wood*, [1899] 1 Ch. 393, 396.

*See No. 101, above.*

103. — *Joinder of two plaintiffs in respect of—Slander—Distinct causes of action—R. S. C., Order XVI., r. 1.*

Two plts. sued jointly for slander and delivered a statement of claim alleging several slanders, some of one plt., some of the other :—

*Held*, that they were improperly joined, that they must elect which would proceed, and that the other must be struck out of the action. *SANDES v. WILDSMITH* Div. Ct. [1893] 1 Q. B. 771

— *Lunatic adjudicated bankrupt—Trustee in bankruptcy added as defendant to action—Right of trustee to have action stayed as against him.*

*See LUNACY—Bankruptcy.* 3.

— *Misjoinder—Fraudulent prospectus—Action against company and directors—Causes of action.*

*See COMPANY.* 207.

— *Misjoinder—Joint cause of action—Practice.*

*See TRADE UNION.* 13.

— *Misjoinder of parties—Practice.*

*See CANADA.* 17.

— *Misjoinder—Partition action—Mortgage—Dismissal as against mortgagees.*

*See PARTITION.* 11.

104. — *Misjoinder—Plaintiff added as co-defendant—Foreclosure action.*

A man cannot be both plt. and deft. in an

**PRACTICE (Parties)—continued.**

action. Amendment of writ and pleadings ordered in a foreclosure action by first mortgagee to which he was also made a co-deft. *WAVELL v. MITCHELL* - *Kekewich J.* [1891] *W. N.* 86

105. — *Misjoinder—Plaintiff—Affreightment.*

Order XVI., r. 1, deals merely with the parties to an action, and has no reference to the joinder of several causes of action. *SMURTHWAITE v. HANNAY* *H. L. (E.)* [1894] *A. C.* 494

*And see also No. 97, above.*

106. — *Misjoinder—Plaintiffs—Slander.*

Two plts. alleged slanders, some published of one plt., some of the other, and some of both :—

*Held*, that the plts. were improperly joined, but the case was not one for setting aside the proceedings. The plts. should elect which plt. should proceed, and the claim of the other plt. should be struck out. *SANDES v. WILDSMITH*

Div. Ct. [1893] 1 Q. B. 771

107. — *Misjoinder—Plaintiff, suing as person of unsound mind by next friend—Form of inquiry.*

In this case *J.*, one of the plts., sued as a person of unsound mind not so found, by his next friend. A summons was taken out on behalf of *J.* to strike out his name as co-plt. on the ground that he was not of unsound mind and had not authorized the action to be commenced :—

*Held*, that an inquiry should be directed as to whether *J.* was competent to retain a solicitor on the date when the summons was taken out. *HOWELL v. LEWIS* *Kekewich J.* [1891] *W. N.* 181

108. — *Misjoinder—Substitution of right for wrong plaintiff after decree—Finality of judgment—R. S. C., Order XVI., rr. 2, 11, 12.*

In an action in personam for damage by collision, the name of the agent instead of that of the owner of the cargo on plt.'s ship was by bonâ fide mistake inserted in the writ as co-plt. After decree fixing the liability, but leaving damages to be assessed, the mistake was discovered and application was made under Order XVI., r. 2, to substitute the cargo owner for his agent as co-plt. :—

*Held*, that the decree was not final, and that there was power to make the order under Order XVI., rr. 2, 11, subject to production of the written consent of the cargo owner. *THE DUKE OF BUCKLEUCH (No. 2)* - *C. A.* [1892] *P.* 201

109. — *Non-joinder—Indirect interest in the action.*

The provisions of Order XVI., r. 11, as to adding necessary parties, do not entitle or require the Court to add persons indirectly and commercially interested in the result of the action, since the non-joinder of such a person in no way affects the power of the Court to deal with the issues involved in the action. *MOSER v. MARSDEN* *C. A.* [1892] 1 Ch. 487

110. — *Non-joinder—Joinder.*

The practice as to joinder of parties considered. *In re WRIGHT. KIRKE v. NORTH*

*Kekewich J.* [1895] 2 Ch. 747

111. — *Non-joinder—Refusal to be joined as plaintiff—Discretion.*

Order XVI., r. 11, does not make the non-joinder of a party as plt. fatal to an action in a

**PRACTICE (Parties)—continued.**

case where his consent in writing to be joined is refused. *Per* Wills J. **ROBERTS v. HOLLAND**

[1893] 1 Q. B. 665, at p. 667

**112. — Non-joinder—Tenants in common —**  
*Held* of one to sue without joining others.

The reversion of a lease was devised to tenants in common. The interest of one tenant became vested in the plt.; the lease was then vested in the deft. :—

*Held*, that the plt. could sue as plts. without joining the other tenants in common, both for damage to the reversion and for breach of covenant, the covenant running with the land. **ROBERTS v. HOLLAND** Div. Ct. [1893] 1 Q. B. 665

— Parish council—Right to sue.

See PARISH COUNCILS. 3.

Order XVI., rr. 9, 32, relates to misrepresentation.

**113. — Representative action — Class—Action on behalf of a class of the public — R. S. C., Order XVI., r. 9 ; Order XXV., r. 5—Covent Garden Regulation Act (9 Geo. 4, c. cxviii.).**

The plts. (six in number) sued on behalf of themselves and all other the growers of fruit, flowers, vegetables, roots and herbs, within the meaning of the Act for the Regulation of Covent Garden Market (9 Geo. 4, c. cxviii.), to enforce certain preferential rights to stands in the market, which they alleged to have been given to the class of growers by the Act. The sole deft. was the lord of the market :—

*Held* (V. Williams L.J. dissenting), that there being a bona fide question as to the construction of the Act, the plts., as representing the class of growers, who had an interest in common, could maintain the action, but that the Att.-Gen. must be added as a deft. to represent the rest of the public who were interested in disputing the alleged preference :

*Held*, by V. Williams L.J., that the growers had not a community of interest in the subject-matter of the action, but (agreeing with the rest of the Court) that, if the plts. could maintain the action as representing a class, the Att.-Gen. must be made a party.

Decision of *Romer J.*, [1898] W. N. 169 (11), reversed. **ELLIS v. DUKE OF BEDFORD**

C. A. [1899] W. N. 19 (10); [1899] 1 Ch. 494

This case was affirmed by H. L. (Earl of Halsbury L.C. and Lord Brampton dissenting) [1900] W. N. 268; [1901] A. C. 1

**114. — Representation—"Class"—Devises.**

Action for a declaration of plt.'s right to property under two wills. Probate proceedings were pending as to one will, and it was suggested that, if the will were set aside and another admitted to probate, certain persons, not then before the Court, would be interested as devisees :—

*Held*, that these devisees were a "class" within Order XVI., r. 32, for whom the Court could appoint a representative. *In re* NASH. *In re* SPENCE. **LEWIS v. DARBY**

**Stirling J.** [1893] W. N. 99

**115. — Representation—"Class"—Next of kin.**  
 Where under an originating summons to

**PRACTICE (Parties)—continued.**

determine whether residuary estate was disposed of or passed to the next of kin, it is impossible without an inquiry to ascertain who were the next of kin, the Court can appoint the legal personal representative of the executor and trustee to represent the next of kin on the originating summons. *In re* HAKE. **POWELL v. PRYOR — Kekewich J.** [1895] W. N. 116 (11)

**116. — Representation—Defendants—Common beneficial interest—Officers of trade unions—Strike—Order XVI., r. 9.**

Certain officials of a trade union were sued on their own behalf, and as representing each of the societies, for causing workmen to break their contracts :—

*Held*, that they could not be sued in their representative character, Order XVI., r. 9, only applying to persons who have or claim to have some beneficial proprietary right, which they are asserting or defending on behalf of themselves and others. **TEMPERTON v. RUSSELL** (No. 1)

C. A. affirm. Div. Ct. [1893] 1 Q. B. 435

— Representation—Forfeiture of lease.

See LANDLORD AND TENANT—Lease. 60.

— Representation—Foreclosure of mortgage.

See MORTGAGE—Foreclosure. 25—29.

**117. — Representation—Identical interests—One person defending on behalf of all.**

An order may be made, under Order XVI., r. 9, authorizing one or more persons to defend on behalf of all persons interested, against the will of the person or persons so authorized :—

*Held*, that the president and secretary of a labour protection league could be ordered to defend an action on behalf of all the other members, the action being to enforce, under the rules of the league, a levy on the members for the benefit of a member who had become permanently disabled. **WOOD v. MCCARTHY**

Div. Ct. [1893] 1 Q. B. 775

— Representation—Redemption action.

See MORTGAGE—Redemption. 66.

— Representation—To petition under Settled Estates Act.

See SETTLED LAND—Practice. 101.

— Separate causes of action—Joinder.

See Nos. 95—103, above.

**118. — Separate causes of action—Claim for damages—Injunction—Order XVI., r. 4.**

Claims for damages against two or more defts. in respect of their several liability for separate torts cannot be combined in one action.

In an action against two defts. the statement of claim alleged that each of the defts. by their several acts, and that the defts. by their combined acts, obstructed the plt.'s access to his premises, and claimed damages against them and each of them and an injunction :—

*Held*, that the action could not be maintained in this form and that one of the defts. must be struck out.

The decision of C. A., [1895] 2 Q. B. 688, affirmed.

*Quære* whether the action could have been



**PRACTICE (Parties)—continued**

maintained if an injunction only had been claimed. *SADLER v. GREAT WESTERN RY. CO.*

**H. L. (E.) [1896] A. C. 450**

Referred to by *C. A. Thompson v. London County Council*, [1899] 1 Q. B. 840, 843.

Referred to by *Stirling J. Walters v. Green*, [1899] 2 Ch. 696, 701.

**119. — Separate cause of action—Joinder of defendants—Claim for damages—R. S. C., Order XVI., rr. 4, 5, 7.**

The plts. brought an action against the defts. for negligently excavating near the plts'. house, and thereby damaging it. The defts. in their defence denied liability, and attributed the damage wholly or in part to the negligence of a water co. in leaving their water-main insufficiently stopped. On an application by the plts. to add the water co. as defts. :—

*Held*, that the causes of action against the defts. and the water co. being in respect of separate torts, though the resulting damage might be the same in each case, the water co. could not be joined as defts. *THOMPSON v. LONDON COUNTY COUNCIL* - **C. A. [1899] 1 Q. B. 840**

Explained by *C. A. Frankenburg v. Great Horseless Carriage Co.*, [1900] 1 Q. B. 504.

**120. — Separate causes of action, Joint and—Joinder of plaintiffs—R. S. C., Order XVI., r. 1.**

The plts., the two Universities of Oxford and Cambridge, claimed an injunction to restrain the defts., who were publishers of educational and other works, from publishing and selling books or publications bearing the titles "The Oxford and Cambridge Publications" or "The Oxford and Cambridge Edition," and from using the words "Oxford and Cambridge," so as to lead to the belief that the publications of the defts. were publications of the Universities or of either of them, or issued from the University Presses. The defts. had published a series of books bearing the titles complained of by the plts. :—

*Held*, that the action arose out of the same series of transactions; that common questions of fact would arise, namely, the fact of publication and the fact that a belief would be induced that the publications of the defts. were those of the plts.; that, therefore, the conditions mentioned in *Stroud v. Lawson*, [1898] 2 Q. B. 44, as being necessary to bring a case within Order XVI., r. 1, were fulfilled; and that consequently the plts. were entitled to join in one action. *UNIVERSITIES OF OXFORD AND CAMBRIDGE v. GEORGE GILL & SONS* *Stirling J.* [1898] **W. N. 155 (8); [1899] 1 Ch. 55**

— Settled Estates Act.

*See SETTLED LAND.* 101.

— Strike—Joint cause of action.

*See TRADE UNION.* 13.

— Unnecessary or improper—Costs—Setting aside settlement.

*See SETTLEMENT—Costs.* 12.

**Payment into Court.**

*Order XXII. relates to payment into court by the parties as an incident of pleading.*

**121. — The history of the practice as to**

**PRACTICE (Payment into Court)—continued.**

ordering payment into Court upon interlocutory motions considered.

(A) *HOLLIS v. BURTON* **C. A. [1892] 3 Ch. 223**

(B) *In re BEENY* - **[1894] 1 Ch. 499**

(C) *NEVILLE v. MATTHEWMAN*  
**C. A. [1894] 3 Ch. 345**

(D) *CROMPTON & EVANS' UNION BANK v. BURTON*  
**[1895] 2 Ch. 711**

— Admiralty practice.

*See Cases under SHIPPING—Tender.*

**ADMISSIONS.]** *Order XXXII. relates to admissions.*

**ADMISSIONS.]** *Compare County Court Rules (May), 1899, Order IX., r. 17aa. W. N. 1899 (April 29), at p. 149. See Current Index, 1899 p. xevii.*

**122. — Admission by defendant—Proceeds of sale of trust securities paid away by defendant—Payment into court on motion.**

In an answer to an interlocutory motion that the deft. should pay into court money which arose from the sale of shares, of which he had been a trustee for the plt., but which he alleged (though the plt. denied it) that the plt. had given to him, the deft. admitted that he had received the proceeds of sale, and had transferred the shares to the purchasers. But he deposed: "Before any question was raised as to the transfers I in good faith paid away and disposed of all the purchase-money in the belief that I was entitled thereto, and no part thereof is now in my hands, and I have no power over the shares or any of them" :—

*Held*, that it was not shewn that the purchase-money was not under the defts.' control, and that he must be ordered to pay the amount into court. *In re BENSON. ELLESTON v. PILLERS* *North J.*  
**[1898] W. N. 155 (9); [1899] 1 Ch. 39**

**123. — Admission by defendant—Money received by defendant but improperly paid away.**

Upon an interlocutory motion by the plts. (second mortgagees) that the defts. (the first mortgagee and his solicitor) should be ordered to pay into court the balance of the proceeds of sale of the mortgaged property (which the solicitor admitted that he had received for his client), after deducting what was due in respect of the first mortgage, the solicitor claimed to retain also the amount of payments which he had made to the executors of the mortgagor :—

*Held*, that though those payments were improper, yet, as the amount of them was not in the hands of the defts., they could not be ordered to pay it into court upon an interlocutory motion, and they were ordered to pay only the balance of the sale moneys after deducting that amount and the amount due on the first mortgage. *CROMPTON & EVANS' UNION BANK v. BURTON*  
**North J. [1895] 2 Ch. 711**

**124. — Admissions—General rule.**

An order to pay money into court cannot be made unless the deft. (1) unequivocally admits on affidavit that it is in his hands, or (2) fails to answer an affidavit by the plt. that the money is in the deft.'s hands.

The history of the practice as to ordering

**PRACTICE (Payment into Court)—continued.**

payment into court upon interlocutory motions considered.

(A) *HOLLIS v. BURTON* C. A. [1892] 3 Ch. 226

(B) *In re BEENY* - - [1894] 1 Ch. 499

(C) *NEVILLE v. MATTHEWMAN*  
C. A. [1894] 3 Ch. 345

(D) *CROMPTON & EVANS' UNION BANK v. BURTON* - - [1895] 2 Ch. 711

**125. — Admissions in letters before action.**

Where a debt, is alleged to have admitted in letters written before action that he has a sum of money belonging to the plt. in his hands, the Court must have regard to the whole of the evidence, including any affidavit by the deft., before making an order for the deft. to pay in such sum.

*NEVILLE v. MATTHEWMAN* C. A. [1894] 3 Ch. 345

Considered by North J. *Crompton & Evans' Union Bank v. Burton*, [1895] 2 Ch. 711.

**126. — Admission of plaintiff's claim—Striking out counter-claim—Action—Damages—Injunction—Defence—Denial of liability—Satisfaction—R. S. C., 1883, Order XXII., rr. 1, 6.**

A landowner brought an action claiming damages for trespass, and also an injunction. The deft. put in a defence and counter-claim alleging a right by custom to go on the land, and, under R. S. C., Order XXII., r. 1, with his defence, though denying liability, paid a sum into court by way of satisfaction of his liability, if any, in respect of the matters complained of. Under rule 6 the plt. took the money out on notice to the deft. that he accepted it "in satisfaction of the claim in respect of which it is paid in."

On an application by the plt. to strike out the counter-claim on the ground that the deft. had by his payment into court, followed by the plt.'s acceptance, admitted the plt.'s entire cause of action:—

*Held*, by the C. A. (affirming the decision of *Stirling J.*, [1899] W. N. 57), that there had been no such admission by the deft. as to preclude him from prosecuting his counter-claim setting up the custom, nor (*semble*) such acceptance in satisfaction by the plt. as to preclude him from prosecuting his claim for an injunction, the payment into court being by rule 1 confined to the plt.'s claim for damages only. *COOTE v. FORD*

C. A. [1899] 2 Ch. 93

**127. — Admissions—Motion by some plaintiffs only.**

A motion under Order XXXII., r. 6, for an order against a deft. on admissions of fact must be made by all the plts. in the action, and not merely by some of them. Accordingly, where, in an action by a tenant for life and the reversioners under a settlement against the trustees to make good a breach of trust, the reversioners alone moved under the above rule for an order on one of the defts. to pay capital moneys into court on admissions, the Court refused to entertain the motion in the absence of the tenant for life.

The practice as to joinder of parties considered.

An order on admission is not a matter of

**PRACTICE (Payment into Court)—continued.**

right, but is in the discretion of the Court. *In re WRIGHT. KIRKE v. NORTH*

*Kekewich J.* [1895] 2 Ch. 747

**128. — Admissions—Verbal admission.**

A verbal admission by a deft. that money is in his hands or under his control, if verified by an affidavit to which he does not reply, and to which his attention is directed by notice of motion, is to justify an order to pay the money into court. *In re BEENY. FRENCH v. SPROSTON*

*North J.* [1894] 1 Ch. 499

**129. — Admissions—Withdrawal.**

A deft. by his defence and answers to interrogatories, admitted receipt of money by his firm, on which admission an order was made to pay the money into court. The deft. afterwards asked leave to amend his defence and withdraw his admission as founded on a mistake:—

*Held*, that the application should be granted only on terms of his paying the money into court. *HOLLIS v. BURTON* - C. A. [1892] 3 Ch. 226

Explained by North J. *In re Beeny*, [1894] 1 Ch. 499, 501.

— Bankrupt lunatic.

*See LUNACY—Bankruptcy.* 4.

— Before defence—Order on plaintiff to pay defendant's costs—Jurisdiction.

*See COSTS.* 3.

— By one defendant—Verdict for less than amount paid in—Liability of other defendant for costs.

*See NEGLIGENCE.* 3.

— Costs—Compulsory purchase—Charitable land—Re-investment.

*See LANDS CLAUSES ACTS.* 2.

**130. — Counter-claim—Payment by plaintiffs in satisfaction of—R. S. C., Order XXII., r. 5—Supreme Court Funds Rules, 1886, r. 30; Appendix, Form No. 10.**

Under Order XXII., r. 9, a plt. is entitled to make a payment into court in satisfaction of a counter-claim. *HUTCHINSON v. BARKER*

*North J.* [1894] W. N. 198

**131. — Deceased insolvent in British India—English administration not required.**

A fund in court, which stood to the credit of a person who had become insolvent at Bombay, and had afterwards died there intestate, was ordered to be paid out to the official assignee of the Insolvent Court at Bombay, in whom all the property of the insolvent had been vested by an order of that Court, without requiring administration in England to be taken out, administration having been granted to his estate in India, and there being evidence that the debts proved in the insolvency were still unpaid, and that the insolvent had not obtained his discharge.

*In re Davidson's Settlement Trusts*, (1873) L. R. 15 Eq. 383, followed. *In re LAWSON'S TRUSTS* - *North J.* [1896] 1 Ch. 175

Considered by *Kekewich J.* *In re Haywood*, [1897] 1 Ch. 905, 909.

**132. — Executor—Retainer—Payment into Court at instance of executor.**

An administrator cum testamento annexo, being defendant to a creditor's administration

**PRACTICE (Payment into Court)—continued.**

action, obtained an order that the testatrix's business should be sold, and the proceeds of sale paid into court to the credit of the action:—

*Held*, following *Richmond v. White*, (1879) 12 Ch. D. 361, that as the money had merely been paid into court for the convenience of administration, though at the instance of the administrator, the administrator had not lost his right of retainer. *In re LANGLEY. JOHNSON v. LANGLEY* - *Kekewich J.* [1899] W. N. 23 (5)

— Interpleader—Seizure of the goods by another execution creditor—Further payment into court.

*See INTERPLEADER. 2.*

*Investment—R. S. C., Order XXII., r. 17—Addition to rule. W. N. 1899 (Aug. 12), p. 255. See Current Index, 1899, p. cxxviii.*

**133. — Judgment or order—Enforcement of order.**

Where a sum of money has been ordered to be paid into court a garnishee order cannot be made attaching a debt to answer the sum so ordered, to be paid in. *In re GREER. NAPPER v. FANSHAWE* - *Chitty J.* [1895] 2 Ch. 217

Referred to by *Stirling J.* *In re Turnbull*, [1899] 1 Ch. 180, 181.

**134. — Jury, Issue tried by—Rules of procedure—Ultra vires—Order XXII., r. 22—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 22.**

*Order XXII., r. 22*, provides that, where a cause or matter is tried by a judge with a jury, no communication to the jury shall be made, until after the verdict is given, either of the fact that money has been paid into court, or of the amount paid in; and that the jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into court:—

*Held*, that the rule is not ultra vires. *WILLIAMS v. GOOSE* - *C. A.* [1897] 1 Q. B. 471

— Leave to defend, payment into court for—Bankruptcy of defendant before trial—Secured creditor.

*See BANKRUPTCY—Practice. 153.*

**135. — Liability not denied by defence—Verdict for amount smaller than payment in—R. S. C., Order XXII., r. 5.**

(A) Where the debt, in an action of slander paid a sum into court, and in his defence did not deny his liability, but on trial the jury found a verdict for the plt. for one farthing:—

*Held*, that the judge had power, under *Order XXII., r. 5*, to direct the money paid in, less one farthing, to be paid out to the debt. *GRAY v. BARTHOLOMEW* *C. A.* [1895] 1 Q. B. 209

(B) Where the action was against a newspaper for libel, and payment into court and an apology were pleaded under 8 & 9 Vict. c. 75, s. 2:—

*Held*, that the plt. was entitled to the whole sum as paid in. *DUNN v. DEVON AND EXETER CONSTITUTIONAL NEWSPAPER CO.*

*Wills J.* [1895] 1 Q. B. 211, n.

— Libel—Newspaper—Pleading.

*See DEFAMATION—Libel. 14.*

*Life Assurance Companies (Payment into*

**PRACTICE (Payment into Court)—continued.**

*Court) Act, 1896 (59 & 60 Vict. c. 8), enables money to be paid into court in certain cases.*

*Rules under Life Assurance Companies (Payment into Court) Act, 1896. W. N. 1896 (Oct. 31), p. 291. See Current Index, 1896, p. lxiix.*

**LODGMENT OF MONEYS.] Rule 41 A, dated Aug. 10, 1896, as to lodgment schedule of moneys paid into court. W. N. 1896 (Oct. 31), p. 291. See Current Index, 1896, p. lxiix.**

— Married woman—Default in paying money into court—Attachment.

*See HUSBAND AND WIFE—Practice. 35.*

**136. — Married woman—Widow—Right of successful plaintiff to money brought into court under Order XIV.**

In an action on a covenant against a married woman, on an application under *Order XIV.*, the debt, a married woman, obtained leave to defend on paying a sum of money into court. Judgment was given for the plt., with an order that the money should remain in court pending an inquiry whether the debt. had separate estate available in execution. On an application for payment out the debt. pleaded she had no property available for execution:—

*Held*, that the money was paid into court to abide the event, and the Court could not then hear argument, after the event had gone against the party who paid it in, that the money ought not to be paid out to the successful party. *BIRD v. BARSTOW* *C. A.* [1892] 1 Q. B. 94

Referred to by *Wright J.* *In re Ford*, [1900] 2 Q. B. 211, 213.

— Married woman administratrix—Attachment—Form of order.

*See HUSBAND AND WIFE. 38.*

— Settled Land Acts.

*See Cases under SETTLED LAND.*

**137. — Trustees—Money not in hands of trustees—R. S. C., Order LV., r. 3 (d).**

An order cannot be made under *Order LV., r. 3 (d)*, on a trustee or executor to pay into court money which he has received and for which he is responsible, unless it is actually in his hands. In such a case the proper course is to proceed by originating summons for administration of the trust under *Order LV., r. 4 (c)*. *NUTTER v. HOLLAND* *C. A.* [1894] 3 Ch. 408

Considered by *North J.* *Crompton & Evans' Union Bank v. Burton*, [1895] 2 Ch. 711.

**138. — Trustee—Payment in by—Notice to beneficiaries—Chancery Funds Consolidated Rules, 1874, r. 31—Chancery Funds (Amended) Orders, 1871, Order v.—Supreme Court Funds Rules, 1886, rr. 2, 41.**

A trustee who pays a fund into court under the *Trustee Relief Act, 1847*, is no longer bound to give notice to the persons entitled to the fund. *In re GRAHAM'S TRUSTS*

*Chitty J.* [1891] 1 Ch. 151

*By the Trustee Act, 1893, the Trustee Relief Acts were repealed and consolidated.*

**138 A. — Under R. S. C., Order XIV.**

Observations of *Kay L.J.* *HOLLIS v. BURTON* *C. A.* [1892] 3 Ch. 226

**PRACTICE (Payment into Court)—continued.**

— With denial of liability—Security for costs.  
See **BANKRUPTCY—Practice.** 154.

**Payment out of Court.**

*County Court Rules (May), 1899, Order 1x.*  
**W. N. 1899 (April 29), p. 147.** See **Current Index, 1899, p. xcii.**

— Bankrupt—Annulment—Payment out after six years—Statute of Limitations.  
See **BANKRUPTCY—Receiving Order.** 196.

— Costs.

See **COSTS—Payment out of Court.**

**139. — Deposit—Jurisdiction—Life Assurance Companies Acts, 1870 to 1872—Accident insurance company.**

Petition by the association for the payment out of court of a sum of 17,874*l.* 14*s.* 5*d.* New Consols, representing the deposit of 20,000*l.* required by the Bd. of Trade under the Life Assurance Companies Acts, 1870 to 1872.

As the Bd. of Trade intimated that insurance of the kind contemplated was life insurance so far as related to fatal accidents, the 20,000*l.* deposit was required and paid on registration. After the decision of *Lancashire Insurance Co. v. Inland Revenue*, [1899] 1 Q. B. 353, that employers' liability policies similar to those granted by the association were contracts of indemnity and not policies of insurance against accident, the directors communicated with the Bd. of Trade with a view to obtaining payment out of court of the 20,000*l.* deposit, when they were informed that this was a matter for the Chancery Division, but that, if the memorandum of association was amended so as to exclude life insurance business, the Bd. of Trade would raise no objection to repayment.

*Held*, that the Court had jurisdiction. Order made for payment out of the Consols in court to the association, as asked. *In re Wool Industries Employers' Insurance Association, Ltd.*

**Byrne J. [1899] W. N. 259**

— Foreign subject—Jurisdiction.

See **LUNACY—Practice.** 36.

**140. — Fund paid in on compulsory purchase under special Act—Costs—Jurisdiction.**

Sect. 5 of the Judicature Act, 1890, gives the Court jurisdiction over the costs in a petition for payment out of purchase-money of property purchased compulsorily under a special Act (in this case 57 Geo. 3, c. xxix.) which contains no provision as to the costs of applications for payment out of purchase-money.

Judgment of Chitty J., [1894] 1 Ch. 53, affirmed. *In re Fisher* **C. A. [1894] 1 Ch. 450**

Referred to. *In re Wrexham, Mold and Conaah's Quay Ry. Co.*, C. A. [1900] 1 Ch. 261, 269.

**141. — Infants domiciled in France—French law—Right of father to receive children's money—Jurisdiction.**

Where infants who were French subjects and domiciled in France had become absolutely entitled to a fund in court, and it appeared that by the law of France their father as their legal guardian was entitled to receive and give legal

**PRACTICE (Payment out of Court)—continued.**

discharges for all moneys coming to them during minority:—

*Held*, that the Court was not bound to pay out the fund to the father as of right, but that evidence ought to be adduced shewing that the fund would be applied for the benefit of the infants. *In re Chataud's Settlement.*

**Kekewich J. [1899] W. N. 35 (11); [1899] 1 Ch. 712**

Distinguished by *Kekewich J. Thierry v. Chalmers, Guthrie & Co.*, [1899] W. N. 235; [1900] 1 Ch. 80, 83.

**142. — Liability not denied by defence—Verdict for amount smaller than payment in.**

(A) Where the deft. pays a sum into court, and in his defence does not deny his liability, but on the trial the jury find a verdict for the plt. for one farthing, the judge has power, under Order XXII, r. 5, to direct the money paid in, less one farthing, to be paid out to the deft. *Gray v. Bartholomew* **C. A. [1895] 1 Q. B. 209**

(B) Where the action is against a newspaper for libel and payment into court and an apology is pleaded under 6 & 7 Vict. c. 96 and 8 & 9 Vict. c. 75, s. 2, the plt. is entitled to the whole sum paid in. *Dunn v. Devon and Exeter Constitutional Newspaper Co.*

**Wills J. [1895] 1 Q. B. 211, n.**

**143. — Married woman—Petition—Affidavit of no settlement.**

Petition for payment out of court of fund to which petitioner was now absolutely entitled. She was tenant for life of the fund, and had taken assignments of all the reversionary interests. One of the reversioners was a married woman who, before she assigned, was entitled to a share of the reversion as her separate property. She and her husband refused to make an affidavit of no settlement.

The Court, on proof of this, and an affidavit by the reversioners' brother to the effect that he knew the circumstances, and that there was no settlement, on the authority of *Rowland v. Oakley*, (1850) 14 Jur. (N.S.) 845, made the order for payment out. *Timothy v. Crown*

**Cozens-Hardy J. [1900] W. N. 51**

— Parliamentary deposit.

See **Cases under PARLIAMENT—Deposits and Bonds.**

**144. — Petition—Distribution of fund in court—Rectification of deed—Jurisdiction—Assignment—Defective title—Subsequent acquisition of good title—Estoppel.**

Petition for the distribution of a fund in court.

*Held*, upon the question of jurisdiction, that though *In re Bird's Trusts*, (1876) 3 Ch. D. 214, and *Lewis v. Hillman*, (1852) 3 H. L. C. 607, were not directly in point, being decisions under the Trustee Relief Act, 1847 (10 & 11 Vict. c. 96), the Court should be shrewd in overcoming all objections to deciding on petition any questions concerning the distribution of a fund in court under whatever Act and under whatever circumstances it was paid in; but where a question occurred which might involve rectification or restitutio in integrum it was the duty of the

**PRACTICE (Payment out of Court)—continued.**

petitioners to state clearly the alleged grounds for the decision asked.

Upon the merits, *held*, following *Noel v. Bewley*, (1829) 3 Sim. 103, that though the assignment was of a defective title, yet as the assignor afterwards acquired a good title to the one-sixth share, the Court ought to make that good title available to make the assignment effectual. The respondents were therefore entitled to the whole of the one-sixth share. *In re HOFFE'S ESTATE* ACT, 1855 — **Kekewich J. [1900] W. N. 114**

**145. — Petition dispensed with.**

Where in an action the incumbrances on a fund in court had been ascertained, and the fund was only sufficient to pay the first ten of such incumbrances, an order was made for payment out without requiring a petition under the Trustee Relief Act. The order was to be entitled in the matter of the Trustee Relief Act, and in the matter of the Trustee Act, 1893. *PULLEN v. ISAACS* — **North J. [1895] W. N. 90**

**146. — Petition or summons—Costs—R. S. C., Order LV., r. 2 (1).**

An application to carry over to the credit of an action money exceeding 1000*l.*, representing the purchase-money of land taken by a ry. under the Lands Clauses Act, 1845, is "an application for payment or transfer to any person" within Order LV., r. 2 (1); although the matter be complicated the rule applies, and the ry. must pay the costs according to the Act, but not exceeding such costs as would have been incurred on a summons adjourned into court and attended by counsel. *In re LANCASHIRE AND YORKSHIRE RY. CO. SLATER v. SLATER*

**Kekewich J. [1895] W. N. 85**

*And see* PRACTICE—Originating Summons. 73.

**147. — Sums under 10*l.* — Administration action.**

Sums under 10*l.* payable out of court in an administration action will no longer be paid over to the solicitor for the plts. on his undertaking, but will be transmitted direct by post or otherwise. *In re BELL* **Kekewich J. [1894] W. N. 9**

*And see* Supreme Court Funds Rules, 1894.

**148. — Tenant in tail.**

A small sum in court representing land was paid out to a tenant in tail without a disentailing assurance. *STEAD v. HARPER*

**North J. [1896] W. N. 46 (12)**

— Wrong person—Solicitor—Replacement.

*See* PRINCIPAL AND AGENT. 13, 14.

**Petition.**

*See* SPECIFIC TITLES.

**Pleading.**

— Amendment of pleadings.

*See* Cases under PRACTICE—Amendment.

— Claim, Statement of—Altering, modifying or extending indorsement of writ.

*See* PRACTICE—Writ. 278.

— Claim, Statement of—Particulars—Recovery of land.

*See* DISCOVERY—Particulars. 64.

**PRACTICE (Pleading)—continued.**

— Coroner's inquisition—Sufficiency of.

*See* CRIMINAL LAW—Practice. 60.

**149. — Counter-claim—Cause of action against plaintiff by defendant jointly with another person—Joinder of parties—R. S. C., 1883, Order XVI., r. 11; Order XXI., r. 11.**

The deft. in an action counter-claimed in respect of a cause of action which he claimed to have jointly with another person against the plts., joining that other person with the plts. as a co-deft. to the counter-claim:—

*Held*, that the rules did not admit of such a counter-claim, and therefore it must be struck out. *PENDER v. TADDEI* **C. A. [1898] 1 Q. B. 798**

— Counter-claim—Default in pleading.

*See* No. 156, below.

**150. — Counter-claim—Libel—Suit by foreign State—R. S. C., 1883, Order XXI., r. 15; Order XIV., r. 27.**

A fund arising from debentures issued by the deft. co. and guaranteed by the South African Republic was by arrangement lodged with two trustees, one nominated by the Republic and the other by the co., pending the completion of a ry. which the co. was making under a concession by the Republic. The nominee of the co. having died, the Republic brought an action here, the fund being in England, to have a new trustee appointed and the fund paid to the two trustees. The co. put in a defence and counter-claim. By their defence they alleged various grounds of complaint against the Republic as making it inequitable that they should have any control over the fund, and among other things a letter addressed to the co. by the Railway Commr. of the Republic, a copy of which was forwarded by him to the London Stock Exchange, making various charges against the co. which the co. alleged to be untrue. By counter-claim the co. repeated these grounds of complaint, and alleged that they had sustained heavy loss through the letter, which they alleged to be libellous, and claimed 100,000*l.* damages for libel. *North J.* in chambers ordered this allegation and the claim for damages to be expunged:—

*Held*, that this order was right, for that if the plt. had been an individual resident in this country the counter-claim for libel would have been struck out, and the defts. left to bring a separate action, inasmuch as the claim for damages for libel could not be conveniently tried in an action for appointing a new trustee and protecting a trust fund, and that the fact that the co. could not bring a separate action for libel against the Republic was not a sufficient ground for allowing the counter-claim for libel to go on. *SOUTH AFRICAN REPUBLIC v. LA COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD*

**C. A. [1897] 2 Ch. 487**

**151. — Counter-claim—Power to order trial of counter-claim after discontinuance of action—Remitting to county court—Contract.**

A plt. claiming 25*l.* recovered 8*l.* under Order XIV., and discontinued. A master of the High Court then remitted the counter-claim of 18*l.* 10*s.* to the City of London Court:—

*Held*, there was no jurisdiction under s. 65 of

**PRACTICE (Pleading)—continued.**

the County Courts Act, 1888, to remit the counter-claim. *REG. V. JUDGE OF THE CITY OF LONDON COURT (No. 1)* - Div. Ct. [1891] 2 Q. B. 71

**152. — Counter-claim in reply—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-ss. 3, 7—R. S. C., Order XIX., r. 3; Order XXI., rr. 10–17.**

In an action for the price of goods supplied, the defts. counter-claimed for damages for breach by the plts. of a contract. The plts. in their reply denied that the contract was binding on them, and further alleged that, if it was binding, the defts. had committed breaches of it which caused them loss, and they counter-claimed to set off the loss so sustained against the defts.' counter-claim. Upon an application to strike out the counter-claim in the reply:—

*Held*, that as the plts. did not rely upon the counter-claim in the reply as an independent claim, but merely as a protection against the defts.' counter-claim, the counter-claim was properly raised in the reply and ought not to be struck out.

*Take v. Andrews*, (1882) 8 Q. B. D. 428, approved. *RENTON GIBBS & CO. v. NEVILLE & CO.* C. A. [1900] 2 Q. B. 181

**153. — Counter-claim—Right to deliver—Defendant to counter-claim not party to original action—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-s. 3—R. S. C., 1883, Order XXI., rr. 11, 12, 13, 14.**

A person not a party to an action, who is brought in by the original deft. as a deft. to a counter-claim, cannot counter-claim against the original plt. and deft.

*Street v. Gover*, (1877) 2 Q. B. D. 498, followed. *Take v. Andrews*, (1882) 8 Q. B. D. 428, distinguished. *ALCOY AND GANDIA RY. AND HARBOUR CO. v. GREENHILL* C. A. [1896] 1 Ch. 19

**154. — Counter-claim—Remitting to county court—Tort.**

In an action in the High Court the deft. counter-claimed for damages for slander. The deft. became bankrupt, and the action was stayed except as to the counter-claim. The plt. sought to have security for costs, or else to have the action remitted to the county court:—

*Held*, that the counter-claim for tort was not an "action" within the meaning of s. 66 of the County Courts Act, 1888, and there was no jurisdiction to remit it. *DELOBBEL-FILIP v. VASTY* Div. Ct. [1893] 1 Q. B. 663

— Counter-claim—Security for costs.

*See Costs—Security for Costs.* 54.

— Counter-claim—Striking out—Payment into court—Satisfaction—Admission of plaintiff's claim.

*See PRACTICE—Payment into Court.* 126.

— Counter-claim—Taxation of costs.

*See Costs—Apportionment.* 12.

**155. — Counter-claim — Whether separate action.**

For the purpose of determining a solicitor's right to a charging order for his costs, claim and counter-claim must be treated as one action.

*WESTACOTT v. BEVAN* Div. Ct. [1891] 1 Q. B. 774

*Order XXVII. relates to default in pleading.*

**PRACTICE (Pleading)—continued.**

**156. — Default in pleading—Motion for judgment on counter-claim—R. S. C., Order XXI., r. 16; Order XXIII., r. 4; Order XXVII., r. 11.**

(A) Where an action after the delivery of the counter-claim has been dismissed for want of prosecution, the deft. is entitled to set down the action under Order XXVII., r. 11, on motion for judgment on his counter-claim. *ROBERTS v. BOOTH* - - - North J. [1893] 1 Ch. 52

(B) When the plt. fails to deliver a defence to a counter-claim, the deft. cannot sign judgment on the counter-claim for default in pleading, but must move for judgment under Order XXVII., r. 11. *JONES v. MACAULAY*

C. A. [1891] 1 Q. B. 221

**157. — Default in pleading—Motion for judgment—Order for inquiry—R. S. C., Order XXVII., r. 11.**

Upon motion for judgment under Order XXVII., r. 11, upon default in delivery of defence the Court may order interlocutory judgment to be entered, and may refer the whole claim to an official referee to ascertain and report to the Court the amount due to the plt. *CHARLES v. SHEPHERD*

C. A. [1892] 2 Q. B. 622

**158. — Default of appearance—Summons for directions—R. S. C., 1883, Order XIII., r. 12; Order XXX., r. 1.**

One of the defts. in this action made default in appearance. On summons for directions, the master ordered the action to be set down for trial without pleadings on motion for judgment. The action came on as a short cause.

*Cozens-Hardy J.* The master could not dispense with the filing a statement of claim against the deft., who had not put in an appearance; no judgment can be made now. *In re NORMAN. NORMAN v. NORMAN*

*Cozens-Hardy J.* [1900] W. N. 159

**159. — Defence—Action against partners in firm name—Death of partner after appearance—Defence of surviving partner—Form of defence.**

An action was brought against a firm in the firm name. There were two partners, one of whom died after writ and appearance. The surviving partner put in a defence not purporting to be the defence of the firm, but as his personal defence to the action:—

*Held*, that the form of the defence was wrong, as the defendant, not being sued in his personal capacity, was not entitled to put in a personal defence, but only a statement of defence for and in the name of the firm. *ELLIS v. WADESON*

C. A. [1899] 1 Q. B. 714

**160. — Defence—Confession of defence—Signing judgment for costs—R. S. C., Order XXIV., r. 3.**

Defts. pleaded matter arising since the issue of the writ which afforded a complete defence to the claim. The plt. entered a confession of this defence under Order XXIV., r. 3, and signed judgment for his costs:—

*Held*, that the case did not fall within Order XXIV., r. 3, and the judgment for costs must be set aside. *HOUGHTON v. TOTTENHAM AND FOREST GATE RY. CO.*

North J. [1892] W. N. 88

**PRACTICE (Pleading)—continued.**

**161.** — *Defence—Leave to defend notwithstanding special agreement not to put in a defence—Specific performance—Title defective by reason of recent decision of the Court.*

Motion by deft. for leave to put in a defence notwithstanding that the time for so doing had expired, and that he had entered into an agreement with the plts. not to put in any defence.

Action for specific performance of an agreement by deft. to purchase certain leasehold houses. The deft. had some difficulty in finding the purchase-money, and delay took place in completion. Considerable indulgence was shewn by plts. to deft., who ultimately, having accepted the title, gave the agreement above mentioned. He then ascertained that the lease of the premises contained a reservation of minerals, and, having been granted by a tenant for life whose powers were similar to those of a tenant for life under the Settled Land Acts, was invalid according to the recent decision of Kekewich J. in *In re Newell and Nevill's Contract*, [1900] 1 Ch. 90. [NOTE.—This case was disapproved of by C. A.: *In re Gladstone*, [1900] 2 Ch. 101. See SETTLED LAND. 73.]

The Court, in the exercise of its discretion, allowed the deft. to defend to the extent of pleading that the lease was bad on the ground that, being granted by a tenant for life, it contained a reservation of minerals. The leave was limited to that defence only, and stringent conditions as to payment of costs were imposed upon deft. Leave to appeal granted. *SCOTT v. MOXON*

**Kekewich J. [1900] W. N. 14**

— *Defence—Special defence—Notice—Statutes of Limitation—County court.*  
See LIMITATIONS, STATUTE OF. 37.

**162.** — *Defence—Striking out—Slander—Embarrassing pleading.*

Where in an action for slander the statement of claim set out the words complained of, and the defence set out and justified different words:—

*Held*, that the defence as pleaded was embarrassing and must be struck out. *RASSAM v. BUDGE*

**C. A. [1893] 1 Q. B. 571**

**163.** — *Documents—Statement of effect—Action for recovery of land—Order XIX., r. 21.*

The plts. in an action for the recovery of land having in their statement of claim briefly stated the effect of certain limitations in a will, as alleged by them, without setting out the precise words of the will:—

*Held*, that they were entitled so to do under Order XIX., r. 21, although a question arose as to the construction of the will. *DARBYSHIRE v. LEIGH*

**C. A. [1896] 1 Q. B. 554**

— *Frauds, Statute of—Wrong section.*

See PRACTICE—Amendment. 2.

**164.** — *Frivolous and vexatious action—Interlocutory application in county court—Subsequent action in High Court raising same question—Staying action.*

In an action in a county court judgment was recovered for a sum of money and costs, but before the costs were taxed the plt. agreed, on a representation of the property of the deft., to accept a smaller sum than that for which judg-

**PRACTICE (Pleading)—continued.**

ment had been given, and executed a deed releasing the deft. from the judgment debt and costs. Subsequently the plt. carried in his bill of costs, and applied to the county court judge for an order to tax, upon the ground that the release had been obtained by misrepresentation. The judge, after hearing evidence, found that the execution of the deed had been obtained by misrepresentation, and make an order that the costs should be taxed, and should be paid together with the balance remaining due under the judgment. The deft. in that action thereupon brought the present action in the High Court for a declaration that he had been released from the judgment debt and costs, and for an injunction to restrain further proceedings to enforce payment thereof:—

*Held*, that as the question raised in this action was identical with that decided by the county court judge upon the interlocutory application, and had been decided by a court of competent jurisdiction, the action ought to be stayed as frivolous and vexatious and an abuse of the process of the Court. *STEPHENSON v. GARNETT*

**C. A. [1898] 1 Q. B. 677**

**165.** — *Frivolous and vexatious proceedings—Inherent jurisdiction to stay.*

Every Court of justice has inherent jurisdiction to stay or dismiss a frivolous or vexatious action.

(A) *HAGGARD v. PELICIER FRÈRES*

**P. C. [1892] A. C. 61, at p. 68**

(B) *DAVEY v. BENTINCK*

**C. A. [1893] 1 Q. B. 185, at p. 187**

Order XXV., r. 4, empowers the Court to strike out or stay frivolous and vexatious pleadings and proceedings.

**166.** — *Frivolous and vexatious proceedings—Extrinsic evidence of frivolousness—Scope of Order XXV., r. 4.*

Order XXV., r. 4, is not intended to supply the place of demurrer except in frivolous cases, and an application thereunder will not be entertained where the pleading raises an important point of law.

*Per* A. L. Smith L.J.: An application to strike out a pleading under Order XXV., r. 5, can only be made where it can be shewn without extrinsic evidence that the pleading shews on the face of it no cause of action or defence. *ATT.-GEN. OF THE DUCHY OF LANCASTER v. LONDON AND NORTH WESTERN RY. CO.*

**C. A. [1892] 3 Ch. 274**

**167.** — *Frivolous and vexatious proceedings—Inherent jurisdiction to stay—Time for exercise of jurisdiction—Particulars—R. S. C. Order XIX., r. 7.*

The Court, if satisfied at any stage of an action that the action or defence is frivolous or vexatious, may stay the action or strike out the defence.

*Per* Lord Esher M.R.: *Quære*, whether particulars are pleadings within Order XXV., r. 4. *DAVEY v. BENTINCK* — **C. A. [1893] 1 Q. B. 185**

**168.** — *Frivolous and vexatious proceedings—Reopening concluded litigation.*

A sale of settled land by the tenant for life was sanctioned by the House of Lords. A sub-

**PRACTICE (Pleading)**—*continued*.

sequent action was brought to restrain the sale on the ground of fraud:—

*Held*, that the second action must be stayed as frivolous, vexatious, and an abuse of the process of the Court, as being an attempt to reopen litigation finally determined by the House of Lords. **BRUCE v. MARQUIS OF AILESBUURY** (No. 2) **Stirling J. [1892] W. N. 149**

**169.** — *Frivolous and vexatious proceedings—Striking out frivolous and vexatious statement of defence—Abuse of process of the Court.*

A deft. delivered a statement of defence in which he either denied or refused to admit each of the allegations in the statement of claim, but set up no case of his own. In previous proceedings in another action he had admitted upon oath several of the material statements which he now denied, and had not denied any of the others:—

*Held* (by Romer J. and by C. A.), that though the Court will not on affidavit evidence order a pleading to be struck out on the ground that the statements in it are false, the circumstances in the present case shewed the statement of defence to be frivolous and vexatious, and one which ought to be struck out as being an abuse of the procedure of the Court.

**Hildige v. O'Farrell**, (1881) 8 L. R. Ir. 158, approved. **REMMINGTON v. SCOLES**

**C. A. [1897] 2 Ch. 1**

Referred to by C. A. **Stephenson v. Garnett**, [1898] 1 Q. B. 677, 681.

— Judicial Trustees Act, 1896.

*See* **TRUSTEE—Judicial Trustees.** 74.

— Particulars.

*See* **DISCOVERY—Particulars.**

— Reply.

*See* **PRACTICE—Reply.**

— Reply—Non-delivery of reply—Time for giving notice of trial.

*See* **PRACTICE—Trial.** 262.

— Striking out statement of claim—Trust whether express or constructive.

*See* **LIMITATIONS, STATUTE OF.** 24.

**170.** — *Without pleadings, trial—Default of appearance—Motion for judgment—R. S. C., 1883, Order XIII., r. 12; Order XVIII. a, r. 6.*

The plts. indorsed their writ as follows:—

“The plts.’ claim is for a declaration that the written agreement of . . . whereby the defts. agreed to erect certain buildings on the glebe land belonging to . . . is determined and at an end, and that the sum of 300*l.* therein mentioned has been forfeited to the Ecclesiastical Commrs.

“If the defts. appear to this writ of summons the plts. intend to proceed to trial without pleadings.”

The defts. did not appear. The plts., without filing any statement of claim, moved for judgment in default of appearance.

*Held*, that a statement of claim must be filed. Motion refused. **GREENE v. ST. JOHN'S MANSIONS, LD.** — — **Div. Ct. [1900] W. N. 9**

**Prohibition.**

*See* Cases under **PROHIBITION.**

**PRACTICE**—*continued*.**Quo Warranto.**

*See* Cases under **QUO WARRANTO**.

**Receiver.**

*See* Cases under **RECEIVER.**

**Rehearing.**

*And see* **PRACTICE—Review.**

— Application for rehearing—Divorce cause—Practice.

*See* **DIVORCE.**

**171.** — *Order not passed nor entered—Material evidence.*

Judgment refusing rectification of a settlement had been given, but the order had not been drawn up. On motion to have the case reheard on the ground of material facts not having been brought out:—

*Held*, that there was jurisdiction to rehear, and as the motion was unopposed gave leave to apply to have the case restored to the paper. **BADEN-POWELL v. WILSON**

**Kekewich J. [1894] W. N. 146**

**172.** — *Order passed and entered—Misrepresentation—Jurisdiction.*

When an order has been perfected and expresses the real decision of the Court, the Court has no jurisdiction to alter it. An application was made that certain costs which A. had been ordered to pay should be made costs in the action and for a stay of proceedings on the order on the ground that the order had been obtained by misrepresentation:—

*Held*, that this was in effect an application for rehearing, and that the Court had no jurisdiction to entertain it. **PRESTON BANKING CO. v. ALLSUP & SONS** — **C. A. [1895] 1 Ch. 141**

Referred to by C. A. *In re Scowby*, [1897] 1 Ch. 741, 754.

**Reply.**

— Non-delivery of reply—Time for giving notice of trial.

*See* **PRACTICE—Trial.** 262.

— Right of, in trials.

*See* Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 3.

**Review.**

*And see* **PRACTICE—Rehearing.**

— Arbitration—Railways.

*See* **CANADA.** 18.

**173.** — *Jurisdiction of Chancery Division.*

The Ch. Div. can still exercise the jurisdiction of the old Court of Chancery as to allowing proceedings by way of review in a proper case.

*Semble*, an action of review can now be commenced without leave. *In re* **SCOTT AND ALVAREZ'S CONTRACT.** **SCOTT v. ALVAREZ**

*Per* **Kekewich J. [1895] 1 Ch. 596, at p. 622**

This case was partly affirmed and partly reversed by C. A. [1895] 2 Ch. 603.

— Order not passed nor entered—Material evidence.

*See* **PRACTICE—Rehearing.** 171.



**PRACTICE (Review)—continued.**

— Order passed and entered.

See **PRACTICE—Rehearing.** 172.

— Solicitor's bill of costs.

See **APPEAL.** 45.

**Revivor.**

*Order XVII. relates to proceedings on change of parties during the pendency of a suit.*

*Order XLII., r. 23, relates to proceedings on death after judgment of parties.*

174. — *Administration suit—Death of party after judgment—Procedure—R. S. C., Order XVII., r. 4.*

The addition of the executor of a deceased coplt. after judgment shall not be made ex parte. *In re HOLMES. FARRAR v. EDDLESTONE*

North J. [1892] W. N. 177

175. — *Divorce proceedings—Death of co-respondent before payment of costs—Receiver—R. S. C., Order XVII., r. 4; Order XLII., r. 28.*

The Court has power under Order XVII., r. 4, and Order XLII., r. 28, to appoint a petitioner receiver of the estate of a deceased co-respondent in respect of a debt for costs of a divorce petition ordered to be paid by the co-respondent. *WADDELL v. WADDELL* — Butt P. [1892] P. 226

176. — *Fund in court applicable to payment of debts—Dormant suit—Lapse of time.*

An administration suit had been dormant since 1753, but there was money in Court which was available under a decree in the suit for the payment of debts. In 1889 a petition was presented for inquiries as to the parties entitled to the fund:—

*Held*, that lapse of time was no bar to revivor.

*MICKLETHWAITE v. VAVASOUR*

Chitty J. [1893] W. N. 61

177. — “*Judgment*”—*Statutes of Limitations—R. S. C., Order XVII., r. 4.*

The legal representatives of a judgment creditor will not be allowed to take proceedings under Order XLI., r. 23, after the judgment debt is statute-barred.

(A.) *HEBBLETHWAITE v. PEEVER*

Collins J. [1892] 1 Q. B. 124

(B.) *JAY v. JOHNSTONE*

C. A. [1893] 1 Q. B. 189

178. — *Legatees' suit commenced in 1758—Fund in court—Revivor dispensed with.*

In a legatees' suit commenced in 1758, where there was a fund in court, and it was impossible to trace the representatives of the original defts., revivor was dispensed with. *BALLARD v. MILNER*

Chitty J. [1895] W. N. 14

179. — *Personal action—Death of party after judgment—Receiver.*

The procedure by scire facias and order of revivor in the case of the death of a judgment creditor after judgment is superseded by Order XLI., r. 23, empowering his legal personal representatives to ask leave to issue execution. But that rule does not empower the appointment of a receiver at the instance of the legal personal representative. *NORBURN v. NORBURN*

Div. Ct. [1894] 1 Q. B. 448

**PRACTICE—continued.****Sales by the Court.**

*Order LI. relates to sales by the Court.*

— Mortgaged property.

See **MORTGAGE—Sale.**

— Shares.

See **COMPANY—Shares.**

**Security for Costs.**

See **COSTS—Security for Costs.**

**Separation.**

See Cases under **HUSBAND AND WIFE—Separation and Summary Jurisdiction.**

**Sequestration.**

See Cases under **SEQUESTRATION.**

**Service.**

*Order IX. relates to service of writs of summons.*

*Order LXVII. relates to service of orders, &c.*

*Order XLVIII. A, relates to service on firms.*

*Companies—Service of Summonses on, facilitated. See Explanatory Memorandum to County Court Rules (May), 1899, and rules 1, 2, and 7. W. N. 1899 (May 20), at p. 171. See Current Index, 1899, p. cxi.*

— Admiralty practice — Jurisdiction — County court—Agent.

See **SHIPPING.** 203.

180. — *Agreement that writ may be served upon agent in England—Defendant domiciled or ordinarily resident in Scotland—R. S. C., 1883, Order IX., rr. 1, 2.*

An agreement by a person domiciled or ordinarily resident in Scotland, that a writ for breach of contract may be served by leaving it with an agent in England, appointed by him to accept service, is valid, and service upon the agent is good service on the defendant.

*Thariss Sulphur Co. v. Societe Industrielle des Metaux*, (1889) 58 L. J. (Q. B.) 435; 60 L. T. 924, approved. *MONTGOMERY, JONES & Co. v. LIEBENTHAL & Co.* — C. A. [1893] 1 Q. B. 487

— Appeal—Essential particulars.

See **TRADE-MARK.**

— Bankruptcy notice—Act of bankruptcy.

See **BANKRUPTCY.** 25.

— Contract of—Agreement to devote whole time—Negative stipulation—Breach of contract.

See **CONTRACT—Personal.** 30.

— Copies of affidavit—Time—Evidence.

See **EVIDENCE.** 21.

— Corporation—Order on—Disobedience.

See **ATTACHMENT.** 13.

— Costs of substituted service—Taxation—Fixed costs.

See **COSTS—Taxation.** 78.

— Divorce Bill—Substituted service—Practice.

See **APPEAL.** 20.

181. — *Foreign company—Carrying on business within jurisdiction—London agent—Setting aside service—R. S. C., 1883, Order IX., r. 8.*

A co. incorporated in the state of Tennessee,

**PRACTICE (Service)—continued.**

and having offices in Tennessee and New York States had also an agent and offices in London for the purpose of dealing with English shareholders, and some property in that office;—

*Held*, that this did not constitute carrying on business in England, and that service of a writ against the co. on the London agent was bad. *BADDOCK v. CUMBERLAND GAP PARK CO.*

**Stirling J. [1893] 1 Ch. 362**

**182. — Foreign corporation—Service of writ—Agent—Clerk—Admiralty—R. S. C., 1883, Order IX., r. 8.**

The defts., a foreign corporation, had their name on the door of an office of their agents in London, and issued business cards and advertisements directing the public to apply to them there respecting the carriage of goods by their steamers. The rent of the office was paid by the agents of the defts., and the clerks, including the manager, employed in the office, were the servants of the agents.

The plts., owners of cargo in a foreign ship, commenced an action for damages by collision against the defts., and served the writ of summons on the managing clerk at the office in London. On motion by the defts. to set aside the service:—

*Held*, that the service of the writ was not on “the . . . clerk . . . of such corporation” within the meaning of Order IX., r. 8, and must therefore be set aside, but without costs, as the defts. had held themselves out as having an office in London. *THE PRINCESSE CLÉMENTINE*

**G. Barnes J. [1897] P. 18**

**183. — Foreign corporation carrying on business in England—Service of writ—Agent—Officer—Jurisdiction—R. S. C., Order IX., r. 8.**

A foreign corporation which does business in England in such a way as to be resident here may be sued here, and the writ may be served on its officer here.

The decision of *Jeune P.*, [1898] W. N. 80 (1) and the *C. A.*, *La Bourgogne*, [1898] W. N. 150 (1); [1899] P. 1 affirmed. *Sub nom. LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE v. LAW & CO. LA “BOURGOGNE”*

**H. L. (E.) [1899] W. N. 90; [1899] A. C. 431**

**184. — Foreign defendant carrying on business within jurisdiction in name other than his own.**

Order XLVIII. A. (actions against firms and others not trading under their own name) does not apply to a foreign subject resident out of the jurisdiction, who carries on business within the jurisdiction in a name or style other than his own name, and in such a case service under r. 3 on the foreign manager in England is not good, nor in such a case will substituted service nor leave to serve the writ as notice out of the jurisdiction be allowed.

(A) *ST. GOBAIN, CHAUNY AND CIREY CO. v. HOYERMANN'S AGENCY* **C. A. [1893] 2 Q. B. 96**

(B) *DE BERNALES v. NEW YORK HERALD* **C. A. [1893] 2 Q. B. 97, n.**

**185. — Foreign firm—Action in firm name.**

A firm, some members of which are resident abroad, cannot be served as a firm under Order IX., r. 6, and all the partners' names must be specified in the writ, which may then be served on any

**PRACTICE (Service)—continued.**

partner found within the jurisdiction, or by leave under Order XI., outside the jurisdiction.

(A) *WESTERN NATIONAL BANK OF NEW YORK v. PEREZ, TRIANA & CO.*

**C. A. (Lord Esher M.R. diss.) [1891] 1 Q. B. 304**

(B) *INDIGO CO. v. OGILVY*

**North J. [1891] 2 Ch. 31**

(C) *HEINEMANN & CO. v. HALE & CO.*

**C. A. [1891] 2 Q. B. 83**

**186. — Foreign firm—“Carrying on business within the jurisdiction.”**

Order XLVIII. A. r. 1, applies to all partnerships carrying on business within jurisdiction. Therefore a foreign or colonial firm so carrying on business can be served under Order XLVIII. A. r. 3, without leave, although the members are resident out of the jurisdiction. The writ in such a case cannot be served by substituted service within the jurisdiction on a partner who is out of the jurisdiction. *WORCESTER CITY AND COUNTY BANKING CO. v. FIRBANK, PAULING & CO.*

**C. A. [1894] 1 Q. B. 784**

**187. — Foreign firm—Service of notice on partner abroad—Action in name of firm—R. S. C., Order IX., r. 6; Order XI., r. 7.**

In an action against a foreign partnership in the name of the firm leave was given to serve notice of the writ, and it was served abroad on one partner. No appearance was entered and the plts. applied for leave to sign judgment:—

*Held*, that Order IX., r. 6, of the Rules of 1883 did not apply to a firm not domiciled within the jurisdiction, and that service on one partner was not good service on the firm. *DOBSON v. FESTI, RASINI & CO.* **C. A. [1891] 2 Q. B. 92**

*But see now Order XLVIII. A. rr. 1–11, R. S. C., June, 1891.*

**188. — Foreign firm—Service on partner resident in England—R. S. C., Order IX., r. 6.**

A writ issued against a foreign firm for breach of a contract made and to be performed in England. The writ was issued in the firm name, and was served on a partner resident in England:—

*Held*, that a writ issued against a foreign firm cannot be served on the partners resident abroad by serving one of them in England. *HEINEMANN & CO. v. HALE & CO.*

**C. A. [1891] 2 Q. B. 83**

*But see now Order XLVIII. A. r. 1.*

**189. — Foreign firm—Service on partner resident in England—Validity—Summary judgment against firm—R. S. C., Order IX., r. 6; Order XIV., r. 1.**

Where a foreign firm carries on business in England with one partner living within the jurisdiction, service on the resident partner is sufficient, in an action against the firm, to support a judgment under Order XIV. *LYSAGHT, LD. v. CLARK & CO.* **Div. Ct. [1891] 1 Q. B. 552**

*But see now Order XLVIII. A. r. 1.*

**190. — Foreign firm—Service on partner visiting England—Irregularity—Appearance—Waiver—R. S. C., Order IX., r. 6.**

In an action against a foreign partnership in

**PRACTICE (Service)**—*continued*.

the name of the firm a writ was served on a partner who was visiting England:—

*Held*, that the service was not good service against the firm, although if the writ had been against the partners nominatim, it would have been good; but that as the partner had appeared, and in part waived the irregularity, leave should be given to amend the writ by specifying the names of the partners, and that on such amendment service should stand as against the partner who had appeared. **WESTERN NATIONAL BANK OF NEW YORK v. PEREZ, TRIANA & CO.**

**C. A. (Lord Esher M.R. diss.) [1891] 1 Q. B. 304**

*But see now Order XLVIII. A, r. 1.*

Followed by **C. A. Indigo Co. v. Ogilvy**, [1891] 2 Ch. 31.

**191. — Foreign person—Name of firm—Scottish defendant—Carrying on business in name or style other than his own—R. S. C., Order XLVIII. A, rr. 3, 11.**

J. B., a domiciled Scotchman, carried on business in S. as G. & J. B., and had a branch in Liverpool under the same name. A partnership action against J. B. was brought against G. & J. B.:—

*Held*, that Order XLVIII. A, r. 11, did not apply so as to enable the plt. to effect service of the writ upon B. by serving it on the person having the management and control of the business at Liverpool. **MACIVER v. G. & J. BURNS**

**C. A. [1895] 2 Ch. 630**

— **New trustee—Vesting order—Trustee incapable of acting—Physical and medical incapacity—Service dispensed with.**

*See TRUSTEE—Vesting Order. 107.*

— **Notice—Abatement of nuisance—Service on person not liable—Recovery of expense.**

*See NUISANCES. 2.*

— **Notices—London Building Act.**

*See Cases under LONDON—Buildings.*

— **Notice—Vaccination Act.**

*See VACCINATION. 5.*

— **Notice of appeal to quarter sessions.**

*See JUSTICES—Appeal. 43, 44.*

— **Notice of opposition to renewal of licence.**

*See LICENSING ACTS. 16, 17.*

— **Notice to make sewer—S. rvice on every frontager.**

*See SEWERS. 8.*

**192. — Out of jurisdiction—Notice of motion for injunction—R. S. C., Order XI, r. 1; Order LII, r. 9.**

*Seamble*, that leave to serve notice of motion for an injunction with the writ outside the jurisdiction cannot be granted. **MANITOBA AND NORTH-WEST LAND CORPORATION v. ALLAN**

**North J. [1893] 3 Ch. 432**

— **Out of jurisdiction—Notice of motion to attach.**

*See ATTACHMENT. 20—24.*

**193. — Out of jurisdiction—Notice of motion for injunction.**

Action for injunction to restrain Y. and others from parting with certain securities. Y. was abroad. North J. granted leave to serve writ, but not notice of motion for interim injunction

**PRACTICE (Service)**—*continued*.

out of jurisdiction, holding that he had no power under Order XI. to give such leave.

C. A. granted leave to serve the notice of motion without prejudice to any question which might arise thereon. **HERSEY v. YOUNG**

**C. A. [1894] W. N. 18**

— **Out of jurisdiction—Notice of motion to expunge proof.**

*See BANKRUPTCY—Proof. 177.*

**194. — Out of jurisdiction—Notice of motion to expunge trade-mark—Registered proprietor out of the jurisdiction—R. S. C., 1883, Order v., r. 9; Order XI, r. 1; Order LXVIII, r. 5—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 90.**

A notice of motion to rectify the register by striking out a trade-mark registered in the name of a foreign co. not carrying on business within the jurisdiction was served on the comptroller and on the co. abroad without the leave of the Court:—

*Held*, there was no power in the parties to serve the notice abroad, and no jurisdiction in the Court to give leave for service abroad, and that the service was invalid.

*Seamble*, the proper course was to proceed on the notice against the comptroller, after sending a copy to the co. with an intimation that proceedings which might affect its interests were pending. **IN re LA COMPAGNIE GÉNÉRALE D'EAUX MINÉRALES ET DE BAINS DE MER**

**Stirling J. [1891] 3 Ch. 451**

Referred to by North J. *In re Cliff*, C. A. [1895] 2 Ch. 21, 25.

**195. — Out of jurisdiction—Notice of motion—Trade-mark—R. S. C., 1883, Order v., r. 9 (c).**

There is no provision by statute or rule as to the service out of the jurisdiction of notice of motion to expunge a trade-mark, but such notice must be given to interested parties outside the jurisdiction as is required by natural justice. **IN re KING & CO.'S TRADE-MARK**

**C. A. [1892] 2 Ch. 462**

Followed by Stirling J. *In re Kay's Patent*, [1894] W. N. 68. *See No. 197, below.*

Referred to by North J. *In re Cliff*, C. A. [1895] 2 Ch. 21, 25. *See next Case.*

**196. — Out of jurisdiction—Notice of order on originating summons—Jurisdiction—R. S. C., 1883, Order XI, r. 1; Order XVI, r. 40—R. S. C., Nov. 28, 1893, r. 7; Jan. 10, 1894.**

Leave to serve notice of an order made on an originating summons on a person resident abroad cannot be given. But the person having conduct of the order may of his own motion give notice to the person resident out of the jurisdiction, and if after notice that person does not choose to come in the Court will act on the order, and in the case of a fund in Court will distribute it in his absence.

Decision of North J. affirmed. *In re CLIFF*, **EDWARDS v. BROWN** — **C. A. [1895] 2 Ch. 21**

Referred to by Stirling J. *Deutsche National Bank v. Paul*, [1898] 1 Ch. 283, 288.

**197. — Out of jurisdiction—Petition for revocation of patent—R. S. C., 1883, Order XI, r. 1.**

Where one of the respondents to a petition

**PRACTICE (Service)—continued.**

for revocation of a patent was out of the jurisdiction, and could not be served with the petition, ordered that notice of the presentation of the petition should be given him, that the petition should go into the witness list, but unless he appeared by counsel, the petition should not come on for hearing without leave of the judge. *In re KAY'S PATENT* Stirling J. [1894] W. N. 68

**198. — Out of jurisdiction—Petition—Trustee Relief Act.**

There is no jurisdiction to give leave to serve out of the jurisdiction a petition for payment of money out of Court under the Trustee Relief Act. *In re STANWAY'S TRUSTS*

Kekewich J. [1892] W. N. 11

Referred to by North J. *In re Cliff*, C. A. [1895] 2 Ch. 21, 25.

**— Out of jurisdiction—Restitution of conjugal rights—Decree—Practice.**

See **DIVORCE—Practice**. 117.

**199. — Out of jurisdiction—Service of writ—Contract “which, according to the terms thereof, ought to be performed within the jurisdiction” — R. S. C., 1883, Order XI., r. 1 (e).**

In order to allow service of a writ out of the jurisdiction under Order XI., r. 1 (e), the contract for breach of which the action is brought must be one which, according to the terms thereof, must be performed within the jurisdiction. Leave cannot be given in a case where the contract may be performed either within or out of the jurisdiction.

Where the deft. abroad contracted to sell goods sent to him and remit the proceeds to England by bills, and he sold the goods and kept the proceeds:—

*Held*, that since his contract could all be performed abroad, no writ could be issued here for service abroad, either for breach of contract or for money had and received.

The decision of C. A. reversed. *COMBER v. LEYLAND*

H. L. (E.) [1898] A. C. 524

**200. — Out of jurisdiction, Service of writ—R. S. C., 1883, Order XI., r. 1 (e), (g).**

J. & Co., who carried on business in London, deposited certain policies of life assurance with the plts., a German bank, as security for advances, and afterwards created a second charge upon the same policies in favour of E. The plts. subsequently acquired the equity of redemption in the policies, and caused it to be transferred to P. and F. as trustees for the plts. P. and F. resided in England; E. resided in Germany. The plts. brought an action for foreclosure against P. and F., and obtained leave to give notice, in lieu of service, of the writ to E. out of the jurisdiction. Upon motion to discharge that order:—

*Held*, (1.) that the action was not founded on any breach of contract, and therefore the case did not come within Order XI., r. 1 (e); and (2.) that inasmuch as no actual relief was claimed against P. and F., they were not properly made defts., but should have been joined as co-plts.; the action was, therefore, not properly brought against them within the meaning of Order XI.,

**PRACTICE (Service)—continued.**

r. 1 (g), and the order for service out of the jurisdiction must be discharged. *DEUTSCHE NATIONAL BANK v. PAUL*

Stirling J. [1898] 1 Ch. 283

**— Out of the jurisdiction—Vesting order.**

See **TRUSTEE—Vesting Order**. 107, 113.

**201. — Out of jurisdiction—Writ—Absence beyond seas—R. S. C., 1883, Order XI.**

Order XI. does not annul the right of a plt., under 4 Anne, c. 16, to bring his action after the deft.'s return from beyond the seas within the time limited by the Limitation Act, 1623.

Decision of Div. Ct., [1894] 1 Q. B. 533, affirmed. *MUSURUS BEY v. GADBAN*

C. A. [1894] 2 Q. B. 352

**202. — Out of jurisdiction—Writ—Appearance—Unconditional appearance—Waiver of irregularity.**

If a deft. appears unconditionally to a writ served out of the jurisdiction he submits to the jurisdiction as to the whole claim, although part of it is outside Order XI., r. 1. On a motion to set aside an order giving leave to serve a writ out of the jurisdiction (part only of the claim being within Order XI., r. 1):—

*Held*, that the order should stand; the plt. should only be entitled to relief on so much of his claim as came within the rule. *MANITOBA AND NORTH-WEST LAND CORPORATION v. ALLAN*

North J. [1893] 3 Ch. 432

**203. — Out of jurisdiction—Writ—Appearance under protest.**

A foreigner resident out of the jurisdiction, on whom notice of a writ served by leave under Order XI., can properly enter an appearance under protest without losing his right to object to the jurisdiction. *FIRTH & SONS v. DE LAS RIVAS*

Div. Ct. [1893] 1 Q. B. 768

**204. — Out of jurisdiction—Writ—Set aside service, Application to—Procedure—R. S. C., Order XII., r. 30—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.**

An application by a deft. to discharge an order at chambers made ex parte, giving leave to serve the writ upon him out of the jurisdiction or to set the service aside, should be made by summons at chambers, and not by motion in Div. Ct. or C. A. *BLACK v. DAWSON*

C. A. [1895] 1 Q. B. 848

**205. — Out of jurisdiction—Writ—Concurrent Writ—Irregularity.**

When leave is granted for the issue of a concurrent writ to be served out of the jurisdiction, the copy served should be marked “concurrent.” On an application to serve out of the jurisdiction it must be shewn that the deft. within the jurisdiction has previously been duly served. *COLLINS v. NORTH BRITISH AND MERCANTILE INSURANCE CO.* PRATT v. SAME

Kekewich J. [1894] 3 Ch. 228

**206. — Out of jurisdiction—Writ—Contract affecting land—Assignee of lease—Action for breach of covenant to repair—R. S. C., Order XI., r. 1 (b), (g).**

An action for breach of a covenant to repair is an action brought to enforce a contract affecting land or hereditaments. Consequently an order

**PRACTICE (Service)—continued.**

for service out of the jurisdiction may be made under Order XI., r. 1 (b). Each of the sub-sections of Order XI., r. 1, is complete in itself, and is to be construed independently of the others.

**TASSELL v. HALLEN** Div. Ct. [1892] 1 Q. B. 321

Held not to affect *Yorkshire Tannery v. Eglinton Chemical Co.*, 54 L. J. (Ch.) 81, per Kekewich J. *Collins v. North British and Mercantile Insurance Co.*, [1894] 3 Ch. 228.

**207. — Out of jurisdiction—Writ—Contract to be performed within the jurisdiction—Commission—R. S. C., Order XI., r. 1 (e).**

One of the defts. engaged the plt. to superintend certain works in Spain on a commission on the outlay. The contract was ratified by the deft.'s partner in Spain. Leave was given to issue a concurrent writ against the Spanish partner on application to set aside this writ and service under it:—

Held, that on the true construction of the contract, the intention was that the payments in respect of the commission were to be made in England, and therefore the case came within Order XI., r. 1 (e), the contract being one "which, according to the terms thereof, ought to be performed within the jurisdiction." **THOMPSON v. PALMER — C. A. [1893] 2 Q. B. 80**

**208. — Out of jurisdiction—Writ—Contract to be performed within the jurisdiction—Foreign company—R. S. C., Order XI., r. 1 (e).**

A contract by shipowners to pay lighters at foreign ports, with a covenant by the consignees for indemnity from such payments, is not a contract to be performed within the jurisdiction within Order XI., r. 1 (e), for which leave to serve writ outside the jurisdiction will be granted. **BELL & Co. v. ANTWERP, LONDON AND BRAZIL LINE C. A. [1891] 1 Q. B. 103**

Approved by H. L. (E.) *Comber v. Leyland*, [1898] A. C. 524, 533.

**209. — Out of jurisdiction—Writ—Contract to be performed within the jurisdiction—Foreign salvag. contract—R. S. C., Order XI., r. 1 (e).**

A salvage contract was entered into between foreigners in English waters, but no place was specified in the contract for payment of the salvage money. An action was brought in England for breach of contract in not paying the salvage money, and an ex parte order was obtained, allowing service of the writ out of the jurisdiction:—

Held, that the writ must be set aside, there being no obligation on the defts. to pay the money within the jurisdiction, and therefore no breach within Order XI., r. 1 (e).

Decision of Jeune P. affirmed. **THE "EIDER" C. A. [1893] P. 119**

Approved of by H. L. (E.) *Comber v. Leyland*, [1898] A. C. 524, 533.

**210. — Out of jurisdiction—Writ—Contract to be performed within the jurisdiction—Place of payment—R. S. C., Order XI., r. 1 (e).**

The plt. consigned goods from England to the deft., a German subject carrying on business in Germany. The usual place of payment for similar transactions between the parties was in

**PRACTICE (Service)—continued.**

England. The plt. applied for leave to issue a writ under Order XI., r. 1 (e), for service on the deft. in Germany for the price of goods under the contract:—

Held, that there was sufficient evidence of breach of a contract to be performed in England. **REIN v. STEIN — C. A. [1892] 1 Q. B. 753**

**211. — Out of jurisdiction—Writ—Foreign firm—No place of business—R. S. C., Order XLVIII. A, rr. 1, 3.**

Per Div. Ct.: Rules 1, 3, of Order XLVIII. A, have no application to actions against foreign firms, the members of which are domiciled and resident out of the jurisdiction:—

Held, also, by C. A. and Div. Ct., that a Glasgow firm, which transacted their business in London solely through an agent, who had his own offices and who only transmitted orders to his principals, were not carrying on business within the jurisdiction. **GRANT v. ANDERSON & Co. C. A. [1892] 1 Q. B. 108**

Referred to by C. A. *Grainger & Son v. Gough*, [1895] 1 Q. B. 71, 84.

**212. — Out of jurisdiction—Writ—Injunction—Act to be done within jurisdiction—R. S. C. 1883, Order XI., r. 1 (f).**

Manufacturers in Switzerland, in reply to a letter from retail dealers in England asking them to send 5 lbs. of a dye which they manufactured, replied by a letter in which they inclosed an invoice of the goods ordered. The invoice described the goods as "bought" by the dealers of the manufacturers, and stated that they were sent to a specified firm in Switzerland "to be held by them at your disposal." The pls. alleged that the dye thus sold was an infringement of their patent, and commenced an action against the English purchasers and the Swiss manufacturers, claiming an injunction. The pls., having served the purchasers, applied ex parte for leave to issue a concurrent writ and to serve notice thereof on the manufacturers out of the jurisdiction:—

Held (reversing the decision of North J.), that the pls. had shewn a *prima facie* case, within Order XI., r. 1 (f), of a sale within the jurisdiction, and that the leave asked should be given. **BADISCHE ANILIN UND SODA FABRIK v. HENRY JOHNSON & CO. AND BASLE CHEMICAL WORKS, BINDSCHEDLER C. A. [1896] 1 Ch. 25**

**213. — Out of jurisdiction—Writ—Setting aside service—Irregularity—R. S. C., 1883, Order XI., rr. 1, 4; Order II., r. 5; Order LXX, r. 1; Appx. A, Part I, Form No. 5.**

A writ was issued and served on a sole deft., who applied for and obtained leave to serve a third party notice on D., who was out of the jurisdiction, and the plt. obtained leave to add D. as a deft. and to amend the writ. No affidavit was made under Order XI., r. 4, of good cause of action, and the amended writ served on D. was not properly indorsed according to Form 5 of Appx. A to R. S. C., 1883:—

Held, that these omissions were mere irregularities, and did not entitle D. to have the writ and the service set aside. **DICKSON v. LAW**

**North J. [1895] 2 Ch. 62**  
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**PRACTICE (Service)—continued.**

214. — *Out of jurisdiction—Writ—Naval officer at sea—R. S. C., Order XI., r. 4.*

An officer in Her Majesty's navy is within the jurisdiction so long as he is on board his ship, and Order XI. does not apply. Evidence that officer was in a Queen's ship on the Mediterranean Station, and would ultimately put into Malta:—

*Held*, not sufficient to shew in what "place or country the debt is or probably may be found" within the meaning of Order XI., r. 4, and that leave to serve a writ on him out of the jurisdiction must be refused. *SEAGROVE v. PARKS*  
Div. Ct. [1891] 1 Q. B. 551

215. — *Out of jurisdiction—Writ—Necessary or proper party—Alternative claim—Action properly brought—R. S. C., Order XI., r. 1 (g).*

In order to bring a case within Order XI., r. 1 (g) (relating to the power of necessary and proper parties who are outside the jurisdiction), the plt. must have an apparent cause of action against the person served within the jurisdiction, and must not merely have joined such person in order to be able to sue, within the jurisdiction, a person who is out of the jurisdiction.

Decision of Div. Ct., [1893] 1 Q. B. 431, reversed. *WITTED v. GALBRAITH*

C. A. [1893] 1 Q. B. 577

Decision of C. A. applied and followed by *Kekewich J. in Collins v. North British and Mercantile Insurance Co.*, [1894] 3 Ch. 228, 237.

216. — *Out of jurisdiction—Writ—"Necessary or proper party"—Salvage action—Order XI., r. 1 (g).*

The plts. brought an action against the owners of a British ship for salvage services performed abroad, and claimed to serve notice of the writ on the owners of the cargo who were foreigners residing out of the jurisdiction:—

*Held*, that the cargo owners were "proper" parties within Order XI., r. 1 (g), to an action properly brought against persons duly served within the jurisdiction. Service allowed. *THE "ELTON"*  
*Jeune J.* [1891] P. 265

217. — *Out of jurisdiction—Writ—"Necessary or proper party"—Separate relief—R. S. C., 1883, Order VI. r. 1; Order XI., rr. 1 (g), 4.*

To bring a case within Order XI., r. 1 (g), the relief sought against the debt, outside the jurisdiction must be connected, but need not be identical with that sought against the debt, within the jurisdiction.

C. was the trustee in bankruptcy of A., a beneficiary under the will of a Canadian testator; the property was vested in B., an executor domiciled in Canada. A. had previous to his bankruptcy mortgaged his interest to persons in England. C. brought an action against the mortgagees to redeem the mortgage and for accounts, and against B. that as trustee for A. he should pay the sum due to the mortgagees and account for the property to C. Before the writ was served on the mortgagees, C. obtained leave to issue a concurrent writ for service on B. In his affidavit C. did not state that B. was a necessary or proper party to the action, nor that

**PRACTICE (Service)—continued.**

C. believed that he had good cause of action against B. The concurrent writ was marked "concurrent," but not so the copy served on B.:—

*Held*, that the service was irregular, and further that B. was not a "necessary or proper party to an action properly brought," for the relief sought against B. was not connected with that sought against the mortgagees. *COLLINS v. NORTH BRITISH AND MERCANTILE INSURANCE CO. PRATT v. SAME - Kekewich J.* [1894] 3 Ch. 228

218. — *Out of jurisdiction—Writ—"Necessary or proper party"—Tort—Defendant resident in Ireland—R. S. C., Order XI., r. 1 (g).*

The plt. sought to serve one debt., an Irish co. out of the jurisdiction, with a writ in an action for malicious prosecution. The other debt., the co.'s manager, had been served within the jurisdiction:—

*Held*, (1) that Order XI., r. 1 (g), applied to actions of tort; (2) that the Irish co. were a proper party to the action. *CROFT v. KING*

Div. Ct. [1893] 1 Q. B. 419

Referred to by C. A. *Williams v. Cartwright*, [1895] 1 Q. B. 142, 147. See next case.

219. — *Out of jurisdiction—Writ—"Necessary or proper party"—Tort—Defendant resident in Scotland—"Comparative cost and convenience—R. S. C., Order XI., rr. 1 (g), 2.*

Service out of the jurisdiction on a person out of the jurisdiction who is "a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction," can be had in an action of tort, but the jurisdiction is discretionary. Where an action of deceit was brought against three persons, two of whom were resident in England and one in Scotland:—

*Held*, that as under the circumstances comparative cost and convenience were in favour of proceedings in England, service out of the jurisdiction ought to be allowed. Comparative cost and convenience in Order XI., r. 2, means not that of the person sought to be served only, but of the parties generally. *WILLIAMS v. CARTWRIGHT - C. A. (Lord Esher M.R. diss.)*  
[1895] 1 Q. B. 142

220. — *Out of jurisdiction—Writ—"Necessary or proper party"—Scotch executrix—R. S. C., Order XI., rr. 1 (f), 2.*

Plt. instituted an action in England against debts, in England, and executrices native resident in Scotland and acting under a Scotch confirmation of a deceased Scotsman, to obtain a declaration that the deceased was domiciled in Bolivia, and an injunction against dealing with the estate. An order for service was obtained under Order XI., r. 1 (f), on the executrices. On motion to discharge the order:—

*Held*, (1) that an injunction against the executrices to restrain them from doing any act within the jurisdiction would fall within Order XI., r. 1 (f); (2) that as the Scotch Courts had seisin of the case, and plt. intended to proceed there, the order for service should be discharged. *In re DE PENNY. DE PENNY v. CHRISTIE*

Chitty J. [1891] 2 Ch. 63

221. — *Out of jurisdiction—Writ—Property*

**PRACTICE (Service)—continued.**

*situate within the jurisdiction—R. S. C., Order XI., r. 1.*

To support service out of the jurisdiction under Order XI., r. 1 (d), the property must be property actually situate within the jurisdiction, and not merely property which ought to be, or if the trusts were duly executed, would be so situate.

*Semble*, the service may be held good if property has subsequently come within the jurisdiction. *WINTER v. WINTER*

**Stirling J. [1894] 1 Ch. 421**

**222. — Out of jurisdiction—Writ—Scotland—Defendant domiciled or ordinarily resident in Scotland—Agreement that writ may be served out of jurisdiction—Order XI., r. 1 (e).**

An agreement by a person domiciled or ordinarily resident in Scotland that a writ for breach of contract arising within the jurisdiction may be served on him in Scotland does not authorize the Court to direct service of such a writ in Scotland, as to do so would be in direct contravention of Order XI., r. 1 (e). *BRITISH WAGON CO. v. GRAY*

**C. A. [1896] 1 Q. B. 35**

Distinguished by *C. A. Montgomery v. Liebenthal*, [1898] 1 Q. B. 487, 493.

**223. — Out of jurisdiction—Writ—Scotland—Waiver—County Court Rules, 1889, Order LI., r. 23—R. S. C., 1888, Order XI., rr. 1 (d), 2—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 67, 68, 164—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 17.**

Rule 23 of Order LI. of the County Court Rules, 1889, which relates to service out of the jurisdiction, though more extensive than any existing rule applicable to the High Court, is within the powers of making rules conferred by s. 164 of the County Courts Act, 1888.

Service having been effected in Scotland under Order LI., r. 23, of the County Court Rules, 1889, on a debt in an administration action, the action was transferred to the High Court on the ground that the value of the estate exceeded the limit of the jurisdiction of the county court. The debt answered interrogatories in the county court, but objected to the order for service both in the county court and the High Court:—

*Held*, that, though the order for service would have been valid if the action had remained in the county court, after the transfer, the question depended upon Order XI., rr. 1 (d) and 2, of the Rules of the Supreme Court, and that the debt ought to have an opportunity of filing evidence as to the domicile of the testator, and as to whether there was an adequate concurrent jurisdiction in Scotland:—

*Held*, further, that there had been no waiver by the debt. of the right to object to the service. *WOOD v. MIDDLETON* **Stirling J. [1897] 1 Ch. 151**

— Partnership — Dissolution—Bankruptcy petition against one late partner—Irregularity.

*See* **BANKRUPTCY—Partnership. 137.**

*Order IX., r. 2, relates to personal service.*

— Personal service—Affidavits.

*See* **ATTACHMENT. 2—1.**

**PRACTICE (Service)—continued.**

— Personal service—Notice of motion to attach. *See* **ATTACHMENT. 22.**

**224. — Personal service—Service in envelope—Order XI., r. 6; Order LXVII., r. 5.**

Handing to a debt. a writ (or if the debt. is out of the jurisdiction, notice of a writ) inclosed in an envelope (whether sealed up or not), the debt. being uninformed as to its contents and ignorant of the commencement of an action, is not good personal service. *BANQUE RUSSE ET FRANÇAISE v. CLARK* **C. A. [1894] W. N. 203**

**225. — Post—Service of notice by post—Evidence—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 267.**

Under s. 267 of the Public Health Act, 1875, in order to prove service of a notice by letter through the post, it is necessary to shew that the letter was "prepaid," and an affidavit containing no statement to that effect is insufficient as evidence of service. *WALTHAMSTOW URBAN DISTRICT COUNCIL v. HENWOOD*

**Kekewich J. [1897] 1 Ch. 41**

**226. — Several defendants—Notice of motion for judgment—Judgment against one defendant—R. S. C., Order XXVII., r. 12.**

Where, under Order XXVII., r. 12, an action is set down on motion for judgment against one of several debts., and the cause of action against that debt. is severable from the cause of action against the remaining debts., it is not necessary to serve the notice of motion upon the remaining debts.

*Cooke v. Gilbert*, [1892] W. N. 111, 128, followed. *MACMILLAN v. AUSTRALASIAN TERRITORIES*

**Stirling J. [1897] W. N. 30 (14)**

— Registration of voters—No postal delivery.

*See* **PARLIAMENT—Franchise.**

**227. — Retired partner—Execution—Liability—R. S. C., Order LXVIII. A, rr. 1, 3, 8.**

Where an action has been brought and judgment recovered against co-partners in the firm name, if one of the members left the firm before action brought to the knowledge of the plt. and does not appear, or admit that he is a partner, the plt. must have served him with the writ under Order XLVIII. A, r. 3, before he can get leave to issue execution, or have the question of the ex-member's liability tried. *WIGRAM v. COX, SONS, BUCKLEY & CO. Div. Ct. [1894] 1 Q. B. 792*

— Sale of lands apart from minerals—Petition—Service on remainderman.

*See* **TRUSTEE—Practice. 80.**

**228. — Scotch railway company—Office in England—Principal office—R. S. C., Order IX., r. 8.**

A ry. co. having its governing body resident and domiciled in Glasgow, had a short line in England, which was under the Companies Clauses Act, 1845:—

*Held*, that the co. was a Scotch co., and that service of a writ at the principal office of the co. on the English part of its line was not good service, r. 8 being excluded by the Companies Clauses Consolidation (Scotland) Act, 1845,

**PRACTICE (Service)—continued.**

which was incorporated in the co.'s special Act, and required service at the principal office of the co., i.e., in Glasgow.

Decision of Div. Ct., [1892] 1 Q. B. 607, reversed. *PALMER v. CALEDONIAN RY. CO.*

C. A. [1892] 1 Q. B. 823

— Sequestration—Payment of costs.

See SEQUESTRATION. 5.

Order *x.* relates to substituted service.

229. — Substituted service—Motion to commit —Order XLIV., r. 2; Order LXVII., r. 6.

(A) If personal service of a motion to commit cannot be effected, application must be made *ex parte* for leave to effect substituted service. *In re A SOLICITOR* (No. 1)

North J. [1892] W. N. 22

(B) Notice of motion to commit a deft. must be served upon him personally if practicable, service upon his solicitor being insufficient; and the Court will not make an order for substituted service until it is satisfied that every endeavour has been made to effect personal service. Mere knowledge on the part of the deft. of the plt.'s intention to move to commit does not dispense with the necessity of endeavouring to effect personal service; and the appearance of the deft. upon the motion is not a waiver of any objection on his part on the ground either of want of personal service or of any irregularity. *MANDER v. FALCKE* (No. 2) — — [1891] 3 Ch. 488

230. — Substituted service—Writ—Default in appearance—Delivery of amended writ—R. S. C., Order XLX., r. 10; Order XLVIII., r. 10.

An amended writ may be delivered to a deft. who has made default in appearance, by filing it at the Central Office, personal service being unnecessary. *In re HARTLEY. NUTTALL v. WHITEAKER* (No. 1)

North J. [1891] 2 Ch. 121

231. — Substituted service—Writ—Defendant abroad before writ issued—R. S. C., Order LX., r. 2; Order *x.*

Substituted service of an ordinary writ cannot be allowed on a deft. who left England before the issue of the writ and is still out of the jurisdiction, where it does not appear there was any intention to avoid service. *WILDING v. BEAN*

C. A. [1891] 1 Q. B. 100

Referred to by C. A. *In re Cliff*, [1895] 2 Ch. 21, 26.

Distinguished by C. A. *Jay v. Budd*, [1898] 1 Q. B. 12.

232. — Substituted service—Writ of summons—Defendant out of jurisdiction—R. S. C., 1883, Order LX., r. 2.

Where a writ for service within the jurisdiction was issued against a deft. who was then within the jurisdiction, but, after the writ had come to his knowledge, went out of the jurisdiction, though not for the purpose of evading service:—

*Held*, by C. A. (Rigby L.J. dissenting), that an order for substituted service of the writ might be made under Order LX., r. 2, the circum-

**PRACTICE (Service)—continued.**

stances of the case showing that it would be just to make such an order.

*Fry v. Moore*, (1889) 23 Q. B. D. 395, and *Wilding v. Bean*, [1891] 1 Q. B. 100, distinguished. *JAY v. BUDD* C. A. [1898] 1 Q. B. 12

— Substituted—Written demand for cohabitation. See DIVORCE—Practice. 117.

— Summons—Putative father out of jurisdiction. See BASTARDY. 3.

— Summons under Public Health London Act, 1891.

See NUISANCES. 2.

233. — Undertaking to do an act—Committal or attachment—R. S. C., 1883, Order XL., r. 5.

Motion by plt. that defts. might stand committed to gaol, or that plt. might have leave to issue a writ of attachment against them in respect of their breach of their undertaking by refusing or neglecting "forthwith" to execute an indenture.

The notice of motion and judgment were duly served on the defts., but the judgment did not bear upon it any such memorandum as required by Order XL., r. 5.

*Per Kekewich J.*: There was a consensus of opinion among the judges of the Ch. Div. that in the case of an undertaking of this kind there ought either to be service in accordance with Order XL., r. 5, or an order in the nature of a four-day order. Admittedly, no one had ever had the point before him in his experience. Having regard to *Thomas v. Nokes*, (1868) L. R. 6 Eq. 521, he thought that, notwithstanding what was said in *Gilbert v. Endean*, (1878) 9 Ch. D. 259, at p. 266, it must be held that the use of the word "forthwith" dispensed with the necessity for fixing a time, though but for *Thomas v. Nokes* he should have been disposed to hold otherwise.

Order made that defts. should on or before Dec. 5, or subsequently within four days of the service of the order, execute the engrossment which was identified as an exhibit to a certain affidavit. *HALFORD v. HARDY* — *Kekewich J.*

[1899] W. N. 243

Commented on by Cozens-Hardy J. *D. v. A. & Co.*, [1900] 1 Ch. 484, 487.

**Set-off.**

— Account not ear-marked as trust account—Banker and customer. See NEW ZEALAND. 1.

— Bankruptcy.

See BANKRUPTCY—Set-off.

— Calls.

See COMPANY—Calls. 10, 11.

— Company—Winding-up.

See COMPANY—WINDING-UP Set-off.

— Costs.

See COSTS—Set-off.

— Debentures.

See COMPANY—Debentures. 92.

— Defaulter—Official assignee—Assignment of assets—Rules of Stock Exchange.

See STOCK EXCHANGE. 5.



**PRACTICE (Set-off)—continued.**

- Effect of company's adoption of contract made before its formation—Payment of shares in cash.  
*See* NEW SOUTH WALES. 7.

- Hotchpot clause—Rent—Statutes of Limitations.

*See* WILL—Advancement. 23.

- 234. — *Judgments—Solicitor's lien—Charging order—Costs—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28—R. S. C., Order LXV., r. 14.*

An order may be made allowing a judgment debtor to set off against the damages due from him damages due to him from the judgment creditor on a judgment in another action, notwithstanding the existence of an order under the Solicitors Act, 1860, s. 28, charging the first-mentioned damages with a solicitor's costs:

So held by A. L. Smith L.J. and V. Williams L.J., the latter doubting. *GOODFELLOW v. GRAY*

C. A. [1899] 2 Q. B. 498

- Loan by building society to member—Building society—Winding-up.

*See* BUILDING SOCIETY. 25.

- Occupation of rent due from one of several owners—Sale.

*See* PARTITION. 15.

- Practice.

*See* PRACTICE—Set-off.

- Purchase-money and share of proceeds.

*See* PARTITION. 14.

**Setting Aside.**

*Order XII., r. 12, relates to setting aside appearance.*

*Order LII., r. 2, and Order LXIV., r. 14, relate to setting aside awards.*

- Award.

*See* Cases under ARBITRATION—Award.

- Bankruptcy notice.

*See* BANKRUPTCY. 26.

- 235. — *Bankrupt plaintiff—Discontinuance by trustee—Stay—New action by assignee of bankrupt—R. S. C., Order XXV., r. 4.*

A plt. became bankrupt and the trustee disclaimed; the action was then stayed. The trustee sold his interest in the cause of action to B., who brought a fresh action:—

Held, that B.'s action should not be dismissed as frivolous and vexatious. *BEAN v. FLOWER*

C. A. [1895] W. N. 120 (12)

- 236. — *Bankrupt plaintiff—Unconditional stay—Removing stay.*

The plt. in an action became bankrupt, and the trustee declining to proceed, the deft. obtained an unconditional order to stay proceedings. Subsequently the plt., on his discharge, purchased the assets from the trustee, and then applied to have the stay of proceedings removed:—

Held, that the action of the trustee barred the plt., and that there was no special circumstance justifying removal of the stay. *SELIG v. LION*

Div. Ct. [1891] 1 Q. B. 513

Referred to by Kekewich J. *Bean v. Flower*, C. A. [1895] W. N. 120 (12). *See* preceding Case.

**PRACTICE (Setting Aside)—continued.**

- Bonâ fide sale to solicitor—Laches.

*See* MORTGAGE—Sale. 83.

- Company winding-up.

*See* COMPANY—WINDING-UP—Staying Proceedings. 231.

- 237. — *Consent—Judgment—Mistake—Setting aside—Motion—R. S. C., Order XXVIII., r. 11.*

After a judgment has been passed and entered—even where it has been taken by consent and under a mistake—the Court cannot set it aside otherwise than in a fresh action brought for the purpose unless (1.) there has been a clerical mistake or an error arising from an accidental slip or omission within the meaning of Order xxviii., r. 11, or (2.) the judgment as drawn up does not correctly state what the Court actually decided and intended to decide—in either of which cases the application may be made by motion in the action.

*Seem*, that different considerations apply to interlocutory orders; but that even if a judgment has not been passed and entered the Court will not always interfere on motion, e.g., where from the nature of the ground relied on conflicting evidence is essential. *AINSWORTH v. WILDING*

Romer J. [1896] 1 Ch. 673

Referred to by C. A. *Wilding v. Sanderson*, [1897] 2 Ch. 534, 549.

- 238. — *Consent order—Mistake—Jurisdiction—Mortgagor and mortgagee.*

The Court has jurisdiction to set aside a consent order upon any ground which would invalidate an agreement between the parties.

A consent order which had been completed and acted upon, but without affecting interests of third parties, set aside by the Court upon the ground of common mistake. *HUDDERSFIELD BANKING CO. v. H. LISTER & SON, LD.*

C. A. [1895] 2 Ch. 273

Referred to by Romer J. *Ainsworth v. Wilding*, [1896] 1 Ch. 673, 679.

Referred to by C. A. *Hobson v. Gorringe*, [1897] 1 Ch. 182, 189; *Wilding v. Sanderson*, [1897] 2 Ch. 534, 545.

- 239. — *Consent order—Mistake—Unilateral mistake induced by the other party.*

An order made in an action by consent and based upon, and intended to carry out, an agreement come to between the parties, can be set aside on any ground on which an agreement in the terms of the order could be set aside, and one of such grounds is mistake.

A written contract cannot be set aside merely because one of the parties to it put an erroneous construction on the words in which it was expressed; but this principle does not apply to a case where a mistake by one of the parties as to the meaning of the words used has been induced, however innocently, by the other party.

If the parties are not ad idem as to the subject-matter of the contract, there is no real agreement between them.

A party to a contract, who had failed to obtain from the Court a decision in his favour upon the construction of it, is competent to institute an action to have the contract set aside.

Upon these principles, the C. A., affirming

**PRACTICE (Setting Aside)—continued.**

the judgment of Byrne J., set aside a consent order made upon settled minutes in an action after the order had been passed, entered, partially acted upon, and construed by the Court.

*Powell v. Smith*, (1872) L. R. 14 Eq. 85; *Stewart v. Kennedy*, (1890) 15 App. Cas. 108; and *Hickman v. Berens*, [1895] 2 Ch. 638, explained. **WILDING v. SANDERSON**

**C. A. [1897] 2 Ch. 534**

Referred to by *Stirling J. Jennings v. Jennings*, [1898] 1 Ch. 378, 390.

— Contract by company ultra vires—Consent judgment—Terms on which contract will be set aside.

See **CANADA**. 17.

**240. — Fraud—Claim to set aside judgment by default on ground of—Claim for maliciously presenting a bankruptcy petition without alleging special damage—Striking out statement of claim—R. S. C., Order XXV., r. 4; Order XXVII., r. 15.**

An action will lie to set aside a judgment by default on the ground of fraud; but if recourse is had to an action instead of the summary procedure upon an affidavit of merits under Order XXVII., r. 15, *quære* whether the Court may not in a proper case order payment into court of the sum due on the judgment as a condition of allowing the action to proceed.

*Quære*, whether an action will lie without an allegation of special damage for falsely and maliciously and without reasonable or probable cause presenting a bankruptcy petition, and the question is not one which will be determined upon an application to strike out the statement of claim as disclosing no reasonable cause of action. **WYATT v. PALMER**

**C. A. [1899] W. N. 74; [1899] 2 Q. B. 106**

**241. — Fraud—Setting aside judgment obtained by fraud—Fresh action to set aside judgment—Jurisdiction.**

Where a judgment has been obtained by fraud, the Court has jurisdiction, in a subsequent action brought for that purpose, to set the judgment aside. **COLE v. LANGFORD**

**Div. Ct. [1898] 2 Q. B. 36**

**242. — Judgment—Action against one of two joint contractors—Res judicata.**

The plts. obtained a judgment by consent against S. They afterwards discovered that another person was a partner with him, and they applied, with the consent of the judgment debtor, to have the judgment set aside and the writ amended:—

*Held*, that when once judgment was signed against the one partner, the plt.'s remedy against the other was extinguished, and could not be revived by consent. **HAMMOND v. SCHOFIELD**

**Div. Ct. [1891] 1 Q. B. 453**

See *McLeod v. Power*, Byrne J. [1898] 2 Ch. 295, 298.

**243. — Judgment—Default in pleading—Short cause.**

The plt. had given notice of motion for judgment in default of pleading, and set down the case for judgment. The deft. owing to absence did not receive the notice:—

*Held*, that the plt. was within his rights under

**PRACTICE (Setting Aside)—continued.**

the regulations as to short causes; but judgment set aside on terms of paying the costs of the motion and subsequent to the statement of claim. **GREEN v. MOORE** **North J. [1891] W. N. 68**

— Judgment in default of appearance—Jurisdiction of registrar.

See **PRACTICE—District Registry**. 22.

— Misdirection—Withdrawal of facts from jury. See **JAMAICA**. 3.

— Registered transfer—Dolus malus—Priority of unregistered transfer—Law of Natal. See **NATAL**. 2.

— Sale—Laches—Power of sale. See **MORTGAGE—Sale**. 83.

— Sale by liquidator of undertaking of company—Fiduciary relation—Interest on profits. See **VENDOR AND PURCHASER**. 55.

— Separation and annuity deed—Discredited fraudulent representations—Subsequent adultery of wife. See **HUSBAND AND WIFE**. 75.

— Settlement—Unnecessary or improper parties—Costs. See **SETTLEMENT**. 12.

— Voluntary gift. See **Cases under UNDUE INFLUENCE**.

— Voluntary gift—Mistake. See **CHARITY**. 35.

— Voluntary settlement—Rectification. See **Cases under SETTLEMENT—Voluntary Settlement**.

— Where no cause of action disclosed—Frivolous and vexatious proceedings. See **PRACTICE—Pleadings**. 164—169.

**Special Case.**

— Appeal by way of—Appeal to High Court. See **Cases under JUSTICES—Appeal**.

— Award—Right of appeal. See **ARBITRATION—Award**. 23, 24.

— Building society's arbitration. See **BUILDING SOCIETY—Arbitration**. 2.

— Order for statement pending arbitration. See **ARBITRATION—Award**. 34.

**244. — Proceedings extra cursum curiæ—Appeal—Jurisdiction—R. S. C., Order XXVII., r. 1.**

Where a special case is calculated and intended to raise for decision questions of fact only, the proceedings are extra cursum curiæ, the judgment of the Court is in the nature of an arbitrator's award, and an appeal cannot be entertained if its competency is objected to by the party holding the judgment. If in these circumstances the C. A. reverses the judgment below, this House has no jurisdiction except to reverse as incompetent the judgment of the C. A. **BURGESS v. MORTON** **H. L. (E.) [1896] A. C. 136**

Referred to. *Druce v. Young*, [1899] P. 84, 104.

— Statement of, during proceedings under reference—Misconduct. See **ARBITRATION—Award**. 33.

**PRACTICE—continued.****Staying Proceedings.**

— in Action—Frivolous and vexatious proceedings.

See **PRACTICE—Pleading**. 164—169.

— Action in rem—Admiralty practice.

See **Cases under SHIPPING—Practice**.

— under Arbitration clauses—Staying actions.

See **Cases under ARBITRATION—Staying Proceedings**.

— in Bankruptcy.

See **BANKRUPTCY—Stay of Proceedings**.

— Bishop's discretion.

See **ECCLESIASTICAL LAW**. 62.

— in Company—Winding-up.

See **COMPANY—WINDING-UP—Staying Proceedings**.

— Arrest—Action in rem—Guarantee.

See **SHIPPING—Practice**. 199.

— Contract for service—Arbitration clause—Wrongful dismissal—Action for damages.

See **MASTER AND SERVANT**. 95.

— Crown—Action involving rights of—Transfer of action to revenue side.

See **CROWN**. 8.

— of Execution—Special circumstances.

See **PRACTICE—New Trial**. 57.

**245. — Unpaid costs.**

Although mere non-payment of the costs of an interlocutory application which the plt. has been ordered to pay, and his inability to pay, furnish no sufficient ground for ordering proceedings in the action to be stayed until payment, the Court has jurisdiction to order such stay if the action is vexatious, or has been vexatiously conducted by him. **GRAHAM v. SUTTON, CARDEN & Co. (No. 2)** - **C. A. [1897] 2 Ch. 367**

**Stop Order.**

*Order XLVI. rr. 12, 13, relate to stop orders.*

**246. — Fund in court—Priority—Mortgagor—Settlement—Stop order obtained by mortgagees.**

In ascertaining the effect of a stop order the Court need not merely look at the language of the order, but may have recourse to what appears from any part thereof. Having regard to the practice of the Paymaster-General's office as to treating stop orders as not affecting income except where income is mentioned, care should be taken in drawing up such order to express whether capital or income or both are to be restrained. *M.*, a person entitled to the income only of a fund in court, assigned his interest to the trustees of his marriage settlement. The trustees did not obtain a stop order. *M.* subsequently mortgaged his interest without disclosing the settlement. The mortgagees obtained a stop order expressed as to *M.*'s share generally, with no mention of the income of the fund:—

*Held*, that, looking at the deed recited in the stop order, and the mortgages entered therein as read, the stop order must be construed as affecting the income, and giving the mortgagees priority over the trustees of the marriage settlement. **MACK v. POSTLE** - **Stirling J. [1894] 2 Ch. 449**

**247. — Fund in court—Priority—Equitable**

**PRACTICE (Stop Order)—continued.**

*interest in personality—Covenant to settle after-acquired property—Valuable consideration.*

The persons to whom notice of a stop order ought to be sent for priority purposes are those who have the control and custody of the fund.

A fund was in court in an administration action, and under the custody and control of the Court for the purposes of that action. A son of the testator was entitled to a contingent interest in the fund, and died, bequeathing his interest, then still contingent, to a sister, who assigned it to A. and then to B., who had no notice of the first assignment. B. got a stop order on the fund. A. gave notice of his assignment to the son's legal personal representatives:—

*Held*, that the stop order had the same effect as notice to the father's executors would have had if the fund had not been in court, and that the proper person to receive notice of the assignment was the son's legal personal representative, and that A. had priority by virtue of his notice. **STEPHENS v. GREEN. GREEN v. KNIGHT**

**C. A. [1895] 2 Ch. 148**

**Summons.**

See under Heading of Subject-matter of **SUMMONS**.

**Summons for Directions.**

— Foreclosure judgment in chambers.

See **MORTGAGE—Foreclosure**. 34.

— Notice of trial—Assizes—Jurisdiction

See **PRACTICE—Trial**. 261.

**248. — Short cause—No pleadings—Evidence—R. S. C., Order xxx.**

The writ in a debenture-holder's action, which was in the usual form, was issued on Nov. 20, 1899. On Nov. 23 a receiver was appointed. On Dec. 1 the usual application for directions under the *R. S. C., Order xxx.*, was heard, when the master ordered that the action should be set down for hearing without pleadings and as a short cause. Notice of trial was accordingly given, and the action was set down, and now came on for trial as a short cause:—

*Held*, that in cases of this kind the order made ought to contain a direction that evidence should be taken by affidavit; if the deft. consented, the action could then be tried on the earliest short cause day on affidavit evidence: if this was not done, a statement of claim should be directed. The evidence filed on the appointment of the receiver and additional evidence to be used was allowed, and the usual judgment in a debenture-holder's action was made. *In re GUTTA PERCHA CORPORATION, LD. THORNTON v. GUTTA PERCHA CORPORATION, LD.* **Byrne J. [1899]**

**W. N. 251**

**Third Party.**

*Order XVI. rr. 48-55, relate to third party procedure.*

— Account of—Inspection of bankers' books.

See **DISCOVERY—Documents**. 8—11.

— in Admiralty.

See **SHIPPING—Practice**. 208, 209, 270.

**PRACTICE (Third Party)—continued.**

249. — *Appeal—Co-defendant brought in as third party—Defendant claiming against co-defendant—Setting aside service of notice—R. S. C., Order XVI., rr. 52, 55.*

Where a co-deft. is brought in as third party, until an application is made under Order XVI., r. 52, for directions and an order thereon, there is no order which can be appealed against. *BAXTER v. FRANCE* (No. 1).

**C. A. [1895] 1 Q. B. 455**

— Bill outstanding in hands of—Action on consideration—Practice.

*See* BILL OF EXCHANGE. 3.

— Co-defendants—Builder—Severance of defence—Costs—Indemnity.

*See* LIGHT AND AIR.

250. — *Directions, Refusal to give—Discretion of judge—Indemnity—R. S. C., Order XVI., rr. 52, 55.*

The making of an order for directions under Order XVI., r. 52, is discretionary. In an action for recovery of land against F. and other purchasers from him, the latter served a third party notice on F. Besides a claim for indemnity, there was a claim for money expended in building on the land, and there was a doubtful question whether any claim to indemnity arose under the covenants implied under the Conveyancing Act, 1881:—

*Held*, that the judge had rightly exercised his discretion in refusing to make an order for directions. *BAXTER v. FRANCE* (No. 2).

**C. A. [1895] 1 Q. B. 591**

— Documents in solicitor's possession before action—Right to production.

*See* SOLICITOR.

— Fire insurance.

*See* INSURANCE—FIRE. 9.

— Goods taken in execution and claimed by.

*See* COUNTY COURT—EXECUTION. 38.

— Interpleader.

*See* Cases under INTERPLEADER.

— Intervening act of—Negligence.

*See* Cases under MASTER AND SERVANT.

— Letter directed against—Threat—Injunction.

*See* PATENT—THREATS. 56.

— Marshalling assets—Necessaries.

*See* SHIPPING—NECESSARIES. 178.

251. — *Representative of deceased co-executor.*

In an action for a general account against a surviving executor and trustee, the representative of a deceased executor, co-executor, or co-trustee can, if the deft. requires and the circumstances of the case render it advisable, be added under Order XVI., rr. 11, 48. *In re HARRISON. SMITH v. ALLEN* (No. 1).

**Chitty J. [1891] 2 Ch. 349, at p. 353**

— Third party notice—Indemnity clause—Bill of lading—Damage to cargo.

*See* SHIPPING—CHARTERPARTY. 27.

252. — *Third party notice—"Person not a party to the action"—Premature application—R. S. C., Order XVI., r. 48.*

An application for leave to issue a third party notice under Order XVI., r. 48, before delivery

**PRACTICE (Third Party)—continued.**

of defence, is premature. Where defts. sought indemnity from the estate of a deceased tenant for life, whose executors were M., one of the plts., N., one of the defts., and R., who was not a party to the action, and applied to issue such notice to M. and R.:—

*Held*, that the case was not within the rule, as M. was already a party to the action, and the application was to serve only two of the three executors. *In re GILSON. GILSON v. GILSON*

**North J. [1894] 2 Ch. 92**

253. — *Third party notice—Solicitors, Firm of—Surviving partners—Indemnity—Trustee—Breach of trust—R. S. C., Order XVI., r. 48.*

The deft. and A. were joint trustees of a settled fund, A. being a member of the firm of solicitors acting in the management of the trust. A. received the proceeds of sale of part of the trust funds as solicitor and misapplied them, and the moneys were lost. After the death of A. an action was commenced against the deft. as the surviving trustee claiming a declaration that he was liable to pay the plt. the sum so misapplied.

The deft. obtained an order under Order XVI., r. 48, for leave to serve a third party notice on the surviving partners of the firm of solicitors claiming to be indemnified against liability in the action:—

*Held*, on motion to discharge the order, that this was not a claim to indemnify the deft. against the plt.'s claim in the action within Order XVI., r. 48, the right of the deft. to recover from the surviving partners a sum equal to the lost trust fund being an independent right and not one depending on the liability of the deft. in the action. *WYNNE v. TEMPEST*

**Chitty J. [1897] 1 Ch. 110**

Misappropriation of trust funds—Solicitors. *See* WYNNE v. TEMPEST

**Romer J. [1897] W. N. 43 (14)**

**Transfer.**

*See* TRANSFER.

**Trial.**

*Order XXXVI. relates to Trial.*

*Order XLIV., rr. 1-7, relate to transfers from one division of the High Court to another.*

*TRANSFER.] Actions, Chambers, and Masters. W. N. 1900 (Dec. 22), pp. 336, 337. See Current Index, 1900, p. xciii.*

— Action—Prerogative of Crown.

*See* CROWN. 8, 9.

*Order XXXVI., rr. 2-9, relate to trial by jury.*

254. — *Jury—Application to enter final judgment—Leave to defend—Condition—Trial without jury—Right to trial with jury where no such condition—R. S. C., 1883, Order XIV., rr. 6, 8; Order XXX.; Order XXXVI., r. 6.*

On an application under Order XIV., r. 1, the master gave unconditional leave to defend, and directed that the case should go before an official referee. On appeal the judge varied the master's order by directing that the case should go into the short cause list. An application for an order for directions afterwards came before the judge,

**PRACTICE (Trial)—continued.**

and the defendant applied for an order for trial with a jury, which was refused:—

*Held*, that, upon the application under Order XIV., r. 1, it might have been made a condition of leave to defend that the cause should be tried without a jury, but that, as no condition to that effect had been attached to the order giving the deft. leave to defend, he had, at the time of the application for an order for directions, a right under Order XXXVI., r. 6, to an order for a trial with a jury, which the judge had no jurisdiction to refuse. **WOOLFE v. DE BRAAM** C. A. [1899] W. N. 239

**255. — Jury—Right to a—Action on claim which, prior to Judicature Act, 1873, might have been sued for either in Chancery or at Common Law—R. S. C., Order XXXVI., rr. 4, 6, 7.**

In an action in the Q. B. Div. which, before the Judicature Act, 1873, could have been brought either in Chancery or at common law:—

*Held*, (1) that an application by the defts. for trial by jury was rightly refused, since the action could without any consent of parties have been tried without a jury before the Judicature Act, and the cause ought to be tried by a judge without a jury, unless otherwise ordered, and (2) that the action being in the Q. B. Div. made no difference. **BARING BROTHERS & Co. v. NORTH WESTERN OF URUGUAY RY. Co.**

C. A. [1893] 2 Q. B. 406

— Jury—Trial at Gibraltar should be by.

*See* GIBRALTAR.

— Jury—Trial by—Jurisdiction of Court of Chancery of County Palatine of Lancaster.

*See* LANCASTER COURT. 1.

**256. — Jury—Trial by—Nuisance action—Action in Chancery Division—R. S. C., Order XXXVI., rr. 6, 7.**

In an action in the Ch. Div. for nuisance, North J., before whom the case had twice been on motion for an injunction, made, on the plt.'s application, an order directing the action to be transferred for trial before a judge and jury in the Q. B. Div.:—

*Held*, that the C. A. ought not to interfere with the discretion of the judge as to the mode of trial where there is no reason to expect a failure of justice from the mode of trial ordered. **MANGAN v. METROPOLITAN ELECTRIC SUPPLY CO.**

C. A. [1891] 2 Ch. 551

**257. — Jury—Trial by—Trespass action—Action in Chancery Division—R. S. C., Order XXXVI., rr. 6, 7.**

Action in Ch. Div. for an injunction to restrain trespass on mines and for an account of minerals wrongfully gotten:—

*Held*, that the plt. was not entitled as of right to a jury; but that as a view would be essential to justice, trial by special jury should be ordered. **JENKINS v. BUSHBY** C. A. [1891] 1 Ch. 484

Explained by C. A. **Mangan v. Metropolitan Electric Supply Co.**, [1891] 2 Ch. 551. *See preceding Case.*

— Jury—Trial by—Unconditional leave to defend.

*See* PRACTICE.

**PRACTICE (Trial)—continued.**

— Liverpool Court of Passage.

*See* Cases under LIVERPOOL COURTS.

— New trial.

*See* Cases under PRACTICE—New Trial.

**258. — Non-appearance at trial—Default of appearance of defendant—Affidavit of service of notice of trial—R. S. C. Order XXXVI., r. 31.**

In an action by a mortgagee against mortgagors for accounts and foreclosure, a statement of defence was delivered, on which the plt. joined issue. At the trial the defts. did not appear, and an order for accounts and for foreclosure nisi was made:—

*Held*, that an affidavit of service of notice of trial was unnecessary. **BAIRD v. EAST RIDING CLUB AND RACECOURSE CO.**

Romer J. [1891] W. N. 144

**259. — Non-appearance at trial—Default of appearance of plaintiff—Form of entry of judgment—R. S. C., Order XXXVI., r. 32.**

If when a trial is called on the deft. appears and the plt. does not, and there is no counter-claim, or a counter-claim is withdrawn, the deft. is not entitled under Order XXXVI., r. 32, to have judgment entered for him, but judgment should be entered dismissing the action for default of appearance by the plt.

*Semble*, that an appeal lies direct to the C. A. on entry of judgment in default of appearance without first applying under Order XXXVI., r. 33, to the judge who tried the case. **ARMOUR v. BATE** — — — C. A. [1891] 2 Q. B. 233

**260. — Non-appearance at trial—Default of appearance of defendant—Proof of claim.**

Where a deft. does not appear at the trial, the proof of the plt. as to value will be limited to that alleged in the statement of claim. **BARKER v. FURLONG** Romer J. [1891] 2 Ch. 172, at p. 179

**261. — Notice of trial—Assizes—Summons for directions—Jurisdiction—R. S. C., Order XXX., rr. 1, 2—Order XXXVI., rr. 14, 18, 18a.**

Upon a summons for directions under Order XXX., r. 1, in an action to be tried at assizes, a judge has jurisdiction, although the defendant has not done anything to render himself liable to have terms imposed upon him as to notice of trial, to order that the defendant shall take notice of trial at a period less than ten days before the commission day, and that the case shall not come on for trial at the assizes until a day which will make the notice so given a ten days' notice of trial.

**Laskier v. Tekeian**, (1892) 67 L. T. 121, distinguished. **BAXTER v. HOLDSWORTH**

C. A. [1899] 1 Q. B. 266

**262. — Notice of trial—"Close of pleadings"—Reply—R. S. C., Order XXIII., r. 1; Order XXVII., r. 13; Order XXXVI., r. 11.**

If a plt. does not deliver a reply he cannot give notice of trial under Order XXXVI., r. 11, until the time for reply, twenty-one days, given by Order XXVII., r. 13, has expired. **ROBINSON v. CALDWELL** — — — Div. Ct. [1893] 1 Q. B. 619

**263. — Preliminary question of law—Postponement of trial.**

*Semble*, where an order is made for trial of a preliminary question of law under Order xxv.,

**PRACTICE (Trial)—continued.**

r. 2, the trial of the remainder of the action will be postponed till the final decision on appeal of the preliminary question. **OWNERS OF CARGO ON SHIP "MAORI KING" v. HUGHES**

**C. A. [1895] 2 Q. B. 550, at p. 556**

— Rehearing.

See Cases under **PRACTICE—Rehearing.**

— Review.

See Cases under **PRACTICE—Review.**

**264. — Transfer of action—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), Action under—Decree for limitation of liability in the Admiralty Division—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 503—R. S. C., Order XLIX., r. 3.**

Where an action under the Fatal Accidents Act, 1846, was brought in the Q. B. Div. by a widow against shipowners for the loss of her husband through the negligent management of their ship by the defts. servants, and the defts. had obtained a decree in the Admiralty Div. for limitation of their liability in accordance with the Merchant Shipping Act, 1894, s. 503:—

**Held**, that the action in the Q. B. Div. ought not to be transferred to the Admiralty Div. **ROCHE v. LONDON AND SOUTH WESTERN RY. CO.**

**C. A. [1899] 2 Q. B. 502**

**265. — Transfer from Chancery Division to Queen's Bench Division—Originating summons—Bankruptcy of mortgagor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 102, sub-s. 4.**

A trustee in bankruptcy had been added as co-deft. in a foreclosure action commenced by originating summons. He applied that the action should be transferred to the Q. B. Div. to be tried by the judge in bankruptcy. The only question at issue was the validity of the mortgage, which was alleged to have been obtained by pressure and undue influence:—

**Held**, that as the trustee had no higher and better title than the bankrupt the Court would not interfere. *In re CHAMPAGNE. Ex parte KEMP* — **V. Williams J. [1893] W. N. 153**

**266. — Transfer from Queen's Bench Division to Chancery Division—Action.**

Form of order to transfer from Q. B. Div. to Ch. Div. two actions on promissory notes and consolidate them with an action in the Ch. Div. for cancellation of the same notes. **JONES v. MENTIONTHSHIRE PERMANENT BENEFIT BUILDING SOCIETY**

**C. A. [1892] 1 Ch. 173, at p. 179**

**267. — Transfer to Queen's Bench Division—Action in Chancery Division—R. S. C., 1883, Order XXXVI., rr. 1, 1a, 3; Order XLIX., r. 3—Practice in chambers—Appeal.**

Where either or both parties do not intend to accept the decision of the judge in chambers as final, the proper course to adopt is to ask at once to have the summons adjourned into court for argument, and thus save the time of the judge in chambers, and avoid the necessity for an argument in chambers and a second argument in court to discharge the order so made. **FORRESTER v. JONES** — **Byrne J. [1899] W. N. 78**

**268. — Transfer from Queen's Bench Division to Chancery Division—Scotch registered judgment.** Order for transfer to Ch. Div. proceedings on

**PRACTICE (Trial)—continued.**

a Scotch judgment registered in the Q. B. Div. under the Judgments Extension Act, 1868. *In re LOW. BLAND v. LOW* — **C. A. [1894] 1 Ch. 147, at p. 149**

Discussed by C. A. *In re A Bankruptcy Notice*, [1898] 1 Q. B. 383, 386.

**269. — Transfer—Chancery of Lancaster—Motion to make judgment a judgment of High Court—"Transcript"—Costs—Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), s. 15.**

On an ex parte motion to make a judgment of the Chancery of Lancaster a judgment of the High Court when the plt. against whom judgment had been given did not reside and had no goods in the County Palatine:—

**Held**, that s. 15 of 13 & 14 Vict. c. 43 must be strictly complied with, and that a "transcript" of the judgment must be produced, and not the original judgment. An order for transfer under s. 15 carries the costs of the motion. **DUKE v. CLARKE** — **North J. [1894] W. N. 100**

**270. — Venue—Local venues, abolition of—Jurisdiction as to title to land abroad—R. S. C., Order XXXVI., rr. 1.**

Order XXXVI., r. 1, abolishing local venues, does not confer any new jurisdiction on the Court, but merely deals with the place of trial of cases over which the Court has jurisdiction independently of the rule. **BRITISH SOUTH AFRICA CO. v. COMPANHIA DE MOÇAMBIQUE**

**H. L. (E.) [1893] A. C. 602**

Referred to by **Darling J. Adam v. Foreign and British Steamship Co.**, [1898] 2 Q. B. 430, 432.

**271. — Venue—Local venues, Abolition of—Special Acts—R. S. C., Order XXXVI., r. 1.**

Order XXXVI., r. 1, of the Rules of 1875, which were scheduled to the Judicature Act, 1875, absolutely abolished all local venues then existing. The fact that the corresponding rule of 1883 (Order XXXVI., r. 1) makes an exception in favour of statutory local venues, does not revive the local venues abolished in 1875, as the rule only applies to local venues created by statute since the Judicature Act, 1875:—

**Held**, therefore, that the local venue provided by s. 109 of the Hull Docks Act, 1744 (14 Geo. 3, c. lvi.), no longer existed. **BUCKLEY v. HULL DOCKS CO.** — **Div. Ct. [1893] 2 Q. B. 93**

See also Public Authorities Protection Act, 1893, (56 & 57 Vict. c. 61).

— Venue—Mode of trial—Prerogative of Crown — Selection of Court—Transfer.

See CROWN. S. 9.

**Undertakings.**

**272. — Breach of undertaking to do an act—Breach—Committal or attachment—Service of order containing the undertaking—Solicitor—R. S. C., 1883, Order XLII., r. 7; Order XLIV., rr. 1, 2.**

On a motion for liberty to issue a writ of attachment against solicitors for breach of an undertaking, given by them and embodied in an order of the Court, it appeared that the order had not been served upon them:—

**Held**, that service of the order was not neces-

**PRACTICE (Undertaking)—continued.**

sary; but that undertakings, whether positive or negative, must be enforced by committal and not by attachment. *D. v. A. & Co. Cozens-Hardy J.* [1900] W. N. 30; [1900] 1 Ch. 484

— Service—Undertaking to do an act—Committal or attachment.

See **PRACTICE—Service**. 233.

— Solicitor—Unstamped documents—Company—Practice.

See **REVENUE—Stamps**. 173.

— Solicitors' undertaking.

See **SOLICITOR—Undertaking**.

— Solicitors' undertaking—Arrest—damages.

See **SHIPPING—Salvage**. 247.

**273.** — *Writ—Undertaking by solicitor to enter appearance—Duration—R. S. C., 1883, Order VIII., r. 1; Order IX., r. 1.*

Motion for a writ of attachment against a firm of solicitors for failure, in pursuance of an undertaking, to enter an appearance for the deft. in an action of *Anderson v. Tarbutt*. The writ in that action was issued on Feb. 23, 1899, and by it the plt. claimed an account of profits made by the defts. in certain dealings relating to mining property in South Africa. The writ was indorsed by the defts'. solicitors as follows: "We accept service for the defts., and will enter appearance in due course." On Feb. 24 the defts. made an offer in settlement of the action; but the negotiations which ensued were not successful, and, owing to the absence in South Africa of parties concerned, by consent, the time for entering appearance was extended till April 30, 1899.

Nothing further was done in the action until October, 1899, when the plt. refused to accept the defts'. offer in settlement, and called upon the solicitors to enter an appearance pursuant to their undertaking. The solicitors took the view that owing to the lapse of time the action had expired, and their undertaking had ceased to be binding on them.

*Held*, that the undertaking was still binding on the respondents. Order VIII., r. 1, meant that the writ was in force for the purpose of service for twelve months, not that at the end of that period it lost its efficacy for all purposes. The undertaking was a contract binding for six years. The defts. had authorized the solicitors to give the undertaking on their behalf, and could not now withdraw their authority and thus render their agents liable to proceedings such as the present. The undertaking must be complied with. *In re KERLY, SON AND VERDEN*

**Farwell J. [1900] W. N. 274**

**Witness.**

See **CASES under EVIDENCE**.

**Writ.**

**274.** — *Description of parties—Address of defendant—R. S. C., Order II., r. 3.*

The deft. applied to set aside a writ of summons, which had been issued and served upon him in England, on the ground that by the writ the deft. was incorrectly described as of Lytham in the county of Lancaster, whereas his only

**PRACTICE (Writ)—continued.**

place of business and address was at Londonderry in Ireland:—

*Held*, refusing the application, that the incorrect statement of the deft.'s address did not vitiate the writ, and it was good. *SMITH v. HAMMOND* — [1896] 1 Q. B. 571

**275.** — *Description of parties—Class—Plaintiffs suing on behalf of a class.*

Plaintiffs suing on behalf of a class should specify the class as accurately as possible.

Where a debenture-holder sued on behalf of himself and all other debenture-holders in a co. which had been dissolved and re-incorporated by a special Act under the name of the deft. co., and the plt. was described as suing "on behalf of himself and other the holders of the debentures of the deft. co. and its predecessors in title"—

*Held*, by Kekewich J., that the description was too vague and required amendment. *MARSHALL v. SOUTH STAFFORDSHIRE TRAMWAYS CO.*

**C. A. [1895] 2 Ch. 36**

**276.** — *Description of parties—Female parties.*

A female party should be described in the writ of summons as a spinster, married woman, or widow. *TOFIELD v. ROBERTS*

**Romer J. [1894] W. N. 74**

**277.** — *Description of parties—Foreigner resident abroad trading under another name in England—Jurisdiction—R. S. C., Order XLVIII. A, rr. 3, 11.*

A foreigner resident abroad but carrying on business in England by a style or firm other than his own name cannot be sued under that style or firm under Order XLVIII. A, r. 11. *St. GOBAIN, CHAUNY AND CIRY CO. v. HOYERMANN'S AGENCY* — **C. A. [1893] 2 Q. B. 96**

— *Fieri facias—Collision—Action in rem—Arrest—Bail—Release—Judgment—Upaid balance of damages.*

See **SHIPPING—Collision**. 57.

— *Of fieri facias.*

See **COUNTY—WINDING-UP**. 94.

**COUNTY COURT—Jurisdiction**. 60.

**SHIPPING—Collision**. 57.

*Order III. relates to indorsements on writs of summons.*

**278.** — *Indorsement—"Altering, modifying, or extending"—Writ—Adding claim for return of premium—R. S. C., Order XX., r. 4.*

In a partnership action the plt. indorsed the writ for accounts only, but in the statement of claim alleged misrepresentation and claimed a return of the premium paid by him:—

*Held*, that this statement of claim was not an "alteration, modification, or extension" of the claim on the writ within Order XX., r. 4, and the statement of claim must be struck out. *CAVE v. CAREW* — **Kekewich J. [1893] W. N. 42**

**279.** — *Indorsement—Liquidated demand, Writ indorsed for—Reduction of amount by payment—Setting aside judgment for larger amount—R. S. C., Order XIII., r. 3.*

Where a writ is indorsed for a liquidated demand which, after issue, is reduced by payment, judgment on default of appearance under Order XIII., r. 3, ought to be entered only for the

**PRACTICE (Writ)—continued.**

amount actually due at the time of entry, and if he be entered for a larger amount, the debt has a right to have it set aside. *HUGHES v. JUSTIN*

**C. A. [1894] 1 Q. B. 667**

*Order III., r. 6, and Order XIV., relate to special indorsement of writs of summons and proceedings upon writs so indorsed.*

**280. — Indorsement—Special indorsement—Affidavit verifying cause of action—Cheque—Notice of dishonour.**

On an application under Order XIV., r. 1, to enter final judgment on a writ specially indorsed with a claim for the amount of a dishonoured cheque, the affidavit verifying the cause of action need not contain an allegation that notice of dishonour has been given to the drawer. *MAY v. CHIDLEY* - **Div. Ct. [1894] 1 Q. B. 451**

**281. — Indorsement—Special indorsement—Amendment—Omission in copy served on defendants—Marking of copy delivered to defendants.**

In an action for the recovery of land against tenants whose term had expired, the writ was specially indorsed with a statement of the date of the lease, the length of the term, and the mode of devolution of the lessee's interest on the debts.; but in the copy served on the debts. the length of the term was omitted:—

*Held*, that the copy gave the debts. sufficient information to satisfy Order III., r. 6 (f):

*Held*, further, that the directions of Order XXVIII., r. 9, as to marking an amended indorsement or pleading with the dates of the order for amendment and of the amendment, do not extend to the copy delivered to the opposite party. *HANMER v. CLIFTON*

**Div. Ct. [1894] 1 Q. B. 238**

—Amendment of pleadings.

*See Cases under PRACTICE—Amendment.*

**282. — Indorsement—Special indorsement—Amendment of indorsement after appearance and before summons taken out—R. S. C., Order III., r. 6; Order XIV., r. 1—Striking out claim for interest.**

Where after appearance but before summons for judgment the indorsement was amended by striking out a claim for interest:—

*Held*, that the writ had become "specially indorsed" under Order III., r. 6, and that Order XIV., r. 1, applied. *PAXTON v. BAIRD*

**Div. Ct. [1893] 1 Q. B. 139**

Referred to by Div. Ct. *Roberts v. Plant*, C. A. [1895] 1 Q. B. 597, 601.

**283. — Indorsement—Special indorsement—Amendment—Writ for service out of jurisdiction—Statement of claim indorsed on writ—R. S. C., Order XXVIII., rr. 1, 6.**

Order XXVIII. applies to writs issued for service out of the jurisdiction, and a statement of claim indorsed on such a writ may be amended without re-service.

Where leave for amendment is necessary, the plt. must shew that the amended claim would have entitled him in the first instance to leave to issue a writ for service out of the jurisdiction.

Decision of Div. Ct., [1894] 2 Q. B. 346, affirmed. *HOLLAND v. LESLIE*

**C. A. [1894] 2 Q. B. 450**

**PRACTICE (Writ)—continued.**

**284. — Indorsement—Special indorsement—Amendment after taking out summons—Application for judgment under Order XIV.—R. S. C., Order III., r. 6; Order XIV., r. 1 (a).**

In order to entitle a plt. to enter final judgment under Order XIV., r. 1, the writ of summons must be a good specially indorsed writ under Order III., r. 6, at the time when the summons under Order XIV. is taken out.

If, therefore, the indorsement be amended after the issue of a summons under Order XIV. by striking out an unliquidated demand, there is no jurisdiction to make an order giving the plt. leave to enter final judgment. *GURNEY v. SMALL*

**Div. Ct. [1891] 2 Q. B. 584**

*But see now Order XIV., r. 1 (b), R. S. C., Nov. 1893, r. 3 (1) (b).*

Referred to by Div. Ct. *See next Case.*

(B) Where the special indorsement of the writ in an action on a cheque did not allege that due notice of dishonour had been given, but the indorsement was amended without leave after taking out a summons for judgment and before the making of the order for judgment:—

*Held*, that the amendment was rightly made, and that there was power to make the order. *ROBERTS v. PLANT* - **C. A. [1895] 1 Q. B. 597**

**285. — Indorsement—Special indorsement—Averment of condition precedent—Leave to sign judgment—R. S. C., Order III., r. 6; Order XIV., r. 1.**

An agreement was made to pay money on condition that certain bills were delivered up:—

*Held*, that an indorsement for the sum agreed was a good special indorsement, under Order III., r. 6, although it contained no averment that the bills had been delivered up as agreed. *BRADLEY v. CHAMBERLYN* - **Div. Ct. [1893] 1 Q. B. 439**

**286. — Indorsement—Special indorsement—Ejectment—Defence—Order for plaintiff to sign judgment reversed.**

Where the plt. in ejectment claimed that the debt was estopped by payment of rent from denying his title, and the debt. alleged receipt of rent by plt. as collector, *held*, that debt. was entitled to defend on the merits in the ordinary course, and that the plt. was not entitled to judgment under Order XIV. *JONES v. STONE*

**P. C. [1894] B. C. 122**

*This case was decided on Order XIV. of R. S. C. of Western Australia which is identical with R. S. C., Order XIV.*

**287. — Indorsement—Special indorsement—Liquidated demand—Action for arrears of interest on mortgage—Receiver—R. S. C., 1883, Order III., r. 6; Order XIV.**

A receiver was appointed in a foreclosure action with authority to retain arrears of interest and current interest out of the rents. The rents were insufficient to pay the current interest. The receiver commenced an action for the interest and indorsed his writ with a definite sum, being two years' arrears of interest less the amount of rents received:—

*Held*, that this was not a liquidated sum



**PRACTICE (Writ)—continued.**

for which a writ could be specially indorsed, since the receiver was in receipt of the rents. **EARL POULETT v. VISCOUNT HILL**

C. A. [1893] 1 Ch. 277

Explained by C. A. *Lynde v. Waithman*, [1855] 2 Q. B. 180. See No. 289, below.

**288. — Indorsement—Special indorsement — Liquidated demand—Action for balance of purchase-money—Payment of deposit—Non-completion — R. S. C., Order III., r. 6.**

An agreement for sale of leaseholds was not completed by the purchaser. The vendor sued for the balance of purchase-money on the grounds that he had shewn, or was ready to shew, a good title, and was willing to convey:—

*Held*, that, as there was no averment that the purchaser had accepted the title, the writ could not be specially indorsed under Order III., r. 6, the claim being one for unliquidated damages only. **LEADER v. TOD-HEATLY**

Stirling J. [1891] W. N. 38

**289. — Indorsement—Special indorsement — Liquidated demand—Action for mortgage debt and interest—Receiver—R. S. C., Order XIV.**

Where a mortgagee appointed a receiver, who received rents, and afterwards the mortgagee brought an action specially indorsing the writ with a claim for the mortgage debt and interest, and applied for judgment under Order XIV.:—

*Held*, that the mere fact of a receiver having been appointed did not prevent the application of Order XIV., but, as there appeared to be a question as to what on the true state of the account as between the mortgagor and mortgagee was due to the latter, leave to defend must be granted. **LYNDE v. WATHMAN**

C. A. [1895] 2 Q. B. 180

**290. — Indorsement—Special indorsement — Liquidated demand—Bill of exchange—Expenses of noting—"Bank charges."**

In an action on a bill of exchange the writ was indorsed for the amount of the bill, and a further sum described as "bank charges." The deft. failed to appear, and judgment was entered under Order XIII., r. 3:—

*Held*, that this was a liquidated demand within Order XIII., r. 3; expenses of noting, here sufficiently described as "bank charges," being liquidated damages by s. 57 of the Bills of Exchange Act, 1882. **DANDO v. BODEN**

Div. Ct. [1893] 1 Q. B. 318

**291. — Indorsement—Special indorsement — Liquidated demand—Bill of exchange—Expense of noting—R. S. C., Order III., r. 6; Order XIV., r. 1—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 57.**

In an action on a dishonoured bill of exchange the writ may be specially indorsed under Order III., r. 6, with the expenses of noting which are liquidated damages under s. 57 of the Bills of Exchange Act, 1882, and judgment can be entered under Order XIV. on a writ so indorsed. **LAWRENCE & SONS v. WILCOCKS**

C. A. [1892] 1 Q. B. 696

**292. — Indorsement—Special indorsement — Liquidated demand — Common money bond — Penalty—8 & 9 Will. 3, c. 11, s. 8—4 & 5 Anne,**

**PRACTICE (Writ)—continued.**

c. 16, ss. 12, 13—R. S. C., Order III., r. 6; Order XIII., r. 14; Order XIV., rr. 1, 4, 6.

A writ in an action upon a common money bond within 4 & 5 Anne, c. 16, s. 12, can be specially indorsed under Order III., r. 6, and the plt. can proceed under Order XIV. for the purpose of obtaining final judgment. **GERRARD v. CLOWES**

Div. Ct. [1892] 2 Q. B. 11

**293. — Indorsement—Special indorsement — Liquidated demand—Interest from date of writ till payment or judgment, Claim for.**

A plt., in addition to his claim, indorsed his writ with a claim for interest from the date of the writ until payment or judgment, and a sum for costs:—

*Held*, that this was not a special indorsement under Order III., r. 6, for which judgment could be entered under Order XIV., r. 1. **WILKS v. WOOD**

C. A. [1892] 1 Q. B. 684

But see now Order XIV., r. 1 (b), R. S. C., Nov. 1893, r. 3 (1) (b).

**294. — Indorsement—Special indorsement — Liquidated demand—Interest—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 57.**

In an action on a dishonoured bill of exchange or promissory note, the writ may, under s. 57 of the Bills of Exchange Act, 1882, be specially indorsed under Order III., r. 6, with a claim for interest until payment or judgment, interest under that section being deemed to be liquidated damages; and judgment under Order XIV. may be signed on a writ so indorsed.

(A) **LONDON AND UNIVERSAL BANK v. EARL OF CLANCARTY** — Div. Ct. [1892] 1 Q. B. 689

(B) **LAWRENCE & SONS v. WILCOCKS**

C. A. [1892] 1 Q. B. 696

**295. — Indorsement—Special indorsement — Liquidated demand — Interest, Claim for — Affidavit.**

Where the writ does not shew that the interest claimed was payable under an agreement or that it is fixed by statute, the defect cannot be cured by an affidavit proving an agreement to pay interest. **GOLD ORES REDUCTION CO. v. PARR**

Div. Ct. [1892] 2 Q. B. 14

**296. — Indorsement—Special indorsement — Liquidated demand—Interest, Claim for.**

Where a writ was indorsed, under Order III., r. 6, for a sum of money and for interest thereon from the date of the writ till payment or judgment, and it did not appear that the interest was claimed by statute or under any contract between the parties:—

*Held*, that the claim for interest must be treated as part of what purported to be the special indorsement, and that the writ was not "specially indorsed" so as to enable the plt. to obtain final judgment under Order XIV., r. 1.

**RILEY v. MASTER, SHEBA GOLD MINING CO. v. TRUSSHAWE** — Div. Ct. [1892] 1 Q. B. 674

But see now O. XIV., r. (1) (b). R. S. C. Nov. 1893, r. 3 (1) (b).

**297. — Indorsement—Special indorsement — Recovery of land—Action for—Forfeiture—Notice to quit—R. S. C., Order III., r. 6.**

A landlord, in pursuance of a condition in a

**PRACTICE (Writ)—continued.**

lease, gave his tenant notice to quit for non-payment of rent, and brought an action to recover the premises:—

*Held*, that the action being in fact based on a forfeiture, did not come within Order III., r. 6 (f), and that the writ could not be specially indorsed.

ARDEN v. BOYCE C. A. [1894] 1 Q. B. 796

Distinguished by C. A. *Kemp v. Lester* [1896] 2 Q. B. 162, 164.

**298. — Indorsement—Special indorsement on writ—Recovery of land and mesne profits—Time to which mesne profits can be given—R. S. C., Order III., r. 6; Order XIV., r. 1—Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 214.**

The plts. issued a writ indorsed with a claim for possession of hereditaments at S., of which particulars were given, with a statement that the deft. had been tenant to the plts., and that his tenancy had expired by notice on a given day, and the plts. claimed "possession and 80*l.* for mesne profits." They then applied under Order XIV., r. 1, for liberty to sign final judgment for possession and the 80*l.* claimed for mesne profits. By affidavit in support of the application, the 80*l.* was claimed as double rent for six months on account of the deft. having refused to deliver up possession. On the hearing of the application Kennedy J. gave liberty to the plts. to sign final judgment for possession, "and for mesne profits to be calculated up to the date of the plts. obtaining possession":—

*Held*, on appeal, that this order was right, for that, whether double rent could be recovered or not, the writ was not vitiated by the plts. claiming it by affidavit, and that the judge was not confined to giving mesne profits up to the time of the order, and was not bound to put the plts. to a second action to recover mesne profits between the time of judgment and the time of recovering possession. SOUTHPORT TRAMWAYS CO. v. GANDY C. A. [1897] 2 Q. B. 66

— Mandamus.

See Cases under MANDAMUS.

— Of error—Dispensing with attendance of plaintiff.

See CRIMINAL LAW—Practice. 65.

**299. — Partnership—Foreign partnership—“Carrying on business within the jurisdiction—R. S. C., Order XLVIII. A, rr. 1, 3, 8.**

Under Order XLVIII. A, r. 1, a writ may be issued against any partnership firm carrying on business within the jurisdiction, whether English or foreign. WORCESTER CITY AND COUNTY BANKING CO. v. FIRBANK, PAULING & CO.

C. A. [1894] 1 Q. B. 784

Order XLVIII. A relates to suing persons who trade in a name or style other than their own name.

— Prerogative writ—Building plans.

See STREETS—Building Plans. 9.

— Prohibition.

See Cases under PROHIBITION.

Order VIII., r. 1, relates to renewal of writs of summons.

**300. — Renewal of writ—Extension of time —**

**PRACTICE (Writ)—continued.**

*Statute of Limitations—R. S. C. Order VIII., r. 1; Order LXIV., r. 7.*

The rule of practice is not to extend the time under Order LXIV., r. 7, for renewing a writ of summons after the expiration of the twelve months from the date of writ, where the plt's. claim would in the absence of such renewal be barred by the Statute of Limitations.

*Per Kay L.J. Semble*, that there might be a discretion under exceptional circumstances. HEWETT v. BARR — C. A. [1891] 1 Q. B. 98

— Service of writ.

See Cases under PRACTICE—Service.

— Sheriff—Elegit—Duty to file writ and inquisition.

See SHERIFF. 16.

**PRAYERS FOR THE DEAD.**

See ECCLESIASTICAL LAW—Faculty. 33.

**PREACHING—Black gown in pulpit—Legality.**

See ECCLESIASTICAL LAW. 49.

— On beach between high and low water-mark—Injunction.

See SEASHORE.

**PRECATORY TRUST—Will.**

See WILL—Precatory Trusts.

**PRE-EMPTION—“Actual settler for agricultural purposes.”**

See CANADA. 25.

— Superfluous lands.

See LANDS CLAUSES ACTS. 22.

**PREFERENCE—Specialty and simple contract debts.**

See EXECUTOR—Administration. 25.

— Undue preference as to tolls.

See RAILWAY—Railway and Canal Traffic. 53—54A.

— Undue preference of creditors.

See BANKRUPTCY—Discharge. 90.

Cases under BANKRUPTCY—Preference.

**PREFERENCE SHARES.**

See Cases under COMPANY—Shares.

— In railway.

See RAILWAY—Scheme of Arrangement.

**PREFERENTIAL PAYMENTS—Bankruptcy.**

See Cases under BANKRUPTCY—Preference.

— Company winding-up.

See Cases under COMPANY—WINDING-UP—Preference.

— Rates—Priority—Insolvent estate.

See EXECUTOR. 37.

— Receiver and manager—Working expenses—Proper outgoings—Compensation.

See RAILWAY—Receiver. 55.

**PREGNANCY—Concealment by wife from intended husband—Nullity of marriage.**

See DIVORCE—Nullity. 97.

**PRELIMINARY QUESTION—Trial of.**

See PRACTICE—Trial. 263.

**PREMATURE APPLICATION—Third party.**

See PRACTICE—Third Party. 252.

**PREMIUM**—Apprenticeship.*See* INFANT—Necessaries. 34.

## — Assurance companies.

*See* Cases under INSURANCE.

## — Execution of power of appointment over real estate—Premiums on leases.

*See* POWERS—Construction. 5.

## — Guarantee society—Surety—Allowances.

*See* PARTNERSHIP—Receiver. 42.— Life policy—Voluntary settlement by settlor—Bankruptcy of settlor—Policy moneys.  
*See* BANKRUPTCY—Voluntary Settlement. 269.

## — Principal sum repayable with—Debenture.

*See* REVENUE—Stamps. 118.

## — Return of premium.

*See* PARTNERSHIP. 4, 13.**PREROGATIVE**—Liability of servants of the Crown—Agent of Executive Government.*See* TRESPASS. 2.**PREROGATIVE OF CROWN.***See* Cases under CROWN.**PREROGATIVE WRIT**—Mandamus—Refusal to approve building plans.*See* STREETS—Building Plans. 9.**PRESCRIPTION**—Canada, Laws of.*See* CANADA. 58, 59.

## — Fishing in non-tidal water.

*See* FISHERY. 4.

## — Light and air.

*See* Cases under LIGHT AND AIR.

## — Opening locks on river—Lost grant.

*See* EASEMENT. 4.

## — Pew in chancel—Right to.

*See* ECCLESIASTICAL LAW—Pews. 55, 56.

## 1. — Possession—Defect in title.

On a claim to hold land by prescription and immemorial possession :—

*Held*, that where the true root of title is disclosed, the law of prescription does not apply.  
*LABRADOR CO. v. REG. P. C. [1893] A. C. 104*

## — Sewers—Nuisance—Injunction—Prescriptive right in third parties.

*See* SEWERS AND DRAINS. 25.

## — Sewers—Prescriptive right of drainage—Trade effluents—Polluting liquid.

*See* SEWERS AND DRAINS. 27.

## — Soil of highway.

*See* LIMITATIONS, STATUTE OF. 20.

## — Tolls—Prescriptive right—Extinguishment of old franchise by statute.

*See* TOLLS. 1.

## — Way, Right of—"Claiming right thereto"—Evidence—Easement.

*See* WAY, RIGHT OF. 3.**PRESENTATION**—Bequest of trust funds to be applied for or towards purchase of advowsons or—Failure of gift.*See* CHARITY. 16.

## — To living by Roman Catholic.

*See* ECCLESIASTICAL LAW—Advowson. 2.**PRESENTATION OFFICE FEES.***See* FEES—Presentation Office.**PRESUMPTION**—Boundaries of land—Hedge and ditch.*See* BOUNDARY. 1.

## — Death—Affidavit—Practice.

*See* EVIDENCE. 40.

## — Deed more than thirty years old—Evidence.

*See* POWERS—Exercise. 13.

## — Intention to keep alive charge—Payment by tenant for life.

*See* SETTLED LAND. 49, 88.

## — Intention to keep alive security.

*See* MORTGAGE—Redemption. 60.

## — Legal origin—Immemorial user to fix moorings.

*See* THAMES. 9.

## — Lost will.

*See* WILL—Lost Will. 138.

## — Of law rebutted by intention.

*See* WILL. 31.

## — Ownership of soil of highway.

*See* LIMITATIONS, STATUTE OF. 20.

## — Probate.

*See* PROBATE—Presumption of Death. 134—140.

## — Soil of highway—Street in town—Conveyance of land adjoining street.

*See* VENDOR AND PURCHASER. 43.

## — Survivorship between husband and wife.

*See* PROBATE—Presumption of Death. 139.

## — That bed of river ad medium filum passes—Conveyance—Construction.

*See* WATER. 41, 45.**PREVENTION OF ACCIDENTS.***See* RAILWAY—Accidents.**PREVENTION OF CRUELTY TO ANIMALS.***See* ANIMAL.**PREVENTION OF CRUELTY TO CHILDREN—**

Conscientious objection to medical aid—Neglect to procure medical aid—Man-slaughter.

*See* CRIMINAL LAW. 9.

## — Examination of defendant—Previous conviction.

*See* CRIMINAL LAW—Evidence. 18.

## — Proof of age of child.

*See* CRIMINAL LAW. 10.**PRIMOGENITURA**—Law of Malta.*See* MALTA.**PRINCIPAL AND AGENT**—Agreement by vendor to pay commission to purchaser's agent—Non-disclosure—Right of purchaser to recover from vendor.*See* VENDOR AND PURCHASER—Commission. 3.

## — Assessment of income tax on agent.

*See* REVENUE—Income Tax.

## 1. — Auctioneer—Implied agency of—Sale by auction of real estate—Memorandum of contract—Signature by auctioneer's clerk on behalf of purchaser—Revocation—Statute of Frauds.

The authority of an auctioneer, upon a sale

**PRINCIPAL AND AGENT—continued.**

by auction of real estate, to sign a memorandum of the contract as agent for the purchaser does not extend to the auctioneer's clerk. Such a memorandum, in order to bind the purchaser, must be signed by the auctioneer himself and at the time of the sale, unless the purchaser has, by word, sign, or otherwise, authorized the clerk to sign as his agent.

Where the auctioneer had signed a memorandum as agent for the purchaser a week after the sale, and the purchaser had repudiated the purchase at the time:—

*Held*, that the auctioneer's authority had ceased, and that there was no memorandum in writing sufficient to satisfy the requirements of the Statute of Frauds. **BELL v. BALLS**

**Stirling J. [1897] 1 Ch. 663**

— Authority — Contract — Variation — Ratification.

See **CONTRACT**. S.

**2. — Authority of agent—Borrowing—Pledging title-deeds—Excess of authority.**

Where a principal entrusts an agent with securities and instructs him to raise a certain sum upon them, and the agent borrows a larger sum upon the securities and fraudulently appropriates the difference (the lender acting *bonâ fide* and in ignorance of the limitation) the principal cannot redeem the securities without paying the lender all he has lent, although the agent has obtained the loan by fraud and forgery, and although the lender did not know that the agent had authority to borrow at all and made no inquiry.

Decision of **C. A.**, [1893] 3 Ch. 130, affirmed. **BROCKLESBY v. TEMPERANCE PERMANENT BUILDING SOCIETY** — **H. L. (E.) [1895] A. C. 173**

Applicable. **Lloyd's Bank, Ltd. v. Bullock**, [1896] 2 Ch. 192.

**3. — Authority of agent—Borrowing—Signing bills "per pro."**

An agent who is authorized by his power of attorney to buy and sell goods, charter vessels, and employ servants, and do things necessary "for all or any of the purposes aforesaid," cannot borrow money on behalf of his principal, or bind him by a contract of loan, such acts not being necessary for the declared purposes of his power. The taker of a bill has satisfied himself by proper inquiry that an agent has authority to accept or indorse bills of exchange "per pro." The abuse of the authority does not affect the taker of the bill if he is a *bonâ fide* holder for value. **BRYANT, POWIS and BRYANT, Ltd. v. BANQUE DU PEUPLE. THE SAME v. QUEBEC BANK**

**P. C. [1893] A. C. 170**

**4. — Authority of agent — Consideration moving from the principal—Special damage—Appeal from New Zealand.**

The plt.'s agent obtained from the debt. bank a promise to pay certain cheques drawn by the plt. in consideration of his depositing with it a store warrant in lieu of the cash which the plt. had instructed him to pay to the credit of the plt.'s account. The store warrant belonged to the plt., was under pledge to the agent, and was accepted

**PRINCIPAL AND AGENT—continued.**

by the bank with full knowledge of the circumstances:—

*Held*, in an action for dishonouring the cheques, that the agent in substituting the deposit for cash did not exceed his authority, but that even if he had, the contract was complete, for there was consideration for the bank's promise. The deposit conferred on the bank some right, interest, profit, or benefit within the legal meaning of consideration; and in the circumstances it could not be heard to say that that consideration did not move from the plt.:

*Held*, further, that evidence of special damage—that is, of plt.'s loss of custom and credit from particular individuals—was wrongly admitted; special damage not having been alleged. **FLEMING v. BANK OF NEW ZEALAND**

**P. C. [1900] A. C. 577**

**5. — Authority—Stockbroker—Holding out person as having authority—Evidence for jury—Course of business.**

The defts., a firm of stockbrokers, had in their employ a clerk, to whom they allowed commission upon orders introduced by him to them and accepted by them, but who was not authorized himself to accept orders on their behalf. On three occasions the plt. gave orders to the clerk for the purchase of shares by the defts. on the plt.'s behalf, which orders were transmitted by the clerk to the defts., who executed them and sent to the plt. bought notes in respect of the shares so purchased. No intimation was given by the defts. to the plt. that they accepted the orders prior to their execution by the defts. In payment of the price of the first two lots of shares purchased the plt. drew a cheque payable to defts., order which he gave to the clerk, who delivered it to the defts. The third lot of shares was paid for by the plt. in a similar manner, with the exception that the cheque was drawn to the order of the clerk. The defts. received the cheques and credited the plt. with the amount of them. Orders for the purchase of other shares by the defts. were subsequently given by the plt. to the clerk, who did not transmit them to the defts., but made out and handed to the plt. bought notes purporting to shew purchases of shares in pursuance of the orders, and to be signed by the defts., which were forgeries. The plt. gave him cheques for the supposed prices of the shares, which he misapplied to his own use:—

*Held* (Collins L.J. dissenting), that upon the above-mentioned facts there was no evidence for a jury of a holding out by the defts. to the plt. of the clerk as authorized to enter into contracts on their behalf, and, therefore, the defts. were not liable in respect of the orders subsequent to the first three. **SPOONER v. BROWNING**

**C. A. [1898] 1 Q. B. 528**

— Authority to apply for shares—Underwriting letter.

See **COMPANY**. 308.

— Bill of exchange.

See **BILL OF EXCHANGE**. 13, 16.

**6. — Bribe accepted by agent—Avoidance of contract—Agreement by agent with third party to**

**PRINCIPAL AND AGENT—continued.**

*detriment of principal—Surreptitious dealing with other principal.*

The debt. agreed to purchase a pair of horses from the plt., provided they were passed as sound by a veterinary surgeon who was employed by the debt. to examine them. The horses were certified as sound by the veterinary surgeon, and the debt. sent a cheque for the price. The horses were delivered and found to be unsound, and thereupon they were returned and the cheque stopped. In the course of the trial of an action on the cheque it was elicited that the veterinary surgeon had accepted a bribe from the plt. :—

*Held*, that it was immaterial to inquire what effect the bribe had on the mind of the debt.'s agent, that the offer and acceptance invalidated the certificate, and that the pltff. could not recover under the contract which depended on the validity of the certificate. *SHIPWAY v. BROADWOOD* - - - **C. A. [1899] 1 Q. B. 369**

**7. — Bribing agent—Agreement with agent—Release—Remedies of principal against agent and third person.**

The right of a principal to proceed against a person who has bribed his agent to defraud him, is not affected by an agreement with the agent, by which the agent may benefit, provided he aid the principal to recover from the briber. The rights of action against the agent and the briber are distinct, and only a clear release of the agent will relieve the other tortfeasor. *SALFORD CORPORATION v. LEYER* **C. A. [1891] 1 Q. B. 168**

Referred to by C. A. *Grant v. Gold Exploration and Development Syndicate*, [1900] 1 Q. B. 233, 244.

— Broker, default of—Liability of client to jobber—Privy of contract.  
*See STOCK EXCHANGE*, 11.

— Broker lumping several orders in one contract—Liability of principal to jobber on default of broker.  
*See STOCK EXCHANGE*, 10.

**8. — Cheque—Payment by, instead of cash—Authority—Payment to agent—Auctioneer.**

The plt. granted a lease to C. with proviso that C. should not assign without written consent of the plt. C. contracted to assign to A. The plt. signed a licence to assign and handed it to the debt., a house agent, with instructions not to part with it till a quarter's rent which was in arrears was paid. C. drew a cheque to debt.'s order for the quarter's rent and debt.'s charges and then received from debt. the licence. C.'s cheque was dishonoured :—

*Held*, that the agent had no authority to accept a cheque in lieu of cash, that he had exceeded his authority in parting with the licence without receiving the arrears in cash, and that he was responsible to his principal for the quarter's rent. *PAPE v. WESTACOTT*

**C. A. [1894] 1 Q. B. 272**

**9. — Cheque signed by procuration—Unauthorized borrowing—Money applied for benefit of principal—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 25.**

A., the debts.' manager, had power to draw on debts.' account for the purposes of the business,

**PRINCIPAL AND AGENT—continued.**

but not to overdraw or to borrow money on debts.' account. He borrowed money from B., stating he wanted it to pay the wages of debts.' men, and gave B. a cheque signed by him by procuration for debts. A. had overdrawn the debts.' account, and wanted the money to replace what he had abstracted. He paid B.'s money into debts.' account and used it to pay debts.' men :—

*Held*, (1) that as by s. 25 of the Bills of Exchange Act, 1882, B. had notice of A.'s limited authority, and as debts. could only be bound if A. acted within his authority, an action on the cheque must fail; (2) that as the money had found its way into debts.' hands and had been used for debts.' benefit, it was money received for the use of debts., and although debts. did not know A. had borrowed it, B. was entitled to recover. *REID v. RIGBY & CO.*

**Div. Ct. [1894] 2 Q. B. 40**

— Common partner—Close copies—Term fees.  
*See SOLICITOR*, 17.

— Contractor—Liability—Workmen's Compensation Act.  
*See Cases under MASTER AND SERVANT.*

**10. — Contractor—Liability of principal for negligence of public body—Breach of duty—Damage—Remoteness—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.**

A district council, being about to construct a sewer under their statutory powers, employed a contractor to construct it for them. In consequence of his negligence in carrying out the work a gas-main became broken, and the gas escaped from it into the house in which the plts. (a husband and wife) resided, and an explosion took place, by which the wife was injured, and the husband's furniture was damaged. In an action by the plts. against the district council and the contractor :—

*Held*, that the district council owed a duty to the public (including the plts.) so to construct the sewer as not to injure the gas-main; that they had been guilty of a breach of this duty; that, notwithstanding that they had delegated the performance of the duty to the contractor, they were responsible to the plts. for the breach; and that the damages were not too remote to be recovered. Decision of Wright J. reversed. *HARDAKER v. IDLE DISTRICT COUNCIL*

**C. A. [1896] 1 Q. B. 335**

Referred to by C. A. *Penny v. Wimbledon Urban Council*, [1899] 2 Q. B. 72, 77; *The Snark*, [1900] P. 105, 110.

— Copyright—Infringement—Penalties—Indecency of work.  
*See COPYRIGHT*, 16.

— Crown, speciality, and simple contract debts—Insolvent estate.  
*See EXECUTOR—Insolvent Estate*, 38.

**11. — Crown—Contract made by servant of—Liability of agent—Warranty of authority.**

The doctrine that an agent who makes a contract on behalf of his principal is liable to the other contracting party for a breach of an implied warranty of his authority to enter into the con-

**PRINCIPAL AND AGENT—continued.**

tract, is not applicable to a contract made by a public servant acting on behalf of the Crown.

Judgment of Charles J., [1897] 1 Q. B. 401, affirmed. **DUNN v. MACDONALD**

[C. A. [1897] 1 Q. B. 555

— Deposit — Action to recover deposit from agent — Payment of deposit to solicitor as agent.

See No. 17, below.

— Discovery — Action brought in name of agent. See **DISCOVERY—Interrogatories.** 5.

— Duty of agent to sue—Indemnity.

See **INSURANCE, MARINE.** 60.

— Foreign corporation—Service of writ.

See **PRACTICE—Service.** 183-191.

— Foreign principal—Income tax—Exercising trade in United Kingdom.

See **REVENUE—Income Tax.** 97.

— Fraud Fund in Court.

See Nos. 13, 14, below.

12. — *Frauds, Statute of*—Purchase of property — Parol agency.

Where an agent, appointed by parol to purchase, purchased in his own name, with his own money, and took a conveyance to himself and denied the agency:—

Held, that s. 7 of the Statute of Frauds was a good defence. **JAMES v. SMITH**

**Kekewich J. [1891] 1 Ch. 384**

The C. A., without dealing with the application of the Statute of Frauds, held that the plt. had not established the fact of agency.

**C. A. [1891] W. N. 175**

Referred to by C. A. **Rochevoucauld v. Boustead**, [1897] 1 Ch. 196, 206.

Frauds, Statute of—Vendor's name Reference to formal contract.

See **FRAUDS, STATUTE OF.** 2.

13. — *Fund in Court—Payment out to wrong person—Fraud—Solicitor—Use of name by uncertificated solicitor—Ratification—Solicitor partner—Liability—Commissioners of Treasury—Replacement of lost fund—Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 5—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 10—Form of order.*

Where negligence or other breach of duty is committed by a solicitor in a matter of which the Court has seized, the Court can summarily order the solicitor, as its officer, to make good the loss actually occasioned thereby, but cannot mulct him in damages for his misconduct.

To constitute a binding adoption or ratification of acts done without previous authority, (1.) the acts must have been done for, and in the name of, the supposed principal; and (2.) full knowledge of them, and unequivocal adoption after knowledge, must be proved; or else, the circumstances must warrant the clear inference that the principal was adopting the acts of his supposed agent whatever their nature or culpability.

Without the knowledge or authority of X., a solicitor, A. B., another solicitor, used X.'s name in proceedings, wherein by acts of fraud and

**PRINCIPAL AND AGENT—continued.**

forgery, A. B. obtained an order for the payment out of a fund in court, and was thereby enabled to get the fund paid out by a cheque from the Paymaster-General, with which he opened a fictitious account at a bank. Two days later, and after the account had been partially drawn upon, X. was told by A. B. that his name had been made use of for a formal party. X. reprimanded A. B. for this, but, without inquiring into the nature of the business, accompanied A. B. to the Paymaster-General's Office, and received a cheque for 15*l.* for costs; over 10*l.* of this he paid to A. B. for out of pocket expenses, and the balance of 4*l.* 5*s.* 6*d.* he handed to his partner Y., who entered it to the credit of the firm in their books without knowing anything of the circumstances under which the money had been paid.

A large portion of the fund formerly in court having been lost:—

Held, (1) that, even if X. had previously authorized the use of his name for a formal party, he would not have been responsible for the acts of fraud and forgery committed by his supposed agent for that agent's own fraudulent purposes; (2) that, under the circumstances, X. had not condoned or ratified the use of his name by A. B., and was not liable for the whole of the loss sustained, but only for the amount of the 15*l.* cheque which he took; and (3.) that Y. was liable only for the 4*l.* 5*s.* 6*d.* received by him for the partnership.

Form of order for making good a loss occasioned to the Consolidated Fund under the Court of Chancery (Funds) Act, 1872, s. 5, through payment of a fund out of court to the wrong person.

The order of Kekewich J. varied. **MARSH v. JOSEPH**

**C. A. [1897] 1 Ch. 213**

14. — *Fund in Court—Payment out to wrong person—Fraud—Solicitor—Replacement of lost fund.*

**SLATER v. SLATER Kay J. [1897] 1 Ch. 222, n.**

— House agent—Action for commission—Claims by different parties—Interpleader.

See **COUNTY COURT.** 52.

— Instructions to sell—Real estate—Authority to sign contract—Specific performance.

See **VENDOR AND PURCHASER.** 57.

— Knowledge of agent how far knowledge of principal.

See **DISCOVERY—Interrogatories.** 47.

15. — *Knowledge of agent imputed to principal—Misstatement in proposal.*

An illiterate person, blind of one eye, signed, at the request of an agent of an insurance company, an application for a policy on a form which stated he had no physical infirmity. The policy agreed to pay 250*l.* for, inter alia, the loss of one eye and 500*l.* for total blindness. The insured lost his remaining eye by an accident;—

Held, (1) that the knowledge of the agent that the insured had lost one eye affected the company; (2) that the policy was good, and the insured could recover as for total blindness.

**BAWDEN v. LONDON, EDINBURGH AND GLASGOW INSURANCE CO.** — **C. A. [1892] 2 Q. B. 534**

**PRINCIPAL AND AGENT—continued.**

- Limitations, Statute of—Fiduciary relation—  
Liability of estate of deceased partner.  
See **PARTNERSHIP—Liabilities.** 32.
- Mercantile agent.  
See **FACTOR—Hire Agreement.** 2.
- Misappropriation by agent—Acceptances.  
See **CRIMINAL LAW.** 36.
- Misappropriation by agent—Money intrusted  
for safe custody.  
See **CRIMINAL LAW.** 37.
- Misrepresentation—Shares.  
See **COMPANY.** 210.
- Mutual insurance society—Action for contri-  
butions—Insurance by agent, member  
of association—Shipowner not member—  
Liability.  
See **INSURANCE, MARINE.** 64.
- Newspaper—Libel.  
See **CORPORATION.** 26.
- Partner—Liability of estate of deceased partner  
—“Debts or obligations.”  
See **PARTNERSHIP—Liabilities.** 32.
- Patent agents—Registration—Validity of  
rules—Saving of rights acquired.  
See **PATENT—Patent Agents.** 19.
- Practice—Service of writ—Foreign corpora-  
tion carrying on business in England—  
Agent.  
See **PRACTICE—Service.** 183—191.

**16. — Paying money to principal without notice of duress—Receiver appointed under debenture trust deed.**

An agent who pays to his principal's account a cheque given under protest if he has no notice of the duress under which the cheque was handed over, is not personally liable to the drawer of the cheque.

A trading co. executed a trust deed to secure debentures. Under certain circumstances the trustees had power to appoint a receiver as if they were mortgagees within the Conveyancing Act, 1881. Such a receiver was empowered to enter into possession, carry on the business, appoint managers, &c., and was to be deemed the agent of the co., and to be in the same position as a receiver duly appointed by a mortgagee under the Act:—

*Held*, that a receiver so appointed and carrying on the co.'s business was a mere agent, without personal responsibility. The deft. was so appointed. The manager without the deft.'s knowledge compelled the plts. under “duress of goods” to pay a sum for work done by the co. which the plts. alleged to be extortionate. The money was handed the deft., who paid it into the bank without notice of the duress:—

*Held*, that the payment into the bank was a payment by the deft. as agent for the co., and, as it was paid without notice of the duress, he was not personally liable to the plts. **OWEN & Co. v. CRONK** - - - **C. A. [1895] 1 Q. B. 265**

Referred to by **C. A. Burt, Boulton and Hayward v. Bull**, [1895] 1 Q. B. 276, 283; *In re Hale*, [1899] 2 Ch. 107, 115.

**17. — Payment of deposit to solicitor as agent**

**PRINCIPAL AND AGENT—continued.**

— *Action to recover deposit from agent—Sale of real property.*

On the sale of premises by auction the purchaser paid a deposit to the vendor's solicitor as agent for the vendor. The sale went off through the default of the vendor, and the purchaser brought an action to recover the deposit from the solicitor:—

*Held*, that the payment of the deposit to the solicitor was equivalent to payment to the vendor, and that the action could not be maintained. **ELLIS v. GOULTON** **C. A. [1893] 1 Q. B. 350**

— Quebec, Law of—Under Code of Civil Procedure of Quebec.

See **CANADA.** 60.

**18. — Ratification by principal—Contract by agent in name of principal, but for his own benefit.**

Where an agent makes a contract purporting to sell goods in the name of a principal, but with the fraudulent intention of selling them on his own account and for his own benefit, it is competent for the principal to ratify and take the benefit of the contract as against the buyers. *In re TIEDEMANN AND LEDERMANN FRÈRES*

**Div. Ct. [1899] 2 Q. B. 66**

— Receiver and manager.

See **Cases under RECEIVER.**

— Receiver—Liability for goods ordered by—  
Trustees for debenture-holders.

See **COMPANY.** 84.

— Receiver—Remuneration—Surplus assets—  
Jurisdiction.

See **COMPANY—WINDING-UP.** 17.

— Representation to lender by agent of borrower—  
Fraud.

See **MORTGAGE—Escrow.** 15.

**19. — Sale of Goods—Ratification—Contract—Undisclosed principal.**

A contract made by a person intending to contract on behalf of another, but without his authority, may be ratified by that other, and so made his own, although the person who made the contract did not profess at the time of making it to be acting on behalf of a principal.

So *held* by **Collins and Romer L.J.J.**, **A. L. Smith L.J.** dissenting. **DURANT & Co. v. ROBERTS AND KEIGHLEY, MAXTED & Co.**

**C. A. [1900] W. N. 54; [1900] 1 Q. B. 629**

— Signature by agent—Bill of lading—Warranty.  
See **SHIPPING—Charterparty.** 40, 47.

— Signature by agent—Dissolution of building society.

See **BUILDING SOCIETY.** 4.

— Signature by agent “thereunto lawfully authorized”—Memorandum in writing.  
See **FRAUDS, STATUTE OF.** 16.

**20. — Sole agency for sale of goods—Purchasers from principal's other agents—Right of action against.**

Circumstances under which an action was held not maintainable against a rival agent. **HERSCHLER v. HERTZ** - - - **Stirling J.**

**[1895] W. N. 108**

**21. — Stock Exchange—Indemnity—Broker—Wrongful sale by broker.**

A stockbroker who on behalf of a principal

**PRINCIPAL AND AGENT—continued.**

buys stock upon the Stock Exchange for the next settling day, and without authority from his principal, and contrary to the agreement between them, sells the stock before that day at a loss cannot claim indemnity from his principal.

The plt., a stockbroker, having prior to Nov. 10 bought stock of a ry. co. for the deft. on the London Stock Exchange, it was agreed between them that the plt. should take part of the stock so purchased off the market by paying for it with money advanced by him for the purpose, which he accordingly did, and that he should hold that stock as security for his advance with interest, and should not sell the same before the account of Nov. 26. On Nov. 10 the plt. by the deft.'s instructions carried over the residue of the stock till Nov. 26, and bought a further amount of stock for that day. On Nov. 19 the plt., without the deft.'s authority, and contrary to his agreement, sold the whole amount of stock purchased at a loss in order to close the account between them. If the stock had been sold on Nov. 26, it would have realized a price higher than that at which the plt. sold, but lower than that at which he had bought it for the deft. In an action by the plt. against the deft. for indemnity in respect of the difference between the prices at which he had bought and sold the stock:—

*Held*, first, as to the plt.'s claim in respect of the stock paid for and taken off the market by the plt. as before mentioned, that the plt. was entitled to recover as for money paid for the deft. at his request, subject to the deft.'s right to counter-claim damages for the loss occasioned by the plt.'s wrongfully selling the stock before Nov. 26:—

*Held*, secondly, as to the plt.'s claim in respect of the stock carried over and that which was purchased on Nov. 10 as before mentioned (by A. L. Smith L.J. and Collins L.J., Rigby L.J. dissenting), that no action for indemnity was maintainable, the loss having arisen, not through any breach of contract by the deft., but through the wrongful sale by the plt.

By Rigby L.J., in affirmance of Mathew J., that the plt. was entitled to be credited in account with the price at which he purchased for the deft., being charged by way of damages with the loss arising from the wrongful sale.

*Duncan v. Hill*, (1873) L. R. 8 Ex. 242, and *Lacey v. Hill, Scrimgeour's Claim*, (1873) L. R. 8 Ch. 921, discussed. **ELLIS v. POND**

**C. A. [1893] 1 Q. B. 426**

**22. — Surveyor—Certificate as to progress of building—Inaccuracy—Causing damage to third party.**

Mortgagees lent money by instalments to a builder on the faith of certificates negligently granted by the deft., who was a surveyor appointed, not by the mortgagees, but by the builder's vendor. The certificates were inaccurate and misleading, by the negligence of the surveyor, and the mortgagees thereby suffered loss for which they claimed compensation from the deft.:—

*Held*, that as there was no contractual relation between the surveyor and the mortgagees, the

**PRINCIPAL AND AGENT—continued.**

deft. owed no duty to them to exercise care in his certificate, and the action could not be maintained. **LE LIEVRE v. GOULD**

**C. A. [1893] 1 Q. B. 491**

— Trustee or agent—Book containing drawings—Registration.

*See* COPYRIGHT. 19.

— Unauthorized—Option of purchase—Ratification.

*See* CONTRACT. 35.

**23. — Undisclosed principal—Employment of sub-agent by agent—Set-off against principal of debt due from agent—Estoppel.**

If a principal allows his agent to appear in the character of principal, he must take the consequences. Where a principal employs an agent to make a contract and the agent employs a second agent to make the contract, if the first agent is a person who might reasonably be supposed to be acting as a principal the first principal cannot, if the second agent had no notice that the first agent was not a principal, make a demand on the second agent without the latter being entitled to stand in the same position as if the first agent had really been the principal in the transaction. **MONTAGU v. FORWOOD**

**C. A. [1893] 2 Q. B. 350**

**24. — Undisclosed principal—Invoice sent by principal to buyer.**

L. sold goods to M. to be shipped at C., and to be in fair merchantable condition. L. was to draw bills for the price less freight, and M. was to accept the same. The contract was stated to be "by order and on account of L." L. was acting as agent for H., who was the seller of the goods: but this was unknown to M. H. wrote to M. inclosing invoice of the goods and acknowledging that he had drawn on M. for the price. M. returned the invoice and accepted the bill, which was paid at maturity. The goods were delivered to M., who claimed damages from H., alleging that the goods were not in fair merchantable condition:—

*Held*, that the sending of the invoice to M., the retaining of it, the acceptance and payment of the bill, constituted a contract between H. and M., and that H. having had the benefit of it could not repudiate, and that, therefore, M. was entitled to maintain the action. **MALCOLM FLINN & Co. v. HOYLE** - - **C. A. revers. Cave J.**

**[1893] W. N. 167**

**25. — Undisclosed principal, liability of—Unauthorized acts of agent.**

Where a principal allows an agent to act as if he were principal, the real principal will be liable for the acts of the agent if done within the reasonable scope of an agent's authority in the particular business, notwithstanding any limitations which the real principal may have put on his agent's authority. **WATTEAU v. FENWICK**

**Div. Ct. [1893] 1 Q. B. 346**

**26. — Valuer—Liability of—Mortgage—Negligence—Contract.**

A valuer is not liable for a valuation for a mortgage, &c., made without reasonable skill and care (but not fraudulently) unless there is a contract between him and the person who has made



**PRINCIPAL AND AGENT—continued.**

an advance on the faith of the representation. Damages assessed at the whole loss sustained through the deficiency of the security. Cases in which a person may be liable for representations made without fraud considered by *Romer J.*

Decision of *Romer J.*, [1891] W. N. 16, affirmed. *SCHOLES v. BROOK*

C. A. [1891] W. N. 101

27. — *Warrant of authority—Solicitor—Authority to defend action in name of company—Revocation of authority—Notice of revocation—Payment by defendant's solicitor of plaintiff's costs of abortive action—Company—Dissolution pendente lite—Judgment against dissolved company—Jurisdiction.*

A solicitor had originally authority to defend an action in the name of a co., but his authority was revoked by the dissolution of the co. shortly before the trial. The trial of the action was delayed owing partly to the state of the business of the Court and partly to the pleadings being amended. The action was tried on the assumption that the co. was in existence, and judgment was given for the plt. Neither the solicitor nor the plt. knew till after the trial that the co. had been dissolved; but on the day of the trial the solicitor was informed that the co. had held its final meeting, and he took no steps to ascertain whether or not it had been dissolved. Upon motion by the plt. that the solicitor might be ordered to pay his costs of the action as from the date of the dissolution of the co. —

*Held*, (1.) (distinguishing *Whiteley Exerciser, Ltd. v. Gamage*, [1898] 2 Ch. 405), that the judgment was invalid against the co. for want of jurisdiction; (2.) that the solicitor having originally authority to represent the co. was not liable for acting on that authority after it had been revoked by the dissolution of the co. until he knew or, by the exercise of due diligence, might have known of the dissolution; (3.) that on the day of the trial the solicitor did not use due diligence in ascertaining whether or not the co. had been dissolved, and that he ought to pay the plt.'s costs of the action after that date as between solicitor and client.

The principle of *Smout v. Ilbery*, (1842) 10 M. & W. 1, applies to a solicitor representing a party in an action, and it applies to a revocation of authority by the dissolution of a co. as well as by the death of an individual. *SALTON v. NEW BEESTON CYCLE CO.* *Stirling J.* [1900] 1 Ch. 43

*Per Kekewich J.* *Smout v. Ilbery*, (1842) 10 M. & W. 1, overruled by *Collen v. Wright*, (1857) 7 E. & B. 301; 8 E. & B. 617. See *Halbot v. Lens*, [1901] W. N. 6; [1901] 1 Ch. 344.

**PRINCIPAL AND BROKER.**

See Cases under GAMING.  
STOCK EXCHANGE.

**PRINCIPAL AND SURETY.**

*Contribution*, col. 1581.

*Discharge*, col. 1584.

*Limitations, Statute of.* See LIMITATIONS, STATUTE OF—*Surety*.

*Securities*, col. 1587.

**Contribution.****1. — Bankrupt co-surety—Right to contribution****PRINCIPAL AND SURETY (Contribution)—continued.**

*after judgment and before payment—Statute of Limitations.*

Under s. 37 of the Bankruptcy Act, 1883, the liability of a bankrupt co-surety to contribution, though unascertained at the time of the bankruptcy proceedings, is a debt provable in the bankruptcy.

The statute does not begin to run against a surety suing a co-surety for contribution until the liability of the surety is ascertained, i.e., until the claim of the principal creditor has been established against him; although at the time of the action for contribution the statute may have run as between the principal creditor and the co-surety. *WOLMERSHAUSEN v. GULLICK*

*Wright J.* [1893] 2 Ch. 514

Followed by *Stirling J.* *Robinson v. Harkin*, [1896] 2 Ch. 415, 426.

Referred to by C. A. *Ellis v. Pond*, [1898] 1 Q. B. 426, 454.

**2. — Death of co-surety—Fresh bond—Contribution between co-sureties.**

F. with E., B. and H., his securities, gave a bond to a society to secure an advance. It was provided (inter alia) that if either surety should die, and F. did not procure a new surety within a month to enter into a new bond to like effect, the advance should become immediately payable. E. died, and a fresh bond was executed by F., B., and H., with the additional proviso that E.'s estate should not be exonerated. F. became bankrupt, and B. and H. repaid the advance. *Bacon V.-C. held* that B. and H. were creditors of E.'s estate for one moiety of the sums paid by them. No order was drawn up. In 1893 the chief clerk certified B. and H. to be creditors as decided by *Bacon V.-C.* E.'s executor took out a summons to vary the certificate:—

*Held*, that E.'s estate was liable, but only for one-third of the sums paid by B. and H. *In re ENNIS.* *COLES v. PEYTON* C. A. [1893] 3 Ch. 238

**3. — Deed of arrangement—Proof—Co-surety—Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5.**

Three persons were liable as co-sureties. One of them executed a deed of arrangement, the other two paid off the principal creditor and took an assignment of the debt:—

*Held*, that they were entitled to prove for the whole amount of the debt, but on the footing that they should not actually receive more than one-third thereof; but *quære, per Davey L.J.*, whether the result would be the same as if they had claimed by way of contribution and not as assignees of the creditor. *In re PARKER.* *MORGAN v. HILL* - - C. A. [1894] 3 Ch. 400

— Guarantee or indemnity.

See FRAUDS, STATUTE OF. 34.

— Limitations, Statute of—Bankrupt co-surety.  
See No. 1, above.

**4. — Limitations, Statute of—Collateral debt—Promise to pay on demand.**

If a surety promises to pay a debt for the principal debtor on demand, a demand is necessary before action can be brought, and the Statute

**PRINCIPAL AND SURETY (Contribution)—**  
*continued.*

of Limitations will begin to run only from such demand. *In re BROWN'S ESTATE. BROWN v. BROWN* Chitty J. [1893] 2 Ch. 300

Referred to by Kekewich J. *Edwards v. Walters*, [1896] 2 Ch. 157, 162.

— Material alteration in contract.

See CASES UNDER PRINCIPAL AND SURETY  
— Discharge.

5. — *Parol agreement to share commission and losses in respect of Stock Exchange transactions—Guarantee—Statute of Frauds.*

S. entered into a verbal agreement with G. that G. should introduce customers to S., who was a member of the Stock Exchange, that S. should pay to G. half the commission received from such customers, and that G. should pay to S. half of any loss incurred through such customers:—

*Held*, (1) that the contract did not constitute a partnership between S. and G., but that it was not a contract to answer for the debt of another within s. 4 of the Statute of Frauds; (2) that it was a contract which regulated the terms of G.'s employment, and gave him an interest in the transactions which were carried out for the mutual benefit of S. and G., and that S. was entitled to recover half the losses from G. *SUTTON & Co. v. GREY* — C. A. [1894] 1 Q. B. 285

— Receiver—Liability of surety for.

See RECEIVER. 47.

6. — *Recognisance—Rents and profits—Extent of liability.*

A surety under a receiver's recognisance is liable (to the extent of the amount of the penalty) for all sums of money which the receiver himself was properly liable to pay into Court or account for. *In re GRAHAM. GRAHAM v. NOKES* Chitty J. [1895] 1 Ch. 66

7. — *Right to contribution after judgment and before payment.*

A surety against whom judgment has been obtained by the principal creditor for the full amount of the guarantee, but who has paid nothing in respect thereof, can maintain an action against a co-surety to compel him to contribute towards the common liability; and for this purpose the allowance of a claim by the principal creditor against the estate of a deceased surety is equivalent to a judgment; and where the principal creditor is a party to the action, the surety may obtain an order upon the co-surety to pay his proportion to the principal creditor. Where the principal creditor is not a party, the surety may obtain a prospective order directing the co-surety, upon payment by the surety of his own share, to indemnify him against further liability. *WOLMERSHAUSEN v. GULLICK*

Wright J. [1893] 2 Ch. 514

Followed by Stirling J. *Robinson v. Harkin*, [1896] 2 Ch. 415, 426.

Referred to by C. A. *Ellis v. Pond*, [1898] 1 Q. B. 426, 451.

— Scottish law.

See SCOTTISH LAW—Guaranty. 16.

**PRINCIPAL AND SURETY—continued.****Discharge.**

8. — *Cheque given for liability—Unsatisfied judgment on cheque—Liability of joint guarantor—Res judicata.*

An unsatisfied judgment against one co-surety for a cheque given by him alone for the debt is not a bar to an action against the other co-surety on the original contract of guarantee. Decision of Wills J., [1894] 2 Q. B. 101, affirmed. *WEGG-PROSSER v. EVANS* — C. A. [1895] 1 Q. B. 108

See *McLeod v. Power. Byrne J.* [1898] 2 Ch. 295, 297.

9. — *Co-sureties—Material alteration of instrument—Discharge.*

Where two or more persons join as sureties for a common principal, but bind themselves in different amounts, in the event of the principal being in default they are liable to contribute to the satisfaction of the creditor's claim in proportion to the limits of their respective liabilities, and not in equal amounts.

Four persons, as sureties for a principal, executed a joint and several bond of suretyship, by the terms of which the liability of two of them was limited to 50*l.* each, and that of the other two to 25*l.* each. One of those whose liability was limited to 50*l.*, after the other three had executed the bond, executed it himself, but added to his signature the words "25*l.* only." The obligee accepted the bond so executed without objection, and subsequently the principal became in default:—

*Held*, that the effect of the added words was to make a material alteration in the bond, so that the three first signatories were thereby discharged from their obligation; and that as the last signatory only executed the bond as a joint and several bond, he also was not bound by it. *ELLESMERE BREWERY Co. v. COOPER*

[1896] 1 Q. B. 75

— Deposit with bank—Insurance.

See INSURANCE—Guarantee. 13.

— Effect of guarantee on proof in bankruptcy.

See BANKRUPTCY—Proof. 172, 173.

10. — *Express power to give notice determining liability of guarantor.*

A joint and several continuing guaranty bond provided that the obligors, or their respective "representatives," might determine their or his liability by a month's notice in writing to the obligees. One of the obligors having died, his executor, who was unaware of the bond, gave the obligees notice only of his death:—

*Held*, that "representatives" included executors, and that the estate of the deceased obligor was liable for indebtedness incurred after his death. *In re SILVESTER. MIDLAND RY. Co. v. SILVESTER* Romer J. [1895] 1 Ch. 573

— Foreign sureties—Administration bond.

See PROBATE—Administration Bond. 6, 7.

11. — *Giving time to debtor—Contribution—Co-sureties.*

The plts. and the defts., who were directors of a co., gave their joint and several bond for the purpose of guaranteeing repayment of a loan

**PRINCIPAL AND SURETY (Discharge)—*contd.***

which the co. raised upon mortgage of its premises, and it was provided by the bond that, although as between the co. and the obligors, the latter were only sureties for the co., nevertheless, as between the obligors and the obligees (the lenders of the money), the former should be taken to be principal debtors, so that they should not nor should either of them be released from their or his liability by reason of time being given to the co. or their assigns, or by any other forbearance, act, or omission of the obligees or their assigns, or by any other matter or thing whereby the obligors, or either of them, would be so released but for this provision. The plts. having had to pay the amount secured by the bond, the mortgage was transferred and the bond assigned to them: and they brought an action against the deft. for contribution and as assignees of the bond to recover a third part of the amount which they had paid. The plts. having, without the deft.'s assent, entered into an agreement with a new co., who became the purchasers of the goodwill, premises, and stock-in-trade of the first-mentioned co., that they would not for a certain period of time enforce the mortgage against the new co.:—

*Held*, that, having regard to the provisions of the bond, this agreement did not afford a defence to the action brought by the plts. against the deft.

*Query*, whether an agreement by a surety to give time to the principal debtor discharges a co-surety. *GREENWOOD v. FRANCIS*

**C. A. [1899] 1 Q. B. 312**

**12. — Giving time to new firm—Liability of retired partner.**

If of two principal debtors one is notified to the creditor as a surety, from that time that debtor has all the rights of a surety against the creditor, and the creditor must not give time to the other principal debtor, or prejudice the surety's interests. Therefore, where a bank allowed a firm to overdraw, and A. retired from the firm in 1884, and the overdraft was carried to the debit of the new firm, and the bank in 1889 passed a resolution continuing the overdraft for a limited time, and in 1890 agreed with the new firm and a surety, B., for guaranteeing payment to the bank of any balance on the overdraft exceeding a certain sum:—

*Held*, that there was no agreement to give time to the new firm, or to alter the relation between the parties, and that the retired partner was not released; but *quære* whether a proviso in the deed of dissolution of 1884 which gave time to make arrangements with creditors prevented A. from being discharged.

Decision of C. A., [1894] 2 Ch. 32, affirmed. *ROUSE v. BRADFORD BANKING CO.*

**H. L. (E.) [1894] A. C. 586**

**13. — Giving time to principal—Mortgage.**

(A) The deft. covenanted as surety for the repayment by B. of a mortgage debt. B. afterwards, by a deed to which the surety was not a party, consolidated this mortgage with others, and assigned the benefit of all covenants to the plt.:—

*Held*, that, as by the terms of the consolidated

**PRINCIPAL AND SURETY (Discharge)—*contd.***

mortgage, the debt was not to be repaid until six months after date, time had been given to the principal debtor and the surety was discharged. *BOLTON v. BUCKENHAM* **C. A. [1891] 1 Q. B. 278**

(B) The deft. covenanted, as surety, for repayment of a mortgage debt, and assigned property as collateral security. The mortgage was afterwards consolidated, and the covenant in the consolidated mortgage was for repayment of the debt at a later date:—

*Held*, that both the property and the personal liability of the surety was thereby discharged. *BOLTON v. SALMON* **Chitty J. [1891] 2 Ch. 48**

**14. — Laches of employer.**

A surety for a contractor for engineering works is not discharged from liability, although his position has been altered by the conduct of the employer, where that conduct has been caused by a fraudulent act or omission of the contractor against which the surety has, by the contract of suretyship, guaranteed the employer. *KINGSTON-UPON-HULL CORPORATION v. HARDING*

**C. A. [1892] 2 Q. B. 494**

**15. — Material alteration in contract—Contribution.**

C. being appointed agent and traveller to the plts., procured four persons to execute as sureties a joint and several bond conditioned for the due accounting by him for all moneys received by him on the plts.' account. The bond limited the liability of N. and E., two of the sureties, to 50*l.* each, and that of P. and B., the other two, to 25*l.* each. After the three last-named sureties had executed the bond N. executed it, adding to his signature the words "25*l.* only":—

*Held*, that the effect of that addition being to alter the rights of the sureties inter se, it discharged all of them, including N., from their liability upon the bond. *ELLESMERE BREWERY CO. v. COOPER AND OTHERS*

**Div. Ct. [1895] W. N. 157 (8)**

— Reconstruction of principal debtor company.

*See Cases under COMPANY—WINDING-UP—Scheme of Arrangement.*

**16. — Release of co-surety—Evidence of collateral agreement to reserve rights against co-surety.**

In a suit against one of five joint and several sureties, it appeared that the creditor had, without the deft.'s knowledge and consent, released another of the sureties "from all debts due by him to (the creditor) at this date":—

*Held*, that the creditor could not recover, and that the legal effect of the release could not be modified by evidence of verbal negotiations prior to the release for the purpose of shewing an agreement superseded by the release to reserve rights against the sureties. *MERCANTILE BANK OF SYDNEY v. TAYLOR* **P. C. [1893] A. C. 317**

**17. — Release of principal debtor—Novation.**

A creditor released his principal debtor, and accepted B. as full debtor in his stead. The surety for the original debtor agreed to give a guarantee for C. and to continue his former guarantee until he did so, but died before doing so. In an action by the creditor against the surety's executors, *held*, that as the former debt

**PRINCIPAL AND SURETY (Discharge)—*contd.***

had been extinguished by the release, the remedy against the surety was gone. **COMMERCIAL BANK OF TASMANIA v. JONES** - P. C. [1893] A. C. 313  
— Scottish law.

See SCOTTISH LAW—Guaranty. 16.

— Surety—"Creditor."

See BANKRUPTCY—Fraudulent Preference. 115.

**Limitations, Statute of.**

See LIMITATIONS, STATUTE OF—Surety.

**Securities.****18. — Counter security.**

The principal creditor is not entitled to the benefit of all counter bonds or collateral securities given by the principal debtor to the surety. Testator guaranteed the current account of S. & Co. with the plts., who were bankers, and S. & Co. gave a counter security to the testator. S. & Co. failed, and the plts. claimed the exclusive right to the proceeds of the counter security:—

*Held*, that the claim could not be sustained. *In re WALKER. SHEFFIELD BANKING Co. v. CLAYTON* - Stirling J. [1892] 1 Ch. 621

**PRIOR PUBLICATION—Patent.**

See PATENT—Prior Publication. 37, 38.

**PRIORITY—Bankruptcy.**

See Cases under BANKRUPTCY.

— Bills of sale.

See Cases under BILL OF SALE.

— Building society members.

See BUILDING SOCIETY—Dissolution. 5, 6.

— Ceylon Land Registration Ordinance.

See CEYLON. 6.

— Charging order for solicitor's costs.

See SOLICITOR—Lien. 105.

— Chose in action—Reversionary trust fund—Notice to existing trustees—Death or retirement of trustees.

See ASSIGNMENT. 5.

— Company winding-up.

See COMPANY—WINDING-UP—Assets. 5.  
COMPANY—WINDING-UP—Costs. 70.

— Crown debts—Debts due to Boards of Education—Law of Newfoundland.

See NEWFOUNDLAND. 1.

— Crown debt—Legacy duty—Bankruptcy.

See REVENUE—Legacy Duty. 124.

— Crown over simple contract creditor.

See CANADA. 36.

— Crown, specialty, and simple contract debts—Insolvent estate.

See EXECUTOR—Administration. 38.

— Debentures.

See COMPANY—Debentures. 71–74.  
CONFLICT OF LAWS. 3.

— Dolus malus—Unregistered transfer—Registered transfer set aside.

See NATAL. 2.

— Equitable interests—Notice.

See EXECUTOR. 26.

**PRIORITY—*continued.***

— Execution creditor.

See SHERIFF. 14.

— Executor carrying on testator's business.

See EXECUTOR—Powers. 49.

— Investment advised by solicitor to trustees—Contributory mortgage.

See TRUSTEE. 39.

— Insolvent estate—Voluntary debt.

See EXECUTOR. 35.

— Judgment not signed or entered—Judgment creditor.

See PRACTICE—Judgment. 36.

— Legacies.

See WILL—Legacy.

— Liquidator's solicitor—Remuneration—Costs—Petitioning creditor.

See COMPANY—WINDING-UP—Liquidator. 123.

— Lunatic—Maintenance—Scheme.

See LUNACY. 20.

— Lunatic—Maintenance—Scheme—Creditors—Form of judgment.

See CONFLICT OF LAWS. 7.

— Maintenance of lunatic.

See LUNACY—Maintenance. 20.

— Mortgages.

See MORTGAGE—Priority.

— Mortgage estate devised free from incumbrances—Pecuniary legatee and annuitants—Marshalling.

See WILL. 147.

— in action for Necessaries.

See SHIPPING—Necessaries. 181.

— Parliamentary deposits claims on.

See PARLIAMENT—Deposits and Bonds. 5, 6.

— Patent—Licence—Assignment—Registration—Notice—Equitable rights.

See PATENT. 15.

— Preferential payments—Working expenses—Proper outgoings—Compensation.

See RAILWAY. 38.

— Rates—Preferential payments in bankruptcy—Administration.

See EXECUTOR. 37.

— Receiver—Appointment of, by way of equitable execution.

See COMPANY—WINDING-UP. 93.

— Shares.

See COMPANY—Shares. 295, 296.

— Unauthorized borrowing—Secured creditors—Subrogation.

See RAILWAY. 30.

— Widow's charge—Dower.

See DOWER. 1.

**PRISON—Foreign Prison-made Goods Act, 1897 (60 & 61 Vict. c. 63), prohibits their importation.**

*Prison Act, 1898 (61 & 62 Vict. c. 41), amends the Prison Acts.*

*Prison Rules dated April 21, 1899, under the Prison Act, 1898 (61 & 62 Vict. c. 41). St. R. & O. 1899, p. 1084, No. 322.*

**SUMMARY PROCEEDINGS.] Rule dated April 6,**

**PRISON**—*continued.*

1899, under s. 29 of the *Summary Jurisdiction Act*, 1879 (42 & 43 Vict. c. 49), as to the application of sums paid under s. 9 of the *Prison Act*, 1898 (61 & 62 Vict. c. 41). **St. R. & O.** 1899, p. 1242, No. 2044-6.

**PRIVATE INTERNATIONAL LAW.**

See Cases under **CONFLICT OF LAWS**, **DOMICIL**, and **INTERNATIONAL LAW**.

**PRIVATE RESIDENCE**—Covenant—Boarding of scholars attending school.

See **COVENANT**. 4.

## — Restrictive covenant—User—Residential flats.

See **COVENANT**. 5.

**PRIVATE ROAD**—*Definition.*

A private road is a "street" within ss. 16, 54 of the *Public Health Act*, 1875. **HILL v. WALLASEY LOCAL BOARD** **C. A.** [1894] 1 Ch. 133

**PRIVATE STREET.**

See Cases under **LONDON—Streets.**

**Streets** — **Private Streets.**

**"PRIVIES IN ESTATE"**—Assistance by in prior action by person under indemnity to defendant.

See **ESTOPPEL**. 1.

**PRIVILEGE**—Ambassador.

See **INTERNATIONAL LAW**. 2.

## — Builder's hypothecary privilege — Law of Quebec.

See **CANADA**. 5.

## — Conversation between one party and the solicitor of the other.

See **EVIDENCE**. 41.

## — Councillor—Music and dancing — Licensing committee—Defamation.

See **MUSIC AND DANCING**. 3.

## — Coroner's jury—Exemption.

See **JURY**. 1.

## — Discovery—Production of documents.

See Cases under **DISCOVERY**.

## — Distress—Bedstead—"Bedding."

See **DISTRESS**. 12.

## — Libel,

See Cases under **DEFAMATION—Libel**.

## — Member of Parliament.

See **CONTEMPT OF COURT**. 9.

**PARLIAMENT—Privilege**. 142, 143.

## — Patent.

See **PATENT—Threats**. 55.

## — Production of documents.

See Cases under **DISCOVERY**.

**LUNACY—Practice**. 35.

## — Slander.

See Cases under **DEFAMATION—Slander**.

## — Solicitors.

See Cases under **SOLICITOR—Privilege**.

**PRIVITY OF CONTRACT**—Contract on behalf of intended company — New contract — Patent—Licence—Burden attaching to property.

See **COMPANY—Contracts**. 21.

**PRIVY.**

See Cases under **WATER-CLOSETS**.

**PRIVY COUNCIL.**

*Privy Council Appeals*, col. 1590.  
*Judicial Committee*, col. 1590.

**Privy Council Appeals.**

See **AUSTRALIA**.

**BERMUDA**.

**BRITISH COLUMBIA**. See **CANADA**.

**BRITISH GUIANA**.

**BRITISH HONDURAS**.

**BRITISH NORTH AMERICA**. See **CANADA**.

**CANADA**.

**CAPE OF GOOD HOPE**.

**CEYLON**.

**CHINA**.

**FLJI**.

**GIBRALTAR**.

**GOLD COAST**.

**GUERNSEY**.

**HONG KONG**.

**JAMAICA**.

**JAPAN**.

**JERSEY**.

**LEEWARD ISLANDS**.

**MALTA**.

**MANITOBA**. See **CANADA**.

**MAURITIUS**.

**NATAL**.

**NEWFOUNDLAND**.

**NEW BRUNSWICK**. See **CANADA**.

**NEW SOUTH WALES**.

**NEW ZEALAND**.

**NORTH-WEST TERRITORIES**. See **CANADA**.

**NOVA SCOTIA**. See **CANADA**.

**ONTARIO**. See **CANADA**.

**QUEBEC**. See **CANADA**.

**QUEENSLAND**.

**SEYCHELLES**.

**SIERRA LEONE**.

**TASMANIA**.

**TRINIDAD (TRINIDAD AND TOBAGO)**.

**VICTORIA**.

**Judicial Committee.**

*Constitution*, col. 1590.

*Practice*, col. 1590.

**(Constitution.)**

*By the Judicial Committee (Amendment) Act 1895 (58 & 59 Vict. c. 44), it was provided that certain Colonial Judges should be members of the Committee.*

**(Practice.)**

*O. in C. dated 1900, referring to the Judicial Committee all appeals on which petitions may be presented to H. M. in Council during the ensuing twelve months. St. R. & O. 1895, No. 576, L. 32.*

[A similar Order is issued annually.]

**PRIVY COUNCIL (Judicial Committee (Practice))**  
—continued.

*As to appeals from places under the Foreign Jurisdiction Act,*

*See FOREIGN JURISDICTION.*

1. — *Appeal—Divorce suit.*

Special leave granted to appeal from a decree of the Supreme Court of Ceylon in a divorce suit. *LE MESURIER v. LE MESURIER*

**P. C. [1894] A. C. 283**

2. — *Appealable amount—Mesne profits.*

The measure of value for determining a plt.'s right of appeal is the amount for which the deft. has successfully resisted a decree. Mesne profits, if demanded in the plaint, must enter into the calculation of the appealable value. *MOHIDEEN HADJIAN v. PITCHHEY* — **P. C. [1893] A. C. 193**

3. — *Costs—Special leave to appeal.*

Costs of both parties of the appeal to P. C. directed to be paid by the successful appellant, special leave having been given to him under special circumstances notwithstanding the small amount at stake. *FORGET v. OSTIGNY*

**P. C. [1895] A. C. 318**

4. — *Criminal cases.*

(A) The granting of leave to appeal will not be advised in criminal cases where it is not even suggested or surmised that substantial injustice has been done either through a disregard of forms of legal process or by some violation of natural justice.

(a) *Ex parte DEEMING.* **P. C. [1892] A. C. 422**

(b) *KOPS v. REG. Ex parte KOPS*

**P. C. [1894] A. C. 650**

(b) Although in very special and exceptional circumstances leave to appeal in criminal cases may be granted, misdirection by a judge either in leaving a case to a jury where there is no evidence, or founded on misconstruction of a statute, is insufficient to ground an appeal, especially where no miscarriage of justice has resulted. *Ex parte MACREA*

**P. C. [1893] A. C. 346**

5. — *Documents not before the Court below.*

In a Jersey appeal an order was made that certain documents not before the Court below should be received by the registrar and produced at the hearing, subject to objections as to admissibility. *ATT.-GEN. AND RECEIVER-GENERAL FOR JERSEY v. LE MOIGNAN* **P. C. [1892] A. C. 402**

6. — *Evidence—Witnesses in London.*

Where in an appeal from a Colonial Court witnesses to facts requisite for the purpose of the judgment were in London, instead of remitting the case an order was made for the evidence to be taken on commission in London. *BANK OF CHINA, JAPAN, AND THE STRAITS R. AMERICAN TRADING Co.*

**P. C. [1894] A. C. 266**

7. — *Finality of judgments.*

The rule of finality applicable to decisions in relation to rights of property is not equally binding as regards those which relate to ritual and ecclesiastical practice and depend partly upon the accuracy of historical investigation. *READ v. BISHOP OF LINCOLN* **P. C. [1892] A. C. 644**

— *Patents—As to prolongation of.*

*See Cases under PATENT—Prolongation.*

**PRIVY COUNCIL (Judicial Committee (Practice))**  
—continued.

— *Railway Committee of Privy Council—Canada Railway Act—Construction.*

*See CANADA. 16.*

8. — *Raising new question of fact.*

(A) The P. C. will not permit questions of fact to be raised which were abandoned or not taken in the Courts appealed from. *COUNCIL OF THE BOROUGH OF RANDWICK v. AUSTRALIAN CITIES INVESTMENT CORPORATION*

**P. C. [1893] A. C. 322, at p. 325**

(B) Where charges of fraud and deceit have failed, the person making them will not be allowed to raise new issues as to negligence on appeal. *CONNECTICUT FIRE INSURANCE Co. v. KAVANAGH* — **P. C. [1892] A. C. 473**

— *Ritual, As to.*

*See Cases under ECCLESIASTICAL LAW—Ritual.*

9. — *Security for Vice-Admiralty appeal.*

Rule No. 15 of the Privy Council Rules of 1865 (*Published in W. N., Jan. 27, 1866*) may be dispensed with in a proper case. *HUNTER v. SS. "HESKETH"* — **P. C. [1891] A. C. 628**

10. — *Security for costs—Appeal dismissed for want of prosecution.*

Where a colonial Supreme Court directed that costs secured should be dealt with as the P. C. should think fit, and the appeal was dismissed for want of prosecution:—

*Held*, that the respondent should apply to the Supreme Court to correct its order by directing that costs should abide the event of the appeal; and if the application were refused, should apply for special leave to appeal from such refusal. *MILSON v. CARTER* — **P. C. [1893] A. C. 638**

**PRIZE**—By the *Prize Courts Act, 1894* (57 & 58 Vict. c. 39), provision was made as to *Prize Courts in British Possessions.*

**PRIZE COMPETITION**—Prediction of coming event—Births and deaths in London during named week.

*See LOTTERY. 3.*

**PROBATE.**

*Additional Rules and Orders, Dec. 7, 1892—Non-contentious business. St. R. & O. 1892, p. 908; [1893] W. N. (Appx. of O. & R.), p. 1.*

*Order dated Dec. 12, 1892, as to Supreme Court Fees. St. R. & O. 1892, p. 912; [1893] W. N. (Appx. of O. & R.), p. 1.*

*Letters of administration, Power to grant, in respect of real estate only. See Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.*

**NON - CONTENTIOUS BUSINESS.] Additional Rules and Orders with regard to. W. N. 1897 (Jan. 9), p. 9; (Dec. 25), p. 351. See Current Index, 1897, p. lxxxi.**

*Costs—Rule as to. W. N. 1898, (July 9), p. 253; (Aug. 13), p. 279.*

*Probate and letters of administration—County Court Rules (Nov.) 1900, Ord. XLIX. A. W. N. 1900 (Dec. 8), p. 325. See Current Index, 1900, p. lxxxiii.*

**PROBATE**—*continued.*

*Probate Registry—Paper grants and engrossments.* **W. N. 1900** (Dec. 8), p. 329. See *Current Index*, 1900, p. xciv.

*Administration Bond*, col. 1593.

*Citation.* See **GRANT OF ADMINISTRATION**. 24—29; **GRANT OF PROBATE**. 82, 83.

*Colonial Probates Act*, 1892, col. 1595.

*Costs.* See **GRANT OF PROBATE**. 87—92. *Execution*, col. 1595.

*Grant of Administration*, col. 1597.

*Grant of Probate*, col. 1609.

*Lost Will*, col. 1622.

*Practice Note*, col. 1623.

*Presumption of Death*, col. 1623.

*Renunciation*, col. 1624.

*Revocation of Administration*, col. 1625.

*Revocation of Probate*, col. 1626.

*Revocation of Will.* See **WILL—Revocation**.

*Soldier's Will*, col. 1627.

*Testamentary Capacity*, col. 1627.

**Administration Bond.**1. — *Amount—Lunatic executor.*

An executor who was sole legatee, having been found lunatic by inquisition, his committee took out letters of administration for his use and benefit. The estate was found larger than the original estimate. The administrator had paid into court part of the estate :—

*Held*, that the sureties might be allowed to give a bond to double the amount actually in the hands of the administrator. **IN THE GOODS OF CORMACK** - - **Butt J. [1891] P. 151**

2. — *Amount—Reduction of grant.*

An administrator pendente lite, who was also executor of the will in dispute, and had taken out a general grant, owing to the value of the estate, found it difficult to obtain sureties :—

*Held*, that the grant might be limited to two sums payable to the estate, and the sureties allowed to justify for double the reduced amount. **ASKEW v. ASKEW** **Jeune J. [1891] P. 174**

3. — *Assignment of administration bond—Practice—Court of Probate Act, 1857 (c. 77), s. 83.*

An application for the assignment of an administration bond should be made to a registrar. **IN THE GOODS OF REES**

**G. Barnes J. [1896] W. N. 57 (12)**

4. — *Breach of condition—Infant's legacy—Liability of sureties—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 81.*

A condition in an administration bond to administer well and truly the estate and pay the legacies thereout, is broken if through any default of the administrators a legacy cannot be paid out of the estate. An undertaking to pay the legacy out of other funds when the time of payment comes will not cure the breach. An administratrix got in the estate and paid all debts and legacies except one to a minor, the amount whereof she handed over to A., who did not pay it over to the minor, but absconded :—

*Held*, that the sureties of the administratrix

**PROBATE (Administration Bond)**—*continued.*

were liable for the amount of the legacy. **DOBBS v. BRAIN** - **C. A. [1892] 2 Q. B. 207**

5. — *Estate partly administered—Amount of bond.*

Where, after an estate had been partly administered, application was made for a grant of administration, the Court allowed a bond to be given in double the amount of the unadministered estate. **IN THE GOODS OF OAKLEY**

**G. Barnes J. [1896] P. 7**

6. — *Foreign sureties—Application at chambers.*

An application to allow an administration bond to be given with foreign sureties should be made to a judge in chambers. **IN THE GOODS OF SCOTT** - - - **Jeune P. [1895] P. 342**

7. — *Foreign sureties.*

On application for administration with will annexed of the property in England of a French subject resident in France, grant made on a bond with two foreign sureties. **IN THE GOODS OF DE BEAUFORT** - **G. Barnes J. [1893] P. 231**

See *In the Goods of Scott*, [1895] P. 342.

8. — *Form of administration bond—Administration to creditor—Right of retainer to be abolished—Note of Probate practice.* **PRACTICE NOTE**

**Jeune P. [1899] W. N. 262**

9. — *Inability to find security.*

Where next of kin were unable to find security, administration granted to a receiver in a Chancery administration action. **IN THE GOODS OF MOORE (No. 1)** - **Jeune J. [1892] P. 145**

10. — *Re-execution.*

(A) An administration bond had been executed in New South Wales to Sir J. Hannen, who when it was brought into the principal registry had ceased to be President :—

*Held*, that the Court could not substitute in the bond the name of the present President for that of the late President, and that the bond must be re-executed. **IN THE GOODS OF REEVES** **Jeune J. [1881] W. N. 124**

(B) Where an administration bond had been sent back to New South Wales to be re-executed :—

*Held*, that it could be received, although the re-execution and the original oath had not been sworn before the same commissioner. **IN THE GOODS OF SUTTON** - **Jeune J. [1891] W. N. 184**

11. — *Surety—Limited company accepted as sole surety—Administration with will annexed.*

Where a limited co. were appointed executors and trustees under a will, the Court granted administration with the will annexed to the general manager of the co. as their nominee, and accepted the co. themselves as sole surety under the administration bond. **IN THE GOODS OF HUNT** - **G. Barnes J. [1896] P. 288**

12. — *Widow—Missing will—Personal bond only required.*

A testator having mislaid a will appointing his wife executrix, made another in the same terms, but omitted to appoint executors. The missing will was found after his death. Administration with the second will annexed granted to the widow on her personal bond only. **IN THE GOODS OF ALLEN** **Jeune P. [1893] P. 184**

**PROBATE**—continued.**Colonial Probates Act, 1892.**

*The Colonial Probates Act, 1892 (55 & 56 Vict. c. 6), provides for the admission to probate in the United Kingdom of Wills made in any colony or dependency which has been brought by O. in C. within the Act.*

Orders in Council have been issued of the undermentioned dates, applying the provisions of the Act to the following British Possessions. References are appended to the volumes of Statutory Rules and Orders, in which these O. in C. have been printed at length:—

*Bahamas, Nov. 23, 1893. 1893, p. 4.*  
*Barbados, Jan. 29, 1894. 1894, p. 1, No. 73.*  
*British Columbia, Oct. 26, 1896. 1896, p. 2, No. 960.*

*British Guiana, May 16, 1893. 1893, p. 3.*  
*British Honduras, Jan. 30, 1893. 1893, p. 1.*  
*Canada. The North-West Territories being part of the Dominion of Canada. St. R. & O. 1897, p. 1, No. 556.*

*Cape of Good Hope, Jan. 30, 1893. 1893, p. 1.*  
*Falkland Islands, Oct. 3, 1895. 1895, No. 405.*  
*Fiji, April 30, 1894. 1894, p. 2, No. 117.*  
*Gibraltar, Jan. 30, 1893. 1893, p. 1.*  
*Gold Coast, May 16, 1893. 1893, p. 3.*

*Grenada, Feb. 3, 1898. 1898, p. 1, No. 124.*  
*Hong Kong, March 15, 1893. 1893, p. 2.*  
*Jamaica, July 18, 1894. 1894, p. 4, No. 178.*  
*Leeward Islands, March 6, 1896. 1896, p. 1, No. 194.*

*Lagos, Jan. 29, 1894. 1894, p. 1, No. 73.*  
*Manitoba, Nov. 27, 1896. 1896, p. 4, No. 1083.*

*Natal, Feb. 2, 1895. 1895, No. 56.*  
*New South Wales, on misconception, 1893. 1893, p. 1.*  
*New Zealand, on ground of carriage, 1893. 1893, p. 1.*  
*Nova Scotia, 1896. 1896, p. 3, No. 961.*

*Ontario, on amendments, 1893. 1893, p. 2.*  
*Queensland, on amendments, 1899. 1899, p. 1415, No. 449.*  
*St. Helena, on amendments, 1900. St. R. & O. 1900, No. 88.*

*St. Vincent, on amendments, May 19, 1898. 1898, p. 2, No. 412.*

*South Australia, May 16, 1893. 1893, p. 3.*  
*Straits Settlements, May 16, 1893. 1893, p. 3.*  
*Tasmania, Jan. 29, 1894. 1894, p. 1, No. 73.*

*Trinidad and Tobago, June 27, 1894. 1894, p. 3, No. 160.*  
*Victoria, Jan. 30, 1893. 1893, p. 1.*

*Western Australia, March 15, 1893. 1893, p. 2.*

**Execution.**

**13. — Attestation — Insufficient attestation clause—Refusal of witness to make affidavit—20 & 21 Vict. c. 77, s. 24—Non-contentious Rules of 1862, rr. 4, 7.**

Where all the three attesting witnesses to a will, of which the attestation clause was defective, refused to make an affidavit under rule 4

**PROBATE (Execution)**—continued.

of the Non-contentious Probate Rules of 1862 as to the execution, but the executor made an affidavit under rule 7, stating that the signatures of the testator and attesting witnesses were in their handwriting, and that no other persons were present at the execution:—

*Held*, (1) that the evidence was insufficient for grant of probate under rule 7; (2) that an order might be made under s. 24 of the Court of Probate Act, 1857, requiring the attesting witnesses to attend for examination as to the execution of the will. **IN THE GOODS OF SWEET**

**Jeune J. [1891] P. 400**

**14. — Attestation—Signatures of witnesses in the margin of will — Subscription — Wills Act (1 Vict. c. 26), s. 9.**

The attesting witnesses to a will signed their names in the margin of the first and second sheets opposite to certain amendments, intending, as it was proved, to attest the testator's signature:—

*Held*, that this was a valid subscription within s. 9 of the Wills Act, 1837. **IN THE GOODS OF STREATLEY**

**[1891] P. 172**

**15. — Married woman—Re-execution on death of husband—Wills Act, 1837 (1 Vict. c. 26), s. 24.**

Sect. 3 of the Married Women's Property Act, 1893, dispensing with the necessity of re-execution or republication of a will made during coverture on the death of a husband, applies to every will of a married woman who dies after passing of the Act. *In re WYLIE. WYLIE v. MOFFAT*

**Romer J. [1895] 2 Ch. 116**

**16. — Onus probandi—Informal will.**

Strict proof must be given of a will which is informal signed by mark instead of the usual subscription in full of the testator, and has been obtained from him by one of the proposers having a substantial interest in its provisions and witnessed by two of her relations. Such a will is not invalid; but the onus probandi may be increased by circumstances, and the presumption may even be conclusive against the validity of the instrument. *DONNELLY v. BROUGHTON*

**P. C. [1891] A. C. 435**

**17. — Position of signature of testator—"At the foot or end thereof"—Wills Act Amendment Act, 1852 (15 & 16 Vict. c. 24), s. 1.**

A testamentary document consisted of a sheet of paper containing on the first page a lithographed form of will. The form in the first page was filled in by the testatrix and contained bequests to "my sisters and friends." Her signature and those of the attesting witnesses were at the bottom of the first page. The second and third pages contained a list of bequests to persons, some of whom were the sisters and other friends of the testatrix. There was no direct evidence that the second and third pages had been written before the execution of the will:—

*Held*, that assuming the second and third pages to have been written before the execution of the will, the signature of the testatrix was not so placed "opposite to" the writing contained in these pages as to bring the case within s. 1 of the Wills Amendment Act, 1852, and that therefore the first page alone would be admitted to probate. *ROYLE v. HARRIS*

**Jeune P. [1895] P. 163**



**PROBATE (Execution)—continued.**

18. — *Position of signature of testator—First sheet only—Probate of part only.*

The testator and witnesses signed at the bottom of the first page of a will after an unfinished sentence which went on overleaf;—

*Held*, that probate could be granted of the first page of the will only. *IN THE GOODS OF ANSTEE* — — — **Jeune P. [1893] P. 283**

19. — *Position of signature of testator—Foot or end—Lord St. Leonard's Act, 1852 (15 & 16 Vict. c. 24), s. 1.*

The whole of the disposing portion of a will was written on the first side of a double sheet of foolscap; the second and third sides were blank; the signatures and attestation clause were on the fourth side:—

*Held*, that the will was duly executed. *IN THE GOODS OF FULLER* — **Jeune P. [1892] P. 377**

20. — *Presence of witness—Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26), s. 9.*

A testator acknowledged his will in the presence of two witnesses, but only one witness was present when the will was signed:—

*Held*, that the will was not duly executed in accordance with s. 9 of the Wills Act, 1837. *WYATT v. BERRY* — **G. Barnes J. [1893] P. 5**

— *Will of Maori.*

*See NEW ZEALAND. 10.*

**Grant of Administration.**

21. — *Attorney, Grant to—Necessity for notice—Administration de bonis non.*

Where administration had been granted to the attorney of one of two next of kin, both of whom resided out of the jurisdiction, and the administrator died leaving the estate partly unadministered, the Court, upon proof of notice to the next of kin for whose benefit the administration had been granted, granted administration de bonis non to the attorney of the other next of kin. *IN THE GOODS OF BARTON*

**Jeune P. [1897] W. N. 158 (1); [1898] P. 11**

— *Bankruptcy.*

*See BANKRUPTCY—Insolvent Estates. 117.*

22. — *Bastardy—Escheated Land—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.*

The Land Transfer Act, 1897 (60 & 61 Vict. c. 65), does not bind the Crown, and therefore, the legal estate in escheated land does not, under s. 1, vest in the Solicitor to the Treasury as the Crown's nominee.

Where a widow died, after the commencement of the Act, without issue, a bastard and intestate, entitled to both real and personal estate, a grant was made by the Court to the Solicitor to the Treasury of administration of her personal estate only, as before the Act. *IN THE GOODS OF HARTLEY* — **Jeune P. [1898] W. N. 155 (10); [1899] P. 4**

23. — *Bodily incapacity of executor—Administration with will annexed.*

Where an executor was incapacitated by illness, a grant of letters of administration with will annexed was made to a residuary legatee

**PROBATE (Grant of Administration)—continued.**  
for life for the use of the executor until his recovery. *IN THE GOODS OF PONSONBY*

**Jeune P. [1895] P. 287**

24. — *Citation—Executor—Absence from England—No citation—Grant to nominee of assignees of residuary legatee—Will—Practice.*

A testator died in 1890, leaving a will and codicil appointing executors, who duly proved. One of the executors died shortly afterwards, and in 1891 the other went abroad and had intimated that he had no present intention of returning to England, or of acting further as executor.

The Court, without requiring citation or any formal notice to be served upon the executor, granted administration de bonis non, with the will and codicil annexed, in favour of the nominee of the assignees of the residuary legatee. *IN THE GOODS OF CAMPION* — — — **G. Barnes J. [1899] W. N. 218; [1900] P. 13**

25. — *Citation and non-appearance of alleged legatees—Practice—Will.*

In an action brought to set aside an alleged will, the Court, on proof of the citation and non-appearance of the alleged legatees, made a grant of administration to the next of kin of the deceased.

*Morton v. Thorpe*, (1863) 3 Sw. & Tr. 179, followed. *IN THE GOODS OF QUICK. QUICK v. QUICK* — — — **G. Barnes J. [1899] P. 187**

26. — *Citation dispensed with—Sureties—Justification—Practice—Intestacy—Oath of administrator—Next of kin—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*

The intestate died in 1898. His son, who, if alive, would be entitled to administration as sole next of kin, had married and left this country in 1872, and had not been heard of since. The intestate's estate amounted to about 200*l*. The Court allowed a grandson of the intestate (the issue of a deceased daughter) to take a grant of administration under s. 73, without requiring the missing next of kin to be cited by advertisements; the applicant to swear that he believed himself to be the sole next of kin, and the sureties to his bond to justify.

*In the Goods of Reed*, (1874) 29 L. T. (N.S.) 932, followed.

*In the Goods of Shoosmith*, [1894] P. 23; distinguished. *IN THE GOODS OF CALLICOTT*

**Jeune P. [1899] P. 189**

Considered by Jeune P. *In the Goods of Loveday*, [1900] P. 154, 155.

— *Citation—Grant of probate.*

*See PROBATE—Grant of Probate. 87—92.*

27. — *Citation—Grant to creditor—Notice to next of kin in lieu of citation—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*

In granting administration of a small estate to a creditor, the Court dispensed with the citation of the next of kin, on proof that they had received notice of the application. *IN THE GOODS OF TEECE* **G. Barnes J. [1895] W. N. 143 (12); [1896] P. 6**

28. — *Citation—Necessity for—Disappearance of person entitled.*

Where upon an application by the one surviving brother of an intestate, who died in 1895,

**PROBATE (Grant of Administration)**—*continued.*  
for administration of his estate, it appeared that the intestate's father, who, if alive, was entitled to administration, had deserted his wife in 1866 and had not since been heard of, the Court directed that the father should be cited. **IN THE GOODS OF HARPER G. Barnes J. [1899] P. 59**

**29. — Citation—Representative of next of kin—Citation of person entitled in distribution—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.**

Under s. 73 of the Probate Act, 1857, a grant of administration may be made to the representative of the next of kin of an intestate without citing a person entitled in distribution. **IN THE GOODS OF KINCHELLA Jeune P. [1894] P. 264**

**30. Convent—Legacy to a Roman Catholic Convent—Administration with the will annexed.**

A testatrix left her residue to B. "to be disposed of as she shall think fit at her discretion for the benefit of" a convent. B. and the executor died during the lifetime of the testatrix. Letters of administration with will annexed were granted to the Reverend Mother of the convent as residuary legatee on proof of the permanence of the institution and the fitness of the Reverend Mother, having regard to her powers, to receive and apply the legacy. **IN THE GOODS OF M'ALIFFE Jeune P. [1895] P. 290**

**31. — Executor—Disappearance of person named as Will—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73—Substantial estate—Grant to one of the residuary legatees.**

The executor named in a will took some steps towards obtaining probate, but, after drawing a sum of 25*l.* from the estate on account of costs, appeared to have departed from the country in embarrassed circumstances, leaving no address, and apparently with no intention of returning:—

*Held* (all parties interested under the will consenting), that, although the estate was of substantial value, administration with the will annexed might be granted, upon motion, under s. 73, to one of the persons named as residuary legatees without notice to the executor. **IN THE GOODS OF MASSEY G. Barnes J. [1899] P. 270**

**32. — Executors—Powers and duties—Law of Chili—Evidence—Grant of administration with will annexed to the widow.**

A testator died domiciled in Chili, leaving a will, appointing two executors, one of whom died without taking probate. The other was believed to be in Bolivia, but no response had been obtained to repeated applications made to him. The only property in this country of any value consisted of a debt which it was desired to collect.

The Court accepted the affidavit of a notary, who was not a qualified Chilean lawyer, as evidence of the law of Chili; and, upon his evidence that the powers and duties of an executor in that country would only extend to seeing that the estate was duly administered by the acting heiress, who in this case was the testator's widow, the Court made to her a grant of administration, with the will annexed. **IN THE GOODS OF WHITELEGG — Jeune P. [1899] P. 267**

**33. — Foreign domicile—Next of kin out of the jurisdiction—Assets and some beneficiaries in**

**PROBATE (Grant of Administration)**—*continued.*  
*England—No executor—Grant to stranger without citing next of kin—Practice—Administration with will annexed—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*

The testatrix, who died domiciled in the Republic of Hayti, left a will which was valid by the law of her domicile, but not executed with the formalities prescribed in the Wills Act. There was no appointment of executors, but the will contained the words: "M. E. Bordu of Port-au-Prince and Mr. J. B. Wallace of Liverpool shall carry out my last wishes." The only estate in England consisted of a sum of 1260*l.* 7*s.* 11*d.* in the hands of Mr. Wallace's firm.

The sole next of kin, who was entitled in distribution to half the fund, was in Hayti and had not been cited; but the persons entitled to the other half were in England, and assented to Mr. Wallace being appointed administrator with the will annexed.

The Court appointed Mr. Wallace administrator (with the will annexed) under s. 73 without requiring the next of kin to be cited. **IN THE GOODS OF MOFFATT Jeune P. [1900] P. 152**

**34. — Foreign domicile of testatrix—Will made in execution of power of appointment—Grant of administration with will annexed.**

A testatrix who at the time of her death had a French domicile, executed, in pursuance of a power of appointment, a will in the English form, invalid according to French law.

The Court, on the authority of the decision of Sir C. Cresswell in *In the Goods of Alexander* (29 L. J. (P. & M.) 93), which is held to be binding, though erroneous, following in this respect the decision of Sir J. P. Wilde in *In the Goods of Hallyburton* (L. R. 1 P. & D. 90) granted administration with the will annexed. **IN THE GOODS OF HUBER Jeune P. [1896] P. 209**

Referred to by Jeune P. *In the Goods of Trefond*, [1899] P. 247, 250.

Referred to by Stirling J. *In re Price*, [1900] 1 Ch. 442, 452.

Referred to by Farwell J. *Pouey v. Hordern*, [1900] 1 Ch. 492, 494.

**35. — Foreign railways. Shares in—Administration de bonis non—Intestacy—Legal estate outstanding in the intestate—Beneficial owner a bankrupt—Limited grant to trustee in bankruptcy.**

A. being the owner of certain shares in two foreign ry. cos. handed the certificates to C., who received the dividends as beneficial owner until he became bankrupt, after which the trustee in C.'s bankruptcy received such dividends as became payable. A. died, never having divested himself of the legal estate in the shares; and administration to his estate was granted to B., who died leaving part of the estate unadministered. Upon the application of the trustee in C.'s bankruptcy,

The Court granted administration to him, in respect of the unadministered estate of A., limited to the shares in the two foreign ry. cos. **IN THE GOODS OF AGNESE Jeune P. [1900] P. 60**

**36. — Foreign will disposing of property abroad—Intestacy as to English estate—Grant.**

A testatrix left a will expressly limited to

**PROBATE (Grant of Administration)—continued.**  
her property abroad which was proved in the foreign Court. She died intestate as to her English property :—

*Held*, that administration of English property might be granted to her sole next of kin. IN THE GOODS OF MANN **Jenne P. [1891] P. 293**

Referred to by G. Barnes J. In the Goods of Murray, [1896] P. 65, 71.

**37. — Foreign will — Persons appointed to realize property in England.**

A person domiciled in Germany made a will appointing persons to realize his property in England, and to pay the proceeds to his executors in Germany. A grant of probate was made to these persons of administration to the use and benefit of the executors, on the ground that this grant would enable them to perform in England the duties imposed on them according to German law by the will. IN THE GOODS OF BRIESEMANN (No. 1) **Jenne P. [1894] P. 260**

See IN THE GOODS OF BRIESEMANN (No. 2) [1895] W. N. 32

**38. — Foreign will — Foreign sureties to administration bond—Practice.**

The testator, a French subject resident in France, made a will there by which he constituted a domiciled French subject his universal and residuary legatee. Part of the estate was in the English Funds, and there were no debts in this country :—

*Held*, on application for administration with will annexed, that the administratrix might give an administration bond with two foreign sureties. IN THE GOODS OF DE BEAUFORT

**G. Barnes J. [1893] P. 231**

See In the Goods of Scott, [1895] P. 342.

— **Heir-at-law—Application by—Practice—Real estate.**

See No. 62, below.

**39. — Heir-at-law of intestate wife passing over husband, Grant to—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I., s. 2, sub-s. 4—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.**

By the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I., s. 2, sub-s. 4, "Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of Court for adapting the procedure and practice in the grant of letters of administration to the case of real estate."

A wife died intestate. Her husband survived her, and she left a son by a former marriage, a minor, who was her heir-at-law.

On it appearing that the husband was a dissipated man, who was mismanaging a public-house which was part of the estate, and of which he refused to give up possession, the Court, acting under the sub-section and s. 73 of the Court of Probate Act, 1857, granted administration of the estate to the guardian ad litem of the infant heir-at-law. IN THE GOODS OF ARDEN

**G. Barnes J. [1898] P. 147**

**PROBATE (Grant of Administration)—continued.**

**40. — Heir-at-law—Necessity for citation of—Grant of administration with the will annexed—Grant ad colligendum—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I., s. 2, sub-s. 4.**

By the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I., s. 2, sub-s. 4, "Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of Court for adapting the procedure and practice in the grant of letters of administration to the case of real estate :—

By an additional rule and order, dated Nov. 20, 1897, for the registrars of the principal and district registries: "All rules orders and instructions and the existing practice of the Court with respect to non-contentious business shall, so far as the circumstances of each case will allow, be applicable to grants of probate and administration made under the authority of the Land Transfer Act, 1897."

A married woman who owned certain farms made a will, by which she left her real estate to her husband for life, with remainder to her natural daughter absolutely, and all her personal estate to her husband, whom she appointed executor.

Her natural daughter died in her lifetime. Her husband died without proving the will, and administration of his personal estate was granted to his sister as next of kin. It was not known who was the heir-at-law of the testatrix. The value of the real estate was 7688*l.*, that of the personal estate 45*l.* :—

*Held*, on an application by the administratrix of the husband, for a grant of administration of the real and personal estate of the testatrix, that, having regard to the provisions of the sub-section, the heir-at-law not having been cited, a general grant ought not to be made, but that the applicant might take a grant ad colligendum, which would enable her to let and manage the farms, till the heir-at-law could be cited. IN THE GOODS OF ROBERTS **Jenne P. [1898] P. 149**

— **Husband jure mariti, Property coming to.**

See HUSBAND AND WIFE. 14.

**41. — Husband missing—No executor or residuary legatee—"Special circumstances"—Grant to son without citing husband—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.**

Where no executor or residuary legatee was named in the will, and the testator's husband had deserted her fifteen years before her death and had not been heard of since, the Court granted letters of administration with will annexed to a trustee for beneficiaries under the will and dispensed with citation of the husband, under the "special circumstances" of the case, under s. 73 of the Court of Probate Act, 1857. IN THE GOODS OF SHOOSMITH **G. Barnes J. [1894] P. 23**

**42. — Informalities—Practice—Will and codicils—Infants interested—Probate granted on motion.**

Where a testatrix left three testamentary

**PROBATE (Grant of Administration)—continued.**

papers, two of which contained certain informalities and affected the interests of infants, the Court, being of opinion that, if the usual practice were insisted upon and the documents propounded in solemn form, the result would be to establish all three documents, granted probate thereof, on motion, to the executors. *IN THE GOODS OF O'BRIEN* - **Jeune P. [1900] P. 208**

**43. — Intestacy—Father and son—Doubt as to who died first—Probate Act, 1857 (20 & 21 Vict. c. 77)—Grant under s. 73.**

Where a person who left no will was presumed to have died "in or since 1863," and his father died in 1866, also intestate, the Court made a grant under s. 73 to a brother of the presumed deceased, no representative of the father's estate having been appointed. *IN THE GOODS OF HARLING* - **Jeune P. [1900] P. 59**

**44. — Intestate's estate of value under 500l.—Grant to executor of widow who had not taken administration—Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), s. 1—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.**

A widow died without taking administration to her husband's estate, which was of the net value of under 500l., and, as he died without issue, belonged exclusively to her, under s. 1 of the Intestates' Estates Act, 1890. The Court granted administration to her executor, under s. 73 of the Court of Probate Act, 1857. *IN THE GOODS OF BRYANT* **G. Barnes J. [1896] P. 159**

**45. — Joint grant to next of kin and another person entitled in distribution—20 & 21 Vict. c. 77, s. 73.**

A widow died intestate leaving a brother and nine nephews and nieces. Three of her nephews and nieces were in Australia, but, the other six consenting, the Court, under s. 73 of the Court of Probate Act, 1857, made a grant of administration to the brother and one of the nephews. *IN THE GOODS OF WALSH* **Jeune P. [1892] P. 230**

**46. — Joint grant—Widow and two elder sons—Consent of minor.**

Joint grant of administration of estate of an intestate made to his widow and her two sons by consent of all parties, where all five children were of age except one who was six months under age. *IN THE GOODS OF DICKINSON*

**Jeune P. [1891] P. 292**

**47. — Limited administration. — Grant ad colligendum—Next of kin abroad—Necessity for the immediate sale of a business.**

Where the keeper of a small shop in London died apparently a bachelor and intestate, and his next of kin who lived in South America had been communicated with but had not yet answered, and it was necessary to sell the goodwill at once, the Court made a grant ad colligendum to a friend, whom the deceased had shortly before his death asked to manage his affairs, in the form adopted in *In the Goods of Schwerdtfeger*, (1876) 1 P. D. 424. *IN THE GOODS OF BOLTON*

**G. Barnes J. [1899] P. 186**

**48. — Limited administration—Necessity for annexation of will.**

In granting, for the purpose of a conveyance,

**PROBATE (Grant of Administration)—continued.**

administration limited to certain leasehold property of a testator, the Court held that the will should be annexed to the grant. *IN THE GOODS OF BUTLER* - **Jeune P. [1897] W. N. 153 (12); [1898] P. 9**

**49. — Limited administration—Person entitled to grant abroad—Immediate grant necessary—Grant to stranger—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.**

At the time of the death of an intestate his next of kin were in the interior of Bolivia, where it took six weeks to communicate with them by telegram, and four months by letter. The Court, being satisfied that an immediate representation was necessary for the preservation of the personal estate, made a general grant to a member of a firm of accountants in London in whose hands the books of the intestate's firm had been placed, limited until such time as the next of kin should apply to take a full grant, and ordered the administrator to give justifying security. *IN THE GOODS OF SUAREZ* - **G. Barnes J. [1897] P. 82**

**50. — Limited administration—Trust fund.**

The Court will grant letters of administration to the cestui que trust of a trust fund, limited to that fund, after the death of the trustee, on the consent of his personal representatives.

*Pegg v. Chamberlain*, (1860) 1 Sw. & Tr. 527, followed. *IN THE GOODS OF RATCLIFFE*

**G. Barnes J. [1899] P. 110**

**51. — Limited administration—Will of married woman—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75)—Probate Rules of April, 1887.**

Where, upon the death of a woman who had married before the commencement of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), it appeared that, before her marriage, she had acquired a mortgage debt, which her husband had not reduced into possession, and had since her marriage made a will purporting to dispose of all her real and personal property, the Court made a grant to her husband of administration to such of her property as she had no power to dispose of by will. *IN THE GOODS OF LEMAN*

**Jeune P. [1898] P. 215**

**52. — Limited grant to husband—Practice—Will of married woman—Consent of husband.**

Motion by the husband of the deceased, Elizabeth Davis, for a grant to him of letters of administration in respect of her estate:—

*Held*, that under the circumstances letters of administration in respect of all the estate which by law devolved on or vested in the representative of Elizabeth Davis, save and except such estate as she had a right to dispose of, and had actually disposed of, by will, be decreed to the lawful husband of the deceased.

Form of limited grant in *In the Goods of Honor Leman*, [1898] P. 215, adopted; *In the Goods of Donovan*, (1898) 78 L. T. (N.S.) 567, referred to. *IN THE GOODS OF DAVIS*

**Jeune P. [1899] W. N. 61**

**53. — Lunatic—Form of oath by administrator.**

A testator while of unsound mind and being dependent on his relatives, and wholly without

**PROBATE (Grant of Administration)—continued.**  
property, made a will disposing of large sums of money, which was not propounded:—

*Held*, that administration, as in case of intestacy, might be granted to his sister as attorney for his widow, who was in Australia, and that the oath of the administratrix should be that as far as she knew and believed the deceased left no will. **IN THE GOODS OF RICH**

**Butt P. [1892] P. 143**

**54. — Lunatic—Pauper lunatic—Small intestacy—“Widow, but no issue”—Grant to clerk of guardians under 20 & 21 Vict. c. 77, s. 73—Next of kin not cited—53 & 54 Vict. c. 29, s. 1.**

The value of the property of an intestate who died leaving a widow, but no issue, did not exceed 500*l.* The widow was a pauper lunatic, and her father renounced his right to take the grant on her behalf:—

*Held*, that a grant of administration might be made under s. 73 of the Court of Probate Act, 1857, to a nominee of the guardians, to whom the pauper lunatic was indebted for maintenance, without citing the next of kin of the intestate or of the lunatic. **IN THE GOODS OF EVERLEY**

**[1892] P. 50**

**55. — Married woman—Foreign domicile — Power of appointment—Will made in execution of power—Administration with will annexed—Grant to appointee—Limited or general grant.**

Upon an application for administration with the will annexed it appeared that the deceased was domiciled in France, her husband, who survived her, being a domiciled Frenchman. The applicant was the appointee in trust under the marriage settlement of the deceased, which, on the face of it, appeared to include all her property, and the ground of the application was that the will had not been executed in accordance with the law of the domicile of the deceased:—

*Held*, that unless the husband of the deceased were to consent, a full grant ought not to be made; and that, in accordance with the practice, failing the husband's consent, the grant to the applicant, as appointee, should be limited to such property as the deceased had power to dispose of, and did dispose of, by the instrument executing the appointment. **IN THE GOODS OF TRÉFOND**

**Jeune P. [1899] P. 247**

**56. — Mental infirmity—Person “through mental infirmity arising from age incapable of managing his affairs”—Person appointed to act with powers of a committee—Lunacy Act, 1890 (53 Vict. c. 5), s. 116—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.**

The sole next of kin of a deceased intestate was a person “not lawfully detained as a lunatic, and not found a lunatic by inquisition, but through mental infirmity arising from age incapable of managing her affairs” within s. 116, sub-s. 1 (*d*), of the Lunacy Act, 1890. Her estate was administered by a person appointed to act with a power of committee under sub-s. 2 of the section. The Court made a general grant under s. 73 of the Probate Act, 1857, to the person so appointed, for the use and benefit of the next of kin. **IN THE GOODS OF LEESE**

**Jeune P. [1894] P. 160**

**PROBATE (Grant of Administration)—continued.**

**57. — Misconduct of widow—Grant to son of intestate.**

Where the widow of an intestate, whose estate was small, was shewn to have been a woman of dissipated habits, who had eloped with another man sixteen years before the application, and had not since been heard of, the Court made a grant of administration to the only son of the intestate, without the citation of the widow.

*In the Goods of Anderson*, (1864) 3 Sw. & Tr. 489, followed. **IN THE GOODS OF STEVENS**

**Jeune P. [1898] P. 126**

**58. — Next of kin—Grant to representative of—Executrix and sole legatee not to be found.**

Where an executrix and sole legatee—being the illegitimate daughter of the testatrix—had not been heard of forty years, the Court, the Crown waiving its rights, granted administration with the will annexed to the representative of the testatrix's next of kin, on proof of citation of the executrix by advertisement, and of the waiver by the Crown, and subject to administration to the next of kin being taken out. **IN THE GOODS OF LEY**

**— [1892] P. 6**

**59. — Next of kin as upon intestacy, Grant to — Practice—Document executed as a will—Sole executrix and beneficiary cited—Non-appearance.**

The deceased died leaving a document, which he had duly executed as a will, giving all his property to a certain person and appointing her sole executrix.

Upon proof of personal service upon that person of a citation, calling upon her to bring in the will or to shew cause why administration, as upon intestacy, should not be granted to the applicant as next of kin, and upon an affidavit of non-appearance to the citation:—

The Court, upon the authority of *Crosby v. Noton*, (1867) 36 L. J. (P. & M.) 55, and although there was no evidence before it as to the invalidity of the will, made a grant to the applicant, as upon an intestacy, conditionally upon the applicant swearing, when taking the grant, that he was the next of kin of the deceased. **IN THE GOODS OF DENNIS**

**— Jeune P. [1899] P. 191**

**60. — Pendente lite—Practice—Right of creditor to sue administrator—Will—Action touching validity—Appointment of administrator pendente lite—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70.**

An administrator pendente lite of the personal estate of a deceased person, appointed by the Probate Div., under s. 70 of the Court of Probate Act of 1857, pending an action touching the validity of the will of the deceased, may, without any leave of the Court, be sued in the Ch. Div. by a creditor of the deceased in the same way as a general administrator. *In re TOLEMAN*. **WESTWOOD V. BOOKER**

**North J. [1897] 1 Ch. 866**

**61. — Pendente lite—Duration of grant.**

The functions of an administrator pendente lite determine on a decree in favour of a will with executors.

*Semble*, that the case is the same if there be no executors. **WIELAND V. BRD**

**Jeune P. [1894] P. 262**

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**PROBATE (Grant of Administration)—continued.**

62. — *Practice—Real estate—Application by heir-at-law—Land Transfer Act, 1897* (60 & 61 Vict. c. 65), *Part I, s. 2, sub-s. 4.*

By the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I, s. 2, sub-s. 4, "Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of Court for adapting the procedure and practice in the grant of letters of administration to the case of real estate."

*Per G. Barnes J.:* Where the title of the person applying under the sub-section for administration as heir-at-law is clear, and there is no personality, a grant may be made to the applicant without notice to the next of kin; but where the title of the applicant is doubtful, or the amount of the personality large compared with the realty, notice should be given to the next of kin. *IN THE GOODS OF BARNETT*

**G. Barnes J. [1898] P. 145**

— *Presumption of death—Practice.*

*See Cases under PROBATE—Presumption of Death.*

63. — *Re-sealing—Intestacy—Colonial grant.*

Where the executors of a will, under which a legacy of 250*l.* was payable to the "personal representatives" of the testator's brother, who died intestate domiciled in one of the Australian Colonies leaving no estate in this country, insisted on the re-sealing here of a grant of letters of administration which the brother's widow had obtained in the Colony,

The Court allowed the grant to be re-sealed. *IN THE GOODS OF SANDERS*

**G. Barnes J. [1900] P. 292**

64. — *Residuary bequest—Will—All other effects."*

A bequest of furniture, &c., and "all other effects," to the wife in a will which contains no bequests to any other person, constitutes the wife residuary legatee, and a grant of administration with the will annexed will be made to her accordingly. *IN THE GOODS OF JUPP*

**Jeune J. [1891] P. 300**

— *Revocation of administration.*

*See Cases under PROBATE—Revocation of Administration.*

65. — *Second grant—Lunacy of single administrator—Appointment of person under s. 116 of Lunacy Act, 1890* (53 & 54 Vict. c. 5), *with only specified powers.*

Where a single administrator becomes insane, and a person is appointed under s. 116 of the Lunacy Act, 1890, with only specified powers, the Court will make a grant to another of the next of kin for the use of such administrator during his lunacy, impounding the original grant. *IN THE GOODS OF COOKE*

**Jeune P. [1895] P. 68**

66. — *Security—Next of kin unable to find security.*

**PROBATE (Grant of Administration)—continued.**

Where the next of kin of a lunatic was unable to find the justifying security:—

*Held*, that administration could not be granted to him, but that a grant might be made to a receiver already appointed by the Ch. Div. in an administration action. *IN THE GOODS OF MOORE* (No. 1)

**Jeune J. [1892] P. 145**

67. — *Sole executor missing.*

Where the sole executor had completely disappeared:—

*Held*, that the Court could grant administration with the will annexed to the testator's widow, the sole beneficiary, without citing the executor. *IN THE GOODS OF CRAWSHAY*

**Jeune P. [1893] P. 106**

68. — *Sole executrix a lunatic—Personal service of citation dispensed with—Grant to creditor under s. 73 of 20 & 21 Vict. c. 77.*

Where the sole executrix was a lunatic:—*Held*, that a grant of administration with the will annexed might be made under s. 73 of the Court of Probate Act, 1857, to a creditor, and personal service of the citation on the lunatic dispensed with. *IN THE GOODS OF ATHERTON*

**Jeune J. [1892] P. 104**

69. — *Son, passing over the husband, Grant to.*

Where the husband of an intestate had been cited to take out letters of administration to the personality and had entered no appearance, the Court passed him over and made a grant to the only son of the intestate. *IN THE GOODS OF SARAH MOORE*

**[1891] P. 299**

— *Subsequent discovery of will.*

*See TRUSTEE—Practice.* 88.

70. — *Stranger, Grant to—Grant of administration de bonis non with will annexed—Probate Act, 1857* (20 & 21 Vict. c. 77), *s. 73.*

All parties interested in the estate of the deceased entered into a compromise, with a view to putting an end to further disputes and litigation, and, being unable to agree amongst themselves that any one or more of their number should take a grant, it was arranged that B., chartered accountant, who had audited the books of the deceased's businesses for some years, should apply for letters of administration with the will and codicils of the deceased annexed; and the Court made an order in terms of this arrangement (see [1899] P. 265). In accordance with this order, B. entered upon his duties as administrator, and, after selling certain leaseholds and shares belonging to the testator's estate, died on Dec. 18, 1899, leaving part of the estate still unadministered.

On Dec. 20, administration de bonis non was granted, under s. 73, to Barnes, a partner of the said B., limited to collecting and preserving the estate and completing the sale of the leaseholds and continuing the business of the deceased until Jan. 29, 1900, or until a fresh permanent grant should be made.

With the consent of all parties interested, who were still unable to agree amongst themselves to a grant going to any one or more of their number,

The Court now made, on the application of Barnes, a grant de bonis non to him, with the will and codicils of the deceased annexed, subject

**PROBATE (Grant of Administration)**—*continued.*  
to formal consents by all parties being filed, and subject also to an affidavit of the fitness of the applicant. **IN THE GOODS OF POTTER. POTTER v. POTTER** - - - **Jeune P. [1900] W. N. 31**

**71. — Stranger—Grant of administration with will annexed to stranger—“Special circumstances”**—*Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*

Where all parties interested in the estate of the deceased had entered into a compromise, with a view to putting an end to all further disputes and litigation, upon the basis that B., a stranger in blood, who had been employed by the deceased in auditing his accounts, should apply for and obtain a grant of letters of administration with the will and codicils annexed, the Court, upon his application, and subject to the consents of all the persons interested in the estate, and subject to an affidavit of the fitness of the proposed administrator being filed, made the grant to him under s. 73. **IN THE GOODS OF POTTER. POTTER v. POTTER** **G. Barnes J. [1899] P. 265**

See *In the Goods of Potter*, [1900] W. N. 31.

**72. — Stranger—Grant to—No known relatives of testator, and no residuary legatee appointed.**

Where there were no known relatives of the testator and no residuary legatee had been appointed:—

*Held*, that a grant of administration with the will annexed might be made to a stranger. **IN THE GOODS OF JACKSON. Jeune P. [1892] P. 257**

**73. — Urgency—Both executors abroad.**

A testator appointed two executors, both of whom were at the time of his death resident out of the United Kingdom. The will contained a clause requesting A., the partner of one of the executors, to act for him in the event of his absence. There being urgent necessity for the appointment of an administrator:—

*Held*, that a grant could be made to A. with the will annexed, under s. 73 of the Court of Probate Act, 1857, until such time as one or other of the executors should prove the will. **IN THE GOODS OF TAYLOR. Jeune J. [1892] P. 90**

**74. — Widow appointed executor by missing will—Two wills.**

A testator made a will leaving everything to his wife and appointing her his sole executrix. The testator subsequently, not being able to find this will, made another in the same terms, but omitted to appoint executors:—

*Held*, on a motion for probate of both wills, that administration ought to be granted to the widow with the last will annexed, but that she might give her personal bond without being required to find securities. The missing will was found after the testator's death. Administration granted to the widow on her personal bond only. **IN THE GOODS OF ALLEN. Jeune P. [1893] P. 164**

#### Grant of Probate.

##### (Jurisdiction and Practice.)

— Acceptance of letters of request granted in aid of probate action—Jurisdiction.

See **ECCLESIASTICAL LAW—Faculty. 29.**

**75. — Alteration in grant—Omission of one of the christian names of an executor.**

The christian names of an executor called in

**PROBATE (Grant of Probate)**—*continued.*

a will and grant of probate “Frederick” were “Frederick John.” The Court, on proof that the Bank of England had objected to transferring stock into the names of the executors, in consequence of this executor having signed the memorandum for the transfer with the initials “F. J.,” allowed the description in the grant to be altered into “Frederick John M. . . .,” called in the will Frederick M. . . . **IN THE GOODS OF HONYWOOD. Jeune P. [1895] P. 341**

**76. — Alteration in will—Erasure after execution—Substituted executor and attesting witness.**

After the execution of his will, the testator added the names of two persons as executors, and erased the name of C. S., one of the witnesses, being one of the persons named as executor, and substituted another name:—

*Held*, that the nomination of executors might be included in the probate, but that the name of C. S. must be restored both as executor and attesting witness. **IN THE GOODS OF GREENWOOD. Jeune J. [1892] P. 7**

**77. — Ambiguity—Extrinsic evidence admitted to identify executor—“My nephew G. A.”**

A testator in his will applied the terms nephew and niece to legitimate and illegitimate relatives indiscriminately. He appointed as one of his executors “my nephew G. A.” having an illegitimate and a legitimate nephew of that name:—

*Held*, that extrinsic evidence was admissible to shew that the illegitimate nephew was meant by the will. **IN THE GOODS OF ASHTON. Jeune J. [1892] P. 83**

Referred to by Kekewich J. *In re Parker*, [1897] 2 Ch. 213.

**78. — Ambiguity—Extrinsic evidence—Identity of executor—Declaration of testator.**

Where there is ambiguity as to the identity of an executor, evidence of surrounding circumstances is admissible to clear up that ambiguity:—

*Semble*, that evidence of declarations by the testator is not admissible in such a case. **IN THE GOODS OF CHAPPELL. Jeune J. [1894] P. 98**

**79. — Ambiguity—Unexecuted testamentary document—Debt.**

A testator left in a box belonging to him a letter written by him to his executor, which had not been communicated to the executor, in which was said “the 100*l.* I lent you does not form part of the money left you; it is cancelled”:—

*Held*, that the letter was a testamentary document not duly executed, and was inadmissible in evidence of the cancellation of the debt. **IN re HYSLOP. HYSLOP v. CHAMBERLAIN. North J. [1894] 3 Ch. 522**

**80. — Ambiguity—Extrinsic evidence—Words of reference.**

Only where the terms of a will or the circumstances considered in connection with the will shew an ambiguity to exist are declarations of the testator admissible in evidence. **PATON v. ORMEROD. Jeune J. [1892] P. 247**

**81. — “Apparent”—Paper pasted over words**

**PROBATE (Grant of Probate)—continued.**

*in will*—*Nature of expert evidence admissible*—*Wills Act, 1837 (7 Will. 4, and 1 Vict. c. 26), s. 21.*

In deciding whether words obliterated, &c., in a will are apparent within s. 21 of the Wills Act, 1837, it is allowable to use magnifying glasses or artificial arrangement of light, but not to resort to any physical interference with the document. Paper had been pasted by a testator over words in a will. These words could be read by experts if the will was placed against a window pane, and the light was concentrated on the part to be read:—

*Held*, that the words deciphered should be admitted to probate. *FINCH v. COMBE*

*Jeune P. [1894] P. 191*

**82. — Citation by advertisement — Chain of executorship—Executor of executor—Disappearance of executor to whom power to prove reserved.**

Probate of a will was granted to one of two executors, power being reserved to make the like grant to the other executor. The acting executor died, not having fully administered; at the date of his death the other executor had not been heard of for fourteen years. The daughter and sole next of kin of the testator, with the assent of the executors of the acting executor, moved for a grant to herself of letters of administration *de bonis non*:—

*Held*, that the grant could not be made, as, upon the non-appearance to a citation of the executor to whom power to prove had been reserved, the chain of executorship would be continued in the executors of the acting executor without any fresh grant from the Court. Leave given to effect service of the citation on the absent executor by advertisement.

*In the Goods of Noddings*, (1860) 2 Sw. & Tr. 15, as amended by the corrigenda in that volume, followed. *IN THE GOODS OF REID*

*G. Barnes J. [1896] P. 129*

**83. — Citation — Compromise — Charitable bequest—Attorney-General.**

A testator by his will bequeathed the residue of his real and personal estate for the establishment of an agricultural college. The will was disputed by one of his next of kin who was also heiress at law; but a compromise was agreed to by which the will was to be proved in solemn form without opposition. The Att.-Gen., as interested in the disposal of the residue, was cited and appeared to sanction the compromise. *BOUGHEY v. MINOR*

*Jeune P. [1893] P. 181*

— Citation—Grant of administration.

*See PROBATE—Grant of Administration.*  
24—29.

**84. — Conditional will.**

A testator, a Scotsman, by his will gave the residue of his estate to his wife for life during widowhood, and in case of her re-marriage gave her one-third for life, the remainder to various legatees. There was no disposition of the residue after the wife's death in the event of her remaining a widow.

The testator, being about to sail with his wife from Calcutta to England, wrote a letter to his brother in England, which was in form a good testamentary document at Scots law, and con-

**PROBATE (Grant of Probate)—continued.**

tained the following: "If anything happens to us on the way my will has been accidentally packed away in a tin box to which I cannot now get access, as I forget which box it has been put into. However, if we both come to grief, I appoint you my executor; if I only, then in conjunction with Nan." The letter then proceeded to deal with the disposition of his estate after his wife's death, in the event of her surviving him. Neither the testator nor his wife died during the voyage:—

*Held*, that the letter was not conditional, but was a valid testamentary document, and must be admitted to probate. *HALFORD v. HALFORD.* (*BYRCE, INTERVENER*) *Jeune P. [1897] P. 36*

**85. — Conditional will.**

The deceased, a military officer on active service, wrote to his sister a letter in which he made use of the following language: "If we remain here taking paks for some time to come the chances are in favour of more of us being killed, and as I may not have another opportunity of saying what I wish to be done with any little money I may possess in case of an accident, I wish to make everything I possess over to you. In the first place there is money at . . . Keep this until I ask you for it."

*Held*, that the disposition of the deceased's property was not dependent on his death while on active service; that the document was not therefore a conditional will; and that, being good as a military will, it was entitled to probate.

*In the Goods of Robinson*, (1870) L. R. 2 P. & M. 171, considered. *IN THE GOODS OF SPRAATT* — *Jeune P. [1897] P. 28*

**86. — Conduct money—Practice—Examination**—*Court of Probate Act, 1837 (20 & 21 Vict. c. 77), s. 26.*

*Seem*, that conduct money cannot be claimed in the first instance by a person who is directed to attend for the purpose of being examined pursuant to s. 26 of the Court of Probate Act, 1837, (20 & 21 Vict. c. 77). *IN THE GOODS OF WYATT*

*Jeune P. [1898] P. 15*

**87. — Costs — Liability of defendant giving notice under r. 18 of Order XXI.—R. S. C., Order XXI., r. 18; Order LXV., r. 1.**

The general rule, that in cases tried with a jury costs follow the event, as, also, the exception engrafted on this rule by the Probate rule protecting a defendant from being ordered to pay costs where he has duly delivered a notice of his intention to call no witnesses, and merely requiring the will to be proved in solemn form, have been superseded by Order XXI., r. 18, as now amended.

The effect of that rule as amended is that, whether he has asked for a jury or not, a defendant who duly gives notice under the rule is not to be liable to pay the costs of the other side, unless the judge shall be of opinion that there was no reasonable ground for opposing the will. *DAVIES v. JONES* — *Jeune P. [1899] P. 161*

**88. — Costs—Married woman, proceeding instituted by—Costs of litigation—Entry of Caveat—Property subject to restraint on anticipation**



**PROBATE (Grant of Probate)—continued.**

*Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100—R. S. C., 1883, Order I., r. 1; Order II., r. 1.*

An executor's probate action, brought in consequence of a caveat entered by a married woman who was made a deft. to the action, resulted in a verdict for the plt. with costs against the deft. Upon an application by the plt. under the Married Women's Property Act, 1893, s. 2, for an order for payment of the costs out of property to which the deft. was entitled subject to a restraint on anticipation:—

*Held*, that the proceedings in the probate action were "instituted" within the meaning of the Act of 1893 by the issue of the writ by the plt., and not by the entry of the caveat, or the appearance of the caveator in answer to the warning; and accordingly that the order applied for could not be made. *MORAN v. PLACE*

**C. A. [1896] P. 214**

**89. — Costs of unsuccessfully opposing probate—Testamentary expenses.**

The plt.'s costs of an unsuccessful action impeaching the validity of a will, though ordered by the judge of the Probate Div. to be paid out of the testator's estate, are not testamentary expenses. *In re PRINCE. GODWIN v. PRINCE*

**Stirling J. [1898] 2 Ch. 225**

**90. — Costs "out of the estate"—Real estate, Liability of.**

In a probate action judgment was given for the plt. establishing the will (which contained specific devises of real estate, but no residuary devise), and the deft.'s costs were ordered to be paid out of the estate, but no order was made as to the costs of the plts. propounding the will. The deceased's estate consisted of real estate, part only of which was devised, and personal estate not sufficient to pay the costs of the action. In an administration action:—

*Held*, that the order of the Probate Div. could only refer to the estate over which it had jurisdiction (namely, personalty), and that the Ch. Div. had no jurisdiction except under special circumstances to order the costs in the Probate Div. to be paid out of the real estate. *In re SHAW. BRIDGES v. SHAW*

**Kekewich J. [1894] 3 Ch. 615**

**91. — Costs—Proof in solemn form—Notice by defendant to cross-examine only—Practice—Order XXI., r. 18—R. S. C., July, 1898.**

By Order XXI., r. 18, as amended by the Rules of the Supreme Court, July, 1898, "In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists on the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the judge shall be of opinion that there was no reasonable ground for opposing the will."

The judge, being of opinion that the defendants in a probate action had opposed the will

**PROBATE (Grant of Probate)—continued.**

without reasonable ground, ordered them to pay the costs of the other side, under the amended rule. *SPICER v. SPICER*

**Jeune P. [1898] W. N. 156 (11); [1899] P. 38**

**92. — Costs—Severance of defences—Practice—Good cause—Probate action—Action tried with a jury—Separate sets of costs—R. S. C., Order LXV., r. 1.**

An action to establish the third, and, alternatively, the second, will of a testator, was separately defended by the executors of the first will and two legatees thereunder. The legatees were interested in upsetting both the second and third wills, but the executors were only substantially interested in upsetting the third. The jury found that the execution of the last two wills was obtained by undue influence, and the judge pronounced against them and for the first will:—

*Held*, that there was a sufficient divergence of interest between the defts. to justify the legatees in appearing by separate counsel, and that, consequently, there was no good cause for depriving them of the costs of their separate appearance.

Decision of G. Barnes J. reversed. *BAGSHAW v. PIMM* - - **C. A. [1900] W. N. 64; [1900] P. 148**

— County court jurisdiction.

*See PROBATE—Revocation of Administration. 143.*

**93. — Discovery and inspection of documents—Disputed will.**

In an action to propound a will the defts. applied for inspection of documents. It appeared that the plt.'s solicitor had for many years acted for the testatrix, and had in his possession diaries, &c., relating to the affairs which were his own private property:—

*Held*, (1) that the plt. could not be compelled to produce these documents for inspection; (2) that the solicitor could not be compelled under Order xxxvii., r. 7, to produce the documents for discovery, nor called for examination under Order xxxvi., r. 5, at that stage of the action; (3) that an affidavit of documents claiming privilege for documents as communications between the party and his solicitor is insufficient, it being also necessary to shew that the letters were professional communications of a confidential character for the purpose of getting legal advice. Decision of Jeune P., [1891] P. 237, partly affirmed. *O'SHEA v. WOOD* - **C. A. [1891] P. 286**

Referred to by C. A. *Reg. v. Bullivant*, [1900] 2 Q. B. 163, 168.

**94. — Executor according to the tenor.**

(A) Trustees nominated by a testator (A.) "to carry out this will," and (B.) "for the due execution of this my will":—

*Held*, entitled to probate as being executors according to the tenor.

(A) IN THE GOODS OF RUSSELL

**Jeune P. [1892] P. 380**

(B) IN THE GOODS OF LAIRD

**Jeune P. [1892] P. 380**

(B) A testatrix appointed two persons trustees

**PROBATE (Grant of Probate)—continued.**

of her will and expressed a wish that they should pay her funeral and other debts:—

*Held*, that they were thereby constituted executors according to the tenor of the will, and were entitled to probate. *IN THE GOODS OF WILKINSON* - **Jeune J. [1892] P. 227**

— Foreign assets, Debts chargeable on—Statement by executors.  
*See VICTORIA. 11.*

**95. — Foreign will—German law—Probate of copy.**

The will of a German subject domiciled in the kingdom of Wurtemberg at his death had been proved in Wurtemberg in accordance with the requirements of local law and deposited with a notary, who by the law of the country was forbidden to allow it to leave his custody. It contained a direction that during her lifetime the widow should have the unrestricted right of administration and usufruct of the testator's estate without giving security, which according to the local law was equivalent to appointing her executrix, and entitled her to collect the personal estate as though she were the owner thereof. Part of the personal estate was in England:—

*Held*, that probate might be granted to the widow of a copy of the original will properly proved, limited to such time as might elapse before the original will itself should be brought in. *IN THE GOODS OF VON LINDEN*

**Jeune P. [1896] P. 148**

**96. — Foreign will—Grant of probate to foreign executors.**

A person domiciled in England by his will appointed persons in England to realize property there and pay the proceeds to his executors abroad. Letters of administration were granted to those persons to the use of the executors. The administrators renounced. Probate granted to the executors in Germany. *IN THE GOODS OF BRIESEMANN (No. 2)* **Jeune P. [1895] W. N. 32**

— General and special grant—Personal representative.

*See TRUSTEE—Appointment. 12.*

**97. — Guardian ad litem—Official receiver appointed—Contention—Rules of Probate Court, 1862, r. 74 R. S. C., 1883, Order XIII., r. 1.**

Where the debt to a probate action was a minor and resident abroad, and no appearance was made to the citation:—

*Held*, that Order XIII., r. 1, applied, and that the official solicitor should be made guardian ad litem, and his costs provided for as part of the costs of the plt., who was the executor propounding the will. *WHITE v. DUVERNAY*

**Jeune J. [1891] P. 290**

**98. — Incorporated document—Will—Library catalogue—Custody.**

A testator made a bequest to a college of his books as enumerated in his library catalogue, a voluminous document, a copy of which would entail considerable expense. Probate was granted of the will without requiring the catalogue to be brought into the Probate Registry under rules 12, 13 of the Rules of 1862, the college undertaking

**PROBATE (Grant of Probate)—continued.**

to hold the catalogue for the registry, and a note to that effect being made upon the probate. *IN THE GOODS OF BALME* **Jeune P. [1897] P. 261**

**99. — Incorporation—Words of reference—Latent ambiguity—Parol evidence.**

A testatrix by a will executed in 1873 bequeathed a moiety of a fund, over which she had a power of appointment, to P. In 1881 she made another will revoking all former wills, but containing a recital apparently referring to the 1873 bequest:—

*Held*, on the facts, that there was no incorporation by reference. *PATON v. ORMEROD*

**Jeune J. [1892] P. 247**

**100. — Incorporation by codicil—Unattested—Interlineations.**

By an unattested interlineation made after the execution of a will 1000*l.* was given to each of the executors. In the body of the will 10,000*l.* was given to A., one of the executors, and a codicil contained a recital that 11,000*l.* had been given to A.:—

*Held*, that this reference shewed that the interlineation had been made previously to the codicil, and was, therefore, incorporated by it. *IN THE GOODS OF HEATH* - **Jeune P. [1892] P. 253**

**101. — Incorporation—Document not referred to as existing—Codicil.**

A testator devised property to trustees to provide an annuity for his wife, setting apart certain funds which they would find noted; he confirmed his will by two codicils. A document certainly later than the will and possibly before the codicils was found which set apart funds for this purpose:—

*Held*, that as the will did not refer to the document as existing, the codicils had not the effect of incorporating it with the documents of which probate was to be granted. *DURHAM v. NORTON* - **Jeune P. [1895] P. 66**

*And see next Case.*

**102. — Incorporation—Testamentary papers—Validity—Inadmissibility—Refusal of probate.**

A testator executed a document in the presence of two witnesses who duly attested it. The document appointed no executors and contained no bequest, but referred to "the enclosed papers numbered" 1-6, as containing his testamentary wishes, and recited that such papers had been signed by him in the presence of the witnesses. This the witnesses denied, saying that when they witnessed the testator's signature, he said, "The will is in this drawer." Papers 1-6 bore dates antecedent to the witnessed document. In the attestation clause the deceased was referred to as the testator:—

*Held*, that, as the papers 1-6 were not clearly identified, they could not be taken as incorporated with the attested document, and as the attested paper alone would be inoperative, probate of all the documents must be refused. *IN THE GOODS OF GARNETT* **G. Barnes J. [1894] P. 90**

**103. — Inspection of testamentary papers—20 & 21 Vict. c. 77, s. 26—21 & 22 Vict. c. 95, s. 23.**

Where the executors and solicitors of a testa-

**PROBATE (Grant of Probate)—continued.**

trix refused to give any information as to previous alleged wills, the Court, under the 26th section of the Court of Probate Act, 1857, ordered them to bring into the registry all wills and testamentary papers of the deceased in their possession, and to allow certain persons who believed themselves to have been benefited by such wills to take copies subject to payment of deposit for inspection. *IN THE GOODS OF SHEPHERD*

**Jeune J. [1891] P. 323**

— Invalid bequest—Grant of general probate to husband—Implied assent to will.

*See HUSBAND AND WIFE. 41.*

**104. — Joint will—Husband and wife.**

Where a husband and wife made a joint will, the Court, upon the death of the wife, granted probate of so much of the instrument as became operative upon her death. *IN THE GOODS OF FIAZZI-SMYTH*

**Jeune P. [1897] W.N. 150 (2); [1898] P. 7**

**105. — *Lis pendens*—Receiver before probate—Jurisdiction.**

A. entered a caveat against probate of a will. B., the executor named in the will, warned it, and A. appeared. Before anything further had been done A. moved for an order for a receiver and administrator pendente lite:—

*Held* (affirming the decision of the President), that there was no jurisdiction to make the order, for the caveat proceedings did not constitute a *lis pendens*, and, as no writ had been issued, there was no application to the Court on which the Court could act.

*In re Parker*, (1885) 54 L. J. (Ch.) 694, explained. *SALTER v. SALTER*

**C. A. [1896] P. 291**

— Married woman—Invalid bequest—Grant of general probate to husband—Implied assent to will.

*See HUSBAND AND WIFE. 41.*

**106. — Misrepresentation—Notice to husband—20 & 21 Vict. c. 85, s. 21—Desertion.**

A woman married in 1863, who had separated from her husband by mutual consent, made a will on the strength of a protection order under s. 21 of the Matrimonial Causes Act, 1857. This order had been obtained (after the husband's return to co-habitation) by the suppression of material facts and without giving notice to the husband. The husband did not know of the order until after the wife's death:—

*Held*, that the protection order must be set aside as obtained by false statements and concealment of material facts and without notice to the husband, and the will pronounced against. *MAHONEY v. M'CARTHY*

**Jeune P. [1892] P. 21**

**107. — Mistake in date of reference—Codicil.**

A testatrix executed a will in 1887, and another in 1899 by which she revoked all previous wills, and in 1891 a codicil which by mistake was described as a codicil to the will of 1887:—

*Held*, that probate might be granted of the codicil, together with the will of 1889, with the reference to the will of 1887 omitted. *IN THE GOODS OF GORDON*

**Jeune P. [1892] P. 228**

**PROBATE (Grant of Probate)—continued.****108. — Mistake in will—Correcting in grant.**

Where, by a mistake in the engrossment of a draft will, a house No. 105 was described as No. 103, so that one house was bequeathed twice over and another house was left undisposed of:—

*Held*, that the Court could strike out the wrong description, but must leave the Court of construction to fill up the blank. *IN THE GOODS OF WALKLEY*

**Jeune P. [1893] W. N. 62**

**109. — Mistake in will—Correcting in grant—Grant of probate with name omitted.**

Where in a will the name of one sister was inserted by a mistake of the conveyancer for that of another sister:—

*Held*, that probate might be granted to the executors with the repeated name omitted. *IN THE GOODS OF BOEHM*

**Jeune J. [1891] P. 247**

**110. — Mistake in will—Omission of words of revocation included in will without testatrix's knowledge.**

After the execution of her will by which she left her whole property to her illegitimate son, a testatrix wrote out and duly executed on a printed form of will a bequest of certain furniture to her sister. The form commenced with a clause revoking all previous wills, but the testatrix did not fill up the blanks in this clause, which was not read over to her (as the rest of the form was) at the time of execution, and of which there was no evidence she had ever heard:—

*Held*, that probate might be granted of the paper, omitting the revocation clause, as a codicil to the original will. *IN THE GOODS OF MOORE* (No. 2)

**Jeune P. [1892] P. 378**

— Neglect to take out probate—Willful default—Breach of duty.

*See EXECUTOR—Liabilities. 41.*

**111. — New trial—Motion for—Findings of jury—Legatee preparing will in his own favour.**

On a motion for a new trial made by the executors after the Court had excluded from probate a pecuniary legacy exhausting nearly the whole of the testator's estate to his confidential agent who had drawn the will, it appeared that the jury had properly found that the testator knew and approved its contents except as regards the above bequest, which he did not know and approve of, but had in a rider expressed its belief that the testator intended to give to said legatee half his property:—

*Held*, that the motion was properly refused. The rider did not neutralise but rather supported the verdict, for, if correct, it shewed that the will did not truly express the testator's intention. *FARRELY v. CORRIGAN*

**P. C. [1899] A. C. 563**

**112. — Obliteration—Will—Practice—Words of will before alteration whether "apparent"—Evidence of experts in writing—Wills Act (1 Vict. c. 26), s. 21.**

The Court, on motion, allowed words beneath alterations in a will to be substituted, as "apparent" within the meaning of s. 21 of the Wills Act (1 Vict. c. 26), upon proof that they could be deciphered by an expert in handwriting using a magnifying glass. *IN THE GOODS OF BRAZIER*

**G. Barnes J. [1899] P. 36**

**PROBATE (Grant of Probate)—continued.**

**113. — Onus probandi—Informal will—Wills of Maoris—Law of New Zealand.**

Strict proof must be given of a will which is informal signed by mark instead of the usual subscription in full of the testator, and has been obtained from him by one of the propounders having a substantial interest in its provisions and witnessed by two of her relations. Such a will is not invalid; but the onus probandi may be increased by circumstances, and the presumption may even be conclusive against the validity of the instrument. *DONNELLY v. BROUGHTON*

**P. C. [1891] A. C. 435**

**114. — Onus probandi—Will prepared under suspicious circumstances.**

Where a will is prepared and executed under suspicious circumstances, it is for the party propounding it to adduce evidence to remove such suspicion and to satisfy the Court that the testator knew and approved of the contents of the will. The testatrix in 1880 and 1884 made wills in favour of the deft., but afterwards became dissatisfied with him, and from 1888 to 1892 wrote to her solicitor complaining of the deft. On Nov. 7, 1892, she made a will leaving her property to the plt. On Nov. 9 the deft.'s son brought to her a will prepared by himself leaving the property to the deft. The deft.'s son and a friend of his were the only persons present when this will was executed. The attesting witnesses swore that the testatrix understood and approved of the will:—

*Held*, that the onus was on the deft. to remove the suspicion arising from the circumstances, and that the evidence was not sufficient. *TYRRELL v. PAINTON (No. 1)* **C. A. [1894] P. 151**

**115. — Power of attorney—Grant of probate to attorneys—Executor absent from the country.**

An executor on going abroad had executed a power of attorney, enabling the persons named in it to act in business of every kind whatsoever as fully and effectually as he himself could do:—

*Held*, that the power was wide enough to enable the Court to make a grant with the will annexed to the attorneys for the use and benefit of the executor. *IN THE GOODS OF BARKER*

**Jeune J. [1891] P. 251**

— Presumption of death.

*See* CASES UNDER **PROBATE—Presumption of Death.**

**116. — Proof in solemn form—Costs—Discretion—Contentious Rules of 1862, r. 41.**

Where the party opposing a will has given notice under r. 41 of the Contentious Business Rules of 1862 that he merely insists on the will being proved in solid form and on cross-examining the witnesses, but does not seek to call in the probate, he cannot be condemned in costs. *LEIGH v. GREEN* - - -

**Div. Ct. [1892] P. 17**

— Res judicata—Will—Validity—Probate action—Citation of parties.

*See* **ESTOPPEL**. 9.

**117. — Revival by reference.**

A testator made a will in 1867 and two codicils thereto in 1869 and 1874, and in 1875 another will expressly revoking all former wills

**PROBATE (Grant of Probate)—continued.**

and testamentary papers. Two persons who were benefited by the codicil of 1874 and the will of 1875 having died, he in 1881 made another codicil disposing of the property which had been left to them, and commencing, "Whereas my two sisters named in my codicil dated May 12, 1874 . . .":—

*Held*, that this reference to the codicil of 1874 did not revive it, and it must be excluded from probate. *IN THE GOODS OF DENNIS*

**Jeune J. [1891] P. 326**

**118. — Torn will—Incomplete restoration—Copy.**

After a testator's death and while one of the executors was making a copy of the will, one of the testator's sons snatched the will and tore it in pieces. The executor collected the pieces and gummed them together, but some of them were missing:—

*Held*, that probate might be granted of the incomplete will, together with the copy, which the executor had subsequently completed. *IN THE GOODS OF LEIGH* **Jeune J. [1892] P. 82**

**119. — Torn will—Security for share of absentee.**

A testator suffering from softening of the brain tore his will into pieces. The pieces were pasted together, and probate applied for by the widow. The will left all the testator's estate to his wife for life, with remainder to his two sons in equal shares, and appointed the widow and the sons trustees and executors. The eldest son was willing that probate should be granted. The younger had not been communicated with:—

*Held*, that probate might be granted to the widow on her giving security for one-third of the personal estate, being the younger son's share in case of intestacy. *IN THE GOODS OF HINE*

**Jeune P. [1893] P. 282**

**120. — Two testamentary documents—Only one executed.**

A testatrix left two testamentary documents: the first, which was unexecuted, made various specific bequests; the second, which was duly executed, left everything to A. "for the purposes I require him to do absolutely":—

*Held*, that the two documents could not be admitted to probate together as constituting the will of the deceased, but that probate might be granted of the second paper with directions to administer the estate in conformity with the trusts of the first. *IN THE GOODS OF MARCHANT*

**Jeune P. [1893] P. 254**

**121. — Two wills, one dealing with English, the other with foreign property—Independent English and foreign wills—Incorporation of foreign with English will.**

A testator made two wills with codicils, the earlier relating to property in the United States, the later to property in England, and appointed executors in the two countries, his intention being that the American executors, after realizing so much of his property in America as they required for the purpose of paying his debts there and the legacies given by his American will and codicils, should realize the residue under the direction of his English representatives and hand

**PROBATE (Grant of Probate)—continued.**

the proceeds over to them, to be dealt with as directed by the English will and codicils:—

*Held*, that the American and English wills were independent documents, and the English will did not incorporate the American will, and that, therefore, the American will and codicils ought not to be included in the probate to be granted of the English will and codicils. **IN THE GOODS OF MURRAY** G. Barnes J. [1896] P. 65

**122. — Two wills—Property in England and Canada — Independent grant — Affidavit as to movables.**

A testator having property in England and Canada made two wills, each purporting to be independent of the other and disposing only of the property situate in the country to which it referred:—

*Held*, that probate might be granted of the English will without requiring the executors to bring in the Canadian will, on affidavits being filed shewing that the movables mentioned in the two wills were in England and Canada respectively at the time of the testator's death. **IN THE GOODS OF SEAMAN** Jeune J. [1891] P. 253

**123. — Two wills—Property in England and Italy—Incorporation.**

An Italian lady, widow of an Englishman and domiciled in England, made a will for her English property, and afterwards in Italy made another will, confined to her Italian property, except that it expressly confirmed her English will:—

*Held*, that, as the Italian will confirmed the English will, it must be incorporated in the probate. **IN THE GOODS OF LOCKHART**

G. Barnes J. [1893] W. N. 80

**124. — Two wills—Property in England and Scotland—Debts charged on one estate only.**

A testator executed two wills, one dealing with property in England, the other only with property in Scotland. By the Scottish will all the testator's debts were charged on the Scottish property:—

*Held*, that probate might be granted of the English will alone without requiring the Scottish will to be incorporated, on condition that a certified copy was filed and a note to that effect made on the probate. **IN THE GOODS OF FRASER**

Jeune J. [1891] P. 285

**125. — Will and two codicils—Second codicil revoking "all previous codicils."**

A testator left a will and two codicils, the second of which revoked "all previous codicils made in favour of" a legatee. A difficulty was raised in the registry by reason of the reference in the second codicil to previous "codicils" in the plural:—

*Held*, that it was clear that all three documents must be admitted to probate. **IN THE GOODS OF JENKINS** Jeune P. [1894] W. N. 16

**126. — Will dealing with immovable property in foreign country.**

A testator domiciled in England left a will and codicils dealing with property in England and personal property in Russia; and also left two other documents, one of which was a will

**PROBATE (Grant of Probate)—continued.**

duly executed according to English law, both referring only to immovable property in Russia, and appointing separate executors for such property. All the executors applied for probate of all five documents. Probate refused of the two documents, referring only to the immovable property in Russia. **IN THE GOODS OF TAMPLIN**

G. Barnes J. [1894] P. 39

**127. — Will proved abroad—French law — Probate of copy.**

The will of a British subject domiciled abroad at the time of his death had been proved in the French Courts and deposited with a notary, who by the law of France was forbidden to allow it to be removed from his custody:—

*Held*, that probate might be granted of a properly proved copy of the original will limited to such time as might elapse before the will itself should be brought in. **IN THE GOODS OF LEMME**

Jeune J. [1892] P. 89

**128. — Wrong surname—Executor described by —Will—Appointment of executors.**

The deceased, by his will, appointed certain executors, of whom one was described as "the said Thomas Cooper." The deceased had no friend, child, or relative named Thomas Cooper, but he had a friend named Thomas Stevenson, who was named in the will as a trustee along with the other two persons properly named as executors.

The Court ordered the surname "Cooper" to be struck out of the engrossment of the will to be made for the purposes of probate, and granted probate to Thomas Stevenson and the other two executors. **IN THE GOODS OF COOPER**

Jeune P. [1899] P. 193

**Lost Will.**

**129. — Lost will—Codicil admitted to probate where will not forthcoming.**

Where testator executed a codicil which was described as "a codicil to my will executed some years ago," and no trace of a will could be found:—

*Held*, that probate of the codicil might be granted. **IN THE GOODS OF CLEMENTS**

Jeune P. [1892] P. 254

**130. — Lost will—Grant of administration until will found.**

On an application for a grant of administration until a lost will could be found, there was evidence that the testator had duly executed a will, but that it could not be found after his death, and his widow, who refused to attend, and, being examined as to its contents, having stated that it had been accidentally destroyed, there was no evidence of its contents:—

*Held*, that a grant of letters of administration might be made to the only son, with the consent of the other next of kin, limited to dealing with certain specified property, until the lost will should be found. **IN THE GOODS OF WRIGHT**

G. Barnes J. [1893] P. 21

**131. — Lost will—Proof on motion—Necessity for consent of next of kin—Practice.**

The contents of a lost will cannot be proved

**PROBATE (Lost Will)—continued.**

on motion without the consent of the next of kin.  
IN THE GOODS OF PEARSON

G. Barnes J. [1896] P. 289

Qualified by G. Barnes J. *In the Goods of Apted*, [1899] P. 272.

**132. — Lost will—Small estate—Proof on motion—Consent of next of kin dispensed with.**

The Court will now, in the case of a small estate, entertain an application to prove, upon motion, the contents of a lost will, without requiring, as an absolute condition, the consent of all persons interested in the estate.

*In the Goods of Pearson*, [1896] P. 289, qualified. IN THE GOODS OF APTEED

G. Barnes J. [1899] W. N. 128; [1899] P. 272

**Practice Note.**

**133. — Non-contentious business — Probate pieces and engrossments.**

Sir F. H. Jeune P., referring to an intimation which had been conveyed to practitioners towards the end of the last Trinity Sittings, said that after a considerable amount of correspondence to ascertain the views of solicitors and with a wish to consult the interests of all persons concerned, he had now directed the Senior Registrar to issue the following regulations, to take effect on and after January 1, 1901:—

**Paper Grants and Engrossments.**

1. By direction of the President, special paper will be used instead of parchment for grants and engrossments on and after January 1, 1901.

2. A grant of probate or administration with will annexed will be written on the front of a whole sheet of paper, which will enclose the engrossment book-fashion.

3. Official engrossment sheets of the special paper will be obtainable of Messrs. Eyre & Spottiswoode or of any bookseller, price one penny per sheet.

No other paper engrossments will be accepted.

4. For the present, a parchment engrossment will not be refused if it is desired for any special reason, but it is particularly requested that in such a case the sheets may be of uniform size with the official paper engrossment sheet.

PRACTICE NOTE — Jeune P. [1900] W. N. 265

**Presumption of Death.**

**134. — Advertisements — Necessity for — Practice.**

On an application for leave to swear an affidavit of the death of a person who had disappeared, the Court, though the estate was small, and the person had not been heard of for twenty-five years, ordered that advertisements requesting information concerning him should be published in newspapers. IN THE GOODS OF ROBERTSON — G. Barnes J. [1896] P. 8

**135. — Affidavit as to date of death—Filing letter from life assurance company.**

On a motion for a grant of probate and for leave to depose as to the death of the testator, although the only proof of his death was by presumption from his disappearance, it appeared that notice of the motion had been given to a

**PROBATE (Presumption of Death)—continued.**

company with whom the testator had insured his life, and that a letter had been written in reply stating that the company did not intend to interfere in the proceedings.

The Court granted the application subject to the letter being filed. IN THE GOODS OF SAUL

G. Barnes J. [1896] P. 151

**136. — Affidavit of applicant—Practice.**

On an application for leave to presume the death of a person who has disappeared, the affidavit of the applicant should contain a statement of belief that the death occurred at the alleged date. IN THE GOODS OF HURLSTON

G. Barnes J. [1898] P. 27

**137. — Foreign grant followed.**

Where a foreign Court of competent jurisdiction had made a grant of administration on the presumption of the death of the intestate:—

*Held*, that the grant might be accepted as sufficient proof of the death without requiring it to be proved by independent evidence. IN THE GOODS OF SPENCELEY Jeune P. [1892] P. 255

**138. — Practice—Presumption of death from disappearance for seven years—Practice—Grant of administration.**

On an application, made in 1898, for leave to presume the death of a person who had not been heard of since 1891, of whose death no evidence was offered beyond the fact of his disappearance, and who had been cited in a suit which was pending in the Ch. Div., the Court, in giving leave to depose to the death, directed that the grant of administration should, except in so far as it might be required in the Ch. Div., remain in the registry till the expiration of seven years from the date of the disappearance. IN THE GOODS OF WINSTONE G. Barnes J. [1898] P. 143

**139. — Survivorship—Husband and wife.**

A husband and wife made identical wills, each appointing the other universal legatee and sole executor. Both left England in a ship which was lost at sea with all hands:—

*Held*, that a grant of letters of administration with the will annexed might be granted to the next of kin of each. IN THE GOODS OF ALSTON

Butt P. [1892] P. 142

**140. — Time of application.**

The Court, on proof of sufficient inquiries, allowed the death of a testator to be sworn three years after his disappearance. IN THE GOODS OF MATTHEWS Jeune P. [1897] W. N. 163 (8);

[1898] P. 17

**Renunciation.**

**141. — Executor—Retraction of renunciation—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 79.**

The old practice which, in a proper case, allowed a co-executor who had renounced probate to retract his renunciation, is not abrogated by s. 79 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77).

Where one of two executors absconded after taking probate, the Court allowed his co-executor, who had renounced, to retract his renunciation and take probate. IN THE GOODS OF STILES

Jeune P. [1898] P. 12

**PROBATE (Renunciation)—continued.**

— Joint grant to three persons.

See **PROBATE—Revocation of Administration.** 144.

**Revocation of Administration.**

**142. — Disappearance—Practice—Administration de bonis non — Former administratrix—Disappearance—Revocation of grant—Fresh grant to one of the next of kin.**

The practice by which a grant of administration may be revoked and a fresh grant made in the absence of the holder of the outstanding grant, is not confined to cases where administration has been taken by creditors.

Where an intestate died leaving a widow and six children by a former marriage, and the widow, who obtained administration, could not be found, the Court, upon the application of the children, revoked the grant and directed administration de bonis non in favour of one of their number.

IN THE GOODS OF LOVEDAY

**Jeune P. [1900] P. 154**

**143. — Husband passed over—Fraud—Appeal—“Point of law”—Probate Acts (20 & 21 Vict. c. 77), ss. 54, 58; (21 & 22 Vict. c. 95), s. 11—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.**

A wife long separated from her husband died intestate, and letters of administration were taken out as if she had been a spinster. The husband, some years later, discovering what had been done, applied after some delay in the county court to have the letters set aside and a grant made to him. The county court judge, holding that there had been no fraud, refused the application. On appeal, held (1) that the decision was on a “point of law” within s. 58 of the Court of Probate Act, 1857, and that the point of law was sufficiently raised at the hearing under s. 120 of the County Courts Act, 1888, and that an appeal lay; (2) that the decision that the grant could not be revoked in the absence of fraud was wrong.

COPELAND v. SMISTER - Div. Ct. [1893] P. 16

**144. — Joint grant to three persons—Practice—Grant of administration—Renunciation—Retraction—Administration de bonis non.**

In 1896 A. H. T. died bankrupt and intestate, leaving a widow, who was his second wife, and six children surviving. His estate was in the hands of an official receiver in bankruptcy. The widow and children duly renounced all rights to administration, and the official receiver took the grant to A. H. T.'s estate, and also a grant de bonis non to the estate of A. H. T.'s first wife.

In 1899 the administrator, having paid all the debts, desired to be relieved of his office, and, with his concurrence, the Court (G. Barnes J.) permitted the widow and children to retract their renunciations; revoked the letters of administration; and made a joint grant to the widow and two of the children, in respect of that portion of A. H. T.'s estate remaining unadministered, thus giving them the right, as of course, to take administration de bonis non in the estate of A. H. T.'s first wife. IN THE GOODS OF THACKER

G. Barnes J. [1899] W. N. 218; [1900] P. 15

**145. — Laches—Acquiescence—Claim as next of**

**PROBATE (Revocation of Administration) — continued.**

*kin after distribution of intestate's estate—Action for revocation of letters of administration.*

The plt., who claimed to be entitled as next of kin of an intestate, three years after the distribution of the estate, sought to impeach the title of the persons amongst whom the estate had been distributed, on the ground of the illegitimacy of one of their ancestors, and for this purpose commenced an action for revocation of letters of administration which had been granted to one of the persons who had received a share of the estate under the distribution. The plt. was aware at the date of the distribution of the alleged illegitimacy, but pleaded want of means in justification of the delay in bringing the action:—

Held, that the action was not maintainable, because (1) the plt.'s object might be obtained, without revoking the letters of administration, by commencing an action in the Ch. Div. for the purpose of following the assets into the hands of the persons who had wrongly received them; (2) the plt. was debarred by laches and acquiescence from prosecuting her claim.

Decision of G. Barnes J., [1899] P. 211, affirmed. MOHAN v. BROUGHTON

C. A. [1900] W. N. 20; [1900] P. 56

**146. — Practice—Motion—Grant of probate refused—Dependent relative revocation.**

Where infants are interested the Court will not on motion revoke letters of administration (granted in error) and to grant probate of the will, but will require the later will to be propounded. IN THE GOODS OF ANDREWS

G. Barnes J. [1893] P. 14

— Subsequent discovery of will—Grant of administration.

See **TRUSTEE—Practice.** 88.

**Revocation of Probate.**

**147. — Former action—Cognizance—Power of intervention.**

A person who had cognizance of and assisted in a previous action to revoke a probate, but who had no right to intervene in it, is not precluded from bringing a subsequent action to revoke the same probate, when he has since the first trial discovered that he had an interest under a prior will. YOUNG v. HOLLOWAY

Jeune P. [1895] P. 87

Referred to by Chitty J. *In re Lart*, [1896] 2 Ch. 788, 794.

**148. — Necessity for lodging documents in registry—Practice.**

The Court refused to hear a motion for the revocation of a grant of probate, and a declaration of the validity of a draft will, where the probate and draft had not been lodged in the registry. IN THE GOODS OF RILEY

G. Barnes J. [1895] W. N. 150; [1896] P. 9

**149. — Testamentary incapacity.**

Evidence necessary to justify revocation of probate for testamentary incapacity considered. AITKEN v. McMECKAN - P. C. [1895] A. C. 310

**Revocation of Will.**

See Cases under **WILL—Revocation.**

**PROBATE**—*continued.***Soldier's Will**

150. — *Minor*—*Wills Act, 1837* (1 Vict. c. 26), s. 11—“*Actual military service*”—*What amounts to—True test—Probate granted.*

Where there is at the date of the will a state of war with which the soldier is or may be connected, the true test of the validity of the document is whether the testator has taken some step—has done some act—to bring himself, in the words of the section, upon actual military service, which amounts very nearly if not quite to the same thing as was understood by the Roman law as being in expeditione.

Applying this test to the present case, *held*, that the will in question was entitled to probate.  
**IN THE GOODS OF HISCOCK**

**Jeune P. [1900] W. N. 266**

**Testamentary Capacity.**

151. — *Evidence—Reports of Chancery visitors—Lunacy.*

The reports of “Chancery Visitors” as to the state of mind of an alleged lunatic cannot be put in evidence, with a view of testing her testamentary capacity, at the time of the execution of a will, since all such reports ought to be destroyed on the death of the lunatic under s. 186 of the Lunacy Act, 1890. **ROE v. NIX**

**G. Barnes J. and L.JJ. in Lunacy [1893] P. 55**

152. — *Weight of evidence—Verdict against—New trial ordered.*

Verdict revoking grant of probate for want of testamentary capacity set aside as against weight of evidence, the medical evidence being insufficient to support while the other evidence of incapacity related to irrelevant circumstances, and was contradicted by witnesses who deposed to actual transactions with the testator and to his conduct and condition at the time of his executing the will. **AITKEN v. McMECKAN**

**P. C. [1895] A. C. 310**

**“PROCEEDINGS INSTITUTED.”**

*See HUSBAND AND WIFE. 44, 55.*

**PROCESS**—Arrests, commitments, and execution of.

*See COMPANY—WINDING-UP—Enforcement of Orders.*

— Attachment—Married woman administratrix—Payment into court—Form of order.  
*See HUSBAND AND WIFE. 38.*

— Case stated by Commissioners of Income Tax—Amendment.  
*See REVENUE—Income Tax. 107.*

— Leave to issue—City of London Court—Jurisdiction.  
*See LONDON—City of London Court. 35.*

**PROCTOR**—Compensation annuity to.  
*See ANNUITY. 3.*

— Intervention of Queen's Proctor.  
*See Cases under DIVORCE.*

**PROCURATION**—Bills of exchange signed by.  
*See BILL OF EXCHANGE. 17.*

— Cheque signed by—Liability of principal.  
*See PRINCIPAL AND AGENT. 9.*

**“PROCURATION GÉNÉRALE ET SPÉCIALE.”**

*See CANADA—Quebec. 60.*

**PRODUCTION**—of Work of Art.

*See COPYRIGHT—International. 24.*

**PRODUCTION OF DOCUMENTS.**

*See Cases under DISCOVERY.*

**PROFANE OR OBSCENE LANGUAGE**—Prohibition of use of—By-laws—Validity.

*See STREETS. 38.*

**PROFIT A PRENDRE**—Licence to fish and carry away fish caught—Incorporeal hereditament.

*See FISHERY. 10.*

**PROFIT COSTS**—Mortgagees Legal Costs Act—Retrospective effect.

*See MORTGAGE—Costs. 12, 13.*

— Solicitor—Gift to attesting witness—Codicil—Republishation.

*See WILL—Attestation. 30.*

— Solicitor-executor—Power to charge—Insolvent estate.

*See SOLICITOR. 134.*

— Solicitor mortgagee.

*See MORTGAGE—Solicitor Mortgagee. 88—90.*

— Solicitor trustee.

*See TRUSTEE—Remuneration. 95.*

**PROFITS**—Account of—Patent action.

*See PATENT—Discovery. 3.*

— Company—Assets.

*See Cases under COMPANY—WINDING-UP—Assets.*

— Industrial society.

*See INDUSTRIAL AND PROVIDENT SOCIETY. 1.*

— Interest on—Setting aside sale—Sale by liquidator of undertaking of company—Fiduciary relation.

*See VENDOR AND PURCHASER. 53.*

— Secret profit by promoters—Duty of disclosure.  
*See COMPANY—Promoter. 204.*

— Waiving tort and claiming—Damages—Wrong to public.  
*See TORT. 2.*

**PROHIBITION**—Company—Winding-up—*Stannaries Court—County Court—Jurisdiction—Committal for contempt—Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), s. 1, sub-s. 6—*Stannaries Court (Abolition) Act, 1896* (59 & 60 Vict. c. 45), s. 1—*County Court Rules, 1889, Order XXV., r. 40 (b).*

By the Companies (Winding-up) Act, 1890, s. 1, sub-s. 6, it is provided that every Court having jurisdiction under that Act to wind up a co. shall, for the purposes of that jurisdiction, have all the powers of the High Court. The judge of a county court, to which the above-mentioned provision applied, having made an order of committal for disobedience of an order made by him in the course of the winding-up of a co., an application was made for a prohibition to him on the ground that the provisions of Order XXV., r. 40 (b), of the County Court Rules, 1889, with regard to service of the order sought to be enforced, had not been complied with, and



**PROHIBITION—continued.**

he therefore had not jurisdiction to make an order for committal:—

*Held*, that, inasmuch as the county court judge was invested for the purposes of the winding-up jurisdiction with the powers of the High Court, a prohibition to him could not be granted. *In re THE NEW PAR CONSOLS, LD.* (No. 2) — C. A. [1898] 1 Q. B. 669

Followed by C. A. *Skinner v. County Court Judge of Northallerton*, [1898] 2 Q. B. 680, 685. This case was affirmed by H. L. (E.) [1899] A. C. 439.

2. — *County council—Alteration of parish boundaries—Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 57, sub-ss. 1, 6; s. 59, sub-s. 6.

*Quære*, whether prohibition is the proper remedy where a county council makes or is about to make an order which they have no power to make under s. 57 of the Local Government Act, 1888, since it is doubtful whether such an order is the exercise of a judicial function. *REG. v. LONDON COUNTY COUNCIL*

C. A. [1893] 2 Q. B. 454

3. — *County court—Jurisdiction of registrar.* Prohibition does not lie where a county court registrar strikes out a counter-claim to a default summons. *HOOPER v. HILL*

C. A. [1894] 1 Q. B. 659

4. — *County court—Want of jurisdiction—Acquiescence—Agricultural Holdings (England) Act, 1883* (46 & 47 Vict. c. 61), s. 24.

If total want of jurisdiction appears on the face of the proceedings in an inferior court, the Court is bound to grant prohibition, although the applicant may have acquiesced. In a lease by A. to B. it was provided that at the end of the tenancy compensation should be allowed for matters outside the Agricultural Holdings Act, 1883, and the procedure of the Act should apply to any claim for such compensation. At the end of the tenancy, cross-claims were referred to arbitration, and an award was made by an umpire, on the face of which it appeared that he had given B. compensation for matters both within and outside the Act. A county court judge made an order under s. 24 of the Act to enforce the award by execution.

On an application by A. for prohibition, *held*, that as it was apparent on the face of the proceedings that the county court judge had no jurisdiction to make an order under s. 24 of the Act to enforce payment of so much of the award as related to matters outside the Act, the writ must issue notwithstanding (1) the agreement in the lease, and (2) that the lessor had by his conduct acquiesced in the exercise of jurisdiction by the county court. *FARQUHARSON v. MORGAN*

C. A. [1894] 1 Q. B. 552

5. — *County court—Jurisdiction—Appeal—Judicature Act, 1873* (36 & 37 Vict. c. 66), ss. 16, 34.

Under the Judicature Act, 1873, a judge of the Admiralty Div. has all the powers as to prohibition of a judge of the High Court. An appeal from the refusal of prohibition lies direct to the C. A. if the judge requires no further argument. Sect. 132 of the County Courts Act, 1888, merely

**PROHIBITION—continued.**

prevents repeated applications to judges of co-ordinate jurisdiction for a writ of prohibition after refusal by one judge. THE "RECEPTA"

C. A. [1893] P. 255

— County court judge — Appeal — Practice and procedure.

See APPEAL. 2.

6. — *Inferior court — Jurisdiction—Salford Hundred Court of Record Act, 1868* (31 & 32 Vict. c. cxxx.), ss. 6, 7.

"The cause of action" in the Salford Hundred Court of Record Act, 1868, s. 6, means the whole cause of action, and not merely the act or default which gives the plt. his cause of complaint.

Sect. 7 of the Salford Hundred Court of Record Act, 1868, enacts that "No deft. shall be permitted to object to the jurisdiction of the Court otherwise than by special plea, and, if the want of jurisdiction be not so pleaded, the Court shall have jurisdiction for all purposes":—

*Held* (by the C. A., reversing the decision of a Div. Ct.), that, the effect of the section being to give jurisdiction to the Salford Hundred Court in cases where the want of jurisdiction is not pleaded, a deft., against whom judgment had been recovered in that court in default of appearance, and who had consequently not pleaded to the jurisdiction, was not entitled to a writ of prohibition on the ground of want of jurisdiction. *PAYNE v. HOGG* — C. A. [1900] W. N. 86; [1900] 2 Q. B. 43

— Jurisdiction—Wages—Action in rem—Ship's husband.

See SHIPPING—Seamen.

— Power of—Liquor laws—Distribution of legislative powers.

See CANADA. 13.

7. — *Practice—Rule absolute without pleadings—Costs—Judicature Act, 1890* (53 & 54 Vict. c. 44), ss. 4, 5.

The granting of prohibition not being exclusively in the jurisdiction of the Crown side of the Q. B. Div., the High Court, in making a rule absolute without pleadings, has power to make an order as to costs. *REG. v. LONDON COUNTY JUSTICES* (No. 3) — C. A. [1894] 1 Q. B. 453

— Proof of formation of company.

See LONDON—Mayor's Court.

— Rent-charge—Arrears of—Jurisdiction.

See COUNTY COURT. 44.

**PROJECTING SIGN.**

See STREETS—Projecting Signs.

**PROJECTING STRUCTURE.**

See LONDON—Buildings.

**PROLONGATION—Of patent.**

See Cases under PATENT—Prolongation.

**PROMISE—To leave property to intended wife.**

See SETTLEMENT—Construction. 4.

**PROMISSORY NOTE—Bill of exchange.**

See Cases under BILL OF EXCHANGE.

**— Executor—Debt secured by promissory note.**

See TRUSTEE. 27.

**— Part payment to stranger.**

See LIMITATIONS, STATUTES OF. 5.

**PROMISSORY NOTE**—*continued.*

— Stamp insufficient.

*See EVIDENCE.* 42.**PROMOTER**—Company.*See COMPANY—Promoters.***PROMOTION**—Company.*See COMPANY—Promoters.***PROOF**—Age of child—Prevention of cruelty to children.*See CRIMINAL LAW.* 10.

— Bankruptcy practice.

*See BANKRUPTCY—Proof.*

— Burden of proof—Contract of towage—Duty of harbour authority.

*See SHIPPING—Harbour.* 156.

— Burden of proof—Carriage of goods—Short delivery.

*See SHIPPING.* 153.

— Company in liquidation.

*See COMPANY—WINDING-UP—Proof.*

— “Cover”—“Money deposited to abide the event”—Bankruptcy.

*See GAMING.* 28.

— Desertion.

*See Cases under DIVORCE—Desertion.*

— Formation of company—Prohibition.

*See LONDON—Mayor's Court.* 46.

— In solemn form—Notice by defendant to cross-examine only.

*See PROBATE.* 116.

— Marriage—Evidence—Certificate—Ireland—Marriage in Protestant Episcopal Church.

*See IRELAND.* 2.

— Marriage between Christians in British India—Evidence.

*See DIVORCE.* 81.

— Onus of—Collision at anchor.

*See SHIPPING—Collision.* 50.

— Onus of—Correctness of returning officer's figures.

*See SCHOOLS—School Board.* 7.

— Onus of—Heirlooms—Sale—Extravagance of tenant for life—Discretion of Court.

*See HEIRLOOMS.* 4.

— Onus of—Rates—Quinquennial valuation—Alteration in value of hereditament—Cause of alteration.

*See RATES—Rateability.* 43.

— Onus of—Rates for merchandise—Rebate—Siding not belonging to railway company—Station accommodation.

*See RAILWAY.* 46.

— Status and boundaries of foreign State—Judicial cognizance.

*See EVIDENCE.* 38.

— Winding-up of company.

*See COMPANY—WINDING-UP—Proof.***PROPER NAME**—Registration of as trade-mark.*See TRADE-MARK—Registration.* 29.**“PROPERTY.”***See COMPANY—Debentures.* 75.*LANDLORD AND TENANT.* 11.**PROPERTY AND INCOME TAX.***See Cases under REVENUE—Income Tax.***PROPERTY, RIGHTS OF**—No use of property which would be legal if due to a proper motive can become illegal because it is prompted by a motive which is improper or even malicious.Decision of C. A., [1895] 1 Ch. 145, affirmed. **BRADFORD CORPORATION v. PICKLES****H. L. (E.) [1895] A. C. 587***See dictum of Lord Shand in Allen v. Flood, [1898] A. C. 1, 167.***PROPRIETARY MEDICINE.***See Cases under POISON.***PROPRIETOR**—Registered, of hackney carriage.*See HACKNEY CARRIAGE.* 1.**PROSECUTION**—Application to dismiss for want of.*See PRACTICE—New Trial.* 51.

— Malicious prosecution.

*See Cases under MALICIOUS PROSECUTION.*

— Stifling.

*See CONTRACT—Illegality.* 21.**PROSPECTUS OF COMPANY.***See COMPANY—Prospectus.***PROTECTED TRANSACTION**—Charging order.*See BANKRUPTCY—Charging Order.***PROTECTION ORDER**—Fraud and concealment in obtaining.*See PROBATE—Grant of Probate.* 106.

— Married woman.

*See Cases under HUSBAND AND WIFE—Summary Jurisdiction.***PROTEST**—Appearance of foreigner under—Right afterwards to object to jurisdiction.*See PRACTICE—Appearance.* 10.

— Probate duty paid under protest—Application for refund—Delay.

*See NEW SOUTH WALES.* 38.

— Tender under protest.

*See TENDER.* 2.**PROVIDENT SOCIETY.***See INDUSTRIAL AND PROVIDENT SOCIETY.***PROVISIONAL LIQUIDATOR**—Appointment.*See Cases under COMPANY—WINDING-UP—Liquidator.***PROVISIONAL SPECIFICATION**—Patent—Sufficiency.*See PATENT—Validity.* 61, 62.**PROXY**—in Bankruptcy.*See BANKRUPTCY—Proxy.* 190.

— Company—Mode of counting poll.

*See COMPANY—Meetings.* 163.

— Meeting of shareholders—Special resolution—Blanks in proxies.

*See COMPANY—Meetings.* 164.

— Thames Conservancy.

*See THAMES.* 3.**PUBLIC**—Action on behalf of a class of the public—Representative action—Parties.*See PRACTICE—Parties.* 113.

**PUBLIC AUTHORITIES PROTECTION**—*By the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), the statutory provisions relating to the protection of persons acting in the execution of statutory and other public duties were generalized and amended and portions of over one hundred Acts were repealed.*

1. — *Act done in pursuance of Act of Parliament—Limitation of action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 4.*

A sanitary authority served notices, under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 4, on the owner of premises, requiring him to do certain specified works in respect of what was supposed to be a drain. He complied with the notices, and incurred expense in doing the works. It was discovered that the supposed drain was a sewer, which the sanitary authority was liable to repair, and the executors of the owner brought an action against the sanitary authority, to recover the amount of the expenses incurred, as money paid to the use, and at the request, of the defts. The action was not commenced within six months after the expenses had been paid :—

*Held*, that the action was brought for an act done in pursuance, or execution, or intended execution, of the Public Health (London) Act, 1891, within the meaning of the Public Authorities Protection Act, 1893, s. 1, and ought to have been brought within six months, and therefore the defendants were not liable.

*Waterhouse v. Keen*, (1825) 4 B. & C. 200, and *Midland Ry. Co. v. Withington Local Board*, (1883) 11 Q. B. D. 788, followed. *CREE v. ST. PANCRAS VESTRY* — *Bruce J.* [1899] 1 Q. B. 693

Disapproved of by *C. A.* *Bostock v. Ramsey Urban Council*, [1900] 2 Q. B. 616, 623.

2. — *Company incorporated by Act of Parliament with statutory duties—Company dividing profits—Limitation—“Persons acting in execution of any public duty or authority”—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (a).*

A co. incorporated by Act of Parliament, not only for the performance of duties of public utility, but also for the purpose of earning profits, is not entitled to the benefit of the Public Authorities Protection Act, 1893.

Dictum of *Jeune P.* in *The Ydun*, [1899] P. 236, 239, followed. *ATT.-GEN. v. COMPANY OF PROPRIETORS OF MARGATE PIER AND HARBOUR*

*Kekewich J.* [1900] W. N. 65; [1900] 1 Ch. 749

— Costs.

*See Costs—Public Authorities Protection.*

— Harbour board—Limit of time for commencement of action against a—Costs.

*See SHIPPING—Harbour.* 155.

3. — *Limitation of action—Fatal accidents—Neglect in execution of Act of Parliament—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), ss. 1, 3—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

By s. 3 of the Fatal Accidents Act, 1846, an action for the benefit of the wife, husband, parent,

**PUBLIC AUTHORITIES PROTECTION**—*contd.*

or child of a person whose death has been caused by the wrongful act, neglect, or default of another must be commenced within twelve calendar months of the death of the deceased.

By s. 1 of the Public Authorities Protection Act, 1893, an action against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act, must be commenced within six months next after the act, neglect, or default complained of, or, in case of continuing injury or damage, within six months next after the ceasing thereof.

An action under the Fatal Accidents Act, 1846, was brought against the defts., a statutory body formed to provide, maintain, and manage a hospital, to recover damages for the death of a patient in the hospital caused by the negligent act of a nurse in the defts.' employment: the writ was issued more than six months, but less than twelve months, after the death of the deceased :—

*Held*, that the plts.' cause of action arose upon the death of the deceased, and that, the action not having been brought within six months after his death, the defts. were entitled to the protection of the Public Authorities Protection Act, 1893, and the action was not maintainable. *MARKEY v. TOLWORTH JOINT ISOLATION HOSPITAL DISTRICT BOARD* — *Div. Ct.* [1900] 2 Q. B. 454

**PUBLIC BODY**—Contract to execute works—Negligence of contractor—Liability of employer.

*See NEGLIGENCE.* 3.

— Infringement of statute — Information by Attorney-General — Injunction — Evidence of injury.

*See RAILWAY—Level Crossings.* 10.

1. — *Non-feasance—Contract.*

Decisions that public bodies are not liable to individuals for non-feasance do not apply where the public body is under contract with the individual for remuneration. *BRABANT & CO. v. KING* P. C. [1895] A. C. 632

— Statutory powers.

*See SCHOOLS—School Board.* 8.

**PUBLIC HEALTH ACTS.**

*See under Heading of Subject-matter of PUBLIC HEALTH.*

**PUBLIC HOUSE.**

*See INN.*

**PUBLIC LIBRARY.**

*See LIBRARY.*

**PUBLIC OFFICE**—Words importing misconduct in.

*See DEFAMATION—Slander.* 36.

**PUBLIC OFFICES FEES ACTS, 1879**—*Order as to payment of certain Fees payable in Admiralty Division.* W. N. 1897 (Jan. 2), p. 1. *See Current Index, 1897, p. lxxxv.*

**PUBLIC OFFICES FEES ACT, 1879 (42 & 43 Vict. c. 58).** *Fees under Land Registry, Land Transfer and Land Registry (Middlesex Deeds) Acts. Reprint from W. N. 1900 (Dec. 22), p. 335. See Current Index, 1900, p. xciv.*

**PUBLIC PARK**—Land let for—Compensation.

See LANDS CLAUSES ACTS.

— Rateable value—Beneficial occupation.

See RATES—Rateability. 37.

**PUBLIC POLICY**—Murder of insured by wife in whose favour insurance had been effected.

See INSURANCE—Life. 18.

— Restraint of trade.

See Cases under RESTRAINT OF TRADE.

— Validity of mortgage.

See BANKRUPTCY—Assets. 65.

**PUBLIC RECORD OFFICE, ENGLAND**—*Inspection of documents—Rules and regs. dated March 14, 1893, made by the Master of the Rolls respecting the public use of the records and documents in his custody.* St. R. & O. 1896, p. 800.

*Rule dated Dec. 9, 1898, for disposal of documents which are not considered of sufficient public value to justify their preservation in the Public Record Office.* W. N. 1899 (June 3), p. 183. See Current Index, 1899, p. cxxvii.

**PUBLIC RIGHTS**—Fishing in non-tidal waters.

See Cases under FISHERY.

**PUBLIC SCHOOL.**

See CHARITY—Commissioners. 10—15.

Cases under CHARITY — **Management.**

**PUBLIC SERVICE ACT (VICTORIA)**—Pension, Right to—"Prosecutor for the Queen."

See VICTORIA. 10.

**PUBLIC WORKS LOANS ACT, 1896** (59 & 60 Vict. c. 42), *provides for granting moneys for local loans.*

**PUBLIC WORSHIP REGULATION ACT.**

See Cases under ECCLESIASTICAL LAW—Ritual.

**PUBLICATION**—Contempt of Court.

See CONTEMPT OF COURT. 7, 10.

— In foreign country—Libel—Action for damages.

See DEFAMATION—Libel. 29.

— Libel—Book—Circulating library—Negligence.

See DEFAMATION—Libel. 27.

— Libel—Copying letter.

See DEFAMATION—Libel. 28.

— Rates.

See HIGHWAY—Repairs. 25.

— "Sporting paper."

See NEWSPAPER. 1.

**PUBLICI JURIS.**

See TRADE-MARK—Registration. 45.

**"PUBLISHED."**

See COPYRIGHT—International. 25.

**PUBLISHER**—Author—Publishing agreement—Assignability.

See COPYRIGHT—Formation. 10.

— Publishing agreement — Assignability — Author's consent.

See CONTRACT. 16.

**PUMPING STATION.**

See RATES—Rateability.

**PUNISHMENT**—Illegal proclamation of arbitrary — Legislative power.

See CAPE OF GOOD HOPE. 6.

**PURCHASE**—Addition to burial ground—Approval of by Secretary of State.

See BURIAL. 5.

— Option to purchase.

See LANDLORD AND TENANT—Option to Purchase.

— Shares.

See COMPANY — Reduction of Capital 244—246.

**PURCHASE (COMPULSORY)** — Land — Lands Clauses Acts.

See Cases under LANDS CLAUSES ACTS.

— Meaning of word in s. 7 of the Trade Unions Act, 1871.

See TRADE UNION. 2.

— Money—Application—College lands.

See UNIVERSITY. 4.

— of Tramway.

See TRAMWAY COMPANY. 1, 2.

**PURCHASE AND HIRE AGREEMENT.**

See Cases under FACTOR.

FIXTURES. 5—7.

**PURCHASER.**

See Cases under VENDOR AND PURCHASER.

— for Value—Ademption of legacy.

See WILL—Ademption.

— for Value—Void settlement.

See FRAUDULENT CONVEYANCE. 2.

— for Value—Voluntary settlement—Father and son—"Settlement of property."

See BANKRUPTCY. 266.

**PURCHASER FOR VALUE WITHOUT NOTICE**

— Omission to require production of title-deeds — Equitable mortgage — Priority.

See MORTGAGE—Priority. 47, 48.

**PYROTECHNIC LIGHTS.**

See SHIPPING—Collision. 70.

## Q.

**QUALIFICATION**—Dentist—Right to be registered.

See MEDICAL PRACTITIONER. 1.

— Director—Qualifying shares.

See COMPANY—Directors. 124—135.

— London county electors.

See LONDON—Electors.

— Registration of voters.

See Cases under PARLIAMENT.

— Vestryman.

See LONDON—Vestries.

**"QUALIFIED PILOT"**—Membership of interested class—Disqualification.

See JUSTICES—Disqualification. 51.

— Unexempted ship.

See SHIPPING—Pilots. 195.

**QUALIFYING SHARES**—Directors.

See COMPANY—Directors. 124—135.

**QUANTUM MERUIT**—Right to sue on—Abandonment of contract—Evidence of new contract.

See CONTRACT. 1.

**QUARANTINE**—Acts relating to, repealed by Public Health Act, 1896 (59 & 60 Vict. c. 19); but this Act is repealed in so far as it relates to Scotland. See Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 196.

**QUARE IMPEDIT**—Adwoson—Usurpation—Exchange.

See ECCLESIASTICAL LAW. 3.

**QUARRY**—By the Quarries Act, 1894 (57 & 58 Vict. c. 42), certain provisions of the Acts relating to metalliferous mines were applied to quarries; modification of application of Factory Acts to quarries.

— Royalty—Life-rent—Opened quarries.

See MINES. 14.

**QUARTER SESSIONS.**

See JUSTICES.

**QUARTERLY TENANT**—Recovery of rates—Written or verbal demand.

See RATES—Recovery. 66.

**QUAY**—Rateable occupation—Harbour dues.

See RATES—Rateability. 42.

**QUEBEC**—Laws of.

See CANADA—Quebec.

**QUEEN ANNE'S BOUNTY**—Power of governors of, to extend time for repayment of loans. See Incumbents of Benefices Loans Extension Act, 1896 (59 & 60 Vict. c. 13).

**QUEENSLAND.**

Laws of Queensland.

See Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), ss. 3, 6.

Appeals in Admiralty matters. O. in C. dated Nov. 24, 1891, regulating, to the Supreme

**QUEENSLAND (Laws of Queensland)**—*contd.*

Court of Queensland at Brisbane from the Colonial Court of Admiralty in British New Guinea. St. R. & O. 1891, p. 23.

1. — *Charity—Validity of charitable gift—Effect of incorporation—Religious, Educational, and Charitable Institutions Act of 1861 (25 Vict. No. 19), s. 3.*

The Religious, Educational, and Charitable Institutions Act of 1861, s. 3, applies to every gift which increases the resources of a body incorporated under the Act, although not in terms in its favour, and though different trustees are appointed. Therefore, where a bequest was made to a church and congregation, which had voluntarily joined an ecclesiastical body which had been incorporated through its officers under the Act:—

*Held*, that the congregation having become constituent members of the ecclesiastical body, a bequest in their favour was in reality a bequest to that body, and was invalid for want of registration and attestation as prescribed by the Act. *McSWAINE v. LASCELLES*

P. C. [1895] A. C. 618

2. — *Dividend Duty Paying Act, 1890 (54 Vict. No. 10), s. 9—Foreign debts—Constructive assets.*

Where debts due to a co. by debtors out of Queensland are payable out of Queensland, but are charged on realty and personalty in the colony:—

*Held*, that they are an asset of the co. within s. 9 of the Act, to the extent at all events of the value of the incumbrance, and taking into account collateral securities held elsewhere than in Queensland for the same debts. *WALSH v. REG.*

P. C. [1894] A. C. 144

Referred to by P. C. *Henty v. Reg.*, [1896] A. C. 567, 574.

3. — *Insurance—Remedies of insurers—Effect of payment under policy—Subrogation—Chose in action—Assignment—Queensland Judicature Act (40 Vict. c. 84), s. 5, sub-s. 6.*

Payment honestly made by insurers in satisfaction of a claim by the insured entitles the insurers to the remedies available to the insured; and such remedies cannot be resisted on the ground that the payment was not within the terms of the policy:—

*Held*, that although the insurers could not by mere force of subrogation sue in their own name, yet that in this case the right to do so was conferred by assignment from the insured aided by s. 5, sub-s. 6, of the Judicature Act (40 Vict. c. 84), corresponding with the English Judicature Act of 1873. *KING v. VICTORIA INSURANCE CO.*

P. C. [1896] A. C. 250

4. — *Negligence of bailee—Liability of Government as compulsory bailees for hire—Volenti non fit injuria—Queensland Navigation Act, 1876 (41*

**QUEENSLAND (Laws of Queensland)—contd.**

*Vict. No. 3*)—*Queensland Customs Act, 1873* (37 *Vict. No. 1*), s. 103.

Where a Government, being bailees for hire, stored B.'s explosive goods in sheds near to the water edge:—

*Held*, that the selection of such a site rendered it incumbent upon them to place the goods at such a level as would in all probability ensure their absolute immunity from the incursion of flood water; that B. was entitled to rely on the care and skill of his bailees, and could not be said to have accepted any risks of defective storage with which he had made himself acquainted.

Case remanded for a new trial, to ascertain whether the Government negligently stored the goods at too low a level, or whether, on the advent of the floods, they failed to take reasonable and proper measures for saving the goods, or part thereof. *BRABANT & Co. v. KING*

**P. C. [1895] A. C. 632**

*And see PUBLIC BODY.*

5. — *New trial, order for, reversed—Verdict—Conflict of evidence.*

In an action for damages due to the negligent construction of a drain by a municipal council a jury found that there was no negligence, but the Full Court set aside the verdict and ordered a new trial:—

*Held*, that there being evidence both ways the verdict was one which the jury could reasonably find and ought not to have been set aside. *BRISBANE MUNICIPAL COUNCIL v. MARTIN*

**P. C. [1894] A. C. 249**

— Probate—Legatee preparing will in his own favour—Findings of jury—Motion for new trial.

*See PROBATE.* 111.

6. — *Succession and Probate Duties Act, 1892* (56 *Vict. No. 13*), s. 4—*Succession defined—Movables locally situated in the colony—Domicil of the testator.*

*Held*, that s. 4 of the Queensland Succession and Probate Duties Act, 1892, defining a "succession" being the same as s. 2 of the English Succession Duty Act of 1853, must be read in the sense affixed to the English Act by the English tribunals; and that it does not include movables locally situated in Queensland which belonged to a testator whose domicil was in Victoria:—

*Held*, further, that the amendment Act of 1895, s. 2, is not retrospective in its operation. *HARDING v. COMMS. OF STAMPS FOR QUEENSLAND* — — — **P. C. [1898] A. C. 769**

**QUEEN'S PROCTOR—Practice.**

*See Cases under DIVORCE.*

"**QUIA TIMET**" ACTION—Anticipated nuisance—Injunction.

*See INJUNCTION.* 26.

— Slaughter-house—Partial restraint.

*See RESTRAINT OF TRADE.* 14,

**QUICKSAND**—Surface—Subsidence—Right of support—Working stratum of pitch.  
*See SUPPORT.* 1.

**QUIET ENJOYMENT**—Covenant running with land—Injunction—Damages—Compensation.

*See RAILWAY.* 3.

— Landlord and tenant.

*See LANDLORD AND TENANT.* 19—23, 73.

**QUINQUENNIAL VALUATION**—Alteration in value of hereditament—Cause of alteration—Onus of proof.

*See RATES—Rateability.* 43.

**QUIT, NOTICE TO**—Yearly tenancy—"End of the current year."

*See LANDLORD AND TENANT.* 39, 43.

**QUIT-RENT**—Extinction by non-payment.

*See COPYHOLD.* 8.

**QUO WARRANTO—Alderman.**

Quo warranto will not lie to question the election of an alderman in any case where an election petition can be brought under s. 87 of the Municipal Corporations Act, 1882. *REG. v. MORTON*  
**Div. Ct. [1892] 1 Q. B. 39**

2. — *Incompatible offices—Vestry clerk and churchwardens.*

The remedy by quo warranto does not apply to a non-corporate office unless there is both acceptance and user. The deft., while churchwarden, was proposed and elected as vestry clerk. He wrote a letter of thanks to the electors, but did not act as vestry clerk:—

*Held*, that what he had done was not such an exercise of the office of vestry clerk as to render the remedy by quo warranto applicable. *REG. v. TIDY*  
**Div. Ct. [1892] 2 Q. B. 179**

3. — *School board.*

*Semble*, that the legality of an election of members of a school board may be questioned by quo warranto. *RICHARDSON v. METHLEY SCHOOL BOARD* — **Kekewich J. [1893] 3 Ch. 510**

Followed by *Kekewich J. Turnbull v. West Riding Athletic Club (Leeds), Ltd.*, [1894] W. N. 4.

4. — *Vestry clerk—Election.*

Quo warranto will lie to inquire into the validity of the election of a clerk to a vestry under the Vestries Act, 1850 (13 & 14 *Vict. c. 57*), ss. 6, 7. *REG. v. BURROWS* — **Div. Ct. [1892] 1 Q. B. 399**

5. — *Vestryman.*

Quo warranto will lie in respect of usurpation of the office of vestryman created by the Metropolitan Management Act, 1855. *REG. v. SOUTTER*  
**C. A. affirm. Div. Ct. [1891] 1 Q. B. 57**

[NOTE.—By the *Local Government Act, 1894* (56 & 57 *Vict. c. 73*), the provisions of the *Metropolitan Management Act, 1855*, as to the qualification of vestrymen were repealed and further provision made.]

**QUORUM**—Different classes of shareholders—Separate general meetings of each class.  
*See COMPANY—Meetings.* 165.

— Directors.

*See COMPANY—Directors.* 136, 137.

## R.

**RABBITS**—Alienation of right to kill—Occupier of land.

*See* Cases under **GAME**.

— Rabbit coursing—"Domestic animals."

*See* **CRIMINAL LAW**—Cruelty to Animals. 8.

— "Vermin"—Gun licence.

*See* **REVENUE**—Gun Licence. 50.

**RACECOURSE**—Inclosure on—"Place" used for betting.

*See* **GAMING**. 15.

**RAILWAY.**

*In General*, col. 1641.

*Abandonment*, col. 1642.

*Accidents*, col. 1642.

*Accommodation Works.* *See* Cases under **RAILWAY**—**WORKS**.

*Arches*, col. 1643.

*Compensation*, col. 1643.

*Contract of Carriage*, col. 1644.

*Costs.* *See* **RAILWAY**—**Practice**.

*Drainage.* *See* **SCOTTISH LAW**—**Railway**.

*Fences*, col. 1644.

*Lands Clauses Acts.* *See* **LANDS CLAUSES ACTS**.

*Level Crossings*, col. 1645.

*Light Railways*, col. 1647.

*Management*, col. 1648.

*Minerals*, col. 1648.

*Negligence*, col. 1649.

*Parliamentary Deposit.* *See* **PARLIAMENT**—**Deposits and Bonds**.

*Passengers*, col. 1651.

*Powers*, col. 1653.

*Practice Generally*, col. 1655.

*Railway and Canal Traffic*, col. 1657.

*Railway Servants*, col. 1662.

*Rates and Taxes*, col. 1662.

*Receiver and Manager*, col. 1662.

*Regulation*, col. 1662.

*Roads and Streets*, col. 1663.

*Scheme of Arrangement*, col. 1663.

*Scottish Law.* *See* **SCOTTISH LAW**—**Railways**.

*Sewers*, col. 1664.

*Sidings*, col. 1664.

*Stations*, col. 1666.

*Truck Acts*, col. 1667.

*Ventilating Shafts*, col. 1667.

*Water.* *See* **WATER**.

*Way-leave*, col. 1667.

*Works*, col. 1667.

**In General.**

— Arbitration—Review.

*See* **CANADA**. 18.

**RAILWAY (In General)**—*continued*.

— Canada Railway Act—Construction—Railway Committee of Privy Council.

*See* **CANADA**. 16.

— Compensation—Lease of colliery—Right of lessee to sink shaft in land of lessor not included in demise.

*See* **LANDS CLAUSES ACTS**.

— Contract—Breach by one party—Right of other party to repudiate.

*See* **CONTRACT**. 7.

— Demurrage—Discharge into railway wagons—Deficiency of wagons—Liability of charterer.

*See* **SHIPPING**—**Demurrage**. 108.

— Imported steel rails—Duty payable.

*See* **CANADA**. 20.

— Lateral deviation—Meaning of.

*See* **STATUTES**—**Generally**. 15.

— Municipal legislation affecting Dominion railway—Municipal Code of Quebec.

*See* **CANADA**. 61.

— New Zealand Railways Construction and Land Act—Rights of debenture-holders.

*See* **NEW ZEALAND**. 9.

— Rates—Exemptions—Land used as railway for public conveyance—Liverpool Corporation Act.

*See* **RATES**. 44.

— Scottish law.

*See* **SCOTTISH LAW**—**Railways**. 33—36.

— Section of railway capable of sale—Jurisdiction of Court.

*See* **CANADA**. 33.

— Stamp—Receipt for compensation for not working coal adjacent to railway—Right of support.

*See* **REVENUE**—**Stamps**. 179.

— Stamp duty—Increase of nominal capital.

*See* **REVENUE**—**Stamps**. 177.

— Way-leave—Construction—Ancient document—Contemporaneous usage or interpretation.

*See* **WAY-LEAVE**. 1.

— Wooden structure used in connection with traffic—Licence of county council—Exemption.

*See* **LONDON**—**Buildings**.

**Abandonment.**

— Release of Parliamentary deposit.

*See* **PARLIAMENT**—**Deposits and Bonds**.

**Accidents.**

**PREVENTION OF ACCIDENTS.]** *Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27), provides for the better prevention of accidents on railways.*

**RAILWAY (Accidents)—continued.**

— Accident to railway—Charterparty—Exceptions.

See SHIPPING—Exceptions. 131.

1. — *Compensation — Finality of document discharging all claims—Verbal reservation.*

A document signed by the injured passenger held to be a final discharge of his claims on the co., notwithstanding an alleged verbal reservation by him.

Decision of the Second Division of the Court of Session, (1890) 28 Sco. L. R. 130, reversed. NORTH BRITISH RY. CO. v. WOOD

H. L. (Sc.) [1891] W. N. 130

**Arches.**

2. — *Temporary letting of arches for purposes of profit—Implied powers.*

A ry. co. authorized by its special Act to acquire land for the purposes of the ry. and works has also the implied power of using land so acquired in any manner which is not an infringement of the legal rights of others, and which is not inconsistent with the purposes for which the co. was constituted. Therefore a ry. co. can let the interiors of arches on which its line is built for profit if they retain the right to resume possession. FOSTER v. LONDON, CHATHAM AND DOVER RY. CO. C. A. [1895] 1 Q. B. 711

Referred to by C. A. In *re Gonty and Manchester, Sheffield and Lincolnshire Ry. Co.*, [1896] 2 Q. B. 439, 448.

**Compensation.**

— Accident.

See RAILWAY—Accidents.

— Accommodation works.

See Nos. 67—70, below.

— Land—Acquisition under Lands Clauses Act. See Cases under LANDS CLAUSES ACTS.

— Minerals.

See Cases under RAILWAY—Minerals.

3. — *Purchase by railway company of reversion on lease — Covenant running with land—Covenant for quiet enjoyment—Injunction—Damages—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 6.*

In 1893 an Act was passed enabling the plt. co. to take compulsorily (inter alia) the property to which this action related. In 1894 the owner of the property let it to the deft. for a term of years by a lease containing the usual covenant for quiet enjoyment. In 1895 the co. purchased the reversion of the property, subject to the lease. After this the co. proceeded with their works, and in so doing caused structural injury to the deft.'s house; they also for some time rendered the access to his premises less convenient, by erecting hoardings which blocked up half the thoroughfare along the street in which his house stood, and by taking a great number of carts along that street. They also for three or four days incumbered a passage along which he had a right of way so that he could not use it. It was not alleged that the co. had exceeded their statutory powers or exercised them negligently. The co. sued the deft. for rent, and

**RAILWAY (Compensation)—continued.**

he counter-claimed for damages for breach of the covenant for quiet enjoyment:—

Held, that the covenant for quiet enjoyment was in force and was binding on the co., and that they were liable to make compensation for any breach of it, but that no action would lie against them for any breach of it committed in the reasonable and careful exercise of their statutory powers, the only remedy of the tenant for such breaches being under the compensation clauses of the Railways Clauses Act, 1845, and the Lands Clauses Act, 1845, and that the counter-claim, therefore, had been properly dismissed.

Though structural injury to a house by the lessor is a breach of the covenant for quiet enjoyment, no temporary inconvenience caused by the lessor, but not affecting the title or possession of the tenant, is a breach of the covenant.

Decision of Byrne J., [1898] W. N. 35 (10), affirmed. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO. v. ANDERSON

C. A. [1898] 2 Ch. 394

Referred to by Buckley J. *Tebb v. Cave*, [1900] 1 Ch. 642, 649.

**Contract of Carriage.**

4. — *Delay—Owner's risk note—Construction.*

The plt. delivered to the defts., a ry. co., goods to be carried to their destination via a particular route, upon the terms that the plt., in consideration of his being charged a reduced rate below the defts.' ordinary rate, relieved the defts. "from all liability for (inter alia) delay . . . except upon proof that such . . . delay . . . arose from wilful misconduct on the part of the servants of the co." The defts. by mistake forwarded the goods by a different route from that contracted for, in consequence whereof the arrival at their destination was delayed and the plt. suffered damage.

Held, that as the delay of the goods was not a delay in the performance by the defts. of their contract, they were not relieved from responsibility. MALLETT v. GREAT EASTERN RY. CO.

Div. Ct. [1899] 1 Q. B. 309

**Drainage.**

See SCOTTISH LAW—Railway. 34.

**Fences.**

5. — *Liability to fence—Owner and occupier of adjoining land—Adjoining highway—License of owner of soil—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 68.*

A ry. co., whose premises adjoin a public highway, is not bound to fence against cattle straying upon the highway, and not merely passing and repassing along it, although they are upon the highway by permission of the owner of the soil.

Cattle belonging to a farmer were allowed to graze in a wood adjoining his farm; through the wood ran a highway, the property in the soil of which was in the owner of the wood. The cattle got upon the highway, and left it at a point where it was adjacent to the land of a ry. co., and, getting on to the line along an unfenced



**RAILWAY (Fences)—continued.**

approach road belonging to the ry. co., were killed by a passing train:—

*Held*, that the ry. co. were not liable. **LUSCOMBE v. GREAT WESTERN RY. CO.**

**Div. Ct. [1899] 2 Q. B. 313**

6. — *Liability to make and maintain fences—Limitation of time as to further accommodation works—Fence not made within five years of opening railway—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 68, 73.*

By s. 68 of the Railways Clauses Act, 1845, "The co. shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the ry.: (inter alia) sufficient fences for separating the land taken for the use of the ry. from the adjoining lands not taken, and protecting the cattle of the owners or occupiers thereof from straying thereout." By s. 73, "the co. shall not be compelled to make any further or additional accommodation works . . . after five years from . . . the opening of the ry. for public use."

The obligation on a ry. co., under s. 68 of the Railways Clauses Act, 1845, to make and maintain fences is absolute, and is not affected by the limitation of time with regard to further accommodation works contained in s. 73, and a ry. co. are responsible to the occupier of adjoining land for injury to his cattle arising from neglect of the duty thrown on them by s. 68, although no fences were made within five years of the opening of the ry. for public use.

Judgment of Lord Russell of Killowen C.J., [1896] 2 Q. B. 333, affirmed. **DIXON v. GREAT WESTERN RY. CO. - C. A. [1897] 1 Q. B. 300**

**Lands Clauses Acts.**

— Acquisition of land under.

*See Cases under LANDS CLAUSES ACTS.*

**Level Crossings.**

7. — *Negligence—Contributory negligence—Onus of proof with regard to contributory negligence.*

A ry. line crossed a public footpath on the level, the approaches to the crossing being guarded by hand gates. A watchman who was employed by the ry. co. to take charge of the gates and crossing during the day was withdrawn at night.

The dead body of a man was found on the line near the level crossing at night, the man having been killed by a train which carried the usual head lights but did not whistle or otherwise give warning of its approach. No evidence was given of the circumstances under which the deceased got on to the line.

An action on the ground of negligence having been brought by the administratrix of the deceased, the jury found a verdict for the plt.:—

*Held*, (1886) 12 App. Cas. 41, affirming the decision of the C. A., that even assuming (but without deciding) that there was evidence of negligence on the part of the co., yet there was no evidence to connect such negligence with the

**RAILWAY (Level Crossings)—continued.**

accident: that there was therefore no case to go to the jury and that the ry. co. were not liable.

Observations as to the onus of proof with regard to contributory negligence. **WAKELIN v. LONDON AND SOUTH WESTERN RY. CO.**

**C. A. and H. L. (E.) [1896] 1 Q. B. 189, n.**

8. — *Negligence—Gatekeeper's duty—Contributory negligence.*

The plt.'s husband was run over and killed by a train of the defts. under the following circumstances. The defts.' line crossed a public highway on the level. There was a gatekeeper's lodge near the crossing, where a servant of the defts. was stationed, whose duty under the co.'s regulations was to attend to the carriage gates at the crossing, and, whenever a train was approaching, to stand by the rails and, if the line was clear, exhibit as a signal a white flag by day or a white light by night. There were lamps on the carriage gates which shewed, when they were closed across the highway, a white light, and, when they were closed across the line, a red light. The deceased, who lived near the crossing on the other side of the line, called at the gatekeeper's lodge between 8 and 9 o'clock on a December night to inquire whether his wife was there, and found the gatekeeper sitting in his lodge reading. Being told that his wife was not there, he left the lodge. Though a train had been signalled, the gatekeeper gave him no warning and did not go out to signal the train. The deceased attempted to cross at the level crossing, and was caught by the train and killed. The train carried lights which were visible by any one about to cross at the level crossing for a distance of more than 600 yards. The engine-driver whistled ten seconds before the train passed over the crossing, which it did at the rate of from thirty-five to forty miles an hour. The engine-driver stated in evidence that, when approaching the crossing, he saw the white light on the carriage gates, but did not receive any hand-signal from the gatekeeper:—

*Held*, in an action by the plt. under Lord Campbell's Act to recover damages in respect of her husband's death, that there was upon the above facts evidence to go to the jury of negligence on the part of the defts. by which, and not by any negligence on his own part, the death of the plt.'s husband was caused, and therefore the judge at the trial was right in not withdrawing the case from the jury. **SMITH v. SOUTH-EASTERN RY. CO. - C. A. [1896] 1 Q. B. 178**

9. — *Severed land—Level crossing—Severance—Easement—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 68.*

A ry. was made through the land of R., and pursuant to an award a level crossing was provided under the Railways Clauses Act, 1845, s. 68, as an accommodation work, and by the conveyance to the co. a right of way over it was reserved to R. and his successors in title, and the co. covenanted to maintain it. Afterwards R. sold and conveyed his land on one side of the ry. to P., not mentioning the crossing, and not giving P. any right of way over the land retained, nor reserving any right of way over the land sold. Afterwards the land retained by R. was

**RAILWAY (Level Crossings)—continued.**

sold to G., who insisted on his right to use the crossing:—

*Held*, that after the conveyance to P. there was no right to use the crossing, and that the co. were at liberty to stop it:

*Held*, further, that the right to the crossing was finally abandoned by the conveyance to P., and would not be revived if the lands on the two sides of the ry. should again become vested in the same person.

Decision of Wright J., [1895] 2 Ch. 129, affirmed with a variation in the order. **MIDLAND RY. CO. v. GRIBBLE** - C. A. [1895] 2 Ch. 827

10. — *Speed of trains—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 48—Infringement of statute by public body—Information by Attorney-General—Injunction—Injury to public, evidence of not necessary.*

Upon an information filed by the Att.-Gen. to restrain a public body with statutory powers from infringing a term introduced into their Act in the interests of the public, as a condition of the exercise of their powers, it is not necessary to prove that injury to the public results from that infringement.

A ry. co. was by a special Act, which incorporated the Railways Clauses Act, 1845, empowered to carry their ry. across a turnpike road on the level. They constantly drove their trains over the level crossing, which adjoined a station, at a speed exceeding four miles an hour, in contravention of the provisions of s. 48 of the Railways Clauses Act, 1845.

On an information filed by the Att.-Gen. to restrain them from so doing, they set up by way of defence that there was no proof of any injury occasioned to the public by their contravention of the section, and that the inconvenience caused to the public by reason of the existence of the crossing would be increased if they complied with it:—

*Held* (affirming the judgment of Bruce J., [1898] W. N. 160 (12); [1899] 1 Q. B. 72), that, as the information was filed by the Att.-Gen. to enforce the express terms of an enactment made by the Legislature in the interests of the public, the Court could not entertain the question whether injury to the public was in fact occasioned by the contravention of the Act, but were bound to grant the injunction.

*Att.-Gen. v. Great Western Ry. Co.*, (1872) L. R. 7 Ch. 767, *Att.-Gen. v. Cockermouth Local Board*, (1874) L. R. 18 Eq. 172, and *Att.-Gen. v. Shrewsbury (Kingsland) Bridge Co.*, (1882) 21 Ch. D. 752, followed. **ATT.-GEN. v. LONDON AND NORTH WESTERN RY. CO.** C. A. [1900] 1 Q. B. 78

**Light Railways.**

*Light Railways Act, 1896 (59 & 60 Vict. c. 48), facilitates the construction of light railways in Great Britain.*

*Rules dated Sept., 1896, made by the Board of Trade with respect to applications to the Light Railway Commissioners for Orders authorizing Light Railways.* St. R. & O. 1896, No. 787. Price 3d.

*Rules made by Board of Trade in Sept., 1896,*

**RAILWAY (Light Railways)—continued.**

*and modified in Oct., 1898, with respect to applications to the Light Railway Commissioners under this Act.* W. N. 1898 (Dec. 17), p. 408; *Current Index, 1898*, p. ci.

*Costs.* Rules dated May 27, 1898, made by the Board of Trade, pursuant to s. 13 of the *Light Railways Act, 1896*. W. N. 1898 (Aug. 13) p. 279; *Current Index, 1898*, p. xcix.

**Management.**

— Circular to servants—Libel—Privileged occasion.

*See* DEFAMATION—Libel. 22.

— Rates and charges.

*See* Nos. 42—48, below.

**Minerals.**

11. — *Notice of intention to work minerals—Compensation—Arbitration—Duty of company to take up award—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 35.*

A ry. co., having (though under protest) appointed an arbitrator and joined in the arbitration under the Lands Clauses Act, 1845, in respect of a claim for the purchase of minerals, must take up the award and furnish a copy to the claimants in accordance with s. 35 of the Act; and a mandamus may be granted to compel them. The validity of the award may be contested later.

Decision of C. A., [1899] 1 Q. B. 921, affirmed on this ground. **LONDON AND NORTH WESTERN RY. CO. v. WALKER** H. L. (E.) [1900] W. N. 34; [1900] A. C. 109

12. — *Open workings—Clay—Right to support—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 77, 78, 79.*

The pits. sold land to the defts., reserving the minerals. They subsequently gave notice to the defts. of their intention to work the minerals, but the defts. did not purchase:—

*Held*, that the pits. were entitled under the Railways Clauses Act, 1845, ss. 77, 79, to enter the land sold to the defts. and to work their minerals, clay, in the ordinary manner, i.e., by open workings, and for this purpose to remove the ballast, rails, and surface soil lying above the clay. **RUABON BRICK AND TERRA COTTA CO. v. GREAT WESTERN RY. CO.**

C. A. [1893] 1 Ch. 427

Referred to by C. A. *In re Lord Gerard and London and North Western Ry. Co.*, [1895] 1 Q. B. 466. *See next Case.*

13. — *Purchase by railway company of all adjacent strata except coal—Right of coal-owner to compensation before commencing working—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 77–85.*

The mutual rights are not altered by the fact that the co. has taken some of the underground strata as well as surface, and the landowner cannot recover compensation for ungotten coal until the time arrives for working the pits.

Judgment of Div. Ct., [1894] 2 Q. B. 915, affirmed. *In re LORD GERARD AND LONDON AND NORTH WESTERN RY. CO.*

C. A. [1895] 1 Q. B. 459

**RAILWAY (Minerals)—continued.**

14. — *Support—Compensation for minerals unworked—Arbitration—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 35—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 6, 78, 81.*

The provisions of the Lands Clauses Act, 1845, relating to the assessment of compensation, apply to compensation under s. 78 of the Railways Clauses Act, 1845. The owner of mines under a ry. gave notice of intention to work them. The ry. required a certain amount of support to be left. Arbitrators were appointed to settle the amount of compensation :—

*Held*, that the owner's claim was made under s. 78 of the Railways Clauses Act, and therefore the provisions of the Lands Clauses Act as to the assessment of compensation applied, and therefore the ry. was bound to take up the award. *REG. v. LONDON AND NORTH WESTERN RY. CO.*

*Div. Ct. [1894] 2 Q. B. 512*

15. — *Support—Subjacent and adjacent support—Subsidence.*

A horse tramway was originally authorized by an Act of 1825, which excepted mines which might be worked so as not to injure the co.'s tram-road authorized by that Act. In 1830 the surface lands were conveyed to the co. By an Act of 1835 the Railways Clauses Act, 1845, was incorporated, and provision was made for altering the line so as to be suitable to locomotive engines; acts previously done, and all rights and liabilities consequent thereon, were saved. The defts., owners of the subjacent mines, gave notice under s. 78 of the Railways Clauses Act, 1845, of intention to work the mines, and on refusal by the ry. co. to pay compensation commenced working, and thereby caused subsidence of the surface and ry. :—

*Held*, that the ry. co. were entitled under the conveyance to a right of support without compensation which had not been lost by the conversion of the tramway into a ry., nor by the Act of 1855; and that the defts. must be restrained by injunction from letting down the surface or the ry. *GREAT WESTERN RY. CO. v. CEFN CRIBBWR BRICK CO.*

*Kekewich J. [1894] 2 Ch. 157*

Referred to by *C. A. Reg. v. London and North Western Ry. Co., [1899] 1 Q. B. 944.*

**Negligence.**

16. — *Common carrier—Liability—Loss by theft of company's servants—Special contract—Carriers Act, 1830 (11 Geo. 4 and 1 Will. 4, c. 68), ss. 1, 6, 8—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.*

Sect. 7 of the Railway and Canal Traffic Act, 1854, enacts that a ry. co. shall be liable in the absence of a signed or reasonable contract for loss "occasioned by the neglect or default of such co. or its servants" :—

*Held*, that a loss by theft of a co.'s servant without negligence on the part of the co. was not within the section, and, therefore, that the co. could at common law protect themselves by a special contract, although such contract was not reasonable within the meaning of the Act. *SHAW v. GREAT WESTERN RY. CO.*

*Div. Ct. [1894] 1 Q. B. 373*

**RAILWAY (Negligence)—continued.**

17. — *Defective railway wagons—Breach of duty—Liability of railway company for their own defective wagons while in use by another railway company—Relevancy.*

Wagons belonging to the Caledonian Ry. Co. were filled with coal from pits on that ry. co.'s system, and delivered to the Glasgow and South Western Ry. Co. at Dumfries Station, who had an agreement with the Gas Commrs. of Dumfries to haul the coal from the station to the gasworks. The station and the gasworks were connected by the Gas Commrs.' tramway line running along a public street. The Glasgow and South Western supplied the men and horses to haul the wagons, and once the wagons left the Caledonian Co.'s system they were not under their control. In conducting the wagons into the gasworks, two wagons at a time were taken along the tramway; but owing to a descent and ascent, one of the wagons was as usual uncoupled at the top of the descent, and the other taken on at a sharp trot to rush the ascent. While this was being done an obstruction got in the way, and the first wagon had to be pulled up; but the brake of the second wagon refused to act, and the husband of the respondent, who was in the employ of the Glasgow and South Western Ry. Co., was caught between the two wagons and killed. The respondent raised this action against both ry. cos., and the question was whether there was a relevant case made against the Caledonian Ry. Co. There was no averment as to the state of the wagons before they left the Caledonian Ry. Co.'s system :—

*Held*, reversing the decision of the Second Division of the Court of Session, [1897] 24 R. 429; 34 Sco. L. R. 317, that the respondent's averments did not shew that there was any duty cast on the Caledonian Ry. Co. in respect to any one using the wagons on behalf of the Glasgow and South Western Ry. Co. to take care that the wagons were in proper order after the coal had been delivered at Dumfries Station; and therefore the Caledonian Ry. Co. must be dismissed from the action.

*Heaven v. Pender, (1883) 11 Q. B. D. 503, distinguished. CALEDONIAN RY. CO. v. MULHOLLAND - H. L. (Sc.) [1898] A. C. 216*

*Distinguished by Bigham J. Marney v. Scott, [1899] 1 Q. B. 986, 991.*

— *Employer and workman—Person in charge of train—Negligence.*

*See MASTER AND SERVANT. 78.*

18. — *Fire caused by spark from engine—Negligence not proved—Question of fact.*

A fire was caused by a spark from a locomotive which was of the best form, and though without a spark arrester had no unusual tendency to throw out sparks :—

*Held*, that the onus was on the appellants to shew that the ry. co. were guilty of negligence.

The decision of Court of Session, 19 R. 608, affirmed. *PORT GLASGOW AND NEWARK SAILCLOTH CO. v. CALEDONIAN RY. CO.*

*H. L. (Sc.) [1893] W. N. 29*

— *Level crossings.*

*See RAILWAY—Level Crossings.*

**RAILWAY—continued.****Parliamentary Deposit.**See **PARLIAMENT—Deposits and Bonds.****Passengers.****19. — Assault by fellow-passenger—Neglect—Liability of company.**

The neglect of a ry. co. to supply reasonable accommodation will not enable the passenger to recover in an action for damages for assaults committed on him by fellow-passengers. **POUNDER v. NORTH EASTERN RY. CO.** — **Div. Ct.**  
[1892] 1 Q. B. 385

But see hereon observations of Earl of Selborne on *Cobb v. Great Western Ry. Co.*, H. L. (E.) [1894] A. C. 419, at p. 423.

**20. — By-law—Validity—Penalty—Ticket not available—Absence of fraud—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 103, 104, 108, 109—Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5, sub-s. 3 (a)—Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).**

A by-law of a ry. imposed a penalty on using a ticket on a day on which it was not available:—

*Held*, that a person who was not guilty of fraud or intent to defraud was not liable to be convicted, and that the by-law was invalid. **HUFFMAN v. NORTH STAFFORDSHIRE RY. CO.**

**Div. Ct. [1894] 2 Q. B. 821**

— Contract that railway shall not be liable for negligence.

See **INFANT—Contracts**, 7.

**21. — Duty—Passenger duty—Exemption—Third-class passengers—Extra charge for reserved carriage—Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), s. 2, Schedule—Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 2, sub-s. 1.**

By 5 & 6 Vict. c. 79, s. 2, and the schedule to that Act, a duty at the rate of 5 per cent. is made payable upon all sums received or charged for the hire, fare, or conveyance of passengers conveyed for hire upon any ry. By 46 & 47 Vict. c. 34, s. 2, sub-s. 1, fares not exceeding the rate of one penny a mile are exempt from duty.

A ry. co., whose third-class fares did not exceed a penny a mile, abolished all its second-class carriages and fares, and in lieu of them introduced a system by which third-class passengers, after taking and paying for their tickets, could for an extra charge procure "supplementary reserve tickets," entitling them to travel in reserved third-class compartments not available for the ordinary third-class passengers who had not paid the extra charge:—

*Held*, that the extra sums were paid in respect of extra accommodation incidental to the conveyance of the passengers, and that the Crown was entitled to duty upon the sums received by the ry. co. in all cases where the sum paid for the supplementary ticket when added to that paid for the ordinary third-class ticket exceeded a penny a mile. **ATT.-GEN. v. FURNESS RY. CO.**

**Div. Ct. [1899] 2 Q. B. 267**

— Falsely pretending to be a traveller—Offences.

See **LICENSING ACTS**, 39.

**RAILWAY (Passengers)—continued.****22. — Fare—Condition on ticket—Ticket used for station beyond that to which available.**

The deft. took a special excursion ticket from P. to W. and back at a reduced fare. The ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. The deft. travelled to and returned from H., a station beyond W., paying the ordinary fare for the journeys between H. and W.:—

*Held*, that the condition was applicable to stations beyond that named on the ticket as well as to intermediate stations; that the deft. had used the ticket for a journey to a station other than that named on it, and that the ry. co. were entitled to treat the ticket as forfeited. **GREAT NORTHERN RY. CO. v. PALMER** — **Div. Ct.**  
[1895] 1 Q. B. 862

**23. — Fare—Ticket used for station other than that for which it is available—Penalty.**

The deft. took a tourist ticket to X. costing 8s.: he alighted at Y, a station short of X., and to which the fare was 9s.: his ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. He did not give up his ticket at Y., but took another ticket to his destination on a branch line:—

*Held*, that an action in the county court to recover the fare was maintainable, as it was one of contract and not for a penalty. **GREAT NORTHERN RY. CO. v. WINDER** — **Div. Ct.**  
[1892] 2 Q. B. 595

**24. — Inspector of weights and measures—Police officer—Conveyances at reduced rate—Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 6.**

A police officer, appointed by the county council an inspector of weights and measures, is not entitled, when travelling as such inspector, to conveyance at the reduced rate provided by s. 6 of the Cheap Trains Act, 1883, for the conveyance of the police on occasions of the public service. **SPENCER v. LANCASHIRE AND YORKSHIRE RY. CO.** — **Div. Ct. [1898] 1 Q. B. 643**

**25. — Luggage—Bicycle—"Ordinary luggage."**

A bicycle is not "ordinary luggage," within the meaning of a Railway Act, by which every passenger travelling in a carriage of a certain class may take with him his ordinary luggage, not exceeding a certain weight, free of charge; and therefore a passenger by train, without luggage, is not entitled to take with him, free of charge, a bicycle, not packed up, and of less weight than the weight of luggage allowed to be carried free of charge by the class in which he is travelling. **BRITTEN v. GREAT NORTHERN RY. CO.**

**Channell J. [1899] 1 Q. B. 243**

**26. — Luggage—Cloak-room—Bailment—Ticket—Condition exempting from responsibility for articles above a certain value—Damage to article deposited.**

A condition upon a cloak-room ticket issued by a ry. co. that they "will not be responsible for any package exceeding the value of 10l." protects the co. from liability, not only for the loss of an article deposited in the cloak-room, but also for damage or injury thereto while in their custody. **PRATT v. SOUTH EASTERN RY. CO.**

**Div. Ct. [1897] 1 Q. B. 718**

**RAILWAY (Passengers)—continued.**

27. — *Luggage—Injury to—Personal luggage of servant—Property of employer—Injury by misfeasance of defendants—Right of owner to sue.*

A servant of the plt. took a ticket for a journey on defts.' ry., and a portmanteau of his was accepted by the defts. as his personal luggage. The portmanteau contained his livery, which was the property of the plt. Through an act of misfeasance of a porter in the employment of the defts. the livery was destroyed. In an action to recover the value of the goods destroyed:—

*Held*, that the defts. were liable to the plt. for the tortious act of their servant in injuring the plt.'s property. *MEUX v. GREAT EASTERN RY. CO.* C. A. [1895] 2 Q. B. 387

28. — *Personal injury—Contract—Tort.*

An action by a passenger against a ry. for personal injuries caused by the negligence of the co.'s servants is founded on tort and not on contract—

(A) even though the passenger has taken a ticket. *TAYLOR v. MANCHESTER, [SHEFFIELD AND LINCOLNSHIRE RY. CO.]* C. A. [1895] 1 Q. B. 134

Referred to. *See preceding Case.*

(B) or though the negligence charged is an act of omission and not of misfeasance. *KELLY v. METROPOLITAN RY. CO.* - - - C. A. [1895] 1 Q. B. 944

29. — *Robbery in train—Overcrowding—Refusal to detain train.*

A passenger claimed damages for loss by robbery in the defts.' train on the grounds (1) that the station-master at the station where the robbery occurred refused to detain the train to enable him to recover the money and arrest the thieves, and (2) that the robbery was directly due to overcrowding:—

*Held*, (1) that, under the circumstances, there was no duty cast on the station-master to detain the train, and therefore no cause of action was shewn; (2) that the damage was too remote.

Decision of the C. A., [1893] 1 Q. B. 459, affirmed. *COBB v. GREAT WESTERN RY. CO.*

H. L. (E.) [1894] A. C. 419

**Powers.**

30. — *Borrowing powers—Unauthorized borrowing—Money applied in payment of debts of company—Subrogation of lender to rights of creditors—Secured creditors—Priority.*

A ry. co. had power to borrow money by the creation of three classes of debenture stock, A, B, and C, A having priority over B and C, and B over C. They had issued the whole of these stocks, and had no other borrowing power. Not having the funds to pay a half-year's interest on the debenture stocks, they borrowed money from their bankers for the purpose, the bankers paying the interest warrants of the stockholders when presented to them. Soon after this had been done a judgment creditor of the co. presented a petition under the Railway Companies Act, 1867, and a receiver was appointed under the petition. The receiver had in his hands moneys sufficient to pay the next half-year's interest due to the A stockholders and to pay

**RAILWAY (Powers)—continued.**

in part the interest for the same half-year due to the B stockholders:—

*Held*, that the bankers were not entitled, in respect of the moneys advanced by them and applied in paying the interest due to the debenture stockholders, to the benefit of the securities and priorities of those stockholders or any of them, but that they were only entitled, so far as the moneys advanced had been applied in discharging legal debts or liabilities of the co., to stand in the same position as if the advance had been a valid one.

Where a co. borrows money ultra vires, the lender, so far as the money is applied in the discharge of legal debts and liabilities of the co., is entitled to have the loan treated as valid, but he is not subrogated to any securities or priorities of the creditors who are paid by means of his money.

Decisions of *Romer J.*, [1898] 2 Ch. 663; [1899] W. N. 2 (5); [1899] 1 Ch. 205, affirmed. *In re WREXHAM, MOLD AND CONNAH'S QUAY RY. CO.* C. A. [1899] W. N. 22 (4); [1899] 1 Ch. 440

— Contract by company—Effect of consent judgment—Terms on which contract will be set aside.

*See CANADA. 17.*

31. — *Debentures—Issue at discount—Companies Clauses Acts, 1845, 1863 (8 & 9 Vict. c. 16; 26 & 27 Vict. c. 118, s. 21; 1869 (32 & 33 Vict. c. 48), s. 5—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 27.*

An agreement by a ry. co. to issue fully paid-up original stock and debentures at a discount are legal, subject to the liability of the directors for issuing the stock below its value without necessity:—

*Quære*, if the shares were liable to calls whether the agreement would be legal. *WEBB v. SHROPSHIRE RYS. CO. WHADCOAT v. SAME. LONDON FINANCIAL ASSOCIATION v. WHADCOAT*

C. A. [1893] 3 Ch. 307

32. — *Deposited plans—"Delineated"—Land not inclosed on every side by lines.*

When a co. seek to obtain power to acquire a limited portion only of a piece of land of great extent which is not broken up into closes, they must frame their deposited plans in such a way as to shew how much of it they mean to acquire power to take. *PROTHEOROE v. TOTTENHAM AND FOREST GATE RY. CO.* - C. A. [1891] 3 Ch. 278

33. — *Temporary possession—Power to take—Necessary purpose—"Road"—Railroad—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 32.*

A ry. co. gave notice that they intended to take a piece of land in order to build a temporary ry., which ry. was to save the trouble and expense of carting materials from a highway:—

*Held*, that the authority given by s. 32 of the Railways Clauses Act, 1845, to take temporary possession of land for the purpose of forming roads does not include taking for the purpose of forming a railroad, and can only be so taken when the taking is necessary for making the line authorized by the co.'s special Act, and mere saving of expense in construction does not con-

**RAILWAY (Powers)—continued.**

stitute such necessity. **MORRIS v. TOTTENHAM AND FOREST GATE RY. CO.** - North J. [1892] 2 Ch. 47

**34. — Time for constructing works—Statutory powers—Expiration of period for completion of works—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 16.**

Sec. 16 of the Railways Clauses Act, 1845, empowers a ry. co., subject to the provisions of the special Act, to execute various works and "from time to time" to alter, repair, or discontinue the before-mentioned works and substitute others in their stead:—

*Held* (by Lindley and A. L. Smith L.JJ., affirming North J., Kay L.J. deciding upon other grounds), that the powers of this last clause were not subject to a restriction in the special Act as to the time for the completion of the ry. **EMSLEY v. NORTH EASTERN RY. CO.**

C. A. [1896] 1 Ch. 418

Referred to. **Kirby v. Harrogate School Board**, C. A. [1896] 1 Ch. 437, 452.

**Practice Generally.****35. — Costs—Appeal.**

Sec. 2 of the Railway and Canal Traffic Act, 1894, applies only to costs before the Railway and Canal Commission, and does not apply to the costs of an appeal from that tribunal to the C. A. **MANSION HOUSE ASSOCIATION ON RY. AND CANAL TRAFFIC FOR THE UNITED KINGDOM (INCORPORATED) v. GREAT WESTERN RY. CO.**

C. A. [1895] 2 Q. B. 141, 148

**36. — Costs—Counsel's fees—Three counsel.**

Where costs are awarded on an application to the Railway and Canal Commissioners, the costs of more than two counsel will not be allowed as between party and party, unless the case is one in which a reasonable man acting with ordinary prudence would not go into court without three counsel. The chance of counsel being absent is not to be taken into consideration. **GLAMORGAN COUNTY COUNCIL v. GREAT WESTERN RY. CO.**

[1895] 1 Q. B. 21

See now 57 & 58 Vict. c. 54, s. 2.

**37. — Costs and expenses of obtaining special Act—Parliamentary deposit—Lien—Companies Clauses Act, 1845 (8 & 9 Vict. c. 16), s. 65.**

A person who had lent the money for the Parl. deposit moved to restrain the directors of the co., until the deposit was repaid, from applying to Parl. for fresh powers, contrary to an agreement made by them as promoters of the ry.

*Held*, that the motion must be refused because (1) the agreement was not binding on the co., as it could not be shewn that the co. had benefited by it; (2) that assuming the plt. to be a creditor of the co., he had no right to interfere with the application of the co.'s funds; (3) that s. 65 of the Companies Clauses Act, 1845, which directs a co. to pay promotion expenses, only gives a right of action against the co. and not a lien on its funds. **CUTBILL v. SHROPSHIRE RYS. CO.** - Stirling J. [1891] W. N. 65

**38. — Costs—Receivership order—“Proper outgoings in respect of the undertaking”—Costs**

**RAILWAY (Practice Generally)—continued.**

*of defending an action in respect of the undertaking—Costs of proceedings under Act of Parliament containing no provision for costs—Jurisdiction—Priority—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4—Judicature Act, 1890 (53 & 54 Vict. c. 43), s. 5.*

An order was made under s. 4 of the Railway Companies Act, 1867, upon the application of a judgment creditor, appointing a receiver and manager of the undertaking of a ry. co., and directing the usual inquiries as to the debts of the co. and the rights and priorities of the creditors. At the date of this order there was pending an action by the contractor of the line against the co. for his remuneration. Subsequently an order was obtained by the contractor giving him liberty, notwithstanding the receivership order, to proceed with the action, and giving the co. liberty (according to the construction placed by the Court upon the order) to defend the action on behalf of all persons interested in the assets of the co. The action resulted in a substantial reduction of the contractor's claim, and each party was ordered to pay his own costs:—

*Held*, (1) that the costs of defending the action were not "proper outgoings in respect of the undertaking" within s. 4 of the Railway Companies Act, 1867; (2) that, notwithstanding the absence of any mention of costs in the Act, the Court had jurisdiction to order payment of the costs of proceedings thereunder; (3) that the costs of defending the action incurred since the date of the receivership order ought to be treated as incurred in prosecuting the inquiries directed by that order, and were incurred for the benefit of the debenture-holders and other creditors of the co., and ought to be paid out of the moneys in the hands of the receiver and manager in priority to their claims.

Order of Byrne J., [1899] W. N. 66, varied. *In re WREXHAM, MOLD AND CONNAR'S QUAY RY. CO.* C. A. [1900] W. N. 21; [1900] 1 Ch. 261

Followed by Farwell J. *In re Wrexham, Mold and Connar's Quay Ry. Co.*, [1900] 2 Ch. 436. No. 5, below.

**39. — Judgment against railway company—Execution—"Action on a contract"—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4.**

The M.-W. Ry. Co. and the M. Ry. Co. were each of them authorized to make a separate line in a certain district to a point of junction with an existing ry. belonging to the L. Co. In order to save expense the three cos. in 1861 entered into an agreement whereby the L. Co. was to make a joint line to be used by the other two, and a joint station to be used by the three cos. This arrangement was embodied and carried into effect by an Act of Parliament passed in 1862, which contained provisions for the payment of certain sums to the L. Co. by the two other cos., and for the recovery of those sums by action in case of default. The works were duly executed by the L. Co. The M. Co. from time to time made default in their payments; and the L. Co. in 1883 and at subsequent dates obtained various judgments against them, which were unsatisfied.

Upon an application by the L. Co. for leave to

**RAILWAY (Practice Generally)—continued.**

issue execution upon the rolling-stock of the M. Co. :—

*Held*, that the actions in which the judgments had been recovered were not "actions on a contract" within the meaning of s. 4 of the Railway Companies Act, 1867, and that consequently the applicants were not entitled to issue execution.

The observations of Lord Watson in *Countess of Rothes v. Kirkcaldy and Dysart Waterworks Commissioners*, (1882) 7 App. Cas. 694, at p. 707, commented on and explained. *In re MANCHESTER AND MILFORD RY. CO.*

*Stirling J.* [1897] 1 Ch. 276

**40. — Particulars—Complaint by association.**

An association certified under s. 7 of the Railway and Canal Traffic Act, 1888, complained of an increase of rates on certain classes of goods made since 1892 as unreasonable :—

*Held*, that the association could not be called on to give particulars of traders represented by them or in respect of whose traffic the complaint was made. *MANSION HOUSE ASSOCIATION ON RY. AND CANAL TRAFFIC FOR THE UNITED KINGDOM (INCORPORATED) v. GREAT WESTERN RY. CO.*

*C. A.* [1895] 2 Q. B. 141

**41. — Service of writ—Scottish railway having short line in England—Companies Clauses Act, 1845 (8 & 9 Vict. c. 16), s. 135.**

A ry. co. having its governing body resident and domiciled in Glasgow had a short line in England which was under the Companies Clauses Act, 1845 :—

*Held*, that the co. was a Scottish co., and that service of a writ under s. 135 of the Act at the principal office of the co. on the English part of the line was not good service.

Decision of Div. Ct., [1892] 1 Q. B. 607, reversed. *PALMER v. CALEDONIAN RY. CO.*

*C. A.* [1892] 1 Q. B. 823

**Railway and Canal Traffic.**

*By the Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), was amended, and provision was made as to complaints as to rates and charges raised since 1892, the power of the Commrs. to award costs was restricted, and the allowance of a rebate on siding rates was provided for.*

— *Metropolis Water Acts.*

*See Cases under WATER.*

**PROVISIONAL ORDERS.]** *By the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 & 55 Vict. c. 12), provision was made as to the powers of governing bodies and county councils with reference to bills for confirming provisional orders under 51 & 52 Vict. c. 25, s. 24.*

**PROVISIONAL ORDER—TIME FOR APPLICATION FOR.]** *By the Railway and Canal Traffic Act, 1892 (55 & 56 Vict. c. 44), the Act of 1888 was amended.*

**42. — Charges—Application for disintegration of charge—Charge below statutory maximum—Sufficiency of answer—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 33, sub-s. 3.**

Where an application is made under s. 33,

**RAILWAY (Railway and Canal Traffic)—contd.**

sub-s. 3, of the Railway and Canal Traffic Act, 1888, to the secretary of a ry. co. by a person interested in a conveyance of merchandise over the ry. for an account dividing the charge made for carriage and distinguishing the charge made for conveyance on the ry. from the terminal charges (if any) and from the dock charges (if any), it is sufficient, if the total charge made is below the co.'s statutory maximum charge for conveyance, for the ry. co. to make a formal answer that the whole charge is in respect of conveyance, and that no charge is made in respect of terminals or of dock charges. *NEW UNION MILLS CO. v. GREAT WESTERN RY. CO.*

*Ry. and Canal Commrs.* [1896] 2 Q. B. 290

— *Charge for use of sidings.*

*See Cases under RAILWAY—Sidings.*

**43. — Charges—Increase of rate—Class of goods—Complaint by association—Jurisdiction—Railway and Canal Traffic Acts, 1888 (51 & 52 Vict. c. 25), ss. 7, 31; 1894 (57 & 58 Vict. c. 54), ss. 1, 2.**

On a complaint as to an unreasonable increase of rate in a class of goods a ry. co. may justify generally the rate for the whole class, and a demand for particulars to identify specific goods as to which the increase of rate might be alleged to be unreasonable, is premature until the general justification has been dealt with. *MANSION HOUSE ASSOCIATION ON RY. AND CANAL TRAFFIC FOR THE UNITED KINGDOM (INCORPORATED) v. GREAT WESTERN RY. CO.* — *C. A.* [1895] 2 Q. B. 141

Referred to by Collins J. *Rickett, Smith & Co. v. Midland Ry. Co.*, [1896] 1 Q. B. 260, 264.

**44. — Charges—Increase of rate—Railway Commissioners—Jurisdiction—Cartage charges—Complaint of unreasonableness—Railway Rates Confirmation Acts, 1891, 1892—Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 1, sub-s. 1.**

Where a ry. co. have, since the last day of Dec., 1892, increased a rate or charge for cartage, and complaint is made that the rate or charge is unreasonable, exclusive jurisdiction is not vested in an arbitrator appointed by the Board of Trade under the Railway Rates Confirmation Acts, 1891, 1892, but the Railway Commrs. have jurisdiction to hear and determine the complaint. *MANSION HOUSE ASSOCIATION ON RY. TRAFFIC v. LONDON AND NORTH WESTERN RY. CO.*

*Ry. and Canal Commrs.* [1896] 1 Q. B. 273

**45. — Charges—Increase of rates—Standard of reasonableness—Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 1, sub-s. 1.**

By s. 1, sub-s. 1, "Where a ry. co. have, . . . since the last day of Dec., 1892, directly or indirectly increased . . . any rate or charge, then if any complaint is made that the rate or charge is unreasonable, it shall lie on the co. to prove that the increase of the rate or charge is reasonable, and for that purpose it shall not be sufficient to shew that the rate or charge is within any limit fixed by an Act of Parliament or by any Provisional Order confirmed by Act of Parliament."

In a case where rates for the carriage of

**RAILWAY (Railway and Canal Traffic)—*contd.***

coal had been indirectly increased on Jan. 1, 1893:—

*Held*, by Collins J., that the effect of the Act was not necessarily in all cases to declare the increased rates void, but that all future increases of rates must be tried by the standard of reasonableness, depending on circumstances existing or apprehended before the increase was made, and therefore, in the case then before the Court, before the Act came into operation. **RICKETT, SMITH & CO. v. MIDLAND RY. CO. DERBYSHIRE SILKSTONE COAL CO. v. THE SAME. GRASSMOOR CO. v. THE SAME Ry. and Canal Commrs. [1896] 1 Q. B. 260**

**46. — Charges—Rates for merchandise—Siding not belonging to railway company—Station accommodation and terminal services—Allowance or rebate in respect thereof—Evidence—Onus of proof—Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 4.**

By s. 4 of the Railway and Canal Traffic Act, 1894, whenever merchandise is received or delivered by a ry. co. at a siding not belonging to the co., and a dispute arises as to any allowance or rebate to be made from the rates charged in respect that the ry. co. does not provide station accommodation or perform terminal services, the Railway Commrs. shall have jurisdiction to hear and determine such dispute, and to determine what, if any, is a reasonable and just allowance or rebate.

At the hearing of an application for an allowance or rebate under this section on the ground that the rates charged by the ry. co., in respect of goods sent from the applicants' siding, included a charge for station accommodation at the siding:—

*Held*, by A. L. Smith and Rigby L.JJ., V. Williams L.J. not assenting, that the applicants, by merely proving that they were charged the rates, and that the siding did not belong to the ry. co., had not made out a *prima facie* case that the rates included a charge for station accommodation at the siding so as to throw upon the ry. co. the onus of proving that the rates did not include a charge for station accommodation. **SALT UNION, LD. v. NORTH STAFFORDSHIRE RY. CO. C. A. [1898] 2 Q. B. 435**

**47. — Jurisdiction—Compensation—Land taken compulsorily or injuriously affected—Trial in superior court—Power of High Court to make order—Jurisdiction of master—Time from which order of judge on appeal from master takes effect—R. S. C., Order LIV., r. 12—Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 41.**

A question of compensation having arisen, under the Lands Clauses Act, 1845, between a claimant and a ry. co., the co., before issuing their warrant to the sheriff to summon a jury, applied under s. 41 of the Regulation of Railways Act, 1868, to a master for an order for the trial of the question in the High Court. The master refused the application, and the co. appealed to a judge who made the order. In the meantime, and before the judge made the order, the co. issued their warrant to the sheriff. On an appeal by the claimant against the order of the judge:—

*Held*, that the jurisdiction conferred by s. 41

**RAILWAY (Railway and Canal Traffic)—*contd.***

of the Regulation of Railways Act, 1868, is now vested in the judges of the High Court, and may, except as to the settling of an issue in case of difference, be exercised by a master under Order LIV., r. 12.

*Held* also, that the judge's order being that which the master should have made, the time when the master's order was made must be taken as the date of the judge's order, and as no warrant had then been issued the judge's order was in time. *In re DONISTHORPE AND MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.*

**C. A. [1897] 1 Q. B. 671**

**48. — Jurisdiction, whether exclusive.**

Sec. 6 of the Railway Traffic Act, 1854, and s. 9 of the Railway and Canal Traffic Act, 1888, do not confer upon the Railway and Canal Commrs. exclusive jurisdiction to determine whether reasonable facilities for traffic have been given, or excessive rates charged under special Acts prior to the passing of these general Acts. **BARRY RY. CO. v. TAFF VALE RY. CO.**

**C. A. [1895] 1 Ch. 128**

*See Davis & Sons v. Taff Vale Ry. Co., [1895] A. C. 554.*

— “Reasonable facilities”—Closing of station for passenger traffic.

*See No. 64, below.*

**49. — Reasonable facilities — Jurisdiction, whether exclusive—Railway and Canal Traffic Acts, 1854, 1888 (17 & 18 Vict. c. 31, s. 6; 51 & 52 Vict. c. 25, ss. 9, 10).**

The Act of the plt. ry. provided that the deft. ry. should afford them reasonable facilities, at rates per mile not greater than the lowest rate charged by the deft. ry. for similar traffic, and also that if on application to the Railway Commrs. as arbitrators, they should decide that the deft. ry. had failed to give any of such facilities, the plt. ry. should be entitled to certain relief:—

*Held*, that even if the latter provision applied to a complaint that the deft. ry. had been charging the plt. ry. rates higher than they were entitled to charge, it did not confer on the commrs. an exclusive jurisdiction, nor oust the ordinary jurisdiction of the Court:—

*Held*, also, that s. 9 of the Railway and Canal Traffic Act, 1888, and s. 6 of the Act of 1854, did not in such a case confer exclusive jurisdiction on the commrs. **BARRY RY. CO. v. TAFF VALE RY. CO. — — — C. A. [1895] 1 Ch. 128**

*See Davis & Sons v. Taff Vale Ry. Co., [1895] A. C. 554.*

— Sidings, Charge for use of—Jurisdiction.

*See Nos. 60—62, below.*

**50. — Through booking—Reasonable facilities—Railway and Canal Commissioners—Jurisdiction—Railway and Canal Traffic Acts, 1854, 1888 (17 & 18 Vict. c. 31, s. 2; 51 & 52 Vict. c. 25, s. 25).**

An application for through booking over a route passing along several lines of ry. is not a matter of right, but the granting of it is governed by the considerations that affect an application for a through rate under s. 25 of the Railway



**RAILWAY (Railway and Canal Traffic)**—*contd.*  
and Canal Traffic Act, 1888. *DIDCOT, NEWBURY AND SOUTHAMPTON RY. CO. v. GREAT WESTERN RY. CO. AND LONDON AND SOUTH WESTERN RY. CO.* - - - C. A. [1897] 1 Q. B. 33

51. — *Through traffic—Special services.*

Where a ry. in consideration of an annual payment were allowed to run their trains along a pier on a ry. belonging to the Admiralty:—

*Held*, that the ry. were not entitled, in the absence of any statutory power or express contract, to make a charge, in excess of the maximum charges authorized by their statutes, for the special service of carrying passengers and their luggage over the line belonging to the Admiralty. *NICHOLSON v. LONDON, CHATHAM AND DOVER RY. CO.* Mathew J. [1895] W. N. 91

52. — *Through traffic—Statutory obligation enforceable by public—Group rates—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 29.*

A clause in a ry. co.'s special Act limiting the rates for certain traffic—the result of a Parliamentary contest between two ry. cos.—has the effect, not merely of a contract between the two cos., but of a statutory obligation which may be enforced by any person chargeable with the rates for such traffic.

*Per Lord Watson:* The power conferred by the Railway and Canal Traffic Act, 1888, s. 29, to fix group rates, "notwithstanding any provision in any general or special Act," cannot affect the rate chargeable, under express statutory provisions, for the conveyance of traffic to any terminus which is not included in the group.

Decision of C. A., [1894] 1 Q. B. 43, reversed. *DAVIS & SONS, LD. v. TAFF VALE RY. CO.*

H. L. (E.) [1895] A. C. 542

53. *Undue preference—Effect of competition—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2; 1888 (51 & 52 Vict. c. 25), ss. 7, 27.*

*Semble*, that the effect of s. 27 of the Railways, &c., Act, 1888, is not to limit the Court in dealing with questions of alleged undue preference to the consideration whether the lower charge is necessary for the interests of the public. An association of traders in grain and flour at L. complained against the deft. co. for undue preference by charging lower rates from C. to B. in comparison with those charged from L. to B., a shorter distance. The lower rates had been fixed with reference to competition with other lines for traffic from C. to B.:—

*Held*, on the facts of the traffic, that there was undue preference. *LIVERPOOL CORN TRADE ASSOCIATION, LD. v. LONDON AND NORTH WESTERN RY. CO.*

Ry. and Canal Commrs. [1891] 1 Q. B. 120

54. — *Undue preference—Lower tolls or rates—Rival traders—Access to competing lines—Railway and Canal Traffic Acts, 1854 (17 & 18 Vict. c. 31), s. 2; 1888 (51 & 52 Vict. c. 25), ss. 17, 27, 29–55.*

The fact that a trader has access to a competing route for the carriage of his goods may be taken into consideration by the Railway Commrs. or the Court in deciding whether lower tolls or rates charged to such trader by a ry. co. constitute an undue preference within the meaning of

**RAILWAY (Railway and Canal Traffic)**—*contd.*  
the Railway and Canal Traffic Acts, 1854 and 1888. *PHIPPS v. LONDON AND NORTH WESTERN RY. CO.* - - - C. A. [1892] 2 Q. B. 229

54A. — *Undue preference—Home and foreign merchandise—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 27.*

All inequalities in rates as between home and foreign merchandise are not prohibited; but if the ry. co. can justify the admitted differences, had the goods in both cases been home goods, the co. are not debarred from relying on those facts as an answer merely because the goods in question are of foreign origin. *MANSION HOUSE ASSOCIATION ON RY. TRAFFIC v. LONDON AND SOUTH WESTERN RY. CO.* - - - [1896] 1 Q. B. 927

### Railway Servants.

HOURS OF LABOUR OF RAILWAY SERVANTS.]  
*Railway Regulation Act, 1893 (56 & 57 Vict. c. 29), amends the law.*

— Circular to servants—Libel—Privileged occasion.

*See* DEFAMATION—Libel. 22.

### Rates and Taxes.

*See* Cases under RATES.

— Land tax on railway tunnel under street.

*See* REVENUE—Land Tax. 118.

### Receiver and Manager.

— Costs—Receivership order—Costs of defending action in respect of the undertaking.

*See* RAILWAY—Costs.

55. — *Preferential payments—Priority—Working expenses—Proper outgoings—Damage caused by defective plant—Compensation—Costs—Judgment debt—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4.*

A judgment debt for damages caused to the property of a person using a ry. by the neglect of the ry. co. to keep its plant in proper repair is not a working expense or other proper outgoing of the ry. within the meaning of s. 4 of the Railway Companies Act, 1867, so as to be entitled to priority over other debts payable by a receiver and manager appointed under that section.

The costs carried by the judgment stand on the same footing as the damages in this respect.

The priority given by the section is confined to working expenses and other proper outgoings without which it would be impossible to carry on the ry. It does not extend to claims for compensation or other claims, the non-payment of which, though probably leading to a decline in traffic, would not absolutely paralyze the undertaking.

*In re Eastern and Midlands Ry. Co.*, (1890). 45 Ch. D. 367, *In re Wrexham, Mold and Connah's Quay Ry. Co.*, [1900] 1 Ch. 261, and *In re Navan and Kingscourt Ry. Co.*, (1885) 17 L. R. Ir. 398, followed. *In re WREXHAM, MOLD AND CONNAH'S QUAY RY. CO.*

Farwell J. [1900] W. N. 147; [1900] 2 Ch. 436

### Regulation.

— Agreement to stop trains.

*See* SCOTTISH LAW—Railways. 33.

**RAILWAY (Regulation)—continued.**

— Amalgamation — Stamps — “Conveyance on sale.”

See **REVENUE—Stamps.** 153.

— Traffic.

See Nos. 42—48, above.

**Roads and Streets.**

— Closing lane.

See **CANADA.** 19, 55.

56. — *Footpath—Bridge—Mandamus—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 46, 49, 50, 61.*

Sect. 46 of the Railways Clauses Act, 1845, does not impose upon a ry. co., whose line crosses a public footpath, the obligation of carrying the footpath over the ry. or the ry. over the footpath by means of a bridge.

Decision of C. A., [1896] 2 Q. B. 74, affirmed. **DARTFORD RURAL DISTRICT COUNCIL v. BEXLEY HEATH RY. CO.** — **H. L. (E.)** [1898] A. C. 210

57. — *Interference with road—Penalty for not substituting sufficient road—Road belonging to different owners—Right of owner of part to sue for penalty—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 53, 54.*

By s. 53 of the Railways Clauses Act, 1845, if a ry. co., in the exercise of their powers, find it necessary to cut through, raise, sink, or use any part of any road, either public or private, so as to render it impassable or dangerous, they shall, before commencing such operations, cause a sufficient road to be made instead of the road to be interfered with; and by s. 54 they are, in default of so doing, liable to a penalty which, in the case of a private road, shall be paid “to the owner thereof”:

*Held*, that the owner of the soil of any part of that portion of a private road which has been interfered with may sue to recover the penalty, but that only one such penalty is recoverable from the ry. co.

Decision of Wright J., [1897] 2 Q. B. 239, affirmed. **LLEWELLYN v. VALE OF GLAMORGAN RY. CO.** — **C. A.** [1898] 1 Q. B. 473

— Street railway—Grant—Construction.

See **CANADA.** 47.

**Scheme of Arrangement.**

58. — *Confirmation by Court—Scheme depending on sanction of Parliament—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 18.*

Where a scheme required the sanction of an Act of Parliament, ordered, that the petition for confirmation should stand over generally, the parties to apply to restore it if at any time during the following year they could shew there was a good prospect of the bill becoming law. *In re* **EASTERN AND MIDLAND RY. CO.** — **Kekewich J.** [1892] W. N. 173

59. — *Preference shareholders—Non-assent of class of—Rights “prejudicially affected”—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), ss. 6, 10, 12, 15, 16, 17.*

A scheme of arrangement was settled which altered the rights of the preference shareholders, but as a whole was beneficial to them. On a

**RAILWAY (Scheme of Arrangement)—continued.**

petition to the Court to confirm the scheme, notwithstanding that the statutory two-thirds of the preference shareholders had not assented:—

*Held*, that the assent of the statutory majority of a class to a scheme of arrangement under the Railway Companies Act, 1867, cannot be dispensed with under s. 15 if any existing right of that class is prejudicially affected, it being for them and not for the Court to consider whether the scheme gives such benefits that their rights on the whole are not prejudicially affected. *In re* **NEATH AND BREGON RY. CO.** **C. A. affirm.** **North J.** [1892] 1 Ch. 349

**Scotland.**

See **SCOTTISH LAW—Railways.** 33—36.

**Sewers.**

— Sewer made under local or private Act—Vesting in local authority.

See **SEWERS.** 11.

**Sidings.**

60. — *Charge for use of sidings—Arbitration—Jurisdiction—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25)—Provisional Order.*

By a Provisional Order, made by the Board of Trade under the Railway and Canal Traffic Act, 1888, and confirmed by statute, a ry. co. were empowered to charge, in addition to the tonnage rate, a reasonable sum for the service, if rendered to a trader at his request or for his convenience, of allowing him “the use or occupation of any accommodation before or after conveyance, beyond such period as shall be reasonably necessary for enabling the co. to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof, and services rendered in connection with such use and occupation,” and “any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party.”

The co. gave notice to the deft., a trader, that they would allow him four days, free of charge, within which to unload goods consigned to him arriving at their station, and that after the expiration of the four days they would charge him 6d. per day siding rent for each wagon allowed to remain unloaded. In an action by the co. to recover from the deft. siding rent at the rate of 6d. per day in respect of wagons which, after receiving that notice, he had allowed to remain unloaded after the four days, the deft. disputed his liability to pay the amount charged:—

*Held*, that the jurisdiction of the Court was ousted, because under s. 5 of the statute an arbitrator appointed by the Board of Trade is the only tribunal for the settlement of any differences arising under that section.

Decision of Div. Ct., [1898] 1 Q. B. 748, reversed. **LONDON AND NORTH WESTERN RY. CO. v. DONELLAN.** **LONDON AND NORTH WESTERN RY. CO. v. BILLINGTON, LD.** — **C. A.** [1898] 2 Q. B. 7; reversed by **H. L. (E.)** [1898] W. N. 174 (11); [1899] A. C. 79

*London and North Western Ry. Co. v. Billington, Ltd.*, [1898] 2 Q. B. 7, was reversed by

**RAILWAY (Sidings)—continued.**

*H. L. (E.)* sub nom. *London and North Western and Great Western Joint Ry. Cos. v. J. H. Bil-  
lington, Ltd.*, [1899] A. C. 79. See next Case.

*London and North Western Ry. Co. v. Donellan*,  
[1898] 2 Q. B. 7, was approved of by *H. L. (E.)*  
*Midland Ry. Co. v. Loseby & Carnley*, [1899] A. C.  
133. See No. 62, below.

**61. — Charge for use of sidings—Arbitration  
—Jurisdiction—Condition precedent—Difference  
before action brought.**

A Railway Act confirming a Provisional Order, after empowering the ry. co. to charge a reason-  
able sum for certain services rendered to a  
trader, by way of addition to the tonnage rate,  
enacted that "any difference arising under this  
section shall be determined by an arbitrator to be  
appointed by the Board of Trade at the  
instance of either party." The co. having sued  
the respondents for services under this section,  
the respondents objected to the jurisdiction of  
the Court on the ground that the matter was one  
for the arbitrator to determine:—

*Held*, that as there had been no difference  
existing between the parties before action brought  
the arbitrator had not and the Court had juris-  
diction.

Decision of C. A., [1898] 2 Q. B. 7, reversed  
and the decision of Div. Ct. restored upon the  
above ground.

*Query* whether the arbitrator can determine  
any matter except the reasonableness of the  
charges. *LONDON AND NORTH WESTERN AND  
GREAT WESTERN JOINT RY. COS. v. J. H. BIL-  
LINGTON, LD.* - *H. L. (E.)* [1899] A. C. 79

**62. — Charge for use of sidings—Reasonable-  
ness of charges—Time allowed for taking delivery  
—Jurisdiction of arbitrator—Provisional Order.**

A Railway Act confirming a Provisional  
Order, after empowering the ry. co. to charge for  
certain services rendered to a trader a reasonable  
sum by way of addition to the tonnage rate,  
enacted that "any difference arising under this  
section shall be determined by an arbitrator  
to be appointed by the Board of Trade at the  
instance of either party." The services included  
"The detention of trucks, or the use or occupa-  
tion of any accommodation, before or after  
conveyance, beyond such period as shall be  
reasonably necessary for enabling the co. to deal  
with the merchandise as carriers thereof, or the  
consignor or consignee to give or take delivery  
thereof . . . And services rendered in connection  
with such use and occupation":—

*Held*, that the arbitrator had jurisdiction to  
determine not only the reasonableness of the  
sums charged for the accommodation, but all  
questions necessarily incidental thereto, and  
among them the reasonableness of the time  
allowed to the consignee for taking delivery of  
the merchandise.

*London and North Western Ry. Co. v. Donellan*,  
[1898] 2 Q. B. 7, approved. *MIDLAND RY. CO.  
v. LOSEBY & CARNLEY*

*H. L. (E.)* [1899] W. N. 23 (9); [1899] A. C. 133

— Rebate on sidings rates.

See *Railway and Canal Traffic Act*, 1894  
(57 & 58 Vict. c. 54), s. 4.

**RAILWAY—continued.****Stations.**

**63. — Cloak-room—Lien for charges—Goods  
deposited by bailee.**

Where a bailee deposited an article at a ry.  
station cloak-room, as he was entitled to do by  
the contract of bailment, and after the deter-  
mination of the contract the owners seek to  
recover it:—

*Held*, that the ry. co. had a lien on it against  
the owners for the cloak-room charges. *SINGER  
MANUFACTURING CO. v. LONDON AND SOUTH  
WESTERN RY. CO.* - *Div. Ct.* [1894] 1 Q. B. 833

**64. — Closing of station for passenger traffic—  
"Reasonable facilities"—Jurisdiction—Railway  
and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31),  
ss. 1, 2.**

*Held*, by the Railway and Canal Commn.,  
that where a ry. co. close a station for passenger  
traffic, at which there is a substantial amount of  
such traffic, without providing an equivalent,  
they commit a breach of their obligation "to  
afford all reasonable facilities for the receiving  
and forwarding and delivering of traffic," pursuant  
to s. 2 of the Railway and Canal Traffic Act,  
1854, and the Commn. ordered the co. "to afford  
reasonable facilities for receiving and forwarding  
and delivering of passenger traffic upon and  
from the said ry."

Reversed by C. A., on the ground that the  
Commn. had no jurisdiction to make the order:  
by *Esher M.R.* and *Smith L.J.*, on the ground  
that the Act does not compel a ry. co. to maintain  
and use its ry. and stations; by *Kay L.J.*, on the  
ground that an order to keep a station open if it  
would compel the ry. co. to carry on business at  
a loss was not an order on them to give reason-  
able facilities.

Decision of C. A., [1894] 2 Q. B. 45, reversed.  
*DARLSTON LOCAL BOARD v. LONDON AND NORTH  
WESTERN RY. CO.* *C. A.* [1894] 2 Q. B. 694

**65. — Exclusion of hotel servant wearing hotel  
badge—Trespass—Right of railway company to  
exclude from the station persons other than travellers  
—Railway and Canal Traffic Act, 1854 (17 & 18  
Vict. c. 31)—Regulation of Railways Act, 1873  
(36 & 37 Vict. c. 48).**

Apart from any facilities granted by the Rail-  
way Commrs., a ry. co. have the right of excluding  
from their stations all persons except those using  
or desirous of using the ry.; and may impose  
upon the rest of the public any terms they think  
proper as the condition of admittance. And it  
follows that a ry. co. who have an hotel of their  
own within the limits of the station may qualify  
their permission to other hotel proprietors and  
their servants to have free access to the platform  
with the condition that on those occasions no  
hotel servant shall wear a distinctive badge or  
livery.

So *held* (Lord Morris dissenting), reversing  
the decision of the Second Division of the Court  
of Session, (1896) 23 R. 885.

The jurisdiction to determine whether there  
is a statutory right to demand from a ry. co. a  
facility or privilege belongs exclusively to the  
Railway Commrs. *PEITH GENERAL STATION  
COMMITTEE v. ROSS H. L. (SC.)* [1897] A. C. 479

**RAILWAY (Stations)—continued.**

— Hackney carriage—Refusal to drive hirer into station.

See HACKNEY CARRIAGE. 2.

— Station works—Special Act.

See No. 70, below.

— Stopping all ordinary trains.

See SCOTTISH LAW—Railway. 33.

— Use of joint station by third party.

See SCOTTISH LAW—Railway. 36.

— Workmen's Compensation Act—Erection of station—Accident to contractor's workman.

See MASTER AND SERVANT. 40.

— Workmen's Compensation Act—Refreshment room.

See MASTER AND SERVANT. 39.

**Traffic.**

See Nos. 42-54A, above.

**Truck Acts.**

— Sick and accident fund—Porter—Railway guard.

See MASTER AND SERVANT—Truck Acts. 105.

**Ventilating Shafts.**

66. — *Damage from working—Damage from construction—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 16.*

A ry. co. were by their special Act authorized to construct an underground ry. A ventilating shaft was made near the back of a dwelling-house, of which H. subsequently became lessee. The co. then enlarged the opening and greatly increased the quantity of smoke, steam, and foul air coming to H.'s house:—

*Held*, that whether the alteration was made by the co. in the exercise of their rights as owners of the land, or under the powers given by s. 16 of the Railways Clauses Act, 1845, H. had no right to compensation, since, as the alteration would cause no damage to him if the line were not used, the damage arose from the working of the line and not from the construction.

ATT.-GEN. v. METROPOLITAN RY. CO.

C. A. [1894] 1 Q. B. 384

**Water.**

See Cases under WATER.

**Way-leave.**

— Construction—Ancient document—Contemporaneous usage or interpretation.

See WAY-LEAVE.

**Works.**

67. — *Accommodation works—Compensation—Power of statutory officer to bind the company.*

Where by a special Act the promoters of a ry. were authorized to take lands, through a Government officer, compensation being payable by the Government, and the owners of the land

**RAILWAY (Works)—continued.**

were entitled to such accommodation works as may be fixed by agreement when the amount of the compensation is being settled:—

*Held*, that as the statutory power of assessing compensation was entrusted to the officer, the making of agreements for accommodation works was within the scope of his authority, and he could within reasonable limits bind the co., although the statutory duty of paying for such works was on the co. WEST INDIA IMPROVEMENT CO. v. ATT.-GEN. OF JAMAICA

P. C. [1894] A. C. 243

— Accommodation works—Fence—Obligation of company to maintain.

See No. 6, above.

68. — *Accommodation works—Injunction to restrain building of bridge—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 21.*

A landowner conveyed land to a ry. co. by a deed containing a recital to the effect that the rent-charge for which the property was sold should include compensation for severance and damage of all kinds to other lands of the landowner, and should also be "in full satisfaction for all accommodation and other works and things which might otherwise be required to be made or done under the said Acts, or any of them, or any other Act, for the benefit or accommodation of the adjoining property" of the landowner, "except as hereinafter mentioned." The exception consisted of the reservation to the landowner of liberty to make certain specified crossings at his own expense. About twelve years afterwards the landowner proposed to build at his own expense a bridge standing upon his own ground carrying two lines of rails, and crossing the ry. by a single span. The co. refusing to assent, the landowner applied to justices for their sanction under s. 71 of the Railways Clauses Consolidation Act, 1845. The co. brought an action for an injunction to restrain the building of the bridge and the application to the justices. Kekewich J. having refused an injunction, the justices sanctioned the proposed work:—

*Held*, on appeal, that according to the better construction the recital amounted to a bargain that no accommodation works should be made by either party, except those specifically mentioned in the conveyance, and that the landowner had contracted himself out of s. 71:

*Held*, further, that if the narrower construction were adopted, that "required to be done" meant "required to be done by the co.," and that the landowner was left at liberty to proceed under s. 71, he could only proceed under it if accommodation works made by the co. or directed by justices to be made by the co. were found afterwards to be insufficient according to the state of things at the time of the construction of the works, and that he could not under that section execute accommodation works which, though convenient in consequence of the altered state of the property, would not have been considered necessary or convenient in the state of things which existed when the works were executed:

*Held*, therefore, that the ry. co. were entitled to an injunction.

Reg. v. Fisher, (1862) 3 B. & S. 191, and Reg.

**RAILWAY (Works)—continued.**

*v. Brown*, (1867) L. R. 2 Q. B. 630, approved.  
**RHONDDA AND SWANSEA RY. CO. v. TALBOT**

**C. A. [1897] 2 Ch. 131**

— Accommodation works—"Sewer" or "drain"  
 — Vesting in local authority.

*See SEWERS. 11.*

**69. — Accommodation works—Transfer to new company—Specific performance of covenants—Form of judgment.**

Where a ry. has, as part of the consideration for land purchased under its special Act, entered into covenants to provide accommodation works and to perform personal services, and by a subsequent Act the ry. is dissolved and its undertaking transferred to another ry. "subject to the obligations and liabilities" of the old ry., the landowner can maintain an action against the new ry. for specific performance of all the covenants, including that for personal services.

Form of judgment against ry. for specific performance of all the covenants considered.

(A) **FORTESCUE v. LOSTWITHIEL AND FOWEY RY. CO. — — Kekewich J. [1894] 3 Ch. 621**

(B) **JERSEY (EARL OF) v. GREAT WESTERN RY. CO. — — C. A. [1894] 3 Ch. 625, n.**

**70. — Station works—Special Act.**

The provisions of a ry. co.'s special Act as to stations held to override the general provisions of the Metropolitan Building Acts. **CITY AND SOUTH LONDON RY. CO. v. LONDON COUNTY COUNCIL**

**C. A. [1891] 2 Q. B. 513**

Followed by Div. Ct. **London County Council v. London School Board**, [1892] 2 Q. B. 606, 611.

*See now London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), ss. 22, 31.*

**RATE OF INTEREST.**

*See INTEREST.*

**RATEABLE OCCUPATION.**

*See RATES—Assessment and Rateability.*

**RATEABLE VALUE.**

*See RATES—Assessment and Rateability.*

**RATE-BOOK** — Conclusiveness — Summons for non-payment of poor-rate.

*See RATES. 67.*

— Right to—Assistant overseer—Appointment.

*See PARISH COUNCILS. 2.*

**RATES.**

*In General, col. 1669.*

*Appeal, col. 1670.*

*Assessment. See RATES—Rateability.*

*London Equalization of Rates, col. 1673.*

*Rateability, col. 1673.*

*Recovery, col. 1688.*

*Valuation, col. 1691.*

*Water Rates. See WATER—Water Rates.*

**In General.**

— City of London—Statute—Implied repeal—Exemption from taxes and assessments.

*See STATUTES. 7.*

— Costs of opposing bill in Parliament—Ultra vires—Burgh.

*See SCOTTISH LAW—Burgh. 3.*

**RATES (In General)—continued.**

— Overseers and audit.

*See London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 10–14.*

— Railway rates and charges.

*See Cases under Railway—Railway and Canal Traffic.*

— Rate-books—Right to—Assistant overseer.

*See PARISH COUNCILS. 2.*

— Sheriff—Duty of sheriff to pay rates—Goods "taken in execution."

*See SHERIFF. 11.*

— Tramway—Landlord's rates and taxes.

*See SCOTTISH LAW. 24.*

— Water rates.

*See Cases under WATER.*

**Appeal.**

**1. — Agent, Right to appear by—Valuation list.**

There is nothing in the Valuation (Metropolis) Act, 1869, to prevent a ratepayer being heard by his agent on an appeal against an assessment. **REG. v. ST. MARY ABBOTTS, KENSINGTON, ASSESSMENT COMMITTEE**

**C. A. [1891] 1 Q. B. 378**

**2. — Alteration of totals of gross and rateable values—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 32, 34, 41.**

After the valuation lists in four parishes comprising a union had been duly made and approved, quarter sessions, on the appeal of certain ratepayers, reduced some of the values of specific hereditaments. No appeal was brought against the totals of the lists, and no alteration in those totals was made by quarter sessions:—

*Held*, that the reduction on appeal of the values of the specific hereditament comprised in the valuation lists of the parishes did not alter the total gross and rateable values appearing in such lists, which total values could only be altered by appealing against them. **REG. v. WOOLWICH UNION — Div. Ct. [1891] 2 Q. B. 712**

**3. — Clerk of assessment committee—Right of audience—Valuation List—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 62.**

The provision in s. 62 of the Valuation (Metropolis) Act, 1869, that on an appeal against a valuation list "an assessment committee . . . may appear . . . by their clerk" does not give the clerk a right to be heard on their behalf for the purpose of consenting to an alteration in the list. **REG. v. LONDON JUSTICES**

**C. A. [1896] 1 Q. B. 659**

**4. — Consent of guardians—Assessment committee as respondents—Costs—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 2.**

Where the assessment committee of a union receive notice of a poor-rate appeal under s. 1 of the Union Assessment Committee Amendment Act, 1864, they have no authority to appear as respondents to the appeal unless they obtain the consent of the guardians after sending notice to every guardian, as required by s. 2. If they do appear without such consent and the appeal is dismissed "with costs to the respondents" they

**RATES (Appeal)—continued.**

are not entitled to costs, although throughout the proceedings they receive notices to attend from the appellants and are treated by them as respondents.

Decision of C. A., [1895] 1 Q. B. 38, affirmed. **WEST HAM UNION v. ESSEX JUSTICES AND LONDON COUNTY COUNCIL**

**H. L. (E.) [1896] A. C. 443**

— Criminal cause or matter—Jurisdiction—Application to enforce general district rate.

See **APPEAL**. 11.

— Distress warrant—Jurisdiction of Justices.

See **RATES—Recovery**. 64.

5. — *Distress warrant—Poor law.*

An appeal will not lie against the issue of a distress warrant for poor-rate before the distress has been levied. **REG. v. LONDON JUSTICES**

**Div. Ct. [1899] W. N. 20 (11); [1899] 1 Q. B. 532**

6. — *Evidence—Admissibility—Procedure—Net annual value—Gross estimated rental—Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 1—Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.*

Where, on objection being made to a poor-rate, the rating authority has fixed the amount of the gross estimated rental of the premises rated appearing in the rate-book, and the ratepayer appeals to quarter sessions against the rate, the rating authority is bound by the amount of the gross estimated rental so fixed, and is not entitled to call evidence before the Court of Quarter Sessions to shew that the gross estimated rental has been fixed too low. **HORTON & SON, LD. v. WALSALL ASSESSMENT COMMITTEE**

**Div. Ct. [1898] 2 Q. B. 237**

— Justices—Disqualification by interest.

See Cases under **JUSTICES—Disqualification**.

— London county.

See **RATES, passim**.

**LONDON COUNTY—VALUATION.** *Regulations were made as to appeals under the Valuation (Metropolis) Act, 1869, by order of the Home Secretary, dated Mar. 24, 1892, under s. 42 (7) of the Local Government Act, 1888. St. R. & O. 1892, p. 587.*

7. — *London county—Appeal against individual assessments—Effect on totals.*

Under s. 32 of the Metropolis Valuation and Assessment Act, 1869, c. 67, appeals were brought by ratepayers against the valuation lists of four parishes in a union on the ground that the gross and rateable values of specific hereditaments comprised in the lists as made and approved were too high. No appeal was brought against the totals. Some of the values were reduced, but the totals were not altered by the quarter sessions:—

*Held*, that the reduction did not alter the total gross and rateable values for each parish appearing in the valuation lists, and that the lists remained conclusive on each parish notwithstanding alteration in the individual assessments. **REG. v. WOOLWICH UNION**

**Div. Ct. [1891] 2 Q. B. 712**

**RATES (Appeal)—continued.**

8. — *London county—Appeal against totals—Effect as to individual assessments—Time—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 32.*

Under s. 32 of the Metropolis Valuation and Assessment Act, 1869, there is no right of appeal against totals on the ground that individual assessments are too low.

*Quære*, whether the London County Council is a party aggrieved with the section so as to be entitled to appeal against totals.

The London County Council appealed to the London Quarter Sessions, exercising the former jurisdiction of the assessment sessions, from the valuation of the parish of A. as approved by the assessment committee of A., on the ground that the totals were too low, alleging that some 3000 hereditaments in A. were under-valued. The appeal was entered in due course, but owing to the glut of business could not be heard before Mar. 31. The assessment committee of A. then applied for prohibition to the justices against hearing the appeal:—

*Held*, by C. A. (reversing Div. Ct.), (1.) that the justices had authority to hear appeals entered in due time, after the time prescribed by the section has expired; (2.) but (affirm. Div. Ct.) that prohibition should go; (3.) the C. A. holding that this was an appeal from the valuation of hereditaments and not against totals, and lay to special sessions and not to quarter sessions direct.

*Quære*, whether the county council had any right of appeal. Affirm. by H. L. (E.), on the ground that it was not intended that any ratepayer, or even the county council, should maintain such an appeal. **REG. v. LONDON COUNTY JUSTICES (No. 2)**

**Div. Ct. and C. A. [1893]**

**2 Q. B. 476; H. L. (E.) sub nom. LONDON COUNTY COUNCIL v. ST. GEORGE'S UNION ASSESSMENT COMMITTEE [1894] A. C. 600**

See also upon another point, C. A. [1894] 1 Q. B. 453.

9. — *Notice of appeal—Quarter sessions—Jurisdiction—Poor-rate—Procedure—Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 4—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 33.*

By the Poor Relief Act, 1743, s. 4, any person aggrieved by any poor-rate may appeal to quarter sessions, "giving reasonable notice to the churchwardens or overseers."

By the Local Government Act, 1894, s. 33, sub-s. 1, "The Loc. Gov. Bd. may, on the application of the council of any municipal borough . . . make an order conferring on that council . . . any powers, duties, or liabilities of overseers."

An order was made under this section transferring to the council of a borough the powers, duties, and liabilities of the overseers with respect to appeals in respect of the poor-rate.

The recorder of the borough decided that he had no jurisdiction to hear an appeal to quarter sessions against a poor-rate, on the ground that notice of appeal had not been given to the town council:—

*Held*, that notice to the town council was not a condition precedent to hearing the appeal, that

**RATES (Appeal)—continued.**

the recorder had jurisdiction, and a mandamus commanding him to hear the appeal granted.

*Reg. v. Kent Justices*, (1899) 80 L. T. (N.S.) 622, disapproved and not followed. *Reg. v. DE GREY* - - - Div. Ct. [1900] W. N. 38; [1900] 1 Q. B. 521

**London Equalization of Rates.**

By the *London Equalization of Rates Act, 1894* (57 & 58 Vict. c. 53), a general rate for all London was imposed for the purpose of, to some extent, equalizing the rates of sanitary authorities.

Order of Loc. Gov. Bd. dated Oct. 19, 1894, prescribing form of precept under s. 2 of the Act. *St. R. & O. 1894, p. 228, No. 737.*

Order of Loc. Gov. Bd. dated Sept. 5, 1895, prescribing forms of contribution orders, demand notes, and receipts under s. 2 of the Act. *St. R. & O. 1895, p. 414, No. 475.*

Order of Loc. Gov. Bd. dated Feb. 22, 1896, modifying the *Census (England and Wales) Act, 1890* (57 & 58 Vict. c. 53), for the purposes of the *London Equalization of Rates Act, 1894*. *St. R. & O. 1896, p. 176, No. 66.*

**Rateability.**

10. — *Advertising contractor—Hoardings—Permitting land to be used for the exhibition of advertisements—Advertising Stations (Rating) Act, 1889* (52 & 53 Vict. c. 27), s. 3.

The appellant, an advertising contractor, under an agreement with the builders of certain buildings then in course of erection, used the hoardings erected by them for the exhibition of advertisements. The appellant's name having been inserted in a valuation list as being the rateable occupier of the hoardings under s. 3 of *Advertising Stations (Rating) Act, 1889* :—

*Held*, that he did not "permit" the "land" on which the hoardings were erected to be "used for the exhibition of advertisements" within the meaning of that section, and was not liable to be rated in respect thereof. *BURTON v. ST. GILES' AND ST. GEORGE'S ASSESSMENT COMMITTEE*  
Div. Ct. [1900] W. N. 9; [1900] 1 Q. B. 389

11. — *Advertising station—Hoardings—Beneficial occupation.*

A builder let a hoarding erected by him round land on which he was building under contract and not otherwise occupied within s. 3 of the *Advertising Stations Rating Act, 1889*, for advertisements :—

*Held*, that he was in beneficial occupation, and therefore rateable under s. 3. *CHAPPELL v. ST. BOTOLPH OVERSEERS*

Div. Ct. [1892] 1 Q. B. 561

**AGRICULTURAL RATES.] Rating of occupiers of agricultural land amended by Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16).**

*Agricultural Rates Order Amendment Order, 1898, dated Jan. 20, 1898. St. R. & O. 1898, No. 146, p. 870.*

As to Scotland, see *Agricultural Rates (Scotland) Act, 1896* (59 & 60 Vict. c. 37).

**RATES (Rateability)—continued.**

— *Agricultural rates—Contribution for special purpose—Apportionment.*

See No. 16, below.

— *Agricultural rates — Market-garden—Glass-houses—"Buildings."*

See No. 34, below.

*Allotments Rating Exemption Act, 1891* (54 & 55 Vict. c. 33), amends the laws relating to the rating of allotments for sanitary purposes.

12. — *Artizans' dwellings—Charge to tenants for cost of lighting and cleaning common stair—Gross value—Valuation (Metropolis) Act, 1869* (32 & 33 Vict. c. 67), s. 4.

The owner of a block of artisans' dwellings, consisting of separate tenements, the access to which was by means of a common stair, let the tenements upon the terms of the tenants paying a certain weekly sum by way of rent, and also a further sum for the lighting and cleaning of the common stair :—

*Held*, that, for the purpose of arriving at the gross value of the tenements under the *Valuation (Metropolis) Act, 1869*, the sum paid for lighting and cleaning the stair must be added to the rent reserved. *PULLEN v. ST. SAVIOUR'S UNION*

Div. Ct. [1899] W. N. 246; [1900] 1 Q. B. 138

13. — *Assessment committee, Functions of.*

An assessment committee is not a court or tribunal exercising judicial functions in the legal acceptance of the term. *REG. v. ST. MARY ABBOTT'S, KENSINGTON, ASSESSMENT COMMITTEE*  
C. A. [1891] 1 Q. B. 378, at p. 382

— *Borough rate.*

See Cases under CORPORATION.

— *Canal—Towing-path—Easement.*

See No. 57, below.

— *Church rate.*

See ECCLESIASTICAL LAW—Church Rates.

14. — *Company in liquidation—Liability for rates—Liquidator's possession.*

The test as to whether a co. in liquidation is liable to payment of rates in full is whether there has been a "beneficial occupation" of the premises within the meaning of ordinary rating cases. Therefore, where a liquidator places a caretaker in possession of leaseholds on which are plant, intending to sell the premises and plant, but not to sell the business as a going concern, he must pay in full rates made after the commencement of the winding-up. *In re BLAZER FIRE LIGHTER, LD.*

V. Williams J. [1895] 1 Ch. 402

15. — *Cotton mills—Stoppage during strike—Occupation during stoppage.*

Two days before making the assessment on cotton mills a strike occurred. During the strike the mills were occupied for the purpose of keeping the machinery in order. The valuation list was objected to. When the objection was heard the strike had ceased. The assessment committee declined to amend the list :—

*Held*, that the assessment was valid, as the committee were not bound to take into consideration this particular strike, and it did not appear that they had disregarded the general consideration of strikes :

*Held*, also, that the assessment, having been

**RATES (Rateability)—continued.**

properly made, could not be reduced by treating the mills as warehouses for storing machinery only during the strike. *HOYLE & JACKSON v. OLDHAM ASSESSMENT COMMITTEE*

**C. A. [1894] 2 Q. B. 372**

**16. — County—County boroughs—Contribution for special purpose—County rate basis—Apportionment—Local Act—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 33—Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), ss. 1, 2, 3, 9—Agricultural Rates Act, 1896, Orders, Art. XVII.**

By a local Act, passed in 1891, the lunatic asylums bd. of a county containing county boroughs were directed to raise in every year, by contributions from the county and the county boroughs, part of the expenses incurred by the bd. in the execution of their duties, and to divide the estimated amount to be raised for each year between the county and the county boroughs in proportion to their respective rateable values as ascertained under s. 33 of the Local Government Act, 1888:—

*Held*, that the provisions of the local Act were not affected by the Agricultural Rates Act, 1896, so that the bd. must still divide the estimated amount between the county and the county boroughs in proportion to their respective rateable values, and not according to their respective assessable values as ascertained under the Agricultural Rates Act, 1896, and the regulations of the Loc. Gov. Bd. made in pursuance of it.

Decision of Div. Ct., [1899] 1 Q. B. 759, reversed. *LANCASHIRE ASYLUMS BOARD v. MANCHESTER CORPORATION* **C. A. [1900] 1 Q. B. 458**

**17. — County Rates—Parish situate in two counties—County Rates Act, 1852 (15 & 16 Vict. c. 81), ss. 21, 26, 31, 32, 33, 34.**

An extra-parochial place situate partly in the parts of Holland and partly in the parts of Kesteven (each of which is a separate administrative county under the Local Government Act, 1888) was by a local Act constituted a parish:—

*Held*, that the county rate should be raised by separate rates in the two parts of the parish. *ATT.-GEN. v. DEEPING ST. NICHOLAS OVERSEERS*

**Stirling J. [1892] W. N. 183**

**18. — Crown property—Police officer's residence—Property used for public purposes.**

The exemption from rateability of property occupied for the purposes of the government of the country does not apply to tenements occupied as residences by constables of a county police force in a county building at a rack-rent deducted from their pay where such tenements are not an integral part of the county building, and the fact that the constables are bound by the terms of their service to reside there does not alter the case. *SHOWERS v. CHELMSFORD UNION ASSESSMENT COMMITTEE* **C. A. [1891] 1 Q. B. 339**

**19. — Crown property—Volunteer corps—Storehouse for arms—Exemption.**

Premises occupied by, and used solely for the purposes of the service of, a volunteer corps are exempt from poor-rate, although parts, such as the mess-rooms, &c., and quarters of the resident

**RATES (Rateability)—continued.**

non-commissioned officers, are not storehouses within s. 26 of the Volunteer Act, 1863. *PEARSON v. HOLBORN UNION ASSESSMENT COMMITTEE*

**Div. Ct. [1893] 1 Q. B. 389**

*Distinguished. Westminster Vestry v. Hoskins, Div. Ct. [1899] 2 Q. B. 477.*

**20. — Crown purposes—Exemption—County council—Joint occupation by quarter sessions and county council—Rateability.**

Premises used by a county council for the purposes of the administrative business of the county are not exempt from rating.

Where premises were jointly occupied by the quarter sessions of a county and by the county council for administrative purposes:—

*Held*, that the county council were rateable in respect of their occupation of the premises. *MIDDLESEX COUNTY COUNCIL v. ST. GEORGE'S ASSESSMENT COMMITTEE* **C. A. [1897] 1 Q. B. 64**

**21. — Crown purposes—Exemption—Exclusive user for service of Crown—Joint occupation by quarter sessions and county council.**

The exemption from rateability to the relief of the poor of property in the occupation of persons using it for the service of the Crown applies only where the property is exclusively used for such service.

*Nicholson v. Holborn Union*, (1886) 18 Q. B. D. 161, discussed. *WORCESTERSHIRE COUNTY COUNCIL v. WORCESTER UNION* **C. A. [1897] 1 Q. B. 480**

**22. — Dock railways—Incapacity to charge tolls.**

Where a dock co. were prohibited by statute from taking tolls for the use of the dock rys.:—

*Held*, since no rent could be earned by the co. because of the statutory prohibition, the rent which could have been earned but for that prohibition ought not to be taken into consideration in determining the rateable value of the co.'s property.

Judgment of C. A., [1894] 2 Q. B. 69, reversed on this point. *HULL DOCKS CO. v. SCULCOATES UNION* **H. L. (E.) [1895] A. C. 136**

**23. — Docks—Canal company—Exclusive occupation.**

On the construction of an agreement entered into by the Mersey Docks and Harbour Bd. (in whom the Liverpool Docks are vested) under their special Act, by which the bd. agreed to set apart and appropriate to a canal co. a berth in the docks:—

*Held*, that by the intention of the parties as expressed in the agreement, the dock co. had not parted with the exclusive possession of the premises, and that the canal co. were therefore not rateable in respect of their occupation. *ROCHDALE CANAL CO. v. BREWSTER*

**C. A. affirm. Div. Ct. [1894] 2 Q. B. 852**

Referred to. *Holywell Union and Halkyn Parish v. Halkyn Drainage Co.*, [1895] A. C. 134.

**24. — Docks in several parishes—Apportionment—Parochial or proportional—Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.**

In assessing to the poor-rate docks which extend over more than one parish the rateable value should, if possible, be ascertained by



**RATES (Rateability)—continued.**

attributing to each parish the receipts earned and the expenses incurred therein, and not by obtaining a rateable value for the whole of the docks, and then allocating this value to each parish in proportion to the water area of the docks in that parish.

Judgment of C. A., [1894] 2 Q. B. 69, affirmed on this point. *HULL DOCKS CO. v. SOULCOATES UNION* - - H. L. (E.) [1895] A. C. 136

25. — *Fine arts—Exemption—Society instituted for purposes of the fine arts exclusively—“Voluntary contributions” —Scientific Societies Act, 1843 (6 & 7 Vict. c. 36), s. 1.*

A society is not “supported by voluntary contributions” within the meaning of 5 & 6 Vict. c. 36, s. 1, when it returns to every contributor the equivalent of his contributions in money’s worth. “Voluntary” as there used does not mean not compulsory; it means gratuitous, without any money or other merely material consideration.

Decision of C. A., [1894] 2 Q. B. 609, reversed and the decision of Wright and Collins JJ. restored. *SAVOY OVERSEERS v. ART UNION OF LONDON* - - H. L. (E.) [1896] A. C. 296

26. — *Gas mains—Easement—Occupation—Exclusive use.*

By a local Act the B. local bd. had the exclusive right of laying down gas-pipes in B., were obliged to keep all present and future gas mains and lamps in repair, and to afford to the corporation of S., who were the owners of gas-works in, and empowered to supply gas in B., the use of the mains for the supply of gas for public and private purposes in consideration of certain payments. The local bd. laid down mains and kept them in repair. The corporation laid down service pipes at the expense of the private consumers, kept them in order, and collected the gas rates:—

*Held*, that the corporation had not an “occupation” of the mains and pipes, but only an easement to use them, and were not liable to be rated in respect of them.

Decision of Div. Ct., [1893] 2 Q. B. 468, affirmed. *SOUTHPORT CORPORATION v. ORMSKIRK UNION ASSESSMENT COMMITTEE*

C. A. [1894] 1 Q. B. 196

— Gas rate—Refusal to supply receiver until arrears due from company paid.

*See GAS. 1.*

— Goods “taken in execution”—Duty of sheriff to pay rates.

*See SHERIFF. 11.*

— Highway rates.

*See Cases under HIGHWAY—Repairs.*

— Hoardings—Advertising contractor.

*See No. 10, above.*

— Increase of rates—Standard of reasonableness.

*See Cases under RAILWAY—Railway and Canal Traffic.*

27. — *Industrial school—County Council—Liability to be rated—Industrial Schools Acts, 1866, 1872 (29 & 30 Vict. c. 118; 35 & 36 Vict. c. 21)—Local Government Act, 1888 (51 & 52 Vict. c. 41).*

A county council is rateable to the poor-rate

**RATES (Rateability)—continued.**

in respect of their occupation of a certified industrial school established by justices under the Industrial Schools Acts, 1866 and 1872, and vested in the council under the Local Government Act, 1888. *DURHAM COUNTY COUNCIL v. CHESTER-LE-STREET ASSESSMENT COMMITTEE AND WITTON GILBERT CHURCHWARDENS*

Div. Ct. [1891] 1 Q. B. 330

28. — *Inn—Public-house—Evidence of trade and profits—Poor-rate—Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.*

In assessing the value of a licensed public-house for the poor-rate the existence of the licence and the amount of the trade which can be and has actually been carried on there are elements to be considered in order to arrive at the rent at which the house may reasonably be expected to let. Evidence of these facts is always admissible, and may be necessary where the ordinary evidence of market value by comparison with other public-houses is not to be had. Evidence of profits made is also admissible, but an inquiry into profits should be avoided where possible, because it is regarded as inquisitorial and oppressive. These are matters not of law but of fact, practice and common sense, and it is very undesirable to multiply decisions about them.

Decision of C. A., [1899] 1 Q. B. 667, affirmed.

*Dodds v. South Shields Union*, [1895] 2 Q. B. 133, commented on. *CARTWRIGHT v. SOULCOATES UNION* - - H. L. (E.) [1900] A. C. 150

Referred to by C. A. *Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*, [1900] 1 Q. B. 143, 150. *See No. 32, below.*

29. — *Inn—Public-house—Evidence of weekly takings—Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.*

In assessing a public-house evidence of the weekly takings is not admissible in evidence in ordinary cases, and the ordinary test is to inquire what rent would be given for the house, and not what would be given for the business carried on there. *DODDS v. SOUTH SHIELDS UNION.*

C. A. [1895] 2 Q. B. 133

Applicable. *In re London County Council and City of London—Brewery Co.*, Div. Ct. [1898] 1 Q. B. 387, 394.

Referred to. *Bradford-on-Avon Assessment Committee v. White*, Div. Ct. [1898] 2 Q. B. 630, 637. *See next Case.*

Distinguished. *Cartwright v. Soulcoates Union*, C. A. [1899] 1 Q. B. 667. *See preceding Case*

30. — *Inn—“Tied” houses—Rateable value—Licensed house—Competition of brewers—Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.*

In assessing a licensed public-house to the poor-rate, the fact that there is a great competition amongst brewers in the district to obtain the tenancy of such houses in order to sub-let them as “tied” houses ought not to be excluded from consideration so far as it shows the existence of such a demand as would necessarily increase the rent at which the premises might reasonably be

**RATES (Rateability)—continued.**

expected to let, whether to brewers or others, on a tenancy from year to year; but the gross estimated rental ought not to be fixed at the special sum, in excess of the annual value obtainable in the market, which a brewer might be willing to give on the consideration, personal to himself, that he could make large profits by sub-letting the house as a "tied" house. **BRADFORD-ON-AVON UNION ASSESSMENT COMMITTEE v. WHITE**

Div. Ct. [1898] 2 Q. B. 630

31. — *Inn—Tied public-house—London County Council — "Betterment" — Initial valuation — Trade interest — Local Government — London County Council (Tower Bridge Southern Approach) Act, 1895 (58 & 59 Vict. c. cxxx.).*

By the London County Council (Tower Bridge Southern Approach) Act, 1895, provision was made for a charge to be made on lands which would be increased in value by the proposed improvement, and for an initial valuation of such lands. By s. 36, "In making such valuation the valuer shall separately distinguish and assess in each case the value of the land apart from that of any existing buildings thereon, and shall also value the land and buildings as a whole, and shall not take into consideration any increased value accruing or supposed to accrue to such land or buildings from or in consequence of the improvement, but shall only take into consideration the value independently of the improvement, and as if the improvement had not been contemplated. The valuer shall also separately value the interest of the owner of any such lands, and the interest of every lessee of any such lands, for a term having not less than twenty-one years unexpired at the date of the valuation (excluding from each such valuation any trade interest)."

In making an initial valuation of a "tied" public-house:—

*Held*, (1.) That, in valuing the land apart from the buildings thereon, the valuer might not take into consideration either the takings and payments of the public-house, nor the fact that it was "tied."

(2.) That, in valuing the land and buildings as a whole, evidence of the takings and payments should not be admitted even for the purpose of testing the evidence of witnesses, and that on this head the fact that the house was "tied" was immaterial.

(3.) That, in valuing the interests of the owners and lessees, the "tying" covenant must be taken into consideration. *In re LONDON COUNTY COUNCIL AND CITY OF LONDON BREWERY CO.*

Div. Ct. [1898] 1 Q. B. 387

— Insolvent estate—Priority.

See **INSOLVENT ESTATES**. 37.

— Investment—Judicial factor—Curator bonis—Liability.

See **TRUSTEE—INVESTMENTS**. 65.

— Landlord's rates and taxes—Tramway—Covenant by tenant to keep free from all expenses whatever.

See **LANDLORD AND TENANT**. 24.

32. — *Lairage—Exceptional case—Structural value—Rateable value—Profit-earning capacity—*

**RATES (Rateability)—continued.**

*Evidence of receipts and expenditure—Admissibility of evidence.*

The appellants, who were owners of lairages for the reception and slaughter of foreign cattle, appealed to quarter sessions against a poor-rate. The recorder found that there were no similar tenements in the neighbourhood with which a comparison could be made. He had evidence before him of structural value, and he admitted in evidence accounts shewing the receipts and expenditure of the defendants:—

*Held*, that as the ordinary test of the rental of similar properties could not be applied, and as the structural value alone would not embrace the profit-earning capacity of the premises, the evidence of receipts and expenditure was admissible and might be considered in conjunction with the structural value, and other circumstances of the case, in the determination of the gross estimated rental at which the premises should be assessed. **MERSEY DOCKS AND HARBOUR BOARD v. BIRKENHEAD ASSESSMENT COMMITTEE**

C. A. [1900] 1 Q. B. 143

33. — *Lighthouse—Rateability—Dues.*

In assessing the rateable value of a lighthouse the dues received in respect of it cannot be taken into consideration. **PORT OF LANCASTER COMMRS. v. BARROW-IN-FURNESS OVERSEERS**

Div. Ct. [1897] 1 Q. B. 166

— Lighting and watching rates.

See **STREETS—Lighting**. 12—14.

— London equalization of rates.

See **RATES—London Equalization of Rates**.

— Lunatic asylums—Parochial rates on—Expenses of pauper lunatics.

See **LUNACY—Lunatic Asylums**. 16.

34. — *Market garden—Glass-houses—"Agricultural land"—"Buildings"—Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), ss. 1, 5, 6, 9.*

Glass-houses in or on a market garden, if buildings, must under the Agricultural Rates Act, 1896, be rated as buildings and not as agricultural land.

The decision of C. A., [1898] 1 Q. B. 683, affirmed. **SMITH v. RICHMOND** — **H. L. (E.)**

[1899] W. N. 130; [1899] A. C. 448

35. — *Mines — Coal mine — Lighting and watching rate—Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1.*

Coal mines are "property (other than land) rateable to the relief of the poor," and are therefore, under s. 33 of the Lighting and Watching Act, 1833, rateable on the higher scale although the mines cannot derive any benefit from the rate.

The decision of Div. Ct., [1894] 1 Q. B. 567, and C. A., [1894] 2 Q. B. 11, affirmed. **THURSBY v. BRIERCLIFFE-WITH-EXTWISTLE CHURCHWARDENS**  
**H. L. (E.)** [1895] A. C. 32

36. — *Music—Exemption—Society instituted for purposes of the fine arts—Royal College of Music—Society not making "any dividend, gift, division, or bonus in money unto or between any*

**RATES (Rateability)—continued.**

of its members"—*Scientific Societies Act, 1843* (6 & 7 Vict. c. 36), s. 1.

The Royal College of Music was a society created and incorporated by royal charter, for the advancement of the art of music by means of a teaching and examining body, charged with the duty of providing musical instruction of the highest class, and of rewarding with academical degrees and certificates of proficiency, and otherwise, persons, whether educated or not at the college, who on examination might prove themselves worthy of such distinctions, for the promotion and supervision of musical instruction in schools and elsewhere conducive to the cultivation and dissemination of the art of music, and for the encouragement and promotion of the cultivation of music as an art. The college erected a building on land demised to them by a lease containing a stipulation that the building should be used for the purposes of their charter only, and it was so occupied and used by them. The charter prohibited any "dividend, gift, division, or bonus in money," to the members. The college paid out of its funds remuneration to certain members of its teaching staff who were also members of the society:—

*Held* (affirming Div. Ct., [1897] W. N. 175 (8); [1898] 1 Q. B. 304), that the college was a society instituted for purposes of the fine arts exclusively, within the meaning of the *Scientific Societies Act, 1843*, s. 1, and did not, in making the above-mentioned payments to members of the teaching staff, "make any dividend, gift, division, or bonus in money" to its members within the meaning of the section; and therefore that the society was entitled to exemption from parochial rates in respect of the building occupied by them as aforesaid. **ROYAL COLLEGE OF MUSIC v. WESTMINSTER VESTRY** — **C. A. [1898] 1 Q. B. 809**

**37. — Park—Public park—Rateable value—Beneficial occupation—London County Council—London Council (General Powers) Act, 1890** (53 & 54 Vict. c. cccxiii.), ss. 4, 5.

A county council, not charged with the duty of providing a park, were empowered by statute to purchase and accordingly purchased premises which by the statute were to be maintained by the county council as a park for the perpetual use thereof by the public for exercise and recreation. The necessary expenses of maintaining the park exceeded any sums which the council could derive from licences for the supply of refreshments therein or for grazing rights or otherwise:—

*Held*, that the county council were not rateable to the poor-rate in respect of the park, both because the park thus dedicated by statute to the use of the public had no rateable value, and also because the county council were not occupiers of the park for rating purposes.

The decision of C. A., [1896] 2 Q. B. 25, affirmed. **LAMBETH OVERSEERS v. LONDON COUNTY COUNCIL** **H. L. (E.) [1897] A. C. 625**

**38. — Part of a house—Occupation of—Rateable hereditament—Representation of the People Act, 1867** (30 & 31 Vict. c. 102), s. 7, sub-s. 2—*Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 5.

A house not structurally severed was let

**RATES (Rateability)—continued.**

partly to one tenant and partly to another, and each had the exclusive occupation of the part let to him. There was a staircase leading from the front door to the upper rooms, and a joint user of the front garden and the back yard, in which was a closet:—

*Held*, that the tenants could not be rated as joint occupiers, but that each was the occupier of a separate tenement capable of being rated, and each should be rated separately. **ALLCHURCH v. HENDON UNION ASSESSMENT COMMITTEE**

**C. A. [1891] 2 Q. B. 436**

**39. — Police—Residence of chief constable.**

The rule exempting from rateability property occupied for the purposes of the govt. of the country:—

*Held*, not to apply to the residences beneficially occupied by the chief constable and chief police officers within the precincts of the barracks of the county constabulary. **SHOWERS v. CHELMSFORD UNION ASSESSMENT COMMITTEE**

**C. A. [1891] 1 Q. B. 339**

**40. — Promoters of undertaking—Deficiency in rates caused by taking lands—Land vacant when taken—Lands Clauses Act, 1845** (8 & 9 Vict. c. 18), s. 133.

Where a ry. had purchased houses outside the limits of deviation to avoid opposition:—

*Held*, that the houses were "taken for the purposes of the works," and the ry. was liable under s. 133 of the *Lands Clauses Act, 1845*, for a consequent deficiency of the assessment, and that the deficiency must be computed on the rental of the houses when taken, and that the fact that some were then unoccupied was immaterial to the computation.

Decision of Div. Ct., [1891] 1 Q. B. 182, affirmed. **POTNEY OVERSEERS v. LONDON AND SOUTH WESTERN RY. CO.**

**C. A. [1891] 1 Q. B. 440**

Applied by Div. Ct. See next Case.

**41. — Promoters of undertaking—Deficiency in rates caused by taking lands—Liability where rates compounded for—Lands Clauses Act, 1845** (8 & 9 Vict. c. 18), s. 133—*Poor Rate Assessment Act, 1869* (32 & 33 Vict. c. 41), s. 3.

Where promoters of an undertaking take land, the owners of houses on which had agreed with the local authority under s. 3 of the *Poor Rate Assessment and Collection Act, 1869*, to pay the rates instead of the occupiers in consideration of a reduction of 25 per cent.:—

*Held*, that the deficiency which the promoters are liable to make good must be computed having regard to the rateable value at the time the special Act was passed, and that they are not entitled to claim the reduction. **ST. LEONARD, SHOREDITCH, VESTRY v. LONDON COUNTY COUNCIL**

**Div. Ct. [1895] 2 Q. B. 104**

— Public-house.

See Nos. 28—31, above.

— Pumping station—Sewage works—Outfall works.

See No. 49, below.

**42. — Quays—Occupation of, adjoining harbour**

**RATES (Rateability)—continued.**

—Harbour dues payable by statute to occupiers of quays.

Harbour commrs. were empowered by special Acts to levy certain dues on vessels entering, &c., and on all goods shipped or unshipped in the harbour. They occupied certain quays adjoining the harbour, the facilities afforded by which largely contributed to the amount of dues; but the soil of the harbour was not vested in them, and there were other places in the harbour where vessels might be moored and goods shipped:—

*Held*, that no part of the dues received by the commrs. was sufficiently connected with their occupation of the quays to be taken into account as enhancing their rateable value.

Decision of Div. Ct., [1894] 2 Q. B. 293, affirmed. *BLYTH HARBOUR COMMRS. v. NEWSHAM AND SOUTH BLYTH CHURCHWARDS AND TYNE-MOUTH UNION ASSESSMENT COMMITTEE*

C. A. [1894] 2 Q. B. 675

43. — *Quinquennial valuation—Supplemental valuation list—Provisional valuation list—Alteration in value of hereditament—Cause of action—Onus of proof—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 43, 46, 47.*

To justify an alteration of the quinquennial valuation of a hereditament by a supplemental or provisional valuation list under the Valuation (Metropolis) Act, 1869, ss. 46, 47, those who seek to alter the assessment must not only prove that there has been an alteration in the annual value of the hereditament, but must also prove the nature and cause of that alteration and that the cause is one which directly affects the assessable value of that particular hereditament. It is not enough, for instance, to shew merely that since the quinquennial valuation there has been throughout the metropolis a general rise in the annual value of the class of property to which the hereditament in question belongs, and that the annual value of that hereditament has increased accordingly.

Decision of C. A. [1900] 1 Q. B. 68, affirmed. *CAMBERWELL ASSESSMENT COMMITTEE v. ELLIS*

H. L. (E.) [1900] W. N. 156; [1900] A. C. 510

44. — *Railway—Exemptions—Land used as railway for public conveyance—Liverpool Corporation Act, 1893 (56 & 57 Vict. c. clxxxi.) s. 36 (ii.).*

The Liverpool Corporation Act, 1893, s. 36, provides that no person occupying "land used as a ry. made under the powers of any Act of Parliament for public conveyance" shall be rated in respect of the same to the general rate leviable by the corporation in any greater proportion than one-fourth part of the net annual value. A ry. co. occupied land in Liverpool for a goods station. The premises consisted of a large covered shed, open on one side; and, on the other, with openings in the walls to admit trucks. Inside the shed were a number of ry. lines, comprising sidings, and running alongside platforms, for the purpose of loading and unloading ry. trucks with goods. All these lines were used for the conveyance of any goods sent by the public to or from the premises. The premises were some distance from the co.'s main line,

**RATES (Rateability)—continued.**

and were connected therewith by a dock line belonging to the Mersey Docks and Harbour Bd., who under statutory powers permitted the company to use such line, and by a tramway laid across a street by the co. under a licence granted by the corporation under statutory powers. The co.'s premises were acquired and laid out under powers conferred upon them by a private Act:—

*Held*, that the land used for the lines, sidings, and platforms inside the co.'s premises was not land "used as a ry. made under the powers of an Act of Parliament for public conveyance" within the meaning of s. 36 of the Liverpool Corporation Act, 1893, and that the co. were not entitled, with regard to those premises, to the partial exemption in respect of rating contained in that section.

Judgment of Div. Ct., [1899] 2 Q. B. 197, reversed. *WILLIAMS v. LONDON AND NORTH WESTERN RY. CO.* - C. A. [1900] W. N. 75; [1900] 1 Q. B. 760

45. — *Railway—Land used as a—Rating—Llandudno Improvement Act, 1854 (17 & 18 Vict. c. cit.), s. 68.*

By the Llandudno Improvement Act, 1854, which authorized commrs. to make annually a general improvement rate upon all property for the time being liable to be rated to the relief of the poor, it was provided that "the occupier of any land used only . . . as a ry." should be assessed in the proportion of one-fourth part only of its net annual value:—

*Held*, that the platforms at a ry. station and the roof covering the ry., the platforms, and the sidings might be rated as land used only as a ry. under this provision. *LONDON AND NORTH WESTERN RY. CO. v. LLANDUDNO IMPROVEMENT COMMRS.* - Div. Ct. [1897] 1 Q. B. 287

Referred to. *Smith v. Richmond*, C. A. [1898] 1 Q. B. 683, 694. This case was affirmed by H. L. (E.) [1899] A. C. 448.

— *Railway and Canal Traffic Act.*

*See RAILWAY—Railway and Canal Commission.*

— *Railway company—Siding not belonging to—Station accommodation—Rebate in respect thereof.*

*See RAILWAY.* 46.

— *Reservoir—"Land covered with water"—Artificial reservoir.*

*See WATER—Water Rates.* 35.

46. — *River bed.*

A ry. co. *held* not to be rateable in respect of the natural bed of a river forming part of a canal navigation vested in them under special Acts on the ground that they were not occupiers, but had only an easement therein. *DONCASTER UNION v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* - H. L. (E.) [1895] A. C. 133, n.

47. — *River bed—Foreshore, moorings, and pontoon—Rateable occupation.*

A ry. co. was rated to poor-rate in respect of property described as "foreshore and moorings, to which pontoon and apparatus are attached." For the purposes of a steam-ferry across a tidal

**RATES (Rateability)—continued.**

navigable river, the ry. co. provided a pontoon, which was used as a landing stage, and floated at high water, and settled on the mud at low water in front of a pier, which projected into the river, and was built upon piles driven into the foreshore or bed of the river, and was the property of the corporation of the borough. The pontoon was fastened by chains or moorings to the pier, and to protect the piles of the pier the ry. co. had driven a pile into the bed of the river. This pile was bolted to the pier, but was the property of the ry. co. The chain from the pontoon passed round this pile to reach the pile of the pier. On a case stated on appeal from the rate:—

*Held*, that the ry. co. was not in occupation of the property charged, and therefore was not liable to be rated. **MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO. v. KINGSTON-UPON-HULL GUARDIANS** — Div. Ct. [1896] W. N. 71 (9)

— Schools—Industrial school—County council.

*See No. 27, above.*

— Schools—Voluntary school—Exemption from rates.

*See Voluntary Schools Act, 1897 (60 & 61 Vict. c. 5), s. 3.*

**48. — Separate assessment of different portions of same hereditament—Poor-rate.**

The mere fact that the different portions of one undivided hereditament are capable of commanding rents if let to different occupiers does not impose any obligation upon the rating authority to assess and rate the different portions separately.

Whether for rating purposes a particular area of land is to be treated as one hereditament or as more than one is a question of fact. **NORTH EASTERN RY. CO. v. YORK UNION**

Div. Ct. [1900] 1 Q. B. 733

— Sewers rate or its equivalent, Incidence of.

*See London Government Act, 1899 (62 & 63 Vict. c. 14), s. 12.*

**49. — Sewage works—Pumping-station—Outfall works—Beneficial occupation—Hypothetical tenant—Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1—Valuation Metropolis Act, 1869 (32 & 33 Vict. c. 67), s. 4.**

Sewage works, including a pumping-station and works and outfall sewers, were erected by a county council, were owned and occupied as a necessary part of a sewage system, and while so used were incapable of returning a profit; but the council would have been willing to pay a rent for them as part of the sewage system equal to that at which they were rated:—

*Held*, (1) that the council were possible hypothetical tenants; (2) that the true test of beneficial ownership was not whether a profit could or could not be made, but whether the occupation was of value; (3) that the pumping-station and works and outfall sewers were assessed on the true principle.

(A) **LONDON COUNTY COUNCIL v. WOOLWICH UNION ASSESSMENT COMMITTEE. LONDON COUNTY COUNCIL v. ST. GEORGE'S UNION ASSESSMENT COMMITTEE** — H. L. (E.) [1893] A. C. 562

revers. C. A. [1893] 1 Q. B. 210

**RATES (Rateability)—continued.**

(B) **LONDON COUNTY COUNCIL v. ERITH OVERSEERS** — H. L. (E.) [1893] A. C. 562

(C) **WEST HAM CHURCHWARDENS v. LONDON COUNTY COUNCIL** — H. L. (E.) [1893] A. C. 562; revers. C. A. [1892] 2 Q. B. 44

Distinguished by H. L. (E.). *Sculcoates Union v. Kingston-upon-Hull Dock Co.*, [1895] A. C. 136.

Referred to by Div. Ct. *Port of Lancaster Commissioners v. Barrow-in-Furness Overseers*, [1897] 1 Q. B. 173.

Distinguished by H. L. (E.). *Lambeth Overseers v. London County Council*, [1897] A. C. 631.

**50. — Sewers—Underground sewers—Diminution of value of surface.**

Where the surface of the soil through which an underground sewer runs was rateable before the sewer was constructed, the sewer is exempt from rating only if the surface is not diminished in value by reason of the construction. If the presence of the sewer restricts the uses to which the occupier of the surface can apply it, and thereby renders the surface of less value, the sewer, although underground, is rateable. **YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. NEWPORT ASSESSMENT COMMITTEE**

Div. Ct. [1900] 1 Q. B. 365

This Case was affirmed by C. A. *See* [1901] 1 K. B. 406.

**51. — Sewers, Commissioners of—Damages for negligence—Levy of rate.**

Where a local Act incorporates drainage commrs. and gives them rating powers, unless the contrary clearly appears, the powers extend to levying rates to compensate for damage sustained by the negligence in the exercise of the statutory powers, and the limitation of their rating powers for purposes of the expenditure on the works will not apply to liabilities for damages. **GALLSWORTHY v. SELBY DAM DRAINAGE COMMS.**

C. A. [1892] 1 Q. B. 348

**52. — Sewers, Commissioners of—Jurisdiction—Evidence—New Romney Level.**

The Guildhall and Assembly Rooms in the town of New Romney are not within the area of the jurisdiction of the Comms. of Sewers of New Romney. **NEW ROMNEY CORPORATION v. NEW ROMNEY COMMS. OF SEWERS**

Div. Ct. [1892] 1 Q. B. 840

**53. — Sewers, Commissioners of—Sewers rate—Principle of assessment.**

A sewers rate ought to be assessed equally, according to their value, on all lands and tenements within the drainage district which derive any benefit from the drainage works, and not differentially in proportion to the amount of the benefit which they respectively derive.

Opinion expressed to the contrary in *Metro-politan Board of Works v. Vauxhall Bridge Co.*, (1857) 7 E. & B. 964, overruled. **KNIGHT v. LANGPORT DISTRICT DRAINAGE BOARD**

Div. Ct. [1898] 1 Q. B. 588

**54. — Tenements of limited value—Rating of owners instead of occupiers—Parochial Assessment Acts, 1836, 1862 (6 & 7 Will. 4, c. 96; 25 & 26**

**RATES (Rateability)—continued.**

*Vict. c. 103*—*Poor Rate Assessment Act, 1869* (32 & 33 *Vict. c. 41*).

Owners of small tenements can be rated to the relief of the poor instead of the occupiers only under the provisions of the Poor Rate Assessment and Collection Act, 1869. Sect. 19 of Sturges Bourne's Act (59 Geo. 3, c. 12) is repealed by implication by virtue of the provisions of the subsequent Assessment Acts. *WEST HAM CHURCHWARDENS v. FOURTH CITY MUTUAL BUILDING SOCIETY* Div. Ct. [1892] 1 Q. B. 654

55. — *Tenements of limited value—Rise of value above statutory limit.*

The vestry of a parish are only entitled, under s. 4 of the Poor Rate Assessment and Collection Act, 1869, to order the owner of a hereditament to be rated to the poor-rate instead of the occupier so long as the rateable value of such hereditament does not exceed the limits specified by s. 3 of that Act. *NORWOOD OVERSEERS v. SALTER* Div. Ct. [1892] 2 Q. B. 118

56. — *Tithe rent-charge—Poor-rate—Deductions—Rateable value—Tenants' profits—Liability to repair chancel of parish church.*

In an assessment to the poor-rate of the owners of a rectorial tithe rent-charge no deduction is permissible in respect of tenants' profits, unless it is established as a fact that such deduction would be required to induce a tenant to take a demise of the rent-charge from year to year; and no deduction is permissible in respect of the liability of the owners of the rent-charge to repair the chancel of the parish church. *ST. ASAPH (DEAN AND CHAPTER) v. LLANRHAIDRYN-MOCHNANT (OVERSEERS)*

C. A. [1897] 1 Q. B. 511

— *Tithe Rent-charge (Rates) Act, 1899* (62 & 63 *Vict. c. 17*).

See *TITHE*.

57. — *Towing-path—Canal—Easement.*

A ry. co. held not to be rateable in respect of a towing-path, as not being occupiers of the soil, but only owners of an easement therein. *DONCASTER UNION v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.*

H. L. (E.) [1895] A. C. 133, n.

58. — *Tramway—"Land used only as a railway"—General district rate—Public Health Act, 1875* (38 & 39 *Vict. c. 55*), s. 211, sub-s. 1 (b).

A ry. co. constructed a tramway communicating by points and switches with a ry. in their possession, which was worked by them in conjunction with the tramway:—

*Held*, that the land occupied by the tramway was not used only as a ry. within s. 211, sub-s. 1 (b), of the Public Health Act, 1875, and could not be rated in the proportion of one-fourth of its net annual value, but must be rated on its full value. *SWANSEA IMPROVEMENTS AND TRAMWAY CO. v. SWANSEA URBAN SANITARY AUTHORITY*

Div. Ct. [1892] 1 Q. B. 357

59. — *Tunnel—Easement—Occupation not exclusive, but paramount.*

Land may be occupied in the enjoyment of an easement so as to make the occupier liable to poor-rate, although the occupation is exclusive only for certain purposes, and although the owner

**RATES (Rateability)—continued.**

of the soil may have reserved rights of possession subordinate to the paramount rights he has granted. The test of rateability is not whether the rights granted are corporeal or incorporeal, but whether there is occupation—which is a question of fact. Pursuant to statute, a landowner granted to a drainage co. the exclusive right to drain through a tunnel and a watercourse on his land, with a right to place works in the tunnel and watercourse, and of making other tunnels in connection with it, but reserving to himself mineral and other rights:—

*Held*, that the statute and grant gave the co. not merely an easement but possession of the tunnels and watercourse; that the rights reserved by the owner were subordinate to the rights granted to the co., and that the co. were de facto in occupation of tunnels and watercourse, and rateable in respect thereof. *HOLYWELL UNION AND HALKYN PARISH v. HALKYN DISTRICT MINES DRAINAGE CO.*

H. L. (E.) revers. C. A. [1895] A. C. 117

— *Underground sewers—Diminution of value of surface.*

See No. 50, above.

— *Valuation list.*

See *RATES—Valuation*.

— *Water rates.*

See *WATER—Water Rates*.

**Recovery.**

— *Appeals.*

See *Cases under RATES—Appeal*.

60. — *Arrears due before Tithe Act, 1891* (54 & 55 *Vict. c. 8*)—*Deductions.*

The occupiers of land, out of which a tithe rent-charge issued, paid on demand of the overseers arrears of rates due before the Tithe Act, 1891. The landowner allowed the amounts so paid to be deducted from the rent, and he now sought to deduct the amount so allowed from the next payment of tithe:—

*Held*, that he could not make any deduction because s. 6 of the Tithe Act, 1891, had taken from the occupiers all liability for rates on tithes and had put it on the tithe-owner. The payments of the occupiers were therefore voluntary payments which they were not entitled to deduct from their rent, and consequently the allowances by the landowner were also voluntary, and he could not deduct them from the tithe. *In re TITHE ACT, 1891.*

(A) *ROBERTS v. POTTS* C. A. (Kay L.J. diss.) [1894] 1 Q. B. 213

(B) *JONES v. COOKE* C. A. [1894] 1 Q. B. 213

61. — *Bill of sale—Priority.*

Where proceedings for recovery of rates in default had been taken in the county court under s. 261 of the Public Health Act, 1875, and not by distress warrant under s. 256:—

*Held*, that a bill of sale protected the chattels and that the local authority was not entitled to the benefit of s. 14 of the Bills of Sale Act, 1882. *WIMBLEDON LOCAL BOARD v. UNDERWOOD*

Div. Ct [1892] 1 Q. B. 836

— *Distress warrant—Appeal.*

See *RATES—Appeal*. 5,

**RATES (Recovery)—continued.**

62. — *Distress and imprisonment—Imprisonment in default of distress—Married woman—Owner—Procedure for recovery of rates—Poor Rate Assessment Acts, 1849, 1869 (12 & 13 Vict. c. 14, s. 2; 32 & 33 Vict. c. 41, ss. 3, 4)—Summary Jurisdiction Acts, 1879, 1844 (42 & 43 Vict. c. 49, ss. 6, 35; 47 & 48 Vict. c. 43, ss. 7, 10)—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, sub-s. 11.*

A married woman who as owner of small tenements has at her own request been rated in respect of them under s. 4 of the Poor Rate Assessment and Collection Act, 1869, is liable to the ordinary remedies by distress and imprisonment in default of distress for recovery of rates made on her as owner, and is not protected by s. 1 of the Married Women's Property Act, 1882. *In re ALLEN* — Div. Ct. [1894] 2 Q. B. 924

63. — *Distress and imprisonment—Procedure for recovery of rates—Married Woman—Owner—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 161.*

The Summary Jurisdiction Acts, 1879 and 1884, and the Interpretation Act, 1889, have not had the effect of superseding the remedy—namely, by distress and imprisonment in default of a sufficient distress—for the recovery of local rates recoverable, under s. 161 of the Metropolis Management Act, 1855, in the same manner as poor-rates. *In re ALLEN*

Div. Ct. [1894] 2 Q. B. 924

64. — *Distress warrant — Jurisdiction of justices.*

Justices sitting to hear an application to issue a distress warrant for the non-payment of poor rates, are a court of summary jurisdiction within s. 13, sub-s. 11, of the Interpretation Act, 1889, and are not necessarily exercising a merely ministerial duty, but are authorized to inquire into the validity of the objections taken by the party summoned, and to state a special case for the opinion of the High Court. *FOURTH CITY MUTUAL BUILDING SOCIETY v. EAST HAM CHURCHWARDENS* — Div. Ct. [1892] 1 Q. B. 661

— London government—Rates, overseers and audit.

See London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 10–14.

65. — *Mistake—Incorrect demand notes—Poor Act, 1744 (17 Geo. 2, c. 38), s. 11.*

In levying a public library rate under the Public Libraries Act, 1855, the overseers, believing that ry. property came within the one-third exemption, only demanded of a ry. co. one-third of the proper amount. Subsequent overseers, discovering the mistake, claimed the balance as "arrears":—

*Held*, that the moneys sought to be recovered were arrears within s. 11 of 17 Geo. 2, c. 38, and that the overseers were not estopped by the delivery by their predecessors of incorrect demand notes. *REG. v. BLENKINSOP*

Div. Ct. [1892] 1 Q. B. 43

66. — *Quarterly tenant—Written or verbal demand—Poor Rate Assessment Act, 1869 (32 & 33 Vict. c. 41), s. 2.*

A written demand for a year's poor-rate was

**RATES (Recovery)—continued.**

served on a tenant occupying for three months. The tenant paid one quarter, being all he was then liable for under s. 2 of the Poor Rate Assessment and Collection Act, 1869. The tenant stayed on for another quarter, and the collector verbally demanded another quarter of the rate:—

*Held*, that a written demand having been made in the first instance for the full amount of the rate, a verbal demand for the second quarter was sufficient. *WALTON-ON-THE-HILL OVERSEERS v. JONES* — Div. Ct. [1893] 2 Q. B. 175

67. *Rate-book, Conclusiveness of—Summons for non-payment of poor-rates.*

Overseers summoned A. for non-payment of rates. A. was on the rate-book, but at the hearing of the summons he tendered evidence to shew he was only a caretaker. The justices declined to hear the case, considering the rate-book conclusive, and made an order for payment:—

*Held*, that the rate-book was not conclusive, and the justices were bound to hear the case. *REG. v. LONDON JUSTICES (No. 1)*

Div. Ct. [1893] W. N. 86

— Rate-books—Right to—Assistant overseer.

See PARISH COUNCILS. 2.

68. — *Rural district council—Special expenses—Retrospective rate—Delay in commencement of action—Mandamus to enforce judgment—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 210, 229, 230.*

The defts., a rural district council, in 1895 incurred a debt to an urban district council in respect of water supply for a contributory place within their district. The defts. refused to pay the debt, setting up a cross-claim against the urban district council for damages for breach of agreement to a greater amount. In respect of these conflicting claims a prolonged correspondence and negotiation took place between the two councils; but, ultimately, the urban district council brought an action for their debt in Mar., 1897, and on May 15, 1897, the amount actually payable to them was ascertained by judgment being recovered by them for a balance of their debt above the sum recovered by the defts. on their counter-claim. On Oct. 25 in the same year the urban district council applied for a mandamus commanding the defts. to issue their precept to the overseers of the contributory place for payment of the amount recovered:—

*Held*, that the delay in the commencement of the action being under the circumstances excusable, the mandamus ought to issue and that the rate which would thereupon have to be made would not be illegal as being retrospective.

*Waddington v. City of London Union, (1858) E. B. & E. 370, and Worthington v. Hulton, (1865) L. R. 1 Q. B. 63, discussed. REG. v. LEIGH RURAL DISTRICT COUNCIL* C. A. [1898] 1 Q. B. 836

69. — *Small tenement—Occupier or owner—Poor Rate Assessment Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4.*

A distress warrant may issue for the recovery of rates from the occupier of a tenement in respect of which the owner had been rated under s. 4 of the Poor Law Assessment and Collection Act, 1869, where the rateable value of the premises is

**RATES (Recovery)—continued.**

increased on a subsequent valuation list, since such increase of the valuation ousts the jurisdiction to rate the owner under the Act of 1869, and restores them to their rights against the occupier. *NORWOOD OVERSEERS v. SALTER*

Div. Ct. [1892] 2 Q. B. 118

— Tithe—Arrears due before Tithe Act, 1891.

See No. 60, above.

**Valuation.**

See *RATES, passim.*

LONDON COUNTY.] *Forms prescribed by the Treasury under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67). Occupiers, St. E. & O. 1896, p. 717; Owners, p. 719.*

— Valuation list—Appeals.

See Cases under *RATES—Appeal.*

70. — *Valuation list—Approval by committee before expiration of statutory period—Union Assessment Committee Acts, 1862, 1864 (25 & 26 Vict. c. 103, s. 18; 27 & 28 Vict. c. 39, s. 1).*

If an assessment committee approve a valuation list before the expiration of twenty-eight days after public notice of the deposit of such list by the overseers, the valuation list and any rate made thereunder are void by s. 18 of the Union Assessment Committee Act, 1862. The effect of the s. is not taken away by s. 1 of the Act of 1864. *REIGATE UNION ASSESSMENT COMMITTEE v. SOUTH EASTERN RY. CO.*

Div. Ct. [1894] 1 Q. B. 411

71. — *Valuation list—Notice of objection—Jurisdiction of assessment committee—Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 18, 19.*

The effect of s. 19 of the Union Assessment Committee Act, 1862, is that, upon the hearing by an assessment committee of an objection to a valuation list, the scope of the inquiry is, in the absence of the consent of the parties supporting the valuation list, limited to the grounds of objection specified in the notice of objection.

Ratepayers, who objected to the amount at which their hereditaments were assessed in a valuation list, gave notice of objection to the rateable value thereof appearing in the list, but they did not give any notice of objection to the gross value appearing therein:—

*Held*, that, in the absence of the consent of the overseers, the assessment committee had no jurisdiction to entertain any objection to the gross value. *REG. v. LONDON JUSTICES*

Div. Ct. [1897] 1 Q. B. 433

72. — *Valuation list—Objector's right to appear by agent—Parochial Assessment Act, 1862 (25 & 26 Vict. c. 103), ss. 18, 19—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 1, 11, 19.*

Under the Union Assessment Committee Act, 1862, a person aggrieved by a valuation list is entitled to be represented before the assessment committee on objections under s. 18 by an agent who is neither a member of the legal profession nor a member of the objector's family or household, and such agent is also entitled to be heard as a skilled witness. *REG. v. ST. MARY ABBOTTS, KENSINGTON, ASSESSMENT COMMITTEE*

C. A. [1891] 1 Q. B. 378

**RATES—continued.****Water Rates.**

See *WATER—Water Rates.*

**RATIFICATION**—By principal—Contract by agent in name of principal, but for his own benefit.

See *PRINCIPAL AND AGENT*. 18.

— Contract—Authority of agent—Lump sum—Variation.

See *CONTRACT*. 8.

— Contract—Company—Ratification and payment in cash.

See *COMPANY—Directors*.

— Fiduciary relation—Ultra vires.

See *COMPANY*. 202.

— Improvident bargain—Agreement with heir.

See *SOLICITOR—Champerty*. 6.

— Infant—Settlement—Repudiation—Marriage with foreigner—Change of domicile by marriage.

See *CONFLICT OF LAWS*. 6.

— Sale of goods—Undisclosed principal.

See *PRINCIPAL AND AGENT*. 19.

— Unauthorized agent—Option of purchase.

See *CONTRACT*. 35.

**RATIONE TENURÆ**—Liability to repair highway.

See *HIGHWAY—Repairs*. 11.

**READING-ROOMS**—Offences in.

See *Libraries Offences Act, 1898 (61 & 62 Vict. c. 53).*

**REAL ESTATE**—Conversion into personality.

See *CONVERSION*. 5.

1. — *Devise in trust—Failure of beneficiaries.*

Trustees under two different wills claimed to have become absolutely entitled to devised property on failure of the beneficiaries:—

*Held*, that the acting trustee of the original will who had the legal estate was entitled to hold the property against the trustee of the will of a beneficiary, on the ground that the latter trustee was a bare trustee with no duties to perform, and accordingly had no right to call for the conveyance of the legal estate. *In re LASHMAR. MOODY v. PENFOLD*

C. A. [1891] 1 Ch. 258

— Exoneration—Locke King's Act—Contrary intention.

See *WILL—Exoneration*. 85—87.

— Partnership.

See *PARTNERSHIP—Property*.

— Whether included in bequest of "effects."

See *WILL*. 213.

**REAL OR HERITABLE SECURITY**—Investments—Judicial factor—Curator bonis—Liability.

See *TRUSTEE*. 65.

**REAL PROPERTY LIMITATION.**

See Cases under *LIMITATIONS, STATUTE OF*.

**REAL REPRESENTATIVE**—Established.

See *LAND TRANSFER*.



**"REALIZATION"**—Costs of—Debenture-holder's action—"Raising" of money.  
See COMPANY—Debentures. 38.

**"REASONABLE AND PROPER"**—Particulars of objection to patent.  
See PATENT—Practice. 32.

**"REASONABLE FACILITIES,"**  
See RAILWAY—Railway and Canal Traffic. 49.

**REASONABLE USE**—Adjoining premises—Alterations—Injunction.  
See NUISANCES. 4.

**REASONABLENESS**—Charge for use of sidings.  
See RAILWAY—Sidings. 62.

**REBUILDING.**  
See Cases under LONDON—Buildings. STREETS.

— Expenditure of money in rebuilding—Jurisdiction.  
See SETTLED LAND. 41.

**RECEIPT**—Conveyancing Act, 1881, s. 55.  
See LANDLORD AND TENANT—Lease. 76.

— Evidence — Promissory note insufficiently stamped—Practice.  
See EVIDENCE. 12.

— Last receipt for rent—Reasonable excuse for non-production.  
See BILL OF SALE. 46.

— Money paid under compulsion of law—Want of bona fides.  
See MISTAKE. 1.

— Money received by servant on account of master and handed over to fellow-servant—Acknowledgment of receipt by fellow-servant.  
See REVENUE—Stamps. 178.

— Mortgagor's signature induced by fraud of his solicitor—Misappropriation—Estoppel.  
See MORTGAGE. 56.

— Payment for customer—Crossed cheque.  
See BANKER. 8.

— Power of trustees to give.  
See SETTLED LAND—Trustees. 136.

— Rent—Covenant to produce.  
See BILL OF SALE. 25.

1. — *Sale of goods—Husband and wife—Separate estate of wife.*

A receipt for purchase-money of furniture paid by a wife to her husband out of her separate estate, and given subsequent to the payment of the money:—

*Held, not to be a bill of sale though it contained words acknowledging her title.* RAMSAY v. MARGRETT - C. A. [1894] 2 Q. B. 18

— Stamp—Compensation for not working coal adjacent to railway.  
See REVENUE—Stamps. 179.

— Stamp—Scrip certificate—Payment by instalments—Receipts for future payments indorsed on certificate.  
See REVENUE—Stamps. 180.

**RECEIPTS**—Of theatre—Earnings of business.  
See RECEIVER. 4.

## RECEIVER.

[Order L., rr. 15a-22, relates to receivers.]

*In General, col. 1694.*

*Accounts, col. 1694.*

*Administration, col. 1694.*

*Appointment, col. 1694.*

*Bankruptcy. See BANKRUPTCY—Official Receiver; BANKRUPTCY—Receiver.*

*Charge, col. 1699.*

*Company. See COMPANY—Debentures. 76—88; COMPANY—WINDING-UP—Official Receiver.*

*Continuance, col. 1700.*

*Costs, col. 1700.*

*Debenture - holders. See COMPANY—Debentures. 76—88.*

*Discharge, col. 1700.*

*Indemnity, col. 1700.*

*Insurance, col. 1700.*

*Jurisdiction, col. 1701.*

*Lunacy. See LUNACY—Receiver.*

*Manager, col. 1701.*

*Mistake, col. 1701.*

*Mortgage, col. 1702.*

*Partnership, col. 1705.*

*Rates and Taxes, col. 1705.*

*Remuneration, col. 1705.*

*Repairs, col. 1705.*

*Security, col. 1705.*

### In General.

— Landlord—Distress—Bill of exchange for rent—Debentures.  
See DISTRESS. 4.

— Official—Appointment of liquidator after winding-up order.  
See COMPANY—WINDING-UP—Liquidator. 110.

### Accounts.

— Discharge—Receipt of rents by receiver.  
See RECEIVER—Mortgage. 30.

— Security—Form of order.  
See RECEIVER—Security. 46.

### Administration.

1. — *Creditor's rights—Action against debtor's representative—Priority.*

*Semble, equitable execution against the estate of a deceased judgment debtor cannot be obtained by one judgment creditor in the absence of the others. Judgment for limited administration ordered by consent.* In re CAVE. MAINLAND v. CAVE - C. A. [1892] W. N. 142

— Pending action in another Division—Jurisdiction.

See RECEIVER—Continuance. 24.

### Appointment.

[Order L., rr. 15a-22, relates to the appointment of receiver by way of equitable execution.]

— Debenture-holders' powers.

See Cases under COMPANY—Debentures.

**RECEIVER (Appointment)—continued.**

2. — *Discretion—Legal estate—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

The Court has now a discretionary power to appoint a receiver whenever it appears to the Court to be just and convenient, and this power may be exercised where the plt. is seeking to recover land by a legal title. The discretion must be exercised with a view to all the circumstances of the case. Among other things, it is important to bear in mind the position of the tenants, who, if the deft. is not a person of undoubted solvency and remains in receipt of the rents, may be called upon to pay twice over if the plt. succeeds. The Court has also to consider the probability of the plt.'s succeeding, and the length of the deft.'s possession, and whether he has any *prima facie* title; and the Legislature must be taken to have contemplated the result that an application for a receiver may practically compel the deft. in an action of ejectment to disclose his title.

Where therefore the plt. sought to recover land by a legal title, and the title of the deft., who was a person of small means, appeared to be shadowy, and the plt.'s title appeared to be satisfactorily made out, subject to a point on the construction of a will which the Court considered very unlikely to be decided against him:—

*Held*, by North J. and the C. A., that a receiver ought to be appointed.

*Foxwell v. Van Grutten*, [1897] 1 Ch. 64, considered. *JOHN v. JOHN* C. A. [1898] 2 Ch. 573

3. — *Earnings—Future earnings of judgment debtor—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

(A) The Court has no jurisdiction to enforce satisfaction of a judgment debt by appointing a receiver of the future earnings of the judgment debtor. *HOLMES v. MILLAGE* — C. A. revers.

Div. Ct. [1893] 1 Q. B. 551

Considered by C. A. *Cadogan v. Lyric Theatre*, [1894] 3 Ch. 338. See No. 4, below.

(B) Order for receiver of unearned fees of a director of a co. refused. *HAMILTON v. BROGDEN* (No. 2) — North J. [1891] W. N. 36

4. — *Earnings of business—Receipts of theatre—Elegit—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

C. was a judgment creditor of a co. who were theatrical proprietors and held a lease of a theatre and had mortgaged the lease. A judgment for deft. was recovered against a theatre co. The theatre was subject to mortgage and the co. had no land except the theatre of which they were lessees, and they were using the theatre for their business:—

*Held*, (1) that a receiver by way of equitable execution could not be appointed of the earnings of a business, and that the receipts at the door of a theatre did not differ from the earnings of any other business, but (2), that as, if the co.'s interest in the theatre had been legal instead of equitable the judgment creditor could have taken it under an *elegit*, he was entitled to a receiver by way of equitable execution of the co.'s equitable interest; (3) the receiver would be entitled to possession of the theatre and to levy an occu-

**RECEIVER (Appointment)—continued.**

pation rent on the co., and thus obtain satisfaction of the judgment. *CADOGAN v. LYRIC THEATRE, LD.* — C. A. [1894] 3 Ch. 338

5. — *Effect of order.*

An order for the appointment of a receiver by way of equitable execution does not operate as a charge, but as an injunction to restrain the judgment debtor from himself receiving the interest subject to the order. *Per Lindley L.J. TYRRELL v. PAINTON* (No. 2) — C. A. [1895] 1 Q. B. 202

6. — *Effect of order—Appointment of receiver for judgment creditor—Cesser of life interest.*

The appointment of a receiver of rents of land under a judgment for debt is "execution by process of law" within the meaning of a cesser clause in a will. *Per Kekewich J. BLACKMAN v. Fysh* — C. A. [1892] 3 Ch. 209

— *Effect of order—Distress.*

See DISTRESS. 13.

7. — *Effect of order—Foreign liquidation—Date from which receivership order takes effect.*

Judgment creditors of a foreign firm obtained *ex parte* an order for a receiver of property belonging to the firm which they could not take in execution, because third parties had a lien on it. Before the lien was paid off and the receiver obtained the balance, the firm was declared in liquidation by a foreign tribunal:—

*Held*, that the judgment creditors, and not the liquidators, were entitled to the balance in the receiver's hands. *LEVASSEUR v. MASON & BARRY, LD.* — C. A. [1891] 2 Q. B. 73

8. — *Effect of order—Property subject to lien.*

Where an order for a receiver was obtained by judgment creditors on property of the debtor in the hands and subject to a lien in favour of third parties:—

*Held*, that the creditor's right to the property or its proceeds became complete at the date of the order, subject to the legal impediment of the lien, and that they were entitled in equity as against the liquidator of the judgment debtor to the proceeds of the sale of the property after satisfying the lien.

(A) *LEVASSEUR v. MASON & BARRY, LD.*

C. A. [1891] 2 Q. B. 73

(B) *In re POTTS. Ex parte TAYLOR.*

*V. Williams J.* [1893] 1 Q. B. 648, at page 653

9. — *Effect of order—"Secured creditor"—Bankruptcy.*

Judgment creditors failing to realize their judgment obtained *ex parte* an order for a receiver to receive a share of a residuary estate which had come to the debtor under a will after the judgment and gave notice of it to the executors of the will. The debtor became bankrupt, and the executors retained the money:—

*Held*, that the order did not make the creditors secured creditors, being merely a process not yet completed for obtaining money, and not having the nature or effect of a charging order. *In re POTTS. Ex parte TAYLOR*

C. A. [1893] 1 Q. B. 648

Referred to by *Stirling J. Crowshaw v. Lyndhurst Ship Co.*, [1897] 2 Ch. 159.

**RECEIVER (Appointment)—continued.**

10. — *Ejectment action—Disputed title—Defendant in possession—Jurisdiction—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

In a pending action to recover possession of land the Court has jurisdiction, under s. 25, sub-s. 8, of the Judicature Act, 1873, to appoint a receiver, although the title is legal and the deft. is in possession:—

*Held*, that a case must be made to justify such appointment, and an order for a receiver made by Kekewich J., [1896] W. N. 158 (6), was discharged as made on insufficient grounds. *FOXWELL v. VAN GRUTTEN*

C. A. [1896] W. N. 161 (11); [1897] 1 Ch. 64

Considered by C. A. *John v. John*, [1898] 2 Ch. 573.

11. — *Equitable reversionary interest in proceeds of sale of land—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

There is jurisdiction to appoint by way of equitable execution a receiver of an equitable reversionary interest in personal estate, including the sale of the proceeds of land, since such an interest cannot be taken under an elegit. *TYRRELL v. PAINTON* (No. 2)

C. A. [1895] 1 Q. B. 202

Followed by Chitty J. *In re Jones and Judgments Act, 1864*, [1895] W. N. 123 (10). See next Case.

12. — *Equitable reversionary interest—Sale—Judgments Act, 1864* (27 & 28 Vict. c. 112), ss. 1, 4.

Where a receiver is appointed of the rents, profits, and moneys receivable in respect of a judgment debtor's reversionary interest in land, this amounts to a delivery in execution within the Judgments Act, 1864, and gives the Court jurisdiction to make an order for inquiries and a sale. *In re JONES and JUDGMENTS ACT, 1864.*

Chitty J. [1895] W. N. 123 (10)

Doubted by C. A. *In re Harrison and Bottemley*, [1899] 1 Ch. 465, 472.

13. — *General appointment—R. S. C., Order XLII, r. 32; Order L, r. 15a.*

It is not the practice of the Court under Order L, r. 15a, to appoint a receiver of the judgment debtor's property generally by way of equitable execution. Order made for examination of the debtor under Order XLII, r. 32, as to his property. *HAMILTON v. BROGDEN* (No. 1)

North J. [1891] W. N. 14

14. — *Jurisdiction—Appointment of receiver—Equitable execution.*

Sect. 25 (8) of the Judicature Act, 1873, and Order LV, r. 15a, do not give jurisdiction to appoint a receiver by way of equitable execution where prior to the Act no Court had such jurisdiction. A receiver can only be appointed at the instance of a judgment creditor under circumstances in which prior to the Act the Court of Chancery could have made such an order. The Court therefore has no jurisdiction to appoint a receiver, because it would be more convenient than the usual modes of execution.

(A) *HARRIS v. BEAUCHAMP BROTHERS* (No. 2)

C. A. [1894] 1 Q. B. 801

**RECEIVER (Appointment)—continued.**

(B) *LOVELL & CHRISTMAS v. BEAUCHAMP*

H. L. (E.) [1894] A. C. 607

(C) *HOLMES v. MILLAGE*

C. A. [1893] 1 Q. B. 551

(D) *CADOGAN v. LYRIC THEATRE, LD.*

C. A. [1894] 3 Ch. 343

15. — *Jurisdiction—Land in Ireland.*

Where a receiver is sought to be appointed of the rents of estates in Ireland, the jurisdiction of the Court is not ousted. *BOLTON v. CURRE* (No. 1) — *Stirling J.* [1894] W. N. 122

16. — *Jurisdiction—Stock standing in books of bank—Dividends—Mental infirmity—Title of order.*

The judge or Master in Lunacy has jurisdiction to make an order appointing a receiver of dividends on stock standing in the Bank of England in the name of a person incapable "through mental infirmity arising from disease or age," and the Bank may safely act on such an order; but as it is unusual to appoint a receiver of dividends on bank stock, the better course is to bring the stock into court. Such an order should not be entitled "in Lunacy." *In re BROWNE*

C. A. [1894] 3 Ch. 412

17. — *Legal remedy.*

A receiver will not be appointed by way of equitable execution of fees earned by a director of a co., since there is a legal mode of execution by attachment. *HAMILTON v. BROGDEN* (No. 2)

North J. [1891] W. N. 36

18. — *Married woman—Jurisdiction—Judgment for costs "to be payable out of her separate property and not otherwise"—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25.

An action by a married woman "suing in respect of her separate estate" was at the trial dismissed with costs, to be taxed and "payable out of her separate property, but not otherwise." The only separate property of the plt. consisted of a share coming to her under a will. Before the taxation of the defts.' costs had been completed by certificate, the trustees of the will being about to distribute their estate and pay the plt. her share, the defts. applied for the appointment of a receiver to receive the share and hold it as security for the costs when taxed:—

*Held*, by C. A., that on the principle of *Kearns v. Leaf*, (1864) 1 H. & M. 681, independently of s. 25 of the Judicature Act, 1873, there was jurisdiction to protect by injunction or the appointment of a receiver the fund out of which the costs were payable, and that a receiver ought to be appointed.

Decision of Kekewich J. affirmed. *CUMMINS v. PERKINS* — C. A. [1898] W. N. 166 (12);

[1899] 1 Ch. 16

19. — *Married woman—Protection order—Mortgage—Restraint on anticipation.*

A married woman, deserted by her husband, obtained a protection order under s. 21 of the Matrimonial Causes Act, 1857. She afterwards mortgaged property which by her father's will she was restrained from anticipating, and judgment was obtained against her as a feme sole in an action on the covenant:—

*Held*, that, although the Act allowed a

**RECEIVER (Appointment)—continued.**

married woman with a protection order to sue and be sued as a feme sole, it did not apply to property to which she was entitled before the protection order; consequently the restraint on anticipation prevailed, and no receiver of the property could be appointed by way of equitable execution. *HILL v. COOPER*

C. A. [1893] 2 Q. B. 85

Distinguished by *Kekewich J. In re Hughes*, C. A. [1898] 1 Ch. 529, 535.

— Mortgage—Appointment of receiver.

See **RECEIVER—Mortgage**. 20.

20. — *Notice of application—Defendant not appearing*—R. S. C., Order XLVII., r. 4.

Where a debt. has not appeared, and an application is made for the appointment of a receiver, it is not sufficient to file the summons at the central office, but it must be served on the debt., or leave must be obtained for substituted service. *TILLING, LD. v. BLYTHE*

C. A. [1899] 1 Q. B. 557

21. — “Parties entitled to execution”—R. S. C., Order XLII., rr. 8, 23.

The appointment of a receiver of the property or interest of a judgment debtor is not “execution” within Order XLII., rr. 8, 23. The executors of a deceased judgment creditor are not entitled to obtain an order for a receiver of the judgment debtor’s property or an injunction against his dealing with it. *NORBURN v. NORBURN*

Div. Ct. [1894] 1 Q. B. 448

— Probate—Receiver before—*Lis pendens*—Caveat.

See **PROBATE**. 105.

22. — *Procedure—Summons or motion*—R. S. C., Order XLII., r. 28; Order L., r. 15a.

Two of the debts. were ordered to pay costs to the plts. The plts. moved for appointment of a receiver by way of equitable execution over an equity of redemption belonging to the debts.:

*Held*, that such applications should be made by summons in chambers and not by motion. *In re HARTLEY, NUTTALL v. WHITAKER* (No. 2)

North J. [1892] W. N. 49

— Vendor and purchaser—Rescission of agreement.

See **VENDOR AND PURCHASER**. 62.

**Bankruptcy.**

See **BANKRUPTCY—Official Receiver** and **BANKRUPTCY—Receiver**.

**Charge.**

— Charge on land—Legal remainder—“Actual delivery in execution.”

See **JUDGMENT DEBT**. 1.

**Company.**

— Company.

See **COMPANY—WINDING-UP—Official Receiver**.

— Debenture-holders.

See **COMPANY—Debentures**. 76—84.

**RECEIVER—continued.****Continuance.**

23. — *Form of judgment—Receiver and manager.*

Where a receiver and manager is appointed in a debenture-holders’ action with a limitation of time on his acting as manager, the proper form is to extend the time during which he may act as manager. *DAVIES v. VALE OF EVESHAM PRESERVES, LD.* *Kekewich J.* [1895] W. N. 105

24. — *Pending action in other Division—Administration actions—Jurisdiction—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

Where an interim receiver has been appointed of a testator’s estate, and subsequently proceedings have been taken in the P. Div., an application to continue the receiver should be made in the P. Div. and not in the Ch. Div. *In re GREEN. GREEN v. KNIGHT* *Kekewich J.* [1895] W. N. 69

25. — *Security—Short cause—Minutes of judgment—Declaration of charge.*

Where a receiver has been appointed until judgment or further order in a debenture-holders’ action, and is continued by the judgment, this is practically a new appointment, and security must be given. *BRINSLEY v. LYNTON AND LYNMOUTH HOTEL AND PROPERTY CO.*

*Kekewich J.* [1895] W. N. 53

See *Marwick v. Lord Thurlow*, [1895] 1 Ch. 776.

**Costs.**

— Railway company—Receivership order—“Proper outgoings in respect of the undertaking.”

See **RAILWAY—Receiver and Manager**.

**Debenture-holders.**

See **COMPANY—Debentures**. 76—88.

**Discharge.**

— Account and discharge—Receipt of rents by receiver.

See **RECEIVER—Mortgage**. 30.

**Indemnity.**

26. — *Right to indemnity—Practice—Receiver and manager—Final account—Discharge of receiver.*

A receiver and manager of a business who has passed his final account and been discharged, is nevertheless still entitled to be indemnified out of the testator’s assets against trade debts and liabilities incurred by him while carrying on the business.

Even after a final account, a receiver ought to be allowed to apply, before the assets are distributed, for a full indemnity against liabilities incurred by him while acting as receiver and manager. *LEVY v. DAVIS*

*Byrne J.* [1900] W. N. 174

**Insurance.**

27. — *Insurance—Repairs—Practice.*

It is the usual practice for a receiver appointed by the Court of rents and profits of real estate to

**RECEIVER (Insurance)**—*continued.*

insure the property or keep up existing insurances.

Proper repairs of real estate fall within the duties and powers of a receiver of the rents and profits thereof. *In re GRAHAM. GRAHAM v. NOAKES* - *Chitty J. [1895] 1 Ch. 66*

**Jurisdiction.**

— Appointment of receiver.

*See Cases under RECEIVER—Appointment.*

28. — *Breach of trust at instigation of beneficiary—Trustees' lien—Assignee of beneficiary.*

Trustees committed a breach of trust at the instance of a tenant for life, who assigned his life interest in part of the trust estate to A. The trustees made good the loss caused by the breach as claimed, a lien on the tenant for life's interest, and a receiver against A. of the life interest assigned to him :—

*Held*, that A. took the assignment subject to an equitable interest by the cestui que trust in remainder which had vested in the trustees on their making good the loss and that they were entitled to the receiver. *BOLTON v. CURRE (No. 1)* *Stirling J. [1894] W. N. 122*

— Wreck—Salvage—Jurisdiction—Detention of property.

*See SHIPPING. 240.*

**Lunacy.**

*See Cases under LUNACY—Receiver.*

**Manager.**

— Bankruptcy practice.

*See BANKRUPTCY—Manager.*

— Continuance—Form of judgment.

*See RECEIVER—Continuance. 23.*

29. — *Liability for goods supplied—Receiver and manager.*

A receiver and manager of a business appointed by the Court is *prima facie* personally liable for goods ordered in the course of such business :—

*Held*, that there was nothing in a written order given "For A. & Co., Ltd." and signed "B.C.—D.E., Receivers and Managers," to rebut this presumption. *BURT, BOULTON & HAYWARD v. BULL* - *C. A. [1895] 1 Q. B. 276*

Referred to. *In re Flowers & Co., C. A. [1897] 1 Q. B. 15.*

— Mortgagee's rights—Manager of business.

*See RECEIVER—Mortgage. 37.*

— Mortgages.

*See RECEIVER—Mortgage.*

— Salary—Undertaking to act without—Allowances.

*See PARTNERSHIP—Receiver. 42.*

**Mistake.**

— Executor—Payment of assets to official receiver without retaining debt—Mistake.

*See EXECUTOR. 58.*

**RECEIVER**—*continued.***Mortgage.**

30. — *Account and discharge, Receiver's—Receipt of rents by receiver.*

Where a receiver had received rents of mortgaged property, between the date of the certificate under a foreclosure judgment and the day fixed for redemption, and after that date, but the amount of such rents was stated not to be sufficient to cover the receiver's out-of-pocket expenses and remuneration, so that nothing available for redemption had in fact been received; the Court, in order to save expense and further delay, upon the submission of the plt. to have his order for foreclosure absolute discharged if the Court should thereafter so direct, in consequence of its appearing that there were any surplus moneys, allowed the receiver's account to be taken at once, leaving the question of his discharge to stand over until after such account. *ELLENOR v. UGLE Chitty J. [1895] W. N. 161 (8)*

31. — *Appointment of receiver—Ex parte application—Service—Notice of motion—R. S. C., Order LII., rr. 5, 9; Order LV., r. 5a.*

Plt., who had taken out an originating summons for a foreclosure, applied ex parte for leave to serve with the summons short notice of motion for the appointment of a receiver. Leave granted subject to any objection which might be taken by deft. *ROBSON v. HORNER*

*Stirling J. [1893] W. N. 100*

32. — *Appointment of receiver—Mortgagor in occupation—Delivery of possession to receiver.*

Where the mortgagor was in occupation a receiver was appointed and delivery to him ordered. *EDGEELL v. WILSON*

*North J. [1893] W. N. 145*

33. — *Attornment to receiver—Occupation rent—Commencement.*

Where a devisee of mortgaged property was in possession, the Court directed a reference to chambers to appoint a receiver and fix an occupation rent, and ordered the devisee to attorn tenant to the receiver as from date of order, or to deliver up possession to the receiver. *In re BURCHNALL. WALKER v. BURCHNALL*

*Stirling J. [1893] W. N. 171*

34. — *Colliery, Mortgage of—Receiver and manager—Mortgagee in possession.*

A colliery co. mortgaged to a bank by way of sub-demise all the lands, beds of coal, and premises, of which they were lessees, and also all buildings, motive power, machinery, &c., except such as were personal chattels within the Bills of Sale Act :—

*Held*, that the mortgage included not only the mines but the right to work them, and that the bank was entitled to have a receiver and manager appointed.

Decision of North J. reversed. *COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM AND HOUSE COAL COLLIERY CO.*

*C. A. [1895] 1 Ch. 629*

Referred to by Wright J. *In re Bank of Syria, [1900] 2 Ch. 272.*

— Debenture-holders'.

*See Cases under COMPANY—Debentures.*

**RECEIVER (Mortgage)—continued.**

35. — *Debentures—Creditor's claims by mortgage—In custodia legis—Rights of mortgagee as against receiver.*

A receiver was appointed in a creditor's administration action. Among the assets were debentures given him by a co. in respect of arrears of dividends payable on certain shares. The mortgagee of the shares, who had proved for his debt, claimed the debentures on the ground that all moneys in the hands of a receiver were in custodia legis:—

*Held*, that the debentures were in the hands of the receiver as assets of the estate, who stood for this purpose in the position of an executor, and not for the benefit of the mortgage.

Where money is in the hands of a receiver appointed by the Court, it is not in custodia legis in the same way as if it were in the hands of a sequestrator; in each case all the circumstances must be considered, and in particular the nature of the action and the object of the appointment.

*In re HOARE. HOARE v. OWEN*

*Stirling J. [1892] 3 Ch. 94*

— Distress—Illegal distress.

*See DISTRESS. 11.*

36. — *Hotel-keeper, Mortgage of hotel by the—Receiver and manager.*

Where a mortgage of premises does not in express terms or by necessary implication include the business there carried on, a receiver appointed at the instance of the mortgagee cannot be directed to manage the business. On the construction of a mortgage of an hotel:—

*Held*, that the security did not include the business or goodwill, and that the Court could not appoint a manager of the hotel. *WHITLEY v. CHALLIS*

*C. A. [1892] 1 Ch. 64*

Distinguished by *C. A. County of Gloucester Bank v. Rudry Merthyr Colliery Co., [1895] 1 Ch. 629.*

— Foreclosure.

*See MORTGAGE—Foreclosure. 21, 22.*

— Illegal distress—Mortgage.

*See DISTRESS. 11.*

— Limitations, Statute of—Part payment by—Debt—Inference of promise to pay.

*See MORTGAGE. 57.*

— Liquidated demand—Action for arrears of interest on mortgage.

*See PRACTICE. 287.*

37. — *Manager of business—Mortgagee's rights.*

Where a receiver is appointed at the instance of a mortgagee over property on which the mortgagor carries on business, the receiver cannot be appointed manager of the business unless

(A) It is in express terms or impliedly included in the security. *WHITLEY v. CHALLIS*

*C. A. [1892] 1 Ch. 64*

Distinguished by *C. A. County of Gloucester Bank v. Rudry Merthyr Colliery Co., [1895] 1 Ch. 629.*

(B) It is necessary to protect the property comprised in the security by carrying on the

**RECEIVER (Mortgage)—continued.**

business. *CAMPBELL v. LLOYD'S, BARNETTS' AND BOSANQUET'S BANK, LD.*

*Chitty J. [1891] 1 Ch. 136, n.*

Explained by *C. A. Whitley v. Challis, [1892] 1 Ch. 64.*

Referred to by *C. A. County of Gloucester Bank v. Rudry Merthyr Colliery Co., [1895] 1 Ch. 638.*

(C) It is necessary to protect the security by selling the business as a going concern. *MAKINS v. PERCY IBOTSON & SONS Kay J. [1891] 1 Ch. 133.*

— Priority—Receivership deed.

*See MORTGAGE—Priority.*

38. — *Procedure—Ex parte application—Irregularity.*

An application to have a receiver appointed by way of equitable execution should not be made *ex parte*. *In re POTTS. Ex parte TAYLOR*

*Per Lindley J., C. A. [1893] 1 Q. B. 648*

Referred to by *Stirling J. Crowshaw v. Lyndhurst Ship Co., [1897] 2 Ch. 159.*

39. — *Procedure—Ex parte application—Service of notice.*

Plt., who had taken out an originating summons for foreclosure, applied *ex parte* for leave to serve with the summons short notice of motion for the appointment of a receiver. Leave granted subject to any objections which might be taken by the deft. *ROBSON v. HORNER*

*Stirling J. [1893] W. N. 100*

40. — *Procedure—Interlocutory application for receiver and manager.*

An order giving possession to a receiver and manager can be made on an interlocutory application. *IND, COOPE & Co. R. MEE*

*North J. [1895] W. N. 8*

— Procedure—Writ specially indorsed—Liquidated demand.

*See PRACTICE. 279.*

41. — *Right claimed against receiver—Course of the Court.*

It is not the course of the Court to refuse liberty to try a right claimed against its receiver appointed in a foreclosure action, unless it is perfectly clear that there is no foundation for the claim. *LANE v. CAPSEY*

*Chitty J. [1891] 3 Ch. 411*

42. — *Steamship.*

A receiver with power to manage can be appointed of a steamship. *FAIRFIELD SHIP-BUILDING AND ENGINEERING CO. v. LONDON AND EAST COAST EXPRESS STEAMSHIP CO.*

*Kekewich J. [1895] W. N. 64*

*See In re Continental Oxygen Co., [1897] 1 Ch. 511, 513.*

43. — *Winding-up of company—Mortgagee's rights—Appointment of receiver for debenture-holders.*

The right of a mortgagee to a receiver when his security is valid and his interest is in arrear is not affected by the fact that the mortgagor is a co. and is being wound up. A petition for winding-up a co. was pending when a receiver was appointed in an action by debenture-holders to enforce their security extending over all the

**RECEIVER (Mortgage)—continued.**

property of the co., where the assets of the co. were not sufficient to pay the debentures:—

*Held*, that the liquidator had no claim to have the receiver for the debenture-holders discharged, since their rights were not taken away by the winding-up. **STRONG v. CARLYLE PRESS (No. 1)**

**C. A. revers. V. Williams J. [1893] 1 Ch. 268**

Referred to by V. Williams J. *British Linen Co. v. South American and Mexican Co.*, [1894] 1 Ch. 108, 111.

**Partnership.****44. — Foreign firm—Separate debt of partner.**

Sec. 23 of the Partnership Act, 1890, which enables a judgment creditor of a partner to obtain a receiver of his interest in the partnership applies to a foreign firm having a branch house in England. **BROWN, JANSON & Co. v. HUTCHINSON & Co. (No. 1)** - **C. A. [1895] 1 Q. B. 737**

*See also* C. A. [1895] 2 Q. B. 126.

— Guarantee society—Premiums—Extra work done by receiver.

*See* PARTNERSHIP. 42.

— Partnership action—Arbitration clause—Appointment of receiver—Dissolution of partnership.

*See* PARTNERSHIP. 12.

**Rates and Taxes.**

— Gas rate—Refusal to supply until arrears due from company paid.

*See* GAS. 1.

— Income tax—Assessment in name of receiver.

*See* REVENUE—Income Tax. 96.

**Remuneration.**

COUNTY COURTS.] *See Explanatory Memorandum to County Court Rules (May)*, 1899, and rules 18 to 23. **W. N. 1899 (May 20)**, p. 171. *See* Current Index, 1899, p. cxi.

— Guarantee society—Premiums—Extra work done by receiver.

*See* PARTNERSHIP. 42.

**45. — Remuneration when trustee—Practice.**

There is no inflexible rule that a trustee can only be appointed receiver of the trust estate on the terms of his having no remuneration, though the insertion of such a term is usual. In this case, the Court allowed a sum as remuneration, although no mention of remuneration was made in the administration order appointing the receiver. *In re BIGNELL*. **BIGNELL v. CHAPMAN**.

**C. A. [1892] 1 Ch. 59**

**Repairs.**

*See* RECEIVER—Insurance. 27.

**Security.**

— On continuance of receiver.

*See* above, Continuance.

**46. — Form of order—Accounts.**

An order appointing a manager and receiver should contain an undertaking by the person applying for his appointment to be answerable

**RECEIVER (Security)—continued.**

for all amounts received until the receiver gives security.

(A) **MAKINS v. PERCY IBOTSON & SONS**

**Kay J. [1891] 1 Ch. 133**

(B) **CAMPBELL v. LLOYD'S, BARNETT'S AND BOSANQUET'S BANK, LD.**

**Chitty J. [1891] 1 Ch. 136, n.**

**47. — Recognizance—Surety—Rents and profits—Extent of liability.**

A surety under a receiver's recognizance is liable (to the extent of the amount of the penalty) for all sums of money which the receiver himself was properly liable to pay into court or account for.

Where a receiver appointed in an administration action of the rents and profits of real estate had received (i.) fire insurance moneys and misapplied them; (ii.) interest on Consols in court derived from the sale of real estate by A., and had not accounted for it; (iii.) balance of money paid to be expended on repairs, and not so expended it:—

*Held*, that the sureties had been properly charged in respect of these three items.

Practice and duties of receivers of rents and profits as to insurance and repairs discussed. *In re GRAHAM*. **GRAHAM v. NOAKES**

**Chitty J. [1895] 1 Ch. 66**

**RECEIVER AND MANAGER.**

*See* RECEIVER, *passim*.

**RECEIVER OF WRECK—Salvage—Jurisdiction**

—Detention of property.

*See* SHIPPING—Salvage. 240.

**RECEIVING.**

*See* CRIMINAL LAW—Larceny. 39, 40.

**RECEIVING ORDER—Bankruptcy practice.**

*See* BANKRUPTCY—Receiving Order.

**RECITALS—Condition and—Guarantee—Bond—Construction.**

*See* NEW SOUTH WALES. 23.

— Construction of settlement—Appointment—Estoppel.

*See* SETTLEMENT—Validity. 33.

1. — *Effect of recitals in deed—Vendor and purchaser—Purchaser for value with notice—Notice—Estoppel.*

Recitals in a deed are not representations of fact on the faith of which a stranger to the deed is entitled to act without inquiry.

Where the plt., a purchaser of a legal estate, had express notice that the defts. obtained possession of the land bought under a deed which purported to convey to them an equitable title thereto:—

*Held*, that he must convey the legal estate to the defts. Erroneous recitals in the deed as to the derivation of the equitable title actually transferred did not estop the defts. or vitiate the notice. **TRINIDAD ASPHALTE Co. v. CORBYAT**

**P. C. [1896] A. C. 587**

— Of agreement—Implied covenant.

*See* INFANT—Settlement. 42.

— Will—Erroneous recital.

*See* WILL—Mistake. 148,

**RECITAL**—*continued.*

- Will—Guarantee—Indemnity.  
*See FRAUDS, STATUTE OF.* 3, 4.

**RECOGNIZANCE** — Forfeited — Amercement — Construction of charter to corporation.  
*See REVENUE.* 48.

- On appeal to quarter sessions.  
*See JUSTICES.* 40, 41.

- Receiver—Surety—Rents and profits—Extent of liability.  
*See RECEIVER.* 47.

**RECONSTRUCTION**—Company.  
*See COMPANY—Reconstruction.***RECONVEYANCE**—To building society—Stamp—Mortgage.  
*See REVENUE.* 168.**RECORD OFFICE.**  
*See PUBLIC RECORD OFFICE.***RECORDER** — Salary of — Liability — Separate court of quarter sessions.  
*See COUNTY COUNCILS.* 3.**RECOUNT** — Votes — Correctness of returning officer's figures—Onus of proof.  
*See SCHOOLS—School Board.* 7.**RECOVERY OF RATES.**  
*See RATES—Recovery.***RECREATION GROUNDS.**  
*See Commons Act, 1899 (62 & 63 Vict. c. 30).*

- Right of recreation by inhabitants of several parishes.  
*See CUSTOM.* 2.

**RECTIFICATION**—Assignment—Defective title—Subsequent acquisition of good title.  
*See PRACTICE—Payment out of Court.* 144.

- Company—Register—Underwriting.  
*See COMPANY—Register.* 256.

- Conveyance—Plan—Mistake—Parol evidence.  
*See VENDOR AND PURCHASER—Contract.* 28.

- Deed—Oral evidence.  
*See SETTLEMENT—Rectification.* 29.

- Lease—Parcels—Right of way—Misdescription—Common mistake.  
*See LANDLORD AND TENANT.* 75.

- Register—Middlesex Deeds.  
*See MIDDLESEX REGISTRY.*

- Settlement.  
*See SETTLEMENT—Rectification.*

- Trade-mark register.  
*See Cases under TRADE-MARK.*

**RECTOR**—Criminal suit against rector for non-repair of chancel—Appeal—Jurisdiction.  
*See ECCLESIASTICAL LAW.* 57.

- Lay rector—Right to chief seat in a chancel—Prescription.  
*See ECCLESIASTICAL LAW.* 56.

**REDEMPTION** — Absolute assignment of debt with proviso for—Implication of power to redeem.  
*See ASSIGNMENT.* 4.**REDEMPTION**—*continued.*

- Annuity.  
*See ANNUITY—Redemption.*

- Debenture—Sinking fund—Prospectus.  
*See COMPANY.* 90.

- Mortgages.  
*See MORTGAGE—Redemption.*

- Rent-charge—Repayment to tenant for life—Improvement—Evidence.  
*See SETTLED LAND.* 102.

- Stamp duty — Debenture — Redemption on contingency—"Marketable security."  
*See REVENUE—Stamps.*

**REDEMPTION MONEY**—For tithes.  
*See TITHE.* 7.**REDROCK** — Reservation from grant — Redrock and coal neither having any commercial value—Injunction.  
*See MINES.* 23.**REDUCTION OF CAPITAL**—Company.  
*See COMPANY—Reduction of Capital.***RE-ENTRY**—Distress.  
*See DISTRESS.* 6.

- Lease—Forfeiture.  
*See Cases under LANDLORD AND TENANT.*

**RE-EXECUTION**—Will—Married woman.  
*See HUSBAND AND WIFE.* 23.**REFEREE.**  
*See Cases under ARBITRATION.***REFERENCE.**  
*See Cases under ARBITRATION.***REFERENTIAL TRUSTS** — Hotchpot — Two funds.  
*See SETTLEMENT.* 26.**REFORM ACT.**  
*See Cases under PARLIAMENT (FRANCHISE).***REFORMATORY.**  
*See DRUNKENNESS.*  
*SCHOOLS—Reformatory Schools.***REFRESHERS**—Counsel.  
*See Costs—Counsel's Fees.* 17.**REFRIGERATING MACHINERY**—Bill of lading—Exceptions.  
*See SHIPPING.* 143.**REFUND** — Application for — Delay — Probate duty paid under protest.  
*See NEW SOUTH WALES.* 38.**REFUSAL**—Contract to give "first refusal" of land—Interest in land—Purchaser with notice—Injunction.  
*See CONTRACT.* 24.**REFUSE**—Chattels—Mounds of refuse produced in iron manufacture.  
*See MINES.* 1.

- Removal of—Metropolis.  
*See Cases under LONDON—Removal of Refuse.*

**"REFUSE OR NEGLECT"**—Condition—Residence—Infant.  
*See WILL—Condition.* 62.**REGIMENTAL DEBTS.**  
*See ARMY AND NAVY—Army.*



**REGISTER.***See* REGISTRATION.

— Unclaimed stock.

*See* BANK OF ENGLAND.**REGISTRAR**—Bankruptcy practice.*See* BANKRUPTCY. 68.

— County court—Jurisdiction—Power to strike out counter-claim—Prohibition.

*See* COUNTY COURT—PRACTICE. 62.

— Discretion of—Costs—Insolvency of estate.

*See* COUNTY COURT. 22.

— District registrar.

*See* PRACTICE—District Registry.

— Jurisdiction of—Setting aside judgment in default of appearance.

*See* PRACTICE. 22.

— Note of master or registrar—Evidence—Proceedings in chambers.

*See* DIVORCE. 3.**REGISTRATION**—Bill of sale.*See* BILL OF SALE—Registration.

— Ceylon Land Registration Act—Priority.

*See* CEYLON. 6.

— Common lodging-house—Liability to penalty—Charitable institution—Non-registration.

*See* LODGING-HOUSE. 1, 2.

— Company.

*See* COMPANY—Registration.

— Copyright.

*See* Cases under COPYRIGHT.

— Dentist—Qualification.

*See* MEDICAL PRACTITIONER. 1.

— Designs.

*See* DESIGNS—Registration. 7.

— Dolus malus—Priority of unregistered transfer

—Registered transfer set aside—Law of Natal.

*See* NATAL. 2.

— Land charges.

*See* LAND CHARGES.

— Lis pendens.

*See* LIS PENDENS.

— Money-lenders.

*See* MONEY-LENDER.

— Mortgages and charges of company.

*See* COMPANY—Mortgages and Charges. 199.

— Patent.

*See* PATENT—Registration.

— Shares and shareholders.

*See* Cases under COMPANY and COMPANY—WINDING-UP.

— Title to land.

*See* LAND—Registration. MIDDLESEX. YORKSHIRE.

— Trade-mark.

*See* TRADE-MARK—Registration.

— Transfer of ship—Fees.

*See* SHIPPING—PRACTICE. 210.

— Voters.

*See* Cases under PARLIAMENT.**REGISTRY**—Exemption from—"Tons burden."*See* SHIPPING—Limitation of Liability. 165.**REGISTRY (DISTRICT).***See* PRACTICE—District Registry.**REGISTRY (LAND REGISTRY).***See* LAND REGISTRY.**REGULATION OF RAILWAYS.***See* Cases under RAILWAY.**RE-HEARING.***See* PRACTICE—Re-hearing.**REIMBURSEMENT**—Of tenant for life for improvements.*See* SETTLED LAND. 43.**RE-INSURANCE**—Marine insurance.*See* Cases under INSURANCE, MARINE.**RE-INVESTMENT**—Of purchase-money—Costs.*See* LANDS CLAUSES ACTS. 2.**"RELATIVES"**—Of illegitimate persons.*See* WILL—Illegitimacy. 102—106.**RELEASE**—Common, Rights of—Extinction on release of seigniorial rights.*See* COMMON. 6.

— Guarantee, Release of—Renewal of bills of exchange—Variation.

*See* BILL OF EXCHANGE. 9.1. — *Joint tortfeasors—Agreement with one.*

The agent of a municipal corporation accepted bribes from L. to procure contracts between L. and the corporation. The corporation on discovering the fraud agreed to help in an action for damages against L., and that the amount should be credited in satisfaction of the agent's liability for bribes:—

*Held*, that the agreement was not a release.

Decision of Div. Ct., (1890) 25 Q. B. D. 363, affirmed. SALFORD CORPORATION v. LEVER

G. A. [1891] 1 Q. B. 168

Referred to by C. A. *Grant v. Gold Exploration and Development Syndicate*, [1900] 1 Q. B. 233, 244, 246.

2. — *Joint tortfeasors—Discharge of one—Release of one—Reservation of claim against the other—Covenant not to sue.*

A covenant not to sue one of two joint tortfeasors does not operate as a release of the other from liability. In this case a letter to one tortfeasor giving a receipt in full discharge of, but reserving rights against, the other, *held* to be a covenant not to sue and not to be a release. *DUCK v. MAYEU* - C. A. [1892] 2 Q. B. 511

*See Rice v. Reed*, C. A. [1900] 1 Q. B. 54, 67.

— Power of appointment—Release.

*See* Cases under POWERS—Extinction.

— Stamp — Receipt for compensation for not working coal adjacent to railway.

*See* REVENUE—Stamps. 179.

— Surety.

*See* Cases under PRINCIPAL AND SURETY—Discharge.

— Trustee in bankruptcy—Error in administration—Revocation by Board of Trade.

*See* BANKRUPTCY—Trustee in Bankruptcy. 247.

**RELEASE**—*continued.*

- Trustee in bankruptcy—Subsequent assets—Right of creditors to appoint new trustee.  
*See* **BANKRUPTCY** — Trustee in Bankruptcy. 248.

**RELEVANCY**—Defective wagons while in use by another railway company—Liability.  
*See* **RAILWAY**, 17.

## — Interrogatories.

*See* **DISCOVERY**, 55.

- Will—Insane delusions—Direct communications from the Deity.  
*See* **WILL**—**Relevancy**.

**RELICS.***See* **FURNITURE**.**RELIEF**—Against forfeiture of lease.*See* Cases under **LANDLORD AND TENANT**.

- Misrepresentation as a bar to relief—Passing off action—Practice.  
*See* **TRADE-MARK**, 64.

## — Trustees' liability.

*See* Cases under **TRUSTEE**.**RELIEF (OF PAUPER).**Cases under **POOR LAW**.**RELIGION**—Gift over on changing—Remote-ness.*See* **POWER**, 19.

- Undue influence — Setting aside gift inter vivos.

*See* **UNDUE INFLUENCE**, 1.**RELIGIOUS EDUCATION** — Guardianship of infant.*See* **INFANT**—**Custody**, 15.**RELIGIOUS PURPOSES**—Gifts for—Charity.*See* **CHARITY**, 18, 21.**RELIGIOUS WORSHIP** — *Charitable Trusts (Places of Worship) Amendment Act, 1894 (57 & 58 Vict. c. 35), amends the Charitable Trusts Acts.***REM, ACTION IN**—Admiralty practice.*See* Cases under **SHIPPING**.**REMAINDER**—Contingent.*See* **WILL**—**Contingent Remainder**.

- Legal—Charge on land—Receiver—Equitable execution—"Actual delivery in execution."

*See* **JUDGMENT DEBT**, 1.**REMAINDERMAN.***See* Cases under **SETTLED LAND**.**RE-MARRIAGE.***See* **WILL**—**Marriage**, 141.**REMITTED ACTION**—County court—Practice.*See* Cases under **COUNTY COURT**.**REMOTENESS**—Agistment—Negligence—Intervening act of third person.*See* **AGISTMENT**.

- Collision—Loss by detention during repairs—Damages—Policy.

*See* **INSURANCE**—**Marine**, 34.

- Collision—Loss of use of dredger—Damages.

*See* **SHIPPING**—**Collision**, 61.**REMOTENESS**—*continued.*

- Contract—Illegality—Uncertainty—Statutory confirmation.

*See* **CONTRACT**, 24.

- Contractor—Damages.

*See* **PRINCIPAL AND AGENT**, 10.

- Damage—Collision—Loss of use of lightship.

*See* **SHIPPING**—**Collision**, 72.

- Depreciation of cargo—General average.

*See* **SHIPPING**—**Average**, 10.

- Maintenance—Will—Construction.

*See* **INFANT**, 24.

- Nervous shock—Damages.

*See* **ACTION**, 2.

- Power of appointment—Fraud on.

*See* **POWERS**—**Exercise**, 19.

- Power of appointment—Validity.

*See* **POWERS**—**Validity**, 44, 46.

- Will.

*See* **WILL**—**Perpetuity**, 157—167.**REMOVAL**—Human remains.*See* Cases under **ECCLIASTICAL LAW** — **Faculty**.

- Lessee—Permanent buildings.

*See* **CAPE OF GOOD HOPE**, 5.

- Licence.

*See* Cases under **LICENSING ACTS**.

- Order of—Infectious disorder—Public health.

*See* **JUSTICES**, 10, 11.

- Pauper.

*See* Cases under **POOR LAW**.

- Refuse.

*See* Cases under **LONDON**—**Removal of Refuse**.

- Wreck.

*See* **SHIPPING**—**Salvage**, 254.**REMUNERATION**—Directors.*See* **COMPANY**—**Directors**, 138—142.

- Elective auditor of corporation.

*See* **LOCAL GOVERNMENT**, 1.

- Liquidator.

*See* **COMPANY** — **WINDING-UP** — **Liquidator**.

- Manager and receiver—Bankruptcy practice.

*See* **BANKRUPTCY**—**Manager**, 120.

- Partner.

*See* Cases under **PARTNERSHIP**.

- Receiver.

*See* **RECEIVER**—**Remuneration**.

- Receiver—Surplus assets—Jurisdiction.

*See* **COMPANY**—**WINDING-UP**.

- Solicitor.

*See* Cases under **SOLICITOR**.

- Trustee.

*See* **TRUSTEE**—**Remuneration**.

- Trustee in bankruptcy.

*See* Cases under **BANKRUPTCY**—**Trustee in Bankruptcy**.**RENEWAL**—Bill of sale.*See* **BILL OF SALE**—**Registration**.

- Fines on renewal of leases for lives—Copy-holds—Income or capital.

*See* **SETTLED LAND**, 50.

**RENEWAL.**—*continued.*

— Lease—Settled Land Acts.

*See SETTLED LAND.*

— Licence.

*See LICENSING ACTS—Licence.*

— Writ.

*See PRACTICE—Writ.***RENT.**—Agreement for lease—Increased rent—Part performance.*See FRAUDS, STATUTE OF. 13.*

— Anticipation of—Churchwardens—Income of charity estates—Banking account—Charge on charitable property.

*See CHARITY. 1.*

— Assignment of leaseholds—Consideration—Stamp duty.

*See REVENUE—Stamps. 160.*

— Bankruptcy.

*See BANKRUPTCY—Rent.*

— “Best rent.”

*See SETTLED LAND. 67, 69.*

— Distress for rent.

*See Cases under DISTRESS.*

— Ground-rent—Cost of sanitary works—Capital or income—Leasehold houses—Tenant for life.

*See SETTLED LAND.*

— Hotspot clause—Set-off—Statutes of Limitations.

*See WILL—Advancement. 23.*

— Intermediate—Infants—Legal and equitable limitations.

*See WILL—Contingent Remainders. 74.*

— Landlord and tenant.

*See LANDLORD AND TENANT—Rent.*

— Last receipt for—Reasonable excuse for non-production.

*See BILL OF SALE. 46.*

— Leaseholds—Tenant for life—Remainderman—Liability.

*See WILL. 119.*

— Mines—Apportionment.

*See SETTLED LAND. 79.*

— Non-payment of rent—Hotspot clause—Absolute title of tenant—Real property limitation.

*See WILL—Advancement. 23.*

— Occupation rent due from one of several co-owners—Set-off—Sale.

*See PARTITION. 16.*

— Payable in advance—Apportionment on eviction.

*See APPORTIONMENT. 1.*

— Received after day fixed for redemption.

*See MORTGAGE—Foreclosure. 35.*

— Royalty—Minerals—Life-rent—“Opened” quarries.

*See MINES. 14.*

— Set-off—Will—Construction.

*See WILL—Advancement. 23.*

— Tenant for life and remainderman.

*See Cases under SETTLED LAND.*

— Way-leave.

*See WAY-LEAVE. 1.***RENT-CHARGE**—*Apportionment—Acreage or value—Grant of land subject to a rent-charge—Grant or reservation—Eviction of grantee from part of land.*

In 1840 A. by deed granted to B. certain land to the use that A. and his heirs should for ever receive thereof a certain rent-charge, “and subject and charged as aforesaid” to dower uses in favour of B.; and by the same deed B. granted to A. in fee the same rent-charge out of the land thereby granted. In 1898 B.’s successors in title were evicted from part of the land by title paramount, and thereupon claimed an apportionment of the rent-charge; but A.’s successor in title contended that the rent-charge was payable in full out of the remainder of the land:—

*Held*, that the deed operated as a reservation of the rent-charge in the first instance to A. in fee; that the subsequent grant by B. to A. in fee of the same rent-charge was inoperative; and that the rent-charge must be apportioned according to the value of the land. *HARTLEY v. MADDOCKS* - *Cozens-Hardy J.* [1899] W. N. 83; [1899] 2 Ch. 199

— Arrears—Annuity.

*See ANNUITY—Arrears. 1, 2.***2. — Arrears—Jurisdiction to sell.**

There is equitable jurisdiction to order a sale or mortgage of land to raise arrears of a jointure rent-charge issuing out of the rents and profits of the land, though there is no express charge on the land. The exercise of such jurisdiction is discretionary. *HAMBRO v. HAMBRO*

*North J.* [1894] 2 Ch. 564

Referred to by Stirling J. *In re Herbage Rents, Greenwich*, [1896] 2 Ch. 811, 816. *See No. 6, below.*

— Arrears of—Action by trustees of charity—Prohibition.

*See COUNTY COURT. 44.***3. — Augmentation of benefice—Charge upon land—Release of part of land—Liability of tenant of residue—29 Car. 2, c. 8.**

An augmentation had been granted under 29 Car. 2, c. 8, “An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies,” and charged upon land, and a portion of such land was held by the deft. as tenant for life in possession, having been acquired by the deft.’s predecessors under a contract, whereby they released the residue of the land from the burden of the charge, and indemnified the owners against it.

In an action to recover from the deft. the whole amount of the arrears of the charge:—

*Held*, that the deft. was liable for the whole amount, notwithstanding that the annual profits of his land fell short of the amount of the charge. *PERTWEE v. TOWNSEND*

*Collins J.* [1896] 2 Q. B. 129

Approved of by Stirling J. *In re Herbage Rents, Greenwich*, [1896] 2 Ch. 811. *See No. 6, below.*

— Payment of past instalments.

*See SETTLED LAND—Rent-charges. 102.*

**RENT-CHARGE—continued.**

— Priority—Mortgage—Limited Owners' Residences Act.

See MORTGAGE—Priority. 53.

— Purchase or redemption.

See SETTLED LAND—Rent-charges. 103.

— Rateable value—Deductions—Tenants' profits.

See RATES. 56.

— Recovery—Charitable Trusts (Recovery) Act, 1891 (54 Vict. c. 17), facilitates the recovery of rent-charges and other payments owing to charities.

— Recovery of rent-charge—Improvement of land.

See Improvement of Land Act, 1899 (62 & 63 Vict. c. 46).

— Redemption—Repayment to tenant for life—Improvement—Evidence.

See SETTLED LAND—Rent-charges. 104.

4. — "Rent-charge"—Perpetual rent for easement—Charge on rates—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 10, 11.

A perpetual rent reserved as the consideration upon the sale of land, even though no power of distress is contained in the conveyance, is not improperly described as a rent-charge, as a power of distress is conferred by 4 Geo. 2, c. 28, s. 5. The Liverpool Corporation Waterworks Act, 1855, which incorporated the Lands Clauses Act, 1845, provided that the persons empowered by the latter Act to convey lands should have full power to convey at an annual rent any easement over certain lands:—

*Held*, that such a rent was properly described as a yearly "rent-charge payable in perpetuity by the corporation of L. in respect of a water-pipe rent created under the authority of the" Act of 1855, and secured by covenants of the corporation and by a statutory charge on the rates leviable by the corporation, and was charged on the rates by the operation of s. 11 of the Lands Clauses Act, 1845. *In re LORD GERARD AND BEECHAM'S CONTRACT* - C. A. [1894] 3 Ch. 295

5. — Sale—Rent-charge—Charge on corpus—Application to raise by sale—Effect of creating term.

A rent-charge, under a marriage settlement payable to the widow having fallen into arrear, and the rents being insufficient and not likely to be sufficient to pay the rent-charge, an action was brought by the assignee of the rent-charge against the surviving trustee of the term, and all persons who under the will had any interest in the property, for payment of the arrears, and an order for sale of the lands charged or a competent part thereof to raise the arrears.

*Held*, that the question was whether the charge on the inheritance was one which was intended to be enforced by sale. There were cases in which when a rent-charge was created, although there was no express power of sale, the Court gave its assistance by ordering a sale, e.g., *Cupit v. Jackson*, (1824) 13 Price, 721; 28 R. R. 735. The result of the cases was that, subject to the discretion of the Court, the owner of the rent-charge was entitled to an order for sale of the inheritance; but the Court would refuse to order a sale in certain cases—for instance, where

**RENT-CHARGE—continued.**

it was advisable to wait for a time: *Graves v. Hicks*, (1841) 11 Sim. 551; or in the case instanced by North J. in *In re Tucker*, [1893] 2 Ch. 323, of the amount of arrears being small. That shewed the sort of discretion which the Court exercised where there was no term. But what was the effect of vesting a term as in the present case? In *Hall v. Hurt*, (1861) 2 J. & H. 76, where a term was vested in trustees, Wood V.-C. said: "Looking at the whole contents and scope of the will, my impression is that the freehold was not intended to be sold to raise the charge of 5000*l.*, but that the term was created for that purpose with the view of avoiding a sale of the fee." Although that was a decision on the construction of a will, it was a guide in the present case, and shewed that the Court ought to see whether the existence of the term was consistent with the right to have a sale ordered by a court of equity. Having regard to the term and to *Hall v. Hurt*, an order for sale must be refused. *BLACKBURN v. HOPE-EDWARDES*

Buckley J. [1900] W. N. 175

Reported - - - [1901] 1 Ch. 419

— Tenant for life—Exoneration of land.

See SETTLED LAND—Rent-charges.

6. — Tenant for years—Personal liability—Charitable Trusts (Recovery) Act, 1891 (54 & 55 Vict. c. 17), s. 3.

A tenant for years is not liable in an action of debt for non-payment of rent-charge issuing out of the land of which he is in occupation, nor in the case of a rent-charge created for charitable purposes is he liable in an action in the Chancery Division at the instance of the Att.-Gen. or the Charity Commrs. *In re HERBAGE RENTS, GREENWICH. CHARITY COMMRS. v. GREEN*

Stirling J. [1896] 2 Ch. 811

— Tithe rent-charge.

See TITHE. 1, 2.

**RENTS AND PROFITS**—Life-rent—"Opened" mines.

See MINES. 14.

— Will—Construction.

See WILL. 198.

**RENUNCIATION**—Probate.

See PROBATE—Renunciation.

— Promissory note.

See BILL OF EXCHANGE. 20.

**REPAIRS**—Artificial watercourse—Sluice-gate—Obligation of owner to repair—Easement.

See WATER. 37.

— Brewery business—Repairs to tied houses—Income tax—Deductions.

See REVENUE—Income Tax. 73.

— Building repaired by means of a scaffolding—Compensation.

See MASTER AND SERVANT—Compensation. 7.

— Copyholds—Customary obligation to repair—Remedy of lord against tenant's executors.

See COPYHOLD. 3.

**REPAIRS**—*continued.*

- Cost of—Sale of ship—Pre-existing maritime liens—Division of purchase-money.  
*See SHIPPING.* 215.
- Covenant to repair—Service out of jurisdiction.  
*See PRACTICE—Service.* 206.
- Criminal suit against rector for non-repair of chancel—Appeal—Jurisdiction.  
*See ECCLESIASTICAL LAW.* 57, 59.
- Fence—Obligation of company to maintain.  
*See RAILWAY—Fences.* 6.
- Guardbox of stopcock—Supply under Waterworks Clauses Act.  
*See WATER.* 16.
- Highway.  
*See HIGHWAY—Repairs.*
- Landlord and tenant.  
*See Cases under LANDLORD AND TENANT.*
- Real estate—Trust for sale—Postponement of sale—Absence of power to mortgage.  
*See POWER.* 6.
- Receiver, Property in hands of a—Duties.  
*See RECEIVER—Insurance.* 26, 27.
- Road taken over by local authority—Determination of trust.  
*See CHARITY.* 23.
- Settled Land Acts.  
*See Cases under SETTLED LAND.*
- Sewer—Liability.  
*See Cases under LONDON—Sewers.* SEWERS.
- Ship—Powers of managing owner.  
*See SHIPPING—Managing Owner.* 173.
- Streets.  
*See LONDON—Streets.* STREETS.
- Tenant at will—Doing of repairs by landlord—Determination of will.  
*See LIMITATIONS, STATUTE OF.* 44.
- Tenant for life and remainderman.  
*See Cases under SETTLED LAND.*
- Tomb.  
*See CHARITY.* 31, 32.

**REPAYMENT**—Costs—Reversal of judgment.  
*See SOLICITOR—Costs.* 71.

- Fully paid-up shares—Alteration of rules—Ultra vires.  
*See BUILDING SOCIETY.* 9.
- Mistake—Executor—Assets paid to official receiver without retaining debt.  
*See EXECUTOR—Retainer.* 58.
- To Shareholders—Company practice.  
*See COMPANY—Reduction of Capital.* 247, 248.

**REPEAL**—Statute.*See STATUTES—Repeals.***REPLEVIN**—*Measure of damages—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.*

In the case of illegal and not merely irregular distress, damages for illegal distress and for annoyance and injury to credit are recoverable in an action of replevin. *SMITH v. ENRIGHT*  
Div. Ct. [1893] W. N. 173

**REPLY.***See PRACTICE—Reply.***REPORT**—Judicial proceedings—Libel—Privilege.  
*See DEFAMATION.* 17.

- Official receiver—Examination—Fraud.  
*See COMPANY—WINDING-UP—Examination.* 81.
- Official referee—Reference.  
*See ARBITRATION—Referee.* 45, 46.
- Speeches—Newspaper—Author.  
*See COPYRIGHT.* 35.
- State of mind of alleged lunatic.  
*See LUNACY.* 34.
- Survey as to manor made under statute—Evidence—Admissibility.  
*See COMMON.* 1.

**REPORT OF CARGO.***See SHIPPING—Report of Cargo.***REPRESENTATION OF THE PEOPLE ACTS.***See Cases under PARLIAMENT.***REPRESENTATION ORDER.***See Cases under PRACTICE—Parties.***REPRESENTATIONS**—Liability for, in absence of fraud.*See SURVEYOR.**VALUER.* 1.

- To lender by agent or borrower—Fraud—Solicitor to both parties.  
*See MORTGAGE.* 15.

**REPRESENTATIVE PARTIES**—Action.*See Cases under PRACTICE—Parties.***"REPRESENTATIVES."***See WILL—Words.* 221.**REPUBLICATION**—Codicil—Gift to attesting witness—Solicitor—Profit costs.*See WILL.* 30.**REPUDIATION**—Assurer's liability—Action for declaration of liability before death of assured.*See INSURANCE, LIFE.* 20.

- By purchaser—Purchase-money payable by instalments—Right of vendor to retain instalments paid.  
*See VENDOR AND PURCHASER.* 35.

- Concealment of identity of lender—Fraud—Right of borrower to repudiate.  
*See CONTRACT.* 20.

- Contract—Breach by one party—Right of other party to repudiate.  
*See CONTRACT.* 7.

- Contract—Condition precedent—Exchange contracts.  
*See CONTRACT—Construction.* 9.

- Contract—Repudiation—Purchase-money payable by instalments—Omission to pay last instalment—Specific performance—Damages.  
*See VENDOR AND PURCHASER—Contract.* 35.

- Forfeiture of shares—Prospectus—Fraudulent misrepresentation.  
*See COMPANY—Prospectus.* 206.

- Infant—Settlement—Ratification—Marriage with foreigner—Change of domicile by marriage.

*See CONFLICT OF LAWS.* 6.

**REPUDIATION**—*continued.*

- Infant—Settlement by—Subsequent repudiation—Married woman—Separate estate.  
*See* INFANT—Settlements. 42—45.
- Infant—Shares—Right to recover.  
*See* INFANT—Contracts. 8.
- Infant borrowing member—Mortgage for advances.  
*See* BUILDING SOCIETY. 7.
- Unauthorized action.  
*See* ACTION. 5.

**REPUGNANCY**—Absolute gift—Subsequent condition.*See* WILL—Condition. 59.

- By-law—Betting in streets—Statutory enactment.  
*See* GAMING. 11.
- Successive absolute limitations of personal estate—Lapse.  
*See* WILL.

**REPUTATION**—Evidence—Admissibility.*See* COMMON. 1.**REPUTED OWNERSHIP**—Bankruptcy practice.*See* Cases under BANKRUPTCY—Order and Disposition.**REQUISITIONS ON TITLE.***See* Cases under VENDOR AND PURCHASER.**REVEREND**—Communion table—Chancel platform.*See* ECCLESIASTICAL LAW—Faculty. 36.

## — Triptych—Painted panels—Sculptured figures.

*See* ECCLESIASTICAL LAW—Faculty. 39.**RES JUDICATA.***See* ESTOPPEL. 8, 9.**RESALE**—Taking land for the purpose of local authority—Statutory powers.*See* STREETS—New Streets. 15.**RESCISSION**—Company—Practice.*See* Cases under COMPANY and COMPANY—WINDING-UP.

## — Contract.

*See* CONTRACT—Rescission.

## — Contract for sale.

*See* VENDOR AND PURCHASER—Rescission. 60.

## — Receiving order.

*See* BANKRUPTCY—Receiving Order. 195.

## — Separation order—"Fresh evidence"—Definition.

*See* HUSBAND AND WIFE—Summary Jurisdiction. 90.**RE-SEALING**—Administration—Intestacy—Colonial grant.*See* PROBATE. 63.**RESERVATION**—From grant—Redrock and coal neither having any commercial value—Injunction.*See* MINES. 23.

## — Grant or—Eviction of grantee from part of land—Apportionment of rent-charge—Acreage or value.

*See* RENT-CHARGE. 1.**RESERVATION**—*continued.*— Mines—Working power—Manorial rights.  
*See* INCLOSURE. 3.**RESERVE FORCES.***See* under ARMY AND NAVY.**RESERVOIR.***See* WATER—Supply. 9.— Tributary of river—Fishery district—Limits.  
*See* FISHERY. 6.**RESETTLEMENT**—Compound settlement—Title.*See* SETTLED LAND—Trustees. 132.**RESIDENCE**—Bank manager at bank.*See* REVENUE—Income Tax. 70.

## — Foreigner—Security for costs.

*See* COSTS—Security for Costs. 58.

## — Poor—Settlement.

*See* Cases under POOR LAW—Settlement.

## — Will—Condition.

*See* WILL—Condition. 61, 62.**RESIDENTIAL FLATS.***See* under FLATS.**RESIDENTIARY CANON**—Right to vote.*See* PARLIAMENT—Franchise. 42.**RESIDUARY GIFTS.***See* Cases under WILL—Residue.**RESIDUE.***See* WILL—Residue.**RESIGNATION**—Outgoing alderman—Resignation of office—Office when vacant.*See* CORPORATION. 7.**RESOLUTION**—Company—Practice.*See* Cases under COMPANY—Meetings.**RESTAURANT KEEPER.***See* under INN and INNKEEPER.**RESTITUTO IN INTEGRUM**—Collision—Total loss—Vessel in ballast under charter—Measure of damage.*See* SHIPPING—Collision. 56.**RESTITUTION OF CONJUGAL RIGHTS.***See* DIVORCE—Restitution of Conjugal Rights.**RESTITUTION OF PROPERTY**—Current coin of the realm—Larceny.*See* CRIMINAL LAW—Larceny. 41.**RESTRAINT**—Action of—Co-ownership—Bond for safe return—Forfeiture—Jurisdiction.*See* SHIPPING—Restraint. 218.**RESTRAINT OF MARRIAGE.***See* Cases under WILL—Marriage.**RESTRAINT OF PRINCES**—Bill of lading—Excepted perils.*See* SHIPPING. 140, 141.**RESTRAINT OF TRADE**—Agreements in restraint—Principles of construction.*See* Principles of construction of agreements in restraint of trade considered.(A) *MILLS v. DUNHAM* C. A. [1891] 1 Ch. 576

**RESTRAINT OF TRADE—continued.**

(B) *NORDENFELT v. MAXIM NORDENFELT GUNS AND AMMUNITION Co. (No. 1)*

**H. L. (E.) [1894] A. C. 535**

(C) *HAYNES v. DOMAN*

**C. A. [1899] 2 Ch. 13, 31**

(D) *In re HOLLIS' HOSPITAL AND HAGUE'S CONTRACT, In re - -* **[1899] 2 Ch. 540, 553**

2. — *Agreement not to "carry on or be in anywise interested in" business—Business carried on by vendor's wife trading separately.*

To constitute a breach of an agreement not "to carry on or be in anywise interested in" a business, the vendor must have an interest in such business, not necessarily in the profits, but such as touches him directly, and gives him some right to interfere in, or some means of gaining an advantage from, the business.

Decision of Kekewich J., [1894] 1 Ch. 209, affirmed. *SMITH v. HANCOCK*

**C. A. (Kay L.J. dissent.) [1894] 2 Ch. 377**

3. — *General or partial restraint—Public policy.*

The nature and difference of covenants in general and partial restraint of trade and the rules of public policy with respect thereto considered. *NORDENFELT v. MAXIM NORDENFELT GUNS AND AMMUNITION Co. (No. 1)*

**H. L. (E.) [1894] A. C. 535**

4. — *General or partial restraint—Time or space, Limitation as to—Public policy.*

Where the covenant is general, i.e. without qualification, it is bad, as being unreasonable and contrary to public policy. Where the covenant is partial—that is, qualified either as to time or space—then the question arises whether it is reasonable or not. Whether the covenant is unreasonable depends on whether the restraint is or is not greater than can possibly be required for the protection of the covenantee. Where the covenant is limited as to time, the burden lies on the covenantor of shewing that the restraint is unreasonable. *BADISCHE ANILIN UND SODA FABRIK v. SCHOTT, SEGNER & Co.*

**Chitty J. [1892] 3 Ch. 447**

5. — *General restraint—Covenant not to exercise any business without consent of employer.*

An employer cannot make his consent a condition precedent to liberty to enter upon other employment of any sort. Therefore, a covenant not to exercise any business without the consent of the employer, even if coupled with a proviso that it is not to be withheld except on engaging in a rival business, though reasonable in respect of distance and time, is void. *PERLS v. SAALFELD*

**C. A. [1892] 2 Ch. 149**

Referred to by C. A. *Haynes v. Doman*, [1899] 2 Ch. 13, 25.

— *Illegal objects—Expulsion of member—Jurisdiction—Injunction.*

*See TRADE UNION. 10.*

6. — *Measurement of distance—Agreement in restraint of business—Solicitors—Within ten miles—Points of measurement.*

By articles of clerkship of Aug., 1895, the deft. agreed not to practise as a solicitor at I. or "any place within ten miles thereof," for a period

**RESTRAINT OF TRADE—continued.**

of five years from the termination of the articles, without the consent in writing of the plts. The deft. had recently opened an office at N. where he practised as a solicitor. N. being, as the plts. alleged, within the prescribed radius of ten miles, the plts. now moved for an injunction to restrain the deft. from practising as a solicitor contrary to the terms of his agreement. The evidence as to the exact distance of N. from I. was conflicting, but the case was argued on the assumption that if the measurements were taken from the deft.'s office to the plts.' office or to the centre of the town of I., the deft. was outside the prescribed radius, if from the deft.'s office to the edge of the borough of I., within the radius:—

*Held*, that within ten miles from I. meant within ten miles from the borough boundary of I., and that the deft. was therefore within the prescribed radius, and the plts. were entitled to an interim injunction. *CATTLE v. THORPE*

**Byrne J. [1900] W. N. 83**

7. — *Partial restraint—Coffee-house, Covenant not to keep—Sale of refreshments by grocer—Ancillary business.*

A grocer covenanted in his lease not to use the demised premises as a coffee-house:—

*Held*, that by selling tea, coffee, and other light refreshments to his customers, he committed a breach of the covenant. *FITZ v. ILES*

**C. A. [1893] 1 Ch. 77**

Commented on by Kekewich J. *Ashby v. Wilson*, [1900] 1 Ch. 66.

8. — *Partial restraint—Foreign carrier and express agent—Covenant severable—Covenant not to carry on similar business.*

The deft., on entering the plt.'s service, who were foreign carriers and express agents at L., covenanted not to carry on any similar business within fifty miles of the plts.' places of business for twelve months after leaving their service:—

*Held*, (1) that the covenant was divisible; (2) that the covenant was reasonable so far as it related to the business actually carried on by the plts. during the employment of the deft., but unreasonable so far as it related to business carried on after the service ended.

The principles on which the Court decides whether a covenant in restraint of trade be reasonable, considered. In this case the Court granted an injunction to restrain the deft. from infringing so much of the covenant as the plts. might reasonably require for the protection of their business. *DAVIES v. LOWEN* **Kekewich J. [1891] W. N. 86**

9. — *Partial restraint—Guns and ammunition—Covenant not restricted in space—Transfer of business—Public policy.*

On the transfer of patents and business of the manufacture of guns and ammunition it was covenanted that the vendor should not for twenty-five years act directly or indirectly in the business of making guns and ammunition:—

*Held*, that the covenant, though restricted as to space, was valid, not being wider than was necessary for the purchasers, having regard to the nature of the business, nor injurious to public interests.

Decision of C. A., [1893] 1 Ch. 630, affirmed.

**RESTRAINT OF TRADE—continued.**

**NORDENFELT v. MAXIM NORDENFELT GUNS AND AMMUNITION CO.** - H. L. (E.) [1894] A. C. 535

Referred to by C. A. Dubowski & Sons v. Goldstein, [1896] 1 Q. B. 484.

Referred to by Byrne J. *In re Hollis' Hospital and Hague's Contract*, [1899] 2 Ch. 540, 553.

**10. — Partial restraint—Hotel—Restaurant—Covenant not to carry on "similar business."**

The plts. granted a lease to the A. Co., who covenanted not to carry on a business similar to that carried on by R., another tenant of the plts. R. was a hotel-keeper who carried on a restaurant on his licensed premises. The A. Co. had a restaurant where they sold tea, coffee, cold meat, &c., but no hot meat except meat pies, and this was not objected to. The A. Co. assigned their lease to G., who proceeded to sell hot meat and other things not sold by the A. Co. G. had no licence for sale of intoxicants, nor a victualler's licence; his establishment was of an inferior class to R.'s, and his prices much lower:—

*Held*, that the test of similarity was whether G.'s business was sufficiently like R.'s to compete with it, and that, although the business differed considerably, G.'s business was similar to R.'s, and that the plt. was entitled to an injunction with a proviso that it was not to prevent G. selling any articles sold by the A. Co. **DREW v. GUY** - - - C. A. [1894] 3 Ch. 25

**11. — Partial restraint—Infant—Milk carrier—Covenant limited in space and time.**

An agreement not to sell milk within a certain area and period entered into by an infant is valid and enforceable by injunction. **EVANS v. WARE**

North J. [1892] 3 Ch. 502

**12. — Partial restraint—Malt liquors or aerated waters—Covenant not to be concerned in selling, within a certain district—Covenant severable.**

The deft., a traveller, employed by the plt., a brewer, agreed not to be concerned in selling malt liquors or aerated waters within a certain district for two years after the determination of his employment. The plt. never dealt in aerated waters, or required the deft. to obtain orders for them:—

*Held*, (1) that the stipulation as to aerated waters was severable; (2) that the deft. must be restrained from selling malt liquors wholesale or retail, but not from selling aerated waters. **ROGERS v. MADDOCKS** - C. A. [1892] 3 Ch. 346

Referred to by C. A. *Underwood & Son, Ltd. v. Barker*, [1899] 1 Ch. 300, 305.

**13. — Partial restraint—Sale of business under power of attorney—Covenant not to trade on sale of business.**

*Seem*, an agreement not to trade is authorized by a power of attorney to sell a business, for a going concern cannot be sold to advantage without such a stipulation. **HAWKLEY v. OUTRAM**

C. A. [1892] 3 Ch. 359

Distinguished by Kekewich J. *Lloyd v. Nowell*, [1895] 2 Ch. 744.

**14. — Partial restraint—Slaughter-house—**

**RESTRAINT OF TRADE—continued.**

**Covenant not to carry on offensive business—Quia timet action.**

The deft. was under covenant not to carry on certain specified businesses (which did not include a slaughter-house) "or any other noxious, noisome, or offensive trade or business." On an application to restrain him from using the premises as a slaughter-house:—

*Held*, (1) that the trade in question was not per se an offensive one; (2) the action was purely a quia timet one, and it could not be inferred that deft.'s business would necessarily be so carried on as to be offensive. **RAPLEY v. SMART**

Chitty J. [1894] W. N. 2

**15. — Partial restraint—Soliciting customers—Agreement not to deal with old customers—Reasonableness—Intention of parties.**

An agreement for the employment of a traveller provided that in the event of its termination he was not to "call upon or directly or indirectly solicit orders from, or in any way deal or transact business" with anyone who was a customer of the plt. while the agreement was in force:—

*Held*, that the agreement intended a restriction on transacting business with such customers of a kind similar to that carried on by the plt.; that this was not a greater restraint than was necessary for the protection of the employers, and therefore that the agreement was valid. **MILLS v. DUNHAM** - Chitty J. [1891] 1 Ch. 576

Referred to by C. A. *Haynes v. Doman* [1899] 2 Ch. 13, 31.

**16. — Partial restraint—Soliciting customers—Covenant not to solicit customers—Assignment.**

The plt. covenanted with the deft., an assistant, that the assistant should not solicit the deft.'s customers. The plt. subsequently sold his business and handed the deed to the purchaser, but did not specifically assign the benefit of the covenant:—

*Held*, that the benefit of the covenant was assigned with the business. **BATHO v. TUNKS**

North J. [1892] W. N. 191

— **Public policy.**

*See Nos. 4, 9, 17.*

— **Reasonableness.**

*See also Nos. 15, 17, 18.*

— **Reasonableness—Contract—Evidence of reasonableness inadmissible.**

*See MASTER AND SERVANT.* 56.

**17. — Reasonableness—Public policy—Hay and straw merchants—Covenant—Validity—Reasonable protection of covenant.**

Plts., hay and straw merchants, at Brentford, who carried on an extensive wholesale and retail trade, in the United Kingdom, France, Belgium, and Canada, and had permanent places of business in the United Kingdom and France, in October, 1897, agreed to employ the deft. as their clerk and foreman, in Calais or elsewhere, at a weekly wage of 35s. Deft. entered into a covenant that he would not, for the space of twelve months next after his leaving or being dismissed, carry on the business of a hay and straw merchant, or enter into the service of, or act as agent for, any person or persons carrying



**RESTRAINT OF TRADE—continued.**

on the business of a hay and straw merchant, in the United Kingdom, or in France, or in the kingdom of Belgium, or Holland, or in the Dominion of Canada. The defendant continued in the plts.' employment until Nov., 1898, when he voluntarily left them, and entered into the employment of a rival hay and straw merchant in London:—

*Held* by C. A. (V. Williams L.J. dissenting), that the restraint imposed on the deft. was not unreasonable, at any rate so far as the United Kingdom was concerned; that the covenant was not void on any ground of public policy; and that the deft. must be restrained from violating his covenant:

*Held*, by V. Williams L.J., that the covenant was unreasonable and invalid, and ought not to be enforced by injunction.

Decision of Kekewich J. affirmed.

Per Lindley M.R. and Rigby L.J.: A covenant in restraint of trade, which is not wider than is reasonably required for the protection of the covenantee, will not be held void on any ground of public policy, unless some specific ground for so holding it void can be clearly established. But such cases are exceptional.

Per V. Williams L.J.: The old rule of law that all covenants in restraint of trade are *prima facie* contrary to public policy, and therefore void, has not been rescinded by recent decisions. *UNDERWOOD & SON, LD. v. BARKER*

C. A. [1899] W. N. 11 (7); [1899] 1 Ch. 300

Referred to by C. A. *Haynes v. Doman*, [1899] 2 Ch. 13, 24.

18. — *Severable—Agreement whether—Validity—Reasonableness.*

By an agreement for the employment of the deft. by the plts. in their business of dairymen, the deft. agreed that he would not, during the continuance of his service, or at any time thereafter, serve or solicit, or in any way interfere with, any of the customers who should at any time be served by or then belonging to the plts. in the said business:—

*Held*, that the deft.'s agreement must be construed as referring only to the business of dairymen as then carried on by the plts. in a particular locality, and not to any other such business started by them elsewhere; and, by Lord Esher M.R. and Lopes L.J., that the agreement was severable and was good with regard to customers of the plts. who were such while the deft. was in their service:

By Rigby L.J., and *semble*, by Lord Esher M.R., the agreement was good, both with regard to the above-mentioned customers and with regard to customers who became such after the termination of the deft.'s service with the plts. *DUBOWSKI & SONS v. GOLDSTEIN*

C. A. [1896] 1 Q. B. 478

Referred to by C. A. *Underwood & Son, Ltd. v. Barker*, [1899] 1 Ch. 300, 305.

19. — *Severable covenant—Contract of hiring and service—Injunction.*

By an agreement in writing H. agreed to serve the William Robinson Co. as confidential clerk for five years from Jan. 1, 1895, the co.

**RESTRAINT OF TRADE—continued.**

having the option to renew the engagement for five years more. The co. could dismiss H. at any time by three months' notice. H. agreed that during the term he would devote his whole time and attention to the business of the co., and that he would not during the engagement, without the consent of the co., engage as principal or servant in any business relating to goods of any description made or sold by the co., or in any other business whatever, upon pain of instant dismissal. H. covenanted that if he should be so dismissed he would not at any time within three years from his dismissal be engaged directly or indirectly as principal, agent, or servant in the business of dealer in wares of the description made by the co., within 150 miles of W. In 1898 H. left the service of the co. without leave and became traveller to another firm carrying on the same business. The co. applied for an injunction to restrain H. during the term of service from carrying on as principal, agent, servant, or otherwise, any business relating to goods of the description made by the co., and from soliciting orders for other firms.

North J. refused an injunction on the authority of *Ehrman v. Bartholomew*, [1898] 1 Ch. 671:—

*Held*, on appeal, that, during the continuance of the engagement, the agreement made by H. with the co. that he would not engage in any business relating to goods sold by the co. was valid though not restricted in point of space, and that it was severable from the agreement not to engage in any other business, and ought to be enforced by injunction. An injunction was therefore granted as asked, but limited to the first term of five years, the co. waiving their option to retain H. in their service for another five years, and the Court doubting whether the agreement ought to be enforced for that further term. *WILLIAM ROBINSON & CO. v. HEUER*

C. A. [1898] 2 Ch. 451

**RESTRAINT ON ALIENATION.**

*See WILL—Forfeiture.* 92, 95.

**RESTRAINT ON ANTICIPATION** — Married woman—Separate property.

*See HUSBAND AND WIFE—Restraint on Anticipation.*

**RESTRICTIVE COVENANT.**

*See Cases under COVENANT.*

“**RESULT**”—Costs to abide “result” of new trial—Discretion of Court.

*See COSTS.* 211.

**RESULTING TRUST.**

*See TRUST.* 4, 5.

**RETAINER**—Executor's right of.

*See EXECUTOR—Retainer.*

— Right of—Administration to creditor.

*See PROBATE.* 8.

— Right of, to be abolished—Form of administration bond—Practice.

*See PROBATE.* 8.

— Solicitor's right of.

*See SOLICITOR—Retainer.*

— Statute-barred debt.

*See EXECUTOR—Retainer.* 60.

**RETAINER**—*continued.*

— Trust property to satisfy annuity—Husband and wife—Separation deed.  
*See* TRUSTEE—**Retainer.** 99.

— Unauthorized investment—Conversion—Rate of interest.  
*See* SETTLED LAND. 57.

**RETAINERS OF COUNSEL.**

*See* BARRISTER.

**RETIREMENT**—Member—Acceptance.

*See* VOLUNTARY ASSOCIATION.

— Trustees.

*See* Cases under TRUSTEE.

**RETRACTION**—Renunciation—Executor.

*See* PROBATE. 141.

— Renunciation—Joint grant to three persons.

*See* PROBATE. 144.

**RETROSPECTIVE ACTS.**

*See* STATUTES—**Retrospectivity.**

**RETURNING OFFICER**—Conservancy election.

*See* THAMES. 3.

— Parliament.

*See* PARLIAMENT—**Returning Officer.** 144.

**REVENUE.**

*Finance Act, 1900 (63 & 64 Vict. c. 7), amends the law.*

*And see also the references to Statutes, &c., under the various Sub-headings of REVENUE.*

*In General, col. 1727.*

*Account Duty, col. 1728.*

*Armorial Bearings, col. 1731.*

*Collection of Taxes, col. 1731.*

*Dog Licence, col. 1731.*

*Estate Duty, col. 1731.*

*Forfeited Recognizances, col. 1751.*

*Game Licence, col. 1751.*

*Government Annuities, col. 1751.*

*Gun Licence, col. 1751.*

*House Duty, col. 1751.*

*Income Tax, col. 1758.*

*Inhabited House Duty. See REVENUE—House Duty.*

*Inventory Duty, col. 1778.*

*Land Revenue. See LAND REVENUE.*

*Land Tax, col. 1779.*

*Legacy Duty, col. 1780.*

*Licence Duty, col. 1782.*

*Plate, col. 1783.*

*Practice, col. 1783.*

*Probate Duty, col. 1784.*

*Property and Income Tax. See REVENUE—Income Tax.*

*Stamps, col. 1787.*

*Succession Duty, col. 1806.*

**In General.**

— Grain duty.

*See* LONDON—**Grain Duty.**

— Imported steel rails—Street railways.

*See* CANADA. 20.

**REVENUE (In General)**—*continued.*

*Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 8, fixed additional duty on certain locomotives.*

— Railways—Duty—Exemption—Third-class passengers—Extra charge for reserved carriage.

*See* RAILWAY—**Passengers.** 21.

— Rates

*See* Cases under RATES.

**TAKES MANAGEMENT.] Power to barristers and solicitors to plead before the General Commissioners. See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 16.**

**TOBACCO.] Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35), restricts the amount of oil in manufactured tobacco.**

**TOBACCO.] Sale of, in omnibuses or tramway cars. See Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6.**

**Account Duty.**

— Estate duty.

*See* REVENUE—**Estate Duty.**

1. — *Incidence—Gift within twelve months before death of donor—Residuary estate and donee—Account stamp duty—Succession duty—Customs and Inland Revenue Acts, 1881 (44 & 45 Vict. c. 12), ss. 38, 39; 1889 (52 & 53 Vict. c. 7), s. 11, sub-s. 1.*

*Under the Customs and Inland Revenue Acts, 1881 and 1889, account stamp duty in respect of property given by a deceased person, within twelve months before his death, to another, is payable by the donee personally and not out of the estate of the deceased. In re FOSTER. THOMAS v. FOSTER Kekewich J. [1897] 1 Ch. 484*

2. — *Incidence of duty—Payment of account duty—Specific appointees—Residuary appointee—Customs and Inland Revenue Acts, 1881 (44 & 45 Vict. c. 12), s. 38, sub-s. 2 (c); 1889 (52 & 53 Vict. c. 7), s. 11.*

*By a will, certain specific sums were appointed to some of testator's children, and the residue of the trust fund to another child. The will contained no direction that the specifically appointed sums should be paid free of duty:—*

*Held, that the matter was one of intention, and as the appointor had shewn no intention of burdening the residuary fund with the whole charge, each share must bear its proportion of the account stamp duty. In re CROFT. DEANE v. CROFT Kekewich J. [1892] 1 Ch. 652*

*Distinguished by Stirling J. In re Bourne, [1893] 1 Ch. 188.*

*Distinguished by Kekewich J. In re Foster, [1897] 1 Ch. 484, 487.*

— Inventory duty.

*See* Cases under REVENUE—**Inventory Duty.**

— Marriage settlement—Children of former marriage—Volunteers.

*See* No. 9, below.

3. — *Mortgage debt—Gift of personally—Benefit to "the donor" by contract or otherwise—Account stamp duty—Customs and Inland Revenue*

**REVENUE (Account Duty)—continued.**

*Acts*, 1881 (44 & 45 *Vict. c. 12*), s. 38, sub-s. 2 (a); 1889 (52 & 53 *Vict. c. 7*), s. 11, sub-s. 1.

A mortgagee, B. his son, and C. the mortgagors, made the following arrangement. B. paid C. a sum down and covenanted to pay A. an annuity, and A. and C. conveyed the mortgaged hereditaments to B. freed from the mortgage:—

*Held*, that under s. 38 (2) (a) of the Act of 1881, as extended by s. 11 (1) of the Act of 1889, account stamp duty was, on the death of A., payable by B. on the amount of the mortgage debt. *ATT.-GEN. v. WORRALL*

C. A. [1895] 1 Q. B. 99

— Policy of insurance.

See **REVENUE—Succession Duty**. 185.

4. — *Power of appointment—Successive appointments—Account stamp duty—Administration—Costs—Customs and Inland Revenue Act*, 1881 (44 & 45 *Vict. c. 12*), s. 38, sub-s. 2 (c).

Where a person having a life interest and power of appointment exercised it successively by deeds and will:—

*Held*, that the account stamp duty under the Customs and Inland Revenue Act, 1881, was payable out of the several sums appointed rateably. *In re SHAW. TUCKET v. SHAW*

North J. [1895] 1 Ch. 343

— Probate duty.

See **REVENUE—Probate Duty**.

— Succession duty.

See **REVENUE—Succession Duty**.

5. — *Voluntary settlement—Conversion of realty into personalty—Customs and Inland Revenue Act*, 1881 (44 & 45 *Vict. c. 12*), s. 38, sub-s. 2 (c).

In 1885, by a voluntary settlement, A. gave real estate to trustees upon trust, at the request of A. or his wife or the survivor of them, or after the death of the survivor, at their own discretion, to sell the same, and hold the proceeds on certain trusts. A. died in 1887:—

*Held*, that the realty must be treated as converted into personalty by the settlement of 1885, and must therefore be included in an account and charged with duty under s. 38 of the Customs and Inland Revenue Act, 1881. *ATT.-GEN. v. DODD* Div. Ct. [1894] 2 Q. B. 150

6. — *Voluntary settlement—Instrument not taking effect as a will—Customs and Inland Revenue Acts*, 1881 (44 & 45 *Vict. c. 12*), s. 38; 1889 (52 & 53 *Vict. c. 7*), s. 11.

By a marriage settlement H. transferred personal property to trustees upon trusts, the ultimate trust being for such persons as she might appoint. The earlier trusts having failed, she by deed appointed the property to her niece:—

*Held*, that the property so appointed was property “passing under” the marriage settlement, that the settlement and deed of appointment constituted a voluntary settlement whereby a life interest was reserved to the vendor within s. 38 of the Customs and Inland Revenue Act, 1881, as amended by s. 11 of the Act of 1889, and that duty was therefore payable. *ATT.-GEN. v. CHAPMAN* — — — Div. Ct. [1891] 2 Q. B. 526

Referred to by Div. Ct. *Att.-Gen. v. Dod-*

**REVENUE (Account Duty)—continued.**

*ington*, [1897] 1 Q. B. 722, 732. This Case was affirmed by C. A., [1897] 2 Q. B. 373.

7. — *Voluntary settlement—Partnership deed—Customs and Inland Revenue Acts*, 1881 (44 & 45 *Vict. c. 12*), ss. 38, 39; 1889 (52 & 53 *Vict. c. 7*), s. 11.

By a deed between G. and his partners, G. was empowered to dispose of his share in the business to any one of a limited class, such person to be certified by the senior partners as qualified. G. left his shares to his son who was duly certified:—

*Held*, that the deed was a voluntary settlement whereby a life interest was reserved in G., within s. 38 of the Customs and Inland Revenue Act, 1881, and s. 11 of the Act of 1889, and that duty was payable. *ATT.-GEN. v. GOSLING*

Div. Ct. [1892] 1 Q. B. 545

Referred to by Div. Ct. *Att.-Gen. v. ELLIS*, [1895] 2 Q. B. 466, 470.

— Voluntary settlement—Reservation of interest in property settled—Stamp duty on accounts.

See **REVENUE—Inventory Duty**. 117.

8. — *“Voluntary transfer”—Joint purchasers of stock—Survivorship—Probate duty—Customs and Inland Revenue Acts*, 1881 (44 & 45 *Vict. c. 12*), s. 38, sub-s. 2 (b); 1889 (52 & 53 *Vict. c. 7*), s. 11, sub-s. 1.

A. and B. bought stock, paying for it in equal shares, and agreed that the survivor should take the whole. B. died:—

*Held*, that the purchase of the stock was a voluntary transfer of the stock by each to himself and his co-purchaser, and that account stamp duty was payable under s. 38, sub-s. 1, of the Customs and Inland Revenue Act, 1881, on so much of the stock as was purchased with B.'s money. *ATT.-GEN. v. ELLIS*

Div. Ct. [1895] 2 Q. B. 466

9. — *Volunteers—Marriage settlement—Children of former marriage—Customs and Inland Revenue Acts*, 1881 (44 & 45 *Vict. c. 12*), s. 38; 1889 (52 & 53 *Vict. c. 7*), s. 11.

A widow, who was intending to sell a business to a co. for shares, married again, and by her marriage settlement it was agreed that of these shares a certain number should be allotted to her children by her former marriage, and the remainder to trustees to pay the income to her for life, and after her death to such of the children of her former marriage as she should appoint. The co. was duly registered and the shares allotted in accordance with the settlement. She died five months after the execution of the settlement:—

*Held*, that account duty was payable, since the children of the first marriage were without the consideration of the marriage, that the allotment to the children was a “voluntary disposition,” and since as to the other shares the children took under a trust “in favour of a volunteer.”

Decision of Div. Ct., [1895] 1 Q. B. 472, reversed.

*Newstead v. Searles*, 1 Atk. 265, explained by *Macfie v. Herbertson*, (1884) 9 App. Cas. 303,

**REVENUE (Account Duty)—continued.**

and *De Mestre v. West*, [1891] A. C. 264; *Gale v. Gale*, (1877) 6 Ch. D. 144, not followed.  
*ATT.-GEN. v. JACOBS-SMITH*

C. A. [1895] 2 Q. B. 341

**Armorial Bearings.**

10. — *Licence to carry armorial bearings—Inland Revenue Act, 1869* (32 & 33 Vict. c. 14), s. 19. sub-s. 13.

*Held*, that a device upon a ring consisting of a shield charged with a crowned lion rampant was an armorial bearing in the sense of sub-s. 13 of s. 19 of the Inland Revenue Act, 1869. *MILLIGAN v. COWAN*, (1896) 23 R. 731, 732

Ct. of Sess. (Sc.) [1897] W. N. 137

**Collection of Taxes.**

— *Estate duty—Collection and recovery of.*

*See Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 6 et seq.

11. — *Income tax and inhabited house duty—Distress—Powers of collectors—Expiration of collector's year—Taxes Management Act, 1880* (43 & 44 Vict. c. 19).

The collectors appointed in each year under the Taxes Management Act, 1880, to collect the duties payable for the year have authority to distrain for those duties if unpaid, although the year has expired; at any rate until they have accounted for the duties given them in charge to collect under Part VII. of the Act. *ELLIOTT v. YATES* - - C. A. [1900] 2 Q. B. 370

**Dog Licence.**

12. — *Certificate of exemption—Duty of justices—Offence not of trifling nature—Customs and Inland Revenue Act, 1878* (41 & 42 Vict. c. 15), s. 22—*Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 16.

The respondent, the owner of a dog, having applied to the Commrs. of Inland Revenue for a certificate of exemption and been refused, declined to take out a licence, and was summoned before justices. The justices held that the commrs. ought to have granted a certificate of exemption, and that if the respondent had committed an offence it was in their opinion of so trifling a nature that they would exercise the powers given to them by s. 16 of the Summary Jurisdiction Act, 1879, and dismiss the information:—

*Held*, that the justices had no jurisdiction to review the decision of the commrs. as to granting or withholding a certificate of exemption, and that the offence of refusing to take out a dog licence was not an offence of a trifling nature to which s. 16 of the Summary Jurisdiction Act, 1879, would apply. *PHILLIPS v. EVANS*

Div. Ct. [1896] 1 Q. B. 305

**Estate Duty.**

*Finance Act, 1894* (57 & 58 Vict. c. 30), imposes a new estate duty.

The following is a list of the Orders in Council which have been issued, extending s. 20 of the Finance Act, 1894, to certain British possessions,

**REVENUE (Estate Duty)—continued.**

with the date of the Order and a reference to the publication in which the Order is to be found.

*Australia (South)*, May 11. St. R. & O. 1895, No. 243, p. 125.

*Australia (Western)*. St. R. & O. 1895, No. 368, p. 126; 1896, No. 672, p. 89.

*Bahamas*, May 11. St. R. & O. 1895, No. 244, p. 125.

*Barbados*, June 29. St. R. & O. 1896, No. 574, p. 89.

*Bermudas*, May 11. St. R. & O. 1895, No. 242, p. 124.

*British Columbia*. St. R. & O. 1896, No. 958, p. 90.

*British Guiana*, Feb. 22. St. R. & O. 1896, No. 55, p. 88.

*British India*, Feb. 2. St. R. & O. 1895, No. 60, p. 123.

*Cape of Good Hope*, Aug. 13. St. R. & O. 1895, No. 369, p. 127.

*Ceylon*, May 11. St. R. & O. 1895, No. 244, p. 125.

*Falkland Islands*, Oct. 3. St. R. & O. 1895, No. 372, p. 128.

*Fiji*, Aug. 24. St. R. & O. 1895, No. 371, p. 128.

*Gambia*, May 11. St. R. & O. 1895, No. 242, p. 124.

*Gibraltar*, July 16. St. R. & O. 1895, No. 368, p. 126.

*Gold Coast*, July 16. St. R. & O. 1895, No. 368, p. 126.

*Hong Kong*, May 11. St. R. & O. 1895, No. 244, p. 125.

*Jamaica*, Aug. 3. St. R. & O. 1897, No. 616, p. 78.

*Labuan*, May 18. St. R. & O. 1897, No. 557, p. 78.

*Lagos*, July 16. St. R. & O. 1895, No. 368, p. 126.

*Leeward Islands*, July 16. St. R. & O. 1895, No. 368, p. 126.

*Manitoba*. St. R. & O. 1896, No. 958, p. 90.

*Natal*, July 16. St. R. & O. 1895, No. 368, p. 126.

*New Brunswick*, Feb. 26. St. R. & O. 1897, No. 177, p. 77.

*New Zealand*, Feb. 2. St. R. & O. 1895, No. 59, p. 122.

*Newfoundland*, March 8. St. R. & O. 1895, No. 137, p. 124.

*Nova Scotia*, Oct. 20. St. R. & O. 1898, No. 1064, p. 263.

*Ontario*. St. R. & O. 1896, No. 959, p. 91.

*Quebec*, Jan. 15, 1897. St. R. & O. 1897, No. 84, p. 76.

*Sierra Leone*, Feb. 8. St. R. & O. 1896, No. 30, p. 87.

*Straits Settlements*, May 11. St. R. & O. 1895, No. 244, p. 125.

*Tasmania*, Oct. 13. St. R. & O. 1897, No. 772, p. 79.

**REVENUE (Estate Duty)—continued.**

*Trinidad and Tobago, Aug. 13. St. R. & O. 1895, No. 370, p. 127.*

*Victoria, Feb. 8. St. R. & O. 1896, No. 29, p. 87.*

**FINANCE ACT, 1894.] Revenue—Rules dated Nov. 26, 1895 (R. S. C., Finance Act, 1894). W. N. 1896 (Jan. 18), p. 35.**

*Regulations dated April 1, 1896, amending the principal Regulations of 1893 in relation to their application to Scotland, the Isle of Man, and the Channel Islands, in order to bring them into conformity with the Finance Act, 1894. Lond. Gaz. April 24, 1896, p. 2459.*

*Finance Act, 1896 (59 & 60 Vict. c. 28), ss. 14–24, amends the law respecting estate duty payable on deaths.*

*Persons not sui juris not to be deemed competent to dispose for the purpose of breaking settlements.*

*Settlement estate duty repayment. See Finance Act, 1898 (61 & 62 Vict. c. 10), ss. 13, 14.*

*Finance Act, 1900 (63 & 64 Vict. c. 7), amends the law.*

**ESTATE DUTY.] Affidavits for death duty, corrective statements need not be on oath. See Finance Act, 1900 (63 & 64 Vict. c. 7), s. 13.**

— Account stamp duty.

*See Cases under REVENUE — Account Duty.*

— Aggregation of property — Amendment of Finance Act, 1894 (57 & 58 Vict. c. 30), s. 4, as to.

*See Finance Act, 1900 (63 Vict. c. 7), s. 12.*

— Annuities, Estate duty on.

*See Finance Act, 1896 (59 & 60 Vict. c. 28), s. 16.*

13. — *Annuity—Change of security—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (b); s. 3, sub-s. 1.*

The deft. was the owner of freehold estates in the county of L., and he was also the tenant for life of freehold estates in the county of D. The L. estates were charged with the payment of an annual jointure rent-charge. The person entitled to this rent-charge, by agreement with the deft. in 1883, released the L. estates, and the deft. in consideration granted to her an annuity charged on his life interest in the D. estates, and secured by policies of assurance on his life. On the death of the annuitant the Crown claimed estate duty from the deft. under s. 2 of the Finance Act, 1894:—

*Held*, that the Crown was entitled to the duty, since the transaction in 1883 was not the grant of an annuity for full consideration in money or money's worth paid to the grantor for his own use or benefit within the meaning of s. 3 of the Finance Act, 1894, but merely a transfer of the security for the jointure rent-charge from the L. estates to the D. estates. **ATT.-GEN. v. SMITH-MARRIOTT** Div. Ct. [1899] 2 Q. B. 595

14. — *Annuity, Bequest of—Direction to raise portions for grandchildren—Limitation to persons by way of succession—Settlement estate duty—*

**REVENUE (Estate Duty)—continued.**

*Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1; s. 22, sub-s. 1.*

A testatrix by her will bequeathed an annuity to A., and directed that a portion of her estate should be set apart to provide for the payment of the annuity, and subject thereto she bequeathed the said portion of her estate to B.:—

*Held*, that the property so set apart to provide for the payment of the annuity was property “standing limited to or in trust for persons by way of succession” within the meaning of s. 2, sub-s. 1, of the Settled Land Act, 1882, and that settlement estate duty was consequently payable in respect of it.

A testator bequeathed his residuary estate to trustees on trust to pay the income to his wife for life, and after her death to pay an annuity to each of his four daughters for life, and after the death of each of his daughters to raise certain named sums in trust for the children of such daughter who should attain the age of twenty-one years, or being females, should marry under that age:—

*Held*, that the direction to raise the portions amounted to a limitation in favour of the testator's grandchildren to take effect upon the death of his daughters, that there was therefore a succession in respect of such portions, and that settlement estate duty was payable upon them. **ATT.-GEN. v. OWEN. ATT.-GEN. v. COULSON** Div. Ct. [1899] 2 Q. B. 253

**APPEALS.] Proceeding in appeals under the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10. County Court Rules (Nov.) 1900. W. N. 1900 (Dec. 8), p. 325. See Current Index, 1900, p. lxxviii.**

— Apportionment of duty.

*See Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14.*

15. — *Apportionment—Debt due on covenant in settlement—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 6, 7, 8, 9, 14.*

A father upon the marriage of his son covenanted with the trustees of the son's settlement that his executors or administrators should, within six months after his death, pay to the trustees the sum of 25,000*l.*, to be held by them upon the trusts of the settlement. The father by his will devised and bequeathed to his trustees (who were also his executors) the residue of his real and personal estate, in trust for sale and conversion, and out of the proceeds to pay his funeral and testamentary expenses, debts and legacies, and to hold the residue upon certain trusts. After the father's death his executors paid the estate duty upon the value of his estate after deducting his funeral and testamentary expenses and his debts, other than the debt of 25,000*l.*:—

*Held*, that the estate duty in respect of the 25,000*l.* must, as between the executors and the trustees of the settlement, be borne by the former. *In re GRAY. GRAY v. GRAY*

North J. [1896] 1 Ch. 620

16. — *Apportionment—Settled estate duty—Incidence—Apportionment between settled property*

**REVENUE (Estate Duty)—continued.**

*and residue—Finance Act, 1891 (57 & 58 Vict. c. 30), ss. 1, 5, 6, 8, 9, 14, 22.*

When pecuniary legacies or shares of the residue of a testator's personal estate are settled by his will, no part of either the estate duty or the settlement estate duty imposed by the Finance Act, 1894, is to be borne by the settled legacies or shares, but the whole of those duties must be borne by the general residue. *In re WEBBER. GRIBBLE v. WEBBER*

North J. [1896] 1 Ch. 914

See now Finance Act, 1896 (59 & 60 Vict. c. 28), s. 19.

See also *In re Gibbs*. Stirling J. [1898] 1 Ch. 625.

Disapproved of by C. A. *In re Maryon-Wilson*, [1900] 1 Ch. 565.

17. — *Apportionment—Settlement—Power of appointment—Residue—Administration—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14, sub-s. 1.*

A donee of a power over settled property appointed 35,000*l.* to one and the residue otherwise:—

*Held*, that the 35,000*l.* was charged on the property within the meaning of s. 14, sub-s. 1, of the Finance Act, 1894, and that estate duty was to be borne *pari passu* by the specific and residuary appointees. *In re COUNTESS OF ORFORD. CARTWRIGHT v. DUC DEL BALZO*

North J. [1896] 1 Ch. 257

Followed by Stirling J. as to costs. *In re Hill's Settlement Trusts*, [1896] W. N. 177 (1).

18. — *Apportionment between settled property and residue—Settlement estate duty—Real estate—"Pass to the executor"—Finance Acts, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1; s. 9, sub-s. 1; 1896 (59 & 60 Vict. c. 28), s. 19, sub-s. 1.*

The testatrix gave real and personal property to trustees upon trust to pay the income therefrom to her sister during her life, and subject thereto upon such trusts and for such persons as she (the sister) should by will appoint; and she gave the residue of her real and personal estate to trustees upon trust, subject to payment of an annuity, for her sister.

All the death duties had been paid out of the general residue, and the question was now raised by originating summons whether the property included in the first gift ought not to contribute a rateable proportion of these duties:—

*Held*, that the language of s. 9, sub-s. 1, of the Finance Act, 1894, must be construed with reference to the law as it stood at that time, and not in accordance with the provisions of the Land Transfer Act, 1897. Therefore, the real estate did not "pass to the executor," and it was charged with a rateable part of the estate duty. The personal property did pass to the executor, and the estate duty on it must, in accordance with the decision in *In re Webber, Gribble v. Webber*, [1896] 1 Ch. 914, be paid out of the general residue. That case was still an authority in respect of estate duty, although the law as to settlement estate duty had been altered by the Finance Act, 1896, s. 19, sub-s. 1, which provided that settlement estate duty must be paid out of the settled property. In this case the property

**REVENUE (Estate Duty)—continued.**

included in the first gift was settled property within s. 5, sub-s. 1, of the Act of 1894. No doubt the sister was not a "person not competent to dispose of the property"; but those words did not apply to property "settled by the will of the deceased." This was property settled by the will of the deceased, and it must bear the settlement estate duty. *In re PALMER. PALMER v. ROSE INNES* — — Buckley J. [1900] W. N. 9

But see *In re Maryon-Wilson*, [1900] 1 Ch. 565, No. 32, below, in which *In re Webber*, [1896] 1 Ch. 914, was disapproved of by C. A.

19. — *Appropriated funds—Residue—Debt on incumbrance—Settlement—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (a); s. 6, sub-s. 2; s. 7, sub-s. 1; s. 8, sub-ss. 3, 4; s. 9, sub-ss. 1, 4, 5; s. 14, sub-s. 1.*

By a post-nuptial settlement personal property was settled in the events that happened upon trust for the settlor for life, and after his death upon trust that the trustees should appropriate funds of a specified value to be held upon the trusts thereafter declared for the benefit of two of the settlor's daughters and their issue, and should stand possessed of the residue of the trust premises in trust for the settlor, his executors, administrators, and assigns:—

*Held*, that the appropriated funds were not voluntary incumbrances within s. 7, sub-s. 1, of the Finance Act, 1894, upon property passing to the executor as such of the deceased (in which case the estate duty on the entire funds would have had to be borne exclusively by the settlor's residuary legatee), but that the provisions contained in the settlement with regard to those funds amounted to substantive settlements thereof, and that the estate duty was payable rateably out of the appropriated funds and the residue according to their respective values. *In re MEYRICK. MEYRICK v. HARGREAVES*

Chitty J. [1897] 1 Ch. 99

— British possession — Exception as to property in.

See Finance Act, 1894 (57 & 58 Vict. c. 30), s. 20.

— Collection and recovery of duty and value of property.

See Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 6 et seq.

20. — *Contingent legacy—Contingent annuity—Incidence—Settlement estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 5, 7, 9, 14, 22—Finance Acts, 1896 (59 & 60 Vict. c. 28), s. 19; 1898 (61 & 62 Vict. c. 10), s. 14.*

The testator by his will gave certain legacies and annuities, some of which were contingent upon the legatees and annuitants attaining the age of twenty-one. He directed that every legacy and annuity should be primarily payable out of his personality, and charged his real estate in aid, but not in exoneration, of his personality with the same, if the personality should be insufficient. He devised his real estate to the use of his eldest son for life with remainders over. He declared that if his residuary personality should be insufficient for payment of his funeral and testamentary expenses, debts, legacies, and

**REVENUE (Estate Duty)—continued.**

annuities, the trustees might raise the deficiency by mortgage of the real estate, but so that the annuities should be paid out of rents and profits, and not by raising a capital sum to provide for the same; and he charged the residuary personalty with the payment of the legacies and annuities, and directed that the ultimate residue of the personalty should be invested and should follow the limitations of the real estate. After the testator's death the executors had paid settlement estate duty in respect of the contingent legacies and annuities. There was a probability that the personal estate would be insufficient to pay the funeral and testamentary expenses, legacies, and annuities. The question having arisen as to how the settlement estate duty ought to be borne as between the residuary estate and the legatees and annuitants:—

*Held*, (1) that the contingent legacies must be treated as settled, and, having regard to the decision in *In re Maryon-Wilson*, [1900] 1 Ch. 565, the duty must be borne by the legatees; and (2.) as regarded the annuities, that the decision in *Attorney-General v. Owen*, [1899] 2 Q. B. 253, applied to the personalty, and consequently the annuitants must bear their proper proportion of the settlement estate duty in accordance with the rule laid down in *In re Parker-Jervis*, [1898] 2 Ch. 643. *In re DUKE OF ST. ALBANS. LODGE v. DUKE OF ST. ALBANS*

**Stirling J. [1900] 2 Ch. 873**

**21. — Contingent settlement—Settlement estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1 (a)—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1.**

Property which is contingently settled is not the less liable to settlement estate duty under s. 5 of the Finance Act, 1894, because the contingency may never arise.

A testator left his residuary estate in trust for all his children who should attain the age of twenty-one years, or being daughters should marry under that age, in equal shares, and directed the trustees to retain the share of each daughter and pay the income thereof to such daughter for her life, and after her death to hold it in trust for her children. The testator died leaving two sons and one daughter surviving him, all being under the age of twenty-one years and unmarried:—

*Held*, that as there was a chance of the sons dying under the age of twenty-one, and of their shares becoming subject to the trusts of the daughter's settlement, settlement estate duty was payable on the whole of the testator's residuary estate. **ATT.-GEN. v. FAIRLEY**

**Div. Ct. [1897] 1 Q. B. 698**

Adopted by Finance Act, 1898. See *Att.-Gen. v. Clarkson*, C. A. [1900] 1 Q. B. 156.

**22. — Contingent settlement—"Settlement estate duty"—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1 (a); s. 22, sub-s. 1 (h), (i)—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1, 4—Finance Act, 1898 (61 & 62 Vict. c. 10), s. 14.**

Settled estate duty is, under s. 5, sub-s. 1 (a), of the Finance Act, 1894, payable in respect of property only contingently settled, though, under

**REVENUE (Estate Duty)—continued.**

s. 14 of the Finance Act, 1898, the duty will, if the contingency does not and cannot arise, be repaid.

Sect. 14 of the Finance Act, 1898, amounts to an adoption by the Legislature of the construction which was put upon s. 5, sub-s. 1 (a), of the Finance Act, 1894, in *Att.-Gen. v. Fairley*, [1897] 1 Q. B. 698. **ATT.-GEN. v. CLARKSON**

**C. A. [1900] 1 Q. B. 156**

**23. — "Disposition"—Exemption—Settlement of personal property—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 21, sub-s. 1.**

By the Finance Act, 1894, s. 21, sub-s. 1, "estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this Act, in respect of which property" probate duty (amongst other specified duties) "has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property." Under a marriage settlement personal property belonging to the wife became vested in trustees upon trust for the wife for life, and after her death, if her husband should survive her, upon trust for the husband for life, and, after the death of the survivor of them, upon trust for such person or persons as the wife should by deed or will appoint. The wife died in the lifetime of her husband, before the commencement of the Finance Act, 1894, having by her will appointed the property in favour of certain beneficiaries, and probate duty was thereupon paid by her executors in respect of the value of the property so appointed after deducting the value of the husband's life interest. The husband died after the commencement of the Act:—

*Held* (affirming the decision of Div. Ct., [1897] 1 Q. B. 722), that the settlement and will together constituted a "disposition" by which the property was settled within the meaning of s. 21, sub-s. 1, and, therefore, that estate duty was not payable on the husband's death in respect of the value upon which probate duty had been paid.

By Rigby L.J.: *Semble*, estate duty was not payable on the amount of the value of the husband's life interest, probate duty having been paid on the whole of the property. **ATT.-GEN. v. DODINGTON**

**C. A. [1897] 2 Q. B. 373**

— Double or single duty—Legatees identified by reference to will of another testator.

See **REVENUE—Probate Duty.**

— Enlargement of interest of settlor, Exception to passing of property on.

See Finance Act, 1896 (59 & 60 Vict. c. 28), s. 14.

**24. — Entail—Debt chargeable on fee of estate—Bond and disposition in security—Expenses—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 6—Entail Amendment Act, 1868 (31 & 32 Vict. c. 84), s. 11.**

Under the Finance Act, 1894, the Commrs. of Inland Revenue are required to give a certificate of the estate duty paid on property, and the certificate so granted is declared to be conclusive evidence that the amount of the estate duty named

**REVENUE (Estate Duty)—continued.**

therein is a first charge on the lands after any debts that may have been allowed by the commrs. in assessing the value of the property.

Sect. 9, sub-s. 6, enacts,—“A person having a limited interest in any property who pays the estate duty in respect of that property shall be entitled to the like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him.”

Sect. 11 of the Entail Amendment Act, 1868, gives power to an heir of entail in possession to grant, with the authority of the Court, bonds and dispositions in security for the amount of any debts “which might lawfully be made chargeable by adjudication or otherwise upon the fee of the estate.”

An heir of entail who had obtained certificates of payment of estate duty and of settlement estate duty presented a petition for authority under s. 11 of the Entail Amendment Act, 1868, to grant a bond and disposition in security over the entailed estate for the amount so paid :—

*Held*, that he was entitled to authority to charge the fee of the estate by way of bond and disposition in security for the duty paid, but not for expenses incurred in settling the amount, nor for the expenses of the petition. *J. C. LAURIE*, (1898) 25 *Rettie*, 636.

Ct. of Sess. (Sc.) [1898] *W. N.* 136

— Fee and life-rent—Succession duties.

See SCOTTISH LAW—Succession. 42.

25. — *Foreign mortgages—Property situate out of the United Kingdom—Legacy Duty Acts, Construction of—Implied repeal of earlier by later statute*—56 *Geo. 3*, c. 56, s. 115; 5 & 6 *Vict. c. 82*, s. 2—*Finance Act*, 1894 (57 & 58 *Vict. c. 30*), s. 2.

A testatrix domiciled in Ireland died possessed of mortgages on freehold property situate in the Colony of Victoria and in Switzerland.

The *Finance Act*, 1894, s. 1, imposes on the property, real or personal, which passes on the death of a person dying after the commencement of the Act, a duty called “Estate Duty.” Sect. 2 (2) enacts that “property passing on the death of the deceased, when situate out of the United Kingdom, shall be included only if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.”

The Commrs. of Inland Revenue having decided that estate duty was payable in respect of these mortgages, the executors presented a petition under the *Finance Act*, 1894, to have the question determined by the Court. It was contended on behalf of the executors that estate duty was not payable on two grounds: first, that the mortgages were immovable property, situate out of the United Kingdom, and therefore not liable to legacy duty before the passing of the *Finance Act*, 1894; and, secondly, that the mortgages were “estates and effects” out of Ireland, and therefore exempt from duty under 56 *Geo. 3*, c. 56, s. 115, which was still in force.

It was contended on behalf of the commrs., first, that the mortgages were personal or movable property, and therefore liable to legacy duty;

**REVENUE (Estate Duty)—continued.**

and, secondly, that 56 *Geo. 3*, c. 56, s. 115, was impliedly repealed by 5 & 6 *Vict. c. 82* :—

*Held*, that the contention of the commrs. on both points was correct, and that estate duty was payable. *LAWSON v. INLAND REVENUE COMMRS.*, [1896] 2 *Ir. 418 Ex. Div. (Ir.)* [1896] *W. N.* 145

26. — *Foreigner—Succession duty—Disposition by foreigner domiciled abroad—Property situate abroad—Disposition to English company on trusts enforceable by English law—Finance Act*, 1894 (57 & 58 *Vict. c. 30*), s. 2—*Succession Duty Act*, 1853 (16 & 17 *Vict. c. 51*), ss. 2, 7, 8, 16.

In 1892 a foreigner domiciled in Austria gave, by a deed in the English language and form to an English co., constituted under the Companies Acts, and having its registered office in London, certain stocks, shares, and securities to a large amount upon the terms and conditions that the co. would permit the donor to receive the income thereof during his life, and, after his death, would apply the same, and any investment substituted for them under the powers of the deed, for the benefit of Russian Jews generally, and principally for the promotion of the emigration of Russian Jews from Europe, and of their settlement in various countries outside Europe. The co. had been formed to carry out the same objects, and at the time of the execution of the deed the various securities comprised therein were transferred to the co. by the donor. The whole of the co.’s business was, under the articles of association, transacted by a council which sat at the principal office of the co. in Paris. The ordinary and extraordinary general meetings of the co. were held at their registered office in London, but formal business only was transacted there. In 1896 the donor, who was still domiciled in Austria, died. At that time the principal part of the securities subject to the deed were foreign securities situate abroad, and the documents of title thereto were abroad, a small proportion only of the property subject to the deed being in England.

*Held* (affirming the judgment of a Div. Ct. [1900] 2 *Q. B.* 556), that there was on the death of the donor a succession by the co. within the meaning of s. 2 of the *Succession Duty Act*, 1853, and that therefore succession duty under that Act, and, consequently, estate duty under the *Finance Act*, 1894, were payable upon the principal value of all the property which was subject to the trusts of the deed of 1892 at the donor’s death. *ATT.-GEN. v. JEWISH COLONIZATION ASSOCIATION* *C. A.* [1900] *W. N.* 269

— Fractions—Exclusion of, from value—Amendment of *Finance Act*, 1896 (59 & 60 *Vict. c. 28*), s. 27, as to.

See *Finance Act*, 1900 (63 *Vict. c. 7*), s. 13.

*Friendly Societies Act*, 1896 (59 & 60 *Vict. c. 25*), s. 59. *Estate duty to be paid when the whole estate exceeds 100l.*

27. — *Gift—Exclusion of benefit to donor—Settlement—Finance Act*, 1894 (57 & 58 *Vict. c. 30*), s. 2, sub-s. 1 (c).

By deed in 1885 real and personal estate was given by the owner to the appellant subject to an annual rent-charge issuing out of the realty,



**REVENUE (Estate Duty)—continued.**

the appellant covenanting to pay the rent-charge and all the funeral and testamentary expenses and all the donor's debts at his death to the full exhaustion of all his property. In the event of the appellant's death in the donor's lifetime or of any breach of covenant by the appellant the donor had power to revoke the deed wholly or in part: any revocation to be without prejudice to any purchase or mortgage made before the revocation. The donor released the rent-charge and power of revocation by deed in Sept. 1894 and died in Oct. 1894:—

*Held*, that benefits having been reserved to the donor, estate duty was payable upon all the property comprised in the deed of 1885 as property passing upon the death of the donor within the meaning of the Finance Act, 1894, ss. 1, 2, sub-s. 1 (c).

Decision of C. A., [1898] 2 Q. B. 534, affirmed.  
**EARL GREY v. ATT.-GEN.** — **H. L. (E.) [1900]**  
**W. N. 40; [1900] A. C. 124**

Referred to by C. A. *Att.-Gen. v. De Préville*, [1900] 1 Q. B. 223, 228.

*See No. 42, below.*

— Gift within twelve months of death—Ademption—Advancement—Account.  
*See WILL—Advancement.* 21.

**28. — Husband or wife, Property settled by—Exemption—Postponement—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 21, sub-s. 5.**

Property belonging to a wife was settled upon trust to pay the income to the husband for life, and after his death to the wife for life, and after the decease of the survivor of them upon the following trusts: if the wife should survive the husband, then after his decease upon trust for her absolutely; but if she should die in his lifetime, then after his decease upon such trusts as the wife should by will appoint, and in default of appointment for her statutory next of kin. The husband died after the Finance Act, 1894, came into operation, leaving his wife surviving:—

*Held* (reversing the decision of Div. Ct.), that s. 21, sub-s. 5, of the Act did not apply to a case where the survivor of the husband and wife became on the death of the other entitled, not to the income only, but to the corpus of the property settled, and that upon the death of the husband estate duty became payable by the wife upon the principal value of the property settled. **ATT.-GEN. v. STRANGE** — **C. A. [1898] 2 Q. B. 39**

**29. — Incidence—Express provision to the contrary—"All duties payable by law out of my estate"—Settlement estate duty—Finance Acts, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1 (a); 1896 (59 & 60 Vict. c. 28), s. 19, sub-s. 1.**

A testatrix who died in 1899, after giving a specific legacy on trust by way of settlement, directed that her debts, funeral and testamentary expenses, "including all duties payable by law" out of her estate, and including the duties on certain annuities given by her will, and on all legacies bequeathed by her duty free, should be paid out of funds which she designated. She then directed certain legacies to be paid out of these funds free of duty:—

*Held*, that the special direction in the will for

**REVENUE (Estate Duty)—continued.**

payment of duties payable by law out of the testatrix's estate referred to duties which by law were payable out of the general residuary estate of the testatrix, and not to duties which by law were made payable out of specific property, and that therefore the direction did not amount to such an express provision as was required by s. 19 of the Finance Act, 1896, in order to make the settlement estate duty payable otherwise than out of the settled legacy:—

*Held*, accordingly, that the settlement estate duty payable in respect of the settled legacy must be paid thereout. *In re LEWIS. LEWIS v. SMITH* — **Kekewich J. [1900] W. N. 32; [1900] 2 Ch. 176**

**30. — Incidence—Legacy—Settlement estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 5, 22; 1896 (59 & 60 Vict. c. 28), ss. 19, 24, 39.**

Sect. 19 of the Finance Act, 1896, is not retrospective; consequently the settlement estate duty leviable in respect of a legacy settled by the will of a person dying after the commencement of the Finance Act, 1894, but before the commencement of the Finance Act, 1896, is still payable out of residue in accordance with *In re Webber*, [1896] 1 Ch. 914. *In re GIBBS. THORNE v. GIBBS* — **Stirling J. [1898] 1 Ch. 625**

**NOTE.**—*In re Webber*, [1896] 1 Ch. 914, was disapproved of by C. A. *In re Maryon-Wilson*, [1900] 1 Ch. 565. *See No. 32, below.*

— Incidence—Settled estate duty—Direction to pay testamentary expenses.  
*See WILL—Testamentary Expenses.* 205, 206.

**31. — Incidence—Settlement not made by will but by antecedent instrument—Settlement estate duty—Finance Acts, 1894, 1896 (57 & 58 Vict. c. 30, s. 5; 59 & 60 Vict. c. 28, s. 19).**

By the marriage settlement of his daughter in 1895 a testator covenanted for the payment of 25,000*l.* to the trustees thereof within six calendar months after his decease "without any deduction." By his will he directed his trustees and executors to pay the 25,000*l.* to the trustees of the settlement:—

*Held*, that the obligation imposed upon the testator's estate by the covenant was fully performed when the sum of 25,000*l.* was paid to the trustees of the settlement without any deduction in respect of estate duty, and that the settlement estate duty was payable out of the 25,000*l.*, and not out of the testator's general residuary estate. *In re MARYON-WILSON. WILSON v. MARYON-WILSON* — **Kekewich J. [1899] W. N. 97; [1899] 2 Ch. 489**

Reversed on one point by C. A. [1900] 1 Ch. 565. *See next Case.*

**32. — Incidence—Settlement estate duty—Settlement by deed inter vivos—Covenant by testator for payment of a specified sum to trustees of settlement after his death "without any deduction"—Finance Acts, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 5, 6 sub-s. 2; s. 8, sub-ss. 3, 4; ss. 9, 14 sub-s. 1; 1896 (59 & 60 Vict. c. 28), s. 19.**

A father on the marriage of his daughter covenanted with the trustees of her marriage settlement that his executors should within six

**REVENUE (Estate Duty)—continued.**

months after his death pay to them the sum of 25,000*l.* "without any deduction," to be held by them upon the trusts of the settlement.

By his will the father devised lands to trustees for the term of 2000 years, upon trust to raise thereout and to pay to the trustees of the settlement the 25,000*l.*, with interest from his death.

On the death of the testator the Crown claimed, under s. 5 of the Finance Act, 1894, the payment of settlement estate duty in respect of the 25,000*l.*—

*Held*, that, independently of the words "without any deduction" in the covenant, the settlement estate duty must have been paid out of the 25,000*l.* and not out of the testator's residuary estate.

But, *held*, that, by reason of those words, the settlement estate duty must be paid out of the residuary estate, or that if the 25,000*l.* was raised by the trustees of the term they must raise also the settlement estate duty in respect of the 25,000*l.*

Decision of Kekewich J., [1899] W. N. 97; [1899] 2 Ch. 489, on the latter point reversed.

*In re Webber*, [1896] 1 Ch. 914, disapproved of. *In re MARYON-WILSON. WILSON v. MARYON-WILSON* — C. A. [1900] W. N. 57; [1900] 1 Ch. 565

33. — *Incidence—Specific and general legatees—Customs and Inland Revenue Acts, 1881, 1889 (44 & 45 Vict. c. 12, ss. 27, 41; 52 & 53 Vict. c. 7, s. 5).*

The Customs and Inland Revenue Act, 1889, has made no difference in the payment of estate duty as between specific and general legatees. The principle is the same as with the old probate duty, viz., that the duty (under s. 5) is not payable by specific legatees so long as there is any general residue out of which it can be paid.

*In re BOURNE. MARTIN v. MARTIN*

*Stirling J.* [1893] 1 Ch. 188

Referred to by North J. *In re Countess of Orford*, [1896] 1 Ch. 257, 263.

Referred to by Kekewich J. *In re Foster*, [1897] 1 Ch. 484, 487.

34. — *Incidence—Specific sum payable out of policy moneys—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14, sub-s. 1.*

Sect. 14, sub-s. 1, of the Finance Act, 1894, has no reference to the incidence of the estate duty, but is intended for the protection of the executor or other person who is called upon to pay the duty, by giving him a right to recoupment.

The holder of a policy of assurance on his own life for 5000*l.* by his marriage settlement assigned the policy to trustees upon trust to raise at his death 4000*l.* to be held on certain trusts, and as to the remaining part of the policy moneys in trust to pay the same to his executors:—

*Held*, that s. 14, sub-s. 1, of the Finance Act, 1894, was not applicable, and that the estate duty on the fund must be borne by the part remaining after payment of the 4000*l.* WADE v. WADE

Kekewich J. [1898] 2 Ch. 276

35. — *Insurance—Policy of life insurance—*

**REVENUE (Estate Duty)—continued.**

*Settled property—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 3.*

By s. 1 of the Finance Act, 1894, estate duty is granted upon all property which "passes on the death" of a person dying after the commencement of the Act. By s. 2, "property passing on the death" shall be deemed to include (sub-s. 1 (d)) any annuity or other interest purchased or provided by the deceased to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death. Sect. 3 exempts from estate duty property passing on the death of the deceased by reason only of a bona fide purchase from the person under whose disposition the property passes, where such purchase was made for full consideration in money or money's worth paid to the vendor for his own use or benefit.

A., shortly before his marriage, effected a policy of insurance on his own life for a sum payable on his own death to his intended wife, and assigned the policy to the trustees of a settlement made in consideration of the marriage. By that settlement the principal moneys to be received under the policy were to be held by the trustees in trust for the wife for life and upon other trusts, and A. covenanted to keep up the policy and pay the premiums thereon during his life. He duly performed his covenant, and died after the commencement of the Act, leaving his wife surviving:—

*Held*, that the sum payable under the policy on A.'s death was an "interest purchased or provided by the deceased" within the meaning of s. 2, sub-s. 1 (d); that the exemption from duty contained in s. 3 did not apply; and, therefore, that on A.'s death estate duty was payable in respect of that sum. ATT.-GEN. v. DOBREE

Div. Ct. [1900] 1 Q. B. 442

— Interest upon estate duty.

*See Finance Act, 1896 (59 & 60 Vict. c. 28), s. 18.*

36. — *Jointure—"Without any deduction whatsoever"—Settlement—Assessment of duty—Limited owner—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (b); s. 4; s. 7, sub-s. 7; s. 8, sub-s. 4; s. 9, sub-s. 1, 5, 6, 7; s. 14, sub-s. 1.*

Under a settlement made by a father and son on the marriage of the latter, an estate was limited to certain uses in strict settlement, including a limitation of a jointure of 1000*l.* a year to the wife, A., in case she survived both father and son, which event happened, such jointure to be paid to her "without any deduction whatsoever except in respect of income tax." The father, by a subsequent settlement made on his second marriage, appointed, under a power in the former settlement, a jointure of 500*l.* a year to his wife, B., if she survived him, which event happened, and charged the same upon the settled estate, but there were no words of exemption as in the case of the 1000*l.* jointure.

Upon the father's death both jointures became payable.

*Held*, as to A.'s jointure, that she was not herself liable to pay the estate duty upon it, or any interest on such duty, since the words "without any deduction, &c." constituted a contract of

**REVENUE (Estate Duty)—continued.**

exemption and also amounted to an "express provision to the contrary" within s. 14, sub-s. 1, of the Finance Act, 1894:

*Held*, as to B.'s jointure, that she must be treated as tenant for life of a sum equivalent to the capitalized value of the jointure, to be ascertained at the same number of years' purchase as the estate as a whole was capitalized for the purpose of duty; and that she must be charged with estate duty on that sum, but was entitled to throw the duty charged against her upon the corpus of the estate, on the terms of her paying interest to the tenant for life or in tail or in fee in possession at the rate actually paid to the Commrs. of Inland Revenue until payment of the duty, and thereafter at the rate at which the duty could be raised by mortgage of the estate.

Under the Finance Act, 1894, the estate duty on the estate passing on a debt is chargeable on the estate as a whole, without regard to tenancies for life or other particular interests, the scheme of the Act being that the duty shall be levied on the inheritance and that the inheritance shall bear it. *In re PARKER-JERVIS*. SALT v. LOCKER  
Kekewich J. [1898] 2 Ch. 643

**37. — Leaseholds — Will — Specific legatee — Primary charge—General personal estate—Title—Executor — Assent — Assignment — Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 1.**

As leaseholds specifically bequeathed are property which by law passes to the executor as such, the estate duty upon them under the Finance Act, 1894, is payable out of the testator's general personal estate, and is not primarily charged upon them under s. 9, sub-s. 1.

The title to leaseholds specifically bequeathed vests, upon the assent of the executor, absolutely in the legatee, without any deed of assignment. *In re CULVERHOUSE*. COOK v CULVERHOUSE

Kekewich J. [1896] 2 Ch. 251

Considered by Kekewich J. *In re Treasure*, [1900] 2 Ch. 648, 652.

— Legacy duty.

*See* REVENUE—Legacy Duty.

**38. — Mortgage of settled property—Equity of redemption—Annuity—Value of property passing on death of tenant for life—Tenant for life and tenant in tail—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1; s. 2, sub-s. 1 (b); s. 7, sub-s. 5.**

Father and son, tenant for life and tenant in tail respectively, executed a disentailing deed by which they granted the estates to a trustee to hold freed from the estate tail to such uses as they should jointly appoint. In exercise of that power father and son mortgaged the estates in fee simple to a co. as security for a loan, part of which was advanced for the benefit of the father and part for the benefit of the son. With part of the loan prior incumbrances on the father's life estate were paid off, and the co. took an assignment of the debts and all the assignors' rights and powers of recovery as further security for the loan. Father and son then executed a deed of resettlement by which the estates were charged with an annuity to the son payable during the father's life, and subject thereto were declared to be held in trust for the father for

**REVENUE (Estate Duty)—continued.**

life and after his death for the son for life with remainders over. Upon the father's death in 1895 the Crown claimed from the son under the Finance Act, 1894, estate duty upon the gross value of the estates without allowing any deduction in respect either of the mortgage to the co. or of the annuity which ceased with the father's life:—

*Held*, reversing on this point the decision of the C. A. (*In re Earl Cowley's Estate*, [1898] 1 Q. B. 355), that the case fell under s. 1 of the Finance Act, 1894, that the settled property which passed to the son on the father's death was only the equity of redemption, and that estate duty was therefore payable only on the equity of redemption.

*Held* also, affirming the decision of the C. A. on this point, that no deduction was allowable in respect of the annuity.

Decision of Div. Ct., [1897] 2 Q. B. 47, restored. *EARL COWLEY v. INLAND REVENUE COMMRS.* H. L. (E.) [1899] W. N. 32 (5); [1899] A. C. 198

Inapplicable. *Att.-Gen. v. De Préville*, C. A. [1900] 1 Q. B. 223, 229.

Referred to by Div. Ct. *Att.-Gen. v. Dobree*, [1900] 1 Q. B. 442, 450.

— Non sui juris (persons) not to be deemed competent to dispose for the purpose of breaking settlements.

*See* Finance Act, 1898 (61 & 62 Vict. c. 10), s. 13.

— Probate duty.

*See* Cases under REVENUE—Probate Duty.

— Property passing on death—Amendment of Finance Act, 1894 (57 & 58 Vict. c. 30), as to.

*See* Finance Act, 1900 (63 Vict. c. 7), s. 11 et seq.

**39. — Property passing on death—Cesser of annuity—Value of benefit accruing—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2 (1) (b), and 7 (7).**

The Finance Act, 1824, enacts, s. 1, that in the case of every person dying after the commencement of the Act, estate duty shall be levied upon the principal value of all property which passes on his death.

Sect. 2: "(1.) Property passing on the death of the deceased shall be deemed to include . . . (b) property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest."

Sect. 7: "(7.) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall . . . (b) if the interest extended to less than the whole income of the property be the principal value of an addition to the property equal to the income to which the interest extended."

The proprietor of an estate burdened it with an annuity of 800*l.* in favour of his widow. The succeeding proprietor burdened the estate with a further annuity of 800*l.* in favour of his widow, restricted during the life of the first annuitant

**REVENUE (Estate Duty)—continued.**

to 400*l.*, the balance of 400*l.* being secured to the second annuitant from movable estate left by him. The second proprietor was survived by both annuitants.

On the death of the first annuitant, *held* (reversing judgment of Lord Stormonth-Darling), that, in a question between the Crown and the then proprietor, the duty payable by him was on the capital value of an annuity of 800*l.*, although he was actually benefited to the extent only of an annuity of 400*l.* *LORD ADVOCATE v. MAC-LACHLAN*, (1899) 1 Fraser, 917

**Ct. of Sess. (Sc.) [1900] W. N. 204**

*See Finance Act, 1900 (63 & 64 Vict. c. 7), s. 11.*

**40. — Property passing on death—Devise to issue of testator—Death of devisee in lifetime of testator—Issue of devisee living at death of testator—Devise taking effect as if devisee had survived testator—Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26), s. 33—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1; s. 2, sub-s. 1 (a); s. 22, sub-s. 1 (l), sub-s. 2 (a).**

By the Wills Act, 1837, s. 33, "Where any person, being a child . . . of the testator, to whom any real . . . estate shall be devised . . . for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise . . . shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

A father devised real property to his son, who died in the lifetime of the father, leaving a daughter, who was living at the death of the father. The son devised his residuary estate to trustees. This devise included the property devised by the father's will, and took effect by virtue of the Wills Act, s. 33. On the death of the father estate duty was paid on all the property which passed on his death, including that devised to his son. The Commrs. of Inland Revenue claimed estate duty on the property devised by the son to the trustees.

On appeal by the trustees, under the Finance Act, 1894, s. 10, to determine the duty payable:—

*Held*, by Darling J., that the property was property of which the son was, at the time of his death, competent to dispose, and therefore was property passing on the death of the son, within the meaning of the Finance Act, 1894, s. 2, sub-s. 1 (a):

*Held*, by Channell J., that, as the Wills Act gave the property to the devisees of the son as if the son had survived the father, it gave it subject to the same duties as if the son had survived the father:

*Held*, by the Court, that estate duty was payable by the trustees. *In re SCOTT*

**Div. Ct. [1900] 1 Q. B. 372; affirmed by C. A. [1900] W. N. 271; [1901] 1 Q. B. 228**

**41. — Property passing on death—Interest ceasing on death—Surrender of life interest to**

**REVENUE (Estate Duty)—continued.**

*remainderman—Settled property—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1; s. 2, sub-s. 1 (b).*

The tenant for life of settled property with a power of appointment appointed the property to her son subject to her own life interest; by a subsequent deed she surrendered her life interest to the trustees of the settlement "to the end and intent that such life interest may merge in the interest in remainder of" her son; and died more than twelve months after:—

*Held*, affirming the decision of the C. A., [1898] 2 Q. B. 147, that the property did not pass on the death of the tenant for life to the remainderman within the meaning of the Finance Act, 1894, s. 1, or s. 2, sub-s. 1 (b), and that estate duty was not payable by the remainderman under that Act. *ATT.-GEN. v. BEECH*

**H. L. (E.) [1899] A. C. 53**

Principle affirmed by Finance Act, 1900 (63 & 64 Vict. c. 7).

Referred to by H. L. (E.) *Earl Cowley v. Inland Revenue Commrs.*, [1899] A. C. 198, 206.

Inapplicable. *Att.-Gen. v. De Prévile*, C. A. [1900] 1 Q. B. 223, 229.

**42. — Property passing on death—Interest ceasing on death—Surrender of life interest to remainderman—Death of life tenant within twelve months—Settled property—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (c); s. 7, sub-s. 7.**

Where the tenant for life of settled property has released the life interest in favour of the remainderman and dies within twelve months of such release, estate duty is not payable by the remainderman on the principal value of the property under s. 2, sub-s. 1 (c), and s. 7, sub-s. 7, of the Finance Act, 1894.

Judgment of Div. Ct., [1899] 2 Q. B. 238, reversed. *ATT.-GEN. v. DE PRÉVILLE*

**C. A. [1900] 1 Q. B. 223**

*But see Finance Act, 1900 (63 & 64 Vict. c. 7), s. 11.*

**43. — Property passing on death—Settlement—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 5.**

By ss. 1 and 2 of the Finance Act, 1894, estate duty is imposed upon property, real or personal, settled or not settled, "which passes on the death" of every person dying after the commencement of the Act. By s. 5, sub-s. 3, where the interest of any person under a settlement fails before it becomes an estate in possession, "and subsequent limitations under the settlement continue to subsist," the property shall not be deemed to pass on his death.

By a marriage settlement personal property belonging to the wife was settled upon trusts to pay the income to her during the joint lives of her husband and herself, and after the death of such one of them as should first die, to pay the income to the survivor during his or her life, and if the wife should survive her husband, and there should be no children of the marriage, then in trust for her absolutely. There were no children of the marriage. The wife survived her husband, who died after the commencement of the Act:—

*Held*, that on his death "subsequent limita-

**REVENUE (Estate Duty)—continued.**

tions under the settlement continued to subsist" within the meaning of s. 5, sub-s. 3, so that estate duty was not payable. *ATT.-GEN. v. WOOD*

*Div. Ct. [1897] 2 Q. B. 102*

— Remission of death duties in case of persons killed in war.

*See Finance Act, 1900 (63 Vict. c. 7), s. 14.*

— Repayment of settlement estate duty.

*See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 14.*

44. — *Reversionary interest—Settlement of—Competency to dispose of property during continuance of settlement—Settled property—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (b); s. 5, sub-s. 2.*

The owner of an absolute reversionary interest in settled personal property, who during the lifetime of the tenant for life makes a settlement of his reversionary interest, reserving a life interest to himself, is a person who was "during the continuance of the settlement competent to dispose of" the property within the meaning of s. 5, sub-s. 2, of the Finance Act, 1894, and therefore upon his death estate duty is payable upon the value of his interest, notwithstanding that estate duty has previously been paid upon it at the death of the original tenant for life. *ATT.-GEN. v. HAY* — *Div. Ct. [1899] 2 Q. B. 245*

— Reverter of property to disposer.

*See Finance Act, 1896 (59 & 60 Vict. c. 28), s. 15.*

45. — *"Settled Property"—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 2.*

By marriage settlement dated Oct. 7, 1861, certain trust funds were settled upon trust for A., the husband, for life, with remainder to B., the wife, for life, and after the death of the survivor, then, in the event, which happened, of there being no children of the marriage, upon trust as to the capital of the funds for such person or persons as the wife should appoint. The wife died on March 14, 1897, and on her death the Inland Revenue claimed, and were paid, estate duty on the value of her reversionary interest in the capital of the trust funds. The husband died on April 14, 1897, and the Inland Revenue claimed duty on the entire funds comprised in the settlement:—

*Held* (affirming the decision of the Q. B. D.), that the duty paid on the death of the wife was in respect of "settled property" within the meaning of s. 5, sub-s. 2, of the Finance Act, 1894, and that credit for it should be given as regards the duty, which would otherwise have been payable on the death of the husband.

*Held*, also, by FitzGibbon, Walker, and Holmes L.J.J., that the principle, which should govern this case, having been already decided by the English C. A. in *Att.-Gen. v. Dodington*, [1897] 2 Q. B. 373, the C. A. in Ireland ought not to differ from that Court on the construction of a statute imposing taxation. *In re STUDDERT AND THE FINANCE ACT, 1894, [1900] 2 Ir. R. 400 C. A. (Ir.) [1900] W. N. 220*

46. — *"Settled property"—Life-rent—Dying*

**REVENUE (Estate Duty)—continued.**

*without issue—Settlement estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 5 (1) and 22 (1) (h) (i).*

By his trust disposition and settlement a testator directed his trustees to hold and apply certain bequests for behoof of his three daughters in life-rent, and for their alimentary uses alternately and their respective issue in fee, said fee to be payable to such issue in such shares, at such times, and subject to such conditions as to life-rent and otherwise as the daughters should appoint, and failing appointment equally. In the event of any daughter dying without issue it was provided that the share life-rented by her should accrete to the surviving daughters and their issue, and the issue of any predeceasing daughter equally, but that, notwithstanding this provision, any daughter dying without issue should have power to test upon the share life-rented by her for such purposes as she should think fit.

In an action by the Crown against the trustees for an account of the property settled by the deed, and for payment of settlement estate duty, the defenders contended that the share of each daughter was only settled in the event of her leaving issue, as otherwise she had an absolute power of disposing of the fee by will, and her share would at her death be liable to estate duty:—

*Held* (affirming judgment of Lord Stormonth-Darling), that the bequests in favour of the daughters were "settled property" in the sense of the Finance Act, 1894, and as such liable to settlement estate duty under s. 5 of that Act. *INLAND REVENUE v. STEWART'S TRUSTEES, (1899) 1 FROBER, 416 Ct. of Sess. (Sc.) [1899] W. N. 198*

— Small estates.

*See Finance Act, 1894 (57 & 58 Vict. c. 30), s. 16.*

— Succession duty.

*See Cases under REVENUE—Succession Duty.*

47. — *"Succession" of a value exceeding 10,000*l.**  
— *Succession duty—Legacy Duty Act (35 Geo. 3, c. 52), s. 12—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 1, 2, 10, 32—Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 5, sub-ss. 1, 4, 5; s. 6, sub-ss. 1, 2, 4.*

Estate duty under s. 6, sub-s. 1, of the Customs and Inland Revenue Act, 1889, held to be payable on a fund of more than 10,000*l.*, vested in the trustees of a marriage settlement in trust for the wife for life, with remainder to the younger children of the marriage. *ATT.-GEN. v. LORD ABERDARE* — *Div. Ct. [1892] 2 Q. B. 684*

— "Testamentary expenses"—Direction to pay.  
*See WILL—Testamentary Expenses.*  
205, 206.

— Value of property.

*See Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 6 et seq.*

— Will—Gift within twelve months of death—Ademption—Advancement—Account.  
*See WILL—Advancement.* 21.

**REVENUE—continued.****Forfeited Recognizances.**

48. — *Fines and Amercements—Construction of charter to corporation.*

By a charter of Henry IV. the Crown granted to the corporation of Nottingham "all fines for trespasses and other offences whatsoever, and also fines for licence to agree, and all amercements, ransoms and forfeited issues, forfeitures year day waste and estrepement."

By a charter of Henry VI. the Crown granted to the corporation "all issues fines and amercements from whatsoever pledges and mainpernors" of persons dwelling in the borough:—

*Held*, that under neither of these charters did a forfeited recognizance to appear to answer a charge of felony or misdemeanour pass to the corporation. *In re NOTTINGHAM CORPORATION*  
Div. Ct. [1897] 2 Q. B. 502

**Game Licence.**

49. — *Game dealer's licence—Foreign game.*

An excise licence to deal in game under 23 & 24 Vict. c. 90, s. 14, is not required to enable a person to deal in game which has been killed abroad. *PUDNEY v. ECCLLES*

Div. Ct. [1893] 1 Q. B. 52

[But see now s. 2 of the *Customs and Inland Revenue Act, 1893* (56 & 57 Vict. c. 7).]

**Government Annuities.**

*Treas. Warrant, dated Jan. 5, 1899, under s. 18 (1) of Revenue Act, 1893* (61 & 62 Vict. c. 46). *St. R. & O. 1899, No. 6.*

**Gun Licence.**

50. — "*Vermin*"—*Rabbits—Gun Licence Act, 1870* (33 & 34 Vict. c. 57), s. 7.

The Gun Licence Act, 1870, imposes a penalty on any person using or carrying a gun without having a licence, but excepts, inter alios, "the occupier of any lands using or carrying a gun for the purpose only of scaring birds or of killing vermin on such lands".—

*Held*, that rabbits were not "vermin" within the meaning of the foregoing exceptions.

Opinions of Lord Justice-Clerk Moncrieff and Lord Gifford in *Gosling v. Brown*, (1878) 5 R. 755, disapproved. *LORD ADVOCATE v. YOUNG*, (1898) 25 R. 778  
Ct. of Sess. (Sc.) [1899] W. N. 190

**House Duty.**

51. — *Annual value—Full and just yearly rent—House Tax Act, 1851* (14 & 15 Vict. c. 36); 48 Geo. 3, c. 55, Sched. B.

The commissioners for inhabited house duty, when assessing for the purposes of that duty a house situate outside the metropolis, are not bound by the assessment appearing in the poor-rate book, but ought to receive independent evidence to enable them to arrive at the annual value.

Where a house is let to a brewer at one rent and sub-let by him to a licensed victualler at a lower rent upon the terms of the latter buying all his beer from him, the full and just yearly rent for the purposes of inhabited house duty is

**REVENUE (House Duty)—continued.**

not the lower rent paid by the sub-tenant to the brewer, nor is it necessarily the higher rent paid by the brewer to his lessor, but the commissioners ought to receive evidence of the sum which the house is worth let by the year as a free house. *WALKER v. BRISLEY. GRINTER v. FLEMING*

Div. Ct. [1900] 2 Q. B. 735

52. — *Business premises—Messengers—Inhabited house duty—Exemption—Customs and Inland Revenue Acts, 1878, 1881* (41 Vict. c. 15, s. 13, sub-s. 2; 44 Vict. c. 12, s. 24).

An insurance co. who had been assessed to inhabited house duty in respect of their offices appealed on the ground that they were within the exemption mentioned in s. 13 of the Customs and Inland Revenue Act, 1878. The case upon appeal set forth that the only persons who occupied the premises at night were two messengers whose duties were to lock up the premises at night and open them in the morning, and in the daytime to go on errands, attend in the lobby, and perform various miscellaneous duties of a similar nature. The case further stated that the co. "rested their appeal on the fact that the messengers were servants absolutely necessary for their business, not merely for the protection of their premises."

*Held*, (1) that the words "for the protection thereof" in s. 13, sub-s. 2, of the Act of 1878 applied to "servant" as well as to "other person"; (2) that this construction was not modified by s. 24 of the Act of 1881; and (3) that the co. were not within the exemption in respect that the messengers did not reside in the premises solely for the protection thereof.

*Question*, whether the exemption would apply to the case of premises in which more than one person resided, such persons being necessary for the protection of the premises, and residing in the premises solely for the protection thereof. *FORBES v. STANDARD LIFE ASSURANCE SOCIETY*, (1894) 21 Rettie, 820

Ct. of Sess. (Sc.) [1896] W. N. 117

— Collection of taxes—Inhabited house duty—Powers of collectors.

See *REVENUE—Collection of Taxes. 11.*

— College—Hall or office.

See No. 56, below.

53. — *College partly self-supporting—"Charity school"—Exemptions—House Tax Act, 1808* (48 Geo. 3, c. 55), Sched. B., *Exemptions, case 4—Inhabited House Duty Act, 1851* (14 & 15 Vict. c. 36), s. 2.

A college, the endowment of which provided for scholarships, prizes, and payment of salaries of teachers, &c., and which charged fees from the students, claimed to be exempt from the duty:—

*Held*, that the liability to pay inhabited house duty depended upon the character of the institution; and that as the college was not primarily intended for the supply of gratuitous education, it did not come within the exemption in favour of "charity schools" in 48 Geo. 3, c. 55, Sched. B. *SOUTHWELL v. ROYAL HOLLOWAY COLLEGE, EGHAM*  
Div. Ct. [1895] 2 Q. B. 487

54. — "*Different tenements*"—*House "let in*

**REVENUE (House Duty)—continued.**

*different tenements*—*Exemption—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13.*

By s. 13 of the Customs and Inland Revenue Act, 1878, where any house, being one property, "shall be divided into, and let in, different tenements," and any of such tenements are occupied solely for the purposes of any trade or business, or are unoccupied, the person chargeable as occupier of the house shall be entitled to exemption from inhabited house duty in respect of any tenements so occupied for purposes of trade or business, or unoccupied. The respondents, being lessees of a house, divided it into two tenements, one of which they occupied solely for the purposes of their trade, and the other they sub-let to a person who used it as his residence. Having been assessed to inhabited house duty for the whole house, they claimed exemption in respect of the tenement occupied by themselves:—

*Held*, that s. 13 did not apply to exempt them:—By Div. Ct., because the enactment required that the tenement in respect of which exemption was claimed should be let as a different tenement, and the tenement occupied by the respondents was not so let:—Also, by Kennedy J., because the enactment only applied where the whole house was let in different tenements, and did not apply where a landlord let part of it in different tenements and retained the other part himself. *HODDINOT v. HOME AND COLONIAL STORES* - - - Div. Ct. [1896] 1 Q. B. 169

55. — *Hall—College—Inhabited house duty—Exemptions—House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, Rule V.—Inhabited House Duty Act, 1851 (14 & 15 Vict. c. 36)—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13, sub-s. 2.*

*Held*, (1) that the Free Church Assembly Hall and Free Church College were "halls or offices" within the meaning of Rule V. of Sched. B of the Act 48 Geo. 3, c. 55, and, being charged for poor and school rates, were liable to inhabited house duty under the House Tax Act, 1851; and (2) that the hall and college were not entitled to the exemption conferred by the Customs and Inland Revenue Act, 1878, in respect that they were not occupied for the purposes of a business or calling, by which the occupier—the General Trustees of the Free Church—sought "a livelihood or profit." *GENERAL TRUSTEES OF FREE CHURCH OF SCOTLAND v. BAIN*, (1897) 24 R. 492 Ct. of Sess. (Sc.) [1897] W. N. 138

— *Hall—College partly self-supporting.*  
*See No. 53, above.*

56. — *Hall or office—Library.*

By 48 Geo. 3, c. 55, Sched. B, r. 5, "Every hall or office whatever belonging to any person or persons, or to any body or bodies politic or corporate, or to any company, that are or lawfully may be charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable as inhabited houses." That Act is repealed, but in the House Tax Act, 1851 (14 & 15 Vict. c. 36), which imposes a duty on inhabited dwelling-houses, Sched. B is incorporated "so far as applicable

**REVENUE (House Duty)—continued.**

and consistent with the express provisions of that Act." On an appeal by the Society of the Middle Temple against assessments of their hall and library to inhabited house duty under the Act of 1851, it was admitted that neither the hall nor the library have any internal communication with any premises used as a dwelling-house in which any person resides or sleeps. Both hall and library are chargeable to the poor-rate:—

*Held*, that the hall was a hall within the meaning of Sched. B, and was assessable to inhabited house duty, but that the library was not a hall or office within that sched. and was not assessable. *STYLES v. SOCIETY OF THE MIDDLE TEMPLE* Div. Ct. [1898] W. N. 172 (5)

57. — *Lunatic asylum—Charity—Self-supporting "hospital"—Exemptions—House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, case 4—Income Tax, 1842 (5 & 6 Vict. c. 35), s. 61, r. 6.*

A lunatic asylum supported chiefly by charitable endowments and subscriptions was managed so that in one particular year the payments by private patients and the sale of farm produce paid all the expenditure:—

*Held*, that the asylum was a hospital maintained by charity within 48 Geo. 3, c. 55, Sched. B, and was not to be considered as wholly self-supporting because in one year it paid its way without having recourse to charity. *CAWSE v. NOTTINGHAM LUNATIC HOSPITAL*

Div. Ct. [1891] 1 Q. B. 585

Approved of by Div. Ct. *Southwell v. Royal Holloway College, Egham*, [1895] 2 Q. B. 487, 493. *See No. 53, above.*

58. — *Lunatic asylum—Self-supporting institution—Inhabited house duty—Exemption—48 Geo. 3, c. 55, case 4.*

Case 4 of 48 Geo. 3, c. 55, exempts from payment of inhabited house duty "any hospital, charity school, or house provided for the reception or relief of poor persons."

A lunatic asylum, originally founded by charitable subscription, and which was governed gratuitously, claimed exemption from payment of inhabited house duty under the above rule. The asylum was possessed of two mortifications, out of which was paid in part the maintenance of two indigent lunatics. The remaining inmates were private patients who paid for their own maintenance, and pauper lunatics, in respect of whom payment was made by the District Lunacy Board of a sum estimated to cover the cost of their maintenance and clothing. The accounts of the asylum shewed that for some years it had maintained itself, and that a profit had been made out of the board paid by both classes of inmates:—

*Held*, that, as an institution, which was not to any substantial extent maintained by charity, or out of charitable endowments, the asylum was not entitled to the benefit of the exempting rule. *MCSGRAYE v. DUNDEE ROYAL LUNATIC ASYLUM*, (1895) 22 Retlie, 784 - - - Ct. of Sess. (Sc.) [1896] W. N. 138

59. — *Part as a dwelling-house and in part as business premises, Entire house occupied by owner in—Exemption—48 Geo. 3, c. 55, Sched. B, r. 3*

**REVENUE (House Duty)—continued.**

—57 Geo. 3, c. 25, s. 1—5 Geo. 4, c. 44, s. 4—41 Vict. c. 15, s. 3 (2).

*Held*, following *Scottish Widows' Fund Society v. Solicitor of Inland Revenue*, (1880) 7 R. 491, and *Glasgow and South Western Ry. Co. v. Banks*, (1880) 7 R. 1161, that the clauses in the above statutes exempting from payment of inhabited house duty a house or part of a house assessed therefor, on proof that it is occupied as trade or business premises, do not apply to an entire house occupied by the owner in part as a dwelling-house and in part as business premises.

*Question*, whether these cases were rightly decided. *INLAND REVENUE v. GRANT*, (1898) 25 R. 1040 Ct. of Sess. (Sc.) [1899] W. N. 195

This decision was reversed by H. L. (Sc.) [1900] A. C. 383. *See next Case.*

60. — *Public-house—Exemption in favour of buildings occupied for trade only*—48 Geo. 3, c. 55, *Sched. B*, r. 3.—57 Geo. 3, c. 25, s. 1—5 Geo. 4, c. 44, s. 4—*Customs and Inland Revenue Act*, 1878 (41 & 42 Vict. c. 15), s. 13, sub-s. 2.

By sub-s. 2 of s. 13 of the Customs and Inland Revenue Act, 1878, "Every house or tenement which is occupied solely for the purposes of any trade or business or of any profession or calling by which the occupier seeks a livelihood or profit shall be exempted from the duties (on inhabited houses) by the said commrs. upon proof of the facts to their satisfaction."

The appellant was the owner of a building of two storeys under one roof situate in Portobello, Edinburgh. The ground-floor was occupied by the appellant to carry on the trade of a licensed retailer of spirits, and was numbered 49, Bath Street. The upper storey was occupied by the appellant as his dwelling-house, and was numbered 47, Bath Street. Access to the dwelling-house was by a door opening from the public street and by a staircase from that door which led up to the upper storey. Access to the public-house was by a different door also opening from the street. There was no internal communication between the dwelling-house upon the upper storey and the public-house on the ground floor:—

*Held*, reversing the decision of the Ct. of Sess., *Langston v. Grant*, (1898) 25 R. 1040, that the public-house was exempt from inhabited house duty, and that the duty ought to be confined to the value of that portion of the building used as a dwelling-house. *GRANT v. LANGSTON*

H. L. (Sc.) [1900] W. N. 126; [1900] A. C. 383

61. — *Public-house—Hotel—Club—House let in part to a person holding a licence*—48 Geo. 3, c. 55, *Sched. B*, r. 6—*Inhabited House Duty Act*, 1851 (14 & 15 Vict. c. 36), *Sched.*—*Customs and Inland Revenue Act*, 1871 (34 & 35 Vict. c. 103), s. 31.

Rule 6 of *Sched. B* of the Act 48 Geo. 3, c. 55, enacts, with regard to the duties on inhabited dwelling-houses, that when a house is let in parts to two or more persons, the house shall be subject to the same duty as if let to one person, and the owner shall be deemed the occupier, and shall be charged with the duty.

The schedule of the Act 14 & 15 Vict. c. 36, enacts,—“For every inhabited dwelling-house,

**REVENUE (House Duty)—continued.**

which, with” offices and gardens, “is or shall be worth the rent of 20*l.* or upwards, by the year . . . . When any such dwelling-house shall be occupied by any person duly licensed by the laws in force to sell therein by retail, beer, ale, wine, or other liquors . . . . there shall be charged for every 20*s.* of such annual value of any such dwelling-house, the sum of 6*d.*; and where any such dwelling-house shall not be occupied and used for any such purpose, and in manner aforesaid, there shall be charged for every 20*s.* of such annual value thereof the sum of 9*d.*”

Sect. 31 of the Act 34 & 35 Vict. c. 103, enacts that duty at the lower rate shall be charged for every inhabited dwelling-house “which shall be occupied by any person who shall carry on in the said dwelling-house the business of a hotel-keeper, although not licensed to sell therein by retail” excisable liquors.

The owner of a house let part of it to a hotel-keeper, who was licensed to retail liquors therein, and the remainder to a club, which had no licence. The rent was above 60*l.*

*Held*, that duty at the rate of 9*d.* per 1*l.* was chargeable on the owner of the house, in respect that he was to be deemed the occupier in the sense of the statutes, and was not licensed to sell liquors therein. *M'DOUGALL v. CAMPBELL*, (1899) 2 Fraser, 244 Ct. of Sess. (Sc.) [1900] W. N. 217

— *Public-house—Office occupied with certificated house—Stables—Licence duty.*  
*See REVENUE—Licence Duty.* 128.

62. — *School buildings—Head and assistant masters' houses—Occupier*—48 Geo. 3, c. 55, *Sched. B—House Duty Act*, 1851 (14 & 15 Vict. c. 36).

The governing body of a public school was assessed to inhabited house duty, as occupier, in respect of the houses of the head master and assistant masters, and the chapel and other school buildings, which were built for the use of the school, and were used by all the boys at the school, whether boarders in the masters' houses or not. The head master paid no rent, but was bound by the terms of his appointment to reside in his house, and took in boarders. The assistant masters paid rents less than the full annual value of their houses, and took in boarders, and resided in their houses as house masters.

On a case stated under the Taxes Management Act, 1880:—

*Held*, that the head and assistant masters did not occupy their houses as servants or agents of the governing body, so as to make their occupation the occupation of the governing body, but were themselves the occupiers of their respective houses, and that the other school buildings were not inhabited dwelling-houses, and therefore the assessment was wrong. *CHARTERHOUSE SCHOOL v. GAYLER* — Div. Ct. [1896] 1 Q. B. 437

Referred to by Div. Ct. *Clifton College v. Tompison*, [1896] 1 Q. B. 436. *See next Case.*

63. — *School buildings—Head master's house*

\* NOTE.—Increased to 60*l.* by the Act 53 Vict. c. 8.



**REVENUE (House Duty)—continued.**

—*Occupier*—48 Geo. 3, c. 55, *Sched. B*—14 & 15 *Vict. c. 36*.

A co. owning a public school, founded by charter, was assessed to inhabited house duty in respect of land and school buildings, and a head master's house, garden, and stables, after allowing for the value of ten out of eleven acres, which were occupied as a garden and playground. The premises were used for the purposes of the school. The head master's house was held by him under a lease, which would determine if he ceased to hold his office. He resided in the house and kept boarders there for profit, but was not bound to reside in it.

On a case stated under the Taxes Management Act, 1880:—

*Held*, that the head master, and not the co., was the occupier of the head master's house, and that the rest of the school buildings could not be treated as inhabited dwelling-houses, and therefore the assessment was wrong. *CLIFTON COLLEGE v. TOMPSON* - - Div. Ct. [1896] 1 Q. B. 432

Referred to by Div. Ct. *Charterhouse School v. Gayler*, [1896] 1 Q. B. 437. See preceding Case.

**SMALL DWELLINGS.]** *By the Customs and Inland Revenue Act, 1891 (54 & 55 Vict. c. 25), s. 4, the law as to house tax was amended in respect of dwellings of small annual value.*

—*Stables*—*Licence duty*—*Public-house*—*Offices occupied with certificated house.*  
See **REVENUE—Licence Duty.** 128.

64. — *Stables—Training stables*—“*Dwelling-house*”—*Exemption*—*House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, r. 2—Inhabited House Duty Act, 1851 (14 & 15 Vict. c. 36)—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13, sub-s. 1.*

A trainer of race-horses occupied stables which he used for the accommodation of horses trained by him; in one wing of the stables were four rooms in which some of the stable-lads employed by him slept. Close to the stables, but outside the stable-yard, was a ten-roomed house with domestic offices and garden, which was occupied by the trainer's “head-lad.” The stables were included with the dwelling-house in an assessment to the inhabited house duty:—

*Held*, that the stables belonged to and were occupied with a dwelling-house within the meaning of 48 Geo. 3, c. 55, *Sched. B, r. 2*; that they did not come within the exemption in s. 13, sub-s. 1, of the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), in favour of premises occupied solely for the purpose of a trade or business; and that the assessment was therefore right. *LAMBTON v. KERE* - - Div. Ct. [1895] 2 Q. B. 233

65. — *Stables (Hotel) and coach-house—Inhabited house duties*—*House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, r. 2—Inhabited House Duty Act, 1851 (14 & 15 Vict. c. 36), Sched.—Customs and Inland Revenue Act, 1878 (41 Vict. c. 15), s. 13, sub-s. 1.*

*Held*, that stables and a coach-house, which were occupied in connection with the business of a hotel by the hotel-keeper, but which were

**REVENUE (House Duty)—continued.**

separated from it by a passage over which the public had a right of way and three adjoining feuars a servitude of passage, were not exempt from inhabited house duty, but fell to be assessed along with the hotel.

*Douglas v. Young*, (1879) 7 *Rettie*, 229, followed. *SMITH v. PETRIE*, (1892) 19 *Rettie*, 405

Ct. of Sess. (Sc.) [1896] W. N. 95

**Income Tax.**

*Finance Act, 1894 (57 & 58 Vict. c. 30), Part IV., makes alterations as to the assessment of income tax and as to exemptions.*

*Finance Act, 1896 (59 & 60 Vict. c. 28), ss. 25–30, makes alterations as to the assessment of income tax, as to exemptions and as to appeals.*

*Finance Act, 1897 (60 & 61 Vict. c. 24), ss. 4, 5, amends the law as to exemption of income of married woman.*

*Relief from income tax where income does not exceed 700l.; annual value of deduction in certain cases; power to landlords to pay income tax under Sched. A.* See *Finance Act, 1898 (61 & 62 Vict. c. 10), ss. 7–11.*

*Taxes Management—Power to barristers and solicitors to plead before the General Commissioners.* See *Finance Act, 1898 (61 & 62 Vict. c. 10), s. 16.*

66. — *Allotments—Common Allotment—Corporation duty*—*Exemptions*—“*Charitable purpose*”—*Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11, sub-ss. 2, 3.*

The profits of an allotment applied for the freemen of a borough under a private inclosure Act are exempt from duty under s. 11, sub-s. 2, of the Inland Revenue Act, 1885, but the profits of an allotment so applied under an agreement are not.

*Income Tax Commrs. v. Pemsel*, [1891] A. C. 531, followed. *INLAND REVENUE COMMISSIONERS v. SCOTT. In re BOOTHAM WARD STRAYS, YORK*  
C. A. [1892] 2 Q. B. 152

67. — *Annuities—“Profits and gains”—Assessment of—Life assurance—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, case 1, r. 4; s. 102.*

Where payments were made by a life insurance co. in respect of annuities granted in consideration of a single sum paid at the time of granting the annuities, *held* that the annuities were not paid out of “profits or gains,” and were not liable to income tax.

Decisions of Div. Ct., 24 Q. B. D. 360, and C. A., 25 Q. B. D. 351, reversed. *GRESHAM LIFE ASSURANCE CO. v. STYLES*

H. L. (E.) [1892] A. C. 309

— *Annuity—Whether a “deduction.”*

See **WILL—Annuity.** 27.

68. — *Annuity by way of alimony.*

Where on dissolution of marriage an annuity by way of alimony is ordered to be paid to the wife, and such annuity is secured by deed, in the absence of express provision in the deed the tax must be paid by the annuitant, if not so secured, *quære*, by whom payable. If the trustee of such a deed has paid the annuity free of income tax,

**REVENUE (Income Tax)—continued.**

he is not entitled to deduct the past payments, but only future payments of income tax. **WARREN v. WARREN** — **Kekewich J. [1895] W. N. 72**

— Balance-sheets furnished for income tax assessment—Production of documents.

*See* **DISCOVERY—Documents. 14.**

**69. — Bankruptcy—Trustee in bankruptcy—Assignment for benefit of creditors—Profits made by trustee in carrying on part of insolvent debtor's business—Income Tax Acts, Sched. D.**

A firm of worsted spinners, having a lease for years of their business premises, generated steam power on part of those premises for the purpose of driving their spinning machines, and sub-let another part, and supplied their surplus steam power to the sub-lessees, and to others, at agreed prices. The firm subsequently became insolvent, and executed a deed of assignment of all their real and personal estate, other than leasehold property, to a trustee for the benefit of creditors. The trustee thereupon occupied the part of the premises which had been retained by the firm, and, under the powers of the deed of assignment, continued to supply the sub-lessees and the others with steam power upon the same terms for the purpose of realizing the firm's assets to the best advantage. He did not otherwise carry on the business of the firm. On the expiration of the sub-lease the firm, by the direction of the trustee, granted to the same underlessees a further underlease of the same part of the premises, and the trustee continued to supply the steam power on the same terms as before. The sums received by the trustee for the steam power supplied exceeded the cost of supplying it, though the whole business carried on by the firm had been carried on at a loss, and the assets realized by the trustee had only produced a dividend of 8s. in the pound:—

*Held*, that income tax under Sched. D. was payable by the trustee in respect of the profit made by him in supplying the steam power. **ARMITAGE v. MOORE** **Div. Ct. [1900] W. N. 123; [1900] 2 Q. B. 363**

**70. — Bank manager, Residence of—Abatement under 400*l.* per annum—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), ss. 100, 146, Sched. D, case 2, r. 2, and case 6, Sched. E, r. 6; 1853 (16 & 17 Vict. c. 31), s. 2—Inland Revenue Act, 1876 (39 & 40 Vict. c. 16), s. 8.**

The value to a bank manager of his right or duty to reside on the bank premises is not to be considered as part of his "total income from all sources" which may be assessed for income tax.

Decision of Ct. of Sess., **TENNANT v. Inland Revenue**, (1891) 18 R. 428; 28 Sco. Law Rep. 307, reversed. **TENNANT v. SMITH**

**H. L. (Sc.) [1892] A. C. 150**

Followed by Ct. of Sess. **M'Dougal v. Sutherland**, 21 R. 753. *See* [1896] W. N. 113.

Distinguished by Ct. of Sess. **Corke v. Fry**. 22 R. 422. *See* [1896] W. N. 128.

Referred to by C. A. **Att.-Gen. v. Beech**, [1895] 2 Q. B. 147, 150. This case was affirmed by H. L. (E.) [1899] A. C. 53.

**71. — Benefit building society—Money lent to borrowing member—"Interest of money" so lent—**

**REVENUE (Income Tax)—continued.**

*Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.*

A benefit building society lent money to borrowing members at a fixed rate of interest, and took from them a security on their property. The repayment of the loans was by weekly payments of a fixed sum, in respect of principal and interest, the proportion of interest to principal in each payment decreasing as time went on, and the principal remaining due decreased. No deduction was allowed to be made by the borrower in respect of income tax. The society were assessed to income tax under Sched. D. on the interest they received, as being interest of money within s. 2 of the Income Tax Act, 1853. On a case stated:—

*Held*, that the expression "interest of money" in s. 2 of the Income Tax Act, 1853, is not restricted to annual interest, and that the interest received by the society was not in respect of a loan on land, but of a contract relating to interest of money lent, and was therefore assessable in their hands to the income tax. **LEEDS PERMANENT BENEFIT BUILDING SOCIETY v. MALLANDAIN** **C. A. [1897] 2 Q. B. 402**

**72. — Brewery—Deduction from profits of brewery—Profits of trade—Brewers carrying on business of bankers and money-lenders—Bad debts on loans—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D; 1853 (16 & 17 Vict. c. 34).**

The appellants carried on the business of brewers, and also, as a branch or adjunct of their brewery business, the business of bankers and money-lenders, and in the course of such business lent money to their customers on security, and received money on deposit from their customers, who were allowed to draw bankers' cheques or orders on the appellants. In no case was any loan or advance made by way of permanent investment, but the same was taken only in connection with the current dealings and transactions of the customer with the appellants, and, in the event of such current dealings or transactions terminating, the loan or advance was required to be paid off, and the account closed. The profits of the brewery were largely increased by the addition of the banking and money-lending business, and the loans were necessary to enable the appellants to realize profits. They claimed to deduct from an assessment to the income tax on profits from trade, bad debts in respect of loans to customers:—

*Held* (distinguishing **Watney v. Musgrave**, (1880) 5 Ex. D. 241) that, on the facts above stated, the appellants must be taken to have carried on one business only, that the money advanced to customers was used in the business, and not capital invested, and that the appellants were entitled to the deduction claimed. **REID'S BREWERY CO. v. MALE** **Div. Ct. [1891] 2 Q. B. 1**

**73. — Brewery business—Repairs to tied houses—Deductions—Balance of profits and gains—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D; 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.**

The provision of s. 100, case 1, r. 3, of 5 & 6 Vict. c. 35, which authorizes a deduction, in estimating the balance of profits and gains of a

**REVENUE (Income Tax)—continued.**

trade, in respect of the expenditure on repairs of "premises occupied for the purpose of such trade," applies only to premises occupied by the person assessed for the purpose of his trade.

The appellants, a firm of brewers, in order to increase their trade, purchased licensed houses which they let to tenants who contracted to buy from them all the beer, wines, and spirits to be sold therein. By reason thereof the appellants' profits had been materially increased. The repairs to these houses were executed and paid for by the appellants, and they claimed in arriving, for the purpose of the income tax, at the balance of the profits and gains of their trade, to be entitled to a deduction in respect of the sum expended on those repairs:—

*Held*, that the appellants were not entitled to any deduction in respect thereof. **BRICKWOOD & Co. v. REYNOLDS** - C. A. [1898] 1 Q. B. 95

**74. — Cemetery—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A, No. 3, Rule III.**

A cemetery co. received from purchasers of lairs, in lieu of annual payment, a lump sum for keeping the lairs in order, the receipts bearing,—"Received . . . being the amount agreed to be accepted by the directors . . . for keeping in order and dressing lair No. . . . in said cemetery, from time to time, during each year in all time coming." The co. having been assessed for income tax on these sums as part of the annual profits of the co., in an appeal the co. maintained that they were not entitled to divide these sums as profits, but were bound to retain them to meet the obligations undertaken by them for all time coming:—

*Held*, that the sums so received were assessable for income tax under Sched. A, No. 3, Rule III., of the Income Tax Act, 1842. **PAISLEY CEMETERY CO. v. INLAND REVENUE**, (1898) 25 R. 1080 **Ct. of Sess. (Sc.) [1899] W. N. 196**

**75. — Chaplain's salary—To be paid "without any deduction or abatement for taxes"—Charitable institution—Special Act (10 Geo. 4, c. xv.), ss. 22, 26—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 102, and Sched. E, rr. 1, 3, 6.**

The Special Act passed in 1829 incorporating a charitable institution provided that the salary of the chaplain should not be less than 300*l.* nor more than 500*l.* per annum, and that the wardens should pay it to him "without any deduction or abatement for taxes or otherwise howsoever":—

*Held*, that the wardens were nevertheless bound under the provisions of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), to deduct income tax from the chaplain's salary. *In re THE SCHOOL FOR THE INDIGENT BLIND AT LIVERPOOL*

**Byrne J. [1898] 2 Ch. 669**

**76. — "Charitable purposes"—Allowances—Procedure—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. A, s. 61, No. 6; s. 62.**

In a case where an allowance which ought to be granted is refused, mandamus lies to the commrs. commanding them to grant the allowance and to give a certificate of the allowance with an order for the payment thereof:—

*Held* by the H. L. (Lord Halsbury L.C. and Lord Bramwell dissenting), that the words

**REVENUE (Income Tax)—continued.**

"charitable purposes" in the Income Tax Act, 1842, Sched. A, s. 61, r. No. 6, were not restricted to the meaning of relief from poverty, but must be construed according to the legal and technical meaning given to them by English law and by legislation applicable to Scotland and Ireland as well as England. Therefore the allowance ought to be granted as to so much of a trust as applied to missionary establishments.

Decision of C. A., 22 Q. B. D. 296, affirmed. **COMMS. FOR SPECIAL PURPOSES OF INCOME TAX v. PEMSEL** **H. L. (E.) [1891] A. C. 531**

Followed by C. A., [1892] 2 Q. B. 152.

Referred to by C. A. *In re Macduff*, [1896] 2 Ch. 466.

Distinguished by C. A. *Cunnack v. Edwards*, [1896] 2 Ch. 685.

Followed by Kekewich J. *In re Buck*, [1896] 2 Ch. 727.

**77. — Charitable purposes—Assembly hall used for church purposes—Exemption—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, Sched. A, r. 6.**

The Income Tax Act, 1842, Sched. A, r. 6, provides for certain allowances to be made from income tax, and, inter alia, on "the rents and profits of lands, tenements, . . . vested in the trustees for charitable purposes," on proof before the Commrs. for Special Purposes of the application of the said rents and profits to charitable purposes only.

The General Trustees of the Free Church of Scotland having been assessed for income tax on the annual value of their assembly hall under the general rule of Sched. A, claimed exemption in respect of the branch of rule 6 above quoted. It appeared that the assembly hall was used for church purposes, and was unlet and yielded no rents or profits:—

*Held*, that the part of rule 6 founded on had no application to the case, as the assembly hall yielded no rent or profits. **MAUGHAN v. GENERAL TRUSTEES OF THE FREE CHURCH OF SCOTLAND**, (1893) 20 Rettie, 759.

**Ct. of Sess. (Sc.) [1896] W. N. 105**

— Charitable trust—Exemption from duty—  
Laws of New Zealand.  
*See NEW ZEALAND. 2.*

**78. — Church manse—Abatement—"Income"—Established Church—Manse—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 167, Schedules A and E—Customs and Inland Revenue Act, 1876 (39 & 40 Vict. c. 16), s. 8.**

In a question between a parish minister and a surveyor of taxes, *held* that the minister of a parish is entitled to let his manse.

The Customs and Inland Revenue Act, 1876, s. 8, allows an abatement from income tax to a person assessed when "his total income from all sources" is less than 400*l.*—

*Held*, that the annual value of a manse occupied by a parish minister fell to be reckoned as "income" of the minister in the sense of the above section, in respect that he was entitled to make it a source of revenue by letting it.

**Tennant v. Smith**, [1892] A. C. 150, and

**REVENUE (Income Tax)—continued.**

*McDougal v. Sutherland*, (1894) 21 *Rettie*, 753; [1896] W. N. p. 113, distinguished. *CORKE v. FRY*, (1895) 22 *Rettie*, 422

Ct. of Sess. (Sc.) [1896] W. N. 128

79. — *Church manse—Abatement—“Income”—Official residence—Free Church manse—Income Tax Act, 1842* (5 & 6 *Vict. c. 35*), s. 167, *Scheds. A and E—Customs and Inland Revenue Act, 1876* (39 & 40 *Vict. c. 16*), s. 8.

The Customs and Inland Revenue Act, 1876, s. 8, allows an abatement from income tax to a person assessed when “his total income from all sources” is less than 400*l*.

*Held*, that the annual value of a manse occupied rent free by the minister of a congregation of the Free Church of Scotland, the feudal title to which was in trustees for behoof of the congregation, did not fall to be reckoned as “income” of the minister in the sense of the above section.

*Tennant v. Smith*, [1892] A. C. 150, followed. *McDOUGAL v. SUTHERLAND*, (1894) 21 *Rettie*, 753

Ct. of Sess. (Sc.) [1896] W. N. 113

This case was distinguished in *Corke v. Fry*. See preceding Case.

— Collection of taxes.

See **REVENUE—Collection of Taxes.**

80. — *College—Bursar—Office or employment of profit—Income Tax Act, 1842* (5 & 6 *Vict. c. 35*), s. 146, *Sched. E*.

The bursar of a college, not being a member of the corporate body, although a necessary officer of the college, is liable to direct assessment to income tax. *LANGSTON v. GLASSON*

Div. Ct. [1891] 1 Q. B. 567

81. — *Colliery—Deductions—Subscriptions to coal owners' association—Money wholly laid out for purposes of trade—Income Tax Act, 1842* (5 & 6 *Vict. c. 35*), s. 100, *Sched. D, Rules applying to First and Second Cases*, rule 1.

The owners of a colliery were subscribers to a coal owners' association, which indemnified its subscribers against losses occasioned by strikes. In returning the profits of the colliery for income tax purposes they claimed to deduct the yearly average excess of their contributions over the amounts received by them as indemnities:—

*Held*, that the money sought to be deducted was not money wholly and exclusively laid out for the purposes of trade, and therefore the deduction could not be allowed. *RHYMEY IRON CO. v. FOWLER* — Div. Ct. [1896] 2 Q. B. 79

82. — *Colonial investments, Interest on—Income Tax Act, 1842* (5 & 6 *Vict. c. 35*), *Sched. D, case 4*, s. 102—*Customs and Inland Revenue Act, 1893* (56 & 57 *Vict. c. 7*), s. 5.

The Customs and Inland Revenue Act, 1893, imposed income tax for the year 1893–94 upon income chargeable under *Scheds. A, B, C, D*, and *E* of the Income Tax Act, 1853, and enacted that provisions in any Income Tax Act in force in the previous year should have full force and effect “with respect to the duties of income tax hereby granted.”

An insurance society was assessed for income tax for the year 1893–94 on the interest of colonial investments not received in Great Britain,

**REVENUE (Income Tax)—continued.**

but received and re-invested in the colonies, on the ground that it was subject to assessment under s. 102 of the Income Tax Act, 1842:—

*Held*, (1) that if and in so far as s. 102 of the Act of 1842 subjected to assessment income not covered by the lettered schedules, it was not in force for the year 1893–94; and (2.) that s. 102 did not impose duties, but merely contained provisions as to the duties granted in the schedules.

Where interest derived from the colonial investments of a society for mutual insurance was not remitted home, but was re-invested abroad, *held* that, by being entered in the society's accounts, it was not constructively remitted to this country so as to be chargeable with duty under case 4 of *Sched. D* of the Income Tax Act, 1842. *FORBES v. SCOTTISH PROVIDENT INSTITUTION*, (1895) 23 *Rettie*, 323

Ct. of Sess. (Sc.) [1896] W. N. 122

— Company — Director — Damages for misfeasance—Interest.

See **COMPANY—Director**. 120.

83. — *Company — “Foreign possessions” — Profits earned abroad and not remitted—Income Tax Acts, 1842, 1853* (5 & 6 *Vict. c. 35*, s. 100; 16 & 17 *Vict. c. 34*, s. 2, *Sched. D*).

Where the head office of a co. was in London, and part of the business was carried on in this country, the fact that a portion of the profits earned abroad was not remitted:—

*Held*, not to exempt the co. from liability to pay income tax on such portion.

Decision of Div. Ct., [1891] 1 Q. B. 383, affirmed. *LONDON BANK OF MEXICO AND SOUTH AMERICA v. APHORPE* C. A. [1891] 2 Q. B. 378

Followed by *C. A. San Paulo (Brazilian) Ry. Co. v. Carter*, [1895] 1 Q. B. 580. This case was affirmed by H. L. (E.) [1896] A. C. 31. See next Case.

84. — *Company — “Foreign possessions” — Trade carried on partly in United Kingdom, partly abroad — Company resident in United Kingdom—Income Tax Act, 1842* (5 & 6 *Vict. c. 35*), s. 100, *Sched. D, 1st and 5th cases*.

Where a trade is carried on either wholly in the United Kingdom or partly within and partly outside it, and profits accrue therefrom to a person or a corporation residing in the United Kingdom, the assessment for income tax falls under the 1st case of *Sched. D* of 5 & 6 *Vict. c. 35*, s. 100, and does not fall under the 5th case, and the duty is to be computed upon the full amount of the balance of the profits or gains of the trade, and not only upon the actual sums annually received in the United Kingdom. A co. registered under the Companies Acts, whose registered office was in England, were the proprietors of a ry. in Brazil. The working of the ry. was under the control and direction of, and the business of the co. was managed by, the directors in England. The directors purchased in England and sent out to Brazil the materials and plant necessary for the purposes of the ry. The accounts were kept and the balance-sheet and reports were made out in London, where also the meetings were held, and all dividends were

**REVENUE (Income Tax)—continued.**

declared and paid. With the exception of certain small amounts for transfer fees and annual interest on money, the whole revenue of the co. arose from moneys paid to them in Brazil for the carriage of passengers and goods on the ry. and for other matters connected with the ry. :—

*Held*, that it was not necessary to decide the question whether the business of the co. was carried on wholly in the United Kingdom, since it was clearly carried on partly in England and not (as in *Colquhoun v. Brooks*, (1889) 14 App. Cas. 493) wholly outside the United Kingdom; and that the co. were therefore assessable to income tax, under the 1st case of Sched. D of 5 & 6 Vict. c. 35, s. 100, upon the full amount of the balance of the profits or gains of their business, and not, under the 5th case, only upon the actual sums annually received in the United Kingdom.

Decision of C. A., [1895] 1 Q. B. 580, affirmed. **SAN PAULO (BRAZILIAN) RY. CO. v. CARTER**

**H. L. (E.) [1896] A. C. 31**

**85. — Company—Investment trust company—Profits or gains—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. D, First Case.**

The memorandum of association of a co. stated that its objects were to raise money by share capital and invest the same in stocks and shares, to vary "the investments of the co., and generally to sell, exchange, or otherwise dispose of, deal with, or turn to account any of the assets of the co." :—

*Held*, that gains made by the co. by realizing investments at larger prices than those paid for them were to be reckoned as "profits and gains" of the co., in the sense of the Income Tax Act, 1842, Sched. D. **SCOTTISH INVESTMENT TRUST CO. v. INLAND REVENUE**, (1893) 21 Rettie, 202

**Ct. of Sess. (Sc.) [1896] W. N. 108**

**86. — Company—Manager, Payment to retiring—Deductions—Assessment of profits or gains—"Sum employed as capital"—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, Cases 1 and 2, r. 1.**

Upon the transfer of an insurance business the transferees agreed to take into their service the transferors' manager at a fixed salary, with liberty to commute the same by payment to him of a gross sum to be calculated upon life tables. The transferees retained the manager's services for a short time and then paid him a gross sum in commutation of his salary. They claimed to deduct that sum in estimating their profits for income tax :—

*Held*, that the agreement to pay the commutation money was in fact part of the consideration for the transfer of the business, that the payment was therefore a "sum employed as capital" and could not be deducted.

Decision of C. A., [1896] 1 Q. B. 41, affirmed upon the above ground. **ROYAL INSURANCE CO. v. WATSON**

**H. L. (E.) [1896] W. N. 161 (13); [1897] A. C. 1**

**87. — Company—Profits—Bonus—Deductions—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. D, First Case, rr. 3, 4, s. 159.**

A co. borrowed a large sum of money and undertook, with repayment of the capital

**REVENUE (Income Tax)—continued.**

sum borrowed, to pay the lenders a bonus of 10 per cent. thereon.

*Held*, that, in estimating the balance of profits and gains chargeable under Sched. D, the company were not entitled to deduct the amount of the bonus from the profit of the year in which it was paid. **ARIZONA COPPER CO. v. INLAND REVENUE**, (1891) 19 Rettie, 150

**Ct. of Sess. (Sc.) [1896] W. N. 93**

— Company—Profits—Company dividing profits—Limitation of action—Public Authorities Protection Act.

See PUBLIC AUTHORITIES PROTECTION. 2.

**88. — Company—Profits or gains—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, First Case—City of Glasgow Bank (Liquidation) Act, 1882 (45 & 46 Vict. c. clii.), s. 17, and First Sched. (Memorandum of Association of the Company), s. iii., sub-ss (a), (b), (c), (d) and (h).**

In order to enable the liquidation of the City of Glasgow Bank to be finally closed the Assets Co. was formed in 1882, and acquired from the liquidators the whole assets of the bank in return for a payment sufficient to discharge the outstanding liabilities of the bank, with the expenses of the liquidation, and a general undertaking to pay all debts of the bank which might afterwards emerge. These assets consisted of real and other properties and securities, and of sums which the liquidators expected to recover from the estates of contributories. At the date of the transference the assets stood in the books of the liquidators estimated at certain values, but these values did not represent the amount paid by the co., which would have been the same if the book values had been increased or diminished to any extent.

The income of the co., as stated in the revenue accounts, consisted of the returns from these assets and investments. From time to time the co. sold portions of the assets at prices exceeding the book values. The surpluses arising from such sales were not entered as income in the revenue accounts, but were credited to capital under the head of "suspense account for surplus assets." Large sums resulting from such sales and recoveries from debtors were carried to the credit of this account during each year subsequent to 1882, and in 1893 the directors, in terms of an interlocutor of the Court, distributed to the shareholders, from the sum standing in the suspense account, a sum of 15,000*l.* as "repayment of surplus capital."

The Inland Revenue claimed that the co. were liable to income tax for the year 1894–95 on the full amount of the sums carried to the credit of suspense account, and assessed the liability on an average of three years preceding 1894.

In a case for appeal against the assessment, in which the foregoing facts were stated, *held*, that as there was no statement of the price paid for each of the assets at the date of the transference, it was not possible to determine whether the realization of the assets had resulted in a profit to the co.

*Opinions* (per Lord Young and Lord Trayner), that when a person buys a doubtful debt and recovers a larger sum than he paid for it the gain

**REVENUE (Income Tax)—continued.**

is not profit in the sense of the Income Tax Acts unless the purchaser is making a trade of buying such debts. *ASSETS Co. v. INLAND REVENUE*, (1897) 24 R. 578 - - - Ct. of Sess. (Sc.) [1897] W. N. 144

89. — *Company domiciled in United Kingdom—Business carried on abroad—Profits earned not remitted to England—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, Fourth and Fifth Cases; 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.*

(A) The B. Co., an English co., which carried on no business of its own, owned all the shares but seven in a foreign co. carrying on business in A., a foreign country. The foreign co., on a dividend being declared by the B. Co., remitted to England the amount required for distribution among the shareholders, less the amount required for distribution among shareholders in the B. Co. resident in A.:—

*Held*, that the profits of the B. Co. arose from foreign possessions, and came within the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, fifth case; that the money retained for distribution among the shareholders resident in A. was not received by the B. Co. in England within the meaning of the fifth case, and that the B. Co. were not liable to pay income tax on the amount retained in A. *BARTHOLOMAEW BREWING Co. (OF ROCHESTER) v. WYATT*

Div. Ct. [1893] 2 Q. B. 499

(B) The N. Co., an English co., which carried on no business of its own, owned shares in various English and foreign cos. The dividends due to the N. Co. from the foreign cos. was insufficient to pay the dividends due from the N. Co. to such of its shareholders as were resident abroad. The N. Co. directed the dividends accruing to it from the foreign cos. to be paid to bankers abroad for distribution among its foreign shareholders:—

*Held*, that the profits of the N. Co. came within 5 & 6 Vict. c. 35, s. 100, Sched. D, fifth case, that the money retained abroad for distribution among shareholders resident abroad was not received by the N. Co. in England within the meaning of the fifth case, and that the N. Co. was not liable to pay income tax on the amount retained abroad. *NOBEL DYNAMITE TRUST Co. v. WYATT* - - - Div. Ct. [1893] 2 Q. B. 499, at pp. 508, 517

90. — *Company resident abroad trading in Scotland—Agent for foreign company assessed in his own name—Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 41.*

The shipping co. "Chanaral" (owners of the ship *Chanaral*) was incorporated under Norwegian law in Norway, and had its registered office in Christiania, where the books were kept, and the two managers resided. The managers held two of the ninety-five shares of the co., the remainder being held by shareholders in Scotland. J. W. & Co., Glasgow, effected the whole of the chartering, kept the whole accounts, received the whole funds, and paid on behalf of the management from the profits of the first voyage a dividend direct to the shareholders. Prior to April, 1896, the ship had made one voyage from Rotterdam to

**REVENUE (Income Tax)—continued.**

various ports, ending at Liverpool. Income tax assessment under Sched. D having been imposed upon "J. W. & Co. for the ship *Chanaral*" for the year ending April 5, 1896, J. W. & Co. appealed:—

*Held*, (1.) that the co. was resident abroad; (2.) that the profits were derived from trade in this country, and were liable to assessment; and (3.) that the assessment was right in point of form, it being unnecessary to designate J. W. & Co. expressly as agents for the co. *WINGATE & Co. v. INLAND REVENUE*, (1897) 24 Rettie, 939 Ct. of Sess. (Sc.) [1898] W. N. 129

— *Company—Winding-up—Production of documents—Income tax returns.*

*See DISCOVERY—Documents.* 14.

— *Deduction—Whether a "deduction"—Annuity.*

*See WILL—Annuity.* 27.

— *Deductions from income tax.*

*See Cases under REVENUE—Income Tax.*

91. — *Depreciation of machinery or plant, Deduction for—Profits of trade—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 12.*

The Commrs. of Income Tax, when estimating the deductions to be allowed from the profits of a trade under s. 12 of the Customs and Inland Revenue Act, 1878, "as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern," are not bound to take an average of the depreciation during the three preceding years, but may adopt as their estimate the amount of the depreciation during the year immediately preceding that of assessment. *CUNARD STEAM SHIP Co. v. COULSON*

Div. Ct. [1899] 1 Q. B. 865

92. — *Dividends—Deduction of income tax from interest or annuities—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), ss. 60, 102; 1853 (16 & 17 Vict. c. 34), s. 2, Scheds. A, D—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24, sub-s. 3.*

The London County Council had deducted income tax under s. 24, sub-s. 3, of the Customs and Inland Revenue Act, 1888, from dividends paid by them on their consolidated stock. These dividends were paid out of the council's Consolidated Loans Fund, which was by statute made applicable in the first place to their payment. That fund consisted of (among other things) interest which had been received by the council on loans made by them to other local authorities, and from which, in accordance with the subsection, income tax under Sched. D had been deducted before payment of the rents and profits of land on which income tax under Sched. A had been paid, of the proceeds of sales of property, and of money raised by rates:—

*Held*, that the county council were entitled to retain a proportion of the income tax which they had deducted corresponding to the proportion in which the dividends on the consolidated stock had been paid out of moneys on which income tax under Sched. D had been already paid; but that they were not entitled to retain

**REVENUE (Income Tax)—continued.**

a proportion of the deducted income tax corresponding to the proportion in which the dividends had been paid out of moneys charged with income tax under Sched. A.

Question as to the proportion in which the dividends on the council's consolidated stock should be deemed to have been paid out of the interest received by the council on loans discussed.

Decision of Div. Ct., [1899] 2 Q. B. 226, affirmed. *ATT.-GEN. v. LONDON COUNTY COUNCIL* C. A. [1900] W. N. 3; [1900] 1 Q. B. 192

The House reversed the decision of the C. A., [1900] 1 Q. B. 192, so far as it was against the appellants, and dismissed the information with costs — — H. L. (E.) [1900] W. N. 268; [1901] A. C. 26

— Divorce—Annuity by way of alimony.

See No. 68, above.

93. — *Failure to deliver true and correct statements of property and income—Prosecution in "High Court"—Property and Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 52 and 55.*

*Held*, (1) that the words "any statement as aforesaid" in s. 55 of the Property and Income Tax Act, 1842, mean the "true and correct" statement mentioned in s. 52, and that a penalty is incurred, and may be recovered under s. 55, not only for failure to deliver any statement at all, but even when a statement has been delivered, if it is not a true and correct statement; and (2) that it is not a condition precedent to a prosecution in the High Court under s. 55 that proceedings have first been taken before the commrs. *LORD ADVOCATE v. SAWERS*, (1897) 25 Rettie, 242 — Ct. of Sess. (Sc.) [1898] W. N. 131

94. — *Failure to make return of property and income—Prosecution for penalty in "High Court"—Time within which information must be laid—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 21 (4)—Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 22—Statute—Implied repeal.*

The Taxes Management Act, 1880, s. 21, enacts, sub-s. 3, that all penalties exceeding 20*l.* shall be recoverable in the High Court; sub-s. 4, that "in default of prosecution within the space of twelve months from the time of any penalty being incurred . . . no penalty or forfeiture shall afterwards be recoverable in any other manner"; sub-s. 5, that subject to the above restriction as to time all pecuniary penalties not exceeding 20*l.* shall be recoverable before the Commrs.

In a prosecution for a penalty of 50*l.* raised in the High Court eighteen months after the penalty was incurred, the defender founded on s. 21, sub-s. 4, of the Taxes Management Act, 1880, and pleaded that the action was barred in respect that it had not been raised within twelve months:—

*Held*, (1) that the words "in any other manner" in sub-s. 4 did not mean in any manner of way, but in any manner other than that mentioned in sub-s. 3, namely, by an action in the High Court, and that the time limitation did not affect actions in the High Court; (2) that even assuming that it did, sub-s. 4 had been superseded by s. 22 of the Inland Revenue Regula-

**REVENUE (Income Tax)—continued.**

tion Act, 1890, which enacts that proceedings shall be commenced within two years after the penalty is incurred; and therefore (3) that the action had been raised in good time. *LORD ADVOCATE v. SAWERS*, (1897) 25 Rettie, 242

Ct. of Sess. (Sc.) [1898] W. N. 131

95. — *Fines on renewal of leases—Direction in will to invest—Temporary deposit in bank at interest—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 6, Sched. A, No. II., r. 5.*

Money received as fines on renewal of leases and placed (pending permanent investment in land under a settlement) on deposit at a bank has not been "applied as productive capital," and therefore is not exempt from income tax under the proviso in s. 60, Sched. A, No. II., of the Income Tax Act, 1842. *LORD MOSTYN v. LONDON* — — Div. Ct. [1895] 1 Q. B. 170

96. — *Foreign merchant—Trade exercised within United Kingdom—Assessment in name of agent—"Factor, agent, or receiver having the receipt of profits or gains"—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), ss. 41-44; 1853 (16 & 17 Vict. c. 34), Sched. D.*

A foreign merchant, who canvasses through agents in the United Kingdom for orders for the sale of his merchandise to customers in the United Kingdom, does not exercise a trade in the United Kingdom within the meaning of the Income Tax Acts so long as all contracts for the sale and all deliveries of the merchandise to customers are made in a foreign country.

This principle applied to the business of Roederer of Reims, wine merchant, and the decisions of Q. B. D. and C. A., [1895] 1 Q. B. 71, reversed (*Lord Morris dissenting*).

*Semble*: the words in the Income Tax Act, 1842, s. 41, "having the receipt of any profits or gains," apply to "factor" and "agent" as well as to "receiver." *GRAINGER & SON v. GOUGH*

H. L. (E.) [1896] A. C. 325

97. — *Foreign principal—Exercising trade in United Kingdom—Consignment of goods from abroad to agent here for sale—Income Tax Acts, 1853 (16 & 17 Vict. c. 34); 1842 (5 & 6 Vict. c. 35).*

Foreign principals were in the habit of consigning goods to agents in this country for sale. The agents, who invoiced the goods to their purchasers in their own names and guaranteed payment by the purchasers, remitted to their principals the proceeds of the sales less their charges and commission. On a claim by the Crown against the foreign principals for income tax:—

*Held*, that though there might be a presumption as between the agents and their purchasers that the agents and not the foreign principals were the vendors, there was no corresponding presumption as between the foreign principals and the agents that the property in the goods had passed from the principals to the agents; that the sales by the agents in this country were as between them and their principals made on behalf of the principals, and that the principals were consequently liable to income tax as exercising a trade within the United Kingdom within

**REVENUE (Income Tax)—continued.**

the meaning of s. 2, Sched. D, of the Income Tax Act, 1853. *WATSON v. SANDIE & HULL*

Div. Ct. [1898] 1 Q. B. 326

98. — *Foreign trade—Deductions—Expense of distributing profits under trust deed—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, case 5.*

Testamentary trustees were assessed for income tax under case 5, Sched. D, of the Income Tax Act, 1842, on the full amount received by them in Great Britain of trade profits made in India.

The trustees claimed deduction of the expense of the trust administration in Great Britain on the ground that the beneficiaries on whom the income tax fell could only receive the profits subject to this deduction:—

*Held*, that the deduction could not be allowed, as the trust administration was not an expenditure for trade purposes. *AIKEN v. TRUSTEES OF MACDONALD*, (1894) 22 *Rettie*, 88

Ct. of Sess. (Sc.) [1896] W. N. 120

99. — *Grazing and shootings over farm—Separate leases—Assessment—Property and Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 63, Sched. B, r. 7.*

*Held*, that the lessee of a farm for grazing under one lease and of the shootings over the farm under another was liable to be assessed under Sched. B, r. 7, of the Income Tax Act, 1842, in respect of occupancy to the extent of the rent for the combined occupation.

*Middleton v. Lord Advocate*, (1876) 3 *Rettie*, 599, followed. *REVELL v. SCOTT*, (1895) 22 *Rettie*, 772

Ct. of Sess. (Sc.) [1896] W. N. 137

100. — *Husband and wife—Deductions—Joint income—Assessment of husband on wife's profits—Costs of Crown—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), s. 45; 1853 (16 & 17 Vict. c. 34), s. 2, Sched. E, s. 51.*

Where a husband and wife were master and mistress of a National School at a joint salary:—

*Held*, that the husband's income tax was properly assessed on the whole salary:

*Held*, also, that a deduction for the wages of a servant, who had been engaged to enable the wife to teach, could not be allowed.

Costs in cases where Commrs. have allowed a deduction against which the Crown successfully appeals, considered. *BOWERS v. HARDING*

Div. Ct. [1891] 1 Q. B. 560

**HUSBAND AND WIFE—MARRIED WOMAN.]**  
*Exemption of income arising from business of wife and repeal of sub-s. 2 of s. 34 of the Finance Act, 1894 (57 & 58 Vict. c. 30). See Finance Act, 1897 (60 & 61 Vict. c. 24), s. 5.*

— Insurance company (life) — “Profits and gains.”

*See No. 88, above.*

101. — *Insurance—Life insurance company—Participating policy-holders—Return of premium by way of bonus—Annual profits or gains—Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D.*

A life insurance co. had a capital divided into shares, the dividends on which were limited by the articles of association to 7 per cent. The

**REVENUE (Income Tax)—continued.**

powers of the co. were vested in a board of directors elected by the shareholders; the board appointed the officers of the co., and by the officers determined the rates of premium and the terms of insurance, and generally managed the affairs of the co. The co. issued participating policies, and by the articles the insurance business was to be conducted on the mutual plan. The earnings and receipts over and above the dividends, losses, and expenses were accumulated from year to year, and every five years a balance was struck and the net surplus in the hands of the co., after deducting an amount sufficient to cover all outstanding risks and obligations, was, in compliance with the articles of association, divided among the holders of participating policies, each policy-holder being credited with an equitable share of such surplus:—

*Held*, that the surplus returned or credited to the policy-holders was “annual profits or gains,” and was assessable to income tax.

*Last v. London Assurance Corporation*, (1885) 10 App. Cas. 438, and *New York Life Insurance Co. v. Styles*, (1889) 14 App. Cas. 381, considered. Decision of Div. Ct., [1899] 2 Q. B. 439, affirmed. *EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES v. BISHOP*

C. A. [1900] 1 Q. B. 177

102. — *Interest—Decree for repayment of price, with interest—Liability of interest to income tax—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 1 and 40.*

In an action at the instance of a ward for reduction of the sale of a part of her estate, which consisted of shares in a public co., the Court found that on repayment by the pursuer of the price received for the shares, with interest at 5 per cent., the pursuer would be entitled to restitution of the shares, with the dividends accruing thereon.

The pursuer tendered payment of the price with 5 per cent. interest, under deduction of income tax on the interest:—

*Held*, that as between the pursuer and defender income tax did not fail to be deducted by the pursuer under s. 40 of the Income Tax Act, 1853, from the interest payable by her. *DUNN v. CHAMBERS*, (1898) 25 *Rettie*, 688

Ct. of Sess. (Sc.) [1898] W. N. 139

103. — *Interest—Payment of interest without deduction of income tax—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40.*

By s. 40 of the Income Tax Act, 1853, it is provided that every person who shall be liable to the payment of any yearly interest of money shall be entitled, “on making such payment,” to deduct income tax therefrom:—

*Held* (dub. Lord Kinnear) that if the debtor makes payment of interest without deducting the income tax, he loses the right to the deduction in respect of such interest. *GALASHIELS PROVIDENT BUILDING SOCIETY v. NEWLANDS*, (1893) 20 *Rettie*, 821 Ct. of Sess. (Sc.) [1896] W. N. 107

— Lease—Annual value of property.

*See No. 114, below.*

— Leases.

*See Nos. 95, 99, above.*



**REVENUE (Income Tax)—continued.**

## — Library—Public library.

See Nos. 108, 109, below.

**104.** — *Literary or scientific institution—Exemption—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. A, r. 6.*

The Income Tax Act, 1842, Sched. A, r. 6, exempts from income tax "any building the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is demanded for any instruction there afforded by lectures or otherwise":—

*Held*, that the hall, library, and museum of the Royal College of Surgeons of Edinburgh were not exempt under the above provision, in respect that the college was not a literary or scientific institution but an institution whose main objects were professional. *SULLY v. ROYAL COLLEGE OF SURGEONS OF EDINBURGH*, (1892) 19 Rettie, 751 Ct. of Sess. (Sc.) [1896] W. N. 98

**105.** — *Literary or scientific institution—Exemption—Property of bodies corporate or unincorporate—Property legally appropriated for the promotion of science—Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11, sub-s. 3.*

The Royal College of Surgeons of England, incorporated by charter, had two main objects: the promotion of the science of surgery, and the promotion and encouragement of the practice of surgery, including the promotion of the interests of those practising surgery as a profession, and the examination of students and others to qualify for practice or honours in surgery and kindred subjects. On an appeal against an assessment to duty under the Customs and Inland Revenue Act, 1885:—

*Held*, that, as the promotion of the interests of those practising surgery as a profession was in itself a main object, and one in respect of which no exemption could be claimed, the only exemption that could be claimed under s. 11 of the Act was in respect of property or income so appropriated as to create a legal obligation to apply it to the promotion of the science of surgery. *In re ROYAL COLLEGE OF SURGEONS OF ENGLAND*

C. A. [1899] 1 Q. B. 871

**106.** — *Lighting—Surplus gas—Deductions—Trade purposes—Municipal corporation—Duty to light town—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A, s. 100, Sched. D.*

A municipal corporation claimed to deduct expenses of lighting their town from profits made by sale of surplus gas to private customers as being money expended for the purposes of a trade:—

*Held*, that the two transactions were distinct, and that there were no "trade" expenses until they began to supply private customers. Claim disallowed. *DILLON v. HAVERFORDWEST CORPORATION*

Div. Ct. [1891] 1 Q. B. 575

## — Married woman—Exemption.

See Finance Act, 1897 (60 & 61 Vict. c. 24), s. 5.

— *Mine—Assessment—Income from ore produced in New South Wales and sold outside it.*  
See NEW SOUTH WALES. 43.

**REVENUE (Income Tax)—continued.**

## — Mortgages—Taxable income—Land and Income Tax Assessment Act.

See NEW SOUTH WALES. 24.

**107.** — *Process—Case stated by Commissioners of Income Tax—Amendment—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 59.*

In the course of the hearing of a case stated by the Commrs. of Income Tax, the Court, without pronouncing any formal order, allowed a note to be put in by the parties setting forth additional facts. *FAISLEY CEMETERY CO. v. INLAND REVENUE*, (1898) 25 R. 1080

Ct. of Sess. (Sc.) [1899] W. N. 196

— *Proof for assessed taxes—Power of Court to go behind assessment—Scheme of arrangement.*

See BANKRUPTCY—Proof. 185.

## — Property and income tax.

See Cases under REVENUE—Income Tax.

**108.** — *Public library—Exemption—Urban authority—"Building the property of a literary or scientific institution"—Public Libraries Act, 1892 (55 & 56 Vict. c. 53), ss. 4, 11, 12, 14—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, No. VI.*

The exemption from income tax granted by the Income Tax Act, 1842 (Sched. A, s. 61, No. VI.), to any building "the property of any literary institution" includes buildings appropriated to free public libraries and used solely for the purposes of the libraries, whoever may be the owners of the buildings, and whether they are or are not supported by rates.

So *held* with regard to the Manchester free public libraries, and the decision of C. A., [1895] 1 Q. B. 673, reversed, Lord Halsbury L.C. dissenting. *MANCHESTER CORPORATION v. McADAM*

H. L. (E.) [1896] A. C. 500

**109.** — *Public free library—"Buildings used solely for the purposes" of institution—Subscription library—Exemption—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, No. 6.*

Sect. 61, Rule 6, of the Income Tax Act, 1842, exempts from duties under Sched. A, "any building the property of any literary or scientific institution, used solely for the purposes of such institution."

In the buildings of the Dundee Free Library accommodation was given to books belonging to the Dundee Subscription Library, and the expenses attending their safe keeping and circulation among the subscribers were defrayed out of the revenues of the Free Library. In consideration of the accommodation and services so given, each book, after being in circulation for a year, became the property of the Free Library:—

*Held*, that the buildings in question did not fall within the above exemption, inasmuch as they were not used "solely" for the purposes of the Free Library. *INLAND REVENUE v. DUNDEE MAGISTRATES*, (1897) 24 Rettie, 930.

Ct. of Sess. (Sc.) [1898] W. N. 127

— "Public school"—Theological college.

See No. 113, below.

**110.** — *Religious society, Trade carried on by—Deductions—Profits arising from trade—Losses not connected with trade—Income Tax Acts, 1853*

**REVENUE (Income Tax)—continued.**

(16 & 17 Vict. c. 34), s. 2, *Sched. D*; 1842 (5 & 6 Vict. c. 35), s. 100, *Sched. D*, case 1, r. 3.

A society whose object was to promote religion by the circulation of tracts and books, carried on the business of booksellers in a shop, and earned profits therefrom. The society also sold books by colporteurs, but the colportage work could not by itself be carried on at a profit as a commercial undertaking, and the society was able to continue it only by means of the profits earned in the shop and of voluntary subscriptions:—

*Held*, that the profits earned in carrying on the business of booksellers were trade profits and fell to be assessed for income tax, and that the losses arising from the colportage agencies did not fall to be deducted therefrom, the colportage being essentially distinct from the bookselling business, and not being of the nature of trade. **RELIGIOUS TRACT AND BOOK SOCIETY OF SCOTLAND v. FORBES**, (1896) 23 *Rettie*, 390.

**Ct. of Sess. (Sc.) [1896] W. N. 126**

— Residence—Abatement—Allowances.

*See No. 79, above.*

— Salary, Chaplain's.

*See No. 75, above.*

**111. — Salary—Deductions—Contribution for superannuation allowance—Sum payable or chargeable by virtue of Act of Parliament—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 146—Poor Law Officers Superannuation Act, 1896 (59 & 60 Vict. c. 50), s. 12.**

The appellant, who was clerk to the guardians of a union, and to the assessment and school attendance committees, was assessed in respect of his salary, under *Sched. E*, on a net amount of 289*l.* He contributed annually under s. 12 of the Poor Law Officers Superannuation Act, 1896, for the purposes of that Act, a sum of 15*l.* 10*s.*, which was deducted from his salary under that section. He claimed to deduct this sum from the amount on which he was assessed, by virtue of the Income Tax Act, 1842, s. 146, *Sched. E*, First Rule, by which duty is payable on salaries, &c., "after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament":—

*Held*, that the amount contributed by the appellant, under the Poor Law Officers Superannuation Act, came within the words "duties or other sums payable or chargeable by virtue of any Act of Parliament," in the Income Tax Act, 1842, s. 146, and therefore he was entitled to the deduction claimed. **BEAUMONT v. BOWERS**

**Div. Ct. [1900] W. N. 117; [1900] 2 Q. B. 204**

— Scientific Institutions—Exemption.

*See Nos. 104, 105, above.*

**112. — Ship—Deductions for wear and tear—Obsolete type of ship—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, *Sched. D*, case 1, r. iii.—Customs and Inland Revenue Act, 1878 (41 Vict. c. 15), s. 12.**

Section 12 of the Customs and Inland Revenue Act, 1878, provided that the commrs. should in assessing the profits or gains of any trade or adventure chargeable under *Sched. D* of the Income Tax Acts, or the profits of any concern

**REVENUE (Income Tax)—continued.**

chargeable by reference to the rules of that schedule, "allow such deduction as they may think just and reasonable, as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern":—

*Held*, that the owners of a ship engaged in trade were not entitled under this section to a deduction for depreciation in the value of their ship caused by ships of a better construction being built. **BURNLEY STEAMSHIP CO. v. AIKEN**, (1894) 21 *Rettie*, 965

**Ct. of Sess. (Sc.) [1896] W. N. 115**

— Surgeons, Royal College of—Exemption.

*See Nos. 104, 105, above.*

**113. — Theological college—"Public school"—Exemption—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, *Sched. A*, r. 6.**

*Held*, that a theological college which was intended primarily for the training of candidates for the ministry of the Free Church of Scotland and the regular students of which required either to be graduates or to have passed through a University course of Arts before they were admitted to the college, was not a "public school" in the sense of the Income Tax Act, 1842, s. 61, *Sched. A*, r. 6. **INLAND REVENUE v. GENERAL TRUSTEES OF FREE CHURCH OF SCOTLAND**, (1897) 24 *R.* 496—499

**Ct. of Sess. (Sc.) [1897] W. N. 140**

**114. — Value—Annual value of property—Leases—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, *Sched. (A)*, No. I.—Taxes Management Act, 1880 (43 & 44 Vict. c. 19).**

The occupant of premises, which had been assessed to income tax for the year ending April 5, 1899, at the annual value of 40*l.* appealed against the assessment to the Commrs., and produced two leases, one dated May 2, 1898, for seven years from Whitsunday, 1898, and the other dated in July, 1888, for ten years from Whitsunday, 1888. The rent stipulated in both cases was 19*l.* 10*s.*, and the appellant maintained that the assessment should be reduced to that amount. It was admitted that the leases contained the whole contract between the owner and occupant. The appellant led no other evidence, and did not require the Commrs. to appoint a valuator.

The Commrs. refused the appeal, being of opinion (1) that they were not bound to accept the leases as conclusive evidence of the value of the premises, and (2) that, from their own local knowledge, and according to the best of their judgment, 40*l.* was a fair valuation.

On appeal the Court affirmed the determination of the Commrs., holding that the Commrs. were not bound or entitled to regard the leases as conclusive evidence of the value of the premises, although they were admissible as evidence quantum valeret, and that the Commrs. were entitled, in considering the evidence, to have regard to their own local knowledge. **STOCKS v. INLAND REVENUE**, (1899) 1 *Fraser*, 1020

**Ct. of Sess. (Sc.) [1900] W. N. 207**

— Victorian Income Tax Act, 1895—"Trusts."

*See VICTORIA. 5.*

**REVENUE (Income Tax)—continued.**

115. — *Wear and tear, Deduction for—Process—Stated case—Amendment—Question of law—Expenses—Customs and Inland Revenue Act, 1878 (41 Vict. c. 15), s. 12—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 50.*

A shipping co. having claimed a deduction under the above section in respect of the depreciation of their fleet of steamships, the Commrs. allowed a deduction at the rate of  $5\frac{1}{2}$  per cent. on the value of the fleet as at the beginning of the year. The shipping co., who claimed a deduction at the rate of  $9\frac{1}{2}$  per cent., appealed. The case for appeal did not state the method by which the Commrs. reached the rate of  $5\frac{1}{2}$  per cent., and merely put the question whether the deduction of  $5\frac{1}{2}$  per cent. was a just and reasonable exercise of the powers of the Commrs. under the statute; but the case stated that "the opinion of Sheriff Rutherford, who delivered the decision of the Commrs., and a statement shewing the effect of depreciation on the diminishing value of a steamer costing originally 20,000*l.* at various rates per cent., and on which the decision proceeded, are subjoined as an appendix to this case." In the opinion of Sheriff Rutherford it was stated that a deduction at the rate of  $5\frac{1}{2}$  per cent. on the annually diminishing value of a steamer would, at the end of twenty-two years (which, it was stated, was the assumed average life of such vessels), amount to the original cost of the vessel, provided that the sums annually deducted were put out at interest; but that if the sums deducted were not put out at interest, the sums deducted would amount only to about two-thirds of the original cost of the vessel. This, the opinion stated, "is put merely as an illustration with the view of shewing that  $5\frac{1}{2}$  per cent. on the diminishing value during each of the twenty-two years is a fair allowance."

At the hearing on the appeal the appellants maintained that the Commrs. had erred in law in taking account of interest in the manner explained in the sheriff's opinion; the Inland Revenue maintained that the opinion formed no part of the case, and that in any view no question of law was raised.

The Court remitted the case to the Commrs. for amendment with the view of embodying in the case the statements in the opinion—*diss.* Lord Young, who was of opinion that, assuming the opinion to form part of the case, the question what was a just and reasonable deduction under the statute was a question of fact and not a question of law.

In the case as amended the Commrs. stated, *inter alia*,—"in fixing the deduction to be allowed for diminished value through wear and tear, we took into account that the sum annually allowed might be so invested as to produce a return of 3 per cent. per annum."

The Court (*diss.* Lord Young) reversed the determination of the Commrs., and remitted to them with an instruction to the effect that in estimating the deduction to be allowed under the statute they were not entitled to make any deduction upon the sum representing the wear and tear during the year in question on account of any interest which might be earned on the sums allowed.

**REVENUE (Income Tax)—continued.**

*Expenses—Stated case.*—The expense of a print containing a correspondence between the parties regarding the form of a stated case disallowed, although the Court ultimately ordered the case to be amended so as in substance to put it into the form proposed by the successful party, who had prepared the print. *LEITH, HULL AND HAMBURG STEAM PACKET CO. v. INLAND REVENUE*, (1899) 1 *Fraser*, 1117

Ct. of Sess. (Sc.) [1900] *W. N.* 210

— Wear and tear—Deductions for—Ship.

*See No. 112, above.*

**Inhabited House Duty.**

*See Cases under REVENUE—House Duty.*

**Inventory Duty.**

— Account stamp duty.

*See Cases under REVENUE—Account Duty.*

116. — *Donation—Delivery—Donatio mortis causa—Customs and Inland Revenue Acts, 1881 (44 & 45 Vict. c. 12), s. 38; 1889 (52 & 53 Vict. c. 7), s. 11.*

In 1886, A., one of two brothers who were in partnership, when ill of the disease of which he died three and a half months afterwards, granted a receipt in favour of B., his partner, by which he acknowledged that he had received the sum of 100*l.* for his interest in the business from B. That sum was a totally inadequate consideration for A.'s interest. In an action against A.'s representatives by the Crown for payment of inventory duty, evidence upon which it was held that whether the transaction between A. and B. was of the nature of a donation or of a sale, it was a transaction by which A.'s interest in the business was transferred to B. absolutely, and that the claim of the Crown in consequence fell to be repelled. *LORD ADVOCATE v. FINNIGAN OR M'COURT*, (1893) 20 *Rettie*, 488.

Ct. of Sess. (Sc.) [1896] *W. N.* 101

— Double duties — Legatees identified by reference to will of another testator—Power of disposal.

*See REVENUE—Probate Duty.* 131, 132.

— Legacy duty.

*See Cases under REVENUE—Legacy Duty.*

— Life-rent—Trust deed.

*See REVENUE—Legacy Duty.* 127.

— Succession duty.

*See Cases under REVENUE—Succession Duty.*

117. — *Voluntary settlement—Reservation of interest in property settled—Stamp duty on accounts—Customs and Inland Revenue Acts, 1881 (44 & 45 Vict. c. 12), s. 38, sub-s. 2 (c); 1889 (52 Vict. c. 7), s. 11, sub-s. 1.*

In 1887 W. transferred to three of his sons, who formed a copartnership, the whole stock in trade and goodwill of his business. No cash was paid down by his sons, but they undertook, both as individuals and as a firm, to grant a bond of annuity in favour of their father, and after his death to their mother, equivalent to 5 per cent. on the value of the stock in trade. The bond was

**REVENUE (Inventory Duty)—continued.**

in no way secured on the business. The sons further, in consideration of their father entering into the arrangement, discharged all claims competent to them on his death to any share of his estate. *W. died in 1893.*

In an action at the instance of the Inland Revenue to recover duty on the property so acquired by his sons, *held* (following *Crossman v. Reg.*, (1886) 18 Q. B. D. 256) that the transfer of the business was a voluntary settlement within the meaning of the Customs and Inland Revenue Act, 1881, s. 38, sub-s. 2, and that the annuity was an interest in the business reserved by implication to the settlor, and therefore that duty was payable. *LORD ADVOCATE v. WILSON*, (1894) 21 *Rettie*, 997.

**Ct. of Sess. (Sc.) [1896] W. N. 118**

**Land Revenue.**

*See* LAND REVENUE.

**Land Tax.**

*Taxes (Regulation of Remuneration) Assessment Act, 1892* (55 & 56 *Vict. c. 25*), alters the mode of payment of collectors of land tax.

*Land Tax Commissioners Names Act, 1893* (56 & 57 *Vict. c. 27*), makes provision for appointing additional Land Tax Commissioners.

*Partial remission, and redemption of Land Tax. See Finance Act, 1896* (59 & 60 *Vict. c. 28*), Part VI.

**SCOTLAND.] See Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896** (59 & 60 *Vict. c. 37*).

*Exemption from land tax in certain cases. See Finance Act, 1898* (61 & 62 *Vict. c. 10*) s. 12.

*Land Tax Commissioners Names Act, 1899* (62 & 63 *Vict. c. 25*), appoints additional commissioners for executing the Acts for granting a land tax and other rules and taxes.

**118. — Railway tunnel under street—"Hereditament"—Liability to assessment—Land Tax Act, 1797** (38 *Geo. 3, c. 5*), s. 4.

A ry. co. under a special Act were entitled to use the subsoil and undersurface of lands without being required wholly to take the lands, and constructed a tunnel under a highway:—

*Held* on the construction of the special Act that the right and interest of the ry. co. in the particular tunnel was an "hereditament" and not merely an easement, and they were liable for land tax in respect of the same under s. 4 of the Land Tax Act, 1797.

*Decision of C. A.*, [1892] 1 Q. B. 165, affirmed. *METROPOLITAN RY. CO. v. FOWLER*

**H. L. (E.) [1893] A. C. 416**

Referred to by *Kekewich J. Farmer v. Waterloo and City Ry. Co.*, [1895] 1 Ch. 527, 532.

**119. — Tithe rent-charge—Exemption from land tax—Hop-grounds or market-gardens.**

The annual rent-charge payable under the Extraordinary Tithe Redemption Act, 1886 (49 & 50 *Vict. c. 54*), in lieu of the extraordinary charge previously leviable on hop-gardens,

**REVENUE (Land Tax)—continued.**

orchards, &c., is not liable to land tax. *CARR v. FOWLE* — *Div. Ct.* [1893] 1 Q. B. 251

— *Victoria, Laws of.*

*See* VICTORIA. 6, 7.

**Legacy Duty.**

**120. — Annuity by way of salary—Stamp Duties Act, 1845** (8 & 9 *Vict. c. 76*), s. 4.

Annuities granted to trustees to be enjoyed by them while carrying on the testator's business are liable to legacy duty. *In re THORLEY. THORLEY v. MASSAM* **C. A. [1891] 2 Ch. 613**

Referred to by *Kekewich J. In re White*, [1898] 1 Ch. 297, 299. This case was affirmed by *C. A.* [1898] 2 Ch. 217.

**121. — Annuity out of rents of realty—Trust for accumulation of surplus rents—Annuitant tenant for life subject thereto—Legacy Duty Act, 1845** (8 & 9 *Vict. c. 76*), s. 4.

A testator who died in 1876 devised real estate to trustees for a term of 500 years, and subject thereto on limitations under which A. became tenant for life. The trusts of the term were to raise and pay out of the rents and profits of the estate an annuity to the person who should, subject to the term, be entitled to the rents and profits; and the testator declared that, subject thereto, the trustees should, during twenty-one years from the testator's death, accumulate the rents and profits and invest them in land to be settled to the same uses; and after the determination of the twenty-one years should pay the rents and profits to the person for the time being entitled to the hereditaments comprised in the term:—

*Held* (Rigby L.J. dissenting), affirming the decision of *Stirling J.*, [1895] 2 Ch. 517, that as A. during the period of twenty-one years had in effect a mere charge upon the estate of another person, legacy duty and not succession duty was payable on the annuity.

*Shirley v. Earl Ferrers*, (1842) 1 Ph. 167, distinguished. *In re DE HOUGHTON. DE HOUGHTON v. DE HOUGHTON* — **C. A. [1896] 1 Ch. 855**

**122. — "Began to enjoy benefit"—Personal estate directed to be laid out in land—Life interest—Absolute estate in remainder—Legacy Duty Act, 1796** (36 *Geo. 3, c. 52*), ss. 12, 19—*Customs and Inland Revenue Act, 1881* (44 & 45 *Vict. c. 12*), s. 41.

T. bequeathed money directed to be laid out in land to be settled to B. for life, with remainders in tail male to B.'s sons, remainder to B. in fee. B. died without male issue in 1893, and directed the money to be part of his personal estate:—

*Held*, that at the moment of his death without male issue, B. began to enjoy the benefit of the settled money, within s. 12 of 36 *Geo. 3, c. 52*, and that therefore duty at the rate of 1 per cent. became payable on the bequest by T., although the affidavit duty had been paid on B.'s estate.

*In re Haygarth's Trusts*, (1883) 22 Ch. D. 545, distinguished. *LORD KENLIS v. HODGSON*

**Kekewich J. [1895] 2 Ch. 458**

**123. — Compounding—Legacy compounded for**

**REVENUE (Legacy Duty)—continued.**

less than the amount thereof—*Legacy Duty Act, 1796* (36 Geo. 3, c. 52), ss. 23, 37.

36 Geo. 3, c. 52, s. 23, enacts that where a legacy shall be released for a consideration or compounded for less than the value thereof, legacy duty shall be paid in respect of such legacy according to the amount taken in satisfaction thereof.

A competition between a person claiming a bequest on behalf of a class of beneficiaries under a will and the next of kin (a niece) of the testator, who maintained that the bequest was void from uncertainty, was terminated by joint minute under which each party received one-half of the subject of the bequest. The Court interposed authority to the minute, and in terms thereof ranked and preferred each claimant to one-half of the fund.

The Crown then claimed legacy duty at the rate of 10 per cent. on the whole fund, on the ground that as the bequest had not been set aside the rate of duty for the whole was that payable by strangers in blood to the testator. The testator's next of kin maintained that the rate of duty on the half payable to her under the arrangement ought to be 3 per cent. only:—

*Held* that, under s. 23 of the Act, the bequest having been released for payment of one-half of its amount, duty at the rate of 10 per cent. was payable on that half only, and that the half payable to the next of kin was liable to 3 per cent. duty. *LORD ADVOCATE v. MURRAY* (FRECKLETON'S JUDICIAL FACTOR), (1894) 21 Rettie, 743

Ct. of Sess. (Sc.) [1896] W. N. 110

124. — *Crown debt—Priority—Bankruptcy—Costs against the Crown*—18 & 19 Vict. c. 90, s. 2.

A., who was executor of a deceased person, received and applied for his own use assets of the deceased without paying to the Crown legacy duty payable in respect of certain legacies which there had been assets sufficient to meet. A. was subsequently adjudicated a bankrupt, and his assignees in bankruptcy realized his estate:—

*Held*, that the Crown debt for legacy duty was entitled to priority over the general creditors of the bankrupt; and (reversing the decision of Boyd J.) that such priority could be asserted by motion in the bankruptcy matter, and existed notwithstanding the vesting of the bankrupt's estate in his assignees:

*Held*, by Boyd J., that costs cannot be given against the Crown where the Att.-Gen. is not a party *eo nomine*.

*Reg. v. Beadle*, (1857) 7 E. & B. 492, followed in preference to *Ex parte Jordan*, (1892) 31 L. R. Ir. 1. *In re GALVIN*, [1897] 1 Ir. R. (Ch.) 520

Ch. Div. (Ir.) [1898] W. N. 140

— Double duties—Legatees identified by reference to will of another testator—Power of disposal.

*See REVENUE—Probate.* 131, 132.

125. — *Lands purchased before vested right acquired by beneficiary.*

Trustees having, pursuant to directions of a will, laid out money out of the personal estate in the purchase of land before the time when any beneficial interest became vested under the will, *held* that legacy duty was not payable upon the

**REVENUE (Legacy Duty)—continued.**

sum so laid out. *LORD ADVOCATE v. MACFARLANE* (DUNLOP'S TRUSTEES), (1894) 21 Rettie, 348. Ct. of Sess. (Sc.) [1896] W. N. 96

*See next Case.*

126. — *Lands—Personality directed to be invested in the purchase of land to be entailed—Legacy Duty Acts, 1796* (36 Geo. 3, c. 52), ss. 12, 19; 1815 (55 Geo. 3, c. 184), s. 2.

Where movable estate was left in trust to accumulate for six years, and to be invested in the purchase of land to be entailed on D. and his heirs male, and D. having by private arrangement obtained the consent of the next heirs, obtained an order for the trustees to convey the land and money held by them to D. in fee simple, and the trustees had invested a certain sum in lands and another sum in building a mansion-house:—

*Held*, affirming decision of Ct. of Sess., *Lord Advocate v. Dunlop's Trustees*, (1892) 19 Rettie, 461, that legacy duty was payable on the residue, less the amount laid out on lands, and that D. could not deduct the amount laid out on building the mansion-house or the compensation he had paid to the next heirs. *MACFARLANE v. LORD ADVOCATE* — H. L. (Sc.) [1894] A. C. 291

*See preceding Case.*

127. — *Life-rent—Trust deed—Legacy and inventory duty—Legacy Duty Act, 1796* (36 Geo. 3, c. 52), s. 14.

By a trust deed the trustees were directed to make an inventory of a library and art collection which were to be vested in and held by them as part of the trust estate with life-rent use thereof to D. his eldest son, and substitute heirs of entail. The deed also provided for the conveyance of the movable estate of the settlor to D. on the liquidation of certain debts and obligations during D.'s lifetime. D. liquidated the debts, but the library and art collection remained vested in the trustees during his life. On D.'s death:—

*Held*, affirming decision of Ct. of Sess., *Lord Advocate v. Duke of Hamilton*, (1891) 29 Sco. Law Rep. 213, that the library and art collection were part of D.'s estate, and legacy and inventory duty were payable thereon by his executors. *DUKE OF HAMILTON v. LORD ADVOCATE*

H. L. (Sc.) [1892] W. N. 160

**Licence Duty.**

128. — *Public-house—Offices occupied with certificated house—Stables—Inland Revenue Act, 1880* (43 & 44 Vict. c. 20), s. 43.

The Inland Revenue Act, 1880, s. 43, imposes duties payable on licences taken out by retailers of spirits, according to a graduated scale which depends on "the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and gardens therewith occupied."

The holder of a public-house certificate was tenant of the house, and of a stable and stable-yard adjoining, at a lump rent for the whole. The entrance to the public-house was from A. street, and to the stable and stable-yard from B. street, at right angles to the former. At the

**REVENUE (Licence Duty)—continued.**

back, the stable and stable-yard were separated from the house by a fence eight feet high, the magistrates having made the erection of such a fence a condition of granting the certificate, and there was no access from the house to the stable and stable-yard except by the public street, or through a small door from the house used only by the publican and his servants. The stables were used chiefly for the accommodation of farmers and others visiting the town, and the publican generally made a charge for stabling at ordinary rates. Some of the persons using the stable sought refreshment at the public-house; others did not.

In a question between the Board of Inland Revenue and the publican as to the amount of licence duty payable by the publican under the above Act, *held* (by Lord Stormonth-Darling, Ordinary in Exchequer) that the stable and stable-yard were occupied along with the public-house in the sense of the Act, and that the annual value of the stable and stable-yard fell to be included in computing the amount of the duty. **PHILLIPS v. LORD ADVOCATE**, (1899) 1 Fraser, 828. Ct. of Sess. (Sc.) [1900] W. N. 204

**Plate.**

**129. — Licence to deal in plate—Secretary of watch club—Inland Revenue Act, 1867 (30 & 31 Vict. c. 90), ss. 1, 3, 17.**

By s. 17 of the Inland Revenue Act, 1867, a penalty is imposed upon persons soliciting, taking, or receiving orders for articles, for the dealing in, retailing or selling which an excise licence is required, without having in force a proper excise licence, with a proviso that the section is not to be deemed to impose a penalty upon a bona fide traveller taking orders for goods which his employer is duly licensed to deal in or sell.

A watchmaker in London, holding an excise licence to deal in plate at his place of business in London, was the proprietor of a "watch club" in a provincial town. The secretary of the club, a clerk in the town, obtained members from among his fellow employees, receiving from each member a weekly subscription, which he forwarded to the watchmaker. A ballot was held at intervals among the members: the member who was successful at the ballot chose a watch from a catalogue of the watchmaker's goods; the secretary communicated his choice to the watchmaker and received from him a watch, which he handed over to the member. The secretary, who had no excise licence to deal in plate, was paid by the watchmaker a commission upon the amount collected by him:—

*Held*, that the secretary of the club was a person soliciting, taking, or receiving orders for an excisable article without having in force a proper excise licence within the meaning of the above section, and that he did not come within the proviso in favour of bona fide travellers therein contained. **KILLICK v. GRAHAM. LINTERN v. BURCHELL** — Div. Ct. [1896] 2 Q. B. 196

**Practice.**

— Collection of taxes—Expiration of collector's year.

*See* REVENUE—Collection of Taxes. 11.

**REVENUE (Practice)—continued.**

— Estate duty—Appeal from Commissioners.

*See* Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10.

— Penalties—Information to recover—Proof of authority to take proceedings.

*See* JUSTICES. 7.

— Penalties—Trial by jury—Exchequer prosecutions.

*See* REVENUE—Stamps. 172.

— Process—Stated case—Amendment.

*See* REVENUE—Income Tax. 107.

— Stamping documents.

*See* Cases under REVENUE—Stamps.

**Probate Duty.**

— Account stamp duty.

*See* Cases under REVENUE — Account Duty.

**130. — Company—Foreign company, Shares in — Certificates transferable in this country by delivery.**

Certificates of shares in a foreign co. on which a form of transfer and power of attorney has been indorsed and executed in blank may be liable to probate duty, if they are marketable in this country and are operative by delivery.

*Att.-Gen. v. Bouwens*, (1838) 4 M. & W. 171, followed. **STERN v. REG.**

Div. Ct. [1896] 1 Q. B. 211

*See In the Goods of Agense, Jeune P.*, [1900] P. 60.

**131. — Double or single duty—Legatees identified by reference to will of another testator—Whether duties under both wills must be paid—Stamp Acts, 1808 (48 Geo. 3, c. 149), s. 38; 1815 (55 Geo. 3, c. 184), s. 37; 1845 (8 & 9 Vict. c. 76), s. 4; 1860 (23 Vict. c. 15), s. 4—Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 32.**

A. bequeathed part of her residual estate to B., and failing him to his executors and representatives. B. died before A., leaving a will which appointed executors. The Crown claimed inventory and legacy duty from B.'s executors in addition to that paid by A.'s executors:—

*Held*, that B.'s executors were not liable for such duty, as B. had no power to dispose of and had not disposed of any part of A.'s estate within the Stamp Duties Acts.

Decision of Ct. of Sess., (1893) 20 R. 429, affirmed. **LORD ADVOCATE v. BOGIE (METHEVEN'S EXECUTORS)** — **H. L. (Sc.) [1894] A. C. 83**

Followed by Div. Ct. *Att.-Gen. v. Loyd*, [1895] 1 Q. B. 496.

Referred to by Div. Ct. *In re Scott*, [1900] 1 Q. B. 372, 387.

**132. — Double or single duty—Legatees identified by reference to will of another testator—Whether duties under both wills must be paid—Customs and Inland Revenue Acts, 1881 (44 & 45 Vict. c. 12); 1889 (52 & 53 Vict. c. 7), s. 5.**

L. left his personality to B., and in case of B. predeceasing him directed that it should go to B.'s administrators as part of his personal estate as if B. had survived him and died immediately

**REVENUE (Probate Duty)—continued.**

after him. B. predeceased L., leaving a will by which he appointed executors:—

*Held*, that B.'s executors were not chargeable with probate and estate duty in addition to those paid on A.'s estate. *ATT.-GEN. v. LOYD*

*Div. Ct. [1895] 1 Q. B. 496*

Referred to by *Div. Ct. In re Scott*, [1900] 1 Q. B. 372, 387.

— Estate duty.

*See Cases under REVENUE—Estate Duty.*

**133. — Executor—Liability of executor after close of administration — Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 32.**

After the administration of an estate has been closed the executors are not "persons acting in the administration of the estate" within s. 32 of the Customs and Inland Revenue Act, 1881, and are therefore not liable to deliver a further affidavit and account in the case of a bona fide mistake in valuation.

Decision of *Div. Ct.*, [1892] 2 Q. B. 289, affirmed. *ATT.-GEN. v. SMITH*

*C. A. [1893] 1 Q. B. 239*

**134. — Executor de son tort—Testator foreign subject domiciled abroad — Company — Inter-meddling with estate—Liability to pay probate duty—Penalties—55 Geo. 3, c. 184, s. 37—Crown Suits Act, 1865 (28 & 29 Vict. c. 104), s. 37—Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 40.**

Upon the death of a testator, a foreign subject domiciled in America, shares and debentures in an English co., of which he was the registered holder in the books of the co. in London, passed by his will to his executors in America, according to the law of his domicile. At their request the co. paid to them the dividends and interest payable upon the testator's shares and debentures and transferred into their names in the co.'s books in London two shares and a debenture. The executors to the knowledge of the co. had not obtained and did not intend to obtain probate in England:—

*Held*, that the co. had made themselves executors de son tort; that they had "taken possession of and administered" part of the testator's estate (see 55 Geo. 3, c. 184, s. 37; 28 & 29 Vict. c. 104, s. 57), and were liable to penalties, and to deliver an account and pay such duty as would have been payable if probate had been obtained in England.

Decision of *C. A.*, [1898] 1 Q. B. 205, affirmed.

*Semble*, by Lord Davey, that the co. were persons who "ought to obtain probate or letters of administration" in England within the meaning of the Customs Act, 1881 (44 Vict. c. 12), s. 40 (although they were not entitled to do so), because under the Probate Act, 1857, s. 73, the Court had power in its discretion to appoint them administrators. *NEW YORK BREWERIES Co. v. ATT.-GEN.* *H. L. (E.) [1899] A. C. 62*

— Incidence—Specific and general legatees.

*See REVENUE—Estate Duty.* 33.

— Legacy duty.

*See Cases under REVENUE — Legacy Duty.*

**REVENUE (Probate Duty)—continued.**

**135. — Local situation of asset—Foreign mortgage.**

A testator, who died domiciled in England, by his will after bequeathing legacies gave the residue of his real and personal estate to his executors in trust for his wife for life, and by a codicil gave one-fourth of his "said residuary real and personal estate" to his wife absolutely. His will was proved in England by his executors domiciled in England. His estate included mortgages on real property in New Zealand. His wife afterwards died and her will was proved in England. At her death her husband's estate had not been fully administered; the clear residue had not been ascertained, and no appropriation had been made of the New Zealand mortgages or of any securities to particular shares of the ultimate residue:—

*Held*, that the right of the wife's executors was, not to one-fourth or any part of the mortgages in specie, but to require her husband's executors to administer his personal estate and to receive from them one-fourth part of the clear residue, that this was an English asset of the wife's estate, and that probate duty was therefore payable under her will upon one-fourth part of the value of the New Zealand mortgages.

Decision of *C. A.*, [1896] 1 Q. B. 354, affirmed. *LORD SUDELEY v. ATT.-GEN.*

*H. L. (E.) [1897] A. C. 11*

Followed by *Romer J. In re Smyth*, [1898] 1 Ch. 89.

**136. — Local situation of asset—Property in Jamaica—English will—Trust for sale.**

A testator, who at the date of his will and death was living and domiciled in England, made an English will whereby in effect he devised and bequeathed a plantation in Jamaica to trustees upon trusts for the benefit of certain persons for life and their issue, and upon the deaths of those persons and failure of issue upon trust to sell the plantation and divide the proceeds amongst several persons therein named. The trustees were at the above dates all domiciled in the United Kingdom; and one of them after the testator's death proved the will in England and acted as trustee, and held as trustee in this country the plantation upon the trusts of the will.

The trust for sale ultimately took effect, and the proceeds of sale of the plantation became divisible amongst the several persons named in that behalf in the will, or their legal personal representatives.

One of those persons, who was at the time of his death living and domiciled in England, died while the persons entitled for life were in existence, and the question was whether probate duty was or was not payable here on his death in respect of his interest under the will:—

*Held*, that the interest of the legatee under the will was an English equitable chose in action, recoverable in England, and an English and not a foreign asset, and as such was subject to probate duty here.

*Lord Sudeley v. Att.-Gen.*, [1897] A. C. 11, followed. *In re SMYTH. LEACH v. LEACH*

*Romer J. [1898] 1 Ch. 89*

**REVENUE (Probate Duty)—continued.**

— Local situation of testator's assets—Partnership business in Colony.

See No. 138, below.

137. — Option to purchase real estate—Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 27.

The price of real estate purchased under a contractual option extended by the will of a testator who died in 1893 (the option not being exercised within the period limited by contract) is not liable to probate duty. *In re GOODALL*.

GOODALL v. GOODALL

North J. [1895] W. N. 136 (7)

— Paid under protest—Application for refund—Delay.

See NEW SOUTH WALES. 38.

138. — Partnership business in the Colony distinct from the general business of the firm—Local situation of testator's assets—Administration and Probate Act, 1890 (54 Vict. No. 1060).

Where a firm carried on businesses in different places, which were severally treated as distinct in the partnership agreement, and in the accounts and conduct of the same:—

*Held*, that the interest of a deceased partner in the business carried on at Melbourne was locally situate in Victoria so as to be liable to duty in that Colony. *BEAVER v. MASTER IN EQUITY OF THE SUPREME COURT OF VICTORIA*

P. C. [1895] A. C. 251

139. — Recovery of duty—Mistake—Estate fully administered.

After an estate had been fully wound up, and the executors had ceased to act as such, a bona fide mistake was discovered in the valuation for probate duty. The Crown sought to recover from the persons who had been the executors under s. 32 of the Customs and Inland Revenue Act, 1881:—

*Held*, that as there was no longer any "person acting in the administration of the estate," the Crown was without remedy and could not recover. *ATT.-GEN. v. SMITH*

C. A. [1893] 1 Q. B. 239

— Succession duty.

See Cases under REVENUE—Succession Duty.

**Property and Income Tax.**

See Cases under REVENUE—Income Tax.

**Stamps.**

Stamp Act, 1891 (54 & 55 Vict. c. 39), consolidates certain enactments relating to stamp duties.

Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), consolidates the law relating to the management of stamp duties.

Customs and Inland Revenue Act, 1893 (56 & 57 Vict. c. 7), alters the law as to certain stamp duties.

Finance Act, 1894 (57 & 58 Vict. c. 30), Pt. V., alters the law as to certain stamp duties.

Finance Act, 1895 (58 & 59 Vict. c. 16), Pt. II., alters certain stamp duties.

**REVENUE (Stamps)—continued.**

Finance Act, 1896 (59 & 60 Vict. c. 28), Pt. III., alters the law as to certain stamp duties.

Truck Act, Exemption of contracts under. See Truck Act, 1896 (59 & 60 Vict. c. 44), s. 7.

Finance Act, 1897 (60 & 61 Vict. c. 24), s. 8, alters the law as to certain stamp duties.

ADJUDICATION STAMPS.] Instructions from solicitor of Inland Revenue as to. See Current Index, 1897, p. lxxxiii.

Finance Act, 1898 (61 & 62 Vict. c. 10), Pt. II., amends the law.

Revenue Act, 1898 (61 & 62 Vict. c. 46), Pt. II., amends the law.

— Accident—Policy of insurance against—Employer's liability.

See No. 164, below.

— Account stamp duty.

See Cases under REVENUE—Account Duty.

Adjudication stamps—Instructions from solicitor of Inland Revenue as to. See Current Index, 1897, p. lxxxiii.

140. — Agreement in consideration of fixed annual payment—Duty on—Lease or tack—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched.

(A) Where a telephone co. contracted to supply telephonic communication between certain places and to erect and maintain in order lines and apparatus for a fixed annual sum per line, the agreement to continue ten years and thence from year to year, determinable at three months' notice by either party, with power to the co. to determine in certain circumstances. *JONES v. INLAND REVENUE COMMRS.* Div. Ct. [1895] 1 Q. B. 484

(B) Where a ry. agreed to permit an automatic machine co. to place machines on their platforms, in places chosen by the ry. The co. to pay a yearly rent to the ry. Power to either party to determine by three months' notice. *SWEETMEAT AUTOMATIC DELIVERY CO. v. COMMRS. OF INLAND REVENUE* Div. Ct. [1895] 1 Q. B. 484

*Held*, by Div. Ct. in each case that the agreement was not a "lease" or "tack" within the sched. of the Stamp Act, 1891, but was chargeable with an ad valorem duty under the head "bond, covenant, or instrument of any kind whatsoever," as being the only principal or primary security for an annuity or for a sum of money at stated periods for an indefinite period.

Distinguished by Div. Ct. *Clifford v. Inland Revenue Commrs.*, [1896] 2 Q. B. 187, 194.

Followed by C. A. *National Telephone Co. v. Inland Revenue Commrs.*, [1899] 1 Q. B. 230. This Case was affirmed by H. L. (E.) [1900] A. C. 1.

— Annuity—"Bond, covenant, or instrument."

See No. 144, below.

141. — Annuity, Security for payment of—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 60, 87, sub-s. 2.

Sect. 87, sub-s. 2, of the Stamp Act, 1891, which provides that a security for the payment of any annuity by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as



**REVENUE (Stamps)—continued.**

a similar security for the payment of the sum of money so lent, advanced, or paid, does not apply to the case of a grant of a perpetual annuity in consideration of a sum of money paid by way of purchase.

Decision of Div. Ct., [1897] 1 Q. B. 786, affirmed. *MERSEY DOCKS AND HARBOUR BOARD v. INLAND REVENUE COMMRs.*

C. A. [1897] 2 Q. B. 316

— Appeal—Stamp objection—Practice.

See COUNTY COURT—Appeal. 15.

142. — *Bill of exchange—Coupon for interest of perpetual bond—Reissue of coupons—Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 48, Sched.—Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 16.*

A perpetual bond of a foreign government contained a statement that a new talon with coupons for ten years payable to bearer would be issued in 1891. The talon of 1891 was in the same form, mutatis mutandis, as that of 1881, with new coupons attached, and a statement as to the issue of the succeeding talon:—

*Held*, that the new coupons were bills of exchange payable on demand, and that since they were not attached to and issued with the security or with any agreement or memorandum for the renewal or extension of time for payment thereof they did not fall within the exemptions of the Stamp Act, 1870, or s. 16 of the Revenue Act, 1889, and that they were liable to stamp duty. *ROTHSCHILD & SONS v. INLAND REVENUE COMMRs.* — Div. Ct. [1894] 2 Q. B. 142

[*But see now s. 40 of the Finance Act, 1894 (57 & 58 Vict. c. 30), exempting coupons from stamp duty.*]

— Bill of exchange—Negligence—Stamp of larger amount than necessary.  
See BILL OF EXCHANGE. 2.

143. — *Bill of exchange—Order on banker to transfer in account—Exemption—Bill drawn for the sole purpose of remitting money to be placed to any account of public revenue—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 32; 1st Sched. tit. “Bill of Exchange,” exemption 10.*

A firm of bankers in London, having an account at the Bank of England, for the purpose of enabling a customer to pay customs duties on goods otherwise than in cash, issued a document addressed to the cashiers of the Bank of England and directing them to transfer from the account of the bankers to the account of the Comms. of Customs a sum named therein. This document was dealt with in one of two ways: (1.) It was handed by the bankers to their customer in exchange for his cheque for the same amount, and given by him to the Comms. of Customs, who handed it to the Bank of England; or (2.) it was handed direct by the bankers to a customs officer in exchange for their customer's cheque, and subsequently handed by the Comms. of Customs to the Bank of England:—

*Held* (affirming the decision of Div. Ct. [1896] 1 Q. B. 222), that the document was a bill of exchange payable on demand within the mean-

**REVENUE (Stamps)—continued.**

ing of s. 32 of the Stamp Act, 1891, and that it was not exempt from duty as being a “bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue” within the meaning of the 10th exemption under the head “Bill of Exchange” in the 1st sched. to the Act.

Sect. 32 is not to be construed as if the first part contained a definition of bills of exchange other than those payable on demand, and the second a definition of bills of exchange payable on demand; but the first part applies to bills of exchange generally, and any document mentioned in it must, if payable on demand, be treated as coming within the second part.

The primary object of the documents in question was to enable the merchant to obtain the release of his goods from the custom house, and they were therefore not drawn “for the sole purpose” of remitting money to an account of public revenue, and, moreover, having regard to the history of the exemption clause, the word “remit” only applied to the placing to its proper account money which was already public money. *COMMITTEE OF LONDON CLEARING BANKERS v. INLAND REVENUE COMMRs.*

C. A. [1896] 1 Q. B. 542

— Bill of exchange—Stamp duty—Reduction of duty on certain bills of exchange.  
See BILL OF EXCHANGE. 19—20.

— Bills charged on local rates—Explanation as to.  
See Finance Act, 1897 (60 & 61 Vict. c. 24), s. 8.

144. — “Bond, covenant, or instrument”—*Agreement in consideration of fixed quarterly payments—Annuity—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched.*

By the 1st sched. to the Stamp Act, 1891, a bond, covenant, or instrument of any kind whatsoever, being the only, or principal, or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack, is chargeable, if for a definite and certain period, so that the total amount to be ultimately payable can be ascertained, with the same ad valorem duty as a bond or covenant for such total amount; if for the term of life or any other indefinite period with a duty of 2s. 6d. for every 5l., and also for any fractional part of 5l. of the annuity or sum periodically payable.

By a separation deed between a husband and wife the husband covenanted to pay the wife for her separate use without power of anticipation “the sum of 625l. every three months by quarterly payments on the 29th day of September, the 25th day of December, the 25th day of March, and the 24th day of June in every year:—

*Held*, that the deed was a security for an annuity or yearly sum payable by quarterly instalments, and not for a sum of money payable at quarterly periods, and that it was therefore liable to ad valorem duty upon the amount of

**REVENUE (Stamps)—continued.**

the annuity and not upon the sum payable quarterly.

*Clifford v. Inland Revenue Commrs.*, [1896] 2 Q. B. 187, distinguished. **LEWIS AND LEWIS v. INLAND REVENUE COMMRS.**

**Div. Ct. [1898] 2 Q. B. 290**

**145.** — “Bond, covenant, or instrument”—*Agreement in consideration of fixed weekly payments—Hotel proprietor—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched.*

By an agreement under seal between the owner and the manager of a hotel, the manager was until determination of the agreement to carry on the business of hotel proprietor, and to have entire control of the business without interference by the owner; he was to receive the whole of the receipts and profits, and pay all necessary outgoings, and to pay to the owner a fixed sum per week. No period was fixed for the duration of the agreement, which contained powers for its determination by either party in certain events; it was ipso facto to determine on the death of the manager. The agreement was not to operate as a demise to the manager, nor to constitute a partnership between the parties:—

*Held*, that the agreement was a security for an indefinite period for a sum of money at weekly periods, and not for an annuity or yearly sum payable by weekly instalments, and was therefore liable to an ad valorem duty upon the sum agreed to be paid weekly, and not upon the total amount of such weekly payments for a year. **CLIFFORD v. INLAND REVENUE COMMRS.**

**Div. Ct. [1896] 2 Q. B. 187**

Distinguished by Div. Ct. *Lewis v. Inland Revenue Commrs.*, [1898] 2 Q. B. 290. *See preceding Case.*

**146.** — “Bond, covenant, or instrument of any kind whatsoever”—*Agreement for hire of chattel in consideration of yearly payment—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.*

The words “bond, covenant, or instrument of any kind whatsoever” in the 1st schedule to the Stamp Act, 1891, include an agreement not under seal.

Decision of C. A., [1899] 1 Q. B. 250, affirmed. **NATIONAL TELEPHONE CO. v. INLAND REVENUE COMMRS.**

**H. L. (E.) [1900] A. C. 1**

— Building society—Reconveyance to—Mortgage.

*See No. 168, below.*

**COLONIAL STOCKS—TRANSFERS OF.] Duty chargeable on, shall extend to stock of any British protectorate. See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 5.**

*Company—Finance Act, 1896 (59 & 60 Vict. c. 28), s. 12, extends s. 113 of Stamp Act, 1891 (54 & 55 Vict. c. 39), to certain other corporations and companies. Amended by Finance Act, 1899 (62 & 63 Vict. c. 9), s. 5.*

— Company—Apportionment of value—Issue of shares at a discount.

*See COMPANY—WINDING-UP—Contribution. 45.*

— Company—Blanks in proxies—Meeting of shareholders.

*See COMPANY—Meetings. 164.*

**REVENUE (Stamps)—continued.**

**147.** — *Company—Debentures—Equitable charge upon debentures not under seal—“Marketable security”—Mortgage—Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 2, sub-s. 10; ss. 105, 107—Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 14, sub-ss. 1, 5.*

By the Customs and Inland Revenue Act, 1888, s. 14, sub-s. 1, the stamp duty then payable upon a mortgage of any stock or “marketable security” was repealed; and by sub-s. 5 “any deed operating as a mortgage” of any “marketable security” was made chargeable with the ad valorem duty on a mortgage under the Stamp Act, 1870. An equitable charge upon the debentures of a limited co. is a “marketable security” within the definition given in s. 2, sub-s. 10, of the Stamp Act, 1870. The Act of 1888 contains no provision as to the duty upon equitable mortgages, not under seal, of marketable securities.

In the case of such a document dated March 5, 1889, *held*, that it was sufficiently stamped with a 6d. agreement stamp. **READ v. ELEY**

**Stirling J. [1900] W. N. 57**

**148.** — *Company—Debentures—Principal sum repayable with premium—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 86, Sched. I.*

A co. issued a series of debentures of 100l. each, each debenture containing an undertaking by the co. to pay to the registered holder upon a specified date “the sum of 100l. together with a premium thereon at 7l. 10s.” The debentures were marketable securities not transferable by delivery within the meaning of Sched. I. of the Stamp Act, 1891:—

*Held*, that each debenture was a security for the payment by the co. of 107l. 10s., the amount of the principal and the premium, and was therefore liable to ad valorem stamp duty upon that amount. **ROWELL v. INLAND REVENUE COMMRS.**

**Div. Ct. [1897] 2 Q. B. 194**

Dicta in, at p. 198. Commented on by Div. Ct. *Knights Deep Ltd. v. Inland Revenue Commrs.*, [1899] 1 Q. B. 345, 351; but this Case was reversed by C. A. [1900] 1 Q. B. 217.

**149.** — *Company—Debentures—Redemption on contingency—“Marketable security”—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.*

A limited co. issued a series of debentures for 100l. each, redeemable at par by annual drawings on and after July 1, 1902. Each debenture contained a stipulation that the co. might, at any time after July 1, 1900, on giving six months’ previous notice in writing to the registered holder, redeem the debenture at 103l., which sum, at the expiration of the six months, should become payable as if the same were the amount of the principal moneys thereby secured:—

*Held*, that ad valorem stamp duty was chargeable on each debenture under the head of “Marketable Security” in the 1st sched. to the Stamp Act, 1891, upon 100l. only, as being the “money secured” by the debenture within the meaning of the sched.

Decision of the Div. Ct., [1899] 1 Q. B. 345, reversed. **KNIGHTS DEEP, LD. v. INLAND REVENUE COMMRS.** — — **C. A. [1900] 1 Q. B. 217**

*Company—Extension of stamp duty on share warrants and stock certificates to bearer—Increase*

**REVENUE (Stamps)—continued.**

of company's capital duty—*Duty on loan capital—And as to other matter.* See *Finance Act, 1899* (62 & 63 Vict. c. 9), ss. 4—8.

*Composition for certain stamp duties—Extension of 54 & 55 Vict. c. 39, s. 114.* See *Finance Act, 1891* (57 & 58 Vict. c. 30), s. 39.

*Contract notes.* See *Finance Act, 1899* (62 & 63 Vict. c. 9), s. 13.

150. — *Contract note—Failure by broker to transmit stamped contract to principal—Sale or purchase of stock—Commission—Customs and Inland Revenue Act, 1888* (51 & 52 Vict. c. 8), s. 17, sub-s. 1.

The penalty imposed by s. 17, sub-s. 1, of the *Customs and Inland Revenue Act, 1888* (now ss. 52, 53 of the *Stamp Act, 1891*), does not affect the contract between the principal and the broker, but only creates an obligation affecting the broker. *LEAROYD v. BRACKEN*

C. A. [1894] 1 Q. B. 114

See now the *Stamp Act 1891* (54 & 55 Vict. c. 39), ss. 52, 53, which consolidates the previous statutes; and the *Revenue Act, 1898* (61 & 62 Vict. c. 46), s. 7.

151. — *Conveyance on sale—Ad valorem duty—Stamp Act, 1891* (54 & 55 Vict. c. 39), ss. 54, 57—*Heritable Securities (Scotland) Act, 1894* (57 & 58 Vict. c. 44), ss. 8, 9.

A bond and disposition in security contained a power of sale. The creditor exposed for sale the property held in security at a price less than the amount due under his security, and failed to find a purchaser. The creditor then applied to the sheriff under s. 8 of the *Heritable Securities (Scotland) Act, 1894*, and the sheriff issued a decree that the debtors had forfeited their rights of redemption, and that the creditor was vested absolutely in the subjects at the price named:—

*Held*, reversing the decision of the First Division of the Ct. of Sess., (1897) 24 R. 934, that the transaction constituted a sale to the creditor, and was chargeable, by virtue of ss. 54 and 57 of the *Stamp Act, 1891*, and the 1st sched. thereto, with ad valorem duty. *INLAND REVENUE COMMRs. v. TOD* H. L. (Sc.) [1898] A. C. 399

See *Finance Act, 1898* (61 & 62 Vict. c. 10), s. 6.

152. — *Conveyance on sale—Agreement for sale—Ad valorem duty—Leasehold interest in licensed house—Goodwill—Stamp Act, 1891* (54 & 55 Vict. c. 39), s. 59, sub-s. 1.

By an agreement under seal the vendor agreed to sell the goodwill of the business of an hotel proprietor and licensed victualler, and the lease of the hotel in which the business was carried on, together with the household furniture, stock-in-trade, cash, and book debts; of the total consideration, 4085*l.* was apportioned to "lease and goodwill," 1462*l.* to furniture, stock-in-trade, and cash, and 37*l.* to book debts. The vendor was to shew a good title to the lease and to assign the lease and goodwill to the purchasers; in the event of the consent of the landlords to the assignment of the lease not being obtained, it was provided that the vendor should, at the option of the purchasers, execute a declaration of trust of the leasehold premises in their favour.

**REVENUE (Stamps)—continued.**

The consent of the landlords not having been obtained, a declaration of trust was executed in favour of the purchasers, which was stamped with the fixed duty of 10*s.*—

*Held*, (1.) by A. L. Smith and V. Williams L.J.J., affirming the judgment of Div. Ct., [1898] 1 Q. B. 226, that the agreement was not an agreement for the sale of an equitable interest in property within the meaning of s. 59, sub-s. 1, of the *Stamp Act, 1891*; by Rigby L.J., that though the agreement was not on the face of it an agreement for the sale of an equitable interest, the proper inference to be drawn from the facts was that the bargain was for the sale of an equitable interest only; (2.) by A. L. Smith and Rigby L.J.J., reversing the decision of the Div. Ct., that the goodwill was not merely an enhancement of the value of the leasehold premises, but was capable of being sold independently thereof, and as it was property other than lands, the agreement was liable to ad valorem duty in respect of the value of the goodwill; by V. Williams L.J., that the goodwill was inseparable from the leasehold premises which were the subject of the sale, and that the instrument was not liable to ad valorem duty upon that portion of the consideration attributed to "lease and goodwill." *WEST LONDON SYNDICATE, LD. v. INLAND REVENUE COMMRs.*

C. A. [1898] 2 Q. B. 507

Distinguished by C. A. *Muller & Co's Margarine, Ltd. v. Inland Revenue Commr's.*, [1900] 1 Q. B. 310, 320. See No. 154, below.

153. — *"Conveyance on sale"—Amalgamation of railway companies—Special Act—Stamp Act, 1891* (54 & 55 Vict. c. 39), s. 54, and *Sched.—Great Western Railway Act, 1892* (55 & 56 Vict. c. cccxxiii).

A special Act amalgamating certain ry. undertakings held to operate as a "conveyance or transference on sale" within s. 54 and the sched. to the *Stamp Act, 1891*, and therefore chargeable with ad valorem stamp duty. *GREAT WESTERN RY. CO. v. INLAND REVENUE COMMRs.*

C. A. [1894] 1 Q. B. 507

Referred to by C. A. *J. & P. Coats v. Inland Revenue Commr's.*, [1897] 2 Q. B. 423, 427.

154. — *Conveyance on sale—Colonial patent—Licence to use patent—"Property locally situate out of the United Kingdom"—Stamp Act, 1891* (54 & 55 Vict. c. 39), s. 59, sub-s. 1.

A share in a patent granted in New South Wales, and a sole licence to use in a district of that Colony the invention protected by the patent, are "property" within the meaning of s. 59, sub-s. 1, of the *Stamp Act, 1891*, and do not come within the exception in that sub-section of "property locally situate out of the United Kingdom." An agreement made in England for the sale of such a share or licence is, therefore, liable to ad valorem stamp duty under that section as though it were an actual conveyance on sale.

Judgment of Div. Ct., [1896] 2 Q. B. 179, affirmed. *SMEETING CO. OF AUSTRALIA v. INLAND REVENUE COMMRs.* — C. A. [1897] 1 Q. B. 175

Discussed and explained by C. A. *Muller & Co's Margarine, Ltd. v. Inland Revenue Commr's.*, [1900] 1 Q. B. 310, 318, 320, 322.

**REVENUE (Stamps)—continued.**

**155. — Conveyance on sale—Declaration of trust—Agreement for sale of equitable interest—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 59.**

The shareholders of the A. co., which was then in course of being voluntarily wound up, entered into an agreement in writing with the B. co. whereby it was agreed that the shareholders of the A. co. should respectively exchange their shares in the A. co. for shares in the B. co., and that upon the B. co. allotting to them the shares to which they were respectively entitled they should thenceforth hold their respective shares in the A. co. in trust for the B. co. :—

**Held**, by Wills and Bruce JJ., that the agreement amounted to a declaration of trust, and as such to a “conveyance on sale” to the B. co. of an equitable interest in the shares of the A. co. within the meaning of s. 54 of the Stamp Act, 1891, and was chargeable with an ad valorem duty accordingly :

**Held**, also, by Wills J., that it was an agreement for the sale of an equitable interest in property within the meaning of s. 59. **CHESTERFIELD BREWERY CO. v. INLAND REVENUE COMMS.**

**Div. Ct. [1899] 2 Q. B. 7**

— Conveyance on sale—Duty in respect of further consideration.

*See Finance Act, 1900 (63 Vict. c. 7), s. 10.*

**156. — Conveyance on sale—Exchange of shares—Ad valorem stamp—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 55, 73.**

By an instrument, entered into in pursuance of an agreement, a shareholder in one co. transferred his shares to another co. in exchange for certain shares in the latter co. :—

**Held**, that the transaction was a conveyance on sale of the shares within ss. 54 and 55 of the Stamp Act, 1891, and that the instrument was therefore chargeable with an ad valorem stamp.

**Judgment of Div. Ct., [1897] 1 Q. B. 778, affirmed. J. & P. COATS v. INLAND REVENUE COMMS. — C. A. [1897] 2 Q. B. 423**

— Conveyance on sale—Further consideration, Duty in respect of.

*See Finance Act, 1900 (63 Vict. c. 7), s. 10.*

**157. — Conveyance on sale—Goodwill—Contract “made” in the United Kingdom—“Equitable interest in property”—“Property locally situate out of the United Kingdom”—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, sub-s. 1.**

By s. 59, sub-s. 1, of the Stamp Act, 1891, “Any contract or agreement made in England or Ireland under seal or under hand only . . . for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except . . . (intending) property locally situate out of the United Kingdom” is chargeable with the same ad valorem duty as if it were a conveyance on sale.

A contract is “made,” within the meaning of that section, in that country in which the signature of the last necessary party to it is affixed.

A contract for the sale of an option to purchase property at a particular price is not a contract

**REVENUE (Stamps)—continued.**

for the sale of an “equitable estate or interest in any property” within the section.

Where the goodwill of a business is sold together with the premises where the business is carried on for a lump sum the goodwill is *prima facie* annexed to the premises, and, therefore, if the business premises so sold are situate abroad, and there are no circumstances to rebut the presumption of annexation, the goodwill also will be treated as “property locally situate out of the United Kingdom” within the meaning of that section.

**West London Syndicate v. Inland Revenue Comms., [1898] 2 Q. B. 507, distinguished. MULLER & CO.’S MARGARINE, LD. v. INLAND REVENUE COMMS. — C. A. [1900] 1 Q. B. 310**

**158. — Conveyance on sale—Mortgage—Equitable mortgage—Foreclosure—Conveyance by mortgagor under foreclosure order—Ad valorem duty—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 57.**

Where an equitable mortgagee obtains an order absolute for foreclosure under which the mortgagor is directed to execute, and does execute, a conveyance of all his estate and interest in the property to the mortgagee, the conveyance is a “conveyance on sale” within the meaning of s. 54 of the Stamp Act, 1891, and is chargeable with ad valorem duty under the head “Conveyance or transfer on sale” in the 1st sched. to that Act. **HUNTINGTON v. INLAND REVENUE COMMS. — Div. Ct. [1896] 1 Q. B. 422**

*See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 6.*

*And see Inland Revenue Comms. v. Tod, H. L. (Sc.) [1898] A. C. 399.*

**159. — Conveyance on sale—Partners—Conveyance by partners to a company consisting of themselves—Consideration—Stamp Act, 1870 (33 & 34 Vict. c. 97), ss. 70, 71.**

Where eight partners turned their business into a co., consisting solely of themselves, transferred by deed the whole of the partnership property to the co., which was a party to the deed, and divided the whole of the shares in proportion to their respective interests in the partnership estate :—

**Held**, that the deed was a “conveyance or transfer on sale” within s. 71 of the Stamp Act, 1870 (now s. 55 of the Stamp Act, 1891), for the consideration of shares and stock, and was liable to ad valorem stamp duty. **FOSTER (JOHN) & SONS, LD. v. INLAND REVENUE COMMS.**

**C. A. [1894] 1 Q. B. 516**

Followed by **C. A. J. & P. Coats v. Inland Revenue Comms., [1897] 2 Q. B. 423, 425.**

Followed by **Div. Ct. Great Northern Ry. Co. v. Inland Revenue Comms., [1899] 2 Q. B. 652, 659.**

**160. — “Conveyance or transfer on sale”—Assignment of leaseholds—Consideration—Rent—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 57, Sched. I.**

The lessee, for a term of ninety-nine years at a yearly rent, of a piece of land with three houses thereon, assigned and conveyed two of the houses, in consideration of 508*l.*, for the residue of the

**REVENUE (Stamps)—continued.**

term subject to an apportioned rent representing two-thirds of the rent reserved by the lease. By the deed of assignment the assignee covenanted to pay such apportioned rent, and to keep the assignor indemnified in respect of it, and the assignor covenanted to pay the remaining one-third of the rent reserved by the lease, and to keep the assignee indemnified in respect of it. The three houses were of the same annual value:—

*Held*, that, for the purpose of fixing the ad valorem duty chargeable under the heading "Conveyance or Transfer on Sale of any Property" in Sched. I. of the Stamp Act, 1891, the payment of rent by the assignee was not part of the consideration for the assignment, and that duty was chargeable upon the 503*l.* only.

Decision of Div. Ct. [1899] W. N. 3 (6); [1899] 1 Q. B. 335, affirmed. *SWAYNE v. INLAND REVENUE COMMS.* — **C. A. [1900] 1 Q. B. 172**

— Corporation, &c.—Bills treated as promissory notes with respect to stamp duty.

*See Finance Act, 1897 (60 & 61 Vict. c. 24), s. 8.*

— Coupons—Stamp duty.

*See No. 142, above.*

— Die for making fictitious stamp—Possession "without lawful excuse."

*See POST OFFICE. 1.*

**161.** — *Foreign firm—English trade-mark and goodwill—"Property"—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, sub-s. 1.*

By an agreement made in England the appellants, a limited co., bought from a firm of soap manufacturers in the United States their freehold works, book and other debts, together with the goodwill of the business and the trade-marks used in connection therewith. The vendors were the owners of a trade-mark, registered in England, relating to their soap, which trade-mark was extensively circulated throughout England in newspapers and pictorial advertisements at the expense of the vendors, who had an office in London for that purpose, and by this means a large demand for the soap had been created in the United Kingdom. The vendors did not sell direct to the retail dealers in the United Kingdom, but to a syndicate of three firms, who gave orders for soap which was despatched to them in England and paid for by them by remittances sent to the vendors; the syndicate then resold it to retail dealers and others at such prices as they thought fit; about two-thirds of the total sales of the vendors were made to the English syndicate:—

*Held*, that the English trade-mark and goodwill were "property" within the meaning of s. 59, sub-s. 1, of the Stamp Act, 1891, and that the agreement was liable in respect of them to ad valorem stamp duty. *BENJAMIN BROOKE & Co. v. INLAND REVENUE COMMS.*

[1896] 2 Q. B. 356

*Foreign or Colonial instruments on which duty is not now payable, Stamp duty on. See Finance Act, 1899 (62 & 63 Vict. c. 9), ss. 4, 12.*

**162.** — *Foreign security made or issued in*

**REVENUE (Stamps)—continued.**

*United Kingdom—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 82, sub-s. 1 (b) (i).*

Bonds of a foreign co. payable to bearer were executed by the co. abroad and delivered abroad to a foreign trustee for the bondholders. The bonds were expressed not to be valid for any purpose unless authenticated by the certificate of the trustee. Some of the bonds were sent to England and the trustee having come to England there certified them and delivered them to the persons entitled to them:—

*Held*, that since the bonds were not marketable till they were certified, the bonds certified in England were "marketable securities by a foreign co. which were made and issued in the United Kingdom" within the meaning of the Stamp Act 1891, s. 82, sub-s. 1 (b) (i), and liable to the stamp duty imposed by that Act upon such securities.

Decision of C. A., *Baring v. Inland Revenue Comms.*, [1898] 1 Q. B. 78, affirmed. *LORD REVELSTOKE v. INLAND REVENUE COMMS.*

**H. L. (E.) [1898] A. C. 565**

*Imitation of Postage Stamps. See Lond. Gaz. June 4, 1897, p. 3131.*

*Insurance—Policies, Composition on—Finance Act, 1896 (59 & 60 Vict. c. 28), ss. 12, 13, extends s. 116 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), as to.*

**163.** — *Insurance—Policy—Stamp duty—Sea insurance—Time policy, including a number of ships—Customs and Inland Revenue Act, 1867 (30 Vict. c. 23), s. 1, Sched. B, and s. 4—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1 (b).*

The Customs and Inland Revenue Act, 1867, s. 1, enacts that there shall be charged the several duties respectively specified in Schedules A, B, and C to the Act.

Sched. B,—" . . . For every policy of sea insurance for time, in respect of every full sum of 100*l.*, and in respect of any fractional part of 100*l.* thereby insured, where the insurance shall be made for any time not exceeding six months, 3*d.*"

Sect. 4 defines sea insurance as meaning, *inter alia*, "any insurance . . . made upon any ship or vessel."

Sect. 1 of the Interpretation Act, 1889, provides—(1) that in any Act passed after 1850, unless the contrary shall appear (b) words in the singular shall include the plural, and words in the plural shall include the singular.

*Held*, that a time policy of insurance embracing a number of vessels with separate sums insured on each was properly stamped at the duty corresponding to the aggregate sum insured. *GREAT BRITAIN STEAMSHIP PREMIUM ASSOCIATION v. WHYTE*, (1891) 19 *Rettie*, 109

Ct. of Sess. (Sc.) [1896] W. N. 91

*INSURANCE.* "Policy of insurance against accident" in s. 98 of 54 & 55 Vict. c. 39, includes policies of insurance or indemnity against liability incurred by employers, &c., when the annual premium does not exceed one pound. *See Finance Act, 1899 (62 & 63 Vict. c. 39), s. 11.*

**164.** — *Insurance—Policy of insurance against accident—Employer's liability—Stamp Act, 1891*

**REVENUE (Stamps)—continued.**

(54 & 55 Vict. c. 39), s. 98, *Sched. I.—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37).

—[An insurance co. by a policy granted to employers of labour agreed to pay, for and on behalf of the employers, such sums as they should become liable to pay under the Employers' Liability Act, 1880, the Workmen's Compensation Act, 1897, or by the common law, in respect of personal injury to any workmen in their employ:—

*Held*, that this instrument was not "a policy of insurance against accident" within the meaning of s. 98 and *Sched. I.* of the Stamp Act, 1891, and therefore was not chargeable with the duty imposed by the Act in respect of such policies. *LANCASHIRE INSURANCE CO. v. INLAND REVENUE COMRS. VULCAN BOILER AND GENERAL INSURANCE CO. v. INLAND REVENUE COMRS.*

**Div. Ct. [1899] 1 Q. B. 353**

*See Finance Act, 1899* (62 & 63 Vict. c. 9), s. 11.

*See In re Wool Industries Employers' Insurance Association, Ltd., Byrne J., [1899] W. N. 259.*

**165. — Medicine**—"Held out or recommended to the public"—"Public notice or advertisement"—Stamp Act, 1804 (41 Geo. 3, c. 98), *Sched. B.—Medicines Stamp Act, 1812* (52 Geo. 3, c. 150), ss. 1, 2, and *Sched.*

Where druggists issued a price list, which was distributed gratis, in which two medicines were described as being beneficial for certain ailments, and one of the medicines was sold in a wrapper which described it in similar terms to those in the price list:—

*Held*, (1) that by distributing the price lists the defts. had held out or recommended the medicines to the public, by public notice or advertisement, as beneficial for the cure of disorders; (2) that it was not necessary that the notice or advertisement should be affixed to or delivered with the medicine; (3) that the case did not come within the exemptions in the *Sched.* to the Medicines Stamp Act, 1812, and (4) that defts. were liable under s. 2 of that Act for selling the medicines without a paper cover duly stamped for denoting the duty. *SMITH v. MASON & CO.*

**Div. Ct. [1894] 2 Q. B. 363**

**166. — Mortgage—Bond and disposition in security in ordinary Scotch form**—Stamp Act, 1891 (54 & 55 Vict. c. 39), *Sched. I.*, voce "Mortgage," sub-s. 5.

A bond and disposition in security, in the ordinary Scotch form, for the principal sum of 5000*l.*, was made in 1877. In 1887, the principal sum to the extent of 2000*l.* was paid off, and a discharge for that sum executed and stamped with 10*s.* duty. In May, 1895, the parties liable on the bond repaid the balance of 3000*l.*, and executed a discharge expressed to be in consideration of the 3000*l.* then repaid, and to be a discharge for that sum, and declaring (in the usual form of a Scotch instrument putting an end to the burden upon the land) the premises to be redeemed and discharged of the debt. The Comrs. of Inland Revenue assessed the duty upon this instrument at 1*l.* 5*s.*, being the ad valorem duty of 6*d.* per cent. upon the whole

**REVENUE (Stamps)—continued.**

(original) principal debt. The trustees who were debtors upon the bond appealed against this assessment, and maintained that the discharge being only a partial one, to the extent of 3000*l.*, it was liable to the duty (of 15*s.* only) on that amount; the 10*s.* duty already paid being imputable to the ad valorem duty of 6*d.* per cent. upon the 2000*l.*:—

*Held*, that the 5th sub-section of the *Sched.* (voce "Mortgage") applied only to such discharges as have the effect of wholly freeing the subjects of the security from that security; and that the duty was to be calculated by the maximum burden which has ever been incumbent by virtue of the security. The whole ad valorem duty was therefore payable on a discharge of the balance equally with a discharge of the whole money. It follows, also, that a discharge which lifts off part of the burden but leaves the security in part still incumbent, is not within the section; and that such discharges are liable to an ordinary deed stamp. *MUNRO v. INLAND REVENUE, (1895) 33 Scottish Law Reporter, 152*

**Ct. of Sess. (Sc.) [1896] W. N. 149**

**167. — Mortgage—Covenant—Agreement to execute mortgage**—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 86, *Sched. I.*

A limited co., by deed, in consideration of 373,000*l.*, then advanced to them by a building society, agreed to execute, whenever called upon by the society, a mortgage or charge, in such form as the society should request, of all the co.'s interest in certain hereditaments to secure the repayment of the sum advanced, with interest. A receiver was appointed by the deed to receive the rents and profits so long as any money remained due to the society; but there was a provision that he was not to enter into possession of such rents and profits until default should be made in payment of the principal and interest:—

*Held*, that this instrument was chargeable with ad valorem stamp duty under the head "Mortgage, Bond, Debenture, Covenant," in the 1st *Sched.* to the Stamp Act, 1891. *UNITED REALIZATION CO. v. INLAND REVENUE COMRS.*

**Div. Ct. [1899] 1 Q. B. 361**

**MORTGAGE — FORECLOSURE DECREES.] Removal of doubt as to 54 & 55 Vict. c. 39, ss. 54, 57, so far as regards.** *See Finance Act, 1898* (61 & 62 Vict. c. 10), s. 6.

— Mortgage—Foreclosure order, Conveyance by mortgagor under.

*See No. 158, above.*

**168. — Mortgage—Reconveyance to building society—Building Societies Act, 1874** (37 & 38 Vict. c. 42), ss. 41, 42—Stamp Act, 1891 (54 & 55 Vict. c. 39), *Sched. I.*

A reconveyance by a building society incorporated under the Building Societies Act, 1874, to the mortgagor is exempt from stamp duty by virtue of s. 41 of that Act; nor is the right to exemption lost by reason of the trustees for the purpose of the dissolution of the society being joined as parties to the reconveyance. *OLD BATTERSEA AND DISTRICT BUILDING SOCIETY v. INLAND REVENUE COMRS.*

**Div. Ct. [1898] 2 Q. B. 294**

**REVENUE (Stamps)—continued.**

**169. — Mortgage—Redemption, Equity of—Agreement for sale—Equitable estate—Property locally situate out of the United Kingdom—Purchase in England of equity of redemption—Ad valorem duty—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, sub-s. 1.—Trust Property Act of 1862, New South Wales (26 Vict. No. 12), s. 25.**

By the Stamp Act, 1891, s. 59, sub-s. 1, "Any contract or agreement made in England under seal, or under hand only, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except property locally situate out of the United Kingdom," is charged with ad valorem duty.

By the New South Wales Trust Property Act of 1862, s. 25, "All mortgages of real or personal estate shall hereafter be deemed at law, as now in equity, pledges only of the property thereby mortgaged; and nothing in any such mortgage shall prevent the title of any mortgagor, or person claiming and being in possession, from being deemed a good title at law, subject to such pledge, as against all persons other than the mortgagee and those claiming under him."

The appellants entered into a written agreement in England to purchase property in New South Wales, subject to a mortgage.

On a case stated by the Commrs. of Inland Revenue, pursuant to s. 13 of the Stamp Act, 1891:—

**Held**, that the words of exception in the Stamp Act, 1891, s. 59, sub-s. 1, do not apply to an equitable estate or interest in property locally situate out of the United Kingdom, and therefore the general words, "any equitable estate or interest in any property whatsoever," apply, and ad valorem duty is payable on an agreement made in England for the purchase of such an estate:

**Held**, also, that the New South Wales Trust Property Act does not confer the legal estate in mortgaged property on the mortgagor:

**Held**, therefore, that ad valorem duty was payable on the purchase by the appellants of the equity of redemption. **FARMER & CO. v. INLAND REVENUE COMMISSIONERS.** Div. Ct. [1898] 2 Q. B. 141

**170. — Mortgage—Trust deed for securing debenture stock—Transfer of mortgage—Additional or substituted security—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 86, sub-s. 1; s. 87, sub-s. 3; s. 88, sub-s. 1; Sched. I.**

A limited co. issued in 1892 500,000l. 4 per cent. debenture stock, secured by a trust deed duly stamped, by which freehold and leasehold property of the co. were conveyed to trustees to secure payment of the amount of the stock and interest as provided for by the deed. By a subsequent trust deed for securing debenture stock made in 1897, the trustees of which were the same as those of the deed of 1892, after reciting that the 500,000l. debenture stock was still outstanding and that the co. were intending to issue further irredeemable  $\frac{3}{4}$  per cent. debenture stock, it was provided (inter alia) that the amount of stock to be issued was limited in the first instance to 300,000l., the co. acknowledging in the deed that they were indebted to the

**REVENUE (Stamps)—continued.**

trustees in that sum carrying interest at  $3\frac{1}{2}$  per cent. per annum; that the co. should be at liberty to issue further irredeemable  $\frac{3}{4}$  per cent. debenture stock not exceeding 540,000l., making a total of 840,000l., but only for the purpose of redeeming or paying off the 500,000l. 4 per cent. stock at the rate of not more than 108l. of the new stock for every 100l. of the stock redeemed or paid off.

**Held**, that in respect of the 540,000l., as well as the 300,000l., the deed of 1897 was chargeable with the ad valorem duty specified in the 1st sched. to the Stamp Act, 1891, under the heading "Mortgage, Bond, Debenture, Covenant," and, not being an "additional" or "substituted" security within the meaning of those words in the sched., it was chargeable with the full duty of 2s. 6d. per cent.

By A. L. Smith L.J.: The deed of 1897 was a "mortgage" within the definition contained in s. 86, sub-s. 1, of the Stamp Act, 1891:

By Rigby L.J.: *Seem*, the deed was not a "mortgage" within that definition, but it was chargeable as a security for the payment of money in the nature of a debenture under s. 88, sub-s. 1, of the Act.

Decision of Div. Ct., [1898] 1 Q. B. 408, reversed. **CITY OF LONDON BREWERY CO. v. INLAND REVENUE COMMISSIONERS.**

**C. A. [1899] 1 Q. B. 121**

**171. — Mortgage to secure further advances—Stamp Act, 1870 (33 & 34 Vict. c. 97), ss. 15, 107.**

Where a mortgage to secure further advances is stamped with an ad valorem stamp up to a certain amount, it is competent for the Commrs. of Inland Revenue, under s. 15 of the Stamp Act, 1870 (now s. 15 of the Stamp Act, 1891), to stamp the deed for the proper amount for which it is sought to render the security available even after the execution of the deed. **FITZGERALD'S TRUSTEE v. MELLERSH (No. 1)**

**Chitty J. [1892] W. N. 4**

— Negligence—Stamp of larger amount than necessary.

**See BILL OF EXCHANGE. 2.**

— Partners—Conveyance by, to a company consisting of themselves.

**See No. 159, above.**

**172. — Penalties for insufficient stamping—Contract-note—Action for penalties against individual partners of firm—54 & 55 Vict. c. 39, ss. 1, 53, sub-s. 2—56 & 57 Vict. c. 7, s. 3—Exchequer prosecutions—Trial by jury—Court of Exchequer (Scotland) Act, 1856 (19 & 20 Vict. c. 56), s. 6.**

The Lord Advocate laid an information against A. and B., stockbrokers, carrying on business under the firm name of A. B. & Co., charging "both and each or one or other of them" with having on occasions specified issued contract-notes in the said firm name which were not duly stamped, contrary to the Statutes 54 & 55 Vict. c. 39, ss. 1, 53, sub-s. 2, and 56 & 57 Vict. c. 7, s. 3, whereby the said A. and B. had "both and each or one or other of them" incurred fines to amounts stated.

The defenders objected that the information

**REVENUE (Stamps)—continued.**

was incompetent as laid, in respect that there was no conclusion against the firm.

*Held*, that the information was well laid.

*Question*, whether an exchequer prosecution must be tried by a jury. **LORD ADVOCATE v. THOMSON. LORD ADVOCATE v. HUTCHESON**, (1897) 24 R. 543. — **Ct. of Sess. (Sc.)** [1897] **W. N. 141**

— Policy of insurance.

*See Nos. 163, 164, above.*

**173. — Practice — Solicitor — Undertaking — Stamp Act**, 1891 (54 & 55 Vict. c. 39), s. 14.

On motions, which were acceded to by the Court, an undertaking was given at the bar by counsel for the respondents, a company, on the instructions of their solicitors, that unstamped documents tendered in evidence on behalf of the respondents should be duly stamped, which undertaking was not fulfilled.

The Court directed the order made on the motions to be drawn up without entering the unstamped documents, and made a four-day order on the solicitors to produce the documents to the registrar duly stamped. *In re COOLGARDIE GOLDFIELDS, LD. In re CANNON, SON & MORTEN (SOLICITORS) Cozens-Hardy J.* [1900] **W. N. 23**; [1900] 1 Ch. 475

**174. — Practice — Sufficiency — Ruling of judge — Finality.**

Where a judge trying an action without a jury decides that a document is sufficiently stamped or does not require a stamp, his decision is final as between the parties to the action. **BLEWITT v. TRITTON — C. A.** [1892] 2 Q. B. 327

**175. — Promissory note — Debenture — Marketable security — Stamp Act**, 1891 (54 & 55 Vict. c. 39), s. 82, sub-s. 1 (b); s. 122.

An American ry. co., as security for a temporary loan, handed through their agents in England to the lender an instrument which stated that for value received they promised to pay twelve months after date to the order of themselves the amount named in it. It also contained a statement that it was one of a series, and was secured by a deposit of gold bonds which (or a sufficient amount of their proceeds) were to be held in trust for the benefit of the holders of the instruments. The instruments were dealt in upon the Stock Exchange, but were not officially quoted there:—

*Held*, that the instrument was not a mere promissory note, but that as it contained a contract that the holder should be entitled to the benefit of the security it was a marketable security within the meaning of s. 82, sub-s. 1 (b), of the Stamp Act, 1891, and was chargeable with stamp duty as such.

Decision of Div. Ct., [1895] 2 Q. B. 240, reversed. **BROWN, SHIPLEY & Co. v. INLAND REVENUE COMMRs. — C. A.** [1895] 2 Q. B. 598

**176. — Promissory note insufficiently stamped — Evidence — Admissibility — Stamp Act**, 1870 (33 & 34 Vict. c. 97), s. 54.

A promissory note insufficiently stamped is not admissible in evidence to prove the receipt of the money for which the note was given.

*Green v. Davies*, (1825) 4 B. & C. 235; 28 R. R. 230, followed; *Evans v. Prothero*, (1832)

**REVENUE (Stamps)—continued.**

1 D. M. & G. 572, distinguished. **ASHLING v. BOON — — Kekewich J.** [1891] 1 Ch. 568

*See Birchall v. Bullough. Div. Ct.*, [1896] 1 Q. B. 325, 326.

**177. — Railway company — Increase of nominal capital — Stamp Act**, 1891 (54 & 55 Vict. c. 39), s. 113.

A special Act authorized the Midland Ry. Co. to rearrange and consolidate the several classes and denominations of the shares and stocks in the capital of the co., and of their loans and debenture stocks. Under the authority of that Act the following changes (inter alia) were effected by the co.: 3,899,121l. 4 per cent. consolidated perpetual rent-charge stock was consolidated so as to amount to 6,238,594l. guaranteed stock bearing interest at the rate of 2l. 10s. per cent. per annum. 29,048,191l. 4 per cent. perpetual preference stock was extinguished, and in lieu thereof 46,477,106l. 2½ per cent. perpetual preference stock was created. Ordinary stock to the amount of 35,000,000l. was extinguished, and in lieu thereof there was created 35,000,000l. preferred converted ordinary stock, entitled to a dividend at the rate of 2l. 10s. per cent. per annum, and 35,000,000l. deferred converted ordinary stock:—

*Held*, that the increase authorized by the Act of the nominal amount of the share capital of the co. was an "increase of the amount of nominal share capital" within the meaning of s. 113 of the Stamp Act, 1891, so that the stamp duty imposed by that section was payable in respect of it. **ATT.-GEN. v. MIDLAND RY. CO. Div. Ct.** [1900] 2 Q. B. 353; affirmed by **C. A.** [1900] **W. N. 271**; [1901] 1 Q. B. 220

**178. — "Receipt" — Money received by servant on account of master and handed over to fellow servant — Acknowledgment of receipt by fellow servant — Stamp Act**, 1891 (54 & 55 Vict. c. 39), s. 101.

A solicitor was employed by a bank under an agreement whereby he was appointed an officer of the bank upon the terms that he was to be paid a salary, and to be provided with an office, stationery, and staff of clerks, and was to devote his whole time to the conduct of the legal business of the bank. The solicitor from time to time sued for and recovered sums of money due to the bank. As each sum was recovered he entered the amount in an account book, and then in accordance with his duty handed over the money to the secretary or cashier of the bank, who wrote against the entry in the account book his initials and the date on which the money was handed over to him, in some instances adding the word "received." The account book was the property of the solicitor and remained in his possession:—

*Held*, that as the initialling of the entries in the account book, whether with the addition of the word "received" or not, was intended as an acquittance of the solicitor in respect of the money handed over by him, the entries so initialled constituted "receipts" within s. 101 of the Stamp Act, 1891, and required to be stamped, none the less because the solicitor was a servant of the bank on whose behalf he had received the



**REVENUE (Stamps)—continued.**

money, and the acknowledgment of the receipt of the money from him was given by a fellow servant. *ATT.-GEN. v. CARLTON BANK*

*Lord Russell of Killowen C.J. [1899] 2 Q. B. 158*

— “Receipt”—Script certificate.

*See No. 180, below.*

**179.** — “Release or renunciation of property upon a sale”—*Receipt for compensation for lost working coal adjacent to railway—Right of support—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 78.*

A ry. co. having given notice under s. 78 of the Railways Clauses Act, 1845, to a colliery co. not to work certain coal under and adjacent to their ry., compensation therefor was assessed. The colliery co. gave the ry. co. a receipt under seal for the amount of the compensation, in which they undertook to leave the coal in question unworked, and further undertook to do and execute all deeds, matters, or things necessary for vesting the same in the ry. co. whenever required, and the document continued: “We further acknowledge and declare that the said sum includes satisfaction and compensation for all claims which but for these presents we might have maintained, either under the provisions of any statute, or at law or in equity, against the ry. co. in respect of the said coal.”—

*Held*, that the document was not a release or renunciation of property, or of any right or interest in property, upon a sale, and was, therefore, not chargeable with ad valorem duty, but that it was a release of an interest in property, and should, therefore, bear a 10s. stamp. *GREAT NORTHERN RY. CO. v. INLAND REVENUE COMRS.*

*Div. Ct. [1899] 2 Q. B. 652*

This case was affirmed by C. A. [1901] 1 K. B. 416.

— Renunciation—Increase of duty on letters of allotment and.

*See Finance Act, 1899 (62 & 63 Vict. c. 9), s. 9.*

**180.** — *Script certificate—Payment by instalments—Receipts for future payments indorsed on certificate—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched., “Receipt,” exemption 11.*

A script certificate duly stamped stated that the bearer was entitled to 100l. stock of the Cape of Good Hope after payment of two several sums of 40l. at specified dates. Receipts were indorsed on the certificate applicable to the payment of the two instalments at the specified dates:—

*Held*, affirming the judgment of a Div. Ct., that the receipts acknowledged the receipt of the consideration money expressed in the certificate on which they were indorsed, and were exempt from duty under title “Receipts,” exemption 11, in the sched. to the Stamp Act, 1891. *LONDON AND WESTMINSTER BANK v. INLAND REVENUE COMRS.*

*C. A. [1900] 1 Q. B. 166*

**181.** — “Settlement”—*Contingent reversionary interest—Stock vested in trustees—Power to vary investments—Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 3.*

A settlement of contingent reversionary interests in specified amounts of stock vested in

**REVENUE (Stamps)—continued.**

trustees with power to vary the securities, held to be liable to an ad valorem stamp duty under sched. of the Stamp Act, 1870 (now sched. of the Stamp Act, 1891).

*Decision of Div. Ct., 24 Q. B. D. 584, affirmed. ONSLOW v. INLAND REVENUE COMRS.*

*C. A. [1891] 1 Q. B. 239*

— Ships—Sea insurance—Time policy including a number of ships.

*See No. 163, above.*

**TRUCK ACT.] Exemption of contract from Stamp Duty.** *See Truck Act, 1896 (59 & 60 Vict. c. 44), s. 7.*

— Unstamped document—Promissory note—Cross-examination.

*See EVIDENCE. 43.*

**Succession Duty.**

**182.** — *Acceleration of succession—Interests for life and in remainder—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 1, 15, 20, 28.*

Under a marriage settlement the trusts were for the wife for life, remainder to the husband for life, remainder in default of issue to the wife absolutely. On the death of the husband, there being no issue, the trustee transferred the fund to the wife:—

*Held*, that succession duty was payable, but that the value of the wife's life interest was to be deducted in calculating the amount of duty.

*Judgment of Div. Ct., [1892] 2 Q. B. 694, affirmed. ATT.-GEN. v. ROBERTSON*

*C. A. [1893] 1 Q. B. 293*

*Distinguished. Att.-Gen. v. Wood, [1897] 2 Q. B. 102, 110.*

— Account stamp duty.

*See Cases under REVENUE—Account Duty.*

**183.** — “Alienation”—*New succession—Annuity—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 15, 17, 18.*

A peer bequeathed his residuary personal estate in trust for his wife for life and after her death in trust for the person who should then be his right heir absolutely. After his death five nieces became his co-heiresses, and the appellant, a nephew, succeeded to the title. In order to make provision for the title a deed of family arrangement was executed whereby the testator's widow assigned her interest in bank shares (part of the testator's residuary estate), and the co-heiresses and the appellant respectively assigned their contingent reversionary interests in the residue, to trustees in trust by clause 1 during the widow's life to pay out of the income of the bank shares an annuity of 15,000l. to the appellant and other annuities to the co-heiresses; and by clause 2 after the widow's death to pay out of the income of the whole residue an annuity of 15,000l. to the person for the time being holding the title, with other payments to the co-heiresses and provisions for keeping up the title. The widow died and the co-heiresses paid legacy duty at 3 per cent. on the whole residue. The Crown having claimed succession duty at 6½ per cent.

**REVENUE (Succession Duty)—continued.**

from the appellant in respect of his annuity under clause 2 of the deed:—

*Held*, that the C. A. was right in holding that the annuity was not payable under “a contract made for valuable consideration in money or money’s worth” within s. 17 of the Succession Duty Act, 1853; and wrong in holding that the deed created a new succession; that the case fell under s. 15 and was one of “alienation” of part of the succession created by the testator’s will, whereby the duty payable in respect of the annuity was at the same rate and time as would have been payable if the annuity had not been created; but that as legacy duty had been paid upon the whole residue out of which the annuity was carved, s. 18 applied and no succession duty would have been payable by the co-heiresses if the annuity had not been created, and therefore that the effect of ss. 15 and 18 together was that no succession duty was payable by the appellant in respect of the annuity.

Decision of C. A., [1897] 1 Q. B. 231, reversed.

*In re Cooper and Allen’s Contract*, (1876) 4 Ch. D. 802, commented on. **BARON WOLVERTON** v. **ATT.-GEN.** **H. L. (E.), [1898] A. C. 535**

**184.** — *Assignment—Legatee’s right to heritage challenged in action of reduction, and action compromised—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 42.*

By his trust disposition and settlement J. Dalrymple directed his trustees to hold one-half of the residue of his estate, including the property of W. L., for his daughter in liferent and her issue in fee, with power to his daughter, in the event of her having no issue, to dispose of the estate so held for her by *mortis causa* deed. Failing her doing so the trustees were directed to hold the estate for behoof of the truster’s grandson, G., in liferent. Miss Dalrymple, who did not marry, exercised the power conferred upon her, and by her settlement directed her trustees to convey W. L. to Mrs. Durrant (a stranger in blood) in liferent, and her son C. in fee, and to hold the residue of her estate for Mrs. Durrant in liferent and her whole children in fee.

G. having raised an action of reduction of Miss Dalrymple’s settlement, it was ultimately agreed that G. should consent to decree of absolvitor, and that Mrs. Durrant and her children should convey to him their rights to W. L. Decree of absolvitor was thereafter pronounced, and Mrs. Durrant and her children having assigned their rights to W. L., Mr. Dalrymple’s trustees, who had the feudal title, executed a disposition of W. L. to Gordon.

The Crown thereafter raised an action against G. for succession duty at the rate of 10 per cent. “in respect of the succession of Mrs. Durrant . . . to the liferent of . . . W. L.” The defender tendered duty at the rate of 3 per cent. on the ground that Mrs. Durrant had not taken any right to W. L. under Miss Dalrymple’s settlement, and that his right to the property was acquired from Miss Dalrymple’s trustee:—

*Held*, that Mrs. Durrant had acquired a right of succession under Miss Dalrymple’s settlement,

**REVENUE (Succession Duty)—continued.**

that the defender had acquired that right in virtue of the assignation in his favour, and that therefore he was liable in succession duty at the rate of 10 per cent. **LORD ADVOCATE v. GORDON**, (1895) 22 *Kettie*, 639.

**Ct. of Sess. (Sc.) [1896] W. N. 134**  
— Estate duty.

*See Cases under REVENUE—Estate Duty.*

— Fee and liferent—Estate duty.

*See SCOTTISH LAW—Succession. 42.*

— Foreigner domiciled abroad, Disposition by—  
Property situate abroad—Disposition to  
English company.

*See REVENUE—Estate Duty.*

**185.** — *Insurance—Policy of insurance—Account duty—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 2—Customs and Inland Revenue Acts, 1881 (44 & 45 Vict. c. 12), s. 38; 1889 (52 & 53 Vict. c. 7), s. 11.*

By gratuitous assignation dated 1883 a father assigned to his daughter policies of insurance on his own life on which for many years he had paid the premiums. From 1883 the premiums on the policies were paid solely by the daughter. The father died in 1890, and the daughter thereupon received the money due under the policies:—

*Held*, affirming the decision of the Ct. of Sess., (1895) 22 R. 568; [1896] W. N. 132, that neither succession duty nor account duty was payable by the daughter. **LORD ADVOCATE v. FLEMING**

**H. L. (Sc.) [1897] A. C. 145**

**186.** — *Predecessor—Contract for money or money’s worth—Personal property—Trust in favour of volunteer—Exemption—16 & 17 Vict. c. 51, ss. 2, 17; 44 Vict. c. 12, s. 38; 52 Vict. c. 7, s. 11.*

By settlement, made on the marriage of A. and B., a sum of 5000*l.*, the fortune of A. (the wife) was assigned to trustees, upon trust to pay the interest thereof to her during the joint lives of herself and B., and upon trust, after the decease of the survivor, and in the events which happened, to apply same in payment and discharge (so far as same would extend) of incumbrances affecting lands brought into settlement by B. and his father C., and over which a jointuring power was reserved to them in favour of A., which they exercised to its full extent; and by the said settlement A. was given a life interest, after B.’s death, in a sum of 4000*l.*, brought into settlement by C. In the event (which happened) of there being no issue of the marriage, D., who was a grandson of C., but a stranger in blood to A., became tenant in tail of the settled lands; and barred the entail and resettled them.

A. survived B., and on her death the 5000*l.* was applied towards discharging incumbrances upon the settled lands:—

*Held*, that A. was predecessor of D. within the meaning of the Succession Duty Act, 1853, and that duty at 10 per cent. was payable by D. in respect of his succession to this sum.

A settlement in consideration of marriage and money or money’s worth is not within the exemption in s. 17 of the Act.

*Held*, also, that, assuming the lands to be of greater value than the incumbrances, the trust of the 5000*l.* was a trust of personal property in

**REVENUE (Succession Duty)**—*continued.*

favour (so far as applied in discharge of incumbences) of D. as a volunteer within the Acts 44 Vict. c. 12, s. 38, and 52 Vict. c. 7, s. 11. *ATT.-GEN. FOR IRELAND v. BARON RATHDONNELL*, (1893) 32 L. Rep. Ir. 574 — [1896] W. N. 141

187. — *Predecessor—Entail—“Disposition”—Devolution by law—Succession Duty Act, 1853* (16 & 17 Vict. c. 51), ss. 2, 10.

An entailor destined an estate to himself, and to D., his only son, “and the heirs-male of his body, and the heirs-male of their bodies, which failing, to the heirs-female of his (D.’s) body . . . the eldest heir-female always succeeding without division.” W., the last surviving heir-male who was called, having died without issue, the succession opened to C., who was the great-granddaughter of D., and the nearest heir-female of his body. C. was also a niece of W.

In a question between the Crown, claiming succession duty, and C. held (affirming judgment of Lord Wellwood) that when the destination to the heirs-male of the body of D. was exhausted on the death of W. the estate passed, not by devolution of law, but under the entailor’s disposition, to a new stirps, the heirs-female of D.’s body, of which C. was the head, and that C. succeeded by “disposition” to the entailor as her “predecessor,” and not by devolution by law to her uncle W.

*Lord Advocate v. Lord Saltoun*, (1858) 21 Dunlop; 124, 3 Macq. 659, commented on. *LORD ADVOCATE v. McCULLOCH*, (1895) 22 Rettie, 356 Ct. of Sess. (Sc.) [1896] W. N. 124

— South Australia, Laws of—Covenant to pay —“With intent to evade payment of duty.”

*See AUSTRALIA.* 1.

— Succession defined—Laws of Queensland—Succession and Probate Duties Act, 1892. *See QUEENSLAND.* 6.

— Vendor and purchaser—Liability for unpaid duty.

*See VENDOR AND PURCHASER.* 2.

**REVERSAL OF JUDGMENT**—Costs—Repayment of—Solicitor.

*See SOLICITOR—Costs.* 71.

**REVERSION AND REVERSIONARY INTERESTS**—Absolute gift—“Any money . . . that may be in my possession”—Reversionary interest—Construction of will.

*See WILL—Absolute Gift.* 1.

— Absolute gift subject to executory limitation —Conversion—Enjoyment in specie.

*See WILL—Absolute Gift.* 10.

— Construction as to whether covenant by lessor runs with the reversion—Liability.

*See NEW ZEALAND.* 6.

— Damage to reversion—Parties to action—Severance of reversion.

*See TENANCY IN COMMON.* 1.

— Lease—Underlease—Grant or assignment of title—“Leasehold reversion.”

*See LANDLORD AND TENANT.* 94, 95.

— Married woman—Assignment of reversionary interest.

*See HUSBAND AND WIFE.* 34—36.

**REVERSION AND REVERSIONARY INTERESTS**—*continued.*

— Omission to convert reversionary interest—Tenant for life and remainderman —Rate of interest.

*See SETTLED LAND.* 58.

— Power of appointment—Recital—Estoppel.

*See SETTLEMENT—Validity.* 33.

— Receiver—Equitable reversionary interests.

*See RECEIVER.* 11, 12.

— Reversioner —Right of —Rent —Way-leave over land.

*See WAY-LEAVE.* 1.

— Reversioner—Right of, to sue for injunction.

*See INJUNCTION.* 33.

— Sale of reversion—Equitable interest—Delay.

*See SPECIFIC PERFORMANCE.* 4.

1. — *Sale of reversion—Inadequate price—“Unfair dealing”—Expectant heir—Sales of Reversions Act, 1867* (31 & 32 Vict. c. 4), s. 1.

The Court, without deciding whether, notwithstanding the Act, a sale of a reversion could be set aside merely on the ground of gross undervalue as being evidence of fraud or unfair dealing, held that the circumstances of the present case shewed that there had been unfair dealing by the defendant, and therefore he was not entitled to the protection of the Act, and the old doctrine of the Court as to dealing with expectant heirs applied, as was shewn by *Earl of Aylesford v. Morris*, (1873) L. R. 8 Ch. 484. *BRENCHLEY v. HIGGINS* — — C. A. [1900] W. N. 242

— Settlement estate duty.

*See Cases under REVENUE—Estate Duty.*

**REVERTER**—Common law condition—Shifting use—Rule against perpetuities.

*See VENDOR AND PURCHASER.* 76.

— Fee simple conditional—Wills Act—Devise.

*See WILL—Reverter.* 178.

**REVIEW (OF BOOK)**—Libel.

*See DEFAMATION—Libel.* 11.

**REVIEW (OF PROCEEDINGS).**

*See Cases under PRACTICE—Review.*

**REVIEW (OF TAXATION)**—Costs —County court—Power of Board of Trade.

*See BANKRUPTCY—Costs.* 79.

— Solicitor’s bill of costs—“Practice and appeal”

*See APPEAL.* 45.

**REVISING BARRISTER.**

*See ELECTION LAW—Revising Barrister.*

**REVIVAL**—Will—Revocation.

*See PROBATE.* 117.

**REVIVOR.**

*See PRACTICE—Revivor.*

— By repeal of statute—Temporary Acts.

*See STATUTES—Repeals.*

**REVOCATION**—Authority to defend action in name of company—Dissolution pendente lite—Solicitor—Costs.

*See PRINCIPAL AND AGENT.* 27.

— By Board of Trade—Release of trustee—Error in administration.

*See BANKRUPTCY—Trustee.* 247.

**REVOCAION**—*continued.*

- Letters of administration.  
See PROBATE—Revocation of Administration.
- Licence—Breach of contract by licensor—Licensee's right of action.  
See LICENCE. 1.
- Nomination by member—Revocation by subsequent will.  
See FRIENDLY SOCIETY. 13.
- Patent.  
See PATENT—Revocation.
- Power of appointment.  
See POWER—Revocation.
- Probate.  
See PROBATE—Revocation of Probate.
- Retainer to solicitor.  
See SOLICITOR—Retainer.
- Settlement.  
See SETTLEMENT—Revocation.
- Signature of auctioneer's clerk—Statute of Frauds.  
See PRINCIPAL AND AGENT. 1.
- Voluntary settlement—Undue influence—Independent advice—Duty of solicitor—Costs.  
See SETTLEMENT. 34.
- Will.  
See WILL—Revocation.

**RHODESIA.**

See AFRICA.

**RIBBLE NAVIGATION ACT, 1883** — Harbour authority—Duty of—Stranding.  
See SHIPPING—Harbour. 156.

**RIGHT ACCRUED.**

See Cases under STATUTES—Repeals.

**RIGHT OF WAY.**

See Cases under WAY, RIGHT OF.

**RIOT.**

*Regs. of the Sec. of State dated June 30, 1894, as to claims for compensation for damages by riot. St. R. & O. 1894, No. 636, p. 396.*

**RIPARIAN OWNER.**

See Cases under WATER.

**RITUAL.**

See ECCLESIASTICAL LAW—Ritual.

**RIVER.**

See Cases under WATER.

**ROADS.**

See Cases under HIGHWAY.  
LONDON—Streets.  
STREETS.

**ROCHDALE.**

See SALFORD HUNDRED COURT.

**ROMAN CATHOLIC**—Nomination to living by.

See ECCLESIASTICAL LAW—Advowson. 2.

**ROMILLY'S ACT (52 Geo. 3, c. 101)**—Mortgage—Sanction of Court.

See CHARITY—Management. 40.

**ROOD-LOFT.**

See ECCLESIASTICAL LAW—Faculty. 40.

**ROOF**—Incombustible materials.

See LONDON—Buildings. 27.

## — Settled Land Acts—Application of capital money.

See SETTLED LAND. 40.

**ROYAL NAVAL RESERVE VOLUNTEERS.**

See ARMY AND NAVY—Volunteers.

**ROYAL NIGER COMPANY.**

See AFRICA.

**ROYAL WARRANT**—Enforcing terms of—Officer's right.

See MANDAMUS. 6.

**ROYALTIES**—Mines.

See under MINES.

## — Personal earnings of bankrupt — Letters patent.

See BANKRUPTCY—Undischarged Bankrupt. 257.

**ROUMANIA**—Extradition.

See EXTRADITION.

**RUBBISH**—Obstruction to navigation.

See SHIPPING—Harbour. 154.

## — Removal of refuse.

See LONDON—Removal of Refuse.

## — Sub-demise for purpose of rubbish shoot—Alteration of nature of demised premises—Injunction.

See WASTE. 2.

**RULES AND ORDERS OF COURT.**

*Rules and Orders of Court judicially considered during the years 1891–1900. See Table of Rules judicially considered.*

*Rules Publication Act, 1893 (56 & 57 Vict. c. 66), is an Act for the publication of Statutory Rules.*

## S.

**SAILING RULES.***See Cases under SHIPPING.***SAILOR AND SEAMAN.***See Cases under SHIPPING—Seamen.*

**ST. HELENA.**—*O. in C. dated Jan. 29, 1900, applying the Colonial Probates Act, 1892, to the island of.* *Lond. Gaz. Feb. 7, 1900, p. 787; St. R. & O. 1900, No. 88.*

**ST. LUCIA.**—Practice—Special leave to appeal—Appeal in formâ pauperis.  
*See PRACTICE—Formâ Pauperis.* 26.

**ST. VINCENT (ISLAND OF).**—Colonial Probates Act, 1892.  
*See PROBATE—Colonial Probates Act, 1892.*

**SALARY.**—After-acquired property—Salary or income.  
*See BANKRUPTCY—Assets.* 53, 54.

—Canon's stipend—Minister's stipend.  
*See SCOTTISH LAW—Church.* 5.

—Chaplain's—Income tax—Charitable institution.  
*See REVENUE—Income Tax.* 75.

—Extra work done by receiver—Allowances—Guarantee society.  
*See PARTNERSHIP.* 42.

—Income tax—Deductions—Contribution for superannuation allowance.  
*See REVENUE—Income Tax.* 111.

—Indian judge.  
*See INDIA.*

—Retired officer—Application.  
*See BANKRUPTCY.* 48.

—Scottish law.  
*See SCOTTISH LAW—Church.* 5, 6.

—Stipend of workhouse chaplain—Validity of mortgage.  
*See BANKRUPTCY—Assets.* 65.

**SALE.**—Auction.  
*See AUCTIONEER.*

—Bankruptcy practice.  
*See Cases under BANKRUPTCY.*

—Bill of sale.  
*See BILL OF SALE.*

—Bread—Sale otherwise than by weight.  
*See BREAD.*

—Charity lands—Consent.  
*See CHARITY.* 5—9.

—Company—Practice.  
*See Cases under COMPANY and COMPANY—WINDING-UP.*

—Contract.  
*See CONTRACT.*

—Food and drugs—Adulteration.  
*See ADULTERATION.*

—Food, Unsound.  
*See FOOD.*

**SALE—continued.**

—Goods.  
*See SALE OF GOODS.*

—Heirlooms.  
*See Cases under HEIRLOOMS.*

—Land.  
*See VENDOR AND PURCHASER.*

—Lands Clauses Acts.  
*See LANDS CLAUSES ACTS.*

—Legal remainder—Charge on land—Receiver—"Actual delivery in execution."  
*See JUDGMENT DEBT.* 1.

—Lunacy.  
*See LUNACY—Sales.*

—Markets and fairs.  
*See MARKET.*

—Mortgages.  
*See MORTGAGES—Sale.*

—Partition actions.  
*See Cases under PARTITION.*

—Partnership.  
*See PARTNERSHIP—Sale.*

—Poisons.  
*See Cases under POISON.*

—Power of sale.  
*See POWERS.*

—Principal and agent.  
*See PRINCIPAL AND AGENT.*

—Rent-charge.  
*See RENT-CHARGE.*

—Resale—Taking land for the purpose of—Local authority—Statutory powers.  
*See STREETS—New Streets.* 15.

—Reversion—Inadequate price—"Unfair dealing"—Expectant heir.  
*See REVERSION.*

—Sale out of court.  
*See PRACTICE—Sales by the Court.*

—Settled estates.  
*See SETTLED LAND—Sale.*

—Sheriff, Sale by.  
*See SHERIFF.*

—Ship.  
*See SHIPPING—Sale.*

—Stamp duty.  
*See Cases under REVENUE—Stamps.*

—Trust for.  
*See EXECUTOR—Administration.* 10.

—Trustees.  
*See TRUSTEE—Sale.*

—Vendor and purchaser.  
*See Cases under VENDOR AND PURCHASER.*

**SALE BY COURT.***See PRACTICE—Sales by the Court.*

**SALE OF GOODS.**

*Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), codifies the law relating to the sale of goods.*

1. — *Acceptance—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4, sub-ss. 1, 3—Act which recognises a pre-existing contract of sale.*

Where goods sold under an oral contract were delivered to the buyer, who took a sample from them, and, after examining it, said that the goods were not equal to his sample, and that he would not have them:—

*Held*, that there was evidence of an act done by him in relation to the goods which recognised a pre-existing contract of sale, and therefore evidence of an acceptance within the meaning of s. 4 of the Sale of Goods Act, 1893. **ABBOTT & Co. v. WOLSEY** — **C. A. [1895] 2 Q. B. 97**

— “Acceptance”—Statute of Frauds—“Memorandum”—Connecting documents.  
*See* **FRAUDS, STATUTE OF. 25.**

— Claimed by third party—Title of purchaser.  
*See* **COUNTY COURT—Execution. 38.**

2. — *Contract—Oral contract—Part payment—Statute of Frauds (29 Car. 2, c. 3), s. 17—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4, sub-s. 1.*

Where, upon an oral contract for the supply of goods, it was a term of the contract that a sum of money which had been overpaid to the vendor upon a previous sale of goods by him to the purchaser should be retained by the vendor on account of the price of the goods contracted to be supplied:—

*Held*, that there was not a part payment which would satisfy the provisions of s. 4, sub-s. 1, of the Sale of Goods Act, 1893.

*Walker v. Nussey*, (1847) 16 M. & W. 302, followed. **NORTON v. DAVISON** — **C. A. [1899] W. N. 12 (12); [1899] 1 Q. B. 401**

3. — *Contract—Sale by description—Implied Condition—Acceptance—Passing of property—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 13, 17, 35.*

The expression “contract for the sale of goods by description,” in the Sale of Goods Act, 1893, s. 13, applies to all cases where the buyer has not seen the goods, but relies solely on the description given by the seller.

The plt. agreed to sell and the deft. to buy a reaping machine, which the deft. had never seen, and which the plt. stated to have been new the previous year, and to have been used to cut only fifty or sixty acres. The machine was delivered, and shortly afterwards the deft. wrote complaining that it did not correspond with the plt.’s statements. After some further correspondence the deft. returned the machine.

In an action to recover the price:—

*Held*, that there was a contract for the sale of goods by description, within the meaning of the Sale of Goods Act, 1893, s. 13, and therefore, by that section, there was an implied condition that the goods should correspond with the description, that there had been no acceptance of the machine by the deft., within the meaning of s. 35, that the property had not passed to the deft., within

**SALE OF GOODS—continued.**

the meaning of s. 17, and the plt. was not entitled to recover. **VARLEY v. WHIPP**

**Div. Ct. [1900] W. N. 38; [1900] 1 Q. B. 513**

4. — *Contract—Sale or return—Transfer of property as between seller and buyer—Pledge of goods—“Act adopting the transaction”—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 18, r. 4 (a).*

Where a person who has received goods on sale or return pledges them he thereby does an act adopting the transaction within the meaning of the Sale of Goods Act, 1893, s. 18, r. 4 (a), so that the property in the goods passes to him, and the original vendor cannot recover them from the person with whom they have been pledged. **KIRKHAM v. ATTENBOROUGH. KIRKHAM v. GILL**

**C. A. [1897] 1 Q. B. 201**

5. — *Contract—Shipment to be made by sailing ship between specified dates—Condition precedent—Implied condition—Measure of damages.*

By agreement in writing the defts. sold to the plts. 250 bales of Manila hemp, shipment to be made from a port or ports in the Philippine Islands by sailer or sailers between May 1 and July 31, 1898; the agreement contained a clause that if the goods did not arrive from loss of vessel or other unavoidable cause the contract was to be void. In consequence of the Spanish-American war it was in a business sense impossible for the defts. to ship hemp by sailer between the specified dates, but in Sept. they shipped hemp (which would otherwise have satisfied the contract) by steamer, and on Oct. 27 declared it against the contract; the plts. refused to accept this declaration, and returned it to the defts., who, on Nov. 4, wrote that it was the only declaration that they were in a position to make:—

*Held*, that the stipulations as to shipment by sailer or sailers between the specified dates were conditions precedent and the declaration was bad; that it was not an implied condition of the contract that it should be possible to ship by sailer between those dates; that the defts. were not protected by the express condition as to non-arrival of the goods, the non-arrival not having been occasioned by any unavoidable cause within the meaning of the contract; and that the damages were to be ascertained by reference to the market price on Nov. 4, the day on which the defts. finally notified their inability to make a declaration in accordance with the contract. **ASHMORE & SON v. C. S. COX & CO.**

**Lord Russell of Killowen C.J. [1899] 1 Q. B. 436**

Referred to by Mathew J. *Nickoll & Knight v. Ashton, Edridge & Co.*, [1900] 2 Q. B. 298, 303.

6. — *Contract—Warranty—Implied condition as to fitness of goods—Evidence—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14.*

Coals were supplied under a written contract of sale containing no mention of the particular purpose for which they were required, though prior to the making of such contract the buyers made known that purpose to the sellers, who were coal agents, and relied on their skill and

**SALE OF GOODS—continued.**

judgment. In an action for damages for breach of warranty by the sellers:—

*Held*, that evidence of what took place between the parties prior to the making of the contract was admissible to raise the implication of the condition specified in s. 14 of the Sale of Goods Act, 1893, and, therefore, by virtue of that section a warranty or condition by the sellers that the coals were reasonably fit for the purpose for which they were required must be implied:

*Held*, also, that a contract for the sale of coals under a particular description known in the coal trade was not “a contract for the sale of a specified article under its patent or other trade name” within the meaning of the proviso to s. 14. *GILLESPIE BROTHERS & Co. v. CHENEY, EGGAR & Co.* — Lord Russell of Killowen C.J.

[1896] 2 Q. B. 59

— Costs of reasonable defence by purchaser of action against him by sub-vendee.  
*See DAMAGES.* 2.

7. — *Document of title, Possession of—Consent of seller—Draft, Failure to accept—Transfer of bill of lading to sub-vendee—Stoppage in transitu—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 25, sub-s. 2; s. 47—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 2, sub-s. 1; ss. 9, 10.*

In fulfilment of a contract for the sale of a certain quantity of copper the sellers forwarded to the buyer a bill of lading indorsed in blank for copper shipped on the deft's ship, together with a draft for the price of the copper for acceptance. The buyer, who was insolvent, did not accept the draft, and delivered the bill of lading to the plts. in fulfilment of a contract which he had, previously to obtaining possession of the bill of lading, made for the sale to them of copper, and they thereupon paid him the price of the copper. The plts. took the bill of lading in good faith, and without notice of the rights of the original sellers in respect of the copper. The sellers stopped the copper in transitu. In an action by the plts. against the defs., non-delivery of the copper:—

*Held*, reversing the judgment of Mathew J., [1898] 2 Q. B. 61, that, the buyer having obtained possession of the bill of lading with the consent of the sellers, the transfer of it by him to the plts. gave them a good title to the copper under s. 25, sub-s. 2, of the Sale of Goods Act, 1893, and that the sellers had no right to stop it in transitu. *CAHN AND MAYER v. POCKETT'S BRISTOL CHANNEL STEAM PACKET CO.*

C. A. [1899] W. N. 32 (6); [1899] 1 Q. B. 643

— Factor.

*See Cases under FACTOR.*

— Goods claimed by third party—Execution—Title of purchase.

*See COUNTY COURT—Execution.* 38.

— Goods seized in execution—Interpleader.

*See Cases under INTERPLEADER.*

8. — *Market overt—Custom of City of London.*

Jewels were sold to a jeweller in the City of London in a private showroom over his shop:—

*Held*, that the sale was not a sale in market overt.

*Semble*, that the custom of market overt in the

**SALE OF GOODS—continued.**

City of London does not apply where the shop-keeper is the purchaser, not the seller, of the goods. *HARGREAVE v. SPINK*

*Wills J.* [1892] 1 Q. B. 25

*See Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).*

— Merchandise marks.

*See Cases under TRADE-MARK—Merchandise Marks.*

— Pledge.

*See Cases under PLEDGE.*

— Practice—Notice of statutory defence—Statute of Frauds.

*See COUNTY COURT.* 63.

— Ratification—Undisclosed principal.

*See PRINCIPAL AND AGENT.* 19.

9. — *Sample, Sale by—Inspection at place of delivery—Right of purchaser to reject.*

A dealer bought grain which he inspected at the place named for delivery and sent on to a sub-purchaser, who rejected it as not being up to sample:—

*Held*, that the dealer had accepted the grain and could not afterwards reject it. *PERKINS v. BELL* — C. A. [1893] 1 Q. B. 193

— Streets—Offences—Exposing goods for sale on carriageway—Penalty.

*See LONDON—Streets.* 89.

**SALFORD HUNDRED COURT.**

*HEYWOOD.] O. in C. dated Mar. 15, 1893, excluding the jurisdiction of the Court within the borough of Heywood in causes not exceeding £5. St. R. & O. 1893, p. 417. Lond. Gaz. Mar. 17, 1893, p. 1682.*

— Prohibition—Jurisdiction.

*See PROHIBITION.* 6.

*ROCHDALE.] O. in C. dated Mar. 15, 1893, excluding the jurisdiction of the Court within the borough of Rochdale in causes not exceeding £5. St. R. & O. 1893, p. 419. Lond. Gaz. April 14, 1893, p. 2232.*

— Rochdale—Canal—Right to support.

*See MINES.* 26.

**SALMON FISHERY.**

*See FISHERY.*

**SALVAGE.**

*See INSURANCE—Marine.*

*SETTLED LAND.* 46.

*SHIPPING—Salvage.*

**SALVAGE EXPENDITURE**—Debenture subject to mortgages—Discretion of Court to allow expenditure.

*See COMPANY—Debentures.* 91.

— Preservation of estate.

*See SETTLED LAND—Infants.* 55.

**SAMOA**—Suit for recovery of land in.

*See FOREIGN JURISDICTION.*

**SAMPLE**—For analysis.

*See ADULTERATION—Analysis.* 11—13.

— Sale by—Acceptance.

*See SALE OF GOODS.* 9.

— Tampering with.

*See CRIMINAL LAW—Evidence.* 19.

**SAND**—Right to take—Right of owner of shore  
—“Bed of river.”  
*See* **THAMES**. 8.

## SANITATION.

*See* **DISTRICT COUNCILS**.  
**LONDON**—Removal of Refuse.  
**LONDON**—Sanitary Convenience.  
**LONDON**—Sewers.  
**NUISANCES**.  
**PUBLIC HEALTH**.  
**SEWERS**.

**SAN MARINO**—Republic of.  
*See* **EXTRADITION**.

**SATISFACTION**—Bill of sale.  
*See* **BILL OF SALE**—Satisfaction.

— Breach of trust—Following trust funds.  
*See* **TRUSTEE**—Breach of Trust. 28.

— Creditor—proof—Fully paid shares taken in payment of debt—Failure of consideration.  
*See* **COMPANY**—WINDING-UP. 206.

— Debt—Satisfaction of by gift.  
*See* **DEBT**. 3.

— Payment into court—Denial of liability—Admission of plaintiff's claim—Striking out counter-claim.  
*See* **PRACTICE**—Payment into Court. 126.

— Scottish law.  
*See* **SCOTTISH LAW**—Satisfaction.

— Will—Legacy.  
*See* **WILL**—Satisfaction. 189.

## SAVINGS BANK.

*Statutes*, col. 1819.

*Trustee Savings Banks*, col. 1819.

### Statutes.

*Savings Bank Act*, 1891 (54 & 55 Vict. c. 21), amends the law as to savings banks.

### Trustee Savings Banks.

*The Savings Bank Investment Regulations*, 1894, dated May 21, 1894. **St. R. & O.** 1894, No. 60, p. 403.

*The Trustee Savings Banks Regulations*, 1895, dated June 14, 1895. **St. R. & O.** 1895, No. 309.

1. — Trustees and managers—Non-compliance with rules—Non-attendance at meetings—Omission or neglect—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 165, 200—*Trustee Savings Banks Acts*, 1863 (26 & 27 Vict. c. 87), ss. 6, 11; 1887 (50 & 51 Vict. c. 47).

The president of a savings bank within the Trustee Savings Bank Act, 1863, who had attended only one meeting and had taken no active part in the management of the bank, had received reports, &c., which entitled him to conclude that the duties undertaken by his co-trustees and co-managers were being duly performed:—

*Held*, that he was not personally liable, under s. 11 of the Savings Banks Act, 1863, for neglect in not complying with the rules as to examination of accounts, &c. **MARQUIS OF BUTE'S CASE**

**Stirling J.** [1892] 2 Ch. 100

**SCAFFOLDING**—Buildings—Workmen's Compensation Act, 1897.  
*See* **MASTER AND SERVANT**. 41, 42.

**SCALE FEE**—Conveyancing—Solicitors' remuneration.  
*See* Cases under **SOLICITOR**—Costs.

— On mortgages.  
*See* Cases under **MORTGAGE**—Costs.

**SCALE, HIGHER OR LOWER**—Costs.  
*See* Cases under Costs.

**SCANDALOUS CONDUCT**—By clergyman.  
*See* **ECCLIESIASTICAL LAW**—Clergy. 50.

**SCAVENGING**—Metropolis.  
*See* Cases under **LONDON**—Removal of Refuse. 49, 50.  
**NUISANCES**.

**SCHEME**—Charity.  
*See* Cases under **CHARITY**.

— For improvements on settled estate.  
*See* Cases under **SETTLED LAND**.

**SCHEME OF ARRANGEMENT**—Bankruptcy practice.  
*See* **BANKRUPTCY**—Scheme of Arrangement.

— Company practice.  
*See* Cases under **COMPANY** and **COMPANY**—WINDING-UP.

— Railway company's affairs.  
*See* **RAILWAY**—Scheme of Arrangement.

**SCHOLARSHIP**—Action for.  
*See* **CHARITY**—Commissioners. 6.

**SCHOOL BOARD**.  
*See* **SCHOOLS**—School Board.

**SCHOOL BUILDINGS**—House duty.  
*See* **REVENUE**—House Duty. 62, 63.

**SCHOOLMASTER**.  
*See* **SCHOOLS**—Schoolmaster.

**SCHOOLS**.  
*Elementary Education Act*, 1891 (54 & 55 Vict. c. 56), makes further provision for assisting education in Public Elementary Schools in England and Wales.

*Elementary Education Act*, 1897 (60 & 61 Vict. c. 16), amends s. 97 of the *Elementary Education Act*, 1870 (33 & 34 Vict. c. 75).

*Elementary Education Act*, 1900 (63 & 64 Vict. c. 53), amends the *Elementary Education Acts*, 1870 to 1893.

*In General*, col. 1821.

*Attendance of Children*, col. 1821.

*Board of Education*, col. 1821.

*Defective and Epileptic Children*, col. 1821.

*Endowed Schools*. *See* **CHARITY**—Commissioners.

*Industrial and Reformatory Schools*, col. 1822.

*Rates*, col. 1822.

*Reformatory Schools*, col. 1822.

*School Board*, col. 1822.

*Schoolmaster*, col. 1824.

*Teachers*, col. 1825.



**SCHOOLS—continued.****In General.**

- Boarding and lodging scholars attending—  
“Private residence.”  
*See COVENANT.* 4.
- Educational charity—Cy-près.  
*See CHARITY.* 20.
- Inhabited house duty.  
*See REVENUE—House Duty.* 62, 63.
- Noise — Nuisance — Misrepresentation by  
vendor's agent—Rescission.  
*See VENDOR AND PURCHASER—Rescission.* 67.
- Priority of Crown debts—Debts due to Boards  
of Education—Law of Newfoundland.  
*See NEWFOUNDLAND.* 1.
- Scheme—Endowed school.  
*See CHARITY—Commissioners.* 11.
- School Sites Act, 1841—“Owners”—Street—  
Recovery of expenses.  
*See STREETS.* 29.

**Attendance of Children.**

*Elementary Education (School Attendance) Act, 1893* (56 & 57 Vict. c. 51), amends the previous Acts with respect to the age for attendance at school.

*Elementary Education (School Attendance) Act (1893) Amendment Act, 1899*, amends the law respecting the employment and education of young children.

1. — *Employment of child by parent “for purposes of gain”*—*Elementary Education Act, 1876* (39 & 40 Vict. c. 79), s. 47.

By s. 6 of the *Elementary Education Act, 1876*, a person who takes into his employment a child, between the ages of ten and fourteen, who is not exempted from school attendance, is liable to a penalty.

By s. 47, “a parent of a child who employs such child in any labour exercised by way of trade or for the purposes of gain shall be deemed for the purposes of this Act to take such child into his employment.”

The respondent, in order to enable his wife to go out and earn money, kept his daughter, a child of the age of thirteen who was not exempted from school attendance, at home to do the housework:—

*Held*, that he did not thereby employ the child for the purposes of gain so as to render himself liable to the penalty imposed by s. 6. *MATHER v. LAWRENCE* Div. Ct. [1899] W. N. 67; [1899] 1 Q. B. 1000

**Board of Education.**

*Board of Education Act, 1899* (62 & 63 Vict. c. 33), provides for the Establishment of a Board of Education for England and Wales and for matters connected therewith.

**Defective and Epileptic Children.**

*Elementary Education (Defective and Epileptic Children) Act, 1899* (62 & 63 Vict. c. 32), makes better provision.

**SCHOOLS—continued.****Endowed Schools.**

*See Cases under CHARITY—Commissioners.*

**Industrial and Reformatory Schools.**

*Reformatory and Industrial Schools Act, 1891* (54 & 55 Vict. c. 23), assists Managers of Reformatory and Industrial Schools in advantageously launching into useful careers the children under their charge.

*Reformatory Schools Act, 1893* (56 & 57 Vict. c. 48), amends the law as to the commitment of young offenders. Rule and Schedule of forms dated Nov. 5, 1895, issued by the Lord Chancellor for the purposes of the *Reformatory Schools Acts. St. R. & O. 1895, No. 423, L. 24.*

*Industrial Schools Acts Amendment Act, 1894* (57 & 58 Vict. c. 33), amends the law relating to Industrial Schools.

*See also* s. 9 of the *Prevention of Cruelty to Children Act, 1894* (57 & 58 Vict. c. 41).

*Reformatory and Industrial Schools (Channel Islands Children) Act, 1895* (58 Vict. c. 17), makes provision for sending children from the Channel Islands to Industrial Schools in Great Britain.

Rule and schedule of forms for sending children to Industrial Schools dated Nov. 5, 1895. *St. R. & O. 1895, No. 423, L. 24.*

*Reformatory Schools Act, 1899* (62 & 63 Vict. c. 12), amends the *Reformatory Schools Act, 1893*. (56 & 57 Vict. c. 48).

2. — *Justices—Jurisdiction—Industrial Schools Act, 1866* (29 & 30 Vict. c. 118), s. 14.

The *Industrial Schools Act, 1866*, does not contain a code of criminal procedure and is not punitive in its character, but is intended for the protection of children coming within its operation. Where, therefore, a child apparently under fourteen years of age is charged before a court of summary jurisdiction with larceny, and the charge is dismissed, but evidence is given that he frequents the company of reputed thieves, he may be sent to an industrial school under s. 14 of the Act, upon an application under that section, without being brought afresh before the Court by summons or otherwise. *REG. v. JENNINGS.* Div. Ct. [1896] 1 Q. B. 64

**Rates.**

— Rating of schools.

*See RATES.* 27.

*Voluntary Schools Act, 1897* (60 Vict. c. 5), exempts schools from rates and repeals part of s. 19 of the *Elementary Education Act, 1876* (39 & 40 Vict. c. 79).

**Reformatory Schools.**

*See SCHOOLS—Industrial and Reformatory Schools.*

**School Board.**

*School Board Conference Act, 1897* (60 & 61 Vict. c. 32), provides for expenses incurred in relation to such conferences.

**SCHOOLS (School Board)—continued.**

3. — *Disqualification by absence—School board member—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), Sched. II., Part I., r. 14.*

Rule 14 of Sched. II., Part I., of the Education Act, 1870, does not entitle a school board to elect a new member in place of a member who has absented himself on account of ill-health, without first giving him an opportunity of explaining or excusing his absence. *RICHARDSON v. METHLEY SCHOOL BOARD* - *Kekewich J. [1893] 3 Ch. 510*

Followed by *Kekewich J. Turnbull v. West Riding Athletic Club (Leeds), Ltd., [1894] W. N. 4.*

— *Disqualification by bankruptcy—School board member.*

*See BANKRUPTCY—Disqualification. 95.*

4. — *Disqualification by crime—School board member—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), Sched. II., Part I., r. 14.*

A member of a school board in England convicted of "conspiracy" under the Criminal Law and Procedure (Ireland) Act, 1887, and imprisoned:—

*Held*, to have been "punished with imprisonment for crime" within the meaning of rule 14, Sched. II., Part I., to the Education Act, 1870, and so to have vacated his seat on the board. *CONYBEARE v. LONDON SCHOOL BOARD*

*Day J. [1891] 1 Q. B. 118*

5. — *Disqualification of member—"Concerned in work done under authority of board"—Sale of materials to contractor with board—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 34.*

By s. 34 of the Elementary Education Act, 1870, a member of a school board who (inter alia) "shall in any way share or be concerned in the profits of any bargain or contract with or any work done under the authority of such school board" is liable to a penalty, and his office becomes vacant.

The respondent, a member of a school board, sold sand and gravel to a builder who had entered into a contract with the board for the building of a school; at the time of the sale the respondent was aware that the sand and gravel were intended to be used (as they were in fact, used) in the building of the school:—

*Held*, that the respondent had been concerned in work done under the authority of the board, and had therefore been guilty of an offence under the section. *BARNACLE v. CLARK*

*Div. Ct. [1900] 1 Q. B. 279*

— *Election—Petition—Interlocutory order—Appeal.*

*See APPEAL. 43.*

6. — *Election of school board—Voting—Ballot-papers—Crosses, how to be counted—Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2—Elementary Education Act, 1873 (36 & 37 Vict. c. 86), Sched. II.—General Order of the Committee of the Privy Council on Education of Aug. 1, 1895.*

At elections of school boards in boroughs a voter has the option of placing on the ballot-paper supplied to him, opposite the name of any candidate for whom he intends to vote, either crosses or figures to signify the number of votes he intends to give to such candidate. Where a ballot-paper is marked with crosses instead of figures the re-

**SCHOOLS (School Board)—continued.**

turning officer ought to count every cross as one vote for the candidate opposite whose name it is placed. If any ballot-paper be marked with a less number of crosses than the voter has votes at that election, the returning officer, in performing his duty of counting the votes, ought not to act upon any presumption or inference that the voter intended to exhaust his whole voting power. If, therefore, there are fifteen candidates for election, and a ballot-paper be marked with a single cross placed opposite the name of one only of those candidates, it ought to be counted as one vote, and not as fifteen votes, for that candidate. So, if a single cross be placed opposite the names of three or five of the fifteen candidates, it ought to be counted as one vote, and not as five or three votes, for the candidate opposite whose name it is placed. *MORRIS v. BEVES*

*Div. Ct. [1897] 1 Q. B. 449*

7. — *Election petition—Recount of votes—Correctness of Returning officer's figures—Onus of proof.*

At an election for a school board there were eight candidates for five seats. The five highest on the poll, of whom the respondent was fifth, were declared by the returning officer to be elected. A petition was presented by the candidate who was sixth on the poll against the election of the respondent, on the ground that certain votes given for the petitioner had been wrongly counted for the respondent or for some other candidate, and the petitioner claimed the seat. A recount having been had of the votes given for the respondent and the petitioner, it appeared that the petitioner had a majority over the respondent. The votes of the other candidates were not recounted:—

*Held*, that the petitioner was entitled to the seat, for that it was enough for him to establish that he had more votes than the respondent, and that it was unnecessary for him to recount the votes given for the first four candidates. *LORD MONESWELL v. THOMPSON* - *Div. Ct. [1898] 1 Q. B. 479*

8. — *Statutory powers—School board—Purchase of land by agreement—Restrictive covenant—Person injuriously affected—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 19, 20—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 68.*

When a school board acquire land, whether by agreement or compulsion, for the purposes of the Elementary Education Act, 1870, and purchase with notice of a restrictive covenant to which the land was subject in the hands of the vendor, the covenantee cannot maintain an action against the school board for breach of covenant; his only remedy is compensation under s. 68 of the Lands Consolidation Act, 1845. *KIRBY v. HARROGATE SCHOOL BOARD*

*C. A. [1896] 1 Ch. 437*

**Schoolmaster.**

9. — *Authority of head master—Punishment of pupil for acts done on way to school.*

The authority delegated by the parent of a pupil to a schoolmaster to punish a pupil is not limited to offences committed by the pupil on the premises of a school, but extends to acts

**SCHOOLS (Schoolmaster)**—*continued.*

done by such pupil while on his way to and from school. **CLEARY v. BOOTH**

Div. Ct. [1893] 1 Q. B. 465

And see Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41).

— Dismissal—Endowed school.

See CHARITY—Commissioners. 10.

— Dismissal—Injunction—National School.

See CHARITY—Management. 39.

**Teachers.**

*Elementary School Teachers (Superannuation) Act, 1898 (61 & 62 Vict. c. 57), provides for superannuation and other annuities and allowances to elementary school teachers certificated by the Education Department.*

**TEACHERS' SUPERANNUATION.** *Elementary School Teachers' Superannuation Rules, 1899, dated April 1, 1899, made for carrying into effect the Elementary School Teachers (Superannuation) Act, 1898 (61 & 62 Vict. c. 57). St. R. & O. 1899, p. 590, No. 174.*

10. — *Teacher's remuneration—Superannuation fund—Management by board—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 35.*

A school board established and managed a superannuation fund for the payment of allowances to their officers and teachers upon their superannuation. This fund was provided by annual deductions from the salaries of the officers and teachers, made in pursuance of contracts between them and the board:—

*Held*, affirming the judgment of a Divisional Court, [1898] 1 Q. B. 4, that the officers and teachers could not recover back the amount of the deductions from their salaries, for (1) even if it was ultra vires for the board to pay the expenses of managing the fund out of the school rates, it was no part of the contract between the board and the officers and teachers that this should be done, and the making of the contract was therefore not ultra vires; (2) assuming that the board could not undertake the management of the fund, in the absence of power under the Elementary Education Acts to do so, the money having been applied to the purposes for which it was subscribed, and the subscribers having had the right to participate in the benefits of the fund, there had been no failure of consideration. **PHILLIPS v. LONDON SCHOOL BOARD. COCKERTON v. SAME** — **C. A. [1898] 2 Q. B. 447**

**SCIENTER**—Evidence of—Mischievous animal—Negligence.

See DAMAGES. 6.

— Giving false warranty to purchaser.

See ADULTERATION. 24.

**SCIENTIFIC EVIDENCE**—Costs on higher scale allowed.

See COSTS—Higher and Lower Scale. 33, 34.

PATENT—Practice. 27, 28.

SHIPPING—Costs. 95.

**SCIENTIFIC INSTITUTION**—Income tax.

See REVENUE—Income Tax. 104, 105, 108, 109.

**SCIENTIFIC SOCIETY.**

*County Court Rules (Nov.), 1900, Ord. XLI. A. W. N. 1900 (Dec. 8), p. 325. See Current Index, 1900, p. lxxiii.*

1. — *Company—Statute—Construction—“In the nature of a joint stock company”—Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), s. 30 (1).*

A literary and scientific institution, in the property of which proprietors were interested in proportion to the number of their shares, which shares were transferable and transmissible:—

*Held*, to be in the nature of a joint stock co. within the meaning of the Literary and Scientific Institutions Act, 1854, s. 30.

*In re The Bristol Athenæum*, (1889) 43 Ch. D. 236, discussed. *In re RUSSELL INSTITUTION. FIGGINS v. BAGHINO* — **North J. [1898] 2 Ch. 72**

2. — *Dissolution—Distribution of assets—Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), ss. 30, 33.*

A society falling within the general scope of the Literary and Scientific Institutions Act, 1854, may be an institution in the nature of a joint stock co. within the exception in s. 30, although not formed for purposes of profit, if it has the other usual indicia of a joint stock co.—as, for example, if it has common property derived from the contributions of its members, and held by them in transferable shares.

*In re The Bristol Athenæum*, (1889) 43 Ch. D. 236, considered.

A horticultural society was constituted in 1844 under a deed which provided that any person who paid a certain fixed sum to the funds of the society should be a member and entitled to one share in the society, which was to be transferable by him or his legal personal representatives, and that each member should pay a fixed annual subscription, and should be entitled to admission for himself and family to the gardens of the society, but should not be entitled to any dividend or bonus, nor to any interest in the property of the society except the right to participate in the profits on a dissolution:—

*Held*, that the society came within the exception in s. 30 of the Literary and Scientific Institutions Act, 1854, and that upon dissolution the property of the society became distributable among the members. *In re JONES. LEGG v. ELLISON* — **Stirling J. [1898] 2 Ch. 83**

— Exemption from duty—Property legally appropriated for the promotion of science. See REVENUE—Income Tax. 104, 105.

— Library.

See LIBRARY.

— Rates—Exemption.

See RATES. 25.

**SCOTTISH LAW.**

*In General*, col. 1827.

*Bankruptcy*, col. 1829.

*Burgh*, col. 1829.

*Church*, col. 1830.

*Company*, col. 1830.

*Contract*, col. 1831.

*Conveyance*, col. 1831.

**SCOTTISH LAW—continued.**

- Death Duties.* See REVENUE.  
*Divorce, col.* 1832.  
*Drainage, col.* 1832.  
*Entail, col.* 1833.  
*Guaranty, col.* 1833.  
*Heritable Securities, col.* 1833.  
*Husband and Wife, col.* 1833.  
*Insurance, Marine.* See INSURANCE—  
**Marine.**  
*Joint Delinquents, col.* 1834.  
*Landlord and Tenant, col.* 1835.  
*Lunacy, col.* 1836.  
*Master and Servant, col.* 1836.  
*Negligence, col.* 1837.  
*Pledge, col.* 1837.  
*Practice, col.* 1837.  
*Railways, col.* 1838.  
*River.* See WATER.  
*Satisfaction, col.* 1839.  
*Sequestration, col.* 1840.  
*Servitude, col.* 1840.  
*Sewers, col.* 1840.  
*Ships.* See SHIPPING.  
*Succession, col.* 1841.  
*Superior and Vassal, col.* 1843.  
*University.* See UNIVERSITY.  
*Walls, col.* 1844.  
*Water.* See WATER.  
*Will, col.* 1845.

**In General.**

- Agreement—Finality of audit—Charge of fraud—Cost.  
 See ACCOUNT. 2.  
 — Appeal to House of Lords—All material facts to be found.  
 See APPEAL. 21.  
 — Arbitration.  
 See Cases under ARBITRATION.  
 — Buildings—Height of.  
 See BUILDING. 1.  
 — Easement—Tramway agreement—Personal or real right—Removal of tramway.  
 See EASEMENT. 5.  
 — Election law.  
 See Cases under PARLIAMENT.  
 — Estate duty.  
 See Cases under REVENUE—Estate Duty.  
 — False pretences made in Scotland—Goods obtained in England—Debtors Act—Jurisdiction.  
 See CRIMINAL LAW—False Pretences. 32.  
 — Income tax.  
 See Cases under REVENUE—Income Tax.  
 — Infant—Adoption on full age of lease made by trustees.  
 See INFANT. 3.

**SCOTTISH LAW (In General)—continued.**

- Inhabited house duty.  
 See Cases under REVENUE—House Duty.  
 — Judicial factor—Investments—Breach of trust.  
 See TRUSTEE—Investments. 65.  
 — Legacy duty.  
 See Cases under REVENUE—Legacy Duty.  
 — Maintenance and establishment of pupil heir..  
 See INFANT—Maintenance. 22.  
 — Maritime lien.  
 See SHIPPING—Lien. 162.  
 — Markets and fairs—Diseases of animals—By-laws—Ultra vires.  
 See MARKET. 1.  
 — Minerals—Coal below low water-mark—Barony title—Lease of coal—Minor—Adoption.  
 See MINES—Leases. 12.  
 — Minerals—Life-rent—Rents and profits—“Opened” quarries.  
 See MINES—Leases. 14.  
 — Pledge—Document of title—Foreign arrestment—Conflict of laws—Goods in Scotland.  
 See FACTOR. 3.  
 — Registration of voters.  
 See Cases under PARLIAMENT.  
 — Revenue.  
 See Cases under REVENUE.  
 — Scottish judgment—Certificate of debts.  
 See EXECUTOR. 7.  
 — Service out of the jurisdiction.  
 See PRACTICE—Service. 220, 222.  
 — Service out of jurisdiction—Waiver.  
 See PRACTICE—Service. 223.  
 — Ships.  
 See Cases under SHIPPING.  
 — Stamp duty.  
 See Cases under REVENUE—Stamps.  
 — Street—Line of.  
 See STREETS. 5.  
 — Street—Obstruction—Snow—Tramways.  
 See NUISANCES. 29.  
 — Succession duty.  
 See Cases under REVENUE—Succession Duty.  
 — Superfluous lands—Land adjoining terminus—Lease of portion.  
 See LANDS CLAUSES ACTS. 24.  
 — Trust for creditors—Right in security—Pledge—Preference—Private manager.  
 See BANKRUPTCY. 158.  
 — Trustee—Breach of trust.  
 See Cases under TRUSTEE—Breach of Trust.  
 — Way-leave—Assessment of—“Heritor”—Church and manse.  
 See WATER. 30.  
 — Will—Construction of WILL.  
 See Cases under WILL.

## SCOTTISH LAW—continued.

## Bankruptcy.

— Bankruptcy notice—Scottish judgment registered in England.

See **BANKRUPTCY—Act of Bankruptcy.**  
24.

1. — *Reappointment of trustee—Discharge of both trustee and bankrupt—Sequestration—Bankruptcy (Scotland) Act, 1856* (19 & 20 Vict. c. 79), ss. 102, 103, 132, 152, 155.

The Ct. of Sess. has power to revive a sequestration after both the bankrupt and trustee have been discharged, where the bankrupt has been discharged without composition, and there are funds not belonging to the sequestrated estate still unrecovered, and the creditors have not been paid in full. The discharge of a trustee in ignorance or inadvertence that the funds vested in him by the sequestration have not been fully recovered does not revest such funds in the bankrupt. The appointment of a new trustee in such a case is mere machinery for carrying out the Bankruptcy (Scotland) Act, 1856. An application for this purpose is to be made to the Inner House.

Decision of Ct. of Sess., *Northern Heritable Securities Investment Co. v. Whyte*, (1888) 16 R. 100, affirmed. **WHYTE v. NORTHERN HERITABLE SECURITIES INVESTMENT CO.**

**H. L. (Sc.) [1891] A. C. 608**

2. — *Vesting of heritable estate in bankrupt's trustee—Latent trust in bankrupt—Bankruptcy (Scotland) Act, 1856* (19 & 20 Vict. c. 79), s. 102.

A sequestration in Scotland does not vest in the trustee for the benefit of creditors heritage which the bankrupt holds on an unqualified *ex facie* absolute disposition registered in his own name, if it can be proved that the bankrupt only holds it on trust for another.

Decision of Ct. of Sess., *Heritable Reversionary Co. v. Millar (McKay's Trustee)*, (1891) 18 R. 1166, reversed. **HERITABLE REVERSIONARY CO. v. MILLAR** — **H. L. (Sc.) [1892] A. C. 578**

## Burgh.

3. — *Costs of opposing bill in Parliament—Public Health (Scotland) Act, 1867* (30 & 31 Vict. c. 101), s. 95—*Rates—Ultra vires.*

The magistrates and council of Leith, who were also the local authority for public health, incurred costs in opposing in Parliament a bill for amalgamating the burghal territory of Leith and Portobello with an enlarged district subject to the government of the new and extended corporation of the city of Edinburgh, and they succeeded in having the bill thrown out as regards Leith:—

*Held*, affirming the decision of the Ct. of Sess., *Leith Dock Commrs. v. Leith (Magistrates of)*, (1897) 25 R. 126, that it was *ultra vires* of the magistrates to include the expenses of the opposition in the public health assessment as expenses “incurred in executing” that act.

*Att.-Gen. v. Mayor of Brecon*, (1878) 10 Ch. D. 204, distinguished. **LEITH COUNCIL v. LEITH HARBOUR AND DOCKS COMMS.**

**H. L. (Sc.) [1899] W. N. 118; [1899] A. C. 508**

## SCOTTISH LAW—continued.

## Church.

4. — *Glebe, Boundary of—Church of Scotland.*  
*Held*, that the decree of the Presbytery drawn up for the purpose of fixing the boundary of the glebe being unambiguous as to the extent of the glebe boundary, its limits could not be extended by evidence of possession of a larger boundary.

Decision of Ct. of Sess., *Robinson (Dalhousie's Tutors) v. Stewart*, (1890) 27 Sco. L. R. 819, affirmed. **STEWART v. ROBINSON**

**H. L. (Sc.) [1891] W. N. 122**

5. — *Stipend, Canon's—Scottish Episcopal Church—Construction of code of cathedral statutes.*

A canon of a cathedral belonging to the Scottish Episcopal Church, on the board of management of which rests the providing fitting support “for the provost and canons of the cathedral,” has no right either under contract or as beneficiary of a trust to claim any share of the funds. The discretion of the board to distribute the funds cannot be questioned so long as the funds are administered in good faith and applied only to cathedral purposes.

Decision of Ct. of Sess., (1893) 20 R. 470, affirmed. **BROOK v. KELLY**

**H. L. (Sc.) [1893] A. C. 721**

6. — *Stipend, Minister's—Church of Scotland—Contract to provide a legal and competent stipend—Extent of obligation.*

Where a decree of the Teind Court made in 1741 ordained that a burgh should provide the minister of a new church with a legal and competent stipend not under a certain sum:—

*Held*, that the decree imposed a direct liability on the burgh to pay a competent and legal stipend according to the varying circumstances from time to time, and that the liability was not impaired by any loss of funds or deficiency in expected contributions.

Decision of Ct. of Sess., *Peters v. Greenock (Magistrates of)*, (1892) 19 R. 643, affirmed. **PROVOST, &C., OF GREENOCK v. PETERS**

**H. L. (Sc.) [1893] A. C. 258**

## Company.

7. — *Deceased shareholder—Sequestration—Title to shares.*

A domiciled Scotsman, who held shares in the T. Co., died, and his estate was sequestered; M. was appointed the trustee in the sequestration. The T. Co. was wound up and the liquidator held money payable to the shareholders. In an action of multiplepounding the claims of M. and of one B. were allowed:—

*Held*, that the liquidator should pay the amount on the shares to M. on the receipt of M. & B. *In re TUTCORIN COTTON PRESS CO.*

**V. Williams J. [1894] W. N. 181**

— Jurisdiction—Company registered in Scotland.

See **COMPANY—WINDING-UP—Jurisdiction.** 102.

— Validity of decree—Right of English Court to question.

See **COMPANY—WINDING-UP—Staying Proceedings.** 233, 235.

— Winding-up—Landlords' rights.

See *below*, **Landlord and Tenant.**

**SCOTTISH LAW—continued.****Contract.**

8. — *Family arrangement—Representations inducing consent to—Reduction—Ignorance of legal rights and powers.*

A family arrangement resettling entailed estates was set aside on the ground that the appellant had been induced to give his consent by erroneous statements.

Decision of Ct. of Sess., (1892) 29 Sco. Law Rep. 677, reversed. **MENZIES v. MENZIES**

**H. L. (Sc.) [1893] W. N. 48**

9. — *Sale of business—Re-sale for enhanced price—Misrepresentation—Reduction—Restitutio in integrum.*

By a clause in an agreement for the sale by M. of property to B., it was provided that the arrangement proceeded upon the basis that the net profits of the property amounted to — pounds on the average. A day was named for completion; if the facts were not as stated, the arrangement was to be at an end; B. was to be at liberty to examine the books.

B. agreed to sell the property to C. at an enhanced price by a conveyance; M., at the instance of B., conveyed the property to C.

More than a year after the conveyance to C. it was discovered that the books had been improperly dealt with by a clerk of M. without M.'s knowledge, so as to make the profits appear greater. An action was begun by C., with the concurrence of B., for reduction of the sale:—

*Held*, that C. and B. had no title to maintain the action, for the contract did not provide for the insertion in the disposition of a clause making that disposition void if the profits were less than stated, the parties contemplating that the time given for completion was sufficient for ascertaining what profits had been made.

Decision of Ct. of Sess., *Edinburgh United Breweries, Ltd. v. Molleson (Nicholson's Trustee)*, (1893) 20 R. 581, affirmed. **EDINBURGH UNITED BREWERIES, LTD. v. MOLLESON**

**H. L. (Sc.) [1894] A. C. 96**

10. — *Testing clause in marriage contract—Liability of law agent for carelessness.*

A declaration inserted in the testing clause of a deed, which purports to affect or qualify any of the provisions in the body of the deed, has no legal effect.

*Smith v. Chambers' Trustees*, (1877) 5 R. 97; 3 App. Cas. 795, followed. **BLAIR v. ASSETS CO.**

**H. L. (Sc.) [1896] A. C. 409**

**Conveyance.**

11. — *Sale of superiority—Construction of dispositive clause—Subsidiary clauses—Right to coals.*

By the law of Scotland, the dispositive clause of a deed in implement of a sale of land rights is the governing clause, and if its terms are express and unambiguous they cannot be contradicted or cut down by inference drawn from other parts of the deed; but if the dispositive clause contain general words of description susceptible of more than one meaning, other clauses of the deed may be referred to as shewing the sense in which these general words are used.

Decision of Ct. of Sess., *Orr v. Mitchell (Moir's*

**SCOTTISH LAW (Conveyance)—continued.**

*Trustees*), (1892) 19 R. 700, reversed. **Lee v. Alexander**, (1883) 8 App. Cas. 853, distinguished. **Fleeming v. Howden**, (1868) 6 Macpherson, 782, approved. **ORR v. MITCHELL**

**H. L. (Sc.) [1893] A. C. 238**

**Death Duties.**

*See Cases under REVENUE.*

**Divorce.**

12. — *Desertion—"Reasonable cause."*

In an action by a husband against his wife for divorce on the ground of desertion for the statutory period, under the Scots Act, 1573, c. 55, it appeared that she had left him because of conduct on his part causing her mental distress sufficient to interfere with her restoration to health, and because of menaces by him sufficient to create in her a well-founded apprehension of physical restraint, and culminating in an act of violence against her person:—

*Held*, that she had reasonable cause for leaving her husband's house, and for declining to return to it, and that there was a good defence to the action. Whether in an action for adherence by a husband, misconduct on his part short of cruelty or other matrimonial offence may be a ground for refusing relief, *quære*.

Decision of Ct. of Sess., (1893) 20 R. 636, affirmed. **MACKENZIE v. MACKENZIE**

**H. L. (Sc.) [1895] A. C. 384**

Referred to by C. A. *Russell v. Russell*, [1895] P. 315, 332. This Case was affirmed by H. L. (D.) [1897] A. C. 395.

Referred to by G. Barnes J. *Oldroyd v. Oldroyd*, [1896] P. 175, 179.

— Nullity of marriage.

*See DIVORCE—Nullity.* 98.

**Drainage.**

13. — *Drainage of adjoining lands—Railways Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 65.*

More than forty years ago lands were conveyed to a ry. co. "in implement of the said decree arbitral." The disposition declared that, "The said ry. co. shall be bound and obliged to preserve the effective drainage of the lands in so far as the same may be interfered with by the ry. works, and to keep up the works, fences, watercourses, and others falling upon them under the Railways Clauses (Scotland) Act, 1845, and protect and keep in repair the bottoms and sides of the streams deepened below the natural level by the ry. co., and also to keep the same clear in so far as affected by the ry. works." In 1897 the First Div. of the Ct. of Sess., reversing the decision of the Lord Ordinary, ordered the appellants to make further and better accommodation:—

*Held*, that the Railways Clauses Act, 1845, s. 65, expressly and in terms protects ry. cos., after five years, from the burden the respondent attempted to throw on the appellants, and there was nothing in the decree arbitral—the governing instrument—or the evidence to shew that the appellants had ever dreamed of waiving the bene-

**SCOTTISH LAW (Drainage)—continued.**

fit of s. 65, or were ever asked to make so foolish a sacrifice.

Decision of Ct. of Sess., *Duke of Fife v. Great North of Scotland Ry. Co.*, (1897) 35 Sco. L. R. 78, reversed. *GREAT NORTH OF SCOTLAND RY. CO. v. DUKE OF FIFE* H. L. (Sc.) [1900] W. N. 62

**Entail.**

14. — *Disentail—Value of expectancies—Proof—Remit.*

The House affirmed the interlocutor of the Ct. of Sess., (1899) 1 F. 1194. *BANKES v. BANKES* H. L. (Sc.) [1900] W. N. 246

15. — *Lands entailed on heirs of another entailed estate—Disentail of that estate.*

Where an estate was entailed failing a series of heirs on the heirs in possession of H., and the other heirs substitute in the entail of H., and H. had been disentailed:—

*Held*, that there was a right in the heirs substitute in the entail of H., notwithstanding the disentail of H.

Decision of Ct. of Sess., (1895) 22 R. 266, affirmed. *INGLIS v. GILLANDERS*

H. L. (Sc.) [1895] A. C. 507

— *Disentail.*

See **REVENUE—Legacy Duty.** 126.

**Guaranty.**

16. — *“Cautionary obligation” — Principal and surety—Mercantile Law (Scotland) Amendment Act, 1856 (19 & 20 Vict. c. 60), s. 6.*

An undertaking by the defenders to give, when required, a guaranty for the repayment of money to be lent by the pursuer is a good “cautionary obligation” within the meaning of s. 6 of the *Mercantile Law (Scotland) Amendment Act, 1856*, and is as binding on the defenders as a direct obligation. *WALLACE v. GIBSON*

H. L. (Sc.) [1895] A. C. 354

**Heritable Securities.**

*Heritable Securities (Scotland) Act, 1894 (57 & 58 Vict. c. 44)*, amends the law relating to heritable securities.

**Husband and Wife.**

17. — *Ante-nuptial contract—Provision to issue of children—Whether contractual or testamentary.*

A conveyance in an ante-nuptial contract of marriage in favour of the children of the marriage and the issue of such children is fractional and is not gratuitous nor testamentary, but onerous and obligatory, and is not revocable by the spouses as regards the issue of the children.

Decision of Ct. of Sess., *Hall's Trustees v. MacDonald*, (1892) 19 R. 567, reversed. *MACDONALD v. SCOTT* H. L. (Sc.) [1893] A. C. 642

18. — *Ante-nuptial contract—Rights of husband's creditors.*

By ante-nuptial contract of marriage the husband bound himself, his heirs, executors, and representatives whomsoever, to pay to the wife an annuity “to be applied by her towards the expenses of my household and establishment, and that during all the days of my life.” He secured the annuity on heritable property, and

**SCOTTISH LAW (Husband and Wife)—contd.**

declared it to be his wife's separate estate free of the *ius mariti*:—

*Held*, that the application of the annuity was for the husband's own benefit, and that the wife had no title to it as against his creditors.

Decision of Ct. of Sess., *Elliott v. Elliott's Trustees*, (1894) 21 R. 955, affirmed. *BIRKETT v. PURDOM*

H. L. (Sc.) [1895] A. C. 371

19. — *Ante-nuptial contract — Succession — Vesting—Conditio si sine liberis decesserit.*

The rule *si sine liberis decesserit* applies to ante-nuptial marriage contracts. On the construction of an ante-nuptial marriage contract:—

*Held*, that it made provision for possible grandchildren, and that the husband and son of a deceased woman were not absolutely entitled to the trust funds.

Decision of Ct. of Sess., *Edwards v. Hughes*, (1890) 18 R. 319, reversed. *HUGHES v. EDWARDS*

H. L. (Sc.) [1892] A. C. 583

Referred to by H. L. (Sc.). *MacDonald v. Scott*, [1893] A. C. 642, 663.

20. — *English heritage of wife—Sale of—Surrogatum—Donation inter virum et uxorem—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 77, 78, 80, 84.*

The wife of a domiciled Scotsman owned at her marriage land in England, which she sold with her husband's concurrence, and conveyed by deed acknowledged under 3 & 4 Will. 4, c. 74, declaring at the same time that she intended to give up her interest without provision in lieu thereof. The husband received the purchase-money. There was no marriage contract. The spouses separated by consent, and the wife executed a deed of revocation of all donations and provisions in her husband's favour. On an action brought for a declaration that the price of the estates in the husband's hands was either surrogatum for her heritage not subject to *ius mariti* or a donation validly revoked:—

*Held*, that as by the English law both spouses possessed undetermined interests in the English land, the price was not surrogatum for heritage belonging solely to the wife, and that her assent to the husband's receiving it was not donation *inter virum et uxorem*.

Decision of Ct. of Sess., *Tennent v. Welch (Tennent's Executor)*, (1889) 16 R. 876, reversed. *WELCH v. TENNENT* H. L. (Sc.) [1891] A. C. 639

— *Jus mariti—Marriage of Scotchman with Englishwoman.*

See **HUSBAND AND WIFE.** 14.

— *Testing clause in marriage contract.*

See No. 10, above.

**Insurance, Marine.**

See **Cases under INSURANCE—Marine.**

**Joint Delinquents.**

21. — *Negligence—Damages—Contribution.*

Where a person had been injured by the negligence of A. & B., and had recovered damages against them jointly with costs, and extracted both decrees and gave a charge to A.,

**SCOTTISH LAW (Joint Delinquents)**—*continued.*

who paid the whole sum and took an assignation to the decrees:—

*Held*, that A. had a claim of relief against B. for the moiety of the sum paid by A., and that B. could not successfully defend on the ground of A. & B. being joint delinquents, as the foundation of A.'s claim rested on a civil debt.

Decision of Ct. of Sess., *Wick and Pulteneytown Steam Shipping Co. v. Palmer*, (1893) 20 R. 275, affirmed. *PALMER v. WICK AND PULTENEYTOWN STEAM SHIPPING CO. H. L. (Sc.) [1894] A. C. 318*

Referred to by Bruce J. *The Englishman and The Australian*, [1895] P. 212, 218.

Referred to by Div. Ct. *Burrows v. Rhodes*, [1899] 1 Q. B. 816, 825.

**Landlord and Tenant.**

22. — *Agricultural lease — Compensation — "Determination of tenancy"*—*"Separation of the crop"*—*Agricultural Holdings (Scotland) Act*, 1883 (46 & 47 Vict. c. 62), ss. 2, 7, 28.

"Determination of tenancy" in s. 7 of the *Agricultural Holdings (Scotland) Act*, 1883, refers to the time when the tenant finally gives up possession of his "holding." The expression "separation of the crop" is in popular language and legal effect equivalent to the term of Martinmas.

*Per* Lord Watson, the terms of s. 35 give rise to serious doubts whether the bare possession of a barn, barnyard and cot-houses unconnected with any land pastoral or agricultural, is possession of a "holding."

Decision of Ct. of Sess., (1893) 21 R. 41, affirmed. *BLACK v. CLAY*

*H. L. (Sc.) [1894] A. C. 368*

*See Morley v. Carter*, [1898] 1 Q. B. 8, 11.

23. — *Hypothec — Sequestration — Company — Winding-up.*

The term sequestration in s. 163 of the *Companies Act*, 1862, includes a sequestration by an urban landlord for rent under his right of hypothec. But a Scottish landlord is a secured creditor under s. 87 of the *Act* by virtue of his right of hypothec. *In re WANZER, LD.*

*North J. [1891] 1 Ch. 305*

24. — *Rates and taxes, Landlord's — Tramway — Covenant by tenant to keep free from all expenses whatever — Valuation of Lands (Scotland) Act*, 1854 (17 & 18 Vict. c. 91), s. 6.

The corporation of Glasgow agreed to borrow money and to construct certain tramways in Glasgow and lease the undertaking to the Glasgow Tramway Co. for twenty-three years. The co. agreed to make various payments to the corporation, and then agreed as follows: "And the co. shall also pay to the corporation the expenses of borrowing, management, &c., and this provision shall be so construed as to keep the corporation free from all expenses whatever in connection with the said tramways." The lease exceeding twenty-one years, the co. under the *Valuation of Lands (Scotland) Act*, 1854, s. 6, became primarily liable to pay and did pay during the whole term of the lease, "owner's assessments, rates, and taxes," amounting in the aggregate to

**SCOTTISH LAW (Landlord and Tenant)**—*contd.*

over 14,000*l.* During the currency of the lease the co. intimated to the corporation that they had a claim in this respect, but did not make any deduction from the rent when paid. The co. contended that the corporation ought to reimburse them these outgoings, or such other sum as might be ascertained to be the amount of owner's assessments, rates, and taxes paid by the co. during the lease:—

*Held*, reversing the decision of the Ct. of Sess., *Glasgow Tramway and Omnibus Co. v. Glasgow Corporation*, (1897) 24 R. 628, that the assessments, rates, and taxes, whether imperial or local, levied on the owner in respect of a tramway or other erection in solo, were an expense connected with the tramway or erection, and that the co. were bound by their lease to relieve the corporation from these expenses, and were not entitled to claim reimbursement. *GLASGOW CORPORATION v. GLASGOW TRAMWAY AND OMNIBUS CO.*

*H. L. (Sc.) [1898] A. C. 631*

25. — *Fee and life-rent — Agricultural leases — Powers of life-renter to grant.*

A testator bequeathed to his widow a life-rent of certain lands directing that she should have the "absolute control and management" thereof "without any interference from the heir who is appointed to succeed after her death":—

*Held*, that this did not give her power to let agricultural leases of nineteen years, but that she had only the ordinary powers of a life-renter. *FRASER v. (ROFT, (1898) 25 Rettie, 496*

*Ct. of Sess. (Sc.) [1898] W. N. 134*

**Lunacy.**

26. — *Curator bonis — Discretion of Court to refuse cognition — Lunacy (Scotland) Act*, 1857 (20 & 21 Vict. c. 71) — *Court of Session (Scotland) Act*, 1868 (31 & 32 Vict. c. 100), s. 101.

There is no absolute right for the issue of a cognition to have the finding of a jury as to the state of mind of an alleged lunatic.

The Ct. of Sess. has a discretion as to its issue, and may, if it think proper, appoint a curator bonis to a person of unsound mind without judicial inquiry and on being satisfied by medical certificates of his insanity, and may for the purpose of deciding the best course to take make or remit to medical men of skill for a report as to the condition of mind of the alleged lunatic. *A — B — v. C — D —*

*H. L. (Sc.) [1891] A. C. 616*

**Master and Servant.**

27. — *Defective gear — Personal injuries — Damage.*

An accident was caused to a seaman through a defective rope, which was in a proper condition when supplied, but had got frayed through use:—

*Held*, that the owners were not responsible to the seaman for the captain (a fellow workman) not keeping it in repair.

Decision of Ct. of Sess., (1891) 29 Sco. Law Rep. 178, affirmed. *GORDON v. PYPER*

*H. L. (Sc.) [1892] W. N. 169*

*And see also under SHIPPING — Seamen.*



**SCOTTISH LAW (Master and Servant)—*contd.*****28. — Second action for solatium—Competency.**

A workman raised an action for injury, alleged to have been caused by the negligence of his employers. Pending the action he died intestate and unmarried. His mother was appointed his executrix *dativæ*; she also brought a second and concurrent action for solatium for loss of her son, and sought to have it referred to the same jury:—

*Held*, that the second action was not competent.

Decision of Ct. of Sess., *Darling v. Gray & Sons*, (1891) 18 R. 1164, affirmed. WOOD v. GRAY & SONS - - H. L. (Sc.) [1892] A. C. 576

*See next Case.*

**Negligence.****29. — Reparation—Death of injured party pending action—Survival of cause of action—Title of relatives to solatium.**

Where a person who is claiming damages for injury by negligence dies pending the action, it may be continued by his executor, and a second concurrent action by his relatives for solatium in respect of such injury is incompetent.

Decision of Ct. of Sess., *Darling v. Gray & Sons*, (1891) 18 R. 1164, affirmed. WOOD v. GRAY & SONS - - H. L. (Sc.) [1892] A. C. 576

*See preceding Case.*

**30. — Reparation—Parent and child—Title to sue for death of illegitimate child—Bastard—Employers Liability Act, 1880 (43 & 44 Vict. c. 42).**

The parent of an illegitimate child has, by the law of Scotland, no right of action against a person whose negligence has caused its death.

Decision of Ct. of Sess., *Weir v. Coltness Iron Co.*, (1889) 16 R. 614, affirmed. CLARKE v. CARFIN COAL CO. - - H. L. (Sc.) [1891] A. C. 412

**— Liability of law agent for carelessness—Testing clause in marriage contract.**

*See No. 10, above.*

**Pledge.****31. — Sale of goods in trust—Redelivery of goods to pledgor in trust for sale—Transaction in England—Conflict of laws.**

In the law of Scotland a pledgee may redeliver the goods to the pledgor for a limited purpose without thereby losing his rights under the contract of pledge. The pledgors of a bill of lading representing a specific cargo obtained the bill from the pledgees for the purpose of getting delivery of the goods and selling them on the pledgees' behalf, and account for the proceeds on satisfaction of the debt:—

*Held*, that the security of the pledgees was not affected, and that they were entitled to the cargo covered by the bill as against the diligence of general creditors of the pledgors.

Decision of Ct. of Sess., (1894) 21 R. 513, reversed. *See* (1894) 22 R. 1. NORTH WESTERN BANK v. POYNTER, SON & MACDONALDS

H. L. (Sc.) [1895] A. C. 56

Discussed by H. L. (Sc.) *Inglis v. Robertson*, [1898] A. C. 616, 626.

**Practice.****32. — Misrepresentation—Representations as****SCOTTISH LAW (Practice)—*continued.***

*to credit—Pleading—Mercantile Law (Scotland) Amendment Act, 1856 (19 & 20 Vict. c. 60), s. 6.*

By s. 6 of the Mercantile Law (Scotland) Amendment Act, 1856, it is provided *inter alia* that "All representations and assurances as to the character, conduct, credit, ability, trade, or dealings of any person, made or granted to the effect or for the purpose of enabling such person to obtain credit, money, goods," &c., "shall be in writing and shall be subscribed by the person . . . making such representations and assurances, or by some persons duly authorized by him or them, otherwise the same shall have no effect."

The pursuers alleged that the defenders' agent, knowing that D., R. & Co., customers of the defenders, were largely indebted to the defenders' bank and were insolvent, conceived a fraudulent design of obtaining the pursuers' acceptances in favour of D., R. & Co., in order to apply them *pro tanto* in reducing D., R. & Co.'s debt to the defenders' bank. That in pursuance of this fraudulent scheme, D., R. & Co. applied to the pursuers for accommodation, and referred them to the defenders' agent, who falsely assured the pursuers, first, that D., R. & Co. were in a thoroughly sound condition financially and only required temporary accommodation; secondly, that the sum due to the defenders' bank was very trifling; thirdly, that D., R. & Co. had made up the losses which they had sustained through another co.; and fourthly, that no portion of the proceeds of any acceptances by the pursuers would be applied in extinction of the bank's debt or of any obligation to them. That in reliance on these assurances the pursuers granted acceptances to D., R. & Co., which were applied to the credit of D., R. & Co.'s banking account with the defenders. D., R. & Co. were sequestrated, and the pursuers, as the bills fell due, were compelled to pay them. All the representations relied on were made orally:—

*Held*, that there was no cause of action, for as to the three first allegations, which undoubtedly came within the Act, the terms of s. 6 were comprehensive and imperative that no oral representations made with the intent specified in the section should be of any legal effect, however false and fraudulent; and secondly, assuming that the fourth representation was independent of the statute, there was no relevant allegation that the bank did not give full effect to the alleged representation of their officer.

Decision of Ct. of Sess., *Paton v. Clydesdale Bank*, (1895) 23 R. 38, reversed. CLYDESDALE BANK v. PATON - H. L. (Sc.) [1896] A. C. 381

**Railways.****33. — Agreement to stop all ordinary trains at temporary station—Subsequent agreement to make station permanent—Right to have trains stopped.**

*Held*, on the construction of a special Act and agreement, that all ordinary trains must stop at a certain station.

Decision of Ct. of Sess., (1893) 20 R. 409, reversed. GILMOUR v. NORTH BRITISH RY. CO. H. L. (Sc.) [1893] A. C. 281

**34. — Drainage of adjoining lands—Railways**

**SCOTTISH LAW (Railways)—continued.**

*Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 65.*

More than forty years ago lands were conveyed to a ry. co. "in implement of the said decree arbitral." The disposition declared that, "The said ry. co. shall be bound and obliged to preserve the effective drainage of the lands in so far as the same may be interfered with by the railway works, and to keep up the works, fences, watercourses, and others falling upon them under the Railways Clauses Consolidation (Scotland) Act, 1845, and protect and keep in repair the bottoms and sides of the streams deepened below the natural level by the ry. co., and also to keep the same clear in so far as affected by the railway works." In 1897 the First Division of the Court of Session, reversing the decision of the Lord Ordinary, ordered the appellants to make further and better accommodation:—

*Held*, reversing the decision of the First Division of the Court of Session, (1897) 35 Sco. L. R. 78, that the Railways Clauses Act, 1845, s. 65, expressly and in terms protects railway companies, after five years, from the burden the respondent attempted to throw on the appellants, and there was nothing in the decree arbitral—the governing instrument—or the evidence to shew that the appellants had ever dreamed of waiving the benefit of a. 65, or were ever asked to make so foolish a sacrifice. **GREAT NORTH OF SCOTLAND RY. CO. v. DUKE OF FIFE**

**H. L. (Sc.) [1900] W. N. 62**

**35. — Office in England—Service of process—Principal office.**

A ry. co. having its governing body resident and domiciled in Glasgow, had a short line in England, which was under the Companies Clauses Act, 1845:—

*Held*, that the co. was a Scotch co., and that service of a writ at the principal office of the co. on the English part of its line was not good service, r. 8 being excluded by the Companies Clauses Consolidation (Scotland) Act, 1845, which was incorporated in the co.'s special Act, and required service at the principal office of the co., i.e., in Glasgow.

Decision of Div. Ct., [1892] 1 Q. B. 607, reversed. **PALMER v. CALEDONIAN RY. CO.**

**C. A. [1892] 1 Q. B. 823**

**36. — Use of joint station by third party—Construction of Private Railway Acts (27 & 28 Vict. c. cxi.; 29 & 30 Vict. c. cccxi.).**

*Held*, that respondents were not entitled to use the joint station at Aberdeen without payment.

Decision of Ct. of Sess., *Aberdeen Station Committee v. North British Ry. Co.*, (1891) 18 R. 855, reversed. **FERGUSON v. NORTH BRITISH RY. CO.**

**H. L. (Sc.) [1893] W. N. 166**

**River.**

See Cases under WATER.

**Satisfaction.**

**37. — Covenant to pay sum of money—Legacy**

**SCOTTISH LAW (Satisfaction)—continued.**

*of same amount—Portions to children—Maxim, "Debitor non præsuntur donare."*

The English rule against double portions to children does not obtain in Scotland.

In an ante-nuptial marriage settlement made on the marriage of his adopted daughter the testator covenanted that his executors should within six months after his death pay the marriage contract trustees 4000*l.* with interest at the rate of 4 per cent. from his death, to be held on trusts declared by reference to the trusts of the adopted daughter's property; with the exception that on the failure of children of the marriage, before the period of vesting, the 4000*l.* should be held on trust for the testator absolutely. By the marriage contract the adopted daughter assigned to her trustees all after-acquired property. Subsequently the testator, by his trust disposition and settlement, among other "legacies and annuities" directed his trustees to pay "a legacy of 4000*l.*" to his said adopted daughter, "who shall be allowed interest at 5 per cent. on that sum so long as she shall prefer to allow it to remain as part of the share in the indigo concern":—

*Held*, that by Scottish law there was no presumption that the 4000*l.* given by the will was intended by the testator to be in satisfaction of the 4000*l.* covenanted to be paid by the marriage settlement, and that the proper inference was that the legacy was given by him as an additional benefit.

Decision of Ct. of Sess., *Haviland v. Johnstone*, (1895) 22 R. 396, affirmed. **JOHNSTONE v. HAVILAND**

**H. L. (Sc.) [1896] A. C. 95**

**Sequestration.**

— Bankruptcy.

See No. 1, above.

— Landlord's right.

See No. 23, above.

**Servitude.**

**38. — Right of way for shooting—Constitution of right.**

In order to found a prescriptive right of way according to Scotch law the acts of possession relied on must be of such a character, or done in such circumstances, as to indicate unequivocally to the proprietor of the servient tenement the fact that a right is asserted and the nature of the right.

Decision of Ct. of Sess., *Duke of Athole v. McInroy's Trustees*, (1890) 17 R. 456, reversed. **McINROY v. DUKE OF ATHOLE**

**H. L. (Sc.) [1891] A. C. 629**

**Sewers.**

**39. — Repair of drain — Substituting new drain—Glasgow Police Act, 1866 (29 & 30 Vict. c. cclxxiii.), ss. 332, 335—Glasgow Police (Amendment) Act, 1890 (53 & 54 Vict. c. cccxi.), s. 16—Judicature (Scotland) Act, 1825 (6 Geo. 4, c. 120), s. 40.**

In cases arising in the Sheriff Court and appealed to the Ct. of Sess., the interlocutor of the Ct. of Sess. must contain all the findings of fact;

**SCOTTISH LAW (Sewers)**—*continued.*

for, if a fact is not found by the interlocutor appealed against, the House of Lords must, unless the parties agree to the fact not found, remit the cause to the Ct. of Sess. to find the fact in question.

SECT. 16 of the Glasgow Police (Amendment) Act, 1890, enacts that if the drains of any house, &c., are found to be defective, the owner of the premises shall be bound, immediately on an "order to that effect being given by the Police Commrs., to carry out all necessary operations for removing defects of structure, or doing such acts as may be requisite to prevent risk to health, and, failing compliance with such order, the Police Commrs. may execute the work and recover the expense thereof as damages from the owner."

The Commrs. having found that the drains of a block of houses were defective issued an order to the owners to repair the same, and, they having failed, the Commrs. proceeded to execute the work themselves; but, instead of repairing the old drain, they constructed a new drain on a different site and outfall into the main sewer. In an action for the expenses, the Ct. of Sess. assuoziled the owners upon the ground that s. 16 of the Act of 1890 did not warrant the formation of a new system of drainage. This House having remitted the case to the Ct. of Sess. to find whether the Commrs. had considered that the new drainage was necessary, that Court found that part of the drainage had been considered necessary, but the rest had not:—

*Held*, varying the decision of the Ct. of Sess., *Glasgow Police Commrs. v. McOmish*, (1896) 23 R. 896, that the part considered necessary must be paid for by the owners, but not the rest. *GLASGOW CORPORATION v. McOMISH*

H. L. (Sc.) [1898] A. C. 432

**Ships.**

See Cases under SHIPPING.

**Succession.****40. — "Heirs female"—Trust disposition.**

A trust in the narrative of his trust disposition stated that, "in order to make and secure additional provisions" for his second son "and the other heirs of entail succeeding to him in" the lands and estate of C., to "enable them to support the dignity and title of Earl of C." he thereupon conveyed to trustees certain securities. In the dispositive portion of the deed it was declared, "that these presents in favour of my said trustees are granted in trust for the uses ends and purposes . . . and under the conditions provisions and declarations after written." Then, fourthly, he directed his trustees after his death to pay the free proceeds of the trust funds to his second son and the heirs male of his body; whom failing, to certain substitutes; whom failing, to the heirs female of the body of his second son. The second son succeeded to the estate, and died, leaving issue only two daughters, of whom the eldest succeeded to the estate, and was declared by Royal Letters Patent to succeed her father in the title and estate of C.:—

*Held*, that the daughters divided the income,

**SCOTTISH LAW (Succession)**—*continued.*

because "heirs female" meant in Scottish law heirs portioners who took as a class; and that the narrative could not control the directions of the deed.

Decision of Ct. of Sess., *Duke of Sutherland's Trustees v. Countess of Cromartie*, (1895) 22 R. 839, reversed. *MACKENZIE v. DUKE OF DEVONSHIRE* - - H. L. (Sc.) [1896] A. C. 400

**41. — Legacy—Plate deposited in bank—Furnishings and plenishings in mansion-house.**

A testator left to his wife a life-rent of two estates and of the "whole plenishings, furnishings, and articles" in the mansion-houses thereof. He also constituted her his sole residuary legatee. At the time of his death there was lying deposited in the bank for safe keeping certain plate which was not in ordinary use in his house:—

*Held*, that it did not fall within the legacy of a life-rent of the "plenishing, furnishing, and articles in the house," but was part of the ordinary movable estate, and therefore that his widow was far of it under the residuary clause. *FRASER v. CROFT*, (1898) 25 Rettie, 496

Ct. of Sess. (Sc.) [1898] W. N. 134

**42. — Succession duties—Estate duty—Fee and life-rent.**

A testator gave his wife a life-rent of his lands, and the fee of the residue of his movable estate, and conferred upon her full power to "raise such sums as may be required to pay all debts and succession duties which may fall upon her after my decease as well as all my debts and funeral expenses":—

*Held*, that this power did not authorize her to charge the heritage with his debts and funeral expenses, or with the whole estate duty, but only to charge it with the rateable part of estate duty effecting to the heritage itself. *FRASER v. CROFT*, (1898) 25 Rettie, 496

Ct. of Sess. (Sc.) [1898] W. N. 134

**43. — Vesting—No gift till a certain event—Direct disposition of heritage.**

A testator left to his wife who survived him "for her sole use and enjoyment during the term of her natural life" certain lands, "and after the death of my said wife, I hereby dispose, convey, and make over my said lands . . . to C., and the heirs whatsoever of his body; whom failing," to the brothers and sisters of C. in their order; whom failing, to a certain series of heirs. C. survived him:—

*Held*, that a right had vested in C. a mortis testatoris. *FRASER v. CROFT*, (1898) 25 Rettie, 496

Ct. of Sess. (Sc.) [1898] W. N. 134

**44. — Vesting—Postponed period of distribution—Conditional institution.**

A testator directed his trustees to allow his widow the life-rent use of his house and such allowance as they thought necessary, and "on the dissolution and winding-up of the firm of B. & Co." (of which he was a partner), "in the event of the predecease of my said wife, and if she then survives, on her death, to realize my whole means and estate and to divide the same into four equal shares, and pay one share to each of my children" A., B., C., and D., "or to their respective heirs." The widow survived the tes-

**SCOTTISH LAW (Succession)—continued.**

tator, and the firm had not been wound up. C. and D. survived the testator, but were dead:—

*Held*, affirming the decision of the Ct. of Sess., *Bowman's Trustees v. Bowman's Trustees*, (1898) 25 R. 811, but not on the same reasoning, that the interests of all the children were not in suspense, but had vested a morte testatoris. *BOWMAN v. BOWMAN* H. L. (Sc.) [1899] A. C. 518

**45. — Vesting—Substitution—General disposition.**

A. died leaving a holograph settlement, by which he gave his widow a life interest in all his property. He gave to B. his estate of S., but wished it to be expressly understood that in the event of B. dying without heirs male then S. was to revert to C. B. survived A., but died before testator's widow, unmarried, leaving a general disposition of all his estate:—

*Held*, that the fee of S. vested in B. after A.'s death, and that the clause of return to C. was not higher than simple substitution, and had been evacuated by B.'s trust disposition.

Decision of Ct. of Sess., *Ritchie, &c. (Watson's Trustees) v. Hamilton*, (1894) 21 R. 451, affirmed. *HAMILTON v. RITCHIE*

H. L. (Sc.) [1894] A. C. 310

**46. — Will—Provision for widow—Partial intestacy—Terce, jus relictæ, and legitim.**

A testator by his will made a provision for his wife declaring it to be in full of all claims by her of terce and jus relictæ or otherwise. Through the death of certain devisees before vesting took place, the residue fell into intestacy:—

*Held*, affirming the decision of the Ct. of Sess., *Hamilton's Trustees v. Boyes*, (1898) 25 R. 899, that the declaration was to be construed as excluding the widow's claim in so far only as conflicting with the will, and an event happening which the testator never contemplated, the widow was entitled both to her provision and to terce and jus relictæ out of such heritable and movables as had fallen into intestacy. *NATSMITH v. BOYES* - - H. L. (Sc.) [1899] W. N. 124; [1899] A. C. 495

**— Succession duty.**

See Cases under **REVENUE—Succession Duty.**

**Superior and Vassal.****47. — Entry—Casualty—Composition—Relief—Trust.**

J.'s ancestor acquired three parcels of land by purchase, in all of which his authors were infeft and entered with the superior. He took base infeftment with one parcel; but none of the series of his heirs on whom his succession devolved expedite a feudal title or were entered with the superior. A trust over the lands was created by the appellant's grandfather, and the trustees after his death were entered with the superior. Ultimately the lands were reconveyed by the surviving trustee to the appellant, who was infeft, and under the Conveyancing (Scotland) Act, 1874, impliedly entered with the superior:—

*Held*, that the appellant was liable to the superior in a composition.

Decision of Ct. of Sess., *Duke of Buccleuch v.*

**SCOTTISH LAW (Superior and Vassal)—contd.**

*Johnstone*, (1891) 18 R. 587, affirmed. *JOHNSTONE v. DUKE OF BUCCLEUCH*

H. L. (Sc.) [1892] A. C. 625

**48. — Obligation in feu charter to rebuild—Disposition of feu after obligation has become enforceable—Conveyancing (Scotland) Act, 1874 (37 & 38 Vict. c. 94), s. 4, sub-s. 2.**

A proprietor by feu-contract disposed certain subjects to a co. "and its successors and assignees whomsoever" under the condition (inter alia), "That the co. and its foresaids" should be bound to erect buildings suitable for a hydropathic establishment of not less value than 15,000*l.* and to uphold buildings of that value in all time coming, and to keep the same insured against fire to the extent of not less than that sum, and in case the said buildings should be destroyed by fire, to rebuild the same so as to maintain the total value of 15,000*l.* Buildings were erected of the stipulated value, and insured. The co. sold the subjects to the first-named appellants. On Nov. 7, 1893, the buildings were destroyed by fire, and on the 27th of the same month the superior, the respondent, raised an action against the first appellants for performance of the obligation to rebuild. Before defences were lodged the first appellants, by a duly recorded disposition, conveyed the subjects to the second appellants, who subsequently conveyed them to one John Wilson. All these were thereafter made parties to the action.

The first appellants then pleaded that, as they were no longer vassals in the feu, they were not liable in the performance of the obligation.

The Ct. of Sess. decided that the obligation, having become prestable during the first appellant's tenure, continued to be binding upon them; and (2.) that all the defenders were jointly and severally liable to rebuild in respect that the obligation was a condition of the grant remaining unfulfilled during the respective periods of their tenure of the subjects.

*Marshall v. Callander and Trossachs Hydropathic Co.*, (1895) 22 Rettie, 954.

Upon appeal to the House of Lords the appellants, after argument, consented that the appeal should be dismissed. *CALLANDER AND TROSSACHS HYDROPATHIC CO. AND THE EAGLE PROPERTY CO. v. MARSHALL* - - H. L. (Sc.) [1896] A. C. 223

**University.**

See Cases under **UNIVERSITY.**

**Walls.****49. — Boundary wall—Mutual gable—Half cost of erection.**

The proprietor of two adjoining building plots erected a house upon one of them, building the whole gable half upon one plot and half upon the other plot. He afterwards conveyed the plot with the house upon it to A. The mutual gable, resting partly on the two plots, was described in the conveyance as a mutual gable. He subsequently sold the other plot, and the purchaser proceeded to erect a house upon it, making use of the mutual gable. In the letters of sale to A. the vendor said: "The unused half

**SCOTTISH LAW (Walls)**—*continued.*

of the gable and boundary walls is not included in the offer." In an action by A.'s successor against the purchaser of the second plot for half the cost of the mutual gable wall, the deft. relied upon the words of the letters as shewing that A. had not acquired the claim for recompense for the unused half of the gable :—

*Held*, affirming the decision of the Ct. of Sess., *Berkeley v. Baird*, (1895) 22 R. 372, that A.'s successor was entitled to claim from the purchaser of the second plot one-half of the value of the mutual gable, and that there was no inconsistency between the letters of sale and the words of the conveyance. *BAIRD v. BELL*

H. L. (Sc.) [1898] A. C. 420

**Water.**

See Cases under **WATER**.

**Will.**

50. — *Heritage—Real or personal burden—Titles to Land Consolidation (Scotland) Act, 1868* (31 & 32 Vict. c. 101), s. 19, sub-s. 4.

A., by a mortis causa settlement, conveyed to B., his son, his whole estate, heritable and movable, subject to a free annuity to C., his daughter, which was "hereby declared to be a real burden on the estates and effects hereby conveyed." After A.'s death B. completed his title to the heritable subjects by recording notarial instruments in accordance with the Titles to Lands Consolidation (Scotland) Act, 1868, in all which notarial instruments the annuity was declared to be a real burden on the land. B.'s estate was sequestrated, and his trustee claimed that C.'s annuity had not been validly constituted a real burden on the lands :—

*Held*, that the annuity had been constituted a real burden on the lands.

Decision of Ct. of Sess., *Muirden (Cowie's Trustee) v. Cowie*, (1891) 18 R. 706, reversed. *COWIE v. MUIRDEN* H. L. (Sc.) [1893] A. C. 674

— Scottish testator — 'Administration by the Chancery Division.

See **EXECUTOR**. 27.

**SCREEN**—To chancel, &c.

See Cases under **ECCLESIASTICAL LAW—Faculty**.

**SCRIP CERTIFICATE**—Stamp—Payment by instalments—Receipts for future payments indorsed on certificate.

See **REVENUE—Stamps**. 180.

**SCRUTINY**—Of Votes at parliamentary election.

See **PARLIAMENT**. 13, 14.

**SCULPTURE**—Casts of fruit and leaves.

See **COPYRIGHT—Sculpture**. 41.

**SEA FISHERY.**

See **FISHERY**.

**"SEAGOING SHIP."**

See **SHIPPING—Offences**. 183.

**SEAGULL**—"Domestic animal."

See **CRIMINAL LAW—Cruelty to Animals**. 7.

**SEAL**—of company affixed to deed.

See **COMPANY—Directors**. 137.

**SEAL FISHERY**—Sea.

See **FISHERY**.

**SEALING**—Administration—Intestacy—Colonial grant—Re-sealing.

See **PROBATE**. 63.

— Company—Sealing of deed by secretary.

See **COMPANY—Directors**. 137.

— Irrelevant entries—Sealing up—Production of books—Discovery.

See **DISCOVERY—Documents**. 10, 11, 40.

— Seal of the Court—Companies winding-up.

See **COMPANY—WINDING-UP—Practice**. 149.

**SEAMAN.**

See **SHIPPING—Seamen**.

**SEARCH-WARRANT**—Legality of—Allegation of reasonable suspicion of larceny.

See **JUSTICES**. 12.

**SEARCHES**—Land charges.

See **LAND CHARGES**.

**SEASHORE**—Foreshore—Crown lease—Preaching—Injunction—Limits of public user.

The pfts. were the local authority of L., and the seashore at L. between high and low water-mark was vested in them under a lease from the Crown. W., a clergyman of the Church of England, held services and delivered addresses on the seashore without the consent of the pfts., and asserted that the seashore was a highway and that he had a right to do so. The pfts. brought an action against W., claiming a declaration that he was not entitled to hold services, &c., on the seashore without their consent, and an injunction to restrain him from so doing. There was no evidence that the acts of W. caused an obstruction or led to a breach of the peace; nor did W. adduce any evidence of a prescriptive right or custom in support of his contention :—

*Held*, that the pfts. were entitled to the declaration for which they asked; but that the matter was too trivial for an injunction, which must be refused.

*Blundell v. Catterall*, (1821) 5 B. & Ald. 268; 24 R. R. 353, followed. *LLANDUDNO URBAN COUNCIL v. WOODS*

*Cozens-Hardy J.* [1899] W. N. 135; [1899] 2 Ch. 705

— Foreshore—Immemorial user in River Thames.

See **THAMES**. 9.

**SEATS**—Seats for Shop Assistants Act, 1899 (62 & 63 Vict. c. 21), provides for seats being supplied.

**SEAWORTHINESS.**

See **SHIPPING**. 48, 143, 144.

— Implied warranty of.

See **INSURANCE, MARINE**. 77.

**SECOND COMMUNION TABLE.**

See **ECCLESIASTICAL LAW—Faculty**. 36.

**SECONDARY EVIDENCE**—Privilege.

See **DISCOVERY—Documents**. 30.

**SECRET PREPARATION**—Name not registered as trade-mark—Injunction.

See **TRADE NAME**. 11.

**SECRET PROCESS**—*Invention*—*Co-owners*—*Right to use invention*—*Disclosure*—*Injunction*.

One of several co-owners can make use of his knowledge of a secret process.

*Mathers v. Green*, (1865) L. R. 1 Ch. 29;  
*Steers v. Rogers*, [1893] A. C. 232, referred to.  
*HEYL-DIA v. EDMUNDS*

*Kekewich J.* [1899] W. N. 222

**SECRET PROFIT**—By promoters—Duty of disclosure.

See **COMPANY**—**Promoter**. 203, 204.

— **Managing owner**.

See **SHIPPING**. 172.

**SECRET TRUST**.

See **TRUST** 7.

**SECRETARY**—Of cost-book mine.

See **COST-BOOK MINE**.

**SECURED CREDITOR**.

See **BANKRUPTCY**—**Proof**.

**BANKRUPTCY**—**Secured Creditor**.

**COMPANY**—**WINDING-UP**—**Proof**.

— Omission to enable secured creditor to realize his interest—*Wilful default*.

See **EXECUTOR**. 41.

— *Unauthorized borrowing*—*Subrogation*.

See **RAILWAY**. 30.

**SECURITIES**—Lumping debts and—**Proof**—**Bills of Exchange**.

See **BANKRUPTCY**—**Proof**. 163.

— *Negotiable instruments*—*Liability of banker*.

See **Cases under BANKER**—**Liability**.

— *Payment of money*—*Acceptances*.

See **CRIMINAL LAW**—**Larceny**. 36.

**SECURITIES TO BEARER**.

See **NEGOTIABLE INSTRUMENT**. 2.

**PARTNERSHIP**—**Liabilities**. 39.

**TRUSTEE**—*Custody of Title-deeds, &c.* 47.

**SECURITY**—*Annuity*.

See **Cases under ANNUITY**.

— **Costs**.

See **Cases under COSTS**—**Security for Costs**.

**SOLICITOR**—**Lien**.

— **Debentures**.

See **Cases under COMPANY**—**Debentures**.

— **Debt**—*Power to assignee to sue in name of assignor*—*Absolute assignment*.

See **ASSIGNMENT**. 2.

— **Liquidator**.

See **Cases under COMPANY**—**WINDING-UP**—**Liquidator**.

— **Mayor's Court**—**Appeals**.

See **LONDON**—**Mayor's Court**. 45.

— Omission to value—*Inadvertence*.

See **BANKRUPTCY**—**Secured Creditor**. 230.

— **Receiver**.

See **RECEIVER**—**Security**.

— **Right in**—*Trust for creditors*—*Pledge*—*Preference*—*Private manager*.

See **BANKRUPTCY**—**Preference**. 158.

**SEIGNORIAL RIGHTS**—*Law of Jersey*.

See **JERSEY**. 1.

**SEIGNORIAL RIGHTS**—*Extinction on release*.

See **COMMON**. 6.

**SEIZURE**—Of goods under bill of sale.

See **BILL of SALE**. 46.

— *Risk of seizure*—*Bill of lading*—*Excepted perils*.

See **SHIPPING**. 140.

— *Ship*—*Existing state of war*.

See **INSURANCE**—**Marine**. 30.

**SEIZURE QUOUSQUE**—*Limitations*, *Statute of*.

See **COPYHOLD**. 1.

**SELECTION**—*Legatee's right of*—*Ambiguity*—*Direct evidence of intention*—*Admissibility*.

See **WILL**—**Evidence**. 83.

**SEPARATE ACCOUNT**—*Fund carried to*—*Assignment*—*Notice*—*Equity against assignee*.

See **ACCOUNT**. 4.

**SEPARATE DEBT**—Of partner.

See **Cases under PARTNERSHIP**.

**SEPARATE ESTATE**—*Married woman*.

See **Cases under HUSBAND AND WIFE**.

**SEPARATE EXAMINATION**—*Married woman*.

See **Cases under HUSBAND AND WIFE**.

**SEPARATE USE**—*Married woman*.

See **Cases under HUSBAND AND WIFE**.

**SEPARATION AND SEPARATION DEEDS**.

See **Cases under**

**HUSBAND AND WIFE**—**Separation**.

**HUSBAND AND WIFE**—**Summary Jurisdiction**.

— *Between persons not married*.

See **DEED**. 5.

**SEQUESTRATION**.

*R. S. C., Ord. XLIII., rr. 3—7, relate to sequestration.*

1. — *Application of proceeds in satisfying claims of creditor in action generally.*

Where a writ of sequestration was issued against a debt. for disobedience to an order directing him to transfer certain shares, and there was a fund in Court representing the proceeds of the sequestration, the Court held that it had jurisdiction to order payment out of the fund to the plt. of costs which the debt. had been ordered to pay to him, and that it was not necessary to resort to the circuitous process of compelling the plt. to issue a second writ of sequestration. *ETHERINGTON v. BIG BLOW GOLD MINES, LD.* *Kekewich J.* [1897] W. N. 21 (9)

2. — *Costs—Enforcing payment of*—*R. S. C., Order XLII., r. 6; Order XLIII., rr. 7, 8—Married woman.*

The old practice as to sequestration for non-payment of costs is superseded by Order XLIII., r. 7. Where an order has been made directing a party to pay costs without limiting any time for payment and the costs have been taxed, an immediate sequestration to enforce payment can be issued without any previous four day order. An order to pay costs within four days and in case of non-payment for sequestration is wrong in form, as it is not competent to make an order for the issue of writs of attachment or sequestration on a

**SEQUESTRATION—continued.**

future uncertain event. *In re LUMLEY. Ex parte CATHCART* - C. A. [1894] 2 Ch. 271

Followed by C. A. *In re Deakin, Ex parte Cathcart*, [1900] 2 Q. B. 478.

— Disobedience of order of Court—Commitment. See CONTEMPT OF COURT. 11.

3. — *Discretion—Non-payment of costs—Procedure*—R. S. C., 1883, Order XLIII., r. 7.

When application is made for leave to issue a sequestration for non-payment of costs the Court or judge should be satisfied that the application is reasonable, but it is not necessary to point to any particular property which may be made available for the payment of the costs by sequestration.

When the Court or judge to whom the application is made has exercised a discretion and made an order, that order ought not to be interfered with by a superior Court unless it is shewn that there has been an improper exercise of the discretion or some miscarriage of justice. *HULBERT v. CATHCART* - H. L. (E.) [1896] A. C. 470

4. — *Dormant action—Notice—Leave of Court*—R. S. C., 1883, Order XLII., rr. 22, 23; Order XLIII., rr. 6, 7; Order XLIV., r. 13.

The month's notice required by Order LXIV., r. 13, where there have been no proceedings for a year, applies to pleadings, &c., in the action, and not to motions for execution of judgment, whether by sequestration or otherwise. Leave granted for sequestration to issue for balance of costs which should be found due from deft., although the time allowed by Order XLII., r. 22, had elapsed. *TAYLOR v. ROE* (No. 2)

*Kekewich J.* [1893] W. N. 26

— Ecclesiastical law.

See ECCLESIASTICAL LAW—Sequestration.

— Hypothec—Company—Winding-up.

See SCOTTISH LAW—Landlord and Tenant. 23.

— Married woman—Separate property.

See HUSBAND AND WIFE. 20.

— Money held by third person not party to the action.

See DIVORCE. 116.

5. — *Payment of costs—Service—Practice*—R. S. C., Order XLI., r. 5; Order XLIII., rr. 6, 7.

In the case of a writ of sequestration issued by leave of a judge to enforce payment of costs under Order XLIII., r. 7, the provisions of Order XLI., r. 5, and Order XLIII., r. 6, are inapplicable. Therefore in such a case it is not necessary that the order for payment of costs should limit a time for payment, or should bear the indorsement mentioned in Order XLI., r. 5, nor is personal service of it essential. *In re Lumley, Ex parte Cathcart*, [1894] 2 Ch. 271, followed. *In re DEAKIN. Ex parte CATHCART*

C. A. [1900] 2 Q. B. 478

6. — *Recovery of judgment—Order for payment within limited time—Jurisdiction*—R. S. C., Order XLI., r. 5; Order XLII., rr. 3, 6; Order XLIII., r. 6.

There is no jurisdiction to make an order directing a judgment debtor to pay the amount

**SEQUESTRATION—continued.**

recovered in the action within a limited time, and in default giving the judgment creditor leave to issue a writ of sequestration. *HULBERT & CROWE v. CATHCART*

Div. Ct. [1894] 1 Q. B. 244

— Vesting of heritable estate in bankrupt's trustee—Latent trust in bankrupt.

See SCOTTISH LAW—Bankruptcy. 1, 2.

**SERIAL.**

See COPYRIGHT. 32, 36.

**SERJEANT-AT-ARMS.** Historical note by Master Jenkins as to the office of Serjeant-at-arms. G—v. L— [1891] 3 Ch. 127, n.

**SERVANT.**

See Cases under MASTER AND SERVANT.

— “Clerk or servant”—Managing director—Preferential payments in bankruptcy. See COMPANY—Director. 114.

**SERVANT OF THE CROWN**—Tenure of office.

See CROWN. 4—6.

**SERVICE**—Practice.

See PRACTICE—Service.

**SERVICE (CONTRACT OF).**

See Cases under MASTER AND SERVANT. SHIPPING—Seamen.

— Personal.

See CONTRACT. 29, 30.

**SERVICE FRANCHISE**—Registration of voters.

See Cases under PARLIAMENT.

**SERVITUDE.**

See SCOTTISH LAW—Servitude.

**SESSIONS**—Quarter sessions.

See Cases under JUSTICES.

**SET-OFF.**

See PRACTICE—Set-off.

**SETTING ASIDE.**

See PRACTICE—Setting aside.

**SETTLED ESTATES.**

See Cases under SETTLED LAND.

**SETTLED LAND.**

*Land Transfer Act*, 1897 (60 & 61 Vict. c. 65). See LAND TRANSFER.

NOTE.—*Settled Estates' Cases and Tenant for Life and Remaindermen Cases are included under this heading.*

Generally, col. 1851.

Accumulations. See ACCUMULATIONS.

Apportionment, col. 1851.

Base Fee, col. 1857.

Capital Money (*Application of Capital Money*), col. 1857.

Charges, col. 1865.

Copyholds, col. 1866.

Costs, col. 1866.

Estate Duty. See REVENUE—Estate Duty.

Fixtures. See FIXTURES.

Heirlooms. See HEIRLOOMS.

Improvements. See Cases under SETTLED LAND—Capital Money.

**SETTLED LAND—continued.**

*Infants*, col. 1867.  
*Interest*, col. 1868.  
*Investments*, col. 1868.  
*Leaseholds*, col. 1869.  
*Leases*, col. 1871.  
*Lunatic*. See LUNACY.  
*Mansion-house*, col. 1874.  
*Mines*, col. 1874.  
*Mortgages*, col. 1876.  
*Option*, col. 1878.  
*Ponds*, col. 1879.  
*Possession*, col. 1879.  
*Powers*, col. 1880.  
*Practice*, col. 1881.  
*Rent-charges*, col. 1881.  
*Repairs*, col. 1883.  
*Sale*, col. 1884.  
*"Settlement,"* col. 1888.  
*Title-deeds*, col. 1890.  
*Trustees*, col. 1890.  
*Waste*. See WASTE.

**Generally.**

- *Bona vacantia*—Right of Crown—Proceeds of sale of land under Settled Land Act, 1882.  
     See CROWN. 2.
- Forfeiture—Foreign bankruptcy—English domicile.  
     See WILL—Forfeiture. 98.
- Infants—Maintenance—Contingent interests—Term for raising portions.  
     See INFANT. 30.
- Transfer of land.  
     See LAND TRANSFER.
- Trustee's right of indemnity—Purchase of land by trustee of settled estates—Entry by tenant for life—Non-payment of principal.  
     See VENDOR AND PURCHASER—Lien. 56.
- Waste.  
     See Cases under WASTE.

**Accumulations.**

See Cases under ACCUMULATIONS.

**Apportionment.**

- 1. — *Business carried on at a loss*—Capital or income.

Apportionment between capital and income of yearly loss or profit in the case of a circus which had been taken on lease by a testator, and proving unsaleable was carried on by executors at a loss. *In re HENGLER*. FROWDE v. HENGLER (No. 1)

Kekewich J. [1893] 1 Ch. 586

Referred to by Kekewich J. *In re Morley*, [1895] 2 Ch. 738, 741.

- 2. *Capital or income*—Money paid under erroneous order of Court.

Where money had been paid under an order of

**SETTLED LAND (Apportionment)—continued.**

Court which was reversed on appeal, and the money had been repaid without interest which was irrecoverable:—

*Held*, that the tenant for life was entitled to a fair proportion thereof as income. *In re DCKE OF CLEVELAND'S ESTATE*. HAY v. WOLMER

Kekewich J. [1895] 2 Ch. 542

- 3. — *Change of investments*—Capital or income.

A tenant for life sold freehold ground rents, and invested the proceeds in long leaseholds, whereby the present income was increased at the expense of the reversion:—

*Held*, that the income in excess of that received from the freehold ground-rents must be treated as capital. *In re BOWYER'S SETTLED ESTATES*

Chitty J. [1892] W. N. 48

- 4. — *Company*—Bonus dividend—Shares—Capital or income.

A bonus dividend was returned to the shareholders of a co. in the form of seventy-five fully paid new shares of 10l. each. These new shares were sold for 1363l.:—

*Held*, that 750l. was income and the remainder of the 1363l. capital. *In re NORTHAGE*. ELLIS v. BARFIELD - North J. [1891] W. N. 84

- 5. — *Company*—Profits not divided—Tenant for life and reversioner—Capital or income.

A testator gave his estate on trust for conversion, with power to postpone conversion, and directed that interest produced in the interim should be treated as interest. He bequeathed, *inter alia*, certain 10l. shares with 8l. paid up to B. for life, with remainder to C. The co. was wound up and reconstructed, and paid 9l. 5s. for each share. The excess arose from profits retained to meet contingencies, and from profits in excess of 10l. per cent. retained to make up dividends if they should fall below 5 per cent.:—

*Held*, by C. A. (reversing Chanc. of Lancaster), that a tenant for life of shares has only a right to dividends and bonuses declared during his life, and that the excess price of 1l. 5s. per share was not income but capital. *In re ARMITAGE*. ARMITAGE v. GARNETT - C. A. [1893] 3 Ch. 337

- 6. — *Company*—Sale of company's undertaking.

A co. sold its undertaking for a sum which, after deducting an amount equivalent to its paid-up capital, left a large surplus:—

*Held*, that this surplus was income and not an accretion to capital. LUBBOCK v. BRITISH BANK OF SOUTH AFRICA - Chitty J. [1892] 2 Ch. 198

Referred to by C. A. *Verner v. General and Commercial Investment Trust*, [1894] 2 Ch. 239, 266.

- 7. — *Company*—Shares issued as dividend—Capital or income.

Part of property in which A. had a life interest consisted of shares in a co.; the co. declared a dividend half of which could be taken in shares. The trustees exercised this option:—

*Held*, that so much of the value of these latter shares as was deducted from the dividend on account of them was income and belonged to A., and that any balance of the proceeds of sale



**SETTLED LAND (Apportionment)—continued.**

belonged to A.'s testator's estate as capital.  
*In re MALAM. MALAM v. HITCHENS*

**Stirling J. [1894] 3 Ch. 578**

8. — *Company—Stock in public company—Right of estate of deceased tenant for life to apportionment of dividend partly earned before but declared after death—Apportionment Act, 1870* (33 & 34 Vict. c. 35), ss. 2, 3, 4, 5.

Stock in a public co. forming part of a testator's residuary estate was settled upon trust for A. for life, and after her death "to pay transfer and assign my residuary estate and the stocks funds and securities upon which the same shall be invested unto and amongst" certain beneficiaries. After the death of the tenant for life the stock was sold "cum dividend" under an order of the Court for the purpose of distribution. This order was made in the absence of the legal personal representatives of the tenant for life. After the sale a dividend was declared and received by the purchaser in respect of profits, a portion of which had been earned prior to the death of the tenant for life:—

*Held*, that the estate of the tenant for life was not entitled under the Apportionment Act, 1870, to be paid out of the purchase-money of the stock anything in respect of the dividend; but, inasmuch as if the trust had been strictly carried out in accordance with the terms of the will, by transferring the investments to the beneficiaries, the representatives of the tenant for life would have been in a position, either directly, or through the trustees, to obtain payment of an apportioned part of the dividend, their claim ought under the special circumstances of the case to be acceded to.  
**BULKELEY v. STEPHENS - [1896] 2 Ch. 241**

9. — *Conversion, Trust for—Tenant for life and remainderman—Discretionary power of postponement—Annual produce until conversion to be deemed annual income of converted fund—Reversionary interest—Omission to convert—Non-exercise of discretion by trustees—Right of tenant for life—Rate of interest.*

When property is given by will on trusts for conversion and investment, and to hold the investments on trust for a tenant for life and remaindermen, with a discretionary power to the trustees to postpone the conversion, and a provision that the income until conversion is to go to the tenant for life, that provision extends to property (such as a reversionary interest) which is not producing income as well as to property of a wasting character.

*MacKie v. MacKie*, (1845) 5 Hare, 70, followed.  
Decision of *Stirling J.* affirmed.

In adjusting the rights as between tenant for life and remaindermen in respect of a reversionary interest which ought to have been but was not converted by trustees:—

*Held*, that interest should be calculated at the rate of 3 per cent.

*In re Goodenough*, [1895] 2 Ch. 537, followed.

A testator bequeathed his personal estate to two trustees, upon trust for conversion and investment of the proceeds, and to pay the income of the investments to his sister during her life, and after her death to hold the capital on trusts for her children. But, if no child of the sister should

**SETTLED LAND (Apportionment)—continued.**

attain a vested interest, the trust fund was to go to the two trustees beneficially, in equal moieties. The testator gave the trustees a discretionary power to postpone for such period as to them should seem expedient the conversion of any part of his personal estate, but the outstanding personal estate was to be subject to the trusts thereinbefore declared, and the yearly produce thereof was to be deemed annual income for the purpose of the trusts. At the time of the testator's death he had no property of a wasting character (except some leaseholds, as to which a special provision was made by his will), but he was entitled to a reversionary interest in a sum of Consols, subject to the life interest therein of his sister. When he died she was a spinster aged thirty-five. Ten years afterwards she was found a lunatic, and less than two years after that she died intestate. She had never married.

The trustees did not during her life sell the reversionary interest, and it fell in upon her death:—

*Held*, by C. A. (upon evidence which was not before *Stirling J.*), that the trustees had never exercised their discretion as to the conversion of the reversionary interest, and that under the circumstances it ought to have been sold and the proceeds invested so as to produce income for the tenant for life:

*Held*, therefore, that the fund must be apportioned between the representative of the tenant for life and the remaindermen on the principle laid down in *In re Earl of Chesterfield's Trusts*, (1883) 24 Ch. D. 643, interest being calculated at the rate of 3 per cent. per annum. **ROWLLS v. BEBB. In re ROWLLS. WALTERS v. SOLICITOR FOR THE TREASURY - C. A. [1900] W. N. 108; [1900] 2 Ch. 107**

10. — *Conversion—Trust for immediate conversion—Interim rents—Investment.*

Trust after the death of A. for immediate conversion of realty with no power to postpone sale. Income of property when sold and invested to go to B. for life. B. died before the property was sold. The property was sold without undue delay. Question to whom belonged the rents received between the death of A. and the sale:—

*Held*, that notwithstanding the absence of any power to postpone the sale or any direction as to the interim rents, the whole rents between the deaths of A. and B. belonged to B.'s personal estate. **HOPE v. D'HÉDOUVILLE**

**Kekewich J. [1893] 2 Ch. 361**

Followed by *Kekewich J. In re Searle*, [1900] 2 Ch. 829.

11. — *Enjoyment of income in specie—Investments retained by trustees under discretionary powers—Tenant for life and remainderman.*

A testator gave his residuary estate to trustees upon trusts for sale and conversion, and empowered them in their absolute discretion to retain securities in their existing state of investment. The trustees retained certain bonds which were liable to be paid off at par at a future date, but of which the present value was considerably above par:—

*Held*, there was a gift of the full income to

**SETTLED LAND (Apportionment)—continued.**

the tenants for life. *In re* THOMAS. WOOD v. THOMAS — Kekewich J. [1891] 3 Ch. 482

12. — *Insurance, Life—Premiums—Mortgage debt—Adjustment of liability for premiums and interest—Tenant for life and remainderman.*

Where trustees paid premiums on a mortgaged policy on a life, and interest on the mortgage out of income, and the life fell in:—

*Held*, that the tenant for life was entitled to be recouped the amount of income so expended with interest at 4 per cent. out of the property preserved by the expenditure—that is the surplus policy money—after deducting the mortgage, and that the balance must be apportioned between capital and income according to the rule in *Chesterfield's Case*, 24 Ch. D. 643. *In re* MORLEY. MORLEY v. HAIG — Kekewich J. [1895] 2 Ch. 738

13. — *Interest, Arrears of—Charge of settled legacy on residuary estate—Insufficiency of security—Tenant for life; and remainderman.*

Where a testator charged his residuary estate with a principal sum and interest to be settled upon a tenant for life and remaindermen (the interest to be paid to the tenant for life and the capital to the remaindermen) and the interest fell into arrear and the residuary estate realized less than the principal sum:—

*Held*, following *In re Moore*, (1885) 54 L. J. (Ch.) 432, that the realized sum ought to be apportioned between the tenant for life and the remaindermen in the proportions which the arrears of interest and the principal sum bore to each other, the Court intimating an opinion that the apportionment in *In re Foster*, (1890) 45 Ch. D. 629, was intended to be confined to the case of a mortgagee in possession. *In re* BARKER. BARKER v. BARKER

Stirling J. [1897] W. N. 154 (14)

— Interest, Rate of.

See Cases under SETTLED LAND — Interest.

— Leaseholds—Repairs, &c.

See Cases under SETTLED LAND — Leaseholds.

— Mines—Rents and royalties—Tenant for life and remainderman.

See Cases under SETTLED LAND — Mines.

14. — *Power to postpone sale and conversion of estate—Property “not actually producing income”—Tenant for life and remainderman—Will—Conversion.*

The will of a testator contained the ordinary clause empowering his trustees to postpone the sale and conversion of his estate, and declaring that the income thereof, previous to the conversion, should be applied as if it were income arising under investments authorized by the will. Then followed this proviso: “But no property not actually producing income which shall form part of my estate shall be treated as producing income or as entitling any party to the receipt of income.”

There was a debt, due to the testator at the time of his death, which could not be got in, and the trustees took from the debtor as security for it a third mortgage upon certain policies of

**SETTLED LAND (Apportionment)—continued.**

insurance on his life. The debtor died in the lifetime of a lady who was tenant for life under the will, and the trustees, who had received neither principal nor interest in respect of the debt, realized their security, with the result that, after payment of the prior charges, they received a sum which was less than the amount due by all the interest and some of the capital:—

*Held* (reversing the decision of Stirling J.), (1) that according to the rule of the Court, this sum represented the arrears of interest as well as the capital, and (2) that it must be treated as property actually producing income within the meaning of the proviso, and must be apportioned between the tenant for life and the remainderman in the proportion that the interest due from the date of the mortgage bore to the capital thereby secured. *In re* HUBBICK. HART v. STONE

C. A. [1896] 1 Ch. 754

15. — *Profits of business pending sale under trust for sale—Tenant for life and remainderman.*

A business was bequeathed to trustees on trust for sale, with power in their absolute discretion to postpone sale, and directions pending sale to pay the profits to the same persons and in the same manner as income for the trust estate:—

*Held*, that the whole income arising from the business was payable to the tenant for life. *In re* CROWTHER. MIDGLEY v. CROWTHER

Chitty J. [1895] 2 Ch. 56

Considered by North J. *In re* Smith, [1896] 1 Ch. 171.

16. — *Reversionary property—Conversion—Apportionment between capital and income—Discretionary power of sale in trustees—Rule in Howe v. Earl of Dartmouth, (1802) 7 Ves. 137 a; 6 R. R. 96—Will—Construction.*

A testator devised and bequeathed his property to trustees, upon trust for his mother for her life, with remainder to other persons. And he gave to his trustees, if and when they should consider it expedient, full power to sell and dispose of all or any part of his estate. Part of the testator's property consisted of the reversion, expectant on the death of his mother, of funds settled on her marriage of which she was tenant for life. The trustees did not convert this reversionary interest during the mother's life:—

*Held*, that the discretionary power of sale given by the will to the trustees excluded the application of the rule in *Howe v. Earl of Dartmouth*, and that the personal representative of the mother was not, after her death, entitled to any part of the proceeds of the sale of the reversion. *In re* FITCAIRN. BRANDRETH v. COLVIN

North J. [1895] W. N. 139 (11); [1896] 2 Ch. 199

17. — *Sale—Apportionment of proceeds—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21, 34.*

Where the tenant for life sold freehold ground rents and the proceeds were invested in long leaseholds, thereby doubling the income:—

*Held*, that the income of the leaseholds should be in accordance with the provisions of s. 34 of the Settled Land Act, 1882, by giving the tenant for life a sum equal to the sold ground rents and

**SETTLED LAND (Apportionment)—continued.**

accumulating the balance as capital. *In re BOWYER'S SETTLED ESTATES*

**Chitty J. [1892] W. N. 48**

— Tenant for life and—Apportionment for loss.  
See **MORTGAGE—Apportionment. 2.**

**18. — Wasting securities—Gift in specie—Sale—Rule in Howe v. Earl of Dartmouth (7 Ves. 137 a).**

A testator gave his residuary estate, to his wife for life, with a gift over. Part of the residue consisted of consolidated and preference stock of a gas co. which stood at 100 per cent. premium; testator had made the investment himself:—

*Held*, (1) that to entitle the wife to the income of the fund as it stood something equivalent to a specific gift was required; (2) that the trustees must put a value on the stock and pay the wife 4 per cent. on it, invest the surplus income and pay the interest thereon to the wife, the corpus to belong to the remainderman. *In re EATON. DAINES v. EATON*

**Kekewich J. [1894] W. N. 95**

**19. — Wasting securities—Unauthorized securities—Rate of interest.**

Notwithstanding the current rate, 4 per cent. is payable to a tenant for life in respect of unauthorized or wasting securities. *NICHOLSON v. NICHOLSON* - **Kekewich J. [1895] W. N. 106**

**Base Fee.**

**20. — Tenant for life—Title to fee simple—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58, sub-s. 1, cl. iii.**

A tenant for life of a base fee is a "person entitled to a base fee" within s. 58 of the Settled Land Act, 1882, and he can make a good title under the Act to the fee simple in the settled land. *In re MORSHEAD'S SETTLED ESTATE*

**North J. [1893] W. N. 180**

**Capital Money.****(Application of Capital Money.)**

**21. — Agent's house—Mansion-house—Chapel—Stables—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. vii.; 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. ii., iv.**

Capital money cannot be expended in building a residence for the estate agent. *In re LORD GERARD'S SETTLED ESTATES*

**C. A. [1893] 3 Ch. 252**

**22. — Alterations with a view to letting.**

Alterations in mansion-house under s. 13 (ii.) of the Act of 1890 must be confined to cases where an actual immediate letting is contemplated.

(A) *In re DE TEISSIER'S SETTLED ESTATES*

**Chitty J. [1893] 1 Ch. 153**

(B) *In re LORD GERARD'S SETTLED ESTATES*

**C. A. [1893] 3 Ch. 252**

(C) *In re GASKELL'S SETTLED ESTATES*

**Chitty J. [1894] 1 Ch. 485**

**23. — "Annual rental."**

Mode, in which annual rental is calculated, considered.

(A) Income derived from capital money in-

**SETTLED LAND (Capital Money)—continued.**

vested is to be included. *In re DE TEISSIER'S SETTLED ESTATES* - **Chitty J. [1893] 1 Ch. 153**

See also *In re Lord De Tabley*, [1896] W. N. 162 (16); *In re Montagu*, [1897] 2 Ch. 8.

(b) Where more than one estate is within the settlement the annual rent of both is to be included. *In re LORD GERARD'S SETTLED ESTATES*

**C. A. [1893] 3 Ch. 252, at p. 268**

(c) Annual rental does not include anything for the mansion-house or any farm occupied therewith, but includes the rent of any farm usually let but temporarily unlet. *In re WALKER'S SETTLED ESTATE* - **North J. [1894] 1 Ch. 189**

**24. — Architectural improvements.**

The Settled Land Acts do not authorize the application of capital money in beautifying an ugly house or the stables attached to it. *In re LORD GERARD'S SETTLED ESTATES*

**C. A. [1893] 3 Ch. 252**

**25. — Building a private chapel.**

Capital money cannot be applied in building a private chapel. *In re LORD GERARD'S SETTLED ESTATES* - **C. A. [1893] 3 Ch. 252**

**26. — Building estate — Waterworks — Improvements—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 25 (xiii.), 27.**

An agreement by a limited owner to sell land to a waterworks co. in consideration of fully paid-up shares in the same, for the purposes of developing a building estate, and to provide part of the working capital, held to fall within ss. 25 (xiii.), 27, of the Settled Land Act, 1882. *In re ORWELL PARK ESTATE*

**Kekewich J. [1894] W. N. 135**

**27. — "Building purposes" — Definition — Public-house—Improvements—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 10 (iii.).**

A grant of a public-house in consideration of a perpetual yearly chief rent of 40*l.* and a sum of 8700*l.* cash, and covenants by the grantees within two years to expend 400*l.* in substantial improvements, and to maintain upon the land buildings of the clear yearly value of at least double the rent reserved:—

*Held*, to be made for "building purposes" within the definition in s. 2, sub-s. 10 (iii.), of the Settled Land Act, 1882. *In re EARL OF ELLESMERE* - **Kekewich J. [1898] W. N. 18 (6)**

**28. — Drainage expenses — Owner — "Repairs"—Public Health Act, 1848 (11 & 12 Vict. c. 63), ss. 2, 43, 90.**

A testator devised houses to trustees on certain trusts, and declared that "the persons beneficially entitled should keep the same in good and absolute repair." The trustees paid capital money of the testator's estate, held on similar trusts, for drainage expenses under the Public Health Act, 1848:—

*Held*, (1) that as the trustees were the persons entitled to receive the rack-rents they were "owners" within s. 2 of the Act from whom the expense of the work could have been recovered if they had not done it, but (2) that as the works were not "repairs" within the will, the sums, though properly expended by the trustees as between the tenant for life and remaindermen,

**SETTLED LAND (Capital Money)—continued.**

must be treated as a charge on the property. *In re BARNEY. HARRISON v. BARNEY*

**Stirling J. [1894] 3 Ch. 562**

Distinguished by Byrne J. *In re Thomas*, [1900] 1 Ch. 319, 324.

— Glebe land—Lands allotted to vicar “and his successors” — Settlement — Improvements—Capital money.

See ECCLESIASTICAL LAW—Glebe. 43.

29. — Improvements—Alterations and additions with view to letting—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 25; 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. ii.

Restoring the roof of a mansion-house, which was in a very dilapidated condition, and altering the main entrance so as to provide a billiard-room, and to render the house less cold and draughty, are “alterations” within s. 13 (ii.) of the Act of 1890, but fitting up warming apparatus and pipes is not such an “alteration,” nor is it either directly or by analogy an “improvement” within s. 25 of the Act of 1882. *In re GASKELL'S SETTLED ESTATES - Chitty J. [1894] 1 Ch. 485*

30. — Improvements—Capital money—Prospective order—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 21, 25: 1887 (50 & 51 Vict. c. 30), s. 1; 1890 (53 & 54 Vict. c. 69), s. 15.

Capital money in s. 15 of the Act of 1890 means capital money already in hand and capable of application. The Court will not make a prospective order fettering its discretion in the application of capital arising from time to time. *In re MARQUIS OF BRISTOL'S SETTLED ESTATE*

**Kekewich J. [1893] 3 Ch. 161**

Discussed by Byrne J. *Duke of Norfolk v. Lord Herries*, [1900] 1 Ch. 461, 465.

31. — “Improvements”—Expense of improvements executed before 1890—Costs of parliamentary opposition—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 26, 36; 1890 (53 & 54 Vict. c. 69), s. 15.

Sect. 15 of the Settled Land Act, 1890, is retrospective as to the cost of improvements executed since the commencement of the Act of 1882, and the Court can direct payment of such cost out of the capital money.

*Quære*, whether s. 15 of the Act of 1890 is retrospective as to improvements effected before the commencement of the Act of 1882. In the case of such improvements the Court has a discretion:—

*Held*, that where such expenditure was deliberately incurred, the Court in its discretion would not allow it to be paid out of capital. *In re ORMROD'S SETTLED ESTATES*

**North J. [1892] 2 Ch. 318**

— “Improvements” — Maintaining houses in good habitable repair—Building houses—Accumulations.

See ACCUMULATIONS. 2.

32. — Improvements—Personalty held on trust to invest on land—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2, 21, 25, sub-ss. (xix.), (xx.), 33.

Capital moneys, arising from a bequest of personalty on trust to purchase land and settle it to the uses of a settlement of land, can be used

**SETTLED LAND (Capital Money)—continued.**

for improvements on the settled land, without first investing the moneys in land and then selling it again; the will and the settlement forming one “settlement” within the meaning of the Settled Land Act, 1882. *In re MUNDY'S SETTLED ESTATES - C. A. [1891] 1 Ch. 399*

Followed by North J. *In re Byng's Settled Estates*, [1892] 2 Ch. 219; *Coote v. Cadogan*, [1899] W. N. 222.

Discussed by Romer J. *In re Lord Monson's Settled Estates*, [1898] 1 Ch. 427.

33. — Improvements — Prospective order — Tenant for life—Capital money—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21 (iii.); s. 22, sub-ss. 1, 2, 7; ss. 25, 26, 53.

Trustees for the purposes of the Settled Land Acts may approve a scheme for improvements submitted to them by a tenant for life, before they have capital money in hand and available for the proposed expenditure; when a scheme has been approved under these circumstances, and the improvements have been executed and paid for by the tenant for life, bona fide, with the knowledge of the trustees for the purpose of, and in accordance with, the approved scheme, early expenditure being for the benefit of all parties interested, in anticipation of moneys becoming afterwards available for the purposes of the approved scheme, the trustees are entitled, either with or without the approval of the Court, to reimburse the tenant for life the money so expended.

*In re Millard's Settled Estates*, [1893] 3 Ch. 116, distinguished. *In re DUKE OF NORFOLK'S PARLIAMENTARY ESTATES. DUKE OF NORFOLK v. LORD HERRIES* **Byrne J. [1900] W. N. 15; [1900] 1 Ch. 461**

34. — Improvements—Two estates comprised in one settlement—Proceeds of sale of estate in Ireland applied in payment for improvement of estate in England—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. 3.

Summons by the tenant for life of settled estates in England and Ireland for an order that capital moneys arising from the sale of part of the Irish property might be applied in repayment to him of certain sums which he had spent on improvements already executed on the English property in accordance with a scheme which had been prepared for that purpose, and also in completing the works contemplated by the scheme.

North J. said, on the question whether money derived from the Irish property ought to be given for the benefit of land in England, that he did not see any reason why the principle of *In re Mundy's Settled Estates*, [1891] 1 Ch. 399, and other cases should not apply. It was one settlement, the trusts of the two estates were the same, and the circumstance that one property was in Ireland and the other in England ought not to make any difference. The details of the scheme to be settled in chambers. *In re EYRE COOTE. COOTE v. CADOGAN.*

**North J. [1899] W. N. 222**

35. — Interpretation.

Judicial interpretations as to the application

**SETTLED LAND (Capital Money)—continued.**

of purchase-money under the Lands Clauses Act are not of any authority as to the application of capital moneys under the Settled Land Acts. *In re* LORD GERARD'S SETTLED ESTATES

C. A. [1893] 3 Ch. 252

— Investment of.

See SETTLED LAND—Investments.

36. — “*Liable*” to be laid out in the purchase of land — *Statute* — *Construction* — *Settled Land Act*, 1882 (45 & 46 *Vict. c. 38*), ss. 32, 33.

Personal property held by trustees with power to invest in land is liable to be laid out in the purchase of land within the meaning of s. 32 and 33 of the Settled Land Act, 1882. *In re* SOLTAN'S TRUSTS — North J. [1898] 2 Ch. 629

37. — *Person having powers of tenant for life* — *Tenant for life subject to term for securing incumbrances* — *Possession* — *Title-deeds* — *Custody* — *Sale* — *Application of capital moneys* — *Discharge of incumbrances* — *Settled Land Act*, 1882 (45 & 46 *Vict. c. 38*), ss. 21, 22, 53.

Land which was subject to mortgages was settled, subject to a term for securing incumbrances, to the use, in the events which happened, of A. for life, with remainders over. The trusts of the term provided that so long as the mortgages remained unpaid the trustees should receive the rents and profits and manage the premises and keep down the interest of the mortgage debts and certain rent-charges created by the settlement, that they should then pay to the tenant for life for the time being subject to the term an annuity of 600*l.* a year, and should apply the residue of the rents and profits towards the payment of the principal moneys charged by the mortgages, and there was a proviso for the ceasing of the term upon the discharge of the mortgage debts. The settlement conferred on the trustees an immediate power of sale and exchange, but no power of leasing:—

The Court, having held that A. was a person having the powers of a tenant for life under the Settled Land Act, 1882, ordered him to be let into possession upon his undertaking to perform the trusts of the term, and gave him the custody of the title-deeds.

The Court would have made the order apart from the annuity to A.

A. subsequently contracted to sell, under the powers of the Settled Land Acts, certain portions of the settled lands, including parts of all the mortgaged lands and a portion which was unincumbered, and in order to complete the sale it was necessary that the mortgages should be paid off. A. therefore directed that the trustees should apply the proceeds of the sale in paying off the mortgages. He deposed that he considered that this would be for the benefit of all the parties entitled under the settlement, seeing that the mortgages bore interest at 4 per cent., whereas the purchase-money could not be invested in trustee securities to yield more than 3 per cent. Upon a summons to determine whether the mortgages ought not to be kept on foot for the benefit of the ultimate remainderman:—

Held, that the beneficiaries under the settlement took subject to the power of sale conferred on the trustees, and that inasmuch as the trustees

**SETTLED LAND (Capital Money)—continued.**

in the exercise of that power might properly, for the purpose of carrying into effect a beneficial sale, pay off the existing incumbrances out of the purchase-money, a tenant for life doing the same thing under the powers of the Settled Land Acts ought not to be held to be acting unjustly towards the remaindermen; that consequently the mortgages ought not to be kept on foot, and that upon the payment off out of the capital moneys of all the mortgages the term would cease.

*Semble*, the Court would have arrived at the same conclusion if the settlement had conferred no power of sale upon the trustees. *In re* RICHARDSON. RICHARDSON *v.* RICHARDSON. *In re* RICHARDSON. RICHARDSON *v.* RICHARDSON

Stirling J. [1900] W. N. 3; [1900] 2 Ch. 778

Followed by Cozens-Hardy J. *In re* Money Kyrle's Settlement, [1900] 2 Ch. 839, 843.

— Prospective order—Improvements.

See No. 33, above.

38. — *Prospective order* — *Improvements* — *Capital money* — *Settled Land Act*, 1882 (45 & 46 *Vict. c. 38*), s. 26, sub-s. 2 (iii.).

A prospective order to apply capital moneys for the construction of roads, &c., to develop a building estate cannot be made under the Act of 1882, for the payment by the trustees can only be sanctioned on proof that the work had been properly done. *In re* MILLARD'S SETTLED ESTATES

C. A. [1893] 3 Ch. 116

Distinguished by Byrne J. *Duke of Norfolk v. Lord Herries*, [1900] 1 Ch. 461.

— Pumps, Erection of new.

See SETTLED LAND—Mines. 82.

39. — “*Rebuilding*” — “*Annual rental*” — *Settled Land Act*, 1890 (53 & 54 *Vict. c. 69*), s. 13, sub-s. iv.

A tenant for life reconstructed the mansion-house, rebuilding reception rooms with rooms over them, converting the kitchens, pulling down servants' rooms and offices, and building a billiard-room, smoking-room, &c., on their site, and rebuilding servants' rooms, &c., on a different site:—

Held, that there had been a rebuilding within the meaning of s. 13 (iv.) of the Act of 1890, and that the application of capital moneys was authorized to the extent of half the annual value of the estate. *In re* WALKER'S SETTLED ESTATE

North J. [1894] 1 Ch. 189

40. — “*Rebuilding*” — *Dry-rot* — *Alterations with a view to letting* — *Settled Land Act*, 1882 (45 & 46 *Vict. c. 38*), s. 22, sub-s. 5; s. 25; 1890 (53 & 54 *Vict. c. 69*), s. 13, sub-s. ii., iv.; s. 15.

A new roof, alterations consequent upon dry-rot, rearrangement of drainage, &c., do not amount to “rebuilding” within s. 13 (iv.) of the Act of 1890. *In re* DE TEISSIER'S SETTLED ESTATES

Chitty J. [1893] 1 Ch. 153

See also *In re* Lord de Tabley, [1896] W. N. 162 (16); *In re* Montagu, C. A. [1897] 2 Ch. 8.

41. — *Rebuilding* — *Expenditure of money in* — *Jurisdiction* — *Conveyancing Act*, 1881 (44 & 45 *Vict. c. 41*).

The Court has no jurisdiction in cases not amounting to salvage to raise money out of a

**SETTLED LAND (Capital Money)—continued.**

settled estate, and apply the money in pulling down and rebuilding houses on the estate.

Settled land was vested in trustees upon trust for P. for life, and after his death upon trust for his children. He had two children, both infants. Four of the houses on the land were old and in bad repair, and it appeared that if they were pulled down and rebuilt at an expense of about 8000*l.* the value of the settled property would probably be increased to 13,000*l.*, and its income more than doubled. There were no powers in the settlement by which this could be done, and it did not appear that it was necessary by way of salvage. An application by the trustees to raise money by mortgage to be applied for the above purpose was refused for want of jurisdiction.

Decision of Kekewich J., [1897] 1 Ch. 685, affirmed.

*Conway v. Fenton*, (1888) 40 Ch. D. 512, distinguished. *In re MONTAGU*. **DERBISHIRE v. MONTAGU** - - **C. A. [1897] 2 Ch. 8**

See *Earl Waldegrave v. Earl of Selborne*, North J. [1899] W. N. 240.

**42. — Recouping expenditure—Improvements—Tenant for life—Purchase of adjoining land under right of pre-emption—Addition to settled estate—Expenditure by tenant for life—Permanent improvements—Trustee and cestui que trust—Constructive trust—Remaindermen.**

Where a constructive trustee of property has expended money thereon in permanent improvements, he is *prima facie* entitled to be recouped his expenditure to the extent of the improved value; and the fact that he is beneficially entitled as tenant for life under the constructive trust does not displace his right to recoupment.

H., tenant for life of a public-house settled by the will of E. W., purchased with his own moneys and had conveyed to him in fee an adjoining piece of land, over which he had, under the Turnpike Acts, a right of pre-emption by virtue of the ownership of the public-house. He then at his own expense enlarged and permanently improved the public-house by new and additional buildings extending over the land purchased by him. He afterwards died having devised all his real estate to the defts., one of whom he appointed his executor.

It being admitted that H. must be regarded as having held the land purchased and the buildings upon it as a constructive trustee for the several persons entitled under the will of E. W., and therefore as having been tenant for life only of the property:—

*Held*, in an action by the remaindermen under the will of E. W. against the executor and devisees of H. to ascertain the rights of the parties, that H.'s executor was entitled to a charge on the land purchased and the buildings upon it, for (1.) the amount of the purchase-money paid by H., and of the costs of conveyance to him, with interest at 4 per cent. from his death; (2.) the amount by which, at H.'s death, the value of the land bought by him had been increased by his expenditure in permanent improvements, together with like interest; and that the persons entitled under E. W.'s will could only

**SETTLED LAND (Capital Money)—continued.**

claim the land and buildings subject to such charge and to the payment of the costs of all parties of the action as between solicitor and client. **ROWLEY v. GINNEVER**

**Kekewich J. [1897] 2 Ch. 503**

**43. — Re-imbursement out of capital moneys—Repairs—Sanitary arrangements—Improvements executed without scheme—Re-imbursement—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 21, 25, 26; 1890 (53 & 54 Vict. c. 69), ss. 13, 15.**

The submission of a scheme before the execution of improvements is no longer necessary since the Act of 1890, and the Court has jurisdiction to sanction the re-imbursement of a tenant for life. But when a tenant for life who has not prepared a scheme asked for re-imbursement the Court should be vigilant and careful to see that no expenses were thrown on capital which from a business point of view might fairly come out of income.

Repairs incidental to the ordinary enjoyment of the property should not be allowed, nor the expense of additions and alterations to the sanitary arrangements of a mansion. *In re TUCKER'S SETTLED ESTATES* **C. A. [1895] 2 Ch. 466**

Referred to by Stirling J. *In re Lever*, [1897] 1 Ch. 32, 34.

Referred to by Byrne J. *In re Thomas*, [1900] 1 Ch. 319, 324; *Duke of Norfolk v. Lord Herries*, [1900] 1 Ch. 461, 466.

— Repairs.

See Cases under **SETTLED LAND — Repairs.**

**44. — Repayment of money raised for improvements—Inconsistency with powers of Settled Land Act, 1882—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 51.**

Under the powers in a settlement made in 1877, the trustees raised money for the tenant for life to improve the estate. The settlement required that the money so raised should be repaid by instalments. The improvements authorized were similar to those authorized by s. 25 of the Settled Land Act, 1882:—

*Held*, (1) that the sinking fund formed by the repayments was capital within the meaning of the Act, and could be employed on further improvements; (2) that the tenant for life having taken the money for improvements under the settlement instead of applying under the Act, must continue to pay the instalments; (3) that having acted under the settlement did not preclude the tenant for life from exercising the powers given him by the Act. *In re SUDBURY AND POYNTON SETTLED ESTATES*. **VERNON v. VERNON** - - **Stirling J. [1893] 3 Ch. 74**

**45. — Sale by tenant for life—Valuation of fixtures, crops, &c.—Capital moneys—Tenant for life and remainderman—Landlord and tenant—Outgoing tenant.**

A tenant for life of settled land, on taking possession of one of the farms from an outgoing tenant in 1896, personally paid for straw, hay, crops, underwood, tenant's fixtures in the house and stables, and fallow dressings, and half manures, at a valuation, according to the custom,

**SETTLED LAND (Capital Money)—continued.**

of the county. In 1897 the tenant for life, in exercise of the statutory power, contracted to sell this farm for 5500*l.* plus a further sum to be paid by the purchaser, after a valuation, for the straw, hay, crops, underwood, tenant's fixtures, fallow dressings, and half manures; the purchaser on paying a small deposit was allowed to go into immediate possession to cultivate the farm.

On completion of the purchase, the tenant for life claimed to be entitled to the whole of the sum paid by the purchaser under the valuation:—

*Held*, that the tenant for life was not entitled to any part of the valuation money paid by the purchaser or incoming tenant which represented the price of underwood, fallow dressings, or half manures, or fixtures permanently annexed to the buildings or land, which must be treated as capital moneys, and paid to the trustees. *In re ROSHER. BRIANT v. ROSHER* - - - *Byrne J.* [1899] W. N. 134

**46. — Salvage.**

Applications under the general jurisdiction of the Court to apply capital moneys for the preservation or salvage of property will be refused. *In re DE TEISSIER'S SETTLED ESTATES*

*Chitty J.* [1893] 1 Ch. 153

**47. — Separate deed or will, Moneys under—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 2, 21, 25, 26; 1890 (53 & 54 Vict. c. 69), s. 13—Improvements.**

Declarations by Court that a will and deed, with limitations almost identical but separately stated, constituted one compound settlement.

(A) Moneys under the deed applied to improve lands held under the will. *In re BYNG'S SETTLED ESTATES* - *North J.* [1892] 2 Ch. 219

(B) Moneys under the will applied to improve lands settled under the deed. *In re MUNDY'S SETTLED ESTATES*

*C. A.* [1891] 1 Ch. 399

**48. — Stables.**

Whether stables are part of the principal mansion-house, and can therefore be rebuilt out of capital, depends upon the facts of each case, and may be so connected not merely physically but by occupation and enjoyment and propinquity as to be part of the mansion-house. *In re LORD GERARD'S SETTLED ESTATES*

*C. A.* [1893] 3 Ch. 252

**Charges.**

*See also Cases under SETTLED LAND—Mortgages.*

**49. — Payment by tenant for life of charge on inheritance—Reconveyance of mortgaged property—Presumption of intention to keep alive charge—Tenant for life and remainderman.**

A reversionary interest in trust funds was mortgaged by the reversioner. He afterwards on his marriage assigned the same interest (subject to the mortgage) to trustees, on trust for his wife for her life, with remainder to himself for his life, with remainders over. After the marriage he paid off the mortgage debt out of his own moneys, and the mortgagee executed a deed which purported to reconvey the mortgaged property to him "absolutely discharged

**SETTLED LAND (Charges)—continued.**

from" the mortgage debt and all claims under the mortgage deed. The solicitors who prepared the reconveyance were ignorant of the existence of the settlement.

In an action by the reversioner, claiming to have the reconveyance set aside or rectified, he gave evidence that he did not intend to pay off the mortgage debt for the benefit of the settlement, but that he intended to keep the charge alive for his own benefit:—

*Held*, that, notwithstanding the form of the reconveyance, the plt. was entitled to have the charge kept alive for his own benefit, and that the sum secured by the mortgage constituted a charge on the property having priority over the settlement, and a declaration was fitted to that effect. *LORD GIFFORD v. LORD FITZHARDINGE* - - - *North J.* [1899] W. N. 75; [1899] 2 Ch. 32

— Investment clause — Consent — Personal security—Loan to tenant for life.  
*See TRUSTEE—Investments.* 67.

**Copyholds.**

**50. — Tenant for life and remainderman—Fines on renewal of leases for lives—Tenants not entitled to renewal—Income or capital—Copyhold custom.**

By the custom of a manor copyholds were granted on leases for lives at small quit rents and subject to heriots, on payment of arbitrary fines to the lord. There was no obligation on the lord to renew the leases. A tenant for life, unimpeachable for waste and having only an ordinary power of leasing for twenty-one years, as lord of the manor granted leases for lives and received fines:—

*Held*, that the fines, being received in the customary mode of enjoyment of the manor by the lord, were income and belonged wholly to him. *In re MEDOWS. NORIE v. BENNETT*

*Kekewich J.* [1898] 1 Ch. 300

**Costs.**

**51. — Attempted sale, Costs of—Payment out of capital money—Charge on land—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 4, 21, Clause x., 46, sub-s. 6; ss. 47, 55, sub-s. 3.**

Where a tenant for life acting honestly and with due diligence in the exercise of his powers under the Settled Land Act, 1882, makes an unsuccessful attempt to sell the land, the costs and expenses incurred by him over the attempted sale are payable out of capital under s. 21(x.). The Court can, under ss. 46, sub-s. 6, 47, and 55 sub-s. 3, order the costs to be paid out of the settled property, and raised by a charge on the settled land. *In re SMITH'S SETTLED ESTATES*

*Kekewich J.* [1891] 3 Ch. 65

**52. — Opposition to bill in Parliament—Costs.**  
Independently of s. 36 of the Settled Land Act, 1882, the Court under its general jurisdiction has power to direct payment out of capital moneys arising under the Act and subject to a settlement of the costs of parliamentary opposition to bills containing provisions injurious to the settled estates. *In re ORMDON'S SETTLED ESTATE*  
*North J.* [1892] 2 Ch. 318

**SETTLED LAND (Costs)—continued.**

53. — *Sale, Costs of—Separate solicitors—Several persons constituting tenant for life—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 6; s. 21, sub-s. 2; s. 56.*

Twenty five persons had been declared by an order of the Court to have the powers of a tenant for life. On a sale of the settled property the vendors employed one solicitor to conduct the sale, but in carrying out the sale, four of them, or their incumbancers, employed other solicitors to peruse and complete:—

*Held*, that there was nothing to disentitle the four persons from employing separate solicitors, and that their costs should be allowed out of the proceeds of the sale. *SMITH v. LANCASTER*

C. A. [1894] 3 Ch. 439

— *Separate solicitors—Tenants for life—Costs of sale—Sets of costs.*

*See COSTS—Sets of costs.* 65.

**Estate Duty.**

*See REVENUE—Estate Duty.*

**Fixtures.**

*See FIXTURES.*

**Heirlooms.**

*See HEIRLOOMS.*

**Improvements.**

*See Cases under SETTLED LAND—Capital Money.*

**Infants.**

— *Appointment of colonial trustees—Form of order.*

*See SETTLED LAND—Trustees.* 129.

54. — *Dispensing with concurrence of unborn child—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), ss. 26, 27, 28.*

Testator's widow was *encciente*; should a male child be born he would be one of testator's heirs in gavelkind, and as such would have an interest in freehold property in Kent as to which it was doubtful whether or not the testator had died intestate. It being desired to lease the property, the Court dispensed with notice to the unborn child. *In re RAYNER'S SETTLED ESTATES*

*Kekewich J. [1891] W. N. 152*

— *Maintenance—Contingent interests—Term for raising portions.*

*See INFANT—Maintenance.* 30.

**55. — Remainderman—Salvage.**

There is no general jurisdiction to charge the interest of an infant tenant for life in remainder with expenditure on structural alterations and repairs on the mansion-house necessary for the preservation of the house. Such expense does not fall under the head of salvage. The Settled Land Acts, whether they do or do not exclude the general jurisdiction of the Court, afford a guide to the Court. *In re DE TEISSIER'S SETTLED ESTATES* *Chitty J. [1893] 1 Ch. 153*

*See also In re Lord de Tabley, [1896] W. N. 162 (16); In re Montagu, C. A. [1897] 2 Ch. 8.*

**SETTLED LAND (Infants)—continued.**

56. — *Trust to accumulate—Contract for sale—Sanction of Court—"Settled estate"—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 16.*

A testator devised real estate on a trust to accumulate the rents during minority of a son followed by a trust for the son absolutely on his attaining twenty-four:—

*Held*, that by virtue of s. 41 of the Conveyancing Act, 1881, the estate was a "settled estate" within the Settled Estates Act, 1877, and the Court could sanction a sale of it. *In re SPARROW'S SETTLED ESTATE*

*North J. [1892] 1 Ch. 412*

**Interest.**

57. — *Rate of interest—Capital or income—Will—Retainer of unauthorized investment—Conversion.*

A testator who died in 1890 gave his residuary real and personal estate to trustees upon trust to convert the same and invest at such time as in their discretion they should think fit, and to pay the income to one for life, with remainders over. Power was given in the will to postpone conversion, and to retain any investments of the testator at the time of his death. There was no direction as to payment of the income of the retained funds. The trustees paid to the tenant for life the whole income, including that of certain investments which they had retained as held by the testator at his death, but which did not fall within the description of securities allowed by the investment clause contained in the will.

*Held*, that the tenant for life was not entitled to receive the income of the retained investments, and that such investments must be valued as at the end of a year from the testator's death, and that, as to the past, interest at the rate of 4 per cent. on that value ought to be allowed to the tenant for life, but as to the future at the rate of 3 per cent. *In re LYNCH-BLOSSE. RICKARDS v. LYNCH-BLOSSE* - - - *Stirling J. [1899] W. N. 27 (8)*

— *Rate of interest—Conversion.*

*See No. 9, above.*

58. — *Rate of interest—Reversion—Capital and income—Apportionment between tenant for life and remainderman.*

In calculating between tenant for life and remainderman the apportionment of an unconverted reversionary interest which has fallen in, the time has arrived to take interest at 3 per cent. instead of 4 per cent. as formerly.

(A) *In re GOODENOUGH. MARLAND v. WILLIAMS* - - - *Kekewich J. [1895] 2 Ch. 537*

(B) *In re DUKE OF CLEVELAND'S ESTATE. HAY v. WOLMER* *Kekewich J. [1895] 2 Ch. 542*

(C) *ROWLLS v. BEBB* *C. A. [1900] 2 Ch. 107*

**Investments.**

59. — *Direction as to investment by tenant for life of capital money in hands of trustees—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21, 22, sub-s. 2; s. 53.*

The exercise in good faith of the power of



**SETTLED LAND (Investments)**—*continued.*

direction as to the investment or other application of capital moneys in the hands of the trustees given to the tenant for life by the Settled Land Act, 1882, s. 22 (2), cannot be controlled by the trustees or by the Court. *In re LORD COLERIDGE'S SETTLEMENT* — **Chitty J.** [1895] 2 Ch. 704

**60.** — “Money liable to be laid out in the purchase of land” — Power to trustees to invest upon request in purchase of particular land — *Settled Land Act*, 1882 (45 & 46 Vict. c. 38), s. 33.

Money which the trustees of a settlement are empowered to invest, at the request of the tenant for life, in the purchase of particular land is money which is “liable to be laid out in the purchase of land” within the meaning of s. 33 of the *Settled Land Act*, 1882.

Where by a settlement, which comprised a moiety of certain freeholds, the trustees were empowered, at the request of the tenant for life, to invest money comprised in the settlement in the purchase of the other or unsettled moiety of the freeholds:—

*Held*, that the case came within s. 33 of the *Settled Land Act*, 1882, and that money in the hands of the trustees might be invested, as capital money, in the purchase by them, jointly with the owner of the unsettled moiety, of land convenient to be held together with the freeholds. *In re HILL. HILL v. PILCHER*

**Kekewich J.** [1896] 1 Ch. 962

**61.** — *Mortgage — Equity of redemption — Capital money — Land in fee simple — Settled Land Act*, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. 7.

Sect. 21, sub-s. 7, of the *Settled Land Act*, 1882, giving power to invest capital money in the purchase of land in fee simple, does not authorize the investment of capital moneys in the purchase of an equity of redemption. *In re EARL RADNOR'S SETTLED ESTATES* **Romer J.** [1898] W. N. 174 (14)

— *Unauthorised investment — Rate of interest.*

*See No. 57, above.*

**Leaseholds.**

— *Covenants — Rent — Repairs — Liability.*

*See WILL — Leaseholds.* 119.

**62.** — *Ground rents — Repairs and outgoing — Corpus or income — Tenant for life and remainder — Construction of will.*

Testator directed his executors and trustees to arrange his affairs and manage his estate, and to retain certain leaseholds and let them on lease at fair rentals, and pay the income derived therefrom to his wife for life for the benefit of herself and her children, and after her decease to divide the whole of his estate equally between his children:—

*Held*, on the construction of the will, that the “income derived” from the leaseholds meant the net income, i.e., the amount of the rents after deducting all proper outgoing, and that consequently ground-rents, current repairs, and other outgoing in respect of the leaseholds must be borne by the tenant for life.

The view taken in *In re Baring*, [1893] 1 Ch. 61, of the decision in *In re Courtier*, (1886) 34

**SETTLED LAND (Leaseholds)**—*continued.*

Ch. D. 136, dissented from. *In re REDDING. THOMPSON v. REDDING* **Stirling J.** [1897] 1 Ch. 876

Discussed by **Kekewich J.** *In re Tomlinson*, [1898] 1 Ch. 232; *In re Gjers*, [1899] 2 Ch. 54, 58.

Referred to by **North J.** *In re Betty*, [1899] 1 Ch. 821, 826.

**63.** — *Liability — Rent, repairs, and renewal fines — Leasehold house.*

Where a testator gave certain life interests in a leasehold house, and bequeathed his residuary personality upon trust to pay out of income the expenses, &c., of carrying out the trusts of the will:—

*Held*, that the rent and expenses of repairs and insurance were payable out of the income of the residue, and that fines and expenses of renewal were payable out of the corpus and must be distributed amongst the beneficiaries of the house according to their enjoyment, to be ascertained on an actuarial calculation. *In re BARING. JEUNE v. BARING* **Kekewich J.** [1893] 1 Ch. 61

*See Trustee Act*, 1898 (56 & 57 Vict. c. 53), s. 19.

Dissented from by **Stirling J.** *In re Redding*, [1897] 1 Ch. 876.

Discussed by **Kekewich J.** *In re Tomlinson*, [1898] 1 Ch. 232; *In re Gjers*, [1899] 2 Ch. 54, 58.

Discussed by **North J.** *In re Betty*, [1899] 1 Ch. 821, 825.

**64.** — *Outgoings — Drainage expenses — Improvements — Capital or income — Leasehold houses — Capital money — Conflict between settlement and Act — Settled Land Acts*, 1882 (45 & 46 Vict. c. 38), ss. 25, 51, 56; 1890 (53 & 54 Vict. c. 69), ss. 13, 15.

The cost of reconstructing the drainage of leasehold houses, forming part of a residuary estate bequeathed to trustees upon trust for tenant for life and remaindermen:—

*Held*, to be payable out of capital money, as an improvement within the meaning of the *Settled Land Acts*, notwithstanding a direction in the will that pending a sale the rents, after payment of “all incidental expenses and outgoing,” were to be paid to the tenant for life. *In re THOMAS. WEATHERALL v. THOMAS* — **Byrne J.** [1900] 1 Ch. 319

**65.** — *Repairs — Ground rent — Cost of sanitary works — Capital or income — Leasehold houses — Equitable tenant for life — Public Health (London) Act*, 1891 (54 & 55 Vict. c. 76) — *Dangerous structures notice — London Building Act*, 1894 (57 & 58 Vict. c. ccciii.).

There is no distinction in the position of an equitable tenant for life of leaseholds where the property is sub-let at a rack-rent, and where it is sub-let at an improved ground-rent; as between tenant for life and remainderman the cost of complying with a sanitary notice under the *Public Health (London) Act*, 1891, and a dangerous structures notice under the *London Building Act*, 1894, is chargeable against income. *In re COPLAND'S SETTLEMENT. JOHNS v. CARDEN*

**Byrne J.** [1900] W. N. 14; [1900] 1 Ch. 326

**SETTLED LAND (Leaseholds)—continued.**

— Repairs—Tenant for life—Remainderman—Liability.

See **WILL—Leaseholds.** 119.

¶ 66. — *Sanitary work, Cost of—Capital or income—Leasehold house—Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), ss. 4, 121, 141.

The cost of sanitary works executed under the Public Health (London) Act, 1891, upon leasehold houses forming part of a residuary bequest to trustees upon trust for tenant for life and remaindermen:—

*Held*, payable out of the capital of the residuary estate. *In re LEVER.* CORDWELL v. LEVER — *Stirling J.* [1897] 1 Ch. 32

Referred to by Byrne J. *In re Thomas*, [1900] 1 Ch. 319, 324.

**Leases.**

— “Best rent”—Building lease—“Money laid out.”

See No. 69, below.

67. — “Best rent”—Lease for term of years—Receipt of bribe from lessee—Invalidity of lease—*Settled Land Acts, 1882* (45 & 46 Vict. c. 38), ss. 7, sub-s. 2; ss. 22, 45, sub-s. 3; ss. 53, 54; 1884 (47 & 48 Vict. c. 18), s. 4; 1890 (53 & 54 Vict. c. 69), ss. 3, 7.

C., tenant for life of a freehold house, who had mortgaged his life interest, in 1892 granted to the deft. a lease of the premises for seven years in consideration of a yearly rent of 25*l.* and covenants by the lessee to execute certain repairs and improvements. As an inducement to execute the deed the deft. had paid to C. the sum of 21*l.*, which he applied to his own use. There was no evidence that a higher rent could have been obtained. The lease purported to be granted by the mortgagees at the request of C. and by C., as tenant for life, by virtue of the *Settled Land Act, 1882*. C. died in 1895. In an action to set aside the lease:—

*Held*, (1) that the Court, in giving relief to the beneficiaries, would not consider the question whether they had been damaged or not; (2) that on the evidence the payment to C. could not be regarded as a fine, and the liability of the deft. was not therefore limited to paying the sum over again to trustees appointed for the purposes of the *Settled Land Acts*; and (3) that, having regard to the improper payment to C., the “best rent” required by s. 7, sub-s. 2, of the *Settled Land Act, 1882*, had not been obtained, and consequently the lease was void. CHANDLER v. BRADLEY *Stirling J.* [1896] W. N. 176 (18); [1897] 1 Ch. 315

68. — *Building lease—Agreement to lay out specific sum in repairs—Settled Land Acts, 1882* (45 & 46 Vict. c. 38), s. 8, sub-s. 1; s. 63; 1884 (47 & 48 Vict. c. 78), s. 7.

A lease made partly in consideration of the lessee agreeing to expend a specific sum of money in doing the improvements and repairs specified in a schedule is a building lease within the meaning of s. 8, sub-s. 1, of the *Settled Land Act, 1882*.

But the Court, in the exercise of its discretion under s. 7 of the *Settled Land Act, 1884*, will

**SETTLED LAND (Leases)—continued.**

not sanction a building lease in which the repairs or improvements agreed to be done by the lessee are such as an ordinary landlord is expected to do. *In re DANIELL'S SETTLED ESTATES*

C. A. [1894] 3 Ch. 503

69. *Building lease—“Best rent”—“Money laid out”—Leasing powers—Settled Land Acts, 1882* (45 & 46 Vict. c. 38), ss. 6, 7, sub-s. 2; s. 8, sub-s. 1; s. 13, sub-s. 1, 5; s. 53.

Part voluntary expenditure by lessee on buildings comprised in his lease is not consideration in law which will justify a tenant for life in granting a building lease under s. 8, sub-s. 1, of the *Settled Land Act, 1882*, at less than the best rent that can be reasonably obtained as required by s. 7, sub-s. 2. Nor is such expenditure “money laid out” within s. 7, sub-s. 2; those words apply only to money laid out with direct reference to the grant of the lease. *In re CHAWNER'S SETTLED ESTATES*

Chitty J. [1892] 2 Ch. 192

70. — *Building leases—General powers of leasing—Vesting in trustees—Settled Estates Act, 1877* (40 & 41 Vict. c. 18), ss. 4, 13.

A testator by his will devised land to the use of certain persons and the survivors of them, with remainders over, and conferred certain powers additional to, or larger than those under the *Settled Estates Act, 1877*, on the tenants for life and the trustees of the settlement, inter alia, a power to grant building leases for any term not exceeding 999 years. Some of the tenants for life being permanently resident abroad, an order was made (on a petition by all the tenants for life), vesting in the trustees general powers of granting building leases for such terms. *In re HOUGHTON'S ESTATES* — Kekewich J. [1894] W. N. 20

— Conversion—Real estate—Partition action—Sale—“Persons absolutely entitled.”

See **PARTITION.** 2.

— Lunatic—Committee—Power of leasing.

See **LUNACY—Leases.** 15.

— Merger—Lease, Agreement for—Life estate—Intention—Benefit.

See **MERGER.** 1.

71. — *Minerals—Lease of—Surface reserving minerals—Invalidity—Tenant for life.*

SCOTT v. MOXON Kekewich J. [1900] W. N. 14

72. — *Minerals—Lease of—Surface reserving minerals—Tenant for life—Power of leasing.*

Where under a settlement a tenant for life has power to lease all or any part of the settled lands for building purposes, and also power to lease mines of coal, iron, or other material, either with or without the surface lands, those powers enable him to lease the settled lands for building purposes, reserving the minerals under the lands so leased.

*Cockerell v. Cholmeley*, (1830) 10 B. & C. 564, distinguished. *In re DUKE OF RUTLAND'S SETTLED ESTATES.* DUKE OF RUTLAND v. MARQUIS OF BRISTOL — Byrne J. [1900] W. N. 122; [1900] 2 Ch. 206

73. — *Minerals—Lease of—Surface reserving minerals—Tenant for life—Power of leasing—*

**SETTLED LAND (Leases)—continued.**

*Settled Land Act*, 1882 (45 & 46 Vict. c. 38), ss. 6, 13, 17.

Under the power to lease settled land conferred on a tenant for life by s. 6 of the Settled Land Act, 1882, a lease may be made of the surface of land reserving the mines and minerals beneath it.

Decision of Kekewich J. in *In re Newell and Nevill's Contract*, [1900] 1 Ch. 90, disapproved. *In re GLADSTONE. GLADSTONE v. GLADSTONE*

C. A. [1900] W. N. 108; [1900] 2 Ch. 101

Referred to by Byrne J. *In re Duke of Rutland's Settled Estates*, [1900] 2 Ch. 206, 209.

Referred to by C. A. *Brown v. Peto*, [1900] 2 Q. B. 653, 659.

74. — *Minerals—Lease of—Surface reserving minerals—Tenant for life—Settled Land Act*, 1882 (45 & 46 Vict. c. 38), ss. 6-13, 17, 20.

The Settled Land Act, 1882, does not enable a tenant for life to lease the surface, reserving the minerals. *In re NEWELL AND NEVILL'S CONTRACT* — Kekewich J. [1900] 1 Ch. 90

Disapproved of by C. A. *In re Gladstone*, [1900] 2 Ch. 101.

See *In re Duke of Rutland's Settled Estates*, [1900] 2 Ch. 206.

— Mining leases.

See **SETTLED LAND—Mines.**

75. — *Notice, Absence of—Constructive notice—Dealing in good faith—Leasing powers—Settled Land Acts*, 1882 (45 & 46 Vict. c. 38), ss. 6, 20, 45, 53, 58, sub-s. 1 (*vihi.*); 1884 (47 & 48 Vict. c. 18), s. 8.

A tenant by the curtesy purported to grant a building lease as absolute owner without any reference to the Settled Land Acts. There were no trustees for the purposes of the Acts, and consequently no notices were given as required by s. 45 of the Act of 1882:—

*Held*, (1) that the lease could and did operate under the Settled Land Act, 1882, to convey the land within the meaning of s. 20, sub-s. 2, and was valid; (2) that the lessee having dealt with the lessor in good faith was protected by s. 45, sub-s. 2, as to the absence of trustees and want of notices.

The doctrine of constructive notice ought not to be applied so as to invalidate the titles of persons dealing *bonâ fide* with tenants for life when exercising their powers under the Settled Land Acts. *MOGRIDGE v. CLAPP*

C. A. [1892] 3 Ch. 382

Referred to by Stirling J. *Chandler v. Bradley*, [1897] 1 Ch. 315, 322.

Distinguished by Romer J. *In re Fisher and Grazebrook's Contract*, [1898] 2 Ch. 660, 662.

76. — *Powers of leasing—Tenant for life—Heir-at-law entitled for life under lapsed devise—Consent of tenant for life—Settled Land Act*, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 5; s. 56, sub-s. 2; s. 58, sub-s. 1.

The period for accumulations allowed by Thellusson's Act having expired, the heir-at-law became entitled to the rents for the remainder of his life. The heir was a lunatic not so found, and the trustees applied to the Court to decide

**SETTLED LAND (Leases)—continued.**

whether his consent was necessary before they could exercise the power given them by the will of granting building leases:—

*Held*, that the heir was tenant for life, or had the powers of a tenant for life under s. 58, sub-s. 1, of the Act of 1882, and that his consent was necessary under s. 56, sub-s. 2. *In re ATHERTON*

Kekewich J. [1891] W. N. 85

77. — *Rents—Tenant for life and remainderman—Settlement by way of trust for sale—Conversion—Real estate—Postponement of sale—Interim rents—Enjoyment in specie—Settled Land Act*, 1882 (45 & 46 Vict. c. 38), s. 63.

Where by a will or settlement property is directed to be sold and converted and the proceeds held in trust for one for life and then for others, and, either in exercise of a power of postponement or without any impropriety, the sale is postponed, the person entitled to the life interest in the proceeds is, as regards real estate, entitled to the rents and profits thereof until sale, and is consequently to be deemed to be the tenant for life thereof within s. 63 of the Settled Land Act, 1882.

*Yates v. Yates*, (1860) 28 Beav. 637, considered. *In re SEARLE. SEARLE v. BAKER*

Kekewich J. [1900] W. N. 186; [1900] 2 Ch. 829

— Surface reserving minerals, Lease of.

See Nos. 71—74, above.

78. — *Wife of tenant for life, Lease to—Leasing powers—Rights of way over park usually occupied with principal mansion-house—Leases Act*, 1849 (12 & 13 Vict. c. 26)—*Settled Land Acts*, 1882 (45 & 46 Vict. c. 38), ss. 6, 53, 54; 1890 (53 & 54 Vict. c. 69), s. 10.

A tenant for life cannot, under the Settled Land Acts, grant leases for the purpose of giving his wife a jointure house and a right of way over the park attached to the mansion-house. The leasing power must be exercised *bonâ fide* for the benefit of the settled estate and not of the lessee to the detriment of the remainderman:—

*Semble*, that a tenant for life may grant a lease to a married woman although she is his own wife. *DOWAGER DUCHESS OF SUTHERLAND v. DUKE OF SUTHERLAND. Romer J.* [1893] 3 Ch. 169

Distinguished by Bigham J. *Brown v. Peto*, [1900] 1 Q. B. 346, 355; C. A. [1900] 2 Q. B. 653.

**Lunatic.**

See Cases under LUNACY.

**Mansion-house.**

— Repairs of.

See Cases under **SETTLED LAND—Repairs.**

— Trust to allow A. to occupy a mansion-house and land so long as she might wish to do so.

See **SETTLED LAND—Trustees.** 135.

**Mines.**

— Accumulations—Rents and royalties from mining leases—Remaindermen.

See **ACCUMULATIONS.** 6.

**SETTLED LAND (Mines)—continued.**

79. — *Capital or income—Compensation moneys—Sale of minerals—Apportionment.*

Minerals were bought by a ry., and the proceeds of sale were paid into Court. The tenant for life claimed the whole sum, or at least an apportioned part, on the ground that, being unimpeachable for waste, he might have gotten all the minerals in his lifetime:—

*Held*, that as the case was governed by s. 69 of the Lands Clauses Act, 1845, there could be no apportionment of capital, and he was only entitled to the income. *In re ROBINSON'S SETTLEMENT TRUSTS* — **Chitty J. [1891] 3 Ch. 129**

— Lease of surface reserving minerals.

*See SETTLED LAND—Leases.* 71—74.

80. — *Open mines—Mining lease—Tenant for life impeachable for waste—Proportion of rent to be capitalised—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 11.*

A tenant for life under the Settled Land Act, 1882, of mineral land, though not declared unimpeachable for waste by the settlement, is not as regards open mines “impeachable for waste in respect of minerals” within s. 11, and may therefore grant a lease of such mines upon the terms of setting aside one-fourth only of the rent as capital money arising under the Act. *In re CHAYTOR* — **Stirling J. [1900] W. N. 181; [1900] 2 Ch. 804**

81. — *Powers of leasing—Mining leases—Tenant for life—Alienation of life estate—Lease of minerals—Rents varying with selling price of minerals gotten—Statutory powers—Validity of leases—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2, 9, 11, 56—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 8.*

When a person has under several instruments a power of appointment over the same subject-matter, and makes an appointment in exercise of “every power” enabling him in that behalf, the power first in point of time is exercised; and if effectually exercised there remains no subject-matter on which the other powers can operate. The Court may also consider which power is most beneficial to the donee of the power.

By a settlement made in 1876 estates were limited, in the events which happened, to A. for life, remainder to B. for life, with remainders over. The settlement contained a power for every person “as and when he should be entitled to the possession or the receipt of the rents and profits” of the settled estates, to grant mining leases reserving the best rents or royalties “by the acre, ton, or otherwise” without taking any fine or premium. During A.’s life B. absolutely aliened his reversionary life interest for value. A. died in 1882. Between the coming into operation of the Settled Land Act, 1882, and of the Settled Land Act, 1890, after the later Act, B. granted mining leases reserving rents varying with the selling price of the minerals gotten, which was in accordance with the custom of the county. All the leases were granted in exercise of “every power” enabling B. in that behalf. Questions having arisen as to the validity of the leases, and whether they were granted under the power in the settlement or under the power in the Settled Land Acts:—

**SETTLED LAND (Mines)—continued.**

*Held*, (1.) that it was competent for B. to exercise the power of leasing in the settlement notwithstanding that he has aliened his life estate; and (2.) that the reservation of rents varying with the selling price of the minerals was within the power and valid:

*Held*, also, that the leases were granted under the power in the settlement, which was first in point of date, and not under the power in the Settled Land Acts:

*Held*, further, that, assuming the leases were granted under the Settled Land Acts, the “conflict” referred to in s. 56 of the Act of 1882 means a conflict between provisions connected with the execution of the power—e.g., the consent of a third party—and not with the result or subject-matter of the power. *EARL OF LONSDALE v. LOWTHER* — **Farwell J. [1900] W. N. 165; [1900] 2 Ch. 687**

82. — *Pumps—Erection of new pumps—Improvements.*

The erection of a new pumping-engine and pumps for draining mines included in a settlement is an improvement authorized by s. 25 (xx.) of the Settled Land Act, 1882. *In re MUNDY'S SETTLED ESTATES* — **C. A. [1891] 1 Ch. 399**

*And see SETTLED LAND—Improvements.* 26.

83. — *Rents and royalties—Tenant for life impeachable for waste—Mining lease—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 11, 12.*

A testator had agreed to grant mining leases. Dead rents had been paid and approaches made, but the leased coal was not actually reached until after the testator's death:—

*Held*, that though the tenant for life was impeachable for waste, the dead rents payable and the royalties to be paid belonged to him as income. Sect. 11 of the Settled Land Act, 1882, does not apply to a mining lease granted by a tenant for life for giving effect to a contract entered into by a predecessor who was absolute owner. *In re KEMEYS-TYNTE. KEMEYS-TYNTE v. KEMEYS-TYNTE* — **North J. [1892] 2 Ch. 211**

**Mortgages.**

84. — *Colliery in possession—Tenant for life—Income.*

Interest on a mortgage of a colliery being in arrear, testator (the mortgagee) went into possession prior to the date of his will. His executors commenced proceedings for foreclosure; a receiver was appointed who worked the colliery, and profits were made and paid into Court. A foreclosure decree was made, and the fund in Court transferred to the credit of the administration action, and apportioned as between capital and income, as follows: The amount which, with interest at 4 per cent. from testator's death to date of transfer to credit of this action, equalled the fund transferred to be deemed capital, the remainder of the fund to go to the tenants for life. *In re GODDEN. TEAGUE v. FOX* — **North J. [1893] 1 Ch. 292**

85. — *Compound settlement—Settlement—Subsequent settlement of other land subject to mortgages upon identical trusts—Payment off of*

**SETTLED LAND (Mortgages)—continued.**

*mortgages by mortgage of lands comprised in both settlements—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1; 1890 (53 & 54 Vict. c. 69), s. 11.*

Where an estate A has been settled, and afterwards by a separate instrument the equity of redemption in an estate B is settled on like trusts, the two settlements form one compound settlement within s. 2, sub-s. 1, of the Settled Land Act, 1882; and when the mortgage on estate B has to be paid off, the moneys required for that purpose may be raised by a mortgage upon both estates A and B by the tenant for life under s. 11 of the Settled Land Act, 1890.

*In re Mundy's Settled Estates*, [1891] 1 Ch. 399, and *In re Byng's Settled Estates*, [1892] 2 Ch. 219, discussed. *In re Lord Monson's Settled Estates* - - - **Romer J. [1898] 1 Ch. 427**

**86. — Interest—Will—Devise of onerous and beneficial property.**

A tenant for life of estates settled by will:—*Held*, bound to keep down interest in respect of charges on the several parts of the estates out of the income of the whole. **FREWEN v. LAW LIFE ASSURANCE SOCIETY** - - - **North J. [1896] 2 Ch. 511**

— Investment on.

*See SETTLED LAND—Investments.* 61.

**87. — Power of mortgaging to pay off incumbrances — Discretion—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 53; 1890 (53 & 54 Vict. c. 69), s. 11.**

Under s. 11 of the Settled Land Act, 1890, a tenant for life has power to mortgage the unmortgaged part of settled land in order to pay off the incumbrances on the other part, but he is not justified in trying to preserve a heavily incumbered estate by mortgaging it if he thereby sacrifices the interest of existing incumbrancers. A tenant for life proposed to mortgage unincumbered lands to pay off incumbrances on other properties. Certain annuitants applied for an injunction on the ground that the effect of the mortgage would be injurious to their security, since ss. 20, 21 of the Settled Land Act, 1882, gave such a mortgage priority over all annuities and charges created by the settlement:—

*Held*, that having regard to s. 53 of the Act of 1882 and the circumstances, the Court could and should interfere to restrain the tenant for life from effecting the proposed mortgage. **HAMPDEN v. EARL OF BUCKINGHAMSHIRE**

**C. A. [1893] 2 Ch. 531**

Referred to by **Romer J. In re Lord Monson's Settled Estates, [1898] 1 Ch. 427, 432.**

— Redemption—Consent of mortgagee as owner of limited estate.

*See MORTGAGE—Redemption.* 71.

**88. — Presumption of intention to keep alive charge—Payment of charge on inheritance—Relation of parent and child—Tenant for life and remainderman.**

The presumption that a tenant for life who pays off a charge upon the inheritance intends to keep the charge alive for his own benefit is not rebutted by the mere fact that the relation of

**SETTLED LAND (Mortgages)—continued.**

parent and child subsists between the tenant for life and the remainderman. *In re HARVEY. HARVEY v. HOBDAV* **C. A. [1896] 1 Ch. 137**

**89. — Reversion, Mortgage of—Arrears of interest—Foreclosure and redemption—Real Property Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), ss. 2, 42; 1874 (37 & 38 Vict. c. 57), ss. 1, 2—Waste by tenant for life—Dilapidation of buildings—Depreciation of marsh lands—Damages—Statute-barred debt—Limitation Act, 1623 (21 Jac. 1, c. 16)—Retainer.**

A testator, who died in 1878, devised some cottages and marsh lands upon trust for his wife for life, she out of the rents and profits keeping "the premises in good tenantable repair and condition," and after her death upon trust for C. in fee. In 1882 C. mortgaged his reversion in fee to the widow, who was in receipt of the rents and profits of the property as tenant for life. She died in 1897, and her executors brought an action of foreclosure against C., who had made no payment either of principal or interest since the date of the mortgage, and who set up the Statutes of Limitations. The cottages were out of repair and the marsh lands had been depreciated to some extent by mowing:—

*Held*, that C. was entitled to damages for non-repair of the cottages, but not for depreciation of the marsh lands, the tenant for life in her dealings with the latter having followed the course that had been adopted by the testator:

*Held*, also, that C. on redeeming was not liable to six years' arrears of interest prior to the date of the writ, but must pay all arrears of interest with principal and costs from the date of the mortgage.

*Du Vigier v. Lee*, (1843) 2 Hare, 326, and *Mason v. Broadbent*, (1863) 33 Beav. 296, discussed; and *Edmunds v. Waugh*, (1866) L. R. 1 Eq. 418, and *In re Marshfield*, (1887) 34 Ch. D. 721, followed on this point.

The tenant for life had lent C. sums of money by way of loan without security, which loans were statute-barred at the date of her death:—

*Held*, that her executors were not entitled to retain the damages assessed for non-repair of the cottages in discharge of the statute-barred loans.

*Courtenay v. Williams*, (1844) 3 Hare, 539, discussed on this point. **DINGLE v. COPPEN. COPPEN v. DINGLE** - **Byrne J. [1899] 1 Ch. 726**

*And see Addendum to that vol.*

**Option.****90. — Money in hands of trustees liable to be laid out in land—Option—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 33.**

Under s. 33 of the Act of 1882, a tenant for life has the same power over capital money in the hands of trustees liable to be laid out in land as he has over settled land. He has an option to direct how the money shall be invested or applied. *In re GEE. PEARSON-GEE v. PEARSON*

**Chitty J. [1895] W. N. 90.**

— Purchase-money.

*See SETTLED LAND—Sale.* 119, 120.

**SETTLED LAND—continued.****Ponds.****91. — Ponds—Liability—Repairs—Cleansing ornamental lake.**

Cleansing an ornamental lake or pond is not a duty imposed on a tenant for life by the ordinary repairing clause in a settlement by will. *DASHWOOD v. MAGNIAC* (No. 1) — — — **C. A.**

(*Kay L.J. diss.*) [1891] 3 Ch. 306

Referred to by *Stirling J.* In *re Chaytor*, [1900] W. N. 181; [1900] 2 Ch. 804.

**Possession.****92. — Assignee of equitable life estate—Letting into possession—Bankruptcy of tenant for life.**

Summons by the assignee of an equitable life interest in a freehold farm, asking to be let into possession and receipt of the rents and profits:—

*Held*, that the applicant was not entitled as of right to possession, but it was a matter for the discretion of the Court: *Taylor v. Taylor*, (1875) L. R. 20 Eq. 297, 303; In *re Bagot*, [1894] 1 Ch. 177. The Court has jurisdiction, upon taking sufficient security, to allow a person in the position of a tenant for life to enter into possession. Applicant ordered to pay the costs of remaindermen, who had been served by direction of the master, and had given the Court valuable assistance.

In *re Newen*, [1894] 2 Ch. 297, 309, not followed upon this point.

The costs of the bankrupt, who had no interest in the matter, disallowed. In *re HUNT. POLLARD v. GEAKE* — — — **Stirling J.** [1900] W. N. 65

**93. — Conditional limitation—Person having the powers of a tenant for life—"In possession"—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 51, 58, sub-s. 1 (vi.).**

By a settlement dated in 1872 a freehold house was limited to trustees for a term of ninety-nine years upon trust to permit the premises to be personally occupied by C. during her life and so long as she should remain a widow and be desirous of personally occupying the same, and after her death or second marriage then over. The trust in C.'s favour came into operation in 1894, but she never occupied or expressed any wish to occupy, and in 1896 joined with other persons interested in the premises in granting a lease of them for the term of five years:—

*Held*, that, during the continuance of the lease, C. could not be regarded as tenant for life in possession for the purposes of the Settled Land Act.

*Semble*, that, upon the determination of the lease, if she exercised her right of personal occupation, she would have the powers of a tenant for life under s. 58 of the Settled Land Act, 1882. In *re EDWARDS' SETTLEMENT*

**Stirling J.** [1897] 2 Ch. 412

**94. — Equitable tenant for life—Right to possession—Discretion of Court—Costs—Form of order—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 63; 1884 (47 & 48 Vict. c. 18), s. 7, sub-s. ii.**

Trustees held freehold land on trust for sale, with power to postpone sale, and with extensive powers of management:—

*Held*, that the Court had a judicial discretion,

**SETTLED LAND (Possession)—continued.**

which was not abrogated by the Settled Land Acts, which it could exercise by letting the tenant for life into possession, and to exercise all the powers conferred by the Acts except the power of sale and exchange, with power for the trustees to apply to resume possession in case they should decide to sell. In *re BAGOT'S SETTLEMENT. BAGOT v. KITTOE*

**Chitty J.** [1894] 1 Ch. 177

Referred to by *Kekewich J.* In *re Newen*, [1894] 2 Ch. 297, 302.

Referred to by *Stirling J.* In *re Hunt*, [1900] W. N. 65.

**95. — Equitable Tenant for life—Right to possession—Estate and Title deeds.**

An equitable tenant for life, whose estate is determinable on alienation or bankruptcy, is entitled, if the estate and the trustees can be adequately protected, to be let into possession of the estate, and consequently, as a general rule, to the custody of the title deeds. Form of order.

In *re WYTHES. WEST v. WYTHES*

**Kekewich J.** [1893] 2 Ch. 369

Form of minutes in, followed by *Chitty J.* In *re Bagot's Settlement*, [1894] 1 Ch. 177, 184.

**96. — Equitable tenant for life—Right to possession—Female tenant.**

An equitable tenant for life of a settled estate is entitled to be let into possession on a proper case being made, but the order must contain terms protecting the trustees, especially where the property is subject, as in the case of leaseholds, to onerous covenants. The application must be by originating summons, and served on the trustees, and any mortgagees of the tenant for life's interest, but not under ordinary circumstances on the reversioner. But where the tenant for life has mortgaged his interest the mortgagee can insist on the title deeds being retained by the trustees. A female tenant for life is not necessarily disqualified from being let into possession. In *re NEWEN. NEWEN v. BARNES*

**Kekewich J.** [1894] 2 Ch. 297

Referred to by *Stirling J.* In *re Hunt*, [1900] W. N. 65.

— Possessory title—Rights of remaindermen—Statutes of Limitations.  
See *ESTOPPEL*. 10.

**98. — Term—Trust for management and accumulation—Tenant for life—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 3, 7; s. 53; s. 58, sub-s. 1, cls. (vi.) (ix.).**

A portion of family estates was subject to a term, created in 1868, in trustees to manage and apply the net income in paying off mortgages, on which large sums were still due. The Court put the tenant for life into possession of the land subject to the term, he giving security to pay the net income over to the trustees. In *re MONEY KYRLE'S SETTLEMENT. MONEY KYRLE v. MONEY KYRLE* — — — **Cozens-Hardy J.** [1900] 2 Ch. 839

**Powers.**

— Powers under Settled Land Acts.  
See *SETTLED LAND, passim*.

**SETTLED LAND (Powers)—continued.**

99. — *Settled land—Annuity to widow during residence—Reduction of annuity on ceasing to reside—Will—Gift of leasehold house to widow—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 51, 58.*

A testator gave his property to trustees upon trust, as to his leasehold house, to permit his widow to occupy the same, and out of his residuary estate to pay her during widowhood the sum of £50l. (afterwards by codicil increased to 1000l.) so long as she continued to reside in the house. The will contained a proviso that if the widow removed from the house before the expiration of the lease the annuity should be reduced to 600l. On a summons taken out under the Settled Land Acts:—

*Held*, that the widow was tenant for life of the house within the meaning of the Acts, and that the proviso as to the reduction of the annuity was void under s. 51 of the Act of 1882.

*In re Paget's Settled Estates*, (1885) 30 Ch. D. 161, and *In re Ames*, [1893] 2 Ch. 479, discussed. *In re EASTMAN'S SETTLED ESTATES*

**Romer J. [1898] W. N. 170 (15)**

Followed by North J. *In re Carne's Settled Estates*, [1899] 1 Ch. 324.

**Practice.**

100. — *Married woman—Separate examination—Title of petition—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21 (9), 32.*

A petition for payment out of Court of the proceeds of sale of a testator's real estate to the trustees of his will should be entitled under the Settled Land Acts as well as the Settled Estates Act, 1877.

A petition for the payment out of Court of proceeds of real estate settled by the testator, to the trustees of his wife, some of the beneficiaries being married women, can be granted with dispensation from separate examination of the married women. *In re WARD'S SETTLED ESTATES*

**Kekewich J. [1895] W. N. 41**

— *Married woman—Separate examination—Practice.*

*See HUSBAND AND WIFE—Practice. 1.*

101. — *Parties—Petition—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 24.*

To a petition under the Settled Estates Act, 1877, where there are subsidiary or derivative settlements by way of trust for sale executed by beneficiaries of the original settlement, the beneficiaries of such subsidiary settlements are not necessarily parties to the petition. *In re HODGE'S SETTLED ESTATES* **Kekewich J. [1895] W. N. 69**

**Rent-charges.**

102. — *Payment of past instalments—Repayment to tenant for life—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 21 (ii.), (iii.); 1887 (50 & 51 Vict. c. 30), ss. 1, 2, 3; 1890 (53 & 54 Vict. c. 69), s. 15.*

Where improvements authorized by the Settled Land Acts have been effected upon settled land and paid for with money borrowed and repayable by a rent-charge under the Improvement of Land Act, 1864, the Court cannot under s. 15

**SETTLED LAND (Rent-charges)—continued.**

of the Act of 1890 direct the trustees to apply capital moneys in their hands in repaying to the tenant for life any instalments of such rent-charge paid by him before the date at which he has required provision to be made for payment or redemption under the Act of 1887. *In re DALISONS' SETTLED ESTATES*

**Stirling J. [1892] 3 Ch. 522**

Considered by Kekewich J. *In re Marquis of Bristol's Settled Estates*, [1893] 3 Ch. 161; *In re Verney's Settled Estates*, [1898] 1 Ch. 508, 513.

103. — *Purchase or redemption—Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), s. 60—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 21, sub-ss. 2, 3; ss. 25, 26; 1887 (50 & 51 Vict. c. 30), ss. 1, 2, 3.*

A tenant for life borrowed, between 1881 and 1885, under the Land Improvement Act, 1864, money for "improvements" and the repayment was secured by rent-charges. Between 1883 and 1885 some of these rent-charges were bought up by the trustee under s. 60 of the Act of 1864. In 1888 the portion of the estate on which the improvements were effected was sold, and the rent-charges shifted to the unsold portions:—

*Held*, inter alia, that the instalments of rent-charges falling due after the passing of the Settled Land Act, 1887, and after the question had been raised by the tenant for life, should be provided for out of capital moneys. *In re HOWARD'S SETTLED ESTATES*

**Stirling J. [1892] 2 Ch. 233**

Considered by Kekewich J. *In re Earl Strafford and Maples*, [1895] W. N. 147 (10). This case reversed by C. A. [1896] 1 Ch. 235.

104. — *Redemption—Repayment to tenant for life—Improvement—Evidence—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 25; 1887 (50 & 51 Vict. c. 30), s. 1.*

The tenant for life of settled estates, in order to obtain a reduction of the rate of interest payable on money borrowed for improvements and secured by rent-charges under the Improvement of Land Act, 1864, caused the rent-charges to be transferred to an insurance society on payment to the original holders of a lump sum in consideration of their consenting to the transfer:—

*Held*, that the repayment of this sum to the tenant for life would not be an expenditure "in redeeming" the rent-charges, "or otherwise providing for the repayment thereof," within s. 1 of the Settled Land Act, 1887, and therefore ought not to be made out of capital money in the hands of the trustees of the settlement.

The fact that the Commrs. under the Act of 1864 sanctioned an improvement, in respect of which a rent-charge was created, as coming within a provision in that Act substantially identical with a provision in the Settled Land Act, 1882, was treated by the Court as evidence that such improvement was within the last-mentioned provision. *In re VERNEY'S SETTLED ESTATES*

**Kekewich J. [1898] 1 Ch. 508.**

105. — *Tenant for life—Improvement—"Incumbence"—Sale of part of land—Exoneration—Contribution—Board of Agriculture—Sanction by—Tithe Act, 1812 (5 & 6 Vict. c. 54), s. 16—Im-*

**SETTLED LAND (Rent-charges)—continued.**

*provement of Land Act, 1864* (27 & 28 Vict. c. 114), ss. 15, 63, 68, 69—*Settled Land Act, 1882* (45 & 46 Vict. c. 38), ss. 5, 30—*Purchase-money—Interest*  
—*Conditions of sale*—“*Wilful default*.”

“Incumbrance” in s. 5 of the *Settled Land Act, 1882*, includes a rent-charge created under the improvement of *Land Act, 1864*; and therefore where settled land is subject to such a rent-charge, the tenant for life can, on a sale of part of the land, effectually exonerate the part sold by obtaining the consent of the owner of the rent-charge to charging the whole of it upon the unsold land under s. 5 of the *Act of 1882*, and the intervention of the Board of Agriculture under ss. 68 and 69 of the *Act of 1864* is unnecessary.

Decision of Kekewich J. reversed.

As the exoneration operates as an effectual discharge of the land sold, the purchaser is not liable, under s. 63 of the *Act of 1864* and s. 16 of the *Tithe Act, 1842* (5 & 6 Vict. c. 54), to contribution at the instance of owners of unsold land subject to the rent-charge.

*Per Kekewich J.*: Where a purchase cannot be completed by the appointed day through the failure of the vendor to obtain the concurrence of necessary parties, he cannot claim interest from the purchaser under the usual condition requiring the purchaser to pay interest on the purchase-money “if from any cause whatever, other than the wilful default of the vendor,” the purchase is not completed by the appointed day, the delay being attributable to the vendor’s “wilful default.”

*In re Helling and Merton’s Contract*, [1893] 3 Ch. 269, followed. *In re EARL OF STRAFFORD AND MAPLES* - C. A. [1896] 1 Ch. 235

**Repairs.****106. — Chargeable to Capital—Settlement.**

Necessary repairs on real estate purchased in accordance with a power in a testamentary settlement of personalty, by the direction or with the consent of the tenant for life, to invest in (inter alia) land to be held as personal estate:—

*Held*, chargeable to capital. *In re FREEMAN. DIMOND v. NEWBURN* North J. [1898] 1 Ch. 28

**107. — Covenants—Leaseholds—Specific bequest—Liability to pay rent and perform covenants.**

A tenant for life of leaseholds, specifically bequeathed by the will of a testator who was assignee of the lease under which the property is held, is bound, during the continuance of her interest, as between herself and the testator’s estate, to pay the rent reserved by the lease, and perform the covenants and conditions contained in it.

*In re Betty*, [1899] 1 Ch. 821, followed. *In re Tomlinson*, [1898] 1 Ch. 232, not followed. *In re GJERS. COOPER v. GJERS*

Kekewich J. [1899] W. N. 77; [1899] 2 Ch. 54

**108. — Covenants—Liability—Insurance—Equitable tenant for life.**

An equitable tenant for life of leaseholds under a will is bound, during the continuance of his interest, as between himself and his testator’s estate, to perform the tenant’s continuing obliga-

**SETTLED LAND (Repairs)—continued.**

tions under the lease; but he is not liable for repairs necessary at the commencement of his interest, or in respect of breaches of covenant which had arisen before the testator’s death.

*In re Courtier*, (1886) 34 Ch. D. 136, considered. *In re Tomlinson*, [1898] 1 Ch. 232, differed from. *In re BETTY. BETTY v. ATTORNEY-GENERAL* - North J. [1899] W. N. 57; [1899] 1 Ch. 821

Followed by Kekewich J. *In re Gjers*, [1899] 2 Ch. 54. See preceding Case.

**— Leaseholds.****See Cases under SETTLED LAND—Leaseholds.****109. — Mansion-house, Repairs of—Payment of costs out of capital—Jurisdiction of Court—Settled estate.**

In this case it was held that the evidence did not shew that the proposed repairs were in the nature of salvage the cost of which it was impossible to pay otherwise than out of capital, and that therefore the Court had (independently of the special provisions of the will) no power under its general jurisdiction to direct the payment of the costs out of capital:—

*Held*, also, that the power given by the will to the trustees, to make out of the income or capital of the personal estate any outlay for the benefit of the estate, did not authorize the trustees to make out of capital any payment which would otherwise have been properly payable only out of incomes or vice versa.

*In re De Teissier*, [1893] 1 Ch. 153, followed. *In re Jackson*, (1882) 21 Ch. D. 786; *In re Household*, (1884) 27 Ch. D. 553; and *Conway v. Fenton*, (1888) 43 Ch. D. 512, distinguished. *In re LORD DE TABLEY. LEIGHTON v. LEIGHTON* North J. [1896] W. N. 162 (16)

Referred to by Kekewich J. *In re Montagu*, [1897] 1 Ch. 685 at p. 691. This case was affirmed [1897] 2 Ch. 8.

**Sale.**

— Apportionment of proceeds of sale—Sale.

**See Cases under SETTLED LAND—Apportionment.**

— Attempted sale, Costs of.

**See SETTLED LAND—Costs. 51.**

— Conversion—Real estate—Partition Action—Sale—“Persons absolutely entitled.”

**See PARTITION. 3.**

**110. — Conversion—Real estate—Postponement of sale—Interim rents—Enjoyment in specie—Tenant for life and remainderman—Settlement by way of trust for sale—Settled Land Act, 1882** (45 & 46 Vict. c. 38), s. 63.

Where by a will or settlement property is directed to be sold and converted and the proceeds held in trust for one for life and then for others, and, either in exercise of a power of postponement or without any impropriety, the sale is postponed, the person entitled to the life interest in the proceeds is, as regards real estate, entitled to the rents and profits thereof until sale, and is consequently to be deemed to be the tenant for



**SETTLED LAND (Sale)—continued.**

life thereof within s. 63 of the Settled Land Act, 1882.

*Yates v. Yates*, (1860) 28 Beav. 637, considered. *In re SEARLE. SEARLE v. BAKER*

**Kekewich J. [1900] 2 Ch. 829**

— Costs.

*See Cases under SETTLED LAND—Costs.*

**111. — Discharge of incumbrances—Sale of settled land—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. ii.; s. 22, sub-s. 2, 5; s. 53.**

A testator devised two estates, W. and S., to his son J. for life, remainder to such of J.'s children as should attain twenty-one, and his residuary estate to J. absolutely. W. was subject to a mortgage in fee. S. was unincumbered. J. sold part of S. under the Settled Land Act, and the money was applied in part-payment of the mortgage on W. J. died leaving only infant children. The contingent remainders failed as to S., but not as to W. The heir-at-law claimed to have a charge on W. for the money applied in reducing the mortgage:—

*Held*, by North J., that J.'s heir could not complain of the application of money applied by the direction of J., who ultimately became absolutely entitled to it:—

*Held*, by C. A., that there was only one settlement and one settled estate, and that the application of the money was within the powers of the Act of 1882. *In re FREME. FREME v. LOGAN* (No. 2) — C. A. [1894] 1 Ch. 1

**112. — Discretion of Court to allow sale—Tenants on estate—Mansion-house—Tenant for life in embarrassed circumstances—Appeal—Remaindermen opposing sale—Discretion of Court—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 3, 15, 50, 51, 53; 1890 (53 & 54 Vict. c. 69), s. 10, sub-s. 2.**

An estate including an old family mansion-house became vested under a settlement in a tenant for life, who was a young man in embarrassed circumstances, and too poor to reside on it. He contracted under the Settled Land Acts to sell it for a good price to a wealthy purchaser. A petition under s. 10 of the Act of 1890 for leave to sell the mansion-house was opposed by the remaindermen, who wished the mansion-house and demesne lands to remain in the family:—

*Held*, that the paramount object of the Settled Land Acts was the well-being of settled land, and that the Court must have regard to the interests of the persons from whose industrial occupation the rents and profits were derived as well as the interests of those entitled under the settlement, and that to refuse the sanction of the Court to the petition would be to defeat the object of the Legislature.

Decision of C. A. *In re Marquis of Ailesbury's Settled Estates*, [1892] 1 Ch. 506, affirmed. *Sub nom. BRUCE v. MARQUIS OF AILESURY*

**No. 1 H. L. (E.) [1892] A. C. 356**

Referred to by C. A. *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275, 288.

Referred to by North J. *In re Bishop of Bath and Wells*, [1899] 2 Ch. 138, 146.

Referred to by Div. Ct. *Att.-Gen. v. Coulson*, [1899] 2 Q. B. 253, 263.

**113. — Consent of assignee for value—Doubtful**

**SETTLED LAND (Sale)—continued.**

*title—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 31, sub-s. 3; 1890 (53 & 54 Vict. c. 69), s. 4.*

Where by a post-nuptial settlement the vendor had charged his life interest with an annuity in favour of his wife:—

*Held*, that without the wife's consent the title was too doubtful to be forced upon the purchaser. *In re MARQUIS OF AILESURY'S SETTLED ESTATES* (No. 2) **Stirling J. [1893] W. N. 140**

**114. — Exclusion of statutory power of sale—"Express declaration"—Trust for sale—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 38.**

A testator expressed his will to be that a trust for sale created by him should not be exercised so far as it related to his mineral lands during the lives of certain persons:—

*Held*, that this direction was such "an express declaration" of intention within s. 38 of the Settled Estates Act, 1877, as to prevent the Court from exercising its statutory powers. *In re PEAKE'S SETTLED ESTATES* (No. 1)

**North J. [1893] 3 Ch. 430**

Further heard by North J., [1894] 3 Ch. 520.

Considered by Kekewich J. *In re Newen*, [1894] 2 Ch. 297.

**115. — Fetter on power of sale—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 51.**

A testator settled real estate. His widow died in 1869, having bequeathed personal estate to be held on trust for the person entitled to the enjoyment of the settled real estate, with a proviso that in case of sale of the real estate, either during the life of a person then in being, or within twenty-one years from her death, her trust property should go over:—

*Held*, that in case of sale of the real estate under the Settled Land Acts the gift over was ineffectual. *In re SMITH. GROSE-SMITH v. BRIDGER* — North J. [1899] W. N. 12 (13); [1899] 1 Ch. 331

**116. — Frivolous proceedings to prevent sale—Jurisdiction to dismiss before hearing—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 15, 53.**

Where a sale by the tenant for life had been sanctioned by the H. L. the Court dismissed a subsequent action to restrain the sale on the ground of fraud, as an abuse of the process of the Court, there being no reasonable ground for such action. *BRUCE v. MARQUIS OF AILESURY* (No. 2) — **Stirling J. [1892] W. N. 149**

— Heirlooms.

*See HEIRLOOMS.*

— Infant—Trust to accumulate.

*See SETTLED LAND—Infants.* 56.

**117. — Married woman—Restraint on anticipation—Will—Settlement—Fee simple—Separate use—Tenant by the curtesy—Tenant for life—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1; s. 58, sub-s. 1 (viii.); s. 61, sub-s. 6—Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 8—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 39.**

Under a will certain real estate was vested in trustees in trust for A. for life, and on her death in trust for her children equally as tenants in common; the shares of daughters to be for their

**SETTLED LAND (Sale)—continued.**

separate use without power of anticipation. On a sale of the real estate upon A.'s death, two of the vendors who were married women claimed to convey as tenants for life within the meaning of the Settled Land Act, 1882. The purchaser contended that they must convey as absolute owners and obtain an order under s. 39 of the Conveyancing Act, 1881 :—

*Held*, in an action for specific performance, that the husbands, if they survived, taking an estate by the curtesy by virtue of the general law and not under the will, and the estate given to the married women being one and entire with no limitation to the husbands, the effect of the restraint on anticipation was not to bring the case within s. 2 of the Settled Land Act, 1882, as creating a settlement whereby the estate was limited to persons by way of succession; and, therefore, that the married women were not tenants for life within the meaning of the Act. *BATES v. KESTERTON* - - - *Chitty J.*  
[1896] 1 Ch. 159

— Minerals, Sale of lands apart from—Service on remainderman.

*See* TRUSTEE—Practice. 89.

— Mortgages—Tenant for life—Person having powers of tenant for life—Tenant for life subject to term for securing incumbrances — Possession — Title-deeds — Custody—Sale—Application of capital moneys—Discharge of incumbrances.  
*See* SETTLED LAND—Capital Money. 37.

119.—*No tenant for life—Option—Application of purchase-money—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 33.*

Although there was no tenant for life, within the meaning of the Settled Land Act, 1882, to exercise the option given by s. 33, the Court directed payment of purchase-money of land, sold under the Settled Estates Act, 1877, to be applied as capital money arising under the Settled Land Act, 1882. *In re TESSEYMAN'S SETTLED ESTATE* North J. [1897] W. N. 168 (11)

120.—“Option”—Payment of money into court—Tenant for life—Sale by—Trustees for the purposes of the Act—Vendor and purchaser—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 22.

Section 22 of the Settled Land Act, 1882, which confers on a tenant for life the option of capital money arising under the Act being paid either to the trustees of the settlement or into court, presupposes that there are trustees for the purposes of the Act in existence.

Therefore, where a vendor selling as tenant for life enters into a contract for the sale of settled land, he cannot, under s. 22, require the purchaser to pay the purchase-money into court where no trustees for the purposes of the Act are in existence when the time comes for the completion of the contract, and the contract will not be enforced.

Where, however, a purchaser pays his purchase-money into court in ignorance of the fact that there are no trustees in existence, he will get a good title. *In re FISHER AND GRAZEBROOK'S CONTRACT* - - - *Romer J.* [1898] 2 Ch. 660

**SETTLED LAND (Sale)—continued.**

121.—*Restraint of sale of land, Settlement of personality in—Validity.*

A testator, after settling real estate, gave the trustees a sum of money with directions to spend the income in keeping up a sea wall and ornamental grounds for the benefit of the settled realty. The will, however, provided that if any of the realty were sold, the settled personality should sink into the residue :—

*Held*, that this provision against alienation was void under s. 51 of the Settled Land Act, 1882, and that the tenant for life who had sold the real estate was still entitled to the income of the personal estate. *In re AMES. AMES v. AMES.* North J. [1893] 2 Ch. 479

122.—*Trust for sale.*

Leave given under s. 7 of the Act of 1884 to tenants for life to sell land held in trust for sale, where there were no interests prior to the interests of the tenants for life of the income. *In re HARDING'S ESTATE*

North J. [1891] 1 Ch. 60

— Trust to pay or permit tenant for life to receive rents and profits.

*See* WILL—Charge of Debts, &c. 33.

— Trustees.

*See* SETTLED LAND—Trustees.

123.—*Undivided share in land—Power to sell—Tenant for life—Vendor and purchaser—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 6-10; s. 19.*

Where under a will land is devised in moieties and each moiety is separately settled by the will itself the tenant for life of one undivided moiety can sell his moiety under the powers of the Settled Land Act, 1882, without the concurrence of the person or persons entitled to or having the power or right of disposition over the other undivided moiety.

*In re Collinge's Settled Estates*, (1887) 36 Ch. D. 516, overruled.

Appeal from *Romer J.* dismissed. *COOPER v. BELSEY* - - - *C. A.* [1899] W. N. 20 (12); [1899] 1 Ch. 639

**“Settlement.”**

124.—“Act of Parliament”—“Settlement”—Will—Next of kin—Executor of deceased next of kin—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 5; s. 58, sub-s. I. cl. v.—*Thellusson Act* (39 & 40 Geo. 3, c. 98), s. 1.

The words “Act of Parliament” in the definition clause, s. 2, sub-s. 1, of the Settled Land Act, 1882, are not confined to private Acts of Parliament, but include general Acts, such as the *Thellusson Act*.

So where under a will a direction to accumulate was void under the *Thellusson Act*, and the accumulations went to the testator's next of kin :—

*Held*, that the will and the Act together constituted a settlement within the meaning of the Settled Land Act, 1882.

The executrixes of a deceased next of kin and the surviving next of kin were under the joint operation of the will and the *Thellusson*

**SETTLED LAND** ("Settlement")—*continued*.

Act entitled for the life of another to receive the rents directed to be accumulated:—

*Held*, that they had jointly the powers of a tenant for life within the meaning of the Settled Land Act, 1882. *VINE v. RALEIGH*

Chitty J. [1896] 1 Ch. 37

— Compound settlement—Appointment of trustees.

See Cases under **SETTLED LAND** — Trustees.

— 125. — *Compound "settlement"—Restraint on anticipation—Conveyance—Parties—Jointures—Settled Land Act, 1882* (45 & 46 Vict. c. 38), ss. 2, 3, 20, 21, 22, 31, 44.

Where land was settled by a series of instruments, the tenant for life under the latest settlement contracted to sell discharged from prior incumbrances, including jointure rent-charges, one of which the jointress was restrained from anticipating:—

*Held*, that he could, the various instruments constituting a "settlement" within s. 2, sub-s. 1, of the Act of 1882:

*Held*, also, that the purchaser could not require the concurrence in the conveyance either of the jointress or of the trustees of the terms securing the jointure. The Court directed payment of the purchase-money to trustees of the compound settlement, who were to be appointed for the purposes of the Act, and directed release of the restraint on anticipation to enable the jointress to consent to the payment of incumbrances over which her jointure had priority. The rent-charges were to be paid out of the income of the purchase-money. *In re MARQUIS OF AILESBUURY AND LORD IVEAGH*

Stirling J. [1893] 2 Ch. 345

Observed upon by Stirling J. *In re Earl of Stamford*, [1896] 1 Ch. 288.

Distinguished by Stirling J. *In re Du Cane and Nettlefold's Contract*, [1898] 2 Ch. 96.

Approved by C. A. *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275.

126. — *Ecclesiastical land—"Settlement"—"Succession"—Land granted by bishop to grantee for life, but during his tenure of an ecclesiastical office—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 2, sub-s. 1.

Some houses in a cathedral city had from time immemorial been granted by the bishop of the diocese for the time being to one of the ecclesiastical dignitaries, for his life. The deed of grant was called a "collation," and the grantee was "inducted" by the registrar of the diocese into possession of the property.

By the last deed of collation the bishop granted the houses to the then archdeacon of the city for his life, but so long only as he should continue to be archdeacon. On the deed was indorsed a certificate signed by the registrar that five days after the date of the deed the grantee was duly inducted by him into the actual corporal possession of the property. Upon a summons by the archdeacon, with the approval of the bishop, asking that trustees might be appointed for the purposes of the Settled Land Act of the settlement created by the deed, the object being that

**SETTLED LAND** ("Settlement")—*continued*.

the archdeacon, as tenant for life, or having the powers of a tenant for life under the Act, might sell the houses, and that the proceeds of sale might be invested in the names of trustees, and the income thereof paid to the persons who would have been from time to time entitled to the rents of the houses if unsold:—

*Held*, that this being ecclesiastical property, the Settled Land Act did not apply to it.

The application was accordingly refused.

Observations of Stirling J. in *Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348, approved and adopted. *In re BISHOP OF BATH AND WELLS* — — North J. [1899] W. N. 91; [1899] 2 Ch. 138

127. — *Tenant for life—Title—Vendor and purchaser—Limitation of various interests to same person by way of succession—Person entitled to income—"Settlement"—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 2, sub-s. 1; s. 58, sub-ss. 1 (ix.) 2.

Real estate stood limited to trustees upon trust for a married woman for her life for her separate use without power of anticipation, and after her death to such uses as she should by will appoint, and in default to the use of herself in fee; and she contracted to sell the property to a purchaser. The Court was not satisfied that these limitations created a "settlement" within s. 2 of the Settled Land Act, 1882, but *held*, that the married woman had the powers of a tenant for life within s. 58, sub-s. 1 (ix.), of the same Act, and could make a title as such to the purchaser. *In re POCOCK AND PRANKERD'S CONTRACT* — Stirling J. [1896] 1 Ch. 302

**Title-deeds.**

— Custody of—Vendor and Purchaser.

See Cases under **VENDOR AND PURCHASER**.

— Title-deeds.

— Delivery of—Right to possession.

See **SETTLED LAND—Possession**. 95—97.

**Trustees.**

128. — *Appointment of trustees—Undivided moiety—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 38.

Where the Court is satisfied that a sale is impossible, the Court is not bound to appoint trustees for the purposes of the Settled Land Acts.

Where W., the tenant for life of an undivided moiety of settled lands, desired to sell the same, the Court, although of opinion that a sale was not probable, appointed trustees, and ordered the costs of the application to be charged on the settled land subject to existing mortgages. *WILLIAMS v. JENKINS* (No. 2)

Kekewich J. [1894] W. N. 176

129. — *Colonial trustees, Appointment of—Infant beneficiary—Sale of settled land—Form of order—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 8; ss. 38, 59, 60—*Rules under the Settled Land Act, 1882, Appendix, Form xix.*

Where an infant domiciled in Australia was

**SETTLED LAND (Trustees)—continued.**

entitled under a will to a small share of real property in this country which the co-owners proposed to sell, and in order to effectuate the sale of the infant's interest it was necessary to apply to the Court for the appointment of trustees under the Settled Land Act, 1882, the Court, upon proof that the sale was for the benefit of the infant, appointed two persons domiciled in Australia trustees of the settlement effected by the will for the purposes of the Act.

The form of order in *In re Wright's Trusts*, (1883) 24 Ch. D. 662, followed. *In re SIMPSON*. *In re WHITCHURCH* C. A. [1897] 1 Ch. 256

**130. — Compound settlement—Appointment of trustees for purposes of Settled Land Act—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1; s. 50, sub-s. 3; 1890 (53 & 54 Vict. c. 69), s. 4, sub-s. 1.**

A testator by his will, made in 1828, gave his real estate to his granddaughter for her life, with remainder to her first and other sons successively in tail male. And he empowered her, either before or after her marriage with any husband, by deed or will to appoint to such husband for his life, to take effect immediately after her decease, a yearly rent-charge not exceeding 600*l.*, to be charged on the devised property, with power to limit a term for securing the same. And also by deed or will to charge the property with portions for the younger children of the granddaughter to the extent of 10,000*l.*, with power to limit a term for the raising and securing of the portions. After the death of the testator the granddaughter married three times.

In 1866, the entail created by the will was barred, and the property was resettled to such uses as the third husband, the wife, and her son by her first husband should appoint, and in default of appointment to the uses of the testator's will. By a settlement made in 1871, on the marriage of the daughter of the granddaughter by her second husband, the third husband and his wife demised part of the settled property to trustees for 100 years from the date of the daughter's marriage (if her mother should so long live) upon trust to raise out of the income two annual sums, to be held respectively on the trusts of a settlement of even date.

In 1894, the Court appointed two trustees for the purposes of the Settled Land Act of the will of the testator and the resettlement of 1866.

The granddaughter and her third husband, as tenants for life, desired to sell part of the settled estates. The married daughter was still living:—

*Held*, that the will of the original testator, the three settlements made by the granddaughter, the deed of resettlement and the settlement made on the marriage of the daughter, together constituted the settlement of the estates, and that, in order that the tenants for life might be able to exercise the powers conferred by the Settled Land Act, trustees for the purposes of the Act must be appointed of that compound settlement.

The trustees appointed in 1894 were accordingly so appointed.

*In re Meade's Settled Estates*, [1897] 1 I. R.

**SETTLED LAND (Trustees)—continued.**

121, approved and followed. *In re TIBBITTS' SETTLED ESTATES* - North J. [1897] 2 Ch. 149

Distinguished by Stirling J. *In re Keck and Hart's Contract*, [1898] 1 Ch. 617; *In re Du Cane and Nettlefold's Contract*, [1898] 2 Ch. 96.

**131. — Compound settlement—Sale by tenant for life—Instrument affecting interests created by original settlement—Appointment of trustees of compound settlement—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2, 3, 20, 22, 38, 45, 50—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 4.**

As a general rule it is not necessary, whenever a deed has been executed affecting the interests created by an original settlement, so that that settlement is no longer the only instrument "under or by virtue of which the land stands limited for the time being to or in trust for persons by way of succession," to appoint trustees of a compound settlement constituted by the original settlement and the subsequent deed. Sect. 4 of the Settled Land Act, 1890, is not to be read as providing that an assignment made by a tenant for life of settled land, in consideration of marriage or by way of family arrangement, is to be deemed one of the instruments creating the settlement for all the purposes of the Act. It is limited to the purpose of excluding the operation of s. 50 of the Settled Land Act, 1882, altogether. Upon a sale, therefore, under the powers of the Settled Land Acts, by a tenant for life who has made such an assignment, it is not necessary to appoint trustees of the settlement constituted by the original deed and the instrument effecting the assignment; but the trustees of the original settlement, having powers of sale, or appointed for the purposes of the Settled Land Acts, are competent to receive and give receipts for the purchase-money.

*In re Tibbits' Settled Estates*, [1897] 2 Ch. 149; *In re Meade's Settled Estates*, [1897] 1 I. R. 121; and *In re Marquis of Ailesbury and Lord Iveagh*, [1893] 2 Ch. 345, distinguished. *In re DU CANE AND NETTLEFOLD'S CONTRACT*

Stirling J. [1898] 2 Ch. 96

Approved of by C. A. *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275, 296.

**132. — Compound settlement—Settlement—Creation of jointure and portions charges—Resettlement—Limitation of new life estate without in terms restoring former life estate—Title—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1; s. 20, sub-s. 1, 2; s. 50; s. 53, sub-s. 1 (iv.).**

By a deed dated in 1861, lands were settled to the use of A. for life with remainder to his first and other sons successively in tail male. In exercise of a power reserved to him by this deed, A., upon his marriage in 1865, by deed charged the lands with a jointure rent-charge for his wife, and with portions for his younger children, both charges being secured by terms of years in the usual way. In 1889, in order to carry out a family arrangement, A. and B. (his eldest son) by deed No. 1 disentailed the lands, and by deed No. 2, in exercise of a power contained in deed No. 1, appointed them to the use of A. for life with remainders over, without, however, in terms expressing that this life estate was limited to A.

**SETTLED LAND (Trustees)—continued.**

in restoration or continuation of his former life estate :—

*Held*, that deed No. 2 of 1889 should not under the circumstances be treated as the only settlement of the property, but should be treated as constituting, together with the previous deeds of 1861, 1865, and 1889, a "settlement" within the meaning of the Settled Land Act, 1882, ss. 2 and 20; and *held* accordingly that it was competent for A. to sell and make a good title to the lands discharged from the jointure and portions, upon trustees of the settlement being appointed to receive the purchase-money.

The words in sub-s. 1 of s. 2 of the Act of 1882, "stands for the time being limited to or in trust for any persons by way of succession," have no technical force, and, according to their natural meaning, include the case of a jointure and portions for younger children limited to arise on or after the death of a tenant for life and the terms of years limited to trustees to secure them.

There may be at the same time a more comprehensive settlement consisting of several deeds, and a less comprehensive settlement constituted by one only of the deeds. The decision of Stirling J. on this point in *In re Du Cane and Nettiefold's Contract*, [1898] 2 Ch. 96, approved.

The effect of s. 50 of the Act of 1882 is that the statutory power of sale given to a tenant for life by the Act of 1882 is not annexed to his estate as in ordinary conveyancing, but is vested in him once for all by the Act, is incapable of being assigned or released, and continues exercisable by him notwithstanding assignment by him of his estate; so that, although the life estate of A. must be treated as a new life estate arising under the resettlement, the statutory power of sale vested in A. before the resettlement was not affected by it.

*Per V. Williams L.J.*: Where an estate in fee simple is settled in the ordinary way with the usual limitations and powers, it is doubtful whether the terms to secure jointure or portions, or the interests thereby secured, are limitations by way of succession within the meaning of s. 2 of the Settled Land Act of 1882, for such terms are mere charges overriding the successive limitations which exhaust the fee and come into operation contemporaneously with them.

Decision of Kekewich J., [1898] W. N. 49 (12), reversed. Decision of Stirling J. in *In re Marquis of Ailesbury and Lord Iveagh*, [1893] 2 Ch. 345, approved. *In re MUNDY AND ROPER'S CONTRACT*

C. A. [1899] W. N. 3 (8); [1899] 1 Ch. 275

133. — *Compound settlement—Settlement created by will—Jointure deeds executed by successive tenants for life under powers conferred by the will—Sale by tenant for life under Settled Land Acts—Appointment of trustees of compound settlement consisting of will and jointure deeds—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 2, 20; 1890 (53 & 54 Vict. c. 69), s. 4.*

By a will real estate was devised to A. for life with remainder to his first and other sons successively in tail male, with like remainders to B. and C. and then over. A. and C. were dead, and B. was tenant for life in possession. A., B. and C. had all executed jointure deeds under a

**SETTLED LAND (Trustees)—continued.**

power conferred by the settlement; that executed by A. was in operation and constituted an existing charge on the settled property. Trustees of the will had been appointed for the purposes of the Settled Land Acts. B. having contracted, under the powers conferred upon him by those Acts, to sell a portion of the estate, the purchaser insisted that trustees should be appointed of the compound settlement created by the will and the several jointure deeds :—

*Held*, (1) that the jointures were not charges upon the estate of the tenant for life within the meaning of s. 4 of the Settled Land Act, 1890; (2) that the will by itself constituted a settlement within the meaning of s. 2 of the Settled Land Act, 1882; (3) that under s. 20 of the same Act B. could convey the land discharged from the jointures, they being "estates, interests, or charges subsisting under the settlement" within that section; and consequently that B. could make a good title to the property, and the trustees of the will could give a good discharge for the purchase-money.

*In re Tibbitts' Settled Estates*, [1897] 2 Ch. 149, and *In re Meade's Settled Estates*, [1897] 1 I. R. 121, distinguished. *In re KECK AND HART'S CONTRACT* — Stirling J. [1898] 1 Ch. 617

Followed by Stirling J. in *In re Du Cane and Nettiefold's Contract*, [1898] 2 Ch. 96, 108.

134. — *Female trustees—Statutory power of sale.*

In a case where two ladies were trustees of settled land—

(A) The Court refused at first to authorize them to exercise the statutory powers of sale. *In re PEAKE'S SETTLED ESTATES (No. 1)*

North J. [1893] 3 Ch. 430

*See next Case.*

(B) When no other persons could be found willing to become trustees, the Court authorized them to exercise the statutory power of sale, "subject to the approval of the Court in each case," but such power was not given to "or other the trustees for the time being." *In re PEAKE'S SETTLED ESTATES (No. 2)*

North J. [1894] 3 Ch. 520

Considered by Kekewich J. *In re Newen*, [1894] 2 Ch. 297.

135. — *Mansion-house—Trust to allow A. to occupy a mansion-house and land so long as she might wish to do so—Tenant for life—Trustees for purposes of Settled Land Act—Trustees of term with power to raise money by mortgage or otherwise—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 3, 5, 8, 10 (i.); s. 38, sub-s. 1; s. 58, sub-s. 1 (vi.).*

By a settlement a mansion-house and lands were (subject to a rent-charge) vested in trustees for a term of 1000 years, upon trust in the first place to allow the plt. to occupy the mansion-house and certain specified lands, rent free, for so long as she might wish to continue to do so. And upon further trust, by mortgage thereof, or by or out of the rents and profits thereof, or by any other reasonable ways or means, to raise some specified sums of money, and, subject to the term, to the use of one of the defts. in fee :—

**SETTLED LAND (Trustees)—continued.**

*Held*, on the authority of *In re Eustman's Settled Estates*, [1898] W. N. 170 (15), that the plt. was tenant for life, within the meaning of the Settled Land Act, 1882, of the mansion-house and lands which she was to be allowed to occupy, and could in respect of them exercise the powers conferred by the Act upon a tenant for life:

*Held*, also, that the trustees of the term were not trustees for the purposes of the Act, but that trustees for those purposes must be appointed.

*In re CARNE'S SETTLED ESTATES*

North J. [1899] W. N. 3 (7); [1899] 1 Ch. 324

136. — *Receipts, Power to give—Settled Land Act*, 1882 (45 & 46 Vict. c. 38), ss. 38, 40.

Trustees for the purposes of the Settled Land Acts can, under s. 40 of the Act of 1882, give a good receipt for purchase-money of land sold in a partition action. *PYNE v. PHILLIPS*

North J. [1895] W. N. 8

137. — *Separate settlements—Order of Court—Construction—Settled Land Act*, 1882 (45 & 46 Vict. c. 38) s. 2, sub-ss. 1, 8; s. 38.

An order dated June 2, 1897, was made on an originating summons headed "In the Matter of the Freehold Estates situate in the County of London, settled by the will of M. D. Skerritt, deceased, dated Sept. 18, 1895, and in the Matter of the Settled Land Acts, 1882 to 1890," appointing two persons "trustees of the settlement created by the said will so far as relates to the above-mentioned estates for the purposes of the above-mentioned Acts.

Doubts were raised whether the above order appointed the two trustees named as separate trustees of the three several settlements created by the will; and this summons, with separate titles for each settlement, was taken out for the purpose of having separate trustees for the purposes of the Settled Land Acts appointed of the three several settlements. The judge in chambers dismissed the summons. A motion was now made to vary the order made in chambers by appointing separate trustees.

*Held*, that the effect of the order of June, 1897, was to appoint the trustees named separate trustees of the several settlements, and the motion was refused. *In re SKERRITT'S ESTATE*.

North J. [1899] W. N. 240

138. — *Trustees for purposes of the Act.*

(A) The Court, if satisfied that a sale is impossible, is not bound to appoint trustees for the purposes of these Acts. *WILLIAMS v. JENKINS* (No. 2) *Kekewich J.* [1894] W. N. 176

(B) *Trustees of will not appointed.* There is no rule of practice that the trustees of a will ought to be appointed by the Court trustees for the purposes of these Acts; the tenant for life may propose other persons if he thinks fit. *In re NICHOLAS AND SETTLED LAND ACT*, 1882

*Kekewich J.* [1894] W. N. 165

— Trustees for purposes of Act—Payment of money into court—"Option."  
*See SETTLED LAND*. 120.

**Waste.**

*See Cases under WASTE.*

**SETTLEMENT.**

*In General*, col. 1896.

*Bankruptcy.* *See BANKRUPTCY—Voluntary Settlement.*

*Charges*, col. 1897.

*Construction*, col. 1898.

*Costs*, col. 1900.

*Covenants (to Settle)*, col. 1901.

*Divorce.* *See DIVORCE—Settlement.*

*Equity to Settlement*, col. 1903.

*Estate Duty.* *See REVENUE—Estate Duty.*

*Forfeiture*, col. 1904.

*Heirlooms.* *See HEIRLOOMS.*

*Hotchpot*, col. 1905.

*Infants.* *See INFANT—Settlement.*

*Jointures*, col. 1906.

*Power of Appointment.* *See POWER.*

*Rectification*, col. 1907.

*Revocation*, col. 1907.

*Stamp Duty.* *See REVENUE—Stamps.*

*Validity*, col. 1908.

*Voluntary Settlement*, col. 1908.

**In General.**

— Appointees—Statutes of Limitations.

*See LIMITATIONS, STATUTE OF*. 34.

— Bill of sale—Agreement for marriage settlement.

*See BILL OF SALE*. 37.

— By grantor having no title—Possessory title—Rights of remaindermen.

*See ESTOPPEL*. 10.

— Compound settlement.

*See Cases under SETTLED LAND.*

1. — *Distribution, Period of—Marriage settlement—Ultimate trust in default of children of the marriage "for all and every the child and children or grandchild" of A. living at the death of the survivor of the husband and wife—Children and grandchildren of A. living at the period of distribution.*

A trust in a marriage settlement of certain stocks and securities for the benefit of the husband and wife and the children of the marriage, and in default of children (which event happened) then, upon the death of the survivor of the husband and wife, "for all and every the child and children or grandchild of A." living at the death of the survivor of the husband and wife.

The husband survived the wife, and died in Jan. 1900. A. had thirteen children, of whom eight survived the husband and five died in his lifetime, four unmarried, and one leaving an only child:—

*Held*, that "or" was not to be read "and," and, there being children of A. living at the period of distribution, no grandchild took a share. *In re COLEY. GIBSON v. GIBSON*

*Byrne J.* [1900] W. N. 272; *see* [1901] 1 Ch. 40

— Estate duty.

*See Cases under REVENUE—Estate Duty.*

— Foreigner, marriage with.

*See CONFLICT OF LAWS*. 6.

**SETTLEMENT (Generally)—continued.**

- Intestacy—Reference to—"Next of kin in blood."  
See DISTRIBUTIONS, STATUTE OF.
- Investment—Power of trustees to vary.  
See TRUSTEE—Investments. 67, 70.
- Jersey, Laws of—Deed of settlement by wife's father—Rights of husband and wife in settled estate—Claim of husband's heir.  
See JERSEY. 3.
- Loan to husband—Bond by husband to trustees Interest on—Statute of Limitations.  
See HUSBAND AND WIFE. 27.
- Post-nuptial settlement—Consideration.  
See FRAUDULENT CONVEYANCE. 1.
- Power of appointment.  
See Cases under POWER.
- Scottish settlements.  
See SCOTTISH LAW—Husband and Wife.
- Settled land.  
See Cases under SETTLED LAND.
- Shares—Lapse—Construction of will.  
See WILL—Lapse. 117.
- Stamp duty—"Settlement."  
See REVENUE—Stamps. 181.
- Tenant for life and remainderman.  
See Cases under SETTLED LAND.
- Unregistered ante-nuptial—Mortgage bonds—Priority.  
See CEYLON. 6.
- Voluntary gift—Mistake—Equitable right of donor to recover.  
See VOLUNTARY GIFT. 2.

**Bankruptcy.**

- Void settlements and voluntary settlements.  
See Cases under BANKRUPTCY—Voluntary Settlement.

**Charges.****2. — Jointure and portions—Effect of charges upon devised estate.**

A., one of several successive tenants for life under a settlement, had power to charge jointures and portions to a specified amount. On his marriage in 1867 he exercised this power. B., the first tenant for life, by his will dated 1877 devised certain realty, and bequeathed his residuary personality on the trusts of the settlement, but not so as to increase or multiply any charges or powers of charging. In 1886 A. became tenant for life, and in 1892 he and his eldest son disentailed the estate:—

*Held*, on the construction of B.'s will, that the property passing thereunder was not subject to the charges created by A. in 1867, and that the trustees were bound to transfer the residuary personality to A. and his son; and that a release of the power ought to be executed. *In re BERNERS. BERNERS v. CALVERT* - North J. [1892] W. N. 171

**3. — Trust for payment of debts—"Family arrangement"—Unnamed creditors—Agency—Revocable trust—Death of settlor—Liability of estate.**

By a deed of "family arrangement" executed

**SETTLEMENT (Charges)—continued.**

in 1867 on the resettlement of an estate by father and son, the estate was limited to the use of the father for life, with remainder to the use of trustees, upon trust, with the consent of the father and son during their joint lives, or of the survivor during his life, and after the death of the survivor at the discretion of the trustees, to sell the same and apply the proceeds, and also the rents and profits until sale, in payment, in such order and in such manner as the trustees should, with the concurrence of the father during his lifetime, determine, of all debts owing by the father; and subject thereto to hold any unsold hereditaments to the uses of an indenture of even date under which the father and son were successive tenants for life with remainder to an infant son of the son in tail. The father's creditors were neither parties to nor named in the deed, nor was it ever communicated to them. After the father's death the trustees sold part of the settled estate with the consent of the son, and applied the proceeds in payment of all the father's debts, except one due to a sister, of which the trustees were unaware. In 1889 the trustees, with the concurrence of the son, who was his father's legal personal representative, conveyed the unsold hereditaments to the uses of the second indenture of 1867. The son died in 1890. In 1896 the executors of the sister, who had died, having become aware of the deeds of 1867 and 1889, brought an action seeking to charge the hereditaments in the possession of the infant tenant in tail with the debt due to the sister's estate:—

*Held*, that the case fell within the principle of *Synnot v. Simpson*, (1854) 5 H. L. C. 121, and not within that of *Garrard v. Lord Lauderdale*, (1831) 2 Russ. & My. 451, and that the infant tenant in tail took the estate subject to the liability for the debt. *PRIESTLEY v. ELLIS*

*Kekewich J.* [1897] 1 Ch. 489

**Construction.**

**4. — Contract in consideration of marriage—Promise to leave house to wife for life—Promiser parting with house—Right of action—Declaration of right—Power to decree conveyance after death of promiser.**

A., as inducement to B. to marry him, promised in writing to leave a house to her for life. B. consented and married A. A. conveyed the house by deed to a third party:—

*Held*, that as A. had put it out of his power to perform the contract, an immediate right of action accrued to B., and that the measure of damages was the value of the possible life estate to which B. would be entitled if she survived A.:—

*Held*, also, that where a proposal in writing to leave a definite piece of real property by will made to induce a marriage is accepted, and the marriage takes place, the Court has power to decree a conveyance thereof after the death of the promiser against all volunteers claiming under him. *SYNGE v. SYNGE*

*C. A.* [1894] 1 Q. B. 466

**5. — "Eldest son"—Portions—Mortgage by**

**SETTLEMENT (Construction)—continued.**

*tenant for life and eldest son—Anticipation of interest.*

The question in this case was which of two sons, G. or C., was to be considered as an "eldest son," and as such excluded from a share in a portions fund under a marriage settlement. G., the elder by birth, having in concurrence with the tenant for life, whom he predeceased, raised a sum by mortgage; or C., who ultimately succeeded to the estates:—

*Held*, that G. had, in virtue of his ownership, anticipated the whole of his rights under the settlement, and had his portion of the estate, and that the clause of exclusion applied to him and his personal representatives, and not to C. *In re FITZGERALD'S SETTLED ESTATES. SAUNDERS v. BOYD* Chitty J. [1891] 3 Ch. 394

**6. — Equitable estate in fee—Limitations—No words of inheritance—Construction.**

Where under a settlement the equity of redemption in certain freeholds was granted to trustees, after certain life estates "then as to and concerning the hereditaments and the rents and profits thereof," in trust for such child or children of the settlor as being the son or sons shall attain the age of twenty-one years, &c.:—

*Held*, that the children took a life interest only. An equitable limitation, by way of trust executed, now has the same construction as a legal limitation. *Meyler v. Meyler*, 11 L. R. Ir. 522, approved. *In re WHISTON'S SETTLEMENT. LOVATT v. WILLIAMSON* Chitty J. [1894] 1 Ch. 661

— Expectancy—Cestui que trust dead—Failure of gift—Resulting trust.  
*See TRUST. 4.*

**7. — Illegitimate child en ventre sa mère.**

A. and B., who were within the prohibited degrees, went through the ceremony of marriage; a settlement was afterwards made providing for the children of B. by A. A month afterwards a child was born of B. by A.:—

*Held*, that the child took no benefit. Though an illegitimate child en ventre sa mère can be provided for by apt words, there was not sufficient in this settlement to indicate any provision for the child otherwise than as a member of a class for whom provision could not be made, and an unborn illegitimate child cannot have the reputation of being the lawful child of any particular person. *In re SHAW. ROBINSON v. SHAW* North J. [1894] 2 Ch. 573

**8. — "Income"—Construction of settlement.**

The Court came to the same conclusion as the learned judge below as to the construction of the deed in question.

*Decision of Kekewich J.*, [1899] W. N. 241, affirmed. *LADY BATEMAN v. FABER*

C. A. [1900] W. N. 157

**9. — Insufficient security—Money recovered from solicitor.**

A. on her marriage settled a sum secured on mortgage; the deed contained no covenant to settle after-acquired property. The security turned out to be insufficient, and in an action against the solicitor for negligence, &c., A. recovered damages:—

*Held*, that the damages belonged to A. abso-

**SETTLEMENT (Construction)—continued.**

lutely and were not bound by the settlement. *In re MACLEOD. MILLS v. MACLEOD*

North J. [1895] W. N. 97

**10. — Ultimate trust for next of kin—Die "without having been married"—Child.**

An ultimate trust in a marriage settlement for the benefit of the person who would be entitled if the wife had died intestate, and "without having been married," does not exclude issue of the wife. *STODDART v. SAVILLE*

Chitty J. [1894] 1 Ch. 480

Followed by *Romer J.* *In re Forbes*, [1899] W. N. 6 (4).

**11. — Ultimate trust for next of kin—Words as if she had died "a spinster and intestate"—Child of former marriage—Wife's property.**

By a settlement made on the second marriage of a lady who had one child by her first marriage, the trust fund was assigned to trustees upon trust to pay the income thereof to the wife for life, then to her husband for life, and upon the death of the survivor upon trust to hold the fund for the children of the said intended marriage, and in default of children, and in the event of the husband being the survivor (which happened) in trust for such persons and purposes as the wife should by will or codicil appoint, and in default of such appointment, in trust for such person or persons as under the Statutes for the Distribution of the Estates of Intestates would at the time of the wife's decease have been entitled thereto if she had then died possessed thereof "a spinster and intestate." The settlement contained no reference to the child of the first marriage. The wife died without having had any child by her second marriage, and without having appointed the fund, but leaving her child by her first marriage surviving:—

*Held*, following *Stoddart v. Saville*, [1894] 1 Ch. 480; *In re Ball's Trust*, (1879) 11 Ch. D. 270; *Upton v. Brown*, (1879) 12 Ch. D. 872; and *In re Arden's Settlement*, W. N. (1890) p. 204, that the child of the first marriage was entitled, as sole next of kin of her mother, to the trust fund. *In re FORBES. ERRINGTON v. SEMPELL*

*Romer J.* [1899] W. N. 6 (4)

**Costs.**

**12. — Setting aside settlement, Action for—Costs—Settlor's own property—Income—Life interest—Bankruptcy, Trust determinable on—Creditors—Void limitations—Parties—Trustees—Beneficiaries—Unnecessary or improper parties.**

The trustees of a settlement who are defendants to an action successfully brought against them to set aside the settlement are entitled, if they have acted properly in the discharge of their duties as trustees and not put the plaintiff to unnecessary expense, to retain their costs of the action, as between solicitor and client, out of the trust fund before handing it over under the judgment.

An action having been brought by a settlor's trustee in bankruptcy against the trustees of the settlement of the settlor's own property to set aside limitations cutting down his life interest in the event of his bankruptcy, the beneficiaries



**SETTLEMENT (Costs)—continued.**

taking under the limitations over were subsequently added by the plt. as defts. at the suggestion of the defts. the trustees, and at the trial appeared to defend separately from their co-defts. the trustees. The action being successful, the trustees were allowed to retain their costs as between solicitor and client out of income in their hands, but the beneficiaries, having chosen to defend, although they had been unnecessarily, but not improperly, made parties, were not allowed any costs. **MERRY v. POWNALL**

**Kekewich J. [1898] 1 Ch. 306**

**Covenant (to Settle.)**

**13. — Accumulation—Covenant to settle wife's other and after-acquired property—Income—Accumulations—Investment by wife of accumulations—Marriage settlement.**

If income not originally included in a covenant in a marriage settlement to settle other and after-acquired property is invested by the wife during the coverture, the investments so made do not become subject to the covenant.

**Lewis v. Madocks, (1803) 8 Ves. 150, (1810) 17 Ves. 48; 7 R. R. 10, considered. In re Bendy, [1895] 1 Ch. 109, discussed and not followed. FINLAY v. DARLING — Romer J. [1897] 1 Ch. 719, and Addendum to the Volume.**

**14. — Accumulations—Covenant to settle wife's property—Purchase by wife during coverture.**

If income not originally included in a covenant in a marriage settlement to settle other and after-acquired property is so invested as to indicate a permanent intention on the part of the owner to turn it into capital, such investment becomes subject to the covenant, provided the terms are sufficiently large to include it as capital. The same result follows in the case of a sale of capital property not originally included in the covenant, where the proceeds are laid out in the purchase of other property coming within the terms of the covenant.

A wife during coverture purchased property partly out of the proceeds of property subject to a covenant to settle, partly out of accumulations of her income under the settlement, and partly out of a loan subsequently repaid by herself and her husband:—

**Held**, that the property so purchased belonged to her absolutely, but subject to a charge in favour of the settlement trustees for the amount (a) of the income accumulations, (b) of her contribution towards repaying the loan. **In re BENDY. WALLIS v. BENDY — Kekewich J. [1895] 1 Ch. 109**

Not followed by Romer J. **Finlay v. Darling, [1897] 1 Ch. 719. See preceding Case.**

**15. — After-acquired property—Covenant by husband that he "and all other necessary parties" would assure.**

By a settlement, the intended husband covenanted with the trustees "that if at any time after the solemnization of the said intended marriage and during his life the said Alice Robson or the said R. A. de Mancha in her right shall become seised or possessed of or entitled to any real or personal property for any estate or interest whatsoever in possession, rever-

**SETTLEMENT (Covenant (to Settle))—contd.**

sion, remainder or expectancy, then and in every such case the said R. A. de Mancha and all other necessary parties shall at the cost of the fund so to be dealt with, as soon as circumstances will admit and to the satisfaction of the trustees, convey, assign, or assure the said real or personal property to, or otherwise cause the same to be vested in, the said trustees upon the trusts" thereafter declared.

Byrne J. **held** that the property in question was not bound by the covenant, and that the case was not distinguishable from an unreported case decided by himself on Dec. 8, 1899, of **In re Gray, Pakenham v. Maclean**, the only distinction between the two cases being that in that case there were recitals relating to the matter, but there he had held that the addition of the words "and all other necessary parties" did not render the covenant so ambiguous as to permit recitals to be referred to for the purpose of assisting the construction, and that the words "all other necessary parties" do not import the same meaning, so far as regarded the wife being bound, as they bear in those cases where the wife is specifically named, and that the introduction of those words only meant that all other persons over whom the husband may be expected to have a right to call on would join. He considered that **In re Gray** would not be differentiated from **Ramsden v. Smith, (1854) 2 Drew. 298, and Daves v. Tredwell, (1881) 18 Ch. D. 354**, and that the reasoning in those cases applied to the present one, but he would observe that there was a clear distinction between the effect of a covenant drawn as in the present case and where it was in the form that the property shall be settled. **In re SMITH. ROBSON v. TIDY**

**Byrne J. [1900] W. N. 75**

— After-acquired property—Infant, Settlement by.

**See INFANT—Settlement. 42.**

**16. — After-acquired property—Life interest subject to forfeiture on alienation—Property included.**

By an ante-nuptial agreement, followed by a covenant in a post-nuptial settlement, C. agreed to settle all after-acquired property coming to him under his mother's will. Under the trusts of the settlement the wife was to have the first life interest in the settled funds. C.'s mother under a power appointed to him a life interest determinable on alienation in a certain fund:—

**Held**, that the ante-nuptial agreement did not extend to this life interest, and that there had therefore been no forfeiture. **In re CRAWSHAY. WALKER v. CRAWSHAY North J. [1891] 3 Ch. 176**

**17. — After acquired property—Severance of joint tenancy.**

M. and her intended husband covenanted to settle after-acquired property. P. executed a voluntary settlement with an ultimate trust in favour of his next of kin, of whom M. was one:—

**Held**, that on the death of P. the joint interest of M. was severed by the operation of the covenant to settle after-acquired property. **In re HEWETT. HEWETT v. HALLETT North J. [1894] 1 Ch. 362**

**18. — After-acquired property—Supplying**

**SETTLEMENT (Covenant (to Settle))—contd.**

words "during coverture"—*Ambiguity—Recitals*—"During her life."

By an ante-nuptial settlement a wife covenanted to bring after-acquired property devolving on her "during her life" into the settlement. After the husband's death property devolved on her as next of kin of an intestate:—

*Held*, that in the absence of words shewing that a more extended operation was intended, the covenant operated only during coverture, and that this construction was assisted by a recital that the parties agreed to covenant as to any personal property which should accrue during the joint lives of the husband and wife, which recital might be referred to in order to explain the ambiguity. *In re COGHAN. BROUGHTON v. BROUGHTON* - **Kekewich J. [1894] 3 Ch. 76**

**19. — After-acquired property — Two ante-nuptial settlements upon different trusts — Evidence — Revocation.**

Two ante-nuptial settlements were executed, each containing a covenant to settle after-acquired property of the intended wife, but upon different trusts. In the absence of evidence of reasons for making the second settlement, the Court, without deciding whether the first settlement in point of time could have been superseded as to after-acquired property, refused to hold that the first settlement was superseded by the second. *In re GUNDRY. MILLS v. MILLS*

**North J. [1898] 2 Ch. 504**

**Divorce.**

*See* **DIVORCE — Settlements (Variation of).**

**Equity to Settlement.**

**20. — Amount to be settled—Two funds—Assignment—Conduct of wife—Acknowledgment by wife—Married Women's Property Act, 1857 (20 & 21 Vict. c. 57).**

Husband and wife assigned two reversionary interests to a purchaser, and received the purchase-money. The deed was acknowledged by the wife under 20 & 21 Vict. c. 57, but was inoperative to bind her, as the reversionary interests were derived under wills made before December 31, 1857. The interests both fell in simultaneously during the life of both husband and wife. One fund was received and expended by them. The wife claimed that the second reversionary interest should be settled on her and her children:—

*Held*, by Kekewich J., that as the husband had received half the wife's fortune, and the amount, 500l., was small, the whole must be settled:

*Held*, by C. A., that although the assignment was nugatory, the Court should take into consideration the conduct of the wife. On appeal, the order was varied by consent, and only half the amount settled. **ROBERTS v. COOPER**

**C. A. [1891] 2 Ch. 335**

**21. — Bankruptcy of husband—Settlement of whole fund—Form of—Ultimate limitation to wife.**

A woman who married in 1863 was entitled

**SETTLEMENT (Equity to Settlement)—contd.**

to a reversion. In 1869 her husband became bankrupt, and a sum remained due to his creditors; he obtained his discharge in 1871, and was engaged in business. The reversion fell in in 1894. No settlement was made on the marriage:—

*Held*, that the whole fund ought to be settled, and that it should in default of children be limited to the wife absolutely, and not to the husband. *In re HOWARD. HOWARD v. HOWARD*  
**Kekewich J. [1895] W. N. 4**

**Estate Duty.**

*See* Cases under **REVENUE—Estate Duty.**

**Forfeiture.**

— Alienation, Trust over on — Retrospective operation—Past alienation.  
*See* **MORTGAGE. 49.**

**22. — Bankruptcy, Avoidance on—Post-nuptial settlement—Separate property of wife settled—Cesser of husband's interest on bankruptcy.**

In order to constitute a "purchaser in good faith" within s. 47 of the Bankruptcy Act, 1883, it is sufficient if there be good faith on the part of the purchaser; it is not necessary that both parties should act in good faith. A wife (married in 1883) after marriage allowed her separate property to pass into her husband's hands, but not as a gift nor as a loan for the purposes of his trade. He, having applied part of the property to his own use, settled the residue, together with property of his own, upon trusts under which he took a life interest, with a proviso for cesser in the event of his bankruptcy; the wife had no notice of any fraudulent intention on his part:—

*Held*, (1) that the settlement was not void under s. 47 of the Bankruptcy Act, 1883; (2) that to the extent of the wife's property received by the husband the proviso for the cesser of his life interest was good; and (3) that s. 3 of the Married Women's Property Act, 1882, did not apply. **MACKINTOSH v. POGOSE**

**Stirling J. [1895] 1 Ch. 505**

**23. — Bankruptcy, Gift over on—Validity of clause—Bankruptcy of settlor—Trust to pay debts—Revocable mandate.**

Under a settlement real estate was limited to such uses and on such trusts as A. and B. should jointly appoint, with a life estate to B. in default of appointment. The trust funds were appointed, *inter alia*, as to part to pay certain of B.'s debts and as to another part to himself for life with a gift over on alienation. B. became bankrupt:—

*Held*, (1) that this was not a settlement by a bankrupt of his own property, and therefore the discretionary trust over was valid, and the trustee in bankruptcy was not entitled to the life estate; (2) that the trust to pay debts was a revocable trust, which must be considered as revoked by the bankruptcy, and therefore the trustee was entitled to such funds as were in the hands of the settlement trustees for that purpose.

*Semble*, that if the trustees under their discretionary power paid B. more than enough for his necessary maintenance he could be made to

**SETTLEMENT (Forfeiture)—continued.**

account for the access to his trustee in bankruptcy. *In re ASHBY. Ex parte WREDFORD*

**V. Williams J. [1892] 1 Q. B. 872**

**24. — Bankruptcy or death, Trust for husband till—Limitation over on death of husband—Implication—Interim income.**

On a marriage funds belonging to the wife were settled upon trust to pay income to wife for her life, and after her death to husband till bankruptcy or alienation, and after the death of the survivor in trust for the children. The husband became a liquidating debtor, and afterwards the wife died:—

*Held*, that the children were entitled to the income from the death of the wife, as the intention was that the fund should go over immediately on the determination of the previous interests.

*In re Tredwell*, [1891] 2 Ch. 640, distinguished. *In re AKEROYD'S SETTLEMENT. ROBERTS v. AKEROYD* — **C. A. [1893] 3 Ch. 363**

— Covenant to settle after-acquired property—Property included.

*See Cases under SETTLEMENT—Covenant to Settle.*

**25. — Settlor's own property, Settlement of—Forfeiture clause—Determinable life interest—Forfeiture—Breach of trust—Bankruptcy—"Cease to be payable."**

By a settlement of 1878, property of the settlor was assigned by him to trustees upon trust to pay the income to him until his death or bankruptcy, or until he should "assign charge or incur the said income or do or suffer anything whereby the same or some part thereof would through his act or default become payable to or vested in some other person or persons" with remainder in favour of the children of the marriage. In 1887 the settlor induced the surviving trustee to lend him the greater part of the trust fund, and the money thus obtained was spent by him for his own purposes. In 1891 the settlor became bankrupt. Proceedings were subsequently taken on behalf of the children of the marriage with the result that the funds lost by the breach of trust were replaced, and the question now raised was, whether the settlor's interest had been forfeited prior to the bankruptcy by the dissipation of the trust fund:—

*Held*, that the settlor's interest had not been determined prior to the bankruptcy; and that, as the limitation until bankruptcy was void as against his creditors, his life interest passed to the trustee in bankruptcy, and that the income of the trust fund was now payable to a purchaser from the trustee during the life of the settlor.

*Semle*: Had the settlement contained a limitation over if the income should "cease to be payable" to the settlor, the dissipation of the trust fund would have worked a forfeiture. *In re BREWER'S SETTLEMENT. MORTON v. BLACKMORE*  
**Chitty J. [1896] 2 Ch. 503**

**Heirlooms.**

*See Cases under HEIRLOOMS.*

**Hotchpot.**

**26. — Two funds—Referential trusts.**

A marriage settlement dealt with two funds:

**SETTLEMENT (Hotchpot)—continued.**

13,000*l.* Consols belonging to the wife, and a policy for 5000*l.* on the life of the husband. The capital of the wife's fund was to go to such children of the marriage as the husband and wife by deed, or the survivor by deed or will, should appoint, and in default of appointment to the children equally, subject to a hotchpot clause in the form usually adopted in the case of one fund: the 5000*l.* policy moneys were to go to such children of the marriage as the wife should by deed or will appoint, and in default of appointment "upon the same or the like trusts," and subject to "the same or the like" powers and provisos as were expressed in the said settlement concerning the wife's fund after the death of the husband and wife and in default of appointment. The whole of the 13,000*l.* had been appointed unequally among the three children of the marriage, the 5000*l.* was unappointed and the question now raised was, whether the two sums were to be aggregated for the purposes of hotchpot, or whether the 5000*l.* was divisible into three equal shares:—

*Held*, that the two funds were distinct, and that the three children were entitled to the 5000*l.* in equal shares, without having to account for or bring into hotchpot any sums appointed to them out of the 13,000*l.* *In re MARQUIS OF BRISTOL. EARL GREY v. GREY*  
**Romer J. [1897] 1 Ch. 946**

**27. — Valuation of life interest brought into hotchpot.**

Funds were settled in trust for the children of the settlor as he should appoint, and in default of appointment equally, with a hotchpot clause. The settlor by his will appointed to two daughters in moieties for life with remainders over ultimately held to be void. On a summons to determine whether the interests of the daughters ought to be immediately valued and brought into hotchpot:—

*Held*, (1) that the life interests must be brought into hotchpot and valued; (2) the value must be calculated, not by reference to the duration of the interests, but by an actuarial valuation of them at the time when they first took effect—i.e., at the death of the settlor. *In re HEATHCOTE. TRENCH v. HEATHCOTE*  
**Kekewich J. [1891] W. N. 10**

**Infant.**

*See INFANT—Settlement.*

**Jointures.**

— Effect of charges upon devised estates—Jointure and portions.

*See SETTLEMENT—Charges.*

**28. — Power of jointuring—Power to appoint "to any woman whom he may marry"—Appointment of jointure on first marriage—Dissolution of first marriage on petition of wife—Second marriage—Appointment of jointure on second marriage.**

In this case it was held that, by the terms of the settlement, the eighth Duke was entitled to exercise his powers of jointuring as often as he should marry, and that there were no words negating his right to appoint on a second legal

**SETTLEMENT (Jointures)—continued.**

marriage although the first wife was living.  
**DOWAGER DUCHESS OF MARLBOROUGH v. DUKE OF MARLBOROUGH** - Byrne J. [1900] W. N. 88;  
 affirmed by C. A. [1900] W. N. 270

**Power of Appointment.**

See Cases under POWER.

**Rectification.****29. — Evidence—Intention—Voluntary settlement.**

The Court is reluctant to try actions for rectification of deeds except on oral evidence, except under special circumstances as when final written instructions are proved from which the deed departs. The Court has jurisdiction, in a proper case, to rectify a voluntary settlement as well as one for value, but will hesitate to do so on the unsupported evidence of the settlor as to his intention, although the rectification would make the deed more in harmony with precedents and with what the settlor might reasonably have intended. **BONHOTE v. HENDERSON**

Kekewich J. [1895] 1 Ch. 742 ;

This case was affirmed on the evidence by C. A. [1895] 2 Ch. 202

**30. — Mistake—Non-execution of a power—Death of donee—Parol evidence—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

In an action to rectify a settlement after the death of the husband, on the ground that it did not exercise a certain power of appointment in favour of the wife, in accordance with the arrangement alleged to have been entered into prior to the marriage, the defts. pleaded the 4th section of the Statute of Frauds; they also contended that relief could not be given against a non-execution, as distinct from an imperfect execution, of a power, and particularly after the death of the donee thereof:—

*Held*, that parol evidence was admissible in an action to rectify a mistake in a settlement, notwithstanding the Statute of Frauds, an action of that kind not being one seeking "to charge any person upon any agreement made upon consideration of marriage" within the meaning of s. 4; that relief could be given, and that rectification in the present case did not amount to aiding the non-execution or defective execution of a power; when once the settlement was made to accord with what the Court found to have been the real bargain and intention of the parties to it, no further deed or relief was necessary. **JOHNSON v. BRAGGE** - Cozens-Hardy J. [1900] W. N. 250; Reported [1901] 1 Ch. 28

**Revocation.**

— After-acquired property—Two ante-nuptial settlements upon different trusts—Evidence.

See SETTLEMENT—Covenant. 19.

— Voluntary settlement—Fiduciary relationship—Power of revocation—Duty of solicitor—Costs.

See SETTLEMENT—Voluntary Settlement. 31.

**SETTLEMENT—continued.****Validity.****31. — Illegal consideration—Marriage with sister of deceased wife.**

On April 30, 1873, a widower executed a deed, by which, in contemplation of a marriage which "had been agreed upon and was intended shortly to be solemnized" between himself and C. P., he conveyed real estate to trustees in fee, to the use of himself and his assigns during his life, with remainder to the use of C. P. during her life, "provided she shall remain a widow and unmarried; and from and immediately after her decease or marriage, whichever event shall first happen," to such uses as the settlor should by deed or will appoint, and, in default of appointment, to the use of such person or persons as would be entitled thereto if the deed had not been executed. C. P. was in fact a sister of the settlor's deceased wife, though this was not stated in the deed. On March 5, 1877, he went through the ceremony of marriage with her, and she afterwards lived with him as his wife. He died in Nov., 1891, intestate. He had not exercised the power of appointment by deed reserved to him by the settlement. During the life of his son and heir-at-law C. P. received the rents of the property without objection on his part:—

*Held*, that the trust for C. P. was illegal and invalid, and that the property was held on trust for the son's administratrix, she being, under the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), his real representative.

**Ayerst v. Jenkins**, (1873) L. R. 16 Eq. 275, distinguished. **PHILLIPS v. PROBYN**

North J. [1899] W. N. 51; [1899] 1 Ch. 811

**Voluntary Settlement.**

— Account stamp duty.

See REVENUE—Account Duty. 5—9.

— Bankruptcy.

See Cases under BANKRUPTCY—Voluntary Settlement.

**32. — Complete or incomplete assignment of debts—Debts got in by settlor—Liability of settlor's estate.**

The settlor assigned certain debts secured on bills of sale (but not the bills of sale or the goods secured) to trustees, with power to sue, and upon trust to sell and convert the trust property, &c., for the benefit of third parties. Afterwards the settlor received payment of the assigned debts, and died intestate:—

*Held*, that the assignment of the debts was complete, and the trustees were entitled to prove against the estate of the settlor for the moneys received by him. Whether the trustees might have sued the intestate at law for the amount received by him, *quære*. *In re PATRICK. BILLS v. TATHAM* - C. A. [1891] 1 Ch. 82

Referred to by Byrne J. *In re Griffin*, [1899] 1 Ch. 408, 411.

**33. — Estoppel—Recital—Reversionary interest—Power of appointment—Construction of voluntary settlement.**

The plt., born in 1875, was an only child. Her father died in 1886. She married in January,

**SETTLEMENT (Voluntary Settlement)—*contd.***

1892, being then entitled under the settlement made on the marriage of her father and mother, dated April 15, 1874, subject to the exercise by her mother of the power of appointment contained in that settlement in favour of the issue of the marriage, and to her mother's life interest to the property comprised in the settlement.

By a voluntary settlement dated July 27, 1892, after reciting that the property comprised in the settlement of April 15, 1874, was vested in trustees upon trust to pay the income to the plt.'s mother for life, and upon her death upon trust for the plt., her heirs, executors, administrators, and assigns, the plt. conveyed all her reversionary property under the settlement of April 15, 1874, to trustees upon trust for conversion and to pay the income to herself for life, then to her husband for life, and on the death of the survivor, on the usual trusts for the benefit of their issue, with a trust in default of issue in favour of the plt. The settlement contained no covenant to settle after-acquired property, and no power of revocation.

In August, 1897, the plt.'s mother, in exercise of the power contained in the settlement of April 15, 1874, irrevocably appointed that the trustees of that settlement should stand possessed of the property therein comprised in trust for the plt., her executors, administrators, and assigns absolutely. There was no issue of the marriage between the plt. and her husband:—

*Held*, that the deed of July 27, 1892, only passed the interest which the plt. had under the deed of April 15, 1874, and did not comprise the interest taken by her under the appointment.

The recital, though inaccurate, was true as far as it went, and worked no estoppel either legal or equitable.

Equitable estoppel is not applied in favour of a volunteer.

*Citizens' Bank of Louisiana v. First National Bank of New Orleans*, (1873) L. R. 6. H. L. 352, discussed. *LOVETT v. LOVETT* — *Romer J.* [1897] W. N. 163 (11); [1898] 1 Ch. 82

**34. — Fiduciary relationship — Independent advice—Power of revocation—Duty of solicitor—Costs—Voluntary settlement by young lady only just of age—Rescission—Undue influence.**

Where a young person is minded to make a voluntary settlement in favour of a parent, it is not enough that he should have independent advice unless he acts on that advice: it is the duty of a solicitor independently advising an intending settlor to protect him against himself, and not merely against the personal influence of the donee in the particular transaction; and if his advice is not accepted he should decline to act further for the intending settlor.

In every voluntary settlement of this kind a power of revocation should be inserted.

Voluntary settlement by a young lady just of age set aside with costs against the relation in whose favour it was made and by whose undue influence it had been executed: trustee, being the solicitor who had drawn the settlement, disallowed his costs of the action in which the settlement was set aside. *POWELL v. POWELL*

*Farwell J.* [1900] 1 Ch. 243

**35. — Illegitimate beneficiaries — Marriage**

**SETTLEMENT (Voluntary Settlement)—*contd.***

*settlement — Volunteer — Subsequent conveyance—Appeal from New South Wales.*

A limitation in a marriage settlement in favour of the settlor's illegitimate child may be defeated, as a limitation in favour of a volunteer, by a subsequent conveyance by the settlor to a purchaser for value, unless such a result would defeat other limitations within the marriage consideration. *DE MESTRE v. WEST*

*P. C.* [1891] A. C. 264

Followed by *C. A. Att.-Gen. v. Jacobs Smith*, [1895] 2 Q. B. 341.

— Mortgage, Voluntary—Settlement by mortgagor after mortgage—Notice—Priority. *See MORTGAGE—Priority.* 49.

— Rectification. *See SETTLEMENT—Rectification.* 29, 30

— Stamp duty. *See REVENUE—Stamps.* 181.

**36. — Time of ascertaining members of class.**  
The rule in *Andrews v. Partington*, 3 Bro. C. C. 401, is not confined to wills, but applies to voluntary settlements (and *semble* to settlements for value). A fund was settled by a voluntary deed upon such trusts as the settlor should appoint, and in default of appointment for such of the younger children of a third person as should attain the age of twenty-one, or being females should marry:—

*Held*, that when one younger child attained a vested interest in possession the class was closed, and such child was entitled to be then paid a share. *In re KNAPP'S SETTLEMENT. KNAPP v. VASSALL* — *North J.* [1895] 1 Ch. 91

— Voluntary gift—Mistake—Equitable right of donor to recover.

*See VOLUNTARY GIFT.* 2.

**SETTLEMENT OF PAUPERS.**

*See Cases under POOR LAW.*

**SEVERABILITY**—Of statement in admission.

*See EVIDENCE.* 13.

— Of subject-matter of bill of sale.

*See BILL OF SALE.* 51.

**SEVERABLE COVENANT**—Restraint of trade.

*See RESTRAINT OF TRADE.* 19.

**SEVERANCE**—Costs — Administration action—Right of Appeal.

*See COSTS.* 66.

— Defences—Separate sets of costs — Probate action.

*See PROBATE.* 92.

— Joint tenancy,

*See JOINT TENANCY.*

— Third party procedure — Co-defendants — Builder—Costs—Indemnity.

*See LIGHT AND AIR.*

— Trustees—Costs—Allowance of two counsel—Taxation.

*See TRUSTEE—Costs.* 45.

**SEVERED LAND**—Level crossing—Easement.

*See RAILWAY—Level Crossings.* 9.

**SEWERS.***In General*, col. 1911.*Cesspools*, col. 1916.*Cleansing*, col. 1917.*Commissioners of Sewers*. See **RATES**.  
51—53.*Costs*, col. 1917.*Nuisance*, col. 1918.*Pollution*, col. 1920.*Repairs*, col. 1920.*Surface Sewers*, col. 1922.**In General.****1. — Definition of "sewer"—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13.**

A sewer, in the Public Health Act, 1875, means something which carries sewage away, and a set of pipes leading from houses and ending in a cesspit is not a sewer nor a work belonging to a sewer within that Act. **MEADER v. WEST COWES LOCAL BOARD**

**C. A. [1892] 3 Ch. 18**

Discussed by Div. Ct. **Kinson Pottery Co. v. Poole Corporation**, [1899] 2 Q. B. 41, 48.

**2. — Duty of local authority to make sewers—Remedy for default—Action for damages—Complaint to Local Government Board—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 19, 299.**

The duty of a local authority, under s. 15 of the Public Health Act, 1875, to make such sewers as may be necessary for effectually draining their district for the purposes of the Act, can only be enforced by complaint to the Loc. Gov. Bd. under s. 299 of the Act, and neglect of the duty does not give a right of action to an individual whose property has been injured by such neglect. **ROBINSON v. WORKINGTON CORPORATION** — **C. A. [1897] 1 Q. B. 619**

**3. — Duty to provide for sewerage—Nuisance—Discharging sewage into sewer of local authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 13, 15, 94, 95, 96.**

P. and others twenty years ago connected their water-closets with a drain belonging to the sanitary authority without its knowledge. A nuisance was caused thereby. No other drain was available for the purpose. The authority had not carried out any system of drainage in its district:—

**Held**, that as s. 15 of the Public Health Act, 1875, imposed upon the sanitary authority the obligation to provide the sewers necessary to drain their district, they could not evade that obligation by taking proceedings against P. **FORDOM v. PARSONS** Div. Ct. [1894] 2 Q. B. 780

**4. — Factory refuse—Duty of local authority to make sewer—Remedy for default—Mandamus—Complaint to Local Government Board—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 299—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 7.**

The duty of a local authority, under s. 15 of the Public Health Act, 1875, to make such sewers as may be necessary for effectually draining their district for the purposes of that Act, cannot be enforced by an action for mandamus brought by a private person: the only remedy

**SEWERS (In General)—continued.**

for neglect of the duty is that given by s. 299 of the Act, a complaint to the Loc. Gov. Bd.

**Decision of C. A. in *Peebles v. Oswaldtwistle Urban District Council*, [1897] 1 Q. B. 625, affirmed. *PASMORE v. OSWALDTWISTLE URBAN DISTRICT COUNCIL* — **H. L. (E.) [1898] A. C. 387****

See ***Eastwood Brothers, Ltd. v. Honley District Council*, [1900] 1 Ch. 781**. This Case was affirmed by C. A. [1901] W. N. 38.

**5. — Incomplete sewer—Acceptance—Vesting—Private street—Frontager's liability—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 13, 15, 150.**

Where a local authority had duly accepted a sewer made in a private road, although it had no outfall, and was at the time of acceptance incapable of being used as a sewer:—

**Held**, that the road having once been sewered to the satisfaction of the local authority, the expenses of constructing a new and more efficient sewer were not chargeable on the frontagers. **HORNSEY LOCAL BOARD v. DAVIS**

**C. A. [1893] 1 Q. B. 756****6. — Insufficient sewer—Nuisance—Liability—Damage by flooding—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 19, 21, 299.**

In consequence of increase of buildings in D. a sewer which had been sufficient became insufficient to carry off the water, when storms occurred. The cellars of the S. Co. became flooded in consequence of the insufficiency. The only mode of preventing the flooding was to construct a new drainage system or a new sewer, which would be an expensive and difficult operation, and would require the advice of experts before a scheme could be commenced. After complaints by the S. Co. the corporation of D. consulted experts, but their report had not been received:—

**Held**, (1) that the rights and liabilities of the parties must be ascertained not as between strangers, but under the statutes regulating the sewers; (2) that the liability imposed by s. 19 of the Public Health Act, 1875, is limited to cases where the public body has been guilty of negligence. **STRETTON'S DERBY BREWERY CO. v. DERBY CORPORATION** **Romer J. [1894] 1 Ch. 431**

— London sewers and drains.

See Cases under **LONDON—Sewers**.

— Matter of record—Order to execute sewage works.

See **ESTOPPEL**. 11.

— Notice by vestry to reconstruct—Covenant to pay all "rates, duties and assessments"—Liability of lessee.

See **LANDLORD AND TENANT**.

— Notice to abate nuisance—Public Health (London) Act—Liability of lessee.

See **NUISANCE**. 2.**7. — Private profit, sewer made for—Right of adjoining owner to use—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 13.**

V., a landowner, made a sewer in the moiety of a road adjoining his land, which he disposed of in building lots, charging the purchasers for connecting the drainage of their premises with his sewer. C., who had a house on the other

**SEWERS (In General)—continued.**

side of the road, connected his drain with V's sewer:—

*Held*, that V. was not entitled to an injunction to restrain C. from connecting with the sewer. *VOWLES v. COLMER*

**Romer J. [1895] W. N. 42**

8. — *Private sewers—"Satisfaction" of local authority—Frontagers—Notice to make sewer—Service on every frontager—Expenses—Apportionment—Charge on premises—Arbitration—Objections to proceedings of local authority—Award, Finality of—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 13, 15, 18, 150, 180, 257, 268.*

A private street, or part thereof, is not "sewered" within s. 150 of the Public Health Act, 1875, when the houses in it are served either singly or in groups by private drains or sewers constructed by the several owners of the houses, but not forming one system of sewerage. Accordingly, the local authority may, although these private sewers are vested in them under s. 13, require the frontagers, under s. 150, to sewer the street, unless the local authority have, either expressly or by inference from circumstances, determined that it is already sewerd to their satisfaction within that section; in which case their powers under that section are no longer exercisable, and any required new sewers must be provided at their own expense under ss. 15 and 18.

The notice under s. 150 to frontagers to sewer a street must be served upon every frontager.

If the proportion of sewerage expenses payable by any frontager under s. 150 is referred to arbitration under s. 180, all objections to the validity of the proceedings of the local authority on the ground of insufficient notice, such as neglecting to serve every frontager, or otherwise, must be raised, if at all, before the arbitrators; and it is too late to raise them by action or other proceeding after the award, which is by sub-s. 15 of that section made "final and binding" on the parties. *HANDSWORTH DISTRICT COUNCIL v. DERRINGTON* - **Kekewich J. [1897] 2 Ch. 438**

9. — *Private sewers—Sewering—Satisfaction of local authority—Frontager—Expenses—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 13, 150. HANDSWORTH LOCAL BOARD v. TAYLOR*

**Romer J. [1897] 2 Ch. 442, n.**

Commented on by Div. Ct. *Rishton v. Haslingden Corporation*, [1898] 1 Q. B. 294, 302.

— *Railway—Drainage of adjoining lands.*

*See SCOTTISH LAW—Railway.*

— *Railway—Drainage of adjoining lands—Scottish law.*

*See RAILWAY—Drainage.*

— *Rateability—Underground sewers—Diminution of value of surface.*

*See RATES—Rateability.* 50.

10. — *"Sewer" or "drain"—Drain passing through private ground—Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 4.*

A drain passing through private ground but receiving the drainage of more than one building

**SEWERS (In General)—continued.**

is a "sewer" within the meaning of s. 4 of the Public Health Act, 1875. *TRAVIS v. UTTLEY*

**Div. Ct. [1894] 1 Q. B. 233**

Distinguished by Div. Ct. *Self v. Hove Commrs.*, [1895] 1 Q. B. 685, 689.

Approved of by Div. Ct. *Bradford v. Eastbourne Corporation*, [1896] 2 Q. B. 205, 208.

11. — *"Sewer" or "drain"—Railway company—Sewer made under local or private Act—Vesting in local authority—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 68—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13, 327.*

A ry. co., whose special Act expressly incorporated the Railways Clauses Consolidation Act, 1845, constructed land drains for the purpose of conveying surface water from lands adjoining the ry., and these land drains were, without the knowledge or consent of the co., used by a rural sanitary authority to convey sewage from certain houses within the district of such authority:—

*Held*, affirming the judgment of Stirling J., [1898] 1 Ch. 34, that these drains were "sewers" within the meaning of the Public Health Act, 1875, but that they were sewers made and used for the purpose of draining land under a local or private Act of Parliament within the second exception in s. 13 of that Act, and did not vest in the local authority; and consequently that the co. were entitled to an injunction to restrain the sanitary authority from so using them. *LONDON AND NORTH WESTERN RY. CO. AND GREAT WESTERN RY. CO. v. RUNCORN RURAL DISTRICT COUNCIL* - **C. A. [1898] 1 Ch. 561**

12. — *Sewer, or drain—Single drain draining several houses—Liability to repair—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13, 41—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 19.*

A drain-pipe passing through private property had, from a date prior to 1890, received the drainage of several houses belonging to different owners before it joined the public sewer. The pipe having become a nuisance, the local authority of the district, who had adopted the Public Health Acts Amendment Act, 1890, gave the owners of the said houses notice under s. 41 of the Public Health Act, 1875, to repair it, and, on failure of the owners to comply with the notice, executed the necessary work themselves, and claimed to recover from the owners the expenses incurred by them in so doing:—

*Held*, that the pipe in question was a "single private drain" within the meaning of s. 19 of the first-mentioned Act, and that the local authority were entitled to recover.

*Self v. Hove Commrs.*, [1895] 1 Q. B. 685, followed. *Hill v. Hare*, [1895] 1 Q. B. 906, disapproved. *BRADFORD v. EASTBOURNE CORPORATION* - **[1896] 2 Q. B. 205**

Distinguished by Div. Ct. *Reg. v. Hastings Corporation*, [1897] 1 Q. B. 46, 48.

Followed by Div. Ct. *Seal v. Merthyr Tydfil Urban Council*, [1897] 2 Q. B. 543.

13. — *"Sewer" or "drain"—"Single private*

**SEWERS (In General)—continued.**

*drain*—*Public Health Acts, 1848* (11 & 12 Vict. c. 63); *1875* (38 & 39 Vict. c. 55), ss. 4, 13, 15, 41; *1890* (53 & 54 Vict. c. 59), s. 19.

Where adjoining houses were, previous to 1848, drained by a brick construction on A.'s land which conveyed the drainage into an adjoining ditch, in 1853 a public sewer was laid down in place of the ditch, and the brick construction was connected with it:—

*Held*, that the brick construction was not “a single private drain,” but had become a sewer vested in the local authority and repairable by them on the passing of the *Public Health Act, 1848*. *HILL v. HAIR* Div. Ct. [1895] 1 Q. B. 906

Disapproved by Div. Ct. *Bradford v. Eastbourne Corporation*, [1896] 2 Q. B. 205; *Seal v. Merthyr Tydfil Urban Council*, [1897] 2 Q. B. 543.

Referred to by Div. Ct. *Reg. v. Hastings Corporation*, [1897] 1 Q. B. 46, 50.

Substituting new drain—*Glasgow Police Acts*.

See SCOTTISH LAW—Sewers. 39.

**14. — Vesting in local authority—“Sewers made by any person for his own profit—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 13, sub-s. 1.**

A drain was made by the owner of a quarry for the purpose of collecting and carrying off surface water coming on to his land and preventing it from running over the quarry. By means of the drain the quarry could be more economically and conveniently worked than if the water were allowed to spread over it:—

*Held*, that the drain was a sewer made by a person for his own profit within the meaning of s. 13, sub-s. 1, of the *Public Health Act, 1875*, and did not vest in the local authority of the district.

Decision of Div. Ct., [1899] 1 Q. B. 979, reversed. *Croydsale v. Sunbury-on-Thames Urban Council*, [1898] 2 Ch. 515, approved. *SYKES v. SOWERBY URBAN DISTRICT COUNCIL*

C. A. [1900] W. N. 49; [1900] 1 Q. B. 584

**15. — Vesting in local authority—Sewer made by landowner “for his own profit”—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 13, sub-ss. 1, 15, 16, 17, 144—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 67, 68.**

The word “profit” in s. 13, sub-s. 1, of the *Public Health Act, 1875*, is not to be restricted to a direct money payment. Accordingly a sewer which is not made for ordinary drainage purposes, but to enable the land on which it is made to be occupied more profitably, or to avoid an expenditure which would otherwise have to be incurred in order that the occupation might be equally beneficial, is made for the “profit” of the owner within the meaning of the section, and does not vest in the local authority:—

So *held*, in the case of a line of pipes laid down by the owner of a field adjoining a highway from a ditch bordering the highway to a disused gravel pit in the field for the purpose of supplying water to the cattle fed in the field.

*Minehead Local Board v. Luttrell*, [1894] 2 Ch. 178, and *Ferrand v. Hallas Land and*

**SEWERS (In General)—continued.**

*Building Co.*, [1893] 2 Q. B. 135, followed and applied.

*Held*, also, that as on the authority of *Croft v. Rickmansworth Highway Board*, [1888] 39 Ch. D. 272, the pit did not form part of the drainage system vested in the local authority, they had no power under s. 67 of the *Highway Act, 1835*, to discharge surface water from the road into the pit, and were not entitled to enter upon the field in order to keep open the existing drain, or to make any other for the same purpose. *CROYSDALE v. SUNBURY-ON-THAMES DISTRICT COUNCIL*

*Stirling J.* [1898] 2 Ch. 515

Approved of by C. A. *Sykes v. Sowerby Urban Council*, [1900] 1 Q. B. 584.

**16. — Vesting of sewers in local authority—Sewer made for private profit—Drainage of town—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 13, sub-s. 1.**

L., who was the owner of nearly all the land in the town of M., constructed at his own expense a system of sewerage for the town, and extended the same as the town increased. He imposed a voluntary sewerage rate on the owners and occupiers of houses in the town. In 1891 an urban sanitary authority was constituted for the town, which claimed that the sewers vested in them:—

*Held*, that L. had laid down the sewers for his own profit within the meaning of s. 13 of the *Public Health Act, 1875*, and that they did not vest in the sanitary authority. *MINEHEAD LOCAL BOARD v. LUTTRELL* *Romer J.* [1894] 2 Ch. 178

Considered by C. A. *Sykes v. Sowerby Urban Council*, [1900] 1 Q. B. 584, 590.

**17. — Vesting in local authority—Sewer made for private profit—Nuisance—Liability.**

A sewer made by a landowner solely to collect the drainage of houses on his land is not a sewer “made for profit” within the meaning of s. 13 of the *Public Health Act, 1875*. Therefore such a sewer is vested in the local authority, and they and not the landowner are liable for any nuisance caused thereby. Meaning of sewers “made for profit” considered. *FERRAND v. HALLAS LAND AND BUILDING CO.*

C. A. [1893] 2 Q. B. 135

Discussed by *Romer J. Minehead Local Board v. Luttrell*, [1894] 2 Ch. 178, 181; *Foules v. Colmer*, [1895] W. N. 42.

Referred to by Div. Ct. *Bradford v. Eastbourne Corporation*, [1896] 2 Q. B. 205, 217.

Followed by *Stirling J. Croydsale v. Sunbury-on-Thames Urban Council*, [1898] 2 Ch. 515.

Considered by C. A. *Sykes v. Sowerby Urban Council*, [1900] 1 Q. B. 584, 590.

**Cesspools.**

**18. — Cesspools in connection with buildings—By laws—Local authority—Powers—Rural sanitary authority—Application of by-law to old buildings—Public Health Acts, 1875 (38 & 39 Vict. c. 55), s. 157; 1890 (53 & 54 Vict. c. 59), s. 23.**

The power of a rural sanitary authority under s. 157 of the *Public Health Act, 1875*, as amended and extended to rural sanitary authorities by



**SEWERS (Cesspools)—continued.**

s. 23 of the Public Health Acts Amendment Act, 1890, to make by-laws with respect to (inter alia) cesspools in connection with buildings extends to old buildings in existence before the making of the by-law as well as to new buildings.

A by-law of a rural sanitary authority providing that "every person who shall construct a cesspool in connection with a building shall construct such cesspool at a distance of fifty feet at least from a dwelling-house" is not unreasonable merely by reason of the fact that in a particular case it is not possible to construct a cesspool at the prescribed distance. *SIMMONS v. MALLING RURAL DISTRICT COUNCIL*

Div. Ct. [1897] 2 Q. B. 433

**Cleansing.**

19. — *Sewers—Duty of local authority to cleanse sewers—Public Health Act, 1875 (38 & 39 Vict. c. 55, ss. 15, 19, 299.*

Section 299 of the Public Health Act, 1875, in providing for complaint to the Loc. Govt. Bd. where a local authority has made default in the maintenance of existing sewers, does not apply to s. 19 of the Act, which imposes on local authorities the duty to cleanse sewers vested in them, and consequently does not affect the right of action of a person who has sustained damage through the negligence of a local authority in not cleansing a sewer vested in them. *BARON v. PORTSLADE URBAN COUNCIL*

C. A. [1900] 2 Q. B. 588

**Commissioners of Sewers.**

See **RATES**. 51—53.

**Costs.**

20. — *Apportionment—Appeal—Charges for sewerage, &c., roads—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 257, 268.*

Where a local authority include in their "charge" for expenses under s. 150 of the Public Health Act, 1875, legal and other expenses and costs of collection, as well as the actual cost of sewerage and paving, the only remedy in case of complaint is by appeal to the Loc. Govt. Bd. under s. 268 of the Act. *WALTHAMSTOW LOCAL BOARD v. STAINES*

B. A. [1891] 2 Ch. 606

21. — *Apportionment of expenses—Sewering, paving, &c.—Streets—Public Health Acts—Dispute as to apportionment—Arbitration—Award—Enforcing award under Arbitration Act, 1889—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 180—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 12, 24.*

An award under s. 150 of the Public Health Act, 1875, as to the proportion of the expenses, incurred by an urban authority in sewerage and otherwise making good a street, to be borne by a person to whom notice has been given requiring him to sewer and otherwise make good a portion of the street, cannot be enforced under s. 12 of the Arbitration Act, 1889. *In re WILLESDEN LOCAL BOARD AND WRIGHT*

C. A. [1896] 2 Q. B. 412

**SEWERS (Costs)—continued.**

— *Drainage expenses—Capital or income.*  
See **SETTLED LAND**. 28.

22. — *Expenses of construction—Payment of debts—General expenses—Liability of contributory place—Elegit.*

The plt. in 1885 recovered judgment with costs against the defts. for fouling a stream. To recover the costs he sued out a writ of elegit.

(A) The defts. moved to set aside the writ. Motion refused until after the sheriff had made his return, the Court holding that although neither present nor future rates were available for the payment of a past debt, the defts. might have property which would be available for the purpose. *JERSEY (EARL) v. UXBRIDGE UNION RURAL SANITARY AUTHORITY (No. 1)*

Stirling J. [1891] W. N. 31

See next Case.

23. — *"Special expenses" — Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 175, 176, 229—235, 242, 270—275—Public Works Loans Acts, 1875 (38 & 39 Vict. c. 89), ss. 28, 36; 1878 (41 & 42 Vict. c. 18), s. 4.*

(B) The sheriff found that the only lands which the deft. possessed were some sewage works which had been bought for a contributory place:—

*Held*, that all proceedings must be stayed, for the sewage works could only be taken for judgment debts exclusively chargeable against the contributory place, and not for "general expenses" of the sanitary district such as the costs in question. *JERSEY (EARL) v. UXBRIDGE UNION RURAL SANITARY AUTHORITY (No. 2)*

Stirling J. [1891] W. N. 113; [1891] 3 Ch. 183

24. — *Street sewers—New street—Main outfall sewer—Expense of constructing—Building plans—Refusal of local authority to approve—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 150, 157, 277.*

An owner of land in a rural sanitary district, who proposed to lay it out as a building estate and to erect on it blocks of houses arranged in streets, deposited with the local authority plans of the proposed buildings, from which it appeared that each of the houses was to be drained with a separate drain ending in the middle of one of the proposed new streets. The local authority refused to approve the plans unless the owner would undertake to construct at his own expense the sewers with which the drains were intended to communicate, and also the necessary main outfall sewer:—

*Held*, affirming the decision of Div. Ct., [1896] 2 Q. B. 219, that the local authority were not entitled to attach such a condition to their approval. *REG. v. TYNEMOUTH RURAL DISTRICT COUNCIL* — C. A. [1896] 2 Q. B. 451

**Nuisance.**

25. — *Discharge of sewage on to private lands—Claim of right for inhabitants of a parish—Injunction—Prescriptive right in third parties to drain into sewers—Power of sanitary authority to stop existing and future connection with sewers*

**SEWERS (Nuisance)—continued.**

—*Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 21, 299.

In an action by a landowner against a corporation (the urban sanitary authority for the borough of D.) for an injunction to restrain them from discharging or allowing to be discharged sewage upon his lands from the sewers vested in them so as to cause a nuisance, the defts. set up a prescriptive right based on the presumption of a lost grant by the plt.'s predecessors in title to trustees for the benefit of the inhabitants of the borough to drain all sewage from any tenements built or to be built within the borough, and to discharge the same on the plt.'s lands. This claim of right failed. It was proved, however, that there were a number of houses in the borough in respect of which prescriptive rights had been acquired to pass sewage into and along the sewers, and that there were other houses the connections of which with the sewers had been made with the consent or by the acquiescence of the defts. :—

*Held*, that an injunction could not be granted so as to interfere with the prescriptive rights that had been acquired, nor to oblige the defts. to stop up the connections of the other houses which they had sanctioned; but that an injunction must be granted to restrain the defts. from authorizing or directing any sewage to flow or be discharged on to the plt.'s lands from sewers vested in them as the sanitary authority.

*Att.-Gen. v. Acton Local Board*, (1882) 22 Ch. D. 221, and *Att.-Gen. v. Clerkenwell Vestry*, [1891] 3 Ch. 527, followed.

*Held*, also, following *Ainley v. Kirkheaton Local Board*, (1891) 60 L. J. (Ch.) 734, that a householder has an absolute right under s. 21 of the Public Health Act, 1875, to connect his drains with a sewer, subject only to the regulations prescribed by the local authority in whom the sewer is vested as to the manner in which the connections are to be made, and therefore that an injunction could not be granted to restrain the defts. from allowing any future connections to be made with their sewers.

*Charles v. Finchley Local Board*, (1883) 23 Ch. D. 767, dissented from on this point.

*Held*, further, that the plt. ought to have applied to the Loc. Govt. Bd. under s. 299 of the Public Health Act, 1875, to make an order on the defts. to adopt a proper system of sewage for their district. *BROWN v. DUNSTABLE CORPORATION*

— *Cozens-Hardy J.*  
[1899] W. N. 83; [1899] 2 Ch. 378

Referred to by *Byrne J. Eastwood Brothers, Ltd. v. Honley District Council*, [1900] 1 Ch. 781, 786; C. A. [1901] W. N. 38.

**26. — Want of structural convenience—Drainage of houses—Liability of owners—"Drain"—"Sewer"—Public Health Act, 1875** (38 & 39 Vict. c. 55), ss. 4, 13, 15, 21, 94, 95.

The appellants were summoned by the sanitary authority of a borough for non-compliance with a notice to abate a nuisance caused by turning slop and scullery water from twelve houses, owned by the appellants, into a drain constructed beside a highway to receive the surface water of the highway, which emptied into an

**SEWERS (Nuisance)—continued.**

open ditch. According to the plan, deposited with the sanitary authority when the houses were built by the appellants' predecessor in title, the houses should have been drained into cesspools, but cesspools to receive the slop and scullery water had not been constructed. No sewer had been constructed by the sanitary authority, by means of which the houses could be drained. The houses were separately occupied, and were not within the same curtilage. The justices made an order to abate the nuisance, by disconnecting the drains of the houses from the surface-water drain, and making cesspools for the houses. On a case stated :—

*Held*, that the sanitary authority were not bound, under the Public Health Act, 1875, s. 15, to provide a sewer to drain the appellants' houses, that the surface-water drain, though for some purposes a "sewer," within the meaning of s. 4, was not a sewer into which the appellants were entitled to empty their drains, that the nuisance was caused by the want of a structural convenience, within the meaning of s. 94, and therefore the defts., as owners, were liable. *KINSON POTTERY CO. v. POOLE CORPORATION* - Div. Ct.  
[1899] 2 Q. B. 41

**Pollution.**

— **Pollution of natural stream—Drain connecting premises with district sewer.**

*See WATER—Pollution. 2.*

**27. — Prescriptive right of drainage—Trade effluents—Polluting liquid—Public Health Act, 1875** (38 & 39 Vict. c. 55), ss. 17, 21; 1890 (53 & 54 Vict. c. 59), s. 17, sub-s. 1—*Rivers Pollution Prevention Act, 1876* (39 & 40 Vict. c. 75), ss. 4, 7, 16—*West Riding of Yorkshire Rivers Act, 1894* (57 & 58 Vict. c. clxvi.), ss. 9; 10.

Where the owners of buildings have acquired a right to discharge drainage into a public sewer through a connection lawfully made, that right extends to the discharge of trade and manufacturing effluents, and the provisions of s. 7 of the Rivers Pollution Prevention Act, 1876, do not justify a local sanitary authority in cutting off the connection with their sewer, even although it is shewn that the discharge of the trade effluent prejudicially affects the disposal of the sewage matter conveyed through the sewer.

Decision of *Charles J. in Peebles v. Oswaldtwistle Urban Council*, [1897] 1 Q. B. 384, on this point followed. *EASTWOOD BROTHERS, LD. v. HONLEY URBAN COUNCIL*

*Byrne J.* [1900] W. N. 94; [1900] 1 Ch. 781;

This Case was affirmed by C. A. *See*  
[1901] 1 Ch. 645

**Repairs.**

**28. — Liability to repair—Effect of notice by local authority to owner to repair—Sewer or drain connecting different houses with public sewer—Public Health Acts, 1875** (38 & 39 Vict. c. 55), s. 41; 1890 (53 & 54 Vict. c. 59), s. 19.

Two houses, owned by different persons, were connected with a sewer by a single private drain; the local authority, which had adopted s. 19 of the Act of 1890, served on one owner a notice addressed to both, under the Public Health Act, 1875, requiring them to abate a nuisance by

**SEWERS (Repairs)—continued.**

doing certain works; the owner served did the work, and sued for the cost as money paid at the request of the authority;—

*Held*, that the notice was not merely a request to do the work, since the owners were compellable to do the work under s. 19 of the Act of 1890 and s. 41 of the Act of 1875. **SELF v. HOVE COMMS.**

Div. Ct. [1895] 1 Q. B. 685

Followed by Div. Ct. *Bradford v. Eastbourne Corporation*, [1896] 2 Q. B. 205.

Discussed by C. A. *Reg. v. Hastings Corporation*, [1897] 1 Q. B. 46, 50.

**29. — Joint notice to several owners to repair drain—Nuisance—Public health—Several houses drained by single private drain—Public Health Acts, 1875 (38 & 39 Vict. c. 55), s. 41; 1890 (53 & 54 Vict. c. 59), s. 19.**

Five houses, of which three belonged to one owner and two to another, were connected with the public sewer by a single private drain. The drain being a nuisance and injurious to health, the local authority served on each of the two owners a notice, under s. 41 of the Public Health Act, 1875, and s. 19 of the Public Health Act, 1890, addressed to them jointly, requiring them to relay the whole of the drain:—

*Held*, that the fact that neither of the owners could relay the part of the drain situate in the other's premises without committing a trespass was no objection to the validity of the notice, and that on non-compliance with the notice the local authority might execute the work and recover the expenses from the owners under the last-mentioned section. **LANCASTER v. BARNES DISTRICT COUNCIL** — Div. Ct. [1898] 1 Q. B. 855

**30. — Single drain draining several houses—Liability to repair—Drain or sewer—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 41—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 19.**

A drain-pipe passing through private property received the drainage of several houses belonging to different owners before it joined the public sewer. The pipe having become a nuisance, the local authority, who had adopted the Public Health Acts Amendment Act, 1890, took proceedings against the owners of the said houses under s. 41 of the Public Health Act, 1875:—

*Held*, following *Bradford v. Eastbourne Corporation*, [1896] 2 Q. B. 205, and disapproving *Hill v. Hair*, [1895] 1 Q. B. 906, that the pipe in question was a single private drain within the meaning of s. 19 of the Act of 1890. **SEAL v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL**

Div. Ct. [1897] 2 Q. B. 543

**31. — Single drain draining several houses—Liability to repair—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 41—Hastings Improvement Act, 1885 (48 & 49 Vict. c. cxcvi.), s. 148.**

Section 41 of the Public Health Act, 1875, empowers a local authority, on written application made to them stating that a drain is a nuisance or injurious to health, to enter the premises, and, if the drain appears to be in bad condition, or to require alteration or amendment, to give notice to the owner or occupier to do the necessary works.

**SEWERS (Repairs)—continued.**

S. ct. 148 of the Hastings Improvement Act, 1885, in cases where two or more houses are connected with a single private drain which conveys their drainage into a public sewer, gives the corporation all the powers conferred by s. 41 of the Act of 1875.

The owner of several houses connected with a single drain conveying their drainage into a public sewer applied for a mandamus to the corporation to repair and maintain the drain. No application had been made under s. 41 of the Public Health Act, 1875:—

*Held*, that the Hastings Improvement Act, 1885, did not empower the corporation to require the owner to repair and maintain the drain, and the corporation were liable to repair and maintain it. **REG. v. HASTINGS CORPORATION**

Div. Ct. [1896] W. N. 160 (7); [1897] 1 Q. B. 46

**Surface Sewers.**

**32. — Watercourse—Roads—Surface-water sewers—"Sewage or filthy water"—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 16, 17.**

Under ss. 15, 16, and 17 of the Public Health Act, 1875, a local authority has power to make its sewers discharge into any natural stream or watercourse, or into any canal, pond, or lake, within its district, subject to the restrictions in s. 17 being observed. The surface water conveyed by surface sewers may be so discharged though it carries down sand and silt, such water not being "sewage or filthy water" within the meaning of s. 17.

Decision of North J. affirmed. **DURRANT v. BRANKSOME URBAN DISTRICT COUNCIL**

C. A. [1897] 2 Ch. 291

Referred to by Stirling J. *Croysdale v. Sunbury-on-Thames Urban Council*, [1898] 2 Ch. 515, 519.

**SEYCHELLES—The Seychelles Judicature O. in C. dated Nov. 28, 1899. St. R. & O. 1899, p. 1661.**

**SHAFT**—Meaning of "working shaft."

See **MINES—Metalliferous Mines**. 17.

**SHAKESPEARE.**

See **TRADE-MARK—Registration**. 33.

**SHELLEY'S CASE, (1851) 1 Rep. 93b—Rule in.**

See **DEED**. 4.

**WILL—Estate Tail**. 81.

**SHANGHAI**—Land taken for public purposes—"Extension" of roads.

See **CHINA**. 1.

**SHAREHOLDERS.**

See **Cases under COMPANY and COMPANY—WINDING-UP**.

**SHARES.**

See **Cases under COMPANY and COMPANY—WINDING-UP**.

**SHARPNESS**—Within the Port of Gloucester.

See **SHIPPING—Demurrage**. 117.

**SHEEP—SHEEP-SCAB.] O. of Bd. of Agriculture dated Sept. 3, 1898, as to. Lond. Gaz. Sept. 13, 1898, p. 5436.**

**SHERIFF.**

*Sheriffs Act, 1887 (50 & 51 Vict. c. 55), consolidates the law.*

**SHERIFF—continued.**

**FEES.]** *Lands Clauses Act, 1845* (8 & 9 Vict. c. 18), *Scale of sheriff's fees for inquiries under—Sheriffs Act 1887* (50 & 51 Vict. c. 55). **W. N. 1900** (Sept. 8), p. 245; **Current Index, 1900**, p. xcvi.

*High Sheriffs (Expenses of Office)—Circular addressed by Her Majesty's Treasury to High Sheriffs with regard to the expenses of their office. 1898 (H. L. 198).*

— Bills of sale.

*See Cases under BILL OF SALE.*

— Execution—Notice of bankruptcy petition—Service.

*See BANKRUPTCY. 106.*

1. — Execution—Outer door.

(A) The effect of the maxim, "A man's house is his castle," is to extend the immunity to the outer door, not only of all dwelling-houses, but also of all buildings whatsoever, and to outer gates of all inclosures as regards both distress and execution.

Decision of Bowen L.J., [1893] **W. N. 67**, affirmed. **AMERICAN CONCENTRATED MEAT CO. v. HENDRY** — — — **C. A. [1893] W. N. 82**

*But see the next Case (B).*

2. — Execution—Outer door—Building not dwelling-house.

(B) But the sheriff may, for the purpose of executing a writ of fieri facias, break open the outer door of a workshop or other building of the judgment debtor, not being his dwelling-house or connected therewith. **HODDER v. WILLIAMS**

**C. A. [1895] 2 Q. B. 663**

— Execution—Seizure of goods and possession for twenty-one days—Sheriff's fees.

*See BANKRUPTCY. 107.*

3. — Execution—Seizure of goods—Going out of possession—Abandonment.

Where a sheriff, who has seized goods under a writ of execution, goes out of possession, the question whether he has abandoned possession is a question of fact. **BAGSHAWES, LD. v. DEACON**

**C. A. [1898] 2 Q. B. 173**

Referred to by **C. A. Lumsden v. Burnett**, [1898] 2 Q. B. 177, 182.

4. — Execution for more than 20*l.*—Sale by private contract—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 145.

Where a sheriff under an execution for more than 20*l.* sells by private contract, with the consent of the debtor, but without leave of the Court, such sale, although against s. 145 of the Bankruptcy Act, 1883, is, until set aside by the Court, valid against a subsequent execution creditor. **CRAWSHAW v. HARRISON**

**Div. Ct. [1894] 1 Q. B. 79**

5. — Garnishee.

Apart from the Bankruptcy Act, 1890, s. 11, sub-s. 2, money in the hands of the sheriff is liable to attachment by a garnishee order. *In re GREER. NAPPER v. FANSHAW*

**Chitty J. [1895] 2 Ch. 217**

Referred to by **Stirling J. In re Turnbull**, [1900] 1 Ch. 180, 184.

**SHERIFF—continued.**

— Holding by sheriff of debtor's goods—Act of bankruptcy.

*See BANKRUPTCY—Act of Bankruptcy. 36.*

— Interpleader.

*See Cases under INTERPLEADER.*

— Levy by—Tools of Trade—Execution creditor—Small Debts Act.

*See BANKRUPTCY—Execution. 102.*

6. — Misconduct—Overcharge by mistake—Penalty under *Sheriffs Act, 1887* (50 & 51 Vict. c. 55), s. 29.

(A) The penalty under s. 29 of the *Sheriffs Act, 1887*, is inflicted for the doing of an act in the nature of a criminal offence; to constitute such an offence there must be a mens rea; therefore a sheriff's officer is not liable to the penalty if he makes an overcharge by mistake. In order to constitute an offence under that Act, it is not necessary that the improper demand or taking of money should be made a condition precedent to the officer's doing his duty.

Decision of Denman J., [1892] 1 Q. B. 231, affirmed. **LEE v. DANGAR, GRANT & CO.**

**C. A. [1892] 2 Q. B. 337**

7. — Overcharge, Unintentional—Liability to penalty—29 *Eliz. c. 4*—3 *Geo. 1, c. 15*—7 *Will. 4 and 1 Vict. c. 55*—*Sheriffs Act, 1887* (50 & 51 Vict. c. 55), s. 29, sub-s. 2 (b), (d).

(B) An unintentional overcharge for poundage due to a clerical error made by a clerk to a firm of sheriff's officers is not an extortion for which a penalty may be recovered under s. 29 of the *Sheriffs Act, 1887*. **SHOPPEE v. NATHAN & CO.**

**Collins J. [1892] 1 Q. B. 245**

8. — Penalty—Demand of excessive fees by sheriff—*Sheriffs Act, 1887* (50 & 51 Vict. c. 55), s. 29, sub-s. 2 (b).

(c) Sending in an account containing items which were greatly reduced on taxation is not a "taking or demand of money above the legal fees" within s. 29 of the *Sheriffs Act, 1887*, the account being subject to and rendered in contemplation of taxation. **TRUSTEE OF WOOLFORD'S ESTATE v. LEVY**

**C. A. [1892] 1 Q. B. 772**

The opinion of Cave J., at p. 776, was dissented from by C. A. **Lee v. Dangar, Grant & Co.**, [1892] 2 Q. B. 337.

Referred to by C. A. *In re Thomas*, [1899] 1 Q. B. 460, 463.

9. — Penalty—Wrongful act of bailiff—*Sheriffs Act, 1887* (50 & 51 Vict. c. 55), s. 29, sub-s. 2.

(d) The liability is imposed by s. 29 of the *Sheriffs Act, 1887*, only upon the person actually guilty of the wrongful act. Therefore, where the sheriff's bailiff in executing a writ of fi. fa. has not excepted from seizure wearing apparel, bedding, tools, and implements of trade to the value of 5*l.* as required by 8 & 9 Vict. c. 127, s. 8, the sheriff is not liable. **BAGGE v. WHITEHEAD**

**C. A. [1892] 2 Q. B. 355**

10. — Money paid to avoid sale.

The provision in s. 11, sub-s. 2, of the Bankruptcy Act, 1890, by which the trustee is entitled, as against the execution creditor, to money paid

**SHERIFF—continued.**

under an execution in order to avoid sale, does not apply to money paid after execution issued in order to prevent seizure, and the execution creditor is entitled to such money as against the trustee.

Decision of Div. Ct., [1895] 2 Q. B. 51, affirmed. *BOWER v. HETT*

C. A. [1895] 2 Q. B. 337

— Poundage—Receiving order—Execution.

See **BANKRUPTCY—Receiving Order**. 215.

11. — *Rates—Seizure of goods of person liable to pay rates—Goods “taken in execution”—Duty of sheriff to pay rates—85 Geo. 3, c. 73 (Local)—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 161, 250.*

By a local Act, where in a certain metropolitan parish the goods of any person liable to pay a rate by virtue of the Act shall have been “taken in execution” by a sheriff before the rate shall have been paid, the sheriff upon demand by the rate-collector is “directed and required in the first place” to pay the rate to the collector; and by the Metropolis Management Act, 1855, the vestry of the parish are to have, for the purpose of levying the rates therein mentioned, the same powers, remedies, and privileges as for levying money for the relief of the poor.

A sheriff seized under a *fi. fa.* the goods of a judgment debtor who was at the time liable to pay to the vestry as the rating authority of the parish a certain rate made up of a poor-rate by virtue of the local Act and a general rate under the Metropolis Management Act, 1855. A demand was made on the sheriff by the rate-collector for the amount of the rate; but the sheriff, having subsequently received from the debtor the amount of the judgment debt, withdrew from possession without having paid the rate:—

*Held*, that the goods had been taken in execution within the meaning of the local Act, and that the sheriff was liable to the vestry for the amount of rate.

Judgment of Bigham J., [1900] 1 Q. B. 111, affirmed. *MARYLEBONE VESTRY v. SHERIFF OF LONDON* — C. A. [1900] 2 Q. B. 591

12. — *Receiving order, Notice of—Costs.*

Although interpleader proceedings may be pending, a sheriff in possession must deliver the goods seized or the proceeds to the official receiver on being served with notice of a receiving order under s. 11, sub-s. 1, of the Bankruptcy Act, 1890. He is only entitled to his costs up to the date at which he received notice of the receiving order. *In re HARRISON. Ex parte SHERIFF OF ESSEX* — Div. Ct. [1893] 2 Q. B. 111

Referred to by C. A. *In re Thomas*, [1899] 1 Q. B. 460, 462.

13. — *Receiving order—Notice of—Sale.*

A sheriff is justified in selling seized goods after notice of a receiving order if so requested by the official receiver, and the trustee has no ground of action because the goods were not delivered up to him in accordance with s. 46 of the Bankruptcy Act, 1883. *TRUSTEE OF WOOLFOOD'S ESTATE v. LEVY* — C. A. [1892] 1 Q. B. 772

Opinion of Cave J., at p. 776, dissented from

**SHERIFF—continued.**

by C. A. *Lee v. Dangar, Grant & Co.*, [1892] 2 Q. B. 337.

Referred to by C. A. *In re Thomas*, [1899] 1 Q. B. 460, 463.

14. — *Recovery of expenses—Right to sue execution creditor—Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 20, sub-s. 2—Order as to Fees, Aug. 31, 1888.*

A sheriff's officer cannot maintain an action against an execution creditor for expenses incurred by him under a writ of *fi. fa.* issued by the creditor, in making inquiries as to the goods of an execution debtor. *SMITH v. BROADBENT & Co.* — Div. Ct. [1892] 1 Q. B. 551

— Remaining in possession more than twenty-one days.

See **BANKRUPTCY**. 107.

— Sale by—Notice of bankruptcy petition—Death of judgment debtor.

See **BANKRUPTCY**. 106.

— Sale by sheriff—Rent in arrear—Lien—Priority—Payment by sheriff—Indemnity.

See **BANKRUPTCY**. 104.

— Sale of goods by—Execution.

See **BILL OF SALE**. 48.

— Seizure of goods by—Priority—Maintenance.

See **LUNACY**. 19, 20.

15. — “*Sheriff*”—*Definition—Bankruptcy petition—Notice of—Bailiff.*

A man in possession who sells the goods of a judgment debtor by direction of the sheriff is not a “sheriff” within s. 168 of the Bankruptcy Act, 1883, and notice to him of a bankruptcy petition presented against the debtor is not notice to the sheriff within s. 11, sub-s. 2, of the Bankruptcy Act, 1890. *BELLYSE v. M'GINN*

Div. Ct. [1891] 2 Q. B. 227

— Trial before under-sheriff and jury—New trial.

See **PRACTICE—New Trial**. 48.

16. — *Writ of elegit—Practice—Duty of sheriff to file writ and inquisition.*

It is the duty of the sheriff, after executing a writ of elegit, to have the writ and inquisition filed in the central office. It is not sufficient, though it has been common, to deliver such documents to the *plt.'s* solicitor. *JOHNS v. PINK*

Stirling J. [1900] 1 Ch. 296

17. — *Writ of fieri facias—Company—Winding-up.*

Although s. 1, sub-s. 6, of the Companies (Winding-up) Act, 1890, gives to the county court winding up a co. “all the powers of the High Court,” the county court has no jurisdiction to issue a writ of *fi. fa.* to the sheriff to enforce by execution an order of that Court directing a person to pay moneys received by him on behalf of the co. to the liquidator. *In re BASSETT'S PLASTER CO.* Div. Ct. [1894] 2 Q. B. 96

**SHERIFF'S FEES AND POUNDAGE ORDER, 1888.**

See **BANKRUPTCY—Receiving Order**. 215.

**SHIFTING CLAUSE—Will.**

See **WILL—Shifting Clause**. 191.

**SHIFTING USE**—Reverter—Common law condition—Rule against perpetuities.  
See VENDOR AND PURCHASER—Title. 76.

## SHIPPING.

*In General*, col. 1928.  
*Anchor*, col. 1928.  
*Appeal*, col. 1929.  
*Arrest*, col. 1929.  
*Average*, col. 1930.  
*Bill of Lading*. See Cases under SHIPPING—**Charterparty**.  
*Bottomry*, col. 1932.  
*Carriage of Grain*, col. 1933.  
*Charterparty*, col. 1933.  
*Collision*, col. 1945.  
*Costs*, col. 1957.  
*Demurrage*, col. 1960.  
*Derelict Vessels*, col. 1966.  
*Deviation*, col. 1966.  
*Docks*. See **DOCK**.  
*Evidence*, col. 1968.  
*Exceptions*, col. 1968.  
*Fees and Stamps*, col. 1974.  
*Fishing Boats*, col. 1974.  
*Freight*, col. 1974.  
*General Average*. See SHIPPING—**Average**.  
*Harbour*, col. 1978.  
*Insurance, Marine*. See **INSURANCE, MARINE**.  
*Interest*, col. 1979.  
*Jettison*, col. 1980.  
*Jurisdiction*. See Cases under SHIPPING—**Practice**.  
*Liability, Limitation of*. See SHIPPING—**Limitation of Liability**.  
*Lien*, col. 1980.  
*Life-saving Appliances*, col. 1981.  
*Limitation of Liability*, col. 1981.  
*Managing Owner*, col. 1985.  
*Maritime lien*. See SHIPPING—**Lien**.  
*Master and Seaman*. See SHIPPING—**Seamen**.  
*Merchant Shipping Acts*. See SHIPPING, *passim*.  
*Mortgage*, col. 1986.  
*Necessaries*, col. 1986.  
*Offences*, col. 1988.  
*Overloading*, col. 1989.  
*Ownership*, col. 1989.  
*Pilotage*, col. 1990.  
*Practice*, col. 1993.  
*Prevention of Accidents*, col. 1999.  
*Quarantine*, col. 1999.  
*Registry*, col. 1999.  
*Report of Cargo*, col. 2000.  
*Restraint*, col. 2000.  
*Sale*, col. 2000.  
*Salvage*, col. 2001.  
*Seamen*, col. 2012.

## SHIPPING—continued.

*Smuggling*, col. 2015.  
*Tender*, col. 2016.  
*Tonnage*, col. 2017.  
*Undermanning*, col. 2017.  
*Wages*. See Cases under SHIPPING—**Seamen**.  
*Wharf*, col. 2017.  
*Wreck*. See Cases under SHIPPING—**Salvage**.

### In General.

*Execution against vessel—Remuneration of appraiser—County Court Rules (Nov.) 1900, Ord. XXXIX. B. W. N. 1900 (Dec. 8), p. 323. See Current Index, 1900, p. lxxviii.*

### — Insurance, Marine.

See Cases under **INSURANCE—Marine**.

— **Obsolete type**—Deductions for wear and tear. See **REVENUE—Income Tax**. 112.

— **Stoppage in transitu**—Transfer to sub-vendee—Possession of document of title—Consent of seller. See **SALE OF GOODS**. 7.

— **Time policy**—Repairs to ship—Assured not liable for cost of repairs—Non-liability of underwriters. See **INSURANCE—Marine**. 79.

1. — **Unseaworthiness**—Detention of ship by Board of Trade—Damage to reputation of shipowner—*Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), s. 6, sub-ss. 1, 10.*

Under s. 10 of the Merchant Shipping Act, 1876 (now s. 460 of the Merchant Shipping Act, 1894), the Bd. of Trade are liable to pay the direct damages caused by the detention of a ship the condition of which does not give reasonable cause for such detention, but they are not liable to pay damages for injury to the shipowner's reputation. *DIXON v. CALCRAFT*

C. A. [1892] 1 Q. B. 458

2. — “**Vessel used in navigation**”—“**Ship**”—*Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 2, 303, 318.*

A small electric launch on an artificial lake fitted to carry passengers:—

*Held*, not to be a vessel used in navigation within s. 2 of the Merchant Shipping Act, 1854 (now s. 742 of the Merchant Shipping Act, 1894), and therefore not to be a passenger steamer within s. 318 of that Act (now s. 281 of the Merchant Shipping Act, 1894), so as to require a duplicate of her Bd. of Trade certificate “to be put up in some conspicuous part of the ship.” *SOUTHPORT CORPORATION v. MORRIS*

Div. Ct. [1893] 1 Q. B. 359

Referred to by Div. Ct. *The Gas Float Whitton (No. 2)*, [1895] P. 301, at p. 307; but this case was reversed by C. A. [1896] P. 42; H. L. (E.) [1897] A. C. 337.

### Anchor.

*Anchors and Chain Cables Act, 1899 (62 & 63 Vict. c. 23)*, simplifies and amends the law relating to the testing and sale of anchors and chain cables.

**SHIPPING (Anchor)—continued.**

— Collision of vessels.

See **SHIPPING—Collision.** 50—54.**Appeal.**

— Costs

See **SHIPPING—Salvage.** 222.

3. — *County court—Appeal from—Amount decreed due under 50l.—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), ss. 26, 31—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.*

Sect. 120 of the County Courts Act, 1888, impliedly repeals ss. 26 and 31 of the County Courts Admiralty Jurisdiction Act, 1868, to the extent of allowing the party aggrieved by the decision of a county court judge on a point of law to appeal, although the amount is under 50l., and although no security for costs has been first given; but in respect of a question of fact the special provisions of the Act of 1868 are unaffected.

(A) **THE "EDEN"** Div. Ct. [1892] P. 67(B) **NEPTUNE STEAM NAVIGATION CO. v. SCLATER. THE "DELANO"**

C. A. affirm. Div. Ct. [1895] P. 40

See also *The Tynwall*, [1895] P. 142, 147; *The Theodore*, [1897] P. 279, 284.

4. — *County court—Appeal from—Cross-appeal—Amount.*

In an action for over five days' demurrage, the county court allowed a sum under 50l. for one day's demurrage. The plts. appealed, and the defts. applied for leave to cross-appeal against the judgment giving one day's demurrage:—

*Held*, that notwithstanding that the plts. had appealed, the defts. had no right to cross-appeal, for they could not originate an appeal questioning a judgment for an amount under 50l. depending as this did upon an issue of fact. **THE "ALNE HOLME"** — — — Div. Ct. [1893] P. 173

5. — *Divisional Court to Court of Appeal, Appeal from—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 45—County Courts Acts, 1875 (38 & 39 Vict. c. 50), s. 10; 1888 (51 & 52 Vict. c. 43), s. 188, sub-s. 5—R. S. C. Order LIX., r. 4.*

Where a Div. Ct. alters the judgment of the county court an appeal lies as of right to the C. A.; for s. 10 of the County Courts Act, 1875, impliedly repeals so much of s. 45 of the Judicature Act, 1873, as is inconsistent with it. And although s. 188 of the County Courts Act, 1888, repealed the whole of the Act of 1875, this repeal (sub-s. 5) does not revive any enactment not in force on Jan. 1, 1889. **THE "DART"**

C. A. [1893] P. 33

**Arrest.**

6. — *Malicious arrest of ship—Action for—Proof of damages—Crassa negligentia—Mala fides.*

Proof of actual damage is not necessary to sustain an action in a Court of Admiralty for wrongful arrest if the seizure of the ship was the result of mala fides or crassa negligentia implying malice.

*Semble*, an action lies at common law for

**SHIPPING (Arrest)—continued.**

malicious arrest of a ship by Admiralty process. **THE "WALTER D. WALLEY"**

Jeune Pres. [1893] P. 202

**Average.**

— *Average bond—No duty to employ an average stater.*

See **NEW SOUTH WALES.** 41.

7. — *General average—Adjustment—Constructive total loss.*

Where, a ship having sustained damage in a storm, it then became necessary, for the purpose of saving the ship and cargo, to make a general average sacrifice, the result of which was that the ship became a constructive total loss and was sold as such:—

*Held*, that the proper mode of ascertaining the amount of the shipowners' loss by the general average sacrifice was by taking the difference between the value of the ship undamaged and the estimated cost of repairing the particular average damage and deducting therefrom the proceeds of the sale of the ship; and that no deduction of one-third new for old was to be made from the estimated cost of the repairs. **HENDERSON BROTHERS v. SHANKLAND & CO.**

C. A. [1896] 1 Q. B. 525

8. — *General average—Charterparty—Bill of lading—Negligence clause.*

Where a contract for carriage of goods by sea contains an exception of negligence of the master and crew, the shipowner is entitled to a contribution from the owner of the goods to general average expenses, though the necessity for the same has been occasioned by the negligence of the master:—

So *held* by A. L. Smith L.J., and Romer L.J., V. Williams L.J. dissenting.

A charterparty, which contained an exception of the negligence of the master and crew, provided that the captain should sign bills of lading at any rate of freight the charterers or their agents might choose without prejudice to the stipulations of the charterparty, and that the charterers should indemnify the shipowners from any consequences which might arise from the captain following the charterers' instructions and signing bills of lading.

The captain, upon the instructions of the charterers, signed bills of lading for goods shipped by a third person, which did not contain a negligence clause. The ship coming into collision with another ship through the negligence of the captain, general average expenses were incurred in putting back for repairs:—

*Held*, that the charterers were liable to indemnify the shipowners against the loss sustained by them through their not being able to obtain a general average contribution from the owner of the goods by reason of the bills of lading not containing a negligence clause.

*The Carron Park*, (1890) 15 P. D. 203, approved of. **MILBURN & CO. v. JAMAICA FRUIT IMPORTING AND TRADING CO. OF LONDON**

C. A. [1900] W. N. 169; [1900] 2 Q. B. 540

9. — *General average—Claim for collision—Jettison of cargo.*

In a collision between a Dutch and an

**SHIPPING (Average)—continued.**

English steamer, the former was sunk, and the latter so injured that she had to jettison cargo to keep the part of the ship damaged out of the water whilst making for a port of refuge. In an action in rem for damage by collision brought by the owners of the Dutch steamer against the English steamer, to which the owners of the latter appeared and counter-claimed, the Dutch steamer was found alone to blame. On the reference as to damages, the owners of the English steamer claimed, *inter alia*, to recover against the owners of the Dutch steamer the balance due in general average contribution from ship to cargo in respect of the jettison, after deducting the amount due from cargo to ship in respect of the damage to the ship:—

*Held*, that the claim must be disallowed, as the loss sustained by the ship in having to make the general average contribution was not directly due to the collision, but arose from the obligation to contribute, resulting from the relation between ship and cargo. *THE "MARPESSA"*

*Jeune J.* [1891] P. 403

10. — *General average—Depreciation of cargo—Remoteness.*

The plaintiffs shipped a deck cargo of cattle and sheep on board the defendants' ship for carriage from Buenos Ayres to Deptford under a contract which provided that the ship should on no account call at a Brazilian port before landing her live stock. The reason for this provision was that by an order of the Bd. of Agriculture foreign animals could not be landed in the United Kingdom if the ship conveying them had touched at a Brazilian port in the course of her voyage. During the voyage the ship sprung a leak, and the master, for the safety of all concerned, put into a Brazilian port for repairs. The plaintiffs thereby suffered loss in consequence of the live stock being unable to be landed in the United Kingdom, and having to be sold elsewhere at lower prices than would have been realized in the English market. The master at the time when he resolved to put into the Brazilian port knew that this would be the result of his so doing:—

*Held*, that the depreciation of the live stock was a loss which the plaintiffs were entitled to have made good in general average. *ANGLO-ARGENTINE LIVE STOCK AND PRODUCE AGENCY v. TEMPERLEY SHIPPING CO.* — *Bigham J.*

[1899] W. N. 110; [1899] 2 Q. B. 403

11. — *General average—Freight—Cargo in peril—Expenses of landing and transporting to place of safety—Extraordinary expenses for general benefit.*

Where after a disaster at sea the shipowner, not merely with a view to freight, but in the interests of the whole adventure or of the cargo owners, and before electing to abandon the ship and carry on the cargo in another ship, incurs necessary expenses on landing a perishable cargo and carrying it to a place of safety, the expenses are not to be charged to freight alone, but are either a general average charge or a charge against cargo or a charge against cargo and freight. In the event of such a disaster there is no rigid rule of law that the shipowner may not

**SHIPPING (Average)—continued.**

employ experienced persons to act in his place for the benefit of all concerned. Whether he is entitled to do so and make the extraordinary expenditure a general average charge depends on the circumstances of the case and whether he acts reasonably and properly. *ROSE v. BANK OF AUSTRALASIA* — *H. L. (E.)* [1894] A. C. 687

12. — *General average—Sacrifice of freight.*

Shippers chartered a ship to carry a cargo of coals from Cardiff to Esquimaux. In the course of the voyage the coal heated to such an extent that if the ship had continued her voyage the ship and cargo would have been totally lost. The master, for the safety of all concerned, put into a port of refuge and landed the coal, which was subsequently surveyed and found to be in such a condition as to be incapable of being carried with safety to its destination. The master accordingly abandoned the voyage, and the chartered freight was lost:—

*Held*, that the freight had not been sacrificed under such circumstances as to make the loss the subject of general average contribution.

*Judgment of Bigham J.*, [1899] 2 Q. B. 356, affirmed. *IREDALE v. CHINA TRADERS INSURANCE CO.* *C. A.* [1900] W. N. 157; [1900] 2 Q. B. 515

— *General average—Ship in ballast—"Foreign statement" clause.*

*See INSURANCE—Marine.* 56.

— *General average loss—Ship valued for policy at less than real value—Salvage—Liability of underwriter.*

*See INSURANCE—Marine.* 27.

— *General average payable per foreign statement—Adjustment—Dutch law.*

*See INSURANCE—Marine.* 57.

— *Particular average loss—Time policy—Repairs to ship.*

*See INSURANCE—Marine.* 79.

13. — *Stranded steamer—Damage to engines—Cost of coal for working engines.*

If in endeavouring to re-float a stranded steamship which is in a position of peril, the engines are intentionally worked, at the risk of damage, for the common safety, damage to the engines caused thereby and value of the coals consumed are the subject of a general average contribution.

*THE "BONA"* — *C. A.* [1895] P. 125

**Bill of Lading.**

*See Cases under SHIPPING—Charter-party.*

**Bottomry.**

14. — *Maritime risk—Maritime interest—Personal credit—Right to payment at intermediate port—Insurance.*

The master of a Norwegian barque at Barbados, being in need of necessities, obtained a cash advance on the security of an instrument by which he promised to repay the amount "within ten days after arrival at port of discharge in Europe, or at any other place at which the voyage may terminate . . . in an approved banker's sight draft or cheque on London to the order of (the agents of the lender) . . . and for



**SHIPPING (Bottomry)—continued.**

which I hereby pledge the said vessel, her freight and her owners. The claim to have priority over all others that may be presented against the said freight and vessel, with the express agreement, however, that it shall not invalidate or affect the lien upon, or right of process against, the said vessel and freight and owners for the amount of this bill . . . in case of its not being duly accepted and paid. Provided always . . . that if the said vessel shall, in the course of the voyage on which she is now being despatched, go into any port of refuge to repair there, all the moneys for the payment of which the said vessel, her freight, and owners, are hereby pledged, shall forthwith become due and payable, and it shall be lawful for the said (agents) to proceed at once against the said vessel, freight and owners, or any or either of the same, separately, to recover the amount of this bill. . . . In the margin was a note as to insurance by the lender:—

*Held*, that the instrument was a valid bottomry bond, for the lender of the money ran the risk of the vessel not reaching her port of discharge, and, therefore, it was immaterial that there was no stipulation as to maritime interest, nor was the bond invalidated by the bill transaction contained in it, or by the loan becoming immediately payable on the vessel putting into a port of refuge, or by the memorandum as to insurance. *THE "HAABET"*

Bucknill J. [1899] P. 295

— Marshalling assets.

See SHIPPING—Necessaries. 178.

**Carriage of Grain.**

**GRAIN CARGOES.] Carriage of. Official Notices with regard to Rules and Regulations conditionally approved under s. 453 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). Price 2d. Bd. of Trade Notices, 1900.**

**Charterparty.****(Bill of Lading and Charterparty.)**

**15. — Ambiguity—Extrinsic evidence—Vessel "always afloat" in dock though unable to cross sill.**

A charterparty was conditioned to the effect that the ship should load in a certain dock "always afloat." The shipowners, finding, that owing to neap tides, the ship, although she could load afloat, would soon not be able to pass out of dock and so be delayed, removed her to another dock, causing the charterers extra expenses:—

*Held*, (1) that the clause as to lighterage was ambiguous, and extrinsic evidence was admissible to explain the intention of the parties; (2) that the shipowners were liable for the extra expenses, as the ship could have been loaded always afloat in the original berth, and the fear of detention did not justify the removal. *THE "CURFEW"*

Div. Ct. [1891] P. 131

**16. — Ambiguity—Printed and written clauses—Exclusion of evidence of custom throwing expense on shipowner.**

By a printed clause the cargo was to be "taken from alongside the ship at merchant's

**SHIPPING (Charterparty)—continued.**

risk and expense." By a written clause the cargo was to be discharged "according to the custom" of the port:—

*Held*, (1) that the first clause referred to the cost, and the second to the time and mode of discharge; (2) that the clauses were not inconsistent nor ambiguous, and therefore evidence as to the custom of the port and the correspondence of the parties were inadmissible. *THE "NIFA"*

Div. Ct. [1892] P. 411

**17. — Ballast—Obligation of shipowner to supply—Responsibility for navigation—Construction of charterparty.**

By a charterparty the ship was let to the charterers for their sole use and benefit for the conveyance of merchandise <sup>and</sup> passengers with liberty to sublet (subject to owner's approval of trade) for two or three round voyages at charterer's option, to be placed by a certain day "with clear holds" at the disposal of the charterers, they "having the whole reach or burthen of the vessel," proper and sufficient room being reserved to the owners for the officers, crew, tackle, &c.; the owners undertaking to maintain her in a thoroughly efficient state during the currency of the charter; the captain to use every reasonable despatch in prosecuting the voyages, and (though appointed by the owners) to be under the orders and directions of the charterers as regards employment, agency and other arrangements; the freight for the hire of the ship to be paid monthly until she was returned by the charterers to the owners:—

*Held*, that upon the true construction of the whole of the charterparty (without deciding whether the contract more nearly resembled one of demise than of carriage) the responsibility for the navigation of the ship was imposed upon the owners, and that the owners were therefore liable to provide any ballast that might be necessary for safe navigation.

Decision of C. A., [1900] 1 Q. B. 28, affirmed. *WEIR v. UNION STEAMSHIP CO. H. L. (E.)* [1900] W. N. 168; [1900] A. C. 525

— Bill of lading—Exception—Conflict of laws.

See SCOTTISH LAW—Pledge. 31.

— Breach of duty—Liability of charterer for defective condition of ship.

See NEGLIGENCE. 2.

**18. — Cargo in frozen condition—Full and complete cargo.**

By a charterparty made in contemplation of a mid-winter loading the charterers agreed to load at a port in the United States "a full and complete cargo of wet wood pulp which contains about 50 per cent. of water." The charterers loaded pulp of that description which was frozen. Frozen pulp is not compressible, and occupies more space than when unfrozen; consequently the cargo was less in quantity than it would have been in summer. The shipowners having brought an action against the charterers for the loss of freight thus caused, evidence was given that in winter wet pulp was usually loaded in a frozen condition:—

*Held*, that the obligation to load a full and complete cargo had been performed by loading

**SHIPPING (Charterparty)—continued.**

as much pulp in a frozen condition as the ship would carry.

Decision of C. A., [1899] 2 Q. B. 364, affirmed.  
STEAMSHIP ISIS Co. v. BAHR

H. L. (E.) [1900] W. N. 112;  
[1900] A. C. 340

19. — "*Cargo of say about 2800 tons.*" *Contract to load a—Construction of charterparty.*

By a contract of charterparty the charterer undertook to load "a cargo of ore, say about 2800 tons." The actual capacity of the ship was 2880 tons. The charterer loaded 2840 tons:—

*Held*, that he had satisfied his contract.

*Morris v. Levison*, (1876) 1 C. P. D. 155, distinguished. *MILLER v. BORNER & Co.*

Div. Ct. [1900] 1 Q. B. 691

20. — "*Cargo of steam coal as ordered by charterers—Colliery guarantee—Strike clause—Colliery on strike.*"

It was agreed by a charterparty that the ship should sail to Cardiff, and proceed to such loading berth as the freighters might name, and should there load "a cargo of steam coal as ordered by the charterers," which they bound themselves to ship, except in the event of (inter alia) strike of shippers' pitmen: the vessel to be loaded as customary, "but subject in all respects to the colliery guarantee, in ——— colliery working days as may be arranged, any claim for demurrage in loading to be settled with colliery direct." The charterers, for the purpose of fulfilling their obligation under the charterparty, contracted with a colliery for a cargo of steam coal, subject to the usual exception as to strikes. Subsequently a strike of pitmen took place, which extended to 85 per cent. of the South Wales collieries, including the before-mentioned colliery. The charterers, in performance of their obligation under the charterparty, tendered to the shipowners the guarantee of that colliery, by which the colliery proprietors undertook to load the ship in twenty days after she should be ready to receive cargo, subject to the usual exception as to strikes. The shipowners objected to the colliery guarantee, as not being in accordance with the charter, on the ground that the colliery was then on strike. The strike still continuing for three months after the arrival of the ship at Cardiff, her loading was in consequence delayed for that period. Steam coal might have been obtained from other collieries in the district which remained working during the strike, although at a very high price.

In an action by the shipowners against the charterers for damages for the detention of the ship:—

*Held*, that the shipowners were not entitled to object to the colliery guarantee as not being in accordance with the charterparty, and that the action was not maintainable. *DOBELL & Co. v. GREEN & Co.*

C. A. [1900] W. N. 41;  
[1900] 1 Q. B. 526

21. — "*Cargo to be taken from alongside at charterers' risk and expense—Any custom of the port notwithstanding—Extent of exclusion of custom—Construction of charterparty.*"

By a charterparty a cargo of timber was to be shipped at a Baltic port and delivered at the Surrey Commercial Docks, London. The charter-

**SHIPPING (Charterparty)—continued.**

party contained a clause, "The cargo to be brought to and taken from alongside the steamer at charterers' risk and expense, any custom of the port notwithstanding":—

*Held*, that the exclusion of the custom of the port related to the whole clause, and that the shipowners were therefore only bound to deliver over the ship's rail, and were not bound by any custom of the port of London requiring a shipowner to do work outside the ship. *BRENDA STEAMSHIP Co. v. GREEN*

C. A. [1900] W. N. 49; [1900] 1 Q. B. 518

22. — "*Carriage of goods and non-delivery—Sale at port of distress—Law of the flag—Duty of master by German law.*"

A German vessel loading at Singapore took aboard pepper shipped by British subjects under English bills of lading in the usual form. During the voyage the ship put into a port of distress, with part of the cargo damaged. The master telegraphed to this effect to Singapore, and the telegram was communicated to the shippers, but no instructions were received. The master then, acting on the best advice available and in good faith, sold the bulk of the pepper, though much was sound and fit for reshipment:—

*Held*, that the law of the flag governed the acts of the master, and that they were justified by that law, and the shippers could not sue for conversion of the pepper. *THE "AUGUST"*

Hannan Pres. [1891] P. 329

Discussed by G. Barnes J. and by C. A. *The Industrie*, [1894] P. 58, 61, 71.

23. — "*Cesser clause—Bill of lading freight less than chartered freight.*"

A cesser clause relieves the charterers from liability only to the extent to which the shipowner has obtained a lien for the freight on the cargo. *HANSEN v. HAROLD BROTHERS*

C. A. [1894] 1 Q. B. 612

24. — "*Cesser clause—Delay at port of loading.*"

The word "demurrage" in a lien clause does not cover damages for undue detention at the port of loading, and the cesser clause does not exempt the charterer from liability for the delay.

(A) *CLINK v. RADFORD & Co.* — C. A.  
[1891] 1 Q. B. 625

(B) *DUNLOP & SONS v. BALFOUR, WILLIAMS & Co.*

C. A. [1892] 1 Q. B. 507

(C) *BRANKELOW STEAMSHIP Co. v. CANTON INSURANCE OFFICE* C. A. [1899] 2 Q. B. 178, 184

25. — "*Condition precedent or warranty—Breach—Waiver.*"

The description of a ship in a charterparty as "now sailed or about to sail" held to be of the substance of the contract a condition precedent, and not a mere warranty, and where such condition is not fulfilled the charterers are justified in refusing to load the ship. But, *held*, on the construction of the correspondence, that the charterers had waived their right, but were entitled to damages:—

*Held*, also, that the construction of the charterparty and of the correspondence was a question for the judge and not for the jury. *BENTSEN v. TAYLOR, SONS & Co.* (No. 2)

C. A. [1893] 2 Q. B. 274

**SHIPPING (Charterparty)—continued.**

26. — *Consignee—Deposit with warehouse owner—Action for freight—“Legal proceedings”—“Owner of goods”—Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), ss. 66, 72.*

Where cargo is deposited by a shipowner with a warehouseman under ss. 66-72 of the Act of 1862 (now ss. 492-496 of the Merchant Shipping Act, 1894), subject to a stop for freight, and the consignee deposits the freight with the warehouseman and takes delivery of the goods from him, no contract by the consignee to be personally liable for the freight is to be inferred from his acceptance of the goods, and the Act creates no such personal liability. In these circumstances a consignee, who is so named in the bills of lading, but who has no property in the goods and takes delivery only as agent for the owner, cannot be sued for the freight.

Decision of C. A., [1894] 1 Q. B. 483, reversed. *WHITE & Co. v. FURNESS, WITHEY & Co.*

**H. L. (E.) [1895] A. C. 40**

Referred to by C. A. *Montgomery v. Foy, Morgan & Co.*, [1895] 2 Q. B. 321, 323, 327.

27. — *Damage to cargo—Bill of lading—Indemnity clause—Third party notice.*

Under a bill of lading dated June 18, 1899, not protecting the deft. shipowners from the consequences of negligence due to improper stowage, a parcel of grain was shipped at Montreal for Liverpool by the steamship *Arroyo*, owned by the defts., and chartered for a term by L. & Co., under a charterparty dated April 19, 1899, not referred to by the bill of lading, but protecting the deft. shipowners from sea damage, and providing that “Bills of lading are to be signed at any rate of freight the charterers or their agents may direct, without prejudice to this charter . . . the charterers hereby indemnify the owners from all consequences or liabilities that may arise from the captain’s doing so.”

On the arrival of the vessel at Liverpool, the grain was found to be damaged from, it was alleged, negligence in the storage of a deck cargo, and the plts., indorsees of the bill of lading and owners of the grain, commenced an action in rem against the defts., as owners of the *Arroyo*, in the Liverpool County Court in the sum of 140*l.* 19*s.* 6*d.* for breach of duty in and about the carriage and delivery of the goods. The defts. served a third party notice on L. & Co., which the county court judge set aside on the ground that the contract of indemnity was “confined to any consequences or liabilities that might arise from the captain’s signing bills of lading at a rate of freight differing from that in the charterparty, and had nothing to do with the damages for breach of duty about the carriage and delivery of goods to which the claim related.”—

*Held*, reversing the decision of the county court judge, that the meaning of the indemnity clause was not so limited. *THE “ARROYO”*

**Div. Ct. [1900] W. N. 60**

28. — *Damage to cargo—Bill of lading incorporating the Harter Act (Act of Congress of U.S.A., Feb. 13, 1893)—Negligence in “management” of the vessel.*

Cargo was shipped at a port in the United States under a bill of lading incorporating the

**SHIPPING (Charterparty)—continued.**

Act of Congress known as “the Harter Act,” by which the owner of the vessel is not to be “held responsible for damage or loss resulting from faults or errors in navigation or in the management of the vessel.”

During the voyage the vessel met with heavy weather, and, the fore-castle becoming flooded, the boatswain, whilst endeavouring, with the aid of a poker, to clear a pipe used to carry off the drainage, drove a hole through it, thereby admitting water into the forehold, and damaging a portion of the cargo. The owner of the cargo sought to render the shipowner liable:—

*Held*, by the Div. Ct. (Sir F. H. Jeune, Pres., and Gorell Barnes J.), reversing the decision of a county court judge, that the shipowner was exempt from liability, as the damage resulted from a fault in the “management” of the vessel, the act having been done for the purpose of rendering the fore-castle habitable, that is, with the object of rendering the ship proper for the purpose for which she was intended.

*The Glenochil*, [1896] P. 10, followed. *THE “RODNEY”* — Div. Ct. [1900] W. N. 46; [1900] P. 112

29. — *Damage to cargo—Bill of lading incorporating the Harter Act (Act of Congress, Feb. 13, 1893)—Negligence in “management” of the vessel in port of discharge.*

Goods were shipped under a bill of lading incorporating the Act of Congress known as “the Harter Act,” by which the owner of the vessel is not to be “held responsible for damage or loss resulting from faults or errors in navigation or in the management of” the vessel.

After the arrival of the vessel at her port of destination, and during the discharge of the cargo, it became necessary to stiffen the ship. For this purpose the engineer ran water into a ballast tank, but negligently omitted first to ascertain the condition of the sounding-pipe and casing, which had, owing to heavy weather during the voyage, become broken. The owner of the goods damaged by the water getting to the cargo, sought to render the shipowner liable:—

*Held*, that the shipowner was exempt from liability, as the damage resulted from a fault in the “management” of the vessel, and the operation of the exception as to “management” was not limited to the period during which the vessel was at sea, but extended to the period during which the cargo was being discharged. *THE “GLENCHIL”* — Div. Ct. [1896] P. 10

Followed by Div. Ct. *The Rodney*, [1900] P. 112.

30. — *Damage to cargo—Excepted perils—Discharge in port of refuge—Refusal of shipowner to reload—Abandonment of voyage—Duty of master.*

Owing to stress of weather, a vessel, after sailing under charter from Cardiff for Cape Town with coals, put into a port of refuge. The coal was discharged partly to effect the necessary repairs to the ship, and partly for the benefit of the cargo, portions of which had become heated from wetting by excepted perils of the sea. After the repairs to the ship were completed, the

**SHIPPING (Charterparty)—continued.**

cargo owner required the shipowner to reload the coal; the shipowner refused on the ground that in the opinion of the surveyors on both sides the coal was not then in a fit state for reshipment, though, subsequent to the commencement of an action for breach of contract, the coal had dried sufficiently to be carried on if the small coal were eliminated from the bulk:—

*Held*, that the charterer was not entitled to recover, as, at the date of the issue of the writ, there was no breach of contract by the shipowner. Up to that time, on the evidence before him, the master, acting on behalf of the shipowner, was justified in refusing to carry on the cargo, and was not bound to wait an indefinite period until experts should be agreed that, the coal being dry, there would be no further risk of spontaneous combustion on a voyage through the tropics, provided the excessive amount of small coal, due to repeated handlings, were removed, for which no facilities existed at the port of refuge, except at an expense out of proportion to the value of the cargo.

Observations of Willes J. in *Notara v. Henderson*, (1872) L. R. 7 Q. B. 225, at p. 237, applied. *THE "SAVONA"* — G. Barnes J. [1900] W. N. 124; [1900] P. 252

**31. — "Damaged" cargo—Inherent vice.**

The master of the plts.' vessel signed bills of lading for cargo as "in good order and well conditioned . . . to be delivered in the like good order and condition," subject to the usual exception as to perils of the seas, and (by incorporation of the charterparty) with the further condition that the balance of freight was payable "on right delivery of cargo less value of cargo . . . damaged . . . not covered" by the exception.

The cargo consisted of fresh cut deals, shipped, as usual at the port of loading, without regard to the weather, which at the time was wet. During the voyage part of the cargo became tainted, discoloured, and out of condition. In an action for balance of freight:—

*Held*, that the defts., the holders of the bills of lading, were not entitled to deduct the amount of the deterioration of the cargo from the balance of freight, as the word "damaged" referred to damage due to breach of contract by the shipowner, and did not include damage arising from want of power in the cargo to bear the ordinary transit in a ship. *THE "BAROCRE"*

G. Barnes J. [1896] P. 294

**— Demurrage.**

See Cases under SHIPPING—Demurrage.

**32. — Description of goods—"Marked and numbered as in the margin"—Bill of lading—Mistake—Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 3.**

By the Bills of Lading Act, 1855, s. 3, "Every bill of lading, in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped"

**SHIPPING (Charterparty)—continued.**

A bill of lading described goods as "marked and numbered as in the margin." Some of the goods shipped were marked and numbered differently from the description in the margin, but this marking and numbering did not affect or denote the substance, quality, or commercial value of the goods.

In an action for damages for short delivery, brought by the consignee against the shipowners' agents, who had signed the bill of lading:—

*Held*, that the defts. were not prevented, by the Bills of Lading Act, 1855, s. 3, from shewing that there was a mistake in the marginal description, and that these goods formed part of the quantity set forth in the bill of lading, and were shipped as part of the plts.' consignment.

*Bradley v. Dunipace*, (1862) 1 H. & C. 521, distinguished. *PARSONS v. NEW ZEALAND SHIPPING CO.* — Kennedy J. [1900] 1 Q. B. 714; this Case was affirmed by C. A. [1901] 1 K. B. 548

**33. — Despatch money—Time for discharge of cargo—"Sundays and fête days" excepted.**

Plts.' ship was chartered by defts. to carry a cargo "to be discharged at the rate of 200 tons per day weather permitting (Sundays and fête days excepted) according to the custom of the port of discharge, and if sooner discharged to pay at the rate of 8s. 4d. per hour for every hour saved":—

*Held*, that despatch money was payable on the difference between the number of hours actually occupied in the discharge (omitting Sundays and fête days) and the total number of hours allowed by the charterparty. *THE "GLENDEVON"* — Div. Ct. [1893] P. 269

**— Deviation.**

See Cases under SHIPPING—Deviation.

**34. — Discharge of timber cargo—Custom—Inconsistency with contract—"To be taken from alongside at merchants' expense."**

A custom that, in discharging long lengths of timber from a ship, the shipowner is bound to put the timber into lighters brought alongside by the consignees is not inconsistent with a charterparty which provides that the timber shall be taken from alongside at merchants' expense. *ARTISELKAB HELIOS v. EEMAN & CO.*

C. A. [1897] 2 Q. B. 83

**— Exceptions.**

See Cases under SHIPPING—Exceptions.

**— Freight.**

See Cases under SHIPPING—Freight.

**— General average.**

See Cases under SHIPPING—Average.

**35. — Hire—Cesser of hire during inefficiency of ship—Payment during discharge of cargo—Costs.**

A charterparty contained a condition in case of breakdown that payment of hire should cease "until the vessel was in an efficient state to resume service." The ship's machinery broke down on her homeward voyage, and she was towed to a port of discharge, the expense being treated as a general average:—

*Held*, that while being towed the ship was not

**SHIPPING (Charterparty)—continued.**

efficient, but that she became efficient when able to discharge.

Decision of Ct. of Sess., (1889) 16 R. 599, affirmed. *HOGARTH v. MILLER BROTHER & Co.*

**H. L. (Sc.) (Lord Bramwell dissent.)**

[1891] A. C. 48

**36. — Incorporation of conditions of charterparty—“Freight and all other conditions as per charterparty”—Limitation to conditions to be performed by consignee.**

By a charterparty a vessel was to load a full cargo of timber, including a deck cargo at merchant's risk. Timber was loaded under a bill of lading which contained no reference to deck cargo, but in which there was a clause “freight and all other conditions as per charterparty.” In an action for freight by the shipowner against the consignees of a part of the cargo which had been carried on deck, the defts. counter-claimed for damage to their cargo:—

*Held* (Rigby L.J. dissenting), that the conditions of the charterparty incorporated into the bill of lading were limited to such as were to be performed by the consignee, and did not include the exemption of the shipowner from liability in respect of deck cargo. *DIEDERICHSEN v. FARQUHARSON BROTHERS* - **C. A. [1898] 1 Q. B. 150**

— Indorsement by buyer—Possession of goods—Consent of seller.

*See* SALE OF GOODS. 7.

**37. — “Lawful merchandise”—Evidence of usage.**

By usage “lawful merchandise” is confined to goods ordinarily shipped from the port of loading:—

*Held*, that as it appeared that ordnance stores were not usually shipped from Ceylon, loading such stores at a port in that Colony was a breach of a charterparty providing for shipment of lawful merchandise. *VANDESPAR & Co. v. DUNCAN & Co.*  
**Charles J. [1891] W. N. 178**

**38. — Loading—Ship to load “always afloat as and where ordered by charterers”—Insufficient depth of water in dock—Detention of ship.**

A charterparty provided that a ship should proceed to a named dock and “there load in the customary manner (Sundays and holidays excepted) always afloat as and where ordered by the charterers, a cargo of rails.” The depth of water in the dock varied with the tides and was sufficient at spring tides, but not at neap tides, for a ship of the size of the chartered vessel to load there always afloat, and this was within the knowledge of the owners and of the charterers. The ship having arrived in the dock the charterers ordered her to a berth where the loading began and continued for several days; then the water began to fall, and to avoid taking the ground the ship was compelled to leave the dock. After several days she returned with the spring tides and completed her loading. The shipowners having sued the charterers for demurrage or damages:—

*Held*, affirming the decision of C. A., [1897] 2 Q. B. 485, that the charterers were not bound to do that which (as was known to the ship-owners) might be physically impossible, namely,

**SHIPPING (Charterparty)—continued.**

order the ship when she arrived to a berth where she could then load continuously always afloat, and that they were not responsible for delay occasioned by natural and physical causes beyond their control. *CARLTON STEAMSHIP CO. v. CASTLE MAIL PACKETS CO.*

**H. L. (E.) [1898] A. C. 486**

— Loss of bill of lading freight—Waiver of lien for chartered freight.

*See* INSURANCE—Marine. 53.

**39. — Penalty or liquidated damages—Refusal to sign bills of lading.**

A charterparty contained the clause, “The captain shall sign charterer's bills of lading as presented without qualification . . . or pay 10*l.* for every day's delay as and for liquidated damages until the ship is totally lost or the cargo delivered.” The captain wrongfully refused to sign the bills of lading as presented; but the charterers were unable to shew that they had sustained any damage by his conduct:—

*Held*, that the clause imposed a penalty and not liquidated damages, and that the plts. were only entitled to nominal damages. *RAYNER v. REDERIARTIEBOLAGET CONDOB*

**Mathew J. [1895] 2 Q. B. 289**

**40. — Pledge—Master and servant—Shipowner's liability—Owner's subsequent liability on bills of lading signed by master.**

The intention and effect of a charterparty is that the owner parts with the possession and control of the vessel to the charterer, and provisions which are not consistent with this intention should be disregarded. Consequently neither the captain nor shipping agent is servant or agent of the owner so as to render him liable either under bills of lading or for negligence, or by reason of his being registered as managing owner. *BAUMVOLL MANUFACTUR VON SCHEIBLER v. GILCHREST & Co.*

**Charles J. [1891] 2 Q. B. 310; revers. by C. A.**

**[1892] 1 Q. B. 253; C. A. affirm. sub nom.**

**BAUMVOLL MANUFACTUR VON SCHEIBLER v.**

**FURNESS, H. L. (E.) [1893] A. C. 8**

Distinguished by C. A. *Manchester Trust v. Furness & Co.*, [1895] 2 Q. B. 539.

**41. — Pledge—Trove—Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1.**

Pledges of goods are entitled to maintain trover in respect of a wrongful delivery of the goods, even where at the date of the wrongful delivery they had not acquired their title to the goods. *BRISTOL AND WEST OF ENGLAND BANK v. MIDLAND RY. CO.* - **C. A. [1891] 2 Q. B. 653**

**42. — Pledge of goods to bank.**

The security of the pledges of a bill of lading is not affected by their return of the bill to the pledgors to enable them to obtain delivery of the merchandise and sell on the pledgee's account, and account for the proceeds towards satisfaction of the debt. *NORTH WESTERN BANK v. JOHN POYNTER, SON & MACDONALDS*

**H. L. (Sc.) [1895] A. C. 56**

Discussed by H. L. (Sc.). *Inglis v. Robertson*, [1898] A. C. 616, 626.

**SHIPPING (Charterparty)—continued.****43. — "Port charges"—Light dues.**

In a charterparty providing for the payment of port charges, the expression "port charges" must be taken to mean all charges which a vessel has to pay before she gets her clearance from a port, and therefore to include whatever light dues she may be required to pay at such port. *NEWMAN & DALE v. LAMPORIT & HOLT*

*Mathew J. [1896] 1 Q. B. 20*

**44. — Port—"Safe port"—Ship unable to reach port without being lightened—Evidence of custom of port.**

A ship was chartered to proceed with a cargo of grain to a port of call "for orders to discharge at a safe port . . . Discharge to be given with dispatch, according to the customs of the port of discharge, and to be all at one port . . . Charterers to have the privilege of naming the discharging dock . . . the dock to be one into which the vessel can at once safely enter and lie afloat at all times." She was ordered to discharge at Gloucester. The basin at Gloucester is approached by a canal seventeen miles long. On arrival of the ship at Sharpness, which is at the entrance to the canal, she was found to be of too great a draught to proceed up the canal. The charterers requested the master to discharge a sufficient part of the cargo at Sharpness to allow of her navigating the canal, and to proceed to Gloucester with the remainder. The master refused to do so, and discharged the whole at Sharpness. Gloucester and Sharpness are for commercial purposes different ports. In an action by the charterers for breach of the charterparty:—

*Held*, that the port of Gloucester, being one which the vessel could not safely reach with a full cargo, was not a safe port within the meaning of the charterparty; and that evidence of a custom of the port for vessels carrying grain to be lightened at Sharpness to allow of their proceeding up the canal to Gloucester was inadmissible, as being inconsistent with the terms of the charterparty by which the discharge was to be "at a safe port."

*Neilsen v. Wait*, (1885) 16 Q. B. D. 67, distinguished. *REYNOLDS & Co. v. TOMLINSON*

*Div. Ct. [1896] 1 Q. B. 586*

**45. — Rescission of charterparty—Damages—Hire of ship—Right of shipowner to rescind contract.**

Where a shipowner rescinded a charterparty under the erroneous belief that the charterer had made default and relet the ship, the charterer was awarded damages for loss of profit. Decision of Ct. of Sess., (1892) 19 R. 987, affirmed.

*CARSWELL v. COLLARD*

*H. L. (Sc.) [1893] W. N. 106; [1893] A. C. 635*

**46. — Warranty, Implied — Bullion-room — Fitness to resist thieves.**

Boxes of gold, shipped abroad, under a bill of lading, for delivery in London, were placed in the bullion-room of the ship, from which one of the boxes was stolen during the voyage. The bill of lading did not contain any mention of a bullion-room, but it was known to the plts. that the defts.' vessels were provided with such rooms, and it was in the contemplation of both parties to

**SHIPPING (Charterparty)—continued.**

the contract that the gold was to be carried in a bullion-room:—

*Held*, affirming the judgment of Mathew J., that there was an implied warranty that the bullion-room in which the gold was stowed was so constructed as to be reasonably fit to resist thieves. *QUEENSLAND NATIONAL BANK, LD. v. PENINSULAR AND ORIENTAL STEAM NAVIGATION Co.* — — — *C. A. [1898] 1 Q. B. 567*

**47. — Warranty of authority—Authority to effect charter—Shipbroker—Telegraphic instructions—Mistake.**

A firm of shipbrokers signed a charterparty in the form "by telegraphic authority" of the charterer "as agent":—

*Held*, that such a form of signature was intended to protect, and by custom did protect, the shipbrokers from any mistake in the telegram. Evidence to explain the meaning of this form of signature admitted. *LILLY, WILSON & Co. v. SMALES, EYLES & Co.*

*Denman J. [1892] 1 Q. B. 456*

**48. — Warranty of seaworthiness—Voyage of steam-vessel in stages—Insufficiency of coal—Cargo burned as fuel.**

The plts.' steam-vessel left Cebu in the Philippine Islands, for Liverpool, with cargo belonging to the defts., shipped under a charterparty and bill of lading giving liberty to coal at ports on the way, and excepting the negligence of the master and engineer. The vessel called at Colombo, but did not take in a reasonably sufficient quantity of coal for the next stage to Suez, and when passing Perim (a coaling station), the master did not call there owing to the negligence of the engineer in not informing him that the coal was running short. In consequence, whilst proceeding up the Red Sea, 50 tons of cargo were burnt as fuel in order to carry the vessel on to Suez, where she again coaled, and so was enabled to perform the chartered voyage to Liverpool:—

*Held* (affirming the decision of G. Barnes J.), that the defts. were entitled to set off by way of counter-claim the value of the cargo burned against the freight, on the ground that, if the plt. shipowners, owing to the necessity for coaling, availed themselves of the liberty to call at ports on the way, they must make their vessel seaworthy at the commencement of each stage for the voyage or stage of the voyage she then enters upon, and, in the circumstances of this case, the second stage was from Colombo to Suez. The plts., therefore, could not rely on the exception covering negligence of the engineer when off Perim, as by the insufficiency of coal when the vessel left Colombo the implied warranty of seaworthiness had been broken.

*Quebec Marine Insurance Co. v. Commercial Bank of Canada*, (1870) L. R. 3 P. C. 234, and *Thin v. Richards & Co.*, [1892] 2 Q. B. 141, followed. *THE "VORTGERN"*

*C. A. [1899] W. N. 34 (2); [1899] P. 140*

**49. — Warranty of seaworthiness—Voyage in stages.**

A steamer was chartered to proceed to O. and there load a part cargo of esparto for delivery at G., with liberty to fill up with dead

**SHIPPING (Charterparty)—continued.**

weight cargo for owners' benefit, and to call at any ports in any order. She called at H. and filled up with ore, but took in no more coal. By reason of insufficient supply of coal she ran ashore and the cargo was lost. On an action for non-delivery of the esparto :—

*Held*, that, even if the voyage could be treated as one divided into stages, the warrant of seaworthiness which attaches at each stage was broken at H., and the plts. were entitled to recover. *THIN v. RICHARDS & Co.*

C. A. [1892] 2 Q. B. 141

Followed by C. A. *The Vortigern*, [1899] P. 140.

**Collision.**

*Collisions at sea—Regulations for preventing—In force on and after July 1, 1897—O. in C. dated Nov. 27, 1896. [1896] P. 307; St. R. & O. 1896, No. 1082.*

50. — *Anchor—Collision at—Duty of colliding vessel—Duty at anchor—Onus probandi.*

When a vessel under way comes into collision with a vessel at anchor exhibiting a proper light, the onus is on her to justify her conduct. She cannot be excused when it is shewn that she had not a sufficient look-out. The vessel at anchor is also bound to keep a competent person on watch, whose duty it is to see that the anchor light or lights are properly exhibited, and to do everything in his power to avert or minimise a collision. If that person acts in error of judgment, when placed by the colliding vessel in a position of difficulty calling for instant decision, he is entitled to favourable consideration, and it must be shewn that any alternative course would have prevented or mitigated the collision. "*MARY*" Tug Co. v. *BRITISH INDIA STEAM NAVIGATION CO. THE "MEANATCHY"* P. C. [1897] A. C. 351

51. — *Anchor light—"Forward part of the vessel"—Regulations for Preventing Collisions at Sea, 1897, art. 11.*

By art. 11 of the Regulations for Preventing Collisions at Sea "a vessel of 150 feet or upwards in length, when at anchor, shall carry" two anchor lights, one "in the forward part of the vessel. . . .":—

*Held*, that a vessel 313 feet in length, at anchor, with the forward light hanging from the foreshroud of the starboard foreerrigging, 72 feet abaft the stem, was, on the true construction of the wording of the article, carrying it "in the forward part of the vessel."

Decision of Bucknill J., [1900] W. N. 5; [1900] P. 43, reversed. *THE "PHILADELPHIAN"*

C. A. [1900] W. N. 120; [1900] P. 262

52. — *Anchor light—Second anchor light—"At or near the stern"—Regulations for Preventing Collisions at Sea, 1897, art. 11.*

Decision of C. A., *The Gannet*, [1899] P. 230, reversed on the facts so far as the *Gannet* was held to be in fault; and the decision of Bucknill J. that the *Algoa* was alone in fault restored. *OWNERS OF STEAMSHIP "GANNET" v. OWNERS OF STEAMSHIP "ALGOA."* *THE "GANNET"*

H. L. (E.) [1900] W. N. 86; [1900] A. C. 234

53. — *Anchor light—Towing lights—"Under*

**SHIPPING (Collision)—continued.**

*way"—Salvage—Regulations for Preventing Collisions at Sea, 1897, preliminary article, and arts. 3, 11.*

A steam-tug is "under way" within the meaning of the preliminary article of the Regulations for Preventing Collisions at Sea, 1897, when she is fast alongside a vessel which she is moving up to her anchor preparatory to towing her away; and the tug should, therefore, exhibit the towing lights and side lights required by art. 3 of the same regulations, though, *semble*, the vessel herself, whilst her anchor is still in the ground, should exhibit the anchor light required by art. 11 of the same regulations. *THE "ROMANCE"* G. Barnes J. [1900] W. N. 254; *see* [1901] 1 Ch. 15

54. — *Anchor, vessel at—Burden of proof—Inevitable accident.*

The defts.' steamer, owing, as they alleged, to a latent defect in the steering gear which could not have been ascertained or prevented by any reasonable care or skill, ran down another vessel at anchor :—

*Held*, that the onus of disproving negligence lay on them, and, on the facts, that they had not disproved negligence and were liable. Evidence necessary to prove inevitable accident considered.

Decision of Butt P., [1892] P. 9, reversed. *THE "MERCHANT PRINCE"* C. A. [1892] P. 179

55. — *Crossing bows of ship—Duties of either vessel.*

Where two steamships entered the Bosphorus from the Black Sea at the same time, both making at about equal speed for a point on the Asiatic side, and on reaching that point the *S*, being on the European side, crossed the bows of the *N*, notwithstanding the proximity of the land, the set of the current, and the fact that neither vessel had on it at the time much steerage way :—

*Held*, that the Court below was wrong in pronouncing the *N*. solely to blame for the collision. The *S*. was to blame in the first instance, but the *N*. was also in fault for not having reversed at once when the *S*'s object was or ought to have been apparent. *SS. "NORD KAP" v. SS. "SANDHILL."* *THE "SANDHILL"* J. C. [1894] A. C. 646

— *Crossing vessels in rivers—Regulations for preventing collisions.*

*See CHINA. 2.*

56. — *Damages—Measure of—Practice—Total loss—Vessel in ballast under charter—Restitutio in integrum.*

The plts.' barque, whilst proceeding in ballast from London to a North American port under charter to load a cargo for the Continent, came into collision with the defts.' steamer and was totally lost.

The defts. admitted liability, and, on the reference to assess the damages, the registrar, assisted by merchants, allowed a sum representing the value of the plts.' barque at the date when she would have accomplished the homeward voyage, together with a sum for the loss of the profit which would have been realized under the charter.

On motion in objection to the report on the

**SHIPPING (Collision)—continued.**

ground that, in the case of the total, as distinguished from the partial, loss of a vessel without cargo, the plts. were only entitled to the market value of the vessel at the time of her loss:—

*Held*, confirming the report of the registrar, that the proper measure of damage was the value of the vessel at the end of the voyage, plus the profits lost under the charterparty.

*The Columbus*, (1849) 3 Wm. Rob. 158, and *The Clyde*, (1856) Sw. 23, considered. *THE "KATE"* - - *Jeune P.* [1899] W. N. 42; [1899] P. 165

57. — *Damages—Unpaid balance of—Action in rem—Arrest—Bail—Release—Judgment—Practically—Admiralty Court Act, 1861 (24 Vict. c. 10), s. 15—Writ of fieri facias.*

A collision occurred in the river Thames between a British and a foreign vessel. The owners of the British vessel commenced an action in rem and arrested the foreign vessel, the owners of which, domiciled abroad, appeared, and, having put in bail for the full value of the vessel and her freight, she was released. The foreign vessel was subsequently found alone to blame, and the decree in the usual form, in the case of owners who have appeared, condemned the defts. and their bail in damages and costs. The damages proved to be in excess of the amount of the bail, and the plts., in respect of this balance, sued out a writ of fieri facias under which the foreign vessel was seized. On application to the Court the sheriff was ordered to withdraw:—

*Held*, by C. A., reversing the decision of Bucknill J. [1899] W. N. 116, that the owners of the foreign vessel had, by appearing, rendered themselves personally liable, and, therefore, payment of the balance could be enforced under s. 15 of 24 Vict. c. 10, by a writ of fieri facias against any of their goods and chattels, including the released vessel, within the jurisdiction.

*The Dictator*, [1892] P. 304, held applicable, approved, and followed. *THE "GEMMA"*  
C. A. [1899] W. N. 136; [1899] P. 285

58. — *Danube—Regulations as to navigation of Lower Danube—Duties of ascending and descending ships—Regulations as to navigation of Lower Danube, art. 32—Appeal from Constantinople.*

Where a ship ascending the Danube finds herself exposed to the risk of meeting a descending ship at or near a point which does not afford sufficient breadth for passing, art. 32 of the regulations applicable to the Lower Danube is imperative, and the ascending ship is bound to stop and wait. If, however, such an ascending ship force her way contrary to art. 32, and her intention so to do is reasonably apparent, a descending ship commits contributory fault by insisting on her right of precedence. *SS. "DIANA" v. SS. "CLIEVEDEN."* *THE "CLIEVEDEN"*

P. C. [1894] A. C. 625

59. — *Delay—Slackening speed, &c.—Reasonable delay—Art. 18 of the Regulations for Preventing Collisions at Sea.*

Art. 18 of the 1884 Regulations under the Merchant Shipping Act, which says, "Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed or stop and reverse if necessary," is sufficiently

**SHIPPING (Collision)—continued.**

complied with though a delay of a few seconds has occurred.

The Court is not bound to hold that compliance must be made the very moment when danger becomes apparent.

*The Emmy Haase*, (1884) 9 P. D. 81, approved. *OWNER OF SS. "KWANG TUNG" v. OWNERS OF SS. "NGAPOOTA."* *THE "NGAPOOTA."*  
P. C. [1897] A. C. 391

60. — *Dock—Barge sunk whilst moored in a dock—Absence of man in charge.*

A barge was sunk whilst moored in a dock during the absence of the man in charge. The dock was lighted, and it would have been impossible to beach the barge, and there being no tide the ropes did not require tending:—

*Held*, that the absence of the person in charge had nothing to do with the collision. *THE "HORNET"* - - *Div. Ct.* [1892] P. 361

61. — *Dredger, Loss of use of—Damage by collision—Remoteness of damage—Mersey harbour trustees.*

Owing to a collision with a ship (the ship being in fault) a steam dredger was injured and the owners were deprived of the use of it for some weeks and the dredging works were delayed. The dredger belonged to trustees charged with the duty of maintaining a harbour and waterway, deriving their funds from rates and not entitled to distribute profits. The trustees having brought a collision suit in the Admiralty against the shipowners:—

*Held* (Lord Morris dissenting), reversing the decision on this point of the C. A., *The Emerald—The Greta Holme*, [1896] P. 192, that though the trustees were not out of pocket in any definite sum they were entitled to recover damages for the loss of the use of the dredger. *OWNERS OF NO. 7 STEAM SAND PUMP DREDGER v. OWNERS OF SS. "GRETA HOLME."* *THE "GRETA HOLME"*  
H. L. (E.) [1897] A. C. 596

Applicable. *The Mediana*, H. L. (E.) [1900] A. C. 113.

62. — *Fleet of warships, Single ship and—Crossing rules—Special circumstances—Regulations for Preventing Collisions at Sea, arts. 19, 21, 27—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 741.*

On a fine clear night in the English channel those in charge of a tug and tow saw, about six miles off and about five points on their port bow, the electric lights of a fleet which proved to consist of thirty warships steaming in company, and proceeding at a speed of ten knots an hour on a course S. 72° E.

The tug and tow were making about six knots an hour on a course N. 9° E., and, acting under art. 21 of the Regulations for Preventing Collisions at Sea, kept their course and speed. They passed across and ahead of the first of the four lines of the fleet, and were crossing ahead of the second line, when the deft., the navigating officer in charge of the leading vessel of that line—acting under the Queen's Regulations corresponding with art. 19 of the Regulations for Preventing Collisions at Sea—kept out of the way of the tug by porting, but negligently omitted



**SHIPPING (Collision)—continued.**

to notice the lights indicating the tow, and, starboarding back again, struck the tow and sank her.

In an action by the owner of the tow it was admitted that the deft. was to blame, and G. Barnes J. held that he was solely to blame, as he could, by the exercise of reasonable care, have avoided the collision, the position and movements of the fleet, in the opinion of the Elder Brethren, not constituting such a danger of navigation or collision, or such circumstances, as to render it necessary for the tug and tow to depart from art. 21, and, under art. 27, avoid immediate danger by keeping out of the way of the fleet. The deft. appealed on the ground that the tug and tow were also to blame for not complying with art. 27:—

*Held*, on the advice of the nautical assessors, that it was improper navigation, as a matter of seamanship, for the tug and tow to attempt, in the circumstances, to pass across and ahead of the fleet; but the Court dismissed the appeal, on the ground that—under the common law doctrine of contributory negligence, as applied in *The Margaret (Cayzer v. Carron Co.)*, (1884) 9 App. Cas. 873—though the tug and tow had been guilty of negligence in keeping on, yet the deft. was not hampered by the other vessels of the fleet, and might, by the exercise of ordinary care and diligence, have avoided the collision.

The construction to be placed on arts. 27 and 29 of the Regulations for Preventing Collisions at Sea considered.

The effect of s. 741 of the Merchant Shipping Act, 1894, in exempting Her Majesty's ships from the provisions of the Act, discussed.

Decision of G. Barnes J., [1900] W. N. 60, affirmed. H.M.S. "SANS PAREIL"

C. A. [1900] W. N. 127; [1900] P. 267

**63. — Fog—Alteration of helm.**

There is no absolute rule that when a ship in a fog finds another ship approaching she is not to alter her course until the direction of approaching ship is discovered. Each case must depend on its own circumstances.

*The Vendomora*, (1889) 14 P. D. 172, affirmed. *THE "VINDOMORA."* OWNERS OF THE "VINDOMORA" v. OWNERS OF THE "HASWELL"

H. L. (E.) [1891] A. C. 1

**64. — Fog—Duty of steamer before entering fog—Regulations for Preventing Collisions at Sea, arts. 12 (a), 13.**

The duty of a steamer to whistle on approaching a fog, and the speed of vessels when in or before entering a fog, under arts. 12 (a), 13 of the Sailing Rules, considered. *THE "N. STRONG."*

Jeune J. [1892] P. 105

**65. — Fog—"Fairway" of river—Duty to ring bell when at anchor—By-laws for Navigation of Thames, 1880, art. 13.**

"Fairway" means a "clear passage way by water," "an open navigable passage used by vessels proceeding up or down a river or channel." *THE "BLUE BELL"* - Div. Ct. [1895] P. 242

— Fog—"Not under command."

See No. 76, below.

**SHIPPING (Collision)—continued.****66. — Fog—Regulations for Preventing Collisions at Sea, 1881, art. 18.**

*Held*, by C. A., that where two ships are approaching in a fog, they ought to stop, and if necessary to reverse, unless there are distinct and unequivocal indications from the fog signals that if the ships continue their course they will pass clear without risk of collision.

Judgment of C. A., *The Lancashire*, [1893] P. 47, affirmed by H. L. (E.) on the facts and not on point of law. *Sub nom. BIBBY BROTHERS & CO., OWNERS OF SS. "LANCASHIRE" v. LEETHAM, OWNER OF SS. "ARIEL."* *THE "LANCASHIRE"*  
H. L. (E.) [1894] A. C. 1

Discussed by Jeune P. *The Lord Bangor*, [1896] P. 28, 32.

— General average.

See Cases under SHIPPING—Average.

**67. — Joint tortfeasors—Assignment of judgment—Damages—Collision—Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5.**

A barque and a tug towing her were found to blame, as was also a steamship with whom they came into collision, and damages were given against the barque and tug, and also to the tug against the steamship. The owners of the barque applied for an order that on payment to the owners of the steamship of the balance due to them, the owners of the steamship should execute an assignment of the judgment to them:—

*Held*, that the application must be refused, since the owners of the barque and tug were joint tortfeasors, and not co-debtors liable for a debt or duty within s. 5 of the Mercantile Law Amendment Act, 1856. *THE "ENGLISHMAN" AND THE "AUSTRALIA"* (No. 2)

Bruce J. [1895] P. 212

**68. — Joint tortfeasors—Form of judgment—Damages—Collision.**

In an action to recover damages for collision against tug and tow, each vessel was found to blame. On motion on behalf of the tug that the judgment should be amended by declaring each vessel severally liable only for half the damage:—

*Held*, that the plt. was entitled to have the judgment drawn up as a joint judgment enforceable against the wrongdoer. *THE "AVON" AND THE "THOMAS JOLIFFE."* - Butt J. [1891] P. 7

— Lights—Anchor light.

See Nos. 50—53, above.

**69. — Lights—Misleading lights—Steamer riding by her chains with anchors unshackled.**

A steamer near the Goodwin Sands unshackled her anchors, banked her fires, shut off steam, and rode head to wind by her chains. She exhibited an anchor light forward and a globular white light aft. A sailing vessel bound down channel mistook the lights for the masthead and green lights of a steamer in motion:—

*Held*, that the steamer was alone to blame for a collision which occurred, as the lights were calculated to mislead, so that the mistake of the sailing vessel was excusable. The steamer having rendered herself unmanageable should have exhibited three red lights, and should have kept steam readily available, so as to bring herself

**SHIPPING (Collision)—continued.**

promptly under command if necessary. *THE "FAEDRELANDET"* - C. A. [1895] P. 205

70. — *Lights—Trawler—Pyrotechnic light—Regulations for Preventing Collisions at Sea, 1884, art. 10, Sched. Part II.—Order in Council, June 24, 1885.*

The provision that a red pyrotechnic light shall be shown by a trawler to an approaching vessel as required by the regulations for preventing collisions as modified by Order in Council of June 24, 1885, only applies when a vessel is approaching the trawler under such circumstances as to create a risk of collision. *THE "ORION"*

Jeune J. [1891] P. 307

71. — *Lights—Vessel carrying misleading light—Mersey river rules, art. 4—Infringement by possibility contributing to collision—Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), s. 17.*

The *T.*, a steamship on the Mersey, came into collision with another while carrying in addition to the usual lights an additional white light alleged to be a customs signal light, as to which no regulation or practice was proved. It was doubtful, on the evidence, whether the lights first seen by the injured ship might not have misled those in charge of her into the belief that the *T.* was at anchor:—

*Held*, that under s. 17 of the Merchant Shipping Act, 1873 (now s. 419, sub-s. 4, of the Merchant Shipping Act, 1894), the *T.* must be deemed at fault. *THE "TALBOT"*

Butt Pres. [1891] P. 184

72. — *Lightship—Loss of use of lightship—Damages—Remoteness of damage.*

A lightship, belonging to a harbour board and used for lighting approaches, was damaged in a collision caused by the negligence of the appellants. The place of the damaged lightship was during her repair taken by another lightship belonging to the board and maintained at an annual expense for the purpose of such an emergency:—

*Held*, that the board was entitled to recover from the appellants not only the out of pocket expenses caused by the collision, but also substantial damages for the loss of the services of the damaged lightship during the time her place was taken by the substituted lightship.

*The Greta Holme*, [1897] A. C. 596, *held* applicable.

Decision of C. A., *The Mediana*, [1899] P. 127, affirmed. OWNERS OF STEAMSHIP "*MEDIANA*" v. OWNERS, & CO., OF LIGHTSHIP "*COMET*." *THE "MEDIANA"*

H. L. (E.) [1900] W. N. 34; [1900] A. C. 113 — Limitation of liability.

See SHIPPING—Limitation of Liability. 163.

— Maritime lien—Scottish law.

See SHIPPING—Lien. 160.

73. — *Narrow channel—Starboard side rule—Regulations for Preventing Collisions at Sea, 1884, art. 21.*

The Swin (between the Middle lightship and the Middle sands) is a narrow channel within art. 21 of the Sailing Rules, 1884, and a steamship must, while safe and practicable, keep to

**SHIPPING (Collision)—continued.**

that side of the fairway which is on her starboard side. *THE "MINNIE"* - C. A. [1894] P. 336

Commented on. *The Oporto*, C. A. [1897] P. 249.

74. — *Narrow channel—Swin Middle Lightship—Risk of collision—Arts. 18 & 21 of the Regulations for Preventing Collisions at Sea, 1884.*

A collision occurred at night, between the plts.' steamship, inward bound, and the defts.' steamship, outward bound, in the Swin Channel at the entrance to the river Thames, about half-way between the Swin Middle Lightship and the North-East Maplin Buoy. Both vessels were found to blame for not reducing speed under art. 18 of the Regulations of 1884 for Preventing Collisions at Sea.

The plaintiffs appealed on the ground that, by reversing at a quarter of a mile, their vessel had complied with art. 18:—

*Held*, by C. A., affirming the decision of G. Barnes J., [1896] W. N. 170 (1) and on the authority of *The Beryl*, (1884) 9 P. D. 137, that the officer in charge of the plts.' vessel having the green light of the defts.' vessel at a distance of half a mile on his port bow crossing to the wrong side of the channel, was not justified, before he stopped and reversed, in waiting to see if there would be a change of light until the vessels were only a quarter of a mile apart.

The plts.' vessel, just prior to the collision, had passed to the southward and eastward of the Swin Middle Lightship, in accordance with the practice sanctioned by the cases of *The Minnie* and *The Corennie*, [1894] P. 336, and 338, n.:—

*Held*, by G. Barnes J., that as any difficulty in the navigation at this part of the river has now been removed by making the North-East Maplin Buoy an occulting gas-light buoy, reliance can no longer be placed on those two cases, and inward-bound steamships must treat the Swin Middle Lightship as midway in a narrow channel, and, when safe and practicable, pass it on their port hand, in order to comply with art. 21 of the Regulations of 1884 (now art. 25 of the Regulations of 1897). *THE "OPORTO"*

C. A. [1897] P. 249

75. — *Newport Harbour By-laws, art. 13.*

By art. 13 of the Newport Harbour By-Laws, 1894: Every vessel shall, unless prevented by stress of weather, be brought into and be taken out of the harbour to the right of mid-channel:—

*Held*, that, in order to comply with this by-law, every vessel proceeding inward from sea must keep outside the southernmost of the buoys, marking the channel at the entrance to the river Usk, until she can round in on to her proper side between the buoys. *THE WINSTANLEY*

C. A. [1896] P. 297

76. — *"Not under command"—Fog—Regulations for Preventing Collisions at Sea, 1884, art. 5.*

"Not under command" in art 5, sub-ss. (a), (c), (d), of the Collision Regulations, 1884, applies only to a ship which is altogether unable "to get out of the way." A vessel which has not lost her power of turning by means of her helm, but is somewhat disabled from reversing, is therefore not within the definition "not under com-

**SHIPPING (Collision)—continued.**

mand"; and for her to hoist the three red lights required by the article is misleading. Decisions of Jeune J., [1891] P. 213, and C. A., [1892] P. 191, affirmed. **OWNERS OF THE "P. CALAND" v. GLAMORGAN STEAMSHIP CO. THE "P. CALAND"**

**H. L. (E.) [1893] A. C. 207**

Referred to by H. L. (Sc.) **McIntyre Brothers v. McGavin**, [1893] A. C. 268, 272.

**77. — Overtaking ship—Regulations for Preventing Collisions at Sea, 1884, art. 20.**

The obligation imposed by art. 20 on the "overtaking ship" to keep out of the way continues, although she has ceased to be within the area lighted by the stern-light and has advanced into a position in which she can see the side-light of the "overtaken" ship. **THE "MOLIERE"**

**Jeune P. [1893] P. 217**

**78. — Pilot for negligence, Action against—County court—Jurisdiction—"Admiralty cause"—County Courts Admiralty Jurisdiction Acts, 1868 (31 & 32 Vict. c. 71), ss. 2, 36; 1869 (32 & 33 Vict. c. 51), ss. 1-4.**

A county court has no jurisdiction to entertain an action in personam against a pilot in respect of a collision between two ships on the high seas caused by his negligence. **REG. v. JUDGE OF THE CITY OF LONDON COURT (No. 2)**

**C. A. [1892] 1 Q. B. 273**

Approved of by H. L. (E.) **The Zeta**, [1893] A. C. 468, 477.

**79. — Practice—Issue as to contributory fault must be first raised in the lower court.**

An issue that the other vessel was to blame in a collision, because of contributory negligence by violation of the Collision Regulations, cannot be raised for the first time in the final Court of Appeal. **OWNERS OF SS. "PLEIADES" v. PAGE AND OWNERS OF SS. "JANE"**

**P. C. [1891] A. C. 259**

**80. — Presumption of blame—Lights obscured—Regulations for Preventing Collisions at Sea, 1884—Merchant Shipping Act, 173 (36 & 37 Vict. c. 85), s. 17.**

By s. 17 of the Merchant Shipping Act, 1873, (now s. 419, sub-s. 4, of the Merchant Shipping Act, 1894), a ship proved to have infringed the rules is to be deemed to be in fault. *Per* Lords Bramwell, Herschell, Macnaghten, and Hannen, the infringement must be one having some possible connection with the collision. Decision of C. A. **The Duke of Buccleuch**, (1889) 15 P. D. 86, affirmed by H. L. (E.) (the votes for and against being equal). **EASTERN STEAMSHIP CO. v. SMITH. THE "DUKE OF BUCCLEUCH"**

**H. L. (E.) [1891] A. C. 310**

**81. — Stopping und reversing—Regulations for Preventing Collisions at Sea, 1884, arts. 15, 18, 19, and 21.**

*Held*, on the facts in a case where the damaged vessel was admittedly in fault, that no fault was attributable to the colliding vessel for not stopping and reversing at an earlier period. **WILSON, SONS & CO., OWNERS OF THE "OTTO" v. CURRIE, OWNER OF THE "THORSA." THE "OTTO"**

**H. L. (Sc.) [1894] A. C. 116**

**82. — Sunken wreck in harbour—Transfer of**

**SHIPPING (Collision)—continued.**

**control to port authority—Liability—Maritime lien—Appeal from Gibraltar.**

The owners of a wreck remained in possession, but the port authority undertook and neglected the duty of indicating its position:—

*Held*, that neither the owners nor the wreck were liable for a collision which ensued, and that no maritime lien arose in the absence of negligence by the owners. The colliding ship having been navigated in circumstances of instant peril with reasonable care and skill:

*Held*, that it was not answerable. **OWNERS OF SS. "UTOPIA" v. OWNERS OF SS. "PRIMULA." THE "UTOPIA"**

**P. C. [1893] A. C. 492**

Referred to by H. L. (E.) **The Crystal**, [1894] A. C. 508, 528.

Referred to by C. A. **The Snark**, [1900] P. 105, 111.

**83. — Sunken wreck in navigable river—Contract to raise—Liability of owner for negligence of contractor.**

A barge belonging to the defts., without negligence on their part, was sunk in the fairway of the river Thames. They employed an under-waterman to conduct the salvage operations necessary to raise her and, for that purpose, put him in possession and control: but, owing to the guard-vessel placed by him, with lights upon it, to mark the submerged barge, having been negligently allowed to get out of position, the plt.'s steamship coming up the river, without negligence, ran upon the wreck and sustained damage:—

*Held*, by C. A., affirming the decision of G. Barnes J., [1899] W. N. 14 (3); [1899] P. 74, that the defts. were personally responsible, as (following *Penny v. Wimbledon Urban Council*, [1899] 2 Q. B. 72), they were bound to see that the necessary precautions were taken to prevent danger to the public, and could not escape from this liability by throwing the blame on the contractor employed by them to do the work. Secondly, because, following *The Utopia*, [1893] A. C. 492, they were under an obligation to protect other vessels from receiving injury from the sunken barge, as the employment of the contractor did not amount to an abandonment or transfer of the possession, management, and control of the wreck. **THE "SNARK"**

**C. A. [1900] W. N. 21; [1900] P. 105**

**84. — Thames By-laws, 1898, Art. 40—Vessel aground in Thames in daytime—Regulations for Preventing Collisions at Sea, 1897, art. 4 (a).**

The plt.'s steamship, whilst proceeding up the Thames in the daytime, took the ground in Limehouse Reach and remained fast. In accordance with art. 40 of the Thames By-laws, those in charge of her gave "four blasts of the steam whistle in rapid succession" to indicate that the vessel was "not under command." The defts., the owners of a steamship which was following her, and ran into her, alleged that those in charge of the plt.'s steamship ought to have hoisted two black balls in accordance with art. 4 (a) of the Regulations for Preventing Collisions at Sea:—

*Held*, that—assuming, without deciding, that

**SHIPPING (Collision)—continued.**

the Regulations for Preventing Collisions at Sea apply in the Thames, as being tidal waters, connected with the high seas, navigable by sea-going vessels—art. 4 (a) of those regulations was not applicable, because that article only provides for the exhibition of black balls by vessels not under command whilst afloat; and, secondly, because, if that article did apply to a vessel fast aground, the case was provided for by art. 40 of the Thames rules, and the sea regulations only come in where they are not excluded by express provision in, or the general scope of, the river rules. *THE "CARLOTTA"* G. Barnes J. [1899] W. N. 80; [1899] P. 223

— Thames navigation.

See Cases under THAMES.

**85. — Tow and tug—Action against—Decree by default against tow—Decree that plaintiffs' ship and tug were both to blame—Division of loss.**

A Norwegian barque, whilst in tow of a tug in the Bristol Channel, came into collision with, and sank, a third vessel. The plts., owners of the third vessel, brought an action in rem against the owners of the barque and the owners of the tug. The owners of the barque having allowed judgment to go by default, the barque was sold by the marshal under a decree condemning that vessel in the amount of the plts.' damage.

The action proceeded against the tug, and resulted in a decree pronouncing both the plts.' vessel and the tug to blame, and condemning the owners of the tug in a moiety of the plts.' damage. On the question of the division of loss:—

*Held*, by the C. A., affirming the decision of Bucknill J., that the plts. were entitled to the proceeds in court of the barque, in part satisfaction of the whole of their damage under the decree by default against that vessel, and that they were also entitled to a moiety of their damage from the owners of the tug, under the decree of both to blame, the proceeds of the barque, and the moiety due from the owners of the tug, taken together, not exceeding the whole of the plts.' loss.

*The Englishman and the Australia*, [1894] P. 239, distinguished. *THE "MORGENGRY" AND THE "BLACKCOCK"* — C. A. [1899] W. N. 211; [1900] P. 1

— Trawler—Pyrotechnic light.

See No. 70, above.

**86. — Tug—Contributory negligence—Joint tortfeasors—Liability of tow—Measure of damages.**

A tug towing a vessel collided with and sunk a third vessel. The tug and the third vessel were found to blame for excessive speed in a fog. The tow was found to blame for not controlling the speed of the tug:—

*Held*, that although the tow had not herself been in collision, and therefore her liability depended on the relation of master and servant between herself and the tug, still the Admiralty rule in case of collision between ships applied, and the tug and the tow were liable to half the damages to the third vessel, after deducting half the damage to the tow to which the third vessel

**SHIPPING (Collision)—continued.**

was liable. *THE "ENGLISHMAN" AND THE "AUSTRALIA"* (No. 1) — JEUNE P. [1894] P. 239

See also [1895] P. 212.

Distinguished by C. A. *The Morgengry and the Blackcock*, [1900] P. 1.

**87. — Tug and tow—Fog—Stopping—Regulations for Preventing Collisions at Sea, 1884, art. 18.**

By art. 18 of the Regulations for Preventing Collisions at Sea, "Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed, or stop and reverse, if necessary."

A four-masted barque, in tow of a tug, in a dense fog at night in the St. George's Channel, was going at the rate of  $1\frac{1}{2}$  knots an hour, and did not stop, though she heard the whistle of a steamer on her port side gradually nearing and indicating danger. The steamer was proceeding at about  $2\frac{1}{2}$  knots an hour, and heard the whistle of the tug crossing her bows from starboard to port. She ported and reversed her engines on seeing the barque, but struck her at right angles on her port quarter, and was held to blame under art. 18 for not stopping sooner:—

*Held*, that the barque was not also to blame for not stopping, as a tug incumbered with a tow is not to be deemed a steamship for all purposes under the rules, and the speed was as slow as was possible consistently with keeping the tow-rope sufficiently taut to prevent the risk of the two vessels being drawn together, and the propeller of the tug being fouled. *THE "LORD BANGOR"* — — JEUNE P. [1896] P. 28

**88. — Tyne river—Compulsory pilotage—Tyne Pilotage Order Confirmation Act, 1865 (28 & 29 Vict. c. 44), Sched., ss. 16, 22—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 604, sub-s. 1.**

A British steamship, belonging to the defts., with passengers for Newcastle, from a place in the British Islands, came into collision with the plt.'s vessel in the Tyne. Neither the master nor the mate of the defts.' steamship held a pilotage certificate for the Tyne district, within which the collision occurred, and the vessel was at the time in charge of a pilot duly licensed by the Tyne Pilotage Commrs. The pilot was found alone to blame:—

*Held*, that the defts. were not liable for the damage sustained by the plt., as, under s. 604, sub-s. 1 of the Merchant Shipping Act, 1894, pilotage was compulsory, notwithstanding the provisions of s. 16 of the schedule to the Tyne Pilotage Order Confirmation Act, 1865, as interpreted in *The Johann Sverdrup*, (1886) 12 P. D. 43. *THE "WARSAW"* G. Barnes J. [1898] P. 127

**89. — Tyne river—Bad look-out—By-law 20 of the Regulations of the River Tyne, 1884.**

A collision occurred, in the daytime, about on the line of lights a quarter of a mile outside the pierheads at the entrance to the river Tyne, between the plts.' steamship going out and the defts.' steamship coming in. G. Barnes J. held the plts.' steamship alone to blame for bad look-out, but that, having regard to the place of collision, the defts.' steamship had, by coming up

**SHIPPING (Collision)—continued.**

from the southward too close to the pierheads infringed by-law 20 of the Regulations of the River Tyne, 1884, as construed by the C. A. in *The Harvest*, (1886) 11 P. D. 90 :—

*Held*, that the defts.' steamship had not broken the rule, as it was not a question of actual distance, but whether the incoming vessel gave the other room to pass out in such a way as not to cause danger, and the defts.' steamship had left the plts.' steamship sufficient room to go out and pass to the southward, provided the outgoing vessel had seen the incoming vessel over the pier, and acted as soon as possible. *THE "JOHN O'SCOTT"* — C. A. [1897] P. 64

**90. — Vessel turning round—Thames By-laws, 1898, art. 48.**

Art. 48 of the Thames By-laws, 1898, by which steam vessels "crossing from one side of the river towards the other side shall keep out of the way of vessels navigating up and down," does not apply to a steam vessel turning round on the same side of the river as that on which she is being navigated, although, when athwart the river, in the process of turning, part of her may, owing to her length, be across the line of mid-stream.

*The River Derwent*, (1891) 7 Asp. M. L. C. 37, distinguished. *THE "JOHN HOLLWAY"*

Bucknill J. [1899] W. N. 246; [1900] P. 37

**Costs.**

**91. — Action in High Court—Cause of action within county court jurisdiction—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3, sub-s. 3; s. 9.**

The plts. claimed over 300*l.* for damages by collision, but agreed to take as damages less than that amount :—

*Held*, that they were entitled to costs, the case being a proper one for trial in the Court. *THE "SALTBRN"*

G. Barnes J. [1892] P. 333

**92. — Action in High Court—County court—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), ss. 3, 9—R. S. C., 1883, Ord. LXV., r. 1.**

An action was brought in the High Court for 180*l.* damages for collision. The plt. recovered 100*l.*, including 50*l.* paid into court. The official referee refused costs, considering that the action should have been brought in a county court :—

*Held*, that the official referee was wrong, on the ground that s. 9 of the County Courts Admiralty Jurisdiction Act, 1868, on which he relied, had been repealed by implication by Order LXV., r. 1. *ROCKETT v. CLIPPINGDALE*

C. A. [1891] 2 Q. B. 293

**93. — Action in the High Court proper to be tried in county court—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3, sub-s. 3, and s. 9.**

A plt., except under special circumstances, will not be allowed costs, when, in an action of damage by collision, although he claim more, he does not recover an amount exceeding 300*l.*, that being the limit of the county court jurisdiction,

**SHIPPING (Costs)—continued.**

under s. 3, sub-s. 3, of the County Courts Admiralty Jurisdiction Act, 1868. *THE "ASIA"*

Hannan P. [1891] P. 121

Commented on by C. A. *Rockett v. Clippingdale*, [1891] 2 Q. B. 293, 300.

— Counsel's fees.

*And see COSTS—Counsel's Fees.*

**94. — Country solicitor—Attendance of, at trial in London—Costs.**

The allowance as between party and party of the costs of the attendance of a country solicitor at a trial in London is a matter for the discretion of the taxing master. In Admiralty actions where the statements of the witnesses have been taken by the country solicitor and the evidence has been collected by him, his presence may be necessary for the proper conduct of the client's case, and if so the costs of his attendance should be allowed, although the case is conducted by the London agent; but in such event the costs of the attendance of the London agent must be reduced. *THE "SOTO"*

G. Barnes J. [1893] P. 73

Discussed by Byrne J. *In re Dixon*, [1898] 2 Ch. 445, 447.

**95. — Higher scale—Scientific witnesses.**

The higher scale under Order LXV., r. 9, was allowed in a case which involved the calling of a number of scientific witnesses and the preparation of plans, and had been so presented as to greatly facilitate the trial. *THE "ROBIN"*

Jeune J. [1892] P. 95

**96. — Limitation of liability—Defendant's costs—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 503.**

In an action for limitation of liability by ship-owners, under the provisions of s. 503 of the Merchant Shipping Act, 1894, when no objection is raised to the decree being pronounced in the terms of the declaration claimed, it is unnecessary for the defts. to be represented by counsel, and their costs will, in future, in such cases not be allowed. *THE "KNIGHT OF ST. GEORGE"*

G. Barnes J. [1898] W. N. 22 (3)

**97. — Limitation of liability—Reference—Costs—Practice.**

On May 21, 1898, a collision occurred in the river Humber between the steamships *Rijnstroom* and *Achilles*. The owners of the *Rijnstroom* admitted liability, and, as plts., obtained a decree, under the provisions of the Merchant Shipping Acts, limiting their liability, with interest, to 622*l.* 10*s.* 5*d.*

At the reference the registrar, assisted by merchants, found that there was due to the several claimants 581*l.* 0*s.* 9*d.*, and the registrar in his report stated that he was of opinion that "each party ought to pay his own costs of the reference and a moiety of the reference fees."

On motion in objection to the report, by the owners of cargo on board the *Achilles* (whose claim of 4783*l.* 1*s.* 11*d.* had been reduced to 2600*l.*), for a declaration that the whole of the damage caused to the cargo was attributable to the collision, and that the practice in limitation

**SHIPPING (Costs)—continued.**

actions was for the plaintiffs to pay the costs of the several claimants:—

*Held*—whilst dismissing the motion with costs on the ground that the registrar had taken the right view of the facts—that no such practice existed, as alleged, for where an exorbitant claim was put forward, which the plaintiffs succeeded in largely reducing, they were practically the successful party, and, therefore, the Court would act upon the suggestion of the registrar, and direct that each party should pay his own costs of the reference and a moiety of the reference fees. *THE "RIJNSTROOM"*

**Bucknill J. [1899] W. N. 33 (1)**

**98. — Pierhead—Damage to ship—Negligence of dock official—County court—Jurisdiction—County Courts Admiralty Jurisdiction Acts, 1868 (31 & 32 Vict. c. 71), s. 3; 1869 (32 & 33 Vict. c. 51), s. 4.**

A ship was damaged by collision with a dock wall, and its owners claimed and recovered in the High Court 221l. from the dock corporation for negligence:—

*Held*, that s. 4 of the County Courts Admiralty Jurisdiction Act, 1869, includes damage to a ship by collision with an object which is not a ship, that the county court had jurisdiction, and that Butt P. had a discretion to refuse to certify for costs.

Decision of C. A. *Turner v. Mersey Docks and Harbour Board. The Zeta*, [1892] P. 285, reversed, and decision of Butt P., [1891] P. 216, restored. *MERSEY DOCKS AND HARBOUR BOARD v. TURNER. THE "ZETA" H. L. (E.) [1893] A. C. 468*

Referred to by Bruce J. *The Theta*, [1894] P. 280, 283.

Referred to by C. A. *The Mecca*, [1895] P. 95, 107.

**99. — Practice—Action in rem—Defence of pilotage—Costs.**

The Court found that the collision was due to the negligent navigation of the *Burma*, but that the fault was solely that of the pilot compulsorily in charge. On the question of costs:—

*Held*, that the defendants were entitled to have the plaintiffs' action dismissed with costs.

*The Courier* (reported on another point), [1891] P. 355, and *The Nellie*, (1896, not reported) followed. *THE "BURMA"* — **Bucknill J. [1899] W. N. 54**

**100. — Refreshers.**

A collision case extended over two hours and a quarter on the first day, and five hours and a half on the second day. On taxation of costs, between party and party, refresher fees were allowed to the counsel of the successful party in respect of the last two and three-quarter hours on the second day:—

*Held*, that the taxing officer had a discretion to allow some refresher fee for any time during which the trial was substantially prolonged beyond five hours. *THE "COURIER"*

**Butt J. [1891] P. 355**

Followed by Div. Ct. *O'Hara, Matthews & Co. v. Elliott & Co.*, [1893] 1 Q. B. 362.

Applied by Bruce J. *The Hestin* (No. 2), [1895] W. N. 100.

**SHIPPING (Costs)—continued.**

— Salvage actions.

See Cases under **SHIPPING—Salvage.**

**101. — Security—Cause of damage—Principal and cross cause—Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 34.**

Plts. issued a writ in personam against defts. for damage by collision. Defts. issued a writ in rem and bail was given by plts. The two actions were consolidated and defts. made counter-claims. Plts. applied for security to be given by defts.:—

*Held*, that s. 34 of the Admiralty Court Act, 1861, gave no power to order security to be given. *THE "ROUGE-MONT"*

**G. Barnes J. [1893] P. 275**

**Demurrage.**

**102. — Colliery guarantee—Incorporation in charterparty—Commencement of lay-days.**

A charterparty provided that the ship should receive "a full and complete cargo" to be loaded as customary at G., as per colliery guarantee, in fifteen colliery working days:—

*Held*, that the provisions of the colliery guarantee as to loading were incorporated into the charterparty, and that the fifteen lay days commenced to run from the day after that on which notice was given that the ship was ready in the dock to receive the cargo. *MONSEN v. MACFARLANE & CO.*

**C. A. (Kay L.J. dissent.) [1895] 2 Q. B. 562**

**103. — Custom for dock company to discharge cargo.**

A charterparty provided the "steamer to be discharged as fast as she can deliver," and owing to the quay being crowded the discharge occupied ten days instead of two as in the ordinary course. By the custom of the dock the whole operation of discharge was conducted by the dock co.:—

*Held*, that the charterers were not liable for demurrage. *THE "JAEDEREN"*

**G. Barnes J. [1892] P. 351**

**104. — Delay in loading—"Weather-working days"—Mode of computation.**

A charterparty provided that cargo should be loaded at a certain rate per weather-working day. On certain days owing to bad weather cargo could only be loaded for a few hours:—

*Held*, that the time so occupied in loading cargo was not to be reckoned against the charterers as a whole, but as a part only, of a weather-working day.

Where work is stopped by bad weather, but a substantial quantity of work is done, though not amounting to half a day, it is to be reckoned as half a day: where substantially more than half a day's work is done, though not amounting to a whole day, it is to be counted as a whole day: no smaller fraction than half a day should be taken into the calculation. *BRANCKELOW STEAMSHIP CO. v. LAMPORT & HOLT*

**Lord Russell of Killowen C.J. [1897] 1 Q. B. 570**

**105. — Delay at loading port—Continuance of demurrage obligation.**

Where demurrage commences to be payable under a charterparty owing to the default of the

**SHIPPING (Demurrage)—continued.**

charterers in failing to provide a quay berth at the port of loading, the obligation to pay demurrage continues, in the absence of any default of the shipowner, until the completion of the loading.

A ship was chartered to go to a foreign port for a cargo, the charterers guaranteeing a cargo and quay berth ready at the port of shipment; owing to their inability to provide a quay berth the ship went on demurrage and, while lying at anchor waiting for a quay berth, was run into by another vessel. The ship was properly taken by her captain to another port for repair, and during her absence for that purpose a quay berth fell vacant which would otherwise have been given to her. After her return to the port of loading she was kept waiting a further six weeks for a quay berth. The shipowners claimed demurrage for the six weeks, but not for the period during which she was absent for repairs:—

*Held*, that upon the return of the ship to the port of loading the demurrage period was resumed without any break in the continuity of the demurrage obligation, and that the charterers were liable to pay demurrage from that date until the loading was completed. **TYNE AND BLYTH SHIPPING CO. v. LEECH, HARRISON & FORWOOD** **Kennedy J. [1900] 2 Q. B. 12**

**106. — Discharge—Delivery of spars—Obligation of consignees.**

A charterparty for the carriage of spars provided that the cargo should be taken from alongside at merchants' expense, the ship "to discharge over side into lighters or otherwise if required":—

*Held*, that the charterparty did not impose upon the ship the obligation to get the spars into the lighters, and for that purpose to put men on board the lighters: but that when it had brought the spars within reach of the consignee's men in the lighters, it was the duty of the latter to take their part in the joint operation of delivering and receiving the goods, and that the consignees were liable to pay demurrage for delay caused by reason of their men being too few to enable the discharge to be completed within the lay days. **PETERSEN v. FREEBODY & CO.**

**C. A. [1895] 2 Q. B. 294**

Differentiated from by **C. A. Aktieselskab Helios v. Ekman & Co., [1897] 2 Q. B. 23, 91.**

**107. — Discharge, Place of—Delivery at usual fruit berth—Obligation to unload.**

A ship carrying under charterparty a cargo of fruit "to be discharged at usual fruit berth as fast as steamer can deliver as customary and where ordered by the charterers," was, on arrival at her destination, unable to discharge immediately, as the harbour authorities, owing to the crowded state of the port, refused to allow her to moor at the usual berths for unloading fruit, which were full; five days later she began discharging, and was unloaded as fast as she could deliver:—

*Held*, that, under the terms of her charterparty, the obligation to unload did not begin until the ship was berthed in a usual fruit berth with the assent of the harbour authorities, the

**SHIPPING (Demurrage)—continued.**

shipowners could not claim demurrage for the delay. **GOOD & CO. v. ISAACS**

**C. A. [1892] 2 Q. B. 555**

Referred to by **C. A. Lyle Shipping Co. v. Cardiff Corporation, [1900] 2 Q. B. 638, 645.**

**108. — Discharge into railway wagons—Deficiency of wagons—Liability of charterer—"Ship to be discharged with all reasonable despatch as customary."**

A ship was chartered to load a cargo of wood, to be carried to the port of Cardiff, and then to be "discharged with all reasonable despatch as customary." The custom at the port of Cardiff was to discharge such a cargo into the wagons of certain rys. that had access to the quay. The charterers arranged with one of these rys. for the supply of wagons to take the cargo. Without any negligence on their part, but owing to stress of work at the port, by reason of which there was a deficiency in the number of wagons available, the discharge of the ship was delayed. In an action against the charterers for the detention of the ship:—

*Held*, affirming the judgment of Bigham J., that the charterers having done their best to procure the appliances that were customarily used at the port for discharging such a ship, and having used them with proper despatch, were not liable for the delay. **LYLE SHIPPING CO. v. CARDIFF CORPORATION** **C. A. [1900] 2 Q. B. 638**

Referred to by **C. A. Monsen v. MacFurlane & Co., [1895] 2 Q. B. 562, 570, 576; Lyle Shipping Co. v. Cardiff Corporation, [1900] 2 Q. B. 638, 645.**

**109. — Lay days.**

Where charterers were asked to commence discharging at 10 A.M. and declined, but ultimately agreed and began to discharge on that day:—

*Held*, (1.) that the charterers were entitled to a whole lay day, and were therefore not bound to take delivery on the day in question, but (2.) that by agreeing to commence the discharge impliedly agreed to count that day as a lay day, and therefore the lay days began on that day. **TUE "KATY" C. A. (revers. Jeune P.) [1895] P. 56**

**110. — Lay days—Damages by way of demurrage—Judicature (Scotland) Act, 1825 (6 Geo. 4, c. 120), s. 40.**

By charterparty it was provided that the *River Ettrick* should proceed to Bo'ness and receive a cargo of coal, to be supplied by the charterers, and brought alongside within sixty running hours, demurrage to be paid at a specified rate, "lay days to count from the time the master has got ship reported berthed and ready to receive cargo, and given notice of the same in writing to the charterers." On Oct. 27 the shipowner informed the charterers that the *River Ettrick* had left Harwich for Bo'ness, and asked them to supply cargo for Oct. 19. On Oct. 19, at 8.30 A.M., the ship arrived in the roads of Bo'ness, but in consequence of the crowded state of the docks she was not allowed to enter. Her arrival was wired to the charterers. On Oct. 21 a loading berth became vacant owing to the cargo of an earlier arrived vessel not being forward. If a

**SHIPPING (Demurrage)—continued.**

cargo had been then ready for the *River Ettrick* she would have been allowed to enter the dock, but her cargo was not ready. Eventually, she was docked on the 26th, berthed for loading on the 27th, and sailed on Oct. 28.

The shipowner recovered from the charterers, in an action raised in the Sheriff Court, Scotland, damages by way of demurrage for the detention of the ship from Oct. 21 until the time when the cargo was ready. Upon appeal to the Court of Session the judgment was reversed. The fact that there was a berth vacant on the 21st was not set out in the interlocutor of the Court of Session in accordance with the Scottish Judicature Act, 1825, but this fact was to be found in the opinion of the judge delivering judgment:—

*Held*, by the House of Lords, that to carry out the spirit of the Scottish Judicature Act all the facts ought to be found by the interlocutor appealed from; but, secondly, it made no difference in the result, for assuming the facts to be as found, the shipowner had no cause of action, for there was no obligation on the part of the charterers to have a cargo on the quay, ready for loading, on the off chance of a berth becoming vacant.

Decision of Ct. of Sess., (1895) 22 R. 796, affirmed. *LITTLE v. STEVENSON & Co.*

**H. L. (Sc.) [1896] A. C. 108**

— Lay days fixed—Strike.

*See* No. 118, below.

**111. — Loading—Obligation of charterers to load—Successive ships—Approximate dates of arrival at loading port—Damages for detention of ship—Perils of the sea clause—Towage clause—Delay—Salvage service—Allowable deviation.**

By a charterparty shipowners agreed with charterers to provide for the successive arrival at a foreign loading port of five steamers between Aug. and Dec. inclusive, “as nearly as possible a steamer a month,” at approximate dates afterwards agreed upon; and the charterers agreed to present cargo within twenty-four hours after notice of each ship’s readiness to receive it. The charterparty contained a clause excepting perils of the sea, and also a clause giving each steamer liberty to tow and be towed and assist vessels in all situations, and providing that salvages should be for the benefit of owners. Owing to perils of the sea, ship No. 2 arrived about a fortnight late; and while she was loading ship No. 3 arrived punctually. There was not sufficient labour to load the two ships at once, and ship No. 3 had to wait for her cargo till the loading of ship No. 2 was completed:—

*Held*, upon the construction of the charterparty, that the shipowners were entitled to damages for the detention of ship No. 3.

Ship No. 4 arrived three weeks late at her Australian port owing to her having while on her voyage to that port fallen in with a disabled ship and towed her to Mauritius as a salvage service; such towage was out of the course of the voyage, and took three weeks to effect. The arbitrator having found that the delay caused by this towing was not so great as to frustrate the object of the adventure:—

*Held*, that the salvage service was an allowable deviation within the contract between the

**SHIPPING (Demurrage)—continued.**

shipowners and the charterers; and that notwithstanding the delay in the arrival of the ship, the charterers were bound to present cargo within twenty-four hours after notice, and not having done so were liable to pay demurrage to the shipowners. *JOHN POTTER & Co. v. BURELL & SON*  
— **C. A. [1897] 1 Q. B. 97**

**112. — Place of discharge—“Ready to discharge.”**

By a charterparty a steamer when loaded with coal was to proceed to a certain port, “and as usual and customary deliver the same always afloat to the order” of the charterers “alongside any store craft steamer depot ship wharf or arsenal . . . Time for delivery to count when steamer is ready to discharge.” There was only one customary place of discharge at the port in question, and when the steamer arrived at the port that place was occupied. In an action for demurrage:—

*Held*, that the steamer was not “ready to discharge,” and that the time for delivery did not therefore commence until she was at the customary place of discharge in the port. *SANDERS v. JENKINS*  
**Collins J. [1897] 1 Q. B. 93**

**113. — Practice—Jurisdiction—District where “property to which the cause relates” is lying—County Courts Admiralty Jurisdiction Act, 1869, s. 2, sub-s. 1—County Courts Admiralty Acts, 1868 (31 & 32 Vict. c. 71), ss. 3, 21, sub-ss. 1, 2; 1869 (32 & 33 Vict. c. 51), ss. 1, 2, sub-s. 1—County Court Act, 1888 (51 & 52 Vict. c. 43), ss. 56, 74.**

The plts., living at N., brought an action in the N. County Court against defts., living at W., in another district, for demurrage for detention of ship at W. At the commencement of the action the ship was at sea, and the former cargo was not within the N. district:—

*Held*, that as the claim arose out of an agreement made in relation to the use and hire of a ship, the action was rightly brought in the N. County Court. *PUGSLEY & Co. v. ROPKINS & Co.*  
**C. A. [1892] 2 Q. B. 184**

**114. — Running days.**

In a charterparty running days mean calendar days from midnight to midnight and not periods of twenty-four hours. *THE “KATY”*

**C. A. (affirm. Jeune P.) [1895] P. 56**

**115. — Strike—Charterer’s liability.**

A charterparty provided that the cargo should “be discharged with all dispatch as customary,” and the ship was detained owing to a strike of dock labourers. By the custom of the port a dock co. undertook the work of discharging cargo:—

*Held*, (1) that the charter did not fix any definite time for discharge, but only required all reasonable dispatch having regard to the circumstances and customary mode of discharge; (2) that the charterers were not liable for the effect of the strike, nor for delay caused by the dock co.

Decision of Wright J., [1892] 1 Q. B. 54, reversed. *CASTLEGATE STEAMSHIP Co. v. DEMPSEY*  
**C. A. [1892] 1 Q. B. 854**

Referred to by C. A. *Lyle Shipping Co. v. Cardiff Corporation*, [1900] 2 Q. B. 638, 645.



**SHIPPING (Demurrage)—continued.****116. — Strike—Consignee's liability.**

Where no time for unloading is fixed by the contract, the consignee's obligation is to use all reasonable diligence under the circumstances which exist at the time of unloading, unless, indeed, those circumstances are attributable to his own conduct;—

*Held*, that as the strike, which caused the delay, was beyond the control of the consignees, they were not liable to the shipowner for delay. *HICK v. RODOCANACHI* C. A. [1891] 2 Q. B. 626;

**affirm.** by H. L. (E.) as regards the consignees, sub nom. *HICK v. RAYMOND AND REID* [1893] A. C. 22

Discussed by H. L. (E.). *Carlton Steamship Co. v. Castle Mail Packets Co.*, [1898] A. C. 486, 490.

Referred to by C. A. *Lyle Shipping Co. v. Cardiff Corporation*, [1900] 2 Q. B. 638, 643.

**117. — Strike—Customary mode of discharge—Sharpness.**

Where the customary mode of discharge in a port was by lighters, and the discharge in this way was delayed by a strike among the lighter-men;—

*Held*, that the charterers were not liable for demurrage under the strike clause, for not discharging in some other way. Sharpness treated as within the port of Gloucester. The "AINE HOLME" — Div. Ct. [1893] P. 173

**118. — Strike—Lay days fixed.**

Under bills of lading incorporating a charterparty fixing the number of lay days and containing no exception as to strikes, the consignees are liable to pay demurrage notwithstanding the inability of the shipowners, owing to a strike, to do their part in the unloading.

Decision of Div. Ct., [1890] 25 Q. B. D. 320, affirmed. *BUDGETT & CO. v. BINNINGTON & CO.*

C. A. [1891] 1 Q. B. 35

**119. — Strike—Option of charterer as to port of discharge.**

A charterparty, which contained a strike clause, provided that the vessel when loaded should proceed to one of several named places on the Thames. The charterers ordered her to proceed to R., one of those places. During the voyage the charterers heard of a strike at R. which did not extend to the other places named in the charterparty. The unloading was delayed by the strike beyond the time fixed in the charterparty;—

*Held*, that the charterers were not obliged to change the destination from R. to one of the other places on learning of the strike, and that as the delay was covered by the strike clause no demurrage was payable. *BULMAN & DICKSON v. FENWICK & CO.* — C. A. [1894] 1 Q. B. 179

**120. — Strike—Shipowner's liability—Discharging cargo—Demurrage.**

A charterparty provided that a cargo of timber should be delivered afloat at L. No fixed date for delivery was given, but clause 13 provided "cargo . . . to be received from alongside ship at port of discharge as customary as fast as steamer can deliver, &c., not less than 100 standards a day." By the custom of the port of

**SHIPPING (Demurrage)—continued.**

L. the ship had to put the timber into barges alongside. The stevedores employed struck during the discharge;—

*Held*, (1) that the provision as to the daily delivery was in favour of the cargo owner, but had not been satisfied, and that demurrage paid under protest in respect of the delay by the strike must be returned, less demurrage for one day on which barges were not ready. *DOBELL & CO. v. WATTS, WARD & CO.* C. A. [1891] W. N. 131

**121. — Termination of voyage—Delivery at safe berth as ordered.**

By a charterparty the vessel was to proceed to the Mersey and deliver her cargo at any safe berth as ordered on arrival in the dock at Garston. On arrival a berth was ordered, but, owing to the crowded state of the dock, delay occurred which prevented the vessel being berthed for some time after arrival. On a claim by the shipowners for demurrage arising from the delay;—

*Held*, that the obligation of the charterers to unload did not commence till the vessel was berthed.

*The Carisbrook*, (1890) 15 P. D. 98, overruled. *Davies v. McVeagh*, (1879) 4 Ex. D. 265, commented on. *THARSIS SULPHUR AND COPPER CO. v. MOREL BROTHERS & CO.*

C. A. [1891] 2 Q. B. 647

Referred to by C. A. *Good & Co. v. Isaacs*, [1892] 2 Q. B. 555; *Dobell & Co. v. Green & Co.*, [1900] 1 Q. B. 526, 532; *Monsen v. Macfarlane & Co.*, [1895] 2 Q. B. 562, 570.

Effect of case stated by Collins J. *Sanders v. Jenkins*, [1897] 1 Q. B. 93, 96.

See also *Carlton Steamship Co. v. Castle Mail Packets Co.*, [1897] 2 Q. B. 485, 491; [1898] A. C. 486.

**Derelict Vessels.**

Act of 1896 for the better reporting of Derelict Vessels (59 & 60 Vict. c. 12).

MERCHANT SHIPPING ACT, 1894.] *Alterations in Forms in Schedule to this Act.* Lond. Gaz. May 12, 1896, p. 2800.

— Salvage actions.

See Cases under SHIPPING—Salvage.

**Deviation.**

— Allowable deviation.

See SHIPPING. 111.

**122. — "Cargo"—Hiring of entire capacity of ship—"Port."**

A charterparty (which was on a printed form filled in with writing, and which commenced with a statement that the ship was of a dead weight capacity of 125 tons) provided that a ship should load "a cargo or estimated quantity of 470 quarters (i.e., 102 tons) of wheat at R. (in the port of L.), and proceed to G." (in the port of P). Also it excepted sea perils and allowed the ship to call at any ports in any order. The words "full and complete" which preceded the word "cargo" in the printed form had been struck out. Having loaded the wheat the ship went to M. (also in the port of L.), and loaded from another shipper ten tons of wire netting for P. (in the port of P.), where the netting was discharged.

**SHIPPING (Deviation)—continued.**

Between P. and G. the ship came into collision and the wheat was damaged. The plt. claimed to recover damages for the injury to the wheat on the ground that the ship had deviated in not proceeding direct to G. :—

*Held*, that the liberty "to call at any ports" included liberty to call for the purpose of loading or discharging other cargo there, for that the charterparty, notwithstanding the use of the term "cargo," did not amount to a hiring of the full carrying capacity of the ship, and that there had consequently been no deviation, and the plt. could not recover.

*Seem*, in a charterparty "ports" is not to be understood in a strict technical sense, but includes loading places, though within the same port.

Decision of Lord Russell of Killowen C.J., [1895] 2 Q. B. 366, affirmed. *CAFFIN v. ALDRIDGE* C. A. [1895] 2 Q. B. 648

**123. — Damage to cargo—Liberty to fill up for steamer's benefit.**

By charterparty the deft.'s vessel was to load a cargo of wheat at Marianople for Gibraltar for orders for a port in the United Kingdom or on the continent between Havre and Hamburg, the master of the vessel, to avoid being frozen in at the port of loading, to be "at liberty to leave . . . with part cargo, and to fill up for steamer's benefit at any open Black Sea, Azoff or Mediterranean port for United Kingdom, Continent or Mediterranean; but in case of leaving with part cargo the steamer shall complete the voyage as if a full cargo had been loaded . . ."

The master, under this liberty, left Marianople with part of the cargo of wheat, and proceeded to Novorossisk, where he filled up for steamer's benefit with linseed. At Gibraltar he was ordered to deliver the wheat at Cardiff; but he first proceeded to King's Lynn, and there discharged the linseed. On the way between King's Lynn and Cardiff the wheat was damaged by fire. The plts., who were holders of the bill of lading incorporating the conditions of the charterparty, sued the defts. for the damage :—

*Held*, that the defts. were liable as, between King's Lynn and Cardiff, they had become insurers of the consignees of the wheat, for, though the usual exceptions in the bill of lading and charterparty would have covered the loss if it had occurred in the ordinary course of the voyage, the defts. were not entitled to deviate by taking the wheat round by King's Lynn, and could only discharge the linseed at a port on the way. *THE "DUNBETH"*

G. Barnes, J. [1897] P. 133

**124. — Limitation of general words.**

General words in the printed part of a bill of lading, giving the ship liberty to call at several ports, must be limited to such ports as are fairly within the specified voyage which is written into and is the object of the particular contract under which the goods are shipped.

Decision of C. A., [1892] 1 Q. B. 337, affirmed. *GLYNN v. MARGETSON & Co.*

H. L. (E.) [1893] A. C. 351

**125. — "Necessity"—Shipowner's liability.**

The master of a ship may deviate where his ship is damaged by tempestuous weather, but is

**SHIPPING (Deviation)—continued.**

not obliged to put into the nearest port for repairs if, in the exercise of his bona fide discretion, he thinks a more remote port better suited for his purpose. A master need not consult the cargo owners on the subject of ships' repairs. *PHELPS, JAMES & Co. v. HILL*

C. A. [1891] 1 Q. B. 605

— Ambiguity.

*See* SHIPPING—Charterparty. 15, 16.

Docks.

*See* DOCK.

Evidence.

**126. — Burden of proof—Bill of lading—Exceptions—Negligence.**

In an action for non-delivery under a bill of lading, excepting perils of the sea, &c., but not excepting negligence, the defts. pleaded that the loss was caused by perils of the sea :—

*Held*, that as the loss apparently fell under the exception the burden of shewing that the defts. were not entitled to the benefit of the exception by reason of negligence fell on the pliffs. *THE "GLENABROCH"* — C. A. [1894] P. 226

**127. — Examination of witnesses before examiner—Correction of transcript of shorthand notes—Costs.**

*Per* Butt P. : If after filing in the registry the transcript of the shorthand notes of the evidence of a witness taken before an examiner of the Court, a mistake is discovered in the transcript, application should be made to the Court for an order to take the transcript off the file and return it to the examiner for amendment. Costs reserved.

*Per* Jeune J. : The costs of the amendment not being due to the fault of either party should be costs in the cause. *THE "KNUTSFORD"* [1891] P. 219

Exceptions.

**128. — "Accident of navigation"—Negligence clause—Damage to cargo—Excepted perils.**

By a charterparty and bill of lading the shipowner was exempted from liability to the charterer for damage to cargo arising from "perils, &c., of the sea or other waters . . . strandings . . . and all other accidents of navigation and all losses, &c., caused thereby . . . even when occasioned by negligence, &c., of the pilot, master, mariners or other servants" of the shipowner, "but unless stranded, sunk or burnt, nothing herein contained shall exempt" the shipowner "from liability to pay for damage to cargo occasioned by improper opening of valves, sluices and ports, or by causes other than those above excepted. . . ." While the ship was loading at her moorings, a valve in the side of the ship was properly opened, but negligently left open. A quantity of water came in and damaged the cargo. To prevent the ship sinking in deep water the master had her towed into shallow water, where she settled on the ground :—

*Held*, that the shipowner was not liable, because the clause as to negligence applied to "perils, &c., of the sea and other waters," and

**SHIPPING (Exceptions)—continued.**

the exemption of improper use of valves was governed by "unless stranded, &c."

*Semble*, that though the ship was moored, yet as she had cargo on board the accident was "an accident of navigation." *THE "SOUTHGATE"*

G. Barnes J. [1893] P. 329

Referred to by Div. Ct. *The Glenochil*, [1896] P. 10, 16.

129. — "Accidents of the seas"—Carriage by steamship—Damage to cargo by heat—Proximate cause.

A cargo of oats and maize was shipped on the defts. steamship under a bill of lading excepting "accidents of the seas." During the voyage, owing to exceptionally heavy weather, and for the safety of the ship, the ventilators were closed for about a week, with the result that the air in the holds nearest the engine-room space became heated and, not being able to escape, a portion of the cargo was damaged:—

*Held*, that the shipowner was not liable, for the contract was for the carriage of goods by a steamship, and the damage was due to the air, heated in the usual course of the voyage of a steamship, being unable to escape from the holds owing to the ventilators being necessarily closed, and, therefore, the severity of the weather was the proximate cause, and the damage covered by the exception. *THE "THRUSCOR"*

Div. Ct. [1897] P. 301

130. — "Defects latent on beginning voyage or otherwise"—Exemption of shipowner from liability.

A bill of lading contained, among other exceptions, one by which the shipowner was not to be liable for loss or damage arising from "defects latent on beginning voyage or otherwise" in hull, tackle, boilers, or machinery, or their appurtenances:—

*Held*, affirming the judgment of Bigham J., [1898] 1 Q. B. 645, that the exception did not cover a defect which was obvious at the commencement of the voyage. *OWNERS OF CARGO ON BOARD SS. WAIKATO v. NEW ZEALAND SHIPPING CO.* C. A. [1898] W. N. 152; [1899] 1 Q. B. 56

131. — Delay—Lock-out—Accident to railway—Other clauses beyond charterer's control—Causes ejusdem generis with antecedent exceptions.

A ship was chartered to proceed to Batoum, and there load with oil from a named factory, and at a specified rate per day. The charterparty excepted, among other things, "strikes lock-outs accidents to railway," and also "other causes beyond charterer's control." Oil is brought to Batoum by a ry., which was injured by floods so that no oil could be sent down, and the workmen of the factory were discharged, there being no employment for them. Subsequently to the arrival of the ship in port the ry. was repaired, and oil arrived in sufficient quantity to load her; but there was delay in doing so, because the workmen who had been discharged could not be got together in sufficient numbers, and such men as were there were employed in loading other vessels according to the order of their arrival, as was the practice of shippers at that

**SHIPPING (Exceptions)—continued.**

port. On a claim for damages for detention of the ship:—

*Held*, that the general clause excepting "other causes beyond charterer's control" referred to matters ejusdem generis with the antecedent exceptions, and that the delay in loading the ship after the arrival of the oil could not be attributed to accident to the ry., or to anything ejusdem generis with a lock-out, which was confined to the dismissal of workmen arising out of a trade dispute. *In re RICHARDSONS AND M. SAMUEL & Co.* C. A. [1898] 1 Q. B. 261

132. — Disabled ship—Abandonment of voyage—Duty of shipowner to repair ship and complete voyage—Constructive loss.

Where a charterparty provided that the ship shall proceed to a port of discharge and there deliver the cargo, unless prevented by the excepted perils, and the ship has to put into a port of refuge for repairs, the shipowner is liable in damages for abandoning the voyage at that port without the consent of the charterers, unless the effect of the excepted perils proves to have been such as to make it either physically impossible to complete the voyage, or so clearly unreasonable as to be impossible from a business point of view.

Decision of Collins J., [1892] 1 Q. B. 571, affirmed. *ASSICURAZIONI GENERALI v. SS. BESSIE MORRIS CO.* C. A. [1892] 2 Q. B. 652

133. — Due diligence—Negligence of agents—The Harter Act, 1893 (52 Congress, Sess. 2, c. 105).

Goods were shipped under a bill of lading which incorporated by reference an Act of Congress by which, if the owner of a ship shall exercise due diligence to make the vessel in all respects seaworthy, and properly manned, equipped, and supplied, neither the vessel, her owner, agent nor charterers shall become liable or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of the vessel. The owner of a vessel supplied proper equipment and appointed a competent ship's carpenter, but by the negligence of the carpenter the ship was allowed to go to sea in an unseaworthy condition, by reason whereof a part of the cargo was damaged during the voyage. In an action by the owner of the damaged goods against the shipowner:—

*Held*, that to exempt the shipowner from liability it was not sufficient merely to shew that he had personally exercised due diligence to make the vessel seaworthy, but that it must be shewn that those persons whom he employed to act for him in this respect had exercised due diligence; and that, therefore, the negligence of the ship's carpenter prevented the exemption from applying, and the shipowner was liable. *DOBELL & Co. v. STEAMSHIP ROSMORE CO.*

C. A. [1895] 2 Q. B. 408

134. — "Management" of ship—Improper stowage.

A clause excepting, inter alia, "damage from any act, neglect, or default of the pilot, master or mariners in navigation or in management of the ship" does not except the acts of a stevedore,

**SHIPPING (Exceptions)—continued.**

nor does "management of the ship" include improper stowage. *THE "FERRO"*

Div. Ct. [1893] P. 38

Explained by Div. Ct. *The Glenochil*, [1896] P. 10, 16, 18.

**135. — Negligence of master—Incorporation of charterparty conditions into bill of lading.**

Goods were shipped under a charterparty, and a bill of lading contained the words "all other conditions as per charter":—

*Held*, that these words did not incorporate into the bill of lading the negligence clause in the charterparty, so as to extend the excepted perils to "stranding occasioned by the negligence of the master." The words ought to be construed as meaning only such conditions of the charterparty as are to be performed by the consignees of the goods.

Decision of Huddleston B., (1890) 25 Q. B. D. 501, affirmed. *SERRAINO & SONS v. CAMPBELL*

C. A. [1891] 1 Q. B. 283

See also *Manchester Trust v. Furness*, C. A. [1895] 2 Q. B. 539, 545; *Diederichsen v. Farquharson Brothers*, C. A. 150, 153, 156, 162.

**136. — Negligence of master—Leak—Condition as to dunnage—Certificate—Conclusiveness.**

Wheat was shipped under a charterparty and bill of lading, both excepting "perils of the sea and other accidents of navigation even when occasioned by the negligence of the master":—

*Held*, that damage to cargo arising from (1) leakage, (2) neglect of master to stop leak, were within the excepted perils. The charterparty was conditioned that there should be good dunnage, and that a surveyor should certify accordingly. A surveyor did certify that the ship was entitled to full confidence and a good risk for underwriters, but did not mention dunnage:

*Held*, that the certificate was not conclusive, and the shipowner was liable for damage caused by imperfect dunnage. *THE "CRESSINGTON"*

Div. Ct. [1891] P. 152

**137. — Negligence of master—Master also part owner—Applicability of exception—Bill of lading.**

A bill of lading was signed by the deft., who was master and part owner of the ship, on behalf of himself and his co-owners. It contained an exception in respect of "the neglect and default of master in navigating the ship." The cargo was lost by the stranding of the ship through the negligence, but not the wilful negligence, of the deft. In an action by the owners and shippers of the cargo:—

*Held*, that the negligence which caused the loss was that of the deft. exclusively as master and not as part owner, and was within the exception. *WESTPORT COAL CO. v. McPHAIL*

C. A. [1898] 2 Q. B. 130

**138. — Negligence of servants "in navigating the ship or otherwise."**

Under a bill of lading the shipowner was not to be liable for "any act, negligence, default, or error in judgment of the pilot, master, mariners, or other servants of the shipowner in navigating the ship, or otherwise." A part of the cargo was

**SHIPPING (Exceptions)—continued.**

damaged by being negligently stowed by a stevedore employed by the shipowner:—

*Held*, that the words "or otherwise" in the bill of lading were general, and did not limit the exemption to loss or damage arising from negligence in matters akin to navigation, or to loss or damage arising from negligence in relation to the other excepted perils of the bill of lading. *BAERSELMAN v. BAILEY* C. A. [1895] 2 Q. B. 301

**139. — "Pirates, robbers, and thieves"—Theft by persons in service of ship.**

An exception of loss by "pirates, robbers or thieves of whatever kind, whether on board or not or by land or sea":—

*Held*, not to apply to thefts committed by persons, such as stevedores, in the service of the ship. *STEINMAN & CO. v. ANGLIER LINE*

C. A. [1891] 1 Q. B. 619

— Restraint—Bond for safe return.

See SHIPPING—Restraint. 213.

**140. — Restraint of princes—Contraband of war—Risk of seizure—Contract of carriage partly performed—Justification of refusal to complete.**

The plts. shipped goods which were contraband of war on the defts.' ship for carriage from London to Yokohama under a bill of lading containing the exception of "restraint of princes," and also a special clause that "if the entering of or discharging in the port (of discharge) shall be considered by the master unsafe by reason of war . . . the master may land the goods at the nearest safe and convenient port." The ship also carried goods belonging to other shippers. In the course of her voyage the ship arrived at Hong Kong, and on the day of her arrival there war was declared between China and Japan. There were at that time several Chinese war-vessels in and round the port of Hong Kong, and if the master had attempted to sail thence with the plts.' goods on board there would have been a serious danger of their being seized and confiscated. The master accordingly landed them there. In an action for breach of contract to carry the goods to Yokohama:—

*Held*, (1.) that the risk of the goods being seized, if attempted to be carried further, amounted to a "restraint of princes" within the exception; (2.) that such risk of seizure on the voyage between Hong Kong and Yokohama, rendered the "entering of or discharging in the port" of Yokohama unsafe within the meaning of the special clause; and (3.) that the master's duty to take care of the cargo justified him, apart from any exceptions in the bill of lading, in landing the plts.' goods where he did. *NOBEL EXPLOSIVES CO. v. JENKINS & CO.* — Mathew J.

[1896] 2 Q. B. 326

**141. — Restraint of princes and rulers—Demurrage—Customary mode of loading.**

Defts. chartered plts.' ship to load 3000 tons of nitrate at I. in C. at the rate of 200 tons per working lay day, to be reckoned from the day when the vessel was ready to receive cargo to the day of her despatch, "restraints of princes and rulers, political disturbances, or impediments during the said voyage always mutually excepted." The customary mode of loading at I. was to send the nitrate by rail direct to the ship's side as

**SHIPPING (Exceptions)—continued.**

required. A civil war was going on, and I. was blockaded. After the blockade was raised, the ry. was in the hands of troops, and no nitrate could reach I. When the ship was loaded, she put into another port of C. to obtain coal (which was very dear at I.) and was detained by the Government in power there for refusing to pay to it export duties she had already paid to that in power at I. :—

*Held*, that the delay in both cases fell within the exception. **SMITH & SERVICE v. ROSARIO NITRATE CO.**

Decision of Pollock B. [1893] 2 Q. B. 323, affirmed — C. A. [1894] 1 Q. B. 174

142. — *Shipowner from liability, Exemption of* — *Clause of exemption in charterparty but not in bill.*

A charterparty contained the following special clause: "The captain and crew, although paid by the owners . . . shall be the agents and servants of the charterers for all purposes . . . In signing bills of lading it is expressly agreed that the captain shall only do so as the agent for the charterers; and the charterers hereby agree to indemnify the owners from all consequences or liabilities (if any) that may arise from the captain signing bills of lading, or in otherwise complying with the same" :—

*Held*, (1.) that the clause in the charterparty was binding only between the owners and the charterers, and did not affect the liability of the owners to the holders of the bills of lading, who were entitled to consider the captain as the agent of the owners; (2.) that the reference to the charterparty in the bills of lading did not give the holders constructive notice of the contents of the charterparty, the equitable doctrine of constructive notice of contents of documents not being applicable to mercantile transactions.

**Manchester Trust v. Furness, Withy & Co.,** [1895] 2 Q. B. 282, affirmed. *Sub nom.* **MANCHESTER TRUST v. FURNESS**

C. A. [1895] 2 Q. B. 539

Referred to by C. A. **Diederichsen v. Farquharson Brothers**, [1898] 1 Q. B. 150, 154, 164.

143. — *Warranty—"Seaworthiness"—Fitness of refrigerating machinery.*

Where a bill of lading of frozen meat, shipped in a ship fitted with refrigerating machinery, contained a clause, "Steamer shall not be accountable for the condition of goods shipped under this bill of lading, nor for any loss or damage arising from failure or breakdown of machinery, insulation, &c." :—

*Held*, that the bill of lading contained an implied warranty that the refrigerating machinery was at the time of shipment fit to carry the frozen meat in condition, and that the exceptions applied only to what might happen during the voyage, and not to the original fitness of the machinery. **OWNERS OF CARGO ON SHIP "MAORI KING" v. HUGHES** — C. A. [1895] 2 Q. B. 550

Discussed by C. A. **Queensland National Bank v. Peninsular and Oriental Steam Navigation Co.**, [1898] 1 Q. B. 567, 570, 571.

144. — *Warranty—Seaworthiness—Uncovered pipe and damage to cargo thereby—Ambiguous*

**SHIPPING (Exceptions)—continued.**

*finding—Remit—Judicature (Scotland) Act, 1825* (6 Geo. 4, c. 120), s. 40.

A claim for damages for injury caused to jute by sea-water coming through an uncased pipe broken by the pressure of the cargo was remitted to the Court of Session to return answers to certain questions on the evidence already taken. The returned answers were (1) that the practice was to case such a pipe before loading; (2) that after loading, the pipe was not accessible without removing part of the cargo :—

*Held*, on these answers that the ship was unseaworthy when the cargo was taken on board, that the peril was not therefore an excepted one, and the shipowners were liable.

Decision of Ct. of Sess., (1891) 18 R. 569, reversed. **GILROY, SONS & CO. v. PRICE & CO.**

H. L. (Sc.) [1893] A. C. 56

**Fees and Stamps.**

*Order as to Supreme Court Fees, 1884, No. 145* — *Order abolishing fees on sums paid out of the Admiralty Registry.* W. N. 1897 (Feb. 6), p. 57. See *Current Index, 1897*, p. lxxxv.

*Order dated Dec. 19, 1896, as to payment of fees, &c., payable in Admiralty Division by means of a transfer in paymaster's books in lieu of stamps.* W. N. 1897 (Jan. 2), p. 1; St. R. & O. 1896, No. 1109. See *Current Index, 1897*, p. lxxxv.

**Fishing Boats.**

*Os. of Bd. of Trade dated Nov. 2, 1899, exempting certain classes of sea fishing boats from ss. 399 to 408 and 414 (2) of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).* St. R. & O. 1899, p. 927, Nos. 805, 806.

**Freight.**

145. — *Advance freight—Loss of cargo—Liability of charterer.*

A charterparty contained the following clause, "the freight to be paid as follows: one-third on signing bills of lading . . . and the remainder on unloading in cash." Bills of lading were to be signed within twenty-four hours after the cargo was on board. After the commencement of the voyage and before bills of lading were signed the ship sank and the cargo was lost. The charterers then refused to present the bills of lading for signature :—

*Held*, that the loss of the cargo did not relieve the charterers from their obligation to present bills of lading, and that the shipowner was entitled to damages equal to the amount of the advance freight. **ORIENTAL STEAMSHIP CO. v. TYLOR** — C. A. [1893] 2 Q. B. 518

Test in this case, at p. 527, applied by **Stirling J. Holford v. Acton Urban Council**, [1898] 2 Ch. 240.

146. — *Advance freight—Loss of ship.*

A clause in a charterparty stipulating for advance freight, if required, can only be enforced if the requirement be made at a time when the charterers are in a position to insure the advance freight. If the ship be lost before the time of making the requirement, the requirement will be

**SHIPPING (Freight).—continued.**

too late, as all insurable interest will be gone. Purposes of "advance freight" considered.

Decision of Charles J., [1891] 1 Q. B. 42, reversed. *SMITH, HILL & Co. v. PYMAN, BELL & Co.*

C. A. [1891] 1 Q. B. 742

Distinguished by C. A. *Oriental Steamship Co. v. Tylor*, C. A. [1893] 2 Q. B. 518, 528.

147. — *Advance freight—Payment three days after sailing—Destruction of part of cargo before sailing by excepted peril.*

By a contract of charterparty the defts. contracted to load on board the plts.' ship a full and complete cargo at a certain rate of freight per ton "on the quantity to be delivered to the consignees." "The freight to be due and paid as follows: Two-thirds in cash three days after sailing, ship lost or not lost, the balance on unloading and right delivery of the cargo." After the defts. had loaded a part of the cargo a fire broke out on board and destroyed the goods so loaded. Fire was one of the perils mutually excepted by the charterparty. The defts. subsequently loaded the balance of the cargo, and the ship sailed. Three days after sailing the plts. claimed payment of advance freight on two-thirds of the full cargo shipped:—

*Held*, that the plts. were not entitled to payment of advance freight on the part of the cargo destroyed.

Judgment of Lord Russell of Killowen C.J., [1898] W. N. 164 (4); [1899] 1 Q. B. 193, affirmed. *WEIR & Co. v. GERVIN & Co.*

C. A. [1900] 1 Q. B. 45

148. — *Advance on account of freight—Charterparty—Disbursements at port of loading.*

A charterparty contained a clause, "Cash for steamer's ordinary disbursements at port or ports of loading, not exceeding 150*l.* in all, to be advanced at exchange of 50*d.* to the dollar on account of freight, subject to 3 per cent. to cover cost of insurance, &c." The master, having other cash in hand, paid part of the disbursements out of it, and only obtained an advance of part from the charterers. The charterers claimed the profit they would have made by the difference of exchange if the whole amount had been advanced:—

*Held*, that the clause was optional and not obligatory on the shipowner, and that the charterers were not entitled to recover. *THE "PRIMULA"* — *G. Barnes J.* [1894] P. 128

— *Average—General average.*

*See Cases under SHIPPING—Average.*

149. — *Cost of Discharge—Bill of Lading.*

By a clause in a charterparty it was agreed that freight on a cargo of coals shipped by the defts. on the plts.' steamship from Sunderland to Port de Bouc should be paid "at the rate of 9*s.* per ton of 20 cwt*s.* . . . delivered, or on bill of lading quantity, less 2 per cent., at receiver's option, to be declared in writing before bulk is broken"; and by another clause the consignees were "to effect the discharge of the cargo, steamer paying 1 *fr.* per ton of 20 cwt*s.*" The bill of lading stated that the quantity of coal shipped was 1184 tons. On arrival at Port de Bouc the consignees exercised their option by accepting the cargo at the bill of lading quantity,

**SHIPPING (Freight).—continued.**

less 2 per cent., but charged the ship with 1 *fr.* per ton on the bill of lading quantity without deducting the 2 per cent.:—

*Held*, that the clauses of the charterparty must be read together, and, as the consignees had elected to pay freight on the bill of lading quantity, less 2 per cent., the same deduction of 2 per cent. must be allowed by the defts. in respect of the payment of 1 *fr.* per ton by the shipowner for the discharge. *THE "HOLLINSIDE"* Div. Ct. [1898] P. 131

150. — *Damage to goods—Loss of merchantable character—Liability to pay freight—Marine insurance—Insurance of profit—Warranty against average—Concealment of material fact.*

A vessel, on board which dates had been shipped under bills of lading making the freight payable on right delivery, was sunk during the course of the voyage, and subsequently raised. On arrival at the port of discharge it was found that although the dates still retained the appearance of dates, and although they were of considerable value for the purpose of distillation into spirit, they were so impregnated with sewage and in such a condition of fermentation as to be no longer merchantable as dates:—

*Held*, that freight was not payable in respect of them.

A ship having been chartered for a lump sum, the charterers put her up as a general ship, and goods were shipped on board under bills of lading at freights which in the aggregate exceeded the charter freight. The charterers insured their "profit on charter" by a policy which contained a warranty against average. On arrival of the ship part of the cargo was delivered, and freight was payable under the bills of lading for that portion; but owing to sea damage the remainder of the cargo had lost its merchantable character, and freight was not payable in respect of it; the result being that the total amount of the freights payable under the bills of lading was less than the charter freight, and the charterers' profit was consequently lost:—

*Held*, that there had been a total loss of the subject-matter of the insurance within the meaning of the warranty:

*Held*, also, that the fact that the charter freight was a lump sum and not a tonnage rate, although material, had been sufficiently disclosed by a reference to the charterparty, a clause for payment of a lump sum for freight being a usual clause in charterparties, and the obligation to specifically disclose the contents of a charter extending only to unusual clauses, the insertion of which the underwriters could not reasonably have anticipated.

Decision of Mathew J., [1895] 2 Q. B. 196, affirmed. *ASFAR & Co. v. BLUNDELL*

C. A. [1896] 1 Q. B. 123

Referred to by Biggam J. *Field Steamship Co. v. Burr*, [1898] 1 Q. B. 821, 823. This case was affirmed by C. A. [1899] 1 Q. B. 579.

151. — *Default in loading full cargo—Damages—Freight earned by shipowner.*

E. chartered A.'s ship for carriage of a full cargo at 1*l.* 17*s.* 6*d.* per ton. The charterparty excepted "fire" and stipulated that the master

**SHIPPING (Freight)—continued.**

should sign bills of lading at any rate, provided that the bill of lading freight should cover the charterparty freight (5600*l.*). E. shipped 1519 tons at 1*l.* 5*s.* A fire broke out which destroyed 1000 tons of this cargo and delayed the ship. E. refused to load more goods, and A. filled up the ship with other cargo:—

*Held*, that the space occupied by the burnt goods was taken out of the charterparty altogether, and that the freight received by A. for goods carried therein belonged to A. and ought not to be taken into account in reduction of damages:—

*Held*, further, that the fire only absolved E. from payment of the bill of lading freight on the goods burnt, and that after the fire E. was liable for 5600*l.* less 1*l.* 5*s.* per ton on the goods burnt, and not 5600*l.* less 1*l.* 17*s.* 6*d.* per ton on the goods burnt. *AITKEN, LILBURN & Co. v. ERNSTHAUSEN & Co.* - C. A. [1894] 1 Q. B. 773

Applied by C. A. *Weir & Co. v. Union Steamship Co.*, [1900] 1 Q. B. 28, 49. This case was affirmed by H. L. (E.) [1900] A. C. 525.

— General average.

See Cases under SHIPPING—Average.

— Marine insurance.

See Cases under INSURANCE, MARINE.

152. — *Sale at port of distress—Construction of written document—Carriage of goods—German law.*

A charterparty in the ordinary English form was negotiated and made in London between A., a merchant in London, and the London broker of B., a German shipowner, domiciled in Germany, for the chartering of the *I.*, a German ship with a German master, then in a French port, "freight being payable at the rate of 35*s.* per ton of 20 cwt. net delivered. . . . The freight to be paid on right delivery of cargo, if discharged in the U. K.; in cash as customary . . . and if on the Continent in cash at the exchange of the day. . . ." The *I.* put into a port of distress, where a portion of the cargo was found to be so much damaged that on survey it was condemned as unfit for reshipment and sold by the master:—

*Held*, that the intention of the parties was to make an English contract, and the payment of freight being expressly dealt with in the charterparty, no freight was payable on the portion sold. *THE "INDUSTRIE"* - C. A. [1894] P. 58

153. — *Carriage of goods—Short delivery—Burden of proof.*

A shipowner is bound to deliver the full amount of goods signed for by the master in a bill of lading, unless he can prove that the whole or some part of it was in fact not shipped.

In an action for freight for the conveyance of 1000 bales of jute against the appellants, onerous indorsees of the bills of lading, the appellants claimed to retain the value of twelve bales short delivered of the 1000 shewn by the bills of lading signed by the master to have been shipped at the port of loading. There was no clear evidence as to how or where the missing bales had disappeared:—

*Held*, that there was nothing to displace the evidence supplied by the bills of lading that the

**SHIPPING (Freight)—continued.**

missing bales had been received on board the vessel, and that the appellants were entitled to the deduction claimed by them.

Decision of Ct. of Sess., (1895) 22 R. 350, reversed. *SMITH & Co. v. BEDOUIN STEAM NAVIGATION Co.* H. L. (Sc.) [1896] A. C. 70

**General Average.**

See Cases under SHIPPING—Average.

**Harbour.**

*Limitation of liability of harbour conservancy authority.* See *Merchant Shipping (Liability of Shipowners and Others) Act*, 1900 (63 & 64 Vict. c. 32), s. 2.

PORTS.] *The Public Health (Ports) Act*, 1896 (59 & 60 Vict. c. 20), assigns powers under *Infectious Disease (Prevention) Act*, 1890, to port Sanitary Authority.

154. — *Discharge of solid matter in suspension—Obstruction to navigation—Harbour Acts*, 1813–14 (54 Geo. 3, c. 159), s. 11.

An alkali co. discharged a large quantity of water containing solid matter in suspension into a tidal brook which flowed into a navigable river. The solid matter was carried down and deposited in the river, but it was not alleged to tend to the obstruction of the navigation of the river:—

*Held*, that the co. were rightly convicted of casting, &c., rubbish, &c., "in any place or situation on shore where the same shall be liable to be washed into the sea, &c.," and that the words "so as to tend to the injury or obstruction of the navigation thereof" did not apply to this provision, but only to the earlier part of s. 11 of the Harbours Act, 1814 (54 Geo. 3, c. 159). *UNITED ALKALI Co. v. SIMPSON* - Div. Ct. [1894] 2 Q. B. 116

155. — *Harbour authority—Damages—Practice—Action against a harbour board—Limit of time for commencement of—Public duty—Costs—Public Authorities Protection Act*, 1893 (56 & 57 Vict. c. 61), s. 1.

The plts., owners of a barque, issued a writ, on Nov. 14, 1898, in an Admiralty action, against the defts. for damages sustained by the grounding of their vessel on Sept. 13, 1893, in the river Ribble within the port and harbour of Preston, through the alleged negligence of the defts. in inviting the vessel to come up when there was not sufficient water in the channel leading to the docks. Jeune P. dismissed the action with costs to be taxed as between solicitor and client:—

*Held*, affirming the decision of the President, that the defts. were acting in pursuance of their public duties, so that s. 1 of the Public Authorities Protection Act, 1893, applied, and as that statute, dealing with procedure only, was retrospective the action was barred after the expiration of six months from the default complained of. *THE "YDON"*

C. A. [1899] W. N. 72; [1899] P. 236

Dictum of Jeune P. followed by Kekewich J. *Att.-Gen. v. Company of Proprietors of Margate Pier and Harbour*, [1900] 1 Ch. 749.

156. — *Harbour authority—Towage—Damage*

**SHIPPING (Harbour)—continued.**

—Contract to exercise reasonable care and skill—Port and harbour authority.

The appellants undertook for payment to tow the respondents' vessel with others by hired tugs up a tidal river, to lighten the respondents' vessel if necessary, and to conduct the whole operation of the towage upon a certain tide, including the arrangement of the time and order of procession, the river being too narrow for two vessels to go abreast or pass one another. The tug towing the leading vessel was so slow and inefficient that the respondents' vessel, which was the last in the line, was stranded on the ebb tide and damaged:—

*Held*, that the appellants were bound to exercise reasonable care and skill in the conduct of the towage, and that, there being evidence of failure in that respect, the respondents were entitled to sue the appellants for damages.

Decision of C. A., *The Ratata*, [1897] P. 118, affirmed. *PRESTON CORPORATION v. BJORNSTAD. THE "RATATA"* H. L. E. [1898] A. C. 513

157. — Harbour-master—Authority of harbour-master to bind owners—Permissive use of lock for grounding—Negligence.

A ship entered a dock to load. While crossing the dock she was disabled, and there being no dry dock, with the permission of the harbour-master put into a lock to ground. On grounding she sustained damage owing to the existence of a sill at the lock's bottom, which the harbour-master had represented was level:—

*Held* (Lords Bramwell and Morris diss.), that the harbour-master was guilty of a breach of duty by giving the permission and making the representations, and that the dock owners were liable. *OWNERS OF "APOLLO" v. PORT TALBOT CO. THE "APOLLO"* H. L. (E.) [1891] A. C. 499

— Harbour rates.

See *TRUSTEE—Investments*. 65.

— Liability to clear a port of sunken ship.

See *VICTORIA*. 15.

158. — Negligence—Reparation—Alleged contributory negligence of those on board.

When a vessel is within the jurisdiction of a harbour-master by law empowered to give compulsory orders, his orders as to the place of anchorage, &c., may only be disregarded in cases of obvious danger.

Decision of Ct. of Sess., (1891) 18 R. 294, reversed. *RENEY v. KIRKCUDBRIGHT MAGISTRATES*

H. L. (Sc.) [1892] A. C. 264

— "Port charges."

See *SHIPPING*. 43.

— Wreck—Removal—Owner.

See *SHIPPING—Salvage*. 254.

**Insurance.**

See *INSURANCE—Marine*.

**Interest.**

159. — Delay in instituting action in rem—Interest on damages—Statutes of Limitation.

After a delay of eleven years, the plts. instituted an action in rem for damages arising from a collision:—

*Held*, (1) that they were entitled to proceed,

**SHIPPING (Interest)—continued.**

although there had been changes in the ownership of the ship, the rights of third parties had intervened, and many of the witnesses were not available; (2) that interest should be granted on the damages for the whole eleven years, according to the Admiralty practice. *THE "KONG MAGNUS"* — — *HANNEN P.* [1891] P. 223

**Jettison.**

— Cargo—Collision—General average, Claim for. See *SHIPPING—Average*. 9.

**Jurisdiction.**

See Cases under *SHIPPING—Practice*.

**Liability, Limitation of.**

See Cases under *Limitation of Liability*, below.

**Lien.**

— Change of ownership.

See *SHIPPING—Necessaries*. 179.

160. — Disbursement by master—Lien on ship and freight—Master's authority to pledge credit of owner—Maritime lien—Merchant Shipping Act, 1889 (52 & 53 Vict. c. 46), s. 1.

Section 1 of the Merchant Shipping Act, 1889—now s. 167 of the Merchant Shipping Act, 1894, (57 & 58 Vict. c. 60)—does not give the master of a ship a lien on the ship for disbursements (e.g., to procure coal for which the charterers were liable on the charterparty) if he has no authority to pledge the shipowners' credit. If there is no lien on the ship there can be none on the freight in respect of the same debt.

Decision of C. A. (Ir.), (1891) 29 L. R. Ir. 55, affirmed. *MORGAN v. "CASTLEGATE" SS. CO. THE "CASTLEGATE"* H. L. (I.) [1893] A. C. 38

Referred to. *The Utopia*, [1893] A. C. 492, 499.

161. — Liability incurred by master—Bill of exchange for coal at home port—Priority—Mortgages—Merchant Shipping Act, 1889 (52 & 53 Vict. c. 46), s. 1 (now Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 167).

P. sold coal for the steamer O. then lying in the port of London, and contracted to be paid by bill drawn by the master on the shipowners in London. The bill was dishonoured. The master issued an action in rem against the shipowners, who did not appear, but on intervention by mortgagees, *held*, by Jeune P., that the Act of 1889 only gave a maritime lien in cases where it was supposed to have been created by the Admiralty Court Act of 1861; and (1) *Held* by C. A. and Jeune P. a lien is given by the Act of 1889 only for those disbursements by the master for which without express authority he could pledge the owner's credit; (2) that there was no lien to the prejudice of the mortgagees. The terms "disbursements" and "necessaries" considered.

Decision of Jeune P. [1894] P. 271. *THE "ORIENTA"* — — *C. A.* [1895] P. 49

— Maritime — Jurisdiction — Wages — Action in rem — Ship's husband.

See *SHIPPING—Seamen*. 267.



**SHIPPING (Lien)—continued.**

— Maritime—Sale of ship—Division of purchase-money.  
See SHIPPING—Sale. 215.

— Maritime lien—Salvage  
See SHIPPING—Salvage. 250.

— Necessaries.  
See Cases under SHIPPING — Necessaries.

— Sale—Pre-existing maritime lien—Division of purchase-money.  
See SHIPPING—Sale. 215.

162. — *Scottish law—Damage by collision—Mortgagee—Maritime lien.*

The maritime law of Scotland being the same as that of England, the law of Scotland recognises a maritime lien in cases of collision.

In order to render a ship liable to a maritime lien for injury caused the ship itself must be the instrument which causes the damage.

*The Bold Buccleugh*, (1851) 7 Moo. P. C. 267, approved.

Decision of Ct. of Sess., (1895) 22 R. 607, affirmed. *CURRIE v. M'KNIGHT*

H. L. (Sc.) [1897] A. C. 97

Referred to by H. L. (Sc.) *Sailing Ship Blairmore Co. v. Macredie*, [1898] A. C. 593, 605.

— Wreck—Collision with sunken wreck in harbour—Transfer of control to port authority—Liability.

See SHIPPING—Collision. 82.

**Life-saving Appliances.**

Rules dated March 9, 1894, made by the Board of Trade as to life-saving appliances. St. R. & O. 1894 (No. 303), p. 290.

**Limitation of Liability.**

*Merchant Shipping (Liability of Shipowners and Others) Act, 1899* (63 & 64 Vict. c. 32), amends the *Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), with respect to the liability of shipowners and others.

163. — *Contract overriding limitation of liability—Collision—Damages—Merchant Shipping Act Amendment Act, 1862* (25 & 26 Vict. c. 63), s. 54.

Two yachts were entered by their respective owners for a club race, each owner undertaking with the club to be bound by the club sailing rules. By the rules the owner of any yacht disobeying any of the rules was to be liable for "all damages arising therefrom." One of the yachts in breach of a sailing rule, through improper navigation without the actual fault or privity of the owner, ran into and sank the other yacht:—

Held, that there was a contract between the owners upon which the owner of the damaged yacht could sue the owner of the other, and that upon the true construction of the rules the words "all damages" excluded the operation of s. 54 of the *British Shipping Act Amendment Act, 1862*, which limited the liability to 8*l.* per ton.

Decision of C. A., *The Satanita*, [1895] P. 248, affirmed. *CLARKE v. EARL OF DUNRAVEN*. THE "SATANITA" — H. L. (E.) [1897] A. C. 59

**SHIPPING (Limitation of Liability)—continued.**

164. — *Crew space—Gross tonnage—Merchant Shipping Act, 1867* (30 & 31 Vict. c. 124), s. 9.

When s. 9 of the *Merchant Shipping Act, 1867* (now s. 79 of the *Merchant Shipping Act, 1894*), has been complied with, the space employed in berthing the crew may be deducted from the gross tonnage without deduction of engine room, for the purpose of calculating the liability of the owners of a ship for a collision. THE "PETREL"

JEUNE P. [1893] P. 320

— Defendant's costs.

See SHIPPING—Costs. 96, 97.

165. — *Exemption from registry—"Tons burden"—"Register tonnage"—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 3, sub-s. 1; s. 503, sub-s. 2 (a).

By s. 3, sub-s. 1, of the *Merchant Shipping Act, 1894*, ships not exceeding 15 "tons burden" employed solely in navigation on the rivers or coasts of the United Kingdom are exempted from registry. By s. 503, sub-s. 2 (a), the owners of a steamship shall not, where, without their actual fault or privity, any loss or damage is caused to any other vessel, by reason of the improper navigation of their steamship, be liable to damages beyond 8*l.* for each ton of the "gross tonnage" of the steamship:—

Held, by the C. A., affirming the decision of G. Barnes J., [1898] W. N. 164 (1); [1899] P. 45, that, under s. 3, a small tug—solely employed in the manner mentioned in the section—of the "gross tonnage," if measured in accordance with the Act, of 35.99 tons, was exempted from registry as the words "tons burden" referred to the net tonnage, and, therefore, under the rules laid down in the Act, involved the deduction from her "gross tonnage" of the allowances for engine-room and crew space, which reduced her tonnage to less than 15 "tons burden."

Secondly, that, as the vessel was properly exempted from registry, her owners were entitled, under s. 503, to limit their liability to 8*l.* for each ton of her gross tonnage ascertained by measuring her in accordance with the Act. THE "BRUNEL" — C. A. [1899] W. N. 227; [1900] P. 24

166. — *Foreign Court, Sale of ship in—Damages—Limitation of liability—Distribution of proceeds—Right of claimants in foreign court to participate—Interest on life claims—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 503.

After a collision between a British and a German steamship, in the North Sea, the German vessel sank with her cargo, and a large number of her crew and passengers were drowned. The British vessel put into Rotterdam, and was there proceeded against by the owners of the German vessel and by two claimants interested in cargo. The British vessel having been found alone to blame, she was sold by order of the Court, and the net proceeds paid out rateably to the three claimants.

The owners of the British vessel, as plts., having obtained a decree in a limitation action in this country, under the *Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 503, paid into court an amount equal to 8*l.* per ton of their

**SHIPPING (Limitation of Liability)—continued.**

statutory liability with interest to date, and in respect of the life claims gave bail to pay the balance of 7*l.* per ton when required. On the question as to the right of those who had sued in Holland to participate in the distribution of this sum, and as to the allowance of interest on the 7*l.* per ton:—

*Held*, that the owners of the German vessel, and the claimant in respect of cargo (the other claimant not taking part in the proceedings), were not debarred from proving against the fund in court to the full extent of their loss, but, in ascertaining the proportion receivable by them, credit must be given for the sums they had respectively been paid out of the proceeds of the sale of the ship, and the plts. were entitled to take out of the fund a sum equal to the amounts received by the three claimants abroad. Also that, as part of the damages, 4 per cent. interest was payable on the sum representing 7*l.* per ton from the date of the collision until payment into court. *THE "CRATHIE"*

G. Barnes J. [1897] P. 178

167. — *Free pass by railway and steamer—Conditions of non-liability—Claim against fund—Loss of life—Loss of luggage—Limitation suit—Lord Campbell's Act (9 & 10 Vict. c. 93)—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 503.*

A free pass, obtained by an official of another ry. co., for himself and wife, from the London and South Western Ry. Co., for the journey from London to Jersey, referred, on the face of it, to the following condition printed on the back: "That it shall be taken as evidence of an agreement that the co. are relieved from all responsibility for any injury, delay, loss, or damage, however caused, that may be sustained by the person or persons using this pass." Through the negligence of the servants of the ry. co., and during the transit from Southampton to the Channel Islands, the steamer stranded, and the official was drowned. His own, and his wife's, luggage were also lost.

The widow on behalf of herself and infant children claimed, against the fund paid by the ry. co. into court in a limitation suit, for the loss of her husband and father of the children. The registrar disallowed the claim:—

*Held*, by G. Barnes J., affirming the decision of the registrar, that, in respect of the loss of life, as the widow and children could only claim under Lord Campbell's Act, where, if death had not ensued, the party injured would have been entitled to maintain an action for damages, the conditions on which the free pass was granted, and which the deceased must, from his official position, be taken to have known, included the sea passage as well as the land transit and barred the claim:

*Held*, also, that in respect of the claim by the widow, as administratrix of her husband, for the loss of his personal effects, and in her own right, for the loss of her luggage, the condition attaching to the pass equally precluded any claim, for the London and South Western Railway special Act of 1848—under ss. 47, 48, 49 of which (made perpetual by an Act of 1860) the co. is empowered to

**SHIPPING (Limitation of Liability)—continued.**

to maintain steamers—is not controlled by s. 31 of the subsequent Railway Clauses Act, 1863, extending to steamers the provisions of s. 7 of the Railway and Canal Traffic Act, 1854.

The words "or other things whatsoever on board the ship" in s. 503, sub-s. 1 (b), of the Merchant Shipping Act, 1894, include passengers' luggage. *THE "STELLA"* — G. Barnes J.

[1900] W. N. 96; [1900] P. 161

168. — *Gross tonnage—Double bottom for water ballast—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 21, sub-s. 2—Merchant Shipping (Tonnage) Act, 1889 (52 & 53 Vict. c. 43), s. 5.*

In calculating the gross tonnage upon which the statutory liability in damages is based the owner of a ship with a double bottom for water ballast may, under s. 5 of the Merchant Shipping (Tonnage) Act, 1889 (now s. 81 of the Act of 1894), exclude the space between the inner and outer plating. *THE "ZANZIBAR"*

Jeune J. [1892] P. 233

169. — *Navigation spaces—Sailing ship—Registered tonnage—Merchant Shipping Acts, 1862 (25 & 26 Vict. c. 63), s. 54; 1889 (52 & 53 Vict. c. 43), s. 3, sub-s. (1) a, (b), (i), (ii.); 1894 (57 & 58 Vict. c. 60), ss. 79, 503.*

In a sailing ship the navigation spaces mentioned in s. 3 (1), (a), (b), (i), (ii.) of the Merchant Shipping (Tonnage) Act, 1889 (now s. 79 (1), (a), (i), (ii.), (b) of the Merchant Shipping Act, 1894), can be deducted in estimating the tonnage for the purpose of the limitation of the owners' liability. *THE "PILGRIM"* — Bruce J. [1895] P. 117

170. — *Navigation spaces—Steamship—Gross tonnage—Merchant Shipping Acts, 1862 (25 & 26 Vict. c. 63), s. 54; 1889 (52 & 53 Vict. c. 43), s. 3, sub-ss. (b), (i), (ii.).*

In a steamship, the navigation spaces mentioned in s. 3, sub-ss. b (i), (ii.) of the Merchant Shipping (Tonnage) Act, 1889 (now s. 79 of the Merchant Shipping Act, 1894), cannot be deducted in estimating the tonnage for the purpose of the limitation of the owners' liability. *THE "UMBILO"* — Hannen P. [1891] P. 118

Distinguished by Jeune J. *The Zanzibar*, [1892] P. 233, 238.

Distinguished by Bruce J. *The Pilgrim*, [1895] P. 117.

171. — *Separate losses—"Distinct occasions"—Wrong manoeuvre not corrected—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 506; 1862 (25 & 26 Vict. c. 63), s. 54.*

By reason of the S. improperly starboarding across the bows of the A. the A. was damaged by colliding with the M. at anchor, and the S. continuing under a starboard helm sank the D. at anchor:—

*Held*, (1.) that the onus was on the S. to shew that it was the same act of improper navigation which caused the damage to the A. and the D.; (2.) that as on the facts the wrongful starboarding might have been corrected in time the occasions were "distinct" within s. 506 of the Merchant Shipping Act, 1854 (now s. 503 (3) of the Merchant Shipping Act, 1894); (3.) that the onus was on the S. to shew the fault was that of the pilot alone; (4.) that as there was no efficient

**SHIPPING (Limitation of Liability)—continued.**

look-out the pilot was not warned in time to correct the wrongful starboarding, and the *S.* was liable to the *A.*, notwithstanding they had obtained a decree limiting their liability in an action by the *D.* THE "SCHWAN." THE "ALBANO" — C. A. [1892] P. 419

— Transfer of action—Fatal accidents—Decree for limitation of liability in the Admiralty Division.

See PRACTICE.—Trial. 264.

**Managing Owner.**

172. — Charges against ship—Secret profit—Commission—Brokerage—Custom.

In the absence of special bargain the managing owner of a ship, even if he is a shipbroker, is not entitled to charge against the ship or retain any profit by way of commission or otherwise for procuring charters or freights. WILLIAMSON v. HINE — Kekewich J. [1891] 1 Ch. 390

— Necessaries.

See No. 179, below.

173. — Powers of managing owner—Liability of co-owners—Repairs.

The authority of a managing owner extends to the conduct on shore of all that concerns the employment of the ship, including power to pledge the co-owners' credit for what is necessary to repair her for her employment in the ordinary course of trade; and it makes no difference that the managing owner has instruction to insure, and has in fact collected from the underwriters the money to discharge a claim for repairs. THE "HUNTSMAN" — G. Barnes J. [1891] P. 214

**Maritime Lien.**

See Cases under SHIPPING—Lien.

**Master and Seaman.**

See Cases under SHIPPING—Seamen.

**Merchant Shipping Acts.**

See SHIPPING, *passim*.

These Acts were consolidated by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

The Rules of the Supreme Court (Merchant Shipping), 1894, dated Dec. 10th, 1894, made under the Merchant Shipping Act, 1894. St. R. & O. 1894 (No. 556), p. 425; [1894] W. N. (Appx. of O. & R.), p. 5; St. O. P.

— Measurement of ships.

See SHIPPING—Registry.

PASSENGERS ACTS.] Notice dated June 19, 1891, under the Passengers Act, 1855, varying the declared length of voyages to certain places. St. R. & O. 1891, p. 564; Lond. Gaz. June 23, 1891, p. 3300.

[The Passengers Acts were repealed by and consolidated in the Merchant Shipping Act, 1894.]

Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 3. O. of Bd. of Trade, dated Feb. 20, 1899, as to Registration, Transfer, and Mortgage Fees. Lond. Gaz. Feb. 21, 1899, p. 1116.

**SHIPPING—continued.****Mortgage.**

174. — Certificate of registry—Order for delivery—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 50.

A shipowner while a ship was being built for him contracted to fit her for a particular trade, and run her for five years as one of the depts.' line. After completion and registry she was mortgaged by the owner. Plt. became second mortgagee with notice of the contract. The first mortgagees, who had no notice of the contract, took possession of the ship and sold her to the plt. He resold to third parties and claimed delivery up of the certificate of registry under s. 50 of the Merchant Shipping Act, 1854 (now s. 15 of the Merchant Shipping Act, 1894):—

Held, that plt. was entitled to have the certificate delivered up to him. THE "CELTIC KING"

G. Barnes J. [1894] P. 175

— Insurance, Marine—Barratry.

See INSURANCE—Marine. 28.

— Maritime lien.

See Cases under SHIPPING—Lien.

175. — Priority—Equitable charge—Debenture—Registration—Merchant Shipping Acts, 1854 (17 & 18 Vict. c. 104), ss. 43, 69; 1862 (25 & 26 Vict. c. 63), s. 3; 1894 (57 & 58 Vict. c. 60), ss. 33, 56, 57.

Mortgages in the statutory form take priority in the strict order in which they are registered over equitable charges. Therefore where under a debenture trust deed legal mortgages of all ships acquired or to be acquired by a co. were to be registered and the co. gave legal mortgages of certain ships to a corporation, and these mortgages were registered before those under the trust deed, the corporation's mortgages had priority, although they had notice of the debentures. BLACK v. WILLIAMS

V. Williams J. [1895] 1 Ch. 403

176. — Receiver and manager—Steamship.

A receiver with power to manage appointed of a steamship under a registered statutory mortgage. FAIRFIELD SHIPBUILDING AND ENGINEERING CO. v. LONDON AND EAST COAST EXPRESS STEAMSHIP CO. Kekewich J. [1895] W. N. 64

Referred to. In re Continental Oxygen Co., [1897] 1 Ch. 511, at p. 513.

— Sale—Costs of repairs.

See No. 215, below.

**Necessaries.**

177. — Action in rem against foreign ship for brokerage—Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6.

An action in rem does not lie against a foreign ship for brokerage on a charterparty, such a claim not falling within the word "necessaries" in s. 6 of the Admiralty Court Act, 1840. THE "MARIANNE" — Butt J. [1891] P. 180

178. — Bottomry—Marshalling assets.

Although the proceeds of ship and freight would be exhausted by the holders of a bottomry bond on ship, freight, and cargo, the Court refused to marshal the assets in favour of a claim for necessities against ship and freight, on the

**SHIPPING (Necessaries)—continued.**

ground that, the owners of ship and freight being different persons from the owners of cargo, third parties, namely, the cargo owners, would be prejudiced by being, in effect, made to pay the claim of the necessities men with which they had no concern.

*The Edward Oliver*, (1867) L. R. 1 A. & E. 379, distinguished. *THE CHIOGGIA*

G. Barnes J. [1897] W. N. 156 (2); [1898] P. 1

179. — *Bunker coal—Action in rem—Master's lien—Maritime lien—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 167—Change of ownership—Liability of res—Settlement of action.*

The defts., owners of a steamship, transferred the possession of it to a Glasgow firm subject to conditions in a contract for sale, by which the defts. were to remain registered owners, and in effect to become mortgagees until payment of the purchase-money. The Glasgow firm appointed the plt. master, and he, whilst on a voyage to the River Plate on account of that firm, and not having notice of the contract of sale, drew two bills of exchange on the Glasgow firm for bunker coal supplied to the vessel at the time the bills were drawn, but in pursuance of a coaling contract previously made in this country between the Glasgow firm and the coal merchants. The bills were dishonoured at maturity, and, the Glasgow firm having suspended payment, the defts., as unpaid vendors, retook possession of the vessel. They then settled with the plt. an action in rem brought, in the name of the plt., by the coal merchants, under an irrevocable mandate, executed by the plt., authorizing them to exercise, in his name, the right of lien, which he claimed under s. 167 of the Merchant Shipping Act, 1894, against the vessel in respect of his liability as drawer of the two bills of which the coal merchants were the holders:—

*Held*, by G. Barnes J., that the settlement of the action was void as against the coal merchants to whom the plt. was liable on the bills, and this liability having been incurred by the plt. as master in the ordinary course of his employment on account of the ship, within the meaning of the statute, he had a valid maritime lien, which could be enforced against the vessel, though the coals were supplied on the credit of the Glasgow firm, and not of the defts., whose property the ship was. *THE "RIFON CITY"* G. Barnes J. [1897] P. 226

Referred to by Jeune P. *The Ripon City*, [1898] P. 78.

Referred to by G. Barnes J. *The Snark*, [1899] P. 74, 82.

180. — *Foreign ship—Foreign port—Action in rem—"High seas"—Admiralty Court Acts, 1840 (3 & 4 Vict. c. 65) s. 6; 1861 (24 & 25 Vict. c. 10), s. 5.*

A. supplied coals at Alexandria, Algiers, and Port Said to the *M.*, a foreign ship, and at Port Said advanced her canal dues. A. commenced an action in rem against the *M.* and arrested her:—

*Held*, that under the words in s. 5 of the Admiralty Court Act, 1861, "any claim for necessities supplied to any ship elsewhere than in the

**SHIPPING (Necessaries)—continued.**

port to which the ship belongs," the Court had jurisdiction.

*Semble*, that Alexandria and Algiers are "upon the high seas" within s. 6 of the Admiralty Court Act, 1840. *THE "MECCA"*

C. A. [1895] P. 95

*See also APPROPRIATION. 1.*

181. — *Priorities—Insufficient proceeds—Foreign ship—Practice.*

On Aug. 10, 1893, F. brought an action in rem in the High Court for necessities against the ship *A.* (which was arrested on the same day) and obtained judgment on Oct. 30. On Aug. 10, an action for wages was commenced in the L. district registry. On Oct. 4 the ship was sold by order of the Vacation Judge and the proceeds paid into court. On Aug. 11 an action for necessities was commenced in the L. county court and the vessel arrested. On Oct. 19 judgment was obtained. On Aug. 12 an action for necessities was commenced in the L. county court and judgment was obtained on Aug. 24. On Aug. 17 an action for necessities was commenced in the L. district registry in which judgment had not yet been given. On Sept. 16 another action for necessities was commenced, judgment in which was obtained on Sept. 29:—

*Held*, confirming the registrar's report, that the claims ranked as follows: (1) F.'s costs up to arrest of the vessel; (2) costs and claim in wages action; (3) remainder of F.'s costs and the costs in the other necessities actions except that of Aug. 17, *pari passu*; (4) claims in the necessities actions *pro rata*, except that of Aug. 17, on the ground that the Court held the property not only for the first claimant but at least for all creditors of the same class who assented their claims before unconditional decree.

*Semble*, a decree in unconditional terms would, so long as the funds remained in court, be modified so as to let in others who, without laches, put forward claims of a like character. *THE "AFRICANO"* Jeune P. [1894] P. 141

**Offences.**

— Overloading.

*See SHIPPING—Overloading.*

182. — "*Passage broker*"—*Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 320, 341, 342.*

By s. 341 of the Merchant Shipping Act, 1894, a "passage broker" is defined as "any person who sells or lets, or agrees to sell or let, or is in anywise concerned in the sale or letting of steerage passages in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea"; and by s. 342, "a person shall not act directly or indirectly as a passage broker" unless he holds the prescribed licence:—

*Held*, that the selling or letting intended by s. 341 was a selling or letting in a named ship of a passage to commence at a definite time for a specified voyage, and, therefore, that a person who agreed to procure a passage for another, no ship or time of sailing being named or specified, had not "acted as a passage broker" within the meaning of s. 342.

The respondent, in consideration of 22l. paid

**SHIPPING (Offences)—continued.**

by him to C., agreed to place C.'s son as a farm pupil in Canada, and out of the 22l. to procure him a steamship passage from Liverpool to Quebec. Subsequently the respondent obtained for about 9l. from shipowners a contract ticket for a voyage from Liverpool to Quebec, and sent it to the son. The respondent made no profit or commission out of the latter transaction:—

*Held*, that he had not been "concerned in the sale or letting of a passage" within the meaning of s. 341.

By s. 320, "if any person, except the Board of Trade and persons acting for them and under their direct authority, receives money from any person for or in respect of" a passage by ship of one of the specified kinds, "he shall give to the person paying the same a contract ticket signed by or on behalf of the owner, master, or charterer of the ship":—

*Held*, that in order to bring a case within this section there must be a receipt of money paid for a specified passage, commencing at a fixed time in a named ship. *MORRIS v. HOWDEN*

Div. Ct. [1897] 1 Q. B. 378

183. — "*Seagoing ship*"—*Offences—Summary proceedings—Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), ss. 109, 243.

A steamer carrying salt in the Mersey, but not going further out to sea than the limits of the port of Liverpool:—

*Held*, not to be a "seagoing ship" within s. 109 of the Merchant Shipping Act, 1854 (now s. 260 of the Merchant Shipping Act, 1894), so as to make the summary proceedings allowed by s. 243 of the Act of 1854 (now s. 225 of the Merchant Shipping Act, 1894), for certain offences, applicable to its crew. *SALT UNION v. WOOD*

Div. Ct. [1893] 1 Q. B. 370

**Overloading.**

184. — *Foreign ship—Merchant Shipping Act, 1876* (39 & 40 Vict. c. 80), ss. 13, 34, 37.

The provisions of s. 34 of the Merchant Shipping Act, 1876 (now s. 692 of the Merchant Shipping Act, 1894), against overloading apply to foreign ships, although there has been no Order in Council under s. 37 (now s. 696 (1) (2) of the Merchant Shipping Act, 1894) specifically applying such provisions to the ships of the particular foreign state. *CHALMERS v. SCOPENICH*

Div. Ct. [1892] 1 Q. B. 735

185. — *Liability of owner for act of master—Merchant Shipping Act, 1876* (39 & 40 Vict. c. 80), s. 28.

The master of a British ship took cargo on board at a foreign port and loaded the ship so as to submerge the centre of the Board of Trade disc in salt water. The owner of the ship was not aware of the overloading:—

*Held*, that the owner was not liable to conviction under s. 28 of the Merchant Shipping Act, 1876 (s. 442 of the Merchant Shipping Act, 1894), for allowing the ship "to be so loaded as to submerge in salt water the centre of the disc." *MASSEY v. MORRIS* — Div. Ct. [1894] 2 Q. B. 412

**Ownership.**

— Change of.

See SHIPPING. 179.

**SHIPPING (Ownership)—continued.**

— Co-ownership.

See SHIPPING. 213, 214.

— Managing owner.

See SHIPPING—Managing Owner. 172, 173.

**Pilotage.**

*Merchant Shipping (Exemption from Pilotage) Act, 1897* (60 & 61 Vict. c. 61), removes certain exemptions from compulsory pilotage.

*Merchant Shipping (Pilotage) Act, 1889* (52 & 53 Vict. c. 68)—*References in R. S. C., Ord. XXXIX. A, how construed.* See W. N. 1900 (Dec. 8), p. 322; *Current Index, 1900*, p. lxxviii.

**SIGNALS.]** *O. in C. approving signals for pilots under the Merchant Shipping Act, 1894.* St. R. & O. 1894 (No. 569), p. 305; *Lond. Gaz. Dec. 14, 1894*, p. 7348.

**STEAM PILOT VESSEL.]** *O. in C. dated July 7, 1897, as to lights.* *Lond. Gaz. July 9, 1897*, p. 3797.

186. — *Coasting trade—Compulsory pilotage—Trinity House outport district—Coasting trade—Trading from port in Great Britain to port north and east of Brest—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 622, sub-s. 1; s. 625, sub-s. 1, 3.

A British ship, without passengers, left Gaza in Asiatic Turkey with a cargo of barley, part of which was to be delivered at the port of Ipswich (a Trinity House outport district), and the remainder at the port of Leith in Scotland. She discharged at Ipswich the portion of cargo to be there delivered, and was proceeding down the river Orwell, within the limits of the port of Ipswich, on her voyage to Leith, when a collision occurred, for which her owners would be responsible if she was not compulsorily in charge of the Trinity House pilot on board:—

*Held*, that pilotage was compulsory, as the vessel was not at the time either employed in the coasting trade within the meaning of sub-s. 1, or trading from a port in Great Britain to a port in Europe north and east of Brest within the meaning of sub-s. 3 of s. 625 of the Merchant Shipping Act, 1894.

*The Winestead*, [1895] P. 170, followed. *THE "GLANYSTWYTH"* *Jeune P.* [1899] W. N. 22 (2); [1899] P. 118.

187. — *Coasting trade—Foreign-going ship—Compulsory pilotage—Merchant Shipping Acts, 1854* (17 & 18 Vict. c. 104), ss. 376, 379; 1894 (57 & 58 Vict. c. 60), s. 625—*Customs Acts, 1876* (39 & 40 Vict. c. 36), ss. 129, 144, 145; 1879 (42 & 43 Vict. c. 21), s. 9.

A steamship made regular voyages from London with part of her cargo to Cardiff, where she took in the remainder of her cargo and proceeded to Venice, and returned to London:—

*Held*, that she was a foreign-going ship, not within the exceptions in the Merchant Shipping Act, 1854, and, therefore, that in the Thames within the London district the employment of a pilot was compulsory. *THE "WINESTEAD"*

*Bruce J.* [1895] P. 170

Followed by *Jeune P. The Glanystwyth*, [1899] P. 118.

**SHIPPING (Pilotage)—continued.**

— Collision.

See Cases under SHIPPING—Collision.

— Defence of pilotage—Collision—Practice—Action in rem—Costs.

See SHIPPING—Costs. 99.

**188.** — *Draught of water—London district—“Under book” pilot in charge—Compulsory pilotage—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 2, 388—Order in Council, May 1, 1855, Regulation 4.*

A collision took place in the London district where pilotage is compulsory under an Order in Council of May 1, 1855. The Court found that the collision was caused by the negligence of the pilot of the deft's vessel. The vessel was a foreign ship of 16 ft. draught, and the pilot, an “under book” pilot, not qualified to pilot a vessel of so great draught under ordinary circumstances:—

*Held*, that the plea of compulsory pilotage must be sustained, for on the construction of the Order in Council regulating pilotage in the district, the employment of an “under book” pilot was compulsory where no “upper book” pilot was available.

*Seem*, that an “upper book” pilot where available would have a right to supersede an “under book” pilot on a vessel of such draught, but the latter would be entitled to a fair proportion of the pilotage fees. Decision of Butt P., [1892] P. 132, affirmed. *THE “CARL XV.”*

C. A. [1892] P. 324

Discussed by Div. Ct. *Stafford v. Dyer*, [1895] P. 566, 569, 570.

**189.** — *Dutch law—Collision in the river Scheldt—Compulsory pilotage—Liability of owner.*

A collision occurred off Flushing at the mouth of the river Scheldt, between a British and a Dutch steamship. In an action by the owners of the former, the owners of the latter pleaded, inter alia, that their vessel was at the time in charge of a Dutch pilot by compulsion of law, and that the negligence, if any, was solely that of the pilot.

The Court found that the collision was due to the negligent navigation of the Dutch vessel, and, after evidence had been given as to the Dutch law on the question of compulsory pilotage:—

*Held*, that, though the employment of the pilot was compulsory, the pilot acted as the adviser of the master who remained in charge, and, therefore, the owners of the Dutch vessel were liable for the damages sustained by the owners of the British vessel. *THE “PRINS HENDRIK”*

G. Barnes J. [1899] W. N. 54; [1899] P. 177

**190.** — *Foreign vessel—Compulsory pilotage—Port of Blyth—Newcastle Pilot Act, 1801 (41 Geo. 3, c. lxxxvi.), s. 6.*

Pilotage is compulsory on a foreign vessel resorting to, or coming into, or departing from, the port of Blyth, for that port is one of the creeks or members of the port of Newcastle-on-Tyne unaffected by legislation subsequent to the Newcastle Pilot Act, 1801 (41 Geo. 3, c. lxxxvi.), s. 6. *THE “HOLAR”*

G. Barnes J. [1900] W. N. 240; see [1901] P. 7

**SHIPPING (Pilotage)—continued.**

**191.** — *London district—Foreign vessel from Norway to London without passengers—Pilotage Act, 1825 (6 Geo. 4, c. 125), s. 59—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 603, 625, sub-s. 4—Merchant Shipping (Exemption from Pilotage) Act, 1897 (60 & 61 Vict. c. 61), s. 1.*

Pilotage is not compulsory in the London district on a Norwegian vessel, from Christiania to London, without passengers, as s. 1 of the Act of 1897 did not repeal the exemption contained in sub-s. 4 of s. 625 of the Act of 1894 in respect of vessels on voyages between Norway and London, for a vessel, without a British register, was not exempted under the Pilotage Act, 1825. *THE “COLUMBUS”* — *Jeune P.* [1899] W. N. 22 (1)

**192.** — *Passengers—Distressed seamen—Liability of owner—Compulsory pilotage—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 191, 192, 625.*

A collision occurred, in Galleons Reach of the river Thames, between the plts.' barge and the defts.' steamship, for which the pilot in charge of the steamship was found solely to blame. The steamship belonged to the port of London, and was, at the time, carrying five distressed British seamen under a conveyance order of a British consular officer at a foreign port pursuant to ss. 191, 192 of the Merchant Shipping Act, 1894, for whom the sum of 3s. each per day was paid by the Board of Trade. By s. 625 of the same Act a ship navigating within the limits of the port to which she belongs is exempt from compulsory pilotage in the London district “when not carrying passengers”:—

*Held*, that the distressed seamen were not passengers, within the meaning of the section of the statute, so as to make pilotage compulsory, and, therefore, the owners of the steamer were liable for the damage done to the barge. *THE “CLYMENE”* G. Barnes J. [1897] P. 295

**193.** — *“Proceeding” to sea—Proceeding to dock—Piloting to landing-stage—“Extra” services—Mersey Dock Acts Consolidation Act, 1858 (21 & 22 Vict. c. xcii.), s. 221.*

The Mersey Docks and Harbour Board, as the pilotage authority for the port of Liverpool, has, under s. 221 of the Mersey Dock Acts Consolidation Act, 1858, power to fix, in addition to the ordinary compulsory pilotage rates, a reasonable charge by way of “extra” remuneration for a pilot, licensed by the Board, taking an outward-bound vessel from a dock alongside a landing-stage to complete her loading, as in the case of embarking passengers, their baggage, and the mails.

The Board has also power to fix an additional reasonable charge as “extra” remuneration (besides the charge per day for attendance whilst a vessel is necessarily lying in the river in the course of her navigation inward or outward) in the case of an inward-bound vessel taken by a pilot to a landing-stage to land passengers, baggage, and mails, before discharging the rest of her cargo in dock, including the case of vessels disembarking cattle and sheep at certain landing-stages in pursuance of the orders made under the provisions of the Diseases of Animals Act, 1894.

*Seem*, that, in the case of an outward-bound

**SHIPPING (Pilotage)—continued.**

vessel, compulsory pilotage will not commence until the vessel proceeds from the stage to sea, and that, in the case of an inward-bound vessel, the employment of the pilot by compulsion of law will cease, or be suspended, as soon as the vessel deviates to the stage from the route which she would otherwise follow to the dock. **THE SERVIA—THE CARINTHIA**

**G. Barnes J. [1898] P. 36**

**194.** — “*Ships trading from any port in Great Britain*” to port north and east of Brest—*Merchant Shipping Act, 1894, c. 60, s. 625, sub-s. 3.*

By the Merchant Shipping Act, 1894, s. 625, sub-s. 3, “Ships trading from any port in Great Britain within the London district to any port in Europe north and east of Brest,” are when not carrying passengers exempted from compulsory pilotage in the London district.

A British ship, laden with a cargo from the river Plate to Rotterdam and with cattle for London, discharged the cattle in London and proceeded with the cargo to Rotterdam:—

*Held*, that whilst the ship was proceeding from London to Rotterdam she was (though she took in no cargo in London) “trading” from London to Rotterdam within the meaning of the statute, and was therefore exempt from compulsory pilotage in the London district.

Decision of C. A., [1896] P. 281, affirmed. **OWNER OF STEAMSHIP “EDENBRIDGE” v. GREEN AND OWNERS OF STEAMSHIP “RUTLAND.” THE “RUTLAND”**

**H. L. (E.) [1897] A. C. 333**

Referred to by Jeune P. *The Glynystwyth*, [1899] P. 118, 124.

**195.** — *Unexempted ship—Qualified pilot—Pilot for exempted ships—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 2, 353—Order in Council, Feb. 5, 1873.*

The term “qualified pilot” in s. 353 of the Merchant Shipping Act, 1854 (now s. 603, sub-s. 2, of the Merchant Shipping Act, 1894), must be understood with reference to the class of ship of which the pilot offers to take charge. A pilot licensed for exempted ships only is not such a qualified pilot as to render liable to a penalty a master of an unexempted ship who, after the said pilot has offered to take charge of her, continues to employ an unqualified pilot. **STAFFORD v. DYER** — **Div. Ct. [1895] 1 Q. B. 566**

**Practice.**

*County Courts—See Explanatory Memorandum to County Court Rules (May), 1899, and rules 42 to 65. W. N. 1899 (May 20), p. 172. See Current Index, 1899, p. cxi.*

**196.** — *Action in rem—County court—Freight—Counter-claim for wrongful arrest—Trial by jury—“Actions”—County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), s. 2, sub-s. 1—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101.*

In a proceeding in rem in a county court, under s. 2, sub-s. 1, of the County Courts Admiralty Jurisdiction Amendment Act, 1869, by a shipowner against cargo owners, for balance of freight, the defts. counter-claimed, under the same sub-section, for 100*l.* damages for wrongful

**SHIPPING (Practice)—continued.**

arrest of the cargo, and, under s. 101 of the County Courts Act, 1888, required a jury to be summoned for the trial of the action. The judge refused to allow the jury to be sworn. On appeal:—

*Held*, affirming the decision of the county court judge, that, this being an Admiralty cause, the defendants were not entitled as of right to a jury, for the word “actions” in s. 101 of the County Courts Act, 1888, did not include Admiralty actions. **THE “THEODORA”**

**Div. Ct. [1897] P. 279**

**197.** — *Action in rem—Jurisdiction—Damage to cargo—Writ served, but warrant not served—Judgment by default.*

Where the writ in an action in rem had been served, and a warrant issued, but before service of the latter the master had clandestinely put to sea:—

*Held*, that the Court had jurisdiction to pronounce judgment by default, for though, according to the ordinary practice, the property proceeded against must be under the arrest of the Court, still the writ was notice to all persons interested, and has the same effect so far as notice is concerned as service of the warrant under the former practice. **THE “NAUTIK”**

**Bruce J. [1895] P. 121**

And see Nos. 177, 179 above, and No. 201 below.

**198.** — *Amendment of indorsement of writ—Salvage—Action in rem—Costs.*

(A) In a salvage action the Court have power to amend the indorsement on the writ after judgment has been given and before the decree is drawn up. Plts. ordered to pay costs of the application by altering the amount of salvage claimed. **THE “DICTATOR” (No. 1)**

**Butt P. [1892] P. 64**

(B) Subsequently the plts. obtained leave to proceed personally for the whole amount of salvage claimed. **THE “DICTATOR” (No. 2)**

**Jeune J. [1892] P. 304**

Approved of by C. A. *The Gemma*, [1900] P. 285.

**— Appeals.**

See Cases under SHIPPING—Appeal.

**199.** — *Arrest—Action in rem—Guarantee—Lis alibi pendens—Bail.*

A British and a German ship came into collision near Rotterdam. The agents at Rotterdam of the owners of the two vessels exchanged written agreements on behalf of the respective captains to give bail to the extent of 50,000 guilders to answer the damages, interest, and expenses to which the captains might be condemned in virtue of the sentence of a competent Court, and for the purpose of serving the writ the domicile of the captains was stated to be at the offices of the respective agents. The agents also procured from Lloyd’s surveyor at Rotterdam an estimate of the amount of damages sustained by each vessel, but owing, it was alleged, to the owners of the German ship insisting on this estimate being conclusive, further negotiations between the parties fell through; and on the arrival of the German ship in this country she

**SHIPPING (Practice)—continued.**

was arrested in an action in rem at the suit of the owners of the British ship.

The owners of the German ship moved the Court for an order for her release and a stay of all proceedings:—

*Held*, by G. Barnes J., that the guarantee was no bar to the action in this country, the vessel not having been arrested in Holland, and there being no legal proceedings pending there.

*The Christiansborg*. (1885) 10 P. D. 141, distinguished. *THE "MANNEHEIM"*

G. Barnes J. [1897] P. 13

— Costs.

*See Cases under SHIPPING—Costs.*

— Costs—Salvage actions.

*See SHIPPING—Salvage.* 231—233.

— Foreign corporation—Service of writ.

*See PRACTICE—Service.* 182, 183.

200. — *Injunction—Agreement affecting employment of ship—Order for delivery of certificate of registry—Injunction.*

When a controversy arises as to the enforcement of an agreement affecting the employment of a ship, the proper course is not to detain the certificate of registry, but to apply for an injunction against acting in derogation of the agreement. *THE "CELTIC KING"*

G. Barnes J. [1894] P. 175

— Issue as to contributory fault must be first raised in the Lower Court.

*See SHIPPING—Collision.* 79.

201. — *Jurisdiction—Action in rem—"Damage done by any ship"—Personal injuries—Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 7.*

In s. 7 of the Admiralty Court Act, 1861, the words "damage done by any ship" include personal injuries, but to give the Probate Div. jurisdiction such damage must be done by those in charge of the ship with the ship as instrument.

Therefore, where Y. sustained injuries by falling into the hold of the *T.* (owing to the hatchway being only covered by a tarpaulin) when he was crossing to his own ship which was moored outside the *T.*:—

*Held*, that there was no jurisdiction in an action in rem as the damage was not "done by any ship." *THE "THETA"*

Bruce J. [1894] P. 280

202. — *Jurisdiction—County court—Judgment in rem—Warrant of execution—Sale of ship—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3, sub-s. 3; ss. 12, 23—County Court Rules, 1892, Order XXXIX. B., r. 42—County Court (Admiralty) Forms, No. 331.*

After judgment in favour of the plt., in an action in rem for damage by collision on the Admiralty side of a county court, a warrant of execution issued directing the high bailiff to "levy by distress and sale of the goods and chattels, including the steamship or vessel *Ruby*, of the defendant." Under this warrant the vessel was appraised and sold, but the registrar of shipping refused to register the bill of sale signed by the high bailiff except subject to an outstanding mortgage:—

*Held*, that the power given to a county court

**SHIPPING (Practice)—continued.**

by sub-s. 3 of s. 3 and s. 12 of the County Courts Admiralty Jurisdiction Act, 1868, "to try and determine" an Admiralty cause of damage by collision and enforce the decree "against the person or persons summoned," carried with it the power of rendering the plt.'s maritime lien effectual against all persons having an interest in the res, and therefore, in order to obtain payment of the debt out of the proceeds, the high bailiff could sell the ship free from incumbrance. *THE "RUBY"* (No. 1) — Jeune P. [1898] P. 52

203. — *Jurisdiction—County court—Service of summons—Agent—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 21, sub-s. 2.*

By the County Courts Admiralty Jurisdiction Act, 1868, s. 21, "Proceedings in an Admiralty cause shall be commenced—(2.) in the county court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides. . . ."

In an action in personam instituted in the City of London Court by the plts., the owners of a barge damaged by collision with the deft.'s steamship within the jurisdiction, the summons described the deft. as "George Smith, of 75, Bothwell Street, Glasgow, the owner of the steamship or vessel *City of Agra*, whose agents in England are Messrs. Montgomerie & Workman, of 36, Gracechurch Street, E.C., within the jurisdiction of this Court." The summons was served on a member of the firm of Montgomerie & Workman; but the *City of Agra* had been lost before the commencement of the action:—

*Held*, that the service of the summons must be set aside, as "agent in England" means a person acting for another person in relation to the vessel or property proceeded against at the time the service of the process is effected, and, at that time, the agency had ceased.

The cases of *The County of Durham*, [1891] P. 1, and *Pugsley v. Hopkins*, [1892] 2 Q. B. 184, explained. *THE "CITY OF AGRA"*

G. Barnes J. [1898] P. 198

204. — *Jurisdiction—Prohibition—Alteration of judgment as to costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 132*

Where a county court judge includes an order as to costs in his judgment determining the liability of the parties, he has no power to rescind that portion of it, and may be prohibited from so doing.

Under the Judicature Act, 1873, a judge of the Admiralty Div. has all the powers as to prohibition of a judge of the High Court. An appeal from the refusal of prohibition lies direct to the C. A. if the judge requires no further argument. Sect. 132 of the County Courts Act, 1888, merely prevents repeated applications to judges of co-ordinate jurisdiction for a writ of prohibition after refusal by one judge. *THE "RECEPTA"* — — C. A. [1898] P. 255

— Legal proceedings as to—Joinder of several plaintiffs in respect of several causes of action.

*See Cases under PRACTICE—Parties.*



**SHIPPING (Practice)—continued.****205. — Parties—Adding plaintiff after judgment.**

A decree in an Admiralty action fixing the liability, but leaving the damages to be assessed, is not final, and there is power under Order XVI., rr. 2, 11, to add the proper person as plt., where by mistake the agent was made co-plt. instead of the principal. *THE "DUKE OF BUCCLEUCH"* (No. 2) — **C. A. [1892] P. 201**

*And see PRACTICE—Parties.*

**206. — Parties—Joinder of pilot as defendant—Action in rem.**

The plts., the owners of a steamship, issued a writ in rem against the owners and parties interested in another steamship for damage by collision. The owners of the other steamship appeared, and statements of claim, defence and counter-claim were respectively delivered, the defence including an allegation of compulsory pilotage. The plts. then applied to the district registrar for liberty to add, as a deft., the pilot who was compulsorily in charge of the other steamship at the time of the collision. The registrar refused the application; but on appeal to the President of the Probate, Divorce, and Admiralty Div. the plts. obtained the order on the ground that no difficulty would result from engrafting a claim in personam on an action in rem:—

*Held*, reversing the decision of the President, that, assuming there was jurisdiction, the order ought not, as a matter of discretion, to be made, as the trial of the action might thereby be embarrassed. *THE "GERMANIC"*

**C. A. [1896] P. 84**

**207. — Parties — Joinder of plaintiffs — Separate causes of action — Salvage actions — R. S. C., 1883, Order XVI., r. 1; Order XVIII., r. 1.**

The plts., the owners, masters, and crews of four steam-tugs, issued a writ of summons in rem in the Admiralty Div. claiming reward for alleged salvage services rendered to a ship, her cargo and freight.

The owners of the ship, and of her cargo, appeared as defts., under protest, and moved to set aside the writ, or, in the alternative, to strike out all the plts., except one, on the ground that their causes of action were separate and distinct:—

*Held*, that the motion must be dismissed, the practice in Admiralty as to parties to the suit, and joinder of causes of action, not being affected by the provisions of Order XVI., r. 1, and Order XVIII., r. 1 of the R. S. C., 1883, as interpreted by *Smurthwaite v. Hannay*, [1894] A. C. 494. *THE "MARÉCHAL SUCHET"*

**G. Barnes J. [1896] P. 233**

*See also PRACTICE—Parties.*

**— Practice generally.**

*See Cases under SHIPPING.*

**— Proceedings in foreign court—Right to retain proceeds against liquidator.**

*See COMPANY—WINDING-UP—Practice.*  
187.

**— Tender.**

*See Cases under SHIPPING—Tender.*

**SHIPPING (Practice)—continued.****208. — Third party—Collision—Practice—Indemnity—R. S. C., 1883, Order XVI., r. 48.**

Defts. in an action in rem served a third party notice on A., who was a ship repairer, under whose control it was alleged the ship was, and who moved the ship to other moorings, during which moving a collision, the subject of the action, occurred:—

*Held*, that the third party notice must be set aside, as there was no contract, express or implied, with A. involving an indemnity within R. S. C., 1883, Order XVI., r. 48. *THE "JACOB CHRISTENSEN"* — **Bruce J. [1895] P. 281**

**209. — Third party procedure—Claim for contribution or indemnity—Order XVI., r. 48.**

Terms of a charterparty by which the charterers were bound stipulated that the ship should be discharged at port of delivery as customary. On the day after the execution of the charterparty the charterers contracted to sell a cargo of bones to be shipped in one or two vessels at the sellers' option to discharge at the port therein named as per charterparty, and the purchasers agreed to take the bones over the ship's side as fast as the captain could deliver, failing which to be resold at the sellers' discretion, the purchasers being liable for any loss, demurrage, or expenses arising therefrom. The bones were carried in the shipowners' ship, and delivery was taken by the purchasers:—

*Held*, that the stipulation in the contract for sale as to the purchasers' liability for demurrage did not amount to a contract by the purchasers to indemnify the charterers against their liability to the shipowners under the charterparty, and that leave to issue a third party notice against the purchasers under Order XVI., r. 48, ought not to be granted. *CONSTANTINE & Co. v. WARDEN & SONS* — **C. A. [1895] W. N. 143 (11)**

**210. — Transfer—Registration—General light-house fund—Fees—Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 3, Sched. I.**

The Merchant Shipping (Mercantile Marine Fund) Act, 1898, Sched. I., gives a scale of the fees which are to be paid on the transfer of British ships "according to the gross tonnage represented by the ships or shares of ships transferred." Fifty-eight shares in a ship, each share being one-sixty-fourth, were transferred to a firm by twenty different bills of sale:—

*Held*, that the firm was liable to pay a separate fee, according to the scale, on the tonnage represented by the shares comprised in each bill of sale, and not merely to pay one fee upon the total of the tonnage represented by all the shares transferred. *HARROWING STEAMSHIP Co. v. TOOHEY* **Kennedy J. [1900] 2 Q. B. 28**

**211. — Trial by judge with assessors or jury—County Court Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), ss. 10, 11—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101.**

The general provisions of s. 101 of the County Courts Act, 1888, are limited by s. 10 of the Act of 1868 as to the trial of causes of salvage, towage, and collision, so that if one party asks for a

**SHIPPING (Practice)—continued.**

jury and the other for assessors, the trial must be by judge and assessors. **THE "TYNWALD"**

**Div. Ct. [1895] P. 142**

Commented on by Div. Ct. *The Theodora*, Div. Ct. [1897] P. 279, 282, 288.

**212. — Venue—County Court Admiralty Acts, 1868 (31 & 32 Vict. c. 71), ss. 5, 21; 1869 (32 & 33 Vict. c. 51), ss. 1, 2, 4.**

(A) Action in N. Court for damage to ship at P. within the P. County Court district:—

*Held*, that as the plts.' ship was at N. when the action commenced, the judge of the N. County Court had jurisdiction. The County Courts Admiralty Jurisdiction Acts, 1868, 1869, are to be read as one Act. **THE "COUNTY OF DURHAM"**

**Div. Ct. [1891] P. 1**

Explained by G. Barnes J. *The "City of Agra,"* [1898] P. 198.

(B) Under s. 74 of the County Courts Act, 1888, an Admiralty action can be commenced in the county court district in which the defts. dwell or carry on their business. **THE "HERO"**

**Div. Ct. [1891] P. 294**

Followed by Div. Ct. *The "Eden,"* [1892] P. 67, 69.

Referred to by G. Barnes J. *The "City of Agra,"* [1898] P. 198, 204.

(C) The plts., living at N., brought an action in the N. County Court against the defts. living at W. (in another county court district) for demurrage for detention of ship at W. The ship was again at sea, and its former cargo was not within the N. district:—

*Held*, (1) that as the claim arose out of an agreement made in relation to the use and hire of a ship, it fell within s. 2, sub-s. 1, of the County Courts Admiralty Jurisdiction Act, 1869, and (2) that as the ship was at sea, sub-s. 2 and not sub-s. 1 of s. 21 of the Act of 1868 applied, and the action was rightly brought in the N. County Court; (3) that the Acts of 1868 and 1869 were not affected by s. 56 of the County Courts Act, 1888, which brought the action within the common law jurisdiction of the Court. **PUGSLEY & CO. v. ROPKINS & CO. C. A. [1892] 2 Q. B. 184**

Explained by G. Barnes J. *The "City of Agra,"* [1898] P. 198, 203.

**Prevention of Accidents.**

**LOAD-LINE.] Regs. dated Jan. 12, 1899, made by the Bd. of Trade, under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). St. R. & O. 1899, p. 928, No. 8.**

*With respect to ships registered in Victoria—Merchant Shipping Act, 1894. Lond. Gaz. March 10, 1899, p. 1664.*

**Quarantine.**

*Public Health Act, 1896 (59 & 60 Vict. c. 19), repeals in part the Acts relating to.*

**Registry.**

**MEASUREMENT OF SHIPS.] General O. of Bd. of Customs as to measurement of dock cargo spaces**

**SHIPPING (Registry)—continued.**

*occupied by cattle and other animals. St. R. & O. 1897, p. 461, No. 50.*

**REGISTRATION OF SHIPS.] O. of Bd. of Customs dated May 5, 1896, as to revised registry forms. St. R. & O. 1896, p. 182, No. 350.**

**Report of Cargo.**

*Regs. dated Sept. 10, 1898, made by the Comms. of Customs under s. 2 (1) of the Revenue Act, 1898 (61 & 62 Vict. c. 46). St. R. & O. 1899, p. 1576.*

**Restraint.**

**213. — Bond for safe return—Forfeiture—Jurisdiction—Discretion of Court—Co-ownership—Action of restraint.**

By a bail bond, in an action of restraint, the sureties submitted themselves to the jurisdiction of the Court, and consented "that if the (named vessel) shall not safely return to the port of Liverpool, and the defts. (the owners of the vessel other than the plt.) shall not, in such case, pay to the plt. (the appraised value of his shares), execution may issue" against them.

The vessel which, at the time the bond was given, had been despatched by the defts. on a voyage from Hartlepool to Calcutta arrived at Dundee in Scotland, and left again on a voyage to New York there to load for Australian ports.

On motion by the plt., G. Barnes J. pronounced the bond forfeited, and ordered the amount to be paid into court with liberty to the sureties to shew cause.

*Held*, by C. A., that there was jurisdiction to make the order, and, assuming a discretion in the Court in respect of the enforcement of a security given to the Court, that discretion has been rightly exercised, as the condition of the bond for safe return was not limited to the case of the vessel being lost, but was broken by the ship, instead of returning to Liverpool, being taken to a port out of the jurisdiction of the English Admiralty Court, and then sent on another voyage. **THE "CAWDOR"**

**C. A. [1900] W. N. 8; [1900] P. 47**

— Restraint of princes and rulers.

*See SHIPPING—Exceptions. 140, 141.*

**Sale.**

**214. — Co-ownership—Sale of ship against will of majority—Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 8.**

The majority of the co-owners of a ship formed a limited co. to which they transferred their shares. The minority of the co-owners moved, in an action of restraint, for the sale of the ship:—

*Held*, that the majority had no right to change the character of the ownership without the consent of all parties, and therefore, in the exercise of the discretion of the Court under s. 8 of the Admiralty Court Act, 1861, and in the interests of all concerned, the sale of the whole ship would be decreed. **THE "HEREWARD"**

**Bruce J. [1895] P. 284**

**215. — Pre-existing maritime liens—Division of purchase-money—Mortgagees of shares—Costs of repairs.**

The managing and majority owners of a

**SHIPPING (Sale)—continued.**

vessel, as vendors, handed over the possession of her to a Scottish firm under a contract of sale by which the firm were to become owners of the shares in the vessel in proportion to the instalments of the purchase-money paid. The firm paid a sum on account of the purchase-money against which eight shares in the vessel were transferred to them. These shares the firm mortgaged. In working the vessel the firm incurred liabilities which, in an action in rem by the master, were held to have created maritime liens on her (*The Ripon City*, [1897] P. 226), and, after entering into an onerous charter for the vessel, the firm became bankrupt. The vendors resumed possession of the vessel, gave bail in the above-mentioned action, paid the amount subsequently adjudged to be due, paid a sum to cancel the charter, repaired the vessel, settled with the minority owners, and, with the acquiescence of the mortgagees of the eight shares, sold her to a foreign purchaser. In an action by the mortgagees against the vendors in respect of the distribution of the proceeds of the sale:—

*Held*, that as against the mortgagees the vendors could not, before dividing the purchase-money, deduct a proportion of (1) the sum paid to clear off the maritime liens, as there had been no request from the mortgagees and they were not at the time of the payment in possession; (2) the sum paid to cancel the charter, as the mortgagees, not being in possession, were not liable for expenses connected with the working of the ship; (3) the cost of repairs, as it was not proved that they had been executed in pursuance of the agreement for the sale of the vessel to the foreign purchaser.

*Johnson v. Royal Mail Steam Packet Co.*, (1867) L. R. 3 C. P. 38, and *The Orchis*, (1889) 15 P. D. 38, distinguished. *THE "RIPON CITY"*

*Jeune P.* [1898] P. 78

216. — *Share—Transmission of share to alien—Forfeiture to Crown—Practice—Sale of share without appraisal—Costs—Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), ss. 62, 63, 64, 103 (3).

A share which had become transmitted to an alien held forfeited to the Crown, and ordered that such share should be sold by the marshal by private contract without appraisal, but not under a stated sum. The owners of the remaining shares were allowed their costs out of the net proceeds. *THE "MILLICENT"*

*Jeune J.* [1891] W. N. 162

— Warrant of execution.

*See No. 202, above.*

**Salvage.**

217. — *Agent—Principles upon which the remuneration of an agent rendering salvage service is to be based.*

An agent is not precluded from claiming salvage. If requested by the owner of the vessel to render assistance he will have a right to some remuneration, even though the operations prove unsuccessful, but should the operations prove successful, the award will be on a different

**SHIPPING (Salvage)—continued.**

basis than if he had risked the loss of his entire expenditure as an independent salvor. *THE "KATE B. JONES"* — *G. Barnes J.* [1892] P. 366

218. — *Agreement for services—Extra premium.*

An agreement was made between the masters of the salving and salvaged ships, by which the salvors should receive remuneration for their services, even if unsuccessful:—

*Held*, that it must be treated as an element for the reduction of the salvage award. An extra premium paid by the salving vessel for deviation, held to be an element for increasing the award. *THE "EDENMORE"*

*G. Barnes J.* [1893] P. 79

219. — *Agreement to tow to a place of safety—Right to salvage.*

Salvage claims rest, not upon contract, but upon the right to be paid out of the property salvaged, and therefore a salvor who has contributed, though to a small extent, to the ultimate safety of the disabled vessel, is not wholly disentitled to remuneration because he acted under an express agreement which he has failed to perform. *THE "HESTIA"* (No. 1)

*Bruce J.* [1895] P. 193

220. — *Amendment of writ after judgment.*

In a salvage action the Court allowed the indorsement on the writ to be amended after judgment, but before decree drawn up, by altering the amount of salvage claimed. *THE "DICTATOR"* (No. 1)

*Butt P.* [1892] P. 64

Subsequently the plts. obtained leave to proceed personally for the whole amount of salvage claimed. *THE "DICTATOR"* (No. 2)

*Jeune J.* [1892] P. 304

Approved and followed by C. A. *The Gemma*, [1899] P. 285.

221. — *Amount—Salving vessels specially equipped—Principles of assessment of award.*

In reviewing an award for salvage made by the judge of the Admiralty Div. and affirmed by the C. A., this House will not interfere with the amount awarded unless it appears that the established principles have not been satisfactorily applied.

Decision of C. A., *The Glengyle*, [1898] P. 97, affirmed. *OWNERS OF "GLENGLYLE," HER CARGO AND FREIGHT v. NEPTUNE SALVAGE CO.* *THE "GLENGLYLE"* *H. L. (E.)* [1898] A. C. 519

222. — *Appeal—Costs—Amount of award reduced.*

On appeals in salvage cases it is a general though not hard and fast rule of practice of the Court that costs will not be given to an appellant who succeeds in reducing the amount of the award. There is no fixed rule for apportioning the award. *THE "GIPSY QUEEN"*

*C. A.* [1895] P. 176

223. — *Apportionment—Agreement to accept percentage of salvage—Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), s. 182; 1862 (25 & 26 Vict. c. 63), s. 18—*Merchant Shipping (Fishing Boats) Act, 1883* (46 & 47 Vict. c. 41), s. 13.

Sec. 182 of the Merchant Shipping Act, 1854 (now s. 156 of the Act of 1894), does not prevent seamen from entering into an equitable arrangement for the apportionment of salvage.

**SHIPPING (Salvage)—continued.**

Therefore, though a vessel be not within the exception of s. 18 of the Act of 1862 (now s. 156 of the Act of 1894), an agreement under s. 13 of the Act of 1883 (46 & 47 Vict. c. 41) to accept a percentage of the salvage earned is binding if in the opinion of the Court equitable.

Where certain officers are paid by a share of fishing profits, costs of repairs necessitated by the salvage operations cannot be deducted from the salvage percentage payable to them:—

*Semble*, the above sections of the Acts of 1854 and 1862 do not apply to a master. *THE "WILHELM TELL"*—G. Barnes J. [1892] P. 337

**224. — Apportionment—Non-navigating members of crew—Surgeon, stewards, &c.**

The non-navigating members of a crew of a large steamer (the surgeon, stewards, &c.), who had taken no active part in salving the salvaged ship, held to be only entitled to a half share according to their rating. *THE "SPREE"*

G. Barnes J. [1893] P. 147

**225. — Apportionment of costs.**

In apportioning the costs of the salvor, payable by the owners of the salvaged ship and cargo respectively:—

*Held*, that the general costs should be apportioned between the owners of the salvaged ship and of her cargo in accordance with the rules laid down in the *The Peace*, (1856) Swa. 115, but without prejudice to the salvors' right to recover the whole from either. *THE "ELTON"*

Jeune J. [1891] P. 265

**226. — Appraisal—Awards to salvors absorbing whole proceeds—Application to vary decree.**

In a salvage action if the defts. do not object at the time to the appraisal, the fact of the sum realized by the sale being much less than the appraised value is not in itself sufficient indication that the appraised value did not fairly represent the value at the time and place where the property is brought into safety to cause the Court to vary the decree. *THE "GEORG"*

Bruce J. [1894] P. 330

[*The C. A.*, [1894] P. 336, n., refused leave to appeal from the original award, substantially on the grounds assigned by Bruce J.]

**227. — Attempt to tow—Derelict—Costs.**

A tug under an agreement endeavoured to tow a disabled barque into port but failed, leaving the ship in a more dangerous position than before, but in such a position that a second set of salvors were able to save her. The second set of salvors claimed salvage on the higher scale as for a derelict ship:—

*Held*, (1.) that the tug was entitled to payment for work done, but not for salvage; (2.) that, as the crew were on board when these last salvage services commenced and remained by her while the salvage operations continued, the ship was not derelict. *THE "LEPANTO"*

Jeune J. [1892] P. 122

**228. — Award—Grounds for an Appeal Court altering the amount.**

There is no rule binding the C. A. not to interfere with a salvage award unless the amount is so large or so small that no reasonable man could fairly arrive at the sum awarded. The

**SHIPPING (Salvage)—continued.**

amount awarded will be increased or diminished if, after carefully considering the facts and giving every possible weight to the view of the previous judge, the amount appears to the C. A. so large as to be unjust to the owners of the salvaged ship or so small as to be unjust to the salvors. *THE "ACCOMAC"*—C. A. [1891] P. 349

**229. — Consolidation—Conduct of cause.**

Where separate salvage actions relate to services rendered to the same ship about the same time, the actions can be consolidated, on grounds of convenience and economy, without regard to the consent of the parties. When actions are consolidated the plts. can appear by separate counsel. Conduct of the consolidated actions was given to the principal salvor. *THE "STRATHGARRY"*—Bruce J. [1895] P. 264

Referred to by G. Barnes J. *The Altair*, [1897] P. 105, 108.

**230. — Contract not to be performed in England.**

A salvage contract was made in English waters between foreigners, but there was no obligation to pay the salvage money within the jurisdiction:—

*Held*, that service of writ out of jurisdiction could not be allowed under Order xi., r. 1 (e), in an action for breach of the contract in not paying the salvage money. *THE "EIDER"*

C. A. [1893] P. 119

Approved of by H. L. (E.). *Comber v. Leyland*, [1898] A. C. 524, 533.

**231. — Costs—Refusal to consolidate actions.**

Second salvors who finally rescued a disabled vessel, and to whom substantial remuneration was awarded, had refused to consolidate their action with that of the first salvors:—

*Held*, that the extra expense thereby caused must be deducted from their costs. *THE "HESLIA"* (No. 1) Bruce J. [1895] P. 193

**232. — Costs—Taxation—Practice—Consolidated actions—Attendance of country solicitor at trial in London.**

In April, 1899, the barque *Metropolis*, belonging to the defts., whilst lying at anchor in the river Mersey, commenced to drag, and was rescued from a position of some peril by the steam tugs *Knight of the Cross*, *Sea King*, and *Gipsy King*. The owners, &c., of the first named tug issued a writ out of the Liverpool District Registry in a salvage action, and the owners, &c., of the two other tugs issued a writ in another action. These two actions were consolidated by order of the Liverpool District Registrar, and the general conduct given to the plts. in the first mentioned action, with liberty to the plts. in the action secondly mentioned to appear by one counsel at the trial. In May, at the hearing before G. Barnes J. assisted by two of the Elder Brethren of the Trinity House, the *Knight of the Cross* was awarded 1200*l.*, the *Sea King* 800*l.*, and the *Gipsy King* 400*l.*, and, on the ground that there was a possibility of some conflict between the two sets of salvors as to the value of their respective services, an order was made that the costs of two counsel for each set of salvors should be allowed. On taxation of the costs of the plts. in the second action, and on the ground that

**SHIPPING (Salvage)—continued.**

the attendance of the solicitor, to whom the conduct of the consolidated action had been given, was sufficient, the following items were disallowed by the Liverpool District Registrar, viz.: (1) Journey from Liverpool to London of the solicitor, (2) his expenses, (3) his railway fare, and (4) cabs and telegrams.

On appeal, by way of objection to the taxation, adjourned into court for the delivery of judgment:—

*Held*, on the authority of *Bell v. Aitkin*, (1868) L. R. 3 C. P. 320; *In re Storer*, (1884) 26 Ch. D. 189, and *The Soto*, [1893] P. 73, that, though the allowance, as between party and party, of the costs of the attendance of the country solicitor at the trial in London, was a matter for the discretion of the taxing master, that discretion had been, in this case, wrongly exercised, for it was reasonably necessary for counsel in the second action to be instructed during the hearing, by the solicitor of the *plts.* in that action, as the solicitor who had the conduct of the consolidated action was not in a position to do full justice to both sets of *plts.* Appeal allowed. *THE "METROPOLIS"* - **Bucknill J. [1899] W. N. 100**

**233. — Costs — Two causes tried together — Refreshers to counsel—R. S. C., Order LXV., r. 27 (48).**

Where two salvage actions were tried together, and the evidence in the first action was, so far as applicable, to be used in evidence in the second action:—

*Held*, that the attendance of counsel was necessary during the hearing of both actions, and that refreshers should be allowed. *THE "HESTIA"* (No. 2) - **Bruce J. [1895] W. N. 100**

**234. — Derelict—Principles of assessment of award.**

Although there is no rule entitling the salvors of a derelict vessel, as of right, to a moiety, or other specific proportion, of the value of the property salvaged, and the award is to be assessed upon the same principles as in other cases of salvage, still there are usually present, in the case of a derelict, at least three special elements which tend to enhance the award, namely, the high degree of danger to which the property to be salvaged is exposed, the difficulty of approaching the derelict vessel without any aid in boarding her, and the necessity, when taking her in tow, of supplying men to steer her, thereby exposing some of the salvors to additional risk, and rendering the salvaging vessel short-handed. *THE "JANET COURT"* - **Jeune P. [1897] P. 59**

**235. — Derelict boiler—Amount of award—Costs.**

The Court, under special circumstances, awarded 50*l.* and costs on the High Court scale to salvors who had landed a derelict boiler, although the boiler when sold fetched under 50*l.* *THE BOILER ex "ELEPHANT"*

**Butt P. [1891] W. N. 52**

**236. — Discontinuous services—Agreement—Tender—Authority of master of salvaging vessel.**

Where the services of a salvor were discontinued, and an amount was tendered and paid into court representing the sums agreed upon,

**SHIPPING (Salvage)—continued.**

by the master of the salvaging vessel, with the master of the salvaged vessel, as the reward to cover valuable services rendered prior to the agreement, as well as the successful services subsequently rendered:—

*Held*, that the tender must be rejected, and a salvage award made in respect of the services prior to the agreement, as the owner and crew of the salvaging vessel had acquired vested rights which the master of the salvaging vessel had no authority to bargain away, but that the amount fixed by the agreement must stand in respect of the subsequent services. *THE "INCHMAREE"*

**Phillimore J. [1899] W. N. 22 (3); [1899] P. 111**

**237. — Division of sum awarded for salvage services—Construction of charterparty.**

A charterparty provided (clause 2) that the shipowner should maintain the chartered vessel (the steamship *Pocklington*) in a thoroughly efficient state for and during the service. Clause 6 provided that if any damage prevented the working of the vessel for more than twenty-four hours the hire should cease. By clause 13 the vessel had liberty to tow and assist vessels in distress, and to deviate for the purpose of saving life or property. By clause 20 all derelicts and salvage were to be "for owners' and charterers' equal benefit." The shipowners obtained an award in the Admiralty Court for a large sum for salvage services rendered by the *Pocklington* in towing another vessel in distress. Through performing those services the hull, engines, and towing gear of the *Pocklington* were strained and damaged, and she incurred expenses and losses attributable to the salvage services in respect of repairs, the costs of gear used in towage, loss of hire for several days whilst she was under repair, and other matters. In an action by the charterers against the shipowners to recover a moiety of the salvage earned by the *Pocklington*:—

*Held*, that the debts were entitled to be deducted from the amount awarded by the Admiralty Court all such losses and expenses incurred by them (including loss of hire) as were attributable to the salvage services, and that the balance only ought to be divided between themselves and the *plts.* *BOOKER & CO. v. POCKLINGTON STEAMSHIP CO.* - **Bigham J. [1899] 2 Q. B. 690**

— Estoppel—Judgment.

*See ESTOPPEL. 6.*

**238. — Inequitable agreement—Grounds for setting aside.**

The fact that parties to a salvage agreement have not contracted on equal terms will not per se invalidate the agreement; but if the sum insisted on by the intending salvor is exorbitant, and the master of the ship to be salvaged is at a disadvantage, the Court will set the agreement aside as inequitable. *THE "RIALTO"*

**Butt J. [1891] P. 175**

**239. — Jurisdiction—County court—Gas float—Beacon or buoy—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 458, 476—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3.**

The jurisdiction of the Admiralty over salvage

**SHIPPING (Salvage)—continued.**

does not extend to all property exposed to perils of the sea and used to assist navigation.

A gas float, shaped like a boat, but neither intended nor fitted to be navigated, was moored in tidal waters to give light to vessels and went adrift in a storm :—

*Held*, that not being a ship or part of a ship or of her apparel or cargo the structure was not the subject of a claim for salvage within the Admiralty jurisdiction.

Decision of C. A., *The Gas Float Whitton* (No. 2), [1896] P. 42, affirmed. *WELLS v. OWNERS OF GAS FLOAT "WHITTON"* (No. 2)

H. L. (E.) [1897] A. C. 337

— Definition of ship.

*See Wells v. Owners of Gas Float Whitton* (No. 2), [1897] A. C. 337.

**240. — Jurisdiction—Receiver of wreck—Detention of property—Merchant Shipping Act, 1894** (57 & 58 Vict. c. 60), ss. 546, 552.

A British steamship, belonging to the plts., with cargo from and to a Continental port, was in the English Channel, in distress, for want of fuel, twenty miles off the coast. A British steam-tug towed her into Plymouth, and, at the request of the master of the tug, the defts., receiver of wreck at that port, detained the plts.' vessel two days pending the production of satisfactory bail to answer a claim for salvage.

In an action for damages for the illegal arrest of the vessel :—

*Held*, affirming the decision of G. Barnes J., [1898] P. 206, that the deft. was entitled to judgment in his favour, for the words in s. 552, "salvage . . . due under this Act," mean "salvage recoverable under this Act," and are not limited by s. 546 in respect of the place where the vessel was in distress; so that a dispute as to salvage having arisen, to be determined by a court recognised by the Act, the defts., as receiver, had jurisdiction to detain the property which was in his district, and liable for salvage.

*Per* G. Barnes J.: *Seem*, that the words "near the coasts of the United Kingdom" in s. 546 are restricted to the territorial limit. *THE "FULHAM"* — C. A. [1899] W. N. 85; [1899] P. 251

**241. — Life Salvage—Authority of master—Contract with passengers—Tender.**

The defts.' steamship, three days out from Montreal for Liverpool, stranded on the coast of Labrador. The master landed his passengers and crew, provided them with food and accommodation, and the same day intercepted a passing steamer, which, at the request of the master, conveyed the passengers to their destination.

The following day a steamer passing in the opposite direction, at the like request, took off the greater part of the crew, conveyed them to Quebec, and, on the way, telegraphed for assistance to be sent.

By the contract with the passengers the defts. were "not liable for loss or delay from the act of God . . . perils of the seas, rivers, or navigation . . . or the wrongful act or default" of their servants. The defts.' vessel became a total loss, materials to the value of 335*l.* only being saved.

**SHIPPING (Salvage)—continued.**

In an action in personam by the owners of the passing steamers for salvage, or, in the alternative, for remuneration for services rendered at request, the defts. tendered 200*l.* :—

*Held*, that the tender must be upheld, as the passengers and crew were not in any danger, so that no life salvage was claimable; and, as the defts. were under no obligation to forward the passengers to their destination, the master, in transhipping them, acted as the agent of the passengers, and not of the defts. *THE "MARIPOSA"* — G. Barnes J. [1896] P. 273

**242. — Life salvage — Foreign vessel—Jurisdiction — Services "wholly or in part within British waters"—Merchant Shipping Act, 1894** (57 & 58 Vict. c. 60), s. 544, sub-s. 1.

By s. 544, sub-s. 1, of the Merchant Shipping Act, 1894, "Where services are rendered wholly or in part within British waters in saving life from any . . . foreign vessel . . . there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage. . . ."

A British steam-trawler whilst on a fishing voyage in the North Sea, and about ninety miles north-east of the Spurn, fell in with a water-logged Norwegian barque. After some difficulty the trawler rescued the crew of the barque, and the next day landed them at Hull. The barque was subsequently saved by other salvors, and brought into Grimsby. In an action for life salvage by the owners, master, and crew of the trawler, it was contended by the defts., the owners of the barque and of her cargo, that there was no jurisdiction under the statute to make an award :—

*Held*, that the plts. were entitled to life salvage, as the saving vessel, in the course of effecting the salvage service, was within British waters, and, therefore, the services were rendered "in part within British waters" within the meaning of the statute. *THE "PACIFIC"*

Jeune P. [1898] P. 170

— Life salvage—Lloyd's policy.

*See* INSURANCE—Marine. 76.

**243. — Misconduct (alleged) of salvors—Refusal to put crew back on board salvaged vessel—Award.**

In an action of salvage the owners of the *Elise* submitted that the misconduct of the plts. disentitled them to any award :—

*Held*, that, though the master and crew of the *Elise* had a legal right to return to their vessel, the Court will not lay down any general rule, but will be guided by the circumstances of each case, and here the master of the *Northumbria* was justified in refusing to put them on board :

*Held*, also, that, as the salvage services were very meritorious, the award to the *Northumbria* would be 6000*l.*, apportioned as follows: to the owners 2500*l.*, to the master 1000*l.*, and to the crew 2500*l.* according to their rating, with double shares to those who went on board the *Elise*. *THE "ELISE"* — G. Barnes J. [1899] W. N. 54

**244. — Misconduct of salvors—Forfeiture of reward.**

In this case the President held that the mis-

**SHIPPING (Salvage)—continued.**

conduct of the salvors, a lifeboat crew, was such as to work a total forfeiture of salvage reward. *THE "CAPELLA"* — — **Butt P. [1892] P. 70**

**245. — Negligence of salvors—Counter-claim for—Diminution of award—Costs.**

On a claim for salvage the salvaged vessel counter-claimed for injuries sustained by bad and negligent navigation of the salvaging vessel, and asked not for forfeiture of the award, but for allowance on account of the damage sustained:—

*Held*, that such want of skill in manœuvring the salvaging vessel as had been proved went to diminish the award of salvage, and the award must be reduced by one-half. An apportionment of the actual damage was refused. *THE "DWINA"* — — **Butt P. [1892] P. 53**

**246. — Negligence—Towage—Stranding—Control of tug by tow—Contributory negligence—Inevitable agreement.**

A barque, with a cargo of wheat from San Francisco, put into Falmouth for orders and left that port for Hull in tow under a contract to pay the tug a fixed sum. The tug set the courses without interference from the tow, but the latter regularly took soundings. When nearing the entrance to the Humber the weather became thick and, a sounding indicating shallower water, the master of the barque was about to signal to the tug, when his vessel took the ground, the wind at the time being light and the sea smooth. A second tug then came up, and, as her master would not take less, the master of the barque agreed to pay 500*l.* if she would assist the first tug in an endeavour to tow the vessel off that tide. The efforts of the two tugs proved unsuccessful, and the second tug, having been sent to Grimsby for more tugs, returned with two others, whilst men from the shore assisted the crew in jettisoning some of the cargo. The four tugs then took hold of the vessel and she came off, and was subsequently safely docked at Hull. The owners, masters, and crews of all four tugs claimed salvage. The defts., the owners of ship, cargo, and freight, alleged that the stranding was due to the negligence of the first tug, and counter-claimed against her for the loss of cargo and for any salvage they might have to pay the other salvors. They further submitted that the agreement with the second tug should be set aside as unreasonable and made under duress:—

*Held*, that the first tug was responsible for the direction of the course, and, having been negligent in respect of it and in not taking soundings, her claim for salvage must be dismissed, but that, on the authority of *Smith v. St. Lawrence Tow Boat Co.*, (1873) L. R. 5 P. C. 308, the counter-claim of the defts. must also be dismissed, as their master was guilty of contributory negligence in allowing the tug to run on instead of ordering her to haul off when approaching a difficult port in foggy weather. As the second tug incurred no risk, the agreement with her must be set aside as unfair, and a reasonable sum for the whole of her salvage services awarded. As the two other tugs rendered their services at request, they were entitled to salvage, though the vessel could have been got off without their assistance. The three last-mentioned tugs were

**SHIPPING (Salvage)—continued.**

also entitled to a small sum for docking, payable, as towage, by the ship only. *THE "ALTAIR"* — — **G. Barnes J. [1896] P. 105**

**247. — Practice—Solicitors' undertaking—Arrest—"Good and sufficient reason"—Damages—R. S. C., 1883, Order xxxix., rr. 12, 18.**

Defts.'s solicitors signed, without qualification, a notice, under Order xxxix., r. 12, of the R. S. C., 1883, by which they undertook to enter an appearance and give bail in a sum not exceeding the value of ship, cargo, and freight; but the plts.—notwithstanding the caveat which on the filing of the above notice in the registry had been thereupon entered—took out, under rule 18 of the same order, a warrant for the arrest of the defts.' vessel in a salvage action:—

*Held*, that the defts.' solicitors, by signing the undertaking without qualification, rendered themselves personally responsible, and the plts. might have taken a reasonable time to make inquiry whether the undertaking was satisfactory; but as, instead of doing so, they had insisted upon the security of the ship, the plts. had failed to shew "good and sufficient reason" within the meaning of rule 18 of the same order, for arresting the vessel, and must, therefore, be condemned in damages and costs. *THE "CRIMDON"* — — **G. Barnes J. [1900] W. N. 130; [1900] P. 171**

**248. — Salvage—Evidence of value—County Court Rules, 1892, Order xxxix. B, rr. 30, 31, and 32.**

In an action for salvage if the plt. is dissatisfied with the value given in the deft.'s affidavit of value, under the County Court Rules, 1892, Order xxxix. B, rr. 30, 31, 32, he has a right to have the ship appraised, and if he does not exercise this right evidence of the value is inadmissible at the trial and the affidavit of value conclusive. *THE "ARGO"* — —

**Div. Ct. [1895] P. 33**

— Salvage contract—Service.

*See PRACTICE—Service.* 209, 216.

— Salvage, Judgment for—Action against underwriter.

*See ESTOPPEL.* 6.

**249. — Service out of the jurisdiction—Cargo owners—Salvage action.**

The plts. brought an action against the owners of an English ship for salvage services performed abroad, and leave was given to serve notice of the writ on the owners of the cargo, who were foreigners residing out of the jurisdiction. On application to set aside the service:—

*Held*, that, under Order xi., r. 1 (g), the cargo owners were "proper" parties to the action. *THE "ELTON"* — — **Jeune J. [1891] P. 265**

**250. — Service rendered under a contract for work and labour with third parties—Maritime lien.**

The plts., with the knowledge and assent of her owners, undertook to lift a sunken vessel, under a contract with the insurers, who advanced to the plts. before the work commenced 40 per cent. of the amount for which the vessel was insured. The vessel was successfully raised, but the operation of lifting proved more costly than

**SHIPPING (Salvage)—continued.**

was anticipated, and some of the underwriters in the meantime became insolvent. In an action of salvage brought by the plts. against the defts. as owners of the vessel:—

*Held*, that the contract with the underwriters, which was not dependent on success, precluded the plts. from asserting a maritime lien on the vessel, and claiming salvage remuneration from her owners. **THE "SOLWAY PRINCE"**

**Jeune P. [1896] P. 120**

**251. — Towage—Construction of contract—Complete performance prevented by a misfortune beyond the control of either party—Subsequent salvage.**

The plts., tug-owners, contracted to tow the deft.'s vessel from Kingroad in the river Severn to Sharpness Dock for a fixed sum, but when near their destination, owing to a fog and without anybody being in fault, the vessel stranded on a rock, and could not be got off:—

*Held*, that the contract was indivisible, and, not having been fulfilled, the plts. were not entitled to recover on a quantum meruit for any portion of the towage.

*Appleby v. Myers*, (1867) L. R. 2 C. P. 651, followed.

After the stranding and failure of the attempt to get the vessel off, the tugs were ordered by the master of the vessel to keep her where she was so as to prevent her drifting up the river and sinking in deep water or doing damage. These orders the tugs obeyed; and in the result the vessel was sold where she lay, but the greater part of the cargo of timber being taken off in lighters, the freight was earned by the shipowner:—

*Held*, that this was a salvage service, and on a total value of 272*l.* the owners, masters, and crews of the three tugs engaged were awarded 370*l.* **THE "MADRAS"** **Jeune P. [1898] P. 90**

**252. — Tug, Claim of—Conditions required before salvage engrafted on towage.**

A tug, under a contract to tow a vessel into port, was able to save the ship from a danger resulting from a mishap to another tug:—

*Held*, that as there was no immediate danger to the ship or risk to the tug in performing the service, the tug had no claim for salvage. Conditions required to engraft salvage on to towage considered. **THE "LIVERPOOL"**

**G. Barnes J. [1893] P. 154**

**253. — "Wreck," Definition of.**

*See Wells v. Gas Float Whitton* (No. 2), [1895] P. 301; [1897] A. C. 337.

**254. — Wreck—Removal—Owner—Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 56—Removal of Wrecks Act, 1877 (40 & 41 Vict. c. 16), ss. 4, 68.**

In s. 56 of the Harbours, Docks, and Piers Clauses Act, 1847, "owner" does not mean a person who was owner of the ship at the time it became an obstruction, but who abandoned her before the expenses of removal were incurred. The *C.* came into collision and sank near a harbour, where she became an obstruction to the navigation. Her owners gave the underwriters notice of abandonment as a total loss, and also gave the harbour authority notice of abandon-

**SHIPPING (Salvage)—continued.**

ment. The harbour authority took possession of the wreck, raised part of the cargo, sold it, and dispersed the wreck by explosives:—

*Held*, that the owners were not personally liable for the repayment, not being the owners within the section.

*Per* Lord Macnaghten also, because the expenses could not be recovered from the owner where the vessel is destroyed.

*Held*, also (Lord Ashbourne dissenting), that the section makes the owner of the wreck personally liable for the expenses of removal. **ARROW SHIPPING CO. v. TYNE IMPROVEMENT COMMS.** **THE "CRYSTAL"**

**H. L. (E.) revers. C. A. [1894] A. C. 508**

Distinguished by *P. C. Smith v. Wilson*, [1896] A. C. 579.

Construction of s. 56 adopted in *The Crystal* applied by *H. L. (E.) Barraclough v. Brown*, [1897] A. C. 615.

**Seamen.**

"**BOY SAILORS.**" *Scale and regs. for grant of money allowances to shipowners in respect of "Boy Sailors."* **Lond. Gaz. March 17, 1899, p. 1829.**

**DESERTERS.] Apprehension of seamen who desert from British merchant ships in Japan.** **St. R. & O. 1898, No. 419; Lond. Gaz. Feb. 4, 1898, pp. 646, 668; May 20, p. 3132.**

**255. — Agreement for service—Advance note—Payment conditional on going to sea—Amount exceeding one month's wages—Engagement abroad—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 124, 140.**

A seaman was engaged at a foreign port, in which there was a British Consul, and was paid a sum exceeding one month's wages, under an advance note, conditionally on his going to sea. In proceedings to recover wages the master claimed to deduct the whole amount paid under the advance note.

*Held*, that s. 124 does not extend s. 140 to engagements of seamen abroad, and therefore s. 140 applies only to engagements to sail from the United Kingdom, and the master was entitled to deduct the whole amount. **RITCHIE v. LARSEN**

**Div. Ct. [1899] W. N. 12 (14); [1899] 1 Q. B. 727**

**256. — Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 16—Act not to apply to seamen—Offence against seaman by person not a seaman.**

Sec. 16 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), means only that the punishments prescribed by the Act are not to fall on seamen. The case of an offence against a seaman by a person who is not a seaman is therefore not excluded from the Act by this section. **KENNEDY v. COWIE**

**Div. Ct. [1891] 1 Q. B. 771**

**257. — Disrating.**  
*Semble*, the master has the power, and if the circumstances require it, is the proper person to disrate a seaman. **THE "HIGHLAND CHIEF"**

**Div. Ct. [1892] P. 76**

**258. — Foreign ship, Engaging seamen for—**



**SHIPPING (Seamen)—continued.**

*Fine—Civil debt—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 111.

The prohibition contained in s. 111 of the Merchant Shipping Act, 1894, against unauthorized persons engaging seamen to be entered on board any ship in the United Kingdom, applies where the ship for which the seamen are engaged is a foreign ship.

The fine imposed by that section for its contravention is a punishment for an offence, and is not recoverable as a civil debt. *REG. v. STEWART*

**Div. Ct. [1899] 1 Q. B. 964**

**259. — Liability of owner — Negligence — Common employment.**

The masters and crews of two different ships belonging to the same owners are not in common employment in such a sense as to be deprived of a remedy against the employer where the master or crew of one ship is injured by the negligence of those of the other. *THE "PETREL"*

**Jeune P. [1893] P. 320**

**260. — Liability of owner — Negligence of master—Common employment—"Seaworthiness"—Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), s. 5.**

The master and seamen of a ship, being servants in a common employment, the owners are not liable for loss occasioned to a seaman through the negligence of a master. A ship does not become "unseaworthy" within s. 5 of the Merchant Shipping Act, 1876 (now s. 458 of the Merchant Shipping Act, 1894), because the master neglects to use a part of her equipment whereby the safety of the crew is endangered, but not that of the ship.

Decision of C. A. [1892] 1 Q. B. 58, affirmed. *HEDLEY v. PINNEY & SONS STEAMSHIP CO.*

**H. L. E. [1894] A. C. 222**

Referred to by C. A. *Dobell & Co. v. Steamship Rossmore Co.*, [1895] 2 Q. B. 408, 416.

Passengers—Distressed seamen—Compulsory pilotage.

*See SHIPPING—Pilotage.* 192.

Personal injuries—Defective gear.

*See SCOTTISH LAW—Master and Servant.* 27.

**261. — Termination of Service abroad—Maintenance and "passage home"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 186.**

By s. 186 of the Merchant Shipping Act, 1894, where the service of any seaman belonging to any British ship terminates at any port out of Her Majesty's dominions, the master shall, among other alternatives, either (c) provide him with a passage home, or (d) deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home.

Upon the discharge abroad of a British seaman, the consul, acting under clause (d), fixed a sum which he deemed sufficient to defray the expenses of the seaman's passage home, and the master deposited this sum with the consul, who provided the seaman with a voucher for a passage. The voucher for the passage did not include maintenance. In an action by the seaman against

**SHIPPING (Seamen)—continued.**

the shipowners to recover the expenses of his maintenance on the passage:—

*Held*, that the master, by depositing the sum fixed by the consul, had complied with the requirements of clause (d), and the shipowners were not liable:

*Semble*, a "passage home" in clause (c) means a passage to the port at which the seamen was shipped, or to some port in the United Kingdom agreed to by him.

Decision of Collins J., [1897] 1 Q. B. 712, affirmed. *EDWARDS v. STEEL, YOUNG & CO.*

**C. A. [1897] 2 Q. B. 327**

Followed by C. A. *Purves v. Straits of Dover Steamship Co.*, [1899] 2 Q. B. 217.

**262. — Termination of service abroad—"Passage Home"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 186.**

When the service of a seaman belonging to a British ship terminates at a foreign port, and the master elects to "provide him with a passage home," under s. 186, sub-s. 2 (c), of the Merchant Shipping Act, 1894, the master is bound to provide him with a passage to the port in Her Majesty's dominions at which he was originally shipped, or to a port in the United Kingdom agreed to by him.

Dicta in *Edwards v. Steel*, [1897] 2 Q. B. 327, followed. Decision of Mathew J., [1899] 1 Q. B. 38, affirmed. *PURVES v. STRAITS OF DOVER STEAMSHIP CO.*

**C. A. [1899] W. N. 102; [1899] 2 Q. B. 217**

**263. — Wages—Contract of Service—Increased danger—Uncompleted voyage.**

The J. Government bought a warship in E. which they placed in charge of a master to navigate to J. O. contracted with the master to serve as one of the crew for the voyage for a fixed sum. During the voyage the J. Government declared war against C., and O. then refused to continue to serve, and left the ship:—

*Held*, that the master was responsible for the act of his principals in declaring war, and that as the risks of O. were increased, O. was justified in abandoning the voyage, and was entitled to the stipulated sum notwithstanding that the voyage was not completed.

Decision of Div. Ct., [1895] 2 Q. B. 70, affirmed. *O'NEIL v. ARMSTRONG, MITCHELL & CO.*

**C. A. [1895] 2 Q. B. 418**

**264. — Wages—Disrating by master—Deductions—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 171.**

A reduction in the amount of wages consequent on disrating is not a "deduction" requiring to be entered under the "deductions" column in the Board of Trade form of account prescribed by s. 171 of the Merchant Shipping Act, 1854 (now s. 132 of the Act of 1894). *THE "HIGHLAND CHIEF"*

**Div. Ct. [1892] P. 76**

**265. — "Wages forfeited for desertion"—Deductions—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 232—Gratuities to master.**

In taking the accounts in an action in rem, in a county court, for wages and disbursements, the master was allowed to deduct, as against the Exchequer, from wages forfeited by desertion,

**SHIPPING (Seamen)—continued.**

the sum of 11*l.* for clothing supplied to the seamen, prior to their desertion, out of the slop chest kept by the master with the knowledge of the owners. He was also allowed to retain a sum of 4*5l.*, being the total of three gratuities paid by consignees of cargo to him, and not credited to the ship. On appeal by the owners:—

*Held*, first, that the “wages forfeited for desertion,” which are to be paid into the Exchequer under s. 232 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), are the wages due after all proper deductions have been made, in which deductions may be included the price of stores supplied by the master to the seamen by way of advance of wages, with the knowledge of the owners; and, secondly, that the master was entitled to retain sums given to him by consignees by way of gratuity for the efficient manner in which he had superintended the discharge of cargoes. **THE “PARDEALE”**

Div. Ct. [1897] P. 53

**266. — Wages — Advances — Assignment —** 8 Geo. 1, c. 24, s. 7—*Merchant Shipping Act*, 1894 (57 & 58 Vict. c. 60), s. 163.

*Held*, that s. 7 of 8 Geo. 1, c. 24, did not apply to the terms upon which a seaman was engaged where his engagement took place in a foreign port, nor prevent a master from engaging a seaman in a foreign port on the terms that he should be paid a sum down on joining the ship and the remainder of his wages at the end of the voyage:

Also, that if the enactment did apply, the seaman could not recover again as unpaid wages the sum advanced to him in excess of the moiety allowed by the statute.

Upon engaging a seaman in a foreign port the master agreed to advance to him a sum on account of wages; the seaman signed a document giving a third person authority to receive that sum, and the master paid it to the third person with the authority of the seaman to make such payment:

*Held*, that s. 163 of the Merchant Shipping Act, 1894, did not apply to make this transaction void, and that the seaman was not entitled to recover from the master the sum so advanced and paid. **ROWLANDS v. MILLER** — — — Div. Ct.

[1899] 1 Q. B. 735

**267. — Wages — Practice — Jurisdiction — Action in rem—Ship's husband—“Seaman”—Maritime Lien—Prohibition—Admiralty Court Act**, 1861 (24 Vict. c. 10), s. 10—*County Courts Admiralty Jurisdiction Act*, 1868 (31 & 32 Vict. c. 71), s. 3, sub-s. 2.

A ship's husband, not being a “seaman” claiming “wages earned by him on board the ship” within the meaning of s. 10 of the Admiralty Court Act, 1861, has no maritime lien upon which he can found an action in rem for “wages” under s. 3, sub-s. 2, of the County Courts Admiralty Jurisdiction Act, 1868. **THE “RUBY”** (No. 2) — — — Jeune P. [1898] P. 59

**SIDELIGHTS.]** *O. in C. dated Feb. 8, 1896, under Merchant Shipping Amendment Act*, 1892, as to side lights. **Lond. Gaz. Feb. 11, 1896.**

**Smuggling.**

*General Regs. of Bd. of Customs dated Aug. 31,*

**SHIPPING (Smuggling)—continued.**

1895, prescribing the limits within which boats and vessels not exceeding 100 tons burden may be employed, and the mode of navigation, manner of employment, and other conditions applicable thereto. **St. R. & O. 1899, p. 1578.**

**Tender.**

*Admiralty rules as to tender and payment into Court revised. See Explanatory Memorandum to County Court Rules, (May) 1899, and rules 58 to 65 W. N. 1899 (May 20), p. 173. See p. cxi, ante.*

**268. — Amount paid into Court exceeding amount found due—R. S. C. Order XXII., rr. 1–5.**

In an action for damage by collision the defendants admitted liability and agreed to pay a certain percentage on the plaintiffs' proved or agreed damages and taxed costs. The damages were referred. Before the hearing on the reference the defendants tendered and paid into Court 75*0l.* which was not accepted. At the reference 71*3l.* and interest was found to be due from the defendants. The plaintiffs applied to have the 75*0l.* paid out to them:—

*Held*, that the plaintiffs were only entitled to the amount found to be due to them, on the ground that, except the rules expressly dealing with Admiralty actions, the provisions of Order XXII. do not affect the Admiralty practice as to tender. **THE “MONA”** — — — Bruce J. [1894] P. 265

Referred to by Jeune P. *The Vulcan*, [1898] P. 222, 226.

**269. — Costs—County court—“Tender”—Final order—Appeal—County Courts Admiralty Jurisdiction Act**, 1868 (31 & 32 Vict. c. 71), s. 26—*County Court Rules (Admiralty)*, 1892, Order XXXIX. B., rr. 48, 50.

The plaintiffs instituted an Admiralty action in a county court for damages for breach of contract in relation to the use or hire of a ship “in the sum of 30*l.* and costs.” The defendants paid into court 17*l.* 10*s.* “in satisfaction of the whole of the plaintiffs' claim herein” together with a denial of liability. The plaintiffs accepted the 17*l.* 10*s.* in satisfaction of the claim in respect of which it was paid in, but their application for taxation, and payment by the defendants, of the costs of the action was refused without leave to appeal:—

*Held*, first, that the order refusing the plaintiffs their costs was a final order within the meaning of s. 26 of the County Courts Admiralty Jurisdiction Act, 1868, and, therefore, no leave to appeal was required; secondly, that this being an Admiralty action the special Admiralty rules of the county court, and not the general common law rules, applied, so that the sum paid into court by the defendants was to be treated as by way of “tender” under rule 48 of Order XXXIX. B. of the County Court Rules, 1892, and, on acceptance of the tender, the plaintiffs were entitled, under rule 50, to taxation and payment of their costs. **THE “VULCAN”** Div. Ct. [1898] P. 222

— Life salvage.

*See SHIPPING—Salvage.* 241.

— Master of sailing vessel, Authority of.

*See SHIPPING—Salvage.* 236.

**SHIPPING—continued.****Tonnage.**

*O. in C.* dated Feb. 22, 1896, under *Merchant Shipping Act (Amendment) Act, 1862*, as to tonnage of ships belonging to German Empire. *Lond. Gaz.* Feb. 25, 1896, p. 1121; *St. R. & O.* 1896, p. 184, No. 56.

**270. — Measurement of tonnage—Deck cargo—Horses and cattle—Light dues—Merchant Shipping Act, 1876** (39 & 40 *Vict. c. 80*), s. 23.

Horses and cattle are “goods” within the meaning of s. 23 of the *Merchant Shipping Act, 1876*, which provides that, where timber, stores, or other goods are carried as deck cargo all dues payable on the ship’s tonnage shall be payable as if there were added to the ship’s registered tonnage the tonnage of the space occupied by such goods.

For the purposes of the computation of such tonnage, the measurement ought to include only the space occupied by the animals themselves, fair allowance being made for their free bodily movements, and ought not to include the shed or pens belonging to the ship in which the animals are confined.

Decision of Lord Russell of Killowen *C.J.*, [1896] 1 *Q. B.* 493, affirmed. *RICHMOND HILL STEAMSHIP CO. v. TRINITY HOUSE CORPORATION*  
**C. A. [1896] 2 Q. B. 134**

**Undermanning.**

*Merchant Shipping Act, 1897* (60 & 61 *Vict. c. 59*), amends the *Merchant Shipping Act, 1894*, with respect to power of detention for undermanning.

**Wages.**

See **SHIPPING—Seamen.**

**Wharf.**

**271. — Wharfingers’ liability—Obstruction in bed of river—Riparian owner—Negligence.**

In this case the *H. L.* held that on the facts there was no evidence of any breach of duty on the part of the wharfingers, and that the injury to the ship was caused by the captain and pilot attempting to berth her alongside the wharf at a time of the tide when it was not safe for a vessel of her draught.

Decision of *C. A.* *The Calliope*, (1889) 14 *P. D.* 138, reversed. *TREDEGAR IRON AND COAL CO. v. OWNERS OF THE “CALLIOPE.” THE “CALLIOPE”* - **H. L. (E.) [1891] A. C. 11**

**Wreck.**

See **Cases under SHIPPING—Salvage.**

**SHIPWRECK—Removal.**

See **SHIPPING—Salvage.** 254.

**SHOOTING—Accident at shooting party.**

See **TRESPASS.** 1.

— Right of way for purposes of sporting.

See **SCOTTISH LAW—Servitude.** 38.

— Teaching shooting.

See **CHARITY.** 30.

**SHOP.**

*Shop Hours Act, 1892* (55 & 56 *Vict. c. 62*), amends the law as to employment of young persons in shops.

*Shop Hours Act, 1895* (58 & 59 *Vict. c. 5*), imposes a penalty for non-compliance with s. 4 of the Act of 1892.

*Seats for Shop Assistants Act, 1899* (62 & 63 *Vict. c. 21*), provides for seats being supplied.

1. — *Non-exhibition of statutory notice as to employment of young person in shop.*

The penalty provided by s. 5 of the *Shop Hours Act, 1892*, does not extend to the neglect of compliance with s. 4 as to the exhibition of a notice stating the working hours. *HAMMOND v. PULSFORD* - **Div. Ct. [1895] 1 Q. B. 223**

Rendered obsolete by 58 & 59 *Vict. c. 5*.

2. — *Public-house—Hotel—Domestic servant—Shop Hours Act, 1892* (55 & 56 *Vict. c. 62*).

By the *Shop Hours Act, 1892*, provision is made as to the number of hours in any one week during which young persons under eighteen years of age may be employed in or about a shop, and by s. 9 “shop” means retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses of any kind.

A building which is used solely as a hotel and restaurant for the accommodation of guests, and which has no bar or counter for the sale of intoxicating liquors, and is not in the ordinary sense of the term a public-house, but which is licensed as an inn under 9 *Geo. 4, c. 64*, for the sale of intoxicating liquors by retail, is a “shop” within the meaning of the above Act.

A page-boy in a hotel, who sleeps on the premises, and who is principally employed as a messenger, but partly also in assisting to dust the reception-rooms, is not within the exemption in s. 10 in favour of “any person wholly employed as a domestic servant.” *SAVOY HOTEL CO. v. LONDON COUNTY COUNCIL*

**Div. Ct. [1900] W. N. 25; [1900] 1 Q. B. 665**

3. — *Work partly away from the premises—Shop Hours Act, 1892* (55 & 56 *Vict. c. 62*), s. 3—*Employment “in or about a shop.”*

By the *Shop Hours Act, 1892*, s. 3, “No young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week.” A newsagent, occupying a shop for the purposes of his business, employed a boy whose work was done partly inside the shop, and partly away from the shop in fetching newspapers and delivering them to the customers:—

Held, that the whole employment was “in or about” the shop within the meaning of the Act. *COLLMAN v. ROBERTS* **Div. Ct. [1896] 1 Q. B. 457**

**SHORE—Rights of owners—Thames Conservancy Act.**

See **Cases under THAMES.**

**SHORTHAND NOTES—Costs.**

See **COSTS—Shorthand Notes.**

**COUNTY COURT—Appeal.** 1.

**PATENT—Practice.** 25, 26.

**SHORT CAUSE**—No pleadings—Evidence—Summons for directions.  
See PRACTICE. 248.

**SHORT TITLES.**

*Short Titles Act, 1896 (59 & 60 Vict. c. 14), facilitates the citation of sundry Acts of Parliament.*

**SIDE CHAPEL.**

See ECCLESIASTICAL LAW—Faculty. 41.

**SIDINGS.**

See RAILWAY—Sidings.

**SIERRA LEONE**—*Appeals from*—*O. in C. dated Feb. 26, 1867, regulating appeals from the Supreme Court of the Settlement of Sierra Leone to Her Majesty in Council.* St. R. & O. 1899, p. 1711.

*O. in C. dated Nov. 24, 1891, regulating appeals from the Supreme Court of Sierra Leone on appeals from the Gambia.* St. R. & O. 1891, p. 24.

— Death duties.

See REVENUE—Estate Duty.

— Territories adjacent to.

See FOREIGN JURISDICTION.

**SIGN OF THE CROSS**—Illegality.

See ECCLESIASTICAL LAW—Ritual. 68.

**SIGNATURE**—Agreement as to costs.

See SOLICITOR—Costs. 18—23.

— Auctioneer's clerk—Statute of frauds.

See PRINCIPAL AND AGENT. 1.

— Memorandum of company.

See COMPANY — Memorandum and Articles. 192.

— Notice of claim or objection—Registration of voters.

See Cases under PARLIAMENT.

— Position of in will.

See PROBATE—Execution. 17—19.

— Receipt—Mortgagor's signature induced by fraud of his solicitor—"Non est factum"  
—Estoppel—Title of mortgagee.

See MORTGAGE. 56.

— Solicitor's clerk signing particulars.

See COUNTY COURT—Costs. 35.

— Statute of frauds—Sufficiency.

See FRAUDS, STATUTE OF. 20.

— Witness to will, will signed in absence of.

See PROBATE—Execution. 14.

**SILENCE**—As to material fact.

See SPECIFIC PERFORMANCE. 2.

— How far evidence of an admission.

See EVIDENCE. 31.

**"SIMILAR BUSINESS."**

See RESTRAINT OF TRADE. 10.

**SIMONY**—False declaration against—Immorality.

See ECCLESIASTICAL LAW—Simony. 74.

**"SILT"**—Surface—Subsidence—Right of support.

See SUPPORT. 1.

**SINKING FUND**—Debenham's redemption—Prospectus.

See COMPANY—Debenham's. 90.

**SITE**—Of church.

See ECCLESIASTICAL LAW—Church. 5.

**SKYLIGHT**—Easement.

See LIGHT AND AIR. 21.

**SLANDER AND SLANDER OF GOODS.**

See Cases under DEFAMATION.

— Interrogatories.

See DISCOVERY. 58.

**SLAUGHTER-HOUSE**—Covenant not to carry on offensive business.

See RESTRAINT OF TRADE. 14.

— Metropolis.

See LONDON—Slaughter-houses. 66.

**SLEEPING PARTNER**—Address and description.

See BILL OF SALE. 5.

**SLEEVE**—Pattern of.

See COPYRIGHT—Book. 4.

**SLUICE-GATE**—Obligation of owner to repair—Artificial watercourse—Easement.

See WATER. 37.

**SMALL DEBTS ACT**—Execution creditor—Levy by sheriff—Tools of trade.

See BANKRUPTCY—Execution. 102.

— Winding-up petition.

See COMPANY—WINDING-UP. 175, 176.

**SMALL DWELLINGS ACQUISITION ACT, 1899**

(62 & 63 Vict. c. 44), empowers Local Authorities to advance money for enabling persons to acquire the ownership of small houses in which they reside.

**SMALL HOLDINGS.**

*Small Holdings Act, 1892 (55 & 56 Vict. c. 31), facilitates the acquisition of small holdings. This Act was amended by Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6.*

*Rules dated Aug. 9, 1892. "The Land Registry (Small Holdings) Rules, 1892." St. R. & O. 1892, p. 540. W. N. 1892 (Appx. of O. & R.), p. 29. St. O. P. Price 2d.*

*Suggestions as to registration under the Act, dated Aug. 1892. W. N. 1892 (Appx. of O. & R.) 33.*

**SMALL-POX HOSPITAL.**

See NUISANCES. 11, 12.

**SMOKE**—Covenant for quiet enjoyment—Breach by erection of buildings causing lessee's chimneys to smoke.

See LANDLORD AND TENANT. 19.

— Nuisance—Abatement notice.

See NUISANCES. 28.

**SMUGGLING.**

See SHIPPING—Smuggling.

**SNOW**—Non-removal of—Street—Obstruction—Tramways.

See NUISANCES. 29.

**SOCIETIES' BORROWING POWERS ACT, 1898**

(61 & 62 Vict. c. 15), empowers certain societies to borrow money from persons and corporations other than members.

**SOLDIER.**

See ARMY AND NAVY.

**SOLICITOR.**

*Solicitors Act, 1894 (57 Vict. c. 9) amends the provisions of the Solicitors Act, 1877 (40 & 41 Vict. c. 25), relating to the examination of persons*

**SOLICITOR—continued.**

applying to be admitted solicitors of the Supreme Court in England.

*Solicitors Act, 1899 (62 & 63 Vict. c. 4), amends the Solicitors Acts.*

*In General, col. 2021.*

*Appearance, col. 2022.*

*Articled Clerks, col. 2022.*

*Authority, col. 2022.*

*Bankruptcy, col. 2022.*

*Champertry, col. 2022.*

*Charging Order, col. 2024.*

*Colonial Solicitors, col. 2027.*

*Costs, col. 2027.*

*Discharge, col. 2045.*

*Fiduciary Relation, col. 2045.*

*Liability, col. 2046.*

*Lien, col. 2049.*

*Misconduct, col. 2052.*

*Partnership, col. 2056.*

*Privilege, col. 2056.*

*Retainer, col. 2057.*

*Solicitor Executor. See SOLICITOR—Solicitor-Trustee.*

*Solicitor-Mortgagee, col. 2058.*

*Solicitor-Trustee, col. 2059.*

*Striking off the Rolls. See SOLICITOR—Misconduct.*

*Undertakings, col. 2060.*

*Unqualified Person, col. 2060.*

**In General.**

— Affidavit sworn before solicitor of grantee—Validity of bill of sale.  
*See BILL OF SALE. 9.*

— Appointment of solicitor as trustee for tenant for life.  
*See TRUSTEE—Appointment. 15.*

— Bias — Disqualification — Adjudication by ordinary member of Incorporated Law Society.  
*See JUSTICES. 49.*

— Cheque—Tender—Validity.  
*See TENDER. 1.*

— Discovery—Production of documents—Privilege—Bills of costs—Correspondence.  
*See DISCOVERY—Documents. 36.*

— Investment advised by solicitor to trustees—Contributory mortgage—Priority.  
*See TRUSTEE—Breach of Trust. 39.*

— Leaving trust money in hands of solicitor—Breach of trust—Immunity clause.  
*See TRUSTEE—Breach of Trust. 29.*

— Receipt—Mortgagor's signature induced by fraud of his solicitor—"Non est factum"—Estoppel—Title of mortgagee.  
*See MORTGAGE—Receipt. 56.*

— Restraint of business, Agreement in—Within ten miles—Points of measurement.  
*See RESTRAINT OF TRADE.*

**RULE COMMITTEE OF THE SUPREME COURT.]**

*By s. 4 of the Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), the*

**SOLICITOR (In General)—continued.**

*President of the Incorporated Law Society was made a member of the Rule Committee of the Supreme Court.*

— Solicitor to both parties—Fraud—Representation to lender by agent of borrower.  
*See MORTGAGE. 15.*

*Taxes management—Power to barristers and solicitors to plead before the General Comms. See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 16.*

— Trustee in bankruptcy—Committee of inspection—Employment of solicitor—Costs—Taxation.  
*See BANKRUPTCY. 70.*

**Appearance.**

*COUNTY COURT.] Appearance of solicitor in county court in proceedings relating to Inland Revenue. See Finance Act, 1896 (59 & 60 Vict. c. 28), s. 38.*

— Right of audience.

*See COUNTY COURT—Practice. 65.*

**Articled Clerks.**

*By the Solicitors Act, 1894 (57 & 58 Vict. c. 9), power of exempting from the intermediate examination persons who have taken degrees in law was conferred on the society.*

1. — Covenant not to act for clients of master's firm—London agent.

A covenant by an articled clerk not to act, for a certain time after the expiration of his articles, on behalf of any person who was a client of the firm during his articles, is broken by the clerk acting as agent for country solicitors for whom the firm had acted as agents during the prescribed period. *REID v. BURROWS*  
**North J. [1892] 2 Ch. 413**

**Authority.**

— Authority of solicitor—Cheque—Tender—Validity.  
*See TENDER. 1.*

2. — *Compromise of client's claim by solicitor—No implied authority before action.*

A solicitor employed to act for a client in regard to his claim against a third person has, before action brought, no implied authority to effect a compromise.

*Duffy v. Hanson, (1867) 16 L. T. 332, approved. MACAULAY v. POLLEY C. A. [1897] 2 Q. B. 122*

**Bankruptcy.**

— Costs—Bankruptcy of client.

*See SOLICITOR—Costs. 25—29.*

— Profit derived from transaction arising out of the bankruptcy.  
*See BANKRUPTCY. 70.*

— Submission to pay costs—Form of order.  
*See SOLICITOR—Costs. 26.*

**Champertry.**

3. — *Champertry and maintenance—Taxation—Right of client to tax.*

Money was subscribed by strangers for maintenance of litigation to be repaid out of the

**SOLICITOR (ChamPERTY)—continued.**

property if recovered; large sums were paid to the solicitor. The litigation was unsuccessful.

*Held*, that the solicitor could not resist taxation of his costs, and an account of money received, on the ground that the employment for which he was retained and for which the money was paid, was illegal. *In re THOMAS. JAQUESS v. THOMAS* — **C. A. [1894] 1 Q. B. 747**

— Equitable jurisdiction—Underground trespass—Fraud—Statute of Limitations.

*See* NEW SOUTH WALES. 20.

4. — *Libel action—Right of third party whose character is reflected on to maintain action.*

In order to justify maintenance by one person of the suit of another, there must either be a common interest recognised by the law in a matter at issue in the suit, or the case must fall within one of the specific exceptions from the law against maintenance established by the authorities.

Decision of *Hawkins J.* [1894] 2 Q. B. 897, affirmed. *ALABASTER v. HARNESSE*

**C. A. [1895] 1 Q. B. 339**

5. — *Solicitor's bill of costs—Right of client to tax.*

Money was subscribed by strangers for maintenance of litigation, to be repaid out of the property if recovered; large sums were paid to the solicitor. The litigation was unsuccessful:—

*Held*, that the solicitor could not resist taxation of his costs, and an account of the money paid to him, on the ground that the employment for which he was retained and for which the money was paid, was illegal. *In re THOMAS. JAQUESS v. THOMAS* — **C. A. [1894] 1 Q. B. 747**

6. — *Unclaimed property—Secret information—Agreement with heir—Improvident bargain—Ratification—Rescission.*

A contract by a person to communicate information on terms of getting a share of any property that may thereby be recovered by the person to whom the information is to be given, and nothing more, is not void for champerty. But if the contract be not merely that information shall be given, but also that the person who gives it and who is to share in what may be recovered shall himself recover the property, or actively assist in the recovery of it, then the contract is against the policy of the law and void, even if the property is in the hands of trustees, or in court, and no hostile action may be necessary to recover it.

A. died intestate having considerable real estate and leaving B. and C. his co-heiresses-at-law, both of whom were advanced in years, illiterate, and of a very humble rank in life. D., having ascertained the heirship of B. and C., induced them to sign an agreement whereby, in consideration of his revealing to them the existence of the property and their title to it (of both which circumstances they were wholly unaware), they agreed to give him one-half of the net amount of the property.

*Held*, that the agreement was in the nature of champerty and void; that the agreement must be set aside as an improvident bargain which D. had obtained by taking an unfair advantage of his position; and that there had been no ratifica-

**SOLICITOR (ChamPERTY)—continued.**

tion of the contract by B. and C., as they never knew of their right to rescind it. *REES v. DE BERNARDY* — **Romer J. [1896] 2 Ch. 417**

**Charging Order.**

7. — *Assignee of solicitor—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

The assignee of a solicitor is entitled, under s. 28 of the Solicitors Act, 1860, to a charging order for costs on property recovered by the solicitor. *BRISCOE v. BRISCOE*

**Kekewich J. [1892] 3 Ch. 543**

8. — *Assignment of judgment debt—"Purchaser for value without notice"—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

The provision in s. 28 of the Solicitors Act, 1860, avoiding conveyances made to defeat a charging order, "unless made to a bona fide purchaser for value without notice," means without notice of the solicitor's right to a lien, and not without notice of the existence of a charging order. B. was solicitor to C., the plt. in an action which was compromised on terms as to payment by instalments, judgment being given for C. C. assigned the money so payable to R. (a witness in the action). It was not proved that R. had express notice of B.'s claim:—

*Held*, that R., knowing of the action and of B.'s employment as solicitor, must be taken to have had notice of B.'s right to a lien, and therefore was not a "purchaser for value without notice" within the section, and B. was entitled to a charging order.

Decision of *Div. Ct.* [1894] 2 Q. B. 180, affirmed. *COLE v. ELEY*

**C. A. [1894] 2 Q. B. 350**

9. — *Assignment of sum recovered—Notice—Solicitors Act, 1860 (23 & 24 Vict. c. 127) s. 28.*

An action of damage by collision was compromised on the terms that the defts., the owners of the steamship *Paris*, should pay to the plt. 50 per cent. of the damages sustained by the plt.'s vessel, each party to bear their own costs of the action, and the amount of the damages to be ascertained by an arbitrator. Prior to the commencement of the action the defts.' solicitors had been pressing the plt. for a settlement of claims of clients of theirs against him, and for their own costs when acting for him; and the plt., after the compromise of the action but before the arbitrator made his award, wrote to the defts.' solicitors that he agreed to their settling the amount due to themselves and to certain named clients of theirs "out of the money coming in from *Paris* s.s."

By his award the arbitrator fixed the sum due from the defts. to the plt., which, with the agreed costs of the reference, made a total of 405*l.* 1*1s.* 8*d.*, and the defts.' solicitors forwarded to the plt.'s solicitors a cheque for a small amount as being the balance out of the above total sum after paying the named clients and themselves. The plt.'s solicitors took out a summons under s. 28 of the Solicitors Act, 1860, for a charging order. It was admitted that there was no collusion, and it was agreed that the award should be treated as a decree:—

*Held*, by Sir F. H. Jeune P., that the plt.'s

**SOLICITOR (Charging Order)—continued.**

solicitors in the action were entitled to an order charging the sum recovered with the plt.'s costs to be taxed as between solicitor and client, on the ground that the fund recovered by the exertions of the plt.'s solicitors was fixed, though not worked out, at the date of the compromise, and that the subsequent assignment of the fund was void under the statute as being an act done operating to defeat the right of the solicitors to a lien for costs—of which right, by reason of the fund being a sum recovered in the action, the deft.'s solicitors, and their clients through them, were affected with notice. *THE "PARIS"*

Jeune P. [1896] P. 77

**— Bankruptcy practice.****See Cases under BANKRUPTCY—Charging Order.**

10. — *Fund in court—Property recovered for company—Application after winding-up—Delay—Discretion—Lien—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

Delay by a solicitor in applying under s. 28 of the Solicitors Act, 1860, for an order charging his costs on property recovered by him is no ground for refusing the order unless other rights in respect of the property have arisen in the meantime.

Solicitors employed by a limited co. recovered a claim against an estate in course of administration by the Court. The co. was subsequently wound up by the Court. Shortly after the winding-up order was made, the solicitors applied for an order charging their costs on the company's share of the fund in court to the credit of the administration action:—

*Held*, that, as the charging order in this case conferred no new right, but was only a cheap and speedy mode of enforcing the common law lien on the co.'s share of the fund in court, which lien existed prior to the winding-up, the Court, in the exercise of its discretion under the statute, would make the order. *In re BORN. CURNOCK v. BORN* Farwell J. [1900] W. N. 148; [1900] 2 Ch. 433

11. — *Property recovered or preserved—Bankruptcy—Jurisdiction—Discretion—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28—Bankruptcy Rules, 1886, r. 125.*

To bring a case within s. 28 of the Solicitors Act, 1860, property must be recovered or preserved in a proceeding in a court of justice.

The appellants were the solicitors to the trustee of a bankrupt's estate. The bankrupt had sold his stock-in-trade, and gone with the proceeds of the sale to Australia. He was arrested there, and brought back to this country on a charge of offences against the Debtors Act, 1869, preferred by order of a Court of bankruptcy made under s. 16 of that Act upon the application of the appellants on behalf of the trustee. On the bankrupt's arrest a sum of money, the proceeds of the before-mentioned sale, was found upon him and taken possession of by the Australian police. Under a power of attorney prepared by the appellants, as solicitors to the trustee, this money was handed over by the police and remitted to the appellants in this country:—

*Held*, that this money was not property re-

**SOLICITOR (Charging Order)—continued.**

covered or preserved in the bankruptcy proceedings, or any other legal proceeding within the meaning of s. 28 of the Solicitors Act, 1860, and therefore that an order could not be made under that section charging the appellants' costs upon it.

The power given by the section is discretionary; and, *semble*, the cases in which it ought to be exercised by a Court of bankruptcy must be rare. *In re HUMPHREYS. Ex parte LLOYD-GEORGE & GEORGE* C. A. [1898] 1 Q. B. 520

12. — *Property recovered or preserved—Property of persons not employing solicitor—Charge for costs—Probate action—Practice—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

A testator by his will, after bequeathing his household furniture and effects to his wife, devised and bequeathed the residue of his real and personal estate to his wife for life, and, after her decease, to his two daughters, of whom one was his legitimate daughter by a former wife and the other was illegitimate, in equal shares. Probate of the will being opposed by the testator's daughters, the executor brought a probate action against them to establish its validity, with the result that probate of the will was decreed. The bulk of the estate was realty:—

*Held*, that the solicitor who acted for the executor was entitled under the Solicitors Act, 1860, s. 28, to a charge for his costs in the action upon the property devised and bequeathed by the will as property preserved through his instrumentality. *Ex parte TWEED* C. A. [1899] 2 Q. B. 167

13. — *Property recovered or preserved—Costs of appeal—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

Kekewich J. having refused an application by a solicitor, under s. 28 of the Solicitors Act, 1860, for a charging order in respect of his costs, charges, and expenses upon property recovered or preserved in an action through his instrumentality, the solicitor appealed:—

*Held*, that the solicitor was entitled to a charge for his costs, &c., properly incurred, and that the charge must include the solicitor's costs as between solicitor and client of his application to the Court below and of the appeal. *WATERLAND v. SERLE* C. A. [1897] W. N. 163 (9)

14. — *"Property recovered or preserved"—Priority over mortgage—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

A mortgaged his interest in certain property to C. Subsequently he brought an action necessary to maintain his title to the property, and succeeded, the mortgagee not aiding him in any way. A's solicitors now applied for a charging order for their costs of the action as for "property recovered or preserved." The Court made the charging order, and gave it priority over the mortgage. *SCHOLEY v. PECK*

Romer J. [1893] 1 Ch. 709

— "Property recovered or preserved" in bankruptcy proceedings—Jurisdiction—Lien. See Cases under BANKRUPTCY—Charging Order.

15. — *Property recovered—Bankruptcy of judgment debtor—Charging order on dividend.*

Where a solicitor employed to prosecute an

**SOLICITOR (Charging Order)—continued.**

action for the recovery of a debt obtains judgment on behalf of his client, and the judgment debtor becomes bankrupt, the Bankruptcy Court has no jurisdiction to order the trustee of the bankrupt's estate to pay to the solicitor, on account of his costs incurred in recovering the judgment, the amount payable to the judgment creditor by way of dividend. *In re Cook. Ex parte CRIPPS*

Div. Ct. [1899] 1 Q. B. 863

**16. — "Property recovered"—Claim and counter-claim.**

Where a deft. pays money into court with a denial of liability, and the plt. elects to continue the action and does not take the money out:—

*Held*, that the money paid into court is not "property recovered or preserved" within s. 28 of the Solicitors Act, 1860, on which the solicitor's lien for costs attaches:

*Held*, also, that claim and counter-claim must be treated as one action for the purpose of determining the solicitor's right to a charging order for his costs, and the sum "recovered" to the balance due to the client on the two accounts. *WESTACOTT v. BEVAN* Div. Ct. [1891] 1 Q. B. 774

— Set-off of judgments—Lien.

See COSTS—Set-off. 64.

**Colonial Solicitors.**

*Colonial Attorneys Relief Act, O. in C. extending to Barbadoes. St. R. & O. 1899, p. 1240, No. 573.*

*Colonial Solicitors Act, 1900 (63 & 64 Vict. c. 14), provides for the admission of solicitors of Courts of British possessions to the Supreme Courts in the United Kingdom.*

**Costs.**

— Adding plaintiff without authority—Liability. See PRACTICE—Parties. 90.

**17. — Agency—Common partner—Term fees—R. S. C., 1883, Order LXV.; App. N, "Close copies."**

Where a London firm of solicitors act as agents for a country firm and there is a partner common to both firms, it is the settled practice not to allow agency fees on taxation. In such a case, close copies and term fees cannot be allowed, and as regards close copies the rule in Sched. N to Order LXV. of the R. S. C., 1883, does not give the taxing master a discretion to allow them, for the rule only applies in cases of agency. *In re BOROUGH COMMERCIAL AND BUILDING SOCIETY (No. 2)* — — C. A. 1894 1 Ch. 289

**18. — Agreement—Sale of land by—Purchase under Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 175, 176.**

Where a purchase of land was made under the Public Health Act, 1875 (which incorporates the Lands Clauses Acts as to voluntary taking of lands), and was entirely voluntary, and where there was no notice to treat, and all costs were to be paid by the purchasers:—

*Held*, that rule 11 of Sched. I., Pt. I., of the General Order of 1882 applied, and that the scale was excluded. *In re BURDEKIN*

C. A. [1895] 2 Ch. 136

**SOLICITOR (Costs)—continued.****19. — Agreement as to costs—Jurisdiction to set aside—Business in police court and at quarter sessions—Solicitor and client—Taxation—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 4, 8, 10, 15.**

The jurisdiction under s. 8 of the Attorneys and Solicitors Act, 1870, to set aside an agreement between a solicitor and his client as to costs relating to business done by the solicitor in a police court or at quarter sessions is in the High Court.

Neither a police court nor quarter sessions is a "Court" within the meaning of s. 8. *In re JONES* — — C. A. [1896] 1 Ch. 222

**20. — Agreement as to costs—Reasonableness of amount payable under agreement—Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 8, 9.**

An agreement fixing the amount to be paid as costs must not only be fair (i.e., understood by the client) but also reasonable, i.e., in amount, having regard to the work done, or it may be set aside under s. 9 of the Solicitors Act, 1870. *In re STUART. Ex parte CATHCART*

C. A. [1893] 2 Q. B. 201

**21. — Agreement as to costs—Setting aside—Procedure—Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 8—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 39.**

An application under s. 8 of the Solicitors Act, 1870, that an agreement as to costs may be set aside, may be made at chambers upon a summons. *In re HOWELL THOMAS*

Div. Ct. [1893] 1 Q. B. 670

**22. — Agreement as to costs—Signature, sufficiency of—Payment in account—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8, subss. 2, 4.**

An agreement allowing a fixed sum for costs is a good agreement under s. 8 of the Solicitors' Remuneration Act, 1881, if it be signed by the client only. To impeach such an agreement as unfair or unreasonable it is not necessary to bring an action to set it aside, nor to have obtained a previous order for taxation, but on a summons for taxation such an agreement may be referred to the taxing master to certify whether it be fair and reasonable.

*Per North J.*, (1) a payment on settlement of a general account is not such a payment of particular bills of costs as to avoid subsequent taxation; (2) the written name of a solicitor in the heading of an account made out by his clerk does not amount to signature by the solicitor. *In re FRAPE. Ex parte PERRETT (No. 1)*

C. A. [1893] 2 Ch. 284

Distinguished by C. A. *In re Baylis*, [1896] 2 Ch. 107.

**23. — Agreement in writing—Signature—Payment—Taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41; 1870 (33 & 34 Vict. c. 28), s. 4.**

B. obtained judgment in an action, the defts. appealed. T., B.'s solicitor, settled the action on the terms that defts. should pay 210l. damages, and 120l. for costs. T. explained this to B. and paid B. the 210l. B. then signed this document, "Received from T. the sum of 210l. being the



**SOLICITOR (Costs)—continued.**

amount of damages received, &c. . . . I hereby agree to allow the sum paid by me on account of costs as an equivalent to the abatement he has made to the debts." This sum was 55*l*. 16*s*. T. delivered to B. a cash account crediting 330*l*., and 55*l*. 16*s*., and debiting 210*l*. and 175*l*. 16*s*. agreed costs:—

*Held*, that this document was an agreement in writing within s. 4 of the Attorneys and Solicitors Act, 1870, and that the transaction amounted to payment between solicitor and client within 6 & 7 Vict. c. 73, s. 41. *In re THOMPSON. Ex parte BAYLIS* - Div. Ct. [1894] 1 Q. B. 462

Report of case corrected. *In re Baylis*, [1896] 2 Ch. 107, at p. 114.

Followed by Stirling J. *In re Jones*, [1895] 2 Ch. 719. This case was affirmed by C. A., [1896] 1 Ch. 222.

**24. — "Attendance"—"Extraordinary case"—Reducing fees—"Document"—Discretion of taxing master.**

Under Sched. II. of the Solicitors Remuneration Act, 1881, the taxing master has discretion in a case which is not an "ordinary" one, i.e., which is more or less difficult than an average case, to increase or diminish the fee for attendance. The discretion must be exercised for "special reasons," but the taxing master need not state them till his decision is impeached.

*Per North J.*, an attendance by a solicitor or his clerk for a merely formal purpose, such as delivering briefs or papers at counsel's chambers, is not an attendance within Sched. II., and the practice of the taxing master to allow only 3*s*. 4*d*. is correct.

*Per North J.*, a case for opinion of counsel is a "document" within Sched. II. *In re MAHON* C. A. [1893] 1 Ch. 507

— **Bankruptcy—Circular notice to creditors—Solicitor's and accountant's charges.**  
See **BANKRUPTCY—Act of Bankruptcy.**  
30.

**25. — Bankruptcy of client—Accountant's charges for statement of affairs—Trustee's title.**

On Aug. 15, 1892, a firm sent out a circular stating "circumstances have placed us in financial difficulties, which makes it desirable for us to consult with our creditors." "We are having our books examined, and a statement prepared by Messrs. F., chartered accountants, and as soon as this is complete, we propose writing you to a meeting of our creditors." On Sept. 7 the firm admittedly committed an act of bankruptcy. On Sept. 17 a receiving order was made against the firm. Between Aug. 15 and Sept. 14, Messrs. F. collected money for the bankrupts, out of which they made payments to themselves for preparing the statement and to the solicitors for costs:—

*Held*, that the circular of Aug. 15 was an act of bankruptcy, and that if an allowance was made to Messrs. F. and the solicitors, it must be only for services which had clearly benefited the creditors. *In re SIMONSON. Ex parte BALL*  
V. Williams J. [1894] 1 Q. B. 433

**26. — Bankruptcy of client—Client and as-**

**SOLICITOR (Costs)—continued.**

*signee, application by—Submission to pay—Form of order—Costs—Taxation.*

The usual submission in an order for taxation of a solicitor's bill of costs to pay the solicitor what shall appear to be due to him on the taxation, must be made by the person or all the persons on whose application the order is made, whether the application is by the client alone or in conjunction with an assignee of all his interest under the taxation; the assignee being bound, as a condition of obtaining the order, to join in the submission even though the client is a bankrupt. *In re BATTAMS & HUTCHINSON*

Kekewich J, [1897] 1 Ch. 699

**27. — Bankruptcy of client—Defence on criminal charge—Right to retain for services rendered.**

Solicitors ordered to pay over to the trustee in bankruptcy a sum handed to them before the bankruptcy of the debtors for defending them on a criminal charge. *In re BEYTS AND CRAIG. Ex parte COOPER* V. Williams J. [1894] W. N. 56

**28. — Bankruptcy of client—Defence on criminal charge—Right to retain for services rendered.**

A solicitor, *held* to be entitled as against the trustee to retain a sum which he had received under an agreement to defend a person on a criminal charge, the agreement and the receipt of the money being before, but the services rendered after, his knowledge of an act of bankruptcy by that person. *In re CHARLWOOD. Ex parte MASTERS* - Div. Ct. [1894] 1 Q. B. 643

**29. — Bankruptcy of client—Mutual dealings—Claim to set-off debt for past services against claim of trustee.**

A client who owed money to his solicitor deposited a sum of money with him to meet future costs. Before this sum was spent the client committed an act of bankruptcy, and was afterwards made bankrupt:—

*Held*, that the trustee's title related back to the act of bankruptcy, and he was entitled to all the unspent deposit: that the unspent money could not be set off against the client's debt, as the money was deposited for a specific purpose; and that there had not been mutual credits within s. 38 of the Bankruptcy Act, 1883, since one sum was due by the solicitor to the trustee, and the other was due to the solicitor from the bankrupt.

Decision of Div. Ct., [1893] 1 Q. B. 175, affirmed. *In re POLLITT. Ex parte MINOR* C. A. [1893] 1 Q. B. 455

Distinguished by Div. Ct. *In re Charlwood*, [1894] 1 Q. B. 643.

Referred to by Wright J. *In re Daintrey*, C. A. [1900] 1 Q. B. 546, 562.

— **Bankruptcy, Trustee in—Committee of inspection—Employment of solicitor—Costs—Taxation.**

See **BANKRUPTCY—Trustee in Bankruptcy.** 245.

**30. — Common order—Solicitor and client—Moneys received by solicitor for client—Counsel's fees—Taxation.**

The provision in the common order to tax a solicitor's bill, that the solicitor "do give credit for all sums of money by him received of or on

**SOLICITOR (Costs)—continued.**

account of" the client, includes and is confined to all moneys which the solicitor, in his character of solicitor or agent of the client, has received, or is legally or equitably liable to pay over to the client, and against which (if sued for by the client) the solicitor could set off his costs when taxed.

Consequently the solicitor is not bound to give credit for moneys received by him and applicable to the payment of fees due by him to the client as counsel in matters not connected with the bill of costs.

Observations on the honorary character of counsel's fees. *In re LE BRASSEUR AND OAKLEY*

C. A. [1896] 2 Ch. 487

31. — *Common order—Suppression of material facts—Second order—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*

A client having obtained one common order to tax, which lapsed, afterwards obtained a second order, without mentioning the first order, or the fact that he was bringing an action against the solicitor to recover moneys received by the solicitor for the client's use:—

*Held*, that the order was irregular. Order varied instead of being set aside. *In re WEBSTER*

North J. [1891] 2 Ch. 102

32. — *Common order—Taxation—Summons—Petition of course—Special circumstances.*

As regards the jurisdiction of the Court an order for taxation can be made on summons or motion or petition. The question is what is the fairest way as between the parties. F., a solicitor, applied by summons for taxation. The client objected that it should have been by petition of course; the solicitor offered to bear all extra costs occasioned by the summons. The client denied retainer as to some matters in the bill, and alleging a counter-claim for negligence and mala fides:—The Court, on the solicitor undertaking not to issue execution without leave of the Court, ordered the taxation to proceed with liberty to the client to question the retainer on any items. *In re FENTON*

Kekewich J. [1894] W. N. 128

33. — *Common order for delivery and taxation of bill of costs—No costs claimed by solicitor—Liability to render cash account—Solicitor and client.*

Under the common order for the delivery and taxation of a solicitor's bill of costs, if the solicitor makes no claim for costs, and swears that he has not retained any costs out of moneys of his client in his hands, he is not liable to deliver a cash account to his client.

*Semble*, that under such circumstances the solicitor would still be liable to account to the client upon a proper application under the summary jurisdiction over solicitors. *In re LAMBOR (A SOLICITOR)*

North J. [1899] W. N. 52;

[1899] J. Ch. 818

34. — *Common order to tax—Abortive order of course—Right to obtain second order of course.*

A client obtained as of course an order to tax two bills of costs. The taxing master found that one of these was not a bill of costs, and that he could not tax one bill on an order to tax two, and further, that the time for him to make his

**SOLICITOR (Costs)—continued.**

certificate having elapsed without his having enlarged it the order had become inoperative, and that he had no jurisdiction to order the client to pay the costs of the proceedings. The client obtained a second order as of course to tax the remaining bill without mentioning the first order:—

*Held*, that the order had been irregularly obtained, that a special application should have been made in the second instance, which would have been granted on terms of the client paying the costs of the first order. To avoid expense the taxing master was directed to proceed on the existing order, and to tax the costs of the first order and of the motion, and to bring these costs into account. *In re TAYLOR, SONS, & TABBUCK*

North J. [1894] 1 Ch. 503

35. — *Common order to tax—Items barred by Statute of Limitations—Submission to pay what is "due"—Solicitor and client—Purchase of several lots at one time—Separate title—Scale charge—General order under Solicitors' Remuneration Act, 1881, Sched. I., Part I., Rule 8.*

Statute-barred costs are, under the common order to tax, subject to taxation, since the Statute of Limitations does not bar the debt but only the remedy; and such costs are recoverable from the client by reason of his usual submission to pay what shall appear to be "due" on the taxation. If the client desires to raise the question whether certain items are statute-barred, he should do so by applying for a special order to tax.

A solicitor acted for the purchaser of several small lots of land all purchased at the same time, though not from the same vendor, at prices varying from 100*l.* to 10*l.* The lots were comprised in one mortgage, but each had a separate and distinct title, a separate abstract for each being delivered:—

*Held*, that the solicitor was entitled, under rule 8 in Sched. I., Part I., of the rules under the Solicitors' Remuneration Act, 1881, to the minimum charge of 5*l.* or 3*l.* for each lot, and was not restricted to one charge for the business as a whole. *In re MARGETTS*

Kekewich J. [1896] 2 Ch. 263

— *Company—Authority to defend action in name of—Dissolution pendente lite.*

*See* PRINCIPAL AND AGENT. 27.

36. — *Conducting sale, Scale fee for—Costs—Taxation—General Order under Solicitors' Remuneration Act, 1881, Sched. I., Part I., r. 11.*

If the purchaser, in pursuance of a condition of sale, pays a fee to the auctioneer, the solicitor is not entitled to the scale fee for conducting a sale by auction.

If the solicitor himself pays the auctioneer, the solicitor is entitled to the scale fee. *CHODDITCH v. JONES* — North J. [1895] W. N. 147 (5); [1896] 1 Ch. 42

37. — *Conducting sale by auction.*

The vendor's solicitor will be allowed under Sched. I. of the General Order of 1882 for conducting a sale by auction only the scale fee on the aggregate realized, even where the property is sold in lots, though the lots be held under

**SOLICITOR (Costs)—continued.**

different titles and sold to different purchasers.  
*In re ONWARD BUILDING SOCIETY* (No. 2)

Div. Ct. [1893] 1 Q. B. 16

Referred to by North J. *Cholditch v. Jones*, [1896] 1 Ch. 42, 44.

38. — *Conducting sale by auction—Auctioneer's commission.*

Solicitors conducted all the business of a sale by auction except taking the bids. As they had not a licence, an auctioneer presided at the sale and took the biddings, for which he was paid a fee of 2l. per lot sold and 1l. per lot unsold:—

*Held*, that this was a commission within rule 11 of Sched. I., Part I., of the General Order of 1882, and that the solicitors were not entitled to charge the scale fee, but only a quantum meruit. *DRIELSMAN v. MANIFOLD*

C.A. [1894] 3 Ch. 100

39. — “*Conveyance of property—Grant of new easement—Costs—Taxation—Scale fee—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 2—General Order under Act, r. 2; Sched. I., Part I.*”

A grant of a new easement is not a “conveyance of property” within the meaning of Sched. I., Part I., to the General Order under the Solicitors' Remuneration Act, 1881, and consequently the scale fee prescribed by Part I. of that schedule does not govern the remuneration of a solicitor in relation to such a transaction. Sched. I., Part I., applies to cases in which an existing property or right is transferred, not to cases in which a new right or easement is created for the first time.

Decisions of Kay J. in *In re Stewart*, (1889) 41 Ch. D. 494, and of Chitty J. in *In re Earnshaw-Wall*, [1894] 3 Ch. 156, approved. *In re SANDERS' SETTLEMENT* — C. A. [1896] 1 Ch. 480

— *Corporation—Negligence—Appeal—Solicitor and client.*

See COSTS. 46.

— *Costs—Taxation—Charges and expenses of Liverpool solicitors' attendances in London.*

See COSTS. 2.

40. — *Country solicitors—Parliamentary proceedings—Costs—Taxation—Local solicitor—London and country certificates—Practice.*

A firm of solicitors had offices in Birmingham and offices in London: some of the partners resided in Birmingham and some in London: all the partners took out London certificates. The firm was employed by certain American promoters of a co., and afterwards by the co.

The taxing master in taxing the firm's bill of costs against the co. taxed the bills in reference to certain parliamentary proceedings upon the footing that the firm were London solicitors, whereas the firm contended that they ought to have been allowed for journeys and suchlike matters as though they were country solicitors, and took out a summons to review taxation on this ground.

Byrne J. said that he had consulted the taxing master, who had communicated with the taxing officer of the House of Lords, with the result that it appeared that the well-established

**SOLICITOR (Costs)—continued.**

practice upon taxation of costs of Chancery proceedings, in accordance with which the taxing master had acted, did not prevail in reference to parliamentary proceedings, and consequently the matter would go back for review upon the footing that the parliamentary practice should be followed. *In re MILWARD & Co., SOLICITORS*

Byrne J. [1899] W. N. 251

41. — *Country solicitor and London agent—London agent, Charges of—Solicitor and client—Taxation of costs—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*

Where a country solicitor employs a London agent he ought to incorporate in his bill of costs the details of the charges of the London agent, and until the details of such charges are stated, either in the original or a supplemental bill, there is no complete bill capable of taxation so as to entitle the solicitor to rely upon its delivery for twelve months as a ground for refusing taxation. *In re POMEROY & TANNER*

Stirling J. [1897] 1 Ch. 284

— *Country solicitor, attendance of, at trial in London—Salvage action.*

See SHIPPING—Salvage. 232.

— *County court—Taxation.*

See Cases under COUNTY COURT—Costs.

42. — *County court actions—Signature of particulars—Subscription by clerk.*

The provision of County Court Rules, 1889, Order xxvii., r. 4, Sched. “Costs,” requiring particulars and copies to be signed by the solicitor in order that he may claim costs, is satisfied if the particulars be signed by the solicitor's clerk. *FRANCE v. DUTTON* Div. Ct. [1891] 2 Q. B. 208

43. — *Debenture trust deed—Non-issue of debentures—“Completed mortgage.”*

A trust or covering deed was executed by a limited co. to trustees in the usual form for securing debentures intended to be issued to a certain amount; but the debentures were never issued, and the deed therefore became inoperative:—

*Held*, that the covering deed so executed was not a completed mortgage within rule 2 (a) and Part I. of Sched. I. to the General Order under the Solicitors' Remuneration Act, 1881, and therefore that the solicitor to the trustees was not entitled to charge a scale fee for “preparing and completing mortgage” under that rule.

Whether, if the deed had become operative by the issue of the debentures, it would have been a “mortgage” within the rule, *quære*.

Whether a mortgage for future advances is a completed mortgage within the rule, *quære*. *In re BIRCHAM* — C. A. [1895] 2 Ch. 786

44. — “*Deducting title—Mortgage of leaseholds.*”

Mere production of a deed is not deduction of a title.

A solicitor acting for a mortgagor of leaseholds who only produces the leases cannot be said to “deduce” title under Sched. I., Part I. of the General Order of 1882, and is not entitled to the scale fee. *WELBY v. STILL* (No. 3)

Kekewich J. [1894] 3 Ch. 641

**SOLICITOR (Costs)—continued.****45. — District registrar's powers.**

A registrar of the District Registry of Liverpool or Manchester has no jurisdiction to make a common order for taxation of a bill of costs on an originating petition of course. *In re PORRETT*

C. A. [1891] 2 Ch. 433

See also PRACTICE—District Registry.

**— Employment of—Liquidator—Costs.**

See COMPANY—WINDING-UP. 116.

**46. — Enforcing payment—Mode of.**

A common order to tax not containing any direction for payment of the amount found due from the client on taxation was obtained by a solicitor:—

*Held*, that payment could not be enforced by summons, but that an action must be brought.

*In re DEBENHAM & WALKER*

North J. [1895] 2 Ch. 430

**47. Foreign documents — Translations — Administration.**

Charges for translations of foreign documents made in a solicitor's office allowed in taxing costs relating to administration. *In re BOWES*. EARL OF STRATHMORE v. VANE

Coxens-Hardy J. [1900] W. N. 117;  
[1900] 2 Ch. 251

**48. — Hasty litigation—Personal order against solicitor—Order LXV., r. 11.**

Where there was unreasonable haste in commencing litigation against trustees who refused information as to the investments of a trust fund, an order was made under Order LXV., r. 11, that the solicitor should be disallowed his costs as against his client. *In re DARTNALL*. SAWYER v. GODDARD

C. A. [1895] 1 Ch. 474

**— House of Lords—Liability of pauper appellant—Solicitor and client.**

See COSTS. 63.

**— Improperly incurred—Payment by solicitor.**

See ANNUITY. 11.

**— Independent proceedings—Lien.**

See COSTS. 64.

**49. — Inquiry before Incorporated Law Society**

—Costs of—Jurisdiction—Judge at chambers—Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 13.

Where a solicitor has been exonerated from charges brought against him on an inquiry before the Committee of the Incorporated Law Society, under s. 13 of the Solicitors Act, 1888, an application by him for the costs of the inquiry must be made to the Div. Ct., and not to a judge at chambers. *In re DAVIDSON*. *Ex parte DAVIDSON*

Div. Ct. [1899] W. N. 68; [1899] 2 Q. B. 103

**50. — Interest—Administration action—"Personal liable"—Practice—Taxation of costs—General Order under Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), r. 7.**

The legal personal representative of a deceased client is the proper person from whom to demand payment of a bill of costs as the person liable, so as to make the costs carry interest.

In the administration by the Court of an insolvent estate, a bill of costs due from the deceased

**SOLICITOR (Costs)—continued.**

had been delivered, by direction of the chief clerk, to the solicitor of a creditor having the conduct of the cause:—

*Held*, that there had been no demand for payment on the person liable, and that the costs did not carry interest. *In re McMURDO*. PENFIELD v. McMURDO - North J. [1897] 1 Ch. 119

**51. — Investigation of title—New mortgage or further charge—Taxation of costs.**

A tenant for life owed, *inter alia*, 192,000*l.* to an insurance co. By a private Act the trustees were empowered to raise moneys to pay the debts of the tenant for life. They borrowed 232,000*l.* of the co. The co. retained enough to pay their debt, and handed the balance to the trustees:—

*Held*, that the solicitors were entitled to regard the transaction as a new mortgage of 232,000*l.* requiring a fresh investigation of title, and not as a further charge, within rule 10 of Sched. I., Part I., of the General Order of 1882, of 40,000*l.* on an old mortgage, the title to which had already been investigated, and were entitled to the scale fee on a mortgage for 232,000*l.* EARL OF AYLESFORD v. EARL POULETT (No. 1)

C. A. [1891] 1 Ch. 248

**— Land Transfer Acts.**

See LAND TRANSFER ACTS.

**52. — Lease—Agreement for lease—"Business connected with lease."**

The scale fee to be paid under Sched. I., Part II., of the General Order of 1882 to a lessor's solicitor for "preparing, settling, and completing lease and counterpart," includes the solicitor's remuneration in respect of negotiations which lead up to, and the preparation of the agreement which precedes, the lease, and the solicitor cannot make a further charge for those negotiations or for preparing the agreement. SAVERY v. ENFIELD LOCAL BOARD

H. L. E. [1893] A. C. 218

Discussed by Chitty J. *In re Horn and Francis*, [1896] 2 Ch. 797, 800.

**53. — Lease—Lessor and lessee—Cost of lease—Preliminary negotiation—Third party order to tax.**

Application to review a taxation of the lessor's solicitor's bill of costs, which raised the question of as to the extent of the liability of the lessee for the costs of the lease, for the costs of preliminary negotiations, and whether this liability was in any way increased by reason of the lessee having obtained a third party order for taxation:—

*Held*, that it was necessary to consider what was the position of a lessee at common law with reference to the costs of a lease, and then how far, if at all, that position was altered by reason of a third party order to tax having been obtained, and upon the first point, having considered the authorities, the Court held that if the lessor in this case had paid his solicitor's bill and then sued the lessee, he could not have recovered anything antecedent to the instructions for the lease, and in particular could not have recovered the fees paid to the mining engineer. With refer-

**SOLICITOR (Costs)—continued.**

ence to the second point, the true view appeared to be that the third party order did not alter the nature or enlarge the scope of the liability upon the existence of which the order was based: this view was supported by *In re Negus*, [1895] 1 Ch. 73, the governing idea of which appeared to be that even on a third party taxation the Court was bound to look at the nature of the items, and to consider whether, apart from the order, the applicant was under any liability to pay them. Although the solicitor might put in one bill as against his own client a series of items, some of which might go beyond the liability of the third party, the third party did not, by obtaining an order to tax, render himself liable to the whole bill. Bill referred back to the taxing master to revise his taxation in accordance with this intimation from the Court. *In re GRAY*

**Cozens-Hardy J. [1900] W. N. 274**

**54. — Lease—Printed form.**

Leases following a general printed form and requiring in each case only to be filled in with the names of the parties, the parcels, a plan, the rent, and so forth, are not subject to the scale charges in Part II. of Sched. I. of the General Order of 1882. *WELBY v. STILL* (No. 4)

**Kekewich J. [1895] 1 Ch. 524**

**55. — Lease—Costs—Taxation—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order thereunder, Sched. I., Part II., Scale of Charges.**

In the case of leases at a rack-rent to which the scale of charges in Sched. I., Part II. of the General Order under the Solicitors' Remuneration Act, 1881, is applicable, the solicitor of the lessor is not entitled, where the annual rent exceeds 100*l.*, to charge any percentage on fractional amounts of 100*l.* in the rental. *In re MCGAREL (A LUNATIC)* — — **C. A. [1897] 1 Ch. 400**

**56. — Lease at rent and premium—Minimum scale charge—Costs of taxation—General order under Solicitors' Remuneration Act, 1881, Sched. I., Part I., rr. 7, 8; Part II., r. 5.**

A lease for ninety-nine years, determinable on three lives, was granted at an annual rent of 12*s.* 1*d.* and a premium of 12*l.* 1*s.* 8*d.* :—

*Held*, that the lessor's solicitors were entitled to a fee of 5*l.* in respect of the rent under Sched. I., Part II. (second scale), to the General Order under the Solicitors' Remuneration Act, 1881, and to an additional fee of 3*l.* in respect of the premium by virtue of rule 5 in Part II. and rule 8 in Part I. of Sched. I.

The lessor's solicitors wrote on Dec. 24 to the lessee's solicitors that their charges in relation to the lease amounted to 7*l.* 11*s.* On Jan. 1 the lessee's solicitors wrote asking for particulars of the charges. In reply the lessor's solicitors on Jan. 2 sent a bill with detailed items, amounting to 10*l.* 10*s.* 8*d.*, adding at the foot, "Say 7*l.* 11*s.*" The lessee obtained an order to tax the bill, and on the taxation the whole of the 7*l.* 11*s.* was allowed :—

*Held* (affirming the decision of the taxing master), that the bill was delivered on Dec. 24; that the bill sent on Jan. 1 was merely explanatory; and that, the bill not having been reduced

**SOLICITOR (Costs)—continued.**

on taxation, the solicitors were entitled to the costs of the taxation. *In re HELLARD & BEWES*

**North J. [1896] 2 Ch. 229**

Referred to by Stirling J. *In re Webb*, [1897] 1 Ch. 144, 149.

**57. — Lease in consideration of rent and premium—Fee for negotiating—Scale fee—General order under Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), Sched. I., Part II., rule 5.**

Where a lease is granted in consideration of a fine or premium as well as of a rent, the lessor's solicitor is not entitled to charge a further fee for negotiating in addition to the scale fee in respect of rent chargeable under Part II. of Sched. I. to the General Order under the Solicitors' Remuneration Act, 1881, and the deducting fee chargeable on the premium under rule 5 of the rules to Part II., Sched. I. The negotiation fee is included in the scale fee chargeable in respect of rent.

*In re Field*, (1885) 29 Ch. D. 608, and *In re Robson*, (1890) 45 Ch. D. 71, discussed and followed. *In re HORN & FRANCIS*

**Chitty J. [1896] 2 Ch. 797**

**58. — "Lease" or agreement for lease—Tenancy agreement for not more than three years—Counterpart.**

In the absence of a prior written agreement, costs must be taxed according to scale where the scale applies, notwithstanding that an item bill has been delivered. The delivery of an item bill does not preclude a solicitor from consenting to have his bill taxed according to scale. An agreement for three years under hand which operates as a present demise is a "lease" within Sched. I., Part II., of the General Order of 1882, and the scale fee applies, although an item bill had been previously delivered. The scale fee also applies to a document on which the parties intend to rely, without having a formal lease executed. In estimating costs payable by the lessee to the lessor's solicitor, the cost of the counterpart must be deducted from the scale fee. *In re NEGUS*

**Chitty J. [1895] 1 Ch. 73**

— Lien for costs.

*See* Cases under **SOLICITOR—Lien.**

**59. — Limitations, Statute of—Solicitor's bill of costs—Period of limitation—Cause of action, Accrual of—Absence beyond seas—Limitation Act 1623 (21 Jac. 1, c. 16), s. 3—4 & 5 Anne, c. 16, s. 19—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.**

In the case of a solicitor's costs the cause of action arises when the work is completed, and therefore the Statute of Limitations begins to run from that time, and not from the expiration of a month from the delivery of the bill of costs. *COBURN v. COLLEDGE* **C. A. [1897] 1 Q. B. 702**

— Liquidator — Remuneration — Liquidator's solicitor—Costs—Priorities.

*See* **COMPANY — WINDING-UP — Liquidator. 123.**

**60. — Lots—Sale by auction in lots—Freehold property held under one title—Separate purchasers—Deducting title—Scale charge—"Transactions" under 100*l.*—Minimum fee—Solicitors' Remunera-**

**SOLICITOR (Costs)—continued.**

*tion Act, 1881 (44 & 45 Vict. c. 44)—General Order, Sched. I., Part I., rr. 1, 7, 8.*

On a sale by auction in lots of property held under one title, each sale of one or more lots to a different purchaser forms a separate transaction within the meaning of rule 8 of the rules annexed to Sched. I., Part I., of the General Order under the Solicitors' Remuneration Act, 1881; so that where the scale charge for deducting title on any of the lots sold to different purchasers does not amount to 5*l.*, the solicitor is entitled to charge the minimum fee prescribed by rule 8 in respect of each separate sale. *In re THOMAS. EVANS v. GRIFFITHS* Stirling J. [1900] W. N. 36; [1900] 1 Ch. 454

— Lunatic, Client alleged—Order obtained ex parte—Suppression by solicitor.  
See **SOLICITOR—Misconduct.** 117.

61. — *Middlesex—Purchase of lands in—Taxation—Scale fees—Registration—“Completion of conveyance”—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44); General Order thereunder, rr. 2, 4, Sched. I., Part I.*

On a purchase of lands, the scale fee allowed to the purchaser's solicitor by Sched. I., Part I., to the General Order under the Solicitors' Remuneration Act, 1881, for “preparing and completing conveyance,” covers and includes his costs (other than money out of pocket) in respect of the registration of a memorial of the conveyance in cases where the land purchased is situated within a register county.

Decision of Kekewich J. affirmed. **GREY v. CURTICE** — C. A. [1899] 1 Ch. 121

62. — *Mortgage—Negotiating loan—Scale fee—Conveyancing—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order under Act, Sched. I.*

The scale fee to “mortgagee's solicitor for negotiating loan” provided for by Sched. I. to the General Order under the Solicitors' Remuneration Act, 1881, is applicable to all cases of loans on mortgage, and is not confined to loans upon mortgage of freehold, copyhold, or leasehold property exclusively. *In re FURBER.*

**Kekewich J. [1898] 2 Ch. 538**

Appeal dismissed on the ground that notice of appeal was served too late. The Court refused to extend the time for appealing.

**C. A. [1898] W. N. 160 (13)**

63. — *Mortgage—Sale of property subject to incumbrances—Sale by second mortgagee with power of sale—Costs of vendor's solicitor—Taxation of costs—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order, Sched. I., rr. 4.*

Rule 9 of Sched. I. of the General Order to the Solicitors' Remuneration Act, 1881, which provides that “where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money,” applies to the case of a sale by a second mortgagee under his power of sale. **FORTESCUE v. MERCANTILE BANK OF LONDON**

**C. A. [1897] 2 Q. B. 236**

64. — *Negotiation fee.*

A surveyor was employed as a general agent

**SOLICITOR (Costs)—continued.**

in developing a building estate, his remuneration being a percentage on all sales, &c., effected during his agency. The surveyor being ill, the owner's solicitor conducted the negotiations for a purchase, the surveyor assisting:—

*Held*, that as the surveyor had received a commission in respect of his part in the negotiations within rule 11 in Sched. I., Part I., of the General Order of 1882, the solicitor was not entitled to the scale fee for negotiation. *In re WITHALL* C. A. [1891] 3 Ch. 8

65. — *Negotiation fee—Sale under direction of Court.*

A solicitor negotiated a sale by private contract, subject, as was necessary, to the sanction of the Court. Before applying to the Court the solicitor obtained sworn valuations from two valuers. The Court sanctioned the arrangement without alteration. The solicitor claimed both the “negotiating” scale fee and return of the fees paid to valuers:—

*Held*, that he had negotiated the sale within rule 11 in Sched. I., Part I., of the General Order of 1882, and that the sworn valuations were not part of the negotiations, but necessary for obtaining the approval of the Court to the sale, and that he was entitled both to the scale fee and to return of the fees paid to the valuers. *In re MACGOWAN. MACGOWAN v. MURRAY* — C. A. [1891] 1 Ch. 105

Referred to by C. A. *Drielsma v. Manifold*, [1894] 3 Ch. 100, 105.

— Non-payment of balance to client—Remedy.

See **SOLICITOR—Misconduct.** 112, 113.

66. — *One of several bills, Taxation of—Order of course.*

A solicitor delivered to his clients seven bills of costs, relating to seven different matters in which he had acted for them, together with a cash account which shewed that the seven bills amounted to 261*l.* 15*s.*, and that the solicitor had received 160*l.* on account, leaving a balance of 101*l.* 15*s.* due to him. The clients then paid him a further sum of 50*l.* on account of the balance, he giving a written undertaking “to return to you any sum that may be found due from me on taxation of my bills delivered.” The next day the solicitor wrote to the clients that he accepted the 50*l.* in full discharge of all claims by him against them, and asked them to treat the 50*l.* as the balance due on the cash account, and not the 101*l.* 15*s.*

The clients were dissatisfied with one of the bills, which was for 172*l.* 18*s.* 10*d.*, and obtained an order of course for the taxation of that bill alone. After this the clients' new solicitor wrote to the solicitor saying that all the other bills were agreed to and paid, so that this was the only bill outstanding. On a motion by the solicitor to discharge the order for irregularity:—

*Held*, by North J., that inasmuch as the solicitor had admitted that nothing was due to him, and he could therefore have no lien on the clients' documents, the only question being whether he had been overpaid, the order was not irregular.

*In re Byrch* (1844) 8 Beav. 124; *In re Law and Gould* (1876) 21 Beav. 481; *Re Warell* (1856)

**SOLICITOR (Costs)—continued.**

22 Beav. 634; and *Re Yetts*, (1864) 33 Beav. 412, distinguishing.

An appeal from this decision was dismissed.  
*In re WARD* - - - C. A. [1896] 2 Ch. 31

67. — *Payment, Taxation after—Special circumstances—Solicitors Act, 1843* (6 & 7 Vict. c. 73), s. 41.

Solicitors kept a running account with a client crediting him with moneys received and debiting him with disbursements and costs for professional business. No bills were delivered, but the accounts were periodically balanced and signed by the client as settled and approved. The last was in 1886. In 1890 the client sued for an account and the solicitors then delivered a bill of costs. There was no evidence of fraud or pressure and no gross overcharge. At the trial the client dropped his claim for an account, but claimed as of right an order for taxation:—

*Held*, that the payments made on account were referable to the bill delivered, and that there were no special circumstances entitling to an order to tax. *HITCHCOCK v. STRETTON*

Stirling J. [1892] 2 Ch. 343

Distinguished by C. A. *In re Baylis*, [1896] 2 Ch. 107.

68. — *Payment, Taxation after—Special circumstances—Solicitors Act, 1843* (6 & 7 Vict. c. 73), s. 38.

There is no rigid rule as to what kind of special circumstances will justify the taxation of a solicitor's bill of costs after payment. The matter in every case is in the discretion of the judge; with this discretion the C. A. will not readily interfere. *In re CHEESMAN*

C. A. [1891] 2 Ch. 289

69. — *Payment by giving negotiable security—Taxation.*

If a client hands his solicitor a negotiable security for the amount of the bill of costs and the solicitor gives a receipt "in settlement," it does not amount to payment, if the security be dishonoured, unless the solicitor proves that such was the intention of the parties and that the client was aware of the effect on his right to taxation. *In re ROMER & HASLAM*

C. A. [1893] 2 Q. B. 286

70. — *Plan, Charge for preparation of—Purchase and sub-sale—Completing conveyance.*

The purchasers' solicitor, in the case of a sale of land and sub-sale of part being carried out by means of two conveyances, and conveying directly to the sub-purchaser, is entitled to the scale fee for purchase on the whole, and for sale on the part sub-sold. A charge for a copy of an existing plan is covered by the scale fee. *In re READ*

Kekewich J. [1894] 3 Ch. 238

— *Public Authorities Protection Act—Costs as between solicitor and client.*

See COSTS.

71. — *Repayment of Costs—Reversal of judgment.*

A solicitor who has demanded and received payment of costs payable to his client under an order of Court, with knowledge that an appeal against that order was pending, cannot on its reversal be ordered personally to repay the costs

**SOLICITOR (Costs)—continued.**

so paid to him where there has been no misconduct and no undertaking to repay.

Decision of C. A., [1896] 1 Q. B. 610, affirmed.  
*HOOD BARRIS v. CROSSMAN & PRICHARD*

H. L. (E.) [1897] A. C. 172

72. — *Retainer—Delivery of bill—Payment.*

A client employed a solicitor to transact certain contentious and non-contentious business, and deposited with him a sum to cover the costs. After the business was done and before a bill was delivered, the solicitor and client verbally agreed the costs at a lump sum, and they were retained out of the deposited money. The client became bankrupt, and his trustee applied for delivery of a bill of costs.

*Held*, that the retainer by the solicitors of the agreed sum out of moneys recovered did not amount to payment of costs so as to preclude the necessity for delivering a bill of costs. *In re WEST, KING & ADAMS. Ex parte CLOUGH*

Div. Ct. [1892] 2 Q. B. 102

73. — *Retainer—Delivery of bill—Payment—Solicitors Act, 1843* (6 & 7 Vict. c. 73), ss. 37, 41—*Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44), s. 8.

*Held*, affirming the decision of Chitty J., that retainer by a solicitor of a sum for costs is not payment of his bill within the meaning of the Solicitors Act, 1843, and does not affect the right to taxation, although the sums from time to time retained for costs have been entered in accounts settled and approved by the clients:—

*Held*, further, that where a verbal agreement had been made that the solicitor should be paid for his costs in obtaining loans a certain percentage on the amounts borrowed, such expressions as "costs as agreed," designating the sums charged in the accounts for costs, which accounts were settled and signed by the client, were referable to the verbal agreement, and could not, as in *In re Frape*, [1893] 2 Ch. 284, be construed as meaning "costs which are hereby agreed at the amount of," and that there was, therefore, no written agreement signed by the client entitling the solicitor to those sums as his remuneration:—

*Held*, further, that the delivery of the bills of costs under the order of the Court would not make the retainer amount to payment within the principle of *Ex parte Hemming*, (1856) 28 L. T. (O.S.) 144; *In re Thompson*, [1894] 1 Q. B. 462; 63 L. J. (Q.B.), 187, and *Hitchcock v. Stretton*, [1892] 2 Ch. 343. *In re BAYLIS*

C. A. [1896] 2 Ch. 107

74. — *Retainer—Right of client to dispute—Taxation.*

Where a client obtained an order to tax ten bills of costs without any reservation of a right to question the retainer as to the whole of any one bill:—

*Held*, that the client thereby admitted that something was due on each bill, and could not dispute the retainer as to the whole of any bill, though he could do so as to particular items. *In re FRAPE. Ex parte PERRETT* (No. 2)

North J. [1894] 2 Ch. 290

75. — *Retainers, Separate—Taxation.*

Where there are a large number of separate

**SOLICITOR (Costs)—continued.**

retainers to the same solicitor on an application by some of the clients for taxation, an endeavour should be made to secure a taxation at which all parties are present, but if it is found impracticable to communicate with all the parties, the summons should not be dismissed. For the applicants are strictly entitled to taxation without serving anybody except the solicitor. *In re SALAMAN* C. A. [1894] 2 Ch. 201

— Reversal of judgment—Repayment of costs.

See COSTS. 35.

**76. — Review—Appeal—Taxation.**

A summons for a review of a solicitor's bill of costs is a "matter of practice and procedure" within s. 1, sub-s. 4, of the Judicature (Procedure) Act, 1894, and an appeal from the judge in chambers lies to C. A., and not to Div. Ct. *In re ODDY* C. A. [1895] 1 Q. B. 392

**77. — Sale of advowson in gross—Freehold property.**

An advowson in gross, although an incorporeal hereditament, is freehold property within Sched. I, Part I., of the General Order under the Solicitors' Remuneration Act, 1881, and on a sale the scale fee applies. *In re EARNSHAW-WALL*

**Chitty J. [1894] 3 Ch. 156**

Approved of by C. A. *In re Sander's Settlement*, [1896] 1 Ch. 480.

**78. — Salary—Solicitor employed at fixed annual salary—Taxation of costs—Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 4, 5.**

A public body employed a solicitor as their clerk at a fixed annual salary, for which (inter alia) he was to prosecute and defend all legal proceedings taken by or against them. Out of pocket expenses were to be paid for by them. In an action brought against them, judgment was entered for them with costs, to be taxed as between solicitor and client. On taxation the registrar struck out all items, except out of pocket expenses paid by the solicitor, on the ground that all work done by him in the conduct of the action was covered by his salary:—

*Held*, that the taxation was wrong and ought to be reviewed. *HENDERSON v. MERTHYR TYDFIL URBAN DISTRICT COUNCIL*

**Div. Ct. [1900] 1 Q. B. 434**

**79. — Series of bills treated as one—Taxation.**

Where a solicitor is retained to conduct litigation other than an ordinary action at common law, such as a protracted arbitration which may extend over a considerable time, and in which breaks may occur of such a kind as to be equivalent to the conclusion of a definite and distinct part of the proceedings, the solicitor may send in a bill of costs for business up to the occurrence of such breaks and demand payment. Where in such a litigation a series of bills are sent in it is always a question of fact whether they are separate bills or merely statements of account of portions of one entire bill. *In re ROMER & HASLAM* C. A. [1893] 2 Q. B. 286

— Set-off—Costs—Solicitor's lien—Independent proceedings.

See COSTS. 64.

— Shorthand notes—Patent action.

See PATENT—Practice. 5, 6.

**SOLICITOR (Costs)—continued.**

— Solicitor-mortgagee—Profit costs.

See Cases under SOLICITOR—Solicitor-Mortgagee.

— Solicitor-trustee.

See Cases under SOLICITOR—Solicitor-Trustee.

**80. — Submission to pay—Exclusion of statute-barred items—Taxation—Special order—Jurisdiction.**

Application for taxation of respondent's bills of costs, the applicants submitting to pay what should appear to be due on taxation, not including in such submission any charges or items barred by the Statutes of Limitation:—

*Held*, that the Court had no right to make the order. The solicitor was entitled to an unconditional submission to pay what should appear to be due on taxation without any exception of charges or items barred by the Statutes of Limitation. *In re HUGHES* — **Kekewich J. (in Chambers) [1899] W. N. 125**

**81. — Trustees and cestui que trust—Taxation at instance of cestui que trust—Bill paid by trustees more than twelve months previously—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 37–41.**

Sect. 39 of the Solicitors Act, 1843, ought to be read and construed, as a separate and parenthetical enactment, independently of s. 41 of that Act; and, accordingly, taxation upon the application of a cestui que trust of a bill of costs paid by the trustees may be ordered under s. 39, notwithstanding that the application is not made within twelve calendar months after payment, as provided for by s. 41. *In re WELLBORNE*

**Kekewich J. [1900] W. N. 82; [1900] 1 Ch. 857**

— Unauthorized use of plaintiff's name.

See COSTS—Shorthand Notes. 70.

**82. — Underlease—Costs—Taxation—Sale by auction of leaseholds—Scale charge—General Order under the Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), Sched. I., Part I., r. 8; Part II., r. 5.**

Leasehold property held with other property under one lease was sold by auction subject to a condition that the purchaser should accept an underlease for the whole of the unexpired term less three days at an apportioned ground-rent. The vendors' solicitors, by virtue of rule 5 of Part II. of Sched. I. to the General Order under the Solicitors' Remuneration Act, 1881, claimed to be entitled to a scale charge in respect of the price and to a further scale charge in respect of the rent:—

*Held*, that the transaction though carried out by an underlease was in fact a sale, and that the solicitors were not entitled to a charge in respect of the rent; but *quære*, whether this was not business not provided for by Sched. I., and therefore to be charged for according to the old system as modified by Sched. II. *In re WEBB*. **STILL v. WEBB** — **Stirling J. [1897] 1 Ch. 144**

— Undischarged bankrupt—After-acquired property—Solicitor's bill of costs—Assignee for value—Notice by trustee—Priority. See BANKRUPTCY—Undischarged Bankrupt. 261.



**SOLICITOR (Costs)—continued.****83. — Withdrawal of first bill.**

A solicitor cannot withdraw a bill which he has delivered, and, on his being warned of an intention to tax, substitute a bill which he thinks he can maintain with a better chance of success, and the first bill is the one which should be taxed.

*Semble*, that in such a case a special and not a common order for taxation ought to be obtained. *In re WOOD*

**Kekewich J. [1891] W. N. 203**

**Discharge.****84. — Practice—Solicitor discharging himself—Motion by client for delivery up of papers—Title of notice of motion.**

A shareholder in a co. employed a solicitor to take proceedings for the rectification of the register of shareholders by omitting his name therefrom, and notice of motion for this purpose was given by the solicitor under s. 35 of the Companies Act, 1862. Before the motion had been heard the shareholder gave a notice of motion, entitled only in the matter of the company and in the matter of the Companies Acts, that the solicitor might be ordered forthwith to deliver up to the client, or his present solicitor, all briefs, papers, &c., in or connected with the matter which were in the first solicitor's hands as the applicant's solicitor, the present solicitor giving the ordinary undertaking to prosecute the matter on behalf of the applicant with all due diligence, &c. It was alleged that the first solicitor had discharged himself. On the hearing of this motion the preliminary objection was taken by the respondent that the notice of motion ought to have been entitled "In the matter of the first solicitor," naming him:—

*Held*, that it was not necessary to entitle the notice of motion in the matter of the solicitor.

On the evidence the Court *held* that the solicitor had discharged himself, and an order was made as asked.

*Heslop v. Metcalfe*, (1837) 3 M. & C. 183, and *Robins v. Goldingham*, (1872) L. R. 13 Eq. 440, were cited. *In re ROSE MARIE GOLD MINING CO.*

**North J. [1896] W. N. 76 (5)**

**Fiduciary Relation.****85. — Benefit conferred by client on solicitor or his near relation—Duty of solicitor—Independent advice—Solicitor and client.**

The plt. claimed to have a deed of 1891 set aside by which she, in exercising with her husband (since deceased) a joint power of appointment, had conferred a benefit on the son of a solicitor who was acting for her husband in the transaction, but who had not been retained by her. The solicitor was also a trustee under a deed of 1890 by which the power had been created. He explained the effect of the deed of 1891 to the plt., and also suggested that she should consult an independent solicitor; but he did not inform her that she was under no obligation to execute the deed, and that it was so adverse to her interest that she ought not to execute it without having independent advice, and she executed the deed without having that advice:—

*Held* (differing from *Cozens-Hardy J.*, [1899]

**SOLICITOR (Fiduciary Relation)—continued.**

2 Ch. 578, on a conclusion of fact), that a confidential relation existed between the plt. and the solicitor, and that therefore it was his duty not only to explain the deed to her, but also to take care that she did not execute it without having independent advice as to her position and her rights:

*Held*, therefore (reversing the decision of *Cozens-Hardy J.*), that the plt. was not bound by the deed of 1891, and that it must be set aside. **BARRON v. WILLIS - C. A. [1900] W. N. 113; [1900] 2 Ch. 121**

— Bonâ fide sale to solicitor—Action to set aside—Laches.

*See* MORTGAGE—Sale. 83.

— Voluntary settlement—Revocation—Undue influence—Independent advice—Duty of solicitor.

*See* SETTLEMENT. 34.

**Liability.****86. — Attachment—Default in payment of money in character of officer of Court—Costs—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4, sub-s. 4.**

An order for the taxation of a solicitor's bill directed that, in case it should appear that the bill was overpaid, the solicitor should, within four days after service of the order and of the taxing master's certificate, repay to the client the amount certified to be overpaid. The taxing master found that the bill had been overpaid. By a subsequent order it was directed that the solicitor should pay the taxed costs of the taxation of the bill:—

*Held*, that the costs of the taxation, as well as the amount found due from the solicitor upon the taxation, were within the exception of sub-s. 4 of s. 4 of the Debtors Act, 1869, as being due from him "in his character of an officer of the Court," and that he could be attached for his default in payment of both. *In re A SOLICITOR* (No. 3) - - **North J. [1895] 2 Ch. 66**

**87. — Attachment—Non-payment of money—Time given by client—Waiver of right to enforce attachment.**

After a writ of attachment had been issued at the instance of clients against a solicitor, for his non-payment of a sum of 78*l.* which he had been ordered to pay, the clients, at the request of the solicitor, agreed to suspend proceedings upon the writ for fourteen days, upon the solicitor paying 25*l.* on account. This was done, but the solicitor did not make any further payment within the extended time, and he was arrested. Upon a motion by the solicitor for his discharge from custody:—

*Held*, that, by giving time and accepting part payment, the clients had not waived their right to enforce the writ of attachment. *In re FEREDAY* **North J. [1895] 2 Ch. 437**

**88. — Attachment—Practice—Order for payment of costs, action upon—Application to strike off Rolls—Order XLII., r. 24.**

An action will lie upon an order of the Court by which a solicitor is ordered to pay the costs of an application to strike him off the rolls, notwithstanding

**SOLICITOR (Liability)—continued.**

standing the fact that an unsuccessful application to attach him for disobedience to the order has been made by the person to whom he was ordered to pay the costs. *GODFREY v. GEORGE*

**C. A. [1895] W. N. 152 (6); [1896] 1 Q. B. 48**

Referred to by C. A. *Pritchett v. English and Colonial Syndicate*, [1899] 2 Q. B. 428, 434.

**89. — Company—Authority to defend action in name of company—Revocation of authority—Notice of revocation—Payment by solicitor of plaintiff's costs of abortive action—Dissolution pendente lite—Judgment against dissolved company—Jurisdiction—Principal and agent—Warrant of authority.**

A solicitor had originally authority to defend an action in the name of a co., but his authority was revoked by the dissolution of the co. shortly before the trial. The trial of the action was delayed owing partly to the state of the business of the Court and partly to the pleadings being amended. The action was tried on the assumption that the co. was in existence, and judgment was given for the plt. Neither the solicitor nor the plt. knew till after the trial that the co. had been dissolved; but on the day of the trial the solicitor was informed that the co. had held its final meeting, and he took no steps to ascertain whether or not it had been dissolved. Upon motion by the plt. that the solicitor might be ordered to pay his costs of the action as from the date of the dissolution of the co.:

*Held*, (1.) that the judgment was not valid against the co.; (2.) that the solicitor having originally authority to represent the co. was not liable for acting on that authority after it had been revoked by the dissolution of the co. until he knew or, by the exercise of due diligence, might have known of the dissolution; (3.) that on the day of the trial the solicitor did not use due diligence in ascertaining whether or not the co. had been dissolved, and that he ought to pay the plt.'s costs of the action after that date as between solicitor and client.

The reasoning of *Whiteley Exerciser, Ltd. v. Gamage*, [1898] 2 Ch. 405, which proceeded on principle "Actus curiae nemini facit injuriam," does not apply to a case where the delay in the trial of the action is partly attributable to the conduct of the parties.

The principle of *Smout v. Ilbery* (1842) 10 W. 1, applies to a solicitor representing a co. in an action, and it applies to a revocation of authority by the dissolution of a co. as well as the death of an individual. *SALTON v. NEW PARTNERSHIP CYCLE CO.* — *Stirling J.*

**[1899] W. N. 213; [1900] 1 Ch. 43**

such documents by solicitor to stamp. — *Unstamped documents—Under-*

— *is always a COMPANY.* 200.

*separ-* of action—Partnership, retainer by — *Dormant partners—Liability—Costs incurred after dissolution of partnership—Partnership Act*, 1890 (53 & 54 Vict. c. 39), s. 17, sub-s. 2; s. 36, sub-s. 3.

The active partner in a firm consisting of himself and two dormant partners retained a solicitor to conduct an action for the recovery of

**SOLICITOR (Liability)—continued.**

a debt due to the firm. While the action was pending, the partnership was dissolved, and the dormant partners retired from the business. No notice of the dissolution was given to the solicitor, who did not know of the existence of the dormant partners, nor did the dormant partners do anything by way of withdrawing the retainer:—

*Held*, that the dormant partners were liable to the solicitor in respect of costs in the action incurred subsequently to the dissolution of partnership. *COURT v. BERLIN*

**C. A. [1897] 2 Q. B. 396**

— *Indemnify co-trustee, Liability to—Breach of trust.*

*See TRUSTEE—Breach of Trust.* 32, 38, 39.

— *Investment—Contributory mortgage—Breach of trust.*

*See TRUSTEE—Breach of Trust.* 39.

**91. — Omission to give notice—Absence of material witness.**

Where solicitors omit to give notice that the deft. who was a material witness, and who had for some time been seriously ill, would not be able to attend, *held*, that they could be ordered personally to pay the costs of the day either under Order LXV., r. 11, or under the general jurisdiction of the Court over solicitors. *SHORTER v. TOD-HEATLY*

**Kekewich J. [1894] W. N. 21**

— *Partners, For acts of.*

*See Cases under SOLICITOR—Partnership.*

— *Replacement—Fund in court—Payment out to wrong person.*

*See PRINCIPAL AND AGENT.* 13, 14.

**92. — Statute-barred debt, Payment of.**

In an administration action a claim against the estate was adjudged to be statute-barred. Subsequently an executor, without the consent of his co-executor, paid it on the advice and through the hands of a solicitor:—

*Held*, that the solicitor was liable to repay the amount to the estate. *MIDGLEY v. MIDGLEY*

**C. A. [1893] 3 Ch. 282**

Referred to by *Kekewich J. Budgett v. Budgett*, [1895] 1 Ch. 202, 215.

**93. — Suppression of material facts—Ex parte injunction.**

A solicitor obtained an ex parte injunction giving the usual undertaking in damages. The undertaking was valueless, there being a receiving order against the client at the instance of the solicitor himself, but the Court was not informed of the fact:—

*Held*, that the solicitor had committed a serious error of judgment for which he was personally liable both in damages and costs. *SCHMITTEN v. FAULES* — *Chitty J.* [1893] W. N. 64

**94. — Trustee—Solicitor not on record.**

A solicitor trustee introduced some trust business to a London firm on the terms that he should receive a commission. The London firm acted as solicitors for the trust in certain actions, and paid the solicitor trustee his commission on the profit costs:—

*Held*, that as the solicitor trustee was not the solicitor on the record, this commission was profit

**SOLICITOR (Liability)—continued.**

made directly or indirectly through his office of trustee for which he was accountable to the trust estate. *VIPONT v. BUTLER*

**Chitty J. [1893] W. N. 64**

**95. — Trustee de son tort—Mortgage—Insufficiency of security.**

Trust money was advanced on security of a mortgage which turned out to be insufficient, and the same solicitor acted for both parties, the facts of his having been employed to carry out the transaction, and of the money having passed through his bank :—

*Held*, not to make him liable for the insufficiency of the security. **BRINDSEN v. WILLIAMS**

**North J. [1894] 3 Ch. 185**

**96. — Undertaking—Enforcement—Terms of stay of execution.**

Where an order is made for stay of execution pending appeal, the applicant to pay the taxed costs of the successful party to his solicitor on his personal undertaking to repay them should the appeal be successful, the undertaking may be enforced by the Court in a summary manner, although the Court to which the appeal was had stayed execution pending a further appeal. **SWYNY v. HARLAND** - **C. A. [1894] 1 Q. B. 707**

**Lien.**

**97. — Administration action—Documents in solicitor's possession before action—Third parties—Right to production.**

A solicitor having a lien on documents in his possession belonging to his client, party to an action, may not embarrass proceedings taken in the action by a third party by refusing to produce the documents if wanted by that third party for the purpose of his proceedings, even though the documents may have come into the solicitor's possession before the commencement of the action.

At the time of the death of a testator his solicitor, C., had in his possession certain documents belonging to the deceased and on which he, C., had the ordinary solicitor's lien. Subsequently the executors of the deceased employed C. to institute an action for the administration of the estate, and the usual administration judgment was pronounced. The action after judgment not being prosecuted with due diligence, conduct of the proceedings was, by order, given to a creditor, the estate being insolvent. The executors however remained parties and C. continued to act for them :—

*Held*, that, notwithstanding his lien, C. was bound to produce to the creditor the documents in his, C.'s, possession, to enable the creditor to take steps for getting in a mortgage debt due to the estate.

The principles and extent of a solicitor's lien discussed. *In re HAWKES. ACKERMAN v. LOCKHART* - **C. A. [1898] 2 Ch. 1**

**98. — Change of solicitors—Partition action.**

On change of solicitors in a partition action, the Court followed the rule applicable to administration actions, and ordered transfer to the new solicitors of all documents come to the old solicitors' hands since the commencement, and for the purposes of the action the transfer to be subject

**SOLICITOR (Lien)—continued.**

to the lien of any of the old solicitors. **BODEN v. HENSBY** - **North J. [1892] 1 Ch. 101**

Commented upon by C. A. *In re Hawkes*, [1898] 2 Ch. 1, 11.

— Charging order.

See Cases under **SOLICITOR—Charging Order.**

**99. — Compromise—Action—Infants—Judgment—Lien.**

At the hearing of the appeal in this case the solicitor withdrew his claim to a charging order under the Solicitors Act, and relied only on his common law lien upon the interests of his clients, the infant plts., in the trust funds. The question thus raised was whether a solicitor in assenting to a judgment compromise on behalf of infants thereby lost his right to the ordinary lien he would have had for his costs if the parties to the compromise had been sui juris :—

*Held*, that there was nothing in the judgment to deprive the solicitor of his ordinary common law lien for costs. The result of the compromise being sanctioned by the Court on behalf of the infants was to place them in the same position, as regarded their solicitor's lien for his costs, as if the compromise had been entered into by persons who were sui juris. It was unnecessary to insert in the judgment any express reservation to the solicitor of the lien to which he was by law entitled; he could not be deprived of that lien without his express consent. There must be a declaration that the solicitor had a lien upon the shares and interests of the plts. in the trust funds. The solicitor's costs on appeal and below would be added to his lien. Appeal allowed. *In re WRIGHT'S SETTLEMENT. WRIGHT v. SANDERSON. In re SANDERSON'S SETTLEMENT. WRIGHT v. SANDERSON* - **C. A. [1900] W. N. 261**

**100. — Compromise by party without knowledge of solicitor — Costs—Taxation—Practice—Affidavits—Applicant reading respondent's affidavits before his own.**

Parties to litigation are at liberty to compromise without the intervention of their solicitors, provided they do so honestly and without any intention to cheat the solicitors of their costs.

P. having retained M. as his solicitor for the taxation of his bill of costs delivered by J., P.'s former solicitor, obtained the common order for taxation. Before the taxation was completed, J., without M.'s knowledge, and with the intention of stopping the taxation and so defeating M.'s lien for his costs, paid P., who was in distressed circumstances, a small sum in settlement of the taxation, which consequently dropped :—

*Held*, that M. was entitled to an order against J. for taxation and payment of the costs incurred by P. to him, M., up to the time when the taxation against J. dropped.

*Price v. Crouch*, (1891) 60 L. J. (Q.B.) 767 followed.

An applicant is at liberty to read the respondent's affidavits notwithstanding the objection, that on his own affidavits no case is made requiring an answer. *In re MARGETSON AND JONES*

**Kekewich J. [1897] 2 Ch. 314**

**SOLICITOR (Lien)—continued.**

101. — *Delivery of papers pending taxation, Order for—Right of solicitor to undertaking by client to return—Costs—Taxation.*

Where a client had obtained a common order to tax his solicitor's bill, and, having tendered the full amount, claimed delivery of his papers free from the solicitor's lien :—

*Held*, that the solicitor was entitled to an undertaking by the client to return the papers in the event of a further sum being found due upon taxation and remaining unpaid. *In re HANBURY, WHITTING & NICHOLSON*

**Stirling J. [1896] W. N. 172 (10)**

102. — *Extent of lien — Waiver — Taking security.*

A solicitor's lien only extends to disbursements such as taxable costs, charges, and expenses which the taxing master can moderate, but does not include ordinary advances on account of income which the solicitor is receiving for the client. The question whether a solicitor waives his lien by taking a security depends on the intention of the parties to be gathered from the circumstances of the case. But *prima facie* where a solicitor takes from his client security for costs without explaining that he intended to reserve his lien the lien is waived.

(A) *In re TAYLOR, STILEMAN & UNDERWOOD*  
**C. A. [1891] 1 Ch. 590**

(B) *BISSELL v. BRADFORD AND DISTRICT TRAMWAYS COMPANY* (No. 2) **C. A. [1893] W. N. 44**

(C) *GROOM v. CHEESEWRIGHT*  
**Kekewich J. [1895] 1 Ch. 730**

(D) *In re DOUGLAS NORMAN & Co.*  
**North J. [1898] 1 Ch. 199**

103. — *Marriage settlement—Costs—Trustee.*

A marriage settlement was prepared by the husband's solicitors, a member of whose firm was one of the trustees. The settlement was kept at the solicitor's office. The husband became bankrupt, being indebted to the solicitors for costs, stamps, &c., incurred in relation to the settlement :—

*Held*, that the solicitors could not claim a lien on the deed of settlement. *In re LAWRENCE. BOWKER v. AUSTIN* **Kekewich J. [1894] 1 Ch. 556**

104. — *Partnership.*

A farm was conveyed to C., a member of a firm of solicitors, as trustee for G. The conveyance did not disclose the trust. C. retired from the firm in 1883, but retained the deed and other documents of G. in his possession. C. gave the other documents to a mortgagee of G. G. died, and C. claimed a sum for costs. 100*l.* was allowed, the rest was held to be statute-barred. C. claimed a lien on the deed for the balance. The costs in respect of the purchase of the farm were included in the 100*l.* C. had received :—

*Held*, that the respondent had no lien on G.'s deeds in his possession in respect of work done by him as a member of his late firm. *In re GOUGH. LLOYD v. GOUGH* **North J. [1894] W. N. 76**

— *Patent—Costs—Taking out letters patent.*

*See* **BANKRUPTCY—Undischarged Bankrupt.** 257.

**SOLICITOR (Lien)—continued.**

105. — *Priority as between successive solicitors—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

The principle that the solicitor last employed in an action is entitled to a charge for costs under s. 28 of the Solicitors Act, 1860, in priority to his predecessor, is unaffected by *North v. Stewart* (15 App. Cas. 452).

*Seem*, where a receiver of rents has been appointed in an action and a new receiver is afterwards appointed in his place, the solicitor by whom such last-mentioned appointment was obtained is entitled to priority of lien against any rents subsequently received. *In re KNIGHT. KNIGHT v. GARDNER*

**Kekewich J. [1892] 2 Ch. 368**

106. — *Priority over debentures.*

A solicitor's lien prevails over the rights of debenture-holders and their receiver, so long as the debentures continue to be a "floating security" even where the debentures stipulate that the co. should not be at liberty to create any mortgage or charge in priority to the debentures, for such lien is not a charge or not a charge created by the co. but by the general law. *BRUNTON v. ELECTRICAL ENGINEERING CORPORATION*

**Kekewich J. [1892] 1 Ch. 434**

Referred to by *Romer J. Robson v. Smith*, [1895] 2 Ch. 118, 126.

— *Production of documents—Solicitor's lien.*

*See* **DISCOVERY.** 41.

— *Set-off—Solicitor's lien—Independent proceedings.*

*See* **COSTS—Set-off.** 64.

— *Solicitor's lien for costs—Taking out letters patent.*

*See* **BANKRUPTCY—Undischarged Bankrupt.** 257.

107. — *Title-deeds held for mortgagee.*

Where the mortgagor has paid to the mortgagee all that is due to him for principal, interest and costs, and the mortgagee has given the mortgagor a release, the mortgagee's solicitor has no right to retain the deeds as against the mortgagor under his lien, for costs for work done relating to the mortgaged property during the mortgage. *In re LLEWELLIN - Chitty J. [1891] 3 Ch. 145*

108. — *Waiver—Lien for costs—Security given by client.*

A client, on retaining a solicitor to negotiate for her a loan, upon the security of a reversionary interest to which she was entitled, signed a document by which she charged that interest with the payment of the solicitor's costs :—

*Held*, on the authority of *In re Taylor Stileman, and Underwood*, [1891] 1 Ch. 590, that by taking this security the solicitor had waived his right to a lien in respect of his costs upon the documents belonging to the client which were in his possession. *In re DOUGLAS NORMAN & Co.*

**North J. [1898] 1 Ch. 199**

— *Waiver of lien.*

*See* No. 102, above.

**Misconduct.**

**STRIKING OFF THE ROLL AND SUSPENSION FROM PRACTICE.] Power to restore solicitor who**

**SOLICITOR (Misconduct)—continued.**

has been struck off the roll or suspended from practice. See *Solicitors Act*, 1899 (62 & 63 Vict. c. 4).

*Motions and other applications—New rule as to application to strike name of solicitor off the roll.* W. N. 1899 (Aug. 12), p. 255. See *Current Index*, 1899, p. cxxviii.

**109. — Borrowing from client without independent advice.**

The committee of the Incorporated Law Society reported a solicitor to have been guilty of professional misconduct in having borrowed large sums of money from a client, who had just come of age:—

*Held*, that it was a case for the exercise of the disciplinary powers of the Court. *In re A SOLICITOR. Ex parte INCORPORATED LAW SOCIETY* (No. 4) — Div. Ct. [1894] 1 Q. B. 254

**110. — Certificate—Suspension from practice—Registrar of solicitors—Application for certificate—Discretion of registrar to refuse—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 21, 23, 24.**

Application under s. 24 of the Solicitors Act, 1843, for an order directing the Incorporated Law Society as registrar of solicitors to grant a certificate to the applicant authorizing him to practise as a solicitor. On Aug. 3, 1896, the applicant was suspended from practice for two years as from Nov. 3, 1896. After his suspension he became bankrupt, and when he applied for a certificate he was still undischarged. After the period of suspension had expired, he applied to the Incorporated Law Society for a certificate, which was refused on the ground of his position as an undischarged bankrupt:—

*Held*, that the Incorporated Law Society was not bound to grant a certificate, but had a discretion to refuse; and that, as they had refused on the ground that the applicant was an undischarged bankrupt, the Court ought not to make the order applied for under s. 24 of the Solicitors Act, 1843, which authorizes the Court "to make such order in the matter as shall be just." *In re SOLICITORS ACT, 1843* Div. Ct. [1899] W. N. 46

**111. — Colonial Court, Order of—Application to strike off the rolls—Jurisdiction.**

On the hearing of an application to strike the name of a solicitor off the Roll of Solicitors of the Supreme Court, it was proved that an order had been made by the Supreme Court of a colony to strike the name of the solicitor off the roll of solicitors of that Court for misconduct, but no direct evidence of the facts constituting the alleged misconduct was produced before the Div. Ct.:—

*Held*, that in the absence of legal evidence of the alleged misconduct, the Court could not act on the order of the Colonial Court alone, and the application must be refused. *In re A SOLICITOR. Ex parte INCORPORATED LAW SOCIETY*

Div. Ct. [1898] 1 Q. B. 331

*Costs of solicitor not found guilty of professional misconduct. New rule.* R. S. C., Order LII., r. 24. W. N. 1899 (Aug. 12), p. 255. See *Current Index*, 1899, p. cxxviii.

**112. — Default in payment of money—Attach-****SOLICITOR (Misconduct)—continued.**

*ment—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 4, sub-s. 4—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), ss. 9, 10.

Notwithstanding s. 9 of the Bankruptcy Act, 1883, a writ of attachment will issue against a solicitor for default in payment of a sum of money, although the solicitor has become bankrupt since the date of the order for payment. *In re EDYE (A SOLICITOR)*

Chitty J. [1891] W. N. 1

**113. — Default in payment of money—Summary order.**

Where a solicitor has committed a breach of professional duty in failing to pay over money received by him for his client, the Court has disciplinary jurisdiction to make an order for summary payment notwithstanding that the client has already brought an action for the money and recovered judgment. *In re H. A. GREY*

C. A. varying Div. Ct. [1892] 2 Q. B. 440

**114. — Inquiry—Incorporated Law Society—Discretion.**

Where the Incorporated Society on a complaint against a solicitor under s. 13 of the Solicitors Act, 1888, holds that there is no case for him to answer, the Court has discretion not to compel the society to proceed further, (1) as the society has a discretion; (2) as the complainant has an alternative remedy directly before the Court. *REG. v. INCORPORATED LAW SOCIETY*

Div. Ct. [1895] 2 Q. B. 456

See also same Case, C. A. [1896] 1 Q. B. 372.

**115. — Inquiry—Incorporated Law Society—Exoneration—Costs—Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 13.**

On an application against a solicitor under s. 13 of the Solicitors Act, 1888, founded on charges of misconduct, the Incorporated Law Society, after hearing the case, made a report exonerating the solicitor:—

*Held*, that the Court had jurisdiction to order the applicant against the solicitor to pay his costs of the inquiry before the statutory committee. *In re LILLEY* — C. A. [1892] 1 Q. B. 759

**116. — Jurisdiction of committee of Incorporated Law Society—Affidavit disclosing no *prima facie* case—Right of committee to decline to take further proceedings—Solicitors Act, 1888 (51 & 52 Vict. c. 65), ss. 13 and 19.**

Upon an application made under s. 13 of the Solicitors Act, 1888, to the Incorporated Law Society, requiring them to call upon a solicitor to answer allegations of misconduct made in the applicant's affidavit, the committee have a discretion not to proceed further in the matter of the application, if they come to the conclusion that the affidavit discloses no case which the solicitor ought to be called upon to answer. *REG. v. INCORPORATED LAW SOCIETY*

C. A. [1896] 1 Q. B. 327

**117. — Lunatic, Client alleged—Order obtained *ex parte*—Pending petition for inquisition—Suppression by solicitor—Misconduct.**

The decisions in *Hartley v. Gilbert*, (1843) 13 Sim. 596, and *Beall v. Smith*, (1874) L. R. 9 Ch. 85, do not amount to a holding that a solicitor,

**SOLICITOR (Misconduct)—continued.**

who believes his client to be sane, cannot take proceedings in the name of the client if he knows that Lunacy proceedings are pending, but only that in a proper case the Court will, when informed of such proceedings, direct a stay pending the completion of the Lunacy inquiry. A solicitor believing his client to be of sound mind, obtained an order for her on an ex parte application without disclosing the fact that a petition in Lunacy was pending against her. She was subsequently found to be of unsound mind. Upon an application to discharge the order:—

*Held*, that the solicitor had not been guilty of such professional misconduct as to make him liable for the costs. *In re GEORGE ARMSTRONG & SONS* - - **Stirling J. [1896] 1 Ch. 536**

Referred to by C. A. *Didisheim v. London and Westminster Bank*, [1900] 2 Ch. 15, 44.

— Misappropriation of trust funds—Interest.  
*See* TRUSTEE. 35.

**118. — Offence not in character of solicitor—Solicitors Act, 1888 (51 & 52 Vict. c. 13).**

A solicitor was summarily convicted of allowing houses belonging to him to be used by his tenants as brothels. The Incorporated Law Society applied to strike his name off the roll:—

*Held*, that a solicitor may be struck off the roll for an offence not in his character of solicitor. Conviction for a criminal offence is *prima facie* ground for striking off, but the Court will exercise a discretion according to the nature of the offence. *In re WEARE*

**C. A. [1893] 2 Q. B. 439**

Referred to by Wright J. *Reg. v. Incorporated Law Society*, [1895] 2 Q. B. 456, 462; C. A. [1896] 1 Q. B. 327.

— Order striking off the roll reversed—Practice.  
*See* GOLD COAST COLONY. 2.

**119. — Permitting unqualified person to use solicitor's name—Striking off roll.**

Sect. 32 of the Solicitors Act, 1843, is imperative and does not give the Court a discretion to inflict on an offending solicitor any less punishment than that of striking him off the roll for the offences in respect of which the Court “shall and may” strike him off, *In re KELLY*

**Div. Ct. [1895] 1 Q. B. 180**

*See* Solicitors Act, 1899 (62 & 63 Vict. c. 4).

**120. — Restoring name to roll.**

Order made for restoration to the roll of solicitors of a person struck off on conviction for obtaining money by false pretences on proof of good character for twelve years, and that he had been put under serious disadvantage at his trial, two previous applications had been refused. *In re BRANDRETH*

**Div. Ct. [1891] W. N. 86**

**121. — Striking off the roll—Condition precedent.**

A preliminary inquiry by the Incorporated Law Society under s. 13 of the Solicitors Act, 1888, is not a condition precedent to an application to strike a solicitor off the roll, as s. 19 preserves

**SOLICITOR (Misconduct)—continued.**

the jurisdiction of the Court to act on its own motion.

(A) *In re WEARE* C. A. [1893] 2 Q. B. 439

(B) *REG. v. INCORPORATED LAW SOCIETY*  
**Div. Ct. [1895] 2 Q. B. 456; C. A. [1896] 1 Q. B. 327**

**Partnership.**

— Breach of trust—Liability of partner.

*See* TRUSTEE—Breach of Trust. 35.

— Dissolution of partnership—Right to use of name of old firm—Liabilities.

*See* PARTNERSHIP. 24.

— Misrepresentation of co-partner—Misappropriation of client's moneys.

*See* PARTNERSHIP. 36.

**122. — Partner—Liability of—Agent—Solicitor becoming constructive trustee.**

It is not within the scope of the implied authority of a solicitor carrying on business in partnership to constitute himself a constructive trustee, and thereby to subject his partner to liability in that character, the partner being ignorant of the dealings by which the constructive trust is established. It having been held by North J. that a solicitor had constituted himself a constructive trustee, and that both he and his partner in business were liable to make good a loss which had resulted from improper investments of the trust funds:—

*Held* (reversing the decision of North J., [1895] 2 Ch. 69), upon the evidence, that in the matters in question the solicitor had acted only in the character of solicitor to the trustees, and that consequently neither he nor his partner were liable as constructive trustees. *MARA v. BROWNE*

**C. A. [1896] 1 Ch. 199**

*See also Wynne v. Tempest*, [1897] 1 Ch. 110, 112.

**123. — Scope of partnership—Negligent investment—Implied retainer.**

Funds subject to the trusts of a settlement were invested on inadequate security by one of a firm of solicitors and a trustee who received payment of costs for the transaction. The trustees were held jointly and severally liable for the loss sustained. The firm was then sued for negligence:—

*Held*, (1) that S. had acted within the scope of his authority as partner and therefore was liable; (2) that the judgment against S. as trustee did not discharge the firm from liability; (3) that an implied retainer of the firm by the trustees was proved; (4) that the liability of the firm extended to the estate of a deceased partner. *BLYTH v. FLADGATE. MORGAN v. BLYTH. SMITH v. BLYTH* -

**Stirling J. [1891] 1 Ch. 337**

Referred to by Byrne J. *In re Turner*, [1897] 1 Ch. 536, 541.

— Scope of partnership—Solicitor—Liability for acts of one partner—Deposit of securities to bearer.

*See* PARTNERSHIP—Liabilities. 39.

**Privilege.**

— Audience, Right of.

*See* COUNTY COURT—Practice. 65.

**SOLICITOR (Privilege)—continued.**

- **Discovery**—Bills of costs—Correspondence.  
See **DISCOVERY**. 36.
- **Discovery**—Charge of fraud.  
See **DISCOVERY**. 31.
- **Communications** between solicitor and client  
— Evasion of statute.  
See **DISCOVERY**. 37.
- **Libel**.  
See **DEFAMATION—Libel**. 24, 25.
- **Managing clerk**, exemption from jury service.  
See **JURY**.
- **Transcript** of shorthand notes of examination under Bankruptcy Acts.  
See **DISCOVERY**. 38.

**Retainer.**

**124. — Agreement to allow third person to conduct defence—Injunction to enforce—Revocation of retainer.**

A. and B. agreed that A. should have sole conduct of an action against B., and that A. should indemnify B. against all costs and damages, and B. retained A.'s solicitor to act for him "in the defence of the action and any appeals therefrom." On an appeal to H. L. being presented in B.'s name, B. wishing to stop the proceedings, withdrew his retainer from A.'s solicitor and took steps to withdraw the appeal:—

*Held*, that A. was entitled to an injunction restraining B. from breaking his agreement to allow A. to conduct the defence and withdrawing the retainer. But under the circumstances the Court took an undertaking from A. to give some further indemnity against extra costs in H. L. **MONTFORTS v. MARSDEN** C. A. [1895] 2 Ch. 11

— **Costs.**

See **SOLICITOR—Costs**. 72—75.

**125. — Partnership, Retainer by—Dormant partners—Costs incurred after dissolution of partnership—Common law action—Entire contract.**

The contract of a solicitor upon a retainer in a common law action is an entire contract to act for his client till the end of the action. Therefore, although there may be reasons which will entitle him to throw up his retainer during the pendency of the action, and nevertheless recover costs in respect of his services, yet he cannot do so at his mere will and pleasure without reason. **UNDERWOOD, SON, & PIPER v. LEWIS**

C. A. [1894] 2 Q. B. 306

**126. — Trust—Administration action.**

An appearance entered on behalf of a sole surviving trustee to an action for the administration of a trust and subsequent proceedings were set aside, on the ground that the action taken by the solicitor who had previously acted in the trust was conducted without the knowledge and authority of the surviving trustee. *In re GREY.* **GREY v. COLES** — North J. [1891] W. N. 201

— **Undue influence.**

See **UNDUE INFLUENCE**. 2, 3.

**Solicitor-Executor.**

See **Cases** under **SOLICITOR—Solicitor-Trustee**.

**SOLICITOR—continued.****Solicitor-Mortgagee.**

See also under **MORTGAGE—Solicitor Mortgagee**.

**127. — Profit costs.**

Though the law as to costs of solicitor mortgagees has been altered by the Mortgagees Legal Costs Act, 1895, s. 3, and though that s. is retrospective, it does not affect judgments of the Court, which were right at the time they were given. **EYRE v. WYNN-MACKENZIE (No. 2)**

C. A. [1896] 1 Ch. 135

But see now Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 2.

**128. — Profit costs.**

A solicitor mortgagee is not entitled to profit costs whether the business is undertaken by the solicitor on behalf of himself solely or on behalf of himself jointly with some one else. *In re DOODY.* **FISHER v. DOODY.** **HIBBERT v. LLOYD**

C. A. [1893] 1 Ch. 129

See *Eyre v. Wynn-Mackenzie.* **Kekewich J.** [1894] 1 Ch. 218.

But his partners, if any, are entitled to a share of such profit costs proportionate to their interest in the partnership.

(A) *In re DOODY.* **FISHER v. DOODY**

**Stirling J.** [1893] 1 Ch. 129

This point did not come before the C.A.

(B) **WELBY v. STILL (No. 2)** **Kekewich J.** [1893] W. N. 91

Rendered obsolete as to costs of solicitor mortgagee by Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 2.

— **Solicitor-mortgagee—Profit costs—Mortgagees Legal Costs Act—Retrospective effect.**  
See **STATUTES—Retrospectively**. 34.

**129. — Profit costs—Partnership.**

Where a bill for costs of a mortgagee is sent in by a firm of which the mortgagee is a member he may shew that by arrangement between himself and his partners he is not to be entitled to any share of profit costs. *In re ROLLIT & SONS*

**Kekewich J.** [1893] W. N. 195

**130. — Profit costs—Partnership.**

A solicitor mortgagee cannot, in the absence of express agreement, charge the mortgagor with any profit costs, either in respect of work done in connection with the mortgaged estate as solicitor to the mortgagor, or of collecting, &c., the income for the mortgagor where the mortgage is of a life interest; but *semble*, a partner of the solicitor mortgagee may receive remuneration for his trouble. A covenant in a mortgage of a life estate to a solicitor mortgagee for payment "of every other sum of money which may hereafter be advanced or paid by the mortgagee to or on account of or become owing to the mortgagee by the mortgagor," does not include profit costs either as solicitor to the mortgagor or as his agent for collecting, &c., the income. For such a covenant is as to profit costs void as clogging the equity of redemption. The Court will allow the mortgagor to surcharge and falsify settled accounts so far as regards such costs, unless the mortgagee can prove that the mortgagor was fully acquainted

**SOLICITOR (Solicitor-Mortgagee)—continued.**

with his legal rights as to such costs. *EYRE v. WYNN-MACKENZIE* - - - *Kekewich J.*  
[1894] 1 Ch. 218

Rendered obsolete as to costs of solicitor mortgagee by Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 2.

**131. — Profit costs—Redemption action.**

A solicitor mortgagee who defends a redemption action for himself is only entitled to costs out of pocket. The objection to the allowance to him of profit costs need not be taken at the hearing, but may be made before the taxing master after judgment in the usual form containing the common order to tax. *STONE v. LICKORISH*

*Stirling J.* [1891] 2 Ch. 363

Referred to by *Stirling J.* *In re Doody*, [1893] 1 Ch. 129, 139.

**Solicitor-Trustee.**

— Breach of trust—New trustees—Liability of retiring trustees—Indemnity.  
*See TRUSTEE—Breach of Trust.* 32.

**132. — Charge for professional services and trouble, Power to.**

A clause held to entitle a solicitor trustee to charge for his trouble as well as for solicitor's business. In the absence of special powers in the will trustees cannot settle the amount payable out of the estate to one of themselves, so as to bind the cestuis que trust and preclude them from investigating the accounts. *In re FISH. BENNETT v. BENNETT* - *C. A.* [1893] 2 Ch. 413

**133. — Professional charges—Opening settled account.**

*S. & S.*, a firm of solicitors, were trustees and executors of a will, under which they were authorized to charge for professional services. They sent an account to the five residuary legatees, and stated that if the legatees would call at their office they would give any explanation they might require. Two items of the account were "to *S. & Co.* for costs relating to obtaining probate," and "paid *S. & S.* costs relating to executorship and counsels' fees and payments made by them." *S. & S.* did not inform the legatees that they were entitled to have a bill of costs delivered, and to have it taxed. The legatees signed a memorandum at the foot of the account, "we have examined and approve of the foregoing account," and executed a release discharging the executors. Nine years after, three of the residuary legatees brought an action to declare the release not binding, and to have a bill of costs delivered and taxed:—

*Held*, that, although it was the duty of *S. & S.* to have informed the legatees that they had a right to have a bill of costs, and to have it taxed, the omission to do so was not a sufficient ground to open a settled account; in order to do so it was necessary to shew that injustice would be done by allowing the account to stand; that excessive charges would be a ground for re-opening; but that no error either of omission or charge having been shewn the action had been rightly dismissed. *In re WEBB. LAMBERT v. STILL* - *C. A.* [1894] 1 Ch. 73

**SOLICITOR (Solicitor-Trustee)—continued.**

— Profit costs—Gift to attesting witness—Codicil—Republication.  
*See WILL—Attestation.* 30.

**134. — Profit costs—Power to charge—Will—Solicitor-executor—Trustee—"Legacy"—Insolvent estate.**

A solicitor who is the sole executor and trustee of a will is not entitled to his profit costs of acting as solicitor to the estate if it turns out to be insolvent, even though the will contains a clause declaring that he should be the solicitor to the estate, and should be allowed to charge for work done as such solicitor; for the clause is in effect a legacy of profit costs to the solicitor, and being bounty he cannot claim it as against creditors.

The rule applies to all professional trustees.

Decision of *Kekewich J.*, [1898] 1 Ch. 297, affirmed. *In re WHITE. PENNELL v. FRANKLIN C. A.* [1898] 2 Ch. 217

**135. — Rendering account of profit costs on summons—Jurisdiction.**

Under an order made on further consideration in an administration action costs were paid to solicitors in the action. They paid over half the profit costs to a solicitor trustee, one of the defendants in the action:—

*Held*, that there was no jurisdiction on summons in the action to order the deft. trustee to pay into court the amount of profit costs paid him. *In re THORPE. VIFONT v. RADCLIFFE*  
*North J.* [1891] 2 Ch. 360

— Trustee solicitor not on record.

*See SOLICITOR—Liability.* 94.

**Undertakings.**

— Breach of undertaking—Committal or attachment—Service of order containing the undertaking.

*See PRACTICE—Undertakings.* 272.

— Salvage—Arrest—Damages—Undertaking by solicitor—Practice.

*See SHIPPING—Salvage.* 247.

— Stamps—Practice.

*See REVENUE—Stamps.* 173.

— Writ—Undertaking by solicitor to enter appearance—Duration.

*See PRACTICE—Undertaking.* 273.

**Unqualified Person.**

**136. — Costs—Business done while uncertificated—Taxation—Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12, sub-s. 1.**

In taxing a solicitor's bill of costs, items relating to business done while the solicitor had not a certificate must be disallowed.

*In re Jones*, (1869) L. R. 9 Eq. 63, is superseded. *In re SWEETING*

*North J.* [1898] 1 Ch. 269

**137. — County court—Jurisdiction over—Solicitors Acts, 1843 (6 & 7 Vict. c. 73), ss. 2, 35, 36; 1860 (23 & 24 Vict. c. 127), s. 26—County Courts Acts, 1846 (9 & 10 Vict. c. 95), s. 113; 1888 (51 & 52 Vict. c. 43), s. 162.**

A county court judge has no jurisdiction



**SOLICITOR (Unqualified Person)—continued.**

under s. 26 of the Solicitors Act, 1860, to commit for contempt an unqualified person who has acted as solicitor in a county court action. *REG. v. JUDGE OF BROMPTON COUNTY COURT*

Div. Ct. [1893] 2 Q. B. 195

**138. — Disobedience to order to deliver up money and documents—Attachment.**

The Court has jurisdiction to order an unqualified person to deliver up money and documents, which he has obtained by pretending to be a solicitor, and should he disobey can attach him. *In re HULM & LEWIS*

Div. Ct. [1892] 2 Q. B. 261

**139. — Settling affidavits—Solicitors Acts, 1843 (6 & 7 Vict. c. 73), s. 2; 1860 (23 & 24 Vict. c. 127), s. 26.**

A person employed by a solicitor as a process server does not "act as a solicitor" within s. 2 of the Solicitors Act, 1843, so as to be liable to attachment for contempt under s. 26 of the Solicitors Act, 1860, by merely settling affidavits for persons in his employment relating to service of process. *In re LOUIS. Ex parte INCORPORATED LAW SOCIETY* - Div. Ct. [1891] 1 Q. B. 649

**SOUTH AFRICA.**

See AFRICA.

**SOUTH AUSTRALIA.**

See AUSTRALIA.

**SOVEREIGN—Foreign, immunities of.**

See INTERNATIONAL LAW. 2.

**SPARS—Delivery of into lighters—Bill of lading.**

See SHIPPING—Demurrage. 106.

**SPECIAL CASE.**

See PRACTICE—Special Case.

**SPECIAL CIRCUMSTANCES—Change of venue of election petition.**

See PARLIAMENT. 11.

**— New trial.**

See PRACTICE—New Trial. 57.

**SPECIAL DAMAGE—Libel.**

See DEFAMATION—Libel. 3.

**— Slander.**

See DEFAMATION—Slander. 36.

**SPECIAL OCCUPANT—Devolution of estate—Intestacy.**

See ESTATE PUR AUTRE VIE. 1, 2.

**— Forfeiture.**

See WILL—Name and Arms Clause. 149.

**SPECIALTY DEBT—Priority—Crown debt—Simple contract debt.**

See EXECUTOR. 38.

**— Retainer—Right of.**

See EXECUTOR. 36.

**SPECIFIC DEVISE.**

See WILL—Specific Devise.

**SPECIFIC LEGACY.**

See WILL—Legacy. 136.

**SPECIFIC PERFORMANCE.**

See also Cases under VENDOR AND PURCHASER—Specific Performance.

**SPECIFIC PERFORMANCE—continued.****1. — Agreement by infant and adult—Repudiation.**

An infant and adult who were joint tenants entered into an agreement to grant a lease:—

*Held*, that specific performance by the infant was out of the question, and on the evidence could not be had against the adult; therefore it would be wrong to grant an injunction. *LUMLEY v. RAVENSCROFT*

C. A. revers. Day J. [1895] 1 Q. B. 683

**— Agreement for further lease—Memorandum—Lessee not named.**

See FRAUDS, STATUTE OF. 9.

**2. — Compromise—Material fact not disclosed—Silence.**

Mere silence as regards a material fact, which the one party is not bound to disclose to the other, is not a ground for rescission, or a defence to specific performance.

Where plt.'s solicitor knew the result of proceedings before the chief clerk and arranged a compromise with deft. who was ignorant thereof:—

*Held*, that there was no obligation binding on plt.'s solicitor to disclose what he knew of the result of the proceedings before the chief clerk, and that plt. was entitled to specific performance of the compromise. *TURNER v. GREEN*

Chitty J. [1895] 2 Ch. 205

**3. — Contract for personal service.**

The Court will not grant an injunction which in effect would amount to decreeing specific performance of a contract of personal service.

*WHITWOOD CHEMICAL CO. v. HARDMAN*

C. A. [1891] 2 Ch. 416

Distinguished by Romer J. *Ehrman v. Bartholomer*, [1898] 1 Ch. 671, 673.

**4. — Delay—Sale of reversion—Equitable interest—Vendor and purchaser.**

S., in April, 1886, contracted to sell to K. the equitable reversion in a sum of Consols vested in trustees, the purchase to be completed on June 25, when an assignment was to be executed containing a covenant by the purchaser to pay succession duty and indemnify the vendor and his estate against it. The purchaser was to pay a deposit; and if the purchase was not completed on June 25, he was to pay interest on the balance of his purchase-money. The deposit was paid and the title investigated; when it appeared that the reversion was subject, along with other property, to heavy incumbrances which the vendor could not discharge, and from which the incumbrancers declined to release the reversion. In Jan. 1888, S. became bankrupt, and his property was sold, under which sale R. claimed title to the reversion. K.'s interest under the contract for sale became vested in B. In 1890 S. died. In 1895 the reversion fell into possession. No active step to enforce the contract for sale was taken till March 5, 1896, when B. obtained leave to attend proceedings in an action in which the estate of S. was being administered. He then took out a summons claiming the Consols, upon which summons an order of May 11, 1896, was made directing an inquiry who was entitled to them, with a provision that the applicant's claim

**SPECIFIC PERFORMANCE—continued.**

was to be treated as if he had commenced an action for specific performance on March 5, 1896. The master found that R. was entitled, and Stirling J. affirmed his decision:—

*Held*, that, although the interest to which the contract related was purely equitable, so that the complete property in it could pass without a formal conveyance, B. could only obtain relief on the ground of specific performance; that the proviso in the order of May 11, 1896, was therefore right; that he was barred from relief by delay; and that the appeal ought to be dismissed.

Decision of Stirling J., [1898] 1 Ch. 478, affirmed. **LEVY v. STOGDON C. A. [1899] 1 Ch. 5**

**5. — Fraud—Condition against particular user—Vendor and purchaser.**

Negotiations for sale of a freehold building went off because the vendors required a condition against a particular user. Another person bought free from conditions, being under contract with the first negotiators to resell to them for the purpose objected to. Specific performance at the instance of the purchaser was decreed. **NASH v. DIX**

— **North J. [1898] W. N. 32 (7)**

**6. — Judgment, form of—Purchaser's action—"In case the parties differ."**

Where in a purchaser's action for specific performance judgment is obtained in default of defence, the words "in case the parties differ" should be omitted from the direction that the vendor should execute a proper conveyance to be settled by the judge. The omission of these words does not necessitate a reference to the conveying counsel; it was only necessary that the document should be initiated in chambers. **BAXENDALE v. LUCAS**

**Kekewich J. [1895] W. N. 30**

— **Landlord and tenant.**

*See* **LANDLORD AND TENANT—Specific Performance.**

**7. — Landlord and tenant—Flats—Covenant to appoint porter.**

Specific performance refused of a covenant by landlord to appoint a resident porter to a building let in flats, on the ground that the execution of the contract would involve constant superintendence by the Court.

The decision of A. L. Smith J., [1892] 1 Ch. 427, reversed. **RYAN v. MUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION**

**C. A. [1893] 1 Ch. 116**

Referred to. **Davis v. Foreman**, [1894] 3 Ch. 654, 658.

— **Lease, agreement for—Merger—Life estate—Intention—Benefit.**

*See* **MERGER. 1.**

— **Marriage contract—Promise by wife's father to leave her "a share" of his estate.**

*See* **HUSBAND AND WIFE. 37.**

— **Mineral property—Agreement for lease of undivided moiety.**

*See* **MINES—Leases. 11.**

**8. — Railway—Accommodation works—Transfer to new company—Covenants—Form of judgment.**

Where a ry. has, as part of the consideration

**SPECIFIC PERFORMANCE—continued.**

for land purchased under their Act, entered into covenants to provide accommodation works and to perform personal services, and by a subsequent Act the ry. is dissolved and its undertaking transferred to another ry. "subject to the obligations and liabilities" of the old ry., the landowner can maintain an action against the new ry. for specific performance of all the covenants, including that for personal services. Form of judgment against a ry. for specific performance of covenants considered.

(A) **FORTESCUE v. LOSTWITHIEL AND FOWEY Ry. Co. Kekewich J. [1894] 3 Ch. 621**

(B) **JERSEY (EARL OF) v. GREAT WESTERN Ry. Co. — C. A. [1894] 3 Ch. 625, n.**

**9. — Sale of partnership business under power of attorney.**

Specific performance of agreement for sale of a partnership business granted by the C. A. An objection that certain stipulations in the agreement for sale were in excess of the power of attorney given by the vendor to one of his partners, and under which the agreement was entered into, overruled, the purchaser having waived the stipulations in question. **HAWKLEY v. OUTRAM C. A. revers. Romer J. [1892] 3 Ch. 359**

Distinguished. **Lloyd v. Nowell**, [1895] 2 Ch. 744.

**10. — Shares, Sale of—Voluntary transfer by vendor to third person.**

The rule that a person taking property under a voluntary conveyance cannot hold that property as against a previous purchaser for value from the person by whom the property has been conveyed applies to shares in a co. **GRAHAM v. O'CONNOR Kekewich J. [1895] W. N. 157 (10)**

— **Title defective by reason of recent decision of the Court—Leave to defend notwithstanding special agreement.**

*See* **PRACTICE—Pleading. 161.**

— **Vendor and purchaser.**

*See* **Cases under VENDOR AND PURCHASER—Specific Performance.**

**11. — Vendor and purchaser—No title shown—Damages—Costs of investigating title.**

In a purchaser's action specific performance with an inquiry as to title was decreed; the writ and statement of claim did not ask for damages or "further or other relief." On it appearing that the deft. had no title, the Court, by way of damages, directed the return of the deposit with interest, and gave the purchaser his costs of the action and of the agreement and investigation of title. **PEARL LIFE ASSURANCE CO. v. BUTTENSHAW — Chitty J. [1893] W. N. 123**

**12. — Waiver—Condition precedent.**

A stipulation in a memorandum that the agreement was "subject to the preparation by the vendor's solicitor and completion of a formal contract" cannot be waived by the vendor as being intended for his benefit alone, so as to constitute the rest of the memorandum a final contract enforceable against the purchaser. **LLOYD v. NOWELL Kekewich J. [1895] 2 Ch. 744**

Discussed by **Kekewich J. North v. Percival**, [1898] 2 Ch. 132.

**SPECIFIC PERFORMANCE**—*continued.*

— Letters signed by agent's clerk.

See **FRAUDS, STATUTE OF.** 10.

— Proof of formation of company—Prohibition.

See **LONDON—Mayor's Court.** 46.

**SPEECHES**—Reports of public speeches—Newspaper—"Author."

See **COPYRIGHT.** 34.

**SPIKES**—Spiked wall abutting on highway—Contributory negligence.

See **NUISANCES.** 30.

**SPIRITS**—Admixture of water.

See **ADULTERATION—Analysis.** 6.

**SPOIL**—Trespass by tipping—Way-leave—Measure of damages.

See **TRESPASS.** 3.

**SPORTING**—Right of way for purposes of.

See **SCOTTISH LAW—Servitude.** 38.

— Sporting rights—Lease.

See **Cases under GAME.**

**SPRING ASSIZES.**

*The annual Os. in C. as to the holding of Spring Assizes are published as Statutory Orders and in the Lond. Gaz.*

**SQUARE**—Paving expenses—Open spaces.

See **LONDON—Streets.** 68.

**STABLE**—Inhabited house duty.

See **REVENUE—House Duty.** 64, 65.

— Nuisance—Tramway company—Statutory powers.

See **TRAMWAY.** 13.

— Public health—Sanitary convenience—Workplace—Persons in attendance—Cabmen.

See **LONDON—Sanitary Convenience.** 51.

— Public-house—Licence duty.

See **REVENUE—Licence Duty.** 128.

— Settled Land Acts.

See **SETTLED LAND.** 21.

**STAGE LICENCE**—Grant of—Condition.

See **THEATRE.** 1.

**STAINED GLASS WINDOW.**

See **ECCLESIASTICAL LAW—Faculty.** 42.

**STAIRCASE**—Flats—Liability of landlord to persons using.

See **LANDLORD AND TENANT.** 68.

**STAKEHOLDER AND STAKES.**

See **Cases under GAMING.**

**STALE DEMAND**—Company—Winding-up—Liability of directors.

See **COMPANY—Directors.** 118.

**STALLS**—Choir stalls.

See **ECCLESIASTICAL LAW—Faculty.** 40.

**STAMPS.**

See **REVENUE—Stamps.**

**STANNARIES COURT.**

See **under COUNTY COURT.**

**STATEMENT OF CLAIM.**

See **Cases under PRACTICE.**

**STATION.**

See **RAILWAY—Stations.**

**STATUTE OF FRAUDS.**

See **FRAUDS, STATUTE OF.**

**STATUTES.**

*Generally, col. 2066.*

*Repeals, col. 2069.*

*Retrospectively, col. 2071.*

*Generally.*

See "*Table of Statutes judicially considered,*" during the years 1891—1900 inclusive.

*Short Titles Act, 1896 (59 & 60 Vict. c. 14), facilitates the citation of sundry Acts of Parliament.*

1. — *Breach of statutory duty—Civil remedies.*  
The breach of a statutory duty by a municipal corporation considered.

(A) **COWLEY v. NEWMARKET LOCAL BOARD**

**H. L. (E.) [1892] A. C. 345**

(B) **MUNICIPALITY OF PICTOU v. GELDEBT**

**P. C. [1893] A. C. 524**

(C) **MUNICIPAL COUNCIL OF SYDNEY v. BOURKE**

**P. C. [1895] A. C. 433**

(D) **BRABANT & Co. v. KING**

**P. C. [1895] A. C. 632, 638**

(E) **OLIVER v. HORSHAM LOCAL BOARD**

**C. A. [1894] 1 Q. B. 332**

(F) **SAUNDERS v. HOLBORN DISTRICT BOARD OF WORKS**

**Div. Ct. [1895] 1 Q. B. 64**

2. — *Breach of statutory duty—Criminal remedies.*

An indictment does not lie for breach of a statutory duty where the duty is first created by the statute, and a particular remedy is prescribed in such terms as expressly or impliedly to exclude the remedy by indictment. **Reg. v. HALL** - - **Charles J. [1891] 1 Q. B. 747**

Followed. **Saunders v. Holborn District Board of Works, [1895] 1 Q. B. 64, 69.**

3. — *Codifying statutes.*

In interpreting a statutory code (e.g. the Bills of Exchange Act, 1882, or the Code of Lower Canada), reference to earlier law and cases can only be justified where the provisions of the code are of doubtful import or are couched in language which has previously acquired a technical meaning.

(A) **BANK OF ENGLAND v. VAGLIANO BROTHERS**

**Per Lord Herschell, H. L. (E.) [1891]**

**A. C. 107, at p. 145**

(B) **ROBINSON v. CANADIAN PACIFIC RY. CO.**

**P. C. [1892] A. C. 481**

(C) *In re* **ENGLISH BANK OF THE RIVER PLATE.**

*Ex parte* **BANK OF BRAZIL**

**Chitty J. [1893] 2 Ch. 438, at p. 444**

4. — *Conflict of Statutes—"Annuity"—Construction of Statute.*

A Provisional Order authorizing an electric lighting undertaking came into operation on June 27, 1892. It gave a municipal corporation power to purchase the undertaking compulsorily on terms of issuing or transferring to the undertakers such an amount of the corporation stock "as will produce by the interest thereon an

**STATUTES (Generally)—continued.**

annuity of 5 per cent." on capital properly expended. Another Provisional Order, coming into operation on June 28, 1892, took away a power the corporation had, but had not exercised, to issue irredeemable stock. The statutes confirming the two orders received the Royal assent on June 27, 1892:—

*Held*, (1) that the statutory price for the undertaking was an amount of irredeemable stock; (2) that the corporation were not by implication authorized to issue irredeemable stock for the purpose of purchasing the undertaking; (3) that, therefore, the power to purchase compulsorily was in abeyance so long as the corporation had no power to issue irredeemable stock. *SHEFFIELD CORPORATION v. SHEFFIELD ELECTRIC LIGHT CO.* North J. [1897] W. N. 171; [1898] 1 Ch. 203

**5. — Exception—Act not to apply to seamen —Conspiracy and Protection of Property Act, 1875.**

Sect. 16 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), means only that the punishment prescribed by the Act are not to fall on seamen. The case of an offence against a seaman by a person who is not a seaman is therefore not excluded from the Act by this section. *KENNEDY v. COWIE*

Div. Ct. [1891] 1 Q. B. 771

**— Foreign penal statute—Interpretation of law—Foreign judgment—Distinction between public and private penalties. See INTERNATIONAL LAW. 7.**

**6. — General or local Act.**

Lands in the parish of St. Pancras were purchased as a burial ground for the parish of Bloomsbury under 9 Anne, c. 22, and 10 Anne, c. 11, and on consecration became part of the latter parish. By Order in Council burials were discontinued in the burial ground, and the parish of St. Pancras applied to the county council, under s. 57 of the Local Government Act, 1888, for an order retransferring the burial ground to St. Pancras. The council gave notice of their intention to hold an inquiry. The parish of Bloomsbury applied for a prohibition:—

*Held*, that the section gives a county council power to amend any part of a public and general Act, which is of a local and personal nature, that the clauses of the statute of Anne relating to the burial ground were local and personal, and that the council had power to make an order. *REG. v. LONDON COUNTY COUNCIL*

C. A. [1893] 2 Q. B. 454

**7. — Implied repeal—Exemption from taxes and assessments—Rates—City of London—7 Geo. 3, c. 37, s. 51 (Local)—11 & 12 Vict. c. clxiii., s. 169 (Local).**

Sect. 51 of 7 Geo. 3, c. 37, provided that certain lands in the City of London, reclaimed from the Thames, should vest in the adjoining owners "free from all taxes and assessments whatsoever."

Sect. 169 of 11 & 12 Vict. c. clxiii., provides that a rate for the purposes of the Act shall be made upon every occupier of houses or buildings in the City, "whether such person shall be now

**STATUTES (Generally)—continued.**

liable in respect of such house or building to be assessed to the relief of the poor or be not liable to be assessed to the relief of the poor in respect thereof by reason of such house or building being situate in any precinct or extra-parochial place or otherwise":—

*Held*, that the provisions of the later Act repealed by implication the exemption from rates given by the earlier Act. *STON COLLEGE v. LONDON CORPORATION* Div. Ct. [1900] 2 Q. B. 581

**8. — Inclosure Acts.**

The general canons of construction of Inclosure Acts stated. *BELL v. EARL OF DUDLEY* Chitty J. [1895] 1 Ch. 182

**9. — Interpretation Act, 1889.**

*Quære*, whether the general provisions of the Interpretation Act, 1889, can be read as overriding the special provisions of other subsequent Acts. *In re TITHE ACT, 1891.* *ROBERTS v. POTTS.* *JONES v. COOKE* - [1893] 2 Q. B. 33;

C. A. (Kay L.J. diss.) affirm. Div. Ct. [1894] 1 Q. B. 213

**10. — Mistake.**

Even where it can be proved that the Legislature was deceived as to the existence of a right, and legislated under the effect of the error, the Legislature only and not the Courts can correct the error. *LABRADOR CO. v. REG.*

P. C. [1893] A. C. 104

**11. — Mistake—Agreement with government—Error in confirming law—Mistake rectified.**

Where by an error in a law, confirming an agreement between a ry. co. and a colonial government that certain mortgage bonds should bear interest depending on yearly profits, the bonds were declared to bear interest depending on half-yearly profits, but the bonds were issued in accordance with the agreement, and erroneously certified by the government to be in accordance with the law:—

*Held*, that reading the agreement and the law together, the bonds should be treated as depending on yearly profits and not on half-yearly profits. *JAMAICA KY. CO. v. ATT.-GEN. OF JAMAICA*

P. C. [1893] A. C. 127

**12. — Statutory power—Laying before Parliament.**

Where one section of a statute provides that "all ordinances made by the comms." shall be laid before both Houses of Parliament, a power given to the Comms. to do an act affecting both public and private interests by another section which is silent as to the sanction of Parliament does not give an absolute power, unless the section plainly states that the exercise of the power shall not be subject to review. *MEDCALFE v. COX* - H. L. (Sc.) [1895] A. C. 328

*NOTE*.—For second Appeal, see *Medcalfe v. Cox*, H. L. (Sc.) [1896] A. C. 647.

**13. — Statutory power—Laying before Parliament.**

Where rules were made by the Board of Trade under a statute which provided that they should be laid for forty days before Parliament:—

*Held*, that after the lapse of that period the

**STATUTES (Generally)—continued.**

rules took effect as part of the statute and could not be treated as *ultra vires*. *INSTITUTE OF PATENT AGENTS v. LOCKWOOD*

H. L. (Sc.) [1894] A. C. 347

Referred to. *In re London and General Bank* (No. 1), [1894] W. N. 155.

Principle adopted. *Baker v. Williams*, [1898] 1 Q. B. 23, 25.

**14. — Statutory power—Mode of exercise—Construction of works unauthorized by statute—Injunction.**

Where the promoters of a public undertaking have statutory authority to interfere with private property on certain terms, any person whose property is interfered with has a right to require that the promoters shall comply with the letter of the enactment in his behalf. No Court can remodel arrangements sanctioned, or relax conditions imposed by Act of Parliament. Where a local Act prescribes certain detailed works, the execution of other works, which are "substantially equivalent," is not a compliance with the Act. *HERRON v. RATHMINES AND RATHGAR IMPROVEMENT COMMS.*

H. L. (I.) [1892] A. C. 498

**15. — Statutory works—Lateral deviation.**

Deviation in its ordinary and natural sense and as used in statutes, means shifting the work in its integrity from one site to another which may be deemed more suitable. It does not imply a right not only to alter the situation of the work, but in doing so to dispense with half or two-thirds of it. *HERRON v. RATHMINES AND RATHGAR IMPROVEMENT COMMS.*

H. L. (I.) [1892] A. C. 498

**16. — Surplusage.**

Under s. 65 of the County Courts Act, 1888, a judge in chambers has power to transfer certain actions for trial in the county court "in which the action might have been commenced or in any court convenient thereto":—

*Held*, that the word "thereto" was meaningless and should be rejected, and the phrase read as "convenient to the parties."

Decision of Div. Ct., [1892] 1 Q. B. 99, affirmed. *BURKILL v. THOMAS*

C. A. [1892] 1 Q. B. 312

**17. — Time—Computation.**

Where a criminal statute enacts that proceedings are to be taken within a limited time after the commission of an offence:—

*Held*, that the day on which the offence was committed was not to be reckoned in computing the time. *RADCLIFFE v. BARTHOLOMEW*

Div. Ct. [1892] 1 Q. B. 161

**18. — Title of an Act of Parliament is to be read as part of the enactments: per C. A. FIELDEN v. MORLEY CORPORATION**

[1899] 1 Ch. 1; H. L. (E.) [1900] A. C. 133

**Repeals.**

**19. — Implied repeal—County Courts Acts.**

Sect. 120 of the County Courts Act, 1888, impliedly repeals ss. 26 and 31 of the County Courts Admiralty Jurisdiction Act, 1868.

(A) *THE "EDEN"* - [1892] P. 67

**STATUTES (Repeals)—continued.**

(B) *NEPTUNE STEAM NAVIGATION Co. v. SOLATER. THE "DELANO"*

C. A. [1895] P. 40

(C) *THE "TYNWALL"* - [1895] P. 142, 147

(D) *THE "THEODORA"* [1897] P. 279, 284

**20. — Implied repeal—Judicature Acts.**

The Judicature Act and Rules do not overrule the provisions of special statutes granting special costs in particular cases. *REEVE v. GIBSON* - - - C. A. [1891] 1 Q. B. 652

**21. — Implied repeal—Excise Management Act, 1827.**

The provisions of s. 71 of 7 & 8 Geo. 4, c. 53, are not impliedly repealed by ss. 21, 24 of the Inland Revenue Regulation Act, 1890. *DYER v. TULLEY* - - [1894] 2 Q. B. 794

**22. — Implied repeal—Revivor of prior enactments.**

Sect. 10 of the County Courts Act, 1875, impliedly repeals so much of s. 45 of the Judicature Act, 1873, as is inconsistent with it; and although s. 188 of the County Courts Act, 1888, repeals the whole of the Act of 1875, this repeal (sub-s. 5) does not revive any enactment not in force on Jan. 1, 1889. *THE "DART"*

C. A. [1893] P. 33

**23. — Implied repeal—Michael Angelo Taylor's Act.**

(A) Sect. 65 of 57 Geo. 3, c. xxix. (Michael Angelo Taylor's Act), is impliedly repealed by the Metropolitan Streets Acts, 1867 (30 & 31 Vict. c. 134, s. 6, and 31 & 32 Vict. c. 5, s. 1) as to costermongers. *SUMMERS v. HOLBORN BOARD OF WORKS* - Div. Ct. [1893] 1 Q. B. 612

(B) *Contra. KEEF v. ST. MARY'S, NEWINGTON. AUSTIN v. ST. MARY'S, NEWINGTON*

C. A. [1894] 2 Q. B. 524

(C) That section is not impliedly repealed by 18 & 19 Vict. c. 120 (Metropolis Management), s. 119, as to hanging out articles in front of a house. *WYATT v. GEMS*

Div. Ct. [1893] 2 Q. B. 225

**24. — Implied repeal—Sturges Bourne's Act (59 Geo. 3, c. 12), s. 19.**

*Semble*, that s. 19 of Sturges Bourne's Act, by virtue of which owners of small tenements could be made to pay the poor-rate instead of the occupiers, is repealed by implication by the subsequent Assessment Acts. *WEST HAM CHURCHWARDENS v. FOURTH CITY MUTUAL BUILDING SOCIETY*

Div. Ct. [1892] 1 Q. B. 654

**25. — Implied repeal—Trade Union Act, 1871—Nominee of members—Right to sue.**

Sect. 4 of the Trade Union Act, 1871, which provides (sub-s. 3) against legal proceedings being taken to enforce "any agreement for the application of the funds of the trade union (a) to provide benefits for members," is not repealed by 39 & 40 Vict. c. 22, and consequently the nominee of a deceased member cannot bring an action to recover moneys due to the deceased under the rules of the trade union. *CROCKER v. KNIGHT*

C. A. [1892] 1 Q. B. 702

**27. — Saving of existing rights and liabilities—**

**STATUTES (Repeals)—continued.**

*Interpretation Act, 1889* (52 & 53 Vict. c. 63), s. 38.

The effect of the general saving clause (s. 38) of the Interpretation Act, 1889, as to saving of existing rights and liabilities, considered in relation to the effect of the particular saving clause (s. 6) of the Tithe Act, 1891, on former Tithe Acts:—

*Held*, that on the construction of the Act of 1891, and the facts, there was no existing right which fell within s. 38 of the Act of 1889.

(A) *In re* TITHE ACT, 1891. ROBERTS v. POTTS  
Div. Ct. [1893] 2 Q. B. 33; C. A.  
(*Kay* L. J. diss.) affirm. Div. Ct.  
[1894] 1 Q. B. 213

(B) JONES v. COOKE C. A. [1894] 1 Q. B. 213

27. — *Saving—Right accrued.*

The mere right existing at the date of a repealing statute, to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause.  
*ABBOTT v. MINISTER FOR LANDS*

P. C. [1895] A. C. 425

28. — *Statute Law Revision Acts.*

Effect of repeals by Statute Law Revision Acts considered. *HUFFAM v. NORTH STAFFORDSHIRE RY. CO.* — Div. Ct. [1894] 2 Q. B. 821

29. — *Temporary Acts.*

A Turnpike Act, which was to continue for the term of twenty-one years, stopped up certain roads and vested them in A. The Act was continued from time to time, and finally repealed:—

*Held*, that the repeal did not revive the old roads, but that they were discontinued for ever as highways by the Turnpike Act and vested in A., free from any public way whatever. *GWYNNE v. DREWITT* —  
Bomer J. [1894] 2 Ch. 616

**Retrospectivity.**

30. — *Bankruptcy Act, 1883, s. 32.*

Sect. 32 of the Bankruptcy Act, 1883, is not retrospective. *In re* SCHOOL BOARD ELECTION FOR THE PARISH OF PULBOROUGH. *BOURKE v. NUTT* C. A. (*Esher* M.R. diss.) revers. Div. Ct. [1894] 1 Q. B. 725

31. — *Bankruptcy Act, 1890.*

(A) Sect. 25 of the Bankruptcy Act, 1890, is not retrospective as to transmission of accounts; whether at all, *quære*. *In re* NORMAN. *Ex parte* BOARD OF TRADE — C. A. [1893] 2 Q. B. 369

(B) Sect. 26 of the Bankruptcy Act, 1890, is not retrospective. *REG. v. GRIFFITHS*  
C. C. R. [1891] 2 Q. B. 145

32. — *Gaming Act, 1892.*

The Gaming Act, 1892, is not retrospective. *KNIGHT v. LEE* Div. Ct. [1893] 1 Q. B. 41

33. — *Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

Sub-s. 6 of s. 25 of the Judicature Act, 1873 (as to assignment of choses in action), is retrospective. *DIBB v. WALKER*

Chitty J. [1893] 2 Ch. 429

34. — *Mortgagees Legal Costs Act, 1895.*

(A) Though s. 3 is retrospective in its action, it does not affect judgments which were right at the

**STATUTES (Retrospectivity)—continued.**

time when they were given. *EYRE v. WYNN-MACKENZIE* (No. 2) — C. A. [1896] 1 Ch. 135

(B) *DAY v. NELLAND*

C. A. [1900] 2 Ch. 745, 748

35. — *Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39).

Sect. 4 is retrospective. *LANE v. LANE*  
Div. Ct. [1896] P. 133

36. — *Trustee Act, 1893, Amendment Act, 1894.*

Sect. 4 has no retrospective operation so as to exempt trustees from liability for a breach of trust, committed before the passing of the Act, in retaining an investment authorized neither by the instrument of trust nor by the general law. *In re* CHAPMAN. *COOKS v. CHAPMAN*  
*Kekewich* J. [1896] 1 Ch. 323. This case was reversed by C. A. [1896] 2 Ch. 763

*See* Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.

**STATUTES OF LIMITATIONS.**

*See* LIMITATIONS, STATUTES OF.

**STATUTORY RULES AND ORDERS—Validity.**

If a statute gives power to make rules and orders, and enacts that such rules and orders shall have effect as if enacted in the Act, and provides that they shall be laid before Parliament, and that if either house resolves within forty days that any of such rules should be annulled, they shall be annulled, no Court is competent to consider whether rules so made and laid before Parliament and not objected to are *intra vires* or not.

(A) *INSTITUTE OF PATENT AGENTS v. LOOKWOOD* H. L. (Sc.) (*Lord Morris* diss.) [1894] A. C. 347

(B) *In re* LONDON AND GENERAL BANK (No. 1) V. *Williams* J. [1894] W. N. 155

(C) *BAKER v. WILLIAMS*  
Div. Ct. [1898] 1 Q. B. 23, 25

(D) *STAREY v. GRAHAM*  
Div. Ct. [1899] 1 Q. B. 406

**STAY OF INQUIRIES—Practice—Appeal.**

*See* APPEAL. 47.

**STAYING PROCEEDINGS.**

*See* PRACTICE—Staying Proceedings.

**STEAMSHIP**—Receiver with power to manage—Mortgagee's remedies.

*See* RECEIVER—Mortgage. 42.

**STEAM-ROLLER**—Licence—"Used" within the county.

*See* LOCOMOTIVE. 1.

**STEAM-WINCH**—Loading from dock.

*See* MASTER AND SERVANT—Compensation. 11.

**STEP-CHILDREN.**

*See* WILL—Children. 46.

**STEWARDS**—Salvage moneys.

*See* SHIPPING—Salvage. 224.

**STIRPES**—Per capita or per stirpes.

*See* WILL—Children. 45.

**STOCK**—Charging order—Foreclosure—Transfer of Consols.

*See* MORTGAGE—Foreclosure. 31.

**STOCK—continued.**

— Legacy of stock charged by testator in his lifetime.

See **WILL—Charge of Debts, &c.** 32.

— Register of unclaimed stock—Right of uninterested person to inspect.

See **BANK OF ENGLAND.**

— Transfer of stock by local authorities.

See **Local Government (Stock Transfer) Act, 1895 (58 & 59 Vict. c. 32).**

— Trustee Acts—Form of vesting order.

See **Cases under TRUSTEE—Vesting Order.**

**STOCKBROKER.**

See **STOCK EXCHANGE.**

— Commission for placing shares—Sale of assets.

See **COMPANY—Shares.** 269.

**STOCK EXCHANGE—Agreement to share commission and losses in respect of Stock Exchange transactions—Guarantee—Oral agreement—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

S. entered into a verbal agreement with G. that G. should introduce customers to S., who was a member of the Stock Exchange, that S. should pay to G. half the commission received from such customers, and that G. should pay to S. half of any loss incurred through such customers:—

*Held*, that the contract did not constitute a partnership between S. and G., but that it was not a contract to answer for the debt of another within s. 4 of the Statute of Frauds. It was a contract which regulated the terms of G.'s employment, and gave him an interest in the transactions which were carried out for the mutual benefit of S. and G., and that S. was entitled to recover half the losses from G. **SUTTON & Co. v. GREY C. A. [1894] 1 Q. B. 285**

— Authority to stockbrokers is on Stock Exchange terms—Notice to produce.

See **CANADA.** 23.

— Bankruptcy, Title of trustee in, as against official assignee of Stock Exchange—Defaulting broker.

See **BANKRUPTCY—Trustee in Bankruptcy.** 252.

— Clients' securities deposited to secure broker's indebtedness—Appropriation of payments—Rights of owner of deposited securities.

See **BANKER.** 25.

**2. — Continuation account—Death of principal—Contracts for sale and repurchase after death—Liability of stockbroker for loss.**

Where a stockbroker having a continuation account with a client, on the death of the client, instead of closing the account immediately, upon his own authority enters into a fresh continuation and ultimately effects a sale of the securities at a loss, he is liable for the loss so incurred.

*In re OVERWEG.* **HAAS v. DURANT**

**Byrne J. [1899] W. N. 245; [1900] 1 Ch. 209**

**3. — Contract — "Differences" — "Cover" system—Delivery—Acceptance—"If demanded"—Option—Gambling transaction—"Gaming or**

**STOCK EXCHANGE—continued.**

*wagering*"—Nullity—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.

A contract on the "cover" system between two stock and share dealers for "differences" is a contract "by way of gaming or wagering" and therefore void under s. 18 of the Gaming Act, 1845: and it is none the less so where the contract gives the buyer or seller an option to demand delivery or acceptance (as the case may be) of the stocks or shares the subject-matter of the contract.

*Universal Stock Exchange v. Strachan*, [1896]

**A. C. 166**, considered. *In re GIEVE*

**C. A. [1899] W. N. 32 (4); [1899] 1 Q. B. 794**

**4. — Contract note—Omission to send—Right of broker to recover commission.**

A broker who sells or buys stock, on the Stock Exchange, and does not transmit to his principal any stamped contract as provided by s. 17, sub-s. 1, of the Customs and Inland Revenue Act, 1888 (now ss. 52, 53 of the Stamp Act, 1891), can recover commission from his principal on such transactions. **LEAROYD v. BRACKEN C. A. [1894] 1 Q. B. 114**

See now the Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 52, 53, which consolidates the previous Statutes; and the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 7.

**5. — Defaulter—Official assignee—Assignment of assets—Set-off—Rules and regulations of Stock Exchange.**

It is provided by the rules and regulations of the Stock Exchange that two or more members shall be appointed annually by the committee to act as official assignees, whose duty it shall be to obtain from a defaulter on the Stock Exchange his books of account and a statement of the sums owing to and by him and to manage the estate in conformity with the rules, regulations, and usages of the Stock Exchange; and by rule 176 "the assignees shall collect and pay the assets to the credit of their joint account at a banker's, and shall distribute the same as soon as possible":—

*Held*, that the term "the assets" in the above-mentioned rule means all the assets of the defaulter; and that, when the rule is brought into operation, the effect is to create an assignment of the assets of the defaulter to the official assignee.

A member of the Stock Exchange was indebted to the debts. He became a defaulter on the Stock Exchange, and the liquidation of his affairs was undertaken by the plt., as official assignee, under the above-mentioned rules. For the purposes of the liquidation he was authorized by the plt. to sell, and accordingly sold, certain shares standing in his name to the debts, who were not members of the Stock Exchange, but who knew his position and that of the plt. as official assignee. The plt. having sued the debts for the price of the shares:—

*Held*, that the action was maintainable, and that the debts were not entitled to a set off in respect of their debt. **RICHARDSON v. STORMONT, TODD & Co. C. A. [1900] 1 Q. B. 701**

**6. — Gaming and wagering contract—Payment of "differences"—Securities deposited as**

**STOCK EXCHANGE—continued.**

“cover” — “To abide the event” — *Action to recover deposited securities—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.*

Where both parties to contracts for the sale and purchase of stocks intend that no stocks shall be delivered and that “differences” only shall be accounted for, the mere fact that the contracts provide that either party may require completion of the purchase and delivery or receipt (as the case may be) of the stocks, does not prevent them from being contracts by way of gaming and wagering within the Gaming Act, 1845, c. 109, s. 18, and therefore void.

In such transactions securities deposited by one of the parties with the other to secure the payment of “differences” are not deposited “to abide the event” within the meaning of s. 18, and are recoverable by action.

The decision of C. A., [1895] 2 Q. B. 329, affirmed. *UNIVERSAL STOCK EXCHANGE v. STRACHAN* — **H. L. (E.) [1896] A. C. 166**

See also *Strachan v. Universal Stock Exchange (No. 2)*, C. A. [1895] 2 Q. B. 697.

Referred to. *In re Cronmire*, C. A. [1898] 2 Q. B. 383, 395.

Considered. *In re Gieve*, C. A. [1899] 1 Q. B. 794.

**7. — Liability of London stockbroker to country customer—Foreign principal.**

A London stockbroker, on the instruction of a country broker, obtained from the Bank of England a power of attorney to sell stock belonging to X. This power was executed by X., and on the instructions of the country broker, the London broker sold the stock for 970*l.*, and credited the country broker with the proceeds in his account. The balance to the country broker's credit in this account was afterwards paid to answer bills drawn by him on the London broker:—

*Held*, that X. was entitled to recover from the London broker the 970*l.* less brokerage. *CROSSLEY v. MAGNIAC* **Romer J. [1893] 1 Ch. 594**

**8. — Pledge of client's securities by broker—Authority—Liability of bank—“Negotiable securities.”**

Principals left bonds transferable by delivery with their broker, who, in fraud of them, pledged the bonds with others belonging to himself and other principals to secure an advance. The broker became insolvent, and the bank sold the bonds to repay the advance:—

*Held*, that the bank was entitled to retain and realize the bonds, as the bonds were negotiable instruments, and there was nothing to shew the bank that the broker was not dealing with his own securities. *LONDON JOINT STOCK BANK v. SIMMONS* **H. L. (E.) [1892] A. C. 201; revers. C. A. [1891] 1 Ch. 270**

Followed by North J. See next Case.

Referred to. *Thomson v. Clydesdale Bank*, H. L. (Sc.) [1893] A. C. 282, 285, 293.

Referred to by C. A. *Manchester Trust v. Furness*, [1895] 2 Q. B. 539, 545.

**9. — Pledge of client's securities by broker—**

**STOCK EXCHANGE—continued.**

*Negotiable securities—Right of redemption—“Contango” transactions.*

The plt. bought stocks, shares, and bonds through a broker, the broker lending the plt. money to “carry over” when necessary. The broker borrowed money of a bank to pay for the stocks, shares, and bonds, depositing them with the bank as security. Such stocks as required registration were transferred to and registered in the name of trustees for the bank, sometimes by the vendors and sometimes by the plt. himself, for a nominal consideration:—

*Held*, that the plt. could not redeem because (1) the plt. in view of the “contango” system, which was common on the Stock Exchange, had not discharged the onus of shewing that the broker had exceeded his authority; (2) that as to certain “bonds payable to bearer,” which were negotiable securities, there was nothing to put the bank on inquiry; (3) that as to the stocks transferred by the vendors the bank had the legal estate and could not be deprived of it; and (4) as to the stock transferred by the plt. he was estopped from denying the bank's title. *BENTINCK v. LONDON JOINT STOCK BANK*

**North J. [1893] 2 Ch. 120**

**10. — Principal and agent—Broker lumping several orders in one contract—Liability of principal to jobber on default of broker—Stock Exchange Rules, r. 177.**

Deft. employed a firm of brokers on the Stock Exchange to purchase for him shares in a certain undertaking, and instructed them to “carry over” 210 of these shares to the next account. The brokers, having orders from other clients for shares in the same undertaking, purchased by a single contract in their own name 360 of these shares for the next account from the plt., who were jobbers on the Stock Exchange, and they apportioned in their books 210 of these shares to the deft. Before the next settling day the brokers were declared defaulters on the Stock Exchange, and, in accordance with the rules of that body, their transaction with the plt. was closed by the official assignee, the price of the shares being fixed at the price then current. Plts., having ascertained that the brokers were acting for deft. as regarded the 210 shares, tendered those shares to him, and, on his refusal to take them, sold them on the settling day and claimed from deft. the difference between the contract price and the selling price:—

*Held*, that, since the brokers had lumped deft.'s order with the orders of other clients, and had contracted in a single transaction with plts. for the purchase of a larger number of shares than they were authorized to purchase for deft., no such contractual relation existed between plts. and deft. as would support the action.

Effect of rule 177 of the Stock Exchange rules discussed. *BECKHUSON & GIBBS v. HAMBLET* **Kennedy J. [1900] 2 Q. B. 18**

Dictum in, followed and approved by *Mathew J. Anderson & Co. v. Beard*, [1900] 2 Q. B. 260.

**11. — Principal and agent—Default of broker—Liability of client to jobber—Privacy of contract.**

The deft. employed a broker to purchase for



**STOCK EXCHANGE**—*continued.*

him certain shares on the Stock Exchange, and afterwards directed him to "carry over" the shares to the next account. The broker, in accordance with the regulations of the Stock Exchange, purchased the shares in his own name from the plts., who were jobbers on the Stock Exchange, and afterwards carried over with them the same shares. The deft.'s name was not disclosed. Before the next settling day the broker was declared a defaulter on the Stock Exchange, and in accordance with the rules of that body his contract with the plts. was closed, and the plts. took back the shares at a price fixed by the official assignee of the Stock Exchange and known as the "hammer price." The plts. having ascertained that the broker was acting for the deft. in this transaction called upon him to take up the shares. He declined to accept any responsibility for them; and the plts. thereupon at once sold the shares for the best price then obtainable, and sued the deft. for the difference between the price at which the shares had been carried over and that at which they had sold them:—

*Held*, that the deft. was liable for this amount, and not merely for the difference between the price at which the shares were carried over and the "hammer price."

Dictum of Kennedy J. in *Beckhuson and Gibbs v. Hamblet*, [1900] 2 Q. B. 18, followed and approved. **ANDERSON & Co. v. BREAD**

**Mathew J.** [1900] 2 Q. B. 260

— Principal and broker.—Gaming.

*See CANADA.* 54.

**12.** — *Stockbroker paying client's money into his own account.*

When a broker or other agent entrusted with the possession and apparent ownership of money pays it away in the ordinary course of business for onerous consideration, a transaction which is fraudulent as between the agent and his employer will bind the latter unless he can shew that the recipient of the money did not act in good faith. Trustees of bank shares instructed a stockbroker to sell them and deposit the proceeds in certain colonial banks. He sold the shares to another stockbroker, and received in the ordinary course a cheque for the price drawn in his own favour. This cheque he paid into his own bank account, then overdrawn. The bank knew the cheque to be proceeds of a sale of shares, but did not know nor inquire in what capacity the broker received it:—

*Held*, affirming the decision of Ct. of Sess., (1891), 18 R. 751, that the bank were entitled to retain the proceeds of the cheque as against the debt due to them by the broker. **THOMSON v. CLYDESDALE BANK** **H. L. (Sc.)** [1893] A. C. 282

**13.** — *Syndicate—Speculative transactions in shares—Authority of manager.*

A. was a member of a syndicate formed to buy and sell shares as a speculation. The syndicate bought from and sold to other associations of which A. was not a member, but some of his associates were:—

*Held*, that such dealings were not necessarily beyond the authority of the manager; which authority, under the circumstances, was not

**STOCK EXCHANGE**—*continued.*

limited to operations in the open market. **LAUGHTON v. GRIFFIN** **P. C.** [1895] A. C. 104

**14.** — *Transactions whether gaming.*

Art. 1927 of the Quebec Civil Code does not differ substantially from the Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18, and renders null and void all contracts by way of gaming and wagering. Contracts made by a broker employed to make actual contracts of purchase and sale, in each case completed by delivery and payment, on behalf of a principal whose object was not investment but speculation, are not gaming contracts within the meaning of the Code. **FORGET v. OSTIGNY** **P. C.** [1895] A. C. 318

**STOP-COCK.**

*See WATER*—Supply. 16.

**STOP ORDER.**

*See PRACTICE*—Stop Order.

— After-acquired property of bankrupt—Priority  
— Assignment by bankrupt.

*See BANKRUPTCY.* 256.

**STRAITS SETTLEMENTS.**

Application of Colonial Probates Act, 1892.

*See PROBATE*—Colonial Probates Act, 1892.

**Death Duties.**

*See Cases under REVENUE*—Estate Duty.

**Extradition.**

*See EXTRADITION.*

**STRANDING**—Marine insurance.

*See INSURANCE*—Marine. 58, 66.

— Stranded steamer — Damage to engines — General average.

*See SHIPPING*—Average. 13.

— Subsequent destruction by fire.

*See INSURANCE*—Marine. 48.

— Towage—Duty of harbour authority.

*See SHIPPING*—Harbour. 156.

— Towage—Salvage—Contributory negligence.

*See SHIPPING*—Salvage. 246.

**STREAM.**

*See Cases under WATER.*

**STREET MUSICIAN**—Non-payment of fine—Imprisonment for longer time than fixed for original offence.

*See MUSIC AND DANCING.* 5.

— Right of householder to order street musician to depart.

*See MUSIC AND DANCING.* 6.

**STREET REFUSE**—Removal of—Scavenging—Snow—Liability to action.

*See LONDON*—Removal of Refuse.

**STREETS—STREETS AND BUILDINGS.**

**NOTE.**—*The cases under this heading relate only to places outside the County of London. As to London—*

*See LONDON*—Buildings.

**LONDON**—Streets.

*In General*, col. 2079.

*Buildings Generally*, col. 2080.

**STREETS—STREETS AND BUILDINGS—contd.***Building Plans*, col. 2081.*Footways*, col. 2082.*Lighting*, col. 2082.*New Streets*, col. 2083.*Paving, &c., Expenses*, col. 2085.*Private Streets*, col. 2089.*Profane or Obscene Language*, col. 2091.*Projecting Signs*, col. 2091.**In General.**

— Faculty—Grant of, for use as public street of portion of consecrated cemetery or churchyard closed for burials.

*See ECCLESIASTICAL LAW—Faculty.* 31.

— Highways.

*See HIGHWAY.*

— New street.

*See STREETS—New Street.*

— Obstructed road—Penalty—Owner.

*See RAILWAY—Roads and Streets.* 57.

— Obstructing street.

*See Cases under HIGHWAY—Obstruction. LONDON—Streets.* 86—89.

— Obstruction—Tramways—Snow and Salt.

*See NUISANCES.* 29.

— Paving, &c., expenses.

*See STREETS—Paving, &c., Expenses.*

— Private streets.

*See STREETS—Private Streets.*

— Projecting signs.

*See STREETS—Projecting Signs.*

— Railway companies.

*See RAILWAY—Roads and Streets.*

— Sewering streets.

*See LONDON—Sewers. SEWERS.*

1. — *Subsoil*—"Street"—Urban authority—Vesting of "street" in urban authority—*Subsoil*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 39, 149.

The Public Health Act, 1875, which by s. 149 vests certain streets in the urban authority, does not vest the subsoil.

Therefore where a local Act authorized the urban authority to erect and maintain "in any street or public place, or on land belonging to them or under their control," lavatories for the use of the public:—

*Held*, that the urban authority had no power to excavate the soil and erect lavatories below the surface of a street which had vested in them within the meaning of the Public Health Act, 1875.

Decision of C. A., [1894] 2 Q. B. 867, affirmed. *TUNBRIDGE WELLS CORPORATION v. BAIRD*

**H. L. (E.) [1896] A. C. 434**

Referred to by C. A. *Battersea Vestry v. County of London and Brush Provincial Electric Lighting Co.*, [1899] 1 Ch. 474, 482.

— Telephone wires—Illegal stretching of, across public streets—Powers of local authority—Removal of wires.

*See TELEPHONE.* 2.**STREETS — STREETS AND BUILDINGS (In General)—continued.**

— Water supply.

*See WATER—Supply.* 17—19.

— Way, Right of.

*See WAY, RIGHT OF.*

— Wires—Right to excavate—Power to lay wires underground.

*See CANADA.* 63.**Buildings Generally.**

— Ancient lights—Prescription—Greenhouse—Injunction.

*See LIGHT AND AIR.* 9.

2. — *Building line*—"Front main wall"—"In the same street"—Public Health Act, 1875 (38 & 39 Vict. c. 35), s. 156—Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3.

In laying down what is the "front main wall" of a house or building with a view of fixing the building line, under s. 3 of the Public Health (Buildings in Streets) Act, 1888, the building must be looked at as a whole—its character, its position, its distance from any house which is being erected or brought forward in alleged contravention of the Act, and a particular wing or projection must not be selected as the front main wall. Two buildings are not necessarily in the same street within s. 3, because one faces the same road or street, or a continuation thereof as the other. *ATT.-GEN. v. EDWARDS*

**Romer J. [1891] 1 Ch. 194**

3. — *Building line*—Taking down house—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 155.

The owner of a house took out the front wall of the ground and first floor in order to turn the two lower floors into one shop. The second floor was undisturbed, but was shored up; the shoring was replaced by girders and brick piers. After the piers and girders had been erected, the urban authority prescribed a building line, under s. 155 of the Public Health Act, 1875, and brought an action to restrain the owner from building in front of it:—

*Held*, by Kekewich J., that the house had been substantially taken down, but that the fixing of the building line was too late:

*Held*, by the C. A., that neither the house nor its front had been taken down within the section, and that the power to fix a building line had not arisen. *ATT.-GEN. v. HATCH C. A. [1893] 3 Ch. 36*

— In Scotland.

*See BUILDING.* 1.

4. — *Pulling down buildings*—Mandatory injunction, form of—Practice.

An injunction the effect of which is to require the performance of a certain act, such as the pulling down and removal of buildings, should now be made in a direct mandatory form, and not in the indirect form hitherto in use. *JACKSON v. NORMANBY BRICK CO. C. A. [1899] W. N. 51; [1899] 1 Ch. 438.*

5. — *Regular line of street*—Police and Improvement (Scotland) Act, 1862 (25 & 26 Vict. c. 101), s. 162.

"Regular line of street" in the Police and

**STREETS—STREETS AND BUILDINGS (Buildings Generally)—continued.**

Improvement (Scotland) Act, 1862, s. 162, means the line of the buildings forming the street, and not a line indicating that part of the street which is dedicated to the public as highway. *SCHULZE v. GALASHEL'S CORPORATION*

H. L. (Sc.) [1895] A. C. 666

**Building Plans.****6. — Alteration of deposited plans—By-laws—New building.**

A by-law of a sanitary authority, made under s. 157 of the Public Health Act, 1875, requiring persons intending to build to deposit plans of the intended building, is broken if any substantial alteration is made in the plans. The fact that the alterations themselves break no by-law, and that there is no by-law forbidding alterations in deposited plans, is immaterial. *JAMES v. MASTERS*

Div. Ct. [1893] 1 Q. B. 355

**7. — “Approved” plan—Local authority—Power to dispense with observance of by-laws.**

A local authority, empowered to make by-laws for the regulation of buildings within its jurisdiction, has no power to sanction plans in contravention of by-laws properly made.

An “approved” plan is a plan which has been lawfully approved by a local authority, and not one which has merely received their approval in fact. *YABBICOM v. KING*

Div. Ct. [1899] 1 Q. B. 444

**8. — New buildings—Erection of—By-laws—Validity—Local authority.**

The appellant was convicted under a by-law, made under the Leeds Improvement Acts by the council of the city of Leeds, by which any person erecting any new building without giving twenty-one days' notice in writing of his intention to the corporation, or without having the plans approved of by the corporation, or in anywise contrary to plans and sections which had been approved by the corporation, was made liable to a penalty. It was not shewn whether or not the buildings erected by the appellant complied with the Leeds Improvement Acts. These Acts gave a right of appeal to quarter sessions from any determination of the corporation under the Acts:—

*Held*, that, having regard to the special provisions of the Acts, the by-law was reasonable and valid, and the appellant was rightly convicted. *COOK v. HAINSWORTH*

[1896] 2 Q. B. 85

Referred to. *Smith v. Chorley District Council*, [1897] 1 Q. B. 532, 535; C. A. [1897] 1 Q. B. 678.

**9. — Refusal to approve building plans—Action of mandamus—Prerogative writ.**

Where a local authority have, in good faith, refused to pass building plans, on the ground that the erection of the proposed houses would amount to the laying out a new street of a width which is insufficient under their by-laws, no action will lie for a mandamus to compel them to approve the plans.

Judgment of *Kennedy J.*, [1897] 1 Q. B. 532, affirmed. *SMITH v. CHORLEY RURAL COUNCIL*

G. A. [1897] 1 Q. B. 678

**STREETS—STREETS AND BUILDINGS—contd.****Footways.****10. — Main road—County borough—Frontagers—Local Act—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11.**

A local Act passed in 1871 gave power to the corporation of a municipal borough to order that in any street (whether or not a highway repairable by the inhabitants at large) footways should be made by the frontagers of such form, size, and materials as the corporation should direct, and provided that if the frontagers made default in the execution of the work the corporation might cause the work to be executed and recover the expense incurred in respect thereof from the frontagers:—

*Held*, that where the municipal borough had, by virtue of the Local Government Act, 1888, become a county borough, the provisions of s. 11 of that Act had not the effect of repealing the provisions of the local Act as regards streets which were main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878. *LODGE v. HUDDERSFIELD CORPORATION*

Div. Ct. [1898] 1 Q. B. 847

— Paving—Apportionment.

See **STREETS—Private Streets.** 35.

**Lighting.****11. — Electric lighting—Urban authority, powers of—Street—“Area of user”—Trespass—Injunction—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149, 161.**

An action was brought to restrain the deft., who claimed as owner of the subsoil of half the roadway of a street vested in the p'ts., from interfering with his poles and electric wires:—

*Held*, that assuming the deft. was owner of half the soil, yet the road being a “street” within s. 141 of the Public Health Act, 1875, the local board were entitled to more than the surface, and had further an “area of user” necessary for the exercise of their statutory powers, e.g., of lighting their district. The restrictions in the sections subsequent to s. 161 as to lighting by other means than gas are only intended to prevent an urban authority from invading the regulated monopoly of any gas co. in its district. *FAREHAM LOCAL BOARD AND FAREHAM ELECTRIC LIGHT CO. v. SMITH Chitty J.* [1891] W. N. 76

**12. — Lighting and watching rate—Coal mine—Assessment—“Land”—Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33.**

Coal mines are “property (other than land) rateable to the relief of the poor,” and are therefore, under s. 33 of the Lighting and Watching Act, 1833, to be rated at a rate three times greater than land.

Decisions of Div. Ct., [1894] 1 Q. B. 567, and C. A., [1894] 2 Q. B. 11, affirmed. *THURSBY v. BRIERCLIFFE-WITH-EXTWISTLE CHURCHWARDENS*

H. L. (E.) [1895] A. C. 32

**13. — Lighting and watching rate—Recovery—Proof of adoption of Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), ss. 5–15.**

On a summons for non-payment of rates under the Lighting and Watching Act, 1833, the overseers are not obliged to prove that the formalities

**STREETS—STREETS AND BUILDINGS (Lighting)—continued.**

prescribed by the Act for its due adoption have been complied with. *REG. v. REYNOLDS*

Div. Ct. [1893] 2 Q. B. 75

14. — *Lighting rates—Brickfield—"Land"—"Buildings and property other than land"—Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33.*

By 3 & 4 Will. 4, c. 90, s. 33, "owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act" (lighting and watching).

The respondents occupied land, with engine-houses and other buildings upon it, for the purposes of a brickfield, the brick earth being dug from a portion of the land and manufactured into bricks on other portions. All the land and buildings were used exclusively for the business of brickmaking :—

*Held*, that—assuming that the buildings or any of them could not be rated apart from the land as being capable of being put to some other than their present use—the whole property was properly rated as "land" at the lower rate specified in the Act, and not at the higher rate as "buildings" or "property other than land."

*CRAFORD OVERSEERS v. RUTTER*

Div. Ct. [1897] 1 Q. B. 650

**New Streets.**

15. — *Compulsory taking of land—Local authority—Street works—Taking land for the purpose of resale—Statutory powers—Construction.*

Under their Act, a corporation were empowered to make certain street works, and had power to take compulsorily "for the purpose of the street works, the lands shewn on the deposited plans in connection therewith and which they may require for the purposes thereof respectively" :—

*Held*, upon the construction of the Act, that certain lands fronting the new line of street which the corporation desired to take being required, not for the construction of the street works, but merely for the purpose of resale at a profit so as to reduce the cost of the street works, could not be taken compulsorily by the corporation under their statutory powers.

*Galloway v. Mayor, &c., of London*, (1866) L. R. 1 H. L. 34, distinguished.

The decision of North J., [1898] W. N. 170 (13), affirmed. *DONALDSON v. SOUTH SHIELDS CORPORATION* - - C. A. [1899] W. N. 6 (2)

16. — *Laying out—Width—By-laws—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 157.*

G. was lessee of a piece of ground with right of way over an adjoining road fifteen feet wide. G. began to build two houses on his ground. The urban sanitary authority summoned him for laying out a new street less wide than required by their by-laws, made under s. 157 of the Public Health Act, 1875 :—

*Held*, that what G. had done did not amount

**STREETS—STREETS AND BUILDINGS (New Streets)—continued.**

to laying out the road as a new street. *GOZZETT v. MALDON URBAN SANITARY AUTHORITY*

Div. Ct. [1894] 1 Q. B. 327

17. — *Laying out—Width—By-laws—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 157.*

Where the owner of a strip of land by the side of a lane which ran into a road began to build a house fronting to the road, the side of which abutted on the lane, and there was nothing to shew any intention on his part of building other houses along the lane :—

*Held*, that he was not laying out a new street along the lane within the meaning of by-laws with respect to the construction of new streets made under s. 157 of the Public Health Act, 1875. *ST. GEORGE'S LOCAL BOARD v. BALLARD*

C. A. [1895] 1 Q. B. 702

Referred to. *Smith v. Chorley District Council*, [1897] 1 Q. B. 532, 537; C. A. [1897] 1 Q. B. 678.

18. — *Laying out—Width—"Passage"—By-laws—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 157, sub-s. 1.*

Ways communicating with the backs of houses, and used for obtaining access to privies and ash-pits, are passages within s. 4 of the Public Health Act, 1875, and are therefore streets, and an urban authority has power to make by-laws with respect to the width and construction of such ways. *REG. v. GOOLE LOCAL BOARD* - - Div. Ct. [1891] 2 Q. B. 212

— Paving new street—Expenses of—Covenant to bear charges.

*See LANDLORD AND TENANT.* 24.

19. — *Width of street—Local authority—"New street"—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 63.*

*Held*, that the decision of the House of Lords in *Robinson v. Barton-Eccles Local Board*, (1883) 8 App. Cas. 798, as to the meaning of the term "new streets" in s. 157 of the Public Health Act, 1875, governs the construction of the same term in s. 63 of the Towns Improvement Clauses Act, 1847.

A country lane in the neighbourhood of a town, and situate within the district of the urban district council of that town, was defined for the greater part of its length (581 yards) by hedges. On one side of it were buildings, extending for 485 feet along the lane, belonging to brickmakers, who were proposing to erect on the other side of the lane, opposite to their existing buildings, new buildings, which would extend for 233 feet along the lane :—

*Held*, that by the erection of these new buildings the lane between them and the old buildings opposite would become a "new street" within the meaning of s. 63 of the Towns Improvement Clauses Act, 1847, and subject to the provisions of that section as to width.

An interlocutory injunction was accordingly granted to restrain the defendants (the brick-makers) from building so as to make or lay out the lane as a new street less than thirty feet wide. *ATT.-GEN. v. RUFFORD & CO.*

*North J.* [1899] W. N. 8 (3); [1899] 1 Ch. 537

**STREETS—STREETS AND BUILDINGS—contd.****Paving, &c., Expenses.**

20. — *Alteration of width of carriageway and footway—Power of urban authority—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 150.

An urban authority, when paving and making good a street, not being a highway repairable by the inhabitants at large, under s. 150 of the Public Health Act, 1875, has no power to alter the respective widths of the carriageway and footway of the street. *ROBERTSON v. BRISTOL CORPORATION* - C. A. [1900] W. N. 102; [1900] 2 Q. B. 198

21. — *Apportionment—Dispute—Arbitration.*

Where an urban authority has done the paving, sewerage, &c., of a street, the person chargeable having neglected to do so, and the apportioned expense is disputed, either as to amount or otherwise, the dispute must be settled by arbitration, as provided by s. 150 of the Public Health Act, 1875, before the urban authority can bring an action to recover it. *SANDGATE LOCAL BOARD v. KEENE* - C. A. [1892] 1 Q. B. 831

Distinguished by *Wright J. Folkestone Corporation v. Brooks*, [1893] 3 Ch. 22, 28.

Referred to by C. A. *In re Willesden Local Board and Wright*, [1896] 2 Q. B. 412, 416.

22. — *Apportionment—Frontager—Objection—Alteration of scheme—Notice—Justices—Jurisdiction—Discretion—Private Street Works Act, 1892* (55 & 56 Vict. c. 57), ss. 6, 7, 8, 11, 12, 13.

Where a resolution has been passed by an urban authority under s. 6, sub-s. 1, of the Private Street Works Act, 1892, approving the plans, sections, estimates, and provisional apportionments for making up the whole of a street, and the resolution has been published and copies thereof have been served on the frontagers under sub-s. 3, the justices have, on the hearing of an objection by a frontager under s. 7 that part of the street is repairable by the inhabitants at large, jurisdiction under s. 8, sub-s. 1, to amend the resolution, plans, &c., by limiting the scheme to the remaining portion of the street; and the urban authority can then carry out the amended scheme without it being necessary for them to begin their proceedings de novo or to pass a resolution approving the amended scheme.

Where, on the hearing of an objection to the original scheme, the justices have decided upon amending the scheme, the question whether or not, under s. 8, sub-s. 1, they shall adjourn the hearing and direct any further notices to be given, is a matter entirely within their discretion; but where the amendment is of a material character, it is desirable, though not obligatory upon them, that they should adjourn the hearing and direct further notices to be given in order that persons affected by the amended scheme may have an opportunity of being heard.

Decision of *Stirling J.*, [1899] 1 Ch. 168, affirmed. *TWICKENHAM URBAN COUNCIL v. MUNTON* - C. A. [1899] W. N. 103; [1899] 2 Ch. 603

23. — *Apportionment—Frontagers' liability.*

Under s. 150 of the Public Health Act, 1875, an urban sanitary authority has power to require the owner of premises fronting on a street, not

**STREETS—STREETS AND BUILDINGS (Paving, &c., Expenses)—continued.**

being a highway repairable by the inhabitants at large, to pave and channel such street, notwithstanding that it has already been paved and channelled to the satisfaction of such authority.

*BARRY AND CADOXTON LOCAL BOARD v. PARRY*  
Div. Ct. [1895] 2 Q. B. 110

24. — *Apportionment—Frontagers' liability—Notice of objection—Arbitration—Public Health Act, 1875*, s. 150.

Two frontagers gave notice of their objection to the claim of a local authority for apportioned expenses of paving, under s. 150 of the Public Health Act, 1875.

(A) One raised the question of the cost, and the objection appeared to be based on that rather than the apportionment:—

*Held*, that arbitration was necessary before the expenses became a debt due to the local authority, as the corporation, whatever may have been their rights, had in fact treated the notice as a notice of objection to the apportionment, and not merely as an objection to the costs of the works. *FOLKESTONE CORPORATION v. BROOKS*

C. A. [1893] 3 Ch. 22

(B) The other disputed the claim of the local authority in general terms:—

*Held*, that this was a dispute as to the apportionment, and that no debt arose until arbitration had been resorted to. *FOLKESTONE CORPORATION v. LADD*

*Wright J.* [1893] 3 Ch. 22, at p. 36

25. — *Charge upon premises—"Owner"—Sale of premises free from restrictive covenant—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 150, 257.

The owner of land having neglected to comply with a levelling and paving notice, the sanitary authority did the work themselves, and claimed a charge on the land therefor, and that the land should be sold to defray such charge freed from a restrictive covenant to which it was subject, restraining the owners thereof from erecting buildings thereon so as to obstruct the view from adjoining houses:—

*Held*, that there was nothing in the Public Health Act, 1875, which enabled the land to be freed from the covenant. *TENDRING UNION v. DOWTON* C. A. 45 Ch. D. 583; [1891] 3 Ch. 265

Discussed. *Hornsey District Council v. Smith*, [1897] 1 Ch. 843, 851.

26. — *Frontager's liability—Order of Local Government Board declaring road a street.*

An Order of the Loc. Govt. Bd., under s. 276 of the Public Health Act, 1875, declaring a road to be a street is not conclusive that such road is a street. A road not formally dedicated to the public, but which had become a public highway since 1835, *held* to be a street within ss. 4, 150 of the Public Health Act, 1875. *FENWICK v. RURAL SANITARY AUTHORITY OF THE CROYDON UNION* - Div. Ct. [1891] 2 Q. B. 216

27. — *Frontager's liability—Right to dispute liability.*

The owner of premises fronting on a street failed to comply with a notice under s. 150 of the Public Health Act, 1875, to sewer, &c., the street according to his frontage. The urban

**STREETS—STREETS AND BUILDINGS (Paving, &c., Expenses)—continued.**

authority did the work, and a sum was apportioned on the owner by their surveyor. He gave no notice under s. 257 of the Act to dispute the apportionment. On a complaint before justices it appeared that the carriageway of the road was repairable by the inhabitants at large, but that the footpath was not :—

*Held*, that the urban authority had jurisdiction to give the notice and make the apportionment as to the footpath, and as the owner had not disputed the apportionment, he could not at the hearing before the justices set up that he was not bound to pay part of the appointed sum.

**DERBY CORPORATION v. GRUDGINGS**

**Div. Ct. [1894] 2 Q. B. 496**

**28. — Highway repairable by inhabitants at large—Frontagers—Local Act—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 149, 340.**

Where a local Act, passed in 1849, gave power to a municipal corporation to order that any street, whether a public highway or not, should be sufficiently sewered, drained, levelled, flagged, paved, and otherwise completed by the frontagers, and provided that, if they made default in the execution of the work, the corporation might cause the work to be executed and recover the expense incurred in respect thereof from the frontagers :—

*Held*, that the Public Health Act, 1875, s. 149, had not the effect of repealing the provision of the local Act as regards streets which were highways repairable by the inhabitants at large.

**ASHTON-UNDER-LYNE CORPORATION v. PUGH**

**G. A. [1898] 1 Q. B. 45**

Considered by C. A. **Lodge v. Huddersfield Corporation**, [1898] 1 Q. B. 847, 853.

**29. — Making up street—"Owners"—National school—Trustees—Statutory conveyance—Local authority—Recovery of expenses—"Charge"—Enforcing charge—Sale—School Sites Act, 1841 (4 & 5 Vict. c. 38), ss. 6, 10—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 150, 257.**

Under s. 6 of the School Sites Act, 1841, a piece of land was conveyed, in the form given in s. 10, to trustees for ever for the purposes of the Act, as a site for a national school, "and for no other purpose whatever"; and a national school was afterwards erected upon it. The local authority, under s. 150 of the Public Health Act, 1875, made up a street on part of which the school premises abutted, and served the trustees with notice under that Act to pay the apportioned expenses :—

*Held* (affirming Kekewich J.), that the trustees were liable for those expenses as "owners" within the Public Health Act, 1875, and that therefore the expenses were, until recovery thereof, a "charge" upon the premises under s. 257; but (reversing Kekewich J.) that the local authority could not enforce the charge by an order for sale of the school premises, since such an order would be in contravention of the School Sites Act, 1841.

**Bowditch v. Wakefield Local Board**, (1871) L. R. 6 Q. B. 567, followed. **HORNSEY DISTRICT COUNCIL v. SMITH**  
**C. A. [1897] 1 Ch. 843**  
— New street.

*See* **STREETS—New Street.**

**STREETS—STREETS AND BUILDINGS (Paving, &c., Expenses)—continued.**

**30. — Owner of adjoining lands not owner of soil of street—Order by local authority upon owner to execute works—Public Health—Trespass.**

Where an Act of Parliament has imposed upon persons, whose lands abut on a street, duties for the discharge of which it is necessary that they should enter on the street, those duties are imposed irrespective of the circumstance whether those persons are the owners of the soil of the street or not; and acts done in the due discharge of those duties cannot constitute a trespass.

So *held* in a case where the owner of land abutting on a street had been ordered by the local authority, under a section of the Local Improvement Act similar in terms to s. 150 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), to execute paving works upon the street no portion of the soil of which was vested in him. **MAYOR, &c., OF WEST HARTLEPOOL v. ROBINSON**

**Stirling J. [1897] W. N. 12 (7)**

**31. — "Owners"—National school—Trustees—Statutory conveyance—Local authority—Making up road—Recovery of expenses—"Charge"—School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 6—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 257.**

Under s. 6 of the School Sites Act, 1841, a piece of land was conveyed to trustees for ever for the purposes of the Act as a site for a national school, "and for no other purpose whatever" :—

*Held*, that the trustees were "owners" of the school premises within the definition in s. 4 of the Public Health Act, 1875, and as such liable, under s. 257, for the apportioned expenses incurred by the local authority for making up an adjoining road: also that, until payment, such expenses were, under the same section, a "charge" upon the premises, though, as to the mode of enforcing the charge, *quære*.

**Bowditch v. Wakefield Local Board of Health**, (1871) L. R. 6 Q. B. 567, and **Wright v. Ingle**, (1885) 16 Q. B. D. 379, discussed. **HORNSEY DISTRICT COUNCIL v. SMITH** — **Kekewich J. [1896] 2 Ch. 254**

*See also* **Hornsey District Council v. Smith**, C. A. [1897] 1 Ch. 843, No. 29, above.

**32. — "Owner"—Trustee for charitable purposes—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 150, 151, 257.**

(A) A claim by a local authority for expenses for the sewerage, levelling, metalling, &c., of roads can be sustained in respect of property vested, under the authority of Parliament, in a trustee for charitable purposes, even though the property cannot be let by reason of a special condition imposed by Parliament. Such a trustee is the "owner" within s. 4 of the Public Health Act, 1875. *In re* **CHRISTCHURCH INCLOSURE ACT**. **MEYRIK v. ATT.-GEN.**

**Stirling J. [1894] 3 Ch. 209**

Referred to by C. A. **Hornsey District Council v. Smith**, [1897] 1 Ch. 843, 860, No. 29, above.

(B) "Owner" in s. 4 of the Public Health Act, 1875, does not include a person who has the benefit of a covenant restricting the use of premises in respect of which street improvement

**STREETS—STREETS AND BUILDINGS (Paving, &c., Expenses)—continued.**

expenses have been incurred. **TENDRING UNION v. DOWTON** — **C. A. [1891] 3 Ch. 265**

Discussed. *Hornsey District Council v. Smith*, [1897] 1 Ch. 843, 851, No. 29, above.

— Private street.

See **STREETS—Private Streets.**

**33. — Sewering—Notice to sewer and make up—Expenses—“Liability incurred”—Statute—Repeal—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 151, 152—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38, sub-s. 2 (c)—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 21, 25.**

An urban local authority served notice under s. 150 of the Public Health Act, 1875, to sewer and make up a private street. Under this notice, if the frontagers did not do the work within a limited time, the local authority had a right to do it themselves, and charge the frontagers with the expense, to be apportioned as provided by the above section. The frontagers having made default, the local authority took steps towards doing the work; but before it had been commenced they adopted the Private Street Works Act, 1892, which by s. 25 provides that from its adoption in any district, s. 150 of the Public Health Act, 1875, shall not apply to that district. The work was subsequently done by the local authority, and the expense apportioned according to the Act of 1875:—

*Held*, that s. 25 of the Act of 1892 did not affect the validity or effect of the notice given while s. 150 was in force in the district, though after the adoption of the Act of 1892 no fresh notice could be given under s. 150, and that if there would otherwise have been any doubt on the point, it was removed by s. 38, sub-s. 2, of the Interpretation Act, 1889, which saves everything duly done under a repealed enactment before its repeal, and every right, obligation, or liability acquired, accrued, or incurred under it before the repeal, and that the subsequent proceedings of the local authority under the notice were effectual.

Decision of North J. affirmed. **HESTON AND ISLEWORTH URBAN DISTRICT COUNCIL v. GROUT**

**C. A. [1897] 2 Ch. 306**

**Private Streets.**

**34. — Charge of expenses on frontager's premises—Date from which charge takes effect—“Completion of works” or “final apportionment”—Vendor and purchaser—“Outgoings”—Implied covenant against incumbrances—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 1, 12, 13.**

The amount of the apportioned expenses of private street works executed under the Private Street Works Act, 1892, become a charge on the premises in respect of which they are apportioned as from the date of the completion of the works, and not merely as from the date of the final apportionment.

If, therefore, the premises are sold free from incumbrances after the completion of the works, but before the date of the final apportionment, the vendor must indemnify the purchaser against

**STREETS—STREETS AND BUILDINGS (Private Streets)—continued.**

the sum finally apportioned in respect of the premises.

Decision of Kekewich J., [1899] W. N. 108; [1899] 2 Ch. 496, affirmed. **STOCK v. MEAKIN**

**C. A. [1900] W. N. 73; [1900] 1 Ch. 683**

**35. — Paving—Footway—Frontage—Apportionment—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 10.**

A local board acting as an urban sanitary authority, resolved, under the Private Street Works Act, 1892, to execute works in a private street having houses only on the north side; part of the land on the south side was owned by the local board. The work partly consisted of flagging a footway on the north side. There was no footway on the south side:—

*Held*, that the expenses of the footpath were properly apportionable among the owners of premises fronting, adjoining, or abutting on both sides of the street. **CLACTON LOCAL BOARD v. YOUNG & SONS**

**Div. Ct. [1895] 1 Q. B. 395**

**36. — Proposed works—Objections—“Insufficient or unreasonable” construction of—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 7, 8.**

An objection was taken to works of paving, levelling, sewerage, and lighting a street proposed by an urban authority to be done under the Private Street Works Act, 1892, the ground of objection being that the proposed works were “insufficient” and “unreasonable” within the meaning of s. 7 (d). On the hearing of the objection before a court of summary jurisdiction it was proved that the works were necessary and proper in order that the street might be safely and conveniently used as a street; but the justices allowed the objections, holding that the works were insufficient, and therefore unreasonable, because the street at one point was too narrow, and the urban authority did not propose to take any steps to have it widened:—

*Held*, that the expression “insufficient” in s. 7 (d) limited the jurisdiction of the court of summary jurisdiction to determining whether or not the works were insufficient to effect the purpose proposed to be effected by them, and therefore that the justices’ decision, being founded upon considerations which they ought not to have entertained, was wrong. **MANSFIELD CORPORATION v. BUTTERWORTH**

**Div. Ct. [1898] 2 Q. B. 274**

**37. — “Street”—Sewering—Local authority—Powers—“Highway repairable by the inhabitants at large”—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 5, 6.**

The definition of “street” in the Private Street Works Act, 1892, s. 5, excludes “a highway repairable by the inhabitants at large.”

By s. 6 an urban authority is empowered, with respect to streets, to do certain sewerage works.

An urban authority proposed to do sewerage works in a certain place in their borough. The place in question (which was called a street) was formed before 1816, and had always been open at both ends into highways, and the place and buildings had existed in the same condition for

**STREETS—STREETS AND BUILDINGS (Private Streets)—continued.**

seventy years, and since its formation the way had been used by foot-passengers without interruption. Neither public nor private repairs were proved.

On a case stated on the hearing and determination by justices of objections to the proposed works:—

*Held*, that the place in question was not a "street" within the meaning of the Act, being a footway repairable by the inhabitants at large, and therefore the urban authority had no power to execute the proposed works. *RISHTON v. HASLINGDEN CORPORATION*

Div. Ct. [1898] 1 Q. B. 294

**Profane or Obscene Language.**

38. — *Use of profane or obscene language — County council — By-law — Reasonableness — Annoyance.*

A by-law made by a county council under s. 16 of the Local Government Act, 1888, was in the following terms: "No person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language":

*Held*, that the by-law was invalid, since even if the words "or on land adjacent thereto," which were clearly too wide, were struck out, it was still unreasonable, because it did not contain any words importing that the acts must be done so as to cause annoyance. *STRICKLAND v. HAYES*

Div. Ct. [1896] 1 Q. B. 290

Considered by Div. Ct. *Burnett v. Berry*, [1896] 1 Q. B. 641, 644.

**Projecting Signs.**

39. — *Projecting signs affixed to houses — Statutory power to order removal — 6 Will. 4, c. xxv., s. 82.*

Under a local Act (6 Will. 4, c. xxv.) s. 82, relating to Credition, improvement commrs. were empowered to order the removal of projecting signs affixed to houses:—

*Held*, that the commrs. were not bound to give the owner of a projecting sign an opportunity of being heard, but only to give him the prescribed notice to remove the sign.

Whether, if deft. had asked to be heard, the commrs. could refuse to hear him, *quære*.

Injunction granted restraining the owner of the sign from obstructing the commrs. in removing the sign. *ATT.-GEN. v. HOOPER*

*Stirling J.* [1893] 3 Ch. 483

Referred to by Div. Ct. *Robinson v. Sunderland Corporation*, [1899] 1 Q. B. 751, 758.

**STRIKE**—Application of profits of industrial society to subscription to strike fund.  
*See INDUSTRIAL AND PROVIDENT SOCIETY.* 1.

— Charterparty — Colliery guarantee — Strike clause — Colliery on strike.  
*See SHIPPING—Charterparty.* 20.

— Cotton mills—Stoppage during strike—Occupation during stoppage.  
*See RATES—Rateability.* 15.

**STRIKE**—continued.

— Shipping—Liability.

*See SHIPPING—Demurrage.* 115—120.

— Trade union.

*See Cases under TRADE UNION.*

— Workmen—Guardians of the poor—Jurisdiction—Persons entitled to relief.

*See POOR LAW.* 10.

**STRIKING OFF ROLL**—Misconduct.

*See SOLICITOR—Misconduct.* 119—121.

**STRIKING OUT**—Pleadings.

*See Cases under PRACTICE—Pleadings.*

**STRUCTURE**—Buildings.

*See BUILDING.*

— London buildings.

*See LONDON—Buildings.*

— Street buildings.

*See STREETS—Buildings generally.*

**STUFFED-BIRD COLLECTION**—Movable chattels—Annexation to freehold.

*See FIXTURES.* 1.

**SUB-CONTRACTOR** — *Property in incomplete article.*

Contractors for the erection of tanks sub-contracted for the work. Before completion the contractors failed:—

*Held*, that the property in the tanks remained in the sub-contractor, they not being fixed to the soil, and that he had a lien on them for the price payable to him by the original contractor. *BELLAMY v. DAVEY* *Romer J.* [1891] 3 Ch. 540; *C. A.* [1891] W. N. 192

— Workmen's Compensation Act.

*See Cases under MASTER AND SERVANT—Compensation.*

**SUB-LEASE.**

*See Cases under LANDLORD AND TENANT—Underlease.*

"**SUBMISSION**"—Arbitration.

*See ARBITRATION.* 60.

**SUBPENA DUCES TECUM**—Motion to set aside—Costs.

*See DISCOVERY—Documents.* 42.

**SUBROGATION**—Indemnity—Contract of.

*See INSURANCE—Fire.* 9.

— Remedies of insurers.

*See QUEENSLAND.* 3.

— Trustee carrying on business—Tort—Damages against trustee—Right to indemnity.

*See TRUSTEE—Indemnity.* 53.

— Trustee's right of indemnity—Purchase of land by trustee of settled estates—Entry by tenant for life.

*See VENDOR AND PURCHASER—Lien.* 56.

**SUBSIDENCE**—Mines and minerals.

*See Cases under MINES.*

— Railway—Support.

*See RAILWAY—Minerals.* 15.

**SUBSOIL**—Vesting "of street" in urban authority.

*See STREETS—In General.* 1.

**SUBSTITUTED SERVICE.**

*See PRACTICE—Service.* 229—232.



**SUBSTITUTED SERVICE**—*continued.*

— Written demand for cohabitation.

*See* DIVORCE. 117.**SUBSTITUTION**—Bill of sale.*See* BILL OF SALE. 53.

— Will, Construction of.

*See* WILL—Substitution.**SUCCESSION**—Scottish law.*See* SCOTTISH LAW—Succession.**SUCCESSION DUTY.***See* REVENUE—Succession Duty.— **SUCCESSORS**—Land allotted to vicar and his  
—Vicar.*See* SETTLED LAND. 126.**SUFFICIENCY**—Answers to interrogatories.*See* Cases under DISCOVERY—Interrogatories.— **SUFFICIENT CAUSE**—Not to make receiving order.*See* BANKRUPTCY—Receiving Order. 211.**SUMMARY JURISDICTION AND PROCEEDINGS.***See* HUSBAND AND WIFE—Summary Jurisdiction.  
JUSTICES.**SUMMONS.***See* Cases and Cross-references under PRACTICE.**SUMMONS FOR DIRECTIONS.***See* PRACTICE—Summons for Directions.**SUNDAY**—Employment on—Jews.*See* MASTER AND SERVANT—Factory Acts. 61.1. — *Observance*—*Exercising* “worldly labour, business, or work” on Sunday—*Barber*—29 Car. 2, c. 7, s. 1.

A barber who shaves customers on Sunday is not a “tradesman, artificer, workman, or labourer, or other person whatsoever” within the meaning of 29 Car. 2, c. 7, s. 1, which prohibits those persons from exercising any worldly labour, business, or work of their ordinary calling upon the Lord’s Day (works of necessity and charity only excepted). *PALMER v. SNOW*

Div. Ct. [1900] W. N. 25; [1900] 1 Q. B. 725

2. — *Observance* — *Justices* — *Practice* — *Information*—*Institution of prosecution*—*Consent in writing of chief constable*—*Sunday Observance Act, 1676* (29 Car. 2, c. 7), s. 1—*Sunday Observance Prosecution Act, 1871* (34 & 35 Vict. c. 87), s. 1.

By the Sunday Observance Prosecution Act, 1871, “No prosecution . . . shall be instituted . . . for any offence . . . under” the Sunday Observance Act, 1676 . . . “except by or with the consent in writing of the chief officer of police of the police district in which the offence is committed. . . .”

The appellant was convicted under the Sunday Observance Act. The chief constable gave a verbal consent before the information was laid, and gave consent in writing after the information was laid and the summons issued:—

*Held*, that the prosecution was instituted when the information was laid, and therefore

**SUNDAY**—*continued.*

was not instituted with the consent in writing of the chief constable, and the conviction was bad. *THORPE v. PRIESTNALL*

Div. Ct. [1896] W. N. 171 (6);  
[1897] 1 Q. B. 159

3. — *Observance* — *Room used for* “public entertainment on Sunday” — “Keeper” of room — *Person managing or conducting* “entertainment.”

The public were admitted on payment to a lecture given by a Sunday evening lecture society in a hall hired from a co. in liquidation. The jury found that the hall was “opened or used” within s. 1 of the Sunday Observance Act, 1780 (21 Geo. 3, c. 49):—

*Held*, that the liquidator’s solicitor who had arranged for letting the hall was not the “keeper,” and that the chairman who introduced the lecturer, but took no other part, was not the person “managing or conducting” within the Act. *REID v. WILSON & KING. SAME v. WILSON & WARD* — C. A. [1895] 1 Q. B. 315

**SUPERANNUATION**—Teachers’.*See* SCHOOLS—Teachers.**SUPERFLUOUS LANDS.***See* LANDS CLAUSES ACTS—Superfluous Lands.**SUPERIOR AND VASSAL.***See* SCOTTISH LAW — Superior and Vassal.

**SUPERSTITIOUS USES** — Gift to be spent in masses for the dead.

*See* WILL—Superstitious Uses. 202.

**SUPERVISION ORDER** — Winding-up of company.

*See* Cases under COMPANY—WINDING-UP.**“SUPPLYING WATER.”***See* Cases under WATER—Supply.**SUPPORT**—Mines and minerals.*See* Cases under MINES.

— Right to—Minerals.

*See* RAILWAY—Minerals. 14, 15.

— Right to—Subadjacent and adjacent minerals.

*See* CANAL. 1.

1. — *Right to support* — *Statutory powers* — *Nuisance*—*Excavation*—*Landowner*—*Drainage*—*Surface, letting down*—*Subsidence*—*Underground water*—*Water-logged land*—*Quicksand*—“*Running silt*”—*Pitch, stratum of*—*Ancient lights, interference with*—*Damages*—*Injunction*—*Gasworks Clauses Acts, 1847, 1871* (10 & 11 Vict. c. 15, s. 29; 34 & 35 Vict. c. 41, s. 9)—*Lord Cairns’ Act* (21 & 22 Vict. c. 27).

The plt. was the owner of land with houses on it. The adjoining land belonged to the defts., a gas co. incorporated by special Act, with power to purchase land by agreement only, and subject to the provisions of the Gasworks Clauses Acts, 1847 and 1871. Under their statutory powers the defts. proceeded to excavate their land for the purpose of erecting a gasometer. In so doing they penetrated an underground stratum of quicksand, or sand loaded with stagnant water, geologically known as “running silt,” which extended under the plt.’s land as well as their own, the

**SUPPORT**—*continued.*

silt or sand largely preponderating over the water. In draining their excavation the defts. withdrew a large quantity of the running silt from under the plt.'s land and thus caused a subsidence of the surface with consequent structural injury to his houses. The liability of the defts. to proceedings for any "nuisance" caused by them in the execution of their works was preserved by s. 9 of the Gasworks Clauses Act, 1871:—

*Held*, by C. A., that the defts. had no statutory authority so to construct their works as to occasion a nuisance, the fact that s. 9 of the Gasworks Clauses Act, 1871, expressly preserved their liability for any nuisance distinguishing the case from *London, Brighton and South Coast Ry. Co. v. Truman*, (1885) 11 App. Cas. 45:

*Held*, also, by Lindley M.R. and Rigby L.J., that, on their view of the facts, the plt.'s land was supported, not by a stratum of water, but by a bed of wet sand or running silt; and that, as the defts. had caused the subsidence of the plt.'s land by withdrawing this support they had committed an actionable nuisance at common law entitling the plaintiff to damages: the decision in *Popplewell v. Hodgkinson*, (1869) L. R. 4 Ex. 248, being inapplicable as dealing only with support by water:

But *held*, by V. Williams L.J., that no nuisance giving a right of action had been proved, because, upon his view of the facts, the subsidence had been caused merely by the withdrawal, through the defts.' draining operations on their own land, of subterranean water-support of the plt.'s land; and that, on principle as well as on the authority of *Popplewell v. Hodgkinson*, the withdrawal of subterranean water-support from a neighbour's land in the course of draining one's own land, even though it damages the neighbour's land, gives him no cause of action.

Decision of North J., [1898] 2 Ch. 614, affirmed.

The right of support for the surface of land by subterranean water, quicksand, or water-logged soil, discussed.

It being proved that the proposed gasometer would obstruct ancient lights in the plt.'s houses:—

*Held*, by C. A., that the plt. was entitled to an injunction to restrain the threatened infringement of his legal right, since it would not be adequately protected or vindicated by damages: *Martin v. Price*, [1894] 1 Ch. 276; *Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287.

*Popplewell v. Hodgkinson* held not applicable to a case in which subsidence of A.'s land had been caused by the working by B. on his own land of an underground stratum of natural pitch common to both lands. (See [1899] 2 Ch. 260, n.) *JORDSON v. SUTTON, SOUTHOATES AND DRYPOOL GAS CO.* — C. A. [1899] 2 Ch. 217

2. — *Right to lateral support*—*Adjacent lands*—*Escape of pitch*—*Injunction*—*Damages*.

Where the defts. by removing the lateral support of their land caused the asphalt or pitch which formed the main ingredient of the plt.'s land to melt and ooze forth into their own land

**SUPPORT**—*continued.*

and thereupon appropriated it to their own use:—

*Held*, that an injunction was rightly granted by the first Court to restrain them, and that damages were recoverable both for injury caused by subsidence of the plt.'s surface and for loss of the pitch. *TRINIDAD ASPHALT CO. v. AMBARD* P. C. [1899] 2 Ch. 260, n.; [1899] A. C. 594

**SURETY.**

See PRINCIPAL AND SURETY.

**SURFACE**—Diminution of value of—Rateability—Underground sewers.

See RATES—Rateability. 50.

— Letting down.

See Cases under SUPPORT.

— Tenant for life—Lease of surface reserving minerals.

See SETTLED LAND—Lease. 71, 74.

**SURFACE SEWERS.**

See SEWERS—Surface Sewers. 32.

**SURGEONS**—Royal College of—Income tax—Exemption.

See REVENUE—Income Tax. 105.

— Salvage — Apportionment — Non-navigating members of crew.

See SHIPPING—Salvage. 224.

— Veterinary surgeon.

See VETERINARY SURGEON.

**SURNAME**—Use of.

See WILL—Name and Arms Clause. 150.

**SURPLUS**—Gift in trust—Beneficial gift or resulting trust.

See TRUST. 6.

— Maintenance of individuals—Death of objects of fund—Unapplied surplus—Resulting trust for subscribers.

See TRUST. 5.

**SURPLUS ASSETS.**

See COMPANY — WINDING-UP — Surplus Assets. 6-19.

— Mortgage by undischarged bankrupt—After-acquired property — Successive bankruptcies—Rights of trustees.

See BANKRUPTCY—Undischarged Bankrupt. 262.

**SURPRISE**—New trial—Notice of setting down for trial.

See DIVORCE. 112.

**SURRENDER**—British subject—Extradition.

See EXTRADITION.

— Landlord and tenant.

See LANDLORD AND TENANT—Surrender.

— Of life interest in favour of remainderman—Estate duty.

See Cases under REVENUE—Estate Duty.

— Policy—Payment "in the meantime"—Payment by mortgagor or his agent.

See LIMITATIONS, STATUTE OF. 29.

— Shares—Issue of new shares in exchange.

See COMPANY—Shares. 290.

**SURROGATE**—Repairs.

See ECCLESIASTICAL LAW—Practice. 57.

**SURVEYOR—Fees—Flats.***See* LONDON—Buildings. 29.**— Highways—Liability of surveyor.***See* HIGHWAY. 4, 30.**1. — Liability—Inaccuracy—Causing damage to third party.**

Mortgagees lent money by instalments to a builder on the faith of certificates negligently granted by the deft., who was a surveyor appointed, not by the mortgagees, but by the builder's vendor. The certificates were inaccurate and misleading, by the negligence of the surveyor, and the mortgagees thereby suffered loss for which they claimed compensation from the deft. :—

*Held*, that as there was no contractual relation between the surveyor and the mortgagees, the deft. owed no duty to them to exercise care in his certificate, and the action could not be maintained. *LE LIEVRE v. GOULD*

**C. A. [1893] 1 Q. B. 491****2. — Quantity surveyor—Charges—Usage.**

The usage is reasonable and valid by which a quantity surveyor is entitled to be paid by the builder whose tender is accepted, out of the first

**SURVEYOR—continued.**

certificate, for his fees for taking out quantities at the instance of the building owner or architect. *NORTH v. BASSETT* Div. Ct. [1892] 1 Q. B. 333

**SURVIVOR—Will—Construction of.***See* WILL—Survivor.**SURVIVORSHIP—Presumption of—Husband and wife.***See* PROBATE. 139.**SUSPENSION—Discharge of bankrupt.***See* BANKRUPTCY—Discharge. 90.**— Injunction.***See* INJUNCTION. 34.**SWIN MIDDLE LIGHTSHIP—Collision—Narrow channel.***See* SHIPPING—Collision. 73, 74.**SYNDICATE—For speculation in shares—Power of manager.***See* NATAL. 3.**— Subscription by—Contract whether joint or several.***See* INSURANCE—Marine. 69.

## T.

**TABERNACLE**—For reception of reserved sacrament.

See ECCLESIASTICAL LAW. 28.

**TABLEAU VIVANTS.**

See COPYRIGHT—Picture. 39, 40.

**"TACK"**—Lease—Agreement in consideration of fixed annual payment.

See REVENUE—Stamps. 140.

**TACKING.**

See MORTGAGE—Tacking.

**TALFOURD'S ACT**—Effect of this Act considered with reference to an Ontario statute framed on the lines thereof. *SMART v. SMART*

P. C. [1892] A. C. 425

**TAPESTRY**—Heirlooms—Executor and heir.

See FIXTURES. 4.

**TARIFF**—Customs Tariff Act, 1894—Laws of Canada.

See CANADA. 8.

**TASMANIA.**

Application of Colonial Probates Act, 1892.

See PROBATE—Colonial Probates Act, 1892.

Law of Tasmania.

See Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), ss. 3, 6.

*Constitution—O. in C. assenting to Bill amending the Constitution Act. St. R. & O. 1896, No. 975.*

1. — *Practice — Special leave to appeal — Tasmanian Act, No. 10 of 1858 (21 & 22 Vict.), ss. 5, 8.*

By Tasmanian Act No. 10 of 1858, s. 5, disputes concerning lands yet ungranted by the Crown are referred to the Supreme Court, whose decision is to be final; and by s. 8 the Court is directed to be guided by equity and good conscience only, and by the best evidence procurable, even if not required or admissible in ordinary cases, and not to be bound by strict rules of law or equity or by any legal forms:—

*Held*, that the Crown's prerogative to grant special leave to appeal is inapplicable to a decision so authorized.

*Théberge v. Laundry*, (1876) 2 App. Cas. 102, followed. *MOSES alias MOSS v. PARKER. Ex parte MOSES*

P. C. [1896] A. C. 245

2. — *Principal and surety—Novation—Release of principal debtor—Discharge of surety.*

Where a creditor released his principal debtor and accepted a third party as full debtor in his stead, and the surety for the former agreed to give a guarantee for the latter, and to continue his former guarantee till he did so, and then died without having given it:—

*Held*, in an action by the creditor against his executors that the debt having been extinguished

**TASMANIA (Law of Tasmania)**—*continued.*

by the release, the remedy against the deceased was gone. Novation of debt operates as a complete release of the original debtor, and cannot be considered as a mere covenant not to sue him. *COMMERCIAL BANK OF TASMANIA v. JONES*

P. C. [1893] A. C. 313

**TAXATION OF COSTS.**

See Cases under COSTS.  
SOLICITOR.

**TAXES.**

See REVENUE.

**TEACHERS.**

See SCHOOLS—Teachers.

**TELEGRAPH.**

TELEPHONE.] See TELEPHONE.

*"The Foreign Telegram Regulations, 1892," dated May 11, 1892. St. R. & O. 1892, p. 918.*

— Bill of lading — Telegraphic instructions — Mistake.

See SHIPPING—Charterparty. 47.

— Contract—Action on—Onus probandi—Cablegrams—Mistake.

See CONTRACT—Formation. 19.

1. — *Mistake — Telegraphic instructions — Charterparty.*

A firm of shipbrokers signed a charterparty in the form "by telegraphic authority" of the charterer "as agent":—

*Held*, that such a form of signature was intended to protect, and by custom did protect, the shipbrokers from any mistake in the telegram. Evidence to explain the meaning of this form of signature admitted. *LILLY, WILSON & Co. v. SMALES, EELES & Co.*

Denman J. [1892] 1 Q. B. 456

2. — *Negotiation by telegram—Acceptance of offer not proved.*

A. telegraphed to B., "Will you sell us B. H. P.? Telegraph lowest cash price." B. telegraphed in reply, "Lowest price for B. H. P. £900." A. telegraphed, "We agree to buy B. H. P. for £900 asked by you." B. did not reply:—

*Held*, that there was no contract. The final telegram was not the acceptance of an offer to sell, as there was no offer to sell, only an offer to buy, the acceptance to which must be express. *HARVEY v. FACEY* — P. C. [1893] A. C. 552

— Obtaining money by forged instrument.

See CRIMINAL LAW—Forgery. 34.

**TELEPHONE.**

*Telegraph Act, 1892 (55 & 56 Vict. c. 59), provides for the development of the telephonic system.*

1. — *Electrical disturbance in wires of telephone company by operations of electric tramway.*

A tramway co. acting under a provisional order of the Bd. of Trade confirmed by Act of

**TELEPHONE**—*continued.*

Parliament, and using the best known system of electrical traction, caused electrical disturbance in the wires of a telephone co. acting under licence from the Postmaster-General:—

*Held*, that the tramway co. were not liable for nuisance caused by exercise of their statutory authority to use electricity. **NATIONAL TELEPHONE CO. v. BAKER**

**Kekewich J. [1893] 2 Ch. 186**

2. — *Illegal stretching of telephone wires across public streets—Powers of local authority—Removal of wires—Law of Guernsey.*

In a suit by a telephone co. against the local authority to recover damages for cutting down and removing telephone wires stretched across a public street, it appeared that the co. was not authorized by statute so to place their wires:—

*Held*, that the action failed. The removal was within the legal powers of the defts., and there was no allegation of any unnecessary damage having been caused by the cutting. **NATIONAL TELEPHONE CO. v. CONSTABLES OF ST. PETER PORT** — — **P. C. [1900] A. C. 317**

3. — *Notice determining tenancy of wire — Acceptance of rent—Waiver of notice.*

In 1889 the N. Co. supplied a telephone wire and apparatus to K. for three years at a rent payable quarterly; upon the expiration of the term the parties continued the agreement by mutual consent. On Dec. 30, 1893, the last day of a quarter, the N. Co. gave notice terminating the agreement forthwith, and demanded rent up to Dec. 31, being one day beyond the quarter. The rent was paid and accepted by the N. Co. On motion to restrain the N. Co. from cutting the wire:—

*Held*, that the agreement created the relation of landlord and tenant between the N. Co. and K., and therefore the acceptance of rent for a day beyond the notice determining the tenancy acted as a waiver of that notice. An injunction granted restraining the N. Co. from interfering with the wire and apparatus.

Rules as to injunction ordering specific performance considered. **KEITH, PROWSE & CO. v. NATIONAL TELEPHONE CO.**

**Kekewich J. [1894] 2 Ch. 147**

— *Vibration—Right of reversioner to sue — Powers of local authority.*  
*See NUISANCES. 9.*

4. — *Wires — Public street—Licence from Postmaster-General — Right to lay wires—Power to open street—Consent—Person liable for repair—Tramway company—Telegraph Act, 1863 (26 & 27 Vict. c. 112), ss. 10, 12, 13—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 28, 32.*

A telephone co., acting under a licence from the Postmaster-General pursuant to the Telegraph Acts, 1863, 1878, and 1892, need not obtain the previous consent of a tramway co. before proceeding to break open a street or public road on which tramway lines are laid for the purpose of laying telephone wires, even though the tramway co. is liable for the repair of that street or public road. **BRISTOL TRAMWAYS AND CARRIAGE CO. v. NATIONAL TELEPHONE CO.**

**North J. [1899] W. N. 91; [1899] 2 Ch. 282**

**TEMPORARY ERECTION**—"Structure"—Building notice.

*See LONDON—Buildings. 31.*

**TENANCY IN COMMON**—Improvements—Expenditure.

*See IMPROVEMENTS.*

— **Mortgage—Parties.**

*See MORTGAGE—Redemption. 66.*

1. — *Parties to action—Damage to reversion—Breach of covenant—Severance of reversion—Covenant running with land.*

A reversion of a lease was devised to tenants in common. The interest of one tenant was vested in the plt.; the lease was vested in deft.:—

*Held*, that the plt. could sue both for damage to the reversion and for breach of covenant without joining the other tenants in common. **ROBERTS v. HOLLAND Div. Ct. [1893] 1 Q. B. 665**

— **Partition.**

*See Cases under PARTITION.*

— **Partners—Property held in common by.**

*See Cases under PARTNERSHIP.*

— **Purchase by one co-tenant — Mortgagee, Duties of.**

*See MORTGAGE—Sale. 86.*

— **Vendor and purchaser tenants in common—Rents and profits in lieu of interest.**

*See VENDOR AND PURCHASER—Contract. 34.*

— **Will, Construction of.**

*See Cases under WILL—Joint Tenancy.*

**TENANT.**

*See Cases under LANDLORD AND TENANT.*

— **Joint tenants.**

*See JOINT TENANCY.*

*WILL—Joint Tenancy.*

**TENANT AT WILL.**

*See Cases under LIMITATIONS, STATUTE OF—Tenancy at Will.*

**TENANT BY THE CURTESY**—*Married Women's Property Act, 1882—Real estate of wife—Devolution.*

This Act does not deprive a husband of his rights as tenant by the curtesy in the wife's real estate not disposed of. **HOPE v. HOPE**

**Stirling J. [1892] 2 Ch. 336**

— **Married woman—Restraint on anticipation.**

*See SETTLED LAND. 117.*

2. — *Validity of lease by—Absence of notice.*

A tenant by the curtesy purported to grant a building lease as absolute owner without any reference to the Settled Land Acts. There were no trustees for the purposes of the Acts, and consequently no notices were given as required by s. 45 of the Act of 1882:—

*Held*, (1.) that the lease could and did operate under the Settled Land Act, 1882, to convey the land within the meaning of s. 20, sub-s. 2, and was valid; (2.) that the lessee having dealt with the lessor in good faith was protected by s. 45,

**TENANT BY THE CURTESY**—*continued.*

sub-s. 2, as to the absence of trustees and want of notices. *MOGRIDGE v. CLAPP*

Kekewich J. affirm. by C. A. [1892] 3 Ch. 382

Referred to by Stirling J. *Chandler v. Bradley*, [1897] 1 Ch. 315, 322.

Distinguished by Romer J. *In re Fisher and Grazebrook's Contract*, [1898] 2 Ch. 660, 662.

**TENANT FOR LIFE.**

See Cases under SETTLED LAND.

**TENANT FOR YEARS**—Rent-charge—Personal liability.

See RENT-CHARGE. 6.

**TENANT IN TAIL**—Will.

See WILL—Estate Tail. 86.

**TENANT PUR AUTRE VIE.**

See ESTATE PUR AUTRE VIE.

— Forfeiture.

See WILL—Forfeiture.

**TENDER**—Admiralty practice.

See SHIPPING—Tender.

— Bill of sale—Property in goods—Trespass—Redemption.

See BILL OF SALE. 54.

1. — *Cheque*—Validity—Authority of solicitor.

Appeal of plts. from Kekewich J., [1897] 1 Ch. 171, dismissed with costs, on the facts. *BLUMBERG v. LIFE INTERESTS AND REVERSIONARY SECURITIES CORPORATION* C. A. [1898] 1 Ch. 27

2. — *Conditional tender*—Tender under protest.

Although a conditional tender is not good, a tender under protest, reserving the right of the debtor to dispute the amount due, is a good tender, if it does not impose any conditions on the creditor:—

*Held*, therefore, that a tender to mortgagees in possession, reserving the right to tax their costs and to review their account was a good tender. *GREENWOOD v. SUTCLIFFE*

C. A. [1892] 1 Ch. 1

3. — "*Highest net money tender*"—Contract for sale—Practice—Striking out statement of claim—*R. S. C.*, 1883, Order XXV., r. 4.

The owner of certain coal mines proposed to receive sealed tenders from two parties who were competing for the purchase of them, and undertook to accept the highest net money tender. One of the competitors offered such a sum as would exceed by 200*l.* the amount offered by the other:—

*Held*, that a tender in this form did not answer the description of the highest net money tender, and an order was made striking out the statement of claim in an action for specific performance of an alleged contract founded on such tender as disclosing no reasonable cause of action. *SOUTH HETTON COAL CO. v. HASWELL, SHOTTON AND EASINGTON COAL AND COKE CO.*

C. A. [1898] 1 Ch. 465

— "Tender"—County court—Practice—Costs—Final order—Appeal.

See SHIPPING. 269.

**TENURE OF OFFICE.**

See CROWN 4, 5.

**TERCE, JUS RELICTÆ, AND LEGITIM** — Partial intestacy—Will—Provision for widow.

See SCOTTISH LAW—Succession. 46.

**TERM**—Rent-charge.

See Cases under RENT-CHARGE.

— Trust for management and accumulation.

See SETTLED LAND. 98.

**TERM FEES**—Agency—Common partner.

See SOLICITOR—Costs. 17.

**TERMINUS**—Land adjoining—Lease of portion—Superfluous lands.

See LANDS CLAUSES ACTS. 24.

**TERRITORIAL COURTS**—Jurisdiction of, under International treaties.

See FOREIGN JURISDICTION.

**TESTAMENTARY CAPACITY.**

See PROBATE—Testamentary Capacity.

— Will—Evidence of execution—Denial by attesting witness.

See BERMUDA.

**"TESTAMENTARY EXPENSES."**

See WILL — Testamentary Expenses. 205, 206.

**TESTAMENTARY PAPERS** — Construction of will.

See Cases under WILL.

PROBATE — Grant of Probate.

**TESTIMONIALS** — Improper use of — Trade rivalry — Fraud — Interlocutory injunction.

See FALSE REPRESENTATION. 1.

**TESTING CLAUSE** — Marriage contract — Liability of law agent for carelessness.

See SCOTTISH LAW—Contract. 10.

**THAMES.****Conservancy and Navigation.**

By the *Thames Conservancy Act, 1894* (57 & 58 Vict. c. clxxxvii.), the whole of the public and local Acts relating to conservancy and navigation were consolidated, and the constitution and powers of the Conservators were amended.

O. in C. dated Aug. 5, 1892, approving By-laws made by the *Thames Conservancy*. St. R. & O. 1892, p. 934.

The *Thames Fishery By-laws, 1893*, dated Aug. 26, 1893. St. R. & O. 1893, p. 686.

— Anchor hanging stock awash.

See No. 12, below.

1. — *Collision* — Anchor not stock awash by order of compulsory pilot—Contributory negligence—*Thames Navigation By-laws, 1872*, r. 20.

A tug negligently managed came into collision with a ship and was damaged by her anchor, which, by the order of a compulsory pilot, was in a position contrary to *Thames by-law No. 20*. Those on the tug knew of the anchor's position, but there was no time for those in the ship, when the collision appeared imminent, to remove the anchor:—

*Held*, (1) that the owners of the ship were not responsible for the breach of the by-law by the pilot's orders; (2) that the tug by ordinary care

**THAMES (Conservancy and Navigation)—*contd.***  
might have avoided the collision. The Thames By-laws differ from the Collision Regs. in that breach of the latter involves liability when the contravening vessel can prove that the breach could not possibly have caused the collision, whereas under the former it must be shewn that the breach contributed to the collision. **THE "MONTE ROSA"** — **G. Barnes J. [1893] P. 23**

2. — *Collision—Barges in tow—Thames by-laws, 1898, r. 11—Anchor ring awash.*

The plts.' and the defts.' barges, in tow of a tug in the river Thames, came into collision, owing to the defts.' barge being affected by the wind and tide whilst the tug was temporarily brought up, and the anchor hanging, ring awash, from the bows of the defts.' barge pierced the quarter of the plts.' barge doing damage:—

*Held*, that the plts. were entitled to recover, for though, by rule 11 of the Thames By-laws, the anchor must be as low as ring awash, it may—according to the interpretation put upon the rule in *The J. R. Hinde*, [1892] P. 231—be as much lower as is thought proper, and those in charge of the defts.' barge were negligent in not having it sufficiently low in the water to avoid danger to other barges in case of contact in the course of the ordinary incidents of navigation in the river. **THE SIX SISTERS**

**G. Barnes J. [1900] P. 302**

— Collision—Vessel aground in Thames in daytime.

*See SHIPPING—Collision. 84.*

— Collision—Vessel turning round—Thames By-laws, 1898, art. 48.

*See SHIPPING—Collision. 90.*

3. — *Election—Returning officer—Proxy—Judicial act—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), ss. 22, 23, 25.*

At an election of conservators by shipowners, the returning officer received and counted proxies given by bodies corporate to electors not being their shareholders or officers:—

*Held*, that the only way in which a corporation could vote by proxy was by a shareholder or officer, and therefore the proxies were wrongly received, but that under s. 23 of the Thames Conservancy Act, 1894, the returning officer had acted judicially and the return was conclusive:—

*Held*, also, that the wrong reception of the proxies was an "error or irregularity" within s. 25, and therefore could not invalidate the election. **REG. v. SAMUEL**

**Div. Ct. [1895] 1 Q. B. 815**

4. — *Lighterman—Qualified lighterman—Apprentice—Watermen's and Lightermen's Act, 1859 (22 & 23 Vict. c. cxxxiii.)—Thames Conservancy By-laws, 1872, No. 16.*

A person duly bound apprentice to a freeman of the watermen's co. or to a registered barge-owner in pursuance of the Watermen's and Lightermen's Act, 1859, is from and after the commencement of his apprenticeship a qualified apprentice and entitled to act as a lighterman, and is also a sufficient second hand to assist in the navigation of a craft of 50 tons burden to satisfy by-law 16 of the Thames Conservancy By-laws, 1872. **GOSLING v. NEWTON. GOSLING v. EAGERS**

**Div. Ct. [1895] 1 Q. B. 793**

**THAMES (Conservancy and Navigation)—*contd.***

5. — *Navigation—Look-out on board steam vessel—By-laws—Inconsistency—Watermen's and Lightermen's Act, 1859 (22 & 23 Vict. c. cxxxiii.), by-law 99—By-laws—Look-out.*

By-law 99, which requires that a proper look-out should be kept from the bow of any steamer navigating the Thames, is not repealed by by-law 36 made under the Thames Conservancy Act, 1864, which merely requires that a "proper look-out" should be kept. **GOSLING v. GREEN**

**Div. Ct. [1893] 1 Q. B. 109**

*The Thames Conservancy Act, 1864, was repealed, and other provision made by the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.)*

6. — *Nuisance on foreshore of Thames—Liability to abate.*

Under their Acts the Thames Conservancy are owners of the soil and sub-soil of the river for certain specified purposes only, and are not owners for the purposes of s. 4 of the Public Health (London) Act, 1891. **THAMES CONSERVANCY v. LONDON PORT SANITARY AUTHORITY**

**Div. Ct. [1894] 1 Q. B. 647**

7. — *Sand—Right to take—Conservators—Rights of owner of shore—"Bed"—"Shore"—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), ss. 3, 87.*

Sect. 87 of the Thames Conservancy Act, 1894, makes it unlawful for any person other than the Conservators, their agents, &c., to dredge or raise sand from the bed of the Thames, except with the licence of the Conservators. The appellant raised sand, without such licence, from a place between high and low water-mark of the Thames, within the district of the Conservators. He claimed to take the sand under a licence from a lessee, holding under a lease, which demised the right to take sand from the place in question:—

*Held*, that the place was part of the "shore" of the river, within the meaning of s. 3, not of the "bed," within the meaning of s. 87, that the Act did not interfere with the right of the lessee to license the appellant to take sand, and therefore the appellant could not be convicted of an offence against the Act. **PEARCE v. BUNTING. REG. v. WEDD. Ex parte PEARCE**

**Div. Ct. [1896] 2 Q. B. 360**

Disapproved of by C. A. *Thames Conservators v. Smeed, Dean & Co.*, [1897] 2 Q. B. 334. *See next case.*

8. — *Sand—Right to take—Rights of owner of shore—"Bed of the Thames"—"Bed of river"—Conservators—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), ss. 87, 238.*

Sect. 87 of the Thames Conservancy Act, 1894, makes it unlawful for any person other than the conservators, their agents, &c., to dredge or raise any gravel, sand, ballast, or other substance from "the bed of the Thames" except with the licence of the conservators:—

*Held*, that the expression "bed of the Thames" in the section, as applied to the tidal portion of the river, means the soil between the ordinary high water-mark on one side and the ordinary high water-mark on the other side; and that the right of the owner of the soil to take gravel, &c.,

**THAMES (Conservancy and Navigation)**—*contd.*  
between high and low water-mark is not preserved by s. 238 of the Act.

*Semble*, the conservators can only exercise their powers of dredging and granting licences for dredging for the purposes of the Act, i.e., for the maintenance and improvement of the navigation.

Ordinary meaning of "bed of river" defined.

*Pearce v. Butting*, [1896] 2 Q. B. 360, disapproved of. **THAMES CONSERVATORS v. SMEED, DEAN & Co.** - - **C. A. [1897] 2 Q. B. 334**

9. — *Sea-shore—Foreshore—Tidal and navigable waters—Right to fix moorings as incident to navigation—Immemorial user to fix moorings in foreshore—Presumption of legal origin—Immemorial user in river Thames.*

An immemorial user of the foreshore in tidal and navigable waters, by the owners of fishing-boats and other craft, by fixing moorings in the soil, for the purpose of attaching their boats to them, may be supported either as an ordinary incident of the navigation of such waters, or on a presumption of a legal origin by grant from the Crown of the foreshore subject to such user, or by concession by a former owner of the foreshore to all persons navigating the waters to use it for fixing moorings.

Such an immemorial user in the river Thames may be supported on the presumption of regulations prescribed by the port authority of the port of London (per Rigby L.J.). **ATTORNEY-GENERAL v. WRIGHT** - - **C. A. [1897] 2 Q. B. 318**

10. — *Side lights—Thames Navigation By-laws, 1887, art. 18, and 1892, art. 7 (c).*

A steam-vessel which throws herself athwart the navigable channel and stops her way is "not under command" within art. 18 of the Thames By-laws, 1887, and must sound her whistle as prescribed by that article. A steam-vessel must take in her side light as soon as she rides to her anchor, and if over 150 ft. long must, under art. 7 (c) of the By-laws of 1892, exhibit a second riding light. **THE "WEGA"**

**Bruce J. [1895] P. 156**

11. — *Stock awash—Thames Navigation By-laws, 1872, r. 20.*

(A) An anchor hanging from the hawse shackle or ring awash, held not to be hanging stock awash within r. 20. **THE "J. R. HINDE"**

**Jeune J. [1892] P. 231**

Followed by G. Barnes J. *The Six Sisters*, [1900] P. 302. See No. 2, above.

(B) An anchor hanging from the hawse pipe held not to be hanging stock awash within r. 20. **THE "DUNSTANBOROUGH"**

**Jeune J. [1892] P. 363, n.**

Distinguished by Div. Ct. *The Hornet*, [1892] P. 361.

12. — *Tug towing barges—Waterman on tug to assist in management and navigation—Ultra vires—By-law of Watermen's Company—Thames navigation—Watermen's and Lightermen's Amendment Act, 1859 (22 & 23 Vict. c. cxxxiii.), ss. 66, 80.*

By s. 80 of the Watermen's and Lightermen's Amendment Act, 1859, power is given to the Court of the Watermen's Co. to make by-laws for

**THAMES (Conservancy and Navigation)**—*contd.*  
the government of the co., for the government and regulation of lightermen and watermen, and for carrying into effect the purposes of the Act and the several powers and authorities thereby vested in the co.

By s. 66 of the Act, no barge, lighter, boat, or other like craft for the carrying of goods, wares, or merchandise is to be worked or navigated within the limits of the Act, unless there be in charge of such craft a licensed lighterman or qualified apprentice, under a penalty not exceeding 5*l.*

By by-law 60 of the Watermen's Co., made under the above Act, "Every steamboat navigated on the river within the limits of this Act in the towing of barges, lighters, vessels, or craft shall have one licensed waterman on board such steamboat for the purpose of assisting in the management and navigation thereof, and if any such steamboat shall be navigated in contravention of this section (*sic*) the owner thereof, or the master in charge of the same, shall incur a penalty not exceeding 40*s.*" :—

*Held*, that the by-law was not a by-law made for carrying into effect the purposes of the Act, and was not authorized by the provisions of s. 66 of the Act, and that it was therefore ultra vires and bad. **KENNAIRD v. CORY & SON**

**Div. Ct. [1898] 2 Q. B. 578**

13. — *Turning ship—Thames Navigation By-laws, 1887, arts. 17 (c), 18.*

A ship in the Thames when turning round and also reversing her engines must give the four blasts of the steam whistle required by art. 18 for vessels turning round. It is not sufficient to give the three blasts ordered by art. 17 (c) for vessels reversing. **THE "NEW PELTON"**

**Jeune J. [1891] P. 258**

— *Watermen—Applications for licences.*

See **CERTIORARI**. 1.

**THEATRE**—Crowd before—Obstruction to highway.

See **NUISANCES**. 36.

— *Construction of.*

See **Cases under MUSIC AND DANCING**.

— *Infant performing at music halls—Theatrical agent—Necessaries.*

See **INFANT**. 35.

— *Keeping open premises during prohibited hours—Offences.*

See **LICENSING ACTS**. 33.

1. — *Licence—Grant of—Discretion to attach condition to grant—"Discretion"—6 & 7 Vict. c. 68.*

A county council acting as the licensing authority for the performance of stage plays may, in the exercise of their discretion, attach to the grant of a licence for such performances a condition that the grantee shall undertake not to apply to the excise authorities under 5 & 6 Will. 4, c. 39, s. 7, for an excise licence to sell intoxicating liquors in his theatre. **REG. v. COUNTY COUNCIL OF WEST RIDING OF YORKSHIRE**

**Div. Ct. [1896] 2 Q. B. 386**

— *Rents and profits.*

See **RECEIVER**. 4.



**THEATRICAL ENGAGEMENT**—Breach of contract.

See **INJUNCTION**. 4.

**THEFT.**

See **Cases under CRIMINAL LAW**.

**THELLUSSON ACT.**

See **Cases under ACCUMULATIONS, SETTLED LAND**.

**THEOLOGICAL COLLEGE**—Income tax—Exemption.

See **REVENUE—Income Tax**. 113.

**THIRD PARTY.**

See **PRACTICE—Third Party**.

**THREATS**—Demanding money with menaces.

See **CRIMINAL LAW**. 55.

— Of proceedings—Offer of terms.

See **INJUNCTION**. 35.

— Patent—Infringement.

See **PATENT—Revocation**. 57.

**THREE COUNSEL**—Costs—Counsel's fees.

See **COSTS—Counsel's Fees**. 18.

**THROUGH TRAFFIC.**

See **RAILWAY — Railway and Canal Traffic**.

**TICKET**—Coal—"Correct weight."

See **WEIGHTS AND MEASURES**. 6.

— Passenger—Conditions—Evidence.

See **CARRIER**. 1.

— Passenger's ticket.

See **RAILWAY—Passenger**.

— Requirement to shew ticket.

See **TRAMWAY**. 10, 11.

**TIMBER**—Right of tenant as to felling timber.

A tenant for life of "a timber estate," i.e., an estate in which income has been regularly derived by the periodical felling of timber trees, is not impeachable for waste for selling the timber, notwithstanding that the trees felled, in this case beech trees, are "timber" by the custom of the county. The meaning of "timber estate," "timber," "seasonable wood," "silva cædua," and "coppice" discussed. *DASHWOOD v. MAGNIAC* (No. 1) C. A. (Kay L.J. diss.) [1891] 3 Ch. 306

**TIMBER-YARD**—Workmen's Compensation Act.

See **MASTER AND SERVANT**. 52.

**TIME**—Action against a harbour board—Public authorities protection—Costs.

See **SHIPPING—Harbour**. 155.

— Allowed for taking delivery—Charge for use of sidings—Jurisdiction of arbitrator.

See **RAILWAY—Sidings**. 62.

— Appeal—Time for.

See **Cases under APPEAL**.

— Appeal from county court.

See **COUNTY COURT—Appeal**. 5.

— Appeal to House of Lords.

See **APPEAL**. 22, 23.

— Arbitration proceedings.

See **Cases under ARBITRATION**.

— Bankruptcy proceedings.

See **BANKRUPTCY**. 46, 67.

— Bills of sale—"Stipulated time of payment."

See **BILL OF SALE**. 41.

**TIME—continued.**

— Commencing prosecution—Misdemeanour.

See **CRIMINAL LAW**. 64.

— Computation "from" Nov. 24, 1887—Day excluded.

See **INSURANCE—Accident**. 2.

— Computation of, of residence—Settlement of poor.

See **POOR LAW**. 12.

— Contract.

See **CONTRACT—Time**. 35.

— Contract for sale—Time during which condition may be performed—Absence of express stipulation.

See **VENDOR AND PURCHASER**. 22.

— Co-sureties—Giving time to debtor—Contribution.

See **PRINCIPAL AND SURETY**. 11.

— Covenant to pay—Time certain.

See **INTEREST**. 1, 2.

— "Engagement" clause—Commencement of risk.

See **INSURANCE—Marine**. 49.

— Enlargement of—Imposition of terms.

See **DIVORCE**. 111.

— Examination—Application to discharge order—Delay.

See **COMPANY—WINDING-UP**. 87.

— Expiry of prescribed time.

See **CANADA**. 56.

— Extension of.

See **COMPANY—Memorandum and Articles**. 193.

— Extension of—Dismissal of action—Mistake.

See **MORTGAGE—Redemption**. 68.

— Fine on admittance—Limitation of action—Point from which time begins to run.

See **COPYHOLD**. 4.

— Lapse of—Infant—Adoption on full age of lease made by trustees.

See **INFANT**. 3.

— Limitation of—Liability to make, &c., fences.

See **RAILWAY—Fences**. 6.

— Limitation of time—Actions.

See **Cases under LIMITATIONS, STATUTE OF**.

— Loss of time arising from peril of the sea—Freight.

See **INSURANCE—Marine**. 31.

— Marine insurance.

See **Cases under INSURANCE—Marine**.

— Master and servant.

See **Cases under MASTER AND SERVANT**.

— Principal, giving time to.

See **PRINCIPAL AND SURETY—Discharge**. 13.

— Redemption—Lapse of time.

See **MORTGAGE—Redemption**. 67.

— Restraint of trade—Contract—Evidence of reasonableness inadmissible.

See **MASTER AND SERVANT**. 56.

— Revivor of action.

See **Cases under PRACTICE—Revivor**.

**TIME**—continued.

— Time policy, including a number of ships—Stamp duty.

See **REVENUE—Stamps.** 163.

— Witness—Subpena.

See **EVIDENCE.** 47.

— Workmen's Compensation Act—Time for commencing proceedings.

See **MASTER AND SERVANT.** 96—98.

**TIME-TABLES.**

See **COPYRIGHT—Book.** 6.

**TIME POLICY.**

See **INSURANCE—Marine.** 50, 79, 80.

**TIPPING SPOIL**—Trespass by—Measure of damages.

See **TRESPASS.** 3.

**TIPSTAFF**—Historical note by Master Jenkins as to the office of tipstaff. G. v. L.

[1891] 3 Ch. 128, n.

**TITHE.**

*Tithe Act, 1891 (54 & 55 Vict. c. 8), makes better provision for the recovery of tithe rent-charge in England and Wales.*

*Tithe Rent-charge Recovery Rules, 1891, made under the Tithe Act. St. R. & O. 1891, p. 1194.*

*Report dated Feb. 18, 1892, of the Royal Commission on the redemption of tithe rent-charge. Parl. Paper, 1892 [C. 6606.] Price 1½d.*

*Extraordinary Tithe Act, 1897 (60 & 61 Vict. c. 23), removes doubts arising under the Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54).*

**RATES.] Exemption of owner of tithe rent-charge attached to a benefice from one-half of rates to which Act applies. See Tithe Rent-charge (Rates) Act, 1899 (62 & 63 Vict. c. 17).**

*Tithe Rent-charge (Rates) Act, 1899—Circular dated Aug. 25, 1899, from Loc. Gort. Bd. to Overseers of the Poor with reference to this Act.*

*Inclosure, &c., Expenses Act, 1868 (31 & 32 Vict. c. 89)—Fees to be taken in respect of transactions under the Tithe and other Acts, in accordance with its provisions. W. N. 1900 (May 19), p. 143. See Current Index, 1900, p. xc.*

— Apportionment—Order for removal of parish documents—Justices—Jurisdiction.

See **PARISH COUNCILS.** 1.

— Charge on great tithes—Inclosure Act—Allotment of lands in lieu of tithes—Transfer of liability to custom.

See **CUSTOM.** 1.

1. — Deduction by tenant of tithe rent-charge from rent—*Tithe Act, 1836 (6 & 7 Will. 4, c. 71), s. 80.*

Each deduction in respect of a payment of tithe rent-charge under s. 80 of the Tithe Act, 1836, should be made from the next payment of rent, and cannot be brought into account in the payment of any subsequent rent. *DAWES v. THOMAS* — C. A. [1892] 1 Q. B. 414

2. — Extraordinary tithe rent-charge, Charge in lieu of—Hop-ground part of farm—Sale in portions—Hop-ground only chargeable—Extra-

**TITHE**—continued.

*ordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), ss. 1-4.*

After the passing of the Extraordinary Tithe Redemption Act, 1886, but before the Land Commrs. made their certificate, A. sold a part of a farm including fifteen acres of hop-ground to B., and the rest of the farm, no part of which was hop-ground, to others. After the value of the charge was ascertained, B. sought to recover a proportionate part of the same from one of the other purchasers:—

*Held*, that the hop-ground only was chargeable under the Act of 1886, and that the deft. was consequently not liable to pay any portion of the charge. *SIMMONDS v. HEATH*

C. A. [1894] 1 Q. B. 29

3. — Income tax—Assessment for occupation of lands—Right of appeal—*Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. B—Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 8.*

Section 8, sub-s. 3, of the Tithe Act, 1891, gives a right of appeal to the owner of tithe rent-charge (where the assessment on land made by the surveyor for Sched. B of the Income Tax Act, 1853, has been reduced by the Commrs. on appeal by the occupier) to such an extent that the tithe rent-charge exceeds two-thirds of the annual value of the land and becomes liable to reduction under s. 8, sub-s. 1. *REG. v. COMMRS. OF TAXES FOR BARSTAPLE DIVISION OF ESSEX*

Div. Ct. [1895] 2 Q. B. 123

4. — Land tax—Exemption from—*Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), ss. 3, 4, sub-s. 5.*

The annual rent-charge, payable under the Extraordinary Tithe Redemption Act, 1886, in lieu of the extraordinary charge previously leviable on hop-grounds, orchards, &c., is not liable to land tax. *CARR v. FOWLE*

Div. Ct. [1893] 1 Q. B. 251

5. — Occupier's liability notice—*Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 2, sub-s. 6.*

On an application by a landowner for a certificate under s. 2, sub-s. 6, of the Tithe Act, 1891, excusing him from not having served on the titheowner an occupier's liability notice, it is not necessary to shew the liability of the occupier to pay tithe under a contract made before the Act. *In re TITHE ACT, 1891. HUGHES v. RIMMER*

Div. Ct. [1893] 2 Q. B. 314

— Rateable value—Deduction—Tenants' profits.

See **RATES.** 56.

6. — Rates—Arrears due before *Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 6—Deductions.*

The occupiers of land, out of which a tithe rent-charge issued, paid on demand of the overseers arrears of rates due before the Tithe Act, 1891. The landowner allowed the amounts so paid to be deducted from the rent, and he now sought to deduct the amount so allowed from the next payment of tithe:—

*Held*, that he could not make any deduction, because s. 6 of the Tithe Act, 1891, had taken from the occupiers all liability for rates on tithes and had put it on the titheowner. The payments of the occupiers were therefore voluntary payments which they were not entitled to deduct

**TITLE**—*continued.*

from their rent, and consequently the allowances by the landowner were also voluntary, and he could not deduct them from the title. *In re* **TITHE ACT, 1891.**

(A) **ROBERTS v. POTTS** - Div. Ct. [1893] 2 Q. B. 33; C. A. affirm. Div. Ct. (Kay L.J. diss.) [1894] 1 Q. B. 213

(B) **JONES v. COOKE** C. A. [1894] 1 Q. B. 213

7. — *Redemption money—Order for recovery—Jurisdiction—Tithe Act, 1891* (54 & 55 Vict. c. 8), s. 10, sub-s. 4.

A county court has jurisdiction under s. 10, sub-s. 4, of the Tithe Act, 1891, to make an order for recovery of redemption money and expenses. **REG. v. PATERSON** - Div. Ct. [1895] 1 Q. B. 31

— Rent-charge.

*See* **SETTLED LAND**. 105.

**TITLE**—Admission by tenant as to—Ancient document in support of ancient possession.

*See* **EVIDENCE**. 1.

— No inquiry as to vendor's title—Equitable mortgage—Priority.

*See* **MORTGAGE—Priority**. 48.

— Operation of—Act of Parliament.

*See* **STATUTES**. 18.

— Petition for appointment of trustees—Policy effected by husband for benefit of wife.

*See* **HUSBAND AND WIFE—Practice**. 40.

— Possessory—Rights of remaindermen—Statutes of Limitations.

*See* **ESTOPPEL**. 10.

— Purchaser—Sale of goods claimed by third party.

*See* **COUNTY COURT**. 38.

— Question of—Jurisdiction.

*See* **COUNTY COURT—Jurisdiction**. 55.

— Registered title—Adverse possession.

*See* **BRITISH HONDURAS**. 1.

— Registration of.

*See* **LAND TRANSFER**.

— Sale of lands.

*See* Cases under **VENDOR AND PURCHASER—Title**.

— Settled Land Acts.

*See* Cases under **SETTLED LAND**.

— Shares.

*See* Cases under **COMPANY—Shares**.

— Vendor and purchaser.

*See* **VENDOR AND PURCHASER—Title**.

— Vendor and purchaser—Partial disclaimer of trusts.

*See* **TRUSTEE—Disclaimer**. 49.

**TITLE-DEEDS**—Custody of.

*See* **VENDOR AND PURCHASER—Title-deeds**.

— Middlesex deeds—Rectification of register.

*See* **MIDDLESEX REGISTRY**. 1.

— Omission to call for title-deeds—Mortgage—Constructive notice of transfer.

*See* **MORTGAGE—Transfer**. 92.

**TITLE-DEEDS**—*continued.*

— Omission to require production of—Negligence—Equitable mortgage—Purchaser for value without notice—Priority.  
*See* **MORTGAGE—Priority**. 48.

— Pledging by agent.

*See* **PRINCIPAL AND AGENT**. 2.

— Possession of—Priority—Negligence.

*See* **COMPANY—Debentures**. 52.

— Right to possession—Tenant for life.

*See* **SETTLED LAND—Possession**. 94—97.

— Trustees—Custody of title-deeds.

*See* **TRUSTEE—Custody of Title-deeds, &c.** 47, 48.

— Vendor and purchaser.

*See* **VENDOR AND PURCHASER—Title-deeds**.

**TITLE OF HONOUR**—Dissolution of marriage—Remarriage—Continued use of title derived from former husband—Injunction to restrain.

*See* **HUSBAND AND WIFE**. 97.

**TOBACCO**—Oil in.

*See* under **REVENUE—In General**.

**TOBAGO**—Laws of.

*See* **TRINIDAD**.

**TOLLS**—Bicycle—Liability—"Carriage."

*See* **BICYCLE**. 2.

— Dock railways—Incapacity to charge tolls.

*See* **RATES—Rateability**. 22.

— Exemption—Carriages employed in military service of Crown—Turnpike Acts.

*See* **HIGHWAY—Tolls**. 31.

1. — *Prescriptive right—Extinguishment of old franchise by statute.*

A municipal corporation having a prescriptive right to take certain customary tolls for the passage of carriages, cattle, &c., over a bridge belonging to them, obtained in 1734 a local Act which, after reciting their right to take the customary tolls, enacted that the said customary tolls should be and remain vested in them, and empowered them to take the said tolls, with a variation as to the exemption of freemen of the borough. In 1819 the corporation obtained another local Act which repealed the former Act and empowered them to take down the old bridge and build a new one and to take tolls which varied from the old tolls in amount and subject-matter. This Act was temporary and had expired:—

*Held*, that the prescriptive right to take tolls had been merged in and extinguished by the statutory right given in 1734, and neither had nor could have been revived by the later Act, and that the right to take tolls expired with the later Act.

Decision of C. A., [1898] 1 Q. B. 186, affirmed. **NEW WINDSOR CORPORATION v. TAYLOR**

**H. L. (E.)** [1898] W. N. 162 (6); [1899] A. C. 41

— Railway companies.

*See* Cases under **RAILWAY—Railway and Canal Traffic**.

**TOMB**—Bequest to maintain, so long as the law permits—Validity.

See **CHARITY—Gift to Charity.** 31.

— Repair of—Conditional gift.

See **CHARITY—Gift to Charity.** 32.

## TONNAGE.

See under **SHIPPING—Tonnage.**

— Measurement of—Limitation of liability.

See **SHIPPING.** 165.

**TOOLS OF TRADE**—Execution creditor—Levy by sheriff—Small Debts Acts.

See **BANKRUPTCY—Execution.** 102.

**TORT**—Accident at shooting party—Trespass without intention or negligence.

See **TRESPASS.**

1. — *Action founded on tort—Personal injury Negligence—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.*

An action against a ry. for personal injuries caused by the negligence of the co.'s servants brought by a passenger is founded on tort and not on contract.

(A.) even though the passenger has taken a ticket. *TAYLOR v. MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RY. CO.* C. A. [1895] 1 Q. B. 134

(B.) whether the negligence is an act of omission or an act of commission amounting to misfeasance. *KELLY v. METROPOLITAN RLWY. CO.*

C. A. [1895] 1 Q. B. 944

Referred to by C. A. *Meux v. Great Eastern Ry. Co.*, [1895] 2 Q. B. 392, 394.

— Action founded on—Contract of agistment—Negligence.

See **AGISTMENT.** 4.

— Counter-claim for slander.

See **COUNTY COURT.** 70.

2. — *Damages for tort—Waiving tort and claiming profits—Wrong to public—Canal.*

The defts. were the owners of a canal, but not of the water therein, and were bound by their statutes to apply all water that might be required for the purposes of navigation, to allow so much as was wanted for the particular use of certain mill-owners, and to discharge the waste water into the B. Canal. By virtue of an Act passed in 1885, the plts., having acquired the B. Canal, were under a statutory obligation to maintain and keep the same and the approaches thereto in good condition and preserve the supplies of water thereto so that the same might at all times be kept open and navigable for the use of all persons desirous to navigate and use the same without any unnecessary hindrance. The defts. had for many years unlawfully abstracted from their own canal large quantities of water which they sold to persons who were not mill-owners entitled to the use of the same. The plts. brought an action for an injunction restraining the illegal abstraction of water (which was granted), and an account of profits or damages, and claimed the right to waive the tort, and elect to affirm what had been done, and take the profits made by the defts. in lieu of damages:—

*Held*, that, the defts.' canal being a public highway and the abstraction of water being a wrong against the public and against other carriers besides the plts., and the plts. being

**TORT**—*continued.*

under statutory obligations in respect of the B. Canal, the plts. could not affirm the wrongful act and take profits in lieu of damages. *MANCHESTER SHIP CANAL CO. v. ROCHDALE CANAL PROPRIETORS* Byrne J. [1899] W. N. 24 (11)

— Husband and wife.

See **HUSBAND AND WIFE.** 6, 30.

— Joint contribution.

See **SCOTTISH LAW—Joint Delinquents.** 21.

— Joint tortfeasor—Admiralty practice.

See **SHIPPING.** 67, 68, 86.

— Joint tortfeasors—Release.

See **RELEASE.** 1, 2.

— Service out of jurisdiction.

See **PRACTICE—Service.** 218.

— Trustee carrying on business — Damages against trustee—Right to indemnity—Subrogation.

See **TRUSTEE—Indemnity.** 53.

— Turnpike Acts—Exemption—Carriages employed in military service of Crown.

See **HIGHWAY.** 31.

— Waiver of—Joint tortfeasors—Compromise by accepting proceeds of sale—Action of trover against the other—Election.

See **TROVER.** 9.

— Wife's tort—Contract—Liability of husband.

See **HUSBAND AND WIFE.** 30.

**TOTAL LOSS**—Marine Insurance.

See **INSURANCE—Marine.** 29, 79.

— Constructive total loss.

See **SHIPPING.** 7.

**TOW**—Collision—Action against tow and tug—Decree by default against tow—Division of loss.

See **SHIPPING—Collision.** 85—87.

— Stranding.

See **SHIPPING.** 246.

## TOWAGE.

See Cases under **SHIPPING—Salvage.**

**TOWN COUNCILLOR**—Imputation of unfitness for office.

See **DEFAMATION—Slander.** 35.

**TOWNS IMPROVEMENT**—Lowering surface of street—Pipes of water company thereunder—Duties of highway authority.

See **HIGHWAY.** 1.

— “New street”—Width of street.

See **STREETS—New Street.** 19.

## TRACTION ENGINE.

See **HIGHWAY—Repairs.**

**LOCOMOTIVE.**

## TRADE.

*Conciliation Act, 1896 (59 & 60 Vict. c. 30), makes better provision for the prevention and settlement of trade disputes.*

— Act of bankruptcy—Married woman—“Carrying on trade.”

See **BANKRUPTCY—Act of Bankruptcy.** 35.

**TRADE—continued.**

— Assignment by partners for benefit of trade creditors only.

See **BANKRUPTCY—Act of Bankruptcy.**  
1.

— Assessing profits of trade.

See **REVENUE—Income Tax.** 72.

— Board of Trade.

See **BOARD OF TRADE.**

1. — *Competition—Underselling—Manufacturer and retail dealer—Retailing goods at wholesale price—Damage to manufacturer—Right to issue advertisement—Misrepresentation—Damnum absque injuria.*

As a general rule a trader may sell at any price whatsoever any goods, including goods of another's manufacture, which he either has in stock or expects to acquire, and may offer the same for sale by advertisement, although he thereby damages the trade of the manufacturer; and his motives for so doing cannot be inquired into.

The deft., a retail dealer, advertised for sale in a newspaper a new piano of the plts.' manufacture of a specified character at the price at which the plts. supplied the same to the trade, and thereby caused other dealers to give up dealing with the plts.; and he continued the advertisement after he ceased to have in stock any pianos of the plts.' manufacture, and after the plts. had refused to supply him, in the expectation of being able to acquire pianos of the plts. from other dealers:—

*Held*, (1.) that, apart from any question of misrepresentation, the deft. had a legal right to issue the advertisement; (2.) that, though the advertisement amounted to an implied representation that the deft. had in his possession a piano of the advertised description, such misrepresentation was not the cause of the damage to the plts.' trade, and consequently gave no right of action. **AJELLO v. WORSLEY**  
**Stirling J. [1898] 1 Ch. 274**

— Conspiracy—Trade combination.

See **Cases under CONSPIRACY.**

— Covenantants against trading.

See **LANDLORD AND TENANT.** 35, 36.

— Custom of—Reputed ownership—Assignment of debt—Bill of exchange.

See **BANKRUPTCY.** 127.

2. — *Debt—Conditional payment—Effect of giving cheque or bill of exchange—Sale of debts and securities—Company—Assignment of debts.*

A cheque or bill of exchange given in respect of a pre-existing debt operates as conditional payment thereof, and on the condition being performed by actual payment, the payment relates back to the time when the cheque or bill was given.

Deft. sold to the plt. co. his business as existing on Dec. 31, 1887, with the goodwill, stock-in-trade, and "all book and other debts due to the vendor in connection with the said business, and the full benefit of all securities for such debts." On Jan. 1, 1888, deft. had in his possession cheques and bills of exchange, given for trade

**TRADE—continued.**

debts, which had been received by him before that date and were subsequently honoured:—

*Held*, that the trade debts, having been paid, did not pass to the co., and that the cheques and bills were not securities within the meaning of the agreement. **FELIX HADLEY & Co. v. HADLEY** — — **Byrne J. [1898] 2 Ch. 680**

— False trade description.

See **Cases under TRADE-MARK—Merchandise Marks.**

— Fixtures.

See **FIXTURES.** 2, 5—7.

— Fixtures — Mortgage — Non-registration — Power of sale—Invalidity.

See **BILL OF SALE.** 44.

— Inhabited house duties—Exemption in favour of buildings occupied for trade only.

See **REVENUE—House Duty.** 60.

— Interference with—Maliciously inducing employer to discharge servant.

See **ACTION.** 1.

— Libel.

See **DEFAMATION—Libel.** 30—33.

**INJUNCTION.** 36.

— Machinery — Mortgage — Non-registration — Invalidity.

See **BILL OF SALE.** 44.

— Married woman, Bankruptcy of — Separate estate — Restraint on anticipation — Death of husband—Title of trustee in bankruptcy.

See **HUSBAND AND WIFE.** 26.

— Municipal trading—Omnibus business—Ultra vires.

See **LONDON—County Council.** 38.

— Noxious trade—Injunction—Reasonable use of property.

See **NUISANCES.** 21, 22.

— Order and disposition—Reputed ownership—Stands used to shew off goods in shop.

See **BANKRUPTCY.** 128.

— Partnership.

See **Cases under PARTNERSHIP.**

— Power to regulate does not include power to prohibit.

See **CANADA.** 48.

— Refuse.

See **LONDON—Removal of Refuse.**

— Restraint of trade.

See **RESTRAINT OF TRADE.**

— Restraint of—Contract—Evidence of reasonableness inadmissible.

See **MASTER AND SERVANT.** 56.

— Restrictive covenants — Trivial breaches — Acquiescence.

See **BUILDING ESTATE.** 2.

— Rival traders.

See **DISCOVERY.** 44.

— Rivalry—Fraud—Improper use of testimonials — Interlocutory injunction.

See **FALSE REPRESENTATION.**

— Secret.

See **MASTER AND SERVANT—Trade Secrets.**

**TRADE**—*continued.*

— Trade-mark.

See **TRADE-MARK.****TRADE SECRET.**See **MASTER AND SERVANT** — **Trade Secrets.****TRADERS.**See **TRADE.****TRADE-MARK.**

*Patent Office (Extension) Act, 1897 (60 & 61 Vict. c. 25), is an Act for the acquisition of land for the extension of the Patent Office, and for purposes connected therewith.*

**FEES.]** *Treas. O. dated Dec. 14, 1892, under s. 3 of the Public Offices Fees Act, 1879, as to the taking of fees by stamps. [1892] W. N. (Appx. of O. & R.) p. 36; St. R. & O. 1892, p. 651.*

**FEES.]** *Notice under the Public Offices Fees Act, 1879, and Patents, Designs, and Trade Marks Act, 1883. W. N. 1898 (Dec. 3), p. 397. See Current Index, 1898, p. xcix.*

*Rules in proceedings before Judicial Committee of Privy Council under Patents, Designs, and Trade Marks Act, 1883, s. 25. W. N. 1897 (Dec. 11), p. 343. See Current Index, 1897, p. lxxx.*

*Protection of patents, trade-marks, &c., extended to British subjects. Lond. Gaz. Jan. 1, 1897, p. 3.*

**REGISTRATION—APPLICATION FOR.]** *New rule substituted for rule 9 of Trade Marks Rules, 1890. See Trade Mark Rules dated Sept. 15, 1898. W. N. 1898 (Dec. 17), p. 408. See Current Index, 1898, p. cviii.*

**REGISTRATION OF TRADE-MARK.]** *Words in a language other than English, &c., as to. See Trade Mark Rules dated Dec. 31, 1897. W. N. 1898 (Dec. 17), p. 407. See Current Index, 1898, p. cviii.*

**INTERNATIONAL EXHIBITION AT PARIS.]** *O. in C. dated Feb. 2, 1899. Lond. Gaz. Feb. 3, 1899, p. 682.*

*In General, col. 2119.*

**Disclaimer.** See **TRADE-MARK—Registration.**

**Infringement.** See **TRADE-MARK, passim.**

*Merchandise Marks, col. 2120.*

*Practice, col. 2123.*

*Registration, col. 2123.*

**In General.**

1. — **Costs—Innocent dealer—Infringement of trade-mark**

Where a retail trader innocently buys and sells a small quantity of goods which turn out to be an infringement of a trade-mark he will not be liable, as a matter of course, for the costs of an action for infringement.

*Upmann v. Forester, 24 Ch. D. 231, distinguished. THE AMERICAN TOBACCO CO. v. GUEST Stirling J. [1892] 1 Ch. 630*

— **Discovery.**

See **DISCOVERY.** 43.

**TRADE-MARK (In General)**—*continued.*

— English goodwill and—Foreign firm—"Property."

See **REVENUE—Stamps.** 161.

2. — **Expired patent—Infringement—Injunction—Misrepresentation—Use of word "patent"—Expired patent.**

Action for an injunction to restrain the defendants from infringing the plaintiffs' registered trade-mark, and from passing off their goods as those of the plaintiffs:—

*Held, on the facts, that there had been no infringement or passing off, so that it was unnecessary to go into the question of law. The judgment concluded as follows:—*

The circumstances under which the word "patent" was used here were certainly peculiar; but if the question had really called for decision, I do not think that it would have been possible to avoid an examination of the authorities cited, which cannot, it seems to me, be easily reconciled under one general rule. As I do not propose carefully to examine them, it is better not to notice them at all; but I desire to take the opportunity of making one remark on my own decision in *Lewis v. Goodbody*, (1892) 67 L. T. 194. It had occurred to me, before the argument of the case in hand, to doubt whether my statement respecting the use of the words "trade mark" was not too general, and reflection for the purposes of this case has converted that doubt into certainty. I cannot recall the facts sufficiently to say whether the explanation suggested by *Stirling J. in Sen Sen Co. v. Britten*, [1899] 1 Ch. 696, is correct; but, be that as it may, I adopt his view of the law. **HUBBUCK & SON, LD. v. BROWN** **Kekewich J. [1899] W. N. 250**

— **Infringement.**

See **TRADE-MARK, passim.**

— **User—Publici juris—Laches.**

See **NEW SOUTH WALES.** 47.

— **Words.**

See under **WORDS.**

3. — **Wrappers—Purchase of same article from same manufacturer and resale in special wrapper.**

If A. and B. purchase the same article in bulk from the same manufacturer, and A. places it on the market in a special wrapper which has become well known in the trade, B. will be restrained from using a similar wrapper. **KNOTT v. MARSHALL** — **Chitty J. [1894] W. N. 214**

**Merchandise Marks.**

*Merchandise Marks Act, 1891 (54 & 55 Vict. c. 15), amends the Act of 1887 as to customs entry, and as to official prosecutions.*

*Regs. of the Bd. of Agric., dated Oct. 27, 1894, as to prosecutions under the Act. St. R. & O. 1894, p. 276.*

4. — **False trade description—Application to goods—Absence of intent to deceive—Liability—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2, 3.**

By the Merchandise Marks Act, 1887, s. 2, sub-s. 2, a person who sells goods, to which a false trade description is applied, is guilty of an

**TRADE-MARK (Merchandise Marks)—contd.**

offence, unless he proves certain facts, "or that otherwise he acted innocently."

By s. 3, sub-s. 1, "A false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied."

The respondents were charged with selling cigarettes, to which a false trade description, namely, "guaranteed hand-made," was applied. The cigarettes were in fact machine-made, but were of equally good quality with hand-made cigarettes.

The magistrate held that there was no intention to deceive the buyer, but only to save expense by using up a stock of old labels, and that the description, though untrue in fact, was not a false trade description in any material respect, as regarded the cigarettes sold, within the meaning of s. 3, and dismissed the information.

On a case stated:—

*Held*, that the fact that the cigarettes sold as hand-made were of as good quality as hand-made cigarettes afforded no defence; that the description was false in a material respect, and that the respondents, having knowingly applied the false description, had not acted innocently, and were guilty of an offence against the Act. *KIRSHENBOIM v. SALMON & GLUCKSTEIN*

Div. Ct. [1898] 2 Q. B. 19

5. — *False trade description*—"Applied to goods"—*Representation implied from conduct*—*Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).*

The appellant went into the respondents' shop and asked for two half-pounds of tea. The respondents' salesman handed him two packets of tea for which he paid. The packets respectively contained less than half-a-pound weight of tea:—

*Held*, that the mere handing of the packets to the appellant in response to his demand did not constitute an "application" to the goods of a false trade description of their weight within the meaning of s. 2, sub-s. 2, of the Merchandise Marks Act, 1887. *LANGLEY v. BOMBAY TEA CO.*

Div. Ct. [1900] W. N. 141; [1900] 2 Q. B. 460

6. — *False trade description, Application of*—*Oral statement*—*Description in invoice written at purchaser's request*—*Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, sub-s. 2.*

The provisions of s. 2, sub-s. 2, of the Merchandise Marks Act, 1887, which make it an offence to sell goods to which a false trade description is applied, do not apply where the description is entirely oral.

The respondent asked a salesman in the appellant's shop for a small English ham; the salesman pointed to some American hams on a shelf, and said, "These are Scotch hams"; the respondent chose one, which was weighed, and an invoice which did not contain the word "Scotch" was handed to the respondent by another assistant. The respondent told the assistant to put the word "Scotch" on the invoice, as he had bought the ham as such; the assistant did so, and handed the invoice to the respondent, who then paid the amount:—

*Held*, that the description in the invoice was

**TRADE-MARK (Merchandise Marks)—contd.**

a false trade description sufficient to satisfy the statute. *COPPEN v. MOORE (No. 1)*

Div. Ct. [1898] 2 Q. B. 300

Referred to by Div. Ct. *Langley v. Bombay Tea Co.*, [1900] 2 Q. B. 460, 463. *See preceding Case.*

7. — *False trade description*—*Description in invoice delivered with goods*—*Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, sub-s. 1 (d), s. 5, sub-s. 1 (d).*

In an invoice delivered with beer the casks were described as "barrels." One cask contained less than a "barrel" of beer should contain, namely, thirty-four instead of thirty-six gallons. The justices dismissed the case on the ground that the mere delivery of an invoice was not an application of a false trade description to the cask:—

*Held*, that the description of the cask in the invoice was not the less applied to the cask within the meaning of s. 2, sub-s. 1 (d) of the Merchandise Marks Act, 1887, because the invoice was not physically attached to the cask. Case remitted. *BUDD v. LUCAS*

Div. Ct. [1891] 1 Q. B. 408

Referred to by Div. Ct. *Coppen v. Moore (No. 1)*, [1898] 2 Q. B. 300, at p. 305.

— *False trade description*—*Sale of goods to which, is applied*—*Criminal liability of master for act of servant.*

*See MASTER AND SERVANT. 72.*

8. — *False trade-mark*—*Offence of selling goods to which false trade-mark is applied*—*Acting innocently*—*Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, sub-s. 2.*

Sec. 2, sub-s. 2, of the Merchandise Marks Act, 1887, provides that a person selling goods to which a forged trade-mark is applied is guilty of an offence against the Act unless he proves that, having taken all reasonable precautions, he had no reason to suspect the genuineness of the trade-mark "or that otherwise he had acted innocently":—

*Held*, that a person who had reason to suspect the genuineness of the trade-mark might nevertheless have acted innocently in selling goods to which the trade-mark was applied, and might, therefore, be exonerated under this subsection. *CHRISTIE, MANSON & WOODS v. COOPER*

Div. Ct. [1900] 2 Q. B. 522

— *Intent to deceive, Evidence of*—*Admissibility.*

*See TRADE NAME. 7.*

9. — *"Trade description"*—*Unintelligible writing explained by oral statement*—*Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 3.*

Although upon a sale of goods a purely oral indication of the country of their production will not amount to a trade description within the meaning of the Merchandise Marks Act, 1887, any writing or mark, however unintelligible without explanation, will, if orally explained by the vendor at the time of sale to be intended to indicate a particular country as the country in which the goods were produced, constitute a sufficient trade description for the purposes of the Act.

The appellant went into the shop of the

**TRADE-MARK (Merchandise Marks)—contd.**

respondent, a dealer in foreign meat, and asked for a leg of New Zealand mutton. The respondent handed him a leg of mutton, at the same time stating that it was New Zealand meat. The respondent also handed him an invoice in which the meat was described simply as a leg of mutton. The appellant then asked the respondent to mark on the invoice that it was New Zealand meat; whereupon the respondent wrote on it the letters "N. M.," intending thereby to represent that the mutton was New Zealand mutton. No evidence was given that those letters bore that meaning according to any custom of the trade:—

*Held*, that under the circumstances the letters "N. M." amounted to a trade description of the meat within s. 3 of the Merchandise Marks Act, 1887, notwithstanding the absence of any trade custom as to their meaning. *CAMERON v. WIGGINS* Div. Ct. [1900] W. N. 253; see [1901] 1 Q. B. 1

**Practice.**

10. — *Appeal—Service—Essential particulars—Trade Marks Rules*, 1890, r. 23.

The applicants sought to register, as a trade-mark for extract of meat, a label which had on it a photograph of Baron Liebig and printed words. The application stated the essential particulars to be "the name and signature of 'Extract of Meat (Baron Liebig) Photograph Brand, Ltd.' in conjunction with the photograph as reproduced on the above label." The comptroller refused to register on the ground that the trade-mark proposed for registration did not consist of any of the essential particulars required as a condition of the registration of a new trade-mark. The applicants appealed to the Bd. of Trade. The Bd. of Trade referred the appeal to the Chancery Div. of the High Court, and directed the applicants to serve the Comptroller-General and a co. called Liebig's Extract of Meat Co. The applicants applied by summons for the determination of the question raised by the appeal without serving Liebig's Extract of Meat Co. The judge in chambers directed the applicants to bring the matter on by way of motion, and serve the parties directed by the Bd. of Trade, leaving it to the judge to deal with any question of costs should he be of opinion that the parties served ought not to have appeared in the proceedings.

The applicants now moved that their appeal should be heard and determined by the Court, "and that the order (if any) made by the judge in chambers on Nov. 13, 1899, directing notice of this application to be served on Liebig's Extract of Meat Co. may be discharged." The motion was argued on the preliminary objection that the applicants had not followed the direction to serve Liebig's Extract of Meat Co.

Cozens-Hardy J. allowed the preliminary objection. *Ex parte* EXTRACT OF MEAT (BARON LIEBIG) PHOTOGRAPH BRAND, LTD.

Cozens-Hardy J. [1900] W. N. 30

**Registration.**

— Alleged misrepresentation of goods—"Club soda."

See *JAMAICA*. 6.

**TRADE-MARK (Registration)—continued.**

11. — *Alteration—Misnomer—"Patent"—Patents, Designs, and Trade Marks Act*, 1883 (46 & 47 Vict. c. 57), ss. 92, 105—*Merchandise Marks Act*, 1887 (50 & 51 Vict. c. 28), ss. 2, 3, sub-s. 1 (c).

An application under s. 92 of the Patents, &c., Act, 1883, to alter a registered mark by striking out the word "patent" (no patent existing for the article sought to be protected) refused.

Whether s. 92 includes an old mark, *quære*. *In re ADAMS' TRADE-MARK*

Kekewich J. [1892] W. N. 40

See *In re Phillip's Trade-mark*, [1891] 3 Ch. 139, below, No. 14.

12. — *Alteration—Non-essential particular—Old mark—Patents, &c., Acts*, 1883–88, s. 92.

A co. had carried on business at M. and B., but were about to give up their works at B.; both M. and B. appeared upon the marks, which were old marks. They were allowed to omit the reference to B. *In re BURHAM BRICK, LIME, AND CEMENT CO.'S TRADE-MARKS*

Stirling J. [1892] W. N. 134

13. — *Alteration—Old marks—Patents, &c., Act*, 1883 (46 & 47 Vict. c. 57), s. 92.

An old mark ought to be kept registered just as it was used, in the absence of special circumstances necessitating an alteration, as, for example, where the proprietors are converted into a limited co., and would be obliged to give up the mark altogether unless they were permitted to add the word "Limited" to their names. Mere transmission of title does not render an alteration (e.g. of the initials forming part of the mark) in any way necessary. *In re HENRY CLAY AND BOOK & CO.*

Per Kekewich J. [1892] 3 Ch. 549

14. — *Alteration—Old mark—Patents, &c., Trade Marks Act*, 1883, *Act* (46 & 47 Vict. c. 57), s. 92.

The Court refused to allow registered marks to be altered by striking out the words "trade mark," (1) because the marks being old marks ought to be registered just as they were used, prior to Aug., 1875, and (2) because in the old marks as registered there had been an indication of claiming only the device on the label rather than the label as a whole. *In re PHILLIP'S TRADE-MARKS* - - - Chitty J. [1891] 3 Ch. 139

Followed by Kekewich J. *In re Adams' Trade-mark*, [1892] W. N. 40. See No. 11, above.

See also *In re Henry Clay and Book & Co.*, [1892] 3 Ch. 549.

15. — *Alteration—Proprietor's name—Patents, &c., Act*, 1883 (46 & 47 Vict. c. 57), s. 92.

Firm becoming a limited co. Leave given to alter the register by adding the word "Limited" to the firm's trade-marks. *In re BURKE'S TRADE-MARKS* - - - North J. [1891] W. N. 2

16. — *Alteration—Terms on which leave granted—Patents, &c., Acts*, 1883 (46 & 47 Vict. c. 57), ss. 64, 74, 92; 1888 (51 & 52 Vict. c. 50), s. 10.

The Court allowed a registered mark to be altered by expunging the words "trade-mark" on condition that it was made quite clear, on registering the alteration, what part of the mark was essential, and disclaiming exclusive right to



**TRADE-MARK (Registration)—continued.**

the added matter if any. *In re COLMAN'S TRADE-MARKS* (No. 1) — **Kekewich J.** [1891] 2 Ch. 402

Distinguished by Chitty J. *In re Phillip's Trade-marks*, [1891] 3 Ch. 139, No. 14, above.

17. — *Amendment of application—Old mark—Disclaimer—User—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), ss. 69, 71, 72, 74, sub-s. 2.

The Court cannot amend an application under s. 69 of the Act of 1883, by directing the comptroller to proceed with the registration of the essential part of a proposed trade-mark. An "old mark" to be registered must be the whole mark used prior to Aug. 13, 1875. An originally defective or wrongful application cannot be corrected by subsequent disclaimer.

*Semble*, a title by user cannot be acquired in a mark used for transhipment only. *In re MEEUS' APPLICATION* — **Chitty J.** [1891] 1 Ch. 41

Referred to by Byrne J. *In re Wright, Crossley & Co.'s Application and Royal Baking Powder Co. of New York*, [1900] 2 Ch. 218, 229.

18. — *Change of name of proprietor—Register of Trade-marks—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 87.

Where a limited co. being the registered owner of a trade-mark changes its name, it is the duty of the comptroller on request to substitute the new name for the old name on the register. *Ex parte NEW ORMONDE CYCLE Co.* — **North J.** [1896] 2 Ch. 520

19. — *Class—Registration for entire class—User for part of class.*

Registration of a trade-mark for an entire class does not give an exclusive right to use it for every article in that class if it has been only used for one article in the class. *HARGREAVE v. FREEMAN* — **Chitty J.** [1891] 3 Ch. 39

20. — *Disclaimer—"Addition"—Label—Distinctive words common to the trade—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), ss. 64, 74.

On the registration, under the Patents, &c., Act, 1883, of a trade-mark consisting of a label, which contains as an essential part of it, not as an "addition" to it, words which are *primâ facie* distinctive, but are common to the trade, s. 74 does not apply, and the right to the exclusive use of those words need not be disclaimed by the owner of the mark. *In re CLÉMENT & CIE'S TRADE-MARK* — **C. A.** [1899] W. N. 220; [1900] 1 Ch. 114

21. — *Disclaimer—Label—Distinctive label—Part of label—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), ss. 64, 73, 74; 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. 3 (i).

A label was registered, having on it the words "Smokeless Powder Co., Ltd.," and an application was made to compel disclaimer of the words "Smokeless Powder":—

*Held*, that the words in question not being distinctive words, nor "calculated to deceive" within s. 73 of the Patents Act, 1883, and further being contained in a distinctive label registered as a whole, need not be disclaimed. *In re SMOKELESS POWDER CO.'S TRADE-MARK* **Chitty J.** [1892] 1 Ch. 590

22. — *Disclaimer—Old and new marks—*

**TRADE-MARK (Registration)—continued.**

*Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 62, sub-s. 2: s. 64, sub-s. 2; s. 74; 1888 (51 & 52 Vict. c. 60), ss. 10–16.

If application for registration of an old trade-mark has to be made under sub-s. 2 of s. 64 of the Patents, &c., Act, 1883, as amended by the Act of 1888, there is no distinction in reference to disclaimer between new marks and old marks.

Where, under s. 62, sub-s. 2, application is made to register a trade-mark which was used by the applicant or his predecessors in business before August 13, 1875, it is not necessary in the application to state the names of the members of the firm for the time being since the alleged first user, nor even to insert the words "and their predecessors in business, members of the firm for the time being." *In re WRIGHT, CROSSLEY & CO.'S APPLICATION AND ROYAL BAKING POWDER COMPANY OF NEW YORK* **Byrne J.** [1900] W. N. 129; [1900] 2 Ch. 218

23. — *Disclaimer—Letters—Injunction—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 64, sub-s. 2; s. 74, sub-s. 2; s. 77; 1888 (51 & 52 Vict. c. 50), ss. 10, 16.

A trader registered a trade-mark consisting in part of his initials, but disclaimed the exclusive use of the letters:—

*Held*, that the disclaimer alone was sufficient ground for the Court to refuse an interim injunction to restrain another trader from using the letters on the same class of goods. *ROSENTHAL v. REYNOLDS* — **North J.** [1892] 2 Ch. 301

24. — *"Distinctive device"—Removal from register—Proper subject-matter—Portrait of manufacturer—Patents, &c., Act, 1883* (51 & 52 Vict. c. 50), s. 10, sub-s. 1 (c).

The portrait of the manufacturer of goods is a "distinctive device" within the meaning of s. 10, sub-s. 1 (c), of the Patents, &c., Act, 1883, and may properly be registered as a trade-mark to be used by him in connection with his goods.

*In re Anderson's Trade-mark*, (1884) 26 Ch. D. 409, explained.

Decision of Romer J., [1896] W. N. 74, affirmed. *ROWLAND v. MITCHELL. In re ROWLAND'S TRADE-MARK C. A.* [1896] W. N. 167 (10); [1897] 1 Ch. 71

25. — *Distinctive words—Passing off goods as those of another trader—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 90.

*Held*, by Kekewich J., that a trade-mark consisting of the words "John Bull Brand" should not have been registered:—

*Held*, by C. A. (reversing Kekewich J.), that prior use of distinctive words forming part of a trade-mark by a third party, which use had ceased before action brought, does not bind the Court to expunge the distinctive words on the application of an unmeritorious applicant; and that the registered owner was entitled to an injunction against infringement.

Principles on which the Court exercises the discretion conferred by the Patents Act, 1883, considered. *PAINE & CO. v. DANIELLS & SONS' BREWERIES. In re PAINE & CO.'S TRADE-MARKS C. A.* [1893] 2 Ch. 567

Referred to by Buckley J. *C. & J. Field &*

**TRADE-MARK (Registration)—continued.**

*Co., Ltd. v. Wagel Syndicate, Ltd., In re Trade-mark* 96,997, [1900] 1 Ch. 651, 654.

26. — *Distinctive words—Resemblance to mark already registered—Trade-mark accepted for registration but not actually registered—Patents, &c., Acts*, 1883 (46 & 47 Vict. c. 57), ss. 72, 73; 1888 (51 & 52 Vict. c. 50), ss. 14, 15.

L. applied in 1887 for the registration of a trade-mark. The application was accepted; but L.'s agent omitting to pay the fee, the mark was not registered. In 1889 H. registered a mark which like L.'s mark contained the words "Unco guid." In 1893 L. discovered that his mark was unregistered, and applied to have it registered. The Comptroller refused the application on the ground that L.'s mark was too like H.'s:—

*Held*, that L.'s mark ought to be registered; L.'s bona fides being apparent, and the only resemblance between the marks being the use of the words "Unco guid," while both L. and H. had disclaimed the exclusive use of these words:—

*Held*, also, that the non-completion of the registration under the first application was not a bar to the making of a second. *In re LOFTUS' TRADE-MARK* — North J. [1894] 1 Ch. 193

27. — *Distinctive words—"Stone Ale"—Rectification—Injunction.*

Action by a brewer at Stone, Staff., to restrain the defts., who had also built a brewery at Stone, from selling their beer as "Stone Ale," and from infringing their trade-mark. The C. A., holding that the words "Stone Ale" were not distinctive words, ordered the trade-mark to be removed from the register, but granted an injunction to restrain the deft. from using the words "Stone Ale" so as to represent his ale to be that of the plt.

Decision of C. A., (1889) 41 Ch. D. 35, affirmed. *In re JOULE'S TRADE-MARK. THOMPSON v. MONTGOMERY* H. L. (E.) [1891] A. C. 217

Observations of Lord Watson followed by Chitty J. *Wolmershausen v. Wolmershausen & Co.*, [1892] W. N. 87.

See also *In re Paine & Co.'s Trade-marks*, [1893] 2 Ch. 567, No. 25, above; *Birmingham Vinegar Brewery Co. v. Powell*, [1897] A. C. 710.

28. — *Double registration.*

Appeal to the Board of Trade from a refusal by the Comptroller of Trade Marks to register a mark brought in by John Player & Son, Limited, in Class 45 for manufactured tobacco. The trade-mark consisted of a sailor's head, with the sea and a full-rigged ship and turret ship in the background, surrounded by a life-belt. On the life-belt was the legend "Player's Navy Mixture." The application was accompanied by a disclaimer of the right to the exclusive use of the words "Navy Mixture." The applicants had already registered a trade-mark in the same class for manufactured tobacco similar to the mark brought in, except that the words of the scroll were "Player's Navy Cut" instead of "Player's Navy Mixture." The exclusive use of the words "Navy Cut" was also disclaimed. The applicants had evidence to shew that it would be useful for the purpose of registration

**TRADE-MARK—(Registration)—continued.**

abroad to have the trade-mark, in the form now applied for, registered.

The Court dismissed the appeal. *In re PLAYER'S TRADE-MARK* Cozens-Hardy J. [1900] W. N. 273

29. — *Essential particulars—Disclaimer of added matter—Own name—Patents, &c., Acts*, 1883 (46 & 47 Vict. c. 57), s. 64; 1888 (51 & 52 Vict. c. 50).

In order to escape the necessity of disclaiming the right to the exclusive use of the firm's own name, it is not necessary to put the whole of the firm's name on the mark.

Therefore, applicants consisting of five persons named Colman and trading as J. & J. Colman were entitled to register an American flag and bull's head coupled, with the words "Bull's Head," and "Colman's Mustard" without disclaiming "Colman's."

*Quære*, whether any disclaimer can be required of words appearing on a label which is as a whole a distinctive label, and therefore an essential particular within s. 64 (1), (c) of the Patents, &c., Act, 1883, as amended by the Act of 1888. *In re COLMAN'S TRADE-MARK APPLICATION* (No. 2) Stirling J. [1894] 2 Ch. 115

30. — *Evidence on appeal from the Comptroller referred to the Court—Trade Marks Rules, 1890, r. 23.*

On an appeal from the decision of the comptroller to register a trade-mark, the Bd. of Trade referred the appeal to the Court, on motion for directions as to evidence. An order was made for the motion to be set down in the witness list, affidavits to be filed by the parties, and the motion to be heard on the statutory declarations used before the comptroller, and the above-mentioned affidavits and the cross-examination in court of any deponent as to whom notice to cross-examine should be given by the other side. *In re ROGER'S TRADE-MARK*

North J. [1894] W. N. 173

31. — *Expunging marks "calculated to deceive"—Colour—Patents, &c., Acts*, 1883 (46 & 47 Vict. c. 57), ss. 67, 72, sub-ss. 2, 90; 1888 (51 & 52 Vict. c. 50), ss. 10, 14.

Where one trader has registered a device, another trader cannot register a description in words of that device even though he adds a specific colour:—

*Held*, on the facts that the entry on the register of respondent's mark was made "without sufficient cause," and that the applicants being "persons aggrieved" within the meaning of s. 90 of the Patents, &c., Act, 1883, were entitled to have it expunged from the register:—

*Held*, also, on the facts, that an injunction limited to user in the Colonies would not afford sufficient protection to the applicants. Decision of Stirling J. [1894] 1 Ch. 61, affirmed. *In re TRADE-MARK OF LA SOCIÉTÉ ANONYME DES VERRIERES DE L'ETOILE* (No. 2) C. A. [1894] 2 Ch. 26

Referred to by C. A. *In re Trade-mark of John Dewhurst & Sons, Ltd.*, [1896] 2 Ch. 137, 146.

32. — *Fancy word—Combination—Brand—Water-mark—Rectification.*

Application to remove from register "Pirie's

**TRADE-MARK (Registration)**—*continued.*

Parchment Bank," which had been registered with a disclaimer of the right to use the two words "Parchment" and "Bank" separately:—

*Held*, (1) that words which simply were in common use in a trade could not become a trade-mark by being combined; (2) that the particular words whether used singly or in combination were not fancy words; (3) that they were not a distinctive brand.

*Semble*, (*per V. Williams J.*) the word "brand" is wide enough to include a "water-mark." **ALEXANDER PIRIE & SONS v. GOODALL**

**V. Williams J. affirm. by C. A. [1892] 1 Ch. 35**

Explained by Stirling J. *In re Colman's Trade mark* (No. 2), [1894] 2 Ch. 115, 126. *See No. 29, above.*

**33. — Fancy word—"Shakespeare"—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64, sub-s. 1 (c).**

Shakespeare as applied to cigars is not a "fancy word" not in common use. *In re BANKS AND JAMES' TRADE-MARK*

**Chitty J. [1895] W. N. 116 (14)**

**34. — Fancy word—Invented word—"Britannia"—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64, sub-s. 1 (c).**

The word "Britannia" is not a "fancy word" within s. 64 of the Patents, &c., Act, 1883, and is therefore incapable of being registered as a new trade-mark. **HODGSON v. SINCLAIR. In re HODGSON & SIMPSON'S TRADE-MARK**

**Chitty J. [1891] W. N. 176**

**35. — Fancy word—Invented word—"John Bull Brand."**

The phrase "John Bull Brand" is a "fancy word" not in common use" applicable to beer and registrable as a trade-mark under s. 64, sub-s. 1 (c) of the Patents, &c., Act, 1883. *In re PAINE & Co.'s TRADE-MARKS. PAINE & Co. v. DANIELLS & SONS' BREWERIES*

**C. A. revers. Kekewich J. [1893] 2 Ch. 567**

**36. — Fancy word—Invented word—Descriptive word—"Mazawattee"—Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57), s. 64; 1888 (51 & 52 Vict. c. 50), s. 10.**

A word partly compounded of a Hindu word and partly of a Cingalese word meaning an estate, is not a descriptive or geographical, but an invented word, and capable of registration. *In re DENSHAM'S TRADE-MARK*

**Romer J. affirm. by C. A. [1895] 2 Ch. 176**

**37. — "Fancy word not in common use"—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64.**

In 1886 J. registered as a trade-mark for substances used as food or as ingredients in food the word "Bovril," which he had invented, and which up to the time of registration he had never used. He made over his business and trade-mark to a limited company. The best known of the articles sold under this mark was a fluid extract of beef which was issued under the name of "Fluid Beef, Brand Bovril," but the article being extensively sold, and called by the public "Bovril," the company adopted this name and described it as "Bovril" in their advertisements. In 1896 a rival trader applied to expunge the word from the Register of Trade Marks on the ground that

**TRADE-MARK (Registration)**—*continued.*

it was not a "fancy word," but as applied to articles derived from beef it was descriptive, and as to articles not so derived was deceptive:—

*Held* (affirming the decision of Kekewich J.), that at the time when the mark was registered "Bovril" was a "fancy word not in common use," and therefore might properly be registered as a trade-mark under the Patents, &c., Act, 1883, and that it was not a descriptive word, for although "Bov" might suggest the idea of an ox, the word as a whole would not at that time convey any meaning. *In re TRADE-MARK No. 58,405, "BOVRIL"* — **C. A. [1896] 2 Ch. 600**

**38. — Foreign trade-mark—Descriptive words—Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57); 1888 (51 & 52 Vict. c. 50), ss. 61, 103.**

Sec. 103 of the Patents, &c., Act, 1883, as amended by the Patents, &c., Act, 1885, authorizes the registration of a trade-mark, application for registration of which has been made in a foreign country, only in cases where the trade-mark is within the definition of a trade-mark in s. 64. *In re CARTER MEDICINE Co.'s TRADE-MARK* — **North J. [1892] 3 Ch. 472**

**39. — Fraudulent user—Old mark—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 74, sub-s. 1.**

Marks were used previously to 1887 with a fraudulent addition implying that the goods were made at H., when they were in fact made in M.:—

*Held*, that such user disentitled the applicant for registration to have them registered as new marks, minus the fraudulent addition. *In re FUENTE'S TRADE-MARKS. Romer J. [1891] 2 Ch. 166*

**40. — Geographical name—Word—Pictorial representation—Descriptive name—"Character or quality of the goods"—Goodwill—Assignment—Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57), ss. 64, 65, 70; 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. 1 (c).**

An American co. registered three trade-marks: (1.) a magnolia flower without words; (2.) the flower with the words "Magnolia antifriction metal"; the exclusive right to the words "antifriction metal" being disclaimed; (3.) the word "Magnolia" alone. Marks (1.) and (2.) were registered in class (6) for "Antifriction metal bearings," Mark (3.) was registered in class (5) for "unwrought and partly wrought metals used in manufacture." The "Magnolia" metal was a compound metal originally made under a secret process, but for which afterwards a patent was taken out:—

*Held*, by Kekewich J., that marks (2.) and (3.) must be expunged, because the word "Magnolia" referred to the character or quality of the goods:

*Held*, by C. A., that they must be expunged, because as a general rule, where an article is made under a secret process or under a patent, the manufacturer cannot, after the secret process has been discovered or the patent has expired, claim a monopoly in name which does not distinguish the article as being of his manufacture:

*Held*, further, by C. A., that mark (2.) had reference to the character and quality of the goods, and might have been expunged on that ground, but that mark (3.) had no such reference

**TRADE-MARK (Registration)—continued.**

and was not liable to be expunged on that ground:

*Held*, by Kekewich J. and by C. A., that "Magnolia" was not "a geographical name" within the meaning of the Act, for that a word whose primary signification is not geographical does not become such because some obscure place has been called by it, unless the name be given to the manufactured articles with reference to the locality; and that marks (2.) and (3.) were not liable to be expunged on that ground:

*Held*, by Kekewich J. and C. A., that it was no objection to the registration of mark (1.) that the flower was the equivalent of a word which was not a good trade-mark:

*Held*, therefore, that mark (1.) was a good trade-mark.

In 1896 the American co. transferred its goodwill and assets to the appellant co. The American co. had sold a large amount of the metal in England under an agreement between them and an English firm, styled their agents, by which they agreed to supply the agents with the metal, to be paid for by the agents, who were to resell it for their own profit. The agents were to be at liberty to trade under the name of "The Magnolia Antifriction Metal Co. of Great Britain" during the existence of the agreement, but not afterwards, and the co. reserved a right in the nature of a reversion in the business carried on by the agents under the agreement. The firm caused bearings to be made and sold them on their own account, but it did not appear that the American co. had sold any bearings in England. The metal sent to England was stamped with trade-mark No. 1, but it did not appear that the bearings were so stamped:

*Held*, by Kekewich J., that, though at the date of the assignment the American co. had a goodwill in a business in England concerned with the metal, they had no goodwill in a business in England concerned with metal bearings; that the assignment was therefore invalid under s. 70 of the Patents, &c., Act, 1883, and that mark (1.) must be expunged:

*Held*, by C. A., that the American co. had a goodwill in a business in England concerned with metal bearings, and that the assignment was valid, and mark (1.) must remain on the register. *In re MAGNOLIA METAL CO.'S TRADE-MARKS* — C. A. [1897] 2 Ch. 371 — International copyright.

See Cases under COPYRIGHT — International.

41. — *Invented word — Descriptive word — "Somatose"* — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64, sub-s. 1; 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. 1.

"Somatose" held not to be an "invented word," but descriptive and therefore not capable of registration. *In re FARBENFABRIKEN APPLICATION* — C. A. (Lindley L.J. dissent.) affirm. North J. [1894] 1 Ch. 645

Overruled. *Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, and Trade Marks*, H. L. (E.) [1898] A. C. 571.

42. — *Invented word — Geographical name — "Eboline"* — Patents, &c., Act, 1883 (46 & 47

**TRADE-MARK (Registration)—continued.**

Vict. c. 57), s. 64; 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. (d) (e).

A word already in existence cannot properly be said to be an "invented word" because the person claiming to have invented it was not aware of its existence. The prohibition in s. 10 (e) of the Patents, &c., Act, 1888, is not confined to the noun substantive, but extends to adjectives formed therefrom, *eboline* being compounded of the geographical name "Eboli," and the suffix "ne" is not an invented word but a geographical name. *In re SIR TITUS SALT, BART., SON'S & CO.'S APPLICATION*

Chitty J. [1894] 3 Ch. 166

Distinguished by Romer J. *In re Densham's Trade-mark*, [1895] 2 Ch. 176, 183.

Referred to by C. A. *In re Magnolia Metal Co.'s Trade-marks*, [1897] 2 Ch. 371. See No. 40, above.

43. — *Invented word — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64; 1888 (51 & 52 Vict. c. 50), s. 10 (d).*

To be registered as a trade-mark, an "invented word" need not be absolutely new, or invented for the purpose.

The word "Tachytype" had been used as part of the name of a foreign co. who had advertised and made communications of patented inventions in their own name in England. An English co. were allowed to register the word "Tachytype" as a trade-mark. *In re LINOTYPE CO.'S TRADE-MARK*

Cozens-Hardy J. [1900] W. N. 106; [1900] 2 Ch. 238

44. — *"Invented word" — Reference to the character or quality of the goods" — Costs of registration and appeal — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64, sub-s. 1, as amended by Patents, &c., Act, 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. 1.*

A word which is "an invented word" within the meaning of clause (d) of s. 64, sub-s. 1, of the Patents, &c., Act, 1883, as amended by the Patents, &c., Act, 1888, s. 10, sub-s. 1, may be registered as a trade-mark, although it "has reference to the character or quality of the goods" within clause (e). Clauses (d) and (e) are independent of each other.

The word "Solio" held to be capable of registration as a trade-mark under class 39 in respect of photographic paper, and the decision of C. A. reversed. [1897] W. N. 48 (6) (affirming Kekewich J., [1896] W. N. 158 (8)).

The term "invented word" discussed.

*In re Farbenfabriken Application*, [1894] 1 Ch. 645, overruled. *EASTMAN PHOTOGRAPHIC MATERIALS CO. v. COMPTROLLER-GENERAL OF PATENTS, DESIGNS, AND TRADE-MARKS*

H. L. (E.) [1898] A. C. 571

Referred to by Cozens-Hardy J. *In re Linotype Co.'s Trade-mark*, No. 220, 858; [1900] 2 Ch. 238, 240; *In re "Unedea" Trade-mark*, [1901] 1 Ch. 550.

45. — *Laches — Publici juris — User of trade-mark.*

The A. Co. in 1889 registered in New South Wales the word "Maizena" under the Colonial

**TRADE-MARK (Registration)—continued.**

Trade Marks Act of 1865, but had allowed the name to be used in the colony for twenty-four years as a term descriptive of the article and not of their own manufacture thereof:—

*Held*, that the word had become publici juris and was no longer registrable, and that as the B. Co., though they had applied the word to their own manufacture, had not tried to pass it off as that of the A. Co. by the use of packets, &c., calculated to deceive, but had stated the name of the maker, &c., the B. Co. could not be restrained from using the word. **NATIONAL STARCH MANUFACTURING CO. v. MUNN'S PATENT MAIZENA AND STARCH CO.** — **P. C. [1894] A. C. 275**

**46. — Name—Fictitious person — “Word” — Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57), s. 64; 1888 (51 & 52 Vict. c. 50), s. 10.**

A fictitious name, such as the name of a character in fiction, is a “word” capable of being registered alone as a trade-mark under sub-s. (e) of s. 10 of the Patents, &c., Act, 1888: *Per C. A.* (Kay L.J. dissenting), reversing decision of North J. *In re HOLT & Co.'s TRADE-MARK* **C. A. [1896] 1 Ch. 711**

**47. — Non-user and no bonâ fide intention to use—Expunging.**

A trader is not entitled to register a trade-mark for goods in which he does not deal and in which he has no bonâ fide intention of dealing. Registration under such circumstances may be expunged.

Decision of C. A., *In re John Batt & Co.'s Registered Trade-marks*, [1898] 2 Ch. 432, affirmed. **JOHN BATT & Co. v. DUNNETT**

**H. L. (E.) [1899] W. N. 90; [1899] A. C. 428**

— Notice of motion to expunge trade-mark—Registered proprietor out of jurisdiction. *See PRACTICE—Service.* 194.

— Old mark, Alteration of.

*See above*, Nos. 12—17.

**48. — Old mark—Name of firm—“Special and distinctive words”—Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91), s. 10—Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57); 1888 (51 & 52 Vict. c. 50), s. 64.**

The name of a firm held to have been properly registered under the Acts of 1883 and 1888 as special and distinctive words used as a trade-mark which had been used by the firm for forty years prior to the Act of 1875. *In re HOPKINSON'S TRADE-MARKS* — **Kekewich J. [1892] 2 Ch. 116**

**49. — Old mark—User before Aug. 13, 1875—Rectification—Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91), s. 10—Patents, &c., Act, 1888 (51 & 52 Vict. c. 50), s. 10.**

User as a trade-mark in s. 10 of the Trade Marks Registration Act, 1875, means user alone, not user in combination with other words. In the present case the words “Monopole” and “Dry Monopole” had only been used as part of a trade-mark, and therefore should not have been registered. The trade-marks were therefore ordered to be expunged from the register. **RICHARDS v. BUTCHER** **Kay J. affirm. by C. A. [1891] 2 Ch. 522**

**TRADE-MARK (Registration)—continued.**

**50. — Old Mark — “Yorkshire Relish” — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 90.**

The use of the words “Yorkshire Relish” on bottles in conjunction with another trade-mark, and on the packing-cases without the other mark:—

*Held*, not to be sufficient user as a trade-mark to authorize registration as an “old mark.” *In re POWELL'S TRADE-MARK. Chitty J. affirm. by C. A.*

**[1893] 2 Ch. 388; sub-nom. POWELL v. BIRMINGHAM VINEGAR BREWERY CO. affirm. by H. L. (E.) [1894] A. C. 8**

Followed by Stirling J. *In re Talbot's Trade-mark*, [1894] W. N. 12. *See also Powell v. Birmingham Brewery Co.*, [1897] A. C. 710.

**51. — Opposition — Amendment of notice — Patents, &c., Acts, 1883 (46 & 47 Vict. c. 57); 1888 (51 & 52 Vict. c. 50), s. 69—Trade Marks Rules, 1890, 22, 31, 54, 55—R. S. C., 1883, Order XXVIII., r. 12.**

Opponents to the registration of a trade-mark applied, after giving notice of appeal, for leave to amend their notice of opposition:—

*Held*, that, as no leave to amend had been asked from the registrar, the Court had no jurisdiction on appeal to give leave to amend. *In re ROBERTSON, SANDERSON & Co.'s APPLICATION*

**Stirling J. [1892] 2 Ch. 245**

— Opposition—Discovery—Production of documents—Motion to remove trade-mark from register.

*See DISCOVERY.* 43.

**52. — Oriental characters—Words “calculated to deceive” — Condition — Local limitation — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), as amended by 51 & 52 Vict. c. 50, ss. 62, 64, 73 (1).**

*Held* (reversing the decision of the Vice-Chancellor of the County Palatine), that the Comptroller-General of Patents, Designs, and Trade Marks was justified in refusing to register a trade-mark containing as an essential part of it words amounting to a verbal description of a mark already on the register, on the ground that their use would be calculated to deceive, though the words were in the Burmese language and character, which are little known out of Burma.

*Held*, by the Vice-Chancellor of the County Palatine, that the comptroller was not justified in refusing to register words in an oriental character as part of a trade-mark for cotton goods. On appeal this point was left open.

The holder of the trade-mark containing a picture of the object referred to by the words in question consented to the application for registration:—

*Held*, by C. A., that this was important only as evidence that the use of the words was not calculated to deceive, and did not preclude the comptroller from deciding otherwise.

Under s. 62, sub-ss. 4 and 5 of the Act of 1883, the Court can order the registration of a trade-mark subject to any conditions. The applicants were willing to accept a registration subject to a condition that the mark should only be put on goods sent to Burma, there being evidence that in Burma the use of the words would not be calculated to deceive:—

*Held*, that the Court ought not to direct

**TRADE-MARK (Registration)—continued.**

registration of a trade-mark subject to a condition that it shall be used only in a particular country, such a condition not being contemplated by the Act, and being incapable of being enforced. *In re* TRADE-MARK OF JOHN DEWHURST & SONS, LD. — C. A. [1896] 2 Ch. 137

Referred to by Stirling J. *In re* Ehrmann's Application, [1897] 2 Ch. 495, 500.

53. — *Partnership—Dissolution—Application by partners for separate registration of identical marks used by old firm—Restrictions on registration—Patents, &c., Acts, 1883–8* (46 & 47 Vict. c. 57; 51 & 52 Vict. c. 50), ss. 70, 71, 72, 73, 74, 76, 77, 87, 91.

A firm consisting of five partners was dissolved by a deed which provided that the business should in future be carried on by two separate firms comprised of various members of the old firm; that all the partners should be entitled to use the trade-marks formerly used by the old firm; and that neither of the new firms should be exclusively entitled to the goodwill of the old business. The new firms applied simultaneously for the registration in their respective names of the marks which had been used by the old firm, some of which were registered in the name of the old firm and one of which was not registered in this country. The new firms mutually consented to each other's application:—

Held, that the registrations asked for ought not to be allowed. *In re* EHRMANN'S APPLICATIONS — Stirling J. [1897] 2 Ch. 495

54. — “*Person aggrieved*”—“*Common to the trade*”—*Disclaimer—Geographical words—Trade Marks Registration Act, 1875* (38 & 39 Vict. c. 91), ss. 5, 10—*Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 90.

In this case the following points were considered: the meaning of “person aggrieved,” “common to the trade,” and “place of business.” The necessity for disclaiming words forming part of label and the proper time for disclaimer. The right of a purchaser to register as his own the trade-mark of a foreign producer. The right to register geographical words like “Apollinaris.” The right to have a trade-mark wrongfully registered struck off, although it may be immediately reinstated. The right to choose which Act to proceed under, where the proceedings cover both. *In re* APOLLINARIS CO.'S TRADE-MARKS (No. 2)

C. A. [1891] 2 Ch. 186

Distinguished by Chitty J. *In re* Phillip's Trade-marks, [1891] 3 Ch. 139, No. 14, above; and see *Smokeless Powder Co.'s Trade-mark*, [1892] 1 Ch. 590, No. 21, above; *In re Magnolia Metal Co.'s Trade-marks*, [1897] 2 Ch. 371, No. 40, above.

55. — “*Person aggrieved*”—*Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 90.

A “person aggrieved” within the section includes a person in the same trade as the person who has registered the trade-mark, and who would or might have his legal rights limited by the existence of the entry, although he has no intention of trading in the article in question.

(A) POWELL v. BIRMINGHAM VINEGAR BREWERY CO. (No. 1) H. L. (E.) affirm. C. A. and Chitty J. [1894] A. C. 8

**TRADE-MARK (Registration)—continued.**

(B) APOLLINARIS CO.'S TRADE-MARK (No. 2)

C. A. affirm. Kekewich J. [1891] 2 Ch. 186

(C) *In re* TALBOT'S TRADE-MARK

Stirling J. [1894] W. N. 12

(D) *In re* THE TRADE-MARK OF LA SOCIÉTÉ ANONYME DES VERRERIES DE L'ETOILE (No. 2)

Stirling J. [1894] 1 Ch. 61 affirm. by

C. A. [1894] 2 Ch. 26

56. — *Practice—Appeal—Evidence—Patents, &c., Acts, 1883 and 1888* (46 & 47 Vict. c. 57, and 51 & 52 Vict. c. 50), s. 69, sub-ss. 3, 4—*Trade Marks Rules, 1890*, rr. 23, 26.

On reference of an appeal by an opponent to registration of a trade-mark to the Chancery Div. of the High Court, it was directed by the Bd. of Trade that the appellant, the applicant, and the comptroller should be “at liberty to adduce such evidence by affidavit, examination, or cross-examination of witnesses and otherwise as the Court may see fit to direct or permit, in addition to the statutory declarations used at the hearing before the comptroller, which for this purpose are, if necessary, to be verified by affidavit:—

Held, that the declarations were to be verified on oath by the several persons who made them. *In re* KINGSFORD'S TRADE-MARK. *Ex parte* NATIONAL STARCH MANUFACTURING CO. — North J. [1898] W. N. 37 (2)

57. — *Rectification—Company—“Limited”—Abbreviation—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 8, 41; *Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 92.

On motion to alter a trade-mark by adding “Ltd.” to the name of a co. owning it, leave was given on terms that the word “Limited” should appear in full on the altered trade-mark. *In re* ROBERT PORTER & CO.

Stirling J. [1895] W. N. 102

58. — *Rectification—Descriptive word—Patents, &c., Acts, 1883* (46 & 47 Vict. c. 57), s. 64, sub-s. 1 (c), s. 90; 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. 1 (d), (e).

The word “emolliolorum” conveys the impression that it acts by softening substances to which it is applied. It is therefore a “descriptive word” not capable of being registered either as a “fancy word” under s. 64 of the Patents, &c., Act, 1883, nor as an invented word under s. 10 (1) (d), (e) of the Act of 1888, nor as a word having reference to the character and quality of the goods. *In re* TALBOT'S TRADE-MARK

Stirling J. [1894] W. N. 12

59. — *Rectification—Notice—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), ss. 62, sub-s. 6, 90, 107, 111, 117.

No special procedure is prescribed by the Acts or rules as to the service on parties of notice of application to expunge a trade-mark. It is enough to give such notice as is required by natural justice. Motion to expunge a trade-mark registered by an Irish co. with a branch office in London. Notice of the motion had been served on the Comptroller-General, and a copy sent to the co. in Ireland. The co. did not appear. The motion was granted, and subsequently the Court refused an application by the co. to set aside the order. Jurisdiction of the English and Irish

**TRADE-MARK (Registration)—continued.**

Courts considered by O. A. *In re KING & Co.'s TRADE-MARK* - C. A. [1892] 2 Ch. 462

Followed by Stirling J. *In re Kay's Patent*, [1894] W. N. 68.

Referred to by North J. *In re Cliff*, [1895] 2 Ch. 21, 25.

60. — *Rectify, Motion to — Infringement — Action for — Trade-mark registered more than five years — Certificate of right to exclusive use — "Action" — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), ss. 76, 77A, 90; 1888 (51 & 52 Vict. c. 50), s. 18.*

The proprietors of a trade-mark, which had been registered for more than five years, brought an action for infringement, and the defendants moved to rectify the register by removing the plaintiffs' mark therefrom. The action and motion were tried together and on the same evidence; an injunction was granted, and the motion was refused:—

*Held*, that, although after the expiration of five years from the date of registration the validity of the trade-mark could only be impeached on motion under s. 90 of the Patents, &c., Act, 1883, the right to the exclusive use of the trade-mark had come in question in the action within the meaning of s. 77A, and that the plaintiffs were entitled to a certificate to that effect. *J. C. & J. FIELD & Co. v. WAGEL SYNDICATE, LD.* *In re TRADE-MARK 96,997*

Buckley J. [1900] W. N. 67; [1900] 1 Ch. 651

61. — *Restrictions upon registration — "Representations of the Royal Crown" — Instructions issued by Comptroller to persons wishing to register trade-marks.*

There is no positive rule binding upon the Court or the Bd. of Trade prohibiting the registration of a trade-mark containing the representation of a Crown. The instructions issued by the Comptroller-General of Trade Marks to applicants for registration, containing a regulation that "representations of the Royal Crown" will not be registered as trade-marks or as prominent parts of trade-marks unless the marks have been used before Aug. 13, 1875, do not prohibit every form of crown, but only representations of the Crown as it appears on the Royal Arms, namely, a circlet surmounted by two arches.

Whether these instructions are binding upon the Court or not, the practice in the Trade Mark Office, which has been based upon them since 1875, ought not now to be departed from. *In re KÖNIG & EBHARDT'S APPLICATION*

Stirling J. [1896] 2 Ch. 236

62. — *Similarity — Misleading use of words "Trade-mark."*

Right of one firm to exclusive use of a common emblem like a star considered.

Trade-mark partly expunged by reason of position of the words "trade-mark." *In re DEXTER'S APPLICATION. In re WILLS' TRADE-MARKS* - Wright J. [1893] 2 Ch. 262

63. — *Unregistered trade-mark.*

R. made and sold belting called R.'s "Camel-hair Belting," but had not registered a trade-mark: B. sold similar belting called "B.'s Camel-

**TRADE-MARK (Registration)—continued.**

hair Belting." In action by R. for infringement, R. gave evidence that their belting was alone known to the trade as "Camel-hair," but none that B. had sold their belting as R.'s. R. was non-suited:—

*Held*, that the proper questions for the jury were (1) whether "camel-hair belting" had acquired in the trade the meaning of belting made by R.; (2) whether B.'s description of their belting would induce purchasers to believe it was made by R. *REDDAWAY v. BENTHAM HEMP-SPINNING CO.* - C. A. (A. L. Smith diss.) [1892] 2 Q. B. 639

Referred to by Stirling J. *Powell v. Birmingham Vinegar Brewery Co.*, C. A. [1894] 3 Ch. 449, 455.

Distinguished by C. A. *Reddaway v. Banham*, [1895] 1 Q. B. 286, 291. This case was reversed by H. L. (E.) [1896] A. C. 199.

64. — *Unregistered trade-mark — Common Law right — Passing off — Imitation of get-up — Misrepresentation from use of the words "trade mark" — Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 105.*

The use by a trader on his goods of the words "trade mark" in connection with a particular mark which he has used as a trade-mark but for which he has not obtained registration, does not necessarily imply that the trade-mark is registered so as to constitute an offence under s. 105 of the Patents, &c., Act, 1883, and apart from s. 105 is not of itself such a misrepresentation as to disentitle him to relief in an action to restrain the imitation of the get-up of his goods.

*Lewis's v. Goodbody*, (1892) 67 L. T. (N.S.) 194, discussed and explained. *SEN SEN CO. v. BRITTEN* - Stirling J. [1899] W. N. 27 (9); [1899] 1 Ch. 692

Followed by Kekewich J. *Hubbuck & Son, Ltd. v. Brown*, [1899] W. N. 250. No. 2, above.

**TRADE NAME**—*Assignment in gross — Infringement — Injunction.*

J. F., a watchmaker in London, used to put his name on the watches he made. After his death C. & Co., of London, bought the business and put J. F. on some of the watches they made, but never traded as J. F. Subsequently C. & Co., by deed, granted to S. & Co., of Liverpool, the sole right to make watches marked J. F. for seven years. After the expiration of the term C. & Co. put J. F. on very few if any of the watches they made. Later on C. & Co. executed a deed of assignment to R. for the benefit of their creditors. R. sold and conveyed to T., watchmaker of Coventry, "the name, title, and goodwill of J. F. of London":—

*Held*, (1) that T. was not the successor in business of J. F.; (2) that if the assignment to T. passed anything it merely passed the right to use the name of J. F. unconnected with any business, and was merely an assignment in gross and could not be supported; (3) that S. & Co. during their licence were not J. F. or his successors in business in London; (4) that after that licence C. & Co. could not set up that J. F. on their watches meant that they were made by J. F. or his successors in business, and had no

**TRADE NAME—continued.**

right to restrain others from using the name of  
J. F. THORNELOE v. HILL

Romer J. [1894] 1 Ch. 569

2. — *Company—Similarity of name—Deception—Injunction.*

The Manchester Brewery Co., Ltd., had carried on business under that name for years. The appellants bought an old business called "The North Cheshire Brewery Co., Ltd.," and then (without intending to deceive) got themselves incorporated and registered under the name, "The North Cheshire and Manchester Brewery Co., Ltd.":—

*Held*, upon the evidence that as a matter of fact the name of the appellant co. was calculated to deceive and that the appellants must therefore be restrained by injunction in the usual way.

Decision of C. A., [1898] 1 Ch. 539, affirmed.  
NORTH CHESHIRE AND MANCHESTER BREWERY CO. v. MANCHESTER BREWERY CO.

H. L. (E.) [1898] W. N. 168 (5); [1899] A. C. 83

3. — *Descriptive name—Interdict.*

The appellants, an English co., claimed to have invented, or at least to have put upon the market, a fabric suitable for shirtings and underwear woven in a particular manner; and alleged that they had for the last ten years described this fabric in their advertisements as made in a certain way; and that they had marked it and invoiced it under the name of "cellular cloth" largely in England and, to some extent, in Scotland. The name had not been registered. The respondents were a wholesale firm in Edinburgh who sold cotton and woollen goods which they had recently described as "cellular."

*Held*, affirming the decision of the First Div. of Ct. of Sess., (1898) 25 R. 1098, that the appellants were not entitled to relief on the grounds—(1.) that the word "cellular" was an ordinary English word which appropriately and conveniently described the cloth of which the goods sold by the respondents were manufactured; and (2.) that the term had not been proved to have acquired a secondary or special meaning so as to denote only the goods of the appellants.

*Reddaway v. Banham*, [1896] A. C. 199, distinguished. CELLULAR CLOTHING CO. v. MAXTON & MURRAY

H. L. (Sc.) [1899] W. N. 56; [1899] A. C. 326

— *False representation—What constitutes—Colourable imitation of name—Right to injunction.*

See CANADA. 24.

4. — *Former concurrent user by two firms—Discontinuance of user by one for several years.*

Where there has been a concurrent user of a trade name by A. and B., but the user thereof by B. has practically ceased for some years, and A. has in the meantime acquired a large sale for his goods and a reputation in the market under the trade name, so that the name has become associated solely with the goods of A., B. may not afterwards revive the use of the name in his business in such a way as to pass off his goods as those of A. DANIEL & ARTER v. WHITEHOUSE

G. Barnes J. [1898] 1 Ch. 686

**TRADE NAME—continued.**

— *Identification of name with goods by user—Injunction.*

See NEW SOUTH WALES. 48.

5. — *Imitation of rival trader's goods—Common law right—Name indicating manufacturer—Injunction—Fraud.*

The respondent had for years manufactured and sold under the name "Yorkshire Relish" a sauce made according to a secret recipe, and the term "Yorkshire Relish" had come to mean that particular manufacture. The appellants began to make a sauce, nearly resembling the respondent's sauce, which they sold as Yorkshire Relish so as to induce purchasers to believe that it was the respondent's "Yorkshire Relish," although the purchasers did not in fact know the name of the respondent in connection with the sauce:—

*Held*, that the respondent was entitled to an injunction restraining the appellants from using the words "Yorkshire Relish" in connection with their sauce without clearly distinguishing it from the respondent's sauce.

Decision of C. A., [1896] 2 Ch. 54, affirmed.

BIRMINGHAM VINEGAR BREWERY CO. v. POWELL

H. L. (E.) [1897] A. C. 710

6. — *Injunction—Form of order.*

Where a person had taken a name as his own name for the purpose of using the name in trade to pass off his boots and shoes as the manufacture of another whose real name it was, he was restrained absolutely from using the name in connection with the sale or manufacture of boots or shoes. F. PINET & CIE. v. MAISON LOUIS PINET, LD. — North J. [1898] 1 Ch. 179

7. — *Injunction—Trade-mark—Rival traders—Passing off—Deception—Intent to deceive—Evidence of intent—Admissibility—Account of profits, form of.*

The principle that "nobody has any right to represent his goods as the goods of somebody else," *Reddaway v. Banham*, [1896] A. C. 199, 204, has no limit as regards name, origin, honesty of manufacture or sale, or otherwise. Thus, a trader whose goods have acquired a reputation under a particular name can restrain the user of that name in any way whatever by a rival trader in connection with the latter's own goods, even though that reputation has been acquired by the exertions or enterprise of the rival trader as an importer and vendor on behalf of the plt.

In an action for an injunction to restrain the use of a trade name; if the deft.'s goods, on the face of them and having regard to surrounding circumstances, are calculated to deceive, evidence to prove the intention to deceive is inadmissible as being unnecessary, the rule being that a man must be taken to have intended the reasonable and natural consequences of his own acts; but if, on the other hand, a mere comparison of the goods, having regard to surrounding circumstances, is not sufficient, then evidence of intention to deceive is admissible, and this evidence may be supplied by admissions, oral or in writing, or by inference from conduct.

*Reddaway v. Banham*, [1896] A. C. 199, discussed.

Where an injunction was granted restraining the defts. from passing off their goods under the



**TRADE NAME—continued.**

plt.'s trade name, an account of profits was directed, as a necessary consequence, in the form allowed in *Lever v. Goodwin*, (1887) 36 Ch. D. 1; 4 Rep. Pat. Cas. 492, although there was no evidence that the defts.' goods had been actually mistaken for the plt.'s. *Saxlehner v. Apollinaris Co.* — **Kekewich J. [1897] 1 Ch. 893**

**8. — Misleading advertisements—Form of order.**

The defts. issued advertisements, cards, and circulars calculated to lead to the belief that the defts.' business was the same as or a branch of the plt.'s business:—

*Held*, that it was a case for granting perpetual injunction to prevent the defts. advertising or carrying on their business without clearly distinguishing their business from that of the plt. *WOLMERSHAUSEN v. WOLMERSHAUSEN & CO.*

**Chitty J. [1892] W. N. 87**

**9. — Name of firm.**

The name of a firm held to have been properly registered under the Acts of 1883 and 1888 as an old mark which had been used by the firm for forty years prior to the Act of 1875. *In re HOPKINSON'S TRADE-MARKS*

**Kekewich J. [1892] 2 Ch. 116**

**10. — Name indicating manufacturer—Common law right—True description of article sold—Imitation—Tendency to deceive—Fraud.**

A trader is not entitled to pass off his goods as the goods of another trader by selling them under a name which is likely to deceive purchasers (whether immediate or ultimate) into the belief that they are buying the goods of that other trader, although in its primary meaning the name is merely a true description of the goods.

The plt. had for some years made belting and sold it as "Camel Hair Belting," a name which had come to mean in the trade the plt.'s belting and nothing else. The defts. began to sell belting made of the yarn of camel's hair, and stamped it "Camel Hair Belting" so as to be likely to mislead purchasers into the belief that it was the plt.'s belting, endeavouring thus to pass off his goods as the plt.'s:—

*Held*, that the plt. was entitled to an injunction restraining the deft. from using the words "camel hair" as descriptive of or in connection with belting made or sold or offered for sale by him and not manufactured by the plt. without clearly distinguishing such belting from the plt.'s belting.

Decision of C. A., [1895] 1 Q. B. 286, reversed. *REDDAWAY v. BANHAM*

**H. L. (E.) [1896] A. C. 199**

Applied by *Kekewich J. Saxlehner v. Apollinaris Co.*, [1897] 1 Ch. 893, 899. See No. 7, above.

Approved by P. C. in *Parsons v. Gillespie*, [1898] A. C. 239.

**11. — Secret preparation—Name not registered as trade-mark—Injunction.**

P. and his predecessor in title had for more than thirty years manufactured and sold a sauce called "Yorkshire Relish." Down to 1893 no other sauce was on the market under that name.

**TRADE NAME—continued.**

In 1884 the name was registered as a trade-mark; in 1893 the B. Co. succeeded in getting the trade-mark removed from the register. The B. Co. then manufactured and sold a sauce different from P.'s, and with a label different from P.'s but with the words "Yorkshire Relish" on it, the B. Co.'s name appearing conspicuously as manufacturers on both the bottle-labels and the wrappers:—

*Held*, that P. was entitled to an injunction restraining the B. Co. from using the words "Yorkshire Relish" in connection with any sauce manufactured by them without clearly distinguishing their mark from P.'s. Form of injunction considered. *POWELL v. BIRMINGHAM VINEGAR BREWERY CO. (No. 2)*

**C. A. affirm. Stirling J. [1894] 3 Ch. 449**

See also *Powell v. Birmingham Vinegar Brewery Co.*, [1894] A. C. 8; [1897] A. C. 710.

Referred to by G. Barnes J. *Daniel & Arler v. Whitehouse*, [1898] 1 Ch. 685, 690.

**— Similarity of name—Deception—Injunction.**

See No. 2, above.

**12. — Similarity of name—Foreign company—Right of foreign company to trade in England under its foreign name.**

A co. was incorporated in Canada under the title of the Sun Life Assurance Co. of Canada:—

*Held*, that in the absence of fraud and dishonesty the co. were entitled to carry on business under their corporate name (provided it were without abbreviation, addition or other modification) in England, notwithstanding the existence of the Sun Life Assurance Co. Undertaking by the Canadian co. not to use any abbreviation of their corporate name without the addition of the words "of Canada." *SAUNDERS v. SUN LIFE ASSURANCE CO. OF CANADA*

**Stirling J. [1894] 1 Ch. 537**

**TRADE UNION—Conspiracy—Maliciously procuring breach of contract.**

Collins J. directed the jury that if the defts., members of a trade union, had induced persons to break contracts made with the plt., and not to enter into further contracts with him, although only with the object of compelling the plt. to adhere to the rules of the trade union, there would be malice in point of law, and the defts. would be liable in damages:—

*Held*, that the direction was right. The right of action for maliciously procuring a breach of contract is not confined to contracts in the nature of contracts of personal service. *TEMPERTON v. RUSSELL (No. 2)* — **C. A. [1893] 1 Q. B. 715**

Discussed. *Allen v. Flood*, [1898] A. C. 1, 94

**2. — Devise or bequests of land—Validity—"Purchase"—Trade Union Act, 1871 (34 & 35 Vict. c. 81), s. 7.**

The word "purchase" in s. 7 of the Trade Union Act, 1871, which enables a trade union to purchase land not exceeding one acre, is used in the ordinary sense of the word "buy" and not the technical sense of "acquire otherwise than by descent or escheat":—

*Held*, therefore, that a devise of land to a

**TRADE UNION—continued.**

trades union was invalid. *In re AMOS. CARRIER v. PRICE* North J. [1891] 3 Ch. 159

**3. — Dissolution — Unexpended funds — Resulting trust.**

A society was registered under the Trade Union Acts, 1871 and 1876, to raise funds, by means of weekly contributions to defend and support its members in obtaining and maintaining reasonable remuneration for their labour. There were two classes of members—printers and transferrers—and by the rules of the society the printers subscribed twice as much as the transferrers, and were entitled to receive twice as much strike or lock-out pay; the scale of payments also varied with the length of time a member had belonged to the society. No provision was made by the rules for the distribution of the funds of the society on a dissolution. At the time of its dissolution the society consisted of 201 members, and its unexpended funds amounted to 1000*l.*, and the question now arose how this sum was to be distributed. The Att.-Gen. having been served, and making no claim to the fund as bona vacantia:—

*Held*, distinguishing *Cunnack v. Edwards*, [1896] 2 Ch. 679, on this point, that there was a resulting trust in favour of those who had subscribed to the fund, and that the money was now divisible amongst the existing members at the time of the dissolution, in proportion to the amount contributed by each member to the funds of the society, irrespective of fines or payments made to members in accordance with the rules. *In re PRINTERS AND TRANSFERRERS' AMALGAMATED TRADES PROTECTION SOCIETY*

Byrne J. [1899] W. N. 86; [1899] 2 Ch. 184

**4. — Intimidating circular—"Black list"—Malicious injury.**

Where a trade union published a poster headed "T.'s Black List," giving the names of T.'s non-union workmen:—

*Held*, by Kekewich J., that as on the evidence the principal motive was to injure T. and the non-union men, and as the injury was being inflicted from day to day, T. and the non-union men were entitled to an injunction against the trade union and their servants, &c., and against the secretary and other officers, who were defts. by name without addition.

Affirmed by C. A. on the ground that a *prima facie* case had been established that the defts. had gone beyond what they were entitled to do, and had refused to give an undertaking to desist pending the action. *TROLLOPE v. LONDON BUILDING TRADES FEDERATION* — Kekewich J.

[1895] W. N. 29; C. A. [1895] W. N. 45

**5. — Intimidation.**

A threat to strike unless the employer ceases to employ non-union men is not intimidation within s. 7 of the Conspiracy and Protection of Property Act, 1875. *CONNOR v. KENT. GIBSON v. LAWSON. CURRAN v. TRELEAVEN*

Lord Coleridge C.J., Mathew, Cave, A. L. Smith and Charles JJ. [1891] 2 Q. B. 545

[A report of the judgment of the Recorder of Newcastle-on-Tyne in *KENT v. CONNOR* forms the Parl. Paper, 1891, 141. Price 1*½*d.]

See *J. Lyons & Sons v. Wilkins*, C. A. [1896]

**TRADE UNION—continued.**

1 Ch. 811, 824, No. 11, below; *Allen v. Flood*, [1898] A. C. 1, at p. 17.

— Maliciously inducing employer to discharge servant—Interference with trade.

See ACTION. 1.

**6. — Nominee of member—Right to sue—Trade Union Acts, 1871 (34 & 35 Vict. c. 31), s. 4, sub-s. 3 (a); 1876 (39 & 40 Vict. c. 22), ss. 1, 10.**

Section 4 of the Trade Union Act, 1871, which provides (sub-s. 3) against legal proceedings being taken to enforce "any agreement for the application of the funds of the trade union (a) to provide benefits for members," is not repealed by 39 & 40 Vict. c. 22, and consequently the nominee of a deceased member cannot bring an action to recover moneys due to the deceased under the rules of the trade union. *CROCKER v. KNIGHT*

C. A. [1892] 1 Q. B. 702

**7. — Officers representing members—Common beneficial interest.**

Certain officials of a trade union were sued on their own behalf, and as representing each of the societies, for causing workmen to break their contracts:—

*Held*, that they could not be sued in their representative character, Order xvi., r. 9, only applying to persons who have or claim to have some beneficial proprietary right, which they are asserting or defending on behalf of themselves and others. *TEMPERTON v. RUSSELL* (No. 1)

C. A. affirm. Div. Ct. [1893] 1 Q. B. 435

**8. — Picketing—"Watching and besetting"—"Wrongfully and without legal authority"—Injunction—Criminal Law Amendment Act, 1871 (34 & 35 Vict. c. 32), s. 1—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 3, 7.**

*Per* Lindley M.R. and Chitty L.J.: To watch or beset a man's house, with a view to compel him to do or not to do that which it is lawful for him not to do or to do, is, unless some reasonable justification for it is consistent with the evidence, a wrongful act: (1.) because it is an offence within s. 7 of the Conspiracy and Protection of Property Act, 1875; and (2.) because it is a nuisance at common law for which an action on the case would lie; for such conduct seriously interferes with the ordinary comfort of human existence and the ordinary enjoyment of the house beset: *Bamford v. Turnley*, (1860) 3 B. & S. 62; *Broder v. Saillard*, (1876) 2 Ch. D. 692, 701; *Walter v. Selfe*, (1851) 4 De G. & Sm. 315; *Crump v. Lambert*, (1867) L. R. 3 Eq. 409.

Proof that the nuisance was caused by an attempt "peaceably to persuade other people" would afford no defence to such an action; though persons may be peaceably persuaded provided the method employed is not a nuisance.

In the expression at the beginning of s. 7 "with a view to compel," the word "view" does not import motive—it imports purpose.

*Per* V. Williams L.J.: the words "wrongfully and without legal authority" in s. 7 of the Act of 1875 mean unwarranted by law.

According to the true meaning of s. 7 all watching and besetting is unlawful except such as is merely for the purpose of obtaining or communicating information; but the fact that a

**TRADE UNION—continued.**

communication invites workmen to discontinue working as soon as they lawfully may does not take such communication out of the proviso in s. 7.

By the Court: Watching and besetting a person's house with a view to compel some one else is within s. 7, sub-s. 4, for the expression "such other" in the sub-section means "any other."

Sect. 7 of the Conspiracy, and Protection of Property Act, 1875, discussed and explained.

The decision of C. A. in *J. Lyons & Sons v. Wilkins*, [1896] 1 Ch. 811, approved, and held to be in no way overruled by *Allen v. Flood*, [1898] A. C. 1, or by any principle laid down therein.

Appeal from decision of Byrne J., holding the plts. entitled to a perpetual injunction to restrain the defts. from watching or besetting either the plts.' works or the works of a sub-manufacturer for them for any purpose except merely to obtain or communicate information, dismissed. *J. LYONS & SONS v. WILKINS* C. A. [1899] W. N. 3 (9); [1899] 1 Ch. 255

Referred to by Stirling J. *Walters v. Green*, [1899] 2 Ch. 696, 702.

9. — *Registration—Liability to be sued in registered name—Trade Union Act, 1871 (34 & 35 Vict. c. 31).*

A trade union cannot sue or be sued in its registered name. *TAFF VALE RY. CO. v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS*

C. A. [1900] W. N. 256

10. — *Restraint of trade—Illegal objects—Expulsion of member—Jurisdiction of Court—Injunction—Trade Union Act, 1871 (34 & 35 Vict. c. 31), ss. 2, 3, 4—Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), s. 16.*

The rules of an association, called the Tea Clearing House, the members of which were dock cos. and tea warehouse keepers carrying on the business of warehousing tea in bond, provided (rule 11) that every member should charge on teas the respective rates and adhere to the terms and conditions specified in a schedule to the rules, and should not be at liberty to depart from them in any way, except that a discount not exceeding 10 per cent. might be allowed on the said rates. No other discount, no money gratuities, and no advantages, direct or indirect, should be offered or allowed by any member to any merchant, broker, or other person in connection with any matter or thing in anywise relating to the Tea Clearing House agreement.

By rule 14, No subscriber should be entitled to warehouse or deposit tea with, or employ in connection with tea, any dock co. or tea warehouse keeper who was not a member of the Clearing House, or to purchase or sample any tea from the warehouse of any non-member.

By rule 15, Any member breaking or failing to observe any of the rules was to be liable to expulsion by resolution of the committee.

The committee passed a resolution expelling the plts. for an alleged breach of the rules, and they brought an action against the members of the committee to restrain them from acting on the resolution, on the ground (inter alia) that the plts. had not had an opportunity of being heard

**TRADE UNION—continued.**

in their defence. Kekewich J. granted an interlocutory injunction:—

Held, on appeal, that the association was a "trade union" within the meaning of s. 16 of the Trade Union Act Amendment Act, 1876; that its objects were illegal independently of the Trade Union Act, 1871, and that s. 4 of that Act prevented the Court from directly enforcing the agreement between the members:

Held, also, that by granting the injunction the Court would be directly enforcing the agreement. The injunction was accordingly dissolved.

*Rigby v. Connol*, (1880) 14 Ch. D. 482, followed.

That case is not inconsistent with and has not been impeached by *Suaine v. Wilson*, (1889) 24 Q. B. D. 252. *CHAMBERLAIN'S WHARF, LD. v. SMITH* C. A. [1900] W. N. 163; [1900] 2 Ch. 605

11. — *Strike—Picketing—Inducing persons not to contract with plaintiffs—Intent to injure—Malice—"Watching or besetting"—Interlocutory injunction—Trade Union Act, 1871 (34 & 35 Vict. c. 31)—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 3, 7.*

The picketing of the works or place of business of an employer, for the purpose of persuading people, whether masters or men, not to work for him, is a "watching or besetting" with a view wrongfully and illegally to compel persons to abstain from doing a lawful act, within the meaning of s. 7, sub-s. 4, of the Conspiracy and Protection of Property Act, 1875.

The defts., officers of a trade union, ordered a strike against the plt. manufacturers, and also against S., a person who made goods for the plts. only; and their pickets by their direction watched and beset the works of the plts. and of S., for the purpose of persuading workpeople to abstain from working for the plts.

The C. A. (affirming the decision of North J.) held, that this kind of picketing and the strike against S. for the indirect purpose of injuring the plts. were illegal acts, and they granted an interlocutory injunction to restrain the defts. and their agents from watching or besetting the plts.' works for the purpose of persuading or otherwise preventing persons from working for him, or for any purpose except merely to obtain or communicate information; and also to restrain the defts. from preventing S. or any other persons from working for the plts. by withdrawing his or their workmen from their employment.

The Conspiracy and Protection of Property Act, 1875, discussed and explained. *J. LYONS & SONS v. WILKINS* — C. A. [1896] 1 Ch. 811

12. — *Strike—"Watching or besetting"—Interlocutory injunction—Conspiracy, and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7.*

Watching or besetting a place where a person "resides, or works, or carries on business, or happens to be," under sub-s. 4 of s. 7 of the Conspiracy, and Protection of Property Act, 1875, does not necessarily imply any lengthened watching, and is not limited to places which he habitually frequents.

During the pendency of a strike two agents of a trade union attended at a landing-stage to await the arrival of a steamer containing work-

**TRADE UNION**—*continued.*

men imported by the masters from Ireland to replace the men on strike, and, on the arrival of the steamer, they informed the Irish workmen of the strike, and offered to pay their expenses if they would go elsewhere to work:—

*Held*, (1.) that the attendance at the landing-stage was with a view to compel the masters to conduct their business in accordance with the requirements of the men, and was not in order merely to communicate information; and (2.) that it was a watching or besetting within sub-s. 4 of s. 7 of the Conspiracy, and Protection of Property Act, 1875; and an interlocutory injunction was granted against the officers of the union. *CHARNOCK v. COURT* - *Stirling J.* [1899] W. N. 44; [1899] 2 Ch. 35

Followed. *See next Case.*

**13. — Strike**—“*Watching or besetting*”—*Interlocutory injunction—Conspiracy, and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7—Practice—Parties—Misjoinder—Joint cause of action—R. S. C., 1883, Order XVI., r. 1.*

In an action under s. 7 of the Conspiracy, and Protection of Property Act, 1875, brought by several members of an association of master builders at H., where there was a strike, against the officials of various trade unions there, the plts., by their statement of claim alleged that the defts., with the intention of compelling the plts. and other members of the association to accept the terms of the unions, combined and conspired together to watch railway stations and other places where workmen imported by the association to replace the men on strike might happen to be, for the purpose of persuading those workmen not to work for the plts. or any of them, or any other member of the association, and in furtherance of the said combination and conspiracy wrongfully did a series of overt acts therein specified for the purpose of persuading the workmen as aforesaid, by reason whereof the plts. suffered damage:—

*Held*, (1.) that the allegations in the statement of claim disclosed a joint cause of action, and that, even if it were not established that all the defendants had committed the acts complained of, judgment might be recovered against some or one of them; (2.) that the plts. could properly combine in bringing the action, inasmuch as the right to the relief claimed arose out of the same series of transactions, and there was a common question of fact as well as law whether all the acts complained of were done in pursuance of a combination so as to render the defts. jointly liable in respect of them.

Interlocutory injunction granted against two of the defts. *WALTERS v. GREEN*

*Stirling J.* [1899] W. N. 138; [1899] 2 Ch. 696

**TRADERS**—*Conspiracy.*

It is not unlawful for traders to combine for the purpose of keeping trade in their own hands, so long as they are not actuated by personal malice or by an intention to ruin their rivals.

Decision of C. A., 23 Q. B. D. 598, affirmed. *MOGUL STEAMSHIP CO. v. MCGREGOR, GOW & CO.*

*H. L. (E.)* [1892] A. C. 25

*See Huttley v. Simmons*, [1898] 1 Q. B. 181, 184; *Allen v. Flood*, [1898] A. C. 1, 23.

**TRADERS**—*continued.***2. — Discovery as between rival traders—Interrogatories.**

Discovery of the documents refused in an action to restrain the defts. from manufacturing and supplying rolling-stock to other tramway companies by means of capital not authorized to be so applied. Interrogatories allowed as to the capital so employed. *ATT.-GEN. v. NORTH METROPOLITAN TRAMWAYS CO.* [1892] 3 Ch. 70

— **Disparagement of goods**—Comparison of plaintiff's goods with those of defendant—Cause of action—Libel.

*See DEFAMATION.* 33.

— **Married woman trading separately from her husband in firm name**—Act of bankruptcy.

*See BANKRUPTCY.* 21.

— **One-man company**—Liability to indemnify company in respect of debts.

*See COMPANY.* 69.

**3. — Trade Protection Association — Dock company—Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 23, 33, 83, 84, 85—R. S. C., 1883, Order XVI., r. 5.**

A trade protection association held (1) to have no locus standi, to obtain a declaration that regulations made by a dock co. were ultra vires, not being themselves traders, and not being entitled to sue as agent for their members; (2) not to be entitled to sue unless they had suffered special damage by the regulations. *LONDON ASSOCIATION OF SHIPOWNERS AND BROKERS v. LONDON AND INDIA DOCKS JOINT COMMITTEE* - *C. A.* [1892] 3 Ch. 242

Referred to. *Barracough v. Brown*, [1897] A. C. 615, 624.

**TRAFFIC**—*Highway.*

*See HIGHWAY, passim.*

— **Locomotive.**

*See LOCOMOTIVE.*

— **London streets.**

*See LONDON—Streets.*  
*STREETS.*

— **Railway.**

*See Cases under RAILWAY—Railway and Canal Traffic.*

**TRAINING STABLES.**

*See REVENUE—House Duty.* 64.

**TRAMWAYS**—*Compulsory purchase—Terms of purchase under Companies Acts—Valuation—Tramways Acts, 1870 (33 & 34 Vict. c. 78), s. 43—London Street Tramways Act, 1870 (33 & 34 Vict. c. clxxi.), s. 44.*

The proper construction of s. 43 of the Tramways Act, 1870, is that the valuation should be made on the principle of assessing what it would cost to lay down the tramways, with an allowance for depreciation, and that past profits or rental value must not be taken into consideration. Tramway held for this purpose to mean the line of rails, and not the power of making rails or the co.'s undertaking or business.

**TRAMWAYS—continued.**

(A) *In re* LONDON COUNTY COUNCIL AND LONDON STREET TRAMWAYS CO.

C. A. revers. Div. Ct. [1894] 2 Q. B. 189;

H. L. (E.) Lord Ashbourne diss., affirm. C. A.

(sub nom. LONDON STREET TRAMWAYS CO. v. LONDON COUNTY COUNCIL) [1894] A. C. 489

(B) *Tramways Act*, 1870 (33 & 34 Vict. c. 78),

s. 43—*Edinburgh Tramway Act* (34 & 35 Vict.

c. *lxxix.*) EDINBURGH STREET TRAMWAYS CO.

v. EDINBURGH CORPORATION — H. L. (Sc.)

Lord Ashbourne diss., affirm. First Div. of Ct. of Session [1894] A. C. 456

2. — *Compulsory purchase—Undertaking—Tramways Act*, 1870 (33 & 34 Vict. c. 78), s. 43.

In s. 43 of the *Tramways Act*, 1870, the word “undertaking” means the special tramway which the promoters are empowered to construct by any special Act or provisional order; therefore where a tramway co. had constructed a number of lines under special Acts passed in different years, a local authority may (subject to the leave of the Bd. of Trade) purchase so much of any one line as is in its district at the expiration of twenty-one years from the time when the promoters were authorized to construct it; notwithstanding that each special Act subsequent to the first defines “undertaking” as the undertaking authorized by that and the preceding special Acts. *NORTH METROPOLITAN TRAMWAYS CO. v. LONDON COUNTY COUNCIL* — — Romer J. [1895] W. N. 91

— *Compulsory purchase of—House of Lords’ decision—Res judicata—Practice.*  
See HOUSE OF LORDS. 2.

3. — *Debenture-holder—Power of sale—Appointment of manager—Sale of undertaking—Tramways Act*, 1870 (33 & 34 Vict. c. 78), s. 44.

Holders of debentures issued by a tramway co., governed by the *Tramways Act*, 1870 (whether the co. be incorporated under the *Companies Act*, 1862, or by a special Act), by which debentures the undertaking of the co. and all its property present and future, including uncalled capital, are charged are, in the event of default by the co., entitled only to the appointment of a receiver of the undertaking of the co. and the net earnings thereof; they are not entitled to an order for the sale of the undertaking nor to the appointment of a manager. The promoters cannot give the debenture-holders a right to exercise the power of sale under s. 44, nor a right to a judicial sale under the order of the Court in an action to enforce the security. *MARSHALL v. SOUTH STAFFORDSHIRE TRAMWAYS CO.* C. A. [1895] 2 Ch. 36

Referred to by North J. *Pegge v. Neath District Tramways Co.*, [1895] 2 Ch. 508, 511; C. A. [1896] 1 Ch. 684.

4. — *Debenture-holder’s action—Manager—Receiver.*

Receiver and manager appointed in a debenture-holder’s action. *BARTLETT v. WEST METROPOLITAN TRAMWAYS CO.* (No. 1)

North J. [1893] 3 Ch. 437

Disapproved by C. A. *Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36. See preceding Case.

5. — *Debenture-holder’s action—Order for*

**TRAMWAYS—continued.**

sale—*Tramways Act*, 1870 (33 & 34 Vict. c. 78), s. 44.

Holders of debentures issued by a tramway co. sued to enforce their security. The chief clerk certified that the property charged by the debentures consisted of the undertaking and all tolls arising therefrom. The co.’s Act incorporated s. 44 of the *Tramways Act*, 1870:—

*Held*, that an order for sale of the undertaking as a going concern could be made, as the section gave the co. power to sell. *BARTLETT v. WEST METROPOLITAN TRAMWAYS CO.* (No. 2).

North J. [1894] 2 Ch. 286

Disapproved by C. A. *Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36. See No. 3, above.

— *Diverting a street into a tramway not a taking of property for public purposes.*  
See NEW SOUTH WALES. 46.

— *Easement—Tramway agreement—Personal or real right—Removal of tramway.*  
See EASEMENT. 5.

— *Imported steel rails—Duty payable.*  
See CANADA. 20.

— *Landlord’s rates and taxes—Covenant by tenant to keep free from all expenses whatever.*  
See SCOTTISH LAW. 24.

6. — *Liability of company for damage from non-repair of road—Tramways Act*, 1870 (33 & 34 Vict. c. 78), ss. 28, 29, 55.

Where a tramway co. has entered into a contract with the road authority under s. 29 of the *Tramways Act*, 1870, whereby such authority has undertaken the repair of the portion of the road which, under s. 28, the tramway co. had to repair, the tramway co. is not liable for injuries occasioned through non-repair of such portion of the road to a person using the same. *ALLRED v. WEST METROPOLITAN TRAMWAYS CO.*

C. A. [1891] 2 Q. B. 398

— *Municipal trading—Omnibus business—Ultra vires.*  
See LONDON—COUNTY COUNCIL. 38.

— *Naval purposes.*  
See ARMY AND NAVY—NAVY.

7. — *Parliamentary deposit—Abandonment—Evidence—Board of Trade notice of non-completion—Tramways Act*, 1870 (33 & 34 Vict. c. 78), s. 18 — *Parliamentary Deposits and Bonds Act*, 1892 (55 & 56 Vict. c. 27).

An application for the payment out of court of the parliamentary deposit on the abandonment of a tramway was supported by affidavit, but no Board of Trade notice under s. 18 of the *Tramways Act*, 1870, was produced:—

*Held*, that the notice was the only evidence which the Court ought to receive, unless satisfied beyond all dispute that it could not be produced. *In re DUDLEY AND KINGSWINFORD TRAMWAYS*

Kekewich J. [1893] W. N. 162

— *Parliamentary deposit—Abortive undertaking—Application of deposit.*  
See PARLIAMENT—DEPOSITS AND BONDS.

1.

**TRAMWAYS—continued.**

8. — *Parliamentary deposit—Liquidator—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 12, 64—Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27), s. 1—Board of Trade Rules, August, 1886, r. 22.*

The parliamentary deposit required by the Bd. of Trade in the case of a tramway co. is not part of the general assets of the co.: it is only made assets for the special purpose of paying the creditors of the co.

Where a tramway co. was being wound up, held that the liquidator was not a creditor of the co. nor entitled to receive out of the deposit the general costs of the liquidation or his own remuneration, but only his costs with reference to the application of the deposit. *In re COLCHESTER TRAMWAYS CO.* North J. [1893] 1 Ch. 309

9. — *Passenger refusing to pay fare—Malicious prosecution—Criminal proceedings—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 51, 52, 56.*

An action for malicious prosecution will lie against a tramway co. in respect of proceedings under s. 51 of the Tramways Act, 1870. *RAYSON v. SOUTH LONDON TRAMWAYS CO.*

C. A. [1893] 2 Q. B. 304

10. — *Passenger—Ticket—Requirement to deliver up, or pay fare—By-law—Reasonableness.*

By a by-law made by a tramway co. and enforceable by a penalty, "Each passenger shall . . . when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger." A passenger, having paid the fare and received a ticket, inadvertently lost it, and was thus unable to deliver it up when required. He declined to pay the fare over again, and was summoned by the co. for breach of the by-law:—

Held, that the by-law was not unreasonable, and that the passenger ought to have been convicted. *HANKS v. BRIDGMAN*

Div. Ct. [1896] 1 Q. B. 253

Referred to by Lindley L.J. *Lowe v. Volp*, [1896] 1 Q. B. 256, 258.

See next Case.

11. — *Passenger—Ticket—Requirement to shew—By-law—Reasonableness.*

By a by-law made by a tramway co. and enforceable by a penalty, "Each passenger shall shew his ticket (if any) when required so to do to the conductor or any duly authorized servant of the co." A passenger, having paid the fare and received a ticket, refused to shew it to an inspector of the co., and was summoned for breach of the by-law:—

Held, that the by-law was not unreasonable, and that the passenger ought to have been convicted. *LOWE v. VOLP*

Div. Ct. [1896] 1 Q. B. 256

12. — *Penalty—Distress—Public undertaking—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 28, 56.*

Penalties, imposed on a tramways co. for non-repair of a tramway, can be recovered by distress on the rolling stock and chattels. Leave to distrain for such penalties was given in a debenture-holders' action in which a receiver

**TRAMWAYS—continued.**

had been appointed. *PEGGE v. NEATH AND DISTRICT TRAMWAYS CO.*

North J. [1895] 2 Ch. 508

Arrangement made on appeal

C. A. [1896] 1 Ch. 684

13. — *Stables—Nuisance—Statutory powers.*

A tramway co.'s Act allowed the tramway to be worked by horses, but did not expressly authorize the co. to build stables:—

Held, that though horses were necessary for the working of the tramways the co. were not justified by their statutory powers in using the stables so as to be a nuisance to their neighbours, and that it was no defence to prove that they had taken all reasonable care to prevent a nuisance. *RAPIER v. LONDON TRAMWAYS CO.*

C. A. [1893] 2 Ch. 588

— Rating—"Railway"

See RATES—Rateability. 45.

— Street—Obstruction—Snow and salt.

See NUISANCES. 29.

— Telephone company—Wires—Power to open street—Consent.

See TELEPHONE. 4.

**TRANSFER**—Bill of lading to sub-vendee—Possession of document of title—Consent of seller—Stoppage in transitu.

See SALE OF GOODS. 7.

— Business.

See Cases under COMPANY—WINDING-UP—Scheme of Arrangement.

RESTRAINT OF TRADE.

— Commercial causes—Transfer—Powers of judge.

See COMMERCIAL CAUSES. 2.

— Company practice.

See Cases under COMPANY and COMPANY—WINDING-UP.

— Dolus malus—Priority of unregistered transfer—Registered transfer to set aside—Law of Natal.

See NATAL. 2.

— Land transfer.

See LAND TRANSFER.

— Licence.

See Cases under LICENSING ACTS.

— Licence—Agreement for sale of public-house.

See VENDOR AND PURCHASER—Contract. 32.

— Lunacy practice.

See Cases under LUNACY.

— Mortgage.

See MORTGAGE—Redemption. 70.

— Mortgages.

See MORTGAGE—Transfer.

— Part of one county to another county—Adjustment of liabilities.

See LOCAL GOVERNMENT. 6.

— Part of one union to another union—Adjustment of property and liabilities.

See LOCAL GOVERNMENT. 7.

— Prerogative of Crown—Transfer to revenue side—Information by Attorney-General—Stay of proceedings.

See CROWN. 8.

**TRANSFER**—*continued.*

## — Ship.

See SHIPPING. 210.

## — Stamp duty.

See Cases under REVENUE—Stamps.

## — Stamp duty chargeable on transfers of certain colonial stocks extended to stock of any British Protectorate.

See Finance Act, 1898 (61 &amp; 62 Vict. c. 10), s. 5.

## — Stock by local authorities.

See Local Government (Stock Transfer) Act, 1895 (58 &amp; 59 Vict. c. 32).

## — Stock under Order in Lunacy.

See WILL—Ademption. 17.

**TRANSLATIONS**—Foreign documents—Solicitor—Costs—Administration.

See SOLICITOR—Costs. 47.

## — Play in foreign language.

See COPYRIGHT—International. 27.

## — Will in foreign language.

See WILL—Foreign Will. 90.

**“TRANSMIT”**—Case stated by justices to High Court.

See JUSTICES. 35.

**TRAWLER**—Pyrotechnic lights.

See SHIPPING—Collision. 70.

**TRAVELLER**—Falsely pretending to be a—Railway station—Offences.

See LICENSING ACTS. 39.

## — Right of innkeeper to give notice to leave.

See INNKEEPER. 5.

## — Sale to “bonâ fide traveller.”

See LICENSING ACTS—Offences. 36—38.

**TREASURE TROVE**—Jurisdiction of Coroner—Prerogative of Crown.

The jurisdiction of a coroner is limited by s. 36 of the Coroners Act, 1887, to the determination of “who was the finder, and who was suspected thereof.” He has no jurisdiction to inquire into a question of title between the Crown and a subject, the title of the Crown to all treasure trove being independent of any finding of the coroner’s jury. ATT.-GEN. v. MOORE - - - Stirling J. [1893] 1 Ch. 676

Referred to by North J. Att.-Gen. v. Albany Hotel Co., [1896] 2 Ch. 696, 701.

**TREATY**—COMMERCIAL TREATIES (HERTSLET’S).

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## — Extradition.

See EXTRADITION.

**TRELLIS SCREEN**—Erection of.

See LANDLORD AND TENANT. 12.

**TRESPASS**—Accident at shooting party—Trespass without intention or negligence.

Action for damages by a person who was wounded by a shot which glanced off a tree, while he was engaged in carrying cartridges for a shooting party:—

*Held*, that the deft. was not liable, for a trespass to the person is not actionable, if, as found in this case, it be neither intentional nor the result of negligence. STANLEY v. POWELL

Denman J. [1891] 1 Q. B. 86

## 2. — Action against public officers in their official capacity—Agent of executive government—Liability of servants of the Crown—Prerogative—Jurisdiction—Amendment.

Alleged authority of an executive department is no justification for a trespass, but only those who commit or in fact authorize the trespass are liable.

The head of a Government Department is not liable for wrongful acts of officials in the Department, unless it can be shown that the act complained of was substantially the act of the head of the Department himself.

The plts. commenced an action against the Lords of the Admiralty with the object of establishing as against them that they were not entitled to enter upon, or acquire by way of compulsory purchase, certain land, the property of the plts. for the purpose of erecting thereon a training college for naval cadets, and claiming damages for alleged trespass and an injunction to restrain further trespass:—

*Held*, that though the plts. could sue any of the defts. individually for trespasses committed, or threatened by them, they could not sue them as an official body, and that as the action was a claim against the defts. in their official capacity, it was misconceived and would not lie; leave to amend, by suing the defts. in their individual capacity, and by adding as defts. the persons who had actually trespassed on the land, was also refused, and the action was dismissed with costs. RALEIGH v. GOSCHEN

Romer J. [1897] W. N. 160 (10); [1898] 1 Ch. 73

## — Action of—Costs—Public authorities protection—Highway.

See COSTS. 46.

## — Appeal from interim injunction—New South Wales Mining on Private Lands Act.

See NEW SOUTH WALES. 37.

## 3. — Damages—Trespass by tipping spoil—Injury to land—Measure of damages.

The defts. having trespassed on the plts.’ land by tipping spoil thereon from their colliery:—

*Held* (decision of Chitty J., [1896] 1 Ch. 894, affirmed), that the amount of damages was not to be assessed by ascertaining merely the diminution in value of the plts.’ land, but that the principle of the way-leave cases, (1839) *Martin v. Porter*, 5 M. & W. 351; *Jegon v. Vivian*, (1871) L. R. 6 Ch. 742; and *Phillips v. Homfray*, (1871) L. R. 6 Ch. 770, applied: namely, that if one person without leave of another uses the other’s land for his own purposes he ought to pay for such user; and that therefore, as to so much of the land as was covered with spoil, the value of the land for the purpose for which it was used by the wrongdoers ought to be taken into account,

**TRESPASS—continued.**

and that as to the rest of the land the measure of damages was the diminution of the value thereof to the pits, by reason of the wrongful acts of the defts. *WHITTHAM v. WESTMINSTER BRYMBO COAL AND COKE CO.* C. A. [1896] 2 Ch. 538

**4. — Forceful entry—Landlord and tenant—Removing roof of house.**

On a tenant refusing to quit after due notice, the justices issued a warrant ordering him to give up possession within twenty-one days. On the same day a builder began to remove the tiles of the house, preparatory to rebuilding, and in so doing damaged the tenant's furniture. The tenant sued for trespass and damage :—

*Held*, (1.) that the landlord's common law right of entry was not suspended by the issuing of the possession warrant; (2.) that the removal of the tiles did not amount to a forcible entry, and the tenant had no cause of action. *JONES v. FOLEY* — Div. Ct. [1891] 1 Q. B. 730

— Grass field—Actual damage—Malicious injury to property.

See CRIMINAL LAW. 44.

— Measure of damages for.

See PARTITION. 13.

— Owner of adjoining lands not owner of soil of street.

See STREETS—Lighting. 11.

— Right of railway company to exclude from station persons other than travellers.

See RAILWAY—Stations. 65.

— Use of highway otherwise than as such.

See HIGHWAY—Trespass. 32.

**TRESPASS TO GOODS—Bill of sale.**

See BILL OF SALE. 35.

**TREES—Legacy to plant.**

See WILL—Legacy. 137.

— Lopping trees beside highway.

See HIGHWAY—Obstruction. 7.

— Overhanging land.

See NUISANCE. 37—39.

And see TIMBER.

**TRIAL—PRACTICE.**

See PRACTICE—Trial.

**TRIBUTARY—of River.**

See FISHERY. 6.

**TRINIDAD—TRINIDAD AND TOBAGO.**

. Application of Colonial Probates Act, 1892.

See PROBATE — Grant of Probate;  
Colonial Probates Act, 1892.

**Death Duties.**

See REVENUE—Estate Duty.

**Law of Trinidad and Tobago.**

— Account—Entries disallowed—Digging pitch—Discretion of Court.

See ACCOUNT. 3.

**1. — Crown—Ejectment—Equitable defence—Ordinance No. 8 of 1889.**

In an action of ejectment by the Crown from lands in the Colony a deft. may set up any equitable defence which would be good against

**TRINIDAD—TRINIDAD AND TOBAGO (Law of Trinidad and Tobago)—continued.**

a private deft. Proof of a concluded contract with the Crown entitles the deft. to issue of a grant of the land in suit under the Real Property Ordinance No. 8 of 1889 :—

*Held*, to justify entry of judgment for the deft. *ATT.-GEN. FOR TRINIDAD AND TOBAGO v. BOURNE* P. C. [1895] A. C. 83

**2. — Judge of the Supreme Court—Act done in exercise of judicial office—Malicious motive—Immunity from action.**

No action lies against a judge of the Supreme Court of the Colony in respect of any act done by him in his judicial capacity, even though he acted oppressively and maliciously to the prejudice of the plt. and the perversion of justice. *ANDERSON v. GORRIE* C. A. [1894] 1 Q. B. 668

**3. — Ordinances No. 4 of 1889 and No. 11 of 1891—Jurisdiction of magistrate—Title to lands.**

These Ordinances have not the effect of erecting the stipendiary magistrate into a Court competent to decide a question of title :—

*Held*, therefore, that an order of the Supreme Court quashing such a magistrate's conviction under them could not sustain a plea of res judicata in an action to try the question of title. For the Supreme Court, sitting in appeal from a magistrate, cannot exercise a jurisdiction the magistrate does not possess. *ATT.-GEN. FOR TRINIDAD AND TOBAGO v. ERICHE* P. C. [1893] A. C. 518

**4. — Practice of the Supreme Court.**

Order XXVIII., r. 12; Order XXXVI., r. 18, and Order LVII., r. 6 of the rules in the Sched. to the Ordinance for the Constitution of the Supreme Court of Trinidad and Tobago, considered and interpreted. *POLLARD v. HARRAGIN*

P. C. [1891] A. C. 450

— Purchaser for value with notice—Effect of recitals in deed—Estoppel.

See RECITALS. 1.

— Support—Right to lateral—Adjacent lands—Escape of pitch—Injunction—Damages.

See SUPPORT. 2.

**TRINITY HOUSE—Outport district—Coasting trade—Compulsory pilotage.**

See SHIPPING—Pilotage. 186.

**TRIPTYCH.**

See ECCLESIASTICAL LAW—Faculty. 39.

**TROUT STREAM—Erection of weirs or dam—Injunction.**

See FISHERY. 13.

**TROVER—Book—Piracy—Infringement—Detinue—Combining causes of action.**

See COPYRIGHT. 11.

**1. — Conversion—Auctioneer, Liability of—Title of plaintiffs.**

Possession of chattels by cestui que trust, if in accordance with the trust deed, is possession of the trustees for the purpose of enabling them to maintain an action against a wrongdoer for conversion of chattels. Liability of auctioneer considered, (1.) when he acts merely as salesman, (2.) when he receives the goods and hands them over to a purchaser with a view of passing



**TROVER—continued.**

the property in them. His position in the latter case contrasted with that of a packing agent or carrier. *BARKER v. FURLONG*

Romer J. [1891] 2 Ch. 172

**2. — Conversion—Bill of sale—Sale by auction on private premises—Liability of auctioneer.**

The owner of household furniture assigned it by bill of sale to the plt. Subsequently he employed the defts., auctioneers, to sell it by auction at his private house. The defts. sold without notice of the bill of sale and delivered it to the purchasers :—

*Held*, that they were liable to the plt. in trover. *CONSOLIDATED Co. v. CURTIS & SON*

Collins J. [1892] 1 Q. B. 495

**3. — Conversion—Crossed cheque—Banker collecting and handing over proceeds.**

The payee of a crossed cheque specially indorsed it to plts. and posted it to them. S., having obtained possession of the cheque in transmission, altered the indorsement, presented it at the defts.' bank, and requested them to collect it. They did so, and handed the proceeds to him in France :—

*Held*, that the defts.' bank were liable in an action for conversion by the plts. *KLEINWORT, SONS & Co. v. COMPTOIR NATIONAL D'ESCOMPTE DE PARIS* - - - *Cave J. [1894] 2 Q. B. 157*

Followed by *Collins J. Lacave & Co. v. Crédit Lyonnais*, [1897] 1 Q. B. 148.

**— Conversion—Evidences of.**

*See LIMITATIONS, STATUTE OF. 17.*

**4. — Conversion—Estoppel—Proximate cause of loss—Liability of warehouseman.**

N. pledged with the plts. as security for an advance eighteen hogsheads of tobacco which were in the custody of the defts. as warehousemen. He subsequently repaid the advance on one of the hogsheads, and presented to the plts. for their signature a delivery order on the defts. On the order the place for the quantity was left blank. The plts. signed the order, and N., having filled in the blank space with the words "eighteen hogsheads," obtained delivery of them all from the defts., and then disposed of them. In an action against the defts. for the conversion of the seventeen hogsheads :—

*Held*, that the plts. could not succeed, since they had impliedly given N. authority to fill up the blank in the delivery order, and were now estopped from shewing that that authority was limited.

In the second action it appeared that N. had pledged with the plts. two separate consignments of tobacco. He paid off the advance on one consignment, and presented to the plts. a properly drawn delivery order in respect of it. They signed it, and N. subsequently added above their signature the description and distinguishing marks of the other consignment, and thus obtained from the defts. delivery of both consignments :—

*Held*, that an action for conversion would lie against the defts., since the plts. had not been guilty of any negligence which was the proximate cause of the wrongful delivery.

**TROVER—continued.**

In the third action it appeared that N., after fraudulently obtaining the tobacco as above stated, had pledged it with the defts. bank as security for an advance, and before the fraud was discovered had repaid the advance and recovered possession of the tobacco :—

*Held*, that no action for conversion would lie against the defts. bank, since N.'s dealing with it had been concluded before the plts. discovered the fraud. *UNION CREDIT BANK v. MERSEY DOCKS AND HARBOUR BOARD. SAME v. SAME. SAME v. SAME AND NORTH AND SOUTH WALES BANK*

Bigham J. [1899] 2 Q. B. 205

**— Conversion—Lease fraudulently deposited—Demand and refusal.**

*See LIMITATIONS, STATUTE OF. 17.*

**5. — Conversion—Auctioneer, Liability of.**

A. employed auctioneers to sell her furniture by auction at her house; she had previously granted a bill of sale to B., of which the auctioneers had no notice. The auctioneers sold the furniture and delivered it to the purchaser. B. brought trover against the auctioneers :—

*Held*, that they were liable for conversion. *CONSOLIDATED Co. v. CURTIS & SON*

Collins J. [1892] 1 Q. B. 495

**6. — Conversion of document — Damages — Measure of — Non-negotiable instrument — Money had and received.**

The plts. received from a co., which was indebted to them, an order addressed to the co.'s bankers for the payment of the amount of their debt. The order was not a cheque within the meaning of the Bills of Exchange Act, 1882, because the payment was made conditional upon signature of a receipt appended to the order. The order was stolen from the plts., the receipt being then unsigned. It was subsequently handed to the defts., a banking co., with a forged indorsement and receipt thereon, for collection on behalf of a customer of theirs whom they credited with the amount of it. It did not appear that the customer knew that the order had been stolen. The order was presented by the defts. to the bank to which it was addressed, and the amount specified therein was thereupon paid by that bank to them. Subsequently, the plts. gave notice to the defts. that the order was stolen from them, and claimed the amount received by the defts. upon it. Nothing had in the meantime taken place to debar the defts. from cancelling the credit given to their customer as before mentioned :—

*Held*, that the plts. were entitled to recover the amount received by the defts. upon the order as money received for the plt.'s use.

*Query*, whether they were entitled to recover that amount as damages for the conversion of the document. *BAVINS, JUNR. & SIMS v. LONDON AND SOUTH WESTERN BANK*

C. A. [1899] W. N. 248; [1900] 1 Q. B. 270

**— Detinue — Combining causes for action — Piracy.**

*See COPYRIGHT. 11.*

**— Detinue—Conversion—Demand and refusal—Time, when beginning to run.**

*See LIMITATIONS, STATUTE OF. 17.*

**TROVER**—*continued.*7. — *Measure of Damages.*

The measure of damages is the market value of the goods at the date of conversion.

(A) *HENDERSON AND CO. v. WILLIAMS*

C. A. [1895] 1 Q. B. 521

(B) *RHODES v. MOULES*

C. A. [1895] 1 Ch. 236, at p. 254

8. — *Right of action — Special property — Right to possession in one co-owner — Conversion by the other co-owner.*

A., the owner of a personal chattel, sold a half share to B. on a special agreement that A. should retain possession until the chattel was sold. A. handed the chattel to B. to take to an auction room, and B. pledged it to debts. To secure a debt:—

*Held*, that A. had a special property in the chattel sufficient to maintain an action for trover and detinue. *NYBERG v. HANDELAAR*

C. A. [1892] 2 Q. B. 202

— Ring found in pool of water.

*See* DETINUE. 3.

— *Underground — Statute of Limitations — Equitable jurisdiction — Fraud — Laches.*

*See* NEW SOUTH WALES. 20.

9. — *Waiver of tort — Wrongful sale of goods — Joint tortfeasors — Action against one in trover and for money had and received — Compromise by accepting proceeds of sale — Action of trover against the other — Election.*

The plt.'s servant wrongfully sold goods of his master to the deft., who knew that the servant was improperly dealing with them, and the servant paid the proceeds of the sale into his account at his bank. The plt. brought an action against the servant and the bank, claiming as against the servant damages for conversion of the goods, and in the alternative for money had and received, and as against the servant and the bank an injunction to restrain them respectively until the trial of the action from drawing out or parting with the sum of 1500*l.* then standing to the servant's credit at the bank. The plt. applied for an interim injunction as above upon an affidavit that 1500*l.* at the least could be specifically traced to the servant's account as being moneys paid by the deft. for the goods wrongfully sold. An interim injunction was granted, but no further steps in the action were taken, an agreement being arrived at between the plt. and the servant that 1125*l.* out of the 1500*l.* then at the bank should be paid to the plt. in full settlement of all claims against the servant, without prejudice to the plt.'s claim against the deft. This agreement was embodied in a judge's order, but no judgment was signed. Before the agreement was made the plt. had brought an action against the deft. claiming damages for the conversion of the goods:—

*Held*, that the plt. had not, by his proceedings in the former action and by his dealings with the servant therein, elected to affirm the sale and to waive the tort, and the action against the deft. was maintainable. *RICE v. REED.*

C. A. [1900] 1 Q. B. 54

“**TRUE OWNER.**”

*See* BANKRUPTCY—Assets.

BILL OF SALE—True Owner.

**TRUCKS** — Defective — Negligence — Breach of duty.

*See* RAILWAY. 17.

**TRUCK ACTS.**

*See* MASTER AND SERVANT.

**TRUST.**

*See* TRUSTEE, *passim.*

1. — *Accumulations for improving lands — Thellusson's Act — Annuitant — Tenant for life — Surplus income.*

A trust to accumulate income in order to improve lands, so long as the improvements come under the words “maintain in good habitable repair houses and tenements on property,” is outside the Thellusson Act. Money laid out in building houses would be within the Act.

Difference between trusts for improving and trusts for purchasing lands considered. *VINE v. RALEIGH* No. 1.

C. A. affirm. *Chitty J.* [1891] 2 Ch. 13

Followed by *Stirling J.* *In re Mason* [1891] 3 Ch. 467. *See* Next Case.

2. — *Accumulations for rebuilding and repair of buildings.*

A will contained a trust for the investment of the clear surplus of the income of the residue in augmentation of the general trust fund, subject to a proviso as to any insufficiency in the insurance moneys received on the destruction by fire of any building and rebuilding or substantially repairing any building.

*Held*, (1) that the will amounted to an express direction for the accumulation of income; and (2) that, upon the principle of *Vine v. Raleigh*, [1891] 2 Ch. 13, *see* preceding Case above, the trust for accumulation was valid, so far as it was a bona fide provision for the performance of the trusts for rebuilding, repairing, and reinstating the buildings; but that, subject to the due performance of such trusts, the trust for investment of the surplus income, after answering the purposes specified in the will, was invalid as from the expiration of twenty-one years from the testator's death. *In re MASON. MASON v. MASON.*

*Stirling J.* [1891] 3 Ch. 467

— Banker and customer — Account not earmarked as trust account — Set-off.

*See* NEW ZEALAND. 1.

3. — *Constructive Trust — Gale — Forest of Dean — Statute of Frauds* (29 Car. 2 c. 3, ss. 7, 8).

A gale in the Forest of Dean was held in trust for A.'s children, of whom B. was one. Neither the trustees, the cestuis que trust, nor A. were free miners. If the gale became forfeited, only a free miner could apply for a grant of the gale. A. and B. arranged for a free miner to obtain a grant and transfer it to them:—

*Held*, that A. and B. were not constructive trustees of the gale, and that the Statute of Frauds could be pleaded in an action to enforce the alleged trust:

*Held*, also, that an arrangement between A. and B., after obtaining the gale, to hold it on trust for persons, some of whom, but not all, were the original cestuis que trust, did not constitute a trust enforceable after the gale had been sold by the survivor of A. and B. *HOLMES v. WILLIAMS*

*Romer J.* [1895] W. N. 116 (15)

**TRUST**—*continued.*

- Declaration of—Copyholds—Married women.  
See COPYHOLD. 6.
- Express or constructive.  
See LIMITATIONS, STATUTES OF. 24.
- Express trust.  
See HUSBAND AND WIFE—Bond. 27.
- Failure of trust—Repair of road—Road transferred to local authority.  
See CHARITY. 23.
- Following—Trust money.  
See BANKRUPTCY—Assets. 58.
- Income tax.  
See VICTORIA.
- Precatory trust.  
See WILL—Precatory Trust.
- Mortgage of share in trust fund—Right of mortgagee to receive whole amount of share.  
See MORTGAGE. 77.
- Resulting trust—Contract—Allegation of partnership—Part performance.  
See FRAUDS, STATUTE OF. 15.
- Resulting trust—Dissolution of trade union—Unexpended funds.  
See TRADE UNION. 3.

4. — Resulting trust—Expectancy—*Cestui que trust dead*—Failure of gift.

By a voluntary settlement in 1880, E., who was contingently entitled in expectancy as one of the next of kin of a lunatic, assigned her possible share in his personal estate to trustees, upon trust to pay certain capital sums to certain named persons, amongst them being 500*l.* to K., and then to hold the residue for the plaintiff. K. predeceased the lunatic, who died in 1894 intestate and a bachelor. In April, 1895, E. wrote to the administrator of the lunatic requesting him to pay and transfer her share to the trustees of the settlement, and the question now raised was, who was entitled to the 500*l.* settled on K. It was admitted that the assignment of a mere expectancy in 1880 was inoperative, and that there was no effectual assignment till the letter of confirmation in April 1895:—

*Held*, that the settlement could not operate in favour of K., who was dead at the time of its confirmation in 1895, which had no retrospective effect; that the 500*l.* did not fall into residue, but that there was a resulting trust in favour of E., the settlor. *In re TILT. LAMPET v. KENNEDY* Chitty J. [1896] W. N. 9 (10)

- Resulting trust—Friendly society.  
See FRIENDLY SOCIETY. 7.

5. — Resulting trust—Fund raised by subscriptions for maintenance of individuals—Death of objects of the fund—Unapplied surplus—Resulting trust for subscribers.

Where a fund was raised by subscription for the maintenance and support of two distressed ladies, and, at the death of the survivor of them, a portion of the fund remained unapplied;—

*Held*, that there was a resulting trust of the balance of the fund for the subscribers thereto. *In re THE TRUSTS OF THE ABBOTT FUND.* SMITH v. ABBOTT

Stirling J. [1900] W. N. 121; [1900] 2 Ch. 326

**TRUST**—*continued.*

- Resulting trust—Marriage—Will in French form—Movable property in England—French subjects—Husband and wife—English marriage—Revocation of antenuptial will—Change of domicile.  
See CONFLICT OF LAWS. 16.

6. — Resulting trust—Surplus—Beneficial gift or resulting trust—Gift in trust—Construction of will.

A gift by will, for a particular purpose only, gives rise to a resulting trust of any surplus not required for that purpose, but a gift, subject to the performance of a particular purpose gives the donee a beneficial interest subject to that purpose.

Gift by will to donees upon trust for sale and upon trust out of the moneys to arise from such sale to pay funeral and testamentary expenses, debts, and legacies, with clauses for indemnity and reimbursement of the "said trustees." No other trusts were declared, and there was no residuary gift. The property not being exhausted by the above trusts:—

*Held*, that the donees did not take the surplus beneficially, but that there was a resulting trust.

The principles stated in *Croome v. Croome*, [1888] W. N. 37, 152; [1889] W. N. 156; 59 L. T. 582; 61 L. T. 814, and *Williams v. Roberts*, (1857) 27 L. J. (Ch.) 177; 4 Jur. (N.S.) 18, discussed and applied. *In re WEST. GEORGE v. GROSE* Kekewich J. [1900] 1 Ch. 84

- Resulting trust—Trade union, Dissolution of—Unexpended funds.  
See TRADE UNION. 3.

- Sale of goods in trust.  
See PLEDGE. 1.

7. — Secret trust—Notice—Joint tenants—Absolute gift.

Where a gift is made to A. and C. as joint tenants upon an alleged secret trust, the authorities have established a distinction between those cases in which the will is made on the faith of an antecedent promise by A. that he will carry out the testator's wishes, and those cases in which the will is left unrevoked on the faith of a subsequent promise by A. In the former case the trust binds both A. and C.: *Russell v. Jackson*, (1852) 10 Hare, 204; *Jones v. Badley*, (1868) L. R. 3 Ch. 362. In the latter case A., and not C., is bound: *Burney v. Macdonald*, (1845) 15 Sim. 6; *Moss v. Cooper*, (1861) 1 J. & H. 352. *In re STEAD.* WITHAM v. ANDREW

Farwell J. [1900] 1 Ch. 237

- Stamp—Declaration of trust—"Conveyance of sale"—Agreement for sale of equitable interest.  
See REVENUE—Stamps. 155.
- Stamp—Trust deed for securing debenture-stock.  
See REVENUE—Stamps. 170.
- Transfer of shares subject to a trust—Constructive notice—Signature of bank manager as "manager in trust."  
See BANKER. 5.
- Trust disposition.  
See SCOTTISH LAW—Succession. 40.

**TRUSTEE.**

*Trustee Act, 1893 (56 & 57 Vict. c. 53), consolidates the enactments relating to trustees.*

*Trustee Act, 1893 (Amendment) Act, 1894 (57 & 58 Vict. c. 10), amends the Act of 1893.*

*Rules under the Supreme Court (Trustee Act), 1893. See Weekly Notes, 1893 (Dec. 9), App. O. & R., p. 10.*

*Judicial Trustees Act, 1896. See TRUSTEE—Judicial Trustees.*

**PUBLIC TRUSTEE (COLONIES).]** *Return of any State Regs. in force in Canada, New Zealand, Victoria, New South Wales, or Cape Colony, to secure the honest Administration of Trusts, and as to the official remuneration of a Public Trustee. Parl. Paper, 1896 (26). Price 4½d.*

*Generally, col. 2163.*

*Accounts, col. 2164.*

*Appointment, col. 2166.*

*Appropriation, col. 2169.*

*Authority, col. 2170.*

*Breach of Trust, col. 2170.*

*Contribution. See TRUSTEE—Breach of Trust.*

*Costs, col. 2181.*

*Custody of Title-deeds, &c., col. 2182.*

*Disclaimer, col. 2182.*

*Discretion, col. 2182.*

*Indemnity, col. 2183.*

*Information as to Trust Funds, col. 2183.*

*Interest, col. 2184.*

*Investments, col. 2185.*

*Judicial Trustees, col. 2189.*

*Legal Estate, col. 2191.*

*Limitations, Statutes of, col. 2191.*

*Negligence, col. 2193.*

*Notice, col. 2193.*

*Practice, col. 2194.*

*Purchase and Sale, col. 2195.*

*Receipts, col. 2196.*

*Remuneration, col. 2196.*

*Renewal of Leaseholds, col. 2197.*

*Resulting Trust. See TRUST.*

*Retainer, col. 2197.*

*Sale. See TRUSTEE—Purchase and Sale.*

*Trustee de son Tort, col. 2198.*

*Vesting Order, col. 2198.*

**Generally.**

— Agent or trustee—Book containing drawings—Registration.

*See COPYRIGHT. 24.*

— Assignment—Priority—Trust fund—Notice to existing trustees—Death or retirement of trustee.

*See ASSIGNMENT. 5.*

— Charity lands—Sale—Consent of Charity Commissioners.

*See CHARITY. 5.*

— Churchwardens—"Ecclesiastical charity."

*See CHARITY. 2.*

**TRUSTEE (Generally)—continued.**

— Executor not express trustee for next of kin—Title of heir-at-law and next of kin barred by Statute of Limitations.

*See CHARITY. 47.*

— Express trustee—Loan to husband—Bond, Interest on—Statute of Limitations.

*See HUSBAND AND WIFE. 27.*

— Fiduciary power—Power to debenture-holder to appoint receiver.

*See COMPANY—Debentures. 83.*

— Fiduciary relation—Setting aside sale—Interest on profits.

*See VENDOR AND PURCHASER. 53.*

— Heirlooms—Tenant for life—Making good loss—Recouping trust estate.

*See HEIRLOOMS. 6.*

— Improvements—Repairs—Real estate—Trust for sale—Absence of power to mortgage.

*See POWER. 6.*

— Lancaster Court of Chancery.

*See LANCASTER. 3.*

— Lease to trustee—Covenant by lessee to repair—Liability of cestui que trust for breach of trustee's covenant.

*See LANDLORD AND TENANT. 31.*

— Liability of cestui que trust for breach of trustee's covenant—Covenant to repair—Occupation by cestui que trust.

*See LANDLORD AND TENANT. 31.*

— Mortgage of share in trust fund—Mortgagee's rights.

*See MORTGAGE. 76.*

— Overdraft—Private account—Payment in of trust money—Liability of bank.

*See BANKER. 21.*

— Priority—Reversionary trust fund—Notice to existing trustees—Death or retirement of trustee.

*See ASSIGNMENT. 5.*

— Settled Land Acts.

*See SETTLED LAND—Trustees.*

— Solicitor trustee.

*See SOLICITOR—Solicitor Trustee.*

— Tacking—Further advance—Second Mortgage—Joint tenants.

*See MORTGAGE. 91.*

— Title—Notice of trusts of mortgage money—Mortgagee not one of the original trustees—Objection—Sufficiency.

*See VENDOR AND PURCHASER. 88.*

— Title of petition—Policy by husband for benefit of wife.

*See HUSBAND AND WIFE—Practice. 40.*

— Trustee de son tort.

*See SOLICITOR—Misconduct.*

**TRUSTEE RELIEF ACTS.]** *The Trustee Relief Acts were repealed and further provision made by the Trustee Act, 1893 (56 & 57 Vict. c. 53).*

**Accounts.**

1. — Annuity—Omission to form fund for—Breach of duty—Action by annuitant against trustee for account—Right of action—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, sub-s. 1, clauses (a) and

**TRUSTEE (Accounts)—continued.****(b)—Carrying back account—Statutes of Limitations.**

The effect of s. 8 of the Trustee Act, 1888, is that except in the three following cases, fraud by the trustee, retention of trust property by him, or receipt by him and conversion of it to his own use, a trustee who has committed a breach of trust is entitled to the protection of the several Statutes of Limitation as if actions or proceedings for breaches of trust were enumerated in them.

Under a will, the plt., on the expiration of a term of fourteen years from the death of the testatrix (who died on May 20, 1875), became entitled to an annuity for her life. During the term it was the duty of the deft., as trustee under the will, to receive the rents of certain devised estates, and after payment of some immediate annuities, to accumulate the surplus rents and invest the accumulations in the purchase of lands. The plt.'s annuity was charged upon the accumulations and the lands to be purchased therewith, as well as upon the devised estates. Without any fraudulent intent the deft., instead of accumulating the surplus rents, applied them in keeping down interest on incumbrances and in necessary repairs.

The term expired on May 20, 1889, the plt.'s annuity fell into arrear in Nov. 1894, and on Aug. 9, 1895, she brought this action for an account.

The deft. had no trust moneys in his hands at the issue of the writ, and had never converted any trust moneys to his own use; and he relied on s. 8 of the Trustee Act, 1888, but admitted that within six years before the issue of the writ he had rents in his hands which he ought to have accumulated and invested:—

*Held*, (1) that the plt. was entitled to an account of the moneys in the hands of the deft. six years before the issue of the writ and liable to the trust for accumulation, and also to an account of the rents which ought afterwards to have been accumulated, but not to an account from the death of the testatrix; and (2) that the case fell either within clause (a) or clause (b) of s. 8 of the Act of 1888, but (*per Rigby L.J.*) preferably within clause (a); and that whichever clause was applicable, the deft. was protected from demands more than six years before the issue of the writ.

Sect. 8 of the Trustee Act, 1888, explained.

*In re Bowden*, (1890) 45 Ch. D. 444, observed upon. *How v. EARL WINTERTON*

C. A. [1896] 2 Ch. 626

**2. — Carrying back account—Administration action—Statute of Limitations—Order, Form of—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.**

Form of order for account by trustees entitled to the protection given by s. 8 of the Trustee Act, 1888, against liability to render accounts extending beyond six years from the commencement of the action. *In re DAVIES. ELLIS v. ROBERTS* — *Kekewich J.* [1898] 2 Ch. 142

**3. — Investigation of accounts—Settlement of accounts between trustees.**

Cestuis que trust have an absolute right to investigate the accounts of their trustees. *Trus-*

**TRUSTEE (Accounts)—continued.**

tees cannot settle an account due to one of themselves so as to preclude such an investigation: *per Kay L.J.* *In re FISH. BENNETT v. BENNETT* C. A. [1893] 2 Ch. 413, 426

— Misconduct of trustee — Common accounts refused at the trial.  
*See ACCOUNT. 6.*

**4. — Right to an account — Limitation of actions—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.**

Where a trustee, deft. to an administration summons (1892), alleged he had expended in educating and maintaining A., the residuary legatee, during his minority which expired in 1880 the whole of the residue, and A. alleged no fraud:—

*Held*, that A.'s right to an account was barred by s. 8 of the Trustee Act, 1888. *In re PAGE. JONES v. MORGAN*

North J. [1893] 1 Ch. 304

Referred to by *Kekewich J.* *In re Somerset*, [1894] 1 Ch. 231, 256.

**Appointment.**

*By the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 6, provision was made for the appointment of separate trustees for separate property.*

*This section was repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53), and s. 10 of that Act takes its place.*

*Appointment of new trustees and vesting orders. See Trustee Act, 1893, s. 25 et seq.*

**5. — Absence from the jurisdiction—Trustee Act, 1893 (56 & 57 Vict. c. 53) s. 10, sub-s. 1.**

Originating summons to determine who were the present trustees of the will of J. Walker.

Prior to June, 1900, the existing trustees of the will were the plt. and the deft. Mrs. Walker.

On June 1, 1900, Mrs. Walker purported, in exercise of the power of appointing new trustees conferred by s. 10 of the Trustee Act 1893, to appoint the deft. Barrow to be a trustee of the will in the place of the plt., on the ground that the plt. had remained out of the jurisdiction for more than twelve months. It appeared that the plt. went to reside abroad in the spring of 1899, and that he had remained abroad for upwards of a year prior to June 1, 1900, except for a week in Nov. 1899, when he came to London and did some business in connection with the trust.

The Court held that it was unable to find as a fact that the plt. remained out of the jurisdiction for twelve months before June 1, 1900. The plt. and Mrs. Walker were, therefore, the present trustees of the will. *In re WALKER. SUMMERS v. BARROW* Farwell J. [1900] W. N. 275

**6. — Donee of power appointing himself.**

The donee of a power of appointing new trustees cannot appoint himself either solely or jointly with others. *In re NEWEN. NEWEN v. BARNES*

*Kekewich J.* [1894] 2 Ch. 297

— "Ecclesiastical charity"—Parish council.

*See CHARITY. 2.*

**7. — Executor — Appointment to perform duties incident to office of—Trustee Acts, 1850 (13 & 14 Vict. c. 60), s. 2; 1893 (56 & 57 Vict.**

**TRUSTEE (Appointment)—continued.**

c. 53), s. 50—*Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 31.

The Trustee Acts do not authorise the appointment of a trustee to discharge duties which belong not to the office of a trustee but only to that of an executor. The executor, as legal personal representative, has certain duties to perform which cannot be taken out of his hands, but when the estate is cleared by payment of debts, &c., the Court will appoint trustees. *EATON v. DAINES* - - *Kekewich J.* [1894] W.N. 32

8. — *Felony—New trustee—Trustee convicted of felony—Summons—Petition—Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 25.

The Court has, under s. 25 of the Trustee Act, 1893, jurisdiction either upon summons or petition to appoint a new trustee in substitution for a trustee who has been convicted of felony or is a bankrupt, but it depends on the circumstances of each particular case whether or not the Court will exercise the jurisdiction. *In re DAWSON'S TRUSTS* - - *Byrne J.* [1899] W.N. 134

— Infant taking by descent—Management of land during minority.

See *INFANT*. 2.

— Judicial trustees.

See Cases under *TRUSTEE—Judicial Trustees*.

9. — *Jurisdiction of Court to override statutory power—Existing trustee—Wishes of beneficiaries—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 31.

Where a trustee has, under s. 31 of the Conveyancing Act, 1881, a power of appointing new trustees of a will, and is desirous of exercising his power, the Court has no jurisdiction to interfere with his exercise of the power by itself appointing new trustees under the Trustee Acts, even though the application is made by a majority of the beneficiaries. *In re HUGGINS-BOTTOM* *Kekewich J.* [1892] 3 Ch. 132

— Lunacy practice.

See Cases under *LUNACY*.

— New South Wales, Practice in—Vesting order. See *NEW SOUTH WALES*. 49.

10. — *Nominors—Appointment of new trustees—Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 10, sub-ss. 1, 5.

Where by an old deed four persons were appointed to nominate new trustees of a trust:—

*Held*, that as there was no person able and willing to act as nominor of trustees, and as there was no contrary intention within the meaning of s. 10 (5) of the Act of 1893, that the surviving trustee had power to appoint under s. 10 (1) of the Act.

*Seem*, that as there had been two previous appointments by the Court in the absence of a nominor, the power given to nominors was gone. *CRADOCK v. WITHAM* *North J.* [1895] W.N. 75

11. — *Person to exercise power of appointing new trustees—Event not specified in trust instrument—Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 10.

In s. 10 of the Trustee Act, 1893, the words "person or persons nominated for the purpose of appointing new trustees by the instrument

**TRUSTEE (Appointment)—continued.**

creating the trust," refer to the person or persons nominated for the purpose of appointing new trustees in the particular event which has happened. Where, therefore, by a marriage settlement the husband and wife, or the survivor of them, were empowered to appoint new trustees in certain specified events, including the event of a trustee becoming incapable, but not the event of a trustee becoming unfit, and one of the trustees became unfit but not incapable:—

*Held*, that the appointment of a new trustee ought to be made not by the surviving husband as the person nominated in the settlement, but by the continuing trustees under the provisions of the Act. *In re WHEELER AND DE ROCHOW*

*Kekewich J.* [1895] W.N. 154 (15); [1896] 1 Ch. 315

12. — *"Personal representatives" of surviving trustee—Appointment of special and general executors by will of surviving trustee—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 31.

Section 31 of the Conveyancing Act, 1881, does not authorize an appointment of trustees in continuation to himself by a sole surviving trustee by his will. The persons in possession of a general grant of probate of the will of a surviving trustee are his "personal representatives" within s. 31 of the Conveyancing Act, 1881, and their deed of appointment of new trustees is valid, notwithstanding the appointment of special executors in that behalf and their subsequently obtaining a limited grant of probate. *In re PARKER'S TRUSTS* *Kekewich J.* [1894] 1 Ch. 707

13. — *Power to appoint new trustees—"Bare trustees"—"Acting trustees"—Land Transfer Act*, 1875 (38 & 39 Vict. c. 87), s. 48.

The surviving trustee of a trust for sale died intestate leaving co-heiresses. The co-heiresses did not receive the rents of the estate; but, on being called upon to do so, executed a deed purporting to appoint new trustees and to vest the trust estate in them:—

*Held*, that the appointment was good, for they were trustees because they could have exercised the power of sale, and they were "acting trustees" because they had acted in making the appointment:—

*Held*, also, that the intestate was not a "bare trustee" within s. 48 of the Land Transfer Act, 1875, and that the trust estate did not vest in his personal representative. *In re CUNNINGHAM AND FRAYLING* - - *Stirling J.* [1891] 2 Ch. 567

14. — *Power to appoint new trustees—Trustee predeceasing testator—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 31.

Where trustees of a will die in the lifetime of the testator, the personal representative of the survivor has no power under s. 31 of the Conveyancing Act, 1881, to appoint new trustees. *NICHOLSON v. FIELD* *Kekewich J.* [1893] 2 Ch. 511

15. — *Power to appoint new trustees of will—Tenant for life donee of power—Trustee "abroad"—Old trustee executor—New trustee solicitor for tenant for life.*

Under a will containing a settlement of real and personal estate the power to appoint new trustees became exercisable in case (*inter alia*) either of the trustees should "be abroad." There

**TRUSTEE (Appointment)—continued.**

were three trustees, and they were also the executors of the will. P., one of them, after acting with his co-trustees for ten years, in 1893 went to reside in Normandy, taking a five years' lease of a house there, and coming occasionally to England upon the trust business. In 1895 the tenant for life, who was the donee of the power, appointed T. W., her own solicitor, to be a new trustee in the place of P. Upon a summons taken out by P. and the other two original trustees, asking the opinion of the Court whether the appointment was valid:—

*Held*, (1) that P. was "abroad" within the meaning of the power; (2) that as, upon the facts, no part of the testator's estate remained vested in P. as executor *virtute officii*, his position was merely that of a trustee; and (3) that although the appointment of the solicitor of the tenant for life as trustee of the settlement was not one which the Court itself would have either made or sanctioned, yet, as T. W. was in other respects a fit and proper person, as none of the beneficiaries objected, and as the tenant for life did not appear to have acted capriciously, the Court could not treat the appointment as invalid, though it would give P. liberty to apply, so that his right of indemnity as legal personal representative should not be prejudiced in case it should turn out that any liability on his part still existed.

*In re Kemp's Settled Estates*, (1883) 24 Ch. D. 485, and *In re Marquis of Ailesbury*, [1893] 2 Ch. 345, observed upon. *In re EARL OF STAMFORD*. *PAYNE v. STAMFORD*

**Stirling J. [1896] 1 Ch. 288**

— Appointment — Policy — Trust for wife and children.

*See INSURANCE—Life*. 16.

— Settled Land Acts.

*See Cases under SETTLED LAND.*

— Settled Land Acts—Application to trustees under Settled Land Acts of provisions as to appointment of trustees.

*See Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 47.

**16. — Settled Land Acts, Trustees for purposes of—Settled Land Act**, 1882 (45 & 46 Vict. c. 38), s. 38.

(A) The Court, if satisfied that a sale is impossible, is not bound to appoint trustees for the purposes of these Acts. *WILLIAMS v. JENKINS* (No. 23) — *Kekewich J. [1894] W. N. 176*

(B) There is no rule of practice that the trustees of a will ought to be appointed by the Court trustees for the purposes of these Acts; the tenant for life may propose other persons if he thinks fit. *In re NICHOLAS AND SETTLED LAND ACT*, 1882 *Kekewich J. [1894] W. N. 165*

— Title of petition.

*See HUSBAND AND WIFE*. 40.

— Vesting orders.

*See TRUSTEE—Vesting Orders.*

**Appropriation.**

**17. — Appropriation of assets — Residue — Settled shares.**

Where a residuary trust fund is settled by

**TRUSTEE (Appropriation)—continued.**

will upon trust for several persons and their families, the trustees have power *virtute officii* to appropriate specific investments to any of the settled shares before the period of final division without making any corresponding appropriation to the other shares.

A testator gave the proceeds of his residuary estate upon trust as to one undivided sixth to pay the income to his eldest son for life, and after his death to pay the capital to his children, and as to the remaining five-sixths upon similar trusts for the testator's four other sons and his daughter and their children, and he empowered his trustees to pay over a portion of the capital of the settled shares to any of his six children absolutely, notwithstanding the previous trusts. In 1881 the then trustees paid to each of the five sons one-half of his share, and to the daughter one-sixth of her share absolutely; and they also set aside for the daughter and her children a sum of stock sufficient at its then value to make up with the sum advanced to her one-half of her share. The income of the stock was paid to the daughter till her death in 1896:—

*Held*, that there was a valid appropriation of the stock to the daughter's share, and that the distribution to her children ought to proceed on that footing. *In re NICKELS*. *NICKELS v. NICKELS*

**Stirling J. [1898] 1 Ch. 630**

**Authority.**

**18. — Carrying on business—Trust for sale—Power to postpone sale—Power to carry on business.**

A power to postpone the sale of all or any part of a residue devised and bequeathed on trust to sell, and particularly to sell his business of a pawnbroker with all convenient speed, held not to give power to carry on the business for an indefinite time.

The Court, under the circumstances, authorized the trustees to carry on one of the testator's two businesses (of a pawnbroker) for two years.

*In re CROWTHER*, [1895] 2 Ch. 56, considered. *In re SMITH*. *ARNOLD v. SMITH* — **North J. [1895] W. N. 154 (16); [1896] 1 Ch. 171**

— Postponement of sale.

*See TRUSTEE—Purchase and Sale*. 91.

**Breach of Trust.**

*Jurisdiction of Court to relieve in cases of breach of Trust. See Judicial Trustees Act*, 1896 (59 & 60 Vict. c. 35), s. 3. *For List of Rules under this Act, see TRUSTEE—Judicial Trustees.*

— Account.

*See Cases under TRUSTEE—Accounts.*

**19. — Accumulation clause—Wilful default—Compound interest—Rate of interest—Trustee and cestui que trust.**

A testator bequeathed the proceeds of his residuary estate upon trust for his children, and directed the trustees to apply towards the maintenance of the infant children the whole or part of the income of their expectant shares, and to accumulate the residue of the income and the income thereof at compound interest:—

*Held*, (1.) that in a proper case it was competent for the Court, upon the further considera-

**TRUSTEE (Breach of Trust)—continued.**

tion of an action, to charge trustees with interest, whether simple or compound, on balances retained in their hands, although no case of wilful default had been raised by the pleadings, and the question of interest was not referred to in the judgment: (2.) that as the trustees had neglected to comply with the express trust for accumulation they were chargeable with compound interest upon the balances in their hands, but at the rate of 3 per cent. only, and that in ascertaining such balances trust funds improperly invested were to be treated as remaining in their hands.

*Knott v. Cottee*, (1852) 16 Beav. 77, followed, except as to the rate of interest. *In re BARCLAY. BARCLAY v. ANDREW Stirling J.* [1899] 1 Ch. 674 — Advancement.

See **WILL—Advancement.** 26.

**20. — Attachment.**

(A) Writ of attachment against a trustee refused by the Court in exercise of its discretion under the Debtors Act, 1878, where the trustee had no means and had received no personal benefit from the breach of trust. *EARL OF AYLESFORD v. EARL POULETT* (No. 2)

**North J.** [1892] 2 Ch. 60

Referred to by C. A. See next Case.

(B) Sect. 9 of the Bankruptcy Act, 1883, does not take away the jurisdiction of the Court under s. 4 (3) of the Debtors Act, 1869, to order the committal or attachment of a defaulting trustee against whom a receiving order in bankruptcy has been made. *In re SMITH. HANDS v. ANDREWS*

**C. A.** [1893] 2 Ch. 1

— Cestui que trust, liability of, for breach of trustee's covenant—Covenant to repair — Occupation by cestui que trust.

See **LANDLORD AND TENANT.** 31.

**21. — Contribution—Co-trustees — Liability—Right to contribution or indemnity as between co-trustees — Statute of Limitations—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, sub-s. 1 (a), (b).**

The principle established in *Wolmershausen v. Gullick*, [1893] 2 Ch. 514, that the Statute of Limitations does not begin to run against a surety suing a co-surety for contribution until the liability of the surety is established, applies equally to the case of a trustee claiming contribution against his co-trustee in respect of a liability incurred from loss occasioned to the trust estate by their joint default. In such a case, therefore, time does not begin to run as between the co-trustees until the claim of the cestui que trust has been established against one of them.

The plt., who was trustee of a marriage settlement, allowed the trust-fund to be in the hands of the deft., his co-trustee, for investment. The deft. entrusted the whole fund to an "outside" stockbroker, who applied a portion of it to his own uses. In an action by the plt. and infant cestui que trust under the settlement, the deft. denied his liability and claimed contribution against the plt. trustee:—

*Held*, (1.) that the deft., not having exercised proper care in the selection of a broker, and having improperly left the whole amount of the trust fund in the broker's hands, was liable for

**TRUSTEE (Breach of Trust)—continued.**

the loss which had occurred; (2.) that the plt. was in pari delicto with the deft., and that the deft. was therefore entitled to contribution from the plt.; and (3.) that as between the two trustees time did not begin to run under the Statutes of Limitation until the date of the judgment in the action. *ROBINSON v. HARKIN*

**Stirling J.** [1896] 2 Ch. 415

**22. — Contribution—Co-trustees—Trustee Beneficiary—Loss to trust estate, Liability for—Contribution between co-trustees—Advance of trust-money —Repayment of private debt of trustee out of advance—Following trust funds.**

The rule as to the right of a trustee to contribution from his co-trustee for loss occasioned to the trust estate by a breach of trust for which both are equally to blame does not apply where one of the trustees is also a cestui que trust and has received, as between himself and his co-trustee, an exclusive benefit by the breach of trust: in that case the rule to be applied is that under which the share or interest of a cestui que trust who has assented to and profited by a breach of trust has to bear the whole loss; and the trustee who is a cestui que trust must therefore indemnify his co-trustee to the extent of his share or interest in the trust estate, and not merely to the extent of the benefit he has received.

The plt. and deft., the trustees of a will, invested certain trust funds, part of the trust estate, in securities of a description authorized by the will. The plt., while a trustee, became also entitled as a beneficiary to a share of the trust estate. The investments, some of which were made before and others after the plt. became a beneficiary, turned out insufficient, and the plt. and deft. were declared jointly and severally liable to make good the loss to the trust estate. The whole of the loss was made good out of the plt.'s share of the trust estate, which share exceeded the amount of the loss:—

*Held*, by C. A., affirming *North J.*, [1895] *W. N.* 132 (17), that the plt. had no right of contribution from the deft. in respect of any part of the loss.

The extent of the liability of a trustee beneficiary for a breach of trust in which he is implicated, discussed.

The fact of a borrower of trust-money from trustees repaying out of the money so borrowed a debt due from him to one of the trustees, is not, of itself, sufficient to render the trustee so accepting repayment liable for breach of trust, the borrower of the trust-money being under no restriction as to its application. *CHILLINGWORTH v. CHAMBERS* — **C. A.** [1896] 1 Ch. 685

Referred to by *Stirling J.* *Robinson v. Harkin*, [1896] 2 Ch. 415, 425. See preceding Case

Referred to by C. A. *Moxham v. Grant*, [1900] 1 Q. B. 88, 92.

**23. — Culpa Lata—Annual accounts—Personal liability of trustees—Failure to fulfil trust directions—Respondents not appearing, costs on reversal —Appellant suing in forma pauperis.**

Where a testator gives power to his trustees



**TRUSTEE (Breach of Trust)—continued.**

to appoint a factor to the estate who may be one of themselves, but directs them to require annual accounts, the trustees are guilty of culpa lata if they fail to call for annual accounts. *CARRUTHERS v. CARRUTHERS* - H. L. (Sc.) [1896] A. C. 659

**24. — Declaration that trustees are not liable—**  
*Costs—R. S. C., 1883, Order LV., r. 3—Originating summons.*

Where under a marriage settlement which gave the trustees power to retain investments, there had been a loss in 1873, and in 1894 new trustees were appointed, who declined to act till it was decided whether the old trustees were liable for the loss:—

*Held*, that the old trustees were entitled to a declaration that they were not liable, and that, under the circumstances, the trustees should be allowed their costs out of their estate. *In re IRWIN. BARTON v. IRWIN*

*Stirling J. [1895] W. N. 23*

— Determinable life interest.

*See SETTLEMENT—Forfeiture. 25.*

**25. — Devastavit—Executor—Reliance on solicitor—Relief from liability—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3, sub-s. 1.**

During the five years' administration of a testator's estate by the Court, the executors, who knew that large sums were necessary for the payment of debts, disbursements, and other administration purposes, paid various sums from time to time to their solicitors in reliance on their statements that these sums were in each case required for those purposes, to which they were in fact in great part applied. Shortly before the close of the administration the solicitors became bankrupt, and the total amount paid to them being substantially in excess of the amount required and applied for administration purposes, the balance was lost to the estate:—

*Held*, under the special circumstances, that the executors had acted honestly and reasonably, and ought fairly to be excused for making the payments in reliance on their solicitors' statements, and ought to be relieved from personal liability in respect of the balance lost.

*Bacon v. Bacon*, (1800) 5 Ves. 331; 5 R. R. 52, followed.

Observations on s. 3, sub-s. 1, of the Judicial Trustees Act, 1896. *In re LORD DE CLIFFORD'S ESTATE. LORD DE CLIFFORD v. QUILTER. LORD DE CLIFFORD v. MARQUIS OF LANSDOWNE*

*Farwell J. [1900] 2 Ch. 707*

**26. — Devastavit, Executor guilty of—Court's power to excuse—Judicial Trustee Act, 1896 (59 & 60 Vict. c. 35), s. 3.**

Section 3 of the Judicial Trustees Act, 1896, applies to the case of an executor who has committed a devastavit, but in construing that section the Court is bound to remember the provisions of 22 & 23 Vict. c. 35, s. 29, and to see that there has been no undue delay in advertising for claims.

A testator, who died in June, 1894, leaving assets amounting to 22,000*l.*, and debts, as then ascertained, of about 100*l.*, gave an immediate legacy of 300*l.* to his widow; the executor paid this legacy and allowed the widow to receive the income arising from the estate for the support of

**TRUSTEE (Breach of Trust)—continued.**

herself and family. In Aug. following a claim for rents received by the testator as an agent, and not accounted for, was sent in; in Nov. the usual advertisements for creditors were issued; in Dec. an action claiming an account on the footing of wilful default by the testator was commenced. The executor, without going to the Court for directions, defended the action, and continued to allow the widow to receive the income till judgment in April 1896, which resulted in some 26,000*l.* being found due from the testators' estate to the plts.

*Held*, that though there had been undue delay in issuing the advertisements for claims, the executor had acted reasonably under all the circumstances in paying the 300*l.* legacy and such further sums on account of income as were necessary to maintain the widow and family up to the issue of the writ, but not after, and to this extent he might be relieved from personal liability. *In re KAY. MOSLEY v. KAY*

*Romer J. [1897] 2 Ch. 518*

Referred to by *Farwell J. In re Lord De Clifford's Estate*, [1900] 2 Ch. 707, 716. *See preceding Case.*

**27. — Executor—Outstanding estate—Debt secured by promissory note—Loss to estate—Liability—Relief—Acting "honestly and reasonably"—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3, sub-s. 1.**

A testator by his will gave his real and personal estate to his executors and trustees upon trust to maintain the same in the like mode of investment as at his death until one of his sons should attain the age of twenty-four. The estate comprised a debt of 166*l.* due upon a promissory note payable upon demand; the executors, believing the debtor to be a man of good credit, neither called in, nor applied to the Court for directions as to this debt; the debtor died insolvent eighteen months after the testator; and the estate suffered a loss:—

*Held*, that, having regard to the terms of the will and the amount of the debt, the executors might reasonably have thought they were not bound either to call in the debt or to apply for directions, and that, under the circumstances, having acted honestly and reasonably, they ought to be relieved, under s. 3 of the Judicial Trustees Act, 1896, from their breach of trust and from personal liability for the same.

The decision of *Kekewich J.* affirmed. *In re GRINDEY. CLEWS v. GRINDEY*

*G. A. [1898] 2 Ch. 593*

**28. — Following trust funds—Satisfaction.**

C., tenant for life under his marriage settlement of 1832, got possession of the trust funds and invested part of them in unauthorized securities, among which was 4000*l.* dock stock, in the joint names of himself and his son A. On the marriage of A., C. out of his own moneys settled on A. sums exceeding A.'s share in the funds of the settlement of 1832. In A.'s settlement was included the above sum of dock stock which A. joined in transferring to the trustees; but in the opinion of the Court it appeared from the evidence that A. did not know the origin of the dock stock, nor that it was a fund in which

**TRUSTEE (Breach of Trust)—continued.**

he had an interest; and it appeared that all the negotiations for A.'s settlement had gone on the footing that C. was settling money of his own:—

*Held*, (reversing the decision of North J., [1895] 2 Ch. 853), that in a suit by the representatives of C.'s children to have the funds of the settlement of 1832 replaced, A. was not to be treated as having received the dock stock so as pro tanto to reduce the claim of C.'s children to have the trust funds replaced. *CRICHTON v. CRICHTON* - - C. A. [1896] 1 Ch. 870

—Breach—Fraudulent preference—Conveyance to make good breaches of trust.

See **BANKRUPTCY—Fraudulent Preference**. 111.

**29. — Immunity clause—Liability of trustee—Negligence—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17, sub-s. 3.**

Three persons were trustees of a fund set apart to answer a life annuity, and divisible on the decease of the annuitant among the persons entitled in remainder. The sum of 3,700*l.*, part of this fund, was invested on a heritable bond. On July 15, 1887, the bond was paid off. The trustees allowed their law agent to receive the money and to retain it in his hands uninvested for rather over six months. At the end of that time the law agent became bankrupt, and the greater part of the fund was lost:—

*Held*, reversing decision of Ct. of Sess. (Lord Morris dissenting), (1898) 25 R. 697, that the trustees were guilty of a plain and positive breach of trust, and were liable to replace the money lost. *WYMAN v. PATERSON*

H. L. (Sc.) [1900] W. N. 63; [1900] A. C. 271

**30. — Indemnity—Instigation of tenant for life, Breach of trust at—Married woman restrained from anticipation—Practice—Administration—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 45—Trustee's equity raised by defence—Procedure—R. S. C., 1883, Order XL., r. 55—Inquiry or liberty to apply.**

In an action by beneficiaries of a settlement against the tenant for life and the executors of the deceased trustees of the settlement, the plaintiffs by their statement of claim alleged that the deceased trustees had in breach of trust advanced the trust funds for the tenant for life and her husband. The executors by their defences admitted the breach of trust, but alleged that it was committed at the instigation and request and consent in writing of the tenant for life, and claimed that her life interest ought to be impounded under s. 45 of the Trustees Act, 1893, by way of indemnity to the estates of the deceased trustee. No notice was given by the executors to the tenant for life under Order XVI., r. 55, that they claimed contribution or indemnity against her. At the trial of the action leave was given to the executors, without going into evidence, to apply in chambers with reference to enforcing their rights (if any) to indemnity against the tenant for life. *In re HOLT. In re ROLLASON. HOLT v. HOLT* Byrne J. [1897] 2 Ch. 525

Referred to by Kennedy J. *Molyneux v. Fletcher*, [1898] 1 Q. B. 648, 656.

**TRUSTEE (Breach of Trust)—continued.**

**31. — Indemnity—"Instigation or request of a beneficiary"—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 6.**

A trustee, at the verbal request of a married woman restrained from anticipating her income, advanced her 80*l.* to prevent her home from being sold up:—

*Held*, (1) that the trustee was entitled to indemnity out of her income; (2) that the "instigation or request of a beneficiary" need not be in writing. *GRIFFITH v. HUGHES*

Kekewich J. [1892] 3 Ch. 105

Approved of by C. A. *In re Somerset*, [1894] 1 Ch. 231, 265.

Referred to by North J. *Mara v. Browne*, [1885] 2 Ch. 69, 92; but this case was reversed by C. A. [1896] 1 Ch. 199.

—Indemnity—Power to make beneficiary indemnify for breach of trust.

See *Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 45.*

**32. — Indemnity—Solicitor-trustee—Court's power to excuse—Liability to indemnify co-trustee—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.**

The power to relieve a trustee from personal liability for a breach of trust given by s. 3 of the Judicial Trustees Act, 1896, is meant to be acted on freely and fairly in the exercise of judicial discretion, but the Court must, before exercising the power, be satisfied by sufficient evidence that the trustee acted reasonably as well as honestly.

No general rules or principles can be laid down as those to be acted upon in carrying out the section; each case depends on its own circumstances.

Where two trustees appointed by a testatrix, one being a solicitor and the other a linendraper, invested trust money on a mortgage which was an improper investment both as to its nature and as to its value, the Court refused to excuse the linendraper when it was not satisfied that he had acted with the care which he would probably have taken if the money had been his own, but found that he had relied on the solicitor. The Court, however, followed *Lockhart v. Reilly*, (1856) 25 L. J. (Ch.) 697, ordered the solicitor to indemnify his co-trustee from the loss resulting from his negligence. *In re TURNER. BARKER v. IVIMEY* - - Byrne J. [1897] 1 Ch. 536

Discussed by Kekewich J. *Head v. Gould*, [1898] 2 Ch. 250, 264.

—Interest—Rate of, to be charged.

See **TRUSTEE—Interest**. 57.

—Investments.

See **Cases under TRUSTEE—Investments**.

**33. — Lien—Trustees' lien on making good breach of trust—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 45.**

On the marriage of A. and B., A. brought into settlement a sum secured by mortgage on his estates, B. a sum invested in Railway Rentcharge Stock. A. and B. each took the first life interest in their respective funds. At the instigation of A. and B., the trustees committed a breach of trust by selling out B.'s stock, and advancing the

**TRUSTEE (Breach of Trust)—continued.**

proceeds to A. secured by an equitable mortgage of A.'s estates. A. then assigned his life interest in his fund to S. The trustees proposed to make good their breach of trust, and claimed a lien on A.'s life interest. On an application by the trustees for a receiver of the rents of A.'s Irish estates:—

*Held*, (1.) that at the date of the assignment to S. there was an existing equity in the cestui que trust in remainder which became vested in the trustees on their making good their breach, and (2.) that in the absence of special circumstances, S. took the assignment subject to that equity; (3.) that the remainderman was a necessary party. **BOLTON v. CURRE (No. 1)**

**Stirling J. [1894] W. N. 122**

*See next Case.*

— Limitations, Statute of.

*See Cases under TRUSTEE—Limitations, Statute of.*

— Maintenance—Education—Bringing up—Immoral home—Control of Court.

*See INFANT—Maintenance. 32.*

**34. — Married woman—Restraint on anticipatory—Trustees' right to be recouped out of beneficiary's interest—Trustee Acts, 1888 (51 & 52 Vict. c. 59), s. 6; 1893 (56 & 57 Vict. c. 53), s. 45.**

The equity of a trustee who commits a breach at the request and for the benefit of a beneficiary (and consequently thus affecting an assignee of the interest of a beneficiary) is not merely statutory since the passing of the Trustee Acts, 1888 and 1893, but is the same now as it was before those Acts, which enlarge the judicial discretion of the Court in such cases. Such equity is not waived where the trustee at the time of the breach declines to take a mortgage of the beneficiary's interest by way of security for the breach. It is the duty of a trustee to protect a married woman, restrained from anticipation against herself, when she asks him to commit a breach of trust. On failure of such duty the Court will be slow to exercise its discretion under s. 45 of the Act of 1893 in order to remove the restraint on anticipation in order that her life interest may be impounded to recoup him. **BOLTON v. CURRE (No. 2)** — **Romer J. [1895] 1 Ch. 544**

**35. — Misappropriation of trust funds—Solicitor—Interest—Judicial Trustee Act, 1896 (59 & 60 Vict. c. 35), s. 3, sub-s. 1.**

In July, 1892, the deft. and T., a solicitor and a member of the firm of solicitors acting for the trust, were trustees of a settled fund; and in that month certain of the securities representing the trust funds were sold and the proceeds, amounting to 1730*l.*, received by T., and, pending the settlement of certain questions with regard to the division of such proceeds, were paid by him into the office account at his own bank. The deft., trusting to the integrity of T., took no steps to ascertain whether the moneys had been paid into the trust account at their bank. T. died in July, 1893, largely indebted to his bankers on his private account, and they claimed and succeeded in establishing their claim to set off the moneys standing to the office account, including the 1730*l.*, the subject of this action,

**TRUSTEE (Breach of Trust)—continued.**

against his indebtedness on his private account, whereby the said trust fund was wholly lost:—

*Held*, that the deft. had not acted "reasonably" within the meaning of sub-s. 1, s. 3, of the Judicial Trustee Act, 1896; and he was therefore ordered to repay the sum so lost, but without interest by reason of the questions that had arisen with regard to the moneys which had necessitated the same being paid into the bank instead of being distributed immediately on the sale. **WYNNE v. TEMPEST**

**Romer J. [1897] W. N. 43 (14)**

[NOTE.—Upon a point of practice—Third party notice. *See Chitty J., [1897] 1 Ch. 110.]*

**36. — Mortgage of trust estate along with trustee's own property—Apportionment.**

The C. A. in 1896 declared B. to have purchased certain Ceylon estates as a trustee for R., subject to B.'s lien for the purchase-money and other advances for the purposes of the estates, and an account was directed of all sums of money received by B. in respect of any sale, mortgage, or other disposition of the estates or any of them. In July, 1876, B., who had previously obtained from C. & Co. two advances of 20,000*l.* and 25,000*l.* on the security of his own estates in Cumberland, had obtained from them 20,000*l.* more, and signed this memorandum: "Messrs. C. & Co.—You have now advanced to me 20,000*l.*, 25,000*l.*, and 20,000*l.* on security of my Cumberland estates. If required by you at any time, I undertake by way of further security to execute to you a valid charge on my Ceylon estates." In July, 1879, by a memorandum indorsed on this memorandum, B. stated to C. & Co. that he had directed his agent to execute to them, in pursuance of the former memorandum, a formal charge on the D. and D. estates (two of the estates to which R. afterwards established his title) for 35,000*l.*, the balance then due from him to C. & Co. A mortgage in Ceylon was executed accordingly. C. & Co. never resorted to the D. and D. estates. The official referee in taking the accounts charged B. with 20,000*l.* as money received by him in respect of a mortgage on part of the trust estate. Kekewich J. struck out this sum altogether:—

*Held*, on appeal, that as B. had received 20,000*l.* on a charge on the Cumberland estates, and a promise to give a charge on the D. and D. estates, which promise was afterwards followed by an actual charge, he must be treated as having raised that sum rateably out of the Cumberland estates and the D. and D. estates according to their respective values after deducting the prior incumbrances upon them, and must be debited with the share attributable to the D. and D. estates. **ROCHEFOUCAULD v. BOUSTEAD**

**C. A. [1898] 1 Ch. 550**

— Mortgage, where bad as breach of trust.

*See MORTGAGE—Validity. 93.*

**37. — Relief of trustees from personal liability—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.**

Trustees of a settlement, erroneously assuming that they had a power of sale, sold the leaseholds comprised in the settlement, and thereby

**TRUSTEE (Breach of Trust)—continued.**

diminished the income of the plaintiff, who, as tenant for life of a moiety, was entitled to the rents and profits in specie, though the sale would have been a proper one had the trustees in fact possessed a power of sale:—

*Held*, affirming the judgment of Kekewich J., [1898] 2 Ch. 521, that as, on the evidence, the trustees had acted honestly and reasonably, they were entitled under s. 3 of the Judicial Trustees Act, 1896, to be relieved from personal liability in respect of the breach of trust. *PERRINS v. BELLAMY* - - - C. A. [1899] W. N. 50; [1899] 1 Ch. 797

**38. — Retiring trustees, Liability of, for breach of trust—Unauthorized investments—Order against trustees—Trustees taking over securities—New trustees—Cestui que trust—Infant—Claim against co-trustee—Indemnity—Solicitor—Third party notice.**

To make a retiring trustee liable for a breach of trust committed by his successor, it must be proved that the very breach of trust which was in fact committed was not merely the outcome of or rendered easy by the retirement and new appointment, but was contemplated by the former trustee when the retirement and appointment took place.

Where one of two trustees by whom a breach of trust is committed is a solicitor, he cannot, merely because he is a solicitor, be required to indemnify his co-trustee where that co-trustee has himself been an active participator in the breach of trust and has not participated in it merely in consequence of the advice and control of the solicitor.

The rule of equity that trustees who have caused a loss by investing trust funds on an unauthorized security cannot be required by the cestui que trust to make good the loss without having the security transferred to themselves, does not apply where the cestui que trust is an infant; he being entitled to have the trust fund made good by the trustees notwithstanding the security cannot be transferred to them.

*In re Salmon*, (1889) 42 Ch. D. 351, considered. **HEAD v. GOULD - Kekewich J. [1898] 2 Ch. 250**

**39. — Solicitor and client—Investment advised by solicitor to trustees—Contributory mortgage—Priority.**

Trustees acting under the advice of their solicitors invested 3000*l.* part of the trust fund, upon the security of a contributory mortgage for 6000*l.*, the remaining 3000*l.* being advanced by the solicitors themselves. The legal estate in the mortgaged property was not vested in the trustees, the mortgage being taken in the names of one of them and of a stranger to the trust. The mortgagees executed a contemporaneous declaration of trust declaring that their names should stand in the mortgage as to the sum of 3000*l.*, part of the said sum of 6000*l.* and the interest thereof in trust for the trustees, and as to the further sum of 3000*l.* "residue of the said sum of 6000*l.* and the residue of the interest to become due and payable" under the mortgage, in trust for the solicitors. By another contemporaneous document the solicitors guaranteed to the trustees the sufficiency of the security for the sum of

**TRUSTEE (Breach of Trust)—continued.**

3000*l.* and interest, and further guaranteed to the trustees the repayment of the 3000*l.* and interest. The solicitors assigned their portion of the security to other persons, and were afterwards adjudicated bankrupts. The mortgaged property having failed to realize the whole of the 6000*l.*:—

*Held*, that the trustees were not entitled to priority for their 3000*l.* as against the assignees of the solicitors. *STOKES v. PRANCE*

**Stirling J. [1897] W. N. 163 (10); [1898] 1 Ch. 212**

— Solicitor becoming constructive trustee—Liability of partner.

*See* **SOLICITOR—Partnership.** 122.

— Surviving partners—Third party notice.

*See* **PRACTICE.** 253.

**40. — Tenant for life—Liability—Valuation for mortgage—Report of valuer—Limitation of action—Trustee Act, 1888 (51 & 52 Vict. c. 59), ss. 4, 5, 6, 8.**

A tenant for life consented in writing to an investment by trustees of the trust fund on a mortgage. The security was insufficient, and some of the trust fund was lost:—

*Held*, by C. A. (1) (reversing Kekewich J.) that the trustees were not entitled under s. 6 of the Trustee Act, 1888, to have the life interest in the whole trust fund impounded by way of indemnity to them against their liability to the infant remaindermen, as the evidence did not shew that the tenant for life instigated, requested, or agreed in writing to a breach of trust; (2) affirming Kekewich J. that, as between the tenant for life and the trustees, the breach of trust was committed in 1878, when the investment was made, and not in 1890, when the interest on the mortgage ceased to be paid, and therefore the tenant for life's remedy against the trustees was barred by the statute; (3) that payment of interest on the mortgage was not an acknowledgment which would take the case out of the Statute of Limitations. Duty of trustees with regard to report of valuer considered. *In re SOMERSET. SOMERSET v. EARL POULETT* - - - C. A. [1894] 1 Ch. 231

**41. — Trustee de son tort—Constructive trust.**

Two persons, strangers to the will, assisted the executrix in carrying on the business of the testator. These persons were aware that the executrix in so doing was committing a breach of trust, but otherwise they acted in good faith. They had no control of the trust funds and did not derive any benefit from the breach of trust, except that they had sold goods to the executrix in the ordinary course of business:—

*Held*, that they were not liable as trustees de son tort or constructive trustees. *In re BARNEY. BARNEY v. BARNEY Kekewich J. [1892] 2 Ch. 265*

**42. — Trustee de son tort—Mortgage—Insufficient security—Solicitor.**

Trust money was advanced on security of a mortgage which turned out to be insufficient, and the same solicitor acted for both parties, the facts of his having been employed to carry out the transaction, and of the money having passed through his bank:—

*Held*, not to make him liable for the insufficiency of the security. *BRINSDEN v. WILLIAMS*  
**North J. [1894] 3 Ch. 185**

**TRUSTEE (Breach of Trust)—continued.**

— Voluntary conveyance to make good breaches of trust.

See **BANKRUPTCY**. 111.

**Contribution.**

See **TRUSTEE—Breach of Trust**.

**Costs.**

— Accountants—Audit—Stock-taking—Costs, charges, and expenses.

See **PARTNERSHIP**. 3.

— Appeal as to costs—"Costs, charges and expenses"—Discretion of judge.

See **COSTS**. 10.

— Disallowance of costs—Extravagant litigation.

See **COSTS**. 5.

43. — *Misconduct—Costs subsequent to judgment.*

Where an action has been occasioned by the misconduct of a trustee the costs incurred in the action subsequent to the judgment are in the discretion of the Court. In this case the trustee was held not entitled to costs. **EASTON v. LANDOR**

**C. A. [1892] W. N. 176**

— Remuneration of trustee.

See **TRUSTEE—Remuneration**.

44. — *Retaining out of estate—Judge making no order as to costs.*

Where, on an originating summons calling on a trustee for his accounts, the judge does "not think fit to make an order as to the costs of the action," it operates as a judicial decision that the trustee is not entitled to his costs of the action, and is inconsistent with his retaining them out of the estate. *In re HODGKINSON*. **HODGKINSON v. HODGKINSON**

**C. A. [1895] 2 Ch. 190**

— Setting aside settlement, Action for—Parties.

See **SETTLEMENT**. 12.

— Severance in defence.

See **COSTS**. 66.

45. — *Severance on further consideration—Costs of—Administration—Defendant trustees—Taxation—Allowance of two counsel.*

On further consideration in an administration action a hostile order was sought against one of the deft. trustees. Thereupon the defts. severed, the trustee attacked appearing by two counsel and his co-trustee by one counsel. The attack failed, and the trustees were given their costs of the action as between solicitor and client, and also their costs of appearing separately. In taxing their costs the taxing master disallowed the costs of a leading counsel to the trustee attacked, being of opinion that one counsel for each trustee was sufficient. On summons to review:—

*Held*, that the trustee attacked was entitled to the costs of appearing by two counsel. *In re MADDOCK*. **BUTT v. WRIGHT**

**Cozens-Hardy J. [1899] W. N. 122; [1899] 2 Ch. 588**

— Solicitor-trustee—Profit costs.

See **SOLICITOR—Solicitor-Trustee**. 134.

46. — *Statute-barred items.*

Where there is a direction to ascertain the

**TRUSTEE (Costs)—continued.**

costs, charges, and expenses of trustees, statute-barred costs should be included, for the Statutes of Limitation bar the remedy, not the debt, and the object of the order is to give effect to the trustee's right of indemnity which extends to fair claims of every kind, and not merely to those enforceable by action. **BUDGETT v. BUDGETT** (No. 2) — **Kekewich J. [1895] 1 Ch. 202**

Referred to by **Kekewich J. In re Margetts**, [1896] 5 Ch. 263, at p. 265.

**Custody of Title-deeds, &c.**

47. — *Bonds to bearer—Mortgage—Building estate—Title-deeds—Custody.*

Although as a general principle trustees must have their title-deeds as well as their securities under their own control, yet where title-deeds relate to a building estate in course of development it is not improper to leave them in the hands of a solicitor.

*Semble*, that certificates and bonds payable to bearer ought not to be under the control of a solicitor or any other agent. Trustees must keep them not necessarily in their own custody, but in some place where they cannot be got at without the consent of the whole body. **FIELD v. FIELD**

**Kekewich J. [1894] 1 Ch. 425**

48. — *Dishonesty of servant—Liability when remunerated.*

The paid trustee under a creditors' deed is not liable either as trustee or as bailee for reward for articles stolen by a servant employed by him in carrying on the debtor's business. **JOBSON v. PALMER** — **Romer J. [1893] 1 Ch. 71**

**Disclaimer.**

49. — *Partial disclaimer—Property in England and abroad—Vendor and purchaser—Title.*

A testator having real and personal property in England and abroad left his residuary estate to trustees upon trust for sale. One of the trustees disclaimed the trusts of the will except as to the property abroad. The remaining trustees sold land of the testator in England:—

*Held*, that the disclaimer had no effect, and that the disclaiming trustee was a necessary party to the conveyance. *In re LORD AND FULLERTON'S CONTRACT*

**C. A. [1895] W. N. 157 (11); [1896] 1 Ch. 228**

— "Return to England"—Condition.

See **WILL—Condition**. 63.

**Discretion.**

50. — *Advancement of legatees—Legatee absolutely entitled.*

A testator by his will directed sums to be invested for the benefit and advancement of his sons, such sums to be applied as the trustees might think fit, and further directed that such sums should be judicially invested, as they were intended specially for the advancement in life of his sons:—

*Held*, that on attaining twenty-one the sons were absolutely entitled to the legacies, freed from the exercise of any discretion on the part of the trustees. *In re JOHNSTON*. **MILLS v. JOHNSTON** — **Stirling J. [1894] 3 Ch. 204**

**TRUSTEE (Discretion)—continued.**

51. — *Allowance towards infant's maintenance—Contingent interest—Jurisdiction of Court to interfere.*

A testator declared that after the decease or marriage again of his wife, his trustees should apply the whole or such part of the income of the expectant share of any child for or towards the maintenance, &c., of such child. The widow married again, and the trustees declined to make her an allowance towards the infant's maintenance:—

*Held*, that there was no absolute trust to apply the income for the maintenance, but a discretionary trust, equivalent to a power, and that the Court would not interfere with the bona fide exercise of the trustees' discretion. *In re BRYANT. BRYANT v. HICKLEY - Chitty J. [1894] 1 Ch. 324*

52. — *Exercise of discretion—Bankruptcy of settlor.*

Under a settlement real estate was limited to such uses and on such trusts as A. and B. should jointly appoint, with a life estate to B. in default of appointment. The trust funds were appointed, *inter alia*, as to part to pay certain of B.'s debts and as to another part to himself for life with a gift over on alienation. B. became bankrupt:—

*Semble*, that if the trustees under their discretionary power paid B. more than enough for his necessary maintenance he could be made to account for the excess to his trustee in bankruptcy. *In re ASHBY. Ex parte WREFOED*

V. Williams J. [1892] 1 Q. B. 872

**Indemnity.**

— Breach of trust.

See **TRUSTEE—Breach of Trust.** 30—32.

53. — *Business, Trustee carrying on—Tort—Damages against trustee—Right of trustee to indemnity—Subrogation—Administration.*

A trustee carried on his testator's colliery business, and in so doing let down the surface of the land and injured the buildings of an adjoining owner, who recovered damages against the trustee personally for 1092*l.* and costs. The adjoining owner then claimed to be entitled to be paid direct out of the testator's estate the amount so recovered:—

*Held*, following *Benett v. Wyndham* (1862) 4 D. F. & J. 259, that, as the injury had been occasioned by the trustee in the reasonable management and working of his testator's estate, he was entitled to be indemnified out of the assets, and, consequently, that the adjoining owner was entitled to stand in the place of the trustee and to claim the benefit of this right to indemnity so as to obtain payment of the damages and costs so recovered direct out of the testator's estate. *In re RAYBOULD. RAYBOULD v. TURNER*

Byrne J. [1899] W. N. 244; [1900] 1 Ch. 199

— Right of indemnity—Purchase of land by trustee of settled estates—Entry by tenant for life—Non-payment of principal—Vendor's lien.

See **VENDOR AND PURCHASER—Lien.** 55.

**Information as to Trust Funds.**

54. — *Information as to funds and incum-*

**TRUSTEE (Information as to Trust Funds)—continued.**

*brances—Persons not cestuis que trust—Misrepresentation.*

(A) Where a trustee, on being applied to by an intending purchaser as to whether his cestui que trust was absolutely entitled to a fund, said he "is entitled to his share, which he can dispose of to any one," although there was an incumbrance, of which the trustee had notice:—

*Held*, that the trustee was liable to reimburse the purchaser. *BURROWES v. LOCK*

[1891] 3 Ch. 94, n.

*This case is incompletely reported in 10 Ves. 470, and is here made complete.*

Considered by C. A. *Low v. Bouverie*, [1891] 3 Ch. 82. See next Case.

(B) A trustee is under no obligation to assist a cestui que trust in incumbering his beneficial interest nor to answer the inquiries of a stranger about to deal with the cestui que trust. If he answers such inquiries he is only bound to answer honestly to the best of his actual knowledge and belief, and need not himself make any inquiries. He is not liable for such honest answers unless they amount to a warranty or an estoppel. A person proposing to lend money on a life interest inquired of the trustee whether there were any prior charges. The trustee, forgetting that several prior charges were recited in the deed appointing him, replied in the negative. The security proved worthless and the mortgagee claimed indemnity from the trustee:—

*Held*, that he was not liable. *LOW v. BOUVERIE*  
C. A. [1891] 3 Ch. 82

Referred to by Stirling J. *In re Wyatt. White v. Ellis*, C. A. [1892] 1 Ch. 188; affirm. by H. L. (E.) *sub nom. Ward v. Duncombe*, [1893] A. C. 369.

55. — *Information as to incumbrances on the fund.*

A cestui que trust who is contingently entitled in remainder to a share of Consols standing in the name of a trustee, is entitled to obtain from such trustee an authority to the Bank of England, enabling him to ascertain whether there is any charging order, stop order, or distringas upon the trust fund. *In re TILLOTT. LEE v. WILSON*

Chitty J. [1892] 1 Ch. 86

56. — *Information as to investment of trust estate.*

A person having a reversionary interest in a trust fund is entitled to information from the trustees as to the investments forming the trust estate. *In re DARTNALL. SAWYER v. GODDARD*

C. A. [1895] 1 Ch. 474

**Interest.**

— Misappropriation of trust funds.

See **TRUSTEE—Breach of Trust.** 19, 35.

57. — *Rate of interest to be charged.*

Trustees guilty of a breach of trust are still chargeable with interest at the rate of 4 per cent. according to the old rule.

*Semble*, that the rule should be revised under the altered circumstances of the times. *OWEN v. RICHMOND - Kekewich J. [1895] W. N. 29*

**TRUSTEE—continued.****Investments.**

The law as to trustees' investments was consolidated and amended by ss. 1-9 of the *Trustee Act*, 1893 (56 & 57 Vict. c. 53). The Act of 1893 was amended by the *Trustee Act*, 1894 (57 & 58 Vict. c. 10).

**COLONIAL STOCK.]** Power to invest in. *Colonial Stock Act*, 1900 (63 & 64 Vict. c. 62), amends the *Colonial Stock Acts*, 1877 and 1892, and the *Trustee Act*, 1893.

**58. — Appropriation to answer annuity—Trust Investment Act**, 1889 (52 & 53 Vict. c. 32), ss. 3, 6.

The power given to trustees by s. 3 of the *Trust Investment Act*, 1889, to invest trust funds in any of the stocks therein mentioned, does not extend to authorizing them to set apart any of such stocks to answer a particular purpose.

*Quære*, whether such an object can be effected under the power of varying investments given at the end of s. 3. *In re OTHWAITE*. *OTHWAITE v. TAYLOR* — **Kekewich J.** [1891] 3 Ch. 494

**59. — Change in firm to which loan was authorized—Continuation of loan—Breach of trust—Mercantile Law Amendment Act**, 1856 (19 & 20 Vict. c. 97), s. 14—*Trustee Act*, 1888 (51 & 52 Vict. c. 59), s. 8.

A. by his will authorized trustees to place a sum "in the hands of B. & Co. should they be willing to receive it at interest":—

*Held*, by **Romer J.**, that it was a breach of trust to continue the loan after a change took place in the members of B. & Co.

In *C. A.*, appeal ordered to stand over till it was ascertained whether any loss had accrued through the alleged breach of trust. *In re TUCKER*. **TUCKER v. TUCKER** (No. 2) — **Romer J.** [1894] 1 Ch. 724; *C. A.* [1894] 3 Ch. 429

**60. — "Company incorporated by Act of Parliament."**

Where by a will made in 1895 trustees were empowered to invest in the bonds, debentures, or debenture stock of any "company incorporated by Act of Parliament"—

*Held*, that the trustees were not authorized to invest in securities of cos. incorporated by registration under the Companies Act, 1862.

*ELVE v. BOYTON*, [1891] 1 Ch. 501, distinguished. *In re SMITH*. **DAVIDSON v. MYRTLE**

**Kekewich J.** [1896] 2 Ch. 590

**61. — Company incorporated by charter—"Act of Parliament."**

An insurance co. incorporated by a charter which the Crown was by statute specially authorized to grant held to be "a co. incorporated by Act of Parliament" within the meaning of an investment clause. *ELVE v. BOYTON*

*C. A.* [1891] 1 Ch. 501

Distinguished by **Kekewich J.** *In re Smith*, [1896] 2 Ch. 590. See preceding Case.

**62. — Convertible securities—Bearer bonds—Custody—Bankers.**

Where trustees are expressly authorized to retain or invest in convertible securities, such as bonds transferable by delivery with coupons attached, they may deal with them in the way usual with prudent men of business, and may

**TRUSTEE (Investments)—continued.**

deposit them in their joint names with the bankers to the trust upon a simple acknowledgment by the bankers of the receipt thereof.

*Field v. Field*, [1894] 1 Ch. 425, distinguished.

*In re DE POTHONIER*. **DENT v. DE POTHONIER**

[1900] W. N. 165; [1900] 2 Ch. 529

**63. — Deceased trustee—Liability of estate of deceased trustee for breach committed after his death.**

The estate of a deceased trustee is not liable for trust funds which he left in a proper state of investment at the time of his death. *In re PALK*.

*In re DRAKE*. **CHAMBERLAIN v. DRAKE**

**North J.** [1892] W. N. 112

**64. — Improper investment—Relief from liability—Judicial Trustees Act**, 1896 (59 & 60 Vict. c. 35), s. 3—*Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 8.

A summons for administration having been taken out by beneficiaries under a will against the trustees, in answer to an inquiry the master had certified that the trust estate had suffered a loss owing to improper investments for which the trustees were liable. No application was made to vary the certificate, but, upon the case coming on for further consideration, the trustees claimed relief under s. 3 of the *Judicial Trustees Act*, 1896. The inquiry was directed and the certificate made before the passing of the Act:—

*Held*, that under the circumstances the application for relief was not too late, and that the Court would hear evidence as to whether the trustees had "acted honestly and reasonably, and ought to be excused."

The onus is on a trustee who applies under s. 3 of the *Judicial Trustees Act*, 1896, to be relieved from the consequences of a breach of trust, to prove that he acted honestly and reasonably; and where the breach of trust consists in investing the trust funds upon sufficient securities, *prima facie* the requirements of s. 4 of the *Trustee Act*, 1888, and s. 8 of the *Trustee Act*, 1893, constitute a standard by which reasonable conduct is to be judged, although non-compliance with those requirements is not necessarily a fatal obstacle to an application for relief; it is also a matter for consideration whether the trustee would have acted in the same way if he had been lending money of his own.

A trustee (1.) acted on a valuation which stated merely the amount for which the property was a good security without stating the value of the property, and (2.) advanced more than two-thirds of the value stated in the valuation. In each case the valuer was employed by a solicitor who acted for the mortgagor also, and the trustee did not allege that he reasonably believed the valuer to be employed independently of any owner of the property:—

*Held*, that he was not entitled to relief. *In re STUART*. **SMITH v. STUART**

**Stirling J.** [1897] 2 Ch. 583

— Information as to investment of trust fund.

See **TRUSTEE—Information as to Trust Funds.**

**65. Judicial factor—Curator bonis—Liability—Real or heritable security—Debenture—Municipal Corporation Rates—Harbour Rates—Trusts**

**TRUSTEE (Investments)—continued.**

(Scotland) Amendment Act, 1884 (47 & 48 Vict. c. 63), s. 3, sub-ss. 10, 12—*Judicial Factors Act*, 1849 (12 & 13 Vict. c. 51), ss. 4, 13.

The accountant of court, Scotland, who as to this matter, fills a similar position to that of a Master in Chancery under the *Judicial Trustee Rules*, 1897, has no power to approve of an improper investment.

By s. 3, sub-s. 10, of the *Trusts (Scotland) Amendment Act*, 1884, trustees, including judicial factors and curators bonis, are authorized to lend trust money in loans on real or heritable security; and by sub-s. 12, in loans on debentures secured on rates or taxes levied under statutory power by municipal corporations.

A curator bonis invested his ward's money on a bond of the Greenock Harbour Trustees, a corporation consisting of the magistrates, the council, and elected trustees. As security the trustees assigned to the curator bonis the "rates and duties and other revenues of the harbour," but no right of obtaining possession of the works on default of payment was given. The accounts of the curator bonis was audited by the accountant of court and passed without comment. The harbour trustees made default in payment of interest:—

*Held*, (1) that the investment was not a real or heritable security; (2) that it was not a debenture created by a municipal corporation; (3) that, looking to the previous statement of accounts of the harbour trust, it was not a security a prudent trustee ought to have invested his ward's money in; and (4) that the annual audit of the accountant of court did not exonerate the curator bonis from liability. *HUTTON v. ANNAN*

**H. L. (Sc.) [1898] A. C. 289**

**66. — Land, Investment in—Option.**

Under s. 33 of the Act of 1882 a tenant for life has the same power over capital money in the hands of trustees liable to be laid out in land as he has over settled land. He has an option to direct how the money shall be invested or applied.

*In re GEE. PEARSON-GEE v. PEARSON*

**Chitty J. [1895] W. N. 90**

**67. — Personal security—Investment clause—Power of investment—Power to vary—Consent of tenant for life—Loan to tenant for life.**

Trustees having a power with the consent of the tenant for life to lend the trust funds on personal security may, if satisfied that there is a reasonable prospect of repayment, lend them on personal security to the tenant for life.

The proposition to the contrary in *Lewin on Trusts*, 10th ed. p. 335, purporting to be founded on *Keays v. Lane*, (1869) *Ir. R. 3 Eq. 1*, is not borne out by that authority. *In re LAING'S SETTLEMENT. LAING v. RADCLIFFE*

**Kekewich J. [1899] W. N. 23 (10); [1899] 1 Ch. 593**

**68. — Power to invest on real securities—Will—Executor—Trustee—Mortgages existing at testator's death—Retaining investments—Depreciation—Insufficient security—Breach of trust—Wilful default.**

Where a will authorizes investments on mortgage of real estate, and part of the testator's estate at his death consists of mortgages of freehold farms, there is no rule that his executors

**TRUSTEE (Investments)—continued.**

and trustees are under an absolute duty, without exercising any judgment of their own in the matter, to call in the securities within twelve months from the death (unless realization is required for payment of debts, funeral and testamentary expenses, and legacies), even though some of the securities may be of a risky nature, as where, owing to agricultural depression, they apparently become insufficient to satisfy the mortgage debts:—

Nor is there any rule that trustees retaining a security authorized by their trust are liable to make good a loss sustained through the fall in value of the security, provided that in so doing they have acted honestly and prudently in the belief that they have taken the best course for all parties interested in the trust estate.

To render trustees liable in such a case, wilful default, including want of ordinary prudence, must be proved.

The duties of executors and trustees, as regards calling in mortgage debts of their testator, discussed.

*Ames v. Parkinson*, 7 *Beav.* 379, distinguished.

Decision of *Kekewich J.*, [1896] 1 *Ch.* 323, reversed. *In re CHAPMAN. COOKS v. CHAPMAN*

**C. A. [1896] 2 Ch. 763**

*See Judicial Trustees Act*, 1896 (59 & 60 Vict. c. 35), s. 3.

**69. — Power to invest in such securities as trustee "shall think fit"—Commission or bribe—Liability of trustee to refund—Breach of trust.**

A testator gave his residuary estate to trustees upon trust to invest "in such stocks, funds, and securities as they should think fit." The trustees invested a portion of the trust estate in 3000*l.* debentures, constituting a floating security on the undertaking and assets of a limited co. One of the trustees received a commission or bribe of 300*l.* for making this investment. The other trustee, since deceased, who was tenant for life of two-thirds of the residue, made the investment in the bona fide belief that it was a good one, and with the desire of increasing his income. In an action by beneficiaries seeking to make the surviving trustee and the estate of the deceased trustee jointly and severally liable to make good any loss to the trust estate occasioned by the investment:—

*Held*, that the words "shall think fit" must be read as meaning "shall honestly think fit"; that in the absence of evidence that the deceased trustee did not act honestly in making the investment his estate could not be made liable; but that the other trustee, having received a bribe, could not have honestly thought fit to make the investment, and was therefore liable to make good the loss:—

*Held* further, that, in addition to making good the loss, the surviving trustee was liable to refund the 300*l.* as being money received by him, at the time when the investment was made, on behalf of the trust estate, and that his position was not altered by the fact that he was subsequently held liable to make good the loss occasioned by the investment. *In re SMITH. SMITH v. THOMPSON. Kekewich J. [1895] W. N. 144 (15); [1896] 1 Ch. 71*



**TRUSTEE (Investments)—continued.**

70. — *Power to vary investments—Instrument giving no power—Trustee Investment Act, 1889 (52 & 53 Vict. c. 32), ss. 3, 6.*

The Trust Investment Act, 1889, s. 3, gives trustees power to vary investments, not only of moneys invested by them under the section, but also of moneys invested in any description of fund mentioned in the section. The fact that the deed or will creating the trust gives no express power to vary the investments is not material. *In re DICK. LOPES v. HUME-DICK*

C. A. [1891] 1 Ch. 423

affirm. by H. L. (E.) *sub nom. HUME v. LOPES*

[1892] A. C. 112

See also *In re Outhwaite. Outhwaite v. Taylor*, [1891] 3 Ch. 494.

71. — *Securities to bearer—Investment clause—Trust for sale—Power to postpone sale.*

A direction to invest in the names of trustees does not authorize investment in securities to bearer, of a class otherwise authorized. A power in a will to postpone the conversion of securities directed to be sold:—

*Held*, not to authorize postponement for a definite time, and not to be vested in a majority of trustees. *In re ROTH. GOLDBERGER v. ROTH*

North J. [1896] W. N. 16 (15)

— Solicitor and client—Investment advised by solicitor to trustee.

See **TRUSTEE—Breach of Trust.** 38, 39.

— Trustees' power of investment—Deposits with banks.

See **VICTORIA.** 3.

**Judicial Trustees.**

*Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), provides for the appointment of judicial trustees and amends the law as to trusts and liability of trustees.*

*Rules under the Act. See Current Index, 1897, p. lxxiii. et seq.*

*Rule under. W. N. 1899, (March 18), p. 79. See Current Index, 1899, p. cxxiii.*

*Sole judicial trustee—Rule (April) 1900 as to. W. N. 1900, (April 21), p. 93. See Current Index, 1900, p. xcii.*

72. — *Appointment—Application by beneficiary—Sole executor—"Trustee"—Administration—"Trust"—Reversioner—Remuneration of trustee—Discretion of Court—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 1, sub-s. 1, 2, 4.*

A person interested in an estate is not entitled as of right to the appointment of a judicial trustee under the Judicial Trustees Act, 1896, but the appointment is, under s. 1, sub-s. 1, a matter entirely within the discretion of the Court.

Thus where the reversioner under a will applied under the Act for the appointment of a judicial trustee to act either alone or jointly with the testator's widow, who was sole executrix and also tenant for life (there being no trustee appointed by the will), the Court refused the application, as it was opposed to her wish and to the testator's manifest intention, which was that she should have the sole control of his estate, there

**TRUSTEE (Judicial Trustees)—continued.**

being, moreover, no ground of complaint against her; nor was the fact that the applicant offered that the remuneration of the judicial trustee, when appointed, should come out of capital and not out of income held to justify the application.

Under s. 1, sub-s. 2, of the Act the administration of the property of a deceased person is a "trust" and the executor is a "trustee": so that, under sub-s. 1, the Court can, in a proper case, remove the executor and appoint a judicial trustee in his place, to whom, under sub-s. 4, it can give directions as to the administration of the trust. *In re RATOLIFFE*

*Kekewich J. [1898] 2 Ch. 352*

73. — *Appointment—Jurisdiction of Court—Official trustee—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 1, sub-ss. 1, 3—Judicial Trustee Rules, 1897, r. 23 (1).*

Upon an application for the appointment of a judicial trustee in place of a retiring judicial trustee, if the Court is not satisfied of the fitness of the person nominated by the applicant, there is jurisdiction to appoint a person suggested by the retiring trustee as his successor, and the Court is not in such a case bound by sub-s. 3 of s. 1 of the Judicial Trustees Act, 1896, to appoint only an official trustee. Decision of *Kekewich J. affirmed. DOUGLAS v. BOLAM*

C. A. [1900] 2 Ch. 749

74. — *Practice—Pleading—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.*

In this case the C. A., reversing a decision of the Vice-Chancellor of the County Palatine of Lancaster, held that the defts., who were trustees against whom the plt. sought relief for alleged breaches of trust, had, upon the evidence, not been guilty of any breach of trust, but that, if they had been, they had "acted honestly and reasonably and ought fairly to be excused for the breach of trust," within s. 3 of the Judicial Trustees Act, 1896, and were, therefore, entitled to be relieved from liability.

Lindley M.R. and Romer L.J. were of opinion that trustees seeking the relief of the Act were not bound specially to plead it, for, the Act being a general one, there was no reason why, in a proper case, a trustee should not avail himself of its provisions when the action came on for trial.

Sir F. H. Jeune P. also held, though with some hesitation, that it was not necessary for trustees to plead the Act specially. He thought it better that they should do so in order that the parties might come prepared with evidence at the trial. *SINGLEHURST v. TAPSCOTT STEAMSHIP CO. — — — C. A. [1899] W. N. 133*

— Relief under Judicial Trustees Act—Breach of trust.

See Cases under **TRUSTEE—Breach of Trust.**

75. — *Sole trustee of will—Small estate—Opposition of majority of beneficiaries—New private trustee—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 1—Judicial Trustee Rules, 1897, r. 27.*

In this case one of the remaindermen took out a summons in a district registry under the Judicial Trustees Act, 1896, asking that the chief clerk to the registrar might be appointed

**TRUSTEE (Judicial Trustees)—continued.**

the judicial trustee of the will of the testator to act jointly with the existing trustee. All the beneficiaries other than the applicant were opposed to the appointment of a judicial trustee, and wished that no change should be made in the appointment of trustee. The registrar made an order appointing his chief clerk judicial trustee jointly with the existing trustee. This order had not been drawn up. The existing trustee appealed to the judge. There was no charge against the character of the trustee, and he made no objection to another private trustee being associated with him:—

*Held*, that the union of a judicial trustee and a private or gratuitous trustee is not desirable, and, having regard to the opposition of the majority of the beneficiaries to the appointment of a judicial trustee and the cost to which the estate would be put by his appointment, the Court would not sanction it. The Court was always averse to a sole trustee, and if the summons had been referred to it by the registrar an additional private trustee might have been appointed. As no order had been drawn up, the summons could still be referred to the judge as an original matter. The better course would be for it to stand over, and the parties to attend before the registrar, and ask him to refer it to the judge. *In re MARTIN* — Kekewich J. [1900] W. N. 129

**Legal Estate.****76. Devise in trust—Failure of beneficiaries.**

Trustees under two different wills claimed to have become absolutely entitled to devise property on failure of the beneficiaries:—

*Held*, that the acting trustee of the original will who had the legal estate was entitled to hold the property against the trustee of the will of a beneficiary, on the ground that the latter trustee was a bare trustee with no duties to perform, and accordingly had no right to call for the conveyance of the legal estate. *In re LASHMAAR*. MOODY v. PENFOLD

C. A. [1891] 1 Ch. 258

**Limitations, Statutes of.****77. — Account—Breach of trust.**

In the absence of fraud the right of beneficiaries to an account from their trustees is subject to s. 8 of the Trustee Act, 1888. *In re PAGE JONES v. MORGAN* North J. [1893] 1 Ch. 304

Referred to by Kekewich J. *In re Somerset*, [1894] 1 Ch. 231, at p. 256.

**78. — Account, Action for—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, sub-ss. 2, 3.**

Sect. 8 of the Trustee Act, 1888, does not apply against persons who have been served with a decree for general administration pronounced after Jan. 1, 1890, if the action was commenced before that date. *In re HARRISON*. ALLEN v. CORT (No. 2) — Chitty J. [1892] W. N. 148

— Accounts.

See **TRUSTEE—Accounts**. 1—4.

— Acknowledgment by one of two executors and trustees—Arrears of interest—Mortgage. See **LIMITATIONS STATUTE OF**. 2.

**TRUSTEE (Limitations, Statutes of)—continued.****79. — Fraud — Sale — Agent — Constructive notice.**

The Trustee Act, 1888, has in no way altered the principles which determine the time at which a cause of action for breach of trust or concealed fraud accrues.

The exception in s. 8 of the Act as to property “still retained” by the trustee applies, and is confined to cases in which at the date of the writ the trustee still retains—that is has actually in his hands or under his control—the trust property or the proceeds thereof.

Decisions of Romer J. [1893] 3 Ch. 530, and C. A. [1894] 1 Ch. 599, affirmed. *THORNE v. HEARD* H. L. (E.) [1895] A. C. 495

Discussed by C. A. — *How v. Earl Winterton*, [1896] 2 Ch. 626, 638.

**80. — Partnership — Misrepresentation by a co-partner—Concealed Fraud.**

The Trustee Act, 1888, does not entitle an innocent partner in a firm of solicitors to plead the Statute of Limitations against a client suing the firm for misappropriation of his moneys by one of his firm. *MOORE v. KNIGHT*

Stirling J. [1891] 1 Ch. 547

**81. — Receipt and conversion of trust money to use of trustee—Trustee Act, 1888 (52 & 53 Vict. c. 59), s. 8.**

Where trust funds advanced on mortgage are with the concurrence of the mortgagor applied in payment of a debt previously charged on the mortgaged property in favour of a bank in which the trustee is a partner, the trustee, in the absence of fraud, can set up the Statute of Limitations (21 Jac. 1, c. 16), s. 8 of the Trustee Act, 1888, not applying to such a case. *In re GURNEY*. MASON v. MERCER — Romer J. [1893] 1 Ch. 590

**82. — Residuary personally held in trust—Executor—Legacy—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.**

Trustees and executors instead of selling residuary personally as directed by their testator, who died in 1872, allowed his widow and children to occupy the testator's farm, and carried such farm on for the benefit of the family until 1882, when X., one of the testator's sons, attained twenty-one, and certain portions of the property became divisible among him and his brothers. In 1890 X. and one of his brothers sued T., the surviving exor. and trustee, for not sooner selling the residuary personally, and for carrying on the farm with the testator's assets:—

*Held*, that the action was brought not to recover a legacy to which 37 & 38 Vict. c. 57, s. 8, could be pleaded, but against a trustee to recover money in respect of a breach of trust, and was “one to which no existing statute of limitations applied” when the Trustee Act, 1888, was passed, and that more than six years having elapsed, the action failed under s. 8 of that Act. *In re SWAIN*. SWAIN v. BRINGEMAN Romer J. [1891] 3 Ch. 233

— Right to contribution as between co-trustees.

See **TRUSTEE—Breach of Trust**. 21, 22.

— Rights of beneficiaries whose trustees are barred—Interest in land.

See **NEW SOUTH WALES**. 27.

**TRUSTEE (Limitations, Statutes of)—continued.**

83. — *Solicitor to trust, Receipt of trust fund by—Failure to account.*

A trustee's solicitor to whom money was entrusted with notice of the trust to invest on mortgage, so invested it. The mortgage was paid off, and the solicitor distributed one moiety to persons absolutely entitled thereto, but did not account for the other moiety. The solicitor died in 1879:—

*Held*, that he was in the same position as an express trustee, and therefore an action against his executrix was not barred by lapse of time, *SOAR v. ASHWELL* - C. A. [1893] 2 Q. B. 390

See *Rochevoucauld v. Boustead*, C. A. [1897] 1 Ch. 196; [1898] 1 Ch. 550.

Distinguished by *Stirling J. Friend v. Young*, [1897] 2 Ch. 421, 432.

Referred to by V. Williams J. *In re Gallard*, [1897] 2 Q. B. 8, 14.

Discussed by C. A. *In re Dixon*, [1900] 2 Ch. 561.

84. — *Trust—Breach of trust—Trust whether express or constructive—Striking out statement of claim—Frivolous and vexatious action—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25.*

To save the right, under s. 25 of the Real Property Limitation Act, 1833, of the cestuis que trust to bring an action to recover possession, the land must be vested in the trustee upon an express trust, i.e., a trust which arises upon the construction of a written instrument, and not by inference of law.

An action to recover possession was dismissed as frivolous and vexatious, on the ground that the appointment by will of trustees and guardians of the estate and person of A. B. was not an express trust. *PRICE v. PHILLIPS*

*Chitty J. [1894] W. N. 213*

**Negligence.**

85. — *Dishonesty—Fraud.*

A trustee is not dishonest and fraudulent merely because he neglects his trust, and thereby wrongs those whom it is his duty to protect. *In re SMITH. HANDS v. ANDREWS*

C. A. [1893] 2 Ch. 1

**Notice.**

86. — *Notice to one of several trustees—Inquiry of trustees—Death of only trustee who has notice.*

Mortgagees of the settled share of a wife in a personal fund held under a will before advancing money inquired of E. and S., the trustees of the will, as to the existence of incumbrances, but received an evasive answer from S. and a reply from E. that he was not aware of any dealings. There was in fact a settlement of which S. had notice, but not E. S. afterwards died, and a new trustee was appointed in his place:—

*Held*, that as the mortgagees took their security without obtaining an answer from S. as to the existence of prior incumbrances, they took subject to the settlement of which he had notice:—

*Held*, also, that the subsequent death of S.

**TRUSTEE (Notice)—continued.**

before the period of distribution did not affect the priority of the settlement.

Decision of C. A. (*In re Wyatt. White v. Ellis*), [1892] 1 Ch. 188, affirmed. *Sub nom. WARD v. DUNCOMBE* [1893] A. C. 369

Referred to by *Stirling J. Mack v. Postle*, [1894] 2 Ch. 449, 455; *In re Wasdale*, [1899] 1 Ch. 163.

Referred to by C. A. *Stephens v. Green*, [1895] 2 Ch. 148, 152, 159.

87. — *Payment into court by trustee—Notice to beneficiaries.*

A trustee who pays a fund into court under the Trustee Relief Act, 1847, is no longer bound to give notice to the persons entitled to the fund, Order v. of the Chancery Funds (Amended) Orders, 1874, being now obsolete since the repeal of the Chancery Funds Consolidated Rules. *In re GRAHAM'S TRUSTS*

*Chitty J. [1891] 1 Ch. 151*

Now obsolete law. See R. S. C., Order LIV. b, r. 4.

**Practice.**

88. — *Payment into court by administrator of supposed intestate—Subsequent discovery of will—Revocation of administration—Trustee Relief Act—Order for payment out to executor.*

The administrator of a supposed intestate paid into court, under the Trustee Relief Act, several sums of money, part of her estate, to the credit respectively of several infants who were some of her next of kin. A will having been afterwards discovered, the grant of administration was revoked, and probate of the will was granted. Upon a petition by the executor and the ex-administrator, to which the infants were made respondents:—

*Held*, that there was jurisdiction to order the funds in court to be paid out to the executor, and an order was made accordingly.—But the Court required an affidavit that some legacies bequeathed by the will to the infants had been paid. *In re HOOD'S TRUSTS* *North J. [1896] 1 Ch. 270*

— Payment into court.

See PRACTICE—Payment into Court.

89. — *Petition—Service—Sale of lands apart from minerals—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 44—Service on remainderman.*

A testator devised all his real estate to a trustee upon trust to sell and hold the proceeds, as to one-third upon trust for his sister A. for life, and after her death upon trust for her children absolutely; and as to the two remaining thirds, upon similar trusts for the benefit of his sisters B. and C. and their children.

The testator's real estate included certain lands which could be most advantageously sold apart from the minerals; and accordingly the trustee petitioned the Court under s. 44 of the Trustee Act, 1893, to sanction a sale in this form.

At the death of the testator, A. was dead leaving children surviving; B. was alive but had no children; C. was alive and had children living.

The petition was served upon B. and C. and

**TRUSTEE (Practice)—continued.**

the children of A., but was not served upon O.'s children.

*Held*, having regard to the state of the authorities, that the petition should be served upon the children entitled in remainder, and a consent brief produced to the registrar on their behalf. *In re HARDSTAFF* Stirling J. [1899] W. N. 256

— Title of petition for appointment of trustees  
— Policy effected by husband for benefit of wife.

See HUSBAND AND WIFE—Practice. 40.

**Precatory Trust.**

See WILL—Precatory Trust.

**Purchase and Sale.**

*Trustee's powers.* See *Trustee Act*, 1893 (56 & 57 Vict. c. 53), ss. 13—16, 44.

90. — *Power of sale—Exercise by executors of surviving trustee—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 30.

W. H., who died in 1851, by his will devised his real estate "unto and to the use of my said wife," A. H., "daughter M., and sons W., R., J., and D., their heirs and assigns," in trust for his wife and children and the issue of the latter as therein mentioned. The will also declared that "the trustees for the time being under this my will shall have power to sell" the real estate. All the original trustees having died, the executors of the one who was the last survivor contracted to sell part of the real estate; but the purchaser raised the objection that the executors could not exercise the power on the ground that the heir of the survivor could not have exercised the power, and that if that was so, *In re Ingleby and Boak and Norwich Union Insurance Co.*, (1883) L. R. 1, 13 Ch. D. 326, was an authority that s. 30 of the Conveyancing Act, 1881, did not enable the executors to exercise the power:—

*Held*, however, that the case cited was distinguishable, as the word "heirs" was not in the devise in that case, and that the executors of the last surviving trustee could make a good title. *In re PIXTON and TONGS CONTRACT*

Byrne J. [1897] W. N. 178 (5)

— Power to postpone sale—Carrying on business.  
See TRUSTEE—Authority. 18.

91. — *Power to postpone sale—Profits of business pending sale.*

A. bequeathed a business to trustees upon trust for sale, with power to postpone the sale, and directed that, pending sale, the income should be paid to the same persons and in the same manner as an income from the trust estate:—

*Held*, that the absolute discretion given to the trustees to postpone the sale involved a power to carry on the business, and that the whole income arising therefrom was properly paid to the tenant for life. *In re CROWTHER*, MIDDLEY v. CROWTHER - - Chitty J. [1895] 2 Ch. 56

Considered by North J. *In re Smith*, [1896] 1 Ch. 171.

92. — *Sale of surface and minerals apart—*

**TRUSTEE (Purchase and Sale)—continued.**

*Service of petition—Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 44.

An order was made authorizing the separate sale of the copyhold interest in surface and minerals under settled copyhold land, following the order made in *Re Wilkway's Trusts*, Seton on Decrees, 5th ed. 1470, service on a beneficiary in remainder out of the jurisdiction known to object to a sale being dispensed with. *In re SKINNER* - - North J. [1896] W. N. 68 (7)

— Purchase as—Parol evidence.

See FRAUDS, STATUTE OF. 13.

**Receipts.**

— Power to give.

See SETTLED LAND.

**Remuneration.**

JUDICIAL TRUSTEES.] *Remuneration and allowances—Rules 17 to 19—Fees.* Rule 32 of the *Rules made under the Judicial Trustees Act*, 1896 (59 & 60 Vict. c. 35). See *Current Index*, 1897, pp. lxxvi., lxxviii.

93. — *Annuity by way of salary.*

Annuities granted to trustees to be enjoyed by them while carrying on the testator's business are liable to legacy duty. *In re THORLEY*, THORLEY v. MASSAM

C. A. affirm. North J. [1891] 2 Ch. 613

Referred to. *In re White*. Kekewich J. [1898] 1 Ch. 299. This case was affirmed by C. A. [1898] 2 Ch. 217.

— Costs.

See Cases under TRUSTEE—Costs.

94. — *Dishonesty of servant—Liability when remunerated.*

A trustee, although remunerated for his services, is not liable for loss occasioned by the felonious acts of his servant, if the servant be properly selected and employed, and there is no negligence.

*Semble*, that the liability of a trustee is not increased by the fact that he is remunerated for his services. *JOBSON v. PALMER*

Romer J. [1893] 1 Ch. 71

95. *Profit out of the estate—Solicitor trustee—Commissions.*

The deft., a solicitor trustee, gave some trust business to a London firm on condition that he should receive a commission. The London firm acted as solicitors for the trust in certain actions, and paid the commission on the profit costs:—

*Held*, that the deft., not being the solicitor on the record, must account to the trust estate for the commissions as profits made directly or indirectly through his office of trustee. *VIPONT v. BUTLER* - - Chitty J. [1893] W. N. 64

96. — *"Professional or other charges"—Non-professional services—Will—Power to charge for professional services.*

The testator directed that "any trustee or executor hereunder being a solicitor or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for any business

**TRUSTEE (Remuneration)—continued.**

done by him or his firm in relation to the management and administration of my estate, and carrying out the trusts, powers, and provisions of this my will, whether in the ordinary course of his profession or business or not, and although not of a nature strictly requiring the employment of a solicitor or other professional person":—

*Held*, that this clause enabled a trustee to charge for any work done for the estate in the course of his profession or business, whether done in the ordinary course or not in the ordinary course thereof, but did not authorize him to charge for work done outside his profession or business. *CLARKSON v. ROBINSON*

Buckley J. [1900] W. N. 188; [1900] 2 Ch. 722

**97. — Receiver—Practice—Remuneration.**

There is no inflexible rule that a trustee can only be appointed receiver of the trust property on the terms of his having no remuneration. Remuneration allowed although no mention of remuneration was made in the administration order appointing the receiver. *In re BIGNELL*. *BIGNELL v. CHAPMAN* - C. A. [1892] 1 Ch. 59

**Renewal of Leaseholds.**

**98. — Fines on renewal—Trustee Act, 1888** (51 & 52 Vict. c. 59), ss. 10, 11.

The object of s. 10 of this Act was to remove the then existing liability of trustees, and not to alter the law as between tenant for life and remaindermen. *In re BARING*. *JEUNE v. BARING* Kekewich J. [1893] 1 Ch. 61

See Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 19, and SETTLED LAND—Leaseholds.

**Resulting Trust.**

See TRUST. 4—6.

**Retainer.**

**99. — Separation deed—Trust of leasehold property in favour of husband—Covenant by husband to pay annuity to wife—Default in payment—Retainer of trust property to satisfy annuity—Deed—Construction—Recital—Implied covenant.**

By a separation deed, after reciting that the husband and wife had agreed to live apart, the husband assigned certain leaseholds to trustees in trust to pay the rents to the wife for life, and then to sell and hold the proceeds, in the events which happened, in trust for himself, and he covenanted to make up the wife's income to 300l. a year. The deed contained a proviso for determination in the event of the wife seeking to resume cohabitation, but it contained no covenant by the wife to live apart. The husband paid nothing under the covenant, and in 1868 he was adjudicated a bankrupt. The trustees proved for arrears due down to the date of the bankruptcy, but there were further arrears due to them since that date. On the death of the wife the husband's assignee in bankruptcy claimed the leaseholds:—

*Held*, that a covenant by the wife to live apart ought to be implied from the recital; that consequently there was valuable consideration

**TRUSTEE (Retainer)—continued.**

for the husband's covenant; and that the trustees were entitled to retain the leaseholds until the arrears were satisfied.

*Semble*, the right of trustees to retain trust property as against a beneficiary who owes money to them as trustees under the instrument creating the trust exists in favour of trustees of a voluntary settlement which has been so completed as to be enforceable by the Court. *In re WESTON*. *DAVIES v. TAGART* - - - *Stirling J.* [1900] W. N. 104; [1900] 2 Ch. 164

**Sale.**

See Cases under TRUSTEE—Purchase and Sale.

**Trustee de son Tort.**

See TRUSTEE—Breach of Trust. 41, 42.

**Vesting Order.**

*Appointment of new trustees and vesting orders.* See Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25 et seq.

**100. — Absconding trustee not to be found—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 26, 35.**

One of the four trustees of a settlement absconded, was adjudicated a bankrupt, and could not be found. On the petition of the other three trustees, to which all the beneficiaries were respondents, for an order vesting in the petitioners the right to transfer or call for a transfer of a sum of India Stock (which was subject to the trusts), and to receive the dividends thereof; the right to sue for and recover certain specified mortgage debts and any other chose in action subject to the trusts and certain specified real estates, which were security for the mortgage debt, for all the estate and interest which was vested in the petitioners and the bankrupt:—

*Held*, that the Court under the above sections had power to make the vesting order. *DUGMORE v. SUFFIELD* - North J. [1896] W. N. 50 (13)

**101. — Affidavit of fitness.**

A statement that proposed trustees are "persons in good credit in the neighbourhood in which they respectively carried on business":—

*Held*, to be a sufficient statement of their pecuniary means. *In re SMITH'S POLICY TRUSTS*. *SMITH v. SMITH* Kekewich J. [1894] W. N. 68

**102. — Copyholds—Vendor and purchaser—Death of vendor before completion—Form of order—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 26, 34.**

Petition by a purchaser and the trustees and executors of the will of a deceased vendor and his infant heir-at-law for an order that, on payment of the unpaid balance (a deposit having been paid) of the purchase-money to the trustees and executors, the copyhold lands which the testator had agreed, a few days before his death, to sell to the purchaser might vest in the purchaser, the vendor having died before the title had been accepted, and before payment of the balance of the purchase-money.

The vendor, the tenant on the Court Rolls of the manor of the lands the subject of the agree-

**TRUSTEE (Vesting Order)—continued.**

ment for sale, died in April, 1898, having by his will devised the same to his son L. B. absolutely, whom he appointed, with his wife and another, trustees and executors of his will, and he directed that the residue of his estate should be held upon certain trusts. Upon the assumption that the testator had been trustee of the copyholds by virtue of the contract, F. B., his customary heir-at-law, was admitted tenant on the Rolls, but by reason of his infancy he was unable to surrender to the purchaser.

It was ordered that the lands should vest in the purchaser for all the estate of the infant heir-at-law and of the testator at the time of his death, the order to be dated and drawn up after payment of the balance of the purchase-money.

*In re Pagani*, [1892] 1 Ch. 236, referred to. *In re BEAUFORT'S WILL*

Kekewich J. [1898] W. N. 148 (5)

103. — *Death of sole trustee—Trustee Act, 1850* (13 & 14 Vict. c. 60), ss. 24, 25.

A sole trustee, domiciled in Scotland, appointed by deed two trustees in lieu of himself, and a deceased co-trustee, but omitted to transfer certain debentures into their name. On his death his personal representatives, who proved the will in Scotland only, neglected to take any steps to complete the transfer:—

*Held*, that the Court had jurisdiction to make a vesting order under s. 25 of the Trustee Act, 1850. *In re TRUBEE'S TRUSTS*

North J. [1892] 3 Ch. 55

[NOTE.—Sect. 25 of the Trustee Act, 1850, is repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53), and other provision made.]

104. — *Deceased mortgagee—Uncertainty as to personal representative—Disputed will—Mortgage debt paid—Trustee Act, 1893* (56 & 57 Vict. c. 53), s. 29 (e).

A mortgagee of freehold land died, having made a will by which he appointed executors. The validity of the will was disputed, and an action to establish the will had been commenced in the P. Div. but had not yet been tried. The mortgage debt had been paid:—

*Held*, that it was, within the meaning of s. 29 (e) of the Trustee Act, 1893, uncertain who was the personal representative of the deceased mortgagee, and that the Court had jurisdiction to make an order vesting the mortgaged land in the mortgagor on being satisfied that the mortgage debt was paid. *In re COOK'S MORTGAGE*

North J. [1895] 1 Ch. 700

— Decreasing number of trustees.

*See Nos. 109—111, below.*

105. — *Disappearance of trustee—Right to call for transfer of stock—Trustee Act, 1893* (56 & 57 Vict. c. 53), s. 35.

Where of three trustees, A., B., and C., one A. had disappeared:—

*Held*, that the proper form of order would be that the right to call for transfer, &c., do vest in B. and C., and that they do transfer the sums of stock into their own names, to hold them to the trusts of the settlement. *In re PRICE*

North J. [1894] W. N. 169

**TRUSTEE (Vesting Order)—continued.**

106. — *Infant tenant in tail in possession—Form and effect of vesting order—Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 31, 32, 50.

Where under the Trustee Act, 1893, an order is made vesting, or appointing a person to convey, the estate of an infant tenant in tail in possession, the effect is to bar the estate tail and remainders over.

*Powell v. Matthews*, 1 Jur. (N.S.) 973, followed.

The order in such a case should not (as in *Seton on Judgments*, 5th ed. vol. ii. p. 1067, Form No. 21) contain a reference to the mode of conveyance under the Fines and Recoveries Act, but should simply vest the land for such estate as the infant, if of full age, could convey. *In re MONTAGU. FABER v. MONTAGU* [1896] 1 Ch. 549

JUDICIAL TRUSTEES.] *Appointment of—Rule 6 of Rules under Judicial Trustees Act, 1896. See Current Index, 1897, p. lxxiv.*

— Lunatic having power of appointment—Settlement of stock — Order authorizing persons to exercise power of appointment of trustees on lunatic's behalf and vesting in named appointees right to call for transfer.

*See LUNACY—Powers.* 32.

— Lunatic sole trustee—Vesting order—Transfer of Consols—Form of order.

*See LUNACY.* 49.

107. — *New trustee—Trustee incapable of acting—Physical and mental incapacity—Jurisdiction—Service dispensed with—Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 25, 35.

A petition was presented under the Trustee Act, 1893, by all the beneficiaries under a settlement for the appointment of a new trustee in substitution for an existing trustee who had become incapable of acting, and for a vesting order. The medical evidence was to the effect that the trustee was suffering from heart disease, old age (eighty), and consequent impairment of mental faculties, and that it would endanger his life to mention any matter of business to him.

*Held*, (1.) following *In re Green*, (1875) L. R. 10 Ch. 272, that service on the trustee might be dispensed with; (2.) following *In re Barber*, (1888) 39 Ch. D. 187, and distinguishing *In re Martin*, (1886) 34 Ch. D. 618, that, as the incapacity arose from physical and not from mental infirmity, the matter was within the jurisdiction of the Chancery Division, and not of the Lunacy authorities, and the Court made the order. *In re WESTON'S TRUSTS*

Stirling J. [1898] W. N. 151 (10)

108. — *New trustees—Vesting declaration—"Trustees for performing the trust"—Trustee Act, 1893* (56 & 57 Vict. c. 53), s. 12, sub-s. 1.

A mortgagor of land by deposit of deeds declared himself trustee of the legal estate for the mortgagee:—

*Held*, that new trustees appointed in lieu of the mortgagor by the mortgagee were "trustees for performing the trust" within the meaning of s. 12, sub-s. 1, of the Trustee Act, 1893.

The mortgagor conveyed the fee to a subse-

**TRUSTEE (Vesting Order)—continued.**

quent incumbrancer with notice of the prior mortgage:—

*Held*, that a vesting declaration in the deed appointing new trustees operated to vest the legal estate in them. **LONDON AND COUNTY BANKING CO. v. GODDARD**

North J. [1897] 1 Ch. 642

109. — *Reduction of number of trustees—Absconding bankrupt—Practice—Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 26, 35.

One of three trustees being an absconding bankrupt and out of the jurisdiction, the Court, under ss. 26 and 35 of the Trustee Act, 1893, made an order vesting the trust estate in the other two trustees.

*In re Lees' Settlement Trusts*, [1896] 2 Ch. 508, followed. *In re FITZHERBERT'S SETTLEMENT TRUSTS* —

North J. [1898] W. N. 58 (8)

110. — *Reduction of number of trustees—Absconding bankrupt—Practice—Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 26, 35.

Where one of four trustees was an absconding bankrupt the Court made an order vesting the trust estate in the other three trustees, although the number of trustees was thereby diminished. *In re LEES' SETTLEMENT TRUSTS*

Chitty J. [1896] 2 Ch. 508

Followed by North J. *In re Fitzherbert's Settlement Trusts*, [1898] W. N. 58 (8). *See preceding Case.*

111. — *Reduction of number of trustees—Lunatic—Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 32.

Where one of four trustees had been found lunatic by inquisition, the Court made an order vesting the trust estate in the three remaining trustees, although the number of trustees was thereby diminished. *In re LEON*

C. A. [1892] 1 Ch. 348

112. — *Refusal by trustee to transfer stock for twenty-eight days—Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 35, sub-s. 1 (ii.), (d), 38.

A petition founded on the refusal for twenty-eight days to transfer stock under s. 35 (ii.) (d) of the Trustee Act, 1893, must not be presented or served before the expiration of the twenty-eight days. On petition for such an order there is jurisdiction to order the recusant trustee to pay the costs.

Decision of Kekewich J., [1895] 1 Ch. 538, affirmed. *In re KNOX'S TRUSTS*

C. A. [1895] 2 Ch. 483

113. — *Service—Vesting order—Trustee Act, 1850* (13 & 14 Vict. c. 60), s. 9.

The heir of a trustee who had died intestate as to his trust estates went abroad some twenty years ago, and when last heard of was in Australia:—

*Held*, on an application for a vesting order of part of the trust estates, that service on the heir might be dispensed with. *In re STANLEY'S TRUSTS* —

North J. [1893] W. N. 30

114. — *"Stock"—New trustees—Form of order—Trustee Act, 1850* (13 & 14 Vict. c. 60), ss. 2, 31,

**TRUSTEE (Vesting Order)—continued.**

35—*Trustee Extension Act, 1852* (15 & 16 Vict. c. 55), s. 6.

A vesting order of stock or shares under s. 35 of the Trustee Act, 1850, should vest in the trustees simply "a right to call for a transfer and to transfer the stock or shares," and to receive the dividends. "Stock," in the Trustee Acts, 1850, 1852, includes shares in a limited co., whether fully paid-up or not. *In re NEW ZEALAND TRUST AND LOAN CO.*

C. A. [1893] 1 Ch. 403

Dictum of C. A. as to form of vesting order disapproved by Kekewich J. *In re Jolliffe's Trusts*, [1893] W. N. 84.

Explained by L.J.J. *See next Case.*

*See now* s. 50 of the Trustee Act, 1893, which embodies this decision.

In the above case the trustees might have become liable for calls, and hence the usual form of order was departed from.

*Per* C. A., in *In re GREGSON*

C. A. [1893] 3 Ch. 233

Approved by C. A. *In re C. M. G., Spinster*, [1898] 2 Ch. 324.

115. — *"Stock"—Form of order.*

On an appointment of new trustees the Court, following the practice of the Bank of England, should direct the trustees to transfer the stock into their own names.

(A) *In re JOLLIFFE'S TRUSTS*

Kekewich J. [1893] W. N. 84

(B) *In re GREGSON* C. A. [1893] 3 Ch. 233

116. — *Stocks standing in name of deceased trustee having no legal personal representative—Trustee Act, 1850* (13 & 14 Vict. c. 60), ss. 25, 35.

Where the sole survivor of original trustees died and left no legal personal representative and new trustees were appointed out of Court, an order was made under s. 25 of the Trustee Act, 1850, that on one of such new trustees retiring another new trustee should be appointed in his place and the stock vested accordingly. *In re STOCKEN'S SETTLEMENT TRUSTS*

Kekewich J. [1893] W. N. 203

**TRUSTEE IN BANKRUPTCY.**

*See* BANKRUPTCY—Trustee in Bankruptcy.

**TRUSTEE RELIEF ACT.**

*See* TRUSTEE.

**TUG—Negligence.**

*See* SHIPPING. 246.

— Wreck and salvage.

*See* SHIPPING—Collision. 85—87.

**TUNBRIDGE WELLS**—History of the disputes concerning the Pantiles. *BAIRD v. TUNBRIDGE WELLS CORPORATION* [1894] 2 Q. B. pp. 868—871

Affirmed by H. L. (E.) [1896] A. C. 434.

Discussed by C. A. *Battersea Vestry v. County of London and Brush Provincial Electric Lighting Co.*, [1899] 1 Ch. 474, 482.

**TUNNEL.**

*See* RAILWAY—Ventilating Shaft. 66.

RATES—Rateability. 59.

REVENUE—Land Tax. 118.

**TUNNEL**—*continued.*

A tunnel under a highway *held* to be a corporeal hereditament and not an easement, and therefore defts. who had been in exclusive possession for more than twelve though less than twenty years had to acquire a statutory title as against the owner of the subsoil of the highway.  
*BEVAN v. LONDON PORTLAND CEMENT Co.*

Romer J. [1892] **W. N. 151**

**TURBARY**—Rights of.

*See Cases under COMMON and INCLOSURE.*

**TURKEY**—Ottoman dominion.

*See FOREIGN JURISDICTION.*

**TURNPIKE.**

*See HIGHWAY.*

**TUTEUR**—Payment to—Money in English bank

— Foreign domicil — Foreign Court —

Declaration of lunacy.

*See LUNACY—Practice.* 37.

**TYNE RIVER.**

*See SHIPPING—Collision.* 88, 89.



## U.

- UBERRIMA FIDES**—Guarantee—Concealment of material facts.  
*See INSURANCE—Guarantee.* 11.
- ULTRA VIRES**—Building society.  
*See BUILDING SOCIETY—Ultra Vires.*
- Directors—Indemnity.  
*See COMPANY—Directors.* 108, 113.
- Directors—Issue of shares at a discount—Extent of liability.  
*See COMPANY.* 111.
- Legislative power—Law of Canada.  
*See CANADA.* 17, 26.
- Markets and fairs—By-laws—Diseases of animals.  
*See MARKET.* 1.
- Municipal trading—Omnibus business.  
*See LONDON—County Council.* 38.
- Newspaper—Libel—Defence of action.  
*See CORPORATION.* 26.
- Payment into court—Issue tried by jury.  
*See PRACTICE.* 134.
- Power of provincial legislature—British Columbian Cattle Protection Acts.  
*See CANADA.* 26.
- Quarter sessions—Rule of practice.  
*See LICENSING ACTS.* 1.
- Railway—Powers.  
*See RAILWAY—Powers.*
- Rates—Costs of opposing bill in Parliament—Burgh.  
*See SCOTTISH LAW—Burgh.* 3.
- Reconstruction—Scheme—Appropriation by new company of unclaimed shares.  
*See COMPANY.* 219.
- Reconstruction—Shares in purchasing company—Rights of dissentient members.  
*See COMPANY—Reconstruction.* 214.
- Sewers—Injunction—Public body—Estoppel—Laches.  
*See LONDON—Sewers.* 62.
- Shares—Issue at a discount.  
*See COMPANY—Shares.* 273—279.
- Thames navigation—By-law—Waterman on tug to assist in navigation.  
*See THAMES.* 12.
- Trustee's remuneration—Resolution of creditors—"Amount realised."  
*See BANKRUPTCY.* 250.
- Winding-up of company—Grounds for—"Just and equitable."  
*See COMPANY—WINDING-UP.* 163.
- UMPIRE**—Notice to appoint—Arbitrators "called on to act"—Time for making award.  
*See COMPANY—WINDING-UP.* 1.
- UNCALLED CAPITAL.**  
*See COMPANY—Debentures.* 95.
- UNCERTAINTY.**  
*See WILL—Uncertainty.*
- UNCERTAINTY**—*continued.*
- Charge—"All my real and personal estate"—Public policy—Validity.  
*See MORTGAGE.* 74.
- Contract—Illegality—Remoteness—Statutory confirmation.  
*See CONTRACT.* 24.
- UNCLAIMED FUND**—Trustee—Liability to account.  
*See BANKRUPTCY.* 243.
- UNDERGROUND BAKEHOUSE**—Premises vacant at commencement of Act.  
*See MASTER AND SERVANT—Factory Acts.* 67.
- UNDERGROUND SEWERS**—Rateability—Diminution of value of surface.  
*See RATES.* 50.
- UNDERGROUND TRESPASS**—Statute of Limitations—Equitable jurisdiction—Fraud.  
*See NEW SOUTH WALES.* 20.
- UNDERGROUND WIRES**—Power to lay—Right to excavate streets.  
*See CANADA.* 63.
- UNDERLEASE.**  
*See LANDLORD AND TENANT—Underlease.*
- UNDERMANNING.**  
*Merchant Shipping Act, 1897 (60 & 61 Vict. c. 59), amends the Merchant Shipping Act, 1894, with respect to the power of detention for undermanning.*
- UNDERTAKER**—Workmen's Compensation Act.  
*See MASTER AND SERVANT.* 46—50.
- UNDERTAKING**—Abortive undertakings.  
*See Cases under PARLIAMENT—Deposits and Bonds.*
- Not to sue—Mine—Right to support.  
*See CANAL.* 1.
- Offer of, by a defendant—Costs.  
*See INJUNCTION.* 29.
- Practice.  
*See PRACTICE—Undertaking.*
- Solicitor.  
*See SOLICITOR—Undertakings.*
- To do an act—Committal or attachment—Service.  
*See PRACTICE.* 233.
- "UNDERTAKING"**—Of tramway promoters.  
*See TRAMWAY.* 2.
- UNDERVALUE**—Sale at an—Relief—Laches.  
*See BANKRUPTCY.* 71.
- UNDERWRITER.**  
*See Cases under INSURANCE—Marine.*
- Brokers—Right to set off unpaid losses.  
*See BANKRUPTCY.* 238.

**UNDERWRITER**—*continued.*

- Contributory—Underwriting agreement.  
See COMPANY—WINDING-UP. 54, 55.
- Shares—Agreement to take.  
See COMPANY—Shares. 307.
- Underwriting contract—Authority to apply for shares—Removal of name from register.  
See COMPANY—Shares. 308.
- Underwriting letter—Rectification of register—Authority to apply for shares.  
See COMPANY. 256.

**UNDISCHARGED BANKRUPT.**

- See BANKRUPTCY—Undischarged Bankrupt.

## — Appointment—Director.

See COMPANY—Directors. 100.

**UNDISCLOSED PRINCIPAL**—Liability of principal.

See PRINCIPAL AND AGENT. 19.

**UNDIVIDED MOIETY**—Agreement for lease of—Mineral property—Specific performance.  
See MINES. 1.**UNDIVIDED SHARE**—Land—Tenant for life—Power to sell.

See SETTLED LAND. 123, 128.

**UNDUE INFLUENCE**—Fiduciary relationship—Voluntary settlement—Revocation—Independent advice—Duty of solicitor—Costs.

See SETTLEMENT. 34.

## 1. — Religion—Confidential relationship.

Gift *inter vivos* set aside on the ground that it had been obtained by the exercise of undue influence under the guise of religion:—

*Semble*, that in this case it might have been set aside on the ground of confidential relationship. *MORLEY v. LOUGHNAN*

Wright J. [1893] 1 Ch. 736

## 2. — Solicitor and client—Executor and beneficiary.

A voluntary gift by beneficiaries to a solicitor *exor.* set aside, on the ground of pressure and absence of independent advice. *WHEELER v. SARGEANT*

Romer J. [1893] W. N. 128

## 3. — Solicitor and client—Gift by client—Absence of independent advice.

The client of a solicitor, without independent advice, made a voluntary conveyance to him of leasehold premises in trust for herself for life, and after her death in trust for his wife, who was her niece, for her separate use absolutely:—

*Held*, that the well-settled rule of equity being that such a gift could not be supported, unless the donor had competent and independent advice in making it, the conveyance must be declared void. *LILES v. TERRY*

C. A. [1895] 2 Q. B. 679

This rule considered by Cozens-Hardy J. *BARRON v. WILLIS*

[1899] 2 Ch. 578, 587

**UNDUE PREFERENCE**—Bankruptcy.

See Cases under BANKRUPTCY—Fraudulent Preference; and BANKRUPTCY—Preference.

**UNDUE PREFERENCE**—*continued.*

- Of creditors—Bankrupt—Discharge—Suspension.  
See BANKRUPTCY. 90.
- Railway and Canal Commission—Jurisdiction and practice.  
See RAILWAY—Railway and Canal Traffic.

**UNEXEMPTED SHIP**—Compulsory pilotage—Qualified pilot.

See SHIPPING. 195.

**UNFAIR COMPETITION**—Damage to manufacturer—Misrepresentation—*Damnum absque injuria*.

See TRADE. 1.

**UNIFORMS**—By the Uniforms Act, 1894 (57 & 58 Vict. c. 45), the unauthorized use of military and naval uniforms was restricted.**UNION**—Trade union.

See TRADE UNION.

- Transfer of part of one union to another union—Adjustment of property and liabilities.  
See LOCAL GOVERNMENT. 7.

**UNION ASSESSMENT.**

See RATES.

**UNITY OF PERSON.**

See HUSBAND AND WIFE. 30.

**UNIVERSITY.**

*Universities and College Estates Act, 1898* (61 & 62 Vict. c. 55), amends the *Universities and College Estates Acts, 1858 to 1880*.

UNIVERSITY, SCOTLAND.] *Committee of Privy Council. O. in C. dated May 9, 1892, making Rules as to its procedure. St. R. & O. 1892, p. 940.*

UNIVERSITY COMMISSIONERS.] *O. in C. dated May 18, 1897, continuing the powers of the Scottish University Commissioners until Jan. 1, 1898. St. R. & O. 1897, p. 647.*

Generally, col. 2208.

Affiliation of Colleges, col. 2208.

Ordinance, col. 2209.

Presentations, col. 2210.

Sale and Investment, col. 2210.

University of London, col. 2210.

Vice-Chancellor's Court, col. 2210.

## Generally.

- Bursar of college—Assessment to income tax.  
See REVENUE. 80.

## Affiliation of Colleges.

1. — Affiliation and incorporation of colleges—Consent, condition attached thereto—*Ultra vires*—Reduction—Jurisdiction—*Universities (Scotland) Act, 1889* (52 & 53 Vict. c. 55), ss. 15, 16, 21.

The *University (Scotland) Act, 1889*, s. 16, provides: "Without prejudice to any of the powers hereinbefore conferred, the commrs." charged with the administration of the Scottish universities "shall with respect to the University of St. Andrews and the University College of Dundee have power to affiliate the said University College to and make it form part of

**UNIVERSITY (Affiliation of Colleges)—*contd.***

the said university, with the consent of the University Court of St. Andrews, and also of the said college, with the object, inter alia, of establishing a fully equipped conjoint University School of Medicine. . . .” By s. 15, sub-s. 3, “The University Court, or any college which under this Act shall have been affiliated to the university, may respectively at any time thereafter resolve that such college shall cease to be affiliated to such university. . . .” By s. 21, “After the expiration of the powers of the commrs., the University Court of each university shall have power to make such ordinances as they think fit with the approval of Her Majesty in Council. . . .” (2.) with respect to “Altering or revoking any of the ordinances affecting such university which have been or may be framed and passed under the Universities (Scotland) Act, 1858, or this Act, and making new ordinances.”

An agreement purporting to be the consent required by s. 16 of the Act of 1889 contained, inter alia, a stipulation that the said union should, as regards duration, be permanent, and dissoluble only by Act of Parliament:—

*Held*, that the stipulation was not ultra vires, for ss. 15 and 21 give no power to revoke an affiliation of the nature of an incorporation which had the effect of merging the college into the university with a joint object:

*Held*, also, differing from the decision of the Second Division of the Court of Session, (1896) 23 R. 559, that that Court had jurisdiction to decide the legal question notwithstanding the fact that the consent sought to be set aside was before the Universities Committee of the Privy Council in respect to a pending ordinance. Second appeal. *MEDCALFE v. COX*

**H. L. (Sc.) [1896] A. C. 647**

**NOTE.**—For *First Appeal*, see No. 3, below.

**Ordinance.**

2. — *College — Privy Council — Ordinance — Procedure — University Court — Res judicata — Universities (Scotland) Act*, 1889 (52 & 53 Vict. c. 55).

The House affirmed the interlocutor of the Ct. of Sess. (1898) 25 R. 1216. *MCGREGOR v. COX*

**H. L. (Sc.) [1900] W. N. 247**

3. — *Statutory power — Laying before Parliament — Universities (Scotland) Act*, 1889 (52 & 53 Vict. c. 55), ss. 15, 16, 19, 20.

Where one section of a statute provided that “all ordinances made by the commrs.” shall be laid before both Houses of Parl.:—

*Held*, that a power given to the commrs. to do an act affecting both public and private interests by another section which is silent as to the sanction of Parl. does not give an absolute power, unless the section plainly states that the exercise of the power shall not be subject to review.

Decision of Court of Session, Scotland, (1895) 22 R. 210, reversed. *METCALFE v. COX*

**H. L. (Sc.) [1895] A. C. 328**

**NOTE.**—For *Second Appeal*, see No. 1, above.

**UNIVERSITY—*continued.*****Presentations.**

*As to presentations by Universities of Oxford and Cambridge, see Benefices Act*, 1898 (61 & 62 Vict. c. 48), s. 7.

**Sale and Investment.**

4. — *Proceeds of sale of college property, application of—Erection of new buildings—Repayment by instalments—Lands Clauses Act*, 1845 (8 & 9 Vict. c. 18), s. 69—*Universities and College Estates Acts*, 1858, 1880 (21 & 22 Vict. c. 44, ss. 27, 28; 43 & 44 Vict. c. 46, ss. 2, 4).

(A) In consequence of s. 4 of the Universities and College Estates Amendment Act, 1880, moneys arising from the sale of college property, and paid into court by the ry. co. cannot be applied under s. 2 of the Act in the purchase of land without the consent of the Bd. of Agric. *Ex parte KING'S COLLEGE, CAMBRIDGE* (No. 1)

**North J. [1891] 1 Ch. 333**

(B) The effect of the Universities and College Estates Acts, 1858 and 1880, is to add another mode of investment of purchase-money of college lands to those mentioned in s. 69 of the Lands Clauses Act. The Court, with the consent of the Bd. of Agric., sanctioned the application of purchase-money of land, paid into Court under the Lands Clauses Act, in the erection of new buildings, on the college undertaking to repay the same in thirty annual instalments. Form in which the consent of the Bd. of Agric. should be evidenced. *Ex parte KING'S COLLEGE, CAMBRIDGE* (No. 2)

**North J. [1891] 1 Ch. 677**

*As to extension of powers of sale, &c., and of investment exercisable by Universities and Colleges, see* 61 & 62 Vict. c. 55.

**University of London.**

*University of London Act*, 1898 (61 & 62 Vict. c. 62), makes further provision with respect to the University of London.

*University of London Act*, 1899 (62 & 63 Vict. c. 24), amends the *University of London Act*, 1898 (61 & 62 Vict. c. 62), with respect to Holloway College.

**Vice-Chancellor's Court.**

OXFORD.] *Rules of the Vice-Chancellor's Court*, dated Mar. 21, 1892, made by the Vice-Chancellor with the approval of the Rule Committee of the Supreme Court. **St. R. & O. 1892, p. 521**; Printed at the Clarendon Press, Price 1s.

*By an O. in C. dated Aug. 23, 1894, the enactments and Rules of the Supreme Court relating to appeals from County Courts were applied to this Court.* **St. R. & O. 1894, p. 189 (No. 212)**; [1894] **W. N. (Appx. of O. & R.) p. 5.**

**UNLAWFUL GAMES.**

*See* GAMING. 34.

**UNLICENSED PREMISES—Offences.**

*See* LICENSING ACTS. 40.

**UNLIMITED COMPANY.**

*See* COMPANY AND COMPANY—WINDING UP.

**UNLIQUIDATED DAMAGES**—Counter-claim for—Jurisdiction.

*See* COUNTY COURT. 2.

— Misrepresentation—Wrongful act done by deceased person—"Actio personalis moritur cum personâ."

*See* EXECUTOR. 6.

— Proof—Costs—Provable debt.

*See* COMPANY—WINDING-UP. 204.

**UNQUALIFIED PERSON.**

*See* SOLICITOR—Unqualified Person.

**UNREGISTERED COMPANY**—Embezzlement—Illegal association—Beneficial owners of property.

*See* COMPANY. 309.

— Winding-up—"More than seven members"—Res judicata.

*See* COMPANY—WINDING-UP. 238, 239.

**UNSEAWORTHINESS OF SHIP**—Detention of ship by Board of Trade.

*See* SHIPPING. 1.

— Liability of owner—Negligence of master—Common employment.

*See* SHIPPING. 260.

— Warranty—Fitness of refrigerating machinery.

*See* SHIPPING. 143.

— Warranty—Uncovered pipe and damage to cargo thereby.

*See* SHIPPING. 144.

**UN SOUND FOOD.**

*See* FOOD.

**URBAN AUTHORITY.**

*See* DISTRICT COUNCILS.

**URINAL**—Construction of, below surface of ground—"Public place."

*See* STREETS. 1.

— Covenant to keep a garden "open and unbuilt upon."

*See* GARDEN. 1.

**URUGUAY**—Extradition.

*See* EXTRADITION.

**USAGE**—Debenture payable to bearer.

*See* NEGOTIABLE INSTRUMENT. 2.

— Effect of drawee bank certifying cheque—Effect of crediting customer with amount of cheque deposited.

*See* NEWFOUNDLAND. 2.

— "Lawful merchandize."

*See* SHIPPING. 37.

**USER**—Ancient lights—Evidence of intention to preserve—Interruption—Abandonment.

*See* LIGHT AND AIR. 16.

— Covenant against trading—Lessee not entitled to enforce covenant as to user between lessee of adjoining land and lessor.

*See* LANDLORD AND TENANT. 35.

— Evidence as to prior—Admissibility—Petition for revocation.

*See* PATENT. 50.

— Foreshore—Crown lease—Injunction—Limits of public user.

*See* SEASHORE.

— Former concurrent user by two firms—Discontinuance of user by one for several years.

*See* TRADE NAME. 4.

— Fraudulent user.

*See* TRADE-MARK. 39.

— Identification of trade name with goods by—Injunction.

*See* NEW SOUTH WALES. 48.

— Immemorial, to fix moorings in foreshore—Presumption of legal origin.

*See* THAMES. 9.

— Interim—Land not immediately required for purpose for which it was acquired.

*See* LOCAL GOVERNMENT. 4.

— Land acquired for particular purpose—Part not required—Powers.

*See* LOCAL GOVERNMENT. 3.

— Non-user and no bonâ fide intention to use—Registration—Expunging.

*See* TRADE-MARK. 47.

— Non-user of invention—Prolongation of patent.

*See* PATENT. 44.

— Private residence—Restrictive covenant—Residential flats.

*See* COVENANT. 5.

— Registration—Identical marks—Non-user—Rectification of register.

*See* TRADE-MARK. 47.

— Title by user.

*See* TRADE-MARK. 45.

**"USUAL COVENANTS"**—Public-house—Agreement for lease.

*See* LANDLORD AND TENANT. 37.

— Purchase of leaseholds.

*See* VENDOR AND PURCHASER. 25.

**USURPATION**—Quære impedit—Exchange.

*See* ECCLESIASTICAL LAW. 3.

**UTILITY**—Patent.

*See* PATENT—Utility.

## V.

**VACANT LAND**—Deposit of filth—Duty of land-owner.

See **NUISANCES**. 40.

**VACATING OFFICE**—Director—Absence through illness.

See **COMPANY—Directors**. 143.

—Trustee in bankruptcy—Rescission of receiving order—Restoration.

See **BANKRUPTCY—Trustee**. 247, 248.

**VACATING REGISTRATION**—Lis pendens—incorporating order in judgment.

See **LIS PENDENS**. 2.

### VACCINATION.

*Vaccination Act, 1898 (61 & 62 Vict. c. 49), amends the law with respect to vaccination.*

**VACCINATORS.] Order of Loc. Govt. Bd. dated Jan. 7, 1897, amending instructions to public vaccinators. St. R. & O. 1897, No. 34, p. 647; Lond. Gaz. Jan. 12, 1897, p. 190.**

*Vaccination Order of Loc. Govt. Bd. dated Oct. 18, 1898.*

*Vaccination Order, June 19, 1899. St. R. & O. 1899, No. 529, p. 1393. Price 3d.*

1. — *Conscientious objection — Requirement of production of birth certificate — Vaccination Act, 1898 (61 & 62 Vict. c. 49), s. 2.*

Upon an application by the parent of an unvaccinated child, whose birth has been registered, for a certificate of conscientious objection under s. 2 of the Vaccination Act, 1898, the justices are entitled to refuse to give such certificate unless and until the applicant produces to them a certificate of the registration of the child's birth. **REG. v. LOWNDES**

**Div. Ct. [1899] W. N. 20 (13); [1899] 1 Q. B. 577**

2. — *Jurisdiction — Previous conviction — Penalty for disobedience — Vaccination Acts, 1867 (30 & 31 Vict. c. 84), ss. 29, 31; 1871 (34 & 35 Vict. c. 98), s. 11.*

If a person has been fined under s. 31 of the Vaccination Act, 1867, for disobedience to an order for the vaccination of a child, he cannot be fined a second time for disobedience to the same order. **REG. v. PORTSMOUTH JUSTICES.**

**Div. Ct. [1892] 1 Q. B. 491**

See 61 & 62 Vict. c. 49, ss. 2-4, and Sched.

3. — *Mandamus—Alternative remedy—Legal remedy—Duty of guardians to appoint vaccination officer—Vaccination Act, 1871 (34 & 35 Vict. c. 98), s. 5.*

The duty imposed upon guardians by s. 5 of the Vaccination Act, 1871, to appoint a vaccination officer may be enforced by a writ of mandamus upon the application of the Loc. Govt. Bd. **REG. v. LEICESTER UNION**

**Div. Ct. [1899] 2 Q. B. 632**

See Vaccination Order of Loc. Govt. Bd. dated Oct. 18, 1898.

4. — *Neglect to procure vaccination — Juris-*

### VACCINATION—continued.

*diction of justices — Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*

The justices who, upon information that a child under fourteen has not been successfully vaccinated and that notice to procure its being vaccinated has been disregarded, signs a summons under s. 31 of the Vaccination Act, 1867, to the parent to appear with the child before him, need not be one of the justices hearing the summons, nor need he sign the order made at the hearing. Such an objection is an objection to the vaccination order itself; it is not a ground of objection to a subsequent proceeding for the recovery of a penalty from the parent for non-compliance with the order. **SOUTHCOMBE v. YEOWIL UNION**

**Div. Ct. [1897] 1 Q. B. 343**

See 61 & 62 Vict. c. 49, ss. 2-4.

5. — *Neglect to procure vaccination—Service of notice—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*

The notice given under s. 31 of the Vaccination Act, 1867, to the parent of a child under fourteen to procure its vaccination need not be served personally upon the parent, nor, if personal service be not effected, need it be proved affirmatively that it reached him. It is a question for the justices to determine upon the evidence in each particular case whether they are satisfied that the notice reached the person to be notified. **HOLLOWAY v. COSTER** **Div. Ct. [1897] 1 Q. B. 346**

6. — *Non-compliance with vaccination order—Burden of proof—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*

Upon the hearing of a summons under s. 31 of the Vaccination Act, 1867, against the parent of a child for non-compliance with an order of justices directing him to have his child vaccinated, the burden of proving non-compliance is upon the prosecution. Evidence that the certificate of vaccination required by the Act has not been received by the proper officer is *prima facie* evidence from which non-compliance with the vaccination order may properly be presumed. **OVER v. HARWOOD** **Div. Ct. [1900] 1 Q. B. 833**

7. — *Non-compliance with vaccination order—Further proceedings—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31—Local Government Board General Order, 1874, art. 16.*

Where an order, under s. 31 of the Vaccination Act, 1867, has been made for the vaccination of a child, summary proceedings for the enforcement of the order may be taken by the vaccination officer without obtaining special directions from the guardians of the union or parish in which the child was at the date of the order. The proviso in art. 16 of the General Order of the Loc. Govt. Bd., 1874, as to further proceedings applies not to the enforcement by summary proceedings of a vaccination order already obtained, but to proceedings for obtaining orders

**VACCINATION—continued.**

against a person who has already been fined under s. 31 of the Vaccination Act, 1867. *REG. v. BROCKLEHURST* Div. Ct. [1892] 1 Q. B. 566  
See 61 & 62 Vict. c. 49, ss. 2-4.

8. — *Power of vaccination officer to take proceedings for vaccination order without authority from guardians — Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31—General Order of Local Government Board, Oct. 31, 1874, art. 16.*

A vaccination officer is, without any special authority in that behalf from the guardians of the union for which he acts, empowered to take proceedings under s. 31 of the Vaccination Act, 1867, for an order directing an unvaccinated child to be vaccinated, notwithstanding the provisions of art. 16 of the General Order of the Loc. Govt. Bd.

Regulations under Vaccination Acts, Oct. 31, 1874. *BRAMBLE v. LOVE.*

Div. Ct. [1897] 1 Q. B. 283

See Vaccination Order of Loc. Govt. Bd. dated Oct. 18, 1898.

As to proceedings under s. 31, see 61 & 62 Vict. c. 49, ss. 2-4.

— Prosecutor — Legal right to apply for mandamus.

See *MANDAMUS*. 4.

**VAGRANCY.**

*Vagrancy Act, 1898 (61 & 62 Vict. c. 39), amends the Vagrancy Act, 1824.*

— Cost of appeal to quarter sessions — Payment by treasurer of county or borough.

See *JUSTICES*. 4.

1. — *Pretending to tell fortunes—Intent to deceive—Rogue and vagabond—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.*

By the Vagrancy Act, 1824, s. 4, "Every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of His Majesty's subjects," shall be deemed to be a rogue and vagabond, and be liable to penalties.

A person was convicted of being a rogue and vagabond, for that she did unlawfully pretend to tell fortunes. The information alleged that the deft. did pretend or profess to tell fortunes. The justices were satisfied on the evidence that the deft. had unlawfully pretended to tell fortunes to deceive and impose upon certain of Her Majesty's subjects.

On the argument of an order nisi for a certiorari to remove and quash the conviction:—

*Held*, that, in order to justify a conviction under the statute, there must be an intent to deceive, but that the intent was implied in the words "pretending or professing," and therefore it was unnecessary that the intent should be specifically alleged, and the conviction was good. *REG. v. ENTWISTLE. Ex parte JONES*

Div. Ct. [1899] W. N. 47; [1899] 1 Q. B. 846

— Strike of workmen—Persons entitled to relief — Guardians of the poor.

See *POOR LAW*. 10.

2. — *Wilful refusal or neglect of person to maintain himself—Incapacity resulting from*

**VAGRANCY—continued.**

*drunkenness—Vagrant Act, 1824 (5 Geo. 4, c. 83), s. 3.*

Where a person at the time of his becoming chargeable to a union is owing to illness unable to maintain himself, the fact that that illness was the result of drunkenness does not cause his inability to amount to a wilful refusal or neglect to maintain himself within the meaning of s. 3 of the Vagrancy Act, 1824. *ST. SAVIOUR'S UNION v. BURBRIDGE*

Div. Ct. [1900] W. N. 184;  
[1900] 2 Q. B. 695

**VALUATION**—Compulsory sale of waterworks—"Price."

See *WATER—Supply*. 8.

— Fixtures, crops, &c.—Sale by tenant for life.

See *SETTLED LAND*. 45.

— Life interests—Hotchpot clause.

See *SETTLEMENT—Hotchpot*. 27.

— Metropolis.

See *Cases under RATES*.

— Mortgage—Duties and liabilities of trustees.

See *TRUSTEE—Breach of Trust*. 40.

— Tramways for purchase by local authority.

See *TRAMWAYS*. 1.

— Valuer—Liability of.

See *VALUER*. 1.

**VALUATION LIST**—Rates.

See *Cases under RATES*.

**VALUATION (METROPOLIS) ACT, 1869**—Gross value — Artizans' dwellings — Cost of lighting and cleaning common stair.  
See *RATES—Rateability*. 12.

**VALUATION OF LANDS (SCOTLAND)**—Covenant by tenant to keep free from all expenses whatever—Tramway.

See *SCOTTISH LAW—Landlord and Tenant*. 24.

**VALUER**—Inaccuracy—Causing damage to third party.

See *SURVEYOR*. 1.

1. — *Liability of—Mortgage—Negligence—Contract.*

A valuer is not liable for a valuation for a mortgage, &c., made without reasonable skill and care (but not fraudulently) unless there is a contract between him and the person who has made an advance on the faith of the representation. Damages assessed at the whole loss sustained through the deficiency of the security. Cases in which a person may be liable for representations made without fraud considered by *Romer J.*

Decision of *Romer J.*, [1891] W. N. 16, affirmed. *SCHOLES v. BROOK*

C. A. [1891] W. N. 101

— Report of valuer—Duties and liabilities of trustees.

See *TRUSTEE—Breach of Trust*. 40.

**VARIATION**—Contract—Authority of agent—Lump sum—Ratification.

See *CONTRACT*. 8.

**VARIATION OF SETTLEMENTS.**

See *DIVORCE—Settlements, Variation of*.

**VASSAL**—Superior and vassal.

See SCOTTISH LAW — Superior and Vassal. 47, 48.

**VAULTS** — Disused churchyard used as public garden.

See ECCLESIASTICAL LAW—Faculty. 23.

**VEHICLE**—Bicycle—Liability to toll —“Carriage.”

See BICYCLE. 2.

## **VENDOR AND PURCHASER.**

*In General*, col. 2217.

*Abstract*, col. 2217.

*Charges and Outgoings*, col. 2218.

*Commission*, col. 2218.

*Conditions of Sale*, col. 2219.

*Contract*, col. 2223.

*Conveyance*, col. 2231.

*Costs*, col. 2236.

*Deposit*, col. 2236.

*Interest*, col. 2237.

*Lien*, col. 2238.

*Lunacy*. See LUNACY—Sales.

*Outgoings*. See VENDOR AND PURCHASER—Charges and Outgoings.

*Parcels*, col. 2240.

*Principal and Agent*, col. 2241.

*Recitals*, col. 2241.

*Rescission*, col. 2241.

*Specific Performance*, col. 2245.

*Title*, col. 2247.

*Title Deeds*, col. 2254.

### **In General.**

— Death of vendor before completion—Copies—Vesting order—Form of order.  
See TRUSTEE—Vesting Order. 102.

— Expressed grant of fee—Leasehold title in equity.  
See MERGER. 2.

— Firm name—Conveyance of freehold shop—Vendor's name over door—Vendor's right to erasure.  
See PARTNERSHIP. 29.

— Lease—“Assigns” — Option to purchase—Equitable assign.  
See LANDLORD AND TENANT. 80.

— Settled Lands Acts.  
See Cases under SETTLED LAND.

— Unpaid succession duty—Liability for.  
See VENDOR AND PURCHASER—Charges and Outgoings. 2.

### **Abstract.**

1. — *Expenses of production* — *Leaseholds* — *Assignment*—*Conveyancing Act*, 1831 (44 & 45 Vict. c. 41), s. 3, sub-s. 6.

Every document that forms a link in the vendor's title ought to be abstracted in chief.

Sect. 3, sub-s. 6, of the Conveyancing Act, 1831, presupposes a proper abstract, and does not apply to a document in the chain of title.

In an abstract of title to leaseholds, an assign-

## **VENDOR AND PURCHASER (Abstract)—continued.**

ment appeared only by way of recital in another document:—

*Held*, that an abstract of the recited assignment must be delivered at the vendor's expense.

*In re Ebsworth and Tidy's Contract*, (1889) 42 Ch. D. 23, considered. *In re STAMFORD, SPALDING AND BOSTON BANKING COMPANY AND KNIGHT'S CONTRACT*

North J. [1899] W. N. 255; [1900] 1 Ch. 287 — Reasonable time for delivery.

See VENDOR AND PURCHASER—Rescission. 58.

— Verification of abstract — Lost deeds — Secondary evidence.

See VENDOR AND PURCHASER — Title-deeds. 101.

### **Charges and Outgoings.**

— *Lis pendens*—Vacating registration—Incorporating order in judgment.

See LIS PENDENS. 2.

— Outgoings—Dangerous structures—Expenses of demolition.

See VENDOR AND PURCHASER—Conditions of Sale. 12.

— “Outgoings” — Implied covenant against incumbrances—Private street works.

See STREETS—Private Streets. 34.

— “Outgoings” — Notice by sanitary authority to abate nuisance.

See VENDOR AND PURCHASER—Conditions of Sale. 13.

2. — *Succession duty*—*Unpaid succession duty* — *Liability for*—*Sale free from incumbrances but subject to leases*—*Succession Duty Act* (16 & 17 Vict. c. 51), ss. 2, 20.

Freeholds were sold which were still subject to succession duty in respect of the improved value which would accrue when certain leasehold interests determined. The freeholds were sold free from incumbrances, and there was no mention of succession duty in the contract for sale:—

*Held*, that the vendors were liable for the unpaid duty. *In re KIDD AND GIBBON'S CONTRACT* — Kekewich J. [1893] 1 Ch. 695

### **Commission.**

3. — *Agreement by vendor to pay commission to purchaser's agent*—*Non-disclosure of agreement by vendor*—*Right of purchaser to recover commission from vendor*.

The plt., who was the owner of a mine, agreed with a person who was in fact, though the plt. did not then know it, a director of and agent for the defts., a co., that the director should have an option of finding a purchaser for the property, and should, if successful, be paid as commission 10 per cent. of the price obtained. The director arranged a sale to the defts., but before the contract was entered into, or the commission had become payable, the plt. became aware of the director's position with regard to the defts.:—

*Held*, that the plt. having completed the contract without disclosing to the defts., as purchasers, the agreement to pay commission to their agent, any part of the agreed commission

**VENDOR AND PURCHASER (Commission) — continued.**

remaining in the plt.'s hands could be recovered from him by the defendants.

*Per Collins L.J.:* The money could be recovered from the plt. as money had and received to the defts.' use.

By a second agreement between the plt. and the director, made before the commission became due, an immediate payment of a sum less than that originally agreed on was substituted. The defts. subsequently discovered the existence of the two agreements as to commission, and the payment to the director, and they demanded of and received from him, in satisfaction of all claims against him, the amount he had received from the plaintiff:—

*Held*, that the defts. were not bound by the agreement as to the reduction of the amount of commission, and that, notwithstanding that agreement and their receipt from the director of the reduced amount of the commission, they were entitled to recover the balance from the plt. **GRANT v. GOLD EXPLORATION AND DEVELOPMENT SYNDICATE, LD.** C. A. [1900] 1 Q. B. 233

**Conditions of Sale.**

4. — *Annulling sale, Vendor's power of—Title—Conveyance—Requisitions—Outstanding estate, Getting in—Contract—Rescission—Defective title—No title.*

A condition of sale empowering the vendor to annul the sale if the purchaser makes any objection or requisition "as to the title, particulars, conditions, or any other matter or thing relating or incidental to the sale," which the vendor is unable or unwilling to comply with, extends to a matter of conveyance as well as of title.

Thus, where a vendor-mortgagee of leaseholds who, having contracted to sell the entire term, turned out, on the investigation of the title by the purchaser, to hold by a sub-demise the bare legal estate in which was outstanding, and expressed himself as unable or unwilling to comply with a requisition by the purchaser that the person having the legal estate should join in the conveyance; it was *held* by the C. A. that the vendor was entitled, under a condition in the above form, to annul the sale.

Decision of Kekewich J. reversed.

The ordinary condition of sale giving the vendor a power of rescission applies only where he has some title, not where he has none.

*Bowman v. Hyland*, (1878) 8 Ch. D. 588, explained. *In re DEIGHTON and HARRIS'S CONTRACT* C. A. [1898] 1 Ch. 458

5. — *Assumption of fact on which the root of the title depends—Misleading conditions of sale.*

A condition requiring the purchaser to assume a certain fact, e.g., the death of A., intestate and without heirs, is not misleading if the vendor really believes the fact, although the fact to be assumed is absolutely necessary to the vendor's title. Nor is it necessary to explain in the condition the particular defect which the condition is intended to cover. *In re SANDBACH AND EDMONDSON'S CONTRACT* C. A. [1891] 1 Ch. 99

*See also In re Scott and Alvarez's Contract.* C. A. [1895] 2 Ch. 603. No. 8, below.

**VENDOR AND PURCHASER (Conditions of Sale) — continued.**

6. — *Compensation conditions—Clause excluding compensation—Misedescription—Specific performance—Possessory title.*

The defts. sold by auction to the plt. a freehold property described in the particulars of sale as containing 5A. 0R. 26P., and as bordering on a lake on S. Common, the sale being subject to conditions of sale, one of which was as follows: "The property is believed and shall be taken to be correctly described in the particulars as to quantity and otherwise . . . and if any error, misstatement, or omission in the particulars be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendors to the purchaser in respect thereof."

The only part of the property to which a good title was shewn contained 4A. 3R. Another part of the property offered for sale bordered on the lake, and as to this the only title offered was what purported to be a title by possession for less than forty years.

The plt. claimed rescission of the contract and a return of the deposit paid by him, and the defts. counter-claimed for specific performance:—

*Held*, that even if the defts. had established a possessory title to the border land for twelve years, that would not have been sufficient, as the contract, so far as it related to that land, was an open one, in which case a forty years' title by possession was required; that the defts. were not entitled to specific performance in respect of the part of the property to which a good title had been shewn; and that the plt. was entitled to rescission of the contract and the return of his deposit.

The authorities as to compensation conditions reviewed. **JACOBS v. REVELL**

**Buckley J. [1900] 2 Ch. 858**

— Condition precedent—Mistake in acreage.

*See No. 71, below.*

7. — *Condition precedent—Waiver.*

A stipulation in a memorandum of agreement that the agreement was subject to the preparation of a formal contract cannot be waived by the vendor as against the purchaser so as to enable the vendor to maintain an action for specific performance upon the rest of the memorandum. **LLOYD v. NOWELL—Kekewich J. [1895] 2 Ch. 744**

Discussed by Kekewich J. *North v. Percival*, [1898] 2 Ch. 132.

8. — *Condition restricting objections to title—Bad title shewn aliunde—Return of deposit refused, but specific performance also refused.*

A purchaser bought property under a strict condition of sale that he should not make any objection as to the intermediate title between a certain lease and the assignment of it, but should assume that the assignment vested a good title in the assignees. It was afterwards discovered by the purchaser that there was a vital defect in the intermediate title, and that the assignees had no title to the property:—

*Held*, (1.) (reversing the decision of Kekewich J., [1895] 1 Ch. 596) that the purchaser was bound at law by the condition, and therefore could not recover his deposit; but (2.), affirming the



**VENDOR AND PURCHASER (Conditions of Sale)**

—continued.

decision of Kekewich J. (*dubitante* Lopes L.J.), that as the vendor could not give a holding title to the purchaser, the Court would, in the exercise of its discretion, refuse to decree specific performance of the contract, and would leave the parties to their remedies at law. *In re SCOTT AND ALVAREZ'S CONTRACT*. *SCOTT v. ALVAREZ*

C. A. [1895] 2 Ch. 603

Discussed by Kekewich J. *In re Wallis and Barnard's Contract*, [1899] 2 Ch. 515, 520.

Discussed by C. A. *In re Hughes and Ashley's Contract*, [1900] 2 Ch. 595, 602.

**9. — Costs—Conveyance—Mortgagees' concurrence.**

The conditions of sale of freehold property appointed a time and place for completion, and provided (condition 10) that—

"On payment by the purchaser of the balance of his purchase-money at the time and place aforesaid, he shall be entitled to a proper assurance of the property purchased by him from the vendor and all other necessary parties (if any), such assurance and every other instrument required for getting in or releasing any outstanding estate, right, or interest, or for completing or perfecting the vendor's title, or for any other purpose, to be prepared by and at the expense of the purchaser."

It appeared on the examination of the title that the property was subject to a mortgage—a fact which was not disclosed by the particulars or conditions. The mortgagees joined in the conveyance, the vendor paying their costs without prejudice to the question how they should be borne as between vendor and purchaser.

Farwell J.: *In re Willett and Argenti*, [1889] W. N. 66; 60 L. T. 735, the contract provided that the vendor and all other necessary parties (if any) should make and execute to the purchaser a proper assurance of the premises, such assurance and every other assurance, act, and thing required by the purchaser for perfecting or completing the vendor's title or otherwise to be prepared, obtained, made and done by and at the expense of the purchaser. That provision was held to throw the expense of procuring the concurrence of the mortgagees on the purchaser.

The present condition merely requires the assurance or other instrument to be prepared by and at the expense of the purchaser. The expense of procuring the concurrence of the mortgagees is not provided for, and, according to the ordinary rule as stated in *Dart on Vendors and Purchasers*, 6th ed. pp. 176, 798, it falls on the vendor. *In re SANDER and WALFORD'S CONTRACT* Farwell J. [1900] W. N. 183

**10. — "Holding title"—Purchaser's right to rescind and recover deposit.**

A mortgagee selling under a power of sale furnished an abstract of title which shewed a defect in the mortgagor's title. After the time limited by the conditions of sale the purchaser refused to complete the sale, and claimed the return of the deposit. The mortgagee then shewed he was at the time of the mortgage ignorant of the defect, and had a good holding title:—

*Held*, by Romer J., that, as he had not dis-

**VENDOR AND PURCHASER (Conditions of Sale)**

—continued.

closed his holding title until the plt. was in a position to rescind and claim the return of the deposit, he was too late. But, *held* by C. A., that there was no defect in the title, and so the purchaser could not rescind. Decision of Romer J., [1891] W. N. 4, reversed. *SAXBY v. THOMAS*

C. A. [1891] W. N. 28

— Interest—"Wilful default."

*See* VENDOR AND PURCHASER—Interest. 54.

**11. — Misleading particulars — Statement by auctioneer—Compensation—Specific performance.**

A clear and distinct statement by an auctioneer at the time of sale verbally correcting a material misdescription in the particulars disentitles the purchaser to specific performance with compensation for that misdescription, even if he does not hear the statement.

*Manser v. Back*, (1848) 6 Hare 443, followed. *In re HARE AND O'MORE'S CONTRACT*

Joyce J. [1900] W. N. 253;

*see* [1901] 1 Ch. 93**12. — "Outgoings"—Agreement by vendor to discharge outgoing up to completion—Order to take down dangerous structures—Expenses of demolition—Liability of vendor.**

By conditions of sale of land within the metropolis the date fixed for completion was May 8, all outgoing up to that day being cleared by the vendor. Before May 8 a magistrate made an order to take down dangerous structures on the land. This order was not complied with, and after May 8 the county council took down the structures, and demanded and received from the purchaser the expenses of so doing:—

*Held*, that, the liability having been incurred before May 8, the expenses were "outgoings," within the meaning of the conditions, which the purchaser was entitled to recover from the vendor.

*Middley v. Coppock*, (1879) 4 Ex. D. 309, followed. *In re Boor, Boor v. Hopkins*, (1889) 40 Ch. D. 572, distinguished. *TUBBS v. WYNNE*

Collins J. [1897] 1 Q. B. 74

Followed by Cozens-Hardy J. *Barsht v. Tagg*, [1900] 1 Ch. 231.

**13. — "Outgoings"—Notice by sanitary authority to abate nuisance.**

Conditions of sale of leasehold houses provided that the purchase should be completed on Aug. 11, 1898, and that "a purchaser paying his purchase-money is, as from that day, to be let into possession or receipt of rents and profits, and up to that date all rents, rates, taxes, and outgoing are (if necessary) to be apportioned, and each apportioned rent shall be paid on completion by each purchaser to the vendor. If, from any cause whatever, other than wilful default on the part of the vendor, the completion of the purchase is delayed beyond the before-mentioned day, the remainder of the purchase-money is to bear interest at the rate of 6l. per cent. per annum from that day to the day of actual payment thereof, or, at the option of the vendor, he may receive the rents and profits up to the day of the actual completion of the purchase. The property shall, as from the day of

**VENDOR AND PURCHASER (Conditions of Sale)**  
—continued.

sale, be at the sole risk of the purchaser, and the vendor shall not incur any liability by reason of its then or subsequently becoming or remaining untenanted, uninsured, or deteriorated." Through default of the plt., who had purchased one of the lots, his purchase was not completed on Aug. 11, although the title had then been accepted, and the deft., the vendor, remained in possession. In Nov., 1898, notices were served on the deft. as "owner" by the vestry under the Public Health (London) Act, 1891 (51 & 55 Vict. c. 76), to abate nuisances on the property, and the cost of making the abatement, about 24*l.*, was paid by the deft. In Feb., 1899, the plt. was ready to complete, and offered to pay interest at 6 per cent. on the balance of the purchase-money from Aug. 11 on receiving the rents and profits from that date, and in that case to repay the 24*l.*, but he insisted that if the deft. retained the rents and profits he ought to bear the cost of the abatement:—

*Held*, that, the 24*l.* being an outgoing (*Tubbs v. Wynne*, [1897] 1 Q. B. 74) which from the time when a good title was shewn must clearly be borne by the purchaser in the absence of express stipulation, the plt. would as from Aug. 11 have been entitled to the rents and profits and liable to pay the 24*l.*, if the conditions had not given the vendor the option to keep the rents and profits in lieu of interest, but that there was nothing to relieve the plaintiff from the obligation to pay the outgoing, and that he could only obtain specific performance on paying the 24*l.* and the balance of his purchase-money. *BARSH v. TAGG*

**Cozens-Hardy J. [1899] W. N. 260;**  
**[1900] 1 Ch. 231**

— Title, as to.

See Cases under VENDOR AND PURCHASER—Title.

**Contract.**

— Acceptance, Offer and—Want of title—Rescission.

See No. 29, below.

14. — Acceptance of offer—Statute of Frauds (29 Car. 2, c. 3), s. 4.

In Aug., 1895, plt. offered deft. H. 1500*l.* for a freehold house called The Wray. The offer was refused; but on Nov. 7, 1895, deft. in writing told plt. that he would take 2000*l.* On the following day plt. replied in writing: "I have decided to accept Mr. H.'s offer, and will give the 2000*l.* he asks for the freehold of the Wray property. I should like to know from what time Mr. H. wishes the purchase to date":—

*Held*, that the last sentence did not impose a fresh term, but was merely a courteous way of asking the vendor when he desired completion of the sale to take place; that there was therefore an unconditional acceptance of the deft.'s offer, and a binding contract of sale. *SIMPSON v. HUGHES* — **Romer J. [1896] W. N. 179 (6);**  
**Affirmed by C. A., [1897] W. N. 26 (11).**

15. — "Adverse claim"—Misleading particulars.

It is the duty of vendors to give notice of

**VENDOR AND PURCHASER (Contract)—contd.**

adverse claims which are not idle and frivolous. A. sold a warehouse to B., who signed the contract without notice that there was a claim to the sole ownership of one wall thereof. A. claimed a declaration that B. was not entitled to insist on a release of the adverse claim:—

*Held*, that as A. had not made out that the claim was clearly unfounded, he ought to have given notice of it, and the purchaser was entitled to insist on the release. *In re HARRIS AND RAWLINGS' CONTRACT Chitty J. [1894] W. N. 19* — Agent—Vendor's name—Reference to formal contract.

See FRAUDS, STATUTE OF. 21.

16. — Authority to agent to find a purchaser—Contract by agent.

Instructions given to estate agents to find a purchaser and negotiate a sale held not to amount to an authority to bind the vendor by a contract. To bind the vendor there must be an express authority to the agent to enter into a contract on behalf of the vendor. *CHADBURN v. MOORE*

**Kekewich J. [1892] W. N. 126**

17. — Brewery—"Fixed plant and machinery."

Upon the sale of a brewery the purchaser was to pay for all "fixed plant and machinery" at a valuation, notwithstanding any description thereof in the sale particulars:—

*Held*, that "machinery" included everything which by its action produces or assists in production, and "plant" that without which production could not go on; it was dead stock, it did not itself act, but was that by means of which such action took place, as brewers' pipes, vats, and the like, and did not include (1) a chimney-shaft disconnected from the boiler-house; (2) a partition which prevented the dust from the malt mills getting into the brewing vessels; (3) staging shaped to the brewing vessels which gave access to them. *In re NUTLEY AND FINN*

**Kekewich J. [1894] W. N. 64**

— Building estate—Conveyance.

See VENDOR AND PURCHASER—Conveyance. 40.

18. — Building estate—Restrictive covenants—Form of covenant to purchaser.

Where vendors sold one lot, part of a building estate subject to certain restrictive covenants, the purchaser was held entitled to a declaration that the vendors would, as to the unsold lots, observe the same restrictive covenants, and to have the same expressed in his conveyance. Liability of vendors to observe restrictive covenants in such cases considered. *In re BIRMINGHAM AND DISTRICT LAND CO. AND ALLDAY*

**Stirling J. [1893] 1 Ch. 342**

Referred to by North J. *Davis v. Leicester Corporation*, C. A. [1894] 2 Ch. 220.

19. — Building estate—Restrictive covenants—General scheme—Injunction.

An owner of part of a building estate is entitled to have the benefit of all matters provided by the general scheme of the estate, and may enforce by injunction not only the covenants imposed at the time of his purchase on the other owners, but also further covenants imposed on

**VENDOR AND PURCHASER (Contract)—contd.**

subsequent purchasers by the scheme as improved or enlarged. *TYNDALL v. CASTLE*

North J. [1893] W. N. 40

20. — *Building estate—Restrictive covenants—Representations by vendor—Plan.*

Where a vendor prepares, and shews to a purchaser of one or more plots, a plan of a building estate in plots, with houses upon them, and also an agreement in a printed form, the purchaser is not in every case entitled to assume that the whole estate is governed by a scheme in strict accordance with the plan, and that each plot is to be bound by clauses similar to the printed clauses of the agreement. *TUCKER v. VOWLES*

Romer J. [1893] 1 Ch. 195

21. — *Completion of purchase—"Wilful default"—Trustee's agent—Absent trustee—Attorney—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 56—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 2, sub-s. 1.*

An attorney appointed by a trustee under a power of attorney to sign a conveyance during the trustee's absence has not the powers of a solicitor-agent appointed under s. 2 of the Trustee Act, 1888, and cannot receive the purchase-money or give a receipt. If, therefore, a purchaser refuse to pay the purchase-money at the proper time because of the attorney's inability to give a proper discharge, he is not guilty of "wilful default" under the conditions of sale. *In re HETLING AND MERTON'S CONTRACT*

C. A. [1893] 3 Ch. 269

NOTE.—What is "wilful default." See *Interest*, No. 54, below.

22. — *Condition to be performed by vendor—Time during which condition may be performed—Absence of express stipulation—Date of completion—Deposit—Contract for sale—Lease of public-house.*

The plt. agreed to purchase from the deft. the lease of a public-house on which there was a subsisting mortgage, on condition that the consent of the mortgagee should be obtained to the same amount of money remaining on mortgage as was then due. A date was fixed for completion and a deposit paid, which was to be forfeited if the sale went off through the default of the plt. At an interview between the plt., the deft., and the mortgagee, the latter would only agree to a lesser amount remaining on mortgage. The plt. thereupon treated the contract as at an end. Subsequently, and before the date fixed for completion, the deft. obtained the consent of the mortgagee to the full amount of the mortgage debt remaining on mortgage, but the plt. refused to proceed with the purchase. In an action to recover the deposit:—

*Held*, that, in the absence of circumstances which would justify the plt. in treating the refusal of the mortgagee as final, or of an agreement express or implied that it should be so treated, the deft. had until the date fixed for the completion of the contract in which to perform the condition by obtaining the consent of the mortgagee; that the contract had therefore gone off through the default of the plt.; and that he could not recover the deposit. *SMITH v. BUTLER*

C. A. [1900] 1 Q. B. 694

**VENDOR AND PURCHASER (Contract)—contd.**

— *Correspondence—Letter signed by purchaser on paper on which vendor's name and address were printed.*

See *FRAUDS, STATUTE OF*. 7.

23. — *Correspondence referring to a contract—Statute of Frauds—Specific performance.*

Where a vendor writes to an intending purchaser accepting his offer, and incloses a contract which he requests the purchaser to sign, if the contract contains stipulations not contained in the previous correspondence, e.g., restriction of commencement of title, limitation of date for completion, and requirement of a deposit, the letters cannot be treated as a concluded agreement of sale, and an action for specific performance will be dismissed. *JONES v. DANIEL*

Romer J. [1894] 2 Ch. 332

24. — *Covenants—Leaseholds—Sale by auction—Onerous covenants—Duty of vendor to disclose—Constructive notice to purchaser.*

The rule laid down by the C. A. in *Reeve v. Berridge*, (1888) 20 Q. B. D. 523, that it is *prima facie* the duty of a vendor to disclose all that is necessary to protect himself, and not the duty of a purchaser to demand inspection of the vendor's title-deed before entering into a contract, is not confined to sales by private contract, but is equally applicable to sales by auction. Where, therefore, on a sale of leaseholds by auction the particulars and conditions of sale contained no statement as to the nature of the covenants in the lease (which were in fact onerous), nor any notice that the lease might be inspected at the office of the vendor's solicitors or elsewhere:—

*Held*, that the purchaser was not affected with constructive notice of the covenants; that he had not had a fair opportunity of inspecting the lease, and was therefore not bound to complete the contract. *In re WHITE AND SMITH'S CONTRACT*

Stirling J. [1896] 1 Ch. 637

— *Covenants—"Usual covenants"—Public-house—Agreement for lease.*

See *LANDLORD AND TENANT—Covenant*.

37.

25. — *Covenants—"Usual covenants"—Purchase of leaseholds—Specific performance.*

Lessee's covenants in a lease of a house, (1.) prohibiting other erections; (2.) prohibiting use otherwise than as a private house; (3.) for registering assignments with the lessor and paying a fee; (4.) for rebuilding in case of fire to satisfaction of lessor's architect:—

*Held*, to be unusual, and an action by the vendor for specific performance of a contract for sale against a purchaser who had had no fair opportunity of seeing the covenants dismissed. *MIDDLEBY v. SMITH*

Romer J. [1893] W. N. 120

— *Frauds, Statute of.*

See *Cases under FRAUDS, STATUTE OF*.

26. — *Leaseholds—Contract for sale—Assignment—Lessor's consent—Duty of vendor—Default of vendor in obtaining consent—Loss of bargain—Deposit—Costs—Liability of vendor—Damages.*

A purchaser of leasehold property, which the vendor cannot assign without a licence from his lessor, is entitled to damages (beyond return of

**VENDOR AND PURCHASER (Contract)—contd.**

the deposit, with interest and expenses) for loss of his bargain by reason of the vendor's omission to do his best to procure such licence.

A vendor agreed with a purchaser for the sale of a leasehold hotel, subject to the consent of the lessor being obtained to the assignment of the lease, and the purchaser paid a deposit on his purchase-money. The vendor died without having completed his contract, and the purchaser then brought an action against his legal personal representative for specific performance. The deft., being desirous of freeing the vendor's estate from the action, induced the lessor to refuse his consent to the assignment, which the lessor accordingly did, and the purchaser thus lost his bargain. Thereupon the purchaser amended his action by claiming damages and return of the deposit:—

*Held*, that the plt. was entitled, not only to the return of his deposit, with interest and costs of investigating title, but also to the damages he had sustained by the loss of his bargain, through the omission of the deft. to obtain the lessor's consent.

*Bain v. Fothergill*, (1874) L. R. 7 H. L. 158, considered. Decision of Romer J. reversed. *DAY v. SINGLETON* C. A. [1899] 2 Ch. 320

— Leaseholds—Onerous covenants.

*See* No. 24, *above*.

— Letters—Correspondence.

*See* No. 23, *above*.

— Lunatic.

*See* Cases under LUNACY—Contracts.

27. — *Memorandum—Purchaser's name filled in by auctioneer's clerk—Statute of Frauds.*

At a sale L., the highest bidder for a lot, gave his name and address to the auctioneer's clerk and followed him to the table where the clerk filled in the blanks in a printed memorandum with L.'s name and address, but L. refused to sign the memorandum, and ultimately refused to complete:—

*Held*, that there was a sufficient signature on behalf of L., and that there was judgment for specific performance. *SIMS v. LANDRAY*

*Romer J.* [1894] 2 Ch. 318

— Name—Vendor's name—Reference to formal contract.

*See* FRAUDS, STATUTE OF. 2.

28. — *Mistake—Rectification—Parol evidence—Covenant for title—Prior document with plan—Conveyance of estate term and interest—Written contract—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7, sub-s. 1 (a).*

By a conveyance expressed to be supplemental to a "principal agreement," under which the vendor was entitled to a lease of certain land coloured red in the plan annexed to that agreement, the vendor (in pursuance of a written contract in that behalf) as beneficial owner conveyed to the purchasers "all his estate term and interest under and by virtue of the principal agreement in the piece of land coloured red in the plan annexed to the principal agreement":—

*Held*, that the words "if any" could not be

**VENDOR AND PURCHASER (Contract)—contd.**

implied after the word "interest," but that the statutory covenant for title extended quoad the estate to that limited by the principal agreement, and quoad the parcels to the entirety shewn in the plan.

*Delmer v. McCabe*, (1863) 14 Ir. C. L. Rep. 377, explained.

The parcels being deficient, the purchasers sued on the covenant. The vendor alleged mutual mistake, and alternatively unilateral mistake on his own part, and counter-claimed for rectification of the conveyance:—

*Held*, that, the written contract and conveyance being unambiguous, parol evidence of mistake was inadmissible after completion either as a defence to the action, to which it afforded no answer: *Cato v. Thompson*, (1882) 9 Q. B. D. 616; *Page v. Midland Ry. Co.*, [1894] 1 Ch. 11; or to support the counter-claim, which amounted to claiming specific performance of a written contract with a parol variation: *Davies v. Fitton*, (1842) 2 D. & War. 225.

*Semble, Harris v. Pepperell*, (1867) L. R. 5 Eq. 1, *Garrard v. Frankel*, (1862) 30 Beav. 445, and *Paget v. Marshall*, (1884) 28 Ch. D. 255, can only be supported on the ground of fraud; in the absence of fraud vendors or purchasers of land cannot be put to their election to rescind or accept rectification, on the ground of unilateral mistake. *MAY v. PLATT*

*Farwell J.* [1900] W. N. 69; [1900] 1 Ch. 616

29. — *Offer and acceptance—Want of title—Rescission of contract—Damages.*

Correspondence passed between the agents of the deft. and the plt. as to the sale of a house on enfranchised copyhold land. A contract was prepared upon which differences arose between the solicitors, and an abstract of title was delivered which shewed that the plt. had not the mines under the land, whereupon the deft. refused to proceed. In an action for specific performance or damages:—

*Held*, without deciding whether there was a completed contract or not, that if there were a contract, as the vendor could not make or compel a conveyance of the mines, the purchaser was entitled to rescind:—

*Held*, also, that the plt. was not entitled to damages, as he was not at end of the time allowed for completion in a position to give a proper conveyance.

Appeal from North J., (1890) 45 Ch. D. 481, dismissed. *BELLAMY v. DEBBENHAM*

C. A. [1891] 1 Ch. 412

30. — *Parcels—Identity of—Admissibility of parol evidence—Statute of Frauds (29 Car. 2, c. 3), s. 4.*

By contract in writing A. agreed to sell and B. to buy "twenty-four acres of land, freehold, at T., in the parish of D. . . . , possession to be had on March 25 next. The vendor guaranteeing possession accordingly."

In an action by A. against B. for specific performance:—

*Held*, applying the principle of *Ogilvie v. Foljambe*, (1817) 3 Mer. 53, and *Shardlow v. Cotterell*, (1881) 20 Ch. D. 90, that parol evidence

**VENDOR AND PURCHASER (Contract)—contd.**

was admissible to shew what was the subject-matter of the contract.

The decision of *Byrne J.*, [1897] W. N. 40 (14), reversed. *PLANT v. BOURNE*

C. A. [1897] 2 Ch. 281

Referred to by *Wright J. Markham and Darter's Case*, [1899] 1 Ch. 414, 429; C. A. [1899] 2 Ch. 480.

Referred to by *Farwell J. Carr v. Lynch*, [1900] 1 Ch. 613, 615.

**31. — Parcels—Overhanging building.**

Where the owner of two premises, one of which partly overhung the other, conveyed the overhung premises by reference to the ground plan:—

*Held*, that the overhanging part of the adjoining premises passed by the conveyance. The ownership of a building partly overhanging other premises does not give the owner a right to raise the overhanging part of his building. *LAYBOURN v. GRIDLEY* — North J. [1892] 2 Ch. 53

**32. — Public-house — Agreement for sale — Transfer of licence—Interim protection—Licence “indorsed or otherwise affected”—Specific performance—Licensing Acts, 1828, 1842 (9 Geo. 4, c. 61, ss. 4, 11, 14; 5 & 6 Vict. c. 44, s. 1).**

A contract for the sale and purchase of a licensed public-house, not containing any special undertaking by the vendor that the licence shall be renewed at the Brewster Sessions, or that he will obtain from the magistrates a transfer of the licence to the purchaser's nominee at the next special sessions, or interim authority for that nominee to use the licence between the date fixed for completion and the next special sessions, does not bind the vendor to free the purchaser from risks in respect of any of the above-mentioned matters. The vendor is bound only to have a valid and effectual licence existing at the date fixed for completion which he can indorse in the usual way, and upon or in respect of which the purchaser can apply at once for interim protection under s. 1 of 5 & 6 Vict. c. 44, at the next special sessions.

The statement in *Dart's Vendors and Purchasers*, 6th ed. vol. i. p. 483, that “if the vendor cannot, by the day appointed for the completion of the purchase, procure a transfer of the licence under the Licensing Act, the purchaser may repudiate the contract,” is too wide.

*Day v. Lulike*, (1868) L. R. 5 Eq. 336; *Claydon v. Green*, (1868) L. R. 3 C. P. 511; and *Cowles v. Gale*, (1871) L. R. 7 Ch. 12, observed upon. *TADCASTER TOWER BREWERY Co. v. WILSON* — Romer J. [1897] 1 Ch. 705

**33. — Purchaser in possession—Specific performance—Interest.**

Where a purchaser has entered into possession and has not paid the price or interest, and has done nothing to interfere with the value of the property, he will not be ordered to pay the balance of the purchase-money without being given an option within a month to pay it or give up possession. In the latter case he must pay interest at 4 per cent. from date for completion. *GREENWOOD v. TURNER*

*Kekewich J.* [1891] 2 Ch. 144

**VENDOR AND PURCHASER (Contract)—contd.**

— Refusal—Purchaser with notice—Contract to give “first refusal” of land—Interest in land—Injunction.

See *CONTRACT*. 24.

**34. — Rents and profits in lieu of interest—Stone quarry subject to lease—Vendor and purchaser tenants in common.**

A contract by one of two tenants in common of a stone quarry for the sale to the other of her interest, contained a provision that if the purchase were not completed by a certain day the vendor should receive the “rents and profits” of the premises until completion in lieu of interest. The quarry was subject to a lease, and the payments made by the lessees had been divided between the vendor and purchaser according to their respective interests, and such division was continued subsequently to the contract:—

*Held*, that the vendor was entitled to the rents and royalties received since the date of the contract.

Decision of *Kekewich J.*, [1891] W. N. 159, affirmed. *LEPPINGTON v. FREEMAN*

C. A. [1891] W. N. 198

**35. — Repudiation of contract by purchaser—Purchase-money payable by instalments—Omission to pay last instalment—Right of vendor to retain instalments paid—Specific performance—Damages.**

The deft. in Aug., 1892, agreed to sell some land to the plt. for 150*l.*, of which 40*l.* was paid at the time, and the balance was to be paid by twelve equal quarterly instalments of 9*l.* 3*s.* 4*d.* each. In case of default for thirty days in the payment of any instalment, the whole of the unpaid instalments were to become immediately due and payable, and, in the event of default for thirty days in payment, the vendor was to be at liberty to resell the land, and to retain out of the proceeds of sale the unpaid instalments with interest, and was to pay the balance to the purchaser.

The purchaser went into possession under the contract, and retained possession for a considerable time, and, though generally in arrear with the instalments, he had by Aug., 1895, paid them all except the last. The last instalment became due on Sept. 29, 1895, but it was never paid. Correspondence took place, in which the vendor called on the purchaser to pay, but he never gave him notice that, if payment was not made within a specified time, he should treat the contract as abandoned. In Oct., 1896, the purchaser went away, and the vendor was unable to find him. The vendor resumed possession of the land and endeavoured to sell it, but without success, and in March, 1898, he agreed to let it for three years to a tenant, who took possession. In June, 1898, the purchaser reappeared, and wrote to the vendor that he was prepared to pay the final instalment. In July, 1898, the purchaser commenced an action against the vendor, claiming specific performance of the agreement of Aug., 1892, and damages in lieu of or in addition to specific performance:—

*Held*, that the plt.'s conduct did not amount to a repudiation of his contract, and that the vendor was not justified in treating the contract

**VENDOR AND PURCHASER (Contract)—contd.**  
as abandoned, and that, though the purchaser was not entitled to specific performance of his contract, he was entitled to damages, which the Court assessed at 125*l*.

Decision of Cozens-Hardy J., [1899] 2 Ch. 710, reversed. *CORNWALL v. HENSON*

C. A. [1900] W. N. 128; [1900] 2 Ch. 298

— Rescission of contract.

See **VENDOR AND PURCHASER—Rescission.**

— Restrictive covenants.

See Nos. 18—20, 24, 25, *above*; **Conveyance**, 47, 48; **Title**, 93, *below*.

— Specific performance.

See Cases under **VENDOR AND PURCHASER—Specific Performance.**

— Validity of contract—Question arising out of contract.

See **VENDOR AND PURCHASER—Conveyance**, 41.

36. — *Vendor in possession trustee for purchaser—Duty to preserve land—Removal of soil by trespasser—Negligence—Claim after completion.*

Where a vendor keeps possession until completion and payment of the purchase-money, he is in the position of a trustee for the purchaser, and bound as such to take reasonable care to preserve the property. Therefore after conveyance the purchaser can maintain an action for breach of trust against the vendor, if between contract and completion a trespasser has removed large quantities of surface soil from the property. *CLARKE v. RAMUZ* C. A. [1891] 2 Q. B. 456

37. — *“Wilful default” — Compensation — Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9.*

Delay in completing a sale occasioned by the vendors having omitted to take steps to procure certain admissions to copyholds, *held* to arise from the wilful default of the vendors.

Damages to the purchaser by reason of such delay, *held* not recoverable as compensation under the Vendor and Purchaser Act, 1874, s. 9. *In re WILSONS AND STEVENS’ CONTRACT*

North J. [1894] 3 Ch. 546

And see **VENDOR AND PURCHASER—Interest**, 54.

### Conveyance.

38. — *“Beneficial owner” — Covenants for title — Surrender of lease — Effect on underlessees — Secret incumbrances.*

S., the deft., conveyed as “beneficial owner” lands to B., who sold them to the plt. S. had previously granted a lease to B. which B. had surrendered, but without informing S. that he had, when lessee, granted sub-leases by way of mortgage. After B. had bought the land the sub-leases were discovered, and B. claimed damages from S. for breach of covenant against incumbrances implied in his conveyance as beneficial owner:—

*Held*, by C. A., that the sub-lessees claimed through S.; that the term had not been merged by the surrender so as to exclude the sub-leases,

**VENDOR AND PURCHASER (Conveyance) — continued.**

and consequently, as S.’s covenant ran with the land, and B.’s fraud did not, S. was liable to the plt. for damages.

Decision of Romer J., [1892] W. N. 115, reversed. *DAVID v. SABIN* C. A. [1893] 1 Ch. 523

39. — *“Beneficial owner” — Implied general words — Right to limit — Secret incumbrances created by person from whom vendor purchased — Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6, sub-ss. 1, 2, 4.*

A vendor selling compulsorily and required to convey as “beneficial owner” land and its “appurtenances”:—

*Held*, to have a right to insert words limiting the implied general words in s. 6 of the Conveyancing, &c., Act, 1881, where the implied words would convey more than he intended or was required to sell:

*Held*, also, that a notice to sell land and its “appurtenances” did not include a right of way over adjoining land of the vendor.

Form of conveyance. *In re PECK AND LONDON SCHOOL BOARD* — Chitty J. [1893] 2 Ch. 315

40. — *Building estate—Owner of two tenements—Purchase of one tenement—Conveyance—General words—Light—Implied grant—Derogating from grant—“Building land” — “Contrary intention” — Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6, sub-ss. 2, 4.*

In 1896 the deft., the owner of building land, sold and conveyed part of it, as “beneficial owner,” without any express general words, to the plt. The conveyance included a house on the land conveyed which had been built by the deft. with windows overlooking the land retained by him and referred to in the conveyance and the plan thereon as “building land,” but the conveyance contained no express reservation to the deft. of any right to build on that land. The defendant subsequently built on that land a house so close to the plt.’s as to interfere with the access of light to his windows:—

*Held*, that by s. 6, sub-s. 2, of the Conveyancing Act, 1881, the conveyance included all lights enjoyed with the house, and that the reference in the conveyance and plan to the adjoining land as “building land” was insufficient to shew a “contrary intention” within sub-s. 4; and that, on the principle that a grantor cannot derogate from his own grant, the plt. had *prima facie* an unrestricted right to light as against the deft., and the burden of setting limits to that right lay on the deft. And on proof by the deft. that this *prima facie* right was restricted by the plt.’s own admission that he would have been satisfied if the deft.’s house had been set back to a certain distance, an inquiry was directed what damages the plt. had sustained by reason of the obstruction of light to his windows occasioned by the deft.’s house not being so set back.

*Swansborough v. Coventry*, (1832) 2 Moo. & Sc. 362; 9 Bing. 305, approved of. *Birmingham, Dudley and District Banking Co. v. Ross*, (1888) 38 Ch. D. 295, and *Myers v. Catterston*, (1889) 43 Ch. D. 470, discussed and explained. *Broomfield v. Williams* — C. A. [1897] 1 Ch. 602

**VENDOR AND PURCHASER (Conveyance) — continued.**

## — Building estate.

See **VENDOR AND PURCHASER—Contract.**  
18—20.

## — Executors—Concurrence of—Land Transfer Act.

See **VENDOR AND PURCHASER—Title.** 79.

## — Costs—Mortgagees' concurrence.

See **VENDOR AND PURCHASER—Conditions of Sale.** 9.

**41. — Form of conveyance—General words—Validity of contract—Question arising out of contract—Parcels—Summons—Specific performance—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6, sub-s. 2.**

Although upon a summons under s. 9 of the Vendor and Purchaser Act, 1874, evidence is adduced tending to throw a doubt upon the existence or validity of the contract itself, that does not preclude the Court from deciding on the summons a specific question arising out of or connected with the contract as it stands, such as a question with regard to the vendor's right to limit, in the conveyance, the operation of the general words in s. 6, sub-s. 2, of the Conveyancing Act, 1881. It is the duty of the Court to deal with such a question on the summons, irrespective of the question whether the contract is one that can be enforced or not. *In re HUGHES AND ASHLEY* - - C. A. [1900] W. N. 168; [1900] 2 Ch. 595

**42. — Form of conveyance—Sale by Court—Sale with concurrence of first mortgagee—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70.**

An order for sale of an estate binds puisne incumbrancers, and, if the purchase-money be insufficient to discharge the first mortgage, the estate should, if the first mortgagees release their mortgage, be sold free from incumbrances. Where the first mortgagees, while releasing their mortgage, reserved the rights of the puisne incumbrancers:—

*Held*, that the purchaser was not bound to complete unless he was tendered an absolute conveyance in fee simple without any qualifying words and was entitled to a declaration that the subsequent incumbrancers were bound by the order of the Court. *MOSTYN v. MOSTYN*

C. A. [1893] 3 Ch. 376

Distinguished by *Romer J. Jones v. Barnett*, [1899] 1 Ch. 611; C. A. [1900] 1 Ch. 370.

**43. — Highway—Soil of—Street in town—Right of adjoining owner ad medium filum viæ—Conveyance of land adjoining street—Presumption.**

The presumption that half the soil of the road is intended to pass to a purchaser under a conveyance of land described as bounded by a public thoroughfare is equally applicable to streets in a town as to highways in the country; and this presumption is not rebutted by the fact that the vendor is the owner of the soil beyond the medium filum viæ; in such a case the presumption is that the conveyance passes the soil of

**VENDOR AND PURCHASER (Conveyance) — continued.**

the highway so far as it is vested in the vendor. *In re WHITE'S CHARITIES. CHARITY COMMISSIONERS v. LONDON CORPORATION*

*Romer J.* [1898] 1 Ch. 659

## — Mortgagees' concurrence—Costs.

See **VENDOR AND PURCHASER—Conditions of Sale.** 9.

**44. — Notice—Purchaser of legal estate—Constructive notice—Conveyancing Acts, 1881, 1882 (44 & 45 Vict. c. 41, s. 21, sub-s. 2; 45 & 46 Vict. c. 39, s. 3, sub-s. 1).**

B. had an equitable charge on the equity of redemption of J. in certain land subject to a legal mortgage. On Dec. 21, 1889, the mortgagees transferred their mortgage to A., who two days afterwards purported to convey under the power of sale to H. for the exact sum which he had paid to the mortgagees. In March, 1890, H. mortgaged the land for 6000*l.*, and on Aug. 13, 1890, E., H.'s executor, sold the equity of redemption to L. for 2500*l.* On Aug. 15, 1890, B. brought an action against J., A., and E., to have it declared that he was entitled to redeem the land as equitable incumbrancer of J. In Nov. 1892, the C. A. declared that B. was so entitled. L. was not a party to the action, but on receiving notice of it he paid off the mortgage for 6000*l.*, and took a reconveyance of the legal title from the mortgagees:—

*Held*, that L. had not constructive notice of the invalidity of the sale to H., and that he was entitled to rely on his acquisition of the legal estate:—

*Held*, also, that the fact that the legal estate was got in pendente lite was immaterial. *BAILEY v. BARNES* - - - C. A. [1894] 1 Ch. 25

Referred to by *Stirling J. In re White and Smith's Contract*, [1896] 1 Ch. 642; *Life Interest Corporation v. Hand-in-Hand Insurance Society*, [1898] 2 Ch. 238.

## — Recitals in deed, Effect of—Notice—Estoppel.

See **RECITALS.** 1.

**45. — Parties—Power of sale—Consent of tenant for life—Incumbrances—Concurrence of trustee in bankruptcy.**

Trustees, having power of sale with the consent of the tenant for life, sold land. The tenant for life had created incumbrances on his life estate, and was bankrupt:—

*Held*, that the tenant for life could still give his consent, but that the concurrence of the incumbrancers and of the trustee in bankruptcy were also necessary to enable the trustees to give a good title. *In re BEDINGFIELD AND HERRING'S CONTRACT* North J. [1893] 2 Ch. 332

**46. — Parties—Settled Land Acts—Jointures—Series of deeds creating a "settlement."**

Where land was settled by a series of instruments, the tenant for life under the latest settlement contracted to sell discharged from prior incumbrances, including jointure rent-charges, one of which the jointress was restrained from anticipating:—

*Held*, that he could, the various instruments

**VENDOR AND PURCHASER (Conveyance) — continued.**

constituting a "settlement" within s. 2, sub-s. 1, of the Act of 1882 :

*Held*, also, that the purchaser could not require the concurrence in the conveyance either of the jointress or of the trustees of the terms securing the jointure. The Court directed payment of the purchase-money to trustees of the compound settlement, who were to be appointed for the purposes of the Act, and directed release of the restraint on anticipation to enable the jointress to consent to the payment of incumbrances over which her jointure had priority. The rent-charges were to be paid out of the income of the purchase-money. *In re MARQUIS OF AILESBUURY AND LORD IVEAGH*.

**Stirling J. [1893] 2 Ch. 345**

Observed upon by Stirling J. *In re Earl of Stamford*, [1896] 1 Ch. 288.

Distinguished by Stirling J. *In re Du Cane and Nettlefold's Contract*, [1898] 2 Ch. 96.

Approved of by C. A. *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275.

**47. — Restrictive covenants—Building land.**

Where vendors sold one lot, part of a building estate subject to certain restrictive covenants, the purchaser was held entitled to a declaration that the vendors would, as to the unsold lots, observe the same restrictive covenants, and to have the same expressed in his conveyance. *In re BIRMINGHAM AND DISTRICT LAND CO. AND ALLDAY*

**Stirling J. [1893] 1 Ch. 342**

Referred to by North J. *Davis v. Leicester Corporation*, C. A. [1894] 2 Ch. 220.

And see **Contract**, Nos. 18—20, 24, 25, above ; **Title**, No. 93, below.

**48. — Title—Practice—Summons—Jurisdiction—Contract—Validity—Mistake—Rescission—Right to obtain—Undisclosed restrictive covenants—Form of conveyance—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9.**

A general declaration as to title ought rarely to be made on a vendor and purchaser summons, that procedure being only intended for the decision of isolated points arising out of or connected with the contract.

Criticism of the existing practice in this respect.

An isolated point on the form of the conveyance may be dealt with on a vendor and purchaser summons, although the respondent may have a right to obtain rescission of the contract on the ground of mistake. Such a right to obtain rescission does not give rise to "a question affecting the existence or validity of the contract" within the meaning of the Vendor and Purchaser Act, 1874, s. 9.

A purchaser is entitled to a conveyance subject only to the restrictive covenants mentioned in the contract, although he has notice of others.

*In re WALLIS AND BARNARD'S CONTRACT*  
**Kekewich J. [1899] W. N. 139 ; [1899] 2 Ch. 515**

Discussed by C. A. *In re Hughes and Ashley's Contract*, [1900] 2 Ch. 595, 600.

**VENDOR AND PURCHASER (Conveyance) — continued.**

**49. — Voluntary conveyance—Sale for value—Specific performance—13 Eliz. c. 5, s. 5 ; 27 Eliz. c. 4, s. 3.**

A purchaser is not entitled to repudiate his contract because one link in the vendor's title is a voluntary conveyance to a person under whom the vendor claims by purchase for value. *NOYES v. PATERSON* — **Romer J. [1894] 3 Ch. 267**

**Costs.**

— Mortgagee's concurrence.

See **VENDOR AND PURCHASER—Conditions of Sale**. 9.

— Solicitors' costs.

See **Cases under SOLICITOR—Costs**.

**Deposit.**

**50. — Cheque for deposit—Sale of land by auction—Refusal to accept highest bidder—Cheque for deposit—Custom—Statute of Frauds (29 Car. 2, c. 3), s. 4.**

In an action for damages for breach of contract that the highest bidder should be the purchaser, and for refusing to allow the auctioneer to accept a cheque for the deposit, or to allow the husband of the plt. to sign the contract. The Court found that if the cheque had been accepted the plt. would have provided funds to meet it.

*Held*, that a vendor who offered property for sale by auction, on the terms of printed conditions, could be made liable in damages to a person who accepted the offer and complied with the conditions if those conditions were violated by the vendor, and that the Statute of Frauds would be no defence: see *Warlow v. Harrison*, (1858) 1 E. & E. 295, 317; *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q. B. 256.

But *held*, that no custom had been proved obliging a vendor to accept, in payment of a deposit, the cheque even of a person in credit, although such a course was usual; and that no such custom could bind a vendor to accept a cheque from a pauper; that the conditions meant that the deposit was to be paid in cash, and the vendors were not bound to wait till the next day for it or to sign the contract until this condition precedent has been performed. *JOHNSTON v. BOYES* — **Cozens-Hardy J. [1899] W. N. 59 ; [1899] 2 Ch. 73**

— Loss of bargain—Costs—Damages.

See **VENDOR AND PURCHASER—Contract**. 26.

**51. — Payment of deposit to solicitor as agent—Action to recover deposit from agent—Sale of real property.**

On the sale of premises by auction the purchaser paid a deposit to the vendor's solicitor as agent for the vendor. The sale went off through the default of the vendor, and the purchaser brought an action to recover the deposit from the solicitor:—

*Held*, that the payment of the deposit to the solicitor was equivalent to payment to the vendor, and that the action could not be maintained. **ELLIS v. GOULTON** — **C. A. [1893] 1 Q. B. 350**



**VENDOR AND PURCHASER (Deposit)—contd.**

— Recover deposit, Action to—Contract for sale of lease—Act of bankruptcy by vendor before completion.

See *BANKRUPTCY*. 188.

— Return of deposit refused—Condition restricting objections to title—Bad title shewn aliunde.

See *VENDOR AND PURCHASER—Conditions of Sale*. 8.

**Interest.**

52. — *Contract for sale of lands—Delay in completion—Defect in title unknown to vendor—"Default"—Interest.*

A clause in a contract for the sale of lands provided that, if from any cause whatever other than the "default of the vendor," the purchase should not be completed by the day fixed, the purchaser should pay interest until completion. Upon investigation of the title a defect in it was discovered by the vigilance of the purchaser's advisers, which was not known to or suspected by the vendor when he entered into the contract, and the time occupied in remedying the defect delayed the completion of the purchase for nearly three months after the day fixed. The purchaser did not have, and keep, his money ready at the proper time, making no interest of it:—

*Held*, affirming the decision of *Romer J.*, [1898] 1 Ch. 433, that, there being no want of reasonable care on the part of the vendor and no abstinence from doing anything that he ought to have done, the delay was not attributable to his "default," and that the purchaser must pay interest until completion.

*In re Young and Harston's Contract*, (1885) 31 Ch. D. 168, 174, and *Williams v. Glenton*, (1866) L. R. 1 Ch. 200, observed upon by *Collins L.J.* *In re Woods and Lewis's Contract*

C. A. [1898] 2 Ch. 211

— Purchaser in possession—Specific performance—Interest.

See *VENDOR AND PURCHASER—Contract*. 33.

— Rents and profits in lieu of interest.

See *VENDOR AND PURCHASER—Contract*. 34.

53. — *Setting aside sale—Sale by liquidator of undertaking of company—Fiduciary relation—Concealment—Liability of liquidator—Account of profits—Interest on profits.*

Upon the setting aside of a sale by a trustee of trust property to himself, and the reconveyance of the property to the beneficiaries, it is not the practice of the Court to charge the trustee with interest on the rents and profits received by him since the date of the sale.

The practice is correctly stated in *Lewin on Trusts*, 10th ed. p. 558.

Where a liquidator sold the undertaking of the co. nominally to a new co., but really to himself, and the sale was set aside on the ground of concealment, and the property ordered to be reconveyed to the old co.:—

*Held*, that the liquidator and the new co. were not chargeable with interest on profits

**VENDOR AND PURCHASER (Interest)—contd.**

received by them from the business of the new co. and withdrawn by them from the business.

*SILKSTONE AND HAIGH MOOR COAL CO. v. EDEY*  
Stirling J. [1900] 1 Ch. 167

54. — *"Wilful default."*

Where the conditions of sale provided that "if from any cause whatsoever other than the wilful default of the vendor," purchase-money was not paid on a certain date, the purchaser was to pay interest, and stated that the property was purchased under a local Act of 1824, but, as a matter of fact, a material portion of the property was acquired under a later Act, held by *Chitty J.* that the vendor's omission in not discovering that the whole was included in the 1824 Act was not "wilful default" within the condition:—

*Held*, by C. A., that the delay was really occasioned by voluntary delay of the purchaser in sending in requisitions and in examining the deposited plan referred to in the Act of 1824, and to his inability to find the purchase-money, and that he was liable to interest from the fixed date:—

*Held*, also (*Kay L.J. diss.*), that there had not been wilful default. What is "wilful default," discussed. *In re London (Mayor of) and Tubb's Contract* — C. A. [1894] 2 Ch. 524

NOTE.—What is "wilful default." See also

(a) *In re Hetling and Merton's Contract*, C. A. [1893] 3 Ch. 269;

(b) *In re Wilson's and Stevens' Contract*, [1894] 3 Ch. 546, 550;

(c) *In re Earl of Strafford and Maples*, C. A. [1896] 1 Ch. 235;

(d) *North v. Percival*, [1898] 2 Ch. 128;

(e) *In re Woods and Lewis's Contract*, [1898] 2 Ch. 211.

**Lien.**

— Glebe—Purchase by trustee—Non-payment of purchase-money—Remedy against owners of settled estates.

See Nos. 56, 56A, below.

— Rescission after order for specific performance—Lien—Purchaser's power to rescind.

See *VENDOR AND PURCHASER—Rescission*. 59.

55. — *Unpaid purchase-money—Vendor's lien—Personality—Share of proceeds of sale—Lunacy—Lunatic not so found—Appointment of receiver—Rights of third parties—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 116.*

A vendor of personal estate is entitled to a lien for unpaid purchase-money on the property sold, e.g., when that property is a share of the proceeds of sale of leasehold property held by the trustees of a will upon trust for sale and division of the proceeds among specified persons.

An order in *Lunacy* under s. 116 of the *Lunacy Act, 1890*, authorizing a person therein specified in the name and on the behalf of the lunatic to receive and give a discharge for all sums of money due to him, does not affect rights enforceable against the lunatic's property at law or in equity (such as a vendor's lien for unpaid

**VENDOR AND PURCHASER (Lien)—continued.**  
purchase-money), previously acquired by third persons.

Such an order deals only with the Lunatic's equitable interest in his property.

*In re Winkle*, [1894] 2 Ch. 519, explained and distinguished. *DAVIES v. THOMAS*

C. A. [1900] W. N. 151; [1900] 2 Ch. 462

56. — *Unpaid purchase-money—Vendor's lien—Specific performance—Purchase of land by trustee of settled estates—Glebe—Entry by tenant for life—Payment of interest on purchase-money—Non-payment of principal—Remedy against owners of estates—Trustee's right of indemnity—Subrogation.*

In 1873 the vicar of a parish, with the consent of the patron of the living and the approval of the Eccles. Commrs., contracted, under the powers of the Ecclesiastical Leasing Acts, 1842 and 1858, to sell the glebe land of the vicarage for 24,963*l.* to the trustee of a will by which estates were devised in strict settlement. The then tenant for life and the Commrs. were parties to the contract. Under the will the trustee held the testator's personal estate upon trust for investment in the purchase of land to be settled to the same uses as the settled estates. The title was accepted, and the tenant for life, with the approval of the trustee, entered into possession of the glebe land and paid the vicar interest on the purchase-money, and this payment was continued by successive tenants for life to the vicar and his successor until 1896, the purchase-money not having been paid. At the date of the contract the trustee had no trust funds under his control available for the payment of the purchase-money, the whole or nearly the whole of the testator's personal estate remaining after investments in land having been advanced upon the security of policies of insurance upon the life of the third tenant for life of the estates, who did not die till many years afterwards. In 1896, the purchase-money not having been paid, the Commrs. brought an action, against the then tenant for life, the personal representatives of the trustee who had entered into the contract, and the then trustees of the settled estates, for the specific performance of the contract, or for an account and a declaration that the plts. were entitled to a vendor's lien on the land sold and the enforcement of the lien. The then vicar was made a deft., and the then tenant in tail was afterwards added as a deft. The glebe land had become of much less value than the price agreed to be given for it. The estate of the trustee who had entered into the contract had been distributed after proper statutory advertisements. The estates had been disentailed and resettled, and the money secured by the policies had been also disentailed, and had been distributed by the trustees of the resettlement among the persons entitled thereto:—

*Held*, that, the contract for the purchase of the glebe land having been made at a time when the trustee had no funds under his control available for the payment of the price, and it being uncertain what the value of the land might be at the time when he would be in a position to pay for it, the contract was a speculative one not authorized by the trust for investment in land;

**VENDOR AND PURCHASER (Lien)—continued.**  
that consequently the trustee had no right to an indemnity out of the settled estates, and that the plts. had therefore no right by subrogation; that the plts. had no remedy against the owners of the settled estates; and that their only remedy was by a lien for the unpaid purchase-money upon the land sold.

Decision of Byrne J., [1899] W. N. 140; [1899] 2 Ch. 729, affirmed. *ECCELESIASTICAL COMMRS. v. PINNEY.*

[1900] W. N. 179; C. A. [1900] 2 Ch. 736

56A. — *Unpaid purchase-money—Vendor's lien—Glebe—Contract for sale by vicar—Entry by purchaser—Payment of interest on purchase-money—Non-payment of principal—Ecclesiastical Commissioners—Action by—Specific performance—Ecclesiastical Licensing Acts, 1842 (5 & 6 Vict. c. 108) and 1858 (21 & 22 Vict. c. 57).*

In 1873 a vicar, with the approval of the Eccles. Commrs. and with the consent of the patron of his living, agreed to sell the glebe lands of the vicarage under the powers of the Ecclesiastical Leasing Acts, 1842 and 1858, for 24,963*l.* to the trustee of a settled estate who had power to invest trust funds in the purchase of land.

The contract was entered into with the consent of the then tenant for life of the settled estate, and the Eccles. Commrs. were parties to and executed it.

The title was accepted, and the then tenant for life entered into possession, and paid the vicar interest on the purchase-money. The vicar died, the estate devolved, and payment of the interest (which was more than an investment of the purchase-money would have produced) was continued by the tenant for life for the time being to the vicar for the time being until 1896, when, the purchase-money being still unpaid, the Eccles. Commrs. brought an action against the present vicar, the tenant for life, and the legal personal representatives of the trustee, for specific performance of the contract and damages, or an account and a declaration that they were entitled to a lien on the lands and to enforcement thereof:—

*Held*, that it was the duty of the plts. to see that the powers given by the Ecclesiastical Leasing Acts were properly applied, and that they had good ground of action. Action remitted for trial.

The judgment of Bigham J., sitting for Byrne J., reversed. *ECCELESIASTICAL COMMRS. v. PINNEY* - - C. A. [1898] W. N. 150 (6); [1899] 1 Ch. 99

#### Lunacy.

See Cases under LUNACY—Sales.

#### "Outgoings."

See Cases under VENDOR AND PURCHASER—Charges and Outgoings.

#### Parcels.

— Identity of parcels—Admissibility of parol evidence.

See VENDOR AND PURCHASER—Contract.  
30.

**VENDOR AND PURCHASER (Parcels)—contd.**

— Overhanging building.

*See* VENDOR AND PURCHASER—Contract.  
31.**Principal and Agent.****57. — Instructions to sell—Real estate—Authority to sign contract—Specific performance.**

Instructions given by an owner of real estate to an agent to sell the property for him, and an agreement to pay a commission on the purchase price accepted, are an authority to the agent to make a binding contract, including an authority to sign an agreement for sale. *ROSENBAUM v. BELSON* - - *Buckley J.* [1900] W. N. 123 ; [1900] 2 Ch. 267

**Recitals.**

Effect of recitals in deed—Notice—Estoppel.

*See* RECITALS. 1.**Rescission.****58. — Abstract—Reasonable time for delivery—Notice fixing time.**

In a case where the vendor failed to deliver an abstract within a reasonable time, he was ordered to repay the deposit with interest at 4 per cent., and by way of damages the purchaser's costs of investigating the title. In this case fourteen days was considered a reasonable time within which to require delivery of an abstract. *COMPTON v. BAGLEY* *Romer J.* [1892] 1 Ch. 313

**59. — After order for specific performance—Purchaser's power to rescind—Lien.**

A vendor having made default in obeying an order for specific performance of a contract for sale of houses :—

*Held*, that the purchaser, notwithstanding the lien on the houses given him by the Court, had a right to rescind the contract. *BAKER v. WILLIAMS* - - *North J.* [1893] W. N. 14

**— Condition precedent—Specific performance—Mistake—"Wilful default."***See* VENDOR AND PURCHASER—Specific Performance. 71.**— Contract—Conditions of sale—Defective title—No title.***See* VENDOR AND PURCHASER—Conditions of Sale. 4.**60. — Contract—Title of trustee for sale who has purchased for himself—Effect of beneficiaries consenting—Effect of intermediate sale to a third party—Appeal from New South Wales.**

In an action by a purchaser of land against a vendor for rescission of contract :—

*Held*, that the title disclosed being that of a purchaser from himself as trustee for sale, it was inequitable to force it upon the plt.

A defence that, notwithstanding the form of the transaction, the deft. really derived title from the beneficiaries who assented to the transaction with full knowledge of all the circumstances must be proved by clear affirmative evidence to that effect.

A further defence that there had been an intermediate sale to a third person and a purchase by the trustee from him will not avail unless that sale were a completed one.

**VENDOR AND PURCHASER (Rescission)—contd.**

A trustee cannot adopt for his own benefit an executory contract to purchase to which he is a party as vendor: *Parker v. McKenna*, (1874) L. R. 10 Ch. 96. *WILLIAMS v. SCOTT*

P. C. [1900] A. C. 499

— Disorderly house—Property used as a.

*See* VENDOR AND PURCHASER—Specific Performance. 72.**61. — Error—Latent defect in title—Vendor's power to rescind—Right of way.**

An agreement provided (clause 6) that if any error should be found in the description of the property in the sched., the same should not annul the sale, but that compensation should be allowed therefor, and (clause 8) that if there should be any objection as to title, the vendor should be entitled to rescind. Subsequently a right of way, of which neither party was aware, was discovered over a portion of the property :—

*Held*, that the existence of the right of way was a latent defect in the title within clause 6, but that the error was also an objection to title within clause 8, and that the vendor was entitled to rescind. *ASHBURNER v. SEWELL*

*Chitty J.* [1891] 3 Ch. 405**— Error—Mistake in acreage—Specific performance.***See* No. 71, below.**62. — Failure to pay moneys due under agreement—Purchaser let into possession before completion—Action by vendor for rescission of agreement—Motion that purchaser give up possession in default of making payments due under agreement—Appointment of receiver.**

An agreement for the sale of a leasehold interest in land provided that possession should be given to the purchaser on payment of a specified part of the purchase-money, he undertaking to pay the rent and other outgoings, and also, on taking possession, paying to the vendor the cost of a new fence. The specified part of the purchase-money having been paid, the purchaser was let into possession, but he failed to pay the cost of the fence and did not pay the rent and taxes, so that the vendor had to pay them in order to prevent the forfeiture of the lease. The vendor commenced an action for rescission of the agreement on the ground that he had been induced to enter into it by misrepresentation, and moved in the action for an order on the deft. to deliver up possession of the land in default of his making the payments due under the agreement :—

*Held*, that the motion, seeking in effect the specific performance of some of the terms of the agreement, was inconsistent with the claim for rescission made by the writ, and must therefore be refused.

But a receiver was appointed for the purpose of securing the payments in question. *COOK v. ANDREWS* - - *North J.* [1897] 1 Ch. 266

**63. — Litigation—Effect of commencing—Power to rescind—Costs.**

Property was sold under conditions of sale empowering the vendor by notice to rescind the sale if any objection should be insisted on which

**VENDOR AND PURCHASER (Rescission) — continued.**

the vendor should be unable to remove, "notwithstanding any intermediate negotiation," and that on rescission the purchaser should be entitled to receive back his deposit without interest or costs. The condition was silent as to intermediate litigation. The purchaser insisted on an objection that the particulars misrepresented that the property was freehold, and that the title shewn was only to a term under an underlease; and on this ground he commenced an action on Nov. 30, 1896, for rescission of the contract, return of his deposit, and payment of the expenses of investigating the title.

Before further proceedings were taken the vendor, on Dec. 4, 1896, gave the purchaser notice of the rescission of the contract, and offered to repay the deposit. On the evidence it was held that the misrepresentation was not made out:—

*Held*, that the notice was in time, and that the purchaser was only entitled to a return of his deposit without interest, and to the costs of the action up to the time of the receipt of the notice to rescind, and that he must pay the deft.'s costs as from that date. *ISAACS v. TOWELL*

**Byrne J. [1898] 2 Ch. 285**

**64. — Litigation — Final judgment given adverse to the title—Power to rescind.**

Conditions of sale gave power for the vendors to annul the sale and return the deposit without compensation, if unable or unwilling to meet any requisition or objection, "notwithstanding any previous negotiation or litigation":—

*Held*, that the condition could not be construed to include a final judgment given adverse to the title, and therefore the vendors on rescinding were bound to pay the intending purchaser the cost of investigating the title. *In re ARBIE AND CLASS' CONTRACT* — **C. A. [1891] 1 Ch. 601**

**65. — Non-disclosure to purchaser—Absence of fraudulent intent—Rescission of contract—Town property—Local authority—Notices to pave, &c.—Service of notices on vendor before sale—Execution of works by local authority—Expenses—Charge on premises—Outgoings—Particulars of sale—Conditions of sale—"Omission in particulars"—Compensation—Misleading condition—Caveat emptor—Specific performance—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 257.**

The omission by a vendor, without fraudulent intent, to disclose, before sale, to the purchaser of town leasehold property the fact that he, the vendor, had been served by the local authority with the usual notices under the Public Health Act, 1875, to pave, &c., the street fronting the premises, is not such an "omission in the particulars" tending to depreciate the value of the property as to entitle the purchaser, if he completes his purchase, to compensation under the usual general condition, where the works are not executed by the local authority, and the expenses thereof do not therefore become a charge on the premises, until after the completion of the purchase.

But whether such an omission on the part of the vendor, even though without fraudulent intent, would have afforded the purchaser sufficient

**VENDOR AND PURCHASER (Rescission) — continued.**

ground for resisting specific performance of his contract, or for an action for rescission, *quære*.

A condition of sale indemnifying the vendor against expenses "in complying with any requirement enforceable against him and made after the sale by the local authority in respect of paving &c., the streets" is not such an implied statement that no requirement has been made by the local authority before the sale as to entitle the purchaser to relief on the ground of deception on discovering that notices under the Public Health Act, 1875, had been served on the vendor before the sale. *In re LEYLAND AND TAYLOR'S CONTRACT* **C. A. [1900] 2 Ch. 625**

**66. — Restrictive covenant—Forfeiture clause of premises used as an inn, alehouse, or spirit shop—Premises uninterruptedly used as a public-house for upwards of thirty years—Waiver—Leasehold premises.**

Summons by a purchaser of certain leasehold premises which had been sold under an Order of the Court, asking that she might be discharged from her purchase.

The premises, together with other premises, were held under a lease from the corporation of Newcastle, which contained a clause of forfeiture if the premises should at any time be used as an inn, alehouse, or spirit shop.

It appeared from the evidence that the premises had, with the knowledge of the corporation, been uninterruptedly used as a public-house for upwards of thirty years, and were so used at the time of the sale:—

*Held*, that the purchaser got a good title. *In re SUMMERSON*. **DOWTIE v. SUMMERSON**  
**Romer J. [1900] 1 Ch. 112, n.**

**67. — Restrictive covenant—Noise—Nuisance—Boys' school—Misrepresentation by vendor's agent.**

A deed of covenant of 1851, relating to a building estate, after forbidding certain offensive and noisy trades and businesses, provided that there should not be carried on "any trade or business or occupation whatsoever whereby any injurious offensive or disagreeable noise or nuisance shall or may be occasioned caused or made." The plt. entered into a contract for the purchase from the deft. of a house on this estate for the purpose of a boys' school, on the representation of the deft.'s agent that there was nothing in this deed which would prevent him from carrying on such a school on this property. On an action for rescission of the contract:—

*Held*, that the carrying on of the plt.'s school in an ordinary and reasonable way would be within the wording of the restrictive covenant, which could not be limited to trades or businesses ejusdem generis with those specifically mentioned; and that the plt., having been induced by a misrepresentation of fact made by the deft.'s agent to enter into this contract, was entitled in equity to rescission, even though the representation had not been made fraudulently. *WAUTON v. COPPARD*

**Romer J. [1899] 1 Ch. 92**

**68. — Restrictive covenant prohibiting sale of beer and spirits—Continuing covenant broken for**

**VENDOR AND PURCHASER (Rescission) —**  
*continued.*

*an uninterrupted period of twenty-four years—Waiver—Freehold premises.*

By a conveyance dated in 1874, a certain plot of land was conveyed subject to a covenant that no dwelling-house, shop, or other building to be erected on the land should at any time thereafter be used as an inn, tavern, or beer-house.

Shortly after the date of the conveyance beer and spirits were sold in one of the houses erected on the land, and continued to be openly sold for upwards of twenty-four years:—

*Held*, in an action by a purchaser to rescind a contract for sale of that house on the ground of the existence of this restrictive covenant, that it must be presumed from the uninterrupted user of the premises as a beerhouse for twenty-four years, that there had been a waiver or release of the covenant.

*Gibson v. Doeg*, (1857) 2 H. & N. 615, discussed and followed. *HEFWORTH v. PICKLES*

*Farwell J.* [1900] W. N. 216; [1900] 1 Ch. 108

— Right to obtain—Undisclosed restrictive covenants—Form of conveyance.

*See VENDOR AND PURCHASER—Conveyance.* 48.

69. — *Vendor's power to rescind on persistence in requisitions—Wilful delay—Negotiations with third party.*

Where the vendor may rescind on requisitions which he is not prepared to comply with being persisted in, he must exercise that right in good faith. If he does not let the purchaser know whether the contract is to go on or no, and still further if he meanwhile negotiates with third parties, the purchaser will be entitled to the return of the deposit with interest and costs. *SMITH v. WALLACE* *Romer J.* [1895] 1 Ch. 385

**Specific Performance.**

*See also under SPECIFIC PERFORMANCE and VENDOR AND PURCHASER, passim.*

70. — *Compensation—Open contract—Restrictive covenants.*

The jurisdiction to enforce specific performance with compensation for defects on a vendor, in cases where the contract is silent as to compensation, rests on the equitable estoppel referred to in *Mortlock v. Buller*, (1804) 10 Ves. 292, 315; 7 R. L. 417, and *Castle v. Wilkinson*, (1870) L. R. 5 Ch. 534, 537, namely, that where a vendor has represented and contracted to sell an estate as his own, and the purchaser has relied on the representation, the vendor cannot afterwards be heard to say he has not the entirety.

Compensation for restrictive covenants being incapable of assessment, the relief is inapplicable.

Dictum of *Jessel M.R.* in *Cato v. Thompson*, (1882) 9 Q. B. D. 616, 618, approved and followed.

*Semble*, to avoid hardship the relief should be confined to cases where the actual subject-matter is substantially the same as that stated in the contract. *RUDD v. LASCELLES*

*Farwell J.* [1900] W. N. 78; [1900] 1 Ch. 815

71. — *Condition precedent—Mistake in acreage*

**VENDOR AND PURCHASER (Specific Performance)—continued.**

—*Memorandum of agreement—“Subject to approval of form of agreement”—Rescission—Statute of Frauds (29 Car. 2, c. 3)—Form of order—Interest—“Wilful default.”*

By “heads of agreement” between a vendor and purchaser it was agreed that the purchaser should purchase “36 acres of land,” the boundaries of which were thereby accurately defined on three sides but not on the fourth, for 3600*l.*, “subject to approval of conditions and form of agreement by purchaser’s solicitor.” The vendor afterwards discovered that the land which he supposed formed the subject-matter of the contract measured out at 42 acres, and required the purchaser to take the whole 42 acres at 4200*l.*, being 100*l.* per acre. The purchaser, however, insisted that the contract should stand for the sale of 36 acres only, and brought an action for specific performance on that footing:—

*Held*, that the purchaser was entitled to specific performance on three grounds: (1.) that the fourth boundary could be readily fixed so as to include 36 acres; (2.) that the “heads of agreement” constituted a complete contract, and that the clause “subject to approval, &c.,” was not a condition precedent to a complete contract; and (3.) that there was no such mistake as entitled the vendor to rescission.

*FORM OF ORDER.*—The contract contained a stipulation that if the purchase was not completed by the day named, the purchase-money should bear interest at 4 per cent. from that day until actual completion:—

*Held*, that the vendor’s repudiation of the contract by resisting the purchaser’s claim to specific performance did not constitute such “wilful default” as to disentitle him to interest. *NORTH v. PERCIVAL Kekewich J.* [1898] 2 Ch. 128

— Delay—Sale of reversion—Equitable interest.

*See SPECIFIC PERFORMANCE.* 4.

72. — *Disorderly house, Property used as a—Rescission of contract.*

Property sold by auction under the description of an eligible freehold property for investment, comprising a house and shop let on a quarterly tenancy, was discovered before completion to be used by the tenant as a disorderly house. Neither the vendors nor the purchaser knew previously that the house was being improperly used. The agreement of tenancy contained a covenant by the tenant not to use the house as a disorderly house, and a proviso for re-entry in case of breach of covenant:—

*Held*, (1.) (reversing *Cozens-Hardy J.*, [1899] W. N. 36 (12); [1899] 1 Ch. 879) that specific performance ought not to be granted, inasmuch as the purchaser, unless he took steps to prevent the improper use of the property by the tenant, would become liable as lessor to criminal proceedings under the Criminal Law Amendment Act, 1885, by reason of the state of the property at the time of the sale; (2.) (affirming *Cozens-Hardy J.*) that this was not a ground for rescission of the contract.

*Lucas v. James*, (1849) 7 Hare, 410, distinguished. *HOPE v. WALTER*

*G. A.* [1900] W. N. 20; [1900] 1 Ch. 257

**VENDOR AND PURCHASER (Specific Performance)—continued.**

73. — *Public-house—Contract—Memorandum in writing—Reference to formal contract—Usual public-house contract—Uncertainty.*

Vendor's action for specific performance of an alleged agreement to buy a leasehold public-house. The alleged agreement signed by both parties stated (*inter alia*) . . . "The usual public-house contract to be entered into within the next four days. The completion to be on or before one month from this date." Before any "usual public-house contract" was entered into, the deft., treating the matter as still in negotiation, withdrew from the proposed purchase, the cheque given for 100*l.* in part payment being stopped.

It appeared from the evidence that the usual public-house contract would contain a covenant by the vendor not to carry on a similar business within a distance varying from one-third of a mile to a mile in different cases, a sum being fixed as liquidated damages for breach of such covenant. Neither the distance nor the amount of liquidated damages had been settled in the present case:—

*Held*, that the Court would have no difficulty in determining on proper evidence what would be the usual and reasonable protected distance, and liquidated damages in the particular case:—

*Held* also, that the contract was complete on February 1, and must be specifically performed. *LUCAS v. HALL* - *Kekewich J.* [1899] W. N. 92

— Repudiation of contract by purchaser—Purchase-money payable by instalments—Right of vendor to retain instalments paid.

See **VENDOR AND PURCHASER—Contracts.** 35.

— Specific performance.

See also **Cases under SPECIFIC PERFORMANCE.**

**Title.**

74. — *Adoption of sale—Mistake as to title.*

A., as heir-at-law, mortgaged land to B. Both A. and B. knew that the former owner had left a will, but believed that there was an intestacy as to the land mortgaged. B. subsequently sold the land under the power of sale. Subsequently the beneficiaries under the will discovered the mistake, and claimed the purchase-money from B.:—

*Held*, that the mortgage deed was worthless and that the beneficiaries were entitled to adopt B.'s sale, and follow the purchase-money, subject to B.'s charges, and if the money lent were for the benefit of the estate, subject to the repayment of the money. *In re CHAMPION. DUDLEY v. CHAMPION* - *C. A.* [1893] 1 Ch. 101

75. — *Adverse rights—Notice of tenancy.*

A tenant's occupation of land affects a purchaser with notice of all that tenant's rights, but not of his lessor's title or rights. Actual knowledge that the rents are paid by the tenants to some person whose receipt is inconsistent with the title of the vendor is notice of that person's rights; but the mere fact that the rents are known to be paid to an estate agent, according

**VENDOR AND PURCHASER (Title)—continued.**  
to the usual practice, affects the purchaser with no notice at all.

*Barnhart v. Greenshields*, (1853) 9 Moo. P. C. 18, and *Knight v. Bowyer*, (1858) 23 Beav. 609; 2 D. & J. 421, followed.

*Mumford v. Stohwasser*, (1874) L. R. 18 Eq. 556, not followed. *HUNT v. LUCK*

*Farwell J.* [1900] W. N. 250;  
see [1901] 1 Ch. 45

76. — *Condition—Reverter—Common law condition—Shifting use—Rule against perpetuities.*

In 1898 a contract was entered into on behalf of the present trustees of Hollis' Hospital for the sale of certain freehold property belonging to the hospital.

The property contracted to be sold formed part of certain property which had been conveyed by H. to trustees upon trusts for the hospital by deeds of lease and release dated May 17 and 18, 1726. The release contained a proviso that if at any time thereafter the premises thereby conveyed or any part thereof, or the rents, issues, and profits of the same or of any part thereof, should be employed or converted to or for any other uses, intents, or purposes than thereinafore mentioned, then and from thenceforth all and every the premises thereinbefore conveyed should revert to the right heirs of H. party thereto.

The title had been accepted and the draft conveyance approved when a letter was received by the purchaser's solicitors from A., one of the trustees of the hospital, intimating that as the heir-at-law of H. he had not concurred in the sale, and calling their attention to the clause in the release under which if the sale was carried out the property would revert to him.

A summons was thereupon taken out by the purchaser for a declaration that a good title to the hereditaments contracted to be sold had not been made:—

*Held*, that the condition was in terms and form a true common law condition, and was void as being obnoxious to the rule against perpetuities.

The dictum of Jessel M.R. in *In re Macleay*, (1875) L. R. 20 Eq. 186, and of North J. in *Dunn v. Flood*, (1883) 25 Ch. D. 629, affirmed by C. A. (1885) 23 Ch. D. 586, followed.

The remarks in *Challis* on the Law of Real Property, 2nd ed. pp. 174–177, upon the question whether the rule against perpetuities applies to common law conditions in defeasance of a freehold discussed at length and dissented from.

*Held*, further, that in view of the notice received from A. claiming as heir-at-law of H., and who declined to be bound by the decision, the title was not one which could be forced upon an unwilling purchaser.

*In re Thackwray and Young's Contract*, (1888) 40 Ch. D. 34, followed. *In re TRUSTEES OF HOLLIS' HOSPITAL AND HAGUE'S CONTRACT*

*Byrne J.* [1899] W. N. 109; [1899] 2 Ch. 540

77. — *Condition limiting commencement of title—Prior title not to be objected to—Right to object to prior title as shewn aliunde.*

A sold to B. what purported to be an estate in fee simple, subject to the condition "that the

**VENDOR AND PURCHASER (Title)—continued.** title shall commence with a conveyance on sale dated '1869,' and the prior title, whether appearing in any abstracted document or not, shall not be required, investigated or objected to." B. objected that by reason of a will prior to 1869, which he had discovered aliunde, the vendors only had a title to a life estate:—

*Held*, that the purchaser was bound by the condition and was not entitled to a declaration that the vendors had not shewn a good title and to the return of his deposit, but *quære* whether A. could enforce specific performance. *In re NATIONAL PROVINCIAL BANK OF ENGLAND AND MARSH* - - North J. [1895] 1 Ch. 190

**78. — Condition precedent—Waiver.**

A stipulation in a memorandum that the agreement was "subject to the preparation by the vendor's solicitor and completion of a formal contract" cannot be waived by the vendor as being intended for his benefit alone, so as to constitute the rest of the memorandum a final contract enforceable against the purchaser. *LLOYD v. NOWELL* - *Kekewich J.* [1895] 2 Ch. 744

— Condition restricting objections to title—Bad title shewn aliunde—Deposit.

*See VENDOR AND PURCHASER — Conditions of Sale.* 8.

**79. — Conveyance—Concurrence of all executors—Real estate—Land Transfer Act, 1897** (60 & 61 Vict. c. 65), s. 1; s. 2, sub-s. 2; s. 24, sub-s. 2.

Where a testator dies subsequently to the Land Transfer Act, 1897, having appointed executors, his real estate vests in all the executors, and not only in those who prove the will or act in the administration of the estate; and the executors who have proved the will cannot convey the legal fee simple without the concurrence of their co-executor who has not proved. *In re PAWLEY AND LONDON AND PROVINCIAL BANK* *Kekewich J.* [1899] W. N. 214; [1900] 1 Ch. 58

— Conveyance, Form of—Practice—Summons.

*See VENDOR AND PURCHASER — Conveyance.* 41.

**80. — Copyholds—Devise to trustees—Legal estate—Estate commensurate with purposes of trust.**

X. devised copyholds to trustees, their heirs and assigns, upon trust, to pay the rents thereof to A. for life, and after the death of A. to stand seised of them in trust for such persons as A. should appoint. A.'s will appointed trustees and directed them to sell the copyholds and assure them for purchaser, &c. X.'s trustees were admitted to the copyholds:—

*Held*, that (1) under X.'s will his trustees took an estate of inheritance in quasi fee simple; (2) that A.'s will operated as an exercise of the power of appointment; (3) that the legal estate in the copyholds remained vested in the surviving trustee of X.'s will, and that a title thereto must be deduced accordingly. *In re TOWNSEND'S CONTRACT* - *Stirling J.* [1895] 1 Ch. 716

Discussed by *Kekewich J.* *North v. Percival*, [1898] 2 Ch. 132.

**VENDOR AND PURCHASER (Title)—continued.**

— County courts—Action involving question of title to hereditament.

*See COUNTY COURT—Costs.* 17.

**81. — Covenants for title—Conveyance as "beneficial owner"—Secret incumbrances—Conveyancing Act, 1881** (44 & 45 Vict. c. 41), s. 7, sub-s. 1 (a).

A. granted a lease and afterwards took a release (both for value) of lands to B. Between the lease and release, B. granted sub-leases by way of mortgage which he did not disclose to A. Subsequently A. conveyed to C.'s predecessor in title:—

*Held*, that A. was liable to C. for breach of the covenants of title for quiet enjoyment and freedom from incumbrances applied under the Conveyancing Act, 1881, s. 7 (1) (a). *DAVID v. SABIN* - - C. A. [1893] 1 Ch. 523

**82. — Defect of title appearing on conveyance—Incumbrance—Covenants for title.**

The M. Co. purchased from X. land to which she derived title under the will of Y., the goodness of the title depending on the construction of the will, which was recited in full in the conveyance to the co. X. conveyed as an owner in fee, and covenanted for title, with indemnity against any person legally or equitably claiming under X. or Y. After X.'s death the title was decided to be defective, and the co. had to pay the purchase-money over again:—

*Held*, that covenants for title apply to all defects within their terms, whether such defects are known to the purchaser or not, and that the co. were entitled to be indemnified by the executors of X. *PAGE v. MIDLAND RY. CO.*

C. A. [1894] 1 Ch. 11

**83. — Defective exercise of statutory power of sale—Specific performance—Mortgagee vendor—Conveyancing Act, 1881** (44 & 45 Vict. c. 41), s. 19, sub-s. 1 (i); ss. 20, 21, sub-s. 2.

The provision in sub-s. 2 of s. 21 of the Conveyancing Act, 1881, that where a conveyance is made in professed exercise of the power of sale conferred on mortgagees by the Act, the title of the purchaser shall not be impeached on the ground that the power was improperly exercised, does not apply until the conveyance has been obtained; consequently, it does not preclude a person who has contracted to purchase from a mortgagee purporting to sell under his statutory power of sale from inquiring whether the vendor was in a position to exercise the power, nor from proving aliunde, in answer to an action for specific performance, that the power was improperly exercised.

*Dicker v. Angerstein*, (1876) 3 Ch. D. 600, explained and distinguished. *LIFE INTEREST AND REVERSIONARY SECURITIES CORPORATION v. HAND-IN-HAND FIRE AND LIFE INSURANCE SOCIETY*

*Stirling J.* [1898] 2 Ch. 230

— Defect in title unknown to vendor—"Default."

*See VENDOR AND PURCHASER—Interest.* 54.

— Defective title by reason of recent decision of the Court—Specific performance—Leave to defend.

*See PRACTICE—Pleadings.* 161.

**VENDOR AND PURCHASER (Title)—continued.**

— Disclaimer—Partial disclaimer of trusts.

See **TRUSTEE—Disclaimer.** 49.

**84. — Executor—Sale of leaseholds by executor—Lapse of twenty years from testator's death—Executor's power to sell.**

The rule that after twenty years from the death of a testator the purchaser of real estate is put upon his inquiry as to the executor's right to sell, does not apply to the case of a sale of leaseholds. A contract for sale of leaseholds provided that the title should commence with a lease to T. dated 1852, and that the purchasers should not require an abstract of an earlier title. The abstract disclosed that the lease was granted to T. as executor of P. in consideration (inter alia) of a surrendered term. Nothing was shewn as to the date of P.'s death. The next abstracted deed was an assignment in 1878 by T. as beneficial owner to the vendor:—

*Held*, that in the absence of evidence to the contrary T. must be presumed to have acted in the discharge of his duty as executor, and that neither the lapse of time nor the fact that he did not execute the deed of 1878 as executor were sufficient to raise the presumption that he acted otherwise:—

*Held*, therefore, that the abstract shewed a good title. *In re VENN AND FURZE'S CONTRACT*

**Stirling J. [1894] 2 Ch. 101**

**85. — Gavelkind lands—Enfeoffment—Insufficient consideration—Infant customary heir.**

A vendor furnished to the purchaser as part of his title to gavelkind lands certain customary feoffments with livery of seisin made to him when he purchased the property by infant co-heirs in gavelkind at the age of fifteen. It appeared on the face of the title that the purchase-money paid by him to the infants was not the full value of their shares, and that they were still under twenty-one:—

*Held*, that the title could not be forced upon the purchaser. *In re MASKELL AND GOLDFINCH'S CONTRACT*

**Stirling J. [1895] 2 Ch. 525**

**86. — Leaseholds—Deeds recited but not abstracted in chief—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), ss. 1, 2—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 3.**

On a sale of leaseholds the vendor abstracted and produced the deed creating the term, the deed (1844) of assignment to him and subsequent deeds, but not a deed of 1840 assigning the legal estate to trustees, which was recited in the deed of 1844:—

*Held*, that, as forty years' good title was shewn, the deed of 1840 need not be abstracted in chief. Although it is necessary to abstract and produce the deed creating a term, it is not necessary to abstract or produce deeds dealing with the term prior to the necessary commencement of the title, unless for some good reason arising from the special circumstances of the case. **WILLIAMS v. SPARGO** — **Kekewich J. [1893] W. N. 100**

**87. — No title shewn—Damages—Costs of investigating title.**

In a purchaser's action specific performance with an inquiry as to title was decreed. The writ and statement of claim did not ask for damages or "further or other relief." On it

**VENDOR AND PURCHASER (Title)—continued.**

appearing that the defendant had no title, the Court, by way of damages, directed the return of the deposit with interest, and gave the purchaser his costs of the action and of the agreement and investigation of title. **PEARL LIFE ASSURANCE CO. v. BUTTENSHAW** **Chitty J. [1893] W. N. 123**

**88. — Notice of trusts of mortgage money—Mortgagee not one of the original trustees—Joint account clause—Objection—Sufficiency.**

A contract was entered into for the sale of property which was subject to a mortgage to two persons. The mortgage deed contained the usual statement that the money belonged to the mortgagees on a joint account. By inadvertence it was disclosed to the purchasers that the mortgage money was held on the trusts of a settlement of which the mortgagees were not the original trustees:—

*Held*, that the purchasers were entitled to require that it should be shewn that the mortgagees were the duly appointed trustees of the settlement.

*In re Harman and Uzbridge and Rickmansworth Ry. Co.*, (1883) 24 Ch. D. 720, distinguished.

*In re BLAIBERG AND ABRAHAMS*

**Kekewich J. [1899] W. N. 98; [1899] 2 Ch. 340**

**89. — Objections to title—Delay of Sale—Constructive notice.**

Conditions fixed the commencement of title in 1852, and limited the time for requisitions. The purchaser, before completion, discovered a restrictive covenant created in 1847:—

*Held*, that the existence of the restrictive covenant was fatal, because the purchaser, by taking less than a forty years' title, would have had constructive notice of it, and would have been bound by it:—

*Held*, also, on the facts, that there was no delay in giving the vendor notice of the defect. *In re COX AND NEVE'S CONTRACT*

**North J. [1891] 2 Ch. 109**

**90. — Objections to title—Voluntary conveyance—Possible bankruptcy of settlor—Avoidance of settlement—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47—Fraudulent Conveyances Act (27 Eliz. c. 4).**

Trustees for sale under a voluntary settlement contracted to sell and agreed that the settlor should concur. The purchasers objected to the title:—

*Held*, that a sale by the trustees with the concurrence of the settlor would not avoid the dangers of the Bankruptcy Act, 1883, s. 47, and the title was not good. The Court suggested that the settlor should avoid the settlement (27 Eliz. c. 4) by selling directly to the purchasers and resettling the proceeds by directing payment to the trustees. *In re BRIGGS & SPICER*

**Stirling J. [1891] 2 Ch. 127**

See now the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21).

Overruled by C. A. *In re Carter and Kenderdine's Contract*, [1897] 1 Ch. 776.

**91. — Objections to title—Voluntary settlement—Title derived under.**

Whether A., in consideration of B.'s paying his debt and taking on himself a liability, con-



**VENDOR AND PURCHASER (Title)—continued.**

veyed his property in trust for C.; and B., in consideration of A. so conveying the property, agreed to pay A.'s debt and to take on himself a liability:—

*Held*, that there was a consideration moving from A. to B. and from B. to A., and that, therefore, the transaction did not amount to a voluntary settlement either by A. or B. within s. 47 of the Bankruptcy Act, 1883, and that C. could make a good title to the property. *In re DALE AND ELSDEN* - - - *Stirling J.* [1892] W. N. 56

92. — *Order of Court, Sale under—Protection of purchaser—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), s. 70, sub-s. 1.

Sect. 70, sub-s. 1 of the Conveyancing Act, 1881, which provides that "an order of the Court under any statutory or other jurisdiction shall not as against a purchaser be invalidated on the ground of (inter alia) want of jurisdiction," does not operate to give a good title to a purchaser at a sale under an order of the Court when the Court in making the order supposed that it was dealing with an interest belonging to a judgment debtor, though it in fact belonged to a person not a party to the proceedings and not bound by them.

Under such circumstances, notwithstanding the order of the Court and the provisions of s. 70, that person has a good title as against the purchaser.

*In re Hall Dare's Contract*, (1882) 21 Ch. D. 41, and *Mostyn v. Mostyn*, [1893] 3 Ch. 376, distinguished.

Decision of *Romer J.*, [1899] W. N. 26 (4); [1899] 1 Ch. 611, affirmed. *JONES v. BARNETT* C. A. [1900] W. N. 29; [1900] 1 Ch. 370

— Possessory title.

*See VENDOR AND PURCHASER—Conditions of Sale.* 6.

— Power of sale.

*See POWERS.* 34.

— Practice—Vendor and purchaser summons—Jurisdiction.

*See VENDOR AND PURCHASER—Conveyance.* 48.

— "Rent-charge" — Conveyance of land and easement to corporation reserving perpetual rent—Charge on rates and tolls.

*See RENT-CHARGE.* 4.

93. — *Restrictive covenant — Enforcement — "Assigns" — Meaning of.* The owner of a building estate inserted in his conveyances a covenant restricting the right of altering, &c., buildings without the consent of him, the grantor, his heirs or assigns:—

*Held*, that the word "assigns" did not include the purchaser of a small portion of the estate, and that such a purchaser could not enforce the covenant. *EVERETT v. REMINGTON* - - - *Romer J.*

[1892] 3 Ch. 148

94. — *Reversion — Reversioner unknown — Right to value of reversion after expiration of term — Lands Clauses Act*, 1845 (8 & 9 Vict. c. 18), s. 79.

Certain land was purchased compulsorily as freehold. On examination of the title the land was discovered to be held on a long term of which

**VENDOR AND PURCHASER (Title)—continued.**

a few years were still to run. The owner received compensation as leaseholder and the purchasers went into possession, paying into court the value of the reversion. Twelve years after the term had expired, the representative of the leaseholder, there being no other claimant, applied to have the reversion money paid out to him.

The Court refused the application, holding that the leaseholder was not in possession when the term expired and never had any inchoate possession of or title to the reversion. *GEDYE v. COMMS. OF WORKS* - - - *C. A.* [1891] 2 Ch. 630

— Review of order of Court of Appeal—Order declaring good title—Counter-claim.

*See PRACTICE—Review.* 179.

— Settlement.

*See Cases under SETTLED LAND and SETTLEMENT.*

95. — *Unwilling purchaser—Qualified covenant against assignment—Lessor's consent—Unreasonable refusal.*

The vendor was the lessee of a public-house. The lease under which the property was held contained a covenant against assigning without the consent of the lessor, with the usual qualification as to refusal in the case of a respectable and responsible tenant.

The vendor agreed to sell the property to the purchasers, who were brewers, under an open contract. The lessor refused to give his consent to the assignment, stating that the main ground of his objection was that he desired the house to remain a free house:—

*Held*, upon summons taken out by the purchasers asking for a declaration that a good title had not been shewn, that the title was not one which could be forced upon an unwilling purchaser. *In re MARSHALL AND SALT'S CONTRACT*

*Byrne J.* [1900] W. N. 105; [1900] 2 Ch. 202

96. — *Wife turning base fee into fee simple—Absolute acknowledgment.*

A base fee in remainder created by vendors when spinsters can be turned into a fee simple absolute by the vendors, if married after the Married Women's Property Act, 1882, without acknowledgment or the concurrence of the husbands. *In re DRUMMOND AND DAVIE'S CONTRACT*

*Chitty J.* [1891] 1 Ch. 524

**Title Deeds.**

97. — *Covenant to produce deeds—Contract for lease—Lessor's title—Right of lessee to acknowledgment or covenant for production—Vendor and Purchaser Act*, 1874 (37 & 38 Vict. c. 78), s. 2.

An agreement for a lease contained provisions that the lessor should deliver an abstract of title, and that the lease should contain the covenants and be in the form of the draft scheduled to the agreement. From the abstract it appeared that the property was mortgaged, but that the mortgagee had agreed to dispense with his concurrence in granting leases. The draft lease contained no acknowledgment for the production of the agreement as to leasing, and no covenant for production of deeds:—

*Held*, that the wording of the agreement excluded s. 2 of the Vendor and Purchaser Act,

**VENDOR AND PURCHASER (Title Deeds)—**  
*continued.*

1874, and that the lessee was entitled to the acknowledgment and covenant for production. *In re PURSELL AND DEAKIN'S CONTRACT*

**Chitty J. [1893] W. N. 152**

**98. — Custody of title deeds—Retention of part of estate by vendor—Contract for sale of land—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 5.**

A mortgagee, in exercise of the power of sale contained in his mortgage, which comprised freehold land and also some policies of insurance on the life of the mortgagor, sold the land and retained the policies:—

*Held*, that, notwithstanding rule 5 in s. 2 of the Vendor and Purchaser Act, 1874, the purchaser of the land was entitled to have the mortgage deed delivered over to him on completion. *In re FULLER AND LEATHLEY'S CONTRACT*

**North J. [1897] W. N. 54 (6)**

**99. — Custody of title deeds—Sale of land—Retention of part of estate by vendor—Retention of personal estate—Insurance policies—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 5.**

Rule 5 in s. 2 of the Vendor and Purchaser Act, 1874, that "where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents":—

*Held*, to apply only to land, including leaseholds.

Consequently, when a mortgage comprised land and policies of insurance on the life of the mortgagor:—

*Held*, that on a sale of the land by the mortgagee, he retaining the policies, the purchaser was entitled to have the mortgage deed delivered to him. *In re WILLIAMS AND DUCHESS OF NEWCASTLE'S CONTRACT*

**North J. [1897] 2 Ch. 144**

— Custody of title deeds of trustees.

*See* Cases under TRUSTEE—Custody of Title Deeds, &c.

**100. — Expense of obtaining—Completion—Documents not in possession of vendor—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 6.**

Sub-s. 6, s. 3, of the Conveyancing and Law of Property Act, 1881, does not affect the ordinary right of a purchaser to have the title deeds handed over to him on completion, and the mere fact that obtaining the deeds for this purpose may cause the vendor trouble and expense is no answer to the purchaser's demand.

On an open contract the vendor must bear the expense of obtaining title deeds required by the purchaser to be handed over on completion, although such title deeds are not in the vendor's possession, and are not referred to in the abstract. *In re DUTHY AND JESSON'S CONTRACT*

**Romer J. [1898] 1 Ch. 419**

**101. — Lost deeds—Secondary evidence—Verification of abstract.**

A contract was entered into for the sale of lands in Yorkshire, and after an abstract of title had been prepared and examined with the original deeds, those deeds were lost by the vendor's solicitor. There was no condition providing for the

**VENDOR AND PURCHASER (Title Deeds)—**  
*continued.*

non-production of lost deeds, and the vendor in verification of the abstract produced, as secondary evidence, copies of the memorials of the several deeds in the Yorkshire Registry, and certain documents which purported to be copies of the completed drafts of the original deeds, but which were not proved to have been compared with them. The vendors also produced statutory declarations verifying a printed abstract of the missing deeds which shewed all the recitals, and contained the words "duly executed and attested" as to the principal deed. And they also offered statutory declarations by some of the parties to the deed that they had respectively executed them; but they were unable to prove the execution by one material party of the conveyance which was the root of title:—

*Held*, that the evidence adduced by the vendors was not such as a purchaser could be compelled to treat as satisfactory, that they had not shewn a good title within a reasonable time, and that the purchaser was accordingly entitled to be discharged from the contract and to have his deposit returned.

*Decision of Stirling J.*, [1898] W. N. 62 (14), affirmed. *In re HALIFAX COMMERCIAL BANK, LD., AND WOOD*

**C. A. [1898] W. N. 174 (16)**

**102. — Missing document of title—Expense of searching for documents not in vendor's possession—Production of documents—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 6.**

Unless the contract for sale contains provisions inconsistent with s. 3, sub-s. 6, of the Conveyancing Act of 1881, the expense of searching for all documents not in the vendor's possession and required by the purchaser for the purpose of verifying the abstract, not excepting even the deed (e.g. an underlease), which is the root of the vendor's title, must be borne by the purchaser.

The decision of Stirling J. affirmed. *In re STUART AND OLIVANT AND SEADON'S CONTRACT*

**C. A. [1896] 2 Ch. 328**

**VENTILATING SHAFT—Damage from working—Damage from construction.**

*See* RAILWAY—Ventilating Shafts. 66.

**VENUE—Abolition—Practice.**

*See* PRACTICE—Trial. 270, 271.

— Trespass to land in foreign country.

*See* PRACTICE—Trial. 270.

**VERBAL ADMISION.**

*See* PRACTICE — Payment into Court. 128.

**VERDICT—Setting aside—Jurisdiction of Court as to.**

*See* NATAL. 6.

**VERIFICATION — Abstract — Lost deeds — Secondary evidence.**

*See* VENDOR AND PURCHASER — Title Deeds. 101.

— Exhumation for purposes of.

*See* ECCLESIASTICAL LAW. 26.

**VERMIN—Local authorities permitted to provide cleansing and disinfection for persons infested with vermin.** *See* 60 & 61 Vict. c. 31.

**VERMIN**—*continued.*

— Rabbits—Gun licence.

*See* REVENUE—Gun Licence. 50.

— Vermin-proof swing gates—Vermin Destruction Act, 1890—Law of Victoria.

*See* VICTORIA. 18.**VESSELS.***See* Cases under SHIPPING.**VESTED INTERESTS**—Divesting—Construction of will—Alternative devise.*See* WILL—Vested Interests. 210.**VESTING**—Streets—Subsoil—Extent of ownership.*See* LONDON—Streets. 91.

— Succession.

*See* Cases under SCOTTISH LAW—Succession.

— Will—Construction of.

*See* Cases under WILL.**VESTING DECLARATION**—New trustees—"Trustees for performing the trust"—Mortgage.*See* TRUSTEE—Vesting Order. 108.**VESTING ORDER**—Lunatic's property.*See* LUNACY—Vesting Order.

— Trustee Acts.

*See* TRUSTEE—Vesting Order.

— Underlessee, Protection of—Forfeiture—Variation in amount of rent—Discretion of Court.

*See* LANDLORD AND TENANT. 63, 64.**VESTRY.***The civil powers of vestries in rural parishes were transferred to the parish councils and parish meetings by the Local Government Act, 1894 (56 & 57 Vict. c. 73).***METROPOLITAN VESTRIES, ABOLITION OF.]** *See* London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4.1. — Election—Vestry clerk—*Quo warranto*—*Vestries Act*, 1850 (13 & 14 Vict. c. 57), ss. 6, 7.A writ of *quo warranto* will lie to inquire into the validity of the election of a clerk to a vestry under the *Vestries Act*, 1850. *REG. v. BURROWS*  
Div. Ct. [1892] 1 Q. B. 399**VESTRYMAN.***See* VESTRY.**VETERINARY SURGEON.***Veterinary Surgeons Amendment Act*, 1900 (63 & 64 Vict. c. 24), amends the law.1. — *Qualified person*—"Veterinary forge"—*Veterinary Surgeons Act*, 1881 (44 & 45 Vict. c. 62), s. 17, sub-s. 1.A shoeing-smith not qualified as a veterinary surgeon who describes his place of business as a "veterinary forge" is liable to a penalty under s. 17, sub-s. 1, of the *Veterinary Surgeons Act*, 1881. *ROYAL COLLEGE OF VETERINARY SURGEONS v. ROBINSON* — Div. Ct. [1892] 1 Q. B. 557**VEXATIOUS ACTIONS ACT, 1896 (59 & 60 Vict. c. 51)**, prevents abuse of the process of the High Court or other Courts by the institution of vexatious legal proceedings.**VIBRATION**—Damage by vibration caused by lessor—Implied grant.*See* LANDLORD AND TENANT. 70.

— Injunction—Electric lighting—Right of reversioner to sue.

*See* INJUNCTION. 33.**VICAR.***See* Cases under ECCLESIASTICAL LAW.**VICARAGE HOUSE**—Application of purchase-money.*See* ECCLESIASTICAL LAW—Parsonage House. 53.**VICTORIA.****Law of Victoria.***See* Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), ss. 3, 6.

— Award—Lump sum—Evidence taken on matters not referred—Jurisdiction of Arbitrators.

*See* ARBITRATION—Award. 27.— Bankruptcy—Undischarged bankrupt—After-acquired property—Assignment of interest under will—*Bona fides*.*See* BANKRUPTCY—Undischarged Bankrupt. 255.1. — *Chinese immigration*—*Alien's rights*—*Collector of customs*—*Victorian Chinese Act*, 1881, s. 3.Where a master of a ship had offended against the *Chinese Act*, 1881, s. 3, by bringing more than the specified number of immigrants:—*Held*, that the collector of customs was justified in refusing to allow any immigrants to land:—*Held*, also, apart from the Act, that no alien has a legal right enforceable by action to enter British territory. *MUSGROVE v. CHUN TEEYONG TOY* — P. C. [1891] A. C. 2722. — *Company*—*Scheme of arrangement*—*Effect of*—*Imperial Joint Stock Companies Arrangement Act*, 1870 (33 & 34 Vict. c. 104), inapplicable to the Colonies—*Non-assenting Victorian creditor*.*Held*, that the *Joint Stock Companies Arrangement Act*, 1870, does not apply to the Colonies.

Accordingly a scheme of arrangement thereunder sanctioned by an English Court is quoad the Colonies a proceeding in a foreign court, and cannot be pleaded by the company in a Victorian Court as a defence to an action by a non-assenting Victorian creditor for the full amount of her claim.

*Gilbs v. Société des Métaux*, (1890) 25 Q. B. D. 399, approved. *NEW ZEALAND LOAN AND MERCANTILE AGENCY CO. v. MORRISON*

P. C. [1898] A. C. 349

3. — *Company*—*Trustees' power of investment*—*Deposits with banks*—*Companies Act*, 1890 (54 Vict. No. 1074), s. 384.Sect. 384 of the *Victoria Companies Act*, 1890, while authorizing the employment of bankers, does not on its true construction enlarge the powers of investment possessed by trustee companies in common with other trustees.*Held*, that the appellant co. was not authorized thereunder, or under its special Act, to invest

**VICTORIA (Law of Victoria)—continued.**

trust moneys on deposit at interest with banks.  
**PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA v. SWAN**

**P. C. [1898] A. C. 763**

4. — *Compensation for damage past and future*  
 — *Local Government Act, 1874* (38 Vict. No. 506),  
 s. 384.

Where a ditch or drain has been made under the powers of the section, an owner or occupier injuriously affected is entitled to have the compensation for present and prospective damages to his land assessed once for all, and the assessment is to be made irrespective of whether the powers have been negligently or properly exercised.  
**PRESIDENT, &C., OF COLAC v. SUMMERFIELD**

**P. C. [1893] A. C. 187**

— *Contract—Authority of agent—Lump sum—Variation—Ratification.*

*See CONTRACT. 8.*

— *Death duties—Estate duty.*

*See REVENUE—Estate Duty.*

5. — *Income Tax—Trusts—Victorian Income Tax Act, 1895* (58 Vict. No. 1374), ss. 5, 7, sub-s. 3  
 — *Construction—"Trusts."*

*Held*, that the appellant co., which carried on insurance business with strangers for gain to the co. as a whole, but had not its principal office in Victoria, was by s. 5 of the Victorian Income Tax Act, 1895, liable to income tax on the proceeds from money lent on the security of land in Victoria.

It could not claim exemption under s. 7 (e), which exempts trusts and all associations not carrying on trade for purposes of gain to be divided amongst the members; for besides granting assurances to persons not its members, it trafficked in reversions, while "trusts" on its true construction means associations acting in or for Victoria. **ENGLAND v. WEBB**

**P. C. [1898] A. C. 758**

6. — *Land Tax Act, 1877, s. 4, sub-s. 3—Bond fide transfer for valuable consideration.*

Under s. 4, sub-s. 3, of the Land Tax Act, 1877, in order to exempt an owner of land from payment of tax, the land must have passed from him, and the consideration passed from the transferee without any secret understanding or trust.  
**HARDING v. COMMISSIONERS OF LAND TAX**

**P. C. [1891] A. C. 446**

**NOTE.**—The Land Tax Act, 1877, is now replaced by the Land Tax Act, 1890.

7. — *Land Tax Act, 1877—Purchaser of less than 640 acres—Vendor's claim to proportionate land tax.*

A. purchased from B. land less than 640 acres (the minimum quantity liable to land tax):—

*Held*, that B. was not entitled on completion to charge A. with the land tax from the date of A.'s possession, either as his proportion of the tax paid by them, or as an outgoing contracted to be paid for in respect of his purchase. **COUNTRY ESTATES CO. v. GRAVES** — **P. C. [1895] A. C. 113**

*See Note to preceding Case.*

8. — *Lane on private land—Rights of adjoining owners and occupiers—Melbourne Corporation Act, 1850* (14 Vict. No. 20).

When a lane set out on private land has been

**VICTORIA (Law of Victoria)—continued.**

brought under the provisions of the Melbourne Corporation Act, the Act does not confer on the adjoining owners and occupiers such a right of passage over it as precludes the owner in fee from ever resuming the control or exclusive possession of such lane. **MOUBRAY ROWAN & HICKS v. DREW**

**P. C. [1893] A. C. 295**

— *Lunacy—"Vested"—Transfer to Master in Lunacy in Victoria—Jurisdiction.*

*See LUNACY—Vesting Order. 52.*

9. — *Mortmain—Land in England.*

The Mortmain and Charitable Uses Act, 1888, does not apply to Colonial wills.

Where A., domiciled in Victoria, by his will gave money to an English corporation for the purchase of land in England for a charitable purpose:—

*Held*, that the gift was governed by the law of Victoria, and, being valid by that law, bound the executors. **CANTERBURY CORPORATION v. WYBURN** — **P. C. [1895] A. C. 89**

10. — *Pension—Right to—Victoria Public Service Act, 1890* (54 Vict. No. 1133), ss. 3, 197—*"Prosecutor for the Queen"—"Prosecuting barrister"—Construction.*

*Held*, that the appellant was entitled under s. 107 of the Public Service Act, 1890, to superannuation allowance by virtue of having held the office of "Prosecutor for the Queen" notwithstanding that he held during pleasure:

*Held*, further, that he was not excluded therefrom as a "prosecuting barrister" within the meaning of the excluding clause (s. 3).

It appearing that the two classes of functionaries were totally distinct, there is no rule of construction to the effect that when one only is named the other is meant or included. **SMYTH v. REG.** — **P. C. [1898] A. C. 782**

11. — *Probate—Statement by executors—Debts chargeable on foreign assets—Law of Victoria—Administration and Probate Act, 1890, No. 1060, s. 97, sub-s. 2.*

*Held*, that, under s. 97, sub-s. 2, of the Administration and Probate Act of 1890, the statement which an executor is required to furnish relates to all assets within the Colony of Victoria, and to such debts as are properly chargeable on these Colonial assets in assessing them for duty so as to shew the assessable balance in the Colony.

Consequently, where the testator was domiciled in Victoria but had foreign assets, these latter, to which Victorian probate gives no title, need not be stated, nor any debts chargeable thereon except so far as they are in excess of the security, and to the extent of that excess are chargeable on the Victorian assets.

**Blackwood v. Reg.** (1882) 8 App. Cas. 82, followed. **HENTY v. REG.** — **P. C. [1896] A. C. 567**

— *Probate—Application of Colonial Probates Act, 1892.*

*See PROBATE—Colonial Probates Act, 1892.*

12. — *Probate—Testamentary capacity—Verdict against weight of evidence—New trial—Issue as to testator's testamentary capacity.*

Verdict revoking grant of probate for want of

**VICTORIA (Law of Victoria)—continued.**

testamentary capacity set aside as against weight of evidence, the medical evidence being insufficient to support while the other evidence of incapacity related to irrelevant circumstances, and was contradicted by witnesses who deposed to actual transactions with the testator and to his conduct and condition at the time of his executing the will. *AITKEN v. McMECKAN*

P. C. [1895] A. C. 310

13. — *Probate—Valuation of Testator's Estate—Bank deposit receipts—Liability on bank shares—Administration and Probate Act, 1890 (54 Vict. No. 1060), s. 97.*

*Held*, that in a statement of a testator's estate under s. 97 of the Administration and Probate Act, 1890, bank deposit receipts should be valued at the price which they would fetch in the market, and not according to the amounts appearing on the face of them to be payable; also, that sums payable in respect of bank shares at the times mentioned in various schemes for the reconstruction of those banks are debts of the deceased, and may be deducted from the sum total of the assets in order to ascertain the balance liable to probate duty. *MASTER IN EQUITY OF SUPREME COURT OF VICTORIA v. PEARSON*

P. C. [1897] A. C. 214

14. — *Revenue—Death duties—Local situation of testator's assets—Partnership business in the Colony distinct from the general business of the firm—Administration and Probate Duty Act, 1890 (54 Vict. No. 1060).*

Where a firm carried on businesses in Melbourne and elsewhere, which were severally treated as distinct in the partnership agreement, and also in the accounts and conduct of the same:—

*Held*, that the interest of a deceased partner in the business carried on at Melbourne was locally situate in Victoria so as to be liable to probate duty under 54 Vict. No. 1060 in respect of his will. *BEAVER v. MASTER IN EQUITY OF THE SUPREME COURT OF VICTORIA*

P. C. [1895] A. C. 251

15. — *Ship—Liability to clear a port of sunken ship—Registered owners—Law of Victoria—Marine Act, 1890, No. 1565, s. 13.*

Sect. 13 of the Victorian Marine Act, 1890, differing in that respect from s. 56 of the English Harbours, Docks, and Piers Clauses Act, 1847, imposes, according to its true construction, upon the owner or master of any ship sunken within a port, the duty of clearing the port thereof, or of reimbursing the statutory officer the expenses incurred by him for that purpose:—

*Held*, that the registered owner of the ship at the date of the occurrence cannot escape liability by abandoning the wreck to the underwriters, who, although they become at common law owners of the wreck, are not within the terms of the section.

*The Crystal*, [1894] A. C. 508, distinguished. *HOWARD SMITH & SONS v. WILSON*

P. C. [1896] A. C. 579

16. — *Transfer of land—Easement—Abandonment—Error in certificate.*

On a claim to assert a right of way granted in

**VICTORIA (Law of Victoria)—continued.**

1839, to which it was pleaded that the right had been abandoned:—

*Held*, that the omission in the certificates of title to the respective tenements to record an easement did not bar the claim to the easement or relieve the servient tenement of its liability. Whether an easement has been abandoned is a question of intention to be determined on the facts of each case.

Provisions of the transfer of land statutes as to easements considered. *JAMES v. STEVENSON*

P. C. [1893] A. C. 162

17. — *Transfer of land—Forged transfer—Rights of purchasers and mortgagees—Transfer of Land Statute, 1866 (29 & 30 Vict. No. 301), s. 144.*

The Transfer of Land Statute, No. 301, protects those who derive a registered title *bonâ fide* and for value from a registered owner. Accordingly they need not investigate the title of such owner, for they are not affected by its infirmities. But they must ascertain at their own peril his existence and identity, the authority of any agent to act for him, and the validity of the deed under which they claim. A registered owner's name was removed from the register in favour of a fictitious and non-existing transferee by means of a forged transfer, and a mortgage purporting to have been executed by the fictitious transferee was subsequently registered by *bonâ fide* mortgagees:—

*Held*, that the mortgage was invalid and did not operate as an incumbrance on the title of the true owner in favour of the mortgagee, and that the true owner was entitled to be restored to the register. *GIBBS v. MESSER* P. C. [1891] A. C. 248

18. — *Vermine Destruction Act, 1890 (54 Vict. No. 1153)—Local Government Act, 1890 (54 Vict. No. 1112), s. 428—Vermine-proof swing gates—Law of Victoria.*

Under the provisions of the Victoria Vermine Destruction Act, 1890, vermine-proof swing gates can be lawfully put across roads other than main roads by owners of lands, whether adjoining owners or single owners, with the consent of the shire council, whether such lands are in special areas as defined by the Act or not.

Sect. 428 of the Local Government Act, 1890, does not, having regard to the exception therein contained, interfere with landowners' rights in this respect. *KING v. CHEYNE*

P. C. [1900] A. C. 622

**VIRILITY**—Medical evidence—Admissibility.

*See EVIDENCE.* 10.

**VOID SETTLEMENT.**

*See Cases under BANKRUPTCY—Voluntary Settlement.*

**"VOLENTI NON FIT INJURIA."**

*See MAXIMS OF LAW.* 11.

**VOLUNTARY ALLOWANCE**—Permanent maintenance—Income of respondent—Practice.

*See DIVORCE.* 15.

**VOLUNTARY ASSOCIATION**—Inn of Chancery—Failure of objects.

*See CHARITY.* 33.

**VOLUNTARY ASSOCIATION—continued.****1. — Member—Retirement—Acceptance.**

The members of a voluntary trade protection society became such by election, and paid an annual subscription, in return for which they were entitled to legal assistance for the purposes of their trade and to some other benefits. By the rules the members incurred no obligation beyond the payment of their subscriptions. The rules contained no provision as to the retirement or expulsion of members:—

*Held*, that a member was entitled to retire at any time without any consent of the other members; that on the receipt by the society of a letter from a member stating his wish to retire he at once ceased to be a member, without the necessity of the acceptance by the society of his resignation; that he could not before acceptance withdraw his resignation; and that he could not become a member again without re-election.

Decision of Kekewich J. reversed. *FINCH v. OAKE* - - - C. A [1896] 1 Ch. 409

**“VOLUNTARY CONTRIBUTION”—Rates—Exemption—Art union.**

See RATES—Rateability. 25.

**VOLUNTARY CONVEYANCES.**

See Cases under FRAUDULENT CONVEYANCES.

**AVOIDANCE OF VOLUNTARY CONVEYANCES.]**  
56 & 57 Vict. c. 21, amends the law. *Voluntary conveyances if bona fide not to be avoided under 27 Eliz. c. 4.*

— Bankruptcy—Fraudulent preference.

See Cases under BANKRUPTCY—Fraudulent Preference.

— Bankruptcy—Voluntary settlements.

See Cases under BANKRUPTCY—Voluntary Settlements.

**VOLUNTARY CREDITOR—Insolvent estate.**

See EXECUTOR. 35.

**VOLUNTARY GIFT—Action to set aside—Mistake.**

See CHARITY. 35.

**1. — Equitable assignment—Banker's deposit receipt—Indorsement and delivery—Donee appointed executor.**

The indorsement and delivery of a banker's deposit receipt, with the intention to make a gift, operate as a good equitable assignment of the amount on deposit at the bank; but, if anything be required to complete the gift, the appointment of the donee as executor of the donor perfects the gift. *In re GRIFFIN. GRIFFIN v. GRIFFIN* Byrne J. [1898] W. N. 174 (15); [1899] 1 Ch. 408

**VOLUNTARY GIFT—continued.**

**2. — Innocent misrepresentation of fact—Common mistake—Equitable right of donor to recover.**

Where a voluntary gift is obtained by means of an innocent misrepresentation of fact by the donee, the donor, on the discovery of the mistake, has a right in equity (though he may have none at law) to recover his gift.

*Wilson v. Thornbury*, (1875) 10 Ch. 239, 249, not followed in this respect. *In re GLUBB. BAMFIELD v. ROGERS* - C. A. [1900] 1 Ch. 354

— Setting aside.

See UNDUE INFLUENCE. 2.

**VOLUNTARY SCHOOLS.**

See SCHOOLS.

**VOLUNTARY SETTLEMENT.**

See SETTLEMENT—Voluntary Settlement.

— Bankruptcy practice.

See BANKRUPTCY—Voluntary Settlements.

— Revenue.

See Cases under REVENUE.

— Sale by trustees—Objections to title.

See VENDOR AND PURCHASER—Title. 89—91.

**VOLUNTARY WINDING-UP OF COMPANY.**

See Cases under COMPANY—WINDING-UP.

**VOLUNTEERS.**

See ARMY AND NAVY—Volunteers.

**VOTERS—Registration of.**

See Cases under PARLIAMENT.

**VOTING—By crosses—School board election.**

See SCHOOLS—School Board. 6.

— Company—Practice.

See Cases under COMPANY—Meetings.

— Recount—Correctness of returning officer's figures—Onus of proof.

See SCHOOLS—School Board. 7.

**VOUCHING—Of accounts—Practice.**

See ACCOUNTS. 7.

**VOYAGE—Shipping practice.**

See Cases under SHIPPING.

**VYRNWY RESERVOIR—Whether within Severn fishery district.**

See FISHERY. 6.

## W.

**WAGER AND WAGERING.***See GAMING.**LOTTERY.*

- Undischarged bankrupt—After-acquired property—Personal earnings—Interpleader—Wagering contract.

*See BANKRUPTCY—Undischarged Bankrupt.* 257.**WAGERING POLICY**—Insurable interest.*See INSURANCE—Marine.* 82.**WAGES**—Coal-miner's.*See MINES—Coal Mines.* 6, 7.

## —Seamen.

*See Cases under SHIPPING—Seamen.***WAGON**—Liability for defective wagons while in use by another railway company.*See RAILWAY—Negligence.* 17.**WAITER**—Coat left in charge of—Restaurant keeper.*See BAILMENT.* 5.**WAIVER**—Agreement to give debenture when called upon—Equitable security.*See COMPANY—Debentures.* 27.

- Conditions of sale—Condition precedent.

*See VENDOR AND PURCHASER—Conditions of Sale.* 7.

- Covenant to build—Repairs—Notice of breach—Sufficiency—Relief against forfeiture.

*See LANDLORD AND TENANT.* 50.

- Informality—Case stated—Service of notice.

*See JUSTICES.* 32.

- Irregular service—Foreign firm—Service on partner visiting England.

*See PRACTICE—Service.* 190.

- Irregularity—Non-payment—Time given.

*See ATTACHMENT.* 27.

- Irregularity—Non-service of copy of affidavit.

*See ATTACHMENT.* 2.

- Lien for costs.

*See SOLICITOR—Lien.* 102, 108.

- Lien lost or waived.

*See COMPANY—Shares.* 283.

- Notice—Lease—Option to purchase—"Assigns"—Equitable assignees—Possession.

*See LANDLORD AND TENANT.* 80.

- Notice determining tenancy—Acceptance of rent.

*See LANDLORD AND TENANT—Determination of Tenancy, &c.* 42.

- Prepayment of premium—Policy.

*See INSURANCE—Burglary.* 6.

- Prospectus or application form—Waiver clause in—Catching conditions.

*See COMPANY—Prospectus.* 209.

- Re-entry—Waiver of right of.

*See DISTRESS.* 16.**WAIVER**—*continued.*

- Restrictive covenant—Prohibiting sale of beer and spirits—Continuing covenant broken for an uninterrupted period of twenty-four years.

*See VENDOR AND PURCHASER.* 68.

- Restrictive covenant prohibiting sale of beer and spirits.

*See VENDOR AND PURCHASER.* 68.

- Taxation—Agreed Costs—Consent order—Payment out.

*See COSTS.* 45.

- Tort—Joint tortfeasors—Compromise by accepting proceeds of sale—Action of trover against the other—Election.

*See TROVER.* 9.**WALL**—Boundary wall—Mutual gable—Half cost of erection.*See SCOTTISH LAW—Walls.* 49.

- Boundary wall—Notice to set back—Forecourt or space.

*See LONDON—Buildings.* 19.

- Building owner—Party wall—Notice—Sufficiency.

*See LONDON—Buildings.* 22.

- Party wall—Implied contract to pay half cost of—Adjoining owners.

*See BUILDINGS.* 2.

- Party Wall—London Building Acts.

*See LONDON—Buildings.* 22, 23.

- Spiked wall—Contributory negligence.

*See NUISANCES.* 30.**WALNUTS**—Unsound food.*See FOOD.* 2.**WAR**—Capture—Seizure by belligerent Government of property of its own subjects—Contract of indemnity—Validity.*See INSURANCE—Marine.* 30.

- When foreign States begin to be "at war."

*See FOREIGN ENLISTMENT ACT.* 3.**WARD**—Amendment of law as to dividing boroughs into wards.*See Cases under CORPORATION.***WARDS OF COURT.***See Cases under INFANT.***WAREHOUSE RECEIPTS**—Negotiability of—Bank.*See CANADA.* 3.**WAREHOUSEMAN**—Deposit with—Action for freight—"Legal proceedings"—"Owner of goods."*See SHIPPING—Charterparty.* 26.

- Liability of—Conversion—Estoppel—Proximate cause of loss.

*See TROVER.* 4.**WARRANTICE CLAUSE**—Lease—Covenant—"Stream."*See WATER—Water Rights.* 38.

**WARRANT**—Legality of—Search-warrant—Allegation of reasonable suspicion of larceny.

See JUSTICES. 12.

—Of execution—Judgment in rem—Sale of ship—Jurisdiction.

See SHIPPING—Practice. 202.

—Poor-rate—Distress warrant—Appeal.

See RATES—Appeal. 5.

—Service of—Writ served—Warrant not served—Judgment by default.

See SHIPPING—Practice. 197.

**WARRANTY**—Breach—Remoteness—Contract—Damages.

The plts., a firm of stevedores, contracted to discharge a cargo from the deft.'s ship, the deft. agreeing to supply all necessary cranes, chains, and other gearing reasonably fit for that purpose. The deft. in breach of his agreement supplied a defective chain, which broke while being used, and in consequence one of the plts.' workmen was injured. The plts. might have discovered the defect in the chain by the exercise of reasonable care. The plts. settled an action by the workman by paying the workman 125*l.*, which sum they sought to recover from the deft. as damages for breach of his contract. It was not disputed that the settlement of the action brought by the workman was a proper one:—

*Held*, that the plts.' liability to pay compensation to their workman was the natural consequence of the deft.'s breach of contract, and such as might reasonably be supposed to have been within the contemplation of the parties when the contract was entered into; and therefore the damages claimed were not too remote.

Decision of Charles J., [1895] 1 Q. B. 857, affirmed. *MOWBRAY v. MERRYWEATHER*

C. A. [1895] 2 Q. B. 640

—Fire insurance

See INSURANCE—Fire. 8, 10.

—Implied—Bullion-room—Fitness to resist thieves.

See SHIPPING—Charterparty. 46.

—Implied condition as to fitness of goods.

See SALE OF GOODS. 6.

—Liability of agent—Contract made by public servant of Crown.

See PRINCIPAL AND AGENT. 11.

—Policy—Amount insured.

See INSURANCE—Marine. 80.

—Sale of food and drugs.

See Cases under ADULTERATION—Warranty.

—Seaworthiness.

See SHIPPING—Exceptions. 143, 144.

—Seaworthiness, Implied warranty of.

See INSURANCE, MARINE. 77.

—Seaworthiness—Insufficiency of coal—Cargo burned as fuel.

See SHIPPING—Charterparty. 48.

—Truth of statements in proposal—Condition.

See INSURANCE—Marine. 83.

**WARSHIPS**—Fleet of—Collision—Single ship—

Crossing rules—Special circumstances.

See SHIPPING—Collision. 62.

**WASHHOUSES.**

See BATHS AND WASHHOUSES.

**WASTE**—Ameliorative waste—Evidence—Farm—Conversion into market garden.

To obtain an injunction on the ground of "waste," the plt. must prove that what the deft. is doing is prejudicial to the inheritance; if it improves the value of the land it is not waste. *MEUX v. COBLEY* Kekewich J. [1892] 2 Ch. 253

—By tenant for life—Dilapidation of buildings—Depreciation of marsh lands—Damages.

See SETTLED LAND. 89.

2. — Landlord and tenant—Sub-demise for purpose of rubbish shoot—Alteration of nature of demised premises—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 25.

By a lease dated Sept. 29, 1830, the plts.' predecessors in title granted to the deft. co. twelve acres of meadow land forming part of marshy land at West Ham, for ninety-nine years, at a certain rent, for the purpose of constructing a reservoir. The co. did not construct a reservoir but used the land for grazing purposes down to 1896, when they sub-demised it to B. for the rest of the term less the last three days thereof at an increased rent, for the purpose of its being used by him as a rubbish shoot. B. took possession and shot quantities of hard and soft rubbish of all kinds on the land, thereby raising its surface about ten feet. The plts. brought an action against the co. and B., alleging that the acts of B. constituted waste and had been done with the authority of the co., and claiming an injunction restraining the bringing or permitting to be brought upon the demised land any rubbish, earth, or material, or otherwise committing waste thereon, and damages. The only value of the lands at the end of the term would be for building factories, to obtain a proper foundation for which it would be necessary to dig down to the original level of the land:—

*Held*, applying the test as to what is waste laid down in *Lord Darcy v. Askwith*, (1616) Hob. 234, that there had been such an alteration of the thing demised—irrespective of the question whether the added material was offensive or inoffensive—as to constitute waste; that it was no answer that the expense of digging down to obtain a proper foundation would be more than compensated for by the increased rent which the reversioners would be able to obtain for the land in its heightened condition; that both defts. were liable in damages for the past acts of waste; and that they must be restrained from committing waste in the future.

*Queen's College, Oxford v. Hallett*, (1811) 14 East, 489; 13 R. R. 293, observed upon. *WEST HAM CENTRAL CHARITY BOARD v. EAST LONDON WATERWORKS CO.*

Buckley J. [1900] W. N. 37; [1900] 1 Ch. 624

3. — Leaseholds—Repairs—Tenant for life and remainderman.

A tenant for life of leaseholds is not liable to the remainderman for permissive waste.

The estate of a tenant for life of leaseholds held not liable to the remainderman for repairs made necessary by the non-fulfilment, during



**WASTE—continued.**

the life tenancy, of covenants to repair. *In re*  
**PARRY AND HOPKIN** North J. [1900] 1 Ch. 160

4. — *Mines in glebe lands—Powers of incumbent—Control by Ecclesiastical Commissioners—Injunction.*

After the passing of the restraining statutes of Elizabeth, the opening of mines in glebe lands, and the letting of the mines by the incumbent, even with the consent of the patron and ordinary, were waste and illegal until the passing of 5 & 6 Vict. c. 108, which enabled the mines to be leased with the consent of the Ecclesiastical Commrs. The Ecclesiastical Commrs. can maintain an action to restrain the working of mines in glebe lands otherwise than under a lease sanctioned by them. An incumbent cannot lawfully continue, or authorize a tenant, to work mines in glebe land which have been unlawfully opened. If he does so, it is waste. **ECCELESTIASTICAL COMMRS. v. WODEHOUSE** Romer J. [1895] 1 Ch. 552

— Mining lease—Tenant for life impeachable for waste—Proportion of rent to be set aside as capital money.

See **SETTLED LAND—MINES.** 83.

— “Person supplied with water” — Suffering waste—Owner of house not exceeding 10l. rent.

See **WATER—Supply.** 22.

5. — *Ponds and lakes—Cleansing.*

Cleansing a lake or pond is not a duty imposed on a tenant for life by the ordinary repairing clause in a will. **DASHWOOD v. MAGNIAC** (No. 1.) C. A., Kay L.J. diss. [1891] 3 Ch. 306

6. — *Timber estate—Custom—Statute of Limitations* (21 Jac. 1, c. 16), s. 7.

A tenant for life of “a timber estate,” i.e., an estate in which income has been regularly derived by the periodical felling of timber trees, is not impeachable for waste for selling the timber, notwithstanding that the trees felled (in this case beech tyres) are “timber” by the custom of the county. **DASHWOOD v. MAGIAC** (No. 1.)

C. A., Kay L.J. diss. [1891] 3 Ch. 306

Referred to by Stirling J. *In re Chaytor*, [1900] 2 Ch. 804.

**WASTE LANDS—Inclosure Act—Bed of river—Reservation to lord of manor—Territorial rights.**

See **WATER.** 45.

— Selection of—Contract—Construction.

See **AUSTRALIA.** 3.

— Statutory reservation of common rights.

See **COPYHOLD.** 10.

**WASTING SECURITIES—Gift in specie—Sale—Apportionment.**

See **SETTLED LAND—Apportionment.** 18, 19.

**WATCHING—Besetting—Picketing—Injunction.**

See **TRADE UNION.** 8, 11-13.

— Lighting and watching rate.

See **Cases under STREETS—Lighting.**

**WATER.**

**NOTE.—Under this heading are included Cases relating to RIVERS, STREAMS, and RESERVOIRS.**

*In General*, col. 2270.

*Pollution*, col. 2270.

*Supply*, col. 2273.

*Water Rates*, col. 2278.

*Water Rights*, col. 2281.

**In General.**

— Fishing rights.

See **Cases under FISHERY.**

— Mortgage on waterworks—Pure or impure personality—Mortmain.

See **CHARITY—Mortmain.** 51.

— Pier.

See **PIER.**

— Thames.

See **Cases under THAMES.**

— Water tower—Effect of Public Health Acts on subsequent special water company's Act—By-laws—Buildings.

See **BUILDING.** 3.

— Watercourse.

See **SEWERS—Surface Sewers.** 32.

— Weir or dam, Erection of—Injunction—Trout stream.

See **FISHERY.** 13.

— Wharfinger's liability.

See **SHIPPING—Wharf.** 271.

**Pollution.**

**DRAINAGE INTO STREAMS.]** By 56 & 57 Vict. c. 31, s. 3 of the *Rivers Pollution Prevention Act*, 1876, was explained and amended with respect to the liability of local authorities for pollution of streams.

*Rivers Pollution Prevention (Border Councils) Act*, 1898 (61 & 62 Vict. c. 34), enables the county councils on either side of the border to act together for the prevention of the pollution of rivers.

*Costs under Rivers Pollution Prevention Acts*—See *Explanatory Memorandum to County Court Rules (May)*, 1899, and rule 68. **W. N. 1899** (May 20), p. 173. See **Current Index**, 1899, p. cxi.

— Discovery—Right of complainant to interro gate.

See **DISCOVERY—Documents.** 39.

— Factory refuse—Duty of local authority to make sewers—Remedy for default—

Mandamus.

See **SEWERS.** 4.

1. — *Liability—Conjoint default of owner of premises and local authority—Rivers Pollution Prevention Act*, 1876 (39 & 40 Vict. c. 75), ss. 3, 10, 11—*Public Health Act*, 1875, ss. 13, 15, 17, 19, 27.

The local board sued the millowners in a county court, under s. 10 of the *Rivers Pollution Prevention Act*, 1876, and obtained an order to restrain the millowners from causing sewage to flow into the natural stream:—

*Held*, (1.) that the millowners had offended against the Act of 1876; (2.) that the water-course being vested in the local board and being

**WATER (Pollution)—continued.**

a sewer they had not discharged their duties under the Public Health Act, 1875, nor shewn any reasonable excuse of prevention, and had also offended against the Act of 1876; (3.) that in the discretion of the Court an order ought not under the circumstances to be made against the millowners at the instance of the local board. *KIRKHEATON LOCAL BOARD v. AINLEY, SONS & Co.*

C. A. [1892] 2 Q. B. 274

Referred to by Div. Ct. and C. A. *In re County Council of Derbyshire and Mayor, &c., of Derby*, [1896] 2 Q. B. 58, 299. This Case was affirmed by H. L. (E.) [1897] A. C. 550.

2. — *Liability — Drain connecting premises with district sewer—Default of local authority—Absence of notice—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 17, 21, 257.*

Millowners constructed on their premises two water-closets, which they connected in 1883 by a drain with a sewer under the control of a local board, which had originally been an open watercourse, and discharged into a large natural stream. The millowners had not given any notice of intention to drain into the watercourse, nor received any express sanction to do so.

Proceedings were commenced against the millowners and the local board to make them keep the sewage out of the natural stream. The local board gave the millowners notice to disconnect the drain from the watercourse, on the ground that it had been connected without notice:—

*Held*, (1.) that in the absence of a by-law requiring notice none was necessary; (2.) that the millowners were entitled, under ss. 15, 17, 21 of the Public Health Act, 1875, to drain into the watercourse, and that it was the duty of the local board to see that their sewers did not convey sewage into any river. *AINLEY, SONS & Co. v. KIRKHEATON LOCAL BOARD*

*Stirling J.* [1891] W. N. 50

3. — *Mine—Right to pump water into river—Right to have purity of water preserved.*

A mine owner is not, apart from contract or prescriptive right, entitled to pump water into a stream, though the water may not make the stream unfit for ordinary purposes but only for some special purpose, e.g., distilling whiskey.

Decision of Ct. of Sess., *Bankier Distillery Co. v. Young & Co.*, (1892) 19 R. 1083, affirmed. *YOUNG & Co. v. BANKIER DISTILLERY CO.*

H. L. (Sc.) [1893] A. C. 691

4. — *Nuisance—Pollution of river—"Putrid solid matter"—Lawful exercise of right to impound or divert water—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), ss. 2, 17, 20.*

Sect. 2 of the Rivers Pollution Prevention Act, 1876, prohibits the putting, or causing or knowingly permitting to be put, or to fall into any stream, so as to pollute its waters, "any putrid solid matter," and by s. 20 of the Act "solid matter" shall not include particles of matter in suspension in water. By s. 17 the Act "shall not apply to or affect the lawful exercise of any rights of impounding or diverting water."

The deft. owned weaving sheds, worked by steam-power, on the bank of a river, and he had, for the purposes of his business, for many years prior to the passing of the Act lawfully

**WATER (Pollution)—continued.**

exercised the right of diverting water from the river by means of a goit and dealing with the same in the following manner. The water so diverted being full of substances discharged into the stream from paper manufactories, not belonging to the deft., higher up the stream it had, before it could be used by the deft. for the purposes of his business, to be impounded in a reservoir and allowed to settle. Whilst it was so impounded, the substances contained therein sank to the bottom, and, after about three days, became putrescent in the form of sludge. The water at the top when thus cleared was taken from the reservoir and used for condensing and boiler purposes. Once a week the reservoir was cleaned by opening the sluice-gates into the river, and allowing the water to flow through the reservoir and out into the stream, carrying with it the sludge deposited in the reservoir. The effluent water as it went into the stream through the sluice-gates contained 97·6 per cent. of water and 2·4 per cent. of solid matter:—

*Held*, by A. L. Smith L.J. and Rigby L.J. (affirming the decision of Div. Ct., [1899] 1 Q. B. 27), that the solid matter when it entered the stream from the reservoir was "in suspension in water" within the meaning of s. 20 and therefore not "solid matter" within s. 2 of the Act:

*Held*, also (by A. L. Smith L.J., Rigby L.J., and V. Williams L.J.), that, assuming that what was put into the stream was "solid matter" within the meaning of s. 2, the deft. was protected by s. 17 and therefore not liable to be proceeded against under the Act. *RIVER RIBBLE JOINT COMMITTEE v. HALLIWELL. THE SAME v. SHORROCK* - - C. A. [1899] W. N. 103; [1899] 2 Q. B. 385

— *Nuisance—Pollution of river—Sewer "made for profit."*

*See NUISANCE.*

5. — *Nuisance on foreshore of navigable river.*

Under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), where the person causing a nuisance cannot be found, the liability of the owner of the premises to abate it only arises when it is shewn that it continues by his act, default or sufferance. *THAMES CONSERVANCY v. LONDON PORT SANITARY AUTHORITY*

Div. Ct. [1894] 1 Q. B. 647

6. — *Old sewers—Liability of local authority—Powers of county council—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), ss. 3, 10.*

The H. urban sanitary authority allowed sewage to flow into a stream through sewers constructed and used before the passing of the Rivers Pollution Prevention Act, 1876, and before the constitution of the H. authority. The H. authority had made certain alterations in the sewers, but had done nothing to increase the pollution:—

*Held*, that the H. authority had "wilfully permitted" sewage to flow into the stream, and that the mere fact that they had not materially altered the sewers, and had done nothing to increase the pollution, was not a sufficient answer to proceedings under the Act. *YORKSHIRE WEST RIDING COUNCIL v. HOLMFIRTH URBAN SANITARY AUTHORITY* - - C. A. [1894] 2 Q. B. 842

**WATER (Pollution)—continued.**

— Old sewers in London.

See LONDON—SEWERS. 63.

— Prescriptive right of drainage—Trade effluents—Polluting liquid.

See SEWERS. 27.

— Order to execute sewage works.

See ESTOPPEL. 11.

— Remedy for default—Mandamus.

See SEWERS. 4.

7. — Return of water in polluted condition—River—Riparian owner.

A riparian proprietor who has a prescriptive right to take, in a particular way and at a particular place, water from a river and to return such water to the river in a polluted condition, is not entitled to take the water in any other way or place, nor use even his common law right of taking it in such a way as to add to the pollution of the stream.

Decision of Ct. of Sess., *McGavin v. McIntyre Brothers*, (1890) 17 R. 818, varied. *McINTYRE BROTHERS v. MCGAVIN*

H. L. (Sc.) [1893] A. C. 268

**Reservoir.**

— Additional reservoir.

See WATER—Supply. 15.

— “Deviation”—Construction of reservoir.

See WATER—Supply. 9.

— “Land covered with water”—Proportionate rating.

See WATER—Water Rates. 35.

**Riparian Owner.**

See Cases under WATER.

**Supply.**

*District Councils (Water Supply Facilities) Act*, 1897 (60 & 61 Vict. c. 44), gives facilities for pure water supply in rural districts.

*Metropolis Water Act*, 1897 (60 & 61 Vict. c. 56), amends the law respecting the *Metropolitan Water Companies*.

*METROPOLIS WATER ACT*, 1897 (60 & 61 Vict. c. 56)] *Railway and Canal Commission Rules*, 1889, to apply, with the necessary modifications, to all applications to the *Railway and Canal Commissioners* under the. *W. N. 1898* (Jan. 22), p. 45. See *Current Index*, 1898, p. xeviii.

**EMERGENCY.**] *Metropolis Water Act*, 1899 (62 Vict. c. 7), enables and requires the *Metropolitan Water Companies* to supply each other with water in cases of emergency.

8. — Compulsory sale—Award—Valuation—“Price”—*Stockton and Middlesbrough Corporations Waterworks Act*, 1876 (39 & 40 Vict. c. cccxxv.), s. 4.

Basin of calculation where a joint water board sell part of their undertaking to a local authority of an outlying district.

A water board was constituted by a special Act with the right to supply within two boroughs and certain other districts, subject to a proviso that the sanitary authority of any such other district might require the board to sell the pipes, mains,

**WATER (Supply)—continued.**

and fittings of the board within such district, “at a price to be fixed in default of agreement by an arbitrator” :—

Held, that “price” meant price and not compensation, and that in fixing the price the basis of calculation should be merely the value of the main pipes and fittings regarded as plant in situ capable of earning a profit, but without any compensation for the loss of profit which they had made, or might make, by supplying water within the district.

Decision of C. A., *In re Kirkleatham Local Board and Stockton and Middlesbrough Water Board*, [1893] 1 Q. B. 375, affirmed. *Sub nom.* *STOCKTON AND MIDDLESBROUGH WATER BOARD v. KIRKLEATHAM LOCAL BOARD*

H. L. (E.) [1893] A. C. 444

Referred to by H. L. (Sc.) *Edinburgh Street Tramways Co. v. Edinburgh Corporation*, [1894] A. C. 456, 483.

9. — “Deviation”—Construction of reservoir—*Literal deviation—Injunction.*

Deviation implies a right to alter the situation of works as a whole, but not in so doing to dispense with a considerable portion of them. Where a special Act empowers the construction of a reservoir and the interference with private property, the exact terms of the statutory authority must be observed.

Decision of Irish C. A., 27 L. R. Ir. 179, reversed. *HERRON v. RATHMINES AND RATHGAR IMPROVEMENT COMMS.*

H. L. (I.) [1892] A. C. 498

10. — *Enlargement of district—Extension of existing waterworks—“Constructing” waterworks—Notice to established water companies—Public Health Act*, 1875 (38 & 39 Vict. c. 55), s. 52—*Local Government Acts*, 1888 (51 & 52 Vict. c. 41), ss. 57, 59; 1894 (56 & 57 Vict. c. 73), s. 36.

A local authority with an existing system of waterworks having had an area added to their district by order of a county council, proceeded to lay pipes for the supply of the added area :—

Held, that this was a “constructing” of waterworks within the meaning of s. 52 of the *Public Health Act*, 1875, so that previous notice thereof should have been given to an established water co. whose limits of supply included the added area; and that such water co. was entitled to an injunction.

Decision of North J., [1897] 1 Ch. 652, reversed; and that of Chitty J. in *Cleveland Water Co. v. Redcar Local Board*, [1895] 1 Ch. 168, approved but held inapplicable. *HUDDERSFIELD CORPORATION v. RAVENSTHORPE URBAN DISTRICT COUNCIL* - C. A. [1897] 2 Ch. 121

11. — *Expenses—Owner—Supply of water to house—Public Health Act*, 1875 (38 & 39 Vict. c. 55), s. 62—*Public Health (Water) Act*, 1878 (41 & 42 Vict. c. 25), s. 3.

By the *Public Health Act*, 1875, s. 62, a local authority may, under certain conditions, require the owner of a house within their district to obtain a supply of water to his house, and in default of his compliance may themselves do the necessary work and recover the expenses from him. By the *Public Health (Water) Act*, 1878,

**WATER (Supply)—continued.**

s. 3, a rural sanitary authority may, where a house within their district has not within a reasonable distance from it a supply of water, and they think that such supply can be brought within a reasonable distance at a cost not exceeding certain specified limits of amount, require the owner to provide such supply within a reasonable distance of his house, and in default of his compliance may themselves execute the necessary works, and recover the cost from him:—

*Held*, that s. 3 of the later Act did not apply to limit the amount of the expenses which the local authority might recover against the owner in proceedings under s. 62 of the earlier Act. **WEST LANCAIRE RURAL DISTRICT COUNCIL v. OGILLY** - - Div. Ct. [1899] W. N. 6 (3); [1899] 1 Q. B. 377

12. — *Fire hydrants—Right of company to use—User for purposes other than extinguishing fires—User without consent of London County Council—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 3, 37–43—Metropolitan Fire Brigade Act, 1865 (28 & 29 Vict. c. 90), s. 32—Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), s. 34—London County Council (General Powers) Act, 1894 (57 & 58 Vict. c. cxxii.), s. 4.*

Hydrants, fire-plugs, and other apparatus, provided by a metropolitan waterworks company, pursuant to the Metropolitan Fire Brigade Act, 1865, s. 32, and the Metropolis Water Act, 1871, s. 34, for supply of water in case of fire, may be used by the waterworks co., for purposes other than the supply of water for extinguishing fires, cleansing sewers and drains, cleansing and watering streets, or supplying public pumps, baths, and washhouses, without the consent of the London County Council, and may, by permission of the co., be used by persons other than the co. **LONDON COUNTY COUNCIL v. EAST LONDON WATERWORKS CO.**

Div. Ct. [1900] W. N. 17; [1900] 1 Q. B. 330

13. — *Fire-plugs—Fixing and maintaining—Liability of local board—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 38–41—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 66.*

The Waterworks Clauses Act, 1847, and the Public Health Act, 1875, impose no obligation on an urban local authority to bear the expense of maintaining in repair the fire-plugs in their district, unless such fire-plugs have been fixed by them, or by some water co. or person at their request. The mere user of fire-plugs by the local authority is not sufficient to imply a request by it to the water co. or an agreement under s. 66 of the Act of 1875 to fix fire-plugs. **GRAND JUNCTION WATERWORKS CO. v. BRENTFORD LOCAL BOARD** - - C. A. [1894] 2 Q. B. 735

14. — *Mines—Preventing Working—Compensation—Prospective injury—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 6, 22, 25, 27.*

Although mines are “lands” within s. 6 of the Waterworks Clauses Act, 1847, the relations of mine-owners and waterworks undertakers are specially governed by s. 18 and the following sections, so that a mine-owner cannot claim against a waterworks undertaking compensation

**WATER (Supply)—continued.**

for prospective injury, which may be caused by his not being able at some future date to work his mine to its utmost. He must wait for compensation until the injury arises.

Decision of C. A., (1888) 20 Q. B. D. 693, affirmed. **HOLLIDAY v. WAKEFIELD CORPORATION**  
H. L. (E.) [1891] A. C. 81

No longer applicable in such a case. *In re Gonty and Manchester, Sheffield, and Lincolnshire Ry. Co.*, C. A. [1896] 2 Q. B. 439.

See also *In re Lord Gerard and L. and N. W. Ry. Co.*, C. A. [1895] 1 Q. B. 459, 464.

— Mining purposes—Water required for—Monopoly of supply.

See **CAPE OF GOOD HOPE**. 2.

— Rates.

See **Water rates**, below.

15. — *Reservoir—Additional reservoir—Restriction on construction of “waterworks”—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 51, 52, 55.*

Waterworks in s. 52 of the Public Health Act, 1875, means new waterworks. Where a local authority had, previous to the passing of a water co.’s special Act, provided substantial waterworks:—

*Held*, that s. 52 of the Public Health Act, 1875 (with which s. 51 must be read), did not restrain the local authority from adding to or improving them. **CLEVELAND WATER CO. v. REDCAR LOCAL BOARD** **Chitty J.** [1895] 1 Ch. 168

Approved by C. A., but held inapplicable. **Huddersfield Corporation v. Ravensthorpe Urban District Council**, [1897] 2 Ch. 121.

— Sale of land to company by limited owner—Improvements—Building estate.

See **SETTLED LAND**. 26.

16. — *Stop-cock in service pipe—Guard-box—Repair—Right to break up street—Negligence—Waterworks Clauses Acts, 1847 (10 & 11 Vict. c. 17), ss. 28, 48, 51, 52; 1863 (26 & 27 Vict. c. 93), ss. 17, 19.*

A water co. had power to lay down, maintain, and repair pipes, &c. At the request and expense of a householder the co. laid down a service pipe (leading from the main under the street into the house), in which was a stop-cock to regulate the supply of water. The stop-cock was provided with a guard-box let into the pavement, the lid of which, being out of repair, occasioned injury to the plt.:—

*Held*, that the co. who alone had power to break up the street for the purpose of repairing the guard-box were responsible for its repair. **CHAPMAN v. FYLDE WATERWORKS CO.**

C. A. [1894] 2 Q. B. 599

17. — *Streets, Breaking up—Land not dedicated to public use—Compulsory powers—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28, 29.*

A water co. in laying its water-pipes is not entitled under s. 28 of the Waterworks Clauses Act, 1847, to cut through plates lying on the top of a girder ry. bridge carrying a road over a ry. for the purpose of suspending from the girders or

**WATER (Supply)—continued.**

the bridge watermains without coming to an agreement with the owner of the bridge.

Decision of Ct. of Sess., (1894) 21 R. 1033, affirmed. **GLASGOW CORPORATION v. GLASGOW AND SOUTH WESTERN RY. CO.**

**H. L. (Sc.) [1895] A. C. 376**

18. — *Streets, Breaking up*—“*Plan*”—“*Difference to be determined by two justices*”—*Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28, 30, 31.*

The plan to be furnished under s. 31 of the Waterworks Clauses Act, 1847, by a water co. to the road authority must shew the mode in which the underground work is intended to be executed. Unless the authority, in case of disapproval, make some counter proposal by plan or otherwise as to the mode of carrying out the work so as to create a “difference” within s. 31, the co. can proceed with their works independently of the road authority. **EAST MOLESSEY LOCAL BOARD v. LAMBETH WATERWORKS CO. C. A. [1892] 3 Ch. 289**

19. — “*Street*”—*Private road*—*Entry and digging up without consent of owner*—*Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28, 29*—*Public Health Act, 1875 (38 & 39 Vict. c. 55) ss. 4, 16, 54, 57, 308.*

A private road is a “street” within ss. 16, 54 of the Public Health Act, 1875. An urban authority which has the general control of the streets and power to supply water may break up the soil of such a road without the owner’s consent for the purpose of supplying the inhabitants with water, making him compensation under s. 308 of the Act of 1875. Sect. 57 of that Act applies only in the case of local authorities who have not control generally of the streets in their district.

Decision of Kekewich J., [1892] 3 Ch. 117, reversed. **HILL v. WALLASEY LOCAL BOARD**

**C. A. (A. L. Smith L.J. diss.) [1894] 1 Ch. 133**

20. — *Supply*—*Constant supply*—*Default by company*—*Penalties*—*Who may take proceedings*—*Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), ss. 7, 16, 44, 45.*

When a metropolitan water co. has provided a supply of water for a district, under s. 7, a private individual cannot take proceedings against the co. for the penalties, imposed by s. 16, for refusing or neglecting “to provide and keep . . . a constant supply of pure and wholesome water sufficient for the domestic purposes of the inhabitants.” Such proceedings can only be taken by the metropolitan authority within the jurisdiction of which the penalty has been incurred. **KYFFIN v. EAST LONDON WATER CO. Div. Ct. [1896] 1 Q. B. 446**

21. — “*Supply water*”—*Exercise of powers*—*Works outside district*—*Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 16, 32, 33, 34, 54, 285.*

A local authority that has power to and is taking steps to supply water does “supply water” within s. 54 of the Public Health Act, 1875. **JONES v. CONWAY AND COLWYN BAY JOINT WATER SUPPLY BOARD - C. A. [1893] 2 Ch. 603**

22. — *Waste*—“*Person supplied with water*”—*Suffering waste*—*Liability to penalty*—*Owner of house not exceeding 10l. rent*—*Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 72.*

By the provisions of a water co.’s special Act,

**WATER (Supply)—continued.**

if “any person supplied with water” by the co. negligently suffered the water so supplied to him to be wasted he was liable to a penalty :—

*Held*, that where a house was let to a tenant at a rent not exceeding 10l., so that the owner was liable under s. 72 of the Waterworks Clauses Act, 1847, to pay the water rates instead of the occupier, the owner was a “person supplied with water” within the meaning of the special Act, and was under a duty to take care that the water supplied was not wasted. **BROOK v. HARRISON**

**Div. Ct. [1899] W. N. 67; [1899] 1 Q. B. 958**

23. — “*Water company*”—*Water supply*—“*Own profit*”—*Independent supply by local authority*—*Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 51, 52.*

(A) The defts. were restrained from setting up independent waterworks for their district (1) because of a statutory agreement with the plts., and, *per* North J., (2) because the plts., who had taken over the undertaking of the local water co., and who could use the surplus profits in reductions of rates, were a “water co. within the defts.’ district desirous and able to afford the necessary supply,” within s. 52 of the Public Health Act, 1875.

Decision of North J., [1891] 1 Ch. 315, affirmed (Kay L.J. diss.). **WOLVERHAMPTON CORPORATION v. BILSON COMMS.**

**C. A. [1891] W. N. 56**

(B) Sect. 52 of the Public Health Act, 1875, does not prohibit a local authority from constructing works to obtain water for their own purposes, such as flushing sewers and treating sewage, but only from doing so for the supply of the public. **WEST SURREY WATER CO. v. CHERTSEY UNION**

**North J. [1894] 3 Ch. 513**

**WATER SUPPLY.] Power of Railway and Canal Commission to hear complaints as to. See Metropolis Water Act, 1897 (60 & 61 Vict. c. 56).**

24. — *Works outside district*—*Water supply.*

A local authority which has the consent of the local authority of an adjoining district to lay down water-mains in such district can only do so after complying with the provisions of ss. 32–34 of the Public Health Act, 1875, as to notices on owners, &c. **JONES v. CONWAY AND COLWYN BAY JOINT WATER SUPPLY BD. C. A. [1893] 2 Ch. 603**

**Water Rates.**

25. — *Arrears of water rate*—*Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 43, 53, 70–74*—*Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), s. 48*—“*Incoming tenant*”—*Trustee in bankruptcy*—*Payment of arrears under protest*—*Trustee’s right to recover same from water company.*

A debtor having been adjudicated a bankrupt, his trustee in bankruptcy took possession of his business premises and found that the water rate was in arrear. The trustee offered to pay in advance from the date of the adjudication for a supply of water, but the water co. declined to supply it unless the arrears were paid, and cut off the water. Thereupon the trustee paid the arrears under protest :—

*Held*, that under s. 48 of the Metropolis Water

**WATER (Water Rates)—continued.**

Act, 1871, the trustee, being in the position of an "incoming tenant," was not liable for the arrears, and was entitled to recover from the water co. the amount paid under protest. *In re FLACK.*  
*Ex parte BERRY* Wright J. [1900] W. N. 83;  
 [1900] 2 Q. B. 32

— Artificial reservoir — "Land covered with water" — Proportionate rating.  
*See No. 35, below.*

26. — *Assessment—Annual value—"Tenement supplied with water"—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 68.*

On an application, under s. 68, to determine a dispute as to the value of a tenement supplied with water, consisting of a dwelling-house and garden with out-houses, occupied as a residence, and comprising about half an acre, the justices found as a fact that a portion of the garden might be separately let, and being of opinion that, in arriving at the annual value of the tenement supplied with water, they had to determine what quantity of garden should reasonably go with the house, they held that the annual value was the value of the premises exclusive of such portion as might be separately let:—

*Held*, that the justices had no jurisdiction to exclude that portion of the garden, and the assessment must be raised to the annual value of the whole of the premises as occupied. *GRAND JUNCTION WATERWORKS CO. v. DAVIES*

Div. Ct. [1897] 2 Q. B. 209

27. — *Assessment—Waterworks—Money advanced out of district—Repayment—Statutory restrictions—21 & 22 Vict. c. xii.*

A local board were authorized by a special Act to acquire waterworks:—

*Held*, not liable to be assessed in respect of assistance moneys paid to them out of the general district rate, when, on the terms of their Act, they were bound to return the assistance moneys if they made a profit. *MERTHYR TYDFIL LOCAL BOARD v. MERTHYR TYDFIL UNION*

Div. Ct. [1891] 1 Q. B. 186

28. — *Assessment—Waterworks not directly earning profit in parish—Capital value, interest on—Cost of construction.*

The corporation of Liverpool were empowered by Act of Parliament to construct a reservoir and other works in a parish in Wales for the purposes of the supply of water to Liverpool. The construction of the reservoir and works involved the submersion of the sites of the parish church, vicarage, and schools, and likewise the stopping up and diversion of certain roads. The Act required the corporation to provide sites for and erect a new church, vicarage, and schools in substitution for those which would be submerged, and to make certain new roads and bridges which were necessary for the purposes of the before-mentioned diversion. The corporation carried out the works in conformity with the Act, provided the requisite new church, vicarage, and schools, and made the necessary new roads and bridges. The corporation, having been rated to a poor-rate in respect of the reservoir and works, appealed to the quarter sessions against the rate. The sessions decided that, in estimating the capital value of the reservoir and works for the

**WATER (Water Rates)—continued.**

purpose of arriving at the rateable value, the amounts expended by the corporation in providing the new church, vicarage, and schools, and making the new roads and bridges, ought to be included as being part of the capital cost of the works:—

*Held* (reversing the judgment of a Div. Ct.), that there was nothing wrong in point of law in the decision of the sessions, which must therefore be affirmed. *LIVERPOOL CORPORATION v. LLANFYLIN UNION* - - C. A. [1899] W. N. 71;  
 [1899] 2 Q. B. 14

29. — *Covenant by lessor for payment of all water rate imposed or assessed upon the premises—Water supplied for domestic purposes—Water supplied for trade purposes—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17)—New River Company's Act, 1852 (15 & 16 Vict. c. clx.), ss. 36, 38, 40.*

Under a covenant by the lessor, in a lease, to pay "all water rate imposed or assessed upon the premises or on the lessor or lessees in respect thereof," the lessor is not bound to pay for water supplied by the water co. to the lessees for trade purposes. *In re FLOYD. FLOYD v. J. LYONS & Co.* - C. A. [1897] 1 Ch. 633

30. — "Heritor" — Church and manse — Assessment of way-leave — Waterworks — Scottish Act, 1663 (c. 21 or c. 31).

The Scottish Act, 1663 (c. 21 or c. 31): "Where competent manses are already built, ordains the heritors of the parochie to relieve the minister and his executors of all costs charges and expenses for repairing of the forsaid manses." A conduit of the Glasgow Waterworks Commrs. was carried underground through lands in a parish in virtue of grants of way-leave in perpetuity, obtained from the proprietors of the land:—

*Held*, affirming the decision of the Ct. of Sess., [1899] 1 F. 523, that the Commrs. were liable under the Act of 1663 to assessment in respect of their conduit as "heritors" of the parish for the repair of the manse. *GLASGOW CORPORATION v. MEWAN* - - H. L. (Sc.) [1900] A. C. 91

— Levying water rate—Lands outside rateable limits—By-laws—Construction.  
*See NEW SOUTH WALES. 50.*

31. — *Recovery—Arrears due before sale of freehold—Liability of purchaser—Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), s. 4.*

Under s. 4, the purchaser of a dwelling-house is liable to a personal action at the suit of the waterworks co. to recover arrears of water rate which accrued due before the date of the purchase. *EAST LONDON WATERWORKS CO. v. KELLERMAN*

Div. Ct. [1892] 2 Q. B. 72

32. — *Recovery—House unoccupied for part of quarter—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 70, 71.*

Under ss. 70, 71, when a house is unoccupied at the beginning of a quarter, and becomes occupied in the course of that quarter, water rate is only payable for the portion of the quarter during which the house is occupied, although the co. had no notice of the non-occupation, and continued to supply water. *EAST LONDON WATERWORKS CO. v. FOULKES* - - Wills J. [1894] 1 Q. B. 819

**WATER (Water Rates)—continued.**

33. — *Recovery—Limitation of time—Railways Clauses Act, 1845* (8 & 9 Vict. c. 20), s. 140 — *Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 74, 85.

Sect. 11 of the Summary Jurisdiction Act, 1848, applies to the hearing of a summons before justices for arrears of water rate, and where the sum accrued due more than six months before the date of the summons the justices have no jurisdiction. *EAST LONDON WATERWORKS CO. v. CHARLES* — Div. Ct. [1894] 2 Q. B. 730

34. — *Recovery—Summons for non-payment—Demand—Railways Clauses Act, 1845* (8 & 9 Vict. c. 20), s. 140 — *Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 70, 74 — *East London Waterworks Act, 1853* (16 & 17 Vict. c. clavi.).

Where a summons has been taken out for arrears of water rate under s. 85 of the Waterworks Clauses Act, 1847, and s. 140 of the Railway Clauses Act, 1845, it is not a condition precedent to the jurisdiction of the justices that a demand should have been made before issue of the summons. *EAST LONDON WATERWORKS CO. v. KYFFIN* — Div. Ct. [1895] 1 Q. B. 55

35. — *Reservoir—Artificial reservoir—"Land covered with water"—Proportionate rating—District rate—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b).

An artificial reservoir is "land covered with water" for the purpose of assessment in the proportion of one-fourth part only of its annual value under the Public Health Act, 1875, s. 211, sub-s. 1 (b).

Decision of C. A., [1898] W. N. 168 (3); [1899] 1 Q. B. 273, affirmed on this point. *HAMPTON URBAN COUNCIL v. SOUTHWARK AND VAUXHALL WATER CO.* H. L. (E.) [1900] A. C. 3

36. — *Water supply—Contributory place—"Special expenses"—Water rates and rents—Liability of contributory place for expense of water supply to part of such place—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 51, 229, 230 — *Public Health (Water) Act, 1878* (41 & 42 Vict. c. 25), s. 10.

Where a rural sanitary authority has, under the provisions of the Public Health Act, 1875, supplied water to part of a contributory place, the expenses both of supply and of maintenance must, so far as they cannot be defrayed by a reasonable water rate or water rent to be paid by the consumers, be raised as special expenses by a rate on the whole contributory place. *HORN v. SLEAFORD RURAL DISTRICT COUNCIL*

Div. Ct. [1898] 2 Q. B. 358

**Water Rights.**

37. — *Artificial watercourse—Alteration of natural state of things—Sluice-gate—Obligation of owner to repair—Easement—Right to take water granted to owner of adjoining land—Damage by flood.*

Where the owner of land on the bank of a river, for the purpose of bringing water from the river to a mill which he erected, made a watercourse with a shuttle at the head of it to control the flow of the water from the river into the watercourse, and afterwards conveyed away a

**WATER (Water Rights)—continued.**

portion of his land adjoining, and his successor in title subsequently granted to the owner of the adjoining land so conveyed a right to use the water for the purposes of a mill belonging to him:—

*Held*, that the existence of that right did not affect the obligation of the owner of the watercourse towards the owner of the adjoining land to keep the shuttle in repair so as to prevent flood water from the river getting into the watercourse and overflowing on to his land.

*Pomfret v. Ricroft*, (1669) 1 Wms. Saund. 321, discussed. R. H. BUCKLEY & SONS, LD. v. N. BUCKLEY & SONS — C. A. [1898] 2 Q. B. 608

— Compensation—Past and future profits.

*See* BARBADOS.

38. — *Diversion of spring—"Stream"—Lease—Covenant—Warrandice clause.*

Water percolating discontinuously through or along strata cannot be described as a "stream."

A lessor demised by lease a distillery, cottages, thirteen and a half acres of land, with two ponds, "together with right to the water in the said ponds and in the streams leading thereto." The lease also contained the usual warrandice clause. The lessor sunk a tank on ground outside but adjoining the demised subjects, and drew off from marshy ground percolating water which would have found its way eventually into one of the ponds:—

*Held* (Lord Halsbury L.C. dissenting), affirming the decision of the Ct. of Sess. ((1896) 33 S. L. R. 497), that water percolating through the ground towards the pond was not water in any stream leading to the pond:

*Held*, secondly, by the whole House, that, assuming an implied obligation on the part of the lessor not to diminish the water supply to the ponds, there had been no breach. *M'NAB v. ROBERTSON* — H. L. (Sc.) [1897] A. C. 129

— Diversion of streams—Grant of land—Construction of reservation.

*See* NATAL. 7.

— Implied grant of supply of water—Equitable mortgagor.

*See* EASEMENT. 8.

39. — *Interference with flow of water—Tunnel for draining mine—Mala fides—Bradford Waterworks Act, 1854* (17 & 18 Vict. c. cxxiv.), s. 44.

Pits were the owners of waterworks which they had purchased from a co. which had constructed them under a special Act which provided that it should not be lawful for any person other than the co. to divert in any other manner than by law they might be legally entitled waters flowing from certain springs, or to sink any well or pit, or do anything whereby such waters might be drawn off or diminished. There was no clause in the Act giving compensation to landowners affected by this provision. The deft. owned land near, and began to sink shafts for the alleged purpose of draining certain beds of stone. The corporation alleged that the deft. was not acting bona fide, but to compel them to purchase his land:—

*Held*, (1) that the special Act did not interfere with the legal rights of the deft.; (2) that a land-

**WATER (Water Rights)—continued.**

owner is entitled to intercept water percolating underground through his own land; (3) that as the deft. was legally entitled to sink the shafts, his motive and object in so doing was immaterial.

Decision of North J., [1894] 3 Ch. 53, reversed, and decision of C. A., [1895] 1 Ch. 145, affirmed. **BRADFORD CORPORATION v. PICKLES**

**H. L. (E.) [1895] A. C. 587**

See dictum of Lord Shand in *Allen v. Flood*, [1898] A. C. 1, 167.

— Irrigation—Land slides—Injunction—Liability for damages.  
See **CANADA**. 22.

— Moorings in foreshore—Immemorial user.

See **THAMES**. 9.

— Opening locks on river—Prescription—Lost grant.

See **EASEMENT**. 4.

— Ownership of foreshore and bed of—Discovery—Right of the Crown.

See **DISCOVERY**. 15.

**40. — Percolation—Interference with flow.**

Observation of Lord Watson as to statement of law of Scotland by Lord Wensleydale in *Chasemore v. Richards*, 7 H. L. C. 349. **BRADFORD CORPORATION v. PICKLES**

**H. L. (E.) [1895] A. C. 587**

See dictum of Lord Shand in *Allen v. Flood*, [1898] A. C. 1, 167.

— Rights of owner of shore—Thames Conservancy Act.

See **THAMES**. 9.

**41. — Riparian owner—Accretions—Change of bed—Several fishery.**

The plts., under an inclosure award made in 1803, were entitled to a piece of land at Wraybury bounded on one side by the Thames, which is there navigable but not tidal. The land ended in an almost perpendicular bank 5 or 6 ft. high, and the bed of the river reached to its foot, the water often reaching some height above the foot. The deft. was entitled to a several fishery in the river and to the bed of the river. The water of the river, owing to the removal of a weir, sank, and at the foot of the bank a deposit took place forming a strip on which some large trees grew, and which during some part of the year was left dry, but it was overflowed during a considerable part of the year. At the foot of the bank the deft. dug a ditch which he regularly cleaned out for more than twelve years, and afterwards filled it up with concrete so as to make a footpath. The plts. brought an action for an injunction to restrain him from trespassing:—

*Held*, by Romer J., [1896] 1 Ch. 78, that whether the strip had ceased to be part of the bed of the river was a question to be determined, not by any hard and fast rule, but by regarding all the material circumstances of the case, including the fluctuations of the river, the nature of the land, and its growth and user, and that, in the present case, the strip had ceased to be part of the bed and belonged to the plts. as having been formed by gradual accretion to their land:—

*Held*, on appeal, that the principle on which

**WATER (Water Rights)—continued.**

Romer J. had proceeded in determining whether the strip was part of the bed of the river was sound, but that on the facts the strip had not ceased to form part of the bed, and therefore belonged to the deft.; but that when it was dry the rights of the plts. as riparian proprietors were not affected, and they had right of access over it to the water, and could use it to the same extent as they could use the bed of the river in its old state.

Whether the accretions, if they had ceased to form part of the bed of the river, would have been the property of the plts. as owners of the adjoining land, *quære*.

Whether the doctrine of accretion could apply in a case where the steep 6 ft. bank which formed the original boundary between the lands of the plts. and deft. still remain clearly defined, *quære*. **HINDSON v. ASHBY** **C. A. [1896] 2 Ch. 1**

Discussed by North J. *Ecroyd v. Coulthard*, [1897] 2 Ch. 554, 569; **C. A. [1898] 2 Ch. 359**.

**42. — Riparian owner—Spring—Flowing water—Defined channel—Artificial channel—Alteration of natural flow—Injunction—Public well—Urban district council—Licence to take water—Public Health Act, 1875 (38 & 39 Vict. c. 55).**

In an action by a riparian owner and his tenant, the occupier of a mill on the banks of a stream, against a licensee from an urban district council, who were in possession of the land upon which the spring rose, to restrain the deft. from taking water from the spring and from interfering with the accustomed flow of water in the said stream, the deft. contended that he was entitled to abstract the water before it had risen to the surface, or flowed in a defined channel:—

*Held*, following *Dudden v. Clutton Union*, (1857) 1 H. & N. 627, that the deft. was not entitled to diminish or interfere with the natural flow of the water at its source, and that the principle of that decision was not affected by the fact that at some remote period the source of the spring had been built round, and formed into a polygonal well in order to improve its mode of issuing from the earth, thus making an artificial channel for a short distance.

A local authority has no power under the Public Health Act, 1875, to license a stranger to take water from a public well for commercial purposes. **MOSTYN v. AHERTON**

**Byrne J. [1899] W. N. 103; [1899] 2 Ch. 360**

**43. — Riparian owner—Stream—Alteration of flow—Local authority—"Injurious affecting"—Injunction—Consent of Riparian Owner—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 57, 332.**

Under s. 51 of the Public Health Act, 1875, a local authority have no power, for the purpose of supplying water to their district, to alter the flow of water in a stream without the consent in writing of the riparian proprietors lower down the stream, as required by s. 332 of the Act.

By so altering the flow of water the local authority are, within the meaning of s. 332, "injuriously affecting" the common law right of such a riparian proprietor, and they will be re-



**WATER (Water Rights)—continued.**

strained from so doing without any proof of sensible damage caused to him.

Decision of Kekewich J. [1899] W. N. 16 (11), [1899] 1 Ch. 583, affirmed. *ROBERTS v. GWYRFAI DISTRICT COUNCIL* C. A. [1899] W. N. 203; [1899] 2 Ch. 608

44. — *Riparian proprietor—Navigable river—Sale of artificial water-power—Appeal from Quebec.*

A riparian proprietor can acquire an interest in the water-power of a navigable river, as derived from a reservoir artificially formed by a dam across its channel, and sell the same as appurtenant to his land. Even if such sale should not be effectual against the public, the vendor cannot himself impeach it on that ground:—

*Held*, in this case, that as the vendor of a specified amount of water-power had not reserved to himself a right to a supply either *pari passu* with or preferably to the purchaser, the latter was entitled to damages in respect of any loss incurred by the vendor's user of the water in diminution of the amount sold. *HAMELIN v. BANNERMAN* — — P. C. [1895] A. C. 237

— *River—Crossing vessels in—Regulations for preventing collisions.*

*See CHINA.* 2.

— *Underground water—Quiet enjoyment.*

*See LANDLORD AND TENANT.* 22.

— *Underground water—Surface—Subsidence—*

*Right of support—Water-logged land.*

*See SUPPORT.* 1.

45. — *Waste land—Bed of river—Reservation to lord of manor—Territorial rights—Fishing rights—Inclosure Act, 1796 (36 Geo. 3, c. xxxix.)*

By a private Inclosure Act, passed in 1796, an allotment was directed of certain waste lands in a manor, the mines, &c., being reserved to the lord, and the allotments were declared freehold of the allottees to all intents and purposes. There was a saving clause providing that nothing in the Act should affect the title of the lord to the mines or to the seignories and royalties, franchises and liberties incident to the manors, but that the lord, his heirs and assigns, should enjoy (*inter alia*) all piscaries, fishing, &c., which could or might be claimed by him or them as owner or owners of the soil of the moors, commons, and waste grounds, in as full, ample, and beneficial a manner to all intents and purposes as if the Act had not been passed. The waste lands were bounded on one side by the river E., and the soil of half the bed belonged to the lord. There was no evidence that any of the tenants had ever enjoyed any rights of fishing, or any other commonable rights, over any other part of the bed of the river; but there was evidence that at the time of the passing of the Act the lord exercised and let to tenants the right of fishing over half the bed. The commons allotted to Leach a part of the waste called Edenbanks, described as a bounded on the west by the river, and gave an acreage which was correct for the land if the half bed was not included. In 1890 the successor of the lord granted to the plt. the right of fishing in half the river between two points lying above and below E. The plt. brought his action to

**WATER (Water Rights)—continued.**

establish his right of fishing in front of E., and a right of landing on E. for fishing purposes. The Leach family insisted that the allotment to Leach passed the soil of the bed *ad medium flum*, and that they had the exclusive right of fishing over so much as adjoined E., and by counter-claim asked an injunction to restrain the plt. from fishing opposite E., and from landing on E. for fishing purposes:—

*Held*, that as the half bed of the river had been enjoyed and let by the lord as a separate tenement up to the passing of the Act, and the commoners had never exercised any rights of common over it, it did not form part of the waste lands which the commons were authorized to allot, and that even if they had expressly included half the bed in the allotment to Leach, he would have taken no interest in the bed, and that he had no right of fishing.

*Held*, that, according to *Duke of Devonshire v. O'Connor*, (1890) 24 Q. B. D. 468, the saving clause in the Act did not reserve to the lord any merely territorial rights; and that as it did not appear that he had any franchise of fishing, his right to land upon E. for fishing purposes was a merely territorial right incident to his ownership of the soil, and was extinguished by the allotment.

Decision of North J., [1897] 2 Ch. 554, affirmed. *ECROYD v. COULTHARD*

C. A. [1898] 2 Ch. 358

— *Watercourse—Roads—Surface-water sewers—“Sewage or filthy water.”*

*See SEWERS.* 32.

**WATER-CLOSETS** — *Defective water-closets—Notice requiring owner to amend—Validity of—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 39, sub-s. 3; s. 41, sub-s. 2.*

The county council made by-laws under s. 39 of the Public Health (London) Act, 1891, with respect to future water-closets, prescribing the mode of their construction, but made none with respect to structural alterations of existing water-closets.

The respondent was the owner of a water-closet which had been constructed before the making of the by-laws. The appellants as the sanitary authority, purporting to act under s. 41, sub-s. 2, served a notice on the respondent requiring him to make certain structural alterations in the water-closet:—

*Held*, (1.) that upon a summons for non-compliance with the notice the magistrate had jurisdiction to inquire into the validity of the notice notwithstanding the provisions as to an appeal to the county council. (2.) That the notice was void under s. 39, sub-s. 3, there being no by-laws for it to be in accordance with:

*Held*, also, by Kennedy J., that the “alteration or amendment” which the sanitary authority are empowered to require under s. 41, sub-s. 2, does not comprise structural alteration. *FULHAM VESTRY v. SOLOMON* Div. Ct. [1896] 1 Q. B. 198

2. — *Entry on premises—Order for—Local Authority—Justices—Jurisdiction—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 36, 305.*

Where an application is made under s. 305 of

**WATER-CLOSETS—continued.**

the Public Health Act, 1875, to a court of summary jurisdiction on an order authorizing a local authority to enter upon premises for the purpose of making a sufficient water-closet there in pursuance of the powers given by s. 36, the Court has no jurisdiction to entertain an objection by the owner of the premises that such entry is unnecessary because they are already provided with sufficient sanitary appliances. *ROBINSON v. SUNDERLAND CORPORATION*

Div. Ct. [1899] W. N. 19 (7); [1899] 1 Q. B. 751

3. — *Insufficient water-closet accommodation, Order of sanitary authority as to—Appeal—Jurisdiction of magistrate—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 37, sub-s. 3, 5.*

The decision of the sanitary authority acting under s. 37, sub-s. 3, of the Public Health (London) Act, 1891, that a house is not furnished with proper and sufficient water-closet accommodation, is final, subject only to an appeal under sub-s. 5 to the county council. Where, therefore, the owner or occupier of a house is summoned for non-compliance with a notice of the sanitary authority to provide such accommodation, a magistrate has no jurisdiction to reverse the decision of the sanitary authority and to hold that the accommodation is not required. *ST. JOHN'S, HACKNEY, VESTRY v. HUTTON*

Div. Ct. [1896] W. N. 158 (5); [1897] 1 Q. B. 210

4. — *Local Authority—Powers—Power to require sufficient water-closet to be provided—Resolution requiring adoption of particular system—Notice in accordance with general resolution—Invalidity—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 36.*

Sect. 36 of the Public Health Act, 1875, which empowers a local authority to give notice requiring the owner of a house to provide a sufficient water-closet, earth-closet, or privy, and in case of non-compliance empowers the local authority to do the necessary works and recover the expenses, does not empower such authority to enforce a general resolution that in all such cases within their jurisdiction a particular system shall be adopted; but they are bound to exercise their discretion in each particular case, and consequently a notice in accordance with the general resolution and requiring compliance with its provisions is invalid.

Decision of Div. Ct., [1897] 2 Q. B. 357, affirmed. *WOOD v. WIDNES CORPORATION*

C. A. [1898] 1 Q. B. 463

Distinguished by *Stirling J. Nicholl v. Epping Urban Council*, [1899] 1 Ch. 844, 848.

5. — *Local authority—Powers—Privies and water-closets—Substitution of water-closet for privy—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 36.*

By s. 36 of the Public Health Act, 1875, if a house within the district of a local authority appears to such authority, by the report of their inspector of nuisances, "to be without a sufficient water-closet, earth-closet or privy, and an ash-pit furnished with proper doors and coverings," the local authority are directed to give notice to the owner or occupier of the house requiring him "to provide a sufficient water-closet, earth-closet

**WATER-CLOSETS—continued.**

or privy, and an ash-pit furnished as aforesaid, or either of them, as the case may require":—

*Held*, that a local authority had power under this section, upon being satisfied that a house within their district was without a sufficient privy, to require the owner (subject to his right to appeal to the Local Government Board under s. 268) to provide a sufficient water-closet in the place of the existing privy. *NICHOLL v. EPPING URBAN COUNCIL*

*Stirling J.* [1899] W. N. 58; [1899] 1 Ch. 844

— Urinal—"Public place."

*See* STREETS. 1.

**WATER RATES.**

*See* WATER—Water Rates.

**WATERCOURSE.**

*See* Cases under WATER.

**WATER-MARK**—Minerals—Coal below low water-mark—Barony title—Lease of coals—Minor—Adoption.

*See* MINES—Leases. 12.

— Use as a "brand."

*See* TRADE-MARK—Registration. 32.

**WATERMAN**—Applications for licences—Judicial order.

*See* CERTIORARI. 1.

**WATERMEN'S AND LIGHTERMEN'S COMPANY.**

*See* Cases under THAMES.

**WATER POWER**—Sale of artificial—Riparian proprietor.

*See* WATER—Water Rights. 44.

**WATERWORKS.**

*See* Cases under WATER.

**WATERWORKS COMPANIES.**

*See* Cases under WATER—Supply.

**WAX-WORKS**—Exhibition of effigy—Injunction—Libel—Discretion.

*See* INJUNCTION. 15.

**WAY, RIGHT OF**—*Adjoining houses—Simultaneous conveyance of houses to different persons—General words—Formed road over one tenement for apparent use of adjoining tenement—Continuous and apparent easement—Agreement—Question of construction involving question of fact—R. S. C., 1883, Order LIV. a.—Jurisdiction.*

A testator having left his residuary estate, which included two immediately adjoining houses, in thirds to his three children, the plt., the deft. and another, they entered into an agreement for the distribution of the estate, whereby it was agreed (*inter alia*) that one of the houses, therein described as "a freehold house and premises known as B., let to A. F.," should be forthwith conveyed to the plt., and that the other house, therein described "as a freehold house and premises known as S., let to J. H., should be forthwith conveyed to the deft. The two houses fronted a public road. From this road there started a private road which ran along the side of S. to the back, and then turned at right angles and ran at the back of the two houses, affording a back entrance to each of the houses. This side and back road was a gravelled road between

**WAY, RIGHT OF—continued.**

fences, made, when the houses were built, for the use of both houses, and it had been de facto used by the tenants of both houses:—

*Held*, that under the agreement the plt. was entitled to a conveyance of B. containing the ordinary general words "together with the ways, easements, rights, and advantages to the premises appertaining," and under a conveyance in that form a formed road over a portion of S. to and for the apparent use of B. would pass to the plt. upon the principle stated by Erle C.J. in *Polden v. Bastard*, (1865) L. R. 1 Q. B. 156; see *Pearson v. Spencer*, (1863) 3 B. & S. 761; *Brown v. Alabaster*, (1887) 37 Ch. D. 490; *Thomas v. Owen*, (1887) 20 Q. B. D. 225. The Court has jurisdiction under Order LIV. a to determine questions of fact, and, being satisfied upon the evidence that this road was made and intended for the use of the two houses:—

*Held*, that the descriptions of the two houses contained in the agreement included rights for the owners, tenants, and occupiers of the two houses respectively to use the side and back road for all purposes. *NICHOLLS v. NICHOLLS*

*Stirling J. [1900] W. N. 4*

2. — *Closing roads—Revival of Public rights by repeal of Turnpike Act.*

A public bridle-path was stopped up by a Turnpike Act:—

*Held*, that the repeal of the Act did not revive the old right of way. *GWYNNE v. DREWITT*

*Romer J. [1894] 2 Ch. 616*

3. — *Evidence—Right of way—Easement—"Claiming right thereto"—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 2.*

From the fact that a way to a messuage had been enjoyed for more than sixty years, and a small annual payment was made for at least the last forty-four years for it, the judge inferred that the way was enjoyed under a parol licence given more than forty years ago in consideration of an annual payment:—

*Held*, that the owner of the messuage was for the full period "claiming right" to the way for the forty years, within the meaning of s. 2 of the Prescription Act; and that in the absence of proof of enjoyment by consent or agreement in writing, an absolute right to the use of the way had been acquired. *GARDNER v. HODGSON'S KINGSTON BREWERY CO.*

*Cozens-Hardy J. [1900] W. N. 67;*

*[1900] 1 Ch. 592*

4. — *Grant—Easement—Mortgage of servient tenement without reservation of right of way.*

A. owned two houses, C and B, which were situated back to back, and from one of which, C, there was a paved and walled passage along the side of and through the other, B, to B street. A. occupied the house C and let B. The passage was not a way of necessity, and was only used occasionally by A. In 1882 A. mortgaged the house B without reserving any right over the passage, and in 1886 she died, having by her will of the same year devised the two houses to different persons, the will containing no words appropriate to any right of way. The ultimate devisee of C. conveyed that house to the plt., purporting to include in such conveyance the

**WAY, RIGHT OF—continued.**

right of way. The deft., who was the devisee of B, paid off the mortgage thereon, and that house was reconveyed to him:—

*Held*, (1) by Div. Ct. and C. A., that as the mortgage deed did not reserve the right of way, and it was not a way of necessity, it was extinguished by the mortgage:

*Held*, (2) by Div. Ct., that no right of way passed to the plt.'s predecessor in title under the will. The C. A. did not decide whether or not any right of way passed under the will to the plt.'s predecessor. *TAWS v. KNOWLES*

*C. A. [1891] 2 Q. B. 564*

— Grant—Power of company to.

*See LANDS CLAUSES ACTS. 9.*

5. — *Grant—Powers of tenant for life—Right of way over a park.*

The leasing power of a tenant for life, under s. 6 of the Settled Land Act, 1890, does not extend to granting a right of way over the park attached to the principal mansion-house. *DOWAGER DUCHESS OF SUTHERLAND v. DUKE OF SUTHERLAND*

*- Romer J. [1893] 3 Ch. 169*

Referred to by Bigham J. *Brown v. Peto*, [1900] 1 Q. B. 346, 355; *C. A. [1900] 2 Q. B. 653.*

6. — *Grant in Gross—Easement—Covenant with yearly tenant and his "heirs and assigns"—Effect of acquiring fee simple.*

A., the owner in fee of Three-acre, conveyed it to B. by a deed dated March 12, 1869, which recited that it had been agreed that on completion of the purchase B. should grant to A., his "heirs and assigns," a right of way over a defined footway leading from a public road across Three-acre to Blackacre. The deed also referred to another deed as then prepared, which when executed was dated March 13, 1869, whereby B., in pursuance of this agreement and in consideration of the conveyance of Three-acre, covenanted and granted with and to A., his "heirs and assigns," that it should be lawful for them and the tenants and occupiers for the time being of Blackacre to use the footway. A. was then and until 1870, when he purchased the fee simple, only tenant from year to year of Blackacre:—

*Held*, that, notwithstanding the limited interest of A. when the easement was granted, and the cesser of that interest by merger in 1870, a lessee of Blackacre claiming under the freehold title of A. was entitled to use the footway. *RYMER v. McILROY*

*- Byrne J. [1897] 1 Ch. 528*

— Lease—Parcels—Misdescription—Common mistake—Rectification.

*See LANDLORD AND TENANT—Lease. 75.*

7. — *Necessity, Way of—Defined way—Grant.*

Action for an injunction to restrain the defts. from trespassing on a roadway.

*Per Kekewich J.*:—The peculiar circumstances in this case were that the land in question was not blocked on all sides, though it was blocked on three sides by land of the vendor. The question was whether the doctrine which calls into existence a way of necessity was applicable to such a case. Referring to the authorities, and in particular to a passage in *Gale on Easements*,

**WAY, RIGHT OF—continued.**

5th ed. p. 133, he said that there was no authority for extending the doctrine referred to to such a case as this, where the granted premises were not surrounded by the land of the vendor, but abutted on one side on land of a stranger. He held, therefore, that the claim to the roadway as a way of necessity failed.

Dicta in *Brown v. Alabaster*, (1887) 37 Ch. D. 490, doubted. *TITCHMARSH v. ROYSTON WATER CO.* — *Kekewich J.* [1899] W. N. 256

**8. — Obstruction—Abatement of obstruction to right of way.**

Where a right of way is obstructed by an inhabited house, the owners of the right may, after notice and request to remove the obstructing house, pull it down even if it is inhabited.

Where the obstructing property is in the hands of a receiver of the Court, it is necessary to obtain the leave of the Court to pursue any remedies and do any acts which might lawfully be taken or done to abate the obstruction, and the Court will grant such leave unless it is perfectly clear that the right claimed does not exist. *LANE v. CAISEY*

*Chitty J.* [1891] 3 Ch. 411

**9. — Obstruction—Public obstruction—Inclosure award—Footway and bridle-path—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 109.**

An inclosure award made in 1800 had allotted a road 15 ft. wide as a footway and bridle-path:—

*Held*, that the public were entitled to use the whole width of the road, and not merely a part, sufficient (e.g., 3½ ft.) for the purposes of a footway and bridle-path. Obstruction for a long period is no answer to public rights. Deft. was refused costs as between solicitor and client, the case not coming within s. 109 of the Highways Act, 1835. *PULLIN v. REFFELL*

*Romer J.* [1891] W. N. 39

[Sect. 109 was repealed by 56 & 57 Vict. c. 61.]

**10. — Obstruction, Removal of—Right of way—Highway authority—Footpath—Local board—Interested member—Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 26, 46—Practice—Pleading—Striking out—Irrelevancy.**

A local board discharging duties in relation to the protection of public rights of way under s. 26, sub-s. 1, of the Local Government Act, 1894, is in the same position as a private individual protecting his own property, and is not acting judicially. Consequently, where an action was brought against a local board to restrain the removal of posts erected on a public footpath by the owners of the adjoining property for the purpose of preventing the footpath from being used for vehicular traffic, and the statement of claim alleged that a member of the board had used his influence with the board for his own private interest, and that in consequence thereof the plts. had failed to induce the board to take steps to prevent the user of the footpath for vehicular traffic:—

*Held*, that the real issue was whether or not the posts constituted an obstruction to the public right of way, and that the allegations in the statement of claim were irrelevant, and ought to be struck out. *MURRAY v. EPSOM LOCAL BOARD*

*Stirling J.* [1896] W. N. 175 (9); [1897] 1 Ch. 35

**WAY, RIGHT OF—continued.**

— Power of company to grant—Access over land taken—Compensation.

*See LANDS CLAUSES ACTS—Compensation.* 9.

— Shooting—Right of way for—Servitude.

*See SCOTTISH LAW—Servitude.* 38.

— Streets.

*See LONDON—Streets.*

*STREETS.*

**11. — Trespass to land—Highway—Use of highway otherwise than as such—Practice—Declaratory judgment.**

The plt. lingered on a highway which passed over the deft.'s grouse moor for the sole and express purpose of interfering with the deft.'s right of shooting over the moor:—

*Held*, that the plt., being upon the highway for purposes other than its use as a highway, was a trespasser, and (Esher M.R. diss.) the Court should make a declaration to that effect. *HARRISON v. DUKE OF RUTLAND*

*C. A.* [1893] 1 Q. B. 142

Considered by H. L. (E.). *Allen v. Flood*, [1898] A. C. 1, 20.

Referred to by Div. Ct. *Luscombe v. Great Western Ry. Co.*, [1899] 2 Q. B. 313, 317.

Followed by *C. A.* *Hickman v. Maisey*, [1900] 1 Q. B. 752.

**12. Vendor and purchaser—Latent defect—Compensation—Rescission.**

A right of way, unknown to either party until the investigation of the title, is a latent defect in the title as well as an error in the description of property. *ASHBURNER v. SEWELL*

*Chitty J.* [1891] 3 Ch. 405

— Way-leave.

*See WAY-LEAVE.*

**WAY-LEAVE—Assessment of—“Heritor”—Church and manse.**

*See WATER—Water Rates.* 30.

**1. — Landowner—Railway company—Agreement for lease—Construction of way-leave—Ancient document—Contemporaneous usage or interpretation.**

By deed in 1854 H. agreed to grant to a ry. co. a way-leave and right to make rys. through his land for the term of 1000 years, the co. paying H. a specified rent on coal carried over “any part of the rys. comprehended in” a bill which afterwards became the co.’s special Act of 1854 and which should be shipped at Port B. The rys. were constructed and for more than forty years rent was paid by the co. for coal carried over the rys. and shipped at Port B., when the coal passed over H.’s land, no rent being paid or claimed for coal carried over the rys. and shipped at Port B. but not passing over H.’s land. In an action brought by H.’s successor against the co.:—

*Held*, that the words in the deed were plain and unambiguous; that the fact that the parties had interpreted the words in a sense different from that which the words themselves plainly bore could not affect the construction; that the co. were liable to pay the rent upon coal conveyed over any part of the rys. comprehended in the special Act and shipped at Port B., although it

**WAY-LEAVE**—*continued.*

did not pass over H.'s land, and that the plt. was entitled to an account for the six years prior to the issue of the writ.

Decisions of *Byrne J.*, [1898] 2 Ch. 674 and of *C. A.*, [1899] 1 Ch. 656, affirmed. *NORTH EASTERN RY. CO. v. LORD HASTINGS*

*H. L. (E.)* [1900] *W. N.* 92; [1900] *A. C.* 260

— Trespass by tipping spoil—Measure of damages.

See *TRESPASS*. 3.

**WEEKLY NOTES.**

*Observations on the practice of relying on decisions briefly reported in the "Weekly Notes." In re WOODIN. WOODIN v. GLASS*

*Kay L.J.* [1895] 2 Ch. 309 at p. 318

As to authority of cases not reported in the *LAW REPORTS*. See *OWEN v. RICHMOND*

[1895] *W. N.* 29

**WEEKLY TENANCY**—Determination—Landlord's liability.

See *LANDLORD AND TENANT*—Determination of Tenancy. 44.

**WEIGHT**—Sale otherwise than by weight.

See *BREAD*.

**WEIGHTS AND MEASURES**—*Metric system legalized by Weights and Measures (Metric System) Act, 1897 (60 & 61 Vict. c. 46).*

*O. in C. dated March 15, 1893, as to amount of error in local standards. St. R. & O. 1893, p. 760.*

*O. in C. dated Aug. 23, 1894, legalizing new denominations of standards for the measurement of electricity. St. R. & O. 1894 (No. 211), p. 514.*

**FEES.** List of fees to be taken at the Standards Office on and after Jan. 1, 1892. *St. R. & O. 1896, p. 810.*

*O. in C. dated May 19, 1898, as to denomination of standards and metric equivalents. Lond. Gaz. May 20, 1898, pp. 3135, 3136; St. R. & O. 1898, Nos. 410, 411.*

Generally, col. 2293.

Coals, col. 2294.

**Generally.**

— *Inspector—Passenger—Police officer—Conveyance at reduced rate.*

See *RAILWAY—Passengers*. 24.

1. — *Milk churn—Gauge indicating quantity contained—False or unjust measure—Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 25.* A. sold milk to B. and sent it by train in his own churns, which were fitted with gauges indicating the quantity contained in accordance with a contract with the railway. B., by his contract with A., was entitled to have the churns regauged:—

*Held*, that the gauged churns were measures which A. had in his possession for use for trade within the meaning of s. 25 of the Act of 1878. *HARRIS v. LONDON COUNTY COUNCIL*

*Div. Ct.* [1895] 1 Q. B. 240

2. — *Weighing machine—Weight indicated exceeding weight of article sold—"False or unjust"—Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 25.*

The respondent was charged under s. 25 of

**WEIGHTS AND MEASURES (Generally)**—*contd.*

the *Weights and Measures Act, 1878*, with having in his possession for use for trade a weighing machine which was false or unjust. The machine, which was used for weighing tea, had on it, under the scoop in which the tea was placed, a piece of paper, the effect of which was to make the machine indicate a weight exceeding, by the weight of the paper, the weight of the tea in the scoop. The paper was placed where it was for the purpose of convenience and expedition in weighing, because it would take longer to weigh the tea if it were placed in the bag in which it was to be sold before being put into the scoop. The paper weighed less than the bag in which the tea was sold.

*Held*, that, as the machine, when used with the paper, indicated a weight in excess of the true weight of the tea sold, it was "false or unjust," within the meaning of s. 25, and the respondent ought to be convicted. *LANE v. RENDALL* - *Div. Ct.* [1899] *W. N.* 208; [1899] 2 Q. B. 673

**Coals.**

3. — *Delivery from vehicle—By-law—County Council—Sale of coal—Validity—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 28.*

A provision in a by-law under s. 28 of the Act of 1889 requiring a weighing machine to be provided and carried when coal is sold out of a vehicle, *held*, to be valid. *KENT COUNTY COUNCIL v. HUMPHREY* *Div. Ct.* [1895] 1 Q. B. 903

Discussed by *Div. Ct.* *Alty v. Farrell*, [1896] 1 Q. B. 636, 640.

4. — *Delivery from vehicle—By-law—Validity—Sale of coal—Requisition to weigh—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 28.*

By a by-law made by a local authority under s. 28 of the *Weights and Measures Act, 1889*, which enables local authorities to make by-laws regulating the sale of coal in small quantities, "Every person in charge of any vehicle carrying coal for sale . . . , in quantities not exceeding two hundredweight . . . shall re-weigh the coal upon being requested to do so by any purchaser, or by any one on behalf of the purchaser, or by any constable"—

*Held*, by Lord Russell of Killowen C.J. (*Wright J.* doubting), that the section authorized the making of a by-law requiring the coal to be weighed by the person in charge of the vehicle, but *held* by the Court that the by-law was unreasonable, and therefore bad. *ALTY v. FARRELL* - [1896] 1 Q. B. 636

Discussed by *Div. Ct.* *Kruse v. Johnson*, [1898] 2 Q. B. 91, 106, 113.

5. — *Delivery of ticket—Sale of coal—Insertion of seller's name—Name under which seller trades—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 21, Sched. III.*

The appellant was convicted for default in compliance with the provisions of the *Weights and Measures Act, 1889*, s. 21, with respect to the delivery of a ticket with a ton of coal delivered by him, by means of a vehicle, to a purchaser. He had delivered a ticket in the form in the

**WEIGHTS AND MEASURES (Coals)**—*continued*.  
3rd sched. to the Act; in the place for the name of the seller were inserted the words, "Sellers the Co-operative Coal Company." This was the name under which the appellant traded, but there was no real company. There was no intent to defraud:—

*Held*, that the provision in the Act, requiring the insertion in the ticket of the seller's name, was sufficiently complied with by the insertion of the name under which the appellant carried on his business, and the conviction was wrong.  
**CAMERON v. TYLER** Div. Ct. [1899] W. N. 80; [1899] 2 Q. B. 94

6. — *Ticket*—"Correct weight"—*Weights and Measures Act*, 1889 (52 & 53 Vict. c. 21), s. 22.

When coal is conveyed for delivery on sale in bulk, in a vehicle not belonging to the purchaser, the "correct weight," which is required by s. 22 of the *Weights and Measures Act*, 1889, to be inserted in the ticket which is to be given to the purchaser, is the weight as ascertained at the place from which the coal is brought, and not the weight at the time of delivery. **KNOWLES & SONS, LD. v. SINCLAIR** Div. Ct. [1898] 1 Q. B. 170

Explained by Div. Ct. **Edwards v. Purnell**, [1899] 1 Q. B. 449, 454.

7. — *Ticket in form in schedule*—*Weights and Measures Act*, 1889 (52 & 53 Vict. c. 21), s. 21.

By an agreement between a firm of coal merchants and the committee of an asylum all coal supplied to the asylum was to be weighed on the asylum weighbridge, and the weight there ascertained before delivery was accepted by the committee. At the time of weighing a cartload of coal in course of delivery at the asylum, the carter had in his possession a book of forms containing tickets in the form in the sched., but in which the weights which were required to be entered were left in blank; at the conclusion of the weighing, and before any part of the coal was unloaded, the purchasers' storekeeper, in pursuance of the arrangement between the parties, filled in upon the ticket the weight of the coal and vehicle, the tare weight of the vehicle and the net weight of coal delivered; the ticket was then detached from the book, and handed by the carter to the storekeeper, and the coal was unloaded:—

*Held*, that the provisions of s. 21 had been complied with by the sellers, and that they could not be convicted under that section for not delivering to the purchaser before any part of the coal was unloaded a ticket in the form in the 3rd schedule to the Act. **EDWARDS v. PURNELL**

Div. Ct. [1899] 1 Q. B. 449

**WEIR**—Erection of weir or dam—Injunction—Fresh-water fishery.  
See **FISHERY**. 13.

**WELSH INTERMEDIATE ACT.**

See **CHARITY**—Commissioners. 12.

**WESLEYAN CHAPEL**—Endowments—Charity Commrs.—Accounts of charity.

See **CHARITY**. 3.

**WEST INDIA DOCKS**—Control of dock-master—Obstruction.

See **DOCK**. 1.

**WEST RIDING OF YORKSHIRE RIVERS ACT.**

See **YORKSHIRE**.

**WESTERN AUSTRALIA.**

See **AUSTRALIA**—*Western Australia*.

**WESTERN PACIFIC**—British jurisdiction.

See **FOREIGN JURISDICTION**. 4.

**WHARF**—Workmen's Compensation Act.

See **MASTER AND SERVANT**. 51, 52.

**WHARFINGER**—Liability—Obstruction in bed of river.

See **SHIPPING**—*Wharf*. 271.

**WIDENING STREETS.**

See *Cases under* **LONDON**—*Streets*.  
**STREETS**.

**WIDOW.**

See *Cases under* **HUSBAND AND WIFE**.

**WIFE.**

See *Cases under* **HUSBAND AND WIFE**.

"**WIFE'S RELATIONS**"—Illegitimate relatives.

See **WILL**—*Illegitimacy*. 104.

**WILD ANIMALS**—Prevention of cruelty to.

See **ANIMAL**.

**WILD BIRDS.**

By the *Wild Birds Protection Act*, 1894 (57 & 58 Vict. c. 24), the *Wild Birds Protection Act*, 1880, was amended.

*Wild Birds Protection Act*, 1896 (59 & 60 Vict. c. 56), amends and explains the *Wild Birds Protection Acts*.

**WILFUL DEFAULT**—Breach of Trust—Accumulation clause—Compound interest—Rate of interest.

See **TRUSTEE**—*Breach of Trust*. 19.

— *Executor*—Breach of duty—Loss of interest.

See **EXECUTOR**. 41.

— *Retaining investments*—*Depreciation*.

See **TRUSTEE**—*Investments*. 68.

— What is "wilful default" discussed.

See **VENDOR AND PURCHASER**—*Interest*. 54.

**WILFUL DELAY**—Rescission—Negotiation with third party.

See **VENDOR AND PURCHASER**—*Rescission*. 69.

**WILL.**

*In General*, col. 2298.

*Absolute Gift*, col. 2298.

*Acceleration*, col. 2302.

*Accumulations*. See **ACCUMULATIONS**.

*Ademption*, col. 2303.

*Advancement*, col. 2304.

*Annuity*, col. 2308.

*Attestation*, col. 2309.

*Charge of Debts, &c.*, col. 2310.

*Children*, col. 2311.

*Class*, col. 2315.

*Codicil*, col. 2317.

*Condition*, col. 2318.

*Construction*, col. 2319.

*Contingent Gift*, col. 2320.

*Contingent Remainder*, col. 2330.

*Conversion*. See **CONVERSION**.

**WILL**—continued.

- Dividends*, col. 2322.  
*Donatis Mortis Causâ*. See DONATIO MORTIS CAUSÂ.  
*Eldest Son*, col. 2323.  
*Estate Tail*, col. 2323.  
*Evidence*, col. 2325.  
*Execution of Will*. See PROBATE — **Execution of Will**.  
*Executory Devise*. See WILL—Contingent Remainder.  
*Exoneration*, col. 2327.  
*Falsa Demonstratio*, col. 2328.  
*Foreign Will*, col. 2328.  
*Forfeiture*, col. 2329.  
*Hotchpot Clause*. See WILL—Advancement.  
*Illegitimacy*, col. 2332.  
*Income*, col. 2333.  
*Interest*. See WILL—Advancements.  
*Investments*. See TRUSTEE — Investments.  
*Joint Tenancy*, col. 2334.  
*Lapse*, col. 2335.  
*Leaseholds*, col. 2337.  
*Legacy*, col. 2337.  
*Lost Will*, col. 2342.  
*Marriage*, col. 2342.  
*Married Woman*, col. 2344.  
*Marshalling*, col. 2345.  
*Mistake*, col. 2345.  
*Mortmain*. See CHARITY—Mortmain.  
*Name and Arm Clause*, col. 2346.  
*Navy and Marines*, col. 2346.  
*Perpetuity*, col. 2346.  
*Power of Appointment*. See POWER.  
*Precatory Trust*, col. 2351.  
*Probate*. See PROBATE.  
*Relevancy*, col. 2352.  
*Remoteness*. See WILL—Perpetuity.  
*Residue*, col. 2353.  
*Resulting Trust*. See TRUST. 4—6.  
*Reverter*, col. 2355.  
*Revival of Will*. See WILL—Revocation.  
*Revocation*, col. 2355.  
*Satisfaction*, col. 2358.  
*Scottish Law*. See SCOTTISH LAW — Will.  
*Secret Trust*. See TRUST. 7.  
*Shifting Clause*, col. 2359.  
*Soldier's Will*. See PROBATE—Soldier's Will.  
*Specific Devise*, col. 2359.  
*Substitution*, col. 2361.  
*Superstitious Uses*, col. 2361.  
*Survivor*, col. 2361.  
*Tenant for Life*. See SETTLED LAND.  
*Tenants in Common*. See WILL—Joint Tenancy.

**WILL**—continued.

- Testamentary Expenses*, col. 2362.  
*Uncertainty*, col. 2363.  
*Vested Interests*, col. 2364.  
*Vesting*, col. 2364.  
*Words*, col. 2365.
- In General.**
- Administration.  
     *See Cases under EXECUTOR.*
  - Charitable gifts.  
     *See Cases under CHARITY.*
  - Contract to build on land—Non-completion before death of landowner—Costs.  
     *See BUILDING CONTRACT. 4.*
  - Co-parceners or joint tenants.  
     *See WILL—Joint Tenancy. 112.*
  - Estate duty.  
     *See Cases under REVENUE—Estate Duty.*
  - Estate duty—Settled estate duty.  
     *See WILL — Testamentary Expenses. 205—206.*
  - Estate pur autre vie.  
     *See Cases under ESTATE PUR AUTRE VIE.*
  - Fidei commissum—Jus accrescendi.  
     *See CEYLON. 1.*
  - Grant of administration.  
     *See Cases under PROBATE.*
  - Grant of probate.  
     *See Cases under PROBATE.*
  - Holograph will.  
     *See POWERS—Exercise. 18.*
  - Insolvent testator—Debt due to executor—Retainer in specie.  
     *See BANKRUPTCY. 219.*
  - Lost will—Presumption that it was destroyed by testator.  
     *See WILL—Lost Will. 138.*
  - Natal law—Mutual will.  
     *See NATAL. 8.*
  - Nuncupative will.  
     *See DONATIO MORTIS CAUSÂ. 3.*
  - Powers.  
     *See Cases under POWER.*
  - Probate of will.  
     *See Cases under PROBATE.*
  - Settled Land Acts.  
     *See Cases under SETTLED LAND.*
  - Special occupant—Devolution of estate.  
     *See ESTATE PUR AUTRE VIE. 2.*
  - Subsequent discovery of will after grant of administration.  
     *See TRUSTEE—Practice. 88.*
  - Tenant for life and remainderman.  
     *See Cases under SETTLED LAND.*
  - Trustees.  
     *See Cases under TRUSTEE.*
- Absolute Gift.**
- Annuities.  
     *See Cases under WILL—Annuity.*
  - 1. — “Any money . . . that may be in my

**WILL (Absolute Gift)—continued.**

*possession*”—*Reversionary interest in personally—Construction of will.*

Testatrix, who died in 1892, by her will dated in 1891, after making certain bequests of stock, declared as follows: “Any money not mentioned in the aforesaid bequests that may be in my possession at my death after the payment of my debts funeral and testamentary expenses I give absolutely” to P. She then made certain specific gifts of chattels. At her death she was entitled to a reversionary interest in personalty which fell into possession in 1897:—

*Held*, that the reversionary interest passed under the bequest to P. *In re EGAN. MILLS v. PENTON* - *Stirling J.* [1899] W. N. 27 (10); [1899] 1 Ch. 688

2. — *Codicil—Absolute gift of personalty—Gift of same personalty for life with remainder to children*—“*Instead of such bequests in the manner expressed in*” the will—*Absolute gift in the will not revoked by the codicil.*

A testator by his will bequeathed his personal estate to his two daughters A. and B. equally.

By a codicil he directed that “instead of such bequests in the manner expressed in my said will to such daughters absolutely” his executors should stand possessed of his personal estate upon trust for sale and conversion, and to pay the income in moieties to his two daughters for life and on the death of either of them to pay the moiety of the trust moneys to their children as they should by deed or will appoint. The codicil contained no gift over in the event of a daughter dying without issue.

B. died without ever having had any issue, having by her will devised and bequeathed all her real and personal estate to her executors, upon the trusts therein mentioned:—

*Held*, that there was no intestacy as to the moiety of the personal estate given to B., there being no revocation under the codicil of the absolute gift given to her by the will.

*Doe v. Marchant*, (1843) 6 Man. & G. 813, followed. *In re WILCOCK. KAY v. DEWHIRST*  
*Romer J.* [1898] 1 Ch. 95

3. — *Codicil—Inconsistent codicil.*

A testator devised real estate at W. in settlement. By a codicil he directed the estate at W. to be sold:—

*Held*, that the devisees were not deprived of the beneficial interest given them by the will. *In re CHIFFERIEL. CHIFFERIEL v. WATSON*  
*North J.* [1895] W. N. 106

— *Condition—Construction of will.*

*See Cases under WILL—Conditions.*

— *Cutting down—Absolute gift—Remoteness—Splitting gift over.*

*See WILL—Perpetuity.* 166.

4. — *Heirlooms—Trust for person entitled to “actual” possession of realty.*

Chattels bequeathed as heirlooms upon trust to go along with, and be enjoyed by the person for the time being entitled under a settlement to the “actual” possession of, settled real estate do not vest absolutely in a tenant in tail of the real estate who dies in the lifetime of the tenant for life. *ANGERSTEIN v. ANGERSTEIN*  
*Kekewich J.* [1895] 2 Ch. 883

**WILL (Absolute Gift)—continued.**

5. — *House and furniture to A., Gift of—Power to B. to take from furniture everything he might desire—Equitable interest in land—Equitable charge—Locke King’s Act Amendment Act, 1877 (40 & 41 Vict. c. 34).*

A power given by will to A. B. to take everything that he may desire from the furniture (*qu’il choisisse tout ce qu’il voudra des meubles*), except certain articles, at a house bequeathed with the furniture therein to X. Y., entitles A. B. to take if he likes the whole of such furniture other than the excepted articles. The decision of North J. affirmed.

If land is made a security for a debt by any instrument which gives the person entitled to the charge an equitable interest in the land, the instrument is an equitable charge within the meaning of Locke King’s Act, 1877. The decision of North J. reversed. *Kennedy v. Kennedy*, 10 Hare, 438, distinguished; *Arthur v. Mackinnon*, 11 Ch. D. 385, approved. *In re SHARLAND. KEMP v. ROZEY* - *C. A.* [1896] W. N. 62 (19); *see also* [1896] 1 Ch. 517

6. — *Law of wills prior to Wills Act—Words of gift without limitation—“Estate”—“Property”—Appeal from New South Wales.*

Before the Wills Act, 1837, came into force words of gift of realty without words of limitation only conveyed a life estate. The words “estate” or “property” or their equivalent, if used in the operative part of the devise, would enlarge the estate to fee simple; not so if used in another part of the will as words of reference only. *HULL v. BROWN* - *P. C.* [1894] A. C. 125

7. — *Limitation, Words of—“Heirs, executors, or administrators”—Life estate.*

Gift to wife and daughter and the survivor for life, with power of appointment by will; gift over in default to the “heirs, executors, and administrators” of the survivor; “such heirs, executors, and administrators” to be ascertained as if the survivor had died unmarried and intestate:—

*Held*, that the ascertaining clause shewed that the testator did not use the words “heirs, executors, and administrators” as words of limitation, as they would have been without the clause, whatever might have been the testator’s intention, and that the survivor only took a life estate with a power of appointment by will. *In re HALL. HALL v. HALL*  
*C. A.* [1893] W. N. 24

8. — *“Married woman”—Construction of will.*

Testator by his will directed his trustees to divide trust funds among such of his seven children as should be alive at the period of distribution, and the issue of such of them as should then be dead. He directed “that the share of each of my said daughters, who at the time of such division shall be a married woman, shall be held by my trustees upon trust to pay the annual income thereof into her hands for her separate use on her sole receipt and so that she may never anticipate the same, and after her decease the said share shall be held in trust for her children as she shall by deed or will appoint, and, in default of appointment, for all her children who



**WILL (Absolute Gift)—continued.**

shall attain twenty-one years, in equal shares, and if there shall not be any such child, then in trust for such person or persons as she shall by deed or will appoint."

The period of distribution had now arrived. Two of the testator's children were now alive, C. A. Cox, a married woman with children, and E. M. Dyer, a widow who had children; all the other children of the testator mentioned in his will were dead without issue. The question was whether Mrs. Dyer was absolutely entitled to half the fund, or whether she was only entitled to a life interest:—

*Held*, that Mrs. Dyer took her half of the fund absolutely. **RUDALL v. NICHOLS**

**Cozens-Hardy J. [1900] W. N. 133**

**9. — "Or" read "and"—Gift of realty and personality.**

Gift of real and personal estate to trustees upon trust for testator's wife for life, and upon her decease "for the sole use and benefit of my son A. upon his attaining the age of twenty-one and to his trustees, executors, administrators, and assigns for ever, but if my said son shall not live to attain that age or die without leaving lawful issue then upon trust" for the plt. A. attained twenty-one in 1863, and died in 1893, without ever having had any issue. The testator's widow had died in 1884:—

*Held*, that A., on his attaining twenty-one, became absolutely entitled to the real and personal estate devised and bequeathed by the will.

The rule in *Fairfield v. Morgan*, (1805) 2 Bos. & P. (N.R.) 38; 9 R. R. 609, is applicable to personality as well as realty. **WRIGHT v. MARSON**

**Chitty J. [1895] W. N. 148 (11)**

**— Precatory trust.**

*See Cases under WILL—Precatory Trust.*

**10. — Reversionary interest—Conversion—Enjoinment in specie—Executor—Administration—General bequest to persons in succession—Absolute gift subject to executory limitation.**

The reason of the rule in *Howe v. Earl of Dartmouth*, (1802) 1 W. & T. 7th ed. p. 68, is not generally applicable to an absolute gift subject to an executory limitation.

By his will a testator gave all his property to his wife, and by a codicil to his will, after reciting that G. M. was the adopted daughter of himself and his wife and that he was desirous of providing for her in the event of his wife dying without issue leaving her surviving, he directed that in such event the gift in his will in favour of his wife should take effect as if the name of G. M. had been substituted therein for that of his wife. Part of the testator's estate consisted of a reversionary interest in a trust fund:—

*Held*, having regard to the form of the gift in the codicil, that the testator intended that the property should be enjoyed in specie, and that the reversion ought not to be sold. *In re Bland*. **MILLER v. BLAND** **Stirling J. [1899] 2 Ch. 336**

**— Revocation or not.**

*See Cases under WILL—Revocation.*

**— Secret trust.**

*See TRUST. 7.*

**WILL (Absolute Gift)—continued.**

**11. — Subsequent gift over of portion undisposed of in legatee's lifetime.**

By his will, subject to payment of his debts and funeral and testamentary expenses, a testator gave all his property to his wife "for her absolute use and benefit, so that during her lifetime for the purpose of her maintenance and support she shall have the fullest power to sell and dispose of my said estate absolutely. After her death, as to such parts of my . . . estate as she shall not have sold or disposed of as aforesaid, subject to payment of my wife's funeral expenses, I give . . . the same" in trust for sale for the benefit of other persons. The wife was also appointed sole executrix. On the testator's death his widow took possession of his estate, and his debts and funeral and testamentary expenses were paid during her lifetime. At her death a considerable part of the estate remained unsold and undisposed of:—

*Held*, that the widow took an absolute interest, and that the part undisposed of passed by her will.

*In re Pounder*, (1886) 56 L. J. (Ch) 113, distinguished. *In re Jones*. **RICHARDS v. JONES**

**Byrne J. [1898] 1 Ch. 438**

**12. — Wasting securities—Life estate—Rule in *Howe v. Earl of Dartmouth*, (1802) 7 Ves. 137 a; 6 R. R. 96.**

To entitle the donee of a life interest in wasting securities to the whole income of the investment as it stands something equivalent to a specific gift is required. *In re Eaton*. **DAINES v. EATON** **Kekewich J. [1894] W. N. 95**

**13. — Wasting or unauthorized securities—Life estate—Rate of interest payable to tenant for life—Rule in *Howe v. Earl of Dartmouth*, (1802) 7 Ves. 137 a; 6 R. R. 96.**

Notwithstanding the current rate, 4 per cent. is payable to a tenant for life in respect of unauthorized or wasting securities. *In re Nicholson*. **NICHOLSON v. NICHOLSON**

**Kekewich J. [1895] W. N. 106**

**Acceleration.****— Forfeiture of interest.**

*See Cases under WILL—Forfeiture.*

**14. — Successive absolute limitations of personal estate—Repugnancy—Lapse.**

Where in a will there are successive limitations of personal estate in favour of several persons absolutely, the first of these who survive the testator takes absolutely, although he would have taken nothing if any prior legatee had survived and taken. The effect of the failure of an earlier gift is to accelerate, not to destroy, the later gift. The doctrine of repugnancy has no application to gifts which fail. *In re Lowman*. **DEVENISH v. PESTER** **C. A. [1895] 2 Ch. 348**

Explained and distinguished by C. A. *In re Hocking*, [1898] 2 Ch. 567,

Followed by *Cozens-Hardy J. In re Carter*, [1900] 1 Ch. 801, 802.

**Accumulations.**

*See Cases under ACCUMULATIONS.*

**WILL—continued.****Ademption.**

## —Advances.

See Cases under WILL—Advancement.

**15. — Contribution by real estate—Payment of debts—Deficiency of personal estate.**

A will, after specific devises and bequests, contained a gift of pecuniary legacies, followed by a gift of residuary real and personal estate. The personalty was insufficient to discharge the debts:—

*Held*, that the pecuniary legacies were not liable to contribute to the debts, but were a charge on the residuary real estate, and that the residuary realty must contribute to the debts rateably with the specific devises and legacies, according to its full value, without deducting the pecuniary legacies. *In re BAWDEN. NATIONAL PROVINCIAL BANK OF ENGLAND v. CRESSWELL. BAWDEN v. CRESSWELL*

**Kekewich J. [1894] 1 Ch. 693**

**16. — Devised estate sold and mortgaged to secure purchase-money—Wills Act, 1837 (1 Vict. c. 26), ss. 23, 24—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.**

After specifically devising freehold estate to which he was absolutely entitled, the testator sold it, and it was on the following day reconveyed to him by way of mortgage to secure part of purchase-money:—

*Held*, that the sum secured by the mortgage did not pass to the specific devisee. *In re CLOWES*

**C. A. [1893] 1 Ch. 214**

Distinguished by *Cozens-Hardy J. In re CARTER, [1900] 1 Ch. 801, 803.*

**17. — Lunacy, Order in—Transfer of stock—Ademption of legacy.**

The transfer under an Order in Lunacy of stock into the name of the Paymaster-General out of the name of a testatrix who had become of unsound mind:—

*Held*, not to redeem a bequest of all stock “standing in my name and belonging to me at the time of my decease.”

The investment under the same order of money belonging to the testatrix in like stock in the name of the Paymaster-General:—

*Held*, not to increase the legacy.

Part of the stock was subsequently sold to provide for costs. The Court directed that the sale should be taken in reduction of the amount invested, and not of the amount transferred, so as to preserve the rights of the legatees. *In re WOOD. ANDERSON v. LONDON CITY MISSION*

**North J. [1894] 2 Ch. 577**

**18. — Specific legacy—Share of trust fund—Transfer to beneficiary—Separate account—Drawings—Appropriation of payments—Partial ademption.**

By her will, dated Feb. 11, 1897, a testatrix, being entitled to one moiety of a trust fund on deposit with V. & Co., subject to a prior life interest, bequeathed that moiety to her nephews and nieces. She bequeathed her residue, including money at her bankers or on deposit with V. & Co., to S. M. M. The prior life interest determined in March, 1897, and on Dec. 14, 1897, one moiety of the trust fund was transferred

**WILL (Ademption)—continued.**

to the testatrix's deposit account with V. & Co. This transfer was made by the trustee without instructions from the testatrix; but she continued to draw on the account, statements of which were sent her from time to time, without distinguishing the moiety transferred. Owing, however, to other credit payments, the balance never fell below 4000*l.* The testatrix died on Sept. 27, 1898.

The question was whether the bequest of the above-mentioned moiety was adeemed by the transfer to the testatrix's private account.

*Held*, that, according to the rule in *Stanley v. Potter, (1789) 2 Cox, 180*, he had merely to inquire whether the specific legacy remained at the testator's death. Being originally a moiety of a trust fund of 8000*l.* in the name of a trustee, it had become a fund of 4000*l.* in the testatrix's own name. Before the transfer she could only have sued V. & Co. through or in the name of her trustee. After the transfer she could sue in her own name. In either case, however, she would have recovered the same thing, namely, 4000*l.* In substance she had disposed of her 4000*l.* trust fund, and it was no less her trust fund because, having fallen in, it was carried to her separate account. The difference was not substantial, being merely one of language, and there was no total ademption. As to partial ademption, the doctrine of appropriation of payments would have applied if the testatrix had been suing V. & Co., but it could not without inconsistency be applied to the present case, as the decision on the first point turned on the view that the specific fund was still intact. *In re VICKERS. VICKERS v. MELLOR*

**Kekewich J. [1899] W. N. 242**

**Advancement.****19. — Abatement of legacies—Advances—Insufficient estate—Holtchpot.**

In setting off advances against legacies, any necessary abatement must be calculated on the whole legacy, and not on the difference between the legacy and the advance. If the advance exceed the amount of the abated legacy, the difference must be refunded by the legatee as a debt to the estate. *In re SCHWEDER. OPPENHEIM v. SCHWEDER (No. 2) Chitty J. [1893] W. N. 12*

—Abatement—Legacy to wife—Insufficient estate—Priority.

See *In re Schweder's Estate (No. 1), [1891] 3 Ch. 44.*

## —Ademption.

See Cases under WILL—Ademption.

**20. — “Expectant or presumptive share”—Impossibility of issue—Woman past child-bearing—Advancement clause—Construction of will.**

Where property is given to B. in the event of A. having a child, the Court will not enter into the question of A. being past child-bearing for the purpose of depriving B. of the chance of becoming entitled to the property.

A testator directed that, in the event of his sister A. marrying and having children, his property should be divided among the children of his sisters A. and B. upon the youngest child attaining twenty-one, but did not provide for the

**WILL (Advancement)—continued.**

event of A. marrying and having no children; and he empowered his trustees to raise a portion of the expectant, presumptive, or vested share of any child of B. for his or her advancement.

Upon a summons by the trustees to determine whether the power of advancement was exercisable in view of the fact that A. was then a widow of fifty-four years of age, and had never had a child:—

*Held* (reversing Kekewich J.), that the power continued in operation during the lifetime of A.

*Jee v. Audley*, (1787) 1 Cox, 324, and *In re Dawson*, (1883) 39 Ch. D. 155, followed.

*In re Louman*, [1895] 2 Ch. 348, explained and distinguished. *In re Hocking. MICHELL v. LOE* — — — C. A. [1898] 2 Ch. 567

21. — *Gift within twelve months of death—Ademption—Estate duty—Account—Finance Act*, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (c); s. 9, sub-s. 1.

A testator within one year of his death spent 4000*l.* on the purchase of a house, which he settled on one of his daughters, and contributed 4300*l.* towards the purchase of another house for another daughter; the Court having decided that these gifts must be considered as an ademption pro tanto of the daughters' shares in the testator's residuary estate, which must be brought into account:—

*Held*, that the amount for which the daughters were accountable was the sums so advanced less the amount they were liable to pay for estate duty by reason of the death of the testator within one year of the gift. *In re BEDDINGTON. MICHOLES v. SAMUEL*

Byrne J. [1900] W. N. 76; [1900] 1 Ch. 771

22. — *Hotchpot clause—Construction of will.*

A father having one son and one daughter covenanted with the trustees of his son's marriage settlement that his executors would pay them 10,000*l.* to be held on trust for the son for life, with remainder for the son's wife for life, with remainder as to the capital for the issue of the marriage; in the event (which happened) of there being no child the capital to be held in trust for the father absolutely. The father died having by his will given the residue of his estate in trust for his son and daughter in equal shares. The will provided that all sums which the testator had covenanted to give to or with any child on his or her marriage should, in default of any direction to the contrary, be taken in or towards satisfaction of the respective share of such child, and should be brought into hotchpot and accounted for accordingly. After the father's death his executors paid 10,000*l.* out of his estate to the trustees of the son's settlement, appropriated a like sum to the daughter, and divided the residue equally between the son and the daughter. The son having afterwards died leaving a wife and without issue, the daughter claimed a moiety of the 10,000*l.* fund:—

*Held*, (1.) that the benefits secured for the testator's son, his wife and children, under the testator's covenant in the son's marriage settlement were sums which the testator had covenanted to give to his son on his marriage, within the

**WILL (Advancement)—continued.**

meaning of that expression in the hotchpot clause; (2.) that the whole beneficial interest in the 10,000*l.* fund must be treated as appropriated to the son's share at the date of the division of the estate, the ultimate interest being appropriated and allotted to the son under the direction for the equal division of the testator's estate between his two children, and the prior interests being brought into account as part of the son's share under the hotchpot clause; and that the son's executors were therefore entitled to the whole of the 10,000*l.* fund, subject to the life interest of the son's widow.

Decision of C. A., *In re Coster, Humphreys v. Gadsden*, [1897] 1 Ch. 325, affirmed. *WHEELER v. HUMPHREYS* — H. L. (E.) [1898] A. C. 506

23. — *Hotchpot clause—Rent—Set-off—Money owing for rent—Landlord and tenant—Non-payment of rent—Adverse possession—Absolute title of tenant—Extinguishment of landlord's title—Construction of will—Real property Limitation Acts*, 1833 (3 & 4 Will. 4, c. 27), ss. 34, 42; 1874 (37 & 38 Vict. c. 57), s. 1.

A testatrix gave her property among her four children, and directed that all moneys owing to her at her death by any child for rent or otherwise should be brought into hotchpot in ascertaining the share of such child. One son had, in the lifetime of the testatrix, acquired an absolute title, under s. 1 of the Real Property Limitation Act, 1874, to a freehold farm which had been let to him by her, through non-payment of rent by him to her for more than twelve years. Upon the question whether the unpaid rent for the twelve years prior to the extinguishment of the estate of the testatrix in the farm ought to be deducted from the son's share:—

*Held*, that, under the Real Property Limitation Acts, 1833 and 1874, all the rights of the reversioner in the farm had become extinguished, and that therefore the unpaid rent was no longer owing to her estate, and should not be deducted from the son's share.

Decision of North J., [1900] 1 Ch. 292, reversed. *In re JOLLY. GATHEBECOLE v. NORFOLK*

C. A. [1900] W. N. 170; [1900] 2 Ch. 616

— Hotchpot clause—Settlement.

See Cases under SETTLEMENT—Hotchpot.

24. — *Interest—Period of distribution—Hotchpot clause—Advancement of part of residuary share—Legacy for life and then to fall into residue—Equality.*

A testator who died in 1878 bequeathed 30,000*l.* with interest at 4 per cent. on trust for his widow for life, and after her death for division into four equal parts and payment of one part to his son, the remaining three-fourths to fall into residue. He declared that any sum which he should advance or covenant to advance to any of his children should be taken in satisfaction pro tanto of the advanced child's provision, and this provision was to apply expressly to a sum of 6000*l.* which he had covenanted to advance to the trustees of one of his daughters' marriage settlements. He gave his real estate and his residuary personal estate to his trustees on trust to sell and convert and out of the proceeds to

**WILL (Advancement)—continued.**

pay his debts and legacies, and to divide the residue into three equal shares, one of such shares for each of his three daughters for life, and after her death for her issue. His estate consisted chiefly of land, of which the trustees in exercise of their discretion under the will postponed the sale. They raised upon mortgage a sum sufficient to pay the debts, including the 6000*l.* which they paid to the daughter's trustees; but the 30,000*l.* was not so raised. The rents of the real estate after providing for the interest on the 30,000*l.* and on the mortgage produced a surplus income of about 200*l.* a year, which was paid in equal shares to the two unadvanced daughters. The widow died in 1895:—

*Held*, upon the division of the residue, that the period of distribution was the death of the testator; that the advanced daughter, besides bringing into hotchpot the 6000*l.*, must be charged with interest thereon as from the date of the advance; but that the rate of interest ought to be 3 and not 4 per cent.

*In re Rees*, (1881) 17 Ch. D. 701, and *In re Dallmeyer*, [1896] 1 Ch. 372, applied. *In re LAMBERT. MIDDLETON v. MOORE*

*Stirling J.* [1897] 2 Ch. 169

25. — *Interest on advancements—Option for sons successively to take testator's business—Son taking to be debited with value—Accumulation of income—Division of residue and accumulations—Equality—Advancement of part of residuary share.*

A testator by his will gave each of his sons in succession, according to seniority, the option of succeeding to his business, and declared that the son electing to do so should be debited with the value thereof in the division of his residuary estate, and if the value should exceed the amount of such son's expectant share therein at the time the option was declared, he should refund the excess to the testator's residuary estate. Then, after giving certain legacies to his other children, sons at twenty-five, and daughters at twenty-one or marriage, which were to carry interest from his death applicable for maintenance, the testator gave his residuary estate upon trusts for sale, conversion, and investment and payment of certain annuities, and directed the trustees to accumulate the surplus income at compound interest for twenty-one years from his death, if any child of his should so long live and be under twenty-one, and on the attainment of twenty-one by his youngest living child (which was to be the period of distribution) to hold the trust fund in trust for his children then living as tenants in common. The will also empowered the trustees, at any time before the period of distribution, to make advances out of the capital of the trust premises in favour of any of his sons, the sums so advanced to be taken in part satisfaction of the shares in the trust premises to which the sons advanced should become entitled.—The testator died in 1883, leaving three sons and two daughters. The eldest son in 1884 elected to succeed to the business, the value of which (15,000*l.*) did not at the time exceed the amount of his expectant share. The youngest child attained twenty-one in 1894; and meanwhile the second son had,

**WILL (Advancement)—continued.**

under the powers of advancement, received sums amounting to 8200*l.*:—

*Held*, by the Court, that in debiting the eldest son with the value of the business taken by him, he ought not to be debited with interest thereon from the time he took it, but only from the period of distribution:—

*Held*, also, by Lord Herschell and A. L. Smith L.J. (Rigby L.J. dissentiente), that as to the sums advanced to the second son no interest ought to be charged thereon prior to period of distribution.

The principles applicable with reference to advancement commented on and explained.

The decision of Kekewich J. affirmed. *In re DALLMEYER. DALLMEYER v. DALLMEYER*

C. A. [1896] 1 Ch. 372

Applied by *Stirling J.* *In re Lambert*, [1897] 2 Ch. 169.

26. — *Power to apply part of presumptive share towards advancement in life of child—Construction of will—Breach of trust.*

A testator bequeathed his estate to trustees on trust to pay the income to his children in equal shares, and gave power to the trustees to apply "in or towards the advancement in life of each child a sum not exceeding 500*l.* of his or her presumptive share." The trustees were to be the sole judges of the advisability of such payment and of the signification of the term "advancement in life." After the share of a married daughter had become vested, the trustees at her request advanced 250*l.* to her under this power with knowledge that the sum so advanced would be used to pay a debt due from her husband to one of the trustees:—

*Held*, that this was not a bona fide exercise of the power, and was therefore a breach of trust.

*Seem*, that there was no power to make any advance after the share had become vested.

*MOLYNEUX v. FLETCHER* — *Kennedy J.*  
[1898] 1 Q. B. 648

— Settled estate duty.

*See WILL—Testamentary Expenses.*  
205, 206.

**Annuity.**

*See also Cases under ANNUITY.*

— Annuity—Reduction of, on ceasing to reside  
— Validity—Gift of leasehold house to widow.

*See SETTLED LAND.* 99.

27. — "*Deductions*" — *Income tax—Absolute gift.*

In his will, B. gave certain annuities "clear of all deductions whatsoever, except income tax." In a subsequent codicil which, inter alia, increased one of the annuities, he said, "And I expressly direct that every legacy and other interest as well devisable under my will as any codicil thereto shall be free of legacy duty and every other deduction:—

*Held*, that B. must be taken to have had his will in his mind when he made the codicil, and as the will shewed he intended "deductions" to include income tax, therefore the annuities must be paid free of income tax. *In re BUCKLE. WILLIAMS v. MARSON* C. A. [1894] 1 Ch. 286

**WILL (Annuity)—continued.****28. — Duration—For life or perpetual.**

(A) A gift of "an annuity of 150*l.* a year to be secured to X." is merely an annuity to X. for life. *In re* LORD STRATHEDEN AND CAMPBELL. COWPER v. STRATHEDEN AND CAMPBELL.

Kekewich J. [1893] W. N. 90

(B) A gift of 250*l.* per annum "to X. or his descendants" is merely an annuity to X. for life with a substitutionary gift for life to X's descendants living at testator's death, if X. did not survive testator. *In re* MORGAN. MORGAN v. MORGAN - - C. A. [1893] 3 Ch. 222

— Interest — Gift of money for purchase of annuity.

See INTEREST. 2.

**29. — Reversion, Annuity charged on—Direction that first payment be made half-a-year after testator's death—Immediate annuity.**

A. gave his personality and a life estate in his realty to B., and charged the reversion or one portion of such realty with an annuity to C., and directed that the first payment of the annuity was to be made half-a-year after A.'s death:—

*Held*, that C. was entitled to an annuity commencing on A.'s death. *In re* WILLIAMS. WILLIAMS v. WILLIAMS - - Stirling J. [1895] W. N. 36

**Attestation.****30. — Attesting witness, Gift to—Solicitor—Profit costs—Codicil—Republishing—Wills Act, 1837 (1 Vict. c. 26), s. 15.**

Though a gift by will to an attesting witness is utterly null and void, it may be rendered effectual, if the will is republished by a codicil referring to the will but not attested by the legatee, and (applying the principles of *Gurney v. Gurney*, (1885) 3 Drew. 208, and *Re Marcus*, (1887) 57 L. T. 399) this benefit will not be lost to the legatee by his subsequent attestation of a second codicil. *In re* TROTTER. TROTTER v. TROTTER - Byrne J. [1899] W. N. 36 (13); [1899] 1 Ch. 764

— Denial by attesting witness—Will—Evidence of execution.

See BERMUDA.

— Donee of power a domiciled Frenchwoman—Holograph will of donee in French language unattested.

See POWER—Exercise. 18.

— General power—French will—Unattested will—Execution of power.

See POWER—Exercise. 23.

— Insufficient attestation clause—Refusal of attesting witnesses to make affidavit.

See PROBATE—Execution. 13.

— Margin of will, Signatures of witnesses in—Subscription.

See PROBATE—Execution. 14.

— Married woman—Re-execution on death of husband.

See PROBATE—Execution. 15.

— Unattested will—Leaseholds—Domiciled foreigner—Immovables—Administration with will annexed.

See CONFLICT OF LAWS. 17.

**WILL—continued.****Charge of Debts, &c.****31. — General charge of legacies on real estate if personal estate insufficient—Subsequent specific devise—Presumption of law rebutted by intention.**

A testator bequeathed pecuniary legacies to be charged in the first place upon his personality, and if the same should be insufficient to be charged upon his real and personal estates. He then specifically devised lands at A. to G. and other lands at other places (naming them) to F. There was no residuary devise. The lands at A. and the lands specifically devised to F. formed the whole of the testator's realty. The personality being insufficient the pecuniary legatees claimed a charge upon the lands at A. :—

*Held*, that upon the true construction of the will the testator's intention was that the lands at A. should be charged with the legacies, and that the presumption of law contra was therefore rebutted.

Decision of C. A. in Ireland, [1897] 1 I. R. 86, affirmed. BANK OF IRELAND v. MCCARTHY

H. L. (I.) [1898] A. C. 181

**32. — Marshalling—Direction for payment of debts—Stock specifically bequeathed charged in testator's lifetime.**

Where the general personal estate of a testator not specifically bequeathed is insufficient for payment of his debts, a specific legatee of property charged by the testator in his lifetime with the payment of a sum of money must, as between such specific legatee and other specific legatees or devisees, bear the burden of the incumbrance; and a general direction in the will that the testator's debts shall be paid after his decease is not sufficient to throw any part of such burden on the specific devisees of real estate. *In re* BUTLER. LE BAS v. HERBERT

Kekewich J. [1894] 3 Ch. 250

**33. — Power of sale—Charge of real estate with debts and legacies—Devises in trust—Vesting of legal estate—Trust to pay or permit tenant for life to receive rents and profits—Implied power of sale—Law of Property Amendment Act, 1859 (Lord St. Leonards' Act, 22 & 23 Vict. c. 35), s. 14.**

A testator by his will dated in 1868 appointed his wife executrix thereof, and directed payment of his debts without saying by whom, and, after bequeathing certain pecuniary legacies, he gave the residue of his real and personal estate to two other persons upon trust as to his real estate to pay to or permit and suffer his wife to receive the rents and profits for her life, and after her death upon trust to pay to or permit and suffer his niece to receive the rents and profits for her life for her separate use; and after declaring certain trusts with regard to his personal estate, he directed his trustees after the death of the survivor of his wife and niece to pay two pecuniary legacies, and after payment thereof to stand possessed of his real estate and the residue of his personal estate upon certain other trusts:—

*Held*, (1.) upon the principle of *Greville v. Browne*, (1859) 7 H. L. C. 689, that there was a charge upon the real estate of the debts and immediate legacies, and also of the two future legacies; (2.) that the charge of the debts and

**WILL (Charge of Debts, &c.)—continued.**

immediate legacies being unaccompanied by any express direction to the trustees to pay, did not vest the legal estate in them; (3.) that the form of the gift to the widow, in the absence of any trust for her separate use, vested the legal estate in her for her life, the purposes of the will not requiring that the legal estate should vest in the trustees during her lifetime; (4.) that, the testator not having devised the real estate to the trustees for his whole interest therein, the trustees had no power to sell under s. 14 of Lord St. Leonards' Act.

*Doe v. Biggs*, (1809) 2 Taunt. 109, and *Doe v. Bolton*, (1839) 11 Ad. & E. 188, followed.

*Horton v. Horton*, (1798) 7 T. R. 652, and *Van Grutten v. Foxwell*, [1897] A. C. 658, distinguished. *In re Adams and Perry's Contract* *Stirling J.* [1899] W. N. 24 (12); [1899] 1 Ch. 554

**Children.**

— "Child"—Implication of words.

See **WILL—Construction**. 66.

— Children or their natural representatives if dead according to the statute rule of distribution—Widow of child.

See **WILL—Words**. 221.

**34. — "Children then living"—Grandchildren.**

Gift in trust for five children, with gift over, on death of any one without issue, to the "other children then living":—

*Held*, that this gift was modified by a subsequent proviso that grandchildren should take the share "the parent would have taken if living." *In re Blantern*. *Lowe v. Cooke*

C. A. [1891] W. N. 54

— Class—Gift to.

See **Cases under WILL—Class**.

**35. — "Die without child or children"—Without leaving children—Real estate—Executory gift over—Construction of will—Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 10.**

A testator gave one-half of his estate, which was principally freehold, to the plt. for her absolute use and benefit, "but should she die without child or children," then over among the defts. The plt. had an infant child:—

*Held*, that "die without child or children" meant "die without leaving a child or children," and that the plt. was now absolutely entitled to one-half of the estate, subject to an executory gift over in favour of the defts., in the event of her not having any child who should survive her, or attain twenty-one in her lifetime. *In re Booth*. *Pickard v. Booth*

*Byrne J.* [1900] W. N. 76; [1900] 1 Ch. 768

— Illegitimacy.

See **WILL—Illegitimacy**.

**36. — Illegitimate children—Gift to "children" of person described as "wife."**

A testator gave property in trust for his children, including "B. the wife of C." with life estates to them and remainders to their "children or child." B. and C. were not legally married; they had one child born before the date of the will, and two born after the testator's death:—

*Held*, that the child born before the date of the will fell within the description in the will,

**WILL (Children)—continued.**

but that the others did not. *In re Harrison*. *Harrison v. Higson*.

*Kekewich J.* [1894] 1 Ch. 561

**37. — Illegitimate children—"Issue"—Construction of will.**

A testatrix gave the income of her residuary estate in moieties between her brother and sister, and on the death of either of them the moiety previously payable to such one equally between her nephews and nieces, naming them, of whom M. A. was one, during the life of the survivor of her brother and sister, with a proviso that, if any of the nephews and nieces should die during the life of the brother or sister leaving issue him or her surviving, such issue should take the share of income which his, her, or their parent would have taken if living at the time of the decease of the brother or sister. M. A. was described elsewhere in the will as "my niece M., the wife of F. H. A.," and her illegitimate daughter was described as "her daughter G. S. A.," and also as the testatrix's "great-niece."

On the death of the testatrix's brother his moiety became distributable in the manner mentioned in the will, and M. A. received her share of the income and died in the lifetime of the testatrix's sister without having had any legitimate children:—

*Held*, that G. S. A. was included in the word "issue," and was entitled for the remainder of the life of the testatrix's sister to the share of income to which her mother had been entitled. *In re Walker*. *Walker v. Lutyens*

*Romer J.* [1897] 2 Ch. 238

**38. — Illegitimate children—Legitimation by subsequent marriage of parents—Domicil—Devise of realty.**

The rule that children born out of wedlock and legitimated by the subsequent marriage of their parents cannot inherit English land as heir, relates only to a case of descent upon an intestacy, and not to a case of devise by will to "children."

A testator devised realty to the children of B. B. had, among other children, a son born before wedlock. This son had been legitimated according to the law of the father's domicile, viz., the Cape Colony, by the subsequent marriage of his parents:—

*Held*, that he was entitled to his share of the devised realty. *In re Grey's Trusts*. *Grey v. Earl of Stamford* *Stirling J.* [1892] 3 Ch. 88

— Illegitimate relatives.

See **WILL—Illegitimacy**. 102—106.

**39. — Implied gift to children—Life estate—Gift over—Death "without leaving children"—Residuary gift.**

A testator gave houses in trust for A. for life with a gift over on the death of A. without leaving children:—

*Held*, per C. A. that A. took a life interest only, that her children had no interest, and on A.'s death, an ultimate residuary gift took effect.

Decision of C. A. *In re Rawlings' Trusts*, (1890) 45 Ch. D. 299, affirmed. *Scale v. Rawlins*

*H. L. E.* [1892] A. C. 342

— Implication of words—"Child."

See **WILL—Construction**. 66.

**WILL (Children)—continued.****40. — "Issue"—"Children"—Construction of will.**

Where in a deed, will, or other document a word has a clear and definite meaning when used in one part, but has not when used in another, the presumption is that the word is intended to bear the same meaning in the latter case as in the former.

Twelve distinct legacies contained gifts over to the "issue" of legatees dying in the testator's lifetime. Except in the case of the eleventh legacy, the gift over in each contained words clearly restricting "issue" to "children." In the eleventh case the gift over to "issue" contained no words of restriction whatever:—

*Held*, reversing Kekewich J., [1899] W. N. 24 (13); [1899] 1 Ch. 703, that the restriction of "issue" to "children" applied to the gift over in the eleventh legacy as well as to the gifts over in the other legacies. *In re BIRKS. KENYON v. BIRKS* C. A. [1900] 1 Ch. 417

**41. — Issue—Succession—Vesting.**

A testator bequeathed to his three daughters, in equal shares, the life-rent of a sum of 36,000*l.*, to be invested within five years after his decease. Until the investment was made, he bequeathed to each daughter an annuity of 200*l.* In the event of a daughter dying, without leaving issue, her life-rent interest was to accrete to her surviving sister or sisters, whilst the capital of the share life-rented by her lapsed into residue. In the event of her leaving issue, the trustees were directed "to divide equally amongst the issue of each of my said daughters" one-third of the sum directed to be invested. Mrs. M., one of the daughters, died in March, 1895, leaving surviving two daughters. Mrs. M. had had also a son and a daughter, Mrs. H., who predeceased her childless, but died after the testator. The question was whether the representatives of the predeceasing issue were entitled to a share of the capital appointed to be divided amongst Mrs. M.'s issue:—

*Held*, reversing the decision of the Ct. of Sess., (1896) 23 R. 598 (Lords Watson and Herschell dissenting), that all the children of Mrs. M. were entitled to share equally in the division of the fund in which their mother had a life interest. *HICKLING v. FAIR* H. L. (Sc.) [1899] A. C. 15

**42. — "Issue living"—Children ventre sa mère.**

A. gave property at the death of B. to C. "in case she has issue living at the death of" B. C. was confined of a living child one day after B.'s death:—

*Held*, that the gift to C. took effect. *In re BURROWS. CLEGHORN v. BURROWS*

Chitty J. [1895] 2 Ch. 497

**— Joint tenancy.**

See Cases under WILL—Joint Tenancy.

**43. — Maintenance—Right of adult children to maintenance during life of widow.**

A testator gave residue on trust to pay to his wife or permit her to receive the annual income thereof during her life for her use and benefit, and for the maintenance and education of

**WILL (Children)—continued.**

his "children," with a provision for division on her death, and a power of advancement:—

*Held*, that the widow took the income subject to a trust for the maintenance of the children, not limited to those who were under twenty-one or unmarried. An inquiry directed as to which, if any, of the children required maintenance. *In re BOOTH. BOOTH v. BOOTH*

North J. [1894] 2 Ch. 282

Referred to by Kekewich J. *In re G. (Infants)*, [1899] 1 Ch. 719, 722, 724.

**44. — "Offspring."**

A testator by his will, dated 1896, gave and bequeathed to the "offspring of my late brother Augustus the sum of 1500*l.*"

The brother had two daughters only, A. and B.; A. was married, and had two children who were infants.

The question was whether the legacy was divisible in fourths amongst A. and B. and the children of A., or in moieties between A. and B.

*Held*, that as the expression "offspring" was used without the addition of other words, it must be taken to mean "children" only. *TABULEAU v. NIXON* Byrne J. [1899] W. N. 115

**45. — Per capita or per stirpes—"Share and share alike."**

A testator gave the income of his property to his wife for life, after her death to his brother and sisters, and on the death of any of them the income of his or her share to his or her children. The will contained these words, "and after the decease of all I desire the whole of my property to be sold," &c., and the proceeds to be equally divided between the children of the aforesaid share and share alike:—

*Held*, that the children of the brother and sisters took *per capita* and not *per stirpes*. *In re STONE. BAKER v. STONE* C. A. [1895] 2 Ch. 196

**46. — Step-children — Gift to "children" — Testator having only step-children.**

A testator by his will, made when he was fifty-nine and his wife sixty, gave his property for sale and conversion, and directed the proceeds to be divided equally among his children. He had no children, but his wife had had children by a former husband, who were treated by testator as his children, and had adopted his name:—

*Held* (1), that the Court could look at circumstances outside the will to determine whom testator meant by "children," and (2) that he intended his step-children to take. *In re JEANS. UPTON v. JEANS* — North J. [1895] W. N. 98

**47. — "Surviving children," Gift to — One survivor only.**

A testator, who died in 1844, made five specific devises of his copyhold property to his five children, subject to the life interest therein of their mother, and continued: "And if any or either of my said children should happen to die without having lawful issue their share or shares of such property to go and be equally divided among the surviving children share and share alike."

One of the daughters died a spinster in 1895; at her death her brother Joseph was the testator's only surviving child; and the question was

**WILL (Children)—continued.**

whether the daughter's share passed on her death without issue to her brother Joseph, as the surviving child of the testator, or to her customary heir.

*Held*, following *Hearn v. Baker*, 2 K. & J. 383, that "surviving children" included a sole surviving child, and consequently that the daughter's share passed to her brother Joseph.

*In re BROWN. BROWN v. ACOMB*

**Chitty J. [1896] W. N. 164 (7)**

**Class.**

— Absent parties accepting benefit of judgment  
— Practice.

*See ESTOPPEL. 4.*

— Ascertainment of members of class—In settlement.

*See SETTLEMENT—Voluntary Settlement. 36.*

**48. — Intermarriage of two members of class—Double shares—Residuary gift.**

A gift to a class, two members of which intermarried:—

*Held*, that the children of such marriage were entitled to two shares, one in respect of each parent. *In re SMITH. DEW v. KENNEDY*

**Kekewich J. [1892] W. N. 106**

**49. — Lapse — Gift to "A. and the children of B."—Death of A. in testator's lifetime — Lapse — Survivorship—Period of distribution.**

A testator gave property in trust for his wife (who survived him) for life, and after her death for his niece A. and the children of his sister B. who should attain twenty-one equally. At the date of the will there were living A. and five children of B., but A. died in the testator's lifetime. At the death of the tenant for life B.'s five children were still living and had all attained twenty-one:—

*Held* (reversing North J.), that the gift was a gift to a class, and that consequently A.'s death in the testator's lifetime had not caused a lapse of her share, but the whole gift passed to the five children as the members of the class surviving at the period of distribution.

*Per Romer L.J.*: A gift by will to a class, properly so called, and A. equally, so that the testator contemplates A. taking the same share that each member of the class will take, is *prima facie* a gift to a class. *In re MOSS. KINGSBURY v. WALTER C. A. [1899] W. N. 112; [1899] 2 Ch. 314*

**50. — Mistake as to number—Gift to children —Practice—Costs—Ascertainment of persons entitled to legacy—Costs out of residue—R. S. C., Order LXV., r. 14 B.**

A testator bequeathed the residue of his estate to his trustees, and directed that out of the proceeds they should pay his funeral and testamentary expenses, debts, and legacies. By a codicil he bequeathed 4000*l.* to his trustees, on trust to pay the annual income thereof to his son R., who was in his uncontrolled discretion to apply the same for the benefit of the testator's son W. and his two children by his late wife. And, after the death of W., the trustees were to stand possessed of the capital and income of the 4000*l.* in trust for "the said two children of W. in equal

**WILL (Class)—continued.**

shares as tenants in common, to be paid to them on their respectively attaining the age of twenty-one years or marrying under that age." At the date of the codicil there were living four children of W. by his late wife. In an action by the trustees after W.'s death to determine which of his four children were entitled to the 4000*l.*:—

*Held*, that the four children were entitled to the 4000*l.* in equal shares:

*Held*, also, that the costs of the action ought to be paid out of the residue of the estate, and not out of the 4000*l.*, and that, if rule 14 B of Order LXV. applied, a direction should be given for the payment of the costs out of the residue. *In re GROOM. BOOTY v. GROOM*

**North J. [1897] 2 Ch. 407**

**51. — Mistake in number — "Unmarried daughter"—Gift to children.**

Gift to five unmarried daughters of A. At the date of the will A. had three sons and three daughters, two daughters being unmarried:—

*Held*, that the words "unmarried daughters" were the material words, and the gift went to the two unmarried daughters. *In re DUTTON. PLUNKETT v. SIMON. North J. [1893] W. N. 65*

**52. — "Nephews and nieces"—Children en ventre sa mère.**

Bequest of residue to nephews and nieces for their respective lives, on their deaths their shares to go to their children; shares of nephews, &c., dying without having any child surviving to go to children of other nephews, &c.:—

*Held*, that a child en ventre sa mère took under this last provision. *In re HALLETT. HALLETT v. HALLETT Chitty J. [1892] W. N. 148*

**53. — "Nephews and nieces"—Husband and wife.**

Gift of residue in trust "for all my nephews and nieces living at my decease who shall live to attain the age of twenty-one years." The testator had given legacies to a number of named persons, including nephews and nieces of his wife:—

*Held*, that the residue was divisible among all the testator's nephews and nieces, whether they were nephews and nieces of the testator or of the testator's wife, and further, that the wife of a nephew, although not related to either the testator or his wife, was to be treated as a niece.

*Per curiam*:—Where there is a gift to a class which includes a husband and wife, the husband and wife take separate shares.

Decision of North J., [1892] W. N. 88, affirmed. *In re GUE. SMITH v. GUE*

**C. A. [1892] W. N. 132**

**54. — Period of ascertaining class—Gift of income to children of A.—Perpetuity—Construction of will.**

A testator directed his trustees to pay the interest, dividends, and annual profits of a share of his personal estate unto the children of his sister, and to divide the same equally among them during their lives, and after their deaths to divide the share equally between their children. The testator's sister survived him:—

*Held*, that the gift of income to the children of the sister was confined to children born at the date of the testator's death, and that the gift



**WILL (Class)—continued.**

over to the children's children was therefore valid, and not void for remoteness.

*In re Wenmoth's Estate*, (1887) 37 Ch. D. 266, distinguished. *In re POWELL. CROSLAND v. HOLLIDAY* - **Kekewich J. [1898] 1 Ch. 227**

— Power of disposition amongst—Power coupled with a trust.

*See POWERS.* 3.

**55. — Substitution—Construction of will.**

A gift in a will to take effect after a life estate to a class ascertainable at the death of the testator, with a substitutional gift to the children of deceased members of the class instead of their parents, does not let in the children of persons who died in the testator's lifetime, but would have been members of the class if they had survived.

*Thornhill v. Thornhill* (1819) 4 Madd. 377, approved. *In re HANNAM. HADDLESLEY v. HANNAM* - **North J. [1897] 2 Ch. 39**

**56. — Substitution—Issue taking by—Gift to children as a class—Wills Act, 1837 (1 Vict. c. 26), s. 33.**

The rule that s. 33 of the Wills Act, 1837, does not apply to gifts to children or grandchildren of the testator as a class is not affected by the fact that the class happens to consist of but one person. *In re SIR E. HARVEY'S ESTATE. HARVEY v. GILLOW* **Chitty J. [1893] 1 Ch. 567**

— Uncertainty—Several deceased sons named B. *See WILL—Uncertainty.* 208.

**57. — Vested or contingent interests—Period of ascertainment of class—Remoteness.**

*In re Mervin. Mervin v. Crossman*, [1891] 3 Ch. 197, followed, his Lordship observing that the decision in *Elliott v. Elliott*, (1841) 12 Sim. 276, depended upon the language of the will there under consideration, and that in *In re Coppard's Estate* (35 Ch. D. 350) he had perhaps attached greater weight to *Elliott v. Elliott* than he was now prepared to do. He did not intend in *In re Coppard's Estate* to go beyond *Elliott v. Elliott*, and so far as *In re Coppard's Estate* did go beyond that case it ought not to be followed. *In re STEVENS. CLERK v. STEVENS* **Stirling J. [1896] W. N. 24 (12)**

**58. — Vesting—Gift to a class at twenty-one—Maintenance—Construction of will.**

A power given by will to trustees to apply "the whole or such part as they shall think fit" of the income of the respective shares of members of a class entitled to shares of property on attaining twenty-one:—

*Held*, not to vest the shares of members under twenty-one.

*Fox v. Fox*, (1876) L. R. 19 Eq. 286 dissented from. *In re WINTLE. TUCKER v. WINTLE* **North J. [1896] 2 Ch. 711**

But *see In re Turner*. C. A. [1899] 2 Ch. 739.

**Codicil.**

— Absolute gift.

*See WILL—Absolute Gift.*

— Attesting witness, Gift to—Solicitor—Profit costs—Codicil—Republication.

*See WILL—Attestation.* 30.

**WILL (Codicil)—continued.**

— Inconsistent codicil.

*See WILL—Absolute Gift.* 3.

— Incorporation by codicil—Interlineations.

*See PROBATE.* 100.

— Lost will—Codicil admitted to probate where will not forthcoming.

*See PROBATE.* 129.

— Second codicil revoking "all previous codicils."

*See PROBATE.* 125.

**Condition.**

**59. — Absolute gift—Subsequent condition—Repugnancy—Restraint on alienation—Legacies out of proceeds of sale.**

A testator gave his plantations in Assam and all other his estate to the plt. absolutely subject to the payment of his debts, and, after appointing her executrix, continued, "on any sale by the plt. of the said plantations I will and direct her to pay my brother the sum of 1000*l.* out of the proceeds of such sale, also the further sum of 500*l.* out of the proceeds of such sale to" the testator's sister:—

*Held*, that the direction to pay these legacies imposed no obligation on the plt. to sell; and further, that this direction was repugnant and void, and that the property, therefore, belonged to the plt. absolutely. *In re ELLIOT. KELLY v. ELLIOT* - **Chitty J. [1896] 2 Ch. 353**

— Gift on condition—Peculatory trust.

*See WILL—Peculatory Trust.* 168.

— Marriage—Condition in restraint of.

*See WILL—Marriage.*

**60. — Repair of tomb—Family vault—Gift over to another charity—Perpetuities.**

The rule against perpetuities does not apply to a transfer in a certain event from one charity to another. A condition that a family vault shall be kept in repair, attached to a gift of stock to charity A., with a gift over on non-compliance to charity B., held to be valid. *In re TYLER. TYLER v. TYLER* - **C. A. [1891] 3 Ch. 252**

Distinguished by *Stirling J. In re Bower*, [1893] 2 Ch. 491.

**61. — Residence—Assignment of share—Defeasible interest.**

Testator gave his son a life interest, subject to a condition that the trustees should pay A. 50*l.* per annum so long as the son resided with her. When not residing with A., the son assigned his life estate as "beneficial owner" thereof. He afterwards went to reside with A.:—

*Held*, notwithstanding the assignment, that the trustees could pay the 50*l.* per annum to A. *In re GREENWOOD. PRIESTLEY v. GRIFFITHS*

**C. A. (Kay L.J. diss.) [1892] W. N. 20**

**62. — Residence—"Refuse or neglect"—Infant.**

Where real estate is devised in strict settlement with a direction that the person becoming entitled shall reside in and occupy the mansion-house, with a gift over in case he shall "refuse or neglect" to do so, and the person in possession is an infant; the gift over cannot operate during infancy, for the condition is a condition subsequent

**WILL (Condition)—continued.**

to divest an already vested estate, and an infant must reside where his guardian prescribes, and therefore in case of non-residence he did not "refuse or neglect" to reside in the mansion-house. *PARTRIDGE v. PARTRIDGE*

North J. [1894] 1 Ch. 351

## 63. — "Return to England."

A condition of trusteeship that the trustee should return to England is satisfied by the person nominated coming to England on a visit and remaining there six months:—

*Held*, therefore, in the absence of evidence that such trustee had dissented from or disclaimed his trusteeship before his return, the trusteeship and estates vested in him on his return, and that he was a necessary party to a conveyance of the trust property. *In re ARBIB AND CLASS' CONTRACT*

C. A. [1891] 1 Ch. 601

**Construction.**

— General principles of construction of wills.

*See Cases under WILL, passim.*

## 64. — Citation of decided cases.

(A) It is a misuse of cases on construction to depart from a plain instrument and to import from the authorities something not in the instrument itself, which raises a doubt not created by the instrument itself. *Per Lindley L.J. In re TREDWELL. JEFFRAY v. TREDWELL (No. 1)*

C. A. [1891] 2 Ch. 640, at p. 653

Distinguished by C. A. *In re Ackeroyd's Settlement*, [1893] 3 Ch. 363.

(B) In construing one will too much attention is not to be paid to decisions on other wills. Rules of law must be attended to; but if in any case the intention of a testator is expressed with sufficient clearness, the Court should give effect to it. The fact that in other wills more or less like that under consideration other judges have not been satisfied as to the intention expressed is not a sufficient ground for defeating the intention appearing on the will under construction. *In re PALMER. PALMER v. ANSWORTH*

*Per Lindley L.J. C. A. [1893] 3 Ch. 369, at p. 373*

(C) The proper rule for construing a will is to form an opinion apart from the cases, and then to see whether the cases required a modification of that opinion; not to begin by considering how far the will resembled wills on which decisions had been given. *In re BLANTERN. LOWE v. COOKE*

C. A. revers. *Stirling J. [1891] W. N. 54*

(D) *Per Halsbury L.C. in C. A.*: "I repudiate entirely the notion of laying down any canon of construction which is to extend beyond the particular instrument that I am called upon to give an interpretation to."

Decision of C. A., *In re Jodrell. Jodrell v. Seale*, (1890) 44 Ch. D. 590, affirmed. *SEALE-HAYNE v. JODRELL*

H. L. (E.) [1891] A. C. 304  
Followed by *Jeune J. In the Goods of Ashton*, [1892] P. 83, 88.

Referred to by *Stirling J. In re Deakin*, [1894] 3 Ch. 565, 569.

Referred to by *Kekewich J. In re Parker*, [1897] 2 Ch. 208, 211.

(E) *Per Kekewich J.*: In dealing with questions of construction affecting title, the Court

**WILL (Construction)—continued.**

considers itself unfettered by any decision or even by the practice of conveyancers. *In re EDWARDS. EDWARDS v. EDWARDS*

[1894] 3 Ch. 644, at p. 648

65. — *Holograph will by lay testator.*

Where in a layman's holograph will words occur which have an intelligible conventional meaning, that meaning is to be ascribed unless the context otherwise requires. *HAMILTON v. RITCHIE*

H. L. (Sc.) [1894] A. C. 310

66. — *Implication of words—"Child."*

A testator devised the residue of the proceeds of his real and personal estate to trustees, upon trust to pay and divide the same "equally amongst the children of my deceased father's brothers and sisters. And I desire that the child or children of any one of such brothers and sisters as may be dead shall take his, her, or their deceased parent's share:—

*Held*, that the word "child" must be implied after the words "any one," and that the children of a deceased child of a brother and the children of a deceased child of a sister of the testator's father were respectively entitled to their deceased parent's share of the residue. *In re WROE*

North J. [1896] W. N. 38 (19)

**Contingent Gift.**

67. — *Contingent interests—Spes successionis—Presumptive next of kin—Bequest to next of kin according to the statute—Right to injunction—Judgments Act, 1840 (3 & 4 Vict. c. 82), s. 1.*

It being necessary for trustees, who had invested part of the residuary estate in Consols, to realize a portion of the Consols, on applying to the Bank of England they found that certain distringases had been placed on the stock, including one by B. The trustees thereupon took the necessary steps for having the distringases orders duly warned.

The only tenant for life now alive was one of the testatrix's sisters, who was ninety years of age.

On April 7 B. obtained an order *ex parte* restraining the bank until after April 11 from permitting the transfer of the Consols on an undertaking to accept from either the Bank of England or from the trustees three hours' notice to discharge the injunction, and he now moved on notice to the bank and to the trustees for an injunction to restrain the bank from permitting the transfer of the Consols, and the question was whether B., claiming through C. A. W., who would be one of the next of kin of the testatrix if he survived the sole surviving tenant for life, had such an interest in the testatrix's estate as to entitle him to the injunction:—

*Held*, that the applicant had not an "interest" sufficient to bring him within 3 & 4 Vict. c. 82, s. 1, and to entitle him to the injunction asked for. No order made on the motion except that the applicant should pay the costs. *In re ASHTON*

Byrnes J. [1900] W. N. 109

**Contingent Remainder.**

(Contingent remainder and executory devise.)

68. — *Contingent remainder—Gift to devisees as joint tenants and to the survivor of them, his*

**WILL (Contingent Remainder)—continued.**

*heirs and assigns for ever—Wills Act, 1837 (1 Vict. c. 26), s. 28.*

A testator by will made in 1840 devised lands to seven persons "as joint tenants and not as tenants in common, and to the survivor or longest liver of them, his or her heirs and assigns for ever":—

*Held*, that the effect of the limitations was to constitute the seven devisees joint tenants for life with a contingent remainder over in fee simple to the ultimate survivor. *QUARM v. QUARM*

Div. Ct. [1892] 1 Q. B. 184

69. — *Devise to trustees—Discretion to pay debts—Contingent remainder—Failure of particular estate.*

The testatrix by her will directed her debts, &c., to be paid, and devised a freehold messuage on trust for H. for life with power of appointment, and in default for each of the children of H. who being sons should attain the age of twenty-one, or, being daughters, should attain that age or marry. H. died without exercising the power of appointment leaving only infant children:—

*Held*, that the legal estate passed to the trustees, and that the estates limited to the children of H. were equitable, and therefore did not fail. *In re BROOKE. BROOKE v. BROOKE* (No. 1)

Chitty J. [1894] 1 Ch. 43

70. — *"Die without leaving male issue"—Estate tail or fee simple—Indefinite failure of issue—Executory devise—Wills Act, 1837 (1 Vict. c. 26), s. 29.*

Section 29 of the Wills Act applies to the case of a gift over on death without "male" issue.

Under a devise of realty to A., with a gift over if A. should die without leaving "male" issue:—

*Held*, that A. took an estate in fee simple, subject to an executory devise over. *In re EDWARDS. EDWARDS v. EDWARDS*

Kekewich J. [1894] 3 Ch. 644

71. — *Equitable estate—Intestacy—Incomes—Contingent Remainder, 1877 (40 & 41 Vict. c. 33).*

An equitable contingent remainder created before 40 & 41 Vict. c. 33, which becomes clothed with the legal estate after the passing of the Act, is not defeated by the failure of the prior life interest; nor would it have been defeated by becoming clothed with the legal estate if the Act had not been passed. *In re FREME. FREME v. LOGAN* (No. 1)

North J. [1891] 3 Ch. 167

Upon another point, see C. A. [1894] 1 Ch. 1, 3.

72. — *Executory devise or contingent remainder.*

A gift to A. for life, and from and after the decease of A. unto and to the use of such child or children of A. living at his decease, and such issue then living of the child or children of A. then deceased, as either before or after the death of A. should attain the age of twenty-one years or die under that age leaving issue, is an executory devise, and not a contingent remainder. *DEAN v. DEAN*

Chitty J. [1891] 3 Ch. 150

Referred to by North J. *Symes v. Symes*, [1896] 1 Ch. 272, 277.

73. — *Executory devise or contingent remainder*

**WILL (Contingent Remainder)—continued.**

—*Receiver—Appointment of, for judgment creditor—Cesser of life estate.*

A devise of a freehold estate contained a proviso that the legal life estate should cease on being taken in execution by any process of law and the estates given to the children of the tenant for life should thereupon absolutely vest in the persons next entitled:—

*Held*, (1) that the appointment of a receiver was a "taking in execution," and the life estate of the son in possession thereupon determined; (2) that the devise over was executory, and the persons entitled were all the children of the tenant for life who should attain twenty-one, &c., and not merely the children born before the receivership order, nor the one child who attained twenty-one before that date. *BLACKMAN v. FYSH*

Kekewich J.; affirm. by C. A.

as to (2), decision as to (1) not being appealed against - [1892] 3 Ch. 209

— *Executory limitation or—Appointment.*

See POWERS—Validity. 46.

74. — *Infants—Intermediate rents—Legal and equitable limitations.*

A testator by his will dated in 1878 devised certain real property to the use of trustees in fee simple upon trust for A. for life, and after her death, for her children who being sons should attain twenty-one, or being daughters should attain that age or marry, as tenants in common. The testator died in 1881; A. died in 1885, leaving six children, all infants and unmarried. The eldest child attained twenty-one in March, 1897:—

*Held*, that the eldest child was entitled on attaining twenty-one to the entirety of the rents until the next child attained a vested interest, and so on, as if the limitations had been legal.

*In re HOLFORD*, [1894] 3 Ch. 30, held not to apply. *In re AVERILL. SALISBURY v. BUCKLE*

Romer J. [1898] 1 Ch. 523

75. — *Joint tenants—Gift to devisees as joint tenants with remainder to the survivor of them his heirs and assigns for ever.*

A devise to seven persons "as joint tenants and not as tenants in common and to the survivor or longest liver of them, his or her heirs and assigns for ever," constitutes the seven devisees joint tenants for life with a contingent remainder over in fee to the ultimate survivor. *QUARM v. QUARM*

Div. Ct. [1892] 1 Q. B. 184

**Conversion.**

See Cases under CONVERSION.

**Dividends.**

76. — *Apportionment—Income or capital—Public company—Construction of Will—Apportionment Act, 1870 (33 & 34 Vict. c. 35), ss. 5, 7.*

Every co. registered under the Companies Act, 1862, is a public co. within the meaning of the term in the Apportionment Act, 1870.

A bequest of shares in a limited co., coupled with a declaration that the shares so bequeathed shall carry the dividend accruing thereon at the

**WILL (Dividends)—continued.**

testator's death, operates as an exclusion of the Apportionment Act.

A testator bequeathed certain shares in a limited co. to trustees upon trust to sell, with a power of postponement, and stand possessed of the proceeds and the shares remaining unsold upon trust to receive the annual produce thereof and hold the same in trust for the testator's children and remoter issue in succession, and declared that every share bequeathed by his will should carry the dividend accruing thereon at his death. The dividends were payable annually:—

*Held*, that the trustees took the whole of the dividend for the year in which the testator died without apportionment, and that such dividend was payable as income to the tenants for life under the will. *In re LYSAGHT*. *LYSAGHT v. LYSAGHT*, — C. A. [1898] 1 Ch. 115

**Donatio Mortis Causâ.**

See *DONATIO MORTIS CAUSÂ*.

**Eldest Son.**

77. — “Eldest son” entitled to possession—*Construction of will*.

A will limited successive life estates in Blackacre to members of a class, other than and except an eldest or only son for the time being entitled to the possession or receipt of the rents of Whiteacre as tenant for life or a greater estate. A tenant in tail in remainder of Whiteacre joined with his father, the tenant for life, in a sale of which he had the benefit:—

*Held*, that on the death of his father he became an eldest son within the exception, and incapable of succeeding to a life estate in Blackacre under the limitations of the will. *SHUTTLEWORTH v. MURRAY*

**Cozens-Hardy J.** [1900] W. N. 89; [1900] 1 Ch. 795

**Estate Tail.**

78. — *Base fee—Fee simple absolute—Acknowledgment by married women*.

A base fee in remainder created by vendors when spinsters can be turned into a fee simple absolute by the vendors, if married after the Married Women's Property Act, 1882, without acknowledgment or the concurrence of the husbands. *In re DRUMMOND AND DAVIE'S CONTRACT*

**Chitty J.** [1891] 1 Ch. 524

79. — *Intention—Revocation—Construction of will—Wills Act (1 Vict. c. 26), s. 28*.

A testator by his will devised his fee simple estates to trustees to give the rents to S. M.; but in case S. M. encumbered the lands or rents at any time the testator revoked the gifts of the rents “from S. M. and from his heirs male,” or should S. M. not forfeit the same and should “die without male issue him surviving,” he bequeathed the rents and estates to R. M. and his issue male in tail male:—

*Held*, that upon the true construction of the whole will the testator's intention was clear that S. M. should take an estate tail.

Decision of Irish C. A., [1899] 1 I. R. 359 affirmed. *CRUMPE v. CRUMPE*

**H. L. (I.)** [1900] W. N. 40; [1900] A. C. 127

**WILL (Estate Tail)—continued.**

— *Personalty—Gift in default of issue—Perpetuity*.

See *WILL—Perpetuity*. 155.

80. — *Postponement clause—Limitations of real estate—Estate “in defeasance of” estate tail—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 15*.

Land was devised in trust for A. for life, remainder to his first and other sons in tail male, similar remainder to B. and C. and their sons successively, with a proviso that upon the happening of a certain event the trusts in favour of B. and his sons “should thereafter be postponed to and take effect in remainder immediately after” the trust in favour of C. and his sons. With the consent of A. (the tenant for life in possession) B. and his eldest son executed a disentailing deed, conveying the lands in fee simple. Subsequently during the life of A., the certain event occurred:—

*Held*, that the estate limited to C. and his sons on the occurrence of the certain event was an estate “in defeasance of” and not “prior to” that of B. and his sons, and therefore that the estate of C.'s eldest son was barred under the statute by the disentailing deed. *MILBANK v. VANE* — C. A. [1893] 3 Ch. 79

81. — *Shelley's Case, Rule in—Issue—Heirs—Gift, over—Descent—Purchase—Construction of will*.

A testator devised lands to trustees in trust to receive the rents and profits for the use and benefit of such of his child or children as should be living at his death, and to apply such rents and profits or so much thereof as the trustees should deem right and proper in the maintenance and education of such child or children until majority or marriage, and from and after majority or marriage in trust to permit and suffer such child or children, as they should severally attain the age of twenty-one or be married, to take the rents and profits, if more than one, in equal shares for her, his, and their own use and benefit for her, his, or their lives; and if he left only one child then to permit and suffer such one child to take the rents and profits for her or his sole use and benefit for her life; and he declared that from and after the death of such child or children, the trustees should stand seised of the lands in trust unto and to the use of the heirs of the body and bodies of such child or children, if more than one to be equally divided between them, such lands to be legally conveyed to such heirs of any child or children in equal shares as they should respectively attain the age of twenty-one or be married, and to their respective heirs and assigns for ever, with power in the meantime to apply the rents and profits in the maintenance and education of such heirs of his child or children. And if he should die leaving no child or children, or issue of any child or children, or if such child or children as he should leave and the issue of such child or children should die before he or they should attain the age of twenty-one or be married—then a gift over.

The testator died leaving only one child surviving him; that child married and left a son who reached twenty-one:—

*Held*, that the legal estate vested in the trust-

**WILL (Estate Tail)**—*continued*.

tees throughout; that the estates both of the child or children and of the heirs of their body were equitable; that the rule in *Shelley's Case*, (1581) 1 Rep. 93 b, applied, and that the testator's child took an estate tail.

A will devised lands to W. in fee simple. By a codicil the testator devised the lands upon the same trusts as were set forth in the will, but nevertheless upon the special trust, and his will was, that it should not be lawful for W. at any time during his life to suffer any recovery or enter into any deed, matter, or thing whereby to cut off, dock, or destroy the entail of his said freehold lands:—

*Held*, that the codicil did not cut down the fee simple estate given by the will to an estate tail. *VAN GRUTTEN v. FOXWELL*. *FOXWELL v. VAN GRUTTEN* - - H. L. (E.) [1897] A. C. 658

Distinguished by Stirling J. *In re Adams and Perry's Contract*, [1899] 1 Ch. 554.

82. — *Special tail*—“*Issue*”—*Devise to “Charles if he marries a fit and worthy gentlewoman and has issue male to such issue”*—*Construction of will*.

In this case it was held that the estates or their proceeds were to go on the limitations which were expressed with regard to the proceeds; and that the limitations must be read as meaning the same as if the testator had said, “to my son Charles and such issue male as he may have by marriage with a fit and proper gentlewoman and their male descendants, in failure of which” then over. The rule in *Shelley's Case*, (1581) 1 Co. Rep. 93 B, did not apply, and the codicil created a valid estate in special tail. The word “issue” was a word of limitation equivalent to heirs of the body, and not a word of purchase. The addition of the words “and their male descendants” did not prevent Lord Charles taking an estate tail.

On the other hand, if the rule in *Shelley's Case* applied, there was no gift in express terms to Lord Charles of a life estate; the first gift without more would give him the fee simple. But the testator intended the estate to travel through the class of issue male, and effect could only be given to that intention by holding that Lord Charles took an estate in tail. If it were held that there was not an estate in special tail male in Charles, but that the first taker in the series of issue took by purchase, it would follow that only the descendants of that particular head of the issue would take, and the words “in failure of which” would not be satisfied. The rule in *Shelley's Case* ought, therefore, to be applied, so that the whole class of issue male by a fit and worthy gentlewoman should be exhausted before the gift over should take effect. Lord Charles took an estate in special tail male, and the *plt.'s* case failed. *PELHAM CLINTON v. DUKE OF NEWCASTLE* - - *Buckley J.* [1900] W. N. 183

**Evidence.**83. — *Ambiguity*.

(A) *Extrinsic evidence* admitted to determine what a childless testator having adopted step-children meant by a gift to “children.” *In re JEANS*. *UPTON v. JEANS* North J. [1895] W. N. 98

**WILL (Evidence)**—*continued*.

(B) *Extrinsic evidence* admitted to identify the particular nephew named as executor, the testator having two nephews of the same name, one legitimate, the other illegitimate. *IN THE GOODS OF ASHTON* - - *Jenne J.* [1892] P. 83

Referred to by Kekewich J. *In re Parker*, [1897] 2 Ch. 213.

(C) *Extrinsic evidence* not admitted to determine to which of two nieces of the same name the testator meant to make a gift, one being legitimate, the other illegitimate. *In re FISH*. *INGRAM v. RAYNER* C. A. [1894] 2 Ch. 83

83A. — *Ambiguity—Equivocation—Legatee's right of selection—Admissibility of evidence—Direct evidence of intention—Construction of will*.

A testatrix by her will gave “my 140 shares in the Crown Brewery Co.” to trustees, upon trust to pay the income thereof to the *plt.* for her life, with remainder in trust for her children, and, if she should die without leaving issue, in trust to divide the same equally between the *six* debts, as tenants in common. Two of the debts were residuary legatees under the will. At the date of the will and at the date of the death of the testatrix she had 280 *5l.* shares in the co., of which 40 were paid up in full, and the other 240 were paid up to the extent of 2*l.* 10*s.* per share. An affidavit by the solicitor who had prepared the will was tendered, to shew that the testatrix intended to bequeath 140 of her partly paid-up shares on the above trusts.

*Held*, by Kekewich J. and by the C. A., that this evidence was not admissible:

*Held*, by the C. A., reversing the decision of Kekewich J., that the tenant for life was not entitled to select which of the 280 shares she would take:

But *held*, on the construction of the will, and having regard to the circumstances, that the bequest must be satisfied out of the 240 partly paid shares.

*Tapley v. Eagleton*, (1879) 12 Ch. D. 683, and *Asten v. Asten*, [1894] 3 Ch. 260, considered. *In re CHREADLE*. *BISHOP v. HOLT*

C. A. [1900] W. N. 174; [1900] 2 Ch. 620

83B. — *Ambiguity—Extrinsic evidence, admissibility of—Construction of will*.

In this case, which was as to the grammatical meaning of an ambiguous sentence in a will:—

*Held*, that, in order to assist in clearing up the ambiguity evidence dehors the will was admissible, on the authority of Sir J. Wigram, who says (Wigram on Discovery, p. 196) that “Every claimant under a will has a right to require that a court of construction, in the execution of its office, shall by means of extrinsic evidence place itself in the situation of the testator the meaning of whose language it is called upon to declare”: *Doe v. Martin and Richards*, (1833) 1 Nev. & M. 512, 524; 4 B. & Ad. 771; *Smith v. Doe d. Jersey*, (1821) 2 B. & B. 473, 553; 22 R. R. 19; *Colpoys v. Colpoys*, (1822) Jac. 451, 465. *In re GRAINGER*. *DAWSON v. HIGGINS* - - C. A. [1900] 2 Ch. 756

— Beneficiary convicted of wilful murder of testatrix—Certificate of conviction not admissible.

*See LANCASTER*. 1,

**WILL (Evidence)—continued.****— Execution.**

See Cases under PROBATE—Execution of Will.

**— Executory devise.**

See Cases under WILL — Contingent Remainder.

**— Illegitimate relatives.**

See WILL—Illegitimacy. 102—106.

**— Legacy—Admissibility of evidence.**

See WILL—Legacy. 123, 125.

**Execution of Will.**

See Cases under PROBATE—Execution of Will.

**Executory Devise.**

See Cases under WILL — Contingent Remainder.

**Exoneration.**

84. — *Building agreement—Vendor's lien—Locke King's Amendment Act, 1877* (40 & 41 Vict. c. 34).

A building agreement provided for leases with ground-rents up to 180l. a year; and, at the option of the lessor, for further leases on payment by her of twenty-two years' purchase of the further ground-rents. She executed the option, and died before completion:—

*Held*, that her devisees took the land included in the agreement subject to discharging the amount payable in respect of the further leases. *In re KIDD. BROOMAN v. WITALL*

North J. [1894] 3 Ch. 558

85. — “*Contrary intention*”—*Intention evidenced by will and subsequent deeds—Locke King's Act* (17 & 18 Vict. c. 113).

A testator who had mortgaged his realty in order to secure Consols which had been transferred to him by the trustees of a settlement:—

*Held*, to have shewn an intention in his will and subsequent deeds that his realty should be exonerated from payment of the mortgage debt. *In re CAMPBELL. CAMPBELL v. CAMPBELL* (No. 1)

Kekewich J. [1893] 2 Ch. 206

86. — *Personal estate—Judgment debt—Land belonging to tenant in tail delivered to execution—Judgments Act, 1838* (1 & 2 Vict. c. 110), s. 13; 1860 (23 & 24 Vict. c. 38), s. 1; 1864 (27 & 28 Vict. c. 112), s. 1—*Locke King's Act, 1854* (17 & 18 Vict. c. 113); 1867 (30 & 31 Vict. c. 69).

Land belonging to a tenant in tail in possession was delivered in execution to judgment creditors of his under a writ of elegit. He died without giving any direction exonerating his personal estate from payment of the debt:—

*Held*, that as Locke King's Acts did not apply, the judgment debt was not chargeable on the land in exoneration of the personalty. *In re ANTHONY. ANTHONY v. ANTHONY* (No. 2)

Kekewich J. [1893] 3 Ch. 498

87. — *Real estate—Judgment debt—Judgments Acts, 1838* (1 & 2 Vict. c. 110), s. 13; 1860 (23 & 24 Vict. c. 38), s. 1; 1864 (27 & 28 Vict. c. 112), s. 1—*Locke King's Act, 1854* (17 & 18 Vict. c. 113); 1877 (40 & 41 Vict. c. 34).

Land which had been delivered in execution

**WILL (Exoneration)—continued.**

under a writ of elegit to judgment creditors of a testator was specifically devised by his subsequent will:—

*Held*, that Locke King's Acts applied, and the devised estate must bear its own burden, and was not entitled to be exonerated. *In re ANTHONY. ANTHONY v. ANTHONY* (No. 1)

Kekewich J. [1892] 1 Ch. 450

**Falsa Demonstratio.****88. — Debenture stock—Construction of will.**

A testatrix bequeathed all her shares in two specified ry. cos. She never had any shares in either co., but at the date of her will she held debenture stock of each co., which she continued to hold at the time of her death:—

*Held*, that the debenture stock passed under the bequest. *In re WEEDING. ARMSTRONG v. WILKIN* — — — North J. [1896] 2 Ch. 364

89. — *Debt—Legacy—Recital—Erroneous statement of indebtedness—Intention to confer bounty—Construction of will.*

A testatrix bequeathed to her grandniece “the sum of 300l. in addition to the sums owing to her from my late husband's estate.” The will contained no direction to pay debts. There were no sums legally owing to the grandniece from the husband's estate, but there were two sums of 500l. for which the husband (as the testatrix knew) had given her an I O U and promissory note, which, however, were not enforceable for want of consideration. The testatrix was universal devisee and legatee under her husband's will:—

*Held*, having regard to the surrounding circumstances, that the intention of the testatrix was to include the two sums in question in the bequest.

*Per V. Williams L.J.*: An erroneous recital in a will of indebtedness on the part of a testator to a legatee, even though accompanied by a direction to pay, will not amount to a gift of the supposed debt, in the absence of any indication in the will of an intention of bounty in respect thereof; but such intention may be implied from the general scope of the will.

*Adams v. Adams*, (1842) 1 Hare, 537, *Whitfield v. Clement*, (1816) 1 Mer. 402, and *Wilson v. Morley*, (1877) 5 Ch. D. 776, discussed. *In re ROWE. PIKE v. HAMLYN C. A.* [1898] 1 Ch. 153

**Foreign Will.**

— *Marriage—Will in French form—Movable property in England—French subjects—Husband and wife—English marriage—Revocation of ante-nuptial will—Change of domicile.*

See CONFLICT OF LAWS. 16.

**— Probate.**

See Cases under PROBATE.

90. — *Will in foreign language—English translation admitted to probate—Translation alleged to be inaccurate—Right of Court to look at original will.*

Probate had been granted of a certified English translation of a copy of a French will. A question arose on the construction of the will,

**WILL (Foreign Will)—continued.**

and it was alleged that the translation was incorrect:—

*Held*, none of the parties insisting on an application to the Probate Div. to correct the translation, that the Court might look at the original French, as well as at the English translation, but that the Court could not construe the will without the assistance of French lawyers nor until the testator's domicile had been ascertained.

The report of *L'Fit v. L'Blatt* (1718) 1 P. Wms. 526, corrected. *In re CLIFF'S TRUSTS*  
North J. [1892] 2 Ch. 229

**Forfeiture.****91. — Acceleration of interest—Remarriage.**

Testator directed his trustees to pay the income of a trust fund to his wife for life or during widowhood, with gifts over on wife's death. The wife remarried:—

*Held*, that the gifts over did not take effect until the wife's death, although her life estate determined on her second marriage. *In re TREDWELL. JEFFRAY v. TREDWELL* (No. 1)

C. A. [1891] 2 Ch. 640

Distinguished by C. A. *In re Akeroyd's Settlement*, [1893] 3 Ch. 363.

**— Alienation—Bankruptcy.**

See Nos. 94, 95, below.

**92. — Alienation—Discretionary trust to apply income "for benefit of A."—Assignable interest.**

Appointment under a power on trust to pay income to A. for life or until he should become a bankrupt or liquidating debtor, or cease to be entitled to receive the income in his own right. A. assigned his interest for value:—

*Held*, that the assignment operated as a cesser of the assignor's title to receive the income. Duty of trustees in applying whole or part of the income of the gift for the benefit of assignor, according to the terms of the will. Right to overplus. Discretion of trustees in such cases considered. *In re BULLOCK. GOODE v. LICKORISH*

*Kekewich J.* [1891] W. N. 62

**93. — Alienation—Provision against—Trust—Life interest—Attachment of income by judgment creditor of tenant for life—Garnishee order.**

A testator gave his real and personal estate to trustees upon trust to pay to his son so much of the income accruing due during his lifetime "as would not, although the same was payable to him, be by his act or default or by operation or process of law so disposed of as to prevent his personal enjoyment thereof, and to apply so much of the same income as would, if the same were payable to my said son, be disposed of as last aforesaid" for the benefit of his son's wife and children at the discretion of the trustees. On April 16, 1895, the trustees had in their hands a sum representing income due and payable to the son. On April 17 they were served by creditors of the son with a garnishee order attaching the money in their hands, and in pursuance thereof they paid over the money to the creditors. On an application by the son's wife to recover it from the trustees:—

*Held*, that the trusts of the income during the

**WILL (Forfeiture)—continued.**

son's life were valid in law; that the time at which the destination of any instalment of income was to be determined was the moment at which that instalment either became due or was in the hands of the trustees ready for application under the trusts of the will; that the son's title to the money accrued on April 16, 1895, and that the plt. consequently never became entitled to the benefit of the discretionary trust in her favour. *In re SAMPSON. SAMPSON v. SAMPSON*

*Stirling J.* [1896] 1 Ch. 630

**94. — Alienation or bankruptcy—Forfeiture clause.**

A testator gave his estate on trust, after the death of the last of certain annuitants, to divide the same among a certain class. There was a substitutionary clause in favour of children of members of the class, and a forfeiture clause on alienation or bankruptcy:—

*Held*, (1) that children of deceased members of the class took whether their parents died in the lifetime of the testator or afterwards; (2) that the shares were payable on the death of the last annuitant, but vested on the death of the testator; (3) that the share of X., one of the class, was forfeited on his bankruptcy and undisposed of. *In re JENNINGS. BURNLEY v. HARLAND*

*North J.* [1892] W. N. 156

**95. — Alienation or bankruptcy—Time of annulment.**

A testator by his will gave real and personal estate in trust for children with gifts over on alienation or bankruptcy. A child became bankrupt before the testator's death, and continued undischarged for some years after:—

*Held*, that she had incurred a forfeiture of her original life interest, and also of an accrued share which fell in before her discharge.

Decision of *Kekewich J.*, (1889) 43 Ch. D. 633, affirmed. *METCALFE v. METCALFE*

C. A. [1891] 3 Ch. 1

Distinguished by C. A. *West v. Williams*, [1899] 1 Ch. 132, 148.

**96. — Assignment inoperative independently of forfeiture clause.**

A will contained a proviso for forfeiture on assignment or attempted assignment of the interest of a beneficiary during a prior tenancy for life:—

*Held*, (1) that the forfeiture clause was valid notwithstanding that the reversionary interests were originally vested but liable to be divested; (2) that a post-nuptial marriage settlement executed by a niece, one of the reversioners, during the prior tenancy caused a forfeiture, though by the *lex loci* (South Australia) the settlement was inoperative as regarded the niece. *In re PORTER. COULSON v. CAPPER*

*North J.* [1892] 3 Ch. 481

**97. — Assignment or attempted assignment—Literal meaning of document not in conformity with real intention of parties.**

A tenant for life under a will, subject to a gift over on assignment or attempted assignment, on the occasion of a loan to him signed a document which in terms amounted to an equitable assignment of his interest in the income. No notice of the document was given to the trustees; it was

**WILL (Forfeiture)—continued.**

subsequently destroyed by the lender, and evidence was given that as between borrower and lender it was not intended as a charge, and that to have so used it would have been a fraud on the bargain :—

*Held*, that the document could have been set aside for fraud or mistake, and that the Court could therefore go behind the literal meaning of the document, and that there had been no forfeiture. *In re SHEWARD. SHEWARD v. BROWN*

Kekewich J. [1893] 3 Ch. 502

## — Bankruptcy—Alienation or.

*See Nos. 94, 95, above.*

**98. — “Bankruptcy”—Foreign bankruptcy—English domicile—Tenant for life.**

The life interest of a domiciled Englishman under a trust by will determinable on bankruptcy or alienation :—

*Held*, not to be forfeited by an adjudication in bankruptcy made by the Supreme Court of New Zealand after the death of the testatrix, but subsequently annulled.

*In re Blithman*, (1866) L. R. 2 Eq. 23, followed. *In re HAYWARD. HAYWARD v. HAYWARD*

Kekewich J. [1897] 1 Ch. 905

**99. — Bankruptcy, Commission of act of—Dismissal of bankruptcy petition—Life interest—Forfeiture—“Liable to be deprived.”**

A. was entitled under his mother's will, subject to a prior life interest, to the income during his life of a fund, subject to gift over if he should do anything whereby he was “liable to be deprived” of the beneficial enjoyment thereof. Before his interest fell into possession he committed an act of bankruptcy. A petition was presented. His interest then fell in, and the petition was dismissed; but before the dismissal an instalment of the income became payable to A. :—

*Held*, that the forfeiture clause had come into operation and that the gift over took effect. *In re LOFTUS-OTWAY. OTWAY v. OTWAY*

Stirling J. [1895] 2 Ch. 255

**100. — Interference with trustees—Annuity—Frivolous action against trustees.**

Testator gave annuities to his son on condition that he did not interfere with the management of the trust estate. The son brought an action against the trustees, which was dismissed as groundless and frivolous :—

*Held*, that he had incurred a forfeiture of his annuities.

Decision of Fry L.J., (1890) 45 Ch. D. 426, affirmed. *ADAMS v. ADAMS*

C. A. [1892] 1 Ch. 369

## — Name and arms clause.

*See Cases under WILL — Name and Arms Clause.*

**101. — Receiving order — Determinable life interest—“Become payable to some other person.”**

A will contained a condition determining a life interest on it “vesting in or becoming payable to some other person” :—

*Held*, that the life interest was forfeited on a receiving order being made against the life

**WILL (Forfeiture)—continued.**

tenant, for, by the force of that order, the life interest became payable to, although it did not vest in, the official receiver. *In re SARTORIS'S ESTATE. SARTORIS v. SARTORIS*

C. A. [1892] 1 Ch. 11

**Hotchpot Clause.**

*See Cases under WILL—Advancement.*

**Illegitimacy.**

## — Illegitimate children.

*See Children, Nos. 36—38, above.*

**102. — Illegitimate relatives—“My nephew G. A.”—Legitimate and illegitimate nephews of same name—Extrinsic evidence.**

A testator appointed as one of his executors “my nephew G. A.” He had legitimate and illegitimate nephews of that name. In his will he applied the terms nephew and niece to legitimate and illegitimate relatives indiscriminately :—

*Held*, that extrinsic evidence was admissible to identify the particular nephew intended. *In THE GOODS OF ASBTON*

Jeune J. [1892] P. 83

Referred to by Kekewich J. *In re Parker*, [1897] 2 Ch. 208, 213.

**103. — Illegitimate relatives—“My niece”—Wife's illegitimate grand-niece — Extrinsic evidence.**

A testator gave his residuary estate to his “niece B. C.,” neither he nor his wife having any niece named B. C., but his wife had two grand-nieces, one legitimate and the other illegitimate, both named B. C. :—

*Held*, that the legitimate grand-niece took, she answering the description sufficiently to exclude evidence in competition with her by the illegitimate grand-niece, and that as there was no latent ambiguity no extrinsic evidence could be admitted. *In re FISH. INGHAM v. RAYNER*

C. A. [1894] 2 Ch. 83

**104. — Illegitimate relatives—“My wife's relations”—Lord Selborne's Act (37 & 38 Vict. c. 37).**

The testator by his will gave all his property to his wife for life, and gave one moiety of the reversion “to my wife's relations as she may direct.” The wife was illegitimate, but her parents, who married after her birth, had always treated her as their child, and made no difference between her and their children born after the marriage :—

*Held*, (1) that the word “relations” must be read as meaning those persons who would have been her relations had she been legitimate, and that an appointment made by the wife among persons she described as children of her brothers and sisters was valid: not so one in favour of “the natural son of my sister”; (2) that the power was a power of distribution, not of selection, and therefore, under the rule established by the cases before Lord Selborne's Act (37 & 38 Vict. c. 37), only exercisable in favour of those persons who, if she had been legitimate, would have been her next of kin living at the time of her death, and that the above rule of construction



**WILL (Illegitimacy)—continued.**

has not been altered by Lord Selborne's Act.  
*In re DEAKIN. STARKEY v. EYRES*

**Stirling J. [1894] 3 Ch. 565**

Followed by North J. *In re Jeans*, [1895] W. N. 98.

Discussed by Kekewich J. *In re Parker*, [1897] 2 Ch. 208, 212.

**105. — Illegitimate "nephew" — "Nephews and nieces," Gift to—Distribution.**

A testator, after giving a legacy to his wife's "nephew" R., gave his residuary estate in trust, as to one moiety, for his wife's "nephews and nieces" equally. R. was an illegitimate nephew of the testator's widow: she had also several legitimate nephews and nieces:—

*Held*, that R. was entitled to share in the moiety of residue equally with the legitimate nephews and nieces:—

*Seale-Hayne v. Jodrell*, [1891] A. C. 304, considered. *In re PARKER. PARKER v. OSBORNE*

**Kekewich J. [1897] 2 Ch. 208**

**106. — Illegitimate relatives — "Relatives named."**

A residuary gift to relatives named *held* to include relatives by affinity as well as consanguinity, and illegitimate as well as legitimate relatives; and also persons described as children of legatees named in the will, although not themselves specifically named.

Decision of C. A., [1891] 44 Ch. D. 304, affirmed. *SEALE-HAYNE v. JODRELL*

**H. L. (E.) [1891] A. C. 304**

Referred to by Jeune J. *In the Goods of Ashton*, [1892] P. 82, 88.

Considered by Kekewich J. *In re Parker*, [1897] 2 Ch. 208.

**Income.**

— Accumulations—Capital or income.

*See Cases under ACCUMULATIONS.*

— Contingent interest—Intermediate income—Maintenance.

*See INFANT—Maintenance. 28.*

**107. — Fund in reversion directed to fall into residue—Residue given in trust for persons in succession.**

A testator directed that a fund should in certain events fall into residue, and gave successive life estates in the residue. The first tenant for life of the residue died in 1858; the fund fell into the residue in 1892:—

*Held*, that the present tenant for life was entitled to the interest of the entire fund, and that the estate of the deceased tenant for life had no claim thereon. *PIGOTT v. PIGOTT*

**Kekewich J. [1893] W. N. 115**

**108. — Interim income—Contingent annuity—Capital or income.**

B., in exercise of a power under A.'s will, gave to L. for life with remainder to L.'s children (i.) a fund set apart to answer legacies under A.'s will which had vested but were not yet payable; (ii.) Consols set apart to answer a conditional annuity payable at discretion of trustees:—

*Held*, (i.) that B.'s interest in the interim income of the vested legacies was in the nature

**WILL (Income)—continued.**

of a terminable annuity, and that such income as between L. and L.'s children must, until the legatees attained twenty-one, be treated as capital and invested, and the dividends only on such investment paid to L.; (ii.) that any surplus dividends of the Consols set apart for the conditional annuity must be paid to L. as income. *In re WHITEHEAD. PEACOCK v. LUCAS*

**Stirling J. [1894] 1 Ch. 678**

**109. — Interim income—Contingent gift of leaseholds—Share vesting at twenty-one—Separation from general estate of testator.**

A testator gave leasehold property upon trust to pay the income to his daughter during her life, and after her death to transfer the same to all her children in equal shares, the shares to vest at twenty-one, and in the case of daughters at twenty-one or marriage. The testator gave his residuary estate upon certain trusts. The daughter died leaving several infant children:—

*Held*, that the effect of the bequest being to separate the leaseholds from the general estate of the testator, the intermediate income until one of the children attained a vested interest was applicable to the maintenance of the infants. *In re WOODIN. WOODIN v. GLASS*

**G. A. [1895] 2 Ch. 309**

**Interest.**

— Advancements.

*See WILL—Advancement. 24, 25.*

**Investments.**

*See Cases under TRUSTEE—Investments.*

**Joint Tenancy.**

— Absolute gift—Secret trust—Joint tenants—Notice.

*See TRUST.*

**110. — Children—Gift to A. and to any lawful issue she may have—Rule in Wild's Case, 6 Rep. 16 b.**

Testator after bequeathing a legacy gave the residue of his real and personal property to various persons for life, and after the decease of the survivor of them to E., "and to any lawful issue she may have, such issue to take a vested interest in my said property upon attaining the age of twenty-one years." The testator died in 1889, leaving both real and personal estate. E. died in 1893 without having been married:—

*Held*, that the direction that the issue should take vested interests at twenty-one was inconsistent with the use of the word as a term of limitation; that E.'s issue took as purchasers, and consequently that her heir-at-law was entitled to the real estate:

*Held*, also, as to the personality, that there was nothing to take the case out of the ordinary rule that under a gift to one and his children the parent and children take concurrently as joint tenants; and, consequently, that E.'s legal personal representative was entitled. *In re WILMOT. WILMOT v. BETTERTON*

**Stirling J. [1897] W. N. 44 (15)**

**111. — Children—Joint tenancy or tenancy in common—"Share and share alike."**

A testator devised realty on trusts, inter alia,

**WILL (Joint Tenancy)—continued.**

for children and the issue of any then dead (such issue standing in loco parentis) share and share alike:—

*Held*, (1.) that the sons and daughters, and the issue of a deceased son or daughter as representing their parents, took as tenants in common; (2.) that there being no words to create a severance as between the issue of deceased children they took inter se as joint tenants. *In re YATES*. *BOSTOCK v. D'EYN COURT*

North J. [1891] 3 Ch. 53

— Contingent remainder.

See **WILL—Contingent Remainder**. 75.

**112. — Co-parceners or joint tenants—Devise to testator's "right heirs"—Female heirs—Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 3.**

Testator gave real estate upon trust for his niece S. for life, and after her death without leaving issue (which event happened) to his "right heirs" for ever. Testator had two sisters M. and A., who predeceased him. M. had two daughters, one of whom was living at testator's death, and the other predeceased him leaving two daughters. A.'s only child was S., the tenant for life. The testator's right heirs, therefore, were his two nieces and his two great-nieces. The question was whether the four ladies took as co-parceners or as joint tenants:—

*Held*, that by virtue of s. 3 of the Inheritance Act, 1833, they took as devisees, and not by descent; that co-parcenary was an incident of descent at common law, and could not attach to an estate otherwise acquired; that there was nothing in the Act to shew an intention that the incident of co-parcenary should attach to such a devise as was mentioned in s. 3; and consequently that the four took as joint tenants, and not as co-parceners. *In re BAKER*. *PURSEY v. HOLLOWAY*

Stirling J. [1898] W. N. 156 (12)

— Legacy—Tenancy in common or—Lapse.

See **WILL—Lapse**. 115.

**Lapse.**

**113. — Charitable legacy—Failure of object—Cy-près.**

(A) A charitable bequest to an institution which comes to an end after the death of the testator, but before the legacy is paid, does not fall into residue, but falls to be administered by the Crown, and will ordinarily be applied for charitable purposes.

Among testator's "charitable" legacies was a gift to a private orphanage. Before the assets could be distributed the orphanage had ceased to exist:—

*Held*, that the property in the legacy became applicable by the Crown for charitable purposes. The doctrine of lapse as applicable to a legacy to a charitable object in existence at the death of the testator, but subsequently failing, discussed.

Decision of Stirling J., [1891] 1 Ch. 373, reversed. *In re SLEVIN*. *SLEVIN v. HEPBURN*

C. A. [1891] 2 Ch. 236

Discussed by Chitty J. *In re Rymer*, C. A. [1895] 1 Ch. 19, 24. See next Case.

(B) A testator by his will bequeathed a legacy "to the rector for the time being" of a certain

**WILL (Lapse)—continued.**

Roman Catholic seminary. He died in 1893. Between the date of the will and his death the seminary had ceased to exist:—

*Held*, that the bequest was for the benefit of the particular seminary; that institution having ceased in testator's lifetime, the legacy could not be applied cy-près, but lapsed. *In re RYMER*. *RYMER v. STANFIELD*

C. A. [1895] 1 Ch. 19

Referred to by C. A. as to costs. *In re Macduff*, [1896] 2 Ch. 451, 475.

**114. — Class, Gift to children as a—Issue taking by substitution.**

The rule that s. 33 of the Wills Act, 1837, does not apply to gifts to children or grandchildren of the testator as a class is not affected by the fact that the class happens to consist of but one person. *In re SIR E. HARVEY'S ESTATE*. *HARVEY v. GILLOW* - Chitty J. [1893] 1 Ch. 567

— Class, Gift to—Survivorship—Period of distribution.

See **WILL—Class**. 49.

**115. — Joint tenancy—Tenancy in common—Lapse.**

A testator gave his residue in trust for A., B., C., and their executors and assigns. A. died before the testator, B. died after him an infant and unmarried:—

*Held*, that A., B. and C. were joint tenants for the lives of them and the survivor of them, with several remainders to them as tenants in common; that C. was entitled to the income of the whole for his life; and that the share in remainder of A. lapsed and devolved as on an intestacy. *In re ATKINSON*. *WILSON v. ATKINSON*

North J. [1892] 3 Ch. 52

**116. — Settlement of shares—Death of legatee in testator's lifetime—Lapse.**

A testator gave his real and personal estate to trustees upon trust for sale and to hold the proceeds in trust for his four sisters, "provided that my trustees shall retain the share of each of my sisters . . . upon the trusts following," i.e., in trust for the sister for life, with power to give a life interest to a husband, and after her death to her children at twenty-one or marriage, and in default to her next of kin. One of the sisters predeceased the testator, leaving infant children:—

*Held*, that her share did not lapse, but that her children were entitled to it contingently on attaining twenty-one or marriage. *In re PINHORNE*. *MORETON v. HUGHES*

Chitty J. [1894] 2 Ch. 276

Followed by Cozens-Hardy J. *In re Powell*, [1900] 2 Ch. 525.

**117. — Settlement of shares—Husband and wife—Construction of will.**

A testatrix gave her real and personal estate to trustees upon trust for sale and conversion, and after payment of debts and legacies, "in trust for my said three daughters in equal shares"; the trustees were then directed to retain the share of each daughter upon trust to pay the income to each daughter for life, to her husband for life, and then for her children in the usual way, and in default of children who should attain a vested interest, in trust for the other

**WILL (Lapse)—continued.**

daughters in equal shares, but so that the share so accruing should be subject to the same trusts as those declared concerning her original share. One of the daughters having predeceased the testatrix without issue, but leaving a husband:—

*Held*, that the share of the deceased daughter had not lapsed, and the husband was entitled to receive the income during his life, and subject to this—that it accrued for the benefit of the other daughters, their husbands and children.

*In re Pinhorn*, [1894] 2 Ch. 276, followed; *In re Roberts*, (1885) 30 Ch. D. 254, distinguished. *In re POWELL*. CAMPBELL v. CAMPBELL

**Cozens-Hardy J. [1900] W. N. 165; [1900] 2 Ch. 525**

**118. — Tenants in common, Gift to—Codicil directing that one should be “excluded from any interest”—Intestacy.**

A testator gave his property to five persons as tenants in common. He afterwards excluded one of the persons, but gave no direction as to the person's share:—

*Held*, that the effect of the exclusion of one did not give property to the others in fourths instead of fifths, but, there being no express disposition of the share, the gift of the share lapsed and went to the next of kin and heir-at-law. *In re HODGKINSON*. HANCOCK v. MELLOR

**Kekewich J. [1893] W. N. 9**

— Time—Acquiescence—Charge of legacies on real estate, if personal estate insufficient.

See **WILL—Charge of Debts, &c. 31.**

**Leaseholds.**

**119. — Tenant for life—Remainderman—Covenants—Rent—Repairs—Liability.**

A testator who died possessed of a leasehold house held by him on a repairing lease bequeathed it directly (without the intervention of trustees) to his niece for life, and after her death to other persons absolutely, and appointed executors:—

*Held*, that the niece, the tenant for life, was not bound to perform any of the covenants in the lease.

*In re Courtier*, (1886) 34 Ch. D. 136, *In re Baring*, [1893] 1 Ch. 61, and *In re Redding*, [1897] 1 Ch. 876, discussed. *In re TOMLINSON*. TOMLINSON v. ANDREW

**Kekewich J. [1898] 1 Ch. 232**

Differed from by North J. *In re Betty*, [1899] 1 Ch. 821.

Not followed by Kekewich J. *In re Gjers*, [1899] 2 Ch. 54.

**Legacy.**

— Abatement of legacies — Advances — Insufficient estate—Hotchpot.

See **WILL—Ademption. 17.**

**120. — Blended fund—Charge of legacies on residuary realty—Gift of personality and realty “not otherwise disposed of.”**

A. by his will, after making specific devises of realty and bequests of pecuniary legacies, left to B. all realty and personality to which at his death he was entitled or over which he should have power to dispose by his will “and not

**WILL (Legacy)—continued.**

otherwise disposed of.” The personality, after payment of A.'s debts, was insufficient to satisfy the legacies:—

*Held*, that where there is a residuary gift of realty and personality blended, whether “residue” or some equivalent word is used or not, the legacies are charged on the realty. *In re BAWDEN*. NATIONAL PROVINCIAL BANK OF ENGLAND v. CRESSWELL. BAWDEN v. CRESSWELL

**Kekewich J. [1894] 1 Ch. 693**

**121. — Blended fund—Charge of realty in aid of personality.**

When a testator bequeaths pecuniary legacies and then bequeaths the residue of his real and personal estate, the legacies are charged upon the real estate or its proceeds, but they are payable primarily out of the personality, unless the testator directs that they are to be paid out of the mixed fund, in which case they are payable rateably out of realty and personality. *In re BOARDS*. KNIGHT v. KNIGHT

**North J. [1895] 1 Ch. 499**

— Charge of debts and legacies.

See **WILL—Charge of Debts, &c. 33.**

— Charitable bequests.

See **Cases under CHARITY.**

**122. — Contingent legacy—Interest.**

S. bequeathed the residue of his real and personal estates to trustees, and directed his trustees to hold a sum “upon trust to invest the same in good security and to pay the same to” certain persons when they shall attain twenty-one, “and if one or more of them die before reaching that age their shares to be equally divided among the survivors,” followed by a disposition of the residue:—

*Held*, that the sum was severed for the benefit of the legatees, and that they were entitled to interest as from one year from S.'s death. *In re SNAITH*. SNAITH v. SNAITH

**North J. [1894] W. N. 115**

**123. — Debtor of testatrix — Gift or loan — Admissibility of evidence of intention.**

Testatrix by her will left various legacies to L. and appointed him co-executor with B., who alone proved. At the death of testatrix L. owed her various sums exceeding the amount of the legacies. L. contended that such sums were gifts:—

*Held*, (1) that the appointment of L. as executor released the debt at law although he had not proved the will; (2) that on the evidence any claim in equity was rebutted by the presumption of the intention of the testatrix to forgive the debt; (3) that evidence of testatrix's intention to forgive the debt in her lifetime was admissible; (4) that even if that were not so, the executor who had proved could not under the circumstances set off against the plt. the debts due from the plt. to the testatrix. *In re APPLEBEE*. LEVESON v. BEALES **Stirling J. [1891] 3 Ch. 422**

Referred to by Byrne J. *In re Griffin*, [1899] 1 Ch. 408, 412.

**124. — Demonstrative or specific legacy.**

A legacy of “£800 invested in 2½ per cent. 4 F

**WILL (Legacy)—continued.**

Consols" in a will where the context bore on the point:—

*Held*, to be specific, not demonstrative. *In re PRATT. PRATT v. PRATT*

North J. [1894] 1 Ch. 491

125. — *Description of legatee—Name—Evidence.*

Gift to Edmund, the son of William. William had amongst other sons "George Edmund" and "Edward Allison":—

*Held*, that evidence was admissible to shew that the testator always called the former George, and the latter Edmund, and declaration made in the latter's favour. *In re BOWMAN. BOWMAN v. BOWMAN*

Mathew J. [1891] W. N. 192

— Devise of land charged with legacies.

See EXECUTOR—Administration. 9.

126. — *Devise of real estate for life—Devisee appointed "residuary legatee."*

M. by his will gave realty to N. for life, then gave pecuniary legacies, and appointed N. his "residuary legatee":—

*Held*, that, *prima facie*, "residuary legatee" did not extend to realty, and that there was no context to take the words out of the general rule. *In re MORRIS. MORRIS v. ATHERDEN*

Stirling J. [1894] W. N. 85

127. — *Discretion given to trustee as to application—Trust for benefit and advancement of legatee.*

A testator by his will directed sums to be invested for the benefit and advancement of his sons, such sums to be applied as the trustees might think fit, and further directed that such sums should be judiciously invested, as they were intended specially for the advancement in life of his sons:—

*Held*, that on attaining twenty-one the sons were absolutely entitled to the legacies, freed from the exercise of any discretion on the part of the trustees. *In re JOHNSTON. MILLS v. JOHNSTON*

Stirling J. [1894] 3 Ch. 204

128. — *Employment of testator—Construction—Legacy to persons who should have been in testator's employment for more than a specified time.*

A testator directed his trustees "to pay to each man who shall have been in my employ over ten years the sum of 10*l.* for each year's service beyond the said ten years":—

*Held*, that a man who had been in the testator's employment for fifteen years, but had left his employment before the date of the will, and was not in his employment at the time of his death, was entitled to a legacy of 50*l.* *In re SHARLAND. KEMP v. ROZEY* [1896] 1 Ch. 517

See also C. A. [1896] W. N. 62 (19).

129. — *Infant—Legacy payable at eighteen.*

Where a will directed legacies to be payable to a class on attaining the age of eighteen, and two of the class had attained that age and were infants out of the jurisdiction:—

*Held*, that their shares should be paid to the trustees on their undertaking to pay over to the legatees. *In re DENEKER. PETERS v. BANCHE-REAN*

North J. [1895] W. N. 28

130. — *Infant child, Legacy to—Interest by way of maintenance—Other provision for main-*

**WILL (Legacy)—continued.**

*tenance—Incorporation of s. 43 into will—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.*

A legacy by a parent to an infant child carries interest by way of maintenance from the death of the testator, notwithstanding that the will contains a provision for the maintenance of the child out of the income of the legacy, or out of the income of a share of residue given to him equally with the other children. Sect. 43 of the Conveyancing Act, 1881, must be treated as incorporated with every will to which it is applicable. *In re MOODY. WOODROFFE v. MOODY*

Kekewich J. [1895] 1 Ch. 101

131. — *Interest—Contingent gift—Distribution—Residuary legatee.*

A testator left his estate on trust after the death of his wife to pay 5000*l.* to each of his sons A. and B. "who should . . . live to attain the age of twenty-one." The wife died in 1891; B. attained twenty-one in 1893:—

*Held*, that the legacy was contingent, and that though the legacy must be set apart for the convenient distribution of the residue, the residuary legatees and not B. were entitled to the interest thereon from 1891 to 1893. *In re INMAN. INMAN v. ROLLS*

Kekewich J. [1893] 3 Ch. 518

— Interest—Contingent legacy.

See No. 122, above.

— Interest—Date from which to run.

See INTEREST. 2.

— Lapse.

See Cases under WILL—Lapse.

— Legatee, Suit by—Revivor.

See PRACTICE—Revivor. 177.

— Limitations, Statutes of.

See LIMITATIONS, STATUTES OF—Legacy.

132. — *Misdescription—Specific gift—"Deben- ture stock or shares."*

N. by his will gave legacies of "500*l.* debenture stock or shares of the S. Co.," of "350 ordinary shares in the S. Co.," of "250 fully paid-up shares in the said co.," and of "50 shares in the said co." He then gave to trustees "5000*l.* debenture stock or shares of the S. Co., 350 ordinary shares in the same co., 1500*l.* debenture stock or shares in the B. Co., and 35 shares in the D. & H. Ry. upon trust to continue the same in their present state of investment. N. at his death had debentures and ordinary shares in the S. Co. and debentures in the B. Co. In neither co. were there any debenture stock or shares other than ordinary shares:—

*Held*, that by debenture stock or shares N. intended to describe something different from ordinary shares, as to the proper designation of which he was in doubt, and must be taken to have meant debentures, that the gift of 5000*l.* debenture stock or shares was clearly specific, and that, looking at this and other indications in the will, all the gifts were specific. *In re NOTTAGE. JONES v. PALMER* (No. 2)

C. A. [1895] 2 Ch. 657

133. — *Non-appropriation to answer legacy—Right of legatee to share in increase of funds.*

A will containing a power to postpone sale and conversion of estate, gave a sum on trust for A. for life, with trusts over for his children. No

**WILL (Legacy)—continued.**

appropriation was made in respect of the sum, and A. was paid  $\frac{1}{4}$  per cent. interest thereon. The investments were unchanged, and had greatly increased in value. The trustee was a beneficiary of the residuary:—

*Held*, the residuary owners were the owners of the estate subject to a charge for the legacy, and that A. and his children were not entitled to share in the increase. *In re CAMPBELL*.

CAMPBELL v. CAMPBELL (No. 2)

Stirling J. [1893] 3 Ch. 468

**134. — Priority of wife—Insufficient estate—Abatement of legacy.**

Where the personalty is insufficient to pay all legacies in full a legacy to the testator's wife for her immediate requirements is not entitled to priority, and is liable to abatement, though directed to be paid within three months after the decease of the testator. *In re SCHWEDER'S ESTATE*. OPPENHEIM v. SCHWEDER (No. 1)

Chitty J. [1891] 3 Ch. 44

— Satisfaction.

See Cases under WILL—Satisfaction.

— Specific contingent legacy—Intermediate income.

See INFANT—Maintenance. 29.

— Specific legacy.

See WILL—Ademption. 18.

**135. — Specific or demonstrative legacies—Bequest of pecuniary legacies—Bequest of "residue and remainder" of specific mortgage debts—Intestacy—Undisposed of personal estate acquired between dates of will and death—Administration—Fund applicable for payment—Ambiguity—Intention—Extrinsic evidence, admissibility of—Evidence dehors the will—Construction of will.**

A testator, after directing payment of his debts and funeral and testamentary expenses, bequeathed a number of pecuniary legacies, and then gave "all the residue and remainder" of two specified mortgage debts then due to him, after payment of his debts and funeral and testamentary expenses (but not adding "and legacies"), to three persons named. At the date of the will the testator's personal estate consisted of the two mortgage debts, which were just sufficient for payment of the legacies (if payable thereout), debts, and funeral and testamentary expenses. Subsequently to the date of his will the testator became possessed of further personal estate, but as the will contained no general residuary gift this remained undisposed of. The total personal estate, exclusive of the two mortgage debts, was not sufficient for payment of the debts, funeral and testamentary expenses, and legacies.

On an originating summons to ascertain in what order the assets should be applied:—

*Held*, by Stirling J., that "the residue and remainder" of the two mortgage debts meant what was left after payment thereof of the debts, funeral and testamentary expenses only, and that the undisposed of personalty could alone be resorted to for the general pecuniary legacies:

But *held*, on appeal (Rigby L.J. dissenting), that "the residue and remainder" of the two mortgage debts meant what was left after payment

**WILL (Legacy)—continued.**

thereout of the general pecuniary legacies as well as of the debts, &c.:

*Held*, also, by the C. A., that the general pecuniary legacies were specific, and consequently that the legatees of the residue of the mortgage debts—though they were, as was admitted, entitled, if any of the debts and funeral and testamentary expenses were paid out of the mortgage debts, to have the amount so paid recouped out of the undisposed of personalty—were not entitled to throw any part of the general pecuniary legacies upon the undisposed of personalty.

The admissibility of extrinsic evidence in aid of the interpretation of wills, discussed. *In re GRAINGER*. DAWSON v. HIGGINS

C. A. [1900] W. N. 158; [1900] 2 Ch. 756

**136. — Specific or general legacy—Payment of debts, &c.**

A testator having property in England and India only, after directing payment of debts, &c., gave his English property to one daughter and her children, and the Indian property in moieties to each of his two daughters and their children:—

*Held*, that both gifts were specific, and the executors were right in paying the debts, &c., rateably out of each legacy, and not charging the whole on the English property. *In re HAMILTON*. WOODWARD v. SIMPSON

Kekewich J. [1892] W. N. 74

**137. — Trees—Legacy to plant trees.**

A bequest of money to be laid out in planting trees on an estate of which the testator was tenant for life:—

*Held*, primarily for the benefit of the owners for the time being, and to belong to persons entitled to the estate absolutely. *In re BOWES*. EARL STRATHMORE v. VANE

North J. [1896] 1 Ch. 507

**Lost Will.**

**138. — Evidence—Presumption that it was destroyed by testator—Presumption against fraudulent abstraction—Appeal from New Zealand.**

Where a will duly executed, traced to the testator's possession and last seen there, is not forthcoming on his death, the presumption is that it was destroyed by himself. To rebut it there must be sufficient evidence that it was not destroyed by the testator *animo revocandi*; and *held* in this case that concurrent findings that it had not been rebutted could not be disturbed. This is a presumption against its fraudulent abstraction either before or after his death, but the circumstances which render such abstraction possible must be taken into account in arriving at the result of the evidence. ALLAN v. MORRISON

P. C. [1900] A. C. 604

**Marriage.**

**139. — Condition in restraint of marriage—Children—Gift over.**

R. bequeathed his residuary estate in trust for his daughter M. for her separate use for life, with a remainder to M.'s children, remainder over. By a codicil R. expressed his will to be that M. should not marry, and in case of her "marriage

**WILL (Marriage)—continued.**

or death" bequeathed the residuary estate to the person entitled under the gift over. *Wigram v. C.* decided (2 Harc, 570) that the limitation over on M.'s marriage by the codicil was void so far as regarded M.'s life interest:—

*Held*, (1) that the will and codicil must be construed together, (2) that the true construction was that the codicil did not make an original and independent gift of, but provided that the property given by the will was to go over on M.'s marriage or death, and (3) that, as it could not go over on M.'s marriage, the children were entitled. *MORLEY v. RENNOLDSON* C. A. [1895] 1 Ch. 449

**140. — Condition not to marry—In terrorem—Blended gift of real and personal estate—Construction of will.**

P. by his will, dated in 1897, after appointing his wife R. P. executrix of his will, proceeded as follows: "I give and bequeath unto my wife R. P. all my estate and effects, both real and personal, and house and land property whatsoever and wheresoever situate, and of what nature and quality soever. My dear wife R. P. will have whole and sole control of my property during her life on condition that R. P. do not marry again after my decease." The will contained no gift over on breach of the condition:—

*Held*, following *Duddy v. Gresham*, (1878) 2 L. R. Ir. 442, that, the will having in one devise to the same person massed together realty and personality, the same rule of law applicable to personality, namely, that the condition was void as being one merely in terrorem, operated as to both realty and personality, and that therefore the condition as to the realty was also void. *In re PETTIFER. PETTIFER v. PETTIFER*

*Byrne J.* [1900] W. N. 182

**— Intermarriage of two members of a class.**

*See WILL—Class. 48.*

**141. — Remarriage—Gift to a son and his wife and children in succession—Remarriage of son after date of will—Construction of will.**

A testator devised and bequeathed a share of his residuary estate upon trust to pay the income thereof to his son B. for life, and after his decease to B.'s wife for life, and after her decease upon trust as to both income and corpus for B.'s children living at B.'s decease; and the will provided for the cesser of B.'s interest upon alienation or bankruptcy, in which event the trustees were to apply the income of the share thereinbefore directed to be invested for B. "and his family" towards the maintenance of B., "his wife and children." B. had a wife living at the date of the will; but she afterwards died, and he married a second wife, who survived him:—

*Held*, that there was sufficient context in the will to rebut the presumption that the gift to B.'s wife for life was confined to the wife living at the date of the will, and that the widow was entitled. *In re DREW. DREW v. DREW* — *Stirling J.*

[1899] 1 Ch. 336

**142. — Restraint of marriage—Marriage with consent—Will—Alternative bequests.**

A testator by his will bequeathed to his son out of personal estate an annuity of 2000*l.*, and, in the event of his marriage, an additional annuity

**WILL (Marriage)—continued.**

of 1000*l.*; and by a codicil he directed that the additional annuity should be payable only if the son should have married with the previous consent in writing of the trustees of the will:—

*Held*, that, as the testator had provided for the son in any event, the condition as to the consent was not in terrorem and was valid.

The principle of *Gillet v. Wray*, (1715) 1 P. Wms. 284, applied.

*Reynish v. Martin*, (1746) 3 Atk. 330, distinguished. *In re NOURSE. HAMPTON v. NOURSE*

*Stirling J.* [1898] W. N. 150 (3); [1899] 1 Ch. 63

**Married Woman.****— Attestation.**

*See WILL—Attestation.*

**143. — Death of husband—Re-execution—Wills Act, 1837 (1 Vict. c. 26), s. 24.**

Sect. 3 of the Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), applies to every will of a married woman who dies after the date of the Act. *In re WYLIE. WYLIE v. MOFFAT*

*Romer J.* [1895] 2 Ch. 116

**144. — "Married woman"—Construction of will.**

Testator by his will directed his trustees to divide trust funds among such of his seven children as should be alive at the period of distribution, and the issue of such of them as should then be dead. He directed "that the share of each of my said daughters, who at the time of such division shall be a married woman, shall be held by my trustees upon trust to pay the annual income thereof into her hands for her separate use on her sole receipt and so that she may never anticipate the same, and after her decease the said share shall be held in trust for her children as she shall by deed or will appoint, and, in default of appointment, for all her children who shall attain twenty-one years, in equal shares, and if there shall not be any such child, then in trust for such person or persons as she shall by deed or will appoint."

The period of distribution had now arrived. Two of the testator's children were now alive, C., a married woman with children, and D., a widow who had children; all the other children of the testator mentioned in his will were dead without issue. The question was whether D. was absolutely entitled to half the fund, or whether she was only entitled to a life interest:—

*Held*, that D. took her half of the fund absolutely. *RUDALL v. NICHOLLS*

*Coxens-Hardy J.* [1900] W. N. 133

**145. — Separate use—Implication.**

Where in a will there are no words expressly giving income to a married woman for her separate use, a subsequent restriction or anticipation (irrespective of coverture) or alienation will not create a gift to her separate use by implication. *STODDON v. LEE*

C. A. [1891] 1 Q. B. 661

**146. — Will before Act of 1882—Property acquired under the Act.**

A married woman, dying in the lifetime of her husband, can leave, by will made during

**WILL (Married Woman)—continued.**

coverture and before the Act of 1882, property acquired under that Act. *In re BOWEN. JAMES v. JAMES* - - - *Chitty J. [1892] 2 Ch. 291*

**Marshalling.**

— Direction for payment of debts—stock specifically bequeathed charged in testator's lifetime.

See **WILL—Charge of Debts, &c.** 32.

**147. — Gift of legacies followed by gift of real and personal estate in one mass—Mortgaged estate devised free from incumbrances—Pecuniary legatees and annuitants—Priorities—Marshalling since Real Estate Charges Act, 1854 (17 & 18 Vict. c. 113).**

A testator, who died in 1889, after legacies of 100*l.* to four of his children, made several specific devises, freed and discharged from any mortgages there might be thereon at the time of his death, for the benefit of a son and three daughters, and declared that if he should sell any of the houses thereinbefore given for the benefit of his daughters, his trustees should out of his residuary estate stand possessed of a sum equivalent to the price received for the same upon trusts similar to those declared respecting the house sold: the testator then gave all other his real and personal estate upon trust to pay annuities of 250*l.* to each of his sons, and out of the balance of the income thereof to pay the specific incumbrances upon the said estate, and after payment off of the said incumbrances, upon trust to assign his said residuary estate to his two sons equally. The testator sold one of the specifically devised houses for 9800*l.* The estate proved insufficient for payment in full to all the beneficiaries:—

*Held*, (1) that the four pecuniary legacies were charged upon the entire residue, and had priority over all other payments directed to be made to beneficiaries; (2) that the annuities were only given to the sons in their capacity of residuary legatees, and were therefore not payable until the sum representing proceeds of sale of realty sold by the testator, and the mortgage debts on the specifically devised realty, had been provided for; (3) that the 9800*l.*, representing proceeds of sale, was to be treated as an ordinary legacy made payable out of residue; and (4) that the rule in *Lutkins v. Leigh*, (1734) Cas. t. Tal. 53, that the pecuniary legatee has priority over the devisee, although the devisee was under the will entitled as against a residuary legatee to have the mortgage debt paid off out of residue, applied, not having been expressly negatived by the testator, and that the devisees of the mortgaged property were not entitled to compete with the legatees.

*Porcher v. Wilson*, (1866) 14 W. R. 1011, followed; *Smith v. Smith*, (1860) 10 Ir. Ch. Rep. 89 and 461, not followed. *In re SMITH. SMITH v. SMITH* **Romer J. [1899] 1 Ch. 365**

**Mistake.**

— Class—Gift void for uncertainty.

See **WILL—Uncertainty.** 208.

— Correction on grant of probate.

See **PROBATE.** 107—110.

**WILL (Mistake)—continued.**

**148. — Erroneous recital—Residuary gift—Intention to exclude.**

A testatrix in her will reciting erroneously that she had settled half of a special fund on A., gave the remainder of the special fund to B.:—

*Held*, that the erroneous recital did not act as a gift to A., but it shewed an intention that B. should have only half the fund, and that the balance went to the residuary legatee. *In re BAGOT. PATON v. ORMEROD*

**C. A. [1893] 3 Ch. 348**

— Foreign will—Mistranslation.

See **WILL—Foreign Will.** 90.

— Gift to class—Mistake as to number—Ascertainment of persons entitled to legacy.

See **WILL—Class.** 50, 51.

**Mortmain.**

See **Cases under CHARITY—Mortmain.**

**Name and Arms Clause.**

**149. — Special occupant—Forfeiture—Cesser of life estate—Estate pur autre vie—Dower.**

By a will freehold and personal property were settled in tail, with a name and arms clause, with a gift over on non-compliance with the clause. A., the tenant for life, did not comply, and his estate went over to B., his only son, who had previously executed a disentailing deed, and subsequently died in his father's lifetime intestate and without issue, but leaving a widow. A. was his son's heir-at-law, sole next of kin, and legal personal representative:—

*Held*, (1) that A. took the rents and profits as special occupant, and the income of the personality as legal representative of B.; (2) that B.'s wife was not entitled to dower. *In re MICHELL. MOORE v. MOORE* **Stirling J. [1892] 2 Ch. 87**

**150. — Use of surname.**

Under a name and arms clause directing a devisee to assume and use the prescribed name "alone or together" with his own family name:—

*Held*, that the devisee had an option to use the prescribed name either before or after his own family name, and that the use of the prescribed name before his own surname was a sufficient compliance with the terms of the devise.

*D'Eyncourt v. Gregory*, (1875) 1 Ch. D. 441, distinguished. *In re EVERSLEY. MILDMAY v. MILDMAY* **Byrne J. [1899] W. N. 208; [1900] 1 Ch. 96**

**Navy and Marines.**

*Navy and Marines (Wills) Act, 1865 (28 & 29 Vict. c. 72), amended by 60 & 61 Vict. c. 15.*

**Perpetuity.**

**151. — Charitable bequest—Conditional gift.**

In 1847 a testator gave money in support of a school, but provided that, if the Government should at any time establish a general system of education, the money should go over to private individuals:—

*Held*, that the gift over was bad for remoteness, as being a gift over of a future interest to

**WILL (Perpetuity)—continued.**

arise on an event which need not necessarily arise within perpetuity limits. *In re BOWEN*. **LYDD PHILLIPS v. DAVIS**

**Stirling J. [1893] 2 Ch. 491**

**152. — Charitable bequest—Conditional gift—Gift over to another charity.**

The rule against perpetuities has no application to a transfer in a certain event of property from one charity to another. *In re TYLER*. **TYLER v. TYLER** **C. A. [1891] 3 Ch. 252**

Distinguished by **Stirling J. In re Bowen**, [1893] 2 Ch. 491.

**153. — Charitable bequest—Contingent gift to volunteer corps.**

The bequest of an annuity to a volunteer corps on the appointment of the next Lieut.-Col. is void as infringing the rule against perpetuities. *In re LORD STRATHEDEN AND CAMPBELL*. **ALT v. LORD STRATHEDEN AND CAMPBELL**

**Romer J. [1894] 3 Ch. 265**

Referred to by **Kekewich J. In re Nottage**, [1895] 2 Ch. 649, 653.

**154. — Charitable bequest—Encouragement of yachting.**

N. by his will gave a sum the interest of which was to be expended in providing a cup to be given for the encouragement of yachting:—

*Held*, that the gift was not charitable and was void for remoteness. *In re NOTTAGE*. **JONES v. PALMER (No. 1)** **C. A. [1895] 2 Ch. 649**

**155. — Default of issue—Gift in—Application to personal estate of limitations framed by *mi-take* as for real estate—*Repnugancy*.**

L. bequeathed personality to P. for life with remainder to his first and other sons in tail male, and in default of such issue to the sons of three ladies, E., M., and F., successively in tail male:—

*Held*, that as the personality could not vest, if at all, in any person who would not come into existence within a life in being at the time of the death of L., the gift was not void as infringing the rule against perpetuities. Application of this principle to successive limitations, in the forms properly applicable to real estate, of property erroneously supposed by the testator to be unconverted, but in fact converted into personality. *In re LOWMAN*. **DEVENISH v. PESTER**

**C. A. [1895] 2 Ch. 348**

Explained and distinguished by **C. A. In re Hocking**, [1898] 2 Ch. 567.

Followed by **Ozens-Hardy J. In re Carter**, [1900] 1 Ch. 801, 802.

**156. — Power of appointment, Invalid—Validity of limitations in default of appointment.**

Limitations depending or expectant upon a prior limitation which is void for remoteness are themselves invalid; but limitations in default of appointment under a power which is void for remoteness are not necessarily invalid unless they are themselves obnoxious to the rule against perpetuities. Gift in trust for A. for life, remainder to her husband for life, remainder to children as parents or survivor should appoint,

**WILL (Perpetuity)—continued.**

and in default of appointment to children in equal shares. At testatrix's death A. was unmarried:—

*Held*, that even assuming that the power conferred on A.'s husband, who might be a person not born at testatrix's death, was invalid, the trusts in default of appointment were valid, there being nothing in them obnoxious to the rule against perpetuities. *In re ABBOTT*. **PEACOCK v. FRIGOUT** **Stirling J. [1893] 1 Ch. 54**

**— Remoteness—Accumulations.**

See Cases under ACCUMULATIONS.

**157. — Remoteness—Class—Gift at twenty-four—Accumulation.**

A residuary gift to all the children of W. (a living person) as they should severally attain twenty-four, held void for remoteness. **WILLERTON v. STOCKS** **Kekewich J. [1892] 1 W. N. 29**

**158. — Remoteness—Class, Gift to—Proviso for re-settlement—Separate application.**

A testator gave his residuary estate in trust, after the death of M. and her husband, for all the daughters of M. who should attain twenty-one or marry under that age; with a proviso that the share of any daughter should be held upon trust for her for life, and after her death upon similar trusts for her children as were thereinbefore declared for the children of M. M. had one daughter only, the plt., who attained twenty-one, and she was born in the lifetime of the testator:—

*Held*, that the proviso for re-settlement of the shares must be construed as applicable to each share separately; and that although it would have been void for remoteness in the case of daughters born after the death of the testator, it was valid in the case of the plt., and therefore she was only entitled to a life interest in the fund. *In re RUSSELL*. **DORRELL v. DORRELL**

**C. A. [1895] 2 Ch. 698**

Referred to by **Chitty J. Bates v. Kesterton**, [1896] 1 Ch. 159, 162.

**159. — Remoteness—Class—Gift to class on “attaining twenty-five years”—Vested or contingent gift.**

A gift to children of M. in being, and to other grandchildren to be hereafter born, “as and when they shall respectively attain the age of twenty-five years,” with powers of maintenance and advancement, &c., held to be a contingent gift to a class to be ascertained when the first of the children of M. attained twenty-five, and to be void for remoteness. *In re MERVIN*. **MERVIN v. CROSSMAN** **Stirling J. [1891] 3 Ch. 197**

Followed by **Stirling J. In re Stevens**, [1896] W. N. 24 (12).

**160. — Remoteness—Gift over on a compound event—Splitting gift over.**

A testator by his will gave property to a daughter, her children and grandchildren, in terms which made the gift void for remoteness. There was a gift over in case, as happened, the daughter died without issue:—

*Held*, that the gift over could not be split up so as to make several gifts over on the several



**WILL (Perpetuity)—continued.**

possible contingencies, and was also void for remoteness. *In re BENCE. SMITH v. BENCE*

C. A. [1891] 3 Ch. 242

Followed by *Byrne J. In re Hancock*, [1900] W. N. 58.

**161. — Remoteness—Gravel pits—Direction to carry on business till gravel pits were exhausted—Residuary gift—Children of child dead at date of will.**

A testator by his will directed trustees to carry on his business as gravel contractor till his freehold gravel pits were exhausted, and then to sell the freehold lands on which they were situate and plant, &c., and hold the proceeds in trust for children then living who should attain the age of twenty-one, &c. He also directed his trustees to hold the residue of his estate upon trust for sale and investment, and to divide the income equally among his children during their lives, and on the death of any child, whether before or after his own death, to hold the corpus of such child's share in trust for any children of such child:—

*Held*, that the directions for the sale of the pits, and the division of the proceeds of sale were void for remoteness, and that the proceeds of sale fell into the residue:—

*Held*, also, that children of a daughter of testator, who died before the date of his will, were not included in the residuary gift.

Decision of *Kekewich J.*, [1894] 2 Ch. 310, affirmed. *In re WOOD. TULLETT v. COLVILLE*

C. A. [1894] 3 Ch. 381

**162. — Remoteness—Invalid trust for sale—Conversion—Real or personal estate—Right of beneficiaries to elect.**

By a trust for sale void as infringing the rule against perpetuities a testator devised a freehold house to trustees, subject to a lease for a term whereof forty-nine years were unexpired, upon trust to pay the rent during the term to certain named persons, and directed that upon the expiration of the lease the freehold should be sold, and the proceeds of sale distributed among certain other named persons:—

*Held*, that notwithstanding the invalidity of the trust for sale, the legatees of the proceeds of sale were entitled to the benefits intended for them by the testator inasmuch as being ascertained within the limits of the rule they had the right in equity to elect to take the property as real estate. *In re DAVERON. BOWEN v. CHURCHILL*

Chitty J. [1893] 3 Ch. 421

Considered by *Kekewich J. In re WOOD*, [1894] 2 Ch. 310; affirmed by C. A. [1894] 3 Ch. 381.

**163. — Remoteness—Invalid trust for sale—Conversion—Share of proceeds, whether real or personal estate.**

A trust for sale cannot in equity convey real into personal estate unless it is valid and effective.

For the purposes of the rule against perpetuities there is no difference between a trust for sale and a power of sale where the sale is intended to be completed by a conveyance to the purchaser of the legal estate vested in the trustees.

**WILL (Perpetuity)—continued.**

A trust for sale contained in a will was void as infringing the rule against perpetuities, but the trusts of the property and the rents and profits until sale were good, and the interests of the beneficiaries did not fail:—

*Held*, that the real and not the personal representatives of a deceased beneficiary were entitled to the proceeds of a sale of the real estate made under the order of the Court. *GOODIER v. EDMUNDS*

Stirling J. [1893] 3 Ch. 455

Considered by *Kekewich J. In re WOOD*, [1894] 2 Ch. 310; affirmed by C. A. [1894] 3 Ch. 381.

**164. — Remoteness — Maintenance clause — Separable.**

A gift to the children of testator's son G. who should attain twenty-four is void for remoteness, but a maintenance clause in favour of such children is separable and valid. Only such children as are under twenty-one take the benefit of the clause in such a case. *In re WATSON. COX v. WATSON*

Chitty J. [1892] W. N. 192

**165. — Remoteness—Power of sale—Life estate—Limitation over—Discretion—Duration.**

Where in a deed or will real and personal estate is limited to one for life, and upon his death on trust to divide it among certain persons with power or authority to the trustees to sell at such times as they shall think fit all or any of the estate for the purposes of the division:—

*Held*, that the power of sale was not void as infringing the law against perpetuities, but might be exercised within a reasonable time after the death of the tenant for life, and after the property has absolutely vested in possession, if on the construction of the instrument such appeared to be the settlor's or testator's intention. *In re LORD SUDELEY AND BAINES AND CO.*

Chitty J. [1894] 1 Ch. 334

Discussed by *Kekewich J. In re Dyson and Foulke*, [1896] 2 Ch. 720.

— Remoteness—Reverter—Shifting use.

See *VENDOR AND PURCHASER—Title*. 76.

**166. — Remoteness—Splitting gift over—Absolute gift—Cutting down—Construction of will.**

The question in this case was whether the testator had made alternative gifts over on the happening of two events, or a gift over in one event involving two things:—

*Held*, as a matter of construction, that the gift over could not be split so as to make it good in the event which had happened, and that it was, therefore, void for remoteness; that the gift was an absolute gift in the first instance, and that, the attempt to cut this gift down being void for remoteness the absolute gift remained.

*In re Bence. Smith v. Bence*, [1891] 3 Ch. 242, and *In re Harvey. Peek v. Savory*, (1888) 39 Ch. D. 289, followed.

Decision of *Byrne J.*, [1900] W. N. 58, affirmed. *In re HANCOCK. WATSON v. WATSON*

C. A. [1900] W. N. 270

**167. — Remoteness—Vesting—Maintenance—Interstacy—Construction of will.**

A testator bequeathed a sum of 12,000*l.* to trustees, upon trust to pay the income thereof to a daughter during her life, and after her

**WILL (Perpetuity)**—*continued.*

death to pay 1000*l.* to her husband, if then living, and subject as aforesaid, as to capital and income, on trust for all the children of the daughter when they should attain twenty-five, but not before, and, if more than one, in equal shares, and in case there should not be "any such child" the fund was to form part of his residue. The testator declared that, until the 12,000*l.* should be invested, his trustees should pay to his daughter, or, in the event of her death, to her husband and children, interest on their respective portions. The testator also declared that his trustees might at their discretion raise any part or parts (not exceeding together one moiety) of the expectant share of any grandchild under his will, and apply the same for his or her advancement, &c. And the testator empowered his trustees to apply all or any part of the income arising from the expectant share of any grandchild under his will, after the death of the preceding owner for life thereof, for the maintenance and education of each such grandchild, and he directed his trustees to invest and accumulate the unapplied income in augmentation of the capital of such share.

By a codicil the testator directed his trustees to hold a moiety of the residue of his estate, real and personal, in trust to pay the income thereof to a son during his life; and after his death for his child or children absolutely upon their attaining twenty-five. And in the event of the death of either or all the son's children before attaining twenty-five, then upon trust to pay the share of the child or children so dying to another son absolutely:—

*Held*, that under the gift of the 12,000*l.*, and also under the gift of a moiety of the residue, the grandchildren took immediate vested interests, subject to their being divested in case they did not attain twenty-five, and that the trusts were not void for remoteness.

Decision of Kekewich J. reversed.

*Per* Lindley M.R. and Sir F. H. Jeune, *Fox v. Fox*, (1875) L. R. 19 Eq. 286, approved. *In re TURNEY. TURNEY v. TURNEY* [1899] W. N. 211; C. A. [1899] 2 Ch. 739

**Power of Appointment.**

*See* Cases under POWER.

**Precatory Trust.**

168. — "*In the fullest confidence*"—*Absolute gift—Gift on condition—Election.*

A testator by his will gave his residuary estate to his wife, her heirs, executors, administrators and assigns absolutely, "in the fullest confidence that she will carry out my wishes in the following particulars," i.e., that she would pay the premiums due during her life on a policy of insurance on her own life (which was her own property), and that she by her will would leave the moneys payable under the policy, and also the moneys payable at the testator's death in respect of a policy on his life (which was the testator's property), to his daughter Lucy; and he appointed his wife and another person his executors:—

*Held* (by Lindley and A. L. Smith L.JJ.,

**WILL (Precatory Trust)**—*continued.*

affirming the decision of Romer J., Rigby L.J. dissentiente), that the wife of the testator was not put to her election as to her own policy, and took the residuary estate of the testator absolutely, and unfettered by any condition or trust.

*Wright v. Atkins*, (1823) 1 T. & R. 143, 157; *Shovelton v. Shovelton*, (1863) 32 Beav. 143; *Lambe v. Eames*, (1871) L. R. 6 Ch. 597; *Curvick v. Tucker*, (1874) L. R. 17 Eq. 320; *Le Marchant v. Le Marchant*, (1874) L. R. 18 Eq. 414; *Irvine v. Sullivan*, (1869) L. R. 8 Eq. 673; *In re Hamilton*, [1895] 2 Ch. 370, considered and explained.

Observations of Rigby L.J. as to the principles on which a trust or condition should be deduced from the language used by a testator. *In re WILLIAMS. WILLIAMS v. WILLIAMS*

C. A. [1897] 2 Ch. 12

169. — "*I wish them to bequeath the same.*"

In considering whether a precatory trust is attached to any legacy the Court will be guided by the intention of the testator apparent in the will, and not by any particular words in which the wishes of the testator are expressed. A gift purporting to be absolute is not to be reduced to a life interest, and a precatory trust is not to be created merely by an expression of the testator's wish that the legatee shall by will or otherwise make a disposition which the legatee could equally effect through his beneficial ownership.

Decision of Kekewich J., [1895] 1 Ch. 573, affirmed. *In re HAMILTON. TRENCH v. HAMILTON* — — — C. A. [1895] 2 Ch. 370

Approved of by C. A. *Hill v. Hill*, [1897] 1 Q. B. 483, 493; *In re Williams*, [1897] 2 Ch. 12, 21.

170. — *Words of request—Heirlooms.*

The widow of a peer stated in a letter or memorandum sent to her solicitor that certain diamonds had been given to her upon her marriage by the mother of her husband, then heir-presumptive to the peerage, for her life with the request that at her death they might be left as heirlooms:—

*Held*, that the terms of the gift as stated did not import a precatory trust, and therefore that the absolute property in the diamonds passed under it to the donee. *HILL v. HILL*

C. A. [1897] 1 Q. B. 483

**Probate.**

*See* Cases under PROBATE.

**Relevancy.**

171. — *Capacity—Insane delusions.*

In an action for reduction of a will the pursuers averred that the testator was "subject to insane delusions," and that "he believed that he had a special and imperative duty to further the cause of total abstinence and to oppose the Church of Rome by devoting his pecuniary resources to these objects, in consequence of commands which he conceived he had received from the Deity by direct communications on various occasions." That these insane delusions dominated his mind and overmastered his judgment to such an extent as to render him incapable of making reasonable

**WILL (Relevancy)—continued.**

and proper settlement of his means and estate, or of taking a rational view of the matters to be considered in making a will:—

*Held*, reversing the decision of the Ct. of Sess., (1896) 23 R. 513 (Lord Davey dissenting), that a relevant case for trial was averred. *HOPE v. CAMPBELL* - - H. L. (Sc.) [1899] A. C. 1

**Remoteness.**

See Cases under **WILL—Perpetuity.**

**Residue.**

172. — “All other my freehold messuages and tenements,” *Gift of—Restriction as to tenure—Residuary devise.*

A testator devised his freehold shop at W. to his son, and then devised to the pits. “all other my freehold messuages and tenements at W. and elsewhere.” The devise to the son having failed by reason of his having attested the will:—

*Held*, upon the authority of *Springett v. Jennings*, (1871) L. R. 6 Ch. 333, that the second devise was not residuary, and that the freehold shop was not included in it.

The principle of *Springett v. Jennings*, L. R. 6 Ch. 333, applies as well to a restriction as regards tenure as to a restriction as regards locality. *In re MASON. OGDEN v. MASON*

*Kekewich J.* [1900] W. N. 105; [1900] 2 Ch. 196  
This case was reversed by C. A. See [1901] 1 Ch. 619.

173. — “Annuities”—*Gift of residue to annuitant—Restraint on anticipation.*

Question whether a restraint on anticipation, which applied to an annuity, also applied to a share in the testator's residue, which was given to the annuitant:—

*Held*, that as the testator intended to give the share of the residue by way of increasing the annuity, the same restraint attached to the share as already attached to the annuity. *In re LAWRENSEN. PAYNE-COLLIER v. VYSE*

C. A. [1891] W. N. 28

— Annuity, Provision for — Distribution of residue.

See **ANNUITY**. 11.

— Appropriation of assets.

See **EXECUTOR—Powers**. 46.

— Appropriation of assets—Settled shares.

See **TRUSTEE**. 17.

174. — “Cease to carry on the business”—*Company—Managing directors.*

A testator gave his leasehold factory and business to his sons, but provided that if his sons should “cease to carry on the business” then the factory should sink into the residue. The sons turned the business into a limited co., of which they were managing directors and principal shareholders:—

*Held*, that they had ceased to carry on the business within the meaning of the proviso in the will, and the factory fell into residue. *In re SAX. BARNED v. SAX* - North J. [1893] W. N. 104

— Costs out of residue—Gift to class—Mistake as to number—Ascertainment.

See **WILL—Class**. 50.

**WILL (Residue)—continued.**

175. — *Gift “after decease” of wife—Life estate by implication—Intestacy.*

Under a bequest after the death of A. to the testator's next of kin, A. takes a life estate by implication, but not if the bequest is to persons who happen to be some of such next of kin.

S. by his will gave his residuary personal estate to trustees to invest and to pay out of the income thereof an annuity to his two daughters on their attaining twenty-one or marrying “for and during the remainder of the life of” his wife if she should be then living; and “from and after the decease of” his wife to divide the corpus between his son and his two daughters:—

*Held*, that the wife did not take a life interest by implication in the residue, but that there was an intestacy as to the income of the residuary estate during the life of the widow. *In re SPRINGFIELD. CHAMBERLIN v. SPRINGFIELD*

*Kekewich J.* [1894] 3 Ch. 603.

— Period of distribution—Advancement—Hatch-pot clause.

See **WILL—Advancement**. 23, 25.

176. — *Referential trusts do not duplicate charges—Gift of residue—Appeal from New South Wales.*

Trusts of residue created by reference to other trusts are not to be read as creating a duplication of charges on the estate in the absence of clear indication that the testator so intended.

Where a testator gave to his widow the interest of 20,000*l.* during widowhood, and on remarriage the interest of 10,000*l.* for life, “and as to all his residuary estate” gave it upon the same trusts as those of the 20,000*l.*, and the widow re-married:—

*Held*, that she did not take either the income for life of a moiety of the residuary estate or of an additional 10,000*l.* *TREW v. PERPETUAL TRUSTEE CO.* - J. C. [1895] A. C. 264

Referred to by *Romer J.* *In re Marquis of Bristol*, [1897] 1 Ch. 949.

— Residuary gift—Successive interests—Lasc-holds—Conversion.

See **CONVERSION**. 7.

— Residuary legatee—Action by—Executor—Breach of duty—Loss of interest.

See **EXECUTOR—Liabilities**. 41.

— Residuary legatee—Right to compel executors to plead Statute of Limitations.

See **EXECUTOR—Liabilities**. 45.

177. — *Revocation by codicil of gift of share of residue, and direction that it should fall into the residue.*

A testator by his will gave his residuary estate to trustees in trust as to two-fifths for A., B. and C., as tenants in common absolutely. By a codicil he directed B.'s share to be restricted to a life interest, and after her death to fall into his residuary estate:—

*Held*, that there was no intestacy as to the reversion in B.'s share, since there was a clear intention expressed in the will that it should go to A. and C. *In re PALMER. PALMER v. ANSWORTH* C. A. [1893] 3 Ch. 369

**WILL (Residue)—continued.**

— Special power of appointment—Bequest of residue to object of power—Intention to exercise.

See POWERS—Exercise. 36.

**Resulting Trust.**

See TRUST. 4—6.

**Reverter.**

— Common law condition—Shifting use—Rule against perpetuities.

See VENDOR AND PURCHASER—Title. 76.

178. — *Fee simple conditional—Wills Act, 1837* (1 Vict. c. 26), s. 3—*Devise.*

The possibility of reverter on failure of a fee simple conditional is “a right of entry for a condition broken” within the meaning of and devisable by force of s. 3 of the Wills Act, 1837. *PEMBERTON v. BARNES* - - - North J. [1899] W. N. 8 (6); [1899] 1 Ch. 544

**Revival of Will.**

See Cases under WILL—Revocation.

**Revocation.**

See also Cases under PROBATE—Revocation of Administration and Revocation of Probate.

— Absolute gift in will not revoked by codicil.

See WILL—Absolute Gift. 2.

179. — *Codicil — Annuity — Revocation by codicil of gift in will—Decision as to future interests.*

B. by his will gave to his granddaughter A. an annuity of 300*l.*, to be a charge on certain land, and after her death he directed that “the said sum of 300*l.*” should be raised and paid unto and amongst her children as she should by deed or will appoint, and in default of appointment amongst her children equally during their respective lives. He devised to his granddaughter C. a like annuity of 300*l.*, to be a charge on the same property, “and to be paid to her and her children in the same manner in all respects as the annuity hereinbefore given to my granddaughter A.” By a codicil reciting that B. had by his will given an annuity of 300*l.* to each of the two granddaughters he revoked the gifts “of the said annuities,” and in lieu thereof gave to each of his said granddaughters A. and B. an annuity of 150*l.*, to be payable and charged in the same manner and on the same land as the annuities of 300*l.* under the will. The children of A. and B. were not referred to in the codicil:—

*Held*, that the effect of the codicil was to substitute annuities of 150*l.* to A. and B. and their respective children for the annuities of 300*l.* given by the will.

Decision of Kekewich J., [1895] 2 Ch. 256, affirmed (Rigby L.J. dissent.) *In re FREME'S CONTRACT* - - - C. A. [1895] 2 Ch. 778

180. — *Codicils — Revival — Law of Nova Scotia.*

By a codicil dated 1882 expressed to be a codicil to his will of 1880 a testator confirmed his

**WILL (Revocation)—continued.**

said will. The will consisted not merely of the document of 1880, but also of an intermediate codicil revoking a particular bequest therein:—

*Held*, that under the circumstances of the case the will of 1880 was after confirmation no longer affected by the partial revocation made by the intermediate codicil. *MCLEOD v. MCNAB*

P. C. [1891] A. C. 471

181. — *Codicil — Revival — Wills Act, 1837* (1 Vict. c. 26), s. 22.

A testatrix in 1889 made a will, and in 1892 instructed her solicitor to prepare a codicil, which she took away with her, but never executed. Later in 1892 she executed a fresh will, prepared by a different solicitor, revoking the former will. In 1893 she executed a codicil, prepared by her original solicitor, who was in ignorance of the existence of the second will, and believed that the codicil to the first will had been duly executed; this codicil purported to be a second codicil to the will of 1889, and to confirm “my said will and the first codicil thereto”:—

*Held*, that the codicil, by its language, revived the earlier will, and that both the wills, together with the codicil, must be admitted to probate. *IN THE GOODS OF CHILCOTT*

G. Barnes J. [1897] P. 223

182. — *Codicil—Revocation—New 3 per cent. Annuities.*

H. by his will bequeathed 10,000*l.* New 3 per cent. Annuities on trust for his wife for life, and after her death to sell the stock and divide the proceeds among certain charities. After the passing of the National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), H. by a codicil reciting that subsequent to the making of his will the 3 per cent. annuities had been converted into 2½ per cent. Consols, bequeathed 15,000*l.* of such Consols on trust to apply the income in making the payments directed by his will for the benefit of his wife and other annual payments, and in all other respects confirmed his will. H. at his death held 15,000*l.* such Consols:—

*Held*, that the codicil did not revoke the legacy given to the charities by the will, and that under the first part of s. 25, sub-s. 2, of the Act there was on the death of the widow a good gift of 10,000*l.* 2½ per cent. Consols to the charities. The first part of sub-s. 2 includes all dispositions of stock, whether by will or any other instrument. *In re HOWELL-SHEPHERD. CHURCHILL v. ST. GEORGE'S HOSPITAL*

Kekewich J. [1894] 3 Ch. 649

183. — *Declarations of testator after date of will — Evidence — Admissibility — Execution of will—Execution in Duplicate—Destruction of one part.*

Declarations made by a testator after the date of an alleged will are not admissible to prove the execution of the will, and they are equally inadmissible to prove that the will was executed in duplicate.

*Sugden v. Lord St. Leonards*, (1876) 1 P. D. 154, explained.

In order to prove that a testatrix had executed her will in duplicate, and that she had revoked the will by destroying one of the parts, evidence was tendered of oral declarations to that effect,

**WILL (Revocation)—continued.**

made by the testatrix after the date of the will:—

*Held*, that these declarations were inadmissible.

Decision of G. Barnes J. affirmed. **ATKINSON v. MORRIS** - - - **C. A. [1897] P. 40**

— French subjects—English marriage—Change of domicile—Intention—Revocation of ante-nuptial will.

*See* **CONFLICT OF LAWS**. 16.

**184. — Implied revocation—Codicils—Substituted or cumulative legacies.**

A testator by a first codicil made provision for his wife, gave directions as to his burial, &c., and gave legacies. On the death of his wife he made a second codicil on a draft of the first, which, except that it increased a legacy and made provisions consequent on the wife's death, was a repetition of the first codicil, and which only referred to the will and not to the first codicil:—

*Held*, that the second codicil was intended to be substituted for the first, and could alone be admitted to probate with the will. **CHICHESTER v. QUATREFAGES** - **Jeune Pres. [1895] P. 186**

— Intention—Estate tail.

*See* **WILL—Estate Tail**. 79.

**185. — Misapprehension.**

The testatrix made a second will, dealing with a small part of her property, on a printed form. The form contained a clause revoking all former wills. To this the testatrix objected, and wished the clause struck out; but, being informed that the clause was inoperative and cancellation dangerous, she signed the form with the clause standing:—

*Held*, that she must be taken to have known and approved the words of revocation, and that they must be included in the probate of the last will. **COLLINS v. ELSTONE**

**Jeune Pres. [1893] P. 1**

— Nomination by member—Revocation by subsequent will.

*See* **FRIENDLY SOCIETY**. 13.

**186. — Paper pasted over writing on back of codicil—Removal, Order for.**

A testatrix left a will and two codicils duly executed. She cancelled the first codicil, and afterwards wrote something at the back of the codicil, and afterwards pasted paper over the writing. Paper ordered to be removed to see if the writing amounted to a revocation of the codicil. **IN THE GOODS OF GILBERT**

**Jeune Pres. [1893] P. 183**

**187. — Partial revocation of will—Cancellation of (second will)—Revival of first will—Wills Act, 1837 (1 Vict. c. 26), ss. 20, 22.**

A testator by his will gave all his property to S., and appointed S. sole executrix. Subsequently he made a second will leaving his real estate to E., and appointed E. sole executrix, but did not expressly revoke the first will. He subsequently cancelled the second will:—

*Held*, that the second will partly revoked the first will, and that the revoked part of the first will was not revived by the cancellation of the second will. Therefore, that probate must be

**WILL (Revocation)—continued.**

granted of so much of the first will as was not revoked, and that as to property dealt with in the second will there was an intestacy. **IN THE GOODS OF HODGKINSON** **C. A. [1893] P. 339**

**188. — Several testamentary papers—Will made in execution of limited power of appointment.**

The father of the testatrix left her the sum of 4000*l.* for life with power of appointment by will among her children. The testatrix made three wills, one in 1890, by which she left one of her daughters "the sum of 4000*l.*, being the sum left to me by the will of my father"; a second in 1894, by which she left the same daughter 4000*l.*, and the residue of her property to the same daughter and one of her sons; and a third in 1895, by which she left all her property to the same daughter:—

*Held*, that, as the second and third wills both professed to deal with all the property of the testatrix, the second will was revoked by the third, that the general words of bequest in the third will did not revoke the execution of the limited power of appointment by the first will, and that probate should, therefore, be granted of the first and third wills.

*In the Goods of Merritt*, (1858) 1 Sw. & Tr. 112, and *In the Goods of Joys* (1860) 4 Sw. & Tr. 214, disapproved. **CADELL v. WILLCOCKS**

**Jeune Pres. [1898] P. 21**

— Will—Intention.

*See* **WILL—Estate Tail**. 79.

**Satisfaction.**

— Covenant to pay—Legacy of same amount.

*See* **SCOTTISH LAW**.

**189. — Debt—Legacy to creditor of greater amount—No time fixed for payment of legacy.**

A testator, who was indebted in a sum payable within three months of testator's death, bequeathed to the creditor a legacy of greater amount than the debt. No time was fixed for payment of the legacy:—

*Held*, that the debt was not satisfied by the legacy. *In re* **HORLOCK**. **CALHAM v. SMITH**

**Stirling J. [1895] 1 Ch. 516**

**190. — Double portions—Presumption rebutted—Shares in partnership business.**

A testator by his will left his shares, in a business divided into twenty-four shares, to three sons equally as tenants in common. At the date of the will the testator had twenty-one shares. One son, who was then manager of the business at a salary, was afterwards taken into partnership to the extent of two shares, and thenceforth managed the business without a salary:—

*Held*, that, assuming both provisions were portions, the presumption against a father giving a double portion to one of his children was rebutted by the circumstances, the father intending that this son should have a greater share in the business than his brothers, and that he was entitled equally with them to the remaining nineteen shares:

*Seem*, the two shares were intended not as a portion, but as remuneration for management. *In re* **LACON**. **LACON v. LACON**

**C. A. [1891] 2 Ch. 482**

**WILL (Satisfaction)—continued.**

— Legacy—Prepayment in testator's lifetime—

Rule against double portions.

See POWERS—Construction. 9.

**Scottish Law.**

See SCOTISH LAW—Will.

**Secret Trust.**

See TRUST. 7.

**Shifting Clause.**

191. *Gift over on succession to earldom*—"Possession."

A devise in strict settlement contained a proviso that if any person, who would be entitled to possession if he had been of full age, should be under twenty-one, the trustees should enter into possession during such minority, and a declaration that if any person entitled to possession or receipt of the rents and profits should succeed to a certain earldom, the hereditaments should go over as if such person were dead without issue. A., who was then and still an infant, became entitled in 1882, and in 1893 he succeeded to the earldom :—

*Held*, that as by reason of the infancy of the earl the possession was taken from him and given to the trustees, he was not when he succeeded to the earldom a person entitled within the words of the shifting clause, and therefore the gift over had not taken effect, and his title had not been displaced. *LESLIE v. EARL OF ROTHES*

C. A. [1894] 2 Ch. 499

**Soldier's Will.**

See PROBATE—Soldier's Will.

**Specific Devise.**

— Adowson—Description—"Real estate in the county of L."—Surrounding circumstances—Intention.

See ECCLESIASTICAL LAW.

192. — "*All and every the children.*"

A devise of realty to "all and every the children of A., their heirs and assigns for ever," held to create a joint tenancy. *BINNING v. BINNING* — Chitty J. [1895] W. N. 116 (16)

193. — *Codicil—Inconsistent codicil.*

A testator devised real estate at W. in settlement. By a codicil he directed the estate at W. to be sold :—

*Held*, that the devisees were not deprived of the beneficial interest given them by the will. *In re CHIFFERIEL*. *CHIFFERIEL v. WATSON*

North J. [1895] W. N. 106

194. — *House to one and of land adjoining to another, Devise of—Right of light to windows over the land.*

The owner in fee in possession of a house and an adjoining field, over which the light required for the windows of the house passed, devised the house to one and the field to another :—

*Held*, (1) that the devise of the field was specific, though residuary in form; (2) that the right to light over the field passed to the devisee

**WILL (Specific Devise)—continued.**

of the house, and that the devisee of the field had no right to obstruct the light. *PHILLIPS v. LOW*

Chitty J. [1892] 1 Ch. 47

[NOTE.—And see *Taws v. Knowles*, C. A. [1891] 2 Q. B. 564.]

195. — *House and lands, Devise of—Wills Act, 1837 (1 Vict. c. 26), s. 24.*

In April, 1873, A. devised certain lands "now in my own occupation"; in Sept. he purchased certain adjoining lands; in Oct. he, by a codicil, confirmed his will :—

*Held*, that the lands purchased in Sept. passed under the devise. *In re CHAMPION*. *DUDLEY v. CHAMPION*

C. A. [1893] 1 Ch. 101

196. — *Lands in S., Devise of—Money arising from sale of lands in S.—Trust to re-invest in land.*

Money arising from sale of lands in the county of S. was held on trust to invest in land to be settled upon the limitations of a settlement, under which C. was tenant for life with remainders to his sons in tail male, remainder to himself in fee. C. died without issue, and by his will gave his lands in the county of S. to A., and all his real and personal estate not otherwise disposed of to B. :—

*Held*, by Kekewich J., that the money went to A. :

*Held*, by C. A., that the money, being impressed with a trust to invest in land, would pass under a devise of land, but (revers. Kekewich J.), that it would not pass under a devise of lands in S., and therefore that it went to B. *In re DUKE OF CLEVELAND'S SETTLED ESTATES*

C. A. revers. Kekewich J. [1893] 3 Ch. 244

197. — *Mortgagee in possession—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30—Executor—Specific devise by executor beneficially entitled to mortgage debt.*

A mortgagee in possession of freehold houses devised and bequeathed all his estate to his wife, and appointed her his sole executrix. By a codicil to her will she devised these houses specifically :—

*Held*, that the mortgage debt passed to the specific devisee. *In re CARTER*. *DODDS v. PEARSON*

Cozens-Hardy J. [1900] W. N. 90; [1900] 1 Ch. 801

198. — *Rents and profits derived from business, Devise and bequest of—Gavelkind tenure.*

A devise by a grocer, carrying on business in a house which he owned in fee, of the whole of the rents and profits derived from the business, held to pass the house in fee. *In re MARTIN*. *MARTIN v. MARTIN*

North J. [1892] W. N. 120

199. — *Specific or aliquot parts of fund, Gift whether of—Gift of sum of money—Trust for investment during life tenancy, and for subsequent conversion—Legacies out of proceeds of sale.*

The decision of Stirling J., [1896] W. N. 31 (11) reversed. *In re LORD ONGLEY*. *OTTLEY v. TURNER*

C. A. [1896] W. N. 54 (16)

200. — *Will made prior to Wills Act—Words of gift—Without limitation—"Estate"—"Property."*

By the law of wills prior to the Wills Act, 1837, words of gift conveyed only a life estate

**WILL (Specific Devise)—continued.**

unless the devise contained words of limitation, and the use of the words "estate" or "property" would not enlarge the gift if used only by way of reference, and not in the operative part of the devise. *HILL v. BROWN* P. C. [1894] A. C. 125

**Substitution.**

201. — *Alternative gift or substitutional—Scheme—Gift to named charity or some one or more kindred institutions.*

Although it has been held in many cases, of which *Carey v. Carey*, (1854) 6 Ir. Ch. Rep. 255, is an example, that a gift to A. or B. is substitutional, there is no authority for the broad proposition that such a gift is *prima facie* to be so construed.

A testator gave to trustees a fund to be called the "D. Charitable Trust," and directed the trustees to pay one-tenth of the income thereof to the P. A. Society, "or some one or more kindred institutions" having certain specified objects, and to divide the remainder of the income between such of the charitable institutions in London or the neighbourhood as they might select, and in such proportions as they might deem fit:—

*Held*, that the gift of the one-tenth was alternative and not substitutional; that it was a good charitable gift to one or more institutions of which the society named was a type; that the trustees had no discretion as to what institutions were to benefit under the gift of the one-tenth; and a scheme was directed to be settled. *In re DELMAR CHARITABLE TRUST*

*Stirling J.* [1897] 2 Ch. 163

— Class, Members of.

*See WILL—Class.* 55, 56.

— Issue taking by—Gift to children as a class:

*See WILL—Lapse.* 114.

**Superstitious Uses.**

202. — *Gift for masses for soul of testator—*1 *Edw.* 6, c. 14.

A domiciled Englishman gave a legacy to a Jesuit college in Victoria, to be spent in masses for the souls of himself and his wife. The gift was good according to the law of Victoria:—

*Held*, that the English law applied, and the gift was void. *In re ELLIOTT. ELLIOTT v. ELLIOTT*

*North J.* [1891] W. N. 9

**Survivor.**

203. — "Survivor"—Trust moneys—Gift of life interest to A.—After death of A. direction to pay and divide equally between two persons— "And if either of them shall be then dead for the survivor"—Death of both legatees before determination of life interest—Meaning of words "either" and "survivor."

A testatrix gave residuary trust moneys upon trust to pay the interest to her sister Thirza during her life, and after her death to pay and divide the said trust moneys equally between the testatrix's two sisters Frances and Sarah, share and share alike, "and if either of my said sisters shall be then dead . . . upon trust for the survivor of my said sisters absolutely."

*Held* (Rigby L.J. dissentiente), that the

**WILL (Survivor)—continued.**

period of distribution was not the death of Sarah who died first, or of Frances who was the survivor of the two legatees, but the death of Thirza, to whom the life interest was given; and that both Sarah and Frances being dead at that time there was then no survivor, and the clear original gift to Sarah and Frances as tenants in common was not divested.

The decision of North J. affirmed.

*White v. Baker*, (1860) 2 D. F. & J. 55, distinguished. *In re PICKWORTH. SNAITH v. PARKINSON.* C. A. [1899] W. N. 28 (11); [1899] 1 Ch. 642

204. — "Survivors"—When read as "others."

Cozens-Hardy J. said that he was bound to hold that the expression "survivors or survivor" meant what it said, namely, that those surviving the event of death took. After referring to *Milsum v. Audry*, (1800) 5 Ves. 465; *Re Corbett's Trusts*, (1860) Johns. 591; and *Beckwith v. Beckwith*, (1876) 46 L. J. (Ch.) 97, he said he had felt some doubt on account of the judgment of Kay J. in *In re Bowman*, (1889) 41 Ch. D. 525, 535, where he classified the cases and said: "It seems to me that the decisions establish the following propositions: When the gift is to A., B., and C." [down to "gift over"]. For that there was ample authority, as there was also for the next proposition, beginning, "If to similar words," and ending "after their parent." But for the last proposition, "They also participate," down to "original shares," there seemed to be no authority, and it seemed as if the attention of Kay J. could not have been called to certain authorities inconsistent with that proposition although *Milsum v. Audry* and *Beckwith v. Beckwith* were cited to him. In the present case it must be decided that the proceeds of sale were to be held in trust for the two surviving daughters on the trusts declared by the will in respect of their original shares. *In re ROBSON. HOWDEN v. ROBSON* Cozens-Hardy J. [1899] W. N. 260

**Tenant for Life.**

*See Cases under SETTLED LAND.*

**Tenants in Common.**

— Joint tenancy or tenancy in common.

*See Cases under WILL—Joint Tenancy.*

**Testamentary Expenses.**

205. — *Direction to pay "testamentary expenses" of another person—Costs of administration on intestacy—Costs of action in Probate Division—Estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 6, sub-s. 2.*

The expression "testamentary expenses" includes the estate duty in respect of the personal property of which the testator or other person whose "testamentary expenses" are referred to was competent to dispose at his death.

A direction for the payment of "testamentary expenses" may extend to the expenses of administration under an intestacy.

A testator by his will gave his residuary estate to trustees upon trust to convert and to invest the net proceeds and pay the income to

**WILL (Testamentary Expenses)—continued.**

his wife during her life; and after her decease he directed his trustees, after paying his widow's funeral and "testamentary expenses" and debts, to apply his residuary estate as therein mentioned. The testator's wife survived him, and signed a document which purported to be her will. After her death the plt. and her brother, who were in the same relationship to the widow and were her next of kin, disputed the will, and the brother brought an action in the Probate Division to have a grant of administration to the estate of the widow made to him. The Court pronounced against the alleged will, but made no order as to costs. Letters of administration to the widow's estate were subsequently granted to the plt. with the assent of her brother:—

*Held*, that the direction for payment of the "testamentary expenses" of the testator's widow extended to (1) the costs and expenses of the plt. in obtaining the letters of administration, and in connection with the administration of the estate of the widow; (2) the costs of the brother of the action in the Probate Division; and (3) the estate duty payable on the death of the widow in respect of her personal property. *In re CLEMON. YEO v. CLEMON*

**Kekewich J. [1900] W. N. 105; [1900] 2 Ch. 182**

Followed by *Kekewich J. In re Treasure*, [1900] 2 Ch. 648, 653.

**206. — Direction to pay testamentary expenses — Estate duty — Incidence — Will in exercise of power of appointment — Appointed fund — Residue — Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 1.**

Where a general power of appointment over a fund is exercised by will, the appointed fund does not pass to the executor as such; consequently, the estate duty in respect thereof (in the absence of any direction in the will to the contrary) is payable out of the fund; but such estate duty falls within the description of testamentary expenses; consequently, where the will contains a direction to pay testamentary expenses out of the residue, the estate duty in respect of the fund is payable out of the residue. *In re TREASURE. WILD v. STANHAM* — — — **Kekewich J. [1900] W. N. 181; [1900] 2 Ch. 648**

**Uncertainty.**

**207. — Charitable gift — Blanks in will — General charitable intent.**

A gift "to the following religious societies . . ." the names being left blank in the will shews such a general charitable intention as the Court can execute. *In re WHITE. WHITE v. WHITE* — — — **C. A. [1893] 2 Ch. 41**

Discussed by **C. A. In re Macduff**, [1896] 2 Ch. 451, 462.

**208. — Class — Member — Mistake — Gift of residue to "the children of the deceased son (named B.) of my father's sister" — Several deceased sons named B. — Construction of will.**

A testator by will gave the residue of his real and personal estate "unto the children of the deceased son (named Bamber) of my father's sister share and share alike." There were three deceased sons all named Bamber of the sister of

**WILL (Uncertainty)—continued.**

the testator's father, and this fact was known to the testator:—

*Held*, by **C. A.** (reversing *Kekewich J.*), that the gift was void for uncertainty.

*Hare v. Cartridge*, (1842) 13 Sim. 165, and *Lee v. Pain*, (1844) 4 Hare, 201, 249, commented on and distinguished. *In re STEPHENSON. DONALDSON v. BAMBER* **C. A. [1897] 1 Ch. 75**

**209. — Insufficient description — Intestacy — Election.**

If it can be gathered from the words used in a will that the testator meant to give a particular property to a legatee, but it is impossible to say either from the will itself or from extrinsic evidence which of several properties answering to the description the testator meant to pass by the specific devise, the gift fails for uncertainty, and the Court cannot, to avoid intestacy, give the legatee an option to elect which property he will take. *A.* was seised of four houses in *S. Place* which had not yet been numbered. By his will he devised to his son *B.* and his heirs "all that newly-built house being No. — *S. Place*," and similar devises to each of his sons *C.*, *D.*, and *E.*:—

*Held*, that the devises were void for uncertainty, and that all four houses went to the heir-at-law. *ASTEN v. ASTEN*

**Romer J. [1894] 3 Ch. 260**

Approved of by **C. A. In re Cheadle**, [1900] W. N. 174; [1900] 2 Ch. 620.

— **Validity.**

See Cases under PROBATE—Grant of Probate.

**Vested Interests.**

**210. — Divesting — Construction of will — Alternative devise — "Such as should be living at widow's death and attain twenty-one" — Appeal from New South Wales.**

Where there is a devise to five persons nominatim, or to such of them as should be living at the death of the testator's widow and attain twenty-one:—

*Held*, that all the devisees take vested interests in fee subject to be divested as regards each devisee dying in the lifetime of the widow in favour of those (if any) who survive her and attain twenty-one.

But where later clauses gave to each devisee a specifically described portion of the land devised for life in the event of all the devisees surviving the widow, and declared that "in case of the death of any of the before-mentioned persons he gave and devised the share to which he would have been entitled" to his heir:—

*Held*, that the effect of this declaration was to alter the original devise, and to give the share of a devisee dying in the widow's lifetime to his heir, and not to the surviving devisees. *PENNY v. COMMISSIONER FOR RAILWAYS*

**P. C. [1900] A. C. 628**

**Vesting.**

— **Remoteness — Maintenance — Intestacy.**

See **WILL — Perpetuity**. 159, 167.

— **Will — Vesting.**

See **SCOTTISH LAW — Succession**. 43—45.



**WILL—continued.****Words.**

- “All and every the children.”  
See **WILL—Specific Devise.** 192.
- “All other my freehold messuages and tenements.”  
See **WILL—Residue.** 172.
- “Annuities.”  
See **WILL—Residue.** 173.
- “Attaining twenty-five years.”  
See **WILL—Perpetuity.** 159.
- “Bankruptcy.”  
See **WILL—Forfeiture.** 98.
- “for Benefit of A.”  
See **WILL—Forfeiture.** 92.
- “Cease to carry on the business.”  
See **WILL—Residue.** 174.
- “Children.”  
See **Cases under WILL—Children.**
- WILL — Uncertainty.**  
208.
- “Children then living.”  
See **WILL—Children.** 34.
- “in the fullest Confidence.”  
See **WILL—Precatory Trusts.** 168.
- Debenture stock or shares.  
See **WILL—Legacy.** 132.
- “Deductions.”  
See **WILL—Annuity.** 27.
- “after Decease.”  
See **WILL—Residue.** 175.

**211.** — Desk “with the contents thereof,” Gift of—Choses in action—Key of strong box—Intention of testator.

*Held*, that a gift of a desk “with the contents thereof,” included various choses in action, such as cheques, deposit notes, and promissory notes payable to order and on demand (including those which were negotiable only after indorsement by the executors), which were found in the desk, as well as bank notes and coin. In the desk was also the key of a tin box containing securities:—

*Held*, that this key gave no title to the contents of the box. *In re ROBSON.* ROBSON v. HAMILTON — Chitty J. [1891] 2 Ch. 559

**212.** — “Die unmarried”—Construction of will.

The primary meaning of “die unmarried” in a will is “die without having been married”; but the expression is flexible.

The phrase “if he shall die unmarried and without leaving a child” held equivalent to “if he shall die without leaving a widow or child.” *In re CHANT.* CHANT v. LEMON

Cozens-Hardy J. [1900] W. N. 133;  
[1900] 2 Ch. 345

- “Die without child or children.”  
See **WILL—Children.** 35, 39.
- “Die without leaving male issue.”  
See **WILL—Contingent Remainder.** 70.

**213.** — “Effects”—Real estate—Indication of testator’s intention.

Question, whether the real estate of the testator passed under a gift of “effects” in a will not drawn by a lawyer:—

*Held*, that there being a reference to locality,

**WILL (Words)—continued.**

and in a second gift a use of the word “property,” that really was included.

*Per Fry L.J.*, (1) “effects” per se will not include real estate; (2) the word “devise” is not enough to give to “effects” a more extended meaning; and (3) the words “of what nature, kind or quality whatsoever” are by themselves not enough.

Decision of Fry L.J., [1891] 3 Ch. 389, affirmed. *HALL v. HALL* (No. 2)

C. A. [1892] 1 Ch. 361

- “Either.”  
See **WILL—Survivor.** 203.
- “Eldest son.”  
See **WILL—Eldest Son.** 77.
- “Estate.”  
See **WILL—Absolute Gift.** 6.

**214.** — “Estates and hereditaments subject to the limitations” of a settlement—Moneys subject to the same limitations.

Moneys to be laid out in the purchase of other lands held, on the construction of a will, to fall within the words “estates and hereditaments subject to the limitations” of a settlement. *BASSET v. ST. LEVAN*

Stirling J. [1894] W. N. 204

- “Expectant or presumptive share.”  
See **WILL.** 20.
- General principles of construction of words in will.  
See **WILL—Construction.** 64.
- “Heirs, executors or administrators.”  
See **WILL.** 7.
- “I wish them to bequeath the same.”  
See **WILL—Precatory Trusts.** 169.
- “Issue.”  
See **WILL—Children.** 37, 40—42.

**215.** — “Legal disability” preventing donee from taking the property for his own benefit.

A testator, subject to a life estate to his wife, gave half his residuary estate to his son; but in case the son should at the death of the wife be “under any legal disability in consequence whereof he would be hindered in or prevented from taking the same for his own personal and exclusive benefit,” the testator gave the same over to the son’s wife and children.

Shortly before the widow’s death the son, who was one of the executors, was found indebted to the estate in 5188*l.*, and an order was made directing him to pay that sum, and declaring his interest under the will liable to make it good. He had also heavily incumbered his interest:—

*Held* (affirming the decision of Stirling J.), that “legal disability” meant a disability of the person arising from act of law, and that neither the charge by the order nor the mortgages created such a legal disability as would cause the gift over to take effect.

The son on the day of his mother’s death, but before her death, was adjudicated bankrupt on his own application; but in a few days the adjudication was annulled on the ground that it ought never to have been made:—

*Held* (affirming the decision of Stirling J.,

**WILL (Words)—continued.**

[1896] 1 Ch. 527, that this bankruptcy, having been a mere contrivance on the part of the son, ought not to be regarded. *In re CAREW. CAREW v. CAREW* - C. A. [1896] 2 Ch. 311

— “Liable to be deprived.”

See **WILL—Forfeiture.** 99.

**216.** — *Life*—“For his life and the life of his heir.”

A testator devised land to A. “for his life and the life of his heir”—

*Held*, that the devise was legally valid, and gave the devisee an estate during his own life and the life of the person who should be ascertained to be his heir at the time of his death. *In re AMOS. CARRIER v. PRICE*

North J. [1891] 3 Ch. 159

— “Married woman.”

See **WILL—Married Woman.** 144.

— “Nephew.”

See **WILL—Illegitimacy.** 102, 105.

— “Nephews and nieces.”

See **WILL—Class.** 52, 53.

— “Niece.”

See **WILL—Illegitimacy.** 103.

**217.** — “Now in my occupation”—*Specific devise of house and lands.*

In April, 1873, A. devised certain lands “now in my own occupation”; in Sept. he purchased certain adjoining lands; in Oct. he, by a codicil, confirmed his will:—

*Held*, that the lands purchased in Sept., being in the testator's occupation at the date of the codicil, passed under the devise. *In re CHAMPION. DUDLEY v. CHAMPION* C. A. [1893] 1 Ch. 101

**218.** — *Occupied*—“As now occupied by me”—*Falsa demonstratio—Limitatio vera.*

S. devised to his wife during widowhood “B. house and premises thereto, as now occupied by me.” Before the date of the devise S. had let to two of his sons an office in the yard of B. house and the coach-house and stables except a room over the coach-house, the only access to which was from the house. The sons were in occupation at his death:—

*Held*, that the devise included the room over the coach-house, but not the office, stables and coach-house, for the property in the testator's occupation answered the whole of the description, and therefore the Court could not enter into the question of inconvenience, and reject as *falsa demonstratio* the reference to occupation. *In re SEAL. SEAL v. TAYLOR* C. A. [1894] 1 Ch. 316

— “Offspring.”

See **WILL—Children.** 44.

— “Or.”

See **WILL.** 9.

**219.** — “Outgoings properly chargeable”—*Rents.*

A testator bequeathed to F. all arrears of rent due to his estate at his death, and all proportions to become due to his estate after his death of rents and profits accruing due at but payable after his death, but so nevertheless that all outgoings of the said hereditaments properly chargeable against such arrears and proportions, and not

**WILL (Words)—continued.**

discharged in his lifetime, should be paid out of such arrears and proportions:—

*Held*, by Kekewich J., that “the outgoings properly chargeable” included only those recoverable by process of law (such as rates, tithes, &c.) in respect of the lands out of which the rent came, and did not include agents' salary, costs of repairs or improvements, or workmen's wages:—

*Held*, by C. A., that they included all expenses due and unpaid at C.'s death which in his ordinary course of management would have come into charge against the arrears and proportions.

*In re DUKE OF CLEVELAND'S ESTATE. VISCOUNT WOLMER v. FORRESTER* C. A. [1894] 1 Ch. 164

— “become Payable to some other person.”

See **WILL—Forfeiture.** 101.

— “Possession.”

See **WILL—Absolute Gift.** 1, 4.

**WILL—Shifting Clause.** 191.

— “Property.”

See **WILL—Absolute Gift.** 6.

**220.** — “Real estate” in the county of S.—*Long leaseholds intermixed with freehold—Wills Act, (1 Vict. c. 26), s. 26.*

A., who had a power of appointment by will of the real and personal estate of her late husband, by her will appointed the real estate in the county of S. to one and all the other real and personal estate to another:—

*Held*, that long leaseholds intermixed with a large freehold estate in the county of S. passed under the appointment of real estate in the county of S. *In re UTTERMARE. LEESON v. FOULIS*

Kekewich J. [1893] W. N. 158

— “Refuse or neglect.”

See **WILL—Condition.** 62.

**221.** — “Representatives” — “Natural” — *Children or their natural representatives if dead according to the statute rule of distribution — Widow of child.*

A testator bequeathed the residue of his personal estate to trustees upon trust, in the events which happened, for two named unmarried daughters for their respective lives, if they should so long remain unmarried, and after the decease or marriage of either of them upon trust for the survivor for her life if she should so long remain unmarried. And after the decease or marriage of both his said daughters “upon trust to pay and divide the same unto and equally between and among all and every my children whether sons or daughters who shall then be living or their natural representatives if dead according to the statute rule of distribution, but so nevertheless that the representatives of such deceased child or children of mine shall take the share or respective shares only which such deceased child or children would have been entitled to if living.”

The survivor of the two named daughters having died, the fund became divisible. A son having died leaving a widow (his second wife) and children by his first wife, the trustees took out this summons to determine whether the widow was entitled to any share of the fund, which was claimed by the son's children:—

*Held*, that the primary meaning of “repre-

**WILL (Words)—continued.**

representatives," namely, "executors or administrators," was excluded by the word "natural," and the contrary had not been suggested. The question, therefore, was whether the expression "their"—i.e., the children's—"natural representatives if dead according to the statute rule of distribution," denoted all persons entitled under the statute, including the widow, or merely the persons called children's "representatives" in the statute, i.e., their lineal descendants. The word "natural" was the key of the problem. The expression "lawful and natural children" was not uncommon, but the expression "lawful and natural wife" was both uncommon and unintelligible. The status of a wife was contractual, that of a child natural and arising from consanguinity. The testator, therefore, clearly intended to use the word "representatives" in the statutory sense, i.e., lineal descendants of children. In this case the idea of consanguinity was predominant, and the widow was excluded. *In re BROMBY. WILSON v. BROMBY* Farwell J. [1900] W. N. 187

— "Relations."

See WILL—Illegitimacy. 104, 106.

— "Residuary legatee."

See WILL—Legacy. 126.

— "Residue and remainder."

See WILL—Legacy. 120.

— "Return to England."

See WILL—Condition. 63.

— "Right heirs."

See WILL—Joint Tenancy. 112.

— "Share and share alike."

See WILL—Children. 45.

**222. — "Shares"—Debenture stock.**

A bequest of all a testator's "shares" in a public co. will not pass debenture stock where testator had both shares and debenture stock in the co. *In re BODMAN. BODMAN v. BODMAN*

Chitty J. [1891] 3 Ch. 135

Distinguished by North J. *In re Weeding*, [1896] 2 Ch. 364, 367.

— "Such as should be living at widow's death and attain twenty-one."

See WILL—Vested Interests. 210.

— "Surviving children."

See WILL—Children. 42, 47.

— "Survivor."

See WILL—Survivor. 203, 204.

— "Testamentary expenses."

See WILL—Testamentary Expenses. 205, 206.

— "Unmarried daughters."

See WILL—Class. 51.

— "Whole income."

See APPORTIONMENT. 2.

— "Wife."

See WILL—Children. 36.

**WINDING-UP—Building society.**

See BUILDING SOCIETY—Winding-up.

— Company.

See COMPANY—WINDING-UP.

**WINDING-UP—continued.**

— Friendly society.

See FRIENDLY SOCIETY. 4, 5.

— Industrial and Provident Society.

See INDUSTRIAL AND PROVIDENT SOCIETY. 4, 5.

**WINDWARD ISLANDS—Practice—Special leave to appeal—Appeal in forma pauperis.**

See PRACTICE—Forma Pauperis.

**WINE AND BEERHOUSE ACTS.**

See Cases under LICENSING ACTS.

**WIRES—Illegal stretching of telephone wires across public streets—Powers of local authority—Removal of wires.**

See TELEPHONE. 2, 4.

— Power to lay underground—Right to excavate streets.

See CANADA. 63.

**WITHDRAWAL—Building society.**

See BUILDING SOCIETY—Withdrawal.

— Letters—Acceptance—Time—Withdrawal of offer.

See CONTRACT—Formation. 17A.

— Member—Retirement—Acceptance.

See VOLUNTARY ASSOCIATION. 1.

— Members.

See VOLUNTARY SOCIETY. 1, 2.

— Members—Unlimited company.

See COMPANY—WINDING-UP—Contributory. 56.

— Shares.

See COMPANY—Shares. 264, 266.

— Shares, Application for—Withdrawal before allotment—Contributory.

See COMPANY—Reconstruction. 213.

**WITNESS—Bankruptcy practice.**

See Cases under BANKRUPTCY—Examination and BANKRUPTCY—Practice.

— Criminal practice.

See Cases under CRIMINAL LAW—Evidence.

— In other cases.

See Cases under EVIDENCE.

— Power to require, to be sworn—Justices—Jurisdiction.

See LICENSING ACTS. 56.

**WOMAN.**

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), married and single women are qualified as voters and for election to Vestries and District Boards in London, and for Urban and Rural District Councils and for Parish Councils.

— Property of married woman.

See Cases under HUSBAND AND WIFE.

— Qualification for election to county council.

See COUNTY COUNCIL—Election. 1.

**WOMAN PAST CHILD-BEARING—Advancement clause—"Expectant or presumptive share"—Impossibility of issue.**

See WILL—Advancement. 20.

**WOODEN STRUCTURE—London Building Act.**

See LONDON—Buildings. 30—33.

**WORDS.**

(Words and Phrases Judicially Considered.)

*And see also under WILL—Words.*

- “About.”  
*See MASTER AND SERVANT.* 26—28.
- “Abroad.”  
*See TRUSTEE.* 15.
- “Absenting himself.”  
*See BANKRUPTCY—Act of Bankruptcy.* 35.
- “Acceptance”—“Memorandum”—Goods.  
*See FRAUDS, STATUTE OF.* 25.
- “any one Accident.”  
*See INSURANCE—Accident.* 2.
- “Accident.”  
*See MASTER AND SERVANT.* 1.
- “Accidents of the Seas.”  
*See SHIPPING.* 128, 129.
- “in Accordance with the submission.”  
*See ARBITRATION.* 61.
- “Accrued due.”  
*See DISTRESS.* 2.
- “Act of Parliament.”  
*See SETTLED LAND.* 124.  
*TRUSTEE—Investments.* 61.
- “Act which recognises a pre-existing contract of sale.”  
*See SALE OF GOODS.* 1.
- “Act or practise as an apothecary.”  
*See MEDICAL PRACTITIONER.* 4.
- “Action.”  
*See COUNTY COURT.* 70.  
*TRADE-MARK.*
- “Action” for tort—Counter-claim—Remittal—County Courts Act, 1888, s. 66.  
*See PRACTICE—Pleading.* 154.
- “Action on a contract.”  
*See RAILWAY.* 39.
- “Actions.”  
*See SHIPPING.* 196.
- “Actor.”  
*See COSTS.* 60.
- “Actual delivery in execution.”  
*See JUDGMENT DEBT.* 1.
- “Actual forcible and violent entry.”  
*See INSURANCE, BURGLARY.* 5.
- “Actual fraud.”  
*See MORTGAGE.* 52.
- “Actual” possession.  
*See WILL.* 4.
- “Addition.”  
*See TRADE-MARK.* 20.
- “Address.”  
*See BILL OF SALE.* 1—8.
- “Adjoining.”  
*See ECCLESIASTICAL LAW.* 20.  
*LANDLORD AND TENANT.* 36.  
*LIGHT AND AIR.* 1.  
*LONDON—Buildings.* 20.
- “Adjoining or contiguous.”  
*See LIGHT AND AIR.* 20.
- “After decease of wife.”  
*See WILL—Residue.* 175.

**WORDS—continued.**

- “Agent.”  
*See PARLIAMENT.* 73.
- “Agreement for sale, pledge, or other disposition.”  
*See FACTOR.* 5.
- “Agreement in writing.”  
*See SOLICITOR—Costs.* 23.
- “person Aggrieved.”  
*See TRADE-MARK—Registration.* 55.
- “Agricultural land.”  
*See RATES.* 34.
- “Alienation.”  
*See REVENUE.* 183.
- “All taxes, rates, duties, assessments, and impositions.”  
*See LANDLORD AND TENANT.* 25.  
*LONDON.* 53, 54.
- “Allotment.”  
*See LANDLORD AND TENANT.* 1.
- “Alteration, modification, or extension” of writ—Order xx., r. 4—Writ.  
*See PRACTICE.* 278.
- “Amount realized by trustee.”  
*See BANKRUPTCY.* 250.
- “Annual pay.”  
*See POLICE.* 4.
- “Annual rental”—Settled Land Act, 1890, s. 13, sub-s. iv.  
*See SETTLED LAND—Capital Money.* 23, 39.
- “Annuity.”  
*See STATUTES.* 4.
- “Any money . . . that may be in my possession.”  
*See WILL.* 1.
- “Apparent.”  
*See PROBATE.* 81.
- “Appeal.”  
*See APPEAL.* 4.
- “Applied” to goods.  
*See TRADE-MARK—Merchandise Marks.* 5.
- “Appreciation.”  
*See COMPANY—WINDING-UP.* 4.
- “Appropriate and use.”  
*See LANDS CLAUSES ACT.* 20.
- “Approved” plan.  
*See STREETS.* 7.
- “Appurtenances”—Notice to sell land and its appurtenances—Conveyance.  
*See VENDOR AND PURCHASER.* 39.
- “Area of user.”  
*See STREETS.* 11.
- “Assets.”  
*See COMPANY.* 3.  
*PARTNERSHIP.* 25.
- “Assets” of company.  
*See COMPANY—Debenture.* 95.
- “surplus Assets.”  
*See COMPANY—WINDING-UP—Assets.* 8.
- “Assignment” of property—Bankruptcy Act, 1883, s. 4, sub-s. 1.  
*See BANKRUPTCY—Act of Bankruptcy.* 2.

**WORDS—continued.**

- “Assigns.”  
See LANDLORD AND TENANT. 18, 80.  
LIGHT AND AIR. 20.  
VENDOR AND PURCHASER—Title. 93.
- “Assurance”—Yorkshire Registry Acts.  
See YORKSHIRE.
- “At maturity.”  
See BILL OF EXCHANGE. 20.
- “tenancy commencing At a particular day.”  
See LANDLORD AND TENANT. 39.
- “Attaining twenty-five years.”  
See WILL—Perpetuity. 159.
- “Attendance.”  
See SOLICITOR. 24.
- “Author.”  
See COPYRIGHT. 34.
- “Available balance in hand.”  
See BUILDING SOCIETY — Withdrawal. 22.
- “Baccarat.”  
See GAMING—Unlawful Games. 34.
- “Bank charges.”  
See PRACTICE—Writ. 290.
- “Bare trustee.”  
See TRUSTEE—Appointment. 13.
- “Bed” of river.  
See THAMES. 7, 8.  
WATER. 41, 45.
- “Bedding.”  
See DISTRESS. 12.
- “Began to enjoy benefit.”  
See REVENUE—Legacy Duty. 122.
- “Beneficial owner.”  
See LANDLORD AND TENANT. 92.  
VENDOR AND PURCHASER. 38, 39, 81.
- “Benefit.”  
See HUSBAND AND WIFE. 57.  
WILL. 92.
- “Best rent.”  
See SETTLED LAND. 67, 69.
- “Betterment.”  
See RATES. 31.
- “Black List.”  
See TRADE UNION. 4.
- “Boiler.”  
See BOILER. 1.
- “Bonâ fide traveller.”  
See LICENSING ACTS—Offences. 36—38.
- “Bond, covenant, or instrument.”  
See REVENUE. 144—146.
- “Bonus.”  
See COMPANY—WINDING-UP. 25.
- “Boots.”  
See PARLIAMENT. 121.
- “Brothel.”  
See CRIMINAL LAW. 45.
- “Building.”  
See ECCLESIASTICAL LAW. 21.  
HOARDING.  
LIGHT AND AIR. 9.  
Cases under LONDON—Buildings.
- “Building land.”  
See VENDOR AND PURCHASER. 40.

**WORDS—continued.**

- “Building purposes.”  
See SETTLED LAND. 27.
- “Buildings.”  
See RATES. 34.
- Buildings and property other than land.”  
See STREETS. 14.
- “Building structure or erection.”  
See LONDON—Buildings. 4, 5.
- “Burnt.”  
See INSURANCE—Marine. 43.
- “Calculated to deceive.”  
See TRADE-MARK—Registration. 31, 52.
- “within one Calendar month.”  
See JUSTICES. 20.
- “used for the purposes of a Canal.”  
See LONDON—Buildings. 30.
- “Cancelling of charter.”  
See INSURANCE—Marine. 31.
- “Candidate.”  
See CORPORATION. 14.
- “Cargo.”  
See SHIP—Deviation. 122.
- “Carnal knowledge.”  
See CRIMINAL LAW. 51.
- “Carriage.”  
See BICYCLE. 2.
- “Carrying on a trade.”  
See BANKRUPTCY. 204.
- “Carrying on business within the jurisdiction.”  
See PRACTICE—Service. 186.  
PRACTICE—Writ. 299.
- “Cautionary obligation.”  
See SCOTTISH LAW. 16.
- “Cease to be payable.”  
See SETTLEMENT. 25.
- “Cease to carry on business” — Business turned into a company.  
See WILL. 174.
- “Chancery visitors.”  
See LUNACY. 33.
- “Charge.”  
See STREETS. 29, 31.
- “Charitable purposes.”  
See CHARITY—Gift to Charity. 17—19.  
See REVENUE. 76.
- “Charity.”  
See FRIENDLY SOCIETY. 6.
- “Charity school.”  
See REVENUE—House Duty. 53.
- “map, Chart, or plan.”  
See COPYRIGHT—Book. 4.
- “Chemin de fer.”  
See GAMING—Unlawful Games. 34.
- “Children.”  
See Cases under WILL—Children.
- “Children then living.”  
See WILL—Children. 34.
- “Civil proceedings in the High Court.”  
See BANKRUPTCY. 5.
- “Class”—Representation in action.  
See PRACTICE—Parties. 114, 115.

**WORDS—continued.**

- “Clear day.”  
See COSTS—Counsel's Fees. 17.
- “Clerk or servant.”  
See COMPANY—Director. 106, 114.
- “Client.”  
See SOLICITOR—Articled Clerk. 1.
- “Clog” on redemption.  
See MORTGAGE—Redemption. 58—60.
- “Close of pleadings.”  
See PRACTICE—Trial. 262.
- “Coal.”  
See LONDON—Streets. 86.
- “ship not under Command.”  
See SHIP—Collision. 76.
- “Commercial matters.”  
See CANADA. 23.
- “Common to the trade.”  
See TRADE-MARK—Registration. 20.
- “Company incorporated by Act of Parliament.”  
See TRUSTEE—Investments. 60.
- “Company duly constituted by law.”  
See COMPANY—Registration. 262.
- “Company's policy.”  
See INSURANCE—Marine. 71.
- “Completed execution.”  
See BANKRUPTCY. 187.
- “Completed mortgage.”  
See MORTGAGE—Costs. 9.  
SOLICITOR. 43.
- “Completion of conveyance.”  
See SOLICITOR. 61.
- “Compromise.”  
See COMPANY—Debentures. 67.
- “Concealed fraud.”  
See LIMITATIONS, STATUTE OF. 15.
- “Contango” transactions.  
See STOCK EXCHANGE. 9.
- “Contents of desk.”  
See WILL—Words. 211.
- “Contract of tenancy.”  
See LANDLORD AND TENANT. 6.
- “Constructing” waterworks.  
See WATER. 10.
- “Contrary intention.”  
See EXECUTOR. 20.  
VENDOR AND PURCHASER. 40.  
WILL. 85.
- “Convenient.”  
See COUNTY COURT. 69.
- “Conveyance.”  
See BANKRUPTCY. 193.  
YORKSHIRE.
- “Conveyance on sale.”  
See REVENUE. 153.
- “Conveyance of property.”  
See SOLICITOR. 39.
- “Conveyance on sale.”  
See Finance Act, 1898 (61 & 62 Vict.  
c. 10), s. 16.
- “Conveyance or assignment” of property—  
Bankruptcy Act, 1883, s. 4, sub-s. 1.  
See BANKRUPTCY. 2.

**WORDS—continued.**

- “Conveyance or transfer on sale.”  
See REVENUE—Stamps. 160.
- “Copy.”  
See COPYRIGHT. 28.
- “Correct weight.”  
See WEIGHTS AND MEASURES.
- “Correspondent.”  
See EVIDENCE. 22.
- “Costs, charges, and expenses.”  
See COSTS. 10.  
PARTNERSHIP. 3.
- “Counselling.”  
See JUSTICES. 5.
- “Coupon competition.”  
See GAMING. 6.
- “Court.”  
See COMPANY. 181, 228.
- “Court in which action might have been commenced.”  
See COUNTY COURT—Transfer. 69.
- “Cover.”  
See GAMING. 28.  
STOCK EXCHANGE. 3, 6.
- “Creditor.”  
See BANKRUPTCY. 114, 115.  
PARLIAMENT. 6.
- “Criminal cause or matter.”  
See APPEAL. 7—11.
- “within the same Curtilage.”  
See LONDON—Sewers. 60.
- “cargo to be discharged with all despatch as Customary.”  
See SHIP—Demurrage. 108.
- “Crossing.”  
See SHIPPING—Collision. 55.
- “Customer.”  
See BANKER. 9, 19.
- “Damaged” cargo.  
See SHIPPING—Charterparty. 31.
- “Debts or obligations.”  
See PARTNERSHIP. 32.  
POWER. 27.
- “Debt provable in bankruptcy.”  
See BANKRUPTCY—Proof. 168.
- “Deducting.”  
See MORTGAGE. 10.
- “Default.”  
See VENDOR AND PURCHASER. 52, 54.
- “Defect in the condition of the works.”  
See MASTER AND SERVANT. 75.
- “Defects latent on beginning voyage or otherwise.”  
See SHIPPING. 130.
- “Delineated.”  
See RAILWAY. 32.
- “place of Delivery.”  
See ADULTERATION. 21.
- “Delivery under any agreement for sale.”  
See FACTOR. 4.
- “Dependants.”  
See MASTER AND SERVANT. 9.
- “Depreciation.”  
See COMPANY—WINDING-UP. 4.

**WORDS**—*continued.*

- “Desertion.”  
See DIVORCE. 67.
- “Design.”  
See Cases under DESIGNS.
- “Determination of tenancy.”  
See LANDLORD AND TENANT. 9.  
SCOTTISH LAW. 22.
- “Deviation.”  
See WATER—Supply. 9.
- “Die unmarried.”  
See WILL—Words. 212.
- “Die without child or children.”  
See WILL—Children. 35, 39.
- “Die without having been married.”  
See SETTLEMENT—Construction. 10.
- “Die without leaving male issue.”  
See WILL—Contingent Remainder. 70.
- “Differences.”  
See STOCK EXCHANGE. 3, 6.
- “Different tenements.”  
See REVENUE. 54.
- “Direct communication.”  
See LONDON. 72.
- “Disbursements.”  
See INSURANCE—Marine. 59.  
SHIPPING—Lien. 161.
- “Disclaimer.”  
See PATENT. 24.
- “Discontinuance.”  
See LANDLORD AND TENANT. 18.
- “Discount.”  
See COMPANY—WINDING-UP. 218.
- “Discretion.”  
See THEATRE. 1.
- “Disposition.”  
See COPYHOLD. 6.  
REVENUE—Estate Duty. 23.
- “arising on Distinct occasions.”  
See SHIP—Limitation of Liability. 171.
- “Distinctive device.”  
See TRADE-MARK. 24.
- “Disused burial-ground.”  
See Cases under BURIAL and ECCLESIASTICAL LAW—Faculty.
- “Document”—Case for opinion of counsel.  
See SOLICITOR—Costs. 24.
- “Domestic animals.”  
See CRIMINAL LAW. 8.
- “Domestic animal.”  
See CRIMINAL LAW. 7.
- “Drain.”  
See LONDON—Sewers. 57.  
SEWERS. 10—13, 26.
- “Dwelling-house.”  
See PARLIAMENT—Franchise. 86, 123, 125, 129, 133.
- “Dwelling-house in England.”  
See BANKRUPTCY—Petition. 142.  
REVENUE. 64.
- “Dwelling-house, joint.”  
See PARLIAMENT—Franchise. 50.
- “Easement.”  
See COUNTY COURT—Jurisdiction. 49.

**WORDS**—*continued.*

- “Ecclesiastical charity.”  
See CHARITY. 2.
- “Effects.”  
See WILL. 213.
- “Effects and securities.”  
See PARTNERSHIP. 27.
- “Either.”  
See WILL. 203.
- “Ejusdem generis.”  
See DEED. 1.
- “Eldest son.”  
See SETTLEMENT—Construction. 5.  
WILL—Eldest Son. 77.
- “End of the current year.”  
See LANDLORD AND TENANT. 43.
- “End of the highway.”  
See HIGHWAY—Diversion. 2.
- “Endowed school.”  
See Cases under CHARITY — Commissioners.
- “Endowment.”  
See Cases under CHARITY — Commissioners.
- “Engineering work.”  
See MASTER AND SERVANT—Compensation. 25.
- “Erection.”  
See LONDON—Buildings. 30—33.
- “Estate.”  
See HUSBAND AND WIFE. 36.  
WILL. 6.
- “Estates and hereditaments subject to the limitations.”  
See WILL—Words. 214.
- “Every such offence.”  
See COPYRIGHT. 17.
- “Excessive weight.”  
See Cases under HIGHWAY—Repairs.
- “Execution.”  
See IMPROVEMENT. 3.
- “Exercise.”  
See PATENT. 14.
- “Exposed for sale.”  
See ADULTERATION. 15.
- “Express declaration.”  
See SETTLED LAND. 114.
- “Extension” of roads.  
See CHINA. 1.
- “External” injury caused by “external” means.  
See INSURANCE—Accident. 1.
- “injury caused by External means.”  
See INSURANCE—Accident. 1.
- “Extra” service.  
See SHIPPING. 193.
- “Extraordinary case.”  
See SOLICITOR—Costs. 24.
- “Extraordinary traffic.”  
See Cases under HIGHWAY—Repairs.
- “Extra services.”  
See SHIPPING—Pilotage. 193.

**WORDS—continued.**

- “Factor, agent, or receiver having the receipt of profits or gains.”  
See **REVENUE—Income Tax.** 96.
- “Factory.”  
See **MASTER AND SERVANT.** 12, 48, 62.
- “Fairway.”  
See **SHIPPING—Collision.** 65.
- “Family arrangements.”  
See **SETTLEMENT.** 3.
- “Fancy word.”  
See **Cases under TRADE-MARK—Registration.**
- “Faut en écritures de commerce.”  
See **EXTRADITION.** 3.
- “Fetter.”  
See **MORTGAGE.** 58.
- “Fictitious or non-existing person.”  
See **BANKER.** 12.  
**BILL OF EXCHANGE.**
- “Final judgment.”  
See **BANKRUPTCY.** 8—11.
- “Final port.”  
See **INSURANCE—Marine.** 78.
- “First refusal.”  
See **CONTRACT.** 24.
- “Fixed plant and machinery.”  
See **VENDOR AND PURCHASER—Contract.** 17.
- “Floating security.”  
See **COMPANY—Debenture.** 58, 94.
- “Flotation.”  
See **CAPE OF GOOD HOPE.** 4.
- “at the Foot or end thereof.”  
See **PROBATE—Execution.** 17.
- “Foreign possessions.”  
See **REVENUE.** 83, 84.
- “Foreign statement.”  
See **INSURANCE—Marine.** 56.
- “Fraudulent.”  
See **COMPANY.** 209.
- “Fresh evidence.”  
See **HUSBAND AND WIFE.** 90.
- “From.”  
See **INSURANCE—Accident.** 2.
- tenancy commencing “From” a particular day.  
See **LANDLORD AND TENANT.** 39.
- “Full annual rent or value.”  
See **ECCLESIASTICAL LAW.** 7.
- “Full compensation.”  
See **CORPORATION.** 27.  
**COSTS.** 76.  
**NUISANCE.**
- “Full costs.”  
See **COPYRIGHT.** 12, 13.
- “Fully paid.”  
See **COMPANY—WINDING-UP.** 31.
- “Furniture.”  
See **INSURANCE—Marine.** 55.
- “General nature.”  
See **COMPANY.** 169.
- “Gentleman.”  
See **EVIDENCE.** 15.

**WORDS—continued.**

- “Geographical name.”  
See **TRADE-MARK—Registration.** 40.
- “Gold mine.”  
See **MINES.** 10.
- “Good or valuable consideration.”  
See **COPYRIGHT.** 37.  
**ECCLESIASTICAL LAW—Church Rates.**
- “Goodwill.”  
See **PARTNERSHIP.** 28.
- “Goods of a debtor.”  
See **BANKRUPTCY.** 104.
- “Government.”  
See **COMPANY.** 180.
- “on the last day of Grace.”  
See **BILL OF EXCHANGE.** 4.
- “Grain brought into the City of London for sale.”  
See **LONDON—Grain Duty.** 42.
- “Guest.”  
See **INNKEEPER.** 1.
- “Heirs female.”  
See **SCOTTISH LAW.** 40.
- “Held out or recommended to the public.”  
See **REVENUE—Stamps.** 165.
- “Hereditament.”  
See **REVENUE.** 118.
- “upon the High seas.”  
See **SHIPPING—Necessaries.** 180.
- “Heritor.”  
See **WATER.** 30.
- “High Court.”  
See **REVENUE.** 93, 94.
- “High seas.”  
See **SHIPPING.** 180.
- “Highest net money tender.”  
See **TENDER.** 3.
- “Holding title.”  
See **VENDOR AND PURCHASER.** 10.
- “Honour policy.”  
See **INSURANCE—Marine.** 59.
- “Hospital.”  
See **REVENUE—House Duty.** 57.
- “House.”  
See **COVENANT.** 5.
- “House refuse.”  
See **LONDON.** 48.
- “Hull and machinery.”  
See **INSURANCE—Marine.** 59.
- “Illegal dealing.”  
See **LICENSING ACTS—Offences.** 40.
- “Improvement area.”  
See **LONDON.** 69.
- “Improvement charge.”  
See **LONDON.** 69.
- “Improvements.”  
See **LANDLORD AND TENANT.** 10.
- “Improvements.”  
See **SETTLED LAND—Capital Money.** 31.
- “Inadvertence.”  
See **COMPANY.** 284.  
**COMPANY—WINDING-UP.** 202.
- “Incombustible materials.”  
See **LONDON—Buildings.** 27.



**WORDS—continued.**

- "Income."  
See REVENUE. 78, 79.  
SETTLEMENT.
- "Incumbrance."  
See SETTLED LAND. 105.
- "Information and belief."  
See EVIDENCE. 19.
- "In his own right."  
See CHARGING ORDER. 3.  
COMPANY. 135.
- "In possession."  
See SETTLED LAND. 93.
- "In the fullest confidence."  
See WILL—Precatory Trust. 168.
- "Interest of money lent."  
See REVENUE—Income Tax. 71.
- "Intermediate income."  
See ACCUMULATIONS. 4.
- "Intestate."  
See DISTRIBUTIONS, STATUTE OF.
- "Invented word."  
See TRADE-MARK—Registration. 44.
- "Issue."  
See BANKER. 12.  
WILL—Children. 37, 40—42.
- "Issue living."  
See WILL—Children. 42.
- "Joint stock company."  
See SCIENTIFIC SOCIETY. 1.
- "Judgment."  
See BALANCE ORDER.  
LIMITATIONS, STATUTE OF. 39, 40.  
PRACTICE. 176.
- "Judgment obtained."  
See COSTS. 45.
- "Just and equitable."  
See COMPANY—WINDING-UP. 163—168.
- "Keeper" of room.  
See SUNDAY. 3.
- "Land."  
See LANDS CLAUSES ACT. 20.  
STREETS. 12, 14.
- "Land covered with water."  
See WATER. 35.
- "Last place of abode."  
See BASTARDY. 2, 3.
- "Lawfully detained."  
See LUNACY. 13, 39.
- "Lawful excuse."  
See POST OFFICE. 1.
- "Lawful merchandise."  
See SHIPPING. 37.
- "Lawful purpose."  
See INDUSTRIAL SOCIETY. 1.
- "Lease."  
See SOLICITOR—Costs. 58.
- "Lease or tack."  
See REVENUE—Stamps. 140.
- "Leasehold reversion."  
See LANDLORD AND TENANT. 94.
- "Legacy."  
See SOLICITOR. 134.

**WORDS—continued.**

- "Legal cruelty."  
See HUSBAND AND WIFE. 84.
- "Legal disability."  
See WILL. 215.
- "Legal proceedings."  
See SHIPPING—Charterparty. 26.
- "Liability incurred."  
See STREETS. 33.
- "Liable to be deprived."  
See BANKRUPTCY. 200.  
WILL—Forfeiture. 99.
- "Liable" to be laid out in the purchase of land.  
See SETTLED LAND. 36.
- "for his Life and the life of his heir."  
See WILL—Words. 216.
- "Limited."  
See TRADE-MARK. 57.
- "Liquidated sum."  
See BANKRUPTCY—Act of Bankruptcy. 29.
- "issue Living."  
See WILL—Children. 42.
- "Loan."  
See BANKRUPTCY. 180.
- "Lopping."  
See HIGHWAY—Obstruction. 7.
- "not lawfully detained as a Lunatic, and not found a lunatic by inquisition, but through mental infirmity arising from age incapable of managing his affairs."  
See LUNACY. 15.
- "all dangerous parts of the Machinery."  
See Cases under MASTER AND SERVANT—Factory Acts.
- "Main purpose."  
See COMPANY. 180.
- "Maintenance of children."  
See WILL—Children. 43.
- "Maker."  
See BILL OF EXCHANGE. 28.
- "Maliciously."  
See ACTION. 14.  
CRIMINAL LAW. 61.
- "Management."  
See SHIPPING. 28.
- "Management" of ship.  
See SHIPPING—Exceptions. 134.
- "Manager in trust."  
See BANKER. 5.
- "person Managing or conducting entertainment."  
See SUNDAY. 3.
- "Manual labour."  
See MASTER AND SERVANT—Contract. 55.
- "Map, chart, or plan."  
See COPYRIGHT—Book. 4.
- "Marketable security."  
See REVENUE—Stamps. 147, 149.
- "without having been Married."  
See SETTLEMENT—Construction. 10.

**WORDS**—*continued.*

- “Married woman.”  
See WILL—Married Woman. 144.
- “Material detriment.”  
See LANDS CLAUSES ACTS. 10.
- “Material facts not brought before the Court.”  
See DIVORCE—Collusion. 25.
- “Matrimonial domicile.”  
See DIVORCE. 84.
- “Matter of complaint.”  
See HACKNEY CARRIAGE. 3.
- “a Member” of a company.  
See COMPANY—Shares. 270.
- “Member.”  
See COMPANY—Meetings. 169.
- “Memorandum.”  
See FRAUDS, STATUTE OF. 25.
- “Memorandum of charge.”  
See YORKSHIRE.
- “Mercantile agent.”  
See FACTOR. 2, 4.
- “Milk to be pure new milk.”  
See ADULTERATION. 26.
- “Ministration.”  
See ECCLESIASTICAL LAW. 49.
- “Missing word.”  
See LOTTERY. 1.
- “Mistake.”  
See PARLIAMENT. 36, 68.
- “Mixed fund.”  
See WILL—Legacy. 121.
- “Money laid out.”  
See SETTLED LAND. 69.
- “Mutual dealings.”  
See BANKRUPTCY—Set-off. 235—237.
- “Natural.”  
See WILL—Words. 221.
- “in Navigating the ship or otherwise.”  
See SHIPPING—Exceptions. 138.
- “Necessaries.”  
See INFANT. 3;—35.  
Cases under SHIPPING—Necessaries.
- “Necessary works of repair.”  
See LONDON—Streets. 90.
- “Negotiable securities.”  
See Cases under BANKER and NEGOTIABLE INSTRUMENT.  
STOCK EXCHANGE. 8.
- “Nephew.”  
See WILL. 102, 105.
- “Nephews and nieces.”  
See WILL—Class. 52, 53.
- “Net profits.”  
See COMPANY—Directors. 140.
- “New street.”  
See LONDON—Streets. 74, 75, 81—85.  
STREETS. 19.
- “New 3 Per Cent. Bank Annuities.”  
See NATIONAL DEBT. 2.
- “New and original design.”  
See DESIGNS—Registration. 5, 6.
- “Next of kin in blood.”  
See DISTRIBUTIONS, STATUTE OF.

**WORDS**—*continued.*

- “Niece.”  
See WILL. 103.
- “Nomination.”  
See ECCLESIASTICAL LAW—Advowson. 2.
- “Non-textile factory.”  
See MASTER AND SERVANT. 62.
- “Notice.”  
See BANKRUPTCY. 29.
- “Obtaining credit.”  
See CRIMINAL LAW. 56.
- “now in my own Occupation.”  
See WILL—Words. 217.
- “as now Occupied by me.”  
See WILL—Words. 218.
- “Now paid.”  
See BILL OF SALE. 18.
- “Occupier.”  
See GAS. 3.
- “Occupier of land.”  
See GAME. 3.
- “Officer” of company.  
See COMPANY—WINDING-UP. 195, 196.
- “Off-licence.”  
See LICENSING ACTS. 4.
- “Offspring.”  
See WILL—Children. 44.
- “Old mark.”  
See TRADE-MARK—Registration. 48—50.
- “On”—Tenancy commencing “on” a particular day.  
See LANDLORD AND TENANT. 39.
- “On demand.”  
See BILL OF EXCHANGE. 20.
- “Open cover.”  
See INSURANCE—Marine. 74.
- “Open for traffic on Sunday.”  
See MASTER AND SERVANT. 61.
- “Opened” mines.  
See MINES. 14.
- “Opposite to the end of the will.”  
See PROBATE—Execution. 17.
- “Option.”  
See SETTLED LAND. 120.
- “Or.”  
See WILL. 9.
- “Order.”  
See BILL OF EXCHANGE. 8.
- “Ordinary course of post.”  
See PARLIAMENT—Franchise. 97.
- “Ordinary luggage.”  
See RAILWAY—Passenger. 25.
- “Originating summons.”  
See PRACTICE—Originating Summons. 61.
- “Outgoings.”  
See STREETS. 29—32.  
VENDOR AND PURCHASER. 12, 13.
- “Outgoings properly chargeable.”  
See WILL—Words. 219.
- “Own profit.”  
See WATER. 23.

**WORDS—continued.**

- "Owner of goods."  
See SHIPPING—**Charterparty.** 26.
- "Owner of lands."  
See LONDON—**Streets.** 77.
- "Owner or tenant."  
See PARLIAMENT. 115.
- "Owners."  
See COMMON. 4.  
LONDON. 20, 68.  
NUISANCES. 23, 24.  
STREETS. 25, 29, 31, 32.
- "Parties entitled to execution."  
See RECEIVER. 21.
- "Passage."  
See STREETS. 18.
- "Passage broker."  
See SHIPPING. 182.
- "Passage home."  
See SHIPPING. 261, 262.
- "Passing upon."  
See HIGHWAY—**Obstruction.** 3.
- "Pattern."  
See DESIGN. 6.
- "Payment."  
See HUSBAND AND WIFE. 42.
- "Perfecting of order."  
See BANKRUPTCY—**Appeal.** 46.
- "Permanent common."  
See COMMON. 5.
- "Person aggrieved."  
See BANKRUPTCY—**Practice.**  
TRADE-MARK—**Registration.** 54, 55.
- "Personal representatives."  
See EXECUTOR. 14.
- "Philanthropic."  
See CHARITY. 17.
- "Physician."  
See MEDICAL PRACTITIONER. 3.
- "Piers or similar structures."  
See INSURANCE—**Marine.** 36.
- "Pirates, robbers, or thieves of whatever kind, whether on board or not, or by land or sea."  
See SHIPPING—**Exceptions.** 139.
- "Place."  
See GAMING. 10—16.  
HACKNEY CARRIAGE. 2.  
JUSTICES. 4.  
PARTNERSHIP. 4.
- "Place of delivery."  
See ADULTERATION. 21.
- "Place of public resort."  
See CORPORATION. 1.
- "Place" used for betting.  
See GAMING. 11—16.
- "Plan."  
See Cases under STREETS—**Building Plans.**  
WATER—**Supply.** 18.
- "map, chart, or Plan."  
See COPYRIGHT—**Book.** 4.
- "Plant."  
See VENDOR AND PURCHASER. 17.

**WORDS—continued.**

- "Point of law."  
See COURT COUNTY. 11.  
PROBATE—**Revocation.** 143.
- "Port charges."  
See SHIPPING. 43.
- "Ports."  
See SHIPPING—**Deviation.** 122.
- "Possession."  
See WILL. 1, 4, 191.
- "Possession or power."  
See PRACTICE—**Discovery.** 41.
- "Practice and procedure."  
See APPEAL. 24.
- "Preaching."  
See ECCLESIASTICAL LAW. 49.
- "Present right to receive."  
See LIMITATIONS, STATUTE OF. 23.
- "Price."  
See WATER—**Supply.** 8.
- "Principal offer."  
See COMPANY—**Winding-up.** 184.
- "Private residence."  
See COVENANT. 4, 5.
- "Privies in estate."  
See ESTOPPEL. 1.
- "Privilege."  
See DISCOVERY. 32.
- "Proceeding" to sea.  
See SHIPPING. 193.
- "Proceedings."  
See POOR LAW—**Guardians.** 2.
- "Proceeding instituted."  
See HUSBAND AND WIFE. 44, 45.
- "Profit derived from transaction arising out of bankruptcy."  
See BANKRUPTCY. 70.
- "Profits and gains."  
See REVENUE. 67.
- "Property."  
See COMPANY. 75.  
LANDLORD AND TENANT. 11.  
REVENUE. 161.  
WILL. 6.
- "Property of wife."  
See DIVORCE. 13.
- "Property recovered or preserved."  
See BANKRUPTCY. 67.
- "Property settled."  
See DIVORCE. 95.
- "Public entertainment."  
See SUNDAY. 3.
- "Public harbours."  
See Canada. 21.
- "Public notice or advertisement."  
See REVENUE—**Stamps.** 165.
- "Public place."  
See STREETS. 1.
- "Public school."  
See REVENUE—**House Duty.** 113.
- "Publication."  
See NEWSPAPER. 1.
- "Published."  
See COPYRIGHT—**International.** 25.

**WORDS—continued.**

- “Punctual” payment.  
See MORTGAGE. 39.
- “Purchase.”  
See TRADE UNION. 2.
- “Purchaser.”  
See INTESTACY. 1.
- “Purchaser for value without notice.”  
See SOLICITOR—Lien.
- “Purchaser in good faith.”  
See BANKRUPTCY. 271.
- “Putrid solid matter.”  
See WATER. 4.
- “Qualified pilot.”  
See SHIPPING—Pilotage. 195.
- “Raising of money.”  
See COMPANY—Debenture. 38.
- “Ready to discharge.”  
See SHIPPING—Demurrage. 112.
- “Real estate.”  
See WILL—Words. 220.
- “Reasonable cause.”  
See SCOTTISH LAW—Divorce. 12.
- “Reasonable facilities.”  
See RAILWAY. 64.
- “Rebuilding”—Settled Land Act, 1890, s. 13.  
sub-s. iv.  
See SETTLED LAND—Capital Money. 39, 40.
- “Receipt.”  
See REVENUE—Stamps. 178, 180.
- “Redeemable.”  
See COMPANY. 90.
- “Refuse or neglect.”  
See WILL—Condition. 62.
- “Register tonnage.”  
See SHIPPING. 165.
- “Relations.”  
See WILL. 104, 106.
- “Religious societies.”  
See CHARITY. 18.
- “Rent charge.”  
See Cases under RENT-CHARGE.
- “Repair, maintain and uphold.”  
See LANDLORD AND TENANT. 26.
- “Repairs.”  
See MASTER AND SERVANT. 7.
- “Repairs.”  
See SETTLED LAND—Capital Money. 28.
- “Representatives.”  
See WILL—Words. 221.
- “Residential flats.”  
See COVENANT. 5.
- “Residue and remainder.”  
See WILL—Legacy. 120.
- “Restraint of princes.”  
See SHIPPING—Exceptions. 140, 141.
- “Result.”  
See COSTS—Discretion. 21.
- “Return to England.”  
See WILL—Condition. 63.

**WORDS—continued.**

- “Road.”  
See LANDS CLAUSES ACTS. 9.  
RAILWAY. 33.
- “Safe port.”  
See SHIPPING. 44.
- “Sailing.”  
See INSURANCE, MARINE. 26.
- “Salary or income.”  
See BANKRUPTCY—Assets. 53, 54.
- “Satisfaction.”  
See SEWERS. 8.
- “Scaffolding.”  
See MASTER AND SERVANT. 41, 42.
- “Scheme legally established.”  
See CHARITY. 5.
- “Sea-going ship.”  
See SHIPPING. 183.
- “Sealing.”  
See COMPANY—WINDING-UP. 149.
- “Seaman.”  
See SHIPPING—Seamen. 267.
- “Seaworthiness.”  
See SHIPPING. 143.
- “Secured”—Annuity secured to A. for life or perpetual.  
See ANNUITY. 7.
- “Secured creditor.”  
See COMPANY—WINDING-UP—Execution. 93.
- “Secured creditors.”  
See RECEIVER. 9.
- “Seller.”  
See ADULTERATION. 5.
- “Separate use.”  
See HUSBAND AND WIFE. 62.
- “Separation of the crop.”  
See SCOTTISH LAW — Landlord and Tenant. 22.
- “Servant.”  
See COMPANY—Directors. 114.
- “Set apart and retain.”  
See ACCUMULATIONS. 4.
- “Settled estate.”  
See SETTLED LAND. 56.
- “Settled property.”  
See REVENUE. 45, 46.
- “Settlement.”  
See BANKRUPTCY. 267.  
REVENUE. 181.  
SETTLED LAND. 124—127.  
VENDOR AND PURCHASER. 46.
- “Sewer.”  
See LONDON—Sewers. 59.  
SEWERS. 1, 10—13, 26.
- “Sewage or filthy water.”  
See SEWERS. 32.
- “Shall think fit.”  
See TRUSTEE.
- “Share of his estate.”  
See HUSBAND AND WIFE. 37.
- “Share of profits.”  
See BANKRUPTCY. 180.
- “Share and share alike.”  
See WILL—Children. 45.

**WORDS—continued.**

- “Shares.”  
See WILL—Words. 222.
- “Sheet of music.”  
See COPYRIGHT. 28.
- “Sheriff.”  
See BANKRUPTCY. 143.  
SHERIFF. 15.
- “Ship.”  
See INSURANCE, MARINE. 82.  
SHIPPING. 2.
- “Shipbuilding” yard.  
See MASTER AND SERVANT—Compensation. 12.
- “Shore” of river.  
See THAMES. 7—9.
- “Similar business.”  
See RESTRAINT OF TRADE. 10.
- “Sole tenant.”  
See PARLIAMENT. 82.
- “Special and distinctive word.”  
See TRADE-MARK—Registration. 48.
- “Special circumstances.”  
See BANKRUPTCY. 74.  
PARLIAMENT. 11.  
PROBATE. 41, 71.
- “Special expenses.”  
See SEWERS. 23.
- “Spinster and intestate.”  
See SETTLEMENT. 11.
- “Sporting paper.”  
See NEWSPAPER. 1.
- “Stations of the Cross.”  
See ECCLESIASTICAL LAW. 36.
- “Statutory defence.”  
See COUNTY COURT. 67.
- “Step in the proceedings.”  
See ARBITRATION. 58.
- “Stream.”  
See WATER. 38.
- “Street.”  
See STREETS. 37.  
WATER—Supply. 19.
- “Structure.”  
See LONDON—Buildings. 30—33.
- “Subject to military law.”  
See ARMY AND NAVY. 8.
- “Submission.”  
See ARBITRATION. 60.
- “Subsequent action.”  
See PATENT. 11.
- “Succession.”  
See QUEENSLAND. 6.  
REVENUE. 47.  
SETTLED LAND. 126.
- “Sufficient cause.”  
See BANKRUPTCY. 210, 211.
- “Sum employed as capital.”  
See REVENUE. 86.
- “Supplying water.”  
See WATER—Supply. 21.
- “Surplus assets.”  
See COMPANY—WINDING-UP—Surplus Assets. 8.

**WORDS—continued.**

- “Surviving children.”  
See WILL. 42—47.
- “Survivor.”  
See WILL. 203, 204.
- “Tender.”  
See SHIPPING. 269.
- “Testamentary expenses.”  
See EXECUTOR. 30.  
INTESTACY.  
WILL—Testamentary Expenses. 205, 206.
- “Threats.”  
See PATENT. 57, 58.
- “Tied” public-house.  
See MORTGAGE—Redemption. 60.  
RATES. 30, 31.
- “Tons burden.”  
See SHIPPING. 165.
- “Tous les biens et droits mobiliers.”  
See POWERS. 22.
- “Trade description.”  
See TRADE-MARK—Merchandise Marks, *passim*.
- “Trade-mark.”  
See TRADE-MARK—Registration, *passim*.
- “Transactions.”  
See SOLICITOR. 60.
- “Transcript.”  
See LANCASTER. 4.  
PRACTICE. 269.
- “Translation.”  
See COPYRIGHT—International. 27.
- “Transmit.”  
See PARLIAMENT. 9.
- “Tributary.”  
See FISHERY. 6.
- “True owner.”  
See BILL OF SALE. 55, 56.
- “Turning.”  
See SHIPPING—Collision.
- “Under way.”  
See SHIPPING. 53.
- “Under-book pilot.”  
See SHIPPING—Pilotage. 188.
- “Undertaker.”  
See MASTER AND SERVANT. 46—50.
- “Undistributed assets.”  
See COMPANY—WINDING-UP. 127.
- “Unfair dealing.”  
See REVERSION. 1.
- “Unmarried daughters.”  
See WILL—Class. 51.
- “Unseaworthy.”  
See SHIPPING—Seamen. 260.
- “Untrue statement.”  
See COMPANY. 209.
- “Upper-book pilot.”  
See SHIPPING—Pilotage. 188.
- “Use.”  
See NEW ZEALAND. 3.
- “Used exclusively for domestic purposes.”  
See BOILER. 1.

**WORDS—continued.**

- “Usual covenants.”  
See **LANDLORD AND TENANT.** 37.  
VENDOR AND PURCHASER. 25.
- “Vested.”  
See **LUNACY.** 46, 52.
- “Veterinary forge.”  
See **VETERINARY SURGEON.** 1.
- “Void.”  
See **BANKRUPTCY—Voluntary Settlement.** 265.
- “Voluntary contribution.”  
See **RATES.** 25.
- “Voluntary transfer.”  
See **REVENUE.** 8.
- “Wages forfeited for desertion.”  
See **SHIPPING—Seamen.** 265.
- “at War.”  
See **FOREIGN ENLISTMENT ACT.** 3.
- “ameliorating Waste.”  
See **LANDLORD AND TENANT.** 77.
- “Water company.”  
See **WATER—Supply.** 23.
- “Weather-working days.”  
See **SHIPPING.** 104.
- “Wharf.”  
See **MASTER AND SERVANT.** 51, 52.
- “Whole income.”  
See **APPORTIONMENT.** 2.
- “Widow but no issue.”  
See **PROBATE.** 54.
- “Wife.”  
See **POWERS.** 38.  
WILL—Children. 36.
- “Wife’s relations.”  
See **WILL—Words.** 104.
- “Wilful default.”  
See **SETTLED LAND.** 105.  
VENDOR AND PURCHASER. 21, 37, 54.
- “Wilfully neglect.”  
See **CRIMINAL LAW.** 9.
- “Will—Construction of.”  
See under **WILL. Words.**
- “I Wish them to bequeath the same.”  
See **WILL.** 169.
- “Within the same curtilage.”  
See **LONDON—Sewers.** 60.

**WORDS—continued.**

- “Without having been married.”  
See **SETTLEMENT—Construction.** 10.
- “Without prejudice.”  
See **BANKRUPTCY—Act of Bankruptcy.** 31
- “Wooden structure or erection of a movable or temporary character.”  
See **LONDON—Buildings.** 30—33.
- “Working shaft.”  
See **MINES.** 17.
- “Workman.”  
See **MASTER AND SERVANT.** 53, 106.
- “Wreck.”  
See **SHIPPING—Salvage.** 253.
- WORKING CLASSES—Housing of.**  
See **HOUSING OF THE WORKING CLASSES.**
- WORKING OF MINES.**  
See **MINES, passim.**
- WORKING SHAFT—**Meaning of Metalliferous Mines.  
See **MINES.** 17.
- WORKING-MEN’S CLUBS—**Provisions respecting.  
See **Friendly Societies Act, 1896 (59 & 60 Vict. c. 25).**
- WORKMAN.**  
See Cases under **MASTER AND SERVANT.**
- WORKSHOP—**Factory and Workshop Acts.  
See Cases under **MASTER AND SERVANT—FACTORY ACTS.**
- WOUNDING—**Unlawful—Aiding and abetting.  
See **CRIMINAL LAW.** 46.
- WRAPPER—**Use of special, restrained by injunction.  
See **TRADE-MARK.** 3.
- WRECK.**  
See **SHIPPING, passim.**
- Salvage.  
See **SHIPPING—Salvage.**
- WRIT.**  
See Cases under **PRACTICE—Writ.**
- WRITING—**Policy—Clause partly in print partly in writing.  
See **INSURANCE—Marine.** 67.
- WRONGFUL DISMISSAL—**Servant.  
See **MASTER AND SERVANT.** 58.

## Y.

**YACHT RACING**—Gift to charity—Perpetuity.

See CHARITY. 37.

**YEOMANRY.**

See ARMY AND NAVY.

**YEW-TREE**—Poisonous tree—Injury to cattle—

Duty to fence.

See NUISANCES. 39.

**YORK-ANTWERP RULES**—General average payable per foreign statement—Adjustment—Dutch law.

See INSURANCE, MARINE. 57.

**YORKSHIRE.**

**Coroners.**

*Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39), constitutes the Ridings Separate Counties.*

**In General.**

— **Sewers**—Prescriptive right of drainage—Trade effluents—Polluting liquid.

See SEWERS.

**Registry Acts.**

1. — *Agreement for sale of land*—“*Assurance*” — *Memorandum of charge*—*Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), ss. 3, 4, 14.*

An agreement that in consideration of money paid by A. to B., B. would complete certain

**YORKSHIRE (Registry Acts)**—*continued.*

buildings on his land, and that A. would purchase the same when completed:—

*Held*, not to be an assurance capable of registration, under the Yorkshire Registries Act, 1884. *RODGER v. HARRISON* C. A. [1893] 1 Q. B. 161

— **Mortgage**—Priority—Registration.

See MORTGAGE—Priority. 52.

**West Riding Rivers Act.**

*The West Riding of Yorkshire Rivers Act Rules, 1894, made under the West Riding of Yorkshire Rivers Act, 1894 (56 & 57 Vict. c. clxvi.). St. R. & O. 1895, No. 311. Price 1d.*

“**YORKSHIRE RELISH**”—Secret preparation.

See TRADE NAME. 5.

**YOUNG PERSON**—Employment in shop.

See under SHOP.

## Z.

**ZANZIBAR**—British jurisdiction in.

See FOREIGN JURISDICTION.

— **Consular Courts.**

See COLONIAL COURT OF ADMIRALTY.

LONDON:  
PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,  
STAMFORD STREET AND CHARING CROSS.









